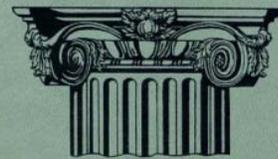




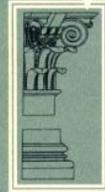
**VIRGINIA CRIMINAL
SENTENCING COMMISSION**

Impact of 2021 Legislation on Sentencing Guidelines

March 22, 2021



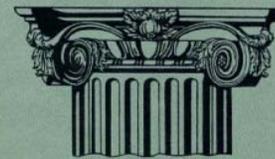
**VIRGINIA
SENTENCING
GUIDELINES**



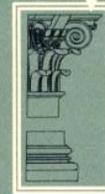


**VIRGINIA CRIMINAL
SENTENCING COMMISSION**

HB 1936 - Robbery



**VIRGINIA
SENTENCING
GUIDELINES**



HB 1936

Creates degrees of punishment corresponding to the severity of a robbery offense

Elements of Robbery (§ 18.2-58)	Penalty (Effective on 7/1/2021)
Results in serious bodily injury or death	Class 2 felony (20 years to life)
Use or display of firearm in threatening manner	Class 3 felony (5 to 20 years)
Use of physical force not resulting in serious bodily injury; use of deadly weapon other than firearm in a threatening manner	Class 5 felony (1 to 10 years)
Use of threat/intimidation not involving a deadly weapon	Class 6 felony (1 to 5 years)

§ 18.2-58 (Effective until 7/1/2021) - If any person commit robbery by partial strangulation, or suffocation, or by striking or beating, or by other violence to the person, or by assault or otherwise putting a person in fear of serious bodily harm, or by the threat or presenting of firearms, or other deadly weapon or instrumentality whatsoever, he shall be guilty of a felony and shall be punished by confinement in a state correctional facility for life or any term not less than five years.



HB 1936

Creates degrees of punishment corresponding to the severity of a robbery offense

HB1936 creates classes of robbery that are different than the way robbery is delineated in the sentencing guidelines (which is by location – **street, business, residence, bank** - and whether or not a **firearm/simulated firearm** was used). Carjacking is embedded in the guidelines, but largely unaffected by the proposal.



Robbery ◆ Section C

Offender Name: _____

Prior Record Classification: _____

◆ **Primary Offense** Category I Category II Other
(scores for attempted/conspired offenses are in parentheses)

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)			
1 count	246	164	82

Score
▼
[] [] []

◆ **Primary Offense Remaining Counts** Assign points to each count of the offense not scored above and total the points
 Maximum Penalty: 10 (years) 5
 Life 19
 [] [] []

◆ **Additional Offenses** Assign points to each additional offense (including counts) and total the points
 Maximum Penalty: Less than 2 (years) 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:

HB 1936

Creates degrees of punishment corresponding to the severity of a robbery offense

- **Commission staff conducted analysis expanding on HB1936 by breaking out carjacking cases, identifying additional potential Class 2 felonies, and estimating primary offense shifts in robbery sentencing events.**
- **Sentencing Guidelines data (FY2019-FY2020) and existing worksheet factors were utilized for the analysis.**
- **Analysis presents historical data and estimates direct effects of statutory change.**
 - **It does not incorporate potential changes to prosecution (charges pressed, pleas, etc.) or judicial sentencing patterns which may result from the legislation.**



HB 1936

Creates degrees of punishment corresponding to the severity of a robbery offense

- Because primary offenses are determined by statutory maximum penalties, HB1936 may lead to a reduction in sentencing events with robbery as the primary offense.
- 148 events (17%) with robbery as the primary offense had an additional offense with a statutory maximum greater than or equal to the robbery's proposed maximum.
- Most common new primary offense types:
 - 1) Burglary (26%)
 - 2) Larceny (24%)
 - 3) Kidnapping (10%)
 - 4) Narcotics (8%)
 - 5) Assault (7%)
- It is difficult to estimate effects of individual robbery offenses when sentencing event involves multiple robberies (guidelines factors scored on event level rather than offense level).
 - Bottom line: the offense with more weight under proposed structure (weapon/injury involved) would be the primary robbery.



Robbery Sentencing Trends (Excluding Carjacking)

Primary Offense (HB1936 Category)	Proposed Class	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence	Cases Sentenced Above Proposed Stat. Maximum
<i>Robbery with life threatening or serious bodily injury</i>	Class 2	144	2.1%	2.8%	6 mos	95.1%	7.4 yrs	N/A (max=life sentence)
<i>Robbery with an additional offense of use of firearm (includes attempted use of firearm)</i>	Class 3	243	0.4%	0.4%	11 mos	99.2%	7.5 yrs	9 (3.7%) Sentenced to more than 20 years
<i>Robbery with use of weapon other than a firearm</i>	Class 5	109	8.3%	8.3%	6 mos	83.5%	4.5 yrs	13 (11.9%) Sentenced to more than 10 years
<i>Robbery not involving a deadly weapon</i>	Class 6	338	14.5%	8.3%	6 mos	77.2%	4.0 yrs	81 (24.0%) Sentenced to more than 5 years
Summary	N/A	834	7.4%	5.0%	6 mos	87.5%	5.5 yrs	103 (12.4%)

Statutory Impact: Estimated 83% of cases would have lower statutory maximums, with 12% currently sentenced above proposal. Class 2 felonies would have a higher statutory minimum (20 years vs. 5 years); 129 proposed Class 2 cases (90%) had an effective sentence of less than 20 years.

Carjacking Sentencing Trends

Includes robbery-primary sentencing events with carjacking as a primary or additional offense

Offense	Total Number of Cases	Percent Sentenced to Probation	Percent Sentenced to Jail	Median Jail Sentence	Percent Sentenced to Prison	Median Prison Sentence	Cases with life threatening or serious bodily injury
<i>Carjacking with use of gun or simulated gun</i>	15	0.0%	0.0%	N/A	100.0%	12.0 yrs	2 (13.3%)
<i>Carjacking (without gun or simulated gun)</i>	38	2.6%	0.0%	N/A	97.4%	7.0 yrs	12 (31.6%)
Summary	53	1.9%	0.0%	N/A	98.1%	8.0 yrs	14 (26.4%)

Statutory Impact: Carjacking will have a higher statutory maximum than most robberies and will usually be the primary offense if other robberies are involved. Otherwise, primary status is unaffected by proposal. These cases are eligible as Class 2 felony robbery if offense involves serious bodily injury or death, which would raise the statutory minimum from 15 years to 20 years.

HB 1936

Creates degrees of punishment corresponding to the severity of a robbery offense

- **Current guidelines do not reflect the classifications of robbery defined in HB1936.**
 - **The proposal does not leave any robbery penalty the same as the current penalty.**
- **It is not known how charging practices or sentencing patterns for robbery will evolve under the new schema.**
- **After July 1, 2021, the current guidelines will not accurately reflect the typical or average robbery outcome for each of the new classifications.**
- **Revisions to the robbery guidelines cannot be implemented until July 1, 2022, at the earliest.**



HB 1936

Creates degrees of punishment corresponding to the severity of a robbery offense

OPTIONS FOR COMMISSION

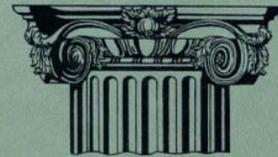
- 1) **Until analysis can be completed on robbery sentencing under the new statutory scheme, should the guidelines continue to cover robbery offenses?**
- 2) **As HB1936 did not modify § 18.2-58.1, related to carjacking, should the guidelines continue to cover carjacking offenses with the existing guidelines?**



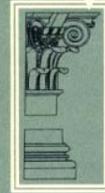


**VIRGINIA CRIMINAL
SENTENCING COMMISSION**

**HB 2038 –
Probation and Sentences
for Technical Violations**



**VIRGINIA
SENTENCING
GUIDELINES**



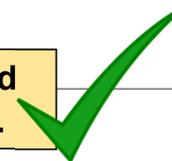
Probation Violation Guidelines Study (2017-2020)

- In 2020, the Commission completed a large-scale multi-year study of probation revocations (characteristics and sentencing outcomes).
- As a result of the study, the Sentencing Commission recommended:
 - Expanding the PVGs to cover violations stemming from new felony and misdemeanor convictions (not just technical violations);
 - Replacing the current instrument with two instruments, one applicable to violators with new felony convictions and one for violators with technical violations or new misdemeanor convictions;
 - Adjusting the low end of the PVGs range to “time served” (i.e., zero) when the judge determines that the probationer has a good rehabilitation potential; and
 - Revising the SRR and the PVGs to standardize the information provided to circuit court judges in revocation cases.



VIRGINIA CRIMINAL
SENTENCING COMMISSION

The 2021 General Assembly accepted the Commissions recommendations.



HB 2038

Limits on probation and sentences for technical violations

- The court may fix the period of probation only up to statutory maximum of the offense. (§19.2-303)
- Period of supervised probation may not exceed 5 years from the release of the defendant from any active period of incarceration.
 - Limitation shall not apply to the extent that an additional period of probation is necessary for the defendant to participate in a court-ordered program. (§19.2-303)
- Limits do not apply to defendants convicted of certain sex offenses; HB2038 leaves current requirements in place. (§19.2-303)
- In any case where a court suspends the imposition or execution of a sentence, it may fix the period of suspension only up to the statutory maximum of the offense. (§ 19.2-303.1)

Statutory Changes: Limits the Length of Supervision



HB 2038

Limits on probation and sentences for technical violations

- The court may not conduct a revocation hearing unless the court issues process to notify the accused or to compel his appearance before the court *within 90 days of receiving notice of the alleged violation* or within one year after the expiration of the period of probation or the period of suspension, *whichever is sooner*, or, in the case of a failure to pay restitution, within three years after such expiration.
- If neither a probation period nor a period of suspension was fixed by the court, then the court shall issue process ~~within one year~~ *six months* after the expiration of the maximum period for which the defendant might originally have been sentenced to be incarcerated. (§ 19.2-306)

Statutory Changes: Creates Deadlines for Revocation Hearings



HB 2038

Limits on probation and sentences for technical violations

- “Technical violation” means a violation based on the probationer's failure to:
 - 2. Report an arrest within 3 days;
 - 3. Maintain regular employment or notify of changes in employment;
 - 4. Report within 3 days of release from incarceration;
 - 5. Permit probation officer to visit home or employment;
 - 6. Follow instructions of the probation officer, be truthful/cooperative;
 - 7. Refrain from the use of alcoholic beverages to excess;
 - 8. Refrain from the use, possession, or distribution of drugs;
 - 9. Refrain from the use, ownership, possession, etc., of a firearm;
 - 10. Gain permission to change residence;
 - 11. Maintain contact with the probation officer such that his whereabouts are no longer known to the probation officer (absconding).

- Multiple technical violations arising from a single course of conduct or considered at the same revocation hearing shall not be considered separate technical violations for the purposes of sentencing.



VIRGINIA CRIMINAL
SENTENCING COMMISSION

§ 19.2-306.1 Defines a Technical Violations as Conditions 2-8 & Condition 10

HB 2038

Limits on probation and sentences for technical violations

- **HB2038 limits the amount of active incarceration a court can impose for a technical violation of probation supervision.**

1 st technical violation	No active incarceration
2 nd technical violation or 1 st technical violation related to firearm or absconding	Presumption against incarceration or, if the defendant cannot be safely diverted, up to 14 days incarceration
3 rd or sub. technical violation or 2 nd or sub. technical violation related to firearm or absconding	Whatever sentence may have been originally imposed

- Limits in HB2038 are not applicable to **special conditions**, such as sex offender or gang-related restrictions.
- The limitations on sentencing shall not apply to the extent that an additional term of incarceration is necessary to allow a defendant to be evaluated for or to participate in a court-ordered drug, alcohol, or mental health treatment program.



HB 2038

Limits on probation and sentence for technical violations

- **HB2038 will require the Commission to adjust the implementation of the new probation violation guidelines, which take effect on 7/1/2021.**

- **OPTIONS:**
 - ✓ **Adjust the guidelines so that they will recommend no incarceration for the 1st technical violation. (Based on Statutory Requirements)**
 - **Limits in HB2038 are not applicable to special conditions, such as sex offender or gang-related restrictions. (Based on Statutory Requirements)**

 - ✓ **Adjust the guidelines so that the recommended range for a 2nd technical violation will be 0 to 14 days. (Based on Statutory Requirements)**

 - ✓ **Implement the guidelines as recommended for the 3rd or subsequent technical violation and for new law violations. (Based on Study & Accepted by 2021 General Assembly)**



Suspended Sentence, Good Behavior and Probation Violations

Original Sentence	Maximum Length of Supervision Period	Statute		Notes
Never Incarcerated for the Offense:	Statutory Maximum for the Offense*	§ 19.2-303		
Incarcerated for the Offense:	5 Years After the Date of Release for the Offense*	§ 19.2-303		
Certain Sex Offenses	At a Minimum the Statutory Maximum for the Offense (No Limit)	§ 19.2-303		§§ 18.2-48, 18.2-61, 18.2-63, 18.2-67.2, 18.2-67.3, 18.2-370 or 18.2-370.1
Imposition of Sentence Suspended	Statutory Maximum for the Offense	§ 19.2-303.1		
Execution of Sentence Suspended	Statutory Maximum for the Offense	§ 19.2-303.1		
Revocation of Probation Sentence	Maximum Time Imposed	Statute	Conduct Hearing	Notes
Technical Violation of Condition 2,3,4,5,6,7,8 or 10 **		§ 19.2-306.1	Within 90 Days of Receiving Notice	
• First Violation	No Active Incarceration*	§ 19.2-306.1	Within 90 Days of Receiving Notice	
• Second Violation	Presumption Against Incarceration - Up to 14 Days*	§ 19.2-306.1	Within 90 Days of Receiving Notice	
• Third or Subsequent Violation	Up to Remaining Revocable Time	§ 19.2-306.1	Within 90 Days of Receiving Notice	
Technical Violation of Condition 9 or 11 (Firearm or Absconding)		§ 19.2-306.1	Within 90 Days of Receiving Notice	
• First Violation	Presumption Against Incarceration - Up to 14 Days*	§ 19.2-306.1	Within 90 Days of Receiving Notice	
• Second or Subsequent Violation	Up to Remaining Revocable Time	§ 19.2-306.1	Within 90 Days of Receiving Notice	
Special Condition Violation (e.g., Sex Offender, Gang, etc.)	Up to Remaining Revocable Time	§ 19.2-306.1	Within 90 Days of Receiving Notice	
New Law Violation of Condition 1 (New Law Violation)	Up to Remaining Revocable Time	§ 19.2-306.1	Within 90 Days of Receiving Notice	
	Maximum Length of Supervision Period At or After Revocation	Statute		Notes
	Statutory Maximum for the Offense Minus Time Served (Probation? Or Incarceration?)	§ 19.2-306		
Good Behavior	Maximum Length of Good Behavior Period	Statute	Conduct Hearing	Notes
Good Behavior - Length Established	Statutory Maximum for the Offense	§ 19.2-306	Within 90 Days of Receiving Notice	
Good Behavior - Length Not Established and No Supervised Probation	Statutory Maximum for the Offense	§ 19.2-306	Within 6 Months After Expiration of Maximum Period (i.e., the Statutory Maximum for the Offense)	

* Unless additional period of supervision or incarceration is necessary to participate in a court-ordered program

**Multiple technical violations arising from a single course of conduct considered at the same revocation hearing are considered one violation event for the purposes of sentencing



**VIRGINIA CRIMINAL
SENTENCING COMMISSION**

