

VIRGINIA CRIMINAL SENTENCING COMMISSION



**Senate Finance Public Safety Subcommittee
January 13, 2012**

Virginia Criminal Sentencing Commission

**Appointed by the Chief Justice of the Supreme Court
and Confirmed by the General Assembly**
Judge F. Bruce Bach, Chairman, Fairfax County

Appointments by the Chief Justice of the Supreme Court

Judge Robert Humphreys, Vice Chair, Virginia Beach
Judge Joanne F. Alper, Arlington
Judge J. Martin Bass, Stafford
Judge Junius P. Fulton, Norfolk
Judge Larry B. Kirksey, Bristol
Judge Malfourd W. Trumbo, Fincastle

Governor's Appointments

Harvey Bryant, Virginia Beach
Marsha Garst, Harrisonburg
Robert C. Hagan, Jr., Daleville
Debbie Smith, Richmond

Senate Appointments

The Honorable Eric J. Finkbeiner, Richmond
Senator Henry L. Marsh, III, Richmond

House of Delegates Appointments

The Honorable Linda D. Curtis, Hampton
Delegate C. Todd Gilbert, Woodstock
Esther Windmueller, Richmond

Attorney General

The Honorable Kenneth T. Cuccinelli, II

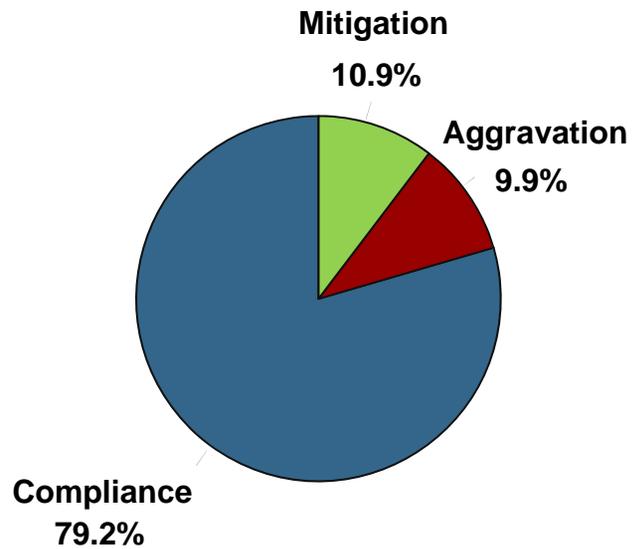
Virginia Criminal Sentencing Commission

Duties and Activities § 17.1-803

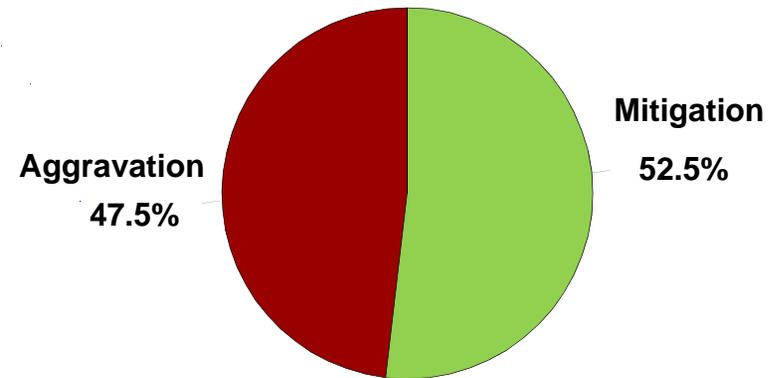
- **Develop, maintain, and modify discretionary sentencing guidelines, reflective of historical practices, for felony crimes**
- **Develop a risk assessment instrument, based on a study of Virginia felons, that is predictive of the relative risk that a felon will become a threat to public safety**
- **Apply the risk assessment instrument to nonviolent felons and determine, with due regard for public safety, the feasibility of placing 25% in alternative sanctions**
- **Study felony sentencing patterns**
- **Monitor crime and criminal justice trends**
- **Maintain data**

SENTENCING GUIDELINES COMPLIANCE

Overall Compliance



Directions of Departures



FY2011
Number of Cases = 23,970

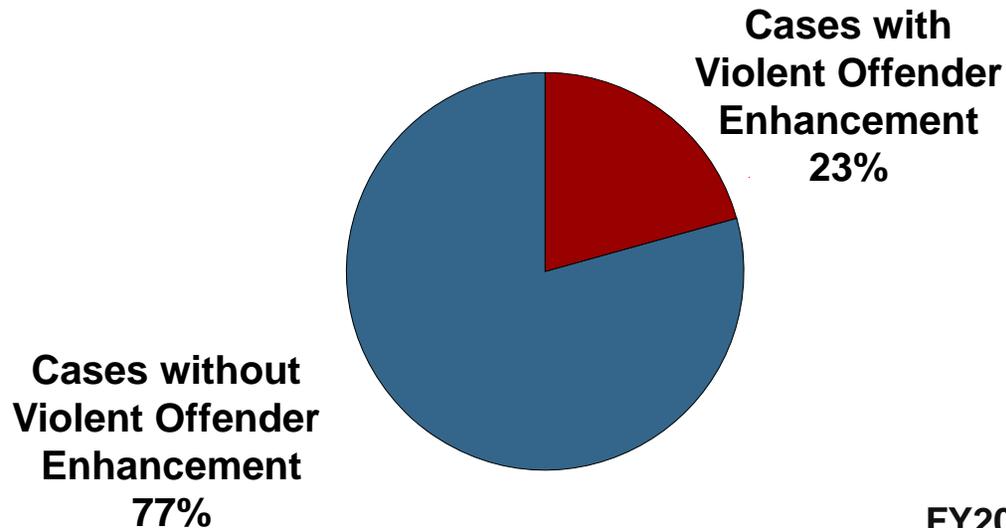
SENTENCING GUIDELINES COMPLIANCE

Circuit Name	Circuit	Compliance	Mitigation	Aggravation	Total	
Radford Area	27	88.6%	6.9%	4.5%	1198	● Ten of the state's 31 circuits exhibited compliance rates above 80%
Bristol Area	28	88.6%	3.3%	8.1%	668	
Prince William Area	31	87.5%	6.8%	5.7%	630	
Newport News	7	85.6%	7.3%	7.1%	687	
Loudoun	20	83.6%	4.9%	11.5%	574	
Petersburg Area	11	82.7%	8.7%	8.7%	381	
Harrisonburg Area	26	82.6%	10.5%	6.9%	1350	
Virginia Beach	2	81.4%	11.2%	7.4%	1146	
Hampton	8	81.3%	14.8%	4.0%	379	
Henrico	14	80.5%	11.8%	7.7%	1002	
Chesterfield Area	12	79.5%	9.5%	11.0%	1042	● Twenty-one circuits reported compliance rates between 70 and 79%
Alexandria	18	79.2%	12.6%	8.2%	293	
Danville Area	22	79.2%	6.3%	14.5%	649	
Norfolk	4	78.8%	14.8%	6.4%	1112	
South Boston Area	10	78.8%	12.6%	8.6%	595	
Charlottesville Area	16	78.5%	11.8%	9.7%	797	
Lynchburg Area	24	78.0%	14.6%	7.4%	922	
Fairfax	19	77.9%	10.9%	11.2%	1257	
Suffolk Area	5	77.7%	9.8%	12.5%	471	
Chesapeake	1	77.0%	10.2%	12.8%	942	
Staunton Area	25	76.9%	14.6%	8.5%	863	
Arlington Area	17	75.9%	8.8%	15.3%	352	
Lee Area	30	75.9%	8.4%	15.7%	464	
Portsmouth	3	75.8%	11.8%	12.3%	592	
Sussex Area	6	75.6%	11.4%	13.0%	446	
Fredericksburg	15	75.4%	11.2%	13.4%	1657	
Martinsville Area	21	75.3%	18.7%	6.0%	267	
Richmond City	13	75.2%	16.0%	8.8%	1151	
Buchanan Area	29	74.1%	8.9%	17.1%	733	
Roanoke Area	23	73.1%	17.0%	9.8%	804	
Williamsburg Area	9	71.6%	8.20%	20.1%	546	

SENTENCING GUIDELINES ENHANCEMENTS FOR VIOLENT OFFENDERS

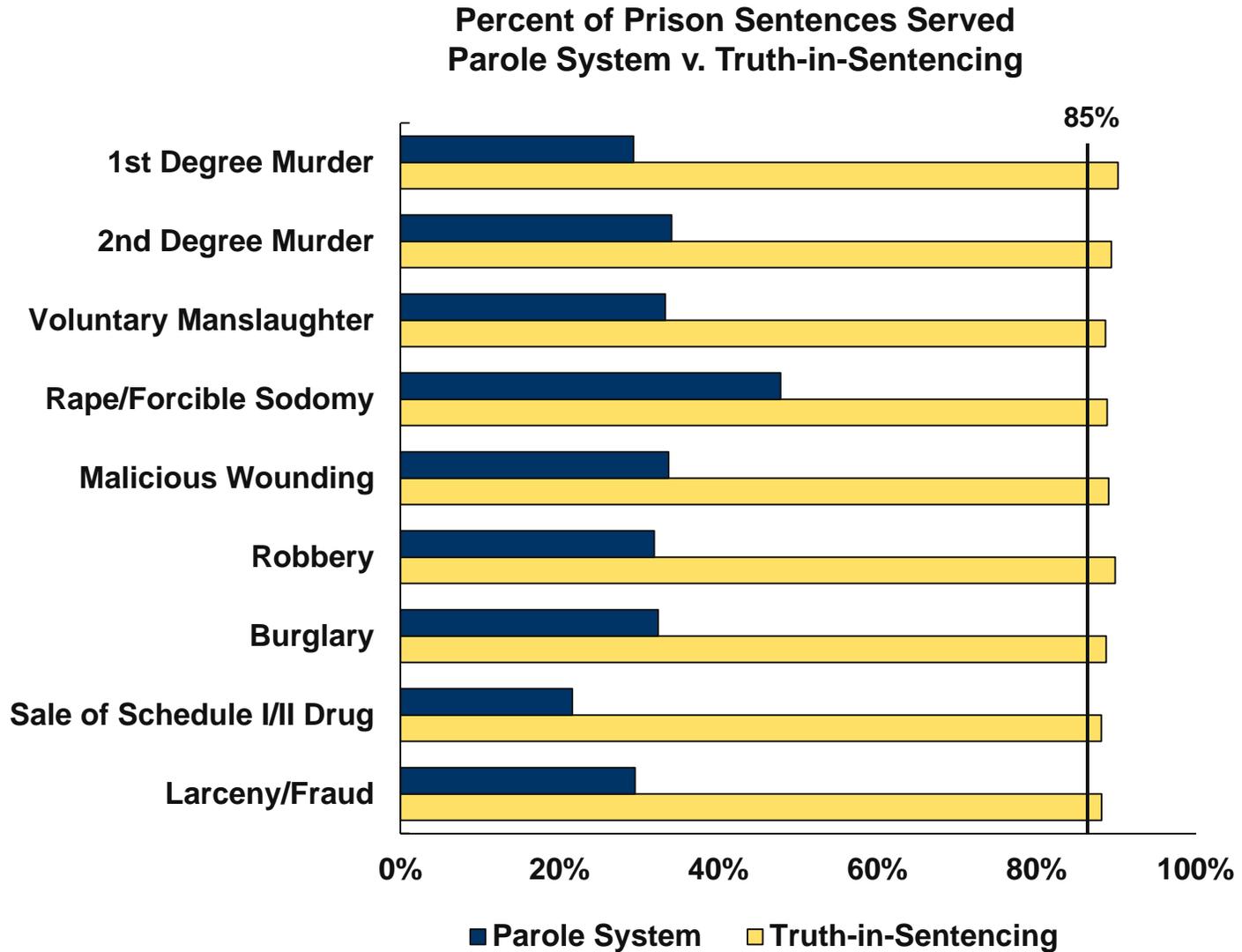
In § 17.1-805, the *Code of Virginia* establishes the framework for "enhancements" that significantly increase the sentencing guidelines recommendation for violent offenders

Offenders with a current or prior conviction (or juvenile adjudication) for a violent felony are recommended for incarceration terms up to six times longer than the terms served by similar offenders under the parole system



FY2011
Number of Cases = 23,970

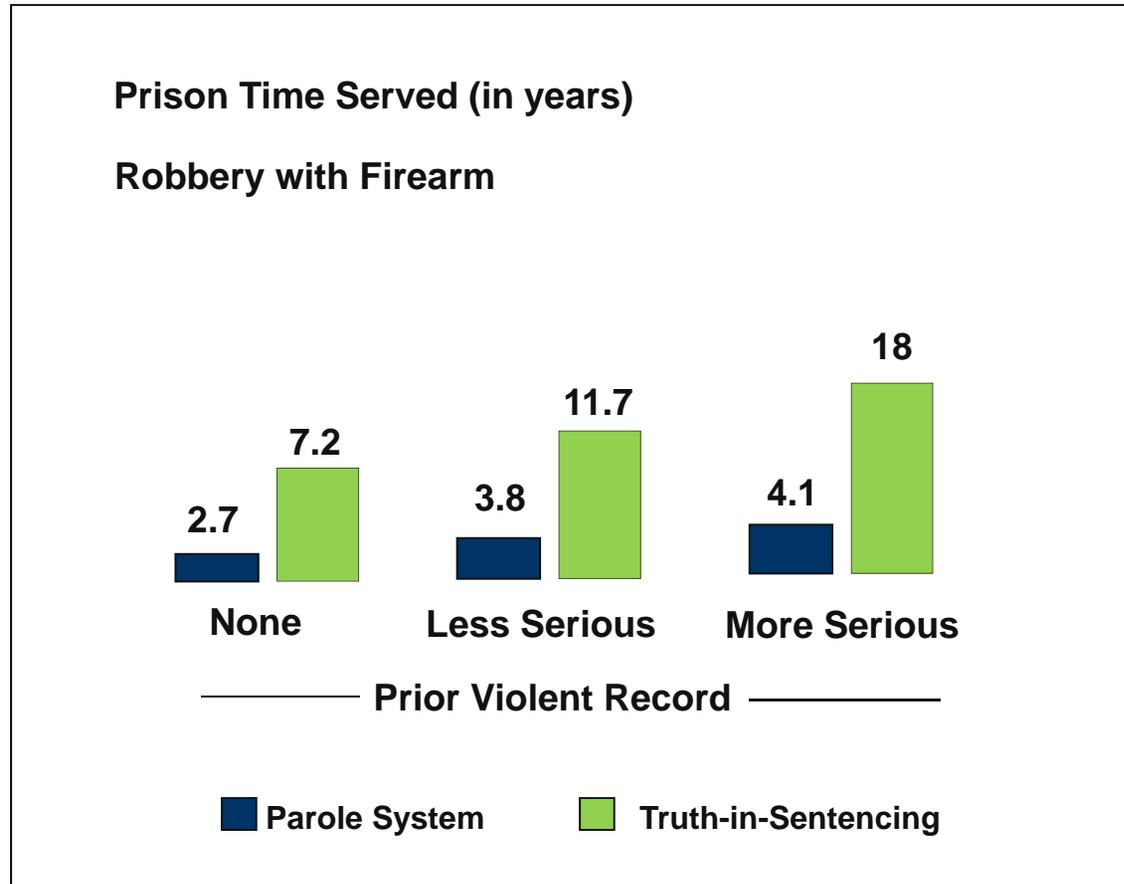
IMPACT OF TRUTH-IN-SENTENCING



Parole system data represent FY1983 prison releases; truth-in-sentencing data is based from the rate of sentence credits earned among prison inmates as of December 31, 2010

IMPACT OF TRUTH-IN-SENTENCING

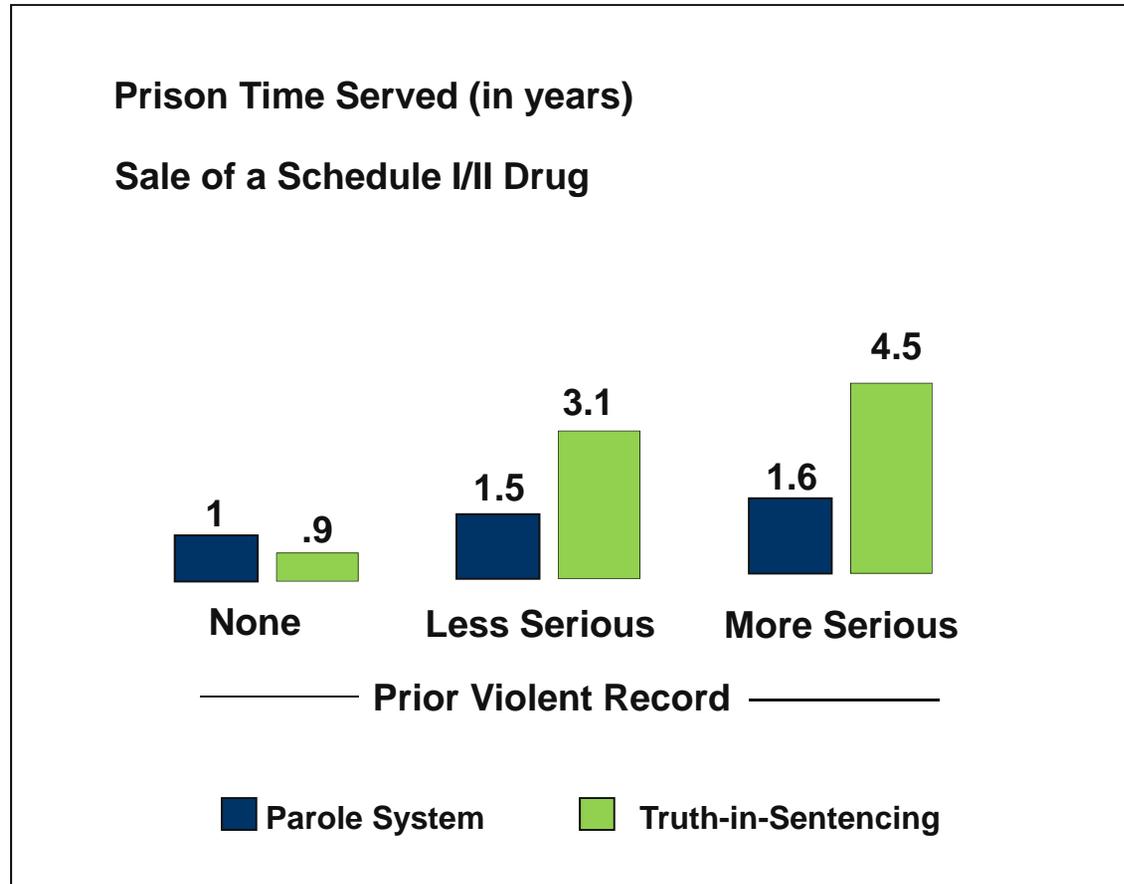
Prison Time Served: Parole System vs. Truth-in-Sentencing



These figures present values of actual incarceration time served under parole laws (1988-1992) and expected time to be served under truth-in-sentencing provisions for cases sentenced FY2004 through FY2008. Time served values are represented by the median (the middle value, where half the time served values are higher and half are lower). Truth-in-sentencing data include only cases recommended for, and sentenced to, incarceration of more than six months.

IMPACT OF TRUTH-IN-SENTENCING

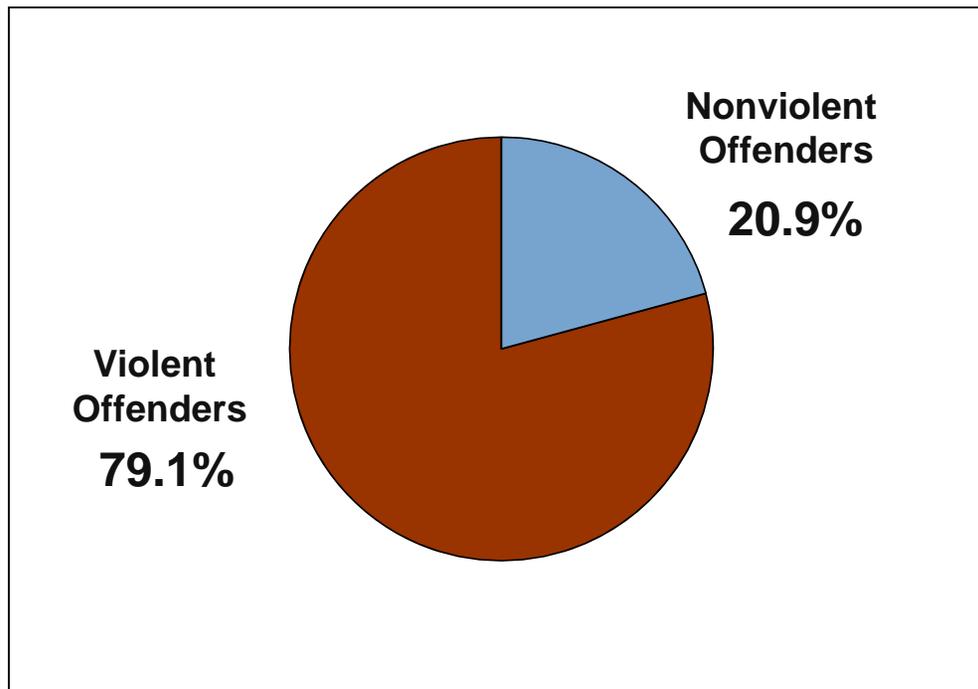
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IMPACT OF TRUTH-IN-SENTENCING

Profile of Offenders in Virginia's Prison System Violent vs. Nonviolent (as defined in § 17.1-805) 2007



Sources: Virginia Department of Corrections' FAST and CORIS data systems, the Pre/Post-Sentence Investigation (PSI) reporting system, and the Virginia Criminal Sentencing Commission's Sentencing Guidelines (SG) database

2011 ANNUAL REPORT

Recommendations for Guidelines Revisions

- **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**

- **The Commission draws on several sources of information:**
 - **Meetings with judges and prosecutors**
 - **Guidelines training seminars**
 - **Sentencing guidelines hotline phone calls**
 - **Departure reasons provided by judges on the guidelines forms**

2011 ANNUAL REPORT

Recommendations for Guidelines Revisions

- **Also, the Commission examines those crimes not yet covered by the guidelines on an annual basis**
- **Proposals reflect the best fit for the historical data**
- **As the Commission's proposals are designed to integrate current judicial sanctioning practices into the guidelines, no correctional impact is expected**

GUIDELINES RECOMMENDATIONS

RECOMMENDATION 1

Increase the length of prison incarceration recommended for offenders convicted of a 3rd or subsequent distribution, etc., of a Schedule I/II drug (§ 18.2-248(C))

Discussion

In 2006, the General Assembly increased the mandatory minimum sentence for this offense from three to five years

With five years of historical data now available, the Commission conducted a thorough analysis and developed a proposal to bring the guidelines more in line with current judicial practice under the higher mandatory minimum

RECOMMENDATION 2

Add the crime of manufacturing methamphetamine as defined in § 18.2-248(C1) to the Schedule I/II drug guidelines

Discussion

In 2005, the General Assembly carved out this offense as a separate and distinct crime in § 18.2-248

Based on the six years of historical data now available, the Commission developed a proposal to incorporate the offense into the Schedule I/II Drug guidelines

GUIDELINES RECOMMENDATIONS

RECOMMENDATION 3

Add the offense of driving while intoxicated (DWI) resulting in permanent and significant physical impairment to another (§ 18.2-51.4(A)) to the Assault guidelines

Discussion

The Commission received several requests to add this crime to the guidelines

After determining that sufficient data existed, the Commission used the historical data to develop a proposal to add this offense to the Assault guidelines

RECOMMENDATION 4

Add the 3rd violation of driving on a suspended license following a conviction for DWI (§ 18.2-272(A)) to the Felony Traffic guidelines

Discussion

This Class 6 felony provision became effective in 2006

The Commission analyzed the five years of historical data now available and developed a proposal to integrate this offense in to the Felony Traffic guidelines

Meredith Farrar-Owens
Deputy Director

meredith.farrar-owens@vcsc.virginia.gov
(804) 371-7626



**Virginia Criminal
Sentencing Commission**