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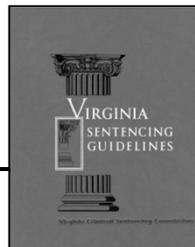
# Proposed Recommendations for Guidelines Revisions

November 2012

## *Proposals for New Guidelines Offenses*

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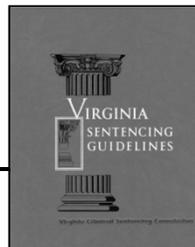
- **Proposals reflect the best fit for the historical data**
- **Proposals are designed to closely match the historical rate of incarceration in prison and jail**
- **Current guidelines worksheets serve as the base for scoring historical cases, but the points assigned to those factors may be adjusted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

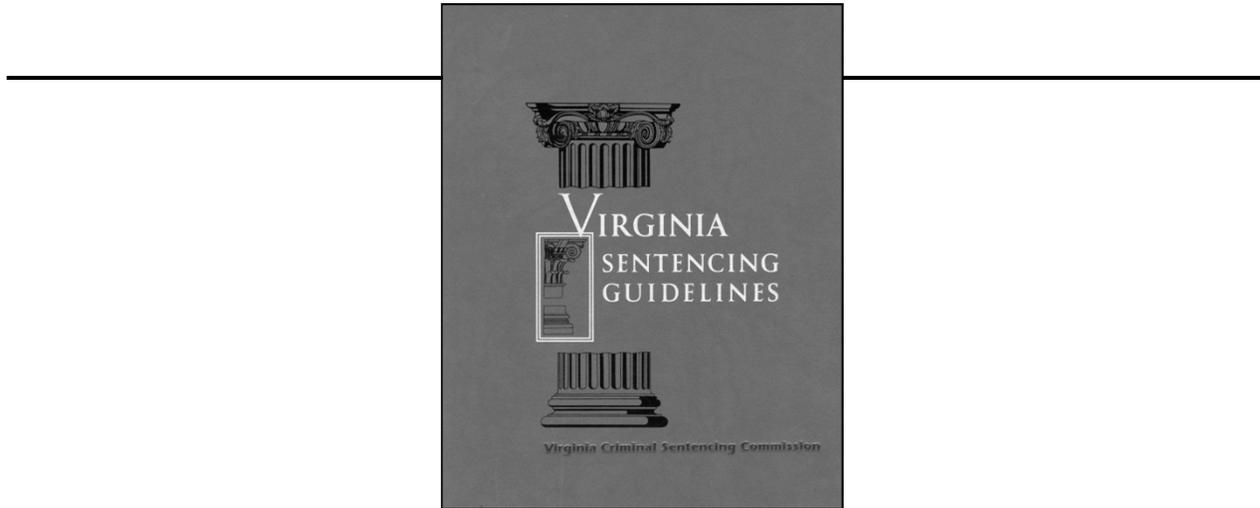


## *Proposals for Revisions to Existing Guidelines*

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- **Proposals are designed to maximize compliance and balance mitigation and aggravation rates to the extent possible**
- **Current guidelines worksheets serve as the base for scoring historical cases, but the points assigned to those factors may be adjusted and new factors may be added**





*Proposed Recommendation 1:*

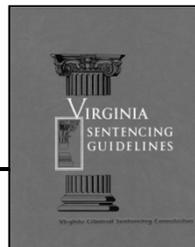
*Add Larceny with Intent to Sell, \$200 or More  
(§ 18.2-108.01(A))  
to the Larceny Guidelines*

*Larceny with Intent to Sell, \$200 or More*  
(§ 18.2-108.01(A))

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**Any person who commits larceny of property with a value of \$200 or more with the intent to sell or distribute such property is guilty of a felony punishable by confinement in a state correctional facility for not less than two years nor more than 20 years. The larceny of more than one item of the same product is prima facie evidence of intent to sell or intent to distribute for sale.**

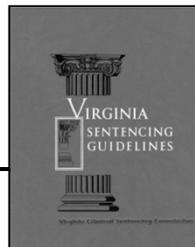
**(Effective July 1, 2003)**



*Larceny with Intent to Sell, \$200 or More  
(§ 18.2-108.01(A))*

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**Currently, convictions under § 18.2-108.01(A)  
involving larceny of property with a value of  
\$200 or more with the intent to sell or distribute  
are not covered by the sentencing guidelines**



**Larceny with Intent to Sell, \$200 or More  
 (§ 18.2-108.01(A))  
 FY2008 – FY2012  
 202 Cases**

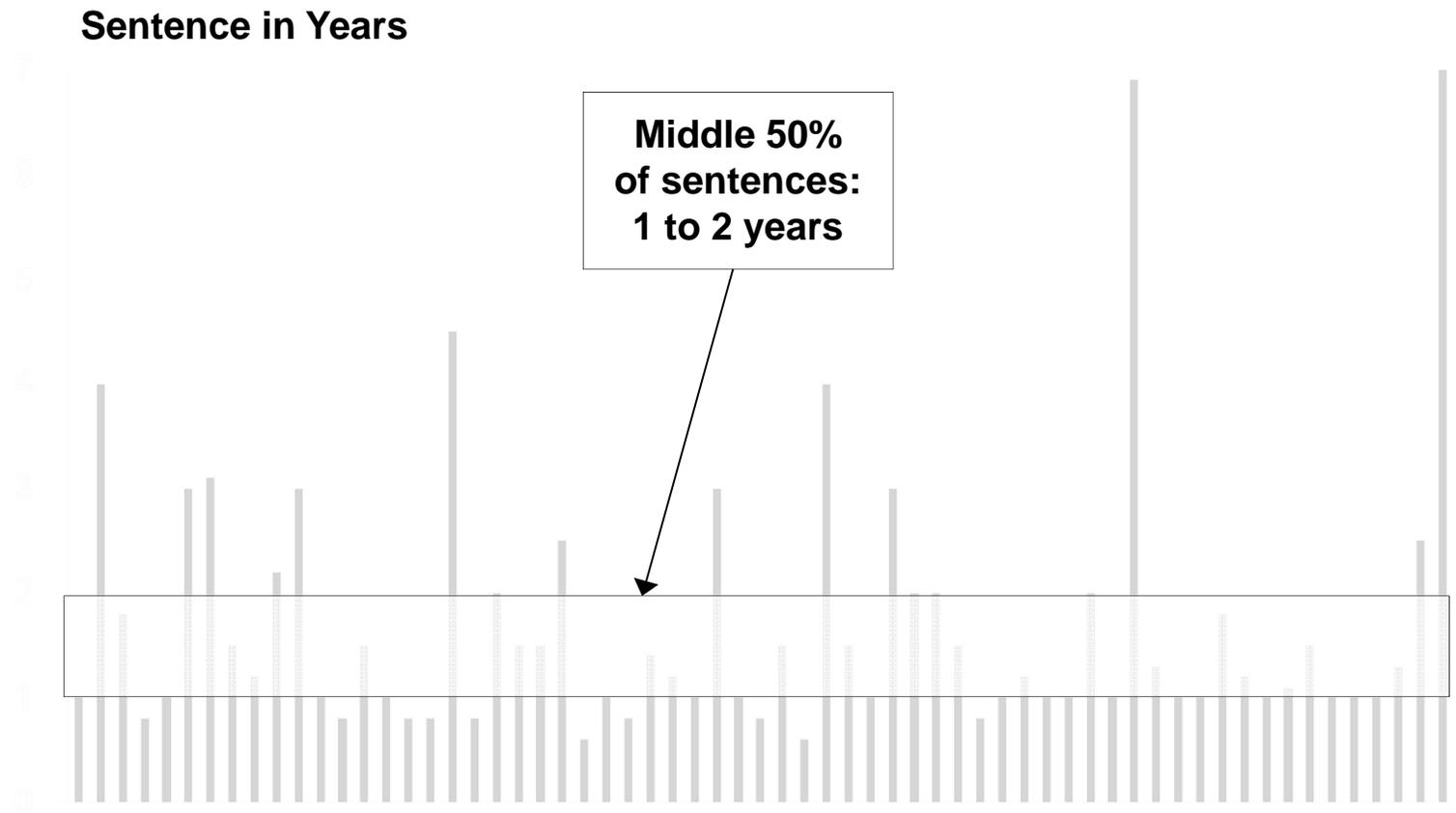
<b>Disposition</b>	<b>Percent</b>	<b>Median Sentence</b>
<b>No Incarceration</b>	<b>42.1%</b>	<b>NA</b>
<b>Incarceration Up to 6 Months</b>	<b>26.7%</b>	<b>3 Months</b>
<b>Incarceration More than 6 Months</b>	<b>31.2%</b>	<b>1.2 Years</b>

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

**Source: Supreme Court of Virginia, Circuit Court Automated Information System (CAIS)**

**Larceny with Intent to Sell, \$200 or More  
(§ 18.2-108.01(A))  
FY2008 – FY2012**

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



Proposed

## Larceny Section A

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

◆ Primary Offense		
A. Attempted or conspired larceny (1 count) .....	1	<div style="border: 1px solid black; padding: 5px; width: 40px; margin: 0 auto;">             Score              ▼  <div style="border: 1px solid black; width: 20px; height: 20px; margin: 0 auto;"></div> </div>
B. Statutory maximum penalty equals 5 years		
1 count .....	1	
2 counts .....	4	
3 counts .....	6	
C. Statutory maximum penalty equals 10 years (1 count) .....	3	
D. Grand larceny auto		
1 count .....	5	
2 counts .....	7	
3 counts .....	10	
E. Grand larceny from person		
1 count .....	4	
2 counts .....	11	
F. Grand larceny of a firearm (1 count) .....	1	
G. Failure of bailee to return animal, aircraft, vehicle or boat (1 count) .....	4	
<b>H. Larceny of bank notes, checks or any book of accounts; Any other larceny offense with maximum penalty of 20 years</b>		
1 count .....	2	
2 - 3 counts .....	4	
4 counts .....	6	

Add Larceny with Intent to Sell, \$200 or More to Primary Offense Group H:

<b>H. Larceny of bank notes, etc.; any other larceny offense with max penalty of 20 years</b>	
1 count .....	2
2-3 counts .....	4
4 counts .....	6

◆ Prior Felony Larceny Convictions/Adjudications		
Number of Counts: 1 .....	2	<div style="border: 1px solid black; padding: 5px; width: 40px; margin: 0 auto;">             0           </div>
2 - 3 .....	3	
4 or more .....	4	
◆ Other Prior Felony Property Convictions/Adjudications		
Number of Counts: 1 - 4 .....	1	<div style="border: 1px solid black; padding: 5px; width: 40px; margin: 0 auto;">             0           </div>
5 or more .....	2	
◆ Prior Felony Convictions/Adjudications Against Person		
Number of Counts: 1 .....	1	<div style="border: 1px solid black; padding: 5px; width: 40px; margin: 0 auto;">             0           </div>
2 or more .....	2	
◆ Prior Misdemeanor Convictions/Adjudications		
Number of Counts: 1 - 4 .....	1	<div style="border: 1px solid black; padding: 5px; width: 40px; margin: 0 auto;">             0           </div>
5 - 8 .....	2	
9 or more .....	3	
◆ Prior Incarcerations/Commitments		
If YES, add 5		<div style="border: 1px solid black; padding: 5px; width: 40px; margin: 0 auto;">             0           </div>
◆ Prior Juvenile Record		
If YES, add 1		<div style="border: 1px solid black; padding: 5px; width: 40px; margin: 0 auto;">             0           </div>
◆ Legally Restrained at Time of Offense		
None .....	0	<div style="border: 1px solid black; padding: 5px; width: 40px; margin: 0 auto;">             0           </div>
Other than parole/post-release, supervised probation or CCCA .....	1	
Parole/post-release, supervised probation or CCCA .....	2	

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS EMBEZZLEMENT § 18.2-111

◆ Amount of Embezzlement		
Amount: Less than \$10,000 .....	0	<div style="border: 1px solid black; padding: 5px; width: 40px; margin: 0 auto;">             0           </div>
\$10,000 - \$19,999 .....	3	
\$20,000 - \$74,999 .....	6	
\$75,000 or more .....	9	

**Total Score**

If total is 15 or less, go to Section B. If total is 16 or more, go to Section C.

0

Larceny/SectionA

Proposed

# Larceny Section B

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

## Primary Offense

A. Any attempted or conspired larceny (1 count) .....	1
B. Maximum penalty equals 5 or 10 years .....	3
1 count .....	4
2 counts .....	7
3 counts .....	7
C. Grand larceny auto .....	3
1 count .....	4
2 counts .....	7
3 counts .....	7
D. Grand larceny from person (1 count) .....	6
E. Grand larceny of a firearm (1 count) .....	1
F. Failure of bailee to return animal, aircraft, vehicle or boat (1 count) .....	1
G. Larceny of bank notes, checks, etc. or any book of accounts .....	3
1 count .....	4
2 counts .....	7
3 counts .....	7
<b>H. Any other grand larceny offense with a maximum penalty of 20 years</b> .....	3
1 count .....	4
2 counts .....	7
3 counts .....	7

Score

0	
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Add Larceny with Intent to Sell, \$200 or More to Primary Offense Group H:

## H. Any other grand larceny offense with a maximum penalty of 20 years

1 count .....	3
2 counts .....	4
3 counts .....	7

## Prior Convictions/Adjudications

Total the maximum penalties for the 5 most recent and serious prior record events

Years: Less than 2 .....	0
2 - 19 .....	1
20 - 38 .....	2
39 or more .....	3

0	
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## Prior Misdemeanor Convictions/Adjudications

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

0	
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## Prior Incarcerations/Commitments

If YES, add 7

0	
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## Legally Restrained at Time of Offense

None .....	0
Other than parole/post-release, supervised probation or CCCA .....	4
Parole/post-release, supervised probation or CCCA .....	5

0	
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SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS EMBEZZLEMENT § 18.2-111

## Amount of Embezzlement

Amount: Less than \$15,000 .....	0
\$15,000 or more .....	3

0	
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## Total Score

See Larceny Section B Recommendation Table to convert score to guidelines sentence. Then, go to Section D Nonviolent Risk Assessment and follow the instructions.

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LarcenySectionB

Proposed

### Larceny Section C

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

◆ Primary Offense \_\_\_\_\_  Category I  Category II  Other

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

A. Attempted or conspired larceny (1 count) .....	8	4	2
B. Statutory maximum penalty equals 5 or 10 years .....			
1 count .....	20	10	5
2 counts .....	28	14	7
3 counts .....	40	20	10
C. Grand larceny auto .....			
1 count .....	32	16	8
2 - 3 counts .....	56	28	14
4 counts .....	72	36	18
D. Grand larceny from person .....			
1 count .....	40	20	10
2 counts .....	56	28	14
3 counts .....	68	34	17
E. Grand larceny of a firearm (1 count) .....	68	34	17
F. Failure of bailee to return animal, aircraft, vehicle or boat (1 count) .....	28	14	7
G. Larceny of bank notes, checks, etc. or any book of accounts .....			
1 - 2 counts .....	32	16	8
3 counts .....	48	24	12
<b>H. Any other larceny offense with a maximum penalty of 20 years</b> .....			
1 count .....	28	14	7
2 counts .....	44	22	11
3 counts .....	56	28	14

**Score**  
▼  
0 0 0

**Add Larceny with Intent to Sell, \$200 or More to Primary Offense Group H:**

**H. Any other larceny offense with a maximum penalty of 20 years**

1 count .....	28	14	7
2 counts .....	44	22	11
3 counts .....	56	28	14

◆ Prior Felony Larceny Convictions/Adjudications \_\_\_\_\_

Number of Counts: 1 .....	1		
2 .....	2		
3 .....	3		
4 or more .....	4		

0 0 0

◆ Other Prior Felony Property Convictions/Adjudications \_\_\_\_\_

Number of Counts: 1 .....	0		
2 - 3 .....	1		
4 or more .....	2		

0 0 0

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

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

0 0 0

◆ Prior Felony Drug Convictions/Adjudications \_\_\_\_\_

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

0 0 0

◆ Prior Juvenile Record \_\_\_\_\_ If YES, add 3 → 0 0 0

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

None .....	0		
Other than parole/post-release, supervised probation or CCCA .....	3		
Parole/post-release, supervised probation or CCCA .....	4		

0 0 0

**SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS EMBEZZLEMENT § 18.2-111**

◆ Amount of Embezzlement \_\_\_\_\_

Amount: Less than \$28,000 .....	0		
\$28,000 - \$89,999 .....	24		
\$90,000 or more .....	30		

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.

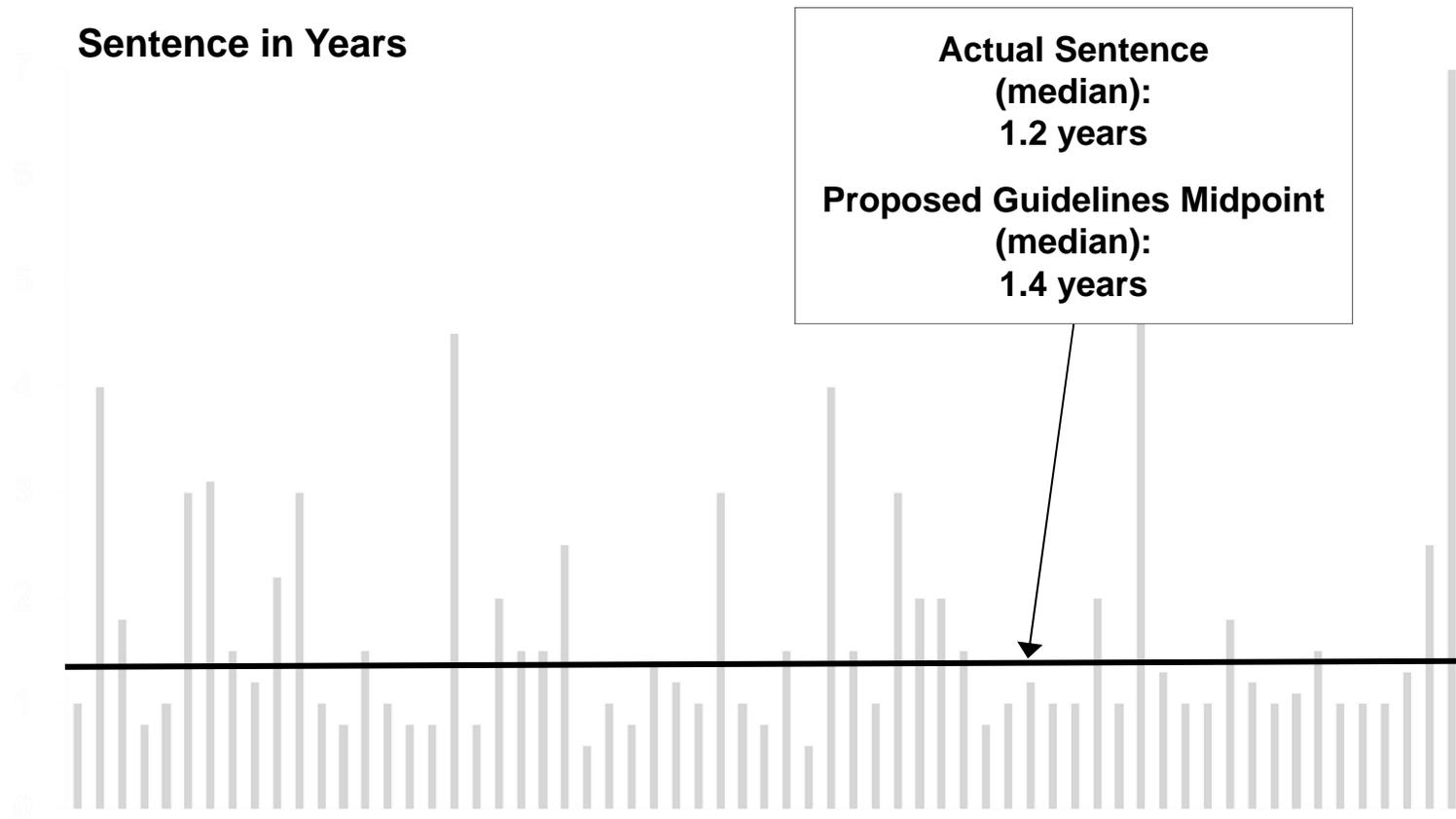
Larceny/Section C

**Larceny with Intent to Sell, \$200 or More  
 (§ 18.2-108.01(A))  
 FY2008 – FY2012  
 202 Cases**

<b>Sentencing Guidelines</b>	<b>Recommendations under Sentencing Guidelines</b>		<b>Actual Practices Prior to Sentencing Guidelines</b>	
<b>Section A Score</b>	<b>Recommendation</b>	<b>Percent</b>	<b>NO PRISON Percent</b>	<b>PRISON Percent</b>
Up to 15	NO PRISON	75.2%	81.6%	18.4%
16 or More	PRISON	24.8%	30.0%	70.0%
			68.8% OVERALL	31.2%

**Larceny with Intent to Sell, \$200 or More  
(§ 18.2-108.01(A))  
FY2008 – FY2012**

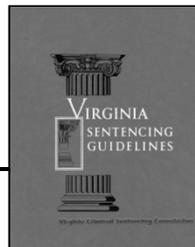
**Offenders Sentenced to Incarceration of More than 6 Months  
63 Cases**

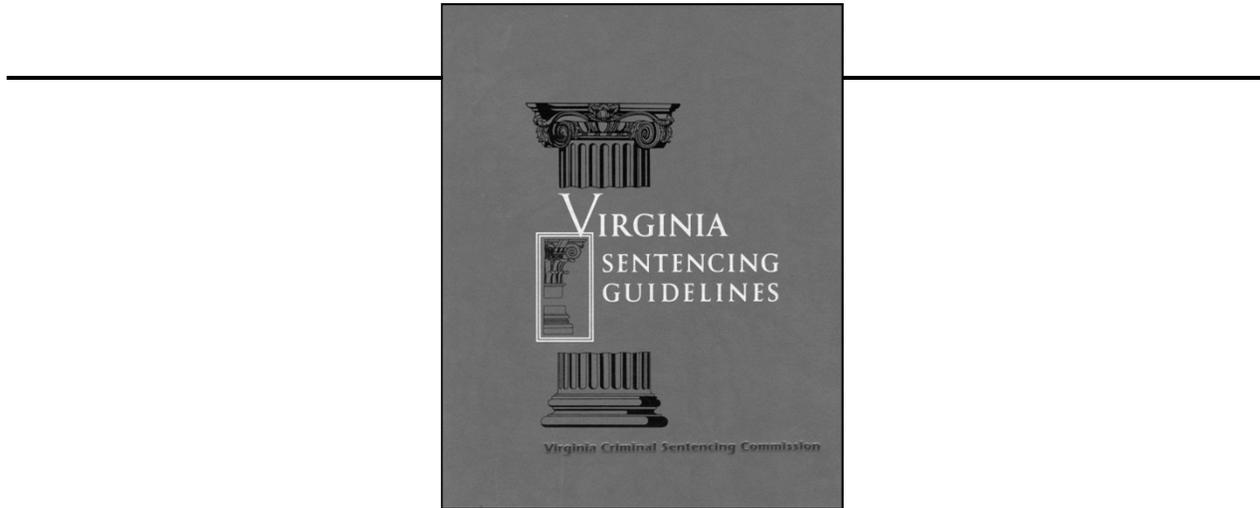


## *Proposed Recommendation 1*

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**Add Larceny with Intent to Sell, \$200 or More (§ 18.2-108.01(A))  
to the Larceny Guidelines  
as proposed**





*Proposed Recommendation 2:*

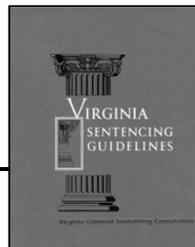
*Add Possess, etc., Stolen Property with Intent to Sell,  
Aggregate Value of \$200 or More (§ 18.2-108.01(B))  
to the Larceny Guidelines*

*Possess, etc., Stolen Property with Intent to Sell,  
Aggregate Value \$200 or More (§ 18.2-108.01(B))*

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**Any person who sells, attempts to sell or possesses with intent to sell or distribute any stolen property with an aggregate value of \$200 or more where he knew or should have known that the property was stolen is guilty of a Class 5 felony.**

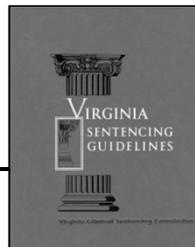
**(Effective July 1, 2003)**



*Possess, etc., Stolen Property with Intent to Sell,  
Aggregate Value \$200 or More (§ 18.2-108.01(B))*

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**Currently, convictions under § 18.2-108.01(B)  
involving possession, etc., of stolen property with  
an aggregate value of \$200 or more with the intent  
to sell or distribute are not covered by the  
sentencing guidelines**



**Possess, etc., Stolen Property with Intent to Sell,  
Aggregate Value \$200 or More (§ 18.2-108.01(B))  
FY2008 – FY2012  
122 Cases**

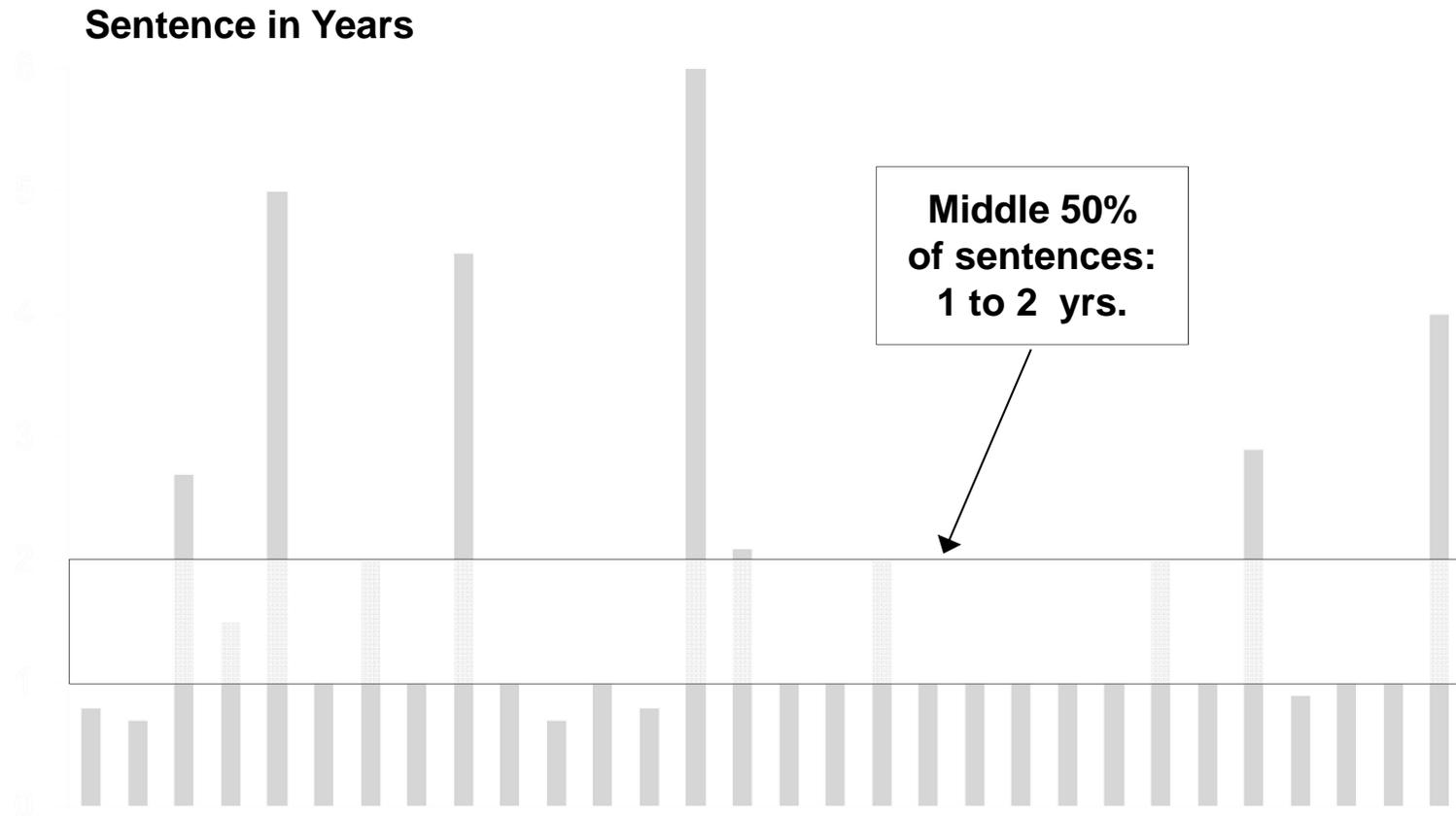
<b>Disposition</b>	<b>Percent</b>	<b>Median Sentence</b>
<b>No Incarceration</b>	<b>47.5%</b>	<b>NA</b>
<b>Incarceration Up to 6 Months</b>	<b>27.9%</b>	<b>3.5 Months</b>
<b>Incarceration More than 6 Months</b>	<b>24.6%</b>	<b>1 Year</b>

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

**Source: Supreme Court of Virginia, Circuit Court Automated Information System (CAIS)**

**Possess, etc., Stolen Property with Intent to Sell,  
Aggregate Value \$200 or More (§ 18.2-108.01(B))  
FY2008 – FY2012**

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



Proposed

# Larceny Section A

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

**Primary Offense**

A. Attempted or conspired larceny (1 count) .....	1
B. Statutory maximum penalty equals 5 years	
1 count .....	1
2 counts .....	4
3 counts .....	6
<b>C. Statutory maximum penalty equals 10 years (1 count) .....</b>	<b>3</b>
D. Grand larceny auto	
1 count .....	5
2 counts .....	7
3 counts .....	10
E. Grand larceny from person	
1 count .....	4
2 counts .....	11
F. Grand larceny of a firearm (1 count) .....	1
G. Failure of bailee to return animal, aircraft, vehicle or boat (1 count) .....	4
H. Larceny of bank notes, checks or any book of accounts; Any other larceny offense with maximum penalty of 20 years	
1 count .....	2
2 - 3 counts .....	4
4 counts .....	6

**Score**

**Add Possess, etc., Stolen Property with Intent to Sell, Aggregate Value of \$200 or More to Primary Offense Group C:**

**C. Statutory maximum penalty equals 10 years (1 count) ..... 3**

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

Years: Less than 2 .....	0	21 - 36 .....	3	0
2 - 11 .....	1	37 or more .....	4	
12 - 20 .....	2			

**Prior Felony Larceny Convictions/Adjudications**

Number of Counts: 1 .....	2	0
2 - 3 .....	3	
4 or more .....	4	

**Other Prior Felony Property Convictions/Adjudications**

Number of Counts: 1 - 4 .....	1	0
5 or more .....	2	

**Prior Felony Convictions/Adjudications Against Person**

Number of Counts: 1 .....	1	0
2 or more .....	2	

**Prior Misdemeanor Convictions/Adjudications**

Number of Counts: 1 - 4 .....	1	0
5 - 8 .....	2	
9 or more .....	3	

**Prior Incarcerations/Commitments** \_\_\_\_\_ If YES, add 5 →

**Prior Juvenile Record** \_\_\_\_\_ If YES, add 1 →

**Legally Restrained at Time of Offense**

None .....	0	0
Other than parole/post-release, supervised probation or CCCA .....	1	
Parole/post-release, supervised probation or CCCA .....	2	

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**SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS EMBEZZLEMENT § 18.2-111**

**Amount of Embezzlement**

Amount: Less than \$10,000 .....	0	0
\$10,000 - \$19,999 .....	3	
\$20,000 - \$74,999 .....	6	
\$75,000 or more .....	9	

**Total Score** \_\_\_\_\_    
If total is 15 or less, go to Section B. If total is 16 or more, go to Section C.

Larceny/SectionA

Proposed

### Larceny Section B

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

◆ Primary Offense \_\_\_\_\_

A	Any attempted or conspired larceny (1 count) .....	1
<b>B</b>	<b>Maximum penalty equals 5 or 10 years</b>	
	1 count .....	3
	2 counts .....	4
	3 counts .....	7
C.	Grand larceny auto	
	1 count .....	3
	2 counts .....	4
	3 counts .....	7
D.	Grand larceny from person (1 count) .....	6
E.	Grand larceny of a firearm (1 count) .....	1
F.	Failure of bailee to return animal, aircraft, vehicle or boat (1 count) .....	1
G.	Larceny of bank notes, checks, etc. or any book of accounts	
	1 count .....	3
	2 counts .....	4
	3 counts .....	7
H.	Any other grand larceny offense with a maximum penalty of 20 years	
	1 count .....	3
	2 counts .....	4
	3 counts .....	7

Score

**Add Possess, etc., Stolen Property with Intent to Sell, Aggregate Value of \$200 or More to Primary Offense Group B:**

**B. Maximum penalty equals 5 or 10 years**

1 count ..... **3**

2 counts ..... **4**

3 counts ..... **7**

20 - 38 .....	2	<input type="text" value="0"/>
39 or more .....	3	<input type="text"/>

◆ Prior Misdemeanor Convictions/Adjudications \_\_\_\_\_

Number of Counts:	1 - 2 .....	2	<input type="text" value="0"/>
	3 .....	3	<input type="text"/>
	4 or more .....	4	<input type="text"/>

◆ Prior Incarcerations/Commitments \_\_\_\_\_ If YES, add 7 →

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

None .....	0	<input type="text" value="0"/>
Other than parole/post-release, supervised probation or CCCA .....	4	<input type="text"/>
Parole/post-release, supervised probation or CCCA .....	5	<input type="text"/>

**SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS EMBEZZLEMENT § 18.2-111**

◆ Amount of Embezzlement \_\_\_\_\_

Amount:	Less than \$15,000 .....	0	<input type="text" value="0"/>
	\$15,000 or more .....	3	<input type="text"/>

**Total Score** →

See Larceny Section B Recommendation Table to convert score to guidelines sentence. Then, go to Section D Nonviolent Risk Assessment and follow the instructions.

LarcenySectionB

Proposed

### Larceny Section C

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

◆ Primary Offense _____		<input type="checkbox"/> Category I <input type="checkbox"/> Category II <input type="checkbox"/> Other		
A. Attempted or conspired larceny (1 count) .....	8	4	2	Score ▼ <input type="text" value="0"/> <input type="text"/> <input type="text"/>
<b>B. Statutory maximum penalty equals 5 or 10 years</b> .....				
1 count .....	20	10	5	
2 counts .....	28	14	7	
3 counts .....	40	20	10	
C. Grand larceny auto .....				
1 count .....	32	16	8	
2 - 3 counts .....	56	28	14	
4 counts .....	72	36	18	
D. Grand larceny from person .....				
1 count .....	40	20	10	
2 counts .....	56	28	14	
3 counts .....	68	34	17	
E. Grand larceny of a firearm (1 count) .....	68	34	17	
F. Failure of bailee to return animal, aircraft, vehicle or boat (1 count) .....	28	14	7	
G. Larceny of bank notes, checks, etc. or any book of accounts .....				
1 - 2 counts .....	32	16	8	
3 counts .....	48	24	12	
H. Any other larceny offense with a maximum penalty of 20 years .....				
1 count .....	28	14	7	
2 counts .....	44	22	11	
3 counts .....	56	28	14	

Add Possess, etc., Stolen Property with Intent to Sell, Aggregate Value of \$200 or More to Primary Offense Group B:

**B. Statutory maximum penalty equals 5 or 10 years**

1 count .....	20	10	5
2 counts .....	28	14	7
3 counts .....	40	20	10

◆ Prior Felony Larceny Convictions/Adjudications _____	
Number of Counts: 1 .....	1
2 .....	2
3 .....	3
4 or more .....	4
	<input type="text" value="0"/> <input type="text" value="0"/> <input type="text"/>
◆ Other Prior Felony Property Convictions/Adjudications _____	
Number of Counts: 1 .....	0
2 - 3 .....	1
4 or more .....	2
	<input type="text" value="0"/> <input type="text" value="0"/> <input type="text"/>
◆ Prior Felony Convictions/Adjudications Against Person _____	
Number of Counts: 1 .....	2
2 .....	4
3 or more .....	6
	<input type="text" value="0"/> <input type="text" value="0"/> <input type="text"/>
◆ Prior Felony Drug Convictions/Adjudications _____	
Number of Counts: 1 - 2 .....	1
3 .....	2
4 or more .....	3
	<input type="text" value="0"/> <input type="text" value="0"/> <input type="text"/>
◆ Prior Juvenile Record _____	If YES, add 3 → <input type="text" value="0"/> <input type="text" value="0"/> <input type="text"/>
◆ Legally Restrained at Time of Offense _____	
None .....	0
Other than parole/post-release, supervised probation or CCCA .....	3
Parole/post-release, supervised probation or CCCA .....	4
	<input type="text" value="0"/> <input type="text" value="0"/> <input type="text"/>

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS EMBEZZLEMENT § 18.2-111

◆ Amount of Embezzlement _____	
Amount: Less than \$28,000 .....	0
\$28,000 - \$89,999 .....	24
\$90,000 or more .....	30
	<input type="text" value="0"/> <input type="text"/> <input type="text"/>

**Total Score** →

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

Larceny/Section C

**Possess, etc., Stolen Property with Intent to Sell,  
Aggregate Value \$200 or More (§ 18.2-108.01(B))  
FY2008 – FY2012  
122 Cases**

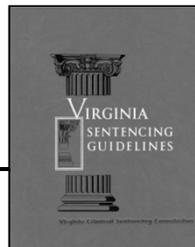
<b>Sentencing Guidelines</b>	<b>Recommendations under Sentencing Guidelines</b>		<b>Actual Practices Prior to Sentencing Guidelines</b>	
<b>Section A Score</b>	<b>Recommendation</b>	<b>Percent</b>	<b>NO PRISON Percent</b>	<b>PRISON Percent</b>
Up to 15	NO PRISON	77.9%	82.1%	17.9%
16 or More	PRISON	22.1%	51.9%	48.1%
			75.4%	OVERALL 24.6%

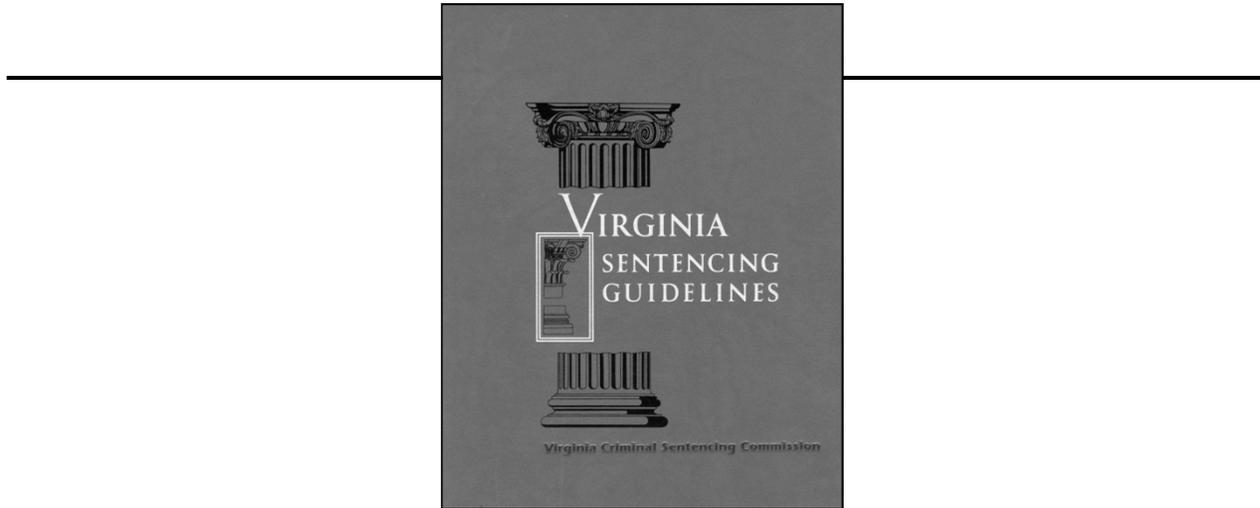


## *Proposed Recommendation 2*

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**Add Possess, etc., Stolen Property with Intent to Sell,  
Aggregate Value of \$200 or More (§ 18.2-108.01(B))  
to the Larceny Guidelines  
as proposed**





*Proposed Recommendation 3:*

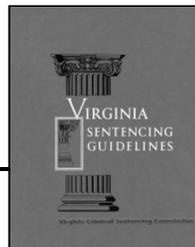
*Add Conspire to Commit Larceny, Aggregate Value of  
\$200 or More (§ 18.2-23(B))  
to the Larceny Guidelines*

*Conspire to Commit Larceny, Aggregate Value of \$200 or More  
(§ 18.2-23(B))*

---

**If any person shall conspire, confederate or combine with another or others in the Commonwealth to commit larceny or counsel, assist, aid or abet another in the performance of a larceny, where the aggregate value of the goods or merchandise involved is more than \$200, he is guilty of a felony punishable by confinement in a state correctional facility for not less than one year nor more than 20 years.**

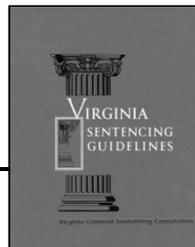
**(Effective July 1, 2003)**



*Conspire to Commit Larceny, Aggregate Value of \$200 or More  
(§ 18.2-23(B))*

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**Currently, convictions under § 18.2-23(B) involving conspiracy to steal property with an aggregate value of \$200 or more are not covered by the sentencing guidelines**



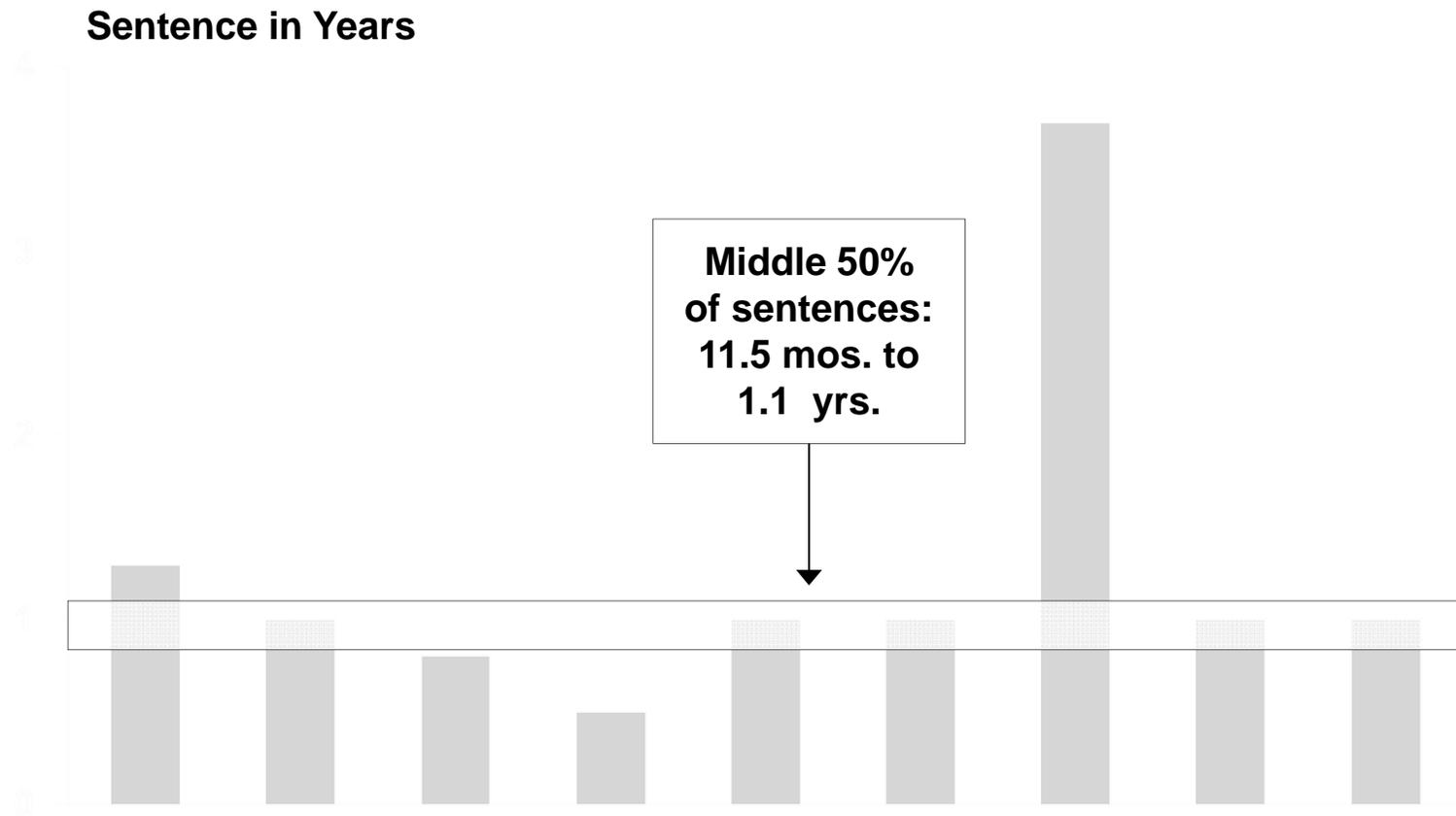
**Conspire to Commit Larceny, Aggregate Value of \$200 or More  
 (§ 18.2-23(B))  
 FY2008 – FY2012  
 53 Cases**

<b>Disposition</b>	<b>Percent</b>	<b>Median Sentence</b>
<b>No Incarceration</b>	<b>50.9%</b>	<b>NA</b>
<b>Incarceration Up to 6 Months</b>	<b>32.1%</b>	<b>3 Months</b>
<b>Incarceration More than 6 Months</b>	<b>17.0%</b>	<b>1 Year</b>

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

**Source: Supreme Court of Virginia, Circuit Court Automated Information System (CAIS)**

**Conspire to Commit Larceny, Aggregate Value of \$200 or More  
(§ 18.2-23(B))  
FY2008 – FY2012  
Offenders Sentenced to Incarceration of More than 6 Months  
9 Cases**



Proposed

## Larceny Section A

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

◆ Primary Offense		
A. Attempted or conspired larceny (1 count) .....	1	↓ <b>Score</b> ▾ <input style="width: 40px; height: 20px;" type="text"/>
B. Statutory maximum penalty equals 5 years		
1 count .....	1	
2 counts .....	4	
3 counts .....	6	
C. Statutory maximum penalty equals 10 years (1 count) .....	3	
D. Grand larceny auto		
1 count .....	5	
2 counts .....	7	
3 counts .....	10	
E. Grand larceny from person		
1 count .....	4	
2 counts .....	11	
F. Grand larceny of a firearm (1 count) .....	1	
G. Failure of bailee to return animal, aircraft, vehicle or boat (1 count) .....	4	
<b>H. Larceny of bank notes, checks or any book of accounts; Any other larceny offense with maximum penalty of 20 years</b>		
1 count .....	2	
2 - 3 counts .....	4	
4 counts .....	6	

Add Conspire to Commit Larceny, Aggregate Value of \$200 or More to Primary Offense Group H:

<b>H. Larceny of bank notes, etc.; any other larceny offense with max penalty of 20 years</b>	
<b>1 count .....</b>	<b>2</b>
<b>2-3 counts .....</b>	<b>4</b>
<b>4 counts .....</b>	<b>6</b>

◆ Prior Felony Larceny Convictions/Adjudications		
Number of Counts: 1 .....	2	↓ <input style="width: 40px; height: 20px;" type="text"/>
2 - 3 .....	3	
4 or more .....	4	
◆ Other Prior Felony Property Convictions/Adjudications		
Number of Counts: 1 - 4 .....	1	↓ <input style="width: 40px; height: 20px;" type="text"/>
5 or more .....	2	
◆ Prior Felony Convictions/Adjudications Against Person		
Number of Counts: 1 .....	1	↓ <input style="width: 40px; height: 20px;" type="text"/>
2 or more .....	2	
◆ Prior Misdemeanor Convictions/Adjudications		
Number of Counts: 1 - 4 .....	1	↓ <input style="width: 40px; height: 20px;" type="text"/>
5 - 8 .....	2	
9 or more .....	3	
◆ Prior Incarcerations/Commitments		
If YES, add 5	→	<input style="width: 40px; height: 20px;" type="text"/>
◆ Prior Juvenile Record		
If YES, add 1	→	<input style="width: 40px; height: 20px;" type="text"/>
◆ Legally Restrained at Time of Offense		
None .....	0	↓ <input style="width: 40px; height: 20px;" type="text"/>
Other than parole/post-release, supervised probation or CCCA .....	1	
Parole/post-release, supervised probation or CCCA .....	2	

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS EMBEZZLEMENT § 18.2-111

◆ Amount of Embezzlement		
Amount: Less than \$10,000 .....	0	↓ <input style="width: 40px; height: 20px;" type="text"/>
\$10,000 - \$19,999 .....	3	
\$20,000 - \$74,999 .....	6	
\$75,000 or more .....	9	

**Total Score**

→ If total is 15 or less, go to Section B. If total is 16 or more, go to Section C.

Larceny/SectionA

Proposed

# Larceny Section B

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

## Primary Offense

A. Any attempted or conspired larceny (1 count) .....	1
B. Maximum penalty equals 5 or 10 years .....	3
1 count .....	4
2 counts .....	7
3 counts .....	7
C. Grand larceny auto .....	3
1 count .....	4
2 counts .....	7
3 counts .....	7
D. Grand larceny from person (1 count) .....	6
E. Grand larceny of a firearm (1 count) .....	1
F. Failure of bailee to return animal, aircraft, vehicle or boat (1 count) .....	1
G. Larceny of bank notes, checks, etc. or any book of accounts .....	3
1 count .....	4
2 counts .....	7
3 counts .....	7
<b>H. Any other grand larceny offense with a maximum penalty of 20 years</b> .....	3
1 count .....	4
2 counts .....	7
3 counts .....	7

Score

0	
---	--

Add Conspire to Commit Larceny, Aggregate Value of \$200 or More to Primary Offense Group H:

## H. Any other larceny offense with a maximum penalty of 20 years

1 count .....	3
2 counts .....	4
3 counts .....	7

## Prior Convictions/Adjudications

Total the maximum penalties for the 5 most recent and serious prior record events

Years: Less than 2 .....	0
2 - 19 .....	1
20 - 38 .....	2
39 or more .....	3

0	
---	--

## Prior Misdemeanor Convictions/Adjudications

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

0	
---	--

## Prior Incarcerations/Commitments

If YES, add 7

0	
---	--

## Legally Restrained at Time of Offense

None .....	0
Other than parole/post-release, supervised probation or CCCA .....	4
Parole/post-release, supervised probation or CCCA .....	5

0	
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SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS EMBEZZLEMENT § 18.2-111

## Amount of Embezzlement

Amount: Less than \$15,000 .....	0
\$15,000 or more .....	3

0	
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## Total Score

See Larceny Section B Recommendation Table to convert score to guidelines sentence. Then, go to Section D Nonviolent Risk Assessment and follow the instructions.

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LarcenySectionB

Proposed

### Larceny Section C

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

◆ Primary Offense		<input type="checkbox"/> Category I <input type="checkbox"/> Category II <input type="checkbox"/> Other		
A.	Attempted or conspired larceny (1 count) .....	8	4	2
B.	Statutory maximum penalty equals 5 or 10 years .....			
	1 count .....	20	10	5
	2 counts .....	28	14	7
	3 counts .....	40	20	10
C.	Grand larceny auto .....			
	1 count .....	32	16	8
	2 - 3 counts .....	56	28	14
	4 counts .....	72	36	18
D.	Grand larceny from person .....			
	1 count .....	40	20	10
	2 counts .....	56	28	14
	3 counts .....	68	34	17
E.	Grand larceny of a firearm (1 count) .....	68	34	17
F.	Failure of bailee to return animal, aircraft, vehicle or boat (1 count) .....	28	14	7
G.	Larceny of bank notes, checks, etc. or any book of accounts .....			
	1 - 2 counts .....	32	16	8
	3 counts .....	48	24	12
<b>H.</b>	<b>Any other larceny offense with a maximum penalty of 20 years</b> .....			
	1 count .....	28	14	7
	2 counts .....	44	22	11
	3 counts .....	56	28	14

Score

0		
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Add Conspire to Commit Larceny, Aggregate Value of \$200 or More to Primary Offense Group H:

#### H. Any other larceny offense with a maximum penalty of 20 years

1 count .....	28	14	7
2 counts .....	44	22	11
3 counts .....	56	28	14

◆ Prior Felony Larceny Convictions/Adjudications	Number of Counts: 1 .....	1		
	2 .....	2		
	3 .....	3		
	4 or more .....	4		
◆ Other Prior Felony Property Convictions/Adjudications	Number of Counts: 1 .....	0		
	2 - 3 .....	1		
	4 or more .....	2		
◆ Prior Felony Convictions/Adjudications Against Person	Number of Counts: 1 .....	2		
	2 .....	4		
	3 or more .....	6		
◆ Prior Felony Drug Convictions/Adjudications	Number of Counts: 1 - 2 .....	1		
	3 .....	2		
	4 or more .....	3		
◆ Prior Juvenile Record	_____ If YES, add 3			
◆ Legally Restrained at Time of Offense	None .....	0		
	Other than parole/post-release, supervised probation or CCCA .....	3		
	Parole/post-release, supervised probation or CCCA .....	4		
<b>SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS EMBEZZLEMENT § 18.2-111</b>				
◆ Amount of Embezzlement	Amount: Less than \$28,000 .....	0		
	\$28,000 - \$89,999 .....	24		
	\$90,000 or more .....	30		
<b>Total Score</b>	_____			

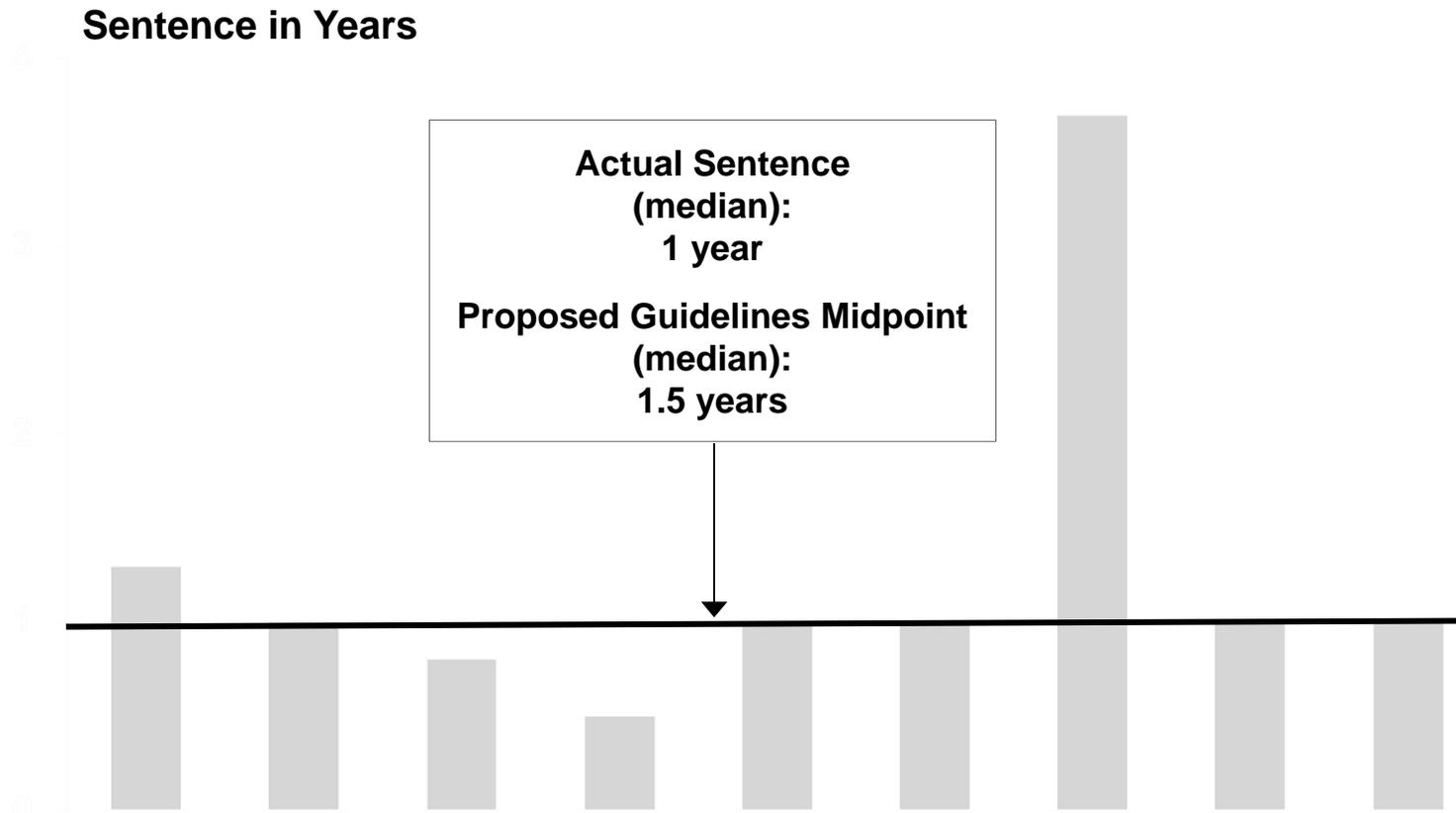
See Larceny Section C Recommendation Table for guidelines sentence range. Then, go to Section D Nonviolent Risk Assessment and follow the instructions.

Larceny/Section C

**Conspire to Commit Larceny, Aggregate Value of \$200 or More  
 (§ 18.2-23(B))  
 FY2008 – FY2012  
 53 Cases**

<b>Sentencing Guidelines</b>	<b>Recommendations under Sentencing Guidelines</b>		<b>Actual Practices Prior to Sentencing Guidelines</b>	
<b>Section A Score</b>	<b>Recommendation</b>	<b>Percent</b>	<b>NO PRISON Percent</b>	<b>PRISON Percent</b>
Up to 15	NO PRISON	88.7%	87.2%	12.8%
16 or More	PRISON	11.3%	50.0%	50.0%
			83.0%	OVERALL 17.0%

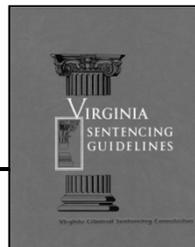
**Conspire to Commit Larceny, Aggregate Value of \$200 or More  
(§ 18.2-23(B))  
FY2008 – FY2012  
Offenders Sentenced to Incarceration of More than 6 Months  
9 Cases**

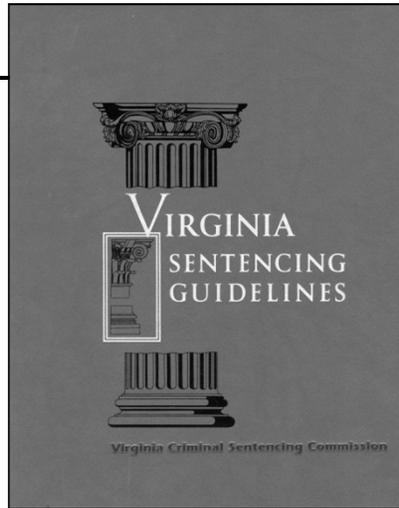


## *Proposed Recommendation 3*

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**Add Conspire to Commit Larceny,  
Aggregate Value of \$200 or More (§ 18.2-23(B))  
to the Larceny Guidelines  
as proposed**





*Proposed Recommendation 4:*

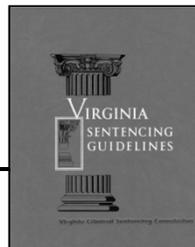
*Add Aggravated Sexual Battery of Child Age 13-17  
by Parent/Grandparent (§ 18.2-67.3(A,3))  
to the Other Sexual Assault Guidelines*

*Aggravated Sexual Battery of Child 13-17 by Parent/Grandparent*  
(§ 18.2-67.3(A,3))

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**An accused shall be guilty of aggravated sexual battery if he or she sexually abuses the complaining witness, and ... the offense is committed by a parent, step-parent, grandparent, or step-grandparent and the complaining witness is at least 13 but less than 18 years of age.**

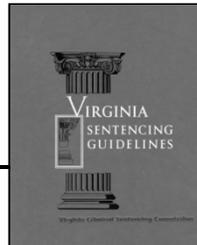
**Aggravated sexual battery is a felony punishable by confinement in a state correctional facility for a term of not less than one nor more than 20 years and by a fine of not more than \$100,000.**



*Aggravated Sexual Battery of Child 13-17 by Parent/Grandparent  
(§ 18.2-67.3(A,3))*

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**Currently, convictions under § 18.2-67.3(A,3)  
involving aggravated sexual battery of a child age  
13-17 by a parent or grandparent are not covered  
by the sentencing guidelines**



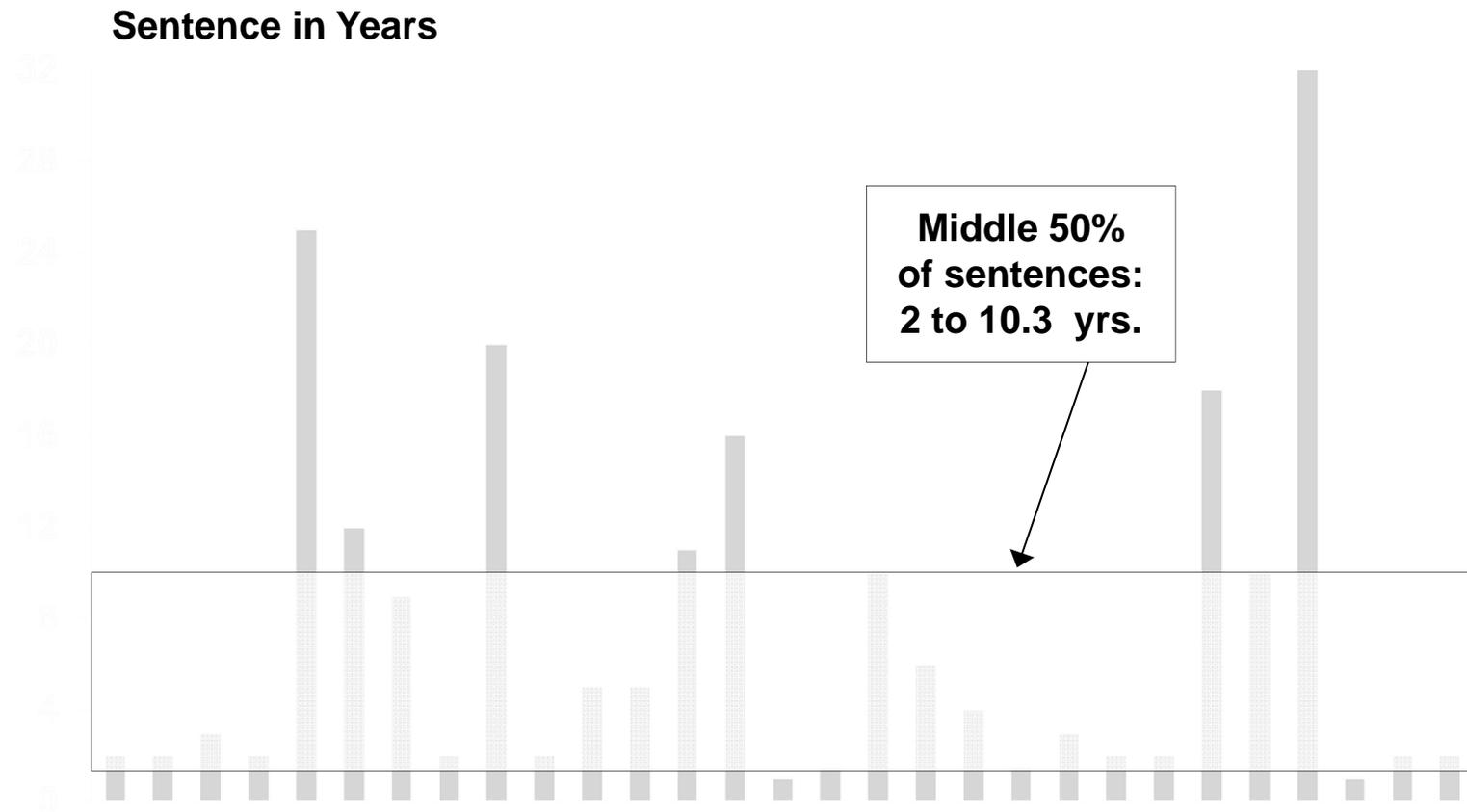
**Aggravated Sexual Battery of Child 13-17 by Parent/Grandparent  
 (§ 18.2-67.3(A,3))  
 FY2008 – FY2012  
 49 Cases**

<b>Disposition</b>	<b>Percent</b>	<b>Median Sentence</b>
<b>No Incarceration</b>	<b>18.4%</b>	<b>NA</b>
<b>Incarceration Up to 6 Months</b>	<b>20.4%</b>	<b>4.5 Months</b>
<b>Incarceration More than 6 Months</b>	<b>61.2%</b>	<b>3 Years</b>

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

**Source: Supreme Court of Virginia, Circuit Court Automated Information System (CAIS)**

**Aggravated Sexual Battery of Child 13-17 by Parent/Grandparent  
(§ 18.2-67.3(A,3))  
FY2008 – FY2012  
Offenders Sentenced to Incarceration of More than 6 Months  
30 Cases**



# Proposed

## Other Sexual Assault ❖ Section A (Part II)

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

### Offenses Not Applicable for Risk Assessment:

Risk Assessment is **NOT APPLICABLE** if the primary offense is bestiality, bigamy, non-forcible sodomy, prostitution, child pornography or child solicitation. (Go to Section A (Part II))

◆ **Offender's Age at Time of Offense** \_\_\_\_\_

Younger than 35 years .....	12	
35 to 46 years .....	4	
Older than 46 years .....	0	

◆ **Less than 9th Grade Education (by conviction date)** \_\_\_\_\_ If YES, add 4 → | 0 |

### Offenses Not Applicable for Risk Assessment:

Risk Assessment is **NOT APPLICABLE** if the primary offense is bestiality, bigamy, non-forcible sodomy, prostitution, child pornography or child solicitation. (Go to Section A (Part II))

**or aggravated sexual battery of child 13 - 17 by parent/grandparent (§ 18.2-67.3(A,3))**

◆ **Aggravated Sexual Battery (Primary Offense §18.2-67.3)** \_\_\_\_\_

No penetration or attempted penetration .....	0	0
Penetration or attempted penetration .....	4	

◆ **Location of Offense** \_\_\_\_\_

Place of employment .....	0	0
Shared victim/offender residence .....	3	
Outdoors .....	3	
Motor Vehicle .....	4	
Victim's residence (not offender's) .....	5	
Offender's residence or other residence .....	9	
Location other than listed .....	3	

◆ **Prior Adult Felony/Misdemeanor Arrests for Crimes Against Person** \_\_\_\_\_

Number: 0 Felonies	1 - 3 Misdemeanors .....	1	
	4+ Misdemeanors .....	8	
1 Felony	0 - 2 Misdemeanors .....	5	
	3+ Misdemeanors .....	8	
2+ Felonies	0 - 3 Misdemeanors .....	8	
	4+ Misdemeanors .....	15	

◆ **Prior Incarcerations/Commitments** \_\_\_\_\_ If YES, add 3 → | 0 |

◆ **Prior Treatment** \_\_\_\_\_

Prior mental health commitment .....	0	0
Prior mental health treatment .....	2	
Prior alcohol or drug treatment .....	3	
No prior treatment .....	4	

**Risk Score** \_\_\_\_\_ → | |

**Risk Level (Risk Score)**

<input type="checkbox"/> 44 or more .....	Level 1
<input type="checkbox"/> 34 - 43 .....	Level 2
<input type="checkbox"/> 28 - 33 .....	Level 3
<input type="checkbox"/> up to 27 .....	No Adjustment

Go to Section A (Part II)

Other Sexual Assault/Section A(Part I)

Proposed

**Other Sexual Assault ❖ Section A (Part II)** Offender Name: \_\_\_\_\_

◆ **Primary Offense** \_\_\_\_\_

A. Other than listed below; all attempted or conspired offenses (1 count) .....	1
B. Non-forcible sodomy, parent/grandparent to child or grandchild age 13 to 17 (1 count) .....	7
C. Non-forcible sodomy, no parental relationship	
1 count .....	3
2 counts .....	4
3 counts .....	13
D. Indecent liberties with child	
1 - 2 counts .....	2
3 counts .....	3
E. Non-forcible carnal knowledge of child age 13, 14 (statutory rape)	
1 count .....	2
2 counts .....	8
3 counts .....	12
F. Aggravated sexual battery	
1 count .....	3
2 counts .....	6
3 counts .....	9
G. Incest with own child/grandchild (1 count) .....	3
H. Incest with own child/grandchild age 13 to 17 (1 count) .....	2
I. Production, publication, sale or financing child pornography (1 count) .....	5
J. Possess child porn (1st Offense) (1 count) .....	6
K. Possess child porn (2nd or subsequent) (1 count) .....	9
L. Reproduce, transmit, sell, etc., child porn (1 count) .....	5
M. Propose act by communication system - child solicitation (1 count) .....	6

**Score**  
▼

<b>N. Aggravated sexual battery, parent/grandparent to child/grandchild age 13 - 17</b>	
<b>1 count</b> .....	<b>5</b>
<b>2 counts</b> .....	<b>7</b>
<b>3 counts</b> .....	<b>10</b>

1 - 26 .....	1	<input type="text" value="0"/> <input type="text" value=""/>
27 - 52 .....	2	
53 or more .....	3	
◆ <b>Victim Less than Age 13 at Time of Offense</b> _____	If YES, add 5 →	<input type="text" value="0"/> <input type="text" value=""/>
◆ <b>Victim Injury</b> _____		
Threatened or emotional .....	2	<input type="text" value="0"/> <input type="text" value=""/>
Physical or serious physical .....	4	
◆ <b>Prior Convictions/Adjudications</b> <u>Total</u> maximum penalties for the 5 most recent and serious prior record events		
Years: Less than 3 .....	0	<input type="text" value="0"/> <input type="text" value=""/>
3 - 18 .....	1	
19 - 31 .....	2	
32 - 44 .....	3	
45 or more .....	4	
◆ <b>Prior Felony Sexual Assault Convictions/Adjudications</b> _____		
Number of Counts: 1 .....	1	<input type="text" value="0"/> <input type="text" value=""/>
2 .....	2	
3 or more .....	3	
◆ <b>Prior Incarcerations/Commitments</b> _____	If YES, add 3 →	<input type="text" value="0"/> <input type="text" value=""/>
◆ <b>Legally Restrained at Time of Offense</b> _____		
None .....	0	<input type="text" value="0"/> <input type="text" value=""/>
Other than parole/post-release, supervised probation or CCCA .....	2	
Parole/post-release, supervised probation or CCCA .....	3	
◆ <b>Risk Assessment Score (From Section A Part I)</b> _____		
Less than 28 .....	0	<input type="text" value="0"/> <input type="text" value=""/>
28 or more (Level 1, 2, or 3) .....	8	
<b>Total Score</b> _____	If total is 8 or less, go to Section B. If total is 9 or more, go to Section C. →	<input type="text" value=""/> <input type="text" value=""/>

Proposed

**Other Sexual Assault ❖ Section B**

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

◆ **Primary Offense** \_\_\_\_\_

- A. Other than listed below (1 count) ..... 1
- B. Aggravated sexual battery
  - 1 count ..... 2
  - 2 counts ..... 4
  - 3 counts ..... 6
- C. Production, publication, sale or financing child pornography (1 count) ..... 1
- D. Possess child porn (1st Offense) (1 count) ..... 1
- E. Reproduce, transmit, sell, etc., child porn (1 count) ..... 1
- F. Propose act by communication system - child solicitation (1 count) ..... 1

**Score**

0	
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**G. Aggravated sexual battery, parent/grandparent to child/grandchild age 13 - 17**

- 1 count** ..... **3**
- 2 counts** ..... **5**
- 3 counts** ..... **7**

- 16 - 19 ..... 5
- 20 - 22 ..... 6
- 23 - 26 ..... 7
- 38 - 41 ..... 11
- 42 or more ..... 12

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

- |        |                     |                     |
|--------|---------------------|---------------------|
| Years: | Less than 1 ..... 0 | 23 - 26 ..... 7     |
|        | 1 - 2 ..... 1       | 27 - 30 ..... 8     |
|        | 3 - 7 ..... 2       | 31 - 34 ..... 9     |
|        | 8 - 11 ..... 3      | 35 - 37 ..... 10    |
|        | 12 - 15 ..... 4     | 38 - 41 ..... 11    |
|        | 16 - 19 ..... 5     | 42 or more ..... 12 |
|        | 20 - 22 ..... 6     |                     |

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◆ **Victim Less than Age 13 at Time of Offense** \_\_\_\_\_

If YES, add 3 →

0	
---	--

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

- |        |                     |  |
|--------|---------------------|--|
| Years: | Less than 3 ..... 0 |  |
|        | 3 - 19 ..... 1      |  |
|        | 20 - 39 ..... 2     |  |
|        | 40 or more ..... 3  |  |

0	
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◆ **Prior Incarcerations / Commitments** \_\_\_\_\_

If YES, add 1 →

0	
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**Total Score** \_\_\_\_\_

See Other Sexual Assault Section B Recommendation Table to convert score to guidelines sentence.

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OtherSexualAssault/SectionB

Proposed

**Other Sexual Assault Section C**

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

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

A. All attempted or conspired sexual assault (1 count).....	24	12	6
B. Completed sexual assault other than listed below (1 count).....	36	18	9
C. Non-forcible sodomy, no parental relationship			
1 count .....	24	12	6
2 counts .....	40	20	10
3 counts .....	104	52	26
D. Non-forcible sodomy, parent/grandparent to child/grandchild age 13 - 17			
1 count .....	36	18	9
E. Indecent liberties with child			
1 count .....	24	12	6
2 counts .....	40	20	10
3 counts .....	104	52	26
F. Non-forcible carnal knowledge of child age 13 - 14 (statutory rape)			
1 count .....	36	18	9
G. Incest with own child/grandchild (1 count).....	104	52	26
H. Incest with own child/grandchild age 13 - 17 (1 count).....	104	52	26
I. Aggravated sexual battery			
1 count .....	90	60	34
2 counts .....	132	88	50
3 counts .....	288	192	108
J. Entice, etc., minor to perform in porn; take part in child porn			
1 count .....	68	34	17
K. Produce child porn; finance child porn			
1 count .....	100	50	25
L. Possess child porn (1st Offense)			
1 count .....	68	34	17
M. Possess child porn (2nd or subsequent)			
1 count .....	100	50	25
N. Reproduce, transmit, sell, etc., child porn			
1 count .....	100	50	25
O. Propose act by communication system - child solicitation			
1 count .....	68	34	17

Score

--	--	--

**P. Aggravated sexual battery, parent/grandparent to child/grandchild age 13 - 17**  
**1 count ..... 42 ..... 28 ..... 9**  
**2 counts ..... 66 ..... 44 ..... 14**

Maximum Penalty (years)	Less than 1 .....	0
	1 .....	1
	2 .....	2
	3 .....	3
	4 .....	4
	5 .....	5
	10 .....	10
	20 .....	19
	30 .....	29
	40 or more .....	39

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◆ **Weapon Used, Brandished, Feigned or Threatened** \_\_\_\_\_ If YES, add 4 →

0	0	
---	---	--

◆ **Victim Injury** \_\_\_\_\_

Threatened or emotional .....	6
Physical or serious physical .....	9

0	0	
---	---	--

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

Maximum Penalty (years)	Less than 2 .....	0
	2, 3, 4, 5 .....	1
	10 .....	3
	20 .....	6
	30 .....	9
	40 or more .....	12

0		
---	--	--

◆ **Prior Felony Sexual Assault Convictions/Adjudications** \_\_\_\_\_

Number of Counts:	1 .....	8
	2 .....	15
	3 or more .....	23

0		
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◆ **On Post-Incarceration Supervision** \_\_\_\_\_ If YES, add 5 →

0	0	
---	---	--

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

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See Other Sexual Assault Section C Recommendation Table for guide lines sentence range.

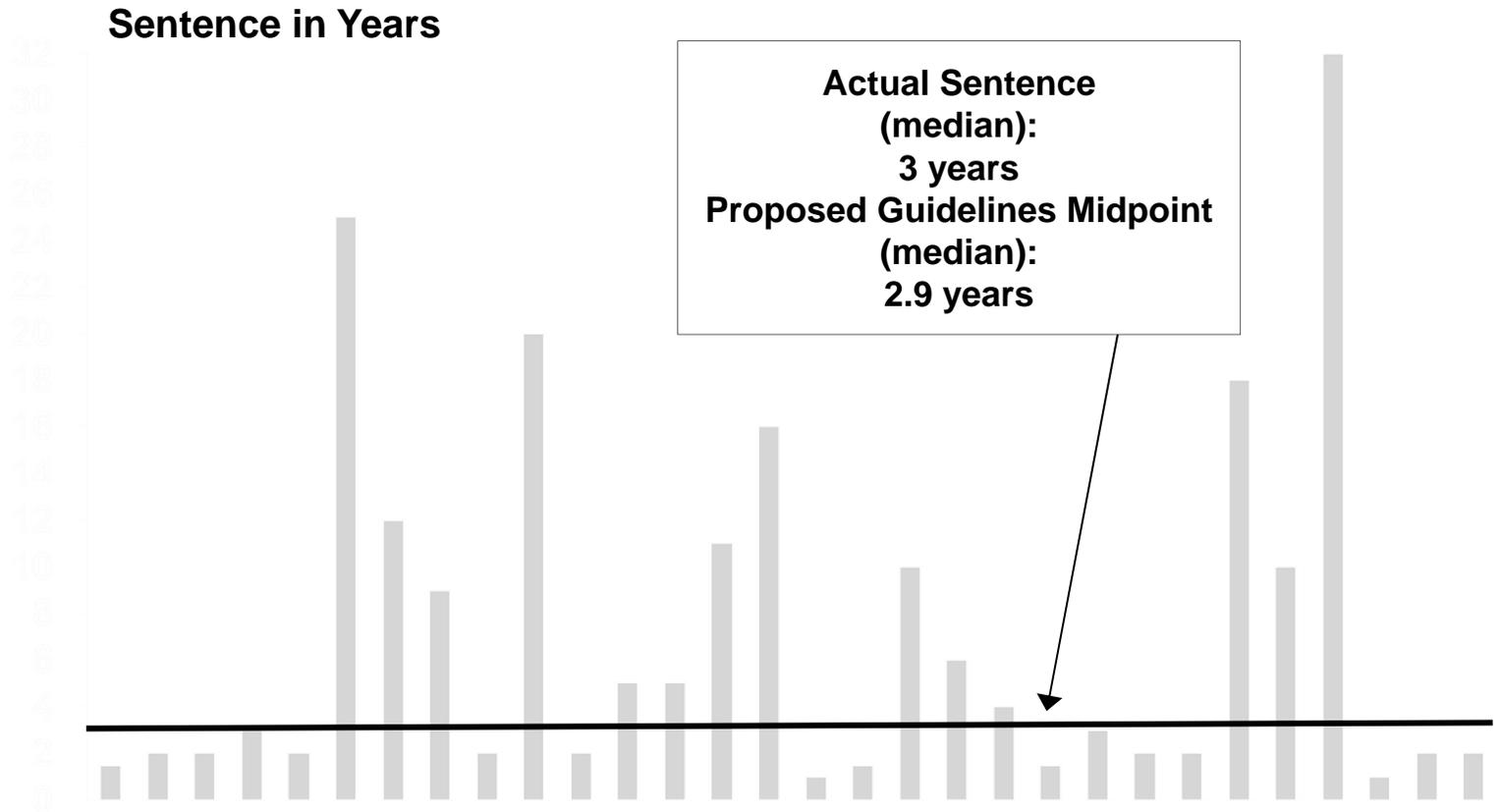
If necessary, on the cover sheet take note the adjusted high end of the guide lines sentence range based on Risk Level:  1  2  3 or  4

Other Sexual Assault Section C

**Aggravated Sexual Battery of Child 13-17 by Parent/Grandparent  
 (§ 18.2-67.3(A,3))  
 FY2008 – FY2012  
 49 Cases**

<b>Sentencing Guidelines</b>	<b>Recommendations under Sentencing Guidelines</b>		<b>Actual Practices Prior to Sentencing Guidelines</b>	
<b>Section A Score</b>	<b>Recommendation</b>	<b>Percent</b>	<b>NO PRISON Percent</b>	<b>PRISON Percent</b>
<b>Up to 8</b>	<b>NO PRISON</b>	<b>40.8%</b>	<b>60.0%</b>	<b>40.0%</b>
<b>9 or More</b>	<b>PRISON</b>	<b>59.2%</b>	<b>24.1%</b>	<b>75.9%</b>
			<b>38.8%</b>	<b>OVERALL 61.2%</b>

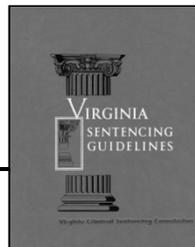
**Aggravated Sexual Battery of Child 13-17 by Parent/Grandparent  
 (§ 18.2-67.3(A,3))  
 FY2008 – FY2012  
 Offenders Sentenced to Incarceration of More than 6 Months  
 30 Cases**

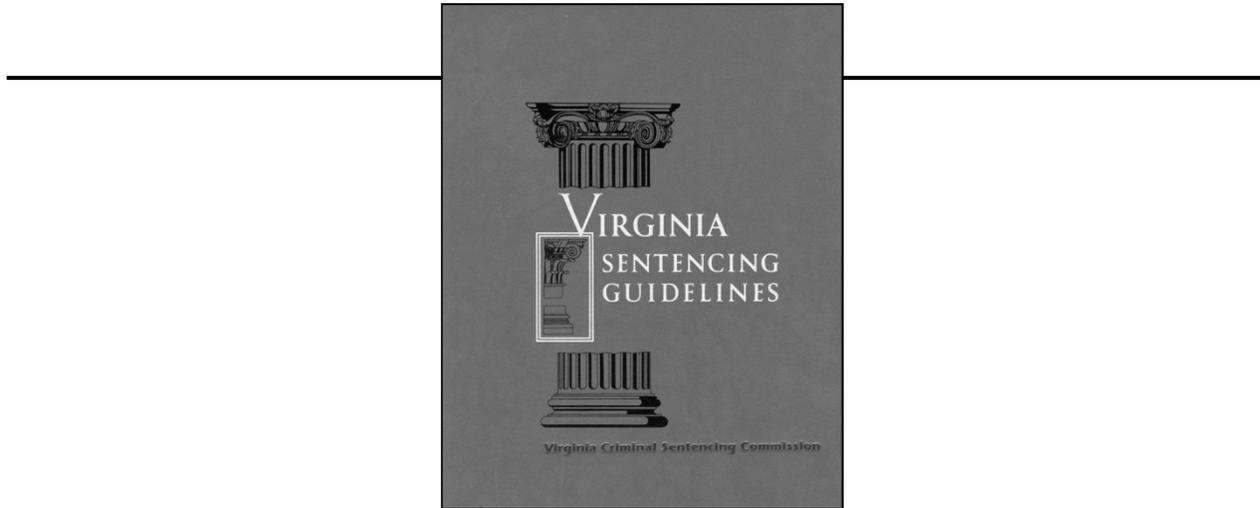


## *Proposed Recommendation 4*

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**Add Aggravated Sexual Battery of Child Age 13-17  
by Parent/Grandparent (§ 18.2-67.3(A,3))  
to the Other Sexual Assault Guidelines  
as proposed**

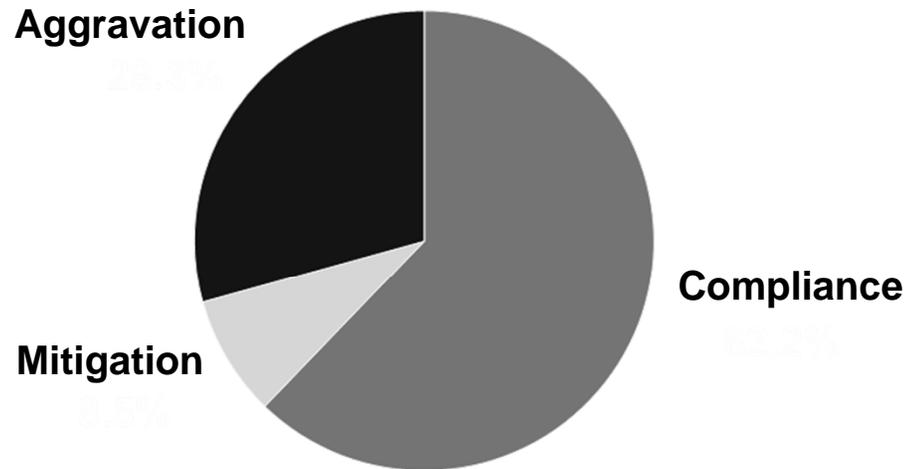




*Proposed Recommendation 5:*

*Revise the sentencing guidelines for  
Vehicular Involuntary Manslaughter  
(§ 18.2-36.1(A))*

**Vehicular Involuntary Manslaughter (§ 18.2-36.1(A))  
FY2008 – FY2012  
82 Sentencing Events\***



\* Worksheets with scoring errors were excluded from the analysis

**Vehicular Involuntary Manslaughter (§ 18.2-36.1(A))  
 FY2008 – FY2012  
 82 Sentencing Events\***

<b>Disposition</b>	<b>Percent</b>	<b>Median Sentence</b>
<b>No Incarceration</b>	<b>4.9%</b>	<b>NA</b>
<b>Incarceration Up to 6 Months</b>	<b>8.5%</b>	<b>4.3 Months</b>
<b>Incarceration More than 6 Months</b>	<b>86.6%</b>	<b>2 Years</b>

\* Worksheets with scoring errors were excluded from the analysis

# Proposed

Increase the points for vehicular involuntary manslaughter on Section A of the Murder/Homicide guidelines

<b>Murder/Homicide</b>	<b>Section A</b>	Offender Name: _____
<b>◆ Primary Offense</b> _____		
A. First degree murder	Completed: 1 count .....	9
	Attempted or conspired: 1 count .....	8
B. Second degree murder or felony homicide	Completed: 1 count .....	8
	Attempted or conspired: 1 count .....	4
C. Voluntary manslaughter	Attempted, conspired or completed: 1 count .....	5
D. Involuntary manslaughter ( <b>§ 18.2-36</b> )	Completed: 1 count .....	1
	2 counts .....	3
	Attempted or conspired: 1 count .....	1
E. Aggravated vehicular manslaughter	1 count .....	8
F. Vehicular involuntary manslaughter ( <b>§ 18.2-36.1(A)</b> )	1 count .....	8

**Score**  
▼  

0	
---	--

All offenders convicted of this offense will be recommended for Section C (prison sentence)

# Proposed

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## Add a new factor to Section C of the Murder/Homicide guidelines

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS  
VEHICULAR INVOLUNTARY MANSLAUGHTER (§ 18.2-36.1(A))

◆ Additional Offense of Felony Hit and Run (§ 46.2-894) —————▶ If YES, add 23

**This new factor will increase the recommended prison sentence  
for offenders convicted of this combination of offenses**

**Vehicular Involuntary Manslaughter (§ 18.2-36.1(A))  
FY2008 – FY2012  
82 Sentencing Events\***

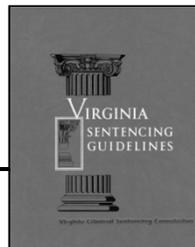
	<b>Current</b>	<b>As Proposed</b>
<b>Compliance</b>	<b>62.2%</b>	<b>65.9%</b>
<b>Mitigation</b>	<b>8.5%</b>	<b>17.1%</b>
<b>Aggravation</b>	<b>29.3%</b>	<b>17.1%</b>

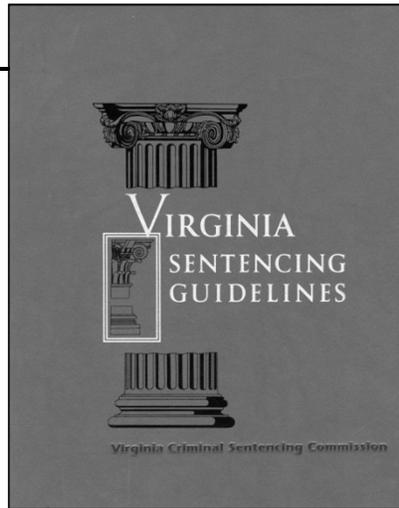
\* Worksheets with scoring errors were excluded from the analysis

## *Proposed Recommendation 5*

---

**Revise the sentencing guidelines for  
Vehicular Involuntary Manslaughter (§ 18.2-36.1(A))  
as proposed**





*Proposed Recommendation 6:*

*Revise the sentencing guidelines for  
Burglary with a Deadly Weapon  
in cases involving an additional offense of  
murder or malicious wounding*

## *Burglary with a Deadly Weapon*

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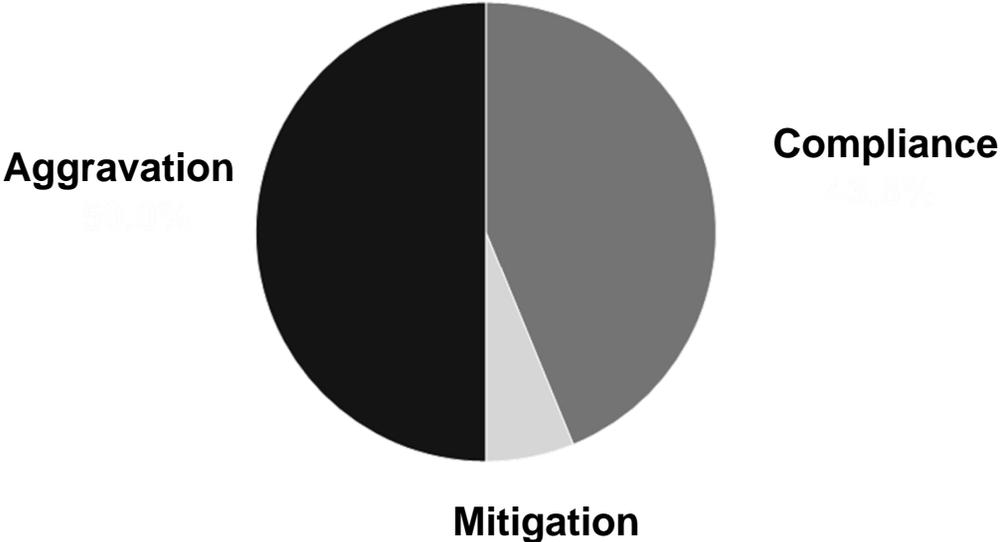
- **Burglary with a deadly weapon can be found in §§ 18.2-89, 18.2-90, 18.2-91, 18.2-92, and 18.2-93**
- **In each statute, burglary with a deadly weapon is a Class 2 felony with a statutory penalty range of 20 years to life**

## *Issue*

---

- **Cases involving a completed burglary with a deadly weapon  
and  
Attempted/Conspired 1<sup>st</sup> degree murder, or  
Attempted/Conspired/Completed 2<sup>nd</sup> degree murder,  
felony murder, or malicious wounding:**
    - **Under guidelines rules, completed burglary with a deadly weapon is the primary offense because it has the higher statutory maximum**
    - **Scoring burglary as the primary offense returns a lower recommendation than if murder or malicious wounding were scored as the primary offense**
-

**Completed Burglary with a Deadly Weapon  
(§§ 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93)  
with Additional Offense of Murder or Malicious Wounding  
FY2008 – FY2012  
64 Sentencing Events**



**Completed Burglary with a Deadly Weapon  
 (§§ 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93)  
 with Additional Offense of Murder or Malicious Wounding  
 FY2008 – FY2012  
 64 Sentencing Events**

<b>Disposition</b>	<b>Percent</b>	<b>Median Sentence</b>
<b>No Incarceration</b>	<b>0%</b>	<b>NA</b>
<b>Incarceration Up to 6 Months</b>	<b>0%</b>	<b>NA</b>
<b>Incarceration More than 6 Months</b>	<b>100%</b>	<b>14 Years</b>

# Proposed

---

## Add a new factor to Section A of the Burglary/Dwelling and Burglary/Other guidelines

**SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS  
COMPLETED BURGLARY WITH A DEADLY WEAPON (§§ 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93)**

- ◆ Additional Offense with VCC Prefix of “MUR” - or - \_\_\_\_\_ → If YES, add 10  
Additional Offense of Malicious Wounding (§ 18.2-51)

(includes attempts, conspiracies and completed acts)

**This new factor will ensure that all offenders convicted of this combination of offenses will be recommended for Section C (prison sentence)**

# Proposed

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## Add a new factor to Section C of the Burglary/Dwelling and Burglary/Other guidelines

**SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS  
COMPLETED BURGLARY WITH A DEADLY WEAPON (§§ 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93)**

◆ Additional Offense with VCC Prefix of “MUR” .....	140
Additional Offense of Completed Malicious Wounding (§ 18.2-51) .....	35
Additional Offense of Attempted/Conspired Malicious Wounding (§ 18.2-51 / § 18.2-22 or § 18.2-26) ....	8

**This new factor will increase the recommended prison sentence for offenders convicted of this combination of offenses**

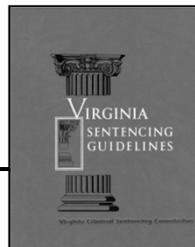
**Completed Burglary with a Deadly Weapon  
(§§ 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93)  
with Additional Offense of Murder or Malicious Wounding  
FY2008 – FY2012  
64 Sentencing Events**

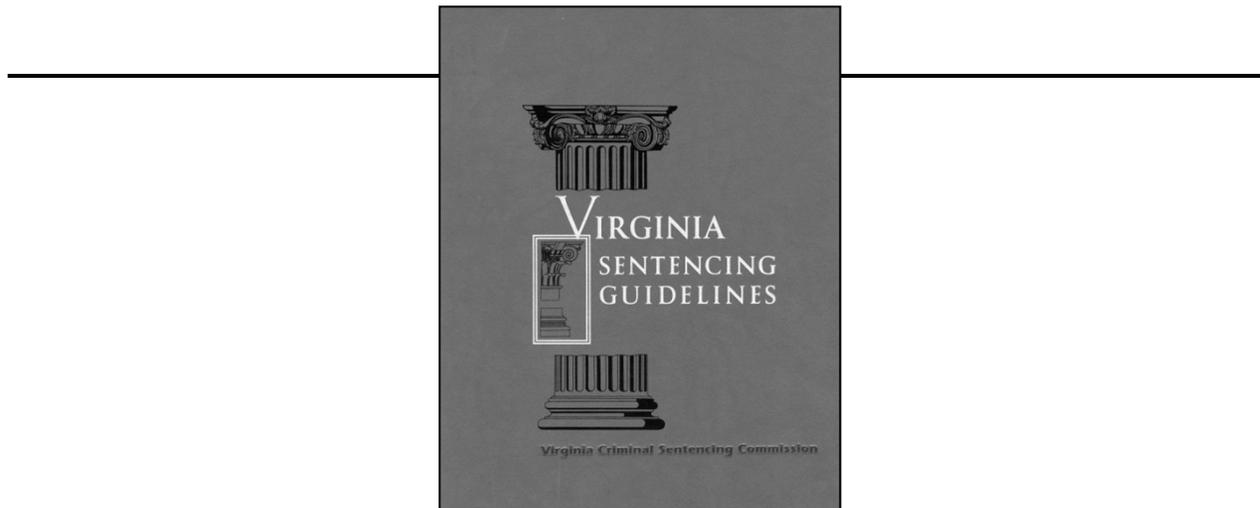
	<b>Current</b>	<b>As Proposed</b>
<b>Compliance</b>	<b>43.8%</b>	<b>50.0%</b>
<b>Mitigation</b>	<b>6.2%</b>	<b>25.0%</b>
<b>Aggravation</b>	<b>50.0%</b>	<b>25.0%</b>

## *Proposed Recommendation 6*

---

**Revise the sentencing guidelines for  
Burglary with a Deadly Weapon  
in cases involving an additional offense of  
murder or malicious wounding  
as proposed**





*Proposed Recommendation 7:*

*Revise several guidelines worksheets to ensure that offenders will receive a recommendation for more than 6 months of incarceration whenever the primary offense is accompanied by an offense that requires a mandatory minimum sentence of at least 6 months*

## *Issue*

---

- **Currently, the Guidelines for Burglary, Drug/Other, Murder/Homicide, Miscellaneous, and Weapon offenses increase the likelihood that a recommendation will be calculated on Section C if the offender has been convicted of a firearm charge that carries a mandatory minimum term of confinement**
  - **There are other types of crimes, however, that also carry a mandatory minimum term of six months or more**
    - **Assault of a law enforcement officer, habitual traffic violation, 4<sup>th</sup> or subsequent driving while intoxicated**
  - **In some cases, the guidelines recommend probation or incarceration less than the mandatory required by law**
-

## *Issue*

---

- **If the primary offense is assault of a law enforcement officer, the offender is always recommended for Section C (prison sentence)**

Proposed

**Drug/Other** ❖ **Section A**

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

◆ **Primary Offense** \_\_\_\_\_

A. Other than listed below (1 count) .....	1	
B. Sell, etc. 1/2 ounce - 5 pounds of marijuana for profit; Sell, etc. marijuana to inmate for accommodation		
1 count .....	3	
2 counts .....	8	
C. Sell, etc. more than 5 pounds of marijuana for profit; Sell, etc. third or subsequent felony (1 count) .....	12	
D. Sell, etc. marijuana to minor (1 count) .....	11	
E. Manufacture marijuana not for personal use (1 count) .....	8	
F. Transport 5 pounds or more of marijuana into Commonwealth (1 count) .....	12	
G. Sell, etc. Schedule III or IV drug to minor (1 count) .....	11	
H. Sell, etc. Schedule III drug-not anabolic steroid		
1 count .....	8	
2 counts .....	10	

**Score**  
▼  
[ ] [ ]

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

Years: 5 - 10 .....	0	
11 - 21 .....	2	
22 - 30 .....	3	
31 - 42 .....	4	
43 or more .....	5	

▼  
[ 0 ] [ ]

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

Years: Less than 4 .....	0	
4 - 10 .....	1	
11 - 21 .....	2	
22 - 30 .....	3	
31 - 42 .....	4	
43 or more .....	5	

▼  
[ 0 ] [ ]

◆ **Knife or Firearm in Possession at Time of Offense** \_\_\_\_\_ If YES, add 2 → [ 0 ] [ ]

◆ **Mandatory Firearm Conviction for Current Event** \_\_\_\_\_ If YES, add ~~X~~ → [ 0 ] [ ]

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

◆ **Prior Incarcerations/Commitments** \_\_\_\_\_ If YES, add 2 → [ 0 ] [ ]

◆ **Prior Felony Drug Convictions/Adjudications** \_\_\_\_\_

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

▼  
[ 0 ] [ ]

◆ **Prior Juvenile Record** \_\_\_\_\_ If YES, add 1 → [ 0 ] [ ]

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

None .....	0	
Other than parole/post-release, supervised probation or CCCA .....	1	
Parole/post-release, supervised probation or CCCA .....	4	

▼  
[ 0 ] [ ]

**Total Score** \_\_\_\_\_ If total is 10 or less, go to Section B. If total is 11 or more, go to Section C. [ ] [ ]

**Other Worksheets Affected:**

- **Burglary/Dwelling**
- **Burglary/Other**
- **Murder/Homicide**
- **Miscellaneous/Person & Property**
- **Miscellaneous/Other**
- **Weapon/Firearm**

# Drug/Schedule I/II Section A

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

## ◆ Primary Offense

A. Possess Schedule I or II drug or First offender violation	
1 count .....	1
2 counts .....	3
3 counts .....	8
B. Sell, Distribute, Possession with Intent, etc., Schedule I or II drug	
1 count .....	12
2 counts .....	13
3 counts .....	14
4 counts .....	15
C. Sell, etc. Schedule I or II drug to minor (1 count) .....	11
D. Accommodation - Sell, Distribute, Possession with Intent Schedule I or II drug	
1 count .....	5
2 counts .....	7
E. Sell, etc. imitation Schedule I or II drug (1 count) .....	4

Score

--	--

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

Years:	5 - 10 .....	1	31 - 42 .....	4
	11 - 21 .....	2	43 or more .....	5
	22 - 30 .....	3		

0	
---	--

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

Years:	Less than 4 .....	0	22 - 30 .....	3
	4 - 10 .....	1	31 - 42 .....	4
	11 - 21 .....	2	43 or more .....	5

0	
---	--

## ◆ Knife or Firearm in Possession at Time of Offense

\_\_\_\_\_ If YES, add 2 →

0	
---	--

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

0	
---	--

## ◆ Mandatory Firearm Conviction for Current Event

\_\_\_\_\_ If YES, add 7 →

0	
---	--

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

Years:	Less than 7 .....	0
	7 - 26 .....	1
	27 - 48 .....	2
	49 or more .....	3

0	
---	--

## ◆ Prior Incarcerations/Commitments

\_\_\_\_\_ If YES, add 2 →

0	
---	--

## ◆ Prior Felony Drug Convictions/Adjudications

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

0	
---	--

## ◆ Prior Juvenile Record

\_\_\_\_\_ If YES, add 1 →

0	
---	--

## ◆ Legally Restrained at Time of Offense

None .....	0
Other than parole/post-release, supervised probation or CCCA .....	1
Parole/post-release, supervised probation or CCCA .....	4

0	
---	--

**SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS POSSESSION OF SCHEDULE I/II DRUG (§ 18.2-250(A,a))**

## ◆ Two or More Prior Felony Convictions/Adjudications

\_\_\_\_\_ If YES, add 2 →

0	
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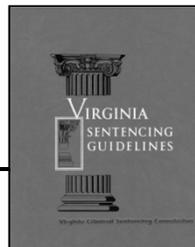
For Possession, Possession with Intent, Distribution, Manufacture or Sale of Schedule I or II Drug

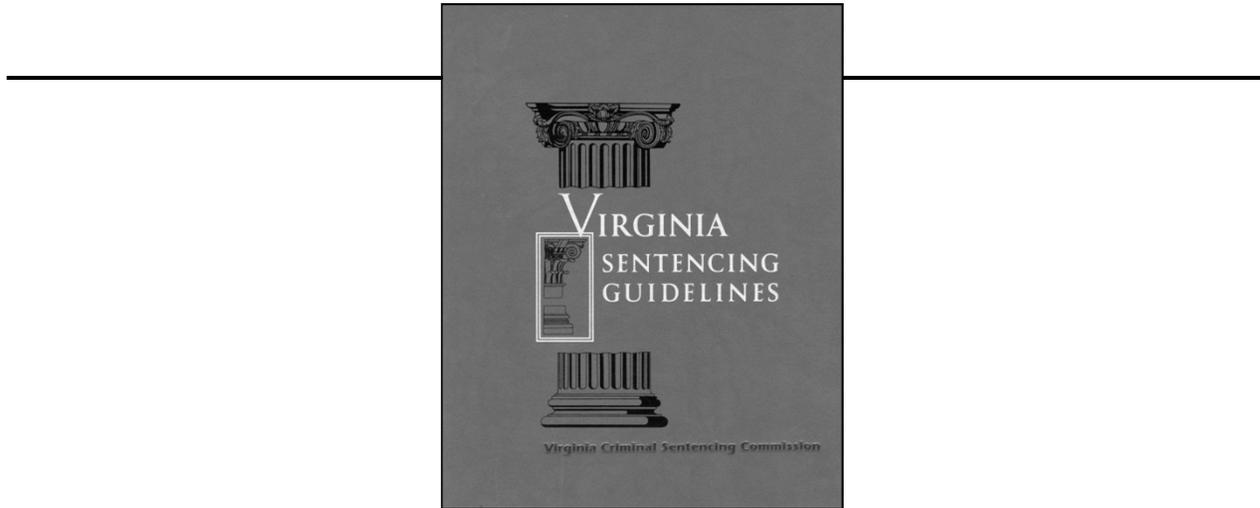
**Proposed change is similar to the change to the Schedule I/II drug guidelines adopted in 2006**

## *Proposed Recommendation 7*

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**Revise several Guidelines worksheets to ensure that offenders will receive a recommendation for more than 6 months of incarceration whenever the primary offense is accompanied by an offense that requires a mandatory minimum sentence of at least 6 months as proposed**





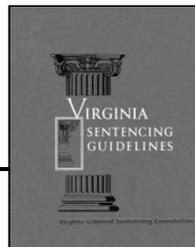
*Proposed Recommendation 8:*

*Modify the wording used on worksheets and  
in the manual instructions to clarify  
the scoring of certain guidelines factors*

## *Modify the Wording for Certain Factors*

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- **Proposals make no changes to the scoring of sentencing guidelines**
- **Proposals are designed to assure the accurate scoring of the guidelines factors**
- **The proposed changes reinforce the current rules and will result in the appropriate recommendation**
- **Proposals are being made now since other proposals will change many of the worksheets**



## Executive Summary

### Proposal: Wording Changes for Existing Factors

- The following proposals do not change existing guidelines rules.
- The suggested wording changes clarify scoring of guidelines factors resulting in recommendations that reflect historical sentencing practices.
- For several years, guidelines users and staff have suggested that the Commission make these adjustments. The proposals are made at this time because the Commission will need to rewrite and reprint the guidelines manual to reflect approved or proposed changes to the majority of worksheets.
- As we implement approved changes, additional adjustments to wording may be needed to accomplish the Commission's directives. Any changes made will be reported to the Commission at the spring meeting.

### Summary:

1. Change the factor "Primary Offense Additional Counts" to "Primary Offense Remaining Counts"
2. Change the factor "Knife or Firearm in Possession at Time of Offense" to "Knife or Firearm in Possession at the Time of Offense or Seized"
3. Rename the categories of victim injury to: Threatened, Emotional, Physical or Life Threatening Injury

# Drug/Schedule I/II Section A

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

**Primary Offense**

A. Possess Schedule I or II drug or First offender violation		
1 count .....	1	
2 counts .....	3	
3 counts .....	8	
B. Sell, Distribute, Possession with Intent, etc., Schedule I or II drug		
1 count .....	12	
2 counts .....	13	
3 counts .....	14	
4 counts .....	15	
C. Manufacture Methamphetamine (1st or 2nd conviction)		
1 count .....	12	
2 counts .....	13	
3 counts .....	14	
4 counts .....	15	
D. Sell, etc., Schedule I or II drug to minor (1 count) .....		11
E. Accommodation - Sell, Distribute, Possession with Intent Schedule I or II drug		

**Score**

**Change the factor "Primary Offense Additional Counts" to "Primary Offense Remaining Counts (counts not scored above)"**

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

Years:	5 - 10 .....	1	31 - 42 .....	4
	11 - 21 .....	2	43 or more .....	5
	22 - 30 .....	3		

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

Years:	Less than 4 .....	0	22 - 30 .....	3
	4 - 10 .....	1	31 - 42 .....	4
	11 - 21 .....	2	43 or more .....	5

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

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

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

Years:	Less than 7 .....	0
	7 - 26 .....	1
	27 - 48 .....	2
	49 or more .....	3

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

**Prior Felony Drug Convictions/Adjudications**

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

**Prior Juvenile Record** If YES, add 1 →

**Legally Restrained at Time of Offense**

None .....	0
Other than parole/post-release, supervised probation or CCCA .....	1
Parole/post-release, supervised probation or CCCA .....	4

---

**SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS POSSESSION OF SCHEDULE I/II DRUG (§ 18.2-250(A,a))**

**Two or More Prior Felony Convictions/Adjudications** If YES, add 2 →   
 For Possession, Possession with Intent, Distribution, Manufacture or Sale of Schedule I or II Drug, etc.

**Total Score**    
 If total is 10 or less, go to Section B. If total is 11 or more, go to Section C.

Drug/Schedule I/II Section A

## ◆ Current Offense Factors

The following instructions apply to all offense groups. Additional instructions are contained in the sections of the manual that address the individual offense groups.

### ◆ Scoring the Primary Offense

Identify the appropriate score for the offense selected as the primary offense. Use both the Virginia Crime Code (VCC) and the *Code of Virginia* section to identify the appropriate score from the offense chapter instructions. The instruction pages in the offense chapters include the VCC and Virginia Code Section. The worksheets contain only a label to identify the most common offense included in the group. The user must refer to the instruction page to accurately select the score for the primary offense factor.

Before scoring the primary offense factor on Section C of the worksheet, the offender's prior record must be classified. See the Prior Record section for details.

Convictions with the exact same VCC as the primary offense are considered counts of the primary offense, not additional offenses. For example, an offender convicted of two counts of grand larceny, \$200 or more not from a person (LAR-2359-F9), has two counts of the primary offense and no additional offenses.

Attempted and conspired acts have different VCCs than completed acts and are treated as separate and distinct offenses. For example, for an offender convicted of one count of distribution of cocaine (NAR-3045-F9) and 1 count of conspiracy to distribute cocaine (NAR-3045-C9), score the distribution as the primary offense and the conspiracy as an additional offense.

If the primary offense is an attempted or conspired offense and the worksheets do not distinguish between completed and attempted or conspired offenses, score attempts or conspiracies as completed acts when scoring this factor.

Revocations of post-release supervision, suspended sentences, probation, CDI or community-based programs, such as those under the Comprehensive Community Corrections Act (CCCA), are never scored as the primary offense in a sentencing event. Revocations are always scored as additional offenses.

If only one co-defendant used a firearm, the primary offense for all co-defendants will be scored as involving a firearm. For example, the primary offense is robbery with a gun for an offender who is in the getaway car while his co-defendant uses a firearm to rob a bank.

"Business robbery" should be scored if the target of the robbery is a business, an employee or a patron of the business at the time of the robbery. This includes pizza delivery persons, taxi cab drivers, ATM patrons, employees making bank deposits, etc. "Street robbery" should be scored if the target is an individual who is not associated with a business function at the time of the robbery. A residential robbery is scored when the robbery takes place in or on property associated with the victim's dwelling. A robbery of a guest in a hotel room is scored as a residential robbery.

If the court order cites two Code sections for one offense, use the more specific code to select the primary offense (i.e., §18.2-95 grand larceny and § 63.2-522 welfare fraud – use welfare fraud to select the primary offense).

### ◆ Scoring Additional Counts of the Primary Offense

Only score counts of the primary offense not scored under the "Primary Offense" factor with the exact same VCC as the primary offense.

Example: An offender is convicted of 4 counts of Grand Larceny from Person (LAR-2361-F9). The Larceny Section A worksheet should be completed as in the example below.

### Larceny ◆ Section A

If the Primary Offense is 4 counts of Grand Larceny from Person (LAR-2361-F9) score 2 of the 4 counts under the Primary Offense factor.

◆ Primary Offense	Score
E. Grand larceny from person	
1 count .....	1
2 counts .....	1

Score the remaining 2 counts under the Primary Offense Additional Counts factor.  
(Total maximum penalties for Grand Larceny from Person (LAR-2361-F9): 2 x 20 = 40)

◆ Primary Offense Additional Counts	Total the maximum penalties for counts of the primary not scored above
Years: 5 - 11 .....	1
12 - 22 .....	2
23 - 33 .....	3
34 - 44 .....	4
45 or more .....	5

# Drug/Schedule I/II ❖ Section A

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

**Primary Offense**

A. Possess Schedule I or II drug or First offender violation	
1 count .....	1
2 counts .....	3
3 counts .....	8
B. Sell, Distribute, Possession with Intent, etc., Schedule I or II drug	
1 count .....	12
2 counts .....	13
3 counts .....	14
4 counts .....	15
C. Manufacture Methamphetamine (1st or 2nd conviction)	
1 count .....	12
2 counts .....	13
3 counts .....	14
4 counts .....	15
D. Sell, etc., Schedule I or II drug to minor (1 count) .....	11
E. Accommodation - Sell, Distribute, Possession with Intent Schedule I or II drug	
1 count .....	5
2 counts .....	7
F. Sell, etc., imitation Schedule I or II drug (1 count) .....	4

**Score**

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

Years: 5 - 10 .....	1	31 - 42 .....	4
11 - 21 .....	2	43 or more .....	5
22 - 30 .....	3		

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

Years: Less than 4 .....	0	22 - 30 .....	2
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**Change the factor "Knife or Firearm in Possession at Time of Offense" to "Knife or Firearm in Possession at the Time of Offense or Seized"**

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

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

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

Years: Less than 7 .....	0
7 - 26 .....	1
27 - 48 .....	2
49 or more .....	3

**Prior Incarcerations/Commitments** ————— If YES, add 2 →

**Prior Felony Drug Convictions/Adjudications**

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

**Prior Juvenile Record** ————— If YES, add 1 →

**Legally Restrained at Time of Offense**

None .....	0
Other than parole/post-release, supervised probation or CCCA .....	1
Parole/post-release, supervised probation or CCCA .....	4

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**SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS POSSESSION OF SCHEDULE I/II DRUG (§ 18.2-250(A,a))**

**Two or More Prior Felony Convictions/Adjudications** ————— If YES, add 2 →    
 For Possession, Possession with Intent, Distribution, Manufacture or Sale of Schedule I or II Drug, etc.

**Total Score** ————— If total is 10 or less, go to Section B. If total is 11 or more, go to Section C.

Drug Schedule I or II/Section A

## ◆ Weapons

### Weapon Definitions

The following definitions apply for all weapon factors:

- **Firearms** include pistols, shotguns, rifles, BB-guns, pellet guns, starter guns or other firearms or any item the victim believed was a firearm.

For drug offenses, the firearm does not have to be on the offender's person to be scored.

For robbery, a note given to a bank teller indicating that the offender has a firearm is scored.

- **Knives** are defined as cutting or stabbing instruments with sharp blades. Included in this category are scissors, box cutters, chain saws, screwdrivers, and letter openers.
- **Explosives** include firecrackers, pipe bombs, incendiaries, and grenades.
- A **simulated or feigned weapon** is scored when a false impression is given that there is an actual weapon present. Simulated and feigned weapons will be scored if the offender threatened to use a weapon and the victim believes that the weapon is not real (e.g., finger in the pocket to indicate a gun, water guns, etc.).
- Any object capable of causing injury or used to restrain that does not fall into the firearm, knife, explosive or simulated/feigned categories will be scored as **"other than listed."** Examples include automobiles, tire irons, baseball bats, bricks, glass bottles, staple and nail guns, animals, rope, and other makeshift weapons.
- Weapon factors on the Burglary worksheets are only scored if used against a person or if the firearm is discharged during the burglary. If a weapon was used to damage property after entry, score the weapon as used in the commission of the crime. Burglary tools used to break and enter are not scored unless a victim views the item in a threatening manner.

### Weapon Factor Rules

The following rules apply for all weapon factors:

- Weapon-related factors are scored if the offender or a co-defendant used, brandished, feigned, or threatened to use a weapon during the commission of any offense at conviction.
- An offender does not have to be charged or convicted with the use of a firearm or weapon in order to score this factor.
- Weapon factors are scored for all offenses at conviction, not just for the primary offense.

- The firearm does not have to be in working order to be scored.
- A weapon is considered in possession if the offender possesses but does not use, display or make reference to a weapon during the commission of the crime.
- A weapon is considered in possession if official reports state that a weapon was seized at the time of arrest.
- "Weapon" includes any object capable of causing injury or used to restrain or threaten. Examples include firearms, knives, explosives, automobiles, tire irons, baseball bats, bricks, glass bottles, staple and nail guns, animals, rope, and walls.
- If more than one weapon was used, brandished, feigned, or threatened, do not add the points corresponding to each weapon. Score this factor to reflect the weapon that receives the highest number of points for the factor (different weapons may be scored on different sections of a worksheet).
- Weapon factors are scored based on the victim's point of view as contained in official reports.
- When the type of weapon or whether a weapon was used is in dispute, the court will make the final determination on how to score this factor.
- Body parts (i.e., fists) are not scored as weapons.

### Weapon Factors

There are different weapon factors that appear in the guidelines worksheets.

#### ◆ Basis of False Statement on Consent Form

Points are not assigned for every false statement on the Virginia Firearms Transaction Record (SP-65) or the Federal Firearms Transaction Form (ATF F 4473). Only assign points when the defendant is convicted of making a false statement in response to these selected questions or similar questions:

- "Have you ever been convicted in any court of a felony," and the felony offense was a person crime? For a list of person crimes see App. H.
- "Have you ever been convicted in any court of a felony," as an adult or juvenile, within four years of signing the firearms transaction form?
- "Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner?"
- "Have you ever been convicted in any court of a misdemeanor crime of domestic violence?"

# Weapon/Firearm Section C

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

**1 Primary Offense** Prior Record Classification  
 Category I  Category II  Other

A. Maliciously discharge firearm, etc. in/at occupied building			
Attempted or conspired: 1 count .....	32	16	8
Completed: 1 count .....	56	28	14
B. Discharge firearm from vehicle (1 count) .....	48	24	12
C. Possess firearm on school property (1 count) .....	32	16	8
D. Possession of sawed-off shotgun (1 count) .....	36	18	9
E. False statement on consent form (1 count) .....	32	16	8
F. Possession of firearm, or other weapon, explosives or ammunition by convicted felon (1 ct) ...	32	16	8

**Score**

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

Maximum Penalty: 5, 10 (years) ..... 1

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

Maximum Penalty: Less than 5 (years) ..... 0  
 5, 10 (years) ..... 1

**Rename the categories of victim injury to:**  
 Threatened  
 Emotional  
 Physical  
 Life Threatening Injury

**4 Victim Injury**

Threatened or emotional .....	2
Physical .....	4
Serious physical .....	5

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

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

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

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

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

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

**9 Legally Restrained at Time of Offense** \_\_\_\_\_ If YES, add 2

**Total Score**   
 See Weapon/Firearm Section C Recommendation Table for guidelines sentence range.

Weapon/Firearm/Section C

◆ **Victim Factors**

◆ **Victim Injury**

There are three different victim injury factors for guideline offense groups. The factors are **Victim Injury, Physical or Serious Physical Injury, and Serious Physical Victim Injury**. The following rules apply to the scoring of all victim injury factors:

- Injury factors are scored if the defendant or a co-defendant threatened or inflicted an injury, caused an injury, or caused the victim to sustain emotional injury. Injury factors are scored if the victim sustained an injury during the course of the crime or as the result of the crime (e.g., victim was injured while running away from the assailant).
- If more than one victim was injured, do not add the points corresponding to the degree of injury each victim received. Score the factor to reflect the victim who received the most serious injury.
- Victim injury factors are scored for all offenses at conviction, not just for the primary offense. The defendant does not have to be charged with an assault for this factor to be scored.
- Injuries documented in official reports, such as police reports, medical records, and other court records, are to be considered as verified. When the factor does not require verification from someone other than the victim or victim's family, a victim impact statement can be used to verify injury for scoring this factor.

For possession of child pornography, victim injury is scored only if the defendant or co-defendant inflicted the documented injury.

To score these factors, the preparer needs to distinguish between threatened, emotional, physical, and serious physical injury. The definitions for these categories follow:

**Threatened Injury** is scored if the defendant or a co-defendant threatened to injure the victim with a weapon, if strong-arm tactics were used without inflicting physical injury, or if the victim felt intimidated at the time of the offense but suffered no long term emotional or physical effects. Assign points if the victim reasonably felt the fear of impending danger.

**Emotional Injury** is scored if the victim sustained any emotional injury requiring any form of mental health care, psychiatric, psychological, or any other type of counseling. Rape crisis hotlines, conferences with clergy, or school guidance counselors are considered forms of counseling, but the contact with a counselor or hotline must be verified by someone other than the victim or victim's family.

**Physical Injury** (non-life threatening) is scored if the victim sustained an injury that was described in an official report (e.g., police report). Victims treated with first aid, "treated in the emergency room," "held for observation," "treated and released," hospitalized for non-life threatening injuries, or who sustain slight impairments to any limb or organ are considered to suffer physical injury rather than serious physical injury.

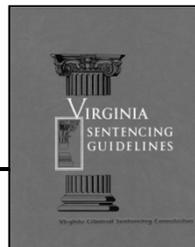
*For sexual assault offenses, a medical examination required by law enforcement agencies for investigation purposes does not, by itself, qualify as physical injury. However, if bruises and abrasions were treated, then physical injury is scored.*

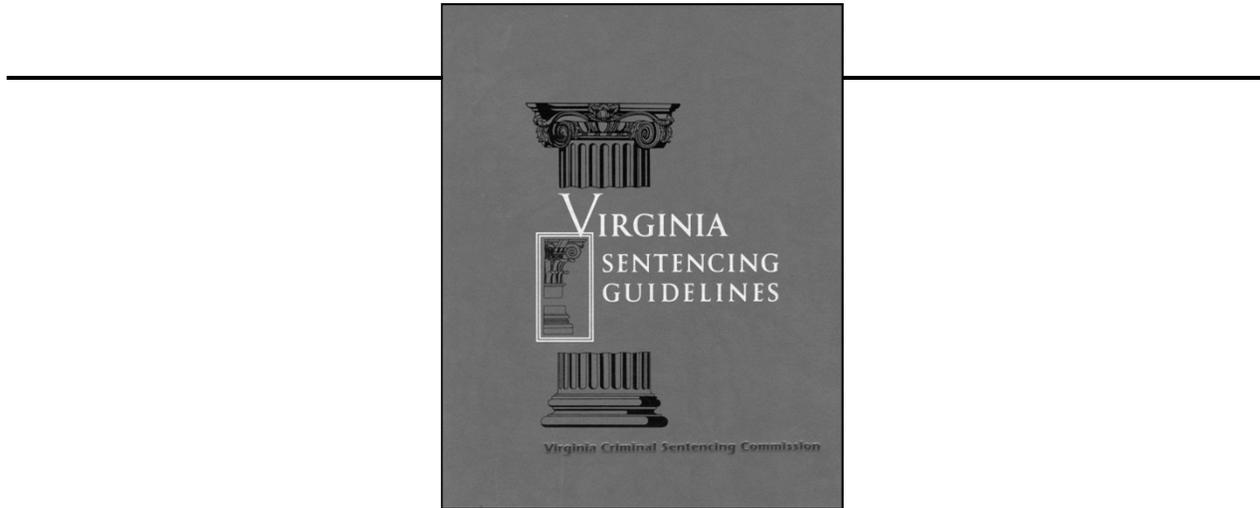
**Serious physical injury** (life threatening) is scored if the victim sustained a **life threatening injury**, an injury that resulted in a permanent physical disability, or died. Generally, a serious physical injury will require hospitalization of at least one night. A life threatening injury includes injuries where the victim could have died without the extensive intervention of medical treatment (e.g., the patient required a life saving procedure, such as surgery to repair internal injuries, a tracheotomy, a chest tube for a collapsed lung, surgery for a head trauma, or was comatose). A permanent disability includes injuries that result in the loss or major impairment of any limb or organ (e.g., becoming HIV positive, pregnant, loss of limb, paralysis, or blindness as a result of the crime).

## *Proposed Recommendation 8*

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**Modify the wording used on worksheets and  
in the manual instructions to clarify  
the scoring of certain guidelines factors  
as proposed**





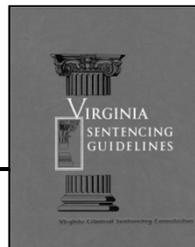
*Proposed Recommendation 9:*

*Revise the Nonviolent Offender Risk Assessment instrument based on the most recent analysis of felony recidivism*

## *Nonviolent Offender Risk Assessment*

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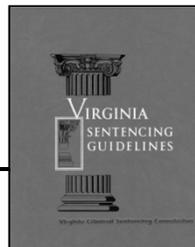
- **Because it had been a number of years since the risk assessment instrument was last examined, the Commission, in 2010, directed staff to begin the process of re-validating its risk assessment tool based on a more recent sample of felony cases**
- **This complex, multi-staged project was completed in mid-2012 and the results were presented to the Commission in September**

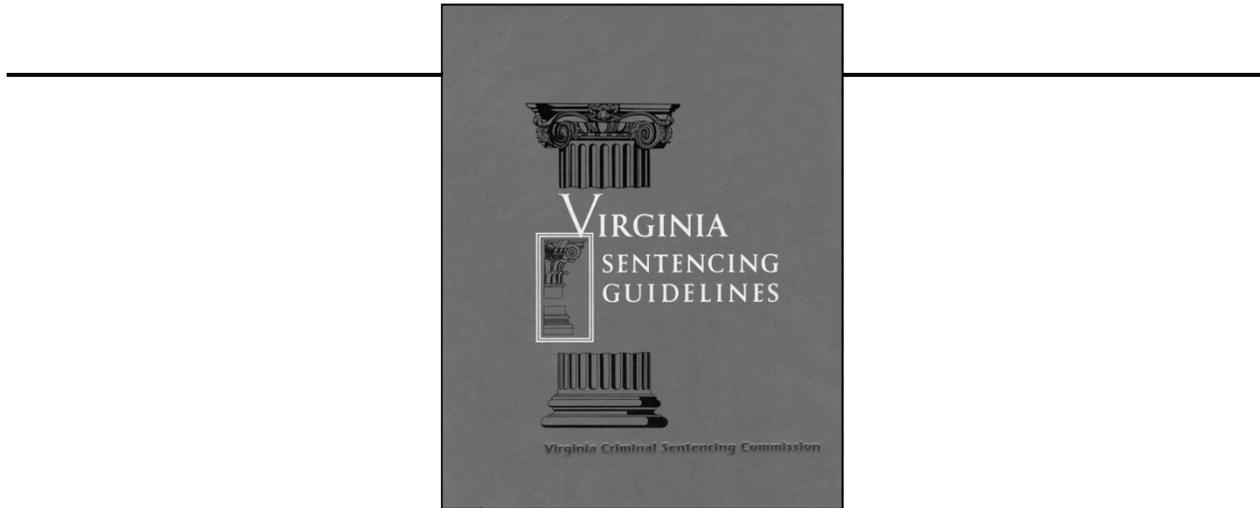


## *Nonviolent Offender Risk Assessment*

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- **The Commission approved the revised risk assessment instruments (one for fraud/larceny offenders and one for drug offenders)**
- **The 2012 Annual Report will include a recommendation to implement the revised risk assessment instruments**





*Examination of guidelines for Possession of a Schedule I/II drug  
for offenders with prior convictions for  
possession or distribution, etc., of a Schedule I or II drug*

## *Guidelines for Possession of a Schedule I/II drug*

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- Offenders convicted of possession of a Schedule I/II drug receive additional points if they have two or more prior convictions related to possession or distribution, etc., of a Schedule I/II drug
- The factor on the guidelines for scoring prior drug convictions does not currently capture prior convictions for delivering a Schedule I or II drug to an inmate (§ 18.2-474.1)

### **Drug/Schedule I/II** ❖ **Section A**

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS POSSESSION OF SCHEDULE I/II DRUG (§ 18.2-250(A,a))

◆ Two or More Prior Felony Convictions/Adjudications ————— If YES, add 2 → 

0	
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For Possession, Possession with Intent, Distribution, Manufacture or Sale of Schedule I or II Drug

**Felony Possession of a Schedule I/II Drug  
FY2008 – FY2012  
21,277 Sentencing Events**

**Total Number of Events: 21,277**

**Received Points on  
Prior Sch. I/II Factor:  
1,021 Cases**

**Did NOT Receive Points  
on Factor:  
20,256 Cases**

**2 Points Would  
NOT Change  
Recommendation:  
18,648 Cases**

**2 Points Would  
Change  
Recommendation:  
1,608 Cases**

**Cases selected  
for study**

## *Factor for Prior Schedule I/II Convictions*

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- **Rap sheets were requested for the 1,608 offenders for whom two points would change the Section A recommendation**
  - **Analysis indicates that one offender was previously convicted under § 18.2-474.1 for delivering drugs, firearms, etc., to an inmate**

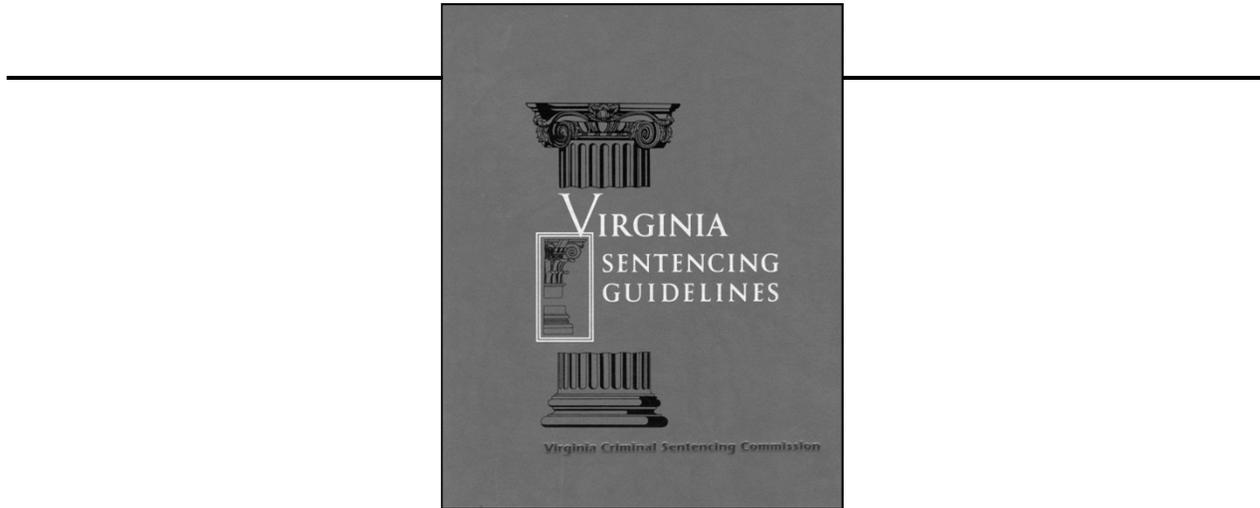
§ 18.2-474.1. Delivery of drugs, firearms, explosives, etc., to prisoners.

Notwithstanding the provisions of § 18.2-474, any person who shall willfully in any manner deliver, attempt to deliver, or conspire with another to deliver to any prisoner confined under authority of the Commonwealth of Virginia, or of any political subdivision thereof, any drug which is a controlled substance regulated by the Drug Control Act in Chapter 34 of Title 54.1, synthetic cannabinoids or marijuana, shall be guilty of a Class 5 felony. Any person who shall willfully in any manner so deliver or attempt to deliver or conspire to deliver to any such prisoner, firearms, ammunitions, or explosives of any nature shall be guilty of a Class 3 felony.

## *Factor for Prior Schedule I/II Convictions*

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- **Although one offender was previously convicted under § 18.2-474.1 , available information did not indicate that the conviction involved a Schedule I/II drug**
- **Therefore, none of the 1,608 offenders were identified as having a prior conviction for a violation of § 18.2-474.1 involving a Schedule I/II drug**



*Proposed Research for 2013:*

*Conduct a new study of larceny and fraud offenses*

## *Study of Embezzlement Offenses, 1996-1997*

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- In 1996-1997, the Commission conducted a study of felony embezzlement cases
- The purpose was to examine the relationship between the value of money or property embezzled and judges' sentencing decisions
- Based on the results of the analysis, the Commission recommended the addition of a factor on the larceny guidelines to increase the sentencing recommendation for offenders who embezzle large sums of money or property

## *Study of Larceny and Fraud Offenses, 1999-2000*

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- In 1999-2000, the Commission conducted a comprehensive study of felony larceny and fraud crimes
- The purpose was to examine the relationship between the value of money or property stolen in larceny and fraud cases and judges' sentencing decisions
- Study included a survey of felony larceny thresholds in all other states
- The Commission did not recommend changes to the guidelines

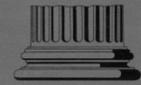
## *New Study of Larceny and Fraud Offenses*

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- **As it has been more than a decade since the Commission last visited this topic, staff propose conducting a new study of felony larceny and fraud crimes**
- **Study could begin in early 2013**



VIRGINIA  
SENTENCING  
GUIDELINES



Virginia Criminal Sentencing Commission