



VIRGINIA CRIMINAL SENTENCING COMMISSION



Virginia Criminal Sentencing Commission: 2018 Annual Report

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

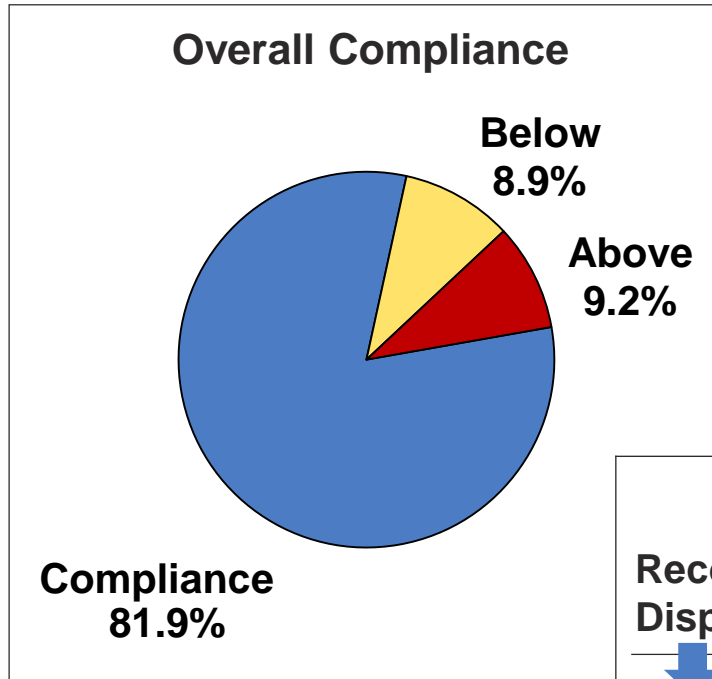
January 8, 2019

Activities in 2018

- **Monitoring and oversight of Sentencing Guidelines**
- **Training, education and other assistance related to the preparation and use of Sentencing Guidelines**
- **Estimating the impact of proposed legislation**
- **Assisting with the prison and jail population forecasting process**
- **Survey of judges regarding factors important for sentencing of probation violators**
- **Providing data and analysis to other agencies**
 - **Compiling data set for the Crime Commission's study of pre-trial outcomes**
- **Sentencing guidelines automation - statewide implementation of Phase 1 and continued development**



In FY2018, Circuit Court judges continued to comply with the Sentencing Guidelines at a high rate overall.

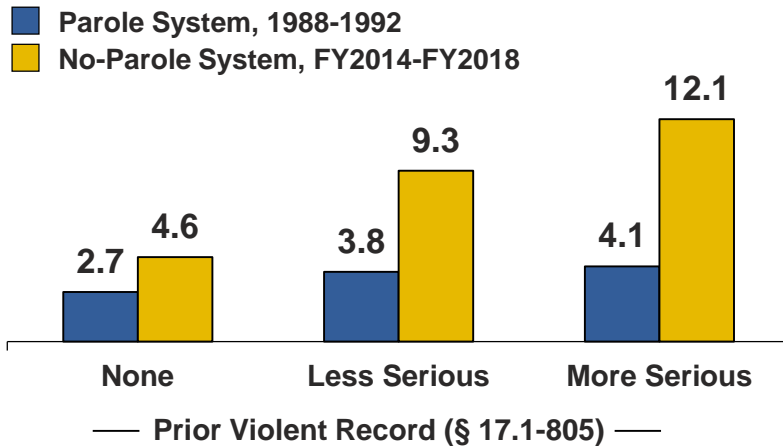


Recommended Disposition	Actual Disposition		
	Probation	Incarceration 1 day to 6 mos.	Incarceration > 6 mos.
Probation	73.7%	22.1%	4.2%
Incarceration 1 day to 6 mos.	11.4%	80.4%	8.2%
Incarceration > 6 mos.	5.8%	7.7%	86.4%

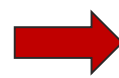


Prison Time Served (in years)

Robbery of Business with Firearm

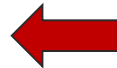


Source: Sentencing Guidelines Data, FY2014-2018

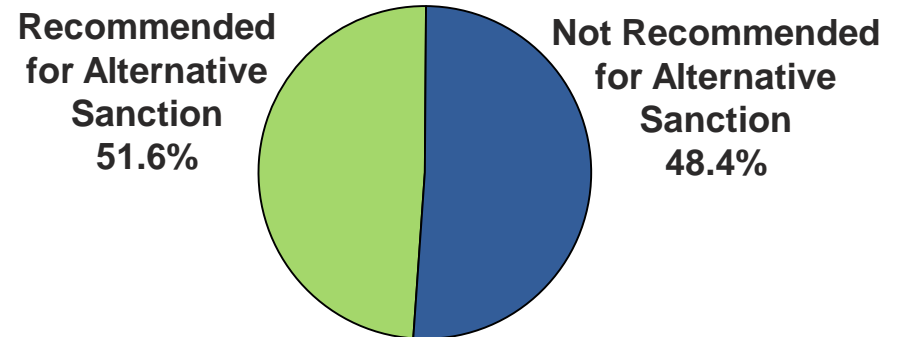


Violent offenders, particularly repeat violent offenders, are serving longer under truth-in-sentencing.

Through legislatively-mandated risk assessment, roughly 3,000 low-risk drug and property offenders are recommended for alternative sanctions each year.



Risk Assessment Outcomes 6,816 Eligible Offenders



Source: Virginia Criminal Sentencing Commission – 2018 Annual Report

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



Recommendations in the Sentencing Commission's 2018 Annual Report

Revisions to Virginia's 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.

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 2018 Annual Report is available at:
www.vcsc.virginia.gov/reports.html**



About the Commission's Recommendations

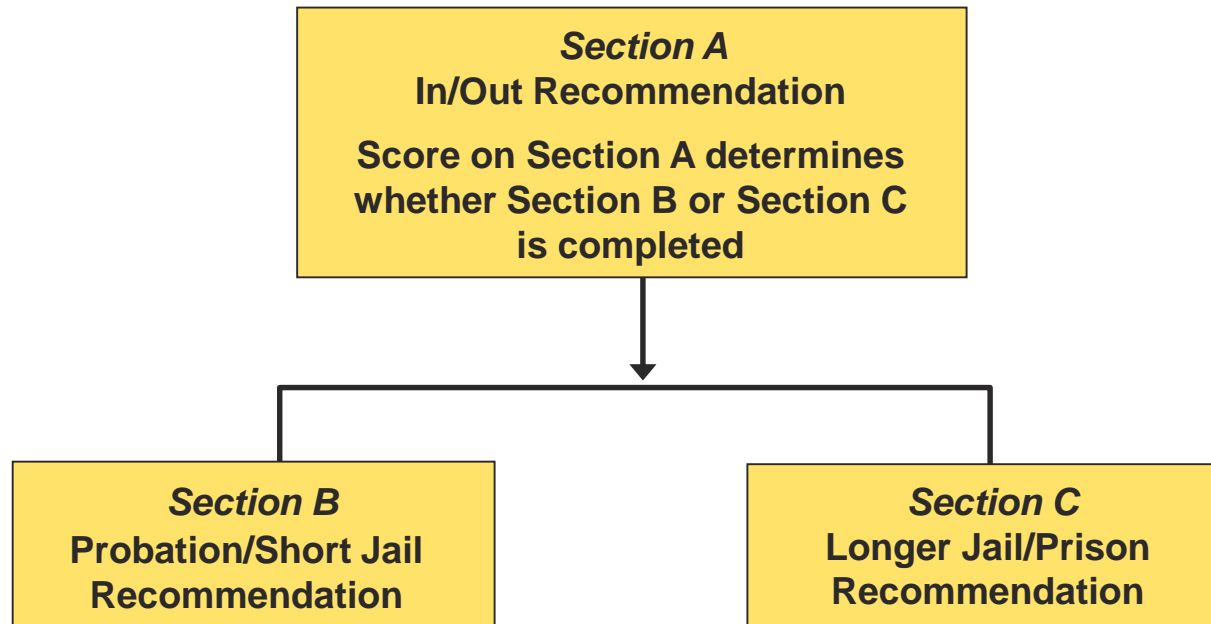
- **The sentencing guidelines are based on analysis of actual sentencing practices and are designed to provide judges with a benchmark that represents the typical (average) case.**
- **Recommendations for revisions to the guidelines are based on the best fit of the available data.**
- **Recommendations 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.

Sentencing Guidelines Structure

Analysis of sentencing practices in Virginia found that judges often consider different factors, or weigh the factors differently, depending on the offense and type of decision being made.

Virginia's Sentencing Guidelines are structured to reflect the judicial decision making process.

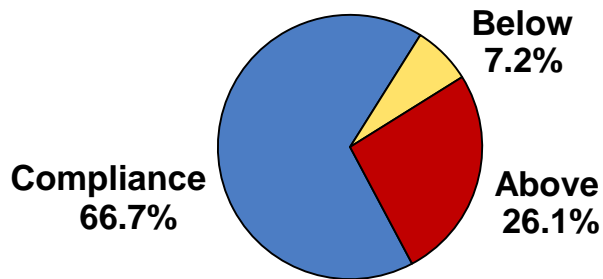


2018 Recommendations

RECOMMENDATION

1

Sentencing Guidelines Compliance
Sex Offender Registry Violation
(Not Violent Category) –
2nd or Subsequent Violation
(§ 18.2-472.1(A))
FY2013-FY2017



Revise the sentencing guidelines for a second or subsequent failure to register with the Sex Offender and Crimes against Minors Registry by an individual who is not categorized as sexually violent (§ 18.2-472.1(A)).

A second or subsequent failure to register by someone who is not categorized as sexually violent (§ 18.2-472.1(A)) is a Class 6 felony.



2018 Recommendations

RECOMMENDATION

1

Section A: No changes recommended.

Section B: Add factor to increase score if offender has 2 or more prior misdemeanor convictions or 1 or more prior felony convictions for Registry violations.

➔ Increases likelihood offender with such priors will be recommended for incarceration.

Section C: No changes recommended.



2018 Recommendations

RECOMMENDATION

2

Add possession of methamphetamine precursors (§ 18.2-248(J)) as a covered offense.

Sentencing Patterns for
Possession of Methamphetamine
Precursors (§ 18.2-248 (J))
FY2013 - FY2017

Disposition	Percent	Median Sentence
No Incarceration	39.9%	n/a
Incarceration up to 6 Mos.	32.4%	4 Mos.
Incarceration of More than 6 Mos.	27.7%	1 Yr.

- Match current rate of incarceration.
- Set scores to best reflect median prison sentence observed in data.



2018 Recommendations

RECOMMENDATION

2

Section A: Set Primary Offense (base) score at 6 points and revise worksheet to provide more prior record points if offender has previous felony drug convictions.

➔ Offenders convicted of possessing meth precursors who have 2 or more prior felony drug convictions will be automatically recommended for a prison term.



2018 Recommendations

RECOMMENDATION

2

Section B: Set Primary Offense (base) score at 6 points and revise worksheet to increase points if offender has a prior incarceration/commitment.

➔ **Ensures correct proportion of offenders will be recommended for jail incarceration.**

Section C: Based on results of data analysis, offenders convicted of this offense will be scored the same as those convicted of selling, etc., an imitation Schedule I or II drug.

➔ **Minimum of 7 months of incarceration will be recommended.**



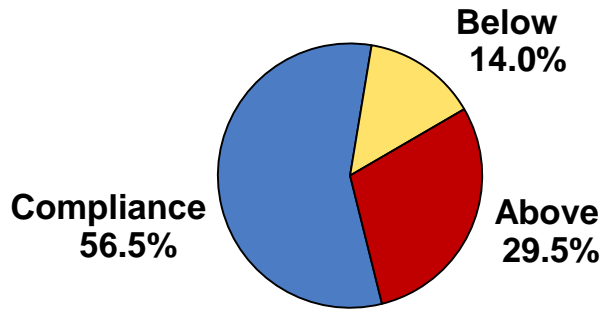
2018 Recommendations

RECOMMENDATION

3

Revise the sentencing guidelines for child abuse and neglect resulting in serious injury (§ 18.2-371.1(A)) to more closely reflect judicial sentencing practices for this offense.

Sentencing Guidelines Compliance
Child Abuse and Neglect Resulting
in Serious Injury (§ 18.2-371.1(A))
FY2013 – FY2017



2018 Recommendations

RECOMMENDATION

3

Section A: No changes recommended.

Section B: No changes recommended.

Section C: Increase points for physical and life threatening injury to the child.

Increase points for offenders who were legally restrained at the time of the offense (e.g., on probation, on bond).

➔ Increases length of recommended prison sentence for some offenders.

Dispositional Compliance/Departure Rates

Compliance	72.8%
Mitigation	13.8%
Aggravation	13.4%

Dispositional compliance is the extent to which judges agree with the type of sanction recommended by the guidelines.



2018 Recommendations

RECOMMENDATION

4

Sentencing Patterns for
DUI after Prior Felony DUI,

Manslaughter or Maiming Conviction
(§ 18.2-270 (C,2))
FY2013 - FY2017

Disposition	Percent	Median Sentence
No Incarceration	0.0%	n/a
Incarceration up to 6 Mos.	0.0%	n/a
Incarceration of More than 6 Mos.	100.0%	1 Yr.

Add driving under the influence (DUI) after a prior felony DUI, manslaughter, or maiming conviction (§ 18.2-270(C,2)) as a covered offense.

- Match current rate of incarceration.
- Set scores to best reflect median prison sentence observed in data.



2018 Recommendations

RECOMMENDATION

4

Section A: Set Primary Offense (base) score to automatically recommend a prison term.

Section B: No changes recommended (not applicable to these offenders).

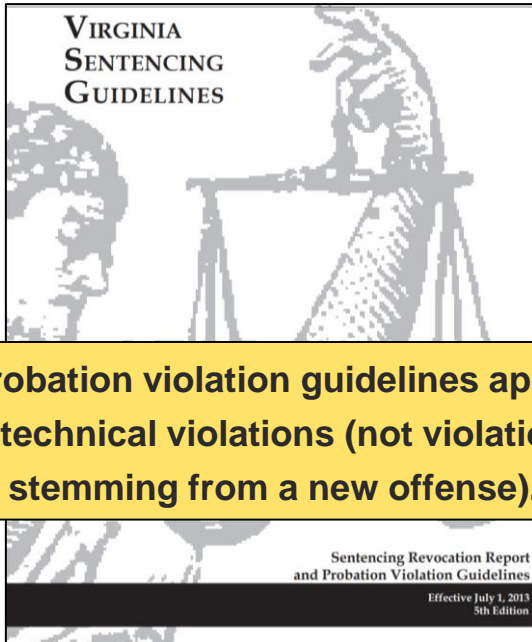
Section C: Offenders convicted of (DUI) after a prior felony DUI, manslaughter, or maiming conviction (§ 18.2-270(C,2)) will be scored the same as offenders convicted of a 4th or subsequent DUI (both offenses carry 1 year mandatory minimum sentence).



2018 Recommendations

RECOMMENDATION

5



Probation violation guidelines apply to technical violations (not violations stemming from a new offense).

Direct guidelines preparers to no longer complete probation violation guidelines when a probationer is removed from DOC's Community Corrections Alternative Program (CCAP) for administrative or medical reasons only.

CCAP is relatively new DOC program for probationers operating out of the Department's Detention and Diversion Centers.



2018 Recommendations

RECOMMENDATION

5

Currently, removal from CCAP for administrative reason is scored on the probation violation guidelines as a violation of special conditions.

- No misconduct to score
- Often for medical reasons
- Data used to create guidelines did not include administrative discharges from CCAP

Note: A probationer removed from CCAP for administrative reasons must go through a violation hearing to be re-sentenced by the court. The revocation will appear on criminal history records. This issue likely can only be addressed by the General Assembly.



