



# THE GUIDELINE MESSENGER

The official newsletter of the Virginia Criminal Sentencing Commission

## UPCOMING CHANGES TO VIRGINIA'S SENTENCING GUIDELINES EFFECTIVE JULY 1, 2025

### IN THIS EDITION

#### Upcoming Changes to Sentencing Guidelines - Effective July 1, 2025

##### [NEW Robbery Guidelines](#)

Page 1

#### General Assembly Accepts the Commission's Existing Methodology for Scoring Prior Record

Page 2

#### Changes to Sealing Provisions: Sealed Convictions Can Be Used on Sentencing Guidelines for New Offenses

Page 3

#### Probation Violation Guidelines: Judges Should Check the Box Indicating the Court's Determination Regarding § 19.2-306.1

Page 4

#### SWIFT - The Automated Sentencing Guidelines Application UPDATES

Page 5

**Virginia's Sentencing Guidelines Are Historically Based.** Unlike many other states, Virginia's 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. The Sentencing Commission closely monitors the Guidelines system and, each year, deliberates upon possible modifications to enhance the usefulness of the Guidelines as a tool for judges. Recommendations for revisions to the Guidelines are based on the best fit of the available data. Moreover, recommendations are designed to closely match historical prison and jail incarceration rates.

**Process for Guidelines Revisions.** Pursuant to § 17.1-806, any modifications adopted by the Commission must be presented in an annual report, due to the General Assembly each December 1. If the General Assembly takes no action, recommendations for Guidelines revisions contained in the Commission's annual report automatically take effect the following July 1.

**New Robbery Guidelines.** In 2021, the General Assembly passed legislation to create four classes of robbery with different statutory penalties, ranging from a Class 2 to a Class 6 felony, based on the circumstances of the offense. At that time, data were insufficient to perform the analysis necessary to develop Guidelines based on the new penalty structure, and the Commission suspended the Robbery Guidelines until a full analysis of sentencing under the new penalties could be completed. After three years, sufficient data were available and the Commission developed new Robbery Guidelines based on a comprehensive analysis of the most recent sentencing practices. Although the penalty for carjacking was not amended in 2021, the Commission included carjacking in the analysis and revised the Guidelines for that offense. Details can be found in the Commission's 2024 Annual Report.

**Other New Guidelines Offenses.** Beginning July 1, 2025, the following crimes will be covered by the Guidelines as the primary, or most serious, offense at sentencing:

- **Unlawfully Shoot or Throw Missile at Train, Car, etc.** (§ 18.2-154) - Miscellaneous/Person and Property worksheets;
- **Resist Arrest/Obstruct Justice by Threats or Force** (§ 18.2-460(C)) - Miscellaneous/Person and Property worksheets; and
- **Prisoner Possess, etc., an Unlawful Chemical** (§ 53.1-203(5)) - Miscellaneous/Other worksheets.



## GENERAL ASSEMBLY ACCEPTS THE COMMISSION'S EXISTING METHODOLOGY FOR SCORING PRIOR RECORD ON GUIDELINES

### Commission's Recommendation Was Included in 2024 Annual Report

By providing a set of objective and consistent standards, use of Sentencing Guidelines can reduce variation, and increase consistency and predictability, in sentencing outcomes for defendants convicted of similar offenses who have exhibited similar prior criminal behavior.

Statutory maximum penalties are used in Virginia's Guidelines as a proxy for measuring previous criminal conduct. When scoring a defendant's prior offenses, Guidelines preparers are instructed to use Virginia's current penalty structure. The Commission has retained this approach since 1995, as it ensures that the Guidelines system reflects the overall sentencing policy set by the General Assembly through the current statutory penalties it has prescribed.

The General Assembly has modified penalties for many offenses over time. The changes have increased penalties for some crimes, reduced penalties for others, and raised the threshold at which certain crimes are punishable as felonies.

By using the current statutory maximums, all prior convictions/adjudications are given the same weight regardless of when the offense was committed or where the

defendant was convicted. This approach to scoring ensures that prior behaviors are scored in a consistent and predictable manner. This is another mechanism by which the Guidelines are intended to reduce disparity in sentencing outcomes.

In addition, using the current penalty structure is a convenient way to allow Guidelines preparers (prosecutors and state probation officers), who are familiar with Virginia's criminal penalties, to use a known system to assign points, rather than having to learn a new ranking system or having to conduct extensive legal research to determine the penalty of an offense when and where it was committed. Finally, the Commission's approach to scoring prior record reflects present-day sentencing policy enacted by the General Assembly.

In its 2024 Annual Report, the Commission recommended that it continue to utilize scoring mechanisms that weigh prior offenses based on the current penalties approved by the legislature. Since no action was taken by the 2025 General Assembly to counteract the Commission's recommendation, the Commission will continue to apply this approach in the development and administration of Virginia's Sentencing Guidelines.



## NEW CHAIRMAN OF THE VIRGINIA CRIMINAL SENTENCING COMMISSION

The Sentencing Commission announces the appointment of the Honorable Dennis L. Hupp (Retired) as Chairman. Judge Hupp's appointment by Chief Justice S. Bernard Goodwyn was confirmed by the 2025 General Assembly.

Judge Hupp previously served on the Sentencing Commission from 2003 to 2010 and 2016 to 2018 before being re-appointed to the Commission in 2022 by the Speaker of the House of Delegates. Most recently, Judge Hupp served as Vice-Chairman of the Commission until his appointment as Chairman.

## HOUSE BILL 2723 AND SENATE BILL 1466: SEALING OF CRIMINAL HISTORY RECORDS

### Changes Ensure Sealed Convictions Can Be Used on Guidelines for New Offenses



The **2021 General Assembly (Special Session I)** passed legislation to establish a process for the automatic sealing of records for certain arrests, charges, and convictions (see House Bill 2113 and Senate Bill 1339, 2021 General Assembly, Special Session I). The legislation also established provisions for an individual to petition the court for the sealing of certain charge and conviction records, including some felonies. A number of criteria were specified in these provisions. The legislation had staggered delayed effective dates in order for agencies to develop systems for implementing the new law. The effective date for many of these provisions was set for July 1, 2025, or earlier if automated systems to support the processes could be established prior to that date. Some of these provisions were modified by the 2023 General Assembly.

This year, the **2025 General Assembly** made key changes to the sealing laws, and the effective date for many of its provisions has been delayed until July 1, 2026 (see House Bill 2723 and Senate Bill 1466, 2025 General Assembly).

Per § 19.2-392.5, as amended, "sealing" means to prohibit public access to records relating to an arrest, charge, or conviction, including any ancillary matters ordered to be sealed, in the possession of the Central Criminal Records Exchange (CCRE), any court, any police department or sheriff's office, or the Department of Motor Vehicles unless dissemination is authorized for one or more purposes set forth in § 19.2-392.13 and it is conducted pursuant to the rules and regulations adopted pursuant to § 9.1-128 and the procedures adopted pursuant to § 9.1-134. Sealing does not prohibit or limit dissemination of records within or between agencies for the purposes of administering duties or functions required by law.

Automatic sealing provisions are specific to certain misdemeanor convictions, as well as misdemeanor and felony charges that result in acquittal or are dismissed with prejudice. For example, under § 19.2-392.6, misdemeanor convictions for § 18.2-96 (petit larceny), § 18.2-103 (shoplifting), § 18.2-119 (trespassing), § 18.2-120 (instigating others to trespass), § 18.2-134 (trespassing-posted property), § 18.2-248.1 (distribution of marijuana), and § 18.2-415 (disorderly conduct) are eligible for automatic sealing if the offense date was on or after January 1, 1986, seven years have passed since the date of the conviction,

the person has not been convicted of new offense reportable to CCRE or any similar crime and, on the date of the conviction, the person was not convicted of another offense that is ineligible for automatic sealing (§ 19.2-392.6). Charges and convictions for other misdemeanors, many Class 5 or 6 felonies, larceny under § 18.2-95, and other offenses deemed larceny in the *Code* are eligible for sealing under certain conditions, but an individual must petition the court and request that such a charge or conviction be sealed (§ 19.2-392.12). Conditions include, for example, that the petitioner must not have been convicted of any other offense reportable to the CCRE for a specified period of time. A number of offenses are not eligible for sealing, such as assault and battery of a family or household member and violation of a protective order.

***One of the most significant changes made by the 2025 General Assembly pertained to the Sentencing Guidelines.*** The 2025 legislation, in § 19.2-392.5(H), specifies that a sealed arrest, charge, or conviction ***shall*** be:

- (i) Disclosed in any pretrial or sentencing report, including any discretionary Sentencing Guidelines;
- (ii) Considered when ascertaining the punishment of a defendant; or
- (iii) Considered in any hearing on the issue of bail, release, or detention of a defendant.

Original provisions established by the 2021 General Assembly prohibited the use of sealed offenses for these purposes.

Based on changes to § 19.2-392.13 made by the 2025 General Assembly, sealed records may be disclosed to the Commonwealth's attorney, the defendant or his counsel, any magistrate, community-based probation services agency or pretrial services agency, the State Police, any police department, sheriff's office, the Department of Corrections, any court, and the Sentencing Commission for specified purposes. As noted above, § 19.2-392.5(H) requires the inclusion of sealed offenses on Sentencing Guidelines and consideration of sealed offenses when the court is ascertaining punishment for subsequent crimes.





**PROBATION VIOLATION GUIDELINES: JUDGES SHOULD CHECK THE BOX INDICATING THE COURT’S DETERMINATION REGARDING § 19.2-306.1**

**Sentencing Revocation Report Is the Only Automated Information Source**

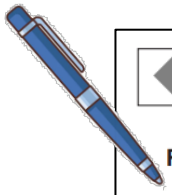
In 2020, the Commission completed a study that provided the foundation needed to revise the Probation Violation Guidelines. The Commission conducted a comprehensive analysis of sentencing outcomes in revocation cases handled in Virginia’s Circuit Courts. Based on this study, the Commission recommended a thorough overhaul of the Probation Violation Guidelines, including an expansion to cover, for the first time, violations associated with new convictions. The recommendation was accepted by the General Assembly. In any proceeding conducted pursuant to § 19.2-306 for a felony probation violation, § 19.2-306.2 requires that the circuit court be presented with the Sentencing Revocation Report and the Probation Violation Guidelines.

Also in 2020, the General Assembly adopted legislation that specified limits on periods of probation and probation supervision terms, defined technical violations of supervision, and established caps on sentences for certain technical violations (see House Bill 2038, Special Session I). The sentence caps are shown in the table to the right. Violations arising because of new offense convictions and violations of special conditions of supervision are not subject to the caps. **The judge must determine, based on statute and current case law, if the conduct alleged by the probation officer is defined by statute as a technical violation and if the limits of § 19.2-306.1 apply.** With more than a dozen appeals decisions to date, related case law continues to evolve.

Technical Violation	Sentence Specified in § 19.2-306.1
1st technical violation not related to firearm or absconding	No active incarceration
2nd technical violation OR 1st technical violation related to firearm or absconding	Presumption against incarceration or, if the defendant cannot be safely diverted, up to 14 days of active incarceration
3rd or subsequent technical violation OR 2nd or subsequent technical violation related to firearm or absconding	Whatever sentence may have been originally imposed

Today, the historically-based Probation Violation Guidelines sentence recommendation will be shown on the Sentencing Revocation Report (cover sheet) in every felony probation violation case. The judge must determine, based on statute and case law, if the conduct alleged by the probation officer is defined by statute as a technical violation and if the limits of § 19.2-306.1 apply. There will be no need to delay proceedings if the court decides that § 19.2-306.1 is not applicable, as the historically-based recommendation is provided in every case. The judge need only check the appropriate box based on his or her determination.

Recent analysis revealed that the check box indicating the judge’s ruling on the applicability of § 19.2-306.1 is often not marked. **Judges are strongly encouraged to record the decision of the court on the Sentencing Revocation Report by checking the box (see below).** In doing so, the sentence ordered by the judge can be interpreted in the context of any statutory requirements applied by the judge in that case.



### Final Decision/Disposition

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

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**RULING ON APPLICATION OF § 19.2-306.1** \_\_\_\_\_

Statutory Requirement ( no time imposed or  0 to 14 days). Case is in compliance with statutory limits.

Statutory Requirement Does Not Apply. (for one or more of the obligations) Range \_\_\_\_\_ to \_\_\_\_\_

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**DECISION OF THE COURT** \_\_\_\_\_

Found in Violation of Conditions as Cited

Found in Violation of Conditions as Modified by the judge: Conditions Violated: \_\_\_\_\_

Found in Violation of good behavior, suspended sentence, felony local probation, or post release

Taken Under Advisement/Continued

Not in Violation

## SWIFT – THE AUTOMATED SENTENCING GUIDELINES APPLICATION



### Judges May Now Designate Someone to Complete the Guidelines Disposition Page

Since the roll out of the Sentencing Worksheets and Interactive File Transfer (SWIFT) application, a number of judges have requested the ability to designate another court staff member to complete the Final Disposition section in SWIFT prior to submitting the Guidelines to the Sentencing Commission. Initially, only the judge could complete and sign the Final Disposition page via electronic signature for available Sentencing Guidelines on their docket. To accommodate this request, the Department of Judicial Services (JIS) developed a Court Staff Designee role that allows a judge to select a designee to update/modify available Guidelines on the judges' electronic docket. Users with the Court Staff Designee role can

review Guidelines and make the same dispositional data edits that are available to users with the Judge role. Once the Guidelines have been edited and the Court Designee selects *Endorse and Review*, a green gavel will reappear next to the Guidelines that have been submitted. The judge can then review, sign, and submit the Guidelines to the Sentencing Commission. The Judge may submit a request for the Clerk to assign a designee, which the Clerk may grant or deny at their discretion. The Clerk may assign a SWIFT Court Staff Designee role to a Deputy Clerk, Judicial Assistant, or other individual of their choice in eAccess by selecting it from the User Role(s) dropdown menu.

### Development of Enhancements to SWIFT to Resume in Late Spring

SWIFT's developer, Chris Geen of the Department of Judicial Information Technology, was assigned to work on critical aspects of the sealing legislation (see page 3) but will return to the SWIFT project in late spring. The next phase of SWIFT will focus on three key functions. The first function is to have SWIFT updated with the new Guidelines for 2025 by June 1. If the scheduled sentencing date is on or after July 1, 2025, the revised Guidelines will populate SWIFT. The second function is to develop a secure process for attorneys and probation officers to share Guidelines within SWIFT. This will require all attorneys and probation officers to have SWIFT accounts. This will also allow the Commonwealth's attorney or probation officer to accept Guidelines as their own and finalize the

documents to the court's docket. If this occurs, the original preparer will be notified. The third function is to develop group administrative roles for probation officers, Commonwealth's attorneys, public defenders, and law offices. This would allow each organization to designate who can see the work of other staff members and allow administrators or their designees to finalize Guidelines when the creator of the Guidelines is not available.

The Commission appreciates everyone's patience as the agency tries to incorporate more user suggestions into SWIFT. E-mail staff at [swift@vacourts.gov](mailto:swift@vacourts.gov), text to 804.393.9588, or call 804.225.4567 to share your ideas.

**NEW**  
**SUPREME COURT DECISION IN**  
**CANALES v. COMMONWEALTH:**  
**Determination of Single Course**  
**of Conduct**

April 2025

In *Canales v. Commonwealth*, the Supreme Court of Virginia concluded that the determination of whether a series of behavior constitutes a "single course of conduct" under § 19.2-306.1 involves a fact-intensive inquiry. In the *Canales* case, the probation violations occurred over approximately five months and were separated by time periods that ranged from six days to over two months. The Court found that these periods of compliance interrupted the underlying sequence of behavior that was at issue in the

case. Further, *Canales'* probation history allowed the circuit court to infer that the violations at issue arose from separate, calculated decisions. Under the circumstances presented in this case, the circuit court permissibly determined that *Canales'* probation violations were separate and distinct events and, thus, the court could impose more than 14 days of active incarceration for the violations. In addition, the Supreme Court affirmed that § 19.2-306.1 does not prohibit a court from addressing individual probation violations described in the same major violation report in separate revocation hearings. **FYI** When the court sets separate revocation hearings, probation officers are instructed to clone the Probation Violation Guidelines worksheets for each hearing, which will provide the judge with the same historically-based recommendation for each event. The judge will then determine, based on statute and current case law, if the alleged conduct constitutes a technical violation and if the caps set by § 19.2-306.1 apply.



## Esther J. Windmueller Fee Waiver Program

On a limited basis and subject to the availability of funds, the Sentencing Commission offers fee waivers for private attorneys. Applications for fee waivers are evaluated based on the percentage of the attorney's practice focusing on indigent defense cases and financial need (especially for new or solo practitioners). To submit an application, go to <http://www.vcsc.virginia.gov/training.html>.

*Fees are always waived for Commonwealth's Attorneys, Public Defenders, and Probation and Parole Staff*

## Members of the Virginia Criminal Sentencing Commission

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

Judge Dennis L. Hupp (Ret.) Chairman, Strasburg

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Vacant

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Theo Stamos, Attorney General's Representative

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Court of Appeals of Virginia

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Sentencing Commission website  
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