



ANNUAL REPORT



2022

Virginia Criminal Sentencing Commission

SENTENCING COMMISSION MEMBERS

Appointed by the Chief Justice of the Supreme Court and Confirmed by the General Assembly

Judge Edward L. Hogshire (Ret.)
Chair, Charlottesville

Appointments by the Chief Justice of the Supreme Court

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Judge Steven C. Frucci, Virginia Beach
Judge Jack S. Hurley, Jr., Tazewell
Judge Patricia Kelly, Hanover
Judge W. Revell Lewis, III, Accomack
Judge Stacey W. Moreau, Chatham

Attorney General

The Honorable Jason Miyares
(**Nicole Wittmann**, Attorney General's Representative)

Senate Appointments

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Marcus Elam, Virginia Beach

House of Delegates Appointments

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The Honorable K. Scott Miles, Norfolk

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The Honorable Shannon L. Taylor, Henrico

**VIRGINIA CRIMINAL
SENTENCING COMMISSION**

**MESSAGE FROM
THE CHAIR**

♦

Judge Edward L. Hogshire, Circuit Judge (Ret.)



To: The Honorable S. Bernard Goodwyn, Chief Justice of Virginia
The Honorable Glenn Youngkin, Governor of Virginia
The Honorable Members of the General Assembly of Virginia
The Citizens of Virginia

Section 17.1-803 of the *Code of Virginia* requires the Virginia Criminal Sentencing Commission to report annually upon its work and recommendations. Pursuant to this statutory obligation, we respectfully submit for your review the 2022 Annual Report of the Criminal Sentencing Commission.

This report details the work of the Commission over the past year. The report includes a detailed analysis of judicial compliance with the felony sentencing guidelines during fiscal year 2022. The Commission's recommendations to the 2023 session of the Virginia General Assembly are also contained in this report.

The Commission wishes to sincerely thank circuit court judges, prosecutors, probation officers and other criminal justice practitioners whose diligent work with the Guidelines enables us to produce this report.

A handwritten signature in black ink, appearing to read 'E. Hogshire', written in a cursive style.

Edward L. Hogshire
Circuit Judge (Ret.)
Chair

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INTRODUCTION



OVERVIEW

The Virginia Criminal Sentencing Commission is required by § 17.1-803 of the *Code of Virginia* to report annually to the General Assembly, the Governor, and the Chief Justice of the Supreme Court of Virginia. To fulfill its statutory obligation, the Commission respectfully submits this report.

The report is organized into four chapters. The remainder of the Introduction chapter provides a general profile of the Commission and an overview of its various activities and projects. The Guidelines Concurrence chapter that follows contains a comprehensive analysis of concurrence with the Sentencing Guidelines and Probation Violation Guidelines during fiscal year (FY) 2022. The third chapter provides an overview of the most recent work related to Virginia's Pretrial Data Project. In the report's final chapter, the Commission presents its recommendations for legislation and revisions to the Guidelines system.

COMMISSION PROFILE

An agency of the judicial branch of government, the Virginia Criminal Sentencing Commission is comprised of 17 members, as authorized in § 17.1-802 of the *Code of Virginia*. The Chairman of the Commission is appointed by the Chief Justice of the Supreme Court of Virginia, must not be an active member of the judiciary and must be confirmed by the General Assembly. The Chief Justice also appoints six judges or justices to serve on the Commission. The Governor appoints four members, at least one of whom must be a victim of crime or a representative of a crime victim's organization. The Speaker of the House of Delegates makes two appointments, while the Chairman of the House Courts of Justice Committee, or another member of the Courts Committee appointed by the chairman, must serve as the third House appointment. Similarly, the Senate Committee on Rules makes one appointment and the other appointment must be filled by the Chairman of the Senate Judiciary Committee or a designee from that committee. The final member of the Commission, Virginia's Attorney General, serves by virtue of his office.

COMMISSION MEETINGS

The full membership of the Commission met four times during 2022. These meetings were held on March 28, June 13, September 13, and November 2. Minutes for each of these meetings are available on the Commission's website (www.vcsc.virginia.gov/meetings.html).

Throughout the year, staff compiles information, analyzes data, and drafts recommendations for action by the full Commission. The Commission's Chairman appoints subcommittees, when needed, to allow for more extensive discussion on special topics.

MONITORING AND OVERSIGHT

Section 19.2-298.01 of the *Code of Virginia* requires that Sentencing Guidelines worksheets be completed in all felony cases covered by the Guidelines. The Guidelines cover approximately 95% of felony sentencing events in Virginia. This section of the Code also requires judges to announce, during court proceedings for each case, that the Guidelines forms have been reviewed. After sentencing, the Guidelines worksheets are signed by the judge and become a part of the official record of each case. Similar provisions in § 19.2-306.2 require the use of Probation Violation Guidelines in felony revocation cases. The clerk of the Circuit Court is responsible for sending the completed and signed worksheets to the Commission.

The Sentencing Guidelines worksheets are reviewed by the Commission staff as they are received. The Commission staff performs this check to ensure that the Guidelines forms are being completed accurately. As a result of the review process, errors or omissions are detected and most can be resolved.

Once the Guidelines worksheets are reviewed, they are automated and analyzed. The principal analysis performed with the automated data relates to judicial concurrence with Guidelines recommendations. This analysis is conducted and presented to the Commission on a semiannual basis. The most recent study of judicial concurrence with the Guidelines is presented in the next chapter.

TRAINING, EDUCATION AND OTHER ASSISTANCE

The Commission provides Sentencing Guidelines assistance in a variety of forms: training and education seminars, training materials and publications, a website, and assistance via the “hotline” phone system. Training and education are ongoing activities of the Commission. The Commission offers training and educational opportunities in an effort to promote the accurate completion of Sentencing Guidelines. Training seminars are designed to appeal to the needs of attorneys for the Commonwealth and probation officers, the two groups authorized by statute to complete the official Guidelines for the court. The seminars also provide defense attorneys with a knowledge base to challenge the accuracy of Guidelines submitted to the court. In addition, the Commission conducts Guidelines seminars for new members of the judiciary and other criminal justice system professionals. Having all sides equally versed in the completion of Guidelines worksheets is essential to a system of checks and balances that ensures the accuracy of the Guidelines.

In FY2022, the Commission offered 77 training seminars across the Commonwealth for more than 1,000 criminal justice professionals. While the Commission continued to offer some virtual training opportunities in 2022, including training videos, most seminars were conducted in person in locations around the Commonwealth. These courses were approved by the Virginia State Bar, enabling participating attorneys to earn Continuing Legal Education credits. During this fiscal year, the Commission did not offer the Guidelines-related ethics classes, understanding rap sheets workshops and advanced Guidelines topics seminars. A three-hour course on the development and use of Sentencing Guidelines, led by Judge David Carson from the 23rd Circuit and Commission staff, was conducted for newly-elected circuit court judges.

The Commission will continue to place a priority on providing Guidelines training to any group of criminal justice professionals. The Commission is also willing to provide an education program on the Guidelines and the no-parole sentencing system to any interested group or organization. Interested individuals can contact the Commission and place their names on a waiting list. Once a sufficient number of people have expressed interest, a seminar is presented in a locality convenient to the majority of individuals on the list.

In addition to providing training and education programs, the Commission maintains a website, “hotline” phone, and texting system. The “hotline” (804.225.4398) is staffed from 7:30 a.m. to 5:00 p.m., Monday through Friday, to respond quickly to any questions or concerns regarding the Sentencing Guidelines or their preparation. The hotline continues to be an important resource for Guidelines users around the Commonwealth. Guidelines users also have the option of texting their questions to staff (804.393.9588). Guidelines users indicated that this option was helpful, particularly when they were at the courthouse or otherwise away from the office. On a typical day staff responds to 25 to 40 phone calls, texts and e-mails related to scoring Guidelines. The number of support calls, after hours requests for assistance and texts increased in 2022, as Commission staff provided additional support for users working away from their offices.

By visiting the Commission’s website, a user can learn about upcoming training sessions, access Commission reports, look up Virginia Crime Codes (VCCs), and view on-line versions of the Guidelines forms. Another resource is the Commission’s mobile website and electronic Guidelines manual. This resource is formatted for use on a smartphone and provides a quick resource when a Guidelines manual is not available.

AUTOMATION PROJECT - SWIFT!

In 2012, the Commission launched a project to automate the Sentencing Guidelines completion and submission process. The Commission collaborated with the Supreme Court’s Department of Judicial Information Technology (DJIT) to design a web-based application for automating the Sentencing Guidelines. The application is called SWIFT (Sentencing Worksheets and Integrated File Transfer).

The Commission pilot tested features of the application in Norfolk and Henrico County. On July 1, 2018, SWIFT was implemented statewide and was designated as the required process for completing Sentencing Guidelines. The Commission is most appreciative of the 118 Circuit Court Clerks who allowed the Commission and Sentencing Guidelines users access to publicly available court data. The Commission continues to work with the Clerks of Buchanan County and Fairfax County to encourage the release of their public available data for use in SWIFT. This access to court information gives registered users the ability to streamline preparation of the Guidelines worksheets through SWIFT.

A significant amount of time was spent developing the judicial component of SWIFT and establishing an automated process to distribute Guidelines to judges, clerks and

the Commission. As part of this process, and at the request of Circuit Court Clerks and judges, SWIFT was modified to capture all docket numbers in a sentencing event. A significant number of clerks and judges across the state have decided not to use the electronic transfer of Sentencing Guidelines in their courts. The application will continue to be refined to fit the needs of judges, clerks, attorneys, and probation officers. The next phase to be implemented will be the electronic transfer of secured Sentencing Guidelines between the preparer (probation officer or attorney for the Commonwealth) and defense attorneys, prosecuting attorneys, and cohorts.

Preparers and users of Sentencing Guidelines are encouraged to let the Commission know about their concerns, issues or suggestions. Staff can be reached by phone (804.225.4398), e-mail (swift@vacourts.gov) or text (804.393.9588) to discuss SWIFT or any Sentencing Guidelines topic.

PROJECTING THE IMPACT OF PROPOSED LEGISLATION

Section 30-19.1:4 of the Code of Virginia requires the Commission to prepare fiscal impact statements for any proposed legislation that may result in a net increase in periods of imprisonment in state correctional facilities. These impact statements must include details as to the impact on adult, as well as juvenile, confined offender populations and any necessary adjustments to Sentencing Guideline recommendations. Any impact statement required under § 30-19.1:4 also must include an analysis of the impact on local and regional jails, as well as state and local community corrections programs.

For the 2022 General Assembly, the Commission prepared a combined total of 192 impact statements on proposed legislation. These proposals included: 1) legislation to increase the felony penalty class of a specific crime; 2) legislation to increase the penalty class of a specific crime from a misdemeanor to a felony; 3) legislation to add a new mandatory minimum penalty; 4) legislation to expand or clarify an existing crime; and 5) legislation that would create a new criminal offense. The Commission utilizes its computer simulation forecasting program to estimate the projected impact of these proposals on the prison system. The estimated impact on the juvenile offender populations is provided by Virginia's Department of Juvenile Justice. In most instances, the projected impact and accompanying analysis of a bill is presented to the General Assembly within 24 to 48 hours after the Commission is notified of the proposed legislation. When requested, the Commission provides pertinent oral testimony to accompany the impact analysis. For the 2022 General Assembly, Commission staff also completed more than 30 ad hoc analyses requested by legislators, the Secretary of Public Safety and Homeland Security, the Department of Planning & Budget, or other state agencies.

PRISON AND JAIL POPULATION FORECASTING

Forecasts of offenders confined in state and local correctional facilities are essential for criminal justice budgeting and planning in Virginia. The forecasts are used to estimate operating expenses and future capital needs and to assess the impact of current and proposed criminal justice policies. Since 1987, the Secretary of Public Safety and Homeland Security has utilized an approach known as “consensus forecasting” to develop the offender population forecasts. This process brings together policy makers, administrators, and technical experts from all branches of state government. The process is structured through committees. The Technical Advisory Committee is comprised of experts in statistical and quantitative methods from several agencies. While individual members of this Committee generate the various prisoner forecasts, the Committee as a whole carefully scrutinizes each forecast according to the highest statistical standards. At the Secretary’s request, the Commission’s Director or Deputy Director has chaired the Technical Advisory Committee since 2006. Due to the COVID-19 pandemic, the Secretary of Public Safety and Homeland Security opted to abbreviate the forecasting process in 2020, 2021 and 2022, while still maintaining a consensus approach.

The Secretary presented updated offender forecasts to the General Assembly in a report submitted in October 2022.

VIRGINIA'S PRETRIAL DATA PROJECT

The Pretrial Data Project was established in 2018 under the direction of the Virginia State Crime Commission. The purpose was to address the significant lack of data available to answer questions regarding various pre-trial release mechanisms, appearance at court proceedings, and public safety. This was an unprecedented, collaborative effort between numerous state and local agencies representing all three branches of government. The 2021 General Assembly passed legislation directing the Sentencing Commission to continue this work on an annual basis.

For the newest pretrial study, the Commission selected individuals with pretrial contact events during CY2018. This period of time was selected in order to establish a pre-COVID baseline. For individuals with more than one contact event during the period, only the first event was selected. Individuals are tracked for a minimum of 15 months (same as the previous study). The follow-up period for the study will run through March 2020. Data for the Project was obtained from multiple agencies. Compiling the data requires numerous iterations of data cleaning, merging, and matching to ensure accuracy when linking information from each data system to each defendant in the cohort. This process is staff intensive and requires meticulous attention to detail. The current study focuses on the 96,135 adult defendants whose contact event in CY2018 included a criminal offense punishable by incarceration where a bail determination was made by a judicial officer.

Pursuant to § 19.2-134.1, several deliverables are required. The Commission must submit a report on the Pretrial Data Project and its findings to the General Assembly on December 1 of each year. Also, the final data set (with personal/case identifiers removed) must be made available on the Commission's website by December 1. Finally, an interactive data dashboard tool must be integrated into the Commission's website and it must be capable of presenting aggregated data based on characteristics or indicators selected by the user.

An overview of the findings from the CY2018 cohort can be found in the third chapter of this report. The complete Pretrial Data Project report will be submitted on December 1 and will be available on the Commission's website.

ASSISTANCE TO OTHER AGENCIES

When requested, the Commission provides technical assistance, in the form of data and analysis, to other state agencies. During 2022, the Commission assisted agencies such as the Virginia Department of Criminal Justice Services, Virginia Department of Juvenile Justice, and Virginia Department of Planning and Budget.

GUIDELINES CONCURRENCE



INTRODUCTION

Beginning January 1, 1995, the practice of discretionary parole release was abolished in Virginia and the existing system of sentence credits awarded to inmates for good behavior was revamped. During a 2021 Special Session of the General Assembly, § 53.1-202.3 was modified to increase the rate at which offenders convicted of certain non-violent felonies could earn sentence credits. Under the provisions of § 53.1-202.3, effective July 1, 2022, persons serving time for certain nonviolent felonies will be eligible to earn as much as 15 days for every 30 days served, based on their participation in programs and record of institutional infractions during confinement. If a nonviolent felon earns at the highest rate throughout his sentence, he will serve no less than 67% of the court-ordered sentence. Others will continue to serve a minimum of 85% of the active sentence ordered by the court (felons in this category may earn a maximum of 4 ½ days for every 30 days). The Virginia Criminal Sentencing Commission was established to develop and administer Guidelines to provide Virginia's judiciary with sentencing recommendations for felony cases under the new truth-in-sentencing laws. Under the current no-parole system, Guidelines recommendations for nonviolent offenders with no prior record of violence are tied to the amount of time they served during a period prior to the abolition of parole. In contrast, offenders convicted of violent crimes, and those with prior convictions for violent felonies, are subject to Guidelines recommendations up to six times longer than the historical time served in prison by similar offenders. In over a half-million felony cases sentenced under truth-in-sentencing laws, judges have agreed with Guidelines recommendations in more than three out of four cases.

This report focuses on defendants sentenced during the most recent year of available data, fiscal year (FY) 2022 (July 1, 2021, through June 30, 2022). Concurrence is examined in a variety of ways in this report, and variations in data over the years are highlighted throughout.

Figure 1

Number and Percentage of Cases Received by Circuit - FY2022*

Circuit	Number	Percent
1	882	4.4%
2	1,241	6.1%
3	105	0.5%
4	496	2.5%
5	394	2.0%
6	452	2.2%
7	313	1.6%
8	204	1.0%
9	554	2.7%
10	555	2.8%
11	255	1.3%
12	768	3.8%
13	472	2.3%
14	931	4.6%
15	1,715	8.5%
16	610	3.0%
17	112	0.6%
18	47	0.2%
19	332	1.6%
20	224	1.1%
21	492	2.4%
22	615	3.0%
23	654	3.2%
24	960	4.8%
25	1,400	6.9%
26	1,570	7.8%
27	1,307	6.5%
28	741	3.7%
29	819	4.1%
30	616	3.1%
31	281	1.4%
Total	20,180	100.0%

*63 cases were missing a circuit number

In FY2022, eight judicial circuits contributed more Guidelines cases than any of the other judicial circuits in the Commonwealth. Those circuits, which include the Fredericksburg area (Circuit 15), Harrisonburg area (Circuit 26), the Botetourt County area (Circuit 25), Radford area (Circuit 27), Virginia Beach (Circuit 2), Lynchburg area (Circuit 24), Henrico (Circuit 14) and Richmond (Circuit 1) comprised nearly half (49.8%) of all worksheets received in FY2022 (Figure 1).

During FY2022, the Commission received 20,243 Sentencing Guideline worksheets. Of these, 63 worksheets contained errors or omissions that affect the analysis of the case. For the purposes of conducting a clear evaluation of Sentencing Guidelines in effect for FY2022, the remaining sections of this chapter pertaining to judicial concurrence with guidelines recommendations focus only on those 20,180 cases for which Guidelines were completed and calculated correctly.

CONCURRENCE DEFINED

In the Commonwealth, judicial concurrence with the truth-in-sentencing Guidelines is voluntary. A judge may depart from the Guidelines recommendation and sentence an offender either to a punishment more severe or less stringent than called for by the Guidelines. In cases in which the judge has elected to sentence outside of the Guidelines recommendation, he or she must, as stipulated in § 19.2-298.01 of the *Code of Virginia*, provide a written reason for departure on the Guidelines worksheet.

The Commission measures judicial agreement with the Sentencing Guidelines using two classes of concurrence: strict and general. Together, they comprise the overall concurrence rate. For a case to be in strict concurrence, the offender must be sentenced to the same type of sanction that the Guidelines recommend (probation, incarceration for up to six months, incarceration for more than six months) and to a term of incarceration that falls exactly within the sentence range recommended by the Guidelines. When risk assessment for nonviolent offenders is applicable, a judge may sentence a recommended offender to an alternative punishment program or to a term of incarceration within the traditional Guidelines range and be considered in strict concurrence. A judicial sentence would be considered in general agreement with the Guidelines recommendation if the sentence 1) meets modest criteria for rounding, or 2) involves time already served (in certain instances).

Concurrence by rounding provides for a modest rounding allowance in instances when the active sentence handed down by a judge or jury is very close to the range recommended by the Guidelines. For example, a judge would be considered in concurrence with the Guidelines if he or she sentenced an offender to a two-year sentence based on a Guidelines recommendation that goes up to 1 year 11 months. In general, the Commission allows for rounding of a sentence that is within 5% of the Guidelines recommendation.

Time served concurrence is intended to accommodate judicial discretion and the complexity of the criminal justice system at the local level. A judge may sentence an offender to the amount of pre-sentence incarceration time served in jail when the Guidelines call for a short jail term. Even though the judge does not sentence an offender to serve incarceration time after sentencing, the Commission typically considers this type of case to be in concurrence. Conversely, a judge who sentences an offender to time served when the Guidelines call for probation also is regarded as being in concurrence with the Guidelines because the offender was not ordered to serve any period of incarceration after sentencing.

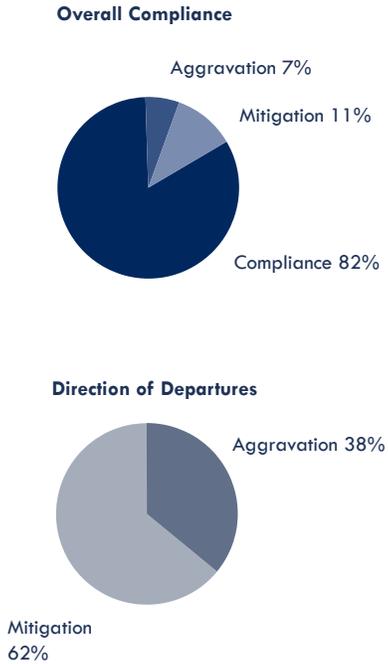
During 2017, the Department of Corrections modified elements of the Detention Center Incarceration Program and the Diversion Center Incarceration Program and referred to the new program as the Community Corrections Alternative Program (CCAP). On July 1, 2019, the changes were codified under § 19.2-316.4. For cases sentenced to these programs on or after July 1, 2019, effective time to serve is calculated as 12 months when calculating concurrence with the Guidelines recommendation.

Effective July 1, 2021, if a judge determines at sentencing that the defendant provided substantial assistance, accepted responsibility or expressed remorse, the low end of the Guidelines recommended range will be adjusted. If the calculated low end of the Guidelines range is three years or less, the low end of the Guidelines range will be reduced to zero. If the calculated low end of the guidelines range is more than three years, the low end of the Guidelines range will be reduced by 50%. The midpoint and the high end of the Sentencing Guidelines range will remain unchanged. The modified recommendation allows the judge the option to consider the defendant's substantial assistance, acceptance of responsibility or expression of remorse and still be in concurrence with the guidelines. The Modification of Recommendation factor was checked by the sentencing judge in 11.4% of all FY2022 cases. Of those cases, just over half were brought from mitigation into concurrence. In the remaining cases, judges were in concurrence with the Guidelines recommendation without sentencing within the modified range.

OVERALL CONCURRENCE WITH THE SENTENCING GUIDELINES

Figure 2

Overall Guidelines Concurrence and Direction of Departures - FY2022



The overall concurrence rate summarizes the extent to which Virginia’s judges concur with the Sentencing Guidelines that have been developed by the Commission, both in type of disposition and in length of incarceration. For over a decade, the general concurrence rate of cases throughout the Commonwealth has hovered around 80%, and this year has followed said pattern. As can be seen in Figure 2, judges continued to agree with the Sentencing Guidelines recommendations in approximately 82% of the cases throughout FY2022.

In addition to concurrence, the Commission also studies departures from the Guidelines. The rate at which judges sentence offenders to sanctions more severe than the Guidelines recommendation, known as the “aggravation” rate, was 6.8% for FY2022, down from 7.1% from FY2021. The “mitigation” rate, or the rate at which judges sentence offenders to sanctions considered less severe than the Guidelines recommendation, remains at 11.0% for the fiscal year. A total of 3,379 cases represented departures from Sentencing Guidelines in FY2022, 62% (2,081 cases) of which resulted in a mitigating sentence, with its complimentary 38% (1,298 cases) of cases resulting in aggravating sentences.

DISPOSITIONAL CONCURRENCE

Since the inception of truth-in-sentencing in 1995, the correspondence between dispositions recommended by the Guidelines and the actual dispositions imposed in Virginia’s circuit courts has been quite high. Figure 3 illustrates judicial concurrence in FY2022 with the type of disposition recommended by the Guidelines. For instance, of all felony offenders recommended for more than six months of incarceration during FY2022, judges sentenced 75% to terms in excess of six months (Figure 3). Some offenders recommended for incarceration of more than six months received a shorter term of incarceration (one day to six months) or probation with no active incarceration, but the percentage of offenders receiving such dispositions was small. These sentencing practices correlate closely to sentencing practices in previous fiscal years.

Figure 3

Recommended and Actual Dispositions - FY2022

Recommended Disposition	Actual Disposition		
	Probation	Incarceration 1 day - 6 mos.	Incarceration > 6 mos.
Probation	81.1%	16.3%	2.6%
Incarceration 1 day - 6 months	20.9%	72.9%	6.2%
Incarceration > 6 months	11.4%	13.2%	75.3%

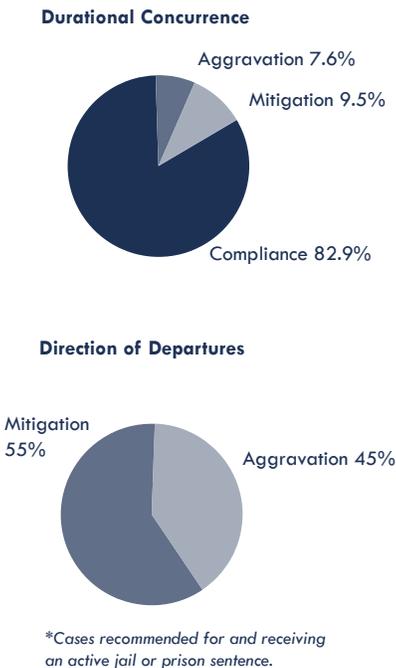
Judges have also typically agreed with Guidelines recommendations for other types of dispositions. In FY2022, 73% of offenders received a sentence resulting in confinement of six months or less when such a sanction was recommended. In some cases, judges felt probation to be a more appropriate sanction (21%) than the recommended jail term and, in other cases, offenders recommended for short-term incarceration received a sentence of more than six months (6%). Finally, 81% of offenders whose Guidelines recommendation called for no incarceration were given probation and no post-dispositional confinement. Some offenders with a “no incarceration” recommendation received a short jail term of less than six months (16%), but rarely did these offenders receive an incarceration term of more than six months (3%). These results were not impacted by the modified recommendation based on the judge’s determination that the defendant provided substantial assistance, accepted responsibility or expressed remorse.

Since July 1, 1997, sentences to the state’s former Boot Camp and Detention and Diversion Centers have been defined as incarceration sanctions for the purposes of the Sentencing Guidelines. Although the state’s Boot Camp program was discontinued in 2002, the Detention and Diversion Center programs continued as sentencing options for judges until 2019. The Commission recognized that these programs are more restrictive than probation supervision in the community. In 2005, the Virginia Supreme Court concluded that participation in the Detention Center program is a form of incarceration (*Charles v. Commonwealth*). In turn, because the Diversion Center program also involves a period of confinement, the Commission defined both the Detention Center and the Diversion Center programs as incarceration terms under the Sentencing Guidelines. Between 1997 and 2003, the Detention and Diversion Center programs were counted as six months of confinement. However, effective July 1, 2007, the Department of Corrections extended these programs by an additional four weeks. Therefore, beginning in FY2008, a sentence to either the Detention or Diversion Center program counted as seven months of confinement for Sentencing Guidelines purposes. In May 2017, the Department of Corrections merged the two programs and established the Community Corrections Alternative Program (CCAP).

Under CCAP the court could sentence the defendant to a minimum of seven months for a Short Term commitment to CCAP or to a maximum of 12 months for a Long Term commitment to CCAP. On July 1, 2019, § 19.2-316 was modified to reflect the requirements of the CCAP. Beginning January 1, 2021, the Department of Corrections restructured the program based on the needs of the defendant. Based on the adjustment, participation in the CCAP will generally last from 22 to 48 weeks based on referrals from the courts and the progress, participation and adjustment of the defendant. Currently, for the calculation of concurrence with the Sentencing Guidelines recommendation, CCAP sentence is counted as an incarceration period of 12 months.

Figure 4

Durational Concurrence and Direction of Departures - FY2022*



Finally, youthful offenders sentenced under the provisions of § 19.2-311, and given an indeterminate commitment to the Department of Corrections, are considered as having a four-year incarceration term for the purposes of Sentencing Guidelines. Under § 19.2-311, a first-time offender who was less than 21 years of age at the time of the offense may be given an indeterminate commitment to the Department of Corrections with a maximum length-of-stay of four years. Offenders convicted of capital murder, first-degree or second-degree murder, forcible rape (§ 18.2-61), forcible sodomy (§ 18.2-67.1), object sexual penetration (§ 18.2-67.2) or aggravated sexual battery of a victim less than age 13 (§ 18.2-67.3(A,1)) are not eligible for the program. For Sentencing Guidelines purposes, offenders sentenced solely as youthful offenders under § 19.2-311 are considered as having a four-year sentence.

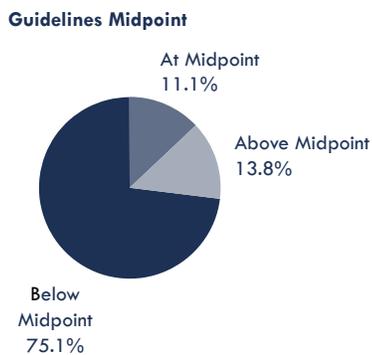
DURATIONAL CONCURRENCE

In addition to examining the degree to which judges concur with the type of disposition recommended by the Guidelines, the Commission also studies durational concurrence, which is defined as the rate at which judges sentence offenders to terms of incarceration that fall within the recommended Guidelines range. Durational concurrence analysis only considers cases for which the Guidelines recommended an active term of incarceration and the offender received an incarceration sanction consisting of at least one day in jail.

Durational concurrence among FY2022 cases was at 83%, indicating that judges, more often than not, agree with the length of incarceration recommended by the Guidelines in jail and prison cases (Figure 4). Of the 17% of cases in which the recommended duration of sentence was departed from, 55% of said cases were mitigating in nature and the opposing 45% were aggravating.

Figure 5

Distribution of Sentences within Guidelines Range - FY2022**



** Analysis includes only cases recommended for more than six months of incarceration.

In cases in which the recommendation exceeds six months in time, Sentencing Guidelines provide a midpoint along with a high-end and a low-end recommendation. Said sentencing ranges recommended by the Guidelines are relatively broad to allow judges to exercise discretion in sentencing offenders to different incarceration terms, while still remaining in concurrence with the Guidelines and, in turn, keeping aligned with sentencing practices of their colleagues throughout the Commonwealth. When the Guidelines recommended more than six months of incarceration, and judges sentenced within the recommended range, only a small share (11% of offenders in FY2022) were given prison terms exactly equal to the midpoint recommendation (Figure 5). Most of the cases (75%) in durational concurrence with recommendations over six months resulted in sentences below the recommended midpoint. For the remaining 14% of these incarceration cases sentenced within the Guidelines range, the sentence exceeded the midpoint recommendation. These sentencing practices relating to durational concurrence almost mirror sentencing practices of FY2021. This pattern of sentencing within the range has been consistent since the truth-in-sentencing Guidelines took effect in 1995, indicating that judges, overall, have favored the lower portion of the recommended range.

In order to gauge the extent of durational departures from the Sentencing Guidelines, it is effective to consider the median length of durational departures. In sum, and once again mirroring FY2021, the median departure from the Guidelines is no more than a year in time in either a mitigating or aggravating fashion. This indicates to the Commission that the durational departures are, in most cases, not extreme. Offenders receiving incarceration, but less than the recommended term, were given effective sentences (sentences less any suspended time) short of the Guidelines by a median value of seven months. For offenders receiving longer than recommended incarceration sentences, the effective sentence also exceeded the Guidelines range by a median value of twelve months (Figure 6).

Figure 6

Median Length of Duration Departures - FY2022*



*Cases recommended for and receiving an active jail or prison sentence.

REASONS FOR DEPARTURE FROM THE GUIDELINES

Compliance with the truth-in-sentencing Guidelines is voluntary, reflecting an effort on behalf of the Commonwealth to embrace judicial discretion in sentencing practices. Although not obligated to sentence within Guidelines recommendations, judges are required by § 19.2-298.01 of the Code of Virginia to submit to the Commission their written reason(s) for sentencing outside the Guidelines range. Each year, as the Commission deliberates upon recommendations for revisions to the Guidelines, the opinions of the judiciary, as reflected in their departure reasons, are an important part of the analysis. While the Commission has provided a standardized list of reasons for departure via an evaluation of past sentencing departure reasons of judges across the Commonwealth, judges are not limited to any standardized departure reasons. Moreover, judges are free to report more than one departure reason in a given sentencing event.

In FY2022 the most frequently cited reasons for sentencing below the Guidelines recommendation were: the acceptance of a plea agreement, judicial discretion, sentenced to an alternative punishment, good rehabilitation potential, recommended by the Commonwealth, mitigating facts of the case, mitigated court circumstances or proceedings, and health issues of the offender. Although other reasons for mitigation were reported to the Commission in FY2022, only the most frequently cited reasons are noted here. For 376 of the 2,802 mitigating cases, a departure reason could not be discerned.

The most frequently cited reasons for sentencing above the Guidelines recommendation were: the acceptance of a plea agreement, aggravating offense circumstances, the number of counts in the sentencing event, the offender’s prior record, poor rehabilitation potential, the degree of victim injury, recommendation of the Commonwealth, and the type of victim. For 38 of the 2,100 cases sentenced above the Guidelines recommendation, the Commission could not ascertain a departure reason.

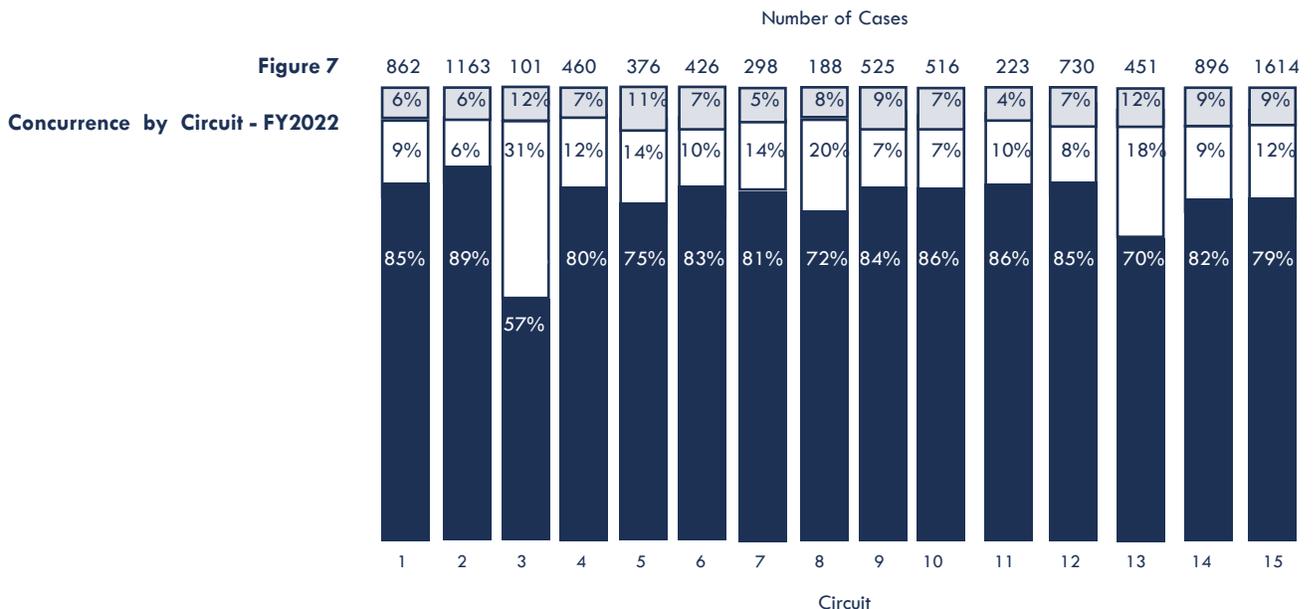
Appendices 1 and 2 present detailed tables of the reasons for departure from Guidelines recommendations for each of the 17 Guidelines offense groups.

CONCURRENCE BY CIRCUIT

Since the onset of truth-in-sentencing, concurrence rates and departure patterns have varied across Virginia’s 31 judicial circuits. FY2022 continues to show differences among judicial circuits in the degree to which judges concur with Guidelines recommendations (Figure 7). The map on the following pages identifies the location of each judicial circuit in the Commonwealth.

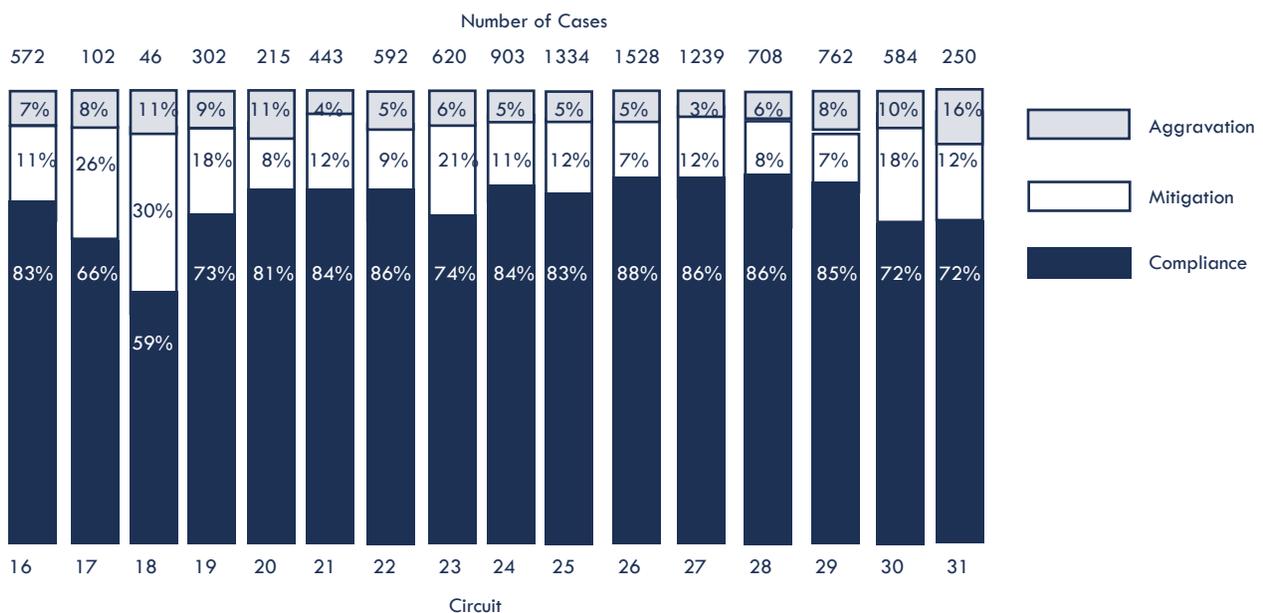
In FY2022, 65% of the state’s 31 circuits exhibited concurrence rates above 80%, while the remaining 35% reported concurrence rates between 57.4% and 79.1%. There are likely many reasons for the variations in concurrence across circuits. Certain jurisdictions may see atypical cases not reflected in statewide averages. In addition, the availability of alternative or community-based programs currently differs from locality to locality. The degree to which judges concur with Guidelines recommendations does not seem to be related primarily to geography. The circuits with the lowest concurrence rates are scattered across the state, and both high and low concurrence circuits can be found in close geographic proximity.

In FY2022, the highest rate of judicial agreement with the Sentencing Guidelines (89%) was in Circuit 2 (Virginia Beach). This was followed by a concurrence rate of 88% in Circuit 26 (Harrisonburg area) and 86% in Circuit 10 (South Boston Area). Circuit 3 (Portsmouth), Circuit 18 (Alexandria), and Circuit 17 (Arlington Area) reported the lowest concurrence rates among the judicial circuits in FY2022.



In FY2022, the highest mitigation rates were found in Circuit 3 (Portsmouth), Circuit 18 (Alexandria), Circuit 17 (Arlington Area), Circuit 23 (Roanoke Area), Circuit 8 (Hampton), Circuit 19 (Fairfax), and Circuit 30 (Lee Area). Circuit 3 (Portsmouth) had a mitigation rate of 31% which is an increase from previous years. Circuit 18 (Alexandria) recorded a mitigation rate of 30% and Circuit 17 (Arlington Area) recorded a mitigation rate of 25%. Circuits from different parts of the state, Circuit 23 (Roanoke Area) had a mitigation rate of 21%, and Circuit 30 (Lee County) had a mitigation rate around 18%. With regard to high mitigation rates, it would be too simplistic to assume that this reflects areas with lenient sentencing habits. Intermediate punishment programs are not uniformly available throughout the Commonwealth, and jurisdictions with better access to these sentencing options may be using them as intended by the General Assembly. These sentences generally would appear as mitigations from the Guidelines. Inspecting aggravation rates reveals that Circuit 31 (Prince William) had the highest aggravation rate (around 16%). Circuit 13 (Richmond City), Circuit 3 (Portsmouth), Circuit 20 (Loudoun), Circuit 18 (Alexandria), Circuit 5 (Suffolk), Circuit 30 (Lee Area), and Circuit 14 (Henrico) had aggravation rates between 9.3% and 12.2%.

Appendix 3 presents concurrence figures for judicial circuits by each of the 17 Sentencing Guidelines offense groups.



Virginia Localities and Judicial Circuits

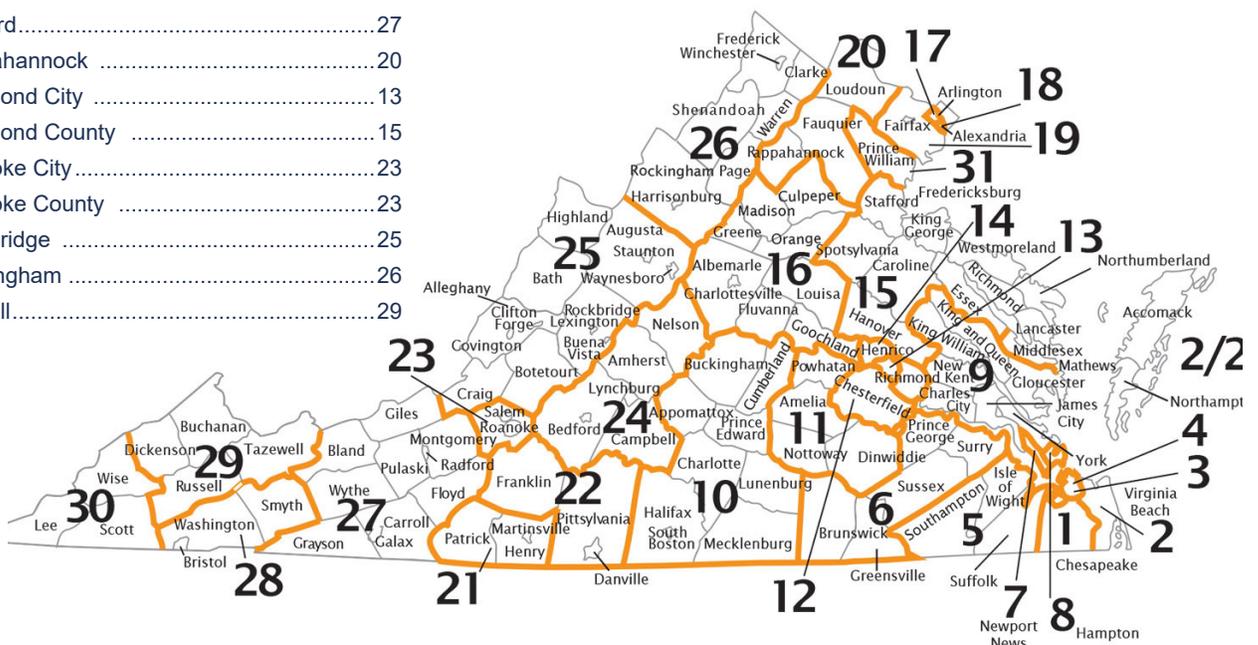
Accomack.....	2	Fairfax City	19
Albemarle	16	Fairfax County.....	19
Alexandria.....	18	Falls Church	17
Alleghany.....	25	Fauquier	20
Amelia	11	Floyd.....	27
Amherst	24	Fluvanna	16
Appomattox	10	Franklin City	5
Arlington	17	Franklin County	22
Augusta	25	Frederick.....	26
		Fredericksburg	15
Bath	25		
Bedford County.....	24	Galax	27
Bland	27	Giles	27
Botetourt.....	25	Gloucester	9
Bristol	28	Goochland	16
Brunswick	6	Grayson.....	27
Buchanan	29	Greene.....	16
Buckingham	10	Greensville.....	6
Buena Vista	25		
		Halifax.....	10
Campbell	24	Hampton	8
Caroline	15	Hanover	15
Carroll	27	Harrisonburg.....	26
Charles City	9	Henrico	14
Charlotte	10	Henry	21
Charlottesville	16	Highland	25
Chesapeake	1	Hopewell	6
Chesterfield	12		
Clarke	26	Isle of Wight.....	5
Colonial Heights	12		
Covington	25	James City	9
Craig.....	25		
Culpeper	16	King and Queen.....	9
Cumberland	10	King George	15
		King William	9
Danville.....	22		
Dickenson	29	Lancaster.....	15
Dinwiddie	11	Lee.....	30
		Lexington	25
Emporia	6	Loudoun	20
Essex	15	Louisa.....	16
		Lunenburg	10
		Lynchburg	24

Madison	16
Manassas	31
Martinsville.....	21
Mathews	9
Mecklenburg	10
Middlesex	9
Montgomery	27
Nelson	24
New Kent	9
Newport News	7
Norfolk	4
Northampton	2
Northumberland	15
Norton.....	30
Nottoway.....	11
Orange	16
Page	26
Patrick	21
Petersburg	11
Pittsylvania	22
Poquoson	9
Portsmouth	3
Powhatan	11
Prince Edward	10
Prince George	6
Prince William	31
Pulaski	27

Salem	23
Scott	30
Shenandoah	26
Smyth	28
Southampton	5
Spotsylvania	15
Stafford	15
Staunton	25
Suffolk	5
Surry	6
Sussex	6
Tazewell	29
Virginia Beach	2
Warren	26
Washington.....	28
Waynesboro	25
Westmoreland	15
Williamsburg	9
Winchester.....	26
Wise.....	30
Wythe	27
York	9

Radford.....	27
Rappahannock	20
Richmond City	13
Richmond County	15
Roanoke City.....	23
Roanoke County	23
Rockbridge	25
Rockingham	26
Russell.....	29

**Virginia
Judicial Circuits**



CONCURRENCE BY SENTENCING GUIDELINES OFFENSE GROUP

In FY2022, as in previous years, judicial agreement with the Guidelines varied when comparing the 17 offense groups (Figure 8). For FY2022, concurrence rates ranged from a high of 86% in the Drug Schedule I/II offense group to a low of 62% in Robbery/Carjacking cases. In general, property and drug offenses exhibit higher rates of concurrence than the violent offense categories. Several violent offense groups (i.e., Sexual Assault, Murder/Homicide, Rape, Robbery/Carjacking, Burglary Dwelling, and Obscenity) had concurrence rates at or below 78%, whereas many of the property and drug offense categories had concurrence rates above 79%.

Highest compliance rates are seen in offense groups such as Drug Schedule I/II (86%), Kidnapping (85%), Fraud (85%), and Larceny (82%). Conversely, the highest rates of mitigation are seen across Robbery/Carjacking cases (38%), Rape cases

Figure 8
Guidelines Concurrence by Offense - FY2022

	Compliance	Mitigation	Aggravation	Number of Cases
Drug I/II	85.6%	9.7%	4.7%	9,694
Kidnapping	85.2%	7.0%	7.8%	128
Fraud	85.0%	11.4%	3.6%	778
Larceny	82.4%	11.7%	5.9%	1,912
Miscellaneous Other	81.2%	13.4%	5.4%	335
Drug Other	81.1%	13.4%	5.6%	359
Traffic	79.9%	11.8%	8.3%	1,319
Burglary Other	79.0%	15.6%	5.3%	262
Weapon	78.6%	9.3%	12.1%	1,023
Obscenity	77.4%	10.4%	12.2%	230
Miscellaneous Person/Property	77.0%	10.7%	12.3%	513
Assault	76.3%	14.0%	9.7%	1,467
Burg Dwelling	72.6%	15.7%	11.7%	351
Murder	69.6%	7.4%	23.0%	270
Other Sex Assault	68.8%	12.5%	18.8%	272
Rape	68.1%	18.1%	13.9%	144
Robbery/Carjacking	62.1%	37.9%	0.0%	29
Total	82.3%	10.9%	6.8%	19,086

(18%), Burglary/Dwelling (16%), and Burglary (non-dwelling) cases (16%). Murder cases (23%), Sexual Assault cases (19%), and Rape cases (14%), were the offense types with the highest rates of aggravation sentences.

During the past fiscal year, judicial concurrence with Guidelines recommendations remained relatively stable, fluctuating less than three percentage points for most offense groups. The most drastic changes in concurrence rates exhibited from FY2021 to FY2022 was a 6 percentage point decrease in concurrence in Robbery sentencing events, and a 6 percentage point decrease in concurrence in Drug/Other cases. Concurrence with the Robbery Guidelines changed, in part, because Guidelines for all Robbery convictions, except for Carjacking, were suspended in FY2022. The 2021 General Assembly modified the penalty structure for robberies. Carjacking continues to carry a life maximum sentence and continues to be a Guidelines offense. As a result, in FY2022 it appears that concurrence dropped to 62% for Robbery with a 38% mitigation rate. However, the rate reflects sentences when Carjacking was the most serious offense. Furthermore, it appears judges started adjusting their sentences for Carjacking to better fit into the newly established statutory penalties for all other types of robberies. There was an 8% increase in concurrence for Kidnapping cases in FY2022 compared to FY2021. When offense groups account for a relatively small percentage of overall sentencing events in a fiscal year, they are more susceptible to fluctuations in year-to-year comparisons. For example, all three of the aforementioned offense types with elevated fluctuations in comparison to FY2021 (Robbery, Drug/Other and Kidnapping) consist of only 0.1%, 1.8%, and 0.6% of all sentencing events in the Commonwealth in FY2022, respectively.

Figure 9

Application of Midpoint Enhancements - FY2022



CONCURRENCE UNDER MIDPOINT ENHANCEMENTS

Section 17.1-805, formerly § 17-237, of the Code of Virginia describes the framework for what are known as “midpoint enhancements,” significant increases in Guidelines scores for violent offenders that elevate the overall Guidelines sentence recommendation. Midpoint enhancements are an integral part of the design of the truth-in-sentencing Guidelines. By design, midpoint enhancements produce sentence recommendations for violent offenders that are significantly greater than the time that was served by offenders convicted of such crimes prior to the enactment of Virginia’s truth-in-sentencing laws. Offenders who are convicted of a violent crime or who have been previously convicted of a violent crime are recommended for incarceration terms up to six times longer than the terms served by offenders fitting similar profiles under the parole system. Midpoint enhancements are triggered for homicide, rape, or robbery offenses, most felony assaults and sexual assaults, and certain burglaries, when any one of these offenses is the current most serious offense, also called the “primary offense.” Offenders with a prior record containing at least one conviction for a violent crime are subject to degrees of midpoint enhancements based on the nature and seriousness of the offender’s criminal history. The most serious prior record receives the most extreme enhancement. A prior record labeled “Category II” contains at least one prior violent felony conviction carrying a statutory maximum penalty of less than 40 years, whereas a “Category I” prior record includes at least one violent felony conviction with a statutory maximum penalty of 40 years or more. Category I and II offenses are defined in § 17.1-805.

Because midpoint enhancements are designed to target only violent offenders for longer sentences, enhancements do not affect the sentence recommendation for the majority of Guidelines cases. Among the FY2022 cases, 80% of the cases did not involve midpoint enhancements of any kind (Figure 9). Only 20% of the cases qualified for a midpoint enhancement because of a current or prior conviction for a felony defined as violent under § 17.1-805. The proportion of cases receiving midpoint enhancements has fluctuated very little since the institution of truth-in-sentencing Guidelines in 1995.

Of the FY2022 cases in which midpoint enhancements were applied, the most common midpoint enhancement was for a Category II prior record. Approximately 66% of the midpoint enhancements were of this type and were applicable to offenders with a nonviolent instant offense but a violent prior record defined as Category II (Figure 10). In FY2022, another 11% of midpoint enhancements were attributable to offenders with a more serious Category I prior record or offenders with a violent current offense but no prior record of violence represented. The most substantial midpoint enhancements target offenders with a combination of instant and prior violent offenses. Roughly 6% qualified for enhancements for both a current violent offense and a Category II prior record. A very small percentage of cases (2%) were targeted for the most extreme midpoint enhancements, triggered by a combination of a current violent offense and a Category I prior record.

Since the inception of the truth-in-sentencing Guidelines, judges have departed from the Guidelines recommendation more often in midpoint enhancement cases than in cases without enhancements. In FY2022, concurrence was 74% when enhancements applied, which is significantly lower than concurrence in all other cases (84%). Thus, concurrence in midpoint enhancement cases is suppressing the overall concurrence rate. When departing from enhanced Guidelines recommendations, judges are choosing to mitigate in nearly three out of every four departures.

Figure 10

Type of Midpoint Enhancements Received - FY2022

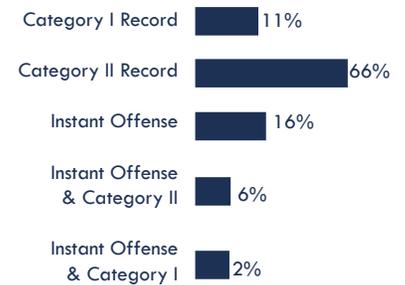
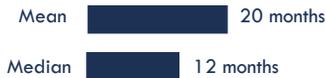


Figure 11

**Length of Mitigation Departures
in Midpoint Enhancement Cases - FY2022**



* Analysis includes only cases that were recommended for more than six months of incarceration and resulted in a sentence below the guidelines range.

Among FY2022 midpoint enhancement cases resulting in incarceration, judges departed from the low end of the Guidelines range by an average of 20 months (Figure 11). The median departure (the middle value, where half of the values are lower, and half are higher) was 12 months.

Concurrence, while generally lower in midpoint enhancement cases than in other cases, varies across the different types and combinations of midpoint enhancements (Figure 12). In FY2022, sentencing events involving a current violent offense, but no prior record of violence generated a concurrence rate of 74%. Concurrence in cases receiving enhancements for a Category I prior record generated a concurrence rate of 66% while concurrence for enhancement cases with a Category II prior record was 76%. Cases involving a combination of a current violent offense and a Category II prior record yielded a concurrence rate of 76%, while those with the most significant midpoint enhancements, for both a violent instant offense and a Category I prior record, had a lower concurrence rate (67%).

Figure 12

Concurrence by Type of Midpoint Enhancement - FY2022

Midpoint Enhancement	Concurrence	Mitigation	Aggravation	Number of Cases
None	84.3%	8.7%	7.0%	15,336
Category I	66.3%	29.8%	3.9%	413
Category II	75.5%	20.0%	4.5%	2,485
Instant Offense	73.7%	13.3%	13.1%	581
Instant Offense & Category I	67.3%	29.1%	3.6%	55
Instant Offense & Category II	75.5%	18.5%	6.0%	216
Total	82.3%	10.9%	6.8%	19,086

METHODS OF ADJUDICATIONS

There are three methods by which Virginia’s criminal cases are adjudicated: guilty pleas, bench trials, and jury trials. Felony cases in circuit courts are overwhelmingly resolved through guilty pleas from defendants, or plea agreements between defendants and the Commonwealth. During the last fiscal year, 92% of Guideline cases were sentenced following guilty pleas (Figure 13). Adjudication by a judge in a bench trial accounted for 7% of all felony Guidelines cases sentenced.

As of July 1, 2021, as the result of changes to §§ 19.2-295 and 19.2-295.1 of the Code of Virginia, juries only decide guilt or innocence. Defendants may still request that the jury sentence in such cases. However, the defendant must notify the court thirty days in advance of the trial to request sentencing by the jury.

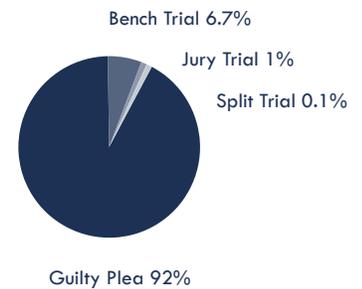
During FY2022, one percent of the cases involved jury trials. The number of jury trials identified in the Sentencing Guidelines is less than expected. Based on Sentencing Guidelines received, the attorneys for the Commonwealth or Probation Officers identified 207 sentencing events that involved a jury. According to the Circuit Court Case Management System (CMS) data for FY2022, there were 357 sentencing events that were resolved by a jury (1.9%). Both sources confirm that for the first year following changes to the Code, the number of jury trials continues to be small.

The Commission will continue to monitor the role of juries in sentencing. Unfortunately, criminal justice databases do not reliably identify when scheduled jury trials are ultimately resolved by guilty pleas or bench trials. Furthermore, court databases and orders have not been systematically updated to identify the number of defendants who request that the jury recommend a sentence.

Until FY2022, there has been a generally declining trend in the percentage of jury trials among felony convictions in circuit courts (Figure 14). Under the parole system in the late 1980s, the percent of jury convictions among all felony convictions was as high as 6.5% before starting to decline in FY1989. In 1994, the General Assembly enacted provisions for a system of bifurcated jury trials. In bifurcated trials, the jury establishes the guilt or innocence of the defendant in the first phase of the trial and then, in a second phase, the jury makes its sentencing decision. When the bifurcated trials became effective on July 1, 1994 (FY1995), jurors in Virginia, for the first time, were presented with information on the offender’s prior criminal record to assist them in making a sentencing decision. During the first year of the bifurcated trial process, jury convictions dropped slightly, to fewer than 4% of all felony convictions. This was the lowest rate recorded up to that time.

Figure 13

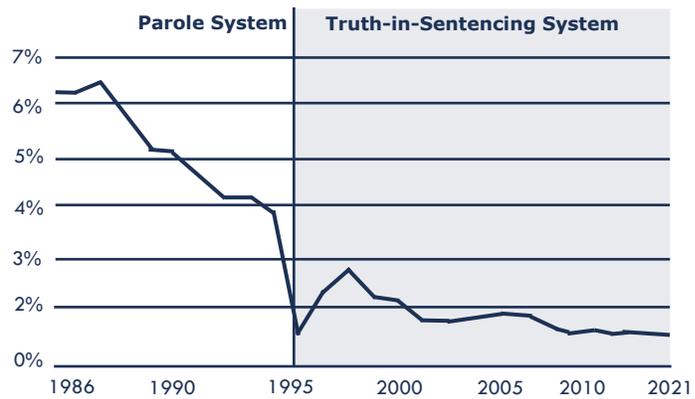
Percentage of Cases Received by Method of Adjudication, FY2022



Among the early cases subjected to the new truth-in-sentencing provisions, implemented during the last six months of FY1995, jury adjudications sank to just over 1%. During the first complete fiscal year of truth-in-sentencing (FY1996), just over 2% of the cases were resolved by jury trials, which was half the rate of the last year before the abolition of parole. Seemingly, the introduction of truth-in-sentencing, as well as the implementation of a bifurcated jury trial system, appeared to have contributed to the reduction in jury trials. Since FY2000, the percentage of jury convictions has remained less than 2%.

Figure 14

**Percent of Felony Convictions Adjudicated by Juries FY1986-FY2022
Parole System v. Truth-in-Sentencing (No Parole) System**



CONCURRENCE AND NONVIOLENT OFFENDER RISK ASSESSMENT

In 1994, as part of the reform legislation that instituted truth-in-sentencing, the General Assembly directed the Commission to study the feasibility of using an empirically based risk assessment instrument to select 25% of the lowest risk, incarceration-bound, drug and property offenders for placement in alternative (non-prison) sanctions. By 1996, the Commission developed such an instrument and implementation of the instrument began in pilot sites in 1997. The National Center for State Courts (NCSC) conducted an independent evaluation of the use of risk assessment in the pilot sites for the period from 1998 to 2001. In 2001, the Commission conducted a validation study of the original risk assessment instrument to test and refine the instrument for possible use statewide. In July 2002, the nonviolent offender risk assessment instrument was implemented statewide for all felony larceny, fraud, and drug cases.

Between 2010 and 2012, the Commission conducted an extensive study of recidivism among nonviolent felons in Virginia to re-evaluate the risk assessment instrument and potentially revise the instrument based upon more recent data. Based on the results of the 2010-2012 study, the Commission recommended replacing the risk assessment instrument with two instruments, one applicable to larceny and fraud offenders and the other specific to drug offenders. The Commission's study revealed that predictive accuracy was improved using two distinct instruments.

Over two-thirds of all Guidelines received by the Commission for FY2022 were for nonviolent offenses. However, only 34% of these nonviolent offenders were eligible to be assessed for an alternative sanction recommendation. The goal of the nonviolent risk assessment instrument is to divert low-risk offenders who are recommended for incarceration on the Guidelines to an alternative sanction other than prison or jail. Therefore, nonviolent offenders who are recommended for probation/no incarceration on the Guidelines are not eligible for the assessment. Furthermore, the instrument is not to be applied to offenders convicted of distributing one ounce or more of cocaine, those who have a current or prior violent felony conviction, or those who must be sentenced to a mandatory minimum term of incarceration required by law. In addition to those not eligible for risk assessment, a risk assessment instrument was not completed and submitted to the Commission for 306 nonviolent offense cases in FY2022. In many of the cases missing a risk assessment, defendants had agreed to sentences specified in plea agreements. In other cases, the preparer did not indicate on the worksheet that the risk assessment was not applicable.

Among the eligible offenders in FY2022 for whom a risk assessment form was received (4,336 cases), 53% were recommended for an alternative sanction by the risk assessment instrument (Figure 15). Just over half of the offenders (52.8%) recommended for an alternative sanction through risk assessment were given some form of alternative punishment by the judge.

Among offenders recommended for and receiving an alternative sanction through risk assessment, judges used substance abuse treatment more often than any other option (Figure 16). In addition, in approximately one-third of the cases in which an alternative was recommended, judges sentenced the offender to a term of incarceration in jail (less than twelve months) rather than the prison sentence recommended by the traditional Guidelines range. Other sanctions frequently utilized were: Unsupervised Probation (54.5%), Supervised Probation (39.7%), Restitution (21.1%), and Time Served (14.8%). The Department of Corrections' Community Corrections Alternative Program was used in a small percentage (1.1%) of the cases. Other alternatives/sanctions included: first offender status under § 18.2-251, Drug Court and Community Service.

Figure 15

Eligible Nonviolent Offender Risk Assessment Cases by Recommendation Type, FY2022 (4,336 cases)

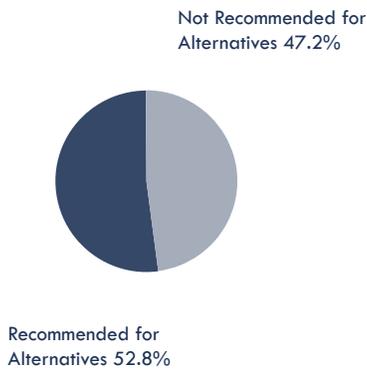
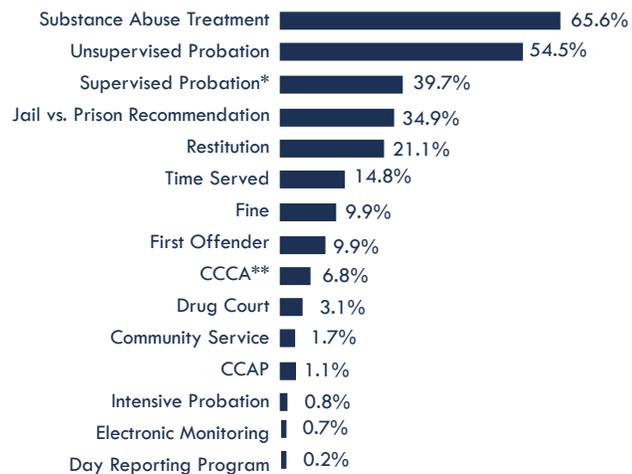


Figure 16

Types of Alternative Sanctions Imposed - FY2022



* Includes indeterminate supervised probation (11.8%).

** Any program established through the Comprehensive Community Corrections Act.

These percentages do not sum to 100% because multiple sanctions may be imposed in each case.

When a nonviolent offender is recommended for an alternative sanction based on the risk assessment instrument, a judge is in concurrence with the Guidelines if he or she chooses to sentence the defendant to a term within the traditional incarceration period recommended by the Guidelines or if he or she chooses to sentence the offender to an alternative form of punishment. For drug offenders eligible for risk assessment, the overall Guidelines concurrence rate is 87%, but a portion of this concurrence reflects the use of an alternative punishment option as recommended by the risk assessment tool (Figure 17). In 30% of these drug cases, judges have complied with the recommendation for an alternative sanction. Similarly, in fraud cases, with offenders eligible for risk assessment, the overall concurrence rate is 86%. In 37% of these fraud cases, judges have complied by utilizing alternative punishment when it was recommended. Finally, among larceny offenders eligible for risk assessment, the concurrence rate was 87%. Judges used an alternative, as recommended by the risk assessment tool, in 15% of larceny cases. The lower use of alternatives for larceny offenders is primarily because larceny offenders are recommended for alternatives at a lower rate than drug and fraud offenders. The National Center for State Courts, in its evaluation of Virginia’s risk assessment tool, and the Commission, during its validation study, found that larceny offenders are the most likely to recidivate among nonviolent offenders.

Figure 17

Concurrence Rates for Nonviolent Offenders Eligible for Risk Assessment - FY2022

	Mitigation	Concurrence		Aggravation	Number of Cases	Overall Concurrence
		Adjusted Range	Traditional Range			
Drug	9.3%	29.5%	57.5%	3.7%	3,261	87.0%
Fraud	10.9%	36.5%	49.8%	2.8%	285	86.3%
Larceny	9.5%	15.4%	71.8%	3.3%	790	87.2%
Overall	9.4%	27.4%	59.6%	3.6%	4,336	87.0%

CONCURRENCE AND SEX OFFENDER RISK ASSESSMENT

In 1999, the Virginia General Assembly requested that the Commission develop a sex offender risk assessment instrument, based on the risk of re-offense, that could be integrated into the state's Sentencing Guidelines system. Such a risk assessment instrument could be used as a tool to identify offenders who, as a group, represent the greatest risk for committing a new offense once released back into the community. The Commission conducted an extensive study of felony sex offenders convicted in Virginia's circuit courts and developed an empirical risk assessment tool based on the risk that an offender would be rearrested for a new sex offense or other crime against a person.

Effectively, risk assessment means developing profiles or composites based on overall group outcomes. Groups are defined by having several factors in common that are statistically relevant to predicting repeat offending. Groups exhibiting a high degree of re-offending are labeled high risk. Although no risk assessment model can ever predict a given outcome with perfect accuracy, the risk instrument produces overall higher scores for the groups of offenders who exhibited higher recidivism rates during the Commission's study. In this way, the instrument developed by the Commission is indicative of offender risk.

The risk assessment instrument was incorporated into the Sentencing Guidelines for sex offenders beginning July 1, 2001. For each sex offender identified as a comparatively high risk (those scoring 28 points or more on the risk tool), the Sentencing Guidelines have been revised such that a prison term will always be recommended. In addition, the Guidelines recommendation range (which comes in the form of a low end, a midpoint, and a high end) is adjusted. For offenders scoring 28 points or more, the high end of the Guidelines range is increased based on the offender's risk score, as summarized below.

Level 1:

For offenders scoring 44 or more, the upper end of the Guidelines range is increased by 300%.

Level 2:

For offenders scoring 34 through 43 points, the upper end of the Guidelines range is increased by 100%.

Level 3:

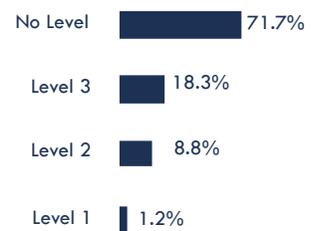
For offenders scoring 28 through 33 points, the upper end of the Guidelines range is increased by 50%.

The low end and the midpoint remain unchanged. Increasing the upper end of the recommended range provides judges the flexibility to sentence higher risk sex offenders to terms above the traditional Guidelines range and still be in concurrence with the Guidelines. This approach allows the judge to incorporate sex offender risk assessment into the sentencing decision, while providing the judge with the flexibility to evaluate the circumstances of each case.

During FY2022, there were 251 offenders convicted of an offense covered by the Sexual Assault Guidelines (this group excludes offenders convicted of rape, forcible sodomy, object penetration and obscenity offenses). As of July 1, 2014, solicitation of a minor and child pornography offenses were removed from the Sexual Assault worksheet and a new Obscenity worksheet was created. In addition, the sex offender risk assessment instrument does not apply to certain Guideline offenses, such as bestiality, bigamy, and prostitution. Of the 251 Sexual Assault cases for which the risk assessment was applicable, the majority (72%) were not assigned a level of risk by the sex offender risk assessment instrument (Figure 18). Approximately 18% of applicable Sexual Assault Guidelines cases resulted in a Level 3 risk classification, with an additional 9% assigned to Level 2. Only three cases (1%) reached the highest risk category of Level 1.

Figure 18

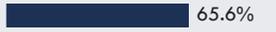
Sex Offender Risk Assessment Levels for Sexual Assault Offenders, FY2022



Under the sex offender risk assessment, the upper end of the Guidelines range is extended by 300%, 100% or 50% for offenders assigned to Level 1, 2 or 3, respectively. Data suggest judges utilize these extended ranges when sentencing some sex offenders. Of the three Sexual Assault offenders reaching Level 1 risk during the past fiscal year, only one was given a sentence within the extended Guidelines range. Of the remaining two cases, one was sentenced using the traditional Guidelines range, and one was sentenced below the traditional Guidelines range (Figure 19). Judges used the extended Guidelines range in 9% of Level 2 cases and 4% of Level 3 risk cases. Judges rarely sentenced Level 1 or 2 offenders to terms above the extended Guidelines range provided in these cases. For Level 2 cases judges sentenced offenders to terms above the extended ranges in 4% of the cases, and 7% were sentenced to a term above the extended ranges in Level 3 cases. Offenders who scored less than 28 points on the risk assessment instrument (who are not assigned a risk category and receive no Guidelines adjustment) had a concurrence rate of 66%. These cases also had a higher rate of aggravation (23%) compared to offenders who were assigned a risk level.

Figure 19

Sexual Assault Concurrence Rates By Risk Assessment Level, FY2022

	Mitigation	Concurrence		Aggravation	Number of Cases	Overall Concurrence
		Traditional Range	Adjusted Range			
Level 1	33.3%	33.3%	33.3%	0.0%	3	 66.6%
Level 2	13.0%	73.9%	8.7%	4.3%	23	 82.6%
Level 3	13.3%	75.6%	4.4%	6.7%	45	 80.0%
No Level	11.1%	65.6%	0.0%	23.3%	180	 65.6%
Overall	12.0%	67.7%	2.0%	18.3%	251	 69.7%

There were 144 offenders convicted of offenses covered by the Rape Guidelines (rape, forcible sodomy, and object sexual penetration) in FY2022. According to Figure 20, approximately 72 percent were not assigned a risk level by the Commission’s risk assessment instrument. Approximately 19% of these cases resulted in a Level 3 adjustment. An additional 8% received a Level 2 adjustment. There were two cases in FY2022 that received a Level 1 adjustment for a rape conviction. As shown below Figure 21, 18% of offenders with a Level 2 risk classification and 19% of offenders with a Level 3 risk classification were given prison sentences within the adjusted range of the Guidelines. Only one of the two cases with a Level 1 risk classification was given a prison sentence within the adjusted range. Defendants who are not assigned a risk category and receive no Guidelines adjustment had similar concurrence rates with the traditional Guidelines recommendations as Levels 2 and 3 offenders (63% concurrence rate), but were more likely to receive a sentence that was an upward departure from the Guidelines (16% aggravation rate).

Figure 20

Sex Offender Risk Assessment Levels for Rape Offenders, FY2022

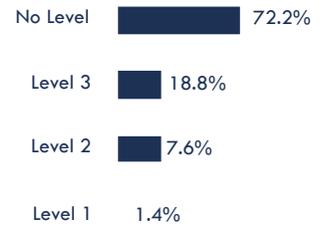


Figure 21

Rape Concurrence Rates By Risk Assessment Level, FY2022

	Mitigation	Concurrence		Aggravation	Number of Cases	Overall Concurrence
		Traditional Range	Adjusted Range			
Level 1	0.0%	50.0%	50.0%	0.0%	2	100%
Level 2	9.1%	63.6%	18.2%	9.1%	11	81.8%
Level 3	11.1%	63.0%	18.5%	7.4%	27	81.5%
No Level	21.2%	62.5%	0.0%	16.3%	104	62.5%
Overall	18.1%	62.5%	5.6%	13.9%	144	68.1%

SPECIFIC TYPE OF DRUG

In 2017, at the request of several Commonwealth’s Attorneys, the Commission began capturing the type of Schedule I, II and III substances on the Sentencing Guidelines cover sheet. Identifying the specific type of drug enables policy makers to better track drug trends by locality and/or geographic region within the Commonwealth. In return, localities would be in a better position to respond with appropriate treatment options. The purpose of the recommendation was not to encourage changes in sentencing based on drug type.

The Commission modified the Guidelines Cover Sheets and began to collect the specific type of drug on July 1, 2017 when a drug offense was the primary or most serious offense in the sentencing event. In FY2022, there were 9,775 Drug Schedule I/II worksheets and 361 Drug Other worksheets submitted to the Commission.

Figure 22 lists the specific type of drug identified on the Drug Sentencing Guidelines. Methamphetamine, measured solely, was the most frequently occurring, appearing in 43.5% of cases. When opioids were grouped together, they were cited in 22.8% of Drug Guidelines. Opioids were followed closely by cases involving cocaine (20.7%), fentanyl (13.6%), and heroin (10%.) In FY2022 the number of Drug sentencing events involving methamphetamine and fentanyl increased significantly compared to FY2021.

Figure 22
Number and Percentage of Cases Received by Drug Type - FY2022

Drug	Percentage	Number of Cases
Methamphetamine	43.5%	4,414
Opioids*	22.8%	2,310
Cocaine	20.7%	2,101
Fentanyl	13.6%	1,379
Heroin	10.0%	1,014
Other	8.5%	865
Oxycodone	2.2%	219
Hydrocodone	0.9%	89
Methylphenidate	0.8%	78
Morphine	0.4%	36
Methadone	0.3%	35
Codeine	0.3%	27

*Opioids includes the drugs heroin, fentanyl, oxycodone, morphine, codeine and methadone (multiple opioids in an event are grouped as one for this measure).

Of the 10,438 drug offenses, a drug type was identified in over 8,400 sentencing events. Multiple drugs were identified in 948 of these sentencing events.

Concurrence rates are not significantly different based on the type of drug involved. In FY2022, judges concurred with the Guidelines' recommendation in over 79% of the drug cases. Rates of concurrence were slightly higher in methamphetamine cases (80%), while opioid cases and cocaine had a slightly lower than average concurrence rate of 79%. In cases involving methamphetamine, the Sentencing Guidelines take into consideration when the drug is being manufactured versus distributed and if a child was present during the manufacturing process. These factors are not available on the Sentencing Guidelines for other drug types. The other category includes some other types of Schedule I/II drugs, but more often Schedule III drugs, prescription drugs and marijuana. These specific types of drugs have slightly higher concurrence rates than cases involving opioids or cocaine. See Figure 23 for details.

One of the reasons the Commission was asked to collect the type(s) of drug on the Drug Sentencing Guidelines was to provide information on drug trends by locality and/or geographic region within the Commonwealth. Representatives from several localities wanted information on drug convictions so they would be in a better position to respond with appropriate treatment options or to take other measures to address drug issues in their communities. Figure 24 lists the types of drugs by circuit.

Figure 23
Guidelines Concurrence by Type of Drug - FY2022

	Compliance	Mitigation	Aggravation	Number of Cases
Methamphetamine Case	80.1%	15.1%	4.8%	4,391
Cocaine Case	76.7%	19.1%	4.2%	2,100
Opioid Case	78.6%	16.9%	4.5%	2,304
Other Case	78.8%	15.1%	6.1%	939
Total	79.4%	15.9%	4.7%	10,096

*Cases that include multiple types of drugs are included in each category. No drug is weighted as more serious than another.
 50 cases were missing

Convictions listed in Figure 24 are not adjusted to reflect a standard measure based on the population of each locality, but simply to provide the localities the information requested. General conclusions regarding methamphetamine are as follows: the Radford Area (Circuit 27), the Harrisonburg Area (Circuit 26), and the Staunton Area (Circuit 25) have the highest frequencies of methamphetamine-related sentencing events across the Commonwealth. Cocaine-related sentencing events appear more frequently in Henrico (Circuit 14), Fredericksburg (Circuit 15), and Virginia Beach (Circuit 2), in comparison to the rest of the Commonwealth. Further, fentanyl-related cases which have increased 67% in FY2022 appear more frequently in Fredericksburg (Circuit 15), Henrico (Circuit 14), and the Harrisonburg Area (Circuit 26) compared to the rest of the Commonwealth.

The number of convictions may not be the best approach to assessing drug problems in communities across the Commonwealth. To some extent, the number of convictions may better reflect the success of law enforcement in arresting and securing convictions for drug violations. Other measures, such as drug overdoses, demands on treatment providers and arrests for drug crimes that do not result in convictions, or that have convictions deferred for treatment, may be better measures. Also, defendants with substance abuse issues may not be convicted of drug offenses and this information is not directly collected on the Sentencing Guidelines. Most importantly, the drug type is not routinely reported by all jurisdictions and may limit the validity of comparisons across circuits. These topics and limitations of the use of sentencing data for an evaluation of drug prevalence by geographic location ought to be taken into consideration when evaluating Figure 24.

The Commission will continue to monitor sentencing in drug cases, as requested. If the sentencing patterns of judges change, the Commission will recommend revisions to the Guidelines based on analysis of the data. As indicated by the concurrence rates of drug sentences throughout the Commonwealth, there is no need at this time to adjust Guidelines based on the type of drug involved.

Figure 24
Type of Drug by Circuit - FY2022

Circuit		Cocaine	Codeine	Fentanyl	Heroin	Hydrocodone	Methadone	Methamphetamine	Methylphenidate	Morphine	Oxycodone	Other*
1	Chesapeake	126	2	74	63	2	0	132	1	1	7	31
2	Virginia Beach	181	5	76	81	6	5	210	3	3	12	75
3	Portsmouth	8	0	3	7	0	0	0	0	0	1	0
4	Norfolk	46	0	17	18	0	0	23	0	0	1	6
5	Suffolk Area	44	1	23	21	1	0	8	0	0	0	8
6	Sussex Area	90	1	37	18	1	0	41	0	0	5	22
7	Newport News	51	1	14	15	1	0	13	1	0	8	9
8	Hampton	38	0	3	7	0	0	2	0	1	0	7
9	Williamsburg Area	56	1	35	31	2	1	84	3	0	5	15
10	South Boston Area	54	1	18	26	0	0	101	1	0	1	16
11	Petersburg Area	16	0	6	3	0	0	33	0	1	0	9
12	Chesterfield Area	128	2	113	54	3	0	93	3	0	5	31
13	Richmond City	111	0	32	47	0	0	7	0	0	4	11
14	Henrico	289	4	153	119	0	2	55	0	0	13	23
15	Fredericksburg	231	2	226	103	4	4	180	3	5	19	204
16	Charlottesville Area	63	0	60	32	1	1	47	0	2	5	39
17	Arlington Area	21	0	3	6	0	0	2	0	0	1	7
18	Alexandria	6	0	2	1	0	0	0	0	0	0	2
19	Fairfax	38	0	35	9	0	0	7	0	0	3	32
20	Loudoun	21	1	27	8	1	0	7	0	0	7	27
21	Martinsville Area	34	0	36	48	7	1	116	1	1	15	10
22	Danville Area	51	0	23	33	3	1	184	4	2	5	22
23	Roanoke Area	36	0	71	54	3	0	138	2	0	3	9
24	Lynchburg Area	77	3	34	58	4	1	264	13	4	10	43
25	Staunton Area	24	2	23	12	4	0	498	7	2	13	28
26	Harrisonburg Area	139	1	124	51	3	6	522	7	4	20	78
27	Radford Area	42	0	34	33	12	7	649	12	1	25	23
28	Bristol Area	4	0	11	15	14	2	406	4	3	8	26
29	Buchanan Area	15	0	25	18	8	2	293	13	5	8	18
30	Lee Area	5	0	6	5	7	1	283	0	0	13	12
31	Prince William Area	48	0	30	17	2	1	5	0	1	2	20
Total	Statewide	2,093	27	1,374	1,013	89	35	4,403	78	36	219	863

Note: One sentencing event may involve more than one type of drug

* The other category includes some other types of Schedule I/II drugs, but more often Schedule III drugs, prescription drugs and marijuana.

SENTENCING REVOCATION REPORTS (SRRs)

Figure 25

Number and Percentage of SRRs Received by Circuit - FY 2022*

Circuit	Number	Percent
1	741	5.3%
2	735	5.2%
3	199	1.4%
4	413	2.9%
5	352	2.5%
6	178	1.3%
7	159	1.1%
8	135	1.0%
9	468	3.3%
10	351	2.5%
11	124	0.9%
12	608	4.3%
13	268	1.9%
14	677	4.8%
15	1,260	9.0%
16	404	2.9%
17	105	0.7%
18	4	0.0%
19	199	1.4%
20	161	1.1%
21	340	2.4%
22	564	4.0%
23	393	2.8%
24	431	3.1%
25	865	6.1%
26	1,191	8.5%
27	784	5.6%
28	601	4.3%
29	722	5.1%
30	404	2.9%
31	234	1.7%
TOTAL	14,070	100.0%

*60 cases were missing a circuit number

One of the most comprehensive resources regarding revocations of community supervision in Virginia is the Commission’s Community Corrections Revocations Data System, also known as the Sentencing Revocation Report (SRR) database. First implemented in 1997 with assistance from the Department of Corrections (DOC), the SRR is a simple form designed to capture the reasons for, and the outcomes of, community supervision violation hearings. The probation officer (or Commonwealth’s attorney) completes the first part of the form, which includes the probationer’s identifying information and checkboxes indicating the reasons why a show cause or revocation hearing has been requested. The checkboxes are based on the list of eleven conditions for community supervision established by the DOC for every felony probationer, but special supervision conditions imposed or authorized by the court also can be recorded. Following the violation hearing, the judge completes the remainder of the form with the revocation decision and any sanction ordered in the case. The completed form is submitted to the Commission, where the information is automated. A revised SRR form was developed and implemented in 2004 to serve as a companion to the new Probation Violation Sentencing Guidelines introduced that year. The SRR was revised again for Fiscal Year (FY) 2022 to reflect new statutory requirements and revised Probation Violation Guidelines. Other fields were added to the SRR that identified alternatives used during the supervision of the probationer or other sentencing options that may be available to the court.

In FY2022, there were 14,130 alleged felony violations of probation, suspended sentences, or good behavior for which the SRR was submitted to the Commission. The SRRs received include cases in which the court found the defendant in violation, cases that the court decided to take under advisement until a later date, and cases in which the court did not find the defendant in violation. The circuits submitting the largest number of SRRs during FY2022 were Circuit 15 (Fredericksburg area), Circuit 26 (Harrisonburg), Circuit 25 (Staunton area), Circuit 27 (Montgomery County, Wytheville Area) and Circuit 1 (Chesapeake). Circuit 18 (Alexandria), Circuit 17 (Arlington), Circuit 8 (Hampton area), and Circuit 11 (Dinwiddie) submitted the fewest SRRs during FY2022 (Figure 25).

Of the 14,130 SRRs received by the Commission in FY2022, 5,720 cases involved a new law violation. In these cases, the judge found the defendant guilty of violating Condition 1 of the Department of Corrections' Conditions of Probation (obey all federal, state, and local laws and ordinances). In 5,885 cases, the probationer was found in violation of other conditions not related to a new law violation. Often, these probationers are referred to as "technical violators." A technical violation is defined by § 19.2-306.1 of the Code of Virginia. Among the remaining cases, the person was not found in violation of any condition (194 cases), the defendant violated the good behavior requirement of a suspended sentence (869 cases), or local probation (603 cases), or the type of violation was not identified on the SRR form (40 cases). The other 859 cases were missing relevant information needed for analyzing and classifying the violation of probation.

Extreme caution must be used when comparing FY2022 data to previous years. Changes in statutes, Guidelines and in automation of court records may have influenced the number and type of violations recorded. The COVID-19 pandemic also had a significant impact on the probation system. Figure 26 compares new law violations and technical violations in FY2022 with previous years. Between FY2009 and FY2014 the number of revocations based on new law violations exceeded the number of revocations based on violations of other conditions. Changes in policies for supervising offenders who violate conditions of probation that do not result in new convictions and procedures that require judges to receive and review the SRRs and Probation Violation Guidelines have impacted the number and types of revocations submitted to the court. In FY2014, the number of technical violations reviewed by the court began to increase. In that year, new law violations exceeded the number of technical violations by 158 cases. This trend continued until FY2021, when new law violations exceeded technical violations. However, in FY2022, technical violations slightly exceeded new law violations. It is too early to determine if changes in the number and types of violations are related to the new statutory provisions of § 19.2-306.1.

Figure 26

Sentencing Revocation Reports Received for Technical and New Law Violations FY1998 - FY2022

Fiscal Year	Technical Violations	New Law Violations	Number
FY1998	2,886	2,278	5,164
FY1999	3,643	2,630	6,273
FY2000	3,490	2,183	5,673
FY2001	5,511	3,228	8,739
FY2002	5,783	3,332	9,115
FY2003	5,078	3,173	8,251
FY2004	5,370	3,361	8,731
FY2005	5,320	3,948	9,268
FY2006	5,510	3,672	9,182
FY2007	6,670	4,755	11,425
FY2008	6,269	5,182	11,451
FY2009	5,001	5,134	10,135
FY2010	4,670	5,228	9,898
FY2011	5,239	6,058	11,297
FY2012	5,147	5,760	10,907
FY2013	5,444	6,014	11,458
FY2014	5,772	5,930	11,702
FY2015	6,511	6,397	12,908
FY2016	6,660	6,000	12,660
FY2017	6,655	5,627	12,282
FY2018	7,790	6,426	14,216
FY2019	8,081	7,253	15,334
FY2020	6,877	6,545	13,422
FY2021	5,454	6,420	11,874
FY2022	5,885	5,720	11,605

*Data from past fiscal years are continuously monitored and modified to better reflect the events for that time period.

HISTORY OF PROBATION VIOLATION GUIDELINES (PVGs)

In 2003, the General Assembly directed the Commission to develop, with due regard for public safety, discretionary Sentencing Guidelines for felony offenders who are determined by the court to be in violation of their probation supervision for reasons other than a new criminal conviction (Chapter 1042 of the 2003 Acts of Assembly). Historically, these probationers are referred to as “technical violators.” In developing the Guidelines, the Commission was to examine historical judicial sanctioning practices in revocation hearings.

Early use of the Probation Violation Guidelines, which took effect on July 1, 2004, indicated that the Guidelines needed further refinement to better reflect current judicial sentencing patterns in the punishment of supervision violators. Judicial concurrence with the first edition of the Probation Violation Guidelines was lower than expected, with only 37% of the violators being sentenced within the range recommended by the new Guidelines. Therefore, the Commission’s 2004 Annual Report recommended several adjustments to the Probation Violation Guidelines. The proposed changes were accepted by the General Assembly and the second edition of the Probation Violation Guidelines took effect on July 1, 2005. These changes yielded an improved concurrence rate of 48% for FY2006.

Concurrence with the revised Guidelines, and ongoing feedback from judges, suggested that further refinement could improve their utility as a benchmark for judges. Therefore, the Commission’s 2006 Annual Report recommended additional adjustments to the Probation Violation Guidelines. Most of the changes proposed in the 2006 Annual Report affected the Section A worksheet. The score on Section A of the Probation Violation Guidelines determines whether an offender will be recommended for probation with no active term of incarceration to serve, or whether the offender will be referred to the Section C worksheet for a jail or prison recommendation. Changes to the Section A worksheet included revising scores for existing factors, deleting certain factors and replacing them with others (e.g., “Previous Adult Probation Violation Events” replaced “Previous Capias/Revocation Requests”), and adding new factors (e.g., “Original Disposition was Incarceration”). The only change to the Section C worksheet (the sentence length recommendation) was an adjustment to the point value assigned to offenders who violated their sex offender restrictions. The proposed changes outlined in the 2006 Annual Report were accepted by the General Assembly and became effective for technical probation violators sentenced on July 1, 2007, and after. This third version of the Probation

Violation Guidelines resulted in higher concurrence rates than previous versions of the Guidelines. Figure 27 illustrates concurrence patterns over the years and the limited impact revisions to the Guidelines had on concurrence rates. Concurrence hovered just slightly above 50% since FY2008 and this pattern continued through FY2021.

In 2016, the Commission approved a study that would provide the foundation needed to revise the Probation Violation Guidelines. The goal was to improve the utility of these Guidelines for Virginia’s judges. As a critical first step in revising the Guidelines, the Commission utilized a survey to seek input from Circuit Court judges. The majority of responding judges felt that the Probation Violation Guidelines should be expanded to cover not only technical violations but also violations arising out of new felony or new misdemeanor convictions. With judicial feedback in mind, the Commission conducted a comprehensive analysis of sentencing outcomes in revocation cases handled in Virginia’s Circuit Courts. Based on the results of this large-scale multi-year project, the Commission recommended revisions to the Probation Violation Guidelines, including an expansion to cover, for the first time, violations associated with new convictions (see the Commission’s 2020 Annual Report).

Figure 27

Probation Violations Guidelines Concurrence by Year, FY2006 - FY2022

Fiscal Year	Concurrence	Mitigation	Aggravation	Total**
2006	47.6%	28.8%	23.5%	5099
2007	46.3%	30.7%	23.0%	6350
2008	52.8%	25.0%	22.2%	5969
2009	52.7%	25.2%	22.1%	4770
2010	52.3%	24.9%	22.8%	4465
2011	53.3%	23.5%	23.2%	5011
2012	49.3%	25.0%	25.7%	4784
2013	51.3%	22.6%	26.1%	5056
2014	51.9%	21.9%	26.2%	5288
2015	52.3%	23.6%	24.1%	6044
2016	54.7%	24.4%	20.9%	6217
2017	54.3%	25.0%	20.7%	6167
2018	55.6%	27.0%	17.4%	7209
2019	54.6%	30.4%	15.0%	7520
2020	52.3%	34.0%	13.7%	6482
2021	50.2%	39.0%	10.8%	5210
2022*	85.5%	10.0%	4.5%	11,605

* Significant changes to statutes and sentencing guidelines were made in FY2022. The inclusion of new law violations in the Probation Violation Guidelines significantly increased the number of cases.

**Excludes cases with missing data, that were incomplete, or had other guidelines issues. Data from past fiscal years are continuously monitored and modified to better reflect the events for that time period.

In summary, the Commission recommended, and the 2021 General Assembly accepted, the Commission's recommendations to:

- Expand the Probation Violation Guidelines to cover violations stemming from new felony and misdemeanor convictions;
- Replace the current instrument with two instruments, one applicable to violators with new felony convictions and the other specific to violators with technical violations or new misdemeanor convictions;
- Adjust the low end of the Probation Violation Guidelines range to “time served” (i.e., zero) when the judge determines that the probationer has a good rehabilitation potential; and
- Revise the Sentencing Revocation Report (SRR) and the Probation Violation Guidelines (PVGs) to standardize the information provided to circuit court judges in revocation cases, particularly information related to new convictions.

Based on analysis of revocation data, the new Probation Violation Guidelines were designed to produce recommendations that provide judges with a more accurate benchmark of the typical, or average, case outcome given the nature of the violation(s), the original most serious offense, the probationer's prior revocations, and any new convictions.

Further modifications to the Probation Violation Guidelines were necessary in order to make them compatible with the requirements of § 19.2-306.1, adopted by the 2021 General Assembly. The historically-based Guidelines were modified so that they would not recommend more incarceration time than that permitted under the provisions of § 19.2-306.1. The new Probation Violation Guidelines that incorporated the statutory requirements took effect on July 1, 2021.

For the first time, the analysis for FY2022 will include violations based on new law convictions and technical violations. Upon further examination, it was found that 40 of the 11,645 violation cases could not be included in more detailed analysis. Cases were excluded if the Guidelines were not applicable (the case involved a parole-eligible offense, a first-offender violation, a misdemeanor original offense, or an offender who was not on supervised probation), if the Guidelines forms were incomplete, or if outdated forms were prepared. Cases in which the judge did not find the probationer in violation were also removed from the analysis.

Of the 11,605 cases examined in which offenders were found to be in violation of their probation, approximately 40% were under supervision for a felony drug offense (Figure 28). This represents the most serious offense for which the offender was on probation. Another 32% were under supervision for a felony property conviction. Offenders who were on probation for a crime against a person (most serious original offense) made up a smaller portion (13%) of those found in violation during FY2022.

Examining both technical and new law violation cases reveals that about half (49%) of the probationers were cited for using, possessing, or distributing a controlled substance (Condition 8 of the DOC Conditions of Probation). Violations of Condition 8 may include a positive test (urinalysis, etc.) for a controlled substance or a signed admission. Similarly, about half (49%) of the probationers were cited for new law convictions and/or failure to follow instructions of the probation officer (Figure 29).

Caution is advised in interpreting the increase in the number of probationers found in violation due to absconding. Absconding is cited by the probation officer after attempts have been made to locate the probationer. Policies of the Department of Corrections require that an officer check known locations such as the probationer’s home, work, or friends and to verify that the offender is not incarcerated. These efforts must be made before the probation officer may cite absconding in the Major Violation Report submitted to the court. As reported later in this chapter (Questions Raised by Court Stakeholders), an interpretation of § 19.2-306.1 includes an unintended advantage to absconding from supervision. As strictly interpreted, the first time that a probationer absconds, the statute limits the amount of active time to 14 days with the presumption that no time should be imposed.

The cause for the apparent decrease in violations of special conditions cannot be fully explained. Historically, special conditions were any conditions that were more specific than the traditional conditions of probation. Special conditions included instructions imposed by the court or additional requirements imposed by the probation officer that were authorized by the court. The Commission, for analysis purposes, always classified Sex Offender Special Instructions or Special Instructions of Confirmed Gang/STG members as special conditions. (A list of the special sex and gang instructions can be found at the end of this chapter.) However, § 19.2-306.1, effective July 1, 2021, did not specifically identify how the court should respond to behavior that was in direct violation of a court order or in violation of a specific requirement authorized by the court. During the implementation phase in 2021, the Commonwealth’s Attorney Services Council presented a webinar that defined “non-technical” violations. Included on the list of non-technical violation was failure to pay restitution, fines or costs, violations that included a mixture of new law,

Figure 28

Probation Violation Guidelines Worksheets Received by Type of Most Serious Original Offense - FY2022
N=11,605*

Original Offense Type	Percent Received
Drug	40.0%
Property	32.3%
Person	12.9%
Traffic	11.0%
Other	3.8%

**Includes FY2022 cases found to be in violation that were completed accurately on current guideline forms.*

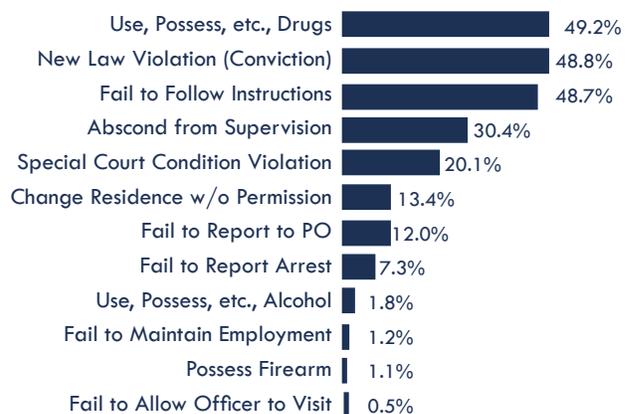
technical and non-technical conditions, and violations of special conditions in court orders. As a result, officers of the court developed policies that attempted to reflect their interpretation of the statute while preserving the authority of the court and probation officers in supervising cases. The result was inconsistent policies across the Commonwealth.

Probationers who were supervised for sex offenses illustrate the potential impact of classifying or not classifying a violation as a special condition. In FY2022, out of 473 violators previously convicted of sex offenses or possession of child pornography, 91 were not scored on Sentencing Guidelines as in violation of special conditions or for new law convictions. In those cases, the court was statutorily limited to no time for the first technical violation and no more than 14 days for a second. For the remaining cases, Guidelines would apply, but judges could sentence up to the total amount of revocable time. It is important to remember that many of these violations were initiated prior to July 1, 2021. The full impact of individual policies cannot be accurately reflected here.

Probationers were also cited for changing residence without permission in 13% of cases. This violation is different from absconding because the probation officer knew the whereabouts of the probationer. Other frequently cited violations included the failure to report to the probation officer (12%) and failure to report an arrest (7.3%). It is important to note that defendants may be, and typically are, cited for violating more than one condition of their probation (Figure 29).

Figure 29

Violation Conditions Cited by Probation Officers, FY2022



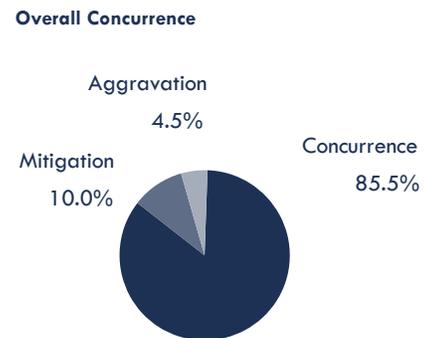
OVERALL CONCURRENCE WITH THE PROBATION VIOLATIONS GUIDELINES

The overall concurrence rate summarizes the extent to which Virginia's judges concur with recommendations provided by the Probation Violation Guidelines, both in type of disposition and in length of incarceration. In FY2022, the overall rate of concurrence with the Probation Violation Guidelines was 85.5%. However, that number is misleading because of the influence of statutory limits and requirements on sentences for probation violations. Instead of referring to one measure, it is more realistic to discuss concurrence based on the type of probation violation. In other words, it is better to evaluate how well the Guidelines reflect judicial sentencing by focusing on the concurrence rates for third technical violations, second technical violation for possessing a firearm or absconding violations and new law violations (i.e., cases in which the statutory caps on sentences do not apply).

As expected, concurrence rates for first and second technical violations and first violation for possessing a firearm or absconding are high (97.8%). The Sentencing Guidelines were engineered to recommend sentences that reflect the statutory requirements. At the start, some judges believed that the provisions of § 19.2-306.1 did not apply to cases that were originally sentenced prior to July 1, 2021. Their sentences did not always reflect the statutory limits of no time or no more than 14 days. Their sentences were above the Guidelines recommendation that reflected the statutory requirements and limits. The Virginia Court of Appeals decisions in *Green v. Commonwealth*, 74 Va. App_0759211, S.E.2d_(2002), and *Smith v. Commonwealth*, 22 Vap UNP 0841212 (2002), support the interpretation of these judges. In a different case, *Heart v. Commonwealth*, 75 Va. App. _ 1120211, _ S.E.2d _ (2022), the court issued an opinion that the prosecutor must present evidence on the type of prior violation. Ultimately, the type and number of prior violations determine what, if any, statutory limits apply.

Figure 30

Overall Probation Violation Guidelines Concurrence FY2022*



* Significant changes to statutes and sentencing guidelines were made in FY2022. The inclusion of new law violations in the Probation Violation Guidelines significantly increased the number of cases.

After the *Green v. Commonwealth* decision, the Commission implemented the Sentencing Guidelines as initially planned and accepted by the 2021 General Assembly. Based on all the court decisions, if the judge did not want to sentence under the § 19.2-306.1 provisions for violations based on offenses prior to July 1, 2021, the court could request that the worksheet now labeled Technical Violation/Special Condition Violation or the New Law Felony or Misdemeanor worksheets be completed. The Technical Violation/Special Condition Violation worksheet reflects a historically accurate sentence for all technical violations. The New Law Felony and New Law Misdemeanor Violation worksheets also will return a historically accurate recommendation if the probationer is found in violation of Condition 1, a new law conviction. The 2022 court decisions create circumstances where similarly situated individuals will not receive the same Guidelines recommendation. Moreover, some probation violators have been sanctioned under the new statutory requirements while others have been sanctioned under the old law. The decision about which statute applies may result in different Guidelines recommendations and ultimately in different sentences.

Excluding the Guidelines that reflect statutory requirements, concurrence rates range from 85% to a low of 73%. These concurrence rates are the highest rates achieved since Probation Violation Guidelines were implemented in 2004. When judges sentence outside the recommendation, their sentences are more likely to be below the low end of the recommended sentencing range. There is not an equal division between mitigating and aggravating departures. While the worksheets were developed based on analysis of historical data, they were subsequently modified to reflect the requirements § 19.2-306.1. Furthermore, there is evidence to suggest the requirements of § 19.2-306.1 have impacted sentencing, court procedures and behaviors.

As with the felony Sentencing Guidelines first implemented in 1991, the development of useful sentencing tools for judges to deal with probation violators will be an iterative process, with improvements made over several years. Feedback from judges, especially through written departure reasons, is of critical importance to the process of continuing to improve the Guidelines, thereby making them a more useful tool. In addition, once the interpretation of § 19.2-306.1 is resolved and agreed upon, Guidelines will once again return the same recommendation for similarly-situated individuals.

VIOLATIONS OF PROBATION THAT DO NOT RESULT IN GUIDELINES RECOMMENDATION

Occasionally, a probationer is returned to court for a behavior that occurred during an earlier supervision period. The behavior is most likely a new law violation. In these cases, the court previously decided to revoke, extend or release the defendant from probation without knowing about or addressing the alleged violation. The policy of the Commission is that only the Sentencing Revocation Report is completed in such circumstances and the Probation Violation Guidelines are not. The preparer checks the “Procedural” box and no recommendation is calculated. There were 29 such cases identified in FY2022. Of those, six cases did not result in an active period of incarceration. The median sentence imposed for those sentenced to incarceration was nine months.

Unrelated to Probation Violation Guidelines is the amount of time a probationer is incarcerated pending a probation violation hearing. The revised Code limits the amount of time a probationer may serve for a first or second technical violation. However, the Code does not modify the mechanisms used to establish hearing dates. Currently, a *capias* or a PB-15 (issued by the probation officer) often requires the probationer to spend some time incarcerated, even for a technical violation, before a judge can decide on how to proceed with the alleged violation. If possible, judges are often issuing or replacing a *capias* or PB-15 warrant with a show cause. Procedures and availability of a judge to hear a case vary across the Commonwealth. Chart (31) identifies that most probationers (59%) are serving some pretrial time prior to having their probation supervision revoked. One must note that pretrial confinement time may be associated with a different offense in a different jurisdiction or state and not the probation violation. The function of the Sentencing Revocation Report is to determine if the defendant was at liberty prior to violation hearing. It was not designed and should not be used for calculation of jail credit. Also, Figure 31 does not take into consideration if the final sentence for the violation was time served, jail, prison, a return to probation or a release from probation supervision.

When a probationer serves time prior to the judge’s decision to revoke, the amount of pretrial time served is related to the type of revocation. First and second technical violators are serving less time than probationers who are before the court for third technical violations. As addressed earlier, special conditions include a variety of behavior that may lead to revocations. When the violations are for special conditions, the amount of pretrial incarceration, on average, is more than technical violations and less than new law. The longest period of pretrial incarceration is for probationers convicted of new offenses. If the new law violation is for a misdemeanor or lesser offense, the median pretrial time served is 59 days and about 142 days for a new felony conviction (Figure 31).

Figure 31

Pretrial Incarceration Pending a Probation Violation Hearing, FY2022

Type of Revocation	Confined Prior to Sentencing Identified	Not Confined Prior to Sentencing	Median Pretrial Confinement (Days)	Total Number of Cases	Number Probationers Confined*
Technical Violation - First	53.3%	46.7%	27.0	1,487	793
Technical Violation - Second	57.0%	43.0%	26.0	810	461
Technical Violation Possess Firearm/Abscond - First	63.9%	36.1%	31.0	1,153	737
Technical Violation Possess Firearm/Abscond - Second	60.2%	39.8%	45.0	284	171
Technical Violation - Third	62.2%	37.8%	46.0	527	327
Special Condition Violations	57.1%	42.9%	38.0	1,594	909
New Misdemeanor Conviction	61.1%	38.9%	59.0	2,584	1,579
New Felony Conviction	60.5%	39.5%	141.5	3,166	1,912
Overall	59.4%	40.6%	50.0	11,605	6,889

* Six cases were missing information need for the calculation of pretrial confinement.

QUESTIONS RAISED BY STAKEHOLDERS AND POTENTIAL UNINTENDED CONSEQUENCES OF THE IMPLEMENTATION OF § 19.2-306.1

Because the Commission is charged with the development and administration of Virginia's Sentencing Guidelines, the Commission is also responsible for educating all court stakeholders in the preparation and application of the Guidelines. Specifically, the Commission trains probation officers and Commonwealth's attorneys (the two groups authorized by statute to complete the Guidelines) to accurately prepare Guidelines worksheets for submission to the court. The Commission's seminars also provide defense attorneys with a knowledge base to challenge the accuracy of Guidelines submitted to the court. The Commission conducts Guidelines seminars for new members of the judiciary, as well. The Commission offers many training and educational opportunities, both in-person and virtual. Having all sides equally versed in the completion of the Guidelines is essential to the court process. In addition to its seminars, the Commission provides assistance to Guidelines users through its website, numerous publications, a "hotline" phone system, and its new texting service - all important resources for Guidelines users. Commission staff are available throughout the day to respond quickly to any questions or concerns regarding the Guidelines or their preparation. Thus, Commission staff interact with a large number of court stakeholders from all perspectives (prosecutors, defense attorneys, probation officers and judges) working throughout the Commonwealth.

Since the implementation of § 19.2-306.1, the Commission has received a number of questions related to the legislation and requests for guidance regarding interpretation of the new law. The Commission, however, cannot advise court stakeholders as to legal interpretation. Interpretation of the law lies with the purview of the courts and individual judges hearing such cases. At this time, there are three court cases that have addressed several issues. However, there remain many other concerns that have not been addressed by the courts or the courts have addressed in a variety of different ways. Nonetheless, the Commission is in a unique position to document other questions raised by an array of court stakeholders and the potential unintended consequences of the legislation they describe. The questions from stakeholders, and the unintended consequences they suggest, are discussed below.

1. Does the statute apply to local community corrections/probation programs?

It appears that § 19.2-306.1 defines technical violations based on the standard Conditions of Probation for adults supervised by the state Department of Corrections. Probationers supervised by a local community corrections/probation office do not sign the same conditions. However, it is unclear if the statute is intended to apply to all types of probation, including supervision by a local community corrections program.

2. Does the 14-day requirement apply to the revocation event or to each technical violation? (i.e., can the penalties be stacked?)

Currently, 19.2-306.1 (A) provides that “[m]ultiple technical violations arising from a single course of conduct or a single incident or considered at the same revocation hearing shall not be considered separate technical violations for the purposes of sentencing pursuant to this section. The statute then limits the amount of time the court may impose to 14 days for a second technical violation of probation or a first violation of probation associated with absconding or possessing a firearm. Defendants often have multiple technical violations in one event. The multiple technical violations in an event may be due to the fact that the individual was convicted of multiple felonies in the original sentencing event, or it may be due to different felony sentencing events in the same jurisdiction that each require the individual to be supervised on probation. If found in violation of each condition or found in violation for each probation term ordered by the court, it is unclear if the court can sentence up to 14 days for each technical violation. Some judges have interpreted the statutory limit to apply to the entire probation violation event and not to each count, each technical violation, or each period of supervision. Others have indicated that they believe the 14-day penalties can be run consecutively to one another (e.g., stacked) in such circumstances.

3. The Code, for the first time, requires that the court not only know the number of previous probation revocations, but the type of revocations (i.e., the specific conditions violated). As a result, several questions have been asked by criminal justice stakeholders implementing the new statute:

A. Do previous technical violations from prior to July 1, 2021, count? Do technical violations from prior probation terms (for other offenses in the jurisdiction) count? Do technical violations from any prior probation term (in the individual’s history) count?

In order to apply the new sentence caps for technical violations correctly, the court must know the number and type of technical violations the defendant has accumulated. It is unclear if the count of violations begins on July 1, 2021, or if the count includes technical violations that occurred prior to July 1, 2021.

Once the time frame has been established, the court must decide which technical violations are counted. When applying the provisions of the statute, in most cases, the courts have limited the count of prior technical violations to violations for the same underlying offense(s) (i.e., the same offense(s) for which the individual is facing revocation in the current hearing). However, the statute is unclear. If the intent of the statute is for the court to consider the defendant’s overall behavior while under probation supervision, limiting the count to prior technical violations for just the underlying offenses may not achieve that intent. If the intent of the statute is to focus on the current behavior on probation for the underlying offenses, a decision to include prior technical violations for other offenses or technical violations in other courts does not support that intent.

Criminal justice stakeholders have advised that the statute does not provide clear guidance regarding the General Assembly’s intent, nor does it specify which prior technical violations are to be included in the count.

B. The legislation treats technical violations for absconding or possessing a firearm in a specific manner and assigns sentence caps differently than for other technical violations. Because of the specific treatment in the legislation, do technical violations for absconding or possessing firearms take precedent over other types of technical violations? That is to say, do the provisions of the Code limit the court to 14 days if it is the first technical violation for absconding or possessing a firearm, even if it is the probationer's third technical violation overall?

For the purposes of scoring Guidelines, the Commission has always instructed that, if a statute or the facts of a case are unclear, users must err on behalf of the defendant when scoring the Guidelines worksheets. Therefore, the Commission has instructed Guidelines users that technical violations related to absconding or firearms take precedent over any other technical violations. In such cases, the number of previous revocations for other types of violations will not be used to determine which Guidelines worksheet will be completed. The Guidelines will be completed based on the absconding or firearm violation and reflect the applicable statutory sentence cap for that violation. The Commission will continue to instruct users to score the Guidelines in this manner until the issue is resolved by the court, case law and/or the General Assembly.

C. In addition to technical violations defined by statute, many probationers are also assigned special conditions of supervision. Special conditions may include financial obligations to the victims and/or the courts, restrictions placed on sex offenders or gang members, treatment requirements, and orders of no contact with victims. The special conditions may be imposed by the court or authorized by the court. Probation officers are often authorized by the court to impose additional conditions as needed to supervise an offender based on the individual's risks/needs. The new statutory language, however, is silent as to special conditions. It is unclear if the special condition must be specified in the court order. If it must appear in the court order, does the special condition need to be specified in the initial court order that places the defendant on probation or can the judge identify the special conditions violated in the revocation order?

Based on information provided to the Commission, prosecutors appear to have taken the position that special conditions must be specified in the original court order. The Commission staff has been informed that this may be based on the federal system. Under 18 U.S.C. § 3563, the court may decide on the special conditions of supervision. However, in Virginia, probationers are required to sign the standard Conditions of Probation Supervision along with an acknowledgment of any special conditions. The standard probation conditions are not included in the court order, while the special conditions are sometimes included in the court order – but not always. Some judges, in their orders, will authorize the Probation Officer to include whatever conditions are needed to effectively supervise an offender. Conditions needed for public safety and the well-being of the probationer (such as substance abuse treatment) may be established after sentencing based on a risk/needs assessment.

Violations of special conditions are not subject to the sentence caps specified in § 19.2-306.1 for technical violations. The new § 19.2-306.1 is silent as to special conditions. Interpretation by the courts has been varied. As a result, a violation that is treated as a special condition violation in some courts (no sentence caps apply) may be treated as a technical violation (failure to follow the Probation Officer's instructions) in other courts and subject to the sentence caps defined in § 19.2-306.1.

D. The statute includes the term “good conduct” violation. In the past, the term “good conduct” was used to define an offender’s behavior while incarcerated. “Good behavior” has been the term traditionally used to define the period established pursuant to § 19.2-306. In the new statutory language, is a “good conduct” violation the same as a “good behavior” violation, or does a “good behavior” violation differ from a “good conduct” violation?

According to the amended § 19.2-306, the court is authorized to revoke a suspended sentence and impose a sentence in accordance with the provisions of the new § 19.2-306.1. However, it is unclear if good behavior violations are restricted to the same statutory restrictions as supervised probation under § 19.2-306.1. Under § 19.2-306.1, if the court finds that the defendant has committed a violation other than a technical violation or a “good conduct violation that did not result in a criminal conviction,” the court may revoke the suspended sentence and impose or re-suspend any or all of the sentence that had been previously suspended. Criminal justice stakeholders have questioned if the Code is now silent on the issue of good behavior as established by the revised statute, or if good behavior was redefined as good conduct.

E. Do the new or revised probation statutes create due process issues? Are there any provisions that prevent courts from issuing writs and incarcerating probationers for first or second technical violations while they await the revocation hearing? Under the new statute, the court may not impose any active time for the first technical violation and may impose only up to 14 days for a second technical violation.

Based on feedback provided to the Commission, courts have been handling writ requests for alleged technical violations in different ways. Some judges are asking that the Probation Officer replace the request for a writ (requiring the probationer’s arrest) with a request for a show cause order (letter instructing the probationer to appear in court on a certain day) when it is the defendant’s first or second technical violation. Other judges are issuing writs for first and second technical violations and holding defendants until their revocation hearings. Complicating the issue, the court may not know at the time of the writ request if the alleged violations are associated with new offense convictions or first, second or third technical violations. Also, the court may not know if, in the past, the probationer had absconded or possessed or used a firearm while under supervision. It has been difficult for criminal justice stakeholders to apply the requirements of the statute without changes to court documents and data systems.

F. Do probation officers issue PB-15s for the first technical violation when the probationer is a threat to themselves or the community?

This question is related to how the courts proceed with writ requests. If the court intends to replace the writ or PB-15 with a show cause order and require no period of confinement, the PB-15 will result in little or no time away from the community. In some jurisdictions, especially when the probationer may be at risk for a drug overdose, the prosecutor will issue a writ for a good behavior violation. This allows the court time to find appropriate treatment for the probationer. PB-15 requirements were not addressed in the revised statutes.

G. Are there other unintended consequences of the new provisions in §§ 19.2-306 and 19.2-306.1?

The Virginia Department of Corrections (DOC) oversees adult probation supervision for felony offenders and that agency is the best resource for information related to its policies and practices for handling technical violators. It is the Commission's understanding, however, that Probation Officers often work with offenders for some time to resolve supervision issues before reaching out to the court and requesting a revocation hearing. Thus, Probation Officers may address a number of technical violations with the offender before initiating a return to court. Staff is also aware of at least one DOC project developed with the primary objective of reducing the number of probationers returned to court. This DOC project provides that graduated sanctions should be utilized by the probation officer before initiating a violation proceeding. Under the Virginia DOC Policy 920.6, "[a]ppropriate graduated sanctions should be imposed based on severity of the violation, the degree of risk, and the preference of the Court." Under this project, "[a]ppropriate sanctions should be exhausted before violation action is initiated." With the revised statutes, however, some judges, prosecutors and probation officers may begin to change their practices. For example, probationers may be returned to court quickly for their first and second technical violations (rather than Probation Officers working with the client through multiple violations, as was previous practice in most areas of the state).

4. Some stakeholders have suggested that the Conditions of Probation may need to be modified. Recent changes in law, revised requirements and the need to assist with treatment and recovery may be better addressed by developing updated conditions. The suggestion is made as one way to better implement the policies of the decision-makers. In other words, have the conditions to be more in line with the requirements of § 19.2-306.1.

Given the different ways in which the new provisions are being interpreted and applied (and possible changes in practice that may evolve), many criminal justice stakeholders have expressed concern about the potential increase in disparity. Differences in implementation may not be based on agreement or disagreement with the intent of the statutory requirements. Differences may occur because the statute is unclear, difficult to administer or, as written, does not provide clear guidance as to the General Assembly's intent. From the Commission's perspective, concerns regarding the potential increase in disparity in the handling of revocation cases are valid and are of paramount concern to the Commission, as well. The Commission will continue to observe the ongoing implementation of § 19.2-306.1 and provide users with the most recent court decisions. Questions and concerns raised by court stakeholders will be documented and shared with Commission members and staff.

Virginia Department of Corrections Sex Offender Special Instructions

MONITORING

1. Reside at _____. You will not relocate or spend the night at an address other than listed above unless a home plan is investigated and approved by your supervising Officer.
2. Do not have contact with your victim or victim's guardian. Contact includes but is not limited to face-to-face meetings, letters, phone calls, any electronic means or through a third party.
3. Do not purchase, consume, or possess alcohol, marijuana and/or illegal substances. You may not take a controlled medication unless it has been prescribed for you by your physician.
4. You will not have any contact with anyone under the age of 18. Contact is defined as physical, verbal, written, or third party.
5. If supervised contact with minors is allowed, the supervisor of this contact must know of your offending behavior and must be approved by your supervising Officer.
6. You will not use any form of social networking, including but not limited to Facebook, MySpace, etc.
7. You must obtain prior approval from your supervising Officer in order to utilize internet services. If approval is obtained, you must install monitoring software and you will be responsible for the cost of this software service. Supervising Office must be listed as an accountability partner.
8. Employment must be approved by your supervising Officer.
9. You may not frequent places where children congregate, such as parks, playgrounds, and schools.
10. If mandated by code section, Department of Corrections procedure, or instructed to do so by your supervising Officer, you will comply with electronic monitoring to include, but not limited to Global Positioning (GPS), AnyTrax, or other means.

TREATMENT

11. Attend and successfully complete a Sex Offender Treatment Program approved by your supervising Officer and assume the costs of your treatment as directed by your supervising Officer.
12. You will allow your sex offender treatment provider unrestricted communication with the probation and parole department, to include your supervising Officer regarding your attendance, level of participation, and any other information deemed necessary to protect the community from your sexually abusive behavior.
13. Do not own or have in your possession any sexually explicit materials. Do not view visual images or printed materials that act as a stimulus for your abusive cycle or that act as a stimulus to arouse you in an abusive fashion.

14. You will inform persons with whom you have a significant relationship of your sexual offending behavior as directed by your supervising Officer and/or treatment provider.
15. You may not participate in friendships and/or relationships with other adults who have children.
16. You will submit to any polygraph and/or plethysmograph testing deemed appropriate by your supervising Officer and assume the costs of the examination. These examinations will be periodic upon the therapist's or supervising Officer's request.

GENERAL

17. If you have photographed your victims in the past, you may not possess a camera or video recorder.
18. You will attend and successfully complete an alcohol and/or drug treatment program approved by your supervising Officer.
19. You must submit to alcosensor and any other drug testing at the direction of your supervising Officer.
20. You must observe curfew restrictions as directed by your supervising Officer.
Your curfew is: _____
21. If mandated by *Virginia Code Section 18.2-370.3*, you may not live within 500 feet of a child day care center, primary, secondary, or high school.
22. If mandated by *Virginia Code Section 18.2 370.5*, you understand that you may not enter school property during school hours or during the hours of school related/school sponsored activities.
23. If required to register with the Virginia State Police Sex Offense and Crimes Against Minors Registry you must report any changes in home, employment, school, and vehicles within three days to the Virginia State Police.
24. If you are allowed internet access, you understand that you must register any electronic address, screen name and webpage with the Virginia State Police and within 30 minutes of any change in electronic address, screen name, or webpage.
25. Other

Figure 33

Confirmed Gang/STG Members Special Instructions

Virginia Department of Corrections-Special Instructions-Confirmed Gang/STG Members

1. I will not associate or communicate with any known gang/STG members or be in the presence of where they are known to associate.
2. I will not wear, display, use, or possess any insignias, emblems, badges, buttons, caps, hats, jackets, shoes, flags, scarves, bandanas, shirt, or other articles of clothing that are evidence of gang/STG membership or affiliation. This also includes photos and writings found inside of the home and on the internet to include any and all social media platforms.
3. I will not appear in or at the courthouse unless I have a scheduled case, am a witness in a case, or are conducting personal transactions (for example, paying court costs).
4. I will not visit or frequent any school grounds unless I am a student at that school, or are the parent or legal guardian of a child at that school.
5. I will not be in possession of graffiti tools, to include: spray paint cans, paint, paint brushes, or any other instruments that can be used to produce graffiti.
6. I will not possess any firearms, ammunition, brass knuckles, knives, machetes, explosives, martial arts weapons, tazers, or any other weapons or simulated weapons.
7. I will allow a designated representative of the Department of Corrections to visit my home or place of employment. I understand that these contacts may occur at any time and may include members of law enforcement. I also realize that I need not be present when these contacts occur.
8. Other

VIRGINIA'S PRETRIAL DATA PROJECT

3

INTRODUCTION

Virginia's Pretrial Data Project was established in 2018 under the direction of the Virginia State Crime Commission as part of the Crime Commission's broader study of the pretrial system in the Commonwealth.¹ The purpose of the Project was to address the significant lack of data available to answer critical questions regarding the pretrial system in Virginia. This was an unprecedented, collaborative effort among numerous state and local agencies representing all three branches of government. The Project laid the groundwork for the collection of comprehensive data in order to better understand all aspects of the pretrial process. The Crime Commission's study focused on a cohort of individuals charged with a criminal offense during a one-month period (October 2017). The work was well-received by lawmakers, and the 2021 General Assembly (Special Session I) passed legislation (House Bill 2110 and Senate Bill 1391) directing the Virginia Criminal Sentencing Commission to continue this work on an annual basis. The legislation, now codified in § 19.2-134.1, requires the Sentencing Commission to submit its first report on the Pretrial Data Project on December 1, 2022. The Sentencing Commission also must create an interactive data dashboard tool that will display aggregated data based on characteristics or factors selected by the user. The dashboard must be available to the public on the Commission's website as of December 1, 2022. Lastly, the final Project dataset (with all personal/case identifiers removed) must be made available on the Commission's website. The Pretrial Data Project will provide valuable data for policy makers, agency and program administrators, and academic researchers and may become a model for other states interested in examining the pretrial process.

For the current study, the Sentencing Commission selected individuals with pretrial contact events during Calendar Year (CY) 2018. A contact event is the point at which an individual comes into contact with the criminal justice system and he or she

¹ See Virginia State Crime Commission. (2018). *2017 Annual Report: Pretrial Services Agencies*. Virginia State Crime Commission. (2019). *2018 Annual Report: Virginia Pretrial Data Project and Pretrial Process*. Virginia State Crime Commission (Dec. 2019). *Virginia Pretrial Data Project Preliminary Findings*. Virginia State Crime Commission. (2021). *Virginia Pretrial Data Project: Final Report*.

is charged with a criminal offense, thus beginning the pretrial process. CY2018 was selected for the study in order to establish a pre-COVID baseline of pretrial data. Establishing a baseline allows researchers to better assess the impact of subsequent events (such as the COVID-19 pandemic) or changes in laws or policies (such as the elimination of the presumptive denial of bail from the Code of Virginia). For individuals with more than one contact event during CY2018, only the first event was selected. Individuals were tracked for a minimum of 15 months (until the disposition of the case or March 31, 2020, whichever occurred first).

Data for the Project was obtained from numerous criminal justice agencies in Virginia. Compiling the data into one primary dataset requires numerous iterations of matching, merging and data cleaning to ensure accuracy when linking information from the respective data systems to each defendant in the cohort. This process is intensive and requires meticulous attention to detail. More than 500 data elements were captured for each defendant, including demographics, charging details, criminal history records, pretrial release status, bond type and amount, court appearance by the defendant, new criminal arrest during the pretrial period, and final dispositions. The Sentencing Commission's approach to the current study largely replicates the methods used in the previous study overseen by the Crime Commission. The overall CY2018 cohort contains nearly 356,000 adult defendants.

The report focuses on the 96,135 adult defendants whose contact event in CY2018 included a charge for a criminal offense punishable by incarceration where a bail determination was made by a judicial officer (i.e., a magistrate or judge). Other defendants, such as those released on a summons, were not analyzed for the report. The report presents a descriptive analysis of the 96,135 defendants, their key characteristics, the ways in which these defendants proceeded through the pretrial system, and outcomes. The report provides a snapshot of pretrial defendants at key points in the pretrial process. It is important to note that descriptive analysis such as this cannot explain why differences may exist across groups of defendants, nor can it suggest any causal relationships. A deeper understanding of the relationships across factors and the impact each factor may have on pretrial decision making and outcomes is necessary. In the coming months, the Sentencing Commission will conduct additional analysis of the pretrial dataset using sophisticated multivariate statistical techniques and will issue supplemental reports presenting the findings as this work is completed.

As the Project moves forward, the Sentencing Commission will solicit input from the policy makers, agency and program administrators, and other stakeholders in the pretrial community. This is an important aspect of the Commission's work. As part of its ongoing efforts, the Sentencing Commission will explore ways to expand and improve the information available through the Pretrial Data Project.

KEY FINDINGS

Presented below are key descriptive findings from the Sentencing Commission's study of the 96,135 adult defendants whose pretrial contact event in CY2018 included a criminal offense punishable by incarceration where a bail determination was made by a judicial officer. The findings are largely consistent with the findings of the Crime Commission's previous study of the October 2017 cohort.

- The majority of defendants (86.8%) were ultimately released from custody during the pretrial period; only 13.2% of the defendants were detained throughout the pretrial period. Of released defendants, most (85.6%) were released within three days of their contact event.
- Approximately 46% of the defendants were charged with a felony offense, while 54.0% were charged with a misdemeanor or special class offense as the most serious offense in the contact event.
- Defendants charged with a felony were much more likely to be detained throughout the pretrial period compared to those charged with a misdemeanor only, with detention rates of 22.3% and 5.3%, respectively.
- A large majority of released defendants (87.6%) were not charged with failure to appear at court proceedings for the offense(s) in the 2018 contact event.
- Fewer than one in four (22.4%) of released defendants had a new in-state arrest for an offense punishable by incarceration during the pretrial period. The majority of the new arrests were for misdemeanor offenses; only 8.2% of released defendants were charged with a new felony, with 2.2% being charged with a new violent felony offense, as defined in § 17.1-805.
- Compared to defendants who were not identified as indigent, a higher proportion of indigent defendants were charged with failure to appear or had a new in-state arrest for an offense punishable by incarceration during the pretrial period.
- The proportion of released defendants charged with failure to appear or who had a new in-state arrest for an offense punishable by incarceration during the pretrial period increased as the defendants' Public Safety Assessment (PSA) scores increased, suggesting that the PSA may be a useful tool in pretrial release decision making.
- Among released defendants, 59.4% were released on personal recognizance or an unsecured bond, while 40.6% were released on a secured bond. Females were more likely than males, Whites were more likely than Blacks, and non-indigent were more likely than indigent defendants to be released on personal recognizance/ unsecured bond versus a secured bond.

- Median secured bond amounts were \$2,500 for felony contact events and \$2,000 for misdemeanor contact events.
- Secured bond amounts at the time of release generally did not vary widely across sex, race, indigency status, or whether the defendant received supervision by a Pretrial Services Agency.
- Approximately 60% of the 96,135 defendants examined were convicted of at least one offense in the contact event (original or reduced charge). Conviction rates varied somewhat across sex, race, and indigency status, with males, Whites and non-indigent defendants convicted at slightly higher rates than defendants in other categories.
- Defendants who were detained during the entire pretrial period had a significantly higher conviction rate compared to defendants who were released during the pretrial period, 76.4% versus 57.6%.
- Defendants represented by a retained attorney were released at a higher rate during the pretrial period (94.5%) compared to defendants represented by a public defender or court-appointed attorney (with 83.0% and 80.9% released, respectively); however, this is based on the type of attorney at case closure, which may not accurately reflect the type of attorney when the pretrial release decision was made.
- Defendants represented by a retained attorney were convicted of at least one offense in the contact event at a slightly higher rate (65.0%) than defendants represented by a public defender or court-appointed attorney, with conviction rates of 57.6% and 61.0%, respectively.
- Defendants who were male, Black, or between ages of 18 and 35 were significantly overrepresented among pretrial defendants compared to their overall representation within Virginia's population.

The full report, entitled Virginia Pretrial Data Project: Findings from the 2018 Cohort, can be found on the Commission's website at <http://www.vcsc.virginia.gov/pretrialdatapoint.html>.

RECOMMENDATIONS

4

INTRODUCTION

The Commission closely monitors the Sentencing Guidelines system and, each year, deliberates upon possible modifications to enhance the usefulness of the Guidelines as a tool for judges in making their sentencing decisions. 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, Guidelines changes recommended by the Commission become effective on the following July 1.

Unlike many other states, Virginia's Sentencing Guidelines are based on analysis of actual sentencing practices and are designed to provide judges with a benchmark that represents the typical, or average, case. Recommendations for revisions to the Guidelines are based on the best fit of the available data. Moreover, recommendations are designed to closely match the rate at which offenders are sentenced to prison and jail, meaning that offenders will be recommended for incarceration in approximately the same proportions as offenders who received incarceration sanctions historically.

The Commission draws on several sources of information to guide its discussions about modifications to the Guidelines system. Commission staff meet with circuit court judges and Commonwealth's attorneys at various times throughout the year, and these meetings provide an important forum for input from these two groups. In addition, the Commission operates a "hotline" phone system, staffed Monday through Friday, to assist users with any questions or concerns regarding the preparation of the Guidelines. While the hotline has proven to be an important resource for Guidelines users, it has also been a rich source of input and feedback from criminal justice professionals around the Commonwealth. Moreover, the Commission conducts many training sessions over the course of a year and these sessions often provide information that is useful to the Commission. Finally, the Commission closely examines concurrence with the Guidelines and departure patterns in order to pinpoint specific areas where the Guidelines may need adjustment to better reflect current judicial thinking. The opinions of the judiciary, as expressed in the reasons they write for departing from the Guidelines, are very important in directing the Commission's attention to areas of the Guidelines that may require amendment.

On an annual basis, the Commission also examines those crimes not yet covered by the Guidelines. Currently, the Guidelines cover approximately 95% of felony cases in Virginia's circuit courts. Over the years, the General Assembly has created new crimes and raised other offenses from misdemeanors to felonies. The Commission tracks all of the changes to the *Code of Virginia* in order to identify new felonies that may be added to the Guidelines system in the future. The ability to create historically-based Guidelines depends, in large part, on the number of cases that can be used to identify past judicial sentencing patterns. Of the felonies not currently covered by the Guidelines, most do not occur frequently enough for there to be a sufficient number of cases upon which to develop historically-based Guideline ranges. Through this process, however, the Commission can identify offenses and analyze data to determine if it is feasible to add particular crimes to the Guidelines system.

The Commission has adopted five recommendations this year. Each of these is described in detail on the pages that follow.

RECOMMENDATION ONE

Request legislation to 1) clarify that Sentencing Guidelines must be reviewed and considered in cases in which the court may defer the disposition as authorized in §§ 18.2-251, 18.2-258.1, 19.2-298.02, or 19.2-303.6, and 2) specify that the Guidelines worksheets for cases resulting in a deferred disposition must be submitted to the Virginia Criminal Sentencing Commission.

ISSUE

While Commission policy states that Guidelines worksheets must be submitted for First Offender and other deferred disposition cases, the Code of Virginia currently specifies that Guidelines and court orders be submitted to the Commission “following the entry of a final order of conviction and sentence” (§ 19.2-298.01(E)). As a result, practice across courts varies and the Commission is not receiving all Guidelines worksheets in deferred disposition cases.

DISCUSSION

For a number of years, it has been the Commission’s policy that Sentencing Guidelines worksheets for defendants placed under First Offender (§ 18.2-251) and other deferred dispositions should be submitted to the Commission. The rationale is three-fold:

- The Commission is charged with studying felony sentencing patterns (§ 17.1-803);
- Currently, annual Sentencing Guidelines worksheet counts are used in the workload formula for Commonwealth’s Attorneys (which affects the distribution of resources to these offices); and
- To respond to policymakers about what types of offenses are deferred, who receives a deferred disposition, success and violation rates.

The General Assembly recently expanded judicial options for deferred dispositions. There are now four Code sections that explicitly provide for deferred dispositions. These are:

- § 18.2-251 – First offender for drug possession;
- § 18.2-258.1 – Obtain controlled substance by fraud or deceit;
- § 19.2-303.6 – Deferred dispositions in certain cases for defendants diagnosed with autism or intellectual disabilities (2020 General Assembly); and
- § 19.2-298.02 – Deferred disposition with agreement of defendant and Commonwealth (2020 General Assembly, Special Session I).

While Commission policy has established that the Guidelines be submitted for First Offender and other deferred disposition cases, the Code of Virginia currently specifies that Guidelines and court orders be submitted to the Commission “following the entry of a final order of conviction and sentence” (§ 19.2-298.01(E)). Given the current statutory language, submission of Guidelines worksheets in deferred disposition cases is not consistent across courts.

With the recent expansion of deferred dispositions, the Commission seeks to improve its ability to:

- Identify defendants who receive a deferred disposition,
- Monitor outcomes of such cases, including sentencing patterns following a deferral failure, and
- Determine which factors are associated with successful completion of deferral conditions and continued success in the community.

Thus, the Commission will request legislation that will 1) clarify that Sentencing Guidelines must be reviewed and considered in cases in which the court may defer the disposition as authorized by Code, and 2) specify that the Guidelines worksheets for cases resulting in a deferred disposition must be submitted to the Commission.

RECOMMENDATION TWO

Modify the Sentencing Guidelines Cover Sheet to identify convictions resulting from failure of a defendant to satisfy the conditions of a deferred disposition (as authorized in §§ 18.2-251, 18.2-258.1, 19.2-298.02, or 19.2-303.6)

ISSUE

Currently, the Sentencing Guidelines Cover Sheet does not provide a way to identify convictions that are the result of violations of the conditions of deferred dispositions.

DISCUSSION

The General Assembly recently expanded judicial options for deferred dispositions (see §§ 19.2-303.6 and 19.2-298.02). Following this expansion, the Commission seeks to improve its ability to:

- Identify defendants who receive a deferred disposition,
- Monitor outcomes of such cases, including sentencing patterns following a deferral failure, and
- Determine which factors are associated with successful completion of deferral conditions and continued success in the community.

There is currently no way on the Sentencing Guidelines Cover Sheet to identify convictions resulting from the failure to satisfy conditions of a deferred disposition. To address this lack of information, the Commission recommends adding check boxes to the Guidelines Cover Sheet to clearly identify felony convictions that are based on the defendant's failure to complete the deferred disposition. The recommended changes to the Cover Sheet are shown in Figure 34. The proposed new check boxes would be completed by the individual preparing the Guidelines for the court.

Figure 34

Recommended Changes to the Sentencing Guidelines Cover Sheet to
Identify Convictions Resulting from Failure to Satisfy Conditions of a Deferred Disposition

Sentencing Guidelines • Burglary/Dwelling Cover Sheet
Complete this form ONLY for applicable felonies sentenced on or after July 1, 2022 and before July 1, 2023.

Offender

Name

First: Middle: Last: Suffix:

CCRE:
CORIS Offender ID:
PSI #:
SSN:
Date of Birth: mm/dd/yyyy

Court

Judicial Circuit: FIPS Code:
City/County:
Sentencing Judge's Name:
Prosecuting Commonwealth's Attorney:
Defense Attorney:
Preparer Name:
 Commonwealth's Attorney
 Probation Officer

Convictions

Offense	Counts	VCC	Offense Date	Docket No.
Deferred Violations Primary Offense			MM DD YY	
✓ STAT. BURGLARY OF DWELLING	1 +	BUR 2212 D2	1 1 22	<input type="text"/>
Additional Offense +				
✓ FIREARM USE IN COMM OF FELONY	1 +	ASL 1319 D9	1 1 22	<input type="text"/>

Primary Offense Code Section §: 18.2-90

RECOMMENDATION THREE

Modify the Virginia Crime Codes (VCCs) used by criminal justice agencies in order to identify convictions resulting from the failure of a defendant to satisfy conditions of a deferred disposition (as authorized in §§ 18.2-251, 18.2-258.1, 19.2-298.02, or 19.2-303.6).

ISSUE

While the *Code of Virginia* requires criminal justice agencies to utilize Virginia Crime Codes (VCCs) to identify offenses with specificity, there is currently no way to readily identify convictions that are based on violations of the conditions of deferred dispositions.

DISCUSSION

Since 1995, the Commission has administered the Virginia Crime Code (VCC) system, including the creation or modification of VCCs. The *Code of Virginia* requires criminal justice agencies in the Commonwealth to use VCCs in their data systems to identify offenses with specificity. Pursuant to § 19.2-390.01, a Virginia Crime Code (VCC) is required on any criminal warrant, indictment, information, presentment, petition, summons, charging document issued by a magistrate, or dispositional document from a criminal trial for a jailable offense. VCCs are used to facilitate administration and research and do not have any legal standing as they relate to charges or dispositions. The statute citation continues to bear the legal standing in criminal cases. In the past 35 years, however, the VCCs have proven to be an efficient way to identify and classify current and past criminal arrests and convictions.

The VCCs are comprised of a combination of nine letters and numbers. The first three letters of each VCC represent an abbreviation of the broad offense category under which the crime falls. Thus, the prefix “BUR” is used for all burglary offenses, “ASL” for assault offenses, and “NAR” for narcotics/drug crimes, and so forth. The next four digits are an identification code unique to each crime. The last two positions of the VCC represent the seriousness index based on the statutory maximum penalty for the crime. An “F” in the eighth character position indicates that the offense is a felony, while an “M” indicates the offense is a misdemeanor. The ninth character position refers to the offense class as defined in the *Code of Virginia* (Class 1 through 6 for felonies or Class 1 through 4 for misdemeanors). For example, a VCC of “NAR-3022-F5” references possession of a Schedule I or II drug, a Class 5 felony under § 18.2-250(A,a). Occasionally, a VCC will contain a seriousness index of “F9” or “M9.” “F9” indicates the crime is a felony with a special penalty structure that does not fall within the ranges for Class 1 through 6 felonies defined in the *Code of Virginia*, while “M9” designates a misdemeanor crime with a penalty range outside of the Class 1 through 4 misdemeanors defined in *Code*.

The VCC system utilizes a number of modifiers in the eighth character position to indicate specific case characteristics. The letters “A” (Attempt) and “C” (Conspiracy) are penalty modifiers and are used in place of the “F” for attempted and conspired crimes. For example, the offense of “malicious bodily injury to a law enforcement officer” has a VCC of ASL-1326-F9, which would change to ASL-1326-A9 for an attempt or ASL-1326-C9 for a conspiracy to commit this specific crime. The letter “L” is also a penalty modifier and is used in place of the “F” when a defendant is convicted under § 19.2-297.1 (Virginia’s “three-strikes” statute). For example, the offense of carjacking has a VCC of ROB-1225-F9, which would change to ROB-1225-L9 for a conviction under § 19.2-297.1. All VCC modifiers are shown in Figure 35.

The Commission recommends adding an offense modifier to the VCC system to identify convictions that are the result of violations of the conditions of deferred dispositions (as authorized in §§ 18.2-251, 18.2-258.1, 19.2-298.02, or 19.2-303.6). With this approach, the eighth character position would change from an “F” or “M” to a “D” if the individual is convicted of the crime after failing to satisfy the terms and conditions of a deferred disposition.

Example:

LAR-2359-F9 Grand larceny conviction

LAR-2359-D9 Grand larceny conviction following failure on deferred disposition

This way of designating deferred disposition failures would apply in all criminal justice data systems that use the VCCs and would make the circumstances of the conviction clear to all criminal justice stakeholders.

Figure 35
Virginia Crime Codes (VCCs) – Offense Modifiers

F = Felony Offense

M = Misdemeanor Offense

A = Attempt (Felonies Only)

C = Conspiracy (Felonies Only)

S = Special Penalty Structure

L = Life Without Parole (§ 19.2-297.1)

X = Subsequent Violent Sexual Assault (§18.2-67.5:3 and § 18.2-67.5:2)

O = Local Ordinance

J = Adult sentenced for Juvenile offense (§ 16.1-284)

Y = Commitment of serious juvenile offender (§ 16.1-285.1)

T = Solicitation to commit a felony (§ 18.2-29)

V = Solicitation to commit a felony-adult solicits juvenile (§ 18.2-29)

RECOMMENDATION FOUR

Modify the Sentencing Guidelines Case Details Worksheet to identify defendants and victims diagnosed with autism spectrum disorder and other intellectual disabilities, as defined in the *Code of Virginia*.

ISSUE

The 2020 General Assembly passed legislation to allow deferred dispositions in certain cases for defendants diagnosed with autism spectrum disorder or intellectual disabilities (see § 19.2-303.6). Currently, there is no way to track how often this provision is applied, or could be applied, in circuit court, or how often victims of felony offenses have such conditions.

DISCUSSION

To address the critical need for information, the Commission approved a Case Details Worksheet that was incorporated into the Sentencing Guidelines system beginning July 1, 2021. This one-page worksheet is designed to provide vital and essential information for the court, the Commission, and state policy makers. The information captured on the Case Details Worksheet is not consistently available in other criminal justice data systems in Virginia. There is currently no universal source of detailed case information on felony cases other than the Commission's Case Details Worksheet.

The Case Details Worksheet is completed by the individual preparing the Sentencing Guidelines for the court. The Worksheet is included in the Guidelines packet submitted to the court. If the Guidelines are prepared using the Commission's automated Guidelines application (called SWIFT), the Case Details Worksheet can be completed within the automated system. Based upon the information gathered through this worksheet, the Commission will be able to recommend revisions to the Guidelines to ensure that they continue to provide judges with an accurate benchmark of the typical sentencing outcome in similar cases. The Case Details Worksheet is shown in Figure 36.

Since July 1, 2020, the *Code of Virginia* has allowed deferred dispositions in many cases for defendants diagnosed with autism spectrum disorder or intellectual disabilities (§ 19.2-303.6). However, there is no way to determine how often this provision is applied or could be applied or the extent to which victims of felony offenses have such conditions.

Figure 36

Sentencing Guidelines Case Details Worksheet



Sentencing Guidelines

Case Details Worksheet

SWIFT/DCN: _____

1. Defendant's Name: _____

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

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

4. Pretrial Status: Secured Bond Unsecured Bond Own Recognizance Confinement Third Party Release Unknown

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

6. Posttrial Status: Secured Bond Unsecured Bond Own Recognizance Confinement Third Party Release Unknown

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

8. Total Time Served Prior to Sentencing: Years _____ Months _____ Days _____ N/A

9. Number of Codefendants: _____

10. Legal Status at Offense (check all that apply):

<input type="checkbox"/> Escaped	<input type="checkbox"/> Inmate	<input type="checkbox"/> Mandatory Parole	<input type="checkbox"/> Discretionary Parole
<input type="checkbox"/> Geriatric Release - § 53.1-40.01	<input type="checkbox"/> Post Release - §19.2-295.2	<input type="checkbox"/> Probation	<input type="checkbox"/> Bond
<input type="checkbox"/> Recognizance	<input type="checkbox"/> Community Program	<input type="checkbox"/> Pre-Trial Supervision	<input type="checkbox"/> Good Behavior <input type="checkbox"/> Unknown
<input type="checkbox"/> Juvenile Probation	<input type="checkbox"/> Juvenile Parole	<input type="checkbox"/> Summons	<input type="checkbox"/> Other _____ <input type="checkbox"/> None

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

12. Weapon Type: Firearm Knife Explosive Simulated/Feigned Weapon Blunt Object

Note/Verbal Vehicle Animal Other _____ N/A

13. Offender's Role Alone Leader Accomplice Police Officer/LEO Not Determined Unknown

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

15. Location: Bank Business Residence Street/Outside Automobile Other _____ N/A

16. Injury to Victim: Death Life Threatening Serious Physical Physical

Emotional Threatened None N/A

17. Victim Relationship to Offender: None/Stranger Known Friend

Family Police Officer/LEO Other _____ N/A

18. Victim Information: Gender: _____ Race: _____ Ethnicity: _____ Age: _____ Handicapped: _____ Unknown

19. Type of Primary Drug: _____ Quantity: _____ Unit: _____ N/A

20. Number of Felony Juvenile Adjudications: Person _____ Property _____ Drug _____ Other _____ None Unknown

Source for Question #21: Defense Attorney Defendant PSI/PSR Commonwealth's Attorney Probation Officer

Information is not available

21. 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).....	<input type="checkbox"/>	<input type="checkbox"/> prior to offense <input type="checkbox"/> after arrest
b. Alcohol abuse (admitted, family information, documented in reports).....	<input type="checkbox"/>	<input type="checkbox"/> prior to offense <input type="checkbox"/> after arrest
c. Mental health issues (admitted, family information, documented in reports) ...	<input type="checkbox"/>	<input type="checkbox"/> prior to offense <input type="checkbox"/> after arrest
d. Under the Influence of drugs/alcohol at the time of the offense	<input type="checkbox"/>	

e. Employment (Last 2 years): Full or part-time for at least 18 months Full-time student Disabled

Stay-at-home spouse/parent Retired Unemployed/Not stable

f. Housing (Last 2 years): Stable/same residence 1+ yrs Multiple Changes Homeless at the time of the offense

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

h. Education: Less than High school High school/GED Technical Training Some College

College Degree Post-graduate/Professional Currently Enrolled (School, College Training)

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: _____

In addition to details of the offense, the Case Details Worksheet captures certain defendant and victim characteristics, such as race, gender, ethnicity, age, and whether the individual is physically handicapped. The Commission recommends expanding the demographic questions to identify defendants and victims who have been diagnosed with autism spectrum disorder or other intellectual disabilities, as defined in the Code of Virginia.

Expanding the Case Details Worksheet will provide a mechanism to identify cases involving these specific circumstances (see Figure 37).

Figure 37

Recommended Changes to the Case Details Worksheet to Identify Defendants and Victims Diagnosed with Autism Spectrum Disorder or Other Intellectual Disabilities

SWIFT/DCN: _____

 <p>Sentencing Guidelines Case Details Worksheet</p>	1. Defendant's Name: _____		
	2. Defendant Information: Gender: _____ Race: _____ Ethnicity: _____ Age: _____ Physical Handicapped: _____		
Intellectual Disabilities/Autism Spectrum Disorder § 19.2-303.6: _____ Other: _____ Unknown: _____			
3. Type of Counsel: <input type="checkbox"/> Retained <input type="checkbox"/> Court Appointed <input type="checkbox"/> Public Defender <input type="checkbox"/> Other			
4. Pretrial Status: <input type="checkbox"/> Secured Bond <input type="checkbox"/> Unsecured Bond <input type="checkbox"/> Own Recognizance <input type="checkbox"/> Confinement <input type="checkbox"/> Third Party Release <input type="checkbox"/> Unknown			
5. Pretrial Supervision by Pretrial Services Agency: <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Yes, ordered but did not complete/attend			
6. Posttrial Status: <input type="checkbox"/> Secured Bond <input type="checkbox"/> Unsecured Bond <input type="checkbox"/> Own Recognizance <input type="checkbox"/> Confinement <input type="checkbox"/> Third Party Release <input type="checkbox"/> Unknown			
7. Source of Bond: <input type="checkbox"/> Personal <input type="checkbox"/> Family <input type="checkbox"/> Other <input type="checkbox"/> Bonding Company <input type="checkbox"/> N/A <input type="checkbox"/> Unknown			
8. Total Time Served Prior to Sentencing: Years _____ Months _____ Days _____			
9. Number of Codefendants: _____			
10. Legal Status at Offense (check all that apply):			
<input type="checkbox"/> Escaped <input type="checkbox"/> Inmate <input type="checkbox"/> Mandatory Parole <input type="checkbox"/> Discretionary Parole <input type="checkbox"/> Geriatric Release - § 53.1-40.01 <input type="checkbox"/> Post Release - §19.2-295.2 <input type="checkbox"/> Probation <input type="checkbox"/> Bond <input type="checkbox"/> Recognizance <input type="checkbox"/> Community Program <input type="checkbox"/> Pre-Trial Supervision <input type="checkbox"/> Good Behavior <input type="checkbox"/> Juvenile Probation <input type="checkbox"/> Juvenile Parole <input type="checkbox"/> Summons <input type="checkbox"/> Other _____ <input type="checkbox"/> None			
11. Weapon Use: <input type="checkbox"/> None <input type="checkbox"/> Possessed <input type="checkbox"/> Used to Injure <input type="checkbox"/> Used to Threaten (Includes by voice, note, text, etc.)			
12. Weapon Type: <input type="checkbox"/> Firearm <input type="checkbox"/> Knife <input type="checkbox"/> Explosive <input type="checkbox"/> Simulated/Feigned Weapon <input type="checkbox"/> Blunt Object <input type="checkbox"/> Note/Verbal <input type="checkbox"/> Vehicle <input type="checkbox"/> Animal <input type="checkbox"/> Other _____ <input type="checkbox"/> N/A			
13. Offender's Role <input type="checkbox"/> Alone <input type="checkbox"/> Leader <input type="checkbox"/> Accomplice <input type="checkbox"/> Police Officer/LEO <input type="checkbox"/> Not Determined			
14. Value of Property Taken/Damaged: Highest value for one item \$ _____ Total value of all items \$ _____			
15. Location: <input type="checkbox"/> Bank <input type="checkbox"/> Business <input type="checkbox"/> Residence <input type="checkbox"/> Street/Outside <input type="checkbox"/> Automobile <input type="checkbox"/> Other _____ <input type="checkbox"/> N/A			
16. Injury to Victim: <input type="checkbox"/> Death <input type="checkbox"/> Life Threatening <input type="checkbox"/> Serious Physical <input type="checkbox"/> Physical <input type="checkbox"/> Emotional <input type="checkbox"/> Threatened <input type="checkbox"/> None <input type="checkbox"/> N/A			
17. Victim Relationship to Offender: <input type="checkbox"/> None/Stranger <input type="checkbox"/> Known <input type="checkbox"/> Friend <input type="checkbox"/> Family <input type="checkbox"/> Police Officer/LEO <input type="checkbox"/> Other _____			

RECOMMENDATION FIVE

Modify the Sentencing Guidelines Case Details Worksheet by removing Question 21.

ISSUE

The Commission incorporated the one-page Case Details Worksheet into the Guidelines System effective July 1, 2021. Designed to provide vital and essential information for the court, the Commission, and state policy makers, the Worksheet captures detailed information not consistently available in other criminal justice data systems in the Commonwealth. The Commission has received considerable feedback from Guidelines users regarding Question 21 on the Case Details Worksheet, with the majority indicating that this question is problematic. Based on input from Guidelines users, concerns about Question 21 may result in other questions, or the entire Worksheet, being left blank.

DISCUSSION

The majority of the Case Details Worksheet captures demographic information, details of the offense(s) that must be known to accurately score the Guidelines, prior record, and other elements that judges have indicated as relevant in the sentencing decision. The remainder of the worksheet (Question 21) captures other factors that may be known at the time of sentencing, such as a defendant's substance abuse issues, alcohol abuse, mental health issues, recent employment history, housing, education, and military service, which the judge may wish to consider in the sentencing decision (Figure 38). Responses to Question 21 may be submitted to the Guidelines preparer by the defendant or his/her attorney.

Figure 38
Sentencing Guidelines Case Details Worksheet - Question 21

21. Other factors known at the time of sentencing (<i>check all that apply</i>)		Yes	Treatment: (in or completed treatment)	
a. Drug abuse (admitted, family information, documented in reports)		<input type="checkbox"/>	<input type="checkbox"/> prior to offense	<input type="checkbox"/> after arrest
b. Alcohol abuse (admitted, family information, documented in reports)		<input type="checkbox"/>	<input type="checkbox"/> prior to offense	<input type="checkbox"/> after arrest
c. Mental health issues (admitted, family information, documented in reports)		<input type="checkbox"/>	<input type="checkbox"/> prior to offense	<input type="checkbox"/> after arrest
d. Under the influence of drugs/alcohol at the time of the offense		<input type="checkbox"/>		
e. Employment (Last 2 years):	<input type="checkbox"/> Full or part-time for at least 18 months <input type="checkbox"/> Stay-at-home spouse/parent	<input type="checkbox"/> Full-time student <input type="checkbox"/> Retired	<input type="checkbox"/> Disabled <input type="checkbox"/> Unemployed/Not stable	
f. Housing (Last 2 years):	<input type="checkbox"/> Stable/same residence 1+ yrs <input type="checkbox"/> Multiple Changes <input type="checkbox"/> Homeless at the time of the offense			
g. Provides support:	Enter Number dependents or family members supported _____			
h. Education:	<input type="checkbox"/> Less than High school <input type="checkbox"/> College Degree	<input type="checkbox"/> High school/GED <input type="checkbox"/> Post-graduate/Professional	<input type="checkbox"/> Technical Training <input type="checkbox"/> Currently Enrolled (School, College Training)	<input type="checkbox"/> Some College
i. Military:	<input type="checkbox"/> Active <input type="checkbox"/> Medical Discharge	<input type="checkbox"/> Reserve <input type="checkbox"/> General Discharge	<input type="checkbox"/> Honorably Discharged <input type="checkbox"/> Bad Conduct Discharge	<input type="checkbox"/> Undesirable Discharge
j. Defendant's Response:	<input type="checkbox"/> Accepts Responsibility <input type="checkbox"/> Remorseful	<input type="checkbox"/> Sought Treatment <input type="checkbox"/> Paid All or Part Restitution	<input type="checkbox"/> Developed Rehabilitation Plans	
k. Other:	_____			

Guidelines received by the Commission since implementation reveal that the Case Details Worksheet, in many cases, is either missing or incomplete. Users have suggested that Question 21 is difficult to complete unless the information is provided by the defendant or defense attorney. In cases involving plea agreements, the Commonwealth's attorney is unlikely to know the information needed to respond to Question 21. Furthermore, defense attorneys are often hesitant to provide information that may be detrimental to the client's case. As a result, Question 21 is left blank in the majority of cases, but factors in other sections, which are critical for future analysis, are often left blank, as well. Concerns about Question 21 may be causing Guidelines users to doubt the validity and utility of the entire Case Details Worksheet.

Because the information in Questions 1 through 20 of the Case Details Worksheet are vitally important for developing and refining Sentencing Guidelines, and to address concerns of Guidelines users, the Commission recommends removing Question 21 from the Case Details Worksheet.



APPENDICES

Appendix 1

Judicial Reasons for Departure from Sentencing Guidelines Property, Drug, and Miscellaneous Offenses

Reasons for MITIGATION

Burglary of Dwelling (77 Cases)	Number	Percent
Plea Agreement	25	32.5%
No mitigating reason given	8	10.4%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	7	9.1%
Sentenced to alternative punishment	5	6.5%
Recommended by the attorney for the Commonwealth	5	6.5%
Offender has health issues	5	6.5%
Request of the victim	4	5.2%
Offender has good potential for rehabilitation	3	3.9%
Offender has made progress in rehabilitating himself or herself	3	3.9%
Missing information	2	2.6%
Cooperated with authorities	2	2.6%
Offender has minimal or no prior record	2	2.6%
Behavior positive since commission of the offense	1	1.3%
Mitigated facts of the offense	1	1.3%
Property was recovered or was of little value	1	1.3%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	1.3%
Victim cannot or will not testify	1	1.3%
Victim circumstances (drug dealer, etc.)	1	1.3%

Burglary of Other Structure (54 Cases)	Number	Percent
Plea Agreement	20	37.0%
No mitigating reason given	10	18.5%
Sentenced to alternative punishment	3	5.6%
Cooperated with authorities	3	5.6%
Recommended by the attorney for the Commonwealth	3	5.6%
Mitigated facts of the offense	2	3.7%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	2	3.7%
Offender issues, general (e.g., age, family support, impact on community, etc.)	2	3.7%
Sequence of events had impact on recommendation	1	1.9%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	1.9%
Sentencing guidelines were missing or incorrect	1	1.9%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	1	1.9%
Offender has health issues	1	1.9%
Offender has good potential for rehabilitation	1	1.9%
Offender has made progress in rehabilitating himself or herself	1	1.9%
Request of the victim	1	1.9%
Sentenced as a juvenile to DJJ	1	1.9%

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix ①

Judicial Reasons for Departure from Sentencing Guidelines Property, Drug, and Miscellaneous Offenses

Reasons for AGGRAVATION

Burglary of Dwelling (69 Cases)	Number	Percent
Aggravated facts of the offense	18	26.1%
Plea agreement	14	20.3%
Degree of victim injury (physical, emotional, etc.)	5	7.2%
Sentencing guidelines recommendation was too low	4	5.8%
Offender has extensive prior record or same type of prior offense	3	4.3%
Offender has poor rehabilitation potential	3	4.3%
Victim circumstances (facts of the case, vulnerability, etc.)	3	4.3%
No aggravating reason given	2	2.9%
Offense involved a high degree of planning or a violation of trust	2	2.9%
Multiple counts, offenses or violations in the event (prosecuted or not)	2	2.9%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	2	2.9%
Poor conduct since commission of the offense	1	1.4%
Aggravated facts of the offense, specific to breaking and entering	1	1.4%
Extreme property or monetary loss	1	1.4%
Recommended by the attorney for the Commonwealth	1	1.4%
Financial obligations (child support, restitution, court costs, etc.)	1	1.4%
Type of victim (child, weak, etc.)	1	1.4%
Victim requested aggravating sentence	1	1.4%
Degree of violence directed at victim	1	1.4%
Offense involved possession or use of a weapon	1	1.4%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	1.4%
Offender has minimal or no prior record	1	1.4%

Burglary of Other Structure (19 Cases)	Number	Percent
Plea agreement	9	47.4%
Multiple counts, offenses or violations in the event (prosecuted or not)	2	10.5%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	2	10.5%
No aggravating reason given	1	5.3%
Poor conduct since commission of the offense	1	5.3%
Aggravated facts of the offense, specific to breaking and entering	1	5.3%
Aggravated facts of the offense	1	5.3%
Offense involved a high degree of planning or a violation of trust	1	5.3%
Aggravated court circumstances or proceedings (e.g., will resentence)	1	5.3%

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix ①

Judicial Reasons for Departure from Sentencing Guidelines Property, Drug, and Miscellaneous Offenses

Reasons for MITIGATION

Drugs/Schedule I/II (1,243 Cases)	Number	Percent
Plea agreement	441	35.3%
No mitigating reason given	171	13.8%
Sentenced to alternative punishment	111	8.9%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	87	7.0%
Recommended by the attorney for the Commonwealth	64	5.1%
Offender has good potential for rehabilitation	55	4.4%
Offender has made progress in rehabilitating himself or herself	47	3.8%
Mitigated facts of the offense	38	3.1%
Cooperated with authorities	34	2.7%
Mitigated court circumstances or proceedings (e.g., will resentence)	30	2.4%
Offender has minimal or no prior record	30	2.4%
Offender has health issues	20	1.6%
Current offense involves drugs or alcohol (e.g., small amount)	19	1.5%
Offender issues, general (e.g., age, family support, impact on community, etc.)	14	1.1%
Offender has substance abuse issues	13	1.0%
Offender needs rehabilitation	11	0.9%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	10	0.8%
Missing information	7	0.6%
Financial obligations (child support, restitution, court costs, etc.)	6	0.5%
Behavior positive since commission of the offense	5	0.4%
Aggravated facts of the offense	3	0.2%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	2	0.2%
Sequence of events had impact on recommendation	2	0.2%
Judge believed sentence was in concurrence with recommendation	3	0.2%
Sentencing guidelines recommendation was too high	3	0.2%
Offender has failed other alternatives or rehabilitation	3	0.2%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	1	0.1%
Offender was the leader	1	0.1%
Offender violated a restraining order or stalked victim	1	0.1%
Probation violation based on minimal facts of the case	1	0.1%
Probation violation not based on new law violation	1	0.1%
Recommended by the jury	1	0.1%
Recommended by the probation officer	1	0.1%
Multiple trial types (i.e., jury, bench, plea)	1	0.1%
Sentencing guidelines recommendation not appropriate (non-specific)	1	0.1%
Judge had issues with risk assessment	1	0.1%
Sentence was rounded down	1	0.1%
Offender was not the leader	1	0.1%
Victim circumstances (facts of the case, credibility issues, etc.)	1	0.1%
Sentenced as a juvenile to DJJ	1	0.1%

Drugs/Other (65 Cases)	Number	Percent
Plea Agreement	22	33.8%
Recommended by the attorney for the Commonwealth	8	12.3%
No mitigating reason given	7	10.8%
Offender has good potential for rehabilitation	5	7.7%
Sentenced to alternative punishment	4	6.2%
Cooperated with authorities	4	6.2%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	3	4.6%
Mitigated facts of the offense	2	3.1%
Mitigated court circumstances or proceedings (e.g., will resentence)	2	3.1%
Offender has minimal or no prior record	2	3.1%
Offender has made progress in rehabilitating himself or herself	2	3.1%
Recommended by the attorney for the Commonwealth	1	1.5%
Behavior positive since commission of the offense	1	1.5%
Current offense involves drugs or alcohol (e.g., small amount)	1	1.5%
Offender needs rehabilitation	1	1.5%

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix ①

Judicial Reasons for Departure from Sentencing Guidelines Property, Drug, and Miscellaneous Offenses

Reasons for AGGRAVATION

Drugs/Schedule I/II (685 Cases)	Number	Percent
Plea agreement	229	33.3%
Multiple counts, offenses or violations in the event (prosecuted or not)	111	16.2%
Aggravated facts of the offense	42	6.1%
Recommended by the attorney for the Commonwealth	35	5.1%
Offender failed alternative program	34	5.0%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	28	4.1%
Offender has extensive prior record or same type of prior offense	25	3.6%
Offender has poor rehabilitation potential	19	2.8%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	18	2.6%
New offenses were committed while on probation	12	1.8%
Failed to follow instructions while on probation	11	1.6%
Poor conduct since commission of the offense	11	1.6%
Used, etc., drugs or alcohol while on probation	10	1.5%
Aggravated court circumstances or proceedings (e.g., will resentence)	10	1.5%
Offender has substance abuse issues	10	1.5%
No aggravating reason given	9	1.3%
Sentencing guidelines recommendation was too low	8	1.2%
Sentenced to alternative punishment	7	1.0%
Absconded from supervision	7	1.0%
Degree of victim injury (physical, emotional, etc.)	7	1.0%
Mandatory minimum was involved in the event	6	0.9%
Did not exercise due caution while driving, excessive speeding, etc.	4	0.6%
Offense involved possession or use of a weapon	4	0.6%
Child present at time of the offense	3	0.4%
Recommended by the jury	3	0.4%
Prior record not adequately weighed by guidelines	3	0.4%
Offender needs rehabilitation offered by jail or prison	3	0.4%
Failed to cooperate with authorities	2	0.3%
Seriousness of the original offense	2	0.3%
Type of victim (child, weak, etc.)	2	0.3%
Sentenced to alternative punishment	2	0.3%
Failed to attend meeting or keep appointments while on probation	1	0.1%
Offense involved a high degree of planning or a violation of trust	1	0.1%
Financial obligations (child support, restitution, court costs, etc.)	1	0.1%
Judge believed sentence was in concurrence with recommendation	1	0.1%
Sentencing guidelines recommendation is not appropriate	1	0.1%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	0.1%
Offender violated a restraining order or stalked victim	1	0.1%
Recommended by the attorney for the Commonwealth	1	0.1%

Drugs/Other (32 Cases)	Number	Percent
Plea agreement	13	40.6%
Multiple counts, offenses or violations in the event (prosecuted or not)	4	12.5%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	2	6.3%
Offender has extensive prior record or same type of prior offense	2	6.3%
Offender failed alternative program	2	6.3%
Illegible written aggravating reason	1	3.1%
Aggravated facts of the offense	1	3.1%
Child present at time of the offense	1	3.1%
Extreme property or monetary loss	1	3.1%
Aggravated court circumstances or proceedings (e.g., will resentence)	1	3.1%
Offender has substance abuse issues	1	3.1%
Offender has health issues	1	3.1%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	3.1%
Type of victim (child, weak, etc.)	1	3.1%

Appendix 1

Judicial Reasons for Departure from Sentencing Guidelines Property, Drug, and Miscellaneous Offenses

Reasons for MITIGATION

Fraud (118 Cases)	Number	Percent
Plea agreement	33	28.0%
No mitigating reason given	18	15.3%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	11	9.3%
Sentenced to alternative punishment	9	7.6%
Mitigated facts of the offense	6	5.1%
Mitigated court circumstances or proceedings (e.g., will resentence)	6	5.1%
Recommended by the attorney for the Commonwealth	6	5.1%
Offender has health issues	5	4.2%
Offender has good potential for rehabilitation	4	3.4%
Financial obligations (child support, restitution, court costs, etc.)	3	2.5%
Offender has made progress in rehabilitating himself or herself	3	2.5%
Offender has minimal or no prior record	2	1.7%
Victim cannot or will not testify	2	1.7%
Request of the victim	2	1.7%
Illegible written mitigating reason	1	0.8%
Cooperated with authorities	1	0.8%
Behavior positive since commission of the offense	1	0.8%
Property was recovered or was of little value	1	0.8%
Offender has substance abuse issues	1	0.8%
Sentence was rounded down	1	0.8%
Offender needs rehabilitation	1	0.8%
Victim circumstances (drug dealer, etc.)	1	0.8%
Larceny (284 Cases)	Number	Percent
Plea agreement	123	43.3%
No mitigating reason given	41	14.4%
Offender has health issues	14	4.9%
Mitigated facts of the offense	13	4.6%
Offender has good potential for rehabilitation	12	4.2%
Financial obligations (child support, restitution, court costs, etc.)	11	3.9%
Sentenced to alternative punishment	10	3.5%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	10	3.5%
Mitigated court circumstances or proceedings (e.g., will resentence)	7	2.5%
Request of the victim	7	2.5%
Cooperated with authorities	6	2.1%
Offender has made progress in rehabilitating himself or herself	6	2.1%
Recommended by the attorney for the Commonwealth	5	1.8%
Property was recovered or was of little value	3	1.1%
Offender issues, general (e.g., age, family support, impact on community, etc.)	3	1.1%
Offender has minimal or no prior record	2	0.7%
Judge believed sentence was in concurrence with recommendation	1	0.4%
Behavior positive since commission of the offense	1	0.4%
Offender has substance abuse issues	1	0.4%
Sentencing guidelines scoring issue (e.g., prior conviction not scored correctly, etc.)	1	0.4%
Sentence was rounded down	1	0.4%
Sentencing guidelines recommendation was too high	1	0.4%
Offender needs rehabilitation	1	0.4%
Offender has failed other alternatives or rehabilitation	1	0.4%
Mitigating court probation circumstances or proceedings (e.g., extend probation)	1	0.4%
Victim cannot or will not testify	1	0.4%
Victim circumstances (drug dealer, etc.)	1	0.4%

Note: Figures indicate the number of times a departure reason was cited.
Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix ①

Judicial Reasons for Departure from Sentencing Guidelines Property, Drug, and Miscellaneous Offenses

Reasons for AGGRAVATION

Fraud (44 Cases)	Number	Percent
Plea agreement	17	38.6%
Aggravated facts of the offense	6	13.6%
Offender has extensive prior record or same type of prior offense	5	11.4%
Multiple counts, offenses or violations in the event (prosecuted or not)	3	6.8%
Failed to cooperate with authorities	2	4.5%
Degree of victim injury (physical, emotional, etc.)	2	4.5%
No aggravating reason given	1	2.3%
Failed to follow instructions while on probation	1	2.3%
Poor conduct since commission of the offense	1	2.3%
Extreme property or monetary loss	1	2.3%
Recommended by the attorney for the Commonwealth	1	2.3%
Recommended by the jury	1	2.3%
Financial obligations (child support, restitution, court costs, etc.)	1	2.3%
Type of victim (child, weak, etc.)	1	2.3%
Victim requested aggravating sentence	1	2.3%

Larceny (180 Cases)	Number	Percent
Plea agreement	47	26.1%
Aggravated facts of the offense	27	15.0%
Multiple counts, offenses or violations in the event (prosecuted or not)	18	10.0%
Offender has extensive prior record or same type of prior offense	13	7.2%
Recommended by the attorney for the Commonwealth	9	5.0%
Offense involved a high degree of planning or a violation of trust	8	4.4%
Offender has poor rehabilitation potential	7	3.9%
Extreme property or monetary loss	5	2.8%
Aggravated court circumstances or proceedings (e.g., will resentence)	5	2.8%
Sentencing guidelines recommendation was too low	5	2.8%
Absconded from supervision	3	1.7%
Poor conduct since commission of the offense	3	1.7%
Aggravated facts of the offense, specific to breaking and entering	3	1.7%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	3	1.7%
Offense involved possession or use of a weapon	3	1.7%
No aggravating reason given	2	1.1%
Mandatory minimum was involved in the event	2	1.1%
Degree of victim injury (physical, emotional, etc.)	2	1.1%
Victim requested aggravating sentence	2	1.1%
Sentenced to alternative punishment	1	0.6%
Failed to follow instructions while on probation	1	0.6%
Gang-related offense	1	0.6%
Child present at time of the offense	1	0.6%
True offense behavior was more serious than offenses at conviction	1	0.6%
Multiple trial types (i.e., jury, bench, plea)	1	0.6%
Financial obligations (child support, restitution, court costs, etc.)	1	0.6%
Sentencing guidelines recommendation is not appropriate	1	0.6%
Offender was the leader	1	0.6%
Seriousness of the original offense	1	0.6%
Sex offender has poor rehabilitation potential	1	0.6%
Never reported for probation or signed conditions	1	0.6%
Type of victim (child, weak, etc.)	1	0.6%

Note: Figures indicate the number of times a departure reason was cited. Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix ①

Judicial Reasons for Departure from Sentencing Guidelines Property, Drug, and Miscellaneous Offenses

Reasons for MITIGATION

Miscellaneous/Other (64 Cases)	Number	Percent
Plea agreement	17	26.6%
No mitigating reason given	13	20.3%
Mitigated facts of the offense	9	14.1%
Offender has good potential for rehabilitation	6	9.4%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	3	4.7%
Cooperated with authorities	2	3.1%
Mitigated court circumstances or proceedings (e.g., will resentence)	2	3.1%
Offender has minimal or no prior record	2	3.1%
Plea agreement	1	1.6%
Probation violation based on minimal facts of the case	1	1.6%
Behavior positive since commission of the offense	1	1.6%
Recommended by the attorney for the Commonwealth	1	1.6%
Recommended by the probation officer	1	1.6%
Financial obligations (child support, restitution, court costs, etc.)	1	1.6%
Sentencing guidelines recommendation not appropriate (non-specific)	1	1.6%
Judge had issues with risk assessment	1	1.6%
Offender has health issues	1	1.6%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	1.6%

Miscellaneous/Person & Property (72 Cases)	Number	Percent
Plea agreement	38	52.8%
No mitigating reason given	5	6.9%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	5	6.9%
Offender has health issues	5	6.9%
Recommended by the attorney for the Commonwealth	3	4.2%
Cooperated with authorities	2	2.8%
Offender has good potential for rehabilitation	2	2.8%
Victim cannot or will not testify	2	2.8%
Request of the victim	2	2.8%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	1	1.4%
Type of victim (child, weak, etc.)	1	1.4%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	1.4%
Offender has substance abuse issues	1	1.4%
Financial obligations (child support, restitution, court costs, etc.)	1	1.4%
Offender has minimal or no prior record	1	1.4%
Offender has made progress in rehabilitating himself or herself	1	1.4%
Little or no injury, offender did not intend to harm victim	1	1.4%

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 1

Judicial Reasons for Departure from Sentencing Guidelines Property, Drug, and Miscellaneous Offenses

Reasons for AGGRAVATION

Miscellaneous/Other (32 Cases)	Number	Percent
Plea agreement	7	21.9%
Multiple counts, offenses or violations in the event (prosecuted or not)	3	9.4%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	3	9.4%
Absconded from supervision	2	6.3%
Aggravated facts of the offense	2	6.3%
Sentencing guidelines recommendation was too low	2	6.3%
Offender has extensive prior record or same type of prior offense	2	6.3%
No aggravating reason given	1	3.1%
Failed to follow instructions while on probation	1	3.1%
Poor conduct since commission of the offense	1	3.1%
Gang-related offense	1	3.1%
Recommended by the attorney for the Commonwealth	1	3.1%
Recommended by the jury	1	3.1%
Multiple trial types (i.e., jury, bench, plea)	1	3.1%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	1	3.1%
Offender has poor rehabilitation potential	1	3.1%
Offender violated sex offender restrictions	1	3.1%
Degree of victim injury (physical, emotional, etc.)	1	3.1%

Miscellaneous/Person & Property (112 Cases)	Number	Percent
Plea agreement	24	21.4%
Aggravated facts of the offense	21	18.8%
Multiple counts, offenses or violations in the event (prosecuted or not)	12	10.7%
Offender has poor rehabilitation potential	7	6.3%
Type of victim (child, weak, etc.)	7	6.3%
Sentencing guidelines recommendation was too low	4	3.6%
Offender violated a restraining order or stalked victim	3	2.7%
No aggravating reason given	2	1.8%
Poor conduct since commission of the offense	2	1.8%
Child present at time of the offense	2	1.8%
Recommended by the attorney for the Commonwealth	2	1.8%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	2	1.8%
Sentencing guidelines recommendation is not appropriate	2	1.8%
Offender has extensive prior record or same type of prior offense	2	1.8%
Sex offender has poor rehabilitation potential	2	1.8%
Degree of victim injury (physical, emotional, etc.)	2	1.8%
Victim requested aggravating sentence	2	1.8%
Degree of violence directed at victim	2	1.8%
Sentenced to alternative punishment	1	0.9%
Violent or disruptive behavior while in custody	1	0.9%
Did not exercise due caution while driving, excessive speeding, etc.	1	0.9%
Aggravated facts of the offense, specific to breaking and entering	1	0.9%
Extreme property or monetary loss	1	0.9%
Offense involved a high degree of planning or a violation of trust	1	0.9%
Aggravated court circumstances or proceedings (e.g., will resentence)	1	0.9%
Offender has substance abuse issues	1	0.9%
Mandatory minimum was involved in the event	1	0.9%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	1	0.9%
Offender has health issues	1	0.9%
Offense involved possession or use of a weapon	1	0.9%

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix ①

Judicial Reasons for Departure from Sentencing Guidelines Property, Drug, and Miscellaneous Offenses

Reasons for MITIGATION

Traffic (203 Cases)	Number	Percent
Plea agreement	75	36.9%
No mitigating reason given	35	17.2%
Offender has good potential for rehabilitation	18	8.9%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	12	5.9%
Offender has health issues	9	4.4%
Recommended by the attorney for the Commonwealth	8	3.9%
Mitigated court circumstances or proceedings (e.g., will resentence)	7	3.4%
Offender has made progress in rehabilitating himself or herself	7	3.4%
Offender has minimal or no prior record	5	2.5%
Sentenced to alternative punishment	4	2.0%
Mitigated facts of the offense	4	2.0%
Cooperated with authorities	3	1.5%
Offender issues, general (e.g., age, family support, impact on community, etc.)	3	1.5%
Request of the victim	3	1.5%
Sequence of events had impact on recommendation	2	1.0%
Sentencing guidelines recommendation was too high	2	1.0%
Missing information	1	0.5%
Absconding from supervision in question	1	0.5%
Recommended by the jury	1	0.5%
Sentencing guidelines recommendation not appropriate (non-specific)	1	0.5%
Mitigating court probation circumstances or proceedings (e.g., extend probation)	1	0.5%
Little or no injury, offender did not intend to harm victim	1	0.5%

Weapons (129 Cases)	Number	Percent
Plea agreement	49	38.0%
No mitigating reason given	11	8.5%
Mitigated facts of the offense	9	7.0%
Offender has good potential for rehabilitation	9	7.0%
Mitigated court circumstances or proceedings (e.g., will resentence)	8	6.2%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	8	6.2%
Cooperated with authorities	6	4.7%
Recommended by the attorney for the Commonwealth	5	3.9%
Offender has minimal or no prior record	5	3.9%
Offender has made progress in rehabilitating himself or herself	4	3.1%
Offender has health issues	3	2.3%
Financial obligations (child support, restitution, court costs, etc.)	2	1.6%
Offender issues, general (e.g., age, family support, impact on community, etc.)	2	1.6%
Weapon was not a firearm	2	1.6%
Missing information	1	0.8%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	1	0.8%
Sentenced to alternative punishment	1	0.8%
Behavior positive since commission of the offense	1	0.8%
Sequence of events had impact on recommendation	1	0.8%
Sentencing guidelines recommendation not appropriate (non-specific)	1	0.8%

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

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Judicial Reasons for Departure from Sentencing Guidelines Property, Drug, and Miscellaneous Offenses

Reasons for AGGRAVATION

Traffic (194 Cases)	Number	Percent
Aggravated facts of the offense	35	18.0%
Plea agreement	30	15.5%
Did not exercise due caution while driving, excessive speeding, etc.	19	9.8%
Offender has substance abuse issues	17	8.8%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	14	7.2%
Offender has extensive prior record or same type of prior offense	13	6.7%
Offender has poor rehabilitation potential	13	6.7%
Multiple counts, offenses or violations in the event (prosecuted or not)	9	4.6%
Degree of victim injury (physical, emotional, etc.)	8	4.1%
No aggravating reason given	5	2.6%
Sentenced to alternative punishment	3	1.5%
Failed to follow instructions while on probation	3	1.5%
Recommended by the attorney for the Commonwealth	3	1.5%
Mandatory minimum was involved in the event	3	1.5%
Sentencing guidelines recommendation was too low	3	1.5%
New offenses were committed while on probation	2	1.0%
Poor conduct since commission of the offense	2	1.0%
Judicial discretion (e.g., time served, shock incarceration, consistent with codef., etc.)	2	1.0%
Offender failed alternative program	2	1.0%
Type of victim (child, weak, etc.)	2	1.0%
Failed to cooperate with authorities	1	0.5%
Child present at time of the offense	1	0.5%
Sentencing guidelines recommendation is not appropriate	1	0.5%
Prior record not adequately weighed by guidelines	1	0.5%
Offense involved possession or use of a weapon	1	0.5%
Mitigated facts of the offense	1	0.5%

Weapons (171 Cases)	Number	Percent
Plea agreement	67	38.6%
Multiple counts, offenses or violations in the event (prosecuted or not)	30	17.5%
Aggravated facts of the offense	21	12.3%
Recommended by the attorney for the Commonwealth	8	4.7%
Offender has extensive prior record or same type of prior offense	7	4.1%
Offense involved possession or use of a weapon	7	4.1%
No aggravating reason given	5	2.9%
Recommended by the jury	3	1.8%
Offender has poor rehabilitation potential	3	1.8%
Type of victim (child, weak, etc.)	3	1.8%
Aggravated court circumstances or proceedings (e.g., will resentence)	2	1.2%
Mandatory minimum was involved in the event	2	1.2%
Judicial discretion (e.g., time served, shock incarceration, consistent with codef., etc.)	2	1.2%
Violent or disruptive behavior while in custody	1	0.6%
Failed to follow instructions while on probation	1	0.6%
New offenses were committed while on probation	1	0.6%
Guidelines scoring issue (e.g., recommendation not adjusted for mandatory time)	1	0.6%
Sentence was rounded up	1	0.6%
Sentencing guidelines recommendation was too low	1	0.6%
Offender has health issues	1	0.6%
Seriousness of the original offense	1	0.6%
Aggravated facts of the offense, specific to sex offenses	1	0.6%
Never reported for probation or signed conditions	1	0.6%
Victim requested aggravating sentence	1	0.6%

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix ②

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for MITIGATION

Assault (288 Cases)

	Number	Percent
Plea agreement	103	35.8%
No mitigating reason given	44	15.3%
Mitigated court circumstances or proceedings (e.g., will resentence)	18	6.3%
Recommended by the attorney for the Commonwealth	16	5.6%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	13	4.5%
Mitigated facts of the offense	12	4.2%
Offender has health issues	12	4.2%
Offender has good potential for rehabilitation	11	3.8%
Request of the victim	10	3.5%
Victim cannot or will not testify	9	3.1%
Sentenced to alternative punishment	5	1.7%
Offender has minimal or no prior record	5	1.7%
Little or no injury, offender did not intend to harm victim	4	1.4%
Cooperated with authorities	3	1.0%
Offender issues, general (e.g., age, family support, impact on community, etc.)	3	1.0%
Sentenced as a juvenile to DJJ	3	1.0%
Financial obligations (child support, restitution, court costs, etc.)	2	0.7%
Victim circumstances (drug dealer, etc.)	2	0.7%
Role of victim in the offense	2	0.7%
Missing information	1	0.3%
Illegible written mitigating reason	1	0.3%
Behavior positive since commission of the offense	1	0.3%
Recommended by the jury	1	0.3%
Judge believed sentence was in concurrence with recommendation	1	0.3%
Sentencing guidelines were missing or incorrect	1	0.3%
Judge had issues with risk assessment	1	0.3%
Sentence was rounded down	1	0.3%
Offender has made progress in rehabilitating himself or herself	1	0.3%
Mitigating court probation circumstances or proceedings (e.g., extend probation)	1	0.3%
Victim circumstances (facts or the case, credibility issues, etc.)	1	0.3%

Kidnapping (14 Cases)

	Number	Percent
Plea agreement	6	42.9%
Offender has health issues	2	14.3%
No mitigating reason given	1	7.1%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	7.1%
Offender has substance abuse issues	1	7.1%
Offender has minimal or no prior record	1	7.1%
Victim cannot or will not testify	1	7.1%
Request of the victim	1	7.1%

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for AGGRAVATION

Assault (238 Cases)	Number	Percent
Aggravated facts of the offense	57	23.9%
Plea agreement	52	21.8%
Degree of victim injury (physical, emotional, etc.)	18	7.6%
Multiple counts, offenses or violations in the event (prosecuted or not)	18	7.6%
Sentencing guidelines recommendation is not appropriate	11	4.6%
Type of victim (child, weak, etc.)	9	3.8%
Degree of violence directed at victim	8	3.4%
Offender has extensive prior record or same type of prior offense	8	3.4%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	6	2.5%
Offender has poor rehabilitation potential	6	2.5%
Sentencing guidelines recommendation was too low	6	2.5%
No aggravating reason given	5	2.1%
Child present at time of the offense	3	1.3%
Offense involved possession or use of a weapon	3	1.3%
Recommended by the attorney for the Commonwealth	3	1.3%
Recommended by the jury	3	1.3%
Victim requested aggravating sentence	3	1.3%
Aggravated court circumstances or proceedings (e.g., will resentence)	2	0.8%
Current offense involved drugs or alcohol (e.g., large amount, location, etc.)	2	0.8%
Did not exercise due caution while driving, excessive speeding, etc.	2	0.8%
Seriousness of the original offense	2	0.8%
True offense behavior was more serious than offenses at conviction	2	0.8%
Extreme property or monetary loss	1	0.4%
Failed to follow instructions while on probation	1	0.4%
Gang-related offense	1	0.4%
Judge believed sentence was in concurrence with recommendation	1	0.4%
Mandatory minimum was involved in the event	1	0.4%
Offender has health issues	1	0.4%
Offender violated a restraining order or stalked victim	1	0.4%
Sentencing guidelines were missing or incorrect	1	0.4%
Violent or disruptive behavior while in custody	1	0.4%

Kidnapping (23 Cases)	Number	Percent
Aggravated facts of the offense	3	13.0%
Offender has poor rehabilitation potential	3	13.0%
Type of victim (child, weak, etc.)	3	13.0%
Degree of violence directed at victim	3	13.0%
Offense involved a high degree of planning or a violation of trust	1	4.3%
Recommended by the jury	1	4.3%
Multiple counts, offenses or violations in the event (prosecuted or not)	1	4.3%
Sentencing guidelines scoring issue (e.g., recommendation not adjusted for mandatory time)	1	4.3%
Sentencing guidelines recommendation was too low	1	4.3%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	4.3%
Offender has extensive prior record or same type of prior offense	1	4.3%
Degree of victim injury (physical, emotional, etc.)	1	4.3%
Offender violated a restraining order or stalked victim	1	4.3%
Victim requested aggravating sentence	1	4.3%
Mitigated facts of the offense	1	4.3%

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix ②

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for MITIGATION

Homicide (29 Cases)	Number	Percent
Plea agreement	6	20.7%
No mitigating reason given	4	13.8%
Mitigated court circumstances or proceedings (e.g., will resentence)	4	13.8%
Mitigated facts of the offense	2	6.9%
Recommended by the jury	2	6.9%
Offender has good potential for rehabilitation	2	6.9%
Sentenced as a juvenile to DJJ	2	6.9%
Recommended by the jury	1	3.4%
Cooperated with authorities	1	3.4%
Recommended by the attorney for the Commonwealth	1	3.4%
Current offense involves drugs or alcohol (e.g., small amount)	1	3.4%
Sentencing guidelines recommendation was too high	1	3.4%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	1	3.4%
Offender has health issues	1	3.4%

Robbery/Carjacking (15 Cases)	Number	Percent
Plea agreement	5	33.3%
Cooperated with authorities	2	13.3%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	2	13.3%
No mitigating reason given	1	6.7%
Aggravated court circumstances or proceedings (e.g., will resentence)	1	6.7%
Sequence of events had impact on recommendation	1	6.7%
Offender has substance abuse issues	1	6.7%
Offender was not the leader	1	6.7%
Victim cannot or will not testify	1	6.7%

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for AGGRAVATION

Homicide (113 Cases)

	Number	Percent
Aggravated facts of the offense	32	28.3%
Degree of victim injury (physical, emotional, etc.)	11	9.7%
Plea agreement	10	8.8%
Offender has extensive prior record or same type of prior offense	10	8.8%
Offender has poor rehabilitation potential	9	8.0%
Type of victim (child, weak, etc.)	5	4.4%
Degree of violence directed at victim	5	4.4%
Did not exercise due caution while driving, excessive speeding, etc.	3	2.7%
Recommended by the attorney for the Commonwealth	3	2.7%
Recommended by the jury	3	2.7%
Sentencing guidelines recommendation was too low	3	2.7%
Victim requested aggravating sentence	3	2.7%
No aggravating reason given	2	1.8%
Multiple counts, offenses or violations in the event (prosecuted or not)	2	1.8%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	2	1.8%
Sentenced to alternative punishment	1	0.9%
Failed to follow instructions while on probation	1	0.9%
Child present at time of the offense	1	0.9%
Offense involved a high degree of planning or a violation of trust	1	0.9%
Offender has substance abuse issues	1	0.9%
Sentencing guidelines were missing or incorrect	1	0.9%
Sentencing guidelines scoring issue (e.g., recommendation not adjusted for mandatory time)	1	0.9%
Offender needs rehabilitation offered by jail or prison	1	0.9%
Offense involved possession or use of a weapon	1	0.9%
Offender has health issues	1	0.9%

Robbery/Carjacking (0 Cases)

Number Percent

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for MITIGATION

Rape (50 Cases)	Number	Percent
Plea agreement	11	20.0%
Mitigated court circumstances or proceedings (e.g., will resentence)	6	12.0%
Request of the victim	6	12.0%
Recommended by the jury	5	10.0%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	4	8.0%
Offender issues, general (e.g., age, family support, impact on community, etc.)	4	8.0%
Victim cannot or will not testify	3	6.0%
Mitigated facts of the offense	2	4.0%
Offender has good potential for rehabilitation	2	4.0%
Aggravated facts of the offense	1	2.0%
Victim requested aggravating sentence	1	2.0%
Sequence of events had impact on recommendation	1	2.0%
Recommended by the attorney for the Commonwealth	1	2.0%
Offender has minimal or no prior record	1	2.0%
Victim circumstances (facts of the case, credibility issues, etc.)	1	2.0%
Sentenced as a juvenile to DJJ	1	2.0%

Other Sexual Assault (62 Cases)

	Number	Percent
Plea agreement	24	38.7%
Victim cannot or will not testify	9	14.5%
Request of the victim	7	11.3%
Mitigated facts of the offense	6	9.7%
Recommended by the attorney for the Commonwealth	3	4.8%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	2	3.2%
Offender issues, general (e.g., age, family support, impact on community, etc.)	2	3.2%
Offender has minimal or no prior record	2	3.2%
Offender has good potential for rehabilitation	2	3.2%
No mitigating reason given	1	1.6%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	1.6%
Offender has made progress in rehabilitating himself or herself	1	1.6%
Victim circumstances (facts of the case, credibility issues, etc.)	1	1.6%
Victim circumstances (drug dealer, etc.)	1	1.6%

Other Sexual Assault/Obscenity (35 Cases)

	Number	Percent
No mitigating reason given	6	17.1%
Plea agreement	6	17.1%
Offender has good potential for rehabilitation	6	17.1%
Mitigated facts of the offense	4	11.4%
Sentenced to alternative punishment	2	5.7%
Recommended by the attorney for the Commonwealth	2	5.7%
Offender has health issues	2	5.7%
Mitigated court circumstances or proceedings (e.g., will resentence)	1	2.9%
Judicial discretion (e.g., time served, consistent with codefendant, etc.)	1	2.9%
Offender issues, general (e.g., age, family support, impact on community, etc.)	1	2.9%
Offender has minimal or no prior record	1	2.9%
Offender has made progress in rehabilitating himself or herself	1	2.9%
Victim circumstances (drug dealer, etc.)	1	2.9%
Request of the victim	1	2.9%

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines Offenses Against the Person

Reasons for AGGRAVATION

Rape (42 Cases)

	Number	Percent
Aggravated facts of the offense	10	23.8%
Offender has poor rehabilitation potential	7	16.7%
Type of victim (child, weak, etc.)	6	14.3%
Plea agreement	5	11.9%
Degree of victim injury (physical, emotional, etc.)	5	11.9%
Victim requested aggravating sentence	3	7.1%
Recommended by the jury	2	4.8%
Sentencing guidelines recommendation was too low	2	4.8%
Multiple counts, offenses or violations in the event (prosecuted or not)	1	2.4%
Offender has extensive prior record or same type of prior offense	1	2.4%

Other Sexual Assault (98 Cases)

	Number	Percent
Type of victim (child, weak, etc.)	19	19.4%
Aggravated facts of the offense	16	16.3%
Plea agreement	9	9.2%
Degree of victim injury (physical, emotional, etc.)	9	9.2%
Offense involved a high degree of planning or a violation of trust	6	6.1%
Recommended by the jury	6	6.1%
Offender has poor rehabilitation potential	6	6.1%
Multiple counts, offenses or violations in the event (prosecuted or not)	4	4.1%
No aggravating reason given	3	3.1%
Recommended by the attorney for the Commonwealth	3	3.1%
Sentencing guidelines recommendation was too low	3	3.1%
Victim requested aggravating sentence	3	3.1%
Offender has extensive prior record or same type of prior offense	2	2.0%
Aggravated facts of the offense, specific to sex offenses	2	2.0%
Illegible written mitigating reason	1	1.0%
Failed to cooperate with authorities	1	1.0%
Poor conduct since commission of the offense	1	1.0%
True offense behavior was more serious than offenses at conviction	1	1.0%
Aggravated court circumstances or proceedings (e.g., will resentence)	1	1.0%
Sentencing guidelines recommendation is not appropriate	1	1.0%
Offender violated a restraining order or stalked victim	1	1.0%

Other Sexual Assault/Obscenity (48 Cases)

	Number	Percent
Plea agreement	12	25.0%
Aggravated facts of the offense	9	18.8%
Multiple counts, offenses or violations in the event (prosecuted or not)	6	12.5%
Judicial discretion (e.g., time served, shock incarceration, consistent with codefendant, etc.)	3	6.3%
Offender has poor rehabilitation potential	3	6.3%
Type of victim (child, weak, etc.)	3	6.3%
Offense involved a high degree of planning or a violation of trust	2	4.2%
Sentencing guidelines recommendation was too low	2	4.2%
Aggravated facts of the offense, specific to sex offenses	2	4.2%
Recommended by the attorney for the Commonwealth	1	2.1%
Mandatory minimum was involved in the event	1	2.1%
Sentencing guidelines recommendation is not appropriate	1	2.1%
Offender has extensive prior record or same type of prior offense	1	2.1%
Degree of victim injury (physical, emotional, etc.)	1	2.1%
Offense involved possession or use of a weapon	1	2.1%

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 3
Sentencing Guidelines Compliance by Judicial Circuit:
Property, Drug, and Miscellaneous Offenses

BURGLARY OF DWELLING

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	71.4%	21.4%	7.1%	14
2	93.3	6.7	0.0	15
3	100	0.0	0.0	1
4	68.8	18.8	12.5	16
5	40.0	40.0	20.0	5
6	50.0	16.7	33.3	6
7	57.1	14.3	28.6	7
8	50.0	33.3	16.7	6
9	57.1	14.3	28.6	7
10	89.5	5.3	5.3	19
11	87.5	12.5	0.0	8
12	66.7	11.1	22.2	9
13	71.4	14.3	14.3	7
14	25.0	50.0	25.0	4
15	50.0	33.3	16.7	12
16	50.0	33.3	16.7	6
17	0.0	66.7	33.3	3
18	0.0	100	0.0	1
19	57.1	28.6	14.3	7
20	50.0	16.7	33.3	6
21	71.4	14.3	14.3	14
22	94.4	0.0	5.6	18
23	80.0	10.0	10.0	10
24	67.7	16.1	16.1	31
25	82.1	14.3	3.6	28
26	90.9	9.1	0.0	22
27	79.3	20.7	0.0	29
28	71.4	7.1	21.4	14
29	66.7	8.3	25.0	12
30	75.0	12.5	12.5	8
31	83.3	0.0	16.7	6
Total	72.6	15.7	11.7	351

BURGLARY/OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	92.9%	7.1%	0.0%	14
2	80.0	10.0	10.0	10
3	0.0	0.0	0.0	0
4	86.7	13.3	0.0	15
5	66.7	16.7	16.7	6
6	100	0.0	0.0	5
7	66.7	33.3	0.0	3
8	40.0	60.0	0.0	10
9	75.0	25.0	0.0	8
10	85.7	7.1	7.1	14
11	57.1	42.9	0.0	7
12	100	0.0	0.0	3
13	66.7	16.7	16.7	6
14	100	0.0	0.0	8
15	66.7	27.8	5.6	18
16	80.0	10.0	10.0	10
17	100.0	0.0	0.0	1
18	100.0	0.0	0.0	1
19	50.0	33.3	16.7	6
20	100	0.0	0.0	6
21	100	0.0	0.0	11
22	91.7	8.3	0.0	12
23	50.0	40.0	10.0	10
24	66.7	20.0	13.3	15
25	90.0	10.0	0.0	20
26	80.0	0.0	20.0	5
27	100	0.0	0.0	15
28	90.9	0.0	9.1	11
29	25.0	50.0	25.0	8
30	100	0.0	0.0	1
31	100	0.0	0.0	3
Total	79.0	15.6	5.3	262

DRUG/OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	91.7%	8.3%	0.0%	12
2	80.8	11.5	7.7	26
3	0.0	0.0	0.0	0
4	85.7	14.3	0.0	7
5	66.7	16.7	16.7	6
6	88.9	0.0	11.1	9
7	100	0.0	0.0	2
8	75.0	25.0	0.0	4
9	100	0.0	0.0	4
10	76.5	11.8	11.8	17
11	100	0.0	0.0	2
12	100	0.0	0.0	12
13	70.0	30.0	0.0	10
14	85.7	14.3	0.0	7
15	61.9	19.0	19.0	21
16	84.6	7.7	7.7	13
17	66.7	33.3	0.0	6
18	100	0.0	0.0	3
19	88.9	11.1	0.0	9
20	92.3	0.0	7.7	13
21	100	0.0	0.0	2
22	85.7	0.0	14.3	14
23	60.0	40.0	0.0	5
24	92.9	0.0	7.1	14
25	76.9	15.4	7.7	13
26	86.4	13.6	0.0	22
27	78.6	7.1	14.3	14
28	92.9	7.1	0.0	14
29	78.4	21.6	0.0	51
30	68.2	22.7	9.1	22
31	60.0	40.0	0.0	5
Total	81.1	13.4	5.6	359

Appendix 3

Sentencing Guidelines Compliance by Judicial Circuit: Property, Drug, and Miscellaneous Offenses

DRUG SCHEDULE I/II

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	87.9%	7.4%	4.7%	364
2	92.8	4.7	2.6	580
3	74.1	25.9	0.0	27
4	75.8	21.1	3.2	95
5	78.6	14.3	7.1	98
6	87.7	9.2	3.1	195
7	83.1	16.2	0.7	136
8	83.9	14.3	1.8	56
9	85.1	4.5	10.4	201
10	90.5	4.5	5.0	222
11	89.4	7.6	3.0	66
12	87.4	7.2	5.4	349
13	78.2	18.6	3.2	156
14	86.8	8.7	4.5	576
15	81.0	11.1	7.9	859
16	89.7	7.2	3.1	223
17	54.1	40.5	5.4	37
18	28.6	42.9	28.6	7
19	75.7	20.7	3.6	111
20	92.0	5.3	2.7	75
21	81.1	15.6	3.3	212
22	90.0	6.9	3.1	290
23	77.6	18.9	3.5	259
24	85.7	10.8	3.4	498
25	85.1	10.0	4.9	781
26	90.4	6.0	3.6	1005
27	86.7	11.3	2.0	781
28	87.3	7.2	5.5	457
29	87.2	4.6	8.2	475
30	75.3	16.6	8.2	380
31	73.3	17.8	8.9	90
Total	85.6	9.7	4.7	9694

FRAUD

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	93.8%	4.7%	1.6%	64
2	85.7	7.1	7.1	42
3	50.0	50.0	0.0	2
4	94.7	0.0	5.3	19
5	85.2	11.1	3.7	27
6	73.3	20.0	6.7	15
7	85.7	14.3	0.0	7
8	100	0.0	0.0	4
9	92.0	8.0	0.0	25
10	94.7	5.3	0.0	19
11	88.9	11.1	0.0	9
12	90.3	6.5	3.2	31
13	62.5	25.0	12.5	8
14	77.8	16.7	5.6	36
15	82.3	12.9	4.8	62
16	81.1	16.2	2.7	37
17	66.7	33.3	0.0	6
18	50.0	0.0	50.0	2
19	83.3	11.1	5.6	18
20	81.8	18.2	0.0	11
21	80.0	6.7	13.3	15
22	90.5	4.8	4.8	21
23	48.3	37.9	13.8	29
24	86.7	13.3	0.0	30
25	85.9	12.5	1.6	64
26	95.2	4.8	0.0	63
27	90.2	7.3	2.4	41
28	78.3	17.4	4.3	23
29	92.9	7.1	0.0	28
30	66.7	25.0	8.3	12
31	80.0	20.0	0.0	5
Total	85.0	11.4	3.6	778

LARCENY

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	91.0%	5.3%	3.8%	133
2	88.1	5.9	5.9	118
3	57.9	36.8	5.3	19
4	78.3	13.0	8.7	69
5	78.4	17.6	3.9	51
6	77.3	18.2	4.5	44
7	91.7	8.3	0.0	12
8	54.5	36.4	9.1	22
9	80.3	4.5	15.2	66
10	86.5	7.7	5.8	52
11	91.3	8.7	0.0	23
12	84.6	7.7	7.7	91
13	66.7	9.1	24.2	33
14	76.1	7.5	16.4	67
15	87.8	7.7	4.5	156
16	83.9	11.3	4.8	62
17	86.7	6.7	6.7	15
18	50.0	50.0	0.0	2
19	76.9	19.2	3.8	26
20	74.2	6.5	19.4	31
21	92.9	5.4	1.8	56
22	81.1	9.4	9.4	53
23	69.6	25.0	5.4	92
24	86.4	10.2	3.4	88
25	79.5	18.8	1.8	112
26	84.3	12.4	3.3	121
27	83.3	16.7	0.0	102
28	88.5	9.8	1.6	61
29	82.8	10.3	6.9	58
30	75.0	20.0	5.0	40
31	82.8	3.4	13.8	29
Total	82.4	11.7	5.9	1912

Appendix 3

Sentencing Guidelines Compliance by Judicial Circuit: Property, Drug, and Miscellaneous Offenses

TRAFFIC				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	80.8 %	12.8 %	6.4%	78
2	86.9	6.1	7.1	99
3	40.0	60.0	0.0	5
4	70.8	25.0	4.2	24
5	76.8	7.1	16.1	56
6	82.9	8.6	8.6	35
7	88.9	5.6	5.6	18
8	62.5	18.8	18.8	16
9	86.0	8.8	5.3	57
10	78.8	13.5	7.7	52
11	92.6	3.7	3.7	27
12	79.7	11.6	8.7	69
13	55.6	25.9	18.5	27
14	73.7	2.6	23.7	38
15	79.0	13.0	8.0	138
16	87.1	6.5	6.5	62
17	80.0	10.0	10.0	10
18	100	0.0	0.0	1
19	75.8	12.1	12.1	33
20	100	0.0	0.0	16
21	84.0	16.0	0.0	25
22	79.3	6.9	13.8	29
23	60.0	32.5	7.5	40
24	78.0	20.3	1.7	59
25	83.1	9.9	7.0	71
26	79.3	12.2	8.5	82
27	89.4	4.3	6.4	47
28	85.7	10.7	3.6	28
29	95.5	4.5	0.0	22
30	65.6	25.0	9.4	32
31	69.6	4.3	26.1	23
Total	79.9	11.8	8.3	1319

MISCELLANEOUS/OTHER				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100%	0.0%	0.0%	12
2	90.0	10.0	0.0	20
3	0.0	0.0	0.0	0
4	71.4	0.0	28.6	7
5	100	0.0	0.0	3
6	100	0.0	0.0	8
7	100	0.0	0.0	5
8	66.7	16.7	16.7	6
9	71.4	28.6	0.0	7
10	87.5	12.5	0.0	16
11	100	0.0	0.0	9
12	70.6	29.4	0.0	17
13	66.7	20.0	13.3	15
14	77.8	11.1	11.1	9
15	68.4	23.7	7.9	38
16	78.6	14.3	7.1	14
17	0.0	0.0	0.0	0
18	0.0	0.0	0.0	0
19	50.0	50.0	0.0	2
20	0.0	66.7	33.3	3
21	100	0.0	0.0	8
22	50.0	33.3	16.7	6
23	89.3	3.6	7.1	28
24	90.0	10.0	0.0	20
25	76.9	15.4	7.7	13
26	100	0.0	0.0	11
27	87.5	12.5	0.0	8
28	88.9	11.1	0.0	18
29	85.0	5.0	10.0	20
30	50.0	40.0	10.0	10
31	100	0.0	0.0	1
Total	81.2	13.4	5.4	335

MISCELLANEOUS/P&P				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	58.8%	17.6%	23.5 %	17
2	88.2	5.9	5.9	34
3	50.0	50.0	0.0	2
4	86.7	6.7	6.7	15
5	46.2	15.4	38.5	13
6	76.9	0.0	23.1	13
7	80.0	20.0	0.0	5
8	50.0	25.0	25.0	4
9	77.8	11.1	11.1	18
10	64.3	21.4	14.3	14
11	100	0.0	0.0	6
12	78.6	0.0	21.4	14
13	70.0	10.0	20.0	10
14	63.2	15.8	21.1	19
15	68.6	11.8	19.6	51
16	80.0	15.0	5.0	20
17	100.0	0.0	0.0	2
18	100.0	0.0	0.0	1
19	50.0	50.0	0.0	2
20	100.0	0.0	0.0	1
21	78.9	5.3	15.8	19
22	82.6	13.0	4.3	23
23	81.3	12.5	6.3	16
24	85.0	5.0	10.0	20
25	76.7	11.6	11.6	43
26	78.8	9.1	12.1	33
27	86.0	9.3	4.7	43
28	73.7	5.3	21.1	19
29	94.4	5.6	0.0	18
30	84.6	15.4	0.0	13
31	66.7	0.0	33.3	3
Total	77.0	10.7	12.3	513

Appendix ③
Sentencing Guidelines Compliance by Judicial Circuit:
Property, Drug, and Miscellaneous Offenses

WEAPONS

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	80.3%	9.2%	10.5%	76
2	83.8	4.4	11.8	68
3	70.6	17.6	11.8	17
4	75.0	11.1	13.9	72
5	82.4	8.8	8.8	34
6	77.8	2.8	19.4	36
7	75.6	13.3	11.1	45
8	66.7	11.1	22.2	18
9	86.7	6.7	6.7	30
10	80.0	5.0	15.0	20
11	87.5	6.3	6.3	16
12	90.2	2.4	7.3	41
13	62.8	9.3	27.9	86
14	84.6	5.1	10.3	39
15	85.5	9.1	5.5	55
16	67.9	10.7	21.4	28
17	66.7	0.0	33.3	3
18	40.0	40.0	20.0	10
19	88.9	0.0	11.1	9
20	75.0	0.0	25.0	8
21	81.0	14.3	4.8	21
22	76.7	16.7	6.7	30
23	76.3	7.9	15.8	38
24	88.6	6.8	4.5	44
25	76.3	13.2	10.5	38
26	87.5	10.0	2.5	40
27	79.5	15.4	5.1	39
28	83.3	11.1	5.6	18
29	80.0	13.3	6.7	15
30	72.2	5.6	22.2	18
31	100	0.0	0.0	6
Total	78.6	9.3	12.1	1023

Appendix ④

Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

ASSAULT				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	69.1%	20%	10.9%	55
2	81.7	8.6	9.7	93
3	26.7	33.3	40.0	15
4	90.9	5.2	3.9	77
5	62.8	25.6	11.6	43
6	77.5	12.5	10.0	40
7	78.8	18.2	3.0	33
8	85.7	14.3	0.0	28
9	86.0	7.0	7.0	57
10	84.8	8.7	6.5	46
11	61.5	23.1	15.4	26
12	78.6	10.7	10.7	56
13	76.6	19.1	4.3	47
14	69.0	9.5	21.4	42
15	71.7	11.8	16.5	127
16	69.4	16.3	14.3	49
17	62.5	25.0	12.5	8
18	75.0	25.0	0.0	12
19	62.1	10.3	27.6	29
20	68.4	10.5	21.1	19
21	86.1	13.9	0.0	36
22	70.5	24.6	4.9	61
23	76.2	19.0	4.8	63
24	84.5	8.6	6.9	58
25	74.4	18.6	7.0	86
26	85.2	8.2	6.6	61
27	77.1	17.1	5.7	70
28	87.5	6.3	6.3	32
29	78.9	10.5	10.5	38
30	63.0	25.9	11.1	27
31	69.0	10.3	20.7	29
Total	76.3	14.0	9.7	1,467

KIDNAPPING				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100%	0.0%	0.0%	5
2	60.0	0.0	40.0	5
3	0.0	0.0	100	1
4	87.5	0.0	12.5	8
5	66.7	16.7	16.7	6
6	100	0.0	0.0	5
7	66.7	0.0	33.3	3
8	100	0.0	0.0	2
9	50.0	50.0	0.0	4
10	75.0	0.0	25.0	4
11	100	0.0	0.0	2
12	83.3	0.0	16.7	6
13	60.0	40.0	0.0	5
14	100	0.0	0.0	5
15	85.7	0.0	14.3	7
16	100	0.0	0.0	4
17	100	0.0	0.0	1
18	100	0.0	0.0	2
19	100	0.0	0.0	4
20	66.7	0.0	33.3	3
21	66.7	33.3	0.0	3
22	100	0.0	0.0	4
23	100	0.0	0.0	4
24	100	0.0	0.0	3
25	100	0.0	0.0	10
26	80.0	20.0	0.0	5
27	71.4	28.6	0.0	7
28	100	0.0	0.0	1
29	100	0.0	0.0	4
30	100	0.0	0.0	1
31	100	0.0	0.0	4
Total	85.2	7.0	7.8	128

HOMICIDE				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	50.0%	0.0%	50.0%	4
2	61.9	4.8	33.3	21
3	55.6	22.2	22.2	9
4	75.0	0.0	25.0	16
5	80.0	20.0	0.0	5
6	100.0	0.0	0.0	4
7	87.5	0.0	12.5	8
8	50.0	33.3	16.7	6
9	89.5	10.5	0.0	19
10	77.8	0.0	22.2	9
11	87.5	0.0	12.5	8
12	50.0	0.0	50.0	8
13	70.8	16.7	12.5	24
14	60.0	0.0	40.0	10
15	66.7	4.8	28.6	21
16	75.0	12.5	12.5	8
17	100.0	0.0	0.0	3
18	0.0	0.0	0.0	0
19	81.8	0.0	18.2	11
20	66.7	33.3	0.0	3
21	88.9	0.0	11.1	9
22	81.8	0.0	18.2	11
23	75.0	16.7	8.3	12
24	42.9	28.6	28.6	7
25	25.0	0.0	75.0	4
26	50.0	0.0	50.0	12
27	60.0	20.0	20.0	5
28	0.0	0.0	0.0	0
29	0.0	0.0	0.0	0
30	40.0	0.0	60.0	5
31	62.5	0.0	37.5	8
Total	69.6	7.4	23.0	270

Appendix 4

Sentencing Guidelines Compliance by Judicial Circuit:
Offenses Against the Person

ROBBERY/CARJACKING

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	0.0%	0.0%	0.0%	0
2	100	0.0	0.0	5
3	0.0	0.0	0.0	0
4	0.0	100	0.0	1
5	0.0	0.0	0.0	0
6	0.0	0.0	0.0	0
7	0.0	0.0	0.0	0
8	100	0.0	0.0	1
9	0.0	0.0	0.0	0
10	0.0	0.0	0.0	0
11	0.0	0.0	0.0	0
12	100	0.0	0.0	1
13	33.3	66.7	0.0	3
14	60.0	40.0	0.0	5
15	100	0.0	0.0	1
16	0.0	100	0.0	1
17	100	0.0	0.0	1
18	0.0	0.0	0.0	0
19	100	0.0	0.0	1
20	0.0	0.0	0.0	0
21	0.0	100	0.0	1
22	0.0	0.0	0.0	0
23	0.0	0.0	0.0	0
24	0.0	0.0	0.0	0
25	0.0	100	0.0	1
26	100	0.0	0.0	1
27	50.0	50.0	0.0	2
28	100	0.0	0.0	1
29	0.0	0.0	0.0	0
30	0.0	0.0	0.0	0
31	33.3	66.7	0.0	3
Total	62.1	37.9	0.0	29

RAPE

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	85.7%	14.3%	0 %	7
2	66.7	0.0	33.3	6
3	0.0	0.0	0.0	0
4	80.0	20.0	0.0	5
5	100	0.0	0.0	1
6	40.0	20.0	40.0	5
7	40.0	20.0	40.0	5
8	100	0.0	0.0	2
9	100	0.0	0.0	6
10	0.0	0.0	0.0	0
11	100	0.0	0.0	3
12	85.7	14.3	0.0	7
13	100	0.0	0.0	1
14	100	0.0	0.0	2
15	81.8	9.1	9.1	11
16	75.0	25.0	0.0	8
17	66.7	0.0	33.3	3
18	0.0	0.0	0.0	0
19	40.0	40.0	20.0	10
20	60.0	20.0	20.0	5
21	83.3	16.7	0.0	6
22	66.7	0.0	33.3	3
23	40.0	60.0	0.0	5
24	66.7	33.3	0.0	3
25	57.1	28.6	14.3	7
26	57.1	14.3	28.6	7
27	85.7	14.3	0.0	7
28	25.0	25.0	50.0	4
29	50.0	0.0	50.0	2
30	75.0	25.0	0.0	4
31	55.6	22.2	22.2	9
Total	68.1	18.1	13.9	144

OTHER SEXUAL ASSAULT

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	66.7%	33.3%	0.0%	3
2	85.0	5.0	10.0	20
3	33.3	66.7	0.0	3
4	100	0.0	0.0	5
5	100	0.0	0.0	7
6	66.7	33.3	0.0	3
7	87.5	0.0	12.5	8
8	0.0	0.0	100	1
9	63.6	9.1	27.3	11
10	88.9	0.0	11.1	9
11	85.7	0.0	14.3	7
12	62.5	12.5	25.0	8
13	50.0	40.0	10.0	10
14	33.3	8.3	58.3	12
15	62.5	25.0	12.5	24
16	66.7	16.7	16.7	12
17	0.0	100	0.0	1
18	50.0	50.0	0.0	2
19	55.6	33.3	11.1	9
20	62.5	0.0	37.5	8
21	100	0.0	0.0	3
22	100	0.0	0.0	13
23	80.0	20.0	0.0	5
24	40.0	0.0	60.0	5
25	87.5	6.3	6.3	16
26	61.5	7.7	30.8	13
27	85.7	0.0	14.3	14
28	33.3	50.0	16.7	6
29	75.0	0.0	25.0	8
30	42.9	14.3	42.9	7
31	52.6	10.5	36.8	19
Total	68.8	12.5	18.8	272

Appendix ④

Sentencing Guidelines Compliance by Judicial Circuit:
Offenses Against the Person

OBSCENITY				
Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	100%	0.0%	0.0%	4
2	0.0	100	0.0	1
3	0.0	0.0	0.0	0
4	88.9	11.1	0.0	9
5	73.3	0.0	26.7	15
6	66.7	0.0	33.3	3
7	100	0.0	0.0	1
8	100	0.0	0.0	2
9	80.0	0.0	20.0	5
10	66.7	0.0	33.3	3
11	50.0	50.0	0.0	4
12	87.5	0.0	12.5	8
13	66.7	33.3	0.0	3
14	64.7	5.9	29.4	17
15	69.2	15.4	15.4	13
16	66.7	13.3	20.0	15
17	100	0.0	0.0	2
18	50.0	50.0	0.0	2
19	66.7	26.7	6.7	15
20	57.1	28.6	14.3	7
21	100	0.0	0.0	2
22	100	0.0	0.0	4
23	75.0	25.0	0.0	4
24	87.5	12.5	0.0	8
25	92.6	3.7	3.7	27
26	88.0	4.0	8.0	25
27	93.3	6.7	0.0	15
28	0.0	0.0	100	1
29	33.3	33.3	33.3	3
30	25.0	25.0	50.0	4
31	85.7	0.0	14.3	7
Total	77.4	10.4	12.2	230

Appendix 5 Sentencing Guidelines Received by Jurisdiction

COUNTIES				CITIES	
ACCOMACK	44	LEE	149	ALEXANDRIA	47
ALBEMARLE	74	LOUDOUN	130	BRISTOL	224
ALLEGHANY	165	LOUISA	76	BUENA VISTA	58
AMELIA	53	LUNENBURG	6	CHARLOTTESVILLE	49
AMHERST	93	MADISON	19	CHESAPEAKE	885
APPOMATTOX	53	MATHEWS	6	COLONIAL HEIGHTS	75
ARLINGTON	112	MECKLENBURG	145	DANVILLE	223
AUGUSTA	447	MIDDLESEX	29	EMPORIA	2
BATH	17	MONTGOMERY	322	FREDERICKSBURG	230
BEDFORD	170	NELSON	82	HAMPTON	206
BLAND	19	NEW KENT	49	HARRISONBURG	36
BOTETOURT	172	NORTHAMPTON	32	HOPEWELL	122
BRUNSWICK	51	NORTHUMBERLAND	35	LYNCHBURG	377
BUCHANAN	191	NOTTOWAY	63	MARTINSVILLE	107
BUCKINGHAM	59	ORANGE	47	NEWPORT NEWS	313
CAMPBELL	219	PAGE	163	NORFOLK	496
CAROLINE	58	PATRICK	93	PETERSBURG	45
CARROLL	210	PITTSYLVANIA	129	PORTSMOUTH	106
CHARLES CITY	7	POWHATAN	49	RADFORD	73
CHARLOTTE	47	PRINCE EDWARD	82	RICHMOND CITY	471
CHESTERFIELD	693	PRINCE GEORGE	153	ROANOKE CITY	296
CLARKE	15	PRINCE WILLIAM	281	SALEM	104
CRAIG	14	PULASKI	229	STAUNTON	228
CULPEPER	212	RAPPAHANNOCK	5	SUFFOLK	244
CUMBERLAND	21	RICHMOND COUNTY	22	VIRGINIA BEACH	1186
DICKENSON	88	ROANOKE COUNTY	253	WAYNESBORO	124
DINWIDDIE	46	ROCKBRIDGE	180	WILLIAMSBURG	135
ESSEX	18	ROCKINGHAM	498	WINCHESTER	168
FAIRFAX COUNTY	332	RUSSELL	175	MISSING	48
FAUQUIER	88	SCOTT	261		
FLOYD	50	SHENANDOAH	127	Total	20,180
FLUVANNA	48	SMYTH	168		
FRANKLIN COUNTY	263	SOUTHAMPTON	78		
FREDERICK	344	SPOTSYLVANIA	456		
GILES	88	STAFFORD	486		
GLOUCESTER	146	SUSSEX	25		
GOOCHLAND	39	TAZEWELL	366		
GRAYSON	171	WARREN	214		
GREENE	60	WASHINGTON	349		
GREENSVILLE	99	WESTMORELAND	45		
HALIFAX	163	WISE	207		
HANOVER	284	WYTHE	147		
HENRICO	932	YORK	115		
HENRY	282				
HIGHLAND	5				
ISLE OF WIGHT	74				
JAMES CITY	15				
KING & QUEEN	20				
KING GEORGE	24				
KING WILLIAM	31				
LANCASTER	30				