

# 2025

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# ANNUAL

# REPORT





# SENTENCING COMMISSION MEMBERS

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

**Judge Dennis L. Hupp (Ret.)**  
Chair, Woodstock

## **Appointments by the Chief Justice of the Supreme Court**

**Judge Steven C. Frucci**, Virginia Beach  
**Judge Jack S. Hurley, Jr.**, Tazewell  
**Judge Tania M. L. Saylor**, Fairfax  
**Judge Stacey W. Moreau, Vice Chair**, 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)

## **Senate Appointments**

**Senator Russet W. Perry**, Loudoun County  
**Marcus Elam**, Powhatan

## **House of Delegates Appointments**

**Delegate Rae C. Cousins**, Richmond City  
**K. Scott Miles**, Norfolk

## **Governor's Appointments**

**The Honorable Bethany Harrison**, Lynchburg  
**Judge Robert J. Humphreys**, Virginia Beach  
**Michon J. Moon, Ph.D.**, Chesterfield  
**Nancy Parr**, Chesapeake

## **Director of the Virginia Indigent Defense Commission**

**Maria Jankowski**, Richmond  
(**Lakishi Stevenson**, Director's Representative)



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**VIRGINIA CRIMINAL  
SENTENCING COMMISSION**

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**MESSAGE FROM  
THE CHAIR**

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*Judge Dennis L. Hupp, 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 2025 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 2025. The Commission's recommendations to the 2026 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.



Dennis L. Hupp  
Circuit Judge (Ret.)  
Chair

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# INTRODUCTION

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## 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 five 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) 2025. The third chapter provides an overview of the most recent work related to Virginia's Pretrial Data Project. The fourth chapter summarizes the evaluation of proposed legislation that would modify violent offenses defined in § 17.1-805 of the Code of Virginia. 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 18 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 members of the Commission serve by virtue of their positions: the Attorney General of Virginia and the Executive Director of the Virginia Indigent Defense Commission.

## **COMMISSION MEETINGS**

The full membership of the Commission met four times during 2024. These meetings were held on March 24, June 9, September 3, and November 6. Minutes for each of these meetings are available on the Commission's website ([www.vcsc.virginia.gov/meetings.html](http://www.vcsc.virginia.gov/meetings.html)).

Throughout the year, staff compiles information, analyzes data, and drafts recommendations for action by the full Commission. The Commission's Chairman appoints subcommittees, when needed, to allow for more extensive discussion on special topics. This year, an additional meeting was held at the request of the Chair of the Virginia Senate Courts of Justice Committee to review legislation proposed during the previous General Assembly session. The proposed legislation focused on the classification of offenses as violent. Chapter 5 provides a summary of the Commission's deliberations and decisions on this matter.

## **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. Sentencing Guidelines worksheets are reviewed electronically and by Commission staff as they are received. This review ensures that the forms are being completed accurately. Through this process, errors or omissions are often 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 FY2025, the Commission offered 50 training seminars across the Commonwealth for more than 850 criminal justice professionals. The Commission continued to offer some virtual question-and-answer sessions and training opportunities in 2025, 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 2025, 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 2025 General Assembly, the Commission prepared a total of 306 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 16 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. Next fiscal year, the committee will be chaired by staff from the Department of Criminal Justice Services.

The Secretary’s Office presented updated offender forecasts to the General Assembly in a report submitted in October 2025.

## **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 CY2022 and CY2023. 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 72,439 adult defendants in CY2023 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 CY2023 cohort 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. In addition, the Commission has partnered with the Virginia Court of Appeals to provide technical assistance with data management and analysis.

# GUIDELINES CONCURRENCE

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A large, solid gold circle with a thin black outline. Inside the circle is the number '2' in a bold, black, sans-serif font.

## 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 are 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) 2025 (July 1, 2024, through June 30, 2025). 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 - FY2025\***

<b>Circuit</b>	<b>Number</b>	<b>Percent</b>
1	705	3.1%
2	1,380	6.0%
3	100	0.4%
4	466	2.0%
5	530	2.3%
6	451	2.0%
7	592	2.6%
8	570	2.5%
9	731	3.2%
10	711	3.1%
11	358	1.5%
12	772	3.3%
13	475	2.1%
14	1,059	4.6%
15	1,862	8.1%
16	766	3.3%
17	163	0.7%
18	110	0.5%
19	520	2.3%
20	304	1.3%
21	465	2.0%
22	629	2.7%
23	942	4.1%
24	947	4.1%
25	1,237	5.4%
26	2,019	8.7%
27	1,786	7.7%
28	840	3.6%
29	670	2.9%
30	555	2.4%
31	379	1.6%
<b>Total</b>	<b>23,094</b>	<b>100.0%</b>

\*3 cases were missing a circuit number

In FY2025, 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), Virginia Beach (Circuit 2), Botetourt County area, (Circuit 25), Henrico (Circuit 14), Roanoke area (Circuit 23), and Lynchburg area (Circuit 24), comprised just over half (51%) of all guidelines received in FY2025 (Figure 1).

During FY2025, the Commission received 23,097 Sentencing Guideline worksheets. Of these, 963 worksheets contained errors or omissions that affected the analysis of the case. Users are becoming acclimated to the Sentencing Guidelines Worksheets Interactive File Transfer system, hereinafter referred to as “SWIFT,” 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 23,097 worksheets received, staff excluded an additional 4,267 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 FY2025, the remaining sections of this chapter pertaining to judicial concurrence with guidelines recommendations focus only on those 17,867 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.

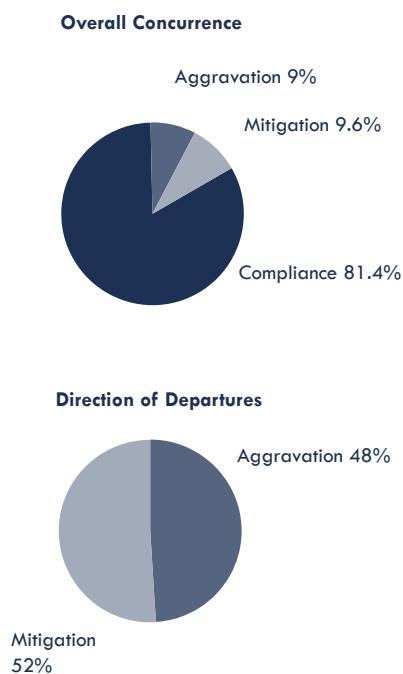
During 2017, the Department of Corrections modified elements of the Detention Center Incarceration Program and the Diversion Center Incarceration Program and referred to the new program as the Community Corrections Alternative Program (CCAP). On July 1, 2019, the changes were codified under § 19.2-316.4. 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 will be reduced to zero. If the calculated low end of the guidelines range is more than three years, the low end 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 17.8% of all FY2025 cases. Of those cases, just over half were brought from mitigation into concurrence. In the remaining cases, judges were already in concurrence with the Guidelines recommendation without using the modified low-end range.

## OVERALL CONCURRENCE WITH THE SENTENCING GUIDELINES

**Figure 2**

### Overall Guidelines Concurrence and Direction of Departures - FY2025



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 81% of FY2025 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 9% for FY2025, up from 8.4% for FY2024. The "mitigation" rate, or the rate at which judges sentence offenders to sanctions less severe than the Guidelines recommendation, was 9.6% for FY2025, slightly up from 8.6% 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 3,326 cases represented departures from Sentencing Guidelines in FY2025, 52% (1,714 cases) of which resulted in a mitigating sentence, while 48% (1,612 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 FY2025 with the type of disposition recommended by the Guidelines. For instance, of all felony offenders recommended for more than six months of incarceration during FY2025, judges sentenced 75.9% to terms in excess of six months. Some offenders recommended for incarceration of more than six months received a shorter term of incarceration (one day to six months; 12.7%) or probation with no active incarceration (11.4%), 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 - FY2025

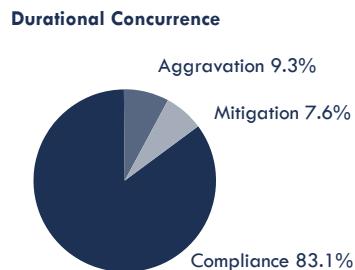
Recommended Disposition	Actual Disposition		
	Probation	Incarceration 1 day - 6 mos.	Incarceration > 6 mos.
Probation	71.6%	23.4%	5.0%
Incarceration 1 day - 6 months	19.0%	71.8%	9.2%
Incarceration > 6 months	11.4%	12.7%	75.9%

Judges have also typically agreed with Guidelines recommendations for other types of dispositions. In FY2025, 71.8% 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 (19.0%) than the recommended jail term, and in other cases, offenders recommended for short-term incarceration received a sentence of more than six months (9.2%). Finally, 71.6% 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 (23.4%), 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.

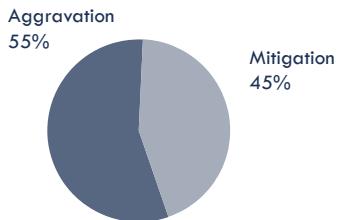
Since July 1, 1997, sentences to the state’s former Boot Camp and Detention and Diversion Centers have been defined as incarceration sanctions for the purposes of the Sentencing Guidelines. Although the state’s Boot Camp program was discontinued in 2002, the Detention and Diversion Center programs continued 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, a CCAP sentence is counted as an incarceration period of 12 months.

**Figure 4**  
**Durational Concurrence and Direction of Departures - FY2025\***



**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.

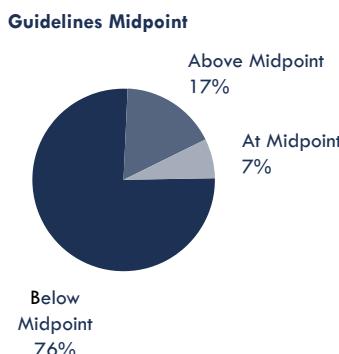
## DURATIONAL CONCURRENCE

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 lengths 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 FY2025 cases was at 83.1%, 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, 45% of cases were mitigating in nature, and the other 55% were aggravating.

**Figure 5**

**Distribution of Sentences within Guidelines Range - FY2025\*\***



\*\* 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 FY2025, 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 FY2024. This pattern of sentencing within the range has been consistent since the truth-in-sentencing Guidelines took effect in 1995, indicating that judges, overall, favor the low-end 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 FY2024, 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, moderate. 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 thirteen months (Figure 6).

## **REASONS FOR DEPARTURE FROM THE GUIDELINES**

Concurrence 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 FY2025, the most frequently cited reasons for sentencing below the Guidelines recommendation were the acceptance of a plea agreement, a sentence to an alternative punishment, judicial discretion, mitigating court circumstances or proceedings, the defendant making progress in rehabilitating himself or herself, a recommendation by the Commonwealth, mitigation facts of the case, and the request of the victim. Although other reasons for mitigation were reported, only the most frequently cited reasons are noted here. For 337 of the 1,677 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 offender's prior record, the defendant having poor rehabilitation potential, the degree of victim injury, and the type of victim in the offense. For 284 of the 1,924 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 - FY2025\***

Mitigation Cases		9 months
Aggravation Cases		13 months

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

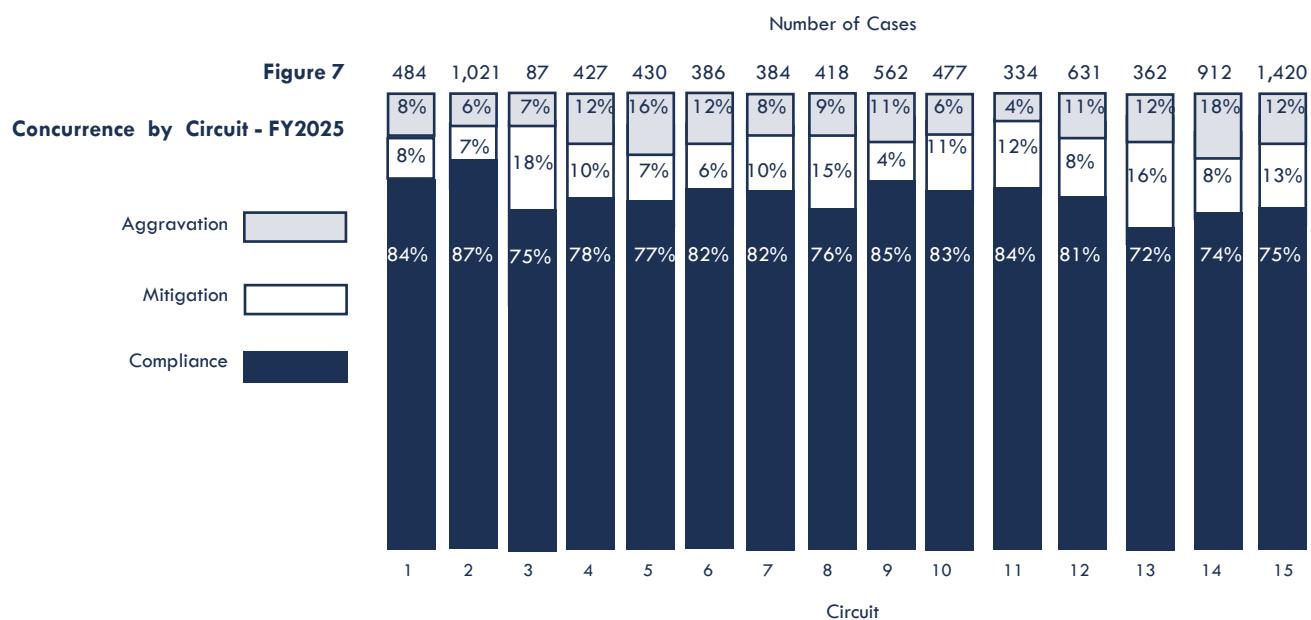
## CONCURRENCE BY CIRCUIT

Since the onset of truth-in-sentencing, concurrence rates and departure patterns have varied across Virginia's 31 judicial circuits, and FY2025 continues to show these differences (Figure 7). The map on the following pages identifies the location of each judicial circuit in the Commonwealth.

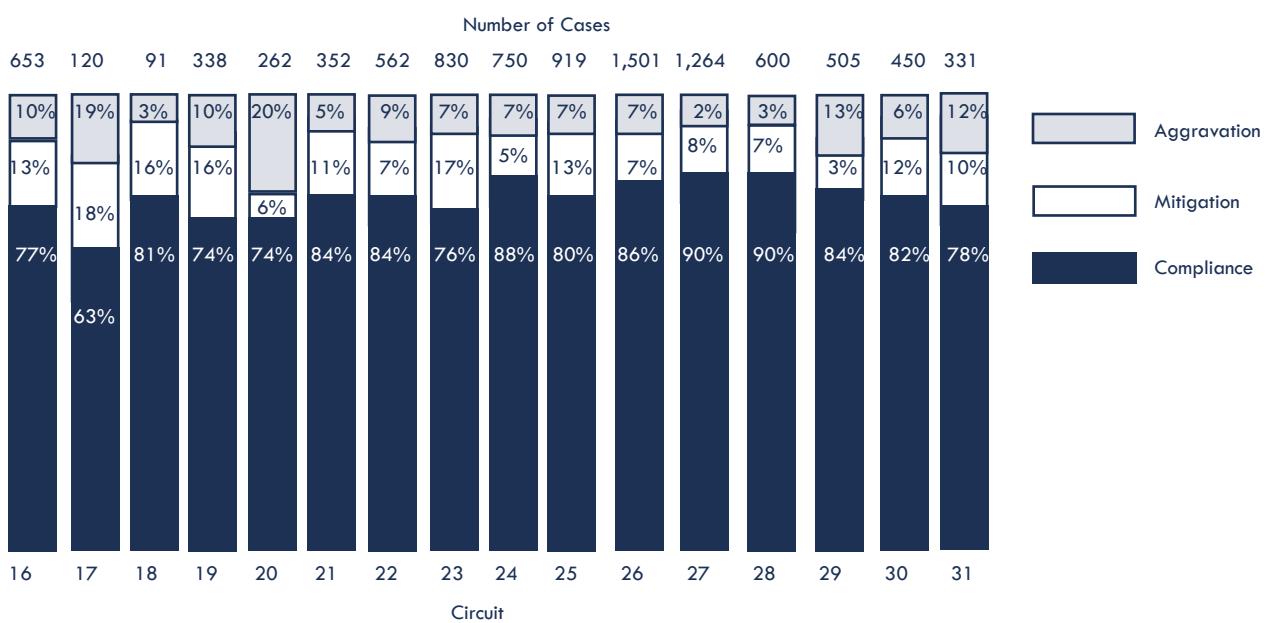
In FY2025, 58% of the state's 31 circuits exhibited concurrence rates at or 80%, while the remaining 42% reported concurrence rates between 63.3% and 78%.

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 FY2025, the highest rate of judicial agreement with the Sentencing Guidelines (89.7%) was in Circuit 27 (Radford area). This was followed by a concurrence rate of 89.2% in Circuit 28 (Bristol area) and 88% in Circuit 24 (Lynchburg area). Circuit 17 (Arlington) had the lowest concurrence rate of 63.3%. Circuit 13 (Richmond City), Circuit 19 (Fairfax), and Circuit 20 (Loudoun area) also reported lower concurrence rates among the judicial circuits in FY2025.



In FY2025, the highest mitigation rates were found in circuit 3 (Portsmouth; 18.4%), Circuit 17 (Arlington area; 17.5%), Circuit 23 (Roanoke area; 17.3%), Circuit 19 (Fairfax; 16.6%), Circuit 13 (Richmond City; 15.7%), Circuit 18 (Alexandria; 15.4%), Circuit 8 (Hampton; 15.1%), and Circuit 25 (Staunton area; 12.8%). Regarding high mitigation rates, it is 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 would generally appear as mitigations from the Guidelines. Inspecting aggravation rates reveals that Circuit 20 (Loudoun area) had the highest aggravation rate (around 20%). Circuit 17 (Arlington area), Circuit 14 (Henrico), Circuit 5 (Suffolk), Circuit 29 (Buchanan area), Circuit 4 (Norfolk), Circuit 15 (Fredericksburg), and Circuit 31 (Prince William) had aggravation rates between 12% and 19%.



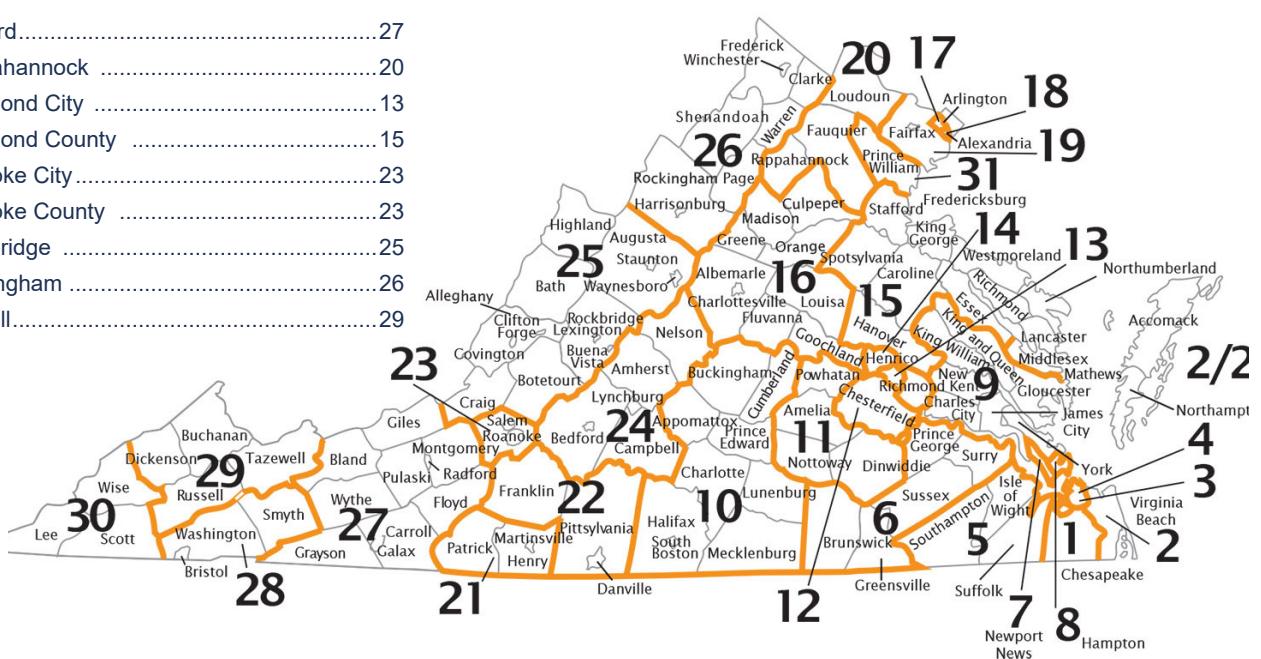
## Virginia Localities and Judicial Circuits

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

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

Virginia  
Judicial Circuits



## CONCURRENCE BY SENTENCING GUIDELINES OFFENSE GROUP

In FY2025, as in previous years, judicial agreement with the Guidelines varied when comparing the 17 offense groups (Figure 8). For FY2025, concurrence rates ranged from a high of 87% in the Fraud offense group to a low of 68% in Murder 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, Rape, Robbery, Murder, 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 - FY2025**

	Compliance	Mitigation	Aggravation	Number of Cases
Fraud	86.6%	8.1%	5.3%	908
Drug Other	85.8%	5.7%	8.5%	212
Larceny	83.9%	7.3%	8.8%	1,788
Schedule I/II Drug	83.8%	9.7%	6.5%	7,642
Miscellaneous Other	82.7%	10.6%	6.6%	527
Burglary of Other Structure	81.0%	11.3%	7.7%	310
Traffic	80.3%	8.6%	11.2%	1,450
Kidnapping	79.3%	15.9%	4.8%	145
Other Sexual Assault/Obscenity	79.1%	8.3%	12.6%	373
Assault	78.8%	10.8%	10.3%	1,577
Miscellaneous Person/Property	76.1%	8.9%	15.0%	573
Weapons	76.0%	9.9%	14.1%	1,181
Robbery	73.5%	14.7%	11.8%	34
Rape	71.7%	18.3%	9.9%	191
Burglary of a Dwelling	71.7%	15.0%	13.3%	346
Other Sexual Assault	69.0%	12.7%	18.3%	268
Murder	68.0%	6.7%	25.2%	341
<b>Total</b>	<b>81.4%</b>	<b>9.6%</b>	<b>9.0%</b>	<b>17,866</b>

The highest compliance rates are seen in offense groups such as Fraud (87%), Drug/Other (86%), Drug Schedule I/II (84%), and Miscellaneous/Other (83%). The highest rates of mitigation are seen across Rape cases (18%), Kidnapping cases (16%), Burglary of a Dwelling cases (15%), Robbery cases (15%), Sexual Assault cases (13%), and Burglary Other cases (11%). Murder cases (25%), Sexual Assault cases (18%), and Miscellaneous Person and Property cases (15%) had the highest rates of aggravation.

During the past fiscal year, judicial concurrence with Guidelines recommendations remained relatively stable, fluctuating less than 6-percentage points for most offense groups. The most drastic change in concurrence rates exhibited from FY2024 to FY2025 was a change in concurrence in Robbery cases. In Robbery cases concurrence was at 54% in FY2024 but increased to 83% in FY2025. In FY2024 guidelines only provided a recommendation for Carjacking offenses due to the change in penalty structure for Robbery that went into effect on July 1, 2021. In FY2025 guidelines once again covered Robbery offenses that occurred July 1, 2021, and after. This increase in concurrence for Robbery cases suggests the guidelines better reflect judicial sentencing patterns. Compliance for Obscenity cases also increased by 10%. The current concurrence rate is more reflective of historical sentencing patterns for obscenity convictions. Additionally, there was a 11-percentage point decrease in concurrence for Rape cases in FY2025 compared to FY2024. 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 Rape and Obscenity offense types with elevated fluctuations in comparison to FY2025 consist of only .1% and .2% of all sentencing events in the Commonwealth in FY2025, 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 - FY2025**



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.

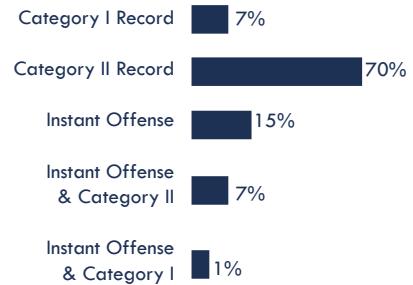
Because midpoint enhancements are designed to target only violent offenders for longer sentences, enhancements do not affect the sentence recommendation for most Guidelines cases. Among the FY2025 cases, 76% of the cases did not involve midpoint enhancements of any kind (Figure 9). Only 24% of the cases 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 FY2025 cases in which midpoint enhancements were applied, the most common midpoint enhancement was for a Category II prior record. Approximately 69% 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 15% 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 7% 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 FY2025, concurrence was 77% when enhancements applied, which is slightly lower than concurrence in all other cases (83%). 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 69% of cases and aggravate in 31% of cases.

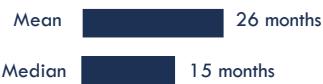
**Figure 10**

**Type of Midpoint Enhancements Received - FY2025**



**Figure 11**

**Length of Mitigation Departures  
in Midpoint Enhancement Cases - FY2025**



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

Among FY2025 midpoint enhancement cases resulting in incarceration, judges departed from the low end of the Guidelines range by an average of 26 months (Figure 11). The median departure (the middle value, where half of the values are lower, and half are higher) was 15 months.

Concurrence, while generally lower in midpoint enhancement cases than in other cases, varies across the different types and combinations of midpoint enhancements (Figure 12). In FY2025, sentencing events involving a current violent offense, but no prior record of violence, generated a concurrence rate of 71%. Cases receiving enhancements for a Category I prior record generated a concurrence rate of 77%, while concurrence for enhancement cases with a Category II prior record was 79%. Cases involving a combination of a current violent offense and a Category II prior record yielded a concurrence rate of 74%, 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 (72%).

**Figure 12**

**Concurrence by Type of Midpoint Enhancement - FY2025**

Midpoint Enhancement	Concurrence	Mitigation	Aggravation	Number of Cases
None	82.8%	7.6%	9.6%	13,587
Category I	77.0%	20.8%	2.2%	318
Category II	78.6%	15.8%	5.5%	2,959
Instant Offense	70.5%	12.1%	17.4%	631
Instant Offense & Category I	71.8%	20.5%	7.7%	39
Instant Offense & Category II	74.2%	18.2%	7.5%	318
<b>Total</b>	<b>81.4%</b>	<b>9.6%</b>	<b>9.0%</b>	<b>17,866</b>

## 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 FY2025, 90% 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.

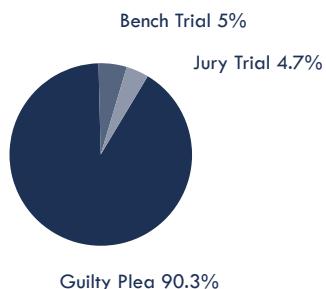
As of July 1, 2021, as the result of changes to §§ 19.2-295 and 19.2-295.1 of the Code of Virginia, juries only decide guilt or innocence. Defendants may still request that the jury sentence in such cases. However, the defendant must notify the court thirty days in advance of the trial to request sentencing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

During FY2025, a small proportion of cases involved jury trials (4.7%). Based on Sentencing Guidelines received, the attorneys for the Commonwealth or Probation Officers identified 386 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 3,998 Guidelines cases.

**Figure 13**

**Percentage of Cases Received by Method of Adjudication, FY2025**



## **CONCURRENCE AND NONVIOLENT OFFENDER RISK ASSESSMENT**

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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.

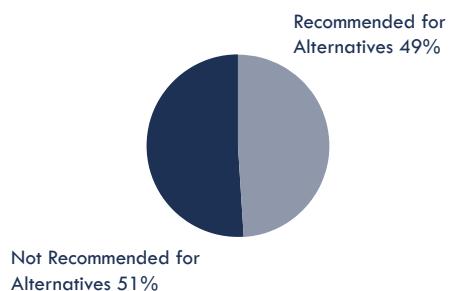
Between 2010 and 2012, the Commission conducted an extensive study of recidivism among nonviolent felons in Virginia to re-evaluate the risk assessment instrument and potentially revise the instrument based upon more recent data. Based on the results of the 2010-2012 study, the Commission recommended 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 FY2025 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.

Among the eligible offenders in FY2025 for whom a risk assessment form was received (4,225 cases), 49% were recommended for an alternative sanction by the risk assessment instrument (Figure 14). Just under half of these offenders (49.3%) 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, FY2025  
(4,225 cases)**

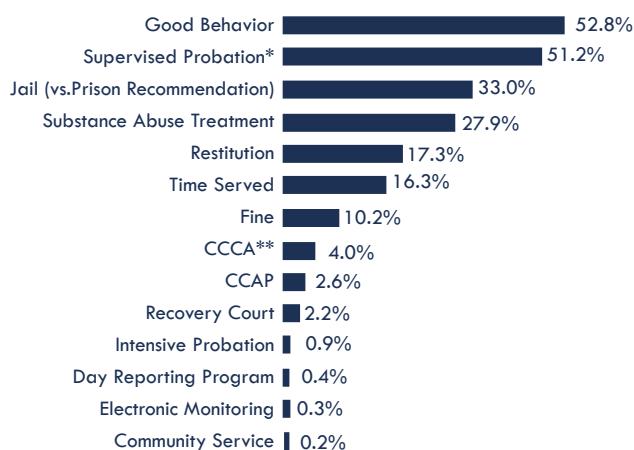


Among offenders recommended for and receiving an alternative sanction through risk assessment, judges used Probation and Good Behavior more often than any other option (Figure 15). In addition, in approximately one-third of the cases in which an alternative was recommended, judges sentenced the offender 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 (27.9%), Restitution (17.3%), and Time Served (16.3%). The Department of Corrections' Community Corrections Alternative Program (CCAP) was used in a small percentage (2.6%) of the cases. Other alternatives/sanctions included Recovery Court (2.2%) 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 - FY2025**



\* Includes indeterminate supervised probation (13.8%).

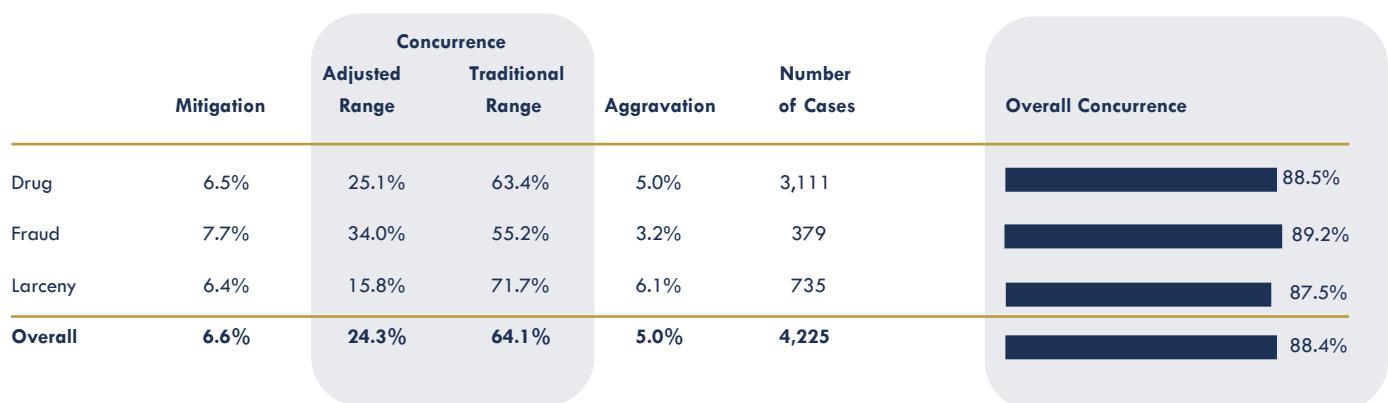
\*\* Any program established through the Comprehensive Community Corrections Act.

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 25% 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 88%. 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 - FY2025**



## **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:**

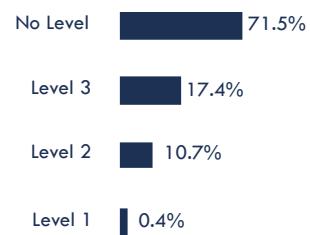
For offenders scoring 28 through 33 points, the upper end of the Guidelines range is increased by 50%.

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 FY2025, there were 268 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 253 Sexual Assault cases for which the risk assessment was applicable, the majority (72%) were not assigned a level of increased risk by the sex offender risk assessment instrument (Figure 17). Approximately 17% of applicable Sexual Assault Guidelines cases resulted in a Level 3 risk classification, with an additional 11% assigned to Level 2. There was one Sexual Assault Guidelines case (0.4%) that reached the highest risk category of Level 1 in FY2025.

**Figure 17**

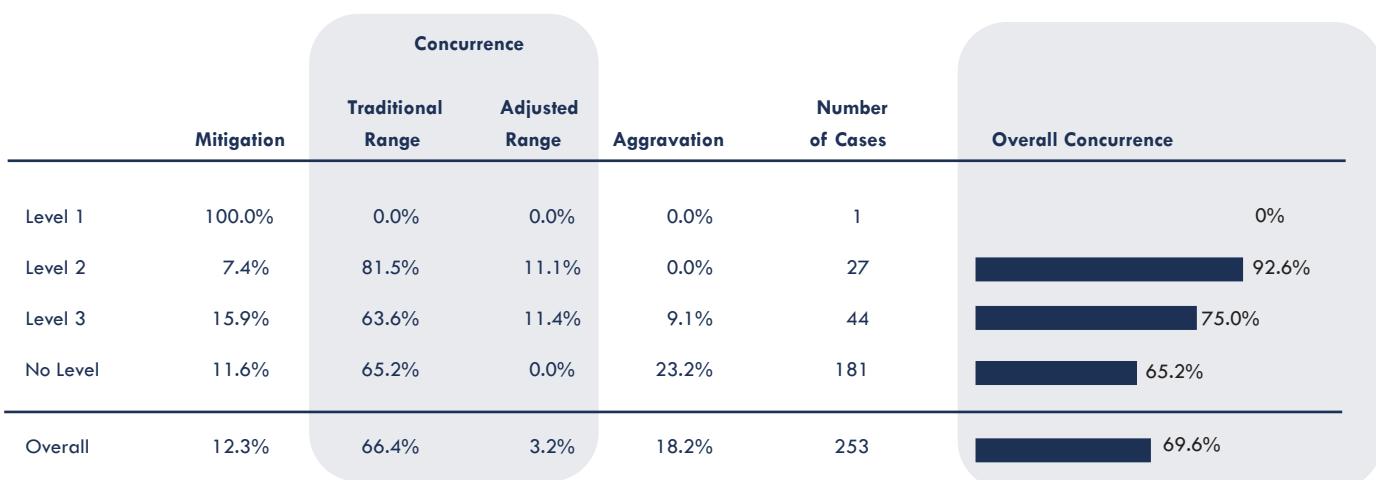
**Sex Offender Risk Assessment Levels for Sexual Assault Offenders, FY2025**



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 was only one Sexual Assault case assigned Level 1 risk category, and the judge sentenced below the traditional guidelines range. Judges used the extended Guidelines range in 11% of Level 2 cases, down from 14% in FY2024, and in 11% of Level 3 risk cases. For Level 2 cases, judges did not sentence offenders to terms above the extended ranges in any of the cases, down from having done so in 11% of those cases in FY2024. In FY2025 9% were sentenced to a term above the extended ranges in Level 3 cases, down from 12% in the previous year. 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 65%. These cases also had a higher rate of aggravation (23%) compared to offenders who were assigned a risk level.

**Figure 18**

**Sexual Assault Concurrence Rates By Risk Assessment Level, FY2025**

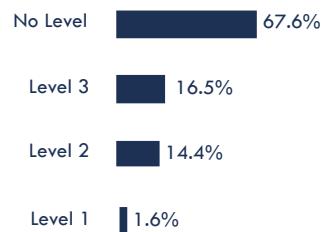


There were 188 offenders convicted of offenses covered by the Rape Guidelines (rape, forcible sodomy, and object sexual penetration) in FY2025. According to Figure 19, approximately 68% were not assigned an increased risk level by the Commission's risk assessment instrument. Approximately 17% of these cases resulted in a Level 3 adjustment, and an additional 14% received a Level 2 adjustment.

There were three cases in FY2025 that received a Level 1 adjustment for a rape conviction (1.6%). 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 FY2025. Of the three cases that resulted in a Level 1 adjustment, two were sentenced within the traditional range, and one was sentenced below the traditional range. Defendants who were not assigned a risk category and received no Guidelines adjustment had a concurrence rate of 72%, which was slightly lower than the concurrence rates for cases with a Level 3 (74%). Offenders with a Level 2 adjustment had the lowest concurrence rate (67%) adjustment. The highest rate of aggravation for rape cases was for those with Level 3 (13%). This is only slightly higher than the aggravation rate for cases with no adjustment (10%).

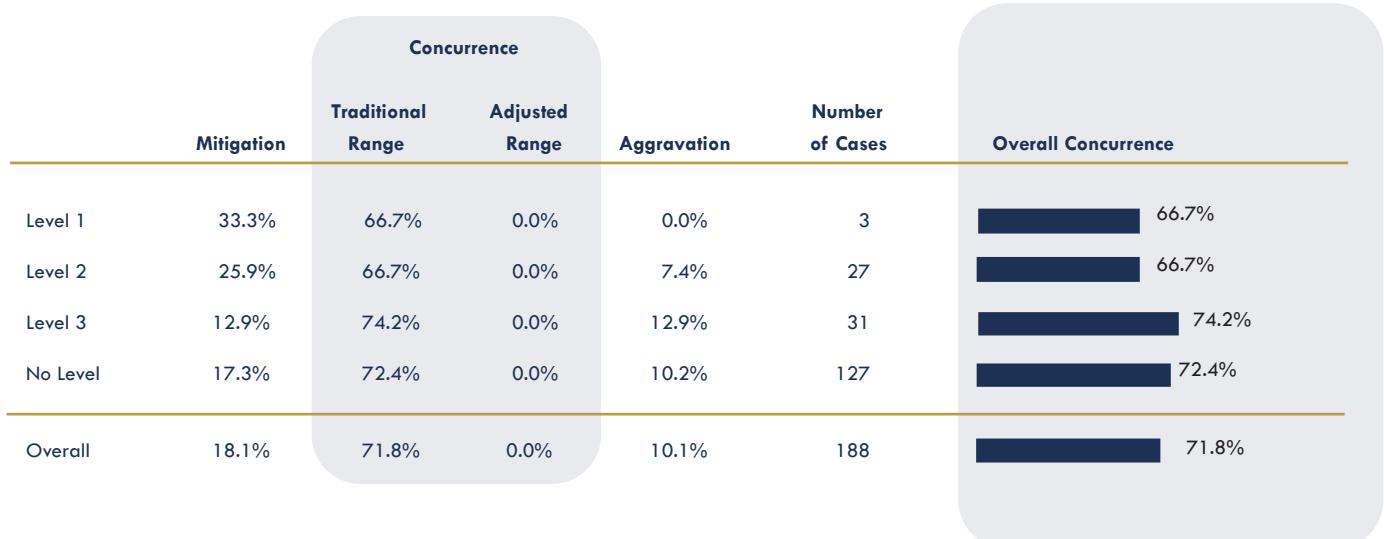
**Figure 19**

**Sex Offender Risk Assessment Levels for Rape Offenders, FY2025**



**Figure 20**

**Rape Concurrence Rates By Risk Assessment Level, FY2025**



## 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 FY2025, there were 10,428 Drug Schedule I/II worksheets and 263 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 42.2% of cases. Cases involving cocaine and crack-cocaine comprised 24.6% of the drugs identified. When opioids were grouped together, they were also cited in 19.5% of Drug Guidelines, followed closely by cases involving specific types of opioids such as fentanyl (15.8%).

**Figure 21**  
**Number and Percentage of Cases Received by Drug Type - FY2025**

Drug	Percentage	Number of Cases
Methamphetamine	42.2%	4,508
Cocaine	24.6%	2,635
Opioids*	19.5%	2,084
Fentanyl	15.8%	1,685
Other	6.4%	689
Heroin	3.5%	377
Oxycodone	1.7%	180
Hydrocodone	0.7%	73
Methylphenidate	0.7%	70
Methadone	0.3%	28
Codeine	0.2%	19
Morphine	0.1%	15

\*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 FY2025, judges concurred with the Guidelines' recommendation in over 83% of the drug cases (Figure 22). Rates of concurrence were slightly higher in methamphetamine cases (84.6%), while opioid cases (81%) 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 - FY2025**

	<b>Compliance</b>	<b>Mitigation</b>	<b>Aggravation</b>	<b>Number of Cases</b>
Methamphetamine Case	84.6%	9.9%	5.4%	3,734
Cocaine Case	82.0%	11.1%	6.8%	2,235
Opioid Case	81.0%	11.9%	7.1%	1,798
Other Case	85.7%	7.0%	7.2%	570
<b>Total</b>	<b>83.2%</b>	<b>10.5%</b>	<b>6.3%</b>	<b>8,887*</b>

*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 Bristol area (Circuit 28) 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 - FY2025**

Circuit		Cocaine	Codeine	Fentanyl	Heroin	Hydrocodone	Methadone	Methamphetamine	Methylphenidate	Morphine	Oxycodone	Other*
1	Chesapeake	119	1	50	23	4	1	100	0	0	6	19
2	Virginia Beach	186	1	90	29	1	1	183	7	4	18	40
3	Portsmouth	7	0	6	3	0	0	0	0	0	1	0
4	Norfolk	32	0	15	5	0	0	5	0	0	3	11
5	Suffolk Area	56	0	11	11	1	0	22	0	1	2	10
6	Sussex Area	65	0	31	10	0	0	43	0	0	2	13
7	Newport News	101	0	19	9	0	1	22	2	0	7	16
8	Hampton	66	0	6	3	1	0	12	0	0	5	4
9	Williamsburg Area	121	1	37	6	2	0	115	0	0	3	22
10	South Boston Area	76	0	26	6	4	2	110	3	0	5	8
11	Petersburg Area	63	0	11	4	1	0	27	1	0	3	4
12	Chesterfield Area	173	1	82	26	0	1	90	1	0	4	20
13	Richmond City	91	0	44	18	1	0	12	0	1	2	7
14	Henrico	328	1	116	35	1	2	54	0	0	6	13
15	Fredericksburg	231	2	177	22	3	1	161	2	0	10	104
16	Charlottesville Area	100	0	69	14	0	2	63	1	0	2	20
17	Arlington Area	18	0	16	1	0	0	6	1	0	1	10
18	Alexandria	14	0	21	1	0	0	2	0	0	1	14
19	Fairfax	49	0	73	4	1	0	20	0	0	3	44
20	Loudoun	46	0	41	1	1	0	12	0	0	1	21
21	Martinsville Area	34	0	63	6	2	1	110	0	0	15	12
22	Danville Area	74	0	42	12	0	3	128	2	1	2	9
23	Roanoke Area	93	0	105	58	1	1	214	3	1	2	9
24	Lynchburg Area	101	0	70	11	5	2	288	9	0	9	25
25	Staunton Area	53	0	58	19	5	1	410	5	1	4	19
26	Harrisonburg Area	207	1	140	10	5	3	573	11	0	13	59
27	Radford Area	56	0	75	21	11	1	814	10	1	17	35
28	Bristol Area	23	0	68	3	11	2	448	7	3	10	13
29	Buchanan Area	8	0	37	2	9	1	264	3	1	6	9
30	Lee Area	8	0	15	2	3	2	191	2	0	8	4
31	Prince William Area	36	1	71	2	0	0	8	0	1	9	28
Total	Statewide	2635	9	1685	377	73	28	4508	70	15	180	622

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 2025

Circuit	Number	Percent
1	690	4.2%
2	833	5.0%
3	102	0.6%
4	387	2.3%
5	324	2.0%
6	309	1.9%
7	169	1.0%
8	156	0.9%
9	539	3.2%
10	445	2.7%
11	223	1.3%
12	589	3.5%
13	265	1.6%
14	690	4.2%
15	1,568	9.4%
16	621	3.7%
17	36	0.2%
18	35	0.2%
19	191	1.2%
20	154	0.9%
21	584	3.5%
22	895	5.4%
23	423	2.5%
24	467	2.8%
25	1,107	6.7%
26	1,451	8.7%
27	1,018	6.1%
28	707	4.3%
29	801	4.8%
30	549	3.3%
31	268	1.6%
Total	16,596	100.0%

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 FY2025 were still being submitted and processed using the Sentencing Worksheets and Interactive File Transfer System (SWIFT). Beginning July 1, 2023, SWIFT became the required method for submitting Guidelines to the Sentencing Commission. However, in FY2025, some Guidelines continue to be prepared outside of the SWIFT system. Guidelines prepared outside SWIFT must be keyed by staff into the system and delay Guidelines being added to the system. At this point, in FY2025, there were 16,596 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 FY2025 were Circuit 15 (Fredericksburg area), Circuit 26 (Harrisonburg area), Circuit 25 (Staunton area), Circuit 27 (Radford area), Circuit 22 (Danville area), Circuit 2 (Virginia Beach), and Circuit 29 (Buchanan area). Circuit 18 (Alexandria), Circuit 17 (Arlington), Circuit 3 (Portsmouth), Circuit 20 (Loudoun area), and Circuit 8 (Hampton) submitted the fewest SRRs during FY2025 (Figure 24).

Of the 16,596 SRRs received by the Commission in FY2025, 7,159 cases identified a new law violation, 6,508 referenced alleged violations other than new law, 2,228 cases identified a violation of a condition not defined by statute, but imposed by the court or probation officer, and there were 701 cases that did not identify the type of violation. The information included in the remainder of this chapter excludes the

following cases: the person was not found in violation of any condition (251 cases), the decision to revoke was taken under advisement (154 cases), the defendant violated the good behavior requirement of a suspended sentence (243 cases), the type of violation was not identified on the SRR form, or other relevant information needed for analyzing and classifying the violation of probation was missing (1,361). Included in the missing category are violations of local probation, Community Corrections Alternative Program removal, and procedural cases when there are no Guidelines recommendations. The remaining 14,586 will be used in this analysis.

Of the remaining 14,586 cases, in 5,880 of the 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 5,779 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. Another 2,927 were found in violation of conditions not defined by statute as technical and did not include a conviction for a new offense.

Extreme caution must be used when comparing FY2025 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 FY2025 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 FY2025.

**Figure 25**  
**Sentencing Revocation Reports Received for Technical and New Law Violations FY1998 - FY2025\***

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
FY2025	8,706	5,880	14,586

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 - FY2025**

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
2025*	85.5%	8.6%	5.9%	12,971

\* 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.

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 FY2025, it was found that concurrence could be calculated for 12,971 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 12,971 cases examined in which offenders were found to be in violation of their probation, approximately 46% 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 28% 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 FY2025.

Examining both technical and new law violation cases reveals that over half (53.2%) 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 (52.9%) (and/or for new law convictions (45.7%) (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**

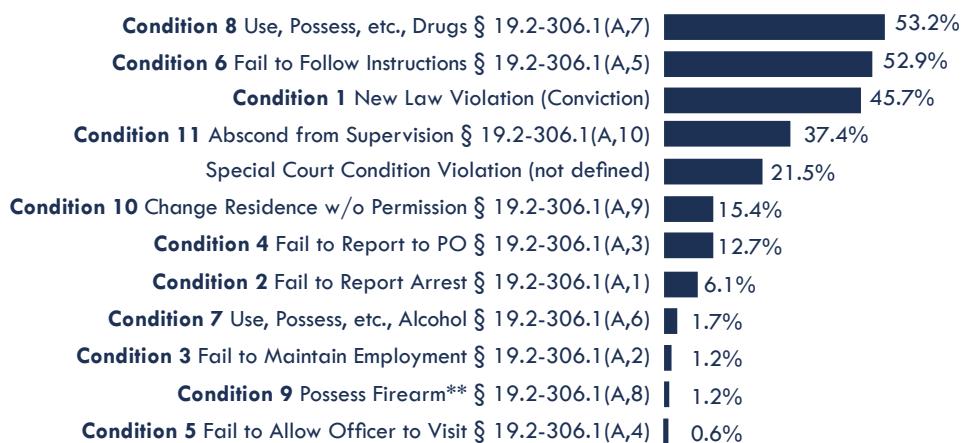
**Probation Violation Guidelines Worksheets Received by Type of Most Serious Original Offense - FY2025**  
N=12,971\*

Original Offense Type	Percent Received
Drug	46.4%
Property	27.8%
Person	13.0%
Other	9.7%
Traffic	3.1%

\*Includes FY2025 cases found to be in violation that were completed accurately on current guideline forms.

**Figure 28**

**Violation Conditions Cited by Probation Officers, FY2025**



\*\* 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 (37.4%) of the FY2025 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 21.5% 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 FY2025, out of 418 violators previously convicted of sex offenses or possession of child pornography, 289 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 FY2025, there were 162 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 15.4% 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 (12.7%) and failure to report an arrest (6.1%). 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**

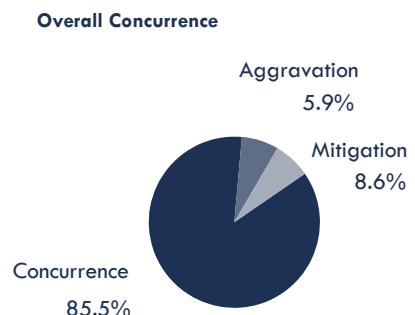
The overall concurrence rate summarizes the extent to which Virginia's judges concur with recommendations provided by the Probation Violation Guidelines, both in type of disposition and in length of incarceration. In FY2025, the overall rate of concurrence with the Probation Violation Guidelines was 85.5% (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 2024 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  
FY2025\***



*\* 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,  
FY2025**

Type of Revocation	Concurrence	Mitigation	Aggravation	Total Number of Cases	Effective Sentence Median (Months)*
Technical Violation - First	97.0%	0.3%	2.8%	2,399	0.46
Technical Violation - Second (Includes absconding and firearm punishable as second by statute)	90.0%	3.5%	6.4%	1,496	0.46
Technical Violation - Third (Includes absconding and firearm punishable as third by statute)	75.9%	17.4%	6.6%	1342	12
Special Condition Violations	79.1%	10.5%	10.3%	1,779	6
New Misdemeanor Conviction	85.1%	10.1%	4.8%	2,842	6
New Felony Conviction	82.5%	11.3%	6.2%	3,113	12
<b>Overall</b>	<b>85.5%</b>	<b>8.6%</b>	<b>5.9%</b>	<b>12,971</b>	<b>6</b>

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

In FY2025, excluding the Guidelines that reflect statutory requirements, concurrence rates range from 85.1% to a low of 75.9%. 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 twice the division between mitigating (11.7%) and aggravating (6.6%) 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 beyond what is specified in statute.

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**

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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 110 such cases identified in FY2025. Of those, 38 cases did not result in an active period of incarceration. The median sentence imposed for those sentenced to incarceration was nine months.

## **PRETRIAL INCARCERATION PENDING A PROBATION VIOLATION HEARING FY2024**

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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 writ of habeas corpus 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 writ of habeas corpus or PB-15 warrant with a show cause.

Procedures and availability of a judge to hear a case vary across the Commonwealth. Figure 31 (needs to change) identifies that most probationers (68.0%) are 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.

**Figure 31**

**Pretrial Incarceration Pending a Probation Violation Hearing, FY2025**

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	54.4%	45.6%		903	
Technical Violation - First	33.3%	66.7%		3	
Technical Violation - Second	50.0%	50.0%		6	
Technical Violation Possess Firearm/Abscond - First	33.3%	66.7%		6	
Technical Violation Possess Firearm/Abscond - Second	0.0%	100.0%		1	
Technical Violation - Third	66.7%	33.3%		3	
Special Condition Violations	37.5%	62.5%		8	
New Misdemeanor Conviction	72.2%	27.8%		3,422	
New Felony Conviction	75.7%	24.3%		3,737	
No New Law Violation	64.4%	35.6%		3,027	
<b>Overall</b>	<b>68.0%</b>	<b>32.0%</b>		<b>16,596</b>	

\* 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, 2025,  
RELATED TO § 19.2-306.1**

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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.<sup>1</sup> The Project's purpose 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 with pretrial data collection has begun to receive national attention.

This year, the Sentencing Commission examined individuals with pretrial contact events during Calendar Year (CY) 2023. A contact event is the point at which an individual is charged with a criminal offense, thus beginning the pretrial process. As in previous studies, 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 were obtained from seven different data systems.<sup>2</sup> 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.

<sup>1</sup> See Virginia State Crime Commission. (2021). *Virginia Pretrial Data Project: Final Report*.

<sup>2</sup> Alexandria Circuit Court system completed switching back to the Court Case Management System in Virginia in the end of 2024. Therefore, the Commission did not make a separate data request to the Clerk of Alexandria Circuit Court..

The Commission overcame several challenges during the course of data collection. One notable challenge is related to the collection of out-of-state criminal history records. After lengthy delays, the Commission finally received the approval from Federal Bureau of Investigation (FBI) to use its out-of-state criminal history information. The Commission has worked with FBI to standardize data exchange procedures and has nearly completed normalizing the process. As a first attempt, the Commission used the primary cohort data for CY2022 to collaborate with FBI for the standardized data exchange procedures. The lengthy process gave the Commission the opportunity to develop the most effective approach to request and obtain the out-of-state criminal history data in a timely manner. After the completion, the Commission reviewed all returned data from FBI and found that about 30% of the defendants in the main CY2022 cohort data have out-of-state history. However, as the Commission was working through the logistics (e.g., submitting the new application for the new CY2023 Cohort data) with FBI for this year's CY2023 cohort, an unforeseeable external event (the government shutdown) made it impossible to obtain the out-of-state criminal history records in a timely manner. Because of this, the Commission was not able to utilize out-of-state criminal history data for this year's data.

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 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 several measures across multiple years of available 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.

This year, the Sentencing Commission conducted a special study to examine the association between pretrial services supervision and pretrial outcomes (failure to appear (FTA) or new criminal arrest (NCA) for jailable offense). Currently, there are 35 pretrial service agencies serving 116 of Virginia's 133 cities and counties. The Commission utilized both descriptive statistics and advanced statistical methods to provide the findings about the pretrial services supervision and its association with 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 from 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 years to come.

## KEY FINDINGS

Presented below are key descriptive findings from the Commission's analysis of CY2021-CY2023 pretrial data. The findings are generally consistent from year to year; however, interesting trends have emerged. These are noted below.

- The vast majority of defendants are ultimately released from custody during the pretrial period. While approximately one in ten defendants were detained throughout the pretrial period during 2020 and 2021, the overall pretrial release rate has increased from 87.7% in CY2019 to 89.5% in CY2020, when the COVID pandemic began. The overall pretrial release rate has since declined to 87.2% in CY2023. CY2023 marked the first year that the overall release rate was lower than the pre-pandemic CY2019 level.
- 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 decreased from 59.1% in CY2021 to 57.9% in CY2023.
- Overall, secured bond amounts at the time of release were consistent from CY2021 to CY2023. Secured bond amounts generally did not vary widely across sex, race, age, assigned counsel type, or year of release.
- About 46% of defendants were charged with a felony offense, while about 55% were charged with a misdemeanor or special class offense as the most serious offense in the contact event. Throughout CY2021-CY2023, 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 CY2022 and CY2023, roughly 79% of individuals facing felony charges were released pretrial. Among those charged with felonies, individuals with felony charges for drugs, 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 and Whites were released more often than Blacks. The defendants not assigned with court-appointed attorneys were much more likely to be released than the defendants assigned with court-appointed attorneys especially when they are charged with a felony or violent offense. It is important to note that many factors, including prior record, affect pretrial release rates.
- Of released defendants, based on the data (CY2021-CY2023), between 16.8% and 18.6% 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 but not placed under pretrial supervision.
- Across each year examined, a small percentage of released defendants were charged with failure to appear at court proceedings for the offense(s) in the contact event. The FTA rate decreased from 16.6% in CY2021 to 13.9% in CY2023; however, the rate remains higher than in CY2019 (12.6%).
- Similarly, a relatively small portion of released defendants were 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 18.6% in CY2023. The CY2023 new-arrest rate is lower than the rate observed during the pre-pandemic period (CY2019).
- During CY2021-CY2023, between 52% and 54% of defendants were convicted of at least one offense in the contact event (original or reduced charge). The conviction rate has been fairly consistent since CY2020.
- Public Safety Assessment (PSA) scores for both failure to appear (FTA) and new criminal arrest (NCA) were quite similar across the CY2021-CY2023 cohort groups. For both FTA and NCA measures, the largest share of defendants was 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 CY2021 than in recent years (CY2022-CY2023); this percentage has since constantly declined.

- 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 rate for new in-state arrest for individuals classified as high risk (PSA NCA scores of 5 or 6) has decreased markedly.
- Results of a sophisticated empirical study conducted by the Commission indicate that defendants who receive pretrial service supervision have lower rates of new FTA than those who did not receive it; this finding is highly statistically significant. On the other hand, the association between pretrial services supervision and new criminal arrest (new in-state offense punishable by incarceration) is found to be statistically insignificant.

However, when the analyses are focused on the released defendants whose assigned PSA score is 3 or higher, the statistical findings show that the likelihood of NCA for the defendants with pretrial services supervision is lower and highly statistically significant than those (PSA score of 3 or higher) without the supervision.

The caution regarding this study is that those findings do not imply the distinctive and definite inferences about the Virginia pretrial service supervision because there would be qualitative and functional differences in the pretrial services in Virginia. In particular, this study only analyzed the subset of the entire pretrial defendants and the many potential unobservable factors, often difficult to operationalize, were not taken into account in this analysis.

The full report, entitled Virginia Pretrial Data Project: Findings from the 2023 Cohort, can be found on the Commission's website at <http://www.vcsc.virginia.gov/pretrialdataproject.html> (available after December 1, 2025).

# 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, which is submitted 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. Most importantly, 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 to guide its discussions about guidelines modifications. 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 opinions. The thoughts of the judiciary, as expressed in the reasons they write for departing from the Guidelines, are vital in directing the Commission's attention to areas of the Guidelines that may require amendment.

On an annual basis, the Commission also examines crimes that are 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

Establish new guidelines for larceny offenses based on historical sentencing practices.

## **ISSUE**

As approved by the General Assembly in 2022, the Commission's staff is in the process of implementing § 17.1-805.1 of the Code of Virginia and developing a single worksheet to be used when a period of incarceration is warranted based on historical practices. In addition, the Case Details Worksheet — approved by the General Assembly and implemented on July 1, 2021 — to replicate data from presentence investigations can now support new analyses aimed at developing guidelines based on current sentencing patterns.

Specifically for the Larceny Guidelines, the Commission aimed to better reflect current sentencing practices following changes to the felony threshold for larceny offenses. The threshold for misdemeanor larceny escalating to felony was raised from \$200 to \$500 in 2018, and then from \$500 to \$1,000 in 2020. These changes affected the scoring in the current Larceny Guidelines, leading to inconsistent application and recommendations.

## DISCUSSION

To begin a re-analysis of the larceny guidelines, a sample dataset was assembled from the FY2021-FY2025 sentencing guidelines database. Cases with primary offense dates before July 1, 2020, were excluded, as they may not meet the current \$1,000 felony threshold. In addition, offenses of petit larceny 3rd/subsequent were removed to account for the elimination of this felony from the Code of Virginia by the 2021 General Assembly. Over 5,500 larceny cases remained in the dataset, from which a random sample of 1,263 was drawn. After eliminating cases missing critical data, the random sample was narrowed down to 1,212 cases. The random sample is broken down in the table below.

**Figure 32**  
**Breakdown of Random Sample for**  
**Larceny Re-Analysis**  
**FY2021- FY2025**

Categories	Number of Sentencing Events
Larceny - Other	201
Larceny - 5 Yr Max	144
Grand Larceny - Property	145
Grand Larceny - From a Person	144
Grand Larceny - Firearm	146
Grand Larceny - Auto	144
Embezzlement	142
Stolen Property / Shoplift	146
<b>TOTAL</b>	<b>1,212</b>

Due to the difficulty of drawing meaningful conclusions from an analysis of offenses with minimal sample sizes, primary offenses with fewer than five people receiving any incarceration were dropped from the dataset. A complete list of dropped offenses can be found below.

**Figure 33**  
**Offenses Dropped from**  
**Larceny Guidelines**  
**FY2021- FY2025**

Offense	VCC	Sample Size
Animals and poultry, <\$1000	LAR2318	0
Fraudulent entry by financial officer	LAR2336	0
Altering, defacing, removing, possessing serial no. >\$1000	LAR2372	0
Theft or destruction of public record	LAR2373	0
Embezzlement by public officer	LAR2706	0
Goods on approval, fail to pay or return goods >\$1000	LAR2380	0
Special commissioner, fail to account for money, >\$1000	LAR2382	0
Conversion by fraud of property titled to another, >\$1000	LAR2379	3

With the offenses excluded, there are 17 remaining larceny offenses with sample sizes sufficient for analysis, plus an extra offense covering any attempted or conspired larceny offense. The included offenses are listed below.

**Figure 34**  
**Offenses Included in Revised Larceny Guidelines**  
**FY2021- FY2025**

Offense	VCC	Statute	Penalty
Auto theft	LAR2404	18.2-95(ii)	1-20 yrs
Grand larceny	LAR2359	18.2-95(ii)	1-20 yrs
Larceny from person, >\$5	LAR2361	18.2-95(i)	1-20 yrs
Larceny of firearm	LAR2383	18.2-95(iii)	1-20 yrs
Unauthorized use of animal, auto, boat, >\$1000	LAR2412	18.2-102	1-5 yrs
Embezzlement, >\$1000	LAR2707	18.2-111	1-20 yrs
Shoplift, alter price tags, >\$1000	LAR2354	18.2-103	1-20 yrs
Receive stolen property, >\$1000	LAR2808	18.2-108	1-20 yrs
Receipt or transfer of stolen vehicle, aircraft, boat	LAR2810	18.2-109	1-5 yrs
Receive stolen firearm	LAR2817	18.2-108.1	1-5 yrs
Sell stolen property, >\$1000 in aggregate	LAR2303	18.2-108.01(B)	1-10 yrs
Attempted or conspired larceny offenses		18.2-22/18.2-26	Varies
Sell stolen property, >\$1000	LAR2302	18.2-108.01(A)	2-20 yrs
Bailee, fail to return animal, auto, etc., >\$1000	LAR2321	18.2-117	1-20 yrs
Larceny of book of accounts, \$>\$1000	LAR2334	18.2-98	1-20 yrs
Leased property, fail to return, >\$1000	LAR2381	18.2-118	1-20 yrs
Larceny of animals (dogs, horses, and cows)	LAR2317	18.2-97	1-10 yrs
Conspire to commit larceny, >\$1000 in aggregate	LAR2304	18.2-23(B)	1-20 yrs
Conversion by fraud of property titled to another, >\$1000	LAR2379	18.2-115	1-20 yrs

Following the standard set by last year's successful reanalysis of the robbery guidelines, this reanalysis of the larceny guidelines aimed to generate a Worksheet A, which would provide a recommendation of incarceration/no incarceration, and a Worksheet C, which would provide a recommended sentence, regardless of whether that sentence is served in jail or prison.

Using data collected from sentencing guidelines and the case details worksheet, a variety of methods were employed to generate an accurate model, with logistic regression and ordinary least squares (OLS) regression serving as primary analytical tools. Once statistically significant factors were identified, worksheets were drafted. The new models were validated using historical data to confirm alignment with judicial practices. Following a thorough review, edits were made to ensure the model closely reflected historical sentencing practices.

Worksheet A, which recommends incarceration or no incarceration, can be found in Figure 35. Unlike on the current larceny Worksheet A, each VCC is listed separately under the Primary Offense factor to give each offense its own score and make it possible to maximize the accuracy of the model for each VCC.

Factors carried over from the current to the revised larceny guidelines, albeit with slightly different scores, include Additional Offenses, Prior Incarcerations/Commitments, Prior Juvenile Record, and Legal Restraint. The Mandatory Minimum factor appears on Larceny Worksheet A because every case must proceed to Worksheet C to reflect the statutory mandate.

The Primary Offense Remaining Counts factor and the Prior Convictions/Adjudications factor exist on the current larceny guidelines, but they are measured differently on the revised version. On the new worksheet, rather than totaling the maximum penalties for remaining primary offense counts and additional offenses, users simply add up offense counts and select the relevant value from the worksheet. This method was found to be more statistically significant than the current method.

If a defendant scores 19 or more points on Worksheet A, they will be recommended for at least one day of incarceration, and Worksheet C must be completed. If 18 or fewer points are scored, however, then the court will receive a recommendation of no incarceration or probation.

**Figure 35**

**Proposed Larceny Section A Worksheet**

## Larceny Section A

Offender Name: \_\_\_\_\_

### ◆ Primary Offense

(scores for attempted/conspired offenses are in parentheses)

A.	Attempted or conspired larceny (1 count) .....	(4)
B.	LAR-2321-F9* Bailee, fail to return animal, auto, etc. - \$1000 or more (1 count).....	3
C.	LAR-2808-F9 Receive stolen goods - \$1000 or more (1 count).....	4
D.	LAR-2359-F9 Grand Larceny - \$1000 or more not from person (1 count) .....	6
E.	LAR-2304-F9 Conspire to commit or assist in larceny w/aggregate value $\geq$ \$1000 (1 count) .....	6
F.	LAR-2383-F9 Larceny of firearms, regardless of value, not from person (1 count) .....	6
G.	LAR-2334-F9 Larceny of bank notes, checks, etc worth \$1000 or more (1 count) .....	6
H.	LAR-2379-F9 Conversion by fraud property titled to another \$1000 or more (1 count).....	6
I.	LAR-2354-F9 Shoplift, alter price tags $>$ \$1000 (1 count) .....	7
J.	LAR-2412-F6 Unauthorized use of animal, auto, boat worth \$1000 or more (1 count) .....	7
K.	LAR-2404-F9 Grand larceny auto (1 count) .....	8
L.	LAR-2381-F9 Fail to return leased personal property, \$1000 or more (1 count).....	8
M.	LAR-2317-F5 Larceny of animals (dog, horse, pony, mule, cow etc.) (1 count) .....	8
N.	LAR-2707-F9 Embezzlement, \$1000 or more (1 count) .....	8
O.	LAR-2302-F9 Receive stolen goods, intent to sell - \$1000 or more (1 count) .....	9
P.	LAR-2361-F9 Grand larceny - \$5 or more from person (1 count).....	9
Q.	LAR-2810-F6 Receipt of transfer, vehicle, aircraft or boat (1 count).....	9
R.	LAR-2817-F9 Receive stolen firearm (1 count) .....	10
S.	LAR-2303-F5 Receive stolen goods, intent to sell - aggregate \$1000 or more (1 count) .....	11

\* Attempted and conspired offenses are scored the same as a completed act.

Score

--	--

### ◆ Primary Offense Remaining Counts

Remaining Counts: 0 .....	0
1 .....	2
2 or more.....	3

0	
---	--

### ◆ Additional Offenses

Total the maximum penalties for additional offenses, including counts \_\_\_\_\_

Maximum Penalty: (years)	0 .....	0
1 to 10 .....	2	2
11 to 20 .....	3	3
21 or more.....	4	4

0	
---	--

### ◆ Prior Convictions/Adjudications

Number of convictions/adjudications for misdemeanors and felonies \_\_\_\_\_

Number of Counts: 0 to 1 prior convictions .....	0
2 to 4 prior convictions .....	1
5 to 10 prior convictions .....	3
11 or more prior convictions.....	4

0	
---	--

### ◆ Mandatory Minimum in Current Event

If YES, add 16 → 

--	--

### ◆ Prior Incarcerations/Commitments

If YES, add 8 → 

0	
---	--

### ◆ Prior Juvenile Record

If YES, add 2 → 

0	
---	--

### ◆ Legally Restrained at Time of Offense

None .....	0
Other .....	6
Parole, post-release, supervised probation, or supervised probation after incarceration.....	8

0	
---	--

### Total Score

If total is 18 or less, the guidelines sentence is **Probation/No Incarceration**.  
If total is 19 or more, go to **Section C**.

--	--

Larceny/Section A

The revised Worksheet C worksheet can be found in Figure 36. Unlike on Worksheet A, where more points reflected an increased probability of receiving some incarceration, one additional point on Worksheet C translates to an additional month on the recommended sentencing midpoint.

Primary offense points on Worksheet C are assigned based on the classification of a defendant's prior record. A defendant's convictions are scored under the Other category if there is no prior conviction for a violent felony defined in § 17.1-805(C). A defendant is scored under Category II if the prior conviction for a violent felony is under § 17.1-805(C) with a statutory maximum penalty of less than 40 years or Category I if the prior conviction has a statutory maximum of 40 years or more.

The current larceny guidelines assign additional points to Category I and II defendants according to enhancements pre-set by § 17.1-805. In contrast, the revised guidelines assign additional points based on historical sentencing data, as authorized by § 17.1-805.1.

The Type of Additional Offense factor is necessary given the unique penalty structure assigned to many larceny offenses. For example, grand larceny offenses have a maximum penalty of 20 years, which is higher than the maximum penalties for other offenses that historically were given higher sentences or were classified a violent in §§ 17.1-805 or 19.1-297.1. This factor allows the guidelines to accurately reflect historical sentencing in these cases.

Similarly, the Weapon Used and Mandatory Minimum factors were added to better reflect sentencing events involving acts considered more serious by statutes, attorneys, and judges. Additional Offenses, Legal Restraint, and Amount of Embezzlement are carried over from the current larceny worksheets, with different updated scores. The Primary Offense Remaining Counts factor works the same as it does on Section Worksheet A of the revised guidelines, requiring users to add up remaining counts of the primary offense rather than adding up the maximum penalties of those counts. The new factor on Larceny Worksheet C is the Prior Larceny Convictions/Adjudications, which requires users to add up all prior offense counts with a larceny VCC prefix, regardless of whether the prior charge is a felony or misdemeanor. This factor is based on the type of offense, not the penalty assigned by another state or statute. This model was developed to closely match historical sentencing practices.

Figure 36

Proposed Larceny Section C Worksheet

## Larceny Section C

### ◆ Primary Offense

Offender Name: _____			
Prior Record Classification _____			
<input type="checkbox"/> Category I <input type="checkbox"/> Category II <input type="checkbox"/> Other <small>(scores for attempted/conspired offenses are in parentheses)</small>			
A. Attempted or conspired larceny (1 count) .....	(3) .....	(2) .....	(1) .....
B. LAR-2321-F9 Bailee, fail to return animal, auto, etc. - \$1000 or more (1 count) .....	4 .....	3 .....	2 .....
C. LAR-2808-F9 Receive stolen goods - \$1000 or more (1 count) .....	4 .....	3 .....	1 .....
D. LAR-2359-F9 Grand Larceny - \$1000 or more not from person (1 count) .....	6 .....	5 .....	3 .....
E. LAR-2304-F9 Conspire to commit or assist in larceny w/aggregate value $\geq$ \$1000 (1 count) .....	11 .....	10 .....	7 .....
F. LAR-2383-F9 Larceny of firearms, regardless of value, not from person (1 count) .....	8 .....	6 .....	3 .....
G. LAR-2334-F9 Larceny of bank notes, checks, etc. worth \$1000 or more (1 count) .....	3 .....	1 .....	1 .....
H. LAR-2379-F9 Conversion by fraud property titled to another \$1000 or more (1 count) .....	10 .....	8 .....	5 .....
I. LAR-2354-F9 Shoplift, alter price tags > \$1000 (1 count) .....	4 .....	3 .....	2 .....
J. LAR-2412-F6 Unauthorized use of animal, auto, boat worth \$1000 or more (1 count) .....	3 .....	2 .....	1 .....
K. LAR-2404-F9 Grand larceny auto (1 count) .....	8 .....	7 .....	4 .....
L. LAR-2381-F9 Fail to return leased personal property, \$1000 or more (1 count) .....	4 .....	3 .....	1 .....
M. LAR-2317-F5 Larceny of animals (dog, horse, pony, mule, cow etc.) (1 count) .....	8 .....	6 .....	4 .....
N. LAR-2707-F9 Embezzlement, \$1000 or more (1 count) .....	9 .....	8 .....	5 .....
O. LAR-2302-F9 Receive stolen goods, intent to sell - \$1000 or more (1 count) .....	12 .....	10 .....	7 .....
P. LAR-2361-F9 Grand larceny - \$5 or more from person (1 count) .....	12 .....	10 .....	6 .....
Q. LAR-2810-F6 Receipt of transfer, vehicle, aircraft or boat (1 count) .....	5 .....	4 .....	2 .....
R. LAR-2817-F9 Receive stolen firearm(1 count) .....	6 .....	4 .....	2 .....
S. LAR-2303-F5 Receive stolen goods, intent to sell - aggregate \$1000 or more (1 count) .....	3 .....	2 .....	1 .....

Offender Name: \_\_\_\_\_

Prior Record Classification \_\_\_\_\_

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

Score

0 | 0 | 0

### ◆ Primary Offense Remaining Counts

Remaining counts: 0 ..... 0  
 1 or more ..... 1

0 | 0 | 0

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

Primary offense: A: Attempted/Conspired G: Larceny of bank notes and L: Fail to return property	
Years	Points
0 to 3.....	0 .....
4 to 10.....	1 .....
20.....	3 .....
30.....	4 .....
40, 50, Life.....	6 .....

Primary offense: All other offenses	
Years	Points
0 to 2.....	0 .....
3 to 5.....	1 .....
10.....	2 .....
20.....	4 .....
30.....	6 .....
40, 50, Life.....	8 .....

0 | 0 | 0

### ◆ Type of Additional Offense (Score if any additional offense includes the following prefix)

Other ..... 0  
 Felony with prefix of ROB or WPN ..... 5  
 Felony with prefix of ASL or MUR ..... 9

0 | 0 | 0

### ◆ Mandatory Minimum in Current Event Assign points to each additional offense with a mandatory minimum and total the points

Less than 2 Year Mandatory Minimum.....0   2 to 3 Year Mandatory Minimum.....1   5 Years or More Mandatory Minimum.....2

0 | 0 | 0

If YES, add 4

### ◆ Weapon Used at Time of Offense

Primary offense A, G and L:      If YES, add 4

Primary offense: All other offenses

No ..... 0  
 Yes ..... 7

0 | 0 | 0

### ◆ Prior Larceny Convictions/Adjudications

Number of Counts:      0 to 1 ..... 0  
 2 to 3 ..... 1  
 4 to 8 ..... 2  
 9 or more ..... 4

0 | 0 | 0

### ◆ Legally Restrained at Time of Offense

None ..... 0  
 Other ..... 3  
 Parole, post-release, supervised probation, or supervised probation after incarceration ..... 6

0 | 0 | 0

SCORE THE FOLLOWING FACTOR **ONLY IF PRIMARY OFFENSE IS N: EMBEZZLEMENT (§ 18.2-111)**

### ◆ Amount of Embezzlement

Amount:      Less than \$28,000 ..... 0  
 \$28,000 or more ..... 21

0 | 0 | 0

### Total Score

See Larceny Section C Recommendation Table for guidelines sentence range.  
 Then, go to Section D Nonviolent Risk Assessment and follow the instructions.

0 | 0 | 0

In the sample dataset, 63.1% of cases received at least one day of incarceration, while our model assigns 63.7% of cases to receive the same. Conversely, 36.9% of cases received no incarceration, compared to 36.3% under the revised model. In addition, of those cases which received any incarceration in real life, the Worksheet C model closely reflects the amount of time received by these defendants. This is illustrated in Figures below.

**Figure 37**

**Actual versus Proposed Recommended Dispositions for Larceny Offense FY2021-FY2025**

	<b>Probation/ No Incarceration</b>	<b>Incarceration 1 day or More</b>
Actual Practice	36.9%	63.1%
Recommended under Proposed Guidelines	36.3%	63.7%

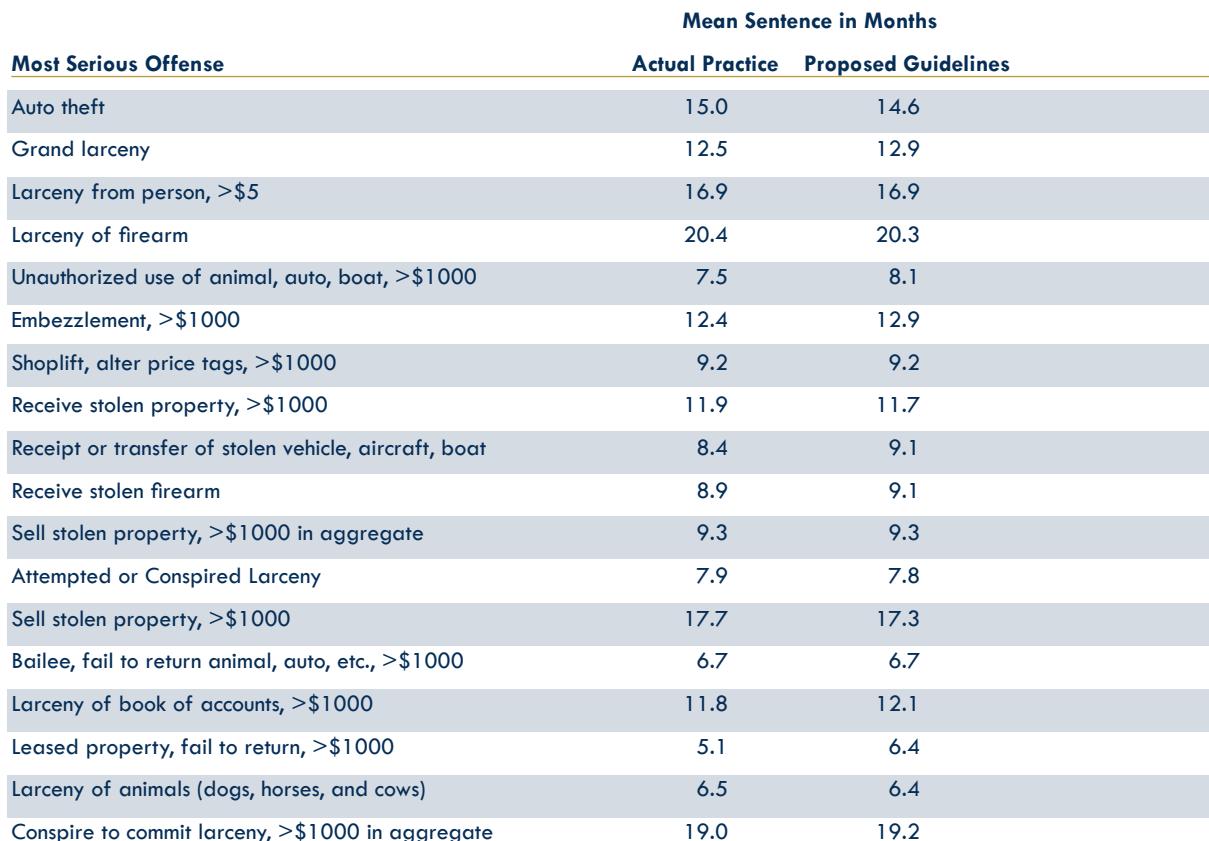
**Figure 38**

**Actual versus Proposed Recommended Dispositions for Larceny Offense FY2021-FY2025**



**Figure 39**

**Defendants Sentenced to Incarceration 1 Day or More**



The average case reaching Worksheet C received a historical sentence of 13.1 months and 13.2 months under the revised guidelines. The model maintains its accuracy when broken down by individual offense, recommending defendants for a sentence that is within one month of the average sentence given or accepted by the court when that specific offense is the primary or most serious offense in the sentencing event. The revised model also produces results which closely match past sentencing behavior related to defendants with violent prior records.

After revising the fraud and larceny guidelines, Commission staff saw a need to revise the recommendation tables that convert scores on Section C into sentencing recommendations. The old method for creating these tables, which used percentage change to set the upper and lower bounds of the sentencing recommendation, was difficult to replicate due incomplete reference material. Moreover, this method was decades old and in need of simplification.

The new method uses standard deviation rather than percentage change. First, the standard deviation of effective sentences across all Section C scores is calculated. For example, cases which score 10 points on Section C of the revised guidelines may have a standard deviation of 4 months of incarceration, while those which score 20 points might have a standard deviation of 6 months. After these calculations, each score's corresponding standard deviation is then added to the score to create the upper bound and subtracted from the score to create the lower bound, with the score itself acting as the recommended midpoint. Finally, these scores are smoothed using a moving average to eliminate any large jumps in the upper or lower bounds.

The new method is simpler, easily communicable to guidelines users and academia if needed, and continues to reflect historical sentencing patterns and concurrence rates.

**Figure 40**

**Defendants Sentenced to Incarceration of 1 Day or More**

**Mean Sentence by Prior Record Category**

<b>Prior Record</b>	<b>Mean Sentence in Month</b>	
	<b>Actual Practice</b>	<b>Proposed Guidelines</b>
Other	10.4	10.4
Category II	19.2	19.9
Category I	26.0	24.9



# RECOMMENDATION TWO

Add a Primary Offense factor to the Assault Worksheet B to distinguish between a missing worksheet and a recommendation of probation/no incarceration

## ISSUE

Currently, on the Assault B worksheet, a total score of zero can represent either a historically based recommendation of probation/no incarceration, or that the Guidelines were not scored at all. A score of zero is appropriate only when the victim reports no injury — including intimidation — and the defendant has no prior record.

## DISCUSSION

To resolve this issue, a Primary Offense factor would be added, and one point would be assigned for all assault Guidelines offenses. The recommendation table would be adjusted to account for this additional point without altering the historical recommendation. As a result, a score of zero would indicate that Worksheet B was not scored, while a score of one would reflect a recommendation of probation/no incarceration.

**Figure 41**

**Proposed Assault Section B Worksheet  
and Recommendation Table**

<b>Assault ✦ Section B</b>		
◆ Primary Offense		
Any felony Assault .....	1	

<b>Recommendation Table</b> _____		
Current Score	Proposed Score	Guideline Sentence
(0-4)	1 - 5.....	Probation/No Incarceration
(5-6)	6 - 7.....	Incarceration 1 Day up to 3 Months
(7+)	8+ .....	Incarceration 3 to 6 Months



# RECOMMENDATION THREE

Revise the Sentencing Guidelines for Fraud and Add False Statement in Application For Payment Under Medical Assistance (§ 32.1-314) to the Fraud guidelines.

## ISSUE

At its June 2025 meeting, the Sentencing Commission approved a study designed to reanalyze fraud and larceny cases and completely revise the Fraud and Larceny worksheets. There were several reasons behind this decision. Many years had passed since a complete re-analysis of these guidelines had been conducted. In the interim, legislative changes affecting the fraud and larceny offense penalty structure had reduced the utility of some of the factors on the worksheets. For instance, changes to the felony monetary threshold for certain fraud and larceny offenses affected the scoring of some prior record factors. The felony threshold was increased from \$200 to \$500 in 2018, and then increased from \$500 to \$1,000 in 2020. Since documentation of the exact dollar value of the offense was frequently unavailable, guidelines preparers had difficulty determining whether a prior conviction should be treated as a felony or a misdemeanor. In addition, the felony penalty for petit larceny 3rd or subsequent was eliminated by the 2021 General Assembly. These changes affected the scoring of factors such as Prior Felony Property Convictions on Section A of the current Fraud guidelines, and Prior Felony Larceny Convictions on Section A of the current Larceny guidelines. Accordingly, the Commission determined that a complete re-analysis was necessary to address these inconsistencies.

A stratified random sample of eligible cases was drawn from the fiscal year (FY) 2021 through FY2025 Sentencing Guidelines database. Cases with a primary offense date prior to July 1, 2020 were excluded, since these may not meet the current \$1,000 felony threshold. Cases with a primary offense of petit larceny 3rd or subsequent were also excluded. In all, 2,147 cases (884 fraud, 1,263 larceny) were selected for study. Supplemental criminal history information was obtained from the Virginia State Police and incorporated into the analysis; defendants with missing criminal history data were excluded from subsequent stages of analysis.

In addition, the Commission was asked to consider adding several felony offenses under § 18.2-369 (abuse and neglect of vulnerable adults) and §§ 32.1-314 and 32.1-315 (medical assistance fraud) to the Sentencing Guidelines. After examining FY2019-FY2024 Circuit Court Case Management System (CMS) data, staff determined that only one offense, false statement in application for payment under medical assistance (§ 32.1-314), provided sufficient cases for analysis. This offense is a felony with a statutory penalty range of one to twenty years. A total of 57 defendants were identified with false statement in application for payment as their primary offense at sentencing. Accordingly, criminal history information was obtained for these individuals and analyzed. As a result, this recommendation includes provisions for adding false statement in application for payment under medical assistance to the Fraud guidelines.

## DISCUSSION

Figure 42 presents the distribution of fraud cases selected and analyzed from the stratified random sample. Some cases could not be used in the analysis because no criminal history data was obtained for them. Figure 42 also shows the 57 cases with false statement in application for payment as their primary offense at sentencing.

**Figure 42**  
**Breakdown of Cases Selected and Analyzed for Fraud Re-Analysis**

Categories	Selected	Analyzed
Fraud - Other*	344	331
Fraud - 10 Year Statutory Maximum	270	270
Fraud - 20 Year Statutory Maximum	270	260
False Statement in Application for Payment	57	57
<b>TOTAL</b>	<b>941</b>	<b>918</b>

\* For fraud offenses with less than 30 cases, we selected ALL available cases

Some offenses will be dropped from the Fraud guidelines because they did not appear as the primary offense at sentencing or provided too few cases for analysis. These offenses are listed in Figure 43.

**Figure 43**  
**Offenses Dropped from Fraud Guidelines**

Offense	VCC
Possess credit card forging devices	FRD2513F6
Forging an official seal	FRD2516F4
Obtain ticket at discount price by fraud	FRD2622F6
Fraudulent use of birth certificate/license to obtain firearm	FRD2647F6
Fraud in commercial dealings with government	FRD2648F6
False statement to obtain hotel/motel service, $\geq \$1000$	FRD2650F5
Buying pig iron with intent to defraud	FRD2675F6
Submit a false certified statement to government agency	FRD2684F6
Obtain signature to writing by false pretenses	FRD2742F4
Unauthorized use of food stamps, $\geq \$1000$	FRD2693F9
False application for assistance	FRD2700F5
Receive goods from credit card fraud, $\geq \$1000$	FRD2807F6
False statement to obtain property/credit, $\geq \$1000$	FRD2811F9
False statement to obtain utilities, TV, $\geq \$1000$	FRD2689F6
Make or possess forging instruments	FRD2515F4
Intent to defraud, funds not used for labor/supplies, $\geq \$1000$	FRD2602F9

Figure 44 presents the fraud offenses to be included on the revised Fraud guidelines, along with their observed rates of incarceration when the offense was the primary offense at sentencing.

**Figure 44**  
**Offenses Included in Revised Fraud Guidelines**

Offense	VCC	Statute	Incarceration Rate
Theft of credit cards or numbers	FRD2360F9	18.2-192(1a)	73.3%
Use identifying info to defraud, $\geq$ \$1000	FRD2509F6	18.2-186.3	34.6%
Obtain ID info w/intent to defraud, 2nd/Subs.	FRD2510F6	18.2-186.3	87.0%
Forgery of credit card	FRD2512F5	18.2-193	40.7%
Forging – coins or bank notes	FRD2514F4	18.2-170	51.5%
Possess forged bank notes, coins, $\geq$ 10	FRD2517F6	18.2-173	53.8%
Forging public record	FRD2519F4	18.2-168	66.7%
Forgery	FRD2520F5	18.2-172	59.0%
Uttering	FRD2521F5	18.2-172	59.2%
Uttering public record	FRD2535F4	18.2-168	70.0%
Bad checks, $\geq$ \$1000	FRD2624F6	18.2-181	46.4%
Credit card fraud, $\geq$ \$1000 over 6 months	FRD2635F6	18.2-195(1)	62.7%
Obtain welfare assistance by fraud, $\geq$ \$1000	FRD2695F9	63.2-522	0.0%
Bad checks, 2 or more in 90 days, $\geq$ \$1000	FRD2699F6	18.2-181.1	62.5%
Obtain money by false pretenses, $\geq$ \$1000	FRD2743F9	18.2-178	45.7%
Receive stolen credit card/no., w/intent to sell	FRD2795F9	18.2-192(1b)	57.1%
Construction fraud, $\geq$ \$1000	FRD2805F9	18.2-200.1	65.0%
False statement in application for payment	FRD3337F9	32.1-314	31.0%

The actual incarceration rates varied from a low of 0.0% (13 cases) for welfare fraud to a high of 87.0% for ID fraud, 2nd or subsequent.

Revision of the Fraud guidelines was in part guided by information obtained from the Commission's 2022 judicial survey. Most respondents indicated that, when making sentencing decisions, they first decided whether a defendant should be incarcerated, and then decided on an appropriate sentence length. Accordingly, the reanalysis was structured to produce two worksheets instead of three; Worksheet A to address the No Incarceration/Incarceration decision, and Worksheet C to address the Length of Sentence recommendation. Worksheet C was designed to produce sentencing recommendations for both jail and prison dispositions.

Once criminal history data was obtained from the Virginia State Police and incorporated into the Commission's database, data analysis commenced with exploratory work – crosstabulations, descriptive statistics, and graphical displays – to indicate which individual factors potentially influenced sentencing decisions. It was important to account for the effects of important extralegal factors on sentencing, such as gender and jurisdiction. Regression methods were then employed to examine the factors collectively and build models for the worksheets. Logistic regression (where the outcome variable is binary) was used to model the No Incarceration/Incarceration decision, and ordinary least squares (OLS) regression (where the outcome variable is continuous) was used to model the Length of Sentence recommendation. Once the best models were determined, discriminant analysis methods were used to convert factor effects into appropriate scores on the worksheets.

**Figure 45**

**Proposed Fraud Section A Worksheet**

## Fraud ✦ Section A

Offender Name: \_\_\_\_\_

### ◆ Primary Offense

		(scores for attempted/conspired offenses are in parentheses)
A.	Attempted or conspired fraud offense (1 count).....	(4)
B.	FRD-2360-F9 Theft of credit card or numbers(1 count).....	5
C.	FRD-2509-F6 Use identifying information to defraud, > \$1000 (1 count).....	4
D.	FRD-2510-F6 Obtain identifying information with intent to defraud, 2nd or sub (1 count).....	5
E.	FRD-2512-F5 Forgery of credit card (1 count).....	4
F.	FRD-2514-F4 Forging – coins or bank notes (1 count) .....	4
G.	FRD-2517-F6 Possess forged banks notes or coins – 10 or more (1 count).....	4
H.	FRD-2519-F4 Forging public record (1 count).....	4
I.	FRD-2520-F5 Forgery (1 count) .....	4
J.	FRD-2521-F5 Uttering (1 count) .....	5
K.	FRD-2535-F4 Uttering public record (1 count).....	4
L.	FRD-2624-F6 Bad checks, \$1000 or more (1 count).....	5
M.	FRD-2635-F6 Credit card fraud > \$1000 over 6 month period (1 count).....	6
N.	FRD-2695-F9* Fraudulently obtaining welfare assistance – \$1000 or more (1 count) .....	1
O.	FRD-2699-F6 Bad checks, two or more w/in 90 days, > = \$1000 (1 count) .....	5
P.	FRD-2743-F9 Obtain money by false pretenses >= \$1000 (1 count) .....	4
Q.	FRD-2795-F9 Receiving stolen credit card/numbers with the intent to use/sell (1 count) .....	4
R.	FRD-2805-F9 Fail to perform construction in return for advances, >= \$1000 (1 count) .....	7
S.	FRD-3337-F9 False statement in application for payment (felony) (1 count) .....	7

\* Attempted and conspired offenses are scored the same as a completed act.

Score

--	--

### ◆ Primary Offense Remaining Counts \_\_\_\_\_

Remaining Counts: 0 to 1 ..... 0  
2 or more ..... 1

0	
---	--

### ◆ Additional Offenses Total the number of additional offenses, including counts \_\_\_\_\_

Primary offense: K: FRD-2535-F4 Uttering public record	
Counts	Points
0 .....	0
1 to 5.....	6
6 or more .....	8

Primary offense: All other offenses	
Counts	Points
0.....	0
1.....	2
2 to 5.....	3
6 or more .....	4

0	
---	--

### ◆ Prior Felony Convictions/Adjudications Against Person \_\_\_\_\_

If YES, add 1 →

0	
---	--

### ◆ Mandatory Minimum in Current Event \_\_\_\_\_

Primary Offense: N: Fraudulently Obtaining Welfare
Do Not Score

Primary Offense: All other offenses
If YES, add 9

0	
---	--

### ◆ Prior Incarcerations/Commitments \_\_\_\_\_

Primary Offense: N: Fraudulently Obtaining Welfare
Do Not Score

Primary Offense: All other offenses
If YES, add 5

0	
---	--

### ◆ Legally Restrained at Time of Offense \_\_\_\_\_

If YES, add 3 →

0	
---	--

### Total Score \_\_\_\_\_

If total is 11 or less, the guidelines sentence is Probation/No Incarceration.  
If total is 12 or more, go to Section C.

Fraud/Section A

The revised Fraud Worksheet A is displayed in Figure 45. Each offense's Virginia Crime Code (VCC) is listed separately under the Primary Offense factor. This made it easier to modify the worksheets to obtain maximum accuracy. In addition, listing each VCC on this factor separately should make it easier for practitioners to use.

On the revised Fraud Worksheet A, offenders convicted of false statement in application for payment (under § 32.1-314) as their primary offense will receive seven points for one count on the Primary Offense factor. Offenders convicted of other fraud offenses will receive Primary Offense points corresponding to their specific primary offense. Note that offenders whose primary offense is fraudulently obtaining welfare assistance will only receive one point for one count on the Primary Offense factor because none of the 13 welfare fraud cases in the study received an incarceration sanction; accordingly, the Primary Offense score for this type of case is low, so that their chance of getting an incarceration recommendation on Worksheet A is also low.

The Additional Offenses factor on Fraud Worksheet A is scored differently than in previous versions; it is now based on the total number of additional offenses, including counts, instead of the statutory maximum penalty of each offense. In addition, practitioners should use the left-hand box to score this factor when the primary offense is uttering a public record; and use the right-hand box for all other primary offenses.

Defendants previously convicted of one or more felony person crimes will pick up one point under that factor. Offenders whose primary offense is welfare fraud will not be scored on two Worksheet A factors, Mandatory Minimum in Current Event and Prior Incarcerations/Commitments. Three points will be scored for Legal Restraint if the offender was under any type of legal restraint at the time of the primary or additional offenses.

A total score of 11 or fewer points on the Fraud Worksheet A means that the offender will be recommended for Probation/No Incarceration. A total score of 12 or more points on Worksheet A means that the offender will then be scored on the Fraud Worksheet C to determine the appropriate sentence length recommendation (including jail and prison dispositions).

Based on the proposed scoring modifications for Worksheet A, Figure 46 compares the proposed recommendations to the actual 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 40.4% of the offenders receive a recommendation of Probation/No Incarceration, while this was the actual disposition in 41.0% of the cases.

**Figure 46**  
**Actual versus Proposed Recommended Dispositions**

	<b>Probation/ No Incarceration</b>	<b>Incarceration 1 day or More</b>
Actual Practice	41.0%	59.0%
Recommended under Proposed Guidelines	40.4%	59.6%

The revised Fraud Worksheet C is displayed in Figure 47. Once again, each primary offense's VCC is listed separately under the Primary Offense factor. Primary Offense points on Worksheet C are based on the classification of an offender's prior record. A Category I offender is someone who has previously been convicted of a violent felony listed in § 17.1-805(C) of the Code of Virginia with a statutory maximum penalty of forty years or more. A Category II offender has a prior conviction for a violent felony listed in § 17.1-805(C) with a statutory maximum penalty of less than forty years. An offender with neither a Category I conviction nor a Category II conviction is classified as Other.

The Commission's proposal recommends that offenders convicted of false statement in application for payment as their primary offense will receive one point for one count of the Primary Offense factor if the offender's prior record is classified as Other, two points if a Category II offender, or three points if a Category I offender (Figure 47). Other defendants will receive Primary Offense points corresponding to their specific prior record classification and primary offense.

The revised Fraud Worksheet C is displayed in Figure 47. Once again, each primary offense's VCC is listed separately under the Primary Offense factor. Primary Offense points on Worksheet C are assigned based on the classification of an offender's prior record. A Category I offender is someone who has previously been convicted of a violent felony listed in § 17.1-805(C) of the Code of Virginia with a statutory maximum penalty of forty years or more. A Category II offender has a prior conviction for a violent felony listed in § 17.1-805(C) with a statutory maximum penalty of less than forty years. An offender with neither a Category I conviction nor a Category II conviction is classified as Other.

**Figure 47**  
**Proposed Fraud C Worksheet**

**Fraud ✪ Section C**

Offender Name: \_\_\_\_\_

Prior Record Classification \_\_\_\_\_

Primary Offense \_\_\_\_\_

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

A. Attempted or conspired fraud offense (1 count) .....	(3) .....	(2) .....	(1) .....
B. FRD-2360-F9   Theft of credit card or numbers (1 count) .....	6 .....	5 .....	4 .....
C. FRD-2509-F6   Use identifying information to defraud, > \$1000 (1 count) .....	6 .....	5 .....	4 .....
D. FRD-2510-F6   Obtain identifying information with intent to defraud, 2nd or sub (1 count) .....	3 .....	2 .....	1 .....
E. FRD-2512-F5   Forgery of credit card (1 count) (1 count) .....	6 .....	5 .....	3 .....
F. FRD-2514-F4   Forging – coins or bank notes (1 count) .....	4 .....	3 .....	2 .....
G. FRD-2517-F6   Possess forged banks notes or coins – 10 or more (1 count) .....	6 .....	5 .....	4 .....
H. FRD-2519-F4   Forging public record (1 count) .....	6 .....	5 .....	4 .....
I. FRD-2520-F5   Forgery (1 count) .....	7 .....	5 .....	4 .....
J. FRD-2521-F5   Uttering (1 count) .....	3 .....	2 .....	1 .....
K. FRD-2535-F4   Uttering public record (1 count) .....	9 .....	8 .....	6 .....
L. FRD-2624-F6   Bad checks, \$1000 or more (1 count) .....	6 .....	5 .....	4 .....
M. FRD-2635-F6   Credit card fraud > \$1000 over 6 month period (1 count) .....	7 .....	6 .....	5 .....
N. FRD-2699-F6   Bad checks, two or more w/in 90 days, >= \$1000 (1 count) .....	5 .....	4 .....	3 .....
O. FRD-2743-F9   Obtain money by false pretenses >= \$1000 (1 count) .....	8 .....	7 .....	5 .....
P. FRD-2795-F9   Receiving stolen credit card/numbers with the intent to use/sell (1 count) .....	8 .....	6 .....	5 .....
Q. FRD-2805-F9   Fail to perform construction in return for advances, >= \$1000 (1 count) .....	11 .....	9 .....	7 .....
R. FRD-3337-F9   False statement in application for payment (felony) (1 count) .....	3 .....	2 .....	1 .....

Score \_\_\_\_\_

0        

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

Maximum Penalty: 4 or less ..... 0  
 Years      5 to 10 ..... 1  
 20 ..... 2

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

Maximum Penalty: 0 to 3 ..... 0  
 (years)      4 to 5 ..... 1  
 10 ..... 2  
 20 ..... 3  
 30 ..... 5  
 40, 50, Life ..... 6

Type of Additional Offense (Score if any additional offense includes the following prefix) \_\_\_\_\_

Other ..... 0  
 Felony with prefix of ROB, WPN, ASL or FAM ..... 4

0        

Mandatory Minimum in Current Event Assign points to each additional offense with a mandatory minimum and total the points \_\_\_\_\_

Less than 2 Year Mandatory Minimum.....0   2 to 3 Year Mandatory Minimum.....1   5 Years or More Mandatory Minimum.....2

0        

Victim Injury \_\_\_\_\_ If YES, add 6 → 0     

Prior Incarceration \_\_\_\_\_ If YES, add 3 → 0     

Prior Incarceration Event of 1 Year or More \_\_\_\_\_ If YES, add 4 → 0     

Legally Restrained at Time of Offense \_\_\_\_\_

None ..... 0  
 Other ..... 1  
 Parole, post-release, supervised probation, or supervised probation after incarceration ..... 4

0     

**Total Score** \_\_\_\_\_

See Fraud Section C Recommendation Table for guidelines sentence range.  
 Then, go to Section D Nonviolent Risk Assessment and follow the instructions.

0

The Commission's proposal recommends that offenders convicted of false statement in application for payment as their primary offense will receive one point for one count of the Primary Offense factor if the offender's prior record is classified as Other, two points if a Category II offender, or three points if a Category I offender (Figure 2). Other defendants will receive Primary Offense points corresponding to their specific prior record classification and primary offense.

On Worksheet C, the Additional Offenses factor is scored based on the statutory maximum penalty of each offense, as in previous versions. There is now a Type of Additional Offense factor as well; offenders convicted of an additional felony offense in the sentencing event with a VCC prefix of ROB, WPN, ASL, or FAM will score four points for this factor.

Offenders convicted of an additional offense carrying a mandatory minimum term of incarceration may score one or more points on the Mandatory Minimum in Current Event factor on Worksheet C, depending on the length of the mandatory minimum. They may also score six points for Victim Injury, which is a factor new to the Fraud worksheets. Victims of fraud crimes may report experiencing threatened or emotional injury due to the financial harm they have suffered. The revised Fraud Worksheet C also includes factors for Prior Incarceration (three points), a Prior Incarceration Event of One Year or More (four points), and Legal Restraint (one point for other legal restraint, four points for on parole, post-release supervision, supervised probation, or supervised probation after incarceration at the time of the new offense(s)). Note that none of these factors require the determination of whether a prior property conviction should be treated as a misdemeanor or a felony.

To check the accuracy of the revision, defendants sentenced to one or more days of incarceration were scored on the revised Fraud Worksheet C and their projected mean sentence was compared to the actual mean sentence. Figures 48 make this comparison separately for each primary offense. In general, the differences between the projected and actual mean sentences are quite small; the overall difference is only 0.2 months. 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.

**Figure 48**

**Defendants Sentenced to Incarceration of 1 Day or More**

<b>Most Serious Offense</b>	<b>Mean Sentence in Months</b>	
	<b>Actual Practice</b>	<b>Proposed Guidelines</b>
Theft of credit card or credit card numbers	12.2	11.8
Forgery, public record	9.0	8.8
Forgery	12.6	12.2
Obtain identifying info with intent to defraud	12.0	12.1
Uttering	8.3	8.0
False pretenses, obtain money by, >\$1000	12.0	11.7
Credit card fraud, >\$1000 in 6-month period	15.5	15.7
Attempts and Conspiracies	14.0	14.0
Forgery of coins or bank notes	10.4	10.5
Uttering, public record	14.0	14.0
Bad check, \$1000 or more	8.9	8.4
Receive stolen credit card or number	12.5	12.5
Forgery or uttering of credit card	13.9	14.3
Financial loss >\$1000, use of identifying info to defraud	9.2	9.6
Fail to perform construction in return for advances, >\$1000	16.2	16.0
Possess forged bank notes or coins - 10 or more	9.9	9.5
Fraudulently obtaining welfare assistance, >\$1000	0.0	0.0

Figure 49 compares the actual and projected mean sentences separately for Other, Category II, and Category I offenders. Again, the observed mean differences are small, indicating good agreement in each group. Most of the fraud offenders analyzed here are classified as Other (n=388), and for this group of study subjects, the actual and projected mean sentences are both 10.2 months. There are 108 Category II subjects, and the actual and projected mean sentences in this group are 14.8 months and 14.0 months. There are only 25 Category II subjects, and the actual and projected mean sentences in this group are 16.0 months and 16.6 months. Note how the actual and projected mean sentences increase as the prior record classification increases in seriousness.

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 49**

**Defendants Sentenced to Incarceration of 1 Day or More**  
**Mean Sentence by Prior Record Category**

<b>Prior Record</b>	<b>Mean Sentence in Month</b>	
	<b>Actual Practice</b>	<b>Proposed Guidelines</b>
Other	10.2	10.2
Category II	14.8	14.0
Category I	16.0	16.6

# RECOMMENDATION FOUR

Revise the Nonviolent Risk Assessment for the Fraud and Larceny guidelines.

## INTRODUCTION

After 1994 reform legislation that instituted truth-in-sentencing in Virginia, the General Assembly required, pursuant to § 17.1-803, the Virginia Criminal Sentencing Commission (the “Commission”) to study the feasibility of an empirically-based risk assessment tool to recommend 25% of nonviolent offenders with the lowest risk for the placement in alternative sanctions rather than incarceration. Accordingly, the Commission underwent several subsequent phases of the nonviolent risk assessment (NVRA) study to keep up with constantly emerging trends in crime and criminal justice system. For instance, after the introduction of the nonviolent risk assessment tools implemented in selected pilot sites from 1998 to 2001, the Commission conducted a validation study of the tool and implemented a refined nonviolent risk assessment tool across the Commonwealth in 2002 for all eligible felony larceny, fraud, and drug offenders. In 2010, the Commission began an extensive revalidation study of the existing tool by selecting the group of fraud, larceny, and drug offenders based on the stratified sampling method.

The original purpose of the nonviolent risk assessment, under the directive of the General Assembly, was to recommend 25% of eligible prison-bound offenders for alternative punishment. The Commission’s initial nonviolent risk assessment selected a score threshold that would lead to only 25% of the lowest risk offenders being recommended for alternative sanctions. However, since the last revision of the tool, the percentage of offenders who were recommended for alternative punishment has constantly increased. Based on the most recent Sentencing Guidelines data, 42% of eligible fraud and larceny offenders were recommended for alternative punishment. However, since the last revision of the tool in 2012, many changes have occurred in aspects of relevant laws. For instance, the felony theft thresholds for larceny and fraud offenses increased from \$250 to \$500 in 2018 and again from \$500 to \$1000 in 2020. Because of this change, many property felony offenders in 2012 would no longer be a felony offender based on the current felony threshold. Moreover, the COVID-19 pandemic significantly affected the court-operations and judicial practices; it contributed to the newly evolving practices and norms in the field of criminal justice.

Therefore, the Commission reviewed the current nonviolent risk assessment tool for larceny and fraud offenders and conducted the reanalysis based on the most recent Sentencing Guidelines data. This chapter provides the background information about data and analytical methods for this study and the recommended risk assessment tool based on the in-depth statistical analyses.

### **Design of the Study and Data Sources**

The Commission made several case selection and research design decisions that were distinctively different from the previous revalidation study (2011-2012). First, rather than using the stratified sampling design for the case selection of this study, the Commission used the statistical matching techniques to address possible attritions and reduce the risk of sampling errors and bias. In preparation of the data for the risk assessment study, the Commission faced a challenge; while the data should reflect the characteristics of the current Larceny and Fraud offenders, it is essential to have the historical data to examine whether an offender recidivated after the conviction. That is, the follow-up analysis is necessary to obtain the information about recidivism as an outcome so that the Commission can develop the statistically reliable prediction model.

The Commission took a more sophisticated approach in the selection of the cases for nonviolent risk assessment study for larceny and fraud offenders, using two steps:

-Identify the offenders whose primary offense is larceny or fraud in the most recent data.

-Match these identified offenders to the ones from the data several years ago who share similar characteristics with current offenders.

In this way, Commission staff makes it possible to conduct follow-up study while still reflecting the cohort population of today. The Commission used Fiscal Year (FY)2015-FY2018 Guidelines data in order to identify and match the offenders from the same FY2022-FY2024 data. The Commission utilized Propensity Score Matching (PSM) (Austin, 2011, 2014). PSM is the statistical matching method to pair individuals in the current data (FY2022-FY2024) with the ones in the prior data (FY2015-FY2018) in which offender characteristics otherwise indicate the similar likelihood of being in the current offender group. The likelihood of being in the current offender group is calculated as the propensity score.

PSM 1:1 matching without replacement was executed. If there is more than one possible match, the statistical program selects the one with the closest proximity given the computed propensity score. The inputs for computing propensity score includes current factors of Nonviolent Risk Assessment and other legal factors including gender, age, legally restrained status, prior felony convictions, prior incarcerations, and Nonviolent Risk Assessment recommendation score. The PSM model utilizes other legal factors, such as dispositional and durational compliances, effective sentence terms, trial type (jury, guilty plea, bench trial), primary offense (based on Virginia Crime Codes), and felony threshold offense (whether primary offense is based on the felony threshold amount) to compute propensity score.

Figure 50 shows the number of the larceny/fraud offenders ultimately selected for the analyses. As the table indicates, the guidelines data have a total of 4,620 Nonviolent Risk Assessment eligible offenders in FY2022-FY2024 data, about 65% of which were larceny offenders and 35% were fraud offenders. However, as the staff examined the cases, there were more than 1,000 cases with errors creating difficulty for analysis. Moreover, there were several cases where offenders' primary offense felony no longer exists. For example, the third or subsequent petit larceny felony statute was repealed in July 2021, thus the Commission staff excluded such offenders as the study should reflect the most current practices and trends. Lastly, if any offenders had missing information for any of the PSM model's input variables, the cases were excluded. In the end, the Commission identified 1,775 larceny/fraud offenders examined for revising the existing assessment tool.

**Figure 50**

**Case Selection Summary**

**FY2022 - FY2024**

**Larceny/Fraud  
Offenders**

Total NVRA Eligible Offenders .....	4,620
-------------------------------------	-------

Suitable for Analysis (e.g., risk assessment worksheet submitted, no errors affecting concurrence calculations) .....	3,124
---	-------

Other Exclusion Criteria before PSM (e.g., excluding third/subsequent petit larceny felony offense).....	2,865
---	-------

Matched Cohort (FY2022-FY2024) based on PSM (excluding cases with missing values in any PSM model variables) .....	1,775
--	-------

After matching, the Commission examined the matched pairs to ensure they represented a reliable and valid study group to analyze. For instance, the Commission carefully made comparisons between the offenders matched from the FY2015-FY2018 data and the ones from the most recent data (FY2022-FY2024). The detailed comparisons based on the selected offender criteria are in the Appendix tables at the end of this Chapter. The Commission concluded that after looking at some of the important legal and demographic characteristics of the offenders, the matched offenders from the old data (FY2015-FY2018) are very similar to the current offenders (from FY2022-FY2024 data). The Commission subsequently analyzed whether matched offenders are not confounded by subsequent felony threshold changes that were recently in effect; it was found that only a small percentage of the matched cohort from the most recent data (FY2022 to FY2024) has the primary offense based on felony threshold of \$500. However, nearly all of these offenders had a known threshold amount ordered by court of at least \$1,000. In addition, all matched offenders (that is, based on the FY2015-FY2018 data) have ordered restitution amounts of at least \$1,000. The Commission has confidence that the selected individuals for the study reflect the current law and practice in the Commonwealth.

After the final selection of the cases, the Commission obtained additional data sources from other departments and agencies to conduct the analyses. The one notable difference regarding outside data is that the Commission did not collect the Pre-Sentence Investigation (PSI) data for the offenders because it is not widely available for all offenders and the proportion of the complete PSI reports among felony cases in Virginia has constantly decreased over the years. Because this study involves only nonviolent offenders, it is unlikely that obtaining PSI data enhances the volume of information used to conduct the comprehensive research. Instead, the Commission relied on other available and reliable data sources in the redevelopment of the risk assessment tool for larceny and fraud offenders. For example, the Commission received the in-state criminal history records from the Virginia State Police to examine prior-convictions and follow-up criminal activities after defendant's current conviction. Moreover, to accurately follow defendants' subsequent criminal activities after conviction, the Commission obtained the release dates of offenders from Department of Corrections' (DOC) Local Inmate Database System (LIDS). Lastly, the Commission used Sentencing Guidelines data to utilize any available legal and extra-legal factors available in the currently existing risk assessment tool.

## **THE ANALYTICAL METHODS AND RECOMMENDED ASSESSMENT TOOL FOR LARCENY/FRAUD OFFENDERS**

After the data building was finalized, the Commission performed the comprehensive statistical analyses and tested the numerous models to determine the one that accurately predicts the likelihood of recidivism for larceny and fraud offenders. The Commission followed the similar principles of the previous revalidation study of the nonviolent risk assessment tool. For instance, the Commission first made a best effort to preserve the existing assessment instruments by examining if any of them are still validated to be significantly associated with the likelihood of the recidivism. The Commission also carefully deliberated any other legal and extralegal factors found to be statistically associated with the outcome of recidivism in terms of practicability and reliability. For example, even if some demographic factors, such as race, are found to be significantly associated with recidivism, it may be due to the fact that it is highly interrelated with socio-economic status, income, or educational levels, or complicated by being mixed up with ethnicity (i.e., White Hispanic, White non-Hispanic). Since these are not the direct measures closely associated with recidivism, the Commission removed them from the model. Nevertheless, the Commission readjusted the scoring distribution of the finalized assessment tool by reflecting the relative weight of influence of such demographic factors omitted from the model. Lastly, in the development of the model, the Commission strove to come up with an assessment tool whose instrument is easier to fill out and does not involve subjective decisions. In that way, the assessment tool can achieve completeness, transparency, and most importantly, the reliability.

Like the previous risk assessment studies, Commission staff used multiple analytical methods to identify factors that are substantially and significantly associated with recidivism. For instance, the Commission used both survival analyses and logistic regression models to test whether the post-estimations and the list of the statistically significant factors are widely different from each other. Survival analyses focus on the survival time-length until the failure (for this study, recidivism) occurs. With its unique analytical approach, the survival analyses typically analyze the factors that significantly affected the length of survival time until an offender recidivated (Virginia Criminal Sentencing Commission, 2012, p. 41). The Commission utilized both Kaplan-Meier Survival Curve and Proportional Hazards Model to identify the statistically significant factors affecting the recidivism and their magnitude of the risk or risk-ratio (Johnson & Shih, 2007). In addition, the Commission also utilized logistic

regression in this study, a common analytical method, especially when analyzing the odds or probability of certain event occurring (for this study, recidivism) where the outcome variable is dichotomous (Weisburd et al., 2022). In this case, the outcome indicates whether an offender did or did not recidivate during the three-year follow-up period. The analyses based on the two different statistical methods reveal that the same list of the factors found to be significantly associated with recidivism within three-year follow-up period are identical each other. The Commission utilized the statistical results and post-estimations drawn from the logistic regression model to compare the recommended risk assessment tool with the current model. Furthermore, the Commission translated the coefficient estimations from the logistics regression model into the meaningfully assigned points under the proposed risk assessment tool.

Throughout the multiple statistical analyses of this study, the Commission used recidivism as the outcome variable. Just like the previous studies, the Commission defined recidivism as any new arrest that resulted in a felony conviction within three years of release to the community. The Commission initially tested recidivism outcomes based on the projected release date; its computation is based on the active sentencing terms that offender received and typical time served for larceny/fraud offenders from the historical data. Later, the Commission utilized actual release dates of offenders that were obtained from DOC and LIDS data. The overall statistical findings and subsequent model selections did not significantly differ between these two approaches. Locational factors (represented as judicial circuits) in the statistical models to control the varying degrees of regional influence (where offenders were nested) on the likelihood of recidivism were also included.

Table 51 summarizes the statistical analyses and testing through this study relative to the current risk assessment instrument. The primary focus was on the overall goodness of fit of the model and predictive power (how accurately the model predicts recidivism). Statistics for the Correct Classification (actual vs predicted) and Area under the ROC (Receiver Operating Characteristic) curve at the bottom two rows of the table suggest that the recommended model performs slightly better than the current model. Furthermore, testing of scoring factors in the current model based on the new study data indicates that prior adult felony convictions and legally restrained status at time

of offense are not found to be statistically significant, and their significances are often unstable when the model was retested based on certain subsets of the data. Gender is another factor that poses the higher level of multicollinearity with other socio-economic factors, so its statistical significance is often not stable throughout the subsequent re-testing of the model. Therefore, the Commission recommends taking out these three factors while preserving existing factors of prior incarceration and offender age. In addition, as represented by Figure 52, the revised model proposes adding two additional legal factors: prior felony person convictions and criminal arrest within last 12 months. These two additional factors are consistently found to be statistically significant in the model.

**Figure 51**  
**Summary of Current and Recommended Models Instrument**

	<b>Current Model (as an initial model -current factors)</b>	<b>Recommended Model</b>
Methods of Analysis	Logistic Regression/ Survival Analysis	Logistic Regression/ Survival Analysis
Study Size	1,672	1,672
Length of Follow-up	3 years	3 years
Correctly Classified (Predicted vs Actual)	77.39%	77.87%
Area under ROC curve (bigger value-high Predictive power)	68% (.68)	70% (0.70)

**Figure 52**  
**Comparison between Current and Recommended Risk Assessment**

<b>Current Model</b>	<b>Recommended Model</b>
Gender	Age
Age	Prior Adult Incarcerations
Prior Adult Felony Convictions - Found Not Significant	Prior Felony Person Convictions (New)
Prior Adult Incarcerations	Criminal Arrest within last 12 months (New)
Legally Restrained at Time of Offense - Found Not Significant	

Figure 53 represents the relative importance of each significant factor after standardizing estimated coefficients of all factors selected in the model. This step is necessary to determine the relative strength of each factor after placing them all in the same scale. As the figure shows, offender age plays a significant role in the likelihood of recidivism as younger offenders pose more risk of recidivating. Moreover, prior incarcerations of 10 or more times and prior criminal arrest within the past 12 months also indicate higher predictive power for recidivism.

**Figure 53**  
**Relative Importance of Statistically Significant Factors**



Based on several rounds of model testing and statistical findings, the Commission came up with the recommended Nonviolent Risk Assessment worksheet for larceny and fraud offenders (see Figure 2). Just as the existing worksheet, points assigned to age play a significant factor for scoring, earning the highest points if offender is younger than 21-years-old. The next highest points are assigned to offenders with 10 or more prior adult incarcerations. With this recommended worksheet, the recidivism rate for larceny and fraud offenders recommended for an alternative punishment is consistently below 16% throughout several multiple simulated datasets with re-samplings (e.g., Bootstrapping). As compared to the relevant studies dealing with the same topic, such recidivism rates are considered very low. The proposed worksheet establishes the total score threshold which is in line with the legislative goal of diverting 25% of non-violent offenders from an active incarceration into other types of sanctions. Based on the data analysis, applying the recommended risk assessment worksheet would result in around 27% of larceny and fraud offenders being recommended for alternative punishment.

**Figure 54**  
**Proposed NonViolent Risk Assessment Worksheet for Fraud and Larceny**

## Nonviolent Risk Assessment Section D

### ◆ Ineligibility Conditions

Offender Name: \_\_\_\_\_

A. Was the offender recommended for Probation/No Incarceration on Section B? .....  Yes  No

B. Do any of the offenses at sentencing involve the sale, distribution, or possession with intent, etc. of cocaine of a combined quantity of 28.35 grams (1 ounce) or more? .....  Yes  No

C. Are any prior record offenses violent (Category I/II listed in Appendix A of the Guidelines Manual)? .....  Yes  No

D. Are any of the offenses at sentencing violent (Category I/II listed in Appendix A of the Guidelines Manual)? .....  Yes  No

E. Do any of the offenses at sentencing require a mandatory term of incarceration? .....  Yes  No

F. Did the offense occur while serving a sentence? .....  Yes  No

If answered **YES** to **ANY**, go to "Nonviolent Risk Assessment Recommendations" on cover sheet and check Not Applicable. If answered **NO** to **ALL**, complete remainder of Section D worksheet.

### ◆ Offender Age at Time of Offense

Younger than 21 years	.....	11
21 to 29 years	.....	5
30 to 43 years	.....	4
Over 43 years	.....	1



### ◆ Prior Adult Incarcerations

Number:	0.....	0
	1 - 9 .....	4
	10 or more.....	6



### ◆ Prior Adult Felony Person Convictions

If YES, add 2



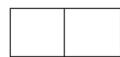
### ◆ Prior Arrest or Confinement Within Past 12 Months (Prior to Offense)

If YES, add 4



### Total Score

7 or less, check Recommended for Alternative Punishment.  
 8 or more, check NOT Recommended for Alternative Punishment.



Go to Cover Sheet and fill out Nonviolent Risk Assessment Recommendations.

## THE FUTURE PLAN FOR NONVIOLENT RISK ASSESSMENT STUDY

The previous re-validation studies for nonviolent risk assessment utilized various data sources, such as pre/post-sentence reports, general district and circuit courts records, inmate datasets, and state/federal criminal history reports. However, using multiple sources of data requires carefully planned data-obtaining strategies, and it often leads to an extended period for data collection, which delays timely development of the assessment tool. To overcome such challenges, the Commission plans to use existing Sentencing Guidelines data. Unlike the previous projects, the current Sentencing Guidelines include the Case Details Worksheet that, like the PSI, would provide more comprehensive information related to the offenders, including the prior criminal records, demographic characteristics, and social/family/employment history.

The current literature suggests that other than core legal factors, the factors of family relationships, residential instability, substance abuse, past poor performance in work or education, and criminal peer networks all contribute to a higher likelihood of recidivism among nonviolent offenders (van der Put et al., 2020). While several factors suggested by the current literature are relatively more difficult to quantify or operationalize, some of them are easily available in the Case Details Worksheet. To achieve the most reliable and unbiased risk assessment tool, the Commission will continue to refine the existing risk assessment tool by examining additional factors as possible instruments that may enhance the predictive power of the assessment tool.

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# RECOMMENDATION FIVE

Adjust the rules governing completion of Probation Violation Guidelines to align with the Virginia Supreme Court's Ruling in *Canales v. Commonwealth*, No. 230934 (Va. June 6, 2024).

## ISSUE

Under current procedures, probation officers are instructed to submit identical copies of the Probation Violation Sentencing Guidelines when a court elects to address multiple violations stemming from one or more major violation reports in separate revocation hearings. This practice assumes that all violations form part of a "single course of conduct" under Code § 19.2-306.1, and thus require a unified sentencing analysis.

In *Canales v. Commonwealth*, No. 230934 (Va. June 6, 2024), the Supreme Court of Virginia clarified that Code § 19.2-306.1 does not mandate a court to adjudicate all probation violations listed in a major violation report during the same revocation hearing. More significantly, the Court upheld the circuit court's finding that the violations in question did not constitute a "single course of conduct," affirming the court's discretion to sever the allegations and address them in distinct sentencing proceedings.

Based on the holding in *Canales*, the current practice of submitting identical copies of the Probation Violation Guidelines for multiple hearings no longer aligns with legal standards. When the court determines that the violations do not arise from a single course of conduct and elects to hold separate revocation hearings, individualized Guidelines should be prepared, at the judge's direction, for each hearing. These Guidelines must reflect only the violations and sentencing factors relevant to that specific proceeding.

The issues are how to revise current procedural guidance to require probation officers to:

1. Know if the court has ruled that violations will be addressed separately.
2. Prepare updated and distinct sets of Probation Violation Sentencing Guidelines for each revocation hearing, in accordance with the court's division of the allegations.

## **DISCUSSION**

Following the Supreme Court of Virginia's decision in *Canales v. Commonwealth*, it is clear that Code § 19.2-306.1 does not require courts to address all probation violations listed in a major violation report within a single revocation hearing. The Court affirmed that a circuit court may permissibly determine that multiple violations do not constitute a "single course of conduct" and may be adjudicated in separate sentencing events.

Despite this holding, current practice has not been fully aligned with the Court's interpretation. Initial guidance has been to duplicate a single set of Guidelines across multiple hearings, even when violations are being addressed separately, without tailoring each set to reflect only the conduct at issue in that specific hearing.

## **PROPOSED RULE CHANGE**

To bring Guidelines procedures into full compliance with the holding in *Canales* and to ensure consistency across all revocation and Guidelines matters, it is proposed that:

The judge may order that separate and updated Probation Violation Sentencing Guidelines be prepared and submitted for each distinct probation violation sentencing event. In some instances, the judge may instead direct that the Guidelines be amended to reflect the specific sentencing event. A sentencing event is defined as all cases heard before the same judge on the same date and at the same time. If a court conducts multiple, sequential hearings on separate violations, each proceeding constitutes a distinct sentencing event and requires its own updated set of Guidelines.



# APPENDICES

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## Appendix ①

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

#### Reasons for MITIGATION

##### Burglary of Dwelling (52 Cases)

	Number	Percent
No Departure Reason Given for Mitigation	24	32.9%
Guilty Plea, Agreement, or Joint Recommendation	16	21.9%
Sentenced to Deferred, Alternative, Treatment, or Service	6	8.2%
Offender is Remorseful	3	4.1%
Offender Has Identified Substance Abuse or Mental Health Issues	3	4.1%
Evidence Witness Issues, or Old Case	3	4.1%
Sentence is Affected by the Request of Victim	3	4.1%
Offense Was Minor in Nature or Severity	2	2.7%
Offender Has No Violent, Little, or Recent Criminal History	2	2.7%
Offender is Cooperative with Law Enforcement	2	2.7%
Offender is Senior or Minor, Sick, Disabled, or Had Trauma	2	2.7%
Sentenced to Pay Restitution	2	2.7%
Judge: Disagrees With Guidelines	2	2.7%
Offender is Making Progress/Recovering in Pretrial, Probation, or In General	1	1.4%
Offender Waived 4th Amendment Right	1	1.4%
Commonwealth Recommendation	1	1.4%

##### Burglary of Other Structure (35 Cases)

	Number	Percent
No Departure Reason Given for Mitigation	16	38.1%
Guilty Plea, Agreement, or Joint Recommendation	12	28.6%
Sentenced to Deferred, Alternative, Treatment, or Service	4	9.5%
Offender Served, Serving or to Serve Time on Current or Other Charges	3	7.1%
Judge: Disagrees With Guidelines	2	4.8%
Offense Was Minor in Nature or Severity	1	2.4%
Offender is Making Progress/Recovering in Pretrial, Probation, or In General	1	2.4%
Offender is Paying or Paid Restitution	1	2.4%
Evidence Witness Issues, or Old Case	1	2.4%
Sentence is Affected by the Request of Victim	1	2.4%

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

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

## Appendix (1)

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

#### Reasons for AGGRAVATION

##### Burglary of Dwelling (46 Cases)

	Number	Percent
Guilty Plea, Agreement, or Joint Recommendation	15	16.3%
Judge: Disagrees With Guidelines	9	9.8%
Offense Occurred in a Penalty-Enhancing Location or Context	9	9.8%
Offender: Extensive Criminal History or Repeated Criminal Behavior	8	8.7%
Charge Dismissed, Reduced, or Amended	8	8.7%
No Departure Reason Given for Aggravation	7	7.6%
Offender is Violent or Dangerous (No Children Involved)	6	6.5%
Offense Involves Excessive Quantity, Value, Speed or Content	6	6.5%
Victim Impact: Bodily or Emotional	6	6.5%
Offense Involved Weapon (Primary not Weapon Offense)	3	3.3%
Victim Impact: Financial	3	3.3%
Offender Planned, Premeditated, or Organized the Offense	2	2.2%
Offender: Did Not Show Remorse or Take Responsibility	2	2.2%
Offender: Homeless or No Stable Residence in Virginia	1	1.1%
Children were Involved (Non-Violent)	1	1.1%
Victim was Judicial Personnel, Vulnerable, or Innocent	1	1.1%
Offender Served, is Serving or to Serve Time on Current or Other Charges	1	1.1%
Sentenced Jail time to Deter Crime or Correct Behavior	1	1.1%
Sentenced to Treatment Program	1	1.1%
Jury Trial, Jury Sentence, or Jury Recommendation	1	1.1%
Victim, Multiple	1	1.1%

##### Burglary of Other Structure (24 Cases)

	Number	Percent
Guilty Plea, Agreement, or Joint Recommendation	10	27.8%
No Departure Reason Given for Aggravation	7	19.4%
Charge Dismissed, Reduced, or Amended	4	11.1%
Judge: Disagrees With Guidelines	3	8.3%
Offender: Extensive Criminal History or Repeated Criminal Behavior	2	5.6%
Offender is Violent or Dangerous (No Children Involved)	2	5.6%
Offense Involved Weapon (Primary not Weapon Offense)	2	5.6%
Victim Impact: Bodily or Emotional	2	5.6%
Offender is in a Position of Trust	1	2.8%
Offender Failed Probation, Alternatives, Court Orders, Appear etc.	1	2.8%
Offender: Did Not Show Remorse or Take Responsibility	1	2.8%
Offender: Absconded/Eluded Police/Not Cooperative	1	2.8%

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 MITIGATION

##### Drugs/Schedule I/II (727 Cases)

	Number	Percent
No Departure Reason Given for Mitigation	342	39.5%
Guilty Plea, Agreement, or Joint Recommendation	191	22.1%
Sentenced to Deferred, Alternative, Treatment, or Service	76	8.8%
Offender is Making Progress/Recovering in Pretrial, Probation, or In General	39	4.5%
Offender is Cooperative with Law Enforcement	24	2.8%
Guidelines were Misunderstood or Miscalculated	21	2.4%
Evidence Witness Issues, or Old Case	21	2.4%
Offender is Remorseful	20	2.3%
Offender Served, Serving or to Serve Time on Current or Other Charges	18	2.1%
Offender is Senior or Minor, Sick, Disabled, or Had Trauma	15	1.7%
Offense Was Minor in Nature or Severity	15	1.7%
Offender Has Identified Substance Abuse or Mental Health Issues	14	1.6%
Judge: Disagrees With Guidelines	9	1.0%
Charge Dismissed, Reduced, or Amended	8	0.9%
Guidelines are Modified or Adjusted	7	0.8%
Sentencing is Affected by Concurrent Sentences, Co-Defendants, or Similar Events	7	0.8%
Offender Has No Violent, Little, or Recent Criminal History	6	0.7%
Commonwealth Recommendation	6	0.7%
Unspecified Fact of the Case or Mitigating Factors	6	0.7%
Offender Waived 4th Amendment Right	4	0.5%
Mandatory Time Applies	4	0.5%
Offender is Employed or In School	4	0.5%
Unspecified Fact of the Case or Aggravated Factors	3	0.3%
Offender is Homeless or Unemployed	1	0.1%
Offender is Not the Leader of the Offense	1	0.1%
Offender is Not or No Longer a Danger to Public	1	0.1%
Offender Has Good Background, Family or Community Support	1	0.1%
Mandatory Time Dropped/Amended	1	0.1%

##### Drugs/Other (12 Cases)

	Number	Percent
No Departure Reason Given for Mitigation	5	31.2%
Guilty Plea, Agreement, or Joint Recommendation	4	25.0%
Offender is Making Progress/Recovering in Pretrial, Probation, or In General	2	12.5%
Offender Has No Violent, Little, or Recent Criminal History	1	6.2%
Offender Waived 4th Amendment Right	1	6.2%
Offender is Remorseful	1	6.2%
Offender is Senior or Minor, Sick, Disabled, or Had Trauma	1	6.2%
Evidence Witness Issues, or Old Case	1	6.2%

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 (485 Cases)

	Number	Percent
Guilty Plea, Agreement, or Joint Recommendation	164	24.8%
No Departure Reason Given for Aggravation	146	22.1%
Charge Dismissed, Reduced, or Amended	63	9.5%
Offender Failed Probation, Alternatives, Court Orders, Appear etc.	48	7.3%
Offender: Extensive Criminal History or Repeated Criminal Behavior	42	6.3%
Offense Involves Excessive Quantity, Value, Speed or Content	32	4.8%
Offender Served, is Serving or to Serve Time on Current or Other Charges	20	3.0%
Offender: Absconded/Eluded Police/Not Cooperative	17	2.6%
Offense is Cruel, Egregious, or Caused Death	17	2.6%
Offender is Violent or Dangerous (No Children Involved)	15	2.3%
Judge: Disagrees With Guidelines	14	2.1%
Offense Involved Weapon (Primary not Weapon Offense)	12	1.8%
Offender Has Identified Substance Abuse or Mental Health Issues	8	1.2%
Unspecified Fact of the Case or Aggravated Factors	8	1.2%
Sentenced to Treatment Program	7	1.1%
Guidelines were Misunderstood or Miscalculated	6	0.9%
Mandatory Time Applies	6	0.9%
Sentenced Jail time to Deter Crime or Correct Behavior	6	0.9%
Children were Involved (Violent)	4	0.6%
Offender: Did Not Show Remorse or Take Responsibility	3	0.5%
Offender is in a Position of Trust	3	0.5%
Offense Occurred in a Penalty-Enhancing Location or Context	3	0.5%
Mandatory Time Dropped or Amended	3	0.5%
Sentencing is Affected by Concurrent Sentences, Co-Defendants, or Similar Events	3	0.5%
Victim Impact: Bodily or Emotional	2	0.3%
Victim was Judicial Personnel, Vulnerable, or Innocent	2	0.3%
Offender Planned, Premeditated, or Organized the Offense	2	0.3%
Offense Involved Drug or Alcohol (Primary not Drug Offense)	1	0.2%
Offender Failed to Pay Restitution	1	0.2%
Children were Involved (Non-Violent)	1	0.2%
Victim, Multiple	1	0.2%
Offender: Not a Virginia Resident/Not Acclimated	1	0.2%
Offender is Dishonest or Provided False Information.	1	0.2%

##### Drugs/Other (18 Cases)

	Number	Percent
No Departure Reason Given for Aggravation	7	30.4%
Guilty Plea, Agreement, or Joint Recommendation	6	26.1%
Offense Involves Excessive Quantity, Value, Speed or Content	2	8.7%
Offender: Extensive Criminal History or Repeated Criminal Behavior	2	8.7%
Offense is Cruel, Egregious, or Caused Death	1	4.3%
Offense Involved Weapon (Primary not Weapon Offense)	1	4.3%
Charge Dismissed, Reduced, or Amended	1	4.3%
Sentence is Affected by the Request from Victim	1	4.3%
Commonwealth or Joint Recommendation	1	4.3%
Mandatory Time Dropped or Amended	1	4.3%

## Appendix ①

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

#### Reasons for MITIGATION

##### Fraud (74 Cases)

	Number	Percent
Guilty Plea, Agreement, or Joint Recommendation	26	30.6%
No Departure Reason Given for Mitigation	24	28.2%
Sentenced to Deferred, Alternative, Treatment, or Service	6	7.1%
Evidence Witness Issues, or Old Case	4	4.7%
Sentenced to Pay Restitution	4	4.7%
Offender is Remorseful	3	3.5%
Judge: Disagrees With Guidelines	2	2.4%
Offender Served, Serving or to Serve Time on Current or Other Charges	2	2.4%
Offender Has Identified Substance Abuse or Mental Health Issues	2	2.4%
Offender is Making Progress/Recovering in Pretrial, Probation, or In General	2	2.4%
Offender is Senior or Minor, Sick, Disabled, or Had Trauma	2	2.4%
Offender is Cooperative with Law Enforcement	2	2.4%
Offender Has No Violent, Little, or Recent Criminal History	2	2.4%
Offender is Employed or In School	1	1.2%
Commonwealth Recommendation	1	1.2%
Offender is Paying or Paid Restitution	1	1.2%
Unspecified Fact of the Case or Mitigating Factors	1	1.2%

##### Larceny (130 Cases)

	Number	Percent
No Departure Reason Given for Mitigation	58	39.7%
Guilty Plea, Agreement, or Joint Recommendation	41	28.1%
Sentenced to Deferred, Alternative, Treatment, or Service	9	6.2%
Evidence Witness Issues, or Old Case	7	4.8%
Offender Has Identified Substance Abuse or Mental Health Issues	5	3.4%
Offender Served, Serving or to Serve Time on Current or Other Charges	5	3.4%
Guidelines are Modified or Adjusted	3	2.1%
Guidelines were Misunderstood or Miscalculated	3	2.1%
Offender is Senior or Minor, Sick, Disabled, or Had Trauma	2	1.4%
Offender is Cooperative with Law Enforcement	2	1.4%
Offender is Paying or Paid Restitution	2	1.4%
Offender is Making Progress/Recovering in Pretrial, Probation, or In General	2	1.4%
Unspecified Fact of the Case or Mitigating Factors	2	1.4%
Offender Has Good Background, Family or Community Support	1	0.7%
Offense Was Minor in Nature or Severity	1	0.7%
Sentenced to Pay Restitution	1	0.7%
Commonwealth Recommendation	1	0.7%
Unspecified Fact of the Case or Aggravated Factors	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 AGGRAVATION	Number	Percent
<b>Fraud (48 Cases)</b>		
No Departure Reason Given for Aggravation	16	22.9%
Guilty Plea, Agreement, or Joint Recommendation	11	15.7%
Offender: Extensive Criminal History or Repeated Criminal Behavior	8	11.4%
Charge Dismissed, Reduced, or Amended	6	8.6%
Judge: Disagrees With Guidelines	4	5.7%
Offender: Did Not Show Remorse or Take Responsibility	4	5.7%
Offender Served, is Serving or to Serve Time on Current or Other Charges	3	4.3%
Offender Failed Probation, Alternatives, Court Orders, Appear etc.	2	2.9%
Offense is Cruel, Egregious, or Caused Death	2	2.9%
Victim, Multiple	2	2.9%
Guidelines Were Modified or Adjusted	1	1.4%
Sentenced to Treatment Program	1	1.4%
Sentencing is Affected by Concurrent Sentences, Co-Defendants, or Similar Events	1	1.4%
Offender: Not a Virginia Resident/Not Acclimated	1	1.4%
Victim Impact: Bodily or Emotional	1	1.4%
Offender is Dishonest or Provided False Information.	1	1.4%
Offender Has Identified Substance Abuse or Mental Health Issues	1	1.4%
Offender is Violent or Dangerous (No Children Involved)	1	1.4%
Offender Planned, Premeditated, or Organized the Offense	1	1.4%
Offender: Absconded/Eluded Police/Not Cooperative	1	1.4%
Offender Failed to Pay Restitution	1	1.4%
Guidelines were Misunderstood or Miscalculated	1	1.4%
<b>Larceny (155 Cases)</b>		
No Departure Reason Given for Aggravation	36	15.1%
Guilty Plea, Agreement, or Joint Recommendation	33	13.9%
Offense Involves Excessive Quantity, Value, Speed or Content	24	10.1%
Offender: Extensive Criminal History or Repeated Criminal Behavior	22	9.2%
Charge Dismissed, Reduced, or Amended	20	8.4%
Judge: Disagrees With Guidelines	15	6.3%
Offender is in a Position of Trust	11	4.6%
Offense is Cruel, Egregious, or Caused Death	11	4.6%
Offender Failed Probation, Alternatives, Court Orders, Appear etc.	7	2.9%
Offender Served, is Serving or to Serve Time on Current or Other Charges	7	2.9%
Offender: Absconded/Eluded Police/Not Cooperative	6	2.5%
Victim Impact: Bodily or Emotional	5	2.1%
Offender is Violent or Dangerous (No Children Involved)	5	2.1%
Victim was Judicial Personnel, Vulnerable, or Innocent	5	2.1%
Offender: Did Not Show Remorse or Take Responsibility	4	1.7%
Offense Involved Weapon (Primary not Weapon Offense)	4	1.7%
Unspecified Fact of the Case or Aggravated Factors	3	1.3%
Victim Impact: Financial	2	0.8%
Offense Involved Drug or Alcohol (Primary not Drug Offense)	2	0.8%
Sentenced to Treatment Program	2	0.8%
Sentenced by Community Standards	2	0.8%
Offender Planned, Premeditated, or Organized the Offense	2	0.8%
Unspecified Fact of the Case or Aggravated Factors	2	0.8%
Offender Has Identified Substance Abuse or Mental Health Issues	1	0.4%
Offender is a Member of a Crime Organization	1	0.4%
Sentencing is Affected by Concurrent Sentences, Co-Defendants, or Similar Events	1	0.4%
Jury Trial, Jury Sentence, or Jury Recommendation	1	0.4%
Guidelines Were Modified or Adjusted	1	0.4%
Offender Failed to Pay Restitution	1	0.4%
Guidelines were Misunderstood or Miscalculated	1	0.4%
Offense Occurred in a Penalty-Enhancing Location or Context	1	0.4%

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

## Appendix ①

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

#### Reasons for MITIGATION

##### Miscellaneous/Other (49 Cases)

	Number	Percent
No Departure Reason Given for Mitigation	21	36.2%
Guilty Plea, Agreement, or Joint Recommendation	11	19.0%
Offender Served, Serving or to Serve Time on Current or Other Charges	5	8.6%
Offender is Making Progress/Recovering in Pretrial, Probation, or In General	4	6.9%
Offense Was Minor in Nature or Severity	3	5.2%
Evidence Witness Issues, or Old Case	3	5.2%
Commonwealth Recommendation	2	3.4%
Offender is Employed or In School	1	1.7%
Offender Has No Violent, Little, or Recent Criminal History	1	1.7%
Offender is Remorseful	1	1.7%
Offender is Cooperative with Law Enforcement	1	1.7%
Offender is Senior or Minor, Sick, Disabled, or Had Trauma	1	1.7%
Offender Has Identified Substance Abuse or Mental Health Issues	1	1.7%
Offender is Homeless or Unemployed	1	1.7%
Guidelines are Modified or Adjusted	1	1.7%
Guidelines were Misunderstood or Miscalculated	1	1.7%

##### Miscellaneous/Person & Property (51 Cases)

	Number	Percent
No Departure Reason Given for Mitigation	22	36.1%
Guilty Plea, Agreement, or Joint Recommendation	15	24.6%
Offender Has No Violent, Little, or Recent Criminal History	3	4.9%
Evidence Witness Issues, or Old Case	3	4.9%
Offender is Making Progress/Recovering in Pretrial, Probation, or In General	3	4.9%
Guidelines were Misunderstood or Miscalculated	2	3.3%
Sentenced to Deferred, Alternative, Treatment, or Service	1	1.6%
Judge: Disagrees With Guidelines	1	1.6%
Guidelines are Modified or Adjusted	1	1.6%
Sentence is Affected by the Request of Victim	1	1.6%
Sentenced to Pay Restitution	1	1.6%
Charge Dismissed, Reduced, or Amended	1	1.6%
Offender Served, Serving or to Serve Time on Current or Other Charges	1	1.6%
Offender Has Identified Substance Abuse or Mental Health Issues	1	1.6%
Offender is Senior or Minor, Sick, Disabled, or Had Trauma	1	1.6%
Offender Has Good Background, Family or Community Support	1	1.6%
Offender is Remorseful	1	1.6%
Offender is Employed or In School	1	1.6%
Unspecified Fact of the Case or Mitigating Factors	1	1.6%

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

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

## Appendix 1

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

#### Reasons for AGGRAVATION

Miscellaneous/Other (19 Cases)	Number	Percent
No Departure Reason Given for Aggravation	6	27.3%
Offender: Extensive Criminal History or Repeated Criminal Behavior	4	18.2%
Charge Dismissed, Reduced, or Amended	3	13.6%
Guilty Plea, Agreement, or Joint Recommendation	3	13.6%
Offense is Cruel, Egregious, or Caused Death	1	4.5%
Offender Failed Probation, Alternatives, Court Orders, Appear etc.	1	4.5%
Offender: Absconded/Eluded Police/Not Cooperative	1	4.5%
Offender is Violent or Dangerous (No Children Involved)	1	4.5%
Offense Involved Weapon (Primary not Weapon Offense)	1	4.5%
Judge: Disagrees With Guidelines	1	4.5%

#### Miscellaneous/Person & Property (86 Cases)

Miscellaneous/Person & Property (86 Cases)	Number	Percent
Children were Involved (Violent)	21	15.2%
No Departure Reason Given for Aggravation	18	13.0%
Guilty Plea, Agreement, or Joint Recommendation	18	13.0%
Offender is Violent or Dangerous (No Children Involved)	12	8.7%
Judge: Disagrees With Guidelines	9	6.5%
Offense is Cruel, Egregious, or Caused Death	8	5.8%
Offender: Extensive Criminal History or Repeated Criminal Behavior	8	5.8%
Victim Impact: Bodily or Emotional	7	5.1%
Offender: Did Not Show Remorse or Take Responsibility	5	3.6%
Charge Dismissed, Reduced, or Amended	5	3.6%
Offense Involved Weapon (Primary not Weapon Offense)	5	3.6%
Victim, Multiple	3	2.2%
Unspecified Fact of the Case or Aggravated Factors	3	2.2%
Victim Impact: Financial	2	1.4%
Offender Served, is Serving or to Serve Time on Current or Other Charges	2	1.4%
Offender: Absconded/Eluded Police/Not Cooperative	2	1.4%
Offender Failed Probation, Alternatives, Court Orders, Appear etc.	2	1.4%
Offender Has Identified Substance Abuse or Mental Health Issues	1	0.7%
Offense Involved Drug or Alcohol (Primary not Drug Offense)	1	0.7%
Victim was Judicial Personnel, Vulnerable, or Innocent	1	0.7%
Victim was Animal	1	0.7%
Offender is a Member of a Crime Organization	1	0.7%
Jury Trial, Jury Sentence, or Jury Recommendation	1	0.7%
Mandatory Time Applies	1	0.7%
Guidelines were Misunderstood or Miscalculated	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

##### Traffic (124 Cases)

	Number	Percent
No Departure Reason Given for Mitigation	66	45.5%
Guilty Plea, Agreement, or Joint Recommendation	27	18.6%
Evidence Witness Issues, or Old Case	9	6.2%
Offender is Making Progress/Recovering in Pretrial, Probation, or In General	5	3.4%
Sentenced to Deferred, Alternative, Treatment, or Service	5	3.4%
Offender Has No Violent, Little, or Recent Criminal History	4	2.8%
Offender Has Identified Substance Abuse or Mental Health Issues	4	2.8%
Offender Served, Serving or to Serve Time on Current or Other Charges	4	2.8%
Offender is Remorseful	3	2.1%
Offender is Senior or Minor, Sick, Disabled, or Had Trauma	3	2.1%
Guidelines were Misunderstood or Miscalculated	3	2.1%
Guidelines are Modified or Adjusted	2	1.4%
Judge: Disagrees With Guidelines	2	1.4%
Commonwealth Recommendation	2	1.4%
Unspecified Fact of the Case or Mitigating Factors	1	0.7%
Sentenced to DJJ or Blended	1	0.7%
Sentenced to Pay Restitution	1	0.7%
Charge Dismissed, Reduced, or Amended	1	0.7%
Offender Has Family Responsibilities or Family Circumstances	1	0.7%
Unspecified Fact of the Case or Aggravated Factors	1	0.7%

##### Weapons (117 Cases)

	Number	Percent
No Departure Reason Given for Mitigation	50	33.6%
Guilty Plea, Agreement, or Joint Recommendation	41	27.5%
Evidence Witness Issues, or Old Case	11	7.4%
Offender Served, Serving or to Serve Time on Current or Other Charges	8	5.4%
Sentenced to Deferred, Alternative, Treatment, or Service	6	4.0%
Offender is Cooperative with Law Enforcement	5	3.4%
Mandatory Time Applies	5	3.4%
Guidelines were Misunderstood or Miscalculated	4	2.7%
Unspecified Fact of the Case or Mitigating Factors	2	1.3%
Judge: Disagrees With Guidelines	2	1.3%
Charge Dismissed, Reduced, or Amended	2	1.3%
Offender is Employed or In School	2	1.3%
Offender Has Identified Substance Abuse or Mental Health Issues	2	1.3%
Offender is Senior or Minor, Sick, Disabled, or Had Trauma	2	1.3%
Offender is Remorseful	2	1.3%
Commonwealth Recommendation	1	0.7%
Offender Has Family Responsibilities or Family Circumstances	1	0.7%
Offender Was Allured, Coerced, or Acted on Self-Defense	1	0.7%
Offender Waived 4th Amendment Right	1	0.7%
Unspecified Fact of the Case or Aggravated Factors	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 AGGRAVATION

Traffic (162 Cases)	Number	Percent
No Departure Reason Given for Aggravation	35	14.1%
Offender: Extensive Criminal History or Repeated Criminal Behavior	34	13.7%
Guilty Plea, Agreement, or Joint Recommendation	28	11.3%
Offense Involves Excessive Quantity, Value, Speed or Content	23	9.3%
Offender: Absconded/Eluded Police/Not Cooperative	21	8.5%
Offender is Violent or Dangerous (No Children Involved)	16	6.5%
Offense is Cruel, Egregious, or Caused Death	14	5.6%
Judge: Disagrees With Guidelines	11	4.4%
Victim Impact: Bodily or Emotional	8	3.2%
Charge Dismissed, Reduced, or Amended	8	3.2%
Mandatory Time Applies	6	2.4%
Offender Failed Probation, Alternatives, Court Orders, Appear etc.	6	2.4%
Unspecified Fact of the Case or Aggravated Factors	5	2.0%
Offender Served, is Serving or to Serve Time on Current or Other Charges	5	2.0%
Offense Involved Weapon (Primary not Weapon Offense)	4	1.6%
Guidelines were Misunderstood or Miscalculated	4	1.6%
Mandatory Time Dropped or Amended	3	1.2%
Offender is Dishonest or Provided False Information.	3	1.2%
Offense Occurred in a Penalty-Enhancing Location or Context	3	1.2%
Children were Involved (Violent)	2	0.8%
Offense Involved Drug or Alcohol (Primary not Drug Offense)	2	0.8%
Victim, Multiple	2	0.8%
Offender: Not a Virginia Resident/Not Acclimated	1	0.4%
Victim Impact: Financial	1	0.4%
Offender Has Identified Substance Abuse or Mental Health Issues	1	0.4%
Offender: Did Not Show Remorse or Take Responsibility	1	0.4%
Unspecified Fact of the Case or Aggravated Factors	1	0.4%

Weapons (167 Cases)	Number	Percent
No Departure Reason Given for Aggravation	59	27.1%
Guilty Plea, Agreement, or Joint Recommendation	56	25.7%
Charge Dismissed, Reduced, or Amended	25	11.5%
Offender is Violent or Dangerous (No Children Involved)	14	6.4%
Offender: Extensive Criminal History or Repeated Criminal Behavior	12	5.5%
Mandatory Time Applies	10	4.6%
Offense is Cruel, Egregious, or Caused Death	8	3.7%
Offender Failed Probation, Alternatives, Court Orders, Appear etc.	5	2.3%
Mandatory Time Dropped or Amended	4	1.8%
Judge: Disagrees With Guidelines	4	1.8%
Children were Involved (Violent)	4	1.8%
Victim was Judicial Personnel, Vulnerable, or Innocent	3	1.4%
Victim Impact: Bodily or Emotional	3	1.4%
Unspecified Fact of the Case or Aggravated Factors	2	0.9%
Offender is a Member of a Crime Organization	2	0.9%
Offender: Absconded/Eluded Police/Not Cooperative	1	0.5%
Commonwealth or Joint Recommendation	1	0.5%
Offender: Did Not Show Remorse or Take Responsibility	1	0.5%
Offender: Legally Restrained/Under Warrant	1	0.5%
Offense Involves Excessive Quantity, Value, Speed or Content	1	0.5%
Guidelines were Misunderstood or Miscalculated	1	0.5%
Offender is Dishonest or Provided False Information.	1	0.5%

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

##### Assault (171 Cases)

	Number	Percent
No Departure Reason Given for Mitigation	83	39.9%
Guilty Plea, Agreement, or Joint Recommendation	51	24.5%
Evidence Witness Issues, or Old Case	16	7.7%
Offender Served, Serving or to Serve Time on Current or Other Charges	10	4.8%
Offender Has Identified Substance Abuse or Mental Health Issues	9	4.3%
Offender is Making Progress/Recovering in Pretrial, Probation, or In General	6	2.9%
Offender is Senior or Minor, Sick, Disabled, or Had Trauma	4	1.9%
Offender is Remorseful	4	1.9%
Sentence is Affected by the Request of Victim	4	1.9%
Guidelines were Misunderstood or Miscalculated	3	1.4%
Mandatory Time Applies	3	1.4%
Judge: Disagrees With Guidelines	3	1.4%
Sentenced to DJJ or Blended	2	1.0%
Offense Was Minor in Nature or Severity	2	1.0%
Commonwealth Recommendation	2	1.0%
Offender is Employed or In School	1	0.5%
Sentenced to Deferred, Alternative, Treatment, or Service	1	0.5%
Offender Has Good Background, Family or Community Support	1	0.5%
Offender Has Family Responsibilities or Family Circumstances	1	0.5%
Offender is Cooperative with Law Enforcement	1	0.5%
Unspecified Fact of the Case or Mitigating Factors	1	0.5%

##### Kidnapping (23 Cases)

	Number	Percent
No Departure Reason Given for Mitigation	11	40.7%
Guilty Plea, Agreement, or Joint Recommendation	7	25.9%
Evidence Witness Issues, or Old Case	3	11.1%
Sentenced to Deferred, Alternative, Treatment, or Service	2	7.4%
Offender Has No Violent, Little, or Recent Criminal History	1	3.7%
Offender Has Family Responsibilities or Family Circumstances	1	3.7%
Sentence is Affected by the Request of Victim	1	3.7%
Unspecified Fact of the Case or Mitigating Factors	1	3.7%

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 AGGRAVATION

##### Assault (163 Cases)

	Number	Percent
No Departure Reason Given for Aggravation	39	13.9%
Victim Impact: Bodily or Emotional	35	12.5%
Offender is Violent or Dangerous (No Children Involved)	34	12.1%
Guilty Plea, Agreement, or Joint Recommendation	33	11.8%
Offense is Cruel, Egregious, or Caused Death	32	11.4%
Offender: Extensive Criminal History or Repeated Criminal Behavior	17	6.1%
Judge: Disagrees With Guidelines	15	5.4%
Charge Dismissed, Reduced, or Amended	12	4.3%
Offender: Did Not Show Remorse or Take Responsibility	10	3.6%
Children were Involved (Violent)	10	3.6%
Offense Involved Weapon (Primary not Weapon Offense)	9	3.2%
Offender Failed Probation, Alternatives, Court Orders, Appear etc.	5	1.8%
Offender Planned, Premeditated, or Organized the Offense	4	1.4%
Offense Occurred in a Penalty-Enhancing Location or Context	3	1.1%
Offender Has Identified Substance Abuse or Mental Health Issues	3	1.1%
Offense Involved Drug or Alcohol (Primary not Drug Offense)	3	1.1%
Offense Involves Excessive Quantity, Value, Speed or Content	3	1.1%
Victim, Multiple	2	0.7%
Offender is in a Position of Trust	2	0.7%
Victim was Judicial Personnel, Vulnerable, or Innocent	1	0.4%
Offender: Absconded/Eluded Police/Not Cooperative	1	0.4%
Offender Served, is Serving or to Serve Time on Current or Other Charges	1	0.4%
Sentenced to Treatment Program	1	0.4%
Sentence is Affected by the Request from Victim	1	0.4%
Commonwealth or Joint Recommendation	1	0.4%
Jury Trial, Jury Sentence, or Jury Recommendation	1	0.4%
Mandatory Time Applies	1	0.4%
Guidelines were Misunderstood or Miscalculated	1	0.4%

##### Kidnapping (7 Cases)

	Number	Percent
Offender: Extensive Criminal History or Repeated Criminal Behavior	2	15.4%
No Departure Reason Given for Aggravation	1	7.7%
Offense is Cruel, Egregious, or Caused Death	1	7.7%
Offender: Did Not Show Remorse or Take Responsibility	1	7.7%
Children were Involved (Violent)	1	7.7%
Offender is Violent or Dangerous (No Children Involved)	1	7.7%
Offense Involved Weapon (Primary not Weapon Offense)	1	7.7%
Victim Impact: Bodily or Emotional	1	7.7%
Offender Served, is Serving or to Serve Time on Current or Other Charges	1	7.7%
Guilty Plea, Agreement, or Joint Recommendation	1	7.7%
Judge: Disagrees With Guidelines	1	7.7%
Unspecified Fact of the Case or Aggravated Factors	1	7.7%

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

##### Homicide (23 Cases)

	Number	Percent
No Departure Reason Given for Mitigation	11	39.3%
Guilty Plea, Agreement, or Joint Recommendation	5	17.9%
Offender Has No Violent, Little, or Recent Criminal History	3	10.7%
Evidence Witness Issues, or Old Case	3	10.7%
Offender Has Identified Substance Abuse or Mental Health Issues	2	7.1%
Unspecified Fact of the Case or Mitigating Factors	2	7.1%
Offender Was Allured, Coerced, or Acted on Self-Defense	1	3.6%
Offender is Senior or Minor, Sick, Disabled, or Had Trauma	1	3.6%

##### Robbery/Carjacking (5 Cases)

	Number	Percent
Guilty Plea, Agreement, or Joint Recommendation	3	33.3%
No Departure Reason Given for Mitigation	2	22.2%
Sentenced to DJJ or Blended	2	22.2%
Offender is Making Progress/Recovering in Pretrial, Probation, or In General	1	11.1%
Offender is Senior or Minor, Sick, Disabled, or Had Trauma	1	11.1%

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 ②

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

#### Reasons for AGGRAVATION

##### Homicide (86 Cases)

	Number	Percent
Offense is Cruel, Egregious, or Caused Death	30	20.0%
Guilty Plea, Agreement, or Joint Recommendation	19	12.7%
Children were Involved (Violent)	15	10.0%
Offender: Did Not Show Remorse or Take Responsibility	12	8.0%
No Departure Reason Given for Aggravation	11	7.3%
Judge: Disagrees With Guidelines	8	5.3%
Victim Impact: Bodily or Emotional	8	5.3%
Charge Dismissed, Reduced, or Amended	5	3.3%
Offense Involved Weapon (Primary not Weapon Offense)	5	3.3%
Offender: Extensive Criminal History or Repeated Criminal Behavior	4	2.7%
Offender Planned, Premeditated, or Organized the Offense	3	2.0%
Offense Involves Excessive Quantity, Value, Speed or Content	3	2.0%
Offense Involved Drug or Alcohol (Primary not Drug Offense)	3	2.0%
Offender is a Member of a Crime Organization	3	2.0%
Jury Trial, Jury Sentence, or Jury Recommendation	2	1.3%
Offender is in a Position of Trust	2	1.3%
Offender Failed Probation, Alternatives, Court Orders, Appear etc.	2	1.3%
Victim was Judicial Personnel, Vulnerable, or Innocent	2	1.3%
Offense Occurred in a Penalty-Enhancing Location or Context	2	1.3%
Victim, Multiple	2	1.3%
Offender Has Identified Substance Abuse or Mental Health Issues	2	1.3%
Offender: Absconded/Eluded Police/Not Cooperative	2	1.3%
Unspecified Fact of the Case or Aggravated Factors	2	1.3%
Offender is Dishonest or Provided False Information.	1	0.7%
Offender: Legally Restrained/Under Warrant	1	0.7%
Offender is Violent or Dangerous (No Children Involved)	1	0.7%

##### Robbery/Carjacking (4 Cases)

	Number	Percent
No Departure Reason Given for Aggravation	1	16.7%
Offender: Did Not Show Remorse or Take Responsibility	1	16.7%
Children were Involved (Violent)	1	16.7%
Offender is Violent or Dangerous (No Children Involved)	1	16.7%
Charge Dismissed, Reduced, or Amended	1	16.7%
Guilty Plea, Agreement, or Joint Recommendation	1	16.7%

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

##### Rape (35 Cases)

	Number	Percent
Guilty Plea, Agreement, or Joint Recommendation	14	29.2%
No Departure Reason Given for Mitigation	9	18.8%
Evidence Witness Issues, or Old Case	8	16.7%
Unspecified Fact of the Case or Mitigating Factors	3	6.2%
Offender Served, Serving or to Serve Time on Current or Other Charges	2	4.2%
Sentence is Affected by the Request of Victim	2	4.2%
Commonwealth Recommendation	2	4.2%
Offender Has No Violent, Little, or Recent Criminal History	1	2.1%
Offender is Remorseful	1	2.1%
Offender Has Good Background, Family or Community Support	1	2.1%
Sentenced to Deferred, Alternative, Treatment, or Service	1	2.1%
Jury Trial, Jury Sentence, or Jury Recommendation	1	2.1%
Guidelines are Modified or Adjusted	1	2.1%
Judge: Disagrees With Guidelines	1	2.1%

##### Other Sexual Assault (34 Cases)

	Number	Percent
Guilty Plea, Agreement, or Joint Recommendation	19	40.4%
No Departure Reason Given for Mitigation	8	17.0%
Evidence Witness Issues, or Old Case	4	8.5%
Offender Served, Serving or to Serve Time on Current or Other Charges	4	8.5%
Offender is Remorseful	2	4.3%
Offender Has Good Background, Family or Community Support	2	4.3%
Offender Has Identified Substance Abuse or Mental Health Issues	2	4.3%
Offender is Not a Virginia Resident	2	4.3%
Offender is Senior or Minor, Sick, Disabled, or Had Trauma	1	2.1%
Sentence is Affected by the Request of Victim	1	2.1%
Commonwealth Recommendation	1	2.1%
Guidelines were Misunderstood or Miscalculated	1	2.1%

##### Other Sexual Assault/Obscenity (31 Cases)

	Number	Percent
No Departure Reason Given for Mitigation	15	42.9%
Guilty Plea, Agreement, or Joint Recommendation	10	28.6%
Offender is Senior or Minor, Sick, Disabled, or Had Trauma	2	5.7%
Offender Served, Serving or to Serve Time on Current or Other Charges	2	5.7%
Offender Has No Violent, Little, or Recent Criminal History	1	2.9%
Offender is Remorseful	1	2.9%
Offender Has Identified Substance Abuse or Mental Health Issues	1	2.9%
Jury Trial, Jury Sentence, or Jury Recommendation	1	2.9%
Mandatory Time Applies	1	2.9%
Guidelines were Misunderstood or Miscalculated	1	2.9%

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

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

## Appendix 2

### Judicial Reasons for Departure from Sentencing Guidelines

#### Offenses Against the Person

##### Reasons for AGGRAVATION

###### Rape (19 Cases)

	Number	Percent
Children were Involved (Violent)	12	26.7%
Offense is Cruel, Egregious, or Caused Death	8	17.8%
Guilty Plea, Agreement, or Joint Recommendation	5	11.1%
Offender is in a Position of Trust	4	8.9%
Victim Impact: Bodily or Emotional	3	6.7%
Offender: Extensive Criminal History or Repeated Criminal Behavior	2	4.4%
Victim, Multiple	2	4.4%
Judge: Disagrees With Guidelines	2	4.4%
Offender: Did Not Show Remorse or Take Responsibility	1	2.2%
Offender: Absconded/Eluded Police/Not Cooperative	1	2.2%
Offense Involved Drug or Alcohol (Primary not Drug Offense)	1	2.2%
Charge Dismissed, Reduced, or Amended	1	2.2%
Commonwealth or Joint Recommendation	1	2.2%
Mandatory Time Dropped or Amended	1	2.2%
Unspecified Fact of the Case or Aggravated Factors	1	2.2%

###### Other Sexual Assault (49 Cases)

	Number	Percent
Children were Involved (Violent)	24	25.3%
Victim Impact: Bodily or Emotional	10	10.5%
Offender is in a Position of Trust	9	9.5%
Judge: Disagrees With Guidelines	8	8.4%
Offender: Extensive Criminal History or Repeated Criminal Behavior	7	7.4%
Guilty Plea, Agreement, or Joint Recommendation	6	6.3%
Offense is Cruel, Egregious, or Caused Death	5	5.3%
Offender is Violent or Dangerous (No Children Involved)	5	5.3%
Offender: Did Not Show Remorse or Take Responsibility	4	4.2%
Jury Trial, Jury Sentence, or Jury Recommendation	3	3.2%
Offender Planned, Premeditated, or Organized the Offense	2	2.1%
Offense Involved Drug or Alcohol (Primary not Drug Offense)	2	2.1%
Victim, Multiple	2	2.1%
Offender Failed Probation, Alternatives, Court Orders, Appear etc.	2	2.1%
Charge Dismissed, Reduced, or Amended	2	2.1%
No Departure Reason Given for Aggravation	2	2.1%
Offense Occurred in a Penalty-Enhancing Location or Context	1	1.1%
Offender is Employed in Law Enforcement or Judicial Field	1	1.1%

###### Other Sexual Assault/Obscenity (47 Cases)

	Number	Percent
Guilty Plea, Agreement, or Joint Recommendation	15	19.7%
Children were Involved (Violent)	10	13.2%
No Departure Reason Given for Aggravation	8	10.5%
Charge Dismissed, Reduced, or Amended	8	10.5%
Judge: Disagrees With Guidelines	5	6.6%
Mandatory Time Applies	3	3.9%
Mandatory Time Dropped or Amended	3	3.9%
Offender: Did Not Show Remorse or Take Responsibility	3	3.9%
Offender Planned, Premeditated, or Organized the Offense	3	3.9%
Offense is Cruel, Egregious, or Caused Death	3	3.9%
Victim Impact: Bodily or Emotional	2	2.6%
Unspecified Fact of the Case or Aggravated Factors	2	2.6%
Offender: Extensive Criminal History or Repeated Criminal Behavior	2	2.6%
Offense Involves Excessive Quantity, Value, Speed or Content	2	2.6%
Victim, Multiple	1	1.3%
Offender Committed Crime Through Internet	1	1.3%
Offense Involved Drug or Alcohol (Primary not Drug Offense)	1	1.3%
Offender: Absconded/Eluded Police/Not Cooperative	1	1.3%
Commonwealth or Joint Recommendation	1	1.3%
Offender is in a Position of Trust	1	1.3%
Offender Has Identified Substance Abuse or Mental Health Issues	1	1.3%

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 (3)

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

#### BURGLARY OF DWELLING

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	25.0%	50.0%	25.0%	4
2	60.0	13.3	26.7	15
3	66.7	33.3	0.0	3
4	50.0	25.0	25.0	8
5	66.7	16.7	16.7	12
6	81.8	0.0	18.2	11
7	85.7	14.3	0.0	7
8	66.7	20.0	13.3	15
9	60.0	10.0	30.0	10
10	78.6	14.3	7.1	14
11	50.0	0.0	50.0	2
12	53.3	20.0	26.7	15
13	75.0	25.0	0.0	4
14	62.5	12.5	25.0	8
15	59.1	31.8	9.1	22
16	75.0	12.5	12.5	16
17	100	0.0	0.0	1
18	50.0	50.0	0.0	2
19	100	0.0	0.0	5
20	28.6	0.0	71.4	7
21	90.9	9.1	0.0	11
22	91.3	4.3	4.3	23
23	75.0	25.0	0.0	12
24	77.3	4.5	18.2	22
25	63.2	26.3	10.5	19
26	86.4	9.1	4.5	22
27	85.2	11.1	3.7	27
28	90.0	10.0	0.0	10
29	57.1	0.0	42.9	7
30	60.0	30.0	10.0	10
31	50.0	50.0	0.0	2
Total	71.7	15.0	13.3	346

#### BURGLARY/OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	90.9%	9.1%	0%	11
2	84.6	11.5	3.8	26
3	80.0	20.0	0.0	5
4	75.0	8.3	16.7	12
5	83.3	0.0	16.7	12
6	85.7	14.3	0.0	7
7	88.9	11.1	0.0	9
8	75.0	16.7	8.3	12
9	83.3	0.0	16.7	6
10	100	0.0	0.0	12
11	100	0.0	0.0	4
12	66.7	33.3	0.0	3
13	88.9	11.1	0.0	9
14	54.5	0.0	45.5	11
15	80.0	10.0	10.0	20
16	85.7	14.3	0.0	7
17	66.7	33.3	0.0	3
18	100	0.0	0.0	1
19	42.9	57.1	0.0	7
20	50.0	25.0	25.0	4
21	100	0.0	0.0	2
22	72.7	9.1	18.2	11
23	70.0	20.0	10.0	10
24	100	0.0	0.0	18
25	82.4	5.9	11.8	17
26	77.8	16.7	5.6	18
27	87.5	6.2	6.2	16
28	84.6	15.4	0.0	13
29	87.5	0.0	12.5	8
30	81.8	9.1	9.1	11
31	40.0	60.0	0.0	5
Total	81.0	11.3	7.7	310

#### DRUG/OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	90.9%	9.1%	0%	11
2	83.3	0.0	16.7	6
3	0.0	0.0	100	1
4	100	0.0	0.0	3
5	83.3	0.0	16.7	6
6	100	0.0	0.0	1
7	100	0.0	0.0	7
8	91.7	8.3	0.0	12
9	100	0.0	0.0	5
10	83.3	16.7	0.0	6
11	100	0.0	0.0	3
12	66.7	0.0	33.3	6
13	33.3	66.7	0.0	3
14	70.0	10.0	20.0	10
15	75.0	12.5	12.5	16
16	75.0	16.7	8.3	12
17	100.0	0.0	0.0	1
18	100.0	0.0	0.0	3
19	66.7	0.0	33.3	3
20	92.9	0.0	7.1	14
21	0.0	0.0	0.0	0
22	88.9	0.0	11.1	9
23	100	0.0	0.0	4
24	83.3	0.0	16.7	6
25	83.3	0.0	16.7	6
26	87.5	12.5	0.0	8
27	100	0.0	0.0	8
28	100	0.0	0.0	5
29	83.3	4.2	12.5	24
30	100	0.0	0.0	6
31	100	0.0	0.0	7
Total	85.8	5.7	8.5	212

## Appendix ③

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

#### DRUG SCHEDULE I/II

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	85.2%	8.1%	6.7%	209
2	93.7	3.8	2.5	365
3	78.9	21.1	0.0	19
4	75.4	15.4	9.2	65
5	86.7	7.8	5.6	90
6	89.8	3.1	7.0	128
7	86.3	5.9	7.8	102
8	79.8	19.2	1.0	99
9	87.3	3.8	8.9	213
10	84.8	9.1	6.1	164
11	85.2	13.0	1.9	108
12	87.2	7.6	5.2	290
13	66.4	23.4	10.3	107
14	80.5	10.2	9.4	502
15	73.8	13.1	13.1	588
16	79.8	10.6	9.6	208
17	62.2	17.8	20.0	45
18	77.1	20.0	2.9	35
19	80.8	18.3	1.0	104
20	73.8	5.0	21.2	80
21	80.6	15.2	4.2	165
22	84.6	7.7	7.7	246
23	74.0	18.3	7.7	388
24	91.0	5.1	3.9	355
25	81.1	13.3	5.6	445
26	90.0	5.9	4.0	792
27	90.5	7.9	1.5	719
28	89.6	8.5	2.0	355
29	85.2	1.8	12.9	271
30	79.7	13.4	6.9	246
31	85.1	8.8	6.1	114
Total	84.1	9.5	6.4	7,619

#### FRAUD

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	92.9%	3.6%	3.6%	28
2	87.3	9.5	3.2	63
3	100	0.0	0.0	1
4	70.0	20.0	10.0	20
5	84.6	7.7	7.7	26
6	89.5	5.3	5.3	19
7	87.5	0.0	12.5	8
8	90.9	0.0	9.1	11
9	88.9	0.0	11.1	27
10	90.0	10.0	0.0	10
11	76.5	17.6	5.9	17
12	96.0	0.0	4.0	25
13	83.3	0.0	16.7	6
14	91.2	2.9	5.9	34
15	73.6	13.8	12.6	87
16	80.0	12.5	7.5	40
17	72.7	9.1	18.2	11
18	100	0.0	0.0	2
19	72.2	22.2	5.6	18
20	88.9	0.0	11.1	18
21	95.8	0.0	4.2	24
22	100.0	0.0	0.0	26
23	68.6	29.4	2.0	51
24	97.0	0.0	3.0	33
25	87.3	9.5	3.2	63
26	93.1	3.4	3.4	87
27	91.2	8.8	0.0	68
28	96.8	3.2	0.0	31
29	95.0	0.0	5.0	20
30	90.5	0.0	9.5	21
31	84.6	15.4	0.0	13
Total	86.6	8.1	5.3	908

#### LARCENY

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	90.6%	1.9%	7.5%	53
2	89.0	5.5	5.5	127
3	90.0	10.0	0.0	10
4	77.8	9.5	12.7	63
5	84.6	5.8	9.6	52
6	78.9	5.3	15.8	19
7	82.8	6.9	10.3	29
8	86.0	4.7	9.3	43
9	88.9	4.8	6.3	63
10	80.9	8.5	10.6	47
11	83.3	10.0	6.7	30
12	82.6	2.9	14.5	69
13	95.7	4.3	0.0	23
14	70.0	4.4	25.6	90
15	77.7	10.9	11.4	193
16	82.5	7.0	10.5	57
17	75.0	0.0	25.0	8
18	100	0.0	0.0	6
19	80.4	13.7	5.9	51
20	76.6	6.4	17.0	47
21	97.1	0.0	2.9	34
22	84.8	6.5	8.7	46
23	78.8	17.6	3.5	85
24	92.2	2.6	5.2	77
25	82.6	8.7	8.7	69
26	86.3	7.6	6.1	131
27	87.3	11.0	1.7	118
28	87.5	6.3	6.3	48
29	90.0	2.5	7.5	40
30	92.0	4.0	4.0	25
31	88.6	2.9	8.6	35
Total	83.9	7.3	8.8	1,788

## Appendix ③

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

TRAFFIC					MISCELLANEOUS/OTHER					MISCELLANEOUS/P&P				
Circuit	Compliance	Mitigation	Aggravation	# of Cases	Circuit	Compliance	Mitigation	Aggravation	# of Cases	Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	79.1%	4.7%	16.3%	43	1	90%	0%	10%	10	1	40%	40%	20%	5
2	89.1	5.5	5.5	110	2	93.3	6.7	0.0	15	2	81.8	3.0	15.2	33
3	80.0	20.0	0.0	10	3	50.0	50.0	0.0	2	3	66.7	0.0	33.3	3
4	75.0	13.9	11.1	36	4	92.9	0.0	7.1	14	4	81.0	9.5	9.5	21
5	70.4	5.6	24.1	54	5	58.3	16.7	25.0	12	5	57.9	10.5	31.6	19
6	74.1	3.7	22.2	27	6	87.5	12.5	0.0	32	6	73.3	0.0	26.7	15
7	88.5	7.7	3.8	26	7	91.7	8.3	0.0	12	7	84.6	7.7	7.7	13
8	70.8	12.5	16.7	48	8	100	0.0	0.0	7	8	60.0	26.7	13.3	15
9	89.2	4.6	6.2	65	9	100	0.0	0.0	10	9	83.3	0.0	16.7	30
10	77.8	15.6	6.7	45	10	84.4	15.6	0.0	32	10	78.9	15.8	5.3	19
11	88.6	8.6	2.9	35	11	66.7	33.3	0.0	18	11	100	0.0	0.0	11
12	82.4	7.4	10.3	68	12	66.7	27.8	5.6	18	12	64.3	7.1	28.6	14
13	80.0	13.3	6.7	15	13	82.6	13.0	4.3	23	13	71.4	28.6	0.0	7
14	49.0	3.9	47.1	51	14	66.7	5.6	27.8	36	14	64.0	4.0	32.0	25
15	82.1	9.9	8.0	162	15	88.4	7.0	4.7	43	15	66.7	19.4	13.9	36
16	76.6	14.1	9.4	64	16	75.0	25.0	0.0	24	16	69.7	12.1	18.2	33
17	90.0	0.0	10.0	10	17	100	0.0	0.0	2	17	0.0	0.0	100	1
18	66.7	11.1	22.2	9	18	100	0.0	0.0	1	18	100	0.0	0.0	2
19	70.8	12.5	16.7	24	19	0.0	0.0	100	1	19	25.0	25.0	50.0	4
20	78.8	9.1	12.1	33	20	0.0	0.0	0.0	0	20	50.0	12.5	37.5	8
21	92.0	8.0	0.0	25	21	83.3	0.0	16.7	6	21	100	0.0	0.0	6
22	80.0	8.0	12.0	25	22	80.0	6.7	13.3	30	22	84.6	0.0	15.4	13
23	76.6	12.5	10.9	64	23	82.5	15.0	2.5	40	23	90.9	0.0	9.1	22
24	90.2	3.9	5.9	51	24	57.9	5.3	36.8	19	24	85.2	7.4	7.4	27
25	81.7	7.0	11.3	71	25	84.2	10.5	5.3	19	25	80.6	16.7	2.8	36
26	82.4	3.2	14.4	125	26	87.5	6.3	6.3	16	26	77.8	8.9	13.3	45
27	87.9	12.1	0.0	58	27	88.9	11.1	0.0	18	27	82.0	8.0	10.0	50
28	82.8	6.9	10.3	29	28	100	0.0	0.0	15	28	89.5	5.3	5.3	19
29	85.7	9.5	4.8	21	29	100	0.0	0.0	19	29	52.9	0.0	47.1	17
30	77.8	22.2	0.0	18	30	90.6	9.4	0.0	32	30	83.3	8.3	8.3	12
31	67.9	17.9	14.3	28	31	100	0.0	0.0	1	31	83.3	8.3	8.3	12
Total	80.3	8.6	11.2	1,450	Total	82.7	10.6	6.6	527	Total	76.1	8.9	15.0	573

## Appendix ③

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

#### WEAPONS

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	84%	10%	6%	50
2	78.6	7.1	14.3	98
3	63.6	36.4	0.0	11
4	79.4	5.9	14.7	68
5	66.7	11.8	21.6	51
6	69.6	4.3	26.1	46
7	78.5	9.2	12.3	65
8	83.0	7.5	9.4	53
9	70.0	6.7	23.3	30
10	78.8	6.1	15.2	33
11	80.0	6.7	13.3	30
12	78.6	14.3	7.1	28
13	61.3	16.2	22.5	80
14	65.3	8.2	26.5	49
15	75.0	10.7	14.3	56
16	66.7	11.1	22.2	45
17	40.0	20.0	40.0	5
18	33.3	66.7	0.0	6
19	63.6	27.3	9.1	11
20	60.0	20.0	20.0	5
21	81.5	11.1	7.4	27
22	90.9	2.3	6.8	44
23	76.4	12.7	10.9	55
24	77.8	6.7	15.6	45
25	76.5	11.8	11.8	34
26	78.0	12.2	9.8	41
27	89.4	6.4	4.3	47
28	90.9	9.1	0.0	22
29	87.5	12.5	0.0	16
30	73.3	6.7	20.0	15
31	78.6	7.1	14.3	14
Total	76.0	9.9	14.1	1,181

## Appendix 4

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

ASSAULT					KIDNAPPING					HOMICIDE				
Circuit	Compliance	Mitigation	Aggravation	# of Cases	Circuit	Compliance	Mitigation	Aggravation	# of Cases	Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	76.9%	15.4 %	7.7%	26	1	75.0%	25.0%	0%	4	1	55.6%	0%	44.4%	9
2	84.1	8.0	8.0	88	2	85.7	14.3	0.0	7	2	66.7	14.3	19.0	21
3	81.8	9.1	9.1	11	3	0.0	0.0	0.0	0	3	66.7	11.1	22.2	9
4	83.6	7.5	9.0	67	4	100	0.0	0.0	6	4	63.2	0.0	36.8	19
5	82.8	5.2	12.1	58	5	100	0.0	0.0	1	5	55.6	0.0	44.4	9
6	75.0	14.3	10.7	56	6	100	0.0	0.0	2	6	60.0	20.0	20.0	10
7	71.4	18.4	10.2	49	7	86.7	13.3	0.0	15	7	71.4	14.3	14.3	14
8	66.7	30.8	2.6	39	8	75.0	25.0	0.0	4	8	38.9	5.6	55.6	18
9	86.4	4.5	9.1	66	9	80.0	0.0	20.0	5	9	75.0	0.0	25.0	4
10	81.8	14.5	3.6	55	10	55.6	33.3	11.1	9	10	50.0	25.0	25.0	4
11	78.8	15.4	5.8	52	11	100	0.0	0.0	2	11	90.9	0.0	9.1	11
12	70.8	6.2	22.9	48	12	100	0.0	0.0	5	12	72.7	0.0	27.3	11
13	82.0	8.0	10.0	50	13	100	0.0	0.0	2	13	68.2	4.5	27.3	22
14	65.5	3.4	31.0	58	14	100	0.0	0.0	4	14	70.6	5.9	23.5	17
15	76.1	12.4	11.5	113	15	77.8	11.1	11.1	9	15	58.8	17.6	23.5	17
16	80.0	15.0	5.0	80	16	100	0.0	0.0	4	16	73.7	0.0	26.3	19
17	52.6	31.6	15.8	19	17	50.0	50.0	0.0	2	17	40.0	20.0	40.0	5
18	93.8	6.2	0.0	16	18	100	0.0	0.0	1	18	100	0.0	0.0	2
19	71.0	16.1	12.9	31	19	60.0	20.0	20.0	5	19	63.2	10.5	26.3	19
20	64.7	11.8	23.5	17	20	50.0	0.0	50.0	2	20	100	0.0	0.0	3
21	78.8	6.1	15.2	33	21	100	0.0	0.0	3	21	100	0.0	0.0	7
22	70.2	8.5	21.3	47	22	100	0.0	0.0	4	22	81.8	18.2	0.0	11
23	83.6	8.2	8.2	61	23	50.0	50.0	0.0	4	23	80.0	10.0	10.0	10
24	80.4	10.9	8.7	46	24	100	0.0	0.0	5	24	85.7	0.0	14.3	14
25	80.6	13.4	6.0	67	25	50.0	50.0	0.0	8	25	100	0.0	0.0	3
26	81.2	8.9	9.8	112	26	60.0	30.0	10.0	10	26	43.8	6.2	50.0	16
27	94.2	4.3	1.4	69	27	75.0	25.0	0.0	4	27	87.5	0.0	12.5	8
28	80.0	8.6	11.4	35	28	100	0.0	0.0	3	28	100	0.0	0.0	5
29	82.4	8.8	8.8	34	29	100	0.0	0.0	5	29	50.0	0.0	50.0	4
30	86.7	10.0	3.3	30	30	50.0	33.3	16.7	6	30	100	0.0	0.0	5
31	68.2	15.9	15.9	44	31	100	0.0	0.0	4	31	60.0	6.7	33.3	15
Total	78.8	10.8	10.3	1,577	Total	79.3	15.9	4.8	145	Total	68.0	6.7	25.2	341

## Appendix ④

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

ROBBERY/CARJACKING					RAPE					OTHER SEXUAL ASSAULT				
Circuit	Compliance	Mitigation	Aggravation	# of Cases	Circuit	Compliance	Mitigation	Aggravation	# of Cases	Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	0%	0%	0%	0	1	100%	0%	0%	2	1	71.4%	28.6%	0%	7
2	100	0.0	0.0	3	2	70.0	20.0	10.0	10	2	80.0	10.0	10.0	20
3	50.0	0.0	50.0	2	3	0.0	0.0	0.0	0	3	0.0	0.0	0.0	0
4	50.0	0.0	50.0	2	4	92.9	0.0	7.1	14	4	80.0	20.0	0.0	5
5	75.0	0.0	25.0	4	5	75.0	25.0	0.0	4	5	80.0	0.0	20.0	10
6	0.0	0.0	0.0	0	6	100	0.0	0.0	2	6	100	0.0	0.0	4
7	100	0.0	0.0	1	7	72.7	18.2	9.1	11	7	80.0	6.7	13.3	15
8	60.0	40.0	0.0	5	8	80.0	20.0	0.0	5	8	76.9	15.4	7.7	13
9	0.0	0.0	0.0	0	9	25.0	25.0	50.0	4	9	64.3	7.1	28.6	14
10	0.0	0.0	0.0	0	10	100	0.0	0.0	4	10	87.5	12.5	0.0	8
11	0.0	0.0	0.0	0	11	100	0.0	0.0	3	11	100.0	0.0	0.0	4
12	0.0	0.0	0.0	0	12	66.7	16.7	16.7	6	12	33.3	11.1	55.6	9
13	85.7	14.3	0.0	7	13	50.0	50.0	0.0	2	13	100	0.0	0.0	1
14	100	0.0	0.0	1	14	0.0	0.0	100	2	14	100	0.0	0.0	2
15	50.0	0.0	50.0	2	15	66.7	20.0	13.3	15	15	35.3	23.5	41.2	17
16	0.0	0.0	0.0	0	16	50.0	40.0	10.0	10	16	64.3	21.4	14.3	14
17	0.0	0.0	0.0	0	17	0.0	100	0.0	2	17	100	0.0	0.0	3
18	100	0.0	0.0	1	18	0.0	0.0	0.0	0	18	100	0.0	0.0	3
19	0.0	100	0.0	2	19	100	0.0	0.0	7	19	61.5	7.7	30.8	13
20	0.0	0.0	0.0	0	20	50.0	50.0	0.0	2	20	50.0	0.0	50.0	6
21	0.0	0.0	0.0	0	21	66.7	33.3	0.0	3	21	0.0	100	0.0	1
22	100	0.0	0.0	1	22	50.0	50.0	0.0	6	22	77.8	0.0	22.2	9
23	0.0	0.0	0.0	0	23	50.0	50.0	0.0	8	23	44.4	44.4	11.1	9
24	100	0.0	0.0	1	24	77.8	11.1	11.1	9	24	100	0.0	0.0	8
25	0.0	0.0	0.0	0	25	69.2	15.4	15.4	13	25	66.7	33.3	0.0	9
26	100	0.0	0.0	2	26	81.8	18.2	0.0	11	26	58.3	16.7	25.0	24
27	100	0.0	0.0	1	27	70.0	20.0	10.0	10	27	90.9	9.1	0.0	11
28	0.0	0.0	0.0	0	28	100	0.0	0.0	5	28	66.7	0.0	33.3	3
29	0.0	0.0	0.0	0	29	80.0	0.0	20.0	5	29	72.7	0.0	27.3	11
30	0.0	0.0	0.0	0	30	100.0	0.0	0.0	2	30	66.7	33.3	0.0	3
31	0.0	0.0	0.0	0	31	71.4	7.1	21.4	14	31	58.3	8.3	33.3	12
Total	74.3	14.3	11.4	35	Total	71.7	18.3	9.9	191	Total	69.0	12.7	18.3	268

## Appendix ④

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

OBSCENITY				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	75.0%	16.7%	8.3%	12
2	73.3	20.0	6.7	15
3	0.0	0.0	0.0	0
4	50.0	50.0	0.0	4
5	50.0	0.0	50.0	10
6	71.4	14.3	14.3	7
7	100	0.0	0.0	1
8	84.2	15.8	0.0	19
9	80.0	0.0	20.0	10
10	92.9	0.0	7.1	14
11	100	0.0	0.0	4
12	81.2	6.2	12.5	16
13	100	0.0	0.0	1
14	66.7	0.0	33.3	12
15	87.0	13.0	0.0	23
16	85.0	10.0	5.0	20
17	50.0	0.0	50.0	2
18	100	0.0	0.0	1
19	72.7	12.1	15.2	33
20	87.5	0.0	12.5	16
21	50.0	0.0	50.0	2
22	100	0.0	0.0	9
23	71.4	14.3	14.3	7
24	69.2	23.1	7.7	13
25	83.9	6.5	9.7	31
26	67.5	7.5	25.0	40
27	96.8	0.0	3.2	31
28	100	0.0	0.0	1
29	50.0	50.0	0.0	2
30	100	0.0	0.0	6
31	63.6	0.0	36.4	11
Total	79.1	8.3	12.6	373

## Appendix ⑤

### Sentencing Guidelines Received by Jurisdiction

COUNTIES		CITIES	
ACCOMACK	41	KING & QUEEN	15
ALBEMARLE	39	KING GEORGE	63
ALLEGHANY	188	KING WILLIAM	17
AMELIA	38	LANCASTER	30
AMHERST	82	LEE	115
APPOMATTOX	68	LOUDOUN	160
ARLINGTON	163	LOUISA	116
AUGUSTA	351	LUNENBURG	38
BATH	20	MADISON	23
BEDFORD	212	MATHEWS	19
BLAND	31	MECKLENBURG	166
BOTETOURT	138	MIDDLESEX	20
BRUNSWICK	76	MONTGOMERY	534
BUCHANAN	125	NELSON	69
BUCKINGHAM	83	NEW KENT	84
CAMPBELL	206	NORTHAMPTON	45
CAROLINE	79	NORTHUMBERLAND	33
CARROLL	236	NOTTOWAY	46
CHARLES CITY	6	ORANGE	158
CHARLOTTE	70	PAGE	362
CHESTERFIELD	666	PATRICK	74
CLARKE	15	PITTSYLVANIA	117
CRAIG	13	POWHATAN	43
CULPEPER	213	PRINCE EDWARD	80
CUMBERLAND	24	PRINCE GEORGE	130
DICKENSON	98	PRINCE WILLIAM	379
DINWIDDIE	49	PULASKI	256
ESSEX	28	RAPPAHANNOCK	35
FAIRFAX COUNTY	520	RICHMOND COUNTY	34
FAUQUIER	109	ROANOKE COUNTY	325
FLOYD	38	ROCKBRIDGE	159
FLUVANNA	65	ROCKINGHAM	629
FRANKLIN COUNTY	236	RUSSELL	137
FREDERICK	288	SCOTT	242
GILES	123	SHENANDOAH	150
GOOCHLAND	207	SMYTH	177
GRAYSON	26	SOUTHAMPTON	101
GREENE	200	SPOTSYLVANIA	420
GREENSVILLE	60	STAFFORD	502
HALIFAX	98	SURRY	7
HANOVER	183	SUSSEX	17
HENRICO	361	TAZEWELL	309
HENRY	1059	WARREN	302
HIGHLAND	291	WASHINGTON	310
ISLE OF WIGHT	4	WESTMORELAND	46
	97	WISE	199
		WYTHE	240
		YORK	145
		Total	23,097