

Virginia Criminal Sentencing Commission

2024 ANNUAL REPORT



SENTENCING COMMISSION MEMBERS

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

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Chair, Charlottesville

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Judge Jack S. Hurley, Jr., Tazewell
Judge Tania Saylor, Fairfax
Judge Stacey W. Moreau, Chatham
Judge Bryant L. Sugg, Newport News
Judge Victoria A.B. Willis, Stafford

Attorney General

The Honorable Jason Miyares
(**Theo Stamos**, Attorney General's Representative)

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House of Delegates Appointments

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**VIRGINIA CRIMINAL
SENTENCING COMMISSION**

**MESSAGE FROM
THE CHAIR**

♦
Judge Edward L. Hogshire, Circuit Judge (Ret.)



To: The Honorable S. Bernard Goodwyn, Chief Justice of Virginia
The Honorable Glenn Youngkin, 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 2024 Annual Report of the Criminal Sentencing Commission.

This report details the work of the Commission over the past year. The report includes a detailed analysis of judicial compliance with the felony sentencing guidelines during fiscal year 2024. The Commission's recommendations to the 2025 session of the Virginia General Assembly are also contained in this report.

The Commission wishes to sincerely thank circuit court judges, prosecutors, probation officers and other criminal justice practitioners whose diligent work with the Guidelines enables us to produce this report.

A handwritten signature in black ink, appearing to read 'E. Hogshire', written in a cursive style.

Edward L. Hogshire
Circuit Judge (Ret.)
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INTRODUCTION



OVERVIEW

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

The report is organized into 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 and Probation Violation Guidelines during fiscal year (FY) 2024. The third chapter provides an overview of the most recent work related to Virginia's Pretrial Data Project. In the report's final chapter, the Commission presents its recommendations for legislation and revisions to the 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 Judiciary 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 2024. These meetings were held on March 25, June 10, September 4, and November 7. Minutes for each of these meetings are available on the Commission's website (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. Similar provisions in § 19.2-306.2 require the use of Probation Violation Guidelines in felony revocation cases. 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 most can be resolved.

Once the Guidelines worksheets are reviewed, they are automated and analyzed. The principal analysis performed with the automated data relates to judicial concurrence with Guidelines recommendations. This analysis is conducted and presented to the Commission on a semiannual basis. The most recent study of judicial concurrence with the 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 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 the Guidelines.

In FY2024, the Commission offered 81 training seminars across the Commonwealth for more than 1,160 criminal justice professionals. The Commission continued to offer some virtual question-and-answer sessions and training opportunities in 2024, including training videos, but most seminars were conducted in person in locations around the Commonwealth.

The Commission’s courses have been approved by the Virginia State Bar, enabling participating attorneys to earn Continuing Legal Education credits. During this fiscal year, the Commission did not offer the Guidelines-related ethics classes, understanding rap sheets workshops, and advanced Guidelines topics seminars. 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 circuit court judges.

The Commission will continue to place a priority on providing 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, “hotline” phone, and texting system. The “hotline” (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 e-mails related to scoring Guidelines. The number of support calls, after hour requests for assistance, and texts continued at the same level in 2024, as Commission staff continued to provide support for users working away from their offices.

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 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, the Commission launched a project to automate the Sentencing Guidelines completion and submission process. The Commission collaborated with the Supreme Court's Department of Judicial Information Technology (DJIT) to design a web-based application for automating the Sentencing Guidelines, called SWIFT (Sentencing Worksheets and Integrated File Transfer).

The Commission pilot-tested features of the application in Norfolk and Henrico County. On July 1, 2018, SWIFT was implemented statewide and was designated as the required process for completing Sentencing Guidelines. The Commission is most appreciative of the Circuit Court Clerks who allowed the Commission and Sentencing Guidelines users access to publicly-available court data. The Commission continues to work with the Clerk in Fairfax County to encourage the release of their public available data for use in SWIFT. This access to court information gives registered users the ability to streamline preparation of the Guidelines worksheets through SWIFT.

A significant amount of time was spent developing the judicial component of SWIFT and establishing an automated process to distribute Guidelines to judges, clerks, and the Commission. As part of this process, and at the request of judges, SWIFT was

modified to allow judges to designate staff to complete the disposition page of the Guidelines. The judges are then able to review the page, electronically sign the document, and submit the Guidelines to the Commission. A significant number of clerks and judges across the state have decided not to use the electronic transfer of Sentencing Guidelines in their courtrooms. The application will continue to be refined to fit the needs of judges, clerks, attorneys, and probation officers. The next phase to be implemented will be the electronic transfer of secured Sentencing Guidelines between the preparer (probation officer or attorney for the Commonwealth) and defense attorneys, prosecuting attorneys, and cohorts.

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), e-mail (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, and juvenile confined 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 2024 General Assembly, the Commission prepared a total of 331 impact statements on proposed legislation. These proposals included: 1) legislation to increase the felony penalty class of specific crime; 2) legislation to increase the penalty class of specific crimes from misdemeanors to felonies; 3) legislation to add new mandatory minimum penalties; 4) legislation to expand or clarify existing crimes; and 5) legislation that would create new criminal offenses. 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 populations 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. Commission staff also completed a number of ad hoc analyses requested by legislators, the Secretary of Public Safety and Homeland Security, the Department of Planning & Budget, and other state agencies.

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.

The Secretary’s Office presented updated offender forecasts to the General Assembly in a report submitted in October 2024.

VIRGINIA'S PRETRIAL DATA PROJECT

The Pretrial Data Project was established in 2018 under the direction of the Virginia State Crime Commission. The purpose was to address the significant lack of data available to answer questions regarding various pretrial release mechanisms, appearance at court proceedings, and public safety. This was an unprecedented, collaborative effort between numerous state and local agencies representing all three branches of government. The 2021 General Assembly passed legislation directing the Sentencing Commission to continue this work on an annual basis.

For the newest pretrial study, the Commission selected individuals with pretrial contact events during CY2021 and CY2022. For individuals with more than one contact event during the period, only the first event was selected. Individuals are tracked for a minimum of 15 months (same as the previous studies). Data for the Project was obtained from multiple agencies. Compiling the data requires numerous iterations of data cleaning, merging, and matching to ensure accuracy when linking information from each data system to each defendant in the cohort. This process is staff-intensive and requires meticulous attention to detail. The current study focuses on 70,345 adult defendants in CY2021 and 72,804 adult defendants in CY2022 whose contact event included a criminal offense punishable by incarceration where a bail determination was made by a judicial officer.

Pursuant to § 19.2-134.1, several deliverables are required. The Commission must submit a report on the Pretrial Data Project and its findings to the General Assembly on December 1 of each year. Also, the final data set (with personal/case identifiers removed) must be made available on the Commission's website by December 1. Finally, an interactive data dashboard tool must be integrated into the Commission's website and it must be capable of presenting aggregated data based on characteristics or indicators selected by the user.

An overview of the findings from the CY2021 and CY2022 cohorts can be found in the third chapter of this report. The complete Pretrial Data Project report will be submitted on December 1 and will be available on the Commission's website.

ASSISTANCE TO OTHER AGENCIES

When requested, the Commission provides technical assistance, in the form of data and analysis, to other state agencies. During FY2024, the Commission assisted agencies such as the Virginia Department of Criminal Justice Services, Virginia Department of Juvenile Justice, and Virginia Department of Planning and Budget.

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 revamped. During a 2021 Special Session of the General Assembly, § 53.1-202.3 was modified to increase the rate at which offenders convicted of certain non-violent felonies could earn sentence credits. Under the provisions of § 53.1-202.3, effective July 1, 2022, persons serving time for certain nonviolent felonies will be eligible to earn as much as 15 days for every 30 days served, based on their participation in programs and their record of institutional infractions during confinement. If a nonviolent felon earns at the highest rate throughout their sentence, they will serve no less than 67% of the court-ordered sentence. Others will continue to serve a minimum of 85% of the active sentence ordered by the court (felons in this category may earn a maximum of 4 ½ days for every 30 days).

The Virginia Criminal Sentencing Commission was established to develop and administer Guidelines 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 75% of cases.

This report focuses on defendants sentenced during the most recent year of available data, fiscal year (FY) 2024 (July 1, 2023, through June 30, 2024). 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 - FY2024*

Circuit	Number	Percent
1	691	3.5
2	1,171	5.9
3	62	0.3
4	379	1.9
5	357	1.8
6	443	2.2
7	408	2.1
8	325	1.6
9	673	3.4
10	519	2.6
11	252	1.3
12	727	3.7
13	490	2.5
14	997	5.0
15	1,714	8.7
16	575	2.9
17	36	0.2
18	61	0.3
19	573	2.9
20	229	1.2
21	420	2.1
22	488	2.5
23	786	4.0
24	922	4.7
25	1,253	6.3
26	1,752	8.8
27	1,422	7.2
28	607	3.1
29	679	3.4
30	470	2.4
31	315	1.6
Total	19,798	100.0%

*2 cases were missing a circuit number

In FY2024, eight judicial circuits contributed the majority of Guidelines cases. Those circuits, which include the Harrisonburg area (Circuit 26), Fredericksburg area (Circuit 15), Radford area (Circuit 27), Botetourt County area (Circuit 25), Virginia Beach (Circuit 2), Henrico (Circuit 14), Lynchburg area (Circuit 24), and Roanoke area (Circuit 23) comprised just over half (51%) of all worksheets received in FY2024 (Figure 1).

During FY2024, the Commission received 19,798 Sentencing Guideline worksheets. Of these, 1,350 worksheets contained errors or omissions that affected the Guidelines recommendation and analysis of the case. Users are becoming acclimated to the Sentencing Guidelines Worksheets Interactive File Transfer system, hereinafter referred to as “SWIFT,” which is a system by which worksheets are submitted to the Commission electronically. The Commission continues to receive worksheets electronically, via scan, and via mail, and staff are working to retrieve the remaining worksheets. Furthermore, of the 19,798 worksheets received, staff excluded an additional 2,042 cases from the analysis where the court deferred findings under § 18.2-251 / § 18.2-258.1 (First Offender) and § 19.2-298.2 / § 19.2-303.6 (Deferred Disposition) to accurately capture judicial concurrence with Guidelines. For the purposes of conducting a clear evaluation of Sentencing Guidelines in effect for FY2024, the remaining sections of this chapter pertaining to judicial concurrence with guidelines recommendations focus only on those 16,406 cases for which Guidelines were completed and calculated correctly and did not include a deferred adjudication.

CONCURRENCE DEFINED

In the Commonwealth, judicial concurrence 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, they 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, or 2) involves time already served (in certain instances).

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 to still be in general compliance..

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.

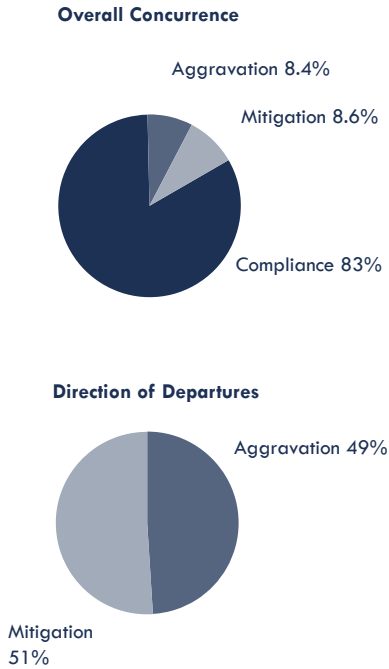
During 2017, the Department of Corrections modified elements of the Detention Center Incarceration Program and the Diversion Center Incarceration Program and referred to the new program as the Community Corrections Alternative Program (CCAP). On July 1, 2019, the changes were codified under § 19.2-316.4. For cases sentenced to these programs on or after July 1, 2019, effective time to serve is calculated as 12 months when calculating concurrence with the Guidelines recommendation.

Effective July 1, 2021, if a judge determines at sentencing that the defendant provided substantial assistance, accepted responsibility, or expressed remorse, the low end of the Guidelines recommended range will be adjusted. If the calculated low end of Guidelines range is three years or less, the low end of the Guidelines range will be reduced to zero. If the calculated low end of the guidelines range is more than three years, the low end of the Guidelines range will be reduced by 50%. The midpoint and the high end of the Sentencing Guidelines range will remain unchanged. The modified recommendation allows the judge the option to consider the defendant's substantial assistance, acceptance of responsibility, or expression of remorse and still be in concurrence with the guidelines. The Modification of Recommendation factor was checked by the sentencing judge in 17.1% of all FY2024 cases. Of those cases, just over half were brought from mitigation into concurrence. In the remaining cases, judges were in concurrence with the Guidelines recommendation without sentencing within the modified low-end range.

OVERALL CONCURRENCE WITH THE SENTENCING GUIDELINES

Figure 2

Overall Guidelines Concurrence and Direction of Departures - FY2024



The overall concurrence rate summarizes the extent to which Virginia’s judges concur with the Sentencing Guidelines that have been developed by the Commission, both in type of disposition and in length of incarceration. For over a decade, the general concurrence rate of cases throughout the Commonwealth has hovered around 80%, and this year has followed the same pattern. As can be seen in Figure 2, judges continued to agree with the Sentencing Guidelines recommendations in 83% of FY2024 cases.

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 8.4% for FY2024, down from 10.4% for FY2023. This decrease in the percentage of aggravation cases may be a result of judges adjusting to the expansion of earned sentence credits in § 53.1-202.3 in the beginning of FY2023. The “mitigation” rate, or the rate at which judges sentence offenders to sanctions less severe than the Guidelines recommendation, was 8.6% for FY2023, slightly up from 7.9% for the previous fiscal year. The overall balance between mitigation and aggravation is a sign that the historically based Guidelines recommendations continue to reflect acceptable sentences for typical cases. A total of 2,790 cases represented departures from Sentencing Guidelines in FY2024, 51% (1,410 cases) of which resulted in a mitigating sentence, while 49% (1,380 cases) resulted in aggravating sentences (Figure 2).

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 FY2024 with the type of disposition recommended by the Guidelines. For instance, of all felony offenders recommended for more than six months of incarceration during FY2024, judges sentenced 76.7% 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; 12.3%) or probation with no active incarceration (11.0%), but the percentage of offenders receiving such dispositions was small. These sentencing practices correlate closely to sentencing practices in previous fiscal years.

Figure 3

Recommended and Actual Dispositions - FY2024

Recommended Disposition	Actual Disposition		
	Probation	Incarceration 1 day - 6 mos.	Incarceration > 6 mos.
Probation	71.0%	24.0%	5.0%
Incarceration 1 day - 6 months	19.1%	72.9%	8.0%
Incarceration > 6 months	11.0%	12.3%	76.7%

Judges have also typically agreed with Guidelines recommendations for other types of dispositions. In FY2024, 72.7% 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 (19.1%) than the recommended jail term, and in other cases, offenders recommended for short-term incarceration received a sentence of more than six months (8%). Finally, 71% 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 of less than six months (24%), but rarely did these offenders receive an incarceration term of more than six months (5%). These results were not impacted by the modified recommendation based on the judge’s determination that the defendant provided substantial assistance, accepted responsibility, or expressed remorse.

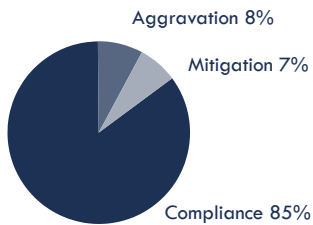
Since July 1, 1997, sentences to the state’s former Boot Camp and Detention and Diversion Centers have been defined as incarceration sanctions for the purposes of the Sentencing Guidelines. Although the state’s Boot Camp program was discontinued in 2002, the Detention and Diversion Center programs continued as sentencing options for judges until 2019. 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*). In turn, because the Diversion Center program also involves a period of confinement, the Commission defined 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. In May 2017, the Department of Corrections merged the two programs and established the Community Corrections Alternative Program (CCAP).

Under CCAP, the court could sentence the defendant to a minimum of seven months for a Short-Term commitment to CCAP or to a maximum of 12 months for a Long-Term commitment to CCAP. On July 1, 2019, § 19.2-316 was modified to reflect the requirements of CCAP. Beginning January 1, 2021, the Department of Corrections restructured the program based on the needs of the defendant. Based on the adjustment, participation in CCAP will generally last from 22 to 48 weeks based on referrals from the courts and the progress, participation, and adjustment of the defendant. Currently, for the calculation of concurrence with the Sentencing Guidelines recommendation, CCAP sentence is counted as an incarceration period of 12 months.

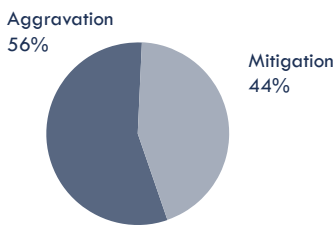
Figure 4

Durational Concurrence and Direction of Departures - FY2024*

Durational Concurrence



Direction of Departures



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

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 aggravated murder (§ 18.2-31), first-degree or second-degree murder (§ 18.2-32), 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.

DURATIONAL CONCURRENCE

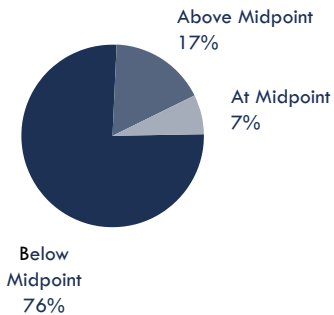
In addition to examining the degree to which judges concur with the type of disposition recommended by the Guidelines, the Commission also studies durational concurrence, the rate at which judges sentence offenders to terms of incarceration that fall within the recommended Guidelines range. Durational 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 FY2024 cases was at 85%, indicating that judges, more often than not, agree with the length of incarceration recommended by the Guidelines in jail and prison cases (Figure 4). Of the 15% of cases in which the recommended duration of sentence was departed from, 44% of cases were mitigating in nature, and the other 56% were aggravating.

Figure 5

Distribution of Sentences within Guidelines Range - FY2024**

Guidelines Midpoint



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

In cases in which the recommendation exceeds six months in time, the Sentencing Guidelines provide a midpoint along with a high-end and a low-end recommendation. The sentencing ranges recommended by the Guidelines are relatively broad to allow judges to exercise discretion in sentencing offenders to different incarceration terms, while still remaining in concurrence with the Guidelines and, in turn, keeping aligned with sentencing practices of their colleagues throughout the Commonwealth. In FY2024, when the Guidelines recommended more than six months of incarceration and judges sentenced within the recommended range, only a small share (7%) were given prison terms exactly equal to the midpoint recommendation (Figure 5). Most of the cases (76%) in durational concurrence with recommendations over six months resulted in sentences below the recommended midpoint. For the remaining 17% of these incarceration cases sentenced within the Guidelines range, the sentence exceeded the midpoint recommendation. These sentencing practices relating to durational concurrence almost mirror the sentencing practices of FY2023. 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.

In order to gauge the extent of durational departures from the Sentencing Guidelines, the Commission uses the median length of durational departures. Once again mirroring FY2023, the median departure from the Guidelines is around one year in either a mitigating or aggravating direction. This indicates to the Commission that the durational departures are, in most cases, not extreme. Offenders receiving incarceration less than the recommended term were given effective sentences (sentences less any suspended time) below the Guidelines by a median of nine months. For offenders receiving longer than recommended incarceration sentences, the effective sentence exceeded the Guidelines by a median of twelve months (Figure 6).

REASONS FOR DEPARTURE FROM THE GUIDELINES

Compliance with the truth-in-sentencing Guidelines is voluntary, reflecting an effort on behalf of the Commonwealth to embrace judicial discretion in sentencing practices. 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. While the Commission has provided a standardized list of reasons for departure via an evaluation of past sentencing departure reasons of judges across the Commonwealth, judges are not limited to any standardized departure reasons. Moreover, judges may report more than one departure reason per sentencing event.

In FY2024, the most frequently cited reasons for sentencing below the Guidelines recommendation were the acceptance of a plea agreement, judicial discretion, mitigating court circumstances or proceedings, a sentence to an alternative punishment, the defendant having health issues, mitigating facts of the case, the defendant having little or no prior record, a recommendation by the Commonwealth, and the defendant making progress in rehabilitating himself or herself. Although other reasons for mitigation were reported, only the most frequently cited reasons are noted here. For 205 of the 1,410 mitigating cases, a departure reason could not be discerned.

The most frequently cited reasons for sentencing above the Guidelines recommendation were the acceptance of a plea agreement, aggravating facts of the offense, the number of offenses in the sentencing event, the degree of victim injury, the offender's prior record, the defendant having poor rehabilitation potential, and the type of victim in the offense. For 104 of the 1,380 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 - FY2024*



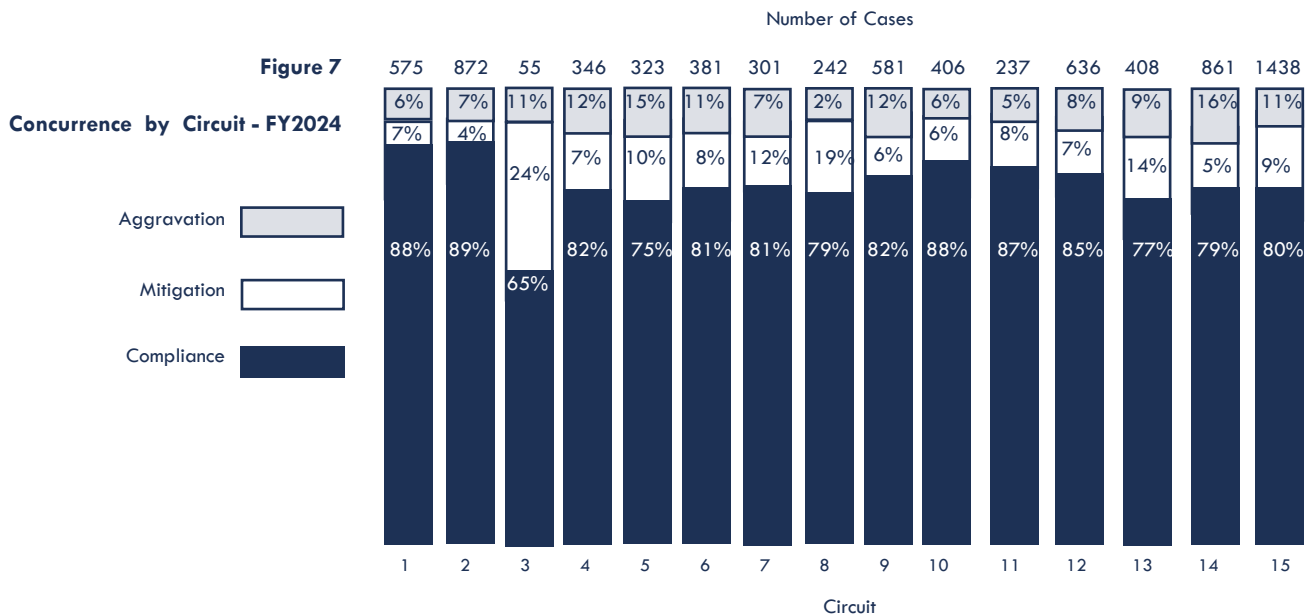
*Cases recommended for and receiving an active jail or prison sentence.

CONCURRENCE BY CIRCUIT

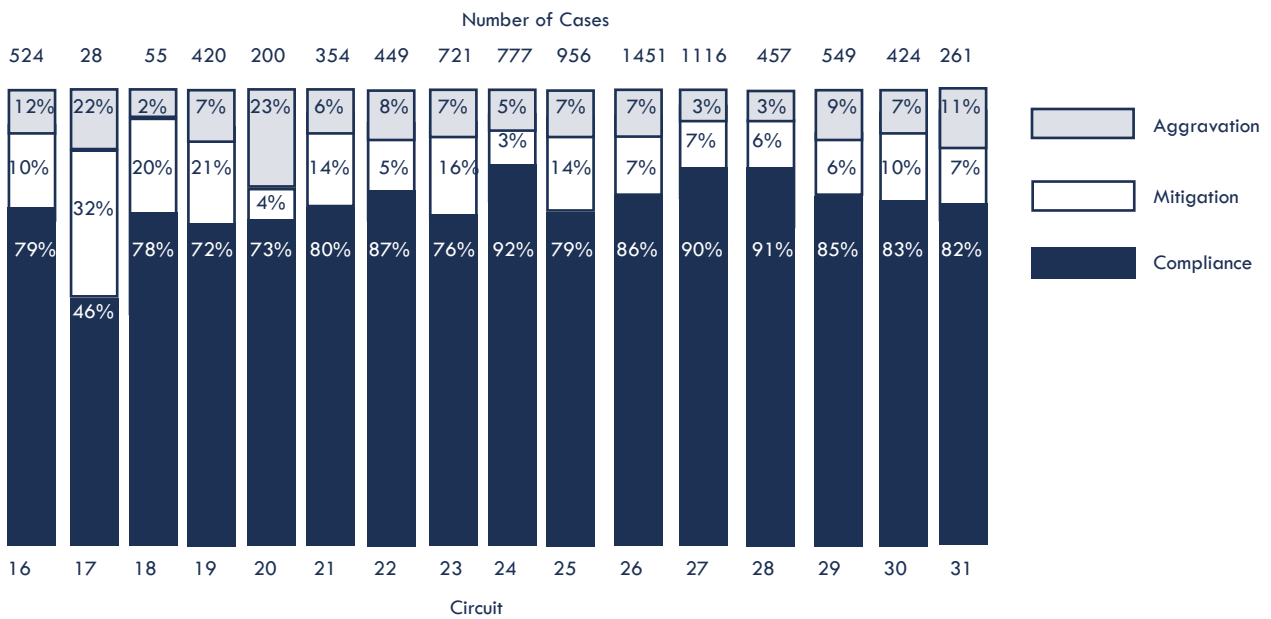
Since the onset of truth-in-sentencing, concurrence rates and departure patterns have varied across Virginia’s 31 judicial circuits, and FY2024 continues to show these differences (Figure 7). The map on the following pages identifies the location of each judicial circuit in the Commonwealth.

In FY2024, 58% of the state’s 31 circuits exhibited concurrence rates above 80%, while the remaining 42% reported concurrence rates between 46.4% and 79.7%. 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 differs by circuit. 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 FY2024, the highest rate of judicial agreement with the Sentencing Guidelines (92%) was in Circuit 24 (Lynchburg area). This was followed by a concurrence rate of 91% in Circuit 28 (Bristol Area) and 90% in Circuit 27 (Radford area). Circuit 17 (Arlington) had the lowest concurrence rate of 46.4%, but less than 30 Guidelines were submitted for the fiscal year. Circuit 3 (Portsmouth), Circuit 19 (Fairfax), and Circuit 20 (Loudoun area) also reported lower concurrence rates among the judicial circuits in FY2024.



In FY2024, the highest mitigation rates were found in circuit 17 (Arlington; 32%), Circuit 3 (Portsmouth; 24%), Circuit 19 (Fairfax; 21%), Circuit 18 (Alexandria; 20%), Circuit 8 (Hampton; 19%), Circuit 23 (Roanoke area; 16%), Circuit 21 (Martinsville area; 14%), and Circuit 25 (Staunton area; 14%). Regarding 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 20 (Loudoun area) had the highest aggravation rate (around 23%). Circuit 17 (Arlington area), Circuit 14 (Henrico), Circuit 5 (Suffolk), Circuit 9 (Williamsburg area), Circuit 15 (Fredericksburg area), Circuit 31 (Prince William area), and Circuit 6 (Sussex area) had aggravation rates between 11.0% and 21.4%.



Virginia Localities and Judicial Circuits

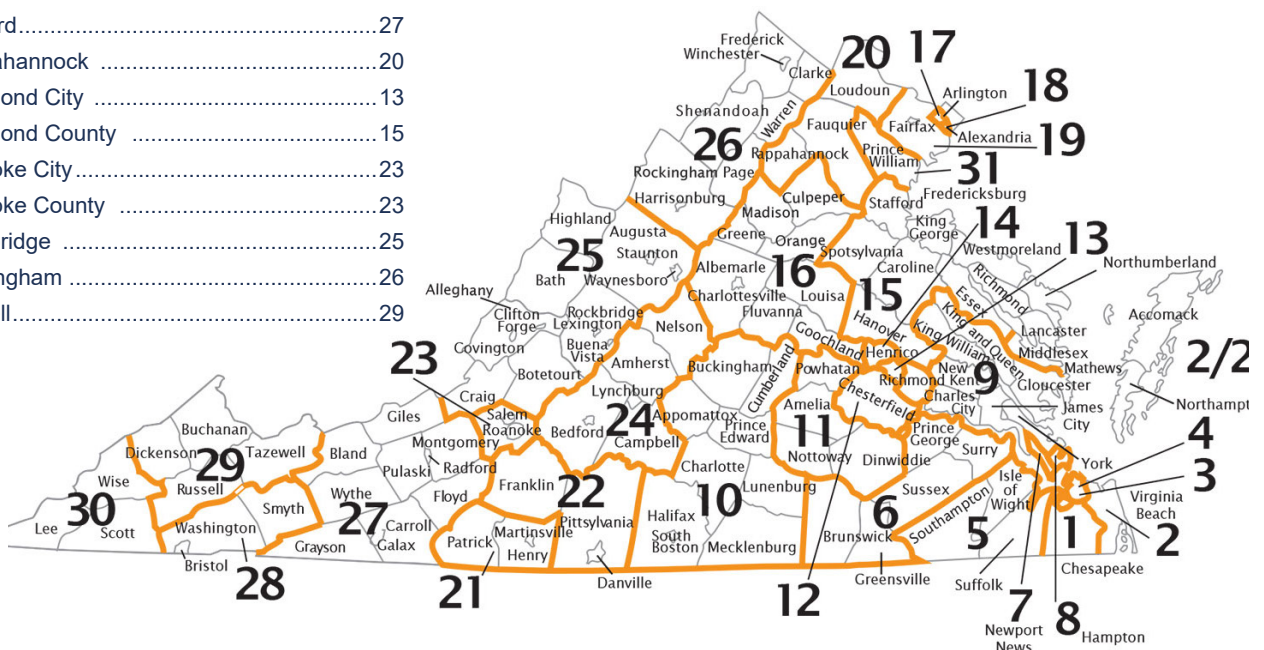
Accomack.....	2	Fairfax City	19
Albemarle	16	Fairfax County	19
Alexandria.....	18	Falls Church	17
Alleghany.....	25	Fauquier	20
Amelia	11	Floyd.....	27
Amherst	24	Fluvanna	16
Appomattox	10	Franklin City	5
Arlington	17	Franklin County	22
Augusta	25	Frederick.....	26
		Fredericksburg	15
Bath	25		
Bedford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

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

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

Radford.....	27
Rappahannock	20
Richmond City	13
Richmond County	15
Roanoke City.....	23
Roanoke County	23
Rockbridge	25
Rockingham	26
Russell.....	29

**Virginia
Judicial Circuits**



CONCURRENCE BY SENTENCING GUIDELINES OFFENSE GROUP

In FY2024, as in previous years, judicial agreement with the Guidelines varied when comparing the 17 offense groups (Figure 8). For FY2024, concurrence rates ranged from a high of 87% in the Fraud offense group to a low of 54% in Carjacking cases. In general, property and drug offenses exhibit higher rates of concurrence than the violent offense categories. Several violent offense groups (i.e., Burglary of a Dwelling, Kidnapping, Murder, Obscenity, and Sexual Assault) had concurrence rates at or below 75%, whereas many of the property and drug offense categories had concurrence rates above 83%.

Figure 8

Guidelines Concurrence by Offense - FY2024

	Compliance	Mitigation	Aggravation	Number of Cases
Fraud	87.1%	7.5%	5.4%	856
Drug Other	86.4%	4.2%	9.3%	236
Drug Schedule I/II	85.8%	8.2%	5.9%	7,308
Miscellaneous Other	85.0%	8.0%	7.0%	399
Larceny	83.3%	8.2%	8.5%	1,587
Rape	83.0%	5.2%	11.9%	135
Traffic	83.0%	8.0%	9.0%	1,332
Burglary of Other Structure	81.6%	11.3%	7.1%	283
Assault	79.9%	10.6%	9.5%	1,410
Miscellaneous Person/Property	79.8%	7.4%	12.8%	514
Weapon	77.9%	8.3%	13.8%	1,047
Burglary of a Dwelling	75.3%	14.0%	10.6%	292
Kidnapping	75.0%	18.8%	6.3%	128
Murder	74.0%	5.2%	20.8%	327
Obscenity	69.1%	9.0%	21.9%	256
Sexual Assault	67.3%	14.7%	18.0%	272
Robbery/Carjacking	54.2%	29.2%	16.7%	24
Total	83.0%	8.6%	8.4%	16,406

The highest compliance rates are seen in offense groups such as Fraud (87%), Drug/Other (86%), Drug Schedule I/II (86%), and Miscellaneous/Other (85%). The highest rates of mitigation are seen across Carjacking cases (29%), Kidnapping (19%), Sexual Assault (15%), Burglary of Dwelling cases (14%), Burglary of Other Structure cases (11%), and Assault cases (11%). Obscenity cases (22%), Murder cases (21%), and Sexual Assault cases (18%) had the highest rates of aggravation.

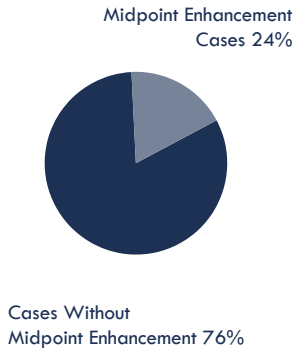
During the past fiscal year, judicial concurrence with Guidelines recommendations remained relatively stable, fluctuating less than five percentage points for most offense groups. The most drastic change in concurrence rates exhibited from FY2023 to FY2024 was a change in concurrence in Weapon cases. In Weapon cases concurrence was at 64% in FY2023 but returned to 78% in FY2024. The current concurrence rate is more reflective of historical sentencing patterns for weapon convictions. Additionally, there was a 13-percentage point decrease in concurrence for Carjacking cases in FY2024 compared to FY2023. When offense groups account for a relatively small percentage of overall sentencing events in a fiscal year, they are more susceptible to fluctuations in year-to-year comparisons. For example, both of the aforementioned offense types with elevated fluctuations in comparison to FY2023 (Weapon and Carjacking) consist of only 7% and .1% of all sentencing events in the Commonwealth in FY2024, respectively.

Appendix 3 and 4 presents concurrence figures for judicial circuits by each of the 17 Sentencing Guidelines offense groups.

CONCURRENCE UNDER MIDPOINT ENHANCEMENTS

Figure 9

Application of Midpoint Enhancements - FY2024



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 homicides, rapes, robberies, most felony assaults and sexual assaults, and certain burglaries when any one of these offenses is the most serious offense in the sentencing event, 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 is labeled as “Category II” if it 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 most Guidelines cases. Among the FY2024 cases, 76% of the cases did not involve midpoint enhancements of any kind (Figure 9). Only 24% 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 FY2024 cases in which midpoint enhancements were applied, the most common midpoint enhancement was for a Category II prior record. Approximately 70% 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). Another 7% of midpoint enhancements were attributable to offenders with a more serious Category I prior record. About 16% of the enhancements were due to the primary offense being a Category I or Category II offense. The most substantial midpoint enhancements target offenders with a combination of primary and prior violent offenses. Roughly 6% qualified for enhancements for both a current violent offense and a Category II prior record. A very small percentage of cases (1%) were targeted for the most extreme midpoint enhancements, triggered by a combination of a current violent offense and a Category I prior record.

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 FY2024, concurrence was 80% when enhancements applied, which is slightly 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 about 51% of cases and aggravate in 49% of cases.

Figure 10

Type of Midpoint Enhancements Received - FY2024

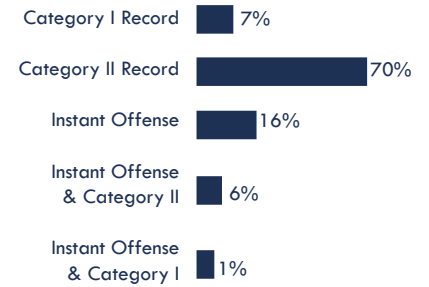


Figure 11

**Length of Mitigation Departures
in Midpoint Enhancement Cases - FY2024**



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

Among FY2024 midpoint enhancement cases resulting in incarceration, judges departed from the low end of the Guidelines range by an average of 21 months (Figure 11). The median departure (the middle value, where half of the values are lower, and half are higher) was 12 months.

Concurrence, while generally lower in midpoint enhancement cases than in other cases, varies across the different types and combinations of midpoint enhancements (Figure 12). In FY2024, sentencing events involving a current violent offense, but no prior record of violence, generated a concurrence rate of 77%. Cases receiving enhancements for a Category I prior record generated a concurrence rate of 75%, while concurrence for enhancement cases with a Category II prior record was 81%. Cases involving a combination of a current violent offense and a Category II prior record yielded a concurrence rate of 75%, 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 (78%).

Figure 12

Concurrence by Type of Midpoint Enhancement - FY2024

Midpoint Enhancement	Concurrence	Mitigation	Aggravation	Number of Cases
None	84.0%	7.0%	9.0%	12,509
Category I	75.1%	21.5%	3.5%	289
Category II	81.3%	13.6%	5.0%	2,707
Instant Offense	76.7%	9.2%	14.1%	631
Instant Offense & Category I	77.8%	16.7%	5.6%	36
Instant Offense & Category II	74.8%	15.4%	9.8%	234
Total	83.0%	8.6%	8.4%	16,406

METHOD OF ADJUDICATIONS

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, Alford pleas (pleas of “no contest”), or plea agreements between defendants and the Commonwealth. During FY2024, 91% of Guideline cases were sentenced following guilty pleas or Alford pleas (Figure 13). Adjudication by a judge in a bench trial accounted for 5% of all felony Guidelines cases sentenced.

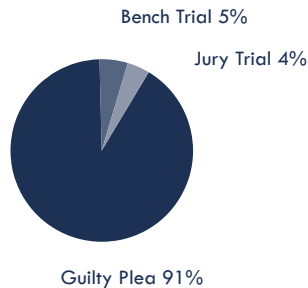
As of July 1, 2021, as the result of changes to §§ 19.2-295 and 19.2-295.1 of the Code of Virginia, juries only decide guilt or innocence. Defendants may still request that the jury sentence in such cases. However, the defendant must notify the court thirty days in advance of the trial to request sentencing by the jury.

During FY2024, a small proportion of cases involved jury trials (4%). Based on Sentencing Guidelines received, the attorneys for the Commonwealth or Probation Officers identified 564 sentencing events that involved a jury.

The Commission will continue to monitor the role of juries in sentencing. Unfortunately, criminal justice databases do not reliably identify when scheduled jury trials are ultimately resolved by guilty pleas or bench trials. Furthermore, court databases and orders have not been systematically updated to identify the number of defendants who request that the jury recommend a sentence. In addition, the method of adjudication is missing in 3,009 Guidelines cases.

Figure 13

Percentage of Cases Received by Method of Adjudication, FY2024



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 assessments in the pilot sites for the period from 1998 to 2001. In 2001, the Commission conducted a validation study of the original risk assessment instrument to test and refine the instrument for possible use statewide. In July 2002, the Nonviolent Offender Risk Assessment (NVRA) instrument was implemented statewide for all felony larceny, fraud, and drug cases.

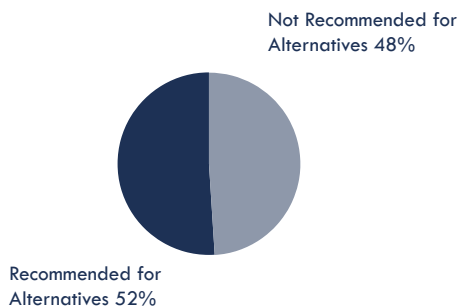
Between 2010 and 2012, the Commission conducted an extensive study of recidivism among nonviolent felons in Virginia to re-evaluate the risk assessment instrument and potentially revise the instrument based upon more recent data. Based on the results of the 2010-2012 study, the Commission recommended 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 60% of all Guidelines received by the Commission for FY2024 were for nonviolent offenses. However, only 40% 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. The NVRA was not completed in approximately 24% of cases where the NVRA may have applied.

Among the eligible offenders in FY2024 for whom a risk assessment form was received (3,942 cases), 52% were recommended for an alternative sanction by the risk assessment instrument (Figure 14). Just over half of these offenders (50.2%) recommended for an alternative sanction were actually given some form of alternative punishment by the judge.

Figure 14

Eligible Nonviolent Offender Risk Assessment Cases by Recommendation Type, FY2024 (3,942 cases)

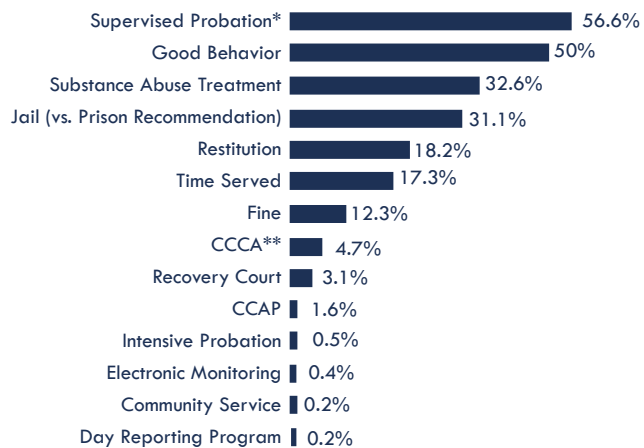


Among offenders recommended for and receiving an alternative sanction through risk assessment, judges used Probation and Good Behavior more often than any other option (Figure 15). In addition, in approximately one-third of the cases in which an alternative was recommended, judges sentenced the offender to a term of incarceration in jail (less than twelve months) rather than the prison sentence recommended by the traditional Guidelines range. Other sanctions frequently utilized were Substance Abuse Treatment (32.6%), Restitution (18.2%), and Time Served (17.3%). The Department of Corrections' Community Corrections Alternative Program (CCAP) was used in a small percentage (1.6%) of the cases. Other alternatives/sanctions included Recovery Court (3.1%) and Community Service (.2%).

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 they choose to sentence the defendant to a term within the traditional incarceration period recommended by the Guidelines or if they choose 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

Figure 15

Types of Alternative Sanctions Imposed - FY2024



* Includes indeterminate supervised probation (13.8%).

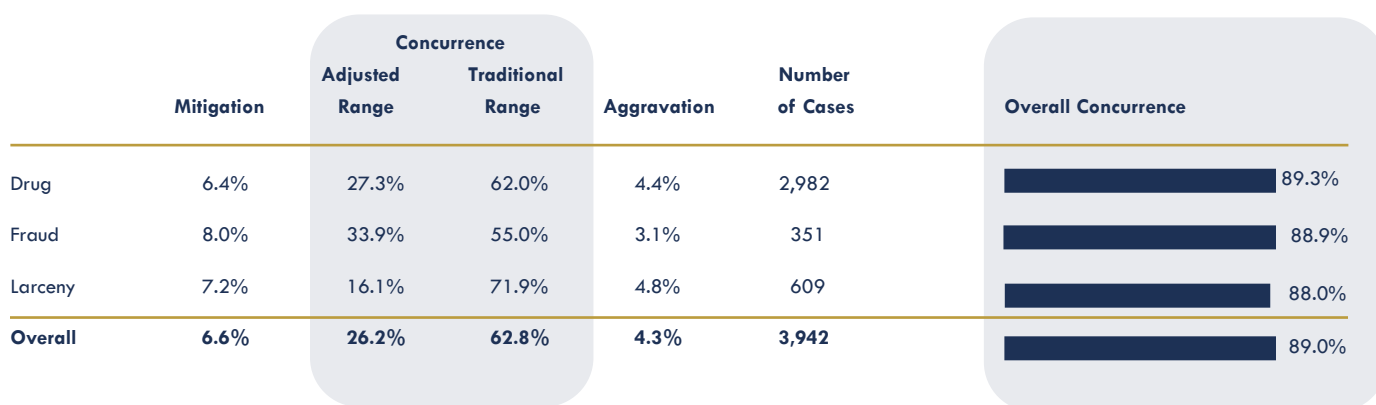
** Any program established through the Comprehensive Community Corrections Act.

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

the use of an alternative punishment option as recommended by the risk assessment instrument (Figure 16). In 27% of these drug cases, judges have agreed with the recommendation for an alternative sanction. Similarly, in fraud cases with offenders eligible for risk assessment, the overall concurrence rate is 89%. In 34% 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 was 88%. Judges used an alternative, as recommended by the risk assessment tool, in 16% 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 instrument, and the Commission, during its validation study, found that larceny offenders are the most likely to recidivate among nonviolent offenders.

Figure 16

Concurrence Rates for Nonviolent Offenders Eligible for Risk Assessment - FY2024



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 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 instrument 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 several 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 assessment instrument produces overall higher scores for the groups of offenders who exhibited higher recidivism rates during 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 sex offenders identified as a comparatively high-risk (those scoring 28 points or more on the risk assessment), the Sentencing Guidelines were 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.

Level 1:

For offenders scoring 44 or more, the upper end of the Guidelines range is increased by 300%.

Level 2:

For offenders scoring 34 through 43 points, the upper end of the Guidelines range is increased by 100%.

Level 3:

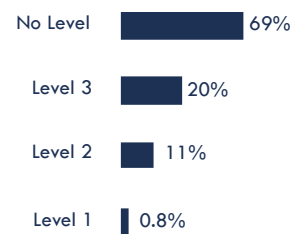
For offenders scoring 28 through 33 points, the upper end of the Guidelines range is increased by 50%.

The low end and the midpoint of the Guidelines recommendation 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 FY2024, there were 272 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 offenses were removed from the Sexual Assault worksheet, and a new Obscenity worksheet was created. In addition, the sex offender risk assessment instrument does not apply to certain Guideline offenses, such as bestiality, bigamy, and prostitution. Of the 260 Sexual Assault cases for which the risk assessment was applicable, the majority (69%) were not assigned a level of increased risk by the sex offender risk assessment instrument (Figure 17). Approximately 20% of applicable Sexual Assault Guidelines cases resulted in a Level 3 risk classification, with an additional 11% assigned to Level 2. There were two Sexual Assault Guidelines cases (0.8%) that reached the highest risk category of Level 1 in FY2024.

Figure 17

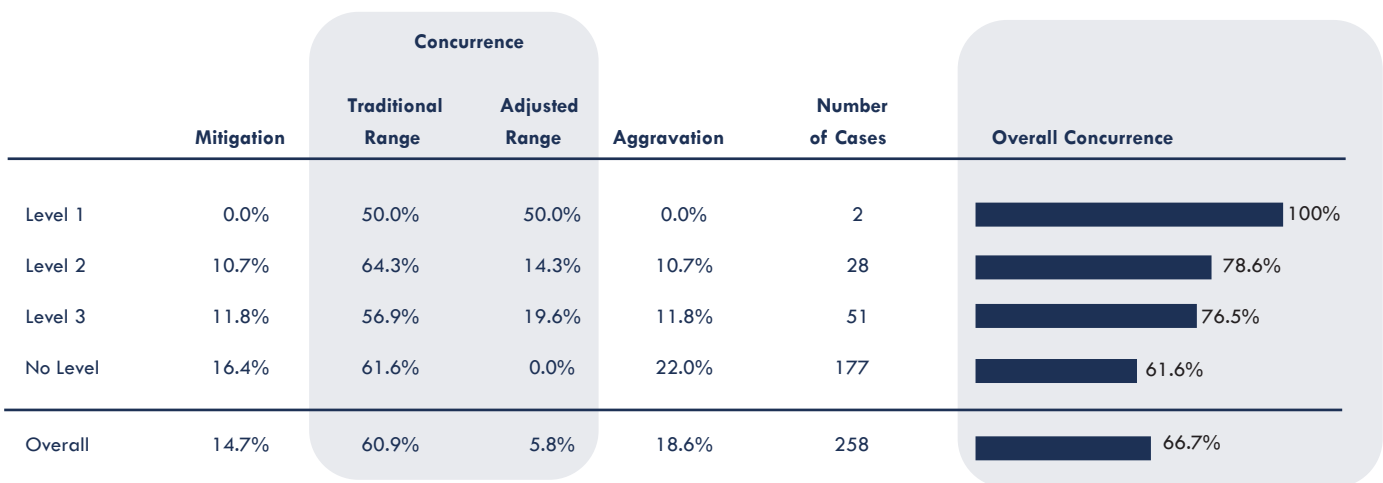
Sex Offender Risk Assessment Levels for Sexual Assault Offenders, FY2024



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 (Figure 18). As noted above, there were two Sexual Assault cases assigned Level 1 risk category, and the judge used the extended range in one case. Judges used the extended Guidelines range in 14% of Level 2 cases, down from 17% in FY2024, and in 20% of Level 3 risk cases. For Level 2 cases, judges sentenced offenders to terms above the extended ranges in 11% of the cases, and 12% were sentenced to a term above the extended ranges in Level 3 cases. Offenders who scored less than 28 points on the risk assessment instrument (who are not assigned a risk category and receive no Guidelines adjustment) had a concurrence rate of 62%. These cases also had a higher rate of aggravation (22%) compared to offenders who were assigned a risk level.

Figure 18

Sexual Assault Concurrence Rates By Risk Assessment Level, FY2024



There were 135 offenders convicted of offenses covered by the Rape Guidelines (rape, forcible sodomy, and object sexual penetration) in FY2024. According to Figure 19, approximately 73% were not assigned an increased risk level by the Commission’s risk assessment instrument. Approximately 17% of these cases resulted in a Level 3 adjustment, and an additional 10% received a Level 2 adjustment. There was one case in FY2024 that received a Level 1 adjustment for a rape conviction (0.07%). As shown in Figure 20, no offenders were given prison sentences within the adjusted range of the Guidelines for Level 1, Level 2, and Level 3 adjustments in FY2024. The one case that resulted in a Level 1 adjustment was sentenced within the traditional range. Defendants who were not assigned a risk category and received no Guidelines adjustment had a concurrence rate of 79%, which was much lower than the concurrence rates for cases with a Level 3 (96%) or Level 2 (92%) adjustment. The highest rate of aggravation for rape cases was for those with no adjustment (15%).

Figure 19

Sex Offender Risk Assessment Levels for Rape Offenders, FY2024

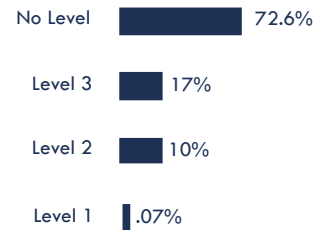


Figure 20

Rape Concurrence Rates By Risk Assessment Level, FY2023

	Mitigation	Concurrence			Number of Cases	Overall Concurrence
		Traditional Range	Adjusted Range	Aggravation		
Level 1	0.0%	100.0%	0.0%	0.0%	1	100%
Level 2	0.0%	92.3%	0.0%	7.7%	13	92.3%
Level 3	4.3%	95.7%	0.0%	0.0%	23	95.7%
No Level	6.1%	78.6%	0.0%	15.3%	98	78.6%
Overall	5.2%	83.0%	0.0%	11.9%	135	83%

CONCURRENCE AND DRUG TYPE

On July 1, 2017, at the request of several Commonwealth’s Attorneys, the Commission began capturing the type of Schedule I, II, and III substances on the Sentencing Guidelines Cover Sheet when a drug offense was the primary, or most serious, offense in the sentencing event. 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, but rather to be informative for the judiciary and policymakers throughout the state.

In FY2024, there were 7,308 Drug Schedule I/II worksheets and 236 Drug/Other worksheets submitted to the Commission.

Figure 21 lists the specific type of drug identified on the Drug Sentencing Guidelines. Methamphetamine, measured solely, was the most frequently occurring, appearing in 43.1% of cases. Cases involving cocaine and crack-cocaine comprised 24% of the drugs identified. When opioids were grouped together, they were also cited in 22.3% of Drug Guidelines, followed closely by cases involving specific types of opioids such as fentanyl (18.1%).

Figure 21
Number and Percentage of Cases Received by Drug Type - FY2024

Drug	Percentage	Number of Cases
Methamphetamine	43.1%	3,249
Cocaine	24.0%	1,808
Opioids*	22.3%	1,679
Fentanyl	18.1%	1,366
Other	6.8%	511
Heroin	4.3%	327
Oxycodone	1.6%	124
Hydrocodone	0.8%	60
Methylphenidate	0.8%	59
Methadone	0.4%	29
Morphine	0.2%	13
Codeine	0.1%	9

*Opioids includes the drugs heroin, fentanyl, oxycodone, morphine, codeine and methadone (multiple opioids in an event are grouped as one for this measure).

Data excludes deferred cases.

Concurrence rates are not significantly different based on the type of drug involved. In FY2024, judges concurred with the Guidelines' recommendation in over 85% of the drug cases (Figure 22). Rates of concurrence were slightly higher in methamphetamine cases (85.4%), while opioid cases (84.6%) had a slightly lower average concurrence rate. In the cases involving methamphetamine, the Sentencing Guidelines take into consideration when the drug is being manufactured versus distributed and if a child was present during the manufacturing process. These factors are not available on the 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 cases involving marijuana distribution. These specific types of drugs have similar concurrence rates to cases involving methamphetamine, opioids, and cocaine (85.7%).

Figure 22
Guidelines Concurrence by Type of Drug - FY2024

	Compliance	Mitigation	Aggravation	Number of Cases
Methamphetamine Case	85.4%	8.4%	6.3%	4,295
Cocaine Case	85.0%	9.1%	5.9%	1,808
Opioid Case	84.6%	8.9%	6.5%	1,679
Other Case	85.7%	7.0%	7.2%	568
Total	85.9%	8.1%	6.0%	7,544*

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

**Numbers will differ from totals because of excluding deferred cases.*

As previously noted, 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 23 lists the types of drugs by circuit.

Convictions listed in Figure 23 are not adjusted for the population of each locality, but simply provide the localities with the requested information. The Radford area (Circuit 27), the Harrisonburg area (Circuit 26), and the Staunton area (Circuit 25) have the highest frequencies of methamphetamine-related sentencing events across the Commonwealth. Cocaine-related sentencing events appear most frequently in the Fredericksburg area (Circuit 15) and Henrico (Circuit 14) in comparison to the rest of the Commonwealth. Furthermore, fentanyl-related cases appear most frequently in Fredericksburg area (Circuit 15), Harrisonburg area (Circuit 26), and Henrico (Circuit 14) compared to the rest of the Commonwealth.

The number of convictions may not be the best approach to assessing drug problems in communities across the Commonwealth. To some extent, 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. These topics and limitations of the use of sentencing data for an evaluation of drug prevalence by geographic location ought to be taken into consideration when evaluating Figure 23.

The Commission will continue to monitor sentencing in drug cases, as requested. If the sentencing patterns of judges change, the Commission will recommend revisions to the Guidelines based on analysis of the data. As indicated by the concurrence rates of drug sentences throughout the Commonwealth, there is no need at this time to adjust Guidelines based on the type of drug involved.

Figure 23
Type of Drug by Circuit - FY2024

Circuit		Cocaine	Codeine	Fentanyl	Heroin	Hydrocodone	Methadone	Methamphetamine	Methylphenidate	Morphine	Oxycodone	Other*
1	Chesapeake	103	1	51	22	0	0	75	1	0	8	20
2	Virginia Beach	102	1	63	21	0	2	152	3	2	3	29
3	Portsmouth	4	0	4	0	0	0	2	0	0	1	0
4	Norfolk	19	0	6	4	0	0	6	4	0	1	2
5	Suffolk Area	38	0	14	2	0	0	14	0	0	1	9
6	Sussex Area	52	0	21	6	0	0	43	0	0	6	7
7	Newport News	56	0	18	7	1	0	12	0	0	1	2
8	Hampton	56	0	9	9	0	1	4	0	0	2	4
9	Williamsburg Area	85	1	38	17	2	3	105	0	0	6	26
10	South Boston Area	39	0	20	12	3	1	67	0	0	4	10
11	Petersburg Area	33	0	4	1	0	0	15	1	0	0	3
12	Chesterfield Area	134	1	85	18	0	3	84	2	0	4	30
13	Richmond City	101	0	48	15	1	0	16	0	1	4	4
14	Henrico	183	1	105	26	0	1	35	3	0	2	12
15	Fredericksburg Area	198	2	177	33	1	1	124	3	2	10	127
16	Charlottesville Area	69	0	48	13	2	0	63	3	0	5	17
17	Arlington Area	4	0	2	1	1	0	1	0	0	3	2
18	Alexandria	5	0	6	1	0	0	0	1	0	0	3
19	Fairfax	40	0	60	0	0	0	14	0	0	5	25
20	Loudoun Area	21	0	20	3	2	2	7	0	0	1	18
21	Martinsville Area	42	0	45	4	1	1	85	1	0	8	5
22	Danville Area	55	0	43	17	7	0	128	2	0	1	14
23	Roanoke Area	57	0	86	33	2	0	168	6	1	8	6
24	Lynchburg Area	57	0	58	9	2	0	185	12	0	4	17
25	Staunton Area	26	0	36	4	2	1	312	2	0	1	16
26	Harrisonburg Area	133	1	112	9	1	5	426	5	0	9	38
27	Radford Area	27	0	60	24	2	4	531	4	2	10	19
28	Bristol Area	10	0	29	7	10	4	202	1	2	0	12
29	Buchanan Area	14	0	31	7	5	0	198	4	2	3	14
30	Lee Area	3	0	11	0	8	0	167	1	0	7	3
31	Prince William Area	42	1	55	2	6	0	7	0	1	6	16
Total	Statewide	1,808	9	1,365	327	59	29	3,248	59	13	124	510

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

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

SENTENCING REVOCATION REPORT (SRR)

Figure 24

Number and Percentage of SRRs Received by Circuit - FY 2024

Circuit	Number	Percent
1	664	4.7%
2	537	3.8%
3	73	0.5%
4	336	2.4%
5	189	1.3%
6	255	1.8%
7	134	0.9%
8	80	0.6%
9	452	3.2%
10	328	2.3%
11	169	1.2%
12	507	3.6%
13	173	1.2%
14	497	3.5%
15	1,417	10.0%
16	375	2.6%
17	57	0.4%
18	19	0.1%
19	211	1.5%
20	126	0.9%
21	583	4.1%
22	908	6.4%
23	291	2.0%
24	499	3.5%
25	1,052	7.4%
26	1,453	10.2%
27	799	5.6%
28	487	3.4%
29	806	5.7%
30	548	3.9%
31	182	1.3%
Total	14,207	100%

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 probationer’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 by the DOC for every felony probationer, but special supervision conditions imposed or authorized by the court can also 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. The SRR was revised again for Fiscal Year (FY) 2022 to reflect new statutory requirements and revised Probation Violation Guidelines. Other fields were added to the SRR that identified additional sentencing options that may be available to the court.

At time of publication, additional reports from FY2024 were still being submitted and processed using the Sentencing Worksheets and Interactive File Transfer System (SWIFT). FY2023 was the first year SWIFT was the required method to submit Guidelines to the Sentencing Commission; however, in FY2024, Guidelines continue to be prepared outside of SWIFT. Guidelines prepared outside SWIFT must be keyed by staff into the system and delay Guidelines being added to the system. At this point, in FY2024, there were 14,207 alleged felony violations of probation, suspended sentences, or good behavior for which the SRR was submitted to the Commission. 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 FY2024 were Circuit 26 (Harrisonburg area), Circuit 15 (Fredericksburg area), Circuit 25 (Staunton area), Circuit 22 (Danville area), Circuit 29 (Buchanan area), and Circuit 27 (Radford area). Circuit 18 (Alexandria), Circuit 17 (Arlington), Circuit 3 (Portsmouth), and Circuit 8 (Hampton) submitted the fewest SRRs during FY2024 (Figure 24).

Of the 14,207 SRRs received by the Commission in FY2024, 6,001 cases identified a new law violation. In 5,775 of 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 6,702 cases, the probationer was found in violation of other conditions not related to a new law violation (Figure 25). Often, these probationers are referred to as "technical violators." A technical violation is defined by § 19.2-306.1 of the Code of Virginia. Among the remaining cases, the person was not found in violation of any condition (202 cases), the decision to revoke was taken under advisement (97 cases), the defendant violated the good behavior requirement of a suspended sentence (190 cases), or the type of violation was not identified on the SRR form (420 cases). The other 821 cases were missing relevant information needed for analyzing and classifying the violation of probation.

Extreme caution must be used when comparing FY2024 data to previous years. Changes in statutes, Guidelines, and in automation of court records may have influenced the number and type of violations recorded. The COVID-19 pandemic also had a significant impact on the probation system. Figure 25 compares new law violations and technical violations in FY2024 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 FY2015, the number of technical violations reviewed by the court began to increase. This trend continued until FY2021, when new law violations exceeded technical violations. However, in FY2022, technical violations exceeded new law violations once again, and this trend continued in FY2024.

Figure 25
Sentencing Revocation Reports Received for Technical and New Law Violations
FY1998 - FY2024*

Fiscal Year	Technical Violations	New Law Violations	Number
FY1998	2,886	2,278	5,164
FY1999	3,643	2,630	6,273
FY2000	3,490	2,183	5,673
FY2001	5,511	3,228	8,739
FY2002	5,783	3,332	9,115
FY2003	5,078	3,173	8,251
FY2004	5,370	3,361	8,731
FY2005	5,320	3,948	9,268
FY2006	5,510	3,672	9,182
FY2007	6,670	4,755	11,425
FY2008	6,269	5,182	11,451
FY2009	5,001	5,134	10,135
FY2010	4,670	5,228	9,898
FY2011	5,239	6,058	11,297
FY2012	5,147	5,760	10,907
FY2013	5,444	6,014	11,458
FY2014	5,772	5,930	11,702
FY2015	6,511	6,397	12,908
FY2016	6,660	6,000	12,660
FY2017	6,655	5,627	12,282
FY2018	7,790	6,426	14,216
FY2019	8,081	7,253	15,334
FY2020	6,877	6,545	13,422
FY2021	5,454	6,420	11,874
FY2022	5,885	5,720	11,605
FY2023	5,884	5,036	10,920
FY2024	6,702	5,775	12,477

Note: Excludes cases with missing data that were incomplete or had other guidelines issues.

A technical violation is defined as anything other than a new conviction including special conditions.

*Data from past fiscal years are continuously monitored and modified to better reflect the events for that time period.

HISTORY OF 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*). Historically, these probationers 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. Most of the changes proposed in the 2006 Annual Report affected the Section A worksheet. The score on Section A of the Probation Violation Guidelines determined whether an offender would be recommended for probation with no active term of incarceration to serve, or whether the offender would 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 resulted in higher concurrence rates than previous versions of the Guidelines. Figure 26 illustrates concurrence patterns over the years and the limited impact revisions to the Guidelines had on concurrence rates. Concurrence hovered just slightly above 50% since FY2008, and this pattern continued through FY2021.

In 2016, the Commission approved a study that would provide the foundation needed to revise the Probation Violation Guidelines. The goal was to improve the utility of these Guidelines for Virginia’s judges. As a critical first step in revising the Guidelines, the Commission utilized a survey to seek input from Circuit Court judges. The majority of responding judges felt that the Probation Violation Guidelines should be expanded to cover not only technical violations, but also violations arising out of new felony or new misdemeanor convictions. With that judicial feedback in mind, the Commission conducted a comprehensive analysis of sentencing outcomes in revocation cases handled in Virginia’s Circuit Courts. Based on the results of this large-scale, multi-year project, the Commission recommended revisions to the Probation Violation Guidelines, including an expansion to cover, for the first time, violations associated with new convictions (see the Commission’s 2020 Annual Report).

Figure 26

Probation Violations Guidelines Concurrence by Year, FY2006 - FY2024

Fiscal Year	Concurrence	Mitigation	Aggravation	Total*
2006	47.6%	28.8%	23.5%	5,099
2007	46.3%	30.7%	23.0%	6,350
2008	52.8%	25.0%	22.2%	5,969
2009	52.7%	25.2%	22.1%	4,770
2010	52.3%	24.9%	22.8%	4,465
2011	53.3%	23.5%	23.2%	5,011
2012	49.3%	25.0%	25.7%	4,784
2013	51.3%	22.6%	26.1%	5,056
2014	51.9%	21.9%	26.2%	5,288
2015	52.3%	23.6%	24.1%	6,044
2016	54.7%	24.4%	20.9%	6,217
2017	54.3%	25.0%	20.7%	6,167
2018	55.6%	27.0%	17.4%	7,209
2019	54.6%	30.4%	15.0%	7,520
2020	52.3%	34.0%	13.7%	6,482
2021	50.2%	39.0%	10.8%	5,210
2022*	85.5%	10.0%	4.5%	11,605
2023*	88.4%	7.5%	4.0%	10,754
2024*	85.8%	7.2%	6.9%	11,107

* Significant changes to statutes and sentencing guidelines were made in FY2022. The inclusion of new law violations in the Probation Violation Guidelines significantly increased the number of cases.

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.

In summary, the Commission recommended, and the 2021 General Assembly accepted, the Commission's recommendations to:

- Expand the Probation Violation Guidelines to cover violations stemming from new felony and misdemeanor convictions.
- Replace the current instrument with two instruments, one applicable to violators with new felony convictions and the other specific to violators with technical violations or new misdemeanor convictions.
- Adjust the low end of the Probation Violation Guidelines range to "time served" (i.e., zero) when the judge determines that the probationer has a good rehabilitation potential; and
- Revise the Sentencing Revocation Report (SRR) and the Probation Violation Guidelines (PVGs) to standardize the information provided to circuit court judges in revocation cases, particularly information related to new convictions.

Based on analysis of revocation data, the new Probation Violation Guidelines were designed to produce recommendations that provide judges with a more accurate benchmark of the typical, or average, case outcome given the nature of the violation(s), the original most serious offense, the probationer's prior revocations, and any new convictions.

Further modifications to the Probation Violation Guidelines were necessary in FY2022 in order to make them compatible with the requirements of § 19.2-306.1, adopted by the 2021 General Assembly. The historically-based Guidelines were modified so that they would not recommend more incarceration time than that permitted under the provisions of § 19.2-306.1. The new Probation Violation Guidelines that incorporated the statutory requirements took effect on July 1, 2021.

For the first time, the analysis for FY2022 included violations based on new law convictions and technical violations. In FY2024, it was found that concurrence could be calculated for 11,107 violation cases. 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 11,107 cases examined in which offenders were found to be in violation of their probation, approximately 47% were under supervision for a felony drug offense (Figure 27). This figure represents the most serious offense for which the offender was on probation. Another 31% were under supervision for a felony property conviction. Offenders who were on probation for a crime against a person (most serious original offense) made up a slightly smaller portion (13%) of those found in violation during FY2024.

Examining both technical and new law violation cases reveals that over half (54.5%) of the probationers were cited for using, possessing, or distributing a controlled substance (Condition 8 of the DOC Conditions of Probation or § 19.2-306.1 (A,7)). Violations of this condition may include a positive test (urinalysis, etc.) for a controlled substance or a signed admission. Similarly, over half of the probationers were cited for failure to follow instructions of the probation officer (50.4%) (and/or for new law convictions (46%) (Figure 28)). The use of the condition for failure to follow instructions includes a variety of conduct that may not be considered technical conduct as defined by § 19.2-306.1.

Absconding (Condition 11 of the DOC Conditions of Probation or § 19.2-306.1 (A,10)) is cited by the Probation Officer after a probationer stops reporting and attempts to locate the probationer have failed. Policies of the Department of Corrections require that an officer check known locations such as the probationer's home, work, or friends, and to verify that the offender is not incarcerated. These efforts must be made before the probation officer may cite absconding in the Major

Figure 27

Probation Violation Guidelines Worksheets Received by Type of Most Serious Original Offense - FY2024
N=11,107*

Original Offense Type	Percent Received
Drug	46.8%
Property	30.7%
Person	13.4%
Other	6.2%
Traffic	2.9%

*Includes FY2024 cases found to be in violation that were completed accurately on current guideline forms.

Figure 28

Violation Conditions Cited by Probation Officers, FY2024



** Convicted felon in possession of firearms, in most cases, are cited under new law violations. The officer may also cite the same conduct under the firearm condition.

Violation Report submitted to the court. A 2024 Virginia Court of Appeals decision, Lawrence W. Nall, III v. Commonwealth, resolved an earlier interpretation of § 19.2-306.1. There is no longer an advantage to absconding from supervision because if the third technical violation is first time absconding, the court has ruled that the statute does not limit the time the court may impose to 14 days. Nevertheless, absconding was cited in over one-third (34.9%) of the FY2024 probation violation cases.

Historically, special conditions were any conditions that were more specific than the traditional conditions of probation. Special conditions included instructions imposed by the court or additional requirements imposed by the probation officer that were authorized by the court. The Commission, for analysis purposes, always classified Sex Offender Special Instructions or Special Instructions of Confirmed Gang and Security Threat Group (STG) Members as special conditions. However, § 19.2-306.1, effective July 1, 2021, did not specifically identify how the court should respond to behavior that was in direct violation of a court order or in violation of a specific requirement authorized by the court. Recent Virginia Court of Appeals decisions have limited technical violations to conduct specifically identified in § 19.2-306.1. Conduct previously included as a failure to follow an officer's instructions or a number of other conditions may now be classified as special or not defined by § 19.2-306.1. Special conditions were cited in about 20% of the probation violation cases.

Interpretations of the statute have varied across jurisdictions. The result is inconsistent policies across the Commonwealth.

Probationers who were supervised for sex offenses illustrate the potential impact of classifying or not classifying a violation as a special condition. In FY2024, out of 346 violators previously convicted of sex offenses or possession of child pornography, 106 were not identified on Sentencing Guidelines as being in violation of special conditions or for new law convictions. In most of the cases, the violation was cited as a failure to follow the probation officer's instruction. In those cases, listed as technical violations only, the court was statutorily limited to no time for the first technical violation and no more than 14 days for a second. In FY2024, there were 85 cases for defendants on probation for a sex offense that appear to be restricted by § 19.2-306.1. For the remaining cases, Guidelines would apply, but judges could sentence up to the total amount of revocable time. The full impact of individual policies cannot be accurately reflected here.

Probationers were also cited for changing their residence without permission in 15% of cases. This violation is different from absconding because the probation officer knew the whereabouts of the probationer. Other frequently cited violations included the failure to report to the probation officer (13%) and failure to report an arrest (6%). It is important to note that defendants may be, and typically are, cited for violating more than one condition of their probation.

OVERALL CONCURRENCE WITH THE PROBATION VIOLATIONS GUIDELINES

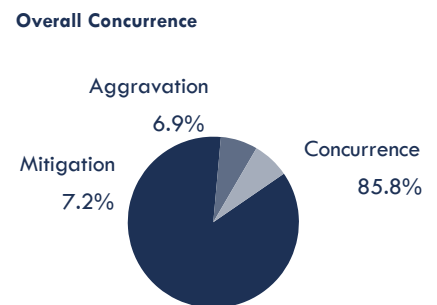
The overall concurrence rate summarizes the extent to which Virginia’s judges concur with recommendations provided by the Probation Violation Guidelines, both in type of disposition and in length of incarceration. In FY2024, the overall rate of concurrence with the Probation Violation Guidelines was 85.8% (Figure 29). However, that percentage is misleading because of the influence of statutory limits and requirements on sentences for probation violations. Instead of referring to one measure, it is more realistic to discuss concurrence based on the type of probation violation. In other words, it is better to evaluate how well the Guidelines reflect judicial sentencing by focusing on the concurrence rates for third technical violations, special conditions not defined by § 19.2-306.1, and new law violations (i.e., cases in which the statutory caps on sentences do not apply). In cases when the court did not identify whether or not the statutory limits of § 19.2-306.1 applied or not but gave an effective sentence between zero and 14 days, the case was assumed to be restricted by statute.

As expected, concurrence rates for first and second technical violations are high (95.8%). The Sentencing Guidelines were engineered in FY2022 to recommend sentences that reflect the statutory requirements for violations that were initiated July 1, 2021, and after. At the start, some judges believed that the provisions of § 19.2-306.1 did not apply to cases that were originally sentenced prior to July 1, 2021. Their sentences did not always reflect the statutory limits of no time or no more than 14 days and were above the Guidelines recommendation that reflected the statutory requirements and limits. The Virginia Court of Appeals decisions in *Green v. Commonwealth*, 75 Va. App. 69 (2022), and *Smith v. Commonwealth*, 22 Vap UNP 0841212 (2022), support the interpretation of these judges. In a different case, *Heart v. Commonwealth*, 75 Va. App. 453 (2022), the court issued an opinion that the prosecutor must present evidence on the type of prior violation. Ultimately, the type and number of prior violations determine what, if any, statutory limits apply.

After the *Green v. Commonwealth* decision, the Commission implemented the Sentencing Guidelines as initially planned and accepted by the 2021 General Assembly. Based on all the court decisions, the Guidelines were modified in FY2024 to always provide historically-based recommendations in every case. The judge would then decide if the restrictions of § 19.2-306.1 apply, not the Probation officer. The current Probation Violation Guidelines reflect a historically accurate sentence for all violations and allow the court to move forward with sentencing if the judge determines the statutory limits do not apply based on the most recent decisions of the Virginia Supreme Court and Court of Appeals. Multiple decisions created circumstances where similarly-situated individuals would not receive the same Guidelines recommendation. Moreover, some probation violators had been sanctioned under the new statutory requirements, while others were sanctioned under the old law.

Figure 29

Overall Probation Violation Guidelines Concurrence FY2024*



* Significant changes to statutes and sentencing guidelines were made in FY2022. The inclusion of new law violations in the Probation Violation Guidelines significantly increased the number of cases.

The decision about which statute applied rested with the judge and may have resulted in different Guidelines recommendations and, ultimately, in different sentences.

The median sentences in Figure 30 only includes cases when the court imposed incarceration time. The results include the multiple ways judges are applying the requirements of § 19.2-306.1. It should be noted that within each category, there were cases when the judge imposed no time. Overall, nearly a third of violators were not sentenced to any additional incarceration time.

Figure 30

Probation Violation Guidelines Concurrence with Good Rehabilitation Potential, FY2024

Type of Revocation	Concurrence	Mitigation	Aggravation	Total Number of Cases	Effective Sentence Median (Months)*
Technical Violation - First	95.8%	1.1%	3.1%	2,251	0.46
Technical Violation - Second (Includes absconding and firearm punishable as second by statute)	89.6%	4.2%	6.2%	1,409	0.46
Technical Violation - Third (Includes absconding and firearm punishable as third by statute)	73.8%	12.2%	14.0%	983	12
Special Condition Violations	78.1%	7.8%	14.1%	1,369	6
New Misdemeanor Conviction	85.9%	9.1%	4.9%	2,226	6
New Felony Conviction	83.9%	10.1%	6.0%	2,869	12
Overall	85.8%	7.2%	6.9%	11,107	6

* Median is the effective sentence when the court imposed time. In every category there are cases when the court imposed no time.

In FY2024, excluding the Guidelines that reflect statutory requirements, concurrence rates range from 86% to a low of 74%. These concurrence rates are some of the highest rates achieved since Probation Violation Guidelines were implemented in 2004. When judges sentence outside the recommendation, their sentences are more likely to be below the low end of the recommended sentencing range. There is nearly equal division between mitigating (7.2%) and aggravating (6.9%) departures. While the worksheets were developed based on analysis of historical data, they were subsequently modified to reflect the requirements of § 19.2-306.1. Furthermore, there is evidence to suggest the requirements of § 19.2-306.1 have impacted sentencing, court procedures, and behaviors.

As with the felony Sentencing Guidelines first implemented in 1991, the development of useful sentencing tools for judges to deal with probation violators will be an iterative process, with improvements made over several years. Feedback from judges, especially through written departure reasons, is of critical importance to the process of continuing to improve the Guidelines, thereby making them a more useful tool. In addition, once the interpretation of § 19.2-306.1 is resolved and agreed upon, Guidelines will once again return the same recommendation for similarly-situated individuals.

VIOLATIONS OF PROBATION THAT DO NOT RESULT IN A GUIDELINES RECOMMENDATION

Occasionally, a probationer is returned to court for a behavior that occurred during an earlier supervision period. The behavior is most likely a new law violation. In these cases, the court previously decided to revoke, extend, or release the defendant from probation without knowing about or addressing the alleged violation. The policy of the Commission is that only the Sentencing Revocation Report is completed in such circumstances, and the Probation Violation Guidelines are not completed. The preparer checks the “Procedural” box, and no recommendation is calculated. There were 75 such cases identified in FY2024. Of those, 28 cases did not result in an active period of incarceration. The median sentence imposed for those sentenced to incarceration was six months.

PRETRIAL INCARCERATION PENDING A PROBATION VIOLATION HEARING FY2024

Unrelated to Probation Violation Guidelines is the amount of time a probationer is incarcerated pending a probation violation hearing. The revised Code limits the amount of time a probationer may serve for a first or second technical violation. However, the Code does not modify the mechanisms used to establish hearing dates. Currently, a *capias* or a PB-15 (issued by the Probation Officer) often requires the probationer to spend some time incarcerated, even for a technical violation, before a judge can decide on how to proceed with the alleged violation. If possible, judges are often issuing or replacing a *capias* or PB-15 warrant with a show cause. Procedures and availability of a judge to hear a case vary across the Commonwealth.

Figure 31 identifies that most probationers (57%) are not serving some pretrial incarceration time prior to having their probation supervision revoked. One must note that pretrial confinement time may be associated with a different offense in a different jurisdiction or state and not the probation violation. The function of the Sentencing Revocation Report is to determine if the defendant was at liberty prior to their violation hearing. It was not designed and should not be used for calculation of jail credit. Also, Figure 31 does not take into consideration if the final sentence for the violation was time served, jail, prison, a return to probation, or a release from probation supervision. When a probationer serves time prior to the judge's decision to revoke, the amount of pretrial time served is related to the type of worksheet completed. Violators without new convictions are serving less time than probationers who are before the court for new law violations. As addressed earlier, special conditions include a variety of behavior that may lead to revocations. If the new law violation is for a misdemeanor or lesser offense, the median pretrial time served is 52 days, and the median pretrial time is about 137 days for a new felony conviction (Figure 31).

Figure 31

Pretrial Incarceration Pending a Probation Violation Hearing, FY2024

Type of Revocation	Confined Prior to Sentencing Identified	Not Confined Prior to Sentencing	Median Pretrial Confinement (Days)	Total Number of Cases	Number Probationers Confined*
N/A or Missing	51.6%	48.4%		31	
Technical Violation - First	46.2%	53.8%		26	
Technical Violation - Second	57.1%	42.9%		14	
Technical Violation Possess Firearm/Abscond - First	52.2%	47.8%		23	
Technical Violation Possess Firearm/Abscond - Second	38.5%	61.5%		13	
Technical Violation - Third	54.8%	45.2%		31	
Special Condition Violations	52.6%	47.4%		38	
New Misdemeanor Conviction	45.9%	54.1%	52	2,262	1,037
New Felony Conviction	44.4%	55.6%	137	2,931	1,300
No New Law Violation	41.8%	58.2%	28	5,945	2,482
Overall	43.4%	56.6%	43	11,314	4,909

* This chart includes all Sentencing Revocation Reports received. Of the reports received, 3,073 cases were missing information need for the calculation of pretrial confinement

COURT OF APPEALS CASES AS OF NOVEMBER 1, 2023, RELATED TO § 19.2-306.1

Below is a QR code that is connected to the Court of Appeals decisions. The decisions have begun to standardize what conduct is defined by § 19.2-306.1 as technical and limits the amount of time a judge can impose for a first or second violation. Generally, it appears from the decisions that the conduct presented to the court from the officer's Major Violation Report determines if the violation is a technical violation. The condition cited by the probation officer, or the condition cited in a court order, does not appear to be a determining factor. The Commission will continue to update the list of opinions on the VCSC mobile website.



VIRGINIA'S PRETRIAL DATA PROJECT



INTRODUCTION

Virginia's Pretrial Data Project was established in 2018 under the direction of the Virginia State Crime Commission as part of the Crime Commission's broader study of the pretrial system in the Commonwealth.¹ The purpose of the Project was to address the significant lack of data available to answer key questions regarding the pretrial process in Virginia. The Project was an unprecedented, collaborative effort among numerous state and local agencies representing all three branches of government. The Crime Commission's study focused on a cohort of individuals charged with a criminal offense during a one-month period (October 2017). The work was well received by lawmakers, and the 2021 General Assembly (Special Session I) passed legislation (House Bill 2110 and Senate Bill 1391) directing the Virginia Criminal Sentencing Commission to continue this work on an annual basis. Virginia's work in the area of pretrial data collection has begun to receive national attention.

This year, the Sentencing Commission examined individuals with pretrial contact events during Calendar Year (CY) 2021 and CY2022. A contact event is the point at which an individual comes into contact with the criminal justice system and he or she is charged with a criminal offense, thus beginning the pretrial process. As in previous years, for individuals with more than one contact event during the calendar year, only the first event was selected; however, the defendant's first contact event in a calendar year was excluded if it was identified as a pretrial outcome for an event that occurred during the previous calendar year. Individuals were tracked for a minimum of 15 months, until the disposition of the case or the end of the follow-up period, whichever occurred first. The Sentencing Commission adhered to the previously-established data collection methods. Data for the Project was obtained from eight different data systems. Compiling the data into a unified dataset requires numerous iterations of matching, merging and data cleaning to ensure accuracy when linking information from the respective data systems to each defendant in the cohort. More than 500 data elements were captured for each defendant, including demographics, charging details, criminal history records, pretrial release status, bond type and amount, court appearance by the defendant, new criminal arrest during the pretrial period, and final dispositions. The Commission captured additional prior record measures this year based on input from stakeholders.

¹ See Virginia State Crime Commission. (2021). Virginia Pretrial Data Project: Final Report.

The Sentencing Commission's data analysis, presented in this report, focuses on adult defendants whose contact event included a charge for a new criminal offense punishable by incarceration where a bail determination was made by a judicial officer (i.e., a magistrate or judge). Other defendants, such as those released on a summons, were not analyzed for this report. This report presents various descriptive findings for the selected defendants, their key characteristics, how they proceeded through the pretrial system, and outcomes. This report also compares a number of measures across multiple years of data now available. When examining pretrial outcomes, it is important to consider what factors or combination of factors may be associated with success or failure while on pretrial release. Empirically-based risk assessment tools are commonly used to estimate the likelihood of success or failure in the community during the pretrial period. For the purposes of the Project, the Public Safety Assessment (PSA), a pretrial risk assessment tool developed by Arnold Ventures, is utilized. Using the PSA allows the Commission to calculate risk scores for all defendants in the cohort based on available automated data.

To date, the Sentencing Commission's work has been limited to using in-state criminal history records. This limitation affects the measurement of prior record, the estimation of risk based on the PSA, and outcome measures such as new criminal arrest during the pretrial period. Out-of-state criminal history records can only be obtained from the Federal Bureau of Investigation (FBI). The Commission previously submitted the required applications and all related documents to the FBI and, after lengthy delays, the FBI has finally approved the Commission's request. The Commission is working with the FBI to standardize data exchange procedures. As this process is not yet complete, out-of-state records could not be included in this year's report. The Commission expects that out-of-state criminal history records will be available next year and will greatly enhance the Pretrial Data Project.

This year, the Sentencing Commission conducted a special study to examine the effects of recent changes in the bail process in Virginia. In 2021, the General Assembly passed legislation to abolish the presumptive denial of bail for defendants charged with certain offenses or who otherwise meet specified criteria (Senate Bill 1266, 2021 General Assembly, Special Session I). The Commission analyzed the impact of this policy change on various facets of Virginia's pretrial system, including pretrial release, release on secured bond, failure to appear, and new criminal arrest during the pretrial period.

Virginia's Pretrial Data Project continues to serve as a valuable resource for policy makers, practitioners, and academics. Findings from the Commission's ongoing analyses as well as other researchers may be used to inform policy and practice and provide a platform for discussion of pretrial matters in the Commonwealth today and in the years to come.

KEY FINDINGS

Presented below are key descriptive findings from the Commission's analysis of CY2020-CY2022 pretrial data. The findings are generally consistent from year to year; however, interesting trends have emerged. These are noted below.

- In Virginia, the vast majority of defendants are ultimately released from custody during the pretrial period. Approximately one in ten defendants are detained throughout the pretrial period. The overall pretrial release rate increased from 86.8% in CY2018 to 89.5% in CY2020, when the COVID pandemic began. The overall pretrial release rate has since declined to 88.3% in CY2022. The overall release rate remains higher than CY2018-CY2019 levels.
- Over half of defendants each year were released on a personal recognizance or unsecured bond. The percentage of defendants released on personal recognizance or unsecured bond increased from 57.5% in CY2020 to 59.2% in CY2022.
- Overall, secured bond amounts at the time of release were consistent from CY2020 to CY2022. Secured bond amounts generally did not vary widely across sex, race, age, or indigency status, or year of release.
- Approximately 45% to 48% of defendants were charged with a felony offense, while 51% to 55% were charged with a misdemeanor or special class offense as the most serious offense in the contact event. Throughout CY2020-CY2022, the most common felony charge was a drug offense. Since CY2020, assault has been the most common misdemeanor charge.
- The pretrial release rate for defendants charged with felony offenses is lower than the release rate for those charged with misdemeanors. During CY2021 and CY2022, between 79% and 81% of individuals facing felony charges were released pretrial. Among those charged with felonies, individuals with felony charges for drug, assault, burglary, kidnapping or other crimes against a person were more likely to be detained throughout the pretrial period.
- When charged with a felony or violent offense, females were more likely than males to be released. Similarly, when charged with a felony or violent offense, Whites were released more often than Blacks. Non-indigent defendants charged with a felony or violent offense were much more likely to be released than indigent defendants charged with the same type of offense. It is important to note that many factors, including prior record, affect pretrial release rates.

- Of released defendants, between 16.1% and 17.1% each year were ordered to receive supervision from a Pretrial Services Agency. A larger percentage of defendants placed under pretrial supervision requirements received a secured bond compared to those who were released and not placed under pretrial supervision.
- Across each year examined, a large majority of released defendants were not charged with failure to appear at court proceedings for the offense(s) in the contact event. The failure-to-appear rate decreased from 16.6% in CY2021 to 15.7% in CY2022; however, the rate remains higher than in prior years (12.4% and 12.6% in CY2018 and CY2019, respectively).
- Similarly, the majority of released defendants were not arrested during the pretrial period for an in-state offense punishable by incarceration. The new-arrest rate decreased from a high of 23.5% in CY2020 to 20.6% in CY2022. The CY2022 new-arrest rate is lower than the rate observed during the pre-pandemic period (CY2018-CY2019).
- During CY2020-CY2022, approximately 52% of defendants were convicted of at least one offense in the contact event (original or reduced charge). The conviction rate has been consistent since CY2020.
- Public Safety Assessment (PSA) scores for both failure-to-appear (FTA) and new criminal arrest (NCA) were quite similar across the CY2020-CY2022 cohort groups. For both FTA and NCA measures, the largest share of defendants were classified as low risk, having a score of 1 or 2.
- Each year, defendants with higher PSA scores were less likely to be released than those with lower scores. A larger percentage of defendants classified as high risk (PSA scores of 5 or 6) were released in CY2020 than in previous years; this percentage has since declined but has not returned to pre-pandemic levels (CY2018).
- The percentage of released defendants charged with failure to appear or who were arrested for a new in-state offense punishable by incarceration during the pretrial period increased as the defendants' PSA scores increased, suggesting that the PSA may be a useful tool in pretrial release decision making.
- While overall rates for failure to appear and new in-state arrest have decreased since CY2020, the failure to appear rate for individuals classified as high risk (PSA FTA scores of 5 or 6) has increased markedly.

- Results of a sophisticated empirical study conducted by the Commission indicate that the elimination of presumptive denial of bail in 2021 increased pretrial release among defendants who would have been subject to the provision (had it still been in effect). This finding is highly statistically significant. Results also suggest that the likelihood of failure to appear and new criminal arrest may have increased among affected defendants after the policy change; however, such estimations are only marginally significant and the magnitude of the estimated effect is rather small. Results of the study and two potential shortcomings (the exclusion of defendants for whom the applicability of presumptive denial of bail could not be determined with certainty and the inability to include out-of-state criminal records) are discussed in detail in a chapter of the full report.

The full report, entitled Virginia Pretrial Data Project: Findings from the 2021 and 2022 Cohorts, can be found on the Commission's website at <http://www.vcsc.virginia.gov/pretrialdatapoint.html> .

RECOMMENDATIONS

4

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, Guidelines 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 concurrence 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 also 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 five recommendations this year. Each recommendation is described in detail on the pages that follow.

RECOMMENDATION ONE

Add Resist Arrest/Obstruct Justice by Threats or Force (§ 18.2-460(C)) to the Miscellaneous/Person and Property Guidelines.

ISSUE

Section 18.2-460 of the *Code of Virginia* addresses felony and misdemeanor offenses committed by individuals who obstruct justice or resist arrest. Subsection C of this statute states that it is unlawful for an individual to obstruct justice by threats of bodily harm or force or by intimidating or impeding the judiciary, court personnel, or witnesses. It also states that it is unlawful to obstruct or impede the administration of justice in cases pertaining to a violation of, or conspiracy to violate, certain drug, gang, and violent offenses. This offense is a Class 5 felony with a statutory penalty range of one to ten years, and it is not currently covered by Virginia's Sentencing Guidelines.

Commission staff recommended analysis of the section of the code pertaining to threats of bodily harm, force, and intimidation to determine if it could be added to the Sentencing Guidelines. Based on analysis of Circuit Court Case Management System (CMS) data from fiscal year (FY) 2018 through FY2023, the Commission has developed a proposal to add this as a primary offense on the Miscellaneous/Person and Property Guidelines.

DISCUSSION

Figure 32 presents the distribution of actual sentencing dispositions for 124 sentencing events from the FY2018-FY2023 CMS data where the primary offense was a felony under § 18.2-460(C). It shows that 45.2% of the cases were sentenced to a relatively short term of incarceration lasting up to six months (median sentence of 3 months). Another 32.3% of cases did not receive an active term of incarceration to serve. Only 22.6% of the cases were sentenced to a term of incarceration of more than six months (median sentence of one year), which would correspond to a prison recommendation on the Sentencing Guidelines.

Figure 32

Resisting Arrest by Threats of Bodily Harm or Force (§ 18.2-460(C))

FY2018-FY2023

N=124

Disposition	Percent	Median Sentences
No incarceration	32.3%	n/a
Incarceration up to 6 months	45.2%	3 Months
Incarceration More than 6 months	22.6%	12 Months

A unique factor of the analyzed cases was that 58% were amended from an Assault on Law Enforcement (§ 18.2-57(C)), a Class 6 felony that carries a six-month mandatory minimum sentence; the analyzed offense is a Class 5 felony with no mandatory minimum. Given that an underlying assault or a threat of bodily harm likely indicates some type of injury occurred, Commission staff read the criminal complaints, case details, and other facts from each of the 124 cases to determine the level of injury, if any, to assign to each case and subsequently score on the Guidelines. Commission staff also researched if the defendants were legally restrained at the time of the offense using court records and the Online Case Management System.

After this additional data collection, the next step was to score these cases on Section A of the Miscellaneous/Person and Property worksheets and analyze the proportion of cases that would go to either Section B or Section C. A total score of eight or fewer points on the Section A worksheet means that the defendant will be scored on the Section B worksheet to determine if they will be recommended for either probation/no incarceration or incarceration up to six months. A total score of nine or more points on Section A means that the defendant will be scored on the Section C worksheet to determine the appropriate prison length recommendation.

On Section A of the Miscellaneous/Person and Property Guidelines, defendants convicted of felony obstruction of justice as their primary offense will receive one point for one count on the Primary Offense factor (Figure 33). Using the corresponding scores from the far right-hand box for Victim Injury, these defendants will receive one point if the victim suffered from threatened, emotional, physical, or serious physical injury, and two points if the victim had a life threatening injury. Defendants will receive one point if they were under any type of legal restraint at the time of the offense, using the corresponding score from the left-hand box for that factor. Analysis showed that, with these scores, the proportion of cases recommended to Section C will be close to the actual proportion of cases receiving a prison disposition.

Figure 33

Proposed Miscellaneous/Person and Property Section A Worksheet

Offender Name: _____

◆ Primary Offense

A. Burn unoccupied dwelling/church (1 count)	6
B. Burn occupied dwelling/church (1 count)	6
C. Burning of personal property, standing grain, etc., value \$500 or more	
1 count	2
2 counts	6
D. Threatening to bomb, burn or explode (1 count)	1
E. Threat by letter, communication or electronic message (1 count)	3
F. Child neglect/abuse, serious injury	
1 count	3
2 counts	7
G. Gross, reckless care of child (1 count).....	1
H. Cruelty and injury to child (1 count)	2
I. Maliciously shoot, throw missile at train, car, etc. (1 count).....	3
J. Unlawfully shoot, throw missile at train, car, etc. (1 count)	2
K. Damage/destroy any property or monument \$1,000 or more (1 count).....	2
L. Violation of protective order (violence) 3rd or subsequent w/in 20 years (1 count)	2
M. Resisting arrest, obstructing justice by threats bodily harm or force (1 count)	1

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

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

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

Years: Less than 1	0
(12 months = 1 year) 1 - 7	1
8 - 18	2
19 - 28	3
29 - 38	4
39 or more	5

◆ Additional Offenses in Current Event Requiring Mandatory Minimum (6 mos or more) If YES, add 8 →

◆ Type of Additional Offense

Primary offense: J: Unlawfully shoot, throw missile at car, etc. _____ Points	Primary offense: All other offenses _____
Any Additional Offense is a Person Crime (misdemeanor or felony)..... 5	Do Not Score

◆ Victim Injury

Primary offense: F,G, or H: _____ Points	Primary offense: I or J: _____ Points	Primary offense: All other offenses _____ Points
Threatened or emotional 2	Threatened or emotional 1	Threatened or emotional 1
Physical or serious physical ... 2	Physical or serious physical ... 2	Physical or serious physical 1
Life threatening 5	Life threatening 2	Life threatening 2

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

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

◆ Prior Vandalism Convictions/Adjudications

Primary offense: K: Damage/Destroy property _____ Points	Primary offense: All other offenses _____
Misdemeanor vandalism..... 1	Do Not Score
Felony vandalism..... 2	
Both felony and misdemeanor vandalism 3	

◆ Prior Incarcerations/Commitments → If YES, add 4 →

◆ Legally Restrained at Time of Offense

Primary offense: K, L or M: Damage property, viol. of protect order or resist _____ Points	Primary offense: All other offenses _____ Points
Any legal restraint..... 1	None 0
	Other than post-incarceration supervision..... 2
	Post-incarceration supervision 5

Score

0 |

0 |

0 |

0 |

0 |

0 |

0 |

0 |

0 |

0 |

0 |

Total Score →

If total is 8 or less, go to Section B. If total is 9 or more, go to Section C.

New Offense Added

Revised Factor

Revised Factor

Section B of the Sentencing Guidelines determines if a defendant will be recommended for either probation/no incarceration or incarceration up to six months. On Section B of the Miscellaneous/Person and Property worksheets, a total score of nine or less means the defendant will be recommended for probation/no incarceration, and a score of ten or more means the defendant will be recommended for incarceration from one day to six months. Defendants convicted of felony obstruction of justice as their primary offense will receive seven points for one count on the Primary Offense factor on the Miscellaneous/Person and Property Section B worksheet (Figure 34). Under the factor Primary Offense Remaining Counts, these defendants will be scored under the right-hand box using the sum of the statutory maximums of the remaining counts of the primary offense. Using the corresponding scores from the far left-hand box for Victim Injury, these defendants will receive nine points if the victim suffered from threatened, emotional, physical, or serious physical injury, and ten points if the victim had a life threatening injury. Lastly, if these defendants have ever been sentenced to a term of incarceration or were committed as a juvenile, they will receive an additional one point under the Prior Incarcerations/Commitments factor. Analysis showed that, with these scores, the proportion of cases recommended for probation/no incarceration or incarceration up to six months will be close to the actual proportion of cases receiving these dispositions.

Figure 34

Proposed Miscellaneous/Person and Property Section B Worksheet

◆ Primary Offense

A. Burn unoccupied dwelling/church (1 count).....	6
B. Burn occupied dwelling/church (1 count).....	7
C. Burning of personal property, standing grain, etc., value \$500 or more (1 count).....	6
D. Threatening to bomb, burn or explode (1 count).....	6
E. Threat by letter, communication or electronic message (1 count).....	7
F. Child neglect/abuse, serious injury (1 count).....	3
G. Gross, reckless care of child (1 count).....	2
H. Cruelty and injury to child (1 count).....	2
I. Maliciously shoot, throw missile at train, car, etc. (1 count).....	7
J. Unlawfully shoot, throw missile at train, car, etc. (1 count).....	7
K. Damage/destroy any property or monument \$1,000 or more (1 count).....	8
L. Violation of protective order (violence) 3rd or subsequent w/in 20 years (1 count).....	6
M. Resisting arrest, obstructing justice by threats bodily harm or force (1 count).....	7

Score
[] []

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

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

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

0 []

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

Years: Less than 1	0
(12 months = 1 year) 1 - 9	2
10 - 19	3
20 - 29	4
30 - 39	5
40 or more	6

0 []

◆ Victim Injury

Primary offense: F, G, H or M:	Primary offense: I or J:	Primary offense: All other offenses
Threatened or emotional 9	Threatened or emotional 2	Threatened or emotional 2
Physical or serious physical 9	Physical or serious physical ... 3	Physical or serious physical 2
Life threatening 1	Life threatening 4	Life threatening 3

[] []

◆ Weapon Used

Primary offense: J. Unlawfully shoot, throw missile at car, etc.	Primary offense: All other offenses
Other than a firearm 1	Do Not Score
Firearm 3	

0 [] []

◆ Prior Incarcerations/Commitments

Primary offense: I, J, K or M:	Primary offense: All other offenses
Prior Incarceration 1	Do Not Score

0 [] []

◆ Prior Convictions/Adjudications VCC Prefix

Primary offense: J. Unlawfully shoot, throw missile at car, etc.	Primary offense: L: Violation of Protective Order
Any prior conviction with the "VAN" prefix 2	Any prior conviction with the "PRT" prefix 3

0 [] []

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

Total Score _____

See Miscellaneous/Person & Property Section B Recommendation Table to convert score to guidelines sentence.

[] []

Miscellaneous/Person & Property/Section B

New Offense Added

Revised Factor

Revised Factor

As previously mentioned, a total score of nine or more points on the Miscellaneous/ Person and Property Section A worksheet means that the defendant will then be scored on the Section C worksheet to determine the sentence length recommendation for a term of imprisonment. Primary Offense points on Section C are assigned based on the classification of a defendant's prior record. The Commission's proposal recommends that individuals convicted of felony obstruction of justice as their primary offense will receive five points for one count of the Primary Offense factor if the defendant's prior record is classified as Other, ten points if they are a Category II offender, or 20 points if they are a Category I offender (Figure 35). If the defendants have any convictions for additional offenses (any offense other than the primary offense at sentencing) they will be scored using the right-hand box for the Additional Offenses factor, where points will be assigned based on the statutory maximums of the additional offenses and then totaled.

Analysis did not indicate that defendants received any sentence enhancement for an additional conviction of a certain type along with the primary offense conviction, so no modifications were made for the Type of Additional Offense factor on Section C. Using the corresponding scores from the far right-hand box for Victim Injury, defendants will receive two points if the victim suffered from threatened or emotional injury, four points if the victim suffered physical or serious physical injury, and five points if the victim suffered from life threatening injury. For the factor Felony Convictions/Adjudications Against Person, analysis indicated that the sentences for defendants convicted of felony obstruction as the primary offense differed from other offenses as it related to prior convictions for crimes against a person. Therefore, a new scoring category was created solely for these defendants, where they will receive zero points for one prior person crime, two points for two prior person crimes, three points for three prior person crimes, four points for four prior person crimes, and five points for five or more prior person crimes. Lastly, if the defendant was under any type of legal restraint at the time of the offense, they will receive an additional two points, using the right-hand box for this factor. Analysis showed that, with these scores, the sentencing patterns would be very similar to the actual sentencing patterns for this group of defendants.

Figure 35

Proposed Miscellaneous/Person and Property Section C Worksheet

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

◆ Primary Offense

A. Burn unoccupied dwelling/church (1 count)	68	34	17
B. Burn occupied dwelling/church			
Completed: 1 count	108	54	27
2 counts	200	100	50
Attempted or conspired: 1 count	(68)	(34)	(17)
2 counts	(72)	(36)	(18)
C. Burning of personal property, standing grain, etc., value \$500 or more (1 count)	32	16	8
D. Threatening to burn, bomb or explode (1 count)	32	16	8
E. Threat by letter, communication or electronic message (1 count)	40	20	10
F. Child neglect/abuse, serious injury (1 count)	32	16	9
G. Gross, reckless care of child (1 count)	28	14	7
H. Cruelty and injury to child (1 count)	28	14	7
I. Maliciously shoot, throw missile at train, car, etc. (1 count)	40	20	10
J. Unlawfully shoot, throw missile at train, car, etc. (1 count)	40	20	10
K. Damage/destroy any property or monument \$1,000 or more (1 count)	32	16	8
L. Violation of protective order (violence) 3rd or subsequent w/in 20 years (1 count)	40	20	10
M. Resisting arrest, obstructing justice by threats bodily harm or force	20	10	5

Score
 ▼

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

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

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

Primary offense:
B: Burn occupied dwelling/church

Years	Points
Less than 5	0
5, 10, 15	3
20	6
30	9
40, 50, Life	12

Primary offense:
All other offenses

Years	Points
Less than 5	0
5, 10, 15	1
20	2
30	3
40, 50, Life	5

◆ Type of Additional Offense

Primary offense:
B: Burn Occupied Dwelling/Church

Additional offense with VCC Prefix "MUR"	Points
.....	133

Primary offense:
All other offenses

Do Not Score

◆ Firearm Used or Brandished If YES, add 2

◆ Victim Injury

Primary offense:
G, H, I, J or L:

	Points
Threatened or emotional	6
Physical or serious physical	7
Life threatening	10

Primary offense:
F: Child Neglect/Abuse

	Points
Threatened or emotional	6
Physical or serious physical	12
Life threatening	13

Primary offense: All other offenses
A, B, C, D, E, K or M:

	Points
Threatened or emotional	2
Physical or serious physical	4
Life threatening	5

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

Maximum Penalty: Less than 20 (years)	0	1
20, 30, 40, 50, Life	1	

◆ Prior Felony Convictions/Adjudications Against Person

Primary offense:
B: Burn occupied dwelling/church

Number of Counts	Points
1	3
2	4
3	6
4 or more	8

Primary offense:
M: Resist arrest

Number of Counts	Points
1	0
2	2
3	3
4	4
5 or more	5

Primary offense:
All other offenses

Number of Counts	Points
1	1
2	2
3	3
4	4
5 or more	5

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

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

◆ Legally Restrained at Time of Offense

Primary offense:
F or L: Child neglect/abuse or violation of protective order

	Points
None	0
Other than post-incarceration supervision	6
Post-incarceration supervision	9

Primary offense:
All other offenses

Any legal restraint
 2 |

Total Score

See Miscellaneous Section C Recommendation Table for guidelines sentence range.

New Offense Added

Revised Factor

Revised Factor

Based on these scoring modifications, Figure 36 compares the proposed sentencing recommendations for defendants sentenced for a primary offense under § 18.2-460(C) to the actual sentencing dispositions observed for these cases. The proposed Guidelines are well-aligned with the actual sentencing dispositions. For example, the proposed Guidelines recommend that 33.1% of the defendants receive a recommendation of probation/no incarceration, while this was the actual disposition in 32.3% of the cases. The proposed Guidelines also recommend that 46.8% of the defendants receive a sentencing recommendation of incarceration from one day to six months, while this was the actual disposition in 45.2% of the cases. Only 20.1% of defendants would be recommended for incarceration of more than six months under the proposal, whereas this was the actual disposition in 22.6% of the cases.

Figure 37 compares the projected median sentence (12 months) for defendants recommended for an incarceration sanction of more than six months to the actual median sentence (12 months) for defendants who received that disposition. It is important to note, however, that not all defendants who historically received a certain sentence will be recommended for that exact sentence under the proposed Guidelines; this is because of the inconsistencies in past sentencing practices for these offenses. The Guidelines are designed to bring about greater consistency in sentencing decisions.

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 36

Actual versus Proposed Recommended Dispositions for Resisting Arrest by Threats of Bodily Harm or Force (§ 18.2-460(C)) FY2018-FY2023

	Probation/ No Incarceration	Incarceration 1 day - 6 mos.	Incarceration > 6 mos. (Range includes prison)
Actual Practice	32.3%	45.2%	22.6%
Recommended under Proposed Guidelines	33.1%	46.8%	20.1%

Figure 37

Actual versus Proposed Recommended Dispositions for Resisting Arrest by Threats of Bodily Harm or Force (§ 18.2-460(C)) FY2018-FY2023



RECOMMENDATION TWO

Add Prisoner Possess, Sell, or Secrete an Unlawful Chemical (§ 53.1-203(5)) to the Miscellaneous/Other Guidelines

ISSUE

Section 53.1-203 of the *Code of Virginia* addresses felony offenses committed by prisoners in a state, local, or community correctional facility and the accompanying penalties. Subsection 6 of this section states that it is unlawful for a prisoner to procure, sell, secrete or have in his possession a controlled substance classified in Schedule III of the Drug Control Act (§ 54.1-3400 et seq.) or marijuana. This offense is a Class 5 felony with a statutory penalty range of one to ten years, and is covered by Virginia's Sentencing Guidelines. However, the Guidelines currently do not cover the Class 6 felony defined in § 53.1-203(5) regarding a prisoner procuring, selling, secreting, or possessing any chemical compound which he has not lawfully received. Commission staff recommended analysis of this crime to determine if it could be added to the Sentencing Guidelines. Based on analysis of Circuit Court Case Management System (CMS) data from fiscal year (FY) 2019 through FY2023, the Commission has developed a proposal to add this as a primary offense on the Miscellaneous/Other Guidelines.

DISCUSSION

Figure 38 presents the distribution of actual sentencing dispositions for 256 sentencing events from the FY2019-FY2023 CMS data where the primary offense was a felony under § 53.1-203(5). It shows that 43.8% of cases were sentenced to term of incarceration lasting up to six months (median sentence of 3.3 months). Another 34.7% of cases did not receive an active term of incarceration. Only 21.5% of the cases were sentenced to a term of incarceration of more than six months (median sentence of one year), which would correspond to a prison recommendation on the Sentencing Guidelines.

Figure 38

**Prisoner Possess, Sell, Secrete, etc. Unlawful chemical (§ 53.1-203(5))
FY2019-FY2023
N=256**

Disposition	Percent	Median Sentences
No Incarceration	34.7%	n/a
Incarceration up to 6 months	43.8%	3.3 Months
Incarceration more than 6 months	21.5%	1 Year

The initial approach taken was to score these cases on the *Miscellaneous/Other* worksheets similarly to cases with a primary offense of possession or sale of a Schedule III drug or marijuana by a prisoner (§ 53.1-203(6)). A total score of eight or fewer points on the Section A worksheet means that the offender will then be scored on the Section B worksheet to determine if they will be recommended for either probation/no incarceration or incarceration up to six months. A total score of more than eight points on Section A means that the offender will then be scored on the Section C worksheet to determine the appropriate prison length recommendation.

The cases tended to follow a unique pattern such that several existing primary offense factors will rarely be scored – i.e., only one count of the primary offense, no victim injury, and no current convictions requiring a mandatory minimum term of at least six months. It was also important to understand that prisoners in possession of an unlawful chemical would be automatically scored for the *Prior Incarcerations/Commitments and Legal Restraint* factors because of their incarceration status. Analysis showed that scoring the cases on Section A with this initial approach resulted in an excessive number of cases being recommended to Section C (prison recommendation). Therefore, adjustments to the Section A scoring of these cases were necessary to provide sentencing recommendations closer to the actual sentencing dispositions observed in Figure 43. After testing numerous scenarios, the Commission incorporated these adjustments into the following proposal.

On Section A, offenders convicted of possession of an unlawful chemical as their primary offense will receive one point for one count on the *Primary Offense* factor (Figure 39). In addition, these offenders will be scored the same as *Sex Offender Registry* violators on the *Prior Convictions/Adjudications* factor, using the maximum penalty ranges and corresponding scores from the left-hand box for that factor.

These offenders will be scored for *Prior Incarcerations/Commitments* on Section A, receiving four points for this factor. They will be scored for *Legal Restraint* the same as *Sex Offender Registry* violators (using the left-hand box) and will receive one point for this factor. In addition, offenders convicted of possession of an unlawful chemical as their primary offense will pick up an additional point on Section A if they have two or more prior felony drug convictions. Analysis showed that, with these modifications, the proportion of cases recommended to Section C will be closer to the actual proportion of cases receiving a prison disposition.

Figure 39

Proposed Miscellaneous/Other Section A Worksheet

◆ Primary Offense

A. Perjury, falsely swear an oath (1 count).....	1
B. Nonviolent sex offender, fail to register, etc., 2nd/subsequent (1 count)	2
C. Violent sex offender, fail to register or provide false information (1 count)	2
D. Violent sex offender, fail to register, etc., 2nd/subsequent (1 count)	2
E. Failure to appear in court for felony offense	
1 count.....	1
2 counts	4
F. Escape from correctional facility (1 count).....	7
G. Possession or sale of Schedule III drug or marijuana by prisoner (1 count)	3
H. Participation in offense by/for gang (1 count)	5
I. Participation in offense by/for gang with juvenile member (1 count).....	6
J. Provide wireless device to or possession of wireless device by prisoner (1 count).....	2
K. Delivery of narcotics, marijuana to prisoner (1 count)	2
L. Prisoner possess, secrete, etc., unlawful chemical (1 count)	1

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

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

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

Years: Less than 1.....	0
(12 months = 1 year) 1 - 7.....	1
8 - 18.....	2
19 - 28.....	3
29 - 38.....	4
39 or more.....	5

◆ Type of Additional or Prior Record Convictions/Adjudications

Primary offense: H or I: Gang Offense	Points	Primary offense: All other offenses	
Violent Additional or Prior Record Convictions/Adjudications.....	2	Do Not Score	

◆ Victim Injury

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

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

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

Primary offense: B, C, D, J or L: Sex offender registry violation, provide wireless device to or possession of wireless device by prisoner or prisoner possess chemical	Points	Primary offense: All other offenses	
Years	Points	Years	Points
Less than 6.....	0	Less than 2.....	0
6-64.....	1	2-38.....	1
65 or more.....	2	39 or more.....	2

◆ Type of Prior Record Convictions/Adjudications

Primary offense: K: Deliver Drugs to Prisoner	Points	Primary offense: L: Prisoner Possess, chemical	Points	Primary offense: All other offenses	
Prior Felony Drug Convictions/Adjudications	1	2 or more Prior Felony Drug Convictions/Adjudications	1	Do Not Score	

◆ Prior Incarcerations/Commitments If YES, add 4

◆ Legally Restrained at Time of Offense

Primary offense: B, C, D, J or L: Sex offender registry violation, provide wireless device to or possession of wireless device by prisoner or prisoner possess chemical	Points	Primary offense: All other offenses	
Any legal restraint.....	1	None.....	0
		Other than post-incarceration supervision.....	2
		Post-incarceration supervision	5

Total Score

If total is 8 or less, go to Section B. If total is 9 or more, go to Section C.

Score 0

New Offense Added

Score 0

Score 0

Score 0

Score 0

Score 0

Score 0

Score 0

Score 0

Score 0

Revised Factor

Revised Factor

Revised Factor

Section B of the Sentencing Guidelines determines if an offender will be recommended for either probation/no incarceration or incarceration up to six months. A total score of ten or more points on Section B means the offender will be recommended for incarceration from one day to six months. Once again, the initial approach taken with the Section B cases was to score them like offenders whose primary offense was possession or sale of a Schedule III drug or marijuana by a prisoner. However, modifications to the Section B worksheet were necessary to bring the Guidelines recommendations into line with actual judicial sentencing practices.

The Commission recommends that prisoners convicted of possession of an unlawful chemical as their primary offense receive seven points for one count on the Primary Offense factor on the Miscellaneous/Other Section B worksheet (Figure 40).

In addition, these offenders will again be scored for the Prior Incarcerations/Commitments factor on the Section B worksheet, receiving one point for this factor (using the left-hand box). The Commission also recommends a modification to the Type of Prior Convictions/Adjudications factor, to be scored only if the offender's primary offense is a felony violation of § 53.1-203(5). An offender will receive one point for this factor if they have one or more prior felony drug convictions. Furthermore, prisoners in possession of an unlawful chemical will score an automatic one point for Legal Restraint on Section B. With these modifications, the Commission's proposal will increase the probability of a no incarceration recommendation in Section B cases where the offender's primary offense is a felony violation of § 53.1-203(5) to increase concurrence with current sentencing practices.

Figure 40

Proposed Miscellaneous/Other Section B Worksheet

◆ Primary Offense _____

A. Perjury, falsely swear an oath (1 count).....	7
B. Nonviolent sex offender, fail to register, etc., 2nd/subsequent (1 count).....	7
C. Violent sex offender, fail to register or provide false information (1 count).....	8
D. Violent sex offender, fail to register, etc., 2nd/subsequent (1 count).....	9
E. Failure to appear in court for felony offense (1 count).....	10
F. Escape from correctional facility (1 count).....	10
G. Possession or sale of Schedule III drug or marijuana by prisoner (1 count).....	7
H. Participation in offense by/for gang (1 count).....	7
I. Participation in offense by/for gang with juvenile member (1 count).....	8
J. Provide wireless device to or possession of wireless device by prisoner (1 count).....	8
K. Delivery of narcotics, marijuana to prisoner (1 count).....	9
L. Prisoner possess, sell, secrete unlawful chemical compound (1 count).....	7

Score
▼

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

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

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

Years: Less than 1.....	0
(12 months = 1 year) 1 - 9.....	2
10 - 19.....	3
20 - 29.....	4
30 - 39.....	5
40 or more.....	6

◆ Type of Additional Offense _____

Primary offense: H or I: Gang Offense (§ 18.2-46.2) _____	Points
Additional Offense of Assault (Felony or Misdemeanor) 1	1

◆ Victim Injury _____

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

◆ Prior Incarcerations/Commitments _____

Primary offense: B, C, D J, or L: Sex offender registry violation, provide wireless device to, possession of device by prisoner or prisoner possess, sell, unlawful chemical If YES, Add 1	Primary offense: All other offenses _____
	Do Not Score

◆ Type of Prior Convictions/Adjudications _____

Score if Primary Offense B, C, or D: Sex Offender Registry Violations	
2 or more Prior Sex Offender Misdemeanor Registry Violations.....	1
1 or more Prior Sex Offender Felony Registry Violations.....	2
Score if Primary Offense: H or I: Gang Offense (§ 18.2-46.2)	
Prior Juvenile Felony Person Adjudication.....	1
Score if Primary Offense: J: Provide Wireless Device	
0 to 1 Prior Felony Conviction/ Adjudication against a Person.....	0
2 or more Prior Felony Convictions/Adjudications against a Person.....	1
Score if Primary Offense: K: Delivery of Narcotics, Marijuana to Prisoner	
1 or more Prior Felony Drug Convictions/Adjudications.....	2
Score if Primary Offense: L: Prisoner Possess, Secrete, Etc., Unlawful Chemical	
1 or more Prior Felony Drug Convictions/Adjudications.....	1

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

Total Score _____

See Miscellaneous/Other Section B Recommendation Table to convert score to guidelines sentence.

Revised Factor

As previously mentioned, a total score of nine or more points on the Section A worksheet means that the offender will then be scored on the Section C worksheet to determine the sentence length recommendation for a term of imprisonment. Primary Offense points on Section C are assigned based on the classification of an offender's prior record. The Commission's proposal recommends that prisoners convicted of possession of an unlawful chemical as their primary offense will receive eight points for one count of the Primary Offense factor if the offender's prior record is classified as Other, 16 points if they are a Category II offender, or 32 points if they are a Category I offender (Figure 41). In addition, these offenders will score an automatic two points for Legal Restraint on Section C. No other modifications to the Section C worksheet are necessary to ensure that the sentences recommended by the Guidelines accurately reflect historical sentencing practices for these crimes.

Figure 41
Proposed Miscellaneous/Other Section C Primary Offense Factor Worksheet

Primary Offense	Prior Record Classification		
	Category I	Category II	Other
A. Perjury, falsely swear an oath (1 count).....	12	6	3
B. Nonviolent sex offender, fail to register, etc., 2nd/subsequent (1 count)	8	4	2
C. Violent sex offender, fail to register or provide false info. (1 count)	8	4	2
D. Violent sex offender, fail to register, etc., 2nd/subsequent (1 count)	16	8	4
E. Failure to appear in court for felony offense (1 count)	32	16	8
F. Escape from correctional facility (1 count).....	40	20	10
G. Possession or sale of Schedule III drug or marijuana by prisoner (1 count)	32	16	8
H. Participation in offense by/for gang (1 count)	84	42	21
I. Participation in offense by/for gang with juvenile member (1 count).....	104	52	26
J. Provide wireless device to or possession of wireless device by prisoner (1 count).....	8	4	2
K. Delivery of narcotics, marijuana to prisoner (1 count)	36	18	9
L. Prisoner possess, sell, secrete unlawful chemical compound (1 count).....	32	16	8

Score

New Offense Added

Based on these scoring modifications, Figure 42 compares the proposed sentencing recommendations for offenders sentenced for a primary offense under § 53.1-203(5) to the actual sentencing dispositions observed for these cases. The proposed Guidelines appear to be well-aligned with the actual sentencing dispositions. For example, the proposed Guidelines recommend that 35.2% of the offenders receive a recommendation of probation/no incarceration, while this was the actual disposition in 34.7% of the cases. The proposed Guidelines also recommend that 44.1% of the offenders receive a sentencing recommendation of incarceration from one day to six months, while this was the actual disposition in 43.8% of the cases. Only 20.7% of offenders would be recommended for incarceration of more than six months under the proposal, whereas this was the actual disposition in 21.5% of the cases.

Figure 42
Actual versus Proposed Recommended Dispositions
for Prisoner Possess, Sell, Secrete, etc. Unlawful chemical (§ 53.1-203(5) FY2018-FY2023
N=124

	Probation/ No Incarceration	Incarceration 1 day - 6 mos.	Incarceration > 6 mos. (Range includes prison)
Actual Practice	34.7%	43.8%	21.5%
Recommended under Proposed Guidelines	35.2%	44.1%	20.7%

Figure 43 compares the projected median sentence (1.1 years) for offenders recommended for an incarceration sanction of more than six months to the actual median sentence (1 year) for offenders who received that actual disposition. The difference between the projected and actual median sentences is quite small. It is important to note, however, that not all of the offenders who historically received a certain sentence will be recommended for that exact sentence under the proposed Guidelines; this is because of the inconsistencies in past sentencing practices for these offenses. The Guidelines are designed to bring about more consistency in sentencing decisions.

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 43

**Actual versus Proposed Recommended Dispositions
for Prisoner Possess, Sell, Secrete, etc. Unlawful chemical (§ 53.1-203(5))**



RECOMMENDATION THREE

Add Unlawfully Shoot or Throw Missile at Train, Car, Etc., to the Sentencing Guidelines and modify the scores for maliciously shoot or throw missile at train, car, etc. (§ 18.2-154) on the Miscellaneous/Person and Property worksheets.

ISSUE

Section 18.2-154 of the Code of Virginia defines two felony offenses for shooting or throwing a missile at a train or vehicle. One, a Class 4 felony, is a malicious act and the other, a Class 6 felony, is an unlawful act without malicious intent. The Class 4 felony is currently covered by the Guidelines; the Class 6 is a non-Guidelines offense. Judges sentence or accept plea agreements that reflect sentences above the Guidelines in nearly a third of the cases for the Class 4 charge. Sentences including active time for the Class 6 charge have historically been similar, or, in some cases, higher, than the typical sentence for the Class 4 charge.

Based on analysis of Circuit Court Case Management System (CMS) data from fiscal year (FY) 2019 through FY2023, the Commission developed a proposal to add the Class 6 felony charge as a primary offense on the Miscellaneous/Person Property Guidelines. Additionally, the proposal will better reflect current sentencing patterns for the Class 4 charge by adjusting points and factors on the current worksheet.

DISCUSSION

Sentences for the Class 4 charge have historically exceeded the Guidelines recommendation at a high rate (Figure 44). The aggravation rate has been as high as 41.7% with the mitigation rate ranging from just 0% to 14%. If the departure rates are not balanced between aggravating and mitigating, the Commission conducts research to determine if the Guidelines can be modified to better reflect historical sentencing and balance departure rates. The proposed modifications better reflect current sentencing practices for the Class 4 charge.

Figure 44
Maliciously Shoot or Throw Missile at Train, Car, etc.
Concurrence by Year, FY2007 - FY2024

Fiscal Year	Concurrence	Mitigation	Aggravation	Cases
2007	61.3%	6.5%	32.3%	31
2008	70.8%	8.3%	20.8%	24
2009	71.0%	6.5%	22.6%	31
2010	61.9%	14.3%	23.8%	21
2011	58.3%	0.0%	41.7%	24
2012	76.5%	5.9%	17.6%	17
2013	82.4%	0.0%	17.6%	17
2014	66.7%	11.1%	22.2%	9
2015	64.5%	0.0%	35.5%	31
2016	71.4%	0.0%	28.6%	14
2017	72.2%	5.6%	22.2%	18
2018	70.8%	0.0%	29.2%	24
2019	61.1%	5.6%	33.3%	18
2020	64.3%	0.0%	35.7%	14
2021	76.0%	8.0%	16.0%	25
2022	70.8%	4.2%	25.0%	48
2023	67.4%	4.3%	28.3%	46
2024*	66.7%	0.0%	33.3%	21
Total	68.4%	4.4%	27.3%	433

*Data is not complete.

In FY2019-FY2023, nearly half of defendants convicted of the Class 4 charge received no incarceration or a probation-only sentence. However, when time was imposed, the sentences were similar to, or even higher than, the sentences for the Class 6 charge. (Figure 45). Based on a previous study of sentencing patterns for the Class 6 charge, the majority - about 60% of the unlawful acts - were initially charged under the Class 4 felony (Impact Data, Supreme Court of Virginia, Circuit Court Management System (CMS) FY2018-FY2023). Although the charges may have been reduced, the facts of the case did not change, and the length of sentences reflects this issue.

Figure 45

**Maliciously Shoot or Throw Missile at Train, Car, etc.
Class 4 Felony
FY2019-FY2023
N=128**

Disposition	Percent	Median Sentences
Probation/No Incarceration	17.2%	N/A
Incarceration up to 6 months	25.0%	3 Months
Incarceration of More than 6 months	57.8%	1.5 Years

**Unlawfully Shoot or Throw Missile at Train, Car, etc.
Class 6 Felony
FY2019-FY2023
N=47**

Disposition	Percent	Median Sentences
Probation/No Incarceration	48.9%	N/A
Incarceration up to 6 months	34.0%	3.5 Months
Incarceration of More than 6 months	17.0%	1.3 Years

Developing Guidelines for the Class 6 charge required that worksheets be developed in conjunction with the Class 4 charge. A significant requirement was that the proposed Guidelines reflect the current outcome distribution of no incarceration, 1 day to 6 months, and incarceration over 6 months. The proposed modifications do reflect the current distribution of sentences for both types of charges (Figure 46).

To achieve the correct distribution and better reflect current sentencing practices, the following changes are needed:

On Worksheet A, the primary offense score is increased to 3 points for the Class 4 charge, and the score for the Class 6 charge is set at 2 points. The proposed scoring is needed to address the aggravated sentencing pattern for the malicious acts and to reflect the historical sentencing pattern for the unlawful acts. Injury was a key factor in determining if a period of incarceration was imposed; as a result, any physical injury for both offenses is assigned 2 points. To get the correct proportion of defendants to Worksheet C, a new factor is added for the unlawful act - any additional offense classified as a person crime adds 5 points to Class 6 charge scoring.

Figure 46
Actual versus Proposed Recommended Dispositions
for Shoot or Throw Missile at Train, Car, etc. § 18.2-154

	Probation/ No Incarceration	Incarceration up to 6 months	Incarceration of more than 6 months (Range includes prison)
MALICIOUSLY			
Actual Practice	17.2%	25.0%	57.8%
Recommended under Proposed Guidelines	18.0%	25.7%	56.3%
UNLAWFULLY			
Actual Practice	48.9%	34.0%	17.0%
Recommended under Proposed Guidelines	49.0%	36.0%	15.0%

Figure 47

Proposed Miscellaneous/Person & Property Section A Worksheet

Offender Name: _____

◆ Primary Offense

A. Burn unoccupied dwelling/church (1 count).....	6
B. Burn occupied dwelling/church (1 count).....	6
C. Burning of personal property, standing grain, etc., value \$500 or more	
1 count.....	2
2 counts.....	6
D. Threatening to bomb, burn or explode (1 count).....	1
E. Threat by letter, communication or electronic message (1 count).....	3
F. Child neglect/abuse, serious injury	
1 count.....	3
2 counts.....	7
G. Gross, reckless care of child (1 count).....	1
H. Cruelty and injury to child (1 count).....	2
I. Maliciously shoot, throw missile at train, car, etc. (1 count).....	3
J. Unlawfully shoot, throw missile at train, car, etc. (1 count).....	2
K. Damage/destroy any property or monument \$1,000 or more (1 count).....	2
L. Violation of protective order (violence) 3rd or subsequent w/in 20 years (1 count).....	2
M. Resisting arrest, obstructing justice by threats bodily harm or force (1 count).....	1

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

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

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

Years: Less than 1.....	0
(12 months = 1 year) 1 - 7.....	1
8 - 18.....	2
19 - 28.....	3
29 - 38.....	4
39 or more.....	5

◆ Additional Offenses in Current Event Requiring Mandatory Minimum (6 mos or more) If YES, add 8 →

◆ Type of Additional Offense

Primary offense:
 J: Unlawfully shoot, throw missile at train, car, etc. Points
 Any Additional Offense is a Person Crime (misdemeanor or felony)..... 5

Primary offense:
 All other offenses
 Do Not Score

◆ Victim Injury

Primary offense:
 F, G, or H: Points
 Threatened or emotional 2
 Physical or serious physical 2
 Life threatening 5

Primary offense:
 I or J: Points
 Threatened or emotional 1
 Physical or serious physical 2
 Life threatening 2

Primary offense:
 All other offenses Points
 Threatened or emotional 1
 Physical or serious physical 1
 Life threatening 2

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

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

◆ Prior Vandalism Convictions/Adjudications

Primary offense:
 K: Damage/Destroy property Points
 Misdemeanor vandalism..... 1
 Felony vandalism..... 2
 Both felony and misdemeanor vandalism 3

Primary offense:
 All other offenses
 Do Not Score

◆ Prior Incarcerations/Commitments If YES, add 4 →

◆ Legally Restrained at Time of Offense

Primary offense:
 K, L or M: Damage property, viol. of protect order or resist Points
 Any legal restraint..... 1

Primary offense:
 All other offenses Points
 None 0
 Other than post-incarceration supervision..... 2
 Post-incarceration supervision 5

Total Score →

If total is 8 or less, go to Section B. If total is 9 or more, go to Section C.

Score Change
 New Offense Added
 Score
 New Factor Added
 Revised Factor Added

A main goal of Worksheet B is to recommend a historically correct distribution of sentences. Historically, a sentence of probation/no incarceration accounted for 48.9% of the sentences for the Class 6 charge act and 17.2% for the Class 4 charge. Because the sentences for those who do receive incarceration is similar, both offenses are assigned 7 points for the primary offense. Injury points are proposed to increase by one for both offenses - 3 points for physical injury and 4 points for any life-threatening injury. A new factor is added for the Class 6 charge when a weapon is used - if the weapon is a firearm, 3 points are assigned, and 1 point is assigned for any other weapon used. One point is assigned for both offenses if the defendant has a prior period of adult or juvenile incarceration. Finally, to specifically identify defendants who historically received a sentence between 1 day and 6 months, a new factor is added for the unlawful act - if the defendant had a prior conviction for a similar offense with a Virginia Crime Code prefix of VAN, then 2 points are assigned.

The sentencing patterns for both offenses on Worksheet C are nearly identical. To reflect this pattern, the scores for the primary offense on Worksheet C must be adjusted. The base score for both offenses is set at 10 points, and the statutory requirements are applied for Category I and Category II prior convictions as defined by § 17.1-805 (i.e., Category 1 is set to 40 points and Category II is set at 20 points). Injury is a significant factor in determining the length of a sentence for both offenses on Worksheet C – 6 points for threatened or emotional injury, 7 points for physical injury, and 10 points for life-threatening injury. No other changes are required.

The Guidelines are designed to bring about more consistency in sentencing decisions. Moving forward with the proposed changes for these two felonies will reflect current sentencing patterns. The proposal will aid attorneys in offering plea agreements and judges in sentencing defendants to terms that better reflect historical sentencing patterns for similarly-situated individuals.

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

Figure 48

Proposed Miscellaneous/Person & Property Section B Worksheet

Offender Name: _____

◆ **Primary Offense** _____

A. Burn unoccupied dwelling/church (1 count)	6
B. Burn occupied dwelling/church (1 count)	7
C. Burning of personal property, standing grain, etc., value \$500 or more (1 count)	6
D. Threatening to bomb, burn or explode (1 count)	6
E. Threat by letter, communication or electronic message (1 count)	7
F. Child neglect/abuse, serious injury (1 count)	3
G. Gross, reckless care of child (1 count)	2
H. Cruelty and injury to child (1 count)	2
I. Maliciously shoot, throw missile at train, car, etc. (1 count)	7
J. Unlawfully shoot, throw missile at train, car, etc. (1 count)	7
K. Damage/destroy any property or monument \$1,000 or more (1 count)	8
L. Violation of protective order (violence) 3rd or subsequent w/in 20 years (1 count)	6
M. Resisting arrest, obstructing justice by threats bodily harm or force (1 count)	7

Score ← **New Offense Added**

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

Primary offense: K: Damage/Destroy property \$1,000 or more	Primary offense: All other offenses		
Years	Points	Years	Points
5 - 9	1	5 - 9	2
10 - 19	2	10 - 19	3
20 - 29	3	20 - 29	4
30 - 39	4	30 - 39	5
40 or more	5	40 or more	6

0

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

Years:	Less than 1	0
(12 months = 1 year)	1 - 9	2
	10 - 19	3
	20 - 29	4
	30 - 39	5
	40 or more	6

0

◆ **Victim Injury**

Primary offense: F, G, H or M:	Primary offense: I or J:	Primary offense: All other offenses
Threatened or emotional 9	Threatened or emotional 2	Threatened or emotional 2
Physical or serious physical 9	Physical or serious physical 3	Physical or serious physical 2
Life threatening 1	Life threatening 4	Life threatening 3

Revised Factor

◆ **Weapon Used**

Primary offense: J. Unlawfully shoot, throw missile at car, etc.	Primary offense: All other offenses
Other than a firearm 1	Do Not Score
Firearm 3	

New Factor Added 0

◆ **Prior Incarcerations/Commitments**

Primary offense: I, J, K or M:	Primary offense: All other offenses
Prior Incarceration 1	Do Not Score

Revised Factor 0

◆ **Prior Convictions/Adjudications VCC Prefix**

Primary offense: J. Unlawfully shoot, throw missile at car, etc.	Primary offense: L: Violation of Protective Order
Any prior conviction with the "VAN" prefix 2	Any prior conviction with the "PRT" prefix 3

Revised Factor 0

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

Total Score

See Miscellaneous/Person & Property Section B Recommendation Table to convert score to guidelines sentence.
Miscellaneous/Person & Property/Section B

Figure 49

Proposed Miscellaneous/Person & Property Section C Worksheet

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

A. Burn unoccupied dwelling/church (1 count).....	68	34	17
B. Burn occupied dwelling/church			
Completed: 1 count.....	108	54	27
2 counts.....	200	100	50
Attempted or conspired: 1 count.....	(68)	(34)	(17)
2 counts.....	(72)	(36)	(18)
C. Burning of personal property, standing grain, etc., value \$500 or more (1 count).....	32	16	8
D. Threatening to burn, bomb or explode (1 count).....	32	16	8
E. Threat by letter, communication or electronic message (1 count).....	40	20	10
F. Child neglect/abuse, serious injury (1 count).....	32	16	9
G. Gross, reckless care of child (1 count).....	28	14	7
H. Cruelty and injury to child (1 count).....	28	14	7
I. Maliciously shoot, throw missile at train, car, etc. (1 count).....	40	20	10
J. Unlawfully shoot, throw missile at train, car, etc. (1 count).....	40	20	10
K. Damage/destroy any property or monument \$1,000 or more (1 count).....	32	16	8
L. Violation of protective order (violence) 3rd or subsequent w/in 20 years (1 count).....	40	20	10
M. Resisting arrest, obstructing justice by threats bodily harm or force.....	20	10	5

Score ▼

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

Maximum Penalty: 5, 10, 20, 30, 40.....1

(years) Life.....5

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

Primary offense: B: Burn <u>occupied</u> dwelling/church Years Points Less than 5.....0 5, 10, 15.....3 20.....6 30.....9 40, 50, Life.....12	Primary offense: All other offenses Years Points Less than 5.....0 5, 10, 15.....1 20.....2 30.....3 40, 50, Life.....5
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Type of Additional Offense

Primary offense: B: Burn Occupied Dwelling/Church Points

Additional offense with VCC Prefix "MUR".....133

Primary offense: All other offenses Do Not Score

Firearm Used or Brandished If YES, add 2 → 0 0

Victim Injury

Primary offense: G, H, I, J or L: Points Threatened or emotional.....6 Physical or serious physical...7 Life threatening.....10	Primary offense: F: Child Neglect/Abuse Points Threatened or emotional.....6 Physical or serious physical...12 Life threatening.....13	Primary offense: All other offenses A, B, C, D, E, K or M: Points Threatened or emotional.....2 Physical or serious physical...4 Life threatening.....5
--	---	--

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

Maximum Penalty: Less than 20.....0

(years) 20, 30, 40, 50, Life.....1

Prior Felony Convictions/Adjudications Against Person

Primary offense: B: Burn <u>occupied</u> dwelling/church Number of Counts Points 1.....3 2.....4 3.....6 4 or more.....8	Primary offense: M: Resist arrest Number of Counts Points 1.....0 2.....2 3.....3 4.....4 5 or more.....5	Primary offense: All other offenses Number of Counts Points 1.....1 2.....2 3.....3 4.....4 5 or more.....5
---	---	---

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

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

Legally Restrained at Time of Offense

Primary offense: F or L: Child neglect/abuse or violation of protective order Points

None.....0

Other than post-incarceration supervision.....6

Post-incarceration supervision.....9

Primary offense: All other offenses Points

Any legal restraint.....2

Total Score ▼

See Miscellaneous Section C Recommendation Table for guidelines sentence range.

RECOMMENDATION FOUR

Establish new Guidelines for Robbery (§ 18.2-58) based on sentencing practices under the revised penalty structure (effective July 1, 2021) and amend Guidelines for Carjacking (§ 18.2-58.1) to more closely reflect current sentencing practices.

ISSUE

Current Virginia Sentencing Guidelines do not cover robbery offenses defined in § 18.2-58. In 2021, the General Assembly adopted legislation to create four classes of robbery with different statutory penalties based on the circumstances of the offense (House Bill 1936, 2021 General Assembly). The new penalty structure became effective on July 1, 2021. Prior to this change, all robberies had a statutory penalty range of five years to life.

Under the pre-2021 Robbery Sentencing Guidelines, categories were delineated by location of the offense (street, business, residence, or bank) and whether or not the perpetrator used a firearm/simulated firearm in the course of the offense. The Commission concluded that the existing Guidelines would not accurately reflect the typical, or average, robbery sentencing outcomes based on the new classifications. Moreover, it was unknown how charging practices and sentencing patterns for robbery would evolve under the new penalty structure. Data were insufficient to perform the analysis necessary to develop Guidelines based on the new penalty structure. For these reasons, the Commission suspended the Robbery Guidelines until a full analysis of sentencing under the new penalty structure could be completed.¹ It has been three years since the penalty changes were enacted, and the Commission now has sufficient data to develop new Robbery Guidelines.

¹ The Sentencing Guidelines continued to cover Carjacking, as that offense is defined in a separate Code section (§ 18.2-58.1), and the penalty for carjacking was not modified by the 2021 legislation.

DISCUSSION

The 2021 legislation created four classes of robbery with different statutory penalties (Figure 50). The most serious robbery offense, resulting in serious bodily injury or death, is punishable as a Class 2 felony with a maximum penalty of life. Robbery with the use or display of a firearm is a Class 3 felony, which carries a 20-year maximum penalty. Robbery with the use or display of a deadly weapon other than a firearm in a threatening manner is a Class 5 felony punishable by up to 10 years, as is robbery through physical force not resulting in serious bodily injury. Robbery by threat or intimidation not involving a deadly weapon is a Class 6 felony with a maximum penalty of five years.

Figure 50
Penalties for Robbery (§ 18.2-58) Effective July 1, 2021

Elements of Robbery	Penalty
Results in serious bodily injury or death	Class 2 felony (20 years - Life)
Use or display of firearm in threatening manner	Class 3 felony (5 - 20 years)
Use of physical force not resulting in serious bodily injury, or	
Use of a deadly weapon other than firearm in a threatening manner	Class 5 felony (1 - 10 years)
Use of threat/intimidation not involving a deadly weapon	Class 6 felony (1 - 5 years)

The Code of Virginia contains several requirements related to the Sentencing Guidelines. Pursuant to § 17.1-803, the Commission must develop Guidelines that take into account historical sentencing practices. In essence, Guidelines are designed to provide a benchmark for the typical, or average, case outcome based on the offenses at conviction, circumstances of the offense, and the defendant's prior criminal record. There is one exception to this historical mandate, Per § 17.1-805, the Guidelines must include enhancements to increase the sentence recommendation for defendants who have violent felony convictions. Section 17.1-805 specifies varying degrees of enhancements based on the defendant's current and prior convictions for offenses defined as violent in § 17.1-805(C). This provision became effective in 1995, and the sizes of the enhancements specified in this statute have not been revised since that time. An example is shown in Figure 51.

Figure 51
Requirements for Guidelines Midpoint Enhancements § 17.1-805

§ 17.1-805 (A,2)

The midpoint of the initial recommended sentencing range for voluntary manslaughter, robbery, aggravated malicious wounding, malicious wounding, and any burglary of a dwelling house or statutory burglary of a dwelling house or any burglary committed while armed with a deadly weapon or any statutory burglary committed while armed with a deadly weapon shall be further increased by (i) 100 percent in cases in which the defendant has no previous conviction of a violent felony offense, (ii) 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of less than 40 years, or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of 40 years or more...

In 2022, the General Assembly passed legislation to allow an alternative method for setting midpoint enhancements (House Bill 1320/Senate Bill 423). The legislation created a new provision, § 17.1-805.1, that clarifies the Commission's authority to recommend revisions to the Guidelines, specifically regarding the size of midpoint enhancements for violent offenders, based on historical sentencing data. The Commission now has the discretion to recommend revisions to prior record enhancements based on the data instead of artificially-set percentage increases. This new statute became effective July 1, 2023. As with any change to the Guidelines, any recommendations adopted by the Commission to modify the Guidelines midpoints must be contained in the Annual Report required by § 17.1-803, and recommended changes become effective only in accordance with § 17.1-806.

The Commission's proposal for new Robbery Guidelines is based on a comprehensive analysis of available sentencing data. The proposal reflects the best fit for the historical data, and recommended dispositions are designed to closely match the historical rate of incarceration. To analyze sentencing under the new robbery penalty structure, the Commission identified sentencing events in which a robbery committed on or after July 1, 2021, was the primary, or most serious, offense in the event. For the analysis, the Commission included sentencing events through March 30, 2024. In total, 451 sentencing events that met the criteria.² Although the penalty for carjacking was not amended by the 2021 legislation, the Commission included carjacking in the analysis so the new Robbery Guidelines would also reflect recent sentencing practices for that offense, as well.

² The data excluded cases from the City of Alexandria as that clerk does not participate in the statewide Court Case Management System (CMS), and Alexandria data was not otherwise available.

As shown in Figure 52, the vast majority of defendants convicted of robbery or carjacking as the most serious offense (89.7%) received an active term of incarceration of at least one day. For defendants who received an active term of incarceration, the mean (average) sentence was 4.3 years, and the median sentence (where half of the sentences are below and half are above) was 3.0 years. Mean and median sentences varied depending on the class of robbery. Prior to the penalty change, the overall mean sentence for robbery/carjacking defendants receiving an incarceration term was 7.4 years, while the median sentence was 5.0 years. The legislation reduced the statutory maximum penalties for most robberies, and mean and median sentences have shifted downward since the new penalties were enacted.

Figure 52

**Outcomes in Sentencing Events with Robbery (§ 18.2-58) or Carjacking (§ 18.2-58.1) as the Most Serious Offense
FY22-FY24 (through March 31, 2024)
Events with Robbery Offense Dates on or after 7/1/2021
Number of Sentencing Events = 408**

Offense	Probation/No Incarceration	Incarceration 1 Day or More	Incarceration Sentence Length	
			Mean	Median
Robbery - Results in serious bodily injury or death (Class 2 felony)	4.0%	96.0%	10.4 Years	6.5 Years
Robbery - Use or display of firearm in threatening manner (Class 3 felony)	7.8%	92.2%	5.0 Years	4.0 Years
Robbery - Use of physical force not resulting in serious bodily injury, or Robbery -Use of a deadly weapon other than firearm in a threatening manner (Class 5 felony)	15.6%	84.4%	2.7 Years	2.0 Years
Robbery -Use of threat/intimidation not involving a deadly weapon (Class 6 felony)	9.8%	90.2%	2.2 Years	2.0 Years
Carjacking (unclassified felony with life maximum)	11.5%	88.5%	6.4 Years	5.0 Years
OVERALL	10.3%	89.7%	4.3 Years	3.0 Years

Notes: Excludes defendants for whom no criminal history records were returned from Virginia State Police (n = 43). Four defendants received active sentences of greater than 25 years - these are considered outliers. Due to the effect that outliers have on the mean, the sentences in these cases were set equal to 25 years. Table includes attempted, conspired, and completed offenses.

Case details are critical to ensuring that the Guidelines reflect current sentencing practices as accurately as possible. When the most serious offense in a sentencing event is not covered by the Guidelines, preparers are instructed to complete and submit a Guidelines Cover Sheet and a Case Details Worksheet to the court. The judge is instructed to enter his or her sentencing decision on the back side of the Cover Sheet, and the clerk of court is to submit the forms to the Commission. This process provides the Commission with the necessary details to develop new Guidelines for offenses not yet covered. Reviewing data from the Circuit Court Case Management System (CMS),³ the Commission determined that it has not received Guidelines Cover Sheets and Case Details Worksheets for all robbery cases. To address the problem of missing data, the Commission conducted a case file review to gather key pieces of information, such as weapon type, weapon use, victim injury, and legal status at the time of the offense.⁴ The Commission also incorporated criminal history data provided by the Virginia State Police into the analysis; however, defendants with missing criminal history data were excluded from subsequent stages of analysis.

³ Although the Clerk of the Fairfax Circuit Court does not participate in the statewide Circuit Court Case Management System (CMS), the Commission requested and received Fairfax data from the Clerk's Office and included it in the analyses.

⁴ File review was performed by using the Officer of the Court Record Access (OCRA) system for jurisdictions where the Clerk of Court has approved Commission staff for such access.

The Commission used the results of a 2022 judicial survey to guide its analytical approach. In 2022, the Commission conducted a survey to gain input from circuit court judges regarding the Guidelines. The survey results have been useful in pointing the Commission to areas of the Guidelines that are in need of revision and to factors most important to judges as they formulate sentencing decisions. One of the survey questions asked judges to identify the statement that most closely approximates the way in which he or she approaches a sentencing decision. The majority of judges (78%) selected the statement “I decide whether or not a felony defendant should be incarcerated (jail or prison) and then I decide on the appropriate sentence length.”⁵ The Commission used this result to structure its analysis. This two-step structure (incarceration in/out and incarceration sentence length) is different from the current three-part structure of the Guidelines for other offense groups (incarceration of more than six months in/out, probation/jail up to six months, and incarceration sentence length of more than six months).

The Commission developed statistical models of sentencing outcomes for defendants convicted of Robbery or Carjacking as the most serious offense.⁶ The Commission used well-known and accepted statistical methods such as logistic regression and ordinary least squares (OLS) regression. Once statistically-significant sentencing factors were identified, a worksheet was created using the legal factors from the model. Points were assigned to reflect the relative importance of the factors in the statistical model. Two worksheets were developed:

- Section A - Incarceration In/Out recommendation
- Section C - Incarceration Sentence Length recommendation (1 Day or More)

This approach removes the distinction between jail and prison recommendations.

⁵ Only 11% of judges chose the alternative statement: “I decide whether or not a felony defendant should receive a prison sentence and then I decide on the appropriate prison sentence length.”

⁶ For the analysis, defendants for whom no criminal history records were returned from Virginia State Police were excluded (n=43). Four defendants included in the analysis received active sentences of greater than 25 years - these are considered outliers. Due to the effect that outliers have on the mean, the sentences in these cases were set equal to 25 years. Data include attempted, conspired, and completed crimes.

The proposed Section A worksheet is presented in Figure 53. On the proposed Section A, attempts and conspiracies will be scored differently than completed acts. Robbery resulting in serious injury or death, robbery with a firearm, robbery with an other deadly weapon, and carjacking will always be recommended for an active term of incarceration. These offenses receive enough points on the Primary Offense factor to ensure an incarceration term will be recommended. Other robberies (robbery by threat/intimidation with no deadly weapon, robbery by force with no serious bodily injury, and attempted and conspired robberies) will need additional points to be recommended for an incarceration term. Other factors on the proposed Section A include Additional Offenses, Victim Injury, Prior Record, and Legally Restrained at Time of the Offense. The prior record factor on the Proposed Section A is not the traditional factor found on other Guidelines worksheets. It is not based on the statutory maximum penalties of prior record offenses but, instead, on the number of prior felony and misdemeanor convictions (excluding probation violations). The factor for Legally Restrained at the Time of Offense is also structured differently than what appears on other worksheets; here, defendants who were on parole, post-release supervision (§19.2-295.2), or geriatric release (§ 53.1-40.01) when they committed the current offense(s) will pick up more points than individuals who were on supervised probation or other forms of legal restraint. Finally, Section A includes a factor that assigns points when any offense in the sentencing event requires a mandatory term of incarceration. When a mandatory incarceration term is required by law, the defendant will automatically be recommended for Section C. If the total score on Section A is less than six points, the Guidelines recommendation will be probation/no incarceration.

Figure 53

Proposed Robbery Section A Worksheet

Robbery ❖ Section A

Offender Name: _____

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

A. Attempted or conspired robbery without a firearm (1 count)	(1)	Score ▼ <div style="border: 1px solid black; width: 40px; height: 25px; margin: 0 auto; display: flex; align-items: center; justify-content: center;">0</div>
B. Attempted or conspired robbery with a firearm (1 count)	(2)	
C. Robbery by threat etc., no deadly weapon (1 count)	5	
D. Robbery by using physical force, no serious bodily injury (1 count)	5	
E. Carjacking without a firearm or simulated firearm (1 count)	6	
F. Robbery by using or displaying other deadly weapon (not firearm) (1 count)	6	
G. Robbery by using firearm or displaying a firearm (1 count)	6	
H. Carjacking with a firearm or simulated firearm (1 count)	6	
I. Robbery with serious injury (1 count)	8	
J. Robbery resulting in death (1 count)	8	

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

Years: Less than 2	0	▼ <div style="border: 1px solid black; width: 40px; height: 25px; margin: 0 auto;"></div>
(12 months = 1 year) 2 - 4	4	
5 - 9	9	
10 or more	13	

◆ Any Mandatory Minimum Sentence Required _____ If YES, add 9 →

0 0

◆ Victim Injury _____

None, Threatened or Emotional	0	▼ <div style="border: 1px solid black; width: 40px; height: 25px; margin: 0 auto; display: flex; align-items: center; justify-content: center;">0</div>
Physical	3	
Serious physical	6	
Life threatening	6	
Death	9	

◆ Prior Convictions/Adjudications (excluding Probation Violations) _____

Number: 0 Felonies: 0 Misdemeanors	0	▼ <div style="border: 1px solid black; width: 40px; height: 25px; margin: 0 auto;"></div>
1 Misdemeanor	1	
2+ Misdemeanors	2	
1 Felony: 0 Misdemeanors	3	
1 Misdemeanor	4	
2+ Misdemeanors	5	
2+ Felonies: 0 Misdemeanors	6	
1 Misdemeanor	7	
2+ Misdemeanors	8	

◆ Legally Restrained at Time of Offense _____

None	0	▼ <div style="border: 1px solid black; width: 40px; height: 25px; margin: 0 auto; display: flex; align-items: center; justify-content: center;">0</div>
Other than below	4	
Supervised probation	4	
Parole, post-release supervision (§ 19.2-295.2) or geriatric release (§ 53.1-40.01)	8	

Total Score _____

If total is 5 or less, the guidelines sentence is **Probation/No Incarceration**

If total is 6 or more, go to Section C.

Robbery Section A

For defendants who score six points or more on Section A, the proposed Robbery Guidelines will recommend an active term of incarceration, and Section C will be prepared to determine the sentence length recommendation. The proposed Robbery Section C worksheet recommends incarceration length starting at one day, not seven months as the previous Robbery Section C did. Like other Section C worksheets, the scores on the proposed Robbery Section C reflect the recommended midpoint in months.

Primary Offense points on Section C are assigned based on the classification of a defendant's prior record. An offender is scored under the Other category if he or she does not have a prior conviction for a violent felony defined in § 17.1-805(C). An offender is scored under Category II if he or she has a prior conviction for a violent felony that has a statutory maximum penalty of less than 40 years. Offenders are classified as Category I if they have a prior conviction for a violent felony with a statutory maximum of 40 years or more.

As shown in Figure 54, sentence midpoint recommendations start at 11 months for a completed Class 6 Robbery when the defendant has an Other prior record classification (i.e., he or she does not have a prior violent felony conviction). The most serious robbery, one that results in death, starts with a midpoint recommendation of 101 months (8.4 years) if the defendant has an Other prior record classification. Recommendations increase from the starting values based on other factors on the worksheet: enhancements to Primary Offense scores based on a Category I or II prior violent record, Primary Offense Remaining Counts, Additional Offenses, Weapon Used, Victim Injury, Prior Convictions/Adjudications and Probation Revocations, and Legally Restrained at the Time of the Offense. On the proposed Section C worksheet, the Category I and II Prior Record enhancements are based on the analyzed data and do not reflect the artificial percentage increases found in § 17.1-805. They instead reflect the extent to which judges in recent years have ordered longer sentences for defendants with Category I or II prior records. That is to say, the proposed Category I and Category II enhancements are based on analysis of the data, as authorized by § 17.1-805.1. Furthermore, the size of the enhancement varies by the type of robbery/carjacking offense.

Figure 54

Proposed Robbery Section C Worksheet

Robbery ◆ Section C

Offender Name: _____

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

◆ **Primary Offense** _____

A. Attempted or conspired robbery without a firearm (1 count)	(5)	(3)	(1)
B. Attempted or conspired robbery with a firearm (1 count)	(9)	(7)	(3)
C. Robbery by threat etc., no deadly weapon (1 count)	21	18	11
D. Robbery by using physical force, no serious bodily injury (1 count)	23	19	12
E. Carjacking without a firearm or simulated firearm (1 count)	26	22	15
F. Robbery by using or displaying other deadly weapon (not firearm) (1 count)	35	31	22
G. Robbery by using firearm or displaying a firearm (1 count)	50	44	33
H. Carjacking with a firearm or simulated firearm (1 count)	38	34	24
I. Robbery with serious injury (1 count)	82	74	57
J. Robbery resulting in death (1 count)	141	128	101

Score
▼
[] [] [] []

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

Maximum Penalty: 5	4
(years) 10	8
20	16
Life	47

▼
[] [] [] []

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

Maximum Penalty: 1	2
(years) 2	4
(12 months = 1 year) 3	5
4	7
5	9
10, 15	18
20	36
30	54
40, 50, Life	72

▼
[] [] [] []

◆ **Weapon Used** _____

Primary offense:
F, G, or H: Completed robbery with firearm, carjacking with firearm/simulated firearm or robbery with other deadly weapon

Do Not Score

Primary offense:
All other offenses

None	0
Simulated	5
Other Weapon	5
Knife	6
Firearm	11

▼
0 [] [] []

◆ **Victim Injury** _____

None	0
Threatened	3
Emotional	7
Physical	7
Serious physical	8
Life threatening	22
Death	29

▼
[] [] [] []

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

Maximum Penalty: 1	0
(years) 2, 3, 4, 5	1
10, 15	3
20	5
30	8
40, 50, Life	10

▼
[] [] [] []

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

None or other than below	0
Supervised probation	12
Parole, post-release supervision (§ 19.2-295.2) or geriatric release (§ 53.1-40.01)	30

▼
[] [] [] []

Total Score _____

▼
[] [] [] []

See Robbery Section C Recommendation Table for guidelines sentence range.

The Weapon Used factor on the Proposed Section C presented in Figure 54 is split into two separate scoring boxes. Certain types of robbery/carjacking offenses will be scored using the box on the left, while others will be scored using the box on the right. Completed robbery with a firearm, robbery with an other deadly weapon, and carjacking with a firearm/simulated firearm are assigned to the left box and will not receive any additional points for Weapon Used. For these offenses, points for weapon use are included in the primary offense points, as weapon use is part of the definition of the offense itself. All other robbery/carjacking offenses will be scored using the right-hand box and will be assigned points based on the type of weapon used during the offense. Simple possession of a weapon (i.e., a weapon that is not used or displayed during the offense) is not scored on this factor.

The Prior Convictions/Adjudications factor on the Proposed Section C worksheet is structured in the same way as the factor on Section C worksheet for other offense group in that it uses the statutory maximum penalty to score prior offenses. This factor is a broad measure of prior conduct, including prior probation revocations. Guidelines preparers have been instructed to score prior probation revocations on this factor since 1995; however, the factor label now includes the words “and Probation Revocations” to ensure preparers are aware of the scoring procedure.

The factor for Legally Restrained at Time of Offense on the proposed Section C worksheet is structured the same as the factor shown on the proposed Section A. Defendants on parole, post release supervision (§ 19.2-295.2), or geriatric release (§ 53.1-40.01) will receive higher points than defendants on supervised probation or other forms of legal restraint.

The total number of points on the Section C worksheet equals the Guidelines midpoint recommendation in months. Using the Section C point total and the new Section C Recommendation Table, shown in Figure 6, the preparer will identify the low end and the high end of the recommended sentence range and enter the recommended midpoint and range on the Guidelines Cover Sheet.

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

As Figure 55 illustrates, the proposed Robbery Section A is expected to produce recommendations that are closely aligned with recent sentencing practices in robbery and carjacking cases. In actual practice, 10.3% of robbery and carjacking defendants in the analysis received probation/no incarceration, while 89.7% received an active term of incarceration of one day or more. Under the proposed Section A, the model recommends 9.6% of defendants for probation/no incarceration and 90.4% to active incarceration. Thus, the proposed Guidelines are closely aligned with the actual incarceration rates. Overall, the proposed Section A worksheet correctly classified 85% of disposition outcomes in the sentencing events analyzed.

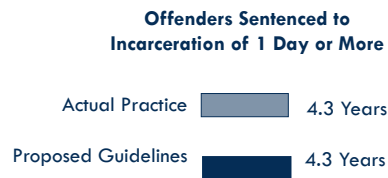
Figure 55
Actual versus Recommended Dispositions
for Robbery (§ 18.2-58) and Carjacking (§ 18.2-58.1)

	Probation/ No Incarceration	Incarceration 1 day or More
Actual Practice	10.3%	89.7%
Recommended under Proposed Guidelines	9.6%	90.4%

The proposed Robbery Section C worksheet generates sentence length recommendations that closely reflect actual sentencing practices under the new robbery penalty structure. The proposed Section C was evaluated by comparing the mean of actual sentences to the mean of recommended sentences. In its reports, the Commission often utilizes the median sentence (where half of the sentences are below and half of the sentences are above) to compare sentencing outcomes. As noted above, when developing a new sentence length worksheet, the Commission utilized a statistical technique known as Ordinary Least Squares (OLS) Regression to develop a model that captures statistically significant factors in judicial sentencing decisions. This technique minimizes the prediction error (i.e., the difference between the estimated and actual values) and utilizes the mean, rather than the median, to measure prediction error. Therefore, to evaluate the Proposed Robbery Section C worksheet, mean sentences and mean midpoint recommendations will be compared.

Among the sentencing events analyzed, for defendants given an active term of incarceration, the mean effective sentence (imposed sentence less any suspended time) was 4.3 years (Figure 56). Scoring defendants on the proposed Section C worksheet produces a mean midpoint recommendation of 4.3 years.

Figure 56
Actual versus Proposed Recommended Sentences
for Robbery (§ 18.2-58) and Carjacking (§ 18.2-58.1)
N=366



Notes: Defendants for whom no criminal history records were returned from Virginia State Police are excluded. Four defendants received active sentences of greater than 25 years. Due to the effect that outliers have on the mean, the sentences in these cases were set equal to 25 years.
 Chart includes attempted, conspired, and completed offenses.

The Commission next evaluated the proposed Section C worksheet by examining defendants in each class of robbery/carjacking offense. As shown in Figure 57, the mean midpoint recommendation closely approximates the mean effective sentence for each offense class.

Figure 57

**Outcomes in Sentencing Events with Robbery (§ 18.2-58) or Carjacking (§ 18.2-58.1) as the Most Serious Offense
FY22-FY24 (through March 31, 2024)
Events with Robbery Offense Dates on or after 7/1/2021
Number of Sentencing Events = 408**

Most Serious Offense	Mean Sentence in Years	
	Actual Practice	Proposed Guidelines Midpoint
Robbery - Results in serious bodily injury or death (Class 2 felony)	10.4	10.7
Robbery - Use or display of firearm in threatening manner (Class 3 felony)	5.0	4.8
Robbery - Use of physical force not resulting in serious bodily injury, or Use of a deadly weapon other than firearm in a threatening manner (Class 5 felony)	2.7	2.9
Robbery - Use of threat/intimidation not involving a deadly weapon (Class 6 felony)	2.2	2.2
Carjacking (unclassified felony with life maximum)	6.4	6.1

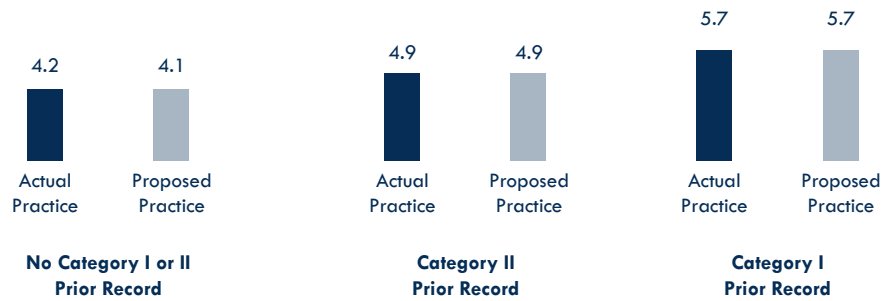
Notes: Defendants for whom no criminal history records were returned from Virginia State Police are excluded (n = 43). Four defendants received active sentences of greater than 25 years - these are considered outliers. Due to the effect that outliers have on the mean, the sentences in these cases were set equal to 25 years. Table includes attempted and conspired offenses.

Finally, the Commission evaluated the proposed Section C worksheet by examining defendants with and without prior violent felony convictions. For defendants without a prior violent conviction and for those with a Category I or Category II prior conviction, the proposed Section C worksheet produces mean midpoint recommendations that closely approximate the actual mean sentences (Figure 58).

Figure 58
Actual versus Proposed Recommended Sentences
for Robbery (§ 18.2-58) and Carjacking (§ 18.2-58.1)

Offenders Sentenced to Incarceration of 1 Day or More

By Prior Record Category
Mean Sentence in Years



After scoring the Section C worksheet, preparers total the points and locate the point total in the Section C Recommendation Table to determine the recommended sentence range. The Robbery Section C Recommendation Table is modified to reflect the new approach, which removes the distinction between jail and prison recommendations. The Table now includes recommendations for individuals who score between 1 and 6 points on the Section C worksheet (Figure 59). For scores 7 through 32, recommended ranges have been adjusted to reflect the new sentencing patterns for robbery. For these scores, the recommended ranges are wider than the Section C Recommendation Table previously used for robbery offenses (which is currently used only for carjacking offenses). For scores above 32, no changes to the Table are recommended.

Figure 59 Proposed Robbery Section C Recommendation Table

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

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

Score	Sentence Range Midpoint	Sentence Range
1	0 yr. 1 mo.	0 yr. 1 day - 0 yr. 6 mo.
2	0 yr. 2 mo.	0 yr. 1 day - 0 yr. 7 mo.
3	0 yr. 3 mo.	0 yr. 1 day - 0 yr. 8 mo.
4	0 yr. 4 mo.	0 yr. 1 mo. - 0 yr. 9 mo.
5	1 yr. 5 mo.	0 yr. 1 mo. - 0 yr. 11 mo.
6	0 yr. 6 mo.	0 yr. 2 mo. - 1 yr. 1 mo.
7	0 yr. 7 mo.	0 yr. 3 mo. - 1 yr. 3 mo.
8	1 yr. 8 mo.	0 yr. 4 mo. - 1 yr. 5 mo.
9	0 yr. 9 mo.	0 yr. 5 mo. - 1 yr. 7 mo.
10	0 yr. 10 mo.	0 yr. 6 mo. - 1 yr. 8 mo.
11	0 yr. 11 mo.	0 yr. 7 mo. - 1 yr. 9 mo.
12	1 yr. 0 mo.	0 yr. 8 mo. - 1 yr. 11 mo.
13	1 yr. 1 mo.	0 yr. 9 mo. - 2 yr. 1 mo.
14	1 yr. 2 mo.	0 yr. 10 mo. - 2 yr. 2 mo.
15	1 yr. 3 mo.	0 yr. 10 mo. - 2 yr. 3 mo.
16	1 yr. 4 mo.	0 yr. 11 mo. - 2 yr. 4 mo.
17	1 yr. 5 mo.	0 yr. 11 mo. - 2 yr. 5 mo.
18	1 yr. 6 mo.	1 yr. 0 mo. - 2 yr. 7 mo.
19	1 yr. 7 mo.	1 yr. 0 mo. - 2 yr. 9 mo.
20	1 yr. 8 mo.	1 yr. 0 mo. - 2 yr. 10 mo.
21	1 yr. 9 mo.	1 yr. 1 mo. - 2 yr. 11 mo.
22	1 yr. 10 mo.	1 yr. 1 mo. - 3 yr. 0 mo.
23	1 yr. 11 mo.	1 yr. 2 mo. - 3 yr. 0 mo.
24	2 yr. 1 mo.	1 yr. 3 mo. - 3 yr. 1 mo.
25	2 yr. 1 mo.	1 yr. 3 mo. - 3 yr. 1 mo.
26	2 yr. 2 mo.	1 yr. 3 mo. - 3 yr. 2 mo.
27	2 yr. 3 mo.	1 yr. 3 mo. - 3 yr. 3 mo.
28	2 yr. 4 mo.	1 yr. 4 mo. - 3 yr. 3 mo.
29	2 yr. 5 mo.	1 yr. 4 mo. - 3 yr. 4 mo.
30	2 yr. 6 mo.	1 yr. 4 mo. - 3 yr. 5 mo.
31	2 yr. 7 mo.	1 yr. 5 mo. - 3 yr. 5 mo.
32	2 yr. 8 mo.	1 yr. 5 mo. - 3 yr. 6 mo.

RECOMMENDATION FIVE

Modify § 19.2-390.01 of the Code of Virginia to specify that the Virginia Criminal Sentencing Commission generates and maintains the Virginia Crime Codes (VCCs).

ISSUE

Since 1995, the Sentencing Commission has administered the VCC system, including the creation and modification of VCCs. Staff from the Judicial Sentencing Guidelines Committee, the predecessor to the current Sentencing Commission, developed the VCCs in the mid-1980s; some of these staff are still involved with maintaining the VCCs.

Since 2003, criminal justice agencies and courts have been required to use Virginia Crime Codes to identify offenses in their respective information systems (§ 19.2-390.01). During the development of this statute in 2003, it was expressed that the courts rely on code section(s) and not VCCs in their information systems; that is why the existing statute states that the VCCs are to have no legal standing. The VCCs were designed to provide additional details needed for research and administrative purposes that could not be determined from the general code site provided by the courts. Since then, the VCCs have been used to provide policy makers, researchers, and the public with a wealth of detailed information. As statutes are applied to ever-changing criminal conduct, the VCCs can be modified to capture such behavior. This detailed information can be used to respond to requests from policy makers on the impact of legislation or the trends related to criminal conduct.

VCCs have been developed and assigned to each unique criminal offense defined in the Code of Virginia. As new laws are passed, new VCCs are created. In addition, VCCs are developed when requested by a criminal justice research agencies or by correctional facilities.

DISCUSSION

The purpose of the legislative change is to maintain the integrity of the VCCs for administration and research purposes. The change will establish the Virginia Criminal Sentencing Commission, with over thirty years of maintaining the VCCs, as the proprietor of the VCCs. The proposal prohibits other agencies from creating their own VCCs but will have no impact on how agencies and courts use the official VCCs. Finally, the proposal will protect current mechanisms, procedures, and processes that keep the VCCs current and accurate.

The proposal is to add the underlined sentence below to § 19.2-390.01.

§ 19.2-390.01 - If any criminal warrant, indictment, information, presentment, petition, summons, charging document issued by a magistrate, or dispositional document from a criminal trial, involves a jailable offense, it shall include the Virginia crime code references for the particular offense or offenses covered. When Virginia crime codes are provided on charging and dispositional documents, the Virginia crime codes shall be recorded and stored for adult offenders in: criminal history computer systems maintained by the State Police; court case management computer systems maintained by the Supreme Court of Virginia; probation and parole case management computer systems maintained by the Department of Corrections and the Virginia Parole Board; pretrial and community-based probation case management computer systems maintained by the Department of Criminal Justice Services; and jail management computer systems maintained by the State Compensation Board. The Department of Juvenile Justice shall record and store Virginia crime codes for particular offenses related to juveniles in case management computer systems. The Virginia Criminal Sentencing Commission shall develop, maintain, and modify the Virginia crime codes as may be deemed necessary by criminal justice research agencies

Virginia crime codes shall only be used to facilitate administration and research and shall not have any legal standing as they relate to a particular offense or offenses.

Since the proposal codifies current practices, no additional costs are anticipated.

RECOMMENDATION SIX

Affirm the Virginia Criminal Sentencing Commission's current methodology, used by the Commission since 1995, for scoring prior criminal conduct on the Sentencing Guidelines in accordance with the current penalty structure regardless of when the crime was committed.

ISSUE

The General Assembly has directed the Virginia Criminal Sentencing Commission to develop, maintain and modify, as may be deemed necessary, a system of statewide discretionary Sentencing Guidelines for use in all felony cases (§ 17.1-803). To promote accurate and consistent preparation of the Guidelines, the Commission has established procedures and provided written instructions for scoring Guidelines factors. When scoring a defendant's prior criminal record, Guidelines preparers are instructed to use Virginia's current penalty structure, as defined in the Code of Virginia, to determine the statutory maximum penalty for each prior record offense. The Commission has retained this approach since 1995, as it ensures that the Guidelines system reflects the overall sentencing policy set by the General Assembly through the current statutory penalties it has prescribed.

The General Assembly has modified penalties for many offenses. The changes have increased penalties for some crimes, reduced penalties for others, and raised the threshold at which certain crimes are punishable as felonies. Through this recommendation, the Commission confirms with the General Assembly that it will continue to utilize scoring mechanisms that weigh prior offenses based on the current penalties approved by the legislature and signed into law.

DISCUSSION

Because Sentencing Guidelines provide a set of objective and consistent standards, use of Guidelines can reduce variation, and increase consistency and predictability, in sentencing outcomes for defendants convicted of similar offenses who have exhibited similar prior criminal behavior. For Virginia's Guidelines, statutory maximum penalties are used as a proxy for measuring previous criminal conduct. The current penalty structure was selected as the proxy because it provides a standardized way of measuring past behavior. By using the current statutory maximums, all prior convictions/adjudications are given the same weight regardless of when the offense was committed or where the defendant was convicted. This approach to scoring ensures that prior behaviors are scored in a consistent and predictable manner. This is another mechanism by which the Guidelines are intended to reduce disparity in sentencing outcomes.

Moreover, using the current penalty structure is a convenient way to allow Guidelines preparers (prosecutors and state probation officers), who are familiar with Virginia's penalty structure, to use a known system to assign points, rather than having to learn a new ranking system or having to conduct extensive legal research to determine the seriousness of an offense when and where it was committed.

Finally, the Commission's approach to scoring prior record reflects present-day sentencing policy enacted by the General Assembly.

For these reasons, the Commission will retain the existing methodology for scoring prior criminal conduct on the Sentencing Guidelines based on the current penalties established by the Virginia General Assembly.



APPENDICES

Appendix 1

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

Reasons for MITIGATION

Burglary of Dwelling (65 Cases)	Number	Percent
Plea Agreement	17	41.5%
No mitigating reason given	7	17.1%
Mitigated facts of the offense	5	12.2%
Cooperated with authorities	4	9.8%
Offender has health issues	4	9.8%
Sentenced to alternative punishment	3	7.3%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	3	7.3%
Offender has good potential for rehabilitation	3	7.3%
Request of the victim	3	7.3%
Mitigated court circumstances or proceedings (e.g., will resentence)	2	4.9%
Recommended by the attorney for the Commonwealth	2	4.9%
Offender has substance abuse issues	2	4.9%
Offender issues, general (e.g., age, family support, impact on community, etc.)	2	4.9%
Illegible written mitigating reason	1	2.4%
Sentencing guidelines recommendation not appropriate (non-specific)	1	2.4%
Sentencing guidelines recommendation was too high	1	2.4%
Offender was not the leader	1	2.4%
Offender has minimal or no prior record	1	2.4%
Offender has made progress in rehabilitating himself or herself	1	2.4%
Victim cannot or will not testify	1	2.4%
Sentenced as a juvenile to DJJ	1	2.4%

Burglary of Other Structure (47 Cases)	Number	Percent
Plea Agreement	24	75.0%
No mitigating reason given	4	12.5%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	4	12.5%
Sentenced to alternative punishment	3	9.4%
Mitigated facts of the offense	2	6.3%
Recommended by the attorney for the Commonwealth	2	6.3%
Cooperated with authorities	1	3.1%
Offender has substance abuse issues	1	3.1%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	1	3.1%
Sentencing guidelines recommendation was too high	1	3.1%
Offender has health issues	1	3.1%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	3.1%
Offender has good potential for rehabilitation	1	3.1%
Offender has made progress in rehabilitating himself or herself	1	3.1%

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 ①

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

Reasons for AGGRAVATION

Burglary of Dwelling (50 Cases)

	Number	Percent
Plea agreement	14	45.2%
Aggravated facts of the offense	7	22.6%
Offense involved a high degree of planning or a violation of trust	3	9.7%
Sentencing guidelines recommendation was too low	3	9.7%
Degree of victim injury (physical, emotional, etc.)	3	9.7%
No aggravating reason given	2	6.5%
Victim circumstances (facts of the case, vulnerability, etc.)	2	6.5%
Type of victim (child, weak, etc.)	2	6.5%
Failed to cooperate with authorities	1	3.2%
Failed to follow instructions while on probation	1	3.2%
Aggravated facts of the offense, specific to breaking and entering	1	3.2%
Gang-related offense	1	3.2%
Extreme property or monetary loss	1	3.2%
Recommended by the attorney for the Commonwealth	1	3.2%
Financial obligations (child support, restitution, court costs, etc.)	1	3.2%
Multiple counts, offenses or violations in the event (prosecuted or not)	1	3.2%
Sentencing guidelines recommendation is not appropriate	1	3.2%
Offender was the leader	1	3.2%
Offender has extensive prior record or same type of prior offense	1	3.2%
Victim requested aggravating sentence	1	3.2%
Degree of violence directed at victim	1	3.2%
Offense involved possession or use of a weapon	1	3.2%

Burglary of Other Structure (33 Cases)

	Number	Percent
Plea agreement	9	45.0%
Multiple counts, offenses or violations in the event (prosecuted or not)	4	20.0%
Aggravated facts of the offense	3	15.0%
Sentencing guidelines recommendation was too low	3	15.0%
Aggravated facts of the offense, specific to breaking and entering	2	10.0%
Offender has extensive prior record or same type of prior offense	2	10.0%
No aggravating reason given	1	5.0%
Illegible written aggravating reason	1	5.0%
Failed to cooperate with authorities	1	5.0%
Absconded from supervision	1	5.0%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	1	5.0%
Financial obligations (child support, restitution, court costs, etc.)	1	5.0%
Sentencing guidelines were missing or incorrect	1	5.0%
Degree of victim injury (physical, emotional, etc.)	1	5.0%
Offense involved possession or use of a weapon	1	5.0%
Plea Agreement	1	5.0%

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 ①

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

Reasons for MITIGATION

Drugs/Schedule I/II (780 Cases)	Number	Percent
Plea Agreement	316	52.5%
No mitigating reason given	90	15.0%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	64	10.6%
Sentenced to alternative punishment	60	10.0%
Mitigated court circumstances or proceedings (e.g., will resentence)	45	7.5%
Offender has made progress in rehabilitating himself or herself	31	5.1%
Offender has minimal or no prior record	18	3.0%
Current offense involves drugs or alcohol (e.g., small amount)	17	2.8%
Offender has good potential for rehabilitation	17	2.8%
Offender has health issues	16	2.7%
Cooperated with authorities	15	2.5%
Recommended by the attorney for the Commonwealth	15	2.5%
Behavior positive since commission of the offense	13	2.2%
Offender issues, general (e.g., age, family support, impact on community, etc.)	9	1.5%
Mitigated facts of the offense	7	1.2%
Offender has substance abuse issues	7	1.2%
Recommended by the jury	5	0.8%
Sentencing guidelines recommendation was too high	5	0.8%
Offender needs rehabilitation	5	0.8%
Sentencing guidelines recommendation not appropriate (non-specific)	4	0.7%
Illegible written mitigating reason	3	0.5%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	3	0.5%
Offender was not the leader	2	0.3%
Offender has substance abuse issues	1	0.2%
Judge believed sentence was in concurrence with recommendation	1	0.2%
Multiple counts, offenses or violations in the event (prosecuted or not)	1	0.2%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	1	0.2%
Offender has extensive prior record or same type of prior offense	1	0.2%
Probation violation based on minimal circumstances involving drugs or alcohol	1	0.2%
Probation violation based on minimal facts of the case	1	0.2%
Probation violation not based on new law violation	1	0.2%
Financial obligations (child support, restitution, court costs, etc.)	1	0.2%
Sentencing guidelines were missing or incorrect	1	0.2%
Sentence was rounded down	1	0.2%
Original offense was nonviolent	1	0.2%
Mitigating court probation circumstances or proceedings (e.g., extend probation)	1	0.2%
Drugs/Other (11 Cases)	Number	Percent
Plea Agreement	6	60.0%
No mitigating reason given	1	10.0%
Behavior positive since commission of the offense	1	10.0%
Mitigated facts of the offense	1	10.0%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	10.0%
Recommended by the jury	1	10.0%

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 ①

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

Reasons for AGGRAVATION

Drugs/Schedule I/II (632 Cases)	Number	Percent
Plea agreement	178	41.2%
Multiple counts, offenses or violations in the event (prosecuted or not)	83	19.2%
Aggravated facts of the offense	41	9.5%
Offender failed alternative program	35	8.1%
No aggravating reason given	31	7.2%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	27	6.3%
Sentenced to alternative punishment	25	5.8%
Offender has poor rehabilitation potential	22	5.1%
Offender has extensive prior record or same type of prior offense	21	4.9%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	18	4.2%
Aggravated court circumstances or proceedings (e.g., will resentence)	16	3.7%
Degree of victim injury (physical, emotional, etc.)	16	3.7%
Sentencing guidelines recommendation was too low	12	2.8%
Offender has substance abuse issues	11	2.5%
Offender needs rehabilitation offered by jail or prison	10	2.3%
Did not exercise due caution while driving, excessive speeding, etc.	9	2.1%
Absconded from supervision	7	1.6%
Poor conduct since commission of the offense	7	1.6%
Offense involved possession or use of a weapon	7	1.6%
Recommended by the attorney for the Commonwealth	6	1.4%
Illegible written aggravating reason	5	1.2%
Child present at time of the offense	5	1.2%
Prior record not adequately weighed by guidelines	5	1.2%
Recommended by the jury	4	0.9%
Type of victim (child, weak, etc.)	4	0.9%
Used, etc., drugs or alcohol while on probation	3	0.7%
Failed to follow instructions while on probation	3	0.7%
Offender issues, general (e.g., age, family support, impact on community, etc.)	3	0.7%
Failed to cooperate with authorities	2	0.5%
Multiple trial types (i.e., jury, bench, plea)	2	0.5%
Mandatory minimum was involved in the event	2	0.5%
Sentencing guidelines scoring issue (e.g., recommendation not adjusted for mandatory time)	2	0.5%
Seriousness of the original offense	2	0.5%
Victim requested aggravating sentence	2	0.5%
Illegible written mitigating reason	1	0.2%
Violent or disruptive behavior while in custody	1	0.2%
Judge believed sentence was in concurrence with recommendation	1	0.2%
Degree of violence directed at victim	1	0.2%
Sentenced to alternative punishment	1	0.2%

Drugs/Other (34 Cases)	Number	Percent
Plea agreement	10	45.5%
Multiple counts, offenses or violations in the event (prosecuted or not)	5	22.7%
Aggravated facts of the offense	3	13.6%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	3	13.6%
No aggravating reason given	2	9.1%
Sentencing guidelines recommendation was too low	2	9.1%
Type of victim (child, weak, etc.)	2	9.1%
Absconded from supervision	1	4.5%
Did not exercise due caution while driving, excessive speeding, etc.	1	4.5%
Offense involved a high degree of planning or a violation of trust	1	4.5%
Aggravated court circumstances or proceedings (e.g., will resentence)	1	4.5%
Mandatory minimum was involved in the event	1	4.5%
Victim requested aggravating sentence	1	4.5%
Offense involved possession or use of a weapon	1	4.5%

Appendix 1

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

Reasons for MITIGATION

Fraud (53 Cases)	Number	Percent
Plea Agreement	36	56.3%
No mitigating reason given	9	14.1%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	9	14.1%
Recommended by the attorney for the Commonwealth	6	9.4%
Sentenced to alternative punishment	4	6.3%
Financial obligations (child support, restitution, court costs, etc.)	3	4.7%
Offender has good potential for rehabilitation	3	4.7%
Request of the victim	3	4.7%
Cooperated with authorities	2	3.1%
Mitigated facts of the offense	2	3.1%
Mitigated court circumstances or proceedings (e.g., will resentence)	2	3.1%
Offender has minimal or no prior record	2	3.1%
Offender has made progress in rehabilitating himself or herself	2	3.1%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	1	1.6%
Offender has health issues	1	1.6%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	1.6%
Original offense was nonviolent	1	1.6%

Larceny (177 Cases)	Number	Percent
Plea Agreement	63	48.5%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	22	16.9%
No mitigating reason given	14	10.8%
Sentenced to alternative punishment	12	9.2%
Financial obligations (child support, restitution, court costs, etc.)	9	6.9%
Mitigated facts of the offense	6	4.6%
Mitigated court circumstances or proceedings (e.g., will resentence)	6	4.6%
Recommended by the attorney for the Commonwealth	6	4.6%
Request of the victim	6	4.6%
Offender has minimal or no prior record	5	3.8%
Offender has good potential for rehabilitation	5	3.8%
Offender has health issues	4	3.1%
Offender issues, general (e.g., age, family support, impact on community, etc.)	3	2.3%
Property was recovered or was of little value	2	1.5%
Offender needs rehabilitation	2	1.5%
Offender has made progress in rehabilitating himself or herself	2	1.5%
Victim cannot or will not testify	2	1.5%
Illegible written mitigating reason	1	0.8%
Plea agreement	1	0.8%
Cooperated with authorities	1	0.8%
Sequence of events had impact on recommendation	1	0.8%
Offender has substance abuse issues	1	0.8%
Sentencing guidelines were missing or incorrect	1	0.8%
Sentencing guidelines recommendation not appropriate (non-specific)	1	0.8%
Sentencing guidelines recommendation was too high	1	0.8%

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

Appendix ①

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

Reasons for AGGRAVATION

Fraud (76 Cases)	Number	Percent
Aggravated facts of the offense	15	32.6%
Plea agreement	9	19.6%
No aggravating reason given	8	17.4%
Multiple counts, offenses or violations in the event (prosecuted or not)	7	15.2%
Offender has extensive prior record or same type of prior offense	7	15.2%
Offender has poor rehabilitation potential	6	13.0%
Financial obligations (child support, restitution, court costs, etc.)	4	8.7%
Offense involved a high degree of planning or a violation of trust	3	6.5%
Sentencing guidelines recommendation was too low	3	6.5%
Degree of victim injury (physical, emotional, etc.)	3	6.5%
Extreme property or monetary loss	2	4.3%
Prior record not adequately weighed by guidelines	2	4.3%
Type of victim (child, weak, etc.)	2	4.3%
Illegible written aggravating reason	1	2.2%
Failed to cooperate with authorities	1	2.2%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	1	2.2%
Victim circumstances (facts or the case, vulnerability, etc.)	1	2.2%
Offense involved possession or use of a weapon	1	2.2%

Larceny (210 Cases)	Number	Percent
Plea agreement	47	34.8%
Aggravated facts of the offense	33	24.4%
Offense involved a high degree of planning or a violation of trust	16	11.9%
Multiple counts, offenses or violations in the event (prosecuted or not)	14	10.4%
Extreme property or monetary loss	13	9.6%
Sentencing guidelines recommendation was too low	9	6.7%
Offender has extensive prior record or same type of prior offense	9	6.7%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	8	5.9%
Degree of victim injury (physical, emotional, etc.)	7	5.2%
Offense involved possession or use of a weapon	7	5.2%
Did not exercise due caution while driving, excessive speeding, etc.	6	4.4%
No aggravating reason given	5	3.7%
Poor conduct since commission of the offense	5	3.7%
Sentenced to alternative punishment	3	2.2%
Recommended by the attorney for the Commonwealth	3	2.2%
Type of victim (child, weak, etc.)	3	2.2%
Illegible written aggravating reason	2	1.5%
Recommended by the jury	2	1.5%
Financial obligations (child support, restitution, court costs, etc.)	2	1.5%
Prior record not adequately weighed by guidelines	2	1.5%
Offender has poor rehabilitation potential	2	1.5%
Victim requested aggravating sentence	2	1.5%
Failed to follow instructions while on probation	1	0.7%
Child present at time of the offense	1	0.7%
Offender has substance abuse issues	1	0.7%
Judge believed sentence was in concurrence with recommendation	1	0.7%
Mandatory minimum was involved in the event	1	0.7%
Offender was the leader	1	0.7%
Seriousness of the original offense	1	0.7%
Offender needs rehabilitation offered by jail or prison	1	0.7%
Offender failed alternative program	1	0.7%
Recommended by the attorney for the Commonwealth	1	0.7%

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

Appendix ①

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

Reasons for MITIGATION

Miscellaneous/Other (43 Cases)	Number	Percent
Plea Agreement	20	62.5%
Mitigated facts of the offense	4	12.5%
Offender has minimal or no prior record	4	12.5%
Offender has good potential for rehabilitation	3	9.4%
No mitigating reason given	2	6.3%
Recommended by the attorney for the Commonwealth	2	6.3%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	2	6.3%
Illegible written mitigating reason	1	3.1%
Recommended by the jury	1	3.1%
Sentencing guidelines were missing or incorrect	1	3.1%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	3.1%
Offender has made progress in rehabilitating himself or herself	1	3.1%
Mitigating court probation circumstances or proceedings (e.g., extend probation)	1	3.1%

Miscellaneous/Person & Property (51 Cases)	Number	Percent
Plea Agreement	27	73.0%
No mitigating reason given	6	16.2%
Offender has made progress in rehabilitating himself or herself	4	10.8%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	3	8.1%
Sentenced to alternative punishment	2	5.4%
Mitigated court circumstances or proceedings (e.g., will resentence)	2	5.4%
Illegible written mitigating reason	1	2.7%
Mitigated facts of the offense	1	2.7%
Recommended by the attorney for the Commonwealth	1	2.7%
Judge believed sentence was in concurrence with recommendation	1	2.7%
Offender has health issues	1	2.7%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	2.7%
Offender needs rehabilitation	1	2.7%

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 (50 Cases)	Number	Percent
Aggravated facts of the offense	13	46.4%
Plea agreement	9	32.1%
Offender has extensive prior record or same type of prior offense	4	14.3%
Degree of victim injury (physical, emotional, etc.)	3	10.7%
Absconded from supervision	2	7.1%
Aggravated court circumstances or proceedings (e.g., will resentence)	2	7.1%
Multiple counts, offenses or violations in the event (prosecuted or not)	2	7.1%
Sex offender has poor rehabilitation potential	2	7.1%
Offender violated sex offender restrictions	2	7.1%
Type of victim (child, weak, etc.)	2	7.1%
Sentenced to alternative punishment	1	3.6%
Failed to cooperate with authorities	1	3.6%
Poor conduct since commission of the offense	1	3.6%
Gang-related offense	1	3.6%
Recommended by the attorney for the Commonwealth	1	3.6%
Offender has substance abuse issues	1	3.6%
Seriousness of the original offense	1	3.6%
Offender has poor rehabilitation potential	1	3.6%
Degree of violence directed at victim	1	3.6%

Miscellaneous/Person & Property (123 Cases)	Number	Percent
Aggravated facts of the offense	22	33.3%
Plea agreement	22	33.3%
Type of victim (child, weak, etc.)	15	22.7%
Multiple counts, offenses or violations in the event (prosecuted or not)	12	18.2%
Degree of victim injury (physical, emotional, etc.)	9	13.6%
Child present at time of the offense	6	9.1%
Sentencing guidelines recommendation is not appropriate	5	7.6%
Offender has poor rehabilitation potential	5	7.6%
No aggravating reason given	3	4.5%
Did not exercise due caution while driving, excessive speeding, etc.	3	4.5%
Aggravated facts of the offense, specific to breaking and entering	3	4.5%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	3	4.5%
Sentencing guidelines recommendation was too low	3	4.5%
Victim requested aggravating sentence	3	4.5%
Sentenced to alternative punishment	1	1.5%
Violent or disruptive behavior while in custody	1	1.5%
Offense involved a high degree of planning or a violation of trust	1	1.5%
Offender has substance abuse issues	1	1.5%
Sentencing guidelines scoring issue (e.g., recommendation not adjusted for mandatory time)	1	1.5%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	1	1.5%
Offender has health issues	1	1.5%
Offender has extensive prior record or same type of prior offense	1	1.5%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	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 (145 Cases)	Number	Percent
Plea Agreement	59	55.7%
No mitigating reason given	19	17.9%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	8	7.5%
Mitigated facts of the offense	6	5.7%
Offender has minimal or no prior record	6	5.7%
Offender has good potential for rehabilitation	6	5.7%
Sentenced to alternative punishment	5	4.7%
Mitigated court circumstances or proceedings (e.g., will resentence)	5	4.7%
Recommended by the attorney for the Commonwealth	4	3.8%
Offender has health issues	4	3.8%
Sentencing guidelines recommendation not appropriate (non-specific)	3	2.8%
Request of the victim	3	2.8%
Cooperated with authorities	2	1.9%
Recommended by the jury	2	1.9%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	2	1.9%
Offender has made progress in rehabilitating himself or herself	2	1.9%
Little or no injury, offender did not intend to harm victim	2	1.9%
Illegible written mitigating reason	1	0.9%
Financial obligations (child support, restitution, court costs, etc.)	1	0.9%
Sentencing guidelines were missing or incorrect	1	0.9%
Sentencing guidelines recommendation was too high	1	0.9%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	0.9%
Offender needs rehabilitation	1	0.9%
Victim cannot or will not testify	1	0.9%

Weapons (117 Cases)	Number	Percent
Plea Agreement	48	55.2%
No mitigating reason given	13	14.9%
Mitigated court circumstances or proceedings (e.g., will resentence)	13	14.9%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	7	8.0%
Offender has health issues	7	8.0%
Offender has minimal or no prior record	7	8.0%
Cooperated with authorities	3	3.4%
Mitigated facts of the offense	3	3.4%
Recommended by the attorney for the Commonwealth	2	2.3%
Offender issues, general (e.g., age, family support, impact on community, etc.)	2	2.3%
Offender has good potential for rehabilitation	2	2.3%
Illegible written mitigating reason	1	1.1%
Multiple counts, offenses or violations in the event (prosecuted or not)	1	1.1%
Plea agreement	1	1.1%
Sentenced to alternative punishment	1	1.1%
Behavior positive since commission of the offense	1	1.1%
Current offense involves drugs or alcohol (e.g., small amount)	1	1.1%
Sentencing guidelines recommendation not appropriate (non-specific)	1	1.1%
Sentencing guidelines recommendation was too high	1	1.1%
Offender has made progress in rehabilitating himself or herself	1	1.1%
Weapon was not a firearm	1	1.1%

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 ①

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

Reasons for AGGRAVATION

Traffic (214 Cases)	Number	Percent
Aggravated facts of the offense	57	47.5%
Did not exercise due caution while driving, excessive speeding, etc.	33	27.5%
Plea agreement	20	16.7%
Offender has extensive prior record or same type of prior offense	20	16.7%
Offender has substance abuse issues	15	12.5%
No aggravating reason given	13	10.8%
Offender has poor rehabilitation potential	10	8.3%
Degree of victim injury (physical, emotional, etc.)	9	7.5%
Sentencing guidelines recommendation was too low	7	5.8%
Multiple counts, offenses or violations in the event (prosecuted or not)	6	5.0%
Failed to cooperate with authorities	5	4.2%
Recommended by the attorney for the Commonwealth	4	3.3%
Type of victim (child, weak, etc.)	3	2.5%
Offense involved possession or use of a weapon	3	2.5%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	2	1.7%
Sentenced to alternative punishment	1	0.8%
Failed to cooperate with authorities while on probation	1	0.8%
Used, etc., drugs or alcohol while on probation	1	0.8%
Poor conduct since commission of the offense	1	0.8%
Aggravated facts of the offense, specific to breaking and entering	1	0.8%
Recommended by the jury	1	0.8%
Offender violated a restraining order or stalked victim	1	0.8%

Weapons (206 Cases)	Number	Percent
Plea agreement	72	50.0%
Multiple counts, offenses or violations in the event (prosecuted or not)	37	25.7%
Aggravated facts of the offense	22	15.3%
No aggravating reason given	16	11.1%
Offender has poor rehabilitation potential	9	6.3%
Offender has extensive prior record or same type of prior offense	8	5.6%
Degree of victim injury (physical, emotional, etc.)	6	4.2%
Recommended by the attorney for the Commonwealth	4	2.8%
Offense involved possession or use of a weapon	4	2.8%
Did not exercise due caution while driving, excessive speeding, etc.	3	2.1%
Illegible written aggravating reason	2	1.4%
Sentenced to alternative punishment	2	1.4%
Poor conduct since commission of the offense	2	1.4%
Aggravated court circumstances or proceedings (e.g., will resentence)	2	1.4%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	2	1.4%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	2	1.4%
Type of victim (child, weak, etc.)	2	1.4%
Failed to cooperate with authorities	1	0.7%
Absconded from supervision	1	0.7%
Failed to cooperate with authorities while on probation	1	0.7%
Child present at time of the offense	1	0.7%
Recommended by the jury	1	0.7%
Sentencing guidelines were missing or incorrect	1	0.7%
Mandatory minimum was involved in the event	1	0.7%
Sentencing guidelines scoring issue (e.g., recommendation not adjusted for mandatory)	1	0.7%
Offender has health issues	1	0.7%
Seriousness of the original offense	1	0.7%
Offender violated a restraining order or stalked victim	1	0.7%

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

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

Appendix ②

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for MITIGATION

Assault (203 Cases)	Number	Percent
Plea Agreement	93	62.4%
No mitigating reason given	24	16.1%
Mitigated court circumstances or proceedings (e.g., will resentence)	16	10.7%
Offender has health issues	13	8.7%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	12	8.1%
Request of the victim	12	8.1%
Mitigated facts of the offense	4	2.7%
Recommended by the attorney for the Commonwealth	4	2.7%
Offender issues, general (e.g., age, family support, impact on community, etc.)	3	2.0%
Offender has good potential for rehabilitation	3	2.0%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	2	1.3%
Offender has minimal or no prior record	2	1.3%
Offender has made progress in rehabilitating himself or herself	2	1.3%
Victim cannot or will not testify	2	1.3%
Little or no injury, offender did not intend to harm victim	2	1.3%
Sentenced to alternative punishment	1	0.7%
Cooperated with authorities	1	0.7%
Absconding from supervision in question	1	0.7%
Probation violation based on minimal circumstances involving drugs or alcohol	1	0.7%
Financial obligations (child support, restitution, court costs, etc.)	1	0.7%
Judge believed sentence was in concurrence with recommendation	1	0.7%
Sentencing guidelines recommendation not appropriate (non-specific)	1	0.7%
Victim circumstances (facts or the case, credibility issues, etc.)	1	0.7%
Victim circumstances (drug dealer, etc.)	1	0.7%

Kidnapping (37 Cases)	Number	Percent
Plea Agreement	16	69.6%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	4	17.4%
Request of the victim	4	17.4%
No mitigating reason given	3	13.0%
Mitigated court circumstances or proceedings (e.g., will resentence)	2	8.7%
Mitigated facts of the offense	1	4.3%
Recommended by the attorney for the Commonwealth	1	4.3%
Judge had issues with risk assessment	1	4.3%
Offender has health issues	1	4.3%
Offender has minimal or no prior record	1	4.3%
Offender has good potential for rehabilitation	1	4.3%
Mitigating facts of the offense, specific to sex offenses	1	4.3%
Victim cannot or will not testify	1	4.3%

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

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

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for AGGRAVATION

Assault (154 Cases)	Number	Percent
Plea agreement	43	32.1%
Aggravated facts of the offense	38	28.4%
Degree of victim injury (physical, emotional, etc.)	30	22.4%
Multiple counts, offenses or violations in the event (prosecuted or not)	21	15.7%
Offender has extensive prior record or same type of prior offense	19	14.2%
No aggravating reason given	10	7.5%
Degree of violence directed at victim	9	6.7%
Type of victim (child, weak, etc.)	8	6.0%
Sentencing guidelines recommendation is not appropriate	7	5.2%
Offender has poor rehabilitation potential	7	5.2%
Offense involved a high degree of planning or a violation of trust	6	4.5%
Child present at time of the offense	5	3.7%
Offense involved possession or use of a weapon	5	3.7%
Sentencing guidelines recommendation was too low	4	3.0%
Victim requested aggravating sentence	4	3.0%
Did not exercise due caution while driving, excessive speeding, etc.	3	2.2%
Recommended by the jury	3	2.2%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	3	2.2%
Failed to follow instructions while on probation	2	1.5%
Poor conduct since commission of the offense	2	1.5%
Recommended by the attorney for the Commonwealth	2	1.5%
Prior record not adequately weighed by guidelines	2	1.5%
Seriousness of the original offense	2	1.5%
Offender violated a restraining order or stalked victim	2	1.5%
Illegible written aggravating reason	1	0.7%
Sentenced to alternative punishment	1	0.7%
Violent or disruptive behavior while in custody	1	0.7%
Gang-related offense	1	0.7%
Judge believed sentence was in concurrence with recommendation	1	0.7%
Sentencing guidelines were missing or incorrect	1	0.7%
Victim circumstances (facts or the case, vulnerability, etc.)	1	0.7%

Kidnapping (13 Cases)	Number	Percent
No aggravating reason given	3	37.5%
Offender has extensive prior record or same type of prior offense	2	25.0%
Offender has poor rehabilitation potential	2	25.0%
Type of victim (child, weak, etc.)	2	25.0%
Aggravated facts of the offense	1	12.5%
Multiple counts, offenses or violations in the event (prosecuted or not)	1	12.5%
Aggravated facts of the offense, specific to sex offenses	1	12.5%
Victim circumstances (facts or the case, vulnerability, etc.)	1	12.5%

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

Homicide (25 Cases)	Number	Percent
Plea Agreement	9	52.9%
Mitigated court circumstances or proceedings (e.g., will resentence)	3	17.6%
Sentenced as a juvenile to DJJ	3	17.6%
Cooperated with authorities	2	11.8%
Mitigated facts of the offense	2	11.8%
No mitigating reason given	1	5.9%
Recommended by the attorney for the Commonwealth	1	5.9%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	1	5.9%
Offender was not the leader	1	5.9%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	5.9%
Request of the victim	1	5.9%

Robbery/Carjacking (9 Cases)	Number	Percent
Plea Agreement	3	42.9%
No mitigating reason given	2	28.6%
Sentenced to alternative punishment	2	28.6%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	1	14.3%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	14.3%

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

Homicide (136 Cases)

	Number	Percent
Aggravated facts of the offense	31	45.6%
Plea agreement	15	22.1%
Type of victim (child, weak, etc.)	11	16.2%
Offender has poor rehabilitation potential	10	14.7%
Multiple counts, offenses or violations in the event (prosecuted or not)	7	10.3%
Offender has extensive prior record or same type of prior offense	7	10.3%
Degree of victim injury (physical, emotional, etc.)	6	8.8%
Did not exercise due caution while driving, excessive speeding, etc.	5	7.4%
Sentencing guidelines recommendation was too low	5	7.4%
Degree of violence directed at victim	5	7.4%
No aggravating reason given	4	5.9%
Recommended by the jury	4	5.9%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	3	4.4%
Victim circumstances (facts of the case, vulnerability, etc.)	3	4.4%
Failed to cooperate with authorities	2	2.9%
Offender has substance abuse issues	2	2.9%
Victim requested aggravating sentence	2	2.9%
Offense involved possession or use of a weapon	2	2.9%
Violent or disruptive behavior while in custody	1	1.5%
Absconded from supervision	1	1.5%
Failed to follow instructions while on probation	1	1.5%
Poor conduct since commission of the offense	1	1.5%
Gang-related offense	1	1.5%
Child present at time of the offense	1	1.5%
Offense involved a high degree of planning or a violation of trust	1	1.5%
True offense behavior was more serious than offenses at conviction	1	1.5%
Recommended by the attorney for the Commonwealth	1	1.5%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	1	1.5%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	1.5%
Seriousness of the original offense	1	1.5%

Robbery/Carjacking (7 Cases)

	Number	Percent
Plea agreement	2	50.0%
Aggravated facts of the offense	1	25.0%
Offender has extensive prior record or same type of prior offense	1	25.0%
Offender has poor rehabilitation potential	1	25.0%
Degree of victim injury (physical, emotional, etc.)	1	25.0%
Victim requested aggravating sentence	1	25.0%

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

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

Appendix ②

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for MITIGATION

Rape (15 Cases)

	Number	Percent
Mitigated court circumstances or proceedings (e.g., will resentence)	3	42.9%
Plea Agreement	3	42.9%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	2	28.6%
No mitigating reason given	1	14.3%
Mitigated facts of the offense	1	14.3%
Recommended by the attorney for the Commonwealth	1	14.3%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	14.3%
Offender has minimal or no prior record	1	14.3%
Victim cannot or will not testify	1	14.3%
Request of the victim	1	14.3%

Other Sexual Assault (66 Cases)

	Number	Percent
Plea Agreement	21	52.5%
No mitigating reason given	6	15.0%
Mitigated facts of the offense	6	15.0%
Mitigated court circumstances or proceedings (e.g., will resentence)	6	15.0%
Offender issues, general (e.g., age, family support, impact on community, etc.)	6	15.0%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	4	10.0%
Request of the victim	4	10.0%
Offender has health issues	3	7.5%
Victim cannot or will not testify	3	7.5%
Recommended by the attorney for the Commonwealth	2	5.0%
Cooperated with authorities	1	2.5%
Sequence of events had impact on recommendation	1	2.5%
Judge had issues with risk assessment	1	2.5%
Offender has minimal or no prior record	1	2.5%
Offender has made progress in rehabilitating himself or herself	1	2.5%

Other Sexual Assault/Obscenity (39 Cases)

	Number	Percent
Plea Agreement	8	34.8%
Judge had issues with risk assessment	4	17.4%
Offender has good potential for rehabilitation	4	17.4%
No mitigating reason given	3	13.0%
Offender has health issues	3	13.0%
Offender has minimal or no prior record	3	13.0%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	2	8.7%
Offender issues, general (e.g., age, family support, impact on community, etc.)	2	8.7%
Offender has made progress in rehabilitating himself or herself	2	8.7%
Victim cannot or will not testify	2	8.7%
Sentenced to alternative punishment	1	4.3%
Mitigated facts of the offense	1	4.3%
Recommended by the attorney for the Commonwealth	1	4.3%
Sentencing guidelines recommendation was too high	1	4.3%
Mitigating facts of the offense, specific to sex offenses	1	4.3%
Request of the victim	1	4.3%

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

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

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for AGGRAVATION

Rape (32 Cases)	Number	Percent
Aggravated facts of the offense	7	43.8%
Type of victim (child, weak, etc.)	5	31.3%
Degree of victim injury (physical, emotional, etc.)	4	25.0%
Plea agreement	3	18.8%
Offender has poor rehabilitation potential	3	18.8%
Offense involved a high degree of planning or a violation of trust	2	12.5%
Aggravated facts of the offense, specific to sex offenses	2	12.5%
No aggravating reason given	1	6.3%
Absconded from supervision	1	6.3%
Recommended by the jury	1	6.3%
Multiple counts, offenses or violations in the event (prosecuted or not)	1	6.3%
Sentencing guidelines recommendation was too low	1	6.3%
Victim requested aggravating sentence	1	6.3%

Other Sexual Assault (107 Cases)	Number	Percent
Aggravated facts of the offense	15	30.6%
Type of victim (child, weak, etc.)	15	30.6%
Plea agreement	12	24.5%
Victim requested aggravating sentence	11	22.4%
Offense involved a high degree of planning or a violation of trust	9	18.4%
Offender has poor rehabilitation potential	9	18.4%
Aggravated facts of the offense, specific to sex offenses	7	14.3%
Multiple counts, offenses or violations in the event (prosecuted or not)	6	12.2%
Degree of victim injury (physical, emotional, etc.)	6	12.2%
Sentencing guidelines recommendation was too low	5	10.2%
Recommended by the attorney for the Commonwealth	2	4.1%
Victim circumstances (facts or the case, vulnerability, etc.)	2	4.1%
No aggravating reason given	1	2.0%
Illegible written aggravating reason	1	2.0%
Sentenced to alternative punishment	1	2.0%
Violent or disruptive behavior while in custody	1	2.0%
Poor conduct since commission of the offense	1	2.0%
Sentencing guidelines were missing or incorrect	1	2.0%
Prior record not adequately weighed by guidelines	1	2.0%
Offender has extensive prior record or same type of prior offense	1	2.0%

Other Sexual Assault/Obscenity (98 Cases)	Number	Percent
Plea agreement	30	53.6%
Aggravated facts of the offense	18	32.1%
Multiple counts, offenses or violations in the event (prosecuted or not)	9	16.1%
Offender has poor rehabilitation potential	7	12.5%
Type of victim (child, weak, etc.)	6	10.7%
Sentencing guidelines recommendation was too low	5	8.9%
Aggravated facts of the offense, specific to sex offenses	5	8.9%
No aggravating reason given	4	7.1%
Recommended by the attorney for the Commonwealth	4	7.1%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	3	5.4%
Offense involved a high degree of planning or a violation of trust	2	3.6%
Victim requested aggravating sentence	2	3.6%
Absconded from supervision	1	1.8%
Sex offender has poor rehabilitation potential	1	1.8%
Degree of victim injury (physical, emotional, etc.)	1	1.8%

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 3

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

BURGLARY OF DWELLING

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	80.0%	0.0%	20.0%	5
2	81.8	0.0	18.2	11
3	100.0	0.0	0.0	1
4	60.0	10.0	30.0	10
5	100.0	0.0	0.0	3
6	100.0	0.0	0.0	8
7	80.0	20.0	0.0	5
8	75.0	12.5	12.5	8
9	100.0	0.0	0.0	8
10	75.0	20.0	5.0	20
11	100.0	0.0	0.0	6
12	75.0	25.0	0.0	4
13	75.0	25.0	0.0	4
14	75.0	0.0	25.0	12
15	72.7	18.2	9.1	22
16	76.9	15.4	7.7	13
17	0.0	100	0.0	1
18	0.0	0.0	0.0	0
19	55.6	22.2	22.2	9
20	0.0	0.0	100	1
21	70.0	20.0	10.0	10
22	80.0	6.7	13.3	15
23	57.9	21.1	21.1	19
24	81.3	18.8	0.0	16
25	55.6	33.3	11.1	18
26	77.8	16.7	5.6	18
27	86.7	13.3	0.0	15
28	100	0.0	0.0	1
29	76.5	11.8	11.8	17
30	77.8	0.0	22.2	9
31	100	0.0	0.0	3
Total	75.3	14.0	10.6	292

BURGLARY/OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100%	0.0%	0.0%	8
2	89.5	10.5	0.0	19
3	0.0	0.0	0.0	0
4	92.3	0.0	7.7	13
5	50.0	12.5	37.5	8
6	100	0.0	0.0	2
7	75.0	0.0	25.0	4
8	100	0.0	0.0	1
9	92.9	0.0	7.1	14
10	91.7	8.3	0.0	12
11	100	0.0	0.0	6
12	83.3	16.7	0.0	6
13	84.6	15.4	0.0	13
14	81.8	0.0	18.2	11
15	72.0	4.0	24.0	25
16	66.7	33.3	0.0	9
17	0.0	100.0	0.0	1
18	33.3	66.7	0.0	3
19	53.8	38.5	7.7	13
20	100	0.0	0.0	1
21	83.3	16.7	0.0	6
22	100	0.0	0.0	10
23	73.3	26.7	0.0	15
24	81.8	9.1	9.1	11
25	80.0	20.0	0.0	15
26	80.0	5.0	15.0	20
27	93.3	6.7	0.0	15
28	100	0.0	0.0	11
29	66.7	33.3	0.0	3
30	71.4	14.3	14.3	7
31	100	0.0	0.0	1
Total	81.6	11.3	7.1	283

DRUG/OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	83.3%	11.1%	5.6%	18
2	100	0.0	0.0	15
3	0.0	0.0	0.0	0
4	100	0.0	0.0	5
5	83.3	8.3	8.3	12
6	66.7	16.7	16.7	6
7	100.0	0.0	0.0	2
8	100.0	0.0	0.0	8
9	85.7	0.0	14.3	7
10	100	0.0	0.0	4
11	100	0.0	0.0	4
12	90.0	0.0	10.0	10
13	100	0.0	0.0	10
14	45.5	0.0	54.5	11
15	71.4	0.0	28.6	14
16	84.6	7.7	7.7	13
17	100	0.0	0.0	1
18	66.7	33.3	0.0	3
19	100	0.0	0.0	1
20	94.4	0.0	5.6	18
21	100	0.0	0.0	4
22	77.8	11.1	11.1	9
23	100	0.0	0.0	3
24	100	0.0	0.0	9
25	85.7	0.0	14.3	7
26	71.4	14.3	14.3	7
27	85.7	14.3	0.0	7
28	100	0.0	0.0	2
29	88.2	0.0	11.8	17
30	100	0.0	0.0	6
31	66.7	33.3	0.0	3
Total	86.4	4.2	9.3	236

Appendix 3

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

DRUG SCHEDULE I/II

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	91.0	6.3	2.7	255
2	92.0	3.9	4.2	361
3	63.6	36.4	0.0	11
4	88.1	9.5	2.4	42
5	73.8	12.3	13.8	65
6	87.1	7.2	5.8	139
7	85.2	11.4	3.4	88
8	78.7	20.2	1.1	89
9	82.2	3.2	14.6	219
10	86.9	4.4	8.8	160
11	81.8	14.5	3.6	55
12	89.8	5.1	5.1	294
13	72.9	17.9	9.3	140
14	86.7	6.8	6.6	442
15	81.9	7.4	10.7	645
16	80.2	8.3	11.5	192
17	37.5	25.0	37.5	8
18	84.6	15.4	0.0	13
19	81.0	16.7	2.4	126
20	78.6	3.6	17.9	56
21	85.6	11.4	3.0	167
22	88.3	4.0	7.6	223
23	76.8	19.7	3.5	310
24	93.8	2.3	4.0	354
25	79.1	14.9	5.9	455
26	89.2	6.5	4.3	840
27	90.6	6.9	2.5	680
28	90.9	7.0	2.1	242
29	85.0	5.8	9.2	294
30	83.3	10.6	6.1	246
31	88.5	8.3	3.1	96
Total	85.8	8.2	5.9	7308

NOTE: Circuit Number missing in 1 case.

FRAUD

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	91.7%	0.0 %	8.3%	36
2	97.8	2.2	0.0	46
3	0.0	0.0	0.0	0
4	87.5	0.0	12.5	16
5	81.0	14.3	4.8	21
6	90.5	4.8	4.8	21
7	91.7	0.0	8.3	12
8	90.0	10.0	0.0	10
9	88.6	2.9	8.6	35
10	95.5	0.0	4.5	22
11	100	0.0	0.0	10
12	80.0	3.3	16.7	30
13	80.0	20.0	0.0	5
14	75.0	2.5	22.5	40
15	86.7	7.2	6.0	83
16	80.0	5.0	15.0	20
17	50.0	25.0	25.0	4
18	100	0.0	0.0	1
19	78.1	21.9	0.0	32
20	88.9	5.6	5.6	18
21	76.9	15.4	7.7	26
22	92.0	8.0	0.0	25
23	60.7	32.1	7.1	28
24	94.9	5.1	0.0	39
25	84.1	12.7	3.2	63
26	93.4	5.3	1.3	76
27	88.7	8.1	3.2	62
28	100	0.0	0.0	26
29	96.3	3.7	0.0	27
30	80.0	20.0	0.0	15
31	83.3	0.0	16.7	6
Total	87.1	7.5	5.4	856

NOTE: Circuit Number missing in 1 case.

LARCENY

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	87.9%	7.6%	4.5%	66
2	86.1	3.7	10.2	108
3	66.7	11.1	22.2	9
4	75.5	2.0	22.4	49
5	89.7	5.1	5.1	39
6	84.2	5.3	10.5	38
7	83.3	12.5	4.2	24
8	79.3	17.2	3.4	29
9	88.1	6.0	6.0	67
10	94.1	5.9	0.0	34
11	79.2	16.7	4.2	24
12	79.4	6.3	14.3	63
13	86.4	9.1	4.5	22
14	71.1	5.3	23.7	76
15	76.4	8.7	14.9	161
16	83.7	12.2	4.1	49
17	33.3	66.7	0.0	3
18	75.0	25.0	0.0	4
19	65.3	32.7	2.0	49
20	60.9	8.7	30.4	23
21	80.6	9.7	9.7	31
22	94.7	5.3	0.0	38
23	80.6	13.9	5.6	72
24	97.3	0.0	2.7	73
25	90.7	7.0	2.3	86
26	84.8	6.7	8.6	105
27	89.8	6.8	3.4	88
28	86.8	7.5	5.7	53
29	91.1	2.2	6.7	45
30	80.8	15.4	3.8	26
31	81.8	9.1	9.1	33
Total	83.3	8.2	8.5	1,587

Appendix 3

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

TRAFFIC				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	96.1%	0.0%	3.9%	51
2	88.9	5.6	5.6	90
3	66.7	33.3	0.0	3
4	88.0	4.0	8.0	25
5	76.5	8.8	14.7	34
6	88.6	2.9	8.6	35
7	80.8	15.4	3.8	26
8	77.3	22.7	0.0	22
9	79.7	14.1	6.3	64
10	93.9	6.1	0.0	33
11	90.9	3.0	6.1	33
12	84.0	6.2	9.9	81
13	76.2	9.5	14.3	21
14	49.1	3.5	47.4	57
15	78.6	13.6	7.9	140
16	79.6	14.8	5.6	54
17	100	0.0	0.0	1
18	100	0.0	0.0	6
19	83.3	13.9	2.8	36
20	69.2	3.8	26.9	26
21	100	0.0	0.0	10
22	86.4	9.1	4.5	22
23	89.5	7.0	3.5	57
24	91.2	0.0	8.8	68
25	76.3	16.3	7.5	80
26	81.5	3.7	14.8	108
27	87.3	10.9	1.8	55
28	96.8	0.0	3.2	31
29	88.0	8.0	4.0	25
30	100	0.0	0.0	17
31	81.0	9.5	9.5	21
Total	83.0	8.0	9.0	1,332

MISCELLANEOUS/OTHER				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100%	0.0%	0.0%	6
2	88.9	0.0	11.1	9
3	100	0.0	0.0	1
4	71.4	14.3	14.3	7
5	66.7	11.1	22.2	9
6	95.5	0.0	4.5	22
7	77.8	22.2	0.0	9
8	90.9	9.1	0.0	11
9	100	0.0	0.0	8
10	88.2	5.9	5.9	17
11	90.9	9.1	0.0	11
12	83.3	8.3	8.3	12
13	88.9	0.0	11.1	9
14	73.9	4.3	21.7	23
15	84.4	11.1	4.4	45
16	60.0	33.3	6.7	15
17	0.0	0.0	0.0	0
18	100	0.0	0.0	1
19	50.0	50.0	0.0	2
20	0.0	0.0	0.0	0
21	75.0	12.5	12.5	8
22	94.1	0.0	5.9	17
23	84.8	8.7	6.5	46
24	85.7	0.0	14.3	7
25	89.5	5.3	5.3	19
26	93.3	3.3	3.3	30
27	90.9	9.1	0.0	11
28	100	0.0	0.0	5
29	83.3	8.3	8.3	12
30	85.0	10.0	5.0	20
31	57.1	14.3	28.6	7
Total	85.0	8.0	7.0	399

MISCELLANEOUS/P&P				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	87.5%	0.0%	12.5%	8
2	77.8	7.4	14.8	27
3	100	0.0	0.0	1
4	80.0	13.3	6.7	15
5	84.6	0.0	15.4	13
6	82.4	0.0	17.6	17
7	66.7	22.2	11.1	9
8	87.5	12.5	0.0	16
9	73.9	4.3	21.7	23
10	92.3	0.0	7.7	13
11	100	0.0	0.0	7
12	90.0	0.0	10.0	10
13	40.0	40.0	20.0	5
14	59.3	11.1	29.6	27
15	67.9	9.4	22.6	53
16	72.7	0.0	27.3	11
17	0.0	0.0	0.0	0
18	0.0	0.0	0.0	0
19	100	0.0	0.0	7
20	66.7	16.7	16.7	6
21	76.9	7.7	15.4	13
22	100	0.0	0.0	13
23	55.0	20.0	25.0	20
24	92.9	0.0	7.1	28
25	75.0	12.5	12.5	32
26	90.2	0.0	9.8	41
27	93.8	6.3	0.0	32
28	94.7	5.3	0.0	19
29	76.7	10.0	13.3	30
30	75.0	16.7	8.3	12
31	83.3	16.7	0.0	6
Total	79.8	7.4	12.8	514

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

WEAPONS

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	76.1%	6.5%	17.4%	46
2	85.2	3.7	11.1	81
3	66.7	22.2	11.1	9
4	83.3	10.0	6.7	60
5	54.0	12.0	34.0	50
6	64.3	10.7	25.0	28
7	74.4	9.3	16.3	43
8	76.5	23.5	0.0	17
9	81.3	3.1	15.6	32
10	89.3	3.6	7.1	28
11	84.2	10.5	5.3	19
12	75.6	17.1	7.3	41
13	74.4	11.5	14.1	78
14	75.0	7.1	17.9	56
15	81.8	9.1	9.1	66
16	90.9	0.0	9.1	33
17	50.0	25.0	25.0	4
18	71.4	14.3	14.3	7
19	66.7	22.2	11.1	9
20	57.1	14.3	28.6	7
21	86.7	6.7	6.7	15
22	84.6	3.8	11.5	26
23	74.0	2.0	24.0	50
24	87.3	3.6	9.1	55
25	66.7	13.9	19.4	36
26	66.7	16.7	16.7	42
27	92.2	3.9	3.9	51
28	88.2	0.0	11.8	17
29	80.0	0.0	20.0	15
30	77.8	11.1	11.1	18
31	87.5	0.0	12.5	8
Total	77.9	8.3	13.8	1,047

Appendix 4

Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

ASSAULT				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	76.1%	17.4%	6.5%	46
2	82.3	1.6	16.1	62
3	57.1	28.6	14.3	7
4	82.4	3.9	13.7	51
5	80.4	9.8	9.8	51
6	65.8	10.5	23.7	38
7	85.4	10.4	4.2	48
8	66.7	33.3	0.0	18
9	84.7	9.7	5.6	72
10	83.3	11.1	5.6	36
11	90.3	6.5	3.2	31
12	87.0	6.5	6.5	46
13	75.0	16.7	8.3	36
14	78.8	1.9	19.2	52
15	75.9	15.2	8.9	112
16	77.0	8.2	14.8	61
17	100	0.0	0.0	2
18	88.9	11.1	0.0	9
19	75.0	14.6	10.4	48
20	57.1	0.0	42.9	14
21	57.9	36.8	5.3	38
22	77.8	14.8	7.4	27
23	76.5	16.2	7.4	68
24	84.0	8.0	8.0	75
25	80.8	11.5	7.7	78
26	79.1	12.1	8.8	91
27	88.5	6.6	4.9	61
28	90.3	3.2	6.5	31
29	90.2	2.4	7.3	41
30	88.9	5.6	5.6	36
31	79.2	0.0	20.8	24
Total	79.9	10.6	9.5	1,410

KIDNAPPING				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	75.0%	25.0%	0.0%	4
2	100	0.0	0.0	6
3	0.0	0.0	0.0	0
4	60.0	40.0	0.0	5
5	50.0	50.0	0.0	2
6	0.0	0.0	0.0	0
7	50.0	40.0	10.0	10
8	50.0	50.0	0.0	2
9	66.7	0.0	33.3	3
10	0.0	100	0.0	1
11	100	0.0	0.0	2
12	75.0	0.0	25.0	4
13	100	0.0	0.0	5
14	100	0.0	0.0	6
15	71.4	14.3	14.3	7
16	100	0.0	0.0	3
17	0.0	0.0	0.0	0
18	0.0	100	0.0	1
19	42.9	42.9	14.3	7
20	100	0.0	0.0	2
21	50.0	50.0	0.0	8
22	100	0.0	0.0	2
23	75.0	25.0	0.0	4
24	100	0.0	0.0	6
25	60.0	20.0	20.0	5
26	77.8	22.2	0.0	9
27	75.0	0.0	25.0	4
28	100	0.0	0.0	7
29	85.7	14.3	0.0	7
30	100	0.0	0.0	1
31	80.0	0.0	20.0	5
Total	75.0	18.8	6.3	128

HOMICIDE				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	71.4%	14.3%	14.3%	7
2	63.6	0.0	36.4	11
3	66.7	16.7	16.7	12
4	75.0	10.0	15.0	20
5	62.5	0.0	37.5	8
6	41.7	50.0	8.3	12
7	80.0	0.0	20.0	10
8	75.0	0.0	25.0	4
9	25.0	0.0	75.0	8
10	90.0	0.0	10.0	10
11	70.0	0.0	30.0	10
12	76.9	15.4	7.7	13
13	89.1	0.0	10.9	46
14	73.9	0.0	26.1	23
15	60.0	0.0	40.0	15
16	83.3	8.3	8.3	12
17	0.0	100	0.0	1
18	50.0	50.0	0.0	2
19	76.9	0.0	23.1	13
20	63.6	0.0	36.4	11
21	80.0	0.0	20.0	5
22	72.7	0.0	27.3	11
23	84.6	7.7	7.7	13
24	84.6	0.0	15.4	13
25	75.0	0.0	25.0	4
26	77.8	0.0	22.2	9
27	80.0	0.0	20.0	10
28	100	0.0	0.0	1
29	50.0	0.0	50.0	2
30	66.7	0.0	33.3	3
31	87.5	0.0	12.5	8
Total	74.0	5.2	20.8	327

Appendix 4

Sentencing Guidelines Compliance by Judicial Circuit:
Offenses Against the Person

ROBBERY/CARJACKING

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	0.0%	0.0%	0.0%	0
2	0.0	0.0	0.0	0
3	0.0	100	0.0	1
4	50.0	0.0	50.0	4
5	0.0	0.0	0.0	0
6	0.0	0.0	0.0	0
7	100	0.0	0.0	1
8	100	0.0	0.0	1
9	100	0.0	0.0	1
10	100	0.0	0.0	1
11	0.0	0.0	0.0	0
12	0.0	0.0	0.0	0
13	0.0	100	0.0	2
14	100	0.0	0.0	1
15	66.7	33.3	0.0	3
16	0.0	0.0	0.0	0
17	0.0	0.0	0.0	0
18	0.0	0.0	0.0	0
19	50.0	50.0	0.0	6
20	0.0	0.0	100	1
21	0.0	0.0	0.0	0
22	0.0	0.0	0.0	0
23	0.0	0.0	0.0	0
24	0.0	0.0	0.0	0
25	100	0.0	0.0	1
26	0.0	0.0	0.0	0
27	0.0	0.0	0.0	0
28	0.0	0.0	100	1
29	0.0	0.0	0.0	0
30	0.0	0.0	0.0	0
31	100	0.0	0.0	1
Total	56.0	28.0	16.0	25

RAPE

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100%	0.0%	0.0%	1
2	100	0.0	0.0	5
3	0.0	0.0	0.0	0
4	100	0.0	0.0	6
5	100	0.0	0.0	1
6	100	0.0	0.0	2
7	83.3	0.0	16.7	6
8	50.0	25.0	25.0	4
9	80.0	0.0	20.0	5
10	100	0.0	0.0	2
11	87.5	12.5	0.0	8
12	100	0.0	0.0	5
13	100	0.0	0.0	3
14	50.0	0.0	50.0	2
15	88.9	0.0	11.1	9
16	57.1	28.6	14.3	7
17	100	0.0	0.0	1
18	0.0	0.0	0.0	0
19	75.0	8.3	16.7	12
20	66.7	0.0	33.3	3
21	66.7	0.0	33.3	3
22	100	0.0	0.0	4
23	80.0	20.0	0.0	5
24	85.7	0.0	14.3	7
25	83.3	0.0	16.7	6
26	83.3	0.0	16.7	6
27	75.0	0.0	25.0	4
28	100	0.0	0.0	4
29	100	0.0	0.0	3
30	0.0	100	0.0	1
31	80.0	0.0	20.0	10
Total	83.0	5.2	11.9	135

OTHER SEXUAL ASSAULT

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	75.0%	8.3%	16.7%	12
2	91.7	0.0	8.3	12
3	0.0	0.0	0.0	0
4	90.0	0.0	10.0	10
5	100	0.0	0.0	6
6	46.2	23.1	30.8	13
7	75.0	25.0	0.0	4
8	100	0.0	0.0	1
9	62.5	37.5	0.0	8
10	60.0	30.0	10.0	10
11	100	0.0	0.0	5
12	50.0	0.0	50.0	10
13	83.3	16.7	0.0	6
14	66.7	0.0	33.3	6
15	81.8	9.1	9.1	22
16	66.7	20.0	13.3	15
17	0.0	0.0	0.0	0
18	75.0	25.0	0.0	4
19	50.0	27.8	22.2	18
20	62.5	0.0	37.5	8
21	100	0.0	0.0	4
22	50.0	0.0	50.0	4
23	37.5	37.5	25.0	8
24	100	0.0	0.0	6
25	58.3	25.0	16.7	12
26	55.0	20.0	25.0	20
27	80.0	6.7	13.3	15
28	25.0	75.0	0.0	4
29	57.1	14.3	28.6	7
30	75.0	0.0	25.0	4
31	55.6	11.1	33.3	18
Total	67.3	14.7	18.0	272

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%	6
2	77.8	0.0	22.2	9
3	0.0	0.0	0.0	0
4	62.5	12.5	25.0	8
5	100	0.0	0.0	1
6	0.0	0.0	0.0	0
7	0.0	0.0	0.0	0
8	100	0.0	0.0	1
9	71.4	0.0	28.6	7
10	100	0.0	0.0	3
11	83.3	0.0	16.7	6
12	42.9	28.6	28.6	7
13	33.3	66.7	0.0	3
14	87.5	0.0	12.5	16
15	88.2	0.0	11.8	17
16	70.6	5.9	23.5	17
17	0.0	0.0	100	1
18	100	0.0	0.0	1
19	53.1	25.0	21.9	32
20	60.0	0.0	40.0	5
21	83.3	0.0	16.7	6
22	0.0	0.0	100	3
23	66.7	0.0	33.3	3
24	70.0	10.0	20.0	10
25	74.4	10.3	15.4	39
26	55.2	6.9	37.9	29
27	100	0.0	0.0	6
28	100	0.0	0.0	2
29	50.0	0.0	50.0	4
30	33.3	33.3	33.3	3
31	72.7	9.1	18.2	11
Total	69.1	9.0	21.9	256

Appendix 5 Sentencing Guidelines Received by Jurisdiction

COUNTIES				CITIES	
AACCOMACK	35	KING & QUEEN	21	ALEXANDRIA	61
ALBEMARLE	59	KING GEORGE	72	BRISTOL	252
ALLEGHANY	198	KING WILLIAM	32	BUENA VISTA	61
AMELIA	32	LANCASTER	31	CHARLOTTESVILLE	61
AMHERST	98	LEE	112	CHESAPEAKE	692
APPOMATTOX	39	LOUDOUN	107	COLONIAL HEIGHTS	97
ARLINGTON	36	LOUISA	54	DANVILLE	210
AUGUSTA	321	LUNENBURG	19	FREDERICKSBURG	201
BATH	16	MADISON	12	HAMPTON	325
BEDFORD	197	MATHEWS	15	HOPEWELL	134
BLAND	42	MECKLENBURG	114	LYNCHBURG	358
BOTETOURT	125	MIDDLESEX	21	MARTINSVILLE	83
BRUNSWICK	59	MONTGOMERY	337	NEWPORT NEWS	408
BUCHANAN	127	NELSON	40	NORFOLK	379
BUCKINGHAM	81	NEW KENT	61	PETERSBURG	72
CAMPBELL	229	NORTHAMPTON	23	PORTSMOUTH	62
CAROLINE	114	NORTHUMBERLAND	26	RADFORD	94
CARROLL	222	NOTTOWAY	59	RICHMOND CITY	490
CHARLES CITY	1	ORANGE	80	ROANOKE CITY	407
CHARLOTTE	46	PAGE	232	SALEM	95
CHESTERFIELD	630	PATRICK	64	STAUNTON	239
CLARKE	26	PITTSYLVANIA	125	SUFFOLK	225
CRAIG	6	POWHATAN	48	VIRGINIA BEACH	1114
CULPEPER	190	PRINCE EDWARD	73	WAYNESBORO	150
CUMBERLAND	20	PRINCE GEORGE	100	WILLIAMSBURG	174
DICKENSON	86	PRINCE WILLIAM	315	WINCHESTER	221
DINWIDDIE	41	PULASKI	279		
ESSEX	23	RAPPAHANNOCK	15	Total	19798
FAIRFAX COUNTY	573	RICHMOND COUNTY	31		
FAUQUIER	107	ROANOKE COUNTY	284		
FLOYD	16	ROCKBRIDGE	131		
FLUVANNA	57	ROCKINGHAM	631		
FRANKLIN COUNTY	153	RUSSELL	104		
FREDERICK	285	SCOTT	198		
GILES	66	SHENANDOAH	150		
GLOUCESTER	201	SMYTH	94		
GOOCHLAND	24	SOUTHAMPTON	88		
GRAYSON	196	SPOTSYLVANIA	444		
GREENE	38	STAFFORD	459		
GREENSVILLE	116	SURRY	6		
HALIFAX	127	SUSSEX	28		
HANOVER	264	TAZEWELL	362		
HENRICO	997	WARREN	207		
HENRY	273	WASHINGTON	261		
HIGHLAND	6	WESTMORELAND	49		
ISLE OF WIGHT	44	WISE	160		
		WYTHE	170		
		YORK	147		