



VIRGINIA CRIMINAL SENTENCING COMMISSION



Judicial Departure Reasons

§ 19.2-298.01

April 9, 2018

Information Requested by General Assembly

For a number of years, the General Assembly has requested a sentencing guidelines report for judges up for re-appointment.

A report like this one is generated for each such judge.

This year, for the first time, the Commission received a request from a legislator for the percentage of missing departure reasons for each active circuit court judge.

Sentencing Guidelines Concurrence and Departure Rates CY 2010 – CY 2017 (Through June)

Statewide Summary

YEAR	CONCURRENCE	MITIGATION ^{1,2}	AGGRAVATION	CASES	DEPARTURE REASON MISSING (CASES)
2010	79.3%	11.5%	9.2%	24,089	3.8% (919)
2011	79.1%	11.0%	9.9%	24,079	4.2% (1,002)
2012	78.0%	11.8%	10.2%	23,946	4.1% (970)
2013	78.2%	11.2%	10.6%	24,885	3.3% (831)
2014	79.6%	10.7%	9.7%	24,727	2.9% (723)
2015	80.2%	10.4%	9.4%	23,777	2.5% (604)
2016	81.1%	9.7%	9.2%	23,526	2.4% (556)
2017	81.2%	9.7%	9.1%	11,714	2.5% (290)
TOTAL	79.5%	10.8%	9.7%	180,743	3.3% (5,895)

The percentage of missing departure reasons has declined overall since 2011.

Note: Figures for CY2017 are through June only.

¹ There were a total of 262 jury recommendations between 2010 and 2017 that were below the guidelines recommendation. By law, judges are not permitted to increase a sentence recommended by a jury (§ 19.2-303).

² Mitigation category includes 278 defendants committed to DJJ under the provisions of § 16.2-285.1 between January 2010 and June 2017.

Information Requested by General Assembly

HON. EDWARD L. HOGSHIRE (RET.)
CHAIRMAN

Commonwealth of Virginia



Supreme Court of Virginia
Virginia Criminal Sentencing Commission

January 24, 2018

Dear Judge [REDACTED]:

You may recall Chief Justice Lemons' 2017 State of the Judiciary address, in which he shared the General Assembly's concern regarding judges not filing a written explanation for departing from the sentencing guidelines as required by § 19.2-298.01(B).

Two pieces of legislation have been filed in the 2018 General Assembly that pertain to sentencing guidelines departure reasons (House Bill 1055 and House Bill 1312). As amended, House Bill would provide that a sentenced person may seek a writ of mandamus to enforce the requirement that the court file a written departure explanation, if the judge has failed to do so. House Bill 1312, as introduced, would allow a court's departure from the sentencing guidelines to be reviewable on appeal if the court failed to file the required written departure explanation and the sentence imposed exceeded the maximum of the sentencing guidelines range by more than 12 months.

In addition, the Commission's staff recently received a request from a legislator for the rate of missing departure reasons for each circuit court judge during fiscal year 2017. Commission staff compiled the statistics and submitted the information to the legislator last week. I am writing to make you aware that legislators have expressed concern in instances similar to yours in which the percentage of missing departure reasons is well above the statewide average. Our staff cautioned legislators that some judges had sentenced a small number of felony cases during the year, which would affect the results.

Should you have any questions or if you would like additional information, please do not hesitate to call the Commission's staff director, Meredith Farrar-Owens, at (804) 371-7626.

With kind regards,

A handwritten signature in black ink, appearing to read "Edward L. Hogshire".

Edward L. Hogshire
Retired Judge
Chairman

MEREDITH FARRAR-OWENS
DIRECTOR

100 NORTH NINTH STREET
RICHMOND, VIRGINIA 23219
TEL (804) 225-4398
FAX (804) 786-3934

After the report was submitted to the General Assembly, a letter was sent from the Commission's Chair to judges whose percentage of missing departures reasons were well above the statewide average for FY2017.

Ongoing Commission Activities Related to Guidelines Departure Reasons

- **Commission is stressing the importance of departure reasons in pre-bench training and at judicial conferences.**
- **Commission is sending guidelines forms for certain cases back to the judge if no departure reason can be discerned.**
 - **This is currently done for cases that must be reported to the Virginia Child Protection Accountability System (§ 63.2-1530) and, since 2017, cases involving modification of a jury sentence (§ 19.2-295).**
- **When fully developed, the Commission's web-based guidelines application will prompt the judge whenever a departure reason is needed.**



Options for the Commission's Consideration

- 1. Staff could start returning all guidelines forms submitted without a departure reason to the sentencing judge or notify judge via e-mail in such cases.**
- 2. Staff could accept departure reasons for guidelines previously submitted by the clerk.**
 - FY2017 and FY2018**
- 3. Staff could revise the guidelines cover sheet to facilitate the judge's use of check boxes for indicating departure reasons.**



Options for the Commission's Consideration

4. **Staff could attempt additional steps to verify the name of the sentencing judge recorded on the guidelines form.**
 - **Sometimes, the judge indicated on the front of the guidelines cover sheet is not the judge who ultimately sentences the offender.**
 - **Staff make every effort to identify the sentencing judge based on his/her signature; however, judges do not always sign the guidelines form.**
 - **To address this, staff could request additional data from the Circuit Court Case Management System (CMS) that includes judge identifier and attempt to match it to sentencing guidelines data.**

Judges who use the SWIFT application to review the guidelines, record the sentence, and enter departure reasons will sign the form with an electronic signature code, which will eliminate errors of this kind.



Options for Modified Guidelines Cover Sheet

◆ Final Disposition Fill In After Sentence Has Been Pronounced

◆ SENTENCE

Total Time Imposed Before Suspension Life Sentence -

Years	Months	Days
<input type="text"/>	<input type="text"/>	<input type="text"/>

Total Effective Time to Serve Life Sentence -

<input type="text"/>	<input type="text"/>	<input type="text"/>
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 Sent to Time Served

Post Release		
Post Release Term § 18.2-10	<input type="text"/>	<input type="text"/>
Post Release Supervision Period § 19.2-295.2(A)	<input type="text"/>	<input type="text"/>

Probation Period (Supervised) § 19.2-303 Indefinite

<input type="text"/>	<input type="text"/>	<input type="text"/>
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Good Behavior Period (§ 19.2-306)

Years	Months	Days
<input type="text"/>	<input type="text"/>	<input type="text"/>

Check all that apply

- Incarceration Sentence to Run Concurrently With Another Sentencing Event
- Written Plea Agreement Accepted = Rule 3A:8(c)(1) (A) or (C)
- Plea and Recommendation Accepted = Rule 3A:8(c)(1)(B)
- Oral Sentence Recommendation Accepted
- Restitution \$ _____ Fine \$ _____

Other Sentencing Programs (check all that apply)

- | | | | | | | | | |
|--|--|----------------------|----------------------|----------------------|-------|----------------------|-----|----------------------|
| <ul style="list-style-type: none"> <input type="checkbox"/> Day Reporting <input type="checkbox"/> Detention Center Incarceration <input type="checkbox"/> Diversion Center Incarceration <input type="checkbox"/> Electronic Monitoring <input type="checkbox"/> Intensive Probation <input type="checkbox"/> § 18.2-251/§ 18.2-258.1 <input type="checkbox"/> Substance Abuse Treatment | <ul style="list-style-type: none"> <input type="checkbox"/> Community-Based Program _____ <input type="checkbox"/> CCAP Detention/Diversion Center Incarceration, 22-28 weeks <input type="checkbox"/> CCAP Detention/Diversion Center Incarceration, 42-48 weeks <input type="checkbox"/> Drug Court <table border="1" style="display: inline-table; vertical-align: middle;"><tr><td>Office Use Only</td><td><input type="text"/></td><td><input type="text"/></td></tr></table> <input type="checkbox"/> Youthful Offender <table border="1" style="display: inline-table; vertical-align: middle;"><tr><td>Other</td><td><input type="text"/></td><td>CCP</td><td><input type="text"/></td></tr></table> <input type="checkbox"/> DJJ Commitment <input type="checkbox"/> Indeterminate <input type="checkbox"/> Determinate <input type="checkbox"/> Other _____ | Office Use Only | <input type="text"/> | <input type="text"/> | Other | <input type="text"/> | CCP | <input type="text"/> |
| Office Use Only | <input type="text"/> | <input type="text"/> | | | | | | |
| Other | <input type="text"/> | CCP | <input type="text"/> | | | | | |

◆ REASON FOR DEPARTURE AND/OR MODIFICATION OF JURY SENTENCE

Must be completed pursuant to § 19.2-298.01(B) and/or § 19.2-295(B)/ § 19.2-303

<input type="text"/>	<input type="text"/>	<input type="text"/>
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- Jury Sentence Imposed
- Plea Agreement or Recommendation Accepted
- CCAP
- DJJ Commitment

◆ SENTENCING DATE

Month	Day	Year
<input type="text"/>	<input type="text"/>	<input type="text"/>

Judge's Signature

◆ ATTACH COURT ORDER AND MAIL Pursuant to § 19.2-298.01(E)

After sentencing, send to:
Virginia Criminal Sentencing Commission • 100 North Ninth Street • Fifth Floor • Richmond, Virginia 23219

◆ Final Disposition Fill In After Sentence Has Been Pronounced

◆ SENTENCE

Total Time Imposed Before Suspension Life Sentence -

Years	Months	Days
<input type="text"/>	<input type="text"/>	<input type="text"/>

Total Effective Time to Serve Life Sentence -

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Good Behavior Period (§ 19.2-306)

Years	Months	Days
<input type="text"/>	<input type="text"/>	<input type="text"/>

Check all that apply

CASE CONCLUSION INFORMATION OR GENERAL DEPARTURE REASONS

- Incarceration Sentence to Run Concurrently With Another Sentencing Event
- Written Plea Agreement Accepted = Rule 3A:8(c)(1) (A) or (C)
- Plea and Recommendation Accepted = Rule 3A:8(c)(1)(B)
- Oral Sentence Recommendation Accepted
- Restitution \$ _____ Fine \$ _____

Other Sentencing Programs OR GENERAL DEPARTURE REASONS (check all that apply)

- | | | | | | | | | |
|--|--|----------------------|----------------------|----------------------|-------|----------------------|-----|----------------------|
| <ul style="list-style-type: none"> <input type="checkbox"/> Day Reporting <input type="checkbox"/> Detention Center Incarceration <input type="checkbox"/> Diversion Center Incarceration <input type="checkbox"/> Electronic Monitoring <input type="checkbox"/> Intensive Probation <input type="checkbox"/> § 18.2-251/§ 18.2-258.1 <input type="checkbox"/> Substance Abuse Treatment | <ul style="list-style-type: none"> <input type="checkbox"/> Community-Based Program _____ <input type="checkbox"/> CCAP Detention/Diversion Center Incarceration, 22-28 weeks <input type="checkbox"/> CCAP Detention/Diversion Center Incarceration, 42-48 weeks <input type="checkbox"/> Drug Court <table border="1" style="display: inline-table; vertical-align: middle;"><tr><td>Office Use Only</td><td><input type="text"/></td><td><input type="text"/></td></tr></table> <input type="checkbox"/> Youthful Offender <table border="1" style="display: inline-table; vertical-align: middle;"><tr><td>Other</td><td><input type="text"/></td><td>CCP</td><td><input type="text"/></td></tr></table> <input type="checkbox"/> DJJ Commitment <input type="checkbox"/> Indeterminate <input type="checkbox"/> Determinate <input type="checkbox"/> Other _____ | Office Use Only | <input type="text"/> | <input type="text"/> | Other | <input type="text"/> | CCP | <input type="text"/> |
| Office Use Only | <input type="text"/> | <input type="text"/> | | | | | | |
| Other | <input type="text"/> | CCP | <input type="text"/> | | | | | |

◆ SPECIFIC REASON FOR DEPARTURE AND/OR MODIFICATION OF JURY SENTENCE

Must be completed pursuant to § 19.2-298.01(B) and/or § 19.2-295(B)/ § 19.2-303

<input type="text"/>	<input type="text"/>	<input type="text"/>
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◆ SENTENCING DATE

Month	Day	Year
<input type="text"/>	<input type="text"/>	<input type="text"/>

Judge's Signature

◆ ATTACH COURT ORDER AND MAIL Pursuant to § 19.2-298.01(E)

After sentencing, send to:

