

Virginia Criminal Sentencing Commission



**Presented to the
Senate Finance Public Safety Subcommittee**

January 10, 2014

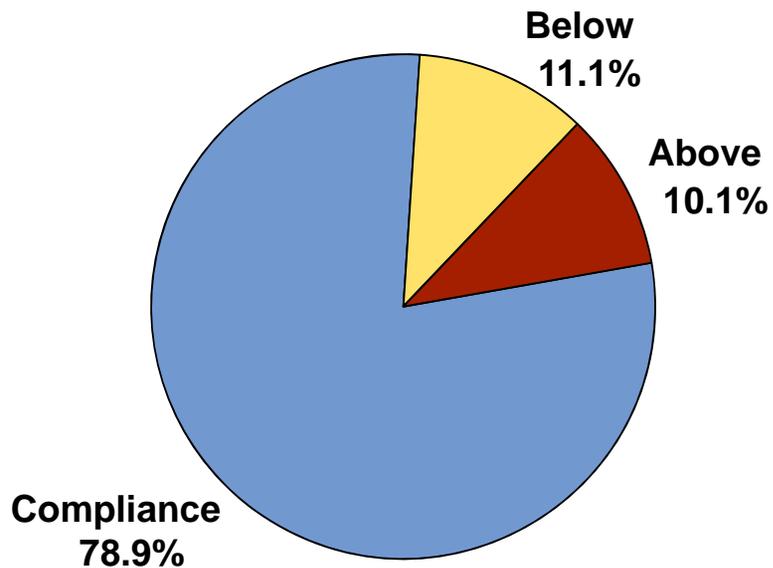
Activities in 2013

- **Monitoring and oversight of Virginia's Sentencing Guidelines system**
- **Training, education and other assistance related to the preparation and use of Sentencing Guidelines**
- **Projecting the impact of proposed legislation (§ 30-19.1:4)**
- **Assisting the Secretary of Public Safety with the prison and jail population forecasting process**
- **Providing technical assistance to other agencies as requested**
- **Administering the Immediate Sanction Probation pilot project**

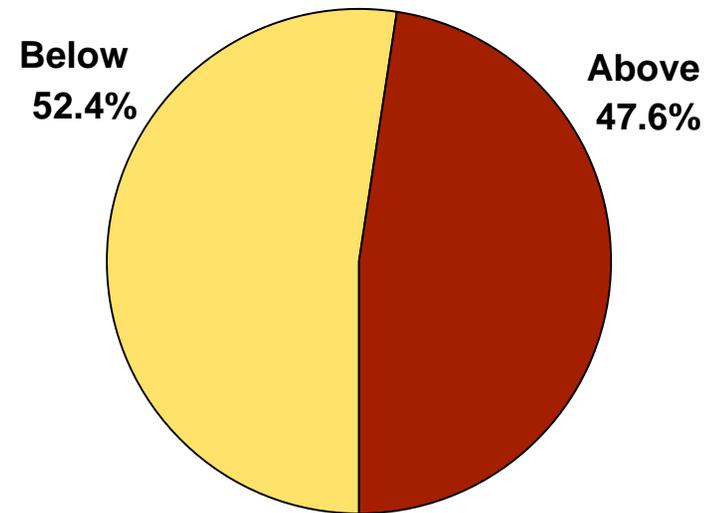


Judicial Compliance/Concurrence with Sentencing Guidelines

Overall Compliance



Direction of Departures



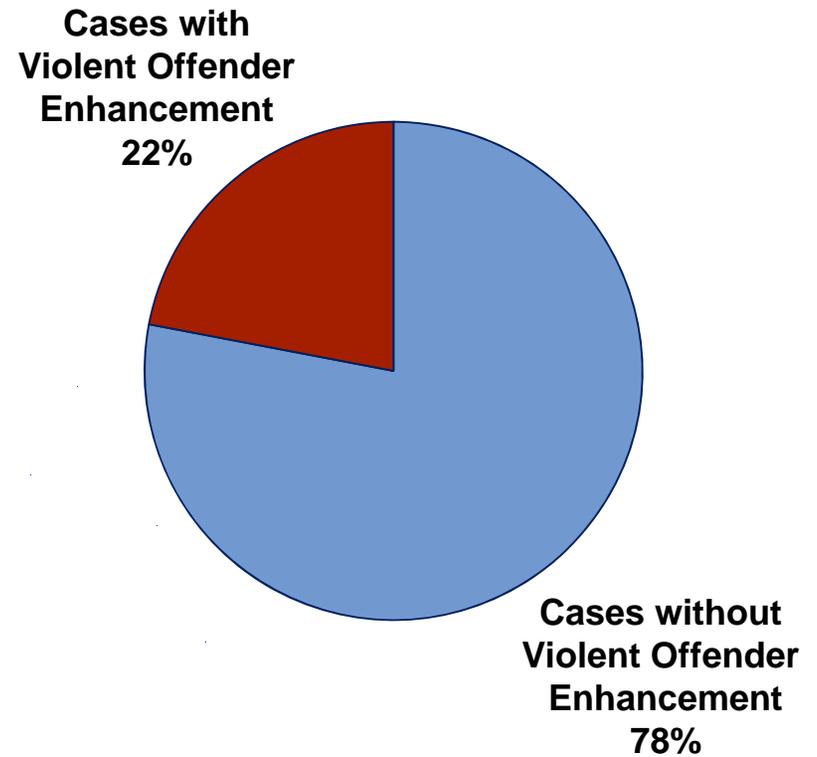
FY2013

Number of Cases = 24,870

Of the state's 31 circuits, 14 circuits had compliance rates of 80% or higher, while 13 circuits had compliance rates between 75% and 79%. The remaining 4 circuits had compliance rates below 75%.

Guidelines Midpoint Enhancements for Violent Offenders (as defined in § 17.1-805)

- Midpoint enhancements produce sentence recommendations for violent offenders that are significantly longer than the time served by these offenders 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, receive these enhancements

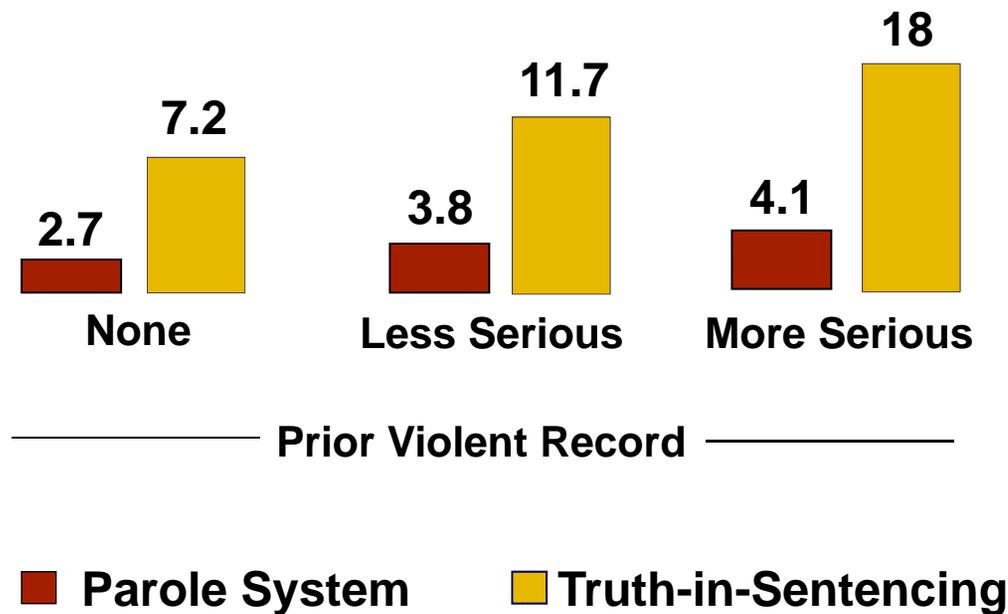


FY2013
Number of Cases = 24,870



Longer Time Served in Prison for Violent Offenders Sentenced under Truth-in-Sentencing

Prison Time Served (in years) Robbery with Firearm



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 only include cases recommended for, and sentenced to, incarceration of more than six months.

Legislative Directive for Nonviolent Offender Risk Assessment

- In 1994, the General Assembly directed the newly-created Sentencing Commission to:
 - Develop an empirically-based risk assessment instrument predictive of a felon's relative risk to public safety, and
 - Apply the instrument to nonviolent felons recommended for prison, with a goal of placing 25% in alternative sanctions

➔ Implemented statewide in 2002



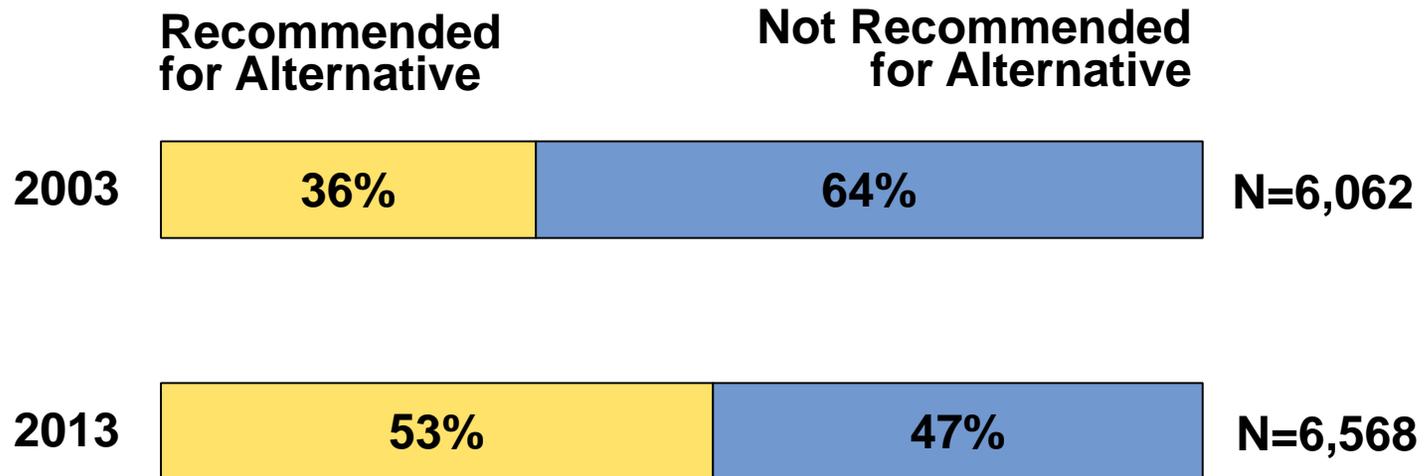
Legislative Directive for Nonviolent Offender Risk Assessment

- In 2003, the General Assembly directed the Commission to determine, with due regard for public safety, the feasibility of recommending additional low-risk nonviolent offenders for alternative punishment
 - The Commission concluded that the risk assessment score threshold could be raised without significant risk to public safety

➔ Change became effective in 2004



Risk Assessment Recommendations for Nonviolent Offenders*



* Offenders recommended by the sentencing guidelines for prison or jail incarceration



**Recommendations in the
Sentencing Commission's
2013 Annual Report**



Revisions to Sentencing Guidelines § 17.1-806

Modifications recommended by the Commission must be presented in an annual report and submitted to the Governor, Chief Justice, and the Legislature each December 1

Virginia Criminal
Sentencing Commission



2013 ANNUAL REPORT
DECEMBER 1, 2013

Legislative session provides opportunity for lawmakers to accept or reject the Commission's recommendations

The recommendations, unless otherwise provided by law, become effective the following July 1 (§ 17.1-806)

**The 2013 Annual Report is available at:
www.vcsc.virginia.gov**

About the Commission's Recommendations

- **The Commission draws on several sources to guide its discussions about modifications to the guidelines:**
 - **Feedback from Circuit Court judges, Commonwealth's attorneys, and other guidelines users**
 - **Review of compliance and departure patterns by offense in order to pinpoint areas that may need adjustment**
 - **The opinions of the judges, expressed in the reasons they write for departing from the guidelines**



About the Commission's Recommendations

- **The sentencing guidelines are based on analysis of actual sentencing practices and are designed to provide judges with a benchmark that represents the typical (or average) case**
- **Recommendations for revisions to the guidelines are based on the best fit of the available data**
- **Recommendations are designed to closely match the rate at which judges sentence offenders to prison and jail**

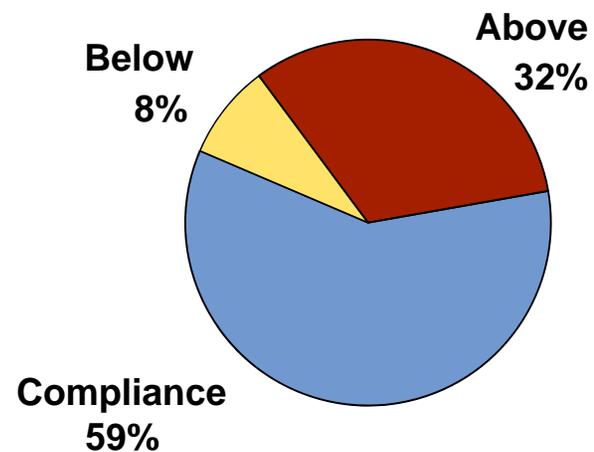
No impact on correctional bed space is anticipated, since the Commission's recommendations are based on analysis of current sanctioning practices

RECOMMENDATION 1

Modify the sentencing guidelines for using a communications system to solicit a child (§ 18.2-374.3) to bring the guidelines more in sync with current penalties and sentencing practices

Compliance with the current guidelines for this offense is well below the overall compliance rate, and nearly all of the departures are above the guidelines range

Compliance with Guidelines for Electronic Solicitation of a Child (§ 18.2-374.3)



FY2009 – FY2013



RECOMMENDATION **1**

Under the Commission's proposed revisions:

- **More offenders convicted of electronic solicitation will be recommended for prison**
 - **More closely aligned with the rate at which judges have sentenced offenders to prison under the penalties enacted in 2007**
- **For offenders who solicited a child under the age of 15 and were 7 or more years older than the victim, the prison sentence recommendation will be at least 20 months longer**
- **Certain additional offenses will also result in a longer prison sentence recommendation**
- **Victim injury will result in a longer prison sentence recommendation**

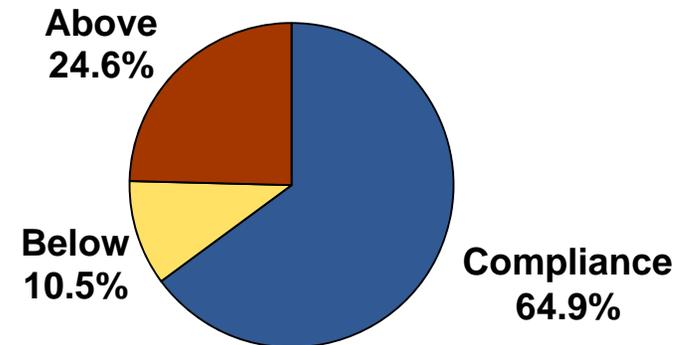


RECOMMENDATION 2

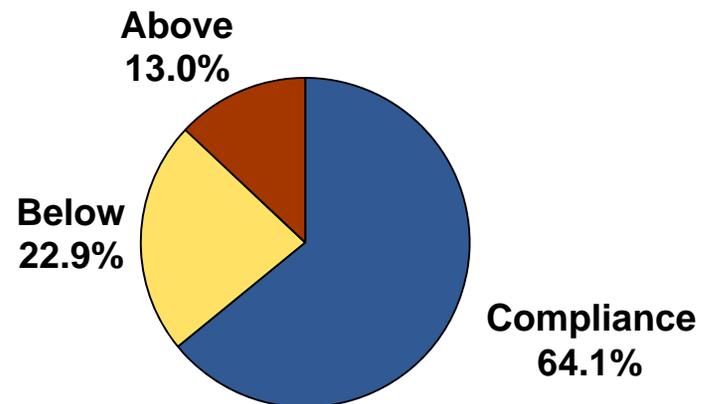
Modify the sentencing guidelines for child pornography (§§ 18.2-374.1 and 18.2-374.1:1) to more closely reflect current sentencing practices for these offenses

Compliance with the current guidelines for these offenses is well below the overall compliance rate, and departures are unbalanced

**Production
(§ 18.2-374.1)**



**Possession/Reproduction
(§ 18.2-374.1:1)**



FY2009 – FY2013



RECOMMENDATION **2**

Under the Commission's proposed revisions:

- **Offenders convicted of producing child pornography will be more likely to receive a prison recommendation**
- **A small percentage of offenders convicted of possessing child pornography (1.4%) will be recommended for jail/probation instead of prison**

➔ Revised guidelines would be more closely aligned with the rate at which judges have sentenced offenders to prison under the penalties enacted in 2007



RECOMMENDATION **2**

Under the Commission's proposed revisions:

- **For offenders convicted of 2 or more counts of certain production offenses, the prison sentence recommendation would increase by 10, 39, or 97 months depending on the seriousness of the offender's prior record**
- **Otherwise, prison sentence length recommendations for production offenses will remain the same**



RECOMMENDATION

2

Under the Commission’s proposed revisions:

- For offenders convicted of possessing child pornography, the starting prison sentence recommendation would decrease

STARTING PRISON RECOMMENDATION (in months)

	<u>Prior Record Category I</u>	<u>Prior Record Category II</u>	<u>Other</u>
Possess child porn (1st offense)			
1 count	68 48	34 24	17 12
Possess child porn (2nd or subsequent offense)			
1 count	100 76	50 38	25 19
Reproduce, transmit, etc., child porn			
1 count	100	50	25

Category I & II:
Sentence enhancements specified in § 17.1-805 for offenders who have a prior conviction for certain violent crimes



RECOMMENDATION

2

Actual versus Recommended Prison Sentences for Possession of Child Pornography Offenses (§ 18.2-374.1:1) FY2009 – FY2013

————— 1 count —————

	Actual Practice	Recommended under Current Sentencing Guidelines	Recommended under <u>Proposed</u> Sentencing Guidelines
Average Sentence	2.3 years	3.2 years	2.3 years



The proposed guidelines better reflect actual sentencing practices



RECOMMENDATION **3**

Split the Sexual Assault guidelines into two offense groups, creating a separate group for obscenity crimes (i.e., child pornography and electronic solicitation of a child)

This will allow for more refined analyses in the future, which could result in improvements to the guidelines for particular offenses

The recommendation does not modify guidelines scores, except as approved (see Recommendations 1 and 2), and would not otherwise change sentence recommendations for offenders

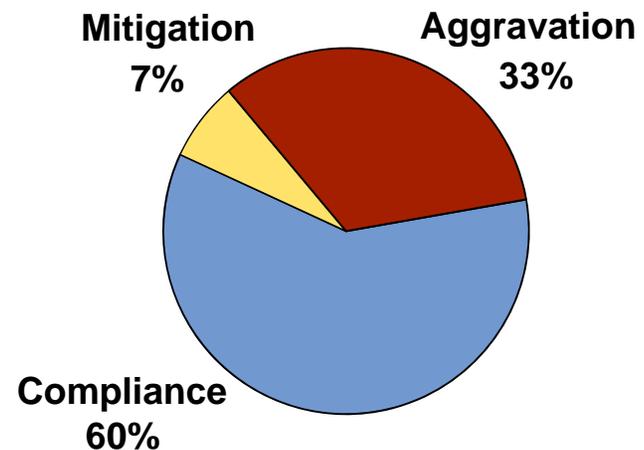


RECOMMENDATION 4

Modify the sentencing guidelines for aggravated malicious wounding (§ 18.2-51.2) to bring the guidelines more in sync with current sentencing practices

Compliance with the sentencing guidelines is well below the overall compliance rate, and nearly all of the departures are above the guidelines range

Compliance with Guidelines for Aggravated Malicious Wounding (§ 18.2-51.2)



FY2009 – FY2013



RECOMMENDATION 4

Under the Commission’s proposed revisions:

- Offenders convicted of attempted and conspired aggravated malicious wounding would always be recommended for a prison term
- For offenders convicted of completed aggravated malicious wounding, the prison sentence recommendation would increase by at least 19 months

STARTING PRISON RECOMMENDATION (in months)

	<u>Prior Record Category I</u>	<u>Prior Record Category II</u>	<u>Other</u>
Aggravated malicious injury (1 count)	264	176	88
	321	214	107

Category I & II:
 Sentence enhancements specified in § 17.1-805 for offenders who have a prior conviction for certain violent crimes



RECOMMENDATION

5

Modify the sentencing guidelines for certain burglaries in cases involving an additional offense of aggravated malicious wounding to more closely reflect current sentencing practices

For offenders convicted of a completed act of burglary with a deadly weapon and completed aggravated malicious wounding, the prison sentence recommendation would increase by 55 months

For offenders convicted of burglary with a deadly weapon and an attempted or conspired aggravated malicious wounding, the prison sentence recommendation would increase by 8 months



RECOMMENDATION

6

Modify the sentencing guidelines for daytime burglary of a dwelling without a deadly weapon (§ 18.2-91) to better reflect current sentencing practices for this offense

Slightly decrease the starting prison sentence recommendation for completed daytime burglary of a dwelling without a deadly weapon by 1 to 3 months (depending on prior record)

Increase the recommended prison sentence for offenders convicted of burglary offenses along with attempted murder (140 months added) or malicious wounding (35 months added)



**Immediate Sanction Probation
Pilot Program**



Directive for Immediate Sanction Probation Pilot Program

- In 2012, the General Assembly directed the Sentencing Commission to implement an Immediate Sanction Probation program in up to 4 pilot sites
- The pilot program is modeled after Hawaii's Opportunity Probation with Enforcement (HOPE) program (established in 2004)
 - A rigorous evaluation of HOPE found a significant reduction in technical violations and drug use among participants, lower recidivism rates, and reduced use of prison beds



Focus of Immediate Sanction Probation

- Focus is on offenders at-risk for recidivating and/or failing probation
- The goal is to improve compliance with the conditions of probation and reduce the likelihood of new criminal offenses by applying swift and certain, but moderate, sanctions for each violation

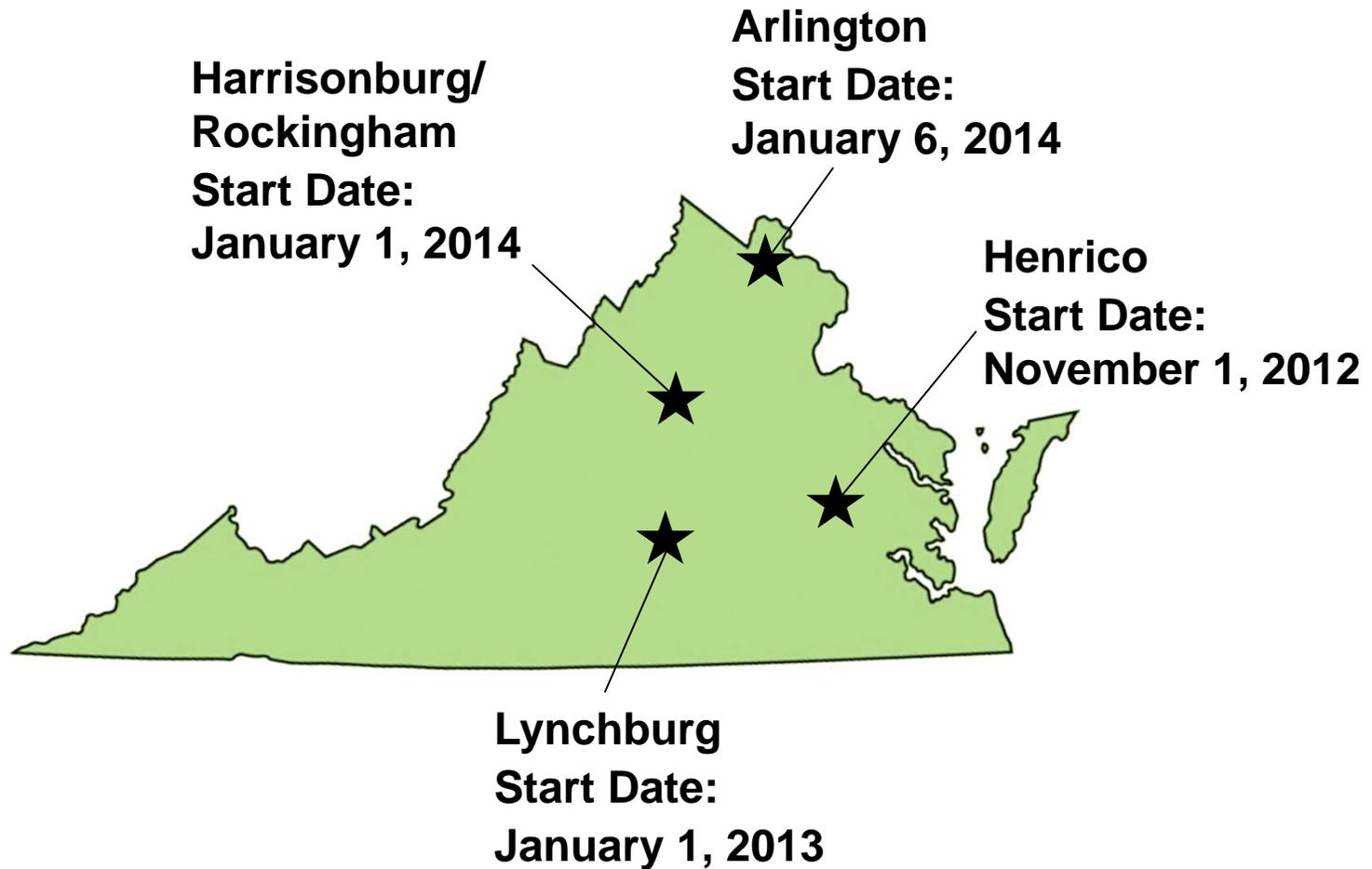


Key Elements of Virginia's Pilot Program

- **When placed in the program, the offender is warned that probation terms will be strictly enforced**
- **Participants undergo frequent, unannounced drug testing**
- **Participants who violate the terms of probation are immediately arrested**
- **The court establishes an expedited process for dealing with violations**
- **For each violation, the judge orders a short jail term**
- **If drug or alcohol addicted, the participant may be referred to substance abuse treatment**



Immediate Sanction Probation Pilot Sites



Activity in the Pilot Sites as of November 15, 2013



**Total number of offenders
placed in program = 54**

Active participants = 47

**Offenders with new felony
convictions = 1**

**Offenders removed from
the program = 7***

**Offenders given a DOC
sentence = 3**



*** 5 offenders were terminated for noncompliance;
the other 2 offenders moved out of the jurisdiction**

Reports to the General Assembly

The Commission has submitted its implementation report to the 2014 General Assembly

The Commission is also charged with conducting an evaluation of the pilot project

The evaluation phase is expected to begin this year

Report of the
Virginia Criminal Sentencing Commission

VIRGINIA'S IMMEDIATE SANCTION
PROBATION PILOT PROGRAM
IMPLEMENTATION REPORT

To The Chief Justice, Governor and the
General Assembly



Commonwealth of Virginia

Richmond, October 1, 2013

Report Document No. 332



Implementation Challenges

- **While there is considerable interest in the swift-and-certain sanctions model, finding localities willing to participate as pilot sites has taken some time**
 - **The pilot project is being implemented within existing agency budgets and local resources**
- **In participating pilot sites, existing resources may be stretched thin**
- **Substance abuse and mental health treatment options are not uniformly and consistently available across the pilot sites**



Request for Change in Appropriation Act Language

- **The 2012 General Assembly adopted budget language to extend the provisions of § 19.2-303.5, which was set to expire in July 1, 2012**
 - **The provision was extended until July 1, 2014**
 - **This statute provides the legal parameters and basic framework for the Immediate Sanction Probation program**
- **The Sentencing Commission has requested an extension (to July 1, 2015) to allow Arlington and Harrisonburg/Rockingham sufficient time to test the program**
 - » **House Bill 30/Senate Bill 30 (Item 47)**





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