2002 Annual Report

Virginia Criminal Sentencing Commission

Report available at
www.vcsc.state.va.us

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Supreme Court of Virginia
Virginia Criminal Sentencing Commission

December 2002

To: The Honorable Harry L. Carrico, Chief Justice of Virginia
The Honorable Mark R. Warner, 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 *2002 Annual Report* of the Criminal Sentencing Commission.

This report details the work of the Commission over the past year and outlines the ambitious schedule of activities that lies ahead. The report provides a comprehensive examination of judicial compliance with the felony sentencing guidelines for fiscal year 2002. The Commission's recommendations to the 2003 session of the Virginia General Assembly are also contained in this report.

January 1, 2003, marks the eighth anniversary of the Commission's implementation of Virginia's no-parole, truth-in-sentencing system. At this milestone, the Commission's report takes a close look at the performance of the new sentencing system in meeting specific objectives set forth by its designers.

The Commission wishes to sincerely thank those of you in the field whose diligent work with the guidelines enables us to produce this report.

Sincerely,

Robert W. Stewart

Robert W. Stewart
Chairman

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Introduction

Overview

In this document, the Virginia Criminal Sentencing Commission presents its eighth annual report. The report describes the many activities the Commission has undertaken in the last year and provides detailed analysis of judicial compliance with the discretionary sentencing guidelines and the impact of truth-in-sentencing in Virginia. Two of the Commission's larger projects over the most recent year are described in greater detail in distinct chapters devoted to those topics. This report also contains the Commission's recommendation to the 2003 Virginia General Assembly.

The report is organized into six chapters. The Introduction chapter provides a general profile of the Commission and its various activities and projects during 2002. The Guidelines Compliance chapter presents the results of an extensive analysis of compliance with the sentencing guidelines during fiscal year (FY) 2002, as well as other related sentencing trend data. In the chapter entitled Comprehensive Review of Sentencing Guidelines, the Commission describes in detail the work completed in the first year of a multi-year review of the current guidelines for all covered offenses. Next, utilizing its Community Corrections Revocation Data System, the Commission addresses an aspect of sentencing for which little data has previously existed—the re-imposition of suspended time for violations of community supervision. The effects of the sweeping reforms that took effect in 1995 are discussed in the chapter on the Impact of Truth-in-Sentencing. The final chapter presents the Commission's recommendation for 2003.

Commission Profile

The Virginia Criminal Sentencing Commission is comprised of 17 members as authorized in *Code of Virginia* § 17.1-802. 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. Five members of the Commission are appointed by the General Assembly: the Speaker of the House of Delegates designates three members, and the Senate Committee on Privileges and Elections selects two members. The Governor appoints four members, at least one of whom must be

Profile of the Commission

The Virginia Criminal Sentencing Commission is comprised of 17 members as authorized in *Code of Virginia* § 17.1-802.

a victim of crime or a representative of a crime victim's organization. The final member is Virginia's Attorney General, who serves by virtue of his office. In the past year, Virginia's Attorney General, Jerry Kilgore, designated Deputy Attorney General Bernard L. McNamee, as his representative at Commission meetings.

The Virginia Criminal Sentencing Commission is an agency of the Supreme Court of Virginia. The Commission's offices and staff are located on the Fifth Floor of the Supreme Court Building at 100 North Ninth Street in downtown Richmond.

Activities of the Commission

The full membership of the Commission met four times in 2002: March 25, June 17, September 9 and November 4. Minutes for each of these meetings are available on the Commission's website www.vcsc.state.va.us. The following discussion provides an overview of some of the Commission actions and initiatives during the past year. Two projects are presented in greater detail elsewhere within this report.

Monitoring and Oversight

The *Code of Virginia*, in § 19.2-298.01, requires that sentencing guidelines worksheets be completed in all felony cases for which there are guidelines and specifies that judges must announce during court proceedings that review of the forms has been completed. After sentencing, the guidelines worksheets must be signed by the judge and then become a part of the official record of each case. The clerk of the circuit court is responsible for sending the completed and signed worksheets to the Commission.

The Commission's staff reviews the guidelines worksheets as they are received. Commission staff performs this check to ensure that the guidelines forms are being completed accurately and properly. When certain problems are detected on a submitted form, it is returned to the sentencing judge for corrective action. In the last fiscal year, staff noted that in approximately one-quarter of the cases with sentences outside the guidelines recommended range, the judge did not include a written explanation of the departure, as is required by § 19.2-298.01(B) of the *Code*. As many new judges have taken the bench in recent years, some may not be aware of this statutory requirement. However, as a result of the review process, the Commission elected to send a letter to all circuit court judges discussing the provisions of this statute and the importance of judicial departure reasons in the Commission's work. Few other errors or omissions have been detected during the past year.

Once the guidelines worksheets are reviewed and determined to be complete, they are automated and analyzed. The principal analysis performed with the

automated guidelines database relates to judicial compliance with sentencing guidelines recommendations. This analysis is conducted and presented to the Commission on a quarterly basis. The most recent study of judicial compliance with the sentencing guidelines is presented in the next chapter.

Training and Education

The Commission continuously offers training and educational opportunities in an effort to promote an understanding of the Commission's recent work and 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. Having all sides trained in the completion of guidelines worksheets is essential to a system that ensures the accuracy of sentencing guidelines. In 2002, the Commission provided sentencing guidelines assistance in a variety of forms: training and education seminars, assistance via the hot line phone system, and publications and training materials distributed directly and / or available on the Comission's website. The Commission offered 50 training seminars in 26 different locations across the Commonwealth, returning to many of theses locations multiple times throughout the year. This year the Commission staff developed and presented two training seminars: an introduction for new users of guidelines and a course that focused on the statewide implementation of the Commission's nonviolent offender risk assessment instrument and common errors made when completing guidelines. Both seminars included a significant component on the nonviolent offender risk assessment instrument that became effective July 1.

The manual incorprates modifications to the guidelines system which took effect on July 1, 2002

Commission staff traveled throughout Virginia, presenting seminars for the first time in several localities, in an attempt to offer training that was even more convenient to most of the guideline users. Also an effort was made to seek out facilities that were designed for training and not the typical courtroom environment. The sites for these seminars included a combination of colleges and universities, libraries, local facilities, a jury assembly room, hotel conference room, a museum and criminal justice academies. Seminars were offered at the following colleges and universities: Southwest Virginia Higher Education Center, Longwood College, Radford University, Rappahannock Community College, Germanna Community College, Lord Fairfax Community College,

Danville Community College, Eastern Shore Community College, Southside Virginia Community College and Shenandoah University. Other seminars were presented at the Department of Corrections' Training Academy, Cardinal Criminal Justice Academy, City of Richmond's Police Academy, Chesterfield County Police Academy, Central Virginia Criminal Justice Academy and Virginia Beach Law Enforcement Training Academy. Facilities such as the Virginia Transportation and Research Council in Charlottesville, Fairfax Government Complex, Massanutten Technical Center, Virginia Beach Central Library, Department of Social Services in Portsmouth, Norfolk's Commonwealth's Attorney's Office, Comfort Inn in Big Stone Gap and the Mariner's Museum in Newport News were used in an effort to provide more comfortable and convenient locations at little or no cost to the Commission. The only court facilities used this year were the jury assembly room in Arlington Circuit Court and a conference room in the Supreme Court of Virginia building.

The Commission will continue to place a priority on providing sentencing guidelines training on request to any group of criminal justice professionals. The Commission regularly conducts sentencing guidelines training at the Department of Corrections' Training Academy as part of the curriculum for new probation officers. The Commission is also willing to provide an education program on guidelines and the no-parole sentencing system to any interested group or organization. If an individual is interested in training, the user can contact the Commission and place his or her name on a waiting list. Once there is enough interest, a seminar is developed and presented in a locality convenient to the majority of individuals on the list.

In addition to providing training and education programs, the Commission staff maintains a "hot line" phone system (804.225.4398). The phone line is staffed from 7:45 a.m. to 5:15 p.m., Monday through Friday, to respond quickly to any questions or concerns regarding the sentencing guidelines. The hot line continues to be an important resource for guidelines users around the Commonwealth. In 2002, the staff of the Commission has responded to thousands of calls through the hot line service.

This year the guidelines manual was updated to include instructions on the Commission's nonviolent offender risk assessment instrument. This addition to the fraud, larceny and drug sentencing guidelines was based on recommendations presented in the Commission's previous annual report, which were accepted by the 2002 General Assembly. Other changes to the *Code of Virginia* required the Commission to update the Virginia Crime Codes (VCC) section of the manual. This year the VCCs were published as a separate document. As a stand-alone document, it serves as a useful reference tool for

preparing all types of forms for the courts and other criminal justice purposes. Also, publishing the VCCs separately from the guidelines manual may allow the Commission to begin printing the revised manual earlier in the year, instead of delaying the printing until after the General Assembly's annual veto session. Any changes to the *Code* resulting from the veto session can be easily incorporated into the VCC reference document, which is then submitted as separate printing job. Ultimately, this will allow for a more timely distribution of the sentencing guidelines manual to users in the field prior to the July 1 effective date for any changes to the guidelines.

Statewide Implementation of Nonviolent Offender Risk Assessment

In 1994, the General Assembly directed the Commission to develop a risk assessment instrument for nonviolent offenders and to determine if 25% of the lowest risk offenders could be diverted from prison to an alternative sanction "with due regard to public safety" (§ 17-235 of the *Code of Virginia*). This mandate was made in conjunction with other changes in the Commonwealth's sentencing structure that were designed to abolish parole and to increase substantially the amount of time served in prison by offenders convicted of violent crimes and offenders with a record of prior violent offenses. The combined plan would reserve expensive prison beds for violent and relatively high-risk offenders, without jeopardizing public safety. The Commission's objective was to develop a reliable and valid predictive scale based on independent empirical research and to determine if the resulting instrument could be a useful tool for judges when sentencing larceny, fraud and drug offenders who come before the circuit court. Pilot testing of the Commission's risk assessment tool began in December 1997. Utilizing the array of information available on the nonviolent offender risk assessment project, the Commission concluded in 2001 that a risk assessment instrument such as the one pilot tested would be a useful tool for circuit court judges throughout the state. In its *2001 Annual Report*, the Commission recommended that the risk assessment program be expanded statewide. The General Assembly accepted the Commission's recommendation and statewide implementation began July 1, 2002.

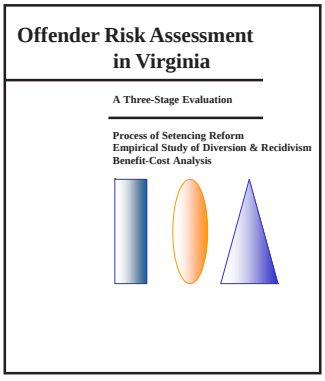
The Commission contemplated several factors in its decision to recommend that risk assessment for nonviolent offenders be implemented statewide. Consideration of the original legislative mandate, the fiscal impact of the project, and the validity of the risk tool were deemed important in this decision. The results from the National Center for State

Courts (NCSC) evaluation of the pilot project, experience in the pilot sites, and the conclusions from the Commission's 2001 validation study were carefully assessed. The NCSC evaluation was helpful to the Commission in confirming the success of the pilot project and the estimated fiscal benefits of the program. According to the NCSC, the pilot program had a net fiscal benefit of $1.5 million. Furthermore, the NCSC estimated that, had the risk assessment instrument been instituted statewide during 2000, the net benefit would have ranged from $3.7 to $4.5 million for that year. Moreover, evidence from the pilot sites indicates that diversion of larceny, fraud and drug offenders who meet the Commission's eligibility criteria increased under the risk assessment program.

The Commission's validation study, conducted in 2001, confirmed that a statistically-based risk assessment instrument can assist judges in identifying those offenders who, based on empirical research, represent the lowest risk to public safety and, conversely, are the most likely to remain crime-free in the community. The purpose of the validation study was to test and refine the nonviolent risk assessment instrument previously introduced through the pilot program. Through better access to criminal records, a refined instrument with increased accuracy was developed.

The Commission found that by identifying low-risk nonviolent offenders through the use of risk assessment, the Commonwealth is in the position to reserve expensive prison beds for violent offenders while minimizing the risk to public safety, consistent with the General Assembly's mandate to the Commission. In accordance with the General Assembly's directive, the Commission chose a score threshold that would result in 25% of the lowest risk offenders being recommended for alternative sanctions. In the risk assessment program, judges are considered in compliance with the guidelines if they sentence within the recommended incarceration range or if they follow the recommendation for alternative punishment. With risk assessment, judges can select better candidates for diversion from prison and jail and have the flexibility to utilize alternative sanctions while remaining in compliance with the guidelines.

The Commission is closely monitoring the nonviolent offender risk assessment program. As statewide use of the risk



The results from the National Center for State Courts (NCSC) evaluation of the pilot project were carefully assessed.

assessment instrument for nonviolent offenders began only July 1 of this year, preliminary data are not yet available. The Commission plans to include a detailed analysis of risk assessment in its *2003 Annual Report*.

Comprehensive Review of Sentencing Guidelines

As detailed in § 17.1-805 of the *Code of Virginia*, the initial set of discretionary felony sentencing guidelines is grounded in a comprehensive analysis of sentencing practices and patterns of time-served for felons sentenced during the years 1988 through 1992. This analysis formed a baseline set of sentencing midpoints and ranges upon which statutory enhancements were applied to increase the recommendations for offenders with current or prior convictions for violent crimes. To date, the Commission has relied upon judicial departure information and guidelines user input as the basis for recommended revisions to specific factors within these initial guidelines. However, a full five years of sentencing data under the truth-in-sentencing system is now available. The Commission has embarked on a comprehensive review of the sentencing guidelines for each covered offense. This review will assist the Commission in determining if any broader revisions to the guidelines are warranted.

Since 1991, Virginia's circuit judges have been provided with historically-based sentencing guidelines that were grounded in an analysis of a recent five full years of criminal sentences. The judiciary had defined history, for sentencing guidelines purposes, as the most recent five years of sentencing decisions for which data were available. Thus, when the new truth-in-sentencing/no parole felony sentencing system was adopted by the General Assembly, it relied upon the same definition of history, a recent five-year time frame, for the new historical benchmarks.

Parole was abolished for any offender convicted of a felony offense committed on or after January 1, 1995. Since the effective date of parole abolition was tied to the offense date, it took some time before this new policy was applied to the majority of sentenced felons. Today, the Commission is confident that a full five years of data for felons sentenced under truth-in-sentencing are available for analysis. The Commission has initiated an analysis of approximately 124,000 truth-in-sentencing decisions made during the five years from FY1997 through FY2001. This comprehensive analysis will ensure that judges are being provided with guidelines that reflect both historical sentencing decisions and changes in more recent sentencing practices.

The proposed analysis of such a large volume of sentencing decisions is a very time consuming task and must be conducted for each of the 14 sentencing

guidelines major offense categories. Becasue it is not possible to perform a comprehensive analysis of, or for the Commission to review, all the guidelines offense groups in a single year, the Commission's review will be a multi-year project. The first stage of the analysis work began with those offense groups with lower compliance rates or where recent legislation has potentially altered historical sentencing patterns. The later stages of the analysis will be reserved for offense groups exhibiting the highest compliance rates with no obvious departure patterns.

During the first year of this immense project, Commission staff has begun to examine the murder / homicide, robbery and rape offense categories. The Commission's methodology is described in considerable detail in the chapter of this report entitled Comprehensive Review of Sentencing Guidelines.

Projecting Prison Bed Space Impact of Proposed Legislation

The *Code of Virginia*, in § 30-19.1:4, requires the Commission to prepare impact statements for any proposed legislation which might result in a net increase in periods of imprisonment in state correctional facilities. Such statements must include details as to any increase or decrease in adult offender populations and any necessary adjustments in guideline midpoint recommendations. Additionally, for any bill introduced on or after July 1, 2002, any impact statement required under § 30-19.1:4 must include an analysis of the impact on local and regional jails as well as state and local community corrections programs.

During the 2002 General Assembly session, the Commission prepared 221 separate impact analyses on proposed legislation. These proposals fell into five categories: 1) legislation to increase the felony penalty class of a specific crime; 2) legislation to add a new mandatory minimum penalty for a specific crime; 3) legislation to expand the definition of an existing crime; 4) legislation that would create a new criminal offense; and 5) legislation that increases the penalty class of a specific crime from a misdemeanor to a felony.

The Commission utilized its computer simulation-forecasting program to estimate the projected impact of these proposals on the prison system. In most instances, the projected impact and accompanying analysis of a bill was presented to the General Assembly within 48 hours after the Commission was notified of the proposed legislation. When requested, the Commission provided pertinent oral testimony to accompany the impact analysis.

Prison and Jail Population Forecasting

Since 1987, Virginia has projected the size of its future prison and jail populations through a process known as "consensus forecasting." This approach combines technical forecasting expertise with the valuable judgment and experience of professionals working in all areas of the criminal justice system.

While the Commission is not responsible for generating the prison or jail population forecast, it is included in the consensus forecasting process. During the past year, Commission staff members served on the technical committee that provided methodological and statistical review of the forecasting work. Also, the Commission's Executive Director served on the Policy Advisory Committee that oversees the development of the prison and jail forecasts.

Community Corrections Revocation Data System

Under § 17.1-803(7) of the *Code of Virginia*, it is the responsibility of the Commission to monitor sentencing practices in felony cases throughout the Commonwealth. While the Commonwealth maintains a wide array of sentencing information on felons at the time they are initially sentenced in circuit court, information on the re-imposition of suspended prison time for felons returned to court for violation of the conditions of community supervision has been, until recently, largely unavailable and its impact difficult to assess. Among other uses, information on cases involving re-imposition of suspended prison time is critically important to forecast accurately future correctional bed space needs.

With the sentencing reforms that abolished parole, circuit court judges now handle a wider array of supervision violation cases. Today, judges handle violations of post-release supervision terms and probation terms following release from incarceration, formerly dealt with by the Parole Board in the form of parole violations. Furthermore, the significant expansion of alternative sanction options in the late 1990s has meant that judges are also deal with offenders who violate the conditions of these programs.

In 1997, the Commission teamed with the Department of Corrections (DOC) to implement a procedure for systematically gathering data on the reasons for and the outcome of community supervision violation proceedings in Virginia's circuit courts. With DOC's assistance, the Commission developed a simple one-page form to capture this information. Following the violation hearing, the completed form is submitted to the Commission.

The Commission believes that the re-imposition of suspended time is a vital facet in the punishment of offenders, and that data in this area have, in the past, been scant at best. The Commission's community corrections revocation data system serves as an important link in our knowledge of the sanctioning of offenders from initial sentencing through release from community supervision. Five years

of revocation data are now available for analysis. The Commission feels that sufficient data have accumulated to begin to examine the practices of Virginia's circuit court judges when re-imposing suspended time for offenders who violate the conditions of supervision in the community. Results of preliminary analysis are presented in the Community Corrections Revocation Data System chapter of this report.

Reorganization of Code of Virginia Title 18.2

During its 2002 session, the General Assembly adopted House Joint Resolution (HJR) 687, directing the Virginia State Crime Commission to study the organization of and inconsistencies in the criminal code contained in Title 18.2 of the *Code of Virginia*, including the level and extent of penalties. The criminal code was last examined through a recodification more than 25 years ago. In the nearly three decades since that recodification, thousands of pieces of legislation have been passed into law. New crimes have been defined and penalties have been modified that reflect new technologies, scientific advances, and changing public priorities. A review of the criminal penalties in the current *Code* raises questions about the weight of penalties when viewed as an overall scheme. In addition, many criminal penalties are defined in other titles of the *Code*.

In response to the legislative mandate, the Virginia State Crime Commission is conducting a thorough examination of the organizational structure of Title 18.2. The Crime Commission will also assess the proportionality of punishment across the hundreds of crimes defined in Title 18.2, as well as other titles of the *Code*. Due to the enormity and complexity of a review of this kind, the Crime Commission has extended the project beyond the original 2002 deadline. At the conclusion of its study, the Crime Commission will report its findings and recommendations to the General Assembly.

During 2002, the Commission has provided technical assistance to the Virginia State Crime Commission on this multi-faceted project. Throughout the year, the Commission's Executive Director served as an advisor to the Crime Commission as it began to examine each chapter of Title 18.2. In addition, the Commission furnished data on the frequency with which individual statutes are applied. The Crime Commission is interested in this type of data as it deliberates on recommendations for streamlining the criminal code.

The Commission's Director and staff will continue to provide technical assistance as requested by the Crime Commission throughout the course of this study.

Application of Virginia Crime Codes (VCCs) in Criminal Justice Databases

In 2002, the General Assembly created § 19.2-390.01 to require criminal justice agencies across the Commonwealth to maintain certain criminal record information in a standardized manner.

Because the *Code of Virginia* defines many distinct criminal acts within a single statute, the statute number is an inadequate method to identify the specific offense committed or its statutory seriousness. The inclusion of a narrative offense description usually does not provide enough additional information to match the crime to its specific statutory penalty. These offense descriptions are not standardized across criminal justice data systems, or even within a single agency's data system, and often lack the elements of the crime needed to make critical distinctions between discrete offenses. This method of reporting and recording offense information has been repeatedly criticized by officials who must use criminal history reports and other criminal justice documents to make important decisions. The manner in which offense information is recorded on criminal justice databases has important implications for those who rely on such data to make both individual and system-wide decisions. Recording offense information in a uniform fashion would greatly improve the efficiency and the quality of criminal justice decision-making in Virginia.

What is needed is a set of standardized offense codes that accurately identify each unique crime in the *Code of Virginia* and that, when entered into a database, is capable of generating the statutory reference as well as a narrative offense description containing the critical elements of the offense. Such an offense coding system already exists. The Virginia Crime Code (VCC) system was established in the mid-1980s and, since 1995, has been maintained and updated by the Commission.

Many criminal justice entities in Virginia already use the VCC references to record offense information. The Commission has always required VCC references on the sentencing guidelines forms. The Department of Corrections has utilized VCCs for its Pre/Post-Sentence Investigation (PSI) reporting since 1985. The Department of Juvenile Justice began using VCC references in the late 1990s. The Virginia Compensation Board, since 2000, has required sheriff's offices to use the VCCs in the automated reports they submit to request state reimbursement for prisoners housed in local and regional jails. However, not all criminal justice databases use the VCC system.

Specifically, § 19.2-390.01 requires numerous criminal justice agencies to include VCC references when recording offense information. The statute mandates that all charging documents issued by magistrates, and all criminal warrants, criminal indictments, informations and presentments, criminal petitions, misdemeanor summonses, and the dispositional documents from criminal trials must include the VCC references for the particular offense or offenses covered. In addition, all reports to the Central Criminal Records Exchange maintained by the Virginia State Police and to any other criminal offense or offender database maintained by the Supreme Court of Virginia, the Department of Corrections, the

Department of Juvenile Justice, the Virginia Parole Board, and the Department of Criminal Justice Services must include the VCC references for the particular offense or offenses covered.

The 2002 legislation adopted by the General Assembly established a work group charged with identifying the necessary steps for accomplishing the requirements of this act. The work group is composed of the agency heads (or designees) from the Departments of Criminal Justice Services, State Police, Juvenile Justice, Corrections, and of the Compensation Board, the Commonwealth's Attorneys' Services Council, the Virginia Association of Chiefs of Police, the Sheriffs' Association, and the Office of the Executive Secretary of the Virginia Supreme Court. The Commission's Executive Director is also a member of the work group. Staff of the Virginia State Crime Commission have coordinated the activities of the group.

The VCC work group met several times during 2002, and has reported its conclusions to the full membership of the Crime Commission. The Crime Commission will provide the 2003 General Assembly with the proposed plan for using the VCC system to standardize offense reporting. However, § 19.2-390.01 will not become effective unless reenacted by the 2003 General Assembly.

Substance Abuse Screening and Assessment for Offenders

Recognizing that a significant number of offenders are affected by substance abuse, the General Assembly adopted legislation in 1998 and 1999 that requires many adult and juvenile offenders in Virginia to undergo screening and assessment for substance abuse problems. The purpose of this legislation is to reduce substance abuse and criminal behavior among offenders by enhancing the identification of substance-abusing offenders and their treatment needs and by improving the delivery of treatment services within the criminal justice system. Statewide implementation began for crimes committed on or after January 1, 2000.

The law targets all adult felons convicted in circuit court and Class 1 misdemeanor drug offenders who are convicted in general district court and ordered to supervision or programming. Juvenile offenders adjudicated for a felony, a Class 1 or 2 drug-related misdemeanor, a drug-related charge that is the juvenile's first offense or any other act for which a social history report is ordered also fall under the screening and assessment provisions. Under the new law, these offenders must undergo a substance abuse screening. If the screening reveals key characteristics or behaviors likely related to drug use or alcohol abuse, a full assessment must be administered. Assessment is a thorough

evaluation. Results of comprehensive assessment can be used for developing treatment plans and assessing needs for services. Different screening and assessment instruments are used for the adult and juvenile populations. For adult felons, screening and assessment is conducted by the Department of Corrections' probation and parole office, while local offices of the Virginia Alcohol Safety Action Program and local community corrections agencies screen and assess adult misdemeanants. Juvenile offenders are screened and assessed by the court service unit serving the Juvenile and Domestic Relations Court.

The Interagency Drug Offender Screening and Assessment Committee was established by § 2.2-223 to oversee the screening and assessment provisions contained in the *Code of Virginia*. The Interagency Committee is composed of the agency heads of the Department of Corrections, the Department of Criminal Justice Services, the Department of Juvenile Justice, the Virginia Alcohol Safety Action Program, and the Department of Mental Health, Mental Retardation and Substance Abuse Services. The Commission's Executive Director is also a member of the Interagency Committee. Interagency Committee members have designated representatives from their respective agencies to serve on an Interagency Workgroup. A Commission staff member serves on this workgroup.

In addition to ensuring the quality and consistency of screening and assessment activities, the Interagency Committee is also charged with implementing an evaluation process to assess the effectiveness of screening, assessment and treatment for offenders in Virginia. In 2001, the Criminal Justice Research Center of the Department of Criminal Justice Services agreed to conduct an evaluation of this program. The first phase of the evaluation study is designed to assess the implementation of the screening and assessment program across the Commonwealth. In the next phase, possible evaluation activities include: assessing offender outcomes using case-specific data, reviewing program models, identifying the range of treatment services available and gaps in services, and conducting a cost-benefit analysis of the program.

The first phase of the evaluation is now complete. The Criminal Justice Research Center will report its findings and recommendations to the 2003 General Assembly.

Guidelines Compliance

Introduction

On January 1, 2002, Virginia's truth-in-sentencing system reached its seven-year anniversary. Effective for any felony committed on or after January 1, 1995, the practice of discretionary parole release from prison was abolished, and the existing system of awarding inmates sentence credits for good behavior was eliminated. Under Virginia's truth-in-sentencing laws, convicted felons must serve at least 85% of the pronounced sentence, and they may earn, at most, 15% earned sentence credit regardless of whether their sentence is served in a state facility or a local jail. The Commission was established to develop and administer guidelines in an effort to provide Virginia's judiciary with sentencing recommendations in 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 the nearly 140,000 felony cases sentenced under truth-in-sentencing laws, judges have agreed with guidelines recommendations in three out of every four cases.

The Commission's last annual report presented an analysis of cases sentenced during fiscal year (FY) 2001. This report will focus on cases sentenced from the most recent year of available data, FY2002 (July 1, 2001 through June 30, 2002). Compliance is examined in a variety of ways in this report, and variations in data over the years are highlighted throughout. Because of the small amount of data available to date, the new guidelines elements introduced by the Commission on July 1, 2002, are not examined in this report.

Case Characteristics

Overall, the number of cases received by the Commission increased from 20,492 in FY2001 to 22,598 in FY2002. Of the 22,598 sentencing guidelines worksheets received by the Commission during the last fiscal year, 21,876 were submitted on new FY2002 guidelines forms and 722 were submitted on old guidelines forms. Because guidelines worksheets are often prepared well in advance of the sentencing date, guidelines in effect prior to July 1 are prepared on cases to be sentenced some time after July 1, the effective date of revisions to the guidelines. Following sentencing, the old forms are submitted to the Commission. Several significant changes were made to the FY2002 guidelines worksheets, including the addition of new offenses and a sex offender risk assessment instrument. For the purpose of conducting a clear evaluation of sentencing guidelines in effect between July 1, 2001, and June 30, 2002, the following compliance analysis focuses only on those 21,876 cases submitted on FY2002 guidelines forms.

Figure 1

Number and Percentage of Cases Received by Circuit - FY 2002

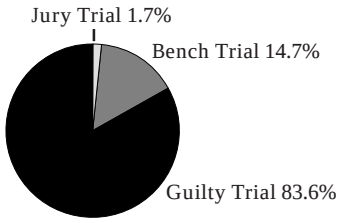
Circuit	Number	Percent
1	889	4.1%
2	1,497	6.8
3	805	3.7
4	1,688	7.7
5	514	2.3
6	351	1.6
7	964	4.4
8	434	2.0
9	612	2.8
10	444	2.0
11	483	2.2
12	682	3.1
13	1,210	5.5
14	1,051	4.8
15	1,025	4.7
16	593	2.7
17	656	3.0
18	367	1.7
19	1,144	5.2
20	389	1.8
21	400	1.8
22	615	2.8
23	603	2.8
24	789	3.6
25	577	2.6
26	701	3.2
27	760	3.5
28	367	1.7
29	321	1.5
30	280	1.3
31	665	3.0
TOTAL	21,876	

Under the truth-in-sentencing system, six urban circuits have contributed more sentencing guidelines cases each year than any of the other judicial circuits in the Commonwealth. These circuits follow Virginia's "Golden Crescent" of the most populous areas of the state. Virginia Beach (Circuit 2), Norfolk (Circuit 4), the City of Richmond (Circuit 13), Henrico County (Circuit 14), the Fredericksburg area (Circuit 15), and Fairfax (Circuit 19) each submitted more than 1,000 sentencing guidelines cases during FY2002. These circuits accounted collectively for more than one-third of all sentencing guidelines cases received by the Commission during the time period (Figure 1).

There are three general methods by which Virginia's criminal cases are adjudicated: guilty pleas, bench trials, and jury trials. Felony cases in the Commonwealth's circuit courts overwhelmingly are resolved as the result of guilty pleas from defendants or plea agreements between defendants and the Commonwealth. During the last fiscal year, more than four in every five guidelines cases (84%) were concluded based on guilty pleas (Figure 2). Adjudication by a judge in a bench trial accounted for 15% of all felony guidelines cases sentenced, while less than 2% of felony guidelines cases involved jury trials. For the past four fiscal years, the overall rate of jury trials has been approximately half of the jury trial rate that existed under the last year of the parole system. See *Juries and the Sentencing Guidelines* in this chapter for more information on jury trials.

Figure 2

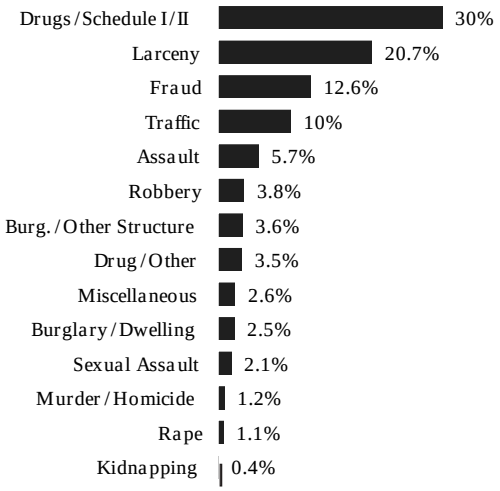
Percentage of Cases Received by Method of Adjudication - FY 2002



Sentencing guidelines worksheets in effect in FY2002 covered 14 distinct offense groups. Worksheet offense groupings are based on the primary, or most serious, offense at conviction. Consistent with previous years, the Commission received more cases for Schedule I/II drug crimes in FY2002 than any of the other offense groups. Schedule I/II drug offenses represented, by far, the largest share (30%) of the cases sentenced in Virginia's circuit courts during the fiscal year (Figure 3). Nearly two-thirds

Figure 3

Percentage of Cases Received by Primary Offense Group - FY 2002



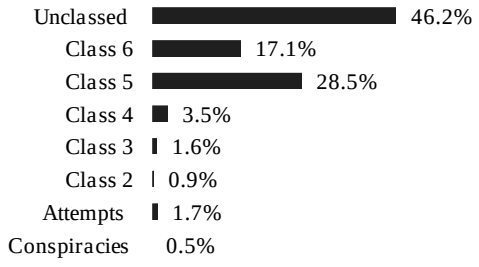
of the Schedule I/II drug offenses were for one crime alone – possession of a Schedule I/II drug. This pattern, however, has persisted since the truth-in-sentencing guidelines were introduced in 1995. In contrast, only about 4% of guidelines involved offenses listed on the Drug/Other worksheet. Property offenses also represent a significant share of the cases submitted to the Commission in FY2002. Nearly 21% of the fiscal year's guidelines cases were for larceny crimes, while the fraud group accounted for another 13% of sentencing events. Felony traffic offenses comprised 10% of guidelines cases received during the year.

The violent crimes of assault, robbery, homicide, kidnapping, rape and other sex crimes collectively represent a much smaller share of the FY2002 cases (14%). Assaults were the most common of the person offenses (6%) followed by robbery offenses (4%). The murder and rape offense groups each accounted for 1% of the cases, while kidnappings made up one-half of 1% of the cases sentenced during the year.

The sentencing guidelines cover a wide range of felonies with varying penalty ranges specified in the *Code of Virginia*. A felony may be assigned to one of the existing six classes of felony penalty ranges, or the *Code* may specify a penalty that does not fall into one of the established penalty classes. Class 1 felonies are capital murder crimes and are not covered by the sentencing guidelines. Felonies with penalty structures differing from the Class 1 through Class 6 penalty ranges are unclassed felonies, and their penalties vary widely, with maximum sentences ranging from three years to life. In FY2002, nearly one-half of guidelines cases (46%) involved unclassed felonies, mainly due to the overwhelming number of unclassed drug offenses (Figure 4). Because possession of a Schedule I/II drug was the single most frequently occurring offense, Class 5 was the most common of the classed felonies (29%). The Commission received cases for the more serious classed felonies (Classes 2, 3, and 4) much less frequently. Convictions for attempted and conspired crimes were rare and together accounted for just over 2% of the cases.

Figure 4

Percentage of Cases Received by Felony Class of Primary - FY 2002



Compliance Defined

In the Commonwealth, judicial compliance 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, the judge 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 compliance: strict and general. Together, they comprise the overall compliance rate. For a case to be in strict compliance, the offender must be sentenced to the same type of sanction (probation, incarceration up to six months, incarceration more than six months) that the guidelines recommend and to a term of incarceration that falls exactly within the sentence range recommended by the guidelines. A judicial sentence would also be considered in general agreement with the guidelines recommendation if the sentence 1) meets modest criteria for rounding, 2) involves time served incarceration, or 3) complies with statutory diversion sentencing options in habitual traffic offender cases.

Compliance 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 compliance with the guidelines if an offender is sentenced 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 compliance 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 a local jail when the guidelines call for a short jail term. Even though the judge does not sentence an offender to post-sentence incarceration time, the Commission typically considers this type of case to be in compliance. Conversely, a judge who sentences an offender to time served when the guidelines call for probation is also regarded as being in compliance with the guidelines because the offender was not ordered to serve any incarceration time after sentencing.

Compliance by special exception arises in habitual traffic cases as the result of amendments to § 46.2-357(B2 and B3) of the *Code of Virginia*, effective July 1, 1997. The amendment allows judges to suspend the mandatory minimum 12-month incarceration term required in felony habitual traffic cases conditioned upon sentencing the offenders to Boot Camp, Detention Center or Diversion Center. For cases sentenced since the effective date of the legislation, the Commission considers either mode of sanctioning of these offenders to be an indication of judicial agreement with the sentencing guidelines.

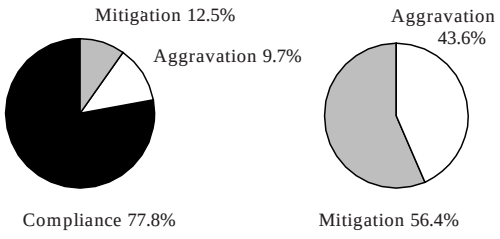
Overall Compliance with the Sentencing Guidelines

The overall compliance rate summarizes the extent to which Virginia's judges concur with recommendations provided by the sentencing guidelines, both in type of disposition and in length of incarceration. Between FY1995 and FY1998, the overall compliance rate hovered around 75%, and increased steadily between FY1999 and FY2001. In FY2002, the overall compliance rate decreased slightly from the previous year to 77.8% (Figure 5).

In addition to compliance, 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 9.7% for FY2002. The "mitigation" rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 12.5% for the fiscal year. Of the FY2002 departures, 44% were cases of aggravation while 56% were cases of mitigation.

●*Figure 5*

Overall Guidelines Compliance and Direction of Departures - FY 2002



Dispositional Compliance

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 6 illustrates judicial concurrence in FY2002 with the type of disposition recommended by the guidelines. For instance, of all felony offenders recommended for more than six months of incarceration during FY2002, judges sentenced 85% to terms in excess of six months (Figure 6). Some offenders recommended for incarceration of more than six months received a shorter term of incarceration (one day to six months), but very few of these offenders received probation with no incarceration.

●*Figure 6*

Recommended Dispositions and Actual Dispositions- FY2002

	Actual Disposition		
Recommended Disposition	**Probation**	**Incarceration 1 day-6 mos.**	**Incarceration >6 mos.**
Probation	76.2%	19.8%	4.0%
Incarceration 1 day-6 months	10.4%	78.2%	11.4%
Incarceration > 6 months	5.8%	9.1%	85.1%

Judges have also typically agreed with guidelines recommendations for shorter terms of incarceration. In FY2002, 78% of offenders received a sentence resulting in confinement of six months or less when such a penalty was recommended. In some cases, judges felt probation to be a more appropriate sanction than the recommended jail term, and in other cases offenders recommended for short-term incarceration received a sentence of more than six months. Finally, 76% 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, but rarely did offenders recommended for no incarceration receive jail or prison terms of more than six months.

Since July 1, 1997, sentences to the state's Boot Camp, Detention Center and Diversion Center programs 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 continue to be defined as "probation" programs in their enactment clauses in the *Code of Virginia §§ 19.2-316.2 and 19.2-316.3*. The Commission recognizes that the programs are more restrictive than probation supervision in the community. The Commission, therefore, defines them as incarceration terms under the sentencing guidelines. The Detention and Diversion Center programs are counted as six months of confinement. In the previous discussion of recommended and actual dispositions, imposition of one of these programs is categorized as incarceration of six months or less.

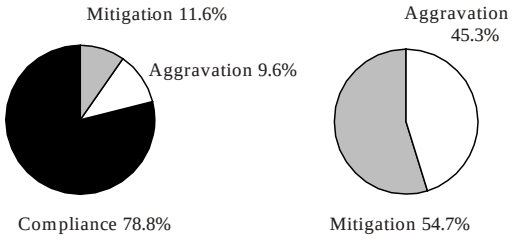
Durational Compliance

In addition to examining the degree to which judges concur with the type of disposition recommended by the guidelines, the Commission also studies durational compliance, defined as the rate at which judges sentence offenders to terms of incarceration that fall within the recommended guidelines range. Durational compliance analysis considers only those 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 compliance among FY2002 cases was approximately 79%, indicating that judges, more often than not, agree with the length of incarceration recommended by the guidelines in jail and prison cases (Figure 7). For FY2002 cases not in durational compliance, mitigations were slightly more prevalent (55%) than aggravations (45%).

Figure 7

Durational Compliance and Direction of Departures - FY2002*



* Cases recommended for and receiving more than six months incarceration

For cases recommended for incarceration of more than six months, the sentence length recommendation derived from the guidelines (known as the midpoint) is accompanied by a high-end and low-end recommendation. The sentence ranges recommended by the guidelines are relatively broad, allowing judges to utilize their discretion in sentencing offenders to different incarceration terms while still remaining in compliance with the guidelines. Analysis of FY2002 cases receiving incarceration in excess of six months that were in durational compliance reveals that 17% of cases were sentenced to prison terms equivalent to the midpoint recommendation (Figure 8). For cases in which the judge sentenced the offender to a term of incarceration within the guidelines recommended range, nearly two-thirds (64%) were given a sentence below the recommended midpoint. Only 19% of the cases receiving incarceration over six months that were in durational compliance with the guidelines were sentenced above the midpoint recommendation. 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.

Offenders receiving more than six months of incarceration, but less than the recommended time, were given "effective" sentences (sentences less any suspended time) short of the guidelines range by a median value of ten months (Figure 9). For offenders receiving longer than recommended incarceration sentences, the effective sentence exceeded the guidelines range by a median value of nine months. Thus, durational departures from the guidelines are typically less than a year above or below the recommended range, indicating that disagreement with the guidelines recommendation is, in most cases, not of a dramatic nature.

Figure 8

Distribution of Sentences within Guidelines Range - FY2002

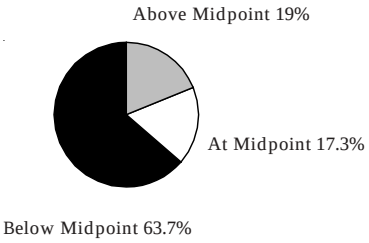
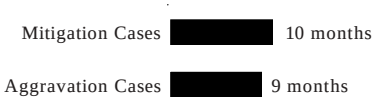


Figure 9

Median Length of Durational Departures - FY2002



Reasons for Departure from the Guidelines

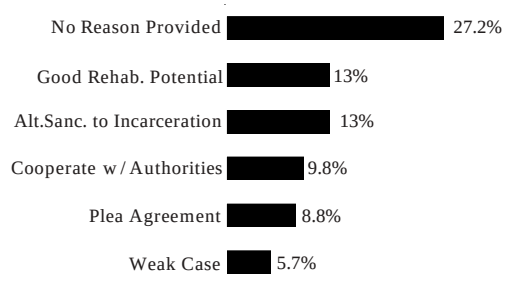
Compliance with the truth-in-sentencing guidelines is voluntary. Although not mandated to sentence within guidelines recommendations, judges are required by § 19.2-298.01 of the *Code of Virginia* to submit to the Commission their reason(s) for sentencing outside the guidelines range. Each year, as the 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 Commission's discussions. Virginia's judges are not limited by any standardized or prescribed reasons for departure and may cite multiple reasons for departure in each guidelines case.

In FY2002, 13% of the 21,876 cases sentenced received sanctions that fell below the guidelines recommendation. An analysis of these mitigation cases reveals that in over one-quarter (27%) of these cases, judges do not provide a reason for departure as is required by statute. The Commission is working to educate the judiciary on the statutory requirement pertaining to departure reasons, as well as the importance of these reasons in providing valuable information for making adjustments to the guidelines. The most popular judicial reason for mitigation, cited in 13% of mitigation cases, was the use of an alternative sanction program to punish the offender instead of a traditional term of incarceration (Figure 10). Detention Center, Diversion Center, intensive supervised probation, day reporting and drug court programs are examples of alternative sanctions available to judges in Virginia. The types and availability of programs, however, vary considerably among localities. Often, these mitigation cases represent diversions from a recommended incarceration term when the judge felt the offender was amenable to such a program.

An offender's potential for rehabilitation, often cited in conjunction with the use of an alternative sanction, was indicated in 13% of the mitigation cases. Judges also referred to the offender's cooperation with authorities, such as aiding in the apprehension or prosecution of others, in nearly one out of every ten cases sentenced below the guidelines. The involvement of a plea agreement calling

Figure 10

Most Frequently Cited Reasons for Mitigations* - FY2002



* Represents most frequently cited reasons only. Multiple reasons may be cited in each case.

for a lesser sanction than recommended by guidelines was the departure reason in 9% of cases. Somewhat less often (6%), judges noted that the case involved weak evidence or the refusal of witnesses to testify. Although other reasons for mitigation were reported to the Commission in FY2002, only the most frequently cited reasons are discussed here.

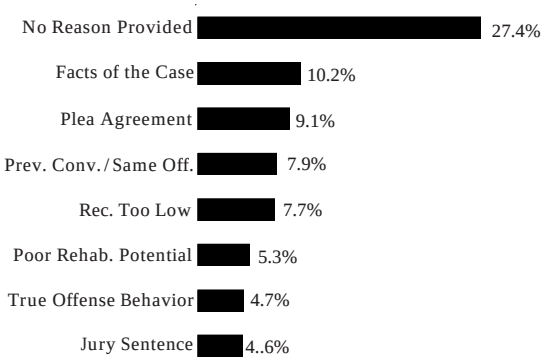
In 10% of the FY2002 cases, judges handed down terms more severe than the sentencing guidelines recommendation, resulting in "aggravation" sentences. In examining these cases, the Commission found that 27% of the time judges did not provide a reason for departing from the guidelines recommendation (Figure 11). The most commonly cited reason, however, relates to the "facts of the case" (10%). These felony cases often involve complex sets of events or extreme circumstances for which judges feel a harsher than recommended sentence should be imposed. In just over 9% of aggravating cases, a plea agreement which called for a tougher sanction than that recommended by guidelines was listed as the reason for departure.

Judges also cited the offender's prior convictions for the same or similar offense (8%) as reason for harsher sanctions. For another 8% of the FY2002 aggravation cases, judges commented that they felt the guidelines recommendation was too low. In some cases (5%), judges felt that the offender was a poor candidate for rehabilitation. Judges said they sentenced more harshly in 5% of the cases because of the offender's true offense behavior or the actual offense was more serious than the offense for which the offender was ultimately convicted. Just under 5% of the upward departures were the result of jury trials. Many other reasons were cited by judges to explain aggravation sentences but with much less frequency than the reasons discussed here.

Appendices 1 and 2 contain detailed summaries of the reasons for departure from guidelines recommendations for each of the 14 guidelines offense groups.

Figure 11

Most Frequently Cited Reasons for Aggravations* - FY2002



* Represents most frequently cited reasons only. Multiple reasons may be cited in each case.

Compliance by Circuit

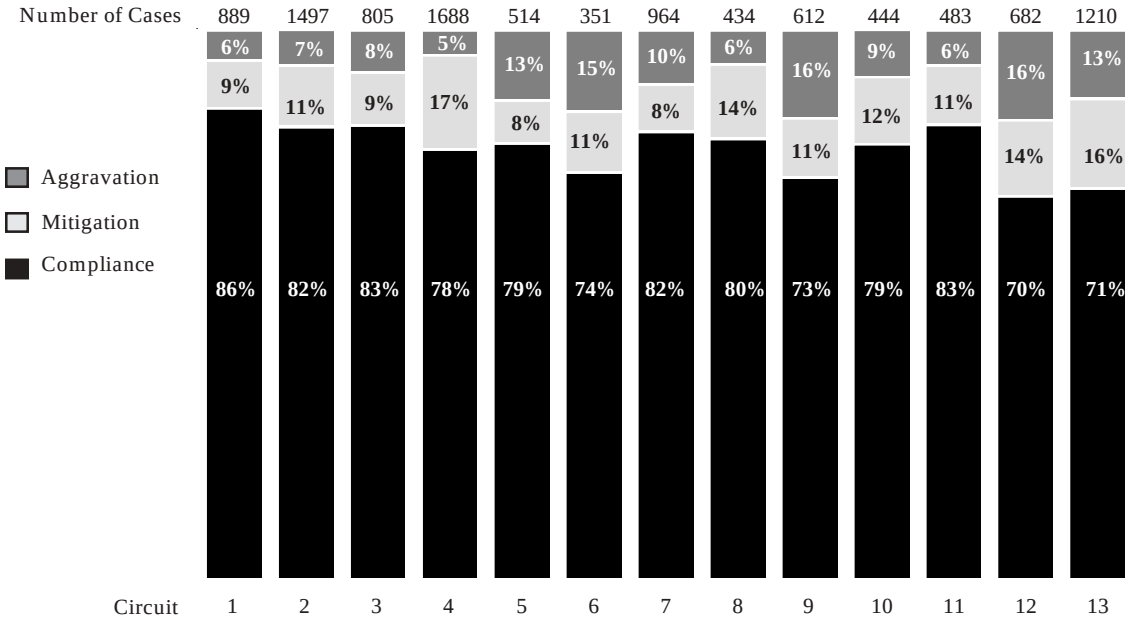
Since the onset of truth-in-sentencing, compliance rates and departure patterns have varied significantly across Virginia's 31 judicial circuits. FY2002 continues to show significant differences among judicial circuits in the degree to which judges within each circuit agree with guidelines recommendations (Figure 12). The map and accompanying table on the following pages identify the location of each judicial circuit in the Commonwealth.

In FY2002, nearly one-third (32%) of the state's 31 circuits exhibited compliance rates at or above 80%, while over one-half (58%) reporting compliance rates between 70% and 79%. Only three circuits had compliance rates below 70%. There are likely many reasons for the variations in compliance 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 agree with guidelines recommendations does not seem to be primarily related to geography. The circuits with the lowest compliance rates are scattered across the state, and both high and low compliance circuits can be found in close geographic proximity.

In FY2002, the highest rate of judicial agreement with the sentencing guidelines, 86%, was found in Chesapeake (Circuit 1). During the same

Figure 12

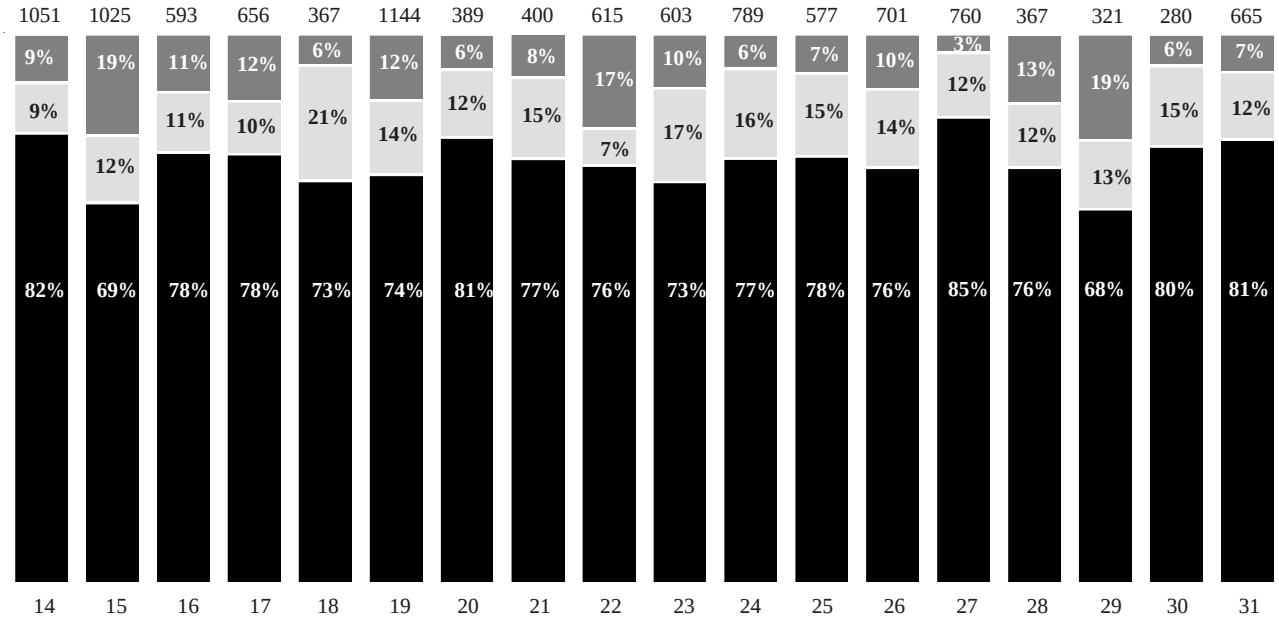
Compliance by Circuit - FY2002



time period, Radford (Circuit 27) had the second highest compliance rate at 85%. The lowest compliance rates among judicial circuits in FY2002 were reported in Circuit 29 (Buchanan, Dickenson, Russell and Tazewell counties), Circuit 15 (Fredericksburg, Stafford, Hanover, King George, Caroline, Essex, etc.), and Circuit 12 (Chesterfield). These circuits all registered compliance rates less than 70%.

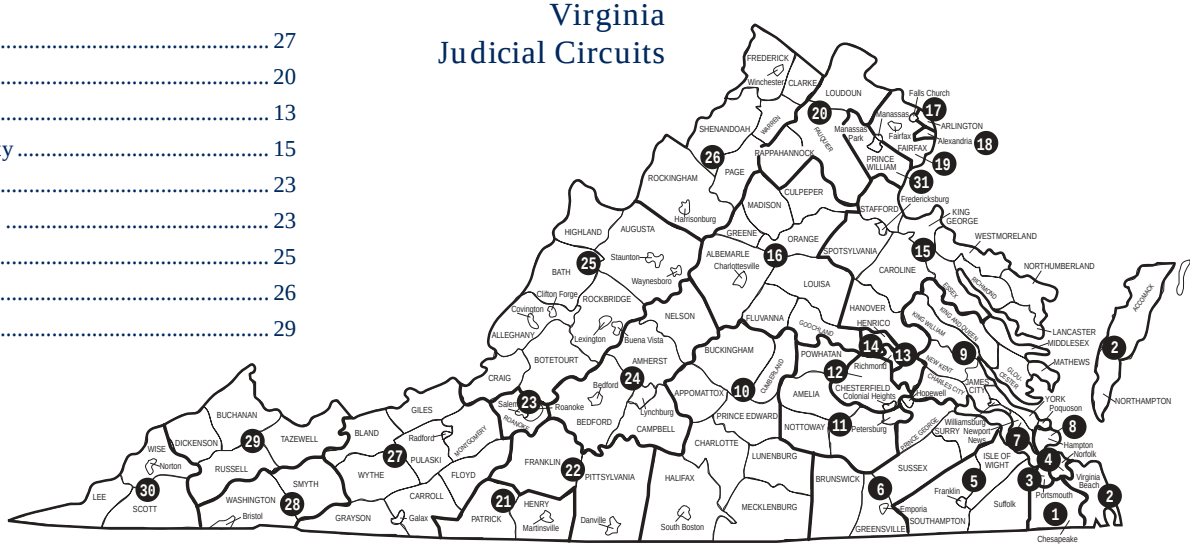
In FY2002, some of the highest mitigation rates were found in Alexandria (Circuit 18), Norfolk (Circuit 4), and the Roanoke / Salem Area (Circuit 23). Each of these circuits had a mitigation rate between 17% and 21% during the fiscal year. With regard to high mitigation rates, it would be too simplistic to assume that this necessarily reflects areas with lenient sentencing habits. Intermediate punishment programs are not uniformly available throughout the Commonwealth, and those jurisdictions with better access to these sentencing options may be using them as intended by the General Assembly. These sentences would appear as mitigations from the guidelines. Inspecting aggravation rates reveals that Circuit 29 (Buchanan County) and Circuit 15 (Fredericksburg, Stafford, Hanover, King George, Caroline, Essex, etc.), in addition to having some of the lowest compliance rates in the state, reported the highest aggravation rates in FY2002 at 19% each.

Appendices 3 and 4 present compliance figures for judicial circuits by each of the 14 sentencing guidelines offense groups.



Virginia Localities and Judicial Circuits

Virginia Judicial Circuits



Compliance by Sentencing Guidelines Offense Group

In FY2002, as in previous years, variation exists in judicial agreement with the guidelines, as well as in judicial tendencies toward departure, when comparing the 14 offense groups (Figure 13). For FY2002, compliance rates ranged from a high of 85% in the felony traffic offense group to a low of 63% in robbery cases. In general, property and drug offenses exhibit rates of compliance higher than the violent offense categories. The violent offense groups (assault, rape, sexual assault, robbery, homicide and kidnapping) had compliance rates below 75% whereas most property and drug offense categories had compliance rates at or above 77%.

Judicial concurrence with guidelines recommendations decreased from FY2001 for all of the fourteen offense groups during the fiscal year. The largest decreases in compliance (8%) occurred with regard to the Kidnapping and Miscellaneous worksheets, due primarily to an increase in mitigation. Mitigation increased for nearly all offenses on the Miscellaneous worksheet. An examination of departure reasons in mitigating cases on the Miscellaneous worksheet fails to shed light on judicial thinking in these cases because over one-third (36%) are missing departure reasons. Of those that did provide departure reasons, 16% cited minimal circumstances / facts of the case, and 11% cited the involvement of a plea agreement that called for a lesser sanction than that recommended by the guidelines. The three predominant offenses on the Kidnapping worksheet—abduction with intent to defile, abduct by force without justification, and abduct with intent to extort—all had increases in mitigation in FY2002. However, caution must be exercised in drawing conclusions because of the small number of kidnapping cases each year (81 cases in FY2002).

Since 1995, departure patterns have differed significantly across offense groups, and FY2002 was no exception. Among the property crimes, burglary of non-dwellings and fraud cases showed a marked mitigation pattern. With respect to violent crime groups, both rape and robbery departures showed tendencies toward sentences that fell below the guidelines recommendation, with more than one quarter of cases resulting in mitigation sentences. This mitigation pattern has been consistent with both rape and robbery offenses since the abolition of parole in 1995. Sexual assault offenses had the highest percentage of aggravating cases (15%). The Miscellaneous and the Drug / Other worksheets also had a higher percentage of cases sentenced above the guidelines recommendation than below.

Figure 13

Guidelines Compliance by Offense - FY 2002

	Compliance	Mitigation	Aggravation	Number of Cases
Traffic	85%	6%	7%	2,198
Larceny	83	8	9	4,531
Fraud	79	16	5	2,765
Drug / Other	78	8	14	760
Drug / Schedule I / II	78	12	10	6,562
Miscellaneous	77	9	14	579
Burg. / Other Structure	76	13	11	553
Assault	73	14	13	1,249
Murder / Homicide	68	18	14	270
Kidnapping	67	21	12	81
Sexual Assault	67	18	15	462
Burglary / Dwelling	66	21	13	789
Rape	66	29	5	242
Robbery	63	27	10	835

Under the guidelines, offenses in the violent crime groups, along with burglaries of dwellings and burglaries with weapons, receive statutorily mandated midpoint enhancements that increase the sentencing guidelines recommendation (§ 17.1-805 of *Code of Virginia*). Further midpoint enhancements are applied in cases in which the offender has a violent prior record, resulting in a sentence recommendation in some cases that is up to six times longer than historical time served by violent offenders convicted of similar crimes under the parole system, prior to the introduction of truth-in-sentencing in 1995. Midpoint enhancements most likely impact compliance rates in very complex ways, and the effect is unlikely to be uniform across guidelines offense groups. For more information on midpoint enhancements, please refer to the section entitled *Compliance under Midpoint Enhancements* later in this chapter.

Specific Offense Compliance

Studying compliance by specific felony crime assists the Commission in determining those crimes for which judges disagree with the sentencing guidelines most often. For convenience, the guidelines are assembled into 14 offense groups, but crimes that exhibit very high guidelines compliance may be collected into the same offense group with those experiencing a much lower rate of compliance. Analyzing compliance by specific crime unmasks the underlying compliance and departure patterns that are of interest to the Commission.

The guidelines in effect during FY2002 covered over 200 distinct felony crimes defined in the *Code of Virginia*, representing about 97% of all felony sentencing events in Virginia's circuit courts. Figure 14 presents compliance results for those offenses that served as the primary offense in at least 100 cases during the most recent fiscal year. These 41 crimes accounted for most (86%) of the FY2002 guidelines cases.

The compliance rates for the crimes listed in Figure 14 range from a high of 93% for habitual traffic offender with DWI to a low of 60% for offenders convicted of street robbery without a gun. The single most common offense, simple possession of a Schedule I/II drug, comprised one out of every five guidelines cases and registered a compliance rate of 81%.

Ten crimes against the person surpassed the 100-case threshold. Person crimes typically exhibit lower compliance than property and drug crimes, but the compliance rate for simple assault of a law enforcement officer was 84%, one of the highest of all offenses. Grand larceny from a person yielded a much higher compliance rate (78%) than the robbery crimes, which were driven primarily by high mitigation rates. Departures that tended toward mitigation were also evident with simple assault of a family

Figure 14

Compliance for Specific Felony Crimes with More Than 100 Cases - FY 2002

	Compliance	Mitigation	Aggravation	Number of Cases
Person				
Malicious Injury	64.3%	19.4%	16.3%	258
Simple Assault of a Family Member, 3rd/Subsequent	73.6	22.3	4.1	148
Simple Assault of a Law Enforcement Officer	84.1	11.0	4.9	347
Unlawful Injury	69.8	10.1	20.1	348
Aggravated Sexual Battery — Victim under age 13	70.4	21.8	7.7	142
Carnal Knowledge — Victim age 13,14	66.1	13.4	20.5	112
Grand Larceny from Person	78.1	9.0	12.9	233
Robbery - Business with a Gun	60.7	33.5	5.8	173
Robbery - Street with a Gun	66.7	25.5	7.8	153
Robbery - Street with No Gun	59.7	26.6	13.6	154
Property				
Burglary of Dwelling with Intent to Commit Larceny, No Deadly Weapon	65.5	21.9	12.5	638
Burglary of Other Structure with Intent to Commit Larceny, No Deadly Weapon	76.7	12.0	11.3	451
Bad Check, Valued $200 or More	75.5	19.0	5.5	163
Credit Card Theft	77.1	15.7	7.2	345
Forgery	79.4	17.0	3.6	724
Forgery of Public Record	78.1	14.0	7.9	443
Obtain Money by False Pretenses, Value $200 or More	75.0	17.3	7.7	364
Uttering	78.5	17.6	3.9	284
Embezzlement of $200 or More	84.5	5.2	10.3	638
Grand Larceny Auto	83.3	4.4	12.4	275
Grand Larceny, Not from Person	82.9	8.3	8.8	1814
Petit Larceny (3rd conviction)	81.3	11.7	7.0	643
Receive Stolen Goods Valued $200 or More	83.1	10.9	6.0	201
Shoplifting Goods Valued Less than $200 (3rd conviction)	81.8	9.1	9.1	143
Shoplifting Goods Valued $200 or More	85.0	7.1	7.9	127
Unauthorized Use of Vehicle Valued $200 or More	85.4	8.0	6.5	261
Drug				
Obtain Prescription Drugs by Fraud	86.7	3.7	9.6	188
Possession of Schedule I/II Drug	81.3	7.5	11.2	3949
Sale of .5 oz - 5 lb of Marijuana	76.9	8.4	14.7	455
Sale of Schedule I/II Drug for Accommodation	77.7	14.5	7.9	242
Distribution of Schedule I/II Drug	67.5	26.6	5.9	560
Possession with Intent to Distribute Schedule I/II Drug	70.0	20.5	9.5	991
Sale for Profit of Schedule I/II Drug	76.8	18.3	4.9	349
Sale, etc. of Schedule I/II Drug — 2nd/Subsequent	69.5	24.0	6.6	167
Traffic Offenses				
Drive While Intoxicated - 3rd within 5 years	80.0	7.2	12.8	125
Drive While Intoxicated - 3rd within 10 years	84.0	5.3	10.7	549
Drive While Intoxicated & Habitual Offender	93.0	3.0	4.0	100
Habitual Traffic Offense with Endangerment to Others	87.6	6.2	6.2	210
Habitual Traffic Offense - 2nd Offense, No Endangerment to Others	87.7	5.3	7.0	951
Hit and Run, Victim Injured	72.7	14.0	13.3	165
Other				
Possession of Firearm/Concealed Weapon by Non-Violent Convicted Felon	87.5	4.2	8.3	144

member (3rd or subsequent), and aggravated sexual battery (victim under age 13). Departures above the guidelines recommendation were more likely in cases involving unlawful injury and carnal knowledge (victim age 13 or 14).

A significant portion of the offenses listed in Figure 14 are property crimes, including two burglaries. Burglary of other structure (non-dwelling) with intent to commit larceny (no weapon) demonstrated a higher compliance rate than the same burglary committed in a dwelling (77% versus 66%). Among the property crimes, mitigations were more common than aggravations with respect to departure pattern, with the exception of embezzlement and grand larceny auto.

Although simple possession of a Schedule I/II drug was the most common offense among FY2002 guidelines cases, seven other drug offenses had more than 100 sentencing guidelines cases during the same time period. The highest judicial agreement rate among the select drug offenses in Figure 14 involved obtaining drugs by fraud, which had an 87% compliance rate. In FY2002, sentences for the distribution of a Schedule I/II drug complied with guidelines only 68% of the time. In these sales-related cases involving Schedule I/II drugs, approximately one in four offenders received a sentence below the guidelines recommendation. In many of these mitigation cases, judges have deemed the offender amenable for placement in an alternative punishment program such as Detention or Diversion Center, programs the General Assembly intended to be used for nonviolent offenders who otherwise would be incarcerated for short jail or prison terms. Application of the nonviolent offender risk assessment instrument recently implemented in FY2003 in cases such as these may have the net effect of reducing mitigation rates among drug and property offenses.

The felony traffic worksheet contributed a substantial number of offenses to the guidelines in FY2002. Habitual traffic offenses have shown consistently high compliance rates over the past years (80% and above), due primarily to the 12-month mandatory minimum sentences incorporated into the guidelines recommendations. Hit and run offenses involving personal injury had the lowest compliance rate among the traffic offenses mentioned (73%), with departures favoring neither mitigation nor aggravation.

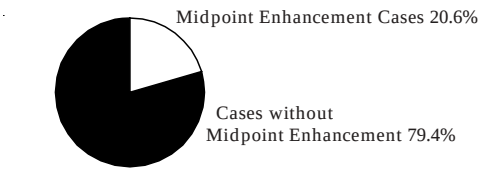
The "Other" offense in Figure 14 is listed on the miscellaneous guidelines worksheet— possession of a firearm by a nonviolent convicted felon. For nonviolent felons possessing a firearm or concealed weapon, judges complied with the guidelines at a rate of 88% and handed down more stringent sentences in the majority of remaining cases. This crime carries a two-year mandatory minimum sentence.

Compliance 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 cases involving violent offenders that elevate the overall guidelines sentence recommendation in those cases. Midpoint enhancements are an integral part of the design of the truth-in-sentencing guidelines. The objective of midpoint enhancements is to provide 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 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 assaults and sexual assaults, and certain burglaries, when any one of these offenses is the current most serious offense, also called the "instant 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 greatest enhancement. A prior record labeled "Category II" contains at least one violent prior 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.

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 FY2002 cases, 79% of the cases did not involve midpoint enhancements of any kind (Figure 15). Only 21% 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 not fluctuated greatly since the institution of truth-in-sentencing guidelines in 1995. It has remained between 19% and 21% over the last six years.

Figure 15
Application of Midpoint Enhancements - FY 2002

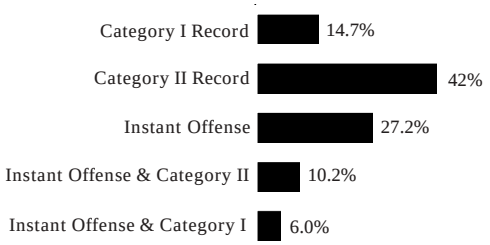


Of the FY2002 cases in which midpoint enhancements applied, the most common midpoint enhancement was that for a Category II prior record. Approximately 42% of the midpoint enhancements were of this type, applicable to offenders with a nonviolent instant offense but a violent prior record defined as Category II (Figure 16). In FY2002, another 15% of midpoint enhancements were attributable to offenders with a more serious Category I prior record. Cases of offenders with a violent instant offense but no prior record of violence represented 27% of the midpoint enhancements in FY2002. The most substantial midpoint enhancements target offenders with a combination of instant and prior violent offenses. About 10% qualified for enhancements for both a current violent offense and a Category II prior record. A small percentage of cases (6%) received 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 sentencing guidelines more often in midpoint enhancement cases than in cases without enhancements. In FY2002, compliance was only 68% when enhancements applied, significantly lower than compliance in all other cases (80%). When departing from enhanced guidelines recommendations, judges are choosing to mitigate in four out of every five departures.

Figure 16

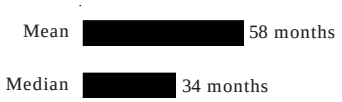
Type of Midpoint Enhancements Received - FY 2002



When sentencing offenders to incarceration periods in FY2002 midpoint enhancement cases, judges departed from the low end of the guidelines range by an average of about five years (58 months), with the median aggravation departure at 34 months (Figure 17).

Figure 17

Length of Mitigation Departures in MidpointEnhancement Cases - FY2002



Compliance, while generally lower in midpoint enhancement cases than in other cases, varies across the different types and combinations of midpoint enhancements (Figure 18). In FY2002, as in previous years, enhancements for a Category II prior record generated the highest rate of compliance of all midpoint enhancements (74%). Compliance in cases receiving enhancements for a Category I prior record was significantly lower (64%). Compliance for enhancement cases involving a current violent offense was 65%. Those cases involving a combination of a current violent offense and a Category II prior record yielded a compliance rate of 65%, while those with the most significant midpoint enhancements, for both a violent instant offense and a Category I prior record, yielded a lower compliance rate of 63%.

The tendency for judges to impose sentences below the sentencing guidelines recommendation in midpoint enhancement cases is readily apparent. Analysis of departure reasons in cases involving midpoint enhancements, therefore, is focused on downward

Figure 18

Compliance by Type of Midpoint Enhancement* - FY2002

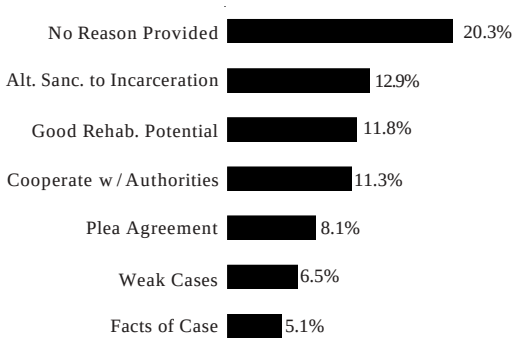
	Compliance	Mitigation	Aggravation	Number of Cases
None	80.3%	9.3%	10.4%	17,314
Category II Record	73.6	20.5	5.9	1,893
Category I Record	64.4	30.7	5.0	662
Instant Offense	65.2	24.8	10.0	1,229
Instant Offense & Category II	65.1	29.0	5.9	459
Instant Offense & Category I	62.5	34.6	3.0	269

* Midpoint enhancements prescribe prison sentence recommendations for violent offenders which are significantly greater than historical time served under the parole system during the period 1988 to 1992.

departures from the guidelines (Figure 19). Examination of midpoint enhancement cases resulting in a mitigation sentence shows that one in five (20%) does not have a departure reason provided. For those that do have a departure reason cited, the most frequent reason cited for mitigation was based on the judge's decision to use alternative sanctions to traditional incarceration (13%). This reason for mitigation includes, but is not limited to, alternative sanctions ranging from Detention Center and Diversion Center incarceration programs to substance abuse treatment, intensive supervised probation or a day reporting program. In nearly 12% of the mitigation cases, the judge sentenced based on the perceived potential for rehabilitation of the offender. Among other most frequently cited reasons for mitigating, judges noted that the defendant cooperated with authorities, there was a plea agreement, the evidence against the defendant was weak, or the facts of the case warranted a lesser sentence.

Figure 19

Most Frequently Cited Reasons for Mitigation in Midpoint Enhancements* - FY 2002



* Represents most frequently cited reasons only. Multiple reasons may be cited in each case.

Juries and the Sentencing Guidelines

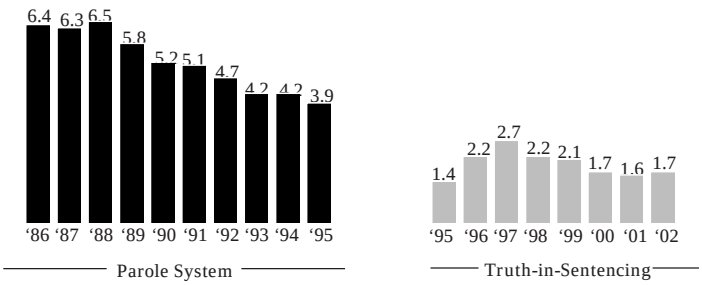
Virginia is one of only five states that allow juries to determine sentence length in non-capital offenses. Since the implementation of the truth-in-sentencing system, Virginia's juries have typically handed down sentences greater than the recommendations of the sentencing guidelines. In fact, in FY2002, as in previous years, a jury sentence was far more likely to exceed the guidelines than fall within the guidelines range. By law, juries are not allowed by law to receive any information regarding the sentencing guidelines to assist them in their sentencing decisions.

Since FY1986, there has been a generally declining trend in the percentage of jury trials among felony convictions in circuit courts (Figure 20). Under the parole system in the late 1980s, the percentage of jury convictions of 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, the lowest rate since the data series began.

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, half the rate of the last year before the abolition of parole. Seemingly,

Figure 20

Percent of Felony Convictions Adjudicated by Juries FY1986-- FY2002
Parole System v. Truth-in-Sentencing (No Parole) System



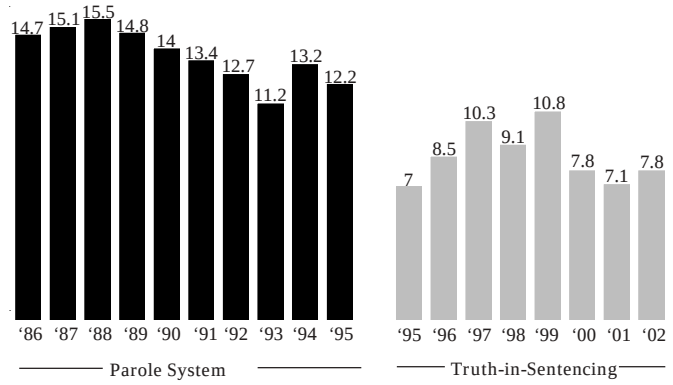
the introduction of truth-in-sentencing, as well as the introduction of a bifurcated jury trial system, appears to have contributed to the significant reduction in jury trials. The percentage of jury convictions rose in FY1997 to nearly 3%, but since has declined to under 2%.

Inspecting jury data by offense type reveals very divergent trends for person, property and drug crimes. From FY1986 through FY1995 parole system cases, the percent of convictions by juries for crimes against the person (homicide, robbery, assault, kidnapping, rape and sexual assault) was typically three to four times the percent for property and drug crimes, which were roughly equivalent to one another (Figure 21). However, with the implementation of truth-in-sentencing, the percent of convictions handed down by juries dropped dramatically for all crime types. Under truth-in-sentencing, jury convictions involving person crimes have varied from 7% to nearly 11% of felony convictions. The percent of felony convictions resulting from jury trials for property and drug crimes declined to less than 1% under truth-in-sentencing.

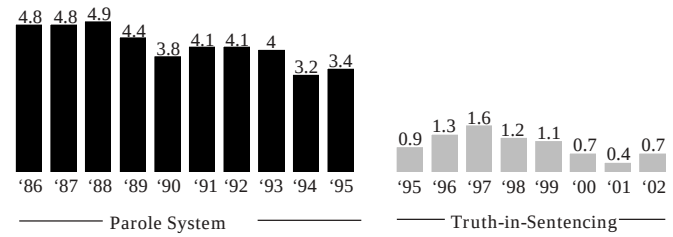
Figure 21

Percent of Felony Convictions Adjudicated by Juries FY1986-- FY2002
Parole System v. Truth-in-Sentencing (No Parole) System

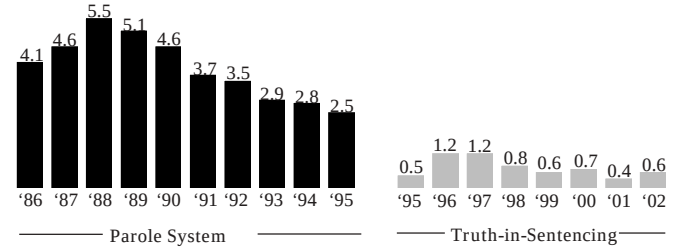
Person Crimes



Property Crimes



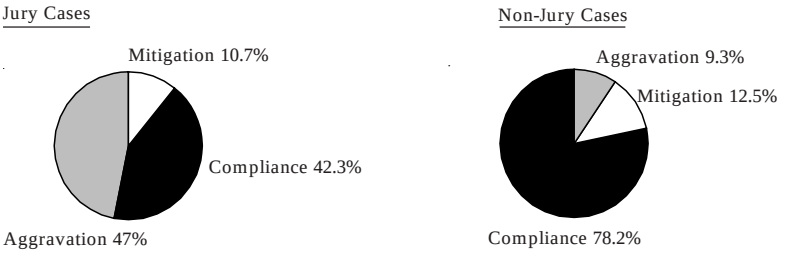
Drug Crimes



In FY2002, the Commission received 360 cases tried by juries. While the compliance rate for cases adjudicated by a judge or resolved by a guilty plea was at 78% during the fiscal year, sentences handed down by juries fell into compliance with the guidelines only 42% of the time (Figure 22). In fact, jury sentences fell above the guidelines recommendation in 47% of the cases. This pattern of jury sentencing vis-à-vis the guidelines has been consistent since the truth-in-sentencing guidelines became effective in 1995.

Figure 22

Sentencing Guidelines Compliance in Jury Cases and Non-Jury-- FY2002

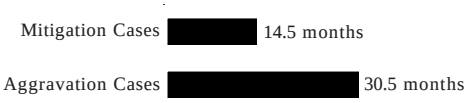


Judges, although permitted by law to lower a jury sentence they feel is inappropriate, typically do not amend sanctions imposed by juries. Judges modified jury sentences in less than one-fourth of the FY2002 cases in which juries found the defendant guilty. Of the cases in which the judge modified the jury sentence, judges brought a high jury sentence into compliance with the guidelines recommendation 29% of the time. In 27% of the cases, judges modified the jury sentence but not enough to bring the final sentence into compliance.

In those jury cases in which the final sentence fell short of the guidelines, it did so by a median value of just over one year (Figure 23). In cases when the ultimate sentence resulted in a sanction more severe than the guidelines recommendation, the sentence exceeded the guidelines maximum recommendation by a median value of about two and one-half years, a decrease from a median aggravation departure of six years during FY2001.

Figure 23

Median Length of Durational Departures in Jury Cases -- FY2002



Compliance and Sex Offender Risk Assessment

In 1999, the Virginia General Assembly requested the Virginia Criminal Sentencing Commission to develop a sex offender risk assessment instrument, based on the risk of re-offense, which could be integrated into the state's sentencing guidelines system. Such a risk assessment instrument could be used as a tool to identify those offenders who, as a group, represent the greatest risk for committing a new offense once released back into the community. On July 1, 2001, a sex offender risk assessment instrument was incorporated into the Rape and Other Sexual Assault sentencing guidelines worksheets. With one year of sex offender risk assessment data accumulated, some preliminary findings are presented below.

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

For each offender recommended for a term of incarceration that includes a prison, the sentencing guidelines are presented to the judge in the form of a midpoint recommendation and an accompanying range (a low recommendation and a high recommendation). 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 compliance with the guidelines. This approach allows the judge to incorporate sex offender risk assessment into the sentencing decision while providing the judge with flexibility to evaluate the circumstances of each case. The adjustments to the guidelines range are based on the offender's risk score, as summarized below.

- For offenders scoring 44 or more, the upper end of the guidelines range is increased by 300%.
- For offenders scoring 34 through 43 points, the upper end of the guidelines range is increased by 100%.
- For offenders scoring 28 through 33 points, the upper end of the guidelines range is increased by 50%.

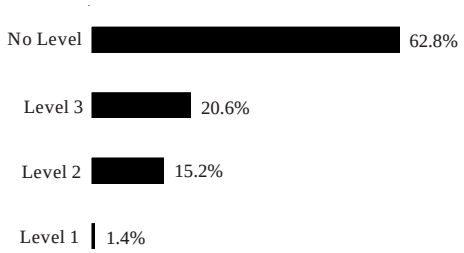
In addition, all rape and sexual assault offenders scoring 28 or more on risk assessment are now recommended for a term of incarceration that includes prison. Offenders scoring less than 28 points receive no sentencing guidelines adjustments.

Other Sexual Assault Guidelines

Among the 462 offenders convicted of an offense covered by the Other Sexual Assault guidelines, the majority (63%) were not assigned a level of risk by the sex offender risk assessment instrument (Figure 24). Approximately 21% of Other Sexual Assault guidelines cases resulted in a Level 3 risk classification, with an additional (15%) assigned to Level 2. Only 1% of offenders reached the highest risk category of Level 1.

Figure 24

Sex Offender Risk Levels for Other Sexual Assault Offenses - FY2002



Under 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. Judges have begun to utilize these extended ranges when sentencing sex offenders. For sex assault offenders reaching Level 1 risk, nearly one in three (29%) were given sentences in extended guidelines range (Figure 25). Although judges were somewhat less likely to use the extended guidelines range in Level 2 and Level 3 risk cases, 11% and 15% of offenders falling into these risk categories, respectively, were sentenced to prison terms provided by the extended guidelines range. Judges rarely sentenced Level 1, 2 or 3 offenders to terms above the extended guidelines range provided in these cases. However, offenders who scored 28 points or less on the risk assessment instrument and, therefore, not assigned a risk category were the least likely to be sentenced in compliance with the guidelines (62%) and the most likely to receive a sentence that was an upward departure from the guidelines (21%). Overall, incorporation of risk assessment and extension of the guidelines range has increased overall compliance for the Other Sexual Assault guidelines from 61% to 66%.

As of July 1, 2001, offenders on the Other Sexual Assault worksheet who are assigned a risk level (Level 1, 2, or 3) are automatically recommended for a term of incarceration that includes a prison sentence on the Section C worksheet. Therefore, sex offenders who historically were recommended for probation or a

Figure 25

Other Sexual Assault Compliance Rates by Risk Level Offenses - FY2002

		Compliance			
	Mitigation	Traditional Range	Adjusted Range	Aggravation	Number of Cases
Level 1	0%	71%	29%	0%	7
Level 2	21%	63	11	5	65
Level 3	19%	63	15	3	93
No Level	17%	62	---	21%	283
Overall	18%	61	5	15%	448

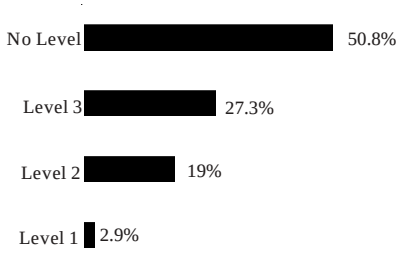
short jail term on the guidelines are now recommended for prison if they fall into a group of offenders at higher risk for recidivism (Level 1, 2, or 3). In FY2002, there were 46 cases affected by this change in guidelines. In nearly three out of four cases when the recommended disposition changed from probation or jail to a term that includes prison, judges agreed with the recommendation and imposed an effective prison sentence (Figure 26). In the remaining 28% of cases, judges sentenced the offender to probation or to an incarceration period of six months or less.

Rape Guidelines

In FY2002, there were 242 offenders convicted of offenses covered by the Rape guidelines (rape, forcible sodomy, and object penetration). Among offenders convicted of these crimes, just over one-half (51%) were not assigned a risk level by the Commission's risk assessment instrument. The proportion of offenders receiving a risk classification and, therefore, an adjusted guidelines recommendation is higher among Rape offenders than among Other Sexual Assault offenders (49% versus 37%). Over 27% of Rape cases resulted in a Level 3 adjustment—a 50% increase in the upper end of the traditional guidelines range recommendation (Figure 26). An additional 19% received a Level 2 adjustment (100% increase). The greatest adjustment (300%) affected 3% of Rape guidelines cases.

Figure 26

Sex Offender Risk Levels for Rape Offenses - FY2002



In sentencing Rape offenders reaching Level 1 risk, judges sentenced one in five (20%) to terms of incarceration falling in the extended guidelines range (Figure 27). Similarly, 21% of offenders with a Level 2 risk classification were given prison sentences with the adjusted range of the guidelines. However, judges utilized the extended guidelines range in only 9% of the Level 3 risk cases. With extended guidelines ranges available for higher risk offenders, judges rarely sentenced Level 1, 2 or 3 offenders above the extended guidelines range. Offenders not assigned a risk category because they scored 28 points or less on risk assessment were the most likely to receive a sentence below the guidelines recommendation (33% mitigation rate). The higher the risk level, the less likely judges were to mitigate from the guidelines. Overall, incorporation of risk assessment and extension of the guidelines range has increased overall compliance for the Rape guidelines from 58% to 66%.

Figure 27

Rape Compliance Rates by Risk Level Offenses - FY2002

		Compliance			
	Mitigation	Traditional Range	Adjusted Range	Aggravation	Number of Cases
Level 1	20%	60%	20%	0%	7
Level 2	29%	50%	21%	0%	46
Level 3	32%	57%	9%	2%	66
No Level	33%	61%	NA	6%	123
Overall	29%	58%	8%	5%	242

Primary Offense Additional Counts

Prior to July 1, 2001, in some cases, not all counts of the primary (i.e., most serious) offense were scored when multiple counts of the offense were combined in the same sentencing event. As a result, on some worksheets, an offender received the same guidelines recommendation for multiple counts as he or she received for one count of the primary offense. The guidelines were criticized for not making higher sentence recommendations in all cases involving multiple counts of the primary offense. Therefore, beginning in FY2002, all counts of the primary offense were factored into the guidelines recommendation.

In FY2002, just over 7% of guidelines cases involved multiple counts of the primary offense that were not scored under the primary offense factor on Section B or C worksheets. Generally, in cases where there were multiple counts of the primary offense that were scored under the Primary Offense Additional Counts factor, judges agreed with the guidelines recommendation at a rate of 72% (Figure 28). They sentenced the offender to a lesser sanction in 16% of the cases, and in another 12%, they imposed a more severe sentence than was called for by the guidelines.

An examination of judicial concurrence in cases involving multiple counts of the primary offense reveals variation based on the type of offense group (Figure 29). The traffic worksheet had the highest rate of compliance (94%) in cases involving multiple counts of the primary, followed by Drug/Other (81%) and Drug Schedule I/II (78%). The lowest compliance rates were found on the Robbery (59%) and Other Sexual Assault (50%) worksheets. Although Figure 35 shows the Kidnapping worksheet having the lowest compliance and highest mitigation rate, the data are skewed significantly because there were only two cases of this type.

In cases involving multiple counts of the primary offense, downward departures from guideline recommendations were predominant among those that included the primary offenses of rape (33%), robbery (30%), fraud (21%), larceny (15%), and Schedule I/II drug (14%). Conversely, upward departures from guideline recommendations in multiple count cases involved miscellaneous offenses (23%), murder offenses (19%), and burglaries of non-dwellings (17%). Departures among sexual assaults other than rape, burglaries of dwellings, drug offenses other than Schedule I/II, and felony traffic offenses were fairly evenly divided between mitigation and aggravation for cases that involved multiple counts of the primary offense.

Figure 28

Compliance Rate for Cases Involving Mulitple Counts of the Primary Offense- FY2002

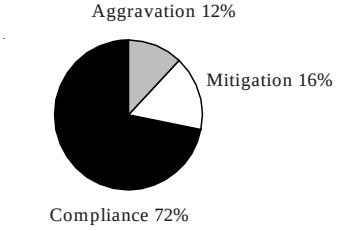


Figure 29

Compliance Rates by Offense for Cases with Multiple Counts of the Primary - FY2002

	Compliance	Mitigation	Aggravation	Number of Cases
Traffic	93.8%	2.1%	4.2%	48
Drug/Other	81.3	10.4	8.3	48
Sch. I/II Drug	78.2	14.1	7.7	156
Larceny	76.4	14.5	9.1	110
Assault	74.6	13.4	11.9	134
Fraud	74.2	20.7	5.2	329
Burg/Oth	71.4	11.5	17.2	227
Murder	69.2	11.5	19.2	26
Rape	66.7	33.3	0.0	21
Burg/Dwell	66.2	16.4	17.4	305
Misc	65.7	11.4	22.9	35
Robbery	58.7	30.2	11.1	63
Sex Assault	50.0	24.0	26.0	50
Kidnap	0.0	100.0	0.0	2

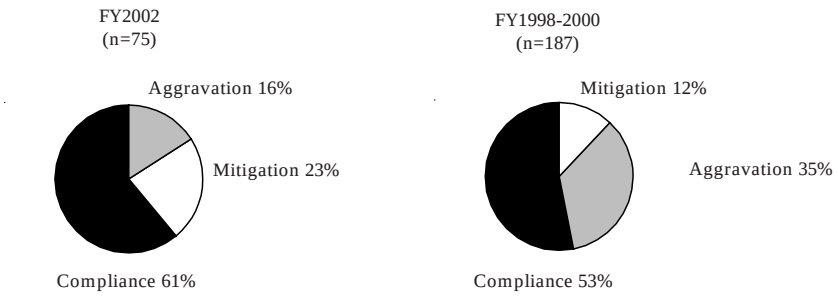
Second Degree Murder & Felony Homicide

Beginning with the FY2002 Murder/Homicide worksheet, the Section C primary offense score for second degree murder and felony homicide was increased for offenders with no prior violent felony record. Specifically, the base midpoint for this offense increased from 133 months (about 11 years) to 205 months (about 17 years). Prior to this change, judges were sentencing second degree murder/felony homicide offenders with no prior violent felony record to incarceration periods that exceeded the upper end of the guidelines range by six years. Judges often cited extreme violence, the victim's vulnerability, and the lack of remorse demonstrated by the offender as reasons for aggravating.

In FY2002, there were 75 completed second degree murder and felony homicide cases. Judicial concurrence with the newly adjusted guidelines recommendations in second degree murder cases increased from 53% to 61%. Of the 29 cases that deviated from the guidelines recommended sentence during FY2002, there appears to be a shift toward mitigation (23%), a marked variation from the high aggravation rates of previous years (Figure 30).

Figure 30

Completed Second Degree Murder/Felony Homicide Compliance Rates



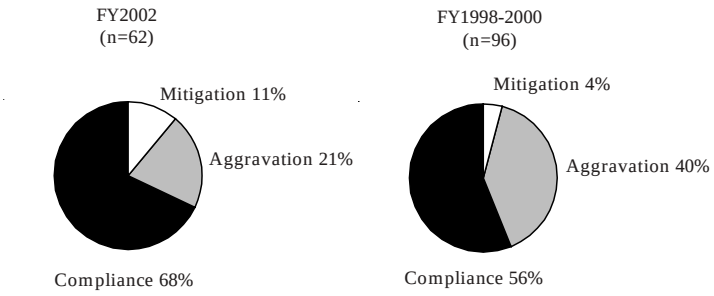
Child Abuse and Neglect with Victim Injury

On the FY2002 Miscellaneous Section B worksheet, scores for victim injury were increased when the primary offense was child abuse or neglect under § 18.2-371.1(A). Prior to July 1, 2001, judges frequently sentenced the offender to a sanction or incarceration period much higher than that which was recommended by the guidelines. Further analysis revealed that most child abusers do not have a significant prior record, the driving factor on many worksheets. Therefore, the majority of offender's convicted of child abuse, due to their low scores on Section A, were recommended for probation on Section B regardless of the severity of victim injury. Judges were sentencing above the guidelines recommendation in 40% of child abuse cases (Figure 31).

Due to the increase in the Section B victim injury score for felony child abuse, compliance in these cases has increased from 56% to 68%. It is evident that departures are beginning to become more evenly dispersed between mitigation (11%) and aggravation (21%), especially in contrast to previous years.

Figure 31

Compliance Rates for Felony Child Abuse/Neglect Cases

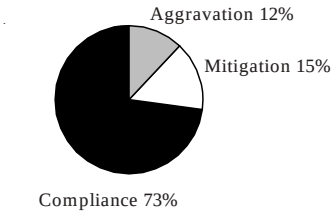


Construction Fraud Offenses

In FY2002, two construction fraud offenses were added to the Fraud worksheet: 1) fail to perform construction in return for advances > $200, and 2) intent to defraud where funds are not used for labor/supplies. During the past fiscal year, the Commission received 34 cases in which the primary offense was construction fraud. In nearly three-quarters (73%) of construction fraud cases, judges agreed with the guidelines recommendation (Figure 32). Furthermore, departures from the guidelines recommendation were split fairly evenly between mitigation (15%) and aggravation (12%).

Figure 32

Compliance Rates for Construction Fraud Cases-FY2002



Comprehensive Review Of Sentencing Guidelines

Introduction

Under § 17.1-803, the Commission is charged with developing, maintaining and modifying a system of statewide discretionary sentencing guidelines for use in felony cases. This guidelines system is to take into account historical sentencing and time-served data as well as other factors as may be deemed relevant to sentencing. The Commission is also directed to monitor sentencing practices throughout the Commonwealth, including the use of the discretionary guidelines. The sentencing guidelines system in place today was first introduced in 1995, when legislation was adopted to abolish parole and institute truth-in-sentencing in Virginia. As detailed in § 17.1-805 of the *Code of Virginia*, the initial set of truth-in-sentencing guidelines is grounded in a comprehensive analysis of sentencing practices and patterns of time-served for felons sentenced during the years 1988 through 1992. This analysis formed a baseline set of sentencing midpoints and ranges upon which legislatively-mandated enhancements were applied to increase the recommendations for offenders with current or prior convictions for violent crimes. Since 1995, the Commission has relied upon judicial departure information and guidelines user input as the basis for recommended revisions to specific factors within these initial guidelines. That approach, however, is not as exact as reanalyzing historical sentencing data in a holistic fashion. At its November 2001 meeting, the Commission approved a plan to conduct a thorough reanalysis of Virginia's discretionary sentencing guidelines for each covered offense.

Since 1991, Virginia's circuit judges have been provided with historically-based sentencing guidelines. Representatives of the Judicial Conference of Virginia selected five years of sentencing data to define "history." Using five years of data minimizes year-to-year fluctuations and reduces the likelihood of spurious results when building sentencing models. Thus, when the truth-in-sentencing/no-parole sentencing system was adopted by the General Assembly, it relied upon the same definition of history, a recent five-year time frame, for the new historical benchmarks. Prior to 1995, however, reanalysis was performed to periodically update the guidelines based on the most recent five years of data as new data became available. This has not been done under truth-in-sentencing because five of years of sentencing data under the new system have only recently become available. Since the effective date of parole abolition is tied to the offense date (parole was abolished for any offender convicted of a felony offense committed on or after January 1, 1995), it took some time before this new policy was applied to the majority of sentenced felons.

Today, the Commission is confident that a full five years of data for felons sentenced under truth-in-sentencing is available for analysis. The Commission has embarked on a comprehensive reanalysis of approximately 126,000 truth-in-sentencing decisions made during the five years from FY1997 through FY2001. By examining sentencing practices under the truth-in-sentencing / no-parole system, the reanalysis will provide a more focused picture of Virginia's experiences since the abolition of parole. This comprehensive analysis will ensure that judges are being provided with guidelines that reflect both historical sentencing decisions and changes in more recent sentencing practices.

The proposed analysis of such a large volume of sentencing decisions is a time-intensive task and must be conducted for each of the 14 sentencing guidelines major offense categories. Statistical models of sentencing under the truth-in-sentencing / no-parole system will be developed. Within each offense group, models will be developed by type of sentencing decision (e.g., type of disposition and sentence length). Since it is not possible to perform a comprehensive analysis of, or for the Commission to review, all the guidelines offense groups in a single year, the reanalysis work will extend into a multi-year project.

The first stage of the analysis work began with those offense groups with the lowest compliance rates or where recent legislation has potentially altered historical sentencing patterns. The later stages of the analysis will be reserved for offense groups exhibiting the highest compliance rates with no obvious departure patterns. Because compliance rates in midpoint enhancement cases are well below overall compliance, guidelines midpoint enhancements will also be examined closely.

During the first year of this immense project, the Commission has begun to examine the murder / homicide, robbery and rape (including forcible sodomy and object sexual penetration) offense categories. Murder, robbery, rape and sexual assault offense groups had the lowest compliance rates in FY2001, ranging between 67% and 70%. Reanalysis of sentencing guidelines for these offense groups is in progress.

This chapter of the Commission's *2002 Annual Report* summarizes the methodological approach used in the analysis of historical sentencing data and the development of guidelines worksheets. The data sources utilized for this project are also described. This chapter also includes descriptive information specific to the murder / homicide, robbery and rape cases currently under study.

Methodology

The methodological approach used by the Commission for developing Virginia's historically-based sentencing guidelines was developed in 1987. The methodology was approved by the Judicial Sentencing Guidelines Committee of the Judicial Conference of Virginia, which oversaw the development of Virginia's first discretionary sentencing guidelines system. Judges approved the concept of discretionary guidelines that were descriptive of historical sentencing practices. The first criterion was that guidelines should be grounded in the historical incarceration rate. The second criterion was that guidelines should recommend ranges of punishment that encompass the middle 50% of historical sentences (excluding the extreme low and high sentences). Judges felt that the most recent five years of data would most accurately capture current judicial thinking. By using the five years of data, year-to-year fluctuations are minimized and the likelihood of spurious results in the sentencing models are reduced.

From these data, models were developed for each offense group by type of judicial sentencing decision. The judge's decision of whether or not to sentence an offender to prison was modeled first. The next sentencing decision was dependent upon the outcome of the first decision. For cases in which the judge did not order a prison term, the judge's choice between giving the offender a jail term or probation without incarceration was modeled. Finally, for cases resulting in a prison term, a model of the length of sentence was constructed.

In order to maintain quality results that can be utilized by judges in making sentencing decisions, the Commission employs quality control techniques. To begin, independent analysis is conducted for each of the guidelines offense groups. Two researchers conduct analysis on each guidelines offense group independently of one other. This tactic reduces the likelihood that errors, spurious findings, or results biased by the style of an individual analyst will find their way into the guidelines. Once the independent analysis is complete, the reconciliation process begins. In the reconciliation process, the researchers team up to evaluate the differences in their independently developed models and conduct statistical tests to determine which model best fits the data. The resulting model is then converted into a proposed guidelines worksheet. With this process complete, the results are then confirmed by another analyst as an additional error check.

The historical data utilized for the Commission's analysis captures a broad array of information on the circumstances of the offense(s), the offender's prior record, as well as the offender's employment, education and substance abuse history. The analysis begins with a wide variety of possible factors that might influence a judge's sentence decision. Applying widely-used statistical techniques enables the analyst to filter out those factors that are not statistically relevant in judges' sentencing decisions. The result is an empirical model containing factors that have demonstrated a statistically significant role in sentencing practices over the five year period.

There are three major statistical techniques utilized in sentencing guidelines analysis. For the decision of whether to send the offender to prison or not (the in/out decision) and the decision between probation and jail incarceration (the probation/jail decision), two statistical techniques known as logistic regression and discriminant analysis are used. For the prison sentence length decision, a technique called ordinary least squares (OLS) regression is applied.

Logistic regression is a statistical technique that can predict a choice from two options, such as prison versus some lesser sanction or probation versus jail. It is used to identify factors that best discriminate between two outcomes or groups (e.g., offenders sentenced to prison and offenders not sentenced to prison). When using logistic regression, an analyst can readily determine which factors are statistically significant. Interpreting the effect of each factor relative to the other factors in the model, however, is complex. This is because logistic regression results are presented in terms of the log of the odds of a particular outcome (e.g., the odds of winning the state lottery). Thus, the drawback of logistic regression is that it cannot determine the relative importance, or weight, of the factors in the model, which is necessary to convert the model to scores on a guidelines worksheet. Logistic regression, therefore, is used in conjunction with a second technique called discriminant function analysis.

Like logistic regression, discriminant function analysis is a statistical technique used to identify factors that best discriminate among two or more outcomes or groups. The discriminant function procedure discriminates between groups by categorizing cases in such a way that the differences between the groups are maximized while the differences within the outcome groups are minimized. In terms of categorizing cases by type of outcome, models generated through logistic regression and discriminant function analysis provide strikingly similar results.

Worksheet scores for Section A (the in/out decision) and Section B (the probation/jail decision) are developed from the weights of factors in the model. Factor weights tend to be small because the Section A and Section B models simply determine a choice between two options. Factor weights are adjusted so that the smallest score value will be at least one point. This process is referred to as standardizing. The relationships among the factors remain the same. After standardizing, the factor weights are used to develop worksheet scores. This process is conducted for all Section A and Section B worksheets.

Ordinary least squares (OLS) regression can be used estimate outcomes that fall along a continuum, such as the sentence length decision for cases that are referred to Section C of the guidelines. This technique is used to identify factors (e.g., weapon use, victim injury, etc.) that influence a response measure (e.g., sentence length). OLS regression assumes a linear relationship between predictor factors and the response measure. Results are calculated by minimizing the model's prediction error. With OLS an analyst can readily determine which factors are statistically significant. Interpretation of the effect of each factor is straight forward. For the sentence length model, the result represents months of incarceration. Guidelines ranges are developed using the middle 50% of sentences for a particular score. The highest 25% and the lowest 25% of sentences are excluded from the recommended range.

Established in the late 1980s, these methods and protocols are still applied today. The comprehensive review of the sentencing guidelines initiated by the Commission in 2002 will examine the guidelines in the context of actual judicial sentencing practices in recent history, defined as the most recent five years of available data. Since its creation in 1995, the Commission has not made prescriptive, or normative, adjustments to the guidelines not supported by historical data. However, some prescriptive adjustments have been mandated by the General Assembly. These adjustments include midpoint enhancements to increase the guidelines recommendations for violent offenders, incorporation of a risk assessment instrument for nonviolent offenders, and implementation of a risk assessment for felony sex offenders.

During the review process, the Commission will explore techniques to simplify the guidelines system while maintaining or improving the statistical power of the sentencing models. For example, the Commission is examining the possibility of reducing the number of sections (or worksheets) that must be completed for the guidelines. Currently, the guidelines for most offense groups are composed of three sections. Section A is completed to determine if the offender will be recommended for incarceration greater than six months or not; Section A represents the "in/out" decision. If the offender is not recommended for incarceration over six months, Section B is completed to generate a recommendation for either probation without active incarceration or incarceration up to six months in jail. If, however, the offender is recommended for lengthier incarceration under Section A, Section C is completed to yield a recommended sentence length. Alternative structures are being explored. It may be possible to revise the guidelines such that Section A would recommend the offender for either an active term of incarceration or probation without incarceration. This would represent a different way to define the "in/out" decision. For an offender recommended for incarceration, a second worksheet would be completed to determine the recommended sentence length and would encompass both jail and prison sentence lengths. The viability of this type of alternative structure will be assessed for each offense group as it comes under review.

Data

This research utilizes the Pre/Post-Sentence Investigation (PSI) database maintained by the Virginia Department of Corrections (DOC). For most felony sentencing events in Virginia, DOC's Community Corrections division is required to prepare a PSI report. The report contains a wealth of information about the defendant and the crime. The PSI captures standardized information regarding the crimes for which the offender is convicted, the circumstances of the crime (e.g., use of a weapon, victim injury, the offender's role in the offense, his relationship to the victim, if he resisted arrest, the quantity of drugs involved, etc.), his prior adult record, his juvenile record, family, and marital information, education, military service, employment history, history of alcohol and drug use, as well as any substance abuse or mental health treatment experiences. In addition to the standardized information, PSI reports ordered by the court also contain significant narrative sections describing the offense and the offender's family, education, employment, health, and substance abuse history in detail. Before forwarding a copy of the PSI report to

DOC's administrative headquarters, the Probation and Parole office attaches information on the sentencing outcome for the case. Prior to 1997, DOC received paper copies of all PSI reports at its central office, where the contents were automated. The PSI system has since been automated at the district level, enabling probation officers to key PSIs directly into a computer terminal and forward the files electronically to DOC. Because the PSI data system contains offender, crime, and sentencing information for most felony offenders convicted in Virginia, it is the database used most extensively by the Virginia Criminal Sentencing Commission in studying sentencing patterns and developing the sentencing guidelines.

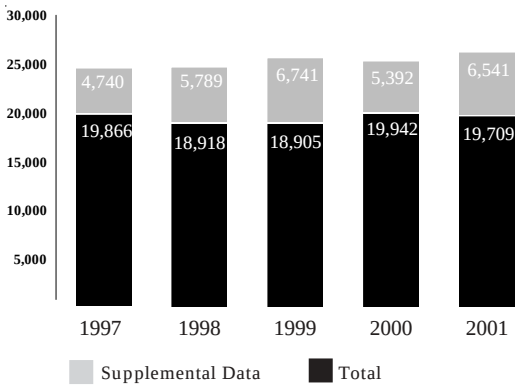
While it is the most extensive data system on felony offenders available in the Commonwealth (and may be one of the most extensive of such databases in the nation), the PSI data system has certain limitations. Although prepared in most felony cases, a PSI is not completed on every felon convicted in circuit court. Cases that do not result in a prison term or a term of supervised probation may not have a PSI. Certain cases are more likely to go without a PSI (e.g., larceny). Potential for bias exists. Moreover, when a pre-sentence report is not ordered and a post-sentence investigation must be done, there is a considerable time lag between sentencing and submission of the post-sentence report. Therefore, there is a time lag during which data for a certain period is accumulated in automated systems. Data for a given year will be incomplete for a lengthy period.

Without supplementing the data, therefore, the data do not fully represent all felony cases sentenced in circuit court. Since 1985, PSI data have been supplemented. The method of supplementing data have evolved with DOC policy and practice. Today, the Commission's sentencing guidelines data system is used to identify felony cases that do not have a PSI. Once the missing cases have been identified, guidelines data are used in three ways. Guidelines information is used directly (e.g., name and other identifying information, offense at conviction, sentence and circuit court). Guidelines records are then used to identify previous PSIs completed for the same offender in order to gain further information about him or her (family background, education, employment and substance abuse history, some prior record information). Finally, guidelines information is used to match to similar

cases already in the PSI system. Information from the matched records is used to fill in any remaining fields appearing in a PSI document. The supplemental PSIs generated by the Commission are then added to the existing PSI database. Figure 33 shows that of the 126,533 cases for reanalysis, supplemental data averages 23% of the total cases each year.

Figure 33

Comprehensive Review of Sentencing Guidelines
Number of Cases for Analysis



Five years of sentencing data under the truth-in-sentencing system is now available. Each of the offense groups will undergo analysis on data from fiscal years (FY) 1997 through 2001 (July 1996 through June 2001). In addition to historical sentencing data, the Commission elected to collect additional information for rape, forcible sodomy and object sexual penetration offenses to supplement existing automated data in these cases. Supplemental data collection includes detailed information on the number of victims, the ages and gender of all victims, the mode of committing the offense, the mode of inflicting injury, the offender's prior felony sexual assault convictions / adjudications, the offender's prior misdemeanor sexual assault convictions / adjudications, the specific offender / victim relationship, and alcohol / drug use by the offender and / or victim at time of offense. The results of this supplemental data collection are discussed later in this chapter.

Murder/Homicide Guidelines Reanalysis

The rate of judicial agreement, or compliance, with the sentencing guidelines for murder / homicide offenses has consistently fallen well below the overall rate of compliance. In Fiscal Year (FY) 2002, judges concurred with the murder / homicide guideline recommendations in 67.4% of the cases. In 18.1% of the cases, judges sentenced offenders to terms below the guidelines recommendation and, in 14.4% of the cases, offenders received sentences above the guidelines recommendation. In FY2002, this was the fourth lowest compliance rate of the offense groups covered by the sentencing guidelines.

Figure 34

Compliance Rates by Offense for Murder/Homicide Guidelines by Primary Offense FY1998-FY2002

Primary Offense	Compliance	Mitigation	Aggravation	Cases
1st Degree Murder	84.2%	13.5%	2.3%	431
Involuntary Manslaughter	63.7	4.4	31.9	113
Aggravated Vehicular Invol. Manslaughter	61.5	15.4	23.1	26
Vehicular Involuntary Manslaughter	60.4	9.9	29.7	101
Voluntary Manslaughter	59.7	24.6	15.7	134
2nd Degree Murder	52.4	11.0	36.6	309
Felony Murder	44.0	24.0	32.0	25

Analysis based on FY1998-FY2002 Sentencing Guidelines data; data includes completed offenses only.

Among the offenses covered by the murder / homicide guidelines, the compliance rates vary considerably (Figure 34). The highest compliance rate is for first-degree murder (84.2%), but when the sentence is out of the recommended range, generally the sentence is lower than the recommendation (13.5% mitigation versus 2.3% aggravation). Compliance rates for voluntary manslaughter and the involuntary manslaughter offenses ranged from 60% to 64% during this period. Departure patterns, however, were markedly different. Voluntary manslaughter had a higher mitigation rate than aggravation rate (25% versus 16%), yet the involuntary manslaughters all had higher aggravation rates (from 23% to 32%) than mitigation rates (from 4% to 15%). Only half (52.4%) of the second-degree murder offenders were sentenced within the recommended range. Well over one-third (36.6%) of second-degree murder offenders were sentenced above the recommended range. The lowest compliance rate is for felony murder, with only 44% of the offenders sentenced within the recommended range. In felony cases, 24% of the offenders were sentenced below the recommendation and 32% were sentenced above.

While reanalysis of the murder / homicide guidelines is currently being conducted, descriptive information is available. Of the 1,410 murder / homicide cases in the

fiscal year data from 1997 through 2001 used in the reanalysis, 1,309 are completed murders / homicides (92.8%) and 101 are attempted / conspired crimes (7.2%).

The number of cases, split by completed offenses versus attempts and conspiracies, are represented in Figure 35. The largest number of cases is in first degree murder (630), followed by second degree murder (372) voluntary manslaughter (177), vehicular involuntary manslaughter (115) and involuntary manslaughter (24). There are relatively few cases of aggravated vehicular manslaughter (51) and attempted capital murder of a law enforcement officer (23). Overall, in 2% of the cases there were multiple counts of the primary offense and, in 99% of the cases, the offender was convicted of at least one additional offense.

For developing sentencing guidelines, an offender's prior record is measured in several ways. These multiple measures are then analyzed to determine the subset of prior record measures that best fit into sentencing models for murder / homicide crimes. Five prior record measures are discussed here.

Nearly 84% of offenders convicted of a murder / homicide offense have not been convicted previously of a violent felony crime (Figure 36). Approximately 12% have a prior record classified as Category II. A Category II prior record includes at least one prior conviction or juvenile adjudication for a violent felony crime with a maximum penalty of less than 40 years. Only 5% of the offenders had a Category I prior record. A Category I prior record includes at least one prior conviction or juvenile adjudication for a violent felony crime with a maximum penalty of 40 years or more, such as rape, robbery or previous murder.

Although the majority of murder / homicide offenders did not have a violent

Figure 35

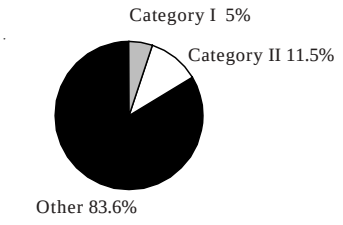
Review of Murder/Homicide Sentencing Guidelines
Number of Cases for Analysis

	Attempts and Conspiracies	Completed Offenses	Total Cases
Attempted Capital Murder	23	0	23
1st Degree Murder	49	581	630
2nd Degree Murder	25	347	372
Felony Murder	2	16	18
Voluntary Manslaughter	1	176	177
Involuntary Manslaughter	0	24	24
Vehicular Invol. Manslaughter	1	114	115
Agg. Vehicular Invol. Manslaughter	0	51	51
Total Number	101	1309	1410
Percentage of Total	7.16%	92.84%	

Data for Attempted Capital Murder includes crimes committed against a law enforcement officer and those committed during the comission of a robbery.

Figure 36

Type of Prior Record of
Murder/Homicide Offenders



A Category II prior record includes at least one prior conviction or juvenile adjudication for a violent felony crime with a maximum penalty of less than 40 years.

A Category I prior record includes at least one prior conviction or juvenile adjudication for a violent felony crime with a maximum penalty of 40 years or more.

felony record, many had served a period of incarceration for a previous conviction. Nearly half (45%) of offenders convicted of first-degree murder have been incarcerated previously, as well as nearly 42% of second-degree murder offenders (Figure 37). Except for aggravated vehicular manslaughter, offenders convicted of other types of murder / homicide crimes had lower rates of prior incarceration.

Overall, nearly two-thirds (64%) of murder / homicide offenders have some type of prior record, either as an adult or as a juvenile. About one in five (23%) have at least one prior felony conviction or adjudication for a crime against a person. Other information about the offenders' prior experiences with the judicial system was also examined. For instance, nearly 14% of offenders had at least one prior violation of adult or juvenile parole, probation, or post-release supervision. Furthermore, 43% of the offenders were under some form of legal restraint at the time of the offense.

Figure 37

Prior Incarceration Record of Murder/Homicide Offenders by Primary Offense (Completed Offenses Only)

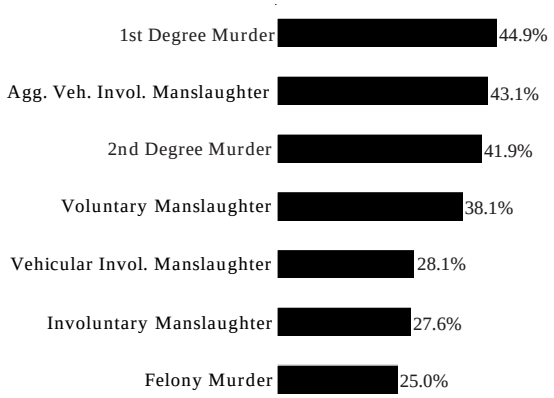
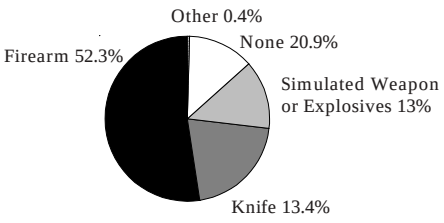


Figure 38

Weapon Use in Murder/Homicide Offenses



Circumstances of the offense are also captured so that their impact on sentencing outcomes can be explored. Because the murder / homicide data include attempted and conspired crimes, death of the victim did not occur in all cases. More than 90% involved serious physical injury or death. Approximately 5% of the victims had no injury. The Commission is also examining the use of weapons in these cases. More than half (52%) of the cases involved some type of firearm (Figure 38). A knife was used in 13% of the crimes. Only one in five (21%) murder / homicide cases did not involve some type of weapon.

Analysis is being conducted on fiscal year data from 1997 through 2001 cases for murder / homicide guidelines. The current guidelines structure for murder /

homicide involves two worksheets. In Section A (the in/out decision), an "out" decision means that the offender will be recommended for probation/no incarceration or incarceration up to six months in jail. Conversely, an "in" decision means the offender will be recommended for incarceration in excess of six months. In those instances, Section C will be completed to generate a recommendation as to the length of the sentence.

With the reanalysis, the Commission is examining two alternatives. The first alternative structure under consideration involves revising Section A to reflect the decision to incarcerate the offenders or not. Under this alternative, an "out" decision would mean that the offender would be recommended for probation/no incarceration. An "in" decision under this alternative Section A would still refer the offender to Section C for a sentence length recommendation. Section C under this alternative would determine the recommended sentence length decision for incarceration periods of 1 day or more. The second alternative structure under consideration eliminates Section A and would recommend all murder/homicide offenders for some period of incarceration. There would be only one guidelines worksheet to be completed in murder/homicide cases: Section C would be completed to provide a recommended sentence length for incarceration periods of 1 day or more. This alternative is being considered because nearly all offenders convicted of murder or manslaughter receive some period of incarceration; very few receive some other type of sanction in lieu of incarceration.

Robbery Guidelines Reanalysis

As with the murder/homicide offense group, the rate of judicial concurrence with the robbery sentencing guidelines historically has been low. Overall in FY2002, judges complied with the recommendation in only 63% of the total number of robbery cases, the lowest compliance rate of any offense group during that year. The mitigation rate, or rate at which judges sentence below the guidelines range, was 27% and the aggravation rate, or the rate at which judges impose a sentence above the guidelines range, was just under 10%. When departing from the robbery guidelines, judges are more likely to depart below than above the

recommended range. When sentencing short of the guidelines, judges most often cite the offender's cooperation with law enforcement (18%), age of the offender (14%), and the use of alternative sanctions (13%) as departure reasons in these cases.

While compliance varied somewhat by type of primary offense, rates were well below the overall average across all robbery offense types (Figure 39). For eight of the ten robbery offenses mitigation rates were higher than aggravation rates. Compliance was highest for bank robbery and carjacking without a firearm. Higher than average mitigation rates were observed for robbery of a business or bank with a firearm. Cooperation with law enforcement was often cited as a departure reason in mitigation cases. Mitigation rates were as much as three times the aggravation rate in some offense groups. In two groups, robbery of a residence without a firearm and carjacking without a firearm, the mitigation and aggravation rates were approximately equal (note that there were only 37 cases of carjacking without a firearm). The aggravation rate was highest in robbery of a residence without a firearm and lowest in bank robbery with and without a firearm. Judges often cited aggravating circumstances such as extreme violence or victim injury as departure reasons when sentencing above the guidelines recommendation in robbery cases.

A total of 4,280 robbery cases from the Pre / Post-Sentence Investigation (PSI)

Figure 39

Compliance Rates for Robbery Guidelines by Primary Offense
FY1998-FY2002

Primary Offense	Compliance	Mitigation	Aggravation	Cases
Business with firearm	62.7%	25.9%	11.4%	860
Business without firearm	68.5	20.0	11.5	390
Street with firearm	66.7	22.7	10.6	651
Street without firearm	63.1	23.4	13.6	723
Residence with firearm	64.3	21.3	14.3	244
Residence without firearm	60.8	19.2	20.0	125
Bank with firearm	67.5	25.4	7.0	114
Bank without firearm	73.3	18.9	7.8	90
Carjacking with firearm	68.3	19.0	12.7	63
Carjacking without firearm	73.0	13.5	13.5	37

database for fiscal years 1997 through 2001 are under analysis of which 91% were completed robberies and 9% were attempts or conspiracies. Most of the robbery cases were robbery of a business or street robbery (Figure 40). Street robberies accounted for 43% of all the robbery cases and robbery of a business accounted for 37%. Robbery of a residence, bank robbery and carjacking together made up the remaining 20% of the robbery cases.

In most cases, robbery victims were not injured physically. Emotional injury is recorded by the probation officer if the officer is aware that the victim met with some type of counselor, psychologist or psychiatrist as the result of the assault. Also, probation officers often record emotional injury if the parents, guardians or other person with knowledge of the victim reports some type of continuing trauma in the victim's life (e.g., bad dreams, behavioral problems, anxiety attacks), even if formal counseling is not pursued. The probation officer, however, must complete the PSI based on knowledge of victim injury documented at the time the PSI report is prepared. The probation officer writing the report may not be aware of certain types of injuries, particularly emotional injury, sustained by the victim. According to PSI information, robbery victims suffered emotional injury in 8% of the cases (Figure 41). Victims were not injured in 19% of the cases, but were threatened with injury in 53% of the cases. Physical injury (injury leaving visible bruising or

Figure 40

Review of Robbery Sentencing Guidelines
Number of Cases for Analysis

Primary Offense	Attempts / Conspiracies	Completed Acts	Total	Percent
Business with firearm	70	982	1052	24.6%
Business without firearm	39	512	551	12.9
Street with firearm	89	761	850	19.9
Street without firearm	143	853	996	23.3
Residence with firearm	20	231	251	5.9
Residence without firearm	9	164	173	4.0
Bank with firearm	9	116	125	2.9
Bank without firearm	6	105	111	2.6
Carjacking with firearm	7	91	98	2.3
Carjacking without firearm	7	66	73	1.7
Total	399	3881	4280	

abrasions or requiring first-aid, broken bones, etc.) was sustained by 15% of the victims. For 5% of the victims, the robbery offense resulted in serious physical injury (injury was life-threatening or resulted in the loss or impairment of any limb or organ) or death.

In nearly two-thirds (64%) of the cases, robbery offenders used a weapon (Figure 42). The most common weapon selected by robbery offenders was a firearm, used in over half (53%) of robbery crimes. Knives and other types of weapons were used much less frequently, in 6.5% and 4.5%, respectively. In 7% of robbery cases, the offender simulated a weapon (e.g., placed his finger in his pocket to resemble the presence of a firearm).

Figure 41

Victim Injury in Robbery Cases

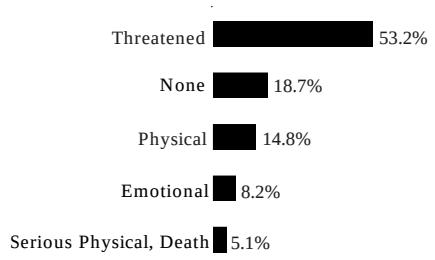
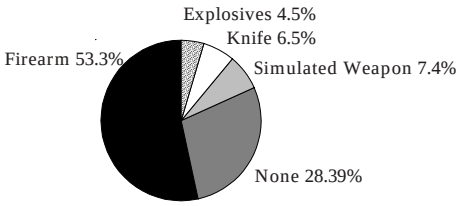


Figure 42

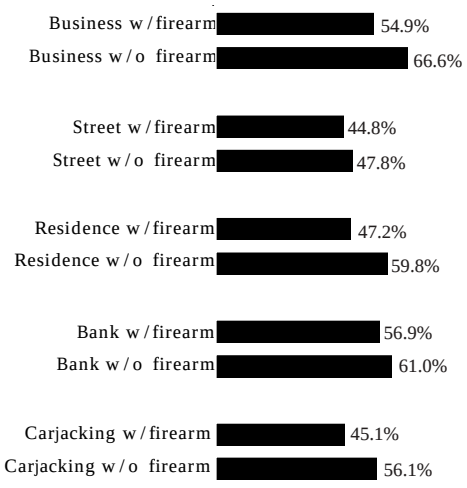
Weapon Use in Robbery Offenses



A large share of robbery offenders had served a prior term of incarceration in prison or jail at the time they committed the robbery crime. Figure 43 presents the prior incarceration rates of offenders whose current offense is a completed robbery. All of these rates are relatively high. Offenders committing street robbery with a firearm (44.8%) and carjacking with a firearm (45.1%) had the lowest prior incarceration rates. Offenders committing robbery of a business without a firearm (66.6%) and bank robbery without a firearm (61.0%) had the highest rates.

Figure 43

Prior Incarceration Record of Robbery Offenders By Primary Offense (Completed Offenses Only)



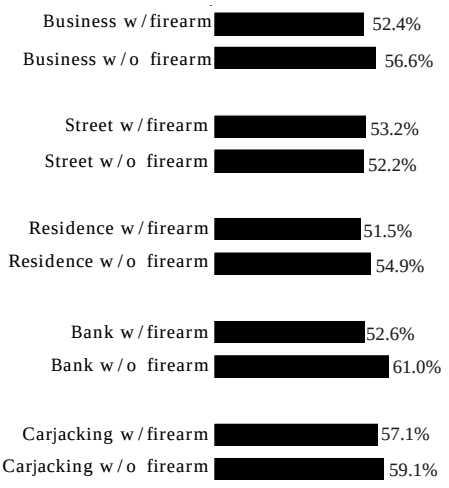
Most offenders committing a completed robbery were under some type of legal restraint at the time of the current offense. Figure 44 presents the rate of legal restraint at offense by primary offense.

The rates ranged from about 52% for robbery of a residence with a firearm to a high of 61% for bank robbery without a firearm.

Analysis is being conducted on fiscal year data from 1997 through 2001 cases for robbery guidelines. The current guidelines structure for robbery involves two worksheets. In Section A (the in/out decision), an "out" decision means that the offender will be recommended for probation/no incarceration or incarceration up to six months in jail. Conversely, an "in" decision means the offender will be recommended for incarceration in excess of six months. In those instances, Section C will be completed to generate a recommendation as to the length of the sentence.

Figure 44

Legal Restraint at Time of Offense for Robbery Offenders



As with the reanalysis of the murder/homicide guidelines, the Commission is exploring alternatives to the current structure of the robbery guidelines. For instance, under one alternative, Section A would reflect the decision to incarcerate the offender or not. An "out" decision would mean that the offender would be recommended for probation/no incarceration. An "in" decision under this alternative would still refer the offender to Section C for a sentence length recommendation. For those offenders recommended for incarceration, the Section C worksheet would be scored to determine the recommended jail or prison sentence.

The sentencing models developed through the reanalysis project will be evaluated by the Commission, with feedback from Commission members playing an important part in the process.

Rape, Forcible Sodomy and Object Sexual Penetration Guidelines Reanalysis

Under the sentencing guidelines, the rape offense group encompasses not only rape crimes but also forcible sodomy and object sexual penetration. All of the offenses carry a maximum statutory penalty of life in prison for a completed

act. The rape offense group was chosen as one of the first offenses to reanalyze because of its consistently low rates of judicial agreement with the sentencing guidelines relative to other offenses. During the most recent fiscal year, compliance with the rape guidelines was only 66%, second lowest only to robbery. Also, the Commission has been cognizant of concerns of some guidelines users over differences in recommendations that may result for offenses involving victims under the age of 13 and those involving older victims. The Commission is seeking to address these issues during the reanalysis of the rape, forcible sodomy and object sexual penetration data.

There are 1,369 rape, forcible sodomy and object sexual penetration cases over the 5 year period ending in FY2001 available for analysis. In addition, supplemental information was collected for a subset of these cases. Figure 45 shows the numbers of rape, forcible sodomy and object sexual penetration cases by primary offense. The number of cases for which supplemental data were collected is also shown. Rape involving victims age 13 or more accounted for nearly one-third (32%) of the cases (Figure 45). Forcible sodomy of a victim under the age of 13 and rape of a victim under the age of 13 represent 22% and 20% of the cases, respectively. Forcible sodomy with a victim 13 years of age or older is about 9% of the total cases, followed by object sexual penetration of a victim under 13 years of age. Other offenses in this group occur less frequently, particularly convictions involving the spouse of the offender. For instance, there have been no convictions for object sexual penetration of a spouse during the entire five-year period under analysis. The Commission is investigating possibilities of how to handle these offenses. It may be possible to group them with other offenses if they are similar in facts and sentencing patterns, or they may need to be removed from the statistical analysis if there is no possibility of obtaining statistically significant results from the analysis of these cases. For purposes of analysis, procedures will be conducted so that the supplemental sample is representative of the total sample.

Automated PSI records for rape and other sexual assault cases were examined and Commission staff extracted rich offense detail from the reports' narrative sections. The Commission was particularly interested in details relating to the offense behavior and the victim not available on the automated data systems.

Figure 45

Review of Rape Sentencing Guidelines - Number of Cases for Analysis

Offense	Total Number	Cases with Supplemental Data
Forcible Sodomy-Spouse	4	1
Rape-Spouse	10	2
Rape-Victim Incapacitated	30	9
Object Sexual Penetration-Victim Age 13 or more	77	27
Object Sexual Penetration-Victim under Age 13	108	38
Forcible Sodomy-Victim Age 13 or more	118	22
Rape-Victim under Age 13	268	62
Forcible Sodomy-Victim under Age 13	308	93
Rape-Victim Age 13 or more	446	112
Total Number	1,369	366

Supplemental information was taken from the narrative section of the automated PSI database describing the details of the rape or sexual assault offense. Narrative sections of the PSI in automated form were available for approximately the last 18 months of the 5 year period under review. All PSIs with an automated offense narrative were utilized for the supplemental data collection. Information was collected on both rape and sexual assault cases simultaneously as an efficiency measure and the sexual assault data will be used in a similar fashion at a later point. This supplemental information was gathered in the hopes that it might help to explain the variance in sentencing in rape and sexual assault cases. If additional variance can be explained, then perhaps factors can be added to the worksheet that will make sentencing recommendations more similar to the actual sentencing decisions, and thus, increase judicial agreement with the guidelines.

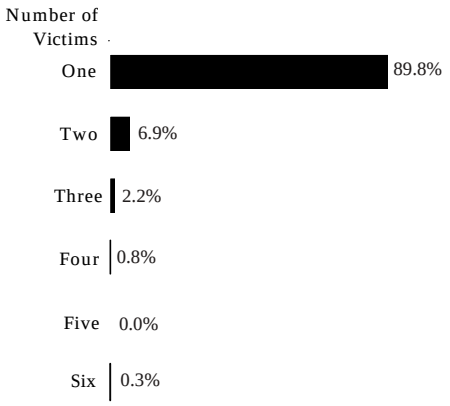
The supplemental instrument was designed to collect additional information about the victim, the circumstances of the offense(s), as well as the offender's prior record. Because the PSI data system contains information on only one victim, the supplemental data allows the Commission to examine all the victims in a particular case. Supplemental victim information was collected for up to three victims for each case and the total number of victims was also recorded.

The total number of rape and sexual assault cases with supplemental data was 1,087. Of those, five were deleted because it was found that they were reduced to misdemeanors. Another 11 cases remain in the total cases for analysis but were excluded from the supplemental data because the collection instrument was designed to focus on victim(s) of sexual crimes and the circumstances of the offense; therefore, cases involving prostitution, bigamy, and bestiality were not included in the supplemental data collection. Of the remaining 1,071 supplemental cases, 366 were rape, forcible sodomy, object sexual penetration offenses covered by the guidelines (shown in Figure 46).

Supplemental data indicate that the vast majority of rape, forcible sodomy and object sexual penetration cases (90%) involved a single victim (Figure 46). The impact of multiple victims on sentencing outcomes will be examined for the remaining 10% of these cases. It is interesting to note that female victims were much more likely than male victims to be involved in cases in which only a single victim was reported. In cases with at least one female victim, nearly 91% were single-victim cases, while 9% were

Figure 46

Number of Victims in Rape, Forcible Sodomy and Object Penetration Cases



cases involving multiple victims (Figure 47). In contrast, in cases in which at least one male victim is reported, less than 63% were limited to a single victim; more than 37% of male-victim cases involved multiple victims.

Figure 47

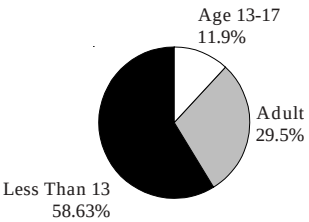
Number of Victims by Gender for Rape, Forcible Sodomy and Object Penetration Cases

Number of Victims	Female	Male
Single Victim	285 (90.8%)	32 (62.7%)
Multiple Victims	29 (9.2%)	19 (37.3%)
	314	51

The Commission is interested in exploring the relationship between the age of the victim(s) and sentencing outcome. As part of the supplemental data collection, detailed information on the age(s) of victim(s) was recorded. In some cases, the specific age of the victim could not be gleaned from the offense narrative of the PSI. For cases in which the age of the victim is known, more than 71% of the cases involved at least one victim who was under the age of 13 at the time of the offense (Figure 48). About 12% of the cases affected were at least one victim between the ages of 13 and 17.

Figure 48

Victim Age in Rape, Forcible Sodomy and Object Penetration Cases

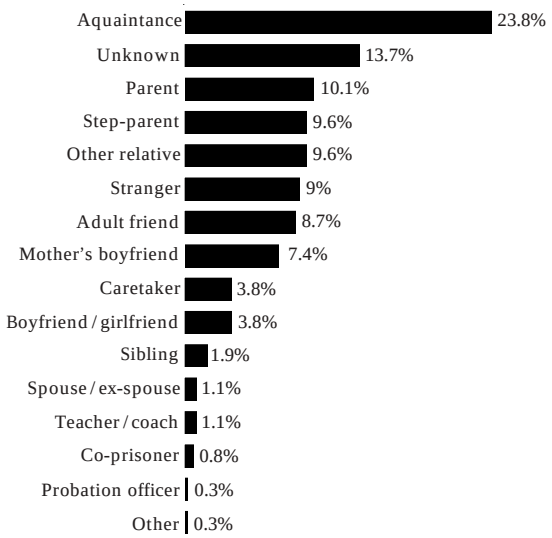


Less than 31% of the cases involved an adult victim (age 18 or more).

The nature of the relationship between the offender and the victim is also being explored by the Commission. The relationship is likely to be an important factor in terms of access to the victim and violation of a position of trust. The most common relationship between the victim and the offender was acquaintance, found for nearly 24% of the cases (Figure 49). Approximately 31% of the cases involved an assault by a parent, step-parent or other relative. In 29% of the cases, the victim and the offender were not related but the victim knew the offender as more than an acquaintance. In 9% of the cases, the offender victimized a stranger. It also should be noted that for nearly 14% of the cases, the relationship between the offender and the victim could not be

Figure 49

Offender's Relationship to Victim in Rape, Forcible Sodomy and Object Penetration Cases*



* Percentages sum to more than 100%, since cases can involve more than one victim.

determined from the PSI offense narrative.

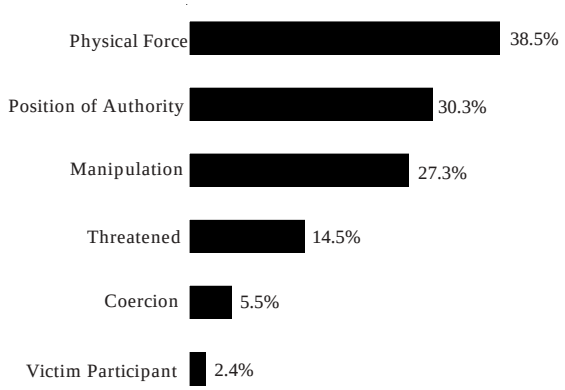
In approximately half of the cases, the victim did not live with the offender. In the cases where the victim did live with the offender, 89% involved at least one female victim and 14% involved at least one male victim. Furthermore, of the cases with both male and female victims, half lived in the same household as the offender. Over 90% of the cases in which the offender and a victim shared the same household involved minor victims; nearly two-thirds (64%) of these victims were under the age of 13.

The mode of the offense (how the offender went about committing the offenses) was also examined. Specific definitions were used and special care was taken in coding this information to ensure consistency between the analysts collecting and coding the data. Special measures included limiting the number of coders to two researchers and having those researchers do blind coding on each other's cases as a check for consistency. Multiple modes for committing offenses could be recorded for victim.

The Commission's supplemental data reveal that offenders in the study sample were most likely to use some type of physical force as the mode of committing the sex offense. More than 37% of offenders used physical force on at least one of their victims (Figure 50). Nearly 15% of offenders threatened at least one victim with violence if he/she did not submit to the offense. More than one-fourth (27%) of offenders used manipulation to commit an offense. Manipulation was coded in the supplemental data if the offender engaged in sexual activity while the victim was impaired, if the offender used some type of deception, trickery or bribery (such as video games or candy), or if the offender threatened to withdraw love and affection. Less than 6% of offenders used coercion. For this study, coercion was defined as forcing the victim to act in a given manner by pressure, non-physical threats, intimidation or domination without physical force. For nearly one-third (30%) of the cases, the offender used a position of authority over a victim to facilitate the offense. This

Figure 50

Mode of Committing Offense in Rape, Forcible Sodomy and Object Penetration Cases



Percentages for the mode of committing offenses sum to more than 100%, since offenders may use more than one mode with a single victim or more than one mode across multiple victims.

mode was recorded if the offender did not use or threaten to use physical force, but the offender was responsible for the health, welfare or supervision of the victim at the time of the offense. Offenses committed through a position of authority typically involved a young child and a step-parent or other relative. A small number of cases (2%) involved a victim participant. For the purposes of this study, victim participant refers to the situation in which the victim, although not of the legal age of consent, appeared to have been an active participant in the offense. Some of these cases may include a dating or romantic relationship in which the offender may or may not be aware of the victim's true age. While the Commission does not imply in any way that children are capable of willing participation in these offenses, this situation is being examined to determine if there differences in sentences based on this, or another, mode of offense. Percentages for the mode of committing offenses sum to more than 100%, since offenders may use more than one mode with a single victim or more than one mode across multiple victims.

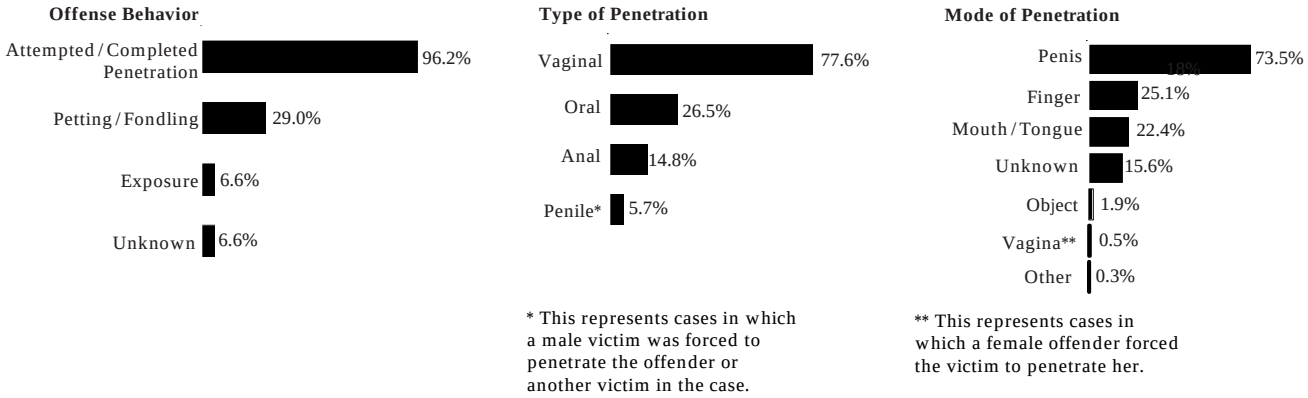
Certain modes of offense seem to be related more strongly to victims within a particular age group. Manipulation, position of authority, and coercion are seen more frequently with victims under the age of 13. On the other hand, physical force and threats of violence were more common with victims that are age 13 or older.

Alcohol and drug use by both the victim and the offender at the time of offense was recorded during the supplemental data collection. In some cases the use of drugs and alcohol by the victim was voluntary and without the aid of the offender and, in some cases, the offender used the alcohol or drugs to entice or manipulate the victim. While more offenders than victims used alcohol and drugs, of the victims that used alcohol, 41% were minors. More than 45% of victims that used drugs were minors, and 66% of victims who used both drugs and alcohol were minors.

Details about the offense are shown in Figure 51. Offense behavior describes the actual physical act that the offender perpetrated on the victim. Offense

Figure 51

Offense Characteristics for Rape, Forcible Sodomy and Object Penetration Cases



* This represents cases in which a male victim was forced to penetrate the offender or another victim in the case.

** This represents cases in which a female offender forced the victim to penetrate her.

behaviors recorded include exposure of offender or victim, petting or fondling, attempted penetration, and penetration. As might be expected in rape cases, at least one victim in over 96% of the cases reported attempted or completed penetration. Because this information was collected for up to three victims per case, having 100% of the cases with penetration is not required. It can be that penetration occurred with the victim from the primary offense and not other victims of crimes in the same sentencing event. The type of penetration was also collected. This factor is designed to reflect the type of penetration that occurred to the victim, so in the case of some male victims, the victim penetrated the offender or another victim. The largest number of victims reported vaginal penetration, followed by oral penetration. The mode of penetration looks at the act that the offender committed upon the victim. Penetration by the offender's penis was the most common mode of penetration reported (53% of the cases). Penetration by the offender's finger or mouth/tongue occurred in 18% and 16% of the cases, respectively.

Cases with adult victims were more likely to involve a single assault (90%) than cases with victims age 13 to 17 (65%) or cases with victims less than 13 (40%). Only 2% to 3% of the cases were associated with multiple assaults within a 24-hour period. On the other hand, cases with minor victims were more likely than cases with adult victims to encompass multiple offenses over a period of time greater than 24 hours. Nearly 57% of cases with victims under the age of 13 occurred over a prolonged period of time versus 35% of cases with victims aged 13 to 17 and 8% of cases with adult victims.

Weapons were not commonly used in rape, forcible sodomy and object penetration cases. Only 5% of offenders used a knife during the offense and only 3% used a gun.

Finally, the Commission looked at the offender's prior record by collecting criminal history records, or "rap" sheets, on each of the offenders included in the supplemental data collection. These data indicate that nearly 8% of the rape, forcible sodomy and object sexual penetration offenders had a prior conviction for a felony sex crime (Figure 52). Approximately 9% had a prior felony conviction for some other type of crime against the person. Overall, data suggest that one-third (32%) of offenders had been convicted previously of a misdemeanor or felony sex crime or other crime against the person.

With the initial supplemental data collection phase of the reanalysis project complete, the supplemental data have been merged with the larger data set and the supplemental data weighted for analysis. Preliminary analysis has begun

on the whole data set. However, because of the small number of cases for some of the offenses in the supplemental data, the Commission is considering a second phase of supplemental data collection. Because all PSIs with an automated offense narrative were utilized for the supplemental data collection conducted thus far, additional data collection will entail obtaining and reviewing hard-copy PSI reports from the Virginia Department of Corrections. If undertaken, this manual data collection would likely not be complete until mid 2003.

Conclusion

The Commission monitors the sentencing guidelines system and, each year, deliberates upon possible modifications to enhance the usefulness of the guidelines as a tool for Virginia's judges in making their sentencing decisions. The Commission studies changes and trends in judicial sentencing patterns in order to pinpoint specific areas in which the guidelines may be out of sync with prevailing judicial thinking.

The comprehensive review of Virginia's sentencing guidelines, initiated this year by the Commission, will include approximately 126,000 truth-in-sentencing decisions made during the five years from FY1997 through FY2001. By examining sentencing practices under the truth-in-sentencing / no-parole system, the reanalysis will provide a more focused picture of Virginia's experiences since the abolition of parole. The Commission's objective is provide circuit court judges with empirically-based guidelines that reflect both historical sentencing decisions and changes in more recent sentencing practices. Because of the comprehensive nature of the Commission's review, the reanalysis work is a multi-year project. During the coming year, the Commission will evaluate preliminary sentencing models and begin to deliberate on possible recommendations for revising Virginia's sentencing guidelines.

Figure 52

Prior Record of Rape, Forcible Sodomy and Object Penetration Offenders*

Prior Record	1 Conviction	2 Convictions	3 or more Convictions
Misdemeanor Sex	5.2%	0.5%	0.3%
Misdemeanor Person	11.2%	4.9%	3.9%
Felony Sex	4.9%	1.9%	0.9%
Felony Person	6.3%	2.5%	0.3%

*For this study, sex crimes are scored separately from other crimes against person

Community Corrections Revocation Data System

Introduction

Although the re-imposition of suspended time is a vital facet in the punishment of offenders, judicial practice in this area has not been thoroughly examined in Virginia. This is largely due to the fact that information on the re-imposition of suspended prison time for felons returned to court for violation of the conditions of community supervision has been, until recently, largely unavailable. Thus, the impact of this aspect of criminal sanctioning has been difficult to assess. To address the void of information is this area, the Commission teamed with the Virginia Department of Corrections (DOC) in 1997 to implement a procedure for systematically gathering data on the reasons for, and the outcome of, community supervision violation proceedings in Virginia's circuit courts. The result was a simple one-page form designed to capture this information, including the re-imposition of suspended time.

The Commission is legislatively mandated under § 17.1-803(7) of the *Code of Virginia* to monitor sentencing practices in felony cases throughout the Commonwealth. The community corrections revocation data system established by the Commission provides an important link in our knowledge of the sanctioning of offenders from initial sentencing through release from community supervision. Among other uses, information on cases involving re-imposition of suspended prison time is critically important to accurately forecast future correctional bed space needs.

The impact of judicial practice when re-imposing suspended time has become even more critical since the abolition of parole in 1995. As a result of sentencing reforms that abolished parole, circuit court judges now handle a wider array of supervision violation cases. Today, judges sanction violations of post-release supervision terms and probation terms following release from incarceration, formerly dealt with by the Parole Board in the form of parole violations. Furthermore, the significant expansion of alternative punishment options means that judges are also dealing with offenders who violate the conditions of these new programs. Analyzing judicial practice in this area provides information crucial for criminal justice policy makers. More than four years of revocation data are now available for analysis. The Commission feels that sufficient data have accumulated to begin to examine the practices of Virginia's circuit court judges when re-imposing suspended for offenders who violate the conditions of supervision in the community. Initial results of preliminary analysis are presented in this chapter.

Background

In early 1997, with assistance from the Department of Corrections, the Commission developed a simple, one-page form to collect critical detail related to community corrections violation hearings conducted in Virginia's circuit courts. Procedures were established for the completion of the forms and submission to the Commission. Department of Corrections probation officers are responsible for completing the top section of the form each time they request a capias or a violation hearing with the circuit court judge responsible for an offender's supervision. The top half of the form contains the offender's identifying information and the reasons the probation officer believes there has been a violation of the conditions of supervision. Anytime an offender is reported to the court for a violation of probation, post-release supervision, a community corrections program, or any suspended sentence, the probation officer attaches the report to the revocation letter or any other document required by the court. In a few jurisdictions, the Commonwealth's Attorney's office has requested that prosecutors actively involved in the initiation of violation hearings also be allowed to complete the top section of the form for the court. The Commission has approved this variation on the normal form completion process.

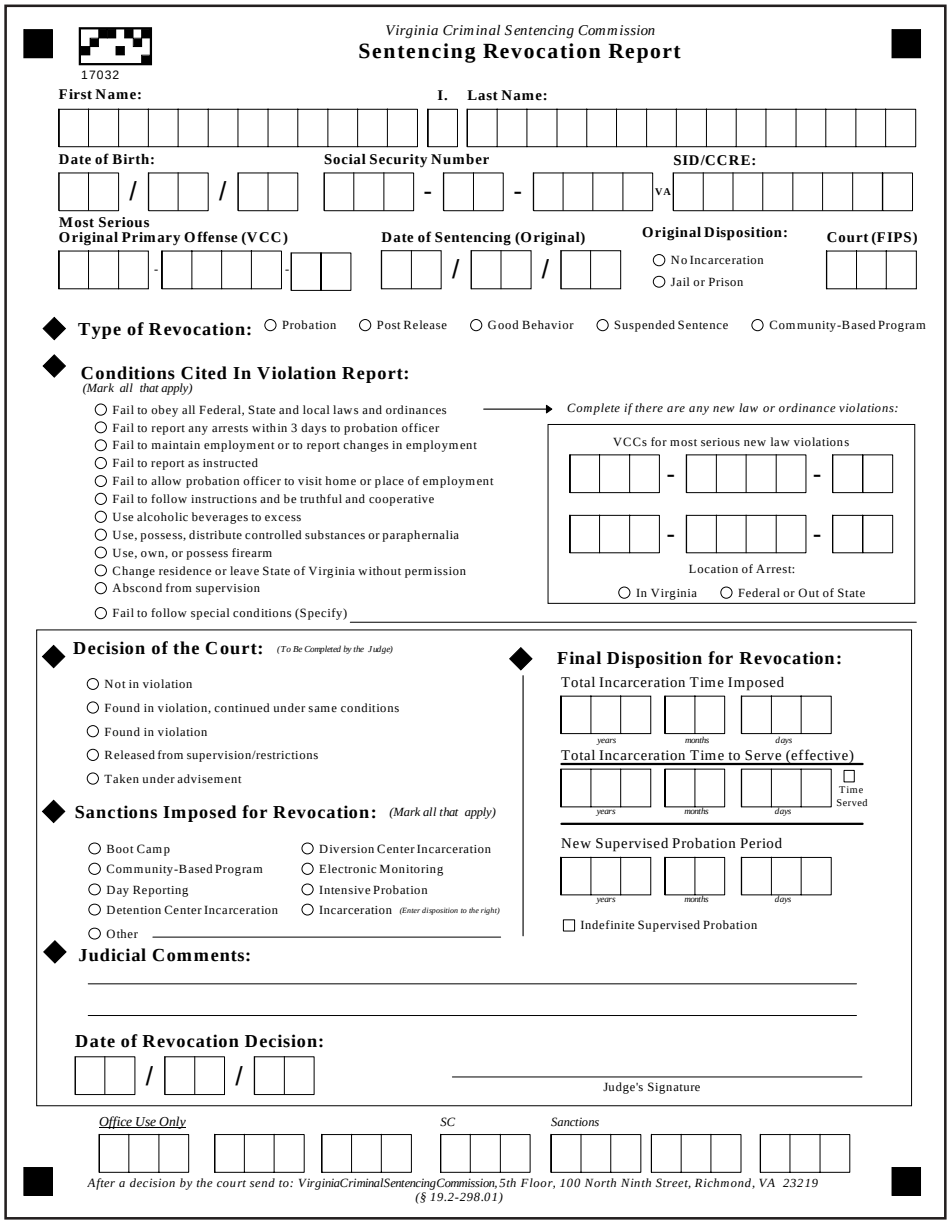
The sentencing revocation form is then submitted to the judge. After the ruling, the judge completes the lower section of the form with the findings in the case and, if the offender is found to be in violation, the specific sanction imposed. The judge completes the form even if the offender's supervision is not formally revoked or if the offender is continued on supervision under the same conditions. The sentencing revocation form also provides a space for the judge to submit any additional comments regarding the decision in the case. The completed form is submitted to the Commission following the violation hearing. The clerk of the circuit court is responsible for sending the completed and signed original form to the Commission.

The Community Corrections Revocation (Sentencing Revocation) Report form is shown in Figure 53. The revocation data collection form was instituted for all violation hearings held on or after July 1, 1997. The Commission now includes training on the sentencing revocation form as part of the standard training provided to new probation officers at the Department of Corrections' Academy for Staff Development.

Analysis

Figure 53

Virginia Criminal Sentencing Commission's Community Corrections Revocation Report



Virginia Criminal Sentencing Commission

Sentencing Revocation Report

17032

First Name: **I.** **Last Name:**

Date of Birth: **Social Security Number** **SID/CCRE:** VA

Most Serious Original Primary Offense (VCC) **Date of Sentencing (Original)** **Original Disposition:** ○ No Incarceration ○ Jail or Prison **Court (FIPS)**

Type of Revocation: ○ Probation ○ Post Release ○ Good Behavior ○ Suspended Sentence ○ Community-Based Program

Conditions Cited In Violation Report:
(Mark all that apply)

- ○ Fail to obey all Federal, State and local laws and ordinances
- ○ Fail to report any arrests within 3 days to probation officer
- ○ Fail to maintain employment or to report changes in employment
- ○ Fail to report as instructed
- ○ Fail to allow probation officer to visit home or place of employment
- ○ Fail to follow instructions and be truthful and cooperative
- ○ Use alcoholic beverages to excess
- ○ Use, possess, distribute controlled substances or paraphernalia
- ○ Use, own, or possess firearm
- ○ Change residence or leave State of Virginia without permission
- ○ Abscond from supervision
- ○ Fail to follow special conditions (Specify) _____

→ *Complete if there are any new law or ordinance violations:*

VCCs for most serious new law violations

Location of Arrest: ○ In Virginia ○ Federal or Out of State

Decision of the Court: *(To Be Completed by the Judge)*

- ○ Not in violation
- ○ Found in violation, continued under same conditions
- ○ Found in violation
- ○ Released from supervision/restrictions
- ○ Taken under advisement

Sanctions Imposed for Revocation: *(Mark all that apply)*

- ○ Boot Camp
- ○ Community-Based Program
- ○ Day Reporting
- ○ Detention Center Incarceration
- ○ Diversion Center Incarceration
- ○ Electronic Monitoring
- ○ Intensive Probation
- ○ Incarceration *(Enter disposition to the right)*
- ○ Other _____

Final Disposition for Revocation:

Total Incarceration Time Imposed (years / months / days)

Total Incarceration Time to Serve (effective) (years / months / days) ☐ Time Served

New Supervised Probation Period (years / months / days)

☐ Indefinite Supervised Probation

Judicial Comments:

_____

_____

Date of Revocation Decision: / /

_____
Judge's Signature

Office Use Only *SC* *Sanctions*

After a decision by the court send to: Virginia Criminal Sentencing Commission, 5th Floor, 100 North Ninth Street, Richmond, VA 23219
(§ 19.2-298.01)

Since its implementation on July 1, 1997, over 25,000 sentencing revocation reports have been received by the Commission. The number of sentencing revocation reports increased from 5,381 in calendar year (CY) 1998 to 8,702 in CY2001 (Figure 54). Between CY2000 and CY2001, the number of forms received by the Commission increased by nearly 35%. In some cases an offender may be under supervision in multiple jurisdictions or for different offenses, so a single violation requires the completion of more than one report.

Any violation of the conditions of probation, post-release supervision, a community corrections program or any suspended sentence may result in a revocation hearing before the judge. During the years CY1997 through CY2001, less than 40% of the revocation hearings were triggered by a new felony or misdemeanor conviction (Figure 3). More than 60% of revocation hearings were associated with violations of the conditions of supervision unrelated to new criminal charges. Violations that do not involve new criminal charges are often referred to as "technical" violations of supervision requirements. Examples of technical violations include: drug use, failure to report, violation of special conditions (such as substance abuse treatment), absconding from supervision, and moving without permission. The frequency of these and other types of technical violations are shown in Figure

Figure 54

Number of Community Corrections Revocations Reports Received 1997-2001

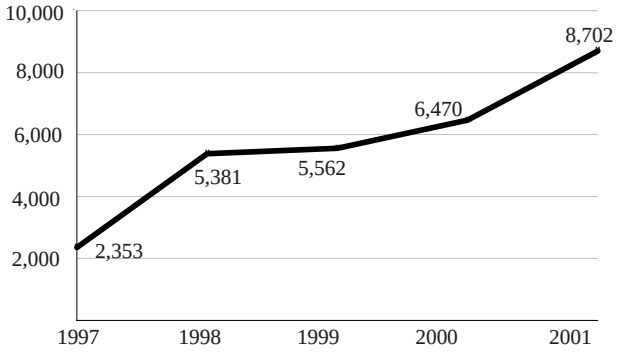
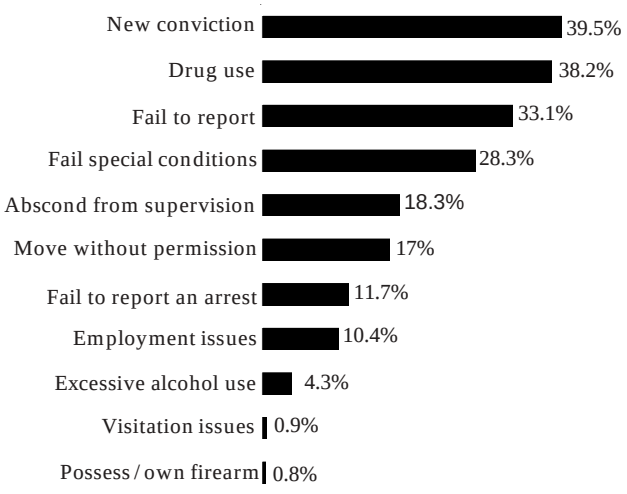


Figure 55

Reason for Revocation Hearing 1997-2001

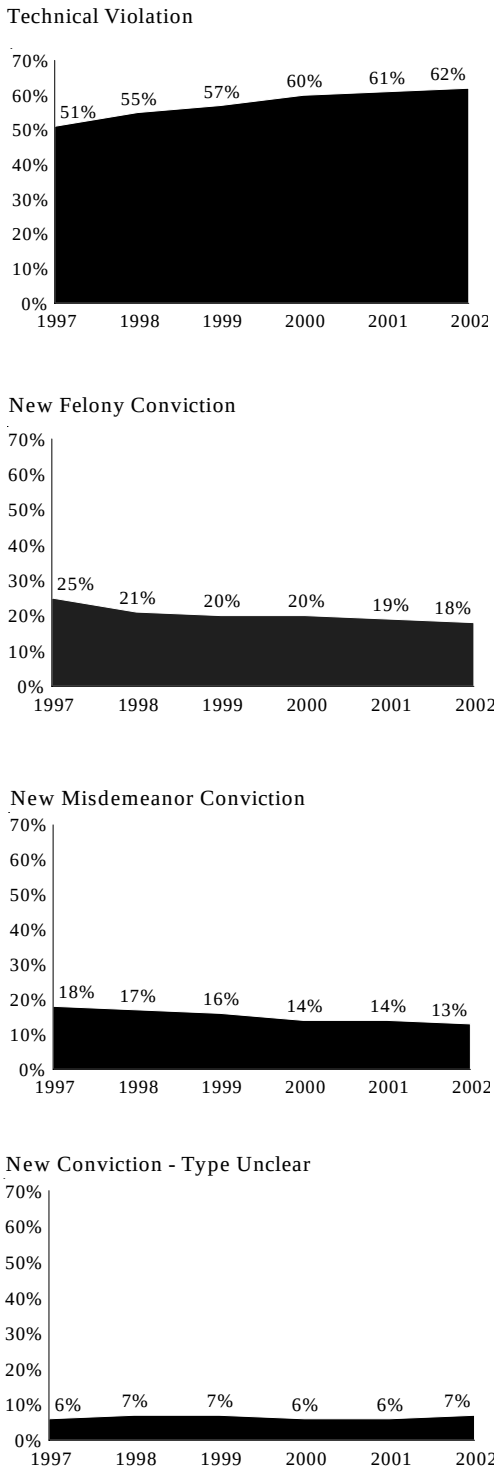


55. Drug use and failing to report are the most frequently cited reasons for revocation hearings that do not involve new criminal charges, reported in 38% and 33% of the cases, respectively. Failing to satisfy special conditions established for the offender's supervision led to 28% of the revocation hearings. The percentages in Figure 3 do not sum to 100% since offenders can violate more than one condition of supervision.

While the rate of revocation hearings not related to new criminal charges has averaged around 60% over the CY1997-2001 period, the rate at which this type of hearing is conducted has increased each year since the data system was established. In CY1998, technical violation hearings represented 55% of all revocation hearings (Figure 56). By CY2001, this figured reached 61%. For the first six and one-half months of CY2002, the rate of technical violation hearings has increased to 62% of all revocation hearings.

Figure 56

Reasons for Revocation Hearings
1997-2001



After ruling in a revocation hearing, the judge completes the lower section of the Commission's form with the findings and the outcome of the case. In a significant portion of violation cases, circuit court judges have re-imposed all or a portion of the original sentence that had been suspended at the offender's initial sentencing hearing. Many probation, post-release and community corrections violators are sentenced to a state-responsible (prison) term of one year or more. From CY1998 to CY2001, the number of revocations resulting in a prison term each year grew from 2,302 to 2,913 (Figure 57). In addition, data for the first six and one-half months of CY2002 suggest that this figure may surpass 3,000 offenders for the current calendar year.

Of the violators sentenced to prison from CY1997 to CY2001, a large number had not been convicted of a new crime. In CY1998, 1,053 revocation hearings based on technical violations of supervision conditions resulted in a prison term for the offender. By 2001, this number had risen to 1,500 (Figure 58). Between CY2000 and CY2001, the number of cases involving technical violators ordered to prison increased by more than 28%. Data for the first six and one-half months of CY2002 suggest that the number will continue to rise for the current calendar year. In each of the last two years (CY2000 and CY2001), technical violation cases with prison sentences have represented over one-half of all violators ordered to serve a prison term.

Because parole has been abolished for offenders who commit felonies on or after July 1, 1995, and a truth-in-sentencing system has been instituted in Virginia, the impact of judicial practice when re-imposing suspended time has become even more critical. As a result of

Figure 57

Number of Community Corrections Revocations (Sentencing Revocations) Resulting in a State-Responsible (Prison) Term
1997-2001

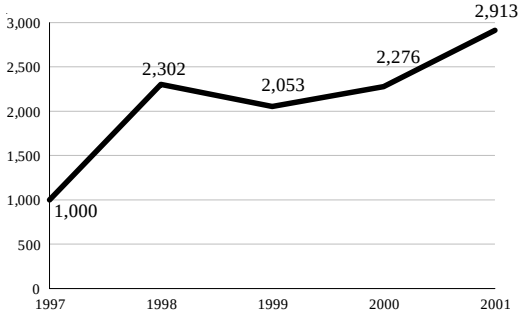
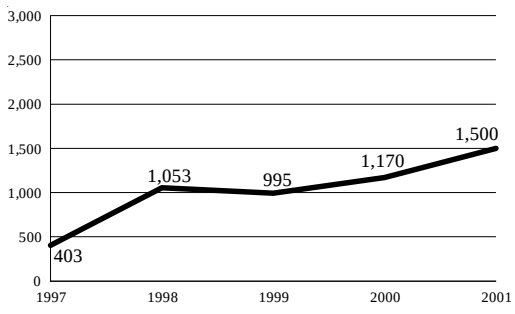


Figure 58

Number of Community Corrections Revocations (Sentencing Revocations) for Technical Violations Resulting in a State-Responsible (Prison) Term
1997-2001

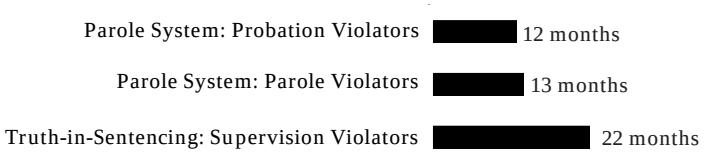


sentencing reforms, circuit court judges now handle a wider array of supervision violation cases, including offenders on probation and post-release supervision who, under the parole system, would have been on parole and subject to revocation and re-incarceration by the Parole Board. In addition, with the significant expansion of alternative sanction options in recent years, judges are dealing with an additional number of offenders who subsequently violate the conditions of those programs. Not only are judges hearing more types of violation cases, sentencing reform has meant that offenders must now serve a significantly larger share of the sentences imposed by Virginia's judges and juries. Offenders subject to truth-in-sentencing provisions by law must serve at least 85% of the effective sentence (imposed sentence less any suspended time) handed down in the court room. In actuality, prison inmates are serving from 90% to 92% of sentences. Prior to 1995, parole and the existing system of good conduct allowances meant that many inmates could be released after serving as little as one-fourth or one-fifth of the sentences handed down in the courtroom. Thus, Virginia's circuit court judges are handling a broader array of offenders who violate conditions of community supervision, and those violators given a prison term must serve a larger share of whatever time is re-imposed.

The Commission's Community Corrections Revocation Data System allows the Commission to examine judicial practice in this area for the first time under truth-in-sentencing. The data reveal that more than 86% of the CY2001 technical violators sentenced to prison were subject to truth-in-sentencing provisions and these offenders had a median expected length of stay of 22 months (Figure 59). This is based on the fact that inmates are serving approximately 90% of the active sentence ordered by the judge. This length-of-stay is nearly double the time-served in prison by technical violators prior to the abolition of parole. Technical probations violators released from prison in fiscal year (FY) 1993 served approximately 12 months for their violations. Technical parole violators released in FY1993 typically served 13 months before being re-released to parole supervision. A large

Figure 59

Time Served by Technical Violators Sentenced to Prison
Parole System v. Truth-in-Sentencing System
1997-2001



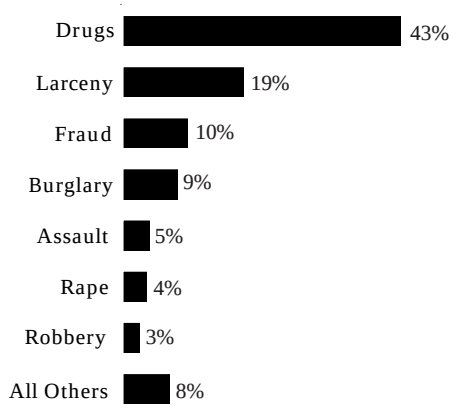
Time served by techincal violators under the parole system is based on offenders released from prison in 1993. Time served under truth-in-sentencing system is based on the expected time to be served for technical violators sentenced under truth-in-sentencing provisions in 2001.

share of technical parole violators were re-released on parole at their first eligibility hearing following their revocation. Thus, offenders who technically violate conditions of community supervision today are serving considerably longer in prison than they did under the parole system.

While the majority of offenders revoked from community supervision had served some period of incarceration in jail or prison following the original sentencing hearing, the vast majority of technical violators had committed non-violent offenses. Of the offenders sentenced in 2001 to prison for supervision violations unrelated to new criminal charges, over 63% had served time in jail or prison when convicted of the offense for which they were now on community supervision. Most technical violators ordered to prison, however, had committed drug or property offenses (Figure 60). Nearly 43% of these cases involved a drug offense.

Figure 60

Technical Revocations Resulting in a State-Responsible (Prison) Sentence, by Type of Original Offense 2001



Approximately 19% were on supervision for a larceny offense, while 10% of these offenders had been convicted of a fraud offense. Less than 12% of these offenders had been originally convicted of an assault, rape (including forcible sodomy and object penetration), or robbery offense.

Continued Study

Although the information provided by the Commission's Community Corrections Revocation (Sentencing Revocation) Report is rich, further analysis is needed to understand fully how the courts are responding to violations of community supervision and release conditions. For example, it is unknown how many times an offender may have committed violations before being referred to the court for a resolution. It may be that some offenders included in this data as having no new law violations, may indeed have new violations in a federal court, another state or another Virginia court. Or, the original court may have decided to revoke and impose a sentence before resolution of the new charge in the other jurisdiction. Over the coming year, the Commission will continue to collect revocation data and to analyze emerging patterns and trends in the sentencing of violation cases in Virginia's circuit courts.

Impact of Truth-in-Sentencing

Introduction

Since the inception of the Virginia's truth-in-sentencing system, the Commission has continually examined the impact of truth-in-sentencing laws on the criminal justice system in the Commonwealth. Legislation passed by the General Assembly in 1994 radically altered the way felons are sentenced and serve incarceration time in Virginia. The practice of discretionary parole release from prison was abolished, and the existing system of awarding inmates sentence credits for good behavior was eliminated. Virginia's truth-in-sentencing laws mandate sentencing guidelines recommendations for violent offenders (those with current or prior convictions for violent crimes) that are significantly longer than the terms violent felons typically served under the parole system, and the laws require felony offenders, once convicted, to serve at least 85% of their incarceration sentences. Since 1995, the Commission has carefully monitored the impact of these dramatic changes on the state's criminal justice system.

Overall, judges have responded to the sentencing guidelines by agreeing with recommendations in nearly four out of every five cases; inmates are serving a larger proportion of their sentences than they did under the parole system; violent offenders are serving longer terms than before the abolition of parole; the inmate population did not grow at the record rate seen prior to the abolition of parole; and judges continue to have numerous sentencing options available. Nearly eight years after the enactment of truth-in-sentencing laws in Virginia, there is substantial evidence that the system is achieving what its designers intended.

Impact on Percentage of Sentence Served for Felonies

The reform legislation that became effective January 1, 1995, was designed to accomplish several goals. One of the goals of the reform was to reduce drastically the gap between the sentence pronounced in the courtroom and the time actually served by a convicted felon in prison. Prior to 1995, extensive good conduct credits combined with the granting of parole resulted in many inmates serving at little as one-fourth of the sentence imposed by a judge or a jury. Today, under the truth-in-sentencing system, parole release has been eliminated and each inmate is required to serve at least 85% of his sentence. The system of earned sentence credits in place since 1995 limits the amount of time a felon can earn off his sentence to 15%.

The Department of Corrections (DOC) policy for the application of earned sentence credits specifies four different rates at which inmates can earn credits: 4½ days for every 30 served (Level 1), three days for every 30 served (Level 2), 1½ days for every 30 served (Level 3) and zero days (Level 4). Inmates are automatically placed in Level 2 upon admission into DOC, and an annual review is performed to determine if the level of earning should be adjusted based on the inmate's conduct and program participation in the preceding 12 months.

Analysis of earned sentenced credits being accrued by inmates sentenced under truth-in-sentencing provisions and confined in Virginia's prisons on December 31, 2001, reveals that the largest share of inmates (39.9%) are earning at Level 2, or three days for every 30 served (Figure 61). Almost as many (38.6%) inmates are earning at the highest level, Level 1, gaining 4½ days for every 30 served. A much smaller proportion of inmates are earning at Levels 3 and 4. Approximately 8% are earning 1½ days for 30 served (Level 3), while 13.3% are earning no sentence credits at all (Level 4). Based on this one-day "snapshot" of the prison population, inmates sentenced under the truth-in-sentencing system are, on average, serving approximately 91% of the sentences imposed in Virginia's courtrooms. The rates of earned sentence credits do not vary significantly across major offense groupings. For instance, larceny and fraud offenders, on average, are earning credits such that they are serving about 91% of their sentences, while inmates convicted of robbery are serving over 91% of their sentences. Inmates incarcerated for drug crimes are serving 90%. The rates at which inmates were earning sentence credits at the end of 2001 closely reflect those recorded at the end of each year since 1998.

Under truth-in-sentencing, with no parole and limited sentence credits, inmates in Virginia's prisons are serving a much larger proportion of their sentences in incarceration than they did under the parole system. For instance, offenders convicted of first-degree murder under the parole system, on average, served less than one-third of the effective sentence (imposed sentence less any suspended time). Offenders given a life sentence who were eligible for parole could

Figure 61

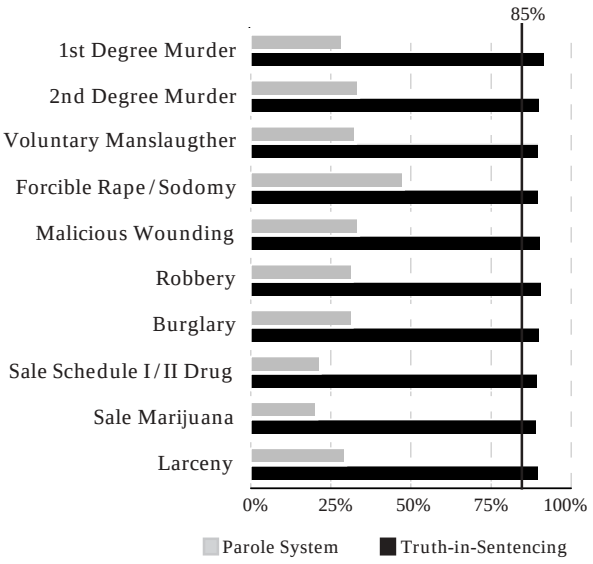
Levels of Earned Sentence Credits among Prison Inmates (December 31, 2001)

Level	Days Earned	Percent
Level 1	4.5 days per 30 served	38.6%
Level 2	3.0 days per 30 served	39.9
Level 3	1.5 days per 30 served	8.3
Level 4	0 days	13.3

become parole eligible after serving between 12 and 15 years. Under the truth-in-sentencing system, first-degree murderers typically are serving 92% of their sentences in prison (Figure 62). A life sentence under truth-in-sentencing requires that an offender remain incarcerated for life unless released conditionally under § 53.1-40.01 after reaching the age of 60 or 65. Robbers, who on average spent less than one-third of their sentences in prison before being released under the parole system, are now serving over 91% of the sentences pronounced in Virginia's courtrooms. Property and drug offenders are also serving a larger share of their prison sentences. Although the average length of stay in prison under the parole system was less than 30% of the sentence, larceny offenders convicted under truth-in-sentencing provisions are serving nearly 91% of their sentences. For selling a Schedule I/II drug like cocaine, offenders typically served only about one-fifth of their sentences when parole was in effect. Under truth-in-sentencing, offenders convicted of selling a Schedule I/II drug, on average, are serving 90% of the sentences handed down by judges and juries in the Commonwealth. The impact of truth-in-sentencing on the percentage of sentence served by prison inmates has been to reduce dramatically the gap between the sentence ordered by the court and the time actually served by a convicted felon in prison.

Figure 62

Average Percent of Sentence Served – Parole System v. Truth-in-Sentencing



Parole system data represents FY 1993 prison releases; truth-in-sentencing data is derived from rate of setnence credits earned among prison inmates on December 31, 2001.

Impact on Incarceration Periods Served by Violent Offenders

Eliminating the practice of discretionary parole release and restructuring the system of sentence credits created a system of truth-in-sentencing in the Commonwealth and diminished the gap between sentence length and time served, but this was not the only goal of sentencing reform. Targeting violent felons for longer prison terms than they had served in the past was also a priority of the designers of the truth-in-sentencing system. The truth-in-sentencing guidelines were carefully crafted with a system of scoring enhancements designed to yield longer sentence recommendations for offenders with current or prior convictions for violent crimes, without increasing the proportion of convicted offenders sentenced to the state's prison system. When the truth-in-sentencing system was implemented in 1995, a prison sentence was defined as any sentence over six months. With scoring enhancements, whenever the truth-in-sentencing guidelines call for an incarceration term exceeding six months, the sentences recommended for violent felons are significantly longer than the time they typically served in prison under the parole system. Offenders convicted of nonviolent crimes with no history of violence are not subject to any scoring enhancements and the initial guidelines recommendations reflect the average incarceration time served by offenders convicted of similar crimes during a period governed by parole laws, prior to the implementation of truth-in-sentencing.

The truth-in-sentencing guidelines were designed to recommend longer sentences for violent offenders without increasing the proportion of felons sentenced to prison, and most judges have responded to the guidelines by sentencing within recommendations at very high rates, particularly in terms of the type of disposition recommended by the guidelines. Overall, since the introduction of truth-in-sentencing, offenders have been sentenced to incarceration in excess of six months slightly less often than recommended by the guidelines. For the most recent five year period, fiscal years 1998 through

2002, the guidelines recommended that 81% of offenders convicted of crimes against the person serve more than six months, while 77% received such a sanction (Figure 63). Forty-four percent of property offenders were recommended for terms over six months and 39% of them were sentenced accordingly. For drug crimes, offenders were recommended for and sentenced to terms exceeding six months in 38% and 33% of the cases, respectively. Many property and drug offenders recommended by the guidelines for more than six months of incarceration in a traditional correctional setting have been placed in state and local alternative sanction programs instead. See *Impact on Alternative Punishment Options* in this chapter for information regarding alternative sanction programs under truth-in-sentencing. Several offenses in the Other category, such as habitual offender and fourth offense of driving while intoxicated, carry mandatory time of one year. This is one reason why 74% of the offenders in this category are recommended for a period of incarceration in excess of six months and 68% actually receive such a sentence. In fiscal year (FY) 2000 third conviction of felony driving while intoxicated offenses were added to sentencing guidelines system, but these offenses carry mandatory time of ten to thirty days. Because of the inclusion of driving while intoxicated-third offense, a smaller percentage of offenders, compared to previous years, are being recommended for a period of incarceration over six months in this other category.

Overall, there is considerable evidence that the truth-in-sentencing system is achieving the goal of longer prison terms for violent offenders. In the vast majority of cases, sentences imposed for violent offenders under truth-in-sentencing provisions are resulting in substantially longer lengths of stay than those seen prior to sentencing reform. In fact, a large number of violent offenders are serving two, three or four times longer under truth-in-sentencing than criminals who committed similar offenses did under the parole system.

The crime of rape illustrates the impact of truth-in-sentencing on prison terms served by violent offenders. Offenders convicted of rape under the parole system were released after serving, typically, five and a half to six and a half years in prison (1988-1992). Having a prior record of violence increased the rapist's median (the middle value, where half of the time

Figure 63

Recommended and Actual Incarceration Rate for Terms Exceeding 6 Months by Offense Type FY1998-FY2002

Type of Offense	Recommended	Actual
Person	81.0%	77.0%
Property	43.7	38.6
Drug	37.4	33.4
Other	74.4	68.0

served values are higher and half are lower) time served by only one year (Figure 64). Under sentencing reform (FY1998-FY2002), rapists with no previous record of violence are being sentenced to terms with a median nearly twice the historical time served.

Virginia's truth-in-sentencing system has had an even larger impact on prison terms for violent offenders who have previous convictions for violent crimes. Offenders with prior convictions for violent felonies receive guidelines recommendations substantially longer than those without a violent prior record, and the size of the increased penalty recommendation is linked to the seriousness of the prior crimes, measured by statutory maximum penalty. The truth-in-sentencing guidelines specify two degrees of violent criminal records. A previous conviction for a violent felony with a maximum penalty of less than 40 years is a Category II prior record, while a past conviction for a violent felony carrying a maximum penalty of 40 years or more is a Category I record.

The crime of rape can also be used to demonstrate the impact of these prior record enhancements. In contrast to the parole system, offenders with a violent prior record will serve substantially longer terms than those without violent priors. Based on the median, rapists with a less serious violent record (Category II) are being given terms to serve of 14 years compared to the seven years they served prior to sentencing reform. For those with a more serious violent prior record (Category I), such as a prior rape, the sentences imposed under truth-in-sentencing are equivalent to time to be served of nearly 32 years, which is more than four times longer than the prison term served by these offenders historically.

The impact of truth-in-sentencing on forcible sodomy cases exhibits a pattern very similar to rape cases. Historically, under the parole system, offenders convicted of forcible sodomy served a median of four and a half to five and a half years in prison, even if they had a prior conviction for a serious violent felony (Figure 65). Recommendations of the truth-in-sentencing guidelines have led to a significant increase in the median time to serve for this crime. Once convicted of forcible sodomy, offenders can expect to serve terms typically ranging from about 9 years, if they have no violent prior convictions, up to a median of 31 years if they have a Category I violent prior record.

Prison Time Served: Parole System v. Truth-in-Sentencing (in years)

This discussion reports values of actual incarceration time served under the parole laws (1988-1992) and expected time to be served under truth-in-sentencing provisions for cases sentenced in FY1998-FY2002. Time served values are represented by the median (the middle value, where half of the time served values are higher and half are lower). Truth-in-sentencing data includes only cases recommended for, and sentenced to, more than six months of incarceration.

Figure 64
Forcible Rape

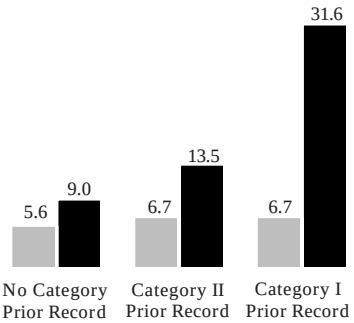
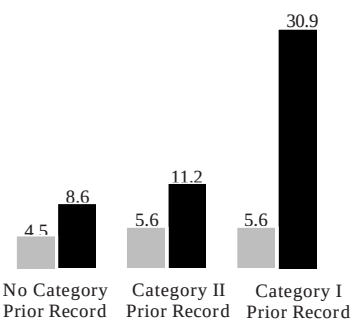


Figure 65
Forcible Sodomy



Sentencing decisions over the past five years for first and second-degree murder illustrates that judges are imposing significantly higher effective sentences, but also that any prior violent offense, either Category I or Category II, results in a significant enhancement. Under the parole system (1988-1992), offenders convicted of first-degree murder who had no prior convictions for violent crimes were released typically after serving twelve and a half years in prison, based on the time-served median. Under the truth-in-sentencing system (FY1998-FY2002), however, first-degree murderers having no prior convictions for violent crimes have been receiving sentences with a median time to serve of 32 years (Figure 66). In these cases, time served in prison has almost tripled under truth-in-sentencing. First-degree murderers with any violent record, Category I or Category II, have been sentenced to a median sentence between 39 and 44 years, compared to the typical sentence of 15 years under the parole system. The median sentence for Category I offenders is lower than for Category II, but it is based on a small number of cases and, for many offenders, a sentence of this magnitude will result in confinement for the remainder of their natural lives.

First degree murder is the only guidelines offense for which it is possible to receive a sentence recommendation of life. For all the other offenses the recommendation is in years and months. For this analysis, a sentence of life was calculated based on the offender's life expectancy as defined by the Center for Disease Control. For example, a 35 year-old offender is expected to live on average another 43.5 years; therefore, a life sentence is calculated as 43.5 years for this individual. A 20 year old is expected to live 57.7 years and life is calculated as such. Under the former parole system an offender sentenced to life was eligible for parole after serving between 12 and 15 years. Under the no-parole system a sentence of life or sentence over 36 years has essentially the same effect – life in prison.

The crime of second-degree murder also provides an example on the impact of Virginia's truth-in-sentencing system on lengthening prison stays for violent offenders. Second-degree murderers historically served five to seven years under the parole system (1988-1992) (Figure 67). With the implementation of truth-in-sentencing (FY1998-FY2002), offenders convicted of second-degree

Figure 66
First-Degree Murder

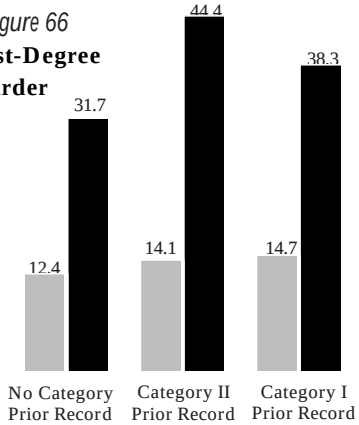
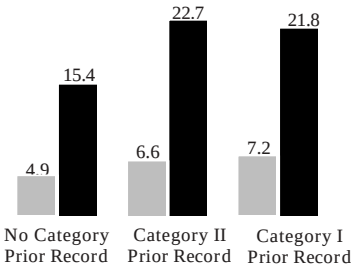


Figure 67
Second-Degree Murder



Category I is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty of 40 years or more.

Category II is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty less than 40 years.

Parole System

Truth-in-Sentencing

murder who have no record of violence have received sentences producing a median time to be served of over 15 years. For second-degree murderers with prior convictions for violent crimes the impact of truth-in-sentencing is even more pronounced. Under truth-in-sentencing, these offenders are serving a median between 22 and 23 years, or at least three times the historical time served. Although the difference between sentences for offenders with Category II versus Category I prior record is small, it is important to note that there are so few offenders with a Category I prior record that the data may be skewed by a handful of extreme cases. In fact, there were 19 offenders with a Category I prior record convicted of second-degree murder in five years.

The impact of truth-in-sentencing is also evident in cases of voluntary manslaughter. For voluntary manslaughter, offenders sentenced to prison typically served two to three years under the parole system (1988-1992), regardless of the nature of their prior record (Figure 68). Persons with no violent prior record convicted of voluntary manslaughter under truth-in-sentencing (FY1998-FY2002) are serving more than twice as long as these offenders served historically. For those who do have previous convictions for violent crimes, median expected lengths of stay have risen to six or nine years under truth-in-sentencing, depending on the seriousness of the offender's prior record. Offenders convicted of voluntary manslaughter today are serving prison terms two to three times longer than those served when parole was in effect.

The tougher penalties specified by the truth-in-sentencing guidelines for offenders convicted of aggravated malicious injury, which results in the permanent injury or impairment of the victim, have yielded substantially longer prison terms for this crime. Offenders convicted of aggravated malicious injury with no prior violent convictions, served, typically, less than four years in prison under the parole system (1988-1992), but sentencing reform (FY1998-FY2002) has resulted in a median term of nine years for these offenders (Figure 69). Likewise, the median length of stay for a conviction

Prison Time Served: Parole System v. Truth-in-Sentencing (in years)

This discussion reports values of actual incarceration time served under the parole laws (1988-1992) and expected time to be served under truth-in-sentencing provisions for cases sentenced in FY1998-FY2002. Time served values are represented by the median (the middle value, where half of the time served values are higher and half are lower). Truth-in-sentencing data includes only cases recommended for, and sentenced to, more than six months of incarceration.

Figure 68
Voluntary Manslaughter

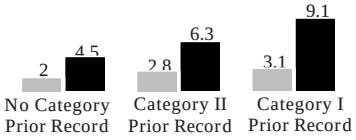
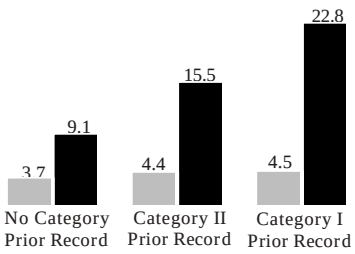


Figure 69
Aggravated Malicious Injury



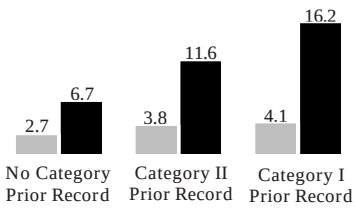
of aggravated malicious injury when an offender has a violent prior record has increased from four and a half years to 16 years for offenders with a Category II record and to 23 years when a Category I record is present.

Sentencing in malicious injury cases demonstrates a similar pattern (Figure 70). Sentencing reform has more than doubled time served for those convicted of malicious injury who have no prior violent record or a less serious violent record (Category II), and almost tripled time served for those with the most serious violent record (Category I).

An examination of prison terms for offenders convicted of robbery in a residence reveals considerably longer lengths of stay after sentencing reform. Robbers who committed their crimes with firearms, but who had no previous record of violence, typically spent less than three years in prison under the parole system (Figure 71). Even robbers with the most serious type of violent prior record (Category I) only served a little more than four years in prison, based on the median, prior to the sentencing reform and the introduction of the truth-in-sentencing guidelines. Today, however, offenders who commit robbery with a firearm are receiving prison terms that will result in a median time to serve of nearly seven years, even in cases in which the offender has no prior violent convictions. This is more than double the typical time served by these offenders under the parole system. For robbers with the more serious violent prior record (Category I), such as a prior conviction for robbery, the expected time served in prison is now 16 years, or four times the historical time served for offenders fitting this profile.

Figure 70
Malicious Injury

Figure 71
Robbery with Firearm



Category I is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty of 40 years or more.

Category II is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty less than 40 years.

Parole System

Truth-in-Sentencing

Lengths of stay for the crime of aggravated sexual battery have also increased as the result of sentencing reform. Aggravated sexual battery convictions under the parole system (1988-1992) yielded typical prison stays of one to two years (Figure 72). In contrast, sentences handed down under truth-in-sentencing (FY1998-FY2002) are producing a median time to serve ranging from almost three years for offenders never before convicted of a violent crime, to over five years for batterers who have committed violent felonies in the past. In aggravated sexual battery cases, time served has more than doubled under truth-in-sentencing.

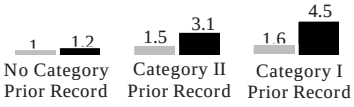
The truth-in-sentencing guidelines were formulated to target violent offenders for incarceration terms longer than those served under the parole system. The designers of sentencing reform defined a violent offender not just in terms of the current offense for which the person has been convicted but in terms of the offender's entire criminal history. Any offender with a current or prior conviction for a violent felony is subject to enhanced penalty recommendations under the truth-in-sentencing guidelines. Only offenders who have never been convicted of a violent crime are recommended by the guidelines to serve terms equivalent to the average time served historically by similar offenders prior to the abolition of parole. Sentencing reform and the truth-in-sentencing guidelines have been successful in increasing terms for violent felons, including offenders whose current offense is nonviolent but who have a prior record of criminal violence. For example, for the sale of a Schedule I/II drug such as cocaine, the truth-in-sentencing guidelines recommend an incarceration term of one year (the midpoint of the recommended range) in the absence of a violent record, the same as what offenders convicted of this offense served on average prior to sentencing reform (1988-1992). In the truth-in-sentencing period (FY1998-FY2002), these drug offenders, in fact, are serving a median of one year (Figure 73). The sentencing recommendations increase dramatically, however, if the offender has a violent criminal background. Although drug sellers with violent criminal histories typically served only a year and a half under the parole system, the truth-in-sentencing guidelines recommend sentences that are producing prison stays of three to four and a half years (at the median), depending on the seriousness of prior record. Offenders convicted of selling a Schedule I/II drug who have a history of violence are

Prison Time Served: Parole System v. Truth-in-Sentencing (in years)

This discussion reports values of actual incarceration time served under the parole laws (1988-1992) and expected time to be served under truth-in-sentencing provisions for cases sentenced in FY1998-FY2002. Time served values are represented by the median (the middle value, where half of the time served values are higher and half are lower). Truth-in-sentencing data includes only cases recommended for, and sentenced to, more than six months of incarceration.

Figure 72
Aggravated Sexual Battery

Figure 73
Sale of a Schedule I/II Drug



serving two to three times longer under truth-in-sentencing than they did under the parole system.

In most cases of the sale of marijuana (more than ½ ounce and less than five pounds), the sentencing guidelines do not recommend incarceration over six months, particularly if the offender has a minimal prior record. Judges typically utilize sentencing options other than prison when sanctioning these offenders, reserving prison for those believed to be least amenable to alternative punishment programs. Under truth-in-sentencing, offenders convicted of selling marijuana who receive sentences in excess of six months (the definition of a prison sentence when the guidelines were implemented in 1995), despite having a nonviolent criminal record, have been given terms which, at the median, more than double historical time served during the parole era (Figure 74). For offenders who sold marijuana and have a prior violent record, the truth-in-sentencing guidelines have resulted in an increase in the time to be served. When sellers of marijuana have the most serious violent criminal history (Category I), judges have responded by handing down sentences which will yield a median prison term of over two years.

Similarly, in grand larceny cases, the sentencing guidelines do not recommend a sanction of incarceration over six months unless the offender has a fairly lengthy criminal history. When the guidelines recommend such a term and the judge chooses to impose such a sanction, grand larceny offenders with no violent prior record are being sentenced to a median term of just over one year (Figure 75). Offenders whose current offense is grand larceny but who have a prior record with a less serious violent crime (Category II) are serving twice as long after sentencing reform, with terms increasing from just under a year to just under two years. Their counterparts with the more serious violent prior records (Category I) are now serving terms of more than two-years instead of the one-year they had in the past.

The impact of Virginia's truth-in-sentencing system on the incarceration periods of violent offenders has been significant. The truth-in-sentencing data presented in this section provide evidence that the sentences imposed on violent offenders after sentencing reform are producing lengths of stay dramatically longer than those seen historically. Moreover, in contrast to the parole system, offenders with the most

Figure 74
Sale of Marijuana (more than ½ oz. and less than 5 lbs.)

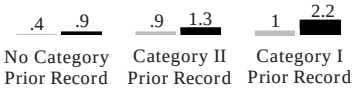
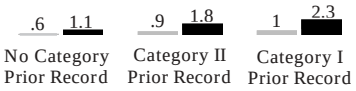


Figure 75
Grand Larceny



Category I is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty of 40 years or more.

Category II is defined as any prior conviction or juvenile adjudication for a violent crime with a statutory maximum penalty less than 40 years.

Parole System

Truth-in-Sentencing

violent criminal records will be incarcerated much longer than those with less serious criminal histories.

Impact on Projected Prison Bed Space Needs

During the development of sentencing reform legislation, much consideration was given as to how to balance the goals of truth-in-sentencing and longer incarceration terms for violent offenders with demand for expensive correctional resources. Under the truth-in-sentencing system, the sentencing guidelines recommend prison terms for violent offenders that are up to six times longer than those served prior to sentencing reform, while recommendations for nonviolent offenders are roughly equivalent to the time actually served by nonviolent offenders under the parole system. Moreover, the truth-in-sentencing guidelines were formulated to preserve the proportions and types of offenders sentenced to prison. At the same time, reform legislation established a network of local and state-run community corrections programs for nonviolent offenders. In other words, reform measures were carefully crafted with consideration of Virginia's current and planned prison capacity and with an eye towards using that capacity to house the state's most violent felons.

Truth-in-sentencing is expected to have an impact on the composition of Virginia's prison (i.e., state responsible) inmate population. Because violent offenders are serving significantly longer terms under truth-in-sentencing provisions than under the parole system and time served by nonviolent offenders has been held relatively constant, the proportion of the prison population composed of violent offenders relative to nonviolent offenders should increase over time. Violent offenders will remain in the state's prisons due to longer lengths of stay, while nonviolent offenders will continue to be released after serving approximately the same terms of incarceration as they did in the past. Over the next decade, the percentage of Virginia's prison population defined as violent, that is, the proportion of offenders with a current or previous conviction for a violent felony, likely will continue to grow.

Sentencing reform and the abolition of parole did not have the dramatic impact on the prison population that some critics had once feared when the reforms were first enacted. Despite double-digit increases in the inmate population in the late 1980s and early 1990s, the number of state prisoners grew at a slower rate beginning in 1996. Some critics of sentencing reform had been concerned that significantly longer prison terms for violent offenders, a major component of sentencing reform, might result in tremendous increases in the state's inmate population. Although violent offenders are serving much longer terms as the result of truth-in-sentencing reform, the prison population growth was less than expected in the years following sentencing reform. An unanticipated increase in the number of new commitments to the Department of Corrections in 2001 has resulted in a forecast with a higher projected annual growth rate for the inmate population than forecasts produced in recent years. The forecast for state prisoners developed in 2002 projects average annual growth of 2.5% over the next five years (Figure 76).

Impact on Alternative Punishment Options

When the truth-in-sentencing system was created, the General Assembly established a two level community-based corrections system. Reform legislation created a network of local and state-run community corrections programs for nonviolent offenders. This system was implemented to provide judges with additional sentencing options as alternatives to traditional incarceration for nonviolent offenders, enabling them to reserve costly correctional institution beds for the state's violent offenders. Although the Commonwealth already operated some community corrections

Figure 76

Historical and Projected State Responsible (Prison) Population 1993-2007

	Date*	Inmates	Percent Change
Historical	1993	20,760	
	1994	23,648	13.9%
	1995	27,364	15.7
	1996	28,743	5.0
	1997	28,743	0.0
	1998	29,043	1.0
	1999	30,862	6.1
	2000	31,649	2.7
	2001	33,109	4.6
	2002	34,918	5.5
Projected	2003	35,760	2.4
	2004	36,736	2.7
	2005	37,546	2.2
	2006	38,420	2.3
	2007	39,450	2.7
Average Projected	2003-07		2.5

* June each year

June 1996 and June 1997 actual prison population levels were identical, according to the Virginia Department of Corrections

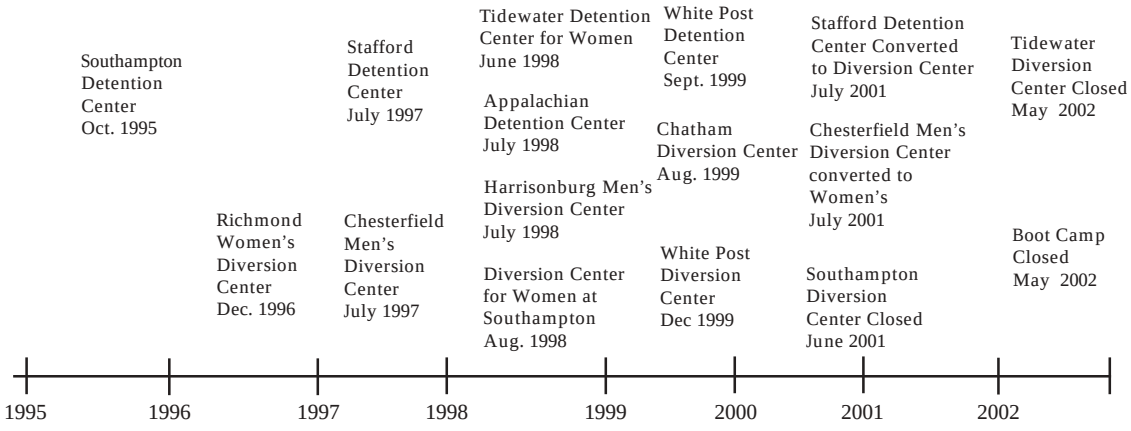
programs at the time truth-in-sentencing laws were enacted, a more comprehensive system was enabled through this legislation.

As part of the state community-based corrections network, two new cornerstone programs, the Diversion Center Incarceration program and the Detention Center Incarceration program, were authorized. The new programs, while they involve confinement, differ from traditional incarceration in jail or prison; they include more structured services designed to address problems associated with recidivism. These centers involve highly structured, short-term incarceration for felons deemed suitable by the courts and Department of Corrections. Offenders accepted in these programs are considered probationers while participating in the program, and the sentencing judge retains authority over the offender should he fail the conditions of the program or subsequent community supervision requirements. The Detention Center program features military-style management and supervision, physical labor in organized public works projects and such services as remedial education and substance abuse services. The Diversion Center program emphasizes assistance to the offender in securing and maintaining employment while also providing education and substance abuse services. In the more than seven years since the new sentencing system became effective, the Department of Corrections (DOC) has gradually established Detention and Diversion Centers around the state as part of the community-based corrections system for state-responsible offenders. As of July 2002, DOC is operating four Detention Centers and six Diversion Centers throughout the Commonwealth (Figure 77). Given current bed space, Detention Centers collectively held 1,213 felony offenders in FY2002, while Diversion programs admitted 1,485 felons over the course of a year.

On June 30, 2002, 898 probationers were in the Detention Center and Diversion Center programs, compared to around 1045 offenders on the same date in 2001 and 1,071 offenders in June of 2000. The Diversion Center programs have been

Figure 77

Detention Centers and Diversion Centers 1995 - 2002



operating at full capacity while the Detention Center programs are functioning at near full capacity. In September of this year, 80 offenders had been accepted into one of these programs and were on waiting lists until openings become available.

In addition to the alternative incarceration programs described above, the DOC operates a host of non-incarceration programs as part of its community-based corrections system. Programs such as regular and intensive probation supervision, home electronic monitoring, day reporting centers, and adult residential centers are an integral part of the system. Regular probation services have been available since the 1940s; intensive supervision, characterized by smaller caseloads and closer monitoring of offenders, was pilot tested in the mid 1980s. Intensive supervision is now an alternative in most of the state's 42 probation districts. Home electronic monitoring, piloted in 1990-1992, is now available in all probation districts, and is used in conjunction with intensive and conventional supervision. In addition, the DOC currently operates ten day reporting centers and day reporting programs. With current capacity, day reporting programs can supervise up to 1,640 felons over the course of a year. These centers feature daily offender contact and monitoring as well as structured services, such as educational and life skills training programs. Offenders report each day to the center and are directed to any combination of education or treatment programs, to a community center work project, or a job. Day reporting centers are considered a more viable option in urban rather than rural areas because offenders must have transportation to the center. In addition to day reporting centers DOC also contracts with private residential centers around the state for inmates transitioning back to the community, which together can serve 362 offenders a year.

The capacity for many of the community corrections programs may be limited by significant budget reductions required in FY 2002. These reductions will continue at least through the next biennium. Prior to July 1, 2002, vacant positions were frozen and two facilities, Southampton Intensive Treatment Center (Boot Camp) and Tidewater Detention Center for Women, were closed. Included in the frozen positions are 50 vacant probation and parole and surveillance staff positions that account for 8% of the offender supervision staff. The future of the Day Reporting Centers remains uncertain; currently these programs are functioning through a shift of funds from the Adult Residential Center programs. The Diversion Centers have to generate a portion of their operating budget from offender room and board charges which were previously used to enhance programming. In addition, substance

abuse and sex offender treatment funds have been reduced and several programs eliminated. While many of the community-based correction programs created by the General Assembly in 1994 are functioning, the future availability and the scope of these programs are subject to change due to budget realities.

Local community-based corrections programs that were an integral part of reform legislation may also be impacted by the state's budget reductions. In 1994, the General Assembly created the Comprehensive Community Corrections Act for Local-Responsible Offenders (CCCA) and the Pre-Trial Services Act (PSA). These two acts gave localities authority to provide supervision and services for defendants awaiting trial and for offenders convicted of low-level felonies (Class 5 and Class 6) or misdemeanors that carry jail time. In order to participate, localities were required, by legislative mandate, to create Community Criminal Justice Boards (CCJBs) comprised of representatives of the courts (circuit court, general district court and juvenile and domestic relations court), the Commonwealth's Attorney's office, the police department, the sheriff's and magistrate's offices, the education system, the Department of Mental Health, Mental Retardation and Substance Abuse Services, and other organizations. The CCJBs oversee the local CCCA and PSA programs, facilitate exchange among criminal justice agencies and serve as an important local policy board for criminal justice matters. The Virginia Department of Criminal Justice Services provides technical assistance, coordinating services and, often, grants funding for local CCCA and PSA programs. The availability of funds through the state may impact the expansion or continuation of programs created by the Local Community Corrections Act and the Pre-Trial Services Act.

Summary

In the eighth year of Virginia's comprehensive felony sentencing reform legislation, the overhaul of the felony sanctioning system continues to be a success. Offenders are serving approximately 91% of incarceration time imposed, with violent felons serving significantly longer periods of incarceration than those historically served. At the same time, Virginia's prison population did not continue to grow at the double-digit rates seen prior to sentencing reform. Part of the reduction in prison growth was due to the funding of intermediate punishment/treatment programs at a level to handle increasing number of felons. Recent budget reductions, however, may affect the availability and the scope of these programs. Nonetheless, nearly eight years after the enactment of the sentencing reform legislation in Virginia, there is substantial evidence that the system is continuing to achieve what its designers contemplated.

Recommendations of the Commission

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, the changes recommended by the Commission become effective on the following July 1.

The Commission draws on several sources of information to guide its discussions about modifications to the guidelines system. Commission staff met 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 "hot line" phone system staffed Monday through Friday, to assist users with any questions or concerns regarding the preparation of the guidelines. While the hot line 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, often, these sessions provide information useful to the Commission. Finally, the Commission closely examines compliance with the guidelines and departure patterns in order to pinpoint specific areas where the guidelines may be out of sync with judicial thinking. The opinions of the judiciary, as expressed in the reasons they write for departing from guidelines, are very important in directing the Commission to those areas of most concern to judges.

This year, the Commission embarked on a comprehensive review of the sentencing guidelines for each covered offense. The Commission is confident that a full five years of data for felons sentenced under truth-in-sentencing is available for analysis. The Commission's analysis will encompass approximately 124,000 truth-in-sentencing decisions made during the five years from FY1997 through FY2001. Since it is not possible to perform a comprehensive analysis of, or for the Commission to review, all the guidelines offense groups in a single year, the Commission's review will be a multi-year project.

With a multi-year study not yet complete, the Commission did not adopt a recommendation in 2002 for revising the current sentencing guidelines. However, a recommendation designed to provide the Commission with improved data access was endorsed. This recommendation is described in detail on the following page.

Recommendation

Modify § 19.2-390.1 of the *Code of Virginia* to allow the Virginia Criminal Sentencing Commission to receive data from the Sex Offender and Crimes Against Minors Registry in an electronic format upon request.

Issue

Currently, § 19.2-390.1 precludes the Department of State Police from disclosing information in the Registry except under specific circumstances for the administration of criminal justice, screening current or prospective employees, or for public safety.

Discussion

The Commission is required under § 30-19.1:4 to prepare fiscal impact statements for proposed legislation that 1) adds new crimes for which imprisonment or commitment is authorized, 2) increases the periods of imprisonment or commitment authorized for existing crimes, or 3) imposes minimum or mandatory terms of imprisonment or commitment. In recent sessions, members of the General Assembly have introduced bills that would either (a) increase the number of persons who would need to register with the Sex Offender and Crimes Against Minors Registry or (b) would change the reporting status of some offenders already reporting to the Registry to a "sexually violent offender." Information from the Registry would greatly assist the Commission's ability to assess the fiscal impact of bills affecting offenders who need to register or whose registry status would change. Under current *Code*, § 19.2-390.1 does not expressly allow release of this data to the Commission in an electronic format. However, such access would permit the Commission to perform timely analysis of proposed legislation.

The Commission recommends that § 19.2-390.1 be amended to allow the Commission to receive this data from the Department of State Police, upon request, in an electronic format. Due to the nature of the Registry data, the Commission shall ensure the data is used for research, evaluative or statistical purposes only and shall ensure the confidentiality and security of the data.

Discussions with the Department of State Police indicate that they are not opposed to providing the Commission with Registry data and that no additional funding would be necessary to complete the required computer programming to transfer the data in a electronic format.

Appendices

Appendix 1 Judicial Reasons for Departure from Sentencing Guidelines
Property, Drug and Miscellaneous Offenses

Reasons for MITIGATION	Burg. of Dwelling	Burg. Other Structure	Sch. I/II Drugs	Other Drugs	Fraud	Larceny	Misc	Traffic
No reason given	17.8%	18.6%	30.8%	33.3%	25.5%	36.7%	36.4%	43.8%
Minimal property or monetary loss	0.0	2.9	0.0	0.0	1.8	2.5	2.3	0.0
Minimal circumstances / facts of the case	3.8	0.0	3.1	0.0	5.1	3.6	15.9	8.5
Offender not the leader	3.2	2.9	1.1	0.0	1.1	0.3	0.0	0.0
Small amount of drugs involved in the case	0.0	0.0	3.2	0.0	0.2	0.0	0.0	0.0
Offender and victims are relatives / friends	1.3	1.4	0.0	0.0	2.3	0.6	0.0	0.0
Little or no injury / offender did not intend to harm; victim requested lenient sentence	1.9	2.9	0.1	0.0	2.3	1.1	2.3	2.3
Victim was a willing participant	0.6	0.0	0.0	0.0	0.2	0.3	0.0	0.0
Offender has no prior record	0.6	0.0	1.7	1.8	1.8	0.3	0.0	0.8
Offender has minimal prior record	3.8	1.4	1.4	1.8	3.7	0.6	2.3	2.3
Offender's criminal record overstates his degree of criminal orientation	0.6	2.9	2.5	0.0	0.7	1.7	0.0	3.1
Offender cooperated with authorities	15.3	14.3	11.2	15.8	8.3	5.2	4.5	2.3
Offender is mentally or physically impaired	1.9	4.3	3.4	0.0	5.5	4.4	0.0	3.1
Offender has emotional or psychiatric problems	1.3	0.0	0.5	1.8	1.1	0.8	0.0	0.0
Offender has drug or alcohol problems	0.6	1.4	0.9	0.0	0.9	0.8	0.0	0.0
Offender needs counseling	0.0	2.9	2.1	0.0	1.6	2.2	0.0	0.0
Offender has good potential for rehabilitation	13.4	10.0	10.1	15.8	24.1	12.7	6.8	9.2
Offender shows remorse	0.6	0.0	0.7	0.0	1.1	0.8	0.0	0.0
Age of Offender	7.0	1.4	2.0	1.8	0.9	1.1	2.3	0.0
Jury sentence	1.3	0.0	0.2	0.0	0.0	1.1	2.3	0.8
Multiple charges are being treated as one criminal event	0.0	1.4	0.1	1.8	1.1	0.0	0.0	0.0
Sentence recommend by Comm. Atty or probation officer	1.9	4.3	3.0	5.3	4.6	2.2	0.0	3.8
Weak evidence or weak case	4.5	5.7	3.6	5.3	3.4	6.3	9.1	0.8
Plea agreement	4.5	2.9	8.8	10.5	6.7	12.1	11.4	10.0
Sentencing Consistency with co-defendant or with similar cases in the jurisdiction	3.8	1.4	0.1	1.8	0.5	0.3	0.0	0.0
Time served	2.5	1.4	1.4	1.8	3.0	1.7	2.3	0.0
Offender already sentenced by another court or in previous proceeding for other offenses	3.2	2.9	1.5	3.5	3.7	1.7	6.8	0.8
Offender will likely have his probation revoked	3.2	2.9	1.4	0.0	0.0	0.8	0.0	0.0
Offender is sentenced to an alternative punishment	22.3	15.7	18.3	10.5	8.3	8.8	4.5	12.3
Attempt, not a completed act	0.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Guidelines recommendation is too harsh	2.5	7.1	1.2	1.8	5.7	2.8	0.0	3.1
Judge rounded guidelines minimum to nearest whole year	1.3	7.1	0.6	0.0	0.5	0.0	2.3	0.0
Other mitigating factors	1.9	2.9	1.7	1.8	1.8	1.1	0.0	0.8

Note: Percentages indicate the percent of mitigation (or aggravation) cases in which the judge cite a particular reason for the mitigation (or aggravation) departure. The percentages will not add to 100% since more than one departure reason may be cited in each case.

Appendix 1 *Judicial Reasons for Departure from Sentencing Guidelines*
Property, Drug and Miscellaneous Offenses

Reasons for AGGRAVATION	Burg. of Dwelling	Burg. Other Structure	Sch. I/II Drugs	Other Drugs	Fraud	Larceny	Misc	Traffic
No reason given	21.2%	15.3%	31.5%	25.0%	26.4%	30.2%	25.6%	33.5%
Extreme property or monetary loss	2.0	3.4	0.0	0.0	9.7	7.4	1.2	1.1
The offense involved a high degree of planning	4.0	1.7	0.0	0.0	9.7	3.1	3.7	0.0
Aggravating circumstances / flagrancy of offense	30.3	13.6	4.2	11.5	11.1	7.4	12.2	9.5
Offender used a weapon in commission of the offense	2.0	0.0	0.5	1.0	0.0	1.0	0.0	0.0
Offender was the leader	0.0	1.7	0.0	0.0	0.0	0.5	0.0	0.0
Offender's true offense behavior was more serious than offenses at conviction	3.0	6.8	7.6	6.7	0.7	3.3	3.7	1.7
Extraordinary amount of drugs or purity of drugs involved	0.0	0.0	2.9	9.6	0.0	0.0	0.0	0.0
Aggravating circumstances relating to sale of drugs	0.0	0.0	0.7	6.7	0.0	0.0	0.0	0.0
Offender immersed in drug culture	0.0	1.7	1.2	1.0	0.0	0.0	0.0	0.0
Offender is related to or is the caretaker of the victim	0.0	0.0	0.0	0.0	0.7	0.3	0.0	0.0
Victim vulnerability	1.0	0.0	0.0	0.0	1.4	0.3	11.0	0.0
Victim request	2.0	0.0	0.5	0.0	0.0	1.8	8.5	6.7
Victim injury	4.0	0.0	0.5	0.0	0.0	0.8	6.1	1.7
Previous punishment of offender has been ineffective	2.0	8.5	3.1	3.8	1.4	4.9	2.4	2.2
Offender was under legal restraint at time of offense	0.0	1.7	4.2	1.9	0.0	2.3	0.0	2.2
Offender has a serious juvenile record	0.0	0.0	0.0	1.0	0.0	0.3	0.0	0.0
Offender's criminal record understates the degree of his criminal orientation	5.1	6.8	2.1	6.7	4.9	5.1	1.2	4.5
Offender has previous conviction(s) or other charges for the same type of offense	5.1	6.8	6.0	13.5	12.5	7.7	1.2	25.1
New crime committed after current offense	1.0	1.7	2.3	3.8	1.4	1.3	1.2	0.6
Offender failed to cooperate with authorities	1.0	5.1	2.4	1.9	2.8	4.6	3.7	7.8
Offender has drug or alcohol problems	3.0	3.4	3.1	1.9	1.4	1.0	1.2	6.1
Offender has poor rehabilitation potential	7.1	5.1	3.9	4.8	6.3	7.4	1.2	3.9
Offender shows no remorse	1.0	0.0	0.8	1.0	2.8	3.1	3.7	0.0
Age of offender	0.0	0.0	0.3	0.0	0.0	0.0	0.0	0.6
Jury sentence	5.1	0.0	3.4	0.0	3.5	2.8	6.1	4.5
Sentence recommend by Comm. Atty. or probation officer	1.0	0.0	0.5	1.0	0.0	0.3	0.0	0.0
Plea agreement	8.1	11.9	14.0	4.8	4.2	7.4	15.9	2.2
Community sentiment	2.0	0.0	1.5	2.9	0.0	0.8	0.0	0.0
Sentencing consistency w / codefendant or w / other similar cases	1.0	1.7	0.2	0.0	0.0	0.5	0.0	0.0
Judge wanted to teach offender a lesson	1.0	1.7	0.2	0.0	0.7	0.3	0.0	0.0
Offender is sentenced to an alt. punishment to incarceration	7.1	6.8	4.2	1.9	4.2	2.6	2.4	0.0
Guidelines recommendation is too low	7.1	10.2	7.6	11.5	11.1	7.7	7.3	6.7
Mandatory minimum penalty is required in the case	3.0	3.4	2.8	1.9	0.7	1.0	4.9	0.0
Judge rounded guidelines minimum to nearest whole year	0.0	0.0	0.7	0.0	0.7	1.3	0.0	1.1
Other reason for aggravation	0.0	1.7	2.1	0.0	1.4	1.3	2.4	0.6

Note: Percentages indicate the percent of mitigation (or aggravation) cases in which the judge cite a particular reason for the mitigation (or aggravation) departure. The percentages will not add to 100% since more than one departure reason may be cited in each case.

Appendix 2 — Judicial Reasons for Departure from Sentencing Guidelines

Offenses Against the Person

Reasons for MITIGATION	Assault	Homicide	Kidnapping	Robbery	Rape	Sexual Assault
No reason given	16.6%	25.5%	12.5%	16.2%	17.4%	18.1%
Minimal property or monetary loss	0.0	0.0	0.0	0.9	0.0	0.0
Minimal circumstances / facts of the case	5.9	4.3	0.0	4.5	7.2	2.4
Offender was not the leader or active participant in offense	3.6	4.3	6.3	7.2	0.0	0.0
Offender and victim are related or friends	2.4	4.3	0.0	0.0	1.4	1.2
Little or no victim injury / offender did not intend to harm; victim requested lenient sentence	11.8	4.3	18.8	3.6	7.2	7.2
Victim was a willing participant or provoked the offense	3.6	2.1	0.0	0.0	5.8	2.4
Offender has no prior record	3.0	0.0	0.0	2.7	2.9	2.4
Offender has minimal prior criminal record	1.8	2.1	6.3	2.3	4.3	7.2
Offender's criminal record overstates his degree of criminal orientation	0.6	2.1	0.0	2.7	0.0	0.0
Offender cooperated with authorities	6.5	14.9	6.3	21.6	1.4	1.2
Offender has emotional or psychiatric problems	1.8	0.0	0.0	0.5	5.8	0.0
Offender is mentally or physically impaired	5.3	0.0	6.3	1.8	1.4	2.4
Offender has drug or alcohol problems	0.6	0.0	0.0	0.0	0.0	0.0
Offender needs counseling	1.8	0.0	0.0	1.4	0.0	1.2
Offender has good potential for rehabilitation	13.6	4.3	0.0	11.3	4.3	12.0
Offender shows remorse	1.2	4.3	0.0	1.4	1.4	1.2
Age of offender	1.8	4.3	12.5	6.8	8.7	2.4
Multiple charges are being treated as one criminal event	1.2	0.0	0.0	0.0	0.0	0.0
Guilty plea	0.0	0.0	0.0	0.9	0.0	0.0
Jury sentence	0.6	21.3	0.0	1.4	5.8	2.4
Sentence was recommended by Comm. atty or probation officer	4.7	0.0	6.3	2.7	2.9	4.8
Weak evidence or weak case against the offender	8.9	8.5	12.5	8.6	14.5	19.3
Plea agreement	11.8	8.5	18.8	7.2	5.8	15.7
Sentencing consistency with codefendant or with other similar cases in the jurisdiction	1.2	2.1	0.0	0.9	1.4	1.2
Time served	3.6	0.0	0.0	0.9	2.9	2.4
Offender already sentenced by another court or in previous proceeding for other offenses	2.4	0.0	0.0	4.1	1.4	0.0
Offender will likely have his probation revoked	0.6	0.0	0.0	0.5	1.4	0.0
Offender is sentenced to an alt. punishment to incarceration	3.6	4.3	18.8	15.8	15.9	6.0
Guidelines recommendation is too harsh	0.0	0.0	0.0	3.6	1.4	3.6
Judge rounded guidelines minimum to nearest whole year	1.2	0.0	0.0	1.8	0.0	0.0
Other reasons for mitigation	3.0	2.1	0.0	1.4	2.9	2.4

Note: Percentages indicate the percent of mitigation (or aggravation) cases in which the judge cites a particular reason for the mitigation (or aggravation) departure. The percentages will not add to 100% since more than one departure reason may be cited in each case.

Appendix 2 Judicial Reasons for Departure from Sentencing Guidelines

Offenses Against the Person

Reasons for AGGRAVATION	Assault	Homicide	Kidnapping	Robbery	Rape	Sexual Assault
No reason given	14.7%	25.6%	22.2%	14.1%	45.5%	26.8%
The offense involved a high degree of planning	0.7	0.0	22.2	1.3	0.0	0.0
Aggravating circumstances/flagrancy of offense	13.3	12.8	55.6	28.2	9.1	8.5
Offender used a weapon in commission of the offense	1.3	0.0	0.0	10.3	0.0	0.0
Offender was the leader	0.0	0.0	11.1	1.3	0.0	0.0
Offender's true offense behavior was more serious than offenses at conviction	3.3	5.1	0.0	2.6	0.0	8.5
Offender is related to or is the caretaker of the victim	1.3	0.0	0.0	0.0	0.0	11.3
Offense was an unprovoked attack	1.3	0.0	0.0	0.0	9.1	0.0
Offender knew of victim's vulnerability	4.0	2.6	0.0	5.1	0.0	8.5
The victim(s) wanted a harsh sentence	1.3	2.6	0.0	9.0	0.0	7.0
Extreme violence or severe victim injury	28.7	23.1	0.0	19.2	9.1	0.0
Previous punishment of offender has been ineffective	2.0	5.1	0.0	0.0	0.0	1.4
Offender was under legal restraint at time of offense	0.7	2.6	0.0	0.0	0.0	0.0
Offender has a serious juvenile record	0.7	0.0	0.0	0.0	0.0	0.0
Offender's record understates the degree of his criminal orientation	0.7	0.0	0.0	1.3	0.0	4.2
Offender has previous conviction(s) or other charges for the same offense	2.7	0.0	0.0	1.3	0.0	1.4
New crime committed after current offense	0.0	2.6	0.0	2.6	0.0	0.0
Offender failed to cooperate with authorities	1.3	7.7	0.0	5.1	0.0	0.0
Offender has mental health problems	0.7	0.0	0.0	0.0	0.0	0.0
Offender has drug or alcohol problems	1.3	0.0	0.0	0.0	0.0	1.4
Offender has poor rehabilitation potential	6.0	0.0	0.0	11.5	9.1	4.2
Offender shows no remorse	4.0	5.1	0.0	3.8	9.1	8.5
Jury sentence	14.0	15.4	22.2	3.8	18.2	5.6
Sentence was recommended by Comm. atty./probation officer	0.7	2.6	0.0	0.0	9.1	1.4
Plea agreement	10.7	0.0	11.1	2.6	0.0	9.9
Community sentiment	1.3	0.0	0.0	1.3	0.0	0.0
Offender is sentenced to an alt. punishment to incarceration	1.3	2.6	0.0	0.0	0.0	1.4
Guidelines recommendation is too low	4.7	2.6	0.0	3.8	0.0	14.1
Mandatory minimum penalty is required in the case	4.7	0.0	0.0	6.4	0.0	0.0
Judge rounded guidelines minimum to nearest whole year	1.3	0.0	0.0	1.3	0.0	0.0
Other reasons for aggravation	0.7	0.0	0.0	1.3	18.2	0.0

Note: Percentages indicate the percent of mitigation (or aggravation) cases in which the judge cites a particular reason for the mitigation (or aggravation) departure. The percentages will not add to 100% since more than one departure reason may be cited in each case.

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

Burglary of Dwelling

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	60.0%	30.0%	10.0%	20
2	75.0	20.6	4.4	68
3	93.1	6.9	0.0	29
4	57.6	30.3	12.1	33
5	91.3	4.3	4.3	23
6	70.0	20.0	10.0	10
7	70.8	8.3	20.8	24
8	66.7	22.2	11.1	9
9	50.0	21.4	28.6	14
10	72.7	27.3	0.0	11
11	60.0	13.3	26.7	15
12	53.1	18.8	28.1	32
13	62.5	25.0	12.5	24
14	80.0	15.0	5.0	20
15	54.5	27.3	18.2	33
16	63.9	16.7	19.4	36
17	70.0	15.0	15.0	20
18	70.0	25.0	5.0	20
19	60.0	13.3	26.7	30
20	75.0	16.7	8.3	12
21	72.4	13.8	13.8	29
22	54.2	8.3	37.5	24
23	55.6	44.4	0.0	27
24	45.5	39.4	15.2	33
25	79.4	20.6	0.0	34
26	69.7	15.2	15.2	33
27	83.7	9.3	7.0	43
28	47.1	35.3	17.6	17
29	37.5	37.5	25.0	24
30	50.0	31.8	18.2	22
31	85.0	10.0	5.0	20
Total	**66.3**	**20.5**	**13.2**	**789**

Burglary of Other Structure

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	77.8%	16.7%	5.6%	18
2	77.1	17.1	5.7	35
3	81.8	9.1	9.1	11
4	79.2	20.8	0.0	24
5	85.7	0.0	14.3	14
6	81.8	0.0	18.2	11
7	72.2	5.6	22.2	18
8	75.0	25.0	0.0	8
9	77.8	5.6	16.7	18
10	86.7	13.3	0.0	15
11	77.8	11.1	11.1	9
12	64.3	14.3	21.4	14
13	73.9	21.7	4.3	23
14	79.2	12.5	8.3	24
15	58.1	9.7	32.3	31
16	61.1	27.8	11.1	18
17	57.1	14.3	28.6	28
18	84.6	7.7	7.7	13
19	75.0	16.7	8.3	12
20	92.9	7.1	0.0	14
21	56.3	31.3	12.5	16
22	78.6	7.1	14.3	28
23	88.9	11.1	0.0	9
24	77.8	16.7	5.6	18
25	78.9	10.5	10.5	19
26	81.3	6.3	12.5	16
27	82.9	17.1	0.0	41
28	88.9	0.0	11.1	9
29	77.8	5.6	16.7	18
30	91.7	0.0	8.3	12
31	100.0	0.0	0.0	9
Total	**76.5**	**12.7**	**10.8**	**553**

Other Drugs

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	87.0%	8.7%	4.3%	23
2	87.5	6.3	6.3	80
3	75.0	0.0	25.0	8
4	81.4	7.0	11.6	43
5	20.0	0.0	80.0	5
6	42.9	14.3	42.9	7
7	85.7	7.1	7.1	28
8	71.4	28.6	0.0	7
9	87.5	6.3	6.3	16
10	70.8	4.2	25.0	24
11	100.0	0.0	0.0	7
12	66.7	14.8	18.5	27
13	69.2	3.8	26.9	26
14	71.0	3.2	25.8	31
15	67.6	14.7	17.6	34
16	76.2	4.8	19.0	21
17	66.7	8.3	25.0	12
18	64.3	28.6	7.1	14
19	82.8	4.7	12.5	64
20	100.0	0.0	0.0	13
21	72.7	9.1	18.2	11
22	43.8	0.0	56.3	16
23	86.2	6.9	6.9	29
24	85.7	2.9	11.4	35
25	78.1	12.5	9.4	32
26	85.0	0.0	15.0	20
27	71.2	21.2	7.7	52
28	82.8	3.4	13.8	29
29	57.1	0.0	42.9	7
30	100.0	0.0	0.0	17
31	86.4	9.1	4.5	22
Total	**78.3**	**7.8**	**13.9**	**760**

Schedule I/II Drugs

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	84.5%	9.0%	6.5%	287
2	83.9	11.4	4.7	404
3	81.4	10.6	8.0	451
4	79.0	16.5	4.5	707
5	75.0	5.6	19.4	124
6	71.6	10.8	17.6	102
7	84.6	5.9	9.5	507
8	85.4	10.5	4.1	171
9	67.2	19.4	13.3	180
10	77.5	13.8	8.7	138
11	84.8	9.3	5.9	204
12	60.6	15.6	23.8	160
13	71.5	14.7	13.8	579
14	80.5	10.8	8.7	195
15	68.6	9.4	22.0	223
16	76.4	11.1	12.5	144
17	76.2	14.3	9.5	147
18	68.7	24.2	7.1	99
19	77.3	14.8	7.9	304
20	79.2	12.5	8.3	72
21	77.9	10.3	11.8	68
22	74.8	7.0	18.2	143
23	72.9	15.3	11.8	144
24	75.8	15.2	9.0	211
25	78.8	14.1	7.1	85
26	66.2	19.5	14.3	133
27	83.8	13.4	2.8	142
28	67.4	15.8	16.8	95
29	71.4	10.0	18.6	70
30	76.7	19.2	4.1	73
31	84.2	9.1	6.7	209
Total	**77.6**	**12.6**	**9.9**	**6,562**

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

Fraud

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	92.5%	4.7%	2.8%	107
2	81.9	15.1	3.0	166
3	82.2	15.6	2.2	45
4	86.5	11.7	1.8	171
5	87.3	11.1	1.6	63
6	84.2	7.9	7.9	38
7	81.0	17.2	1.7	58
8	68.8	27.1	4.2	48
9	71.6	17.6	10.8	74
10	81.6	12.2	6.1	49
11	76.1	19.6	4.3	46
12	74.4	21.1	4.4	90
13	74.7	17.7	7.6	79
14	86.0	8.4	5.6	143
15	70.9	13.4	15.7	134
16	81.5	13.6	4.9	81
17	84.0	5.7	10.4	106
18	78.8	21.2	0.0	52
19	74.8	16.8	8.4	202
20	76.7	18.3	5.0	60
21	60.8	31.4	7.8	51
22	78.3	12.0	9.6	83
23	76.9	20.9	2.2	91
24	71.0	28.0	1.0	100
25	73.1	20.4	6.5	108
26	78.9	16.5	4.5	133
27	83.5	14.4	2.2	139
28	75.0	17.3	7.7	52
29	74.6	16.9	8.5	71
30	67.7	29.0	3.2	31
31	72.3	25.5	2.1	94
Total	**78.5**	**16.1**	**5.4**	**2,765**

Larceny

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	88.6%	6.3%	5.1%	254
2	85.1	8.0	6.8	336
3	89.1	6.5	4.3	92
4	80.9	16.2	2.9	346
5	87.3	2.9	9.8	102
6	82.0	4.9	13.1	61
7	87.5	2.1	10.4	96
8	88.3	7.8	3.9	77
9	81.2	1.2	17.6	85
10	89.1	5.5	5.5	55
11	94.5	1.8	3.6	55
12	73.4	6.5	20.1	169
13	77.3	10.8	11.9	185
14	87.8	5.2	7.0	384
15	68.8	11.3	20.0	240
16	85.4	7.9	6.7	89
17	81.0	8.1	10.9	249
18	85.4	11.7	2.9	103
19	78.0	9.4	12.6	277
20	93.8	3.8	2.5	80
21	85.1	10.6	4.3	94
22	78.0	5.3	16.7	132
23	73.3	13.7	13.0	131
24	84.2	14.2	1.7	120
25	87.0	10.0	3.0	100
26	83.7	8.8	7.5	147
27	93.1	4.2	2.8	144
28	87.5	4.2	8.3	72
29	63.0	9.3	27.8	54
30	84.7	8.5	6.8	59
31	82.5	7.7	9.8	143
Total	**82.7**	**8.3**	**9.0**	**4,531**

Traffic

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	96.5%	2.4%	1.2%	85
2	91.3	3.5	5.2	172
3	85.7	4.8	9.5	21
4	86.4	9.9	3.7	81
5	73.4	12.5	14.1	64
6	78.8	12.1	9.1	33
7	87.2	7.7	5.1	78
8	83.3	4.2	12.5	24
9	75.9	2.8	21.3	109
10	90.6	7.8	1.6	64
11	92.7	2.4	4.9	41
12	80.7	10.8	8.4	83
13	92.5	1.9	5.7	53
14	87.5	5.7	6.8	88
15	84.1	6.1	9.8	164
16	84.5	5.2	10.3	97
17	82.4	2.9	14.7	34
18	71.4	28.6	0.0	14
19	74.5	15.3	10.2	98
20	79.4	7.4	13.2	68
21	88.6	9.1	2.3	44
22	91.4	0.0	8.6	70
23	83.8	5.9	10.3	68
24	90.6	3.6	5.8	139
25	81.0	7.9	11.1	63
26	85.4	3.9	10.7	103
27	90.9	5.2	3.9	77
28	91.7	2.1	6.3	48
29	73.1	0.0	26.9	26
30	96.6	3.4	0.0	29
31	78.3	6.7	15.0	60
Total	**85.4**	**6.0**	**8.6**	**2,198**

Miscellaneous

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	84.2%	15.8%	0.0%	19
2	79.2	8.3	12.5	24
3	89.5	5.3	5.3	19
4	73.8	14.3	11.9	42
5	87.5	0.0	12.5	24
6	62.5	0.0	37.5	8
7	82.6	4.3	13.0	23
8	87.5	0.0	12.5	8
9	80.0	0.0	20.0	15
10	81.3	0.0	18.8	16
11	81.8	9.1	9.1	11
12	52.9	17.6	29.4	17
13	75.9	10.3	13.8	29
14	57.1	28.6	14.3	21
15	60.0	3.3	36.7	30
16	77.3	9.1	13.6	22
17	100.0	0.0	0.0	4
18	40.0	0.0	60.0	5
19	63.2	10.5	26.3	19
20	76.0	24.0	0.0	25
21	91.7	8.3	0.0	24
22	86.7	3.3	10.0	30
23	65.2	8.7	26.1	23
24	84.2	5.3	10.5	19
25	83.3	5.6	11.1	18
26	77.4	12.9	9.7	31
27	87.0	4.3	8.7	23
28	87.5	0.0	12.5	8
29	66.7	8.3	25.0	12
30	100.0	0.0	0.0	7
31	66.7	0.0	33.3	3
Total	**77.0**	**8.6**	**14.3**	**579**

Appendix 4 Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

Assault

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	78.8%	9.1%	12.1%	33
2	73.1	14.9	11.9	67
3	82.1	9.0	9.0	78
4	75.9	18.1	6.0	83
5	82.0	6.0	12.0	50
6	73.5	11.8	14.7	34
7	56.6	18.9	24.5	53
8	76.9	3.8	19.2	26
9	81.6	6.1	12.2	49
10	67.6	14.7	17.6	34
11	78.9	13.2	7.9	38
12	96.8	0.0	3.2	31
13	65.9	20.5	13.6	88
14	74.4	9.3	16.3	43
15	65.9	15.9	18.2	44
16	70.3	18.9	10.8	37
17	56.3	6.3	37.5	16
18	64.3	21.4	14.3	14
19	68.3	17.1	14.6	41
20	72.0	16.0	12.0	25
21	76.5	14.7	8.8	34
22	74.4	2.6	23.1	39
23	66.7	18.5	14.8	27
24	64.2	28.3	7.5	53
25	71.9	17.5	10.5	57
26	70.0	16.7	13.3	30
27	83.7	14.0	2.3	43
28	28.6	35.7	35.7	14
29	78.9	5.3	15.8	19
30	75.0	8.3	16.7	12
31	86.5	10.8	2.7	37
Total	**73.3**	**14.0**	**12.7**	**1,249**

Kidnapping

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	33.3%	66.7%	0.0%	3
2	50.0	0.0	50.0	2
3	0.0	0.0	0.0	0
4	53.8	30.8	15.4	13
5	0.0	0.0	100.0	1
6	100.0	0.0	0.0	3
7	60.0	40.0	0.0	5
8	100.0	0.0	0.0	1
9	100.0	0.0	0.0	2
10	66.7	33.3	0.0	3
11	100.0	0.0	0.0	1
12	25.0	25.0	50.0	4
13	40.0	60.0	0.0	5
14	83.3	16.7	0.0	6
15	100.0	0.0	0.0	4
16	100.0	0.0	0.0	3
17	100.0	0.0	0.0	1
18	0.0	0.0	0.0	0
19	40.0	20.0	40.0	5
20	0.0	0.0	0.0	0
21	0.0	0.0	0.0	0
22	50.0	0.0	50.0	2
23	100.0	0.0	0.0	3
24	50.0	50.0	0.0	2
25	100.0	0.0	0.0	3
26	0.0	0.0	0.0	0
27	100.0	0.0	0.0	1
28	0.0	0.0	0.0	0
29	50.0	0.0	50.0	2
30	0.0	0.0	0.0	0
31	83.3	16.7	0.0	6
Total	**66.7**	**21.0**	**12.3**	**81**

Homicide

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	60.0%	0.0%	40.0%	10
2	70.0	20.0	10.0	10
3	80.0	10.0	10.0	10
4	83.3	8.3	8.3	24
5	83.3	16.7	0.0	6
6	50.0	50.0	0.0	4
7	69.2	23.1	7.7	13
8	50.0	16.7	33.3	6
9	80.0	0.0	20.0	5
10	62.5	25.0	12.5	8
11	83.3	0.0	16.7	6
12	71.4	14.3	14.3	7
13	59.1	27.3	13.6	44
14	50.0	20.0	30.0	10
15	55.6	22.2	22.2	9
16	75.0	25.0	0.0	**4**
17	50.0	25.0	25.0	4
18	66.7	0.0	33.3	3
19	70.0	10.0	20.0	10
20	0.0	0.0	0.0	0
21	88.9	11.1	0.0	9
22	77.8	22.2	0.0	9
23	60.0	30.0	10.0	10
24	70.0	20.0	10.0	10
25	100.0	0.0	0.0	3
26	16.7	83.3	0.0	6
27	100.0	0.0	0.0	4
28	50.0	12.5	37.5	8
29	50.0	25.0	25.0	4
30	100.0	0.0	0.0	4
31	70.0	0.0	30.0	10
Total	**67.4**	**18.1**	**14.4**	**270**

Appendix 4 Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

Robbery

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	75.0	25.0	0.0	28
2	64.8	17.0	18.2	88
3	85.7	3.6	10.7	28
4	58.2	38.8	3.0	67
5	56.5	26.1	17.4	23
6	61.5	23.1	15.4	26
7	75.0	21.9	3.1	32
8	69.7	27.3	3.0	33
9	72.0	8.0	20.0	25
10	73.3	13.3	13.3	15
11	70.0	26.7	3.3	30
12	55.6	37.0	7.4	27
13	52.6	38.6	8.8	57
14	61.3	29.0	9.7	62
15	54.3	31.4	14.3	35
16	88.9	11.1	0.0	9
17	72.2	16.7	11.1	18
18	47.8	47.8	4.3	23
19	63.6	30.3	6.1	33
20	0.0	100.0	0.0	4
21	50.0	25.0	25.0	12
22	60.0	13.3	26.7	15
23	41.7	50.0	8.3	24
24	69.2	26.9	3.8	26
25	64.3	14.3	21.4	14
26	64.7	35.3	0.0	17
27	66.7	25.0	8.3	24
28	100.0	0.0	0.0	4
29	66.7	22.2	11.1	9
30	62.5	25.0	12.5	8
31	63.2	36.8	0.0	19
Total	**63.2**	**27.3**	**9.5**	**835**

Rape

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	50.0	25.0	25.0	4
2	80.0	20.0	0.0	15
3	80.0	0.0	20.0	5
4	57.1	38.1	4.8	21
5	66.7	16.7	16.7	6
6	33.3	50.0	16.7	6
7	72.7	27.3	0.0	11
8	83.3	16.7	0.0	6
9	50.0	50.0	0.0	8
10	42.9	57.1	0.0	7
11	62.5	37.5	0.0	8
12	77.8	22.2	0.0	9
13	60.0	40.0	0.0	10
14	66.7	0.0	33.3	6
15	75.0	25.0	0.0	12
16	66.7	22.2	11.1	9
17	87.5	12.5	0.0	8
18	60.0	40.0	0.0	5
19	72.7	18.2	9.1	11
20	60.0	40.0	0.0	5
21	75.0	25.0	0.0	4
22	62.5	37.5	0.0	8
23	50.0	50.0	0.0	6
24	88.9	11.1	0.0	9
25	55.6	44.4	0.0	9
26	50.0	25.0	25.0	8
27	80.0	20.0	0.0	5
28	62.5	37.5	0.0	8
29	66.7	33.3	0.0	3
30	50.0	50.0	0.0	2
31	75.0	25.0	0.0	8
Total	**66.1**	**29.3**	**4.5**	**242**

Other Sexual Assault

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	57.1	28.6	14.3	7
2	73.3	20.0	6.7	30
3	37.5	25.0	37.5	8
4	61.3	32.3	6.5	31
5	66.7	33.3	0.0	9
6	87.5	0.0	12.5	8
7	61.1	22.2	16.7	18
8	50.0	30.0	20.0	10
9	61.5	0.0	38.5	13
10	60.0	20.0	20.0	5
11	66.7	16.7	16.7	12
12	83.3	16.7	0.0	12
13	37.5	37.5	25.0	8
14	77.8	5.6	16.7	18
15	50.0	25.0	25.0	32
16	78.3	8.7	13.0	23
17	90.0	10.0	0.0	10
18	50.0	0.0	50.0	2
19	47.4	7.9	44.7	38
20	81.8	9.1	9.1	11
21	75.0	0.0	25.0	4
22	62.5	6.3	31.3	16
23	90.9	0.0	9.1	11
24	71.4	21.4	7.1	14
25	68.8	25.0	6.3	32
26	54.2	29.2	16.7	24
27	81.8	18.2	0.0	22
28	100.0	0.0	0.0	3
29	100.0	0.0	0.0	2
30	75.0	25.0	0.0	4
31	76.0	24.0	0.0	25
Total	**66.5**	**18.2**	**15.4**	**462**