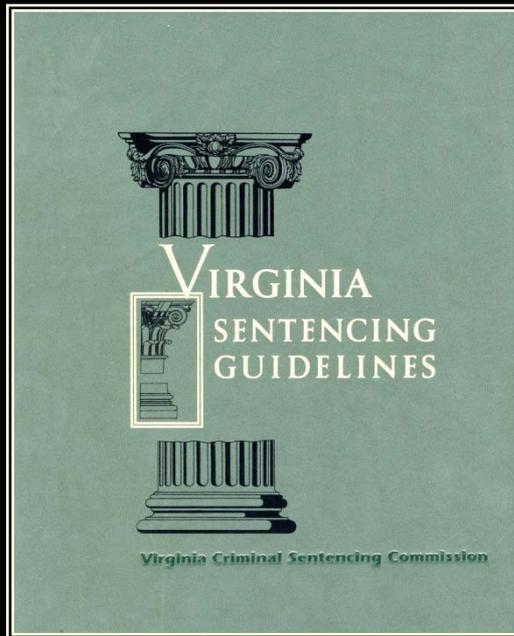




# VIRGINIA CRIMINAL SENTENCING COMMISSION



## Proposed Topics for Possible Guidelines Revisions

September 11, 2017

# 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.**



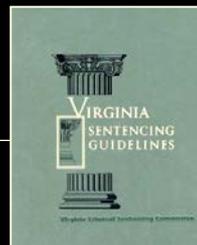
# Proposals for New Guidelines Offenses

- **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.**



## Proposals for Revisions to Existing Guidelines

- **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.**



# Suggestions for New Guidelines Offenses and Guidelines Revisions

- 1. Procedural decision to not score probation violation as additional offenses. Current policy results in different recommendations for similarly situated individuals.**
- 2. Add Provide cell phone to, or possession of cell phone by, a prisoner (§ 18.2-431.1)?**
- 3. Add Unlawfully discharge firearm or missile in/at occupied building (§ 18.2-279)?**
- 4. Review abduction with intent to defile (§ 18.2-48, ii) for possible refinement?**
- 5. Review Burglary Worksheets? (MUR as an additional offense picks up 140 additional points for either attempted, conspired or completed). Face validity issue: same points if a person dies or not. Points already exceed the statutory maximum for attempted murder.)**



# Suggestions for New Guidelines Offenses and Guidelines Revisions

- 1. Procedural decision to not score probation violation as additional offenses. Current policy results in different recommendations for similarly situated individuals.**

*(Official vote to include in 2017 Annual Report)*



# Drug/Schedule I/II Section A

Offender Name: \_\_\_\_\_

## Primary Offense

- A. Possess Schedule I or II drug or First offender violation
- |                |   |
|----------------|---|
| 1 count .....  | 1 |
| 2 counts ..... | 3 |
| 3 counts ..... | 8 |
- B. Sell, distribute, possession with intent, etc., Schedule I or II drug

## Sentencing Guidelines Cover Sheet

Complete this form ONLY for applicable felonies sentenced on or after July 1, 2017.

Scheduled Sentencing Date: \_\_\_\_\_

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### OFFENDER

First \_\_\_\_\_ Middle \_\_\_\_\_ Last \_\_\_\_\_ Suffix \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

CCRE:  V  A CORIS Offender ID: \_\_\_\_\_ PSI: \_\_\_\_\_

### COURT

Judicial Circuit \_\_\_\_\_ City/County \_\_\_\_\_ FIPS Code \_\_\_\_\_

Sentencing Judge's Name \_\_\_\_\_

Preparer Name \_\_\_\_\_  Commonwealth's Attorney  Probation Officer

Prosecuting Commonwealth's Attorney \_\_\_\_\_ Defense Attorney \_\_\_\_\_

### CONVICTIONS

Offense	Counts	VCC	Offense Date
Primary Offense			
Additional Offenses			

Primary Offense Code Section § \_\_\_\_\_ Docket Number \_\_\_\_\_

Drug Type in Event Please check all that apply. This information is for research purposes only.

- Cocaine  Codeine  Fentanyl  Heroin  Hydrocodone  Methadone  
 Methamphetamine  Methylphenidate  Morphine  Oxycodone  Any other Schedule I/II drug \_\_\_\_\_

### METHOD OF ADJUDICATION

- Jury Trial Sentence Set by Jury: \_\_\_\_\_  Life  Juvenile  Fine Only  
 Bench Trial  Guilty Plea  Alford Plea/Nolo contendere

### SENTENCING GUIDELINES RECOMMENDATION

- Section B**  
 Probation/No Incarceration  
 Incarceration 1 Day to 3 Months  
 Incarceration 1 Day to 6 Months  
 Incarceration 3 to 6 Months  
 Probation/No Incarceration or Incarceration to 6 Months
- Section C**  
 Life Sentence  Non Guidelines Offense (Primary offense is a non-guidelines offense)  
 Incarceration (Enter Midpoint and Range Below)  
 Range Midpoint: \_\_\_\_\_ to \_\_\_\_\_  
 Sentence Range: \_\_\_\_\_ TO \_\_\_\_\_
- Section B**  
 Mandatory Minimum \_\_\_\_\_  Recommendation Adjusted for Mandatory Minimum

### NONVIOLENT RISK ASSESSMENT Section D of Drug, Fraud, and Larceny Worksheets

- Recommended for Alternative Punishment  Not Applicable (INELIGIBILITY CONDITIONS marked on Section D)  
 NOT Recommended for Alternative Punishment  Not a DRUG, FRAUD or LARCENY Offense



# Sentencing Revocation Report

IMSP Case

Date Form Completed: \_\_\_\_\_

### OFFENDER

First \_\_\_\_\_ Middle \_\_\_\_\_

Last \_\_\_\_\_ Suffix: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

SID/CCRE: \_\_\_\_\_ CORIS Offender ID: \_\_\_\_\_

### COURT

Judicial Circuit \_\_\_\_\_ City/County \_\_\_\_\_ FIPS Code \_\_\_\_\_

Judge's Name: \_\_\_\_\_

### MOST SERIOUS ORIGINAL FELONY OFFENSE INFORMATION

Primary Offense \_\_\_\_\_ VCC \_\_\_\_\_ Sentencing Date (Original) \_\_\_\_\_

PSI NUMBER \_\_\_\_\_

### ORIGINAL DISPOSITION INFORMATION

- No Incarceration  Detention or Diversion Center Incarceration (no active incarceration)  Jail or Prison

### TYPE OF REVOCATION (check all that apply)

- Probation  Post-Release  Good Behavior  Suspended Sentence  Community-Based Program

### CONDITIONS CITED IN VIOLATION (check all that apply)

1. Fail to obey all Federal, State, and local laws and ordinances  
 2. Fail to report any arrests within 3 days to probation officer  
 3. Fail to maintain employment or to report changes in employment  
 4. Fail to report as instructed  
 5. Fail to allow probation officer to visit home or place of employment  
 6. Fail to follow instructions and be truthful and cooperative  
 7. Use alcoholic beverages  
 8. Use, possess, distribute controlled substances or paraphernalia  
 9. Use, own, possess, transport or carry firearm  
 10. Change residence or leave State of Virginia without permission  
 11. Abscond from supervision  
 Fail to follow special conditions (specify) \_\_\_\_\_

Complete if there are any new law or ordinance violations:  
 VCCs for most serious convictions


Location of Arrest:  
 Virginia  Out of State or Federal

### VIOLATION GUIDELINES RECOMMENDATION

- Probation/No Incarceration  Probation Violation Guidelines Do Not Apply (check reason)  
 Incarceration (Enter Range Below)  Condition 1 Violation  
 Range: \_\_\_\_\_ to \_\_\_\_\_  Deferred Finding/Sentence (Complete 3G)  
 Recommendation  Parole Eligible Case  
 Exceeds Revocable Time of: \_\_\_\_\_  Revocation Other Than Probation



# Drug/Schedule I/II Section A

Offender Name: \_\_\_\_\_

## ◆ Primary Offense

A. Possess Schedule I or II drug or First offender violation		
1 count .....		1
2 counts .....		3
3 counts .....		8
B. Sell, distribute, possession with intent, etc., Schedule I or II drug		
1 count .....		12
2 counts .....		13
3 counts .....		14
4 counts .....		15
C. Manufacture Methamphetamine (1st or 2nd conviction)		
1 count .....		12
2 counts .....		13
3 counts .....		14
4 counts .....		15
D. Sell, etc., Schedule I or II drug to minor (1 count) .....		11
E. Accommodation - Sell, distribute, possession with intent Schedule I or II drug		
1 count .....		5
2 counts .....		7
F. Sell, etc., imitation Schedule I or II drug (1 count) .....		4

Score

1	2
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## ◆ Primary Offense Remaining Counts

Total the maximum penalties for counts of the primary not scored above

Years: 5 - 10 .....	1	31 - 42 .....	4
11 - 21 .....	2	43 or more .....	5
22 - 30 .....	3		

0	0
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## ◆ Additional Offenses

Total the maximum penalties for additional offenses, including counts

Probation Violation: grand larceny & 2 counts forgery

11 - 21 .....	2	43 or more .....	5
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0	2
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## ◆ Knife or Firearm in Possession at Time of Offense

IF YES, add 2

0	
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## Scoring Probation Violations as Additional Offenses

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Users have expressed concern that when a probation violation or good behavior violation is scored as an additional offense, the points do not reflect a historically accurate sentence. The belief is that when combined into one event, the impact of the violation is not adequately weighed by the guidelines.

On Section C, each point is equivalent to a month in the midpoint. Listed below are the minimum and maximum points that would be added for a violation based on the type of new law conviction.

<b>New Law Violation Offense Group</b>	<b>Minimum Score (Months) for a Violation <sup>1</sup></b>	<b>Maximum Score (Months) for a Felony Violation<sup>2</sup></b>	<b>Percentage of Sentences Above Maximum Points (Months) Assigned for Violation as an Additional Offense</b>
Assault	3 Months	26 Months	10.8%
Burglary	1 Month	6 Months	78.0%
Drug	1 Month	7 Months	51.2%
Fraud	0	3 Months	74.9%
Kidnapping	1 Month	5 Months	82.5%
Larceny	1 Month	5 Months	64.3%
Murder	4 Months	42 Months	48.4%
Other Sexual Assault	5 Months	39 Months	7.0%
Robbery	2 Months	19 Months	51.3%
Traffic	1 Month	5 Months	50.4%
Miscellaneous	1 Month	12 Months	38.6%
Weapons	1 Month	5 Months	67.4%

Source FY 2013 – FY 2017 VCSC Sentencing Revocation and Probation Violation Database

<sup>1</sup> Based on a class 6 felony with a five year statutory maximum

<sup>2</sup> Based on a felony with a statutory maximum of 40 years or more

# Sentencing Guidelines with Legal Restraint Factor Scored

Comparison of Cases With and Without Probation Violation or Good Behavior Violation Scored as an Additional Offense  
By Fiscal Year

Note the increase in the percentage of cases

Fiscal Year	No Probation Violation in Event	Probation Violation Scored as an Additional Offense	Percentage of Cases	Total
2007	4,618	106	2.2%	4,724
2008	6,344	208	3.2%	6,552
2009	6,077	203	3.2%	6,280
2010	6,219	228	3.5%	6,447
2011	6,009	268	4.3%	6,277
2012	4,945	214	4.1%	5,159
2013	6,226	369	5.6%	6,595
2014	6,613	366	5.2%	6,979
2015	6,389	424	6.2%	6,813
2016	5,928	481	7.5%	6,409
2017	5,239	506	8.8%	5,745

Source: FY2007 – FY2017 VCSC Sentencing Guidelines Database  
N= 67,980

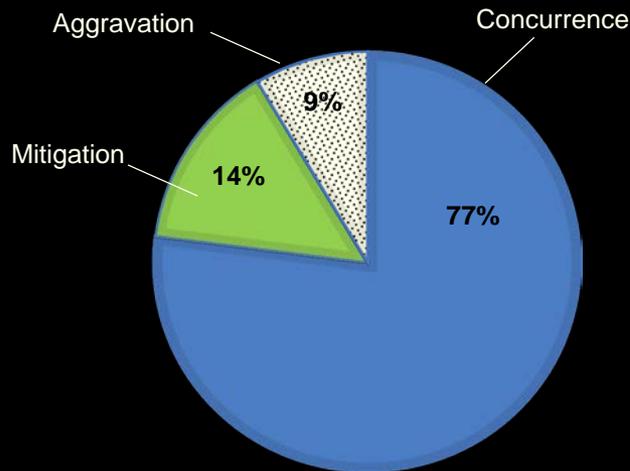
# Sentencing Guidelines with Legal Restraint Factor Scored

Comparison of Cases With and Without Probation Violation or Good Behavior Violation Scored as an Additional Offense

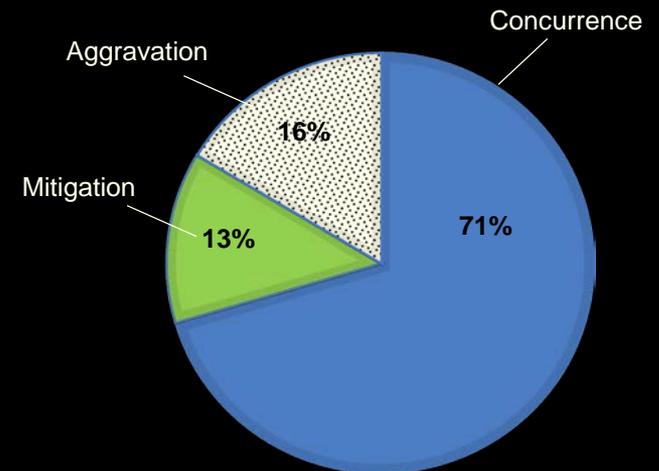
Concurrence with Guidelines Recommendation

FY2007 – FY2017

No Probation Violation in Event  
n = 64,571



Probation Violation Scored as an  
Additional Offense  
n = 3,370



Source: FY2007 – FY2017 VCSC Sentencing Guidelines Database  
N = 67,980 (Missing 39 cases)

# Sentencing Guidelines with Legal Restraint Factor Scored

Comparison of Cases With and Without Probation Violation or Good Behavior Violation Scored as an Additional Offense

By Circuit

Circuit	No Probation Violation in Event	Probation Violation Scored as an Additional Offense	Number
1	85.8%	14.2%	3,049
2	87.6%	12.4%	3,988
3	99.9%	0.1%	1,749
4	93.6%	6.4%	3,837
5	90.7%	9.3%	1,863
6	99.5%	0.5%	1,039
7	99.9%	0.1%	1,629
8	96.7%	3.3%	1,375
9	97.9%	2.1%	2,094
10	87.1%	12.9%	1,710
11	99.3%	0.7%	995
12	99.2%	0.8%	2,888
13	94.8%	5.2%	3,120
14	100.0%	0.0%	2,627
15	98.6%	1.4%	4,501
16	88.3%	11.7%	2,336
17	99.8%	0.2%	1,004
18	99.9%	0.1%	679
19	99.9%	0.1%	2,703
20	89.2%	10.8%	1,687
21	90.4%	9.6%	1,164
22	98.8%	1.2%	1,890
23	99.2%	0.8%	2,165
24	98.8%	1.2%	2,417
25	99.4%	0.6%	2,409
26	90.6%	9.4%	3,539
27	97.0%	3.0%	2,875
28	90.9%	9.1%	1,555
29	91.2%	8.8%	1,861
30	97.8%	2.2%	1,179
31	97.7%	2.3%	2,026
Total*	95.0%	5.0%	67,980

Source: FY2007 – FY2017  
 VCSC Sentencing  
 Guidelines Database  
 N = 67,980  
 (Missing 27 cases)

# Suggestions for New Guidelines Offenses and Guidelines Revisions

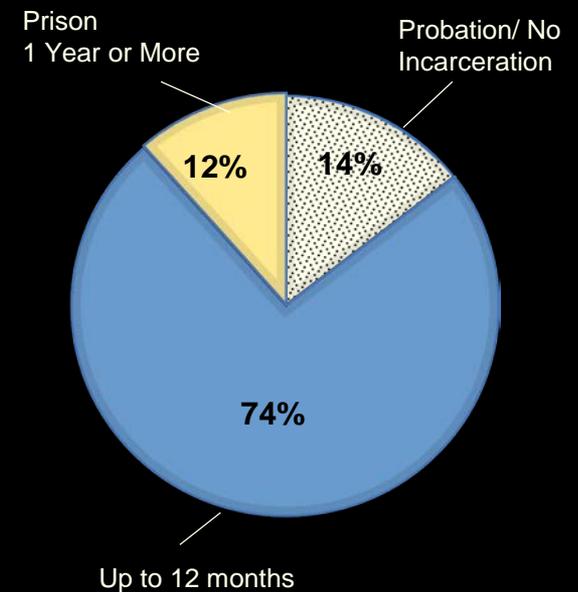
## 2. Add Provide cell phone to, or possession of cell phone by, a prisoner (§ 18.2-431.1)?

Provide Cell Phone to Prisoner = 25 convictions

Possession of Cell Phone by Prisoner = 202 convictions

FY2013-FY2017 Circuit Court Case Management System (CMS) Data

Dispositions

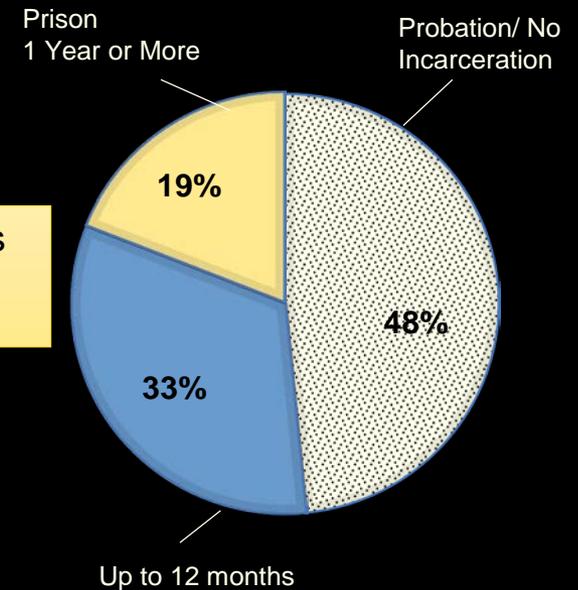


# Suggestions for New Guidelines Offenses and Guidelines Revisions

3. Add unlawfully discharge firearm or missile in/at occupied building (§ 18.2-279) and analyze with maliciously discharge firearm or missile in/at occupied building?

Unlawful Discharge Firearm or missile at Building = 180 convictions

FY2013-FY2017 Circuit Court Case Management System (CMS) Data

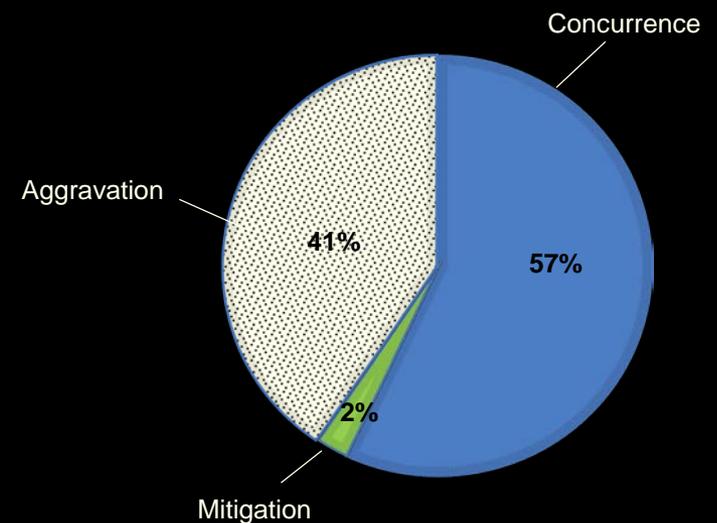


# Suggestions for New Guidelines Offenses and Guidelines Revisions

## 4. Review abduction with intent to defile (§ 18.2-48, ii) for possible refinement.

Abduction with Intent to Defile = 42

FY2013-FY2017 VCSC Sentencing Guidelines Data



# Suggestions for New Guidelines Offenses and Guidelines Revisions

- Review Burglary Worksheets (MUR as an additional offense picks up 140 additional points for either attempted, conspired or completed). Face validity issue: same points if a person dies or not. Points already exceed the statutory maximum for attempted murder.)**

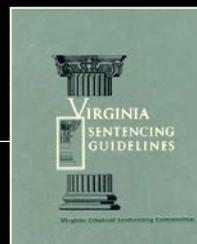
Burglary with Murder as an Additional Offense = 7 Sentencing Events

FY2013-FY2017 VCSC Sentencing Guidelines Data

More than the statutory maximum for an attempted murder

## ◆ Type of Additional Offense(s)

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



# Suggestions for New Guidelines Offenses and Guidelines Revisions

- 1. Procedural decision to not score probation violation as additional offenses. Current policy results in different recommendations for similarly situated individuals.**
- 2. Add Provide cell phone to, or possession of cell phone by, a prisoner (§ 18.2-431.1)?**
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VIRGINIA  
SENTENCING  
GUIDELINES



Virginia Criminal Sentencing Commission