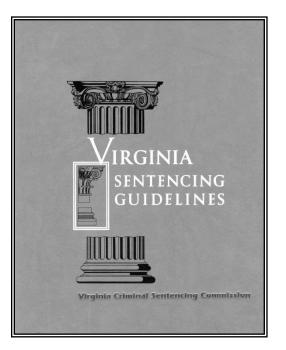


VIRGINIA CRIMINAL SENTENCING COMMISSION



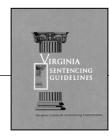
Possible Recommendations

for Guidelines Revisions

November 2, 2016

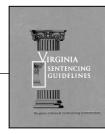
Modifications to the Sentencing Guidelines

- The Commission closely monitors the sentencing guidelines system and, each year, deliberates upon possible modifications to the guidelines.
- 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.



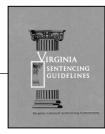
Proposals for Revisions to Existing Guidelines Offenses

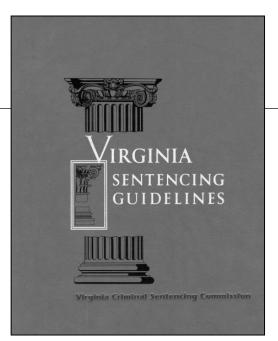
- Proposals are designed to maximize compliance and balance mitigation and aggravation rates to the extent possible.
- Current guidelines worksheets serve as the base for scoring historical cases, but the points assigned to those factors may be adjusted and new factors may be added.



Proposals for New Guidelines Offenses

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



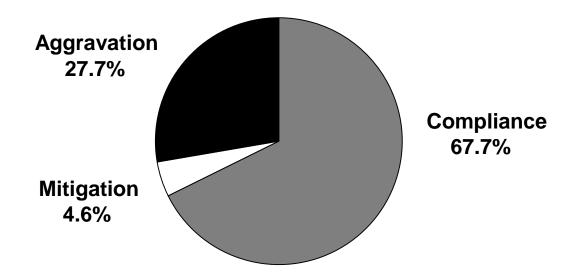


Proposed Recommendation 1:

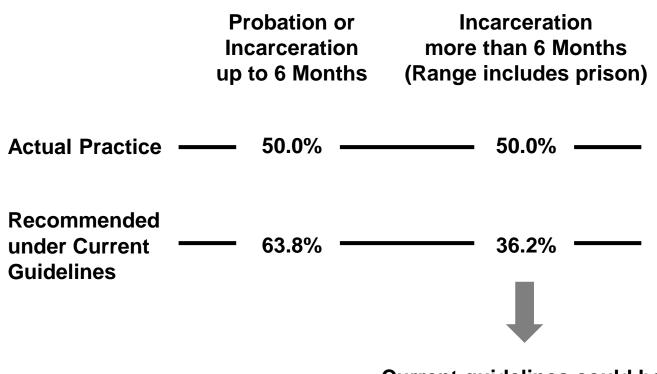
Revise guidelines for Maliciously Discharging a Firearm/Missile in/at an Occupied Building (§ 18.2-279)

Compliance with Guidelines for Maliciously Discharging a Firearm/Missile in/at an Occupied Building (§ 18.2-279) FY2012-FY2016

130 Sentencing Events

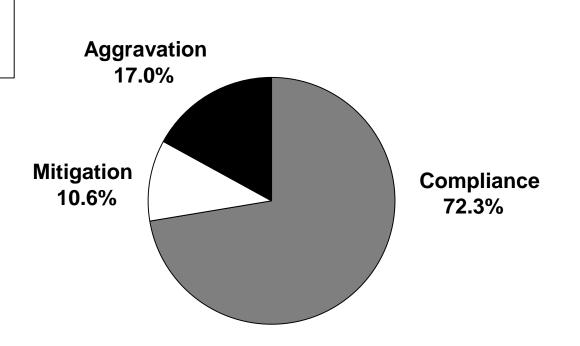


Compliance with the current guidelines for this offense is below the overall compliance rate and, when judges depart, they are significantly more likely to sentence above the guidelines than below. Actual versus Recommended Sentences for Maliciously Discharging a Firearm/Missile in/at an Occupied Building (§ 18.2-279) FY2012-FY2016



Current guidelines could be more closely aligned with the actual prison incarceration rate Actual versus Recommended Sentences for Maliciously Discharging a Firearm/Missile in/at an Occupied Building (§ 18.2-279) FY2012-FY2016

Cases in which guidelines recommend incarceration of more than 6 months (range includes prison)



47 Sentencing Events

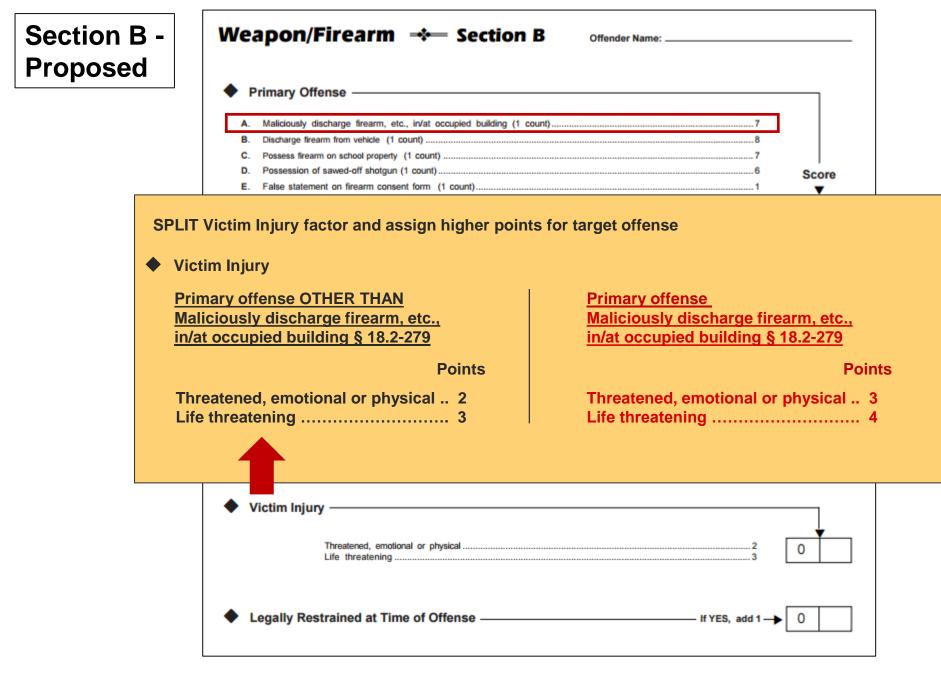
Section A - Proposed	Weapon/Firearm Section Primary Offense	Offender Name:	-
	count)]	
◆ Prim	Primary Offense Remaining Counts factor a ary Offense Remaining Counts ary offense OTHER THAN ciously discharge firearm, etc., occupied building § 18.2-279	nd assign higher points for target offense <u>Primary offense</u> <u>Maliciously discharge firearm, etc.,</u> <u>in/at occupied building § 18.2-279</u>	
	al Maximum Penalties Points ars: 5 - 7 1 8 - 18 2 19 - 28 3 29 - 38 4 39 or more 5	Total Maximum Penalties Po Years: 5 - 7	3 4 5
	Legally Restrained at Time of Offense		

Section A -	A. Maliciously discharge firearm, etc., in/at occupied building (1	count)2
Dropood	B. Discharge firearm from vehicle (1 count)	
Proposed	C. Possess firearm on school property (1 count)	
	D. Possession of sawed-off shotgun (1 count)	
	E. False statement on firearm consent form (1 count)	Score
	F. Possession of firearm, other weapon, explosives or ammunities	
	2 counts	
	Primary Offense Remaining Counts Total the main	aximum penalties for counts of the primary not scored above
	Years: 5 - 7	
		2
		5
	 Additional Offenses Total the maximum penalties for 	additional offenses, including counts
		0
		2 3
	39 or more	• 0
	Additional Offenses factor and assign highe	er points for target offense
🔶 Addi	tional Offenses	
◆ Addi	tional Offenses ary offense OTHER THAN	Primary offense
 ◆ Addi Prim Malio 	tional Offenses ary offense OTHER THAN ciously discharge firearm, etc.,	<u>Primary offense</u> <u>Maliciously discharge firearm, etc.,</u>
 ◆ Addi Prim Malio 	tional Offenses ary offense OTHER THAN	Primary offense
 ◆ Addi Prim Malio in/at 	tional Offenses ary offense OTHER THAN ciously discharge firearm, etc.,	<u>Primary offense</u> <u>Maliciously discharge firearm, etc.,</u>
 Addi Prim Malio in/at Tot 	tional Offenses ary offense OTHER THAN ciously discharge firearm, etc., occupied building § 18.2-279	<u>Primary offense</u> <u>Maliciously discharge firearm, etc.,</u> <u>in/at occupied building § 18.2-279</u> Total Maximum Penalties Points Years: 1 - 7
 Addi Prim Malio in/at Tot 	tional Offenses ary offense OTHER THAN ciously discharge firearm, etc., occupied building § 18.2-279 al Maximum Penalties Points	Primary offense Maliciously discharge firearm, etc., in/at occupied building § 18.2-279 Total Maximum Penalties Points
 Addi Prim Malio in/at Tot 	tional Offenses ary offense OTHER THAN ciously discharge firearm, etc., occupied building § 18.2-279 al Maximum Penalties Points ars: 1 - 7 1 8 - 18 2	<u>Primary offense</u> <u>Maliciously discharge firearm, etc.,</u> <u>in/at occupied building § 18.2-279</u> Total Maximum Penalties Points Years: 1 - 7
 Addi Prim Malio in/at Tot 	tional Offenses ary offense OTHER THAN ciously discharge firearm, etc., occupied building § 18.2-279 al Maximum Penalties Points ars: 1 - 7 1 8 - 18 2 19 - 28 3	Primary offense Maliciously discharge firearm, etc., in/at occupied building § 18.2-279Total Maximum PenaltiesPointsYears:1 - 738 - 1845
 Addi <u>Prim</u> Malio in/at Tot 	tional Offenses ary offense OTHER THAN ciously discharge firearm, etc., occupied building § 18.2-279 al Maximum Penalties Points ars: 1 - 7 1 8 - 18 2	Primary offense Maliciously discharge firearm, etc., in/at occupied building § 18.2-279Total Maximum PenaltiesPoints 9Years: 1 - 73 8 - 184

	Primary Offense	
Section A -	A. Maliciously discharge firearm, etc., in/at occupied building (1	count) 2
Dropocod	B. Discharge firearm from vehicle (1 count)	
Proposed	C. Possess firearm on school property (1 count)	
_	D. Possession of sawed-off shotgun (1 count)	
	E. False statement on firearm consent form (1 count)	Score
	F. Possession of firearm, other weapon, explosives or ammunition	
	2 counts	
		1
		2
		4 0
	39 or more	
SI	PLIT Legally Restrained factor and assign higher Legally Restrained at Time of Offense <u>Primary offense OTHER THAN</u> <u>Maliciously discharge firearm, etc.,</u> <u>in/at occupied building § 18.2-279</u>	<u>Primary offense</u> <u>Maliciously discharge firearm, etc.,</u> <u>in/at occupied building § 18.2-279</u>
	Points	Points
	None 0	None 0
	Other than post-incar supervision 2	Other than post-incar supervision 3
	Post-incarceration supervision 5	Post-incarceration supervision 6
	 Incarcerations/Commitments Legally Restrained at Time of Offense 	If YES, add 4
		n after incarceration)

Section A -Proposed

	Primary Offense
	A. Maliciously discharge firearm, etc., in/at occupied building (1 count)
	B. Discharge firearm from vehicle (1 count)
	C. Possess firearm on school property (1 count)
	D. Possession of sawed-off shotgun (1 count)
	E. False statement on firearm consent form (1 count)1
	F. Possession of firearm, other weapon, explosives or ammunition by convicted felon
	1 count
	2 counts
	Primary Offense Remaining Counts Total the maximum penalties for counts of the primary not scored above
	Years: 5 - 7
	8 - 182
	19 - 28
	29 - 38
	39 or more
	Additional Offenses Total the maximum penalties for additional offenses, including counts
	Years: Less than 10
	1 - 7
	8 - 18
	19 - 28
	29 - 38
	Victim Injury
	Threatened, emotional or physical
	Conviction in Current Event Requiring Mandatory Minimum Term (6 mos or more) - If YES, add 8
	Prior Convictions/Adjudications <u>Total</u> the maximum penalties for the 5 most recent and serious prior record events
	Years: Less than 2 0
ADD n	new factor for specific types of additional offenses
	SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE AT CONVICTION IS MALICIOUSLY DISCHARGING FIREARM, ETC., IN/AT OCCUPIED BUILDING § 18.2-279
•	Type of Additional Offense(s)
	Additional offense with VCC prefix of WPN or ASL



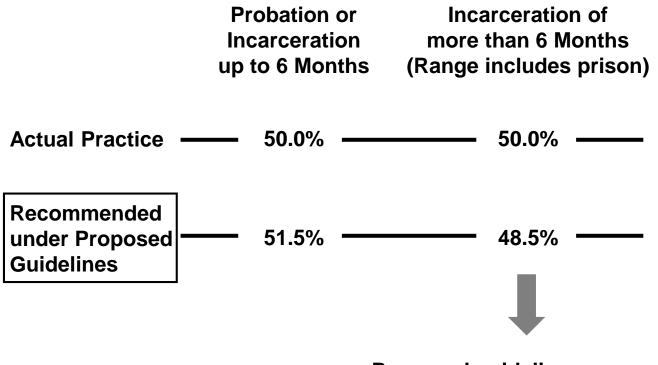
If total is 10 or more, recommendation is JAIL up to 6 months.

ction C -	Weapon/Firearm 🛶 Sec	CION C Offender Name:		
Proposed	Primary Offense	_	Category II	_
		(scores for attempted	Category II Conspired offenses are inj	
	A. Maliciously discharge firearm, etc. in/at occupied b			
	Attempted or conspired: 1 count			
	Discharge firearm from vehicle (1 count)			
	Possess firearm on school property (1 count)			
	Possession of sawed-off shotgun (1 count)			
	False statement on consent form (1 count)			
	Possession of firearm, other weapon, explosives or amm	nunition by convicted felon (1 count) 32		8
A. Malic	iously discharge firearm, etc., in/at occ	upied building		
A. Malic	iously discharge firearm, etc., in/at occ Completed: 1 count	•	30	15
A. Malic				
A. Malic	Completed: 1 count Firearm Used or Brandished			
A. Malic	Completed: 1 count		—— If YES, ad	d 2 → 0 0
A. Malic	Completed: 1 count Firearm Used or Brandished Victim Injury Threatened or emotional		—— If YES, ad	d 2 → 0 0
A. Malic	Completed: 1 count Firearm Used or Brandished Victim Injury Threatened or emotional		—— If YES, ad	d 2 → 0 0
A. Malic	Completed: 1 count Firearm Used or Brandished Victim Injury Threatened or emotional Life threatening		—— If YES, ad	d 2 → 0 0 ² ⁴ ⁵ 0 0
A. Malic	Completed: 1 count Firearm Used or Brandished Victim Injury Threatened or emotional Physical Life threatening Prior Convictions/Adjudications Assign po	bints to the 5 most recent and serious prior rec	If YES, ad	d 2 \rightarrow 0 0 ² ⁴ 0 0 the points \rightarrow
A. Malic	Completed: 1 count Firearm Used or Brandished Victim Injury Threatened or emotional Life threatening	bints to the 5 most recent and serious prior rec	If YES, ad	d 2 \rightarrow 0 0 ² ⁴ 0 0 the points \rightarrow
A. Malic	Completed: 1 count Firearm Used or Brandished Victim Injury Threatened or emotional Physical Life threatening Prior Convictions/Adjudications Assign po Maximum Penaty: Less than 20 (years) 20, 30, 40 or more	bints to the 5 most recent and serious prior rec	If YES, ad	d 2 \rightarrow 0 0 ² ⁴ 0 0 the points \rightarrow
A. Malic	 Firearm Used or Brandished Victim Injury Victim Injury Threatened or emotional Physical Life threatening Prior Convictions/Adjudications Assign por Maximum Penalty: Less than 20	bints to the 5 most recent and serious prior rec	If YES, ad	$d 2 \rightarrow 0 0$
A. Malic	 Firearm Used or Brandished Victim Injury Threatened or emotional Physical Life threatening Prior Convictions/Adjudications Assign por Maximum Penalty: Less than 20	bints to the 5 most recent and serious prior rec	If YES, ad	$d 2 \rightarrow 0 0$
A. Malic	Completed: 1 count Firearm Used or Brandished Victim Injury Threatened or emotional Physical Life threatening Prior Convictions/Adjudications Assign por Maximum Penaty: Less than 20 (years) 20, 30, 40 or more Prior Felony Convictions /Adjudications Number 1 of Counts: 2	bints to the 5 most recent and serious prior rec	If YES, ad	$d 2 \rightarrow 0 0$
A. Malic	Completed: 1 count Firearm Used or Brandished Victim Injury Threatened or emotional Physical Life threatening Prior Convictions/Adjudications Assign por Maximum Penaty: Less than 20. (years) 20, 30, 40 or more. Prior Felony Convictions /Adjudications Number 1 of Counts: 2 3 4	oints to the 5 most recent and serious prior rec	If YES, ad	$d 2 \rightarrow 0 0$
A. Malic	Completed: 1 count Firearm Used or Brandished Victim Injury Threatened or emotional Physical Life threatening Prior Convictions/Adjudications Assign por Maximum Penaty: Less than 20 (years) 20, 30, 40 or more Number 1 of Counts: 2 3 3 4 5 or more	bints to the 5 most recent and serious prior rec	If YES, ad	$d 2 \rightarrow 0 0$
A. Malic	Completed: 1 count Firearm Used or Brandished Victim Injury Threatened or emotional Physical Life threatening Prior Convictions/Adjudications Assign por Maximum Penaty: Less than 20. (years) 20, 30, 40 or more. Prior Felony Convictions /Adjudications Number 1 of Counts: 2 3 4	bints to the 5 most recent and serious prior rec	If YES, ad	$d 2 \rightarrow 0 0$
A. Malic	Completed: 1 count Firearm Used or Brandished Victim Injury Threatened or emotional Physical Life threatening Prior Convictions/Adjudications Assign potential Maximum Penaty: Less than 20 (years) 20, 30, 40 or more Prior Felony Convictions /Adjudications Number 1 of Counts: 2 3 4 5 or more 5 or more	bints to the 5 most recent and serious prior rec	If YES, ad	$d 2 \rightarrow 0 0$

Sectio Propo	_	Weapon/Firearm Primary Offense	→ Section C	Offender Name: —— Prior Record Classification —— —— Category I Category II Other	
	INCRE/	SE Primary Offense score for t	arget offense	Prior Record Classification	
	A. Ma	iciously discharge firearm, etc Completed: 1 count		<u>Category I Category II Other</u> Ig 	
_	SP	_IT Prior Convictions/Adjudica	tions factor and assign	higher points for target offense	1
	•	Prior Convictions/Adjudication Primary offense OTHER THAN Maliciously discharge firearm,	etc.,	Primary offense Maliciously discharge firearm, etc.,	
		n/at occupied building § 18.2-2 Maximum Penalty Years: Less than 20	Points 	in/at occupied building § 18.2-279 Maximum Penalty Poi Years: Less than 20	0
			ations Assign points to the 5 most recent a	20, 30, 40 or more	5
		(years) 20, 30, 40 or more Prior Felony Convictions // Number 1	Adjudications Against Persor	n1 0 0]	
		Number 1 of Counts: 2 3 4	Adjudications with the Same V		

Sectio	on C -		Weapon/Firearm 🛶 Section	C Offender Name:
Propo	sed		Primary Offense	Prior Record Classification Category I Category I
_	INCRE	ASE	Primary Offense score for target offense	Prior Record Classification
				Category I Category II Other
	A. M	alicio	ously discharge firearm, etc., in/at occupied Completed: 1 count	
	SI		Prior Felony Convictions/Adjudications Aga sign higher points for target offense	ainst Person factor and
	•	Prio	or Felony Convictions/Adjudications Against	t Person
		Prin	nary offense OTHER THAN	Primary offense
			iciously discharge firearm, etc.,	Maliciously discharge firearm, etc.,
		<u>in/a</u>	t ccupied building § 18.2-279	in/at occupied building § 18.2-279
		Νι	Imber of Counts Points	Number of Counts Points
			1 1	1 5
			2 2	2 6
			3 3	3 7
			4 4 5 or more 5	4 8 5 or more 9
			of Counts: 2	e Same VCC Prefix as Primary Offense

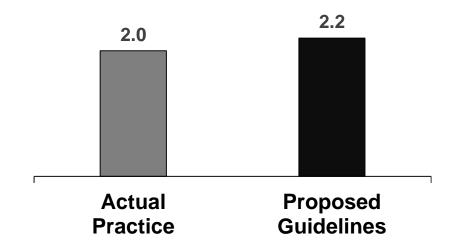
Actual versus Proposed Sentences for Maliciously Discharging a Firearm/Missile in/at an Occupied Building (§ 18.2-279) FY2012-FY2016



Proposed guidelines are more closely aligned with the actual prison incarceration rate Actual versus Proposed Sentences for Maliciously Discharging a Firearm/Missile in/at an Occupied Building (§ 18.2-279) FY2012-FY2016

> Offenders Sentenced to Incarceration of More than 6 Months

> > Median Sentence (in years)



Compliance with Guidelines for Maliciously Discharging a Firearm/Missile in/at an Occupied Building (§ 18.2-279) FY2012-FY2016

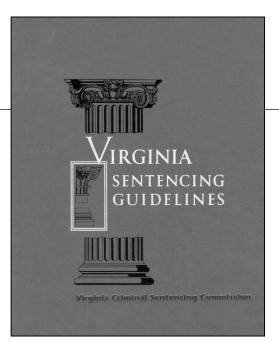
130 Sentencing Events

Dispositional Compliance				Overall ompliance	•
	Current	Proposed		Current	Proposed
Compliance	69.2%	72.3%	Compliance	67.7%	69.2%
Mitigation	3.1%	14.6%	Mitigation	4.6%	14.6%
Aggravation	27.7%	13.1%	Aggravation	27.7%	16.2%

Proposed Recommendation 1

Revise guidelines for Maliciously Discharging a Firearm/Missile in/at an Occupied Building (§ 18.2-279) as proposed





Proposed Recommendation 2:

Add Unlawfully Discharging a Firearm/Missile in/at an Occupied Building (§ 18.2-279) to the Weapon/Firearm guidelines

Sentences for Unlawfully Discharging a Firearm/Missile in/at an Occupied Building (§ 18.2-279) FY2012-FY2016

60 Sentencing Events

Disposition	Percent	Median Sentence
No Incarceration	51.7%	NA
Incarceration up to 6 Months	28.3%	4 Months
Incarceration of More than 6 Months	20.0%	1.2 Years

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

Source: Supreme Court of Virginia, Circuit Court Case Management System (CMS)

Section A Proposed		Weapon/Firearm Section A Offender Name: Primary Offense Offense				
		A. Maliciously discharge firearm, etc., in/at occupied building (1	1 count)2			
			ge firearm, etc., in/at occupied building 2			
		2 counts				
		8 - 18 19 - 28 29 - 38	naximum penalties for counts of the primary not scored above			
		Primary Offense Remaining Counts factor a mary Offense Remaining Counts	and assign higher points for target offense			
	Mal	mary offense OTHER THAN liciously or unlawfully discharge firearm It occupied building § 18.2-279	<u>Primary offense</u> <u>Maliciously or unlawfully discharge firearm</u> <u>in/at occupied building § 18.2-279</u>			
	Тс	otal Maximum Penalties Points	Total Maximum Penalties Points			
	Ye	ears: 5 - 7	Years: 5 - 7			

Section A -	Primary Offense A. Maliciously discharge firearm, etc., in/at occupied building (1	count)2
Proposed		ge firearm, etc., in/at occupied building
	1 count	2
	2 counts	
	 8 - 18	1 2 3 4 5 0
SPLIT	Additional Offenses factor and assign high	er points for target offense
Add	ditional Offenses	
Mal	mary offense OTHER THAN liciously or unlawfully discharge firearm at occupied building § 18.2-279	Primary offense Maliciously or unlawfully discharge firearm in/at occupied building § 18.2-279
Тс	otal Maximum Penalties Points	Total Maximum Penalties Points
Ye	ears: 1 - 7 1 8 - 18 2 19 - 28 3	Years: 1 - 7 3 8 - 18 4 19 - 28 5
	29 - 38 4 39 or more 5	29 - 38 6 39 or more 7

Section A	۹ -	Primary Offense A. Maliciously discharge firearm, etc., in/at occupied building (1 cd	ount)2			
Proposed	Oposed A. Maliciously or unlawfully discharge firearm, etc., in/at occupied building					
		1 count	2			
	-	2 counts				
		8 - 18 19 - 28				
	SPLI	۲ Legally Restrained factor and assign higher ا	points for target offense			
	🔶 Le	gally Restrained at Time of Offense				
	Ma	imary offense OTHER THAN aliciously or unlawfully discharge firearm at occupied building § 18.2-279	<u>Primary offense</u> <u>Maliciously or unlawfully discharge firearm</u> <u>in/at occupied building § 18.2-279</u>			
		Points	Points			
	0	one0 ther than post-incar supervision 2 ost-incarceration supervision 5	None0 Other than post-incar supervision 3 Post-incarceration supervision 6			
		r Incarcerations/Commitments	If YES, add 4			
		Other than post-incarceration supervision	after incarceration)			

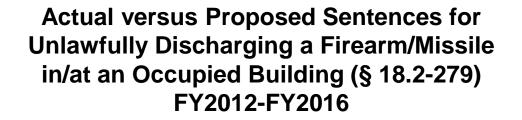
Section A	-
Proposed	

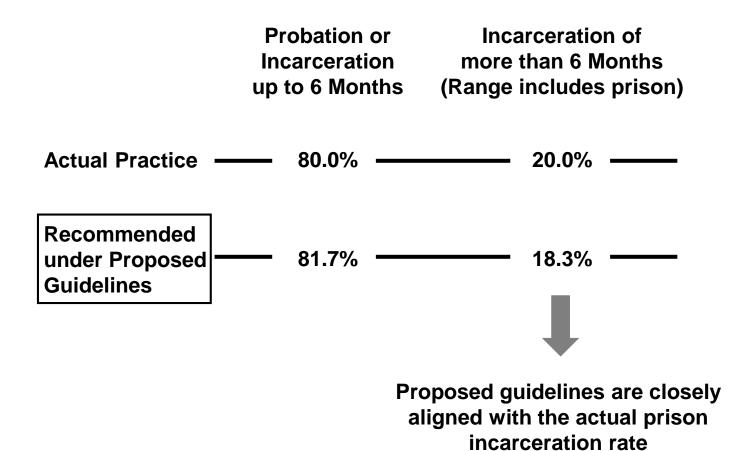
	2 counts	4	0
Primary Offe	ense Remaining Counts Total the maximum penalties for counts of the primary not s	cored above	
Years:	5 - 7		
	8 - 18		+
	29 - 38		
	39 or more	5	
Years: Victim Injury Conviction in 	Offenses Total the maximum penalties for additional offenses, including counts Less than 1 1 - 7 8 - 18 19 - 28 19 - 28 29 - 38 39 or more 39 or more Threatened, emotional or physical Life threatening Life threatening Current Event Requiring Mandatory Minimum Term (6 mos or more) - If YES tions/Adjudications	1 2 3 4 5 1 2 3, add 8 —	
Years:	Less than 2	0	↓ I
	ed if primary offense is <u>maliciously</u> discharging firear		

Section B - Proposed	Weapon/Firearm Section B Offender Name:
•	Primary Offense A. Maliciously discharge firearm, etc., in/at occupied building (1 count)
_	D. Possession of sawed-off shotgun (1 count)
	G. <u>Unlawfully</u> discharge firearm, etc., in/at occupied building 1 count
	 Primary Offense Remaining Counts Years: 5-9
	Victim Injury Threatened, emotional or physical
	◆ Legally Restrained at Time of Offense If YES, add 1 → 0

If total is 10 or more, recommendation is JAIL up to 6 months.

Section C - Proposed	Weapon/Firearm Section C Offender Name: Primary Offense — Prior Record Classification — (scores for altempted consolved offenses are in parentheses)
	A. Maliciously discharge firearm, etc. in/at occupied building Attempted or conspired: 1 count (32) Completed: 1 count 60 B. Discharge firearm from vehicle (1 count) 48 C. Possess firearm on school property (1 count) 32 D. Possession of sawed-off shotgun (1 count) 36 F. Possession of firearm, other weapon, explosives or ammunition by convicted felon (1 count) 32
	Prior Record Classification Category I Category II Other
	Completed: 1 count 40 20 10
	 ◆ Firearm Used or Brandished If YES, add 2 → 0 0 ◆ Victim Injury
	(years) 20, 30, 40 or more 1 0 0 ◆ Prior Felony Convictions /Adjudications Against Person
	 Prior Felony Convictions/Adjudications with the Same VCC Prefix as Primary Offense
	Number 1 2 of Counts: 2 4 3 6 6 4 8 6 5 or more 10 0

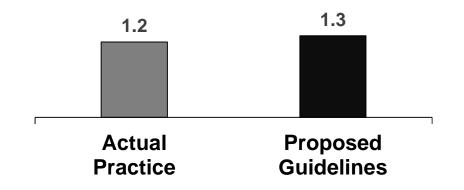




Actual versus Proposed Sentences for Unlawfully Discharging a Firearm/Missile in/at an Occupied Building (§ 18.2-279) FY2012-FY2016

> Offenders Sentenced to Incarceration of More than 6 Months

> > Median Sentence (in years)



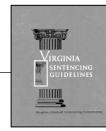
Proposed Recommendation 2

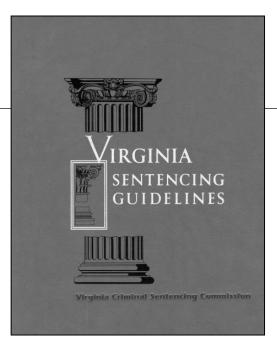
Add Unlawfully Discharging a

Firearm/Missile in/at an Occupied Building (§ 18.2-279)

to the Weapon/Firearm guidelines

as proposed



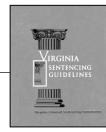


Proposed Recommendation 3:

Add Carrying a Concealed Weapon (§ 18.2-308) to the Weapon/Firearm guidelines

Carry concealed weapon (§ 18.2-308)

- First conviction for carrying a concealed weapon is a Class 1 misdemeanor.
- Second conviction for carrying a concealed weapon is a Class 6 felony.
- Third conviction for carrying a concealed weapon is a Class 5 felony.



Sentences for Carrying a Concealed Weapon (§ 18.2-308) FY2012-FY2016

Concealed Weapon, 2nd offense 113 Sentencing Events

Concealed Weapon, 3rd offense 18 Sentencing Events

Disposition	Percent	Median Sentence	Disposition	Percent	Median Sentence
No Incarceration	39.8%	NA	No Incarceration	33.3%	NA
Incarceration up to 6 Months	35.4%	3 Months	Incarceration up to 6 Months	22.2%	3 Months
Incarceration of More than 6 Months	24.8%	1.0 Year	Incarceration of More than 6 Mont	44.4% IS	1.0 Year

Note: Data reflect cases in which this offense was the primary (or most serious) offense at sentencing. Offenders convicted of being a felon in possession of a firearm (§ 18.2-308.2(A)) and carrying a concealed weapon (§ 18.2-308) were excluded. Four offenders were excluded because a rap sheet could not be located.

Source: Supreme Court of Virginia, Circuit Court Case Management System (CMS)

Section A -Proposed

	ense
A. Maliciously	discharge firearm, etc., in/at occupied building (1 count)2
B. Discharge fire	earm from vehicle (1 count)
C. Possess firea	arm on school property (1 count)1
	of sawed-off shotgun (1 count)2
	nent on firearm consent form (1 count)1 Score
F. Possession	of firearm, other weapon, explosives or ammunition by convicted felon
	1 count
G Carry	concealed weapon, 2 nd or 3 rd offense
G. Carry	concealed weapon, 2 ° or 5 ° offense
1 co	ount
	29 - 38
	39 or more
Additional	Offenses Total the maximum penalties for additional offenses, including counts
Years:	Less than 10
	1 - 7
	19 - 28
	29 - 38
	39 or more
Victim Injury	у ————
	Threatened, emotional or physical
	Life threatening
Conviction i	in Current Event Requiring Mandatory Minimum Term (6 mos or more) - If YES, add 8
Prior Convi	ctions/Adjudications Total the maximum penalties for the 5 most recent and serious prior record events
	Less than 2 0 🛛 💙
Years:	2 - 38

Section A - Proposed	Weapon/Firearm Section A Offender Name: Primary Offense
	A. Maliciously discharge firearm, etc., in/at occupied building (1 count)
	G. Carry concealed weapon, 2 nd or 3 rd offense 1 count
	29 - 38 39 or more 5 0 39 or more 5 0 5 Years: Less than 1 0 1 1 - 7 1 1 1 8 - 18 2 1 1 19 - 28 3 29 - 38 0 39 or more 5 0 0
ADD	new criminal history factor SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE AT CONVICTION IS CARRYING A CONCEALED WEAPON § 18.2-308
	Prior Criminal Misdemeanor Convictions
	Number Points 0 0 1 - 6 1 7 or more 2

 Primary Offense A Maldiously discharge firearm, etc., in/at occupied building (1 count) B. Discharge frearm (con which (1 count)) B. Discharge frearm (con which (1 count)) C. Protess ferme on school property (1 count) Prosession of staved-off sholg in (1 count) Prosession of theory optical error ammunition by convicted helon (1 count) Prosession of theory optical Primary Offense Remaining Counts Carrying concealed weapon, 2nd or 3rd offense 1 count Primary Offense Remaining Counts Total the maximum penalties for counts of the primary not scored above Year: S - 9 10 - 10 20 - 20 20 - 20 30 - 30 40 or more Additional Offenses Total the maximum penalties for additional offenses, including counts Year: Less than 1 1 - 9 10 - 10 20 - 20 30 - 30 40 or more 6 0 	Section B - Proposed	Weapon/Firearm - Section B Offender Name:
A. Maliciously discharge firearm, etc., in/at occupied building (1 count) 7 B. Discharge firearm ton vehicle (1 count) 7 C. Prosess froarm on school property (1 count) 7 D. Protession of searced riskings (1 count) 7 E. False statement on finearm consent form (1 count) 7 F. Possession of finearm, other weapon, explosives or ammunition by convicted leton (1 count) 7 C. Carrying concealed weapon, 2nd or 3rd offense 7 I count 7 Primary Offense Remaining Counts Intial the maximum penalties for counts of the primary not scored above Years: 8 - 9 30 - 30 40 40 or more 6 Veriant: Leas than 1 1 - 9 2 10 - 10 2 30 - 30 40 40 or more 6 Victim Injury 1 Threatened, enclosed or physical 2 10 - 10 3 10 - 10 2 10 - 10 2 10 - 10 2 10 - 10 2 10 - 10 2 10 - 10 2 <t< th=""><th></th><th>Primary Offense</th></t<>		Primary Offense
B. Discharge fream forn vehicle (1 count)		
C. Possess fream on schol property (1 court) 7 D. Possession of sawed-off sholgun (1 court) 6 E. False statement on fream consent form (1 court) 7 F. Possession of fream, other weapon, explosives or ammunition by convicted fielon (1 court) 7 F. Possession of fream, other weapon, explosives or ammunition by convicted fielon (1 court) 7 G. Carrying concealed weapon, 2 nd or 3 rd offense 7 Image: Court courts Total the maximum penalties for courts of the primary not scored above 7 Vears: 5.9 2 3 3039 40 0 0 40 or more 6 0 Vears: Less than 1 0 10-19 3 0 20-29 3 0 30-39 40 or more 6 0 Vears: Less than 1 0 0 10-19 3 0 0 0 20-29 3 0 0 0 40 or more 6 0 0 0 Victim Injury Treatened, emotional o		
 D. Possession of saved-off shotgun (1 count)		B. Discharge firearm from vehicle (1 count)
 E. False statement on fream consent form (1 court)		C. Possess firearm on school property (1 count)7
 E. False statement on firearm consent form (1 count)		D. Possession of sawed-off shotgun (1 count)
G. Carrying concealed weapon, 2 nd or 3 rd offense 1 count 7 ◆ Primary Offense Remaining Counts Istal the maximum penaties for courts of the primary not scored above Years: 5 - 9 10 - 19 3 20 - 29 4 40 or more 6 Vears: Less than 1 Years: Less than 1 1 - 9 2 10 - 19 3 30 - 29 3 30 - 39 4 40 or more 6 Vears: Less than 1 1 - 9 2 10 - 19 3 20 - 29 3 30 - 39 5 40 or more 6 Victim Injury Threatened, emotional or physical Life threatening 3		
1 count 7 Primary Offense Remaining Counts Total the maximum penaties for counts of the primary not scored above Year: 5 · 9 ·································		F. Possession of firearm, other weapon, explosives or ammunition by convicted felon (1 count)7
Years: 5 - 9 2 10 - 19 3 20 - 29 3 30 - 39 5 40 or more 0 Years: Less than 1 Years: Less than 1 10 - 19 3 20 - 29 3 30 - 39 4 40 or more 6 0 0 10 - 19 3 20 - 29 3 30 - 39 6 40 or more 6 0 0 40 or more 6 0 0 10 - 19 3 20 - 29 3 30 - 39 0 40 or more 6 0 0 Threatened, emotional or physical 2 0 3		
Years: 5 - 9 2 10 - 19 3 20 - 29 3 30 - 39 5 40 or more 0 Years: Less than 1 Years: Less than 1 10 - 19 3 20 - 29 3 30 - 39 4 40 or more 6 Victim Injury 0 Threatened, emotional or physical 2 Life threatening 3		Primary Offense Remaining Counts <u>Total</u> the maximum penalties for counts of the primary not scored above
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20 - 29 4 30 - 39 5 40 or more 6 • Additional Offenses: Iolal the maximum penalties for additional offenses, including counts Years: Less than 1 1 - 9 2 10 - 19 3 20 - 29 4 30 - 39 5 40 or more 6 Victim Injury Threatened, emotional or physical 2 Life threatening 3		
30 - 39 5 0 40 or more 6 0 Additional Offenses Iotal the maximum penalties for additional offenses, including counts Years: Less than 1 0 1 - 9 2 3 20 - 29 3 3 30 - 39 5 0 40 or more 6 0		
40 or more6 U Additional Offenses Total the maximum penalties for additional offenses, including counts Years: Less than 10 2 10-19		30-39 5
 Additional Offenses Total the maximum penalties for additional offenses, including counts Years: Less than 1		
Years: Less than 1 0 1 - 9 2 10 - 19 3 20 - 29 4 30 - 39 5 40 or more 6 Victim Injury 0 Threatened, emotional or physical 2		
Years: Less than 1 0 1 - 9 2 10 - 19 3 20 - 29 4 30 - 39 5 40 or more 6 Victim Injury 0 Threatened, emotional or physical 2		Additional Offenses Total the maximum penalties for additional offenses, including counts
1 - 9		
10 - 19		
20 - 29		
30 - 39		
40 or more		
Victim Injury Threatened, emotional or physical		
Threatened, emotional or physical		
Life threatening		Victim Injury
Life threatening		
Life threatening		Threatened, emotional or physical
Legally Restrained at Time of Offense If YES, add 1 → 0		♦ Legally Restrained at Time of Offense If YES, add 1 → 0

If total is 10 or more, recommendation is JAIL up to 6 months.

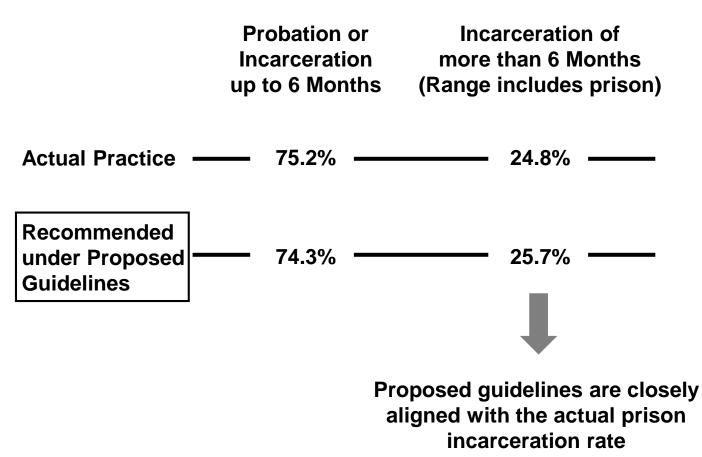
Section B - Proposed	Weapon/Firearm - Section B Offender Name:
•	Primary Offense A. Maliciously discharge firearm, etc., in/at occupied building (1 count)
	G. Carrying concealed weapon, 2 nd or 3 rd offense 1 count
	 Primary Offense Remaining Counts Total the maximum penalties for counts of the primary not scored above Years: 5 - 9
ADD r	new criminal history factor SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE AT CONVICTION IS CARRYING A CONCEALED WEAPON § 18.2-308
	Prior Criminal Misdemeanor Convictions
	Number Points
	0 0 1 or 2 1 3 2 4 or more 3

If total is 10 or more, recommendation is JAIL up to 6 months.

Section C - Proposed	Weapon/Firearm Section C Offender Name: Primary Offense — Category I Category II Other
	A. Maliciously discharge firearm, etc. in/at occupied building Attempted or conspired: 1 count (32) (16) (8) Completed: 1 count 56 28 14 B. Discharge firearm from vehicle (1 count) 48 24 12 C. Possess firearm on school property (1 count) 32 16 8 Score D. Possession of sawed-off shotgun (1 count) 36 18 9 ▼ E. False statement on consent form (1 count) 32 16 8 0 F. Possession of firearm, other weapon, explosives or ammunition by convicted felon (1 count) 32 16 8 0
	Prior Record Classification Category I Category II Other
	ying concealed weapon, 2 nd or 3 rd offense Completed: 1 count
	♦ Firearm Used or Brandished If YES, add 2 → 0 0
	 Victim Injury Threatened or emotional Physical Life threatening
	Prior Convictions/Adjudications Assign points to the 5 most recent and serious prior record events and total the points Maximum Penalty: Less than 20 0 0 0 0 (years) 20, 30, 40 or more 1 0 0 0
	Prior Felony Convictions /Adjudications Against Person Number 1 of Counts: 2 3 3 4 3 5 or more 5
	Prior Felony Convictions/Adjudications with the Same VCC Prefix as Primary Offense Number 1 of Counts: 2 3 4 5 or more 10

Actual versus Proposed Sentences for Carrying a Concealed Weapon (§ 18.2-308) FY2012-FY2016

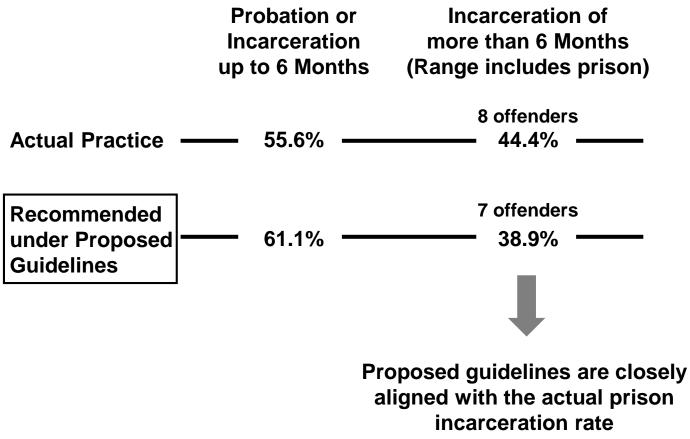
Concealed Weapon, 2nd offense



113 Sentencing Events

Actual versus Proposed Sentences for Carrying a Concealed Weapon (§ 18.2-308) FY2012-FY2016

Concealed Weapon, 3rd offense



Actual versus Proposed Sentences for Carrying a Concealed Weapon (§ 18.2-308) FY2012-FY2016

Concealed Weapon, 2nd offense

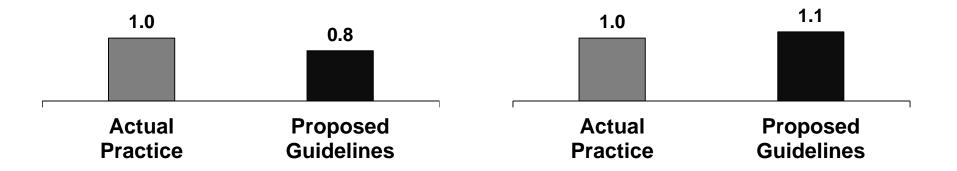
Offenders Sentenced to Incarceration of More than 6 Months

Median Sentence (in years)

Concealed Weapon, 3rd offense

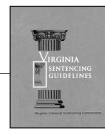
Offenders Sentenced to Incarceration of More than 6 Months

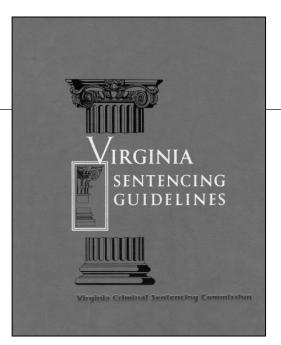
Median Sentence (in years)



Proposed Recommendation 3

Add Carrying a Concealed Weapon (§ 18.2-308) to the Weapon/Firearm guidelines as proposed





Proposed Recommendation 4:

Revise the "Mandatory Minimum for Weapon Conviction(s)" factor on Section C of the Schedule I/II Drug guidelines to include convictions under § 18.2-53.1

Schedule I/II Drug Guidelines Section C Worksheet

- The factor "Mandatory Minimum for Weapon Conviction(s) in Current Event" does not include a conviction for "Use of a Firearm in the Commission of a Felony" (§ 18.2-53.1). The court must impose a mandatory sentence of 3 years for the first conviction and 5 years for a second or subsequent conviction.
- Only additional offenses that have a VCC prefix of "WPN" and a mandatory minimum of 2 years or 5 years are scored for this factor.

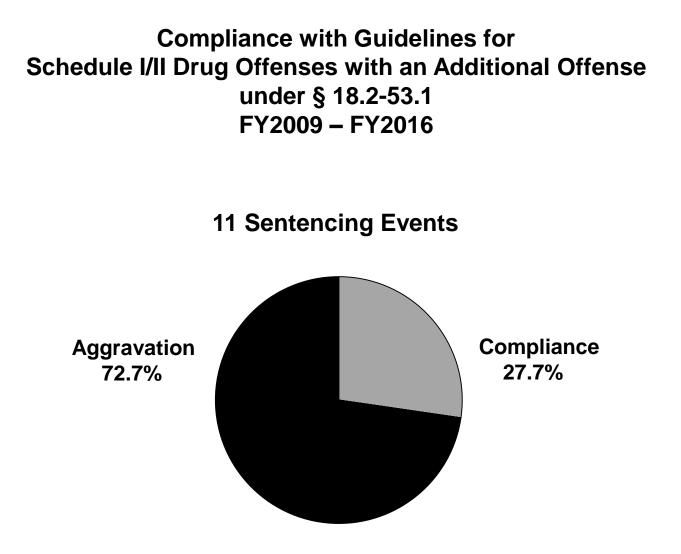
Drug/Schedule I/II 🖛 Section C

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C . S	iell, etc., Schedu ompleted (Attemp	ule I or II drug, se ted or Conspired):	cond offense 1 count 2 counts				110 (88) 310(248)		6 (44) . 6(124)		(22)		
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E. M	lanufacture Met Attempted, consp	hamphetamine, f ired or completed:	irst or second off 1 count	fense, § 18	3.2-248(C1)		145		37				
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G. A	ccomodation-S Attempted, consp	ell, etc., Schedule ired or completed:	e I or II drug 1 count 2 counts								_	Sc	•
H. S	ell, etc., imitation ttempted, conspir	on Schedule I or ed or completed:	1 counts 2 counts 2 counts 2 counts Counts Assign (. 12		6		L		1
			2 counts Counts Assign (0000000000	ton obtant of th	no printing i	101 000100		ina constitu	no ponto			
			pints to <u>each</u> addi										-
			I 3rd or Subsequer		rimary offense			are point					
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Offender Name:

This is not a typical case, but it is a face validity problem.

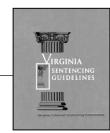
In 10 years, there were 11 cases that included use of a firearm in the commission of a felony.

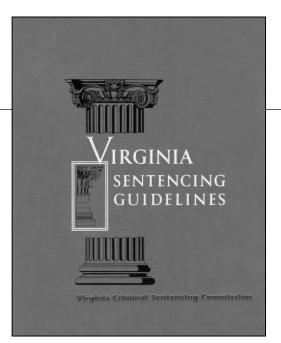


	Primary Offense PriorRecord Classification Category I Category II Other	
1	A. Possess Schedule I or II drug or First offender violation (scores for attempted/conspired offenses are in parentheses) Attempted, conspired or completed: 1 count 20 10 5 2 counts 28 14 7 3 counts 36 0	
	B. Sell, Distribute, Possession with intent, etc., Schedule I or II drug Completed (Attempted or Conspired): 1 count 60 (48) 36 (24) 12 2 counts 2 counts 80 (64) 48 (32) 16 3 counts 95 (76) 57 (38) 19 4 counts	(12) (16) (19) (26)
c	C. Sell, etc., Schedule I or II drug, second offense Completed (Attempted or Conspired): 1 count	
ſ	D. Sell, etc., Schedule I or II drug - third or subsequent offense Attempted, conspired or completed: 1 count	
	E. Manufacture Methamphetamine, first or second offense, § 18.2-248(C1) Attempted, conspired or completed: 1 count	
	F. Schedule I or II drug to minor Attempted, conspired or completed: 1 count	
	G. Accomodation-Sell, etc., Schedule I or II drug Attempted, conspired or completed: 1 count 32 16 8 2 counts 40 20 10	
•	H. Sell, etc., imitation Schedule I or II drug Attempted, conspired or completed: 1 count 12 6	
· ·	Maximum Penalty (years) 5,10	Second Second
• A	Additional Offenses Assign points to each additional offense (including counts) and total the points	
	Years Points Years Points Less than 5 0 0 0 5 10 2 2 0 1 20 4 20 1 1 30 6 30 4 30 4 40 or more 7 40 or more 5 1	
♦ N	Mandatory Minimum for Weapon Conviction(s) in Current Event Assign points to each additional offense with a mandatory minimum and total the points	▶ 0
• 1	ndatory Minimum factor to score convictions under § 18.2-53.1 Mandatory Minimum for Weapon Conviction(s) in Current Event Assign points for each additional offense with a mandatory minimum and total	l points
	2 Year Mandatory Minimum 13	
	3 Year Mandatory Minimum 25 5 Year Mandatory Minimum 32	

Proposed Recommendation 4

Revise the "Mandatory Minimum for Weapon Conviction(s)" factor on Section C of the Schedule I/II Drug guidelines to include convictions under § 18.2-53.1 as proposed





Proposed Recommendation 5:

Revise § 19.2-298.01 to require circuit court clerks to submit sentencing guidelines forms when the judge defers the disposition in the case

Guidelines Submission Requirements § 19.2-298.01

Pursuant to § 19.2-298.01, following the entry of a final order of conviction and sentence in a felony case, circuit court clerks are required to send the sentencing guidelines worksheets, any departure reason, and a copy of the court order or orders, to the Commission.

Sentencing Guidelines Data Used by the Compensation Board

- The Compensation Board uses sentencing guidelines data to calculate the Commonwealth's Attorneys workload statistics.
- The workload statistics affect how resources are distributed to Commonwealth's Attorney's offices.
- Several years ago, the Commission agreed to accept guidelines forms for cases in which the judge placed the defendant on first offender status (§ 18.2-251).
 - Court does not enter a finding of guilt.
 - These cases are included in the data provided to the Compensation Board.

Administrative Procedures

Worksheet Completion Responsibility § 19.2-298.01

Plea of Not Guilty

If an offender pleads not guilty and is tried by the court (bench trial), the probation officer will be responsible for completing the guidelines worksheet. The officer will provide the original to the judge and copies to the Commonwealth's attorney and defense attorney <u>before</u> sentencing. The officer also retains a copy.

Plea of Guilty or Plea Agreements

If the offender pleads guilty or accepts a plea agreement (including an oral sentence recommendation), the court has the option to direct the probation officer to prepare the worksheet or, when the accused, the court and the Commonwealth's attorney concur, the Commonwealth's attorney may prepare the worksheet. In either case, the original will be provided to the judge with copies given to the Commonwealth's attorney (if prepared by the probation officer) and the defense attorney <u>before</u> sentencing. The preparer also retains a copy.

Jury Sentences

If the offender has been convicted by a jury and the jury has recommended a sentence, a sentencing guidelines worksheet must then be provided to the judge. No sentencing guidelines information may be provided to the jury (§ 19.2-298.01(A)). The probation officer will be responsible for completing the guide-lines worksheet. The officer will provide the original to the judge and copies to the Commonwealth's attorney and defense attorney <u>before</u> sentencing. The officer also retains a copy.

Recording Sentence Information

• Final Disposition – The sentencing judge, circuit court clerk, or other judicial designee is responsible for completing the back section of the cover sheet, which specifies the actual sentence.

Policy -

Sentencing for Multiple Jurisdictions

Convictions that occur in different jurisdictions, but result in one sentencing in one court, are still considered to be separate sentencing events. If the combined sentencing takes place on the same day, with the same judge, in the same court, separate worksheets must be prepared for each jurisdiction, reflecting the convictions arising in each locality. Policy does not prohibit a judge from reviewing one combined guideline, but the official guidelines must be prepared and submitted for each jurisdiction. If a judge departs from the recommendation for any jurisdiction, then a departure reason, as required by statute, must be provided.

Deferred Dispositions (e.g., First Offender)

When a court defers a finding of guilt for a guidelines offense, such as authorized under § 18.2-251, sentencing guidelines are to be submitted to the Commission after the court's decision to defer the finding. If the offender violates any condition of the deferral and the court finds the offender guilty of the guidelines offense, updated guidelines must be submitted to the court before sentencing. Guidelines must be sent to the Commission after each court action.

Factor Bargaining

The sentencing guidelines must be computed based on the rules stated within this manual. Guidelines rules are not to be circumvented by guidelines factor bargaining. Agreements that require the preparer to calculate guidelines factors in a manner that conflicts with established rules or procedures shall have no bearing on the completion of the official sentencing guidelines submitted to the court.

Departure Reasons

Guidelines Submission Requirements § 19.2-298.01

Language proposed at the September meeting

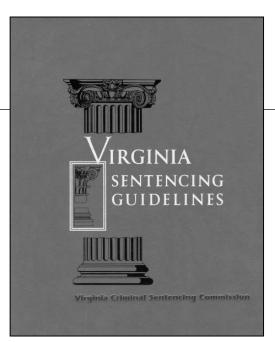
§ 19.2-298.01. Use of discretionary sentencing guidelines.

E. Following the entry of a final order of conviction and sentence in a felony case <u>or statutorily-sanctioned deferred dispositions</u>, the clerk of the circuit court in which the case was tried shall cause a copy of such order or orders, the original of the discretionary sentencing guidelines worksheets prepared in the case, and a copy of any departure explanation prepared pursuant to subsection B to be forwarded to the Virginia Criminal Sentencing Commission within five days. Similarly, the statement required by §§ 19.2-295 and 19.2-303 and regarding departure from or modification of a sentence fixed by a jury shall be forwarded to the Virginia Criminal Sentencing Commission.

Proposed Recommendation 5

Revise § 19.2-298.01 to require circuit court clerks to submit sentencing guidelines forms when the judge defers the disposition in the case





Proposed Changes to the Sentencing Guidelines Cover Sheet

Total Time Imposed Before Suspension	Life Sentence +	
Total Effective Time to Serve		
Post Release		
Post Release Term § 18.2-10		ay tc
Post Release Supervision Period § 19.	-295.2(A) identify time served	
Probation Period (Supervised) § 19.2 - 303		
Check all that apply		
Incarceration Sentence to Run Concurr	entry With Another Sentencing Event	
Written Plea Agreement Accepted (Rull)	3A:8(c) (1) (A) or (C))	
Plea and Recommendation Accepted	Rule 3A:8 (c) (1) (B))	
Oral Sentence Recommendation Accept	led	
Restitution \$	□ Fine \$	
Other Sentencing Programs (check all the	t apply Indeterminate Commitment to DJJ	
Day Reporting	Community-Based Program — Determinant Commitment to DJJ	
Diversion Center Incarceration	Detention Center Incarceration	
Electronic Monitoring	Drug Court	
Unsupervised Probation/Good Behavior	Intensive Probation	
§ 18.2-251/§ 18.2-258.1	Other Deferred Finding, Execution of Sentence Suspended	FSS)
Substance Abuse Treatment		
REASON FOR DEPARTURE	Imposition of Sentence Suspended (ISS)	
Must be completed pursuant to § 19.2-298.01(B)		
SENTENCING DATE		
OENTEROINO DATE		