MEETING OF THE
VIRGINIA CRIMINAL SENTENCING COMMISSION

November 4, 2020, 10:00 a.m.

Richard P. Kern Memorial Conference Room
Virginia Supreme Court Building
Fifth Floor

**** Meeting will be held by videoconference via Zoom ****
(Selected presentations included in this notebook)

AGENDA

I. Approval of Minutes from Last Commission Meeting

Judge Edward L. Hogshire (Ret.), Chairman

II. Results of the Probation Violation Guidelines Study
(Presentation Included)

Jody Fridley, Deputy Director
Thomas Barnes, Research Associate
Joe Boelsche, Research Associate
Chang Kwon, Research Associate

III. Possible Recommendations for Sentencing Guidelines Revisions
(Presentation Included)

Meredith Farrar-Owens, Director
Jody Fridley, Deputy Director

IV. Sentencing Guidelines Supplemental Case Information Form
(Copy of Form)

Meredith Farrar-Owens, Director

V. Miscellaneous Items

a. Follow-up on Key Special Session Legislation
b. Members with Terms Expiring in 2020
c. Possible Meeting Dates for 2021

Meredith Farrar-Owens, Director

VIRGINIA CRIMINAL
SENTENCING COMMISSION

Results of the Probation Violation Guidelines Study

November 4, 2020

Probation Guidelines Study Recap

Progress Update

- Held stakeholder meeting (Oct. 14) and refined models based on feedback.
- Concluded statistical analysis of probation data.
- Finalized probation guidelines worksheet factors and scores.

Stakeholder Meeting

- Presented initial draft of guidelines worksheet to a group of 20 probation officers, defense attorneys, and Commonwealth attorneys.
- Focused discussion on feasibility of scoring factors, ability to gather accurate information, and potential unintended consequences.

Stakeholders Meeting Takeaways

Stakeholder Feedback	Change Implemented
Some factors are “gameable” and require careful definition	Based “same behavior” on conviction VCC prefixes
Wording of worksheet and timeline of prior revocations must be straightforward	Focused prior revocation terms around “current offense”
Convictions easier to score than sentencing events	New felonies scored by conviction count

We redrafted scoring factors following the stakeholder meeting and conducted another round of analysis, which led today’s proposed worksheet.

Probation Guidelines Proposed Factors

Probation Violation Guidelines Study
Sample Update

- Final Scoring Samples
  - 3,410 Cases Included (85.3% of initial sample)
    - 695 Felony New Law (Condition 1) Violators – (20.4%)*
    - 2,715 Technical and Misdemeanor New Law Violators – (79.6%)*
    - Revocation Dates FY2014 - FY2018
  - 590 cases (14.7%) dropped due to invalid supervision dates, lack of MVR, unclear Condition 1 status, or wrong violation type (Good Behavior etc.)

*Offenders whose only new felony conviction was for another supervision violation were scored in the technical/misdemeanor sample.

Analysis Process

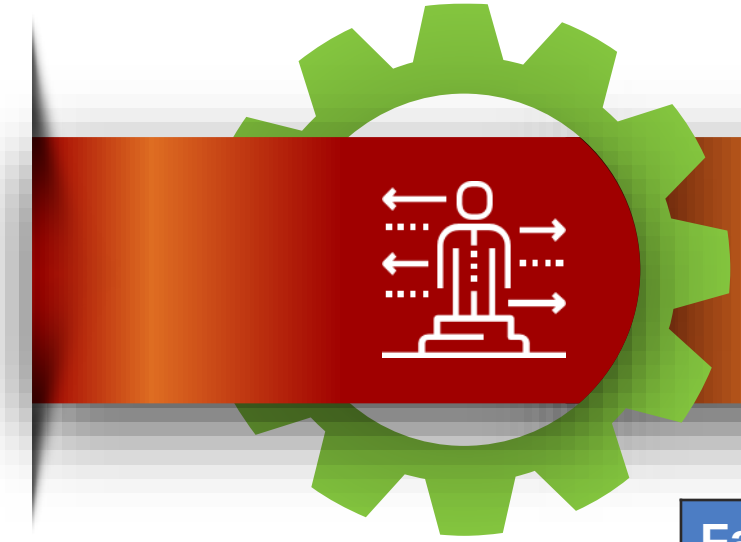
1. Identified significant factors for new felony violators and technical/new misdemeanor violators using statistical methods (regression).
2. Used relative weighting of the regression results to develop scores for guidelines factors.
3. “Rescored” sample cases against proposed guideline factors to create recommendation tables.

Factors Analyzed

- New Felonies, subsequent revocations, and continued violation of similar laws drive these guidelines.

Factor	% of Score Composition
New Felony Convictions (Person type)	51%
“Home Court” Prior Revocations	26%
Same Behavior as Original Offense	18%
New Felony Convictions (Non-Person type)	5%

Factors Analyzed



SIGNIFICANT
(Technical and Misdemeanor)

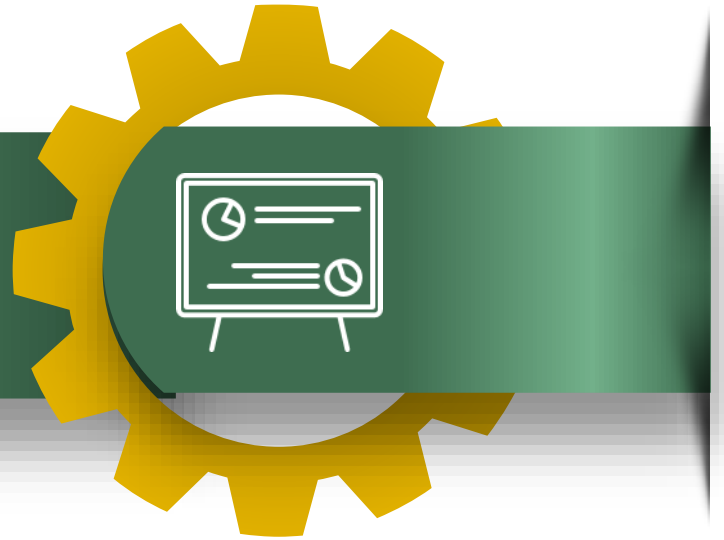
- These guidelines are similar to the new felony model, but also driven by sex offender status and some specific technical violations.

Factor	% of Score Composition
“Home Court” Prior Revocations	39%
Registered Sex Offender	21%
Prior Felonies (since original offense)	13%
Abscond (Condition 11)	10%
Misdemeanor Same Behavior	9%
Drug Violation (Condition 8)	7%
Fail to Report (Condition 4)*	2%

**Used as a baseline factor to prevent scores of zero.*

Factors Analyzed

NOT SIGNIFICANT



Factor	Exclusion Reason
Abscond Length	Timeline construction issues
Race, Age	No consistent trend
Original Offense Recommendation/Sentence	
Other violations cited (alcohol, residence, etc.)	Small sample/No consistent trend
Drug/Mental Health/Other Treatment	

Many other factors were tested in the analysis—some key factors are presented above.

Other Findings

- **Vast majority of cases had eligible time served based on Local Inmate Data System, we incorporated this into the sentences we analyzed.**
- **Controls used in analysis include attorney type, sex of offender, court circuits, and year of revocation.**

Supplemental Data: PV Cases with Good or Poor Rehab Potential

- In SRR data from FY2014-FY2019, departure codes for 482 cases citing good rehabilitation potential and 827 cases citing poor rehabilitation potential were identified. These cases were also predominately technical violators.
- Revocation effective sentence was substantially shorter in cases where good rehabilitation potential was noted, and the majority of these cases received an effective sentence of zero.
- Based on these findings, staff recommend a new factor to allow the judge to adjust the low end recommendation to "time served" if the judge finds the probationer has good rehabilitation potential.

	Effective Sentence (Months)			
Rehab Potential	**Median**	**Mean**	**Minimum**	**Maximum**
Good	0.0	2.8	0.0	36.0
Poor	15.0	22.7	0.0	396.0
Not Given	6.0	9.9	0.0	857.0

Probation Violation Worksheet

Offender Name:_____

Technical or Condition 1 based on new misdemeanor conviction

Base Guidelines on the Current Primary Offense:_____ ❒ Original Sentencing was Incarceration/CCAP

❒ ICOTS Case for Supervision of Current Primary Transferred to: State Abv:_____

Amount of Total Revocable Time at Hearing Sentencing: ❒ Life + [ ][ ][ ] Years [ ][ ] Months [ ][ ][ ] Days

◆ **Prior Revocations in this Court Only**

Original Sentencing Date _____ Start of Current Supervision Period_____

Number of Prior Revocations for Current Offense

Does the probationer have a prior felony conviction from any court between the dates listed above?

If NO	
Number of Prior Revocations for Current Offense	**Points**
One Prior Revocation	10
Two or More Prior Revocations	22

If YES	
Number of Prior Revocations for Current Offense	**Points**
One Prior Revocation	23
Two or More Prior Revocations	35

[0][ ][ ]

Other Prior Probation Revocations for Other Offenses in this Court Only

Does the probationer have a prior felony conviction from this court prior to sentencing for original offense ?

If YES	
One Prior Revocation	18
Two or More Prior Revocations	19

[0][ ][ ]

◆ **Condition 1 Violation: New Misdemeanor Conviction(s)**

New Misdemeanor Conviction is Similar Behavior to Current Offense (Refer to Appendix 4))	9
Any Other New Misdemeanor Convictions (Refer to Appendix 4)	1

[0][0][ ]

Enter VCC _____ Sent./Conv. Date_____ FIPS ____ Eff Sent. __Y ___M ___D ❒ Pending Sentencing

Enter VCC _____ Sent./Conv. Date_____ FIPS ____ Eff Sent. __Y ___M ___D ❒ Pending Sentencing

Sum of Total Effective Sentence for New Convictions ____Y _____M _____D

◆ **Condition 4 Violation: Fail to Report as Instructed** — If YES, add 2 → [0][ ]

◆ **Condition 8 Violation: Drug Violation** — If YES, add 7 → [0][ ]

◆ **Condition 11 Violation: Abscond** — If YES, add 10 → [ ][ ]

Last Date whereabouts were known ___/___/___ Date arrested for this violation ___/___/___

◆ **Registered Sex Offender** — If YES, add 22 → [ ][ ]

Recommendation Score → [ ][ ][ ][ ]

Go to Cover sheet and fill out the violation guidelines recommendation range.

Recommendation Table

Score	Guidelines Sentence
❒ Under 19	Time served to 6 months
❒ 19 to 33	3 months to 1 year
❒ 34 to 43	1 year to 1 year 6 months
❒ 44 or more	1 year to 4 years

DESIGN & LAYOUT WILL BE REFINED

Probation Violation Worksheet

Offender Name:_____

Technical or Condition 1 based on new misdemeanor conviction

Base Guidelines on the Current Primary Offense:_____ ❒ Original Sentencing was Incarceration/CCAP

✓ ❒ ICOTS Case for Supervision of Current Primary Transferred to: State Abv:_____

✓ Amount of Total Revocable Time at Hearing Sentencing: ❒ Life + | | | | Years | | | Months | | | | Days |

◆ Prior Revocations in this Court Only

Original Sentencing Date _____ Start of Current Supervision Period_____

Number of Prior Revocations for Current Offense

Does the probationer have a prior felony conviction from any court between the dates listed above?

If NO

Number of Prior Revocations for Current Offense	Points
One Prior Revocation	10
Two or More Prior Revocations	22

If YES

Number of Prior Revocations for Current Offense	Points
One Prior Revocation	23
Two or More Prior Revocations	35

0 | | |

Other Prior Probation Revocations for Other Offenses in this Court Only

Does the probationer have a prior felony conviction from this court prior to sentencing for original offense ?

◆ Prior Revocations in this Court Only

Original Sentencing Date _____ Start of Current Supervision Period_____

Number of Prior Revocations for Current Offense

Does the probationer have a prior felony conviction from <u>any</u> court between the dates listed above?

If NO

Number of Prior Revocations for Current Offense	Points
One Prior Revocation	10
Two or More Prior Revocations	22

If YES

Number of Prior Revocations for Current Offense	Points
One Prior Revocation	23
Two or More Prior Revocations	35

0		

Other Prior Probation Revocations for Other Offenses in this Court Only

Does the probationer have a prior felony conviction from <u>this</u> court prior to sentencing for original offense ?

If YES

One Prior Revocation	18
Two or More Prior Revocations	19

0		

◆ Condition 1 Violation: New Misdemeanor Conviction(s)

New Misdemeanor Conviction is Similar Behavior to Current Offense (Refer to Appendix 4))	9
Any Other New Misdemeanor Convictions (Refer to Appendix 4)	1

0	0	

Spacing Issues will be resolved ⇘

Enter VCC _____ Sent./Conv. Date_____ FIPS ____ Eff Sent. __Y ___M ___D ❒ Pending Sentencing

Enter VCC _____ Sent./Conv. Date_____ FIPS ____ Eff Sent. __Y ___M ___D ❒ Pending Sentencing

Sum of Total Effective Sentence for New Convictions ____Y _____M _____D

◆ **Condition 4 Violation: Fail to Report as Instructed** — If YES, add 2 → 0

◆ **Condition 8 Violation: Drug Violation** — If YES, add 7 → 0

◆ **Condition 11 Violation: Abscond** — If YES, add 10 →

Last Date whereabouts were known ___/___/___ Date arrested for this violation ___/___/___

◆ **Registered Sex Offender** — If YES, add 22 →

Recommendation Score →

Go to Cover sheet and fill out the violation guidelines recommendation range.

Recommendation Table

Score	Guidelines Sentence
☐ Under 19.....	Time served to 6 months
☐ 19 to 33.....	3 months to 1 year
☐ 34 to 43.....	1 year to 1 year 6 months
☐ 44 or more.....	1 year to 4 years

Probation Violation Worksheet

Offender Name:_____

Condition 1 based on new felony conviction

Base Guidelines on the Current Primary Offense:_____ ❒ Original Sentencing was Incarceration/CCAP

❒ ICOTS Case for Supervision of Current Primary Transferred to: State Abv:_____

Amount of Total Revocable Time at Hearing Sentencing: ❒ Life + [ ][ ][ ] Years [ ][ ] Months [ ][ ][ ] Days

◆ **Prior Revocations for Current Offense**

One or more Prior Revocation.....10 → 0 [ ][ ]

Condition 1 Violation: New Felony Conviction(s)

Enter VCC _____ Sent./Conv. Date_____ FIPS ____ Eff Sent. __Y ___M ___D ❒ Pending Sentencing
Enter VCC _____ Sent./Conv. Date_____ FIPS ____ Eff Sent. __Y ___M ___D ❒ Pending Sentencing

◆ **Number of New Person Felony Convictions** [ ][ ] **X 20** → [ ][ ][ ]

◆ **Number of New Non-Person Felony Convictions** [ ][ ] **X 2** → [ ][ ][ ]

◆ **New Felony or Misdemeanor Conviction is Similar Behavior to Current Offense** *(Refer to Appendix 4)* — If YES, add 7 → 0 0 [ ]

Sum of Total Effective Sentence for New Convictions ____Y _____M _____D

Recommendation Score → [ ][ ][ ][ ]

Recommendation Table

Score	Guidelines Sentence
❒ 1 to 7.....	Time served to 1 year
❒ 8 to 15.....	6 months to 1 year 6 months
❒ 16 to 22.....	8 months to 2 years
❒ 23 or more.....	15 months to 4 years

Go to Cover sheet and fill out the violation guidelines recommendation range.

DESIGN & LAYOUT WILL BE REFINED

Probation Violation Worksheet

Offender Name:_____

Condition 1 based on new felony conviction

Base Guidelines on the Current Primary Offense:_____ ☐ Original Sentencing was Incarceration/CCAP

✓ ☐ ICOTS Case for Supervision of Current Primary Transferred to: State Abv:_____

✓ Amount of Total Revocable Time at Hearing Sentencing: ☐ Life + [ ][ ][ ] Years [ ][ ] Months [ ][ ][ ] Days

◆ Prior Revocations for Current Offense

One or more Prior Revocation.....10 → [0][ ][ ]

Condition 1 Violation: New Felony Conviction(s)

Spacing Issues will be resolved ↘

Enter VCC _____ Sent./Conv. Date_____ FIPS ____ Eff Sent. __Y ___M ___D ☐ Pending Sentencing

Enter VCC _____ Sent./Conv. Date_____ FIPS ____ Eff Sent. __Y ___M ___D ☐ Pending Sentencing

◆ Number of New Person Felony Convictions [ ][ ] X 20 → [ ][ ][ ]

◆ **Number of New Non-Person Felony Convictions** ——— [ ][ ] ——— **X 2** ———▶ [ ][ ][ ]

◆ **New Felony or Misdemeanor Conviction is Similar Behavior to Current Offense** *(Refer to Appendix 4)* ——— If YES, add 7 ———▶ [0][0][ ]

Sum of Total Effective Sentence for New Convictions ____Y _____M _____D

Recommendation Score ═══▶ [ ][ ][ ][ ]

Recommendation Table

Score	Guidelines Sentence
☐ 1 to 7.....	Time served to 1 year
☐ 8 to 15.....	6 months to 1 year 6 months
☐ 16 to 22.....	8 months to 2 years
☐ 23 or more.....	15 months to 4 years

Go to Cover sheet and fill out the violation guidelines recommendation range.

Proposed Probation Guidelines Factors – Connection to Survey Feedback

Judicial Survey Take Aways

- **Responding judges provided some insight into the factors that, on average, are weighed the most heavily in sanctioning probation violators. Examples:**
  - **Type of original felony offense**
  - **Violation of sex offender restrictions**
  - **Violation behavior that is similar to underlying offense**
  - **New felony convictions**
  - **Number of prior adult probation revocations**

The above factors are incorporated into the following proposed factors:

- **Same Behavior as Original Offense**
- **Sex Offender (any violation)**
- **New felony convictions**
- **“Home court” prior revocations**

Probation Officers, Commonwealth's Attorneys, and Defense Attorneys Survey

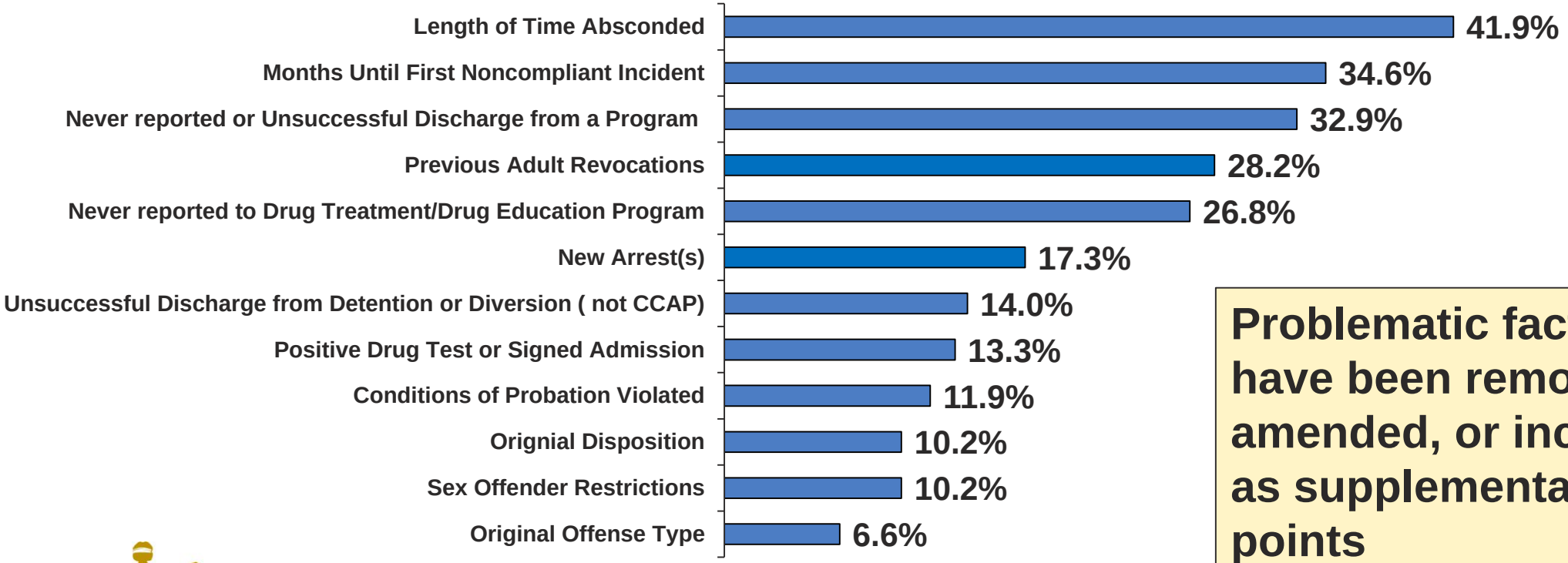
13: What other factors, not currently on the probation violation guidelines, should be on the probation violation guidelines?

Similarly addresses factors mentioned by probation officers and attorneys survey

1. Substance or Mental Health Treatment (32)
2. Positive Behavior (24)
3. Amenable to Supervision (20)
4. Employment - Employed or Unemployed (20)
5. Same New Offense Conviction/Arrest (18)
6. Total Number of Probation Violations (15)
7. Length of Time on Supervision Before Violation (12)
8. Include Condition One (10)
9. Restitution (10)
10. Drug Type (9)
11. CCAP (7)
12. Number of Noncompliance Incidents (7)
13. Administrative Probation Issues (6)

12: Thinking about the current probation violations guidelines, are there any factors that are problematic to score accurately?

(More than one factor may have been identified and the total will not add to 100%)



Problematic factors have been removed, amended, or included as supplemental data points

8: Please rank the top condition of probation based on your opinion of what conditions the judges in your primary court view as the most serious technical violations (Anything other than Condition 1: New Law Violation).

Answered: 646 Skipped: 176

Answer Choices	Frequency	Percent
Condition 11: Not abscond from supervision	353	54.9%
Condition 8: Not use, possess, distribute controlled substances	132	20.5%
Condition 13: Abide by special sex offender conditions	68	10.6%
Condition 9: Not use, own, possess, transport or carry a firearm	33	5.1%
Condition 6: Follow the Probation and Parole Officer's instructions	15	2.3%
Condition 12: Abide by special conditions	13	2.0%
Condition 2: Report any arrest to the Probation and Parole Officer	7	1.1%
Condition 4: Report to the Probation and Parole Officer as instructed	5	0.8%
Condition 3: Maintain regular employment	1	0.2%
Condition 10: Not change my residence or leave the state without permission	1	0.2%
Condition 5: Permit the Probation and Parole Officer to visit my home, etc.	0	0.0%
Condition 7: Not use alcoholic beverages in excess	0	0.0%

The top 3 most serious technical violations have been retained in worksheet scoring.

Procedural Elements of Revocation

Procedural Issues

- Timeliness of Guidelines submission
- Good Behavior Violations vs Probation Violations (lack of MVR)
- Information not available to the Judge
- Inconsistent policies on reporting violations
- Judicial sentencing philosophies vary

Procedural Issues - Resolutions

Timeliness	Good Behavior	Information	Reporting Policies	Judicial Philosophy
Clarification on importance of submitting Guidelines within 30 days of hearing.	The PVG only apply if prepared by a PO or based on MVR. Overwise, policy would require CA to proceed with a Good Behavior violation.	Additional fields in worksheets and SRR provide more information.	Focus group recommended taking local policy issues to chiefs and Dept. of Corrections.	Ability for judges to adjust guidelines low end based on rehabilitation potential.

Process changes and proposed guidelines revisions address each of the procedural challenges identified.

DESIGN & LAYOUT WILL BE REFINED

Sentencing Revocation Report- Felony Supervision/Good Behavior/Suspended Sentence Violations

This report is not completed for probationer on supervision for misdemeanor offenses only

◆ OFFENDER

First: _____ Middle: _____ Last: _____ Suffix: _____

Date of Birth: _____ Social Security Number: _____ SID/CCRE: _____ CORIS Offender ID: _____

◆ COURT

Judicial Circuit: _____ City/County: _____ FIPS Code: _____

◆ TYPE OF REVOCATION

(Complete SRR and Guidelines): ☐ State Supervised Probation

(Complete SRR only, guidelines do not apply): ☐ Local Probation ☐ Good Behavior ☐ Suspended Sentence ☐ CCAP

(NOTE: This form is not completed for First Offender Violations, Deferred Finding Violations or Parole Violations)

◆ CONDITIONS CITED IN VIOLATION BY PROBATION/PAROLE OFFICER *(check all that apply)*

☐ 1. Fail to obey all Federal, State, and local laws.

◆ TREATMENT, SANCTIONS, EDUCATIONAL PROGRAMS & ALTERNATIVES UTILIZED

	Completed/ Enrolled	Not Completed	Ineligible
Anger management			

◆ CONDITIONS CITED IN VIOLATION BY PROBATION/PAROLE OFFICER *(check all that apply)*

- ❒ 1. Fail to obey all Federal, State, and local laws.
- ❒ 2. Fail to report any arrests within 3 days to PO.
- ❒ 3. Fail to maintain employment or to report changes.
- ❒ 4. Fail to report as instructed
- ❒ 5. Fail to allow probation officer to visit home or job.
- ❒ 6. Fail to follow instructions, 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 Virginia without permission
- ❒ 11. Abscond from supervision
- ❒ Fail to follow special conditions (specify)

_____

- ❒ Special Sex Offender Conditions (Enter Letter for Special Sex Offender Condition(s) Violated:

_____

Focus Group: Should be included in the Major Violation Report
Discussion:
- Inconsistently reported to the court
- available options are not always apparent to the judge
- a way to potentially develop mitigation factors

◆ TREATMENT, SANCTIONS, EDUCATIONAL PROGRAMS & ALTERNATIVES UTILIZED

	Completed/ Enrolled	Not Completed	Ineligible
Anger management	❒	❒	❒
CCAP	❒	❒	❒
Community Service	❒	❒	❒
Employment Skills Program	❒	❒	❒
Gang Supervision	❒	❒	❒
Incarceration - jail or prison	❒	❒	❒
Increase in supervision level	❒	❒	❒
Mental health counseling	❒	❒	❒
Parenting class	❒	❒	❒
Recidivist Prevention Program	❒	❒	❒
Reprimand	❒	❒	❒
Salvation Army Program	❒	❒	❒
Sex offender treatment	❒	❒	❒
Substance Abuse Program, Jail/DOC	❒	❒	❒
Substance Abuse treatment, inpatient	❒	❒	❒
Substance Abuse treatment, outpatient	❒	❒	❒
Substance Abuse treatment: AA or NA	❒	❒	❒
Substance Abuse increased in drug screens	❒	❒	❒
Thinking for a Change	❒	❒	❒
Voice Verification Biometrics Monitoring	❒	❒	❒
Other_____	❒	❒	❒

◆ PRETRIAL STATUS RELEASE :(For the judge's information only. There is no indication that the times served will be

Other_____ ❒ ❒ ❒

◆ **PRETRIAL STATUS RELEASE :**(For the judge's information only. There is no indicati that the times served will be applied to this case) ❒ Secure Bond ❒ Unsecured Bond ❒ Own Recognizance ❒ T rty Release

◆ **PRETRIAL CONFINEMENT:** (Enter Dates Confined for Current Violatio

❒ Confined Since Arrest for violation on ___/___/___

❒ Dates Confined ___/___/___to ___/___/___ ❒ Dates Confined

Focus Group: The Attorneys in the case should decide when the judge is given the amount of pretrial confinement

Discussion:
- Significant in determining the length of sentence imposed

◆ **VIOLATION GUIDELINES RECOMMENDATION**

RECOMMENDATION RANGE ❒ Time Served OR | | | | to | | | |
Years Months Days Years Months Days

❒ Recommendation modified by judge because of the defendant's good rehabilitation potential. The low end is time served or zero additional days)

Final Decision/Disposition

To be completed by the sentencing judge or judge's designee.

◆ DECISION OF THE COURT

- ❒ Found in Violation as Cited
- ❒ Found in Violation as Cited, Except for Conditions Number(s) _____ _____ _____ _____
- ❒ Found in Violation of Conditions Not Cited (Enter Conditions Number(s) _____ _____ _____ _____
- ❒ Found in Violation of good behavior, suspended sentence, felony local probation
- ❒ Taken Under Advisement
- ❒ Not in Violation

◆ SENTENCE FOR REVOCATION

❒ Court Finds that the Defendant is a good candidate for Rehabilitation (The low end of the guidelines is set to time served or zero)

Amount of revocable time moved to the worksheets

		Years	Months	Days	
Amount of Time Imposed.....	❒ Life +				❒ Sentenced to Time Served
Amount of Time to Serve for this Violation (total effective sentence)..	❒ Life +				

New/Revised probation/Supervised Period

	Years	Months	Days
❒ Continued on same period of probation supervision (not extended)			

New/Revised probation/Supervised Period

☐ Continued on same period of probation supervision (not extended)

☐ Placed on a probation supervision for a new period of..... ☐ Life + Years | Months | Days

☐ Released from supervised probation

☐ New conditions of probation _____

☐ Continued on same conditions

Other Sentencing Programs *(check all that apply)*

☐ Day Reporting

☐ Electronic Monitoring

☐ Intensive Probation

☐ Substance Abuse Treatment

☐ § 18.2-251/§ 18.2-258.1

☐ Drug Court

☐ Community-Based Program _____

☐ **CCAP** Detention/Diversion Center Incarceration, 22-28 weeks

☐ **CCAP** Detention/Diversion Center Incarceration, 42-48 weeks

☐ Youthful Offender

☐ **DJJ** Commitment ☐ **Indeterminate** ☐ **Determinate**

☐ Other _____

Office Use Only

◆ REASON FOR DEPARTURE FROM GUIDELINES

Office Use Only

_____

_____

_____

_____

_____

◆ DATE OF REVOCATION DECISION

		/			/
Month			Day		Year

Judge's Signature

Sentencing Revocation Report- Felony Supervision/Good Behavior/Suspended Sentence Violations

This report is not completed for misdemeanor supervision violations.

◆ OFFENDER

First: _____ Middle: _____ Last: _____ Suffix: _____

Date of Birth: _____ Social Security Number: _____ SID/CCRE: _____ CORIS Offender ID: _____

◆ COURT

Judicial Circuit: _____ City/County: _____ FIPS Code: _____

◆ TYPE OF REVOCATION

(Complete SRR and Guidelines): ❒ State Supervised Probation

(Complete SRR only, guidelines do not apply): ❒ Local Probation ❒ Good Behavior ❒ Suspended Sentence ❒ CCAP

(NOTE: This form is not completed for First Offender Violations, Deferred Finding Violations or Parole Violations)

◆ CONDITIONS CITED IN VIOLATION BY PROBATION/PAROLE OFFICER *(check all that apply)*

❒ 1. Fail to obey all Federal, State, and local laws.
❒ 2. Fail to report any arrests within 3 days to PO.
❒ 3. Fail to maintain employment or to report changes.
❒ 4. Fail to report as instructed
❒ 5. Fail to allow probation officer to visit home or job.
❒ 6. Fail to follow instructions, 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 Virginia without permission
❒ 11. Abscond from supervision
❒ Fail to follow special conditions (specify)

_____

❒ Special Sex Offender Conditions (Enter Letter for Special Sex Offender Condition(s) Violated:

_____

◆ TREATMENT, SANCTIONS, EDUCATIONAL PROGRAMS & ALTERNATIVES UTILIZED

	Completed/ Enrolled	Not Completed	Ineligible
Anger management	❒	❒	❒
CCAP	❒	❒	❒
Community Service	❒	❒	❒
Employment Skills Program	❒	❒	❒
Gang Supervision	❒	❒	❒
Incarceration - jail or prison	❒	❒	❒
Increase in supervision level	❒	❒	❒
Mental health counseling	❒	❒	❒
Parenting class	❒	❒	❒
Recidivist Prevention Program	❒	❒	❒
Reprimand	❒	❒	❒
Salvation Army Program	❒	❒	❒
Sex offender treatment	❒	❒	❒
Substance Abuse Program, Jail/DOC	❒	❒	❒
Substance Abuse treatment, inpatient	❒	❒	❒
Substance Abuse treatment, outpatient	❒	❒	❒
Substance Abuse treatment: AA or NA	❒	❒	❒
Substance Abuse increased in drug screens	❒	❒	❒
Thinking for a Change	❒	❒	❒
Voice Verification Biometrics Monitoring	❒	❒	❒
Other_____	❒	❒	❒

◆ PRETRIAL STATUS RELEASE :

(For the judge's information only. There is no indication that the times served will be applied to this case) ❒ Secure Bond ❒ Unsecured Bond ❒ Own Recognizance ❒ Third Party Release

◆ PRETRIAL CONFINEMENT: (Enter Dates Confined for Current Violation)

❒ Confined Since Arrest for violation on ___/___/___

❒ Dates Confined ___/___/___to ___/___/___ ❒ Dates Confined ___/___/___to ___/___/___

◆ VIOLATION GUIDELINES RECOMMENDATION

RECOMMENDATION RANGE ❒ Time Served OR | | | | to | | | |
Years Months Days Years Months Days

❒ Recommendation modified by judge because of the defendant's good rehabilitation potential. The low end is time served or zero additional days)

Final Decision/Disposition

To be completed by the sentencing judge or judge's designee.

◆ DECISION OF THE COURT

- ❒ Found in Violation as Cited
- ❒ Found in Violation as Cited, Except for Conditions Number(s) _____ _____ _____ _____
- ❒ Found in Violation of Conditions Not Cited (Enter Conditions Number(s) _____ _____ _____ _____
- ❒ Found in Violation of good behavior, suspended sentence, felony local probation
- ❒ Taken Under Advisement
- ❒ Not in Violation

◆ SENTENCE FOR REVOCATION

❒ Court Finds that the Defendant is a good candidate for Rehabilitation (The low end of the guidelines is set to time served or zero)

Amount of Time Imposed.....❒ Life + Years ☐☐☐ Months ☐☐ Days ☐☐☐

Amount of Time to Serve for this Violation (total effective sentence)..❒ Life + Years ☐☐☐ Months ☐☐ Days ☐☐☐

❒ Sentenced to Time Served

New/Revised probation/Supervised Period

- ❒ Continued on same period of probation supervision (not extended)
- ❒ Placed on a probation supervision for a new period of.....❒ Life + Years ☐☐☐ Months ☐☐ Days ☐☐☐
- ❒ Released from supervised probation
- ❒ New conditions of probation_____
- ❒ Continued on same conditions

Other Sentencing Programs *(check all that apply)*

- ☐ Day Reporting
- ☐ Electronic Monitoring
- ☐ Intensive Probation
- ☐ Substance Abuse Treatment
- ☐ § 18.2-251/§ 18.2-258.1
- ☐ Drug Court
- ☐ Community-Based Program _____
- ☐ **CCAP** Detention/Diversion Center Incarceration, 22-28 weeks
- ☐ **CCAP** Detention/Diversion Center Incarceration, 42-48 weeks
- ☐ Youthful Offender
- ☐ **DJJ** Commitment ☐ **Indeterminate** ☐ **Determinate**
- ☐ Other _____

Office Use Only ☐☐☐ ☐☐☐

◆ REASON FOR DEPARTURE FROM GUIDELINES

Office Use Only ☐☐☐ ☐☐☐ ☐☐☐

_____

_____

_____

_____

_____

◆ DATE OF REVOCATION DECISION

☐☐ / ☐☐ / ☐☐

Month / Day / Year

_____

Judge's Signature

Probation Violation Worksheet

Offender Name:_____

Technical or Condition 1 based on new misdemeanor conviction

Base Guidelines on the Current Primary Offense:_____ ❒ Original Sentencing was Incarceration/CCAP

❒ ICOTS Case for Supervision of Current Primary Transferred to: State Abv:_____

Amount of Total Revocable Time at Hearing Sentencing: ❒ Life + | | | | | | | | | |
Years | Months | Days

◆ Prior Revocations in this Court Only

Original Sentencing Date _____ Start of Current Supervision Period_____

Number of Prior Revocations for Current Offense

Does the probationer have a prior felony conviction from any court between the dates listed above?

If NO

Number of Prior Revocations for Current Offense	Points
One Prior Revocation	10
Two or More Prior Revocations	22

If YES

Number of Prior Revocations for Current Offense	Points
One Prior Revocation	23
Two or More Prior Revocations	35

→ 0 | | |

Other Prior Probation Revocations for Other Offenses in this Court Only

Does the probationer have a prior felony conviction from this court prior to sentencing for original offense ?

If YES

One Prior Revocation	18
Two or More Prior Revocations	19

→ 0 | | |

◆ Condition 1 Violation: New Misdemeanor Conviction(s)

New Misdemeanor Conviction is Similar Behavior to Current Offense (Refer to Appendix 4))	9
Any Other New Misdemeanor Convictions (Refer to Appendix 4)	1

→ 0 | 0 | |

Enter VCC _____ Sent./Conv. Date_____ FIPS ____ Eff Sent. __Y ___M ___D ❒ Pending Sentencing

Enter VCC _____ Sent./Conv. Date_____ FIPS ____ Eff Sent. __Y ___M ___D ❒ Pending Sentencing

Sum of Total Effective Sentence for New Convictions ____Y _____M _____D

◆ Condition 4 Violation: Fail to Report as Instructed — If YES, add 2 → 0 | |

◆ Condition 8 Violation: Drug Violation — If YES, add 7 → 0 | |

◆ Condition 11 Violation: Abscond — If YES, add 10 → | |

Last Date whereabouts were known ____/____/____ Date arrested for this violation ____/____/____

◆ Registered Sex Offender — If YES, add 22 → | |

Recommendation Score → | | | | |

Go to Cover sheet and fill out the violation guidelines recommendation range.

Recommendation Table

Score	Guidelines Sentence
❒ Under 19.....	Time served to 6 months
❒ 19 to 33.....	3 months to 1 year
❒ 34 to 43.....	1 year to 1 year 6 months
❒ 44 or more.....	1 year to 4 years

Probation Violation Worksheet

Offender Name:_____

Condition 1 based on new felony conviction

Base Guidelines on the Current Primary Offense:_____ ❒ Original Sentencing was Incarceration/CCAP

❒ ICOTS Case for Supervision of Current Primary Transferred to: State Abv:_____

Amount of Total Revocable Time at Hearing Sentencing: ❒ Life + | | | | Years | | | Months | | | | Days |

◆ **Prior Revocations for Current Offense**

One or more Prior Revocation.....10 → 0

Condition 1 Violation: New Felony Conviction(s)

Enter VCC _____ Sent./Conv. Date_____ FIPS ____ Eff Sent. __Y ___M ___D ❒ Pending Sentencing
Enter VCC _____ Sent./Conv. Date_____ FIPS ____ Eff Sent. __Y ___M ___D ❒ Pending Sentencing

◆ **Number of New Person Felony Convictions** | | **X 20** → | | | |

◆ **Number of New Non-Person Felony Convictions** | | **X 2** → | | | |

◆ **New Felony or Misdemeanor Conviction is Similar Behavior to Current Offense** *(Refer to Appendix 4)* — If YES, add 7 → 0 0 |

Sum of Total Effective Sentence for New Convictions ____Y _____M _____D

Recommendation Score ⟹ | | | | |

Recommendation Table

Score	Guidelines Sentence
❒ 1 to 7.....	Time served to 1 year
❒ 8 to 15.....	6 months to 1 year 6 months
❒ 16 to 22.....	8 months to 2 years
❒ 23 or more.....	15 months to 4 years

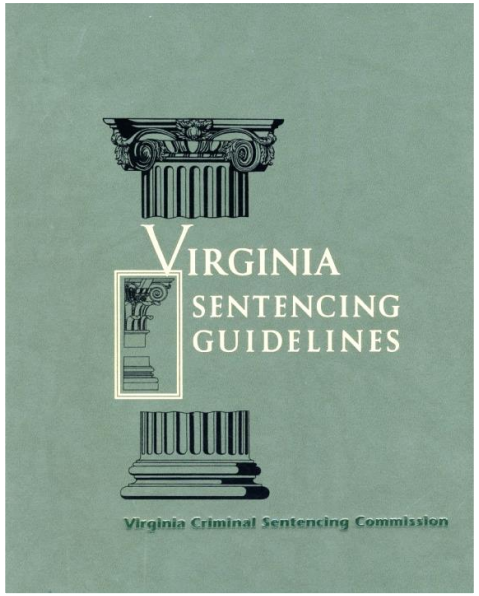
Go to Cover sheet and fill out the violation guidelines recommendation range.

VIRGINIA CRIMINAL SENTENCING COMMISSION

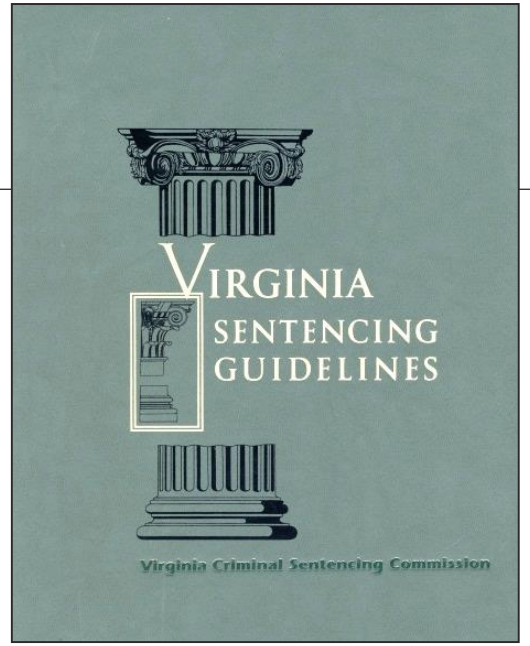
November 4, 2020

VIRGINIA CRIMINAL
SENTENCING COMMISSION

Possible Recommendations for Guidelines Revisions



November 4, 2020



Proposed Recommendation 1:

Revise the Probation Violation Guidelines based on the results of the most recent study of sentencing outcomes in revocation cases

Revise the Probation Violation Guidelines with the Proposed Implementation Plan

- Continue to refine wording on the worksheets to clearly identify factors and scoring rules
- Work with stakeholders to develop concise instructions
- Between January 1, 2021 and March 1, 2021, score a sample of cases to identify issues with factor labels or instructions
- Beginning in May 2021, offer statewide training on the new instrument.
- July 1, 2021, Begin Phase I, statewide implementation of the probation violation guidelines
- Phase II, will be an evaluation of Phase I and on December 1, 2022 propose refinements to the instrument – if needed

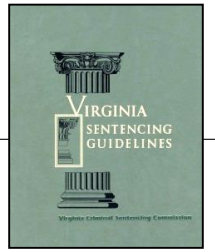
Proposed Recommendation 1

Revise the Probation Violation Guidelines

as proposed

Modifications to the Sentencing Guidelines

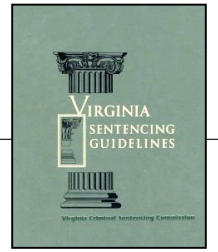
- The Commission closely monitors the sentencing guidelines system and, each year, deliberates upon possible modifications to the guidelines.
- Under § 17.1-806 of the *Code of Virginia*, any modifications adopted by the Commission must be presented in its annual report, due to the General Assembly each December 1.
- Unless otherwise provided by law, the changes recommended by the Commission become effective on the following July 1.

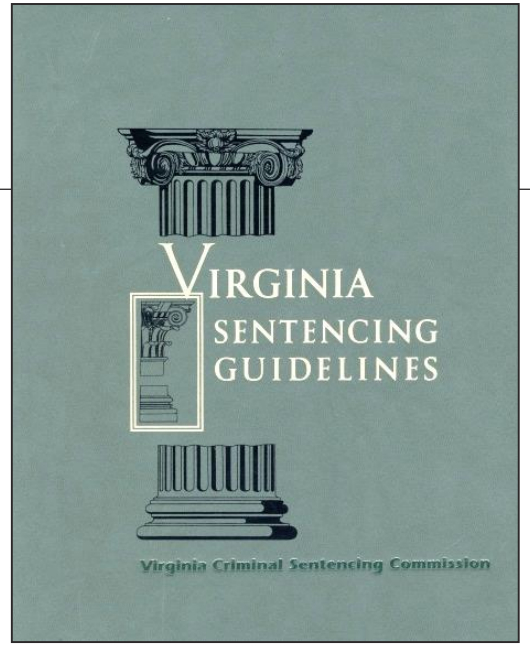


Modifications to the Sentencing Guidelines

- Proposals reflect the best fit for the historical data.
- 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.

Procedure: Is the preference to vote on each proposal separately?

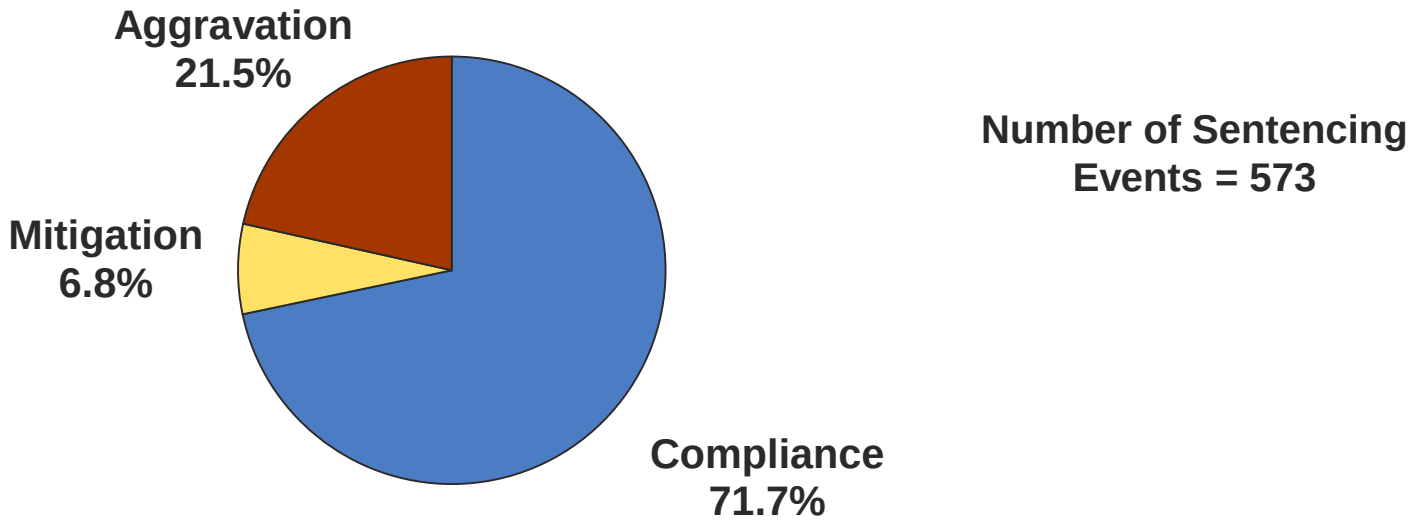




Proposed Recommendation 2:

Revise the Aggravated Sexual Battery Guidelines to better reflect current sentencing practices

Compliance with Guidelines for Aggravated Sexual Battery (§ 18.2-67.3) FY2017-FY2020

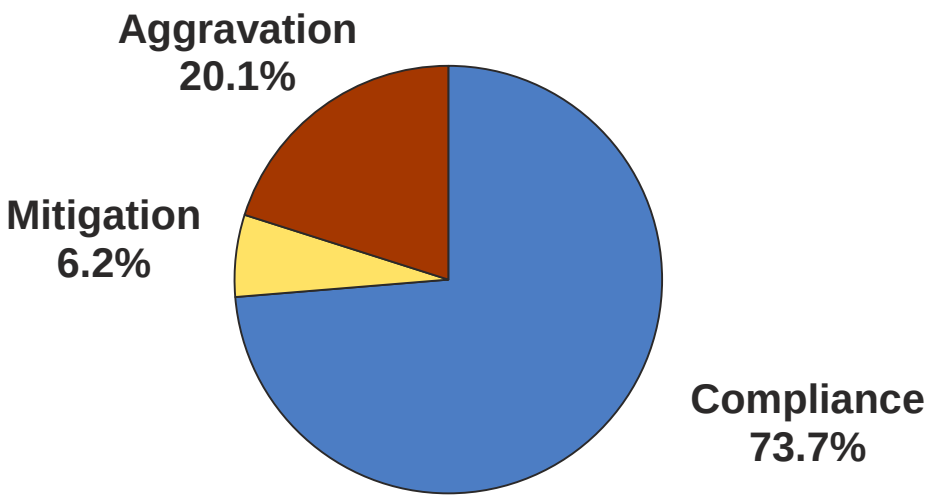


Compliance with the current guidelines for this offense is below the overall compliance rate and, when judges depart, they are significantly more likely to sentence above the guidelines than below.

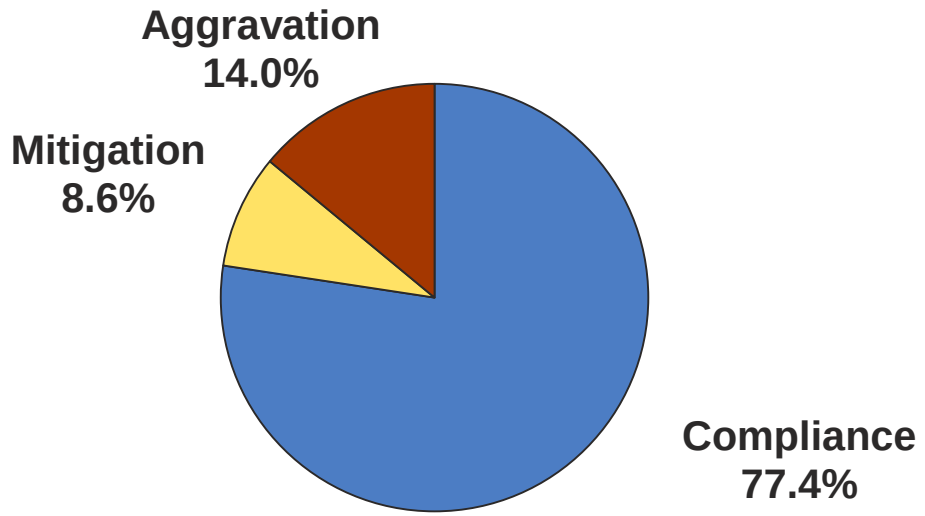
Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System (downloaded on 10/05/2020)

Compliance with Guidelines for Aggravated Sexual Battery (§ 18.2-67.3) FY2017-FY2020

Offenders Originally Charged with Aggravated Sexual Battery



Offenders Originally Charged with Offense OTHER THAN Aggravated Sexual Battery



Number of Sentencing Events = 462

Note: This analysis includes only those offenders whose case could be matched to the Supreme Court's Case Management System (81%). Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System (downloaded on 10/05/2020)

Recommended and Actual Dispositions for Aggravated Sexual Battery (§ 18.2-67.3) FY2017-FY2020

	Probation/ Incarceration up to 6 months	Incarceration of more than 6 Months (Range includes prison)
Actual Practice	11.9%	88.1%
Recommended under CURRENT Guidelines	18.2%	81.8%

Current guidelines are not as closely aligned with actual dispositions as they could be

Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System (downloaded on 10/05/2020)

Section A - Proposed

1) Move

ASB of Incapacitated Victim
ASB with Serious Injury
ASB with Weapon

from F. to G.

2) Under G., increase points for 1 count of ASB from 6 to 7.

This change in scoring will increase the likelihood that offenders convicted of certain ASB offenses will be recommended for prison.

Other Sexual Assault — Section A (Part II)

Offender Name: _____

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. Indecent liberties with child under age 15
- 1 count 3
- 2 counts 8
- 3 counts 10

D. Indecent liberties by custodian
- 1 count 4
- 2 counts 6
- 3 counts 7

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 **Leave only ASB VICTIM < AGE 13 here**
- 1 count 3
- 2 counts 6
- 3 counts 9

G. Aggravated sexual battery, victim age 13 or 14 or parent/grandparent to child/grandchild age 13 to 17
- 1 count ..... 6 → 7
- 2 counts 8
- 3 counts 10

H. Incest with own child/grandchild (1 count) 3
I. Incest with own child/grandchild age 13 to 17 (1 count) 2

Primary Offense Remaining Counts

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

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

0

Additional Offenses

Total the maximum penalties for additional offenses, including counts

Years:
- Less than 1 0
- 1 - 26 1
- 27 - 52 2
- 53 or more 3

0

Victim Less than Age 13 at Time of Offense

If YES, add 5 → 0

Victim Injury

- Threatened or emotional 2
- Physical, serious or life threatening .....

0

If total is 9 or more, Section C is completed.

Prior Convictions/Adjudications

Total maximum penalties for the 5 most recent and serious prior record events

Section B - Proposed

Other Sexual Assault — Section B

Offender Name: _____

Primary Offense

A.	Other than listed below (1 count)	1
B.	Aggravated sexual battery **NO CHANGE IN PRIMARY OFFENSE POINTS**	
	1 count	2
	2 counts	4
	3 counts	6

Score: 0

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		

Create NEW FACTOR to account for certain Types of Additional Offenses

This change in scoring will increase the likelihood that offenders convicted of ASB will be recommended for a short jail term rather than probation/no incarceration.

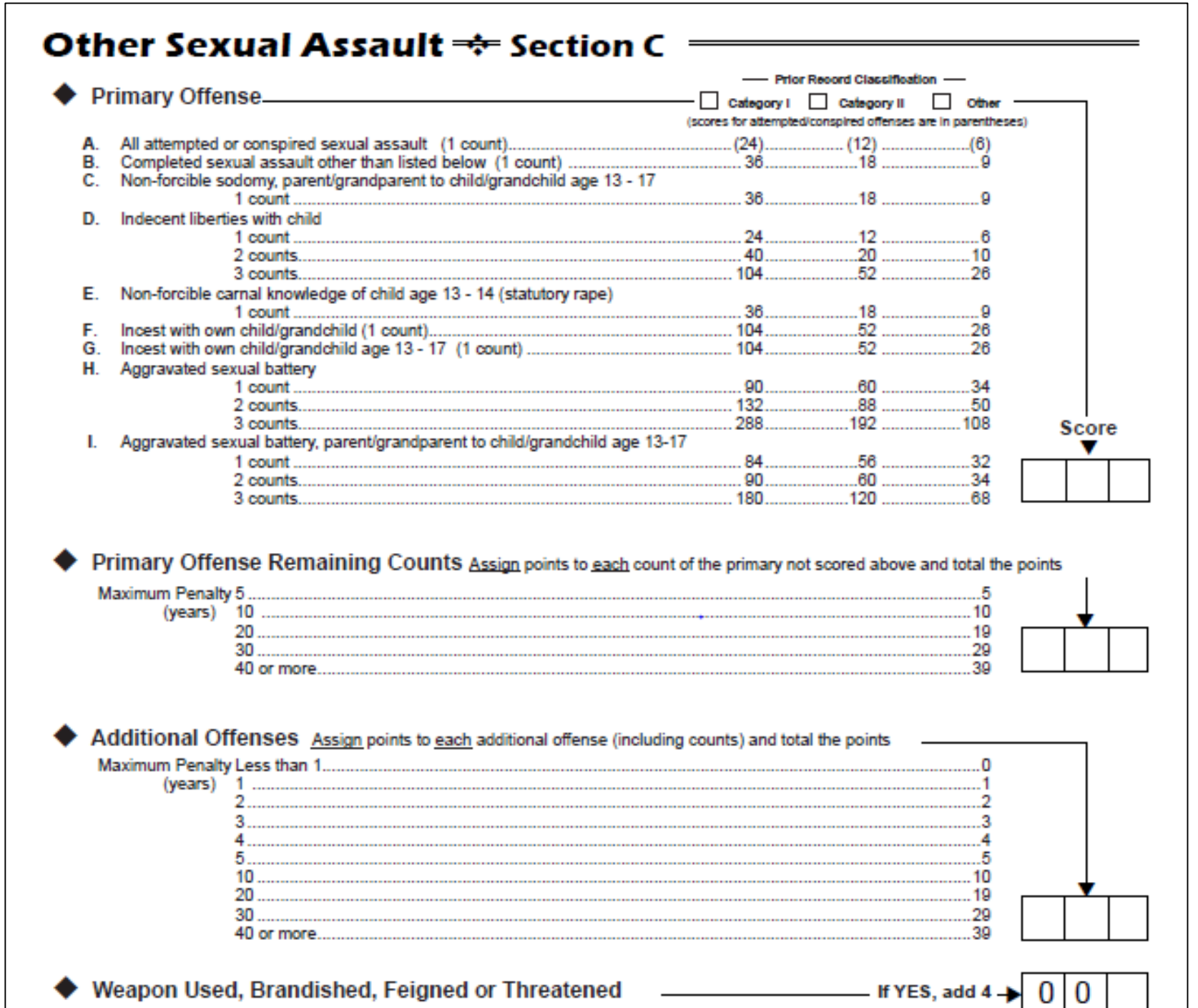
Type of Additional Offense

Any Additional Offense has a prefix of "SEX," "RAP," or "OBS"

Primary offense is Aggravated Sexual Battery	Primary offense: All other offenses
If YES, add 1	Do Not Score

No changes proposed for Section C

Among defendants recommended for Section C:	
Compliance	78.5%
Mitigation	8.1%
Aggravation	13.4%



Other Sexual Assault — Section C

Primary Offense

Prior Record Classification — ☐ Category I ☐ Category II ☐ Other

(scores for attempted/conspired offenses are in parentheses)

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, parent/grandparent to child/grandchild age 13 - 17			
	1 count	36	18	9
D.	Indecent liberties with child			
	1 count	24	12	6
	2 counts	40	20	10
	3 counts	104	52	26
E.	Non-forcible carnal knowledge of child age 13 - 14 (statutory rape)			
	1 count	36	18	9
F.	Incest with own child/grandchild (1 count)	104	52	26
G.	Incest with own child/grandchild age 13 - 17 (1 count)	104	52	26
H.	Aggravated sexual battery			
	1 count	90	60	34
	2 counts	132	88	50
	3 counts	288	192	108
I.	Aggravated sexual battery, parent/grandparent to child/grandchild age 13-17			
	1 count	84	56	32
	2 counts	90	60	34
	3 counts	180	120	68

Score ▼ [ ][ ][ ]

Primary Offense Remaining Counts

Assign points to each count of the primary not scored above and total the points

Maximum Penalty (years)	
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

Maximum Penalty (years)	
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 → [0][0][ ]

Recommended and Actual Dispositions for Aggravated Sexual Battery (§ 18.2-67.3) FY2017-FY2020

	Probation/ Incarceration up to 6 months	Incarceration of more than 6 Months (Range includes prison)
Actual Practice	11.9%	88.1%
Recommended under PROPOSED Guidelines	11.0%	89.0%

Proposed guidelines are more closely aligned with actual dispositions in these cases

Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System (downloaded on 10/05/2020)

Compliance with Guidelines for Aggravated Sexual Battery (§ 18.2-67.3) FY2017-FY2020

Dispositional Compliance and Departure Rates

	Current	As Proposed
Compliance	86.4%	89.2%
Mitigation	2.8%	5.8%
Aggravation	10.8%	5.1%

Dispositional compliance is the degree to which judges agree with the type of sanction recommended by the guidelines.

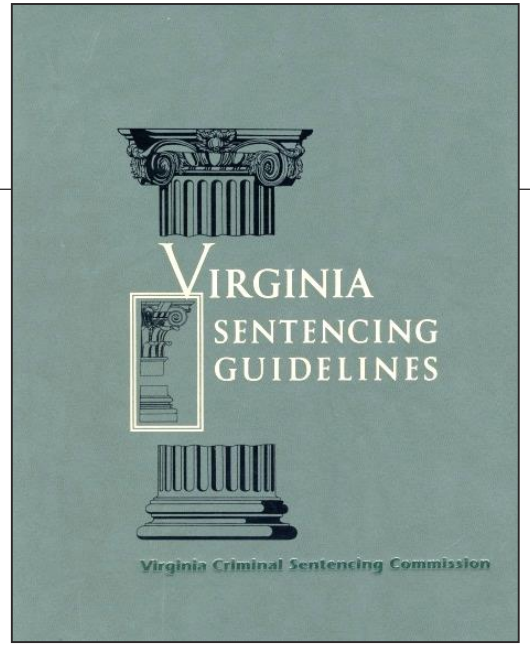
Overall Compliance and Departure Rates

	Current	As Proposed
Compliance	71.7%	71.7%
Mitigation	6.8%	11.7%
Aggravation	21.5%	16.6%

Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System (downloaded on 10/05/2020)

Proposed Recommendation 2

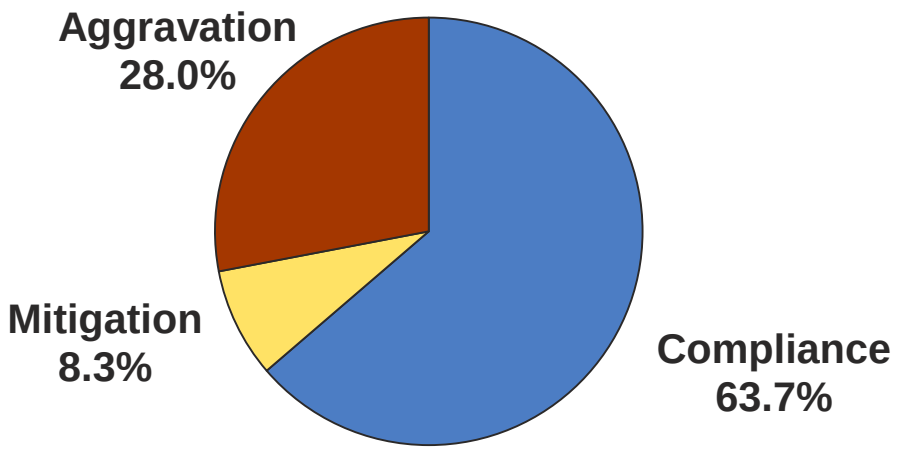
Revise the Aggravated Sexual Battery Guidelines to better reflect current sentencing practices as proposed



Proposed Recommendation 3:

Revise the Indecent Liberties Guidelines to better reflect current sentencing practices

Compliance with Guidelines for Indecent Liberties (§ 18.2-370 & § 18.2-370.1) FY2017-FY2020



Number of Sentencing Events = 289

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.

Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System (downloaded on 10/05/2020)

Recommended and Actual Dispositions for Indecent Liberties (§ 18.2-370 & § 18.2-370.1) FY2017-FY2020

	Probation/ Incarceration up to 6 months	Incarceration of more than 6 Months (Range includes prison)
Actual Practice	27.3%	72.7%
Recommended under CURRENT Guidelines	34.9%	65.1%

Current guidelines are not as closely aligned with actual dispositions as they could be

Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System (downloaded on 10/05/2020)

Section A - Proposed

INCREASE Primary Offense points for most offenders convicted of Indecent Liberties

This change in scoring increases the likelihood of a prison recommendation for most offenders convicted of Indecent Liberties.

Other Sexual Assault — Section A (Part II)

Offender Name: _____

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.	Indecent liberties with child under age 15	
	1 count	3 → 4
	2 counts	8
	3 counts	10
D.	Indecent liberties by custodian	
	1 count	4 → 5
	2 counts	6 → 7
	3 counts	7 → 8
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.	Aggravated sexual battery, victim age 13 or 14 or parent/grandparent to child/grandchild age 13 to 17	
	1 count	6
	2 counts	8
	3 counts	10
H.	Incest with own child/grandchild (1 count)	3
I.	Incest with own child/grandchild age 13 to 17 (1 count)	2

Primary Offense Remaining Counts

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

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

→ 0

Additional Offenses

Total the maximum penalties for additional offenses, including counts

Years:	Less than 1	0
	1 - 26	1
	27 - 52	2
	53 or more	3

→ 0

Victim Less than Age 13 at Time of Offense

If YES, add 5 → 0

Victim Injury

Threatened or emotional	2
Physical, serious or life threatening	

→ 0

Prior Convictions/Adjudications

Total maximum penalties for the 5 most recent and serious prior record events

If total is 9 or more, Section C is completed.

Section B - Proposed

Other Sexual Assault — Section B

Offender Name: _____

Primary Offense

A. Other than listed below (1 count) ..... 1 — NO CHANGE IN PRIMARY OFFENSE POINTS

B. Aggravated sexual battery
- 1 count 2
- 2 counts 4
- 3 counts 6

Score: 0

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 → 0

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

0

Section B - Proposed

◆ **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 → 0

◆ **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 → 0

SCORE THE FOLLOWING FACTOR ONLY IF PRIMARY OFFENSE AT CONVICTION IS INDECENT LIBERTIES ~~BY CUSTODIAN (§ 18.2-370.1(A))~~ (§ 18.2-370 & § 18.2-370.1)

◆ **Victim Injury**

Threatened or emotional	3
Physical or life threatening	4

0

Score VICTIM INJURY factor for all types of Indecent Liberties

Create NEW FACTOR to account for certain Types of Additional Offenses

These changes increase the likelihood that offenders will be recommended for a short jail term rather than probation/ no incarceration.

◆ **Type of Additional Offense**

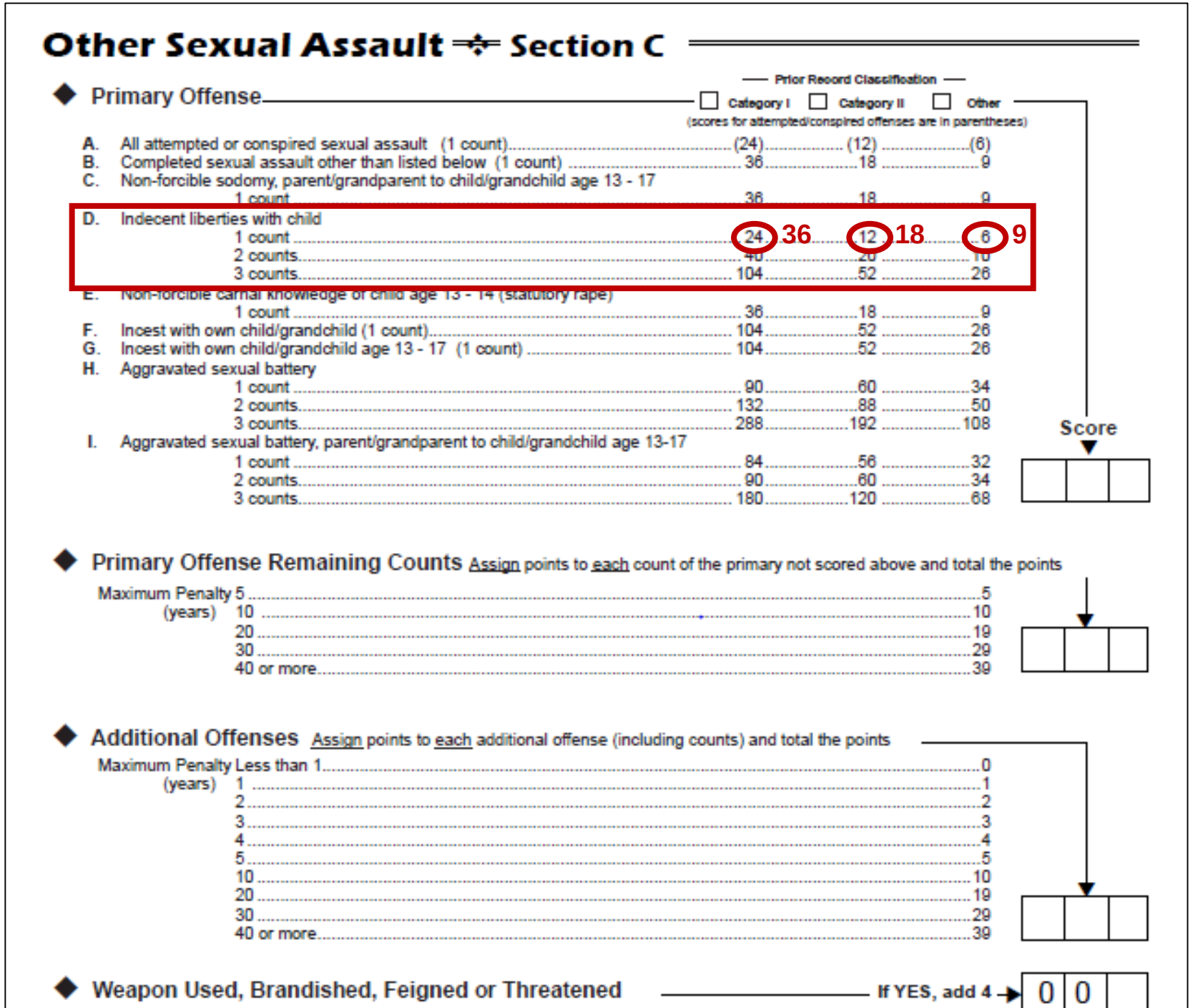
Any Additional Offense has a prefix of "SEX," "RAP," or "OBS"

Primary offense is Indecent Liberties	Primary offense: All other offenses
If YES, add 1	Do Not Score

Section C - Proposed

Guidelines enhancements for Category I and II violent prior records are required by § 17.1-805.

These changes will increase the prison sentence recommendation for most offenders convicted of Indecent Liberties.



Other Sexual Assault — Section C

Primary Offense

Prior Record Classification — ☐ Category I ☐ Category II ☐ Other

(scores for attempted/conspired offenses are in parentheses)

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, parent/grandparent to child/grandchild age 13 - 17			
	1 count	36	18	9
D.	Indecent liberties with child			
	1 count	24	36 12	18 6
	2 counts	40	20	10
	3 counts	104	52	26
E.	Non-forcible carnal knowledge of child age 13 - 14 (statutory rape)			
	1 count	36	18	9
F.	Incest with own child/grandchild (1 count)	104	52	26
G.	Incest with own child/grandchild age 13 - 17 (1 count)	104	52	26
H.	Aggravated sexual battery			
	1 count	90	60	34
	2 counts	132	88	50
	3 counts	288	192	108
I.	Aggravated sexual battery, parent/grandparent to child/grandchild age 13-17			
	1 count	84	56	32
	2 counts	90	60	34
	3 counts	180	120	68

Score ☐☐☐

Primary Offense Remaining Counts

Assign points to each count of the primary not scored above and total the points

Maximum Penalty (years)	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

Maximum Penalty (years)	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 → 0 0 ☐

Recommended and Actual Dispositions for Indecent Liberties (§ 18.2-370 & § 18.2-370.1) FY2017-FY2020

	Probation/ Incarceration up to 6 months	Incarceration of more than 6 Months (Range includes prison)
Actual Practice	27.4%	72.7%
Recommended under PROPOSED Guidelines	27.0%	73.0%

✓ Proposed guidelines are more closely aligned with actual dispositions in these cases

Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System (downloaded on 10/05/2020)

Compliance with Guidelines for Indecent Liberties (§ 18.2-370 & § 18.2-370.1) FY2017-FY2020

Dispositional Compliance and Departure Rates

	Current	As Proposed
Compliance	73.0%	70.9%
Mitigation	8.0%	14.5%
Aggravation	19.0%	14.5%

Dispositional compliance is the degree to which judges agree with the type of sanction recommended by the guidelines.

Overall Compliance and Departure Rates

	Current	As Proposed
Compliance	63.7%	60.2%
Mitigation	8.3%	16.3%
Aggravation	28.0%	23.5%

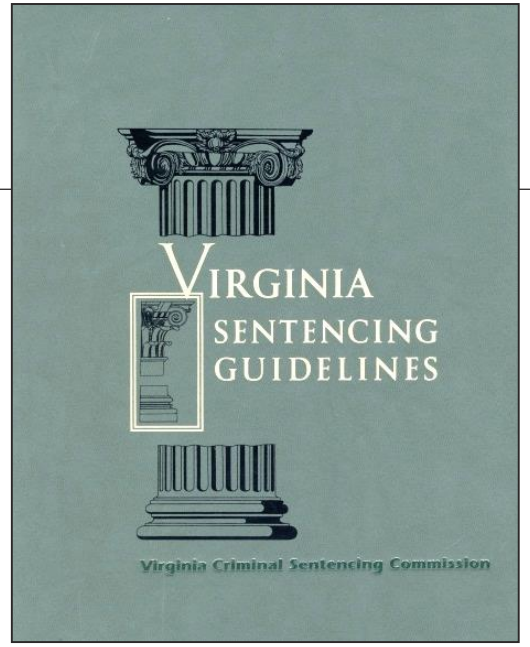
Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System (downloaded on 10/05/2020)

Proposed Recommendation 3

Revise the Indecent Liberties Guidelines

to better reflect current sentencing practices

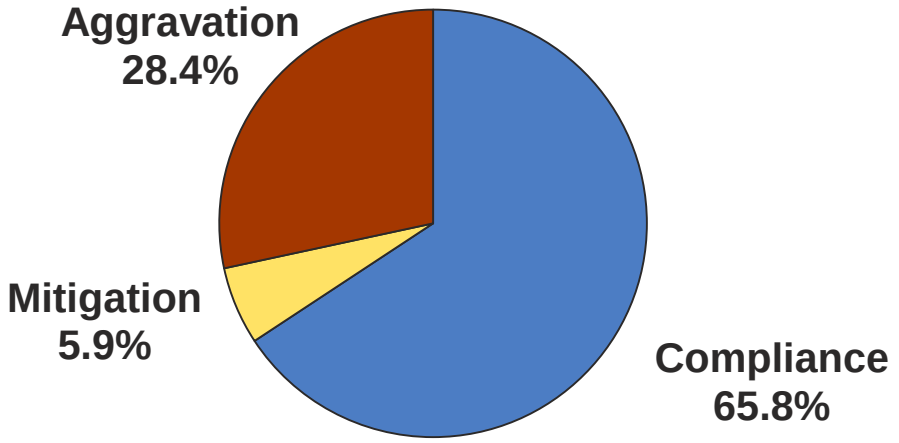
as proposed



Proposed Recommendation 4:

Revise the Carnal Knowledge Guidelines to better reflect current sentencing practices

Compliance with Guidelines for Carnal Knowledge (§ 18.2-63) FY2017-FY2020



Number of Sentencing Events = 222

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.

Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System (downloaded on 10/05/2020)

Recommended and Actual Dispositions for Carnal Knowledge (§ 18.2-63) FY2017-FY2020

	Probation/ Incarceration up to 6 months	Incarceration of more than 6 Months (Range includes prison)
Actual Practice	27.0%	73.0%
Recommended under CURRENT Guidelines	41.0%	59.0%

Current guidelines are not as closely aligned with actual dispositions as they could be

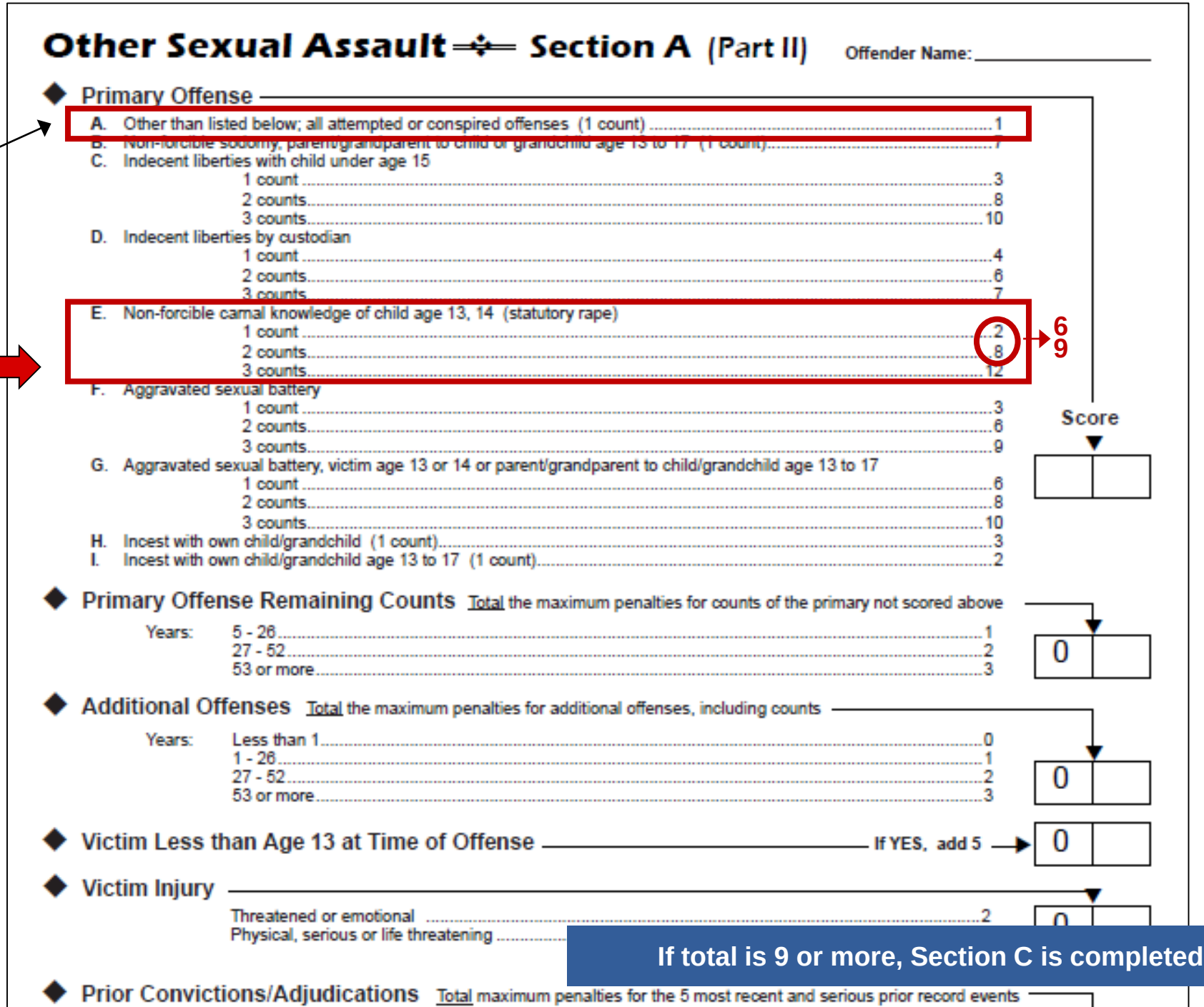
Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System (downloaded on 10/05/2020)

Section A - Proposed

CK Consenting victim age 13-14,
Accused 3+yrs older;
CK by court/DJJ employee

INCREASE Primary Offense points for most offenders convicted of Carnal Knowledge

This change in scoring increases the likelihood of a prison recommendation for most offenders convicted of Carnal Knowledge.



Other Sexual Assault — Section A (Part II)

Offender Name: _____

◆ **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.	Indecent liberties with child under age 15	
	1 count	3
	2 counts	8
	3 counts	10
D.	Indecent liberties by custodian	
	1 count	4
	2 counts	6
	3 counts	7
E.	Non-forcible carnal knowledge of child age 13, 14 (statutory rape)	
	1 count	2 → 6
	2 counts	8 → 9
	3 counts	12
F.	Aggravated sexual battery	
	1 count	3
	2 counts	6
	3 counts	9
G.	Aggravated sexual battery, victim age 13 or 14 or parent/grandparent to child/grandchild age 13 to 17	
	1 count	6
	2 counts	8
	3 counts	10
H.	Incest with own child/grandchild (1 count)	3
I.	Incest with own child/grandchild age 13 to 17 (1 count)	2

Score ▼ [ ]

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

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

→ [0]

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

Years:	Less than 1	0
	1 - 26	1
	27 - 52	2
	53 or more	3

→ [0]

◆ **Victim Less than Age 13 at Time of Offense** — If YES, add 5 → [0]

◆ **Victim Injury**

Threatened or emotional	2
Physical, serious or life threatening	

→ [0]

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

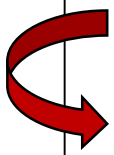
If total is 9 or more, Section C is completed.

Section B - Proposed

1) Move

Carnal Knowledge

from A. to B.



Other Sexual Assault — Section B

Offender Name: _____

Primary Offense

A.	Other than listed below (1 count)	1
B.	Aggravated sexual battery or CARNAL KNOWLEDGE	
	1 count	2
	2 counts	4
	3 counts	6

Score: 0

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 → 0

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

Section B - Proposed

1) Move

Carnal Knowledge

from A. to B.

Other Sexual Assault — Section B

Offender Name: _____

Primary Offense

A. Other than listed below (1 count) 1

B. Aggravated sexual battery or CARNAL KNOWEDGE

- 1 count 2
- 2 counts 4
- 3 counts 6

Score: 0

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	

Create NEW FACTOR to account for certain Types of Additional Offenses

These changes increase the likelihood that offenders will be recommended for a short jail term rather than probation/ no incarceration.

Type of Additional Offense

Any Additional Offense has a prefix of "SEX," "RAP," or "OBS"

Primary offense is Carnal Knowledge	Primary offense: All other offenses
If YES, add 1	Do Not Score

No changes proposed for Section C

Among defendants recommended for Section C:	
Compliance	78.6%
Mitigation	9.9%
Aggravation	11.5%

Other Sexual Assault — Section C

Primary Offense

Prior Record Classification — ☐ Category I ☐ Category II ☐ Other

(scores for attempted/conspired offenses are in parentheses)

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, parent/grandparent to child/grandchild age 13 - 17			
	1 count	36	18	9
D.	Indecent liberties with child			
	1 count	24	12	6
	2 counts	40	20	10
	3 counts	104	52	26
E.	Non-forcible carnal knowledge of child age 13 - 14 (statutory rape)			
	1 count	36	18	9
F.	Incest with own child/grandchild (1 count)	104	52	26
G.	Incest with own child/grandchild age 13 - 17 (1 count)	104	52	26
H.	Aggravated sexual battery			
	1 count	90	60	34
	2 counts	132	88	50
	3 counts	288	192	108
I.	Aggravated sexual battery, parent/grandparent to child/grandchild age 13-17			
	1 count	84	56	32
	2 counts	90	60	34
	3 counts	180	120	68

Score ▼ [ ][ ][ ]

Primary Offense Remaining Counts

Assign points to each count of the primary not scored above and total the points

Maximum Penalty (years)	
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

Maximum Penalty (years)	
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 → [0][0][ ]

Recommended and Actual Dispositions for Carnal Knowledge (§ 18.2-63) FY2017-FY2020

	Probation/ Incarceration up to 6 months	Incarceration of more than 6 Months (Range includes prison)
Actual Practice	27.0%	73.0%
Recommended under PROPOSED Guidelines	24.8%	75.2%

Proposed guidelines are more closely aligned with actual dispositions in these cases

Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System (downloaded on 10/05/2020)

Compliance with Guidelines for Carnal Knowledge (§ 18.2-63) FY2017-FY2020

Dispositional Compliance and Departure Rates

	Current	As Proposed
Compliance	70.3%	73.9%
Mitigation	5.0%	12.1%
Aggravation	24.7%	14.0%

Dispositional compliance is the degree to which judges agree with the type of sanction recommended by the guidelines.

Overall Compliance and Departure Rates

	Current	As Proposed
Compliance	65.8%	67.6%
Mitigation	5.9%	12.6%
Aggravation	28.4%	19.8%

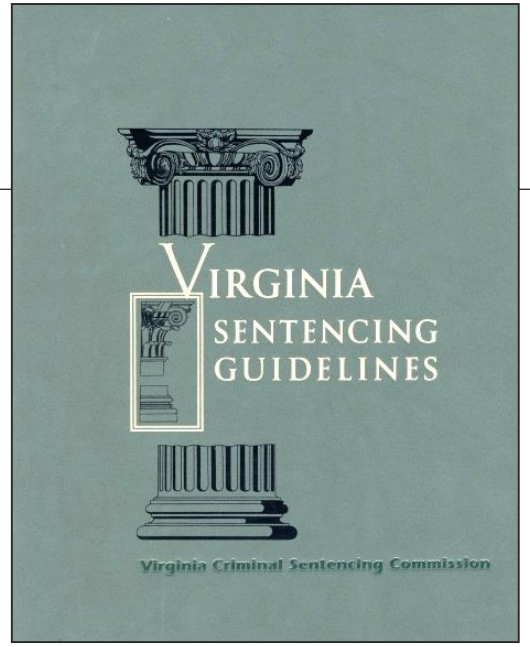
Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System (downloaded on 10/05/2020)

Proposed Recommendation 4

Revise the Carnal Knowledge Guidelines

to better reflect current sentencing practices

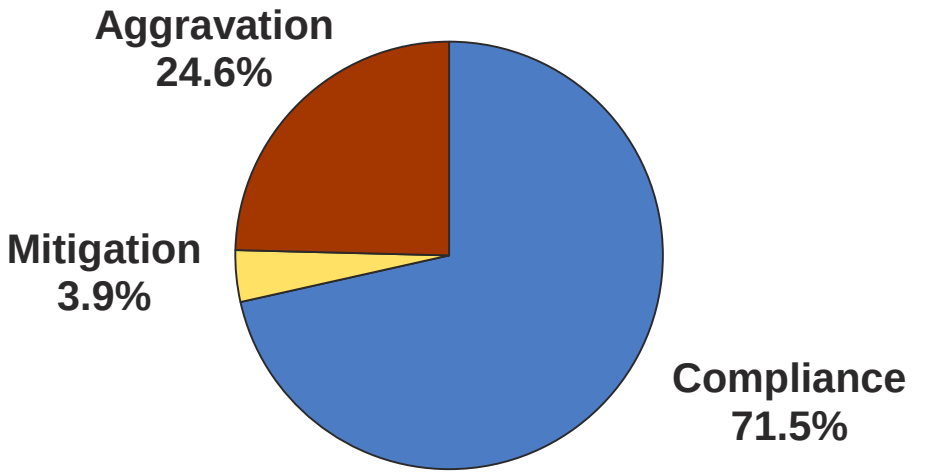
as proposed



Proposed Recommendation 5:

Revise the Online Solicitation Guidelines to better reflect current sentencing practices

Compliance with Guidelines for Online Solicitation of Minor (§ 18.2-374.3) FY2016-FY2020



Number of Sentencing Events = 390

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.

Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System (downloaded on 10/05/2020)

Compliance with Guidelines for Online Solicitation of Minor (§ 18.2-374.3) FY2016-FY2020

		Compliance	Mitigation	Aggravation
25% of Defendants	Convicted of Additional Offenses Suggesting Offender Showed Up to Meet with Minor*	81.8%	3.0%	15.2%
75% of Defendants	NOT Convicted of Additional Offenses Suggesting Offender Showed Up to Meet with Minor	68.0%	4.1%	27.8%
	Overall	71.5%	3.9%	24.6%

* Any additional offenses of indecent liberties or any additional offenses with a VCC prefix of "RAP" were included in this category.

Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System (downloaded on 10/05/2020)

Recommended and Actual Dispositions for Online Solicitation of Minor (§ 18.2-374.3) FY2016-FY2020

	Probation/ Incarceration up to 6 months	Incarceration of more than 6 Months (Range includes prison)
Actual Practice	10.5%	89.5%
Recommended under CURRENT Guidelines	20.5%	79.5%

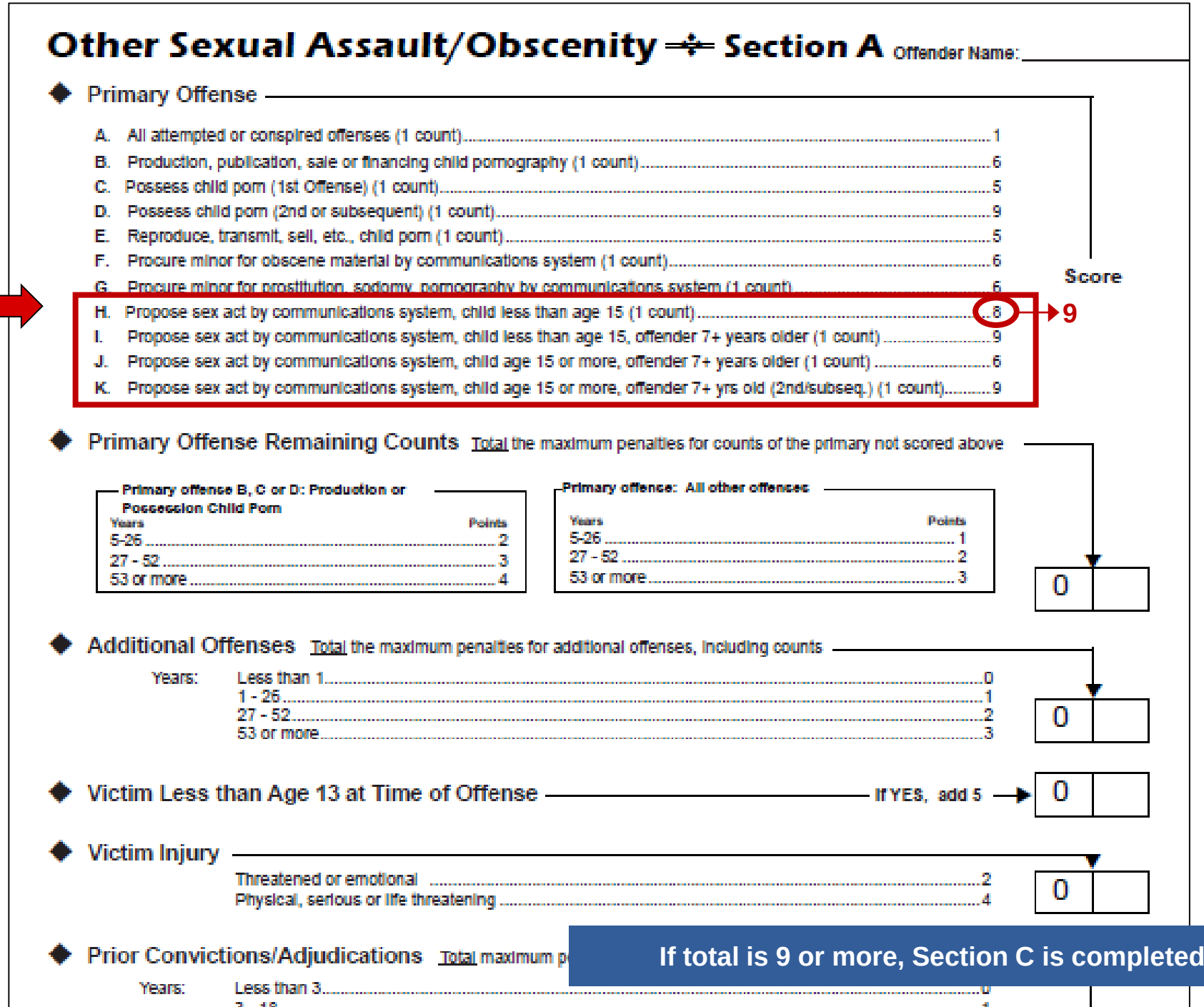
Current guidelines are not as closely aligned with actual dispositions as they could be

Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System (downloaded on 10/05/2020)

Section A - Proposed

INCREASE Primary Offense points for certain offenders convicted of Online Solicitation

This change in scoring ensures that offenders convicted of Online Solicitation of a Child Less than Age 15 will be recommended for prison.



Other Sexual Assault/Obscenity — Section A

Offender Name: _____

Primary Offense

		Score
A.	All attempted or conspired offenses (1 count)	1
B.	Production, publication, sale or financing child pornography (1 count)	6
C.	Possess child porn (1st Offense) (1 count)	5
D.	Possess child porn (2nd or subsequent) (1 count)	9
E.	Reproduce, transmit, sell, etc., child porn (1 count)	5
F.	Procure minor for obscene material by communications system (1 count)	6
G.	Procure minor for prostitution, sodomy, pornography by communications system (1 count)	6
H.	Propose sex act by communications system, child less than age 15 (1 count)	8 → 9
I.	Propose sex act by communications system, child less than age 15, offender 7+ years older (1 count)	9
J.	Propose sex act by communications system, child age 15 or more, offender 7+ years older (1 count)	6
K.	Propose sex act by communications system, child age 15 or more, offender 7+ yrs old (2nd/subseq.) (1 count)	9

Primary Offense Remaining Counts

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

Primary offense B, C or D: Production or Possession Child Porn

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

Primary offense: All other offenses

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

0

Additional Offenses

Total the maximum penalties for additional offenses, including counts

Years:	
	Less than 1 — 0
	1 - 26 — 1
	27 - 52 — 2
	53 or more — 3

0

Victim Less than Age 13 at Time of Offense

If YES, add 5

0

Victim Injury

Threatened or emotional	2
Physical, serious or life threatening	4

0

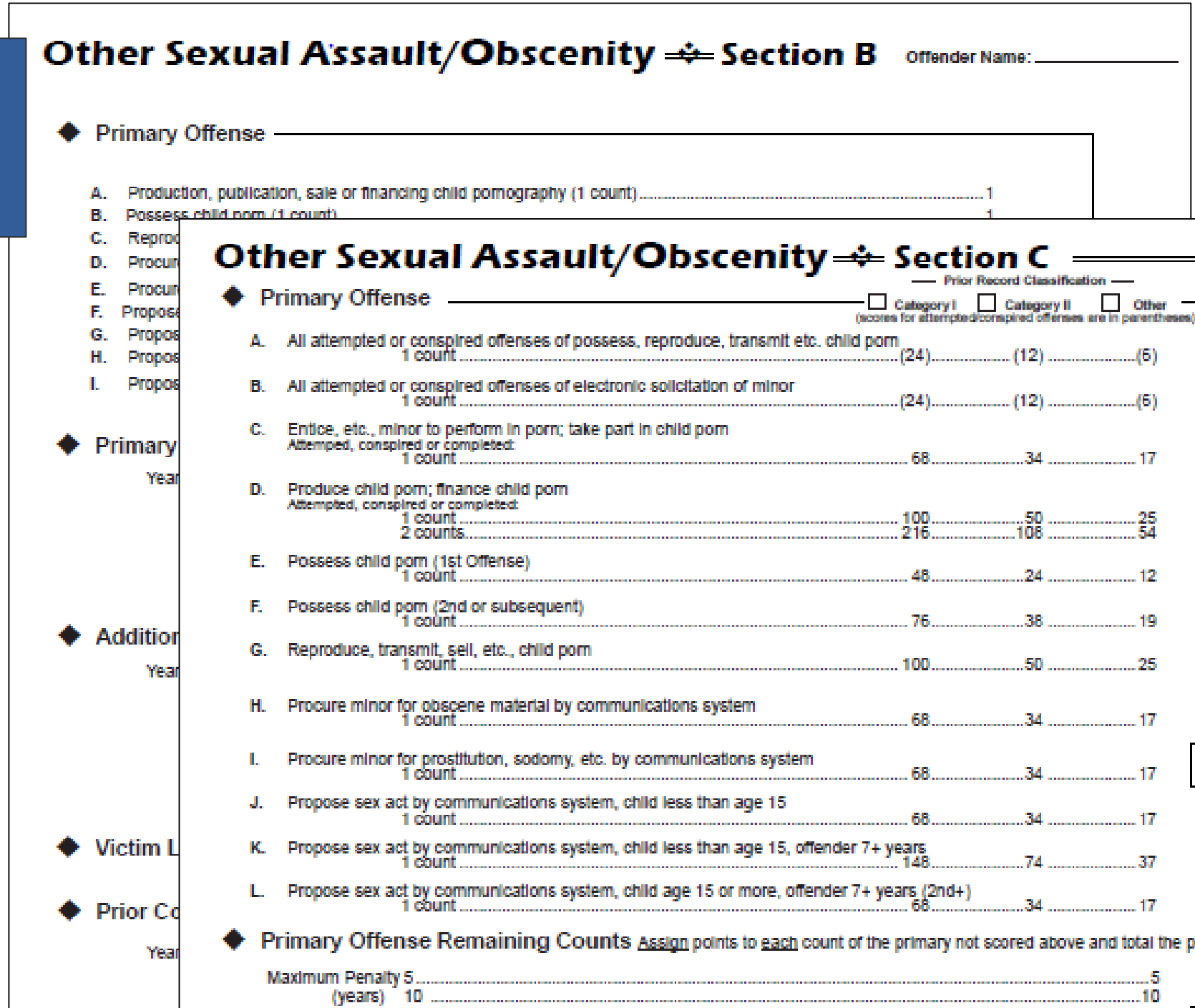
Prior Convictions/Adjudications

Total maximum p

Years:	
	Less than 3 — 0

If total is 9 or more, Section C is completed.

No changes proposed for Section B or Section C



Other Sexual Assault/Obscenity — Section B

Offender Name: _____

◆ Primary Offense

A. Production, publication, sale or financing child pornography (1 count) 1
B. Possess child porn (1 count) 1
C. Reproc
D. Procur
E. Procur
F. Propose
G. Propos
H. Propos
I. Propos

◆ Primary
Year

◆ Additior
Year

◆ Victim L

◆ Prior Co
Year

Other Sexual Assault/Obscenity — Section C

Prior Record Classification

◆ Primary Offense

☐ Category I ☐ Category II ☐ Other
(scores for attempted/conspired offenses are in parentheses)

A. All attempted or conspired offenses of possess, reproduce, transmit etc. child porn
1 count ..... (24) ..... (12) ..... (6)

B. All attempted or conspired offenses of electronic solicitation of minor
1 count ..... (24) ..... (12) ..... (6)

C. Entice, etc., minor to perform in porn; take part in child porn
Attemped, conspired or completed:
1 count ..... 68 ..... 34 17

D. Produce child porn; finance child porn
Attempted, conspired or completed:
1 count ..... 100 ..... 50 25
2 counts ..... 216 ..... 108 54

E. Possess child porn (1st Offense)
1 count ..... 48 ..... 24 12

F. Possess child porn (2nd or subsequent)
1 count ..... 76 ..... 38 19

G. Reproduce, transmit, sell, etc., child porn
1 count ..... 100 ..... 50 25

H. Procure minor for obscene material by communications system
1 count ..... 68 ..... 34 17

I. Procure minor for prostitution, sodomy, etc. by communications system
1 count ..... 68 ..... 34 17

J. Propose sex act by communications system, child less than age 15
1 count ..... 68 ..... 34 17

K. Propose sex act by communications system, child less than age 15, offender 7+ years
1 count ..... 148 ..... 74 37

L. Propose sex act by communications system, child age 15 or more, offender 7+ years (2nd+)
1 count ..... 68 ..... 34 17

Score

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

Maximum Penalty (years) 5 5
10 10

Among defendants convicted of online solicitation of a child less than age 15 who were recommended for Section C:

Compliance	**84.5%**
Mitigation	**3.9%**
Aggravation	**11.7%**

Recommended and Actual Dispositions for Online Solicitation of Minor (§ 18.2-374.3) FY2016-FY2020

	Probation/ Incarceration up to 6 months	Incarceration of more than 6 Months (Range includes prison)
Actual Practice	10.5%	89.5%
Recommended under PROPOSED Guidelines	8.5%	91.5%

Proposed guidelines are more closely aligned with actual dispositions in these cases

Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System (downloaded on 10/05/2020)

Compliance with Guidelines for Online Solicitation of Minor (§ 18.2-374.3) FY2016-FY2020

Dispositional Compliance and Departure Rates

	Current	As Proposed
Compliance	84.4%	90.8%
Mitigation	2.3%	5.1%
Aggravation	13.3%	4.1%

Dispositional compliance is the degree to which judges agree with the type of sanction recommended by the guidelines.

Overall Compliance and Departure Rates

	Current	As Proposed
Compliance	71.5%	77.2%
Mitigation	3.8%	6.2%
Aggravation	24.6%	16.7%

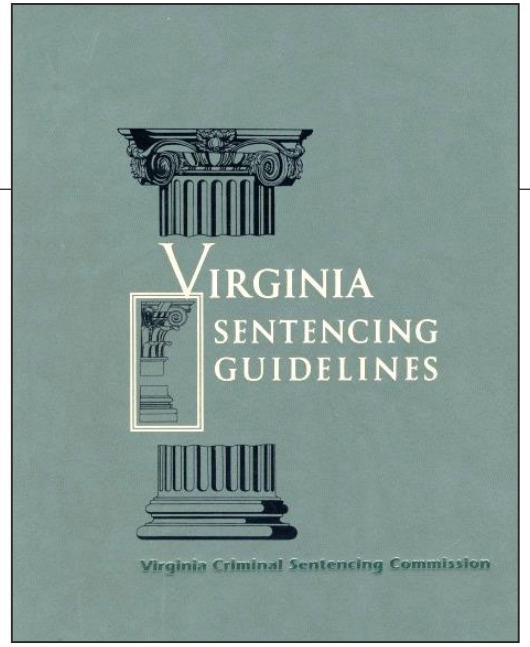
Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System (downloaded on 10/05/2020)

Proposed Recommendation 5

Revise the Online Solicitation Guidelines

to better reflect current sentencing practices

as proposed



Proposed Recommendation 6:

Revise the Guidelines recommendations to reflect current judicial sentencing when defendants provide substantial assistance or accept responsibility

Issue: How to modify the sentencing guidelines to reflect a historically based sentence when a defendant provides substantial assistance or accepts responsibility and expresses remorse

- Accepts Responsibility & Assistance Cases Identified
  - Departure Codes, Provided by the Judge, Were Used
    - **FY2016-FY2020**
      - Providing Substantial Assistance = **889** Sentencing Events
      - Accepting Responsibility/Remorse = 580 Sentencing Events
      - 16 Sentencing Events Included Both Departure Reasons
      - 9 Cases Had Errors and Were Removed From the Analysis
      - **1,428** Sentencing Events Identified as **Mitigating**

Notes: Plea agreements may take both circumstances into consideration and recommend a sentence within the guidelines. There are still cases when defendants provide assistance or accepts responsibility, and the judges or plea agreements result in sentences above the guidelines. Staff has added departure codes to better capture those aggravating cases.

Issue: How to modify the sentencing guidelines to reflect a historically based sentence when a defendant provides substantial assistance or accepts responsibility and expresses remorse

- Sentencing Patterns For the Assistance & Responsibility Cases
  - A Substantial Number Were Sentenced to Probation

Offense Group	Probation Sentences
DRUG/SCHEDULE I/II	219
LARCENY	110
FRAUD	39
DRUG OTHER	30
WEAPONS/FIREARMS	29
TRAFFIC FELONY	23
MISC: PERSON/PROPERTY	13
OBSCENITY	9
ROBBERY	9
BURGLARY/DWELLING	8
BURGLARY/OTHER	8
ASSAULT	6
MISC: OTHER	6
KIDNAPPING	1
MURDER	1
OTHER SEXUAL ASSAULT	1
RAPE	0

FY2016 - FY2020

- 31.3% were sentenced to probation for providing assistance (n=278*)
- 42.4% were sentenced to probation for having remorse (n=246*)

* Six cases appear in both groups n=512)

Issue: How to modify the sentencing guidelines to reflect a historically based sentence when a defendant provides substantial assistance or accepts responsibility and expresses remorse

- Sentencing Patterns For the Assistance & Responsibility Cases
  - The Following Chart Details:
    1. Average Recommended Low-End of the Guidelines Range
    2. Average Difference Between the Low-End Recommendation and the Effective Sentence
    3. Percentage of Cases Sentenced to Probation Within Each Recommendation Group

* Average is defined as the median. Fifty percent of the cases fall above and fifty percent fall below this number.

Low End Recommendation Groups	No. of Cases	Median Low-End Guidelines Recommendation	Median Months Difference Between Effective Sentence & Recommended Low End	Percentage Less Than Recommended Low-End	Percentage Sentenced to Probation
Incar to 12 months	642	8.0	5.0	62.5%	53.6%
>12 Months to 16 Months	158	14.0	8.0	57.1%	38.0%
>16 Months to 24 months	191	20.0	10.0	50.0%	21.5%
>24 Months to 36 months	118	30.0	18.0	60.0%	20.3%
>36 Months to 48 months	122	42.0	20.0	47.6%	18.9%
>48 Months to 60 months	65	54.0	31.0	57.4%	15.4%
>60 Months to 120 months	88	82.0	36.0	43.9%	9.1%
> 120 months	44	171.0	77.0	45.0%	4.5%
Total	1,428	14.0	8.0	57.1%	35.9%

Issue: How to modify the sentencing guidelines to reflect a historically based sentence when a defendant provides substantial assistance or accepts responsibility and expresses remorse

- Proposed Recommendation
  - ❖ Modify the Guidelines Ranges for Assistance and Responsibility Case:

1. Lower the Low-End of the Recommendation Range to Probation
   - **Option One**: for the Incarceration to 12 Months Group
   - **Option Two**: for the Greater Than 12 Months to 16 Months Group and Below
   - **Option Three**: for the Greater Than 16 Months to 2 Years Group and Below
   - **Option Four**: for the Greater Than 2 Years to 3 Years Group and Below

Where to Draw the Line?

2. Lower the Low-End of the Recommendation Range by 50% for All Other Recommendation Groups

OPTION 1

Low End Recommendation Groups	No. of Cases	Median Low-End Guidelines Recommendation	Median Months Difference Between Effective Sentence & Recommended Low End	Percentage Effective Sentence Less Than Recommended Low-End	Percentage Sentenced to Probation
Incar to 12 months	642	8.0	5.0	62.5%	53.6%
>12 Months to 16 Months	158	14.0	8.0	57.1%	38.6%
>16 Months to 24 months	191	20.0	10.0	50.0%	21.5%
>24 Months to 36 months	118	30.0	18.0	60.0%	20.3%
>36 Months to 48 months	122	42.0	20.0	47.6%	18.9%
>48 Months to 60 months	65	54.0	31.0	57.4%	15.4%
>60 Months to 120 months	88	82.0	36.0	43.9%	9.1%
> 120 months	44	171.0	77.0	45.0%	4.5%
Total	1,428	14.0	8.0	57.1%	35.9%

Group 50% Effective Sentence Less Than Recommended Low-End

Will pull into Concurrence with the Guidelines 72.8% or 1,039 of the mitigating cases in this study.

OPTION 2

Low End Recommendation Groups	No. of Cases	Median Low-End Guidelines Recommendation	Median Months Difference Between Effective Sentence & Recommended Low End	Percentage Effective Sentence Less Than Recommended Low-End	Percentage Sentenced to Probation
Incar to 12 months	642	8.0	5.0	62.5%	53.6%
>12 Months to 16 Months	158	14.0	----- 6 MONTHS ----- 8.0	57.1%	38.0%
>16 Months to 24 months	191	20.0	10.0	50.0%	21.5%
>24 Months to 36 months	118	30.0	18.0	60.0%	20.3%
>36 Months to 48 months	122	42.0	20.0	47.6%	18.9%
>48 Months to 60 months	65	54.0	31.0	57.4%	15.4%
>60 Months to 120 months	88	82.0	36.0	43.9%	9.1%
> 120 months	44	171.0	77.0	45.0%	4.5%
Total	1,428	14.0	8.0	57.1%	35.9%

Group 48% Effective Sentence Less Than Recommended Low-End

Will pull into Concurrence with the Guidelines 79.4% or 1,134 of the mitigating cases in this study.

OPTION 3

Low End Recommendation Groups	No. of Cases	Median Low-End Guidelines Recommendation	Median Months Difference Between Effective Sentence & Recommended Low End	Percentage Effective Sentence Less Than Recommended Low-End	Percentage Sentenced to Probation
Incar to 12 months	642	8.0	5.0	62.5%	53.6%
>12 Months to 16 Months	158	14.0	8.0	57.1%	38.0%
>16 Months to 24 months	191	20.0	---- 10 MONTHS ---- 10.0	50.0%	21.5%
>24 Months to 36 months	118	30.0	18.0	60.0%	20.3%
>36 Months to 48 months	122	42.0	20.0	47.6%	18.9%
>48 Months to 60 months	65	54.0	31.0	57.4%	15.4%
>60 Months to 120 months	88	82.0	36.0	43.9%	9.1%
> 120 months	44	171.0	77.0	45.0%	4.5%
Total	1,428	14.0	8.0	57.1%	35.9%

Group 53% Effective Sentence Less Than Recommended Low-End

Will pull into Concurrence with the Guidelines 84.9% or 1,212 of the mitigating cases in this study.

OPTION 4

Low End Recommendation Groups	No. of Cases	Median Low-End Guidelines Recommendation	Median Months Difference Between Effective Sentence & Recommended Low End	Percentage Effective Sentence Less Than Recommended Low-End	Percentage Sentenced to Probation
Incar to 12 months	642	8.0	5.0	62.5%	53.6%
>12 Months to 16 Months	158	14.0	8.0	57.1%	38.0%
>16 Months to 24 months	191	20.0	10.0	50.0%	21.5%
>24 Months to 36 months	118	30.0	---- 12 MONTHS ----18.0	60.0%	20.3%
>36 Months to 48 months	122	42.0	20.0	47.6%	18.9%
>48 Months to 60 months	65	54.0	31.0	57.4%	15.4%
>60 Months to 120 months	88	82.0	36.0	43.9%	9.1%
> 120 months	44	171.0	77.0	45.0%	4.5%
Total	1,428	14.0	8.0	57.1%	35.9%

Group 61% Effective Sentence Less Than Recommended Low-End

Will pull into Concurrence with the Guidelines 90.1% or 1,286 of the mitigating cases in this study.

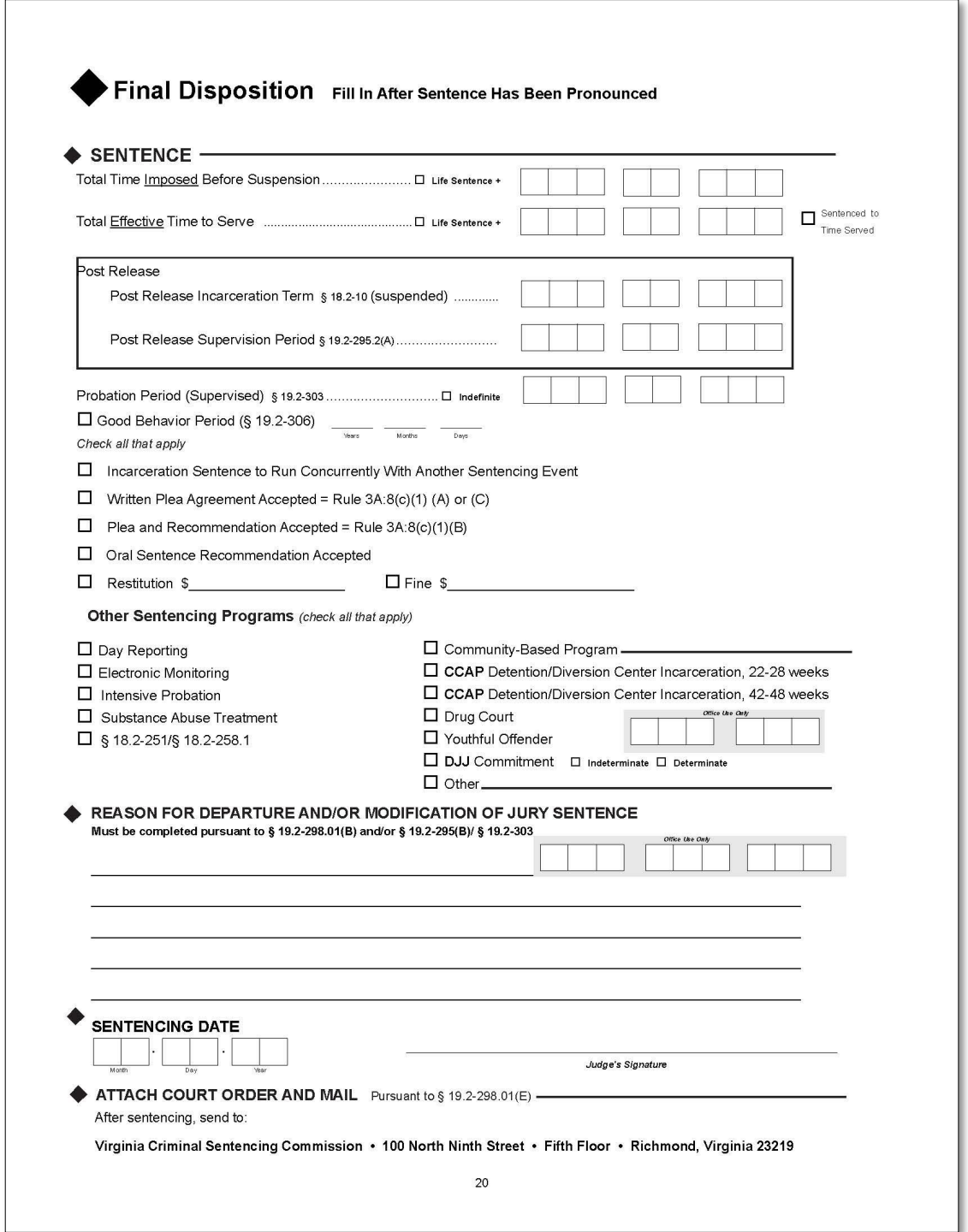
Issue: How to modify the sentencing guidelines to reflect a historically based sentence when a defendant provides substantial assistance or accepts responsibility and is remorseful

- Proposed Recommendation

  – Once Where to Draw the Line is Decided –
  The Coversheet Would be Modified Under the Proposal:

Proposed Adding a Section to the Final Disposition Page

- To Be Historically Based, The decision to Reduce the Guidelines Range Must be Made at the Time Of Sentencing by the Judge
- Unable to Develop a Factor Unique to Each Offense and Sentence Length to Be Scored by the CA or Probation Officer
- Avoid the Issue That the Federal Guidelines Have: 97% of the Defendants Have a Reduced Recommendation Because of a Similar Factor
- Of the Cases in the Virginia Sample With a Departure reason for a Mitigation Sentence Due to Assistance or Responsibility
  - **32.3%** of the Assistance Cases Had No Plea Agreement Identified
  - **62.4%** of the Responsibility Cases Had No Plea Agreement Identified



◆ **Final Disposition** **Fill In After Sentence Has Been Pronounced**

◆ **SENTENCE**

Total Time Imposed Before Suspension ☐ Life Sentence +

Total Effective Time to Serve ☐ Life Sentence + ☐ Sentenced to Time Served

Post Release

Post Release Incarceration Term § 18.2-10 (suspended)

Post Release Supervision Period § 19.2-295.2(A)

Probation Period (Supervised) § 19.2-303 ☐ Indefinite

☐ Good Behavior Period (§ 19.2-306) Years Months Days

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)*

☐ Day Reporting
☐ Electronic Monitoring
☐ Intensive Probation
☐ Substance Abuse Treatment
☐ § 18.2-251/§ 18.2-258.1
☐ Community-Based Program _____
☐ **CCAP** Detention/Diversion Center Incarceration, 22-28 weeks
☐ **CCAP** Detention/Diversion Center Incarceration, 42-48 weeks
☐ Drug Court
☐ Youthful Offender
☐ **DJJ** Commitment ☐ Indeterminate ☐ Determinate
☐ Other _____

Office Use Only

◆ **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

Office Use Only

◆ **SENTENCING DATE**

Month Day Year

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

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☐ MODIFICATION OF RECOMMENDATION

FOR SUBSTANTIAL ASSISTANCE, ACCEPTS RESPONSIBILITY OR EXPRESSES REMORSE:

- If Recommended Low-end is # Years or Less, Adjust Low-end to NO incarceration (**SWIFT** Would Insert New Range)
- If Recommended Low-end is Over # Years, Adjust Low-end to 50% of the Low-end Recommendation (**SWIFT** Would Insert New Range)

◆ SENTENCE

Total Time Imposed Before Suspension ..... ☐ **Life Sentence +** ☐☐☐ ☐☐ ☐☐☐

Total Effective Time to Serve ..... ☐ **Life Sentence +** ☐☐☐ ☐☐ ☐☐☐ ☐ Sentenced to Time Served

Post Release

Post Release Incarceration Term § 18.2-10 (suspended) ..... ☐☐☐ ☐☐ ☐☐☐

Post Release Supervision Period § 19.2-295.2(A) ..... ☐☐☐ ☐☐ ☐☐☐

Probation Period (Supervised) § 19.2-303 ..... ☐ **Indefinite** ☐☐☐ ☐☐ ☐☐☐

☐ Good Behavior Period (§ 19.2-306) _____ Years _____ Months _____ Days

Check all that apply

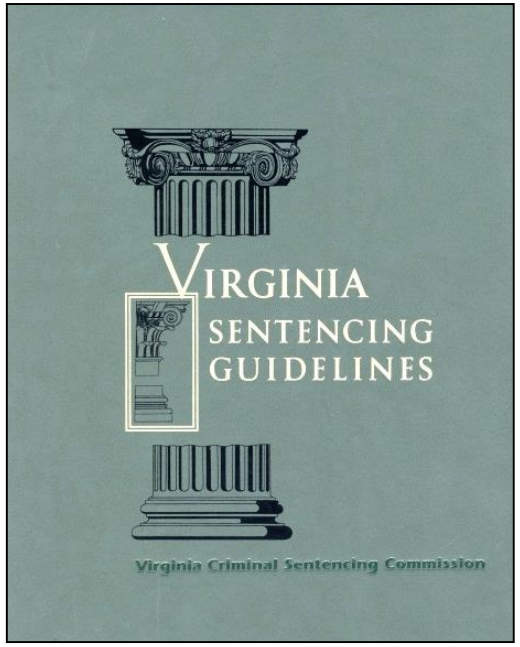
☐ Incarceration Sentence to Run Concurrently With Another Sentencing Event

☐ Written Plea Agreement Accepted = Rule 3A:8(c)(1) (A) or (C)

Proposed Recommendation 6

Revise the Guidelines recommendations to reflect current judicial sentencing when defendants provide substantial assistance or accept responsibility

Which Option?



Proposed Recommendation 7:

Revise the Robbery Guidelines to reflect current judicial sentencing when a completed murder or manslaughter is an additional offense

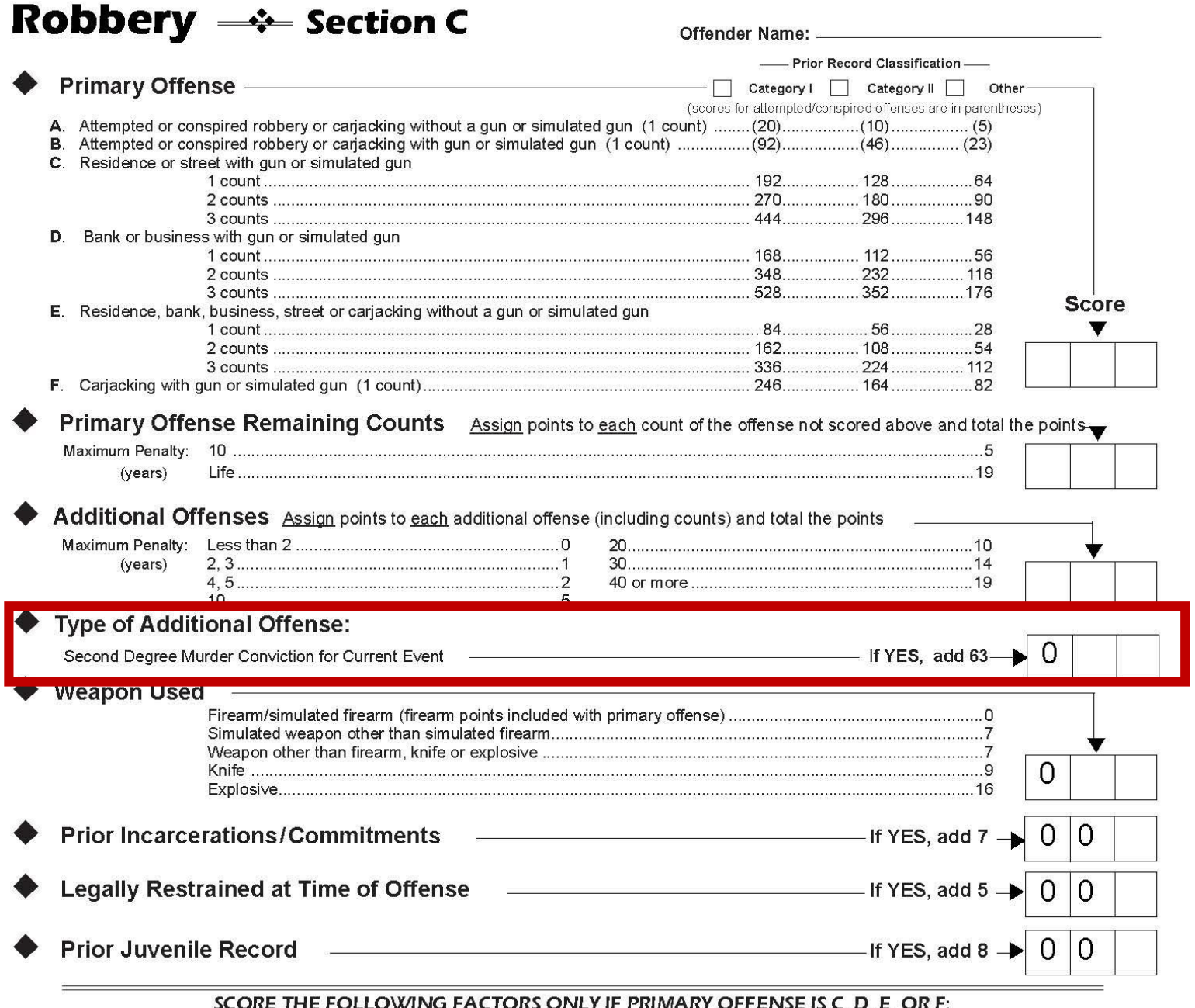
Robbery With Murder as an Additional Offense

- Between FY2011 and FY2020 there were 92 murder or manslaughter cases identified as additional offenses on the Robbery Worksheet.

  - 43 Second Degree Murder
  - ~~3 Completed Capital Murder~~ (scored wrong in one event)
  - 2 Accessory to Capital Murder
  - 2 Felony Murder
  - 1 Voluntary Manslaughter
  - 6 Involuntary Manslaughter
  - 35 Attempt, Conspiracy, Accessory (No Deaths, in one event)

THE ISSUE:
Only Second-Degree Murder is Assigned Additional Points

43	**Second Degree Murder**
3	Completed Capital Murder
2	Accessory to Capital Murder
2	Felony Murder
1	Voluntary Manslaughter
6	Involuntary Manslaughter
35	Attempt, Conspiracy, Accessory



Robbery — Section C

Offender Name: _____

Prior Record Classification — ☐ Category I ☐ Category II ☐ Other

Primary Offense (scores for attempted/conspired offenses are in parentheses) — Score

A. Attempted or conspired robbery or carjacking without a gun or simulated gun (1 count)	(20)	(10)	(5)
B. Attempted or conspired robbery or carjacking with gun or simulated gun (1 count)	(92)	(46)	(23)
C. Residence or street with gun or simulated gun			
1 count	192	128	64
2 counts	270	180	90
3 counts	444	296	148
D. Bank or business with gun or simulated gun			
1 count	168	112	56
2 counts	348	232	116
3 counts	528	352	176
E. Residence, bank, business, street or carjacking without a gun or simulated gun			
1 count	84	56	28
2 counts	162	108	54
3 counts	336	224	112
F. Carjacking with gun or simulated gun (1 count)	246	164	82

Primary Offense Remaining Counts Assign points to each count of the offense not scored above and total the points

Maximum Penalty: (years)	10	5
	Life	19

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

Maximum Penalty: (years)	Less than 2	0	20	10
	2, 3	1	30	14
	4, 5	2	40 or more	19
	10	5		

Type of Additional Offense:

Second Degree Murder Conviction for Current Event — If YES, add 63 → 0

Weapon Used

Firearm/simulated firearm (firearm points included with primary offense)	0
Simulated weapon other than simulated firearm	7
Weapon other than firearm, knife or explosive	7
Knife	9
Explosive	16

→ 0

Prior Incarcerations/Commitments — If YES, add 7 → 0 0

Legally Restrained at Time of Offense — If YES, add 5 → 0 0

Prior Juvenile Record — If YES, add 8 → 0 0

SCORE THE FOLLOWING FACTORS ONLY IF PRIMARY OFFENSE IS C, D, E, OR F:

Type of Additional Offense:

Second Degree Murder Conviction for Current Event ——— If YES, add 63 → 0

THE ISSUE:

- **Only Second-Degree Murder is Assigned Additional Points**
- **Other Murder Offenses Have Statutory Maximums Equal to or Higher than Second-Degree Murder and are not scored**

43	**Second Degree Murder**	**40 YEARS**
2	Accessory to Capital Murder	**LIFE**
2	Felony Murder	**40 YEARS**
1	Voluntary Manslaughter	**10 YEARS**
6	Involuntary Manslaughter	**10 YEARS**
35	Attempt, Conspiracy, Accessory	**5-10 YEARS**

Robbery With Murder as an Additional Offense

- In 2009, there was one sentencing event for robbery with an accessory to capital murder as an additional offense.
- In 2019, there were two robbery convictions with additional offenses of felony murder.
- In 2020, there was a conviction of robbery and accessory to capital murder.
- Clearly, there are not a lot of these cases. However, in three of the four cases, judges sentenced above the guidelines and in the fourth case the sentence given concurred with the guidelines recommendation because the 63 points were incorrectly assigned for the factor Type of Additional Offense.

Robbery With Murder as an Additional Offense

- Proposal: For the factor Type of Additional Offense factor assign **63** points if an additional offense is felony murder or principal in the second degree or accessory to capital murder
- This adjustment would increase concurrence and resolve a face validity problem without impacting cases that were already sentenced within the guidelines range.

Current Guidelines High	Effective Sentence	Proposed Range
13Y 0M	14Y	12Y 2M to 19Y 2M
21Y 1M	23Y	17Y 3M to 27Y 2M
10Y 9M	11Y	10Y 9M to 16Y 11M
30Y 7M	30Y	19Y 9M to 30Y 7M

Robbery With Murder as an Additional Offense

- Proposal: For the factor Type of Additional Offense factor assign **22** points if an additional offense is any **other type of completed murder/manslaughter.**
- This adjustment would increase concurrence without impacting cases that were already sentenced within the guidelines range.

Current Guidelines High	Effective Sentence	Proposed Range
8Y 10M	8Y 1M	6Y 6M to 10Y 0M
7Y 10M	15Y 0M	6Y 7M to 10Y 1M
3Y 9M	6Y 0M	2Y 11M to 6Y 1M
4Y 2M	6Y 0M	3Y 3M to 6Y 4M
3Y 9M	6Y 0M	2Y 11M to 6Y 1M
7Y 4M	9Y 0M	6Y 0M to 9Y 6M
4Y 6M	10Y 0M	8Y 8M to 13Y 7M

Attempted or Conspired

Robbery With Murder as an Additional Offense

- Concurrence rates for robbery with **attempted or conspired murder/manslaughter convictions** as additional offenses were evenly split between sentences within the guidelines range (47.2%) and sentences above the recommended range (47.2%).

- In many of the aggravation cases either physical or life-threatening injuries were scored. However, the aggravating sentences were above the guidelines recommendation anywhere from about 3 years to life.

- Adjusting the guidelines factor for Type of Additional Offense or Victim Injury, when the additional offense is attempted or conspired murder or manslaughter, would result in a lower concurrence rate because sentences currently in concurrence would then become mitigating sentences.

F. Carjacking with gun or simulated gun (1 count) ..... 246 ..... 164 82

Primary Offense Remaining Counts

Assign points to each count of the offense not scored above and total the points

Maximum Penalty: (years)		
10	5	
Life	19	

Additional Offenses

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

Maximum Penalty: (years)			
Less than 2	0	20	10
2, 3	1	30	14
4, 5	2	40 or more	19
10	5		

Type of Additional Offense:

Second Degree Murder, Felony Murder and Principal in the Second Degree to Capital Murder or Accessory to Capital Murder..... 63

Any Other Completed Murder..... 22

Weapon other than firearm, knife or explosive 7

Knife 9

Explosive..... 16

0

Prior Incarcerations/Commitments

If YES, add 7 → 0 0

Legally Restrained at Time of Offense

If YES, add 5 → 0 0

Prior Juvenile Record

If YES, add 8 → 0 0

SCORE THE FOLLOWING FACTORS ONLY IF PRIMARY OFFENSE IS C, D, E, OR F: COMPLETED ROBBERY OR CARJACKING (§§ 18.2-58, 18.2-58.1)

Victim Injury

Threatened	0
Emotional	2
Physical, serious	6
Life threatening	23

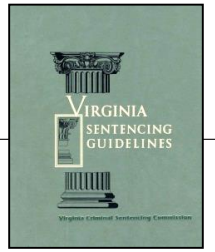
0

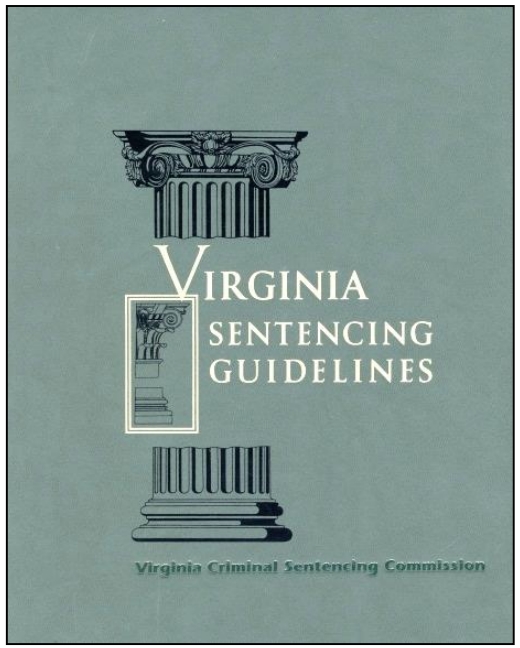
Proposed Recommendation 7

Revise the Robbery Guidelines

to better reflect current sentencing practices

as proposed





Proposed Recommendation 8:

Revise the Cover Sheet to advise judges that sentencing a defendant to an alternative sanction when it was recommended by the nonviolent risk assessment (NVRA) is not considered a departure from the guidelines

Issue: Some judges were concerned about statewide sentencing in drug cases and the perceived lack of use of the Nonviolent Risk Assessment (NVRA) instrument.

- Use of Nonviolent Risk Assessment & Concurrence for FY 2020
  - Concurrence to the guidelines recommendation is high – 87.4%
  - **40.7%** Recommended for an alternative, receive an alternative
  - The same alternatives are not available to all Judges statewide

	Mitigation	Adjusted Range	Traditional Range	Aggravation	Number of Cases	Overall Concurrence
Drug	7.6%	**25.2%**	61.9%	5.3%	4159	87.1%
Fraud	8.9%	**30.5%**	58.7%	1.9%	618	89.2%
Larceny	8.9%	**8.4%**	79.2%	3.5%	1669	87.6%
ALL	8.1%	**20.8%**	66.6%	4.5%	6446	87.4%

Source: 2020 VCSC Annual Report

ALL DRUG OFFENSES FY 2020

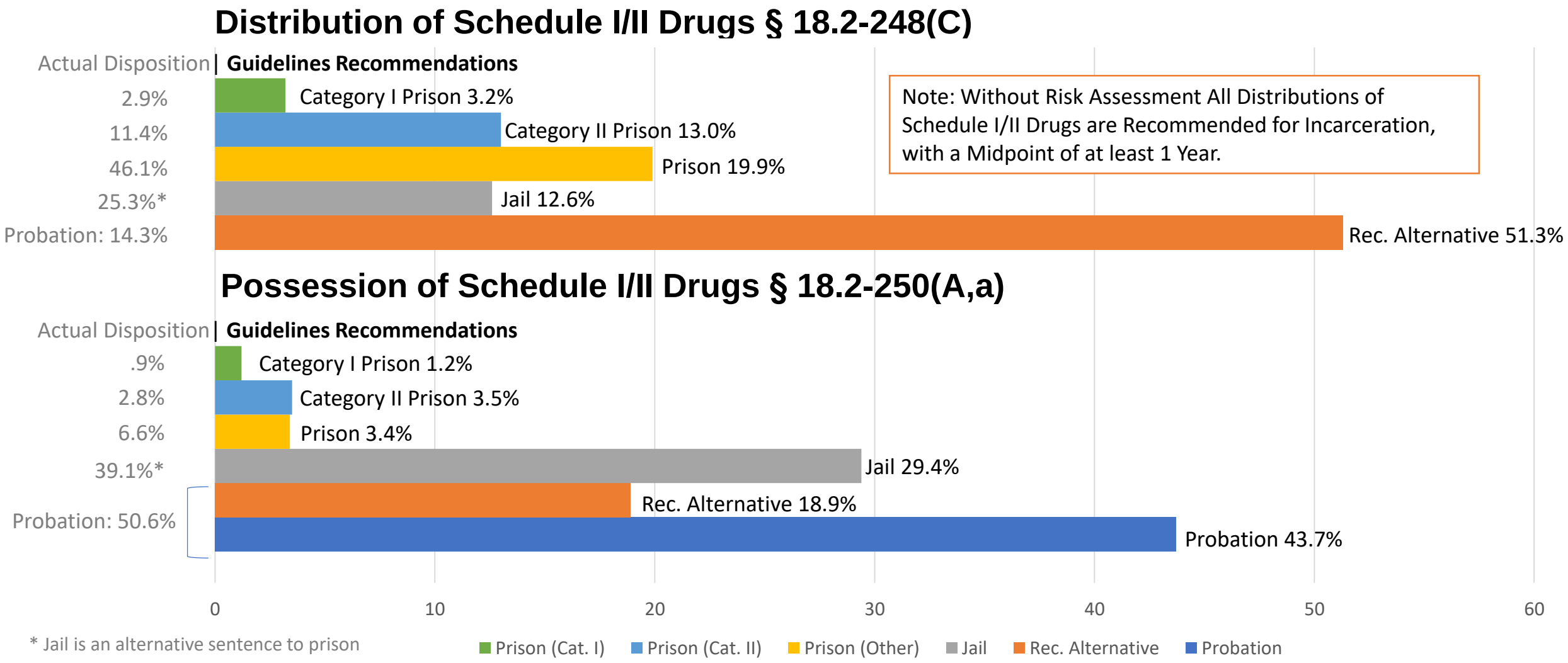
Proportion Recommended and Not Sentenced to Alternatives

NVRA - ALTERNATIVE	No. of Cases	Percent
Recommended & Received	1048	25.2%
Recommended & Did Not Receive	1482	**35.6%**
Not Recommended & Received	445	**10.7%**
Not Recommended & Did Not Receive	1184	28.5%
Total	4159	100.0%

Question: Can guidelines be adjusted to increase the use of alternatives in drug cases?

Guidelines Recommendations FY 2020

Proportion of Cases Recommended for an Alternative

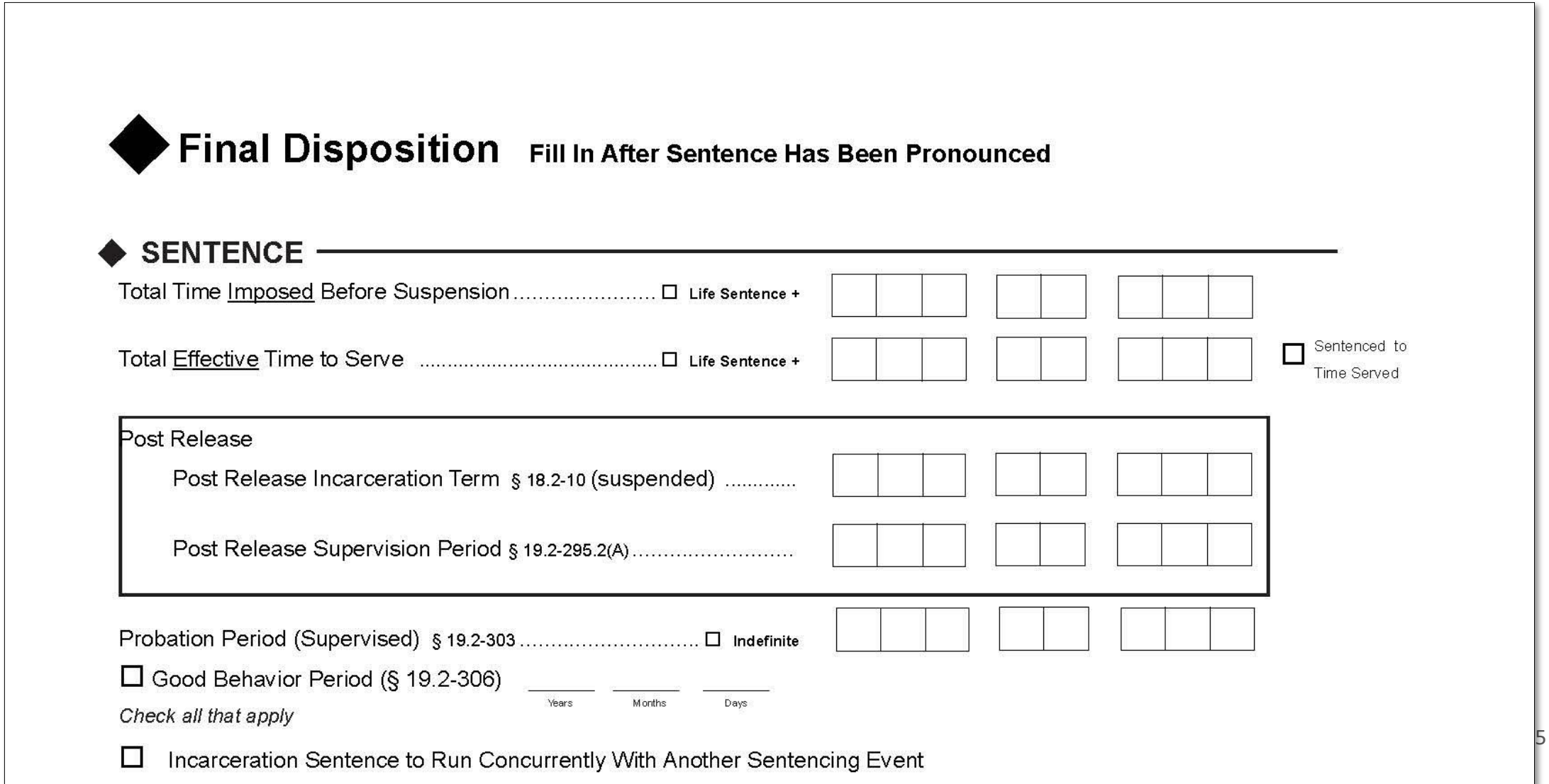


Currently the proportion of drug cases recommended for an alternative is significant and concurrence rates do not indicate the need for modification at this time. Also, the need for alternatives statewide cannot be addressed by guidelines.

Issue: Nonviolent Risk Assessment (NVRA) instrument not completed or missing in many cases.

- Nonviolent Risk Assessment Missing in FY 2020
  - 7.9% of the drug, fraud and larceny cases are missing the NVRA instrument
    - Often plea agreement establishes the sentence
    - NVRA may have been completed, but not sent to the Commission
    - **12.8%** of the possession of Schedule I/II drugs worksheets are missing NVRA
      - 794 cases
    - **7.3%** of the distribution of Schedule I/II drugs worksheets are missing NVRA
      - 136 cases

Proposal: Modify the Sentencing Guidelines Cover Sheet to better explain how the Nonviolent Risk Assessment (NVRA) recommendation is used when calculating concurrence and stress that the NVRA must be reviewed before sentencing.



◆ **Final Disposition** **Fill In After Sentence Has Been Pronounced**

◆ **SENTENCE**

Total Time Imposed Before Suspension ..... ☐ **Life Sentence +**

Total Effective Time to Serve ..... ☐ **Life Sentence +**

☐ Sentenced to Time Served

Post Release

Post Release Incarceration Term § 18.2-10 (suspended) .....

Post Release Supervision Period § 19.2-295.2(A) .....

Probation Period (Supervised) § 19.2-303 ..... ☐ **Indefinite**

☐ Good Behavior Period (§ 19.2-306) _____ Years _____ Months _____ Days

Check all that apply

☐ Incarceration Sentence to Run Concurrently With Another Sentencing Event

Other Sentencing Programs *(check all that apply)*

- ☐ Day Reporting
- ☐ Electronic Monitoring
- ☐ Intensive Probation
- ☐ Substance Abuse Treatment
- ☐ § 18.2-251/§ 18.2-258.1
- ☐ Community-Based Program _____
- ☐ **CCAP** Detention/Diversion Center Incarceration, 22-28 weeks
- ☐ **CCAP** Detention/Diversion Center Incarceration, 42-48 weeks
- ☐ Drug Court
- ☐ Youthful Offender
- ☐ **DJJ** Commitment ☐ **Indeterminate** ☐ **Determinate**
- ☐ Other _____

Office Use Only

◆ 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

☐ Accepted NVRA recommendation, no departure reason needed

Office Use Only

May also serve as a reminder of the need to review the NVRA before sentencing

◆ SENTENCING DATE

Month . Day . Year

_____

Judge's Signature

◆ ATTACH COURT ORDER AND MAIL

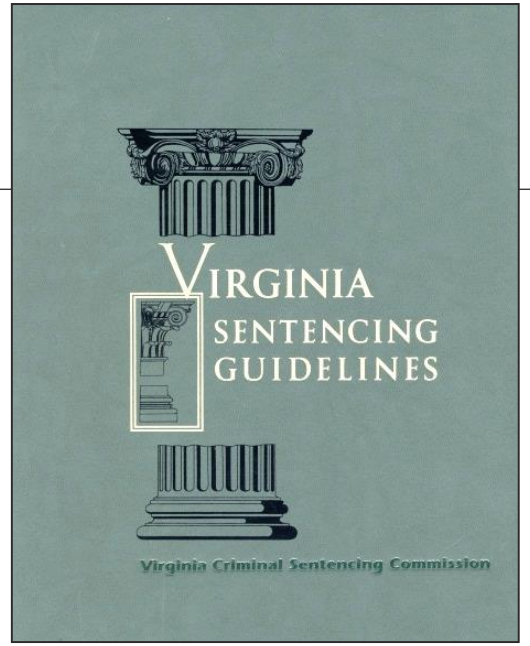
Pursuant to § 19.2-298.01(E) _____

After sentencing, send to:

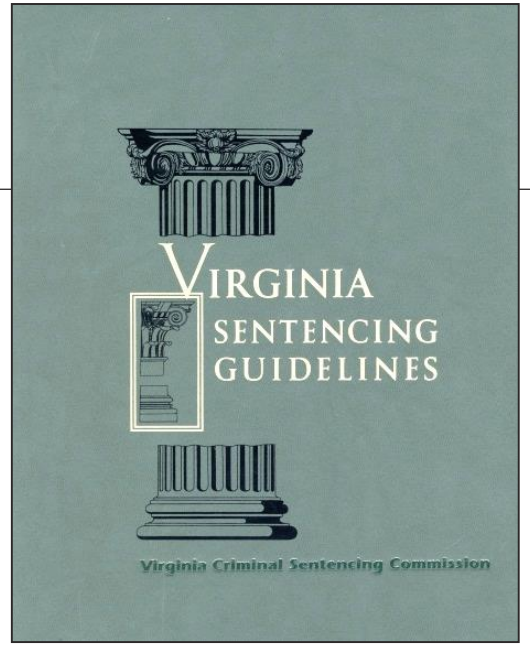
Virginia Criminal Sentencing Commission • 100 North Ninth Street • Fifth Floor • Richmond, Virginia 23219

Proposed Recommendation 8

Revise the Cover Sheet for Drugs, Larceny and Fraud to better explain the use of the NVRA in the calculation of concurrence as proposed



Other Proposals



Embezzlement Study

Conduct a special study of embezzlement offenses to determine the importance of certain factors in sentencing outcomes

Compliance with Guidelines for Embezzlement (§ 18.2-111) FY2015-FY2019

Estimated Duration of Embezzlement*	Compliance	Mitigation	Aggravation	Number of Sentencing Events
Up to 1 week	91.7%	3.4%	4.8%	145
More than 1 week - Up to 1 mo.	91.8%	2.7%	5.5%	256
More than 1 mo. - Up to 6 mos.	89.8%	2.7%	7.5%	665
More than 6 mos. - Up to 1 yr.	80.1%	5.7%	14.2%	296
More than 1 yr. - Up to 5 yrs.	80.3%	4.2%	15.5%	427
More than 5 yrs. - Up to 10 yrs.	76.4%	7.3%	16.4%	55
More than 10 yrs.	62.5%	0.0%	37.5%	8
Missing	83.5%	8.0%	8.5%	224
Overall	85.7%	4.2%	10.1%	2,076

* Based on length of time between earliest date of an embezzlement offense in the sentencing event and latest arrest date for an embezzlement offense in the sentencing event (according to Virginia State Police records).

Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System

Compliance with Guidelines for Embezzlement (§ 18.2-111) FY2015-FY2019

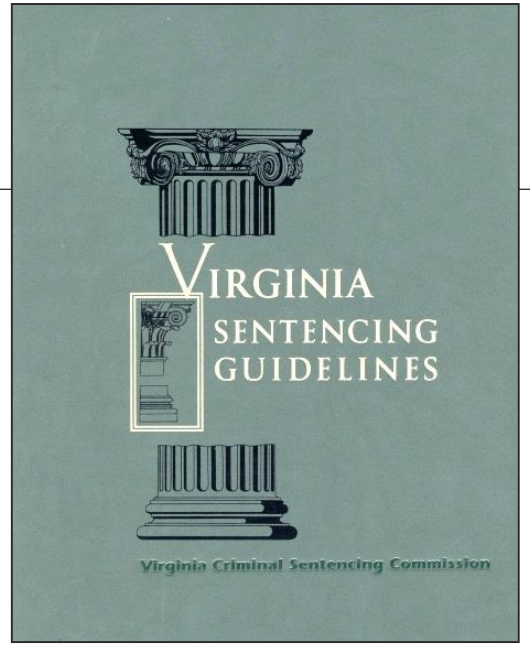
Amount of Embezzlement*	Compliance	Mitigation	Aggravation	Number of Sentencing Events
Less than $10,000	89.5%	3.6%	6.9%	1,538
$10,000-$19,999	80.0%	6.2%	13.8%	195
$20,000-$74,999	77.0%	3.8%	19.1%	209
$75,000-$119,000	57.0%	5.4%	37.6%	93
$120,000+	78.0%	17.1%	4.9%	41
Overall	85.7%	4.2%	10.1%	2,076

* Based on Amount of Embezzlement factor on Section A of the guidelines.

Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System (downloaded on 10/05/2020)

Possible Embezzlement Study

- Arrest date provides an imperfect measure of offense duration.
  - A special study of embezzlement cases, including file review, could provide more accurate information on offense duration.
- With a more accurate measure of offense duration, study may reveal a more complete understanding of the interactions between duration, counts and amount stolen in embezzlement cases.

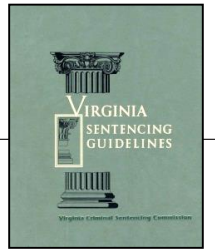


Larceny Study

Conduct a special study of larceny offenses to determine the importance of prior felony and misdemeanor larceny convictions/ adjudications

Possible Larceny Study

- Since 2018, the General Assembly has twice raised the felony larceny threshold.
  - In 2018, the felony threshold was increased from $200 to $500.
  - In 2020, the felony threshold was increased from $500 to $1,000.
- The Larceny Guidelines contain a factor for Prior Felony Larceny Convictions/Adjudications.
  - Based on guidelines rules, prior larceny convictions are scored based on the current penalty structure.



Possible Larceny Study

- Section A and Section C of the Larceny Guidelines each contain a factor for Prior Felony Larceny Convictions/Adjudications.
- As data accumulate under the current felony larceny threshold, a special study of larceny offenses may suggest that these and other factors could be revised to better reflect judicial thinking.
- This would be a multi-year study in order to collect sufficient data under the new larceny threshold.

Section A

Larceny ⊹ Section A

Offender Name: _____

Primary Offense

(scores for attempted/conspired offenses are in parentheses)

A.	Attempted or conspired larceny (1 count)	(1)
B.	Statutory maximum penalty equals 5 years	
	1 count	1
	2 counts	4
	3 counts	6
C.	Statutory maximum penalty equals 10 years (1 count)	3
D.	Grand larceny auto	
	1 count	5
	2 counts	7
	3 counts	10
E.	Grand larceny from person	
	1 count	4
	2 counts	11
F.	Grand larceny of a firearm (1 count)	1
G.	Failure of bailee to return animal, aircraft, vehicle or boat (1 count)	4
H.	Larceny of bank notes, checks or any book of accounts; Any other larceny offense with maximum penalty of 20 years	
	1 count	2
	2 - 3 counts	4
	4 counts	6

Score: [ ]

Primary Offense Remaining Counts

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

Years:				
	5 - 11	1	34 - 44	4
	12 - 22	2	45 or more	5
	23 - 33	3		

[0]

Additional Offenses

Total the maximum penalties for additional offenses, including counts

Years:				
	Less than 1	0	23 - 33	3
	1 - 11	1	34 - 44	4
	12 - 22	2	45 or more	5

[0]

Prior Convictions/Adjudications

Total the maximum penalties for the 5 most recent and serious prior record events

Years:				
	Less than 2	0	21 - 36	3
	2 - 11	1	37 or more	4
	12 - 20	2		

[0]

Prior Felony Larceny Convictions/Adjudications

Number of Counts:		
	1	2
	2 - 3	3
	4 or more	4

[0]

Other Prior Felony Property Convictions/Adjudications

Number of Counts:		
	1 - 4	1
	5 or more	2

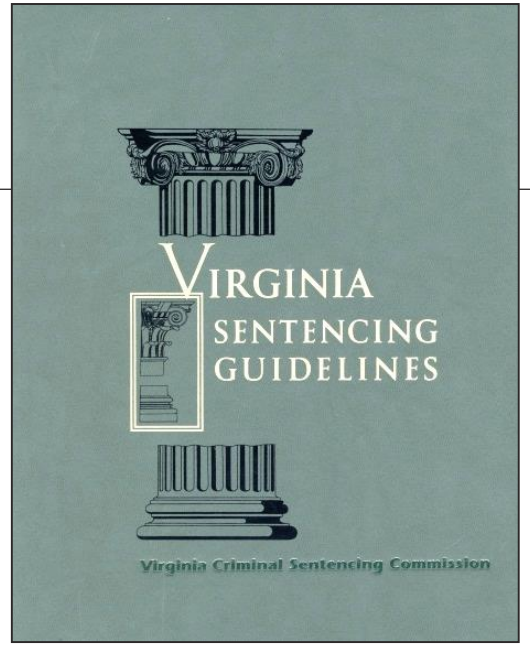
[0]

Prior Felony Convictions/Adjudications Against Person

Number of Counts:		
	1	1
	2 or more	2

[0]

Prior Misdemeanor Convictions/Adjudications (Exclude Traffic)



Assault Study

Conduct a special study of assault offenses to determine the importance of other factors in sentencing outcomes

Compliance with Guidelines for Assault Offenses FY2016-FY2020

Most Serious Offense	Compliance	Mitigation	Aggravation	Total
Simple assault of LEO, etc.	87.1%	10.3%	2.7%	2,073
Unlawful Wounding	74.0%	9.4%	16.6%	1,631
Malicious Wounding	74.1%	12.8%	13.1%	1,403
Assault of family/ household member, 3rd off.	76.9%	19.4%	3.7%	924
Strangulation	77.8%	9.9%	12.2%	686
Agg. Malicious Wounding	63.1%	11.0%	25.9%	290
Other Assaults	61.3%	10.1%	28.6%	248
Overall	77.6%	11.7%	10.7%	7,255

Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System (downloaded on 10/05/2020)

Recommended and Actual Dispositions for Assault Offenses FY2016-FY2020

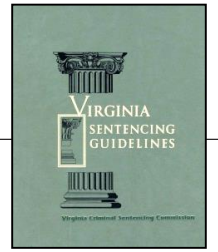
Recommended Disposition	Actual Disposition: Probation/No Incarceration	Incarceration up to 6 mos.	Incarceration >6 mos.	Total
Probation/No Incarceration	45.7%	42.5%	11.8%	100.0%
Incarceration up to 6 mos.	7.3%	72.2%	20.4%	100.0%
Incarceration >6 mos.	2.4%	11.8%	85.8%	100.0%

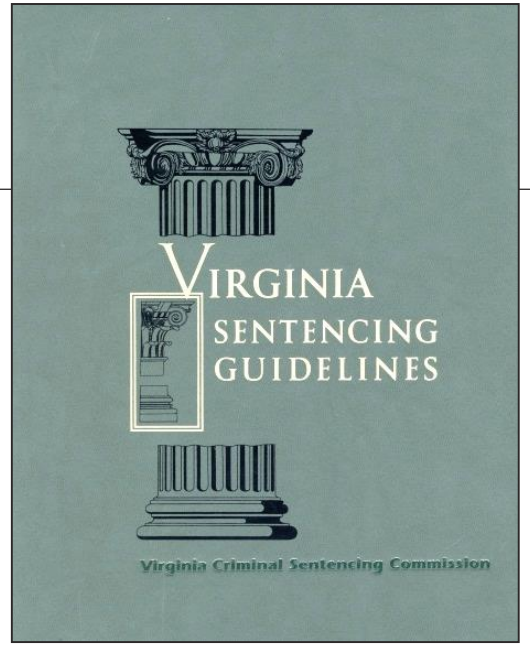
Current ASSAULT guidelines recommend too many defendants for probation/no incarceration and too few defendants for jail incarceration up to 6 months.

Note: Worksheets with scoring errors were excluded from the analysis.
Source: Sentencing Guidelines Data System (downloaded on 10/05/2020)

Possible Assault Study

- Current Assault guidelines recommended too many defendants for probation/no incarceration and too few defendants for jail incarceration up to 6 months.
  - This suggests that staff should take a closer look at Section B of the Assault guidelines.
- Based on recent analysis, the current factors on Section B do not adequately differentiate between defendants who received probation and those who received a short jail sentence.
- Additional data, such as complete criminal history records, would allow staff to test other factors and their importance in Section B sentencing decisions.





Attempted/Conspired Capital Murder Study

Conduct a special study of attempted/ conspired capital murder to determine the feasibility of adding of these offenses to the sentencing guidelines

Felony Sentencing Events with Attempted/Conspired Capital Murder or Accessory before the Fact or Principal in the 2nd Degree to Capital Murder* as the Most Serious Offense

Fiscal Year	Number of Sentencing Events
2011	7
2012	3
2013	6
2014	7
2015	8
2016	4
2017	15
2018	8
2019	9
2020	11
Total	78

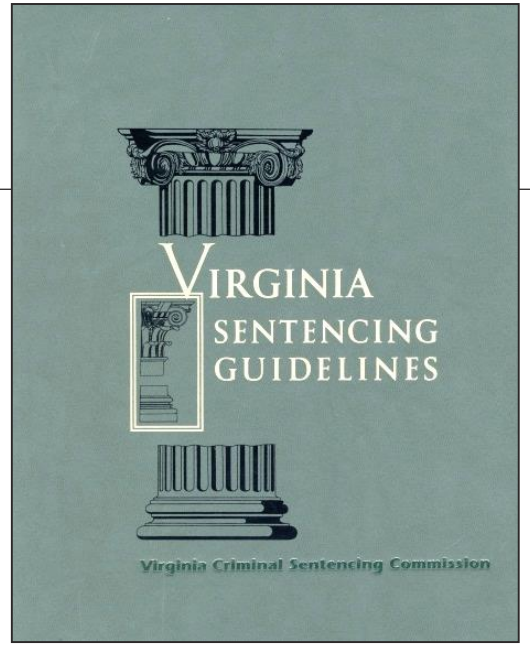
Type of Sentence	Number of Defendants
Life Sentence	12
Sentence in Years	66
Total	78

Mean 20.6 yrs.

Median 18.0 yrs.

* Excludes Class 1 felonies

Source: Supreme Court of Virginia, Office of the Executive Secretary, Circuit Court Case Management System (CMS), as analyzed by the Virginia Criminal Sentencing Commission



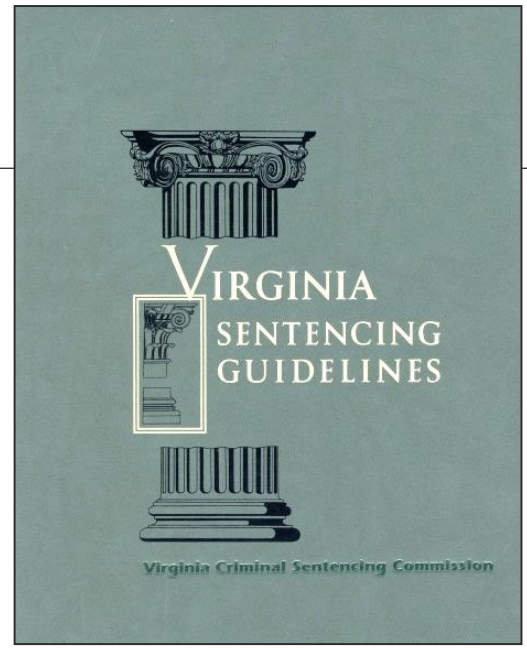
Possible Studies for 2021

Embezzlement

Larceny

Assault

Attempted/Conspired Capital Murder


VIRGINIA
SENTENCING
GUIDELINES
Virginia Criminal Sentencing Commission

SWIFT/DCN: _____

Sentencing Guidelines
Supplemental Form

1. Defendant's Name: _____

2. Defendant Information: Gender: _____ Race: _____ Ethnicity: _____ Age: _____ Handicapped: _____

3. Type of Counsel: ❑ Retained ❑ Court Appointed ❑ Public Defender ❑ Other

4. Pretrial Status: ❑ Secure Bond ❑ Unsecured Bond ❑ Own Recognizance ❑ Confinement ❑ Third Party Release

5. Pretrial Supervision by Pretrial Services Agency: ❑ No ❑ Yes ❑ Yes, ordered but did not complete/attend

6. Posttrial Status: ❑ Secure Bond ❑ Own Recognizance ❑ Confinement ❑ Third Party Release

7. Source of Bond: ❑ Personal ❑ Family ❑ Other ❑ Bonding Company ❑ N/A

8. Total Time Served Prior to Sentencing: Years_____ Months _____ Days _____

9. Number of Codefendants: _____

10. Legal Status at Offense:

❑ Escaped	❑ Bond	❑ Mandatory Parole	❑ Discretional Parole		
❑ Geriatric Release-§ 53.1-40.01	❑ Inmate	❑ Probation	❑ Post Release -§ 19.2-295.2		
❑ Recognizance	❑ Community Program	❑ Pre Release	❑ Good Behavior		
❑ Juvenile Probation	❑ Juvenile Parole	❑ Pre-Trial Supervision	❑ Summons	❑ Other	❑ None

11. Weapon Use: ❑ None ❑ Used to Injure ❑ Used to Threaten (Includes by voice, note, text, etc.)

12. Weapon Used/ Possessed:

❑ Firearm	❑ Knife	❑ Explosive	❑ Simulated/Feigned Weapon	
❑ Note/Verbal	❑ Vehicle	❑ Animal	❑ Other	❑ N/A

13. Offender's Role ❑ Alone ❑ Leader ❑ Accomplice ❑ Not Determined

14. Value of Property Taken/Damaged: Highest value for one item **$**_____ Total value of all items **$** _____

15. Injury to Victim:

❑ Death	❑ Life Threatening	❑ Serious Physical	❑ Physical
❑ Emotional	❑ Threatened	❑ None	❑ N/A

16. Victim Relationship to Offender:

❑ None/Stranger	❑ Known	❑ Friend
❑ Family	❑ Police Officer/LEO	❑ Other

17. Victim Information: Gender: _____ Race: _____ Ethnicity: _____ Age: _____ Handicapped: _____

18. Type of Primary Drug: _____ **Quantity of Primary Drug:** _____

19. Number of Felony Juvenile Adjudications: Person _____ Property _____ Drug _____ Other _____

20. Other factors known at the time of sentencing *(check all that apply)*

	Yes	Treatment: (in or completed treatment)	
a. Drug abuse (admitted, family information, documented in reports).....	❑	❑ prior to offense	❑ after arrest
b. Alcohol abuse (admitted, family information, documented in reports).....	❑	❑ prior to offense	❑ after arrest
c. Mental Health issues (admitted, family information, documented in reports)..	❑	❑ prior to offense	❑ after arrest
d. Under the Influence of drugs/alcohol at the time of the offense	❑		

e. Employment: ❑ Stable (Employed full or part-time for 18 months) ❑ Full-time student ❑ Disabled ❑ Stay-at-home spouse/parent ❑ Retired

f. Housing: ❑ Stable/same residence 1+ years ❑ Homeless at the time of the offense

g. Provides support: Enter Number dependents or family members supported _____

h. Education: ❑ High school/GED ❑ Technical Training ❑ Some College ❑ College Degree ❑ Currently Enrolled

i. Military: ❑ Active ❑ Reserve ❑ Honorably Discharged ❑ Undesirable Discharge ❑ Medical Discharge ❑ General Discharge ❑ Bad Conduct Discharge

j. Defendant's Response: ❑ Accepts Responsibility ❑ Sought Treatment ❑ Developed Rehabilitation Plans ❑ Remorseful ❑ Paid All or Part Restitution

k. Other:_____