Virginia Criminal Sentencing Commission

Annual Report

2003

Virginia Criminal Sentencing Commission

2003 Annual Report

December 1, 2003

Virginia Criminal Sentencing Commission Members

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

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Chairman, Norfolk

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Supreme Court of Virginia
Virginia Criminal Sentencing Commission

December 2003

To: The Honorable Leroy Rountree Hassell, Sr., Chief Justice of Virginia
The Honorable Mark R. Warner, Governor of Virginia
The Honorable Members of the General Assembly of Virginia
The Citizens of Virginia

Section 17.1-803 of the *Code of Virginia* requires the Virginia Criminal Sentencing Commission to report annually upon its work and recommendations. Pursuant to this statutory obligation, we respectfully submit for your review the *2003 Annual Report* of the Criminal Sentencing Commission.

This report details the work of the Commission over the past year and outlines the ambitious schedule of activities that lies ahead. The report provides a comprehensive examination of judicial compliance with the felony sentencing guidelines for fiscal year 2003. The Commission's recommendations to the 2004 session of the Virginia General Assembly are also contained in this report.

January 1, 2004, marks the ninth anniversary of the Commission's implementation of Virginia's no-parole, truth-in-sentencing system. At this milestone, the Commission's report takes a close look at the performance of the new sentencing system in meeting specific objectives set forth by its designers.

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

Sincerely,

Robert W. Stewart

Robert W. Stewart
Chairman

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INTRODUCTION

Overview

Established in 1995, the Virginia Criminal Sentencing Commission is required by § 17.1-803 of the Code of Virginia to report annually to the General Assembly, the Governor and the Chief Justice of the Supreme Court of Virginia. To fulfill its statutory obligation, the Commission respectfully submits this report, the Commission's ninth. As in previous years, the report provides detailed analysis of judicial compliance with the discretionary sentencing guidelines. Additionally, the report documents the wide-ranging work of the Commission during the last year. As mandated, the report includes the Commission's recommendations to the 2004 Virginia General Assembly.

The report is organized into seven chapters. The remainder of the Introduction chapter provides a general profile of the Commission and an overview of its various activities and projects during 2003. The Guidelines Compliance chapter presents the results of a comprehensive analysis of compliance with the sentencing guidelines during fiscal year (FY) 2003, as well as other related sentencing trend data. Subsequent chapters detail three of the Commission's most recent analytic projects. A chapter devoted to the Technical Violator Study describes the 2003 legislative directive and the Commission's efforts to examine this population of offenders. In response to another legislative request, the chapter entitled Review of Nonviolent Offender Risk Assessment discusses Virginia's first-year experience with this innovative sentencing tool (developed by the Commission and implemented statewide in 2002) and the feasibility of identifying additional low-risk offenders to recommend for alternative punishment programs. In the chapter dedicated to the Comprehensive Review of Sentencing Guidelines, the Commission describes in detail the work completed in the second year of a multi-year review of the current guidelines for all covered offenses. The Commission's continuing look at the effects of the sweeping reforms that took effect in 1995 are discussed in the chapter on the Impact of Truth-in-Sentencing. The report's final chapter presents the Commission's recommendations for 2004.

Commission Profile

The Virginia Criminal Sentencing Commission is comprised of 17 members as authorized in Code of Virginia § 17.1-802. The Chairman of the Commission is appointed by the Chief Justice of the Supreme Court of Virginia, must not be an active member of the judiciary and must be confirmed by the General Assembly. The Chief Justice also appoints six judges or justices to serve on the Commission. Five members of the Commission are appointed by the General Assembly: the Speaker of the House of Delegates designates three members, and the Senate Committee on Privileges and Elections selects two members. The Governor appoints four members, at least one of whom must be a victim of crime or a representative of a crime victim's organization. The final member is Virginia's Attorney General, who serves by virtue of his office.

The Virginia Criminal Sentencing Commission is an agency of the Supreme Court of Virginia. The Commission's offices and staff are located on the Fifth Floor of the Supreme Court Building at 100 North Ninth Street in downtown Richmond.

Activities of the Commission

The full membership of the Commission met four times during 2003. These meetings, held in the Supreme Court of Virginia, were held on March 17, June 23, September 8 and November 10. In addition, the Commission's Research Subcommittee met two times, on June 16 and November 3. Minutes for each of these meetings are available on the Commission's website (www.vcsc.state.va.us). The following discussion presents an overview of the Commission's activities and projects during the year. For three of the Commission's recent projects, greater detail may be found in later chapters within this report.

Monitoring and Oversight

The Commission's staff reviews the guidelines worksheets as they are received. Commission staff performs this check to ensure that the guidelines forms are being completed accurately and properly. In the last fiscal year, staff noted that in approximately one-quarter of the cases with sentences outside the guidelines recommended range, the judge did not include a written explanation of the departure, as is required by §19.2-298.01(B) of the *Code*. As many new judges have taken the bench in recent years, some may not be aware of the statutory requirement. The opinions of the judiciary, as expressed in the reasons they write for departing from guidelines, are very important in directing the Commission to those areas of most concern to judges. Upon reviewing guideline departure information in 2002, the

Commission elected to send a letter to all circuit court judges discussing the provisions of this statute and the importance of judicial departure reasons in the Commission's work. The Commission reviewed the issue of guideline departures again in 2003. As a result of these recent discussions, the Commission endorsed a plan to send a second letter to circuit court judges and to have individual Commission members and the Commission's Executive Director participate in judges' regional meetings, held periodically during the year. The Commission's goal is to bring about full awareness regarding the statutory requirement and to share with judges the Commission's interest in receiving departure reasons, since they are an important expression of judicial opinion. Few other errors or omissions have been detected during the past year.

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

Training and Education

The Commission continuously offers training and educational opportunities in an effort to promote the accurate completion of sentencing guidelines. Training seminars are designed to appeal to the needs of attorneys for the Commonwealth and probation officers, the two groups authorized by statute to complete the official guidelines for the court. The seminars also provide defense attorneys with a knowledge base to challenge the accuracy of guidelines submitted to the court. Having all sides equally trained in the completion of guidelines worksheets is essential to a system of checks and balances that ensures the accuracy of sentencing guidelines.

In 2003, the Commission provided sentencing guidelines assistance in a variety of forms: training and education seminars, assistance via the hot line phone system, and publications and training materials. The Commission offered 19 training seminars in 10 different locations across the Commonwealth, returning to many of these locations multiple times throughout the year. This year the Commission staff offered an introduction to sentencing guidelines for new users. The seminar included a significant component on the two risk assessment instrument: nonviolent offender risk assessment and sex offender risk assessment.

Commission staff traveled throughout Virginia, in an attempt to offer training that was convenient to most of the guideline users. Staff continue to seek out facilities that are designed for training, forgoing the typical courtroom environment for the Commission's

training programs. The sites for these seminars included a combination of colleges and universities, higher education centers, local facilities, and criminal justice academies. Many sites, such as the Virginia Beach Law Enforcement Training Academy, were selected in an effort to provide comfortable and convenient locations at little or no cost to the Commission.

The Commission will continue to place a priority on providing sentencing guidelines training on request to any group of criminal justice professionals. The Commission regularly conducts sentencing guidelines training at the Department of Corrections' Training Academy as part of the curriculum for new probation officers. The Commission is also willing to provide an education program on guidelines and the no-parole sentencing system to any interested group or organization. If individuals are interested in training, they can contact the Commission and place their names on a waiting list. Once there is enough interest, a seminar is developed and presented in a locality convenient to the majority of individuals on the list.

In addition to providing training and education programs, the Commission maintains a website and a "hot line" phone system (804.225.4398). The website offers users a variety of helpful tools. For example, a user can learn about upcoming training sessions, access Commission reports, look up Virginia Crime Codes (VCCs) and utilize automated versions of the sentencing guidelines forms. The guidelines forms available on-line allow a user to print blank forms to his or her local printer or to fill in the form's blanks on screen so that the completed form can be printed locally. The "hot line" phone is staffed from 7:45 a.m. to 5:15 p.m., Monday through Friday, to respond quickly to any questions or concerns regarding the sentencing guidelines. The hot line continues to be an important resource for guidelines users around the Commonwealth. As in previous years, the staff of the Commission has responded to thousands of calls through the hot line service during 2003.

In addition to the on-line version, the VCC reference guide also was published as a printed document. As a stand-alone document, it serves as a useful reference tool for preparing all types of forms for the courts and other criminal justice purposes. Any changes to the *Code of Virginia* resulting from a legislative session or the respective veto session can be easily incorporated into the VCC reference guide, both on the web and in printed form.

Probation/Post-Release Violator Study

Since 1991, Virginia's circuit judges have been provided with historically-based sentencing guidelines grounded in an analysis of criminal sanctioning practices. Today, sentencing guidelines apply to nearly all felony offenses committed in the Commonwealth. These guidelines are an important tool available to judges to assist them in formulating sentences for convicted felons. However, no such tool exists for judges when faced with re-imposing suspended time for offenders returned to court for violating conditions of community supervision. Since 1995, when sentencing reforms abolished parole, circuit court judges have dealt with a wider array of supervision violation cases, including violations of supervision following release from incarceration that formerly were handled by Virginia's Parole Board as parole violations. Despite the larger role they now play in overseeing supervision of offenders in the community, circuit court judges have had to perform these duties without any sentencing tools available to them.

Data from the Commission's Community Corrections Revocation Data System reveal an increasing trend in the number of technical violators who are incarcerated in prison following revocation of community supervision. From 1999 to 2002, technical violators serving a prison term following revocation increased nearly 56%, while the overall state-responsible (prison) population increased by 12% during the same period. The increasing number of technical violators is contributing to the increasing prison population in the Commonwealth. Virginia is not alone; other states, such as California, are experiencing significant growth in technical violators returned to prison.

In 2003, the General Assembly directed the Commission to develop, with due regard for public safety, discretionary sentencing guidelines for application in cases involving felony offenders who are determined by the court to be in technical violation of probation or post-release supervision (Chapter 1042 of the 2003 Acts of Assembly). In determining the guidelines, the Commission is to examine historical judicial sanctioning patterns in revocation hearings when offenders have been found to be in technical violation of their supervisory conditions. Additionally, the Commission must determine recidivism rates and patterns for these offenders and evaluate the feasibility of integrating a risk assessment instrument into the guidelines for technical violators. The Commission must report its findings to the 2004 Session of the General Assembly.

In response to the legislative directive, the Commission designed and implemented a research plan to examine historical sanctioning practices in revocation cases related to technical violations and to investigate recidivism among this population of offenders. The Commission embarked upon an extensive data collection effort in order to learn more about Virginia's technical violators. This effort, which included reviewing offenders' probation files and criminal history reports (rap sheets), provided rich detail about technical violators, their behavior while under supervision and specific reasons

why probation officers brought the offenders back to court for revocation hearings. This supplemental information proved invaluable to the Commission for the study of this offender population.

The first phase, developing sentencing guidelines for technical violators, is now complete. The results of the analysis are provided in considerable detail in the chapter of this report dedicated to the Technical Violator Study. The Commission's recommendations for implementing sentencing guidelines for technical violators can be found in the Recommendations chapter. The second phase of this study, analyzing recidivism and evaluating the feasibility of developing a risk assessment tool for technical violators, is underway and is scheduled for completion in 2004.

Review of Title 18.2 of the *Code of Virginia*

During its 2002 session, the General Assembly adopted House Joint Resolution (HJR) 687, directing the Virginia State Crime Commission to study the organization of and inconsistencies in the criminal code contained in Title 18.2 of the *Code of Virginia*, including the level and extent of penalties. The criminal code was last examined through a recodification more than 25 years ago. In the nearly three decades since that recodification, thousands of pieces of legislation have been passed into law. New crimes have been defined and penalties have been modified that reflect new technologies, scientific advances, and changing public priorities. A review of the criminal penalties in the current *Code* reveals inconsistencies in the weight of penalties when viewed as an overall scheme. In addition, many criminal penalties are defined in other titles of the *Code*, while many procedural statutes contained in Title 18.2 would be more appropriately placed elsewhere in the *Code*.

In response to the legislative mandate, the Virginia State Crime Commission initiated a thorough examination of the organizational structure of Title 18.2 and punishment schema of the criminal *Code*. During 2002 and 2003, the Sentencing Commission provided technical assistance for this multi-faceted project by furnishing a wide array of conviction and sentencing data. In addition, the Sentencing Commission's Executive Director served as an appointee on the Crime Commission's Title 18.2 Subcommittee. The Crime Commission will report the findings of this enormous and complex review of the *Code*, as well as its recommendations, to the 2004 General Assembly.

Projecting Prison Bed Space Impact of Proposed Legislation

The *Code of Virginia*, in § 30-19.1:4, requires the Commission to prepare fiscal impact statements for any proposed legislation which might result in a net increase in periods of imprisonment in state correctional facilities. Such statements must include details as to any increase or decrease in adult offender populations and any necessary adjustments in guideline midpoint recommendations. Additionally, for any bill introduced on or after July 1, 2002, any impact statement required under § 30-19.1:4 must include an analysis of the impact on local and regional jails as well as state and local community corrections programs.

During the 2003 General Assembly session, the Commission prepared 235 separate impact analyses on proposed legislation. These proposals fell into five categories: 1) legislation to increase the felony penalty class of a specific crime; 2) legislation to add a new mandatory minimum penalty for a specific crime; 3) legislation to expand or clarify an existing crime; 4) legislation that would create a new criminal offense; and 5) legislation that increases the penalty class of a specific crime from a misdemeanor to a felony.

The Commission utilized its computer simulation-forecasting program to estimate the projected impact of these proposals on the prison system. In most instances, the projected impact and accompanying analysis of a bill was presented to the General Assembly within 48 hours after the Commission was notified of the proposed legislation. When requested, the Commission provided pertinent oral testimony to accompany the impact analysis.

Prison and Jail Population Forecasting

Since 1987, Virginia has projected the size of its future prison and jail populations through a process known as "consensus forecasting." This approach combines technical forecasting expertise with the valuable judgment and experience of professionals working in all areas of the criminal justice system.

While the Commission is not responsible for generating the prison or jail population forecast, it is included in the consensus forecasting process. During the past year, Commission staff members served on the technical committee that provided methodological and statistical review of the forecasting work. Also, the Commission's Executive Director served on the Policy Advisory Committee that oversees the development of the prison and jail forecasts.

Community Corrections Revocation Data System

Under § 17.1-803(7) of the *Code of Virginia*, it is the responsibility of the Commission to monitor sentencing practices in felony cases throughout the Commonwealth. While the Commonwealth maintains a wide array of sentencing information on felons at the time they are initially sentenced in circuit court, information on the re-imposition of suspended prison time for felons returned to court for violation of the conditions of community supervision was, until 1997, largely unavailable and its impact difficult to assess. Among other uses, information on cases involving re-imposition of suspended prison time is critically important to accurately forecast future correctional bed space needs.

With the sentencing reforms that abolished parole, circuit court judges now handle a wider array of supervision violation cases. Today, judges handle violations of post-release supervision terms and probation terms following release from incarceration, formerly dealt with by the Parole Board in the form of parole violations. Furthermore, the significant expansion of alternative sanction options means that judges are also dealing with offenders who violate the conditions of these new programs.

In 1997, the Commission teamed with the Department of Corrections (DOC) to implement a procedure for systematically gathering data on the reasons for and the outcome of community supervision violation proceedings in Virginia's circuit courts. With DOC's assistance, the Commission developed a simple one-page form to capture this information. Following the violation hearing, the completed form is submitted to the Commission.

The Commission believes that the re-imposition of suspended time is a vital facet in the punishment of offenders. The Commission's community corrections revocation data system serves as an important link in our knowledge of the sanctioning of offenders from initial sentencing through release from community supervision. Currently, the Commission is utilizing this data system for its Technical Violator Study, a project mandated by the 2003 General Assembly.

Application of Virginia Crime Codes in Criminal Justice Databases

In 2002, the General Assembly created § 19.2-390.01 to require criminal justice agencies across the Commonwealth to maintain certain criminal record information in a standardized manner. Because the Code of Virginia defines many distinct criminal acts within a single statute, the statute number is an inadequate method to identify the specific offense committed or its statutory seriousness. The inclusion of a narrative offense description usually does not provide enough additional information to match the crime to its specific statutory penalty. These offense descriptions are not standard-

ized across criminal justice data systems, or even within a single agency's data system, and often lack the elements of the crime needed to make critical distinctions between discrete offenses. This method of reporting and recording offense information has been repeatedly criticized by officials who must use criminal history reports and other criminal justice documents to make important decisions. The manner in which offense information is recorded on criminal justice databases has important implications for those who rely on such data to make both individual and system-wide decisions. Recording offense information in a uniform fashion would greatly improve the efficiency and the quality of criminal justice decision-making in Virginia. The Virginia Crime Code (VCC) system is designed for exactly this purpose. The VCC system is set of standardized offense codes that accurately identify each unique crime in the *Code of Virginia*. When entered into a database, the statutory reference can be generated, as well as a narrative offense description containing the critical elements of the offense. The VCC system was established in the mid-1980s and, since 1995, has been maintained and updated by the Commission.

Many criminal justice entities in Virginia already use the VCC references to record offense information. The Commission has always required VCC references on the sentencing guidelines forms. The Department of Corrections has utilized VCCs for its Pre/Post-Sentence Investigation (PSI) reporting since 1985. The Department of Juvenile Justice began using VCC references in the late 1990s. The Virginia Compensation Board, since 2000, has required sheriff's offices to use the VCCs in the automated reports they submit to request state reimbursement for prisoners housed in local and regional jails. However, not all criminal justice databases use the VCC system. Specifically, § 19.2-390.01 requires numerous criminal justice agencies to include VCC references when recording offense information. The statute requires that all charging documents issued by magistrates, and all criminal warrants, criminal indictments, informations and presentments, criminal petitions, misdemeanor summonses, and the dispositional documents from criminal trials must include the VCC references for the particular offense or offenses covered. In addition, all reports to the Central Criminal Records Exchange maintained by the Virginia State Police and to any other criminal offense or offender database maintained by the Supreme Court of Virginia, the Department of Corrections, the Department of Juvenile Justice, the Virginia Parole Board, and the Department of Criminal Justice Services must include the VCC references for the particular offense or offenses covered.

The legislation adopted by the General Assembly established a work group charged with identifying the necessary steps for accomplishing the requirements of this act. The work group, which included representation from the Commission, reported its conclusions to the full membership of the Crime Commission and to the 2003 General Assembly. The provisions of § 19.2-390.01 will become effective October 1, 2004. To promote a smooth transition to utilization of the VCC system statewide, the Commission will continue to provide assistance to all agencies affected by this legislative mandate.

GUIDELINES COMPLIANCE

Introduction

On January 1, 2003, Virginia's truth-in-sentencing system reached its eight-year anniversary. Effective for any felony committed on or after January 1, 1995, the practice of discretionary parole release from prison was abolished, and the existing system of awarding inmates sentence credits for good behavior was eliminated. Under Virginia's truth-in-sentencing laws, convicted felons must serve at least 85 percent of the pronounced sentence, and they may earn, at most, 15 percent earned sentence credit regardless of whether their sentence is served in a state facility or a local jail. The Commission was established to develop and administer guidelines in an effort to provide Virginia's judiciary with sentencing recommendations in felony cases under the new truth-in-sentencing laws. Under the current no-parole system, guidelines recommendations for nonviolent offenders with no prior record of violence are tied to the amount of time they served during a period prior to the abolition of parole. In contrast, offenders convicted of violent crimes and those with prior convictions for violent felonies are subject to guidelines recommendations up to six times longer than the historical time served in prison by similar offenders. In the nearly 185,000 felony cases sentenced under truth-in-sentencing laws, judges have agreed with guidelines recommendations in three out of every four cases.

The Commission's last annual report presented an analysis of cases sentenced during fiscal year (FY) 2002. This report will focus on cases sentenced from the most recent year of available data, FY2003 (July 1, 2002 through June 30, 2003). Compliance is examined in a variety of ways in this report, and variations in data over the years are highlighted throughout.

Case Characteristics

Overall, the number of cases received by the Commission increased from 22,598 in FY2002 to 23,596 in FY2003. Of the 23,596 sentencing guidelines worksheets received by the Commission during the last fiscal year, 21,719 were submitted on the current FY2003 guidelines forms and 1,877 were submitted on old guidelines forms. Several significant changes were made to the FY2003 guidelines worksheets including the addition of the new nonviolent offender risk assessment instrument. For the purpose of conducting a clear evaluation of sentencing guidelines in effect between July 1, 2002, and June 30, 2003, the following compliance analysis focuses only on those 21,719 cases submitted on current FY2003 guidelines forms.

During the fiscal year, five urban circuits have contributed more sentencing guidelines cases than any of the other judicial circuits in the Commonwealth. These circuits follow Virginia's "Golden Crescent" of the most populous areas of the state. Virginia Beach (Circuit 2), Norfolk (Circuit 4), Henrico County (Circuit 14), the Fredericksburg area (Circuit 15), and Fairfax (Circuit 19) each submitted more than 1,000 sentencing guidelines cases during FY2003. Collectively these circuits accounted for more than one-fifth of all sentencing guidelines cases received by the Commission during the time period (Figure 1).

There are three general methods by which Virginia's criminal cases are adjudicated: guilty pleas, bench trials, and jury trials. Felony cases in the Commonwealth's circuit courts overwhelmingly are resolved as the result of guilty pleas from defendants or plea agreements between defendants and the Commonwealth.

FIGURE 1

Number and Percentage of Cases Received by Circuit - FY 2003

Circuit	Number	Percent
1	793	3.7%
2	1,438	6.6
3	738	3.4
4	1,592	7.3
5	558	2.6
6	348	1.6
7	904	4.2
8	472	2.2
9	475	2.2
10	476	2.2
11	469	2.2
12	754	3.5
13	954	4.4
14	1,133	5.2
15	1,098	5.1
16	634	2.9
17	631	2.9
18	393	1.8
19	1,175	5.4
20	434	2.0
21	411	1.9
22	641	3.0
23	580	2.7
24	848	3.9
25	703	3.2
26	722	3.3
27	676	3.1
28	364	1.7
29	423	1.9
30	225	1.0
31	635	2.9
Total	21,719	

During the last fiscal year, more than four in every five guidelines cases (84%) were sentenced following guilty pleas (Figure 2). Adjudication by a judge in a bench trial accounted for 14 percent of all felony guidelines cases sentenced, while less than two percent of felony guidelines cases involved jury trials. For the past five fiscal years, the overall rate of jury trials has been approximately half of the jury trial rate that existed under the last year of the parole system. See *Juries and the Sentencing Guidelines* in this chapter for more information on jury trials.

Sentencing guidelines worksheets in effect in FY2003 covered 14 distinct offense groups. Worksheet offense groupings are based on the primary, or most serious, offense at conviction. Consistent with previous years, the Commission received more cases for Schedule I/II drug crimes in FY2003 than any of the other offense groups. Schedule I/II drug offenses represented, by far, the largest share (29%) of the cases sentenced in Virginia's circuit courts during the fiscal year (Figure 3). Nearly two-thirds of the Schedule I/II drug offenses were for one crime alone – possession of a Schedule I/II drug. This pattern, however, has persisted since the truth-in-sentencing guidelines were introduced in 1995. In contrast, only about three percent of guidelines involved offenses listed on the Drug/Other worksheet. Property offenses also represent a significant share of the cases submitted to the Commission in FY2003. Nearly 22 percent of the fiscal year's guidelines cases were for larceny crimes, while the fraud group accounted for another 13 percent of sentencing events. Felony traffic offenses comprised about 10 percent of guidelines cases received during the year.

FIGURE 2

Percentage of Cases Received by Method of Adjudication - FY 2003

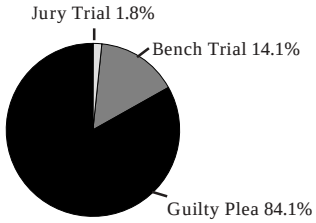
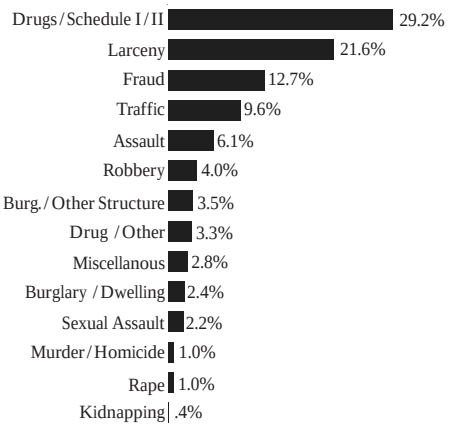


FIGURE 3

Percentage of Cases Received by Primary Offense Group - FY 2003

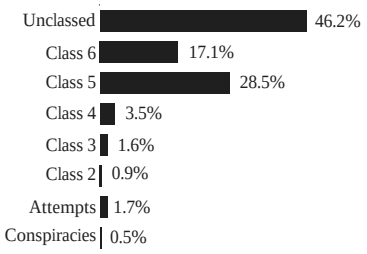


The violent crimes of assault, robbery, homicide, kidnapping, rape and other sex crimes collectively represent a much smaller share of the FY2003 cases (14%). Assaults were the most common of the person offenses (6%) followed by robbery offenses (4%). The murder and rape offense groups each accounted for one percent of the cases, while kidnappings made up one-half of one percent of the cases sentenced during the year.

The sentencing guidelines cover a wide range of felonies with varying penalty ranges specified in the *Code of Virginia*. A felony may be assigned to one of the existing six classes of felony penalty ranges, or the *Code* may specify a penalty that does not fall into one of the established penalty classes. Class 1 felonies are capital murder crimes and are not covered by the sentencing guidelines. Felonies with penalty structures differing from the Class 1 through Class 6 penalty ranges are unclassed felonies, and their penalties vary widely, with maximum sentences ranging from three years to life. In FY2003, nearly one-half of guidelines cases (46%) involved unclassed felonies, mainly due to the overwhelming number of unclassed drug offenses (Figure 4). Because possession of a Schedule I/II drug was the single most frequently occurring offense, Class 5 was the most common of the classed felonies (29%). The Commission received cases for the more serious classed felonies (Classes 2, 3, and 4) much less frequently. Convictions for attempted and conspired crimes were rare and together accounted for just over two percent of the cases.

FIGURE 4

Percentage of Cases Received by Felony Class of Primary Offense- FY 2003



Compliance Defined

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

The Commission measures judicial agreement with the sentencing guidelines using two classes of compliance: strict and general. Together, they comprise the overall compliance rate. For a case to be in strict compliance, the offender must be sentenced to the same type of sanction (probation, incarceration up to six months, incarceration more than six months) that the guidelines recommend and to a term of incarceration that falls exactly within the sentence range recommended by the guidelines. A judicial sentence would also be considered in general agreement with the guidelines recommendation if the sentence 1) meets modest criteria for rounding, 2) involves time served incarceration, or 3) complies with statutory diversion sentencing options in habitual traffic offender cases.

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

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

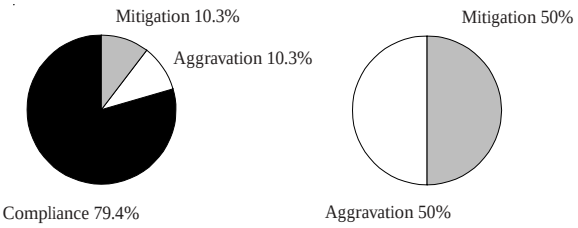
Compliance by special exception arises in habitual traffic cases as the result of amendments to § 46.2-357(B2 and B3) of the *Code of Virginia*, effective July 1, 1997. The amendment allows judges to suspend the mandatory minimum 12-month incarceration term required in felony habitual traffic cases conditioned upon their sentencing the offenders to Boot Camp, Detention Center or Diversion Center. For cases sentenced since the effective date of the legislation, the Commission considers either mode of sanctioning of these offenders to be an indication of judicial agreement with the sentencing guidelines.

Overall Compliance with the Sentencing Guidelines

The overall compliance rate summarizes the extent to which Virginia's judges concur with recommendations provided by the sentencing guidelines, both in type of disposition and in length of incarceration. Between FY1995 and FY1998, the overall compliance rate hovered around 75 percent, increased steadily between FY1999 and FY2001, and then decreased slightly in FY2002. In FY2003, the overall compliance rate increased to 79.4 percent (Figure 5).

FIGURE 5

Overall Guidelines Compliance and Direction of Departures - FY 2003



In addition to compliance, the Commission also studies departures from the guidelines. The rate at which judges sentence offenders to sanctions more severe than the guidelines recommendation, known as the "aggravation" rate, was 10.3 percent for FY2003. The "mitigation" rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 10.3 percent for the fiscal year. Of the FY2003 departures, 50 percent were cases of aggravation while 50 percent were cases of mitigation.

Dispositional Compliance

Since the inception of truth-in-sentencing in 1995, the correspondence between dispositions recommended by the guidelines and the actual dispositions imposed in Virginia's circuit courts has been quite high. Figure 6 illustrates judicial concurrence in FY2003 with the type of disposition recommended by the guidelines. For instance, of all felony offenders recommended for more than six months of incarceration during FY2003, judges sentenced 86 percent to terms in excess of six months (Figure 6). Some offenders recommended for incarceration of more than six months received a shorter term of incarceration (one day to six months), but very few of these offenders received probation with no incarceration.

Judges have also typically agreed with guidelines recommendations for shorter terms of incarceration. In FY2003, 77 percent of offenders received a sentence resulting in confinement of six months or less when such a penalty was recommended. In some cases, judges felt probation to be a more appropriate sanction than the recommended jail term, and in other cases offenders recommended for short-term incarceration received a sentence of more than six months. Finally, 75 percent of offenders whose guidelines recommendation called for no incarceration were given probation and no post-dispositional confinement. Some offenders with a "no incarceration" recommendation received a short jail term, but rarely did offenders recommended for no incarceration receive jail or prison terms of more than six months.

FIGURE 6

Recommended Dispositions and Actual Dispositions- FY2003

	Actual Disposition		
Recommended Disposition	**Probation**	**Incarceration 1 day-6 mos.**	**Incarceration >6 mos.**
Probation	75.1%	20.4%	4.6%
Incarceration 1 day-6 months	10.9%	76.9%	12.2%
Incarceration > 6 months	5.3%	8.7%	86.0%

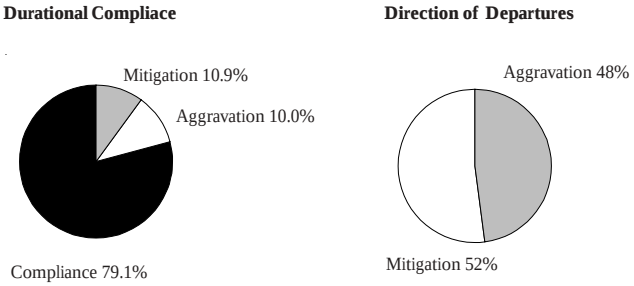
Since July 1, 1997, sentences to the state's Boot Camp, Detention Center and Diversion Center programs have been defined as incarceration sanctions for the purposes of the sentencing guidelines. Although the state's Boot Camp program was discontinued in 2002, the Detention and Diversion Center programs continue to be defined as "probation" programs in their enactment clauses in the *Code of Virginia*. The Commission recognizes that the programs are more restrictive than probation supervision in the community. The Commission, therefore, defines them as incarceration terms under the sentencing guidelines. The Detention and Diversion Center programs are counted as six months of confinement. In the previous discussion of recommended and actual dispositions, imposition of one of these programs is categorized as incarceration of six months or less.

Durational Compliance

In addition to examining the degree to which judges concur with the type of disposition recommended by the guidelines, the Commission also studies durational compliance, defined as the rate at which judges sentence offenders to terms of incarceration that fall within the recommended guidelines range. Durational compliance analysis considers only those cases for which the guidelines recommended an active term of incarceration and the offender received an incarceration sanction consisting of at least one day in jail. Durational compliance among FY2003 cases was approximately 79 percent, indicating that judges, more often than not, agree with the length of incarceration recommended by the guidelines in jail and prison cases (Figure 7). For FY2003 cases not in durational compliance, mitigations were slightly more prevalent (52%) than aggravations (48%).

FIGURE 7

Durational Compliance and Direction of Departures - FY 2003*

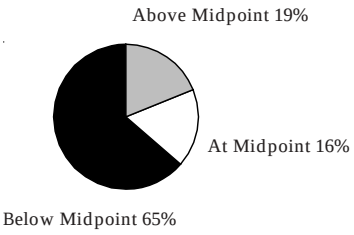


*Cases recommended for and receiving more than six months incarceration.

For cases recommended for incarceration of more than six months, the sentence length recommendation derived from the guidelines (known as the midpoint) is accompanied by a high-end and low-end recommendation. The sentence ranges recommended by the guidelines are relatively broad, allowing judges to utilize their discretion in sentencing offenders to different incarceration terms while still remaining in compliance with the guidelines. Analysis of FY2003 cases receiving incarceration in excess of six months that were in durational compliance reveals that 16 percent of cases were sentenced to prison terms equivalent to the midpoint recommendation (Figure 8). For cases in which the judge sentenced the offender to a term of incarceration within the guidelines recommended range, nearly two-thirds (65%) were given a sentence below the recommended midpoint. Only 19 percent of the cases receiving incarceration over six months that were in durational compliance with the guidelines were sentenced above the midpoint recommendation. This pattern of sentencing within the range has

FIGURE 8

Distribution of Sentences within Guidelines Range - FY2003



been consistent since the truth-in-sentencing guidelines took effect in 1995, indicating that judges, overall, have favored the lower portion of the recommended range. Offenders receiving more than six months of incarceration, but less than the recommended time, were given "effective" sentences (sentences less any suspended time) short of the guidelines range by a median value of nine months (Figure 9). For offenders receiving longer than recommended incarceration sentences, the effective sentence exceeded the guidelines range by a median value of nine months. Thus, durational departures from the guidelines are typically about less than one year above or below the recommended range, indicating that disagreement with the guidelines recommendation is, in most cases, not extreme.

FIGURE 9

Median Length of Durational Departures - FY2003

Reasons for Departure from the Guidelines

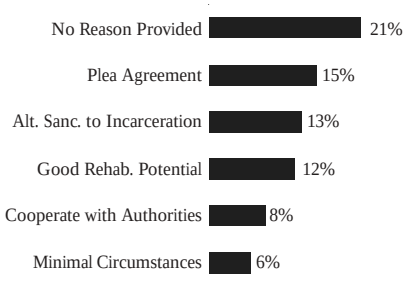
Compliance with the truth-in-sentencing guidelines is voluntary. Although not obligated to sentence within guidelines recommendations, judges are required by § 19.2-298.01 of the *Code of Virginia* to submit to the Commission their reason(s) for sentencing outside the guidelines range. Each year, as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

In FY2003, 10 percent of the 21,719 cases sentenced received sanctions that fell below the guidelines recommendation. An analysis of these mitigation cases reveals that in nearly one-quarter (21%) of these cases, judges do not provide a reason for departure as is required by statute. The most popular judicial reason for mitigation, cited in 15 percent of mitigation cases, was the involvement of a plea agreement (Figure 10).

The use of an alternative sanction, such as Detention or Diversion Center, was cited in 13 percent of mitigating cases. An offender's potential for rehabilitation was indicated, in conjunction with the use of an alternative sanction, in 12 percent of the mitigation cases. Judges also referred to the offender's cooperation with authorities, such as aiding in the apprehension or prosecution of others. Somewhat less

FIGURE 10

Most Frequently Cited Reasons for Mitigations* - FY2003



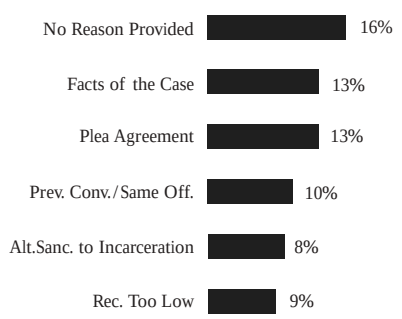
* Represents most frequently cited reasons only. Multiple reasons may be cited in each case.

often (6%), judges noted that the case involved weak evidence or the refusal of witnesses to testify. Although other reasons for mitigation were reported to the Commission in FY2003, only the most frequently cited reasons are discussed here.

Judges sentenced 10 percent of the FY2003 cases to terms more severe than the sentencing guidelines recommendation, resulting in "aggravation" sentences. In examining these cases, the Commission found that 16 percent of the time judges did not provide a reason for departing from the guidelines recommendation (Figure 11). The most commonly cited reason, however, relates to the "facts of the case" (13%). These felony cases often involve complex sets of events or extreme circumstances for which judges feel a harsher than recommended sentence should be imposed. In 13 percent of aggravating cases, a plea agreement which called for a tougher sanction than that recommended by guidelines was listed as the reason for departure.

FIGURE 11

Most Frequently Cited Reasons for Aggravations* - FY2003



* Represents most frequently cited reasons only. Multiple reasons may be cited in each case.

Judges also cited the offender's prior convictions for the same or similar offense (10%) as reason for harsher sanctions. In 9 percent of aggravation cases, judges sentenced the offender to Detention or Diversion Center rather than a straight probation period recommended by the guidelines. For another 8 percent of the FY2003 aggravation cases, judges commented that they felt the guidelines recommendation was too low. Many other reasons were cited by judges to explain aggravation sentences but with much less frequency than the reasons discussed here.

Appendices 1 and 2 contain detailed summaries of the reasons for departure from guidelines recommendations for each of the 14 guidelines offense groups.

Compliance by Circuit

Since the onset of truth-in-sentencing, compliance rates and departure patterns have varied significantly across Virginia's 31 judicial circuits. FY2003 continues to show significant differences among judicial circuits in the degree to which judges within each circuit agree with guidelines recommendations (Figure 12). The map and accompanying table on the following pages identify the location of each judicial circuit in the Commonwealth.

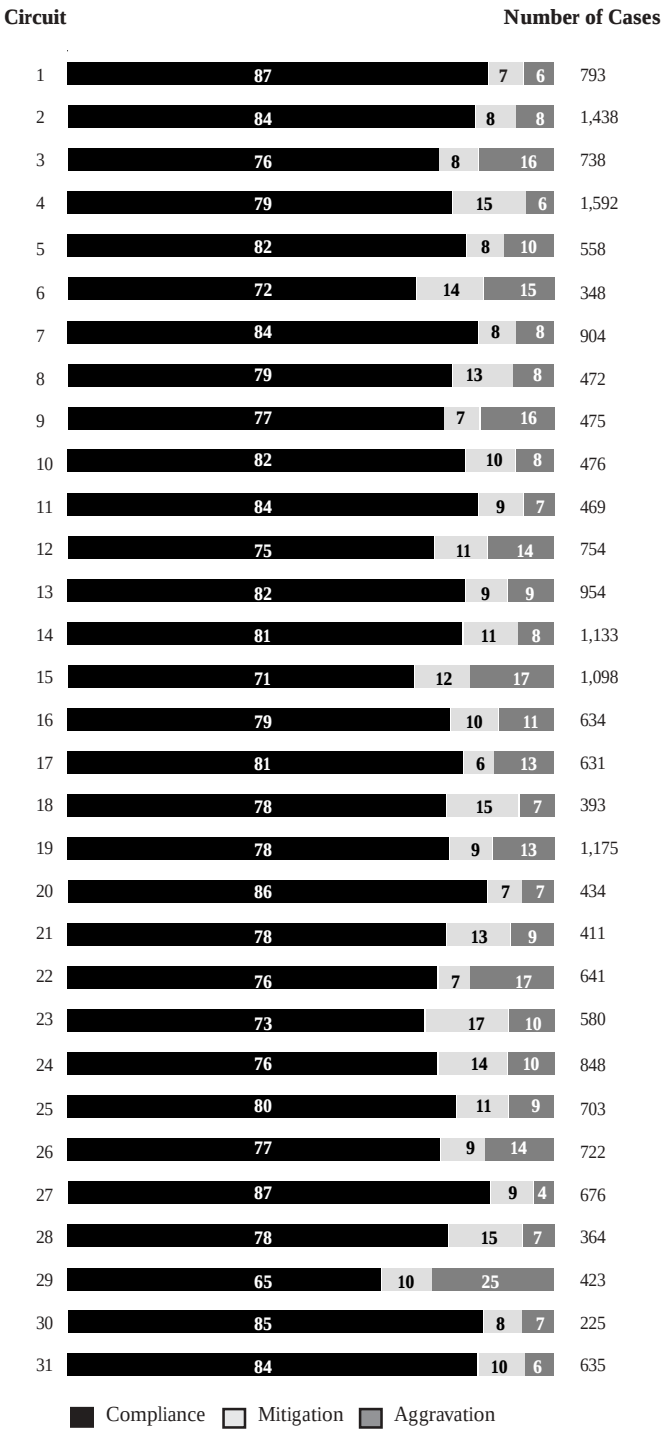
In FY2003, nearly one-half (45%) of the state's 31 circuits exhibited compliance rates at or above 80 percent, while just over one-half (52%) reported compliance rates between 70 and 79 percent. Only one circuit had a compliance rate below 70 percent. There are likely many reasons for the variations in compliance across circuits. Certain jurisdictions may see atypical cases not reflected in statewide averages. In addition, the availability of alternative or community-based programs currently differs from locality to locality. The degree to which judges agree with guidelines recommendations does not seem to be primarily related to geography. The circuits with the lowest compliance rates are scattered across the state, and both high and low compliance circuits can be found in close geographic proximity.

In FY2003, the highest rates of judicial agreement with the sentencing guidelines, at 87 percent each, were found in Chesapeake (Circuit 1) and the Radford area (Circuit 27). The lowest compliance rates among judicial circuits in FY2003 were reported in Circuit 29 (Buchanan, Dickenson, Russell and Tazewell counties), Circuit 15 (Fredericksburg, Stafford, Hanover, King George, Caroline, Essex, etc.), and Circuit 6 (Sussex).

In FY2003, some of the highest mitigation rates were found in the Bristol area (Circuit 28), Norfolk (Circuit 4), and the Roanoke/Salem Area (Circuit 23). Each of these circuits had a mitigation rate between 15 and 17 percent during the fiscal year. With regard to high mitigation

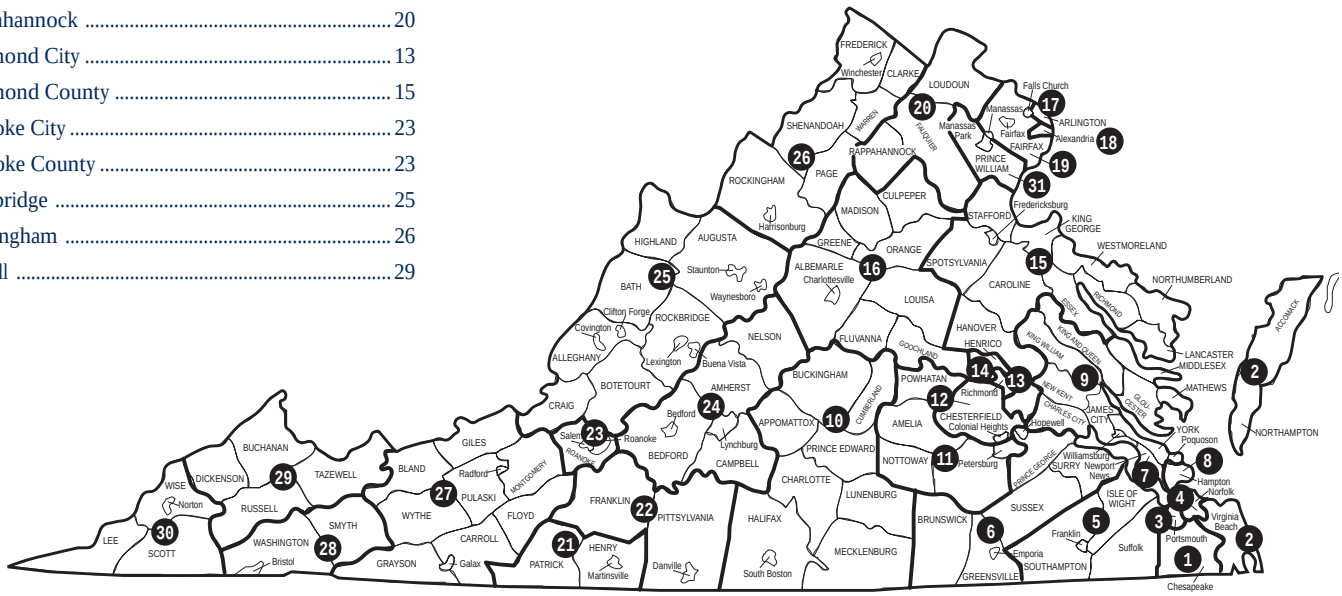
FIGURE 12

Compliance by Circuit - FY 2003



Virginia Localities and Judicial Circuits

Virginia Judicial Circuits



rates, it would be too simplistic to assume that this reflects areas with lenient sentencing habits. Intermediate punishment programs are not uniformly available throughout the Commonwealth, and those jurisdictions with better access to these sentencing options may be using them as intended by the General Assembly. These sentences generally would appear as mitigations from the guidelines. Inspecting aggravation rates reveals that Circuit 29 (Buchanan County) had the highest aggravation rate at 25 percent, followed by Circuit 15 (Fredericksburg, Stafford, Hanover, King George, Caroline, Essex, etc.) and Circuit 22 (Danville) at 17 percent each. Thus, the lower compliance rates in these circuits are due primarily to high aggravation rates.

Appendices 3 and 4 present compliance figures for judicial circuits by each of the 14 sentencing guidelines offense groups.

Compliance by Sentencing Guidelines Offense Group

In FY2003, as in previous years, variation exists in judicial agreement with the guidelines, as well as in judicial tendencies toward departure, when comparing the 14 offense groups (Figure 13). For FY2003, compliance rates ranged from a high of 85 percent in the fraud offense group to a low of 52 percent in kidnapping cases. In general, property and drug offenses exhibit rates of compliance higher than the violent offense categories. The violent offense groups (assault, rape, sexual assault, robbery, homicide and kidnapping) had compliance rates below 75 percent whereas many of the property and drug offense categories had compliance rates at or above 80 percent. Judicial concurrence with guidelines recommendations increased for six of the fourteen offense groups during the fiscal year. The largest increases in compliance are evident in the drug and fraud offense groups, due primarily to a decrease in mitigation. Five of the fourteen offense groups had lower compliance rates over the previous fiscal year. The largest decrease (15%) occurred on the Kidnapping worksheet. However, there were only ninety-six kidnapping cases

FIGURE 13
Guidelines Compliance by Offense - FY 2003

	Compliance	Mitigation	Aggravation	Number of Cases
Fraud	84.5%	10.8%	4.7%	2,769
Larceny	82.6	8.2	9.2	4,695
Drug/Schedule I/II	82.0	7.9	10.1	6,332
Drug/Other	81.9	4.2	13.9	717
Traffic	81.3	7.0	11.7	2,091
Miscellaneous	75.1	9.1	15.7	527
Burg./Other Structure	73.5	14.8	11.7	608
Assault	73.2	16.0	10.7	1,323
Rape	69.7	21.5	8.8	228
Burglary/Dwelling	68.6	17.8	13.6	865
Sexual Assault	68.2	16.2	15.6	487
Robbery	62.3	25.5	12.2	754
Murder/Homicide	61.2	15.0	23.8	227
Kidnapping	52.1	20.8	27.1	96

during the fiscal year, so the decrease is more a function of the small number of cases rather than a substantial change in sentencing patterns. Judicial agreement with recommendations on the Murder/Homicide worksheet decreased to its lowest (61%) since the inception of truth-in-sentencing. Nearly one in four offenders convicted of offenses on the Murder/Homicide worksheet were sentenced to harsher sentences than those recommended by the guidelines. In more than one-third of these aggravation cases, the judge's departure reason focused on the flagrancy of the offense.

Mitigation among the offense groups remained similar to previous years with the exception of the drug and fraud offense groups. Overall, drug and fraud offenses had significantly lower mitigation rates during the fiscal year compared to previous years. The primary reason for this difference is the statewide implementation of the Nonviolent Offender Risk Assessment instrument on July 1, 2002. The risk assessment worksheet is completed for fraud, larceny and drug offenders who are recommended for some period of incarceration by the guidelines and who satisfy the eligibility criteria established by the Commission. When the risk assessment instrument is completed, offenders scoring thirty-five points or less on the scale are recommended for sanctions other than traditional incarceration. The instrument itself does not recommend any specific type or form of alternative punishment. That decision is left to the discretion of the judge and may depend on program availability. In these cases, judges are considered in compliance if they sentence within the recommended incarceration range or if they follow the recommendation for alternative punishment. Thus, mitigation rates for fraud and drug offenses have decreased since the guidelines now recommend the lowest risk of nonviolent offenders for alternative sanctions.

Since 1995, departure patterns have differed significantly across offense groups, and FY2003 was no exception. Among the property crimes, burglary of non-dwellings and fraud cases showed a marked mitigation pattern. With respect to violent crime groups, both rape and robbery departures showed tendencies toward sentences that fell below the guidelines recommendation, with around one quarter of cases resulting in mitigation sentences. This mitigation pattern has been consistent with both rape and robbery offenses since the abolition of parole in 1995. Kidnapping offenses had the highest percentage of aggravating cases (27%). The Murder/Homicide, Miscellaneous, and Drug worksheets also had higher percentages of cases sentenced above the guidelines recommendation than below.

Under the guidelines, offenses in the violent crime groups, along with burglaries of dwellings and burglaries with weapons, receive statutorily mandated midpoint enhancements that increase the sentencing guidelines recommendation (§ 17.1-805 of *Code of Virginia*). Further midpoint enhancements are applied in cases in which the offender has a violent prior record, resulting in a sentence recommendation in some cases that is up to six times longer than historical time served by violent offenders convicted of similar crimes under the parole system, prior to the introduction of truth-in-sentencing in 1995. Midpoint enhancements most likely impact compliance rates in very complex ways, and the effect is unlikely to be uniform across guidelines offense groups. For more information on midpoint enhancements, please refer to the section entitled *Compliance under Midpoint Enhancements* later in this chapter.

Specific Offense Compliance

Studying compliance by specific felony crime assists the Commission in determining those crimes where judges disagree with the sentencing guidelines most often. For convenience, the guidelines are assembled into 14 offense groups, but crimes that exhibit very high guidelines compliance may be collected into the same offense group with those experiencing a much lower rate of compliance. Analyzing compliance by specific crime unmasks the underlying compliance and departure patterns that are of interest to the Commission.

The guidelines in effect during FY2003 covered over 200 distinct felony crimes defined in the *Code of Virginia*, representing about 97 percent of all felony sentencing events in Virginia's circuit courts. Figure 14 presents compliance results for those offenses that served as the primary offense in at least 100 cases during the most recent fiscal year. These 40 crimes accounted for nearly all (86%) of the FY2003 guidelines cases.

The compliance rates for the crimes listed in Figure 14 range from a high of 89 percent for shoplifting goods valued at $200 or more, to a low of 55 percent for offenders convicted of business robbery with a gun. The single most common offense, simple possession of a Schedule I/II drug, comprised about one out of every five guidelines cases and registered a compliance rate of 84 percent.

Ten crimes against the person surpassed the 100-case threshold. Person crimes typically exhibit lower compliance than property and drug crimes, but the compliance rate for simple assault of a law enforcement officer was 86 percent, one of the highest of all offenses. Grand larceny from a person yielded a much higher compliance rate (76%) than the robbery crimes, which were driven primarily by high mitigation rates. Departures that tended toward mitigation were also evident with simple assault of a family member (3rd or subsequent), and aggravated sexual battery (victim under age 13). Departures above the guidelines recommendation were more likely in cases involving carnal knowledge (victim age 13 or 14).

A significant portion of the offenses listed in Figure 14 are property crimes, including two burglaries. Burglary of other structure (non-dwelling) with intent to commit larceny (no weapon) demonstrated a higher compliance rate than the same burglary committed in a dwelling (73% versus 68%). Among the property crimes, mitigations were generally more common than aggravations with respect to departure pattern, with the exception of embezzlement.

Although simple possession of a Schedule I/II drug was the most common offense among FY2003 guidelines cases, seven other drug offenses had more than 100 sentencing guidelines cases during the same time period. The highest judicial agreement rate among the select drug offenses in Figure 14 involved obtaining drugs by fraud, which had an 86 percent compliance rate. In FY2003, sentences for the

FIGURE 14

Compliance for Specific Felony Crimes with More Than 100 Cases - FY 2003

	Compliance	Mitigation	Aggravation	Number of Cases
Person				
Malicious Injury	67.1%	19.7%	13.2%	295
Simple Assault of a Family Member, 3rd/Subsequent	73.2	20.3	6.5	153
Simple Assault of a Law Enforcement Officer	85.6	12.1	2.3	390
Unlawful Injury	68.4	17.5	14.1	354
Aggravated Sexual Battery — Victim under age 13	75.0	18.4	6.6	152
Carnal Knowledge — Victim age 13,14	80.2	8.3	11.6	121
Grand Larceny from Person	76.2	10.5	13.3	210
Robbery - Business with a Gun	55.4	31.5	13.1	130
Robbery - Street with a Gun	60.8	30.7	8.5	176
Robbery - Street with No Gun	64.7	21.1	14.3	133
Property				
Burglary of Dwelling with Intent to Commmit Larceny, No Deadly Weapon	68.2	18.5	13.3	720
Burglary of Other Structure with Intent to Commmit Larceny, No Deadly Weapon	72.6	15.8	11.6	482
Bad Check, Valued $200 or More	84.4	11.7	3.9	180
Credit Card Theft	85.2	10.1	4.6	366
Forgery	82.9	14.2	2.9	712
Forgery of Public Record	83.6	11.6	4.9	450
Obtain Money by False Pretenses, Value $200 or More	86.3	8.3	5.4	336
Uttering	82.2	11.2	6.7	269
Embezzlement of $200 or More	87.1	2.8	10.0	637
Grand Larceny Auto	78.1	10.1	11.8	288
Grand Larceny, Not from Person	82.2	8.7	9.1	1888
Petit Larceny (3rd conviction)	81.1	11.0	7.9	684
Receive Stolen Goods Valued $200 or More	82.5	9.2	8.3	229
Shoplifting Goods Valued Less than $200 (3rd conviction)	80.9	9.9	9.2	141
Shoplifting Goods Valued $200 or More	88.5	5.4	6.1	148
Unauthorized Use of Vehicle Valued $200 or More	86.1	8.0	5.9	237
Drug				
Obtain Prescription Drugs by Fraud	85.9	3.5	10.6	199
Possession of Schedule I/II Drug	84.0	5.7	10.3	3940
Sale of .5 oz - 5 lb of Marijuana	80.4	4.5	15.0	419
Sale of Schedule I/II Drug for Accommodation	85.6	4.8	9.6	167
Distribution of Schedule I/II Drug	81.3	10.7	8.0	411
Possession with Intent to Distribute Schedule I/II Drug	77.0	11.8	11.1	1032
Sale for Profit of Schedule I/II Drug	81.8	10.9	7.4	340
Sale, etc. of Schedule I/II Drug — 2nd/Subsequent	71.7	21.1	7.2	166
Traffic Offenses				
Drive While Intoxicated - 3rd within 5 years	69.8	11.5	18.7	139
Drive While Intoxicated - 3rd within 10 years	78.2	8.0	13.8	522
Habitual Traffic Offense with Endangerment to Others	84.7	4.0	11.3	150
Habitual Traffic Offense - 2nd Offense, No Endangerment to Others	86.5	5.0	8.5	801
Hit and Run, Victim Injured	74.6	10.2	15.2	283
Other				
Possession of Firearm/Concealed Weapon by Non-Violent Convicted Felon	84.3	3.1	12.6	127

second or subsequent distribution of a Schedule I/II drug complied with guidelines 72 percent of the time. In these subsequent sales-related cases involving Schedule I/II drugs, approximately one in five offenders received a sentence below the guidelines recommendation.

The felony traffic worksheet contributed a substantial number of offenses to the guidelines in FY2003. Habitual traffic offenses have shown consistently high compliance rates over the past years (85% and above), due primarily to the 12-month mandatory minimum sentences incorporated into the guidelines recommendations. Drive while intoxicated, third offense within five years, had the lowest compliance rate among the traffic offenses mentioned (70%), with departures tending to favor aggravation.

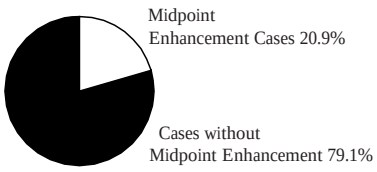
The "Other" offense in Figure 14 is listed on the miscellaneous guidelines worksheet—possession of a firearm by a nonviolent convicted felon. For nonviolent felons possessing a firearm or concealed weapon, judges complied with the guidelines at a rate of 84 percent and handed down more stringent sentences in the majority of remaining cases. This crime carries a two-year mandatory minimum sentence.

Compliance under Midpoint Enhancements

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

Because midpoint enhancements are designed to target only violent offenders for longer sentences, enhancements do not affect the sentence recommendation for the majority of guidelines cases. Among the FY2003 cases, 79 percent of the cases did not involve midpoint enhancements of any kind (Figure 15). Only 21 percent of the cases qualified for a midpoint enhancement because of a current or prior conviction for a felony defined as violent under § 17.1-805. The proportion of cases receiving midpoint enhancements has not fluctuated greatly since the institution of truth-in-sentencing guidelines in 1995. It has remained between 19 and 21 percent over the last seven years.

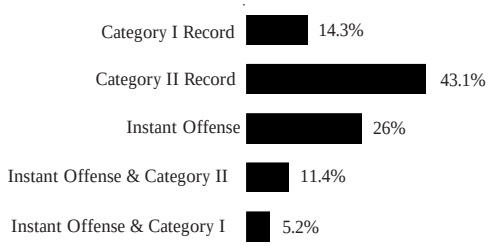
FIGURE 15
Application of Midpoint Enhancements - FY 2003



Of the FY2003 cases in which midpoint enhancements applied, the most common midpoint enhancement was that for a Category II prior record. Approximately 43 percent of the midpoint enhancements were of this type, applicable to offenders with a nonviolent instant offense but a violent prior record defined as Category II (Figure 16). In FY2003, another 14 percent of midpoint enhancements were attributable to offenders with a more serious Category I prior record. Cases of offenders with a violent instant offense but no prior record of violence represented 26 percent of the midpoint enhancements in FY2003. The most substantial midpoint enhancements target offenders with a combination of instant and prior violent offenses. About 11 percent qualified for enhancements for both a current violent offense and a Category II prior record. Only a small percentage of cases (5%) were targeted for the most extreme midpoint enhancements triggered by a combination of a current violent offense and a Category I prior record.

Since the inception of the truth-in-sentencing guidelines, judges have departed from the sentencing guidelines more often in midpoint enhancement cases than in cases without enhancements. In FY2003, compliance was only 69 percent when enhancements applied, significantly lower than compliance in all other cases (82%). Thus, compliance in midpoint enhancement cases is suppressing the overall compliance rate. When departing from enhanced guidelines recommendations, judges are choosing to mitigate in three out of every four departures.

FIGURE 16
Type of Midpoint Enhancements Received - FY 2003



When sentencing offenders to incarceration periods in FY2003 midpoint enhancement cases, judges departed from the low end of the guidelines range by an average of about four years (49 months), with the median aggravation departure at 32 months (Figure 17). Given the lower than average compliance rate and overwhelming mitigation pattern, this is evidence that judges feel the midpoint enhancements are too extreme in certain cases.

FIGURE 17

Length of Mitigation Departures in Midpoint Enhancement Cases - FY2003

Compliance, while generally lower in midpoint enhancement cases than in other cases, varies across the different types and combinations of midpoint enhancements (Figure 18). In FY2003, as in previous years, enhancements for a Category II prior record generated the highest rate of compliance of all midpoint enhancements (74%). Compliance in cases receiving enhancements for a Category I prior record was significantly lower (63%). Compliance for enhancement cases involving a current violent offense was 67 percent. Those cases involving a combination of a current violent offense and a Category II prior record yielded a compliance rate of 67 percent, while those with the most significant midpoint enhancements, for both a violent instant offense and a Category I prior record, yielded a lower compliance rate of 57 percent.

The tendency for judges to impose sentences below the sentencing guidelines recommendation in midpoint enhancement cases is readily apparent. Analysis of

FIGURE 18

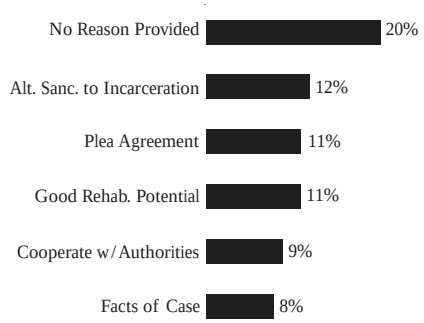
Compliance by Type of Midpoint Enhancement* - FY2003

	Compliance	Mitigation	Aggravation	Number of Cases
None	82.2%	6.3%	11.0%	17,185
Category II Record	74.4	19.0	6.5	1,953
Category I Record	62.5	34.5	3.1	650
Instant Offense	67.1	22.2	10.8	1,178
Instant Offense & Category II	67.2	25.1	7.7	518
Instant Offense & Category I	57.4	32.3	10.2	235

* Midpoint enhancements prescribe prison sentence recommendations for violent offenders which are significantly greater than historical time served under the parole system during the period 1988 to 1992.

departure reasons in cases involving midpoint enhancements, therefore, is focused on downward departures from the guidelines (Figure 19). Examination of midpoint enhancement cases resulting in a mitigation sentence shows that one in five (20%) does not have a departure reason provided. For those that do have a departure reason cited, the most frequent reason cited for mitigation was based on the judge's decision to use alternative sanctions to traditional incarceration (12%). This reason for mitigation includes, but is not limited to, alternative sanctions ranging from Detention Center and Diversion Center incarceration programs to substance abuse treatment, intensive supervised probation or a day reporting program. In nearly 11 percent of the mitigation cases, the judge sentenced based on the perceived potential for rehabilitation of the offender. Among other most frequently cited reasons for mitigating, judges noted that the defendant cooperated with authorities, there was a plea agreement, the evidence against the defendant was weak, or the facts of the case warranted a lesser sentence.

FIGURE 19
Most Frequently Cited Reasons for Mitigation in Midpoint Enhancements* - FY 2003



* Represents most frequently cited reasons only. Multiple reasons may be cited in each case.

Juries and the Sentencing Guidelines

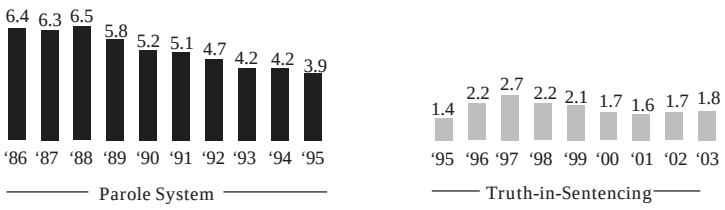
Virginia is one of only five states that allow juries to determine sentence length in non-capital offenses. Since the implementation of the truth-in-sentencing system, Virginia's juries have typically handed down sentences more severe than the recommendations of the sentencing guidelines. In fact, in FY2003, as in previous years, a jury sentence was far more likely to exceed the guidelines than fall within the guidelines range. By law, juries are not allowed by law to receive any information regarding the sentencing guidelines to assist them in their sentencing decisions.

Since FY1986, there has been a generally declining trend in the percentage of jury trials among felony convictions in circuit courts (Figure 20). Under the parole system in the late 1980s, the percentage of jury convictions of all felony convictions was as high as 6.5 percent before starting to decline in FY1989. In 1994, the General Assembly enacted provisions for a system of bifurcated jury trials. In bifurcated trials, the jury establishes the guilt or innocence of the defendant in the first phase of the trial, and then, in a second phase, the jury makes its sentencing decision. When the bifurcated trials became effective on July 1, 1994 (FY1995), jurors in Virginia, for the first time, were presented with information on the offender's prior criminal record to assist them in making a sentencing decision. During the first year of the bifurcated trial process, jury convictions dropped slightly to fewer than 4 percent of all felony convictions, the lowest rate since the data series began.

Among the early cases subjected to the new truth-in-sentencing provisions, implemented during the last six months of FY1995, jury adjudications sank to just over one percent. During the first complete fiscal year of truth-in-sentencing (FY1996), just over two percent of the cases were resolved by jury trials, half the rate

FIGURE 20

Percent of Felony Convictions Adjudicated by Juries FY1986-- FY2003
Parole System v. Truth-in-Sentencing (No Parole) System



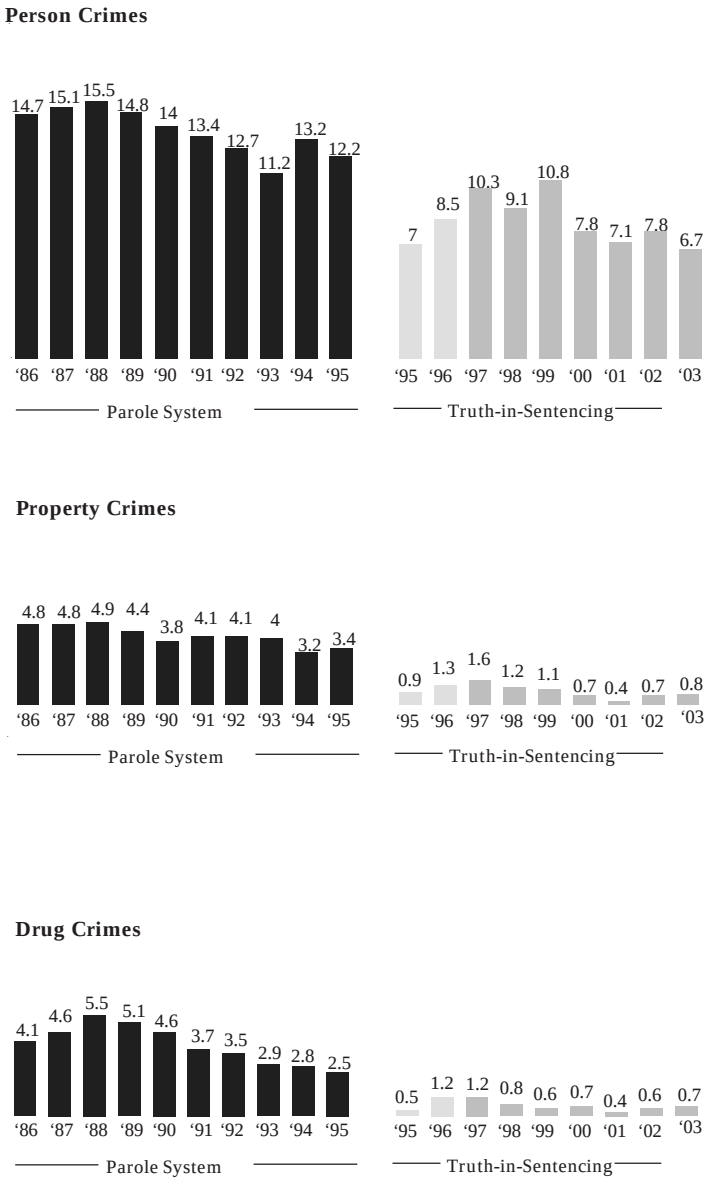
of the last year before the abolition of parole. Seemingly, the introduction of truth-in-sentencing, as well as the introduction of a bifurcated jury trial system, appears to have contributed to the significant reduction in jury trials. The percentage of jury convictions rose in FY1997 to nearly three percent, but since has declined to under two percent.

Inspecting jury data by offense type reveals very divergent trends for person, property and drug crimes. From FY1986 through FY1995 parole system cases, the percent of convictions by juries for crimes against the person (homicide, robbery, assault, kidnapping, rape and sexual assault) was typically three to four times the percent for property and drug crimes, which were roughly equivalent to one another (Figure 21). However, with the implementation of truth-in-sentencing, the percent of convictions handed down by juries dropped dramatically for all crime types. Under truth-in-sentencing, jury convictions involving person crimes have varied from seven percent to nearly 11 percent of felony convictions. The percent of felony convictions resulting from jury trials for property and drug crimes declined to less than one percent under truth-in-sentencing.

In FY2003, the Commission received 351 cases tried by juries. While the compliance rate for cases adjudicated by a judge or resolved by a guilty plea was at 80 percent during the fiscal year, sentences handed down by juries fell into compliance with the

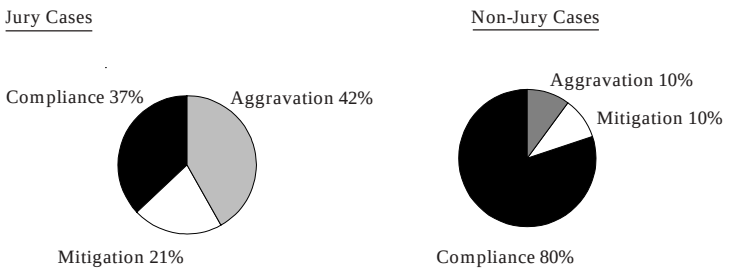
FIGURE 21

Percent of Felony Convictions Adjudicated by Juries FY1986-- FY2003
Parole System v. Truth-in-Sentencing (No Parole) System



guidelines only 37 percent of the time (Figure 22). In fact, jury sentences fell above the guidelines recommendation in 42 percent of the cases. This pattern of jury sentencing vis-à-vis the guidelines has been consistent since the truth-in-sentencing guidelines became effective in 1995.

FIGURE 22
Sentencing Guidelines Compliance in Jury Cases and Non-Jury-- FY2003



Judges, although permitted by law to lower a jury sentence they feel is inappropriate, typically do not amend sanctions imposed by juries. Judges modified jury sentences in less than one-fourth of the FY2003 cases in which juries found the defendant guilty. Of the cases in which the judge modified the jury sentence, judges brought a high jury sentence into compliance with the guidelines recommendation 26 percent of the time. In 39 percent of the cases, judges modified the jury sentence but not enough to bring the final sentence into compliance.

In those jury cases in which the final sentence fell short of the guidelines, it did so by a median value of just under five years (Figure 23). In cases where the ultimate sentence resulted in a sanction more severe than the guidelines recommendation, the sentence exceeded the guidelines maximum recommendation by a median value of three years.

FIGURE 23

Median Length of Durational Departures in Jury Cases -- FY2003

Compliance and Sex Offender Risk Assessment

In 1999, the Virginia General Assembly requested the Virginia Criminal Sentencing Commission to develop a sex offender risk assessment instrument, based on the risk of re-offense, which could be integrated into the state's sentencing guidelines system. Such a risk assessment instrument could be used as a tool to identify those offenders who, as a group, represent the greatest risk for committing a new offense once released back into the community. On July 1, 2001, a sex offender risk assessment instrument was incorporated into the Rape and Other Sexual Assault sentencing guidelines worksheets. With two years of sex offender risk assessment data accumulated, some preliminary findings for FY2002 and FY2003 are presented below.

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

For each offender recommended for a term of incarceration that includes prison, the sentencing guidelines are presented to the judge in the form of a midpoint recommendation and an accompanying range (a low recommendation and a high recommendation). Increasing the upper end of the recommended range provides judges the flexibility to sentence higher risk sex offenders to terms above the traditional guidelines range and still be in compliance with the guidelines. This approach allows the judge to incorporate sex offender risk assessment into the sentencing decision while providing the judge with flexibility to evaluate the circumstances of each case. The adjustments to the guidelines range are based on the offender's risk score, as summarized below.

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

In addition, all rape and sexual assault offenders scoring 28 or more on risk assessment are now recommended for a term of incarceration that includes prison. Offenders scoring less than 28 points receive no sentencing guidelines adjustments.

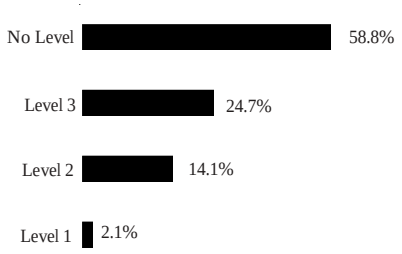
Other Sexual Assault Guidelines

Between FY2002 and FY2003 there were 889 offenders convicted of an offense covered by the Other Sexual Assault guidelines. The majority (59%) were not assigned a level of risk by the sex offender risk assessment instrument (Figure 24). Approximately 25% of Other Sexual Assault guidelines cases resulted in a Level 3 risk classification, with an additional 14% assigned to Level 2. Only 2% of offenders reached the highest risk category of Level 1.

Under sex offender risk assessment, the upper end of the guidelines range is extended by 300%, 100% or 50% for offenders assigned to Level 1, 2 or 3, respectively. Judges have begun to utilize these extended ranges when sentencing sex offenders. For sexual assault offenders reaching Level 1 risk, one in five (21%) were given sentences within the extended guidelines range (Figure 25). Although judges were somewhat less likely to use the extended guidelines range in Level 2 and Level 3 risk cases, 16% and 12% of offenders falling into these risk categories, respectively, were sentenced to prison terms provided by the extended guidelines range. Judges rarely sentenced Level 1, 2 or 3 offenders to terms above the extended guidelines range provided in these cases. However, offenders who scored 28 points or less on the risk assessment instrument and, therefore, not assigned a risk category were the least likely to be sentenced in compliance with the guidelines (62%) and the most likely to receive a sentence that was an upward departure from the guidelines (22%). Overall, incorporation of risk assessment and extension of the guidelines range has increased compliance for the Other Sexual Assault guidelines from 61% to 68%.

FIGURE 24

Sex Offender Risk Levels for Other Sexual Offenses - FY2003



As of July 1, 2001, offenders on the Other Sexual Assault worksheet who are assigned a risk level (Level 1, 2, or 3) are automatically recommended for a term of incarceration that includes a prison sentence on the Section C worksheet. Therefore, sex offenders who historically were recommended for probation or a short jail term on

FIGURE 25

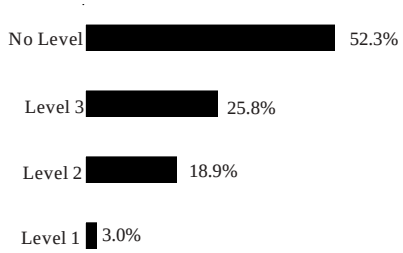
Other Sexual Assault Compliance Rates by Risk Level Offenses - FY2003

		Compliance			
	Mitigation	Traditional Range	Adjusted Range	Aggravation	Number of Cases
Level 1	11%	63%	21%	5%	19
Level 2	19%	62%	16%	3%	126
Level 3	19%	66%	12%	3%	220
No Level	17%	62%	—	22%	524
Overall	**18%**	**62%**	**6%**	**14%**	**889**

the guidelines are now recommended for prison if they fall into a group of offenders at higher risk for recidivism (Level 1, 2, or 3). Between FY2002 and FY2003, there were 105 cases affected by this change in guidelines. In more than four out of five cases where the recommended disposition changed from probation or jail to a term that includes prison, judges agreed with the recommendation and imposed an effective prison sentence. In the remaining 18% of cases, judges sentenced the offender to probation or to an incarceration period of six months or less.

FIGURE 26

Sex Offender Risk Levels for Rape Offenses - FY2002



Rape Guidelines

In FY2002-FY2003, there were 465 offenders convicted of offenses covered by the Rape guidelines (rape, forcible sodomy, and object penetration). Among offenders convicted of these crimes, just over one-half (52%) were not assigned a risk level by the Commission's risk assessment instrument. The proportion of offenders receiving a risk classification and, therefore, an adjusted guidelines recommendation is higher among Rape offenders than among Other Sexual Assault offenders (48% versus 41%). Nearly 26% of Rape cases resulted in a Level 3 adjustment—a 50% increase in the upper end of the traditional guidelines range recommendation (Figure 26). An additional 19% received a Level 2 adjustment (100% increase). The most extreme adjustment (300%) affected 3% of Rape guidelines cases.

In sentencing Rape offenders reaching Level 1 risk, judges sentenced 29% to terms of incarceration falling in the extended guidelines range (Figure 27). Similarly, 23% of offenders with a Level 2 risk classification were given prison sentences with the adjusted range of the guidelines. However, judges utilized the extended guidelines range in only 12% of the Level 3 risk cases. With extended guidelines ranges available for higher risk offenders, judges rarely sentenced Level 1, 2 or 3 offenders above the extended guidelines range. Offenders with a Level 1 risk category were least likely to receive a sentence below the guidelines recommendation (7% mitigation rate). Approximately, one out of four rape cases with a risk Level 2 or 3, as well as those with no risk level, had sentences that fell below the recommended guidelines range. Overall, incorporation of risk assessment and extension of the guidelines range has increased overall compliance for the Rape guidelines from 58% to 68%.

FIGURE 27

Rape Compliance Rates by Risk Level Offenses - FY2003

		Compliance			
	Mitigation	Traditional Range	Adjusted Range	Aggravation	Number of Cases
Level 1	7%	57%	29%	7%	14
Level 2	24%	52%	23%	1%	88
Level 3	27%	54%	12%	7%	120
No Level	26%	65%	—	9%	243
Overall	**25%**	**60%**	**8%**	**7%**	**465**

PROBATION / POST-RELEASE VIOLATOR STUDY

Introduction

Since 1991, Virginia's circuit judges have been provided with historically-based sentencing guidelines grounded in an analysis of criminal sanctioning practices. Today, sentencing guidelines apply to nearly all felony offenses committed in the Commonwealth. These guidelines are an important tool available to judges to assist them in formulating sentences for convicted felons. However, no such tool exists for judges when faced with re-imposing suspended time for offenders returned to court for violating conditions of community supervision. Since 1995, when sentencing reforms abolished parole, circuit court judges have dealt with a wider array of supervision violation cases, including violations of supervision following release from incarceration that formerly were handled by Virginia's Parole Board as parole violations. Despite the larger role they now play in overseeing supervision of offenders in the community, circuit court judges have had to perform these duties without sentencing tools, such as guidelines, available to them.

In 2003, the General Assembly directed the Commission to develop, with due regard for public safety, discretionary sentencing guidelines for application in cases involving felony offenders who are determined by the court to be in violation of probation or post-release supervision for reasons other than a new criminal conviction (Chapter 1042 of the Acts of Assembly 2003). Often these offenders are referred to as "technical violators." In determining the guidelines, the Commission is to examine historical judicial sanctioning patterns in revocation hearings for such cases. Additionally, the Commission must determine recidivism rates and patterns for these offenders and evaluate the feasibility of integrating a risk assessment instrument into the guidelines for violators not convicted of a new crime.

Chapter 1042 of the 2003 Acts of Assembly

Authority: Title 17.1, Chapter 8, Code of Virginia.

B. The Virginia Criminal Sentencing Commission shall develop, with due regard for public safety, discretionary sentencing guidelines for application to felony offenders who are determined by the court to be in technical violation of probation or post release supervision. In determining these sentencing guidelines, the Commission shall examine historical judicial sanctioning patterns in revocation hearings where offenders have been found to be in technical violation of their supervisory conditions. The Commission shall also determine recidivism rates and patterns for these offenders and evaluate the feasibility of integrating a risk assessment instrument into these discretionary sentencing guidelines. The Virginia Criminal Sentencing Commission shall provide its findings on this matter to the 2004 Session of the General Assembly.

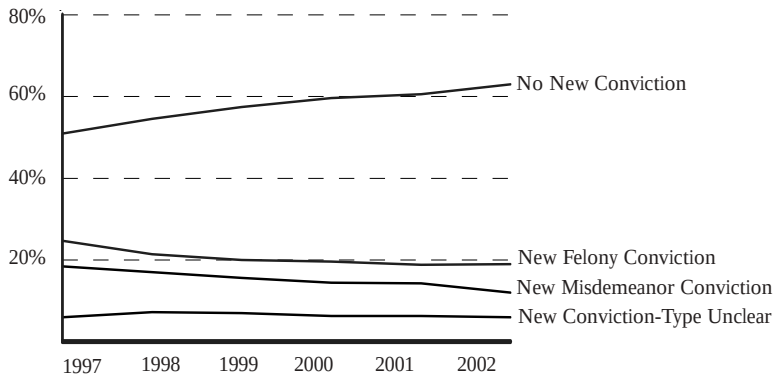
In response to the legislative directive, the Commission designed and implemented a research plan to examine historical sanctioning practices for violations of community supervision not involving a new conviction and to investigate recidivism among this population of offenders. The first phase of the study, developing historically-based sentencing guidelines for violators not convicted of a new crime, is now complete. The second phase of this study, analyzing recidivism and evaluating the feasibility of developing a risk assessment tool for these violators, is underway and is scheduled for completion in 2004. This chapter of the Commission's 2003 Annual Report examines recent trends in revocation cases not associated with a new conviction, describes the Commission's study, and presents the results of the analysis of historical sanctioning practices, including proposed sentencing guidelines applicable to these cases. The Commission's plan for the second phase of the study is also outlined.

Trends in Revocations of Community Supervision

Data from the Commission's Community Corrections Revocations Data System reveal an increasing trend in the number of revocations of community supervision handled in Virginia's circuit courts. In large part, this growth is fueled by increases in the number of revocations for offenders whose probation or post-release supervision is terminated for reasons other than a new criminal conviction (Figure 28). From July 1997 through 2002, the proportion of revocations not associated with a new conviction swelled from 51% to 63% of all revocation cases.

FIGURE 28

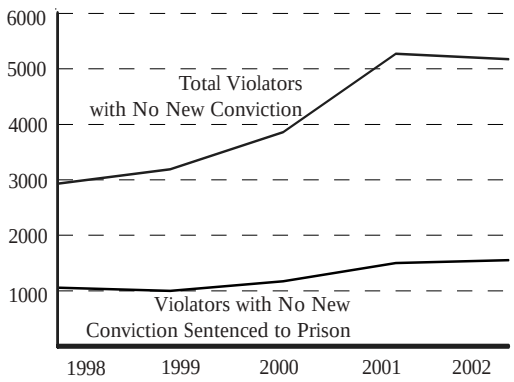
Reasons for Community Supervision Revocations 1997-2002



While the overall number of revocations has increased from 1998 to 2002, the escalation in the number of revocations not related to a new criminal conviction has been particularly dramatic (Figure 29). Despite a small decline last year, the number of these revocations has grown nearly 77% from 1998 to 2002, increasing from 2,931 to

FIGURE 29

Violators without New Criminal Convictions 1998-2002



5,178. The burgeoning number of violators without a new criminal conviction is contributing to the increasing state-responsible (prison) population in the Commonwealth. The number of violators not convicted of a new crime ordered to prison as a result of their failure to comply with the conditions of community supervision surged nearly 56% from 1999 through 2002. The overall population of state prisoners rose by 12% for the four year period ending in June 2002 (Figure 30). Although crime rates have declined over the last decade in Virginia, the number of offenders committed to the state's prison system has increased in recent years. Offenders who are revoked from community supervision, but not convicted of a new crime, are not counted in crime and arrest statistics. However, these offenders have been entering prison in increasing numbers. Virginia is not alone; other states, such as California, are experiencing significant growth in violators returned to prison. The number of state prisoners is expected to grow by 1,400 to 1,900 offenders annually between fiscal year (FY) 2005 and FY 2009.

FIGURE 30

State-Responsible Offender (Prison) Forecast

Fiscal Year	Historical	Projected
1999	30,546	
2000	31,160	
2001	32,591	
2002	34,343	
2003	35,429	
2004		36,350
2005		37,772
2006		39,184
2007		40,870
2008		42,575
2009		44,464

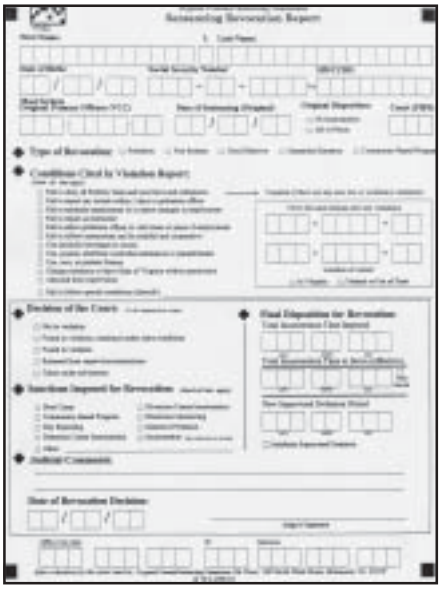
Methodology for Sentencing Guidelines Analysis

Charged with developing sentencing guidelines for offenders who violate the conditions of community supervision but are not convicted of a new crime, the Commission designed and implemented a research plan to examine historical sanctioning practices in revocation cases of this kind.

The Commission reviewed the sources of data available for the study. The most complete resource regarding revocations of community supervision in Virginia is the Commission's Community Corrections Revocations Data System, also known as the Sentencing Revocation Report (SRR) database. Until 1997, information on the re-imposition of suspended incarceration time for felons returned to court for violating conditions of community supervision was largely unavailable and its impact difficult to assess. In 1997, the Commission teamed with the Department of Corrections (DOC) to implement a procedure for systematically gathering data on the reasons for and the outcome of community supervision violation proceedings in Virginia's circuit courts.

FIGURE 31

Community Corrections Revocation Data System - Sentencing Revocation Report (SRR)



With DOC's assistance, the Commission developed a simple one-page form to capture this information (Figure 31). The probation officer completes the top half of the form, which includes identifying information and check boxes indicating the reasons why the probation officer has requested a show cause or revocation hearing. The check boxes are based on the list of ten conditions for community supervision established for every offender, but the form also allows the probation officer to record any other supervision condition specific to the individual offender. Following the violation hearing, the judge completes the bottom half of the form with the revocation decision and any sanction ordered in the case. The completed form is submitted to the Commission and automated as part of the SRR database. With five years of data accumulated, the SRR data provides a broad-based foundation for the Commission's study. It is this database from which the study sample was selected.

The SRR database, however, provides only general information about the revocation case and the reasons why an offender was brought back to court. While indicating which conditions of supervision in general were violated, detailed information regarding the offender's behavior while under supervision is not recorded on the SRR form. To provide the kind of rich contextual detail about the offender's behavior during the supervision period, the Commission embarked upon an extensive manual data collection effort.

In order to identify the most useful sources of information on Virginia's violators, Commission staff visited the Chesterfield Probation & Parole Office on May 21 and the Richmond Probation & Parole Office on May 23 of 2003 to review violator case files. Initially, staff believed that the probation officers' log sheets would be the most informative resource documenting specific behavior and violations. However, these log sheets are handwritten and often very difficult to read. In addition, the quality of log sheets was inconsistent across districts and officers' files. After thoroughly reviewing more than 100 case files, staff determined another document proved to be the better tool for the Commission's study. That document is known as the "violation letter." A violation letter is prepared by the probation officer and submitted to the court when the officer requests a show cause or revocation hearing. A violation letter is required for each show cause or revocation hearing request made by the probation officer. The letters are standardized and typewritten. Moreover, these letters document specific violations, including specific behavior and dates. The Commission designed a special form to record information from the probation officers' violation

letters (Figure 32). The information recorded on the special form was automated and added to the automated records already maintained by the Commission. This supplemental information proved invaluable to the Commission for the study of this offender population.

FIGURE 32
Supplemental Data Collection Forms

To further supplement information about offenders who violate, the Commission requested the criminal history record ("rap sheet") for each offender in the study sample. The rap sheet allowed the Commission to supplement any automated information regarding the offender's criminal history prior to the offense for which he was placed on supervision. In addition, the rap sheets enabled the Commission to identify arrests and convictions that occurred during the probation period.

For additional information on the offender and the offense for which he was placed on community supervision, the Commission utilized Pre/Post-Sentence Investigation (PSI) data provided by the Virginia Department of Corrections (DOC). Completed by DOC's Community Corrections division for most felony sentencing events in Virginia, the report contains a wealth of information about the defendant and the crime. The PSI captures standardized information regarding the circumstances of the crime (e.g., use of a weapon, victim injury, the offender's role in the offense, his relationship to the victim, if he resisted arrest, the quantity of drugs involved, etc.), his prior adult record, his juvenile record, family and marital information, education, military service, employment history, history of alcohol and drug use, as well as any substance abuse or mental health treatment experiences. In addition to the standardized information, PSI reports ordered by the court also contain significant narrative sections describing the offense and the offender's family, education, employment, health, and substance abuse history in detail. After sentencing, information on the sentencing outcome is added. The Commission also included data from its own Sentencing Guidelines (SG) database to the automated file developed for each offender in the study sample.

The Commission drew a sample of 600 cases from its Community Corrections Revocations Data System, or Sentencing Revocation Report (SRR) database. Sample cases were drawn from revocations occurring from fiscal year (FY) 1997 through FY2001. The study was designed to focus on sanctioning practices under the truth-in-sentencing/no-parole system, in place since 1995. Prior to drawing the sample, the Commission excluded offenders who were on probation or other form of community supervision for an offense committed prior to 1995, since these offenders remain parole eligible (even for incarceration time re-imposed as a result of a revocation). Next, offenders on probation or other supervision for a misdemeanor offense were excluded from the sampling process. Because of the relatively small number of cases, all violent felons sentenced under truth-in-sentencing provisions were selected for the

study. The Commission took this step in order to ensure that offenders convicted of violent crimes were more fully represented in the study, as a large share of violent felons subject to truth-in-sentencing provisions remain incarcerated and have not yet been released to supervision in the community. Once a sample of 600 cases was selected, the supplemental data collection began. During the supplemental data collection process, the Commission was able to identify additional offenders who were parole eligible. For some cases, the offender's probation file did not contain sufficient information to complete the supplemental data collection form, or the offender's file was not available. For these reasons, 72 cases were dropped from the study during the data collection process. The final sample for the Commission study contained 528 cases, a sample large enough to satisfy the Commission's strict statistical standards. The Commission applied a process known as "reweighting" to ensure that the study sample reflects the entire population of violators whose supervision was revoked for reasons other than a new criminal conviction.

With sample selection and data collection complete, the Commission began its analysis. The analytical approach laid out by the Commission is not unlike that used for developing Virginia's historically-based sentencing guidelines, already utilized in circuit courts around the Commonwealth. To develop guidelines for supervision violators, judicial decision-making was conceptualized as a two-step process. In the first step of this conceptual framework, the judge decides whether or not to incarcerate the offender. The second decision is dependent upon the outcome of the first. If the first step results in a decision to incarcerate, the judge must then determine the length of the incarceration term the offender is to be given. The factors considered by judges in making the first decision are not necessarily the same as the factors considered in making the second decision. Moreover, the degree to which a factor weighs in a judge's decision making, or its importance relative to other factors, may differ for the two types of sanctioning decisions. Structuring the analysis based on this two-step framework allows researchers to examine sentencing practices in a more detailed fashion.

In the development of sentencing guidelines, the Commission employs a number of quality control techniques. Two researchers conduct analysis on each step in the judicial decision-making process, working independently of one other. This tactic reduces the likelihood that errors, spurious findings, or results biased by the style of an individual analyst will find their way into the guidelines. Once the independent analysis

is complete, the reconciliation process begins. In the reconciliation process, the researchers team up to evaluate the differences in their independently developed models and conduct statistical tests to determine which model best meets the Commission's objectives. That resulting model is then converted into a guidelines worksheet. With this process complete, the results are then reviewed by another analyst as an additional error check.

The analysis begins with a wide variety of possible factors that might influence a judge's sentence decision. Applying widely-used statistical techniques enables the analyst to filter out those factors that are not statistically relevant in judges' sentencing decisions. The result is an empirical model containing factors that have demonstrated a statistically significant role in sentencing practices in violator cases.

There are three major statistical techniques utilized in sentencing guidelines analysis. For the decision of whether to incarcerate the offender (the in/out decision), two statistical techniques known as logistic regression and discriminant analysis are used. For the sentence length decision, a technique called ordinary least squares (OLS) regression is applied.

Logistic regression is a statistical technique that can predict a choice from two options, such as incarceration versus some non-incarceration sanction. It is used to identify factors that best discriminate between two outcomes or groups (e.g., offenders sentenced to incarceration and offenders not sentenced to incarceration). When using logistic regression, an analyst can easily determine which factors are statistically significant. Interpreting the effect of each factor relative to the other factors in the model, however, is complex. This is because logistic regression results are presented in terms of the log of the odds of a particular outcome (e.g., the odds of winning the state lottery). Thus, the drawback of logistic regression is that it cannot determine the relative importance, or weight, of the factors in the model, which is necessary to convert the model to scores on a guidelines worksheet. Logistic regression, therefore, is used in conjunction with a second technique called discriminant function analysis. Like logistic regression, discriminant function analysis is a statistical technique used to identify factors that best discriminate among two or more outcomes or groups. The discriminant function procedure discriminates between groups by grouping cases in

such a way that the differences between the groups are maximized while the differences within the outcome groups are minimized. In terms of categorizing cases by type of outcome, models generated through logistic regression and discriminant function analysis provide strikingly similar results. Using the Commission's approach, logistic regression is used to identify those factors important in the judge's in/out decision. Then, the discriminant function procedure is applied to those factors to establish the relative importance, or weight, for each factor in the sentencing model.

Worksheet scores for the incarceration worksheet (the in/out decision) are developed from the weights of factors in the model. Factor weights are adjusted so that the smallest score value will be at least one point. This process is referred to as standardizing. The relationships among the factors remain the same. After standardizing, the factor weights are used to develop worksheet scores.

Ordinary least squares (OLS) regression can be used to estimate outcomes that fall along a continuum, such as the sentence length decision. This technique is used to identify factors (e.g., failing to meet with the probation officer, failing a drug test, or absconding) that influence a response measure (e.g., sentence length). OLS regression assumes a linear relationship between predictor factors and the response measure. Results are calculated by minimizing the model's prediction error. An analyst can easily determine which factors are statistically significant. Interpretation of the effect of each variable is straightforward and worksheet scores can be assigned easily.

Using this methodology, the Commission developed empirically-based sentencing guidelines worksheets for violators that reflect judges' historical practices. Next, the Commission calibrated the guidelines by applying historical criteria. For the incarceration in/out worksheet, offenders scoring at or above the threshold established by the Commission will be recommended by the guidelines for an active term of incarceration. The Commission selected a threshold based on the historical rate of incarceration for these offenders. For the sentence length worksheet, an offender's score will determine the range of sentence recommended by the guidelines. The Commission selected ranges of punishment that reflect historical patterns of sentencing.

Historical Practices

Localities differ with respect to their handling of revocation cases when offenders violate the conditions of community supervision but are not convicted of a new crime. Figure 33 presents the frequency of incarceration resulting from revocation, by judicial circuit, for the sample of cases analyzed by the Commission. Although the overall incarceration rate was 73%, it can be seen that substantial differences exist statewide among the judicial circuits. There may even be striking differences between adjoining and similar circuits. For example, there was an 85% incarceration rate in Circuit 7 (Newport News) versus 46% in Circuit 8 (Hampton), and a 91% incarceration rate in Circuit 18 (Alexandria) versus 46% in Circuit 19 (Fairfax). Many different factors could account for these differences, such as the types of crimes originally committed, the demographic characteristics (age, sex, physical and mental health status, employment history) of the offenders, and their eligibility for treatment programs or

FIGURE 33

Frequency of Incarceration for Violators without New Criminal Convictions by Circuit

Circuit	Circuit Area	Percent Not Incarcerated	Percent Incarcerated	Number of Cases
1	Chesapeake	21%	79%	24
2	Virginia Beach	44	56	19
3	Portsmouth	16	84	38
4	Norfolk	21	79	33
5	Suffolk	18	82	17
6	Sussex	0	100	7
7	Newport News	15	85	20
8	Hampton	54	46	35
9	Williamsburg	40	60	15
10	South Boston	50	50	8
11	Petersburg	0	100	2
12	Chesterfield	8	92	13
13	Richmond City	21	79	39
14	Henrico	15	85	13
15	Fredericksburg	20	80	15
16	Charlottesville	8	92	13
17	Arlington	0	100	3
18	Alexandria	9	91	22
19	Fairfax	54	46	37
20	Loudoun	33	67	9
21	Martinsville	0	100	7
22	Danville	100	0	3
23	Roanoke	33	67	24
24	Lynchburg	10	90	30
25	Staunton	41	59	17
26	Harrisonburg	67	33	6
27	Radford	33	67	24
28	Bristol	0	100	4
29	Buchanan	0	100	12
31	Prince William	16	84	19
Total		**27%**	**73%**	**528**

alternative sanctions. Also note that some circuits contributed relatively few cases to the total sample; therefore, their incarceration rates tend to be extremely low or high. Figure 34 reports the median sentence length by judicial circuit for those violators receiving an active term of incarceration. Again, circuits with few cases tended to have relatively low or high median sentences (e.g., none of the three Circuit 22 (Danville) violators were incarcerated). While the overall median sentence was 12 months, substantial differences exist among localities. Circuit 28 (Bristol) had the shortest median sentence, one month, although this was based on only four cases. Circuit 16

FIGURE 34

Median Sentence Length for Violators without New Criminal Convictions by Circuit*

Circuit	Circuit Area	Median Sentence For Revocation (Months)	Number of Cases
1	Chesapeake	6	19
2	Virginia Beach	12	10
3	Portsmouth	12	32
4	Norfolk	18	26
5	Suffolk	7	14
6	Sussex	26	7
7	Newport News	20	17
8	Hampton	12	16
9	Williamsburg	18	9
10	South Boston	3	4
11	Petersburg	12	2
12	Chesterfield	24	12
13	Richmond City	6	31
14	Henrico	6	11
15	Fredericksburg	12	12
16	Charlottesville	27	12
17	Arlington	22	3
18	Alexandria	6	20
19	Fairfax	8	17
20	Loudoun	4	6
21	Martinsville	12	7
23	Roanoke	12	16
24	Lynchburg	12	27
25	Staunton	6	10
26	Harrisonburg	23	2
27	Radford	6	16
28	Bristol	1	4
29	Buchanan	22	12
31	Prince William	10	16
Total		**12**	**390**

* Includes only violators who received an active term of incarceration.

(Charlottesville) had the longest median sentence, 27 months. Most of the circuits, however, had median effective sentences between 6 and 12 months.

The Commission's study revealed significant differences in the sanctioning of violators simply based on the locality in which the offender was under supervision. Some of the disparities among localities may be due to the differing philosophies toward resentencing held by individual probation officers and judges. Some probation officers may not return an offender to court for revocation based on a single incident, such as a failed drug screen or missed appointment. Other officers, however, are more likely to adopt this approach, especially if the offender has prior revocations or a previous history of noncompliance with treatment protocols. Similarly, judges differ greatly in their revocation decisions. Some judges require evidence of a pattern of noncompliance seen as a series of violations over time before revoking an offender's probation, whereas others may act on a single revocable violation. While some judges may impose all or most of the suspended time in a certain case, others might impose little or no suspended time. These differences are inherent in a system where different individuals hold differing views of the sentencing process.

Certainly differences in the availability of alternative punishment sentencing options exist among jurisdictions. In the late 1990s, there was a significant expansion of alternative punishment options. In recent years, the availability and location of programs has been affected by state and local fiscal circumstances. Certain areas of the state are able to apply local resources to expand the types and availability of sentencing options.

There are also differences among localities with respect to the availability of substance abuse and sex offender treatment programs, both inpatient and outpatient. Urban and suburban areas in northern Virginia, for example, have more programs and resources than many other localities. Even so, demand for bed space may be high in metropolitan areas, making it difficult to place an offender into an inpatient program. The availability of inpatient treatment beds and follow-up counseling may be of critical importance. Reviewing the violation letters, Commission staff saw cases where an offender did well in an inpatient treatment program, but relapsed once outside this controlled environment.

As mentioned above, urban population centers may have more programs and more resources, but a high demand on those resources. Rural areas may not have as many programs and resources to choose from but may not have as high a demand on them as the urban areas.

Proximity to day reporting, detention and diversion centers may be important. The detention and diversion center programs are available to nonviolent felony offenders otherwise sentenced to incarceration but requiring more intensive supervision and

services. Detention center is a regimented, highly structured program designed to instill discipline and to deal with substance abuse. Diversion center is a structured residential work program offering classes for education, cognitive restructuring and substance abuse counseling. Day reporting centers handle probation cases requiring daily supervision, treatment and services. Probationers must comply with daily reporting requirements, attend substance abuse counseling and receive educational training. The suitability of offenders for these programs and their perceived effectiveness also may affect judicial sentencing practices in revocation cases.

Differences in resentencing drug offenders may be associated with perceptions of localized drug problems. For instance, if a particular drug is seen as a problem in a certain area, this may affect the sentencing of probationers who continue to abuse the drug. For example, the sale or use of methamphetamine and oxycontin may be of particular concern to officials in certain regions of the Commonwealth. Some judges may be tougher on drug cases involving certain drugs, especially if the offender has previously been noncompliant with treatment protocols.

Certainly offenders who commit violent crimes tend to get longer sentences originally and may have longer periods of suspended time hanging over them. They are also ineligible for many alternative sentencing options. For example, felons convicted of a violent crime are ineligible for detention center, diversion center, and home electronic monitoring. Judges may therefore find their sentencing options restricted in these cases. As discussed above, individual probation officers and judges may adopt a tougher stance toward the resentencing of violent offenders.

It is important to account for unexplained variability in sentencing among the various circuits or regions when analyzing sentencing data. Controlling for the variation in sentencing by locality improves the ability to detect and assess other factors that affect sentencing decisions. The type of analysis conducted by the Commission enables analysts to better understand the relative importance of the legal factors (such as failing to report to the probation officer, continuing drug use, or absconding) versus other types of factors that are generally considered extralegal (such as race).

Characteristics of Violators with No New Convictions

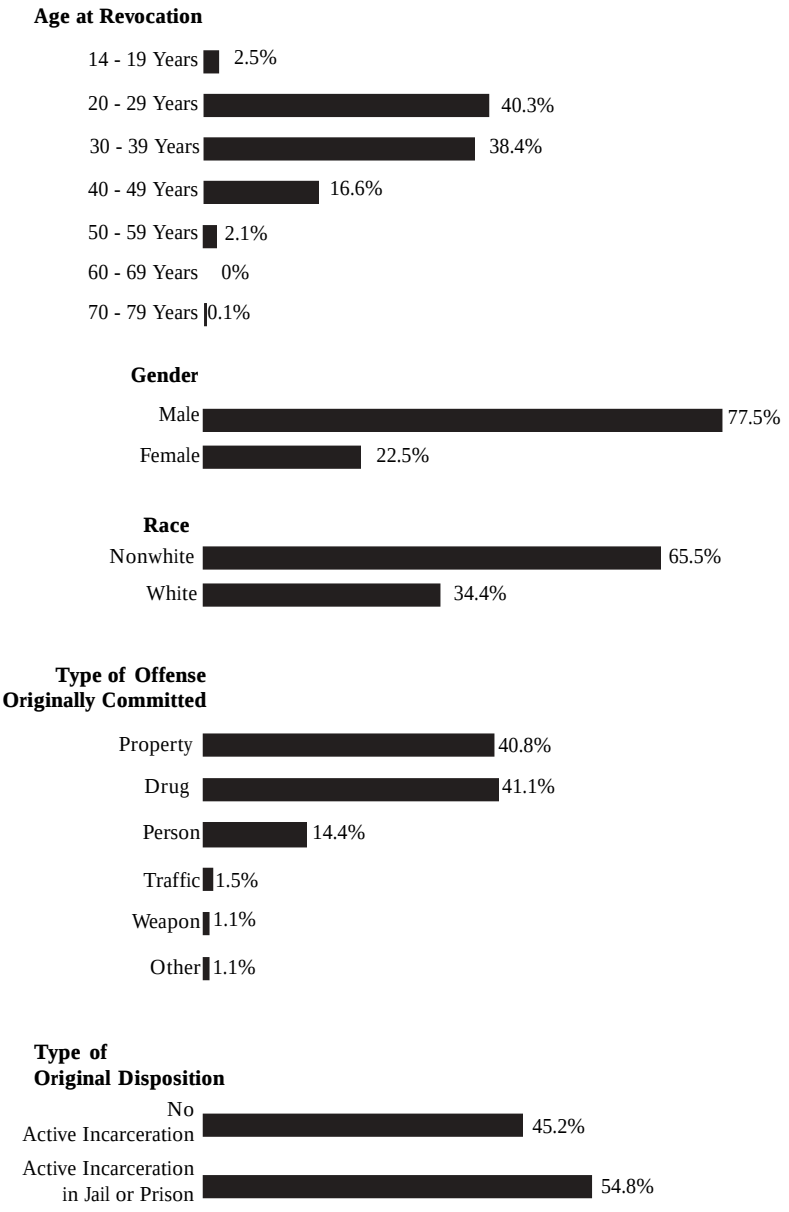
Violators in the Commission's study covered a wide age range, as illustrated in Figure 35. Over three-fourths of the offenders, however, were between 20 and 39 years old at revocation, and the median age was 32. Roughly one in six were between 40 and 49 years old at revocation. Only 2.5 percent of offenders were teenagers. The youngest

offender was age 14 at revocation and the eldest 72. Figure 35 also reports the gender and race of the offenders under study. Over three-fourths of the offenders in the study were male. About one-third were white and two-thirds were nonwhite. In addition, Figure 35 classifies the offenders under study by the type of felony offense originally committed (i.e., the offense for which the offender was placed under community supervision). The large majority of offenders originally committed either property or drug offenses. Approximately 41% committed property offenses and another 41% committed drug offenses. Crimes against a person accounted for approximately 14% of the study subjects. Relatively few offenders committed traffic, weapons, or other offenses for their original crimes. Those with traffic offenses had been convicted of driving while intoxicated (DWI) or habitual offender violations; felony hit and run offenses are included as person crimes if victim injury resulted. As Figure 35 shows, nearly 55% of the offenders under study had served an active term of incarceration for the original offense, prior to beginning supervision in the community.

The Commission's data reveal that most violators began their noncompliance behavior early in the probation period. During the data collection process, the Commission recorded the length of time an offender was under supervision until his first incident of noncompliance. Almost 60% of

FIGURE 35

Characteristics of Violators without New Criminal Convictions



Note: Data based on 528 cases under study

offenders committed their first act of noncompliance within three months of the start of supervision (Figure 36). Another 30% of offenders had their first incident of noncompliance between 4 and 12 months after the start of supervision. Only 10% of offenders had their initial noncompliance incident more than 12 months after beginning supervision. The median time to the first noncompliance incident was approximately 86 days, or somewhat less than three months.

FIGURE 36

Time to the First Noncompliance Incident

Time to 1st Incident	Number	Percent	Cumulative Percent
Less Than 1 Month	138	26.1%	26.1%
1 - 3 Months	171	32.4	58.5
4 - 6 Months	81	15.4	73.9
7 - 12 Months	84	16.0	89.9
13 - 24 Months	35	6.6	96.5
More Than 24 Months	19	3.5	100.0
Total	**528**	**100.0**	

There were 183 offenders deemed to have absconded from supervision, making up nearly 35% of the offenders studied. The period of time offenders had absconded is summarized in Figure 37. Although many offenders absconded for relatively short periods of time, more than one-fourth of those absconding were able to evade supervision for more than 12 months. Many of these individuals had their probation transferred to other probation districts or other states, and reports from other law enforcement officials or family members proved critical in apprehending them. The median length of time offenders absconded was approximately 200 days, or about six and two-thirds months.

FIGURE 37

Length of Time Absconded

Time Absconded	Number	Percent	Cumulative Percent
Less Than 6 Months	79	43.1%	43.1
6 - 12 Months	55	30.0	73.1
More Than 12 Months	49	26.9	100.0
Total	**183**	**100.0**	

Note: Overall, 34.6% of offenders in the study absconded.

Results of Historical Analysis

The decision to incarcerate an offender, or not, is referred to as an in/out decision. In the case of offenders whose community supervision is revoked, incarceration is the result of a judge re-imposing previously suspended jail or prison time. For the violators under study, 73% received an active term of incarceration of some kind, while 27% received some type of nonincarceration sanction for the revocation. Factors gathered through supplemental data were utilized to develop a guidelines model capable of explaining, at least in part, determinants of judicial decisions on whether or not an offender should be incarcerated.

FIGURE 38

Relative Importance of Significant Factors-Incarceration In/Out Decision

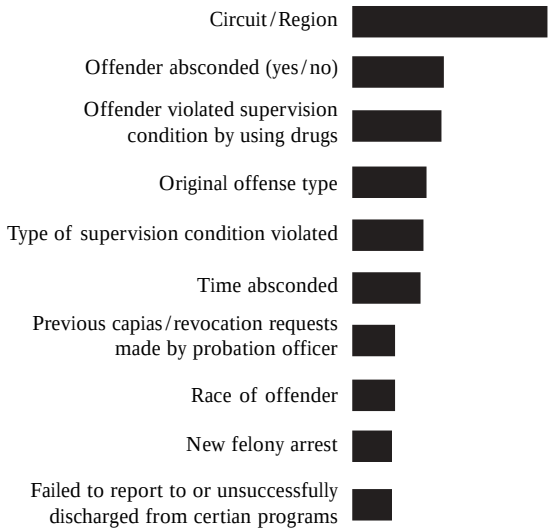


Figure 38 shows the relative importance of the significant factors of the incarceration in/out model. In the model are a variety of factors that influence judges' decisions to incarcerate or not. These factors can be divided into legal factors and extralegal factors. The legal factors are those that will appear on the guidelines worksheet. There are two extralegal factors in this model, circuit and the race of the offender. Circuit is the most influential factor in the in/out model. This result suggests that, all other factors being equal, there is significant disparity in sentencing offenders across Virginia's circuits. Although less important than circuit in explaining judges' incarceration decisions, the race of the offender was also found to be statistically significant. The Commission's study found that white violators are more likely to be incarcerated than nonwhite offenders. Neither circuit nor race will be included on the guidelines worksheet.

The legal factors found in the in/out model reflect the offender's original offense and the offender's behavior while under supervision. The most important legal factor in explaining the incarceration decision was whether or not the offender had absconded from supervision. Offenders who absconded were much more likely to receive a jail or prison term than those who did not. Nearly as important in the incarceration decision, however, was the offender's continued use of drugs. This was followed closely by the type of the original offense (categorized as person, property, drug, felony traffic, weapon or other). Offenders originally convicted of third or fourth driving while intoxicated (DWI) offenses, habitual traffic offenses, weapons-related crimes, or any crime against a person were more likely to receive an incarceration sanction for violating supervision. Offenders who had been convicted of property or other nondrug crimes were the least likely to be incarcerated following a violation.

In addition to the supervision condition prohibiting drug use, the Commission found that offenders who violated other supervision conditions were also more likely to receive incarceration. These included the failure to report a new arrest, maintain employment, report as instructed, allow home visits, be truthful and cooperative, or follow any special conditions of supervision, as well as the use of alcoholic beverages to excess or possessing a firearm. Violating any one of these conditions contributed to the likelihood of being incarcerated, but none were as important relatively speaking as violating the condition regarding drug use.

While absconding was found to be the most important legal factor explaining incarceration decisions, the period of time the offender had absconded also played a significant role. Offenders who had eluded supervision for six months or more were considerably more likely than offenders who had been gone for less time to be given incarceration. For offenders gone for more than one year, the likelihood of incarceration was still greater.

The Commission found other legal factors also played a role in judges' incarceration decisions for violators. Analysis revealed that the number of capias/revocation hearing requests submitted by the probation officer to the judge during the offender's current supervision period made incarceration more likely when his supervision was revoked. Those previous requests for revocation hearings did not have to result in a revocation; however, judges considered these earlier requests when sanctioning violators.

While the Commission's study targets violators not convicted of a new crime, a portion of these offenders had been arrested during the supervision period. The analysis revealed that the number of new arrests for felony crimes was highly correlated with the likelihood of receiving a jail or prison term when the judge revoked the offender's supervision, particularly if the offender had four or more new felony arrests since beginning probation or post-release supervision.

Lastly, the Commission found that an offender's failure to report to or an unsuccessful discharge from certain programs was relevant statistically in judges' in/out decisions, although less important than other aspects of the offender's behavior. These programs include programs of a rehabilitative or punitive nature that the offender was instructed to attend and complete. For example, this factor encompasses employment programs, residential programs, day reporting, and community service programs. Residential programs include, but are not limited to, the state's detention or diversion center programs and youth programs. Programs that are specifically for drug, alcohol, or substance abuse are excluded from this factor.

The incarceration in/out worksheet developed from the sentencing model just described appears in Figure 39. The points assigned to the various factors are based on the results of the statistical model. At the top of the worksheet are instructions that this worksheet should only be filled out if the violator has not been convicted of any federal, state and local law or ordinance violations prior to sentencing for the revocation. Those who are revoked because of a new conviction were not included in this study and the new guidelines should not be used in those cases.

Instructions at the bottom of the worksheet tell the preparer whether or not the violator is recommended for an active term of incarceration. Based on the proposed worksheet, violators scoring 31 points or more will be recommended for incarceration. In those cases the sentence length worksheet must be completed. Figure 40 demonstrates how the threshold of 31 points was determined. The Commission scored the offenders under study using the newly developed guidelines worksheet. Column 1 of this chart shows ranges of scores that offenders can score on the incarceration in/out worksheet. Column 2 reports the percentage of offenders receiving a nonincarceration sanction at each score level. Column 3 contains the percentage of offenders who received incarceration at each score level. Columns 2 and 3 reflect historical patterns of incarceration for these offenders broken out by the worksheet score. Overall, just under 27% of the violators under study received some nonincarceration sanction, while approximately 73% were ordered to serve an incarceration term. Column 5 represents the cumulative percent of offenders scoring at or below each score level. The Commission's analysis revealed that 27% of the offenders under study scored 30 points or less on the in/out worksheet. The Commission, therefore, selected a threshold of 30 points as the maximum an offender can score to receive a recommendation for no incarceration. Offenders scoring 31 points or

FIGURE 39

Incarceration In/Out Guidelines Worksheet

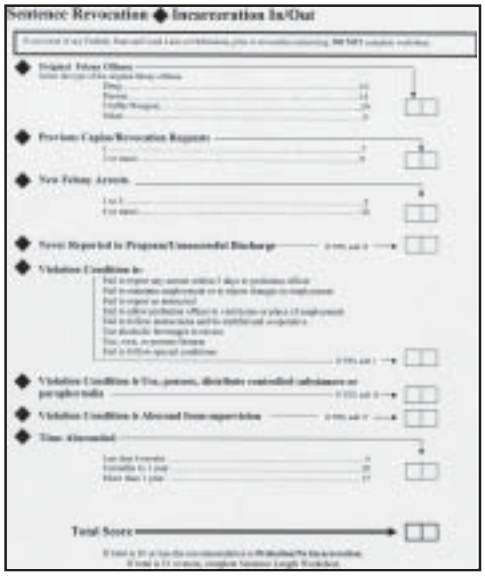


FIGURE 40

Setting the Incarceration In/Out Threshold

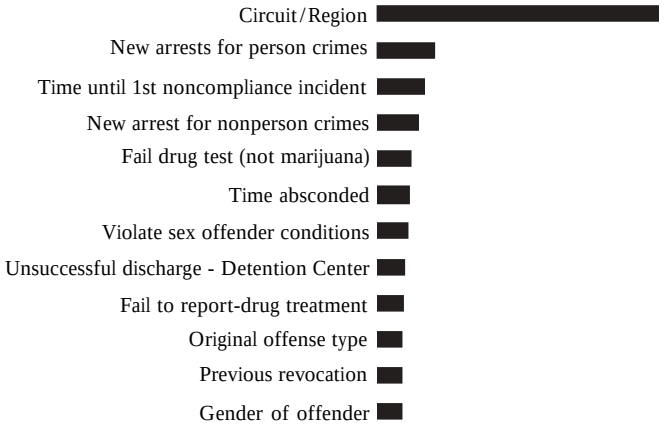
Score	Historical In/Out Decision Out	In	Proposed Model Recommendation	Cummulative Percent
column 1	column 2	column 3	column 4	column 5
0 - 16	66.6%	33.4%	OUT	6.3%
17 - 25	39.5	60.5	OUT	14.4
26 - 29	31.6	68.4	OUT	21.6
30	25.0	75.0	OUT	27.1
31 - 35	23.7	76.3	IN	38.1
36 - 47	26.5	73.5	IN	73.9
48 - 57	17.6	82.4	IN	90.0
58+	5.8	94.2	IN	100.0%
Overall	26.6%	73.4%		

more would be recommended for an active jail or prison term. Choosing 31 points as the threshold ensures that the percentage of violators recommended for incarceration matches the historical rate of incarceration for these offenders. When incarceration is recommended, the proposed sentence length worksheet must be completed.

The Commission modeled sentence length for offenders who served a period of incarceration as a result of the revocation of their community supervision. Figure 41 shows the relative importance of the significant factors found in the Commission's analysis of the sentence length decision. There are a variety of factors that influence judges' decisions on incarceration length. As with the in/out model, these factors can be divided into legal factors and extra legal factors. The legal factors are those that will appear on guidelines worksheet. One of the extralegal factors, the circuit in which the case is handled, is the most influential factor in the model. Again, analysis revealed significant disparity across circuits in punishing violators. In addition, data reveal that male violators typically received longer incarceration sentences than female violators. These two factors will not appear on the sentencing length worksheet.

FIGURE 41

Relative Importance of Significant Factors-Sentence Length Decision



The most important legal factor in explaining the sentence length decision was the number of times the offender had been arrested during the supervision period for a crime against a person. The greater the number of these new arrests, the longer the sentence given by the judge. Nearly as important in the sentence length decision was the period of time the offender was supervised before his first incidence of noncompliance. Offenders who committed their first act of noncompliance within 22 months of beginning supervision typically received longer sentences than offenders who managed to remain compliant with the conditions of their supervision for more than 22 months. A second arrest factor was found to be statistically relevant in sentence length decisions, although it played a lesser role than the first. This second factor, which counts new arrests for any crime other than a crime against a person, captures all arrests not included in the first arrest measure just described.

As in the in/out decision, the offender's continued drug use played a role in the sentence length decision. Offenders who tested positive for using a Schedule I/II or other drug were likely to receive longer terms than offenders who remained drug free. However, analysis revealed that, on average, testing positive for marijuana use did not contribute to a longer sentence. Therefore, marijuana is not included in this factor.

The Commission found that the period of time an offender had absconded was statistically significant in explaining sentence length decisions. A similar factor can be found in the incarceration in/out model. Offenders who had absconded for more than two months were considerably more likely than other offenders to receive a longer term. For offenders gone for more than two years, sentences were longer still.

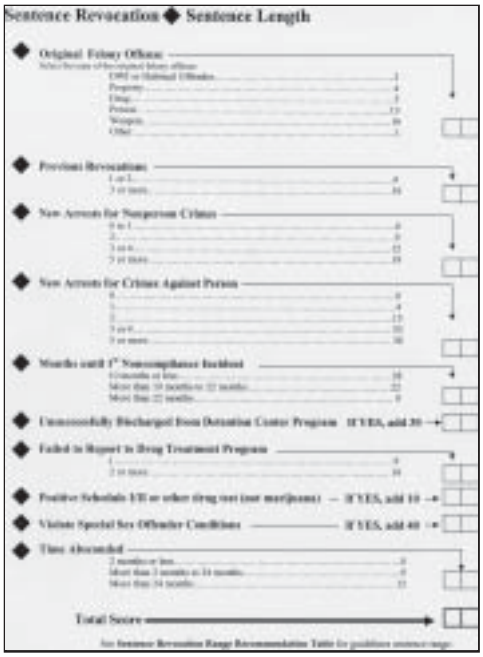
The sentence length model also contains a factor specifically relating to sex offenders being supervised in the community. Judges often impose special conditions for the supervision of sex offenders. The Commission's analysis revealed that when a sex offender violates a no-contact provision with the victim, enters a prohibited area such as a school, has contact with a minor when prohibited from doing so, or fails a polygraph test during the supervision period, he is likely to receive a lengthy period of incarceration when his supervision is revoked.

The Commission found that failing to comply with the judge's order to participate in and complete certain programs would likely result in a longer term upon revocation. Offenders who were returned to court because they had been unsuccessfully discharged from a detention center program received considerably longer sentences, on average, than offenders who had not failed to comply with a detention center order. Likewise, offenders who failed to report to a drug treatment program ordered as a condition of supervision were penalized by the judge with longer sentences once revoked.

Like the in/out decision, the sentence length decision is affected by the type of the original offense. In the sentence length model, offenders originally convicted of a crime against a person or a weapon-related offense were given lengthier incarceration. The terms given to drug, property, DWI, and habitual traffic offenders were typically shorter.

FIGURE 42

Sentence Length Guidelines Worksheet for Violators with No New Criminal Conviction



The last legal factor in the Commission's sentence length model captures the offender's prior revocations of community supervision. The total number of revocations during the current and any prior probation periods are included on this factor. The number of prior failures of community supervision, as measured by revocations, was found to be highly correlated with longer sentence lengths.

The legal factors in the sentence length model were assembled on a worksheet and assigned appropriate points based on the results of the sentencing model. The proposed sentence length guidelines worksheet is seen in Figure 42.

At the bottom of the Sentence Length worksheet, the score is totaled and the preparer is instructed to refer to the Sentence Length Recommendation Table, seen in Figure 43. The first column contains the score ranges and the second column presents the recommended sentence range associated with those scores. A sentence recommendation of 12 months or less is considered a local-responsible (jail) sentence; a sentence recommendation of one year or more is defined as a state-responsible (prison) sentence. The Commission selected ranges of punishment that reflect historical patterns of sentencing for violators who have not been convicted of a new crime.

FIGURE 43

Sentence Length Recommendation Table

	Score	Guideline Sentence
Jail Recommendation	Up to 33	1 Day up to 3 Months
	34 - 41	More than 3 Months up to 6 Months
	42 - 43	More than 6 Months up to 12 Months
Prison Recommendation	44 - 48	1 Year up to 1 Year 3 Months
	49 - 51	More than 1 Year 3 Months up to 1 Year 6 Months
	52 - 55	More than 1 Year 6 Months up to 2 Years
	56 - 62	More than 2 Years up to 3 Years
	63 - 66	More than 3 Years up to 4 Years
	67 - 74	More than 4 Years up to 5 Years
	75 – 85	More than 5 Years up to 6 Years
	86 +	More than 6 Years

Implementation of Sentencing Guidelines for Violators

Pursuant to the 2003 legislative directive, the Commission has developed discretionary sentencing guidelines for application in cases involving felony offenders who are determined by the court to be in violation of community supervision for reasons other than a new criminal conviction. After careful consideration of the study's findings, the Commission concluded that the sentencing guidelines for violators would be a useful tool for circuit court judges in the Commonwealth. Like the sentencing guidelines introduced more than a decade ago for offenders being sentenced for felony crimes, the historically-based guidelines developed for violators are designed to reduce unwarranted disparity in the punishment of offenders who fail the conditions of community supervision. The Commission approved the guidelines worksheets and is recommending their use statewide beginning in July 2004. The proposal for statewide implementation is described in the final chapter of this report – Recommendations of the Commission (Recommendation 1).

Risk Assessment for Violators

Risk assessment is the second phase of the Commission's examination of probation or post-release supervision violators not convicted of a new crime. Specifically, the General Assembly requested that "(t)he Commission shall also determine recidivism rates and patterns for these offenders and evaluate the feasibility of integrating a risk assessment instrument into these discretionary sentencing guidelines."

Criminal risk assessment estimates an individual's likelihood of repeat criminal behavior and the classification of offenders in terms of their relative risk of such behavior. In practice, risk assessment is typically an informal process in the criminal justice system (e.g., prosecutors when charging, judges at sentencing, probation officers in developing supervision plans). Empirically-based risk assessment, however, is a formal process using knowledge gained through observation of actual behavior within groups of individuals. More recently in Virginia, risk assessment has become an increasingly formal process. At sentencing, for example, judges are provided with a risk assessment for offenders convicted of sexual assault, rape, drug offenses, larceny, or fraud. These risk assessment instruments were developed by the Commission and implemented as part of the statewide guidelines system in 2001 (rape and sexual assault) and 2002 (drug, larceny and fraud). Other forms of risk assessment instruments are also used by the Department of Corrections' Division of Community Corrections, the Department of Juvenile Justice, and the Parole Board.

Effectively, risk assessment means developing profiles or composites based on overall group outcomes. Groups are defined by having a number of factors in common that are statistically relevant to predicting the likelihood of repeat offending. Those groups exhibiting a high degree of re-offending are labeled high risk. This methodological approach to studying criminal behavior is an outgrowth from life-table analysis used by demographers and actuaries and the approach has been used by many scientific disciplines.

A useful analogy can be drawn from medicine. In medical studies, individuals grouped by specific characteristics are studied in an attempt to identify the correlates of the development or progression of certain diseases. The risk profiles for medical purposes, however, do not always fit every individual. For example, research demonstrates a strong statistical link between smoking and the development of lung cancer. Nonetheless, some heavy smokers may never develop lung cancer. Similarly, not every offender that fits the lower risk profile will refrain from criminal activity. No risk assessment research can ever predict with 100% accuracy. The goal, rather, is to produce an instrument that is broadly accurate and provides useful additional information to decision makers. The standard used to gauge the success of risk classification is not perfect prediction; the standard should be the degree to which decisions made with a risk assessment tool are improved compared to decisions made without the tool.

Failure, in the criminal justice system, is typically referred to as recidivism. Offender recidivism, however, can be measured in several ways. Potential measures vary by the act defined as recidivism. For instance, recidivism can be defined as any new offense, a new felony offense, a new offense for a specific type of crime (e.g., a new sex offense), or any number of other behaviors. The true rate at which offenders commit new crimes will likely never be known, since not all crimes come to the attention of the criminal justice system. Recidivism, therefore, is nearly always measured in terms of a criminal justice response to an act that has been detected by law enforcement. Probation revocation, re-arrest, reconviction and recommitment to prison are all examples of recidivism measures.

In risk assessment research, the characteristics, criminal histories and patterns of recidivism among offenders are carefully analyzed. Factors proven statistically significant (i.e., those with a known level of success) in predicting recidivism can be assembled on a risk assessment worksheet, with scores determined by the relative importance of the factors in the statistical model. The instrument then can be applied to an individual offender to assess his or her relative risk of future criminality. Behavior of the individual is not being predicted. Rather, this type of statistical risk tool predicts an individual's membership in a subgroup that is correlated with future offending. Individual factors do not place an offender in a high-risk group. Instead, the combination of certain factors determines the risk group of the offender.

The Commission considered very carefully how recidivism and the length of follow-up should be defined for the study requested. Both the measures of recidivism and the follow-up periods have varied widely in other studies. Indeed, in the Commission's own work on developing risk assessment both the measure of recidivism and the length of follow-up have been tailored to the specific goals. In the non-violent risk assessment studies, the original legislative goal was to divert up to 25% of those who otherwise would have been sentenced to prison. As such, recidivism was defined as any new arrest that led to a conviction within three years of release from confinement, to give the measure broad scope, certainty of guilt, and a reasonable follow-up period. By contrast, for the sex-offender risk assessment study, the goal was to identify those most likely to be sexual predators and to incapacitate those offenders for a substantial length of time. Recidivism, then, was defined as a new arrest for a sex or other crime against a person (misdemeanor or felony) with a minimum follow-up period of five years, to focus on predatory acts and provide more time for the crime to be detected.

In the current study, the goal is, again, to identify low-risk offenders who could be safely recommended for sanction other than traditional incarceration in jail or prison. By studying persons coming before a judge for a revocation hearing, these persons have already demonstrated a propensity to recidivate in some manner. The study will employ a minimum follow-up period of 18 months, but recidivistic behavior will be

collected for a longer period of time if available. The primary measure selected by the Commission is any new arrest, but other measures with more specificity, such as reconviction, will be collected at the same time. A major concern when using a follow-up period as short as 18 months is whether the time period is long enough to capture the recidivist behavior. The Commission looked at data from the guidelines development stage to ascertain whether 18 months would be adequate. For those whose revocation included incarceration (those most likely to be looked at for the purpose of diversion) 92% were arrested either for a new crime or on a capias within the first 18 months of supervision. Additionally, of those who were arrested for a new crime prior to revocation, 89% were arrested during that same 18 month time span.

The follow-up period was of particular concern because researchers often utilize a follow-up period longer than 18 months. The time period was selected as a compromise between the desire for a longer follow-up period, if possible, and limitations in the availability of data, particularly for violent offenders sentenced under truth-in-sentencing provisions (who did not begin to appear in the Commission's Community Corrections Revocation database in significant numbers until the end of the study period, thus restricting the follow-up period).

As in past risk assessment studies, the Commission will use three different statistical techniques to analyze the recidivism data. The three methods will be performed independently by different analysts. The preliminary models generated by each method will then be compared. Differences in the results will be identified, assessed and tested. In this way the Commission can be assured that the final model does not reflect spurious results associated with a particular technique or with the style of any individual analyst.

One of the statistical methods employed by the Commission (called logistic regression) requires that all offenders be tracked for the same length of time after release. When applying this method, the Commission will use an 18 month follow-up period in determining recidivism. Any offender re-arrested for any crime within 18 months of

release will be defined as a recidivist. A second method often used in recidivism studies (known as survival analysis) allows researchers to utilize and control for varying follow-up periods. This means that Commission staff can utilize the entire study period to look for recidivist behavior, even if some offenders were tracked for only 18 months while others were tracked for five or more years. Both statistical methods allow multiple factors to be included in the model simultaneously as predictors. As a result, an offender's re-arrest probability can be determined using the unique contribution of several factors to that offender's overall likelihood of recidivism.

A third method (called classification tree analysis) will be used to assist researchers in examining the relationships among the variables under analysis. This technique will be used to create classification systems which will help reveal interactions between two or more variables and to dissect complex relationships. The results from this type of analysis have helped researchers with additional insight into the data, which could then be utilized in the development of the recidivism models using the two primary analytic techniques.

The risk assessment phase of the Commission's study is scheduled to be completed in 2004. The Commission will evaluate the feasibility of integrating a risk assessment component into the guidelines for violators. The Commission will report its conclusions and recommendations to the 2005 General Assembly.

REVIEW OF NONVIOLENT OFFENDER RISK ASSESSMENT STUDY

Introduction

In 1994, as part of the reform legislation that instituted truth-in-sentencing, the General Assembly required the Commission to study the feasibility of using an empirically-based risk assessment instrument to select 25% of the lowest risk, incarceration-bound, drug and property offenders for placement in alternative (non-prison) sanctions. By 1996, the Commission developed such an instrument and implementation of the instrument began in pilot sites in 1997. The National Center for State Courts (NCSC) conducted an evaluation of nonviolent risk assessment in the pilot sites for the period from 1998 to 2001. In 2001, the Commission conducted a validation study of the original risk assessment instrument to test and refine the instrument for possible use statewide. In July 2002, the nonviolent risk assessment instrument was implemented statewide. This chapter will review the first year of available statewide nonviolent risk assessment data, specifically for fiscal year (FY) 2003.

Development of the Risk Assessment Instrument

To develop the original risk assessment instrument for nonviolent offenders, the Commission studied a random sample of over 1,500 fraud, larceny and drug offenders who had been released from incarceration between July 1, 1991, and December 31, 1992. Recidivism was defined as reconviction for a felony within three years of release from incarceration. Sample cases were matched to data from the Pre/Post-Sentence Investigation (PSI) database to determine which offenders had been reconvicted of a felony crime during the three-year follow-up period.

Construction of the risk assessment instrument was based on statistical analysis of the characteristics, criminal histories and patterns of recidivism of the fraud, larceny and drug offenders in the sample. The factors proving statistically significant in predicting recidivism were assembled on a risk assessment worksheet, with scores determined by the relative importance of the factors in the statistical model. The Commission, however, chose to remove the race of the offender from the risk assessment

instrument. Although it emerged as a statistically significant factor in the analysis, the Commission viewed race as a proxy for social and economic disadvantage and, therefore, decided to exclude it from the final risk assessment worksheet. The total score on the risk assessment worksheet represents the likelihood that an offender will be reconvicted of a felony within three years. Offenders who score few points on the worksheet are less likely to be reconvicted of a felony than offenders who have a higher total score.

The risk assessment worksheet is completed for fraud, larceny and drug offenders who are recommended for some period of incarceration by the guidelines and who satisfy the eligibility criteria established by the Commission. Offenders with any current or prior convictions for violent felonies (defined in §17.1-803) and offenders who sell an ounce or more of cocaine are excluded from risk assessment consideration. When the risk assessment instrument is completed, offenders scoring at or below the selected threshold are recommended for sanctions other than traditional incarceration. The instrument itself does not recommend any specific type or form of alternative punishment. That decision is left to the discretion of the judge and may depend on program availability. In these cases, judges are seen as concurring with the guidelines recommendation if they sentence within the recommended incarceration range or if they follow the recommendation for alternative punishment. For offenders scoring over the selected threshold, the original recommendation for incarceration remains unchanged.

Pilot Program

Prior to the statewide implementation of the nonviolent risk assessment instrument, six judicial circuits agreed to participate as pilot sites. On December 1, 1997, Circuit 5 (cities of Franklin and Suffolk and the counties of Southampton and Isle of Wight), Circuit 14 (Henrico), and Circuit 19 (Fairfax) became the first circuits to use the risk assessment instrument. Three months later, Circuit 22 (city of Danville and counties of Franklin and Pittsylvania) joined the pilot project. In the spring of 1999, Circuit 4 (Norfolk) and Circuit 7 (Newport News) began using the instrument, bringing the number of pilot sites to six. The pilot sites represent large and small jurisdictions, urban and rural areas and different geographic regions of the state.

NCSC Evaluation

The National Center for State Courts (NCSC), with funding from the National Institute of Justice, conducted an independent evaluation of the development and impact of the risk assessment instrument. During the summer of 2000, NCSC investigators visited the pilot sites to interview judges, Commonwealth's attorneys, defense counsel, and probation officers about the design and use of the risk assessment instrument. Included in the NCSC evaluation was a benefit-cost analysis of the risk assessment instrument. The NCSC evaluation concluded that the risk assessment instrument is an effective tool for predicting recidivism as well as a cost-saving benefit for the Commonwealth.

The NCSC also suggested the instrument may be streamlined by modifying certain factors. However, it is important to note that there were significant methodological differences between the two studies. The evaluation study used re-arrest and re-arrest resulting in conviction as outcome measures, while the Commission's original study relied upon only felony convictions as the recidivism measure. In addition, the original study examined all convicted larceny, fraud, and drug felons, while the NCSC evaluation study used only larceny, fraud, and drug felons from pilot sites who were actually diverted to alternative punishment. These differences in research methodology could account for the differences in the studies' findings.

Validation Study

In 2001, the Commission conducted a validation study with the goal of testing and refining the nonviolent offender risk assessment instrument previously introduced through the pilot program. The Commission's original analysis and validation study included offenders from throughout the Commonwealth who were eligible for nonviolent risk assessment. This approach differed from the evaluation study conducted by NCSC because the evaluation study observed only offenders from pilot sites that were already diverted to alternative sanctions. The revised instrument was implemented statewide in July of 2002.

For the refined instrument developed through its validation study, the Commission adopted a scoring threshold of thirty-five points on the risk assessment scale. The Commission's analysis suggested that a threshold of thirty-five points would satisfy the legislative goal of diverting at least 25% of nonviolent offenders from incarceration in a state prison facility to other types of sanctions.

First Year Experiences with Statewide Implementation

After several years of research, pilot testing, and evaluation, the nonviolent risk assessment instrument was implemented statewide on July 1, 2002 for all felony larceny, fraud, and drug cases. Between July 1, 2002 and June 30, 2003, two-thirds of all guidelines received by the Commission were for nonviolent offenses. However, only 42% (6,062) of these nonviolent cases were actually eligible to be assessed for an alternative sanction recommendation. The goal of the nonviolent risk assessment instrument is to divert low-risk offenders, who are recommended for incarceration on the guidelines, to an alternative sanction other than prison. Therefore, nonviolent offenders who are recommended for probation/no incarceration on the guidelines are not eligible for the assessment. Furthermore, the instrument is not to be applied to offenders convicted of distributing one ounce or more of cocaine and those who have a current or prior violent felony conviction. It should be noted that there were 1,833 nonviolent offense cases for which a risk assessment instrument was not completed, including those cases that may have been eligible for assessment.

FIGURE 44
Percentage of Eligible Nonviolent Risk Assessment Cases Recommended for Alternatives--FY2003

Of the 6,062 eligible nonviolent offense cases in FY2003, 36% were recommended for an alternative sanction by the risk assessment instrument (Figure 44). During the same time period, the average risk score for screened offenders was 39 points. Risk assessment cases can be categorized into four groups based upon whether the offender was recommended for an alternative sanction by the risk assessment instrument and whether the judge subsequently sentenced the offender to some form of alternative punishment. Of the eligible offenders screened with the risk assessment instrument, 17% were recommended for and sentenced to an alternative punishment (Figure 45). Another 20% were sentenced to a traditional term of incarceration despite being recommended for an alternative sanction by the risk assessment instrument. In 15% of the screened cases, the offender was not recommended for, but was sentenced to, an alternative punishment. Twenty-eight percent of these offenders scored just over

FIGURE 45
Recommended and Actual Dispositions to Alternative Sanctions--FY2003

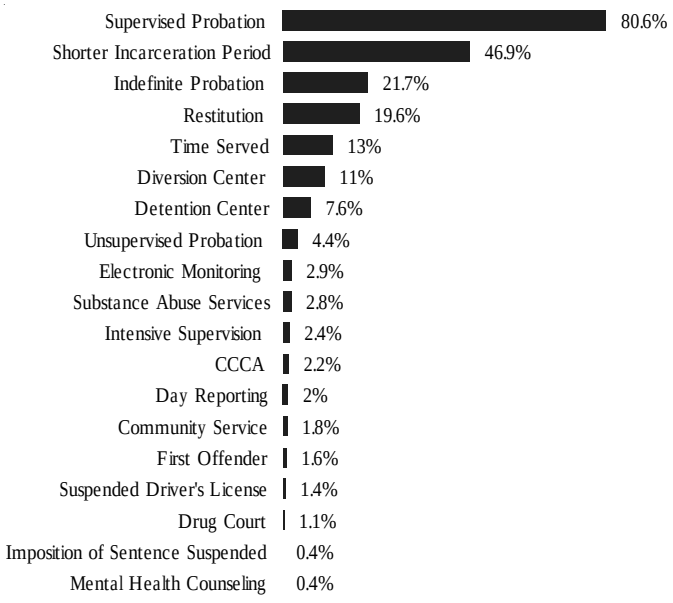
RECOMMENDED DISPOSITION	ACTUAL DISPOSITION: Offender Received Alternative	ACTUAL DISPOSITION: Offender Did Not Received Alternative
Offender Recommended for Alternative	16.5%	19.7%
Offender Not Recommended for Alternative	15.1%	48.7%

the thirty-five point threshold (36 to 39 points). This may indicate that judges recognize the probabilistic nature of risk assessment and make use of additional information when identifying good candidates for alternative sanctions. Nearly 49% of the screened offenders were not recommended for an alternative, and judges concurred in these cases by utilizing traditional incarceration.

In cases in which offenders were recommended for and received an alternative sanction, most often judges sentenced the offender to a period of supervised probation (81%) (Figure 46). In addition, 47% of the time risk assessment recommended an alternative sanction, the judge agreed and sentenced the offender to a shorter incarceration period than was recommended by the traditional guidelines range. Other frequent sanctions cited include indefinite probation (22%), restitution (20%), and time served (13%). Department of Corrections' Diversion and Detention Center programs were cited as alternatives in about one out of every ten cases. Less frequently cited alternatives include home electronic monitoring (HEM), day reporting, community service, and drug court.

FIGURE 46

Types of Alternative Sanctions Imposed--FY2003



While 17% of eligible nonviolent offenders were recommended for an alternative on the risk assessment instrument and actually received an alternative sanction in lieu of a prison sentence during FY2003, individual judicial circuits show differences in their concurrence with recommendations provided by the nonviolent risk assessment instrument (Figure 47). For instance, of the 185 eligible nonviolent risk assessment cases sentenced in Circuit 7 (Newport News) in FY2003, 14% were recommended for and received an alternative sanction to prison. In contrast, of the 173 eligible nonviolent risk assessment cases sentenced in Circuit 27 (Radford, Pulaski, Wythe area) in FY2003, 31% were recommended for and received an alternative sanction to prison. One reason for differences in the use of alternative sanctions may be the types and availability of alternative programs in each jurisdiction. Furthermore, offenders in some jurisdictions may be more or less amenable to alternative programs available in their area.

FIGURE 47

Recommended & Actual Dispositions to Alternative Sanctions by Judicial Circuit--FY2003

Judicial Circuit		Recommended and Received	Recommended and Not Received	Not Recommended and Received	Not Recommended and Not Received	Number of Eligible Cases
1	Chesapeake	8.7	20.9	13.4	57.0	172
2	Virginia Beach	14.2	19.6	15.4	50.7	408
3	Portsmouth	9.2	15.6	12.8	62.4	218
4	Norfolk	20.8	10.6	25.9	42.7	424
5	Suffolk Area	12.2	17.6	14.9	55.4	148
6	Sussex Area	15.1	16.1	19.4	49.5	93
7	Newport News	13.5	30.3	8.6	47.6	185
8	Hampton	15.0	17.9	19.3	47.9	140
9	Williamsburg Area	13.7	16.0	16.0	54.2	131
10	South Boston Area	15.0	26.2	3.7	55.1	107
11	Petersburg Area	14.2	20.3	13.5	52.0	148
12	Chesterfield Area	13.3	21.2	12.9	52.7	241
13	Richmond City	19.0	21.1	22.9	37.0	284
14	Henrico	9.1	16.5	18.8	55.7	352
15	Fredericksburg Area	14.1	20.5	12.0	53.4	283
16	Charlottesville Area	20.3	34.3	7.6	37.8	172
17	Arlington Area	16.0	22.4	10.3	51.3	156
18	Alexandria	17.8	12.9	17.8	51.5	101
19	Fairfax	20.9	22.1	14.5	42.5	358
20	Loudoun Area	15.2	21.0	14.3	49.5	105
21	Martinsville Area	17.1	28.5	17.9	36.6	123
22	Danville Area	9.3	25.0	6.5	59.3	216
23	Roanoke Area	17.6	18.7	18.1	45.6	182
24	Lynchburg Area	14.7	15.1	17.5	52.6	251
25	Staunton Area	30.6	20.0	15.0	34.4	180
26	Harrisonburg Area	23.1	18.6	10.9	47.5	221
27	Radford Area	30.6	13.9	11.0	44.5	173
28	Bristol Area	17.5	23.8	21.3	37.5	80
29	Buchanan Area	14.5	22.8	15.2	47.6	145
30	Lee Area	34.0	17.0	8.5	40.4	47
31	Prince William Area	18.1	18.6	12.4	51.0	210
	Missing Circuit	12.5	12.5	25.0	50.0	8
	Total	**16.5**	**19.7**	**15.1**	**48.7**	**6062**

Of the risk assessment worksheets received, drug cases represent nearly half of all offenses, with the large majority (44%) consisting of Schedule I/II drug offenses. Of the 2,959 eligible drug cases in FY2003, 19% were recommended for and received an alternative sanction to prison (Figure 48). Another 13% were not recommended for an alternative by the risk assessment instrument; however, the judge deemed that an alternative would be appropriate and sentenced the individual as such.

Just under one-third (30%) of all risk assessment cases sentenced during the time period were larceny offenses. Of the 1,845 eligible larceny cases, 5% were recommended for and received an alternative sanction to prison (Figure 49). Another 15% were not recommended for an alternative sanction, but the judge sentenced the individual to an alternative to prison. More than two-thirds of larceny offenders (68%) were not recommended for, and did not receive, an alternative sanction on the risk assessment instrument. In these cases, the judge agreed that a traditional incarceration sentence was the appropriate punishment. The nonviolent offender risk assessment instrument recommends fewer larceny offenders for alternative sanctions because both the National Center for State Courts evaluation and the Commission's validation study found that larceny offenders are most likely to recidivate among nonviolent offenders.

Fraud offenses accounted for about 21% of the nonviolent risk assessment cases in FY2003. Of the 1,258 eligible fraud cases, 26% were recommended for and received an alternative sanction to prison (Figure 50). Another 22% were not recommended for an alternative on the risk assessment instrument, but the judge felt that an alternative was the most appropriate sanction. In total, 48% of eligible fraud offenders screened by the risk assessment instrument received an alternative sanction. This would seem to indicate that judges feel fraud offenders are the most amenable, among nonviolent offenders, for alternative sanctions.

FIGURE 48

Recommended and Actual Dispositions to Alternative Sanctions--FY2003

Drug Schedule I/II & Drug/Other Cases (N = 2,959)

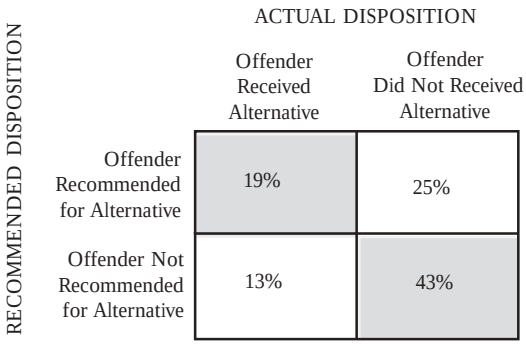


FIGURE 49

Larceny Cases (N = 1,845)

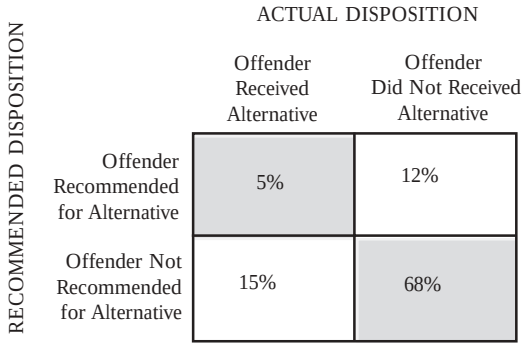
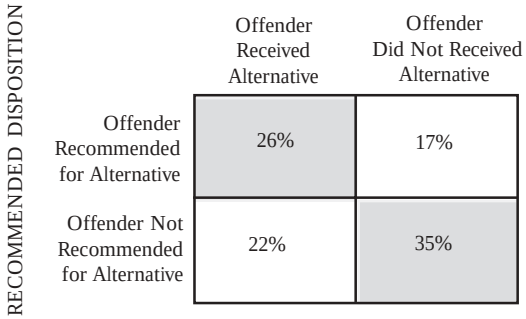


FIGURE 50

Fraud Cases (N = 1,258)



Legislative Directive to Review Risk Assessment

In 2003, the General Assembly directed the Commission to utilize its nonviolent risk assessment instrument to identify offenders who are not currently recommended for alternative punishment options by the assessment instrument and who pose little risk to public safety. On the basis of risk assessment and with due regard for public safety, the Commission is to determine the feasibility of adjusting the assessment instrument to recommend low-risk offenders for appropriate punishment options (Chapter 1042 of the Acts of Assembly 2003). If the Commission determines that a portion of offenders not currently recommended for alternative sanctions by risk assessment do not pose a significant risk of recidivism, the mandate directs the Commission to adjust the risk instrument accordingly. The Commission must also report its findings to the 2004 General Assembly.

Authority: Title 17.1, Chapter 8, Code of Virginia.

A. The Virginia Criminal Sentencing Commission shall utilize the non-violent risk assessment instrument developed pursuant to § 17.1-803 (5), Code of Virginia, to identify offenders who are not currently recommended for alternative punishment options by the assessment instrument and who pose no significant risk to public safety. The Commission shall determine, on the basis of such risk assessment and with due regard for public safety, the feasibility of adjusting the assessment instrument to recommend low risk non-violent offenders for appropriate punishment options. Adjustments in the risk assessment instrument recommendations should be considered only for offenders who do not pose a significant recidivism risk. If the Commission so determines that this goal is feasible, it shall incorporate the appropriate adjustments into the discretionary sentencing guidelines in a timely manner, as it seems appropriate. The Virginia Criminal Sentencing Commission shall provide its findings on this matter to the 2004 Session of the General Assembly.

In response to the legislative directive, the Commission closely scrutinized the application of the risk assessment instrument during its first year of statewide use. Data reveal that the current threshold of 35, the maximum score for an offender to be recommended for an alternative sanction, can be adjusted to the score of 38 without a significant increase in the risk to public safety. Adjusting the threshold would increase the number of offenders recommended by risk assessment for alternative punishment in lieu of traditional incarceration.

Figure 51 demonstrates the impact of adjusting the threshold currently used for the risk assessment instrument. The first column presents the risk score, beginning with scores up to 35 points. The second column reports the number of cases involving drug offenses at each risk score. The third column shows the number of fraud cases at each score, while the fourth column shows the number of larceny cases at each score. The fifth column presents the total number of cases associated with each score. The next column indicates the percent of cases at each score level for which an alternative sanction is ordered in lieu of the traditional term of incarceration recommended by the guidelines. It is followed by a column that provides the cumulative percent of cases at or below each score level. The final column reports the rate of recidivism for

offenders at each score level as determined by the Commission during its 2001 validation study. For the Commission's risk assessment work with nonviolent offenders, the Commission measures recidivism, or risk to public safety, by a new felony conviction within three years of the offender's release to the community.

As shown in Figure 51, offenders who scored 35 points or less in the Commission's validation study recidivated at a rate of 16.4%. However, the recidivism rates for offenders scoring 36, 37 or 38 points were only slightly higher and did not exceed 17.6%. Beginning at the score of 39, the recidivism rates began to climb more steeply to 19.2%, and up to 21% at the score of 40.

During its validation study, the Commission chose a threshold of 35 points because analysis suggested that a threshold of 35 would satisfy the legislative goal of diverting at least 25% of nonviolent offenders from incarceration into other types of sanctions. Figure 51 reveals, however, that the current threshold could be revised to 38 with little impact on the recidivism rate among offenders recommended for alternative punishment. By adjusting the threshold to 38 points, the number of offenders recommended for such alternative punishment would increase. Data suggests that an additional 654 offenders would have been recommended for an alternative sanction had the threshold been set at 38 during FY2003.

After deliberating upon the first-year experiences of the statewide nonviolent offender risk assessment program instrument and reviewing available recidivism data, the Commission concluded that the risk assessment threshold could be adjusted to a score of 38 points without significant risk to public safety.

FIGURE 51

Risk Assessment Cases and Recidivism Rates by Score--FY2003

Risk Assessment Score	Number of Drug Cases at Each Score	Number of Fraud Cases at Each Score	Number of Larceny Cases at Each Score	Total # of Cases at Each Score	% of Cases Currently Receiving Alternatives at Each Score	Cumulative % of Cases Potentially Recommended for Alternative	Cumulative Recidivism Rates (from VCSC study)
up to 35	1323	545	325	2193	16.5%	36.2%	16.4%
36	145	69	54	268	27.6	40.6	17.6
37	84	60	35	179	28.5	43.5	17.3
38	111	33	63	207	26.1	47.0	17.4
39	174	70	63	307	26.7	52.0	19.2
40	65	50	30	145	24.8	54.4	21.0

Future of Nonviolent Offender Risk Assessment

Pursuant to the 2003 legislative charge, the Commission has examined its nonviolent offender risk assessment program. After careful consideration, the Commission has approved a change in the instrument to increase the threshold, or the maximum score an offender can receive to be recommended for an alternative sanction, from 35 to 38 points. Data indicate that the offenders who would be affected by this change do not pose a significant recidivism risk. The proposal for this revision to the Commission's risk assessment program is described in the chapter entitled Recommendations of the Commission (Recommendation 2). Per § 17.1-806 of the Code of Virginia, any modifications to the sentencing guidelines adopted by the Commission and contained in its annual report shall, unless otherwise provided by law, become effective on the following July 1.

COMPREHENSIVE REVIEW OF SENTENCING GUIDELINES

Introduction

Under §17.1-803, the Commission is charged with developing, maintaining and modifying a system of statewide discretionary sentencing guidelines for use in felony cases. The Commission is also directed to monitor sentencing practices throughout the Commonwealth, including the use of the discretionary guidelines. The sentencing guidelines system in place today was first introduced in 1995, when legislation was adopted to abolish parole and institute truth-in-sentencing in Virginia. As detailed in §17.1-805 of the Code of Virginia, the initial set of truth-in-sentencing guidelines is grounded in a comprehensive analysis of sentencing practices and patterns of time-served for felons sentenced during the years 1988 through 1992. This analysis formed a baseline set of sentencing midpoints and ranges upon which legislatively-mandated enhancements were applied to increase the recommendations for offenders with current or prior convictions for violent crimes. Since 1995, the Commission has relied upon judicial departure information and guidelines user input as the basis for recommended revisions to specific factors within these initial guidelines. That approach, however, is not as exact as reanalyzing historical sentencing data in a holistic fashion. At its November 2001 meeting, the Commission approved a plan to conduct a thorough reanalysis of Virginia's discretionary sentencing guidelines system.

Since 1991, Virginia's circuit judges have been provided with historically-based sentencing guidelines. Representatives of the Judicial Conference of Virginia selected five years of sentencing data to define "history." Using five years of data minimizes year-to-year fluctuations and reduces the likelihood of spurious results when building sentencing models. Thus, when the truth-in-sentencing/no-parole sentencing system was adopted by the General Assembly, it relied upon the same definition of history, a recent five-year time frame, for the new historical benchmarks. Prior to 1995, however, reanalysis was performed to periodically update the guidelines based on the most recent five years of data as new data became available. This has not been done under truth-in-sentencing because five of years of sentencing data under the new system have only recently become available. Since the effective date of parole abolition was tied to the offense date (parole was abolished for any offender convicted of a felony offense committed on or after January 1, 1995), it took some time before this new policy was applied to the majority of sentenced felons.

By 2001, a full five years of data for felons sentenced under truth-in-sentencing provisions had accumulated. The Commission has embarked on a comprehensive analysis of approximately 126,000 truth-in-sentencing decisions made during the five years from FY1997 through FY2001. By examining sentencing practices under the truth-in-sentencing/no-parole system, the reanalysis will provide a more focused picture of Virginia's experiences since the abolition of parole. This comprehensive analysis will ensure that judges are being provided with guidelines that reflect both historical sentencing decisions and changes in more recent sentencing practices.

The proposed analysis of such a large volume of sentencing decisions is a very time consuming task and must be conducted for each of the 14 sentencing guidelines major offense categories. Statistical models of sentencing under the truth-in-sentencing/no-parole system will be developed. Within each offense group, models will be developed by type of sentencing decision (e.g., type of disposition and sentence length). Since it is not possible to perform a comprehensive analysis of, or for the Commission to review, all the guidelines offense groups in a single year, the reanalysis work is a multi-year project.

The first stage of the analysis work began with those offense groups with the lowest compliance rates or where recent legislation has potentially altered historical sentencing patterns. The later stages of the analysis will be reserved for offense groups exhibiting the highest compliance rates with no obvious departure patterns. Because compliance rates in midpoint enhancement cases are well below overall compliance, guidelines midpoint enhancements will also be examined closely. Murder, robbery, rape and sexual assault offense groups had the lowest compliance rates in FY2001, ranging between 67% and 70%. These categories were the first targeted for reanalysis.

During 2002, the first year of this immense project, the Commission began to examine the murder/homicide and robbery offense categories. Because sentencing patterns in rape and sexual assault offenses have been particularly complex to analyze in the past, the Commission opted to collect additional offense detail from sex offender case files to supplement the automated data used for analysis. Although reviewing case files and extracting pertinent offense details was time consuming and staff intensive, this process yielded rich detail to aid analysts in examining these offense categories. The rape and sexual assault data collection also began in 2002.

This year, reanalysis of the murder/homicide sentencing guidelines continued. Results were presented to the Commission and subsequently approved. Data collection for the

rape and sexual assault offense groups was completed in 2003 and Commission staff launched into analysis of the sexual assault offense group. Preliminary sex assault models have been developed.

This chapter of the Commission's 2003 Annual Report summarizes the methodological approach used in the analysis of historical sentencing data and the development of guidelines worksheets. The data sources utilized for this project are also described. The Commission's supplemental data collection for rape and sexual assault offenses is outlined. Finally, the Commission's actions regarding the murder/homicide and robbery guidelines reanalysis are discussed.

Methodology

The methodological approach used by the Commission for developing Virginia's historically-based sentencing guidelines was developed in 1987. The methodology was approved by the Judicial Sentencing Guidelines Committee of the Judicial Conference of Virginia, which oversaw the development of Virginia's first discretionary sentencing guidelines system. Judges approved the concept of discretionary guidelines that were descriptive of historical sentencing practices. The first criterion was that guidelines should be grounded in the historical incarceration rate. The second criterion was that guidelines should recommend ranges of punishment that encompass the middle 50% of historical sentences (excluding the extreme low and high sentences). Judges felt that the most recent five years of data would most accurately capture current judicial thinking. By using the five years of data, year-to-year fluctuations are minimized and the likelihood of spurious results in the sentencing models are reduced. From these data, models were developed for each offense group by type of judicial sentencing decision. The judge's decision of whether or not to sentence an offender to prison was modeled first. The next sentencing decision was dependent upon the outcome of the first decision. For cases in which the judge did not order a prison term, the judge's choice between giving the offender a jail term or probation without incarceration was modeled. Finally, for cases resulting in a prison term, a model of the length of sentence was constructed.

In order to maintain quality results that can be utilized by judges in making sentencing decisions, the Commission employs a number of quality control techniques. To begin, independent analysis is conducted for each of the guidelines offense groups. Two researchers conduct analysis on each guidelines offense group independently of one

other. This tactic reduces the likelihood that errors, spurious findings, or results biased by the style of an individual analyst will find their way into the guidelines. Once the independent analysis is complete, the reconciliation process begins. In the reconciliation process, the researchers team up to evaluate the differences in their independently developed models and conduct statistical tests to determine which model best meets the Commission's objectives. That resulting model is then converted into a guidelines worksheet. With this process complete, the results are then reviewed by another analyst as an additional error check.

The historical data utilized for the Commission's analysis captures a broad array of information on the circumstances of the offense(s), the offender's prior record, as well as the offender's employment, education and substance abuse history. The analysis begins with a wide variety of possible factors that might influence a judge's sentence decision. Applying widely-used statistical techniques enables the analyst to filter out those factors that are not statistically relevant in judges' sentencing decisions. The result is an empirical model containing factors that have demonstrated a statistically significant role in sentencing practices over the five year period.

There are three major statistical techniques utilized in sentencing guidelines analysis. For the decision of whether to send the offender to prison or not (the in/out decision) and the decision between probation and jail incarceration (the probation/jail decision), two statistical techniques known as logistic regression and discriminant analysis are used. For the prison sentence length decision, a technique called ordinary least squares (OLS) regression is applied.

Logistic regression is a statistical technique that can predict a choice from two options, such as prison versus some lesser sanction or probation versus jail. It is used to identify factors that best discriminate between two outcomes or groups (e.g., offenders sentenced to prison and offenders not sentenced to prison). When using logistic regression, an analyst can easily determine which factors are statistically significant. Interpreting the effect of each factor relative to the other factors in the model, however, is complex. This is because logistic regression results are presented in terms of the log of the odds of a particular outcome (e.g., the odds of winning the state lottery). Thus, the drawback of logistic regression is that it cannot determine the relative importance, or weight, of the factors in the model, which is necessary to convert the model to scores on a guidelines worksheet. Logistic regression, therefore, is used in conjunction with a second technique called discriminant function analysis. Like logistic regression, discriminant function analysis is a statistical technique used to identify factors that best discriminate among two or more outcomes or groups. The discriminant function procedure discriminates between groups by grouping cases in such a way the differences between the groups are maximized while the differences

within the outcome groups are minimized. In terms of categorizing cases by type of outcome, models generated through logistic regression and discriminant function analysis provide strikingly similar results.

Worksheet scores for Section A (the in/out decision) and Section B (the probation/jail decision) are developed from the weights of factors in the model produced by discriminant function analysis. Factor weights tend to be small because the Section A and Section B models simply determine a choice between two options. Factor weights are adjusted so that the smallest score value will be at least one point. This process is referred to as standardizing. The relationships among the variables remain the same. After standardizing, the factor weights are used to develop worksheet scores. This process is conducted for all Section A and Section B worksheets.

Unlike logistic regression and discriminant function analysis, ordinary least squares (OLS) regression can be used estimate outcomes that fall along a continuum, such as the sentence length decision for cases that are referred to Section C of the guidelines. This technique is used to identify factors (e.g., weapon use, victim injury, etc.) that influence a response measure (e.g., sentence length). OLS regression assumes a linear relationship between predictor factors and the response measure. Results are calculated by minimizing the model's prediction error. An analyst can easily determine which factors are statistically significant. Interpretation of the effect of each variable is straightforward. For the sentence length model, the result represents months of incarceration. Guidelines ranges are developed using the middle 50% of sentences for a particular score. The highest 25% and the lowest 25% of sentences are excluded from the recommended range.

Established in the late 1980s, these methods and protocols described here are still applied today. The comprehensive review of the sentencing guidelines initiated by the Commission in 2002 will examine the guidelines in the context of actual judicial sentencing practices in recent history, defined as the most recent five years of available data. Since its creation in 1995, the Commission has not made prescriptive, or normative, adjustments to the guidelines not supported by historical data. However, some prescriptive adjustments have been mandated by the General Assembly. These adjustments include midpoint enhancements to increase the guidelines recommendations for violent offenders, incorporation of a risk assessment instrument for nonviolent offenders, and implementation of a risk assessment for felony sex offenders.

During the review process, the Commission will explore ways to possibly simplify the guidelines system while maintaining or improving the statistical power of the sentencing models. For example, the Commission is examining the possibility of

reducing the number of sections or worksheets that must be completed for the guidelines. Currently, the guidelines for most offense groups are composed of three sections. Section A is completed to determine if the offender will be recommended for incarceration greater than six months or not; Section A represents the "in/out" decision. If the offender is not recommended for incarceration over six months, Section B is completed to generate a recommendation for either probation without active incarceration or incarceration up to six months in jail. If, however, the offender is recommended for lengthier incarceration under Section A, Section C is completed to yield a recommended sentence length. Alternative structures are being explored. It may be possible to revise the guidelines such that Section A would recommend the offender for either an active term of incarceration or probation without incarceration. This would represent a different way to define the "in/out" decision. For an offender recommended for incarceration, a second worksheet would be completed to determine the recommended sentence length and would encompass both jail and prison sentence lengths. The viability of this type of alternative structure will be assessed for each offense group as it comes under review.

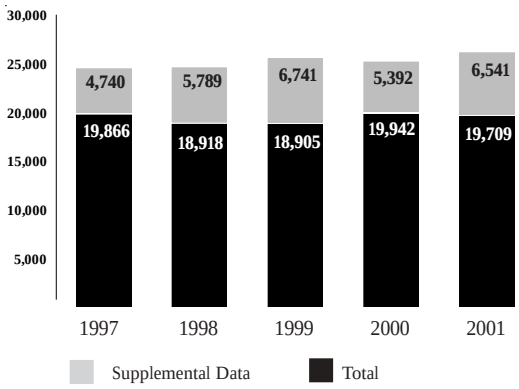
Data

This research utilizes the Pre/Post-Sentence Investigation (PSI) database maintained by the Virginia Department of Corrections (DOC). For most felony sentencing events in Virginia, DOC's Community Corrections division is required to prepare a PSI report. The report contains a wealth of information about the defendant and the crime. The PSI captures standardized information regarding the crimes for which the offender is convicted, the circumstances of the crime (e.g., use of a weapon, victim injury, the offender's role in the offense, his relationship to the victim, if he resisted arrest, the quantity of drugs involved, etc.), his prior adult record, his juvenile record, family and marital information, education, military service, employment history, history of alcohol and drug use, as well as any substance abuse or mental health treatment experiences. In addition to the standardized information, PSI reports ordered by the court also contain significant narrative sections describing the offense and the offender's family, education, employment, health, and substance abuse history in detail. Before forwarding a copy of the PSI report to DOC's administrative headquarters, the Probation and Parole office attaches information on the sentencing outcome for the case. Prior to 1997, DOC received paper copies of all PSI reports at its central office, where the contents were automated. The PSI system has since been automated at the district level, enabling probation officers to key PSIs directly into a computer terminal and forward the files electronically to DOC. Because the PSI data system contains offender, crime, and sentencing information for most felony offenders convicted in Virginia, it is the database used most extensively by the Virginia Criminal Sentencing Commission in studying sentencing patterns and developing the sentencing guidelines.

While it is the most extensive data system on felony offenders available in the Commonwealth (and may be one of the most extensive of such databases in the nation), the PSI data system has certain limitations. Although prepared in most felony cases, a PSI is not completed on every felon convicted in circuit court. Cases that do not result in a prison term or a term of supervised probation will not have a PSI. Certain cases are more likely to go without a PSI (e.g., larceny). Potential for bias exists. Moreover, when a pre-sentence report is not ordered and a post-sentence investigation must be done, there is a considerable time lag between sentencing and submission of the post-sentence report. Therefore, there is a time lag during which data for a certain period is accumulated in automated systems. Data for a given year will be incomplete for a lengthy period.

FIGURE 52

Comprehensive Review of Sentencing Guidelines
Number of Cases for Analysis



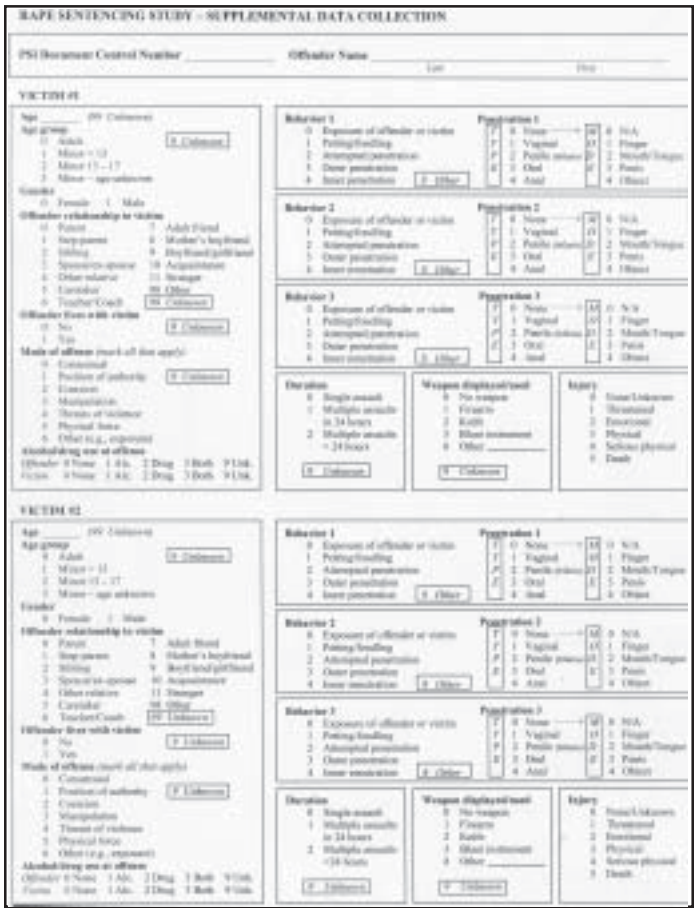
Without supplementing the data, therefore, the data does not fully represent all felony cases sentenced in circuit court. Since 1985, PSI data has been supplemented. The method of supplementing data has evolved with DOC policy and practice. Today, the Commission's sentencing guidelines data system is used to identify felony cases that do not have a PSI. Once the missing cases have been identified, guidelines data are used in three ways. Guidelines information is used directly (e.g., name and other identifying information, offense at conviction, sentence and circuit court). Guidelines records are then used to identify previous PSIs completed for the same offender in order to gain further information about him or her (family background, education, employment and substance abuse history, some prior record information). Finally, guidelines information is used to match to similar cases already in PSI system. Information from the matched records is used to fill in any remaining fields appearing in a PSI document. The supplemental PSIs generated by the Commission are then added to the existing PSI database. Figure 52 shows that of the 126,533 cases for reanalysis, supplemental data averages 23% of the total cases each year. Each of the guidelines offense groups will undergo analysis based on data from fiscal years (FY) 1997 through 2001 (July 1996 through June 2001).

Rape and Sexual Assault Supplemental Data Collection

In addition to historical sentencing data, the Commission elected to collect additional information for rape, forcible sodomy and object sexual penetration and other sexual assault offenses to supplement existing automated data in these cases. To supplement automated PSI records for rape and other sexual assault cases, Commission staff reviewed offenders' pre/post-sentence reports, specifically the offense narrative sections and any victim impact statements. The Commission was particularly interested in details relating to the offense behavior and the victim not available on the automated data systems used for analysis. The Commission designed an instrument to record additional information about the victim, the circumstances of the offense(s), as well as specific crimes in the offender's prior record (Figure 53). This information was extracted from the PSI's narrative sections, any victim impact statements and the offender's criminal history ("rap sheet") report. Supplemental data collection includes detailed information on the number of victims, the ages and gender of all victims, the mode of committing the offense, the mode of inflicting injury, the offender's prior felony sexual assault convictions/adjudications, the offender's prior misdemeanor sexual assault convictions/adjudications, the specific offender/victim relationship, and use of alcohol by the offender and/or victim at time of offense.

FIGURE 53

Supplemental Data Collection Instrument for Rape and Sexual Assault Cases



Supplemental data allows analysts to examine details of the criminal behavior not otherwise available. For example, the PSI data used for analysis contains general information on only one victim; the supplemental data allows the Commission to examine all the victims in a particular case and the exact acts committed by the offender against each victim. Supplemental victim information was collected for up to three victims for each case. The total number of victims was also recorded.

The Commission selected a sample of rape and sex offense cases about which to collect supplemental data. Supplemental data was obtained in two ways. For a portion of the cases, the PSI offense narrative could be found on the DOC's recently automated PSI system. In the late 1990s, Virginia's DOC automated the PSI system throughout the agency's 43 Probation & Parole District Offices, allowing probation officers to prepare individual PSIs using their desk-top computers and to transmit PSI reports to DOC electronically. For PSIs entered into this new automated system, narrative sections of the PSI report are maintained in text form. The Commission utilized the automated PSI texts whenever possible. For the remainder of the cases, the Commission obtained paper copies of PSIs and victim impact statements from the DOC's Probation & Parole Offices. Due to the relatively small number of cases, the

initial supplemental data collection was expanded to include additional rape, forcible sodomy and object sexual penetration cases.

Supplemental data collection phase of the reanalysis project, initiated in 2002, was completed in 2003. The supplemental data has been prepared for analysis and has been merged with the larger data set. With the data collection stage complete, Commission staff was able to begin preliminary analysis. The total number of cases with supplemental data is 1,322. Of these, 657 cases involve rape, forcible sodomy or object penetration offenses; the remaining 665 cases are based on other felony sexual assault crimes.

This supplemental information was gathered in the hopes that it might help to explain the variance in sentencing in rape and sexual assault cases. If additional variance can be explained, then perhaps factors can be added to the worksheet that will make sentencing recommendations more similar to the actual sentencing decisions, and thus, increase judicial agreement with the guidelines. Examination of the rape and sexual assault guidelines will be an ongoing activity of the Commission in 2004.

Murder/Homicide and Robbery Guidelines Reanalysis

During 2002 and 2003, the Commission examined the murder/homicide and robbery offense categories. For these offense groups, the reanalysis phase is complete. The reanalysis of these offense groups produced sentencing models that refine the sentencing guidelines currently in use. In 2003, the Commission reviewed and approved these revised sentencing models. The models will serve as the foundation for new sentencing guidelines for the murder/homicide and robbery offense groups. Due to a recent study conducted by the Virginia State Crime Commission, however, the Sentencing Commission felt it prudent to delay further action until 2004.

During its 2001 session, the General Assembly directed Virginia's Crime Commission to study the organization of and inconsistencies in the criminal code contained in Title 18.2 of the Code of Virginia, including the level and extent of penalties. In response to the legislative mandate, the Crime Commission initiated a thorough examination of the organizational structure of Title 18.2 and punishment schema of the criminal Code. Throughout 2002 and 2003, the Sentencing Commission provided technical assistance to the Crime Commission. Based on its nearly three-year study, the Crime Commission has developed recommendations for revising the state's criminal code, including the creation of degrees of crimes, the introduction of a new felony penalty class, and revision of penalties for certain crimes. The Crime Commission will present its findings from this enormous and complex review of the Code, as well as its

recommendations, to the 2004 General Assembly. An omnibus crime bill encompassing the Crime Commission's recommendations will be introduced during the General Assembly's upcoming session.

Given the potential impact of the legislation recommended by the Crime Commission legislation, the Sentencing Commission elected to delay the development and implementation of revised guidelines for the murder/homicide and robbery offense groups. Should the legislation proposed by the Crime Commission be adopted, the Sentencing Commission will likely have to revisit the murder/homicide and robbery sentencing models reviewed and approved during 2003. It is possible that additional analysis will be required to bring the sentencing models in line with the new criminal code, before new guidelines for these offense groups can be implemented.

The Commission also considered other factors in its decision to delay the implementation of new murder/homicide and robbery guidelines. During the year, the Commission discussed the potential costs associated with implementing revised guidelines. Revisions of this nature require the Commission to change the sentencing guidelines manual, print new worksheets, revise the Commission's website and expand the Commission's guidelines training curriculum. Given these costs, the Commission concluded it is likely to be more cost effective to implement changes to the guidelines for several offense groups simultaneously, rather than introduce changes for one or two offense groups at a time. For these reasons, the Commission is not recommending any revisions to the murder/homicide or robbery guidelines this year.

Conclusion

The Commission has completed the second year of its comprehensive multi-year review of Virginia's sentencing guidelines. The Commission's objective is to provide circuit court judges with empirically-based guidelines that reflect both historical sentencing decisions and changes in more recent sentencing practices.

The Commission will continue to work diligently on the reanalysis project throughout 2004. During the upcoming session of the General Assembly, the Commission will monitor legislation proposed by the Virginia State Crime Commission to restructure Title 18.2 and will assess the impact of any changes to the criminal code. Further analysis of the murder/homicide and the robbery guidelines may be required. In addition, Commission staff will continue analysis of the rape and sexual assault guidelines and will present preliminary sentencing models to the Commission. As work progresses, the Commission will continue to deliberate on possible recommendations for revising Virginia's sentencing guidelines.

IMPACT OF TRUTH-IN-SENTENCING

Introduction

Since the inception of the Virginia's truth-in-sentencing system, the Commission has continually examined the impact of truth-in-sentencing laws on the criminal justice system in the Commonwealth. Legislation passed by the General Assembly in 1994 radically altered the way felons are sentenced and serve incarceration time in Virginia. The practice of discretionary parole release from prison was abolished, and the existing system of awarding inmates sentence credits for good behavior was eliminated. Virginia's truth-in-sentencing laws mandate sentencing guidelines recommendations for violent offenders (those with current or prior convictions for violent crimes) that are significantly longer than the terms violent felons typically served under the parole system, and the laws require felony offenders, once convicted, to serve at least 85% of their incarceration sentences. Since 1995, the Commission has carefully monitored the impact of these dramatic changes on the state's criminal justice system. Overall, judges have responded to the sentencing guidelines by agreeing with recommendations in nearly four out of every five cases, inmates are serving a larger proportion of their sentences than they did under the parole system, violent offenders are serving longer terms than before the abolition of parole, the inmate population did not grow at the record rate seen prior to the abolition of parole, and judges continue to have alternative sentencing options available. Nearly nine years after the enactment of truth-in-sentencing laws in Virginia, there is substantial evidence that the system is achieving what its designers intended.

Impact on Percentage of Sentence Served for Felonies

The reform legislation that became effective January 1, 1995, was designed to accomplish several goals. One of the goals of the reform was to reduce drastically the gap between the sentence pronounced in the courtroom and the time actually served by a convicted felon in prison. Prior to 1995, extensive good conduct credits combined with the granting of parole resulted in many inmates serving at little as one-fourth of the sentence imposed by a judge or a jury. Today, under the truth-in-sentencing system, parole release has been eliminated and each inmate is required to serve at least 85% of his sentence. The system of earned sentence credits in place since 1995 limits the amount of time a felon can earn off his sentence to 15%.

The Department of Corrections (DOC) policy for the application of earned sentence credits specifies four different rates at which inmates can earn credits: 4½ days for every 30 served (Level 1), three days for every 30 served (Level 2), 1½ days for every 30 served (Level 3) and zero days (Level 4). Inmates are automatically placed in Level 2 upon admission into DOC, and an annual review is performed to determine if the level of earning should be adjusted based on the inmate's conduct and program participation in the preceding 12 months.

Analysis of earned sentenced credits being accrued by inmates sentenced under truth-in-sentencing provisions and confined in Virginia's prisons on December 31, 2002, reveals that for the first time since the abolition of parole, the largest share of inmates (40.1%) are earning at the highest level, Level 1, gaining 4½ days per 30 days served (Figure 54). Almost as many (39.6%) inmates are earning credits at the next highest level, Level 2, or three days for every 30 served . A much smaller proportion of inmates are earning at Levels 3 and 4. Approximately 9% are earning 1½ days for 30 served (Level 3), while 11.7% are earning no sentence credits at all (Level 4). Based on this one-day "snapshot" of the prison population, inmates sentenced under the truth-in-sentencing system are, on average, serving approximately 91% of the sentences imposed in Virginia's courtrooms. The rates of earned sentence credits do not vary

FIGURE 54

Levels of Earned Sentence Credits among Prison Inmates (December 31, 2002)

Level	Days Earned	Percent
Level 1	4.5 days per 30 served	40.1%
Level 2	3.0 days per 30 served	39.6
Level 3	1.5 days per 30 served	8.6
Level 4	0 days	11.7

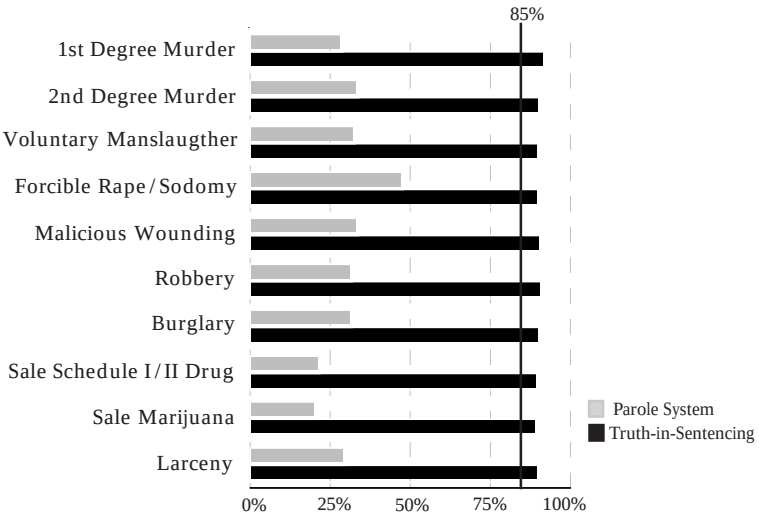
significantly across major offense groupings. For instance, larceny and fraud offenders, on average, are earning credits such that they are serving about 91% of their sentences, while inmates convicted of robbery are serving over 91% of their sentences. Inmates incarcerated for drug crimes are serving 90%. The rates at which inmates were earning sentence credits at the end of 2002 closely reflect those recorded at the end of each year since 1998.

Under truth-in-sentencing, with no parole and limited sentence credits, inmates in Virginia's prisons are serving a much larger proportion of their sentences in incarceration than they did under the parole system. For instance, offenders convicted of first-degree murder under the parole system, on average, served less than one-third of the effective sentence (imposed sentence less any suspended time). Offenders given a life sentence who were eligible for parole could become parole eligible after serving between 12 and 15 years. Under the truth-in-sentencing system, first-degree murderers typically are serving 92% of their sentences in prison (Figure 55). A life sentence under truth-in-sentencing requires that an offender remain incarcerated for life unless released conditionally under §53.1-40.01 after reaching the age of 60 or 65. Robbers, who on average spent less than one-third of their sentences in prison before being released under the parole system, are now serving over 91% of the sentences pronounced in Virginia's courtrooms. Property and drug offenders are also serving a larger share of their prison sentences. Although the average length of stay in prison under the parole system was less than 30% of the sentence, larceny offenders convicted under truth-in-sentencing provisions are serving nearly 91% of their sentences. For selling a Schedule I/II drug like cocaine, offenders typically served only about one-fifth of their sentences when parole was in effect. Under truth-in-sentencing, offenders convicted of selling a Schedule I/II drug, on average, are serving 90% of the sentences handed down by judges and juries in the Commonwealth. The impact of truth-in-sentencing on the percentage of sentence served by prison inmates has been to reduce dramatically the gap between the sentence ordered by the court and the time actually served in prison by a convicted felon.

Parole system data represents FY 1993 prison releases; truth-in-sentencing data is derived from rate of sentence credits earned among prison inmates on December 31, 2002.

FIGURE 55

Average Percent of Sentence Served – Parole System v. Truth-in-Sentencing



Impact on Incarceration Periods Served by Violent Offenders

Eliminating the practice of discretionary parole release and restructuring the system of sentence credits created a system of truth-in-sentencing in the Commonwealth and diminished the gap between sentence length and time served, but this was not the only goal of sentencing reform. Targeting violent felons for longer prison terms than they had served in the past was also a priority of the designers of the truth-in-sentencing system. The truth-in-sentencing guidelines were carefully crafted with a system of scoring enhancements designed to yield longer sentence recommendations for offenders with current or prior convictions for violent crimes, without increasing the proportion of convicted offenders sentenced to the state's prison system. When the truth-in-sentencing system was implemented in 1995, a prison sentence was defined as any sentence over six months. With scoring enhancements, whenever the truth-in-sentencing guidelines call for an incarceration term exceeding six months, the sentences recommended for violent felons are significantly longer than the time they typically served in prison under the parole system. Offenders convicted of nonviolent crimes with no history of violence are not subject to any scoring enhancements and the initial guidelines recommendations reflect the average incarceration time served by offenders convicted of similar crimes during a period governed by parole laws, prior to the implementation of truth-in-sentencing.

The truth-in-sentencing guidelines were designed to recommend longer sentences for violent offenders without increasing the proportion of felons sentenced to prison, and judges have responded to the guidelines by sentencing within recommendations at very high rates, particularly in terms of the type of disposition recommended by the guidelines. Overall, since the introduction of truth-in-sentencing, offenders have been sentenced to incarceration in excess of six months slightly less often than recommended by the guidelines. For the most recent five year period, fiscal years 1999 through 2003, the guidelines recommended that 82% of offenders convicted of crimes

against the person serve more than six months, while 77% received such a sanction (Figure 56). Forty-four percent of property offenders were recommended for terms over six months and 40% of them were sentenced accordingly. For drug crimes, offenders were recommended for and sentenced to terms exceeding six months in 38% and 35% of the cases, respectively. Many property and drug offenders recommended by the guidelines to more than six months of incarceration in a traditional correctional setting have been placed in state and local alternative sanction programs instead. See Impact on Alternative Punishment Options in this chapter for information regarding current alternative sanction programs under truth-in-sentencing. Remaining crimes are grouped together into the Other offense category shown in Figure 55. Several offenses in the Other category, such as habitual offender and fourth offense of driving while intoxicated, carry mandatory time of one year. This is one reason why 72% of the offenders in this category are recommended for a period of incarceration in excess of six months and 67% actually receive such a sentence.

FIGURE 56

Recommended and Actual Incarceration Rate for Terms Exceeding 6 Months by Offense Type, FY1998-FY2003

Type of Offense	Recommended	Actual
Person	81.9%	77.4%
Property	44.4	39.8
Drug	38.4	34.9
Other	71.9	67.1

Overall, there is considerable evidence that the truth-in-sentencing system is achieving the goal of longer prison terms for violent offenders. In the vast majority of cases, sentences imposed for violent offenders under truth-in-sentencing provisions are resulting in substantially longer lengths of stay than those seen prior to sentencing reform. In fact, a large number of violent offenders are serving two, three or four times longer under truth-in-sentencing than criminals who committed similar offenses did under the parole system.

The crime of rape illustrates the impact of truth-in-sentencing on prison terms served by violent offenders. Offenders convicted of rape under the parole system were released after serving, typically, five and a half to six and a half years in prison (1988-1992). Having a prior record of violence increased the rapist's median (the middle value, where half of the time served values are higher and half are lower) time served by only one year. Under sentencing reform (FY1999-FY2003), rapists with no

previous record of violence are being sentenced to terms with a median nearly twice the historical time served (Figure 57).

Virginia's truth-in-sentencing system has had an even larger impact on prison terms for violent offenders who have previous convictions for violent crimes. Offenders with prior convictions for violent felonies receive guidelines recommendations substantially longer than those without a violent prior record, and the size of the increased penalty recommendation is linked to the seriousness of the prior crimes, measured by statutory maximum penalty. The truth-in-sentencing guidelines specify two degrees of violent criminal records. A previous conviction for a violent felony with a maximum penalty of less than 40 years is a Category II prior record, while a past conviction for a violent felony carrying a maximum penalty of 40 years or more is a Category I record.

The crime of rape can also be used to demonstrate the impact of these prior record enhancements. In contrast to the parole system, offenders with a violent prior record will serve substantially longer terms than those without violent priors. Based on the median, rapists with a less serious violent record (Category II) are being given terms to serve of 23 years compared to the seven years they served prior to sentencing reform. For those with a more serious violent prior record (Category I), such as a prior rape, the sentences imposed under truth-in-sentencing are equivalent to time to be served of nearly 34 years, which is nearly five times longer than the prison term served by these offenders historically.

The impact of truth-in-sentencing on forcible sodomy cases exhibits a pattern very similar to rape cases. Historically, under the parole system, offenders convicted of forcible sodomy served a median of four and a half to five and a half years in prison, even if they had a prior conviction for a serious violent felony (Figure 58). Recommendations of the truth-in-sentencing guidelines have led to a significant increase in the median time to serve for this crime. Once convicted of forcible sodomy, offenders can expect to serve terms typically ranging from about 9 years, if they have no violent prior convictions, up to median of 30 years if they have a Category I violent prior record.

Prison Time Served: Parole System v. Truth-in-Sentencing (in years)

This discussion reports values of actual incarceration time served under the parole laws (1988-1992) and expected time to be served under truth-in-sentencing provisions for cases sentenced in FY1998-FY2003. Time served values are represented by the median (the middle value, where half of the time served values are higher and half are lower). Truth-in-sentencing data includes only cases recommended for, and sentenced to, more than six months of incarceration.

FIGURE 57
Forcible Rape

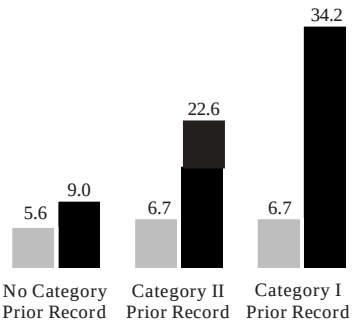
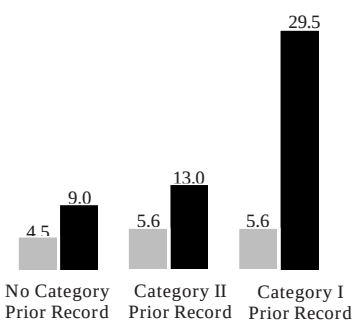


FIGURE 58
Forcible Sodomy



Sentencing decisions over the past five years for first and second-degree murder illustrates that judges are imposing significantly higher effectives sentences under the truth-in-sentencing system, particularly for offenders with a Category I or Category II violent prior record. Under the parole system (1988-1992), offenders convicted of first-degree murder who had no prior convictions for violent crimes were released typically after serving twelve and a half years in prison, based on the time-served median. Under the truth-in-sentencing system (FY1999-FY2003), however, first-degree murderers having no prior convictions for violent crimes have been receiving sentences with a median time to serve of 30 years (Figure 59). In these cases, time served in prison has almost tripled under truth-in-sentencing. First-degree murderers with any violent record, Category I or Category II, have been sentenced to a median sentence of about 44 years, compared to the typical sentence of 15 years under the parole system. The median sentence for Category I offenders is lower than for Category II, but it is important to remember that for many offenders, a sentence of this magnitude will result in confinement for the remainder of their natural lives.

First-degree murder is the only guidelines offense where it is possible to receive a sentence recommendation of life. For all the other offenses the recommendation is in years and months. For this analysis, a sentence of life was calculated based on the offender's life expectancy as defined by the Center for Disease Control. For example, a 35 year-old offender is expected to live on average another 43.5 years; therefore, a life sentence is calculated as 43.5 years for this individual. A 20 year old is expected to live another 57.7 years and life is calculated as such. Under the former parole system an offender sentenced to life was eligible for parole after serving between 12 and 15 years. Under the no-parole system a sentence of life or sentence over 36 years has essentially the same effect – life in prison.

The crime of second-degree murder also provides an example of the impact of Virginia's truth-in-sentencing system on lengthening prison stays for violent offenders. Second-degree murderers historically served five to seven years under the parole system (1988-1992) (Figure 60). With the implementation of truth-in-sentencing (FY1999-FY2003),

FIGURE 59
First-Degree Murder

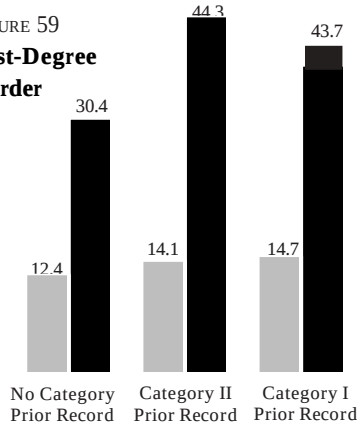
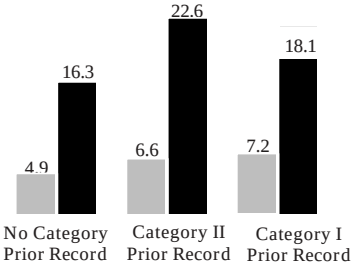


FIGURE 60
Second-Degree Murder



Category I is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty of 40 years or more.

Category II is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty less than 40 years.

Parole System

Truth-in-Sentencing

offenders convicted of second-degree murder who have no record of violence have received sentences producing a median time to be served of over 16 years. For second-degree murderers with prior convictions for violent crimes the impact of truth-in-sentencing is even more pronounced. Under truth-in-sentencing, these offenders are serving a median between 18 and 23 years, or nearly three times the historical time served. Although the difference between sentences for offenders with Category II versus Category I prior record is small, it is important to note that there are relatively few offenders with a Category I prior record that the data may be skewed by a handful of extreme cases. In fact, there were 13 offenders with a Category I prior record convicted of second-degree murder over the five year period.

The impact of truth-in-sentencing is also evident in cases of voluntary manslaughter. For voluntary manslaughter, offenders sentenced to prison typically served two to three years under the parole system (1988-1992), regardless of the nature of their prior record (Figure 61). Persons with no violent prior record convicted of voluntary manslaughter under truth-in-sentencing (FY1999-FY2003) are serving more than twice as long as these offenders served historically. For those who do have previous convictions for violent crimes, median expected lengths of stay have risen to seven and nine years under truth-in-sentencing, depending on the seriousness of the offender's prior record. Offenders convicted of voluntary manslaughter today are serving prison terms two to three times longer than those served when parole was in effect.

The tougher penalties specified by the truth-in-sentencing guidelines for offenders convicted of aggravated malicious injury, which results in the permanent injury or impairment of the victim, have yielded substantially longer prison terms for this crime. Offenders convicted of aggravated malicious injury with no prior violent conviction, served, typically, less than four years in prison under the parole system (1988-1992), but sentencing reform (FY1999-FY2003) has resulted in a median term of nine years for these offenders (Figure 62). Likewise, the median length of stay for a conviction

Prison Time Served: Parole System v. Truth-in-Sentencing (in years)

This discussion reports values of actual incarceration time served under the parole laws (1988-1992) and expected time to be served under truth-in-sentencing provisions for cases sentenced in FY1998-FY2003. Time served values are represented by the median (the middle value, where half of the time served values are higher and half are lower). Truth-in-sentencing data includes only cases recommended for, and sentenced to, more than six months of incarceration.

FIGURE 61
Voluntary Manslaughter

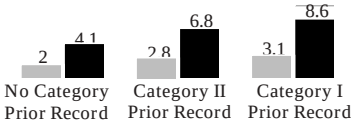
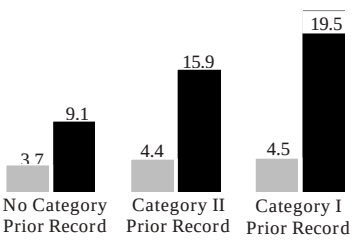


FIGURE 62
Aggravated Malicious Injury



of aggravated malicious injury when an offender has a violent prior record has increased from four and a half years to 16 years for offenders with a Category II record and to 20 years when a Category I record is present.

Sentencing in malicious injury cases demonstrates a similar pattern (Figure 63). Sentencing reform has more than doubled time served for those convicted of malicious injury who have no prior violent record or a less serious violent record (Category II), and almost tripled time served for those with the most serious violent record (Category I).

An examination of prison terms for offenders convicted of robbery with a firearm reveals considerably longer lengths of stay after sentencing reform. Robbers who committed their crimes with firearms, but who had no previous record of violence, typically spent less than three years in prison under the parole system (Figure 64). Even robbers with the most serious type of violent prior record (Category I) only served a little more than four years in prison, based on the median, prior to the sentencing reform and the introduction of the truth-in-sentencing guidelines. Today, however, offenders who commit robbery with a firearm are receiving prison terms that will result in a median time to serve of seven years, even in cases in which the offender has no prior violent convictions. This is more than double the typical time served by these offenders under the parole system. For robbers with the more serious violent prior record (Category I), such as a prior conviction for robbery, the expected time served in prison is now 16 years, or four times the historical time served for offenders fitting this profile.

FIGURE 63
Malicious Injury

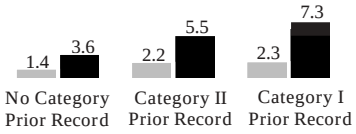
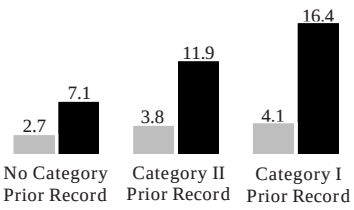


FIGURE 64
Robbery with Firearm



Category I is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty of 40 years or more.

Category II is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty less than 40 years.

Parole System

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Lengths of stay for the crime of aggravated sexual battery have also increased as the result of sentencing reform. Aggravated sexual battery convictions under the parole system (1988-1992) yielded typical prison stays of one to two years (Figure 65). In contrast, sentences handed down under truth-in-sentencing (FY1999-FY2003) are producing a median time to serve ranging from almost three years for offenders never before convicted of a violent crime, to over five years for batterers who have committed violent felonies in the past. In aggravated sexual battery cases, time served has more than doubled under truth-in-sentencing.

The truth-in-sentencing guidelines were formulated to target violent offenders for incarceration terms longer than those served under the parole system. The designers of sentencing reform defined a violent offender not just in terms of the current offense for which the person has been convicted but in terms of the offender's entire criminal history. Any offender with a current or prior conviction for a violent felony is subject to enhanced penalty recommendations under the truth-in-sentencing guidelines. Only offenders who have never been convicted of a violent crime are recommended by the guidelines to serve terms equivalent to the average time served historically by similar offenders prior to the abolition of parole.

Sentencing reform and the truth-in-sentencing guidelines have been successful in increasing terms for violent felons, including offenders whose current offense is nonviolent but who have a prior record of criminal violence. For example, for the sale of a Schedule I/II drug such as cocaine, the truth-in-sentencing guidelines recommend an incarceration term of one year (the midpoint of the recommended range) in the absence of a violent record, the same as what offenders convicted of this offense served on average prior to sentencing reform (1988-1992). In the truth-in-sentencing period (FY1999-FY2003), these drug offenders, in fact, are serving a median of slightly less than one year (Figure 66). The sentencing recommendations increase dramatically, however, if the offender has a violent criminal background. Although drug sellers with

Prison Time Served: Parole System v. Truth-in-Sentencing (in years)

This discussion reports values of actual incarceration time served under the parole laws (1988-1992) and expected time to be served under truth-in-sentencing provisions for cases sentenced in FY1998-FY2003. Time served values are represented by the median (the middle value, where half of the time served values are higher and half are lower). Truth-in-sentencing data includes only cases recommended for, and sentenced to, more than six months of incarceration.

FIGURE 65
Aggravated Sexual Battery

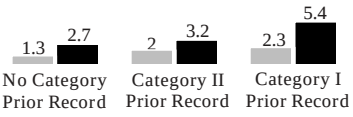
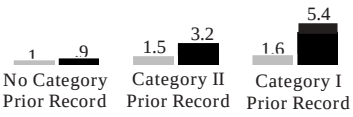


FIGURE 66
Sale of a Schedule I/II Drug



violent criminal histories typically served only a year and a half under the parole system, the truth-in-sentencing guidelines recommend sentences that are producing prison stays of three to five years (at the median), depending on the seriousness of prior record. Offenders convicted of selling a Schedule I/II drug who have a history of violence are serving two to three times longer under truth-in-sentencing than they did under the parole system.

In most cases of the sale of marijuana (more than ½ ounce and less than five pounds), the sentencing guidelines do not recommend incarceration over six months, particularly if the offender has a minimal prior record. Judges often utilize sentencing options other than prison when sanctioning these offenders, reserving prison for those believed to be least amenable to alternative punishment programs. Under truth-in-sentencing, offenders convicted of selling marijuana who receive sentences in excess of six months, despite having a nonviolent criminal record, have been given terms which, at the median, more than double historical time served during the parole era (Figure 67). For offenders who sold marijuana and have a prior violent record, the truth-in-sentencing guidelines have resulted in an increase in the time to be served. When sellers of marijuana have the most serious violent criminal history (Category I), judges have responded by handing down sentences which will yield a median prison term of nearly two years.

Similarly, in grand larceny cases, the sentencing guidelines do not recommend a sanction of incarceration over six months unless the offender has a fairly lengthy criminal history. When the guidelines recommend such a term and the judge chooses to impose such a sanction, grand larceny offenders with no violent prior record are being sentenced to a median term of just over one year (Figure 68). Offenders whose current offense is grand larceny but who have a prior record with a less serious violent crime (Category II) are serving twice as long after sentencing reform, with terms increasing from just under a year to just under two years. Their counterparts with the more serious violent prior records (Category I) are now serving terms of more than

FIGURE 67
Sale of Marijuana (more than ½ oz. and less than 5 lbs.)

FIGURE 68
Grand Larceny

Category I is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty of 40 years or more.

Category II is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty less than 40 years.

Parole System

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two-years instead of the one-year they had in the past. The impact of Virginia's truth-in-sentencing system on the incarceration periods of violent offenders has been significant. The truth-in-sentencing data presented in this section provide evidence that the sentences imposed on violent offenders after sentencing reform are producing lengths of stay dramatically longer than those seen historically. Moreover, in contrast to the parole system, offenders with the most violent criminal records will be incarcerated much longer than those with less serious criminal histories.

Impact on Projected Prison Bed Space Needs

During the development of sentencing reform legislation, much consideration was given as to how to balance the goals of truth-in-sentencing and longer incarceration terms for violent offenders with demand for expensive correctional resources. Under the truth-in-sentencing system, the sentencing guidelines recommend prison terms for violent offenders that are up to six times longer than those served prior to sentencing reform, while recommendations for nonviolent offenders are roughly equivalent to the time actually served by nonviolent offenders under the parole system. Moreover, the truth-in-sentencing guidelines were formulated to preserve the proportions and types of offenders sentenced to prison. At the same time, reform legislation established a network of local and state-run community corrections programs for nonviolent offenders. In other words, reform measures were carefully crafted with consideration of Virginia's current and planned prison capacity and with an eye towards using that capacity to house the state's most violent felons.

Truth-in-sentencing is expected to have an impact on the composition of Virginia's prison (i.e., state responsible) inmate population. Because violent offenders are serving significantly longer terms under truth-in-sentencing provisions than under the parole system and time served by nonviolent offenders has been held relatively constant, the proportion of the prison population composed of violent offenders relative to nonviolent offenders should increase over time. Violent offenders will remain in the state's prisons due to longer lengths of stay, while nonviolent offenders will continue to be released after serving approximately the same terms of incarceration as they did in

the past. Over the next decade, the percentage of Virginia's prison population defined as violent, that is, the proportion of offenders with a current or previous conviction for a violent felony, should continue to grow.

Sentencing reform and the abolition of parole did not have the dramatic impact on the prison population that some critics had once feared when the reforms were first enacted. Despite double-digit increases in the inmate population in the late 1980s and early 1990s, the number of state prisoners grew at a slower rate beginning in 1996. Some critics of sentencing reform had been concerned that significantly longer prison terms for violent offenders, a major component of sentencing reform, might result in tremendous increases in the state's inmate population. In recent years, the number of nonviolent offenders incarcerated in prison and the number of probation and post-release supervision violators given a prison term has increased. As a result, the forecast for state prisoners developed in 2003 projects average annual growth of 3.7% over the next five years (Figure 69).

FIGURE 69
Historical and Projected State Responsible (Prison) Population 1993-2007

	Date	Inmates	Percent Change
Historical	1993	20,760	
	1994	23,648	13.9%
	1995	27,364	15.7
	1996	28,743	5.0
	1997	28,743	0.0
	1998	29,043	1.0
	1999	30,546*	5.2
	2000	31,160*	2.0
	2001	32,591*	4.6
	2002	34,343	5.4
	2003	35,429	3.2
Projected	2004	36,350	2.6
	2005	37,772	3.9
	2006	39,184	3.7
	2007	40,870	4.3
	2008	42,575	4.2

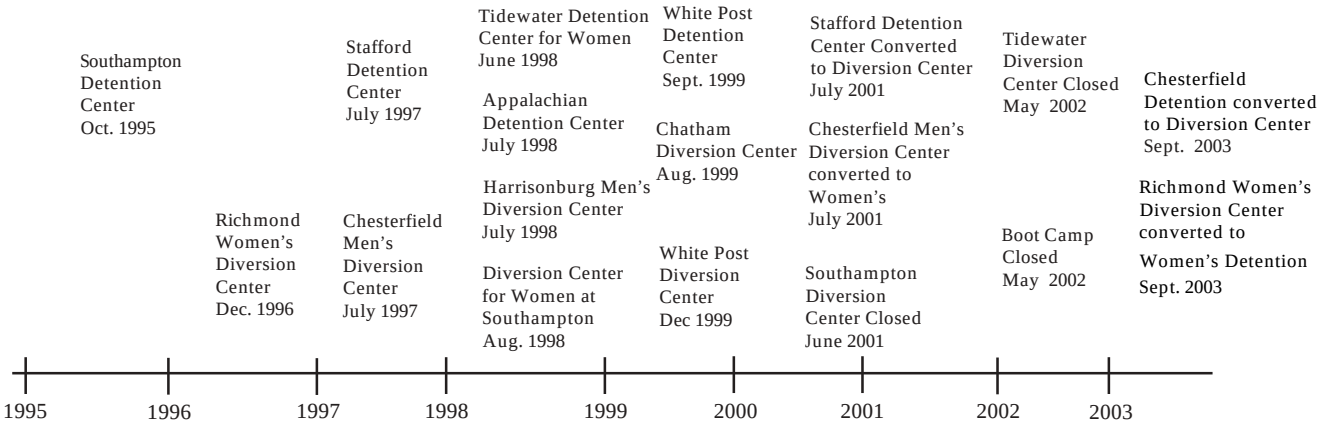
Date is June of each year
June 1996 and June 1997 actual prison population levels were identical, according to the Virginia Department of Corrections.
*FY1999 to FY2002 data was revised by the Virginia Department of Corrections to account for felons who were ordered to serve their time in a local facility.

Impact on Alternative Punishment Options

When the truth-in-sentencing system was created, the General Assembly established a two level community-based corrections system. Reform legislation created a network of local and state-run community corrections programs for nonviolent offenders. This system was implemented to provide judges with additional sentencing options for nonviolent offenders as alternatives to traditional incarceration, enabling them to reserve costly correctional institution beds for the state's violent offenders. Although the Commonwealth already operated some community corrections programs at the time truth-in-sentencing laws were enacted, a more comprehensive system was enabled through this legislation.

As part of the state community-based corrections network, two new cornerstone programs, the Diversion Center Incarceration program and the Detention Center Incarceration program, were authorized. The new programs, while they involve confinement, differ from traditional incarceration in jail or prison since they include more structured services designed to address problems associated with recidivism. These centers involve highly structured, short-term incarceration for felons deemed suitable by the courts and Department of Corrections. Offenders accepted in these programs are considered probationers while participating in the program and the sentencing judge retains authority over the offender should he fail the conditions of the program or subsequent community supervision requirements. The Detention Center program features military-style management and supervision, physical labor in organized public works projects and such services as remedial education and substance abuse services. The Diversion Center program emphasizes assistance to the offender in

FIGURE 70
Detention Centers and Diversion Centers 1995 - 2003



securing and maintaining employment while also providing education and substance abuse services. In the more than eight years since the new sentencing system became effective, the Department of Corrections (DOC) has gradually established Detention and Diversion Centers around the state as part of the community-based corrections system for state-responsible offenders. As of July 2003, DOC was operating four Detention Centers and six Diversion Centers throughout the Commonwealth (Figure 70). In September 2003, the Richmond Diversion Center was converted to a Detention Center and the Chesterfield Detention Center converted to a Diversion Center. This consolidated female Diversion Center women participants in Chesterfield County and shifted the women detainees to the Richmond facility. The result is a total Detention Center capacity of 400 and a Diversion capacity of 572.

In FY2003, Detention Centers collectively admitted 941 felons, resulting in 823 graduations and 151 terminations. Diversion programs admitted 1,283 felons, graduating 1,148 and terminating 167.

On June 30, 2003, 828 probationers and parolees were in the Detention Center and Diversion Center programs, compared to around 898 offenders on the same date in 2002, 1,045 offenders in June of 2000 and 1,071 offenders in June of 2000. The Diversion Center programs and the Detention Center programs are operating at near full capacity. In September of this year, 57 offenders had been accepted into one of these programs and were on waiting lists until openings could be made available. The 2003 General Assembly authorized DOC to utilize the Detention Center and Diversion Center programs for offenders on probation or other form of community supervision who were not complying with the conditions of supervision.

In addition to the alternative incarceration programs described above, the DOC operates a host of non-incarceration programs as part of its community-based corrections system. Programs such as regular and intensive probation supervision, home electronic monitoring, day reporting centers, and adult residential centers are an integral part of the system. Regular probation services have been available since the 1940s; intensive supervision, characterized by smaller caseloads and closer monitoring of offenders, was pilot tested in the mid 1980s. Intensive supervision is now an alternative in most of the state's 43 probation districts. Home electronic monitoring, piloted in 1990-1992, is now available in all probation districts, and is used in conjunction with intensive and conventional supervision. Global positioning by satellite (GPS) will be piloted in FY2004.

The Department currently operates ten day reporting centers and day reporting programs. The centers were reduced in scope and consolidated with probation and parole offices during the budget cutbacks in FY2003. With current capacity of 1,000 participants, day reporting programs are consistently over capacity. On June 30, 2003, the census was 1,158. These programs are characterized by an "onsite, one stop" array of services such as life skills and educational training targeted as delinquent and transitioning offenders.

These centers feature frequent offender contact and monitoring as well as structured services, such as educational and life skills training programs. Offenders report to the program and participate in any combination of education or treatment programs, to a community center work project, or a job. Day reporting programs are considered a more viable option in urban rather than rural areas since offenders must have transportation to the center. In addition to day reporting centers DOC also contracts with private residential centers around the state for inmates transitioning back to the community, which together can serve 362 offenders a year.

The capacity for many of the Community Corrections programs may be limited by significant budget reductions required in FY2002 and FY 2003. These reductions will continue at least through the next biennium. Prior to July 1, 2002, vacant positions were frozen and two facilities, the Southampton Intensive Treatment Center (Boot Camp) and Tidewater Detention Center for Women, were closed. Included in the frozen positions are 50 vacant probation and parole and surveillance staff positions that account for 8% of the offender supervision staff. In late 2002, 16 Deputy Chief Officers, 5 substance abuse/project supervisors and 46 clerical support positions were abolished. However, the probation and parole caseload exceeded 46,000 offenders and the remaining staff completed over 92,000 investigations. In 2003, despite the cuts in staff, the American Correctional Association completed an audit and re-accredited the Probation and Parole Services of the Department of Corrections.
The Diversion Centers have to generate a portion of their operating budget from offender room and board charges which were previously used to enhance programming. In addition, substance abuse and sex offender treatment funds have been reduced and several programs eliminated. While many of the community-based correction programs created by the General Assembly in 1994 are functioning, the future availability and the scope of these programs are subject to change due to budget realities.

Local community-based corrections programs that were an integral part of reform legislation may also be impacted by the state's budget reductions. In 1994, the General Assembly created the Comprehensive Community Corrections Act for Local-Responsible Offenders (CCCA) and the Pre-Trial Services Act (PSA). These two acts gave localities authority to provide supervision and services for defendants awaiting trial and for offenders convicted of misdemeanors or low-level felonies (Class 5 and Class 6). In order to participate, localities were required, by legislative mandate, to create Community Criminal Justice Boards (CCJBs) comprised of representatives of the courts (circuit court, general district court and juvenile and domestic relations court), the Commonwealth's Attorney's office, the police department, the sheriff's and magistrate's offices, the education system, the Department of Mental Health, Mental Retardation and Substance Abuse Services, and other organizations. The CCJBs oversee the local CCCA and PSA programs, facilitate exchange among criminal justice agencies and serve as an important local policy board for criminal justice matters. The Virginia Department of Criminal Justice Services provides technical assistance, coordinating services and, often, grant funding for local CCCA and PSA programs. The availability of funds through the state may impact the expansion or continuation of programs created by the Local Community Corrections Act and the Pre-Trial Services Act.

Summary

In the ninth year of Virginia's comprehensive felony sentencing reform legislation, the overhaul of the felony sanctioning system continues to be a success. Offenders are serving approximately 91% of incarceration time imposed, with violent felons serving significantly longer periods of incarceration than those historically served. At the same time, Virginia's prison population, has not grown at the double-digit rates seen prior to sentencing reform, despite longer lengths of stay for violent offenders and recent increases in the number of nonviolent offenders and probation violators sentenced to prison. Part of the reduction in the pace of prison growth was due to the funding of intermediate punishment/treatment programs at a level to handle increasing number of felons. Recent budget reductions, however, have affected the availability and the scope of these programs. Nonetheless, nearly nine years after the enactment of the sentencing reform legislation in Virginia, there is substantial evidence that the system is continuing to achieve what its designers intended.

RECOMMENDATIONS OF THE COMMISSION

Introduction

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

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

In 2003, the Commission focused its attention on two legislative directives. The first charged the Commission with developing discretionary sentencing guidelines and a risk assessment instrument for felony offenders who violate conditions of community supervision but are not convicted of a new crime. The second instructed the Commission to utilize its nonviolent offender risk assessment instrument to identify offenders who are not currently recommended for alternative punishment options by the assessment instrument and who pose little risk to public safety and to determine if the assessment instrument can be adjusted to safely recommend those offenders for sanctions other than traditional incarceration in prison or jail. After careful deliberation, the Commission developed two proposals in response to these legislative mandates. In all, the Commission has adopted four recommendations this year. Each of these is described in detail on the pages that follow.

RECOMMENDATION 1

Implement historically-based sentencing guidelines applicable to felony offenders found to be in violation of the conditions of community supervision for reasons other than a new criminal conviction.

Issue

During its 2003 session, the General Assembly directed the Commission to develop, with due regard for public safety, discretionary sentencing guidelines for application in cases involving felony offenders who are determined by the court to be in violation of probation or post-release supervision for reasons other than a new criminal conviction, offenders also known as "technical violators" (Chapter 1042 of the Acts of Assembly 2003). The General Assembly's mandate specifies that violator guidelines are to be based on an examination of historical judicial sanctioning patterns in revocation hearings.

Discussion

Since 1995, when sentencing reforms abolished parole, circuit court judges have dealt with a wider array of supervision violation cases, including violations of supervision following release from incarceration that formerly were handled by Virginia's Parole Board as parole violations. Despite the larger role they now play in overseeing supervision of offenders in the community, circuit court judges have had to perform these duties without sentencing tools, such as guidelines, available to them.

Pursuant to the 2003 legislative directive, the Commission designed and implemented a research plan to examine historical sanctioning practices for violations of community supervision not involving a new conviction. Using the results of this empirical study, the Commission has developed historically-based discretionary sentencing guidelines applicable to these offenders.

The analytical approach laid out by the Commission is not unlike that used for developing Virginia's historically-based sentencing guidelines, already utilized in circuit courts around the Commonwealth. To develop guidelines for supervision violators, judicial decision-making was conceptualized as a two-step process. In the first step of this conceptual framework, the judge decides whether or not to incarcerate the offender (the in/out decision). The second decision is dependent upon the outcome of the first. If the first step results in a decision to incarcerate, the judge must then determine the length of the incarceration term the offender is to be given (the sentence length decision). The factors considered by judges in making the first

decision are not necessarily the same as the factors considered in making the second decision. Moreover, the degree to which a factor weighs in a judge's decision making, or its importance relative to other factors, may differ for the two types of sanctioning decisions. Structuring the analysis based on this two-step framework allows researchers to examine sentencing practices in a more detailed fashion.

FIGURE 71

Relative Importance of Significant Factors-Incarceration In/Out Decision

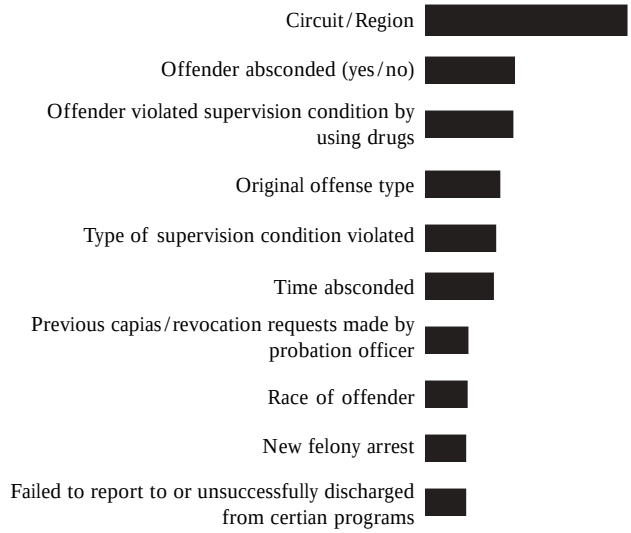


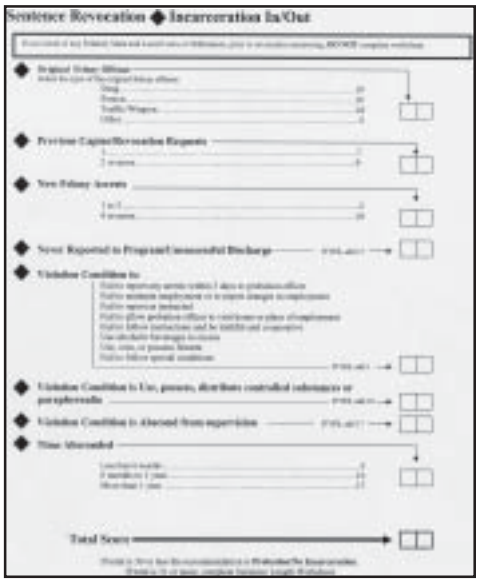
Figure 71 shows the relative importance of the significant factors of the incarceration in/out model. Circuit is the most influential factor in the in/out model. This result suggests that, all other factors being equal, there is significant disparity in sentencing offenders across Virginia's circuits. Although less important than circuit in explaining judges' incarceration decisions, the race of the offender was also found to be statistically significant. The Commission's study found that white violators are more likely to be incarcerated than non-white offenders. Although statistically significant findings, neither circuit nor race appear on the guidelines worksheet.

The legal factors found in the in/out model reflect the offender's original offense and the offender's behavior while under supervision. The most important legal factor in explaining the incarceration decision was whether or not the offender had absconded from supervision. Other factors found to be statistically significant in the incarceration decision were: offender's continued use of drugs, the type of the original offense, the type of supervision conditions violated (i.e., failure to report a new arrest, maintain employment, report as instructed, allow home visits, be truthful and cooperative, or follow any special conditions of supervision, as well as the use of alcoholic beverages to excess or possessing a firearm), the period of time the offender had absconded, the number of capias/revocation hearing requests previously submitted by the probation officer to the judge during the supervision period, the number of new arrests for felony crimes, and the failure to report to or an unsuccessful discharge from certain programs (e.g., employment programs, day reporting, community service programs, youth programs, residential programs, or the state's detention or diversion center

programs). These factors are discussed in further detail in the chapter entitled Probation/Post-Release Violator Study contained in this report.

FIGURE 72

Incarceration In/Out Guidelines Worksheet for Violators with No New Criminal Conviction



The incarceration in/out worksheet developed from the sentencing model just described appears in Figure 72. The points assigned to the various factors are based on the results of the statistical model. At the top of the worksheet are instructions that this worksheet should only be filled out if the violator has not been convicted of any federal, state and local law or ordinance violations prior to sentencing for the revocation. Those who are revoked because of a new conviction were not included in this study and the new guidelines should not be used in those cases.

Instructions at the bottom of the worksheet tell the preparer whether or not the violator is recommended for an active term of incarceration. Based on the proposed worksheet, violators scoring 31 points or more will be recommended for incarceration. In those cases the sentence length worksheet must be completed. Figure 73 demonstrates how the threshold of 31 points was determined. The Commission scored the offenders under study using the newly developed guidelines worksheet. Column 1 of this chart shows ranges of scores that offenders can score on the incarceration in/out worksheet. Column 2 reports the percentage of offenders who actually received a nonincarceration sanction. Column 3 contains the percentage of offenders who received an incarceration term. Columns 2 and 3 reflect historical patterns of incarceration for these offenders broken out by the worksheet score. Overall, just under 27% of the violators under study received some nonincarceration sanction, while approximately 73% were ordered to serve an incarceration term. Column 5 represents the cumulative percent of offenders

FIGURE 73

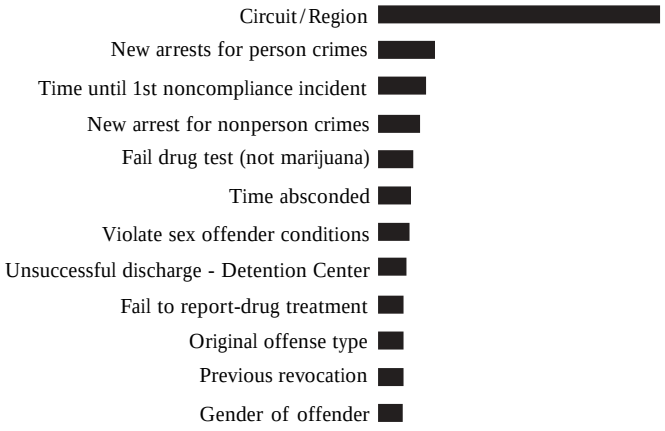
Setting the Incarceration In/Out Threshold

	Historical In/Out Decision		Proposed Model	
Score	Out	In	Recommendation	Cummulative Percent
column 1	column 2	column 3	column 4	column 5
0 - 16	66.6%	33.4%	OUT	6.3%
17 - 25	39.5	60.5	OUT	14.4
26 - 29	31.6	68.4	OUT	21.6
30	25.0	75.0	OUT	27.1
31 - 35	23.7	76.3	IN	38.1
36 - 47	26.5	73.5	IN	73.9
48 - 57	17.6	82.4	IN	90.0
58+	5.8	94.2	IN	100.0%
Overall	26.6%	73.4%		

scoring at or below each score level. The Commission's analysis revealed that 27% of the offenders under study scored 30 points or less on the in/out worksheet. The Commission, therefore, selected a threshold of 30 points as the maximum an offender can score to receive a recommendation for no incarceration. Offenders scoring 31 points or more would be recommended for an active jail or prison term. Choosing 31 points as the threshold ensures that the percentage of violators recommended for incarceration matches the historical rate of incarceration for these offenders.

FIGURE 74

Relative Importance of Significant Factors-Sentence Length Decision

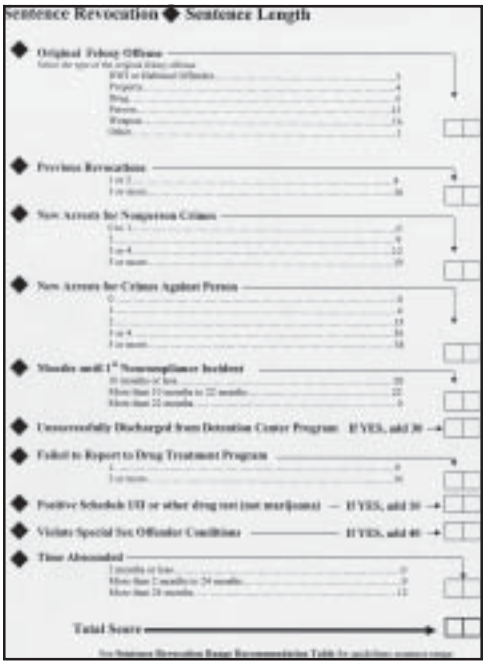


Next, the Commission examined the length of the sentences given to offenders who served an active term of incarceration for violating conditions of community supervision. Figure 74 shows the relative importance of the significant factors found in the Commission's analysis of the sentence length decision. As with the in/out decision, the circuit in which the case is handled is the most influential factor in the model. This result provides further evidence of significant disparity across circuits in punishing violators. In addition, male violators typically received longer incarceration sentences than female violators. While statistically relevant, these two factors will not appear on the sentence length worksheet.

The most important legal factor in explaining the sentence length decision was the number of times the offender had been arrested during the supervision period for a crime against a person. Nearly as important in the sentence length decision was the period of time the offender was supervised before his first incident of noncompliance. Offenders who committed their first act of noncompliance early in the supervision period typically received longer sentences than offenders who managed to remain compliant with the conditions of their supervision for a longer period of time. A second arrest factor was found to be statistically relevant in sentence length decisions, although it played a lesser role than the first. This second factor, which counts new

FIGURE 75

Sentence Length Guidelines Worksheet for Violators with No New Criminal Conviction



arrests for any crime other than a crime against a person, captures all arrests not included the first arrest measure just described.

Other factors found to be statistically significant in the sentence length decision were: the offender's continued drug use, testing positive for using a Schedule I/II or other drug (not including marijuana), the period of time an offender had absconded, violation of special sex offender conditions, failure to report to drug treatment, an unsuccessful discharge from the detention center program, the type of the original offense, and the number of prior revocations during the current and any previous probation periods. For the factor relating specifically to sex offenders, the Commission's analysis revealed that when a sex offender violates a no-contact provision with a victim, enters a prohibited area such as a school, has contact with a minor when prohibited from doing so, or fails a polygraph test during the supervision period, he is likely to receive a lengthy period of incarceration when his supervision is revoked. Additional discussion of these factors can be found in the Probation/Post-Release Violator Study chapter of this report.

The legal factors in the sentence length model were assembled on a worksheet and assigned appropriate points based on the results of the sentencing model. The proposed sentence length guidelines worksheet is seen in Figure 75.

At the bottom of the Sentence Length worksheet, the score is totaled and the preparer is instructed to refer to the Sentence Length Recommendation Table, seen in Figure 76. The first column contains the score ranges and the second column presents the recommended sentence range associated with those scores. A sentence recommendation of 12 months or less is considered a local-responsible (jail) sentence; a sentence recommendation of

FIGURE 76

Sentence Length Recommendation Table

	Score	Guideline Sentence
Jail Recommendation	Up to 33	1 Day up to 3 Months
	34 - 41	More than 3 Months up to 6 Months
	42 - 43	More than 6 Months up to 12 Months
Prison Recommendation	44 - 48	1 Year up to 1 Year 3 Months
	49 - 51	More than 1 Year 3 Months up to 1 Year 6 Months
	52 - 55	More than 1 Year 6 Months up to 2 Years
	56 - 62	More than 2 Years up to 3 Years
	63 - 66	More than 3 Years up to 4 Years
	67 - 74	More than 4 Years up to 5 Years
	75 – 85	More than 5 Years up to 6 Years
	86 +	More than 6 Years

one year or more is defined as a state-responsible (prison) sentence. The Commission selected ranges of punishment that reflect historical patterns of sentencing for violators who have not been convicted of a new crime.

After careful consideration of the empirical findings, the Commission concluded that the sentencing guidelines for violators would be a useful tool for circuit court judges in the Commonwealth. Like the sentencing guidelines introduced more than a decade ago for offenders being sentenced for felony crimes, the historically-based guidelines developed for violators are designed to reduce unwarranted disparity in the punishment of offenders who fail the conditions of community supervision. The Commission approved the guidelines worksheets and is recommending their use statewide beginning in July 2004. This implementation time frame will allow the Commission to provide training to probation officers, Commonwealth's attorneys, defense attorneys and judges on the preparation of the new guidelines forms.

RECOMMENDATION 2

Revise the nonviolent offender risk assessment instrument by adjusting the threshold, or the maximum score an offender can score to receive a recommendation for an alternative sanction in lieu of traditional incarceration, from 35 to 38 points.

Issue

In 2003, the General Assembly directed the Commission to utilize its nonviolent risk assessment instrument to identify offenders who are not currently recommended for alternative punishment options by the assessment instrument and who pose little risk to public safety. On the basis of risk assessment and with due regard for public safety, the Commission was charged with determining the feasibility of adjusting the assessment instrument to recommend low-risk offenders for appropriate punishment options (Chapter 1042 of the Acts of Assembly 2003). If the Commission was able to determine that a portion of offenders not currently recommended for alternative sanctions by risk assessment do not pose a significant risk of recidivism, the mandate directs the Commission to adjust the risk instrument accordingly.

Discussion

In response to the legislative directive, the Commission closely scrutinized the application of the risk assessment instrument during its first year of statewide use. Data reveal that the current threshold of 35, the maximum score for an offender to be recommended for an alternative sanction, can be adjusted to the score of 38 without a significant increase in the risk to public safety. Adjusting the threshold would increase the number of offenders recommended by risk assessment for alternative punishment in lieu of traditional incarceration.

Figure 77 demonstrates the impact of adjusting the threshold currently used for the risk assessment instrument. The first column presents the risk score, beginning with scores up to 35 points. The second column reports the number of cases involving drug offenses at each risk score. The third column shows the number of fraud cases at each score, while the fourth column shows the number of larceny cases at each score. The fifth column presents the total number of cases associated with each score. The next column indicates the percent of cases at each score level for which an alternative sanction is ordered in lieu of the traditional term of incarceration recommended by the guidelines. It is followed by a column that provides the cumulative percent of cases at or below each score level. The final column reports the rate of recidivism for offenders at each score level as determined by the Commission during its 2001 validation study. For the Commission's risk assessment work with nonviolent offenders, the Commission measures recidivism, or risk to public safety, by a new felony conviction within three years of the offender's release to the community.

As shown in Figure 77, offenders who scored 35 points or less in the Commission's validation study recidivated at a rate of 16.4%. However, the recidivism rates for offenders scoring 36, 37 or 38 points were only slightly higher and did not exceed 17.6%. Beginning at the score of 39, the recidivism rates began to climb more steeply to 19.2%, and up to 21% at the score of 40.

During its validation study, the Commission chose a threshold of 35 points because analysis suggested that a threshold of 35 would satisfy the legislative goal of diverting at least 25% of nonviolent offenders from incarceration into other types of sanctions. Figure 77 reveals, however, that the current threshold could be revised to 38 with little impact on the recidivism rate among offenders recommended for alternative punishment. By adjusting the threshold to 38 points, the number of offenders recommended for such alternative punishment would increase. Data suggests that an additional 654 offenders would have been recommended for an alternative sanction had the threshold been set at 38 during FY2003.

After deliberating upon the first-year experiences of the statewide nonviolent offender risk assessment program and reviewing available recidivism data, the Commission concluded that the risk assessment threshold could be adjusted to a score of 38 points without significant risk to public safety. Following careful consideration, the Commission has approved a change in the instrument to increase the threshold, or the maximum score an offender can receive to be recommended for an alternative sanction, from 35 to 38 points. Data indicate that the offenders who would be affected by this change do not pose a significant recidivism risk. The Commission recommends this change take effect July 2004 to permit adequate time for training probation officers, Commonwealth's attorneys, defense attorneys and judges on this change and its impact on nonviolent offenders coming before the circuit court.

FIGURE 77

Risk Assessment Cases and Recidivism Rates by Score--FY2003

Risk Assessment Score	# of Drug Cases at Each Score	# of Fraud Cases at Each Score	# of Larceny Cases at Each Score	Total # of Cases at Each Score	% of Cases Currently Receiving Alternatives at Each Score	Cumulative % of Cases Potentially Recommended for Alternative	Cumulative Recidivism Rates (from VCSC study)
up to 35	1323	545	325	2193	16.5%	36.2%	16.4%
36	145	69	54	268	27.6	40.6	17.6
37	84	60	35	179	28.5	43.5	17.3
38	111	33	63	207	26.1	47.0	17.4
39	174	70	63	307	26.7	52.0	19.2
40	65	50	30	145	24.8	54.4	21.0

RECOMMENDATION 3

Modify the Drug Schedule I/II, Section C Worksheet to remove the Detention Center recommendation for offenders with a small quantity of cocaine and no felony record.

Issue

Currently, a risk assessment is completed for all non-violent offenders convicted of a drug offense. In certain cases the non-violent risk assessment indicates that the defendant is not a good risk for an alternative to incarceration. This sometimes conflicts with the recommendation on Section C for Detention Center participation based solely on no felony record and a quantity of cocaine of 1 gram or less.

Discussion

In December of 1996, the Commission made a recommendation to include the quantity of cocaine involved in an event as a factor on the sentencing guidelines. As part of that recommendation the Commission made a normative decision to include a recommendation to Detention Center or Boot Camp for offenders who have no previous felony convictions and sold 1 gram or less of cocaine. After review by the General Assembly, the recommendation went into effect July 1997.

At the request of the General Assembly, the Commission developed and pilot-tested a non-violent risk assessment instrument. This instrument was to be predictive of the risk of being convicted of a new felony offense. After four years of pilot-testing, an independent evaluation by the National Center for State Courts (NCSC) and a subsequent validation study, the Commission concluded that it was feasible to use an empirically based risk assessment tool to identify 25% of the lowest risk, incarceration-bound property and drug offenders for placement into alternative sanction programs. After a review by the legislature the instrument went statewide in July of 2002.

Both Section C of the Drug Schedule I/II worksheet and the nonviolent risk assessment recommend selected individuals to an alternative sanction other than prison. One is based on a normative decision and the other is empirically based. As a result, the normative based recommendation indicates that 44% (FY2003) of the defendants with no criminal record and a small quantity of cocaine are recommended to Detention Center as an alternative to prison when the risk assessment indicates that the defendant is not a good candidate for an alternative.

Therefore, it is recommended that this conflict be resolved by removing the recommendation for Detention Center from Section C of the Schedule I/II worksheet. As a result, the risk assessment that is now available across the state can be used by judges to evaluate a defendant's ability to benefit from an alternative sanction other than prison.

RECOMMENDATION 4

Amend § 17.1-805(C) of the Code of Virginia to add §§ 18.2-46.5, 18.2-46.6, 18.2-46.7, and solicitation to commit murder under § 18.2-29 to the definition of violent offenses.

Issue

Section 17.1-805(C) of the Code specifies those offenses which are to be scored as violent crimes under the truth-in-sentencing guidelines. Offenders with prior convictions for violent felonies receive guidelines recommendations substantially longer than those without a violent prior record, and the size of the increased penalty recommendation is linked to the seriousness of the prior crime, as measured by statutory maximum penalty. There have been new statutes added or modified that created violent offenses that are not currently included in the list of crimes defined as violent. The Commission now recommends their inclusion as designated violent crimes.

Discussion

The Commission recommended that four Code sections be added to § 17.1-805(C). Three of the Code sections relate to terrorism and were enacted by the 2002 General Assembly. These are: §§ 18.2-46.5, 18.2-46.6 and 18.2-46.7.

In addition, the Commission recommends that the crime of solicitation to commit murder (§ 18.2-29) be added to the list of violent felony offenses.

By amending § 17.1-805(C) to include these offenses, offenders who have prior convictions for any of these offenses will receive increased sentence recommendations on the sentencing guidelines. The increase in the guidelines recommendation will range from 300% to 500% depending on the statutory maximum penalty of the offense.

APPENDICES

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

Reasons for MITIGATION	Burg. of Dwelling	Burg. Other Structure	Sch. I/II Drugs	Other Drugs	Fraud	Larceny	Misc	Traffic
No reason given	21.6%	26.4%	27.7%	36.6%	25.6%	26.4%	28.8%	46.5%
Minimal property or monetary loss	0.0	1.1	0.0	0.0	0.3	2.4	0.0	0.7
Minimal circumstances/facts of the case	9.5	2.3	2.3	0.0	5.5	6.2	6.7	6.3
Offender not the leader	0.7	0.0	1.7	3.3	0.3	1.3	0.0	0.0
Small amount of drugs involved in the case	0.0	0.0	3.2	0.0	0.0	0.0	0.0	0.0
Offender and victims are relatives/friends	4.7	2.3	0.0	0.0	2.7	1.1	0.0	0.0
Little or no injury/offender did not intend to harm; victim requested lenient sentence	3.4	1.1	0.2	0.0	2.0	1.1	0.0	1.4
Victim was a willing participant	0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.7
Offender has no prior record	0.7	0.0	1.1	0.0	0.7	0.3	0.0	0.7
Offender has minimal prior record	3.4	3.4	2.5	3.3	2.7	1.6	6.7	2.1
Offender's criminal record overstates his degree of criminal orientation	3.4	2.3	2.1	0.0	3.4	1.1	0.0	2.1
Offender cooperated with authorities	4.7	10.3	11.3	13.3	8.9	6.7	4.4	3.5
Offender is mentally or physically impaired	1.4	4.6	3.4	0.0	3.1	4.9	8.9	2.1
Offender has emotional or psychiatric problems	2.7	1.1	0.8	3.3	1.0	1.3	2.2	0.0
Offender has drug or alcohol problems	1.4	0.0	1.5	0.0	0.7	1.9	0.0	0.7
Offender needs counseling	0.7	1.1	0.6	0.0	0.3	1.9	0.0	0.0
Offender has good potential for rehabilitation	8.8	8.0	11.8	10.0	22.5	10.2	13.3	10.6
Offender shows remorse	1.4	1.1	0.6	0.0	1.0	0.8	0.0	0.7
Age of Offender	4.7	2.3	2.3	0.0	3.1	0.5	2.2	1.4
Guilty plea	0.0	0.0	1.1	0.0	0.3	0.5	0.0	0.0
Jury sentence	0.0	1.1	0.0	3.3	0.7	0.8	2.2	0.0
Multiple charges are being treated as one criminal event	1.4	0.0	0.2	0.0	0.0	0.3	0.0	0.0
Sentence recommended by Commonwealth Attorney or probation officer	7.4	2.3	5.7	3.3	4.4	4.0	2.2	1.4
Weak evidence or weak case	3.4	2.3	4.2	3.3	4.4	3.8	11.1	1.4
Plea agreement	9.5	10.3	10.3	10.0	9.2	12.7	17.8	12.0
Sentencing Consistency with co-defendant or with similar cases in the jurisdiction	1.4	1.1	0.2	0.0	0.3	0.8	0.0	2.1
Time served	4.7	3.4	2.1	3.3	3.8	5.7	2.2	0.0
Offender already sentenced by another court or in previous proceeding for other offenses	4.7	1.1	1.9	0.0	5.1	1.9	2.2	9.2
Offender will likely have his probation revoked	0.0	1.1	0.4	0.0	0.3	0.3	0.0	2.1
Offender is sentenced to an alt. punishment to incarceration	18.9	21.8	15.5	6.7	4.8	9.4	4.4	0.0
Attempt, not a completed act	0.0	0.0	0.2	0.0	0.0	0.0	0.0	0.0
Legal restraint in question	0.0	0.0	0.2	0.0	0.0	0.0	0.0	0.0
Guidelines recommendation is too harsh	2.0	0.0	1.9	3.3	4.1	3.5	0.0	0.0
Judge rounded guidelines minimum to nearest whole year	2.0	1.1	1.1	0.0	1.7	0.5	0.0	1.4
Other mitigating factors	2.7	3.4	1.3	0.0	3.4	1.3	0.0	4.2

Note: Percentages indicate the percent of mitigation (or aggravation) cases in which the judge cite a particular reason for the mitigation (or aggravation) departure. The percentages will not add to 100% since more than one departure reason may be cited in each case.

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

Reasons for AGGRAVATION	Burg. of Dwelling	Burg. Other Structure	Sch. I/II Drugs	Other Drugs	Fraud	Larceny	Misc	Traffic
No reason given	23.6%	29.9%	27.3%	28.3%	33.9%	22.6%	27.3%	30.4%
Extreme property or monetary loss	2.7	0.0	0.2	1.0	3.1	5.9	1.3	0.9
The offense involved a high degree of planning	0.0	0.0	0.2	6.1	3.1	4.5	1.3	0.4
Aggravating circumstances/flagrancy of offense	29.1	11.9	7.2	0.0	10.2	10.7	10.4	12.6
Offender used a weapon in commission of the offense	0.0	0.0	0.0	1.0	0.0	0.2	1.3	0.0
Offender was the leader	0.9	0.0	0.2	0.0	0.0	0.0	0.0	0.0
Offender's true offense behavior was more serious than offenses at conviction	4.5	3.0	5.7	9.1	1.6	3.6	3.9	2.2
Extraordinary amount of drugs or purity of drugs involved in the case	0.0	0.0	3.3	11.1	0.0	0.2	0.0	0.0
Aggravating circumstances relating to sale of drugs	0.0	0.0	1.5	2.0	0.0	0.0	0.0	0.0
Drugs involved	0.0	0.0	0.2	0.0	0.0	0.2	0.0	0.0
Offender immersed in drug culture	0.0	0.0	0.5	1.0	0.0	0.0	0.0	0.0
Offender is related to or is the caretaker of the victim	0.9	0.0	0.0	0.0	0.0	0.2	0.0	0.0
Unprovoked attack	0.0	0.0	0.0	0.0	0.0	0.2	0.0	0.0
Community drug problem	0.0	0.0	0.2	0.0	0.0	0.0	0.0	0.0
Victim vulnerability	2.7	0.0	0.0	0.0	0.8	0.7	2.6	0.9
Victim request	5.5	0.0	0.3	4.0	0.8	1.7	3.9	2.6
Victim injury	5.5	1.5	0.5	0.0	0.0	0.7	11.7	2.2
Previous punishment of offender has been ineffective	2.7	1.5	2.8	1.0	2.4	4.3	5.2	1.7
Offender was under some form of legal restraint at time of offense	2.7	1.5	3.5	2.0	3.9	3.8	0.0	1.3
Offender has a serious juvenile record	0.0	0.0	0.0	0.0	0.0	0.5	0.0	0.0
Offender's criminal record understates the degree of his criminal orientation	0.0	3.0	4.0	2.0	3.1	6.4	3.9	3.5
Offender has previous conviction(s) or other charges for the same type of offense	10.0	11.9	10.0	12.1	7.1	10.0	3.9	21.7
New crime committed after current offense	0.9	3.0	2.7	5.1	0.8	1.4	0.0	0.9
Offender failed to cooperate with authorities	1.8	3.0	2.5	3.0	6.3	4.5	2.6	3.0
Offender has mental health problems	0.0	0.0	0.0	1.0	0.0	0.2	0.0	0.0
Offender has drug or alcohol problems	1.8	1.5	4.8	4.0	1.6	1.7	1.3	11.3
Offender has poor rehabilitation potential	2.7	3.0	6.8	4.0	6.3	7.1	1.3	9.1
Offender shows no remorse	3.6	0.0	1.0	2.0	0.0	2.4	2.6	0.9
Age of offender	0.9	0.0	0.2	0.0	0.0	0.0	0.0	0.0
Jury sentence	3.6	6.0	2.8	2.0	2.4	3.1	10.4	2.6
Sentence recommend by Commonwealth Attorney or probation officer	0.0	0.0	0.2	0.0	0.0	1.0	0.0	0.0
Plea agreement	9.1	16.4	13.8	5.1	10.2	9.7	9.1	8.3
Community sentiment	2.7	1.5	2.3	2.0	2.4	1.2	1.3	0.0
Sentencing consistency with codefendant or with other similar cases in the jurisdiction	0.9	1.5	0.5	1.0	0.8	0.7	1.3	0.0
Judge wanted to teach offender a lesson	1.8	0.0	0.2	2.0	0.0	0.2	0.0	0.0
Offender is sentenced to an alternative punishment to incarceration	2.7	4.5	3.7	4.0	2.4	1.9	0.0	1.7
Guidelines recommendation is too low	10.9	4.5	6.8	7.1	7.1	10.0	6.5	8.3
Mandatory minimum penalty is required in the case	0.0	0.0	2.2	3.0	0.8	0.2	2.6	0.0
Judge rounded guidelines minimum to nearest whole year	0.9	1.5	0.8	0.0	2.4	1.0	0.0	0.0
Other reason for aggravation	0.9	3.0	1.5	1.0	1.6	2.4	1.3	0.9

Note: Percentages indicate the percent of mitigation (or aggravation) cases in which the judge cite a particular reason for the mitigation (or aggravation) departure.

The percentages will not add to 100% since more than one departure reason may be cited in each case.

Judicial Reasons for Departure from Sentencing Guidelines
Offenses Against the Person

Reasons for MITIGATION	Assault	Homicide	Kidnapping	Robbery	Rape	Sexual Assault
No reason given	22.9%	12.1%	15.0%	16.7%	15.2%	20.0%
Minimal property or monetary loss	0.0	3.0	0.0	1.1	0.0	0.0
Minimal circumstances/facts of the case	8.8	12.1	15.0	4.9	6.5	6.7
Offender was not the leader/active participant in offense	1.5	12.1	5.0	6.5	0.0	0.0
Offender and victim are related or friends	2.9	0.0	5.0	0.5	0.0	1.3
Little or no victim injuryoffender did not intend to harm; victim requested lenient sentence	11.7	6.1	10.0	1.6	13.0	13.3
Victim was a willing participant or provoked the offense	3.4	0.0	0.0	0.0	2.2	4.0
Offender has no prior record	0.5	3.0	0.0	3.2	2.2	4.0
Offender has minimal prior criminal record	3.4	0.0	0.0	2.7	2.2	4.0
Offender's criminal record overstates his degree of criminal orientation	0.0	0.0	0.0	1.1	0.0	1.3
Offender cooperated w/ authorities or law enforcement	1.0	15.2	5.0	17.3	4.3	4.0
Offender has emotional or psychiatric problems	3.9	3.0	0.0	1.6	0.0	2.7
Offender is mentally or physically impaired	4.9	3.0	10.0	0.0	6.5	2.7
Offender has drug or alcohol problems	1.0	0.0	0.0	0.5	2.2	0.0
Offender needs counseling	0.5	0.0	0.0	0.0	2.2	0.0
Offender has good potential for rehabilitation	11.7	0.0	5.0	8.1	8.7	14.7
Offender shows remorse	2.0	6.1	0.0	2.2	4.3	0.0
Age of offender	1.0	9.1	0.0	8.1	2.2	0.0
Multiple charges are being treated as one criminal event	0.0	0.0	0.0	0.0	0.0	0.0
Guilty plea	1.0	3.0	5.0	0.0	2.2	0.0
Jury sentence	2.4	6.1	0.0	0.5	10.9	2.7
Sentence was recommended by Commonwealth's attorney or probation officer	3.4	9.1	10.0	8.6	2.2	5.3
Weak evidence or weak case against the offender	9.3	0.0	20.0	3.2	17.4	8.0
Plea agreement	12.2	9.1	25.0	8.1	10.9	17.3
Sentencing consistency with codefendant or with other similar cases in the jurisdiction	1.5	0.0	15.0	5.4	2.2	4.0
Time served	3.9	3.0	0.0	1.1	0.0	1.3
Offender already sentenced by another court or in previous proceeding for other offenses	1.5	3.0	0.0	4.9	0.0	0.0
Offender will likely have his probation revoked	0.0	0.0	0.0	0.0	0.0	0.0
Offender is sentenced to an alt. punishment to incarceration	2.4	0.0	0.0	18.9	8.7	1.3
Guidelines recommendation is too harsh	1.0	3.0	0.0	2.7	2.2	0.0
Judge rounded guidelines minimum to nearest whole year	3.4	0.0	0.0	1.6	0.0	2.7
Other reasons for mitigation	1.0	6.1	0.0	3.2	0.0	5.3

Note: Percentages indicate the percent of mitigation (or aggravation) cases in which the judge cites a particular reason for the mitigation (or aggravation) departure. The percentages will not add to 100% since more than one departure reason may be cited in each case.

Offenses Against the Person

Reasons for AGGRAVATION	Assault	Homicide	Kidnapping	Robbery	Rape	Sexual Assault
No reason given	25.5%	9.1%	30.8%	17.5%	15.4%	13.9%
The offense involved a high degree of planning	1.5	0.0	3.8	1.3	7.7	4.2
Aggravating circumstances/flagrancy of offense	14.6	34.1	15.4	21.3	30.8	30.6
Offender used a weapon in commission of the offense	0.7	0.0	0.0	2.5	0.0	0.0
Offender was the leader	0.0	0.0	0.0	3.8	0.0	0.0
Offender's true offense behavior was more serious than offenses at conviction	3.6	9.1	11.5	1.3	7.7	4.2
Offender is related to or is the caretaker of the victim	0.7	0.0	3.8	0.0	7.7	9.7
Offense was an unprovoked attack	2.9	2.3	0.0	0.0	0.0	0.0
Offender knew of victim's vulnerability	7.3	11.4	3.8	3.8	15.4	8.3
The victim(s) wanted a harsh sentence	0.0	4.5	7.7	6.3	7.7	6.9
Extreme violence or severe victim injury	27.7	11.4	7.7	20.0	0.0	1.4
Previous punishment of offender has been ineffective	1.5	0.0	0.0	0.0	0.0	2.8
Offender was under some form of legal restraint at time of offense	0.0	0.0	0.0	1.3	0.0	0.0
Offender has a serious juvenile record	0.7	0.0	0.0	0.0	0.0	0.0
Offender's record understates the degree of his criminal orientation	2.9	4.5	3.8	0.0	0.0	0.0
Offender has previous conviction(s) or other charges for the same offense	1.5	6.8	7.7	5.0	0.0	6.9
New crime committed after current offense	0.0	2.3	0.0	3.8	0.0	0.0
Offender failed to cooperate with authorities	1.5	2.3	0.0	0.0	0.0	1.4
Offender has mental health problems	0.7	0.0	0.0	0.0	0.0	0.0
Offender has drug or alcohol problems	0.0	6.8	0.0	0.0	0.0	0.0
Offender has poor rehabilitation potential	13.1	4.5	3.8	8.8	7.7	2.8
Offender shows no remorse	3.6	4.5	3.8	1.3	15.4	2.8
Age of offender	0.0	0.0	0.0	0.0	0.0	1.4
Jury sentence	13.1	13.6	3.8	15.0	15.4	5.6
Sentence was recommended by Commonwealth's attorney or probation officer	0.0	0.0	0.0	0.0	0.0	0.0
Plea agreement	5.1	0.0	7.7	5.0	0.0	11.1
Community sentiment	0.0	0.0	0.0	1.3	0.0	0.0
Judge wanted to teach offender a lesson	0.0	0.0	0.0	0.0	0.0	1.4
Offender is sentenced to an alt. punishment to incarceration	1.5	2.3	0.0	0.0	0.0	4.2
Guidelines recommendation is too low	5.8	6.8	3.8	7.5	7.7	5.6
Mandatory minimum penalty is required in the case	1.5	0.0	3.8	3.8	0.0	0.0
Judge rounded guidelines minimum to nearest whole year	0.0	2.3	0.0	0.0	0.0	0.0
Other reasons for aggravation	2.2	2.3	11.5	2.5	7.7	2.8

Note: Percentages indicate the percent of mitigation (or aggravation) cases in which the judge cites a particular reason for the mitigation (or aggravation) departure. The percentages will not add to 100% since more than one departure reason may be cited in each case.

APPENDICES 3 Sentencing Guidelines Compliance by Judicial Circuit: Property, Drugs, and Miscellaneous Offenses

Burglary of Dwelling

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	68.8%	18.8%	12.5%	32
2	79.2	15.1	5.7	532
3	85.0	2.5	12.5	40
4	57.1	34.3	8.6	35
5	66.7	19.0	14.3	21
6	42.1	26.3	31.6	19
7	50.0	29.2	20.8	24
8	66.7	33.3	0.0	15
9	66.7	11.1	22.2	9
10	61.3	35.5	3.2	31
11	72.7	13.6	13.6	22
12	80.0	6.7	13.3	15
13	80.0	5.0	15.0	20
14	61.5	20.5	17.9	39
15	55.0	17.5	27.5	40
16	72.9	20.8	6.3	48
17	78.6	0.0	21.4	14
18	64.7	11.8	23.5	17
19	62.2	13.5	24.3	37
20	80.0	13.3	6.7	15
21	66.7	20.8	12.5	24
22	62.9	14.3	22.9	35
23	72.2	16.7	11.1	18
24	56.5	34.8	8.7	46
25	74.4	18.6	7.0	43
26	60.9	13.0	26.1	23
27	86.4	9.1	4.5	44
28	75.0	12.5	12.5	16
29	66.7	10.0	23.3	30
30	90.0	0.0	10.0	10
31	72.4	20.7	6.9	29
Total	68.6	17.8	13.6	865

Burglary of Other Structure

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	84.6%	15.4%	0%	13
2	79.5	7.7	12.8	39
3	64.3	0.0	35.7	14
4	68.8	25.0	6.3	32
5	81.0	19.0	0.0	21
6	75.0	8.3	16.7	12
7	76.0	12.0	12.0	25
8	100.0	0.0	0.0	5
9	72.7	13.6	13.6	22
10	88.2	11.8	0.0	17
11	83.3	11.1	5.6	18
12	60.0	33.3	6.7	15
13	81.3	6.3	12.5	16
14	62.5	20.8	16.7	24
15	72.2	5.6	22.2	36
16	88.9	0.0	11.1	9
17	78.1	9.4	12.5	32
18	87.5	12.5	0.0	8
19	62.5	31.3	6.3	16
20	90.0	10.0	0.0	10
21	70.0	30.0	0.0	10
22	82.4	11.8	5.9	17
23	50.0	40.0	10.0	10
24	60.9	26.1	13.0	23
25	70.0	10.0	20.0	30
26	64.7	23.5	11.8	34
27	82.1	14.3	3.6	28
28	84.2	5.3	10.5	19
29	42.3	19.2	38.5	26
30	82.4	11.8	5.9	17
31	90.0	10.0	0.0	10
Total	73.5	14.8	11.7	608

Other Drugs

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	83.3%	8.3%	8.3%	12
2	85.9	8.5	5.6	71
3	75.0	0.0	25.0	12
4	90.3	6.5	3.2	31
5	77.8	0.0	22.2	9
6	87.5	0.0	12.5	8
7	81.3	0.0	18.8	16
8	100.0	0.0	0.0	8
9	66.7	20.0	13.3	15
10	93.8	0.0	6.3	16
11	76.9	0.0	23.1	13
12	66.7	0.0	33.3	18
13	90.9	4.5	4.5	22
14	87.5	0.0	12.5	24
15	57.1	6.1	36.7	49
16	82.1	0.0	17.9	28
17	69.2	0.0	30.8	13
18	66.7	11.1	22.2	9
19	89.3	1.8	8.9	56
20	82.1	3.6	14.3	28
21	50.0	0.0	50.0	6
22	66.7	0.0	33.3	12
23	79.2	8.3	12.5	24
24	94.1	0.0	5.9	34
25	88.9	5.6	5.6	36
26	77.3	2.3	20.5	44
27	93.1	6.9	0.0	29
28	95.7	4.3	0.0	23
29	55.6	5.6	38.9	18
30	100.0	0.0	0.0	10
31	86.4	9.1	4.5	22
Total	81.9	4.2	13.9	716

Schedule I/II Drugs

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	92.3%	0.9%	6.8%	220
2	86.3	8.4	5.2	439
3	77.1	6.3	16.6	398
4	83.3	12.4	4.3	701
5	87.7	4.4	7.9	114
6	69.0	11.0	20.0	100
7	87.9	4.8	7.4	420
8	83.4	8.3	8.3	169
9	80.8	8.8	10.4	125
10	81.0	7.4	11.6	121
11	90.0	6.5	3.5	200
12	74.1	7.0	18.9	143
13	79.7	8.8	11.5	479
14	85.8	6.7	7.6	225
15	70.5	8.9	20.7	237
16	79.2	4.0	16.8	149
17	83.0	8.1	8.9	135
18	70.7	22.8	6.5	92
19	84.1	8.3	7.6	302
20	93.8	3.7	2.5	81
21	85.9	4.3	9.8	92
22	76.8	5.4	17.8	185
23	77.1	12.1	10.8	157
24	80.2	6.5	13.4	217
25	81.4	7.9	10.7	140
26	78.6	5.7	15.7	159
27	86.6	9.7	3.7	134
28	77.5	15.0	7.5	80
29	59.7	1.4	38.9	72
30	86.8	7.9	5.3	38
31	86.6	6.5	7.0	201
Total	82.0	7.9	10.1	6325

APPENDICES 3 Sentencing Guidelines Compliance by Judicial Circuit: Property, Drugs, and Miscellaneous Offenses

Fraud

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	94.7	5.3	0.0	114
2	92.3	5.6	2.1	142
3	69.2	19.2	11.5	26
4	83.8	11.4	4.8	167
5	88.9	4.8	6.3	63
6	85.3	11.8	2.9	34
7	87.7	9.9	2.5	81
8	88.5	9.6	1.9	52
9	90.0	0.0	10.0	40
10	94.1	5.9	0.0	34
11	84.2	10.5	5.3	38
12	76.5	12.2	11.3	115
13	91.5	7.0	1.4	71
14	84.8	12.1	3.0	165
15	77.9	11.0	11.0	145
16	86.4	11.7	1.9	103
17	92.6	3.7	3.7	81
18	80.0	12.0	8.0	50
19	81.1	12.8	6.1	180
20	91.9	6.8	1.4	74
21	82.9	14.3	2.9	70
22	77.9	11.7	10.4	77
23	76.5	19.6	3.9	102
24	78.8	17.7	3.5	113
25	83.2	13.6	3.2	125
26	90.9	7.3	1.8	110
27	91.9	7.3	0.8	124
28	81.0	13.8	5.2	58
29	65.0	18.8	16.3	80
30	88.1	9.5	2.4	42
31	84.9	10.5	4.7	86
Total	84.5	10.8	4.7	2762

Larceny

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	86.8%	7.0%	6.1%	228
2	85.5	5.8	8.6	325
3	81.0	5.0	14.0	100
4	81.0	14.3	4.8	294
5	84.6	9.1	6.3	143
6	67.3	14.5	18.2	55
7	86.7	10.0	3.3	90
8	85.9	10.6	3.5	85
9	72.6	8.3	19.0	84
10	89.3	5.3	5.3	75
11	80.3	9.8	9.8	61
12	77.8	9.7	12.5	216
13	84.0	8.3	7.7	169
14	88.2	8.3	3.5	399
15	74.7	8.3	17.0	277
16	84.5	6.8	8.7	103
17	85.7	4.3	10.0	231
18	89.8	6.3	3.9	128
19	81.3	5.6	13.1	321
20	91.6	3.2	5.3	95
21	79.5	13.3	7.2	83
22	74.8	3.9	21.3	127
23	74.5	13.2	12.3	106
24	82.7	12.9	4.3	139
25	83.1	8.5	8.5	130
26	75.4	11.6	13.0	138
27	89.7	5.1	5.1	136
28	81.3	12.5	6.3	64
29	71.2	9.0	19.8	111
30	85.1	8.5	6.4	47
31	88.1	4.5	7.5	134
Total	82.6	8.2	9.2	4694

Traffic

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	93.8%	3.1%	3.1%	64
2	82.8	5.5	11.7	128
3	72.4	13.8	13.8	29
4	76.6	15.6	7.8	77
5	77.6	1.3	21.1	76
6	78.8	6.1	15.2	33
7	87.0	7.6	5.4	92
8	78.6	10.7	10.7	28
9	74.7	5.7	19.5	87
10	87.3	11.1	1.6	63
11	87.2	2.6	10.3	39
12	77.7	9.7	12.6	103
13	88.6	2.9	8.6	35
14	82.8	10.1	7.1	99
15	80.7	7.9	11.4	114
16	80.5	7.3	12.2	82
17	78.4	5.4	16.2	37
18	90.0	0.0	10.0	10
19	69.8	4.7	25.5	106
20	86.0	5.3	8.8	57
21	80.5	7.3	12.2	41
22	82.0	4.5	13.5	89
23	82.3	4.8	12.9	62
24	81.2	7.7	11.1	117
25	79.7	5.1	15.2	79
26	78.3	5.7	16.0	106
27	87.8	8.1	4.1	74
28	84.0	12.0	4.0	50
29	70.4	7.4	22.2	27
30	85.7	5.7	8.6	35
31	90.0	8.0	2.0	50
Total	81.3	7.0	11.7	2089

Miscellaneous

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	78.6%	7.1%	14.3%	14
2	78.9	0.0	21.1	19
3	81.0	9.5	9.5	21
4	75.8	6.1	18.2	33
5	72.7	9.1	18.2	22
6	66.7	11.1	22.2	9
7	93.8	0.0	6.3	16
8	100.0	0.0	0.0	3
9	80.0	0.0	20.0	10
10	82.6	8.7	8.7	23
11	100.0	0.0	0.0	8
12	69.2	19.2	11.5	26
13	85.7	7.1	7.1	14
14	70.0	10.0	20.0	20
15	53.3	16.7	30.0	30
16	52.4	19.0	28.6	21
17	72.7	9.1	18.2	11
18	57.1	0.0	42.9	7
19	88.9	0.0	11.1	9
20	81.0	14.3	4.8	21
21	72.7	18.2	9.1	22
22	69.7	3.0	27.3	33
23	86.7	6.7	6.7	15
24	65.4	15.4	19.2	26
25	94.1	5.9	0.0	17
26	85.7	9.5	4.8	21
27	81.0	4.8	14.3	21
28	81.8	0.0	18.2	11
29	58.3	8.3	33.3	12
30	83.3	0.0	16.7	6
31	80.0	20.0	0.0	5
Total	75.1	9.1	15.7	526

Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

Assault

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	76.5%	20.6%	2.9%	34
2	76.5	9.4	14.1	85
3	75.9	16.7	7.4	54
4	68.9	20.0	11.1	90
5	80.4	13.0	6.5	46
6	93.8	3.1	3.1	32
7	71.8	14.1	14.1	71
8	51.5	18.2	30.3	33
9	93.1	0.0	6.9	29
10	80.4	7.8	11.8	51
11	75.0	21.9	3.1	32
12	79.5	7.7	12.8	39
13	81.0	7.9	11.1	63
14	62.8	20.9	16.3	43
15	63.8	26.3	10.0	80
16	72.7	18.2	9.1	44
17	55.2	17.2	27.6	29
18	80.8	11.5	7.7	26
19	74.5	10.6	14.9	47
20	72.2	22.2	5.6	18
21	73.5	23.5	2.9	34
22	84.6	5.1	10.3	39
23	65.7	28.6	5.7	35
24	64.8	22.2	13.0	54
25	78.8	15.2	6.1	33
26	61.7	17.0	21.3	47
27	81.0	14.3	4.8	42
28	52.0	48.0	0.0	25
29	85.7	0.0	14.3	21
30	78.6	21.4	0.0	14
31	75.0	18.8	6.3	32
Total	73.2	16.0	10.7	1322

Kidnapping

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	33.3%	0.0%	66.7%	3
2	42.9	14.3	42.9	7
3	33.3	33.3	33.3	6
4	25.0	0.0	75.0	4
5	50.0	25.0	25.0	4
6	100.0	0.0	0.0	1
7	100.0	0.0	0.0	3
8	50.0	33.3	16.7	6
9	33.3	0.0	66.7	3
10	50.0	0.0	50.0	4
11	0.0	100.0	0.0	1
12	25.0	75.0	0.0	4
13	66.7	0.0	33.3	3
14	50.0	0.0	50.0	2
15	66.7	33.3	0.0	3
16	60.0	20.0	20.0	5
17	75.0	25.0	0.0	4
18	100.0	0.0	0.0	1
19	33.3	33.3	33.3	6
20	66.7	0.0	33.3	3
21	0.0	0.0	0.0	0
22	0.0	0.0	0.0	0
23	0.0	100.0	0.0	1
24	75.0	25.0	0.0	4
25	50.0	16.7	33.3	6
26	80.0	0.0	20.0	5
27	0.0	100.0	0.0	1
28	100.0	0.0	0.0	1
29	0.0	100.0	0.0	1
30	0.0	0.0	0.0	0
31	75.0	0.0	25.0	4
Total	52.1	20.8	27.1	96

Homicide

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	60.0%	20.0%	20.0%	10
2	72.7	18.2	9.1	11
3	60.0	20.0	20.0	5
4	68.8	6.3	25.0	16
5	80.0	0.0	20.0	5
6	25.0	75.0	0.0	4
7	66.7	8.3	25.0	12
8	80.0	20.0	0.0	5
9	66.7	0.0	33.3	6
10	50.0	20.0	30.0	10
11	85.7	0.0	14.3	7
12	63.6	18.2	18.2	11
13	55.6	22.2	22.2	9
14	61.5	0.0	38.5	13
15	75.0	0.0	25.0	4
16	66.7	0.0	33.3	3
17	50.0	0.0	50.0	2
18	75.0	25.0	0.0	4
19	63.6	9.1	27.3	11
20	60.0	0.0	40.0	10
21	50.0	0.0	50.0	6
22	75.0	12.5	12.5	8
23	37.5	62.5	0.0	8
24	76.9	7.7	15.4	13
25	71.4	0.0	28.6	7
26	0.0	0.0	100.0	3
27	28.6	28.6	42.9	7
28	20.0	60.0	20.0	5
29	50.0	50.0	0.0	2
30	0.0	0.0	0.0	0
31	60.0	20.0	20.0	10
Total	61.2	15.0	23.8	227

APPENDICES 4 Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

Robbery

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	61.3%	25.8%	12.9%	31
2	69.2	16.9	13.8	65
3	60.0	15.0	25.0	20
4	56.2	38.4	5.5	73
5	60.0	20.0	20.0	20
6	57.7	30.8	11.5	26
7	75.9	13.8	10.3	29
8	59.0	28.2	12.8	39
9	60.9	13.0	26.1	23
10	88.9	11.1	0.0	9
11	60.0	40.0	0.0	10
12	72.4	20.7	6.9	29
13	76.9	20.5	2.6	39
14	50.9	37.7	11.3	53
15	64.1	25.6	10.3	39
16	60.0	33.3	6.7	15
17	70.8	8.3	20.8	24
18	48.3	44.8	6.9	29
19	62.2	29.7	8.1	37
20	80.0	0.0	20.0	5
21	57.1	21.4	21.4	14
22	60.0	0.0	40.0	5
23	50.0	40.0	10.0	20
24	59.3	29.6	11.1	27
25	41.7	33.3	25.0	12
26	64.7	11.8	23.5	17
27	100.0	0.0	0.0	6
28	66.7	0.0	33.3	3
29	62.5	0.0	37.5	8
30	50.0	0.0	50.0	2
31	64.0	28.0	8.0	25
Total	62.3	25.5	12.2	754

Rape

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	50.0%	50.0%	0.0%	4
2	83.3	8.3	8.3	12
3	75.0	0.0	25.0	4
4	80.0	20.0	0.0	20
5	83.3	0.0	16.7	6
6	100.0	0.0	0.0	5
7	87.5	12.5	0.0	8
8	85.7	0.0	14.3	7
9	81.8	18.2	0.0	11
10	40.0	40.0	20.0	10
11	71.4	28.6	0.0	7
12	83.3	16.7	0.0	6
13	87.5	12.5	0.0	8
14	72.7	27.3	0.0	11
15	76.9	7.7	15.4	13
16	55.6	33.3	11.1	9
17	33.3	33.3	33.3	6
18	77.8	22.2	0.0	9
19	45.5	9.1	45.5	11
20	25.0	75.0	0.0	4
21	60.0	40.0	0.0	5
22	80.0	0.0	20.0	5
23	55.6	44.4	0.0	9
24	57.1	42.9	0.0	7
25	83.3	16.7	0.0	12
26	60.0	20.0	20.0	5
27	60.0	40.0	0.0	5
28	100.0	0.0	0.0	2
29	25.0	25.0	50.0	4
30	0.0	0.0	0.0	0
31	66.7	33.3	0.0	3
Total	69.7	21.5	8.8	228

Other Sexual Assault

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	64.3%	14.3%	21.4%	14
2	71.4	19.0	9.5	42
3	66.7	33.3	0.0	9
4	68.4	26.3	5.3	19
5	87.5	0.0	12.5	8
6	60.0	40.0	0.0	10
7	88.2	0.0	11.8	17
8	70.6	17.6	11.8	17
9	81.8	0.0	18.2	11
10	75.0	8.3	16.7	12
11	84.6	0.0	15.4	13
12	71.4	7.1	21.4	14
13	50.0	16.7	33.3	6
14	50.0	18.8	31.3	16
15	64.5	22.6	12.9	31
16	73.3	0.0	26.7	15
17	58.3	0.0	41.7	12
18	100.0	0.0	0.0	3
19	63.9	5.6	30.6	36
20	53.8	23.1	23.1	13
21	75.0	25.0	0.0	4
22	55.6	33.3	11.1	9
23	46.2	38.5	15.4	13
24	53.6	28.6	17.9	28
25	69.7	18.2	12.1	33
26	60.0	20.0	20.0	10
27	80.0	12.0	8.0	25
28	57.1	28.6	14.3	7
29	63.6	27.3	9.1	11
30	50.0	0.0	50.0	4
31	87.5	12.5	0.0	24
Total	68.2	16.2	15.6	486