

SATURDAY IN THE STAR



PHOTO ILLUSTRATION BY JEFF TAYLOR/THE WINCHESTER STAR

Counselors work with abusers to change behavior in the Batterers Intervention Program. Courts refer defendants charged for the first time with domestic violence to the program. If the defendants complete the program and don't re-offend for two years, the charges are dropped.

Counseling program aims to reduce domestic violence

By **EVAN GOODENOW**
The Winchester Star

WINCHESTER — At a recent session of the Winchester/Frederick/Clarke Batterers Intervention Program, program director Randa Kennedy sat with three men in the sanctuary of the Hope Again Care Center.

One man discussed dealing with mood swings his wife is experiencing. Another, in a rapid-fire delivery, discussed how his obsessive compulsive disorder for cleanliness causes tension with his girlfriend. "I know her triggers and I try not to touch them," he said.

Kennedy recommended commonsense strategies like leaving a room or home to cool off when an argument occurs. She spoke of the importance of the Golden Rule and setting a good example their children. Kennedy acknowledged that the source of the tension may not be their fault, but they cannot resort to violence.

"If it happens once, it's likely to happen again, but the purpose of you being here is so it doesn't happen again," she said. "Just because you're here doesn't mean you're bad."

Domestic violence, also referred to as intimate partner

See **Counseling**, Page **A13**

Intervention programs innovating for success

By **EVAN GOODENOW**
The Winchester Star

Batterers Intervention Programs, also known as Abuse Intervention Programs, are typically paid for through fees from participants and usually only provide anger management counseling.

The fees-for-service model discourages some low-income offenders from participating and

limits the services programs offer, said Tara Nicole Richards, a University of Nebraska-Omaha School of Criminology assistant professor who has studied intervention programs since 2008, including programs in Colorado and Maryland. Unlike some drug-treatment services available in 36 states, batterers intervention isn't publicly funded.

See **Innovate**, Page **A13**

Counseling

From Page A1

violence, is a pervasive problem that destroys families, clogs courts, overcrowds jails and sometimes has deadly consequences. Some 10 million people are abused by their intimate partners annually, and one in every three female murder victims and one in every 20 male murder victims are killed by an intimate partner, according to the National Coalition Against Domestic Violence.

As with the rest of the nation, hardly a day goes by locally that a person, usually a man, isn't charged with domestic violence. It often involves choking, punching and kicking, and occasionally gunplay.

While still a source of shame for many victims, domestic violence is no longer swept under the rug by society. More money has been allocated for programs and shelters for victims, and abusers face stiffer sentences and protective orders. Intervention programs were created in the 1980s across the nation to change behavior.

The area intervention program covers Clarke, Frederick, Page, Rockingham, Shenandoah and Warren counties plus Harrisonburg and Winchester. The program began in 1992. In Winchester, Frederick and Clarke, it started in 2004.

From 2004 through 2017, 299 men and women from Winchester, Frederick and Clarke have participated, according to Judith Weaver, the licensed professional counselor who oversees the area program. The dropout rate for the local program was unavailable, but between 2014-18, the overall annual dropout rate was about 20 percent.

While courts refer defendants charged for the first time with domestic violence to the program, it is a privately-run program independent of the courts. As part of deferred dispositions, defendants plead guilty, but if they complete the program and don't re-offend for two years, the charge is dropped.

Separate classes are held for men and women. Kennedy began running group sessions of the 25-week program in 2010 and became director in 2018. The weekly sessions usually last an hour to 90 minutes and typically have three to seven participants. They pay a \$25 fee per session.

Annual recidivism rates of graduates aren't tracked by the program or by prosecutors in Winchester, Frederick and Clarke, and some domestic violence victim advocates around the nation have questioned the effectiveness of batterer's intervention. However, proponents point to local and national studies that show a lower recidivism rate for participants.

Weaver said a 2011 study done by a James Mason University intern that included 28 male participants from Winchester, Frederick and Clarke and a control group of 13 local men who didn't participate, showed the program has an impact. The recidivism rate for participants was about 18% compared to nearly 31% for the control group.

Tara Nicole Richards, a University of Nebraska-Omaha School of Criminology assistant professor, evaluated intervention programs in Maryland in 2015-17 while she was at the University of Maryland, Baltimore County. The UMBC study she co-authored looked at 1,916 graduates from eight Maryland intervention programs and a control group of 400 abusers who didn't participate.

While recidivism between program graduates and the control group was statistically insignificant, graduates had "significantly lower"



EVAN GOODENOW/THE WINCHESTER STAR

Winchester/Frederick/Clarke Batters Intervention Program Director Randa Kennedy counsels men and women charged with domestic violence who've been assigned by the courts to receive counseling. Most are first-time offenders who've pleaded guilty and are assigned to the 25-week program as an alternative to incarceration.

recidivism rates than program dropouts. Graduates were charged with half as many overall crimes — 0.69% compared to 1.20% — as dropouts and less than half — 0.69% versus 1.56% of program no-shows. Graduates also had almost half as many domestic violence charges as no-shows — 0.26% compared to 0.47% — and fewer violent charges than dropouts and no-shows — 0.28% versus 0.70%.

"Continued efforts to increase participant motivation and engagement into Abuser Intervention Program services through supportive counseling strategies and effective case monitoring are needed to increase program completion and reduce dropouts," the report said.

Nicole Spicer, a Winchester assistant commonwealth's attorney who handles domestic violence cases, wrote in an email that she has referred defendants to the program since its inception. She said it gives abusers tools to cope with stress rather than lashing out.

"The couples that we see in domestic violence cases often wish to stay together and rebuild their loving relationship," Spicer said. "The Batters Intervention Program is one tool to make that happen and preserve the family unit."

Anne Williams, Clarke County commonwealth's attorney, wrote in an email that the effectiveness of intervention, like most rehabilitative programs, primarily depends on participants genuinely wanting to change.

"For some, it might really hit home and inspire authentic change. It may not for others," Williams said. "However, it's rare that I see a progress note from [Batters Intervention Programs] that says that a participant isn't engaged and benefiting in some way from the program."

The local program focuses on anger management and improving communication and interpersonal skills. Kennedy said most participants are initially angry about hav-

ing to attend the sessions. She tries to get them to overcome their anger and be open-minded.

Kennedy acknowledged some victim advocates believe batterer's intervention doesn't work and she knows she can't reach everybody. She said she tries to build trust in participants and lets them know they can contact her in a crisis.

"I just let them know somebody cares," she said. "Sometimes they don't think anybody cares about them, even though they've been given this opportunity."

The 65-year-old Kennedy said her time as a magistrate for area courts from 1996 to 2007, and the 10 years she spent volunteering with Response, a group that runs a women's shelter in Shenandoah County, has given her perspective on the dynamics of the relationship between abusers and the abused.

She said there are no easy answers or quick fixes and the problem is intractable. "I don't want to sound like I have a lot of power, because I don't, but I do try to influence and educate," Kennedy said.

Most program participants are first-time offenders. Kennedy said she's only had two offenders who had previously taken the program but been assigned to it again and both dropped out. She occasionally gets graduates who voluntarily attend sessions to vent their frustrations and get moral support.

Kennedy, who previously was a child protective services worker and ran an alternative education program for juvenile delinquents, said most participants witnessed domestic violence as a child or were abused themselves.

"Boys witness what daddy does to mama or a boyfriend or whoever and they don't know any other way. [They think] that's how you treat a woman," she said. "Little girls see their mothers abused and say, 'Well, my mom put up with this so I can put up with it. That's what I'm supposed to do.'"

“

I don't know where I'd be without it. Before a problem gets to the point where there's potential for violence, seek out the help first, because no life is worth damaging."

■ Joseph, who participates in a local batterer's intervention program

Like many defendants in the program, James, who asked that his last name not be used, said his arrest on an assault and battery charge involving the mother of his children was alcohol-fueled. He said he never hit her, but pulled out a clasp from her hair during an argument, leading to the arrest.

James, who has been attending classes since December, said he's stopped drinking, which exacerbated his temper. He said the classes are comprehensive, including covering the perspectives of abusers and victims. James said the group setting allows him to vent and listen to the problems his classmates are experiencing. He said the main thing he's learned is to deescalate tension by retreating from a fight.

"Your bound to tick each other off once in a while when you spend days on end together and have kids together. Just having a time out is definitely important, even if one person doesn't want it," he said. "You've just got to walk away or drive away. Whatever it takes."

Joseph, who also asked that his last name not be used, said he's learned to walk away or sit on his hands, if leaving isn't possible. Joseph graduated from the program last year, but voluntarily goes to sessions when he can fit it into his schedule.

He said alcohol and drugs contributed to his problems and led to a fight with his girlfriend and an assault and battery arrest. Joseph, who has been sober since April of last year, said jail time made him want to get clean and change his abusive behavior. He started taking classes before he was mandated to.

Joseph said he prefers the intervention sessions to Alcoholics Anonymous or Narcotics Anonymous programs. He said he can relate better to the men in the intervention classes than those in AA or NA. He said Kennedy has been very supportive.

Joseph said he doesn't ask his partner to read the material Kennedy hands out at meetings, but leaves it where she can find it, knowing she'll eventually read it. He said she understands that when he walks away when he starts to get angry, it's not a sign of disrespect, but a tool to cool off. Joseph said communication is key to a relationship, but it can only occur when both partners are calm.

"You have demons and they have demons," he said. "They have their issues and you have your issues and the only way you're going to deal with that is to communicate."

Joseph, who said he's started his own business since getting clean, credits intervention with keeping him out of trouble.

"I don't know where I'd be without it. Before a problem gets to the point where there's potential for violence, seek out the help first," he said. "Because no life is worth damaging."

— Contact Evan Goodenow at egoodenow@winchesterstar.com



Tara Nicole Richards

Innovate

From **Page A1**

"Resources and funding are a huge issue for these programs," Richards said. "That is a really important component in terms of thinking about why people may drop out of treatment or never show up because there is a cost component."

Because many abusers suffer from addiction, alcoholism, mental illness and unemployment, Richards said anger management often isn't enough. She said the most effective programs have wraparound services located at or near where the intervention counseling is offered. Services can include couples counseling, job training, mental health treatment, parenting classes and substance abuse treatment.

Richards said services also should also be available to abuse victims and their children. Children are often traumatized by witnessing domestic violence and sometimes repeat the behavior as adults.

By focusing on the root causes of domestic violence rather than just attitudes and behaviors, Richards said intervention programs have a better chance of reducing abuse.

"Most BIPs do an assessment and they ask about all of these problems, but we then need to be ready to try to provide services to address these problems," Richards said. "There are more complex problems going on in the home above and beyond the violence."

Intervention programs range from as short as 16 weeks in Alabama to 52 weeks in California. Richards said the most innovative programs are moving away from one-size-fits-all models and recognizing that abusers may need more or less treatment based on their individual circumstances. The state of Washington recently approved risk assessments of abusers to determine the length and type of treatment offenders receive.

Richards acknowledged that no matter how innovative intervention programs are, there are limits to their effectiveness. Because most abusers are ordered by courts to participate rather than volunteering, many are in denial.

"Until the actual perpetrator is ready to step back and take some accountability and feel some motivation to change, there's nothing anybody can do," she said. "You cannot force change upon someone."

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SATURDAY IN THE STAR

Return and redemption

Probation officers try to help offenders change

By EVAN GOODENOW
The Winchester Star

WINCHESTER — When prisoners are released, Teresa “Terry” Carter tries to help them stay out of trouble.

“I look forward to working with you when you get out,” Carter, a senior probation and parole officer and re-entry specialist with the Virginia Department of Corrections District 11, told 12 soon-to-be-released inmates at the Northwestern Regional Adult Detention Center last month. “If you re-offend, it typically happens in the first 120 days. So we want to make sure we’re getting you started on the right foot.”

The District 11 Office of Probation & Parole is responsible for offenders in Winchester as well as Clarke, Frederick, Shenandoah and Warren counties. It has a staff of approximately 20, including about 15 regular probation officers, according to Tessie N. Lam, District 11 chief probation and parole officer.

Through the end of July, the office was overseeing 1,723 offenders including 1,556 probationers. Among them are 116 sex offenders, who are subject to more intensive scrutiny.

Also under supervision are 14 people on parole, an early-release program that was abolished in Virginia 1995. They also supervise 14 offenders who live in the area but are on probation in other states. In addition, two officers monitor defendants in the Northwest Regional Adult Drug Treatment Court.

The number of offenders being supervised is up about 43 percent from the approximately 1,200 when Lam was promoted to chief in 2009. The increase is believed to be tied to efforts to reduce recidivism and jail and prison overcrowding. Lam said an officer typically oversees between 90 and 100 offenders.

Given their high caseloads, communication is crucial in reducing recidivism. Carter has been holding monthly meetings with inmates scheduled to be released in 30 to 90 days from Northwestern since 2012. Briefings are also held at the Coffeewood Correctional Center in Culpeper County and



JEFF TAYLOR/THE WINCHESTER STAR

Tessie Lam (seated) is the chief probation and parole officer in Winchester’s District 11 office. Standing behind her are Bradley Triplett, deputy chief probation and parole officer, and Teresa (Terry) Carter, senior probation and parole officer and re-entry specialist.

Debt to society: parolee says 22 years in prison gave him purpose

By EVAN GOODENOW
The Winchester Star



Jeffrey F. Washington

WINCHESTER — When he was released after 22 years of incarceration for a 1994 robbery and murder, Jeffrey Franklin Washington had spent more of his life in prison than outside of it.

But the first thing the now 46-year-old Washington wanted to do when he got out was to go back. His goal wasn’t to get in more trouble, but to keep others out of it.

See **Probation**, Page **A3**

See **Parolee**, Page **A5**

Probation

From Page A1

the Rappahannock-Shenandoah-Warren Regional Jail in Front Royal.

Topics discussed include alcohol use, curfews, drug treatment, employment, housing, no-contact orders with victims, paying court costs and fines, protocol for home searches and restoration of a felon's rights. Carter told the Northwestern inmates that immediately calling or emailing their probation officer when they have contact with police, even for minor offenses such as getting a speeding ticket, is the best way to avoid violations that can cause a probation revocation.

They must also inform officers when they move. Failure to do so is another common violation.

Carter said homes visits are not designed to embarrass probationers, but to guarantee compliance, such as ensuring there are no drugs or weapons in the home. Police accompany probation officers on home visits and do the searches.

Because of probation officers' large caseloads, police also do some home visits independently and frequently communicate with District 11. Home visits can occur as often as once per week or as infrequently as once per three months based on the level of supervision the probationer or parolee is under.

Carter said she usually doesn't visit clients at their jobs unless there is a problem. Probation officers sometimes receive anonymous tips about possible violations which they are obligated to respond to.

Carter, hired in 2010, and Lam, hired in 1989, said offenders who have just been



EVAN GOODENOW/THE WINCHESTER STAR

Teresa "Terry" Carter, senior probation and parole officer and re-entry specialist with the District 11 of the state Department of Corrections Probation and Parole Office, briefed inmates at the Northwestern Regional Adult Detention Center on Wednesday.

Under supervision

With about 2.2 million prisoners, the U.S. leads the world in incarceration. It's also first in the number of people on parole and probation, with about 4.5 million adults under community supervision at the end of 2016. Through June of this year, there were 62,000 people under community supervision in Virginia. About 1 in 55 adults in the U.S. are on community supervision. The 4.5 million people on community supervision was the lowest number since 1999. About 81% of people on community supervision nationally are on probation. In Virginia it's 87%.

Sources: Bureau of Justice Statistics, Virginia Department of Corrections

released often think probation officers are out to get them. However, they stress their goal is compliance. Ultimately, it's up to offenders whether they succeed. "I can only light the path, but you need to actually do the walking," Carter told the inmates.

Abscending — leaving the area without the permission of a parole officer — is one of the most serious violations. Carter warned the inmates that the longer they remain at large, the longer their prison sentence will be when captured. She said probation officers will try to work with probationers who need to leave the area immediately, such as for a family or medical emergency.

"Abscending is not a joke. If you need help, please talk to your officer. They are your advocate, not your adversary. Let them help you," she said. "Don't run from us because you're really just hurting yourself."

Given the harsh conditions in prison, Jeffrey Franklin Washington said it's understandable that many newly released convicts are wary of probation officers. Nonetheless, Washington — a parolee imprisoned from 1994 to 2016 for the drug-related robbery and murder of Carlos D. Marshall in Winchester in 1994 — credits Brandon Daisy, who was his parole officer though the end of December, for helping him reintegrate into society.

In his first year of freedom, Washington said he met weekly with Daisy and was regularly drug tested

and visited at his job and home. He now has monthly meetings and visits.

Washington, who regularly gives inspirational speeches at halfway houses, jails and prisons, said he had a "great relationship" with Daisy. Washington said he tells inmates who are nearing release to not be shy about asking their probation officers for help and to use them as a resource.

"I truly believe that they do everything that they can within their means to make sure that we are successful. You get out of it what you put into it. If you're real and honest with your probation officer, they will lead you to where you need to be," Washington said. "One of the things I tell these guys at re-entry is that they are not your enemy. They have this misconception inside of prison that your parole officer wants to send you back to prison. That's not what they want to do. They want you to be a successful, returning citizen."

A difficult profession

The job of a probation officer can be demanding and occasionally dangerous. They participate in about four major law enforcement operations annually including a sweep for probation violators, according to Bradley B. Triplett, one of three District 11 deputy chiefs. Ten District 11 officers are authorized to carry pistols while on duty.

Probation officers, whose starting salary is \$39,111, typically have college degrees in the criminal justice field, according to Lam. Incoming officers train for a week at the DOC academy and for a week at a regional Probation and Parole office. They also undergo at least 40 hours of training annually including improving communication skills and motivational techniques designed to build rapport with clients.

Offenders meet with their probation officers within five to 10 days of their release and a "risk-needs" assessment is done within 45 days of an offender's release. Among the factors considered in the assessment are the offender's alcohol or drug use, criminal history, education, family criminality and mental health. The assessment determines if the offender gets a low, medium, medium with override, or high level

of supervision.

The offender and probation officer also prepare a case plan. It includes a probationer's future goals including areas like education and employment or drug and mental health treatment if needed.

Free drug treatment and relapse prevention classes are held at the District 11 office in Winchester. It is one of 43 Probation and Parole offices in Virginia.

Balancing safety and recidivism

Probation officers have discretion about whether to seek a revocation from a judge for a violation. While reducing jail and prison overcrowding is a consideration, Lam and Triplett said the top priority is always public safety.

While violence would typically trigger a revocation, drug use might not. Lam said there are a number of sanctions probation officers can levy before seeking a revocation. In the case of drugs, Triplett said it would depend on the severity of the drug use and the circumstances.

"The first thought is to get them the help they need and the first step may be jail, unfortunately," he said. "But from that point, we work with many programs to get that person help."

For a revocation, a report detailing violations must be submitted to judges. Probation officers sometimes testify in court about violations. They also submit pre-sentence reports that use a scoring system to calculate the range for state sentencing guideline recommendations.

At 23.4%, Virginia has the lowest recidivism rate in the nation. Lam and Triplett said the hard work of probation officers is a major reason why. It's not just about sitting behind a desk but interacting with clients in their lives.

"We tell people all the time that they're not a bad person, they just made a bad choice in their life. And we try to turn their lives around, not for them, but with them," said Triplett who was hired in 1997. "It's a good feeling for us throughout the years to have those success stories, to see people who have actually changed their lives and become productive members of society again."

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Parolee

From **Page A1**

"I want to go and talk to these men and women who are being released," Washington recalled telling his parole officer in Winchester on the day of his release. "It's what inspired me in the re-entry. To see somebody who I can consider a peer who says that they are living their dreams. To go back to inspire others."

Washington spoke with The Winchester Star earlier this month about his time in prison and how the Virginia Department of Correction's Office of Probation & Parole helped him transition back into society. Washington was convicted of killing Carlos D. Marshall in a drug-related robbery in Marshall's apartment in Winchester on Aug. 17, 1994.

Washington, who is seeking a pardon, was one of the five men charged in the killing. He said he was in the apartment, but denies shooting the 22-year-old Marshall. Facing the death penalty if convicted, Franklin entered an Alford plea in which a defendant doesn't admit guilt but concedes the prosecution has enough evidence for a conviction.

While incarcerated, Washington was rotated between several prisons and said addiction, assaults, rapes and stabbings involving fellow inmates were routine. He credits believing God was with him, strong family ties, plus regular exercise and reading for helping him not succumb to despair.

"Prison is a very dark place and they treat you like you're never going to return to society again," he said. "A lot of men take up that mindset and they live their lives like that, but 80% of the people in prison are coming out. Sooner or later, they're returning to society."

In the six months before his release, Washington participated in a re-entry



Jesus says in the Bible that the greatest thing a man can do is lay down his life for his brother. That's what my father did for me.

— Jeffrey Washington
Parolee

program that included anger management, cognitive thinking, conflict resolution and developing employment skills. It also included having former prisoners return to give motivational speeches, which inspired Washington to do the same.

"It is a scary feeling to be in a place for so long and not feel equipped to come back into society and make a living and be productive and be successful," he said "To hear their stories, not only did it prepare me, but it also inspired me to do what I do."

Washington was rejected for parole 10 times before it was granted on his 11th application. His father, Franklin Washington, fought for 20 years to free him. The elder Washington filed court challenges and often protested outside the Winchester Police Department.

He didn't live to see his son freed. Washington, 70, died of prostate cancer in 2014. Jeffrey Washington said his father regularly visited him until his body began breaking down. Washington made a deathbed call to him from prison expressing his appreciation and love.

Washington said he'd seen prisoners lose hope and come undone when a supportive loved one died. But he said he used it as inspiration so that his father's sacrifices wouldn't be in vain.

"Jesus says in the Bible that the greatest thing a man can do is lay down his life for his brother," Washington said. "That's what my father did for me. He laid his life down to make sure I obtained my freedom and that's another thing that fueled me to get out and speak and tell my story."

Washington said former Police Chief Gary W. Reynolds, who served as chief from 1997-2004, told him that Franklin Washington's advocacy led Reynolds to twice testify before the state Parole Board on behalf of the younger Washington. Washington said a parole board member told him it was the first time a Virginia police chief had ever testified before the board on behalf of a prisoner.

Reynolds' second appearance on Washington's 11th try was successful. When released, Washington was returned to Winchester in shackles to meet with parole officer Brandon Daisy, who is now a deputy chief with the District 11 Office of Probation & Parole. Daisy immediately had Washington unshackled and served as Washington's parole officer through the end of December.

Daisy, a probation and parole officer since 2003, said the transition from prison for long-time inmates like Washington includes culture shock. Many are unfamiliar with things most people take for granted like ATM and debit cards, cell phones and the internet. However, Daisy said Franklin adjusted well.

Daisy also said he was familiar with some of the individuals and religious groups Franklin interacted with in prison and supported his goal of giving inspirational speeches.

"Just listening to him speak, I felt he was genuine," Daisy said. "And I felt he would be a good, positive influence on others that are in

his same situation."

While in prison, Washington said inmates advised him that trucking was a good job for felons who often can't get hired because of their criminal background. He obtained his Commercial Driver's License at Lord Fairfax Community College and a fellow church member who owned his own trucking company hired him to deliver to Family Dollar stores on the East Coast.

In July of last year, Washington bought a 26-foot box truck and he and his girlfriend started New Life Delights, an interstate trucking company. He primarily hauls medical equipment and supplies up and down the East Coast.

When not driving, he makes speaking appearances including a scheduled one at the annual Addicted to Hope Rally at Handley High School on Sept. 14. Washington began attending Grace Downtown of Winchester about 18 months ago and he and church pastor the Rev. Brad Hill, a recovering addict and alcoholic, have made about 10 to 15 speeches together.

"God showed up for him and he was released and ever since then he's hit the ground running," Hill said. "His story is so relatable to people who have been thrown into an incredibly negative situation."

Washington said when he entered prison he was merely existing rather than really living. He left with a sense of purpose: to be an example that rehabilitation is not just a word and that ex-convicts can survive and thrive on the outside.

"I truly believe all human beings have a purpose that God has placed in them. Sometimes it takes a hardship for you to recognize what that purpose is," Washington said. "That's what it took for me."

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JEFF TAYLOR/THE WINCHESTER STAR

Attorneys William A. "Beau" Bassler (left) and David L. Hensley discuss sentencing guidelines and disparities.

State sentencing guidelines:

Does the punishment fit the crime?

By **EVAN GOODENOW**
The Winchester Star

WINCHESTER — Seven months.

That's the jail time Evan John Bender received when he was sentenced in Frederick County Circuit Court on Nov. 26. It's also the amount of jail time Alessandro Rashaun Williams got on Aug. 16.

Bender, 27, pleaded no contest to abduction, assault, and strangulation charges in an incident last year in which he beat his then-girlfriend in their home, held her against her will, roughed up her children and stalked them when they fled. Williams, 23, pleaded no contest to marijuana distribution and possession of hashish oil charges involving less than two pounds of pot in 2017.

Bender received an eight-year sentence with all time suspended except for seven months served. Williams got an eight-year sentence with all but seven months suspended.

How is it possible for someone convicted of a violent crime and some convicted of a non-violent crime end up with the same amount of jail time?

It's based on state sentencing guideline recommendations, which are used in about 90% of felony cases. In the remainder of cases, guidelines aren't used because there isn't a statistical basis to calculate them because they involve rare crimes such as the killing of a police officer.

For a generation since Virginia abolished parole in 1995 as part of a national "truth in sentencing" movement, it has relied on guidelines for punishment recommendations. As a result,

MORE INFO

Following Recommendations

State sentencing guideline recommendations are voluntary, but judges usually follow them.

2016-17

- ▶ In concurrence: 81.2 %
- ▶ Below guidelines: 9.6%
- ▶ Above guidelines: 9.2%

2017-18

- ▶ In concurrence: 82%
- ▶ Below guidelines: 9%
- ▶ Above guidelines: 9%

2018-19

- ▶ In concurrence: 83.5%
- ▶ Below guidelines: 8.7%
- ▶ Above guidelines: 7.8%

Source: Virginia Criminal Sentencing Commission

convicts who maintain good behavior serve about 85% of their sentences.

One of the goals of the guidelines was to more accurately reflect the actual time a defendant faces. Under the parole system, sentences were longer, but convicts with good behavior were often eligible for parole early in their sentences.

Guidelines are voluntary, but judges usually

follow them. Guidelines are credited with creating uniformity in sentencing statewide, but they can create disparities in punishment.

The guidelines recommend a sentencing range with a minimum, midpoint and maximum. They use a point system calculated by probation officers.

A defendant's criminal history, including their juvenile record, factor heavily into scoring. Prior convictions, whether they occurred months ago or decades ago, count the same against a defendant. Under the guidelines, a first-offender or someone with a minimal criminal history involved in a violent crime is more likely to get probation than a defendant with an extensive criminal history convicted of a non-violent crime. The disparity can even involve cases involving death.

For example, when driver Kelsey Marie Caldwell accidentally struck and killed an elderly woman in a crosswalk in 2016, she received a two-year suspended sentence in Winchester Circuit Court in 2017 for reckless driving. However, when Ernesto Anthony Newman pleaded guilty in August in Frederick County Circuit Court for shoplifting, he received a one-year sentence with one month suspended.

Caldwell had a relatively clean record, but the 48-year-old Newman's criminal history includes convictions for domestic assault and battery, drug possession, embezzlement, theft and trespassing, which factored into his guidelines. Nonetheless, for stealing \$80 worth of clothing — Newman told police when he was

See **Sentencing**, Page **A5**

Sentencing

From **Page A1**

arrested that it was because he was cold — he spent nearly a year in jail, while a woman who accidentally took a life avoided imprisonment.

Marc Abrams, Winchester commonwealth's attorney, said Caldwell received a suspended sentence because it would've been difficult to convict her on an involuntary manslaughter charge at trial. Abrams would have needed to prove Caldwell showed a "callous disregard for life."

Abrams said Caldwell still suffered consequences as a result of being put on probation. In July, she was sentenced to up to four months in jail for violating probation after leaving the scene of an accident.

Abrams, an attorney since 1988 and commonwealth's attorney since 2015, noted most nonviolent criminals who received jail time for drug or property crimes are habitual offenders.

"What do you do with somebody that won't stop stealing?" he said. "We can't ignore it and keep putting them on probation again."

Based on his record, Newman could be considered a career criminal, but his sentence was also nearly three times as much as what Joshua Allen Putman received on Nov. 21 in Frederick Circuit Court. He pleaded no-contest to unlawful wounding for taking part in an attack in which another man struck the victim in the face with a beer bottle. Putman received a three-year sentence, with all but four months suspended.

McKenzie Marie Stickley is another example of a violent offender getting a lighter sentence than a nonviolent one. Stickley led police on a high-speed chase in February in which she nearly struck a police cruiser and ended up getting Tased by a deputy. In June, she received a seven-year sentence, with all but five months and a week of time served suspended. A year earlier, Samantha Lynn Gregory, an addict with a long history of convictions for nonviolent crimes like breaking and entering, forgery and grand larceny, received six years imprisonment after being terminated from the Northwest Regional Adult Drug Treatment Court for multiple violations.

From the outside looking in, the disparities may appear unfair. But Ross Spicer, an attorney since 1991 and Frederick County commonwealth's attorney since 2013, said that's an illusion.

Spicer said the guidelines are logical and sensible. If people don't understand the disparities, it's because they're not privy to the details of cases.

"On the surface, it seems like there's something out of whack, but the discrepancies can be explained if you're willing to take the time to look at the details," Spicer said. "They aren't just these wild numbers that come out of the air that impose these astronomical sentences for relatively low-level crimes. They do make sense."

Spicer said drug court defendants like Gregory are afforded an "immense opportunity" by being accepted into the alternative-to-incarceration program, which includes services like drug treatment and individual and group therapy. But to keep the court from just being a get-out-of-jail card, it has a carrot-and-stick approach. That means those who fail face long sentences like Gregory.

Regarding Putnam, Spicer said he cooperated

with authorities and was willing to testify against Dustin Marshall McKenzie, who struck the victim with the beer bottle. Spicer said Putnam was also less culpable than McKenzie, who had an extensive and violent criminal record and received five years with two suspended.

In Bender's case, Marie E. Acosta, a county assistant commonwealth's attorney, said after his sentencing that convicting Bender at trial might have been difficult because the only physical evidence was red marks on the victim's neck. The risk of acquittal and the victim's reluctance to put her children through the ordeal of testifying at a trial led to a plea bargain. Trials occur in just 10% of felony cases in Virginia, according to the Virginia Criminal Sentencing Commission.

Recommendations rarely rejected

Williams and his family nervously awaited his fate on the day of his sentencing and hoped for a sentence below guidelines. Williams guidelines called for a minimum of seven months, a midpoint of one year and a maximum of 16 months.

Williams' attorney David L. Hensley argued that guidelines are mathematical calculations that don't account for a defendant's character or humanity. Certainly, the fact that Williams was no drug kingpin wasn't disputed.

In September of 2017, he dealt a half-ounce of marijuana to a Northern Virginia Drug and Gang Task Force confidential informant. About a month later, nine ounces of marijuana, a pound of marijuana edibles, hashish oil and \$2,000 in cash were seized from a home Williams was staying in.

In asking Judge Alexander R. Iden to sentence below the guidelines, Hensley noted that like marijuana, there was once a prohibition on alcohol. Hensley said there are now parties where people dress like Prohibition-era bootleggers. With states increasingly legalizing marijuana, he wondered how society might look at marijuana dealers 100 years from now.

Heather D. Enloe, a county assistant commonwealth's attorney, told Iden it was irrelevant that marijuana is legal elsewhere.

"The defendant does not have to like our laws but he has to obey them," she said. "And when he does not, there is a price to pay."

Williams told Iden he made bad choices but was willing to take responsibility for his actions. Iden said he believed Williams and acknowledged Virginia imprisons people for an activity that is legal in other states.

"We live in the times that we live in," Iden said. "I don't find what takes this below the guidelines."

Iden's verdict was typical. Judges, who must give a written explanation when they sentence outside of guidelines, rarely do. The legislature scrutinizes how often judge sentences outside guidelines when they come up for reappointment every eight years and a judge who often deviates from the guidelines could risk being not reappointed.

However, Meredith Farrar-Owens, sentencing commission director, said in an email that the commission is unaware of any judges not being reappointed based solely on guidelines



SCOTT MASON/SPECIAL TO THE STAR

Winchester Commonwealth Attorney Marc Abrams talks about sentencing guidelines.

compliance. She said only a small number of judges aren't reappointed and the rejected ones often had higher rates of concurring with guidelines than those who were reappointed.

Farrar-Owens added that judicial discretion continues to be an important element of sentencing. She said guidelines could never fully account for the unique circumstances of each case.

"Because the guidelines are advisory, judges are free to consider any potential mitigating or aggravating circumstances for each individual defendant before the court," Farrar-Owens said. "Such factors include the impact of the crime on the victim."

Tim Coyne, area public defender since 2004 and a member of the 17-person commission since 2017, said judges take sentencing seriously and he's had sentencing hearings last all day. Besides guidelines, a defendant's alcohol, drug and psychiatric history as well as character witnesses, letters of support and victim impact statements are considered.

"A judge can always go above or below the guidelines and that's where it's up to us as attorneys to argue for our clients," said Coyne, an attorney since 1991. "I get it all the time from clients. They say, 'I'm in a jail cell with somebody and he got this for that. Why is my sentence or offer so much different?' There are so many individualized factors that play into a sentencing determination."

Coyne said the commission studies whether the guidelines accurately reflect sentencing. For example, guidelines were adjusted when data showed judges were often deviating above guidelines for breaking and entering cases.

Nonetheless, with judges usually adhering to guidelines, the commission is unlikely to adjust them, said William August "Beau" Bassler, an attorney since 1998.

"The more people that are sentenced according to the guidelines, the more statistics back up that that's the appropriate sentence," he said. "It becomes a self-fulfilling prophecy."

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Life

From **Page A1**

Adult Detention Center. "I feel it's just not right."

Williams, who was born in the Cayman Islands before coming to the U.S. in 1999 and becoming a U.S. citizen, had been doing well before his arrest in 2017. A 2015 Millbrook High School graduate, he was in his second semester at Lord Fairfax Community College taking information technology and real estate classes and working part time.

His only brushes with the law were for possession of a small amount of marijuana in a traffic stop when he was 16 and a disorderly conduct conviction in 2017 while visiting West Virginia University in Morgantown, W.Va. Williams

said he went to a college party, got drunk and fell asleep outside. He was awakened by police and when he ran from them, he was tackled and arrested.

Because the arrest happened before his 21st birthday, Williams said it increased his guideline range. He also said he spent eight or nine hours in custody, but police reported it was 24 hours, which added to the range.

Williams said he dealt pot to make a little extra cash for gas, groceries and rent. He said his reputation as a pot smoker who sold to friends got around. Williams said a confidential informant working for the Northern Virginia Drug and Gang Task Force who bought the marijuana from him that led to

his arrest was a young woman he's known all his life.

"I wasn't a big-time hustler," he said. "I came to find out she was just picking me out of a random group to get me in trouble."

Despite a trend toward legalization, marijuana arrests are frequent. Williams was one of 659,700 people arrested for marijuana violations in the U.S. in 2017, according to FBI statistics and one of 60,418 for marijuana dealing or manufacturing. The former category was up about 1% from 2016, the latter down about 8%.

Williams is part of the statistics, but he doesn't want to be a casualty of America's nearly 50-year-old "War on Drugs," which has destroyed thousands of lives and cost taxpayers \$47 billion annually, according

to the Drug Policy Alliance. Upon release, Williams hopes to find a job, return to college and eventually relocate to make a fresh start. He said he's grateful to his family and friends for their regular visits.

While he doesn't feel lucky, Williams said he's fortunate to not have received a longer sentence like so many African-American men like him who are imprisoned on drug charges. He's trying to make the best of a bad situation.

"I've never cried or been upset. I've always been like OK, another day, another day, another day. Just take it one day at a time," he said. "I'm always just positive about it."

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