



**Virginia Criminal Sentencing Commission**

# ANNUAL REPORT

**2019**



# Virginia Criminal Sentencing Commission



**2019 ANNUAL REPORT**  
DECEMBER 1, 2019

# VIRGINIA CRIMINAL SENTENCING COMMISSION MEMBERS

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

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

Appointments by the  
Chief Justice of the Supreme Court

**Judge Charles S. Sharp, Vice Chair**, Stafford  
**Judge Bradley B. Cavedo**, Richmond City  
**Judge Lisa Bondareff Kemler**, Alexandria  
**Judge W. Revell Lewis, III**, Accomac  
**Judge Michael Lee Moore**, Russell  
**Judge Steven Frucci**, Virginia Beach

Attorney  
General

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

Senate  
Appointments

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

House of Delegates  
Appointments

**Delegate Les R. Adams**, Chatham  
**The Honorable James Fisher**, Fauquier  
**The Honorable James E. Plowman**, Loudoun

Governor's  
Appointments

**Timothy S. Coyne**, Winchester  
**Kyanna Perkins**, Chesterfield  
**Kemba Smith Pradia**, Richmond City  
**The Honorable Shannon Taylor**, Henrico

Commonwealth of Virginia

HON. EDWARD L. HOGSHIRE (RET.)  
CHAIRMAN



MEREDITH FARRAR-OWENS  
DIRECTOR

100 NORTH NINTH STREET  
RICHMOND, VIRGINIA 23219  
(804) 225 - 4398

Supreme Court of Virginia  
Virginia Criminal Sentencing Commission

December 1, 2019

To: The Honorable Donald W. Lemons, Chief Justice of Virginia  
The Honorable Ralph S. Northam, Governor of Virginia  
The Honorable Members of the General Assembly of Virginia  
The Citizens of Virginia

Section 17.1-803 of the *Code of Virginia* requires the Virginia Criminal Sentencing Commission to report annually upon its work and recommendations. Pursuant to this statutory obligation, we respectfully submit for your review the *2019 Annual Report* of the Criminal Sentencing Commission.

This report details the work of the Commission over the past year. The report includes a detailed analysis of judicial concurrence with the felony sentencing guidelines during fiscal year 2019. The Commission's recommendations to the 2020 session of the Virginia General Assembly are also contained in this report.

I would like to use this opportunity to express our utmost gratitude to Commission members who have departed the Commission in 2019: Judge Rossie D. Alston, Jr., of Manassas, Judge Bradley Cavedo, of Richmond and Judge Lisa Bondareff Kemler, of Alexandria. All have performed their duties in an exemplary fashion and our work is far better because of his insights and valuable contributions.

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

Sincerely,

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

Edward L. Hogshire  
Chairman

# VIRGINIA CRIMINAL SENTENCING COMMISSION **STAFF**

**Director** ————— **Meredith Farrar-Owens**

**Deputy Director** ————— **Jody T. Fridley**

**Research Associate** ————— **Thomas Y. Barnes**

**Research Associate** ————— **Joe Boelsche**

**Data Processing Specialist** ————— **Alfreda Cheatham**

**Research Associate** ————— **Chang Kwon**

**Training Associate** ————— **Danielle McCowan-Lewis**

**Training Associate** ————— **Kim Thomas**

**Research Associate** ————— **Carolyn A. Williamson**

**Research Assistants** ————— **Trae Christian**  
**William Perkins, IV**  
**Brad Puryear**

# TABLE --- OF CONTENTS

## 1 Introduction

Overview	1
Commission Meetings	2
Monitoring and Oversight	2
Training, Education and Other Assistance	3
Automation Project - SWIFT!	5
Projecting the Impact of Proposed Legislation	6
Prison and Jail Population Forecasting	7
Study of Burglary Sentencing Guidelines	8
Probation Violation Guidelines Revisions	8
Assistance to Other Agencies	9

## 2 Guidelines Concurrence

Introduction	11
Concurrence Defined	12
Overall Concurrence with the Sentencing Guidelines	14
Dispositional Concurrence	14
Durational Concurrence	16
Reasons for Departure from the Guidelines	17
Concurrence by Circuit	18
Virginia Localities and Judicial Circuits	20
Concurrence by Sentencing Guidelines Offense Group	22
Concurrence Under Midpoint Enhancements	25
Juries and the Sentencing Guidelines	27
Concurrence and Nonviolent Offender Risk Assessment	30
Concurrence and Sex Offender Risk Assessment	33
Specific Type of Drug Study	37
Sentencing Revocation Reports (SRRs)	40
Probation Violation Guidelines (PVGs)	42

### 3 Study of Burglary Sentencing Guidelines

Introduction	49
Concurrence with Current Burglary Sentencing Guidelines	50
Methodology and Data Sources	52
Findings	54
Conclusion	58

### 4 Recommendations

Introduction	59
Recommendation 1	61
Recommendation 2	65
Recommendation 3	71
Recommendation 4	78
Recommendation 5	84
Recommendation 6	88
Recommendation 7	92

Appendices	95
------------	----

# 1

# INTRODUCTION

## **Overview**

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

The report is organized into four chapters. The remainder of the Introduction chapter provides a general profile of the Commission and an overview of its various activities and projects. The Guidelines Concurrence chapter that follows contains a comprehensive analysis of concurrence with the sentencing guidelines during fiscal year (FY) 2019. The third chapter describes a special study recently conducted by the Commission on the sentencing guidelines for burglary offenses. In the report's final chapter, the Commission presents its recommendations for revisions to the felony sentencing guidelines system.

## **Commission Profile**

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

## **Commission Meetings**

The full membership of the Commission met four times during 2019. These meetings were held on March 25, June 5, September 9, and November 6. Minutes for each of these meetings are available on the Commission's website ([www.vcsc.virginia.gov /meetings.html](http://www.vcsc.virginia.gov/meetings.html)).

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

## **Monitoring and Oversight**

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

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

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

## Training, Education and Other Assistance

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

In FY2019, the Commission offered 33 training seminars across the Commonwealth for more than 800 criminal justice professionals. As in previous years, Commission staff conducted training for attorneys and probation officers new to Virginia’s sentencing guidelines system. The six-hour seminar introduced participants to the sentencing guidelines and provided instruction on correct scoring of the guidelines worksheets. The seminar also introduced new users to the probation violation guidelines and the two offender risk assessment instruments that are incorporated into Virginia’s guidelines system. By request, a seminar on understanding criminal history “rap sheets” and scoring prior record convictions was offered across the state. In addition, seminars for experienced guidelines users were provided during the year. These courses were approved by the Virginia State Bar, enabling participating attorneys to earn Continuing Legal Education credits. The Commission continued to provide a guidelines-related ethics class for attorneys, which was conducted in conjunction with the Virginia State Bar. The Virginia State Bar approved this class for one hour of Continuing Legal Education Ethics credit. A three-hour course on the development and use of sentencing guidelines, led by Judge David Carson from the 23rd Circuit and Commission staff, was conducted for newly-elected judges. The Commission conducted the last sentencing guidelines seminar at the Department of Corrections’ Training Academy, as part of the curriculum for new probation officers. This year, the Department of Corrections encouraged probation officers to attend sentencing guidelines seminars in their local area. Staff from the Commission continued to travel to district probation offices when training was needed. Finally, the Commission often offers refresher courses to Bar Associations across the Commonwealth and in-house training for attorneys for the Commonwealth and Public Defenders.

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

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

In addition to providing training and education programs, the Commission maintains a website and a "hotline" phone and texting system. The "hotline" phone (804.225.4398) is staffed from 7:30 a.m. to 5:00 p.m., Monday through Friday, to respond quickly to any questions or concerns regarding the sentencing guidelines or their preparation. The hotline continues to be an important resource for guidelines users around the Commonwealth. Guidelines users also have the option of texting their questions to staff (804.393.9588). Guidelines users indicated that this option was helpful, particularly when they were at the courthouse or otherwise away from the office. On a typical day staff responds to 25 to 40 phone calls, texts and emails related to scoring sentencing guidelines.

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

### **Automation Project - SWIFT!**

In 2012, staff launched a project to automate the sentencing guidelines completion and submission process. The Commission has been collaborating with the Supreme Court's Department of Judicial Information Technology (DJIT) to design a web-based application for automating the sentencing guidelines. The application is called SWIFT (Sentencing Worksheets and Integrated File Transfer).

The Commission pilot tested features of the application in Norfolk and Henrico County before expanding the pilot statewide. The Commission is most appreciative of the 107 Circuit Court Clerks who allowed the Commission and the sentencing guidelines users access to publicly available court data. This access to information allowed over 2,000 registered users the ability to streamline preparing sentencing guidelines before the application went statewide. On July 1, 2018, SWIFT was implemented statewide and was designated as the required process for preparing and submitting sentencing guidelines to the court. This year, a significant amount of time was spent modifying SWIFT to capture all docket numbers in a sentencing event. This change was made at the request of Circuit Court Clerks and judges. As full implementation of SWIFT moves forward, the next phase is to use the application to transfer sentencing guidelines between preparers, attorneys, clerks, judges and the Commission.

A focus group of Circuit Court Clerks and judges was established to help develop the protocol for the next phase of SWIFT. Preparers and users of sentencing guidelines are encouraged to let the Commission know about their concerns, issues or suggestions. Staff can be reached by phone (804.225.4398), email ([swift@vacourts.gov](mailto:swift@vacourts.gov)) or text (804.393.9588) to discuss SWIFT or any sentencing guidelines topic.

## **Projecting the Impact of Proposed Legislation**

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

For the 2019 General Assembly and the 2019 Special Session convened during the summer, the Commission prepared a combined total of 375 impact statements on proposed legislation. These proposals included: 1) legislation to increase the felony penalty class of a specific crime; 2) legislation to increase the penalty class of a specific crime from a misdemeanor to a felony; 3) legislation to add a new mandatory minimum penalty; 4) legislation to expand or clarify an existing crime; and 5) legislation that would create a new criminal offense. The Commission utilizes its computer simulation forecasting program to estimate the projected impact of these proposals on the prison system. The estimated impact on the juvenile offender population is provided by Virginia's Department of Juvenile Justice. In most instances, the projected impact and accompanying analysis of a bill is presented to the General Assembly within 24 to 48 hours after the Commission is notified of the proposed legislation. When requested, the Commission provides pertinent oral testimony to accompany the impact analysis. Additional impact analyses may be conducted at the request of House Appropriations Committee staff, Senate Finance Committee staff, the Secretary of Public Safety and Homeland Security, or staff of the Department of Planning and Budget.

## **Prison and Jail Population Forecasting**

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

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

The Secretary presented the most recent offender forecasts to the General Assembly in a report submitted in October 2019.

### **Study of Burglary Sentencing Guidelines**

In 2018, the Commission approved a special study of sentencing guidelines for burglary offenses. Several circuit court judges had asked the Commission to review the burglary guidelines to determine if any revisions were needed in order for the guidelines to better reflect current judicial sentencing practices in burglary cases. For example, factors not currently accounted for by the guidelines may be pertinent in sentencing. To fully examine burglary cases, the Commission was interested in specific case details, such as whether a person was present when the burglary offense was committed, to determine the impact such details have on sentencing outcomes. Most of the details of interest to the Commission are not captured in automated criminal justice data systems. Thus, the Commission launched a special data collection effort to gather case details from court records and case files. Findings from the study, which was completed in 2019, are presented in the third chapter of this report.

### **Probation Violation Guidelines Revision**

In 2003, the General Assembly directed the Commission to develop discretionary sentencing guidelines for probation violators returned to court for reasons other than a new criminal conviction (“technical violations”). To develop these guidelines, the Commission examined historical judicial sanctioning practices in revocation hearings. In its 2003 Annual Report, the Commission recommended that the probation violation guidelines be implemented statewide and the recommendation was accepted by 2004 General Assembly. Statewide use began July 1, 2004. Since July 1, 2010, the Appropriation Act has specified that a Sentencing Revocation Report and, if applicable, the Probation Violation Guidelines, must be presented to the court and reviewed by the judge for any violation hearing conducted pursuant to § 19.2-306.

Although past amendments to the probation violation guidelines have increased compliance, the compliance rate remains relatively low (58% in FY2019). This suggests that many judges are dissatisfied with the probation violation guidelines. Numerous criminal justice practitioners have requested that the Commission revise these guidelines. In 2016, the Commission approved a new study that will provide the foundation needed to revise the guidelines used in revocation cases. The goal is to improve the utility of the probation violation guidelines for Virginia's judges.

As a critical first step in revising the guidelines, the Commission sought input and guidance from circuit court judges through a survey. The survey was administered in September-October 2018. Judges had the option of taking the survey online or on paper. Overall, 89.7% of active circuit court judges responded. The results of the survey have proven to be a rich source of information for the Commission. This information has been used for planning subsequent stages of the project, especially data collection.

Work on the project continued into 2019. Once completed, any recommendations adopted by the Commission will be presented in a subsequent *Annual Report*.

### **Assistance to Other Agencies**

When requested, the Commission provides technical assistance, in the form of data and analysis, to other state agencies. During 2019, the Commission assisted agencies such as the Virginia State Crime Commission, a legislative branch agency, the Virginia Department of Juvenile Justice, and the Department of Planning & Budget.



# 2

## GUIDELINES CONCURRENCE

### Introduction

Beginning January 1, 1995, the practice of discretionary parole release was abolished in Virginia and the existing system of sentence credits awarded to inmates for good behavior was eliminated. Under Virginia's truth-in-sentencing laws, convicted felons must serve at least 85% of the pronounced sentence and they may earn, at most, 15% off in sentence credits, regardless of whether their sentence is served in a state facility or a local jail. The Virginia Criminal Sentencing Commission was established to develop and administer guidelines in an effort to provide Virginia's judiciary with sentencing recommendations for felony cases under the new truth-in-sentencing laws. Under the current no-parole system, guidelines recommendations for nonviolent offenders with no prior record of violence are tied to the amount of time they served during a period prior to the abolition of parole. In contrast, offenders convicted of violent crimes, and those with prior convictions for violent felonies, are subject to guidelines recommendations up to six times longer than the historical time served in prison by similar offenders. In over a half-million felony cases sentenced under truth-in-sentencing laws, judges have agreed with guidelines recommendations in more than three out of four cases. This report focuses on cases sentenced from the most recent year of available data, fiscal year (FY) 2019 (July 1, 2018, through June 30, 2019). Concurrence is examined in a variety of ways in this report, and variations in data over the years are highlighted throughout.

**Figure 1**

**Number and Percentage  
of Cases Received by  
Circuit - FY2019\***

<b>Circuit</b>	<b>Number</b>	<b>Percent</b>
1	755	3.0%
2	1,517	5.9%
3	335	1.3%
4	940	3.7%
5	486	1.9%
6	476	1.9%
7	594	2.3%
8	363	1.4%
9	699	2.7%
10	711	2.8%
11	314	1.2%
12	939	3.7%
13	776	3.0%
14	1,175	4.6%
15	1,967	7.7%
16	942	3.7%
17	241	0.9%
18	94	0.4%
19	1,054	4.1%
20	567	2.2%
21	465	1.8%
22	688	2.7%
23	868	3.4%
24	1,167	4.6%
25	1,505	5.9%
26	1,635	6.4%
27	1,375	5.4%
28	870	3.4%
29	743	2.9%
30	677	2.6%
31	627	2.5%
<b>Total</b>	<b>25,565</b>	<b>100%</b>

\*33 cases were missing a circuit number

In FY2019, eight judicial circuits contributed more guidelines cases than any of the other judicial circuits in the Commonwealth. Those circuits, which include the Fredericksburg area (Circuit 15), the Harrisonburg area (Circuit 26), Virginia Beach (Circuit 2), Botetourt County area (Circuit 25), the Radford area (Circuit 27), Henrico County (Circuit 14), Lynchburg area (Circuit 24), and Fairfax County (Circuit 19) comprised nearly half (45%) of all worksheets received in FY2019 (Figure 1). See Appendix 4 for a breakdown of guidelines received by jurisdiction.

During FY2019, the Commission received 25,565 sentencing guideline worksheets. Of these, 937 worksheets contained errors or omissions that affect the analysis of the case. For the purposes of conducting a clear evaluation of sentencing guidelines in effect for FY2019, the remaining sections of this chapter pertaining to judicial concurrence with guidelines recommendations focus only on those 24,628 cases for which guidelines recommendations were completed and calculated correctly.

**Concurrence Defined**

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

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

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

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

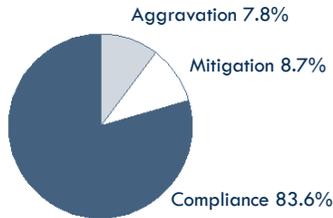
Concurrence through the use of diversion options in habitual traffic cases resulted from amendments to § 46.2-357(B2 and B3) of the *Code of Virginia*, effective July 1, 1997. The amendment allows judges to suspend the mandatory minimum 12-month incarceration term required in felony habitual traffic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

## Overall Concurrence with the Sentencing Guidelines

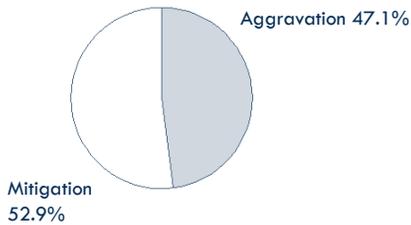
Figure 2

### Overall Guidelines Concurrence and Direction of Departures - FY2019

#### Overall Concurrence



#### Direction of Departures



The overall concurrence rate summarizes the extent to which Virginia’s judges concur with recommendations provided by the sentencing guidelines, both in type of disposition and in length of incarceration. For the past twelve fiscal years, the concurrence rate has hovered around 80%. During FY2019, judges continued to agree with the sentencing guidelines recommendations in approximately 84% of the cases (Figure 2).

In addition to concurrence, the Commission also studies departures from the guidelines. The rate at which judges sentence offenders to sanctions more severe than the guidelines recommendation, known as the “aggravation” rate, was 7.8% for FY2019. The “mitigation” rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 8.7% for the fiscal year. Thus, of the FY2019 departures, 47.1% were cases of aggravation while 52.9% were cases of mitigation.

## Dispositional Concurrence

Since the inception of truth-in-sentencing in 1995, the correspondence between dispositions recommended by the guidelines and the actual dispositions imposed in Virginia’s circuit courts has been quite high. Figure 3 illustrates judicial concurrence in FY2019 with the type of disposition recommended by the guidelines. For instance, of all felony offenders recommended for more than six months of incarceration during FY2019, judges sentenced 87% to terms in excess of six months (Figure 3). Some offenders recommended for incarceration of more than six months received a shorter term of incarceration (one day to six months) or probation with no active incarceration, but the percentage of offenders receiving such dispositions were small.

Figure 3

### Recommended and Actual Dispositions - FY2019

Recommended Disposition	Actual Disposition		
	Probation	Incarceration 1 day - 6 mos.	Incarceration > 6 mos.
Probation	76.8%	20.0%	3.2%
Incarceration 1 day - 6 months	11.2%	80.6%	8.2%
Incarceration > 6 months	6.2%	7.3%	86.5%

Judges have also typically agreed with guidelines recommendations for other types of dispositions. In FY2019, 81% of offenders received a sentence resulting in confinement of six months or less when such a sanction was recommended. In some cases, judges felt probation to be a more appropriate sanction than the recommended jail term and, in other cases, offenders recommended for short-term incarceration received a sentence of more than six months. Finally, 77% of offenders whose guidelines recommendation called for no incarceration were given probation and no post-dispositional confinement. Some offenders with a “no incarceration” recommendation received a short jail term, but rarely did these offenders receive an incarceration term of more than six months.

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

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

**Figure 4**

**Durational Concurrence and Direction of Departures - FY2019\***

**Durational Concurrence**



**Direction of Departures**



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

**Durational Concurrence**

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

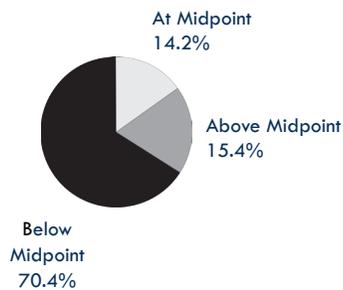
Durational concurrence among FY2019 cases was at 84%, indicating that judges, more often than not, agree with the length of incarceration recommended by the guidelines in jail and prison cases (Figure 4). Among FY2019 cases not in durational concurrence, departures tended slightly more toward mitigation than aggravation.

For cases recommended for incarceration of more than six months, the sentence length recommendation derived from the guidelines (known as the midpoint) is accompanied by a high-end and low-end recommendation. The sentence ranges recommended by the guidelines are relatively broad, allowing judges to use their discretion in sentencing offenders to different incarceration terms, while still remaining in concurrence with the guidelines. When the guidelines recommended more than six months of incarceration, and judges sentenced within the recommended range, only a small share (14% of offenders in FY2019) were given prison terms exactly equal to the midpoint recommendation (Figure 5). Most of the cases (70%) in durational concurrence with recommendations over six months resulted in sentences below the recommended midpoint. For the remaining 15% of these incarceration cases sentenced within the guidelines range, the sentence exceeded the midpoint recommendation. This pattern of sentencing within the range has been consistent since the truth-in-sentencing guidelines took effect in 1995, indicating that judges, overall, have favored the lower portion of the recommended range.

**Figure 5**

**Distribution of Sentences within Guidelines Range - FY2019\*\***

**Guidelines Midpoint**



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

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

### **Reasons for Departure from the Guidelines**

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

In FY2019, 8.7% of guidelines cases resulted in sanctions below the guidelines recommended range. The most frequently cited reasons for sentencing below the guidelines recommendation were: the acceptance of a plea agreement, a sentence to a less-restrictive sanction, mitigating offense circumstances, judicial discretion, defendant's lack of or minimal prior record, and the defendant's cooperation with law enforcement. Although other reasons for mitigation were reported to the Commission in FY2019, only the most frequently cited reasons are noted here. For 165 of the 2140 mitigating cases, a departure reason could not be discerned.

Judges sentenced 7.8% of the FY2019 cases to terms that were more severe than the sentencing guidelines recommendation, resulting in "aggravation" sentences. The most frequently cited reasons for sentencing above the guidelines recommendation were: the acceptance of a plea agreement, aggravating offense circumstances, the number of counts in the sentencing event, the severity or degree of prior record, the involvement of drugs in the offense, the defendant's poor potential for being rehabilitated, and type of victim. For 150 of the 1909 cases sentenced above the guidelines recommendation, the Commission could not ascertain a departure reason.

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

**Figure 6**

#### **Median Length of Duration Departures - FY2019\***



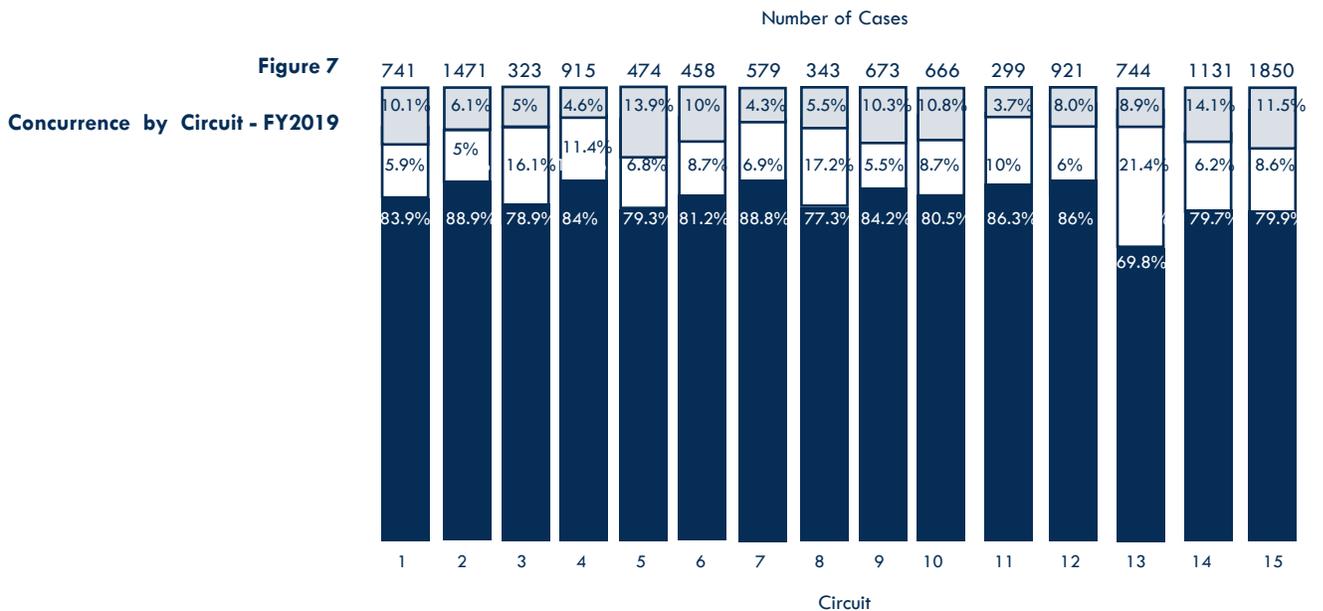
\*Cases recommended for and receiving an active jail or prison sentence.

### Concurrence by Circuit

Since the onset of truth-in-sentencing, concurrence rates and departure patterns have varied across Virginia’s 31 judicial circuits. FY2019 continues to show differences among judicial circuits in the degree to which judges concur with guidelines recommendations (Figure 7). The map on the following pages identifies the location of each judicial circuit in the Commonwealth.

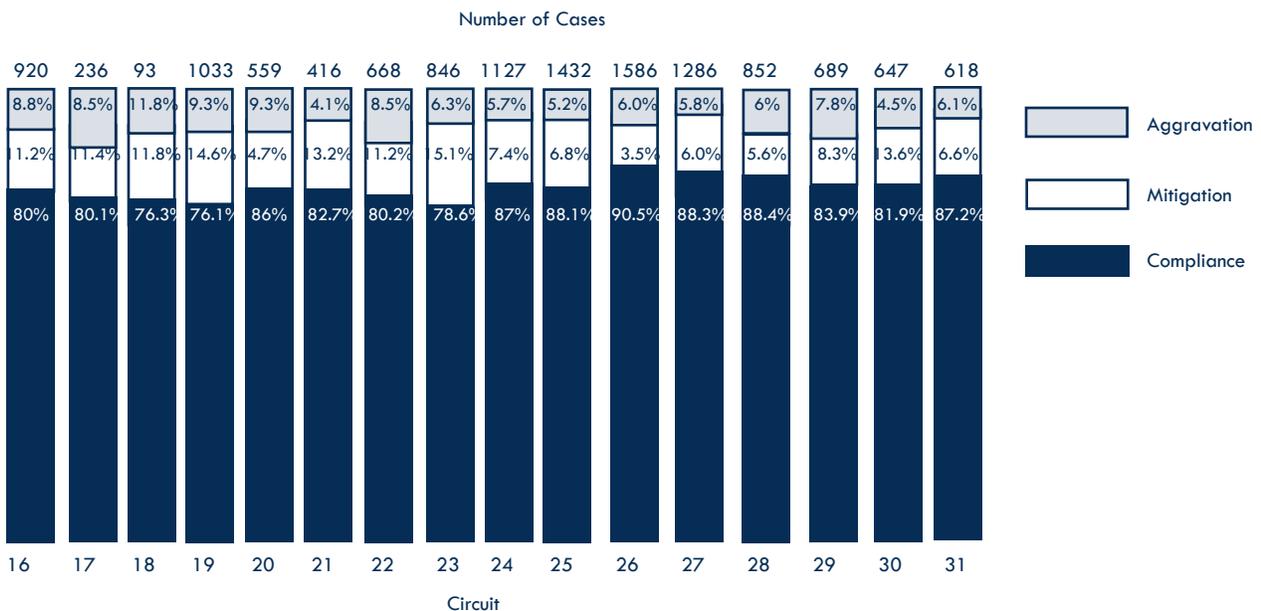
In FY2019, 52% of the state’s 31 circuits exhibited concurrence rates above 81.9%, while the remaining 48% reported concurrence rates between 69.8% and 81.9%. There are likely many reasons for the variations in concurrence across circuits. Certain jurisdictions may see atypical cases not reflected in statewide averages. In addition, the availability of alternative or community-based programs currently differs from locality to locality. The degree to which judges concur with guidelines recommendations does not seem to be related primarily to geography. The circuits with the lowest concurrence rates are scattered across the state, and both high and low concurrence circuits can be found in close geographic proximity.

In FY2019, the highest rate of judicial agreement with the sentencing guidelines (91%) was in Circuit 26 (Harrisonburg Area). Concurrence rates of 89% were found in Circuit 2 (Virginia Beach) and Circuit 7 (Newport News). Circuit 13 (Richmond City), Circuit 19 (Fairfax), and Circuit 18 (Alexandria) reported the lowest concurrence rate among the judicial circuits in FY2019. However, all other concurrence rates were 77% or higher.



In FY2019, the highest mitigation rates were found in Circuit 13 (Richmond City), Circuit 8 (Hampton), Circuit 3 (Portsmouth), Circuit 23 (Roanoke Area), Circuit 19 (Fairfax), and Circuit 30 (Lee County Area). Circuit 13 (Richmond City) had a mitigation rate of 21% which is an increase from previous years. Circuit 8 (Hampton) recorded a mitigation rate of 17% and Circuit 3 (Portsmouth) recorded a mitigation rate of 16%. Circuits from different parts of the state, Circuit 23 (Roanoke Area) and Circuit 19 (Fairfax) had a mitigation rate of 15% for the fiscal year. Circuit 30 (Lee County Area) had a mitigation rate around 14%. With regard to high mitigation rates, it would be too simplistic to assume that this reflects areas with lenient sentencing habits. Intermediate punishment programs are not uniformly available throughout the Commonwealth, and jurisdictions with better access to these sentencing options may be using them as intended by the General Assembly. These sentences generally would appear as mitigations from the guidelines. Inspecting aggravation rates reveals that Circuit 14 (Henrico) and Circuit 5 (Suffolk Area) had the highest aggravation rates around 14%. Circuit 18 (Alexandria), Circuit 15 (Fredericksburg), Circuit 10 (South Boston Area), Circuit 9 (Williamsburg Area), Circuit 1 (Chesapeake), and Circuit 6 (Sussex Area) had aggravation rates between 10.0% and 11.8%.

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



## Virginia Localities and Judicial Circuits

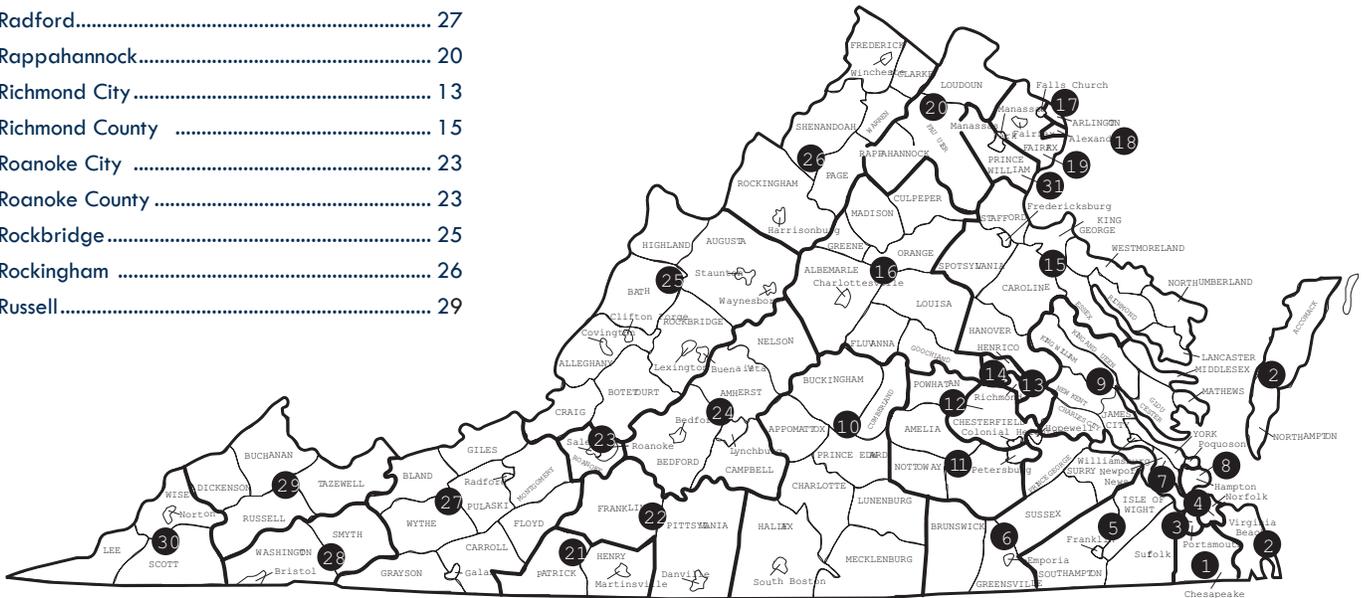
Accomack .....	2
Albemarle.....	16
Alexandria .....	18
Alleghany .....	25
Amelia.....	11
Amherst .....	24
Appomattox .....	10
Arlington .....	17
Augusta .....	25
Bath .....	25
Bedford City .....	24
Bedford County.....	24
Bland .....	27
Botetourt .....	25
Bristol.....	28
Brunswick .....	6
Buchanan .....	29
Buckingham .....	10
Buena Vista .....	25
Campbell.....	24
Caroline .....	15
Carroll .....	27
Charles City .....	9
Charlotte .....	10
Charlottesville .....	16
Chesapeake.....	1
Chesterfield .....	12
Clarke .....	26
Clifton Forge.....	25
Colonial Heights .....	12
Covington .....	25
Craig .....	25
Culpeper.....	16
Cumberland .....	10
Danville.....	22
Dickenson .....	29
Dinwiddie .....	11
Emporia.....	6
Essex .....	15

Fairfax City .....	19
Fairfax County .....	19
Falls Church .....	17
Fauquier.....	20
Floyd.....	27
Fluvanna .....	16
Franklin City .....	5
Franklin County.....	22
Frederick .....	26
Fredericksburg .....	15
Galax.....	27
Giles.....	27
Gloucester .....	9
Goochland .....	16
Grayson.....	27
Greene .....	16
Greensville .....	6
Halifax .....	10
Hampton .....	8
Hanover .....	15
Harrisonburg.....	26
Henrico .....	14
Henry .....	21
Highland .....	25
Hopewell .....	6
Isle of Wight .....	5
James City.....	9
King and Queen .....	9
King George.....	15
King William.....	9
Lancaster .....	15
Lee .....	30
Lexington .....	25
Loudoun.....	20
Louisa .....	16
Lunenburg.....	10
Lynchburg .....	24

Madison .....	16
Manassas .....	31
Martinsville .....	21
Mathews .....	9
Mecklenburg .....	10
Middlesex .....	9
Montgomery .....	27
Nelson .....	24
New Kent .....	9
Newport News .....	7
Norfolk .....	4
Northampton .....	2
Northumberland .....	15
Norton .....	30
Nottoway .....	11
Orange .....	16
Page .....	26
Patrick .....	21
Petersburg .....	11
Pittsylvania .....	22
Poquoson .....	9
Portsmouth .....	3
Powhatan .....	11
Prince Edward .....	10
Prince George .....	6
Prince William .....	31
Pulaski .....	27
Radford .....	27
Rappahannock .....	20
Richmond City .....	13
Richmond County .....	15
Roanoke City .....	23
Roanoke County .....	23
Rockbridge .....	25
Rockingham .....	26
Russell .....	29

Salem .....	23
Scott .....	30
Shenandoah .....	26
Smyth .....	28
South Boston .....	10
Southampton .....	5
Spotsylvania .....	15
Stafford .....	15
Staunton .....	25
Suffolk .....	5
Surry .....	6
Sussex .....	6
Tazewell .....	29
Virginia Beach .....	2
Warren .....	26
Washington .....	28
Waynesboro .....	25
Westmoreland .....	15
Williamsburg .....	9
Winchester .....	26
Wise .....	30
Wythe .....	27
York .....	9

**Virginia  
Judicial Circuits**



### Concurrence by Sentencing Guidelines Offense Group

In FY2019, as in previous years, judicial agreement with the guidelines varied when comparing the 17 offense groups (Figure 8). For FY2019, concurrence rates ranged from a high of 87% in the Drug Schedule I/II offense group to a low of 64% in Murder/Homicide cases. In general, property and drug offenses exhibit higher rates of concurrence than the violent offense categories. Several violent offense groups (i.e., Kidnapping, Sexual Assault, Murder/Homicide, Rape, Robbery, Burglary Dwelling, and Obscenity) had concurrence rates at or below 73%, whereas many of the property and drug offense categories had concurrence rates above 85%.

During the past fiscal year, judicial concurrence with guidelines recommendations remained relatively stable, fluctuating less than three percent for most offense groups. Concurrence rates are much more susceptible to year-to-year fluctuations for offense groups with small numbers of sentencing events in a given year. Concurrence with the Kidnapping worksheets (137 cases) decreased by 6 percentage points from FY2018 to FY2019 because of a tendency to sentence above the guidelines recommendation. During the same time, concurrence on the Sexual Assault worksheets

**Figure 8**  
**Guidelines Concurrence by Offense - FY2019**

	Compliance	Mitigation	Aggravation	Number of Cases
Drug Schedule I/II	87.1%	7.3%	5.6%	10,215
Drug Other	86.4%	6.8%	6.7%	980
Larceny	85.6%	8.8%	5.6%	4,507
Miscellaneous Other	84.6%	9.6%	5.8%	447
Fraud	83.8%	12.1%	4.2%	1,541
Traffic	79.8%	9.0%	11.2%	1,514
Assault	79.4%	9.1%	11.5%	1,562
Weapon	78.7%	9.7%	11.6%	928
Burglary Other	78.4%	12.5%	9.1%	319
Miscellaneous Person/Property	77.7%	6.6%	15.6%	422
Obscenity	72.6%	8.3%	19.0%	252
Burglary Dwelling	72.6%	14.0%	13.4%	536
Robbery	72.6%	19.5%	8.0%	514
Rape	71.8%	10.9%	17.2%	174
Sex Assault	69.9%	4.7%	25.3%	296
Kidnapping	67.9%	8.8%	23.4%	137
Murder	64.1%	9.5%	26.4%	284
<b>Total</b>	<b>83.6%</b>	<b>8.7%</b>	<b>7.8%</b>	<b>24,628</b>

(296 cases) increased this year by 6 percentage points because judges, although still more likely to go above the guidelines recommendation when not concurring with the recommendation, concurred with the guidelines recommendations at a higher rate. Concurrence on the Rape worksheets (174 cases) increased by 5 percentage points due to a significant decrease in the number of cases sentenced below the guidelines recommendations.

Several changes went into effect beginning July 1, 2018. A new felony offense defined by § 18.2-279, unlawful discharge of a firearm or missile in or at an occupied building was added to the sentencing guidelines system. Also added were two other felony offenses defined by § 18.2-431.1 related to possession of wireless devices, cell phones, etc., by prisoners or providing such devices to prisoners. Scores were adjusted for abduction with intent to defile in violation of § 18.2-48 and for § 18.2-279, maliciously discharging a firearm or missile in or at an occupied building. An existing factor on the Burglary worksheets was modified to better reflect when a burglary offense was sentenced together with an additional offense of attempted murder.

At the time of this report, no cases have been received for providing a wireless device to a prisoner or a prisoner possessing a wireless device. However, concurrence rates are high for all the other modifications that were made. Judges concurred with the guidelines' recommendation for unlawful discharge of a firearm or missile in or at an occupied building in about 88% of the cases. When not in agreement, judges sentenced above the recommendation in only 8% of the cases and below in 4% of the cases. Judges, when not in agreement with the recommendation, were more likely to sentence above the guidelines' recommendation in 25% of the convictions for maliciously discharging a firearm or missile at or in an occupied dwelling. However, concurrence with the recommendation was relatively high at 71%. Changes for kidnapping and burglary impacted very few cases and judges agreed with the changes and concurred with the modifications in all cases.

Since 1995, departure patterns have differed across offense groups, and FY2019 was no exception. In most cases, judges are sentencing within the recommendation, but for the offense groups of Robbery, Burglary Dwelling, Burglary Other Structure, and Fraud, judges, when not in concurrence, sentenced below the recommendation. In fact, the Robbery offense group showed the highest mitigation rates with 20% of the robbery cases resulting in sentences below the guidelines. The most frequently cited mitigation reasons provided by judges in robbery cases included: the acceptance of a plea agreement, the defendant cooperated with authorities, judicial discretion, recommended by the attorney for the Commonwealth, and the lack of an extensive prior record.

The concurrence rates for Drug/Other is comparatively high. When judges impose sentences outside the recommendation, the departure pattern is evenly split between mitigation and aggravation. Judges were just as likely to sentence above the guidelines recommendation as below in these cases.

A similar pattern exists for the Burglary Dwelling cases. Although concurrence is not as high as it is for drug offenses, the departure pattern is almost evenly split with just a slight tendency to sentence below the recommendation rather than above.

In the remaining offense groups, judges are more likely to sentence above the recommendation when not in concurrence. In FY2019, the offense groups with the highest aggravation rates were Murder/Homicide at 26%, Sexual Assault at 25%, Kidnapping at 23% and Obscenity at 19%. These offense groups shared similar departure reasons. The most frequently cited aggravating departure reasons were, facts of the case, and plea agreement. Judges also frequently cited recommendation from a jury as the reason for the upward departure, especially in Murder/Homicide cases.

## Concurrence Under Midpoint Enhancements

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

Because midpoint enhancements are designed to target only violent offenders for longer sentences, enhancements do not affect the sentence recommendation for the majority of guidelines cases. Among the FY2019 cases, 81% of the cases did not involve midpoint enhancements of any kind (Figure 9). Only 19% of the cases qualified for a midpoint enhancement because of a current or prior conviction for a felony defined as violent under § 17.1-805. The proportion of cases receiving midpoint enhancements has fluctuated very little since the institution of truth-in-sentencing guidelines in 1995.

Of the FY2019 cases in which midpoint enhancements applied, the most common midpoint enhancement was for a Category II prior record. Approximately 54% of the midpoint enhancements were of this type and were applicable to offenders with a nonviolent instant offense but a violent prior record defined as Category II (Figure 10). In FY2019, another 17% of midpoint enhancements were attributable to offenders with a more serious Category I prior record. Cases of offenders with a violent instant offense but no prior record of violence represented about 19% of the midpoint enhancements in FY2019. The most substantial midpoint enhancements target offenders with a combination of instant and prior violent offenses. Roughly 7% qualified for enhancements for both a current violent offense and a Category II prior record. A very small percentage of cases (3%) were targeted for the most extreme midpoint enhancements triggered by a combination of a current violent offense and a Category I prior record.

Figure 9

### Application of Midpoint Enhancements - FY2019

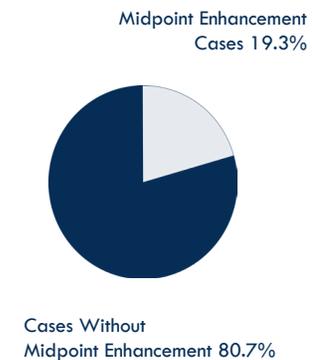
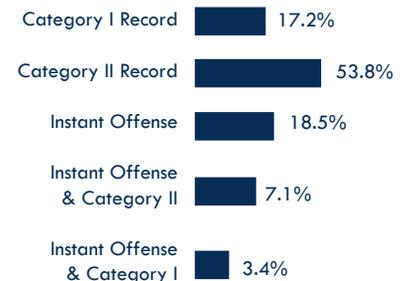


Figure 10

### Type of Midpoint Enhancements Received - FY2019



**Figure 11**

**Length of Mitigation Departures  
in Midpoint Enhancement Cases - FY2019**



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

Since the inception of the truth-in-sentencing guidelines, judges have departed from the guidelines recommendation more often in midpoint enhancement cases than in cases without enhancements. In FY2019, concurrence was 73% when enhancements applied, which is significantly lower than concurrence in all other cases (84%). Thus, concurrence in midpoint enhancement cases is suppressing the overall concurrence rate. When departing from enhanced guidelines recommendations, judges are choosing to mitigate in three out of every four departures.

Among FY2019 midpoint enhancement cases resulting in incarceration, judges departed from the low end of the guidelines range by an average of 23 months (Figure 11). The median departure (the middle value, where half of the values are lower, and half are higher) was 15 months.

Concurrence, while generally lower in midpoint enhancement cases than in other cases, varies across the different types and combinations of midpoint enhancements (Figure 12). In FY2019, involving a current violent offense, but no prior record of violence generated the highest rate of concurrence of all midpoint enhancements (76%). Cases receiving enhancements for a Category I prior record generated the lowest concurrence (67%). Concurrence for enhancement cases with a Category II prior record was 75%. Cases involving a combination of a current violent offense and a Category II prior record yielded a concurrence rate of 71%, while those with the most significant midpoint enhancements, for both a violent instant offense and a Category I prior record, had a lower concurrence rate (70%).

Because of the high rate of mitigation departures, analysis of departure reasons in midpoint enhancement cases focuses on downward departures from the guidelines. Judges sentence below the guidelines recommendation in nearly one out of every five midpoint enhancement cases. The most frequently cited reasons for departure include

the acceptance of a plea agreement, sentenced to alternative punishment, mitigated facts of the offense, judicial discretion (time served, other sentence to serve, consistent with codefendant, etc.), offender has minimal to no prior record, mitigated court circumstances or proceedings (will resentence), recommended by the attorney for the Commonwealth, and offender has health issues.

**Figure 12**

**Compliance by Type of Midpoint Enhancement - FY2019**

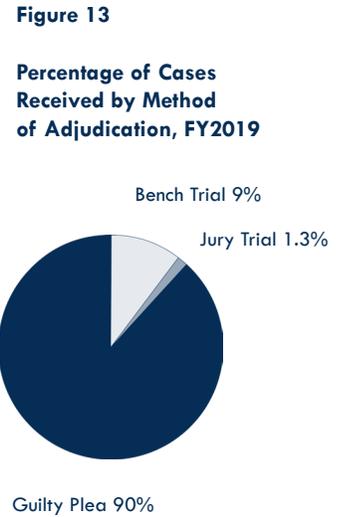
Midpoint Enhancement	Compliance	Mitigation	Aggravation	Number of Cases
None	86.0%	5.9%	8.1%	19,865
Category I	67.1%	31.1%	1.8%	817
Category II	74.9%	20.0%	5.1%	2,561
Instant Offense	76.1%	11.2%	12.7%	884
Instant and Category I	69.8%	27.8%	2.5%	162
Instant and Category II	70.8%	19.5%	9.7%	339
<b>Total</b>	<b>83.6%</b>	<b>8.7%</b>	<b>7.8%</b>	<b>24,628</b>

### Juries and the Sentencing Guidelines

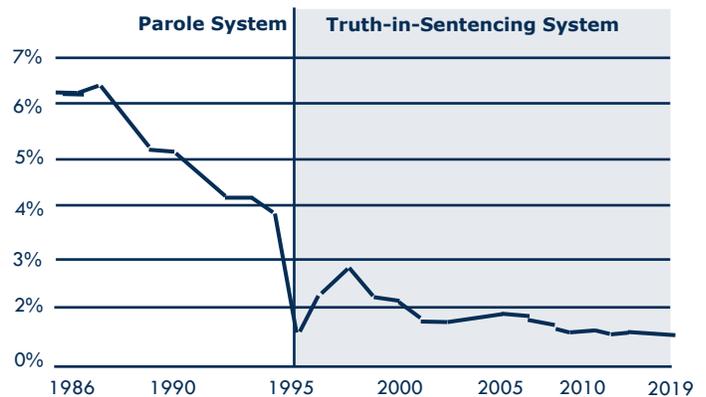
There are three methods by which Virginia’s criminal cases are adjudicated: guilty pleas, bench trials, and jury trials. Felony cases in circuit courts are overwhelmingly resolved through guilty pleas from defendants, or plea agreements between defendants and the Commonwealth. During the last fiscal year, 90% of guideline cases were sentenced following guilty pleas (Figure 13). Adjudication by a judge in a bench trial accounted for 9% of all felony guidelines cases sentenced. During FY2019 1.3% of cases involved jury trials. In a small number of cases, some of the charges were adjudicated by a judge, while others were adjudicated by a jury, after which the charges were combined into a single sentencing hearing.

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

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



**Figure 14**  
**Percent of Felony Convictions Adjudicated by Juries FY1986-FY2019**  
**Parole System v. Truth-in-Sentencing (No Parole) System**

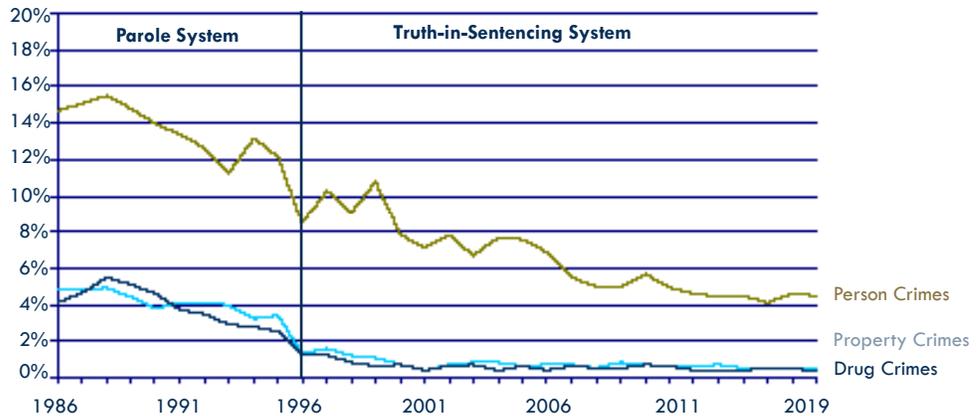


Inspecting jury data by offense type reveals very divergent patterns for person, property, and drug crimes. Under the parole system, jury cases comprised 11% to 16% of felony convictions for person crimes. This rate was typically three to four times the rate of jury trials for property and drug crimes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

In FY2019, the Commission received 287 cases adjudicated by juries. While the concurrence rate for cases adjudicated by a judge or resolved by a guilty plea was at 90% during the fiscal year, sentences handed down by juries concurred with the guidelines 50% of the time (Figure 16) which is a significant increase from the previous years. Of the remaining cases sentenced by a jury, those cases were more likely to fall above the guidelines 37% of the time. This pattern of jury sentencing vis-à-vis the guidelines yields a slight inconsistency (variation) since the truth-in-sentencing guidelines became effective in 1995. By law, however, juries are not allowed to receive any information regarding the sentencing guidelines.

**Figure 15**

**Percent of Felony Convictions Adjudicated by Juries FY1986-FY2019  
Parole System v. Truth-in-Sentencing (No Parole) System**



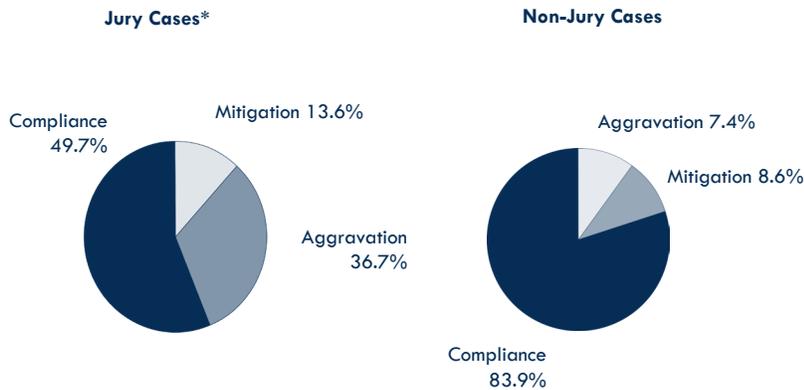
In jury cases in which the final sentence fell short of the guidelines, it did so by a median value of 24 months (Figure 17). In cases where the ultimate sentence resulted in a sanction more severe than the guidelines recommendation, the sentence exceeded the guidelines maximum recommendation by a median value of 40 months.

In FY2019, 13 of the jury cases involved a juvenile offender tried as an adult in circuit court. According to § 16.1-272 of the *Code of Virginia*, juveniles may be adjudicated by a jury in circuit court; however, any sentence must be handed down by the judge without the intervention of a jury. Thus, juries are not permitted to recommend sentences for juvenile offenders. There are many options for sentencing these juveniles, including commitment to the Department of Juvenile Justice. Because judges, and not juries, must sentence in these cases, they are excluded from the previous analysis.

In cases of adults adjudicated by a jury, judges are permitted by law to lower a jury sentence. Typically, however, judges have chosen not to amend sanctions imposed by juries. In FY2019, judges modified 9% of jury sentences.

**Figure 16**

**Sentencing Guidelines Compliance in Jury and Non-Jury Cases, FY2019**



\* The jury case compliance rate is calculated based on the sentence recommended by the jury. Judges modified jury sentences in 35 of 256 cases, or 14%. (Analysis excludes 5 juveniles whose guilt was determined by a jury and 6 fine-only jury recommendations).

**Figure 17**

**Median Length of Durational Departures in Jury Cases, FY2019**



### **Concurrence and Nonviolent Offender Risk Assessment**

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

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

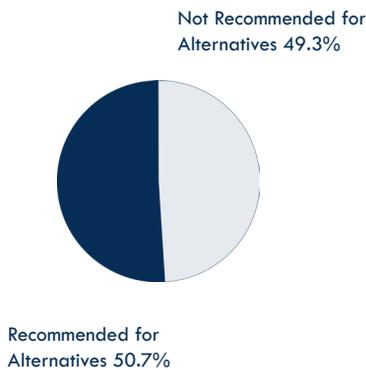
Over two-thirds of all guidelines received by the Commission for FY2019 were for nonviolent offenses. However, only 42% of these nonviolent offenders were eligible to be assessed for an alternative sanction recommendation. The goal of the nonviolent risk assessment instrument is to divert low-risk offenders who are recommended for incarceration on the guidelines to an alternative sanction other than prison or jail. Therefore, nonviolent offenders who are recommended for probation/no incarceration on the guidelines are not eligible for the assessment. Furthermore, the instrument is not to be applied to offenders convicted of distributing one ounce or more of cocaine, those who have a current or prior violent felony conviction, or those who must be sentenced to a mandatory minimum term of incarceration required by law. In addition to those not eligible for risk assessment, a risk assessment instrument was not completed and submitted to the Commission for 10,046 nonviolent offense cases. In many of the cases missing a risk assessment, defendants had agreed to sentences specified in plea agreements. In other cases, the preparer did not indicate on the worksheet that the risk assessment was not applicable.

Among the eligible offenders in FY2019 for whom a risk assessment form was received (3642 cases), 51% were recommended for an alternative sanction by the risk assessment instrument (Figure 18). Less than half of the offenders recommended for an alternative sanction through risk assessment were given some form of alternative punishment by the judge. In FY2019, 41% of offenders recommended for an alternative were sentenced to an alternative punishment option.

Among offenders recommended for and receiving an alternative sanction through risk assessment, judges used supervised probation more often than any other option (Figure 19). In addition, in slightly less than half of the cases in which an alternative was recommended, judges sentenced the offender to a term of incarceration in jail (less than twelve months) rather than the prison sentence recommended by the traditional guidelines range. Other frequent sanctions utilized were: substance abuse services (58%), unsupervised probation or good behavior (52%), restitution (28%), time served (14%) and fines (11%). The Department of Corrections' Community Corrections Alternative Program was used in a small percentage (5%) of the cases. Other alternatives/sanctions included: community service, programs under the Comprehensive Community Corrections Act (CCCA), first offender status under § 18.2-251, drug court, electronic monitoring, intensive probation, day reporting, and work release.

**Figure 18**

**Percentage of Eligible Nonviolent Risk Assessment Cases Recommended for Alternatives, FY2019 (7,184 cases)**



**Figure 19**

**Types of Alternative Sanctions Imposed - FY2019**



\* Includes indefinite supervised probation (19%)

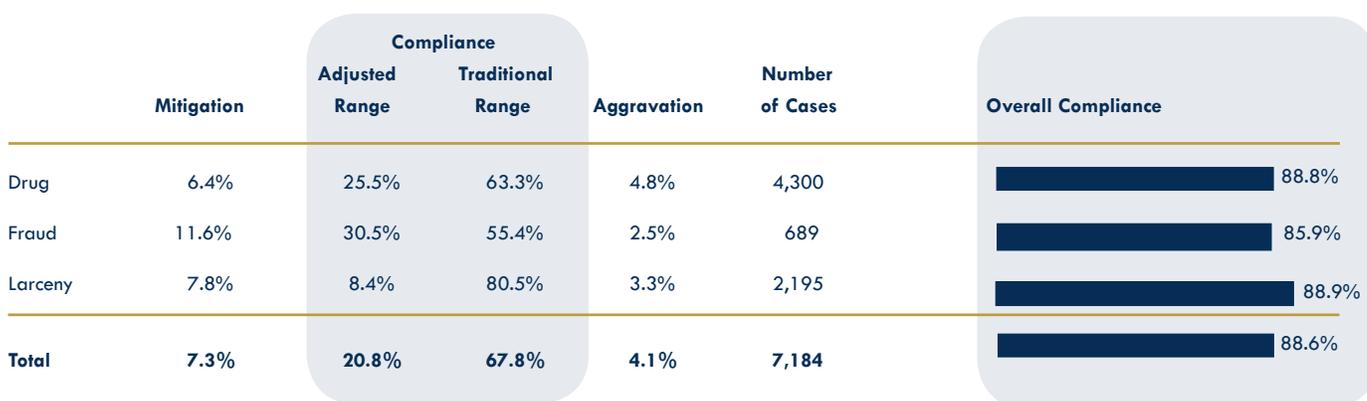
\*\* Any program established through the Comprehensive Community Corrections Act

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

When a nonviolent offender is recommended for an alternative sanction based on the risk assessment instrument, a judge is in concurrence with the guidelines if he or she chooses to sentence the defendant to a term within the traditional incarceration period recommended by the guidelines or if he or she chooses to sentence the offender to an alternative form of punishment. For drug offenders eligible for risk assessment, the overall guidelines concurrence rate is 89%, but a portion of this concurrence reflects the use of an alternative punishment option as recommended by the risk assessment tool (Figure 20). In 26% of these drug cases, judges have complied with the recommendation for an alternative sanction. Similarly, in fraud cases, with offenders eligible for risk assessment, the overall concurrence rate is 86%. In 31% of these fraud cases, judges have complied by utilizing alternative punishment when it was recommended. Finally, among larceny offenders eligible for risk assessment, the concurrence rate is 89%. Judges used an alternative, as recommended by the risk assessment tool, in 8% of larceny cases. The lower use of alternatives for larceny offenders is primarily because larceny offenders are recommended for alternatives at a lower rate than drug and fraud offenders. The National Center for State Courts, in its evaluation of Virginia’s risk assessment tool, and the Commission, during its validation study, found that larceny offenders are the most likely to recidivate among nonviolent offenders.

Figure 20

Compliance Rates for Nonviolent Offenders Eligible for Risk Assessment - FY2019



## **Concurrence and Sex Offender Risk Assessment**

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

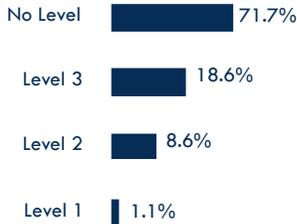
Effectively, risk assessment means developing profiles or composites based on overall group outcomes. Groups are defined by having a number of factors in common that are statistically relevant to predicting repeat offending. Groups exhibiting a high degree of re-offending are labeled high risk. Although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

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

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

**Figure 21**

**Sex Offender Risk Assessment Levels for Sexual Assault Offenders, FY2019**



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

During FY2019, there were 296 offenders convicted of an offense covered by the Sexual Assault guidelines (this group excludes offenders convicted of rape, forcible sodomy, object penetration and obscenity offenses). As of July 1, 2014, solicitation of a minor and child pornography were removed from the Sexual Assault worksheet and a new Obscenity worksheet was created. In addition, the sex offender risk assessment instrument does not apply to certain guideline offenses, such as bestiality, bigamy, and prostitution (11 of the 296 cases in FY2019). Another six cases were missing information for calculating concurrence and were excluded. Of the remaining 279 sexual assault cases for which the risk assessment was applicable, the majority (72%) were not assigned a level of risk by the sex offender risk assessment instrument (Figure 21). Approximately 19% of applicable Sexual Assault guidelines cases

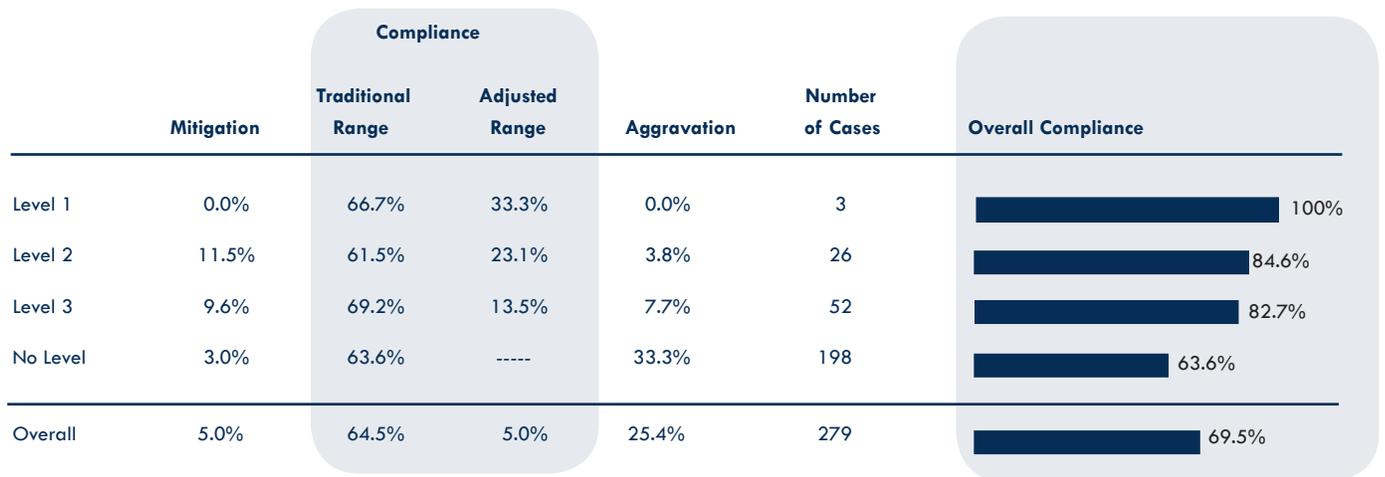
resulted in a Level 3 risk classification, with an additional 9% assigned to Level 2. Approximately 1% of offenders reached the highest risk category of Level 1.

Under the sex offender risk assessment, the upper end of the guidelines range is extended by 300%, 100% or 50% for offenders assigned to Level 1, 2 or 3, respectively. Data suggest judges utilize these extended ranges when sentencing some sex offenders. For the three sexual assault offenders reaching Level 1 risk during the past fiscal year, these were given a sentence within the traditional guidelines range. (Figure 22). Judges used the extended guidelines range in 23% of Level 2 cases and 14% of Level 3 risk cases.

Judges rarely sentenced Level 1, 2 or 3 offenders to terms above the extended guidelines range provided in these cases. However, offenders who scored less than

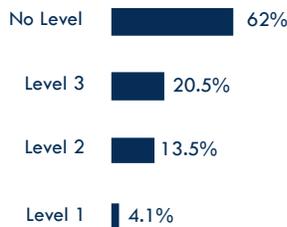
**Figure 22**

**Other Sexual Assault Compliance Rates By Risk Assessment Level, FY2019**



**Figure 23**

**Sex Offender Risk Assessment Levels for Rape Offenders, FY2019**

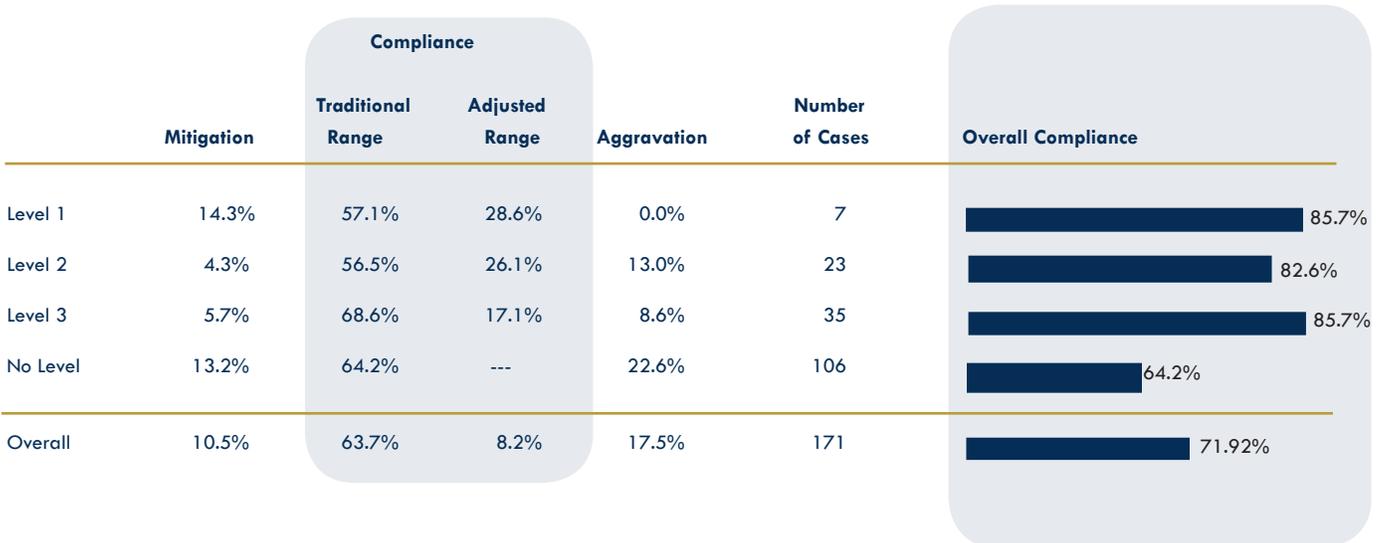


28 points on the risk assessment instrument (who are not assigned a risk category and receive no guidelines adjustment) had similar concurrence rates with the traditional guidelines recommendations as Levels 2 and 3 offenders (64% concurrence rate), but were more likely to receive a sentence that was an upward departure from the guidelines (33% aggravation rate).

In FY2019, there were 171 offenders convicted of offenses covered by the Rape guidelines (which cover the crimes of rape, forcible sodomy, and object penetration). Among offenders convicted of these crimes, nearly two-thirds (62%) were not assigned a risk level by the Commission's risk assessment instrument (Figure 23). Approximately 21% of these cases resulted in a Level 3 adjustment. An additional 14% received a Level 2 adjustment. As shown below, (Figure 24) 26% of offenders with a Level 2 risk classification and 17% of offenders with a Level 3 risk classification were given prison sentences within the adjusted range of the guidelines. With extended guidelines ranges available for higher risk sex offenders, judges continue to only occasionally sentence Level 1, 2 or 3 offenders above the expanded guidelines range.

**Figure 24**

**Rape Compliance Rates By Risk Assessment Level, FY2019**



### Specific Type of Drug Study

In 2017, at the request of several Commonwealth's Attorneys, the Commission began identifying the type of Schedule I, II and III substances on the sentencing guidelines cover sheet. Identifying the specific type of drug enables policy makers to better track drug trends by locality and/or geographic region within the Commonwealth. In return, localities would be in a better position to respond with appropriate treatment options. The purpose of the recommendation was not to encourage changes in sentencing based on drug type.

The Commission modified the cover sheets and began to collect the specific type of drug on July 1, 2017 when a drug offense was the primary or most serious offense in the sentencing event. In FY2019 there were 10,215 Drug Schedule I/II worksheets and 980 Drug Other worksheets submitted to the Commission. In over 6,900 of these worksheets, a drug type was identified and on 721 worksheets multiple drugs were identified.

Figure 25 identifies the specific type of drug identified on the drug sentencing guidelines. Cocaine was identified the most followed by methamphetamines and then heroin. In FY2018, when all the opioids (i.e, heroin, fentanyl, oxycodone, morphine, codeine, and methadone) were grouped together, opioids were the most identified drugs. However, in FY2019, when combined, opioids were identified in 25.7% of the sentencing events in which a drug type was indicated. This is a decrease in the percentage of opioid cases identified.

Concurrence rates are not significantly different based on the type of drug involved. Judges are likely to concur with the guidelines' recommendation in over 85% of the cases regardless of the specific type of drug. Rates of concurrence are slightly higher in methamphetamine cases and in other types of drugs (e.g., amphetamines, LSD, PCP, marijuana, etc.). In the case of methamphetamines, the sentencing guidelines take into consideration when the drug is being manufactured versus distributed and if a child was present during the manufacturing process, factors that

**Figure 25**  
**Number and Percentage of Cases Received by Drug Type- FY2019**

Drug	Percentage	Number of Cases
Cocaine	27.9%	3,120
Methamphetamine	26.3%	2,939
Heroin	16.4%	1,836
Other	7.9%	882
Fentanyl	5.3%	588
Oxycodone	4.0%	445
Hydrocodone	1.9%	209
Morphine	1.1%	118
Methylphenidate	0.5%	55
Methadone	0.5%	54
Codeine	0.4%	43

are not available on sentencing guidelines for other drug types. The Other category includes some other types of Schedule I/II drugs, but more often Schedule III drugs, prescription drugs and marijuana. These specific types of drugs have slightly higher concurrence rates. See Figure 26 for details.

One of the reasons the Commission was asked to collect the type(s) of drug on the drug sentencing guidelines was to provide information on drug trends by locality and/or geographic region within the Commonwealth. Representatives from several localities wanted information on drug convictions so they would be in a better position to respond with appropriate treatment options or to take other measures to address drug issues in their communities. Figure 27 lists the types of drugs by circuit.

Convictions listed in Figure 27 are not adjusted to reflect a standard measure based on the population of each locality, but simply to provide the localities the information requested. Some general conclusions are: more convictions for methamphetamines occur in Circuits 25 through Circuit 28 (Bristol area, Radford area, Staunton area and Harrisonburg area). Cocaine convictions are significant in Circuit 2 (Virginia Beach), Circuit 14 (Henrico), Circuit 15 (Fredericksburg area) and Circuit 4 (Norfolk). Henrico and the Fredericksburg area also report the highest number of heroin cases.

The number of convictions may not be the best approach to assessing drug problems in communities across the Commonwealth. In some cases, the number of convictions may better reflect the success of law enforcement in arresting and securing convictions for drug violations. Other measures, such as drug overdoses, demands on treatment providers and arrests for drug crimes that do not result in convictions or that have convictions deferred for treatment may be better measures. Also, defendants with substance abuse issues may not be convicted of drug offenses and this information is not directly collected on the sentencing guidelines. Most importantly, the drug type is not routinely reported by all jurisdictions and may limit the validity of comparisons across circuits.

**Figure 26**  
**Guidelines Concurrence by Type of Drug - FY2019**

	Compliance	Mitigation	Aggravation	Number of Cases
Opioid Case	85.5%	7.8%	6.7%	2,879
Cocaine Case	85.9%	9.2%	4.9%	3,120
Methamphetamine Case	89.1%	5.5%	5.4%	2,939
Other	88.9%	6.1%	5.0%	934

*Cases that include multiple types of drugs are included in each category. No drug is weighted as more serious than another*

The Commission will continuously monitor sentencing in drug cases. If the sentencing patterns of judges change, so will the guidelines. As indicated by the concurrence rates, there is no need at this time to adjust guidelines based on the type of drug involved.

**Figure 27**  
**Type of Drug by Circuit - FY2019**

Circuit*		Cocaine	Codeine	Fentanyl	Heroin	Hydrocodone	Methadone	Methamphetamines	Methylphenidate	Morphine	Oxycodone	Other**
1	Chesapeake	128	2	20	66	6	0	30	3	3	7	28
2	Virginia Beach	294	5	26	107	9	2	128	3	5	27	71
3	Portsmouth	63	2	15	47	0	0	3	0	0	2	4
4	Norfolk	192	2	38	112	2	0	25	1	2	11	15
5	Suffolk Area	42	1	15	29	2	0	5	0	1	0	18
6	Sussex Area	89	1	8	27	1	1	5	0	0	10	10
7	Newport News	125	0	5	29	3	0	1	0	1	8	16
8	Hampton	45	2	2	15	1	0	0	0	1	1	4
9	Williamsburg Area	87	1	18	40	2	1	9	1	4	4	18
10	South Boston Area	100	0	7	26	6	1	60	0	1	8	26
11	Petersburg Area	43	2	3	9	0	1	15	0	2	7	3
12	Chesterfield Area	141	3	51	120	1	0	14	0	8	16	24
13	Richmond City	188	0	17	118	4	3	4	0	0	7	10
14	Henrico	243	3	52	212	9	2	20	0	6	22	31
15	Fredericksburg	205	1	74	214	9	5	46	6	12	40	88
16	Charlottesville Area	127	3	36	61	0	1	24	1	6	10	38
17	Arlington Area	32	0	5	14	1	0	7	1	0	8	19
18	Alexandria	7	1	0	5	1	0	1	0	0	0	5
19	Fairfax	148	3	22	66	1	1	21	1	1	12	104
20	Loudoun	63	1	25	51	0	3	19	1	2	6	33
21	Martinsville Area	28	0	8	17	20	2	58	2	5	21	8
22	Danville Area	104	0	5	24	5	1	55	0	1	7	28
23	Roanoke Area	61	1	12	97	5	1	210	1	2	4	7
24	Lynchburg Area	126	1	8	33	10	2	199	5	5	22	39
25	Staunton Area	60	1	12	35	11	1	402	6	8	16	43
26	Harrisonburg Area	176	4	61	140	10	11	386	7	16	24	55
27	Radford Area	55	2	9	23	16	4	424	5	3	37	31
28	Bristol Area	13	0	2	6	21	5	457	4	7	22	16
29	Buchanan Area	26	0	2	13	28	4	101	3	10	32	24
30	Lee Area	8	0	3	1	21	1	201	4	3	35	18
31	Prince William Area	92	1	27	79	3	1	9	0	2	19	47
<b>Total</b>	<b>Statewide</b>	<b>3,120</b>	<b>43</b>	<b>588</b>	<b>1,836</b>	<b>209</b>	<b>54</b>	<b>2,939</b>	<b>55</b>	<b>118</b>	<b>445</b>	<b>882</b>

Note: One sentencing event may involve more than one type of drug

\* Circuit is missing in 17 cases

\*\* The other category includes some other types of Schedule I/II drugs, but more often Schedule III drugs, prescription drugs and marijuana.

## Sentencing Revocation Reports (SRRs)

**Figure 28**

**Number and Percentage  
of SRRs Received by  
Circuit - FY 2019\***

Circuit	Number	Percent
1	528	3.9%
2	848	6.2%
3	321	2.4%
4	641	4.7%
5	414	3.0%
6	105	0.8%
7	273	2.0%
8	252	1.8%
9	494	3.6%
10	329	2.4%
11	178	1.3%
12	696	5.1%
13	251	1.8%
14	588	4.3%
15	1,265	9.3%
16	419	3.1%
17	121	0.9%
18	42	0.3%
19	260	1.9%
20	247	1.8%
21	243	1.8%
22	547	4.0%
23	411	3.0%
24	448	3.3%
25	540	4.0%
26	853	6.3%
27	564	4.1%
28	422	3.1%
29	743	5.4%
30	327	2.4%
31	269	2.0%

\*3 cases were missing a circuit number

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

In FY2019, there were 13,639 alleged felony violations of probation, suspended sentences, or good behavior for which a (SRR) was submitted to the Commission (as of September 2, 2019). The SRRs received include cases in which the court found the defendant in violation, cases that the court decided to take under advisement until a later date, and cases in which the court did not find the defendant in violation. The circuits submitting the largest number of SRRs during the time period were Circuit 15 (Fredericksburg area), Circuit 26 (Harrisonburg), Circuit 2 (Virginia Beach), Circuit 29 (Buchanan County area), Circuit 12 (Chesterfield County) and Circuit 4 (Norfolk). Circuit 18 (Alexandria), Circuit 6 (Sussex County area), Circuit 17 (Arlington), and Circuit 11 (Petersburg area) submitted the fewest SRRs during the time period (Figure 28).

For FY2019, the Commission received 13,639 SRRs. Of the total, 6,409 cases involved a new law violation. In these cases, the judge found the defendant guilty of violating Condition 1 of the Department of Corrections' Conditions of Probation (obey all federal, state, and local laws and ordinances). In 6,868 cases, the offender was found in violation of other conditions not related to a new law violation. In a number of cases, the offender was not found in violation of any condition (197 cases) or the type of violation was not identified on the SRR form (165 cases).

Figure 29 compares new law violations with “technical violations” in FY 2019 with previous years. Between FY2009 and FY2014 the number of revocations based on new law violations exceeded the number of revocations based on violations of other conditions. Changes in policies for supervising offenders who violate conditions of probation that do not result in new convictions and procedures that require judges to receive and review the SRRs and Probation Violation Guidelines have impacted the number and types of revocations submitted to the court. In FY2014, the number of technical violations reviewed by the court began to increase in number. In that year, new law violations exceeded the number of technical violations by 161 cases. However, since FY2015 the number of technical violations once again exceed the new law violations. At this point it appears that the pattern continues for FY2019, but data for FY2019 is not complete. Compared to previous years, a significant number of violations for May and June are not included in the September dataset.

**Figure 29**

**Sentencing Revocation Reports Received for Technical and New Law Violations  
FY1998 - FY2019**

<b>Fiscal Year</b>	<b>Technical Violations</b>	<b>New Law Violations</b>	<b>Number</b>
FY1998	2,886	2,278	5,164
FY1999	3,643	2,630	6,273
FY2000	3,490	2,183	5,673
FY2001	5,511	3,228	8,739
FY2002	5,783	3,332	9,115
FY2003	5,078	3,173	8,251
FY2004	5,370	3,361	8,731
FY2005	5,320	3,948	9,268
FY2006	5,509	3,672	9,181
FY2007	6,670	4,755	11,425
FY2008	6,269	5,182	11,451
FY2009	5,001	5,134	10,135
FY2010	4,670	5,226	9,896
FY2011	5,239	6,058	11,297
FY2012	5,145	5,760	10,905
FY2013	5,444	6,013	11,457
FY2014	5,768	5,929	11,697
FY2015	6,510	6,394	12,904
FY2016	6,656	5,998	12,654
FY2017	6,652	5,616	12,268
FY2018	7,734	6,383	13,921
FY2019	6,868	6,409	13,277

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

### **Probation Violation Guidelines (PVGs)**

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

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

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

accepted by the General Assembly and became effective for technical probation violators sentenced on July 1, 2007 and after. This third version of the probation violation guidelines has resulted in consistently higher concurrence rates than previous versions of the guidelines. Figure 30 illustrates concurrence patterns over the years and the impact revisions to the guidelines had on concurrence rates. Concurrence has hovered above 50% since FY2008 and this pattern continues in FY2019.

For FY2019, 6,868 of the 13,639 SRRs involved technical violations only. Upon further examination, it was found that 868 could not be included in more detailed analysis. Cases were excluded if the guidelines were not applicable (the case involved a parole-eligible offense, a first-offender violation, a misdemeanor original offense, or an offender who was not on supervised probation), if the guidelines forms were incomplete, or if outdated forms were prepared. Cases in which the judge did not find the probationer in violation were also removed from the analysis.

Of the 6,000 cases examined in which offenders were found to be in violation of

**Figure 30**

**Probation Violations Guidelines Compliance by Year, FY2005 - FY2019**

Fiscal Year	Compliance	Mitigation	Aggravation	Total
FY2005	37.4%	27.3%	35.4%	3140
FY2006	48.4%	30.0%	21.6%	4793
FY2007	47.1%	31.7%	21.2%	5929
FY2008	53.9%	25.0%	21.0%	5028
FY2009	53.3%	25.8%	21.0%	4488
FY2010	52.7%	25.6%	21.7%	4233
FY2011	54.0%	24.1%	21.9%	4773
FY2012	50.2%	25.9%	23.9%	4504
FY2013	51.9%	23.3%	24.8%	4792
FY2014	53.3%	22.5%	24.2%	4973
FY2015	53.6%	24.2%	22.2%	5713
FY2016	55.9%	25.3%	18.8%	5791
FY2017	55.4%	25.8%	18.8%	5683
FY2018	57.0%	27.9%	15.1%	6643
FY2019	57.8%	30.0%	12.1%	6000

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

**Figure 31**  
**Probation Violation**  
**Guidelines Worksheets Received by**  
**Type of Most Serious**  
**Original Offense - FY2019\***  
**N=6,000**

Original Offense Type	Percent Received
Property	40.6%
Drug	37.9%
Person	14.3%
Traffic	3.8%
Other	3.5%

*\*Includes FY2019 cases found to be in violation that were completed accurately on current guideline forms.*

their probation for reasons other than a new law violation, approximately 41% were under supervision for a felony property offense (Figure 31). This represents the most serious offense for which the offender was on probation. Another 38% were under supervision for a felony drug conviction. Offenders who were on probation for a crime against a person (most serious original offense) made up a smaller portion (14%) of those found in violation during FY2019.

Examining the 6,000 technical violation cases reveals that over half (65%) of the offenders were cited for using, possessing, or distributing a controlled substance (Condition 8 of the DOC Conditions of Probation). Violations of Condition 8 may include a positive test (urinalysis, etc.) for a controlled substance or a signed admission. More than half (60%) of the offenders were cited for failing to follow instructions given by the probation officer. Other frequently cited violations included absconding from supervision (31%), changing residence or traveling outside of designated areas without permission (15%) and failing to report to the probation officer in person or by telephone when instructed (12%). In approximately one-fourth of the violation cases (22%) offenders were cited for failing to follow special conditions imposed by the court, including: failing to pay court costs and restitution, failing to comply with court-ordered substance abuse treatment, or failing to successfully complete alternatives, such as the Community Corrections Alternative Program (CCAP) program. It is important to note that defendants may be, and typically are, cited for violating more than one condition of their probation (Figure 32).

**Figure 32**  
**Violation Conditions Cited by Probation Officers,**  
**Excluding New Law Violations - FY2019\***



*\*Includes FY2019 cases found to be in violation that were completed accurately on current guideline forms.*

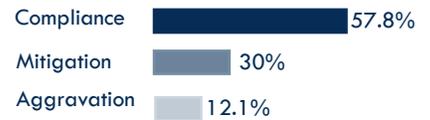
The overall concurrence rate summarizes the extent to which Virginia’s judges concur with recommendations provided by the probation violation guidelines, both in type of disposition and in length of incarceration. In FY2019, the overall rate of concurrence with the Probation Violation Guidelines was 58%, which is slightly higher than concurrence rates since FY 2008 (Figure 33). The aggravation rate, or the rate at which judges sentence offenders to sanctions more severe than the guidelines recommend, was 12% during FY2019. The mitigation rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 30%.

Figure 34 illustrates judicial concurrence with the type of disposition recommended by the Probation Violation Guidelines for FY2019. There are three general categories of sanctions recommended by the probation violation guidelines: probation/no incarceration, a jail sentence up to twelve months, or a prison sentence of one year or more. Data for the time period reveal that judges agree with the type of sanction recommended by the probation violation guidelines in 61% of the cases. When departing from the dispositional recommendation, judges were more likely to sentence below the guidelines recommendation than above it. Consistent with the traditional sentencing guidelines, sentences to the Community Corrections Alternative Program (CCAP) are defined as incarceration sanctions under the Probation Violation Guidelines.

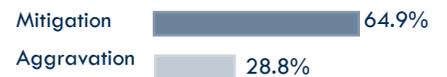
**Figure 33**

**Overall Probation Violation Guidelines Concurrence and Direction of Departures - FY 2019  
N=6,000**

**Overall Concurrence**

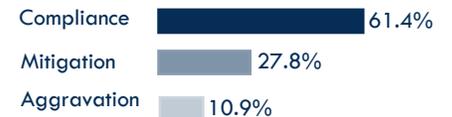


**Direction of Departures**

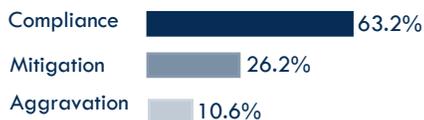


**Figure 34**

**Probation Violation Guidelines Dispositional Compliance FY2019**



**Figure 35**  
**Probation Violation Guidelines**  
**Durational Concurrence\* FY 2019**



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

Another facet of concurrence is durational concurrence. Durational concurrence is defined as the rate at which judges sentence offenders to terms of incarceration that fall within the recommended guidelines range. Durational concurrence analysis only considers cases for which the guidelines recommended an active term of incarceration and the offender received an incarceration sanction consisting of at least one day in jail. Data reveal that durational concurrence for FY2019 was approximately 63% (Figure 35). For cases not in durational concurrence, aggravations were less likely than mitigations.

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

Prior to July 1, 2010, completion of the Probation Violation Guidelines was not required by statute or any other provision of law. However, the 2010-2012 biennium budget passed by the General Assembly specified that, as of July 1, 2010, a sentencing revocation report (SRR) and, if applicable, the Probation Violation Guidelines, must be presented to the court and reviewed by the judge for any violation hearing conducted pursuant to § 19.2-306. This requirement continues to be in the budget and can be found in Item 40 of Chapter 854 of the 2019 Acts of Assembly. Similar to the traditional felony sentencing guidelines, sentencing in accordance with the recommendations of the Probation Violation Guidelines is voluntary. The approved budget language states, however, that in cases in which the Probation Violation Guidelines are required and the judge imposes a sentence greater than or less than the guidelines recommendation, the court must file with the record of the case a written explanation for the departure. The requirements pertaining to the Probation Violation Guidelines spelled out in the latest budget parallel existing statutory provisions governing the use of sentencing guidelines for felony offenses.

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

According to Probation Violation Guidelines data for FY2019, 42% of the cases resulted in sentences that fell outside the recommended guidelines range. With judges departing from these guidelines at such a high rate, written departure reasons are an integral part of understanding judicial sentencing decisions. An analysis of the 1,797 mitigation cases revealed that 81% included a departure reason. Much higher than the percentage reported last year. For the mitigation cases in which departure reasons were provided, judges were most likely to cite the utilization of an alternative punishment option (e.g., CCAP program, treatment options), the recommendation of the attorney for the Commonwealth, progress in rehabilitation, judicial discretion based on issues related to the case, the offender's health, plea agreement or the potential for rehabilitation.

Examining the 727 aggravation cases, the Commission found that the majority (78%) included a departure reason. When a departure reason was provided in upward departures, judges were most likely to cite multiple revocations in the defendant's prior record, the defendant's failure to follow instructions, substance abuse issues, the recommendation of the attorney for the Commonwealth, plea agreement or poor rehabilitation potential.

FY2019 data suggest that judicial concurrence with Probation Violation Guidelines recommendations remains above 50% since the changes implemented on July 1, 2007. As with the felony sentencing guidelines first implemented in 1991, the development of useful sentencing tools for judges to deal with probation violators will be an ongoing process, with improvements made over several years. Feedback from judges, especially through written departure reasons, is of critical importance to the process of continuing to improve the guidelines, thereby making them a more useful tool for judges in formulating sanctions in probation violation hearings. In FY2019 the Commission surveyed judges, attorneys and probation officers on the usefulness of the probation violation guidelines. In FY2020, the Commission members and staff plan to update the Probation Violation Guidelines based on user input and updated data sources to better capture judicial sentencing.



# 3

## STUDY OF BURGLARY SENTENCING GUIDELINES

### Introduction

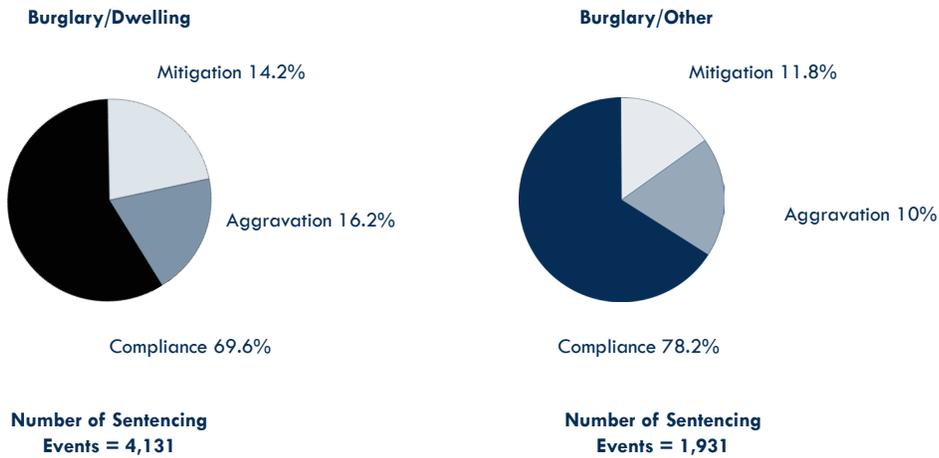
In 2018, the Commission approved a special study of the sentencing guidelines for burglary offenses. The sentencing guidelines were created to provide sentence recommendations based on historical practices using information regarding the nature of the current offense(s) and an offender's criminal history. In essence, the guidelines provide judges with a benchmark of the typical, or average, case outcome given the characteristics of the offense and the offender's prior record. By design, sentencing guidelines include factors that, based on empirical analysis of the data, have been shown to be important to judges when making sentencing decisions. Concurrence with the guidelines recommendation is voluntary, and a judge may sentence outside of the guidelines range in any case where the judge feels the circumstances warrant it. Performance of the sentencing guidelines is assessed by examining concurrence with the recommended sentences. In addition, since the guidelines are designed to model the typical sentence for a case (given certain factors), a balance between mitigation (when a sentence is lower than the guidelines recommendation) and aggravation (when a sentence is higher than the guidelines recommendation) is desired. Several circuit court judges had asked the Commission to review the burglary guidelines and determine if any revisions were needed in order for the guidelines to better reflect current sentencing practices in burglary cases. For example, factors not currently accounted for by the guidelines may be pertinent in sentencing. To fully examine burglary cases, the Commission was interested in specific case details, such as whether a person was present when the burglary offense was committed, to determine the impact such details have on sentencing outcomes. Thus, the Commission launched a special data collection effort to gather case details from court records and case files. However, case details were often unavailable and, therefore, limited the analysis that could be conducted. Findings from the study, which was completed in 2019, are presented in this chapter.

### Concurrence with Current Burglary Sentencing Guidelines

The sentencing guidelines for burglary offenses are divided into two groups: burglary of a dwelling and burglary of some other type of structure. During fiscal year (FY) 2014-FY2018, concurrence with the Burglary/Dwelling guidelines was 69.6% (Figure 36). This is well below the overall average concurrence rate for all offenses, which hovers around 80% each year. Departures from the Burglary/Dwelling guidelines were fairly evenly split above and below the recommended range (16.2% above and 14.2% below). Concurrence with the Burglary/Other guidelines was substantially higher at 78.2%. For Burglary/Other guidelines, departures were also well balanced (10% above and 11.8% below the guidelines range).

Figure 36

Concurrence with Guidelines for Burglary Offenses  
(§ 18.2-89 through § 18.2-94)  
FY2014-FY2018



The Commission examined concurrence and departure patterns in detail. The analysis revealed that both the Burglary/Dwelling guidelines and the Burglary/Other guidelines are out of sync with current sentencing practices regarding the type of disposition. Specifically, judges sentence burglary offenders to incarceration terms far more often than the current guidelines recommend. During FY2014-FY2018, the Burglary/Dwelling guidelines recommended 28.2% of the offenders for probation/no incarceration, while 6.1% were recommended for a short jail term (Figure 37). In practice, judges sentenced only 14.4% of offenders to probation without a term of incarceration and, instead, ordered a short jail term for 16.4% of the offenders. Thus, judges are sentencing Burglary/Dwelling offenders to jail terms at a much higher rate than is recommended by the guidelines. Judges were more likely to concur with the Burglary/Dwelling guidelines when a longer term of incarceration (more than six months) was recommended (65.7% of offenders were recommended for, and 69.2% received, that type of sanction). The analysis indicated that the Commission needed to focus on probation/no incarceration and jail recommendations, as the Burglary/Dwelling guidelines are not closely aligned with actual dispositions ordered by the court in such cases. Analysis of Burglary/Other cases revealed a strikingly similar pattern (Figure 37).

These findings demonstrated that further study was necessary to determine if the guidelines could be revised to better reflect current sentencing practices in burglary cases.

Figure 37

**Actual versus Recommended Dispositions in  
Burglary/Dwelling Sentencing Events  
FY2014 - FY2018**

**Actual versus Recommended Dispositions in  
Burglary/Other Sentencing Events  
FY2014 - FY2018**

	<b>Actual Practice</b>	<b>Recommended under Current Sentencing Guidelines</b>		<b>Actual Practice</b>	<b>Recommended under Current Sentencing Guidelines</b>
Probation/No Incarceration	14.4%	28.2%	Probation/No Incarceration	17.5%	25.7%
Incarceration up to 6 months	16.4%	6.1%	Incarceration up to 6 months	16.7%	6.2%
Incarceration more than 6 months (Range includes prison)	69.2%	65.7%	Incarceration more than 6 months (Range includes prison)	65.9%	68.0%

### **Methodology and Data Sources**

The Commission began by identifying all offenders sentenced during FY2014-FY2018 for whom a burglary conviction was the most serious offense at sentencing. In total, there were 6,062 burglary sentencing events during this time period. Before proceeding, the Commission excluded offenders for whom the sentencing guidelines had been incorrectly scored. To permit more detailed study, a sample of 1,839 was drawn from the 6,062 sentencing events. The sample was based on a stratified random sampling technique to undersample the most common types of burglary and oversample other types of burglaries. This would ensure that an adequate number of cases for less common burglaries were included in the sample. In the subsequent analysis stage, the sampled cases were weighted to reflect each subgroup's actual proportion in the population. This step was necessary to ensure an unbiased analysis. Figure 38 shows the number of sentencing events in the sample by the type of primary offense.

**Figure 38**  
**Number of Sentencing Events by the Type of Primary Offense**

<b>Statute</b>	<b>Description</b>	<b>Sentencing Events</b>	<b>Sample Size</b>
§18.2-91	Dwelling - intent to commit larceny, A&B, etc.	3,480	700
§18.2-91	Other structure - intent to commit larceny, A&B, etc.	1,731	435
§18.2-89	Dwelling at night - intent to commit felony or larceny	311	205
§18.2-94	Possession of burglary tools	161	120
	Other burglaries	379	379
	<b>Total</b>	<b>6,062</b>	<b>1,839</b>

*Note: For the analysis, the sampled cases will be weighted to reflect each subgroup's actual proportion in the population.*

The Commission then developed a strategy to collect supplemental information for each of the burglary cases in the sample. Most of the case details of interest to the Commission are not captured in automated criminal justice data systems. Such details, however, may have an impact on sentencing decisions in burglary cases. The supplemental data collection focused on details related to the crime itself, the offender and the victim, and these are listed in Figure 39. Details such as these typically are not captured in criminal justice data systems.

The Commission identified the information sources most likely to contain the details of interest and most likely to be available to Commission staff during the course of the study. Pre-Sentence Investigation (PSI) reports, prepared prior to sentencing when requested by the judge, typically provide the most descriptive information about an offense. The Commission requested and received PSI data from the Virginia Department of Corrections that included the offense description narrative. Unfortunately, judges requested PSI reports in less than 41% of burglary cases. The Commission concluded that the electronic document filing system used by some clerks (known as the Officer of the Court Remote Access system, or OCRA) would be the next best source of case information. Online access to OCRA must be approved by individual circuit court clerks. The Commission contacted 101 circuit court clerks who use OCRA to request access for the duration of the project. Of those contacted, 47 clerks approved access for Commission staff. In 522 (34.8%) cases, electronic sources were unavailable. For these cases, the Commission sent representatives to local courthouses to review official court records.

For many of the burglary cases in the sample, the OCRA system did not contain documents that fully captured the details sought by the Commission. The Commission found that indictments, warrants, court orders and restitution orders were generally available. However, many of these documents contained only general language as to offense, with little detail specific about the case. A stipulation of facts, the criminal complaint and victim impact statements were generally not available through OCRA or were available only in a few jurisdictions.

Despite a substantial data collection effort, case details were often unavailable, which ultimately limited the analysis that could be conducted.

**Figure 39**

#### **Details Related to the Victim**

- Time of day of the offense
- Type of victim (individual, business, pharmacy, nonprofit, etc.)
- Whether victims were present at the time of the offense
- Vulnerable victims (elderly, young children)
- Victim injury (emotional, threatened, physical, life threatening)
- Injury to pets/animals
- Defendant's relationship to victim
- Value of items taken
- Types of items involved (electronics, opioids/other drugs, etc.)
- Items recovered (at arrest, at pawn shop, online, etc.)
- Damage to items

#### **Details Related to the Offender**

- Role in offense
- Number of codefendants
- Type/use of weapon in possession during offense
- Degree of planning/premeditation (e.g., stalking, monitoring)
- Common scheme/serial burglary
- Drug/alcohol use at time of offense
- Status of restitution at time of sentencing
- Number of prior burglary convictions
- Number of prior trespassing convictions

**Figure 40**  
**Sample of Burglary Sentencing Events**  
**Case Characteristics**

<b>Factors</b>	<b>Percent</b>
<b>Types of Structures Burglarized*</b>	
Dwelling - Home.....	63.1%
Dwelling - Garage, Shed, Etc.....	4.9%
Commercial - Business .....	19.7%
Commercial - Business Storage Structure .....	0.6%
Commercial - Pharmacy .....	0.7%
Public - School, Library, Govt Office .....	1.1%
Church, Mosque, Synagogue, Etc .....	1.8%
Vehicle, Boat, Trailer, Etc.....	2.0%
Other .....	1.3%
Missing .....	9.7%
<b>Degree/Type of Planning by Offender*</b>	
String of Burglaries .....	15.9%
Possession & Use of Burglary Tools .....	10.6%
Surveillance of Structure/Residents.....	10.5%
Solicitation Ruse.....	0.9%
Use of Social Media.....	0.8%
Obituaries/Funerals .....	0.2%
Missing .....	66.4%
<b>Offender's Role in Burglary Offense</b>	
Leader.....	6.7%
Planner .....	0.6%
Driver.....	0.9%
Follower .....	4.4%
Provided Details/Intelligence .....	0.5%
Only One Involved.....	41.6%
Missing .....	45.6%
<b>Offender's Intent*</b>	
Steal Property .....	64.9%
Assault .....	5.4%
Steal Firearms .....	5.4%
Vandalism/Damage Property .....	4.1%
Robbery .....	3.2%
Steal Drugs.....	2.6%
Rape .....	0.7%
Steal Knives.....	0.4%
Murder .....	0.2%
Other .....	2.2%
Not Specified.....	7.6%
Missing .....	14.7%

\*Percentages may total to more than 100%, as each sentencing event may have involved multiple acts of burglaries, multiple victims and/or multiple items taken.

## Findings

The Commission attempted to collect an array of supplemental information for cases included in the burglary study sample. The results of the supplemental data collection are shown in Figure 40 through 43. For some of the case characteristics shown, the percentages may total to more than 100%, as each sentencing event may have involved multiple acts of burglary, multiple victims, and/or multiple items taken.

Factors related to the nature of the offense, including the type of structure, were sought. Nearly two-thirds (63.1%) of the burglarized structures were homes (excluding garages, sheds, etc.). Another 4.9% of the burglaries involved garages, sheds or similar areas attached to, or on the same property, as the home. Another 19.7% of the burglarized structures were commercial businesses, while an additional 0.6% involved business storage facilities. The remaining categories (pharmacy, public building, places of worship, vehicles/boats and other) each accounted for less than 2% of the burglaries in the study. Information was insufficient to determine the type of structure in 9.7% of the cases.

The Commission was also interested in the degree of planning undertaken by the offender before committing the burglary or burglaries. In two-thirds of the cases, available sources did not contain this particular detail. When information was available, the Commission found that, in 15.9% of the cases, the offender had been involved in a string of burglaries. The Commission also tried to discern the offender's specific role in the burglary. Four out of every 10 offenders in the sample committed the burglary alone. In a small percentage of cases (6.7%), the offender was identified as the leader. However, the role of defendant could not be determined in nearly half of the sample cases. For the majority of burglary cases (64.9%), the offender's intent in committing the burglary was to steal property. In less than 10% of the burglaries, the intent was to commit assault, robbery, rape or some other crime against a person.

Other offense details were also sought. For example, the Commission found that 19.3% of burglaries occurred between 11:00 p.m. and 6:00 a.m., with another 14.9% committed between the hours of 7:00 a.m. and 5:00 p.m. The two time periods accounted for the vast majority of cases for which the time of the offense could be identified from the available information.

When collecting supplemental information, the Commission rarely found documentation about any weapon or weapons in the offender's possession at the time of the burglary. This detail was unknown or missing for 87.3% of the cases in the sample. When information about a weapon was available, it was most often a firearm (5.7% of cases).

The Commission found that information regarding the involvement of codefendants was missing in approximately one-quarter of the burglary cases. However, when such information was available, most offenders either acted alone or with a single codefendant. In addition, very little gang involvement was documented in these cases.

The Commission observed that a number of offenders in the sample were under some sort of restriction or had an open court matter when the burglary was committed. According to information available in case files, 10.2% of burglary offenders were on probation, parole or post-release supervision at the time of the offense. Another 7.1% were identified as having violated court-imposed terms of good behavior or unsupervised probation. Slightly less than 1% of offenders violated a protective or restraining order when committing the burglary. For the majority of cases, however, this type of information was not available. While missing in most cases, the Commission was able to document that 20.1% of burglary offenders used drugs or alcohol just prior to committing the burglary or otherwise had some sort of substance abuse issue.

Where possible, the Commission documented what happened as a result of the burglary. In more than one-third of cases, the offender caused damage to the structure although, most of the time, the damage was limited to that which was necessary to enter the dwelling or structure. The Commission

**Figure 41**  
**Sample of Burglary Sentencing Events**  
**Case Characteristics**

<b>Factors</b>	<b>Percent</b>
<b>Time of Day Burglary Committed*</b>	
7:00am to 5:00pm .....	14.9%
5:00pm to 11:00pm.....	8.6%
11:00pm to 6:00am.....	19.3%
Missing .....	57.2%
<b>Weapon in Possession at Time of Offense*</b>	
Firearm/Gun.....	5.7%
Knife .....	1.5%
Hammer (Object Used to Damage) .....	1.2%
Fire (Item Used to Start Fire) .....	0.2%
Ax/Saw .....	0.1%
Household Items or Products (Bleach, Food, Etc.) ..	0.1%
Gasoline/Explosive without Starting Fire.....	0.0%
Other .....	4.5%
None Identified.....	0.2%
Missing .....	87.3%
<b>Number of Codefendants</b>	
None.....	44.3%
1 Codefendant.....	18.5%
2 Codefendants .....	7.0%
3 Codefendants .....	3.4%
4+ Codefendants .....	1.6%
Missing .....	25.2%
<b>Restrictions Violated by Offender</b>	
Probation, Parole or Post-Release Supervision..	10.2%
Good Behavior, Unsupervised Probation .....	7.1%
Protective or Restraining Order .....	0.9%
Warned to Stay Off Property .....	0.7%
GPS .....	0.1%
Other .....	2.7%
Missing .....	79.4%
<b>Offender Issues*</b>	
Mental Health Issues.....	3.5%
Substance Abuse Issues (Incl. Use at Offense) ..	20.1%
Needed Food, Clothing, Etc. ....	1.2%
Other .....	4.9%
Missing .....	72.1%

\*Percentages may total to more than 100%, as each sentencing event may have involved multiple acts of burglaries, multiple victims and/or multiple items taken.

**Figure 42**  
**Sample of Burglary Sentencing Events**  
**Case Characteristics**

<b>Factors</b>	<b>Percent</b>
<b>Damage to Burglarized Structure</b>	
Minor Damage-Only Enough to Aid in Entry.....	25.9%
Extensive Damage-More than Needed to Enter.....	8.9%
None.....	13.1%
Missing.....	52.1%
<b>Item Used to Damage Structure*</b>	
Body Parts or Bodily Fluids.....	7.5%
Hammer.....	1.3%
Firearm/Gun.....	0.6%
Knife.....	0.6%
Fire (Item Used to Start Fire).....	0.6%
Ax/Saw.....	0.3%
Paint, Caulk (Building Supplies).....	0.1%
Gasoline/Explosive without Starting Fire.....	0.0%
Household Items/Products (Bleach, Etc.).....	0.0%
Other (e.g., bricks, crow bars, screwdrivers).....	7.6%
No Damage.....	12.0%
Missing.....	70.7%
<b>Amount of Damage to Structure</b>	
None.....	14.5%
\$1 to \$199.99.....	1.0%
\$200 to \$499.99.....	1.5%
\$500 to \$999.99.....	1.9%
\$1,000 to \$2,499.99.....	1.9%
\$2,500 to \$4,999.99.....	0.6%
\$5,000 to \$9,999.99.....	0.6%
\$10,000 to \$49,999.99.....	0.2%
\$50,000 to \$99,999.99.....	0.0%
\$100,000+.....	0.0%
Missing.....	77.8%

\*Percentages may total to more than 100%, as each sentencing event may have involved multiple acts of burglaries, multiple victims and/or multiple items taken.

<b>Factors</b>	<b>Percent</b>
<b>Type of Property Taken or Damaged (Not Damage to Structure)*</b>	
Electronics.....	24.0%
Financial Items - Cash, Cards, Etc.....	18.2%
Jewelry.....	13.7%
Firearm/Gun.....	8.5%
Clothing.....	4.3%
Equipment - Motorized.....	3.5%
Drugs - Illegal or Prescription.....	3.3%
Vehicles.....	3.3%
Tools.....	3.2%
Animals.....	0.2%
Other.....	16.8%
None.....	9.2%
Missing.....	33.1%
<b>Value of Property Taken or Damaged</b>	
None.....	9.3%
\$1 to \$199.99.....	3.5%
\$200 to \$499.99.....	14.0%
\$500 to \$999.99.....	6.2%
\$1,000 to \$2,499.99.....	9.8%
\$2,500 to \$4,999.99.....	6.1%
\$5,000 to \$9,999.99.....	4.8%
\$10,000 to \$49,999.99.....	4.2%
\$50,000 to \$99,999.99.....	0.7%
\$100,000+.....	0.4%
Missing.....	40.9%
<b>Individual(s) Present during Burglary*</b>	
No One in Occupied Structure.....	48.5%
Person - Not Child, Elderly, Sick or Disabled.....	17.9%
Child under Age 18.....	2.5%
Elderly, Sick or Disabled Person.....	0.3%
Companion Animal.....	0.5%
No One in Unoccupied Building.....	3.2%
Missing.....	30.4%

also recorded the types of property taken or damaged during each burglary (this excluded damage to the dwelling or structure). The most common type of item taken in burglary cases was electronics (including televisions, computers, cell phones, and video games), with 24.0% of the burglaries involving at least one electronic device. The second most common item (cited in 18.2% of the cases) was cash or other financial items, such as credit cards or checks. This was followed by jewelry, which was taken in 13.7% of the burglaries. The items most frequently taken were relatively small and easily converted into cash, often through illicit sales and sales to pawn shops. In many instances, these types of stolen items were ultimately recovered from pawn shops.

Firearms were identified in 8.5% of the offenses. The most common items in the “Other” category were determined to be alcohol and cigarettes/tobacco products. Only rarely (3.3% of cases) were illegal or prescription drugs stolen. In over half of the burglaries, the Commission could determine the value of the items taken or damaged. Approximately one in five cases (17.5%) involved a loss between \$1 and \$499. Another 16% of burglaries resulted in a loss of at least \$500 but less than \$2,500. Larger values were also observed, with 16.2% of burglary losses valued at \$2,500 or more. Value could not be determined for 40.9% of the burglaries in the study sample.

When providing feedback to the Commission regarding the burglary sentencing guidelines, judges often noted that the guidelines do not take into account whether someone was present in the home or other structure when the burglary was committed, or whether someone arrived while the burglary was being committed. Although that detail was not always documented in case files, the Commission determined that at least one in five (20.7%) burglaries involved a person who was present or who arrived during the burglary. Furthermore, in 9.1% of the burglaries, the offender committed or attempted to commit an assault or other violent act against a victim. Thus, among burglaries committed when a person was present or arrived during the act, nearly half resulted in a completed or attempted act of violence.

The Commission also gathered information regarding the relationship, if any, between the offender and the burglary victim(s). Most often, it was determined that the offender and victim were strangers (20.5%). When the offender and victim knew each other, the offender was most often a friend or neighbor of the victim. The offender-victim relationship could not be documented in 60.4% of the burglary cases examined.

**Figure 43**  
**Sample of Burglary Sentencing Events**  
**Case Characteristics**

Factors	Percent
<b>Violent Act Committed during Burglary</b>	
None Identified.....	61.3%
Warning Msg /Threat to Do Harm to Companion Animal.....	0.1%
Warning Msg /Threat to Do Harm to Person....	2.0%
Assault, etc., of Companion Animal .....	0.1%
Attempted Act of Violence to Person.....	2.0%
Assault, etc., of Person .....	7.1%
Missing .....	27.4%
<b>Type of Most Serious Injury to Victim</b>	
Threatened.....	4.6%
Emotional (Counseling).....	0.2%
Physical .....	4.0%
Serious Physical.....	0.6%
Life Threatening .....	0.1%
<b>Type of Impact on Victim (Other than Physical Injury)*</b>	
Sold Property/Moved, Refused Return Home...	0.3%
Financial.....	8.5%
Mental Health Counseling .....	0.1%
Installed Security System.....	0.2%
Feeling of Uneasiness.....	1.1%
Other .....	0.9%
Missing .....	89.0%
<b>Relationship of Offender to Victim (Closest Relationship Only)</b>	
Spouse - Married or Estranged .....	0.7%
Partner - Boyfriend, Girlfriend, Never Married.....	0.6%
Partner - Former.....	1.8%
Family - Sibling, Cousin, Uncle, Etc.....	2.3%
Roommate - Current or Former .....	0.4%
Friend - Current or Former.....	3.2%
Neighbor .....	3.2%
Coworker, Employee, Known through Work.....	2.5%
Service Worker - Uber, Cable, Etc.....	0.7%
Known and Not Listed Above - Victim Only Knows Offender Name, Work Place, School or Residence....	3.6%
Stranger.....	20.6%
Missing .....	60.4%

\*Percentages may total to more than 100%, as each sentencing event may have involved multiple acts of burglaries, multiple victims and/or multiple items taken.

Using the supplemental data collected, the Commission conducted a series of analyses to determine if any of the factors in the supplemental data collection had a measurable impact on sentencing decisions in burglary cases. Due to the amount of missing information in the supplemental data, however, the extent to which these factors impact sentencing decisions could not be fully assessed.

### **Conclusion**

Despite the Commission's substantial data collection effort, details in burglary cases were often unavailable, which limited the analysis that could be conducted with the supplemental data. For this reason, the Commission continued the study by examining sentencing guidelines data (data obtained from the sentencing guidelines worksheets submitted to the Commission) and sentencing outcomes in burglary cases. Through detailed analysis of sentencing guidelines data, the Commission developed a series of recommendations for revising both the Burglary/Dwelling and the Burglary/Other guidelines. The Commission's recommendations are presented in the final chapter of this report.

# 4

## RECOMMENDATIONS

### Introduction

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

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

The Commission draws on several sources of information to guide its discussions about modifications to the guidelines system. Commission staff meet with circuit court judges and Commonwealth's attorneys at various times throughout the year, and these meetings provide an important forum for input from these two groups. In addition, the Commission operates a "hotline" phone system, staffed Monday through Friday, to assist users with any questions or concerns regarding the preparation of the guidelines. While the hotline has proven to be an important resource for guidelines users, it has also been a rich source of input and feedback from criminal justice professionals around the Commonwealth. Moreover, the Commission conducts many training sessions over the course of a year and these sessions often provide information that is useful to the Commission. Finally, the Commission closely examines compliance with the guidelines and departure patterns in order to pinpoint specific areas where the guidelines may need adjustment to better reflect current judicial thinking. The opinions of the judiciary, as expressed in the reasons they write for departing from the guidelines, are very important in directing the Commission's attention to areas of the guidelines that may require amendment.

On an annual basis, the Commission examines those crimes not yet covered by the guidelines. Currently, the guidelines cover approximately 95% of felony cases in Virginia's circuit courts. Over the years, the General Assembly has created new crimes and raised other offenses from misdemeanors to felonies. The Commission tracks all of the changes to the *Code of Virginia* in order to identify new felonies that may be added to the guidelines system in the future. The ability to create historically-based guidelines depends, in large part, on the number of cases that can be used to identify past judicial sentencing patterns. Of the felonies not currently covered by the guidelines, most do not occur frequently enough for there to be a sufficient number of cases upon which to develop historically-based guideline ranges. Through this process, however, the Commission can identify offenses and analyze data to determine if it is feasible to add particular crimes to the guidelines system.

The Commission has adopted seven recommendations this year. Each of these is described in detail on the pages that follow.

**RECOMMENDATION****1**

Simplify the Section B Recommendation Table for the Burglary/Dwelling and Burglary/Other Guidelines.

**Issue**

After thorough analysis of sentencing guidelines data, the Commission developed a series of recommendations for revising both the Burglary/Dwelling and the Burglary/Other guidelines. The first of these recommendations relates to the Section B Recommendation Table. If an offender scores below the threshold specified on the Section A worksheet, he will then be scored on the Section B worksheet to determine if the guidelines will recommend probation/no incarceration or a short jail term (up to six months). After completing the Section B worksheet, a user must look up the total score in the Section B Recommendation Table to determine what guidelines recommendation corresponds to that score. On the Section B Recommendation Table for the Burglary/Dwelling and Burglary/Other Guidelines, the recommendation will be one of the following: Probation/No Incarceration, Incarceration 1 Day up to 3 Months, or Incarceration 3 to 6 Months. Data suggest that combining the latter two categories to simplify the Recommendation Table better reflects sentencing practices in many burglary cases.

**Discussion**

In 2019, the Commission completed a special study of the sentencing guidelines for burglary offenses. Through detailed analysis of sentencing guidelines data, the Commission developed a series of recommendations for revising both the Burglary/Dwelling and the Burglary/Other guidelines. The first recommendation is specific to the Section B Recommendation Table for both offense groups.

When preparing sentencing guidelines, a user must first score the Section A worksheet. On the Burglary/Dwelling and Burglary/Other guidelines, if the offender scores 13 points or less on Section A, the Section B worksheet must be completed to determine if the guidelines will recommend probation/no incarceration or a short jail term. Once Section B is completed and the score totaled, a user must look up the total score in the Section B Recommendation Table to identify the corresponding guidelines recommendation. Currently, the Section B Recommendation Table for both the Burglary/Dwelling and Burglary/Other guidelines yields one of three recommendations, as shown in the left-hand panel, of Figure 44 and Figure 45: Probation/No Incarceration, Incarceration 1 Day up to 3 Months, or Incarceration 3 to 6 Months.

Analysis of data from the 2019 study suggests that the guidelines for burglary offenses can be refined to better reflect current judicial sentencing practices, particularly in terms of the types of disposition recommended. The sentence ranges currently recommended by Section B are quite narrow (Incarceration 1 Day up to 3

**Figure 44**  
Current Burglary/Dwelling  
Section B Recommendation Table

**Burglary/Dwelling ❖ Section B**

Recommendation Table	
Score	Guideline Sentence
0 - 6 .....	Probation/No Incarceration
7 - 8 .....	Incarceration 1 Day up to 3 Months
9+ .....	Incarceration 3 to 6 Months

Proposed Burglary/Dwelling Section B  
Recommendation Table

**Burglary/Dwelling ❖ Section B**

Recommendation Table	
Score	Guideline Sentence
0 - 6 .....	Probation/No Incarceration
7+ .....	Incarceration 1 Day up to 6 Months

Months or Incarceration 3 to 6 Months). Sentencing models performed better when the two individual incarceration ranges were collapsed into a single range. With this change, Section B would result in a recommendation of either probation/no incarceration or Incarceration 1 Day up to 6 Months (see right-hand panel of Figure 44 and Figure 45).

The Section B Recommendation Tables for several other offense groups are already structured in this way. This type of Section B Table can be found in the guidelines for the Fraud, Larceny, Traffic, Weapon, and Miscellaneous offense groups.

The proposed Section B Tables would simplify the scoring structure to two categories, with a threshold of seven points to recommend jail incarceration up to six months. This change improves guidelines compliance by recommending a single, broader incarceration range.

**Figure 45**  
**Proposed Burglary/Other Section B**  
**Recommendation Table**

**Burglary/Other ❖ Section B**

Recommendation Table	
Score	Guideline Sentence
0 - 6 .....	Probation/No Incarceration
7 - 8 .....	Incarceration 1 Day up to 3 Months
9+ .....	Incarceration 3 to 6 Months

**Proposed Burglary/Other Section B**  
**Recommendation Table**

**Burglary/Other ❖ Section B**

Recommendation Table	
Score	Guideline Sentence
0 - 6 .....	Probation/No Incarceration
7+ .....	Incarceration 1 Day up to 6 Months

As shown in Figure 46, the proposed change would increase, albeit slightly, concurrence with the Burglary/Dwelling and Burglary/Other guidelines. The Burglary/Dwelling compliance rate is projected to increase from 69.6% to 70.2%, while the Burglary/Other Structure compliance is projected to increase from 78.2% to 79.0%. The change is expected to decrease the aggravation rate, or the rate at which judges sentence above the recommended range, for both offense groups. The mitigation rate, or the rate at which judges sentence below the recommended range, is also expected to decrease slightly for the Burglary/Other guidelines.

This proposal would not alter the factors or scores on the guidelines worksheets themselves. Using the current burglary worksheets, the proposed change to the Section B Recommendation Tables is expected to yield very modest improvements in compliance and departure rates. However, Recommendations 2 and 3, which follow, propose revisions to both the Burglary/Dwelling and the Burglary/Other Section B worksheets and, in those scenarios, sentencing models performed substantially better when the Section B Recommendation Table was simplified as proposed here.

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

**Figure 46**

**Concurrence with Burglary Guidelines  
FY2014 - FY2018**

	<b>Burglary/Dwelling Guidelines</b>		<b>Burglary/Other Guidelines</b>	
	<b>Current</b>	<b>Proposed</b>	<b>Current</b>	<b>Proposed</b>
Concurrence	69.6%	70.2%	78.2%	79.0%
Mitigation	14.2%	14.2%	11.8%	11.7%
Aggravation	16.2%	15.6%	10.0%	9.4%

## RECOMMENDATION **2**

Revise the Burglary/Dwelling Guidelines to better reflect current judicial sentencing practices.

### Issue

The sentencing guidelines were created to provide sentence recommendations based on historical practices using information regarding the nature of the current offense(s) and an offender’s criminal history. In essence, the guidelines provide judges with a benchmark of the typical, or average, case outcome given the characteristics of the offense and the offender’s prior record. By design, sentencing guidelines include factors that, based on empirical analysis of the data, have been shown to be important to judges when making sentencing decisions. In 2018, the Commission approved a special study of the sentencing guidelines for burglary offenses. The study, completed in 2019, revealed that the Burglary/Dwelling guidelines could be refined to better reflect judicial sentencing practices, particularly in terms of the types of dispositions recommended by the guidelines.

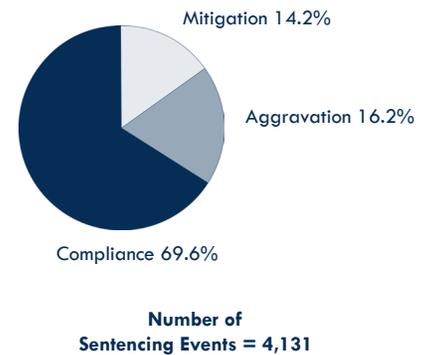
### Discussion

In 2019, the Commission completed a special study of the sentencing guidelines for burglary offenses. Through detailed analysis of sentencing guidelines data, the Commission developed a series of recommendations for revising both the Burglary/Dwelling and the Burglary/Other guidelines. This recommendation focuses on the Burglary/Dwelling guidelines.

During fiscal year (FY) 2014-FY2018, judicial concurrence with the Burglary/Dwelling guidelines was 69.6% (Figure 47). This is well below the overall average concurrence rate for all offenses, which hovers around 80% each year. Departures from the Burglary/Dwelling guidelines were relatively evenly split above and below the recommended range (16.2% above and 14.2% below).

Figure 47

**Concurrence with Guidelines for Burglary of Dwelling Offenses (§ 18.2-89 through § 18.2-92) FY2014-FY2018**



During FY2014-FY2018, the Burglary/Dwelling guidelines recommended 28.2% of the offenders for probation/no incarceration, while 6.1% were recommended for a short jail term (Figure 48). In practice, judges sentenced only 14.4% of offenders to probation without a term of incarceration and, instead, ordered a short jail term for 16.4% of the offenders. Thus, judges are sentencing Burglary/Dwelling offenders to jail terms at a much higher rate than is recommended by the guidelines. Judges were more likely to concur with the Burglary/Dwelling guidelines when a longer term of incarceration (more than six months) was recommended (65.7% of offenders were recommended for, and 69.2% received, that type of sanction). The analysis indicated that the Commission needed to focus on probation/no incarceration and jail recommendations, as the Burglary/Dwelling guidelines are not closely aligned with actual dispositions ordered by the court in such cases.

Figure 49 presents concurrence and departure rates separately for Burglary/Dwelling cases recommended for probation or incarceration up to six months (“Section B cases”) compared with cases recommended for incarceration of more than six months (“Section C cases”). Two distinct patterns are observed. When the current guidelines recommend probation or a short term of incarceration, concurrence is relatively low (61.4%) and there is a high aggravation rate (36.9%). Departures in these cases are more likely to be above the recommended range than below it. When the guidelines recommend longer terms of incarceration, the concurrence rate is higher (73.9%), mitigation is quite high (20.7%), and aggravation is relatively low (5.4%). Departures in these cases are more likely to be below the recommended range. While, overall, departures in Burglary/Dwelling cases appear to be relatively balanced above and below the guidelines recommendation, there are clearly differences in the underlying patterns depending on the type of disposition recommended by the guidelines.

**Figure 48**

**Actual versus Recommended Dispositions in Burglary/Dwelling Sentencing Events  
FY2014 - FY2018**

	Actual Practice	Recommended under Current Sentencing Guidelines
Probation/No Incarceration	14.4%	28.2%
Incarceration up to 6 Months	16.4%	6.1%
Incarceration More than 6 Months (Range includes prison)	69.2%	65.7%

**Figure 49**

**Concurrence with Guidelines for Burglary/Dwelling by Type of Disposition Recommended  
FY2014 - FY2018**

Type of Disposition Recommended	Compliance	Mitigation	Aggravation
Probation or Incarceration up to 6 months	61.4%	1.8%	36.9%
Incarceration more than 6 months	73.9%	20.7%	5.4%

When preparing sentencing guidelines, a user must first score the Section A worksheet. On the Burglary/Dwelling and Burglary/Other guidelines, if the offender scores 13 points or less on Section A, the Section B worksheet must be completed to determine if the guidelines will recommend probation/no incarceration or a short jail term (up to six months). A total score of 14 or more points on Section A means that the offender will then be scored on the Section C worksheet to determine the appropriate sentence length recommendation for a term of imprisonment.

As noted above, judges concur at a high rate when the guidelines recommend a longer term of incarceration (more than six months). Therefore, no changes to the Burglary/Dwelling Section A worksheet are proposed.

Section B of the sentencing guidelines determines if an offender will be recommended for either probation/no incarceration or jail up to six months. The Commission documented that judges often depart above the guidelines in cases scored on the Section B worksheet, specifically when the guidelines recommend probation. In those cases, judges often sentence the offender to an active jail term.

To address these issues, several modifications to the Section B worksheet are proposed. The Commission recommends an increase in points for the Section B Primary Offense factor for most Burglary/Dwelling offenders, as shown in Figure 50. Offenders whose primary offense is burglary of a dwelling with intent to commit larceny, etc., without a deadly weapon will now receive either three points (for one count of the primary offense) or five points (for two or more counts of the primary offense) on the Section B Primary Offense factor; previously, these offenders received only one point for all counts. Furthermore, points scored for the Legal Restraint factor on Section B will increase from three to four. The Commission also recommends adding two new factors to the Burglary/Dwelling Section B worksheet. The first of these accounts for Additional Offense convictions in the current sentencing event. Two points would be scored when an offender has additional offenses for which the sum of the statutory maximum penalties is five years or more. The second new factor would add one point when a stolen firearm is removed from the property during the burglary. This factor was suggested by supplemental data compiled as part of the 2018-2019 Burglary Guidelines Study. These changes will increase the likelihood that a burglary offender will be recommended for a jail term rather than probation without incarceration. The recommendation is designed to bring the Section B guidelines recommendations into line with actual judicial sentencing practices.

Figure 50

Proposed Burglary/Dwelling Section B Worksheet

<b>◆ Primary Offense</b>	
<b>A. Dwelling with intent to commit larceny, etc. without deadly weapon (all counts)</b>	
1 count.....	3
2 counts.....	5
<b>B. Dwelling at night with intent to commit larceny, etc. without deadly weapon (all counts)</b>	
1 count.....	3
2 counts.....	5
<b>C. Other than listed above (all counts).....</b>	
	4
<b>◆ Additional Offenses</b> Total the maximum penalties for additional offenses, including counts	
Years: Less than 5.....	0
5 or more.....	2
<b>◆ Prior Convictions/Adjudications</b> Total the maximum penalties for the 5 most recent and serious prior record events	
Years: 1 - 32.....	1
33 or more.....	2
<b>◆ Prior Misdemeanor Convictions/Adjudications (Excludes Traffic)</b>	
Number of 1 - 2.....	1
Counts: 3 - 5.....	2
6 - 8.....	3
9 or more.....	4
<b>◆ Prior Juvenile Record</b> _____ If YES, add 4	
<b>◆ Legally Restrained at Time of Offense</b> _____ If YES, add 4	
<b>◆ Firearm Removed from Property During Burglary</b> _____ If YES, add 1	

A total score of seven or more points on the Burglary/Dwelling Section B worksheet means the offender will be recommended for incarceration of one day up to six months on the revised Section B Recommendation Table (see Recommendation 1).

No changes to the Burglary/Dwelling Section C worksheet are proposed at this time.

The projected effect of these modifications on guidelines recommendations is displayed in Figure 51. The sentencing recommendations under the proposed guidelines would be more closely aligned with the actual sentencing dispositions in Burglary/Dwelling cases.

Figure 52 presents dispositional concurrence and departure rates for FY2014-FY2018 Burglary/Dwelling cases under both the current and proposed scoring schemes. Dispositional concurrence is defined as the rate at which judges comply with the type of disposition recommended by the guidelines (probation/no incarceration, jail up to six months, or incarceration of more than six months). There is a slight improvement in dispositional concurrence (from 78.8% to 80.8%) under the proposal, and a better balance between dispositional departures above and below the guidelines.

As shown in Figure 52, overall concurrence would essentially remain unchanged. The proposal is expected to reduce the overall aggravation (upward departure) rate considerably in Burglary/Dwelling cases, but it may also increase the mitigation (downward departure) rate. The relatively high mitigation rate is due in part to cases recommended for Section C. Individuals scored on Section C who have prior felony convictions for offenses defined as violent in § 17.1-805 receive legislatively-mandated enhancements that increase the guidelines recommendations for those individuals. In enhancement cases, the Commission has found that judges will sentence offenders below the guidelines recommendation more often than in other cases.

**Figure 51**

**Actual versus Proposed Recommended Dispositions in Burglary/Dwelling Sentencing Events  
FY2014 - FY2018**

	Actual Practice	Recommended under Proposed Sentencing Guidelines
Probation/No Incarceration	14.4%	15.4%
Incarceration up to 6 Months	16.4%	18.0%
Incarceration More than 6 Months (Range includes prison)	69.2%	66.6%

**Figure 52  
Concurrence with Guidelines  
for Burglary/Dwelling Sentencing Events  
FY2014 - FY2018**

	Dispositional Concurrence/ Departure Rates		Overall Concurrence	
	Current	Proposed	Current	Proposed
Compliance	78.8%	80.8%	69.2%	69.1%
Mitigation	4.3%	8.0%	15.5%	19.1%
Aggravation	16.9%	11.3%	15.3%	11.8%

Because the guidelines enhancements are required by statute, the Commission cannot modify the size of the enhancements to address the higher rate of downward departures in those cases. While the mitigation rate in enhancement cases (on Section C) would not be affected by the proposal, the proposal will affect recommendations produced by the Section B worksheet. Although the proposed changes are expected to decrease the rate of upward departures, some of the affected offenders will receive sentences that fall below the new (higher) Section B recommendation. These new mitigation cases from Section B will be in addition to the existing Section C mitigation cases, thus increasing the overall mitigation rates as shown in Figure 52.

Despite this, the proposal effectively addresses dispositional departures from the guidelines by increasing the likelihood that an offender convicted of burglarizing a dwelling will be recommended by the guidelines for a short jail term rather than probation/no incarceration. The relatively high proportion of offenders recommended for probation/no incarceration by the guidelines has been the primary concern expressed by judges in burglary cases.

The Commission's vote to approve this recommendation was not unanimous. Members who voted against this recommendation (developed through empirical analysis of current sentencing practices) expressed concern that the affected offenders may have substance abuse or other issues that could be addressed more effectively through a community-based program rather than a jail term, as may be recommended under the proposal. These members noted that offenders convicted of burglary, by statute, are not eligible to participate in drug treatment court programs. These members also expressed concern regarding the potential impact the proposal may have on plea negotiations in burglary cases by making it more difficult to negotiate a community-based punishment option for the defendant, which may better address his or her needs.

No impact on correctional bed space is anticipated, since the Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines and the proposal will not affect prison sentence recommendations in any way.

**RECOMMENDATION 3**

Revise the Burglary/Other guidelines (applicable in cases involving burglaries of structures other than dwellings) to better reflect current judicial sentencing practices.

**Issue**

The sentencing guidelines were created to provide sentence recommendations based on historical practices using information regarding the nature of the current offense(s) and an offender’s criminal history. Generally speaking, guidelines provide judges with a benchmark of the typical, or average, case outcome given the characteristics of the offense and the offender’s prior record. Sentencing guidelines include factors that, based on empirical analysis of the data, have been shown to be important to judges when making sentencing decisions. The results of a recent study revealed that the Burglary/Other guidelines could be refined to better reflect judicial sentencing practices, particularly in terms of the types of dispositions recommended by the guidelines.

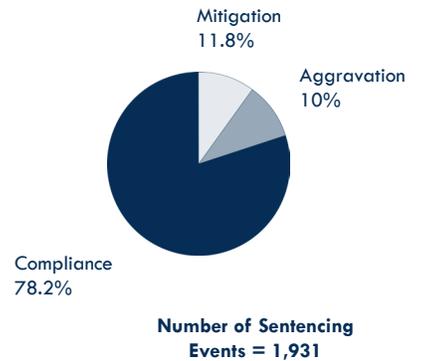
**Discussion**

In 2019, the Commission completed a special study of the sentencing guidelines for burglary offenses. Through detailed analysis of the data, the Commission developed a series of recommendations for revising both the Burglary/Dwelling and the Burglary/Other guidelines. This recommendation focuses on the Burglary/Other guidelines, which are applicable in cases involving burglaries of structures other than dwellings.

During fiscal year (FY) 2014-FY2018, judicial concurrence with the Burglary/Other guidelines was 78.2% (Figure 53). This is close to the overall average concurrence rate for all offenses, which hovers around 80% each year. Departures from the Burglary/Other guidelines were relatively evenly split above and below the recommended range (10.0% above and 11.8% below).

**Figure 53**

**Concurrence with Guidelines for Burglary/Other Offenses (§ 18.2-89 through § 18.2-92) FY2014-FY2018**



During FY2014-FY2018, the Burglary/Other guidelines recommended 25.7% of the offenders for probation/no incarceration, while 6.2% were recommended for a short jail term (Figure 54). In practice, judges sentenced only 17.5% of offenders to probation without a term of incarceration and, instead, ordered a short jail term for 16.7% of the offenders. This indicates that judges are sentencing Burglary/Other offenders to jail terms at a much higher rate than is recommended by the guidelines. Judges were more likely to concur with the Burglary/Other guidelines when a longer term of incarceration (more than six months) was recommended (68.0% of offenders were recommended for, and 65.9% received, that type of sanction). The analysis revealed that the Commission needed to focus on probation/no incarceration and jail recommendations, as the Burglary/Other guidelines are not closely aligned with actual dispositions ordered by the court in such cases. This is very similar to the pattern observed in Burglary/Dwelling cases (see Recommendation 2).

Figure 55 presents concurrence and departure rates separately for Burglary/Other cases recommended for probation or incarceration up to six months (“Section B cases”) compared with cases recommended for incarceration of more than six months (“Section C cases”). As with Burglary/Dwelling cases (shown in Recommendation 2), two district patterns are observed.

When the current guidelines recommend probation or a short term of incarceration, concurrence is somewhat low (74.1%) and there is a high aggravation rate (23.8%). Departures in these cases are more likely to be above the recommended range than below it. When the guidelines recommend longer terms of incarceration, the concurrence rate is higher (80.1%), mitigation is fairly high (16.3%), and aggravation is low (3.6%). Departures in these cases are more likely to be below the

**Figure 54**

**Actual versus Recommended Dispositions  
Burglary/Other Sentencing Events  
FY2014 - FY2018**

	<b>Actual Practice</b>	<b>Recommended under Current Guidelines</b>
Probation/No Incarceration	17.5%	25.7%
Incarceration up to 6 months	16.7%	6.2%
Incarceration more than 6 months (Range includes prison)	65.9%	68.0%

**Figure 55**

**Concurrence with Burglary/Other Guidelines  
by Type of Disposition Recommended  
FY2014 - FY2018**

<b>Type of Disposition Recommended</b>	<b>Compliance</b>	<b>Mitigation</b>	<b>Aggravation</b>
Probation or Incarceration up to 6 months	74.1%	2.1%	23.8%
Incarceration more than 6 months	80.1%	16.3%	3.6%

recommended range. While, overall, departures in Burglary/Other cases appear to be relatively balanced above and below the guidelines recommendation, there are clearly differences in the underlying patterns depending on the type of disposition recommended by the guidelines.

When preparing sentencing guidelines, a user must first score the Section A worksheet. On the Burglary/Dwelling and Burglary/Other guidelines, if the offender scores 13 points or less on Section A, the Section B worksheet must be completed to determine if the guidelines will recommend probation/no incarceration or a short jail term (up to six months). A total score of 14 or more points on Section A means that the offender will then be scored on the Section C worksheet to determine the appropriate sentence length recommendation for a term of imprisonment.

As noted above, judges concur at a high rate when the guidelines recommend a longer term of incarceration (more than six months). Therefore, no changes to the Burglary/Other Section A worksheet are proposed.

Section B of the sentencing guidelines determines if an offender will be recommended for either probation/no incarceration or jail up to six months. The Commission documented that judges often depart above the guidelines in cases scored on the Section B worksheet, specifically when the guidelines recommend probation. In those cases, judges often sentence the offender to an active jail term.

To address these issues, several modifications to the Section B worksheet are proposed. The Commission recommends an increase in points for the Section B Primary Offense factor for most Burglary/Other offenders, as shown in Figure 56. Offenders whose primary offense is burglary of a structure other than a dwelling with intent to commit larceny, etc., without a deadly weapon will now receive three points on the Section B Primary Offense factor; previously, these offenders received only one point on this factor. Furthermore, points scored for the Legal Restraint factor on Section B will increase from three to four. The Commission also recommends adding one new factor to the Burglary/Other Section B worksheet. The factor will account for Additional Offense convictions in the current sentencing event. One point will be scored when the offender has additional offenses for which the sum of the statutory maximum penalties is five years or more. These changes will increase the likelihood that a burglary offender will be recommended for a jail term rather than probation without incarceration. The recommendation is designed to bring the Section B guidelines recommendations into line with actual judicial sentencing practices.

Figure 56

Proposed Burglary/Other Section B Worksheet

◆ <b>Primary Offense</b>	
A. Other structure with intent to commit larceny, etc. (all counts).....	3
B. Possession of burglarious tools (all counts).....	4
C. Other than listed above (all counts).....	4
◆ <b>Additional Offenses</b> <u>Total</u> the maximum penalties for additional offenses, including counts	
Years: Less than 5.....	0
5 or more.....	1
◆ <b>Prior Convictions/Adjudications</b> Total the maximum penalties for the 5 most recent and serious prior record events	
Years: 1 - 32.....	1
33 or more.....	2
◆ <b>Prior Misdemeanor Convictions/Adjudications</b> (Excludes Traffic)	
Number of 1 - 2.....	1
Counts: 3 - 5.....	2
6 - 8.....	3
9 or more.....	4
◆ <b>Prior Juvenile Record</b> _____	If YES, add 4
◆ <b>Legally Restrained at Time of Offense</b> _____	If YES, add 4

A total score of seven or more points on the Burglary/Other Section B worksheet means the offender will be recommended for incarceration of one day up to six months on the revised Section B Recommendation Table (see Recommendation 1).

No changes to the Burglary/Other Section C worksheet are proposed at this time.

The projected effect of these modifications on guidelines recommendations is displayed in Figure 57. The sentencing recommendations under the proposed guidelines would be more closely aligned with the actual sentencing dispositions in Burglary/Other cases.

**Figure 57**

**Actual versus Proposed Recommended Dispositions in Burglary/Other Sentencing Events  
FY2014 - FY2018**

	<b>Actual Practice</b>	<b>Recommended under Proposed Sentencing Guidelines</b>
Probation or Incarceration	17.5%	18.3%
Incarceration up to 6 Months	16.7%	15.2%
Incarceration More than 6 Months (Range includes prison)	65.9%	66.5%

Figure 58 presents dispositional concurrence and departure rates for FY2014-FY2018 Burglary/Other cases under both the current and proposed scoring schemes. Dispositional concurrence is defined as the rate at which judges comply with the type of disposition recommended by the guidelines (probation/no incarceration, jail up to six months, or incarceration of more than six months). There is a slight improvement in dispositional concurrence (from 82.0% to 82.5%) under the proposal, and a near-perfect balance between dispositional departures above and below the guidelines.

As shown in Figure 58, overall concurrence would remain relatively unchanged. The proposal is expected to reduce the overall aggravation (upward departure) rate in Burglary/Other cases, but it may also increase the mitigation (downward departure) rate. The relatively high mitigation rate is due in part to cases recommended for Section C. Individuals scored on Section C who have prior felony convictions for offenses defined as violent in § 17.1-805 receive legislatively-mandated enhancements that increase the guidelines recommendations for those individuals. In enhancement cases, the Commission has found that judges will sentence offenders below the guidelines recommendation more often than in other cases. Because the guidelines enhancements are required by statute, the Commission cannot modify the size of the enhancements to address the higher rate of downward departures in those cases. While the mitigation rate in enhancement cases (on Section C) would not be

**Figure 58**  
**Concurrence with Guidelines**  
**for Burglary/Other Sentencing Events**  
**FY2014 - FY2018**

	Dispositional Compliance/ Departure Rates		Overall Compliance	
	Current	Proposed	Current	Proposed
Compliance	82.0%	82.5%	78.9%	78.0%
Mitigation	5.5%	8.7%	10.2%	13.4%
Aggravation	12.5%	8.8%	10.9%	8.6%

affected by the proposal, the proposal will affect recommendations produced by the Section B worksheet. Although the proposed changes are expected to decrease the rate of upward departures, some of the affected offenders will receive sentences that fall below the new (higher) Section B recommendation. These new mitigation cases from Section B will be in addition to the existing Section C mitigation cases, thus increasing the overall mitigation rates as shown in Figure 58.

Despite this, the proposal effectively addresses dispositional departures from the guidelines by increasing the likelihood that an offender convicted of burglarizing a non-dwelling structure will be recommended by the guidelines for a short jail term rather than probation/no incarceration. The relatively high proportion of offenders recommended for probation/no incarceration by the guidelines has been the primary concern expressed by judges in burglary cases.

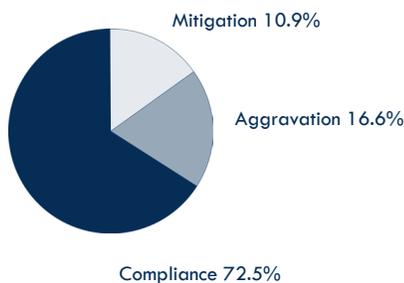
The Commission's vote to approve this recommendation was not unanimous. Members who voted against this recommendation (developed through empirical analysis of current sentencing practices) expressed concern that the affected offenders may have substance abuse or other issues that could be addressed more effectively through a community-based program rather than a jail term, as may be recommended under the proposal. These members noted that offenders convicted of burglary, by statute, are not eligible to participate in drug treatment court programs. These members also expressed concern regarding the potential impact the proposal may have on plea negotiations in burglary cases by making it more difficult to negotiate a community-based punishment option for the defendant, which may better address his or her needs.

No impact on correctional bed space is anticipated, since the Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines and the proposal will not affect prison sentence recommendations in any way.

## RECOMMENDATION 4

**Figure 59**

**Concurrence with Guidelines  
for Kidnapping Class 5 Felony Offenses  
(§ 18.2-47(A) and § 18.2-49)  
CY2014-CY2018**



Number of Sentencing  
Events = 494

Revise the Kidnapping guidelines to better reflect current judicial sentencing practices.

### Issue

The sentencing guidelines were created to provide sentence recommendations based on historical practices using information regarding the nature of the current offense(s) and an offender's criminal history. In essence, the guidelines provide judges with a benchmark of the typical, or average, case outcome given the characteristics of the offense and the offender's prior record. The Kidnapping guidelines cover numerous felony offenses under several sections of the *Code of Virginia*, including two Class 5 felonies: abduction by force without legal justification (§ 18.2-47(A)) and assisting or threatening to abduct (§ 18.2-49). Concurrence with the guidelines for these two offenses is lower than the overall average concurrence rate for all offenses and, when judges depart, they are more likely to sentence above the guidelines recommendation than below it. In particular, judges often disagree with the type of disposition recommended by the current guidelines. Detailed analysis of the data revealed that the Kidnapping guidelines could be refined to bring recommendations more in line with current sentencing practices.

### Discussion

Figure 59 presents recent concurrence and departure rates for the offenses of abduction by force without legal justification (§ 18.2-47(A)) and assisting or threatening to abduct (§ 18.2-49), in cases in which one of these offenses was the primary, or most serious, offense at sentencing. During calendar year (CY) 2014 through CY2018, judicial concurrence with the guidelines in these cases was 72.5%. This is lower than the overall average concurrence rate for all offenses, which is approximately 80%. During this time period, the upward departure rate (16.6%) was somewhat higher than the downward departure rate (10.9%).

**Figure 60**

**Actual versus Recommended Dispositions for  
Kidnapping Class 5 Felony Offenses  
(§ 18.2-47(A) and § 18.2-49)  
CY2014-CY2018**

	Actual Practice	Recommended under Current Guidelines
Probation/No Incarceration up to 6 months	31.4%	40.3%
Incarceration more than 6 months (Range includes prison)	68.6%	59.7%

Figure 60 compares the distributions of recommended and actual sentencing dispositions in cases involving the two Class 5 felony kidnapping offenses examined. During CY2014-CY2018, the guidelines recommended 40.3% of the offenders for probation or incarceration up to six months in jail, while 59.7% were recommended for incarceration of more than six months. In practice, judges sentenced only 31.4% of offenders to probation or jail up to six months and, instead, ordered longer incarceration terms for 68.6% of the offenders. Thus, the current guidelines for these offenses are not closely aligned with the actual sentencing dispositions in these cases. Judges are sentencing offenders convicted of these kidnapping offenses to incarceration terms in excess of six months more often than is recommended by the current guidelines.

Further analysis of the data revealed differences in rates of concurrence with the guidelines for these kidnapping offenses based upon whether or not the offender had been convicted of additional crimes. Among offenders recommended by the current guidelines for probation or incarceration up to six months, the concurrence rate was 75.9% when the offender had no additional convictions but was only 67.5% when the offender had been convicted of at least one additional offense in the case (Figure 61). This suggested that the Commission needed to focus on the differences in sentencing patterns for kidnapping offenders with and without additional convictions. Most frequently-recorded additional offenses in these cases were assault, protective order violations, vandalism, sex offenses and child abuse.

When preparing sentencing guidelines, a user must first complete the Section A worksheet. On the Kidnapping guidelines, if the offender scores four points or less on Section A, the guidelines will recommend probation or a term of incarceration up to six months in jail. If the offender scores five points or more on Section A, the Section C worksheet must be completed to determine the appropriate prison sentence length recommendation. The Kidnapping guidelines do not have a Section B worksheet.

**Figure 61**

**Concurrence with Guidelines for Kidnapping Class 5 Felony Offenses  
 (§ 18.2-47(A) and § 18.2-49)  
 CY2014-CY2018  
 Number of Sentencing Events = 199**

	<b>Compliance</b>	<b>Mitigation</b>	<b>Aggravation</b>
No Additional Offenses	75.9%	0.0%	24.1%
With Additional Offenses	67.5%	0.0%	32.5%

The Commission proposes several modifications to the Kidnapping Section A and Section C worksheets to bring recommendations for these cases into line with current judicial sentencing practices. The Commission recommends adding three new factors to the Section A worksheet, to be scored only when the primary offense at sentencing is abduction by force without legal justification (§ 18.2-47(A)) or assisting or threatening to abduct (§ 18.2-49). The first of these accounts for the type of Additional Offense convictions in the current sentencing event (Figure 62). One point will be scored if an offender has an additional offense with a Virginia Crime Code (VCC) prefix of “PRT”, “SEX”, “RAP”, “FAM.” With this change, offenders who have an additional conviction for a protective order violation, a sexual assault, or a family offense (including child abuse and contributing to the delinquency of a minor) will receive an additional point on the Section A worksheet. A second new factor will add one point if an offender has a conviction in the current event requiring a mandatory minimum term of incarceration of six months or more. The third new factor addresses the degree of injury to the victim. No points will be scored for threatened injury; however, one point will be scored for emotional injury and two points will be scored if a victim suffers physical, serious physical, or life-threatening injury. These changes will increase the likelihood that an offender convicted of one of the specified kidnapping crimes will be recommended for a term of incarceration in excess of six months. In fact, if the offender receives points on any of the three proposed new factors, he or she will have sufficient total points to be recommended for incarceration of more than six months.

Figure 62

**Proposed New Factors for Kidnapping Section A Worksheet**

<p><b>◆ Type of Additional Offense</b></p> <p>Any Additional offense has prefix of “PRT”, “SEX”, “RAP”, or “FAM”</p>	
<p><b>Primary offense:</b> B. or C. Abduction by force without legal justification or Assisting or threatening to abduct</p> <p>If YES, Add 1</p>	<p><b>Primary offense:</b> All other offenses</p> <p>Do Not Score</p>
<p><b>◆ Conviction in Current Event Requiring Mandatory Minimum Term (6 mos or more)</b></p>	
<p><b>Primary offense:</b> B. or C. Abduction by force without legal justification or Assisting or threatening to abduct</p> <p>If YES, Add 1</p>	<p><b>Primary offense:</b> All other offenses</p> <p>Do Not Score</p>
<p><b>◆ Victim Injury</b></p>	
<p><b>Primary offense:</b> B. or C. Abduction by force without legal justification or Assisting or threatening to abduct</p> <p>Threatened ..... 0 Emotional ..... 1 Physical, Serious Physical, Life Threatening ..... 2</p>	<p><b>Primary offense:</b> All other offenses</p> <p>Do Not Score</p>

NOTE: New Factors will be scored only when the Primary Offense is Abduction by Force without Legal Justification (§ 18.2-47(A)) or Assisting/Threatening to Abduct (§ 18.2-49).

Three new factors are also proposed for the Kidnapping Section C worksheet, again to be scored only when the primary offense at sentencing is abduction by force without legal justification (§ 18.2-47(A)) or assisting or threatening to abduct (§ 18.2-49). The factors are similar to those proposed for the Section A worksheet. The first of these new factors will account for the type of Additional Offense convictions in the current sentencing event (Figure 63). Six points will be scored if an offender has an additional offense with a VCC prefix of “PRT”, “SEX”, “RAP”, “FAM” (which include protective order violations, sexual assaults, and family offenses such as child abuse and contributing to the delinquency of a minor). The second new factor will add six more points if an offender has a conviction in the current sentencing event requiring a mandatory minimum term of incarceration of six months or more. The third new factor on Section C will capture victim injury. Two points will be scored for emotional injury and six points will be scored if a victim suffers physical, serious physical, or life-threatening injury. Emotional injury is scored on the guidelines if the victim sustained emotional injury requiring any form of mental health care, psychiatric, psychological, or any other type of counseling that has been documented.

Together, these Section C changes will increase the sentence length recommendation for offenders convicted of one of the specified kidnapping felonies who have additional convictions, who have a mandatory minimum term to serve, or who injured the victim emotionally or physically. On Section C, each point is equivalent to one month added to the sentence length recommendation.

**Figure 63**

**Proposed New Factors for Kidnapping Section C Worksheet**

<p><b>◆ Type of Additional Offense</b></p> <p>Any Additional offense has prefix of “PRT”, “SEX”, “RAP”, or “FAM”</p>	
<p>Primary offense: B. or C. Abduction by force without legal justification or Assisting or threatening to abduct</p> <p>If YES, Add 6</p>	<p>Primary offense: All other offenses</p> <p>Do Not Score</p>
<p><b>◆ Conviction in Current Event Requiring Mandatory Minimum Term (6 mos or more)</b></p>	
<p>Primary offense: B. or C. Abduction by force without legal justification or Assisting or threatening to abduct</p> <p>If YES, Add 6</p>	<p>Primary offense: All other offenses</p> <p>Do Not Score</p>
<p><b>◆ Victim Injury</b></p>	
<p>Primary offense: B. or C. Abduction by force without legal justification or Assisting or threatening to abduct</p> <p>Threatened ..... 0 Emotional ..... 2 Physical, Serious Physical, Life Threatening ..... 6</p>	<p>Primary offense: All other offenses</p> <p>Do Not Score</p>

NOTE: New Factors will be scored only when the Primary Offense is Abduction by Force without Legal Justification (§ 18.2-47(A)) or Assisting/Threatening to Abduct (§ 18.2-49).

The projected effect of these modifications on guidelines recommendations is shown in Figure 64. The sentencing recommendations under the proposed guidelines would be more closely aligned with the actual sentencing dispositions in these kidnapping cases.

Figure 65 presents dispositional concurrence and departure rates for CY2014-CY2018 kidnapping cases in which abduction by force without legal justification (§ 18.2-47(A)) or assisting or threatening to abduct (§ 18.2-49) was the most serious offense. Dispositional concurrence is defined as the rate at which judges comply with the type of disposition recommended by the guidelines (probation/no incarceration, jail up to six months, or incarceration of more than six months). With the proposed changes, considerable improvement in dispositional concurrence is anticipated. Dispositional concurrence is projected to increase from 82.6% to 86.8%, with a near-perfect balance between dispositional departures above and below the guidelines.

**Figure 64**

**Actual versus Proposed Recommended Dispositions for  
Kidnapping Class 5 Felony Offenses  
(§ 18.2-47(A) and § 18.2-49)  
CY2014-CY2018**

	<b>Actual Practice</b>	<b>Recommended under Proposed Sentencing Guidelines</b>
Probation or Incarceration up to 6 Months	31.4%	30.8%
Incarceration More than 6 Months (Range includes prison)	68.6%	69.2%

As shown in Figure 65, overall concurrence is expected to increase slightly under the proposal (from 72.5% to 73.1%). The proposal is expected to reduce the overall aggravation rate considerably in these cases; however, it is also expected to increase the mitigation rate. Analysis suggests that, rather than a tendency for departures to exceed the guidelines recommendation, departures will be more likely to fall below the guidelines under the proposed changes (i.e., the pattern of upward and downward departures switches). Although the proposed changes are expected to decrease the rate of upward dispositional departures, some of the affected offenders will receive sentences that fall below the new (higher) recommended range. Despite this, the proposal effectively addresses dispositional departures from the guidelines by increasing the likelihood that an offender convicted of one of the specified kidnapping offenses will be recommended by the guidelines for a longer term of incarceration. The relatively high proportion of offenders recommended for probation or short jail incarceration was the primary issue revealed by the data analysis.

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

**Figure 65**  
**Concurrence with Guidelines**  
**for Kidnapping Class 5 Felony Offenses**  
**(§ 18.2-47(A) and § 18.2-49)**  
**CY2014-CY2018**

	Dispositional Concurrence/ Departure Rates			Overall Concurrence	
	Current	Proposed		Current	Proposed
Compliance	82.6%	86.8%	Compliance	72.5%	73.1%
Mitigation	4.3%	6.9%	Mitigation	10.9%	15.8%
Aggravation	13.2%	6.3%	Aggravation	16.6%	11.1%

## RECOMMENDATION 5

Revise the guidelines for Schedule I/II drugs in order to provide more consistent recommendations for Manufacture of Methamphetamine (§ 18.2-248(C) and (C1)).

### Issue

Currently, Virginia’s sentencing guidelines cover the crime of manufacturing methamphetamine. However, the guidelines for this offense can be scored two different ways, depending on the paragraph in § 18.2-248 (and the corresponding Virginia Crime Code) that is selected. Virginia Crime Codes (VCCs) are nine digit reference codes that uniquely identify each offense defined in the *Code of Virginia*. While NAR-3044-F9 broadly encapsulates the manufacture of Schedule I or II drugs defined in § 18.2-248(C), NAR-3131-F9 covers the specific crime of manufacturing methamphetamine under § 18.2-248(C1). Manufacture Schedule I/II Drug (§ 18.2-248(C)) drugs carries a 5 to 40-year statutory penalty range, while Manufacture Methamphetamine (§ 18.2-248(C1)) has a 10 to 40-year range. While both VCCs cover the same offense behavior, scoring the offense under NAR-3131-F9 does not produce the same sentence recommendations as scoring the offense under NAR-3044-F9. Moreover, data show regional variation by court circuit for which VCC is used when scoring guidelines for methamphetamine manufacture convictions. These discrepancies suggest that the scoring of guidelines for these VCCs needs to be standardized to consistently score the same criminal behavior and better reflect sentencing for the typical methamphetamine manufacture case.

### Discussion

Figure 66 presents concurrence and departure rates for 198 sentencing events from fiscal year (FY) 2014 through FY2018 Sentencing Guidelines data where the primary offense at sentencing was a single count of Manufacture Schedule I/II Drug (§ 18.2-248(C)) or Manufacture Methamphetamine (§ 18.2-248(C1)). These cases were selected for analysis because there were no other convictions accompanying the drug manufacture. There is a 16 percentage point gap in concurrence with guidelines recommendations between Manufacture Schedule I/II Drug (52%) and Manufacture Methamphetamine (67.6%).

**Figure 66**  
**Manufacture Schedule I/II Drug (NAR-3044-F9) versus Manufacture Methamphetamine (NAR-3131-F9)**  
**Sentencing Patterns for One Count of the Primary Offense, No Additional Offenses**  
**FY2014-FY2018**

Offense	Mean (Months)	Median (Months)	Number of Cases	Baseline Concurrence*
Manufacture Schedule I/II Drug § 18.2-248(C) NAR-3044-F9	12.2	9	25	52.0%
Manufacture of Methamphetamine § 18.2-248(C1) NAR-3131-F9	24.8	20	173	67.6%
Total	23.2	-	198	65.7%

The NAR-3131-F9 baseline sentence average is double the NAR-3044-F9 average, resulting in an additional 12 months of time sentenced. The concurrence rate for NAR-3131-F9 is 15.6 percentage points higher. NAR-3131-F9 is used in 88% of manufacture cases.

\* This is not general concurrence, but calculated to strictly look at cases with only one count of manufacturing methamphetamine and no additional offenses.

The data also show nearly a 13-month difference in average effective sentences, with the average length for Manufacture Schedule I/II Drug at 12 months and Manufacture Methamphetamine at almost 25 months. After extensive analysis of five years of sentencing guidelines data, the Commission has developed a proposal to standardize scoring of these two VCCs on the guidelines and improve concurrence with the guidelines in these cases.

Figure 67 presents the VCCs most often used among the five judicial circuits with the highest volume of convictions for manufacturing methamphetamine during FY2014-FY2018. Manufacture Methamphetamine (NAR-3131-F9) is used in the majority of cases in all of these circuits, ranging from rates of 100% in the 29th Circuit to 76% in the 26th Circuit. Manufacture Methamphetamine (NAR-3131-F9) is used in 88% of manufacture cases statewide. Due to concurrence and sentence length differences shown in Figure 66, using different VCCs to score the same criminal behavior contributes to regional disparities in sentencing outcomes for the manufacture of methamphetamines.

**Figure 67**  
**Guidelines Scoring for the Offense of Manufacturing Methamphetamine among**  
**Judicial Circuits with Highest Volume of Convictions for Manufacturing Methamphetamine**  
**FY2014-FY2018**

Circuit	§ 18.2-248(C) NAR-3044-F9	§ 18.2-248(C1) NAR-3131-F9	TOTAL	Rate of NAR-3131-F9 USE
27 (Radford, Pulaski)	37	168	205	82%
29 (Tazewell, Buchanan)	0	115	115	100%
25 (Staunton, Lexington)	7	98	105	93%
28 (Smyth, Bristol)	11	77	88	88%
26 (Harrisonburg, Shenandoah)	18	57	75	76%
Total Statewide	104	763	867	88%

The 27th and 26th circuits have the highest rate of NAR-3044-F9 use.

Both Manufacture Schedule I/II Drug (NAR-3044-F9) and Manufacture Methamphetamine (NAR-3131-F9) are scored on the Drug/Schedule I/II guidelines. Section A of these guidelines determines whether an offender's recommendation will be calculated via Section B or Section C. Due to the number of Primary Offense points scored on Section A, use of either VCC will automatically meet the point threshold for Section C. Therefore, no changes are proposed for Sections A or B. Currently, Manufacture Schedule I/II Drug (NAR-3044-F9) collects additional points on Section C for multiple counts of the offense (up to four) and reduces points for attempted or conspired offenses versus completed acts. Manufacture Methamphetamine (NAR-3131-F9) does not follow these scoring conventions. The proposed scoring change applies uniform scoring to Manufacture Schedule I/II Drug and Manufacture Methamphetamine cases, using the current Manufacture Methamphetamine conventions and score values that are adjusted to better reflect the typical case (Figure 68).

The Commission tested a range of point values to maximize sentencing concurrence under a standardized scoring structure. Primary Offense points on Section C are assigned based on the classification of an offender's prior record. An offender is scored under the Other category if he or she does not have a prior conviction for a violent felony defined in § 17.1-805(C). An offender is scored under Category II if he or she has a prior conviction for a violent felony that has a statutory maximum

Figure 68

Drug/Schedule I/II Section C Worksheet

Primary Offense	Category I	Category II	Other
<b>A. Possess Schedule I or II drug or First offender violation</b>			
Attempted, conspired or completed:			
1 count.....	20	10	5
2 counts.....	28	14	7
3 counts.....	36	18	9
<b>B. Sell, Distribute, Possession with intent, etc., Schedule I or II drug</b>	<b>Current NAR-3044-F9</b>		
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)
<b>C. Sell, etc., Schedule I or II drug, second offense</b>			
Completed (Attempted or Conspired):			
1 count.....	110 (88)	66 (44)	22 (22)
2 counts.....	310(248)	186(124)	62 (62)
<b>D. Sell, etc., Schedule I or II drug - third or subsequent offense</b>			
Attempted, conspired or completed:			
1 count.....	175	105	35
2 counts.....	390	234	78
<b>E. Manufacture Methamphetamine, first or second offense, § 18.2-248(C1)</b>	<b>Current NAR-3131-F9</b>		
Attempted, conspired or completed:			
1 count.....	145	87	29
<b>F. Sell, etc., Schedule I or II drug to minor</b>			
Attempted, conspired or completed:			
1 count.....	60	30	15
<b>G. Accommodation—Sell, etc., Schedule I or II drug</b>			
Attempted, conspired or completed:			
1 count.....	32	16	8
2 counts.....	40	20	10
<b>H. Sell, etc., imitation Schedule I or II drug; Possession of methamphetamine precursors</b>			
Attempted, conspired or completed:			
1 count.....	12	6	3
2 counts.....	20	10	5
		<b>Proposed for NAR-3044-F9 and NAR-3131-F9</b>	
		130	78 26

*Proposed scoring would balance the recommended scores for manufacturing methamphetamines with an increased score for NAR-3044-F9 cases and decreased score for NAR-3131-F9.*

penalty of less than 40 years; pursuant to statute, Category II offenders receive a 200% enhancement to the Primary Offense score. Offenders are classified as Category I if they have a prior conviction for a violent felony with a statutory maximum of 40 years or more; Category I offenders receive a 400% enhancement to the Primary Offense score. Under the proposed scoring system, Manufacture Methamphetamine (NAR-3131-F9) cases would receive fewer points (resulting in lower guidelines recommendations) than currently while Manufacture Schedule I/II Drug (NAR-3044-F9) cases would receive more points (resulting in higher recommended ranges). See Figure 68.

Figure 69 compares concurrence and departure rates under the current and proposed scoring structures. The test sample consists of 713 cases (640 with Manufacture Methamphetamine (NAR-3131-F9) as the primary offense, 73 with Manufacture Schedule I/II Drug (NAR-3044-F9)), once cases with invalid primary offense scores have been excluded. The Commission anticipates that the proposed guidelines will yield sentence length recommendations that approximate judicial sentencing practices for these offenses. The majority of cases in this analysis are Manufacture Methamphetamine (NAR-3131-F9) primary offenses with an “Other” prior record classification not requiring statutory enhancement. Because departures currently trend toward mitigation and rescoring reduces guidelines ranges for Manufacture Methamphetamine (NAR-3131-F9) cases, many cases are brought into compliance from mitigation under the proposed scoring system. The net effect of the proposed scores is a 2.1 percentage point increase in concurrence, a 4.6 percentage point decrease in mitigating cases, and a 2.5 percentage point increase in aggravating cases. Among departures, the gap between mitigating and aggravating cases is reduced. As a result, the proposal results in a better balance between mitigation and aggravation departures.

Scoring the same behavior in the same manner on the sentencing guidelines will yield consistent recommendations and allow the Commission to better track sentencing patterns for the manufacturing of methamphetamine across the state. Judicial responses to these proposed guidelines will be monitored and the Commission will recommend adjustments, if necessary, based on judicial practice after the guidelines take effect.

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

**Figure 69**

**Concurrence with Guidelines for Manufacturing Methamphetamine (§ 18.2-248)  
FY2014-FY2018**

	<b>Current</b>	<b>As Proposed</b>	<b>Net Change</b>
Compliance	74.8%	76.9%	+2.1%
Mitigation	20.3%	15.7%	-4.6%
Aggravation	4.9%	7.4%	+2.5%

## RECOMMENDATION 6

Revise the Schedule I/II Drug guidelines to eliminate the Drug Exception Rule for scoring primary offense.

### Issue

Currently, all of the offenses defined in § 18.2-248(C) of the Code of Virginia are scored on the Schedule I/II Drug guidelines as though they were multiples of the same offense. This is called the Drug Exception Rule. Under the Rule, convictions for manufacturing, distributing, selling and possessing with intent to sell a Schedule I or II drug under § 18.2-248(C) are considered multiple counts of the same offense for guidelines scoring purposes. However, analysis revealed somewhat different sentencing patterns across these four offenses. By eliminating the Drug Exception Rule, each offense defined within § 18.2-248(C) will be scored separately. This will improve the Commission's ability to analyze sentencing practices in these cases and determine if further revisions to the Schedule I/II Drug guidelines are needed to better reflect sentencing practices for each specific offense under this Code section.

### Discussion

Generally, when scoring the sentencing guidelines, convictions with the exact same VCC are considered as multiple counts of the same offense. Attempted and conspired acts have different VCCs than completed acts and are treated as separate and distinct offenses unless otherwise instructed on the guidelines worksheet. The exception is when there are multiple convictions for offenses defined in § 18.2-248(C). If more than one of these VCCs appears in a sentencing event, they are treated as multiple counts of the primary offense when completing the Schedule I/II Drug guidelines. This is known as the Drug Exception Rule (DER). The offenses (and corresponding VCCs) included under the Rule are:

- NAR-3042-F9 – Distribution of Schedule I or II drugs;
- NAR-3043-F9 – Possession with intent to sell Schedule I or II drugs;
- NAR-3044-F9 – Manufacture Schedule I or II drugs; and
- NAR-3045-F9 – Sell for profit Schedule I or II drugs.

The Rule does not apply to second or subsequent offenses. Of the 47,427 drug sentencing events during FY2014-2018, 3,254 (6.9%) may have been subject to the Drug Exception Rule.

**Figure 70**  
**Sentencing Outcomes for Offenses Defined in § 18.2-248(C)**  
**One Count of the Primary, No Additional Offenses**  
**FY2014-FY2018**

Offense	Mean (Months)	Median (Months)	Number of Cases
NAR-3042-F9 (Distribution)	15.1	11	1,649
NAR-3043-F9 (Possess/intent to Sell)	19.1	12	1,675
NAR-3045-F9 (Sale for Profit)	13.6	10	1,007
NAR-3044-F9 (Manufacture)	12.2	9	25
NAR-3131-F9* (Manufacture of Methamphetamine)	24.8	20	173
Total	16.6	12	4,529

\* This VCC is not a Drug Exception Rule (DER) offense but provides context to Manufacture Schedule I/II Drug (NAR-3044-F9) statistics.

Figure 70 presents the baseline sentencing statistics for actual sentencing dispositions for 4,529 Schedule I/II drug sentencing events from the FY2014-FY2018 Sentencing Guidelines data. Events included here are comprised of a single count of a VCC that falls under the current Drug Exception Rule (as the primary offense), and no additional offenses. Average sentence lengths span from 12 months (NAR-3044-F9) to 19 months (NAR-3043-F9), indicating divergent sentencing patterns among Drug Exception Rule VCCs.

The rescored sample consists of 2,610 cases with more than one count of a Drug Exception Rule-eligible VCC as the primary offense. This excludes cases with missing or incorrect Primary Offense scores. All Drug Exception Rule-eligible cases are scored on the Drug/Schedule I/II guidelines. Section A of these guidelines determines whether an offender's recommendation will be calculated via Section B or Section C. All Drug Exception Rule primary offenses receive points on Section A that automatically meet the point threshold for Section C. Therefore, no changes are proposed for Sections A or B.

Figure 71 shows the rescored mechanics for this analysis. Cases likely affected by the Drug Exception Rule are scored as if the Rule did not exist. First, all cases are scored with a single count

**Figure 71**  
**Current Drug/Schedule I/II Section C Worksheet**  
**Primary Offense and Additional Offense factors**

◆ Primary Offense	Category I	Category II	Other
<b>A. Possess Schedule I or II drug or First offender violation Attempted, conspired or completed:</b>			
1 count.....	20	10	5
2 counts.....	28	14	7
3 counts.....	36	18	9
<b>B. Sell, Distribute, Possession with intent, etc., Schedule I or II drug Completed (Attempted or Conspired):</b>			
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)
<b>C. Sell, etc., Schedule I or II drug, second offense Completed (Attempted or Conspired):</b>			
1 count.....	110 (88)	66 (44)	22 (22)
2 counts.....	310(248)	186(124)	62 (62)
<b>D. Sell, etc., Schedule I or II drug - third or subsequent offense Attempted, conspired or completed:</b>			
1 count.....	175	105	35
2 counts.....	390	234	78
<b>E. Manufacture Methamphetamine, first or second offense, § 18.2-248(C1) Attempted, conspired or completed:</b>			
1 count.....	145	87	29
<b>F. Sell, etc., Schedule I or II drug to minor Attempted, conspired or completed:</b>			
1 count.....	60	30	15
<b>G. Accommodation—Sell, etc., Schedule I or II drug Attempted, conspired or completed:</b>			
1 count.....	32	16	8
2 counts.....	40	20	10
<b>H. Sell, etc., imitation Schedule I or II drug; Possession of methamphetamine precursors Attempted, conspired or completed:</b>			
1 count.....	12	6	3
2 counts.....	20	10	5
<b>◆ Additional Offenses</b> Assign points to <u>each</u> additional offense (including counts) and total the points			
<b>Primary offense:</b>	<b>Primary offense:</b>		
<b>D: Sell, etc., Schedule I/II drug 3rd or Subsequent</b>	<b>All other offenses</b>		
Years	Points	Years	Points
Less than 5.....	0	Less than 5.....	0
5,10.....	2	5,10.....	1
20.....	4	20.....	2
30.....	6	30.....	4
40 or more.....	7	40 or more.....	5

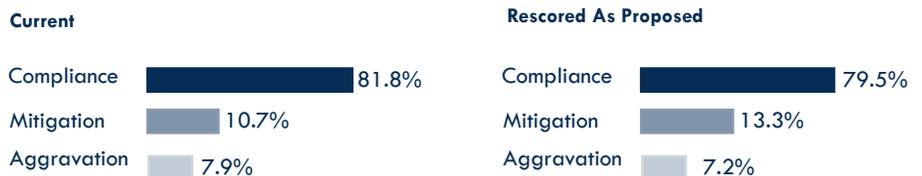
of the primary offense. Second, all primary offense counts beyond the first are then scored as additional offenses and assigned five points each. This rescoreing approach assumes that all additional counts of the primary offense are distinct VCCs grouped together under the Rule. Therefore, results may overstate the impact of eliminating the Rule on actual score changes.

Results of the rescoreing analysis are shown in Figure 72. Eliminating the Drug Exception Rule in the analysis of FY2014-2018 sentencing events reduces compliance by 2.3 percentage points (81.8% to 79.5%), with an increase in mitigating cases (10.7% to 13.3%) and a slight decrease in aggravating cases (7.5% to 7.2%).

A key limitation of the rescoreing analysis is that it alters guidelines recommendations while holding historical judicial practices constant. To address this limitation, the Commission performed a second analysis on FY2014-2018 Drug Exception Rule-eligible cases that were (incorrectly) scored without using the rule as instructed by the Guidelines Manual. These 376 cases include one count of a Drug Exception Rule-eligible VCC as the primary offense, with at least one count of another Drug Exception Rule-eligible VCC scored as an additional offense. The Commission examined concurrence in these cases as this subset of cases provides the best assessment of what concurrence and departure rates will mostly look like under the proposed change.

**Figure 72**

**Concurrence and Departure Rate for Sentencing Events in which the Drug Exception Rule Likely Applied  
FY2014-FY2018  
Number of Sentencing Events=2,610**



*NOTE: This rescoreing approach assumes that all additional counts of the primary offense are distinct VCCs grouped together under the Rule. Therefore, results may overstate the impact of eliminating the Rule on actual score changes.*

Figure 73 presents concurrence statistics for this second analysis. The overall concurrence rate for these cases is 82.4% or 0.6 percentage points higher than cases scored using the Drug Exception Rule. Moreover, in Drug Exception Rule-eligible cases that were (incorrectly) scored without using the Rule, departures above and below the guidelines are more evenly balanced (9.0% mitigating and 8.5% aggravating). Because this subset of cases was incorrectly scored by preparers as though the Drug Exception Rule did not exist, the Commission expects concurrence under the proposed Rule elimination to more closely reflect this 82.4% concurrence rate. Under this model, recommended and actual sentences are closely aligned, and departure types are more balanced.

Eliminating the Drug Exception Rule will allow the Commission to better analyze sentencing patterns for specific offenses defined in § 18.2-248(C). Judicial responses to these proposed guidelines will be monitored and the Commission will recommend adjustments, if necessary, based on judicial practice after the guidelines take effect.

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

**Figure 73**  
**Concurrence and Departure Rates for Sentencing Events in which the**  
**Drug Exception Rule-Eligible Convictions Were Incorrectly Scored without Applying the Rule**  
**One Count of Primary Offense, All Other Counts Scored as Additional Offenses**  
**FY2014-FY2018**

		Prior Record Classification			Total
		Category I	Category II	Other	
Compliance	Number	8	23	269	310
	Percentage	47.1%	66%	87.1%	82.4%
Mitigation	Number	8	14	12	34
	Percentage	47.1%	28.0%	3.9%	9.0%
Aggravation	Number	1	3	28	32
	Percentage	5.9%	6.0%	9.1%	8.5%
Total		17	50	309	376

## RECOMMENDATION

## 7

Amend § 9.1-101 of the *Code of Virginia* to explicitly define the Virginia Criminal Sentencing Commission as a criminal justice agency in the Commonwealth.

### Issue

Section § 9.1-101 of the *Code of Virginia* defines several terms including the “administration of justice” and “criminal justice agency.” Within the Commonwealth, the Virginia Criminal Sentencing Commission is generally considered a criminal justice agency due to the role the Commission plays in the adjudication process. However, the Commission is not explicitly defined as a criminal justice agency in this *Code* section. The Commission is seeking better access to out-of-state criminal history data compiled by the Federal Bureau of Investigation (FBI). Having the Commission explicitly defined as a state criminal justice agency may be necessary as the Commission pursues change at the federal level.

### **Discussion**

The Virginia Criminal Sentencing Commission conducts a wide variety of studies for which criminal history information is necessary. For example, the Commission conducts recidivism analyses to examine rates and patterns of repeat offending. Recidivism analyses are used to develop empirically-based risk assessment instruments, which the Commission has incorporated in the sentencing guidelines for certain offenses (as directed by the General Assembly). For risk assessment tools to accurately represent risk of re-offense, it is imperative that the analyses are based on the most complete and accurate criminal history information. In addition to research activities, Commission staff often assist users in the preparation of sentencing guidelines worksheets that must be submitted to the court. For the guidelines to provide the judge with a sentence recommendation based on the defendant’s full criminal history, access to out-of-state criminal records is needed.

While the Commission has sufficient access to Virginia criminal history records, the process required to access out-of-state criminal history records is extremely cumbersome. Although state sentencing commissions are authorized pursuant to 28 USC § 534 to obtain FBI criminal history record information, current FBI policy requires an agency seeking criminal history data to submit a detailed application to its Institutional Review Board for approval. The Review Board may require the agency to submit additional documentation prior to approval. The submission and approval process may take six months to a year before information is received by the requesting agency.

The US Sentencing Commission and other state sentencing commissions face the same challenges. In particular, directors from the Virginia, Pennsylvania and Maryland sentencing commissions discussed the issue at the most recent conference of the National Association of Sentencing Commissions (NASC). There is interest in working together to seek change at the federal level to simplify the process and ease access for commissions. The proposed change in the *Code of Virginia* may be crucial as the Commission seeks improved access to criminal history data maintained by the FBI.

Section § 9.1-101 of the *Code of Virginia* defines several terms relevant to the state's criminal justice system. Currently, under § 9.1-101, "administration of criminal justice" is defined as the "performance of any activity directly involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information." The same section also defines "criminal justice agency," in part, as "a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so..." Because the Commission administers the sentencing guidelines used in the adjudication process in circuit courts, the Commission is generally considered a criminal justice agency within Virginia.

In addition to the definitions above, certain agencies are listed in § 9.1-101 with specific language defining each as a criminal justice agency. The Virginia Department of Criminal Justice Services, the Virginia State Crime Commission and all programs certified by the Commission on VASAP are all explicitly defined as a "criminal justice agency" in this section.

Under the *Code of Federal Regulation* (specifically 28 CFR § 20.3), a criminal justice agency means the courts and "a governmental agency or any subunit thereof that performs the administration of criminal justice **pursuant to a statute or executive order...**" In order to bolster the Commission's position as it pursues more direct access to out-of-state criminal history data maintained by the FBI, amending § 9.1-101 of the *Code of Virginia* to explicitly define the Commission as a criminal agency may prove essential.





# APPENDICES

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

**Reasons for MITIGATION**

<b>Burglary of Dwelling (75 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	27	36.0%
Sentenced to alternative punishment	13	17.3%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	10	13.3%
Offender has minimal or no prior record	10	13.3%
Cooperated with authorities	8	10.7%
Mitigated facts of the offense	8	10.7%
Recommended by the attorney for the Commonwealth	7	9.3%
Offender has health issues	5	6.7%
Offender has substance abuse issues	5	6.7%
Request of the victim	5	6.7%
Financial obligations (child support, restitution, court costs, etc.)	4	5.3%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	4	5.3%
Mitigated court circumstances or proceedings (e.g., will resentence)	3	4.0%
Offender has good potential for rehabilitation	3	4.0%
Offender has made progress in rehabilitating himself or herself	3	4.0%
No mitigating reason given	2	2.7%
Offender issues, general (e.g., age, family support, impact on community, etc.)	2	2.7%
Offender was not the leader	2	2.7%
Property was recovered or was of little value	2	2.7%
Victim cannot or will not testify	2	2.7%
Victim circumstances (facts or the case, credibility issues, etc.)	2	2.7%
Behavior positive since commission of the offense	1	1.3%
Illegible written mitigating reason	1	1.3%
Little or no injury, offender did not intend to harm victim	1	1.3%
Missing information	1	1.3%
Multiple trial types (i.e., jury, bench, plea)	1	1.3%
Recommended by the jury	1	1.3%
Sentenced as a juvenile to DJJ	1	1.3%
Sentencing guidelines recommendation not appropriate (non-specific)	1	1.3%
Sequence of events had impact on recommendation	1	1.3%
Victim circumstances (drug dealer, etc.)	1	1.3%

<b>Burglary of Other Structure (40 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	15	37.5%
Sentenced to alternative punishment	12	30.0%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	7	17.5%
Cooperated with authorities	3	7.5%
Offender has health issues	3	7.5%
Offender issues, general (e.g., age, family support, impact on community, etc.)	3	7.5%
Recommended by the attorney for the Commonwealth	3	7.5%
Mitigated court circumstances or proceedings (e.g., will resentence)	2	5.0%
Mitigated facts of the offense	2	5.0%
No mitigating reason given	2	5.0%
Offender has failed other alternatives or rehabilitation	2	5.0%
Offender has good potential for rehabilitation	2	5.0%
Offender has minimal or no prior record	2	5.0%
Financial obligations (child support, restitution, court costs, etc.)	1	2.5%
Missing information	1	2.5%
Offender has substance abuse issues	1	2.5%
Request of the victim	1	2.5%
Sentencing guidelines recommendation was too high	1	2.5%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	1	2.5%
Sequence of events had impact on recommendation	1	2.5%
Victim cannot or will not testify	1	2.5%
Victim circumstances (drug dealer, etc.)	1	2.5%
Weapon was not a firearm	1	2.5%

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

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

### Reasons for AGGRAVATION

#### Burglary of Dwelling (72 Cases)

	Number	Percent
Aggravated facts of the offense	26	36.1%
Plea agreement	14	19.4%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	13	18.1%
Multiple counts, offenses or violations in the event (prosecuted or not)	12	16.7%
Offender has extensive prior record or same type of prior offense	7	9.7%
Victim circumstances (facts or the case, vulnerability, etc.)	7	9.7%
Aggravated facts of the offense, specific to breaking and entering	6	8.3%
Degree of victim injury (physical, emotional, etc.)	6	8.3%
Type of victim (child, weak, etc.)	6	8.3%
Sentencing guidelines recommendation was too low	5	6.9%
Offender has poor rehabilitation potential	4	5.6%
Offense involved possession or use of a weapon	4	5.6%
Recommended by the jury	4	5.6%
Recommended by the attorney for the Commonwealth	3	4.2%
Victim requested aggravating sentence	3	4.2%
Aggravated court circumstances or proceedings (e.g., will resentence)	2	2.8%
Violent or disruptive behavior while in custody	2	2.8%
Mitigated facts of the offense	1	1.4%
No aggravating reason given	1	1.4%
Offender has substance abuse issues	1	1.4%
Offender violated a restraining order or stalked victim	1	1.4%
Offender was the leader	1	1.4%
Offense involved a high degree of planning or a violation of trust	1	1.4%
Poor conduct since commission of the offense	1	1.4%
Prior record not adequately weighed by guidelines	1	1.4%
Sentenced to alternative punishment	1	1.4%

#### Burglary of Other Structure (29 Cases)

	Number	Percent
Aggravated facts of the offense	9	31.0%
Plea agreement	7	24.1%
Multiple counts, offenses or violations in the event (prosecuted or not)	5	17.2%
Offender has extensive prior record or same type of prior offense	3	10.3%
Sentencing guidelines recommendation was too low	3	10.3%
Aggravated facts of the offense, specific to breaking and entering	2	6.9%
Financial obligations (child support, restitution, court costs, etc.)	2	6.9%
Aggravated court circumstances or proceedings (e.g., will resentence)	1	3.4%
Child present at time of the offense	1	3.4%
Degree of victim injury (physical, emotional, etc.)	1	3.4%
Extreme property or monetary loss	1	3.4%
Gang-related offense	1	3.4%
Judge believed sentence was in concurrence with recommendation	1	3.4%
Missing information	1	3.4%
Offender failed alternative program	1	3.4%
Offender has poor rehabilitation potential	1	3.4%
Offense involved a high degree of planning or a violation of trust	1	3.4%
Offense involved possession or use of a weapon	1	3.4%
Recommended by the jury	1	3.4%
Seriousness of the original offense	1	3.4%
Victim circumstances (facts or the case, vulnerability, etc.)	1	3.4%

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

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

# Appendix 1

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

### Reasons for MITIGATION

Drugs/Schedule I/II (743 Cases)	Number	Percent
Plea Agreement	279	37.6%
Sentenced to alternative punishment	139	18.7%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	93	12.5%
Mitigated facts of the offense	74	10.0%
Mitigated court circumstances or proceedings (e.g., will resentence)	70	9.4%
Offender has minimal or no prior record	68	9.2%
Cooperated with authorities	66	8.9%
Recommended by the attorney for the Commonwealth	57	7.7%
Offender has made progress in rehabilitating himself or herself	53	7.1%
Offender has health issues	40	5.4%
Behavior positive since commission of the offense	37	5.0%
Missing information	31	4.2%
No mitigating reason given	31	4.2%
Offender has good potential for rehabilitation	29	3.9%
Current offense involves drugs or alcohol (e.g., small amount)	20	2.7%
Offender needs rehabilitation	20	2.7%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	17	2.3%
Offender has substance abuse issues	16	2.2%
Offender issues, general (e.g., age, family support, impact on community, etc.)	15	2.0%
Sentencing guidelines recommendation was too high	8	1.1%
Financial obligations (child support, restitution, court costs, etc.)	6	0.8%
Illegible written mitigating reason	6	0.8%
Recommended by the jury	5	0.7%
Sentencing guidelines recommendation not appropriate (non-specific)	5	0.7%
Offender was not the leader	4	0.5%
Sequence of events had impact on recommendation	4	0.5%
Mitigating court probation circumstances or proceedings (e.g., extend probation)	2	0.3%
Offender has failed other alternatives or rehabilitation	2	0.3%
Plea agreement	2	0.3%
Probation violation based on minimal circumstances involving drugs or alcohol	2	0.3%
Aggravated facts of the offense	1	0.1%
Judge believed sentence was in concurrence with recommendation	1	0.1%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	1	0.1%
Little or no injury, offender did not intend to harm victim	1	0.1%
Multiple counts, offenses or violations in the event (prosecuted or not)	1	0.1%
Probation violation based on minimal facts of the case	1	0.1%
Probation violation guidelines scoring issue	1	0.1%
Sentence was rounded down	1	0.1%
Sentencing guidelines were missing or incorrect	1	0.1%
Subsequent violation of probation or suspended sentence	1	0.1%

Drugs/Other (67 Cases)	Number	Percent
Plea Agreement	26	38.8%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	10	14.9%
Sentenced to alternative punishment	9	13.4%
Cooperated with authorities	6	9.0%
Behavior positive since commission of the offense	5	7.5%
Mitigated court circumstances or proceedings (e.g., will resentence)	4	6.0%
Mitigated facts of the offense	4	6.0%
No mitigating reason given	4	6.0%
Offender has health issues	4	6.0%
Offender has made progress in rehabilitating himself or herself	4	6.0%
Offender has minimal or no prior record	4	6.0%
Recommended by the attorney for the Commonwealth	4	6.0%
Current offense involves drugs or alcohol (e.g., small amount)	3	4.5%
Offender issues, general (e.g., age, family support, impact on community, etc.)	3	4.5%
Offender needs rehabilitation	3	4.5%
Sentencing guidelines recommendation was too high	2	3.0%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	2	3.0%
Financial obligations (child support, restitution, court costs, etc.)	1	1.5%

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

### Reasons for AGGRAVATION

Drugs/Schedule I/II (577 Cases)	Number	Percent
Plea agreement	230	40.1%
Multiple counts, offenses or violations in the event (prosecuted or not)	106	18.5%
Aggravated facts of the offense	89	15.5%
Offender failed alternative program	68	11.9%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	61	10.6%
Offender has extensive prior record or same type of prior offense	60	10.5%
No aggravating reason given	30	5.2%
Offender has poor rehabilitation potential	24	4.2%
Recommended by the attorney for the Commonwealth	24	4.2%
Offender has substance abuse issues	22	3.8%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	19	3.3%
Poor conduct since commission of the offense	18	3.1%
Aggravated court circumstances or proceedings (e.g., will resentence)	17	3.0%
Missing information	16	2.8%
Recommended by the jury	15	2.6%
Sentenced to alternative punishment	14	2.4%
Child present at time of the offense	13	2.3%
Offender needs rehabilitation offered by jail or prison	13	2.3%
Used, etc., drugs or alcohol while on probation	13	2.3%
Absconded from supervision	8	1.4%
Degree of victim injury (physical, emotional, etc.)	8	1.4%
Failed to follow instructions while on probation	7	1.2%
Failed to cooperate with authorities	6	1.0%
Sentencing guidelines recommendation was too low	6	1.0%
Did not exercise due caution while driving, excessive speeding, etc.	5	0.9%
Prior record not adequately weighed by guidelines	5	0.9%
Sentencing guidelines recommendation is not appropriate	4	0.7%
Violent or disruptive behavior while in custody	4	0.7%
Type of victim (child, weak, etc.)	3	0.5%
New offenses were committed while on probation	2	0.3%
Offense involved possession or use of a weapon	2	0.3%
Sentencing guidelines scoring issue (e.g., recommendation not adjusted for mandatory time)	2	0.3%
Seriousness of the original offense	2	0.3%
Degree of violence directed at victim	1	0.2%
Failed to attend meeting or keep appointments while on probation	1	0.2%
Gang-related offense	1	0.2%
Judge believed sentence was in concurrence with recommendation	1	0.2%
Mandatory minimum was involved in the event	1	0.2%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	0.2%
Never reported for probation or signed conditions	1	0.2%
Offense involved a high degree of planning or a violation of trust	1	0.2%
Plea Agreement	1	0.2%
Sentenced to alternative punishment	1	0.2%
Victim requested aggravating sentence	1	0.2%

Drugs/Other (66 Cases)	Number	Percent
Plea agreement	28	42.4%
Multiple counts, offenses or violations in the event (prosecuted or not)	16	24.2%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	15	22.7%
Aggravated facts of the offense	9	13.6%
Offender has extensive prior record or same type of prior offense	7	10.6%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	4	6.1%
Missing information	3	4.5%
Child present at time of the offense	2	3.0%
Offender has poor rehabilitation potential	2	3.0%
Offender has substance abuse issues	2	3.0%
Offense involved a high degree of planning or a violation of trust	2	3.0%
Poor conduct since commission of the offense	2	3.0%
Recommended by the jury	2	3.0%
Sentencing guidelines recommendation was too low	2	3.0%
Used, etc., drugs or alcohol while on probation	2	3.0%
Absconded from supervision	1	1.5%
Failed to follow instructions while on probation	1	1.5%
Illegible written aggravating reason	1	1.5%
Judge believed sentence was in concurrence with recommendation	1	1.5%
No aggravating reason given	1	1.5%
Recommended by the attorney for the Commonwealth	1	1.5%
Sentenced to alternative punishment	1	1.5%
Type of victim (child, weak, etc.)	1	1.5%

# Appendix 1

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

### Reasons for MITIGATION

<b>Fraud (186 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	57	30.8%
Sentenced to alternative punishment	28	15.1%
Mitigated facts of the offense	25	13.5%
Financial obligations (child support, restitution, court costs, etc.)	22	11.9%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	21	11.4%
Offender has minimal or no prior record	19	10.3%
Cooperated with authorities	17	9.2%
Offender has health issues	15	8.1%
Mitigated court circumstances or proceedings (e.g., will resentence)	14	7.6%
Recommended by the attorney for the Commonwealth	13	7.0%
Offender has good potential for rehabilitation	11	5.9%
No mitigating reason given	9	4.9%
Offender issues, general (e.g., age, family support, impact on community, etc.)	8	4.3%
Request of the victim	8	4.3%
Offender has made progress in rehabilitating himself or herself	5	2.7%
Behavior positive since commission of the offense	4	2.2%
Offender has substance abuse issues	4	2.2%
Offender was not the leader	3	1.6%
Property was recovered or was of little value	3	1.6%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	3	1.6%
Sequence of events had impact on recommendation	3	1.6%
Victim circumstances (drug dealer, etc.)	3	1.6%
Judge had issues with risk assessment	2	1.1%
Missing information	2	1.1%
Offender needs rehabilitation	2	1.1%
Sentencing guidelines recommendation not appropriate (non-specific)	2	1.1%
Sentencing guidelines recommendation was too high	2	1.1%
Multiple trial types (i.e., jury, bench, plea)	1	0.5%
Offender has failed other alternatives or rehabilitation	1	0.5%
Recommended by the probation officer	1	0.5%
Victim cannot or will not testify	1	0.5%
Victim circumstances (facts or the case, credibility issues, etc.)	1	0.5%
<b>Larceny (397 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea Agreement	147	37.2%
Sentenced to alternative punishment	76	19.2%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	41	10.4%
Mitigated facts of the offense	34	8.6%
Offender has health issues	33	8.4%
Recommended by the attorney for the Commonwealth	32	8.1%
Offender has minimal or no prior record	27	6.8%
Mitigated court circumstances or proceedings (e.g., will resentence)	26	6.6%
No mitigating reason given	24	6.1%
Cooperated with authorities	22	5.6%
Financial obligations (child support, restitution, court costs, etc.)	21	5.3%
Offender has made progress in rehabilitating himself or herself	21	5.3%
Property was recovered or was of little value	21	5.3%
Behavior positive since commission of the offense	17	4.3%
Offender has good potential for rehabilitation	13	3.3%
Request of the victim	13	3.3%
Sentencing guidelines recommendation was too high	10	2.5%
Missing information	8	2.0%
Offender issues, general (e.g., age, family support, impact on community, etc.)	8	2.0%
Recommended by the jury	7	1.8%
Offender has failed other alternatives or rehabilitation	4	1.0%
Offender has substance abuse issues	4	1.0%
Sentencing guidelines recommendation not appropriate (non-specific)	4	1.0%
Offender needs rehabilitation	3	0.8%
Sentence was rounded down	3	0.8%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	3	0.8%
Sequence of events had impact on recommendation	3	0.8%
Victim circumstances (drug dealer, etc.)	3	0.8%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	2	0.5%
Offender was not the leader	2	0.5%
Current offense involves drugs or alcohol (e.g., small amount)	1	0.3%
Illegible written mitigating reason	1	0.3%
Judge believed sentence was in concurrence with recommendation	1	0.3%
Judge had issues with risk assessment	1	0.3%
Mitigating facts of the offense, specific to sex offenses	1	0.3%
Sentencing guidelines were missing or incorrect	1	0.3%
Victim cannot or will not testify	1	0.3%

# Appendix 1

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

### Reasons for AGGRAVATION

<b>Fraud (64 Cases)</b>	<b>Number</b>	<b>Percent</b>
Plea agreement	19	29.7%
Aggravated facts of the offense	16	25.0%
Offender has extensive prior record or same type of prior offense	12	18.8%
Extreme property or monetary loss	10	15.6%
Type of victim (child, weak, etc.)	9	14.1%
Offense involved a high degree of planning or a violation of trust	8	12.5%
Multiple counts, offenses or violations in the event (prosecuted or not)	6	9.4%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	5	7.8%
No aggravating reason given	3	4.7%
Degree of victim injury (physical, emotional, etc.)	2	3.1%
Offender has poor rehabilitation potential	2	3.1%
Recommended by the attorney for the Commonwealth	2	3.1%
Recommended by the jury	2	3.1%
Sentenced to alternative punishment	2	3.1%
Victim requested aggravating sentence	2	3.1%
Absconded from supervision	1	1.6%
Aggravated facts of the offense, specific to breaking and entering	1	1.6%
Failed to cooperate with authorities	1	1.6%
Missing information	1	1.6%
No mitigating reason given	1	1.6%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	1.6%
Offender needs rehabilitation offered by jail or prison	1	1.6%
Prior record not adequately weighed by guidelines	1	1.6%
Recommended by the attorney for the Commonwealth	1	1.6%
Recommended by the probation officer	1	1.6%
Sentencing guidelines recommendation was too low	1	1.6%
Victim circumstances (facts or the case, vulnerability, etc.)	1	1.6%

### Larceny (251 Cases)

	<b>Number</b>	<b>Percent</b>
Aggravated facts of the offense	70	28.0%
Plea agreement	67	26.8%
Offender has extensive prior record or same type of prior offense	35	14.0%
Offense involved a high degree of planning or a violation of trust	32	12.8%
Multiple counts, offenses or violations in the event (prosecuted or not)	31	12.4%
Extreme property or monetary loss	22	8.8%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	21	8.4%
Sentencing guidelines recommendation was too low	15	6.0%
Missing information	13	5.2%
Offender has poor rehabilitation potential	13	5.2%
Type of victim (child, weak, etc.)	11	4.4%
Poor conduct since commission of the offense	10	4.0%
No aggravating reason given	9	3.6%
Recommended by the attorney for the Commonwealth	9	3.6%
Sentenced to alternative punishment	9	3.6%
Financial obligations (child support, restitution, court costs, etc.)	8	3.2%
Aggravated court circumstances or proceedings (e.g., will resentence)	7	2.8%
Recommended by the jury	7	2.8%
Offender failed alternative program	5	2.0%
Failed to cooperate with authorities	4	1.6%
Offender has substance abuse issues	4	1.6%
Offense involved possession or use of a weapon	4	1.6%
Absconded from supervision	3	1.2%
Aggravated facts of the offense, specific to breaking and entering	3	1.2%
Mandatory minimum was involved in the event	3	1.2%
Prior record not adequately weighed by guidelines	3	1.2%
Victim requested aggravating sentence	3	1.2%
Child present at time of the offense	2	0.8%
Degree of victim injury (physical, emotional, etc.)	2	0.8%
Offender violated a restraining order or stalked victim	2	0.8%
Sentenced to alternative punishment	2	0.8%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	1	0.4%
Did not exercise due caution while driving, excessive speeding, etc.	1	0.4%
Failed to follow instructions while on probation	1	0.4%
Gang-related offense	1	0.4%
Illegible written aggravating reason	1	0.4%
Judge believed sentence was in concurrence with recommendation	1	0.4%
Mitigated facts of the offense	1	0.4%
New offenses were committed while on probation	1	0.4%
Offender has health issues	1	0.4%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	0.4%
Offender needs rehabilitation offered by jail or prison	1	0.4%
Offender was the leader	1	0.4%
Plea Agreement	1	0.4%
Sentence was rounded up	1	0.4%
Sentencing guidelines recommendation is not appropriate	1	0.4%
Used, etc., drugs or alcohol while on probation	1	0.4%
Victim circumstances (facts or the case, vulnerability, etc.)	1	0.4%
Violent or disruptive behavior while in custody	1	0.4%

# Appendix 1

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

### Reasons for MITIGATION

Miscellaneous/Other (43 Cases)	Number	Percent
Plea Agreement	18	41.9%
Mitigated facts of the offense	17	39.5%
Offender has health issues	6	14.0%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	5	11.6%
Recommended by the attorney for the Commonwealth	5	11.6%
Offender has minimal or no prior record	3	7.0%
Absconding from supervision in question	2	4.7%
Cooperated with authorities	2	4.7%
Current offense involves drugs or alcohol (e.g., small amount)	2	4.7%
No mitigating reason given	2	4.7%
Offender has good potential for rehabilitation	2	4.7%
Sentencing guidelines recommendation was too high	2	4.7%
Missing information	1	2.3%
Offender has made progress in rehabilitating himself or herself	1	2.3%
Offender has substance abuse issues	1	2.3%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	2.3%
Recommended by the probation officer	1	2.3%
Request of the victim	1	2.3%
Sentenced to alternative punishment	1	2.3%

Miscellaneous/Person & Property (28 Cases)	Number	Percent
Plea Agreement	17	60.7%
Request of the victim	6	21.4%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	4	14.3%
Mitigated facts of the offense	3	10.7%
Recommended by the attorney for the Commonwealth	3	10.7%
Offender has good potential for rehabilitation	2	7.1%
Offender has minimal or no prior record	2	7.1%
Offender needs rehabilitation	2	7.1%
Behavior positive since commission of the offense	1	3.6%
Cooperated with authorities	1	3.6%
Missing information	1	3.6%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	3.6%
Offender has health issues	1	3.6%
Offender has made progress in rehabilitating himself or herself	1	3.6%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	1	3.6%
Victim cannot or will not testify	1	3.6%
Victim circumstances (facts or the case, credibility issues, etc.)	1	3.6%

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

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

## Appendix 1

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

#### Reasons for AGGRAVATION

Miscellaneous/Other (26 Cases)	Number	Percent
Plea agreement	9	36.0%
Aggravated facts of the offense	5	20.0%
Offender has extensive prior record or same type of prior offense	4	16.0%
Multiple counts, offenses or violations in the event (prosecuted or not)	3	12.0%
Aggravated court circumstances or proceedings (e.g., will resentence)	2	8.0%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	2	8.0%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	2	8.0%
Offender has poor rehabilitation potential	2	8.0%
Offender violated sex offender restrictions	2	8.0%
Recommended by the jury	2	8.0%
Absconded from supervision	1	4.0%
Failed to follow instructions while on probation	1	4.0%
Gang-related offense	1	4.0%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	1	4.0%
Mandatory minimum was involved in the event	1	4.0%
Missing information	1	4.0%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	4.0%
Offender was the leader	1	4.0%
Offense involved possession or use of a weapon	1	4.0%
Poor conduct since commission of the offense	1	4.0%
Victim requested aggravating sentence	1	4.0%

Miscellaneous/Person & Property (66 Cases)	Number	Percent
Aggravated facts of the offense	24	36.4%
Plea agreement	23	34.8%
Type of victim (child, weak, etc.)	10	15.2%
Multiple counts, offenses or violations in the event (prosecuted or not)	7	10.6%
Degree of victim injury (physical, emotional, etc.)	6	9.1%
Offender has extensive prior record or same type of prior offense	6	9.1%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	4	6.1%
No aggravating reason given	4	6.1%
Offender violated a restraining order or stalked victim	3	4.5%
Recommended by the attorney for the Commonwealth	3	4.5%
Recommended by the jury	3	4.5%
Sentencing guidelines recommendation was too low	3	4.5%
Violent or disruptive behavior while in custody	3	4.5%
Aggravated facts of the offense, specific to breaking and entering	2	3.0%
Child present at time of the offense	2	3.0%
Missing information	2	3.0%
Offender has poor rehabilitation potential	2	3.0%
Poor conduct since commission of the offense	2	3.0%
Aggravated court circumstances or proceedings (e.g., will resentence)	1	1.5%
Degree of violence directed at victim	1	1.5%
Did not exercise due caution while driving, excessive speeding, etc.	1	1.5%
Extreme property or monetary loss	1	1.5%
Failed to follow instructions while on probation	1	1.5%
Illegible written mitigating reason	1	1.5%
Offender has substance abuse issues	1	1.5%
Sentencing guidelines recommendation is not appropriate	1	1.5%
Sex offender has poor rehabilitation potential	1	1.5%
Victim requested aggravating sentence	1	1.5%

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

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

## Appendix 1

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

#### Reasons for MITIGATION

Traffic (136 Cases)	Number	Percent
Plea Agreement	54	40.0%
Mitigated facts of the offense	27	20.0%
Offender has minimal or no prior record	20	14.8%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	12	8.9%
Recommended by the attorney for the Commonwealth	12	8.9%
Mitigated court circumstances or proceedings (e.g., will resentence)	10	7.4%
No mitigating reason given	9	6.7%
Offender has health issues	9	6.7%
Offender has made progress in rehabilitating himself or herself	8	5.9%
Cooperated with authorities	7	5.2%
Financial obligations (child support, restitution, court costs, etc.)	7	5.2%
Offender has good potential for rehabilitation	7	5.2%
Offender issues, general (e.g., age, family support, impact on community, etc.)	6	4.4%
Recommended by the jury	6	4.4%
Offender needs rehabilitation	5	3.7%
Little or no injury, offender did not intend to harm victim	4	3.0%
Missing information	4	3.0%
Sentenced to alternative punishment	4	3.0%
Behavior positive since commission of the offense	3	2.2%
Sentencing guidelines recommendation was too high	3	2.2%
Offender has substance abuse issues	2	1.5%
Request of the victim	2	1.5%
Sequence of events had impact on recommendation	2	1.5%
Victim cannot or will not testify	2	1.5%
Multiple counts, offenses or violations in the event (prosecuted or not)	1	0.7%
Probation violation based on minimal facts of the case	1	0.7%
Sentence was rounded down	1	0.7%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	1	0.7%
Subsequent violation of probation or suspended sentence	1	0.7%

Weapons (90 Cases)	Number	Percent
Plea Agreement	35	38.9%
Mitigated facts of the offense	26	28.9%
Offender has minimal or no prior record	21	23.3%
Cooperated with authorities	12	13.3%
Mitigated court circumstances or proceedings (e.g., will resentence)	11	12.2%
Offender has health issues	11	12.2%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	9	10.0%
Offender has good potential for rehabilitation	8	8.9%
Recommended by the attorney for the Commonwealth	7	7.8%
Financial obligations (child support, restitution, court costs, etc.)	4	4.4%
No mitigating reason given	4	4.4%
Missing information	3	3.3%
Offender has made progress in rehabilitating himself or herself	3	3.3%
Offender issues, general (e.g., age, family support, impact on community, etc.)	3	3.3%
Offender needs rehabilitation	3	3.3%
Sentencing guidelines recommendation was too high	3	3.3%
Victim circumstances (facts or the case, credibility issues, etc.)	2	2.2%
Illegible written mitigating reason	1	1.1%
Judge had issues with risk assessment	1	1.1%
Mitigating court probation circumstances or proceedings (e.g., extend probation)	1	1.1%
Multiple counts, offenses or violations in the event (prosecuted or not)	1	1.1%
Offender has failed other alternatives or rehabilitation	1	1.1%
Plea agreement	1	1.1%
Probation violation based on minimal facts of the case	1	1.1%
Recommended by the jury	1	1.1%
Recommended by the probation officer	1	1.1%
Sentenced to alternative punishment	1	1.1%
Weapon was not a firearm	1	1.1%

# Appendix 1

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

### Reasons for AGGRAVATION

Traffic (170 Cases)	Number	Percent
Aggravated facts of the offense	57	33.5%
Offender has substance abuse issues	37	21.8%
Plea agreement	32	18.8%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	31	18.2%
Offender has extensive prior record or same type of prior offense	31	18.2%
Did not exercise due caution while driving, excessive speeding, etc.	23	13.5%
Degree of victim injury (physical, emotional, etc.)	11	6.5%
Multiple counts, offenses or violations in the event (prosecuted or not)	11	6.5%
Offender has poor rehabilitation potential	11	6.5%
No aggravating reason given	9	5.3%
Recommended by the jury	6	3.5%
Sentencing guidelines recommendation was too low	6	3.5%
Prior record not adequately weighed by guidelines	5	2.9%
Sentenced to alternative punishment	5	2.9%
Mandatory minimum was involved in the event	4	2.4%
Missing information	4	2.4%
Type of victim (child, weak, etc.)	4	2.4%
Child present at time of the offense	3	1.8%
Failed to follow instructions while on probation	3	1.8%
Judicial discretion (e.g., time served, shock incarceration, consistent w/codefendant, etc.)	3	1.8%
Poor conduct since commission of the offense	3	1.8%
Recommended by the attorney for the Commonwealth	3	1.8%
True offense behavior was more serious than offenses at conviction	2	1.2%
Victim requested aggravating sentence	2	1.2%
Multiple trial types (i.e., jury, bench, plea)	1	0.6%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	0.6%
Sentenced to alternative punishment	1	0.6%
Sentencing guidelines recommendation is not appropriate	1	0.6%
Used, etc., drugs or alcohol while on probation	1	0.6%

Weapons (108 Cases)	Number	Percent
Plea agreement	53	49.1%
Multiple counts, offenses or violations in the event (prosecuted or not)	44	40.7%
Aggravated facts of the offense	13	12.0%
Offender has extensive prior record or same type of prior offense	9	8.3%
No aggravating reason given	6	5.6%
Recommended by the jury	5	4.6%
Mandatory minimum was involved in the event	4	3.7%
Missing information	3	2.8%
Offense involved possession or use of a weapon	3	2.8%
Recommended by the attorney for the Commonwealth	3	2.8%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	2	1.9%
Mitigated court circumstances or proceedings (e.g., will resentence)	2	1.9%
Offender violated a restraining order or stalked victim	2	1.9%
Gang-related offense	1	0.9%
Judicial discretion (e.g., time served, shock incarceration, consistent w/codefendant, etc.)	1	0.9%
Offender has poor rehabilitation potential	1	0.9%
Sentencing guidelines recommendation is not appropriate	1	0.9%
Sentencing guidelines scoring issue (e.g., recommendation not adjusted for mandatory time)	1	0.9%
Seriousness of the original offense	1	0.9%
Type of victim (child, weak, etc.)	1	0.9%
Victim requested aggravating sentence	1	0.9%
Violent or disruptive behavior while in custody	1	0.9%

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

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

## Appendix

### Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

#### Reasons for MITIGATION

##### Assault (142 Cases)

	Number	Percent
Plea Agreement	64	45.4%
Request of the victim	27	19.1%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	21	14.9%
Mitigated facts of the offense	20	14.2%
Offender has health issues	18	12.8%
Offender has minimal or no prior record	15	10.6%
Recommended by the attorney for the Commonwealth	15	10.6%
Victim cannot or will not testify	14	9.9%
Mitigated court circumstances or proceedings (e.g., will resentence)	12	8.5%
Little or no injury, offender did not intend to harm victim	11	7.8%
Offender has good potential for rehabilitation	5	3.5%
No mitigating reason given	4	2.8%
Offender has made progress in rehabilitating himself or herself	4	2.8%
Missing information	3	2.1%
Offender issues, general (e.g., age, family support, impact on community, etc.)	3	2.1%
Role of victim in the offense	3	2.1%
Sentenced to alternative punishment	3	2.1%
Victim circumstances (drug dealer, etc.)	3	2.1%
Behavior positive since commission of the offense	2	1.4%
Financial obligations (child support, restitution, court costs, etc.)	2	1.4%
Victim circumstances (facts or the case, credibility issues, etc.)	2	1.4%
Cooperated with authorities	1	0.7%
Current offense involves drugs or alcohol (e.g., small amount)	1	0.7%
Judge had issues with risk assessment	1	0.7%
Offender has failed other alternatives or rehabilitation	1	0.7%
Offender needs rehabilitation	1	0.7%
Offender was not the leader	1	0.7%
Original offense was nonviolent	1	0.7%
Recommended by the jury	1	0.7%
Sentenced as a juvenile to DJJ	1	0.7%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	1	0.7%

##### Kidnapping (12 Cases)

	Number	Percent
Plea Agreement	5	41.7%
Request of the victim	4	33.3%
Offender has health issues	2	16.7%
Victim cannot or will not testify	2	16.7%
Cooperated with authorities	1	8.3%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	1	8.3%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	8.3%
Offender has minimal or no prior record	1	8.3%
Offender was not the leader	1	8.3%
Recommended by the attorney for the Commonwealth	1	8.3%
Recommended by the jury	1	8.3%
Sentenced as a juvenile to DJJ	1	8.3%
Sentenced to alternative punishment	1	8.3%
Victim circumstances (facts or the case, credibility issues, etc.)	1	8.3%

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

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

## Appendix 2

### Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

#### Reasons for AGGRAVATION

<b>Assault (179 Cases)</b>	<b>Number</b>	<b>Percent</b>
Aggravated facts of the offense	67	37.6%
Plea agreement	44	24.7%
Degree of victim injury (physical, emotional, etc.)	30	16.9%
Offender has poor rehabilitation potential	22	12.4%
Multiple counts, offenses or violations in the event (prosecuted or not)	17	9.6%
Recommended by the jury	17	9.6%
Sentencing guidelines recommendation is not appropriate	16	9.0%
Offender has extensive prior record or same type of prior offense	12	6.7%
Type of victim (child, weak, etc.)	12	6.7%
Degree of violence directed at victim	11	6.2%
Sentencing guidelines recommendation was too low	8	4.5%
Missing information	7	3.9%
Recommended by the attorney for the Commonwealth	7	3.9%
Gang-related offense	5	2.8%
Victim requested aggravating sentence	5	2.8%
Judicial discretion (e.g., time served, consistent w/codefendant, etc.)	4	2.2%
Offender violated a restraining order or stalked victim	4	2.2%
Offense involved a high degree of planning or a violation of trust	4	2.2%
Child present at time of the offense	3	1.7%
No aggravating reason given	3	1.7%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	2	1.1%
Poor conduct since commission of the offense	2	1.1%
Prior record not adequately weighed by guidelines	2	1.1%
Absconded from supervision	1	0.6%
Aggravated facts of the offense, specific to breaking and entering	1	0.6%
Did not exercise due caution while driving, excessive speeding, etc.	1	0.6%
Failed to follow instructions while on probation	1	0.6%
Financial obligations (child support, restitution, court costs, etc.)	1	0.6%
Mandatory minimum was involved in the event	1	0.6%
Never reported for probation or signed conditions	1	0.6%
Offender has health issues	1	0.6%
Offender has substance abuse issues	1	0.6%
Recommended by the jury	1	0.6%
Recommended by the probation officer	1	0.6%
Sentence was rounded up	1	0.6%
Sentenced to alternative punishment	1	0.6%
Seriousness of the original offense	1	0.6%
True offense behavior was more serious than offenses at conviction	1	0.6%
Victim circumstances (facts or the case, vulnerability, etc.)	1	0.6%

<b>Kidnapping (32 Cases)</b>	<b>Number</b>	<b>Percent</b>
Aggravated facts of the offense	11	34.4%
Offender has poor rehabilitation potential	8	25.0%
Plea agreement	7	21.9%
Degree of victim injury (physical, emotional, etc.)	6	18.8%
Multiple counts, offenses or violations in the event (prosecuted or not)	5	15.6%
Recommended by the jury	4	12.5%
Offender was the leader	3	9.4%
Type of victim (child, weak, etc.)	3	9.4%
Degree of violence directed at victim	2	6.3%
Offender has extensive prior record or same type of prior offense	2	6.3%
Offense involved a high degree of planning or a violation of trust	2	6.3%
Sentencing guidelines recommendation is not appropriate	2	6.3%
Violent or disruptive behavior while in custody	2	6.3%
Aggravated court circumstances or proceedings (e.g., will resentence)	1	3.1%
Failed to cooperate with authorities	1	3.1%
Mandatory minimum was involved in the event	1	3.1%
Missing information	1	3.1%
Multiple trial types (i.e., jury, bench, plea)	1	3.1%
No aggravating reason given	1	3.1%
Offense involved possession or use of a weapon	1	3.1%
Recommended by the attorney for the Commonwealth	1	3.1%
Sentencing guidelines recommendation was too low	1	3.1%
Seriousness of the original offense	1	3.1%

## Appendix 2

### Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

#### Reasons for MITIGATION

Homicide (27 Cases)	Number	Percent
Plea Agreement	10	38.5%
Recommended by the jury	8	30.8%
Cooperated with authorities	5	19.2%
Mitigated court circumstances or proceedings (e.g., will resentence)	5	19.2%
Mitigated facts of the offense	3	11.5%
Missing information	2	7.7%
Offender was not the leader	2	7.7%
Recommended by the attorney for the Commonwealth	2	7.7%
Sequence of events had impact on recommendation	2	7.7%
Victim cannot or will not testify	2	7.7%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	1	3.8%
Offender has made progress in rehabilitating himself or herself	1	3.8%
Offender has minimal or no prior record	1	3.8%
Offender needs rehabilitation	1	3.8%

Robbery (100 Cases)	Number	Percent
Plea Agreement	37	37.0%
Mitigated facts of the offense	17	17.0%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	12	12.0%
Cooperated with authorities	11	11.0%
Offender has minimal or no prior record	11	11.0%
Mitigated court circumstances or proceedings (e.g., will resentence)	10	10.0%
Offender issues, general (e.g., age, family support, impact on community, etc.)	10	10.0%
Recommended by the attorney for the Commonwealth	10	10.0%
Sentenced to alternative punishment	9	9.0%
Offender has health issues	6	6.0%
Offender has good potential for rehabilitation	5	5.0%
Offender was not the leader	5	5.0%
Request of the victim	5	5.0%
Missing information	4	4.0%
Recommended by the jury	4	4.0%
No mitigating reason given	3	3.0%
Offender has substance abuse issues	3	3.0%
Sentenced as a juvenile to DJJ	3	3.0%
Offender has made progress in rehabilitating himself or herself	2	2.0%
Sentencing guidelines recommendation not appropriate (non-specific)	2	2.0%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	2	2.0%
Behavior positive since commission of the offense	1	1.0%
Financial obligations (child support, restitution, court costs, etc.)	1	1.0%
Illegible written mitigating reason	1	1.0%
Mitigating court probation circumstances or proceedings (e.g., extend probation)	1	1.0%
Offender needs rehabilitation	1	1.0%
Sentencing guidelines recommendation was too high	1	1.0%
Sequence of events had impact on recommendation	1	1.0%
Victim cannot or will not testify	1	1.0%
Victim circumstances (drug dealer, etc.)	1	1.0%
Victim circumstances (facts or the case, credibility issues, etc.)	1	1.0%

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

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

## Appendix 2

### Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

#### Reasons for AGGRAVATION

##### Homicide (75 Cases)

	Number	Percent
Aggravated facts of the offense	37	49.3%
Degree of victim injury (physical, emotional, etc.)	16	21.3%
Recommended by the jury	14	18.7%
Plea agreement	11	14.7%
Offender has extensive prior record or same type of prior offense	8	10.7%
Offender has poor rehabilitation potential	8	10.7%
Type of victim (child, weak, etc.)	8	10.7%
Missing information	7	9.3%
Multiple counts, offenses or violations in the event (prosecuted or not)	7	9.3%
Sentencing guidelines recommendation was too low	5	6.7%
Victim requested aggravating sentence	5	6.7%
Degree of violence directed at victim	3	4.0%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	3	4.0%
Offender has substance abuse issues	3	4.0%
Offense involved a high degree of planning or a violation of trust	3	4.0%
Recommended by the attorney for the Commonwealth	3	4.0%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	2	2.7%
Did not exercise due caution while driving, excessive speeding, etc.	2	2.7%
Gang-related offense	2	2.7%
Absconded from supervision	1	1.3%
Illegible written mitigating reason	1	1.3%
Offender violated a restraining order or stalked victim	1	1.3%
Offender was the leader	1	1.3%
Offense involved possession or use of a weapon	1	1.3%
Sentencing guidelines recommendation is not appropriate	1	1.3%

##### Robbery (41 Cases)

	Number	Percent
Aggravated facts of the offense	17	42.5%
Plea agreement	10	25.0%
Degree of victim injury (physical, emotional, etc.)	8	20.0%
Recommended by the jury	7	17.5%
Offender has extensive prior record or same type of prior offense	4	10.0%
Offender has poor rehabilitation potential	3	7.5%
Multiple counts, offenses or violations in the event (prosecuted or not)	2	5.0%
No aggravating reason given	2	5.0%
Child present at time of the offense	1	2.5%
Did not exercise due caution while driving, excessive speeding, etc.	1	2.5%
Mandatory minimum was involved in the event	1	2.5%
Missing information	1	2.5%
Offender has health issues	1	2.5%
Offender was the leader	1	2.5%
Offense involved a high degree of planning or a violation of trust	1	2.5%
Poor conduct since commission of the offense	1	2.5%
Prior record not adequately weighed by guidelines	1	2.5%
Sentenced as a juvenile to DJJ	1	2.5%
Sentencing guidelines recommendation was too low	1	2.5%
Type of victim (child, weak, etc.)	1	2.5%

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

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

## Appendix 2

### Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

#### Reasons for MITIGATION

##### Rape (19 Cases)

	Number	Percent
Plea Agreement	10	52.6%
Request of the victim	6	31.6%
Recommended by the jury	5	26.3%
Mitigated court circumstances or proceedings (e.g., will resentence)	3	15.8%
Mitigated facts of the offense	3	15.8%
Victim cannot or will not testify	3	15.8%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	2	10.5%
Offender issues, general (e.g., age, family support, impact on community, etc.)	2	10.5%
Recommended by the attorney for the Commonwealth	2	10.5%
Missing information	1	5.3%
Multiple trial types (i.e., jury, bench, plea)	1	5.3%
Offender has health issues	1	5.3%
Offender has minimal or no prior record	1	5.3%
Role of victim in the offense	1	5.3%
Victim circumstances (facts or the case, credibility issues, etc.)	1	5.3%

##### Other Sexual Assault (14 Cases)

	Number	Percent
Plea Agreement	6	42.9%
Mitigated facts of the offense	4	28.6%
Request of the victim	4	28.6%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	2	14.3%
Mitigated court circumstances or proceedings (e.g., will resentence)	2	14.3%
Offender issues, general (e.g., age, family support, impact on community, etc.)	2	14.3%
Recommended by the attorney for the Commonwealth	2	14.3%
Victim cannot or will not testify	2	14.3%
Financial obligations (child support, restitution, court costs, etc.)	1	7.1%
Judge had issues with risk assessment	1	7.1%
Mitigating facts of the offense, specific to sex offenses	1	7.1%
No mitigating reason given	1	7.1%
Offender has good potential for rehabilitation	1	7.1%
Offender has health issues	1	7.1%
Offender has minimal or no prior record	1	7.1%
Recommended by the jury	1	7.1%
Victim circumstances (drug dealer, etc.)	1	7.1%

##### Other Sexual Assault/Obscenity (21 Cases)

	Number	Percent
Offender has good potential for rehabilitation	7	33.3%
Mitigated facts of the offense	5	23.8%
Plea Agreement	5	23.8%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	4	19.0%
Offender has made progress in rehabilitating himself or herself	4	19.0%
Cooperated with authorities	3	14.3%
Judge had issues with risk assessment	3	14.3%
Offender issues, general (e.g., age, family support, impact on community, etc.)	3	14.3%
Mitigated court circumstances or proceedings (e.g., will resentence)	2	9.5%
Offender has health issues	2	9.5%
Offender was not the leader	2	9.5%
No mitigating reason given	1	4.8%
Offender has minimal or no prior record	1	4.8%
Offender needs rehabilitation	1	4.8%
Recommended by the attorney for the Commonwealth	1	4.8%
Recommended by the jury	1	4.8%
Request of the victim	1	4.8%

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

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

## Appendix 2

### Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

#### Reasons for AGGRAVATION

##### Rape (30 Cases)

	Number	Percent
Type of victim (child, weak, etc.)	15	51.7%
Aggravated facts of the offense	11	37.9%
Plea agreement	7	24.1%
Recommended by the jury	6	20.7%
Degree of victim injury (physical, emotional, etc.)	4	13.8%
Offender has poor rehabilitation potential	4	13.8%
Multiple counts, offenses or violations in the event (prosecuted or not)	3	10.3%
Missing information	2	6.9%
Illegible written aggravating reason	1	3.4%
No aggravating reason given	1	3.4%
Offender has health issues	1	3.4%
Offense involved a high degree of planning or a violation of trust	1	3.4%
Poor conduct since commission of the offense	1	3.4%
Sentencing guidelines recommendation is not appropriate	1	3.4%
True offense behavior was more serious than offenses at conviction	1	3.4%
Victim circumstances (facts or the case, vulnerability, etc.)	1	3.4%
Victim requested aggravating sentence	1	3.4%

##### Other Sexual Assault (75 Cases)

	Number	Percent
Aggravated facts of the offense	26	34.7%
Plea agreement	26	34.7%
Type of victim (child, weak, etc.)	26	34.7%
Degree of victim injury (physical, emotional, etc.)	10	13.3%
Multiple counts, offenses or violations in the event (prosecuted or not)	10	13.3%
Offender has poor rehabilitation potential	6	8.0%
Aggravated facts of the offense, specific to sex offenses	5	6.7%
Sentencing guidelines recommendation was too low	5	6.7%
No aggravating reason given	4	5.3%
Offense involved a high degree of planning or a violation of trust	4	5.3%
Victim requested aggravating sentence	4	5.3%
Missing information	3	4.0%
Aggravated court circumstances or proceedings (e.g., will resentence)	2	2.7%
Poor conduct since commission of the offense	2	2.7%
Victim circumstances (facts or the case, vulnerability, etc.)	2	2.7%
Child present at time of the offense	1	1.3%
Failed to cooperate with authorities	1	1.3%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	1	1.3%
Offender has extensive prior record or same type of prior offense	1	1.3%
Offender has health issues	1	1.3%
Recommended by the attorney for the Commonwealth	1	1.3%
Recommended by the attorney for the Commonwealth	1	1.3%
Sentencing guidelines recommendation is not appropriate	1	1.3%
Seriousness of the original offense	1	1.3%
Sex offender has poor rehabilitation potential	1	1.3%

##### Other Sexual Assault/Obscenity (48 Cases)

	Number	Percent
Plea agreement	22	45.8%
Aggravated facts of the offense	17	35.4%
Multiple counts, offenses or violations in the event (prosecuted or not)	13	27.1%
Aggravated facts of the offense, specific to sex offenses	6	12.5%
Offender has poor rehabilitation potential	6	12.5%
Sentencing guidelines recommendation was too low	4	8.3%
Type of victim (child, weak, etc.)	4	8.3%
Offender has extensive prior record or same type of prior offense	3	6.3%
Recommended by the attorney for the Commonwealth	3	6.3%
Recommended by the jury	2	4.2%
Victim requested aggravating sentence	2	4.2%
Degree of victim injury (physical, emotional, etc.)	1	2.1%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	1	2.1%
Offender has health issues	1	2.1%
Offense involved a high degree of planning or a violation of trust	1	2.1%
Prior record not adequately weighed by guidelines	1	2.1%
Sex offender has poor rehabilitation potential	1	2.1%

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

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

**Appendix 3**

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

**BURGLARY OF DWELLING**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	75.0%	12.5%	12.5%	16
2	82.1	10.7	7.1	28
3	88.9	11.1	0.0	9
4	72.2	11.1	16.7	18
5	56.0	12.0	32.0	25
6	58.8	11.8	29.4	17
7	78.6	0.0	21.4	14
8	81.0	14.3	4.8	21
9	70.8	16.7	12.5	24
10	73.3	16.7	10.0	30
11	87.5	12.5	0.0	8
12	78.6	14.3	7.1	14
13	64.3	21.4	14.3	14
14	71.4	0.0	28.6	14
15	63.9	19.4	16.7	36
16	41.2	52.9	5.9	17
17	100.0	0.0	0.0	3
18	50.0	0.0	50.0	2
19	72.7	0.0	27.3	11
20	66.7	0.0	33.3	6
21	88.9	11.1	0.0	9
22	67.9	25.0	7.1	28
23	62.5	37.5	0.0	8
24	85.7	4.8	9.5	21
25	81.4	14.0	4.7	43
26	81.8	9.1	9.1	11
27	73.7	5.3	21.1	38
28	88.9	0.0	11.1	9
29	71.4	0.0	28.6	7
30	63.6	27.3	9.1	22
31	76.9	7.7	15.4	13
Total	72.6	14.0	13.4	536

**BURGLARY/OTHER**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	70.0%	10.0%	20.0%	10
2	100.0	0.0	0.0	9
3	60.0	40.0	0.0	5
4	82.4	17.6	0.0	17
5	66.7	8.3	25.0	12
6	66.7	0.0	33.3	9
7	66.7	33.3	0.0	6
8	100.0	0.0	0.0	4
9	90.0	0.0	10.0	10
10	75.0	15.0	10.0	20
11	85.7	0.0	14.3	7
12	70.0	10.0	20.0	10
13	83.3	16.7	0.0	6
14	85.7	0.0	14.3	7
15	69.2	23.1	7.7	13
16	83.3	16.7	0.0	12
17	50.0	50.0	0.0	2
18	100.0	0.0	0.0	1
19	80.0	10.0	10.0	10
20	100.0	0.0	0.0	2
21	80.0	13.3	6.7	15
22	62.5	12.5	25.0	16
23	50.0	25.0	25.0	8
24	87.0	13.0	0.0	23
25	84.2	15.8	0.0	19
26	80.0	0.0	20.0	15
27	94.7	5.3	0.0	19
28	71.4	14.3	14.3	7
29	66.7	22.2	11.1	9
30	80.0	20.0	0.0	10
31	80.0	20.0	0.0	5
Total	78.4	12.5	9.1	319

**DRUG/OTHER**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100.0%	0.0%	0.0%	17
2	94.2	1.9	3.8	52
3	66.7	33.3	0.0	6
4	80.0	13.3	6.7	15
5	70.6	0.0	29.4	17
6	68.4	10.5	21.1	19
7	93.3	0.0	6.7	15
8	85.7	14.3	0.0	7
9	88.2	5.9	5.9	17
10	84.6	3.8	11.5	26
11	80.0	10.0	10.0	10
12	79.3	6.9	13.8	29
13	74.2	6.5	19.4	31
14	88.2	0.0	11.8	34
15	80.3	9.1	10.6	66
16	60.0	13.3	26.7	15
17	76.5	11.8	11.8	17
18	88.9	11.1	0.0	9
19	91.0	7.9	1.1	89
20	88.2	2.9	8.8	34
21	100.0	0.0	0.0	10
22	80.0	20.0	0.0	25
23	50.0	40.0	10.0	10
24	85.0	7.5	7.5	40
25	86.7	11.1	2.2	45
26	89.8	2.0	8.2	49
27	95.6	2.9	1.5	68
28	82.6	13.0	4.3	23
29	88.5	7.3	4.2	96
30	92.3	3.8	3.8	52
31	97.1	2.9	0.0	35
Total	86.4	6.8	6.7	980

### Appendix 3

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

#### SCHEDULE I/II DRUGS

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	85.3 %	4.3 %	10.5 %	258
2	94.1	3.2	2.7	627
3	81.8	12.6	5.6	143
4	87.5	10.1	2.4	368
5	83.5	3.9	12.6	103
6	85.4	4.6	9.9	151
7	94.1	4.8	1.1	186
8	86.7	12.2	1.1	90
9	83.8	4.4	11.9	160
10	81.1	7.8	11.1	244
11	87.1	9.4	3.5	85
12	86.4	5.4	8.2	316
13	70.5	24.9	4.6	325
14	85.6	5.9	8.4	641
15	81.7	6.0	12.3	717
16	83.3	10.4	6.3	336
17	80.2	14.0	5.8	86
18	86.2	10.3	3.4	29
19	82.2	15.1	2.8	325
20	92.3	4.4	3.3	181
21	83.4	14.5	2.1	145
22	84.2	8.1	7.7	221
23	82.2	12.7	5.1	370
24	88.8	7.2	4.0	472
25	91.5	5.2	3.3	755
26	92.8	3.3	3.9	892
27	90.7	4.5	4.8	626
28	91.4	3.4	5.2	537
29	85.8	7.3	6.9	275
30	85.3	11.2	3.5	313
31	91.0	6.7	2.2	223
Total	87.1	7.3	5.6	10,215

#### FRAUD

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	87.8 %	7.3 %	4.9 %	82
2	84.6	11.5	3.8	78
3	87.5	12.5	0.0	16
4	70.2	26.3	3.5	57
5	78.4	13.5	8.1	37
6	83.9	9.7	6.5	31
7	85.7	10.7	3.6	28
8	73.9	21.7	4.3	23
9	85.1	9.0	6.0	67
10	83.0	11.3	5.7	53
11	95.0	0.0	5.0	20
12	85.7	9.5	4.8	63
13	62.5	37.5	0.0	16
14	80.0	12.7	7.3	55
15	75.6	17.1	7.3	123
16	82.6	13.0	4.3	69
17	84.8	15.2	0.0	33
18	50.0	50.0	0.0	6
19	86.1	12.7	1.3	79
20	97.7	0.0	2.3	43
21	77.8	18.5	3.7	27
22	75.5	20.8	3.8	53
23	73.5	20.6	5.9	34
24	93.4	6.6	0.0	61
25	91.9	5.8	2.3	86
26	89.1	5.9	5.0	101
27	84.2	12.3	3.5	57
28	89.4	8.5	2.1	47
29	86.5	10.8	2.7	37
30	83.9	12.9	3.2	31
31	85.2	7.4	7.4	27
Total	83.8	12.1	4.2	1,541

#### LARCENY

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	88.0 %	2.6 %	9.4 %	192
2	88.0	5.6	6.4	249
3	76.2	21.4	2.4	42
4	80.0	13.6	6.4	140
5	85.6	8.9	5.6	90
6	74.3	13.5	12.2	74
7	89.1	10.9	0.0	129
8	76.9	21.5	1.5	65
9	90.2	3.0	6.7	164
10	86.2	6.4	7.4	94
11	87.3	9.5	3.2	63
12	87.9	6.3	5.8	240
13	75.8	22.7	1.5	66
14	78.2	7.7	14.1	156
15	86.5	8.1	5.4	408
16	86.1	9.4	4.4	180
17	82.8	8.6	8.6	58
18	72.7	9.1	18.2	22
19	77.3	20.0	2.7	220
20	87.5	4.2	8.3	120
21	81.7	14.4	3.8	104
22	84.3	9.4	6.3	127
23	81.4	13.3	5.2	210
24	89.8	7.1	3.1	196
25	90.9	5.3	3.8	208
26	91.9	3.4	4.7	236
27	92.0	5.4	2.7	224
28	90.0	7.8	2.2	90
29	86.8	3.9	9.3	129
30	82.6	14.0	3.5	86
31	81.5	11.8	6.7	119
Total	85.6	8.8	5.6	4,507

### Appendix 3

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

TRAFFIC				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	69.4 %	14.3 %	16.3 %	49
2	81.5	3.1	15.4	130
3	75.0	12.5	12.5	16
4	87.9	12.1	0.0	33
5	78.3	6.7	15.0	60
6	78.9	13.2	7.9	38
7	89.5	7.9	2.6	38
8	63.6	27.3	9.1	22
9	87.3	4.2	8.5	71
10	81.4	9.3	9.3	43
11	82.6	17.4	0.0	23
12	91.9	1.6	6.5	62
13	63.6	18.2	18.2	11
14	39.6	1.9	58.5	53
15	79.5	10.3	10.3	146
16	85.5	6.0	8.4	83
17	66.7	0.0	33.3	6
18	100.0	0.0	0.0	3
19	64.6	11.4	24.1	79
20	74.5	12.7	12.7	55
21	87.0	8.7	4.3	23
22	82.4	14.7	2.9	34
23	73.3	24.4	2.2	45
24	87.7	7.7	4.6	65
25	87.9	10.3	1.7	58
26	87.1	4.7	8.2	85
27	90.7	3.7	5.6	54
28	78.6	10.7	10.7	28
29	60.0	26.7	13.3	15
30	71.9	18.8	9.4	32
31	90.7	3.7	5.6	54
Total	79.8	9.0	11.2	1,514

MISCELLANEOUS/OTHER				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100.0 %	0.0 %	0.0 %	10
2	96.0	0.0	4.0	25
3	100.0	0.0	0.0	6
4	94.9	2.6	2.6	39
5	92.9	0.0	7.1	14
6	100.0	0.0	0.0	6
7	88.9	11.1	0.0	18
8	85.7	14.3	0.0	7
9	75.0	0.0	25.0	8
10	77.8	5.6	16.7	18
11	80.0	20.0	0.0	10
12	82.5	12.5	5.0	40
13	84.6	15.4	0.0	13
14	76.9	23.1	0.0	13
15	68.3	19.5	12.2	41
16	92.3	0.0	7.7	13
17	50.0	50.0	0.0	2
18	0.0	0.0	0.0	0
19	78.6	14.3	7.1	14
20	100.0	0.0	0.0	3
21	87.5	12.5	0.0	8
22	85.0	15.0	0.0	20
23	78.3	13.0	8.7	23
24	89.7	6.9	3.4	29
25	90.0	0.0	10.0	10
26	100.0	0.0	0.0	9
27	80.0	20.0	0.0	5
28	76.9	7.7	15.4	13
29	71.4	14.3	14.3	7
30	81.3	18.8	0.0	16
31	66.7	0.0	33.3	6
Total	84.6	9.6	5.8	447

MISCELLANEOUS/P&P				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	61.5 %	30.8 %	7.7 %	13
2	88.9	0.0	11.1	27
3	40.0	60.0	0.0	5
4	81.8	0.0	18.2	11
5	81.3	0.0	18.8	16
6	77.8	5.6	16.7	18
7	87.5	0.0	12.5	8
8	50.0	25.0	25.0	8
9	83.3	5.6	11.1	18
10	81.3	12.5	6.3	16
11	85.7	14.3	0.0	7
12	76.9	7.7	15.4	13
13	75.0	0.0	25.0	8
14	66.7	0.0	33.3	12
15	77.8	8.3	13.9	36
16	58.3	8.3	33.3	12
17	100.0	0.0	0.0	2
18	0.0	0.0	0.0	0
19	66.7	11.1	22.2	9
20	91.7	0.0	8.3	12
21	100.0	0.0	0.0	4
22	70.0	0.0	30.0	10
23	86.7	0.0	13.3	15
24	89.5	5.3	5.3	19
25	65.0	5.0	30.0	20
26	92.0	0.0	8.0	25
27	70.6	8.8	20.6	34
28	77.8	0.0	22.2	9
29	69.2	15.4	15.4	13
30	73.3	6.7	20.0	15
31	100.0	0.0	0.0	6
Total	77.7	6.6	15.6	422

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

---

**WEAPONS**

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	79.4%	5.9 %	14.7 %	34
2	85.7	7.9	6.3	63
3	78.6	14.3	7.1	28
4	89.1	2.2	8.7	46
5	77.8	7.4	14.8	27
6	90.5	9.5	0.0	21
7	89.7	3.4	6.9	29
8	86.2	6.9	6.9	29
9	87.9	6.1	6.1	33
10	75.0	10.0	15.0	20
11	87.5	0.0	12.5	8
12	91.7	4.2	4.2	24
13	68.5	12.4	19.1	89
14	68.6	5.7	25.7	35
15	73.6	5.7	20.8	53
16	75.8	12.1	12.1	33
17	80.0	20.0	0.0	5
18	66.7	33.3	0.0	3
19	94.4	5.6	0.0	18
20	88.9	11.1	0.0	9
21	73.9	13.0	13.0	23
22	75.0	13.9	11.1	36
23	75.9	13.8	10.3	29
24	74.5	13.7	11.8	51
25	76.5	8.8	14.7	34
26	81.8	0.0	18.2	22
27	71.8	20.5	7.7	39
28	67.9	14.3	17.9	28
29	77.3	18.2	4.5	22
30	84.2	10.5	5.3	19
31	81.3	6.3	12.5	16
Total	78.7	9.7	11.6	928

**Appendix 4**

**Sentencing Guidelines Compliance by Judicial Circuit:  
Offenses Against the Person**

ASSAULT				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	73.3%	13.3 %	13.3 %	30
2	84.6	5.1	10.3	78
3	83.3	8.3	8.3	24
4	82.8	10.8	6.5	93
5	86.7	4.4	8.9	45
6	94.1	5.9	0.0	34
7	84.3	3.9	11.8	51
8	80.0	12.0	8.0	25
9	71.9	9.4	18.8	64
10	79.0	8.1	12.9	62
11	88.2	5.9	5.9	34
12	91.8	2.0	6.1	49
13	64.3	21.4	14.3	56
14	77.6	2.0	20.4	49
15	81.3	4.5	14.3	112
16	72.0	12.2	15.9	82
17	63.6	0.0	36.4	11
18	66.7	11.1	22.2	9
19	61.4	13.6	25.0	44
20	77.1	5.7	17.1	35
21	92.0	8.0	0.0	25
22	86.7	4.4	8.9	45
23	74.0	16.0	10.0	50
24	79.3	6.9	13.8	87
25	78.6	11.9	9.5	84
26	87.3	6.3	6.3	63
27	79.7	7.8	12.5	64
28	80.6	16.1	3.2	31
29	75.5	12.2	12.2	49
30	60.0	37.1	2.9	35
31	90.2	2.4	7.3	41
Total	79.4	9.1	11.5	1,562

KIDNAPPING				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100.0 %	0.0 %	0.0 %	1
2	100.0	0.0	0.0	4
3	0.0	0.0	0.0	0
4	75.0	25.0	0.0	4
5	100.0	0.0	0.0	2
6	60.0	40.0	0.0	5
7	75.0	0.0	25.0	4
8	33.3	0.0	66.7	3
9	50.0	0.0	50.0	4
10	62.5	0.0	37.5	8
11	100.0	0.0	0.0	1
12	40.0	0.0	60.0	5
13	83.3	0.0	16.7	6
14	0.0	0.0	100	1
15	72.7	18.2	9.1	11
16	75.0	0.0	25.0	8
17	0.0	0.0	100	1
18	100.0	0.0	0.0	1
19	41.7	8.3	50.0	12
20	50.0	0.0	50.0	4
21	100.0	0.0	0.0	1
22	50.0	0.0	50.0	4
23	66.7	33.3	0.0	3
24	55.6	11.1	33.3	9
25	71.4	21.4	7.1	14
26	71.4	14.3	14.3	7
27	100.0	0.0	0.0	4
28	100.0	0.0	0.0	2
29	100.0	0.0	0.0	5
30	100.0	0.0	0.0	2
31	0.0	0.0	0.0	0
Total	67.9	8.8	23.4	137

HOMICIDE				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	66.7 %	0.0 %	33.3 %	6
2	69.2	0.0	30.8	13
3	100.0	0.0	0.0	3
4	88.2	0.0	11.8	17
5	40.0	0.0	60.0	5
6	60.0	40.0	0.0	5
7	75.0	0.0	25.0	8
8	80.0	20.0	0.0	5
9	75.0	0.0	25.0	12
10	42.9	14.3	42.9	7
11	83.3	16.7	0.0	6
12	75.0	0.0	25.0	8
13	54.8	19.4	25.8	31
14	78.6	0.0	21.4	14
15	70.0	0.0	30.0	10
16	35.7	14.3	50.0	14
17	100.0	0.0	0.0	1
18	33.3	0.0	66.7	3
19	46.7	20.0	33.3	15
20	46.2	7.7	46.2	13
21	50.0	25.0	25.0	4
22	61.5	0.0	38.5	13
23	62.5	37.5	0.0	8
24	78.6	7.1	14.3	14
25	46.2	7.7	46.2	13
26	77.8	11.1	11.1	9
27	50.0	0.0	50.0	2
28	62.5	25.0	12.5	8
29	66.7	16.7	16.7	6
30	100.0	0.0	0.0	2
31	77.8	0.0	22.2	9
Total	64.1	9.5	26.4	284

**Appendix 4**

**Sentencing Guidelines Compliance by Judicial Circuit:  
Offenses Against the Person**

ROBBERY				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	87.5 %	12.5 %	0.0 %	16
2	71.4	24.5	4.1	49
3	52.9	41.2	5.9	17
4	75.0	20.0	5.0	40
5	45.5	18.2	36.4	11
6	80.0	13.3	6.7	15
7	86.7	10.0	3.3	30
8	59.1	36.4	4.5	22
9	90.9	9.1	0.0	11
10	66.7	11.1	22.2	9
11	60.0	40.0	0.0	5
12	95.8	4.2	0.0	24
13	67.9	26.8	5.4	56
14	60.7	21.4	17.9	28
15	57.7	26.9	15.4	26
16	0.0	100.0	0.0	3
17	100.0	0.0	0.0	4
18	100.0	0.0	0.0	1
19	71.9	18.8	9.4	32
20	100.0	0.0	0.0	8
21	83.3	0.0	16.7	6
22	60.0	20.0	20.0	15
23	66.7	22.2	11.1	18
24	81.8	0.0	18.2	11
25	70.0	30.0	0.0	10
26	92.3	0.0	7.7	13
27	63.6	9.1	27.3	11
28	100.0	0.0	0.0	1
29	100.0	0.0	0.0	4
30	0.0	0.0	0.0	0
31	83.3	16.7	0.0	18
Total	72.6	19.5	8.0	514

RAPE				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	50.0 %	0.0 %	50.0 %	2
2	80.0	6.7	13.3	15
3	100.0	0.0	0.0	2
4	85.7	14.3	0.0	7
5	77.8	11.1	11.1	9
6	100.0	0.0	0.0	3
7	33.3	0.0	66.7	3
8	28.6	14.3	57.1	7
9	75.0	25.0	0.0	4
10	75.0	25.0	0.0	4
11	60.0	40.0	0.0	5
12	80.0	0.0	20.0	5
13	50.0	50.0	0.0	4
14	100.0	0.0	0.0	3
15	57.1	0.0	42.9	7
16	83.3	8.3	8.3	12
17	0.0	0.0	0.0	0
18	0.0	0.0	100	1
19	69.2	15.4	15.4	13
20	100.0	0.0	0.0	2
21	83.3	0.0	16.7	6
22	85.7	14.3	0.0	7
23	60.0	20.0	20.0	5
24	50.0	0.0	50.0	2
25	66.7	11.1	22.2	9
26	60.0	20.0	20.0	5
27	80.0	20.0	0.0	10
28	66.7	0.0	33.3	3
29	100.0	0.0	0.0	2
30	100.0	0.0	0.0	3
31	64.3	0.0	35.7	14
Total	71.8	10.9	17.2	174

OTHER SEXUAL ASSAULT				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	75.0 %	0.0 %	25.0 %	4
2	75.0	0.0	25.0	16
3	100.0	0.0	0.0	1
4	88.9	0.0	11.1	9
5	100.0	0.0	0.0	1
6	90.0	0.0	10.0	10
7	70.0	10.0	20.0	10
8	100.0	0.0	0.0	3
9	80.0	0.0	20.0	5
10	100.0	0.0	0.0	9
11	100.0	0.0	0.0	3
12	50.0	16.7	33.3	12
13	75.0	12.5	12.5	8
14	58.3	0.0	41.7	12
15	56.5	8.7	34.8	23
16	68.4	10.5	21.1	19
17	0.0	0.0	100.0	1
18	100.0	0.0	0.0	3
19	36.0	8.0	56.0	25
20	54.5	0.0	45.5	11
21	50.0	25.0	25.0	4
22	85.7	0.0	14.3	7
23	33.3	33.3	33.3	6
24	83.3	0.0	16.7	6
25	66.7	0.0	33.3	15
26	71.4	0.0	28.6	14
27	87.5	0.0	12.5	16
28	100.0	0.0	0.0	4
29	88.9	0.0	11.1	9
30	25.0	25.0	50.0	4
31	84.6	0.0	15.4	26
Total	69.9	4.7	25.3	296

**Appendix 4**

**Sentencing Guidelines Compliance by Judicial Circuit:  
Offenses Against the Person**

---

OBSCENITY				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100.0%	0.0 %	0.0 %	1
2	75.0	12.5	12.5	8
3	0.0	0.0	0.0	0
4	100.0	0.0	0.0	1
5	0.0	0.0	0.0	0
6	100.0	0.0	0.0	2
7	100.0	0.0	0.0	2
8	50.0	50.0	0.0	2
9	100.0	0.0	0.0	1
10	66.7	33.3	0.0	3
11	100.0	0.0	0.0	4
12	71.4	0.0	28.6	7
13	100.0	0.0	0.0	4
14	25.0	0.0	75.0	4
15	59.1	4.5	36.4	22
16	83.3	8.3	8.3	12
17	100.0	0.0	0.0	4
18	0.0	0.0	0.0	0
19	50.0	18.4	31.6	38
20	81.0	4.8	14.3	21
21	50.0	50.0	0.0	2
22	71.4	14.3	14.3	7
23	100.0	0.0	0.0	4
24	85.7	4.8	9.5	21
25	88.9	0.0	11.1	9
26	63.3	0.0	36.7	30
27	80.0	20.0	0.0	15
28	83.3	0.0	16.7	12
29	50.0	25.0	25.0	4
30	80.0	20.0	0.0	5
31	100.0	0.0	0.0	6
Total	72.6	8.3	19.0	252

## Appendix 5 Sentencing Guidelines Received by Jurisdiction

COUNTIES				CITIES	
ACCOMACK	100	LANCASTER	16	ALEXANDRIA	94
ALBEMARLE	262	LEE	183	BRISTOL	219
ALLEGHANY	185	LOUDOUN	388	BUENA VISTA	49
AMELIA	51	LOUISA	96	CHARLOTTESVILLE	108
AMHERST	157	LUNENBURG	57	CHESAPEAKE	754
APPOMATTOX	67	MADISON	29	COLONIAL HEIGHTS	127
ARLINGTON	241	MATHEWS	11	DANVILLE	366
AUGUSTA	441	MECKLENBURG	207	EMPORIA	3
BATH	11	MIDDLESEX	31	FAIRFAX CITY	2
BEDFORD	184	MONTGOMERY	342	FREDERICKSBURG	163
BLAND	8	NANSEMOND	1	HAMPTON	369
BOTETOURT	160	NELSON	111	HARRISONBURG	142
BRUNSWICK	36	NEW KENT	61	HOPEWELL	98
BUCHANAN	148	NORTHAMPTON	64	LEXINGTON	7
BUCKINGHAM	61	NORTHUMBERLAND	45	LYNCHBURG	459
CAMPBELL	236	NOTTOWAY	61	MARTINSVILLE	121
CAROLINE	51	ORANGE	83	NEWPORT NEWS	595
CARROLL	231	PAGE	202	NORFOLK	943
CHARLES CITY	14	PATRICK	68	PETERSBURG	94
CHARLOTTE	46	PITTSYLVANIA	174	POQUOSON	1
CHESTERFIELD	812	POWHATAN	48	PORTSMOUTH	335
CLARKE	24	PRINCE EDWARD	97	RADFORD	74
CRAIG	6	PRINCE GEORGE	132	RICHMOND CITY	776
CULPEPER	223	PRINCE WILLIAM	627	ROANOKE CITY	449
CUMBERLAND	27	PULASKI	238	STAUNTON	266
DICKENSON	62	RAPPAHANNOCK	16	SUFFOLK	279
DINWIDDIE	61	RICHMOND COUNTY	26	VIRGINIA BEACH	1359
ESSEX	45	ROANOKE COUNTY	414	WAYNESBORO	193
FAIRFAX COUNTY	1084	ROCKBRIDGE	188	WILLIAMSBURG	109
FAUQUIER	166	ROCKINGHAM	501	WINCHESTER	288
FLOYD	50	RUSSELL	162	MISSING	19
FLUVANNA	32	SCOTT	250		
FRANKLIN COUNTY	147	SHENANDOAH	92	<b>Total</b>	<b>25,598</b>
FREDERICK	330	SMYTH	315		
GILES	91	SOUTHAMPTON	111		
GLOUCESTER	134	SPOTSYLVANIA	423		
GOOCHLAND	46	STAFFORD	611		
GRAYSON	120	SURRY	9		
GREENE	70	SUSSEX	49		
GREENSVILLE	147	TAZEWELL	347		
HALIFAX	170	WARREN	57		
HANOVER	462	WASHINGTON	334		
HENRICO	1176	WESTMORELAND	51		
HENRY	268	WISE	247		
HIGHLAND	1	WYTHE	225		
ISLE OF WIGHT	98	YORK	181		
JAMES CITY	93				
KING & QUEEN	29				
KING GEORGE	56				
KING WILLIAM	36				