

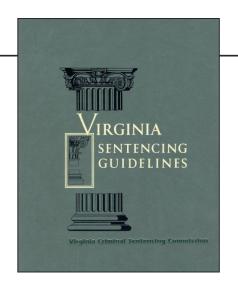
Proposed Recommendations for Guidelines Revisions

November 2011

Proposals for New Guidelines Offenses or Revisions of Existing Guidelines

- 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





Proposed Recommendation 1:

Modify the Sentencing Guidelines for 3^{rd} or Subsequent Sale of a Schedule I/II Drug (18.2-248(C))

3rd or Subsequent Sale of a Schedule I/II Drug (18.2-248(C))

When a person is convicted of a third or subsequent offense under this subsection and it is alleged in the warrant, indictment or information that he has been before convicted of two or more such offenses or of substantially similar offenses in any other jurisdiction which offenses would be felonies if committed in the Commonwealth and such prior convictions occurred before the date of the offense alleged in the warrant, indictment, or information, he shall be sentenced to imprisonment for life or for a period of not less than five years, five years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence and he shall be fined not more than \$500,000. (Effective July 1, 2006)

In 2006, the 3-year mandatory minimum sentence was increased to 5 years

3rd or Subsequent Sale of a Schedule I/II Drug (18.2-248(C)) FY2007 - FY2011 240 Cases

Disposition	Percent	Median Sentence
No Incarceration	0%	NA
Incarceration Up to 6 Months	0%	NA
Incarceration More than 6 Months	100%	7 Years

3rd or Subsequent Sale of a Schedule I/II Drug (18.2-248(C))

In 2007, the Commission voted to add a factor to Section C of the Schedule I/II and Other Drug Sentencing Guidelines to increase the prison sentence recommendation for offenders who have an accompanying weapons offense that carries a mandatory minimum term.

	Prior to Modification	After Modification
Compliance	62.7%	65.4%
Mitigation	4.5%	6.7%
Aggravation	32.8%	27.9%

Drug/Schedule I/II → Section C Offender Name: ---- Prior Record Classification -----Primary Offense Category II Category I Other A. Possess Schedule I or II drug or First offender violation-Attempted, conspired or completed: 2 counts ______ 28 _____ 14 _____ 7 B. Sell. Distribute. Possession with intent, etc., Schedule I or II drug Completed: 2 counts 80 48 16 3 counts 95 57 19 Attempted or conspired: 2 counts 64 32 16 Sell, etc. Schedule I or II drug, second offense; third and subsequent effense 2 counts 248 124 D. Sell, etc. Schedule I or II drug to minor Attempted, conspired or completed: Accomodation-Sell, etc. Schedule I or II drug - Attempted, conspired or completed: Score 1 count 32 16 8 Sell, etc. imitation Schedule I or II drug - Attempted, conspired or completed: 1 count 12 6 3 G. Sell, etc. Schedule I or II drug, third or subsequent offense

		Prior Red	ord Classification	
Primary Offense ————	the state of the s	Category I	Category II	Other —
A. Possess Schedule I or II drug or F	irst offender violation-Attempted, of	onspired or completed:	Assessed	harvest .
		20	10	5
	2 counts	28	14	7
	3 counts	36	18	9
B. Sell, Distribute, Possession with in	tent, etc., Schedule I or II drug			11
Completed:	1 count	60	36	12
1 20 0 0 0 1 0 0 0 0 0 0 0 0 0 0 0 0 0 0	2 counts	80	48	16
	3 counts	95	57	19
	4 counts	130	78	26
Attempted or conspired:	1 count	48	24	12
	2 counts	64	32	16
	3 counts	76	38	19
	4 counts	104	52	26
C. Sell, etc. Schedule I or II drug, se	cond offense; third and subsequ	ent offense		
Completed:		110	66	22
267-268-27-28-232	2 counts	310	186	62
Attempted or conspired:	1 count	88	44	22
	2 counts			62

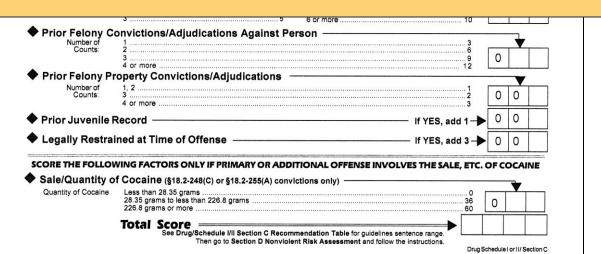
Δ	do	liti	or	nal	0	ffe	ns	es
$\overline{}$	u		\mathbf{v}	ıaı				63

Primary offense OTHER THAN Sell, etc. Sch. I/II 3rd or Subseq

Maximum Penalty		Points		
Years:	Less than 5	0		
	5, 10	1		
	20	2		
	30	4		
	40 or more	5		

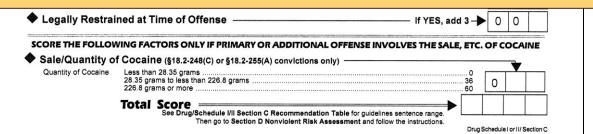
Primary offense Sell, etc. Sch. I/II 3rd or Subseq

Maxim	um Penalty	Points
Years:	Less than 5	0
	5, 10	2
	20	4
	30	6
	40 or more	7



Prima	ry Offense			Category I	Category II	Other -	
A Book	ess Schedule I or II drug or	First offender violation	ttemated conspired or completed				
4. FUSS	ess scriedule i or il diug or		tterripted, conspired or completed		10	5	
						7	1
							l.
Call	Distribute, Possession with i			30	10		1
. Sell,	Completed:		n arug	60	36	12	
	Completed.						
							1
	Attamental as assessed.						
	Attempted or conspired:						- 1
							1
							- 1
Call	etc. Schedule I or II drug, s			. 104	52	20	
. Sell,			subsequent onense	110	66	22	
	Completed:						
	Attached as assessed as					02	
	Attempted or conspired:					22	- 1
) Sell.	etc. Schedule I or II drug to n			. 240	124	62	1
	Attempted, conspired or completed:	1 count		60	30	15	1
				60	30	13	31.
. Acc	omodation-Sell, etc. Schedule			100	12.2	1120	Score
							_
	and the second of the second of the			40	20	10	
Sell,	etc. imitation Schedule I or II	drug - Attempted, conspire	d or completed:		2	_ F	
		1 count		12	6	3	
		2 counts		20	10	5 ∟	
Drime	m, Offense Addition	ol Counto Assiss				-4-1 46	
LIIIII	ary Offense Additiona	al Courts Assign po	oints to each count of the pri	nary not sec	red above and t	otal the points	
Maximur	n Penalty: 5.10					1 Г	
	(years) 40 or more					5	

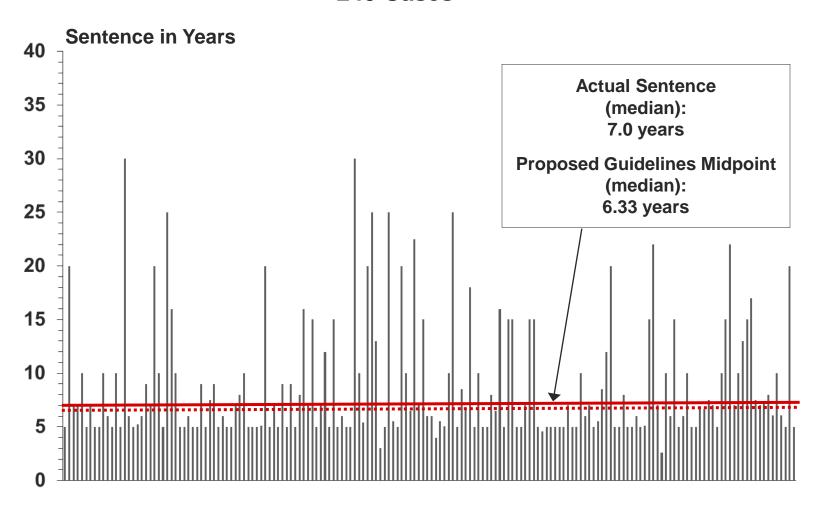
*	Prior Felony Dr	rug Convictions/Adjudicat	ions
	Primary offense Sell, etc. Sch. I/I		Primary offense Sell, etc. Sch. I/II 3 rd or Subseq
		Points	Points
	Number: 1	2	Number: 2 9
	2	3	310
	3	5	417
	4	7	5 or more20
	5	8	
	10 or n	nore 10	



	Drug/Sch	redule	!	ction C	Offender Nam	10:			
					Prior Record Clas				
	Primary Offens	e l or II drug or E	irst offender violation-Attemp	ted, conspired or completes		egory II Othe	ır		
	A. 1 033633 Ochleddie	50 100 501 0 05 10 (0.00) # 10 (0.00)	1 count		20 1			-	
			2 counts		28 1 36 1	4 7		ŀ	
	B. Sell, Distribute, P.	ossession with int	ent etc. Schedule I or II o	Irua					
Droposed		Completed:	1 count		60 3	6 12 8 16			
Proposed			3 counts		95 5	7 19			
•	Attom	pted or conspired:	4 counts						
	Attern	•	2 counts		64 3	2 16			
			3 counts		76 3	8 19			
	C. Sell, etc. Schedul	e I or II drug, sec	cond offense; third and sub	sequent offense		20	٦ .		
		Completed:	1 count		110 6	622			
	Attent	pted or conspired.	1 count		60 4	4 22	_		
			2 counts			4 62			
					Category I	<u>Category</u>	<u>/ </u>	<u>Oth</u>	<u>ner</u>
	G. Sell, etc. Schedu	le I or II drug	, third or subseque	nt offense					
			1 count		175	105		3	35
			2 counts		390	234 .		7	78
			2 counts		20	0 5			Т
	Primary Offens		Counts Assign points t				ointe -		
Sell, etc. Sch. I/II 3rd or Subseq			Assign points t				OII ILS —		_
	Maximum Penalty: (years)								
Maximum Penalty Points	Additional Off	oncos Assiss	points to each additional o	ffanaa (laakudina aasun	ta\	4-			
Years: Less than 5 0								_	j.
5, 10 2	Maximum Penalty: (years)								
204	, , , , , ,								
306	Mandatory Mir	nimum for W	Veapon Conviction	(s) in Current E	vent Assian poi	nts to each addir	tional-		
40 or more 7		ndatory minimum	and total the points		,		_		
40 or more			ry Minimum				0		
		5 Year Mandat	ory Minimum			32	_	+	
	Firearm in Pos	session at T	ime of Offense			If YES, add 5 -	→ 0	0 0	
	A Drien Conviction	/ A all all							
			Assign points to th				nts —		
	Maximum Penalty: (years)						A		
Sell, etc. Sch. I/II 3rd or Subseq	(yours)				••••••		At I	east	8
Number: 2 9	Prior Felony Dr	ug Convictio	ons/Adjudications	***************************************					
310	Number of						_		
	Counts:						At lo	east	9
417						10			
5 or more20	Prior Felony Co		djudications Again			2			
	Counts:					6			Т
	I						0		
	Prior Felony Pr		ictions/Adjudicatio			12			
	Number of		ajaaloallo			1			т
	Counts:	3				2	0	0	
		4 or more				3	<u> </u>	+	\vdash
	Prior Juvenile F	Record				f YES, add 1	▶ 0	0	
	A Lawrence Description	d a4 T!	-4 Off				. =	+=	
	Legally Restrai	ned at Time	of Offense ———		I	f YES, add 3 –	▶ 0	0	

3rd or Subsequent Sale of a Schedule I/II Drug (18.2-248(C))

Offenders Sentenced to Incarceration of More than 6 Months 240 Cases

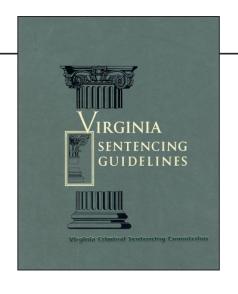


Note: The recommended high falls below the 5-year mandatory minimum for one case.

Proposed Recommendation 1

Revise the sentencing guidelines for 3rd or Subsequent Sale of a Schedule I/II Drug (18.2-248(C)) as proposed





Proposed Recommendation 2:

Add Manufacture of Methamphetamine (§ 18.2-248(C1)) to the Schedule I/II Drug Guidelines

Manufacture Methamphetamine (§ 18.2-248(C1))

Any person who violates this section with respect to the manufacturing of methamphetamine... shall, upon conviction, be imprisoned for not less than 10 nor more than 40 years and fined not more than \$500,000. Upon a second conviction of such a violation, any such person may, in the discretion of the court or jury imposing the sentence, be sentenced to imprisonment for life or for any period not less than 10 years, and be fined not more than \$500,000. When a person is convicted of a third or subsequent offense under this subsection and it is alleged in the warrant, indictment, or information that he has been previously convicted of two or more such offenses or of substantially similar offenses... and such prior convictions occurred before the date of the offense alleged in the warrant, indictment, or information, he shall be sentenced to imprisonment for life or for a period not less than 10 years, three years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence and he shall be fined not more than \$500,000.

(Effective July 1, 2005)

Manufacture Methamphetamine (§ 18.2-248(C1))

- Currently, convictions under § 18.2-248(C1) for manufacturing methamphetamine are not covered by the sentencing guidelines
- Offenders who manufacture methamphetamine can be charged under the general Schedule I/II drug provision (§ 18.2-248(C))
 - When this occurs, methamphetamine cases cannot be distinguished from other drugs



Manufacture Methamphetamine (§ 18.2-248(C1)) FY2007 – FY2011 23 Cases

Disposition	Percent	Median Sentence
No Incarceration	17.4%	NA
Incarceration Up to 6 Months	4.3%	1 Month
Incarceration More than 6 Months	78.3%	3.75 Years

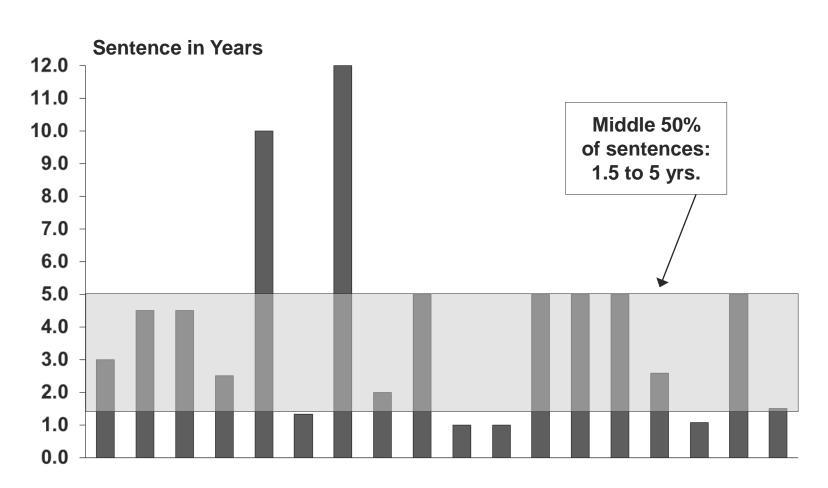
Note: Data reflect cases in which this offense was the primary

(or most serious) offense at sentencing

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

Manufacture Methamphetamine (§ 18.2-248(C1)) FY2007 – FY2011

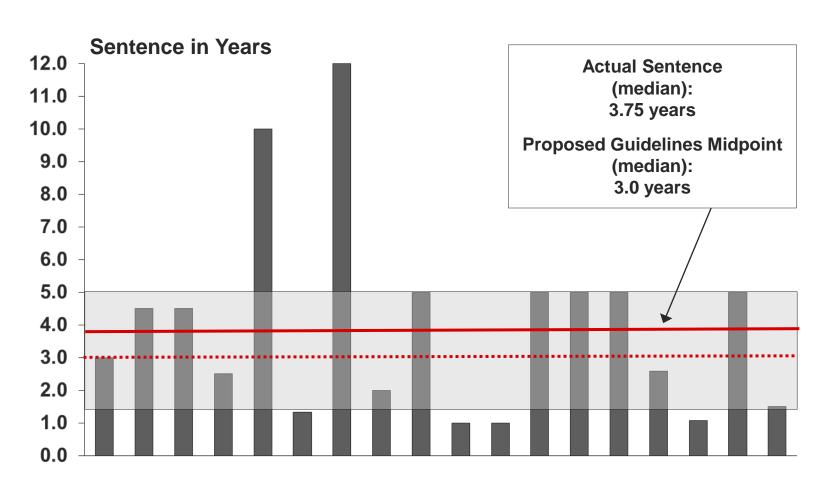
Offenders Sentenced to Incarceration of More than 6 Months 18 Cases



Proposed Primary Offense A Possess Schedule I or II drug or First offencer violation-beamped, compined or compared 2		Drug/Schedule I/II → Section C	Offende	er Name:	
Proposed A Possesis Schedule I or II drug or First offender violation-attempted, compressed compressed 2		A D. J			
Proposed 8. Sell, Distribute, Possession with intent. etc. Shedule or I drug \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$		A Possess Schedule Lor II drug or First offender violation-Attempted consider or con		Category II Other	
Seli, Distribute, Possession with interest care. Schedule I or II drug Competitive Competitive Control Selid S				10 5	=
Proposed B. Sell, Distribute, Possession with intent. etc. Schedule or I drug		2 counts	28	14 7	
Proposed Completed Count			36	18 9	İ
Altergues or conspired 3 counts 89		Completed: 1 count	60	36 12	i
Attempted or conspired Counts 328 74 75 75 75 75 75 75 75	Proposed	2 counts	80	48 16	1
Attempted or conspired Counts	Toposeu				
2 counts	-				ı
South 10 10 10 10 10 10 10 1					1
C Sell, etc. Schedule I or II drug, second offense; third and subsequent offense Completed: 1 count. 80 44 22 Altempted or conspired: 1 count. 80 144 65 D Sell, etc. Schedule I or II drug to minor E. Accomodation-Sell, etc. Schedule I or II drug to minor F. Sell, etc. Imitation Schedule I or II drug - Attempted, conspired or completed: 32 16 8 20 10 F. Sell, etc. Imitation Schedule I or II drug - Attempted, conspired or completed: 32 16 8 3 2 0 10 F. Sell, etc. Imitation Schedule I or II drug - Attempted, conspired or completed: 12 6 3 3 2 0 10 5 Manufacture Methamphetamine, first or second offense, § 18.2-248(C1): 1 count 12 6 3 3 2 0 10 5 Manufacture Methamphetamine, first or second offense, § 18.2-248(C1): 1 count 145 87 29 Additional Offenses Assign points to sach additional offense (including counts) and total the points Maximum Pensity: Less than 5 0 30 4 4 4 0 or more Additional Offenses Assign points to sach additional offense (including counts) and total the points of the points o					
Completed Counts			104	52 26	
Attempted or conspired 1 count		C. Sell, etc. Schedule I or II drug, second offense; third and subsequent offense	440		1
Alternpted or conspiled 1 Dount		Completed: 1 Count	310	186 62	
D. Sell, etc. Schedule I or II drug to milor Attempted, comprised or completed: E. Accomodation-Sell, etc. Schedule I or II drug - Attempted, conspired or completed: E. Accomodation-Sell, etc. Schedule I or II drug - Attempted, conspired or completed: E. Sell, etc. Imitation Schedule I or II drug - Attempted, conspired or completed: E. Sell, etc. Imitation Schedule I or II drug - Attempted, conspired or completed: E. Sell, etc. Imitation Schedule I or II drug - Attempted, conspired or completed: E. Sell, etc. Imitation Schedule I or II drug - Attempted, conspired or completed: E. Sell, etc. Imitation Schedule I or II drug - Attempted, conspired or completed: E. Sell, etc. Imitation Schedule I or II drug - Attempted, conspired or completed: E. Sell, etc. Imitation Schedule I or II drug - Attempted, conspired or completed: E. Sell, etc. Imitation Schedule I or II drug - Attempted, conspired or completed: E. Sell, etc. Imitation Schedule I or II drug - Attempted, conspired or completed: E. Sell, etc. Imitation Schedule I or II drug - Attempted, conspired or completed: E. Sell, etc. Imitation Schedule I or II drug - Attempted, conspired or completed: E. Sell, etc. Imitation Schedule I or II drug - Attempted, conspired or completed: E. Sell, etc. Imitation Schedule I or II drug - Attempted. E. Sell, etc. India under the property of the property of the property of the property of completed: E. Sell, etc. India under the property of the property of completed: E. Sell, etc. India under the property of the property of the property of completed: E. Sell, etc. India under the property of the property of completed: E. Sell, etc. India under the property of completed: E. Sell, etc. India under the property of completed: E. Sell, etc. India under the property of completed: E. Sell, etc. India under the property of completed: E. Sell, etc. India under the property of completed: E. Sell, etc. India under the property of completed: E. Sell, etc. India under the property of completed: E. Sell, etc. In		Attempted or conspired: 1 count		44	
Attempted, compiled or compiled at 1 count					
Manufacture Methamphetamine, first or second offense, § 18.2-248(C1): 1 count		D. Sell, etc. Schedule I or II drug to minor			
Manufacture Methamphetamine, first or second offense, § 18.2-248(C1): 1 count 145 87 29 Manufacture Methamphetamine, first or second offense, § 18.2-248(C1): 1 count 145 87 29 Maximum Penalty Less than 5 0			60	30 15	
Manufacture Methamphetamine, first or second offense, § 18.2-248(C1): 1 count		E. Accomodation-Sell, etc. Schedule I or II drug - Attempted, conspired or completed:	20	16 6	Scor
Manufacture Methamphetamine, first or second offense, § 18.2-248(C1): 1 count		1 COURT	40	20 10	
Manufacture Methamphetamine, first or second offense, § 18.2-248(C1): 1 count		F. Sell, etc. imitation Schedule I or II drug - Attempted, conspired or completed:			
Manufacture Methamphetamine, first or second offense, § 18.2-248(C1): 1 count		1 count	12	6 3	
(years) 40 or more		2 counts	20	10 5	
MANUFACTURE METHAMPHETAMINE, FIRST OR SECOND OFFENSE (§ 18.2-248(C1)) Additional offense of child present during manufacture of methamphetamine (§ 18.2-248.02) Number of 1		◆ Mandatory Minimum for Weapon Conviction(s) in Curre	ent Event Assi	gn points to each addition	nal —
Additional offense of child present during manufacture of methamphetamine (§ 18.2-248.02) Number of 1	tara da la companya				
Number of 1	MANUFACIU	IRE METHAMPHETAMINE, FIRST OR SECOND OFFEN	ISE (§ 18.2-2	<u>248(C1))</u>	
Counts: 2	Additional offense of child p	present during manufacture of methamphetamine (§ 18	3.2-248.02)—	— If YES,	add 14
Counts: 2		Number of 1			
Prior Felony Convictions/Adjudications Against Person Number of 1					
Prior Felony Convictions/Adjudications Against Person Number of Counts: 1 2 6 3 9 4 or more 12 Prior Felony Property Convictions/Adjudications Number of Counts: 1, 2 4 or more 2 4 or more 3 Prior Juvenile Record If YES, add 1 → 0 0		vaccinistation ignormatical and a second contraction of the second con			0
Number of 2					
Counts: 2				^	
3					
Prior Felony Property Convictions/Adjudications Number of Counts: 1, 2 1 0 0 4 or more 3 0 0 Prior Juvenile Record If YES, add 1 → 0 0		3		9	101
Number of 1, 2				12	
Number of 1, 2		Prior Felony Property Convictions/Adjudications ————			
Counts: 3				1	
◆ Prior Juvenile Record — If YES, add 1 → 0 0		Counts: 3		2	0 0
1 1 2 3 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4		4 or more		3	
1 1 2 3 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4					
A Language Destruction of ATI and ATI		A Drien Invente Decemb		14 LUMA	
✓ Legally Restrained at Time of Offense ———————————————————————————————————		◆ Prior Juvenile Record ————————————————————————————————————		── If YES, add 1 ─▶	0 0

Manufacture Methamphetamine (§ 18.2-248(C1)) FY2007 – FY2011

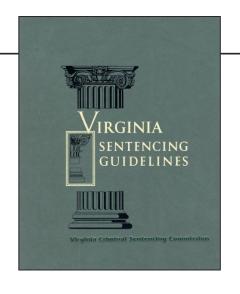
Offenders Sentenced to Incarceration of More than 6 Months 18 Cases



Proposed Recommendation 2

Revise the Schedule I/II Drug Guidelines to add Manufacture of Methamphetamine (§ 18.2-248(C1)) as proposed





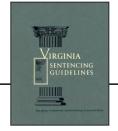
Proposed Recommendation 3:

Add DWI-Victim Permanently Impaired (§ 18.2-51.4(A)) to the Assault Guidelines

DWI – Victim Permanently Impaired (§ 18.2-51.4(A))

Any person who, as a result of driving while intoxicated in violation of § 18.2-266 or any local ordinance substantially similar thereto in a manner so gross, wanton and culpable as to show a reckless disregard for human life, unintentionally causes the serious bodily injury of another person resulting in permanent and significant physical impairment shall be guilty of a Class 6 felony. The driver's license of any person convicted under this section shall be revoked pursuant to subsection B of § 46.2-391.

(Effective July 1, 2000)



DWI-Victim Permanently Impaired (§ 18.2-51.4(A))

Currently, convictions under § 18.2-51.4(A) involving DWI-victim permanently impaired are not covered by the sentencing guidelines



DWI-Victim Permanently Impaired (§ 18.2-51.4(A)) FY2007 – FY2011 46 Cases

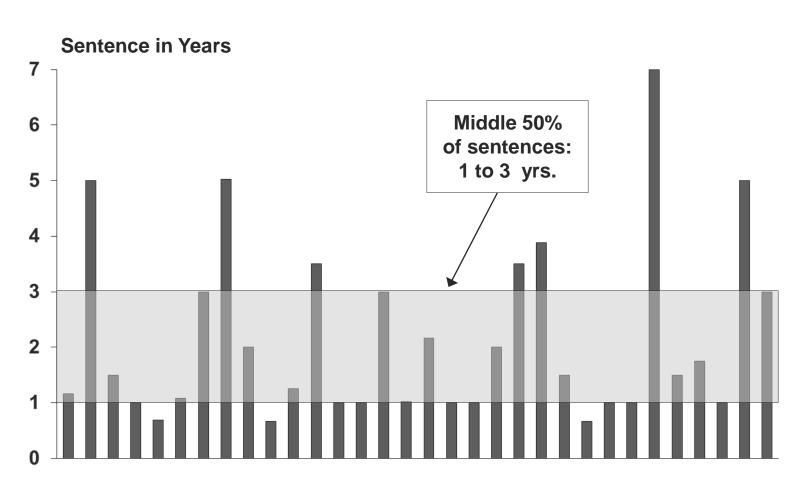
Disposition	Percent	Median Sentence
No Incarceration	10.9%	NA
Incarceration Up to 6 Months	19.6%	4 Months
Incarceration More than 6 Months	69.6%	1.5 Years

Note: Data reflect cases in which this offense was the primary (or most serious) offense at sentencing; one offender was excluded because a rap sheet could not be located Source: Supreme Court of Virginia, Circuit Court Automated

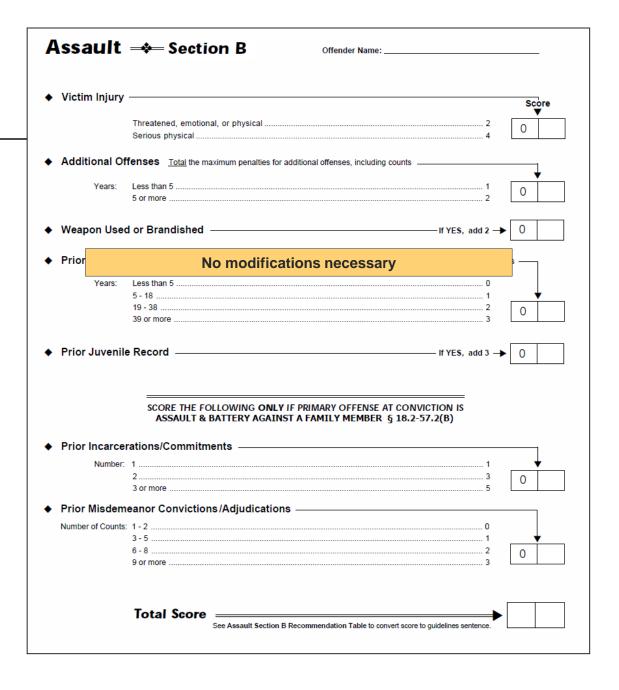
Information System (CAIS)

DWI-Victim Permanently Impaired (§ 18.2-51.4(A)) FY2007 – FY2011

Offenders Sentenced to Incarceration of More than 6 Months 32 Cases



Assault --- Section A Offender Name: Primary Offense A. Assault and battery against a family member, third or subsequent conviction (1 count) B. Assault and battery against a law enforcement officer, fire or rescue personnel (1 count) Any attempted or conspired assault and battery or unlawful injury (1 count) D. Unlawful injury to law enforcement officer, fire or rescue personnel (1 count) . **Proposed** E. Any other unlawful injury 2 counts F. Any attempted or conspired malicious injury or aggravated malicious injury (1 count) Score G. Aggravated malicious injury (1 count) K. DWI – Victim permanently impaired (§ 18.2-51.4(A)) (2 counts) 3 **Additional Offenses Primary offense Primary offense OTHER THAN DWI - Victim permanently impaired DWI - Victim permanently impaired Maximum Penalty Maximum Penalty Points Points** Years: Less than 2 0 Years: Less than 2 0 18 - 23 3 11 - 17 2 18 - 23 3 24 - 31 4 32 - 39 5 24 - 31 4 32 - 39 5 40 or more 6 40 or more 6 **♦** Primary Convictions/Adjudications **Primary offense Primary offense OTHER THAN DWI - Victim permanently impaired DWI - Victim permanently impaired Maximum Penalty Maximum Penalty Points Points** Years: Less than 7 0 Years: Less than 1 0 1 - 46 2 47 or more 3 47 or more 3 Total Score = If total is 5 or less, go to Section B. If total is 6 or more, go to Section C.



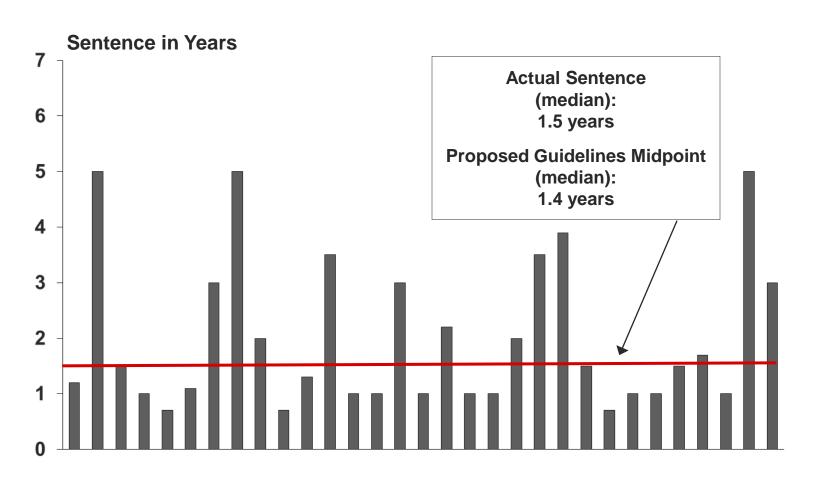
	◆ Primary Offense Category I Category I Other	7
	A. Assault and battery against a family member, third or subsequent conviction (1 count)	
	B. Assault and battery against a law enforcement officer, fire or rescue personnel (1 count)	
<u>م</u> ا	C. Unlawful injury (1 count)	
d	E. Any completed malicious injury	
	1 count	Score
	3 counts 204 136 68	▼
	F. Aggravated malicious injury (1 count) 264 176 88	
	G. Use of firearm in the commission of a felony- first offense (1 count)	
DWI – Victim perm	anently impaired (§ 18.2-51.4(A)): 1 count 48 24 12	
•	Maximum Penalty (years) Points	
	3	
	5 3 Maximum Penalty (years) Points 10 6 5 3	Τ
	20	
	30	
	Life	
	♦ Additional Offenses Assign points to each additional offense (including counts) and total the points —	_
	Primary offense malicious, aggravated malicious wounding or use of firearm Maximum Penalty (years) Primary offense unlawful Injury or any assault and battery Maximum Penalty (years) Points	
	Less than 1 0 Less than 1 0	
	1,2	
	32 3,42 53	
	10	\downarrow
	20	<u> </u>
	40 or more 26 40 or more 22	
	◆ Weapon Used Primary offense malicious, aggravated malicious wounding or use of firearm Primary offense unlawful Injury or any assault and battery	
	Simulated weapon or other than listed below	\
	Knife or firearm 4 Knife 2	
	Fiream	0
	Number of Victims Receiving Serious Physical Injury	
	Primary offense malicious, aggravated malicious wounding or use of firearm———————————————————————————————————	
	Number Score	\perp
	70 1 or more	
	2	
	◆ Prior Convictions/Adjudications Assign points to the 5 most recent and serious prior record events and total the points	7
	Primary offense malicious, aggravated malicious wounding or use of firearm Primary offense unlawful Injury or any assault and battery	
	Maximum Penalty (years) Points Maximum Penalty (years) Points	
	Less than 5	
	20 20 3	\checkmark
	30	
	40 or more6	\perp
	♦ Prior Felony Convictions/Adjudications Against Person —	7
	Primary offense malicious, aggravated malicious wounding or use of firearm———————————————————————————————————	
	Number of Counts Score 1 Do Not Score	\downarrow
	2 12	. 1
	3 or more	'

DWI-Victim Permanently Impaired (§ 18.2-51.4(A)) FY2007 – FY2011 46 Cases

Sentencing Guidelines	Recommendation Sentencing Gui		Actual Practice Sentencing G	
Section A Score	Recommendation	Percent	NO PRISON Percent	PRISON Percent
Up to 5	NO PRISON	30.4% 	50.0%	50.0 %
6 or More	PRISON	69.6%	20.0% ——	80.0%
			34.8% OVER	ALL 65.2%

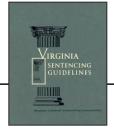
DWI-Victim Permanently Impaired (§ 18.2-51.4(A)) FY2007 – FY2011

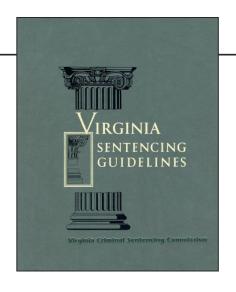
Offenders Sentenced to Incarceration of More than 6 Months 32 Cases



Proposed Recommendation 3

Revise the Assault Guidelines to add DWI-Victim Permanently Impaired (§ 18.2-51.4(A)) as proposed





Proposed Recommendation 4:

Add Driving on Suspended License after a DWI – 3rd Offense within 10 Years (§ 18.2-272(A)) to the Felony Traffic Guidelines

Driving on Suspended License after a $DWI - 3^{rd}$ Offense within 10 Years (§ 18.2-272(A))

Any person who drives or operates any motor vehicle, engine or train in the Commonwealth during the time for which he was deprived of the right to do so (i) upon conviction of a violation of § 18.2-268.3 or of an offense set forth in subsection E of § 18.2-270, (ii) by § 18.2-271 or 46.2-391.2, (iii) after his license has been revoked pursuant to § 46.2-389 or 46.2-391, or (iv) in violation of the terms of a restricted license issued pursuant to subsection E of § 18.2-271.1, is guilty of a Class 1 misdemeanor except as otherwise provided in § 46.2-391, and is subject to administrative revocation of his driver's license pursuant to §§ 46.2-389 and 46.2-391. Any person convicted of three violations of this section committed within a 10-year period is guilty of a Class 6 felony.



(Effective July 1, 2006)

Driving on Suspended License after a DWI – 3rd Offense within 10 Years (§ 18.2-272(A))

Currently, convictions under § 18.2-272(A) involving Driving on Suspended License after a DWI – 3rd
Offense within 10 Years are not covered by the sentencing guidelines



Driving on Suspended License after a DWI – 3rd Offense within 10 Years (§ 18.2-272(A)) FY2007 – FY2011 55 Cases

Disposition	Percent	Median Sentence
No Incarceration	27.3%	NA
Incarceration Up to 6 Months	41.8%	3.0 Months
Incarceration More than 6 Months	30.9%	1.0 Years

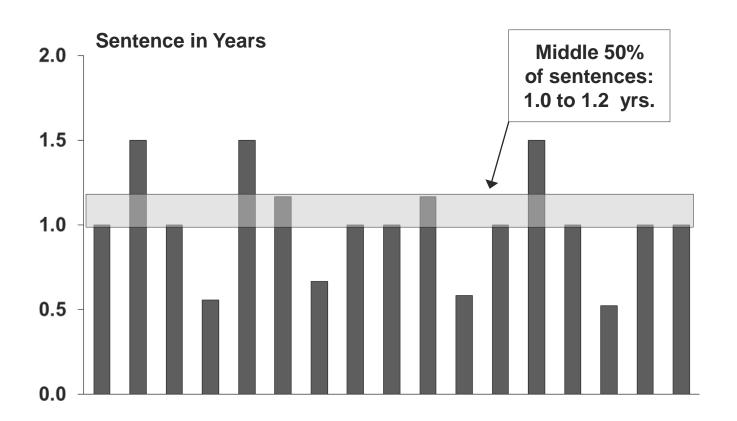
Note: Data reflect cases in which this offense was the primary

(or most serious) offense at sentencing

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

Driving on Suspended License after a DWI – 3rd Offense within 10 Years (§ 18.2-272(A)) FY2007 – FY2011

Offenders Sentenced to Incarceration of More than 6 Months 17 Cases



Traffic/Felony → Section A Offender Name: _ Primary Offense -A. DWI - Third conviction within 5 years (1 count) B. DWI - Third conviction within 10 years (1 count) . DWI - Fourth or subsequent conviction within 10 years (1 count)... Habitual Offender; endangerment, second or subsequent, or DWI and declared **Proposed** habitual offender for DWI, involuntary manslaughter (1 count)... Drive on revoked license after DWI, involuntary manslaughter, or DWI victim permanently impaired (maiming) - endangerment (1 count) ... Drive on revoked license after DWI, involuntary manslaughter or DWI victim permanently impaired (maiming) and DWI etc. violation (1 count) G. Drive on revoked license after DWI, involuntary manslaughter or DWI victim permanently impaired (maiming) - second or subsequent (1 count). Score H. Hit and run, driver fails to stop and aid victim or hit and run, property damage \$1,000 or more 2 counts Disregard police command to stop, endangerment (1 count). J. Driving on Suspended License after DWI – 3rd Offense within 10 Years Additional Offenses Total the maximum penalties for additional offenses, including counts — **Prior Incarceration/Commitments Primary offense OTHER THAN Primary offense** Driving on Susp. License after DWI - 3rd Offense Driving on Susp. License after DWI - 3rd Offense **Points** If YES, add 4 Number: 1 1 2 or more 4 **Legally Restrained at Time of Offense Primary offense OTHER THAN Primary offense** Driving on Susp. License after DWI - 3rd Offense Driving on Susp. License after DWI – 3rd Offense **Points** If YES, add 4 None Other than post-incarceration supervision ... 2 Post-incarceration supervision 5 Total Score

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

Traffic/Felony ⇒ Section B Offender Name: A. DWI - Third conviction within 5 years (1 count)....... **Proposed** B. DWI - Third conviction within 10 years (1 count)...... C. Hit and run, driver fails to stop and aid victim (1 count)........ Score Hit and run, property damage \$1,000 or more (1 count)....... E. Disregard police command to stop, endangerment (1 count)...... F. Driving on Suspended License after DWI – 3rd Offense within 10 Years 40 or more Additional Offenses Total the maximum penalties for additional offenses, including counts — 40 or more Victim Injury —— Threatened, emotional, or physical Serious physical SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS DRIVING ON SUSPENDED LICENSE AFTER DWI - 3RD OFFENSE WITHIN 10 YEARS (§ 18.2-272(A)) **Prior Incarceration/Commitments** If YES, add 2 Total Score See Traffic Section B Recommendation Table to convert score to guidelines sentence.

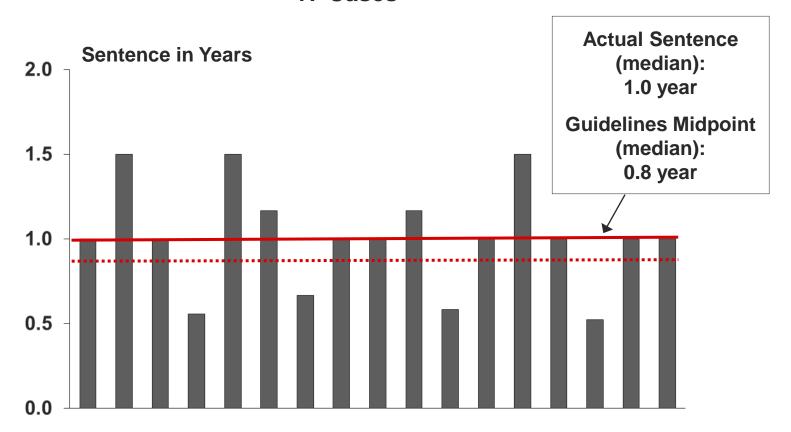
DWI - Third co DWI - Fourth or Habitual offend habitual offend Drive on revok permanently in Drive on revok	onviction within 5 years (1 count)	r DWI and declared		20	Other	
DWI - Third co DWI - Third co DWI - Fourth o Habitual offend Drive on revok permanently in	onviction within 5 years (1 count)	r DWI and declared	20 20 40 48 48 48 48 48 40 48	20	5 10 12 17	
DWI - Third co DWI - Fourth or Habitual offend habitual offend Drive on revok permanently in Drive on revok	onviction within 10 years (1 count)	r DWI and declared			5101217	
DWI - Fourth or Habitual offend habitual offend Drive on revok permanently in Drive on revok	or subsequent conviction within 10 years 1 count 2 counts 3 counts der: endangerment, second or subsequent, or der for DWI, involuntary manslaughter 1 count 2 counts 3 counts ked license after DWI, involuntary manslaughte mpaired (maiming) - endangerment 1 count 2 counts 3 counts ked license after DWI, involuntary manslaughte paired (counts) 3 counts 4 counts 5 counts 6 counts 7 counts 7 counts 7 counts 8 counts	r DWI and declared	40	20	10 12 17 10 12 17	
habitual offend Drive on revok permanently in Drive on revok	2 counts 3 counts der: endangerment, second or subsequent, or der for DWI, involuntary manslaughter 1 count 2 counts 3 counts ked license after DWI, involuntary manslaughte mpaired (maiming) - endangerment 1 count 2 counts 3 counts ked license after DWI, involuntary manslaughte	r DWI and declared	48	24 20 24 34	12 17 10 12 17	
habitual offend Drive on revok permanently in Drive on revok	3 counts der: endangerment, second or subsequent, or der for DWI, involuntary manslaughter 1 count 2 counts 3 counts wed license after DWI, involuntary manslaughte mpaired (maiming) - endangerment 1 count 2 counts 3 counts wed license after DWI, involuntary manslaughte mpaired (maiming) - endangerment 1 count 2 counts 3 counts wed license after DWI, involuntary manslaughte wed license after DWI, involuntary manslaughte	r DWI and declared	68	34 20 24 34	17 10 12 17	
habitual offend Drive on revok permanently in Drive on revok	der: endangerment, second or subsequent, or der for DWI, involuntary manslaughter 1 count 2 counts 3 counts ked license after DWI, involuntary manslaughte mpaired (maiming) - endangerment 1 count 2 counts 3 counts 4 counts 5 counts 6 dicense after DWI, involuntary manslaughte mpaired (maiming) - endangerment 1 count 2 counts 3 counts 6 dicense after DWI, involuntary manslaughte manslaugh	r DWI and declared	40 48 68 40 40	20 24 34	10 12 17	
Drive on revok permanently in Drive on revok	counts count count counts counts counts counts counts counts	er, or DWI victim	48 68 40 48	24 34	12 17	
permanently in Drive on revok	2 counts 3 counts	er, or DWI victim	48 68 40 48	24 34	12 17	
permanently in Drive on revok	ked license after DWI, involuntary manslaughte mpaired (maiming) - endangerment 1 count 2 counts 3 counts ked license after DWI, involuntary manslaughte	er, or DWI victim	40	20		
permanently in Drive on revok	mpaired (maiming) - endangerment 1 count 2 counts 3 counts ked license after DWI, involuntary manslaughte		48	20	10	
. Drive on revok	1 count		48	20	10	
Drive on revok	3 countsked license after DWI, involuntary manslaughte		48		10	
Drive on revok permanently in	ked license after DWI, involuntary manslaughte		6.8	24	12	
permanently in		er, or DWI victim	00	54	17	
	mpaired (maiming) and DWI etc. violation		4.0		4.5	
	1 count		40 48	20 24	10 12	
	3 counts					
. Drive on revok permanently in	ked license after DWI, involuntary manslaughte					
pointailontly III	1 count		40	20	10	Score
	2 counts		48	24	12	30016
. Hit and run, dr	river fails to stop and aid victim or hit and run	n, property damage				▼_,
\$1,000 or more	re (1 count)	· · · · · · · · · · · · · · · · · · ·				0
. Disregard police	ce command to stop, endangerment (1 count	i)	40	20	10	\Box
	ions for Current Event Habitual offender or Drive on a revoked licer	nse with DWI as addition	nal offense		11	*
	DWI third offense, Hit and run or Disregard of					0
/ictim injury					2	•
						0 0
	Serious physical				5	0 0
Prior Convict	tions/Adjudications Assign points to t	the 5 most recent and seri	ious prior recon	d events and tot	al the noints	
•						0 0
(years)	20, 30, 40 of more				1	
Prior Felony	Convictions/Adjudications Agai	inst Person —				
	1				4	•
Number						0 0
Number of Counts:						
	2	2 5 or more				0 0
of Counts:	3	2 5 or more 3				
of Counts:	2	2 5 or more 3 the Same VCC P	refix as Pı	rimary Offe	ense —	
of Counts: Prior Felony Number	2 3 Convictions/Adjudications with	2 5 or more 3 the Same VCC P	refix as Pi	rimary Offe	ense —	—
of Counts: Prior Felony Number of Counts:	2	the Same VCC P	refix as Pi	rimary Offe	ense —	0
of Counts: Prior Felony Number of Counts:	2	the Same VCC P	refix as Pi	rimary Offe	ense —	—
of Counts: Prior Felony Number of Counts: Legally Resi	Convictions/Adjudications with 2 3 3 trained at Time of Offense	2 5 or more	refix as Pi	rimary Offe	ense —	—
of Counts: Prior Felony Number of Counts: Legally Resi	2	the Same VCC P	refix as Pi	rimary Offe	ense —	0
of Counts: Prior Felony Number of Counts: Legally Resi	Convictions/Adjudications with 1	2 5 or more	refix as Pi	rimary Offe	ense —	—
	Hit and run, d \$1,000 or more Disregard polic Cense afrom aximum Penalty: (years) OWI Convict Primary Offense: Victim Injury Prior Convict Assimum Penalty: (years)	permanently impaired (maiming) - second or subsequent 1 count 2 counts 3 counts Hit and run, driver fails to stop and aid victim or hit and run \$1,000 or more (1 count) Disregard police command to stop, endangerment (1 count) Cense after DWI — 3rd Offense w County —	permanently impaired (maining) - second or subsequent 1 count 2 counts 3 counts Hit and run, driver fails to stop and aid victim or hit and run, property damage \$1,000 or more (1 count) Disregard police command to stop, endangerment (1 count) Cense after DWI — 3rd Offense within 10 Yea Auditional Offense Assign points to each additional oriense (including count aximum Penalty: Less than 5 (years) 5, 10 20 30 40 or more DWI Convictions for Current Event Primary Offense: Habitual offender or Drive on a revoked license with DWI as additional offense DWI fourth offense, Hit and run or Disregard command to stop (with DWI forth offense, Hit and run or Disregard command to stop (with DWI counties) Frior Convictions/Adjudications Assign points to the 5 most recent and sendation mainly: Less than 20 (years) 20, 30, 40 or more	permanently impaired (maining) - second or subsequent 1 count 2 counts 3 counts 68 Hit and run, driver fails to stop and aid victim or hit and run, property damage \$1,000 or more (1 count) Disregard police command to stop, endangerment (1 count) Disregard police command to stop, endangerment (1 count) Cense after DWI — 3 rd Offense within 10 Years 32 County Total Offense Within 10 Years 33 County Total Offense Within 10 Years 34 County Total Offense Within 10 Years 35 County Total Offense Within 10 Years 36 County Total Offense Within 10 Years 36 County Total Offense Within 10 Years 36 County Total Offense Within 10 Years 37 County Total Offense Within 10 Years 36 County Total Offense Within 10 Years 37 County Total Offense Within 10 Years 38 County Total Offense Within 10 Years 30 County T	permanently impaired (maining) - second or subsequent 1 count 1 count 40 20 2 counts 48 24 3 counts 68 34 Hit and run, driver fails to stop and aid victim or hit and run, property damage \$1,000 or more (1 count) Disregard police command to stop, endangerment (1 count) Cense after DWI — 3rd Offense within 10 Years 32 16 Counts Counts 32 16 Counts Counts Cou	Permanently impaired (maining) - second or subsequent 1 count

Driving on Suspended License after a DWI – 3rd Offense within 10 Years (§ 18.2-272(A)) FY2007 – FY2011 55 Cases

Sentencing Guidelines	Recommendation Sentencing Gui		Actual Practice Sentencing G	
Section A Score	Recommendation	Percent	NO PRISON Percent	PRISON Percent
Up to 8	NO PRISON	67.3%	73.0% ——	— 27.0%
9 or More	PRISON	32.7%	61.1%	38.9%
			69.1% OVER	ALL (30.9%)

Driving on Suspended License after a DWI – 3rd Offense within 10 Years (§ 18.2-272(A)) FY2007 – FY2011

Offenders Sentenced to Incarceration of More than 6 Months 17 Cases



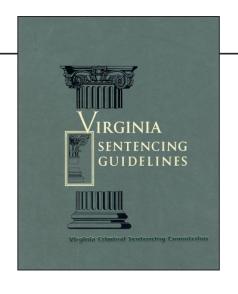
Proposed Recommendation 4

Revise the Felony Traffic Guidelines to add
Driving on Suspended License after a DWI –

3rd Offense within 10 Years (§ 18.2-272(A))

as proposed





Proposed Recommendation 5:

Revise the Weapon/Firearm Guidelines to increase the likelihood that offenders will receive a recommendation for more than 6 months of incarceration whenever the weapons charge is accompanied by an offense that requires a mandatory minimum sentence of at least 6 months

	rimary Offe	ense ———————————————————————————————————	1
A.	Maliciously di	fischarge firearm, etc., in/at occupied building (1 count)	2
B.	Discharge firea	arm from vehicle (1 count)	1
C.	Possess firearr	rm on school property (1 count)	1
D.	Possession of	of sawed-off shotgun (1 count)	2
E.	False stateme	ent on consent form (1 count)	1 Score
F.	Possession of	of firearm, other weapon, explosives or ammunition by convicted felon	Score
		1 count	3
		2 counts	4 0
A	dditional O Years:	Dffenses Total the maximum penalties for additional offenses, including counts Less than 1 1 - 7 8 - 18 18 19 - 28 29 - 38 39 or more 39 or more	
	ctim Injury	Threatened, emotional or physical	1 0
Vi		in seconds, smearing of physical	2

◆ Conviction in Current Event Requiring Mandatory Minimum Term (6 mos. or more)

If YES, add 6

	None
	Other than post-incarceration supervision 2 Post-incarceration supervision (supervision after incarceration) 5
	SCORE THE FOLLOWING ONLY IF PRIMARY OFFENSE AT CONVICTION IS FALSE STATEMENT ON A FIREARM CONSENT FORM (§ 18.2-308.2:2(K))
Basis o	of False Statement on Consent Form (listed below) ————————————————————————————————————
	Prior felony conviction/juvenile adjudication for crime against person
	Other prior felony conviction/juvenile adjudication within 4 years of current offense Prior domestic assault misdemeanor conviction

Weapon/Fireami/Section AEff. 7-1-10

Primary Offer	ise —			
A. Possess Sch	edule I or II drug or First offender violation			
	1 count			
	2 counts			
B. Sell, Distribu	3 countste, Possession with Intent, etc., Schedule		8	
D. Gell, Distribu	1 count			
	2 counts			
	3 counts			
	4 counts			
	nedule I or II drug to minor (1 count) tion - Sell, Distribute, Possession with Inte		11	Scor
D. Accommoda	1 count		5	
	2 counts			
E. Sell, etc. imi	tation Schedule I or II drug (1 count)		4	
Primary Offe Years:	ense Additional Counts <u>Total</u> the 5 - 10	1 31 - 42 2 43 or more	primary not scored above45	0
Additional O	fenses Total the maximum penalties for a	additional offenses, including counts		
Years:	Less than 4		3	•
rears.	4 - 10		4	
	11 - 21		5	0
	11-21			
Vnife or Eire			IFVEE and 2	
	arm in Possession at Time of Of	fense —	If YES, add 2	
Conviction in	arm in Possession at Time of Of	fense atory Minimum Term (6 m	os or more) if YES, add 9	0
Conviction in	arm in Possession at Time of Of	fense atory Minimum Term (6 m	os or more) if YES, add 9	
Conviction in	arm in Possession at Time of Of	fense atory Minimum Term (6 m vent	os or more) If YES, add 9	0
Conviction in	arm in Possession at Time of Of Current Event Requiring Mand rearm Conviction for Current Events tions/Adjudications Total the maxim	atory Minimum Term (6 m	os or more) If YES, add 9 — If YES, add 7 — Id serious prior record events —	0
Conviction in Mandatory Fi Prior Convic	arm in Possession at Time of Of Current Event Requiring Mand rearm Conviction for Current Ev	atory Minimum Term (6 m	os or more) If YES, add 9 — If YES, add 7 — If Serious prior record events —	0
Conviction in Mandatory Fi Prior Convic	Current Event Requiring Mand rearm Conviction for Current Events tions/Adjudications Total the maxim Less than 7	atory Minimum Term (6 m	os or more) If YES, add 9 — If YES, add 7 — Id serious prior record events —	0
Conviction in Mandatory Fi Prior Convic	Current Event Requiring Mand rearm Conviction for Current Eventions/Adjudications Total the maxim Less than 7	atory Minimum Term (6 m	os or more) If YES, add 9 — If YES, add 7 — Id serious prior record events —	0
Conviction in Mandatory Fi Prior Convict Years:	Current Event Requiring Mand rearm Conviction for Current Event Requir	atory Minimum Term (6 m	os or more) If YES, add 9 — If YES, add 7 — If YES, add	0
Conviction in Mandatory Fi Prior Convict Years:	Current Event Requiring Mand rearm Conviction for Current Events tions/Adjudications Total the maxim Less than 7	atory Minimum Term (6 m	os or more) If YES, add 9 — If YES, add 7 — Id serious prior record events —	0
Conviction in Mandatory Fi Prior Convict Years:	Current Event Requiring Mand rearm Conviction for Current Event Requir	atory Minimum Term (6 m	os or more) If YES, add 9 — If YES, add 7 — If YES, add	0
Conviction in Mandatory Fi Prior Convict Years: Prior Incarce	Current Event Requiring Mand rearm Conviction for Current Event Requiring Mand rearm Conviction for Current Event Research Convictions Total the maxim Less than 7 7 - 26 27 - 48 49 or more rations/Commitments Crug Convictions/Adjudications	atory Minimum Term (6 m	os or more) If YES, add 9— If YES, add 7— If YES, add 7— If YES, add 2— If YES, add 2—	0
Conviction in Mandatory Fi Prior Convict Years:	Current Event Requiring Mand rearm Conviction for Current Event Requiring Mand rearm Conviction for Current Event Research Convictions Total the maxim Less than 7	atory Minimum Term (6 m	os or more) If YES, add 9 — If YES, add 7 — If YES, add 7 — If Serious prior record events — 0 —————————————————————————————————	0
Conviction in Mandatory Fi Prior Convict Years: Prior Incarcet Number of	Current Event Requiring Mand rearm Conviction for Current Event Requiring Mand rearm Conviction for Current Event Research Convictions Total the maxim Less than 7 7 - 26 27 - 48 49 or more rations/Commitments Crug Convictions/Adjudications	atory Minimum Term (6 m	os or more) If YES, add 9 — If YES, add 7 — If YES, add 7 — If YES, add 2 — If YES, add 2 — If YES, add 2 —	0 0
Conviction in Mandatory Fi Prior Convict Years: Prior Incarcet Number of	current Event Requiring Mand rearm Conviction for Current Event Requiring Mand rearm Conviction for Current Event Research Total the maxim Less than 7 7 - 26 27 - 48 49 or more rations/Commitments Drug Convictions/Adjudications 1 - 2 3 - 4	fenseatory Minimum Term (6 m // ent um penalties for the 5 most recent an	os or more) If YES, add 9 — ————————————————————————————————	0
Conviction in Mandatory Fi Prior Convict Years: Prior Incarcet Prior Felony Number of Counts:	Current Event Requiring Mand rearm Conviction for Current Event Resident Requiring Mand rearm Conviction for Current Event Resident Reside	fenseatory Minimum Term (6 m // ent um penalties for the 5 most recent an	os or more) If YES, add 9 — ————————————————————————————————	0 0
Conviction in Mandatory Fi Prior Convict Years: Prior Incarcet Prior Felony Number of Counts:	Current Event Requiring Mand rearm Conviction for Current Event Resident Requiring Mand rearm Conviction for Current Event Resident Reside	fenseatory Minimum Term (6 m // ent um penalties for the 5 most recent an	os or more) If YES, add 9 — ————————————————————————————————	0 0
Conviction in Mandatory Fi Prior Convict Years: Prior Incarcet Prior Felony I Number of Counts: Prior Juvenile	Current Event Requiring Mand rearm Conviction for Current Event Resident Requiring Mand rearm Conviction for Current Event Resident Reside	fenseatory Minimum Term (6 m // ent um penalties for the 5 most recent an	os or more) If YES, add 9 — ————————————————————————————————	0 0
Conviction in Mandatory Fi Prior Convict Years: Prior Incarcet Prior Felony I Number of Counts: Prior Juvenile	Current Event Requiring Mand rearm Conviction for Current Event Requiring Mand rearm Conviction for Current Event Research Total the maxim Less than 7	atory Minimum Term (6 m	os or more) If YES, add 9 — — If YES, add 7 — If YES, add 7 — If YES, add 2 — — If YES, add 2 — — If YES, add 1 — — If YES, add 1 —	0 0
Conviction in Mandatory Fi Prior Convict Years: Prior Incarcet Prior Felony I Number of Counts: Prior Juvenile	Current Event Requiring Mand rearm Conviction for Current Event Requiring Mand rearm Conviction for Current Event Requiring Mand rearm Convictions Total the maxim Less than 7 7 - 26 27 - 48 49 or more rations/Commitments Drug Convictions/Adjudications 1 - 2 3 - 4 5 6 or more Record ained at Time of Offense None Other than parole/post-release, supe	atory Minimum Term (6 m vent um penalties for the 5 most recent an	os or more) if YES, add 9 — ————————————————————————————————	
Conviction in Mandatory Fi Prior Convict Years: Prior Incarcet Prior Felony I Number of Counts: Prior Juvenile	Current Event Requiring Mand rearm Conviction for Current Event Requiring Mand rearm Conviction for Current Event Research Total the maxim Less than 7	atory Minimum Term (6 m vent um penalties for the 5 most recent an	os or more) if YES, add 9 — ————————————————————————————————	0 0

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

Proposed Recommendation 5

Revise the Weapon/Firearm Guidelines to increase the likelihood that offenders will receive a recommendation for more than 6 months of incarceration whenever the weapons charge is accompanied by an offense that requires a mandatory minimum sentence of at least 6 months

