

VIRGINIA STATE CRIME COMMISSION



Mandatory Minimum Sentences

2020 ANNUAL REPORT

MANDATORY MINIMUM SENTENCES

EXECUTIVE SUMMARY

During the 2020 Regular Session of the General Assembly, the Senate Committee on the Judiciary and the Senate Committee on Rules referred Senate Bill 537 (Sen. John S. Edwards) and Senate Joint Resolution 34 (Sen. Scott A. Surovell), respectively, to the Crime Commission.¹ The Executive Committee of the Crime Commission directed staff to examine mandatory minimum sentences and the use of such sentences in Virginia.

A “mandatory minimum” sentence is a minimum punishment that must be imposed by a court when a person is convicted of a specific offense. Various policy arguments have been raised by both proponents and opponents of mandatory minimum sentences. Proponents generally contend that such sentences deter crime and ensure uniform punishment, while opponents argue that such sentences contribute to inequities in the criminal justice system and do not deter crime.

Staff reviewed literature related to mandatory minimum sentences and found that:

- Research on the specific effectiveness of mandatory minimum sentences is inconclusive;
- Much of the basis for the use of mandatory minimum sentences is rooted in deterrence and rationale choice theories;
- Mandatory minimum sentences evolved as a result of a shift towards determinate sentencing; and,
- Mandatory minimum sentences disproportionately impact certain racial and ethnic populations.

Staff identified 34 criminal statutes in the Code of Virginia that contain a total of 224 distinct offenses requiring a mandatory minimum sentence with a term of confinement. Of these 224 offenses, 162 are felonies and 62 are misdemeanors. While the types of felony offenses primarily involve driving while intoxicated, drugs, child pornography, and weapon violations, the vast majority of the misdemeanor offenses are for driving while intoxicated. Staff obtained and analyzed charge and conviction data in Virginia from FY2016 through FY2020 for these offenses and found that over the last 5 years:

- Offenses requiring a mandatory minimum sentence accounted for an extremely low number of overall charges and convictions;

- The most frequently *charged* offenses requiring a mandatory minimum sentence varied significantly; and,
- Most *convictions* for offenses requiring a mandatory minimum sentence were for driving while intoxicated.

Additionally, staff requested and reviewed data from the Virginia Department of Corrections on the types of sentences that the 34,719 State Responsible incarcerated inmates were serving on June 30, 2019, and found that:

- Approximately one-third of these inmates were serving at least one mandatory minimum sentence;
- The types of offenses for inmates serving only mandatory minimum sentences varied significantly;
- Offenses requiring mandatory minimum sentences disproportionately impact Black persons and males in Virginia; and,
- Mandatory minimum sentences are not imposed consistently in practice in Virginia.

Staff also conducted a cursory review to determine whether any other states had amended or eliminated any mandatory minimum sentences, and if so, for which types of offenses. While staff identified 16 other states that have amended or eliminated mandatory minimum sentences for certain offenses, only 3 of those states have applied the changes retroactively.

Crime Commission members reviewed the study findings at the January 5, 2021, Commission meeting and were presented with the following policy options:

Policy Option 1: Should any mandatory minimum sentences be eliminated? If so, for which offenses?

The Crime Commission voted to endorse legislation to eliminate all mandatory minimum sentences with a term of confinement from the Code of Virginia.

Policy Option 2: If any mandatory minimum sentences are eliminated, should convicted defendants be eligible for re-sentencing?

The Crime Commission voted to endorse legislation to allow for retroactive re-sentencing of all eliminated mandatory minimum sentences under Policy Option 1, with the exception of any (i) Class 1 felony, (ii) offenses punishable by life in prison, and (iii) misdemeanor offenses.

Policy Option 3: Should courts have the discretion to allow mandatory minimum sentences to be served concurrently with other offenses?

No motions were made by Crime Commission members on this policy option.

Legislation endorsed by the Crime Commission to eliminate all mandatory minimum sentences and to allow for retroactive re-sentencing with certain exceptions as described above was introduced during the 2021 Regular Session of the General Assembly (Senate Bill 1443 - Senator John S. Edwards).² Various amendments were made to the bill in the Senate Committee on the Judiciary before it ultimately passed the Senate. Additionally, legislation was also introduced to eliminate mandatory minimum sentences from 12 specific sections of the Code of Virginia and to allow retroactive re-sentencing for the felony offenses that were eliminated (House Bill 2331 - Del. Michael P. Mullin).³

Due to the differences between Senate Bill 1443 and House Bill 2331, the bills were sent to a conference committee consisting of members of the Senate and the House of Delegates. Both bills remained in conference and neither bill was enacted into law by the General Assembly.

BACKGROUND

Crime Commission staff engaged in the following activities as part of its study on mandatory minimum sentences and the use of such sentences in Virginia:

- Collected available literature and relevant reports relating to mandatory minimum sentences and deterrence;
- Reviewed all offenses requiring a mandatory minimum sentence under Virginia law;
- Examined Virginia case law relating to offenses requiring a mandatory minimum sentence;
- Obtained and analyzed data regarding charges and convictions for offenses requiring a mandatory minimum sentence in Virginia;
- Requested and analyzed data on the types of sentences being served by inmates in the custody of the Virginia Department of Corrections;
- Conducted a cursory review of amendments to and repeals of mandatory minimum sentences in other states; and,
- Consulted with key stakeholders.

A “mandatory minimum” sentence is a minimum punishment that must be imposed by a court when a person is convicted of a specific offense.⁴ The court may not suspend any portion of a mandatory minimum sentence;⁵ however, courts often have the discretion to impose a punishment that is greater than the prescribed mandatory minimum sentence.⁶ While mandatory minimum sentences can include a term of confinement, a fine, or community service,⁷ this report primarily focuses on criminal offenses that require a mandatory minimum sentence with a term of confinement upon conviction.

LITERATURE REVIEW

Various policy arguments have been raised by both proponents and opponents of mandatory minimum sentences.

Mandatory minimum sentences, like other criminal sentences in the Code of Virginia, represent policy decisions that have been made by the General Assembly over the years.⁸ Policy debates regarding the imposition of mandatory minimum sentences are not unique to Virginia.

Proponents contend that mandatory minimum sentences:⁹

- Deter crime;
- Help eliminate inequalities by providing uniformity and fairness, certainty and predictability of outcomes, and greater truth and integrity in sentencing;
- Guarantee that offenders are incapacitated and receive a pre-determined punishment; and,
- Induce cooperation with prosecutors.

Opponents contend that mandatory minimum sentences:¹⁰

- Do not ensure retribution or provide meaningful deterrence, as certainty of punishment and clarity does not equal deterrence;
- Have not eliminated discrepancies in punishment for similarly situated defendants;
- Distort sentences for whole classes of crimes and foster circumvention by judges, prosecutors, and juries; and,
- Inflict a “trial tax” when used to induce cooperation and guilty pleas from defendants who would otherwise exercise their constitutional right to trial by jury.

Research on the specific effectiveness of mandatory minimum sentences is inconclusive.

The effectiveness of mandatory minimum sentences has been frequently measured by impacts relating to deterrence and incapacitation.¹¹ Research regarding the deterrent effect of mandatory minimum sentences has provided mixed findings. Some scholars contend that there is no credible evidence of any deterrent effect,¹² while others have found marginal¹³ or short-term deterrent effects.¹⁴ The evidence regarding the general deterrent effect of severity-based sanctions, such as mandatory minimum sentencing, is varied; whereas, the relationship between these types of sanctions and specific deterrence is less clear.¹⁵ Further, the differences in the types of mandatory minimum sentences (fines to life imprisonment), and in the variety of offenses requiring a mandatory minimum sentence (traffic offenses to homicide), prevent general conclusions from being drawn.¹⁶

Incapacitation theory suggests that decreases in crime rates are achieved through increased rates of imprisonment because individuals are unable to engage in new criminal activity against the general public while incarcerated.¹⁷ Research has shown that imprisonment can have a deterrent effect, a criminogenic effect, or no effect on an individual's future reoffending.¹⁸ A large body of research demonstrates that lengthy prison sentences based on certain sentencing policies, including mandatory minimum sentences, do not serve as effective crime prevention strategies.¹⁹ The deterrent effect of imprisonment can be contingent upon several factors such as age, prior incarceration experience, and stage of criminal career.²⁰ Age has continued to be one of the most important predictors of criminal activity, with an individual's engagement in criminal activity peaking in late adolescence and young adulthood and declining as that individual ages.²¹ Research has repeatedly demonstrated the link between a person's age at the time of their first criminal offense and the persistence, frequency, and seriousness of criminal offending over time.²² Accordingly, some research on the criminal careers of offenders suggests that the effect of incapacitation is diminished because many offenders incarcerated for lengthy periods of time "would have ceased offending long before their prison terms expire."²³ Further, little evidence exists that lengthy prison sentences have a greater than marginal effect in decreasing recidivism.²⁴

In sum, it is unlikely that mandatory minimum sentences have a substantial deterrent effect.²⁵ Therefore, the use of mandatory minimum sentences cannot be justified *solely*

on the basis of deterrence; however, such use may be justified based on incapacitation effects and possibly retribution.²⁶

Much of the basis for the use of mandatory minimum sentences is rooted in deterrence and rationale choice theories.

Deterrence theory focuses on how the threat of punishment and the imposition of sanctions can be used to discourage individuals from engaging in criminal behavior.²⁷ This theory contends that criminal decision-making is a process, and therefore the research behind this theory centers on both an individual's and society's understanding of the potential sanctions that will occur if a person fails to engage in socially acceptable behavior.²⁸

Deterrence theory is based on three components: severity, certainty, and celerity (swiftness) of punishment.²⁹ Severity relates to the strength and weight of the punishment, certainty refers to the probability of detection and ensuing punishment, and celerity relates to how swiftly sanctions are applied once the offense has been committed and the individual detected.³⁰ According to deterrence theory, crime can be inhibited in two manners: general and specific deterrence. General deterrence occurs when the punishment for the crime prevents others in society who are considering engaging in a criminal activity from committing similar acts.³¹ Specific deterrence occurs when the punishment for the crime prevents the specific individual who is being punished from committing additional criminal acts in the future.³² Deterrence theory research has attempted to determine whether the severity of punishment,³³ the certainty of punishment,³⁴ or celerity of punishment³⁵ act as general or specific deterrents.

Deterrence theorists argue that punishment which is certain, occurs immediately after the crime takes place, and is severe enough to outweigh the benefits of engaging in criminal activity, is most effective in curbing criminal behavior.³⁶ These theorists assume that individuals are rational beings who engage in a process of considering the consequences of their actions, which includes weighing the costs and benefits of engaging in criminal behavior.³⁷ Rational choice theory, which is closely related to deterrence theory, focuses on understanding the impact of the anticipated costs and benefits of engaging in criminal behavior. Rational choice theory suggests that individuals rationally weigh the costs and benefits of offending in their decision to engage in criminal behavior.³⁸ Criminal activity is assumed to be deterred through the threat of sanctions and punishment and by increasing the anticipated costs of engaging

in criminal behavior.³⁹ A substantial body of research has focused on how an individual's *perception* of the risk of sanctions impacts the deterrent effect and how such perceptions and subsequent decision-making can vary greatly across offenders.⁴⁰ Ultimately, however, offenders will engage in criminal activity if the estimated utility, or the balance of "pleasures and pains," from engaging in the criminal activity is greater than the estimated utility from abstaining from criminal activity.⁴¹

A review of the research on deterrence theory and rational choice theory found that the effects of deterrence are mixed and have the ability to range in size from insignificant effects to modest effects or large effects.⁴² This small body of literature suggests that there is little evidence that severity-based deterrence measures produce general deterrent effects that are large enough to justify social and economic costs.⁴³ Certainty of punishment has been found to have a stronger deterrent effect than severity of punishment. Additionally, there is mixed evidence regarding the deterrent effect of the celerity (swiftness) of punishment. Finally, research suggests that the elements of deterrence do not operate independently of one another, but rather they interact, in order to achieve the goal of preventing criminal behavior.⁴⁴

Mandatory minimum sentences evolved as a result of a shift towards determinate sentencing.

Two of the predominant sentencing practices in the United States are indeterminate and determinate sentencing. Indeterminate sentencing is an offender-centered approach that focuses on the rehabilitation of offenders in correctional facilities through the use of employment and educational programs.⁴⁵ With indeterminate sentencing, judges are given wide discretion to sentence offenders to broad ranges of punishment, such as a range from 5 to 25 years of incarceration.⁴⁶ Further, an offender's release from incarceration is generally based on the discretion of a parole board, and such release is granted when that board determines that the individual has been properly rehabilitated and is suitable for release into the community.⁴⁷ Conversely, determinate sentencing is rooted in deterrence theory and aims to increase the certainty, severity, and celerity of punishment through incapacitation by reducing the sentencing discretion of judges.⁴⁸ Under determinate sentencing, judges are required to sentence offenders to definitive periods of incarceration.⁴⁹ Additionally, parole is eliminated and individuals are released from incarceration at the expiration of their sentence or through mandatory prison release policies.⁵⁰

Critics began to question the effectiveness of indeterminate sentencing beginning in the late 1960s and pushed for tougher crime control policies.⁵¹ Criticisms focused on disparity in sentence types, racially biased decisions, procedural unfairness, judicial authority, release decisions of parole boards, and the disregard of crime prevention.⁵² In addition, there were concerns with how inmates were being treated in correctional facilities.⁵³ All of this led to a shift in correctional ideology and policy that moved away from the rehabilitation of offenders toward deterrence, incapacitation, and crime prevention.⁵⁴ As a result, states began to adopt more determinate sentencing policies, such as mandatory minimum sentencing, truth-in-sentencing requiring individuals to serve a certain percentage of their sentence, habitual offender statutes, and three strikes laws.⁵⁵

The shift to determinate sentencing policies in some states was based on the desire for increased transparency, certainty, and consistency in sentencing.⁵⁶ Empirical research has consistently demonstrated that the implementation of determinate sentencing is associated with decreased state incarceration rates.⁵⁷ While research continues to demonstrate this pattern, there has been little attention given to explaining exactly *how* determinate sentencing contributes to decreased incarceration rates.⁵⁸

With determinate sentencing came the push for “structured” sentencing policies that controlled the discretion of judges in an effort to ensure uniform sentences for similar offenders and crimes.⁵⁹ Structured sentencing policies were achieved with states adopting presumptive sentencing guidelines, presumptive sentences, or voluntary guidelines.⁶⁰ Research indicates that the development of presumptive sentencing guidelines by sentencing commissions is the most effective manner to reduce disparity, regulate correctional spending, and increase consistency.⁶¹ Furthermore, researchers determined that states with presumptive guidelines established to control correctional resources and prison populations had lower incarceration rates.⁶²

Mandatory minimum sentences disproportionately impact certain racial and ethnic populations.

Mandatory minimum sentences have been found to contribute to disparities in the criminal justice system.⁶³ For example, some research has found that similarly situated defendants are ordered to serve dissimilar sentences for offenses requiring a mandatory minimum sentence.⁶⁴ Additionally, a body of research has found that mandatory minimum sentences undermine equality and exacerbate racial disparities.⁶⁵ In particular, research has found that mandatory minimum sentences have

disproportionately impacted Black and Hispanic defendants.⁶⁶ Specifically, Black males were found to receive sentences that were 50% longer than White males, and Hispanic males received sentences that were 17% longer as compared to White males.⁶⁷ This disproportionality remained even when accounting for other variables such as offense type, offense severity, and criminal history.⁶⁸ Additional research has found that even when controlling for the arrest offense, criminal history, and other prior characteristics, there was a sentence-length gap of about 10% between White and Black federal defendants.⁶⁹ Between 5-10% of this gap was explained by the initial charging decision of the prosecutor, with prosecutors in the sample almost twice as likely to bring a charge carrying a mandatory minimum sentence against a Black defendant.⁷⁰ Moreover, research has found that Black defendants received a higher proportion of mandatory minimum sentences as compared to White and Hispanic defendants.⁷¹ The root causes of these persistent disparities are not well understood.⁷² Researchers contend that the root causes may be the result of one or more of the following factors: (i) subconscious bias or racial stereotyping on the part of the judges;⁷³ (ii) prosecutorial bias;⁷⁴ or, (iii) sentencing policies that have a disparate impact against minorities.⁷⁵

VIRGINIA LAWS AND DATA

The Code of Virginia contains a total of 224 distinct offenses requiring a mandatory minimum sentence across 34 criminal statutes.

Staff conducted a review of the Code of Virginia and the Virginia Crime Codes (VCCs) and found that Virginia law includes 224 distinct offenses requiring a mandatory minimum sentence with a term of confinement across 34 criminal statutes. Of these 224 offenses, 162 are felonies and 62 are misdemeanors. As seen in Tables 1 and 2, the types of offenses range from misdemeanor traffic violations to murder, and the mandatory minimum sentences for these offenses range from 2 days in jail up to life imprisonment.

Table 1: Felony Offenses Requiring a Mandatory Minimum Sentence (162 total)

FELONY OFFENSES		
VCC Category	Mandatory Sentence Range	Number of Offenses
Assault	30 Days – 5 Years	5
Escapes	1 Year	1
Fraud	6 Months	1
Gangs	2 Years	2
Murder	1 Year – Life	3
Narcotics	6 Months - Life	44
Obscenity (Child Pornography)	1 Year – 15 Years	21
Protective Orders	6 Months	2
Sexual Assault	10 Years – Life	6
Traffic - DWI	90 Days – 1 Year 5 Days	58
Traffic- Other	12 Months – 1 Year	7
Vandalism	1 Year	2
Weapons	1 Year – 5 Years	10

Source: Virginia Criminal Sentencing Commission, *VCCs Excel Version* spreadsheet. Count of offenses by Crime Commission staff based on list of offenses provided in *VCCs Excel Version*, retrieved from http://www.vcsc.virginia.gov/codes_qbe.html. Offenses requiring a mandatory minimum sentence under Va. Code §§ 18.2-67.5:2, 18.2-67.5:3, and 19.2-297.1 are not included in the count. Offenses requiring a mandatory minimum sentence other than a term of confinement (fine or community service) are not included in this count. Table prepared by Crime Commission staff.

The majority of misdemeanor offenses requiring a mandatory minimum sentence in the Code of Virginia are for driving while intoxicated.

As illustrated in Table 2, driving while intoxicated (DWI) offenses comprise an overwhelming majority of the misdemeanor offenses requiring a mandatory minimum sentence in the Code of Virginia.

Table 2: Misdemeanor Offenses Requiring a Mandatory Minimum Sentence (62 total)

MISDEMEANOR OFFENSES		
VCC Category	Mandatory Sentence Range	Number of Offenses
Alcohol	30 Days	1
Protective Orders	60 Days	2
Simple Assault	2 Days – 6 Months	3
Tobacco	90 Days	2
Traffic - DWI	5 Days – 45 Days	52
Traffic - Other	10 Days	2

Source: Virginia Criminal Sentencing Commission, *VCCs Excel Version* spreadsheet. Count of offenses by Crime Commission staff based on list of offenses provided in *VCCs Excel Version*, retrieved from http://www.vcsc.virginia.gov/codes_qbe.html. Offenses that require a mandatory minimum sentence other than a term of confinement (fine or community service) are not included in this count. Table prepared by Crime Commission staff.

Offenses requiring a mandatory minimum sentence comprised a small proportion of the total charges and convictions in Virginia courts over the past 5 years.

Staff requested data on the total number of charges and convictions in Virginia’s circuit, general district, and juvenile and domestic relations district courts from FY2016 to FY2020.⁷⁶ As noted in Table 3, offenses requiring a mandatory minimum sentence accounted for only 4% of the charges and 3% of the convictions during that 5 year time period.

Table 3: Total Charges and Convictions, FY2016-FY2020

TOTAL CHARGES	4,903,574
Offense Did NOT Require a Mandatory Minimum Sentence	96%
Offense Required a Mandatory Minimum Sentence	4%
TOTAL CONVICTIONS	2,423,935
Offense Did NOT Require a Mandatory Minimum Sentence	97%
Offense Required a Mandatory Minimum Sentence	3%

Source: Virginia Criminal Sentencing Commission staff analysis of data from the Supreme Court of Virginia’s Case Management Systems (CMS) for the Circuit Court, General District Court, and Juvenile & Domestic Relations (JDR) Court (adult defendants only). The total number of charges and convictions exclude infractions. See endnote 76 for additional important notes, caveats, and limitations. Table prepared by Crime Commission staff.

The most frequently charged offenses requiring a mandatory minimum sentence over the last five years in Virginia varied significantly.

As noted in Table 4, the most frequently charged offenses requiring a mandatory minimum sentence between FY2016 and FY2020 in Virginia included driving on a revoked license (3rd or subsequent offense), assault on public servants, DWI, use of a firearm in a felony, and possession of a firearm by a non-violent felon.⁷⁷ It is important to note that the mandatory minimum sentence for driving on a revoked license (3rd or subsequent offense) was repealed on July 1, 2020, as a result of legislation enacted during the 2020 Regular Session of the General Assembly.⁷⁸

Table 4: Top 5 Charges per Year for Offenses Requiring a Mandatory Minimum Sentence, FY2016-FY2020

Rank	Offense Description	Mandatory Minimum Sentence	Average Charges per Year
1	<i>Driving w/ license revoked - 3rd or sub. in 10 years</i> Repealed as of 7/1/2020	10 days	5,572
2	Simple assault on law enforcement, court, DOC, fire/medical	6 months	4,002
3	DWI, First conviction, blood alcohol level .15 to .20	5 days	3,551
4	Firearm use in commission of felony - first offense	3 years	2,839
5	Convicted felon (non-violent w/in 10 yr.) - possess firearm	2 years	1,944
TOTAL AVERAGE NUMBER OF CHARGES PER YEAR, FY2016-FY2020			34,800

Source: Virginia Criminal Sentencing Commission staff analysis of data from the Supreme Court of Virginia's Case Management Systems (CMS) for the Circuit Court, General District Court, and Juvenile & Domestic Relations (JDR) Court (adult defendants only). See endnote 76 for additional important notes, caveats, and limitations. Table prepared by Crime Commission staff.

Most convictions for offenses requiring a mandatory minimum sentence over the past 5 years in Virginia were for driving while intoxicated.

As detailed in Table 5, DWI offenses accounted for four of the top five most frequent convictions for offenses requiring a mandatory minimum sentence in Virginia over the past 5 years. As previously noted, the remaining offense of driving on a revoked license (3rd or subsequent offense) was repealed as of July 1, 2020.⁷⁹

Table 5: Top 5 Convictions Per Year for Offenses Requiring a Mandatory Minimum Sentence, FY2016-FY2020

Rank	Offense Description	Mandatory Minimum Sentence	Average Convictions per Year
1	<i>Driving w/ license revoked - 3rd or sub. within 10 years</i> Repealed as of 7/1/2020	10 days	3,078
2	DWI, First conviction, blood alcohol level .15 to .20	5 days	2,624
3	DWI, Second conviction within less than 5 years	20 days	943
4	DWI, First conviction, blood alcohol level > .20	10 days	919
5	DWI, Second conviction within 5 to 10 years	10 days	828
TOTAL AVERAGE NUMBER OF CONVICTIONS PER YEAR, FY2016-FY2020			13,959

Source: Virginia Criminal Sentencing Commission staff analysis of data from the Supreme Court of Virginia's Case Management Systems (CMS) for the Circuit Court, General District Court, and Juvenile & Domestic Relations (JDR) Court (adult defendants only). See endnote 76 for additional important notes, caveats, and limitations. Table prepared by Crime Commission staff.

Offenses requiring mandatory minimum sentences disproportionately impact Black persons and males in Virginia.

An analysis by the Virginia Department of Corrections on the impact of mandatory minimum sentences on the State Responsible confined population as of June 30, 2019, found that:⁸⁰

- 41% of Black inmates were serving one or more mandatory minimum sentences as compared to 26% of White inmates; and,
- Male inmates were serving more mandatory minimum sentences than female inmates.⁸¹

Approximately one-third of the State Responsible confined population in Virginia on June 30, 2019, was serving at least one mandatory minimum sentence.

As of June 30, 2019, nearly 35,000 State Responsible inmates were confined in Virginia. As illustrated in Table 6, approximately one-third (10,990) of State Responsible inmates were serving at least one mandatory minimum sentence.⁸²

Table 6: Sentence Type of State Responsible Inmates

Sentence Type	Number of Inmates	% Total
Only Non-Mandatory Minimum Sentences	21,547	62%
Mandatory Minimum & Non-Mandatory Minimum Sentences	9,491	27%
Only Mandatory Minimum Sentences	1,499	4%
Life Sentence, Death Sentence, or Three Strikes	2,182	6%
TOTAL NUMBER OF SR INMATES	34,719	100%

Source: Virginia Department of Corrections, Research – Statistical Analysis & Forecast Unit. (December 2020). *Offense Information of SR Inmates Serving Mandatory Minimum Sentences*. Analysis is based upon sentencing information for inmates in the SR Confined Population on June 30, 2019. Percentages do not total 100 due to rounding. Table prepared by Crime Commission staff.

The Virginia Department of Corrections conducted further analysis on the 4% (1,499) of State Responsible confined inmates in Table 6 who were serving only mandatory minimum sentences. The outcome of this analysis, as detailed in Table 7, indicated that these inmates were serving mandatory minimum sentences for a wide variety of offenses, including drug distribution, driving on a revoked license, possession of a

firearm by a non-violent felon, use of a firearm in a felony, and assault on a public servant.⁸³

Table 7: Top 5 Offenses Amongst State Responsible Confined Inmates Serving Only Mandatory Minimum Sentences

Rank	Offense Description	Number of Offenses	% Total
1	Drug distribution	489	12%
2	License revoked - habitual offender drive w/out license	384	10%
3	Convicted felon (non-violent w/in 10 yr.) - possess firearm	298	7%
4	Firearm use in commission of felony – first offense	271	7%
5	Simple assault on law enforcement, court, DOC, fire/medical	269	7%
TOTAL OFFENSES		4,001	43%

Source: Virginia Department of Corrections, Research – Statistical Analysis & Forecast Unit. (December 2020). *Offense Information of SR Inmates Serving Mandatory Minimum Sentences*. Analysis is based upon sentencing information for inmates in the SR Confined Population on June 30, 2019. As inmates can be convicted of multiple, differing offenses, the offenses listed in this table may or may not be the most serious offense for these inmates. Table prepared by Crime Commission staff.

Mandatory minimum sentences are not imposed consistently in Virginia.

The inconsistent practices surrounding mandatory minimum sentences in Virginia typically stem from whether such sentences are ordered to be served consecutive to, or concurrent with, any other sentences. The distinction between a consecutive sentence and a concurrent sentence is significant in determining how long an individual will remain incarcerated. A consecutive sentence is when an individual serves multiple sentences one after another, while a concurrent sentence is when an individual serves multiple sentences at the same time. For example, if an individual receives two 5 year sentences and serves those sentences consecutively, that individual will serve a total of 10 years in prison. However, if those same two sentences are served concurrently, that individual will serve a total of 5 years in prison.

Virginia statutory and case law vary as to whether a mandatory minimum sentence can be served concurrently with any other sentence. As such, mandatory minimum sentences are not imposed consistently in practice.⁸⁴ One reason for the inconsistency is that the Code of Virginia treats sentences for non-mandatory minimum offenses differently than sentences for offenses requiring a mandatory minimum sentence. Under Virginia law, sentences for non-mandatory minimum offenses are served

consecutively, but courts may order those sentences to be served concurrently.⁸⁵ In contrast, many statutes that set forth offenses requiring a mandatory minimum sentence contain provisions that specifically require the mandatory minimum sentence to be served consecutively with any other sentence.⁸⁶ However, not all statutes that set forth offenses requiring a mandatory minimum sentence contain these specific consecutive sentencing provisions.⁸⁷ Therefore, whether a mandatory minimum sentence is ordered to be served concurrently with another sentence is often based on the interpretation of these statutes by judges and prosecutors across the Commonwealth.

A second reason for the inconsistent sentencing practices is based on how Virginia appellate courts have interpreted provisions in the Code of Virginia that direct the manner in which certain mandatory minimum sentences are to be served. For example, because the Code of Virginia uses varying language to mandate when mandatory minimum sentences must be served consecutively with other sentences, Virginia appellate courts have ruled that multiple convictions for possession of a firearm within ten years of having been convicted of a felony (2 year mandatory minimum sentence)⁸⁸ cannot be served concurrently with each other,⁸⁹ while multiple convictions for use or display of a firearm in committing a felony (3 year and 5 year mandatory minimum sentences)⁹⁰ and multiple convictions for production of child pornography, first offense (5 year mandatory minimum sentence)⁹¹ can be served concurrently with each other.⁹²

OTHER STATES

While several other states have amended or eliminated mandatory minimum sentences for certain offenses, only a few of those states have applied the changes retroactively.

As part of this study, staff conducted a cursory review to determine whether any other states have amended or eliminated any mandatory minimum sentences, and if so, for which types of offenses. Staff identified 16 states as of January 2021 that have amended or repealed mandatory minimum sentences for certain offenses; however, only 3 of those states applied the changes retroactively (California, Michigan, and New York). States that have amended or repealed mandatory minimum sentences include:⁹³

- Arkansas: reduced the length of mandatory minimum sentences for possession and distribution of certain drugs;⁹⁴

- California: California voters passed Proposition 36, which revised the state’s three strikes law that imposed mandatory life sentences for third time offenders;⁹⁵
- Connecticut: eliminated mandatory minimum sentences for drug possession in school zones;⁹⁶
- Delaware: eliminated mandatory minimum sentences for some first-time drug offenders and reduced mandatory minimum sentences for certain drug offenses;⁹⁷
- Florida: eliminated mandatory minimum sentences for aggravated assault with a firearm;⁹⁸
- Iowa: eliminated mandatory minimum sentences for certain drug offenses;⁹⁹
- Louisiana: provided prosecutors with discretion to waive mandatory minimum sentences for nonviolent and non-sexual assault offenses;¹⁰⁰
- Maryland: eliminated mandatory minimum sentences for certain drug offenses;¹⁰¹
- Massachusetts: reduced the length of mandatory minimum sentences for certain drug offenses;¹⁰²
- Michigan: eliminated mandatory minimum sentences for most drug offenses;¹⁰³
- Missouri: eliminated mandatory minimum sentences for certain drug offenses;¹⁰⁴
- Montana: eliminated mandatory minimum sentences for drug offenses;¹⁰⁵
- New York: eliminated mandatory minimum sentences for certain drug offenses;¹⁰⁶
- North Dakota: reduced the length of mandatory minimum sentences for certain drug distribution offenses;¹⁰⁷
- Ohio: eliminated mandatory minimum sentences for certain drug offenses;¹⁰⁸ and,
- Oklahoma: eliminated mandatory minimum sentences for certain drug offenses.¹⁰⁹

CRIME COMMISSION LEGISLATION

The Crime Commission met on January 5, 2021, and heard a presentation from staff on mandatory minimum sentences and the use of such sentences in Virginia.¹¹⁰ Staff provided Crime Commission members with three policy options for consideration.

Policy Option 1: Should any mandatory minimum sentences be eliminated?
If so, for which offenses?

Staff advised Crime Commission members that the decision to eliminate all or some mandatory minimum sentences from the Code of Virginia was ultimately a policy decision. Staff provided members with a list of all offenses requiring a mandatory minimum sentence with a term of confinement in the Code of Virginia. The list included each offense, the mandatory minimum sentence, the sentencing range, and the average number of charges and convictions for each offense over the past 5 years.¹¹¹

Staff further advised members that most mandatory minimum sentences in the Code of Virginia constitute the low end of a sentencing range for a particular offense; however, a few of the mandatory minimum sentences are for a definitive period of incarceration. For example, a person convicted of possession of a firearm after having been convicted of a nonviolent felony within the past 10 years must be sentenced to a mandatory minimum of 2 years in prison, but may be sentenced up to 5 years in prison.¹¹² Conversely, a person convicted of first offense use of a firearm in the commission of certain felonies can only be sentenced to 3 years in prison.¹¹³ Therefore, if any mandatory minimum sentences are eliminated for offenses with a definitive period of incarceration, then members will need to determine new sentencing ranges for those particular offenses.¹¹⁴

Finally, staff noted that eliminating a mandatory minimum sentence does not eliminate the punishment for the underlying criminal offense. If a mandatory minimum sentence is eliminated, a person convicted of that offense will be sentenced based on the classification of the crime, the facts and circumstances of the offense, and the sentencing guidelines, as is the current practice for any non-mandatory minimum offense under the Code of Virginia.

The Crime Commission voted to endorse legislation to eliminate all mandatory minimum sentences with a term of confinement from the Code of Virginia.

Policy Option 2: If any mandatory minimum sentences are eliminated, should convicted defendants be eligible for resentencing?

Policy Option 2 was contingent upon the decision on Policy Option 1. Staff advised members that Policy Option 2 dealt with the retroactive re-sentencing of any eliminated mandatory minimum sentences. Because the Crime Commission had voted to eliminate

all mandatory minimum sentences with a term of confinement from the Code of Virginia, staff asked for further guidance on whether any or all of the offenses requiring a mandatory minimum sentence would qualify for retroactive re-sentencing.

Staff noted that retroactive re-sentencing is a mechanism for equitable relief for individuals currently serving a now eliminated mandatory minimum sentence. However, staff cautioned that retroactive re-sentencing does present certain resource and logistical challenges, such as providing counsel to those defendants as part of the re-sentencing process and potentially returning incarcerated defendants to courts for re-sentencing hearings.

Crime Commission members were provided with draft legislation that created a petition process for retroactive re-sentencing. The re-sentencing process involved the defendant filing a petition with the sentencing court, a response from the Commonwealth's Attorney, provisions to appoint counsel for the defendant, notification to any victims of the underlying offense, a review of the petition by the court, and, if granted, a re-sentencing hearing and potential re-sentencing by the court. The draft legislation was based in concept on a current provision of the Code of Virginia which allows for re-sentencing if a defendant has not been transferred from the custody of a local or regional jail to a state correctional facility.¹¹⁵

The Crime Commission voted to endorse legislation to allow for retroactive re-sentencing of all eliminated mandatory minimum sentences under Policy Option 1, with the exception of any (i) Class 1 felony, (ii) offenses punishable by life in prison, and (iii) misdemeanor offenses.

Policy Option 3: Should courts have the discretion to allow mandatory minimum sentences to be served concurrently with other offenses?

Staff advised members that Policy Option 3 was a stand-alone policy option meant to address inconsistent practices for mandatory minimum sentences. Staff noted that allowing courts to have such discretion would provide clarity in the law and would grant courts greater flexibility in fashioning sentences. Adoption of this policy option would also address the numerous instances where a defendant is charged with multiple offenses requiring a mandatory minimum sentence that would result in a lengthy term of incarceration if the sentences were ordered to be served consecutively. Despite the potential benefits of this policy option, staff cautioned members that granting courts this discretion could unintentionally lead to other sentencing inconsistencies across the

Commonwealth, as this flexibility could result in widely varied sentences across localities for the same type of offense committed under similar circumstances.

Crime Commission members were provided with draft legislation to grant courts the explicit authority to allow mandatory minimum sentences to be served concurrently with other sentences. The draft legislation was based in concept on the current provision of the Code of Virginia that grants courts the discretion to allow non-mandatory minimum sentences to be served concurrently.¹¹⁶

No motions were made by Crime Commission members on Policy Option 3.

Legislation endorsed by the Crime Commission was introduced during the 2021 Regular Session of the General Assembly to eliminate all mandatory minimum sentences with a term of confinement from the Code of Virginia and to allow for retroactive re-sentencing for all such offenses, with the exception of re-sentencing for any (i) Class 1 felony, (ii) offenses punishable by life in prison, and (iii) misdemeanor offenses (Senate Bill 1443 - Senator John S. Edwards).¹¹⁷ Senator Edwards later offered a substitute version of this bill to eliminate all mandatory minimum sentences with a term of confinement from the Code of Virginia, with the exception of Class 1 felonies, and to also remove the retroactive re-sentencing provision from the bill. This substitute version was adopted by the Senate Committee on the Judiciary. Additionally, this substitute version created a work group to evaluate the feasibility of re-sentencing persons who were previously convicted of a felony offense that was punishable by a mandatory minimum term of confinement. The substitute version of Senate Bill 1443 passed the Senate.¹¹⁸ Additionally, legislation was also introduced to eliminate mandatory minimum sentences from 12 specific sections of the Code of Virginia and to allow retroactive re-sentencing for the felony offenses that were eliminated (House Bill 2331 - Del. Michael P. Mullin).¹¹⁹

Due to the differences between Senate Bill 1443 and House Bill 2331, the bills were sent to a conference committee consisting of members of the Senate and the House of Delegates. Both bills remained in conference and neither bill was enacted into law by the General Assembly.

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Virginia Criminal Sentencing Commission

Virginia Department of Corrections

Virginia Department of Juvenile Justice

Virginia Indigent Defense Commission

ENDNOTES

- ¹ Senate Bill 537 is available at <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=sb537>. Senate Joint Resolution 34 is available at <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=sj34>.
- ² Senate Bill 1443 is available at <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=sb1443>.
- ³ House Bill 2331 is available at <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=hb2331>. This bill proposed eliminating mandatory minimum sentences from VA. CODE ANN. §§ 3.2-4212, 4.1-302, 18.2-186.4, 18.2-248, 18.2-248.01, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-255, 18.2-255.2, 46.2-357, and 46.2-391 (2020).
- ⁴ See VA. CODE ANN. § 18.2-12.1 (2020).
- ⁵ *Id.*
- ⁶ *Id.*
- ⁷ *Id.*
- ⁸ See, e.g., VA. CODE ANN. §§ 18.2-10 and 18.2-11 (2020).
- ⁹ Luna, E., & Cassell, P. G. (2010). Mandatory minimalism. *Cardoza Law Review*, 32, 1-83; Tonry, M. (2009). The mostly unintended effects of mandatory penalties: Two centuries of consistent findings. *Crime and Justice*, 38(1), 65-114.
- ¹⁰ *Id.*
- ¹¹ Tonry, M. (2009). The mostly unintended effects of mandatory penalties: Two centuries of consistent findings. *Crime and Justice*, 38(1), 65-114; Tonry, M. (2017). Making American sentencing just, humane, and effective. *Crime and Justice*, 46, 441-504.
- ¹² *Id.*
- ¹³ Durlauf, S. N., & Nagin, D. S. (2011). Imprisonment and crime: Can both be reduced? *Criminology and Public Policy*, 10(1), 13-54.
- ¹⁴ Mastrobuoni, G., & Rivers, D. (2016). Criminal discount factors and deterrence. IZA Discussion Paper No. 9769, Retrieved from <https://poseidon01.ssrn.com/delivery.php?ID=661105029067075097074085125122097075004068033079045035081059123124007046038116114111010122086077054004097080106086097126098105097080066118123122007116106125116110028122026019000&EXT=pdf>
- ¹⁵ Nagin, D., Cullen, F. T., & Jonson, C. L. (2009). Imprisonment and reoffending. *Crime and Justice*, 38(1), 115-200; Nagin, D. (2013). Deterrence in the twenty-first century: A review of evidence. *Crime and Justice*, 42(1), 199-263; Raaijmakers, E. A. C., de Keijser, J. W., Nieuwebeerta, P., & Dirkzwager, A. J. E. (2017). Why longer prison terms fail to serve a specific deterrent effect: An empirical assessment on the remembered severity of imprisonment. *Psychology, Crime & Law*, 23(1), 32-55.
- ¹⁶ The general public being informed about legal sanctions for engaging in criminal behavior impacts deterrence and public safety. Legal sanctions have the ability to deter the criminal behavior of potential offenders through a combination of legislation, simultaneous publicity, and enforcement. For example, a very detailed study that analyzed the impact of mandatory minimum jail sentences in Arizona for drunk driving found that the decrease in drunk driving arrests following the enactment of the “stiffer penalties” was more closely correlated with a corresponding public awareness campaign about the new laws and the dangers of drunk

driving, rather than the specific deterrent effect of the laws themselves. *See, e.g.,* Apel, R. (2013). Sanctions, perceptions, and crime: Implications for criminal deterrence. *Journal of Quantitative Criminology*, 29, 67-101; Fradella, H. F. (2000). Mandatory minimum sentences: Arizona's ineffective tool for the social control of driving under the influence. *Criminal Justice Policy Review*, 11(2), 113-135; Pickett, J. T., Mancini, C., Mears, D. P., & Gertz, M. (2015). Public (mis)understanding of crime policy: The effects of criminal justice experience and media reliance. *Criminal Justice Policy Review*, 26, 500-522.

¹⁷ Stahlkopf, C., Males, M., & Macallair, D. (2010). Testing incapacitation theory: Youth crime and incarceration in California. *Crime & Delinquency*, 56(2), 253-268.

¹⁸ Bales, W. D., & Piquero, A. R. (2012). Assessing the impact of imprisonment on recidivism. *Journal of Experimental Criminology*, 8, 71-101, Cochran, J. C., Mears, D. P., & Bales, W. D. (2014). Assessing the effectiveness of correctional sanctions. *Journal of Quantitative Criminology*, 30(2), 317-347; Nagin, D., Cullen, F. T., & Jonson, C. L. (2009). Imprisonment and reoffending. *Crime and Justice*, 38(1), 115-200; Durlauf, S. N., & Nagin, D. S. (2011). Imprisonment and crime: Can both be reduced? *Criminology & Public Policy*, 10(1), 13-54; Meade, B., Steiner, B., Makarios, M., & Travis, L. (2013). Estimating a dose-response relationship between time served in prison and recidivism. *Journal of Research in Crime & Delinquency*, 4, 525-550; Mears, D. P., Cochran, J. C., & Cullen, F. T. (2015). Incarceration heterogeneity and its implications for assessing the effectiveness of imprisonment on recidivism. *Criminal Justice Policy Review*, 26(7), 691-712, Snodgrass, G. M., Blokland, A. A., Haviland, A., Nieuwbeerta, P., & Nagin, D. P. (2011). Does the time cause the crime? An examination of the relationship between time served and reoffending in the Netherlands. *Criminology*, 49(4), 1149-1194.

¹⁹ Cochran, J. C., Mears, D. P., & Bales, W. D. (2014). Assessing the effectiveness of correctional sanctions. *Journal of Quantitative Criminology*, 30, 317-324; Cullen, F. T., Johnson, C. L., & Nagin, D. S. (2011). Prisons do not reduce recidivism: The high cost of ignoring science. *The Prison Journal*, 91, 485-655; Mears, D. P., Cochran, J. C., Bales, W. D., & Bhati, A. S. (2016). Recidivism and time served in prison. *Journal of Criminal Law and Criminology*, 106, 82-122; Nagin, D. S. (2013). Deterrence in the twenty-first century. *Crime and Justice*, 42(1), 199-263; Piquero, A. R., Farrington, D. P., & Blumstein, A. (2007). *Key Issues in Criminal Career Research: New Analyses of the Cambridge Study in Delinquent Development*. New York: Cambridge University Press; Tonry, M. (2017). Making American sentencing just, humane, and effective. *Crime and Justice*, 46, 441-504.

²⁰ Nagin, D., Cullen, F. T., & Jonson, C. L. (2009). Imprisonment and reoffending. *Crime and Justice*, 38(1), 115-200.

²¹ Sampson, R. J., & Laub, J. H. (2003). Life-course desisters? Trajectories of crime among delinquent boys followed to age 70*. *Criminology*, 41(3), 301-339.

²² *See, e.g.,* Moffitt, T.E. (1993). Adolescence-limited and life-course-persistent antisocial behavior: A developmental taxonomy. *Psychological Review*, 100, 674-701.

²³ Tonry, M. (2017). Making American sentencing just, humane, and effective. *Crime and Justice*, 46, 441-504, at p. 458.

- ²⁴ Subramanian, R., & Delaney, R. (2014). *Playbook for change? States reconsider mandatory sentences*. Vera Institute of Justice. https://www.vera.org/downloads/Publications/playbook-for-change-states-reconsider-mandatory-sentences/legacy_downloads/mandatory-sentences-policy-report-v3.pdf; The Pew Center on the States. (2011). *State of recidivism: The revolving door of America's prisons*. Washington, D.C., https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pes_assets/2011/pewstateofrecidivismpdf.pdf
- ²⁵ Durlauf, S. N., & Nagin, D. S. (2011). Imprisonment and crime: Can both be reduced? *Criminology & Public Policy*, 10(1), 13-54; Nagin, D. (2013). Deterrence in the twenty-first century: A review of evidence. *Crime and Justice*, 42(1), 199-263.
- ²⁶ Nagin, D. (2013). Deterrence in the twenty-first century: A review of evidence. *Crime and Justice*, 42(1), 199-263.
- ²⁷ Apel, R. (2013). Sanctions, perceptions, and crime: Implications for criminal deterrence. *Journal of Quantitative Criminology*, 29, 67-101; Piquero, A. R., Paternoster, R., Pogarsky, G., & Loughran, T. (2011). Elaborating the individual difference component in deterrence theory. *Annual Review of Law and Social Science*, 7, 335-360.
- ²⁸ Apel, R. (2013). Sanctions, perceptions, and crime: Implications for criminal deterrence. *Journal of Quantitative Criminology*, 29, 67-101.
- ²⁹ Beccaria, C. (1986[1764]). *On crimes and punishments*. Macmillan Publishing.; Bentham, J. (1988[1789]). *An introduction to the principles of morals and legislation*. Prometheus Books.
- ³⁰ Piquero, A. R., Paternoster, R., Pogarsky, G., & Loughran, T. (2011). Elaborating the individual difference component in deterrence theory. *Annual Review of Law and Social Science*, 7, 335-360.
- ³¹ *Id.*
- ³² *Id.*
- ³³ According to deterrence theory, there should be a decrease in an individual's likelihood of reoffending after release as a result of a more severe prison sentence. In other words, severe punishment has the potential to raise the anticipated cost of participating in criminal behavior. Researchers have tested this hypothesis in a number of ways: comparing the post-release behavior of individuals sentenced to a period of imprisonment and individuals on probation; examining post-release offending for groups of individuals sentenced to long and short periods of incarceration; and, comparing reoffending among those who experienced harsh prison conditions versus those who experienced more lenient prison conditions. However, researchers contend that there is not an abundance of literature that examines specific policy changes in the evaluation of the deterrent effect of changes in the severity of punishment given. For example, given the importance of sentence enhancements to contemporary criminal justice policy, there is a lack of research examining their deterrent effect. *See, e.g.*, Chen, M. K., & Shapiro, J. M. (2007). Do harsher prison conditions reduce recidivism? A discontinuity based approach. *American Law and Economics Review*, 9(1), 1-29; Cochran, J. C., Mears, D. P., & Bales, W. D. (2014). Assessing the effectiveness of correctional sanctions. *Journal of Quantitative Criminology*, 30(2), 317-347; Drago, F., Galbiati, R., & Vertova, P. (2011). Prison conditions and recidivism. *American Law and Economics Review*, 13(1), 103-130; Durlauf, S. N., & Nagin, D. S. (2011). Imprisonment and crime: Can both be

reduced? *Criminology & Public Policy*, 10(1), 13-54; Meade, B., Steiner, B., Makarios, M., & Travis, L. (2013). Estimating a dose-response relationship between time served in prison and recidivism. *Journal of Research in Crime & Delinquency*, 50(4), 525–550; Nagin, D. (2013). Deterrence in the twenty-first century: A review of evidence. *Crime and Justice*, 42(1), 199-263; Nagin, D. S., & Snodgrass, M. (2013). The effect of incarceration on re-offending: Evidence from a natural experiment in Pennsylvania. *Journal of Quantitative Criminology*, 29(4), 601–642; Raaijmakers, E. A. C., de Keijser, J. W., Nieuwbeerta, P., & Dirkzwager, A. J. E. (2017). Why longer prison terms fail to serve a specific deterrent effect: An empirical assessment on the remembered severity of imprisonment. *Psychology, Crime & Law*, 23(1), 32-55; Snodgrass, G. M., Blokland, A. A., Haviland, A., Nieuwbeerta, P., & Nagin, D. P. (2011). Does the time cause the crime? An examination of the relationship between time served and reoffending in the Netherlands. *Criminology*, 49(4), 1149–1194. One exception to the lack of research on this topic that should be noted relates to California’s three strikes laws. Numerous credible studies have examined the deterrent effect of California’s three strikes laws. In general, the research suggests only a modest deterrent effect. See, e.g., Durlauf, S. N., & Nagin, D. S. (2011). Imprisonment and crime: Can both be reduced? *Criminology & Public Policy*, 10(1), 13-54; Helland, E., & Tabarrok, A. (2007). Does three strikes deter? A nonparametric estimation. *Journal of Human Resources*, 42, 309–330; Nagin, D. (2013). Deterrence in the twenty-first century: A review of evidence. *Crime and Justice*, 42(1), 199-263.

³⁴ Researchers examining the perceived certainty of punishment indicate that it is a much stronger deterrent than the perceived severity of punishment. Evidence suggests that crime has a negative relationship to the perceived certainty of punishment at both the micro and macro-level. These findings have led to recognition of the “certainty principle” or “certainty effect”. Research has noted that findings in support of the deterrent effect of the certainty of punishment relate almost entirely to the probability of apprehension. Further, research has demonstrated that perceived certainty of punishment serves as a deterrent for the type of criminal offense committed and the frequency in which offenses are committed. See, e.g., Apel, R. (2013). Sanctions, perceptions, and crime: Implications for criminal deterrence. *Journal of Quantitative Criminology*, 29, 67-101; Loughran, T. A., Paternoster, R., & Weiss, D. (2012). Hyperbolic time discounting, offender time preferences and deterrence. *Journal of Quantitative Criminology*, 28, 607-628; Loughran, T. A., Pogarsky, G., Piquero, A. R., & Paternoster, R. (2012). Re-examining the functional form of the certainty effect in deterrence theory. *Justice Quarterly*, 29, 712-741; Nagin, D. (2013). Deterrence in the twenty-first century: A review of evidence. *Crime and Justice*, 42(1), 199-263; Walters, G. D. (2018). Change in the perceived certainty of punishment as an inhibitor of post-juvenile offending in serious delinquents: Deterrence at the adult transition. *Crime & Delinquency*, 64(10), 1306-1325.

³⁵ The celerity effects of punishment have been the least examined component of deterrence theory. In the literature, celerity has been defined as the period of time that elapses between the commission of the offense and punishment. Collectively, there exists a lack of agreement on whether swiftly received punishment serves as a deterrent. There are several types of studies that have sought to examine celerity effects: overall offending; specific types of offenses such as the use of illegal substances or drunk driving; and correctional interventions.

Researchers have also examined the length of time between the commission of an offense and arrest on recidivism. The celerity of arrest was found to have a small effect, with those who experienced longer periods of time between offense and arrest date found to be more likely to recidivate. See, e.g., Hawken, A., & Kleiman, M. (2009). Managing drug involved probationers with swift and certain sanctions: Evaluating Hawaii's HOPE. National Institute of Justice; Kleck, G., & Barnes, J. C. (2013). Deterrence and macro-level perceptions of punishment risks: Is there a "collective wisdom"? *Crime & Delinquency*, 59(7), 1006-1035; Kleck, G., Sever, B., Li, S., & Gertz, M. (2005). The missing link in general deterrence research. *Criminology*, 43, 623-660; Loughran, T. A., Paternoster, R., & Weiss, D. (2012). Hyperbolic time discounting, offender time preferences and deterrence. *Journal of Quantitative Criminology*, 28, 607-628; O'Connell, D., Visher, C. A., Martin, S., Parker, L., & Brent, J. (2011). Decide your time: Testing deterrence theory's certainty and celerity effects on substance-using probationers. *The Journal of Criminal Justice*, 39, 261-267; Pratt, T. C., & Cullen, F. T. (2005). Assessing macro-level predictors and theories of crime: A meta-analysis. *Crime and Justice: A Review of Research*, 32, 373-450; Pratt, T. C., & Turanovic, J. J. (2018). Celerity and deterrence. In S. Nagin, F. T. Cullen, & C. L. Jonson (Eds.), *Deterrence, choice, and crime: Contemporary perspectives – advances in criminological theory* (pp. 187-210). Routledge; Tomlinson, K. D. (2016). An examination of deterrence theory: Where do we stand? *Federal Probation*, 80(3), 33-38; Tavares, A. F., Mendes, S. M., & Costa, C. S. (2008). The impact of deterrence policies on reckless driving: The case of Portugal. *European Journal on Criminal Policy and Research*, 14, 417-429; Wagenaar, A. C., & Maldonado-Molina, M. M. (2007). Effects of drivers' license suspension policies on alcohol-related crash involvement: Long-term follow-up in forty-six states. *Alcoholism: Clinical and Experimental Research*, 31, 1399-1406; Zettler, H. R., Morris, R. G., Piquero, A. R., & Cardwell, S. M. (2015). Assessing the celerity of arrest on 3-year recidivism patterns in a sample of criminal defendants. *Journal of Criminal Justice*, 43, 428-436.

³⁶ Paternoster, R. (2010). How much do we really know about criminal deterrence? *Journal of Criminal Law & Criminology*, 100(3), 765-823.

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³⁸ Loughran, T. A., Paternoster, R., Chalfin, A., and Wilson, T. (2016). Can rational choice be considered a general theory of crime? Evidence from individual-level panel data. *Criminology*, 54(1), 86-112; Paternoster, R. (2010). How much do we really know about criminal deterrence? *Journal of Criminal Law & Criminology*, 100(3), 765-823; Pogarsky, G., Roche, S. P., & Pickett, J. T. (2017). Heuristics and biases, rational choice, and sanctions perceptions. *Criminology*, 55(1), 85-111.

³⁹ Piquero, A. R., Paternoster, R., Pogarsky, G., & Loughran, T. (2011). Elaborating the individual difference component in deterrence theory. *Annual Review of Law and Social Science*, 7, 335-360.

⁴⁰ The perceptions of the severity of sanctions can vary across offenders. Researchers have sought to determine how individuals come to make decisions to participate in criminal activity or to refrain from offending. There are several factors that have been shown to impact offenders' decision making such as personal, vicarious, experiential, and historical. For example, one's personal experiences with prior sanctions such as arrest or incarceration can cause individuals to update their risk perceptions upward or downward depending on if they

have committed crimes and experienced sanctions or have gotten away with their criminal behavior. Further, the experiences of those within one's personal network, such as peers or neighborhood residents, regarding criminal activity and subsequent sanctions has also been shown to impact one's perceptions of sanction certainty and severity. Criminological research contends that individuals who engage in criminal activity have an understanding of the risk of punishment, however it is typically inaccurate or vague. Individuals have minimal knowledge regarding the harshness of punishments for engaging in criminal behavior or the certainty of punishment. Moreover, individuals have been found to overestimate their probability of arrest for engaging in criminal behavior and underestimate the minimum and maximum penalties that are associated. Also, offenders have been found to be present oriented, therefore a lengthy sanction for committing a certain offense may not deter the individual from committing the offense. These individuals are concerned with the most recent past and immediate future and are characterized as having a "here and now" mindset. Moreover, present-oriented offenders are concerned with the immediate rewards of engaging in criminal behavior. See, e.g., Apel, R. (2013). Sanctions, perceptions, and crime: Implications for criminal deterrence. *Journal of Quantitative Criminology*, 29, 67-101; Anwar, S. & Loughran, T. A. (2011). Testing a Bayesian learning theory of deterrence among serious juvenile offenders. *Criminology*, 49, 667-698; Durlauf, S. N., & Nagin, D. S. (2011). Imprisonment and crime: Can both be reduced? *Criminology & Public Policy*, 10(1), 13-54; Jacobs, B. A., & Cherbonneau, M. (2018). Perceived sanction threats and projective risk sensitivity: Auto theft, carjacking, and the channeling effect. *Justice Quarterly*, 35(2), 191-222; Kim, B., Pratt, T. C., & Wallace, D. (2014). Adverse neighborhood conditions and sanction risk perceptions: Using SEM to examine direct and indirect effects. *Journal of Quantitative Criminology*, 30, 505-526; Loughran, T. A., Paternoster, R., Piquero, A. R., & Pogarsky, G. (2011). On ambiguity in perceptions of risk: Implications for criminal decision making and deterrence. *Criminology*, 49(4), 1029-1061; Nagin, D. (2013). Deterrence in the twenty-first century: A review of evidence. *Crime and Justice*, 42(1), 199-263; Piquero, A. R., Paternoster, R., Pogarsky, G., & Loughran, T. (2011). Elaborating the individual difference component in deterrence theory. *Annual Review of Law and Social Science*, 7, 335-360; Wilson, T., Paternoster, R., & Loughran, T. (2017). Direct and indirect experiential effects in an updating model of deterrence: A research note. *Journal of Research in Crime and Delinquency*, 54, 63-77.

⁴¹ Apel, R. (2013). Sanctions, perceptions, and crime: Implications for criminal deterrence. *Journal of Quantitative Criminology*, 29, 67-101; Loughran, T. A., Paternoster, R., Chalfin, A., and Wilson, T. (2016). Can rational choice be considered a general theory of crime? Evidence from individual-level panel data. *Criminology*, 54(1), 86-112.

⁴² Nagin, D. (2013). Deterrence in the twenty-first century: A review of evidence. *Crime and Justice*, 42(1), 199-263; Nagin, D., Cullen, F. T., & Jonson, C. L. (2009). Imprisonment and reoffending. *Crime and Justice*, 38(1), 115-200.

⁴³ Gottschalk, M. (2011). Extraordinary sentences and the proposed police surge. *Criminology & Public Policy*, 10(1), 123-136; Nagin, D. (2013). Deterrence in the twenty-first century: A review of evidence. *Crime and Justice*, 42(1), 199-263.

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⁴⁵ Harmon, M. G. (2013). "Fixed" sentencing: The effect on imprisonment rates over time. *Journal of Quantitative Criminology*, 29, 369-397; Lipsey, M., & Cullen, F. T. (2007). The effectiveness of correctional rehabilitation: A review of systematic reviews. *Annual Review of Law & Social Science*, 3, 297-320.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ King, R. (2015). Balancing the goals of determinate and indeterminate sentencing systems. *Federal Sentencing Reporter*, 28(2), 85-87; Zhang, Y., Zhang, L., & Vaughn, M. S. (2014). Indeterminate and determinate sentencing models: A state-specific analysis of their effects on recidivism. *Crime & Delinquency*, 60(5), 693-715.

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⁵² Harmon, M. G. (2013). "Fixed" sentencing: The effect on imprisonment rates over time. *Journal of Quantitative Criminology*, 29, 369-397; Tonry, M. (2019). Fifty years of American sentencing reform: Nine lessons. *Crime and Justice*, 48, 1-34; Zhang, Y., Zhang, L., & Vaughn, M. S. (2014). Indeterminate and determinate sentencing models: A state-specific analysis of their effects on recidivism. *Crime & Delinquency*, 60(5), 693-715.

⁵³ King, R. (2015). Balancing the goals of determinate and indeterminate sentencing systems. *Federal Sentencing Reporter*, 28(2), 85-87.

⁵⁴ Zhang, Y., Zhang, L., & Vaughn, M. S. (2014). Indeterminate and determinate sentencing models: A state-specific analysis of their effects on recidivism. *Crime & Delinquency*, 60(5), 693-715.

⁵⁵ King, R. (2015). Balancing the goals of determinate and indeterminate sentencing systems. *Federal Sentencing Reporter*, 28(2), 85-87; Rengifo, A. F., & Stemen, D. (2015). The unintended effects of penal reform: African American presence, incarceration, and the abolition of discretionary parole in the United States. *Crime & Delinquency*, 61(5), 719-741.

⁵⁶ King, R. (2015). Balancing the goals of determinate and indeterminate sentencing systems. *Federal Sentencing Reporter*, 28(2), 85-87.

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⁵⁸ *Id.*

⁵⁹ Stemen, D., & Rengifo, A. F. (2011). Policies and imprisonment: The impact of structured sentencing and determinate sentencing on state incarceration rates, 1978-2004. *Justice Quarterly*, 28(1), 174-201.

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- ⁷⁶ Important notes, caveats, and limitations of the Virginia Criminal Sentencing Commission staff analysis of data from the Supreme Court of Virginia's Case Management Systems (CMS) for the Circuit Court, General District Court, and Juvenile & Domestic Relations (JDR) Court (adult defendants only): In order to avoid duplication, when analyzing Circuit Court CMS data, appeals from district courts were excluded. Circuit Court data do not include cases from Fairfax or Alexandria as clerks in those jurisdictions do not participate in the statewide Case Management System. Charge and conviction data exclude attempted and conspired felonies, as mandatory minimum penalties do not apply in such cases. Charges are based on the fiscal year filed. Convictions are based on the fiscal year the case was concluded. Figures include ordinance violations to the extent possible. Cases were selected for inclusion in the analysis based on information entered by court clerks into the CMS data systems.

⁷⁷ *Id.*

⁷⁸ 2020 Va. Acts ch. 1018.

⁷⁹ *Id.*

⁸⁰ A State Responsible inmate is a person convicted of a felony and sentenced to one year or more in prison, or a person convicted of a parole violation and sentenced to two years or more in prison.

⁸¹ Virginia Department of Corrections, Research – Statistical Analysis & Forecast Unit. (December 2020). *Disparities in sentencing among inmates with mandatory minimum sentences*. Analysis is based upon sentencing information for inmates in the SR Confined Population on June 30, 2019. Available at [http://vscc.virginia.gov/2021/DOC%20-%20Disparities%20in%20Sentencing%20among%20Offenders%20with%20Mandatory%20Minimum%20Sentences_Dec2020update_FINAL%20\(1\).pdf](http://vscc.virginia.gov/2021/DOC%20-%20Disparities%20in%20Sentencing%20among%20Offenders%20with%20Mandatory%20Minimum%20Sentences_Dec2020update_FINAL%20(1).pdf).

⁸² Virginia Department of Corrections, Research – Statistical Analysis & Forecast Unit. (December 2020). *Offense Information of SR Inmates Serving Mandatory Minimum Sentences*. Available at http://vscc.virginia.gov/2021/DOC%20-%20Offense%20Information%20of%20SR%20Inmates%20Serving%20Mandatory%20Minimum%20Sentences_Dec2020_FINAL.pdf.

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⁸⁵ VA. CODE ANN. § 19.2-308 (2020).

⁸⁶ *See, e.g.*, VA. CODE ANN. §§ 16.1-253.2(A), 18.2-53.1, 18.2-67.1, 18.2-248, 18.2-374.1:1(C), and 53.1-203 (2020).

⁸⁷ *See, e.g.*, VA. CODE ANN. §§ 4.1-302, 18.2-51.1, 18.2-186.4, 46.2-865.1 (2020).

⁸⁸ VA. CODE ANN. § 18.2-308.2(A) (2020).

⁸⁹ *Botkin v. Commonwealth*, 296 Va. 309, 819 S.E.2d 652 (Nov. 1, 2018).

⁹⁰ VA. CODE ANN. § 18.2-53.1 (2020).

⁹¹ VA. CODE ANN. § 18.2-374.1(C1) (2020).

⁹² *Brown v. Commonwealth*, 284 Va. 538, 733 S.E.2d 638 (Nov. 1, 2012); *Commonwealth v. Jefferson*, 60 Va. App. 749, 732 S.E.2d 728 (Oct. 16, 2012).

⁹³ For additional information, see Families Against Mandatory Minimums. (May 10, 2017).

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⁹⁴ 2011 Ark. Acts 570.

⁹⁵ *See* California Courts. *California's three strikes sentencing law*. Retrieved from <https://www.courts.ca.gov/20142.htm>. *See also* Couzens, J.R. & Bigelow, T.A. (May 2017). *The amendment of the three strikes sentencing law*. Retrieved from <https://www.courts.ca.gov/documents/Three-Strikes-Amendment-Couzens-Bigelow.pdf>.

- ⁹⁶ 2015 Conn. Acts 2 (Special Sess.)
- ⁹⁷ 78 Del. Laws 13 (2011).
- ⁹⁸ 2016 Fla. Laws 7.
- ⁹⁹ 2017 Iowa Acts ch. 122.
- ¹⁰⁰ 2012 La. Acts 160.
- ¹⁰¹ 2016 Md. Laws 515.
- ¹⁰² 2012 Mass. Acts 192.
- ¹⁰³ 2002 Mich. Pub. Acts 666.
- ¹⁰⁴ 2012 Mo. Laws 628.
- ¹⁰⁵ 2017 Mont. Laws 321.
- ¹⁰⁶ 2009 N.Y. Laws 56. *See also* New York State Division of Criminal Justice Services. (2020). *2009 drug law changes 2019 annual report*. Retrieved from <https://www.criminaljustice.ny.gov/crimnet/ojsa/FINAL%202019%20Drug%20Law%20Reform%20Report%2011-17-20.pdf>.
- ¹⁰⁷ 2017 N.D. Laws 165. 2019 N.D. Laws 187.
- ¹⁰⁸ 2011 Ohio Laws Sess. Law 29.
- ¹⁰⁹ 2016 Okla. Sess. Laws 220.
- ¹¹⁰ Virginia State Crime Commission. (Jan. 5, 2021). *Mandatory Minimum Sentences*. Available at <http://vscc.virginia.gov/2021/VSCC%20Mandatory%20Minimums%20Presentation.pdf>.
- ¹¹¹ *See* Appendices A and B.
- ¹¹² VA. CODE ANN. § 18.2-308.2(A) (2020). *See also* VA. CODE ANN. § 18.2-10 (2020).
- ¹¹³ VA. CODE ANN. 18.2-53.1 (2020).
- ¹¹⁴ *See, e.g.*, VA. CODE ANN. § 18.2-9, 18.2-10, and 18.2-11 (2020). Staff identified three Code sections with offenses requiring a mandatory minimum sentence of a specific period of incarceration, including VA. CODE ANN. §§ 18.2-53.1, 18.2-248(H2), and 18.2-308.1(C) (2020).
- ¹¹⁵ *See* VA. CODE ANN. § 19.2-303 (2020).
- ¹¹⁶ VA. CODE ANN. § 19.2-308 (2020).
- ¹¹⁷ Senate Bill 1443 is available at <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=sb1443>
- ¹¹⁸ *Id.*
- ¹¹⁹ House Bill 2331 is available at <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=hb2331>. This bill proposed eliminating mandatory minimum sentences from VA. CODE ANN. §§ 3.2-4212, 4.1-302, 18.2-186.4, 18.2-248, 18.2-248.01, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-255, 18.2-255.2, 46.2-357, and 46.2-391 (2020).

APPENDIX A: Felony Offenses in Virginia that Require a Mandatory Minimum Sentence

ASSAULT (ASL)							
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)	
18.2-53.1	Firearm use in commission of felony, 1 st offense	F9	3Y		2,839	504	
18.2-53.1	Firearm use in commission of felony, subsequent	F9	5Y		217	50	
18.2-51.1	Malicious bodily injury to law enforcement, fire or EMS	F9	2Y	5Y-30Y	40	5	
18.2-51.1	Non-malicious injury to law enforcement	F6	1Y	1Y-5Y	5	3	
18.2-57(C)	Simple assault on law enforcement	F6	6M	1Y-5Y	4,002	670	

ESCAPE (ESC)							
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)	
53.1-203(1)	Escape from a correctional facility	F6	1Y	1Y-5Y	12	4	

FRAUD (FRD)							
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)	
18.2-186.4	Publish name of law-enforcement intent to harass	F6	6M	1Y-5Y	0	0	

GANGS (MOB)							
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)	
18.2-46.2	Participation in crime for benefit/direction of gang	F5	2Y	1Y-10Y	4	0	
18.2-46.2	Participation in crime for gang that includes juvenile	F4	2Y	2Y-10Y	26	2	

MURDER (MUR)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
18.2-31(A,6)	Law enforcement officer, offender 18 or older	F1	Life	Life - Death	1	1
18.2-36.1(B)	Involuntary manslaughter, under influence, vehicle	F9	1Y	1Y-20Y	35	12
18.2-36.1(B)	Involuntary manslaughter, under influence, watercraft	F9	1Y	1Y-20Y	0	0

NARCOTICS - MARIJUANA (NAR)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
18.2-248(H,4)	Distribute 100 kilograms or more	F9	20Y (exception)	20Y-Life	1	0
18.2-248(H1,ii,4)	Distribute 100 kilograms, less than 250 kilograms	F9	20Y	20Y-Life	0	0
18.2-248(H2,ii,4)	Distribute 250 kilograms or more marijuana	F9	Life	40Y-Life (exception)	0	0
18.2-248.01	Transport Into Commonwealth 5lbs or more marijuana	F9	3Y	5Y-40Y	86	8
18.2-248.01	Transport into Commonwealth – 5 lbs. or more marijuana, 2 nd or subsequent	F9	10Y	5Y-40Y	1	0
18.2-248.1(d)	Sell, distribute, 3 rd or subsequent felony	F9	5Y	5Y-Life	26	5
18.2-255(A,ii)	Sell <1 oz. of marijuana, minor assists in distribution	F9	2Y	10Y-50Y	1	0
18.2-255(A,ii)	Sell 1 oz. or more of marijuana, minor assists in distribution	F9	5Y	10Y-50Y	0	0
18.2-255(A,i)	Sell <1 oz. of marijuana to minor	F9	2Y	10Y-50Y	33	4
18.2-255(A,i)	Sell 1 oz. or marijuana to minor	F9	5Y	10Y-50Y	3	0

NARCOTICS - MONEY – CONTINUING CRIMINAL ENTERPRISE (NAR)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
18.2-248(H1,i)	Gross \$100,000 to <\$250,000 within 12 month period	F9	20Y	20Y-Life	1	0
18.2-248(H2,i)	Gross \$250,000 or more within 12 month period	F9	40Y, Life		0	0

NARCOTICS – SCHEDULE I OR II DRUGS (NAR)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
18.2-248(C)	Sell with intent, 2 nd conviction	F9	3Y	5Y-Life	1,056	343
18.2-248(C)	Sell with intent, 3 rd or subsequent conviction	F9	10Y	10Y-Life	785	99
18.2-248(C,1)	Heroin distribute 100g, or more	F9	5Y (exception)	5Y-Life	4	1
18.2-248(C,2)	Cocaine mixture distribute 500 g or more	F9	5Y (exception)	5Y-Life	6	1
18.2-248(C,3)	Cocaine base, distribute 250g or more	F9	5Y (exception)	5Y-Life	4	1
18.2-248(C,4)	Methamphetamine distribute 10g or more	F9	5Y (exception)	5Y-Life	142	20
18.2-248(C1)	Manufacture methamphetamine – 3 rd subsequent	F9	3Y	10Y-Life	1	0
18.2-248(H)	Type Not Clear – distribute schedule I/II - quantity defined	F6	20Y	20Y-Life	1	0
18.2-248(H,1)	Heroin mixture, distribute 1.0 kilograms or more	F9	20Y (exception)	20Y-Life	1	0
18.2-248(H,2)	Cocaine mixture, distribute 5.0 kilograms or more	F9	20Y (exception)	20Y-Life	2	0
18.2-248(H,3)	Cocaine base, distribute 2.5 kilograms or more	F9	20Y (exception)	20Y-Life	0	0
18.2-248(H,5)	Methamphetamine distribute 100g or more	F9	20Y (exception)	20Y-Life	67	5
18.2-248(H1,ii)	Type not clear – distribute schedule I/II or marijuana - quantity defined	F9	20Y	20Y-Life	0	0
18.2-248(H1,ii,1)	Heroin mixture - distribute 1.0 kilograms less than 5.0 kilograms	F9	20Y	20Y-Life	2	0
18.2-248(H1,ii,2)	Cocaine mixture distribute, 5.0 kilograms less than 10.0 kilograms	F9	20Y	20Y-Life	0	0
18.2-248(H1,ii,3)	Cocaine base, distribute 2.5 kilograms less than 5.0 kilograms	F9	20Y	20Y-Life	0	0
18.2-248(H1,ii,5)	Methamphetamine distribute 100g <250g	F9	20Y	20Y-Life	0	0
18.2-248(H2,ii)	Type not clear – distribute schedule. I/II or marijuana - quantity defined	F9	40Y, Life		0	0
18.2-248(H2,ii,1)	Heroin mixture, distribute etc. 5.0 kilograms or more	F9	40Y, Life		0	0
18.2-248(H2,ii,2)	Cocaine mixture, distribute 10.0 kilograms or more	F9	40Y, Life		0	0
18.2-248(H2,ii,3)	Cocaine base, distribute 5.0 kilograms or more	F9	40, Life		0	0

NARCOTICS – SCHEDULE I OR II DRUGS (NAR) - Continued						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
18.2-248(H2,ii,5)	Methamphetamine distribute 250g or more / 1 kg or more of mixture	F9	40Y, Life		4	0
18.2-248.01	Transport into Commonwealth 1 oz. or more of cocaine	F9	3Y	5Y-40Y	28	2
18.2-248.01	Transport into Commonwealth 1 oz. or more of cocaine, 2 nd /subsequent	F9	10Y	5Y-40Y	0	0
18.2-248.01	Transport 1 oz. or more other Sch. I/II	F9	3Y	5Y-40Y	100	8
18.2-248.01	Transport 1 oz. or more Sch. I/II 2 nd /subsequent	F9	10Y	5Y-40Y	1	0
18.2-248.03(A)	Methamphetamine distribute 28g or more	F9	(3Y) (exception)	5Y-40Y	81	24
18.2-248.03(B)	Methamphetamine distribute 227g or more	F9	5Y (exception)	5Y-Life	34	9
18.2-255(A,i)	Sell Sch. I/II drug to minor	F9	5Y	10Y-50Y	11	4
18.2-255(A,ii)	Sell Sch. I/II drug, minor assists in distribution	F9	5Y	10Y-50Y	1	0
18.2-255.2	Distribute controlled substance on school property, 2 nd /subsequent	F6	1Y	1Y-5Y	1	0

NARCOTICS – STEROIDS (NAR)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
18.2-248.5(A)	Anabolic steroids	F9	6M	1Y-10Y	9	1

OBSCENITY – CHILD PORN/CHILD SOLICITATION (OBS)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
18.2-374.1:1(C,i)	Reproduce, transmit, sell child porn, subsequent	F9	5Y	5Y-20Y	309	33
18.2-374.1:1(C,ii)	Solicitation of child porn to gain entry to group, subsequent	F9	5Y	5Y-20Y	0	0
18.2-374.1(B,1)	Entice minor to perform in porn, age < 15	F9	5Y	5Y-30Y	23	4
18.2-374.1(B,1)	Entice minor to perform in porn, age < 15, 2 nd /subsequent	F9	15Y	15Y-40Y	14	0
18.2-374.1(B,1)	Entice minor to perform in porn, age 15 older	F9	3Y	3Y-30Y	16	3

OBSCENITY – CHILD PORN/CHILD SOLICITATION (OBS) - Continued						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
18.2-374.1(B,1)	Entice minor to perform in porn, age 15 older, subsequent	F9	10Y	10Y-30Y	7	1
18.2-374.1(B,4)	Finance child porn, age < 15	F9	5Y	5Y-30Y	10	1
18.2-374.1(B,4)	Finance child porn, age < 15 older, 2 nd /subsequent	F9	15Y	15Y-40Y	2	0
18.2-374.1(B,4)	Finance child porn, age 15 older	F9	3Y	3Y-30Y	0	0
18.2-374.1(B,4)	Finance child porn 15 older, 2 nd /subsequent	F9	10Y	10Y-30Y	0	0
18.2-374.1(B,2)	Produce, make child porn, age < 15	F9	5Y	5Y-30Y	24	17
18.2-374.1(B,2)	Produce make child porn, age < 15, 2 nd /subsequent	F9	15Y	15Y-40Y	46	8
18.2-374.1(B,2)	Produce make child porn, 15 older	F9	3Y	3Y-30Y	64	6
18.2-374.1(B,2)	Produce make child porn, 15 older, 2 nd /subsequent	F9	10Y	10Y-30Y	6	0
18.2-374.1(B,3)	Take part, film child porn, age < 15	F9	5Y	5Y-30Y	8	3
18.2-374.1(B,3)	Take part, film child porn, age < 15, 2 nd /subsequent	F9	15Y	15Y-40Y	3	2
18.2-374.1(B,3)	Take part, film child porn, age 15+	F9	3Y	3Y-30Y	3	1
18.2-374.1(B,3)	Take part, film child porn, age 15+, 2 nd /subsequent	F9	10Y	10Y-30Y	5	1
18.2-374.3(C)	Propose sex act by communication age <15	F9	5Y	5Y-30Y	300	50
18.2-374.3(C)	Propose sex act by communication <15, subsequent	F9	10Y	10Y-40Y	146	12
18.2-374.3(D)	Propose sex act by communication age 15 older	F9	1Y	1Y-20Y	32	9

PROTECTIVE ORDERS (PRT)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
18.2-60.4(A)	Violation of protective order (violence) 3 rd within 20 yrs.	F6	6M	1Y-5Y	58	6
16.1-253.2(A)	Juvenile and Domestic Court: Violation of protective order (violence) 3 rd within 20 yrs.	F6	6M	1Y-5Y	174	22

SEXUAL ASSAULT (RAP)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
18.2-61(A,iii)	Rape, Forcible: Intercourse with victim under age 13	F9	Life	Life	55	10
18.2-61(A,iii)	Rape, Forcible: Intercourse with victim under age 13, w/ kidnapping, burglary, wounding	F9	25Y	25Y-Life	1	0
18.2-67.1(A,1)	Sodomy, Forcible: Victim under age 13 (indicted as an adult)	F9	Life	Life	145	15
18.2-67.1(A,1)	Sodomy, Forcible: Victim under age 13, w/kidnapping, burglary, wounding	F9	25Y	25Y-Life	2	0
18.2-67.2(A,1)	Object Sexual Penetration: Victim under age 13	F9	Life	Life	113	8
18.2-67.2(A,1)	Object Sexual Penetration: Victim under age 13, w/ kidnapping, burglary, wounding	F9	25Y	25Y-Life	1	0

TRAFFIC – DRIVING WHILE INTOXICATED (DWI)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
18.2-266	Third within 5 Years	F6	6M	1Y-5Y	461	146
18.2-266	Third within 5 years, BAC .15 to .20	F6	6M	1Y-5Y	34	10
18.2-266	Third within 5 years, BAC > .20	F6	6M	1Y-5Y	20	6
18.2-266	Third within 5 years, drugs	F6	6M	1Y-5Y	5	3
18.2-266	Third within 5 years – prior DWI manslaughter, assault or felony DWI	F6	1Y 6M	1Y-5Y	3	0
18.2-266	Third within 10 years	F6	90D	1Y-5Y	820	308
18.2-266	Third 10 years, BAC .15 to .20	F6	90D	1Y-5Y	5	3
18.2-266	Third 10 years, BAC > .20	F6	90D	1Y-5Y	36	13
18.2-266	Third within 10 years, drugs	F6	90D	1Y-5Y	10	11
18.2-266	Third within 10 years – prior DWI manslaughter, assault or felony DWI	F6	1Y 90D	1Y-5Y	16	4
18.2-266	Third within 5 years, w/ child	F6	6M 5D	1Y-5Y	9	4
18.2-266	Third within 5 years, BAC .15 to .20 w/child	F6	6M 5D	1Y-5Y	1	0
18.2-266	Third within 5 years, BAC > .20 w/child	F6	6M 5D	1Y-5Y	1	0

TRAFFIC – DRIVING WHILE INTOXICATED (DWI) - Continued						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
18.2-266	Third within 5 years, drugs w/ child	F6	6M 5D	1Y-5Y	0	0
18.2-266	Third within 5 years – prior DWI manslaughter, assault or felony DWI w/ child	F6	1Y 6M 5D	1Y-5Y	0	0
18.2-266	Third within 10 years, w/ child	F6	95D	1Y-5Y	20	7
18.2-266	Third within 10 years, BAC .15 to .20 w/child	F6	95D	1Y-5Y	1	0
18.2-266	Third within 10 years, BAC > .20 w/child	F6	95D	1Y-5Y	1	0
18.2-266	Third within 10 years, drugs w/child	F6	95D	1Y-5Y	0	1
18.2-266	Third within 10 years – prior DWI manslaughter, assault or felony DWI w/ child	F6	1Y 95D	1Y-5Y	0	0
18.2-266	Fourth or subsequent within 10 years	F6	1Y	1Y-5Y	190	64
18.2-266	Fourth or subsequent within 10 years, BAC .15 to .20	F6	1Y	1Y-5Y	9	3
18.2-266	Fourth or subsequent within 10 years, BAC > .20	F6	1Y	1Y-5Y	6	1
18.2-266	Fourth or subsequent within 10 yrs., drugs	F6	1Y	1Y-5Y	2	1
18.2-266	Fourth or subsequent within 10 years, w/ child	F6	1Y 5D	1Y-5Y	4	1
18.2-266	Fourth or subsequent within 10 yrs., BAC .15 to .20 w/child	F6	1Y 5D	1Y-5Y	0	0
18.2-266	Fourth or subsequent within 10 yrs., BAC > .20 w/ child	F6	1Y 5D	1Y-5Y	0	0
18.2-266	Fourth or subsequent within 10 yrs., drugs w/ child	F6	1Y 5D	1Y-5Y	0	0
18.2-266	Prior DWI manslaughter, assault felony DWI	F6	1Y	1Y-5Y	225	90
18.2-266	Prior DWI manslaughter, BAC .15 to .20	F6	1Y	1Y-5Y	16	5
18.2-266	Prior DWI manslaughter, BAC > .20	F6	1Y	1Y-5Y	10	2
18.2-266	Prior DWI manslaughter, w/ child	F6	1Y 5D	1Y-5Y	6	1
18.2-266	Prior DWI, BAC .15 to .20 w/ child	F6	1Y 5D	1Y-5Y	0	0
18.2-266	Prior DWI, BAC > .20 w/child	F6	1Y 5D	1Y-5Y	0	0

TRAFFIC – DRIVING WHILE INTOXICATED – COMMERCIAL VEHICLE (DWI)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
46.2-341.24	Third within 5 years	F6	6M	1Y-5Y	0	0
46.2-341.24	Third within 5 yrs., BAC .15 to .20	F6	6M	1Y-5Y	0	0
46.2-341.24	Third within 5 yrs., BAC > .20	F6	6M	1Y-5Y	0	0
46.2-341.24	Third within 10 yrs.	F6	90D	1Y-5Y	0	0
46.2-341.24	Third within 10 yrs., BAC .15 to .20	F6	90D	1Y-5Y	0	0
46.2-341.24	Third within 10 yrs., BAC > .20	F6	90D	1Y-5Y	0	0
46.2-341.24	Third DWI within 5 yrs., w/child	F6	6M 5D	1Y-5Y	0	0
46.2-341.24	Third within 5 yrs., BAC .15 to .20 w/child	F6	6M 5D	1Y-5Y	0	0
46.2-341.24	Third within 5 yrs., BAC > .20 w/child	F6	6M 5D	1Y-5Y	0	0
46.2-341.24	Third within 10 yrs., w/child	F6	95D	1Y-5Y	0	0
46.2-341.24	Third within 10 yrs., BAC .15 to .20 w/child	F6	95D	1Y-5Y	0	0
46.2-341.24	Third within 10 yrs., BAC > .20 w/child	F6	95D	1Y-5Y	0	0
46.2-341.24	Fourth within 10 yrs.	F6	1Y	1Y-5Y	0	0
46.2-341.24	Fourth within 10 yrs., BAC .15 to .20	F6	1Y	1Y-5Y	0	0
46.2-341.24	Fourth within 10 yrs., BAC > .20	F6	1Y	1Y-5Y	0	0
46.2-341.24	Fourth within 10 yrs., w/child	F6	1Y 5D	1Y-5Y	0	0
46.2-341.24	Fourth within 10 yrs., BAC .15 to .20 w/child	F6	1Y 5D	1Y-5Y	0	0
46.2-341.24	Fourth within 10 yrs., BAC > .20 w/child	F6	1Y 5D	1Y-5Y	0	0
46.2-341.24	Prior DWI manslaughter	F6	1Y	1Y-5Y	0	0
46.2-341.24	Prior DWI manslaughter, BAC .15 to .20	F6	1Y	1Y-5Y	0	0
46.2-341.24	Prior DWI manslaughter, BAC > .20	F6	1Y	1Y-5Y	0	0
46.2-341.24	Prior DWI w/child	F6	1Y 5D	1Y-5Y	0	0
46.2-341.24	Prior DWI w/child, BAC .15 to .20	F6	1Y 5D	1Y-5Y	0	0
46.2-341.24	Prior DWI w/child, BAC > .20	F6	1Y 5D	1Y-5Y	0	0

TRAFFIC – OPERATOR'S LICENSE (LIC)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
46.2-357(B,2)	DWI declared habitual offender	F9	1Y	1Y-5Y	68	16
46.2-357(B,2)	Operate vehicle, license revoked – endangerment	F9	12M	1Y-5Y	107	23
46.2-357(B,3)	Operate vehicle, licensed revoked, 2 nd or subsequent	F9	12M	1Y-5Y	875	213
46.2-391(D,2a,i)	Operate vehicle, license revoked endangerment	F9	12M	1Y-5Y	120	25
46.2-391(D,2a,ii)	Operate vehicle license revoked, DWI	F9	12M	1Y-5Y	194	50
46.2-391(D,3)	Operate vehicle license revoked, 2 nd or subsequent	F9	12M	1Y-5Y	90	22

TRAFFIC – RECKLESS DRIVING (REC)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
46.2-865.1(A,2)	Cause death by racing	F9	1Y	1Y-20Y	1	0

VANDALISM, DAMAGE PROPERTY (VAN)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
18.2-154	Shoot or throw missile at law enforcement	F4	1Y	2Y-10Y	4	2
18.2-154	Shoot or throw missile at law enforcement w/o malice	F6	1Y	1Y-5Y	1	0

WEAPONS (WPN)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
18.2-308.4(B)	Poss. Sch. I/II with firearm	F6	2Y	1Y-5Y	604	79
18.2-308.4(C)	Sell more than 1lb. marijuana while possessing firearm	F6	5Y	1Y-5Y	Data Unavailable	Data Unavailable
18.2-308.4(C)	Sell Sch. I/II while possessing firearm	F6	5Y	1Y-5Y	Data Unavailable	Data Unavailable
18.2-308.2(A)	Convicted felon (nonviolent within 10 yr.) possess firearm	F6	2Y	1Y-5Y	1,940	480

WEAPONS (WPN) - Continued						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
18.2-308.2(A)	Convicted felon (violent) possess transport firearm	F6	5Y	1Y-5Y	1,581	197
18.2-308.2:2(M,i)	Purchase firearm – provide to ineligible person	F4	1Y	2Y-10Y	0	0
18.2-308.2:2(N)	Solicit by ineligible person	F4	5Y	2Y-10Y	0	0
18.2-308.2:2(M,ii)	Transport firearm out of state – provide to ineligible person	F4	1Y	2Y-10Y	0	0
18.2-308.2:2(M)	Provide > 1 firearm to ineligible person through purchase	F4	5Y	2Y-10Y	0	0
18.2-308.1(C)	Firearm use on school property	F9	5Y		1	0

APPENDIX B: Misdemeanor Offenses in Virginia that Require a Mandatory Minimum Sentence

AGRICULTURE, HORTICULTURE & FOOD (AGR)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
3.2-4212(D,ii)	Possess, import cigarettes ≥ 3000 pkgs.	M1	90 D	0-12M	0	0
3.2-4212(D,i)	Sell or Distribute cigarettes not in directory ≥ 3000 pkgs.	M1	90 D	0-12M	0	0

ALCOHOL (ALC)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
4.1-302	Sale, illegal alcohol - subsequent offense	M1	30 D	0-12M	0	0

ASSAULT (ASL)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
18.2-57(D)	Simple Assault – Teacher, School Employee w/ weapon	M1	6 M	0-12M	3	7
18.2-57(D)	Simple Assault – Teacher, School Employee	M1	2 D	0-12M	17	10
18.2-57(E)	Simple assault- Health Care Provider	M1	2 D	0-12M	101	43

PROTECTIVE ORDERS (PRT)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
16.1-253.2(A)	Violation of protective order (violence) 2 nd w/in 5 yrs. (JDR)	M1	60 D	0-12M	135	61
18.2-60.4(A)	Violation of protective order (violence) 2 nd w/in 5 yrs.	M1	60 D	0-12M	174	22

TRAFFIC – 1 st CONVICTION (DWI)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
18.2-266	BAC .15 to .20	M1	5 D	0-12M	3,551	2,624
18.2-266	BAC > .20	M1	10 D	0-12M	1,262	919

TRAFFIC – 2 nd CONVICTION (DWI)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
18.2-266	Within 5 years	S9	20 D	1M-1Y	1,625	943
18.2-266	Within 5 years, BAC .15 to .20	S9	30 D	1M-1Y	422	256
18.2-266	Within 5 years, BAC > .20	S9	40 D	1M-1Y	305	221
18.2-266	Within 5 years, drugs	S9	20 D	1M-1Y	8	4
18.2-266	Within 5-10 years	S9	10 D	1M-1Y	1,205	828
18.2-266	Within 5-10 years, BAC .15 to .20	S9	20 D	1M-1Y	283	169
18.2-266	Within 5-10 years, BAC > .20	S9	30 D	1M-1Y	148	92
18.2-266	Within 5-10 years, drugs	S9	10 D	1M-1Y	7	5
18.2-266	Within 10 years, BAC .15 to .20	S9	20 D	1M-1Y	8	26
18.2-266	Within 10 years, BAC > .20	S9	30 D	1M-1Y	7	14

TRAFFIC – 1 st CONVICTION WITH CHILD (DWI)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
18.2-266	First Conviction	M1	5 D	0-12M	230	136
18.2-266	BAC .15 to .20	M1	10 D	0-12M	59	39
18.2-266	BAC > .20	M1	15 D	0-12M	31	23
18.2-266	Drugs	M1	5 D	0-12M	7	6

TRAFFIC – 2 nd CONVICTION WITH CHILD (DWI)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
18.2-266	Within 5 years	S9	25 D	1M-1Y	27	15
18.2-266	Within 5 years, BAC .15 to .20	S9	35 D	1M-1Y	12	9
18.2-266	Within 5 years, BAC > .20	S9	45 D	1M-1Y	5	3

TRAFFIC – 2 nd CONVICTION WITH CHILD (DWI)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
18.2-266	Within 5 years, drugs	S9	25 D	1M-1Y	1	1
18.2-266	Within 5-10 years	S9	15 D	1M-1Y	25	12
18.2-266	Within 5-10 years, BAC .15 to .20	S9	25 D	1M-1Y	5	4
18.2-266	Within 5-10 years, BAC > .20	S9	35 D	1M-1Y	5	3
18.2-266	Within 5-10 years, drugs	S9	15 D	1M-1Y	2	1
18.2-266	Within 10 years, BAC .15 to .20	S9	25 D	1M-1Y	0	1
18.2-266	Within 10 years, BAC > .20	S9	25 D	1M-1Y	1	1

TRAFFIC - COMMERCIAL VEHICLES – 1 st CONVICTION (DWI)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
46.2-341.24	BAC .15 to .20	M1	5 D	0-12M	1	1
46.2-341.24	BAC > .20	M1	10 D	0-12M	2	2

TRAFFIC - COMMERCIAL VEHICLES – 2 nd CONVICTION (DWI)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
46.2-341.24	Within 5 years	S9	20 D	1M-1Y	1	0
46.2-341.24	Within 5 years, drugs	S9	20 D	1M-1Y	0	0
46.2-341.24	Within 5 years, BAC .15 to .20	S9	30 D	1M-1Y	5	3
46.2-341.24	Within 5 years, BAC > .20	S9	40 D	1M-1Y	5	4
46.2-341.24	Within 5 to 10 years	S9	10 D	1M-1Y	1	1
46.2-341.24	Within 5 to 10 years, BAC .15 to .20	S9	20 D	1M-1Y	0	0
46.2-341.24	Within 5 to 10 years, BAC > .20	S9	30 D	1M-1Y	0	0
46.2-341.24	Within 5-10 years, drugs	S9	10 D	1M-1Y	0	0
46.2-341.24	Within 10 years, BAC .15 to .20	S9	20 D	1M-1Y	0	0
46.2-341.24	Within 10 years, BAC > .20	S9	30 D	1M-1Y	0	0

TRAFFIC - COMMERCIAL VEHICLES – 1 st CONVICTION WITH CHILD (DWI)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
46.2-341.24	First Offense	M1	5 D	0-12M	0	0
46.2-341.24	BAC .15 to .20	M1	10 D	0-12M	0	0
46.2-341.24	BAC > .20	M1	15 D	0-12M	1	0
46.2-341.24	Drugs	M1	5 D	0-12M	0	0

TRAFFIC - COMMERCIAL VEHICLES – 2 nd CONVICTION WITH CHILD (DWI)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
46.2-341.24	Within 5 years	S9	25 D	1M-1Y	0	0
46.2-341.24	Within 5 years, drugs	S9	25 D	1M-1Y	0	0
46.2-341.24	Within 5 years, BAC .15 to .20	S9	35 D	1M-1Y	0	0
46.2-341.24	Within 5 years, BAC > .20	S9	45 D	1M-1Y	0	0
46.2-341.24	Within 5-10 years	S9	15 D	1M-1Y	0	0
46.2-341.24	Within 5-10 years, BAC .15 to .20	S9	25 D	1M-1Y	0	0
46.2-341.24	Within 5-10 years, BAC > .20	S9	35 D	1M-1Y	0	0

TRAFFIC - COMMERCIAL VEHICLES – 2 nd CONVICTION WITH CHILD (DWI)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
46.2-341.24	Within 5-10 years, drugs	S9	15 D	1M-1Y	0	0
46.2-341.24	Within 10 years, BAC .15 to .20	S9	25 D	1M-1Y	0	0
46.2-341.24	Within 10 years, BAC > .20	S9	35 D	1M-1Y	0	0

HABITUAL OFFENDER (LIC)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
46.2-357(B,1)	Operate vehicle, license revoked	M1	10 D	0-12M	Data Unavailable	Data Unavailable

DRIVE AFTER LICENSE REVOKED FOR DWI, MANSLAUGHTER, MAIMING (LIC)						
Statute	Offense	Classification	Mandatory Minimum	Sentence Range	Avg. # Charges Filed Per Year (FY 16 - FY 20)	Avg. # Convictions Per Year (FY 16 – FY 20)
46.2-391(D,1)	No endangerment	M1	10 D	0-12M	187	141

