



# Virginia Criminal Sentencing Commission

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## Meeting of the Virginia Criminal Sentencing Commission

March 24, 2025

10:00 am – 12:00 pm

## Meeting held at the Virginia Supreme Court Building

### Meeting Minutes

Members Attending in Person: Judge Dennis Hupp (Chairman), Judge Stacey Moreau (Vice Chairman), Delegate Rae C. Cousins, Bethany Harrison, Judge Robert J. Humphreys, Judge Jack S. Hurley, Jr., K. Scott Miles, Nancy Parr, Senator Russet Perry, Judge Tania Saylor, Judge Bryant L. Sugg, Robert Tracci (for Theo Stamos) and Judge Victoria A.B. Willis

Members Absent: Marcus Elam, Judge Steven C. Frucci, and Dr. Michon Moon

### WELCOME

Before calling the meeting to order, Judge Hupp, Chairman, welcomed Commission members. Judge Hupp announced that the Governor appointed Ms. Nancy Parr, retired Commonwealth's Attorney for the City of Chesapeake, to fill the vacancy created by Tim Coyne, who served two terms and was not eligible for re-appointment. Judge Hupp designated Judge Moreau as Vice-Chair of the Commission.

### AGENDA

The meeting agenda is available at: <http://www.vcsc.virginia.gov/2025Meetings/AgendaMar242025.pdf>

### APPROVAL OF MINUTES FROM LAST COMMISSION MEETING

Minutes from the meeting held on November 7, 2024, were approved as submitted. The minutes are available at: <http://www.vcsc.virginia.gov/2025Meetings/MinutesNov72024.pdf>

### REPORT ON THE 2025 GENERAL ASSEMBLY AND LEGISLATIVE IMPACT ANALYSIS

Presentation link: <http://www.vcsc.virginia.gov/2025Meetings/ReportGAMar242025.pdf>

Dr. Chang Kwon, the Commission's Chief Methodologist, described the many activities of Commission staff during the 2025 Session of the General Assembly. These activities included the preparation of fiscal impact statements, as required by statute, responding to legislators' requests for supplemental information, monitoring legislation, observing the judicial interview process, and providing technical assistance to other agencies. He provided an overview of the requirements pertaining to fiscal impact statements that must be prepared by the Commission. Dr. Kwon then presented an overview of the number and kinds of impact statements prepared for the 2025 General Assembly. Staff produced a total of 306 impact statements. Proposals requiring fiscal impact statements most frequently involved the expansion or clarification of an existing statute (92%) or the definition of a new crime (40%). Dr. Kwon displayed a slide to show the diversity of topic areas among fiscal impact statements prepared. For the 2025 Session, the most common topic area was firearms/weapons. Commission staff also completed ad

hoc analyses requested by legislators, the Department of Planning & Budget and other state agencies. As indicated by Dr. Kwon, legislators can ask the Joint Legislative Audit and Review Committee (JLARC) to conduct an independent review of any fiscal impact statement prepared by the Commission. The number of such requests has ranged from zero to two per year. During the 2025 Session, JLARC was not asked to review any of the Commission's fiscal impact statements.

Ms. Farrar-Owens, Commission Director, highlighted a number of bills that related directly to the Commission, Sentencing Guidelines, criminal penalties, or the time to be served for felony offenses. She noted that her presentation was not intended to be comprehensive but would focus on the legislation most relevant to the Commission's work. First, she informed members that no legislation had been introduced during the 2025 General Assembly session pertaining to the recommendations in the Commission's [2024 Annual Report](#). Therefore, the Commission's recommendations for Guidelines revisions would become effective on July 1, 2025. She noted that the General Assembly accepted the Commission's current methodology for scoring prior criminal conduct on the Sentencing Guidelines.

The Commission had requested legislation ([House Bill 2236](#)) to statutorily designate the Virginia Criminal Sentencing Commission as the agency to administer the Virginia Crime Code (VCC) system. The VCCs are a short-hand offense identification system used to facilitate administration and research. Ms. Farrar-Owens reported that House Bill 2236 had passed the General Assembly and was awaiting action by the Governor (House Bill 2236 was signed by the Governor later on March 24, 2025).

As introduced, [House Bill 2456](#) would have added certain crimes and removed others from the list of violent felony offenses for the purposes of the Sentencing Guidelines. Ms. Farrar-Owens reminded members that the Commission had not made any recommendations related to the definition of a violent felony in the most recent Annual Report. Although the bill failed, the legislative subcommittee discussed that further review of § 17.1-805 may be in order. Ms. Farrar-Owens indicated that staff had a proposal on this issue as the next item on the agenda.

[Senate Bill 1191](#) would allow the Commission to contribute data from the Virginia Pretrial Data Project to the Virginia Longitudinal Data System administered by the State Council of Higher Education. Ms. Farrar-Owens noted that Senate Bill 1191 had passed the General Assembly and was awaiting action by the Governor (Senate Bill 1191 was ultimately vetoed by the Governor on March 26, 2025).

In [House Bill 2723](#) and [Senate Bill 1466](#), the General Assembly revised numerous statutes related to the expungement and sealing of criminal records. Most pertinent to the Commission, one amendment specifies that sealed convictions shall be used for scoring the Sentencing Guidelines. Ms. Farrar-Owens reported that the Governor had made recommendations for further amendments to the bills that would be addressed by the General Assembly during the upcoming reconvened session (On April 2, 2025, the General Assembly accepted the Governor's recommendation and passed the amended bills).

[Senate Bill 966](#) would add the executive director of the Virginia Indigent Defense Commission or his designee to the membership of the Commission. Ms. Farrar-Owens informed members that the bill had passed, had been signed by the Governor, and would take effect on July 1, 2025.

[Senate Joint Resolution 293](#) had passed, confirming the Chief Justice's appointment of Judge Dennis L. Hupp as Chairman of the Commission.

Before concluding, Ms. Farrar-Owens reviewed a number of other bills pertaining to sentencing for certain offenses, expansion of the definition of "family or household member" for certain provisions, probation, earned sentence credits, and bail.

## HOUSE BILL 2456 – REVIEW of § 17.1-805

Presentation link: <http://www.vcsc.virginia.gov/2025Meetings/HouseBill2456Mar242025.pdf>

Ms. Farrar-Owens provided an overview of [House Bill 2456](#). The bill would amend [§ 17.1-805](#), by adding and removing certain offenses from the definition of a violent felony for Sentencing Guidelines purposes. Defendants with convictions for violent offenses receive enhancements, as required by § 17.1-805, that increase the Guidelines recommended sentences for those individuals.

As proposed, the following offenses would be added to the list of violent offenses in § 17.1-805:

- § 18.2-47 - Abduction of a minor (Class 2 felony);
- § 18.2-51.7 - Genital mutilation (Class 2 felony);
- § 18.2-55.1 - Bodily injury caused by hazing (Class 1 misdemeanor);
- § 18.2-64.2 - Carnal knowledge by law enforcement officer, DOC staff, or bail bond person (Class 6 felony);
- § 18.2-144.1 - Killing or severely injuring law enforcement animal (Class 5 felony);
- § 18.2-308.5 - Manufacture, transfer, or possess plastic firearm (Class 5 felony); and
- § 18.2-308.5:1 - Manufacture, transfer, or possess trigger activator (Class 6 felony).

The following offenses would be removed from the list of violent offenses in § 17.1-805:

- § 18.2-60.3 - Felony stalking, 2<sup>nd</sup> within five years (Class 6 felony);
- § 18.2-89 - Burglary at night while armed (Class 2 felony);
- § 18.2-92 - Burglary with intent to commit misdemeanor (Class 6 felony);
- § 18.2-152.7 - Unlawful computer trespass (Class 6 felony);
- § 18.2-287.2 - Wearing body armor during commission of crime (Class 4 felony);
- § 18.2-355 - Procurement for prostitution that does not involve the use of force, threat, or coercion (Class 3 and 4 felonies);
- § 182-366 - Incest between adults that does not involve force, threat, or coercion (Class 5 felony);
- § 18.2-474.1 - Delivery of drugs (Class 5 felony) or weapons (Class 3 felony) to prisoners;
- § 37.2-917 - Escape of sexually violent predator from civil commitment facility (Class 6 felony); and
- § 53.1-203 - Certain felonies by prisoners: escape from a correctional facility, damage to aid escape, possession of instrument to aid escape, possession of unlawful chemicals, possession of Schedule III drug or marijuana, damage of fire protection equipment, and conspiracy to commit an offense in this section (Class 5 and 6 felonies).

According to Ms. Farrar-Owens, the bill did not pass and was left in the House Courts of Justice Committee. Members of the House Courts of Justice Criminal Law Subcommittee suggested that a comprehensive review of § 17.1-805 may be beneficial, the results of which could be used to refine the bill for consideration during the 2026 General Assembly. Ms. Farrar-Owens spoke with Delegate Mike Cherry (the bill's patron) and offered to assist if such an effort went forward.

Based on the comments of the Criminal Law Subcommittee, staff proposed that the Commission convene a Work Group, composed of individuals who are not members of the Commission, to review § 17.1-805 and develop recommendations for the 2026 General Assembly. Commission staff would provide technical assistance and data support to the work group throughout the process.

Judge Hupp introduced Delegate Cherry, who briefly discussed his proposed legislation. Mr. Tracci inquired about the individuals who would be appointed to the work group. Judge Humphreys indicated that members of the Commission could potentially serve in that capacity. Senator Perry concurred with Judge Humphreys' suggestion that Commission members could serve on the work group, noting that the final decision would rest with the General Assembly. Judge Willis suggested that the Commission review this legislation without a formal work group.

Judge Hurley made a motion to convene a special meeting of the Commission to review the list of violent felony offenses, if a formal request was received from the General Assembly for the Commission to do so. Judge Humphreys seconded the motion. With no further discussion, the Commission voted 14-0 in favor.

#### **STUDY OF LARCENY AND FRAUD GUIDELINES**

Presentation link: <http://www.vcsc.virginia.gov/2025Meetings/LarcenyFraudMar242025.pdf>

Mr. Fridley, the Commission's Deputy Director, began by stating that the reanalysis will focus on larceny and fraud cases received between FY2021 and FY2024, which totaled 11,735 cases. He also noted that FY2025 cases received and coded by July 1, 2025, would be incorporated into the analysis. The presentation included a review of judicial concurrence rates with the Larceny and Fraud Guidelines.

Mr. Fridley pointed out that the majority of these cases (approximately 80%) do not include value information. To collect information on the value of money or property associated with an offense, staff would utilize the Officer of the Court Record Access (OCRA) system in localities where the clerks had granted access to Commission staff. Staff have secured OCRA access in numerous localities for prior studies. Staff may need to visit courts that have not yet granted access to the OCRA system.

The objective of the reanalysis is to develop Larceny and Fraud Guidelines that are structured like the new Robbery Guidelines (with two worksheets: a Probation/Incarceration In/Out worksheet and a Jail/Prison Sentence Length worksheet).

Mr. Fridley discussed the Nonviolent Offender Risk Assessment instrument that has been incorporated into the Larceny and Fraud Guidelines since 2001. The instrument is required by § 17.1-803. Mr. Fridley posed several questions related to the Risk Assessment Instrument and how to address risk assessment in the development of new Larceny and Fraud Guidelines. He also asked members if the current risk assessment requirement in § 17.1-803 should be modified. There was consensus among members to continue to include a risk assessment instrument in the Guidelines, though not necessarily the same instrument used currently.

Mr. Fridley concluded the presentation by saying that, if the Commission wished to proceed with the study, staff would present a status report at the next meeting.

Judge Humphreys made a motion to move forward with the study. Senator Perry seconded the motion. With no further discussion, the Commission voted 14-0 in favor.

#### **PROPOSED CHANGES TO SENTENCING REVOCATION REPORT**

Presentation link: <http://www.vcsc.virginia.gov/2025Meetings/SRRequestMar242025.pdf>

Mr. Fridley presented a request from a Guidelines user involving a proposed modification to the Sentencing Revocation Report (SRR). A Guidelines user recommended that a statute citation be included on the SRR for each state-imposed condition of probation. The purpose of this addition is to ensure that the specific probation condition(s) violated are accurately documented in the court order. Mr. Fridley displayed an example SRR with the proposed addition. He further noted that recording the exact violation(s) would facilitate the application of the requirements set forth in [§ 19.2-306.1](#) and [Heart v. Commonwealth](#) during future hearings.

He recommended including the specific statute citation, along with the corresponding Department of Corrections probation condition number and description, to assist the clerk in preparing the court order.

Judge Willis believed that including statute references on the cover page of the SRR would create confusion and make the page appear cluttered.

No motion was made and the proposal did not advance.

#### **MISCELLANEOUS ITEMS**

Ms. Farrar-Owens informed members that a letter had been sent to the Office of the Attorney General requesting a formal advisory opinion on the Commission's options for releasing records and automated data once the sealing legislation became effective (§§ 19.2-392.5 through 19.2-392.17). A copy of the letter was included in the meeting packet provided to members.

Ms. Farrar-Owens advised that the National Association of Sentencing Commissions (NASC) will hold its 2025 conference in Madison, Wisconsin, on August 11–12. She invited any members interested in attending to contact her directly.

Ms. Farrar-Owens noted that staff would be present at the upcoming Judicial Conference and would host a table where judges could ask questions regarding the Guidelines.

Finally, Ms. Farrar-Owens reminded members of the remaining 2025 meeting dates: June 9, September 3, and November 6.

#### **PUBLIC COMMENT**

No member of the public wished to provide comment.

With no comments and there being no further business, the Commission adjourned at 12:00p.m.

#### **Sentencing Commission Meeting Recording**

##### **NEXT VCSC MEETING:**

Tentative Date: Monday, June 9, 2025

Time: 10:00 a.m.

Members of the public may request remote access or sign up for public comment by sending an e-mail to: [Cwilliamson@vacourts.gov](mailto:Cwilliamson@vacourts.gov).

Respectfully submitted by:

Carolyn Williamson, Research Associate

Minutes Reviewed by:

Meredith Farrar-Owens, Director