# Virginia Criminal Sentencing Commission

# 2013 ANNUAL REPORT

**DECEMBER 1, 2013**

## Virginia Criminal Sentencing Commission Members

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

Judge F. Bruce Bach
Chairman, Nellysford

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

Judge Malfourd W. Trumbo, Vice Chairman, Alleghany County
Judge Rossie Alston, Jr., Manassas
Judge Bradley B. Cavedo, Richmond City
Judge Lisa Bondareff Kemler, Alexandria
Judge Michael Lee Moore, Lebanon
Judge Charles S. Sharp, Stafford

### Attorney General

The Honorable Kenneth T. Cuccinelli, II
(John F. Childrey, Attorney General's Representative)

### Senate Appointments

Judge James S. Yoffy, Henrico
Senator Thomas K. Norment, Williamsburg

### House of Delegates Appointments

The Honorable Linda D. Curtis, Hampton
Delegate Benjamin L. Cline, Amherst
Esther J. Windmueller, Richmond City

### Governor's Appointments

Debbie H. Smith, Williamsburg
The Honorable Marsha L. Garst, Rockingham
The Honorable Harvey L. Bryant, Virginia Beach

Commonwealth of Virginia

Hon. F. Bruce Bach
Chairman

Meredith Farrar-Owens
Director

100 North Ninth Street
Richmond, Virginia 23219
(804) 225 - 4398

Supreme Court of Virginia
Virginia Criminal Sentencing Commission

December 1, 2013

To: The Honorable Cynthia D. Kinser, Chief Justice of Virginia
The Honorable Robert F. McDonnell, 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 *2013 Annual Report* of the Criminal Sentencing Commission.

This report summarizes the work of the Criminal Sentencing Commission over the past year. The report presents a comprehensive examination of judicial compliance with the felony sentencing guidelines for fiscal year 2013. The Commission's recommendations to the 2014 Session of the Virginia General Assembly also are contained in this report.

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

Sincerely,

F. Bruce Bach
Chairman


## Virginia Criminal Sentencing Commission Staff

**Director**
Meredith Farrar-Owens

**Research Associate**
Thomas Y. Barnes

**Data Processing Specialist**
Alfreda Cheatham

**Training/Data Processing Unit Manager**
Jody T. Fridley

**Research Associate**
Susan E. Gholston

**Research Manager**
Joanna E. Laws

**Research Associate**
Carolyn A. Williamson

**Interns**
Taja Cooper
Zachery Curtis
Danielle McCowan
Shandell Taylor

# TABLE OF CONTENTS

## 1 Introduction



## 2 Guidelines Compliance

## 3 Immediate Sanction Probation Pilot Program



## 4 Recommendations of the Commission

# INTRODUCTION 1

## Overview

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

The report is organized into four chapters. The remainder of the Introduction chapter provides a general profile of the Commission and an overview of its various activities and projects during 2013. The Guidelines Compliance chapter that follows contains a comprehensive analysis of compliance with the sentencing guidelines during fiscal year (FY) 2013. The third chapter describes the Immediate Sanction Probation program, which the General Assembly has directed the Commission to implement in select pilot sites. 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 § 17.1-802 of the *Code of Virginia*. The Chairman of the Commission is appointed by the Chief Justice of the Supreme Court of Virginia, must not be an active member of the judiciary, and must be confirmed by the General Assembly. The Chief Justice also appoints six judges or justices to serve on the Commission. The Governor appoints four members, at least one of whom must be a victim of crime or a representative of a crime victim's organization. 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 modified this provision. Now, the Speaker of the House of Delegates makes two appointments, while the Chairman of the House Courts of Justice Committee, or another member of the Courts Committee appointed by the chairman, must serve as the third House appointment. Similarly, the Senate Committee on Rules makes 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.

## Commission Meetings

The full membership of the Commission met four times during 2013. These meetings were held on March 18, June 10, September 9, and November 6. Minutes for each of these meetings are available on the Commission's website (www.vcsc.virginia.gov).

Throughout the year, staff compiles information, analyzes data, and drafts recommendations for action by the full Commission. The Commission's Chairman appoints subcommittees, when needed, to allow more extensive discussion on special topics.

## Monitoring and Oversight

Section 19.2-298.01 of the *Code of Virginia* requires that sentencing guidelines worksheets be completed in all felony cases covered by the guidelines. The guidelines cover approximately 95% of felony sentencing events in Virginia. This section of the Code also requires judges to announce, during court proceedings for each case, that the guidelines forms have been reviewed. After sentencing, the guidelines worksheets are signed by the judge and become a part of the official record of each case. 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 "hotline" phone system. Training and education are ongoing activities of the Commission. The Commission offers training and educational opportunities in an effort to promote the accurate completion of sentencing guidelines. Training seminars are designed to appeal to the needs of attorneys for the Commonwealth and probation officers, the two groups authorized by statute to complete the official guidelines for the court. The seminars also provide defense attorneys with a knowledge base to challenge the accuracy of guidelines submitted to the court. In addition, the Commission conducts 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 FY2013, the Commission offered 80 training seminars across the Commonwealth for more than 1,070 criminal justice professionals. As in previous years, Commission staff conducted training for attorneys and probation officers new to Virginia's sentencing guidelines system. The six-hour seminar introduced participants to the sentencing guidelines and provided instruction on correct scoring of the guidelines worksheets. The seminar also introduced new users to the probation violation guidelines and the two risk assessment instruments that are incorporated into Virginia's guidelines system. A two-hour What's New seminar was offered for all criminal justice professionals prior to the rollout of the FY2013 guidelines revisions. This seminar informed users of the significant changes to the nonviolent offender risk assessment instrument as well as other changes to the guidelines worksheets. Seminars for experienced guidelines users were also provided. These courses were approved by the Virginia State Bar, enabling participating attorneys to earn Continuing Legal Education credits. The Commission continued to provide a guidelines-related ethics class for attorneys, which was conducted in conjunction with the Virginia State Bar. The Virginia State Bar approved this class for one hour of Continuing Legal Education Ethics credit. The Commission also prepared and conducted a refresher course to address regional issues identified by staff. This seminar, approved for three Continuing Legal Education credits, reinforced the rules for scoring guidelines accurately. A one-hour course was developed and conducted for judges based on frequently asked questions. Finally, the Commission conducted sentencing guidelines seminars 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 guidelines 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 have included a combination of colleges and universities, libraries, state and local facilities, and criminal justice academies. Many sites 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, upon request, to any group of criminal justice professionals. The Commission is also willing to provide an education program on the guidelines and the no-parole sentencing system to any interested group or organization. Interested individuals can contact the Commission and place their names on a waiting list. Once a sufficient number of people have expressed interest, a seminar is presented in a locality convenient to the majority of individuals on the list.

In addition to providing training and education programs, the Commission maintains a website and a "hotline" 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 "hotline" phone (804.225.4398) is staffed from 7:45 a.m. to 5:15 p.m., Monday through Friday, to respond quickly to any questions or concerns regarding the sentencing guidelines. The hotline continues to be an important resource for guidelines users around the Commonwealth. In 2013, the Commission began to provide guidelines users with the option of texting their questions to staff. Guidelines users indicated that this option was helpful, particularly when they were at the courthouse or otherwise away from the office.

## 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. Any impact statement required under § 30-19.1:4 also must include an analysis of the impact on local and regional jails, as well as state and local community corrections programs.

During the 2013 General Assembly, the Commission prepared 342 impact statements on proposed legislation. The Commission prepared more impact statements for the 2013 Session of the General Assembly than in any year since 2000, when the Commission began tracking legislative trends. These proposals included: 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 is notified of the proposed legislation. When requested, the Commission provides pertinent oral testimony to accompany the impact analysis. Additional impact analyses may be conducted at the request of House Appropriations Committee staff, Senate Finance Committee staff, the Secretary of Public Safety, or staff of the Department of Planning and Budget.

## 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 comprised of experts in statistical and quantitative methods from several agencies. While individual members of this Committee generate the various prisoner forecasts, the Committee as a whole carefully scrutinizes each forecast according to the highest statistical standards. Select forecasts are presented to the Secretary's Work Group, which 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 Committee. Led by the Secretary of Public Safety, this 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. The Policy 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, prosecutor, sheriff, and jail associations.

While the Commission is not responsible for generating the prison or jail population forecast, it participates in the consensus forecasting process. In years past, Commission staff members have served on the Technical Advisory Committee and the Commission's Director has served on the Policy Advisory Committee. At the request of the Secretary of Public Safety, the Commission's Director or Deputy Director has chaired the Technical Advisory Committee since 2006. The Secretary presented the most recent prisoner forecasts to the General Assembly in a report submitted in October 2013.

## Automation Project

In 2012, staff launched an automation project with two goals in mind: to update the Sentencing Commission's website and to automate the sentencing guidelines completion and submission process. The new website was completed in the fall of 2012. Since then, the Commission has been collaborating with the Supreme Court's Department of Judicial Information Technology (DJIT) to design a web-based application for automating the sentencing guidelines. DJIT has agreed to develop an application that will allow users to complete guidelines forms online, give users the ability to save guidelines information and recall it later, provide a way for users to submit the guidelines to the court electronically, and permit Clerk's Offices to send the guidelines forms to the Commission in electronic format.

An early prototype of the application was demonstrated for the Commission at its June meeting. Commission staff were invited to attend the Circuit Court Clerks conference to present the application prototype, and this resulted in valuable feedback from the Clerks. Staff sought input from other types of users by demonstrating the prototype for a Commonwealth's attorney, defense attorney, and probation officer. When the application is ready for the testing phase, the Norfolk Circuit Court Clerk's office has expressed interest in pilot testing the new application.

## Assistance to Other Agencies

The Virginia State Crime Commission, a legislative branch agency, is charged by the General Assembly with several studies each year. The Crime Commission may request assistance from a variety of other agencies, including the Virginia Criminal Sentencing Commission. During the course of 2013, the Sentencing Commission was asked to provide data and analysis on several different topics, including cigarette trafficking and offenses related to child sexual abuse.

Assistance to other agencies included:

- Development of offender comparison groups for a Department of Corrections recidivism study;
- Tracking of recidivist activity among former juvenile offenders (now adults) for the Department of Juvenile Justice;
- Analyses of drug offenses and first-offense driving under the influence (DUI) convictions for the Department of Criminal Justice Services; and
- Compilation of offense lists and offense descriptions for the Secretary of the Commonwealth.

## Immediate Sanction Probation Pilot Program

In 2012, the Virginia General Assembly adopted budget language to extend the provisions of § 19.2-303.5 of the *Code of Virginia* and to authorize the creation of up to four Immediate Sanction Probation programs (now Item 50 of Chapter 806 of the 2013 Acts of Assembly). The Immediate Sanction Probation program is designed to target nonviolent offenders who violate the conditions of probation while under supervision in the community but are not charged with a new crime. These violations are often referred to as "technical probation violations."

The budget provision directs the Commission to select up to four jurisdictions to serve as pilot sites, with the concurrence of the Chief Judge and the Commonwealth's Attorney in each locality. It further charges the Commission with developing guidelines and procedures for the program, administering the program, and evaluating the results.

In responding to the legislative mandate, the Commission has been engaged in a variety of activities. Details regarding the Commission's activities to date, and plans for the coming year, can be found in the third chapter of this report.

# GUIDELINES COMPLIANCE 2

## Introduction

On January 1, 2014, Virginia's truth-in-sentencing system will reach its nineteenth 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 guidelines recommendations up to six times longer than the historical time served in prison by similar offenders. In over 419,000 felony cases sentenced under truth-in-sentencing laws, judges have agreed with guidelines recommendations in more than three out of four cases.

This report focuses on cases sentenced from the most recent year of available data, fiscal year (FY) 2013 (July 1, 2012, through June 30, 2013). Compliance is examined in a variety of ways in this report, and variations in data over the years are highlighted throughout.

In FY2013, ten judicial circuits contributed more guidelines cases than any of the other judicial circuits in the Commonwealth. Those circuits, which include the Fredericksburg area (Circuit 15), the Harrisonburg area (Circuit 26), Virginia Beach (Circuit 2), Richmond City (Circuit 13), the Radford area (Circuit 27), Fairfax County (Circuit 19), Chesterfield County (Circuit 12), Norfolk (Circuit 4), Chesapeake (Circuit1) and the Lynchburg area (Circuit 24) comprised nearly half (49%) of all worksheets received in FY2013 (Figure 1).

During FY2013, the Commission received 24,892 sentencing guideline worksheets. Of these, 722 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 FY2013, the remaining sections of this chapter pertaining to judicial concurrence with guidelines recommendations focus only on those 24,170 cases for which guidelines recommendations were completed and calculated correctly.

## 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 that the guidelines recommend (probation, incarceration for up to six months, incarceration for more than six months) and to a term of incarceration that falls exactly within the sentence range recommended

**Figure 1**

**Number and Percentage of Cases Received by Circuit - FY2013***

| Circuit | Number | Percent |
|---|---|---|
| 1 | 1,013 | 4.1% |
| 2 | 1,253 | 5.0% |
| 3 | 533 | 2.1% |
| 4 | 1,088 | 4.4% |
| 5 | 550 | 2.2% |
| 6 | 387 | 1.6% |
| 7 | 728 | 2.9% |
| 8 | 393 | 1.6% |
| 9 | 645 | 2.6% |
| 10 | 607 | 2.4% |
| 11 | 368 | 1.5% |
| 12 | 1,090 | 4.4% |
| 13 | 1,252 | 5.0% |
| 14 | 891 | 3.6% |
| 15 | 1,672 | 6.7% |
| 16 | 684 | 2.8% |
| 17 | 381 | 1.5% |
| 18 | 257 | 1.0% |
| 19 | 1,157 | 4.7% |
| 20 | 635 | 2.6% |
| 21 | 406 | 1.6% |
| 22 | 746 | 3.0% |
| 23 | 920 | 3.7% |
| 24 | 990 | 4.0% |
| 25 | 809 | 3.3% |
| 26 | 1,464 | 5.9% |
| 27 | 1,248 | 5.0% |
| 28 | 624 | 2.5% |
| 29 | 899 | 3.6% |
| 30 | 412 | 1.7% |
| 31 | 768 | 3.1% |
| **Total** | **24,870** | **100.0%** |

**22 cases were missing a circuit number*

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 also would 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 offender traffic 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 5% 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 also is 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 offender 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 mandatory minimum 12-month incarceration term required in felony habitual offender 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.

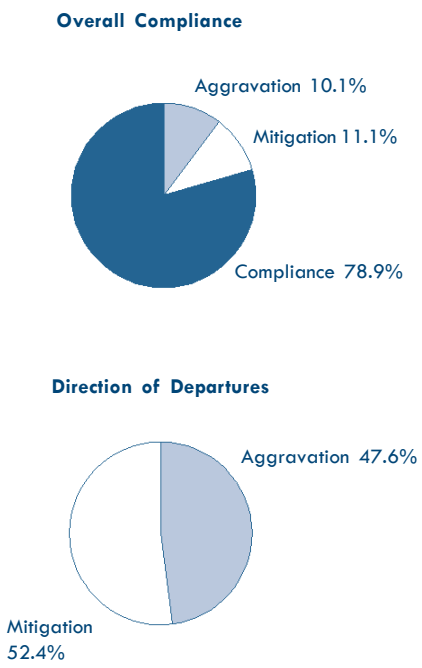
## Overall Compliance with the Sentencing Guidelines

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 ten fiscal years, the compliance rate has hovered around 80%. During FY2013, judges continued to agree with the sentencing guidelines recommendations in approximately 79% of the cases (Figure 2).

In addition to compliance, the Commission also studies departures from the guidelines. The rate at which judges sentence offenders to sanctions more severe than the guidelines recommendation, known as the "aggravation" rate, was 10.1% for FY2013. The "mitigation" rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 11.1% for the fiscal year. Thus, of the FY2013 departures, 47.6% were cases of aggravation while 52.4% were cases of mitigation.

**Figure 2**

**Overall Guidelines Compliance and Direction of Departures - FY2013**




## 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 FY2013 with the type of disposition recommended by the guidelines. For instance, of all felony offenders recommended for more than six months of incarceration during FY2013, judges sentenced over 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.

**Figure 3**

**Recommended and Actual Dispositions - FY2013**

| | Actual Disposition | | |
|---|---|---|---|
| **Recommended Disposition** | **Probation** | **Incarceration 1 day-6 mos.** | **Incarceration >6 mos.** |
| Probation | 71.2% | 23.5% | 5.3% |
| Incaceration 1 day - 6 months | 12.9% | 77.2% | 9.9% |
| Incarceration > 6 months | 5.8% | 8.1% | 86.2% |

Judges have also typically agreed with guidelines recommendations for other types of dispositions. In FY2013, 77% 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, 71% 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 these offenders receive an incarceration term of more than six months.

Since July 1, 1997, sentences to the state's former Boot Camp and the 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 counted as seven months of confinement for sentencing guideline purposes.

Finally, youthful offenders sentenced under the provisions of § 19.2-311, and given an indeterminate commitment to the Department of Corrections, are considered as having a four-year incarceration term for the purposes of sentencing guidelines. Under § 19.2-311, a first-time offender who was less than 21 years of age at the time of the offense may be given an indeterminate commitment to the Department of Corrections with a maximum length-of-stay of four years. Offenders convicted of capital murder, first-degree or second-degree murder, forcible rape (§ 18.2-61), forcible sodomy (§ 18.2-67.1), object sexual penetration (§ 18.2-67.2) or aggravated sexual battery of a victim less than age 13 (§ 18.2-67.3(A,1)) are not eligible for the program. For sentencing guidelines purposes, offenders sentenced solely as youthful offenders under § 19.2-311 are considered as having a four-year sentence.

## 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, which is defined as the rate at which judges sentence offenders to terms of incarceration that fall within the recommended guidelines range. Durational compliance analysis only considers cases for which the guidelines recommended an active term of incarceration and the offender received an incarceration sanction consisting of at least one day in jail.

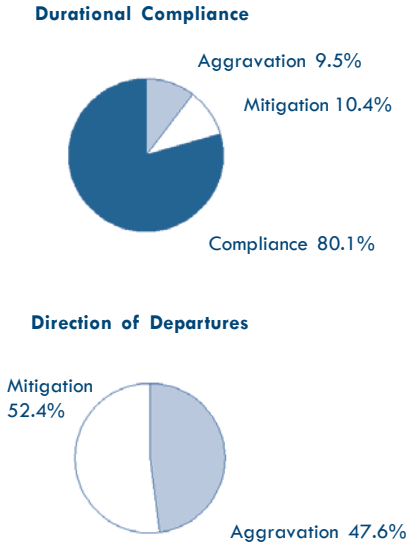
Durational compliance among FY2013 cases was over 80%, indicating that judges, more often than not, agree with the length of incarceration recommended by the guidelines in jail and prison cases (Figure 4). Among FY2013 cases not in durational compliance, departures tended slightly more toward mitigation than aggravation.

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 use their discretion in sentencing offenders to different incarceration terms, while still remaining in compliance with the guidelines. When the guidelines recommended more than six months of incarceration, and judges sentenced within the recommended range, only a small share (13% of offenders in FY2013) were given prison terms exactly equal to the midpoint recommendation (Figure 5). Most of the cases (70%) in durational compliance with recommendations over six months resulted in sentences below the recommended midpoint. For the remaining 17% of these incarceration cases sentenced within the guidelines range, the sentence exceeded the midpoint recommendation. 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 no more than one year above or below the recommended range, indicating that disagreement with the guidelines recommendation, in most cases, is not extreme. Offenders receiving incarceration, but less than the recommended term, were given effective sentences (sentences less any suspended time) short of the guidelines by a median value of 9 months. For offenders receiving longer than recommended incarceration sentences, the effective sentence also exceeded the guidelines range by a median value of 9 months.

**Figure 4**

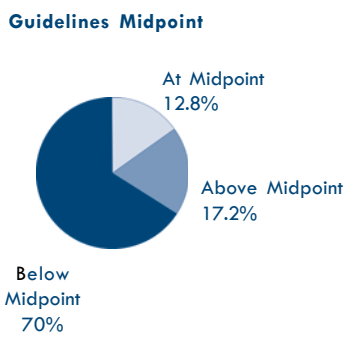
**Durational Compliance and Direction of Departures - FY2013***




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

**Figure 5**

**Distribution of Sentences within Guidelines Range - FY2013****




** 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 written reason(s) for sentencing outside the guidelines range. Each year, as the Commission deliberates upon recommendations for revisions to the guidelines, the opinions of the judiciary, as reflected in their departure reasons, are an important part of the analysis. 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 FY2013, 11.1% 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, judicial discretion, a sentence to a less-restrictive sanction, the defendant's cooperation with law enforcement, mitigating offense circumstances, and a sentence recommendation provided by the Commonwealth's Attorney. Although other reasons for mitigation were reported to the Commission in FY2013, only the most frequently cited reasons are noted here. For 534 of the 2,673 mitigating cases, a departure reason could not be discerned.

Judges sentenced 10.1% of the FY2013 cases to terms that were 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 flagrancy of the offense, the severity or degree of prior record, the defendant's poor potential for being rehabilitated, the number of counts in the sentencing event and issues with the sentencing guidelines recommendation. For 541 of the 2,432 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 16 guidelines offense groups.

## Compliance by Circuit

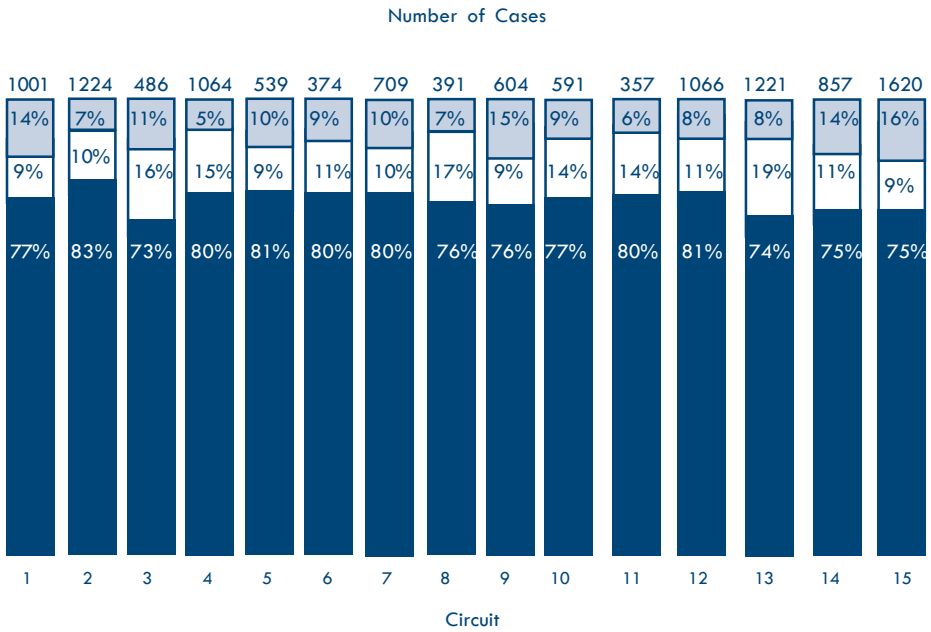
Since the onset of truth-in-sentencing, compliance rates and departure patterns have varied across Virginia's 31 judicial circuits. FY2013 continues to show differences among judicial circuits in the degree to which judges concur with guidelines recommendations (Figure 6).

The map and accompanying table on the following pages identify the location of each judicial circuit in the Commonwealth.

In FY2013, nearly half (45%) of the state's 31 circuits exhibited compliance rates at or above 79%, while the remaining 55% reported compliance rates between 72% 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 related primarily 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 FY2013, the highest rate of judicial agreement with the sentencing guidelines (87%) was in Circuit 31 (Prince William area). Concurrence rates of 86% or higher were found in Circuit 20 (Loudoun area), Circuit 27 (Radford area) and Circuit 28 (Bristol area). The lowest compliance rates among judicial circuits in FY2013 were reported in Circuit 29 (Buchanan area) and Circuit 3 (Portsmouth).

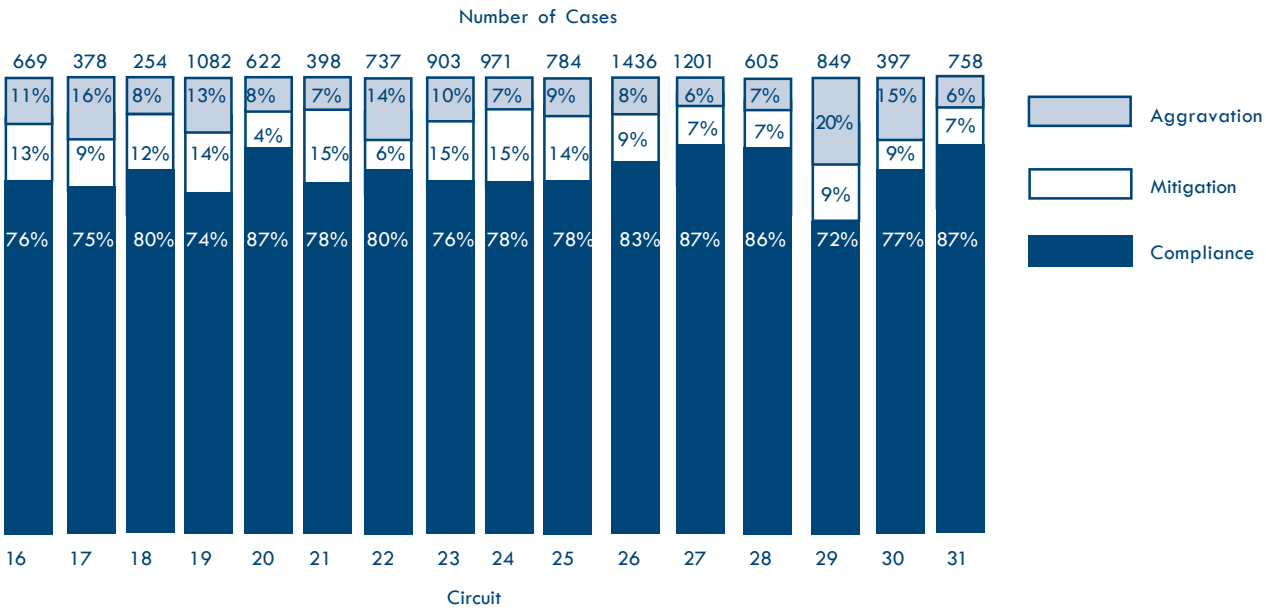
**Figure 6**

**Compliance by Circuit - FY2013**



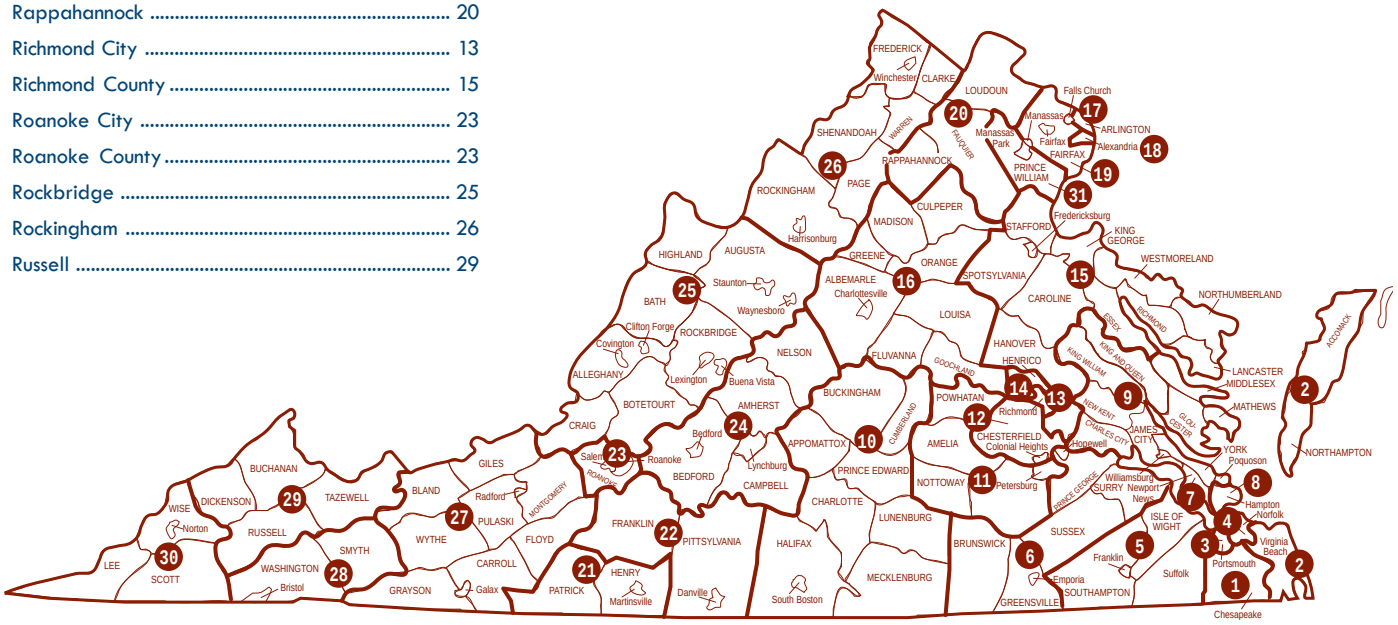
In FY2013, the highest mitigation rates were found in Circuit 13 (Richmond City), Circuit 8 (Hampton) and Circuit 3 (Portsmouth). Circuit 13 (Richmond City) had a mitigation rate of nearly 19% while Circuit 8 (Hampton) had a mitigation rate of 17% for the fiscal year; Circuit 3 (Portsmouth) recorded a mitigation rate of 16%. 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 jurisdictions with better access to these sentencing options may be using them as intended by the General Assembly. These sentences generally would appear as mitigations from the guidelines. Inspecting aggravation rates reveals that Circuit 29 (Buchanan County area) had the highest aggravation rate (nearly 20%), followed by Circuits 17 (Arlington) and 15 (Fredericksburg area) at 16%. Lower compliance rates in these latter circuits are a reflection of the relatively high aggravation rates.

Appendix 3 presents compliance figures for judicial circuits by each of the 16 sentencing guidelines offense groups.



## Virginia Localities and Judicial Circuits

**Virginia**
**Judicial Circuits**



## Compliance by Sentencing Guidelines Offense Group

In FY2013, as in previous years, judicial agreement with the guidelines varied when comparing the 16 offense groups (Figure 7). For FY2013, compliance rates ranged from a high of 84% in the fraud offense group to a low of 62% in rape cases. In general, property and drug offenses exhibit higher rates of compliance than the violent offense categories. The violent offense groups (assault, rape, sexual assault, robbery, homicide, and kidnapping) had compliance rates at or below 74%, whereas many of the property and drug offense categories had compliance rates above 80%.

During the past fiscal year, judicial concurrence with guidelines recommendations remained relatively stable, fluctuating three percent or less for most offense groups. Compliance rates are much more susceptible to year-to-year fluctuations for offense groups with small numbers of sentencing events in a given year. Compliance with the murder worksheets (226 cases) increased by 6.9 percentage points from FY2012 to FY2013 because of a decreased rate of mitigation. On the rape worksheets (176 cases), the increased rate of aggravation resulted in a 4.4-percentage decrease in compliance. Compliance with the kidnapping worksheets (123 cases) increased 4.4 percentage because of significant changes in both mitigation and aggravation. In addition, compliance for the robbery offense group increased by nearly six percentage points between FY2012 and FY2013. The current compliance rate of 66 percent is comparable to the rate of compliance in FY2010 and FY2006. This fiscal year, a separate analysis of the miscellaneous person and property worksheets and the miscellaneous other worksheets was completed. A true comparison between the previous compliance rates for the miscellaneous worksheets and the current analysis is not possible. However, compliance rates of 75 percent and 77 percent indicate that the worksheets are reflective of judicial sentencing across the Commonwealth.

Four new offenses were added to the sentencing guidelines effective July 1, 2012: manufacture methamphetamines, first or second offense (as defined by § 18.2-248(C1)), maiming as a result of driving while intoxicated (as defined by § 18.2-51.4(A) and third offense in ten years of driving after forfeiture of license (as defined by § 18.2-272(A)). Also, primary offense and prior record points were adjusted for a third or subsequent distribution of a Schedule I/II drug (§ 18.2-248(C)).

As historically has been the case, compliance rates for the drug and license offenses were higher than the compliance rate for maiming as a result of driving intoxicated. Compliance with recommendations on the Drugs Schedule I/II worksheet for manufacture methamphetamines was above 77%. The modifications to the Drug Schedule I/II worksheet for a third or subsequent distribution of a Schedule I/II worksheet increased compliance from 66% in FY2012 to 71% in FY2013.

Compliance in the first year for the newly added offense of maiming as a result of driving intoxicated was 56%, with a greater tendency to go above the guidelines recommendation (33% aggravation) than below (11% mitigation). The compliance rate for this crime was lower than expected. The lower compliance rate, in part, may be due to the low number of convictions, only nine in FY2013. The Commission will continue to monitor sentencing patterns for these offenses and recommend modifications, if needed.

Since 1995, departure patterns have differed across offense groups, and FY2013 was no exception. During this time period, the rape and burglary of a dwelling offense groups showed the highest mitigation rates with nearly one-quarter of the rape cases (23%), and nearly one-fifth of the burglary of a dwelling cases (19.8%) resulting in sentences below the guidelines. This mitigation pattern has been consistent with rape offenses since the abolition of parole in 1995. The most frequently cited mitigation reasons provided by judges in rape cases include plea agreement, procedural issues, victim's request and offender issues, including health issues. The most frequently cited mitigation reasons provided by judges in burglary of a dwelling cases included: the acceptance of a plea agreement, the utilization of alternative sentences and judicial discretion.

In FY2013, the offense groups with the highest aggravation rates were murder/homicide, at 24% and sexual assault, at 20%. As the most frequently cited aggravating departure reasons in murder/homicide cases, facts of the case, 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 FY2013 included the acceptance of a plea agreement, the flagrancy of the offense and the type of victim involved (such as a child).

**Figure 7**
**Guidelines Compliance by Offense - FY2013**

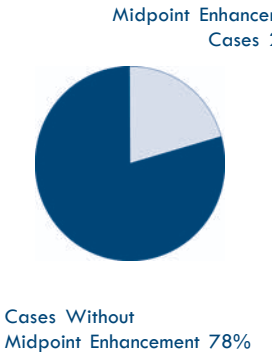
| | Compliance | Mitigation | Aggravation | Number of Cases |
|---|---|---|---|---|
| Fraud | 84.4% | 9.5% | 6.1% | 2,206 |
| Drug Other | 83.2% | 6.7% | 10.0% | 1,456 |
| Larceny | 82.7% | 9.0% | 8.4% | 5,904 |
| Drug Schedule I/II | 80.8% | 10.7% | 8.5% | 6,443 |
| Traffic | 79.1% | 8.9% | 12.1% | 1,728 |
| Miscellaneous Other | 77.4% | 12.9% | 9.7% | 403 |
| Burglary Other | 75.8% | 10.8% | 13.4% | 529 |
| Misc. Person/Property | 74.8% | 8.5% | 16.7% | 437 |
| Weapon | 74.5% | 12.7% | 12.8% | 600 |
| Assault | 73.8% | 14.7% | 11.5% | 1,442 |
| Kidnapping | 69.1% | 12.2% | 18.7% | 123 |
| Sex Assault | 68.0% | 12.0% | 20.1% | 593 |
| Murder | 66.4% | 9.7% | 23.9% | 226 |
| Robbery | 65.6% | 24.4% | 9.9% | 745 |
| Burglary Dwelling | 65.0% | 19.8% | 15.2% | 1,159 |
| Rape | 61.9% | 22.7% | 15.3% | 176 |
| Total | 78.9% | 11.1% | 10.1% | 24,170 |

## 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. 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 been previously convicted of a violent crime are recommended for incarceration terms up to six times longer than the terms served by offenders fitting similar profiles under the parole system. Midpoint enhancements are triggered for homicide, rape, or robbery offenses, most felony assaults and sexual assaults, and certain burglaries, when any one of these offenses is the current most serious offense, also called the "primary offense." Offenders with a prior record containing at least one conviction for a violent crime are subject to degrees of midpoint enhancements based on the nature and seriousness of the offender's criminal history. The most serious prior record receives the most extreme enhancement. A prior record labeled "Category II" contains at least one prior violent felony conviction carrying a statutory maximum penalty of less than 40 years, whereas a "Category I" prior record includes at least one violent felony conviction with a statutory maximum penalty of 40 years or more. Category I and II offenses are defined in § 17.1-805.

**Figure 8**

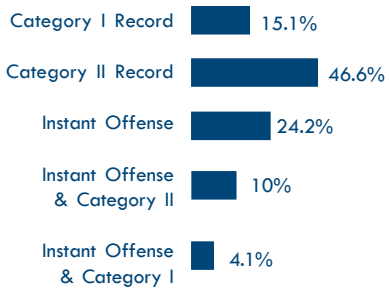
**Application of Midpoint Enhancements - FY2013**




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 FY2013 cases, 78% of the cases did not involve midpoint enhancements of any kind (Figure 8). Only 22% of the cases qualified for a midpoint enhancement because of a current or prior conviction for a felony defined as violent under § 17.1-805. The proportion of cases receiving midpoint enhancements has fluctuated very little since the institution of truth-in-sentencing guidelines in 1995.

**Figure 9**

**Type of Midpoint Enhancements Received - FY2013**




Of the FY2013 cases in which midpoint enhancements applied, the most common midpoint enhancement was for a Category II prior record. Approximately 47% of the midpoint enhancements were of this type and were applicable to offenders with a nonviolent instant offense but a violent prior record defined as Category II (Figure 9). In FY2013, another 15% 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 24% of the midpoint enhancements in FY2013. The most substantial midpoint enhancements target offenders with a combination of instant and prior violent offenses. About 10% 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 FY2013, compliance was 69% when enhancements applied, which is significantly lower than compliance in all other cases (82%). Thus, compliance in midpoint enhancement cases is suppressing the overall compliance rate. When departing from enhanced guidelines recommendations, judges are choosing to mitigate in three out of every four departures.

Among FY2013 midpoint enhancement cases resulting in incarceration, judges departed from the low end of the guidelines range by an average of 22 months (Figure 10). The median departure (the middle value, where half of the values are lower and half are higher) was 14 months.

**Figure 10**

**Length of Mitigation Departures in Midpoint Enhancement Cases - FY2013**


Compliance, while generally lower in midpoint enhancement cases than in other cases, varies across the different types and combinations of midpoint enhancements (Figure 11). In FY2013, as in previous years, enhancements for a Category II prior record generated the highest rate of compliance of all midpoint enhancements (73%). Compliance in cases receiving enhancements for a Category I prior record was significantly lower (62%). Compliance for enhancement cases involving a current violent offense, but no prior record of violence, was 69%. Cases involving a combination of a current violent offense and a Category II prior record yielded a compliance rate of 63%, 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%.

Because of 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 three out of every four midpoint enhancement cases. The most frequently cited reasons for departure include the acceptance of a plea agreement, judicial discretion, the defendant's cooperation with law enforcement, utilization of sentencing alternatives, and the defendant's minimal prior record.

**Figure 11**

**Compliance by Type of Midpoint Enhancement - FY2013**

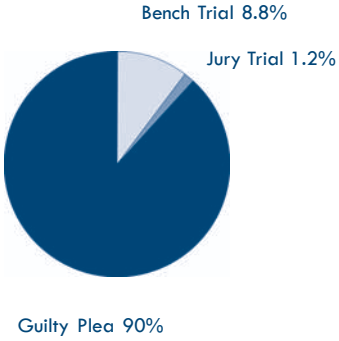
| Midpoint Enhancement | Compliance | Mitigation | Aggravation | Number of Cases |
|---|---|---|---|---|
| None | 81.7% | 7.3% | 11.0% | 18,754 |
| Category I | 62.3% | 34.6% | 3.1% | 818 |
| Category II | 73.3% | 21.2% | 5.5% | 2,524 |
| Instant Offense | 69.4% | 19.9% | 10.8% | 1,309 |
| Instant and Category I | 58.0% | 36.3% | 5.8% | 226 |
| Instant and Category II | 63.1% | 27.1% | 9.8% | 539 |
| Total | 78.9% | 11.1% | 10.1% | 24,170 |

## Juries and the Sentencing Guidelines

There are three methods by which Virginia's criminal cases are adjudicated: guilty pleas, bench trials, and jury trials. Felony cases in circuit courts are overwhelmingly resolved through guilty pleas from defendants, or plea agreements between defendants and the Commonwealth. During the last fiscal year, 90% of guideline cases were sentenced following guilty pleas (Figure 12). Adjudication by a judge in a bench trial accounted for less than 9% of all felony guidelines cases sentenced. During FY2013, 1.2% of cases involved jury trials. In a small number of cases, 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.

**Figure 12**

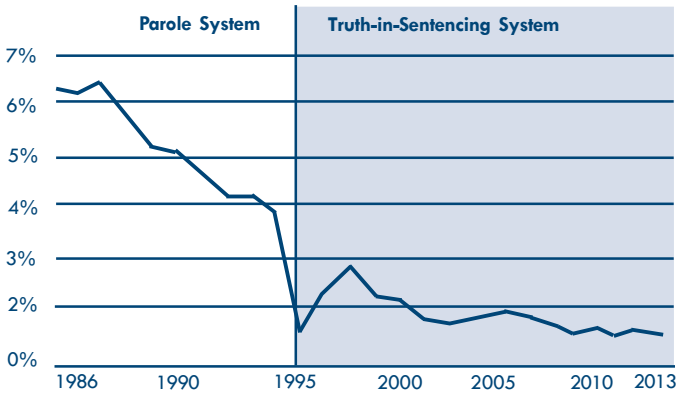
**Percentage of Cases Received by Method of Adjudication, FY2013**




Since FY1986, there has been a generally declining trend in the percentage of jury trials among felony convictions in circuit courts (Figure 13). 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 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.

**Figure 13**

**Percent of Felony Convictions Adjudicated by Juries FY1986-FY2013**
**Parole System v. Truth-in-Sentencing (No Parole) System**

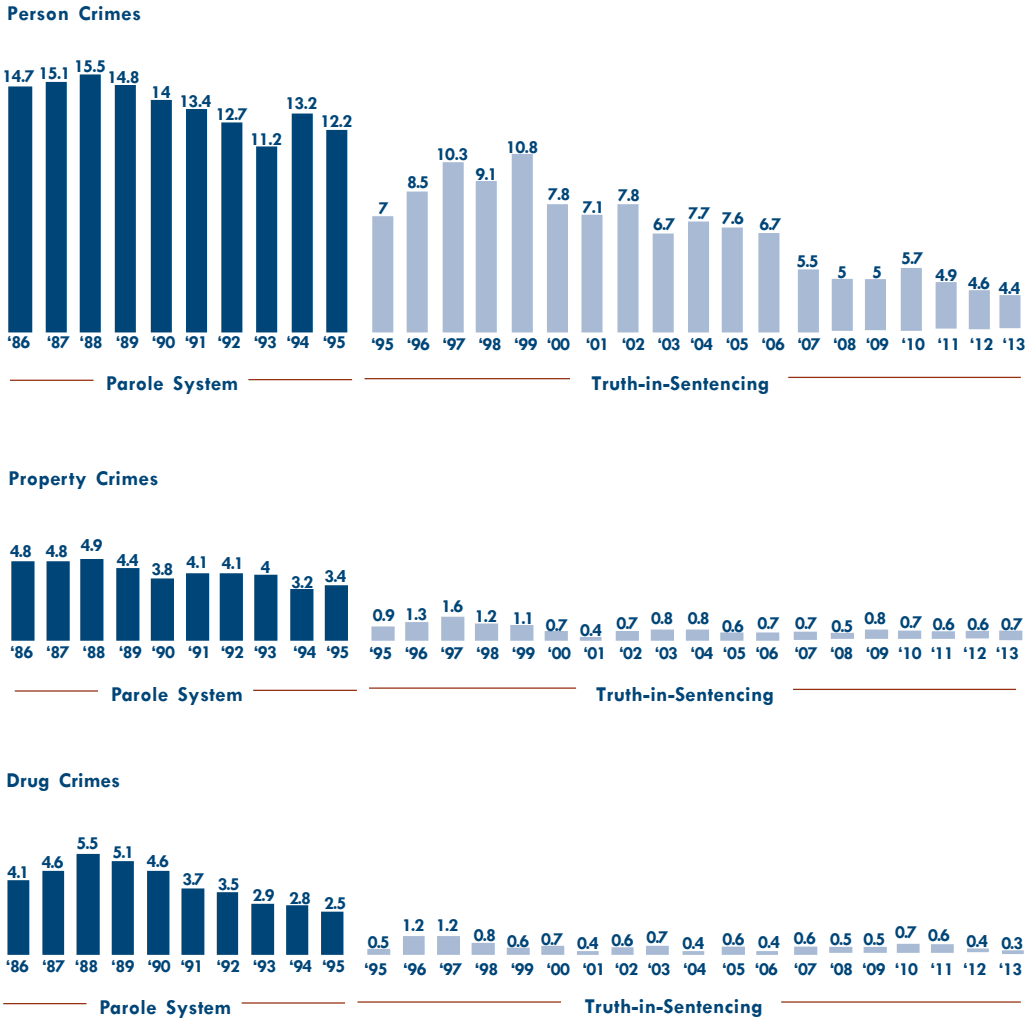



Among the early cases subjected to the new truth-in-sentencing provisions, implemented during the last six months of FY1995, jury adjudications sank to just over 1%. During the first complete fiscal year of truth-in-sentencing (FY1996), just over 2% of the cases were resolved by jury trials, which was 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% to 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 14). However, with the implementation of bifurcated trials and truth-in-sentencing provisions, the percent of convictions decided by juries dropped dramatically for all crime types. Since FY2007, the rate of jury convictions for person crimes has been between 4% and 6%, the lowest rates since truth-in-sentencing was enacted. The percent of felony convictions resulting from jury trials for property and drug crimes has declined to less than 1% under truth-in-sentencing.

**Figure 14**

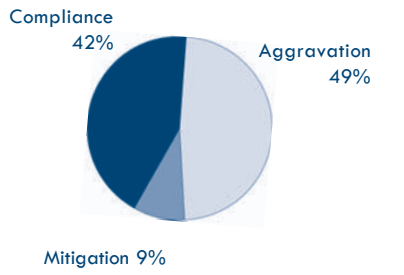
**Percent of Felony Convictions Adjudicated by Juries FY1986-FY2013**
**Parole System v. Truth-in-Sentencing (No Parole) System**



In FY2013, the Commission received 293 cases adjudicated by juries. While the compliance rate for cases adjudicated by a judge or resolved by a guilty plea was at 79% during the fiscal year, sentences recommended by juries concurred with the guidelines only 42% of the time (Figure 15). In fact, jury sentences were more likely to fall above the guidelines than within the recommended range (50%). This pattern of jury sentencing vis-à-vis the guidelines has been consistent since the truth-in-sentencing guidelines became effective in 1995. By law, however, juries are not allowed to receive any information regarding the sentencing guidelines.

**Figure 15**

**Sentencing Guidelines Compliance in Jury and Non-Jury Cases, FY2013**




In jury cases in which the final sentence fell short of the guidelines, it did so by a median value of 30 months (Figure 16). 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 39 months.

In FY2013, nine of the jury cases 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 FY2013, judges modified 17% of jury sentences.

**Figure 16**

**Median Length of Durational Departures in Jury Cases, FY2013**

## Compliance and Nonviolent Offender Risk Assessment

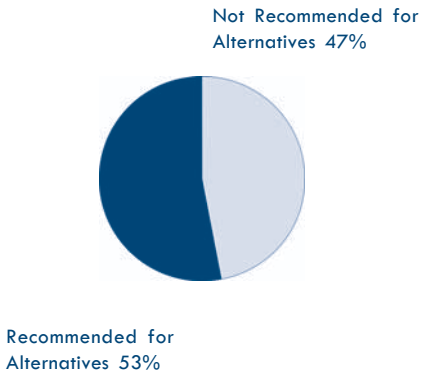
In 1994, as part of the reform legislation that instituted truth-in-sentencing, the General Assembly directed the Commission to study the feasibility of using an empirically-based risk assessment instrument to select 25% of the lowest risk, incarceration-bound, drug and property offenders for placement 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 200. 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.

Nearly two-thirds of all guidelines received by the Commission for FY2013 were for nonviolent offenses. However, only 41% 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 2,523 nonviolent offense cases for which a risk assessment instrument was not completed and submitted to the Commission.

Among the eligible offenders in FY2013 for whom a risk assessment form was received (6,568 cases), 53% were recommended for an alternative sanction by the risk assessment instrument (Figure 17). A large portion of offenders recommended for an alternative sanction through risk assessment were given some form of alternative punishment by the judge. In FY2013, 42% of offenders recommended for an alternative were sentenced to an alternative punishment option.

**Figure 17**

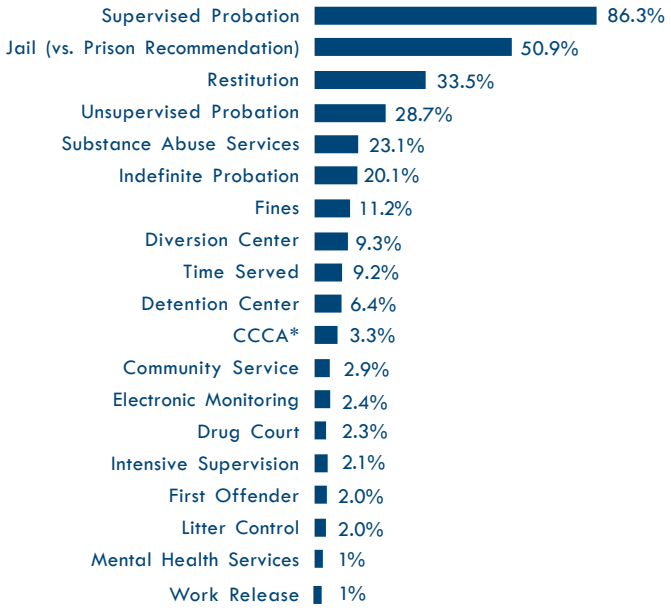
**Percentage of Eligible Nonviolent Risk Assessment Cases Recommended for Alternatives, FY2013 (6,568 cases)**



Among offenders recommended for and receiving an alternative sanction through risk assessment, judges used supervised probation more often than any other option (Figure 18). In addition, in over 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 prison sentence recommended by the traditional guidelines range. Other frequent sanctions utilized were: restitution (34%), unsupervised probation (29%), substance abuse services (23%), and indefinite probation (20%). The Department of Corrections' Diversion and Detention Center programs were used in 9% and 6% of the cases, respectively. Other alternatives/sanctions included: fines, time served, programs under the Comprehensive Community Corrections Act (CCCA), community service, electronic monitoring, drug court, intensive supervision, first offender status under § 18.2-251, work release, litter control, mental health services and work release.

**Figure 18**

**Types of Alternative Sanctions Imposed - FY2013**




** Any program established through the Comprehensive Community Corrections Act*
*These percentages do not sum to 100% because multiple sanctions may be imposed in each case.*

When a nonviolent offender is recommended for an alternative sanction using the risk assessment instrument, a judge is considered to be in compliance with the guidelines if he or she chooses to sentence the defendant to a term within the traditional incarceration period recommended by the guidelines or if he or she chooses to sentence the offender to an alternative form of punishment. For drug offenders eligible for risk assessment, the overall guidelines compliance rate is 85%, but a portion of this compliance reflects the use of an alternative punishment option as recommended by the risk assessment tool (Figure 19). In 28% 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 88%. In 37% 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 86%. Judges used an alternative, as recommended by the risk assessment tool, in 10% of larceny cases. The lower use of alternatives for larceny offenders is primarily because larceny offenders are recommended for alternatives at a lower rate than drug and fraud offenders. The National Center for State Courts, in its evaluation of Virginia's risk assessment 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 19**

**Compliance Rates for Nonviolent Offenders Eligible for Risk Assessment - FY2013**

| | Compliance | | | | | |
|---|---|---|---|---|---|---|
| | Mitigation | Adjusted Range | Traditional Range | Aggravation | Number of Cases | Overall Compliance |
| Drug | 6.7% | 27.5% | 57.1% | 8.7% | 3,069 | 84.6% |
| Fraud | 7.5% | 36.9% | 51.2% | 4.4% | 1,007 | 88.1% |
| Larceny | 7.7% | 9.8% | 76.3% | 6.1% | 2,492 | 86.1% |
| **Overall** | **7.2%** | **22.2%** | **63.5%** | **7.1%** | **6,568** | 85.7% |

## 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, that could be integrated into the state's sentencing guidelines system. Such a risk assessment instrument could be used as a tool to identify offenders who, as a group, represent the greatest risk for committing a new offense once released back into the community. The Commission conducted an extensive study of felony sex offenders convicted in Virginia's circuit courts and developed an empirical risk assessment tool based on the risk that an offender would be rearrested for a new sex offense or other crime against a person.

Effectively, risk assessment means developing profiles or composites based on overall group outcomes. Groups are defined by having 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 produces overall 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.

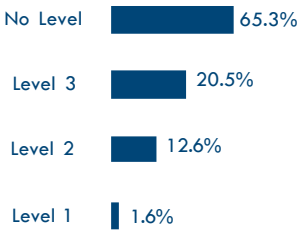
- For offenders scoring 44 or more, the upper end of the guidelines range is increased by 300% (Level 1).
- For offenders scoring 34 through 43 points, the upper end of the guidelines range is increased by 100% (Level 2).
- For offenders scoring 28 through 33 points, the upper end of the guidelines range is increased by 50%. (Level 3)

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

During FY2013, there were 415 offenders convicted of an offense covered by the sexual assault guidelines (this group excludes offenders convicted of rape, forcible sodomy, or object penetration). However, the sex offender risk assessment instrument does not apply to certain guideline offenses, such as bestiality, bigamy, non-forcible sodomy, prostitution, child pornography, and online solicitation of a minor (220 of the 593 cases in FY2013). Another seven cases were missing the risk assessment or had a detectable error. Of the remaining 366 sexual assault cases for which the risk assessment was applicable, the majority (65%) were not assigned a level of risk by the sex offender risk assessment instrument (Figure 20). Approximately 21% of applicable sexual assault guidelines cases resulted in a Level 3 risk classification, with an additional 13% assigned to Level 2. Just 1.6% of offenders reached the highest risk category of Level 1.

**Figure 20**

**Sex Offender Risk Assessment Levels for Sexual Assault Offenders, FY2013**




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 the six sexual assault offenders reaching Level 1 risk during the past fiscal year, five of them were given sentences within the traditional guidelines range and one below. (Figure 21). Judges used the extended guidelines range in 26% of Level 2 cases and 14% 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 (61% compliance rate) and were more likely to receive a sentence that was an upward departure from the guidelines (29% aggravation rate).

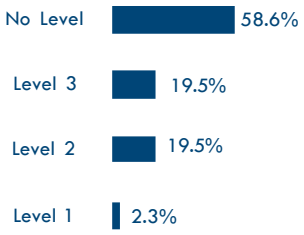
**Figure 21**

**Other Sexual Assault Compliance Rates By Risk Assessment Level, FY2013**

| | Compliance | | | | | |
|---|---|---|---|---|---|---|
| | Mitigation | Traditional Range | Adjusted Range | Aggravation | Number of Cases | Overall Compliance |
| Level 1 | 16.7% | 83.3% | 0.0% | 0.0% | 6 | 83.3% |
| Level 2 | 12.8% | 59.6% | 25.5% | 2.1% | 47 | 85.1% |
| Level 3 | 9.7% | 70.8% | 13.9% | 5.6% | 72 | 84.7% |
| No Level | 10.4% | 61.0% | 0.0% | 28.6% | 241 | 61% |
| Overall | 10.7% | 63.1% | 6.0% | 20.2% | 366 | 69.1% |

**Figure 22**

**Sex Offender Risk Assessment Levels for Rape Offenders, FY2013**

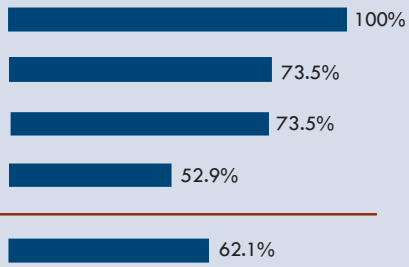



In FY2013, there were 174 offenders convicted of offenses covered by the rape guidelines (which cover the crimes of rape, forcible sodomy, and object penetration). Among offenders convicted of these crimes, over one-half (59%) were not assigned a risk level by the Commission's risk assessment instrument (Figure 22). Approximately 20% of these cases resulted in a Level 3 adjustment - a 50% increase in the upper end of the traditional guidelines range recommendation. An additional 20% received a Level 2 adjustment (100% increase). The most extreme adjustment (300%) affected about 2% of rape guidelines cases. One of the four rape offenders reaching the Level 1 risk group was sentenced within the extended high end of the range (Figure 23). As shown below, 18% 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 only occasionally sentenced Level 1, 2 or 3 offenders above the expanded guidelines range.

**Figure 23**

**Rape Compliance Rates By Risk Assessment Level, FY2013**

| | Compliance | | | | |
|---|---|---|---|---|---|
| | Mitigation | Traditional Range | Adjusted Range | Aggravation | Number of Cases |
| Level 1 | 0.0% | 75.0% | 25.0% | 0.0% | 4 |
| Level 2 | 20.6% | 55.9% | 17.6% | 5.9% | 34 |
| Level 3 | 14.7% | 58.8% | 14.7% | 11.8% | 34 |
| No Level | 26.5% | 52.9% | --- | 20.6% | 102 |
| Overall | 22.4% | 55.2% | 6.9% | 15.5% | 174 |



## Sentencing Revocation Reports (SRRs)

The most complete resource regarding revocations of community supervision in Virginia is the Sentencing Commission's Community Corrections Revocations Data System, also known as the Sentencing Revocation Report (SRR) database. First implemented in 1997 with assistance from the Department of Corrections (DOC), the SRR is a simple form designed to capture the reasons for, and the outcomes of, community supervision violation hearings. The probation officer (or Commonwealth's attorney) completes the first part of the form, which includes the offender's identifying information and checkboxes indicating the reasons why a show cause or revocation hearing has been requested. The checkboxes are based on the list of eleven conditions for community supervision established for every offender, but special supervision conditions imposed by the court also can be recorded. Following the violation hearing, the judge completes the remainder of the form with the revocation decision and any sanction ordered in the case. The completed form is submitted to the Commission, where the information is automated. A revised SRR form was developed and implemented in 2004 to serve as a companion to the new probation violation sentencing guidelines introduced that year.

In FY2013, there were 11,510 felony violations of probation, suspended sentences, or good behavior for which a Sentencing Revocation Report (SRR) was submitted to the Commission by September of this year. The SRRs received include cases in which the court found the defendant in violation, cases that the court decided to take under advisement until a later date, and cases in which the court did not find the defendant in violation. The circuits submitting the largest number of SRRs during the time period were Circuit 4 (Norfolk), Circuit 29 (Buchanan area), and Circuit 15 (Fredericksburg area). Circuit 11 (Petersburg area), Circuit 6 (Sussex County area), and Circuit 17 (Arlington area) submitted the fewest SRRs during the time period (Figure 24).

In 2003, the General Assembly directed the Commission to develop, with due regard for public safety, discretionary sentencing guidelines for felony offenders who are determined by the court to be in violation of their probation supervision for reasons other than a new criminal conviction (Chapter 1042 of the Acts of Assembly 2003). Often, these offenders are referred to as "technical violators." In determining the guidelines, the Commission was to examine historical judicial sanctioning practices in revocation hearings.

Early use of the probation violation guidelines, which took effect on July 1, 2004, indicated that the guidelines needed further refinement to better reflect current judicial sentencing patterns in the punishment of supervision violators. Judicial compliance with the first edition of the probation violation guidelines was lower than expected, with only 37% of the violators being sentenced within the range recommended by the new guidelines. Therefore, the Commission's 2004 Annual Report recommended several adjustments to the probation violation guidelines. The proposed changes were accepted by the General Assembly and the second edition of the probation violation guidelines took effect on July 1, 2005. These changes yielded an improved compliance rate of 48% for fiscal year (FY) 2006.

**Figure 24**

**Number and Percentage of Cases Received by Circuit - FY2013***

| Circuit | Number | Percent |
|---|---|---|
| 1 | 650 | 5.6 |
| 2 | 203 | 1.8 |
| 3 | 324 | 2.8 |
| 4 | 836 | 7.3 |
| 5 | 381 | 3.3 |
| 6 | 112 | 1 |
| 7 | 227 | 2 |
| 8 | 372 | 3.2 |
| 9 | 316 | 2.7 |
| 10 | 220 | 1.9 |
| 11 | 61 | 0.5 |
| 12 | 318 | 2.8 |
| 13 | 301 | 2.6 |
| 14 | 439 | 3.8 |
| 15 | 661 | 5.7 |
| 16 | 267 | 2.3 |
| 17 | 139 | 1.2 |
| 18 | 182 | 1.6 |
| 19 | 568 | 4.9 |
| 20 | 207 | 1.8 |
| 21 | 209 | 1.8 |
| 22 | 628 | 5.5 |
| 23 | 348 | 3 |
| 24 | 423 | 3.7 |
| 25 | 375 | 3.3 |
| 26 | 652 | 5.7 |
| 27 | 543 | 4.7 |
| 28 | 372 | 3.2 |
| 29 | 755 | 6.6 |
| 30 | 148 | 1.3 |
| 31 | 266 | 2.3 |
| **Total** | **11,503** | **100.0%** |

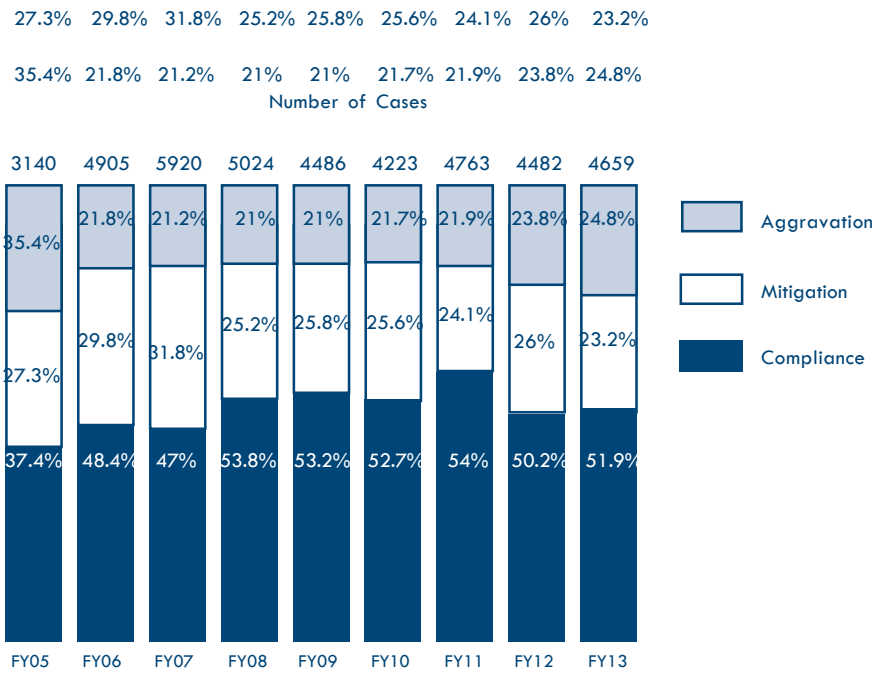
**7 cases were missing a circuit number*

Compliance with the revised guidelines, and ongoing feedback from judges, suggested that further refinement could improve their utility as a benchmark for judges. Therefore, the Commission's 2006 Annual Report recommended additional adjustments to the probation violation guidelines. The majority of the changes proposed in the 2006 Annual Report affected the Section A worksheet. The score on Section A of the probation violation guidelines determines whether an offender will be recommended for probation with no active term of incarceration to serve, or whether the offender will be referred to the Section C worksheet, for a jail or prison recommendation. Changes to the Section A worksheet included revising scores for existing factors, deleting certain factors and replacing them with others (e.g., "Previous Adult Probation Violation Events" replaced "Previous Capias/Revocation Requests"), and adding new factors (e.g., "Original Disposition was Incarceration"). The only change to the Section C worksheet (the sentence length recommendation) was an adjustment to the point value assigned to offenders who violated their sex offender restrictions. The proposed changes outlined in the 2006 Annual Report were accepted by the General Assembly and became effective for technical probation violators sentenced on July 1, 2007 and after. This third version of the probation violation guidelines has resulted in consistently higher compliance rates than previous versions of the guidelines.

Figure 25 illustrates compliance patterns over the years and the impact revisions to the guidelines had on compliance rates. Compliance has hovered above 50% since FY2008 and this pattern continues in FY2013. The remainder of this section will focus on violation cases for offenders sentenced between July 1, 2012 and June 30, 2013, fiscal year 2013.

**Figure 25**

**Compliance by Year - FY2005 - FY2013**




*Note: Excludes cases missing data, incomplete or other guidelines issues*

For FY2013, the Commission received 11,510 SRRs. Of the total, 5,874 cases involved a new law violation. In these cases, the judge found the defendant guilty of violating Condition 1 of the Department of Corrections' Conditions of Probation (obey all federal, state, and local laws and ordinances). In 5,331 cases, the offender was found in violation of other conditions not related to a new law violation. For these "technical violators," the probation violation guidelines should be completed and submitted to the court. In a number of cases, the offender was not found in violation of any condition (220 cases) or the type of violation was not identified on the SRR form (85 cases).

Figure 26 compares new law violations with "technical violations" in FY2013 and previous years. Since FY2009 the number of revocations based on new law violations has exceeded the number of revocations based on violations of other conditions. Changes in policies for supervising offenders who violate conditions of probation that do not involve new convictions and procedures that require judges to receive and review the SRRs and probation violation guidelines have impacted the number and types of revocations submitted to the court. This trend continues in FY2013 with the number of new law violations exceeding the number of technical violations reviewed by the court.

Upon further examination of the 5,331 technical violator cases, it was found that 672 could not be included in the analysis of judicial compliance with the probation violation guidelines. There were several reasons for excluding these cases from compliance analysis. Cases were excluded if the guidelines were not applicable (the case involved a parole-eligible offense, a first-offender violation, a misdemeanor original offense, or an offender who was not on supervised probation), if the guidelines forms were incomplete, or if outdated forms were prepared. The following analysis of compliance with the probation violation guidelines will focus on the remaining 4,659 technical violator cases heard in Virginia's circuit courts between July 2012 and June 2013.

**Figure 26**

**Sentencing Revocation Reports Received for Technical and New Law Violations FY1998 - FY2013**

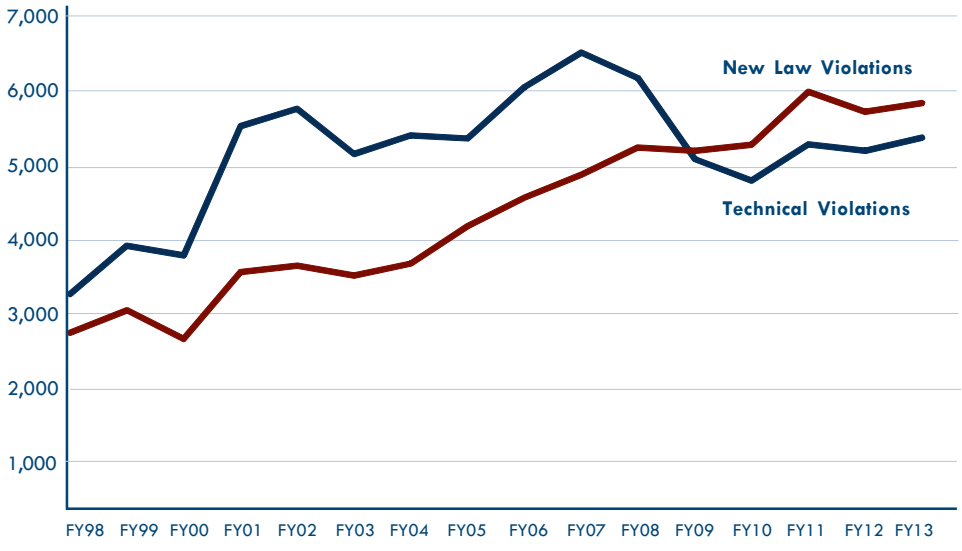


**Figure 27**

**Probation Violation Guidelines Worksheets Received by Type of Most Serious Original Offense - FY2013 N=4,659**

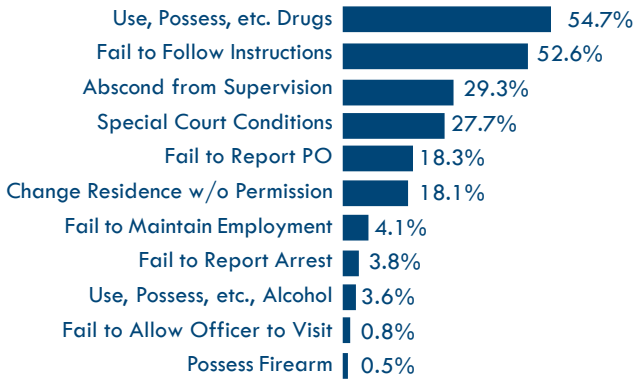
| Original Offense Type | Percent Received |
|---|---|
| Property | 44.5% |
| Drug | 33.3% |
| Person | 15.3% |
| Traffic | 4.5% |
| Other | 2.3% |
| Total | 100.0% |

Of the 4,659 cases in which offenders were found to be in violation of their probation for reasons other than a new law violation, approximately 45% were under supervision for a felony property offense (Figure 27). This represents the most serious offense for which the offender was on probation. Another 33% were under supervision for a felony drug conviction. Offenders who were on probation for a crime against a person (most serious original offense) made up a smaller portion (15%) of those found in violation during FY2013.

Examining the 4,659 violation cases (excluding those with a new law violation) reveals that over half (55%) of the offenders were cited for using, possessing, or distributing a controlled substance (Condition 8 of the DOC Conditions of Probation). Violations of Condition 8 may include a positive test (urinalysis, etc.) for a controlled substance or a signed admission. More than half (53%) of the offenders were cited for failing to follow instructions given by the probation officer. Other frequently cited violations included absconding from supervision (29%), failing to report to the probation officer in person or by telephone when instructed (18%) and changing residence or traveling outside of designated areas without permission (18%). Offenders were often cited for failing to follow special conditions imposed by the court, including: failing to pay court costs and restitution, failing to comply with court-ordered substance abuse treatment, or failing to successfully complete alternatives, such as a Detention Center or Diversion Center program in more than one-fourth of the violation cases (28%). It is important to note that defendants may be, and typically are, cited for violating more than one condition of their probation (Figure 28).

**Figure 28**

**Violation Conditions Cited by Probation Officers, Excluding New Law Violations - FY2013 N=4,659**



The overall compliance rate summarizes the extent to which Virginia's judges concur with recommendations provided by the probation violation guidelines, both in type of disposition and in length of incarceration. In FY2013, the overall rate of compliance with the probation violation guidelines was 52%, which is comparable to compliance rates since FY2008 and significantly higher than the compliance rate of 37% for the first edition of the guidelines (Figure 29). The aggravation rate, or the rate at which judges sentence offenders to sanctions more severe than the guidelines recommend, was 25% during FY2013. The mitigation rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 23% (Figure 29).

Figure 30 illustrates judicial concurrence with the type of disposition recommended by the probation violation guidelines for FY2013. There are three general categories of sanctions recommended by the probation violation guidelines: probation/no incarceration, a jail sentence up to twelve months, or a prison sentence of one year or more. Data for the time period reveal that judges agree with the type of sanction recommended by the probation violation guidelines in 58% of the cases. When departing from the dispositional recommendation, judges were more likely to sentence below the guidelines recommendation than above it. Consistent with the traditional sentencing guidelines, sentences to the Detention Center and Diversion Center programs are defined as incarceration sanctions under the probation violation guidelines and are counted as seven months of confinement (per changes to the program effective July 1, 2007).

**Figure 29**

**Overall Probation Violation Guidelines Compliance and Direction of Departures - FY2013**
**N=4,659**

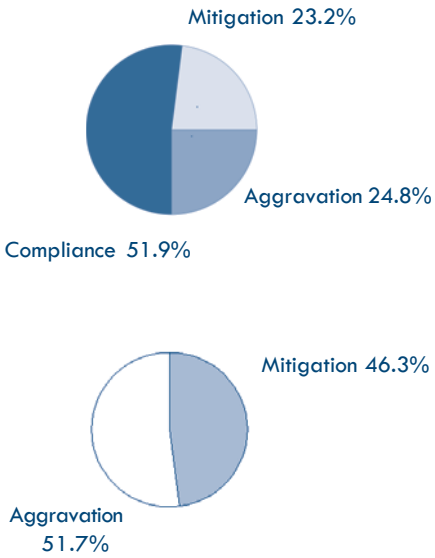
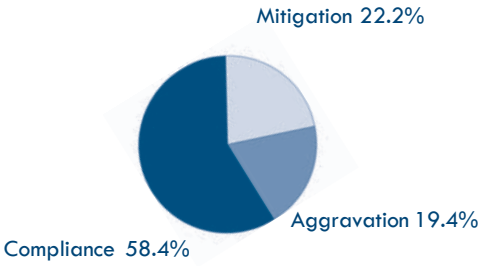



**Figure 30**

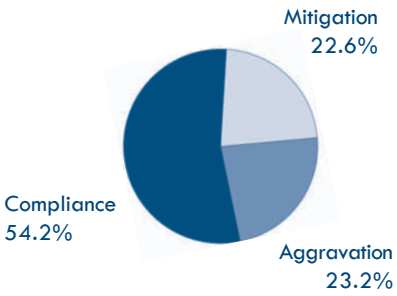
**Probation Violation Guidelines Dispositional Compliance**
**FY2013**



Another facet of compliance is durational compliance. Durational compliance is defined as the rate at which judges sentence offenders to terms of incarceration that fall within the recommended guidelines range. Durational compliance analysis only considers cases for which the guidelines recommended an active term of incarceration and the offender received an incarceration sanction consisting of at least one day in jail. Data reveal that durational compliance for FY2013 was approximately 54% (Figure 31). For cases not in durational compliance, aggravations were just as likely as mitigations.

**Figure 31**

**Probation Violation Guidelines Durational Compliance* FY2013**




**Compliance in cases that are recommended for, and receive, an active jail or prison sentence.*

When judges sentenced offenders to incarceration, but to an amount less than the recommended time, offenders were given "effective" sentences (imposed sentences less any suspended time) short of the guidelines range by a median value of six months. For offenders receiving longer than recommended incarceration sentences, the effective sentence exceeded the guidelines range by a median value of nine months. Thus, durational departures from the guidelines are typically less than one year above or below the recommended range.

Prior to July 1, 2010, completion of the Probation Violation Guidelines was not required by statute or other any provision of law. However, the 2010-2012 biennium budget and subsequent budgets passed by the General Assembly specify that a sentencing revocation report (SRR) and, if applicable, the Probation Violation Guidelines, must be presented to the court and reviewed by the judge for any violation hearing conducted pursuant to § 19.2-306 (this requirement can be found in Item 42 of Chapter 806 of the 2013 Acts of Assembly). Similar to the traditional felony sentencing guidelines, sentencing in accordance with the recommendations of the Probation Violation Guidelines is voluntary. The approved budget language states, however, that in cases in which the Probation Violation Guidelines are required and the judge imposes a sentence greater than or less than the guidelines recommendation, the court must file with the record of the case a written explanation for the departure. The requirements pertaining to the Probation Violation Guidelines spelled out in the latest budget parallel existing statutory provisions governing the use of sentencing guidelines for felony offenses.

Before July 1, 2010, circuit court judges were not required to provide a written reason for departing from the Probation Violation Guidelines. Because the opinions of the judiciary, as reflected in their departure reasons, are of critical importance when revisions to the guidelines are considered, the Commission had requested that judges enter departure reasons on the Probation Violation Guidelines form. Many judges responded to the Commission's request. Ultimately, the types of adjustments to the Probation Violation Guidelines that would allow the guidelines to more closely reflect judicial sentencing practices across the Commonwealth are largely dependent upon the judges' written reasons for departure.

According to Probation Violation Guidelines data for FY2013, 52% of the cases resulted in sentences that fell within the recommended guidelines range. With judges departing from these guidelines at such a high rate, written departure reasons are an integral part of understanding judicial sentencing decisions. An analysis of the 1,082 mitigation cases revealed that over half (55%) included a departure reason. For the mitigation cases in which departure reasons were provided, judges were most likely to cite the utilization of an alternative punishment option (e.g., Detention or Diversion Center programs, or other treatment options), the involvement of a plea agreement, judicial discretion based on the facts of the case, the minimal circumstances involving the violation or the recommendation of the attorney for the Commonwealth.

Examining the 1,157 aggravation cases, the Commission found that more than half (55%) included a departure reason. When a departure reason was provided in aggravation cases, judges were most likely to cite multiple revocations in the defendant's prior record, the defendant's poor potential for rehabilitation, the defendant's failure to follow instructions, issues with the sentencing guidelines recommendation, or the defendant's need for rehabilitation offered by a jail or the Department of Corrections.

FY2013 data suggest that judicial concurrence with probation violation guidelines recommendations remains above 50% since the changes implemented July 1, 2007. As with the felony sentencing guidelines first implemented in 1991, the development of useful sentencing tools for judges to deal with probation violators is be an iterative process, with improvements made over several years. Feedback from judges, especially through written departure reasons, is of critical importance to the process of continuing to improve the guidelines, thereby making them a more useful tool for judges in formulating sanctions in probation violation hearings.

# IMMEDIATE SANCTION PROBATION PILOT PROGRAM


## Introduction

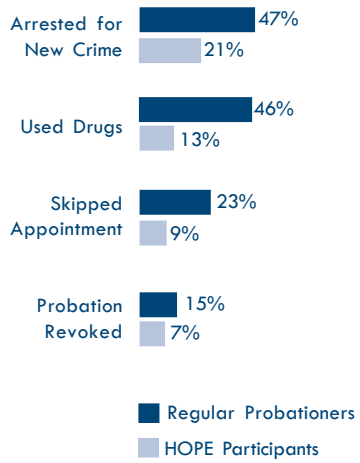
In 2004, Judge Steven Alm of Hawaii's First Circuit established the Hawaii Opportunity Probation with Enforcement (HOPE) program. The HOPE program was created with the goal of enhancing public safety and improving compliance with the rules and conditions of probation among offenders being supervised in the community. Targeting higher risk probationers, the HOPE program applies swift and certain, but mild, sanctions for each violation of probation. The approach was markedly different from probation as it was being conducted in Hawaii at that time.

According to the National Institute of Justice, the HOPE approach is grounded in research which suggests that deferred and low-probability threats of severe punishment are less effective in changing behavior than immediate and high-probability threats of mild punishment (see, e.g., Grasmick & Bryjak, 1980; Nichols & Ross, 1990; Paternoster, 1989). In other words, the certainty of a punishment, even if it is moderate, has a stronger deterrent effect than the fear of a more severe penalty if there is a possibility of avoiding the punishment altogether. Furthermore, punishment that is both swiftly and consistently applied sends a strong message to probationers about personal responsibility and accountability, and the immediacy is a vital tool in shaping behavior.

**Figure 32**

**Hawaii Opportunity Probation with Enforcement (HOPE) Program Evaluation Outcomes**

**One Year Follow Up**




Source: Hawken, A. & Kleiman, M. (2009). Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE. www.ncjrs.govpdffiles1/nij/grants/229023.pdf

In 2009, a federally-funded evaluation of HOPE was completed using a randomized control trial, which is considered to be the most rigorous form of evaluation (this method is frequently used in clinical trials in medicine). The study found a significant reduction in technical violations and drug use among participants, as well as lower recidivism rates, compared to similar offenders supervised on regular probation (Figure 32). In a separate study, researchers found that HOPE participants and regular probationers served about the same number of jail days for violations, but HOPE participants used significantly fewer prison beds than regular probationers. Evaluators observed that most HOPE participants successfully changed their behavior, leading to increased compliance and lower recidivism.

After the release of the HOPE evaluation in 2009, interest in Hawaii's swift-and-certain sanctions model spread. In 2011, the Bureau of Justice Assistance and the National Institute of Justice partnered to provide grant funding to four jurisdictions to replicate and evaluate Hawaii's program model. As of September 2013, there were swift-and-certain sanctions programs operating in 18 states across the country. While many are still in the implementation or evaluation phase, preliminary reports from a number of programs are showing results similar to HOPE (see, e.g., Hawken & Kleiman, 2012; Carns & Martin, 2011; Loudenburg et al., 2012).

Policymakers in Virginia also became interested in Hawaii's approach to dealing with probation violators. In 2010, the General Assembly adopted legislation authorizing the creation of up to two Immediate Sanction Probation programs with key elements modeled after the HOPE program (see § 19.2-303.5 of the *Code of Virginia*). The 2010 legislation did not designate a particular agency to lead or coordinate the effort. Although supporting legislation existed, an Immediate Sanction Probation program had not been formally established by 2012. Nonetheless, many Virginia officials remained interested in launching such a program in the Commonwealth.

**CHAPTER 3 of the 2012 Acts of Assembly (Special Session I)**
**Item 50**

Virginia Criminal Sentencing Commission

B.1. Notwithstanding the provisions of § 19.2-303.5, Code of Virginia, the provisions of that section shall not expire on July 1, 2012, but shall continue in effect until July 1, 2014, and may be implemented in up to four sites.

2. The Virginia Criminal Sentencing Commission, with the concurrence of the chief judge of the circuit court and the Commonwealth's attorney of the locality, shall designate each immediate sanction probation program site. The Virginia Criminal Sentencing Commission shall develop guidelines and procedures for implementing the program, administer the program, and evaluate the results of the program. As part of its administration of the program, the commission shall designate a standard, validated substance abuse assessment instrument to be used by probation and parole districts to assess probationers subject to the immediate sanction probation program. The commission shall also determine outcome measures and collect data for evaluation of the results of the program at the designated sites. The commission shall present a report on the implementation of the immediate sanction probation program, including preliminary recidivism results to the Chief Justice, Governor, and the Chairmen of the House and Senate Courts of Justice Committees, the House Appropriations Committee, and the Senate Finance Committee by October 1, 2013.

(Passed by the 2012 General Assembly)

In May 2012, the General Assembly adopted budget language to extend the provisions of § 19.2-303.5 and to authorize the creation of up to four Immediate Sanction Probation programs (Item 50 of Chapter 3 of the 2012 Acts of Assembly, Special Session I). This provision directs the Virginia Criminal Sentencing Commission to select up to four jurisdictions to serve as pilot sites, with the concurrence of the Chief Judge and the Commonwealth's Attorney in each locality. It further charges the Sentencing Commission with developing guidelines and procedures for the program, administering the program, and evaluating the results. As supplemental funding was not included in the 2012-2014 budget, the pilot project is being implemented within existing agency budgets and local resources.

Per § 19.2-303.5, the Immediate Sanction Probation program is designed to target nonviolent offenders who violate the conditions of supervised probation but have not been charged with a new crime. These violations, often referred to as "technical violations," include using illicit drugs, failing to report as required, and failing to follow the probation officer's instructions. As in Hawaii, the goal is to reduce recidivism and improve compliance with the conditions of probation by applying swift and certain, but mild, sanctions for each violation. Improving compliance with probation rules and lowering recidivism rates reduces the likelihood that offenders ultimately will be sentenced to prison or lengthy jail terms. The Department of Corrections (DOC) reports that, as of May 31, 2013, the state inmate population included 1,340 technical probation violators. In addition, DOC reports that 40% of the offenders sentenced to prison in FY2012 had been on probation at the time they committed a new offense. Reducing the number of probation violators who ultimately end up in prison, at a cost of $25,000 to $30,000 a year, allows the most expensive correctional resources to be reserved for violent and dangerous offenders. According to DOC, the average cost of supervising an offender in the community is $1,355 per year. While the cost of Immediate Sanction Probation will exceed the average, due to the intensive nature of monitoring and drug testing for participants when they enter the program, the cost is still considerably less than the cost of prison.

**§ 19.2-303.5. (Expires July 1, 2014) Immediate sanction probation programs.**

There may be established in the Commonwealth up to two immediate sanction probation programs in accordance with the following provisions:

1. As a condition of a sentence suspended pursuant to § 19.2-303, a court may order a defendant convicted of a crime, other than a violent crime as defined in subsection C of § 17.1-805, to participate in an immediate sanction probation program.

2. If a participating offender fails to comply with any term or condition of his probation and the alleged probation violation is not that the offender committed a new crime or infraction, (i) his probation officer shall immediately issue a noncompliance letter pursuant to § 53.1-149 authorizing his arrest at any location in the Commonwealth and (ii) his probation violation hearing shall take priority on the court's docket. The probation officer may, in any event, exercise any other lawful authority he may have with respect to the offender.

3. When a participating offender is arrested pursuant to subdivision 2, the court shall conduct an immediate sanction hearing unless (i) the alleged probation violation is that the offender committed a new crime or infraction; (ii) the alleged probation violation is that the offender absconded for more than seven days; or (iii) the offender, attorney for the Commonwealth, or the court objects to such immediate sanction hearing. If the court conducts an immediate sanction hearing, it shall proceed pursuant to subdivision 4. Otherwise, the court shall proceed pursuant to § 19.2-306.

4. At the immediate sanction hearing, the court shall receive the noncompliance letter, which shall be admissible as evidence, and may receive other evidence. If the court finds good cause to believe that the offender has violated the terms or conditions of his probation, it may (i) revoke no more than 30 days of the previously suspended sentence and (ii) continue or modify any existing terms and conditions of probation. If the court does not modify the terms and conditions of probation or remove the defendant from the program, the previously ordered terms and conditions of probation shall continue to apply. The court may remove the offender from the immediate sanction probation program at any time.

5. The provisions of this section shall expire on July 1, 2012.

(Originally passed by the 2010 General Assembly and extended by the 2012 General Assembly)

## Key Features and Stakeholders in the Swift-and-Certain Sanctions Model

The swift-and-certain sanctions model has several key features. Operational details may vary from program to program, but certain components are central to the swift-and-certain sanctions formula. These are:

- Higher risk offenders are identified for participation in the program.
- The judge gives an official warning that probation terms will be strictly enforced and that each violation will result in jail time.
- Program participants are closely monitored to ensure that there are no violations.
- New participants undergo frequent, unannounced drug testing (4 to 6 times per month for at least the first month). For offenders testing negative, frequency of testing is gradually reduced.
- Participants who violate the rules or conditions of probation are immediately arrested and brought to jail.
- The court establishes an expedited process for dealing with violations (usually within three business days).
- For each violation, the judge orders a short jail term. The sentence for a violation is modest (usually only a few days in jail) but virtually certain and served immediately.

Successful implementation of a swift-and-certain sanctions program requires a significant amount of collaboration and coordination across numerous stakeholders representing multiple agencies and offices. Each stakeholder must be engaged, informed, and willing to participate. Critical stakeholders include:

- Judges,
- Prosecutors,
- Probation officers and the Department of Corrections,
- Defense attorneys,
- Law enforcement,
- Jail officials, and
- Court clerks.

## Design of Virginia's Immediate Sanction Probation Program

The Sentencing Commission has designed Virginia's Immediate Sanction Probation program based on the parameters established by the General Assembly's statutory and budgetary language and the key elements of the swift-and-certain sanctions model pioneered in Hawaii. Implementing Virginia's program with fidelity to the basic tenets of the swift-and-certain sanctions model provides the best opportunity to determine if the positive results observed in other states will emerge in Virginia as well.

To be considered for the Immediate Sanction Probation program, offenders must meet certain criteria. In § 19.2-303.5, the General Assembly specifies that the offender must:

- Not be on probation for a violent offense defined in § 17.1-805.

The Sentencing Commission set additional criteria for the pilot program. To be eligible, an offender must:

- Be 18 years of age or older (there are presently a wide array of sanction options available for juveniles tried as adults in circuit court),
- Be on supervised probation for a felony conviction (not given a deferred disposition, as that does not include a suspended term of incarceration),
- Have a recent risk/needs assessment on file (based on the COMPAS instrument currently utilized by the Department of Corrections for supervision planning),
- Not have been diagnosed with a severe mental health issue (these offenders may not be able to fully comprehend the consequences for violations and be able to modify their behavior), and
- Be supervised in the same jurisdiction where the offender was originally sentenced.

Since the program is being implemented in only four pilot sites, this last eligibility criteria ensures that judges in the pilot sites have jurisdiction over the cases and can swiftly impose sanctions.

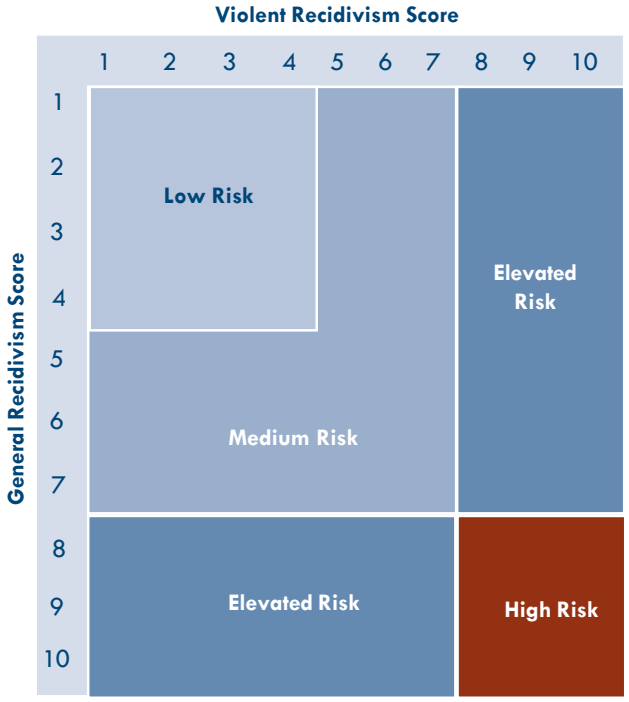
## Identifying Higher Risk Probationers

Selecting offenders who are more likely to recidivate and/or fail on probation is an important aspect of the swift-and-certain sanctions model. These are offenders who are at-risk for committing a new offense or who are not performing well on regular probation (i.e., they are at risk for having their probation revoked due to the accumulation of multiple technical violations). Since swift-and-certain sanctions programs involve intense monitoring and are more time and resource-intensive than regular probation, targeting higher-risk offenders allows for the most efficient use of resources. In addition, criminological research has shown that placing low-risk offenders in programs designed for high-risk offenders may actually increase their likelihood to recidivate (see, e.g., Andrews & Bonta, 2007; Lowenkamp & Latessa, 2004; Lowenkamp, Latessa, & Holsinger, 2006).

To be a candidate for Virginia's Immediate Sanction Probation program, an offender must be identified as being at-risk for recidivating or failing probation. To measure recidivism risk, Department of Corrections (DOC) probation officers administer the COMPAS risk/needs assessment instrument. COMPAS is currently used by probation officers to develop supervision plans and to determine the most appropriate supervision level for an offender. COMPAS contains two recidivism risk scales: risk of violent recidivism and risk of general recidivism. Based on the offender's scores on these two scales, he or she is categorized as low risk, medium risk, elevated risk, or high risk, as shown in Figure 33.

**Figure 33**

**COMPAS Recidivism Risk Scales and Risk Classification**

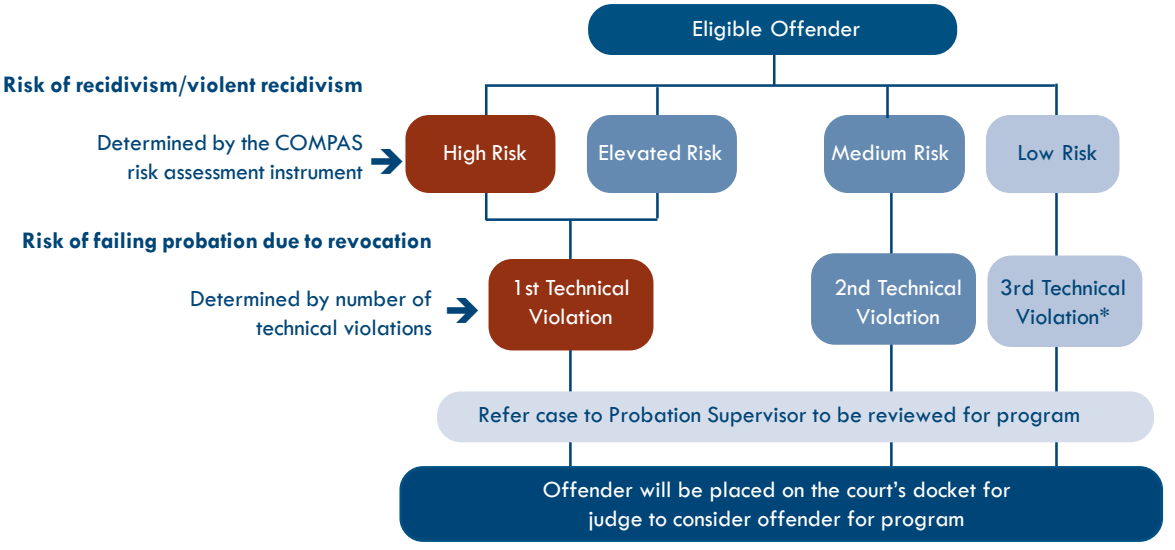


Risk of recidivating is then used in conjunction with risk for failing probation (measured by the number of technical violations the offender is alleged to have committed) to identify candidates for the pilot program. The Sentencing Commission has developed a framework for integrating these two measures of risk, which is shown in Figure 34. An eligible offender who has been identified through COMPAS as high risk or elevated risk becomes a candidate for the Immediate Sanction Probation program upon the first alleged technical violation. Because these offenders are already at the highest risk for recidivism compared to other probationers, the threshold in terms of technical violations is set at one. For an offender identified as medium risk on COMPAS, the probation officer handles the first violation based on DOC policy, using the officer's experience and skills in working with probationers. However, upon the second alleged technical violation, a medium-risk offender becomes a candidate for the program. For an offender who is found to be at low risk for recidivism on COMPAS, the probation officer continues to work with the offender for the first two technical violations but, upon the third violation, the offender becomes a candidate for the program. While COMPAS indicated that such an offender was low risk for recidivating, the offender's behavior of repeated technical violations suggests that he or she is at increasing risk of failing probation (i.e., having his or her probation revoked). Once identified as a candidate, the offender can be referred to the court for a review hearing.

As noted above, offenders on supervised probation for a violent felony offense (as defined § 17.1-805) are not eligible for the program and, therefore, are excluded from this process.

**Figure 34**

**Identifying Candidates for the Immediate Sanction Probation Program Based on Two Risk Measures**




** Violations occurring on different dates*

## Candidate Review Hearing

Once identified as a candidate for the program, the offender usually appears before the judge within seven days for a review hearing. These hearings are conducted much like traditional Show Cause (violation) hearings. A Public Defender, court-appointed attorney, or private attorney is present when review hearings are conducted. When possible, the attorney meets with the offender prior to the review hearing to discuss the program's requirements. The presence of all parties at the review hearing assists in impressing upon the offender the seriousness of the matter.

At the review hearing, the judge decides whether or not to place the offender in the Immediate Sanction Probation Program. If the court decides not to place the offender in the program, the judge continues the hearing on the probation violation so it may be handled under existing practices. If the judge determines that an eligible offender is a good candidate for the program and there is sufficient evidence to find that the offender violated a term or condition of probation, the judge orders that the Show Cause be continued upon the condition that the offender successfully complete the Immediate Sanction Probation program. If the judge places the offender in the program, he or she may also order that the offender serve three to seven days in jail (or sentence the offender to time served) for the violation(s) that brought the offender before the court, prior to the offender beginning the program.

## Official Warning

The warning hearing is a critical piece of the swift-and-certain sanctions model. Participating in a swift-and-certain sanctions program is different from regular probation and it is important to explain this to the offender. As part of the warning hearing, the judge:

- Stresses the importance of the probationer taking charge of his life and accepting responsibility for his actions;
- Clearly lays out the consequences for violation in advance; and
- Expresses a message toward the probationer that the judge wants the probationer to succeed.

The goal is to instill in the offender that one's own choices (rather than the probation officer's or the Judge's) result in the consequences and that the offender has the power to change his or her behavior. Frequently referred to as one's "internal locus of control" and "self-efficacy," these beliefs are considered to be strong predictors of behavioral change.

The judge may give the probationer the official warning immediately after ordering the probationer to complete the program or the judge may schedule a formal warning hearing with other probationers placed into the program. It is important that judges use the same language and communicate a consistent message to each probationer who is placed in the Immediate Sanction Probation program. For this reason, the Sentencing Commission has developed a standardized script for the judges' use. The script, which is based on the one used in Hawaii's HOPE program, is shown in Figure 35.

**Figure 35**

**Immediate Sanction Probation Program Warning Script**

**Immediate Sanction Probation Warning Script**

You have been placed in a program called Immediate Sanction Probation. You have been put in this program because you have not been doing your part and following the rules of probation. When you are on probation instead of serving time in prison, you are making a deal with the judge to follow the rules. You are the one responsible for making sure that you comply with the rules of probation. If you choose not to follow the rules of probation, from this point on, there will be immediate consequences. From now on, if you fail a drug test, if you fail to meet with your probation officer when you are supposed to, or if you don't comply with any other term of your probation, such as attending treatment if you have been told to go, you will be arrested and you will go to jail. This will happen for each and every violation.

You will be frequently drug tested. Your probation officer will advise you when to come in for testing. If you test positive, you will be arrested on the spot, held in custody, and we will have a hearing a couple of days later. If you use drugs, you will go to jail. If you miss a drug test or a scheduled appointment or don't comply with any other condition of probation, a police officer or Sheriff's deputy will find you and arrest you. They will arrest you at work or home or wherever, and you will go to jail. If you continue to violate the conditions of supervision, I can remove you from the program and revoke your probation. If that happens, I may give you a prison sentence.

I understand that things happen in life. If your car breaks down on the way to the probation office, push it to the side of the road, call your probation officer, tell him or her that you will be late, and get on the bus. If you or your child is at the Emergency Room, call your probation officer to reschedule your appointment and be ready to bring proof of the medical treatment when you come for that appointment.

All of your actions in life have consequences, good or bad. If you confront your problems and learn to change your thinking and your behavior, you will be able to follow the rules of probation and be able to remain free in society. The more responsible you are, the more freedom you will have. The less responsible you are, the less freedom you will have. If you violate the rules, there will be consequences, and they will happen right away. It's all about your choices.

Do you understand everything I just said? Do you have any questions for me?
I wish you success on probation after today and hope I don't see you back in a courtroom anytime soon.

## Participant Supervision

Program participants are closely monitored to ensure compliance with all terms and conditions of probation. New participants are subject to frequent, unannounced drug testing (four to six times per month for at least the first month). Handheld drug testing units are used because immediate results are necessary to swiftly sanction the participant for continued drug use. For offenders testing negative, frequency of testing is gradually reduced. In addition, the probation officers frequently verify treatment participation, if applicable, employment status/efforts, and payment of court costs and restitution. Like the drug testing schedule, the frequency of probation appointments may also be gradually reduced after periods of compliance.

Immediate Sanction Probation officers also reinforce the message expressed by the court during the warning hearing and violation hearings. As in Hawaii, Virginia's probation officers use several techniques, including Motivational Interviewing and Cognitive Behavioral approaches, to guide the offender toward improving his or her choices going forward. The probation officers also use their extensive training and experience to assist the offender in identifying triggers and creating strategies to prevent future violations.

## Violations while Participating in the Program

When a violation is detected, the supervising probation officer immediately issues a PB-15 authorizing the offender's arrest. The swiftness aspect to this program means that an arrest should occur as soon as possible. For example, an offender who tests positive for drug use is arrested in the Probation & Parole District office and taken to jail. If an offender fails to show up for an appointment with his probation officer, law enforcement serves the warrant quickly and takes the offender to jail. The offender remains in jail while awaiting the expedited hearing.

## Expedited Hearings for Violations

An expedited process for handling Immediate Sanction Probation violations has been established by the court in each pilot site. The expedited hearings are conducted multiple days of the week to ensure that offenders do not wait in jail more than 48 to 72 hours before appearing (unless arrested on a Friday or holiday). For example, hearings in Henrico and Lynchburg are usually held on Monday, Wednesday, and Friday from 1:00 to 1:30pm. Expedited hearings are typically brief, lasting approximately eight minutes each, so multiple hearings can be held within the 30-minute period.

Pursuant to § 19.2-303.5, the court conducts an expedited hearing except under certain circumstances. An expedited hearing is not conducted when:

- It is alleged that the offender committed a new crime or infraction,
- It is alleged that the offender absconded more than seven days, or
- The offender, the Commonwealth's Attorney, or the court objects to the expedited hearing.

If an expedited hearing is not held, the violation is handled through the normal process (i.e., full Show Cause hearing). In some jurisdictions in Virginia, it may be weeks or months until the violation is heard by the court. Some offenders are not granted or cannot make bail and they are held in jail until the hearing. If the violation is handled through the normal process, the offender may receive a substantially longer sentence than he or she would receive during an expedited hearing, up to and including the full amount of the suspended sentence in the offender's case.

## Access to Defense Counsel

A Public Defender (if an office exists in the site) is assigned to each session in which the court will hold expedited hearings. If no Public Defender Office exists in a pilot site, a cadre of court-appointed attorneys is established to provide counsel. The offender can call a private attorney or elect to waive counsel, if he or she chooses.

Access to defense counsel was built into Virginia's Immediate Sanction Probation pilot program for two reasons. First, § 19.2-303.5 allows all parties, including the offender, to object to the expedited violation hearing, in which case the matter proceeds to a full Show Cause hearing, which could result in the judge re-imposing the offender's entire suspended sentence. Second, the presence of both the prosecution and defense is important for emphasizing the seriousness of the matter for the offender and creating a perception of fairness about the process. In addition, probation officers can use these elements to reinforce the message that the offender's own choices (rather than the probation officer's or the Judge's) resulted in the consequences.

## Jail Time for Violations

Technical violations committed by offenders participating in the program result in certain jail time. When the court holds an expedited hearing and finds sufficient evidence that the participant violated a condition of probation, the judge orders the participant to a certain number of days in jail, based on the graduated sanctions shown in Figure 36. Per § 19.2-303.5, the maximum sentence that can be ordered during an expedited hearing is 30 days. The offender's probation is not revoked during the expedited hearing and, throughout the offender's participation in the program, the pending Show Cause order is continued. The incarceration ranges provide judges with some discretion based on the violation and circumstances surrounding it, with increasing severity for subsequent violations. The sanction recommended for each violation is usually served in addition to time served in jail awaiting the expedited hearing (which is typically three days or less).

As noted above, if an expedited hearing is not held, the violation is handled through the normal process, the result of which the offender may receive a substantially longer sentence (up to his or her entire suspended sentence).

**Figure 36**

**Terms of Incarceration for Violations of the Immediate Sanction Probation Program**

| Program Violation | Incarceration |
|---|---|
| 1st violation | 3-7 days |
| 2nd violation | 5-10 days |
| 3rd violation | 7-14 days |
| 4th violation | 10-20 days |
| 5th violation | 15-25 days |
| 6th+ violation | 20-30 days |

## Substance Abuse Treatment

The swift-and-certain sanctions model has been shown to be extremely useful for distinguishing between offenders who are able to cease drug use through the imposition of brief, but certain, jail stays and those who are unable to do so due to addiction issues. An offender who continues to use drugs in spite of the knowledge that they will be drug-tested regularly, and who has been jailed multiple times for continued use while in the Immediate Sanction Probation program, would be a likely candidate for substance abuse services. For participants in the Immediate Sanction Probation program who do not desist from drug or alcohol use in response to the frequent random drug tests and repeated jail sanctions, the court may order a full substance abuse assessment and refer the offender to substance abuse treatment or a drug court program, depending on the offender's suitability and the availability of treatment resources. In addition, the judge can consider a participant's request for substance abuse treatment.

Used in this way, the swift-and-certain sanctions model relies on actual offender behavior rather than a substance abuse screening or offender self-report to signal a potential need for treatment services. Offenders who use drugs recreationally but are able to stop on their own generally do so in the face of regular, random drug-testing and certainty of sanctions for use. Offenders who continue to test positive in spite of the consequences for this behavior are identified as those most likely to need services. This approach to identifying offenders with treatment needs has been called "behavioral triage" (Hawken, 2010).

## Removal from Program

The court may remove an offender from the Immediate Sanction Probation program at any time. If a participant is convicted of a new felony, the Sentencing Commission requires that he or she be removed from the program. If this occurs, the violation is handled through a full Show Cause hearing and sanctioning of the offender is left to the discretion of the court.

## Successful Completion

If an offender has gone 12 months since his or her last violation, the offender will be considered as having "successfully completed" the Immediate Sanction Probation program. The probationer may be returned to regular probation supervision, placed on a less-restrictive level of supervision or, at the judge's discretion, released from supervision.

## Program Implementation

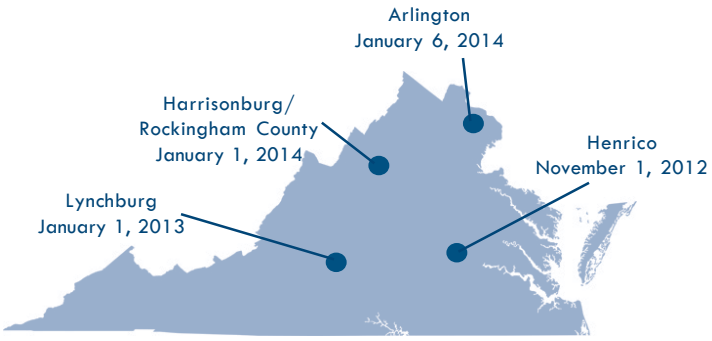
In September 2012, the Sentencing Commission approved the design for Virginia's Immediate Sanction Probation pilot program. Sentencing Commission staff then moved forward with implementation, which began with identifying potential pilot sites.

## Selection of Pilot Sites

Sentencing Commission staff worked closely with the Secretary of Public Safety's Office and the Department of Corrections to identify potential pilot sites for the Immediate Sanction Probation program. The Sentencing Commission wished to pilot test the program in jurisdictions in different regions of the state and in a mix of urban/suburban/rural localities. The size of the probation population in each jurisdiction was also important, as small probation populations may not yield a sufficient number of eligible candidates to conduct a thorough evaluation of the program. In several localities, one or more officials had expressed interest to the Secretary of Public Safety's Office or to the Sentencing Commission's director. Such local interest was highly desired. In addition, the Sentencing Commission hoped to test the program in various settings and therefore considered if potential sites had a Public Defender's Office or a drug court. After consideration of these factors, Sentencing Commission staff and the Deputy Secretary of Public Safety approached stakeholders in Henrico, Lynchburg, and Newport News to discuss their possible participation in the pilot project. Henrico and Lynchburg agreed to participate, with start dates of November 1, 2012, and January 1, 2013, respectively. The stakeholders in Newport News elected not to participate in the pilot project. Subsequent meetings were held in Hampton and Chesapeake, but neither locality elected to move forward with a pilot program. Finding pilot sites has been one of the challenges to implementing the Immediate Sanction Probation program. These challenges are discussed in the next section of this chapter. In July 2013, Arlington agreed to participate as the third pilot site. Most recently, in September 2013, Harrisonburg/Rockingham County agreed to become the fourth pilot site. Pilot programs in both sites will become operational in January 2014. Start dates were set by local stakeholders (Figure 37).

**Figure 37**

**Immediate Sanction Probation Program**
**Pilot Sites and Start Dates**




In each site, Sentencing Commission staff organizes and participates in multiple meetings prior to the start date to brief officials and staff on the program and to facilitate decisions about operational details.

The stakeholders in each of the selected pilot sites have excellent working relationships, which has been essential to successfully implementing the program.

## Implementation Support

The Sentencing Commission has completed a number of tasks to support and facilitate the implementation of the program in each pilot site. The Sentencing Commission has:

- Developed guidelines and procedures and prepared an Implementation Manual;
- Written a warning script for judges to use when placing offenders into the program;
- Created forms to help stakeholders with administrative processes and gather data for the evaluation;
- Assisted with development of template court orders for the program;
- Ensured a point-of-contact was identified for each office/agency involved in the locality's pilot program and produced a contact list for each pilot site;
- Identified a payment process for court-appointed attorneys working with the program in Henrico and Rockingham/Harrisonburg (as there is not a Public Defender's Office);
- Worked with DOC, the Compensation Board, and Clerks to add new codes in automated systems so that program participants can be tracked; and
- Met with all probation officers in Lynchburg, Henrico, and Arlington to explain the program and encourage the identification and referral of candidates.

Sentencing Commission staff have organized regular meetings (every four to six weeks) with stakeholders in Henrico and Lynchburg, the two programs up and running at the time of this report. These meetings are very beneficial to review procedures, examine the progress of the participants, and identify and resolve any issues or concerns as they arise. In this way, stakeholders work together to develop solutions that are satisfactory to everyone. In addition, at the request of DOC, Commission staff participate in weekly conference calls with both Henrico and Lynchburg Probation & Parole Districts to discuss potential candidates for the program. These calls provide an opportunity to address questions from probation staff and to receive valuable feedback on the program from probation officers. Practitioners are also encouraged to call the Sentencing Commission to discuss emergent issues at any time. Sentencing Commission staff will continue to hold regular meetings and conference calls in Henrico and Lynchburg and will organize meetings, etc., in Arlington and Harrisonburg/Rockingham as those programs become operational.

## Supervision and Drug Testing

During the planning phase, the Sentencing Commission emphasized the need for uniformity in the supervision of program participants and in responses to violations. As a result, DOC has assigned a seasoned probation officer currently working in each pilot site as the Immediate Sanction Probation officer. This officer is dedicated to the supervision of the offenders participating in the pilot program. DOC is utilizing existing resources to provide one new probation officer for each pilot site. According to DOC, the approximate cost (including benefits) for four probation officer positions for the pilot sites is $219,679. With the additional position provided by DOC, a new probation officer can be hired to assist with the District's regular caseload and other duties. The Sentencing Commission strongly supports this approach, as offenders participating in the program are those who are at higher risk of recidivism or failing probation, and therefore likely to be more challenging to supervise. Having an experienced and highly-skilled officer to supervise offenders in this program is preferred. In each pilot site, the probation officers selected to supervise Immediate Sanction Probation offenders have demonstrated a strong competency and willingness to innovate to overcome potential challenges that have arisen. Their extensive experience and training continue to prove invaluable not only to those in their respective jurisdictions, but also to the program as a whole. The work these officers have done to date should be commended.

The Department of Corrections is also using existing resources to support drug testing for the Immediate Sanction Probation program. DOC reports that, as a cost saving measure, it has moved away from using the handheld drug testing kits ("cup" tests), and now sends offender urine samples to the Department of General Services' Division of Consolidated Laboratory Services (DCLS) for analysis. DCLS provides the test results to the Probation & Parole District approximately one week following submission of the sample. Because the Immediate Sanction Probation program is based on swift-and-certain sanctions, the DCLS process is untenable. For the pilot project, DOC has purchased the handheld testing kits, which have the advantage of providing the immediate test results necessary for the program. DOC has estimated the cost for these to be $10,000 per year, based on current expenditures, the anticipated number of participants as the pilot expands from two to four sites, and the frequency of testing required for the program.

Implementing a swift-and-certain sanctions program is resource-intensive up front, largely due to the intense monitoring and frequent drug testing required by probation staff. Potential cost savings occur later through fewer revocations, lower recidivism rates, and reduced use of jail and prison.

## Defense Counsel

In Lynchburg and Arlington, defense counsel is provided by the Public Defender's Office. Since Henrico does not have a Public Defender's Office, defense counsel is provided by six court-appointed attorneys who have agreed to work with the Immediate Sanction Program. Harrisonburg/Rockingham will also use court-appointed attorneys. For hearings associated with the Immediate Sanction Probation program, the court-appointed attorneys are paid at the same hourly rate as they are paid for traditional probation violation hearings ($90 per hour). This program may result in additional hearings for some offenders, as they test the boundaries of the program and are brought back to court for each violation. During the pilot project, the Virginia Supreme Court is absorbing the cost of court-appointed attorneys for the Immediate Sanction Probation program. As of September 27, 2013, the expenditures for this purpose have totaled $4,320 ($1,492 in FY2013 and $2,828 in FY2014).

## Court Processes

The pilot sites have established an expedited court process for dealing with program candidates and violations. Immediate Sanction Probation hearings are held on multiple days of the week so that offenders will not spend long in jail before being considered for placement in the program or having a violation heard by the court. Hearings for violations occur swiftly (usually within three business days following arrest). This expedited process diverges significantly from the normal probation violation process in Virginia, which can take weeks or even months in some jurisdictions.

In Henrico and Lynchburg (the two programs operational at the time of this report), judges usually conduct Immediate Sanction Probation hearings on Monday, Wednesday, and Friday from 1:00 to 1:30 p.m. This time slot is designated for both candidate review hearings, where the judge considers whether or not to place the offender in the program, and program violations. If there are no candidates or violations to be heard on a given day, stakeholders simply use the time for normal work-related activities. Based on a sample of hearings conducted in Henrico and Lynchburg, the candidate review hearings last, on average, 9.5 minutes each, while violations have been handled in an average of 7.0 minutes. This is comparable to the length of hearings in Hawaii's HOPE program.

## Law Enforcement

The law enforcement stakeholders have proven to be enthusiastic partners in piloting the Immediate Sanction Probation program. By quickly executing arrests, law enforcement officers are integral to ensuring that program violations are met with swift and certain sanctions. In the two pilot jurisdictions that were operational at the time of this report, police officers and Sherriff's deputies have demonstrated a high degree of commitment to upholding the tenets of the program and assisting in any way they can.

Jail staff have also assisted by ensuring the quick transport of candidates and program participants between jail and court. In particular, the cooperation of the five jails that comprise the Blue Ridge Regional Jail Authority has been essential to the Lynchburg pilot program.

## Implementation Challenges

Establishing and successfully implementing a pilot program that diverges substantially from existing practices can be a difficult process and is not without challenges. Considerable groundwork must be laid prior to placing the first offender in the program. Once the program is operational, obstacles may be encountered and need to be addressed as quickly as possible.

Ensuring that violations are addressed immediately and cases are handled swiftly requires extensive collaboration and coordination among many criminal justice agencies and offices. Breakdowns in communication or commitment to the program within any office can hinder the ability of the program to operate in a swift and certain manner. Although achieving such seamless communication can pose a significant challenge in some jurisdictions, stakeholders in the pilot sites have demonstrated a continued commitment to working with each other and giving the pilot program the best opportunity to succeed. During stakeholders' meetings in the pilot sites, new lines of communication, procedures, forms, and template court orders were designed and refined to ensure that the swiftness aspect of the program could be successfully achieved without overwhelming any of the partners. While both Henrico and Lynchburg have reached a point of comfort with the practices developed in their respective jurisdictions, ongoing stakeholders meetings continue to prove beneficial in updating stakeholders on the progress of participants, addressing emerging challenges, and identifying potential efficiencies in existing practices.

As with most pilot programs, some challenges have been encountered in the implementation of Virginia's Immediate Sanction Probation pilot program. While there is considerable interest in the swift-and-certain sanctions model, finding localities willing to participate as pilot sites has taken some time. Supplemental funding was not included in the 2012-2014 budget; therefore, Virginia's pilot project

is being implemented within existing agency budgets and local resources. Since many agencies and offices have undergone staff cuts in recent years and some offices experience a relatively high rate of turnover, taking on the responsibilities of a new program may not be seen as feasible. Three jurisdictions that the Sentencing Commission approached to pilot this program decided not to participate, citing resource limitations as one of the reasons.

Because stakeholders in the two most recent localities to join the pilot project selected start dates in January 2014, the Sentencing Commission has requested that the pilot period be extended. Per language in the Appropriation Act (Item 50 of Chapter 806 of the 2013 Acts of Assembly), the pilot project is scheduled to end on July 1, 2014. The Sentencing Commission has submitted a request to the Department of Planning & Budget to extend the pilot period through July 1, 2015. This change will ensure that Arlington and Harrisonburg/Rockingham will have sufficient time to adequately test the program.

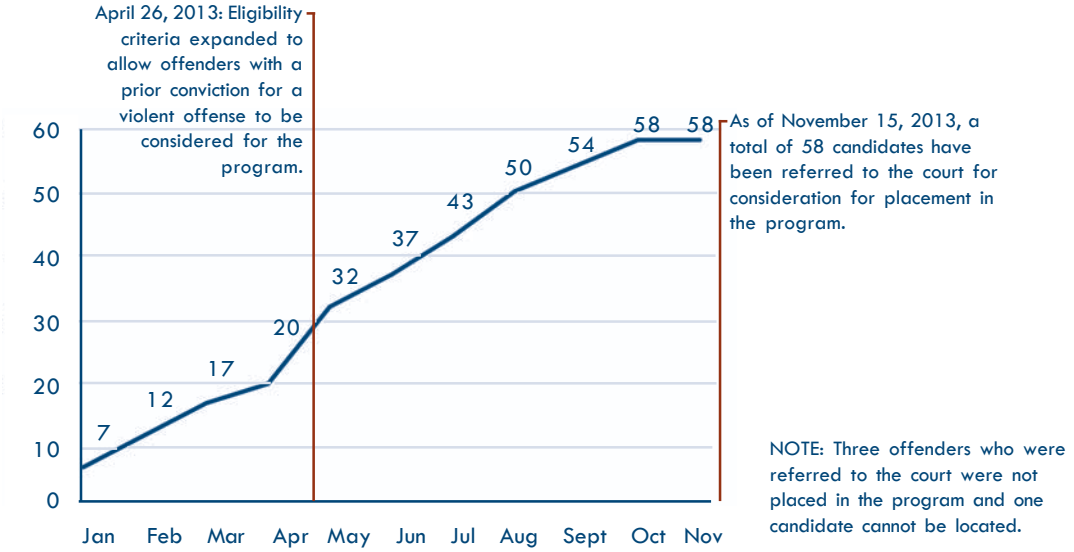
For the jurisdictions that have agreed to undertake the challenge of piloting the Immediate Sanction Probation program, the stakeholders have remained dedicated to successfully implementing the program despite the extra workload. However, limited staff resources have presented additional challenges in the two active pilot sites. For example, Lynchburg has experienced some difficulties in maintaining a consistent schedule for the hearings because the city currently has only one circuit court judge. The lack of a consistent schedule can then cause issues for other stakeholders, who must adjust their schedules in a very short amount of time. Fortunately, the stakeholders in each pilot jurisdiction have demonstrated a clear understanding of the challenges faced by each office and a strong desire to cooperate and assist one another, where possible. In general, the intense supervision of new participants in conjunction with immediate arrests, hearings, and jail time for violations can place stress on stakeholders with limited resources and, if the program grows, existing resources may be stretched thin.

The number of program candidates identified by probation staff has been lower than initially expected. Much of this may be attributable to the eligibility criteria. For instance, stakeholders in one of the pilot sites have indicated that the eligibility criteria excluding offenders who have obligations to courts outside of the pilot jurisdiction significantly reduces the pool of eligible candidates. This eligibility criteria was established for the pilot programs to ensure that judges in the pilot sites have jurisdiction over the cases and can swiftly impose sanctions. Should the program expand to additional localities in the future, options will be explored that may render this eligibility criteria unnecessary.

Stakeholders in the pilot sites have indicated that other eligibility criteria further reduce the pool of eligible offenders. For example, per § 19.2-303.5, offenders on probation for a violent crime, as defined in § 17.1-805, are not eligible for the program. As initially designed, the Sentencing Commission also excluded offenders with a prior offense listed in § 17.1-805. During ongoing stakeholder meetings in the pilot sites, several individuals indicated that they had identified offenders whom they felt would respond well to the structure of the Immediate Sanction Probation program, but the offenders were ineligible due to a prior violent offense (a prior burglary was frequently cited; burglary is defined as a violent offense in § 17.1-805). Based on feedback from stakeholders in the pilot sites participating at that time (Henrico and Lynchburg), the Sentencing Commission initiated discussions with the Secretary of Public Safety's Office, Commonwealth's attorneys, and several others. Sentencing Commission staff also conducted a comprehensive review of eligibility criteria and evaluation findings for similar swift-and-certain sanctions programs around the country. After careful consideration, the Sentencing Commission expanded the criteria to allow offenders with a prior conviction for an offense listed in § 17.1-805 to be considered for the program. Following the expansion of the eligibility criteria in April 2013, the number of potential candidates referred to the court increased. Figure 38 shows the cumulative number of candidates referred to the court, as of November 15, 2013. The judge ultimately determines if the offender will be placed into the program. For the majority of offenders referred to the court (95%), the judge has ordered the offender to complete the Immediate Sanction Probation program.

**Figure 38**

**Cumulative Number of Candidates for the Immediate Sanction Probation Program Referred to the Court by Month (as of November 15, 2013)**



It has also been suggested that some offenders currently being supervised for a violent offense may respond well to the structure provided by the program, but they are statutorily excluded at this time. Research from the HOPE program in Hawaii and a similar program in Washington indicates that offenders who are currently on supervision in the community for a violent offense may respond equally well to the close scrutiny and the swiftness and certainty of sanctions imposed in this type of program. Expanding Virginia's pilot program to include offenders currently on probation for a violent offense would require legislative action.

Stakeholders in Lynchburg developed an innovative approach to expand the pool of eligible offenders. The Probation & Parole District there covers several jurisdictions (the City of Lynchburg as well as Amherst, Campbell, and Nelson Counties). Participants in the Lynchburg pilot program must have an obligation to Lynchburg Circuit Court. However, probation staff identified offenders believed to be good candidates for the program who lived just outside the Lynchburg City line. At the suggestion of Lynchburg stakeholders, the Sentencing Commission approached the Sheriffs in the neighboring Amherst and Campbell Counties, who agreed to assist with the pilot program by quickly executing Lynchburg's PB-15 arrest warrants in their respective jurisdictions. As a result, the pool of potential program participants for Lynchburg's pilot has been expanded to include those living outside the Lynchburg City limits. This is an excellent example of stakeholders innovating and collaborating to improve the implementation of the program in their jurisdiction.

Stakeholders have also provided feedback on the requirements for removing offenders from the program and, as a result, the Sentencing Commission approved a modification. Based on the Sentencing Commission's initial program design (approved September 2012), a participant convicted of any new offense would be removed from the program. After a participant who had been otherwise compliant was cited for driving on a suspended license, some of the stakeholders from Henrico attended the Sentencing Commission's June 10 meeting to request that judges be given some discretion regarding removal of participants who have been convicted of a new offense. The concern was that an offender participating in the program might be convicted of a minor misdemeanor offense, such as driving on a suspended license or being drunk in public. In most cases, however, an offender convicted of driving on a suspended license or certain other misdemeanor offenses is unlikely to serve significant jail time. If the offender were removed from the Immediate Sanction Probation program, he or she would likely return to regular probation, where supervision would be less intensive than when the offender was participating in the program. Under these circumstances, continuing the offender in the Immediate Sanction Probation program following release from jail could better serve public safety. The Sentencing Commission approved a change to provide judges with discretion as to whether or not to remove offenders convicted of a new misdemeanor. The Sentencing Commission continues to require that offenders convicted of a new felony be removed from the program.

Piloting a swift-and-certain sanctions program also presents specific challenges for Probation & Parole Districts. The intensive nature of this program, coupled with the need for an immediate response to every violation can pose several administrative challenges for a participating District. For instance, establishing and executing a procedure for the frequent random drug testing of participating offenders that yields immediate results can be difficult. In order to facilitate randomized drug testing for offenders on regular probation, DOC employs a standard drug testing protocol (known as "color code"), which is set up to drug test a large number of offenders in a single day. In order to notify probationers when their color is randomly selected, probationers call into an automated system to determine if they must report to give a urine sample on a given day.

Most of the probation officers in each District take turns assisting in the collection of samples from probationers, which are then mailed to the Department of General Services' Division of Consolidated Laboratory Services (DCLS). DCLS tests the samples and enters the results into a centralized tracking system, which notifies the supervising probation officer of the results. This procedure introduces a great deal of efficiency to the random drug testing process, especially in terms of identifying and notifying offenders when they need to report to be tested, collecting the samples, and entering the results into the database, with the workload being shared among many personnel. However, at least within the context of a swift-and-certain sanctions model, this system also adds an unacceptable delay between when the sample is taken and when the results are available to the probation officer.

DOC has indicated that the color code protocol cannot be adapted to incorporate the use of handheld drug testing kits for offenders participating in the pilot program. According to DOC personnel, they cannot ensure that the handheld tests would be used for program participants if they were to be tested as part of the color code protocol, nor can they guarantee that participants who test positive would be arrested immediately (instead of being allowed to leave the District office after giving the sample, as regular probationers are permitted to do). As a result, the individual officer in each District dedicated to the Immediate Sanction Probation caseload must select drug testing dates and times, notify offenders when they need to report, collect the sample (or locate another probation officer to collect the sample from an offender of the opposite sex), and enter the drug screen results into a centralized tracking system. Especially in jurisdictions where the Immediate Sanction Probation officer is not the same gender as most of the probationers he or she supervises, close coordination is required within the District to ensure that other probation officers are available to monitor the collection of urine samples. The Immediate Sanction Probation officer must also fill in notes for frequent office visits and regularly verify treatment participation, employment status/efforts, etc. As the project continues to grow, the Sentencing Commission will continue to work with DOC and Probation & Parole Districts to develop efficiencies wherever possible.

Probation & Parole Districts piloting the Immediate Sanction Probation program have also faced the challenge of ensuring that most, if not all, eligible candidates are referred to the court to be considered for placement in the program. The program, as originally designed, relies heavily upon the probation officers in each District to identify offenders on their caseload who meet the eligibility criteria and have committed at least one recent technical violation. In addition to identifying eligible candidates, probation officers are asked to prepare a Major Violation Report relatively quickly after candidate identification; the Major Violation Report is then submitted to the court as part of the referral process. Achieving a quick-turn around in the preparation of the Major Violation Report has proven to be challenging in Districts that have experienced significant staff cuts in recent years, where probation officers have large caseloads, or where officers prepare a high volume of Pre-Sentence Investigation reports. In order to encourage referrals and ensure that any questions or concerns expressed by probation officers are addressed, DOC asked the Sentencing Commission to prepare and present materials to all of the probation officers in each of the pilot sites. To this end, the Chief Probation & Parole Officer in District 13, which includes Lynchburg City, also established weekly staff meetings, where probation officers can discuss potential candidates for the program as well as the progress of participants. DOC asked Sentencing Commission staff to attend these meetings (telephonically), which provides the Commission the opportunity to address questions or concerns from probation staff and to receive valuable feedback on the program from probation officers. In fact, many of the suggestions for improvements to the program and ways to increase efficiency have stemmed from the weekly meetings with probation officers. Due to the success of these weekly meetings in Lynchburg, DOC asked Henrico Probation & Parole to conduct similar meetings. Depending on the topics discussed, these weekly meetings usually range from five to ten minutes in length. In addition to the District-wide efforts to encourage referrals for the program, the Immediate Sanction Probation officers also play a significant role in encouraging fellow probation officers to refer potential candidates by assisting in the identification of possible candidates, answering questions regarding the program, and helping other officers complete the necessary paperwork for referrals (i.e., the Major Violation Report).

Certain types of offenders can present unique challenges as well. For instance, some challenges have arisen in regards to supervising alcohol-abusing offenders within the context of the program. There does not appear to be an immediate test for alcohol use that may have taken place since the offender's last probation appointment, because alcohol is metabolized quickly by the body. Breathalyzers can test for current intoxication levels only. One suggestion has been to utilize SCRAM bracelets. SCRAM bracelets provide continuous monitoring of alcohol use by frequently testing for alcohol consumption through an offender's perspiration. An offender is required to upload the data from the SCRAM bracelet to the monitoring agency at least once per day, where the data is then analyzed and prepared in the form of a report. If a violation is detected, analysts are available to provide testimony regarding results, if necessary. The offender is charged for the cost of using this device. Participants with mental health issues can also prove to be more challenging to supervise. Many of these offenders require more intensive supervision, particularly since probation officers must confirm that the probationer is following the treatment regimen prescribed by the mental health treatment provider, such as participating in recommended counseling and taking all necessary medications. Within the context of the Immediate Sanction Probation program, offenders who have a severe mental health issue are not eligible to be placed in the program. However, offenders who exhibit less severe mental health problems may be considered for the program. For these offenders, failure to follow any instructions relating to mental health treatment would be treated the same as any other violation.

Limited resources for substance abuse services may pose an additional challenge. As described above, the swift-and-certain sanctions model has been shown to be very useful for distinguishing between offenders who use drugs but are not addicted to them and offenders with addiction issues. An offender who continues to use drugs in spite of regular drug testing, and who has been jailed multiple times for continued use while participating in the program, would be a likely candidate for additional interventions, such as substance abuse treatment. The Sentencing Commission has designed the pilot program such that the judge, in his or her discretion, may refer a participant to substance abuse services or a drug court program, depending on the offender's suitability and the availability of treatment resources. Offenders with a diagnosis involving a severe mental illness are not eligible to participate in the pilot program; however, offenders with less serious mental health issues who are stable in regards to their medications may participate if they are determined to be otherwise eligible. Resources are limited, however, and substance abuse and mental health treatment options are not uniformly and consistently available across the pilot sites. Limits in terms of available treatment options and stability of treatment providers can be a barrier to matching offenders who are identified as having addiction and/or mental health issues with the most appropriate treatment.

Despite the numerous challenges, stakeholders in the participating pilot sites have demonstrated the ability and willingness to collaborate and to develop innovative solutions to overcome many barriers as they arise.

## Characteristics of Program Participants, Violations, and Sanctions to Date

As of November 15, 2013, a total of 54 offenders had been placed into the Immediate Sanction Probation pilot program (28 in Henrico and 26 in Lynchburg). The Arlington and Harrisonburg/Rockingham pilot sites were not operational at the time this report was prepared. For current participants, the length of participation ranges from 22 days to 9.4 months in Henrico (average of 5.4 months) and 18 days to 9.0 months in Lynchburg (average of 5.9 months).

Nearly half of the participants (26 of 54, or 48.1%) have not committed a violation since being placed in the program. This is similar to Hawaii's HOPE program, where 52% of participants did not have a violation for drug use or a missed appointment during the 12 months they were tracked (Hawken & Kleiman, 2009). Although the data are still preliminary, this finding is significant given that all of these offenders had a record of technical violations prior to entering the Immediate Sanction Probation program (the average was four previous technical violations). The remaining 28 participants committed at least one violation after being placed in the program (Figure 39). As of November 15, 2013, there were a total of 50 violations among participants.

**Figure 39**

**Immediate Sanction Probation Program Participants as of November 15, 2013**

| | Locality | | |
|---|---|---|---|
| | Henrico (start date: November 1, 2012) | Lynchburg (start date: January 1, 2013) | Total |
| Offenders Placed into the Program | 28 | 26 | 54 |
| Participants who have Violated | 16 | 12 | 28 |
| Number of Violations | 26 | 24 | 50 |
| Participants Removed | 5 | 2 | 7 |
| Current Participants | 23 | 24 | 47 |
| Pending Candidates | 1 | 0 | 1 |

Of the seven participants removed from the program: five offenders were terminated due to noncompliance; the other two offenders moved out of the jurisdiction.

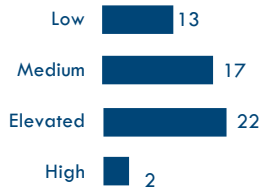
To date, four participants have been convicted of a new offense. One was convicted of driving without an operator's license, a misdemeanor, and allowed to remain in the program. One participant was convicted of assault on a law enforcement officer, a felony, and was removed. A third participant was convicted of misdemeanor assault and battery and subsequently absconded, and the fourth was convicted of driving on a suspended license and failing to appear in court for that offense; this particular offender also had multiple technical violations while in the program and had not been truthful with the court. She was terminated from the program and given a prison sentence of 1.5 years.

As of November 15, 2013, seven participants have been removed from the program. Five of these offenders were removed from the program due to continued non-compliance. While two of these offenders are pending sentencing (one is awaiting a review to determine eligibility for drug court), the three remaining offenders were given prison sentences ranging from 1.0 to 1.5 years. Two additional participants received approval to move out of the jurisdiction and were therefore ineligible to continue in the program.

As noted earlier in this chapter, the Immediate Sanction Probation program focuses on higher risk probationers. The largest share of offenders placed into the program (22 of 54) have been identified as elevated risk (Figure 40). Treated the same as high risk offenders, these offenders need only one technical violation to become a candidate for the program. On average, however, these offenders had accumulated three technical violations prior to being placed in the program. Only two high risk offenders have been placed in the program. This is likely due to the fact that many of the probationers that are classified as high risk are on probation for a violent offense listed in § 17.1-805, which statutorily precludes them from participating in the Immediate Sanction Probation program. To date, 17 medium risk offenders have been placed into the program. Medium risk offenders qualify for the program after two technical violations. On average, these offenders had four violations prior to program placement. Thirteen low risk offenders have been placed into the program. While needing three technical violations to become a candidate for the program, the low risk offenders had accumulated an average of four such violations at the time they were placed in the Immediate Sanction Probation program.

**Figure 40**

**DOC Recidivism Risk Level for Offenders Placed in the Immediate Sanction Probation Program (as of November 15, 2013)**




Risk of recidivism/violent recidivism as determined by the COMPAS risk/needs assessment instrument used by the Department of Corrections

Of the 28 participants who have committed violations in the program, 15 have committed a single violation (Figure 41). Another seven offenders have committed two violations, while three offenders have had three violations in the program. Three additional offenders have accumulated four violations. One of these individuals was identified as being at high risk for recidivism and had a long history of substance use. She committed four violations quickly after being placed in the Immediate Sanction Probation program and received jail sanctions each time. She was allowed to remain in the program and, at the time this report was prepared, she had been violation-free for nearly seven months. Research on the swift-and-certain sanctions approach in Hawaii and elsewhere indicates that many participating offenders change their behavior and begin to comply with the conditions of probation.

In addition to implementing the Immediate Sanction Probation program, the Sentencing Commission has been charged with completing an evaluation of the pilot project. Outcome measures are being developed for the evaluation. Certainly, those outcome measures will include recidivism rates - how many participants were convicted of new offenses - and the use of jails and prison resources. In addition, it is important for the evaluation process to determine if the pilot sites were able to achieve both swiftness and certainty, critical elements of the program model.

**Figure 41**

**Number of Violations Committed by Participants in the Immediate Sanction Probation Program (as of November 15, 2013)**


* One participant was removed after two violations, three participants were removed after three violations, and one was removed after four violations.

To allow the pilot programs in Henrico and Lynchburg sufficient time to test and refine the new procedures, the Sentencing Commission began tracking measures of swiftness on March 8, 2013. Overall, more than half (58%) of the expedited hearings have been conducted by the court within three days following the commission of a violation (Figure 42). On average, the hearing took place within 3.2 days of the violation. If an offender tests positive for drug use, he or she is arrested immediately in the Probation & Parole District office. For offenders who fail to show up for a drug test or an appointment with the supervising officer, a PB-15 is issued immediately and sent to law enforcement officers, who search for the offender in the community (at home, work, and other possible locations). The time that it takes law enforcement to locate and arrest the offender affects the average time between violation and the court hearing. Breaking down the total 3.2 days from violation to hearing, the average time between violation and arrest has been 1.5 days and the average time between arrest and the hearing has been 1.7 days. Once a participant is arrested for a violation, courts are conducting hearings within an average of 1.2 business days. Based on this data, it appears that the stakeholders in both of the current pilot sites have been able to successfully achieve the swiftness aspect of the program model.

**Figure 42**

**Measures of Swiftness for the Immediate Sanction Probation Program**

| | Lynchburg | Henrico | Total |
|---|---|---|---|
| **Percent of violation hearings held within 3 days of violation** | 41.2% | 71.4% | 57.9% |
| **Avg. time between violation and hearing** | 4.4 days | 2.3 days | 3.2 days |
| **Avg. time between violation and arrest** | 2.3 days | <1 day | 1.5 days |
| **Avg. time between arrest and hearing** | 2.1 days | 1.4 days | 1.7 days |
| **Avg. time between arrest and hearing – business days** | 1.3 days | 1.1 days | 1.2 days |
| **Number of Violations** | 17 | 21 | 38 |

These figures are based program violations committed on or after March 8, 2013

Regarding the certainty aspect of the program, 100% of the violations in the two operating pilot sites have been met with jail sanctions, per the program's design (Figure 43). For the first violation in the program, the average sanction has been 3.8 days. For the second violation, the average sanction has been 6.1 days, while the average sanction for the third violation has been 9.8 days. Both of the offenders who had a fourth violation and were allowed to remain in the program received 10 days in jail. Certainty has been achieved in the pilot sites and the sanction days are consistently within the ranges recommended by the Sentencing Commission for the program.

**Figure 43**

**Measures of Certainty and Consistency for Immediate Sanction Probation Program**

| | Lynchburg | Henrico | Total |
|---|---|---|---|
| **Percent of violations resulting in a jail term** | 100% | 100% | 100% |
| **Average length of sentence for 1st violation** | 3.1 days | 4.4 days | 3.8 days |
| **Average length of sentence for 2nd violation** | 5.2 days | 7.2 day | 6.1 days |
| **Average length of sentence for 3rd violation** | 8.3 days | 14 days* | 9.8 days |
| **Average length of sentence for 4th violation** | 10 days* | 10 days* | 10 days |

* represents one case

## Upcoming Activities

In the coming months, Sentencing Commission staff will assist the stakeholders in Arlington and Harrisonburg/Rockingham with the implementation of the Immediate Sanction Probation program in those sites. Staff will also continue to work closely with the existing programs in Henrico and Lynchburg.

While the formal evaluation has not yet begun, the Sentencing Commission has started planning for the evaluation phase. The Sentencing Commission is designing a rigorous evaluation of the pilot project. In addition to the measures of swiftness and certainty described above, the Sentencing Commission will capture data on new arrests and new convictions for offenders who have participated in the program, which will be used to calculate recidivism rates. The Sentencing Commission will also calculate the number of days participants spent in jail serving time on violations, as well as the number of days served in jail or prison by participants who ultimately have their probation revoked (i.e., offenders who do not successfully complete the program). The Sentencing Commission will identify a comparison group of similar offenders under regular probation supervision. Thus, the outcomes of the pilot program will be assessed by comparing the results of participants to those for a like group of offenders on regular probation. Although the most rigorous form of evaluation is the randomized control trial (an experimental design involving the random assignment of offenders to the program or to the comparison group, similar to a clinical trial in medicine), this sort of research design is difficult to achieve in criminal justice settings. The Commission's plan involves a quasi-experimental design often used in criminal justice evaluations. The evaluation phase of the Immediate Sanction Probation pilot project will begin in July 2014.

**References**

Andrews, D. A., & Bonta, J. (2007). *Risk-need responsivity model for offender assessment and rehabilitation* (2007-06). Ottawa: Public Safety Canada.

Carns, T. & Martin, S. (2011). *Anchorage PACE probation accountability with certain enforcement: A preliminary evaluation of the Anchorage pilot PACE project.* Retrieved from http://www.ajc.state.ak.us/reports/pace2011.pdf

Grasmick, H. G. & Bryjak, G. J. (1980). The deterrent effect of perceived severity of punishment. Social Forces, 59(2), 471-491.

Hawken, A. (2010). Behavioral Triage: A new model for identifying and treating substance-abusing offenders. *Journal of Drug Policy Analysis*. 3(1), doi: 10.2202/1941-2851.1014

Hawken, A. & Kleiman, M. (2009). Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE. Submitted to the United States Department of Justice, National Institute of Justice. NCJ 229023. www.ncjrs.govpdffiles1/nij/grants/229023.pdf

Hawken, A. & Kleiman, M. (2012, January 25). *Washington Intensive Supervision Program: Evaluation Report.* Retrieved from http://www.leg.state.nv.us/Interim/76th2011/Exhibits/AdminJustice/E060612I.pdf

Kleiman, M. (2001). Controlling drug use and crime with testing, sanctions, and treatment. In P. B. Heymann & W. H. Brownsberger (Eds.), *Drug Addiction and Drug Policy: The Struggle to Control Dependence* (pp. 168-192). Cambridge, MA: Harvard University Press.

Loudenburg, R., Drube, G., Leonardson, G., & Bathke, J. (2012, November 9). *South Dakota 24/7 Sobriety Program: Evaluation Supplemental Findings Report.* Retrieved from http://apps.sd.gov/atg/dui247/AnalysisSupplementalSD24.pdf

Lowenkamp, C. T., & Latessa, E. J. (2004). Understanding the risk principle: How and why correctional interventions can harm low-risk offenders. *Topics in Community Corrections, Annual Issue 2004: Assessment Issues for Managers.* Washington, DC: U.S. Department of Justice, National Institute of Corrections.

Lowenkamp, C. T., Latessa, E. J., & Holsinger, A. M. (2006). The risk principle in action: What have we learned from 13,676 offenders and 97 correctional programs? *Crime and Delinquency*, 52, 77-93.

National Institute of Justice (2012, February 3). *Swift and Certain Sanctions in Probation Are Highly Effective: Evaluation of the HOPE Program*. Retrieved from http://www.nij.gov/topics/corrections/community/drug-offenders/hawaii-hope.htm.

Nichols, J. & Ross, H. L. (1990). Effectiveness of legal sanctions in dealing with drinking drivers. *Alcohol, Drugs, and Driving*, 6(2), 33-55.

Paternoster, R. (1989). Decisions to participate in and desist from four types of common delinquency: Deterrence and the rational choice perspective. *Law and Society Review,* 23, 501-534.

# RECOMMENDATIONS OF THE COMMISSION 4

## Introduction

The Commission closely monitors the sentencing guidelines system and, each year, deliberates upon possible modifications to enhance the usefulness of the guidelines as a tool for judges in making their sentencing decisions. Under § 17.1-806 of the *Code of Virginia*, any modifications adopted by the Commission must be presented in its annual report, 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 "hotline" phone system, staffed Monday through Friday, to assist users with any questions or concerns regarding the preparation of the guidelines. While the hotline has proven to be an important resource for guidelines users, it has also been a rich source of input and feedback from criminal justice professionals around the Commonwealth. Moreover, the Commission conducts many training sessions over the course of a year and these sessions often provide information that is useful to the Commission. Finally, the Commission closely examines 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.

On an annual basis, the Commission examines those crimes not yet covered by the guidelines. Currently, the guidelines cover approximately 95% of felony cases in Virginia's circuit courts. Over the years, the General Assembly has created new crimes and raised other offenses from misdemeanors to felonies. The Commission keeps track of all of the changes to the *Code of Virginia* in order to identify new felonies that may be added to the guidelines system in the future. Unlike many other states, Virginia's guidelines are based on historical practices among its judges. The ability to create guidelines depends, in large part, on the number of historical cases that can be used to identify past judicial sentencing patterns. Of the felonies not currently covered by the guidelines, many do not occur frequently enough for there to be a sufficient number of cases upon which to develop historically-based guideline ranges. Through this process, however, the Commission can identify offenses and analyze data to determine if it is feasible to add particular crimes to the guidelines system.

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

## RECOMMENDATION 1

Modify the sentencing guidelines for use of a communications system to solicit a child (§ 18.2-374.3) to more closely reflect judicial sentencing practices for these offenses.

### Issue

In Virginia, the sentencing guidelines are based on analysis of historical sentencing practices. In 2006, after detailed analysis, the Commission recommended adding electronic solicitation of a child and certain child pornography offenses to the sentencing guidelines. This recommendation, submitted in the Commission's *2006 Annual Report*, was accepted by the 2007 General Assembly. However, the 2007 General Assembly also enacted new legislation elevating penalties and adding mandatory minimum sentences for certain electronic solicitation and child pornography crimes. The guidelines that became effective on July 1, 2007, were implemented as approved and, therefore, did not account for the new penalty structures. With five years of sentencing data now available for cases falling under the new penalty structures, the Commission re-evaluated the guidelines for electronic solicitation of a child (§ 18.2-374.3).

### Discussion

Section 18.2-374.3 establishes penalties for electronic solicitation of a child, which vary based on the age of the victim, the age of the offender, and whether the offender has previously been convicted of a violation of § 18.2-374.3. Figure 44 summarizes the penalties contained in § 18.2-374.3.

**Figure 44**

**Electronic Solicitation Offenses § 18.2-374.3**

| Offenses | Statutory Penalty | Mandatory Minimum |
|---|---|---|
| Propose sex act by communications system<br>Child age < 15 | 1-10 years | |
| Propose sex act by communications system<br>Child age <15, Offender 7+ years older | 5-30 years | 5 years |
| Propose sex act by communications system<br>Child age <15, Offender 7+ years older<br>2nd or subsequent conviction | 10-40 years | 10 years |
| Propose sex act by communications system<br>Child age 15+, Offender 7+ years older | 1-10 years | |
| Propose sex act by communications system<br>Child age 15+, Offender 7+ years older<br>2nd or subsequent conviction | 1-20 years | 1 year |
| Procure minor for obscene material<br>by communications system | 1-5 years | |
| Procure minor for prostitution, sodomy, or pornography<br>by communications system | 1-10 years | |

According to fiscal year (FY) 2009 through FY2013 Sentencing Guidelines data available for analysis, the rate of compliance with the guidelines for electronic solicitation of a child under § 18.2-374.3 was 59.2%. Moreover, when judges departed from the recommendation, they were much more likely to give the offender a sentence above the guidelines range than below it (Figure 45).

Sentencing Guidelines data also indicate that nearly two-thirds (64.5%) of the offenders convicted of electronic solicitation were sentenced to a term of incarceration greater than six months; however, the current guidelines for electronic solicitation of a child have recommended 44.2% of the offenders for that type of disposition (Figure 46). Thus, the current guidelines are not closely aligned to the actual incarceration rate for these crimes.

**Figure 45**

**Compliance with Sentencing Guidelines for Electronic Solicitation Offenses (§ 18.2-374.3) FY2009-FY2013 N=321**

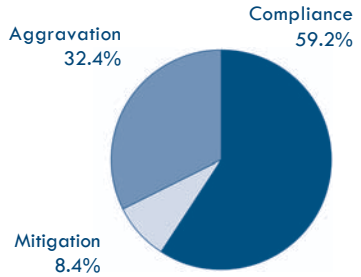



**Figure 46**

**Actual versus Recommended Incarceration Rates for Electronic Solicitation of a Child (§ 18.2-374.3) FY2009 – FY2013**

| | Actual Practice | Recommended under Current Sentencing Guidelines |
|---|---|---|
| Probation or Incarceration Up to 6 Months | 35.5% | 55.8% |
| Incarceration More than 6 months (range includes prison) | 64.5% | 44.2% |
| | 100% | 100% |

To improve compliance and address the disproportionate rate of aggravating sentences, the Commission recommends amending the guidelines for electronic solicitation of a child, which are covered by the Other Sexual Assault worksheets. Section A (Part II) of the sentencing guidelines worksheets determines if an offender will be recommended for probation or jail up to six months (Section B) or incarceration of more than six months (Section C). To more closely reflect the actual rate of incarceration for this type of offense, the Commission recommends modifying Section A (Part II) of the Other Sexual Assault worksheet as shown in Figure 47.

**Figure 47**

**Proposed Changes to Other Sexual Assault Section A (Part II) Worksheet**

**Other Sexual Assault — Section A (Part II)**

**Primary Offense**

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

**Use of Communications System**

| | | |
|---|---|---|
| **M.** | Procure minor for obscene material<br>Procure minor for prostitution, sodomy or pornography<br>Propose sex act with child age 15+, offender 7+ years older (1 count) | 6 |
| **N.** | Propose sex act with child under age 15, offender NOT 7+ years older (1 count) | 8 |
| **O.** | Propose sex act with child under age 15, offender 7+ years older (1st/2nd or subsequent)<br>Propose sex act with child age 15+, offender 7+ years older (2nd or subsequent) | 9 |

Specifically, the Commission recommends increasing the Primary Offense scores on Section A for a subset of the cases involving electronic child solicitation. In cases involving a child under the age of 15 and an offender who is less than seven years older than the child, the Primary Offense score for electronic solicitation (i.e., proposing a sex act by a communications system) would increase from six to eight points (see Primary Offense Group N in Figure 47). In cases involving a child under 15 and an offender who is at least seven years older than the child, the Primary Offense score would increase from six to nine points (see Primary Offense Group O in Figure 47). A second or subsequent conviction for proposing a sex act with a child at least 15 years of age, when the offender is at least seven years older, would also be increased to nine points (Primary Offense Group O). Electronic solicitation offenses scoring nine points on the revised worksheet carry mandatory prison sentences of at least one year and offenders convicted of these specific offenses will be automatically recommended for a prison term (Section C).

With the recommended changes on Section A, the guidelines will be more closely aligned with the actual incarceration rate experienced under the new penalties adopted by the General Assembly in 2007. As shown in Figure 48, the revised guidelines are expected to recommend approximately the same proportion of offenders for a sentence greater than six months as have received that type of disposition.

**Figure 48**

**Actual versus Recommended Prison Incarceration Rates for Electronic Solicitation of a Child (§ 18.2-374.3) FY2009 - FY2013**

| | Actual Practice | Recommended under Proposed Sentencing Guidelines |
|---|---|---|
| Probation or Incarceration Up to 6 Months | 35.5% | 37.2% |
| Incarceration More to 6 months (Range includes prison) | 64.5% | 62.8% |
| | 100% | 100% |

Similar changes are proposed for the Other Sexual Assault Section B worksheet (Figure 49). On the current Section B worksheet, all offenders whose primary offense is electronic solicitation of a child currently receive one point on the Primary Offense factor. The Commission recommends that the Primary Offense score for proposing a sex act with a child under age 15 be increased to six points (see Primary Offense Group G in Figure 49); when scored on Section B, these cases will always result in a jail recommendation.

**Figure 49**

**Proposed Changes to Other Sexual Assault Section B Worksheet**

**Other Sexual Assault ❖ Section B**

◆ **Primary Offense**

| | | |
|---|---|---|
| **A.** | Other than listed below (1 count) | 1 |
| **B.** | Aggravated sexual battery | |
| | 1 count | 2 |
| | 2 counts | 4 |
| | 3 counts | 6 |
| **C.** | Production, publication, sale or financing child pornography (1 count) | 1 |
| **D.** | Possess child porn (1st Offense) (1 count) | 1 |
| **E.** | Reproduce, transmit, sell, etc., child porn (1 count) | 1 |
| **F.** | Procure minor for obscene material | |
| | Procure minor for prostitution, sodomy or pornography(1 count) | 1 |
| **G.** | Propose sex act by communications system child less than age 15 (1 count) | 6 |
| **H.** | Propose sex act by communications system child age 15+, offender 7+ yr (1 count) | 2 |

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

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

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

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

◆ **Victim Less than Age 13 at Time of Offense** — **If YES, add 3** ▶

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

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

◆ **Prior Incarcerations / Commitments** — **If YES, add 1** ▶

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE IS F, G, OR H: ELECTRONIC SOLICITATION (§18.2-374.3)

◆ **Victim Injury (Threatened, emotional, physical or life threatening)** — **If YES, add 5** ▶

Total Score ▶

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

In addition, the Commission recommends increasing the Primary Offense score on Section B for offenders convicted of proposing a sex act with a child at least 15 years of age when the offender is at least seven years older than the victim; here, the score would increase from one to two points (see Primary Offense Group H in Figure 49). This adjustment increases the likelihood that offenders convicted of this offense will be recommended for a jail sentence.

The Commission also recommends adding a new factor to Section B to account for any type of victim injury in electronic solicitation cases. The new factor, which would be scored only if the primary offense is electronic solicitation of a child, would assign five points for victim injury (for example, emotional or threatened injury). When this factor is scored on Section B, offenders convicted of electronic solicitation of a child will always be recommended for a jail term. As shown in Figure 50, the proposed changes to Section B will enable the guidelines to more closely reflect the actual jail incarceration rate.

**Figure 50**

**Actual versus Recommended Jail Incarceration Rates for Electronic Solicitation of a Child (§ 18.2-374.3) FY2009 – FY2013**

| Section B | Actual Practice | Recommended under Current Sentencing Guidelines | Recommended under Proposed Sentencing Guidelines |
|---|---|---|---|
| Probation | 58.9% | 81.3% | 59.5% |
| Incarceration 1 Day to 6 Months | 41.1% | 18.7% | 40.5% |
| | 100% | 100% | 100% |

Commission staff also evaluated the scores on Section C, which determines the length of the prison sentence recommendation. Primary Offense points on Section C are assigned based on the classification of an offender's prior record. An offender is scored under the Other category if he does not have a prior conviction for a violent felony defined in § 17.1-805(C). An offender is scored under Category II if he has a prior conviction for a violent felony that has a statutory maximum penalty of less than 40 years. Offenders are classified as Category I if they have a prior conviction for a violent felony with a statutory maximum of 40 years or more. Based on detailed analysis of historical sentencing practices, the Commission recommends modifying Section C of the Other Sexual Assault worksheet. Electronic solicitation cases scored on Section C currently receive 17, 34, or 68 points for the primary offense factor depending on whether the offender's prior record classification is Other, Category II, or Category I, respectively. The Commission recommends increasing the Primary Offense scores on Section C for electronic solicitation cases involving a child under age 15 and an offender who is at least seven years older than the victim; the recommended Primary Offense scores are shown in Figure 51. This change will result in longer prison sentence recommendations for offenders convicted of this specific variation of electronic solicitation.

The Commission also recommends revising the Additional Offense factor on Section C. As shown in Figure 51, the scores for Additional Offenses would be revised only for cases in which the Primary Offense is electronic solicitation. In most cases, the revised factor will result in a higher number of points assigned for additional offenses than are currently received by offenders convicted of electronic solicitation.

Finally, the Commission recommends splitting the Victim Injury factor on Section C and increasing the points scored for electronic solicitation cases. Offenders currently receive six points when injury is emotional or threatened, or nine points if physical or life-threatening injury results. To better reflect judicial sentencing practices in cases involving the electronic solicitation of a child, the Commission recommends increasing the scores for victim injury to 14 points for threatened or emotional injury and 15 points for any physical or life-threatening injury. This change is shown in Figure 51.

## Other Sexual Assault ❖ Section C

| ◆ Primary Offense | Category I | Category II | Other |
|---|---|---|---|
| A. All attempted or conspired sexual assault (1 count) | (24) | (12) | (6) |
| B. Completed sexual assault other than listed below (1 count) | 36 | 18 | 9 |
| C. Non-forcible sodomy, no parental relationship | | | |
| 1 count | 24 | 12 | 6 |
| 2 counts | 40 | 20 | 10 |
| 3 counts | 104 | 52 | 26 |
| D. Non-forcible sodomy, parent/grandparent to child/grandchild age 13 - 17 | | | |
| 1 count | 36 | 18 | 9 |
| E. Indecent liberties with child | | | |
| 1 count | 24 | 12 | 6 |
| 2 counts | 40 | 20 | 10 |
| 3 counts | 104 | 52 | 26 |
| F. Non-forcible carnal knowledge of child age 13 - 14 (statutory rape) | | | |
| 1 count | 36 | 18 | 9 |
| G. Incest with own child/grandchild (1 count) | 104 | 52 | 26 |
| H. Incest with own child/grandchild age 13 - 17 (1 count) | 104 | 52 | 26 |
| I. Aggravated sexual battery | | | |
| 1 count | 90 | 60 | 34 |
| 2 counts | 132 | 88 | 50 |
| 3 counts | 288 | 192 | 108 |
| J. Entice, etc., minor to perform in porn; take part in child porn | | | |
| 1 count | 68 | 34 | 17 |
| K. Produce child porn; finance child porn (include attempted/conspired offenseses) | | | |
| 1 count | 100 | 50 | 25 |
| 2 counts | 216 | 108 | 54 |
| L. Possess child porn (1st Offense) | | | |
| 1 count | 48 | 24 | 12 |
| M. Possess child porn (2nd or subsequent) | | | |
| 1 count | 76 | 38 | 19 |
| N. Reproduce, transmit, sell, etc., child porn | | | |
| 1 count | 100 | 50 | 19 |
| O. Propose sex act by communication system - child solicitation | | | |
| 1 count | 68 | 34 | 17 |
| P. Propose sex act by communications system child less than age 15, offender 7+ yr (1st or 2nd Offense) | | | |
| 1 count | 148 | 74 | 37 |

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

| | |
|---|---|
| 5 | 5 |
| 10 | 10 |
| 20 | 19 |
| 30 | 29 |
| 40 or more | 39 |

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

| Primary offense O or P: Electronic Solicitation | |
|---|---|
| Years | Points |
| Less than 1 | 0 |
| 1 | 1 |
| 2 | 2 |
| 3 | 3 |
| 4 | 4 |
| 5 | 8 |
| 10 | 12 |
| 20 | 15 |
| 30 | 18 |
| 40 or more | 22 |

| Primary offense: All other offenses | |
|---|---|
| Years | Points |
| Less than 1 | 0 |
| 1 | 1 |
| 2 | 2 |
| 3 | 3 |
| 4 | 4 |
| 5 | 5 |
| 10 | 10 |
| 20 | 19 |
| 30 | 29 |
| 40 or more | 39 |

◆ **Weapon Used, Brandished, Feigned or Threatened** — **If YES, add 4** ▶

◆ **Victim Injury**

| Primary offense O or P: Electronic Solicitation | Points |
|---|---|
| Threatened or emotional | 14 |
| Physical or life threatening | 15 |

| Primary offense: All other offenses | Points |
|---|---|
| Threatened or emotional | 6 |
| Physical or life threatening | 9 |

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

| Years: | |
|---|---|
| Less than 2 | 0 |
| 2, 3, 4, 5 | 1 |
| 10 | 3 |
| 20 | 6 |
| 30 | 9 |
| 40 or more | 12 |

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

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

◆ **On Post-Incarceration Supervision** — **If YES, add 5** ▶

Total Score

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

**Figure 51**

**Proposed Changes to Other Sexual Assault Section C Worksheet**

By amending the Other Sexual Assault guidelines as recommended, the compliance rate with the guidelines for electronic solicitation of a child is expected to increase slightly to 60.1%, with the mitigation rate and aggravation rate balanced at 20.1% and 19.8%, respectively (Figure 52). The reduction in aggravating sentences indicates that the guidelines recommendation would be more in line with current judicial sentencing practices for this offense.

No impact on correctional bed space is anticipated, since the Commission's proposal is designed to integrate current penalty structures and judicial sanctioning practices into the guidelines.

**Figure 52**

**Compliance with Sentencing Guidelines for Electronic Solicitation of a Child (§ 18.2-374.3) FY2009 - FY2013**

| | Compliance | Mitigation | Aggravation | Total |
|---|---|---|---|---|
| Current | 59.2% | 8.4% | 32.4% | 100% |
| Projected | 60.1% | 20.1% | 19.8% | 100% |

## RECOMMENDATION 2

Modify the sentencing guidelines for child pornography (§§ 18.2-374.1 and 18.2-374.1:1) to bring the guidelines more in sync with sentencing practices for these offenses.

### Issue

As described in the Issue section of Recommendation 1, offenses involving child pornography were added to the sentencing guidelines effective July 1, 2007. With five years of sentencing data now available for cases falling under the new penalty structures enacted by the 2007 General Assembly, the Commission re-evaluated the guidelines for these offenses.

### Discussion

Sections 18.2-374.1 and 18.2-374.1:1 establish numerous penalties for offenses involving child pornography. For individuals convicted of production of child pornography under § 18.2-374.1, the penalties vary based on the age of the victim, the age of the offender, and whether the offender has previously been convicted of a violation of § 18.2-374.1. Figure 53 summarizes the penalties contained in §§ 18.2-374.1 and 18.2-374.1:1.

**Figure 53**

**Child Pornography Offenses**

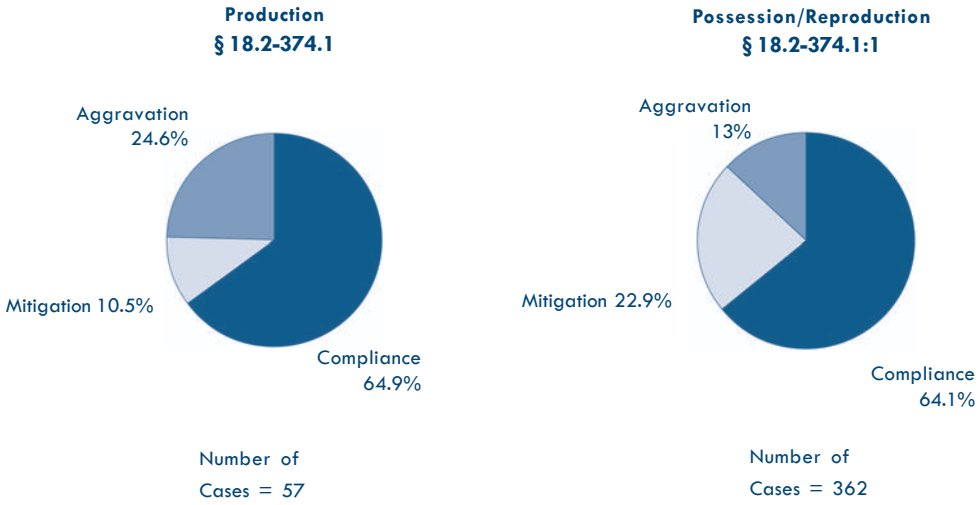
| Offenses | Statutory Penalty | Mandatory Minimum |
|---|---|---|
| **§ 18.2-374.1:1** | | |
| Possess child pornography (1st offense) | 1-5 years | |
| Possess child pornography (2nd offense) | 1-10 years | |
| Reproduce, transmit, etc., child pornography (1st offense) | 5-20 years | |
| Reproduce, transmit, etc., child pornography (2nd offense) | 5-20 years | 5 years |
| **§ 18.2-374.1*** | | |
| Entice a minor to perform in pornography | 1-20 years to 15-40 years depending on child's age, offender's age, and previous convictions for same offense | Varies |
| Finance child pornography | | Varies |
| Produce, make child pornography | | Varies |
| Take part in or film child pornography | | Varies |

** This statute encompasses 24 distinct offense/penalty combinations*

According to available Sentencing Guidelines data for FY2009 through FY2013, the rate of compliance with the guidelines for child pornography offenses was lower than the overall average compliance of 78.9% for all offenses. Compliance rates for both production and possession/reproducation of child pornography were between 64% and 65%. However, the departure patterns are quite different. In production cases, the aggravation rate is much higher than the mitigation rate (24.6% versus 10.5%), indicating that, when departing from the guidelines, judges are significantly more likely to sentence above the guidelines recommendation than below it. For possession/reproduction cases, judges are more likely to sentence below the guidelines range than above it (mitigation rate of 22.9% versus aggravation rate of 13.0%).

**Figure 54**

**Compliance with Sentencing Guidelines for Child Pornography Offenses FY2009 – FY2013**



When convicted of producing, publishing, selling, or financing child pornography (as the primary, or most serious, offense), 87.7% of offenders were sentenced to a term of incarceration greater than six months; however, the current guidelines recommended only 80.7% of the offenders for that type of disposition (Figure 55). For offenders convicted of possession or reproduction of child pornography, 66.6% received a sentence of incarceration more than six months, while the current guidelines recommended a slightly higher proportion (69.1%) of the offenders for incarceration of that length. The relatively low compliance rate and the differences between the recommended and actual disposition for child pornography cases suggest that the guidelines could be refined to more closely reflect judicial thinking in these cases.

**Figure 55**

**Actual versus Recommended Incarceration Rates for Production, etc., of Child Pornography Offenses (§ 18.2-374.1) FY2009 – FY2013**

| | Actual Practice | Recommended under Current Sentencing Guidelines |
|---|---|---|
| Probation or Incarceration up to 6 Months | 12.3% | 19.3% |
| Incarceration More than 6 Months (Range includes prison) | 87.7% | 80.7% |
| | 100% | 100% |

**Actual versus Recommended Prison Incarceration Rates for Possession/Reproduction of Child Pornography Offenses (§ 18.2-374.1:1) FY2009 – FY2013**

| | Actual Practice | Recommended under Current Sentencing Guidelines |
|---|---|---|
| Probation or Incarceration up to 6 Months | 33.4% | 30.9% |
| Incarceration More than 6 Months (Range includes prison) | 66.6% | 69.1% |
| | 100% | 100% |

Section A of the sentencing guidelines determines if an offender will be recommended for probation or jail up to six months (Section B) or incarceration of more than six months (Section C). To more closely reflect the actual rate of incarceration for this type of offense, the Commission recommends modifying Section A (Part II) of the Other Sexual Assault worksheet as shown in Figure 56.

On Section A, the Commission recommends increasing the Primary Offense scores for production, etc., of child pornography from five to six points; as a result, offenders convicted of production/sales-related offenses are more likely to be recommended for Section C (i.e., a prison sentence). Primary Offense points for first-time possession of child pornography would be decreased from six to five points.

The Commission also recommends revising the Additional Offense factor such that offenders convicted of child pornography as the primary offense will receive higher points for any additional offense convictions. This change is also shown in Figure 56.

**Figure 56**

**Proposed Changes to Other Sexual Assault Section A (Part II) Worksheet**

**Other Sexual Assault ⇒ Section A (Part II)**

◆ **Primary Offense**

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

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

**Primary offense: All other offenses**

| Years | Points |
|---|---|
| 5-26 | 1 |
| 27 - 52 | 2 |
| 53 or more | 3 |

**Primary offense: Production, Possession Child Porn**

| Years | Points |
|---|---|
| 5-26 | 2 |
| 27 - 52 | 3 |
| 53 or more | 4 |

By revising Section A in this manner, the guidelines will be more closely aligned with the actual incarceration rate experienced under the new penalties adopted by the General Assembly in 2007. As illustrated in Figure 57, the revised guidelines are expected to recommend approximately the same proportion of offenders for a sentence greater than six months as have received that type of disposition.

No modifications to the Section B worksheet are recommended.

**Figure 57**

**Actual versus Recommended Incarceration Rates for Production, etc., of Child Pornography Offenses (§ 18.2-374.1) FY2009 – FY2013**

| | Actual Practice | Recommended under Proposed Sentencing Guidelines |
|---|---|---|
| Probation or Incarceration up to 6 Months | 12.3% | 15.8% |
| Incarceration More than 6 Months (Range includes prison) | 87.7% | 84.2% |
| | 100% | 100% |

**Actual versus Recommended Prison Incarceration Rates for Possession/Reproduction of Child Pornography Offenses (§ 18.2-374.1:1) FY2009 – FY2013**

| | Actual Practice | Recommended under Proposed Sentencing Guidelines |
|---|---|---|
| Probation or Incarceration up to 6 Months | 33.4% | 32.3% |
| Incarceration More than 6 Months (Range includes prison) | 66.6% | 67.7% |
| | 100% | 100% |

An offender who scores nine points or more on Section A (Part II) of the Other Sexual Assault guidelines is then scored on Section C, which determines the length of the prison sentence length recommendation. Primary Offense points on Section C are assigned based on the classification of an offender's prior record. An offender is scored under the Other category if he does not have a prior conviction for a violent felony defined in § 17.1-805(C). An offender is scored under Category II if he has a prior conviction for a violent felony that has a statutory maximum penalty of less than 40 years. Offenders are classified as Category I if they have a prior conviction for a violent felony with a statutory maximum of 40 years or more. Based on detailed analysis of sentencing practices, the Commission recommends modifying Section C of the Other Sexual Assault worksheet, as shown in Figure 58.

On Section C, the Commission recommends increasing the Primary Offense points received by offenders who are convicted of at least two counts of production, etc., of child pornography (see Primary Offense Group K in Figure 58). These offenders would score 54, 108, or 216 points on the primary offense factor, depending on their prior record classification. The Commission also recommends a slight reduction in the Section C primary offense scores for offenders convicted of possession of child pornography (see Primary Offense Groups L and M in Figure 58).

**Figure 58**

**Proposed Changes to Other Sexual Assault Section C Worksheet**

**Other Sexual Assault ❖ Section C**

| | | Category I | Category II | Other |
|---|---|---|---|---|
| A. | All attempted or conspired sexual assault (1 count) | (24) | (12) | (6) |
| B. | Completed sexual assault other than listed below (1 count) | 36 | 18 | 9 |
| C. | Non-forcible sodomy, no parental relationship | | | |
| | 1 count | 24 | 12 | 6 |
| | 2 counts | 40 | 20 | 10 |
| | 3 counts | 104 | 52 | 26 |
| D. | Non-forcible sodomy, parent/grandparent to child/grandchild age 13 - 17 | | | |
| | 1 count | 36 | 18 | 9 |
| E. | Indecent liberties with child | | | |
| | 1 count | 24 | 12 | 6 |
| | 2 counts | 40 | 20 | 10 |
| | 3 counts | 104 | 52 | 26 |
| F. | Non-forcible carnal knowledge of child age 13 - 14 (statutory rape) | | | |
| | 1 count | 36 | 18 | 9 |
| G. | Incest with own child/grandchild (1 count) | 104 | 52 | 26 |
| H. | Incest with own child/grandchild age 13 - 17 (1 count) | 104 | 52 | 26 |
| I. | Aggravated sexual battery | | | |
| | 1 count | 90 | 60 | 34 |
| | 2 counts | 132 | 88 | 50 |
| | 3 counts | 288 | 192 | 108 |
| J. | Entice, etc., minor to perform in porn; take part in child porn | | | |
| | 1 count | 68 | 34 | 17 |
| K. | Produce child porn; finance child porn (include attempted/conspired offenseses) | | | |
| | 1 count | 100 | 50 | 25 |
| | 2 counts | 216 | 108 | 54 |
| L. | Possess child porn (1st Offense) | | | |
| | 1 count | ~~68~~ 48 | ~~34~~ 24 | ~~17~~ 12 |
| M. | Possess child porn (2nd or subsequent) | | | |
| | 1 count | ~~100~~ 76 | ~~50~~ 38 | ~~25~~ 19 |
| N. | Reproduce, transmit, sell, etc., child porn | | | |
| | 1 count | 100 | 50 | 25 |
| O. | Propose act by communication system - child solicitation | | | |
| | 1 count | 68 | 34 | 17 |
| P. | Propose act by communications system child less than age 15, offender 7+ yr (1st or 2nd Offense) | | | |
| | 1 count | 148 | 74 | 37 |

Amending the Other Sexual Assault guidelines as described is expected to increase the compliance rate with the guidelines for child pornography offenses. Given judicial sentencing practices during FY2009-FY2013, compliance with the guidelines for child pornography offenses is expected to increase from 64.9% to 66.7% for production-related offenses and from 64.1% to 66.3% for possession/reproduction offenses. A better balance between mitigation and aggravation departures is also expected, as shown in Figure 59. The increase in overall compliance and improved balance between mitigation and aggravation would bring recommendations more in line with current judicial sentencing practices for these offenses.

No impact on correctional bed space is anticipated, since the Commission's proposal is designed to integrate current penalties and judicial sanctioning practices into the guidelines.

**Figure 59**

**Compliance with Sentencing Guidelines for Child Pornography Offenses FY2009 - FY2013**

| | Compliance | Mitigation | Aggravation | Total |
|---|---|---|---|---|
| **Production (§ 18.2-374.1)** | | | | |
| Current | 64.9% | 10.5% | 24.5% | 100% |
| Projected | 66.7% | 15.8% | 17.5% | 100% |
| **Possession/Reproduction (§ 18.2-374.1:1)** | | | | |
| Current | 64.1% | 22.9% | 13.0% | 100% |
| Projected | 66.3% | 18.8% | 14.9% | 100% |

## RECOMMENDATION 3

Amend the Other Sexual Assault guidelines by dividing the offenses and creating a new offense group for obscenity crimes (those involving child pornography or electronic solicitation of a child).

### Issue

The Other Sexual Assault guidelines currently cover a wide array of offenses and the nature of these crimes varies considerably. Splitting these crimes into two separate offense groups will allow for more refined analyses in the future, which could result in improvements to the guidelines for particular offenses.

### Discussion

The Other Sexual Assault guidelines currently cover offenses ranging from indecent liberties, carnal knowledge, aggravated sexual battery, and incest to production or possession of child pornography and electronic solicitation of a child. The number and variety of offenses covered has resulted in worksheets that are very tightly spaced and complex to score.

Virginia's sentencing guidelines are grounded in actual sentencing practices among circuit court judges. The Commission closely monitors guidelines compliance by offense to determine if, based on judicial concurrence and departure patterns, any adjustments are needed to bring the guidelines more in line with current practice. Given the current worksheets for the Other Sexual Assault offense group, there is little room to add any new factors or expand existing factors. This is particularly true of the Section A and Section C worksheets. In addition, little space remains on the existing worksheets to add new guidelines offenses.

To allow for future expansion and refinement and improvement of the guidelines for offenses currently listed in the Other Sexual Assault offense group, the Commission recommends splitting the obscenity offenses (those involving child pornography under §§ 18.2-374.1 and 18.2-374.1:1 and electronic solicitation of a child under § 18.2-374.3) into a new offense group. The proposal does not modify the guidelines scores, except as approved (see Recommendations 1 and 2), and would not otherwise change the sentence recommendations for offenders.

No impact on correctional bed space is anticipated, since the Commission's proposal is technical in nature.

## RECOMMENDATION 4

Modify the sentencing guidelines for aggravated malicious wounding (§ 18.2-51.2) to more closely reflect judicial sentencing practices for this offense.

### Issue

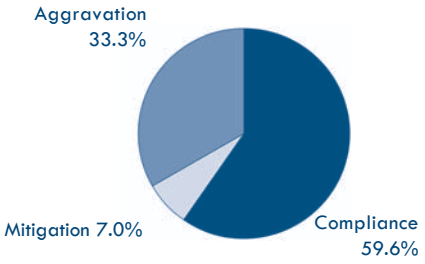
Aggravated malicious wounding (§ 18.2-51.2) is a Class 2 felony, with a statutory maximum penalty of life. This offense is currently covered under the Assault sentencing guidelines. Recent guidelines data have shown a relatively low compliance rate and a high aggravation rate associated with aggravated malicious wounding cases. As a result, the Commission conducted a thorough analysis and has developed a proposal to increase compliance and reduce the aggravation rate in these cases.

### Discussion

According to fiscal year (FY) 2009 through FY2013 Sentencing Guidelines data available at the time of the analysis, there were a total of 327 cases in which aggravated malicious wounding was the primary offense at sentencing. As shown in Figure 60, compliance in these cases was relatively low (59.6%). When departing from the guidelines recommendation, judges nearly always gave the offender a sentence above the guidelines recommendation. To address the disproportionate rate of aggravating sentences, the Commission recommends amending the guidelines for aggravated malicious wounding. Section A of the Assault guidelines determines if an offender will be recommended for probation or jail up to six months (Section B) or incarceration of more than six months (Section C). Detailed analysis revealed that nearly all (98.5%) of the offenders whose primary offense was aggravated malicious wounding, including those convicted of attempted and conspired acts, received a sentence of more than six months. Therefore, the Commission recommends increasing the Section A

**Figure 60**

**Compliance with Sentencing Guidelines for Aggravated Malicious Wounding (§ 18.2-51.2)**
**FY2009 - FY2013**
**N=327**



Primary Offense scores for attempted or conspired aggravated malicious wounding. As shown in Figure 61, these offenses would be reassigned to Primary Offense Group G and would receive seven points, rather than three points as currently scored. This would ensure that all offenders convicted of attempted, conspired, or completed aggravated malicious injury are recommended for Section C (i.e., a prison sentence).

**Figure 61**

**Proposed Changes to Assault Section A Worksheet**

**Assault ❖ Section A**

**◆ Primary Offense** *(scores for attempted/conspired offenses are in parentheses)*

| | | |
|---|---|---|
| **A.** | Assault and battery against a family member, third or subsequent conviction (1 count) | 2 |
| **B.** | Assault and battery against a law enforcement officer, fire or medical services, etc. (1 count) | 6 |
| **C.** | Any attempted or conspired assault and battery or unlawful injury (1 count) | (1) |
| **D.** | Unlawful injury to law enforcement officer, fire/rescue personnel services, etc. (1 count) | 7 |
| **E.** | Any other unlawful injury | |
| | 1 count | 1 |
| | 2 counts | 3 |
| **F.** | Any attempted or conspired malicious injury ~~or aggravated malicious injury~~ (1 count) | (3) |
| **G.** | Any attempted, conspired or completed aggravated malicious injury (1 count) | 7 |
| **H.** | Malicious injury to a law enforcement officer, fire or medical services, etc. (1 count) | 7 |
| **I.** | Any other malicious injury (1 count) | 7 |
| **J.** | Use of firearm in the commission of a felony (1 count) | 4 |
| **K.** | DWI with reckless disregard, victim permanently impaired | |
| | 1 count | 1 |
| | 2 counts | 3 |

Commission staff also evaluated the scores on Section C, which determines the length of the prison sentence recommendation. This portion of the analysis indicated that compliance could be maximized by increasing the Primary Offense points for aggravated malicious wounding on the Assault Section C worksheet. Primary Offense points on Section C are assigned based on the classification of an offender's prior record. An offender is scored under the Other category if he does not have a prior conviction for a violent felony defined in § 17.1-805(C). An offender is scored under Category II if he has a prior conviction for a violent felony that has a statutory

maximum penalty of less than 40 years. Offenders are classified as Category I if they have a prior conviction for a violent felony with a statutory maximum of 40 years or more. Cases involving aggravated malicious wounding that are scored on Section C currently receive 88, 176, or 264 points, depending on whether the offender's prior record classification is Other, Category II, or Category I, respectively. In order to more closely reflect actual sentencing practices, the Commission recommends increasing the Primary Offense points for these cases as shown in Figure 62. This change will result in longer prison sentence recommendations for offenders convicted of aggravated malicious wounding.

**Figure 62**

**Proposed Changes to Assault Section C Worksheet**

**Assault ❖ Section C**

| | Category I | Category II | Other |
|---|---|---|---|
| **A.** Assault and battery against a family member, third or subsequent conviction (1 count) | 28 | 14 | 7 |
| **B.** Assault and battery against a law enforcement officer, fire or medical services, etc. (1 count) | 32 | 16 | 8 |
| **C.** Unlawful injury (1 count) | 32 | 16 | 8 |
| **D.** Any attempted or conspired malicious injury (1 count) | (68) | (34) | (17) |
| **E.** Any completed malicious injury | | | |
| 1 count | 102 | 68 | 34 |
| 2 counts | 120 | 80 | 40 |
| 3 counts | 204 | 136 | 68 |
| **F.** Aggravated malicious injury (1 count) | ~~264~~ 321 | ~~176~~ 214 | 88 107 |
| **G.** Use of firearm in the commission of a felony - first offense (1 count) | 32 | 32 | 32 |
| **H.** Use of firearm in the commission of a felony - subsequent offense (1 count) | 56 | 56 | 56 |
| **I.** DWI with reckless disregard, Victim permanently impaired (1 count) | 48 | 24 | 12 |

Based on offenders sentenced from FY2009 through FY2013, the recommended modifications to the Assault sentencing guidelines are expected to slightly increase compliance for aggravated malicious wounding from 59.6% to 61.5% and decrease the proportion of sentences above the guidelines recommendation (Figure 63). Improving compliance and achieving a better balance between mitigation and aggravation would bring recommendations more in line with current judicial sentencing practices for this offense.

No impact on correctional bed space is anticipated, since the Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines.

**Figure 63**

**Compliance with Sentencing Guidelines for Aggravated Malicious Wounding (§ 18.2-51.2) FY2009 – FY2013**

| | Compliance | Mitigation | Aggravation | Total |
|---|---|---|---|---|
| Current | 59.6% | 7% | 33.4% | 100% |
| Projected | 61.5% | 15% | 23.5% | 100% |

## RECOMMENDATION 5

Modify the sentencing guidelines for burglary in cases involving an additional offense of aggravated malicious wounding to more closely reflect judicial sentencing practices in these cases.

### Issue

In 2012, the Commission recommended adding a factor to the Burglary worksheets for cases involving completed burglary with a deadly weapon with an additional offense of murder/manslaugther or malicious wounding. The Commission's analysis indicated that this change would improve the compliance rate in these cases, while providing a more balanced split between aggravation and mitigation departures. The recommendation, submitted in the Commission's *2012 Annual Report*, was accepted by the 2013 General Assembly. Because there were no cases in five years of data involving completed burglary with a deadly weapon and an additional offense of aggravated malicious wounding, this scenario was not covered by the modifications. Commission staff have continued to monitor the data to determine if this factor could be expanded to include aggravated malicious wounding.

### Discussion

The modifications contained in the Commission's *2012 Annual Report* affected cases with a primary offense of completed burglary with a deadly weapon, and an additional offense of attempted/conspired first degree murder, or attempted/conspired/completed second degree murder, felony murder/manslaugther or malicious wounding.

In 2012, a new factor was added to Section A of the Burglary/Dwelling and Burglary/Other guidelines (Figure 64) to ensure that all offenders convicted of this combination of offenses would be recommended for Section C (prison sentence). A new factor was also added to Section C of the Burglary/Dwelling and Burglary/Other guidelines to increase the recommended prison sentence for offenders convicted of this combination of offenses (Figure 64).

Monitoring new FY2012-FY2013 data as it became available revealed two cases involving completed burglary with a deadly weapon and an additional offense of aggravated malicious wounding. Both offenders were sentenced to incarceration for more than six months, with a median sentence of 38.5 years. Only one offender, however, was sentenced in compliance with the guidelines recommendation.

**Figure 64**

**Current Burglary/Dwelling Section A and C Factors**

**Burglary/Dwelling ❖ Section A**

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

◆ **Type of Additional Offense(s)**

| | |
|---|---|
| Additional offense with VCC prefix of MUR | 10 |
| Malicious wounding (§ 18.2-51) | 10 |
| All others | 0 |

**Burglary/Dwelling ❖ Section C**

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

◆ **Type of Additional Offense(s)**

| | |
|---|---|
| Additional Offense with VCC Prefix of "MUR" | 140 |
| Completed Malicious Wounding (§ 18.2-51) | 35 |
| Attempted/Conspired Malicious Wounding (§ 18.2-51/§ 18.2-22 /§ 18.2-26) | 8 |

The Commission recommends expanding the existing factors on Sections A and C of the Burglary/Dwelling and Burglary/Other worksheets, which currently add points when the offender has also been convicted of murder/manslaugther or malicious wounding, so that burglary offenders with an additional offense of aggravated malicious wounding will also receive points for this factor. These changes are shown in Figure 65.

Amending the Burglary/Dwelling and Burglary/Other guidelines in this way is expected to improve the compliance rate in these cases, as shown in Figure 66, and bring recommendations more in line with current judicial sentencing practices.

No impact on correctional bed space is anticipated, since the Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines.

**Figure 65**

**Proposed Changes to Burglary/Dwelling Section A and Section C Worksheets**

**Burglary/Dwelling ❖ Section A**

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

◆ **Type of Additional Offense(s)**

Additional offense with VCC prefix of MUR ..... 10
Malicious or Aggravated Malicious Wounding (§§ 18.2-51 or 18.2-51.2) ..... 10
All others ..... 0

**Burglary/Dwelling ❖ Section C**

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

◆ **Type of Additional Offense(s)**

Additional Offense with VCC Prefix of "MUR" ..... 140
Completed Aggravated Malicious Wounding (§ 18.2-51.2) ..... 55
Completed Malicious Wounding (§ 18.2-51) ..... 35
Attempted/Conspired Malicious or Aggravated Malicious Wounding (§ 18.2-22 /§ 18.2-26) ..... 8

**Figure 66**

**Compliance with Sentencing Guidelines for Burglary with a Deadly Weapon with Additional offense of Aggravated Malicious Wounding (§ 18.2-51.2) FY2009 – FY2013**

| | Compliance | Mitigation | Aggravation | Total |
|---|---|---|---|---|
| Current | 50% | 0% | 50% | 100% |
| Projected | 100% | 0% | 0% | 100% |

## RECOMMENDATION 6

Modify the sentencing guidelines for daytime burglary of a dwelling without a deadly weapon (§ 18.2-91) to more closely reflect judicial sentencing practices for this offense.

### Issue

Virginia's sentencing guidelines are grounded in actual sentencing practices among circuit court judges. The Commission closely monitors guidelines compliance by offense to determine if, based on judicial concurrence and departure patterns, any adjustments are needed to bring the guidelines more in line with current practice. According to Sentencing Guidelines data for FY2009 through FY2013, the compliance rate for offenders convicted of daytime burglary of a dwelling without a deadly weapon was 65.9%, with slightly higher mitigation (17.6%) than aggravation (16.5%). During an analysis to determine if compliance with the Burglary guidelines could be increased for any burglary offense, the Commission found that the guidelines for daytime burglary of a dwelling without a deadly weapon could be modified to be more in sync with current sentencing practices in these cases.

### Discussion

According to FY2009-FY2013 Sentencing Guidelines data available at the time of the analysis, there were a total of 3,911 cases in which daytime burglary of a dwelling without a deadly weapon was the primary offense at sentencing. The compliance rate in these cases was 65.9%. Although the mitigation rate (17.6%) and the aggravation rate (16.5%) for these cases were relatively balanced, further analysis indicated that modifying these sentencing guidelines would result in improved compliance.

Section A of the sentencing guidelines worksheets determines if an offender will be recommended for probation or jail up to six months (Section B) or incarceration of more than six months (Section C). The Commission recommends expanding the existing factor for the Type of Additional Offenses on Section A of the Burglary/Dwelling and Burglary/Other guidelines to apply to all burglary offenses, as shown in Figure 67. Currently, this factor is only scored if the primary offense at conviction is completed burglary with a deadly weapon. If expanded to apply to all burglary cases, this factor would increase the likelihood that offenders convicted of certain combinations of offenses will be recommended for Section C (i.e., a prison sentence).

No modifications to the Burglary/Dwelling or Burglary/Other Section B worksheets are proposed.

**Figure 67**

**Proposed Changes to Burglary/Dwelling Section A Worksheet**

**Burglary/Dwelling ❖ Section A**

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

◆ **Type of Additional Offense(s)**

| | |
|---|---|
| Additional offense with VCC prefix of MUR | 10 |
| Malicious wounding (§ 18.2-51) | 10 |
| All others | 0 |

An offender who scores 14 points or more on Section A of the Burglary/Dwelling or Burglary/Other guidelines is then scored on Section C, which determines the prison sentence length recommendation. Primary Offense points on Section C are assigned based on the classification of an offender's prior record. An offender is scored under the Other category if he does not have a prior conviction for a violent felony defined in § 17.1-805(C). An offender is scored under Category II if he has a prior conviction for a violent felony that has a statutory maximum penalty of less than 40 years. Offenders are classified as Category I if they have a prior conviction for a violent felony with a statutory maximum of 40 years or more. Cases involving completed daytime burglary of a dwelling without a deadly weapon that are scored on Section C currently receive 18, 36, or 54 points for the first count of the primary offense, depending on whether the offender's prior record classification is Other, Category II, or Category I, respectively. Based on a detailed analysis of actual sentencing practices, the Commission recommends lowering by one point the Primary Offense score for completed acts of daytime burglary of a dwelling without a deadly weapon, as shown in Figure 68. The Primary Offense scores for cases involving attempted or conspired burglary of a dwelling without a deadly weapon would not be modified.

**Figure 68**

**Proposed Changes to Burglary/Dwelling Section C Worksheet**

| Burglary/Dwelling ❖ Section C | Category I | Category II | Other |
|---|---|---|---|
| **Dwelling Without Weapon** | | | |
| **A.** Occupied dwelling with intent to commit a misdemeanor without deadly weapon (1 count) | 48 | 32 | 16 |
| **B.** Dwelling with intent to commit murder, rape, robbery or arson without deadly weapon | | | |
| Completed: 1 count | 90 | 60 | 30 |
| Attempted/conspired: 1 count | (60) | (30) | (15) |
| **C.** Dwelling with intent to commit larceny, etc. without deadly weapon | | | |
| Completed: 1 count | ~~54~~ 51 | ~~36~~ 34 | ~~18~~ 17 |
| Attempted/conspired: 1 count | (36) | (18) | (9) |
| **D.** Dwelling at night with intent to commit larceny etc. without deadly weapon | | | |
| Completed: 1 count | 54 | 36 | 18 |
| Attempted/conspired: 1 count | (36) | (18) | (9) |

The Commission also proposes increasing the recommended prison sentence for burglary cases involving certain additional offenses (Figure 69). With this change, the factor for Type of Additional Offenses applies to all cases scored on the Burglary/Dwelling or Burglary/Other worksheets and would increase the recommended prison sentence for offenders convicted of certain combinations of offenses.

**Figure 69**

**Proposed Changes to Burglary/Dwelling Section C Worksheet**

**Burglary/Dwelling ❖ Section C**

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

◆ **Type of Additional Offense(s)**

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

Based on offenders sentenced from FY2009 through FY2013, the recommended modifications to the Burglary sentencing guidelines are expected to slightly increase compliance for daytime burglary of a dwelling without a deadly weapon from 65.9% to 66.7% (Figure 70). In addition, the mitigation rate would be reduced, yielding a better balance between mitigation and aggravation. As a result, the recommended sentences would be more in line with current judicial sentencing practices for this offense.

No impact on correctional bed space is anticipated, since the Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines.

**Figure 70**

**Actual versus Recommended Prison Sentences for Daytime Burglary of a Dwelling without a Deadly Weapon (§ 18.2-91) FY2009 – FY2013**

| | Compliance | Mitigation | Aggravation | Total |
|---|---|---|---|---|
| Current | 65.9% | 17.6% | 16.5% | 100% |
| Projected | 66.7% | 16.6% | 16.7% | 100% |

# APPENDICES

# Appendix 1

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

| Reasons for MITIGATION | Burg. of Dwelling (N=230) | Burg. Other Structure (N=57) | Sch. I/II Drugs (N=689) | Other Drugs (N=98) | Fraud (N=298) | Larceny (N=530) | Misc Oth (N=52) | Misc P&P (N=37) | Traffic (N=153) | Weapon (N=76) |
|---|---|---|---|---|---|---|---|---|---|---|
| Plea Agreement | 56 | 17 | 262 | 40 | 71 | 192 | 25 | 16 | 58 | 23 |
| No Reason Given | 38 | 11 | 152 | 25 | 50 | 129 | 10 | 5 | 32 | 16 |
| Judicial discretion | 31 | 7 | 61 | 3 | 16 | 50 | 7 | 2 | 14 | 8 |
| Offender is sentenced to an alternative punishment | 32 | 9 | 77 | 6 | 20 | 53 | 1 | 1 | 4 | 2 |
| Offender cooperated with authorities | 21 | 8 | 57 | 15 | 14 | 33 | 2 | 2 | 2 | 4 |
| Facts of the case (not specific) | 13 | 5 | 20 | 6 | 6 | 41 | 5 | 7 | 14 | 11 |
| Court Circumstances or Procedural Issues | 11 | 0 | 63 | 3 | 9 | 19 | 1 | 2 | 15 | 9 |
| Offender has minimal/no prior record | 12 | 2 | 50 | 3 | 13 | 25 | 2 | 3 | 10 | 11 |
| Sentence recommended by Commonwealth Attorney | 18 | 6 | 45 | 4 | 12 | 33 | 5 | 5 | 7 | 6 |
| Offender health (mental, physical, emotional, etc.) | 10 | 1 | 29 | 3 | 14 | 20 | 1 | 3 | 6 | 4 |
| Offender has good potential for rehabilitation | 17 | 0 | 15 | 3 | 14 | 18 | 2 | 1 | 8 | 6 |
| Offender has made progress in rehabilitating him/herself | 7 | 2 | 18 | 2 | 4 | 19 | 1 | 1 | 10 | 1 |
| Offender issues (age of offender, family issues, etc.) | 14 | 3 | 12 | 3 | 5 | 11 | 0 | 0 | 2 | 1 |
| Victim request | 11 | 2 | 0 | 0 | 6 | 7 | 0 | 2 | 3 | 0 |
| Victim cannot/will not testify | 2 | 2 | 1 | 0 | 2 | 7 | 0 | 1 | 0 | 0 |
| Financial obligations (court costs, child support, etc.) | 4 | 0 | 5 | 0 | 8 | 10 | 1 | 0 | 1 | 1 |
| Offender not the leader | 5 | 1 | 4 | 0 | 3 | 2 | 2 | 1 | 0 | 0 |
| Judge had an issue scoring guidelines factors | 6 | 0 | 12 | 2 | 3 | 1 | 1 | 0 | 3 | 0 |
| Sentenced to Department of Juvenile Justice | 3 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| Jury sentence | 4 | 0 | 0 | 0 | 2 | 1 | 0 | 0 | 0 | 0 |
| Current offense involves drugs/alcohol (small amount) | 0 | 1 | 20 | 1 | 0 | 0 | 1 | 0 | 0 | 1 |
| Behavior positive since commission of the offense | 1 | 1 | 12 | 1 | 1 | 5 | 0 | 0 | 0 | 0 |
| Sentencing guidelines incorrect/missing | 2 | 0 | 4 | 1 | 0 | 0 | 0 | 0 | 1 | 0 |
| Offender needs rehabilitation | 1 | 1 | 4 | 3 | 2 | 5 | 0 | 0 | 0 | 1 |
| Guidelines recommendation is too harsh | 1 | 0 | 2 | 0 | 2 | 4 | 1 | 1 | 1 | 1 |
| Victim circumstances (drug dealer, etc.) | 2 | 0 | 0 | 0 | 7 | 2 | 0 | 0 | 0 | 0 |
| Minimal property or monetary loss | 0 | 0 | 0 | 0 | 1 | 16 | 0 | 0 | 0 | 0 |
| Offender's substance abuse issues | 2 | 0 | 9 | 0 | 2 | 2 | 0 | 0 | 0 | 0 |
| Victim's role in the offense | 2 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |
| Illegible written reason | 0 | 0 | 2 | 2 | 2 | 3 | 0 | 0 | 4 | 0 |
| Sentencing guidelines recommendation not appropriate | 3 | 1 | 3 | 2 | 0 | 1 | 0 | 1 | 0 | 0 |
| Multiple charges/events are being treated as one event | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Concealed weapon, but was not a firearm | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 |
| Sentence recommended by Probation Officer | 0 | 0 | 0 | 1 | 0 | 2 | 1 | 0 | 2 | 1 |
| Little or no injury/offender did not intend to harm | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 |
| Victim circumstances (facts of the case, etc.) | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 1 | 0 |
| Judge thought sentence was in compliance | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Judge rounded guidelines minimum to nearest whole year | 0 | 0 | 0 | 2 | 0 | 1 | 0 | 0 | 0 | 0 |
| Offender needs sex offender treatment | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Judge had an issue scoring probation violation | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 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 1

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

| Reasons for AGGRAVATION | Burg. of Dwelling (N=176) | Burg. Other Structure (N=71) | Sch. I/II Drugs (N=549) | Other Drugs (N=146) | Fraud (N=135) | Larceny (N=494) | Misc Oth (N=39) | Misc P&P (N=73) | Traffic (N=209) | Weapon (N=77) |
|---|---|---|---|---|---|---|---|---|---|---|
| Plea agreement | 40 | 19 | 148 | 40 | 37 | 111 | 13 | 14 | 31 | 33 |
| No reason given | 35 | 12 | 152 | 39 | 33 | 127 | 11 | 12 | 43 | 14 |
| Aggravating circumstances/flagrancy of offense | 28 | 13 | 43 | 9 | 11 | 61 | 3 | 23 | 32 | 7 |
| Offender has extensive prior record | 25 | 11 | 68 | 20 | 17 | 77 | 7 | 3 | 58 | 6 |
| Offender has poor rehabilitation potential | 15 | 2 | 27 | 8 | 12 | 15 | 1 | 8 | 24 | 1 |
| Number of violations/counts in the event | 7 | 5 | 42 | 13 | 6 | 21 | 3 | 3 | 6 | 15 |
| Guidelines recommendation is too low | 14 | 4 | 15 | 15 | 9 | 26 | 4 | 4 | 8 | 3 |
| Jury sentence | 6 | 1 | 9 | 2 | 6 | 15 | 1 | 3 | 13 | 7 |
| Type of victim (child, etc.) | 5 | 2 | 0 | 3 | 9 | 16 | 0 | 10 | 2 | 0 |
| Offender is sentenced to an alternative punishment | 5 | 6 | 35 | 6 | 3 | 27 | 0 | 1 | 8 | 0 |
| Offense involved a degree of planning/violation of trust | 5 | 4 | 2 | 2 | 10 | 39 | 0 | 1 | 0 | 0 |
| Current offense involves drugs/alcohol (large amount) | 0 | 1 | 27 | 18 | 0 | 1 | 0 | 4 | 22 | 0 |
| Judicial discretion | 6 | 6 | 16 | 7 | 3 | 13 | 1 | 4 | 2 | 0 |
| Degree of victim injury (physical, emotional, etc.) | 0 | 0 | 4 | 2 | 0 | 3 | 0 | 7 | 6 | 0 |
| Extreme property or monetary loss | 2 | 1 | 2 | 1 | 5 | 47 | 0 | 0 | 1 | 0 |
| Offender's substance abuse issues | 2 | 1 | 18 | 2 | 1 | 7 | 1 | 1 | 11 | 0 |
| Poor conduct since commission of offense | 1 | 2 | 12 | 1 | 2 | 8 | 0 | 0 | 2 | 0 |
| Victim circumstances (facts of the case, etc.) | 10 | 2 | 0 | 1 | 1 | 1 | 1 | 2 | 0 | 0 |
| Offender needs rehabilitation offered by jail/prison | 1 | 0 | 11 | 1 | 2 | 4 | 0 | 0 | 5 | 1 |
| Aggravating court circumstances/proceedings | 5 | 1 | 8 | 3 | 0 | 5 | 1 | 0 | 2 | 0 |
| True offense behavior was serious | 1 | 0 | 6 | 1 | 0 | 4 | 0 | 1 | 1 | 1 |
| Sentence recommended by Commonwealth Attorney | 2 | 1 | 8 | 2 | 1 | 4 | 0 | 1 | 1 | 1 |
| Offender used a weapon in commission of the offense | 6 | 2 | 3 | 0 | 0 | 8 | 0 | 1 | 0 | 4 |
| Prior record not adequately weighed by guidelines | 2 | 0 | 7 | 1 | 1 | 7 | 0 | 0 | 0 | 2 |
| Seriousness of offense | 2 | 0 | 2 | 0 | 1 | 4 | 0 | 1 | 0 | 2 |
| Victim request | 5 | 0 | 0 | 0 | 2 | 0 | 0 | 2 | 2 | 0 |
| Violent/disruptive behavior in custody | 0 | 1 | 4 | 3 | 3 | 4 | 3 | 0 | 0 | 0 |
| Current offense involves accident/reckless driving | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 | 13 | 0 |
| Offender failed alternative sanction program | 0 | 0 | 15 | 3 | 1 | 1 | 0 | 0 | 1 | 0 |
| Sentencing guidelines not appropriate | 1 | 0 | 4 | 1 | 0 | 2 | 1 | 1 | 1 | 0 |
| Degree of violence toward victim | 0 | 0 | 1 | 0 | 0 | 2 | 0 | 1 | 0 | 0 |
| Aggravating facts involving the breaking and entering | 10 | 1 | 0 | 0 | 0 | 1 | 0 | 2 | 0 | 0 |
| Mandatory minimum involved in event | 2 | 1 | 1 | 1 | 1 | 1 | 0 | 1 | 5 | 1 |
| Offender issues (age, lacks family support, etc.) | 1 | 2 | 4 | 1 | 1 | 3 | 0 | 0 | 3 | 0 |
| Used, etc., drugs/alcohol while on probation | 0 | 1 | 13 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| Failed to follow instructions while on probation | 2 | 0 | 5 | 0 | 2 | 2 | 0 | 0 | 1 | 0 |
| Child present at time of offense | 0 | 0 | 4 | 0 | 0 | 2 | 0 | 6 | 2 | 0 |
| Absconded from probation supervision | 0 | 0 | 7 | 0 | 0 | 1 | 2 | 1 | 2 | 0 |
| Offender failed to cooperate with authorities | 1 | 1 | 3 | 0 | 0 | 3 | 0 | 0 | 3 | 0 |
| Committed offense while on probation | 0 | 0 | 7 | 1 | 0 | 1 | 0 | 0 | 0 | 0 |
| Facts of sex offense involved | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Judge thought sentence was in compliance | 0 | 0 | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 4 |
| Offender was the leader | 1 | 0 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 |
| Financial obligations (court costs, child support, etc.) | 2 | 0 | 1 | 0 | 1 | 2 | 0 | 0 | 0 | 0 |
| Offender violated protective order or was stalking | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 |
| Illegible written reason | 0 | 0 | 3 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| Gang-related offense | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 |
| Multiple offenses in the sentencing event | 0 | 0 | 0 | 1 | 1 | 2 | 0 | 0 | 0 | 0 |
| Sentenced to an alternative | 0 | 0 | 0 | 1 | 0 | 2 | 0 | 0 | 0 | 0 |
| Judge rounded guidelines minimum to nearest whole year | 0 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Offender never reported for probation supervision | 0 | 0 | 1 | 0 | 2 | 0 | 0 | 0 | 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 MITIGATION | Assault (N=212) | Homicide (N=22) | Kidnapping (N=15) | Robbery (N=182) | Rape (N=40) | Sexual Assault (N=71) |
|---|---|---|---|---|---|---|
| Plea Agreement | 83 | 7 | 4 | 66 | 21 | 32 |
| No Reason Given | 39 | 1 | 1 | 22 | 0 | 3 |
| Judicial discretion | 14 | 0 | 1 | 10 | 2 | 10 |
| Offender is sentenced to an alternative punishment | 7 | 0 | 0 | 6 | 1 | 1 |
| Offender cooperated with authorities | 2 | 1 | 1 | 38 | 1 | 6 |
| Facts of the case (not specific) | 22 | 1 | 3 | 13 | 4 | 10 |
| Court Circumstances or Procedural Issues | 12 | 1 | 1 | 15 | 9 | 6 |
| Offender has minimal/no prior record | 10 | 1 | 2 | 20 | 2 | 9 |
| Sentence recommended by Commonwealth Attorney | 13 | 1 | 3 | 15 | 1 | 6 |
| Offender health (mental, physical, emotional, etc.) | 17 | 0 | 3 | 4 | 4 | 1 |
| Offender has good potential for rehabilitation | 7 | 0 | 1 | 11 | 0 | 3 |
| Offender has made progress in rehabilitating him/herself | 4 | 0 | 0 | 5 | 0 | 3 |
| Offender issues (age of offender, family issues, etc.) | 5 | 1 | 1 | 9 | 5 | 4 |
| Victim request | 14 | 0 | 2 | 2 | 5 | 5 |
| Victim cannot/will not testify | 16 | 0 | 1 | 3 | 4 | 8 |
| Financial obligations (court costs, child support, etc.) | 2 | 0 | 0 | 0 | 0 | 1 |
| Offender not the leader | 2 | 2 | 1 | 12 | 0 | 0 |
| Judge had an issue scoring guidelines factors | 2 | 1 | 0 | 1 | 0 | 0 |
| Sentenced to Department of Juvenile Justice | 6 | 0 | 0 | 17 | 3 | 1 |
| Jury sentence | 3 | 7 | 0 | 2 | 4 | 4 |
| Current offense involves drugs/alcohol (small amount.) | 0 | 0 | 0 | 1 | 0 | 1 |
| Behavior positive since commission of the offense | 0 | 1 | 0 | 3 | 0 | 0 |
| Sentencing guidelines incorrect/missing | 1 | 0 | 0 | 1 | 0 | 0 |
| Offender needs rehabilitation | 1 | 0 | 0 | 1 | 0 | 1 |
| Guidelines recommendation is too harsh | 3 | 0 | 0 | 1 | 0 | 1 |
| Victim circumstances (drug dealer, etc.) | 6 | 0 | 0 | 0 | 0 | 0 |
| Minimal property or monetary loss | 0 | 0 | 0 | 1 | 0 | 0 |
| Offender's substance abuse issues | 0 | 0 | 0 | 1 | 0 | 0 |
| Victim's role in the offense | 11 | 0 | 1 | 0 | 0 | 2 |
| Illegible written reason | 1 | 0 | 0 | 1 | 0 | 0 |
| Sentencing guidelines recommendation not appropriate | 0 | 0 | 0 | 0 | 0 | 1 |
| Multiple charges/events are being treated as one | 0 | 0 | 0 | 1 | 0 | 1 |
| Concealed weapon, but was not a firearm | 0 | 0 | 0 | 5 | 0 | 0 |
| Sentence recommended by Probation Officer | 1 | 0 | 1 | 0 | 1 | 0 |
| Little or no injury/offender did not intend to harm | 5 | 1 | 1 | 0 | 0 | 0 |
| Victim circumstances (facts of the case, etc.) | 1 | 0 | 0 | 0 | 0 | 0 |
| Judge thought sentence was in compliance | 2 | 0 | 0 | 0 | 0 | 0 |
| Judge rounded guidelines minimum to nearest whole year | 0 | 0 | 0 | 0 | 0 | 0 |
| Offender needs sex offender treatment | 0 | 0 | 0 | 0 | 0 | 3 |
| Judge had an issue scoring probation violation | 0 | 0 | 0 | 0 | 0 | 0 |
| Judge had an issue scoring a risk assessment factor | 0 | 0 | 0 | 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 2

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

| Reasons for AGGRAVATION | Assault (N=166) | Homicide (N=54) | Kidnapping (N=23) | Robbery (N=74) | Rape (N=27) | Sexual Assault (N=119) |
|---|---|---|---|---|---|---|
| Plea agreement | 41 | 6 | 9 | 12 | 2 | 37 |
| No reason given | 30 | 5 | 0 | 16 | 3 | 9 |
| Aggravating circumstances/flagrancy of offense | 33 | 16 | 10 | 16 | 10 | 34 |
| Offender has extensive prior record | 16 | 5 | 1 | 6 | 1 | 12 |
| Offender has poor rehabilitation potential | 16 | 5 | 1 | 2 | 5 | 14 |
| Number of violations/counts in the event | 9 | 2 | 1 | 4 | 0 | 9 |
| Guidelines recommendation is too low | 8 | 2 | 1 | 5 | 0 | 14 |
| Jury sentence | 18 | 13 | 8 | 10 | 11 | 3 |
| Type of victim (child, etc.) | 9 | 7 | 0 | 4 | 7 | 24 |
| Offender is sentenced to an alternative punishment | 0 | 0 | 0 | 0 | 0 | 0 |
| Offense involved a degree of planning/violation of trust | 2 | 0 | 0 | 3 | 2 | 12 |
| Current offense involves drugs/alcohol (large amount) | 0 | 5 | 0 | 0 | 0 | 0 |
| Judicial discretion | 2 | 2 | 0 | 1 | 0 | 7 |
| Degree of victim injury (physical, emotional, etc.) | 24 | 9 | 0 | 8 | 0 | 3 |
| Extreme property or monetary loss | 0 | 0 | 0 | 0 | 0 | 0 |
| Offender's substance abuse issues | 0 | 1 | 0 | 0 | 0 | 0 |
| Poor conduct since commission of offense | 1 | 1 | 1 | 1 | 1 | 0 |
| Victim circumstances (facts of the case, etc.) | 2 | 1 | 1 | 2 | 3 | 3 |
| Offender needs rehabilitation offered by jail/prison | 0 | 0 | 0 | 1 | 0 | 1 |
| Aggravating court circumstances/proceedings | 0 | 0 | 0 | 0 | 0 | 2 |
| True offense behavior was more serious | 5 | 0 | 0 | 0 | 1 | 5 |
| Sentence recommended by Commonwealth Attorney | 0 | 1 | 0 | 0 | 1 | 2 |
| Offender used a weapon in commission of the offense | 2 | 0 | 0 | 1 | 0 | 0 |
| Prior record not adequately weighed by guidelines | 1 | 0 | 0 | 1 | 0 | 1 |
| Seriousness of offense | 3 | 1 | 1 | 4 | 0 | 2 |
| Victim request | 1 | 0 | 0 | 2 | 2 | 6 |
| Violent/disruptive behavior in custody | 1 | 1 | 1 | 0 | 0 | 0 |
| Current offense involves accident/reckless driving | 0 | 5 | 0 | 1 | 0 | 0 |
| Offender failed alternative sanction program | 0 | 0 | 0 | 0 | 0 | 0 |
| Sentencing guidelines not appropriate | 7 | 0 | 0 | 1 | 0 | 1 |
| Degree of violence toward victim | 6 | 4 | 0 | 6 | 1 | 0 |
| Aggravating facts involving the breaking and entering | 1 | 0 | 0 | 2 | 0 | 0 |
| Mandatory minimum involved in event | 2 | 0 | 0 | 2 | 0 | 1 |
| Offender issues (age of offender, lacks family support, etc.) | 0 | 1 | 0 | 0 | 1 | 1 |
| Used, etc., drugs/alcohol while on probation | 1 | 0 | 0 | 0 | 0 | 0 |
| Failed to follow instructions while on probation | 0 | 0 | 0 | 0 | 0 | 0 |
| Child present at time of offense | 0 | 0 | 0 | 0 | 0 | 0 |
| Absconded from probation supervision | 0 | 0 | 0 | 0 | 0 | 0 |
| Offender failed to cooperate with authorities | 1 | 0 | 0 | 0 | 0 | 0 |
| Committed offense while on probation | 0 | 0 | 0 | 1 | 0 | 0 |
| Facts of sex offense involved | 0 | 0 | 0 | 1 | 1 | 6 |
| Judge thought sentence was in compliance | 0 | 0 | 0 | 0 | 0 | 0 |
| Offender was the leader | 2 | 0 | 0 | 0 | 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, Drug, and Miscellaneous Offenses

### BURGLARY OF DWELLING

| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
|---|---|---|---|---|
| 1 | 60.5% | 23.3% | 16.3 % | 43 |
| 2 | 71.9 | 14.1 | 14.1 | 64 |
| 3 | 72.7 | 9.1 | 18.2 | 33 |
| 4 | 70.1 | 23.4 | 6.5 | 77 |
| 5 | 82.6 | 8.7 | 8.7 | 23 |
| 6 | 62.5 | 31.3 | 6.3 | 16 |
| 7 | 76.2 | 7.1 | 16.7 | 42 |
| 8 | 47.8 | 34.8 | 17.4 | 23 |
| 9 | 56.8 | 16.2 | 27.0 | 37 |
| 10 | 53.8 | 35.9 | 10.3 | 39 |
| 11 | 70.6 | 11.8 | 17.6 | 17 |
| 12 | 65.1 | 14.0 | 20.9 | 43 |
| 13 | 66.1 | 25.4 | 8.5 | 59 |
| 14 | 50.0 | 37.5 | 12.5 | 40 |
| 15 | 63.0 | 15.2 | 21.7 | 46 |
| 16 | 47.7 | 36.4 | 15.9 | 44 |
| 17 | 50.0 | 0 | 50.0 | 4 |
| 18 | 33.3 | 66.7 | 0 | 6 |
| 19 | 44.7 | 26.3 | 28.9 | 38 |
| 20 | 75.0 | 12.5 | 12.5 | 16 |
| 21 | 56.5 | 34.8 | 8.7 | 23 |
| 22 | 70.0 | 12.0 | 18.0 | 50 |
| 23 | 47.8 | 34.8 | 17.4 | 46 |
| 24 | 70.9 | 25.5 | 3.6 | 55 |
| 25 | 70.6 | 11.8 | 17.6 | 34 |
| 26 | 73.8 | 11.5 | 14.8 | 61 |
| 27 | 77.6 | 12.1 | 10.3 | 58 |
| 28 | 80.8 | 7.7 | 11.5 | 26 |
| 29 | 46.9 | 14.3 | 38.8 | 49 |
| 30 | 82.4 | 11.8 | 5.9 | 17 |
| 31 | 89.7 | 3.4 | 6.9 | 29 |
| Missing | 0 | 100 | 0 | 1 |
| Total | 65.0 | 19.8 | 15.2 | 1159 |

### BURGLARY/OTHER

| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
|---|---|---|---|---|
| 1 | 70.4% | 22.2% | 7.4% | 27 |
| 2 | 91.3 | 0 | 8.7 | 23 |
| 3 | 83.3 | 0 | 16.7 | 6 |
| 4 | 84.6 | 15.4 | 0 | 26 |
| 5 | 73.3 | 20.0 | 6.7 | 15 |
| 6 | 78.6 | 14.3 | 7.1 | 14 |
| 7 | 100.0 | 0 | 0 | 5 |
| 8 | 100.0 | 0 | 0 | 2 |
| 9 | 81.3 | 12.5 | 6.3 | 16 |
| 10 | 90.5 | 0 | 9.5 | 21 |
| 11 | 70.0 | 0 | 30.0 | 10 |
| 12 | 72.2 | 11.1 | 16.7 | 18 |
| 13 | 76.2 | 23.8 | 0 | 21 |
| 14 | 52.9 | 23.5 | 23.5 | 17 |
| 15 | 66.7 | 6.7 | 26.7 | 30 |
| 16 | 100.0 | 0 | 0 | 7 |
| 17 | 73.3 | 13.3 | 13.3 | 15 |
| 18 | 100.0 | 0 | 0 | 2 |
| 19 | 78.6 | 14.3 | 7.1 | 14 |
| 20 | 66.7 | 0 | 33.3 | 3 |
| 21 | 78.6 | 7.1 | 14.3 | 14 |
| 22 | 73.7 | 5.3 | 21.1 | 19 |
| 23 | 52.9 | 11.8 | 35.3 | 17 |
| 24 | 66.7 | 20.8 | 12.5 | 24 |
| 25 | 76.9 | 11.5 | 11.5 | 26 |
| 26 | 81.1 | 10.8 | 8.1 | 37 |
| 27 | 79.3 | 6.9 | 13.8 | 29 |
| 28 | 76.9 | 7.7 | 15.4 | 26 |
| 29 | 60.0 | 10.0 | 30.0 | 20 |
| 30 | 77.8 | 0 | 22.2 | 18 |
| 31 | 85.7 | 14.3 | 0 | 7 |
| Total | 75.8 | 10.8 | 13.4 | 529 |

### DRUG/OTHER

| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
|---|---|---|---|---|
| 1 | 86.5% | 2.7% | 10.8% | 37 |
| 2 | 88.6 | 8.6 | 2.9 | 105 |
| 3 | 83.3 | 5.6 | 11.1 | 18 |
| 4 | 91.4 | 5.7 | 2.9 | 35 |
| 5 | 75.0 | 5.0 | 20.0 | 20 |
| 6 | 92.9 | 7.1 | 0 | 14 |
| 7 | 82.4 | 5.9 | 11.8 | 34 |
| 8 | 100.0 | 0 | 0 | 7 |
| 9 | 85.7 | 3.6 | 10.7 | 28 |
| 10 | 76.9 | 5.1 | 17.9 | 39 |
| 11 | 95.8 | 4.2 | . | 24 |
| 12 | 82.5 | 7.5 | 10.0 | 80 |
| 13 | 79.1 | 4.7 | 16.3 | 43 |
| 14 | 82.5 | 2.5 | 15.0 | 40 |
| 15 | 71.1 | 5.3 | 23.7 | 76 |
| 16 | 87.0 | 0 | 13.0 | 23 |
| 17 | 78.9 | 0 | 21.1 | 19 |
| 18 | 88.9 | 0 | 11.1 | 18 |
| 19 | 82.4 | 10.1 | 7.6 | 119 |
| 20 | 91.3 | 0 | 8.7 | 46 |
| 21 | 64.7 | 29.4 | 5.9 | 17 |
| 22 | 83.3 | 12.5 | 4.2 | 24 |
| 23 | 75.8 | 15.2 | 9.1 | 33 |
| 24 | 85.3 | 8.0 | 6.7 | 75 |
| 25 | 83.3 | 11.9 | 4.8 | 42 |
| 26 | 84.6 | 10.3 | 5.1 | 78 |
| 27 | 90.9 | 4.5 | 4.5 | 88 |
| 28 | 88.4 | 7.0 | 4.7 | 43 |
| 29 | 73.1 | 2.6 | 24.4 | 78 |
| 30 | 73.8 | 9.8 | 16.4 | 61 |
| 31 | 87.9 | 5.5 | 6.6 | 91 |
| Missing | 100 | 00 | | 1 |
| Total | 83.2 | 6.7 | 10.0 | 1456 |

## Appendix 3
## Sentencing Guidelines Compliance by Judicial Circuit: Property, Drug, and Miscellaneous Offenses

### SCHEDULE I/II DRUGS

| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
|---|---|---|---|---|
| 1 | 79.4% | 7.5% | 13% | 253 |
| 2 | 84.2 | 11.7 | 4.2 | 240 |
| 3 | 69.6 | 19.0 | 11.3 | 168 |
| 4 | 81.3 | 13.9 | 4.8 | 294 |
| 5 | 78.5 | 8.3 | 13.2 | 144 |
| 6 | 81.7 | 9.6 | 8.7 | 115 |
| 7 | 87.0 | 6.5 | 6.5 | 230 |
| 8 | 83.3 | 15.5 | 1.2 | 84 |
| 9 | 78.8 | 8.8 | 12.4 | 113 |
| 10 | 80.5 | 9.4 | 10.1 | 149 |
| 11 | 85.2 | 11.4 | 3.4 | 88 |
| 12 | 82.4 | 10.4 | 7.2 | 250 |
| 13 | 75.8 | 18.5 | 5.6 | 534 |
| 14 | 77.8 | 9.1 | 13.1 | 198 |
| 15 | 77.5 | 6.1 | 16.4 | 409 |
| 16 | 79.5 | 12.0 | 8.4 | 166 |
| 17 | 79.4 | 8.8 | 11.8 | 68 |
| 18 | 79.5 | 12.3 | 8.2 | 73 |
| 19 | 80.8 | 14.9 | 4.3 | 302 |
| 20 | 88.4 | 4.3 | 7.2 | 207 |
| 21 | 78.9 | 11.3 | 9.9 | 71 |
| 22 | 84.4 | 4.6 | 11.0 | 218 |
| 23 | 76.8 | 15.2 | 8.1 | 198 |
| 24 | 80.0 | 11.9 | 8.1 | 235 |
| 25 | 74.6 | 18.9 | 6.5 | 185 |
| 26 | 84.3 | 10.0 | 5.7 | 458 |
| 27 | 89.0 | 4.4 | 6.6 | 365 |
| 28 | 86.8 | 8.0 | 5.2 | 174 |
| 29 | 66.7 | 10.2 | 23.2 | 177 |
| 30 | 80.8 | 6.8 | 12.3 | 73 |
| 31 | 85.4 | 8.5 | 6.0 | 199 |
| Missing | 100 | 0 | 0 | 5 |
| Total | 80.8 | 10.7 | 8.5 | 6443 |

### FRAUD

| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
|---|---|---|---|---|
| 1 | 86.7% | 6.7% | 6.7% | 75 |
| 2 | 89.6 | 5.9 | 4.4 | 135 |
| 3 | 78.4 | 10.8 | 10.8 | 37 |
| 4 | 91.2 | 7.4 | 1.5 | 68 |
| 5 | 90.2 | 7.8 | 2.0 | 51 |
| 6 | 77.4 | 12.9 | 9.7 | 31 |
| 7 | 86.8 | 5.7 | 7.5 | 53 |
| 8 | 75.6 | 17.1 | 7.3 | 41 |
| 9 | 79.4 | 11.8 | 8.8 | 68 |
| 10 | 85.0 | 15.0 | 0 | 40 |
| 11 | 87.5 | 8.3 | 4.2 | 24 |
| 12 | 83.3 | 7.1 | 9.5 | 84 |
| 13 | 78.8 | 15.4 | 5.8 | 52 |
| 14 | 80.9 | 4.4 | 14.7 | 68 |
| 15 | 82.1 | 7.7 | 10.3 | 156 |
| 16 | 79.7 | 17.6 | 2.7 | 74 |
| 17 | 81.5 | 7.4 | 11.1 | 54 |
| 18 | 86.7 | 10.0 | 3.3 | 30 |
| 19 | 84.1 | 10.1 | 5.8 | 138 |
| 20 | 93.2 | 3.4 | 3.4 | 59 |
| 21 | 70.3 | 27.0 | 2.7 | 37 |
| 22 | 84.5 | 8.6 | 6.9 | 58 |
| 23 | 80.8 | 15.4 | 3.8 | 78 |
| 24 | 82.5 | 15.0 | 2.5 | 80 |
| 25 | 87.1 | 10.9 | 2.0 | 101 |
| 26 | 84.3 | 8.3 | 7.4 | 121 |
| 27 | 90.6 | 6.3 | 3.1 | 127 |
| 28 | 94.5 | 3.6 | 1.8 | 55 |
| 29 | 78.5 | 8.6 | 12.9 | 93 |
| 30 | 82.5 | 10.5 | 7.0 | 57 |
| 31 | 88.3 | 6.7 | 5.0 | 60 |
| Missing | 100 | 0 | 0 | 1 |
| Total | 84.4 | 9.5 | 6.1 | 2206 |

### LARCENY

| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
|---|---|---|---|---|
| 1 | 78.9% | 8.4% | 12.8 % | 298 |
| 2 | 85.2 | 9.9 | 4.9 | 304 |
| 3 | 80.0 | 12.4 | 7.6 | 105 |
| 4 | 81.9 | 14.8 | 3.3 | 210 |
| 5 | 84.1 | 9.4 | 6.5 | 138 |
| 6 | 85.0 | 6.7 | 8.3 | 60 |
| 7 | 76.9 | 17.1 | 6.0 | 117 |
| 8 | 82.9 | 12.4 | 4.8 | 105 |
| 9 | 78.3 | 8.0 | 13.7 | 175 |
| 10 | 81.1 | 11.0 | 7.9 | 127 |
| 11 | 87.9 | 9.1 | 3.0 | 66 |
| 12 | 81.0 | 11.9 | 7.0 | 327 |
| 13 | 77.3 | 18.0 | 4.7 | 150 |
| 14 | 77.5 | 8.7 | 13.8 | 276 |
| 15 | 79.2 | 7.6 | 13.2 | 447 |
| 16 | 77.9 | 11.7 | 10.3 | 145 |
| 17 | 82.8 | 6.0 | 11.2 | 134 |
| 18 | 83.6 | 6.6 | 9.8 | 61 |
| 19 | 76.7 | 13.3 | 10.0 | 210 |
| 20 | 94.3 | 1.4 | 4.3 | 140 |
| 21 | 81.3 | 13.8 | 4.9 | 123 |
| 22 | 76.5 | 5.0 | 18.5 | 200 |
| 23 | 85.2 | 7.6 | 7.2 | 291 |
| 24 | 82.5 | 12.2 | 5.2 | 229 |
| 25 | 82.1 | 11.4 | 6.5 | 184 |
| 26 | 88.7 | 5.6 | 5.6 | 354 |
| 27 | 91.0 | 4.7 | 4.3 | 277 |
| 28 | 91.3 | 5.0 | 3.7 | 161 |
| 29 | 79.3 | 5.4 | 15.3 | 222 |
| 30 | 85.3 | 7.4 | 7.4 | 95 |
| 31 | 92.3 | 3.6 | 4.2 | 168 |
| Missing | 100 | 0 | 0 | 5 |
| Total | 82.7 | 9.0 | 8.4 | 5904 |

## Appendix 3
## Sentencing Guidelines Compliance by Judicial Circuit: Property, Drug, and Miscellaneous Offenses

### TRAFFIC

| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
|---|---|---|---|---|
| 1 | 77.2% | 5.0% | 17.8% | 101 |
| 2 | 83.0 | 9.8 | 7.1 | 112 |
| 3 | 62.5 | 20.8 | 16.7 | 24 |
| 4 | 77.4 | 16.1 | 6.5 | 62 |
| 5 | 85.7 | 8.6 | 5.7 | 35 |
| 6 | 85.7 | 3.6 | 10.7 | 28 |
| 7 | 84.6 | 10.3 | 5.1 | 39 |
| 8 | 80.8 | 11.5 | 7.7 | 26 |
| 9 | 77.8 | 2.2 | 20.0 | 45 |
| 10 | 90.7 | 3.7 | 5.6 | 54 |
| 11 | 92.9 | 3.6 | 3.6 | 28 |
| 12 | 89.3 | 7.1 | 3.6 | 112 |
| 13 | 78.6 | 14.3 | 7.1 | 42 |
| 14 | 63.6 | 4.5 | 31.8 | 44 |
| 15 | 75.0 | 9.1 | 15.9 | 132 |
| 16 | 83.1 | 3.4 | 13.6 | 59 |
| 17 | 63.3 | 3.3 | 33.3 | 30 |
| 18 | 90.0 | 0 | 10.0 | 10 |
| 19 | 57.8 | 6.3 | 35.9 | 64 |
| 20 | 83.6 | 0 | 16.4 | 61 |
| 21 | 80.6 | 9.7 | 9.7 | 31 |
| 22 | 84.4 | 2.2 | 13.3 | 45 |
| 23 | 66.2 | 23.9 | 9.9 | 71 |
| 24 | 76.5 | 20.6 | 2.9 | 68 |
| 25 | 83.9 | 10.7 | 5.4 | 56 |
| 26 | 80.5 | 11.5 | 8.0 | 113 |
| 27 | 81.6 | 10.5 | 7.9 | 76 |
| 28 | 92.3 | 0 | 7.7 | 26 |
| 29 | 65.9 | 12.2 | 22.0 | 41 |
| 30 | 54.5 | 4.5 | 40.9 | 22 |
| 31 | 89.4 | 6.1 | 4.5 | 66 |
| Missing | 100 | 0 | 0 | 5 |
| Total | 79.1 | 8.9 | 12.1 | 1728 |

### MISCELLANEOUS/OTHER

| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
|---|---|---|---|---|
| 1 | 76.9% | 0% | 23.1% | 13 |
| 2 | 92.3 | 7.7 | 0 | 13 |
| 3 | 71.4 | 28.6 | 0 | 7 |
| 4 | 91.7 | 5.6 | 2.8 | 36 |
| 5 | 66.7 | 33.3 | 0 | 3 |
| 6 | 75.0 | 16.7 | 8.3 | 12 |
| 7 | 88.9 | 11.1 | 0 | 9 |
| 8 | 70.0 | 10.0 | 20.0 | 10 |
| 9 | 75.0 | 12.5 | 12.5 | 8 |
| 10 | 64.3 | 21.4 | 14.3 | 14 |
| 11 | 27.3 | 72.7 | .0 | 11 |
| 12 | 72.0 | 24.0 | 4.0 | 25 |
| 13 | 84.0 | 12.0 | 4.0 | 25 |
| 14 | 93.3 | 0 | 6.7 | 15 |
| 15 | 61.0 | 14.6 | 24.4 | 41 |
| 16 | 83.3 | 5.6 | 11.1 | 18 |
| 17 | 66.7 | 33.3 | 0 | 3 |
| 18 | 100.0 | 0 | 0 | 3 |
| 19 | 46.2 | 30.8 | 23.1 | 13 |
| 20 | 90.9 | 9.1 | 0 | 11 |
| 21 | 100.0 | 0 | 0 | 2 |
| 22 | 84.2 | 5.3 | 10.5 | 19 |
| 23 | 90.0 | 5.0 | 5.0 | 20 |
| 24 | 88.9 | 11.1 | 0 | 9 |
| 25 | 50.0 | 50.0 | 0 | 6 |
| 26 | 66.7 | 0 | 33.3 | 12 |
| 27 | 80.0 | 0 | 20.0 | 5 |
| 28 | 83.3 | 16.7 | 0 | 6 |
| 29 | 88.2 | 0 | 11.8 | 17 |
| 30 | 33.3 | 33.3 | 33.3 | 3 |
| 31 | 100.0 | 0 | 0 | 14 |
| Total | 77.4 | 12.9 | 9.7 | 403 |

### MISCELLANEOUS/P&P

| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
|---|---|---|---|---|
| 1 | 84.6% | 7.7% | 7.7% | 13 |
| 2 | 93.3 | 6.7 | 0 | 15 |
| 3 | 75.0 | 25.0 | 0 | 4 |
| 4 | 76.2 | 0 | 23.8 | 21 |
| 5 | 100.0 | 0 | 0 | 12 |
| 6 | 66.7 | 11.1 | 22.2 | 9 |
| 7 | 72.2 | 11.1 | 16.7 | 18 |
| 8 | 75.0 | 25.0 | 0 | 8 |
| 9 | 84.6 | 0 | 15.4 | 13 |
| 10 | 80.0 | 20.0 | 0 | 10 |
| 11 | 80.0 | .0 | 20.0 | 5 |
| 12 | 66.7 | 16.7 | 16.7 | 6 |
| 13 | 83.3 | 16.7 | 0 | 6 |
| 14 | 64.7 | 5.9 | 29.4 | 17 |
| 15 | 72.9 | 2.1 | 25.0 | 48 |
| 16 | 61.5 | 15.4 | 23.1 | 13 |
| 17 | 100.0 | 0 | 0 | 1 |
| 18 | 100.0 | 0 | 0 | 1 |
| 19 | 61.1 | 0 | 38.9 | 18 |
| 20 | 45.5 | 27.3 | 27.3 | 11 |
| 21 | 72.7 | 9.1 | 18.2 | 11 |
| 22 | 91.7 | .0 | 8.3 | 12 |
| 23 | 75.0 | 16.7 | 8.3 | 12 |
| 24 | 80.0 | 12.0 | 8.0 | 25 |
| 25 | 66.7 | 13.3 | 20.0 | 15 |
| 26 | 80.8 | 3.8 | 15.4 | 26 |
| 27 | 82.1 | 3.6 | 14.3 | 28 |
| 28 | 60.0 | 26.7 | 13.3 | 15 |
| 29 | 58.3 | 12.5 | 29.2 | 24 |
| 30 | 85.7 | .0 | 14.3 | 7 |
| 31 | 84.6 | 7.7 | 7.7 | 13 |
| Total | 74.8 | 8.5 | 16.7 | 437 |

## Appendix 3
## Sentencing Guidelines Compliance by Judicial Circuit: Property, Drug, and Miscellaneous Offenses

### WEAPONS

| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
|---|---|---|---|---|
| 1 | 77.8% | 5.6% | 16.7% | 18 |
| 2 | 93.3 | 6.7 | 0 | 30 |
| 3 | 91.7 | 8.3 | 0 | 12 |
| 4 | 75.0 | 15.6 | 9.4 | 32 |
| 5 | 83.3 | .0 | 16.7 | 12 |
| 6 | 72.7 | 9.1 | 18.2 | 11 |
| 7 | 73.2 | 4.9 | 22.0 | 41 |
| 8 | 72.7 | 27.3 | 0 | 11 |
| 9 | 60.0 | 30.0 | 10.0 | 10 |
| 10 | 48.0 | 28.0 | 24.0 | 25 |
| 11 | 61.5 | 30.8 | 7.7 | 13 |
| 12 | 76.9 | 7.7 | 15.4 | 13 |
| 13 | 70.0 | 13.3 | 16.7 | 60 |
| 14 | 73.1 | 15.4 | 11.5 | 26 |
| 15 | 73.5 | 14.7 | 11.8 | 34 |
| 16 | 64.7 | 29.4 | 5.9 | 17 |
| 17 | 50.0 | 50.0 | 0 | 2 |
| 18 | 66.7 | 0 | 33.3 | 3 |
| 19 | 50.0 | 25.0 | 25.0 | 8 |
| 20 | 90.9 | 9.1 | 0 | 11 |
| 21 | 73.7 | 15.8 | 10.5 | 19 |
| 22 | 77.3 | 13.6 | 9.1 | 22 |
| 23 | 84.2 | 5.3 | 10.5 | 19 |
| 24 | 75.0 | 15.0 | 10.0 | 20 |
| 25 | 77.8 | 5.6 | 16.7 | 18 |
| 26 | 82.8 | 0 | 17.2 | 29 |
| 27 | 75.8 | 15.2 | 9.1 | 33 |
| 28 | 85.7 | 0 | 14.3 | 14 |
| 29 | 76.5 | 5.9 | 17.6 | 17 |
| 30 | 78.6 | 7.1 | 14.3 | 14 |
| 31 | 50.0 | 33.3 | 16.7 | 6 |
| Total | 74.5 | 12.7 | 12.8 | 600 |

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

### ASSAULT

| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
|---|---|---|---|---|
| 1 | 69.1% | 19.1% | 11.8% | 68 |
| 2 | 78.4 | 12.2 | 9.5 | 74 |
| 3 | 54.1 | 29.7 | 16.2 | 37 |
| 4 | 80.3 | 13.2 | 6.6 | 76 |
| 5 | 72.5 | 17.5 | 10.0 | 40 |
| 6 | 74.2 | 12.9 | 12.9 | 31 |
| 7 | 63.3 | 20.0 | 16.7 | 60 |
| 8 | 56.7 | 26.7 | 16.7 | 30 |
| 9 | 76.3 | 5.3 | 18.4 | 38 |
| 10 | 82.9 | 11.4 | 5.7 | 35 |
| 11 | 76.7 | 14.0 | 9.3 | 43 |
| 12 | 87.5 | 6.3 | 6.3 | 48 |
| 13 | 65.0 | 20.0 | 15.0 | 80 |
| 14 | 82.9 | 12.2 | 4.9 | 41 |
| 15 | 70.7 | 14.1 | 15.2 | 92 |
| 16 | 87.5 | 8.3 | 4.2 | 48 |
| 17 | 63.6 | 9.1 | 27.3 | 11 |
| 18 | 76.5 | 17.6 | 5.9 | 17 |
| 19 | 66.0 | 20.0 | 14.0 | 50 |
| 20 | 77.3 | 0.0 | 22.7 | 22 |
| 21 | 89.3 | 7.1 | 3.6 | 28 |
| 22 | 88.5 | 7.7 | 3.8 | 26 |
| 23 | 67.1 | 16.4 | 16.4 | 73 |
| 24 | 75.3 | 14.3 | 10.4 | 77 |
| 25 | 70.8 | 14.6 | 14.6 | 48 |
| 26 | 75.0 | 12.5 | 12.5 | 64 |
| 27 | 84.5 | 10.3 | 5.2 | 58 |
| 28 | 75.8 | 15.2 | 9.1 | 33 |
| 29 | 59.2 | 24.5 | 16.3 | 49 |
| 30 | 58.3 | 25.0 | 16.7 | 12 |
| 31 | 90.0 | 6.7 | 3.3 | 30 |
| Missing | 33.3 | 33.3 | 33.3 | 3 |
| Total | 73.8 | 14.7 | 11.5 | 1442 |

### KIDNAPPING

| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
|---|---|---|---|---|
| 1 | 80% | 0% | 20% | 5 |
| 2 | 80.0 | 0 | 20.0 | 5 |
| 3 | 100 | 0 | 0 | 2 |
| 4 | 50.0 | 50.0 | 0 | 2 |
| 5 | 60.0 | 20.0 | 20.0 | 5 |
| 6 | 0 | 0 | 100 | 1 |
| 7 | 80.0 | 0 | 20.0 | 5 |
| 8 | 100 | 0 | 0 | 1 |
| 9 | 100 | 0 | 0 | 4 |
| 10 | 0 | 50.0 | 50.0 | 2 |
| 11 | 0 | 0 | 0 | 0 |
| 12 | 33.3 | 33.3 | 33.3 | 3 |
| 13 | 75.0 | 16.7 | 8.3 | 12 |
| 14 | 100 | 0 | 0 | 2 |
| 15 | 75.0 | 16.7 | 8.3 | 12 |
| 16 | 75.0 | 0 | 25.0 | 4 |
| 17 | 50.0 | 0 | 50.0 | 4 |
| 18 | .0 | .0 | 100 | 1 |
| 19 | 33.3 | 33.3 | 33.3 | 6 |
| 20 | 0 | 0 | 0 | 0 |
| 21 | 100 | 0 | 0 | 1 |
| 22 | 50.0 | 0 | 50.0 | 2 |
| 23 | 75.0 | 25.0 | 0 | 4 |
| 24 | 83.3 | 16.7 | 0 | 6 |
| 25 | 75.0 | 25.0 | 0 | 4 |
| 26 | 50.0 | 10.0 | 40.0 | 10 |
| 27 | 100 | 0 | 0 | 4 |
| 28 | 75.0 | 25.0 | 0 | 4 |
| 29 | 85.7 | 0 | 14.3 | 7 |
| 30 | 50.0 | 0 | 50.0 | 2 |
| 31 | 66.7 | 0 | 33.3 | 3 |
| Total | 69.1 | 12.2 | 18.7 | 123 |

### HOMICIDE

| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
|---|---|---|---|---|
| 1 | 100% | 0% | 0% | 7 |
| 2 | 30.0 | 10.0 | 60.0 | 10 |
| 3 | 66.7 | 0 | 33.3 | 6 |
| 4 | 80.8 | 0 | 19.2 | 26 |
| 5 | 69.2 | 0 | 30.8 | 13 |
| 6 | 75.0 | 25.0 | 0 | 4 |
| 7 | 71.4 | 14.3 | 14.3 | 7 |
| 8 | 60.0 | 20.0 | 20.0 | 5 |
| 9 | 50.0 | 0 | 50.0 | 6 |
| 10 | 40.0 | 20.0 | 40.0 | 5 |
| 11 | 60.0 | 40.0 | 0 | 5 |
| 12 | 66.7 | 22.2 | 11.1 | 9 |
| 13 | 61.1 | 22.2 | 16.7 | 18 |
| 14 | 72.7 | 27.3 | 0 | 11 |
| 15 | 75.0 | 12.5 | 12.5 | 8 |
| 16 | 75.0 | 0 | 25.0 | 4 |
| 17 | 0 | 0 | 0 | 0 |
| 18 | 100.0 | 0 | 0 | 2 |
| 19 | 80.0 | 0 | 20.0 | 5 |
| 20 | 100.0 | 0 | 0 | 1 |
| 21 | 100.0 | 0 | 0 | 6 |
| 22 | 33.3 | 33.3 | 33.3 | 6 |
| 23 | 50.0 | 50.0 | 0 | 4 |
| 24 | 75.0 | 0 | 25.0 | 8 |
| 25 | 45.5 | 9.1 | 45.5 | 11 |
| 26 | 25.0 | 0 | 75.0 | 8 |
| 27 | 71.4 | 0 | 28.6 | 7 |
| 28 | 50.0 | 0 | 50.0 | 4 |
| 29 | 90.0 | 0 | 10.0 | 10 |
| 30 | 50.0 | 0 | 50.0 | 2 |
| 31 | 75.0 | 0 | 25.0 | 8 |
| Total | 66.4 | 9.7 | 23.9 | 226 |

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

### ROBBERY

| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
|---|---|---|---|---|
| 1 | 44.0% | 28.0% | 28.0% | 25 |
| 2 | 69.8 | 25.4 | 4.8 | 63 |
| 3 | 61.1 | 27.8 | 11.1 | 18 |
| 4 | 62.9 | 31.4 | 5.7 | 70 |
| 5 | 76.9 | 7.7 | 15.4 | 13 |
| 6 | 88.2 | 5.9 | 5.9 | 17 |
| 7 | 81.8 | 12.1 | 6.1 | 33 |
| 8 | 69.0 | 20.7 | 10.3 | 29 |
| 9 | 45.0 | 35.0 | 20.0 | 20 |
| 10 | 50.0 | 50.0 | 0 | 12 |
| 11 | 60.0 | 40.0 | 0 | 5 |
| 12 | 84.0 | 4.0 | 12.0 | 25 |
| 13 | 66.7 | 27.6 | 5.7 | 105 |
| 14 | 60.0 | 22.9 | 17.1 | 35 |
| 15 | 64.1 | 23.1 | 12.8 | 39 |
| 16 | 50.0 | 42.9 | 7.1 | 14 |
| 17 | 42.9 | 42.9 | 14.3 | 21 |
| 18 | 62.5 | 33.3 | 4.2 | 24 |
| 19 | 46.7 | 40.0 | 13.3 | 30 |
| 20 | 55.6 | 11.1 | 33.3 | 9 |
| 21 | 85.7 | 14.3 | .0 | 7 |
| 22 | 75.0 | 12.5 | 12.5 | 16 |
| 23 | 46.7 | 26.7 | 26.7 | 15 |
| 24 | 66.7 | 20.0 | 13.3 | 15 |
| 25 | 63.6 | 27.3 | 9.1 | 11 |
| 26 | 74.1 | 18.5 | 7.4 | 27 |
| 27 | 91.7 | 0 | 8.3 | 12 |
| 28 | 100.0 | 0 | 0 | 7 |
| 29 | 87.5 | 12.5 | 0 | 8 |
| 30 | 50.0 | 0 | 50.0 | 4 |
| 31 | 81.3 | 18.8 | 0 | 16 |
| Total | 65.6 | 24.4 | 9.9 | 745 |

### RAPE

| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
|---|---|---|---|---|
| 1 | 66.7% | 16.7% | 16.7% | 6 |
| 2 | 44.4 | 11.1 | 44.4 | 9 |
| 3 | 0 | 100.0 | 0 | 1 |
| 4 | 70.0 | 20.0 | 10.0 | 10 |
| 5 | 60.0 | 20.0 | 20.0 | 5 |
| 6 | 50.0 | 50.0 | 0 | 2 |
| 7 | 57.1 | 28.6 | 14.3 | 7 |
| 8 | 66.7 | 33.3 | 0 | 3 |
| 9 | 75.0 | 25.0 | 0 | 4 |
| 10 | 62.5 | 25.0 | 12.5 | 8 |
| 11 | 33.3 | 33.3 | 33.3 | 6 |
| 12 | 50.0 | 50.0 | 0 | 4 |
| 13 | 50.0 | 50.0 | 0 | 4 |
| 14 | 83.3 | 16.7 | 0 | 6 |
| 15 | 46.7 | 40.0 | 13.3 | 15 |
| 16 | 40.0 | 20.0 | 40.0 | 5 |
| 17 | 50.0 | 0 | 50.0 | 6 |
| 18 | 0 | 0 | 0 | 0 |
| 19 | 57.1 | 0 | 42.9 | 7 |
| 20 | 100.0 | 0 | 0 | 3 |
| 21 | 100.0 | 0 | 0 | 3 |
| 22 | 85.7 | 0 | 14.3 | 7 |
| 23 | 85.7 | 14.3 | 0 | 7 |
| 24 | 57.1 | 28.6 | 14.3 | 7 |
| 25 | 71.4 | 14.3 | 14.3 | 7 |
| 26 | 66.7 | 33.3 | 0 | 3 |
| 27 | 75.0 | 25.0 | 0 | 4 |
| 28 | 66.7 | 33.3 | 0 | 3 |
| 29 | 57.1 | 28.6 | 14.3 | 7 |
| 30 | 50.0 | 25.0 | 25.0 | 4 |
| 31 | 69.2 | 23.1 | 7.7 | 13 |
| Total | 61.9 | 22.7 | 15.3 | 176 |

### OTHER SEXUAL ASSAULT

| Circuit | Compliance | Mitigation | Aggravation | # of Cases |
|---|---|---|---|---|
| 1 | 66.7% | .0% | 33.3% | 12 |
| 2 | 77.3 | 0 | 22.7 | 22 |
| 3 | 100.0 | 0 | 0 | 8 |
| 4 | 78.9 | 10.5 | 10.5 | 19 |
| 5 | 70.0 | 10.0 | 20.0 | 10 |
| 6 | 66.7 | 11.1 | 22.2 | 9 |
| 7 | 55.6 | 22.2 | 22.2 | 9 |
| 8 | 66.7 | 16.7 | 16.7 | 6 |
| 9 | 68.4 | 10.5 | 21.1 | 19 |
| 10 | 63.6 | 27.3 | 9.1 | 11 |
| 11 | 66.7 | 16.7 | 16.7 | 12 |
| 12 | 73.7 | 15.8 | 10.5 | 19 |
| 13 | 60.0 | 40.0 | 0 | 10 |
| 14 | 81.0 | 14.3 | 4.8 | 21 |
| 15 | 60.0 | 11.4 | 28.6 | 35 |
| 16 | 53.6 | 7.1 | 39.3 | 28 |
| 17 | 50.0 | 0 | 50.0 | 6 |
| 18 | 100.0 | 0 | 0 | 3 |
| 19 | 60.0 | 3.3 | 36.7 | 60 |
| 20 | 68.2 | 13.6 | 18.2 | 22 |
| 21 | 40.0 | 20.0 | 40.0 | 5 |
| 22 | 69.2 | 7.7 | 23.1 | 13 |
| 23 | 66.7 | 20.0 | 13.3 | 15 |
| 24 | 60.5 | 26.3 | 13.2 | 38 |
| 25 | 66.7 | 13.9 | 19.4 | 36 |
| 26 | 77.1 | 11.4 | 11.4 | 35 |
| 27 | 70.0 | 23.3 | 6.7 | 30 |
| 28 | 25.0 | 12.5 | 62.5 | 8 |
| 29 | 83.3 | 0 | 16.7 | 30 |
| 30 | 33.3 | 16.7 | 50.0 | 6 |
| 31 | 82.9 | 8.6 | 8.6 | 35 |
| Missing | 100.0 | 0 | 0 | 1 |
| Total | 68.0 | 12.0 | 20.1 | 593 |