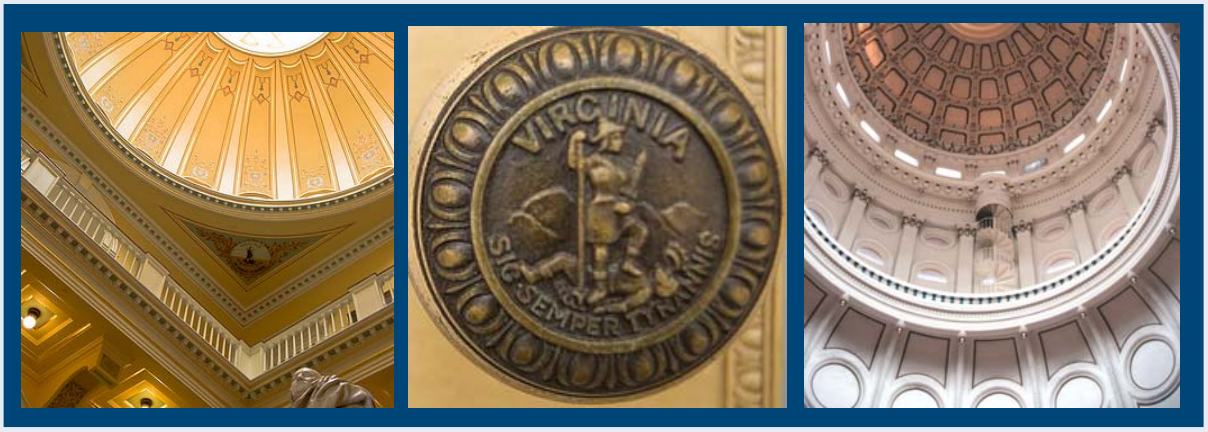
2008 Annual Report

Virginia Criminal Sentencing Commission

VIRGINIA CRIMINAL SENTENCING COMMISSION



2008 ANNUAL REPORT

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

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Chairman, Fairfax County

Appointments by the Chief Justice of the Supreme Court

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SUPREME COURT OF VIRGINIA
VIRGINIA CRIMINAL SENTENCING COMMISSION

December 1, 2008

To: The Honorable Leroy Rountree Hassell, Sr., Chief Justice of Virginia
The Honorable Timothy M. Kaine, 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 *2008 Annual Report* of the Criminal Sentencing Commission.

This report details the work of the Commission over the past year. The report includes a detailed analysis of judicial compliance with the felony sentencing guidelines during fiscal year 2008. The Commission's recommendations to the 2009 session of the Virginia General Assembly are also contained in this report.

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,

F. Bruce Bach
Chairman

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Introduction

Virginia's approach has proven to be one of the most successful and effective avenues for reform.

Overview

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

The report is organized into five chapters. The remainder of the Introduction chapter provides a general profile of the Commission and an overview of its various activities and projects during 2008. The Guidelines Compliance chapter presents a comprehensive analysis of compliance with the sentencing guidelines during fiscal year (FY) 2008. The Commission's newest project, a significant and groundbreaking new study examining crimes committed in the presence of Virginia's children, is described in the third chapter of the report. The Commission's most recent look at the effects of the sweeping reforms that took effect in 1995 is documented in the chapter on the Impact of Truth in Sentencing. In the report's final chapter, the Commission presents its recommendations for revisions to the felony sentencing guidelines system.

Commission Profile

The Virginia Criminal Sentencing Commission is comprised of 17 members as authorized in the *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. 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. In the original legislation, five members of the Commission were to be appointed by the General Assembly, with the Speaker of the House of Delegates designating three members and the Senate Committee on Privileges and Elections selecting two members. The 2005 General Assembly

Commission Meetings

The full membership of the Commission met four times during 2008. These meetings, held in the Supreme Court of Virginia, were held on March 17, June 9, September 8 and November 10. Minutes for each of these meetings are available on the Commission's website (www.vcsc.virginia.gov).

modified this provision. Now, the Speaker of the House of Delegates has two appointments, while the Chairman of the House Courts of Justice Committee, or another member of the Courts Committee appointed by the chairman, must serve as the third House appointment. Similarly, the Senate Committee on Rules makes only one appointment and the other appointment must be filled by the Chairman of the Senate Courts of Justice Committee or a designee from that committee. The 2005 amendment did not affect existing members whose appointed terms had not expired; instead, this provision became effective when the terms of two legislative appointees expired on December 31, 2006. The Chairman of the Senate Courts of Justice Committee joined the Commission in 2007, as did a member of the House Courts of Justice Committee. The final member of the Commission, Virginia's Attorney General, 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.

Monitoring and Oversight

Section 19.2-298.01 of the *Code of Virginia* requires that sentencing guidelines worksheets be completed in all felony cases for which there are guidelines. This section of the *Code* also requires judges to announce during court proceedings for each case that the guidelines forms have been reviewed. After sentencing, the guidelines worksheets are signed by the judge and become a part of the official record of each case. The clerk of the circuit court is responsible for sending the completed and signed worksheets to the Commission.

The sentencing guidelines worksheets are reviewed by the Commission staff as they are received. The Commission staff performs this check to ensure that the guidelines forms are being completed accurately. As a result of the review process, errors or omissions are detected and resolved.

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, Education and Other Assistance

The Commission provides sentencing guidelines assistance in a variety of forms: training and education seminars, training materials and publications, a website, and assistance via the "hot line" phone system. Training and education are on-going activities of the Commission. The Commission offers training and educational opportunities in an effort to promote the accurate completion of sentencing guidelines. Training seminars are designed to appeal to the needs of attorneys for the Commonwealth and probation officers, the two groups authorized by statute to complete the official guidelines for the court. The seminars also provide defense attorneys with a knowledge base to challenge the accuracy of guidelines submitted to the court. In addition, the Commission conducts sentencing guidelines seminars for new members of the judiciary and other criminal justice system professionals. Having all sides equally versed in the completion of guidelines worksheets is essential to a system of checks and balances that ensures the accuracy of sentencing guidelines.

In 2008, the Commission offered 34 training seminars across the Commonwealth. As in previous years, Commission staff conducted training for attorneys and probation officers new to Virginia's sentencing guidelines. The six-hour seminars introduced participants to the sentencing guidelines and provided instruction on correct scoring of the guidelines worksheets. The seminars also introduced new users to the probation violation guidelines and the two offender risk assessment instruments that are incorporated into Virginia's guidelines system. Seminars for experienced guidelines users were also provided. These courses are approved by the Virginia State Bar, enabling participating attorneys to earn Continuing Legal Education credits. This year, the Commission added a new seminar to its regular offerings: a guidelines-related ethics class. The Virginia State Bar assisted in the development of the class material and participated with Commission training staff in the presentation of the seminars. The Virginia State Bar has approved this class for one hour of Continuing Legal Education Ethics credit for attorneys. Finally, the Commission regularly conducts sentencing guidelines training at the Department of Corrections' Training Academy as part of the curriculum for new probation officers.

Commission staff traveled throughout Virginia in an attempt to offer training that was convenient to most guideline users. Staff continues 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, libraries, state and local facilities, a jury assembly room, a museum and criminal justice academies. Many sites, such as the Roanoke Higher Education Center, 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 is also willing to provide an education program on guidelines and the no-parole sentencing system to any interested group or organization. If an individual is interested in training, he or she can contact the Commission and place his or her name on a waiting list. Once there is enough interest, a seminar is presented in a locality convenient to the majority of individuals on the list.

In addition to providing training and education programs, the Commission maintains a website and a "hot line" phone system. By visiting the website, a user can learn about upcoming training sessions, access Commission reports, look up Virginia Crime Codes (VCCs) and utilize on-line versions of the sentencing guidelines forms. The "hot line" phone (804.225.4398) is staffed from 7:45 a.m. to 6:00 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.

Projecting the Impact of Proposed Legislation

Section 30-19.1:4 of the *Code of Virginia* requires the Commission to prepare fiscal impact statements for any proposed legislation that may result in a net increase in periods of imprisonment in state correctional facilities. These impact statements must include details as to the impact on adult, as well as juvenile, offender populations and any necessary adjustments to sentencing guideline recommendations. Additionally, 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 2008 General Assembly session, the Commission prepared 304 impact statements on proposed legislation. These proposals fell into five categories: 1) legislation to increase the felony penalty class of a specific crime; 2) legislation to increase the penalty class of a specific crime from a misdemeanor to a felony; 3) legislation to add a new mandatory minimum penalty for a specific crime; 4) legislation to expand or clarify an existing crime; and 5) legislation that would create a new criminal offense. The Commission utilizes its computer simulation forecasting program to estimate the projected impact of these proposals on the prison system. The estimated impact on the juvenile offender population is provided by Virginia's Department of Juvenile Justice. In most instances, the projected impact and accompanying analysis of a bill is presented to the General Assembly within 24 to 48 hours after the Commission was notified of the proposed legislation. When requested, the Commission provides pertinent oral testimony to accompany the impact analysis.

Prison and Jail Population Forecasting

Forecasts of offenders confined in state and local correctional facilities are essential for criminal justice budgeting and planning in Virginia. The forecasts are used to estimate operating expenses and future capital needs and to assess the impact of current and proposed criminal justice policies. Since 1987, the Secretary of Public Safety has utilized an approach known as "consensus forecasting" to develop the offender population forecasts. This process brings together policy makers, administrators and technical experts from all branches of state government. The process is structured through committees. The Technical Advisory Committee is composed of experts in statistical and quantitative methods from several agencies. While individual members of this Committee generate the various prisoner forecasts, the Committee as a whole carefully scrutinizes each forecast according to the highest statistical standards. Select forecasts are presented to the Policy-Technical Liaison Work Group. Chaired by the Deputy Secretary of Public Safety, the Work Group evaluates the forecasts and provides guidance and oversight for the Technical Advisory Committee. It

includes deputy directors and senior managers of criminal justice and budget agencies, as well as staff of the House Appropriations and Senate Finance Committees. Forecasts accepted by the Work Group are then presented to the Policy Advisory Committee. Led by the Secretary of Public Safety, the Policy Advisory Committee reviews the various forecasts, making any adjustments deemed necessary to account for emerging trends or recent policy changes, and selects the official forecast for each prisoner population. This Committee is made up of agency directors, lawmakers and other top-level officials from Virginia's executive, legislative, and judicial branches, as well as representatives of Virginia's law enforcement and prosecutorial associations.

While the Commission is not responsible for generating the prison or jail population forecast, it is included in the consensus forecasting process. In years past, Commission staff members have served on the Technical Advisory Committee and the Commission's Deputy Director has served on the Policy Advisory Committee. In 2008 (as in 2006 and 2007), the Commission's Deputy Director was appointed by the Secretary of Public Safety to chair the Technical Advisory Committee. The Secretary presented the most recent prisoner forecasts to the General Assembly in a report submitted in October 2008.

Study of Crimes Committed in the Presence of Children

The Virginia Criminal Sentencing Commission has embarked upon a new research project this year, one of the firsts of its kind in the nation. Earlier this year, members of the Commission voted to conduct a comprehensive study of crimes committed in the presence of children, noting that crimes can have a profound effect on the health and welfare of the children who witness them, even when they are not the direct victims. The goal is to identify crimes witnessed by children, to describe the nature of such crimes, and to determine how courts respond to and utilize information concerning the presence of children during the commission of the crime when sentencing the offender. This project will entail unique and groundbreaking research. Because criminal justice databases available in the Commonwealth lack sufficient detail to identify offenses witnessed by children, this research will require a special data collection process. Based on the results of the data analysis, the Commission may consider revising the sentencing guidelines to account for the presence of youth during the commission of the offense. This project is described in full detail in the third chapter of this report.

Guidelines Compliance

In the Commonwealth, judicial compliance with the truth-in-sentencing guidelines is voluntary.

Introduction

On January 1, 2009, Virginia's truth-in-sentencing system will reach its fourteenth anniversary. Beginning January 1, 1995, the practice of discretionary parole release from prison was abolished and the existing system of sentence credits awarded to inmates for good behavior was eliminated. Under Virginia's truth-in-sentencing laws, convicted felons must serve at least 85% of the pronounced sentence and they may earn, at most, 15% off in sentence credits, 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 for felony cases under the new truth-in-sentencing laws. Under the current no-parole system, guidelines recommendations for nonviolent offenders with no prior record of violence are tied to the amount of time they served during a period prior to the abolition of parole. In contrast, offenders convicted of violent crimes and those with prior convictions for violent felonies are subject to guideline recommendations up to six times longer than the historical time served in prison by similar offenders. In the more than 280,000 felony cases sentenced under truth-in-sentencing laws, judges have agreed with guidelines recommendations in more than three out of every four cases.

This report will focus on cases sentenced from the most recent year of available data, FY2008 (July 1, 2007, through June 30, 2008). Compliance is examined in a variety of ways in this report, and variations in data over the years are highlighted throughout.

Case Characteristics

In FY2008, five judicial circuits contributed more guidelines cases than any of the other judicial circuits in the Commonwealth. Those circuits, which include Virginia Beach (Circuit 2), Richmond City (Circuit 13), the Fredericksburg area (Circuit 15), Norfolk (Circuit 4), and Fairfax County (Circuit 19), comprised nearly one-third (30%) of all worksheets received in FY2008. In addition, four other circuits submitted over 1,000 guideline forms during the year: Henrico (Circuit 14), the Harrisonburg area (Circuit 26), Chesapeake (Circuit 1), and the Lynchburg area (Circuit 24).

During FY2008, the Commission received a total of 27,195 sentencing guideline worksheets. Of the total, however, 777 worksheets contained errors or omissions that affect the analysis of the case. For the purposes of conducting a clear evaluation of sentencing guidelines in effect for FY2008, the remaining sections of this chapter pertaining to judicial concurrence with guideline recommendations focus only on those 26,418 cases for which guidelines recommendations were completed and calculated correctly.

Figure 1
Number and Percentage of Cases Received by Circuit, FY2008

Judicial Circuit	Cases	Percentage	Rank
2	1,760	6.5%	1
13	1,690	6.2	2
15	1,658	6.1	3
4	1,635	6.0	4
19	1,447	5.3	5
14	1,266	4.7	6
26	1,193	4.4	7
1	1,035	3.8	8
24	1,020	3.8	9
12	999	3.7	10
25	971	3.6	11
27	960	3.5	12
3	934	3.4	13
23	921	3.4	14
7	893	3.3	15
8	742	2.7	16
10	723	2.7	17
31	654	2.4	18
16	650	2.4	19
22	639	2.3	20
5	628	2.3	21
9	611	2.2	22
29	608	2.2	23
28	600	2.2	24
6	546	2.0	25
17	513	1.9	26
20	465	1.7	27
11	430	1.6	28
21	367	1.3	29
18	338	1.2	30
30	299	1.1	31
TOTAL	**27,195**		

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. When risk assessment for nonviolent offenders is applicable, a judge may sentence a recommended offender to an alternative punishment program or to a term of incarceration within the traditional guidelines range and be considered in strict compliance. 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 already served (in certain instances), or 3) complies with statutorily-permitted diversion 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 or she sentenced an offender to a two-year sentence based on a guidelines recommendation that goes up to 1 year 11 months. In general, the Commission allows for rounding of a sentence that is within five percent of the guidelines recommendation.

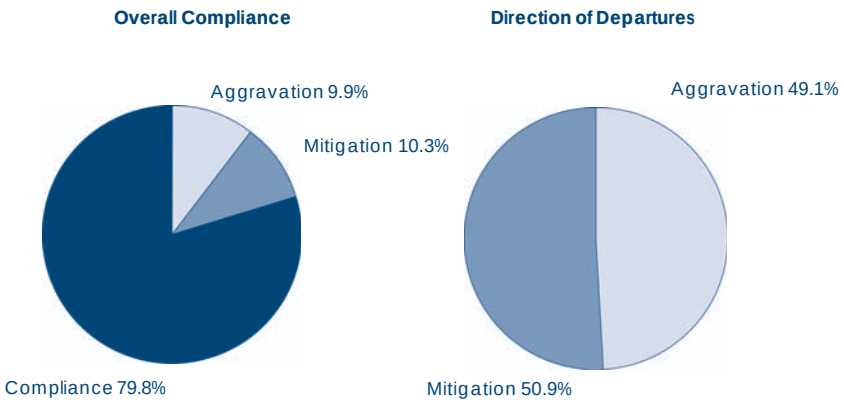
Time served compliance is intended to accommodate judicial discretion and the complexity of the criminal justice system at the local level. A judge may sentence an offender to the amount of pre-sentence incarceration time served in a local jail when the guidelines call for a short jail term. Even though 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 through the use of diversion options in habitual traffic cases resulted from amendments to §46.2-357(B2 and B3) of the *Code of Virginia*, effective July 1, 1997. The amendment allows judges to suspend the 12-month mandatory minimum term of incarceration required in felony habitual traffic cases if they sentence the offender to a Detention Center or Diversion Center Incarceration Program. For cases sentenced since the effective date of the legislation, the Commission considers either mode of sanctioning of these offenders to be in compliance 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 remained around 75%, increased steadily between FY1999 and FY2001, and then decreased slightly in FY2002. For the past five fiscal years, the compliance rate has hovered at 80%. During FY2008, judges continued to agree with the sentencing guidelines recommendations in approximately 80% of the cases (Figure 2).

Figure 2
Overall Guidelines Compliance and Direction of Departures, FY2008
N=26,418



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 9.9% for FY2008. The "mitigation" rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 10.3% for the fiscal year. Thus, of the FY2008 departures, 49.1% were cases of aggravation while 50.9% 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 3 illustrates judicial concurrence in FY2008 with the type of disposition recommended by the guidelines. For instance, of all felony offenders recommended for more than six months of incarceration during FY2008, judges sentenced 86% to terms in excess of six months (Figure 3). Some offenders recommended for incarceration of more than six months received a shorter term of incarceration (one day to six months), but very few of these offenders received probation with no active incarceration.

Judges have also typically agreed with guidelines recommendations for other types of dispositions. In FY2008, 78% 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, 73% 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.

Since July 1, 1997, sentences to the state's former Boot Camp, and current 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 have continued as sentencing options for judges. The Commission recognized that these programs are more restrictive than probation supervision in the community. In 2005, the Virginia Supreme Court concluded that participation in the Detention Center program is a form of incarceration (Charles v. Commonwealth). Because the Diversion Center program also involves a period of confinement, the Commission defines both the Detention Center and the Diversion Center programs as incarceration terms under the sentencing guidelines. Since 1997, the Detention and Diversion Center programs have been counted as six months of confinement. However, effective July 1, 2007, the Department of Corrections extended these programs by an additional four weeks. Therefore, beginning in FY2008, a sentence to either the Detention or Diversion Center program counts as seven months of confinement for sentencing guideline purposes.

Figure 3

Recommended Dispositions and Actual Dispositions, FY2008

	Actual Disposition		
Recommended Disposition	**Probation**	**Incarceration 1 day-6 mos.**	**Incarceration >6 mos.**
Probation	73.1%	22.9%	4.0%
Incarceration 1 day - 6 months	11.6%	77.7%	10.7%
Incarceration > 6 months	5.7%	7.8%	86.5%

Durational Compliance

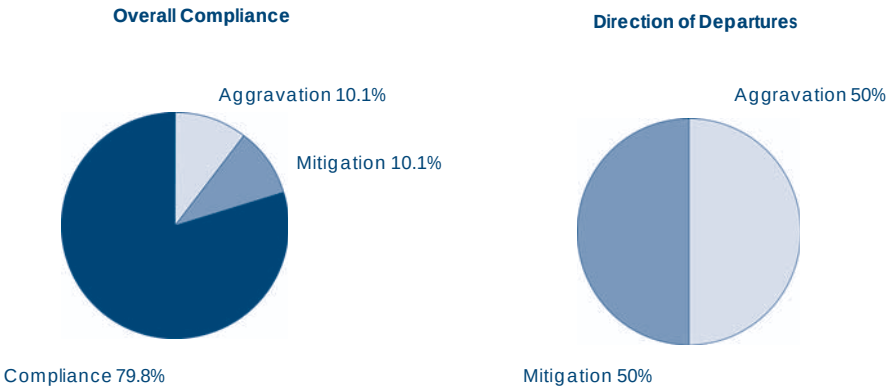
In addition to examining the degree to which judges concur with the type of disposition recommended by the guidelines, the Commission also studies durational compliance, defined as the rate at which judges sentence offenders to terms of incarceration that fall within the recommended guidelines range. 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 FY2008 cases was approximately 80%, indicating that judges, more often than not, agree with the length of incarceration recommended by the guidelines in jail and prison cases (Figure 4). Among FY2008 cases not in durational compliance, departures were evenly split between aggravation sentences and mitigation sentences.

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 remain-

Figure 4

Durational Compliance and Direction of Departures, FY2008*



** Analysis includes only cases recommended for and receiving an active term of incarceration.*

ing in compliance with the guidelines. When the guidelines recommended more than six months of incarceration and judges sentenced within the recommended range, 16% of offenders in FY2008 were given prison terms exactly equal to the midpoint recommendation (Figure 5). Most (65%) of the cases in durational compliance with recommendations over six months resulted in sentences below the recommended midpoint. For the remaining 19% of these incarceration cases sentenced within the guidelines range, the sentence exceeded the midpoint recommendation. This pattern of sentencing within the range has been consistent since the truth-in-sentencing guidelines took effect in 1995, indicating that judges, overall, have favored the lower portion of the recommended range.

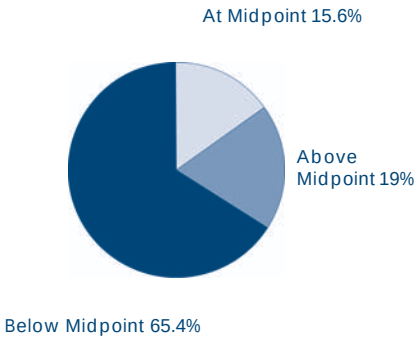
Overall, durational departures from the guidelines are typically less than one year above or below the recommended range, indicating that disagreement with the guidelines recommendation is, in most cases, not extreme. Offenders receiving incarceration, but less than the recommended term, were given effective sentences (imposed sentences less any suspended time) short of the guidelines by a median value of nine months (Figure 6). For offenders receiving longer than recommended incarceration sentences, the effective sentence exceeded the guidelines range also by a median value of nine months.

Figure 6

Median Length of Durational Departures, FY2008

Figure 5

Distribution of Sentences within Guidelines Range, FY2008*



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

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 analysis. 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 FY2008, 10.3% of guidelines cases resulted in sanctions below the guidelines recommendation. The most frequently cited reasons for sentencing below the guidelines recommendation were: the acceptance of a plea agreement, mitigating offense circumstances, the defendant's cooperation with law enforcement, a sentence recommendation provided by the Commonwealth's Attorney, a sentence to an alternative sanction other than the recommended incarceration period, and the defendant's minimal prior record. Although other reasons for mitigation were reported to the Commission in FY2008, only the most frequently cited reasons are noted here. For 613 of the 2,711 mitigating cases, a departure reason could not be discerned.

Judges sentenced 9.9% of the FY2008 cases to terms more severe than the sentencing guidelines recommendation, resulting in "aggravation" sentences. The most frequently cited reasons for sentencing above the guidelines recommendation were: the acceptance of a plea agreement, the severity or degree of prior record, the flagrancy of the offense, the defendant's poor potential for being rehabilitated, a sentence recommended by a jury, and the use of special sanctioning programs, such as the Detention Center Incarceration program. Many other reasons were cited by judges to explain aggravation sentences but with much less frequency than the reasons listed here. For 518 of the 2,614 cases sentenced above the guidelines recommendation, the Commission could not ascertain a departure reason.

Appendices 1 and 2 contain detailed summaries of the reasons for departure from guidelines recommendations for each of the 15 guidelines offense groups.

Compliance by Circuit

Since the onset of truth-in-sentencing, compliance rates and departure patterns have varied across Virginia's 31 judicial circuits. FY2008 continues to show differences among judicial circuits in the degree to which judges within each circuit agree with guidelines recommendations (Figure 7). The map and accompanying table on the following pages identify the location of each judicial circuit in the Commonwealth.

In FY2008, more than half (55%) of the state's 31 circuits exhibited compliance rates at or above 80%, while the remaining 45% reported compliance rates between 73% and 79%. 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

Figure 7

Compliance by Circuit - FY2008
N=26,418

Circuit Name	Circuit	Compliance	Mitigation	Aggravation	Total
Radford Area	27	88.9%	7.1%	3.9%	941
Newport News	7	86.4	6.7	6.9	881
Prince William Area	31	86.4	8.7	5.0	646
Hampton	8	86.4	8.0	5.6	733
Bristol Area	28	85.6	7.8	6.6	590
Chesapeake	1	82.6	7.8	9.6	1,010
Virginia Beach	2	82.3	8.8	8.9	1,736
South Boston Area	10	82.2	11.4	6.4	704
Staunton Area	25	81.6	10.2	8.2	962
Arlington Area	17	81.3	5.1	13.6	507
Loudoun Area	20	81.2	5.2	13.5	458
Fairfax	19	81.1	8.8	10.2	1,103
Petersburg Area	11	80.9	9.7	9.4	414
Henrico	14	80.7	12.4	6.9	1,236
Martinsville Area	21	80.5	15.3	4.1	365
Harrisonburg Area	26	80.3	11.7	8.0	1,182
Norfolk	4	79.7	12.4	7.8	1,609
Danville Area	22	78.6	6.7	14.8	630
Suffolk Area	5	78.4	6.9	14.7	612
Chesterfield Area	12	77.9	8.2	13.9	988
Roanoke Area	23	77.4	14.0	8.6	909
Richmond City	13	77.0	15.9	7.0	1,675
Charlottesville Area	16	76.9	9.3	13.7	642
Portsmouth	3	76.8	11.3	11.9	917
Lee Area	30	76.8	8.1	15.2	297
Alexandria	18	76.3	18.0	5.7	334
Lynchburg Area	24	76.0	13.6	10.5	1,011
Sussex Area	6	74.3	11.9	13.8	536
Williamsburg Area	9	73.8	8.6	17.7	560
Fredericksburg Area	15	73.5	11.7	14.9	1,639
Buchanan Area	29	72.9	5.8	21.3	591

- Over half (16) of the state's 31 circuits exhibited compliance rates at or above 80%.
- Fifteen circuits reported compliance rates between 70% and 79%.

Virginia Localities and Judicial Circuits

Madison 16
Manassas 31
Martinsville 21
Mathews 9
Mecklenburg 10
Middlesex 9
Montgomery 27

Nelson 24
New Kent 9
Newport News 7
Norfolk 4
Northampton 2
Northumberland 15
Norton 30
Nottoway 11

Orange 16

Page 26
Patrick 21
Petersburg 11
Pittsylvania 22
Poquoson 9
Portsmouth 3
Powhatan 11
Prince Edward 10
Prince George 6
Prince William 31
Pulaski 27

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

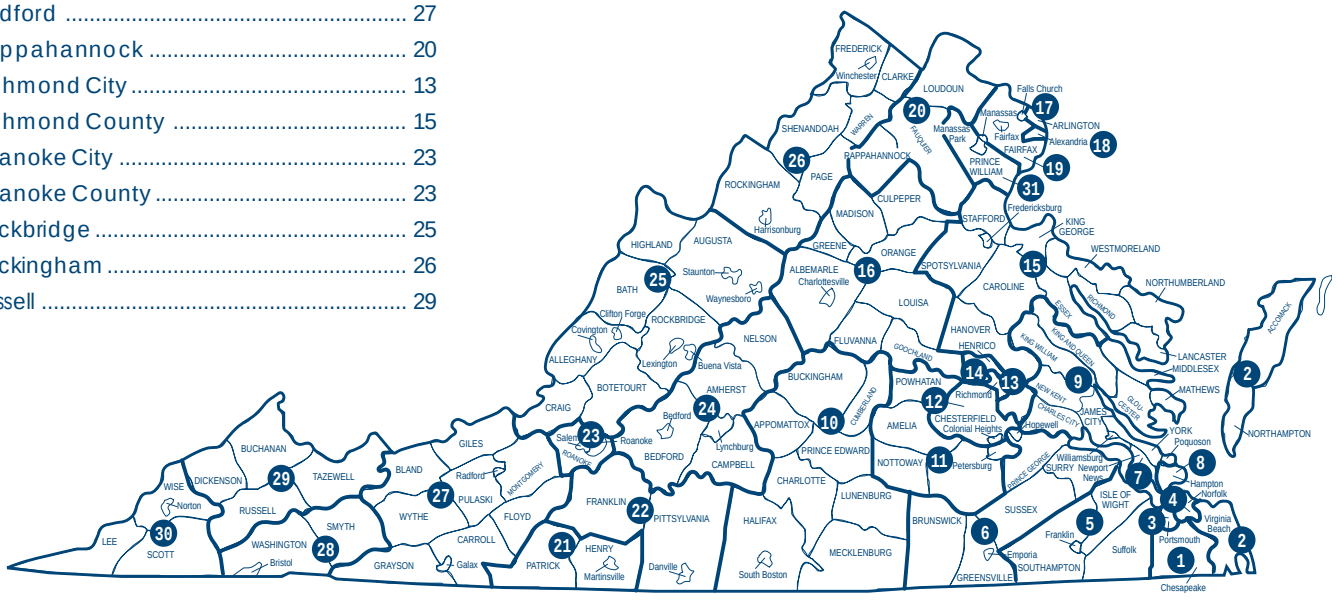
Salem 23
Scott 30
Shenandoah 26
Smyth 28
South Boston 10
Southampton 5
Spotsylvania 15
Stafford 15
Staunton 25
Suffolk 5
Surry 6
Sussex 6

Tazewell 29

Virginia Beach 2

Warren 26
Washington 28
Waynesboro 25
Westmoreland 15
Williamsburg 9
Winchester 26
Wise 30
Wythe 27

York 9



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 FY2008, the highest rate of judicial agreement with the sentencing guidelines (89%) was in Circuit 27 (Radford area). Concurrence rates of 85% or higher were also found in Circuit 7 (Newport News), Circuit 31 (Prince William County area), Circuit 8 (Hampton), and Circuit 28 (Bristol area). The lowest compliance rates among judicial circuits in FY2008 were reported in Circuit 9 (Williamsburg area), Circuit 15 (Fredericksburg, Stafford, Hanover, King George, Caroline, Essex, etc.), and Circuit 29 (Buchanan, Dickenson, Russell and Tazewell counties). However, Circuit 29 had the highest increase in compliance in FY2008, up nearly nine percentage points since FY2007.

In FY2008, the highest mitigation rates were found in Circuit 18 (Alexandria), Circuit 13 (Richmond City), and Circuit 21 (Martinsville area). Alexandria had a mitigation rate of 18% for the fiscal year; both Richmond and the Martinsville area circuits recorded mitigation rates around 15%. With regard to high mitigation rates, it would be too simplistic to assume that this reflects areas with lenient sentencing habits. Intermediate punishment programs are not uniformly available throughout the Commonwealth, and 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 area) had the highest aggravation rate at 21%, followed by Circuit 9 (Williamsburg area) at 18%, and Circuit 30 (Lee County area) at 15%. Lower compliance rates in these latter circuits are a reflection of the relatively high aggravation rates.

Appendices 3 and 4 present compliance figures for judicial circuits by each of the 15 sentencing guidelines offense groups.

Compliance by Sentencing Guidelines Offense Group

In FY2008, as in previous years, judicial agreement with the guidelines varied when comparing the 15 offense groups (Figure 8). For FY2008, compliance rates ranged from a high of 85% in the fraud offense group to a low of 62% in robbery 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 at or below 73% whereas many of the property and drug offense categories had compliance rates above 80%.

During the last fiscal year, judicial concurrence with guidelines recommendations remained relatively stable, fluctuating less than two percent, for most offense groups. Compliance on the miscellaneous worksheet did increase by nearly seven percentage points, primarily due to increases in judicial concurrence with three different offenses: making a threat or false report of arson or a bomb by someone age 15 or more; failing to appear for a felony offense; and shooting a missile at a train, car, or vessel with malice. For making a threat or false report of arson or a bomb, compliance jumped from 74% in FY2007 to 88% in FY2008, due to decreases in both mitigation and aggravation departures. Similarly, fewer mitigation and aggravation departures in failing to appear cases increased compliance to 80% in

Figure 8

Compliance by Offense - FY2008

Offense	Compliance	Mititgation	Aggravation	Total
Fraud	84.5%	9.6%	5.9%	2,790
Schedule I/II Drug	83.3	8.0	8.6	9,353
Larceny	82.8	8.7	8.5	5,078
Drug Other	82.5	3.8	13.7	1,027
Traffic	79.9	8.0	12.0	2,244
Burglary Other	76.4	16.3	7.3	589
Miscellaneous	72.7	12.7	14.6	260
Assault	72.4	15.3	12.3	1,553
Weapon	72.3	14.9	12.8	530
Rape	68.3	22.8	8.9	202
Burglary of Dwelling	67.1	18.2	14.7	927
Kidnapping	66.9	14.2	18.9	127
Sexual Assault	66.2	13.2	20.5	551
Murder/Homicide	63.4	15.1	21.6	232
Robbery	61.9	25.5	12.6	955
Total	**79.8**	**10.3**	**9.9**	**26,418**

FY2008, up from 69% the previous year. The compliance rate for shooting at a train, car, etc., with malice increased from 60% in FY2007 to 74% and FY2008, respectively; this was associated with a significant decrease in aggravation departures.

Since 1995, departure patterns have differed across offense groups, and FY2008 was no exception. During the time period, the robbery and rape offense groups showed the highest mitigation rates with approximately one-quarter of cases (26% and 23%) resulting in sentences below the guidelines. This mitigation pattern has been consistent for both rape and robbery offenses since the abolition of parole in 1995. The most frequently cited mitigation reasons provided by judges in robbery cases include the defendant's cooperation with law enforcement, the involvement of a plea agreement, or (because of the defendant's age) a commitment to the Department of Juvenile Justice. The most frequently cited mitigation reasons provided by judges in rape cases include the acceptance of a plea agreement, a commitment to the Department of Juvenile Justice, or the victim's request that the offender receive a more lenient sentence.

In FY2008, offenses with the highest aggravation rates were murder/homicide, at 22%, and sexual assault (other than rape, sodomy, etc.), at 21%. In murder/homicide cases, the influence of jury trials and extreme case circumstances have historically contributed to higher aggravation rates. The most frequently cited aggravating departure reasons in sexual assault cases in FY2008 included the flagrancy of the offense, the type of victim involved (such as a child), the acceptance of a plea agreement, and the poor rehabilitation potential of the offender.

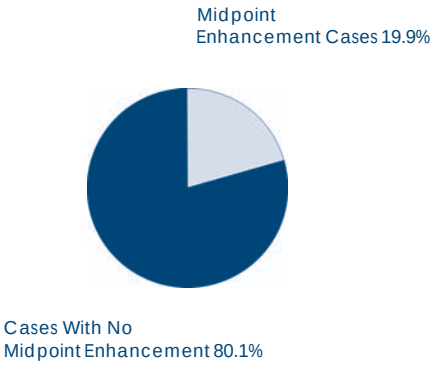
Compliance under Midpoint Enhancements

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 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. By design, midpoint enhancements produce sentence recommendations for violent offenders that are significantly greater than the time that was served by offenders convicted of such crimes prior to the enactment of truth-in-sentencing laws. Offenders who are convicted of a violent crime or who have previously been 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. Category I and II offenses are defined in §17.1-805.

Because midpoint enhancements are designed to target only violent offenders for longer sentences, enhancements do not affect the sentence recommendation for the majority of guidelines cases. Among the FY2008 cases, 80% of the cases did not involve midpoint enhancements of any kind (Figure 9). Only 20% 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.

Figure 9

Application of Midpoint Enhancements, FY2008



Of the FY2008 cases in which midpoint enhancements applied, the most common midpoint enhancement was for a Category II prior record. Approximately 45% 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 10). In FY2008, another 16% 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% of the midpoint enhancements in FY2008. The most substantial midpoint enhancements target offenders with a combination of instant and prior violent offenses. About 9% qualified for enhancements for both a current violent offense and a Category II prior record. Only a small percentage of cases (4%) were targeted for the most extreme midpoint enhancements triggered by a combination of a current violent offense and a Category I prior record.

Since the inception of the truth-in-sentencing guidelines, judges have departed from the guidelines recommendation more often in midpoint enhancement cases than in cases without enhancements. In FY2008, compliance was 68% when enhancements applied, significantly lower than compliance in all other cases (83%). 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.

Among FY2008 midpoint enhancement cases resulting in incarceration, judges departed from the low end of the guidelines range by an average of 22 months (Figure 11). The median mitigation departure (the middle value, where half are lower and half are higher) was 12 months.

Figure 10

Type of Midpoint Enhancements Received, FY2008

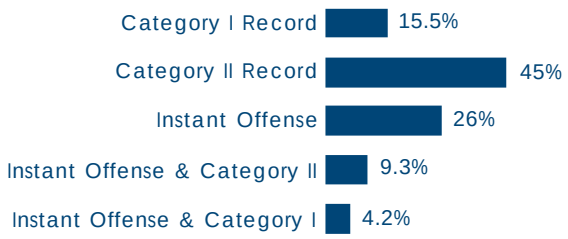


Figure 11

Length of Mitigation Departures in Midpoint Enhancement Cases, FY2008

Compliance, while generally lower in midpoint enhancement cases than in other cases, varies across the different types and combinations of midpoint enhancements (Figure 12). In FY2008, 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 (60%). Compliance for enhancement cases involving a current violent offense, but no prior record of violence, was 65%. Those cases involving a combination of a current violent offense and a Category II prior record yielded a compliance rate of 65%, 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 58%.

Due to the high rate of mitigation departures, analysis of departure reasons in midpoint enhancement cases focuses on downward departures from the guidelines. Judges sentence below the guidelines recommendation in one out of every four midpoint enhancement cases. The most frequently cited reasons for departure include the acceptance of a plea agreement, minimal offense circumstances, and the defendant's cooperation with law enforcement.

Figure 12

Compliance by Type of Midpoint Enhancement*, FY2008

	Compliance	Mitigation	Aggravation	Number of Cases
None	82.9%	6.8%	10.4%	21,169
Category I Record	59.8	35.7	4.5	815
Category II Record	73.8	20.4	5.8	2,360
Instant Offense	64.6	23.1	12.3	1,366
Instant Offense & Category I	58.3	33.5	8.2	218
Instant Offense & Category II	64.5	24.9	10.6	490
Total				**26,418**

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

- Overall, judges sentence below the guidelines recommendation in one out of every four midpoint enhancement cases.

Juries and the Sentencing Guidelines

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 through guilty pleas from defendants or plea agreements between defendants and the Commonwealth. During the last fiscal year, 88% of guidelines cases were sentenced following guilty pleas (Figure 13). Adjudication by a judge in a bench trial accounted for 11% of all felony guidelines cases sentenced. During FY2008, just over 1% of felony guidelines cases involved jury trials. In a small number of cases (0.1%), some of the charges were adjudicated by a judge while others were adjudicated by a jury, after which the charges were combined into a single sentencing hearing. Under truth-in-sentencing, the overall rate of jury trials has been between one-third and one-half of the jury trial rate that existed under the last year of the parole system.

Since the implementation of the truth-in-sentencing system, Virginia's juries typically have handed down sentences more severe than the recommendations of the sentencing guidelines. In FY2008, as in previous years, a jury sentence was far more likely to exceed the guidelines recommendation than a sentence given by a judge following a guilty plea or bench trial. By law, juries are not allowed to receive any information regarding the sentencing guidelines.

Since FY1986, there has been a generally declining trend in the percentage of jury trials among felony convictions in circuit courts (Figure 14). Under the parole system in the late 1980s, the percent of jury convictions of all felony convictions was as high as 6.5% before starting to decline in FY1989. In 1994, the General

Figure 13

Percentage of Cases Received by Method of Adjudication, FY2008

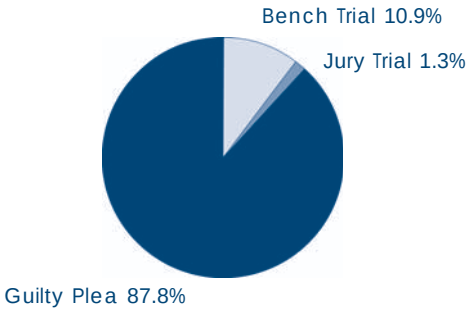
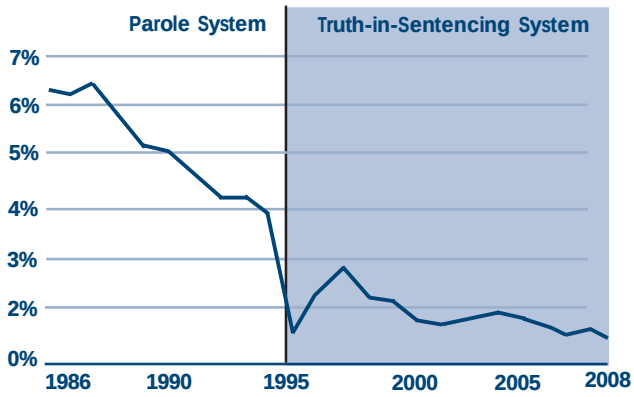


Figure 14

Percent of Felony Convictions Adjudicated by Juries FY1986-FY2008
Parole System v. Truth-in-Sentencing (No Parole) System



- Since FY1986, there has been a generally declining trend in the percentage of jury trials among felony convictions in circuit courts.
- 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.

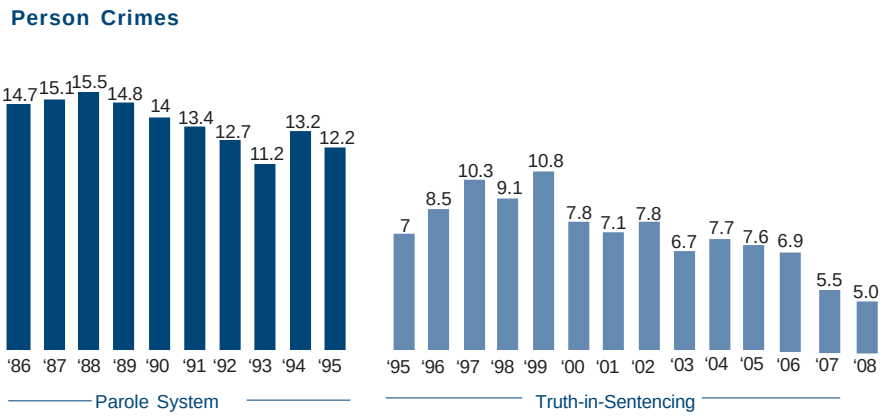
Assembly enacted provisions for a system of bifurcated jury trials. In bifurcated trials, the jury establishes the guilt or innocence of the defendant in the first phase of the trial, and then, in a second phase, the jury makes its sentencing decision. When the bifurcated trials became effective on July 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% of all felony convictions. This was the lowest rate recorded up to that time.

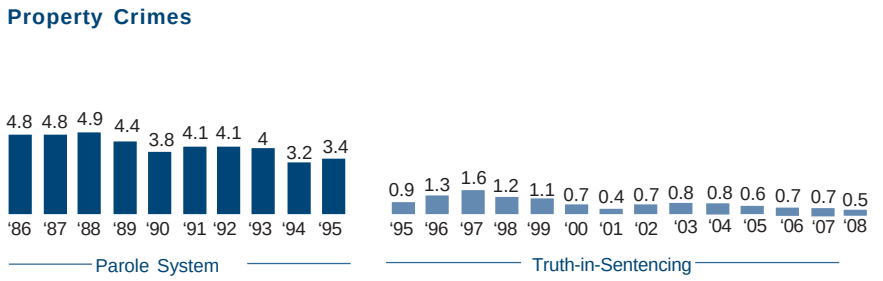
Among the early cases subjected to the new truth-in-sentencing provisions, implemented during the last six months of FY1995, jury adjudications sank to just over 1%. During the first complete fiscal year of truth-in-sentencing (FY1996), just over 2% of the cases were resolved by jury trials, half the rate 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 reduction in jury trials. Since FY2000, the percentage of jury convictions has remained less than 2%.

Inspecting jury data by offense type reveals very divergent patterns for person, property and drug crimes. Under the parole system, jury cases comprised 11%-16% of felony convictions for person crimes. This rate was typically three to four times the rate of jury trials for property and drug crimes (Figure 15). However, with the implementation of truth-in-sentencing, the percent of felony convictions decided by

Figure 15

Percent of Felony Convictions Adjudicated by Juries FY1986-FY2008
Parole System v. Truth-in-Sentencing (No Parole) System





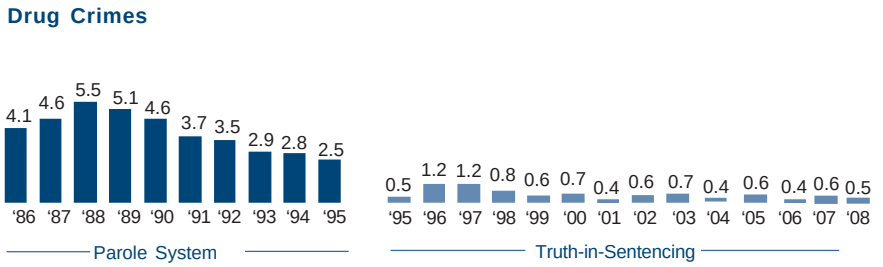
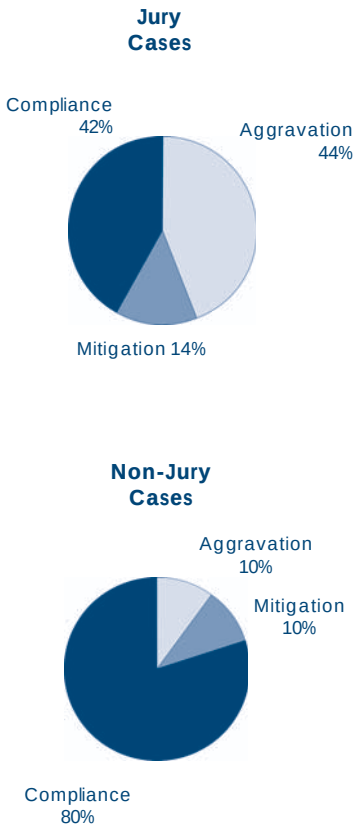


Figure 16

Sentencing Guidelines Compliance in Jury and Non-Jury Cases, FY2008



juries dropped dramatically for all crime types. Under truth-in-sentencing, jury convictions for person crimes has been between 6% and 11% of felony convictions for those crimes. In FY2008, however, this rate dropped to its lowest since truth-in-sentencing was enacted (5%). The percent of felony convictions resulting from jury trials for property and drug crimes has declined to less than 1% under truth-in-sentencing.

In FY2008, the Commission received 349 cases adjudicated by juries. While the compliance rate for cases adjudicated by a judge or resolved by a guilty plea was at 80% during the fiscal year, sentences handed down by juries concurred with the guidelines only 42% of the time (Figure 16). In fact, jury sentences were more likely to fall above the guidelines than within the recommended range. This pattern of jury sentencing vis-à-vis the guidelines has been consistent since the truth-in-sentencing guidelines became effective in 1995.

In those jury cases in which the final sentence fell short of the guidelines, it did so by a median value of 21 months (Figure 17). 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 nearly four years.

One of the jury cases received by the Commission involved a juvenile offender tried as an adult in circuit court. According to §16.1-272 of the *Code of Virginia*, juveniles may be adjudicated by a jury in circuit court; however, any sentence must be handed down by the court without the intervention of a jury. Therefore, juries are not permitted to recommend sentences for juvenile offenders. Rather, circuit court judges are responsible for formulating sanctions for juvenile offenders. There are many options for sentencing these juveniles, including commitment to the Department of Juvenile Justice. Because judges, and not juries, must sentence in these cases, they are excluded from the previous analysis.

In cases of adults adjudicated by a jury, judges are permitted by law to lower a jury sentence. Typically, however, judges have chosen not to amend sanctions imposed by juries. In FY2008, judges modified only 17% of jury sentences.

Figure 17

Median Length of Durational Departures in Jury Cases, FY2008

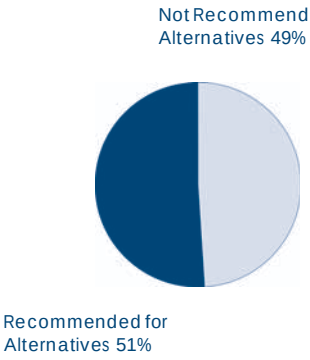
Compliance and Nonviolent Offender Risk Assessment

In 1994, as part of the reform legislation that instituted truth-in-sentencing, the General Assembly directed the Commission to study the feasibility of using an empirically-based risk assessment instrument to select 25% of the lowest risk, incarceration-bound, drug and property offenders for placement in alternative (non-prison) sanctions. By 1996, the Commission developed such an instrument and implementation of the instrument began in pilot sites in 1997. The National Center for State Courts (NCSC) conducted an independent evaluation of 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 for all felony larceny, fraud, and drug cases. This section will review the most recent fiscal year of statewide data, FY2008.

More than two-thirds of all guidelines received by the Commission for FY2008 were for nonviolent offenses. However, only 39% of these nonviolent offenders were eligible to be assessed for an alternative sanction recommendation. The goal of the nonviolent risk assessment instrument is to divert low-risk offenders who are recommended for incarceration on the guidelines to an alternative sanction other than prison or jail. Therefore, nonviolent offenders who are recommended for probation/no incarceration on the guidelines are not eligible for the assessment. Furthermore, the instrument is not to be applied to offenders convicted of distributing one ounce or more of cocaine, those who have a current or prior violent felony conviction, or those who must be sentenced to a mandatory minimum term of incarceration required by law. In addition to those not eligible for risk assessment, there were 3,256 nonviolent offense cases for which a risk assessment instrument was not completed and submitted to the Commission.

Figure 18

Percentage of Eligible Nonviolent Risk Assessment Cases Recommended for Alternatives, FY2008 (7,060 cases)



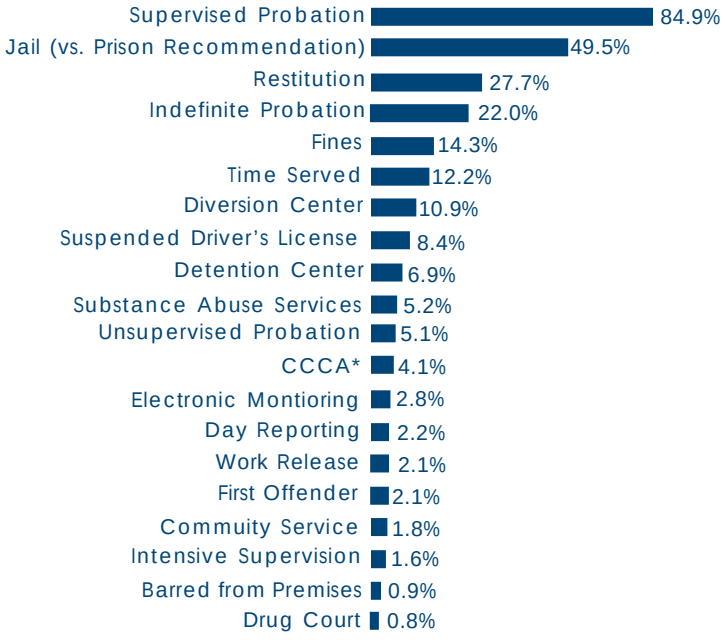
Among the FY2008 eligible offenders for whom a risk assessment form was received (7,060 cases), 51% were recommended for an alternative sanction by the risk assessment instrument (Figure 18). A large portion of offenders recommended for an alternative sanction through risk assessment were given some form of alternative punishment by the judge. In FY2008, nearly 41% of offenders recommended for an alternative were sentenced to an alternative punishment option.

Among offenders recommended for and receiving an alternative sanction through risk assessment, judges utilized supervised probation more often than any other option (Figure 19).

In addition, in nearly half of the cases in which an alternative was recommended, judges sentenced the offender to a shorter term of incarceration in jail (less than twelve months) rather than the longer prison sentence recommended by the traditional guidelines range. Other frequent sanctions included restitution (28%), indefinite probation (22%), fines (14%), and a sentence of time served while awaiting trial (12%). The Department of Corrections' Diversion Center program was cited in 11% of the cases; the Detention Center program was cited as an alternative sanction 7% of the time. Less frequently cited alternatives include suspension of the offender's driver's license, substance abuse services, unsupervised proba-

Figure 19

Types of Alternative Sanctions Imposed, FY2008



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

tion, programs under the Comprehensive Community Corrections Act (CCCA), electronic monitoring, day reporting, work release and first offender status under §18.2-251.

When a nonviolent offender is recommended for an alternative sanction via the risk assessment instrument, a judge is considered to be in compliance with the guidelines if he chooses to sentence the defendant to a term within the traditional incarceration period recommended by the guidelines or if he chooses to sentence the offender to an alternative form of punishment. For drug offenders eligible for risk assessment, the overall guidelines compliance rate is 84%, but a portion of this compliance reflects the use of an alternative punishment option as recommended by the risk assessment tool (Figure 20). In 22% of these drug cases, judges have complied with the recommendation for an alternative sanction. Similarly, in fraud cases with offenders eligible for risk assessment, the overall compliance rate is 87%. In 36% of these fraud cases, judges have complied by utilizing alternative punishment when it was recommended. Finally, among larceny offenders eligible for risk assessment, the compliance rate is 83%. Judges utilized an alternative, as recommended by the risk assessment tool, in 9% of larceny cases. The lower usage of alternatives for larceny offenders is due primarily to the fact that larceny offenders are recommended for alternatives at a lower rate than drug and fraud offenders. The National Center for State Courts, in its evaluation of Virginia's risk assessment tool, and the Commission, during the course of its validation study, found that larceny offenders are the most likely to recidivate among nonviolent offenders.

Figure 20

Compliance Rates for Nonviolent Offenders Eligible for Risk Assessment, FY2008

	Mitigation	Compliance: Traditional Range	Compliance: Adjusted Range	Aggravation	Number of Cases	Overall Compliance
Drug	7%	62%	22%	9%	3,890	84%
Fraud	8%	51%	36%	5%	1,215	87%
Larceny	9%	74%	9%	8%	1,955	83%
Overall	8%	63%	21%	8%	7,060	84%

Compliance and Sex Offender Risk Assessment

In 1999, the Virginia General Assembly requested that the Virginia Criminal Sentencing Commission 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. The Commission conducted an extensive study of felony sex offenders convicted in Virginia's circuit courts and developed an empirical risk assessment tool based on the risk that an offender would be re-arrested for a new sex offense or other crime against a person.

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

The risk assessment instrument was incorporated into the sentencing guidelines for sex offenders beginning July 1, 2001. For each sex offender identified as a comparatively high risk (those scoring 28 points or more on the risk tool), the sentencing guidelines have been revised such that a prison term will always be recommended. In addition, the guidelines recommendation range (which comes in the form of a low end, a midpoint and a high end) is adjusted. For offenders scoring 28 points or more, the high end of the guidelines range is increased based on the offender's risk score, as summarized below.

- 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%.

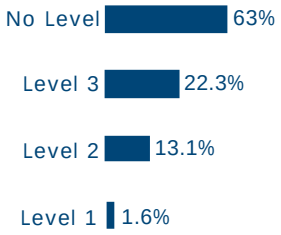
The low end and the midpoint remain unchanged. Increasing the upper end of the recommended range provides judges with the flexibility to sentence higher risk sex offenders to terms above the traditional guidelines range and still be in compliance with the guidelines. This approach allows the judge to incorporate sex offender risk assessment into the sentencing decision while providing the judge with flexibility to evaluate the circumstances of each case.

During FY2008, there were 551 offenders convicted of an offense covered by the sexual assault guidelines (this group does not include offenders convicted of rape, forcible sodomy or object penetration). However, the sex offender risk assessment instrument does not apply to certain guidelines offenses, namely bestiality, bigamy, non-forcible sodomy, prostitution, and child pornography or child solicitation. These offenses comprised 102 of the 551 cases in FY2008. Of the remaining 449 sexual assault cases for which the risk assessment was applicable, the majority (63%) were not assigned a level of risk by the sex offender risk assessment instrument (Figure 21). Approximately 22% of applicable sexual assault guidelines cases resulted in a Level 3 risk classification, with an additional 13% assigned to Level 2. Just under 2% of offenders reached the highest risk category of Level 1.

Under the sex offender risk assessment, the upper end of the guidelines range is extended by 300%, 100% or 50% for offenders assigned to Level 1, 2 or 3, respectively. Judges have begun to utilize these extended ranges when sentencing sex offenders. For sexual assault offenders reaching Level 1 risk, 14% were given sentences within the extended guidelines range (Figure 22). Judges used the extended guidelines range in 24% of the Level 2 and 11% of Level 3 risk cases. Judges rarely sentenced Level 1, 2 or 3 offenders to terms above the extended guidelines range provided in these cases. However, offenders who scored less than 28 points on the risk assessment instrument (who are not assigned a risk category and receive no guidelines adjustment) were less likely to be sentenced in compliance with the guidelines (63%) and were the most likely to receive a sentence that was an upward departure from the guidelines (27%).

Figure 21

Sex Offender Risk Assessment Levels for Sexual Assault Offenders, FY2008* N=449



**Excludes cases missing the sex offender risk assessment portion of the Other Sexual Assault worksheet.*

Figure 22

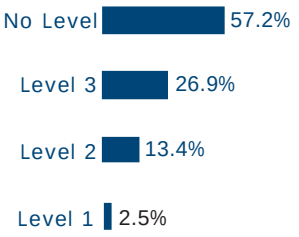
Other Sexual Assault Compliance Rates By Risk Assessment Level, FY2008*

	Compliance					
	Mitigation	Traditional Range	Adjusted Range	Aggravation	Number of Cases	Overall Compliance
Level 1	29%	57%	14%	0%	7	71%
Level 2	12%	56%	24%	9%	59	80%
Level 3	17%	67%	11%	5%	100	78%
No Level	10%	63%	0%	27%	283	63%
Overall	12%	63%	6%	19%	449	69%

**Excludes cases missing the sex offender risk assessment portion of the Other Sexual Assault worksheet.*

Figure 23

**Sex Offender Risk Assessment Levels for Rape Offenders, FY2008*
N=201**



**Excludes cases missing the sex offender risk assessment portion of the Rape worksheet.*

In FY2008, there were 201 offenders convicted of offenses covered by the rape guidelines (which cover the crimes of rape, forcible sodomy, and object penetration). Among offenders convicted of these crimes, over one-half (57%) were not assigned a risk level by the Commission's risk assessment instrument. Approximately 27% of rape cases resulted in a Level 3 adjustment-a 50% increase in the upper end of the traditional guidelines range recommendation (Figure 23). An additional 13% received a Level 2 adjustment (100% increase). The most extreme adjustment (300%) affected 3% of Rape guidelines cases.

Four of the five rape offenders reaching the Level 1 risk group were sentenced within the guidelines range, with one judge sentencing below the traditional incarceration range (Figure 24). However, 11% of offenders with a Level 2 risk classification, and 15% of offenders with a Level 3 risk classification, were given prison sentences within the adjusted range of the guidelines. With extended guidelines ranges available for higher risk sex offenders, judges rarely sentenced Level 1, 2 or 3 offenders above the expanded guidelines range.

Figure 24

Rape Compliance Rates By Risk Assessment Level, FY2008*

		Compliance				
	Mitigation	Traditional Range	Adjusted Range	Aggravation	Number of Cases	Overall Compliance
Level 1	20%	80%	0%	0%	5	80%
Level 2	41%	48%	11%	0%	27	59%
Level 3	33%	46%	15%	6%	54	61%
No Level	14%	73%	0%	13%	115	73%
Overall	23%	63%	6%	9%	201	69%

**Excludes cases missing the sex offender risk assessment portion of the Rape worksheet.*

Crimes Committed in the Presence of Children

Introduction

During the March 17, 2008, Commission meeting, Senator Henry Marsh proposed that the Sentencing Commission undertake a study to determine the impact of the presence of a child during the commission of a crime on the eventual sentencing of the offender. Anecdotally, many practitioners in the field of criminal justice and child protective services report a connection between witnessing certain crimes and negative impacts on children. For the most part, the empirical research supports this assumption. Acknowledging that children are potentially harmed by witnessing crime and that judges may take this into account when deciding the appropriate punishment for an offender, the other Commission members agreed that the study would provide useful information and the study was approved.

Commission staff researched numerous potential sources of information in order to identify cases in Virginia where a child was present during the commission of the crime. Although several avenues of identifying cases with child witnesses were explored, no existing data sources were adequate for efficiently detecting cases for inclusion in the study. After careful review of the options, the Commission decided to proceed with a point-forward study. The Commission will ask Commonwealth's Attorneys across the state to assist in its efforts by reporting cases where the crime was committed in the presence of children. Although this approach will require additional time for data collection, it will yield more reliable and complete results than the alternative methods.

Once the information has been gathered, Commission staff will be able to compare sentencing decisions in cases where a child is present, a child is the victim, or no child was present during the commission of the crime to determine how the presence of a child impacts judicial sentencing in the Commonwealth. If supported by the data, the Commission may recommend adding a factor to one or more worksheets to more accurately reflect judicial sentencing practices in cases where a child is present during the commission of the crime.

Once the information has been gathered, Commission staff will be able to compare sentencing decisions in cases where a child is present, a child is the victim, or no child was present during the commission of the crime to determine how the presence of a child impacts judicial sentencing in the Commonwealth.

Impact of Witnessing Crime on Children

Studies relating to children who witness crimes have primarily focused upon the impact of community or domestic violence on children's physical and mental well-being and development. Few studies address the impact of witnessing drug-related or other non-violent offenses on children, with the exception of manufacturing illicit drugs. Although many studies focus on the way in which parental, sibling or other adult drug use can influence children, few studies specifically address whether the child must witness the act in order to be affected. However, child knowledge of adult drug use, while not exact, can serve as an indicator that the child witnessed either the use or after-effects of the drug.

In general, research relating to violent acts has found that witnessing certain forms of violence can increase the likelihood that a child will experience psychological, emotional, and behavioral problems. While researchers focusing upon the impact of manufacturing illegal substances in the presence of a child often observe the physical and psychological effects this act can have on the child, greater debate exists in relation to how the use of illegal drugs in the presence of children affects them.

Manufacture of Illicit Substances

The majority of research concerning the impact of manufacturing illegal drugs in the presence of children has focused upon methamphetamine. Methamphetamine is typically manufactured in clandestine laboratories using toxic ingredients, including acids, liquid ammonia, and iodine. While children can be at a heightened risk for exposure during the actual manufacturing process, they may also come into contact with the precursor chemicals while they are stored. Basic exposure to certain precursor chemicals prior to the manufacturing process can cause serious injuries, such as internal and external burns, renal failure, and asphyxiation (National Drug Intelligence Center [NDIC], 2002).

As a result of the combination of chemicals during methamphetamine manufacture, chemical vapors and fumes are released into the air, which can cause serious medical problems (NDIC, 2002). The manufacturers also risk igniting the chemicals if they are improperly mixed or heated, leading to fires and explosions

(Manning, 1999). In addition, toxins and methamphetamine particles are deposited on surrounding surfaces and can then be ingested or absorbed into the body. Locations where methamphetamine has been produced can remain contaminated for several days after the process has been completed (Martyny et al., 2005a; Martyny et al., 2005b; Martyny et al., 2002). Consequently, children do not have to be present during the manufacture of methamphetamine in order to be harmed by the process. The NDIC (2002) reports that more than a third (34.5%) of children who were present at seized methamphetamine laboratories in 2001 tested positive for toxic levels of chemicals. However, many states do not record this information and this figure most likely underestimates the number of children who are exposed to the chemicals.

Children are not only more susceptible to ingesting or absorbing dangerous chemicals than adults in a manufacturing environment, but they are also especially vulnerable to the harms caused by the toxic byproducts of methamphetamine laboratories. Children are more likely to explore their surroundings with their hands and mouths, which increases the potential that they will ingest or come into contact with hazardous precursors, byproducts, or the drug itself. Smaller children in labs tend to crawl on carpet with residue and exhibit hand-to-mouth behaviors, which can also lead to the ingestion of toxins. Children's small size and high metabolic and respiratory rates increase the likelihood that the child will suffer more severe reactions to exposure to the dangerous materials used and produced by methamphetamine laboratories ("Methamphetamine and Child Maltreatment," 2007; Swetlow, 2003). Some research suggests that living with users who smoke methamphetamine can also lead to health problems for children through inhalation of the smoke and contact with residue ("Fighting Meth," 2005; Martyny et al., 2005a; Scott, 2006).

In addition to the physical harms that children can experience as the result of exposure to a methamphetamine laboratory, this environment can also impact children's behavior and psychological health. Using a small sample of preschoolers living in rural areas of Tennessee, Asanbe et al. (2008) found that young children from methamphetamine-producing homes had more problems with aggression than their peers, although students who lived in a methamphetamine environment demonstrated similar levels of internalizing problems. The reason behind the difference in levels of aggression between children from methamphetamine homes and children who were not from methamphetamine homes was not identified in this study. However, many authors speculate that children in methamphetamine-producing homes are more likely to be neglected or abused, since many individuals who manufacture methamphetamine also use the drug ("Methamphetamine and Child Maltreatment," 2007; Swetlow, 2003; NDIC, 2002; Ells et al., 2002).

In 2006, Virginia's General Assembly created §18.2-248.8 to restrict the availability of certain precursor chemicals with the goal of reducing the number of methamphetamine laboratories in Virginia. The federal government passed a similar law that year, hoping to accomplish the same objective on the national level. The number of methamphetamine laboratories seized in Virginia and the United States has decreased considerably over the past few years. As a result, fewer children are expected to be exposed to methamphetamine manufacture. Since the supply has remained relatively stable due to the importation of methamphetamine from Mexico (NDIC, 2007), the number of children who are affected by methamphetamine use is not expected to decrease.

Virginia has also instituted heightened penalties for the manufacture of methamphetamine in the presence of a child. Specifically, §18.2-248.02 states that a custodian of a child under the age of 18 who allows the child to be present during the manufacture or attempted manufacture of methamphetamine is guilty of a felony punishable by a term of imprisonment from 10 to 40 years. In addition, the General Assembly has incorporated certain behaviors involving illicit drugs into Virginia's civil child abuse statutes. In 2004, the General Assembly passed legislation that expanded the definition of child abuse to include permitting a child to be present during the manufacture or attempted manufacture of a Schedule I or II controlled substance, such as methamphetamine (§§16.1-228(1) and 63.2-100(1), *Code of Virginia*). The 2004 General Assembly also amended §§16.1-228(1) and 63.2-100(1) to specify that child abuse includes allowing a child to be present during the unlawful sale of a Schedule I or II controlled substance.

Use of Illicit Substances

Studies examining the impact of parental, sibling, and significant adults' drug use on children generally indicate that the use of illicit substances by these individuals increases the likelihood that the child will experience psychological problems and engage in antisocial behaviors, including increased self-control problems and drug use.

The impact of adult and sibling substance use or abuse on adolescent drug use has received considerable attention over the past three decades. Although the majority of studies focus solely upon parental alcohol use, a growing body of research examines how adult or sibling drug use affects children who are exposed to their use. In general, research in this field suggests that children whose nuclear family members or other significant people in their lives use drugs are at a greater risk to use drugs themselves (Drapela & Mosher, 2007; Fisher et al., 1987; Gfroerer, 1987; Hops et al., 1996; Li et al., 2002; Brook et al., 2002). Some studies (Biederman et al., 2000; Meller et al., 1988; Hoffman & Su, 1998; Hoffman & Cerbone, 2002) specifically address parental

substance abuse and addiction, which has also been shown to increase the likelihood that a child will use drugs or eventually develop a substance abuse disorder. Although it has been established that adult substance use can increase the risk that a child will use drugs, debate continues as to the primary mechanism by which adults and parents, in particular, influence the future behavior of children. These approaches can be categorized into theories that rely primarily upon social or environmental influences and theories relating to genetic transmission.

Numerous studies support the theory that social learning of behavior causes the association between adult or sibling substance use and an increased risk of substance use in children who are exposed to others' use. The social learning perspective, particularly research concerning modeling of behaviors, is the only body of research in this area that refers specifically to children witnessing substance use or the resulting inebriation. Although studies focusing on modeling of substance use report that observing parents using drugs increases the likelihood that an adolescent will engage in drug use (Andrews et al., 1993; Huba & Bentler, 1980; Newcomb & Bentler, 1986; Newcomb et al., 1983), parental modeling does not appear to be the most important factor influencing drug use. For instance, Brook et al. (1990) report that modeling of substance use by peers or older brothers has a stronger association with adolescents' drug use than parental drug modeling. If older siblings and peers are models for nonuse, children are less likely to use drugs (Brook et al., 1990).

A child's understanding of others' attitudes toward substance use can also increase the likelihood that he or she will adopt similar attitudes or use drugs. In particular, parents' permissiveness toward substance use has been identified as an important factor in the substance use of their offspring (Andrews et al., 1993; Wright & Pemberton, 2004; Bahr et al., 2005). However, in the case of adolescent use of marijuana, parental attitudes favorable to use were not as important as peers' pro-drug attitudes in predicting adolescent use of the drug (Wright & Pemberton, 2004). Pro-drug attitudes among siblings can also influence adolescent substance use (Pomery et al., 2005). Similarly,

sibling or maternal disapproval of drug use can buffer the effects of peer substance use on adolescent substance use (Pomery et al., 2005; Lam et al., 2007).

Substance use by parents and other individuals significant in the lives of children can increase the likelihood that adolescents will use drugs indirectly by increasing other risk factors. One school of thought emphasizes the role that substance use can play in lessening parents' ability to parent effectively and monitor their children, which then increases the likelihood of substance use among the children. More specifically, parental substance use can lead to family instability and conflict, which increases the risk of adolescent substance use (Keller et al., 2002; Lam et al., 2007; Hawley et al., 1995). In addition, low levels of parental and family attachment or cohesiveness resulting from parental drug use can also impact adolescent substance use (Hoffman & Su, 1998; Boyd, 1993; Kandel, 1990; Duncan et al., 1995; O'Donnell et al., 1995). Conversely, strong attachment to parents and a positive relationship with one's parents can decrease the likelihood that children will use drugs (Hoffman & Cerbone, 2002; Coombs et al., 1991).

Association with delinquent peers is one of the strongest predictors of adolescent drug use and delinquency in general (cf. Nurco et al., 1999; Mayes & Suchman, 2006; Huba & Bentler, 1980; Brook & Brook, 1990). Several studies suggest that parental substance use increases the likelihood that their children will associate with delinquent peers, who then play a role in children's involvement in substance use. Theories identifying the primary mechanism by which delinquent or substance-using peers influence the substance use of others rely primarily upon social learning and the transmission of behavior through interaction (Kumpfer & Turner, 1990/ 1991; Bahr et al., 2005, Hoffman & Su, 1998; Brook et al., 1990; Drapela & Mosher, 2007).

Research examining the impact of genetics on substance abuse offers another reason as to why some children and siblings of substance abusers go on to use drugs themselves. Most of the research on the heritability of substance use focuses specifically upon substance abuse and dependence. Although there is general agreement that parents can pass on a vulnerability to drug dependence, thus increasing the risk that their children will develop a substance use disorder, whether this transmission is specific to particular drugs is unclear. While some studies find that parents who are addicted to a certain drug are more likely to have children who are addicted to that same drug, other studies indicate that the transmission is more general and can apply to any drug (Kendler et al., 2003; Hicks et al., 2004; Bierut et al., 1998; Merikangas et al., 1998). While genetics-based theories can offer greater insight into the drug use of some individuals, they are limited in that they do not help to explain substance use among individuals without a family history of drug use.

Although many studies focus on either genetic or environmental factors, the best explanation appears to be an interaction between the two arenas, where both genetic and environmental risks act to increase the likelihood that an individual will use drugs (Kendler et al., 1999; Kendler et al., 2000; Kendler & Prescott, 1998; Kendler et al., 2003). When environmental factors are weighed against genetic factors in this area of research, however, the environment tends to influence drug use more than genetics (McGue et al., 2000; Han et al., 1999; Maes et al 1999). For instance, while children with parents who are addicted to drugs are more likely to become addicted to drugs themselves, the availability of drugs can be crucial to the development of substance dependence (McGue et al., 2000). At the same time, drugs are more likely to be available to a child in a household where drugs are kept, sold or used (Wright & Pemberton, 2004).

The results of studies about the impact of adult and sibling use of illegal drugs on children are similar to findings relating to licit drugs, particularly tobacco and alcohol. Overall, while substance use by parents, siblings, or other adults can increase the risk that an exposed child or adolescent will engage in drug use, other aspects of a child's life, including delinquent peers, neighborhood disorganization, and individual-level factors, tend to play a more crucial role.

In addition to increasing the risk that children will become involved in drug use, parental drug use is also associated with control problems and externalizing behaviors among children and adolescents (Kandel, 1990; Stanger et al., 1999; Wilens et al., 2005; Stein et al., 1993). Stein et al. (1993) report that grandparent and maternal drug use, in particular, increases the likelihood that children will exhibit behavior problems. Stanger et al. (1999) suggest that parental addiction to cocaine and opiates is also related to delinquent and aggressive behavior among children affected by drug use.

In addition to an association with behavioral problems, parental substance use can also influence children's psychological well-being. Several studies point to multiple psychological problems that are related to parental drug use, including thought problems, oppositional defiant disorder, conduct disorder, and attention-deficit/hyperactivity disorder (Weissman et al., 1999; Stanger et al., 1999). Others focus upon a more specific connection between parental substance use and depression in children (Johnson et al., 1990/1991; Gross & McCaul 1990/ 1991). Additionally, in a qualitative study of 18 children placed in foster homes due to parental methamphetamine abuse, children reported an increased distrust of authority figures as well as role reversals, where the child acted as the parent in the relationship (Haight et al., 2007).

Violence

Numerous studies have demonstrated the potentially severe impact that violent victimization as a child can have on the emotional, psychological, and social development of a child. In addition to numerous psychological problems, child victims of violence may also turn to the use of illicit substances and commit crimes as juveniles or adults. In the late 20th century, researchers interested in this area began to broaden their focus to include children who witness violent crimes, particularly violence in their communities and domestic violence. Similar to findings regarding child victims, child witnesses of either community or domestic violence can experience multiple negative psychological and behavioral consequences. Although much debate continues in the field, researchers comparing child witnesses to child victims of violence generally observe that the impact of the violent act on the child tends to be more harmful to children who are the direct victims of the violence than child witnesses.

Literature concerning child reactions to traumatic events discusses the consequences in terms of risk and protective factors, in that some characteristics of the child, community, or his or her life experiences can either increase or decrease the likelihood that the child will experience certain negative effects. For instance, studies have found that witnessing community violence is a risk factor for certain children and adolescents while parental and school support can serve as protective factors.

Community Violence

Researchers examining the impact of community violence on child witnesses have observed consequences that are similar in nature to those found in child victims of violence. In general, research on this topic suggests that witnessing community violence increases the likelihood that children will experience psychological problems and engage in problematic or criminal behavior. While most of the early studies examining the impact of community violence collapsed child victims and witnesses into a single group, several studies have emerged that distinguish between the two groups or focus solely upon child witnesses of community violence.

Numerous studies have found that witnessing community violence impacts aggression, as well as violent and antisocial behavior in children and adolescents (Attar et al., 1994; Farrell & Bruce, 1997; Farrell & Sullivan, 2004; Flannery et al., 2004; Guerra et al., 2003; Miller et al., 1999; Patchin et al., 2006; Ruchkin et al., 2007; Sullivan et al., 2007; Weaver et al., 2008; Lai, 1999). Eitle and Turner (2002) offer one of the more thorough examinations in this area and conclude that witnessing community violence within the past year was associated with criminal offending among 8th and 9th grade students. Unlike the majority of studies in this area, Eitle and Turner (2002) selected a representative sample of students, rather than only students in urban or high-violence areas. Because the sample was not limited to children or adolescents who live in urban or high-violence areas, where researchers are more likely to find children who have witnessed violence in their community, there is greater certainty that these results are not due to bias in the study design.

Some gender differences have been observed in the connection between witnessing community violence and violent behavior. O'Keefe (1997) notes that witnessing community and school violence is a significant predictor of aggressive acting-out or externalizing behaviors among males, but only school violence was a predictor of aggression in females. In addition, O'Keefe (1997) cites a tendency for females to react to violence through internalizing behaviors whereas males react through externalizing behaviors. Guerra et al. (2003) also observe a relationship between prior violence exposure and normative beliefs about aggression among children who are between the ages of 9 and 12 years old. Similarly, Farrell and Sullivan (2004) found that witnessing violence predicted subsequent increases in attitudes supporting violence and decreases in attitudes supporting nonviolence in both rural and urban settings. Patchin et al. (2006) report that, in addition to increasing the likelihood that a child will engage in violent behavior, witnessing community violence also increases the likelihood that adolescents will carry weapons. This increase in weapon-carrying behaviors may be the result of increased feelings of insecurity and a desire for protection. In addition to supporting the hypothesis that witnessing violence can impact a child's propensity for violent behavior,

findings published by Weaver et al. (2008) also suggest that witnessing violence as a child is a predictor of adolescent delinquency.

Research findings suggest that parent and school support are protective factors for children who witness community violence, although research has yielded conflicting results as to the importance of these protective factors for child victims of community violence (O'Donnell et al., 2002; Brookmeyer et al., 2005). Hammack et al. (2004) identify several social support factors as protective factors for children who witness violence, including maternal closeness and time spent with family. However, these factors did not have the same effect on child victims and their likelihood of negative consequences was not decreased with increased social support (Hammack et al., 2004). In one study, peer support acted as a risk factor as opposed to a protective factor and increased the likelihood that adolescents who had witnessed community violence would engage in delinquency, school misconduct, and substance abuse (O'Donnell et al., 2002). Other researchers have identified religiousness and parental involvement as protective factors that can mitigate the impact witnessing community violence may have on adolescents' behavioral problems (Pearce et al., 2003).

In general, research indicates that children who witness violence are more likely to develop psychological problems than children who do not witness an act of violence and who have not been victims of violence (Bailey, 2006; Bailey et al., 2005; Cohen, 2000; Fitzpatrick, 1993; Flannery et al., 2004; Hurt et al., 2001; Rosenthal, 2000; Rosenthal & Wilson, 2003). The psychological problems identified in these studies include increased incidence of depression, anxiety, post-traumatic stress disorder, anger, aggression, and other internalizing difficulties. Researchers focusing upon college freshmen who had witnessed violence during high school have observed a moderate relationship between witnessing violence and later psychological distress (Rosenthal, 2000; Rosenthal & Wilson, 2003). A survey of younger children also showed a relationship between witnessing violence and psychological problems, namely depression, anxiety, and low self-esteem (Hurt et al., 2001). Shahinfar, Fox, and Leavitt (2000), who focused on preschoolers in a Head Start program, found that child witnesses to violence demonstrated more internalizing problems, while victims of violence were more likely to develop externalizing problems. In a rural sample, exposure to gun violence as either the victim or a witness had a weak effect on youth's signs of trauma, measured by symptoms of

posttraumatic stress, depression, anxiety, anger, and dissociation (Slovak, 2002). A few studies also report a connection between witnessing violence and high-risk sexual behavior among sexually active adolescent girls, although whether this is due to psychological problems resulting from the violence is unknown (Berenson et al., 2001).

While some studies suggest a moderate relationship between witnessing violence and depression, in particular, others observe a weaker association or no relationship after taking into account other factors that can influence depression (Martinez & Richters, 1993; Schwab-Stone et al., 1995). Martinez and Richters' (1993) study of 5th and 6th grade students, for instance, found that the relationship between witnessing violence and depression was weak, with other factors accounting for more of the variation in levels of depression. Although the association was weak, the authors identify the child's relationship to the victim as a factor that influenced the likelihood that the child reported being depressed. More specifically, children who were victimized by or witnessed violence involving family, friends, and acquaintances were more likely to develop signs of depression, whereas children who were victimized by or witnessed violence involving strangers were not as likely to feel depressed (Martinez & Richters, 1993).

Although several studies have identified a moderate relationship between witnessing community violence and various psychological problems, many researchers do not incorporate measures of neighborhood disadvantage into their models. As a result, this factor may explain more of the variation in psychological problems, particularly since neighborhood disadvantage is associated with violence and the likelihood that a child will witness violence (Attar et al., 1994). Hill and Madhere (1996) address this concern in their study and report that low family income was related more consistently to psychological adjustment than witnessing violence, suggesting that neighborhood disadvantage can have a greater impact on psychological problems in children than witnessing violence. This is not to say that witnessing violence does not play a role in the development of psychological distress in children but, rather, that other factors may be more important. Ozer and Weinstein (2004) identify several protective factors that can decrease the likelihood that a child witness or victim of violence will experience psychological problems, including social support, perceived school safety, and lower constraints for discussing violence.

The results of a study using a small sample of children aged 8 to 12 years old from moderate to high-violence areas in Richmond, Virginia, lend support to the hypothesis that children who witness or are victims of violence are at a higher risk of developing psychological problems. Kliewer et al. (1998) observed a two-step process, wherein children who were exposed to violence were more likely to experience intrusive thoughts (unwanted thoughts about an unpleasant event). In turn, children with high levels of intrusive thoughts were more likely to experience psychological distress. However, these negative effects were not uniform across all children and children with high levels of violence exposure and inadequate social support were the most likely to experience intrusive thoughts. In addition, children with high levels of intrusive thoughts and inadequate social support were the most likely to develop psychological problems. This study is limited by the fact that the sample was only drawn from moderate to high-violence areas and does not include children who live in areas with less overall incidence of violence.

Another Virginia study examined gender differences in exposure to violence, coping strategies, and problem behavior among 306 African-American middle and high school students. This study focused on the internalizing and externalizing behavioral characteristics of urban students exposed to violence and the extent to which coping strategies differ across gender. Results showed specific gender differences with regard to problem behavior and coping strategies among African-American youth exposed to violence. For adolescent males, exposure to violence and victimization was strongly associated with externalizing problem behaviors, such as delinquency, while adolescent females exposed to violence and victimization were more likely to exhibit internalizing behaviors indicative of post-traumatic stress disorder (PTSD). Females were more likely to use problem-focused coping strategies (i.e., social support) as an adaptive strategy in comparison to males (McGee et al., 2001). This study contains the same limitations as the study conducted by Kliewer et al. (1998), in that the nature of the sample limits the ability to generalize the findings to children who do not live in urban areas.

Numerous studies have reported that witnessing violence increases a child's likelihood of developing post-traumatic stress disorder (PTSD) symptoms (Fitzpatrick & Boldizar, 1993; McGee et al., 2001; Overstreet & Braun, 2000; Ruchkin et al., 2007). Overstreet and Braun's (2000) findings support the hypothesis that the positive relationship between exposure to community violence and children's PTSD symptoms is mediated by perceptions of decreased neighborhood safety and increased family conflict. In other words, witnessing violence increases the likelihood that children will view their neighborhood as unsafe and the family will experience increased internal conflict which, in turn, can lead to PTSD in the child. Ruchkin and colleagues (2007) also note that witnessing violence increases the likelihood that an adolescent will develop PTSD. However, the authors expand their analysis to show that PTSD, in turn, increases the likelihood that an adolescent will commit an act of violence. In addition, the authors observe a direct effect of witnessing violence on violent behavior among adolescents that is outside the indirect effect exerted through PTSD.

Several studies suggest that witnessing violence can also negatively influence academic achievement (Hurt et al., 2001; Henrich et al., 2004). Investigators studying 6 and 7-year-old urban children found a significant negative association between exposure to violence and academic performance. Specifically, first graders exposed to higher levels of violence had lower levels of reading achievement, even after controlling for socioeconomic status, prenatal substance exposure, quality of home environment, and caregiver IQ (Delaney-Black et al., 2002). Henrich et al. (2004) report that, although other studies have shown that parent support can act as a buffer for children who witness community violence, this was not the case in relation to the negative impact of witnessing violence upon academic achievement. In contrast, one of the more rigorous studies in this area, which included many more variables and potentially confounding factors, showed no relationship between academic achievement and witnessing violence, although there was a relationship between these two variables for child victims of violence (Ratner et al., 2006). Attar et al. (1994) report similar findings, suggesting that studies that do not account for important variables may

observe a relationship between witnessing violence and academic achievement because an underlying, unmeasured factor associated with both factors can create the appearance of a relationship between the two.

Several studies also identify witnessing community violence as a risk factor for adolescent substance use (Kilpatrick et al., 2000; Berenson et al., 2001; Vermeiren et al., 2003; Sullivan et al., 2007). In fact, Kilpatrick et al. (2000) observed that witnessing violence was among the most powerful risk factor measured for drug abuse among youth in the sample. Farrell and Sullivan's (2004) research shows that this relationship is observed in both rural and urban settings. Although their findings are consistent with this conclusion, Sullivan et al. (2004) note that high levels of parental monitoring and family support act as protective factors at low levels of witnessing violence.

Domestic Violence

Numerous investigators have found that domestic violence negatively impacts a child's emotional, behavioral, and cognitive development (Dauvergne & Johnson, 2001; Kernic et al., 2003; McFarlane et al., 2003). Researchers often report that children who witness domestic violence are more at risk for externalizing (i.e. attention problems, aggressive behavior, temper tantrums, fighting, rule-breaking actions) and internalizing (i.e. anxiety, depression, suicidal behaviors, withdrawal, somatic complaints, phobias, insomnia, tics, bed-wetting, low self-esteem) behavior problems. While boys tend to exhibit externalizing behaviors, girls tend to demonstrate internalizing behavior in response to witnessing domestic violence (McGee et al., 2001; Dauvergne & Johnson, 2001; Gorman-Smith & Tolan, 1998; McFarlane et al., 2003; Ruchkin et al., 2007).

Witnessing domestic violence is also related to being a victim of violence, particularly since marital violence and child abuse frequently occur together (Sternberg et al., 2006). More specifically, children in households with domestic violence were found to be at higher risk for sexual abuse than were children in nonviolent households (Fantuzzo & Mohr, 1999). When children not only

witness domestic violence but are themselves victims of physical and/or sexual abuse, they may be at increased risk of behavioral and emotional problems (Appel & Holden, 1998; Bragg, 2003; Edleson, 1999). Hughes (1988) found that children who were both witnesses of spousal abuse and victims of child abuse had the most externalizing behavior problems, while children who were neither victims nor witnesses had the fewest such problems. Children who were witnesses but not victims had intermediate scores.

Investigators studying 167 children of Seattle women who were victims of intimate partner violence (IPV) concluded that exposure to maternal IPV is significantly associated with child behavioral problems both in the presence and the absence of concurrent child abuse (Kernic et al., 2003). They found that children exposed to maternal IPV who were not themselves victims of child abuse were at increased risk for externalizing behavior and total behavioral problems. However, children exposed to maternal IPV who were also victims of child abuse were at greatly increased risk for externalizing behavior, internalizing behavior, and total behavioral problems, and their across-the-board level of risk was much higher than that of children who had only witnessed domestic violence.

Studies that have assessed problems related to cognitive and academic functioning found differences between children from violent, versus nonviolent, homes. Children exposed to domestic violence demonstrated impaired ability to concentrate, difficulty in their schoolwork, and significantly lower scores on measures of verbal, motor, and cognitive skills (Fantuzzo & Mohr, 1999).

Potential risk factors associated with the prevalence of domestic violence include poverty, unemployment, and parental substance abuse. The presence of any or all of these factors may greatly increase the likelihood of domestic violence in the household. Dauvergne and Johnson (2001) concluded that households with older children, somewhat older parents, parental unemployment, low income, blended, step or single parent families, or a recent change in family structure had higher rates of children who were exposed to physical violence in the home.

There are also numerous intervening factors that may intensify or weaken the effects of witnessing domestic violence. Age frequently plays an important role, in that older children may exhibit different types of behavioral problems than younger children, and they may be more severely affected or less affected than younger children (this was dependent on the focus of the study and the nature of the participants). Infants may show poor weight gain, poor sleeping habits, and irritability, while school-aged children tend to develop problems at school and other symptoms associated with post-traumatic stress disorder. In a study of 330 children recruited from primary care public health clinics in a large urban area, investigators observed no significant differences in the behavior scores of children from abused and non-abused women in a subset of children aged 18 months to 5 years. However, there were significant differences in the behavior scores of children from abused and non-abused women in a second subset of children aged 6 to 18 years (McFarlane et al., 2003).

Other important intervening factors include gender (McGee et al., 2001; Dauvergne & Johnson, 2001; Gorman-Smith & Tolan, 1998), severity and frequency of the violence (which is often difficult to determine), a positive sense of self-worth, and availability of a strong social support system from friends, relatives, or counseling services (Knapp, 1998). Other factors that play a role in children's responses to domestic violence include multiple moves and family size.

While numerous studies lend support to the hypothesis that children who witness violence are more likely to experience negative outcomes, including psychological and behavioral problems, it is one of many interacting factors that can lead to negative results among children.

Study Methodology

Many researchers have noted the difficulties encountered when trying to obtain detailed information on child witnesses of crimes (Hughes, 1988; Kernic et al., 2003; Fantuzzo & Mohr, 1999; Augustyn et al., 2002). Moreover, there is little research available on the potential effect of child witnesses on sentencing practices. Some studies have examined how innovations in courtroom procedures could make it easier for child victims or witnesses to testify in criminal trials. These innovations include orienting the child to the court process (Pynoos and Eth, 1984; Whitcomb et al., 1985; Wolfe et al., 1987) and training investigators and court professionals in appropriate child interview methods and the dynamics of child victimization (American Bar Association, 1985; Whitcomb et al., 1985; National Council of Juvenile and Family Court Judges, 1986).

One 1990 study relied on case file reviews and interviews of participants in cases from nine jurisdictions in Alabama, Florida, and South Carolina (Tidwell et al., 1990). Cases eligible for study included those in which (1) the defendant was indicted for a violent crime, (2) a child aged 1 to 18 years had the potential of being a significant witness in the adjudication process, and (3) the outcome was either a plea bargained conviction, a jury acquittal, or a jury conviction. In most cases, the child witness was the victim; cases in which a child was a potential witness but not the victim were "extremely difficult to identify." Nevertheless, several cases of this type were included in the case file review. Cases which were dismissed were excluded from this study, as they were not relevant to children's experiences in the courtroom. The researchers conducting this study encountered difficulties when attempting to identify eligible cases from court clerks' files and eventually determined that prosecutors' case files were a better source of data.

Still another study that targeted prosecutors as a data resource relied on two specific methodologies for data collection: a national telephone survey of prosecutors, and intensive field research in five jurisdictions (Whitcomb, 2000). Sponsored by the National Institute of Justice, this exploratory study was conducted to address the challenges facing prosecutors when women are battered by their intimate partners and children are exposed to the violence. Survey respondents were asked questions about how they would handle and/or prosecute three different scenarios: first, cases where a battered woman is abusing her children; second, cases where the male perpetrator is battering both the mother and the children; and third, cases where children are exposed to domestic violence but not directly abused themselves. Respondents were also asked about the availability of any community resources, programs, or services for battered mothers and their children, and if prosecutors have received any particular training about co-occurring domestic violence and child maltreatment.

Whitcomb (2000) found that many prosecutors aggressively prosecute domestic violence cases involving children as victims or witnesses. In general, the prosecutors consider mothers' experience of victimization when deciding whether to report or prosecute battered mothers for abusing their children or failing to protect them from abuse or from exposure to domestic violence.

The Commission's study of crimes committed in the presence of children has several major objectives:

- To identify crimes witnessed by children;
- To describe the nature of such crimes, and
- To examine sentencing outcomes and compare them to sentences in cases that do not involve child witnesses and where the child is the victim.

At the outset, Commission staff contacted numerous state and local agencies looking for data that would be useful in examining sentencing patterns in child witness cases. Staff members spoke with representatives of the Virginia Department of Social Services, a local social services department, a child witness task force, and the Virginia Network of Victims and Witnesses of Crimes. Based on the responses from these agencies, however, the Commission determined that none have data that could be utilized for this particular study.

Next, the Commission explored several approaches for identifying cases for the study. One of these methods utilized the Commission's Sentencing Guidelines database. Judges who impose sentences departing from the guidelines' recommendation must, by statute, submit departure explanations. These departure reasons are categorized and assigned numeric codes that are then entered into the guidelines database. One of these departure codes reflects the fact that a child was with the offender at the time he or she committed the crime. Commission staff searched the fiscal year (FY) 2001 through 2007 guidelines data for cases with this particular departure reason. However, very few cases were identified. Only 46 cases were obtained from these seven fiscal years of guidelines data. This likely underestimates the number of cases involving child witnesses. In addition, this would only allow for the identification of cases where the judge departed from the guidelines recommendation and does not include cases where judges pronounced a sentence within the guidelines range. Interestingly, although the number of cases identified in the guidelines data was very small, this departure reason was most frequently associated with larceny offenses (19 out of 46 cases).

Another approach involved an electronic keyword search of offense narratives recorded as part of the Pre/Post-Sentence Investigation (PSI) database maintained by the Virginia Department of Corrections (DOC). Commission staff searched these narratives for keywords such as "child," "minor," "juvenile," "son," "daughter," "school," and other words that might indicate a child's involvement in a criminal case as a witness. Initially, keyword searches yielded a narrative database of several thousand potential cases. In order to determine the effectiveness

of this technique, the staff then selected a sample of approximately 250 cases, which were reviewed for information regarding the child's apparent involvement in the case. Commission staff found that only roughly 5% of these cases actually involved child witnesses and would qualify for inclusion in the study. In the other 95% of cases examined, the use of the word "child" or a related term did not refer to a witness of the offense. Court records and criminal justice databases in general tend to contain little or no demographic data regarding victims, and even less detail pertaining to witnesses. Researchers interested in sentencing have experienced similar difficulties with gathering relevant information and identifying cases with child witnesses (Tidwell et al., 1990; Champion, 1988; Whitcomb, 2000).

In order to more efficiently identify child witness cases, the Commission decided to adopt a similar strategy to prior research and use data provided by Commonwealth's Attorneys. The Commission will contact Commonwealth's Attorneys around the state for help in identifying cases that meet the study's criteria. To assist prosecutors, the Commission is creating a data collection form on its website. Prosecutors will be able to enter the offender's identifying information and electronically transmit it to Commission staff for data storage and analysis. Once the offenders have been identified, the Commission will examine each case in detail and record pertinent information for each, including the number of witnesses, the age of the witness, the relationship between the witness and the offender, the location of the offense, the most serious injury sustained by the victim, if applicable, and the location of the witness relative to the offense.

The Commission will monitor data collection in the coming months. Because of the uniqueness of this study, it is not certain how long the data collection phase must last to ensure that a sufficient number of cases for analysis will be achieved. A progress report will be provided in the Commission's 2009 Annual Report.

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Impact of Truth-in-Sentencing

Virginia's approach has proven to be one of the most successful and effective avenues for reform.

Introduction

Since the enactment of Virginia's truth-in-sentencing system more than a decade ago, 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 guideline 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 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, and the inmate population has not grown at the record rate seen prior to the abolition of parole. More than a decade after the implementation of truth-in-sentencing laws in Virginia, there is substantial evidence that the system is achieving what its designers intended.

Goals of Sentencing Reform

The cornerstone of reform in Virginia was the abolition of discretionary parole release and the adoption of truth-in-sentencing. Under parole eligibility laws, inmates served a fraction of the sentence handed down by a judge or a jury before becoming eligible for parole release. A first-time inmate, for example, became eligible for parole after serving one-fourth of his sentence. In addition, inmates could earn as much as 30 days in sentence credits for every 30 days they served. Half of this sentence credit could be applied toward the offender's parole eligibility date, further reducing the portion of the sentence that needed to be served before a prisoner could be granted parole and released. As a result, inmates often served as little as one-fifth of the sentence ordered by the court.

An essential goal of the reform, therefore, was to reduce drastically the gap between the sentence pronounced in the courtroom and the time actually served by a convicted felon in prison. Under Virginia's truth-in-sentencing system, parole was eliminated for any felony committed on or after January 1, 1995, and the system by which prison inmates earn sentence credits was revamped. In contrast to the 30 days an inmate could receive for every 30 days served under the parole system, an offender committed to the state penitentiary under truth-in-sentencing provisions may not earn more than 4.5 days for every 30 days served (or 15%) off his incarceration sentence. Prior to 1995, felons sentenced to jail served their time under different provisions than felons in state prisons. Under truth-in-sentencing, all felons must serve at least 85% of the incarceration sentence regardless of whether they serve that time in a local jail or in a state institution.

Abolishing parole and achieving truth-in-sentencing were not the only goals of the reform legislation. Ensuring that violent criminals serve longer terms in prison than in the past was also a priority. New 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. The sentencing enhancements built into the guidelines prescribe prison sentences for violent offenders that are significantly longer than historical time served by these offenders. Unlike other initiatives, which typically categorize an offender based on the current offense alone, Virginia's truth-in-sentencing guidelines define an offender as violent based on the totality of his criminal career, both the current offense and the offender's prior criminal history.

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. 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. This prioritization of resources led to an additional reform goal: to safely redirect low-risk nonviolent felons from prison to less costly sanctions. In its 1994 charge to the newly-created Sentencing Commission, the General Assembly instructed the Commission to develop a risk assessment instrument for nonviolent offenders, predictive of the relative risk a felon would become a threat to public safety. Such an instrument, based on empirical analysis of actual patterns of recidivism among Virginia's felons, can be used to identify offenders who are likely to present the lowest risk to public safety in the future. In the initial mandate, the Commission was to determine if 25% of incarceration-bound offenders could be safely redirected to alternative punishment options in lieu of prison. Existing sanctioning options were expanded and new programs were authorized to create a network of local and state-run community corrections programs for nonviolent offenders.

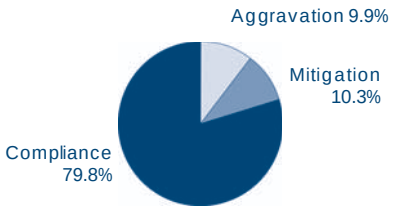
Inherent in Virginia's truth-in-sentencing reform is the goal of reducing unwarranted disparity in the punishment of offenders. Sentencing guidelines provide a set of rational and consistent sentencing standards. Use of guidelines can reduce disparity not attributable to the circumstances of the offense or the defendant's criminal history. Rational and consistent sentencing practices foster public confidence in the criminal justice system, the ultimate goal of Virginia's truth-in-sentencing reform a decade ago.

Sentencing Guidelines Compliance

Judicial compliance with Virginia's 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. 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. Overall compliance, nearly 75% when the guidelines were first implemented, has reached 80% in recent years. In fiscal year (FY) 2008, the compliance rate was 79.8% (Figure 25). This high rate of concurrence with the guidelines indicates that the guidelines serve as a useful tool for judges when sentencing felony offenders. General acceptance of the guidelines by Virginia's judiciary has been crucial in the successful transition from a system in which time served was governed by discretionary parole release to a truth-in-sentencing system in which felons must serve nearly all of the incarceration time ordered by the court.

Figure 25

Overall Guidelines Compliance, FY2008, N=26,418



Percentage of Sentence Served by Felons

An essential goal of truth-in-sentencing, ensuring that a convicted felon will serve nearly all of the sentence set by the judge or jury, has been universally achieved. Felons, who prior to truth-in-sentencing reform were released on parole after serving a small fraction of their sentences, today are serving at least 85% of their incarceration terms. In fact, many felons are serving longer than the minimum 85% required by law.

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 1 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 sentence credits being accrued by inmates sentenced under truth-in-sentencing provisions and confined in Virginia's prisons on December 31, 2007, reveals that the largest share of inmates (nearly 76%) are earning at the highest level, Level 1, gaining 4½ days per 30 days served. A much smaller proportion of inmates are earning at Levels 2, 3 and 4; approximately 10% are earning 3 days for 30 served (Level 2), 8% are earning 1½ days for 30 served (Level 3), and 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, on average, will serve nearly 89% of the incarceration sentences pronounced in Virginia's courtrooms (Figure 26).

Figure 26

Levels of Earned Sentence Credits among Prison Inmates (December 31, 2007)

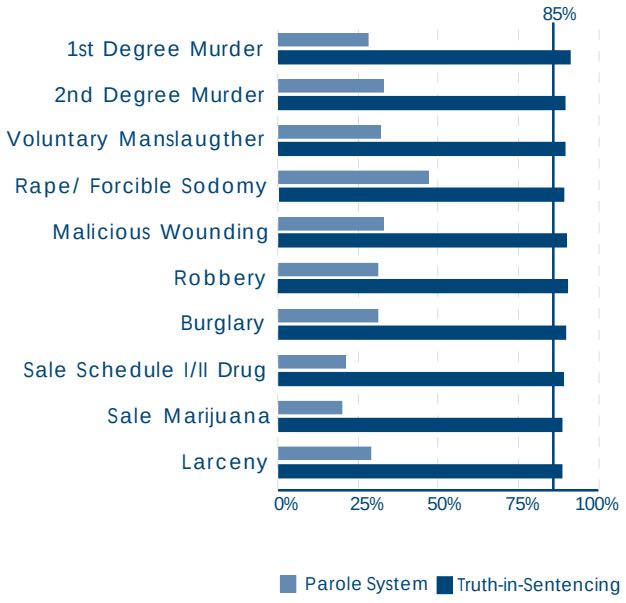
Level	Days Earned	Percent
Level 1	4.5 days per 30 served	75.7%
Level 2	3.0 days per 30 served	9.3
Level 3	1.5 days per 30 served	8.0
Level 4	0 days	7.0

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). In addition, 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 are earning sentence credits at a rate that would result in them serving approximately 90% of the incarceration terms ordered by the court (Figure 27). An offender given a life sentence under truth-in-sentencing provisions, however, must remain incarcerated for the remainder of his natural life unless conditionally released under Virginia's geriatric provision (§ 53.1-40.01) after reaching the age of 60 or 65.

The significant increase in the percent of sentence served as a result of truth-in-sentencing is reflected in other offenses as well. Robbers, who on average spent less than one-third of their sentences in prison before being released under the parole system, now are serving close to 90% of their incarceration terms. Larceny offenders convicted under truth-in-sentencing laws are serving 88% of their sentences, compared to 30% under the parole system. 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 89% 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 significantly the gap between the sentence ordered by the court and the time actually served in prison by a convicted felon.

Figure 27
Percent of Prison Sentence Served-Parole System v. Truth-in-Sentencing



Parole system data represents FY1993 prison releases; truth-in-sentencing data is derived from rate of sentence credits earned among prison inmates on December 31, 2007.

Length of Incarceration Served by Violent Offenders

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.

When the truth-in-sentencing system was implemented in 1995, a prison sentence was defined as any sentence over six months. Whenever the truth-in-sentencing guidelines call for an incarceration term exceeding six months, scoring enhancements ensure that 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 guidelines recommendations reflect the average time served by nonviolent offenders prior to the abolition of parole.

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 typically were released after serving approximately 5½ years in prison (during the period from 1988 to 1992). Having a prior record of violence increased the rapist's median time

served (the middle value, where half of the time-served values are higher and half are lower) by only one year (Figure 28). Under sentencing reform (FY2004-FY2008), rapists with no previous record of violence are being sentenced to terms with a median nearly twice the historical time served.

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. The size of the increased penalty recommendation is linked to the seriousness of the prior crimes, as 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 demonstrates the impact of these prior record enhancements. In stark contrast to the parole system, offenders with a violent prior record serve substantially longer terms than those without violent priors. Based on the median, rapists with a less serious violent record (Category II) will serve terms of 22 years compared to the seven years they served prior to sentencing reform. For those with a more serious violent record (Category I), such as a prior rape, the amount of time to be served under truth-in-sentencing is nearly 27 years. This is four times longer than the prison term served by these offenders historically.

For first-degree murder, the impact of truth-in-sentencing has been equally dramatic. Under the former system, an offender sentenced to life in prison was eligible for parole after serving between 12 and 15 years. First-degree murderers who were released on parole between 1988 and 1992 had typically served around 12½ years, if they had no prior record of violent crimes (Figure 29). As seen with the crime of rape, having a prior violent felony did little to increase the time served by offenders imprisoned for first-degree murder.

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

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.

Figure 28
Rape

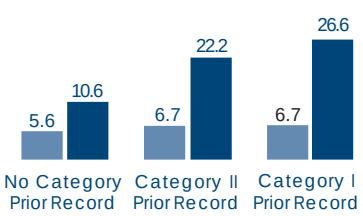
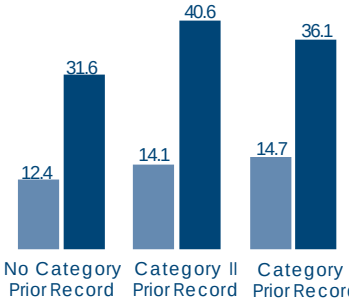


Figure 29
First-Degree Murder



Under truth-in-sentencing, however, first-degree murderers having no prior convictions for violent crimes have been receiving sentences with a median time to serve of nearly 32 years, almost triple the time served when parole was in effect. First-degree murderers with a violent record are serving terms between 36 and 41 years, compared to the typical 15 years under the parole system. The median term for Category I offenders is slightly less than for Category II, but it is important to remember that a sentence of this magnitude, for many offenders, is equivalent a sentence of life in prison. First-degree murder is the only guidelines offense for which it is possible to receive a sentence recommendation of life. The guidelines recommend a life sentence for any offender convicted of first-degree murder who has a prior conviction for a serious (Category I) violent felony. For this analysis of the impact of truth-in-sentencing, a life sentence was assigned a value in years based on the offender's life expectancy, as established 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.

Offenders convicted of robbery with a firearm are also serving considerably longer terms since truth-in-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 30). 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 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 more than 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 most serious violent prior record

Figure 30
Robbery with Firearm

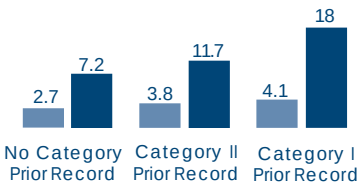
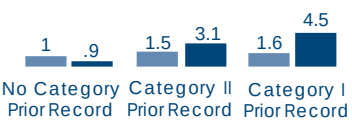


Figure 31
Sale of a Schedule I/II Drug



These figures present 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 FY2004-FY2008. 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 only include cases recommended for, and sentenced to, more than six months of incarceration.

Parole System

Truth-in-Sentencing

(Category I), such as a prior conviction for robbery, the expected time served in prison is now 18 years, more than four times the historical time served for offenders fitting this profile.

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 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) if the offender does not have a violent record. With the reduced sentence credits authorized under truth-in-sentencing, these offenders today are serving slightly less than one year (Figure 31). This matches almost exactly what offenders convicted of this offense served on average prior to sentencing reform (1988-1992). The sentencing recommendations increase dramatically, however, if the offender has a violent criminal background. Although drug sellers with violent criminal histories typically served only 1½ years under the parole system, the truth-in-sentencing guidelines recommend sentences that are producing prison stays of three to four and a half 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 today than they did under the parole system.

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 significantly longer than those seen historically under parole. 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. The impact of Virginia's truth-in-sentencing system on the incarceration periods of violent offenders is the result of carefully-crafted sentencing guidelines, designed to incapacitate dangerous offenders.

Risk Assessment for Nonviolent Offenders

Today, offender risk assessment is an integral component of Virginia's sentencing guidelines system. In 1994, the truth-in-sentencing reform legislation charged the Commission with studying the feasibility of using an empirically-based risk assessment instrument to redirect 25% of the lowest risk, incarceration-bound, drug and property offenders to alternative (non-prison) sanctions. After extensive study, a risk assessment tool was pilot-tested from 1997 to 2001. The National Center for State Courts (NCSC) conducted an independent evaluation of the pilot project and concluded that Virginia's risk assessment instrument provided an objective, reliable, transparent and more accurate alternative for assessing an offender's potential for recidivism than traditional reliance on judicial intuition or perceptual short hand. The Commission refined the instrument and, in July 2002, risk assessment was implemented statewide. At the request of the 2003 General Assembly, the Commission re-examined the risk instrument and began to recommend additional low-risk offenders for alternative punishment options. This change took effect July 1, 2004.

Risk assessment applies in felony drug, fraud and larceny cases for offenders who are recommended for incarceration by the sentencing guidelines and who meet the eligibility criteria. Offenders with a current or prior violent felony conviction and those who sell one ounce or more of cocaine are excluded from risk assessment consideration. The goal of the nonviolent risk assessment instrument is to divert low-risk offender, who are recommended for incarceration on the guideline, to an alternative sanction other than prison or jail. Therefore, nonviolent offenders who are recommended for probation/no incarceration on the guidelines are not eligible for the assessment. Offenders who score below the specified threshold are recommended for alternative sanctions in lieu of a traditional term in prison or jail.

In fiscal year (FY) 2008, more than two-thirds of all guidelines received by the Commission were for these nonviolent offenses. Of the eligible offenders, 51% were recommended for an alternative sanction by the risk assessment instrument. A large portion of offenders recommended for an alternative sanction through risk assessment were given some form of alternative punishment by the judge. In FY2008, nearly 41% of offenders recommended for an alternative were sentenced to an alternative punishment option. The most common alternatives given to these low-risk offenders were probation supervision or a short jail term (in lieu of prison). For example, a large share of offenders found to be low-risk through the risk assessment process are given a short jail sentence to be followed by probation in the community instead of the prison term recommended by the standard guidelines. When a nonviolent offender is recommended for an alternative sanction via the risk assessment instrument, a judge is considered to be in compliance with the guidelines if he chooses to sentence the defendant to a term within the traditional incarceration period recommended by the guidelines or if he chooses to sentence the offender to an alternative form of punishment.

Not all low-risk offenders recommended for alternative punishment receive such a sanction. Judges have expressed the concern that there are not enough alternative options available for these felons. Moreover, the capacity of many existing community corrections programs may be reduced by recent significant budget reductions required in FY2008 and FY2009. These reductions will continue at least through the current biennium. While many of the community-based correction programs created by the General Assembly in 1994 (e.g., Detention and Diversion Incarceration Centers) are functioning, the future availability and the scope of these programs are subject to change due to budget realities.

Risk assessment for nonviolent offenders has proven to be an effective, objective tool for identifying low-risk offenders. A limited array of punishment options, however, has likely precluded more extensive use of alternative sanctions for these offenders.

Composition of Virginia's Prison Population

Ensuring that violent criminals serve longer terms in prison was a priority of sentencing reform. As shown above, the sentencing enhancements built into the guidelines prescribe prison sentences for violent offenders that have resulted in significantly longer lengths-of-stay. For nonviolent offenders, the sentencing guidelines recommend terms roughly equal to the terms they served prior to the abolition of parole. In addition, the Commission's empirically-based risk assessment instrument identifies the lowest risk, incarceration-bound, property and drug offenders and recommends them for alternative (non-prison) sanctions.

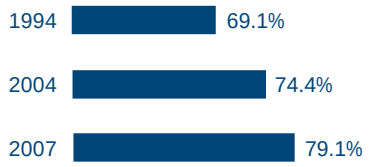
This approach to reform was expected to alter the composition of the state's prison population. Over time, violent offenders queue up in the system due to longer lengths of stay than under the previous system. Nonviolent offenders sentenced to prison, by design, are serving about the same amount of time on average as they did under the parole system. Moreover, with the use of risk assessment, a portion of nonviolent offenders receive alternative sanctioning in lieu of prison. As a result, the composition of the prison population has been undergoing a dramatic shift.

Using the definition of a violent offender set forth in § 17.1-805, the prison population is now composed of a larger percentage of violent offenders than when parole was abolished. In June 1994, 69.1% of the state-responsible (prison) inmates classified by the Department of Corrections (DOC) were violent offenders (Figure 32). At that time, nearly one in three inmates was in prison for a nonviolent crime and had no prior conviction for a violent offense. By May 2004, the percent of the inmate population defined as violent had increased to 74.4%. As of June 2007, 79.1% of the inmate population was defined as violent under § 17.1-805.

A clear shift has taken place. 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 has grown. As violent offenders continue to serve longer terms and risk assessment identifies low-risk nonviolent offenders for alternative punishment options, the proportion of violent offenders housed in Virginia's prison system may continue to increase over the next several years. The Commission will continue to monitor this trend.

Figure 32

Percent of Violent Offenders (as defined by § 17.1-805) in Virginia's Prison System



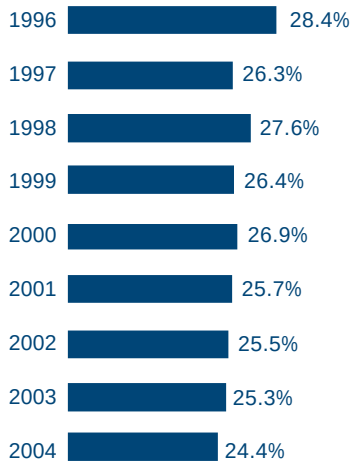
Note: Analysis compares state-responsible (prison) inmates classified by the Department of Corrections as of June 30, 1994, May 30, 2004, and June 13, 2007. Improvements in data systems and increases in the number of records available for analysis provided a more detailed profile of inmates in 2007.

Sources: Virginia Department of Corrections' FAST and CORIS data systems, the Pre/Post-Sentence Investigation (PSI) reporting system, and the Virginia Criminal Sentencing Commission's Sentencing Guidelines (SG) database.

Repeat Violent Offenders

Targeting violent offenders for longer terms of incarceration serves to incapacitate these offenders for a greater portion of what is often referred to by criminologists as the "crime-prone age years." Many criminologists consider the ages of 15 to 24 to be the years during which a person is at greatest risk for becoming involved in criminal activity, particularly violent criminal behavior. For example, of all individuals arrested for the crime of robbery in 2003, nearly two-thirds (60%) were between the ages of 15 and 24. The peak age for robbery arrestees was 18 years. As individuals age, the risk of being arrested for robbery declines significantly.

Figure 33
Percentage of Violent Recidivists Convicted in Virginia's Circuit Courts



Virginia's truth-in-sentencing reform has achieved longer prison terms for violent offenders. A large share of these offenders are young and at greatest risk for returning to a criminal lifestyle when released, were it not for longer prison stays. Longer terms incapacitate at-risk offenders through years during which they would be most likely to engage in crime. By achieving longer lengths of stay for violent offenders, sentencing reform was expected to result in fewer repeat violent offenders returning through the circuit courts of the Commonwealth.

Whenever the sentencing guidelines recommend a prison term, the guidelines preparer must categorize the offender's prior record as violent or nonviolent. According to guidelines data, the percent of violent offenders convicted in circuit court who have a prior conviction for a violent felony offense has declined since 1996. In 1996, more than 28% of violent offenders also had a violent felony record (Figure 33). By 2004, this figure had dropped to 24%.

The impact of truth-in-sentencing reform on violent recidivism has not been fully realized as yet. Violent offenders typically served several years in prison, even under the old parole system; therefore, the full impact of longer lengths of stay under truth-in-sentencing has not been fully achieved. Over the next few years, when more violent offenders have surpassed the typical time they would have served under the parole system, the incapacitation effect will be more fully realized.

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.

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. This has not occurred. While Virginia's prison population grew by more than 154% from 1985 to 1995, the number of inmates increased by a total of only 31% between 1995 and 2005. The forecast of prison inmates approved in 2008 projects a modest annual growth averaging 2.3% over the next six years (Figure 34).

Figure 34
State-Responsible (Prison) Inmate Forecast through FY2014

	Year	Population
Historical	FY2001	32,347
	FY2002	34,171
	FY2003	35,363
	FY2004	35,879
	FY2005	35,900
	FY2006	36,486
	FY2007	37,957
	FY2008	38,826
Projected	FY2009	39,431
	FY2010	40,481
	FY2011	41,453
	FY2012	42,447
	FY2013	43,424
	FY2014	44,422

An average growth of 2.3% per year is projected through FY2014.

Virginia's Geriatric Release Provision

The geriatric release provision was adopted as part of the truth-in-sentencing reform package enacted by the General Assembly during a 1994 Special Session. It is an aspect of the truth-in-sentencing system that heretofore the Commission has never examined. Under § 53.1-40.01, any person serving a sentence imposed upon a conviction for a felony offense other than a Class 1 felony, (i) who has reached the age of sixty-five or older and who has served at least five years of the sentence imposed or (ii) who has reached the age of sixty or older and who has served at least ten years of the sentence imposed may petition the Parole Board for conditional release. Originally applicable only to offenders sentenced under truth-in-sentencing laws, the 2001 General Assembly expanded this provision to apply to all prison inmates.

The rationale for the geriatric release provision is based on empirical evidence. With violent offenders targeted for very lengthy terms of incapacitation under truth-in-sentencing and no discretionary parole release, some prisoners will remain incarcerated well into old age. Research shows that, as offenders age, they are less likely to recidivate (with the exception of certain sex offenders). Some inmates, by virtue of their age and physical condition, are unlikely to pose a threat to public safety. Moreover, cost to the Department of Corrections, particularly in medical expenses, is significantly higher for older inmates.

As specified in § 53.1-40.01, an inmate must apply to the Parole Board to be considered for release under the geriatric provision. An inmate eligible for discretionary parole release is considered for parole annually once he reaches his parole eligibility date; parole consideration is automatic. If a parole-eligible inmate chooses to apply for geriatric release, he loses his discretionary parole hearing for that year. An inmate can be considered for geriatric release or discretionary parole release, but not both, in the same year.

The number of inmates eligible for geriatric release has been increasing. At the end of CY2001, the year that the provision was expanded to include all state inmates, 245 of the 32,946 state inmates had reached the age/time served requirements to be eligible for geriatric release (Figure 35). By the end of CY2007, the number of eligible inmates had more than doubled, reaching 500. Very few of the eligible inmates were sentenced under the no-parole/truth-in-sentencing system. Because truth-in-sentencing is applicable to felonies committed on or after January 1, 1995, only a handful of offenders sanctioned under the new system have qualified for geriatric release consideration. Of the 500 inmates eligible at the close of CY2007, 89 were truth-in-sentencing inmates. This number is expected to rise in the coming years.

Figure 35
Prison Inmates Eligible for Geriatric Release

		Inmates Eligible for Geriatric Release		
	State-Responsible Prison Population	Parole System Inmates*	Truth-in-Sentencing Inmates	Total
2001	32,946	231	14	245
2004	35,916	328	47	375
2007	38,527	411	89	500

* Parole system inmates include offenders who have a combination of parole-eligible felonies and truth-in-sentencing felonies.

Approximately half of the geriatric-eligible inmates are between the ages of 60 and 64 (Figure 36). These inmates have served at least 10 years in prison. According to data from the Department of Corrections, the median time served for these inmates (the middle value, where half the inmates have served less and half have served more) is 19 to 20 years, well over the 10-year minimum needed to qualify. The remaining eligible inmates are age 65 or more and have served at least five years. The median time served for these geriatric-eligible inmates was 12 years in CY2001, but has since risen to 16 years.

Geriatric-eligible inmates have most often been convicted of first-degree murder, rape, or other sexual assault offenses. Of the 500 eligible inmates at the end of CY2007, one-third were serving time for first-degree murder. Another third were serving terms for rape/sexual assault. The remaining elder inmates were incarcerated for an array of other crimes, such as robbery, abduction, assault, second-degree murder, drug offenses, burglary, larceny/fraud, manslaughter, and arson.

Figure 36
Inmates Eligible for Geriatric Release by Age and Time Served

	Age 60 to 64 and served at least 10 years		Age 65 or more and served at least 5 years	
	Number	Median Time Served	Number	Median Time Served
2001	112	19 yrs.	133	12 yrs.
2004	184	20 yrs.	191	14 yrs.
2007	241	20 yrs.	259	16 yrs.

Data from the Parole Board reveals that few eligible inmates have applied to be considered for geriatric release. Only 52 (10%) of the 500 eligible inmates in CY2007 submitted an application to the Parole Board (Figure 37). This is most likely because the majority of inmates eligible for geriatric release are also eligible for discretionary parole release. Parole-eligible inmates are automatically considered annually by the Parole Board and the inmate need not take any specific action for this to occur. Thus, most parole-eligible prisoners do not bother to apply for geriatric release consideration.

The Parole Board has granted geriatric release to seven inmates since the provision took effect in 1995. In 2007, the Board approved geriatric release for two of the 52 inmates who had applied (Figure 37). For 95% of the offenders denied release, the Parole Board has cited the serious nature of the original offense.

The number of inmates eligible for geriatric release is projected to double between 2007 and 2010 (Figure 38). By the end of 2010, 1,003 inmates will qualify. This number is expected to continue to rise at a fast pace, as more inmates sentenced under the truth-in-sentencing system reach the necessary age and time-served thresholds.

Figure 37
Inmates Considered for Geriatric Release

	Inmates Eligible for Geriatric Release	Inmates Who Applied	Inmates Granted
2004	375	39 (10%)	2
2007	500	52 (10%)	2

Figure 38
Projected Number of Geriatric-Eligible Inmates, 2008 through 2010

Year	Inmates Eligible for Geriatric Release
2007	500
2008	635
2009	794
2010	1003

Consistency and Fairness in Sentencing

In 2007, the National Center for State Courts (NCSC) in Williamsburg, Virginia, conducted groundbreaking research to examine the impact of different sentencing guidelines systems on consistency and fairness in judicial sanctioning. The primary goal of the study was to provide a comprehensive assessment of sentencing outcomes in three states that employ a range of alternative approaches to shaping and controlling judicial discretion through sentencing guidelines. With long-established and respected guidelines systems, Virginia, Michigan, and Minnesota were selected by the NCSC as the subjects of this unique comparative study. These states vary according to the presumptive versus voluntary nature of the respective guidelines systems and differ in basic design and mechanics of the guidelines.

Classifying state guidelines systems along a continuum from most voluntary to most mandatory, Virginia ranks among the most voluntary systems. Minnesota is considered one of the most mandatory guidelines systems in the nation. Michigan falls in between Virginia and Minnesota on this continuum. Moreover, Minnesota's guidelines generally produce smaller ranges for recommended sentences than the guidelines in Michigan and Virginia. In contrast to the two-dimensional sentencing grids used in Michigan and Minnesota, Virginia employs a list, or tariff, style scoring system to determine the recommended punishment.

Funded by the National Institute of Justice (NIJ), the NCSC's study examines the extent to which each state's system promotes consistency and proportionality and minimizes discrimination. The following questions were considered of primary importance:

- To what extent do sentencing guidelines contribute to consistency? Are similar cases treated in a similar manner?

- To what extent do sentencing guidelines contribute to a lack of discrimination? Is there evidence of discrimination that is distinct from inconsistency in sentencing? Are the characteristics of the offender's age, gender, and race significant in determining who goes to prison and for how long?

The NCSC has announced two important findings for the Commonwealth. First, the study shows that consistency in sentencing has been achieved in Virginia. The researchers concluded that Virginia's guidelines system is achieving its goal of overall consistency in sanctioning practices. Second, there is no evidence of systematic discrimination in sentences imposed in Virginia in regards to race, gender, or the location of the court. According to the NCSC, virtually no evidence of discrimination arises within the confines of Virginia's criminal sentencing system.

Summary

In the fourteenth year of Virginia's comprehensive felony sentencing reform legislation, the overhaul of the felony sanctioning system continues to be a success by any measure. Offenders are serving approximately 90% of the sentences ordered by the court, 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 an increasing number of felons. Recent budget reductions, however, likely will affect the availability and the scope of these programs. Nonetheless, years after the enactment of sentencing reform legislation in Virginia, there is substantial evidence that the system is continuing to achieve what its designers intended.

Recommendations of the Commission

Unless otherwise provided by law, the changes recommended by the Commission become effective on the following July 1.

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 these sessions often provide information that is 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 need adjustment to better reflect current judicial thinking. The opinions of the judiciary, as expressed in the reasons they write for departing from the guidelines, are very important in directing the Commission's attention to areas of the guidelines that may require amendment.

The Commission has adopted two recommendations this year. Each of these is described in detail on the pages that follow.

Recommendation 1

Amend the Miscellaneous sentencing guidelines to add the offense of felony vandalism (intentional damage to property of $1,000 or more) under § 18.2-137(B,ii).

Issue

Currently, Virginia's sentencing guidelines do not cover felony vandalism (intentional damage to property of $1,000 or more) as defined in § 18.2-137(B,ii) when this crime is the primary (or most serious) offense in a case. The guidelines presently cover only one vandalism-related offense - maliciously shooting or throwing a missile at a train, vessel, or motor vehicle under § 18.2-154. However, the Commission has periodically received suggestions from users that felony vandalism under § 18.2-137(B,ii) be added to the guidelines. After thorough analysis, the Commission has developed a proposal to incorporate this crime into the sentencing guidelines system.

Discussion

Commission staff analyzed data from the Pre/Post-Sentence Investigation (PSI) database and the Supreme Court of Virginia's Court Automated Information System (CAIS) database to identify cases of felony vandalism (intentional damage to property of $1,000 or more) in violation of § 18.2-137(B,ii). According to the PSI and CAIS databases, there were 439 cases of felony vandalism between fiscal year (FY) 2003 and FY2007. Felony vandalism under § 18.2-137(B,ii) is a Class 6 felony with a statutory penalty range of one year to five years. As shown in Figure 72, 42% of these offenders received probation without an active term of incarceration, 31% were given an incarceration term up to six months in jail (median sentence of three months), and 27% were sentenced to more than six months of incarceration (median sentence of 1.3 years).

Figure 72

Felony Vandalism § 18.2-137 (B,ii)
FY2003-FY2007
N=439 cases

Disposition	Percent	Median Sentence
No Incarceration	41.5%	
Incarceration up to 6 months	31.2%	3 Months
Incarceration More than 6 Months	27.3%	1.3 Years

Several steps were employed in the development of sentencing guidelines for this offense. The Commission examined actual judicial sentencing practices for this crime for the period FY2003 through FY2007. Using actual sentencing data, various scoring scenarios were rigorously tested. The goal was to seamlessly integrate the offenses with those currently covered, maximizing compliance and, if possible, balancing mitigation and aggravation departures from the guidelines.

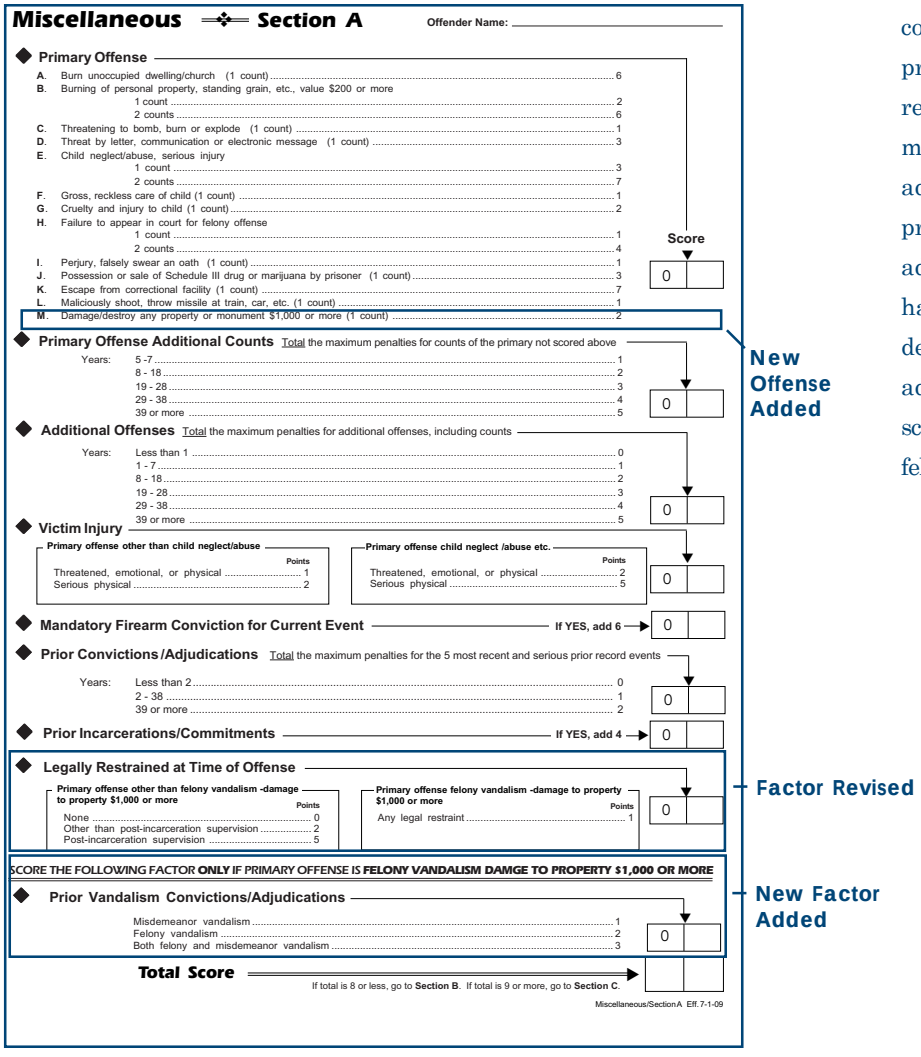
Following thorough analysis of the data, the Commission recommends adding felony vandalism under § 18.2-137(B,ii) to the Miscellaneous sentencing guidelines. The Miscellaneous guidelines encompass a variety of offenses, such as child abuse, arson, failure to appear, perjury and one other vandalism-related offense. It is important to note that the proposal is based on the actual practices of Virginia's circuit court judges for the period studied.

To model actual sentencing practices for this crime most accurately, the Commission found it necessary to revise some factors and to introduce new factors on Sections A and B of the Miscellaneous guidelines. On Section A, for instance, it was necessary to revise the scoring of the legal restraint factor and to introduce a new factor for prior vandalism convictions/adjudications to more clearly distinguish between offenders recommended for more than six months of incarceration and those who were not.

The proposed revisions for incorporating felony vandalism (§ 18.2-137(B,ii)) into the Miscellaneous worksheets are presented in Figures 73, 74 and 75. On Section A of the proposed guidelines (Figure 73), offenders convicted of this offense receive two points for the Primary Offense factor. When there is more than one count of the offense, each count will be scored on the factor for Primary Offense Additional Counts. The remaining factors on the worksheet will also be scored. Under the proposal, however, the last factor on Section A, legal restraint at the time of the offense, is revised. When this crime is the primary offense in the case, an offender will receive one point if he was legally restrained in any way at the time the crime was committed. This modification would affect only cases in which this crime is the primary offense; for all other crimes, legal restraint will continue to be scored as it is currently. In addition, the Commission recommends adding a new factor to score prior vandalism convictions/adjudications. On the proposed new factor, an offender would receive one point if he has only prior misdemeanor vandalism convictions/adjudications, two points if he has any prior felony vandalism convictions/adjudications, and three points if he has both prior felony and misdemeanor vandalism convictions/adjudications. This factor is to be scored only when the primary offense is felony vandalism under § 18.2-137 (B,ii).

Figure 73

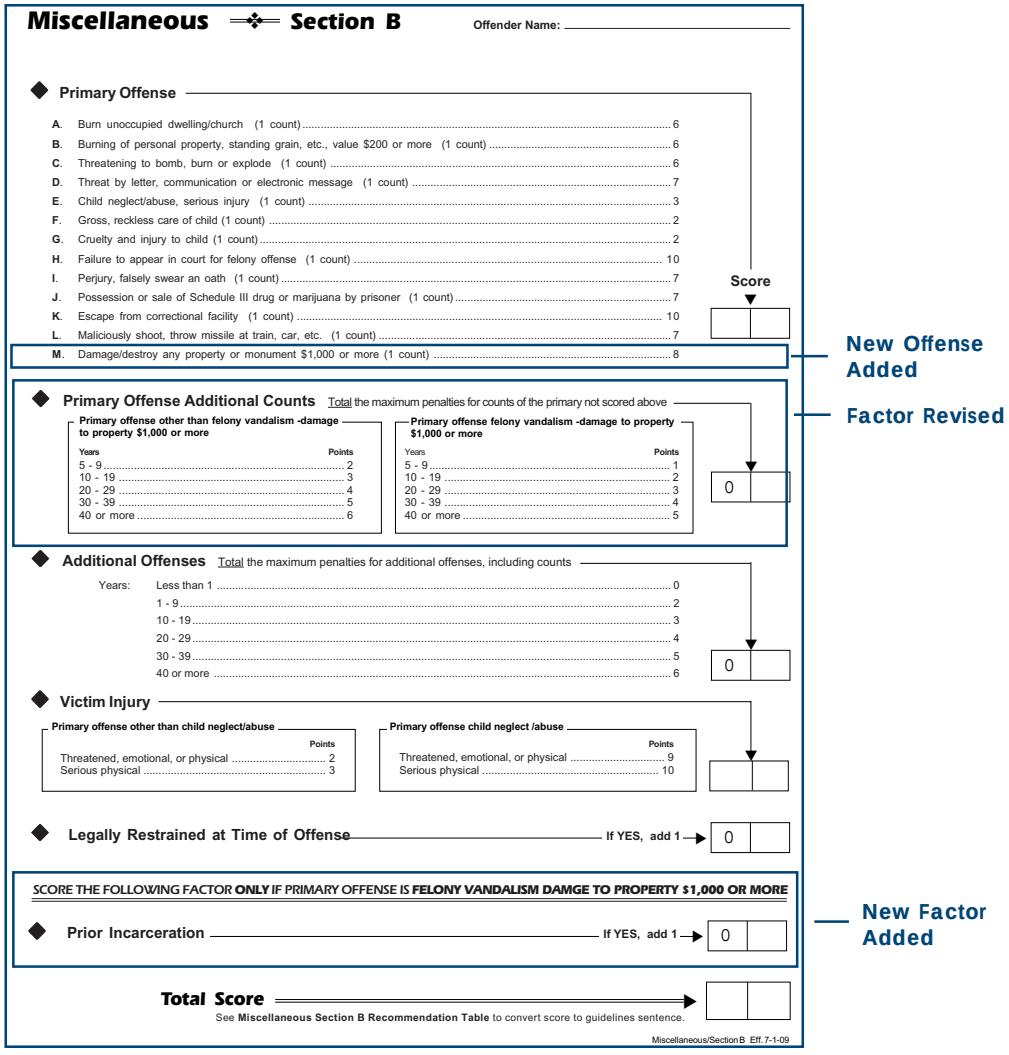
Proposed Miscellaneous Section A Worksheet



On Section B of the proposed Miscellaneous guidelines (Figure 74), offenders convicted of this particular vandalism crime receive eight points for the Primary Offense factor. Under the proposal, the Primary Offense Additional Counts factor on Section B is modified and offenders convicted of vandalism under § 18.2-137(B,ii) receive slightly different scores than all other offenders. The proposal includes a new factor on Section B, which is scored only for offenders convicted of this vandalism offense. Under the new factor, an offender convicted of this crime receives an additional point if he has been incarcerated in the past.

Figure 74

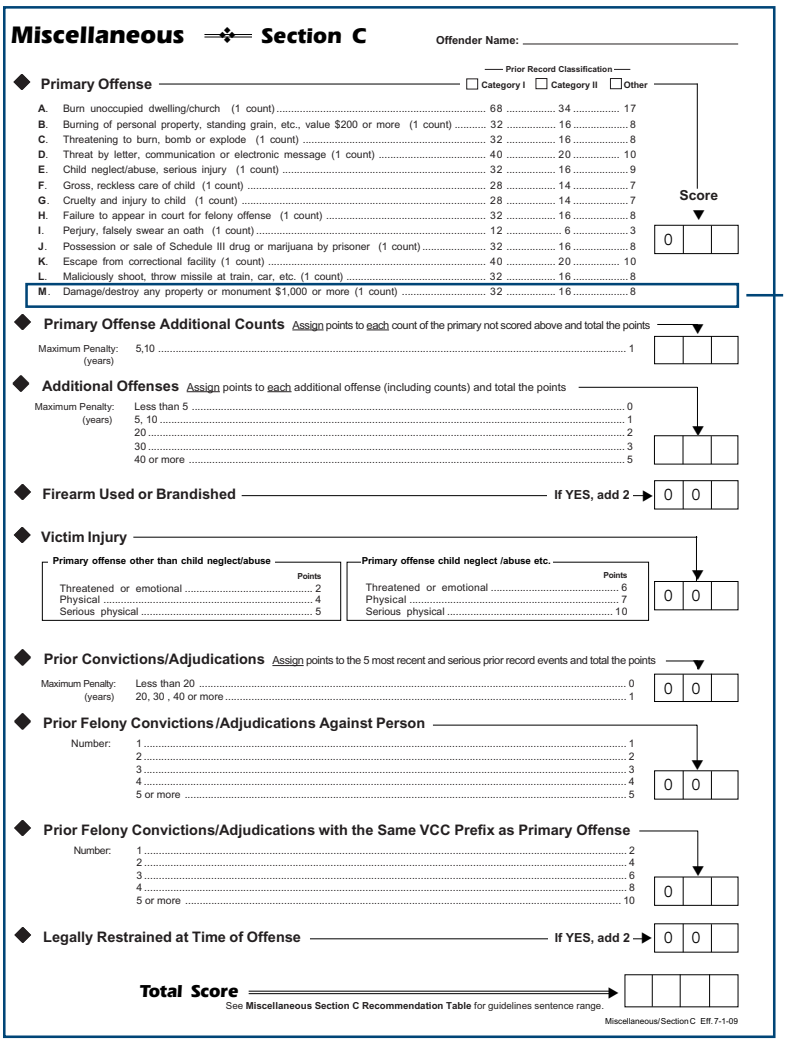
Proposed Miscellaneous Section B Worksheet



Offenders who receive nine points or more on Section A are then scored on Section C to obtain the sentence length recommendation. Primary Offense points on Section C are assigned based on the classification of an offender's prior record. On Section C of the proposed Miscellaneous guidelines, an offender convicted of vandalism under § 18.2-137(B,ii) receives eight points for the Primary Offense factor if his prior record is classified as Other. An offender is assigned to the Other category if he does not have a prior conviction for a violent felony defined in § 17.1-805. An offender is assigned to Category II if he has a prior conviction for a violent felony that has a statutory maximum penalty of less than 40 years. An Offender is classified as Category I if he has a prior conviction for a violent felony with a statutory maximum of 40 years or more. Under the proposal, a Category II offender convicted of felony vandalism (§ 18.2-137(B,ii)) scores 16 points on the Primary Offense factor, while a Category I offender scores 32 points. No other revisions regarding felony vandalism cases are necessary on Section C of the Miscellaneous guidelines.

Figure 75

Proposed Miscellaneous Section C Worksheet



Miscellaneous — Section C

Offender Name: _____

Primary Offense — Prior Record Classification: ☐ Category I ☐ Category II ☐ Other

A.	Burn unoccupied dwelling/church (1 count)	68	34	17
B.	Burning of personal property, standing grain, etc., value $200 or more (1 count)	32	16	8
C.	Threatening to burn, bomb or explode (1 count)	32	16	8
D.	Threat by letter, communication or electronic message (1 count)	40	20	10
E.	Child neglect/abuse, serious injury (1 count)	32	16	9
F.	Gross, reckless care of child (1 count)	28	14	7
G.	Cruelty and injury to child (1 count)	28	14	7
H.	Failure to appear in court for felony offense (1 count)	32	16	8
I.	Perjury, falsely swear an oath (1 count)	12	6	3
J.	Possession or sale of Schedule III drug or marijuana by prisoner (1 count)	32	16	8
K.	Escape from correctional facility (1 count)	40	20	10
L.	Maliciously shoot, throw missile at train, car, etc. (1 count)	32	16	8
M.	Damage/destroy any property or monument $1,000 or more (1 count)	32	16	8

Score: 0

New Offense Added

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

Maximum Penalty: (years) 5,10 1

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

Maximum Penalty: (years)
Less than 5 0
5, 10 1
20 2
30 3
40 or more 5

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

Victim Injury

Primary offense other than child neglect/abuse	Points	Primary offense child neglect /abuse etc.	Points
Threatened or emotional	2	Threatened or emotional	6
Physical	4	Physical	7
Serious physical	5	Serious physical	10

0 0

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

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

0 0

Prior Felony Convictions/Adjudications Against Person

Number:
1 1
2 2
3 3
4 4
5 or more 5

0 0

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

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

0

Legally Restrained at Time of Offense — If YES, add 2 → 0 0

Total Score

See **Miscellaneous Section C Recommendation Table** for guidelines sentence range.

Miscellaneous/Section C Eff. 7-1-09

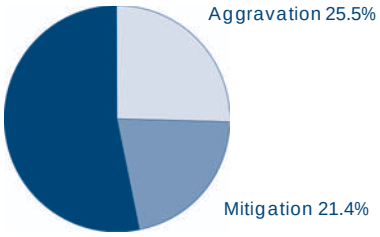
During its analysis, the Commission discovered that sentencing practices for felony vandalism (§ 18.2-137(B,ii)) vary considerably. Based on recent sanctioning patterns, the proposed guidelines would maximize the rate of judicial concurrence, although compliance is expected to be lower than the compliance rate for most other offenses.

As proposed, compliance is expected to be approximately 53%, with a roughly equal balance between mitigation and aggravation departures (Figure 76). This crime will be the subject of ongoing study by the Commission. Refining the guidelines for this crime will likely be an iterative process, with improvements made over several years. Feedback from judges will be of critical importance to this process.

The Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines; therefore, no impact on correctional bed space is anticipated.

Figure 76

Expected Guidelines Compliance for Felony Vandalism § 18.2-137 (B,ii)



Recommendation 2

Amend the sexual assault sentencing guidelines to reflect the statutory penalty changes enacted by the 2007 General Assembly.

Issue

In 2006, the Commission recommended guidelines for child pornography and electronic (online) solicitation offenses. The recommendations, submitted in the Commission's *2006 Annual Report*, were not rejected by the 2007 General Assembly. However, the 2007 General Assembly enacted legislation elevating penalties for certain child pornography and online solicitation crimes. The guidelines that became effective on July 1, 2007, were implemented as approved and, therefore, did not account for the new penalty structures.

Discussion

At the request of Virginia's Attorney General, the Commission in 2006 conducted a special study of crimes related to child pornography and online solicitation of a minor in order to determine if guidelines for these offenses were feasible. After thorough analysis of the data, the Commission developed a proposal for integrating these crimes into the guidelines for sexual assault offenses. The Commission's proposal was presented as a recommendation in its *2006 Annual Report*. 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. The Commission's recommendation was not rejected by the 2007 General Assembly and the guidelines were implemented on July 1, 2007.

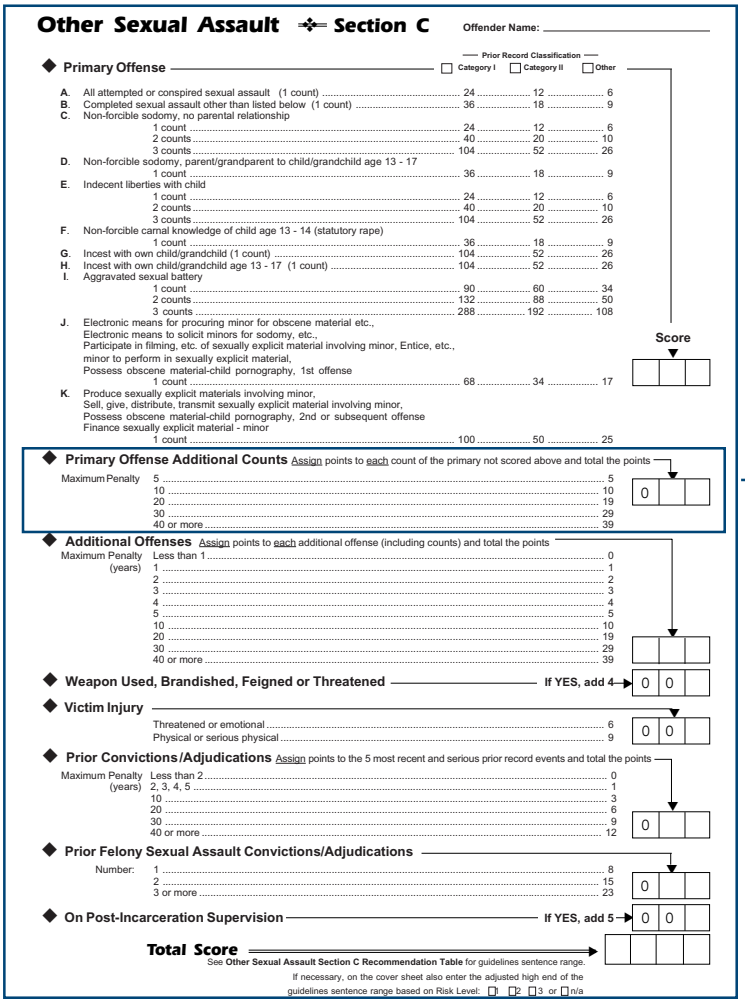
During the 2007 General Assembly, however, several bills related to child pornography and online solicitation were proposed. The General Assembly adopted, and the governor signed, legislation that elevated the penalties for certain child pornography and online solicitation offenses. For example, the maximum penalties of 5 and 10 years for certain acts were increased to 30 and 40 years. These higher penalties became effective on July 1, 2007, for any crimes committed on or after that date. However, the sentencing guidelines that became effective on July 1, 2007, were implemented as approved and, therefore, did not reflect the new penalty structures with 30 and 40 year statutory maximums.

The Commission recommends amending the sexual assault guidelines to address this inconsistency. The Commission proposes expanding the factor for Primary Offense Additional Counts on Section C of the sexual assault guidelines to correspond to the higher penalty structures adopted by the 2007 General Assembly. This modification is shown in Figure 77. The scores shown were derived from the available data for these crimes.

The Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines; therefore, no impact on correctional bed space is anticipated.

Figure 77

Proposed Other Sexual Assault Section C Worksheet



Appendices

Appendix 1

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

Reasons for MITIGATION	Burg. of Dwelling (N=169)	Burg. Other Structure (N=96)	Sch. I/II Drugs (N=752)	Other Drugs (N=39)	Fraud (N=268)	Larceny (N=443)	Misc (N=33)	Traffic (N=180)	Weapon (N=79)
No reason given	31	17	183	12	56	98	13	57	17
Illegible written reason	0	0	2	0	0	1	0	0	1
Offender is sentenced to an alternative punishment to incarceration	13	12	48	1	22	32	1	1	0
Offender cooperated with authorities	10	7	58	6	14	21	1	2	1
Minimal circumstances involved with supervision violation	0	0	1	0	0	2	0	0	1
Behavior positive since commission of the offense	1	1	3	0	0	2	0	1	0
Minimal circumstances/facts of the case	11	7	40	4	24	26	2	18	12
Minimal property or monetary loss	2	0	2	0	1	15	0	0	0
Multiple charges are being treated as one criminal event	4	1	2	0	4	1	0	0	0
Mitigating circumstances (plead guilty to avoid trial, weak case)	6	2	53	0	7	25	2	8	3
Sentence recommended by Commonwealth Attorney	8	5	50	3	13	27	2	10	6
Jury sentence	2	2	2	0	0	6	1	3	0
Sentence recommended by Probation Officer	0	0	3	0	0	0	0	0	0
Current offense involves drugs/alcohol (small amount)	0	0	30	0	1	0	2	0	0
Offender's substance abuse issues	0	0	10	0	2	3	0	0	1
Financial obligations (court costs, restitution, child support, etc.)	0	0	5	1	11	13	0	3	3
Judge thought sentence was in compliance	0	0	2	0	2	0	1	0	0
Sentencing guidelines incorrect/missing	3	0	7	0	1	2	0	4	0
Judge had an issue scoring one of the guidelines factors	3	0	4	0	4	3	0	0	0
Sentencing guidelines recommendation not appropriate (non-specific)	1	0	6	0	0	1	0	1	0
Judge rounded guidelines minimum to nearest whole year	0	0	1	0	0	0	0	1	0
Guidelines recommendation is too harsh	4	1	9	0	2	2	0	1	1
Judicial discretion (time served, other sentence to serve, etc.)	18	13	57	3	36	32	2	9	5
Offender not the leader	2	0	3	1	4	1	0	0	0
Offender health (mental, physical, emotional, etc.)	6	4	16	0	11	14	0	7	5
Offender issues (age of offender, homeless, family issues, etc.)	17	3	31	1	8	14	0	3	6
Plea agreement	45	35	194	8	80	148	13	58	20
Offender has minimal/no prior record	10	2	39	1	10	12	0	12	9
Offender has good potential for rehabilitation	3	1	23	1	11	7	0	9	4
Offender needs rehabilitation	3	1	5	0	2	1	0	3	0
Offender failed alternative sanction program	0	0	2	0	0	0	0	0	0
Offender's progress in rehabilitation	7	0	33	2	10	7	0	3	2
Concealed weapon, but was not a firearm	0	0	0	0	0	0	0	0	2
Supervision issue (extended probation period, etc.)	0	0	0	0	0	1	0	0	0
Victim circumstances (facts of the case, etc.)	0	0	0	0	0	0	0	1	0
Little or no injury/offender did not intend to harm	0	0	0	0	0	0	0	2	0
Victim cannot/will not testify	1	0	1	0	1	3	0	0	0
Type of victim (drug dealer, relative, friend, etc.)	7	0	0	0	6	5	0	0	0
Victim request	12	1	0	0	6	8	1	0	0
Sentenced to Department of Juvenile Justice	2	0	1	0	0	1	0	0	1

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

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

Appendix 1

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

Reasons for AGGRAVATION	Burg. of Dwelling (N=136)	Burg. Other Structure (N=43)	Sch. I/II Drugs (N=806)	Other Drugs (N=141)	Fraud (N=165)	Larceny (N=431)	Misc (N=38)	Traffic (N=270)	Weapon (N=68)
No reason given	17	7	175	38	38	89	11	54	11
Illegible written reason	0	0	1	0	1	1	0	1	0
Offender is sentenced to an alternative punishment	5	4	52	3	13	31	0	22	0
Offender failed to cooperate with authorities	0	0	11	1	0	2	1	2	0
Violent/disruptive behavior in custody	1	0	4	0	1	2	0	1	0
Absconded from probation supervision	0	0	6	1	0	5	1	0	0
Displayed disrespect for authority while on probation	0	0	1	0	0	0	0	0	0
Used, etc., drugs/alcohol while on probation	3	1	10	1	0	4	0	1	0
Failed to follow instructions while on probation	1	0	16	0	0	3	0	0	0
New offenses were committed while on probation	2	0	16	1	3	8	1	3	0
Poor conduct since commission of offense	1	0	11	0	3	4	0	3	1
Aggravating facts involving the breaking and entering	13	2	0	0	0	0	0	0	0
Aggravating circumstances/flagrancy of offense	23	4	38	9	17	36	7	33	13
Gang-related offense	0	0	3	0	1	4	0	0	2
Child present at time of offense	0	0	2	0	0	2	0	0	0
Extreme property or monetary loss	3	1	5	0	6	35	0	0	0
Number of violations/counts in the event	2	2	5	3	3	9	0	8	0
Offense involved a high degree of planning/violation of trust	6	1	4	0	8	21	1	5	1
True offense behavior was more serious than offenses at conviction	2	2	13	1	2	8	2	0	1
Aggravating court circumstances/proceedings	1	0	9	1	4	1	1	1	0
Sentence recommended by Commonwealth Attorney	1	0	6	1	0	0	0	2	1
Jury sentence	7	1	33	5	4	12	3	11	5
Current offense involves drugs/alcohol	1	0	54	14	1	3	1	18	1
Offender's substance abuse issues	0	3	34	7	2	10	0	10	0
Financial obligations (restitution, child support, etc.)	1	0	1	0	4	6	0	2	0
Judge thought sentence was in compliance	0	0	2	0	0	1	1	1	0
Sentencing guidelines recommendation not appropriate	4	0	0	0	0	0	0	2	0
Mandatory minimum involved in event	0	0	5	0	1	1	0	0	2
Prior record not adequately weighed by guidelines	5	2	39	2	3	21	3	13	2
Judge rounded guidelines minimum to nearest whole year	0	0	0	0	1	2	0	0	0
Guidelines recommendation is too low	13	2	27	4	2	15	1	10	1
Judicial discretion (time served, shock incarceration,etc.)	6	2	34	3	5	17	0	3	2
Offender was the leader	1	0	2	1	0	2	0	0	0
Seriousness of offense	5	1	1	2	0	0	0	1	2
Plea agreement	24	14	193	32	38	83	5	37	22
Offender has extensive record or same type of prior offense	15	3	100	27	19	47	1	67	6
Offender has poor rehabilitation potential	18	1	39	2	11	20	1	38	2
Offender needs rehabilitation offered by jail/prison	1	1	14	3	2	6	0	2	0
Offender failed alternative sanction program	0	0	22	2	0	3	0	0	0
Victim circumstances (facts of the case, etc.)	6	0	1	0	0	1	0	3	0
Degree of victim injury (physical, emotional, etc.)	6	0	3	0	2	5	6	13	0
Type of victim (child, etc.)	3	0	0	0	2	7	3	0	0
Victim request	1	0	0	0	1	0	0	1	0
Degree of violence toward victim	3	0	0	0	0	2	0	0	0
Offender used a weapon in commission of the offense	5	1	2	1	0	4	0	0	1
2nd/subsequent revocation of defendant's probation	0	0	5	0	1	1	0	1	0

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

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

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for MITIGATION	Assault (N=236)	Homicide (N=35)	Kidnapping (N=18)	Robbery (N=244)	Rape (N=46)	Sexual Assault (N=73)
No reason given	52	2	2	52	4	17
Illegible written reason	0	0	0	0	1	0
Offender is sentenced to an alt. punishment to incarceration	6	0	0	6	0	0
Offender cooperated with authorities	5	3	0	51	1	1
Minimal circumstances involved with supervision violation	1	0	0	14	0	0
Behavior positive since commission of the offense	1	0	0	0	0	0
Minimal circumstances/facts of the case	27	3	3	0	5	12
Multiple charges are being treated as one criminal event	0	0	0	2	0	0
Mitigating court circumstances/proceedings	5	3	4	11	1	10
Sentence recommended by Commonwealth Attorney	19	2	2	11	1	2
Jury sentence	2	9	0	4	3	4
Split trial/sentence (combination jury and bench trial)	0	0	0	3	0	0
Current offense involves drugs/alcohol (small amount of drugs)	1	0	0	1	0	0
Offender's substance abuse issues	0	0	0	2	0	0
Financial obligations (restitution, child support, etc.)	4	0	0	1	0	0
Judge thought sentence was in compliance	1	0	0	1	1	0
Sentencing guidelines incorrect/missing	2	0	0	0	0	0
Judge had an issue scoring one of the guidelines factors	1	0	0	3	0	0
Sentencing guidelines recommendation not appropriate	1	0	0	1	0	0
Judge rounded guidelines minimum to nearest whole year	1	0	0	0	0	0
Guidelines recommendation is too harsh	1	0	0	0	0	1
Judicial discretion (time served, other sentence to serve, etc.)	17	1	1	24	2	4
Offender not the leader	2	2	0	14	0	0
Offender health (mental, physical, emotional, etc.)	5	0	0	3	2	4
Offender issues (age of offender, homeless, family issues, etc.)	13	2	0	22	1	2
Plea agreement	73	12	7	42	13	21
Offender has minimal/no prior record	6	0	1	20	2	3
Offender has good potential for rehabilitation	5	1	2	8	1	2
Offender needs rehabilitation	1	0	0	1	0	0
Offender's progress in rehabilitation	4	0	0	4	2	3
Victim cannot/will not testify	5	0	1	4	3	4
Victim circumstances (facts of the case, etc.)	1	0	0	0	0	0
Little or no injury/offender did not intend to harm	7	1	0	3	1	0
Type of victim (drug dealer, relative, friend, etc.)	6	1	1	0	3	0
Victim request	17	1	1	1	8	3
Victim's role in the offense	2	0	0	1	3	0
Sentenced to Department of Juvenile Justice	6	1	0	20	9	3
Other mitigating reasons	0	0	0	1	0	0

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

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

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for AGGRAVATION	Assault (N=191)	Homicide (N=50)	Kidnapping (N=24)	Robbery (N=120)	Rape (N=18)	Sexual Assault (N=113)
No reason given	26	7	2	19	3	21
Offender is sentenced to an alt. punishment to incarceration	3	0	0	2	0	0
Offender failed to cooperate with authorities	0	0	0	2	0	0
Violent/disruptive behavior in custody	3	1	0	0	0	0
Absconded from probation supervision	0	0	0	0	0	0
Displayed disrespect for authority while on probation	1	0	0	0	0	0
New offenses were committed while on probation	1	0	0	3	0	3
Poor conduct since commission of offense	1	0	1	0	0	0
Aggravating circumstances/flagrancy of offense	36	14	8	24	2	29
Gang-related offense	2	0	0	2	0	0
Number of violations/counts in the event	1	0	0	2	0	3
Offense involved a high degree of planning/violation of trust	2	2	1	2	1	7
True offense behavior was more serious than offenses at conv.	3	4	0	1	0	3
Aggravating court circumstances/proceedings	1	0	0	1	0	0
Sentence recommended by Commonwealth Attorney	3	0	0	1	0	0
Jury sentence	17	11	4	18	9	5
Current offense involves drugs/alcohol	2	5	0	1	0	1
Offender's substance abuse issues	0	4	0	0	0	0
Financial obligations (restitution, child support, etc.)	1	0	0	0	0	0
Sentencing guidelines recommendation not appropriate	10	0	2	1	0	2
Mandatory minimum involved in event	3	0	0	0	0	0
Prior record not adequately weighed by guidelines	10	0	1	2	0	1
Judge rounded guidelines minimum to nearest whole year	0	0	0	1	0	1
Sentencing guidelines recommendation issue	0	0	1	0	0	0
Guidelines recommendation is too low	7	2	2	7	0	9
Judicial discretion (time served, shock incarceration, etc.)	3	0	0	5	0	4
Offender was the leader	0	1	0	0	0	0
Offender issues (age of offender, lacks family support, etc.)	1	0	1	1	0	2
Seriousness of offense	5	3	2	10	0	6
Plea agreement	26	5	1	8	1	21
Offender has extensive record or same type of prior offense	26	5	1	12	0	4
Offender has poor rehabilitation potential	16	3	2	11	2	11
Victim circumstances (facts of the case, etc.)	0	0	0	6	0	1
Degree of victim injury (physical, emotional, etc.)	41	4	1	10	0	4
Offender violated protective order or was stalking	0	0	0	1	0	0
Type of victim (child, etc.)	9	1	3	8	4	23
Victim request	0	0	1	3	1	0
Degree of violence toward victim	17	3	1	10	0	0
Offender used a weapon in commission of the offense	4	0	0	3	0	0
Other aggravating reasons	0	0	0	1	0	0

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

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

Appendix 3

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

BURGLARY OF DWELLING

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	78.8%	6.1%	15.2%	33
2	65.2	19.7	15.2	66
3	72.4	13.8	13.8	29
4	75.6	12.2	12.2	41
5	54.2	12.5	33.3	24
6	57.1	28.6	14.3	28
7	87.5	4.2	8.3	24
8	77.8	18.5	3.7	27
9	42.1	31.6	26.3	19
10	62.1	17.2	20.7	29
11	75.0	12.5	12.5	16
12	71.9	12.5	15.6	32
13	76.0	20.0	4.0	25
14	69.2	20.5	10.3	39
15	41.7	25.0	33.3	48
16	51.4	20.0	28.6	35
17	57.1	28.6	14.3	7
18	27.3	36.4	36.4	11
19	61.1	11.1	27.8	36
20	80.0	13.3	6.7	15
21	68.2	31.8	0.0	22
22	71.9	12.5	15.6	32
23	65.6	28.1	6.3	32
24	66.7	26.7	6.7	45
25	76.1	23.9	0.0	46
26	71.1	15.8	13.2	38
27	77.1	14.3	8.6	35
28	72.4	24.1	3.4	29
29	60.0	6.7	33.3	30
30	75.0	10.0	15.0	20
31	85.7	14.3	0.0	14
Total	67.1	18.2	14.7	927

BURGLARY - OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100%	0%	0%	10
2	76.7	16.3	7.0	43
3	82.4	17.6	0.0	17
4	77.8	16.7	5.6	18
5	70.6	17.6	11.8	17
6	78.6	0.0	21.4	14
7	80.0	5.0	15.0	20
8	88.9	11.1	0.0	9
9	66.7	33.3	0.0	9
10	84.6	15.4	0.0	26
11	83.3	0.0	16.7	12
12	88.2	11.8	0.0	17
13	85.2	14.8	0.0	27
14	75.0	25.0	0.0	20
15	52.4	31.0	16.7	42
16	77.8	18.5	3.7	27
17	93.8	0.0	6.3	16
18	42.9	57.1	0.0	7
19	85.7	7.1	7.1	14
20	66.7	0.0	33.3	3
21	80.0	20.0	0.0	10
22	84.0	0.0	16.0	25
23	66.7	20.0	13.3	15
24	64.7	29.4	5.9	34
25	86.7	6.7	6.7	30
26	68.3	29.3	2.4	41
27	85.0	10.0	5.0	20
28	86.7	13.3	0.0	15
29	76.9	7.7	15.4	13
30	55.6	11.1	33.3	9
31	66.7	22.2	11.1	9
Total	76.4	16.3	7.3	589

DRUG/OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	80.6%	6.5%	12.9%	31
2	84.6	5.1	10.3	78
3	80.6	8.3	11.1	36
4	83.9	7.1	8.9	56
5	86.7	0.0	13.3	15
6	75.0	4.2	20.8	24
7	89.7	3.4	6.9	29
8	92.6	3.7	3.7	27
9	76.9	3.8	19.2	26
10	100.0	0.0	0.0	21
11	69.2	0.0	30.8	13
12	86.1	2.8	11.1	36
13	88.4	2.3	9.3	43
14	80.6	6.5	12.9	31
15	82.1	3.0	14.9	67
16	77.8	3.7	18.5	27
17	91.7	0.0	8.3	12
18	85.7	14.3	0.0	7
19	81.0	1.7	17.2	58
20	69.2	0.0	30.8	26
21	76.9	7.7	15.4	13
22	82.6	0.0	17.4	23
23	82.6	2.2	15.2	46
24	65.7	11.4	22.9	35
25	81.4	0.0	18.6	43
26	92.9	2.4	4.8	42
27	88.9	2.2	8.9	45
28	92.1	5.3	2.6	38
29	63.6	0.0	36.4	22
30	53.8	11.5	34.6	26
31	96.7	0.0	3.3	30
Total	82.5	3.8	13.7	1,027

SCHEDULE I/II DRUGS

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	86%	6.1%	8.0%	413
2	87.7	6.7	5.5	595
3	76.4	10.7	12.9	513
4	81.5	11.2	7.3	633
5	85.0	5.0	10.0	220
6	78.5	7.0	14.6	158
7	90.2	4.8	5.0	482
8	90.4	4.8	4.8	395
9	80.6	8.1	11.3	160
10	81.8	12.4	5.8	225
11	82.4	8.8	8.8	148
12	78.1	5.1	16.8	256
13	80.2	13.5	6.3	1013
14	85.7	7.9	6.4	342
15	73.3	9.4	17.3	416
16	83.8	5.6	10.6	179
17	86.9	5.4	7.7	130
18	88.8	8.8	2.5	80
19	87.7	6.2	6.2	276
20	86.2	2.2	11.6	138
21	87.0	10.4	2.6	77
22	81.7	4.7	13.6	169
23	85.8	6.6	7.6	303
24	77.9	9.3	12.8	376
25	86.1	7.3	6.6	288
26	82.6	8.3	9.1	396
27	90.7	4.2	5.1	332
28	85.2	8.8	6.0	182
29	72.7	6.7	20.7	150
30	82.4	4.7	12.9	85
31	89.2	6.3	4.5	223
Total	83.3	8.0	8.6	9,353

FRAUD

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	92.2%	6.5%	1.3%	77
2	84.8	9.8	5.4	184
3	88.9	8.3	2.8	36
4	83.3	12.1	4.5	132
5	82.7	7.7	9.6	52
6	76.9	11.5	11.5	52
7	89.2	10.8	0.0	37
8	95.5	4.5	0.0	22
9	78.7	8.5	12.8	47
10	88.1	8.3	3.6	84
11	91.7	8.3	0.0	36
12	85.6	5.9	8.5	118
13	79.4	17.5	3.2	63
14	83.4	10.6	6.0	151
15	80.6	8.1	11.2	258
16	85.1	9.5	5.4	74
17	83.8	5.0	11.3	80
18	70.6	19.6	9.8	51
19	83.9	8.0	8.0	137
20	87.5	5.6	6.9	72
21	80.0	15.6	4.4	45
22	89.3	6.7	4.0	75
23	82.1	17.9	0.0	106
24	80.5	16.3	3.3	123
25	88.2	8.8	2.9	136
26	77.7	14.9	7.4	148
27	92.3	5.6	2.1	142
28	88.8	6.3	5.0	80
29	86.5	4.5	9.0	89
30	88.5	3.8	7.7	26
31	91.1	5.4	3.6	56
Total	84.5	9.6	5.9	2,790

LARCENY

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	82.7%	7.5%	9.8%	214
2	85.6	5.5	8.9	327
3	80.3	11.1	8.5	117
4	85.2	7.6	7.2	263
5	78.3	7.5	14.2	106
6	82.4	8.2	9.4	85
7	87.2	9.0	3.8	78
8	87.3	8.8	3.9	102
9	68.1	5.3	26.6	94
10	84.5	10.7	4.9	103
11	83.6	7.5	9.0	67
12	78.3	7.6	14.1	276
13	77.9	17.2	4.8	145
14	86.9	9.8	3.3	367
15	79.3	8.8	11.9	396
16	80.0	7.1	12.9	85
17	87.8	4.7	7.4	148
18	80.2	19.0	0.9	116
19	83.2	8.6	8.3	315
20	85.5	3.9	10.5	76
21	87.8	9.2	3.1	98
22	86.9	3.6	9.5	137
23	77.4	13.8	8.8	159
24	77.0	16.8	6.2	161
25	82.5	8.8	8.8	171
26	85.8	9.0	5.2	233
27	88.5	9.7	1.8	165
28	90.5	6.3	3.2	95
29	74.3	4.1	21.6	171
30	79.2	7.8	13.0	77
31	90.7	6.2	3.1	129
Total	82.8	8.7	8.5	5,078

Appendix 3

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

TRAFFIC

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	80%	9.1%	10.9%	110
2	83.0	6.1	10.9	147
3	80.4	13.0	6.5	46
4	76.0	12.5	11.5	104
5	79.4	3.2	17.5	63
6	78.0	12.0	10.0	50
7	83.1	4.6	12.3	65
8	90.2	9.8	0.0	41
9	74.2	4.1	21.6	97
10	87.5	6.8	5.7	88
11	82.8	6.9	10.3	29
12	81.8	9.1	9.1	88
13	77.4	11.3	11.3	62
14	81.0	10.1	8.9	79
15	76.4	9.3	14.3	140
16	88.3	2.6	9.1	77
17	64.4	4.4	31.1	45
18	100.0	0.0	0.0	15
19	81.2	10.6	8.2	85
20	73.0	4.8	22.2	63
21	71.1	26.7	2.2	45
22	65.2	4.5	30.3	66
23	69.1	18.1	12.8	94
24	82.6	5.4	12.0	92
25	75.8	8.4	15.8	95
26	82.8	8.2	9.0	122
27	95.7	2.9	1.4	69
28	85.7	1.6	12.7	63
29	65.6	6.3	28.1	32
30	84.2	5.3	10.5	19
31	96.2	3.8	0.0	53
Total	79.9	8.0	12.0	2,244

MISCELLANEOUS

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100%	0.0%	0.0%	4
2	86.7	0.0	13.3	15
3	66.7	0.0	33.3	3
4	66.7	26.7	6.7	15
5	75.0	0.0	25.0	4
6	50.0	45.8	4.2	24
7	66.7	0.0	33.3	12
8	100.0	0.0	0.0	3
9	85.7	0.0	14.3	7
10	66.7	16.7	16.7	6
11	100.0	0.0	0.0	9
12	63.6	9.1	27.3	11
13	62.5	31.3	6.3	16
14	22.2	44.4	33.3	9
15	61.5	11.5	26.9	26
16	57.1	14.3	28.6	7
17	50.0	0.0	50.0	4
18	100.0	0.0	0.0	1
19	100.0	0.0	0.0	6
20	83.3	16.7	0.0	6
21	100.0	0.0	0.0	2
22	100.0	0.0	0.0	6
23	75.0	0.0	25.0	4
24	87.5	12.5	0.0	8
25	100.0	0.0	0.0	9
26	80.0	10.0	10.0	10
27	100.0	0.0	0.0	4
28	75.0	0.0	25.0	8
29	84.6	0.0	15.4	13
30	100.0	0.0	0.0	4
31	50.0	0.0	50.0	4
Total	72.7	12.7	14.6	260

WEAPONS

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	62.5%	12.5%	25.0%	16
2	81.1	10.8	8.1	37
3	61.1	22.2	16.7	18
4	76.0	14.0	10.0	50
5	56.3	12.5	31.3	16
6	50.0	10.0	40.0	10
7	64.3	21.4	14.3	14
8	81.8	9.1	9.1	11
9	100.0	0.0	0.0	8
10	86.4	4.5	9.1	22
11	100.0	0.0	0.0	3
12	73.7	15.8	10.5	19
13	72.7	9.1	18.2	44
14	59.3	14.8	25.9	27
15	67.9	32.1	0.0	28
16	77.3	13.6	9.1	22
17	0.0	33.3	66.7	3
18	50.0	50.0	0.0	2
19	66.7	11.1	22.2	9
20	85.7	0.0	14.3	7
21	85.7	0.0	14.3	7
22	82.4	5.9	11.8	17
23	80.0	10.0	10.0	20
24	64.3	17.9	17.9	28
25	65.2	21.7	13.0	23
26	63.2	26.3	10.5	19
27	83.3	16.7	0.0	24
28	80.0	20.0	0.0	10
29	100.0	0.0	0.0	5
30	50.0	50.0	0.0	4
31	71.4	28.6	0.0	7
Total	72.3	14.9	12.8	530

Appendix 4

Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

ASSAULT

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	72%	14%	14%	50
2	66.3	14.7	18.9	95
3	77.6	8.6	13.8	58
4	78.9	12.6	8.4	95
5	74.0	6.0	20.0	50
6	66.7	13.7	19.6	51
7	73.5	18.4	8.2	49
8	71.4	7.1	21.4	28
9	78.0	9.8	12.2	41
10	83.1	8.5	8.5	59
11	73.3	20.0	6.7	45
12	76.6	12.8	10.6	47
13	75.9	15.2	8.9	79
14	69.8	20.6	9.5	63
15	71.6	17.6	10.8	102
16	61.0	20.3	18.6	59
17	75.0	6.3	18.8	16
18	60.0	26.7	13.3	15
19	79.6	8.2	12.2	49
20	84.2	0.0	15.8	19
21	78.3	17.4	4.3	24
22	70.0	17.5	12.5	40
23	61.4	28.6	10.0	70
24	71.9	15.8	12.3	57
25	58.9	30.4	10.7	56
26	75.4	15.4	9.2	65
27	79.6	16.3	4.1	49
28	84.4	0.0	15.6	32
29	61.8	14.7	23.5	34
30	76.5	11.8	11.8	17
31	71.8	17.9	10.3	39
Total	72.5	15.2	12.3	1,553

KIDNAPPING

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	0%	25%	75%	4
2	66.7	0.0	33.3	3
3	100.0	0.0	0.0	2
4	66.7	22.2	11.1	9
5	66.7	0.0	33.3	3
6	80.0	20.0	0.0	5
7	100.0	0.0	0.0	2
8	0.0	0	100	1
9	57.1	0.0	42.9	7
10	100.0	0.0	0.0	3
11	100.0	0.0	0	2
12	66.7	0.0	33.3	3
13	77.8	11.1	11.1	9
14	40.0	60.0	0.0	5
15	60.0	20.0	20.0	5
16	100.0	0.0	0.0	2
17	50.0	0.0	50.0	2
18	66.7	0.0	33.3	3
19	88.9	0.0	11.1	9
20	0.0	0.0	0.0	0
21	100.0	0.0	0.0	2
22	100.0	0.0	0.0	1
23	50.0	50.0	0.0	6
24	85.7	14.3	0.0	7
25	66.7	33.3	0.0	6
26	50.0	33.3	16.7	6
27	100.0	0.0	0.0	4
28	100.0	0.0	0.0	1
29	33.3	0.0	66.7	6
30	50.0	0.0	50.0	2
31	57.1	14.3	28.6	7
Total	66.9	14.2	18.9	127

HOMICIDE

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100%	0%	0%	2
2	58.8	5.9	35.3	17
3	37.5	18.8	43.8	16
4	77.8	16.7	5.6	18
5	28.6	14.3	57.1	7
6	60.0	20.0	20.0	5
7	66.7	11.1	22.2	9
8	87.5	12.5	0.0	8
9	66.7	16.7	16.7	6
10	75.0	25.0	0.0	8
11	100.0	0.0	0.0	2
12	50.0	0.0	50.0	4
13	56.0	24.0	20.0	25
14	55.6	22.2	22.2	9
15	64.3	7.1	28.6	14
16	50.0	0.0	50.0	2
17	57.1	0.0	42.9	7
18	60.0	20.0	20.0	5
19	87.5	0.0	12.5	8
20	50.0	33.3	16.7	6
21	75.0	25.0	0.0	4
22	50.0	16.7	33.3	6
23	50.0	50.0	0.0	6
24	50.0	25.0	25.0	4
25	100.0	0.0	0.0	4
26	50.0	0.0	50.0	2
27	100.0	0.0	0.0	6
28	66.7	16.7	16.7	6
29	66.7	33.3	0.0	3
30	50.0	50.0	0.0	2
31	72.7	0.0	27.3	11
Total	63.4	15.1	21.6	232

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

ROBBERY

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	60.0%	26.7%	13.3%	30
2	67.9	24.4	7.7	78
3	80.0	10.0	10.0	20
4	63.9	25.4	10.7	122
5	69.6	13.0	17.4	23
6	77.8	11.1	11.1	18
7	82.1	10.7	7.1	28
8	58.5	24.4	17.1	42
9	47.8	21.7	30.4	23
10	44.4	33.3	22.2	9
11	64.7	23.5	11.8	17
12	66.7	22.9	10.4	48
13	49.0	40.4	10.6	104
14	69.7	27.3	3.0	66
15	63.4	26.8	9.8	41
16	50.0	16.7	33.3	18
17	76.5	5.9	17.6	17
18	22.2	55.6	22.2	9
19	59.4	31.3	9.4	64
20	90.0	10.0	0.0	10
21	60.0	20.0	20.0	5
22	23.1	15.4	61.5	13
23	65.6	18.8	15.6	32
24	42.1	26.3	31.6	19
25	71.4	14.3	14.3	14
26	57.1	38.1	4.8	21
27	72.7	27.3	0.0	11
28	77.8	5.6	16.7	18
29	62.5	12.5	25.0	8
30	33.3	33.3	33.3	3
31	45.8	50.0	4.2	24
Total	61.8	25.6	12.6	955

RAPE

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	75%	0%	25%	4
2	76.9	15.4	7.7	13
3	33.3	66.7	0.0	3
4	71.4	28.6	0.0	14
5	66.7	33.3	0.0	3
6	66.7	33.3	0.0	6
7	77.8	11.1	11.1	9
8	60.0	30.0	10.0	10
9	75.0	25.0	0.0	4
10	50.0	37.5	12.5	8
11	50.0	0.0	50.0	2
12	77.8	11.1	11.1	9
13	80.0	20.0	0.0	10
14	66.7	33.3	0.0	6
15	38.5	53.8	7.7	13
16	50.0	50.0	0.0	2
17	83.3	0.0	16.7	6
18	100.0	0.0	0.0	3
19	37.5	25.0	37.5	8
20	0.0	66.7	33.3	3
21	33.3	66.7	0.0	3
22	50.0	33.3	16.7	6
23	50.0	25.0	25.0	4
24	100.0	0.0	0.0	7
25	77.8	11.1	11.1	9
26	80.0	10.0	10.0	10
27	100.0	0.0	0.0	11
28	60.0	40.0	0.0	5
29	75.0	0.0	25.0	4
30	100.0	0.0	0.0	1
31	83.3	16.7	0.0	6
Total	68.3	22.8	8.9	202

OTHER SEXUAL ASSAULT

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	75.0%	8.3%	16.7%	12
2	68.4	10.5	21.1	38
3	50.0	50.0	0.0	2
4	78.4	13.5	8.1	37
5	88.9	11.1	0.0	9
6	66.7	0.0	33.3	6
7	77.3	9.1	13.6	22
8	71.4	28.6	0.0	7
9	75.0	8.3	16.7	12
10	53.8	30.8	15.4	13
11	61.5	15.4	23.1	13
12	50.0	12.5	37.5	24
13	50.0	50.0	0.0	10
14	45.5	22.7	31.8	22
15	51.2	14.0	34.9	43
16	57.7	7.7	34.6	26
17	42.9	7.1	50.0	14
18	77.8	11.1	11.1	9
19	62.1	0.0	37.9	29
20	57.1	21.4	21.4	14
21	62.5	12.5	25.0	8
22	50.0	28.6	21.4	14
23	75.0	8.3	16.7	12
24	80.0	13.3	6.7	15
25	81.3	6.3	12.5	32
26	65.5	20.7	13.8	29
27	70.8	16.7	12.5	24
28	87.5	12.5	0.0	8
29	54.5	9.1	36.4	11
30	50.0	0.0	50.0	2
31	88.2	5.9	5.9	34
Total	66.2	13.2	20.5	551