



VIRGINIA CRIMINAL SENTENCING COMMISSION



Virginia Criminal Sentencing Commission

Presentation to the
Senate Finance Public Safety Subcommittee

January 11, 2016

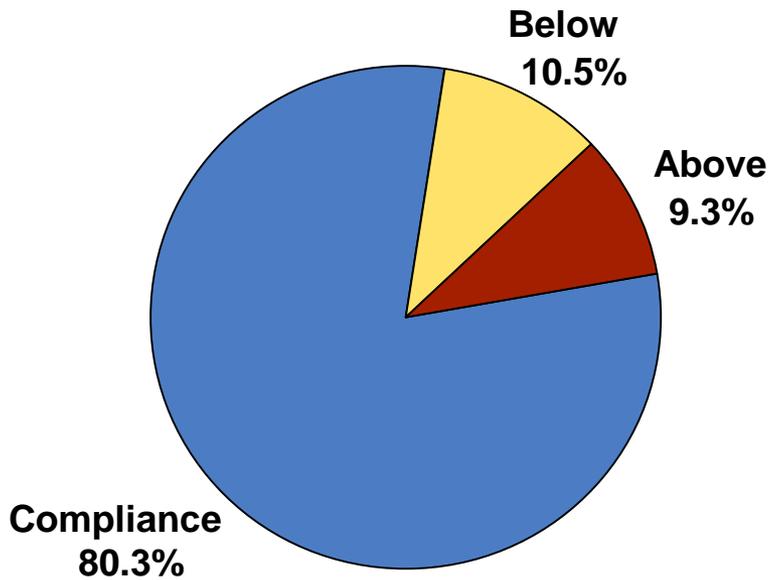
Activities in 2015

- **Monitoring and oversight of Virginia's Sentencing Guidelines system**
- **Training, education and other assistance related to the preparation and use of Sentencing Guidelines**
- **Estimating the impact of proposed legislation (§ 30-19.1:4)**
- **Assisting with the prison and jail population forecasting process**
- **Providing data and analysis to other agencies as requested**
- **Administering the Immediate Sanction Probation pilot project**
- **Completing a study of larceny and fraud offenses**

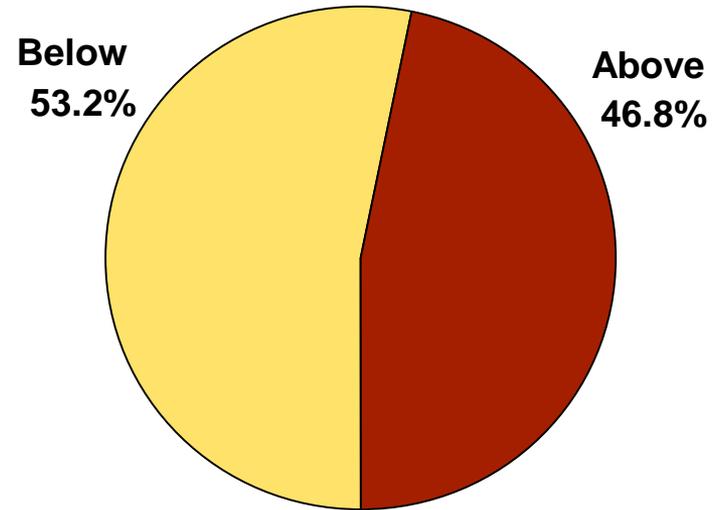


Circuit court judges continue to comply with the sentencing guidelines at a high rate overall.

Overall Compliance



Direction of Departures



FY2015

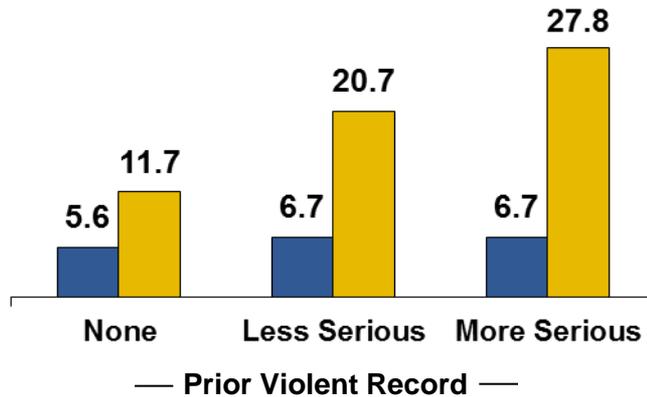
Number of Felony Sentencing Events = 23,609



Violent offenders, and particularly repeat violent offenders, are serving significantly longer under truth-in-sentencing.

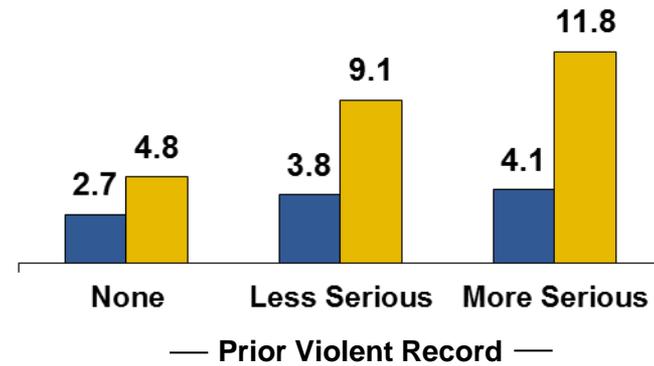
Forcible Rape

Prison Time Served (in years)



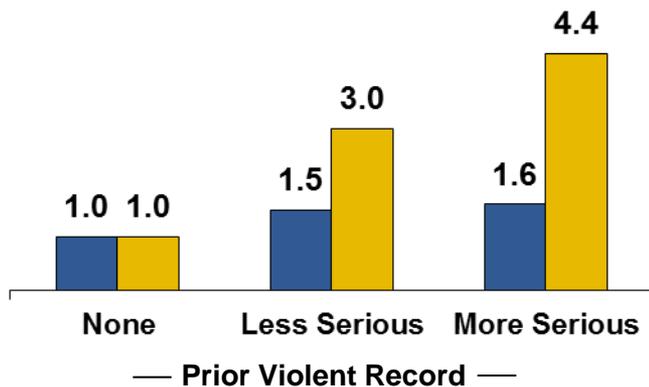
Robbery with Firearm

Prison Time Served (in years)



Sale of a Schedule I/II Drug

Prison Time Served (in years)



■ Parole System ■ Truth-in-Sentencing

These figures present values of actual incarceration time served under parole laws from 1988 through 1992 and expected time to be served under truth-in-sentencing provisions for cases sentenced FY2010 through FY2014. 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.

Each year, roughly 3,000 low-risk drug and property offenders are recommended for alternative sanctions in lieu of traditional incarceration in prison or jail.

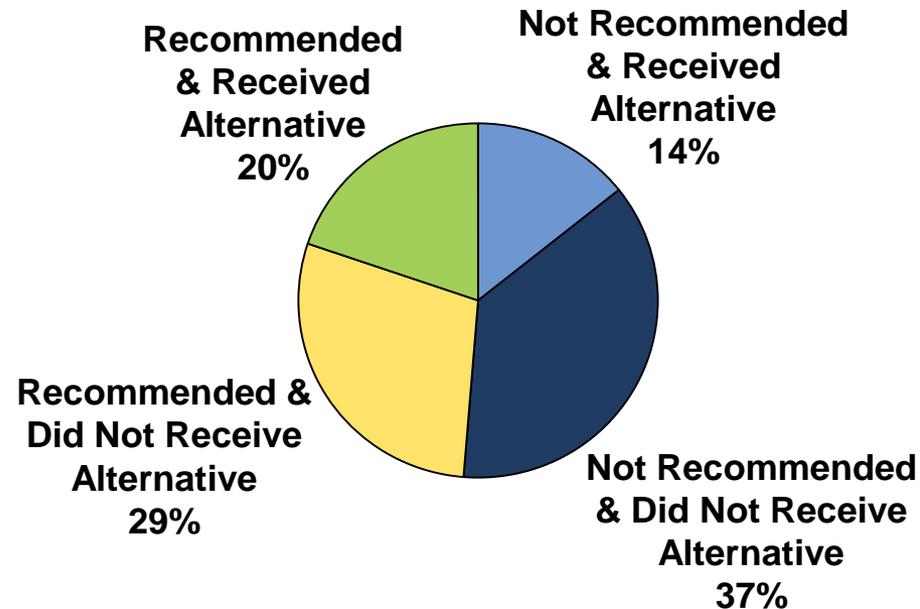
In 1994, the General Assembly directed the Sentencing Commission to:

- Develop an empirically-based risk assessment instrument, and
- Apply the instrument to nonviolent felons recommended for prison, with a goal of placing 25% in alternative sanctions.

➔ Implemented statewide in 2002

Risk Assessment Outcomes FY2015

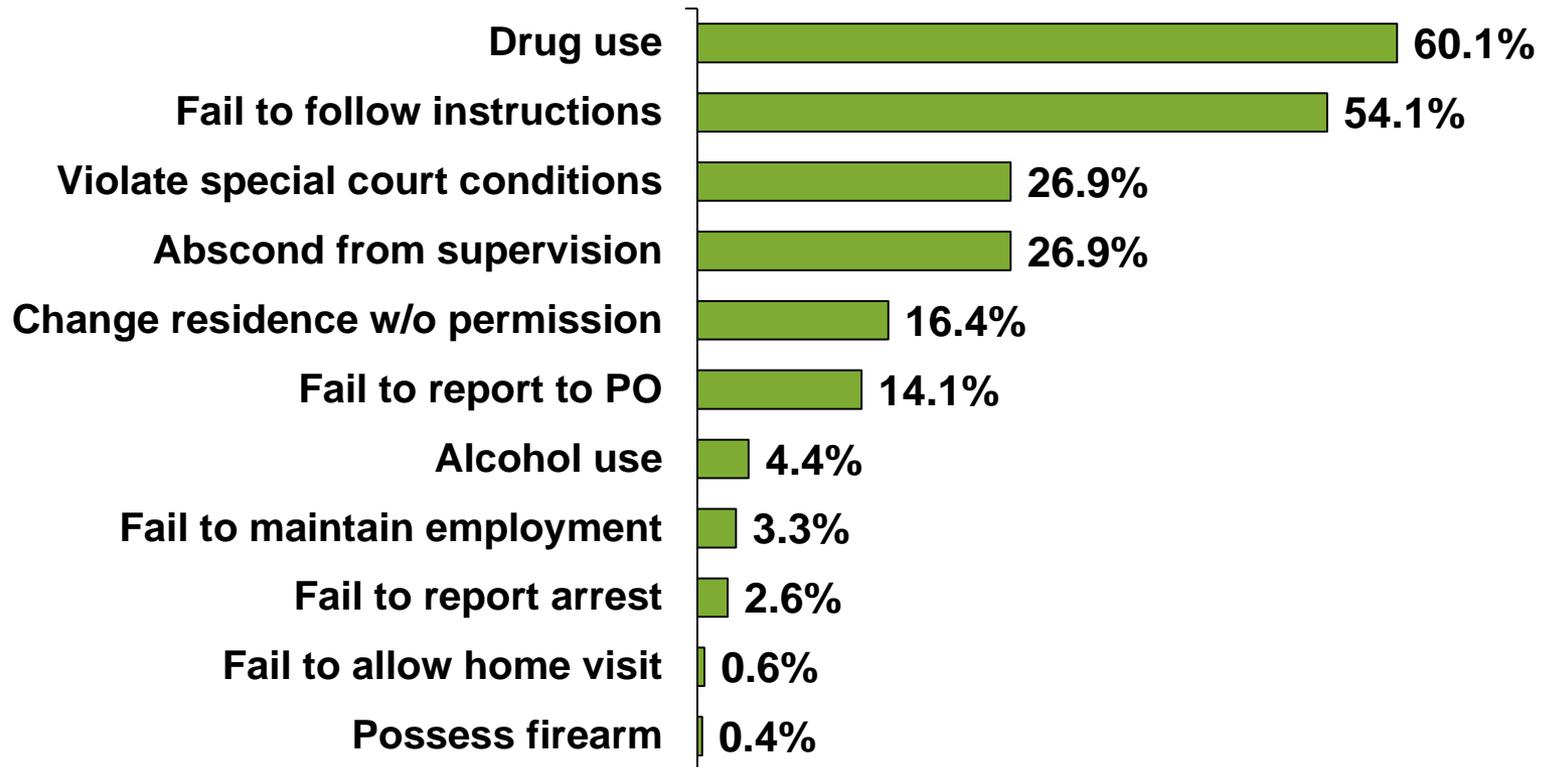
6,772 Eligible Offenders



Analysis is based on offenders recommended by the sentencing guidelines for prison or jail incarceration.

When returning probationers to court for reasons other than a new offense (i.e., technical violations), probation officers most frequently cite the offender's drug use.

Type of Violation Cited by Probation Officers When Returning Probationers to Court for Reasons Other than a New Offense



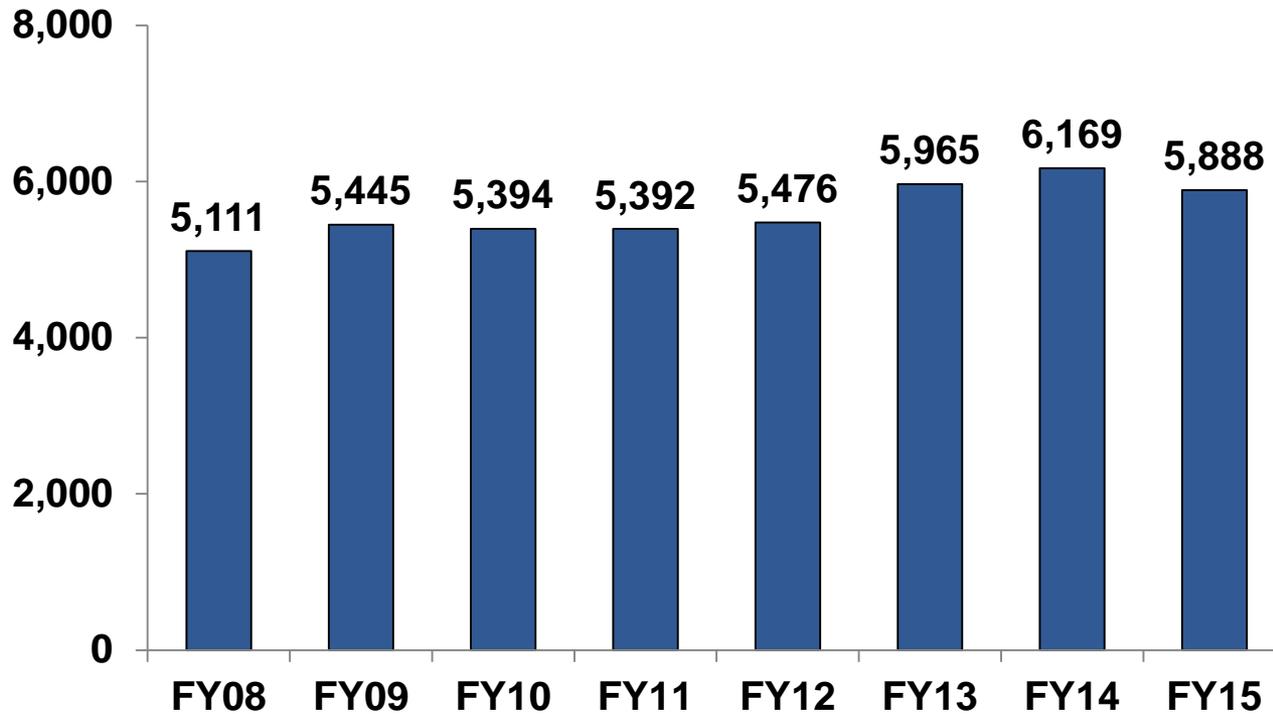
Note: Figures do not sum to 100% as probationers can be cited for multiple violations.
Source: Virginia Criminal Sentencing Commission – 2015 Annual Report



Sentencing Commission's Larceny and Fraud Study

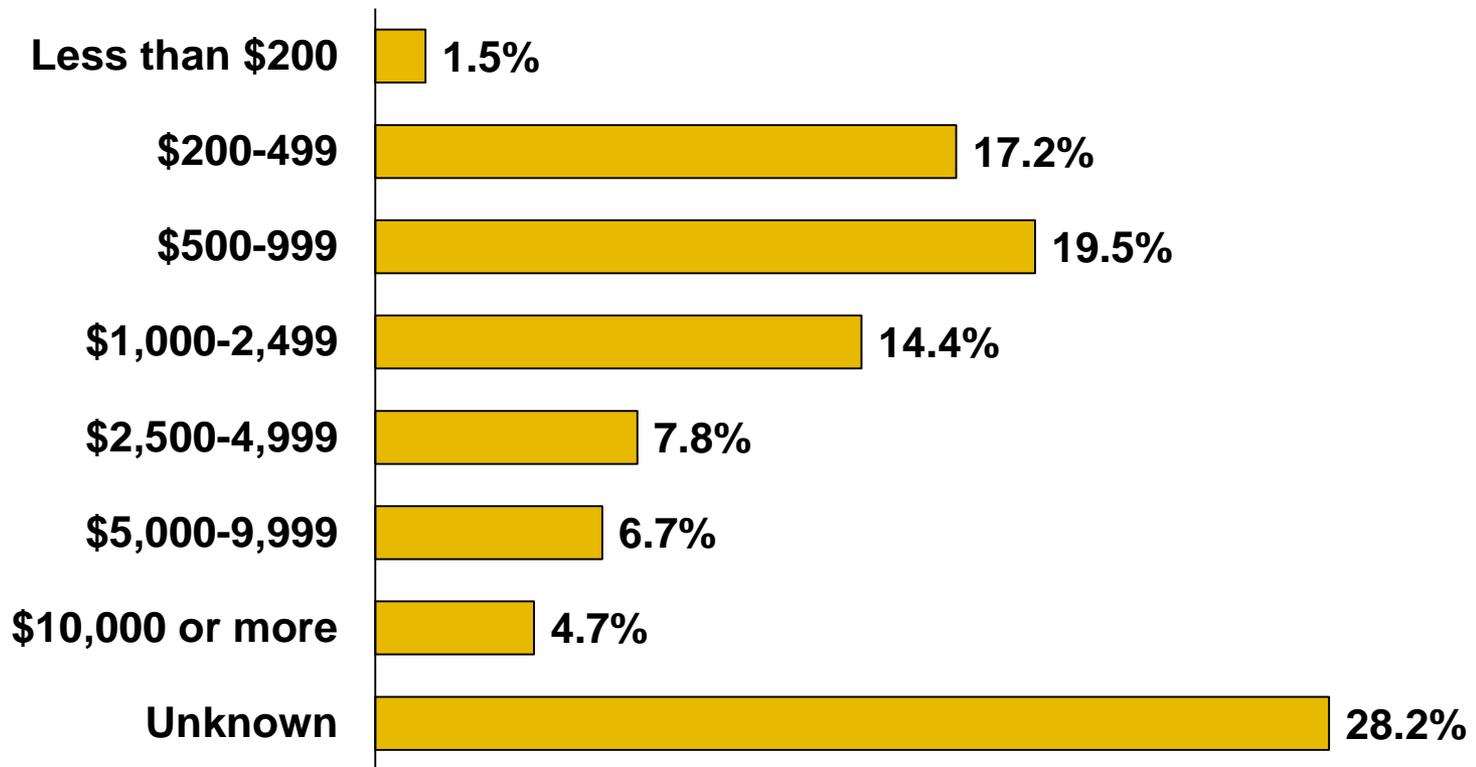
Examining sentencing events based on the most serious offense revealed that larceny accounted for 1 in 4 of all felony sentencing events during FY2015.

Number of Felony Sentencing Events
in which Larceny Was the Most Serious Offense
FY2008-FY2015



Sentencing Commission's Larceny and Fraud Study 2013-2015

Larceny Sentencing Events (excluding Embezzlement) Value of Property Involved





Immediate Sanction Probation Pilot Program

Background 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.
 - 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.
- The pilot program is modeled after Hawaii's Opportunity Probation with Enforcement (HOPE) program (established in 2004).



Background for Immediate Sanction Probation Pilot Program

- **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.**
- **The Washington State Institute on Public Policy, a widely-respected research organization, recently added the HOPE approach to its inventory of evidence-based programs shown through rigorous research to improve outcomes in a cost-effective manner.**

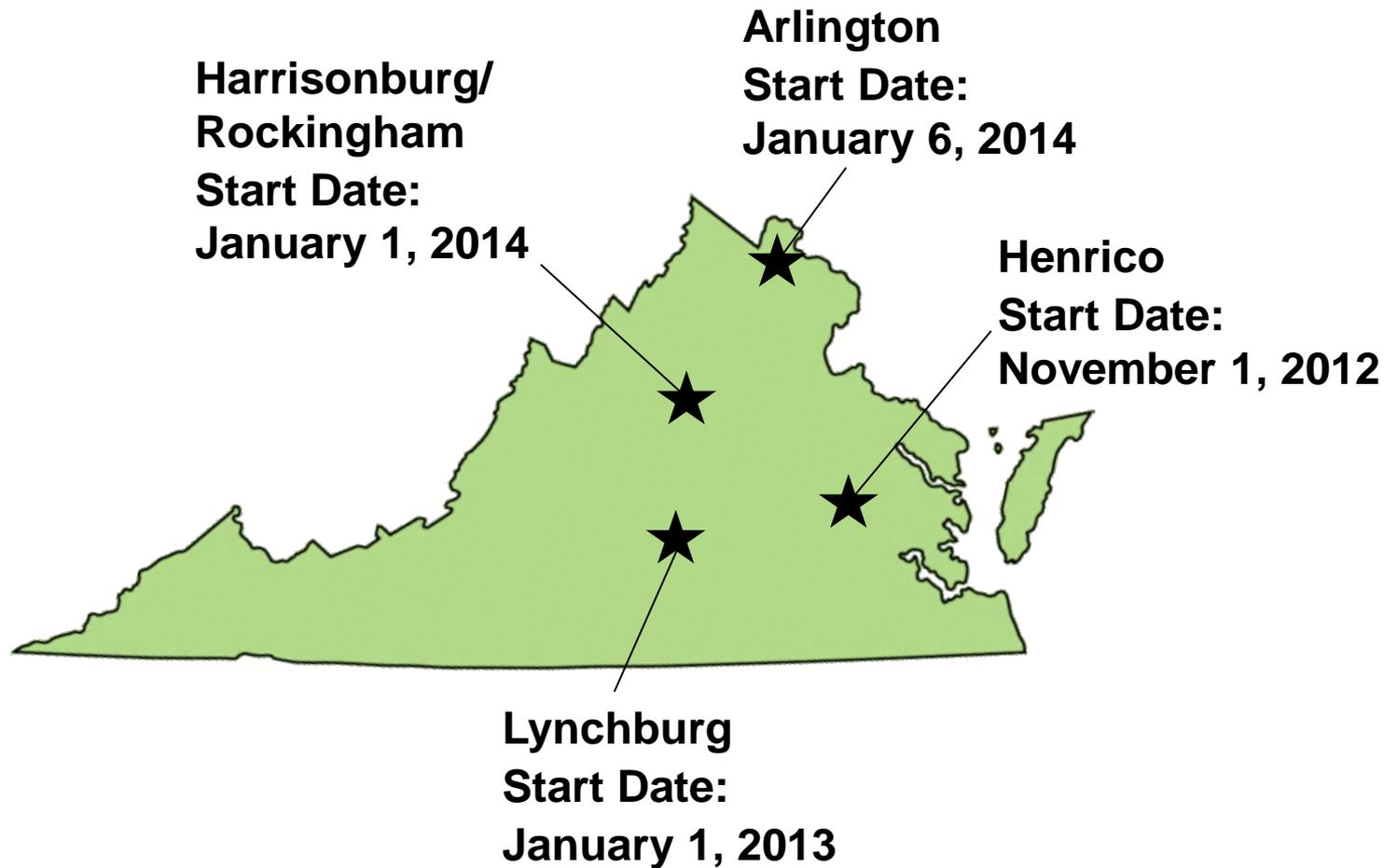


Key Elements of Virginia's Pilot Program

- **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, usually in 1-3 days.**
- **For each violation, the judge orders a short jail term.**
- **If drug or alcohol addicted, the participant may be required to complete substance abuse treatment.**



Immediate Sanction Probation Pilot Sites



Activity in the Pilot Sites as of November 17, 2015

	Henrico (start 11/1/12)	Lynchburg (start 1/1/13)	Harrisonburg Rockingham (start 1/1/14)	Arlington (start 1/6/14)	Total
Offenders placed in the program	70	66	65	17	218
Participants who have violated	60	49	48	11	168
Number of violations	153	92	130	23	398
Participants removed	36	14	26	6	82
Current participants	22	32	33	8	95
Number of completions	12	20	6	3	41



Authorization for Pilot Program

- **The provisions of § 19.2-303.5, the statute establishing the parameters of the Immediate Sanction Probation program, are set to expire on July 1, 2016.**
- **The Commission's evaluation of the pilot program is due to the General Assembly on November 1, 2016.**
- **Many stakeholders in the pilot sites have communicated an interest in continuing the program until the evaluation is completed and the 2017 General Assembly has determined whether or not to continue or expand the program.**
- **Stakeholders say that they see value in this approach and are pleased with the improved compliance among many of the probationers participating in the program.**





Recommendations in the Sentencing Commission's 2015 Annual Report

Revising the 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**

2015 ANNUAL REPORT

100 North Ninth Street , Fifth Floor
Richmond, Virginia 23219
www.vcsc.virginia.gov
Phone 804.225.4398

Legislative session provides an 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 2015 Annual Report is available at:
www.vcsc.virginia.gov/reports.html**

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 (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.

2015 Recommendations

RECOMMENDATION

1

Revise the guidelines for embezzlement (§ 18.2-111) to increase the likelihood that individuals who embezzle larger amounts will be recommended for more than six months of incarceration

RECOMMENDATION

2

Amend the guidelines for vehicular involuntary manslaughter (§ 18.2-36.1(A)) to increase prison sentence recommendations

Amend the guidelines for voluntary manslaughter (§ 18.2-35) to increase the prison sentence recommendation in cases involving multiple counts



2015 Recommendations

RECOMMENDATION

3

Add felony strangulation (§ 18.2-51.6) to the Assault sentencing guidelines

RECOMMENDATION

4

Modify the guidelines for aggravated sexual battery of a child age 13-14 (§ 18.2-67.3(A,4,a)) to increase the likelihood that an individual convicted of this offense will be recommended for incarceration of more than six months

RECOMMENDATION

5

Add aggravated sexual battery of a child 13-17 by a parent/grandparent (§ 18.2-67.3(A,3)) to the Other Sexual Assault guidelines



2015 Recommendations

RECOMMENDATION

6

Modify the guidelines for indecent liberties with a child by a custodian (§ 18.2-370.1(A)) to increase the likelihood that a prison term will be recommended

RECOMMENDATION

7

Modify the guidelines for indecent liberties with a child under age 15 (§ 18.2-370(A)) to increase the likelihood that a prison term will be recommended



2015 Recommendations

RECOMMENDATION

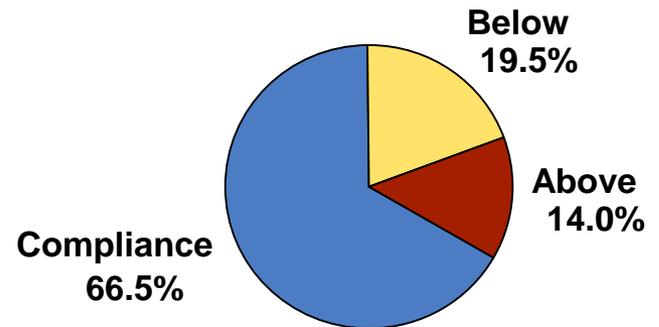
8

Modify the guidelines for possession of child pornography (§ 18.2-374.1:1) to bring the guidelines more in sync with sentencing practices for these offenses

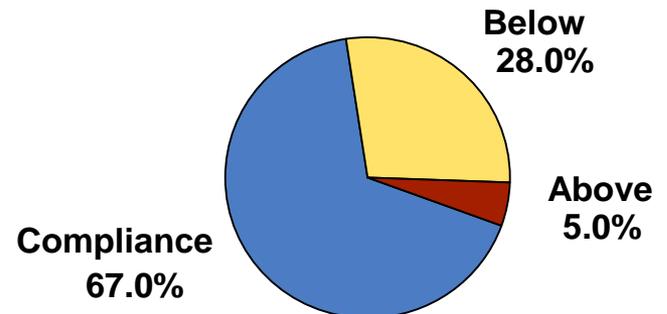
This recommendation follows a review completed pursuant to a directive from the 2014 General Assembly.

Based on the results of the review, the Commission resubmits the modifications proposed in 2013.

**Sentencing Guidelines Compliance
Possession of Child Pornography
1st Offense**



**Sentencing Guidelines Compliance
Possession of Child Pornography
2nd Offense**



RECOMMENDATION

8

(continued)

Under the proposed revisions:

- A small percentage of offenders convicted of first-time possession of child pornography (less than 1%) will be recommended for jail/probation instead of prison; and
- For offenders convicted of possessing child pornography, the starting prison sentence recommendation would decrease (see below).

STARTING PRISON RECOMMENDATION (in months)

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

Category I & II: Type of prior record (as defined in § 17.1-805)



Meredith Farrar-Owens
Virginia Criminal Sentencing Commission

meredith.farrar-owens@vcsc.virginia.gov

www.vcsc.virginia.gov

804.225.4398
