



Integration of Offender Recidivism Risk Assessment into Virginia Sentencing

Nature of Risk Assessment

- Criminal risk assessment estimates an individual's likelihood of repeat criminal behavior and classifies offenders based on their relative risk of such behavior.
- In practice, risk assessment is typically an informal process in the criminal justice system
 - Prosecutors when charging
 - Judges at sentencing
 - Probation officers in developing supervision plans



Nature of Risk Assessment

- Empirically-based risk assessment, however, is a formal process using knowledge gained through observation of actual behavior within groups of individuals.
- In Virginia, risk assessment has become an increasingly formal process.
 - Nonviolent offender risk assessment
 - Sex offender risk assessment
- Risk assessment is a companion piece to the guidelines.



Nature of Risk Assessment

- The Commission's methodological approach to studying criminal behavior is identical to that used in other scientific fields such as medicine.
- In medical studies, individuals are studied in an attempt to identify the correlates of the development of diseases.
- Medical risks profiles do not perfectly fit every individual.
 - For example, some heavy smokers may never develop lung cancer.



Nature of Risk Assessment

- Groups are defined by having a number of factors in common that are statistically relevant to predicting the likelihood of repeat offending
- These groups exhibiting a high degree of re-offending are labeled high risk



Nature of Risk Assessment

- No risk assessment research can ever predict a given outcome with 100% accuracy.
- The goal is to produce an instrument that is broadly accurate and provides useful additional information to decision makers.
- Individual factors by themselves do not place an offender in a high-risk group.
 - The presence or absence of certain combinations of factors determine the risk group of the offender.



Nonviolent Offender Risk Assessment



Legislative Directive

- The Sentencing Commission shall:
 - Develop an offender risk assessment instrument predictive of a felon's relative risk to public safety to determine appropriate candidates for alternative sanctions
 - Apply the instrument to non-violent felons recommended for prison
 - Goal: Place 25% of these prison bound felons in alternative sanctions



- § 17.1-803 (5,6) of the *Code of Virginia*

Empirical Study of Nonviolent Offender Recidivism

- The Commission studied 1,500 property and drug felons released from incarceration during 2-year period
- Over 200 unique factors relating to criminal record, substance abuse, education and employment history, family background, etc., were examined.
 - Pre/Post-Sentence Investigation (PSI) database
 - Supplemental Data Collection



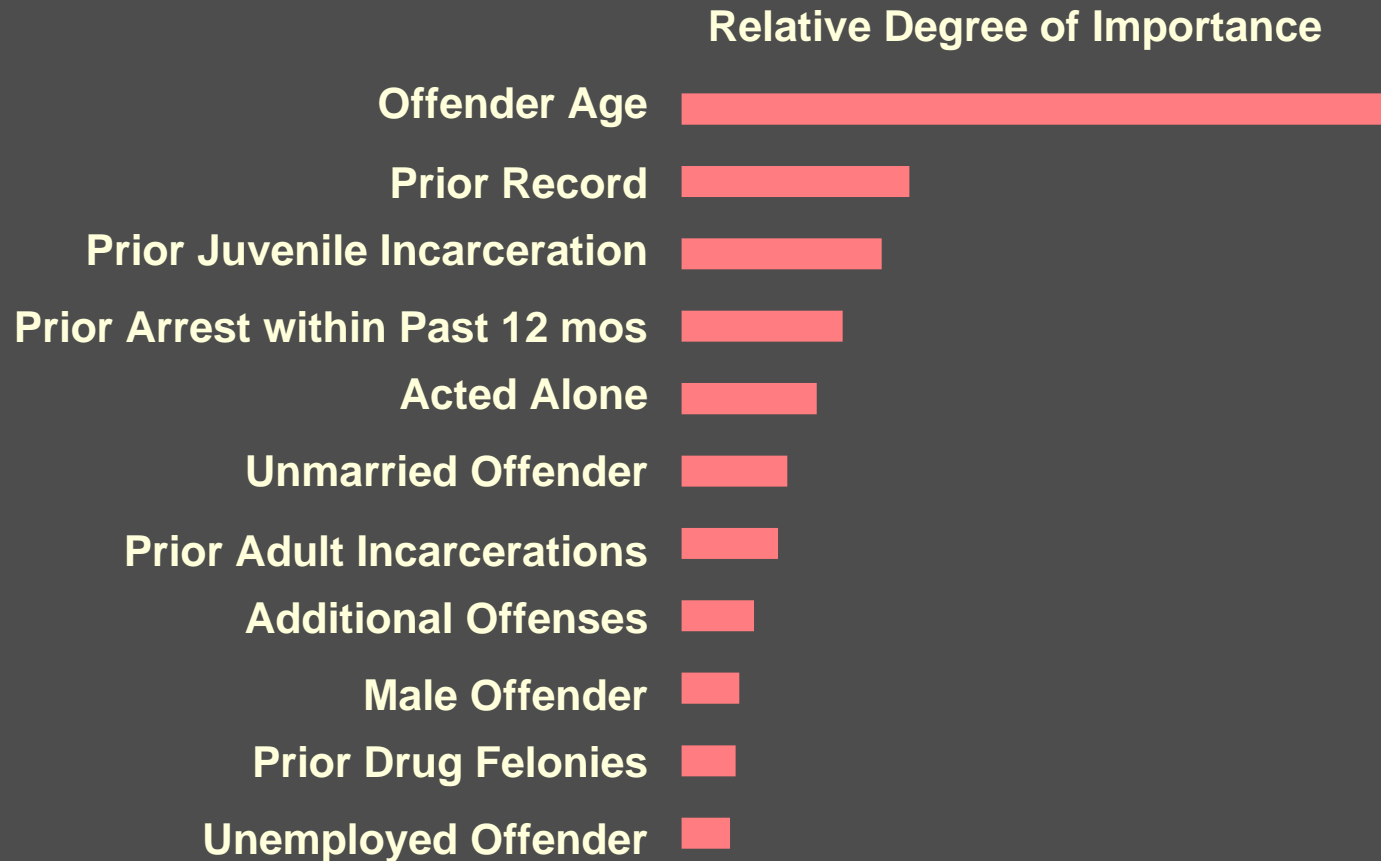
Empirical Study of Nonviolent Offender Recidivism

- Recidivism was defined as a reconviction for a felony within three years of release.
- A risk assessment worksheet was developed based on those factors that were statistically relevant in predicting recidivism.
- Pilot testing began Dec. 1997 and included six judicial circuits.



Non-Violent Risk Assessment

Significant Factors in Assessing Risk



Non-Violent Risk Assessment

◇ **Offense Type** _____
Select the offense type of the instant offense

| | | |
|--------------|---|--------------------------|
| Drug..... | 3 | |
| Fraud..... | 3 | <input type="checkbox"/> |
| Larceny..... | 6 | <input type="checkbox"/> |

◇ **Offender is Male** _____ **IF YES, add 3** →

◇ **Additional Offense** _____ **IF YES, add 2** →

Go to Cover Sheet and fill out Alternative Punishment Recommendations section.

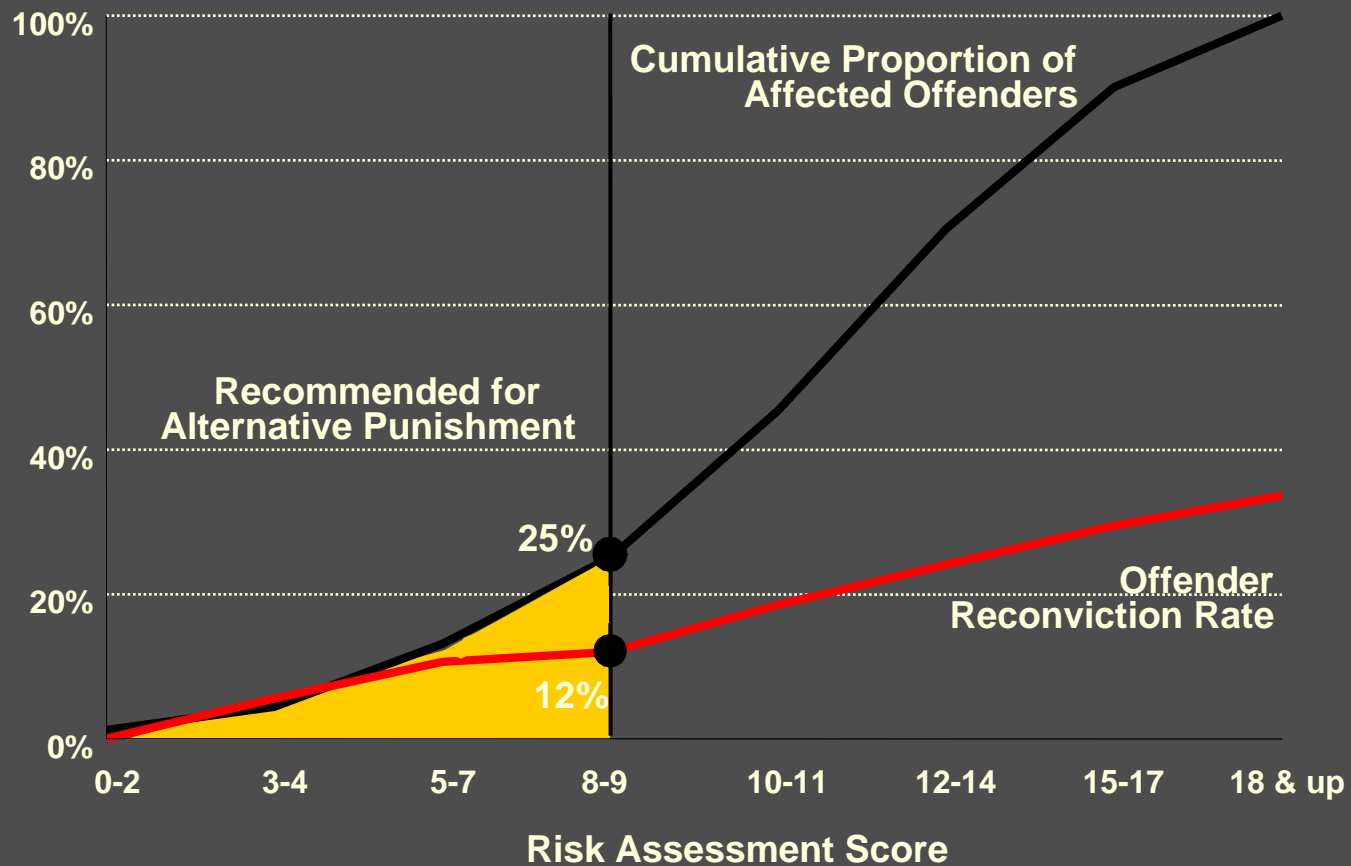
If total is 9 or less, check Recommended for Alternative Punishment.

If total is 10 or more, check Do NOT Recommend for Alternative Punishment.

If total is 9 or less, check Recommended for Alternative Punishment.
If total is 10 or more, check Do NOT Recommend for Alternative Punishment.

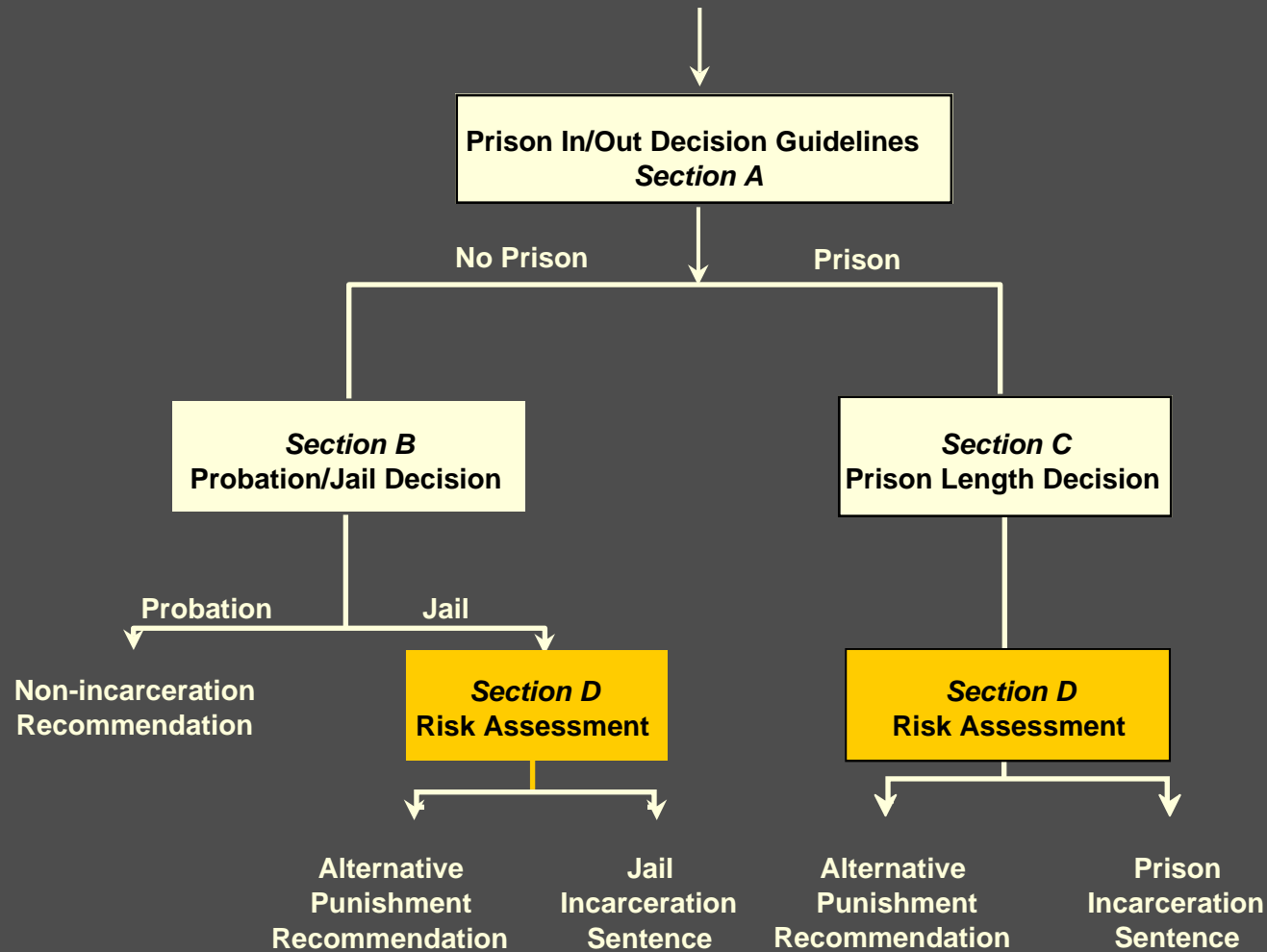
Non-Violent Risk Assessment

Offender Reconviction Rates and Cumulative Proportion of Affected Offenders



Non-Violent Risk Assessment

Felony Drug, Fraud and Larceny Convictions



Non-Violent Risk Assessment

Risk Assessment Instrument Pilot Test

- Six Circuits

Circuit 5 (Cities of Franklin and Suffolk and the counties of Southampton and Isle of Wight), Circuit 14 (Henrico), Circuit 19 (Fairfax), and Circuit 22 (city of Danville and counties of Franklin and Pittsylvania) effective Dec, 1997

- Circuit 4 (Norfolk) and Circuit 7 (Newport News) effective April, 1999

Non-Violent Risk Assessment

Independent Evaluation by National Center for State Courts

- Interviews with judges, prosecutors, defense attorneys, and probation officers
- Statistical validation study of risk assessment instrument via recidivism analysis of diverted felons
- Concluded that the risk assessment instrument is an effective tool for predicting recidivism
- Recommended that the risk assessment instrument be refined and retested with more recent felony cases and expanded to all jurisdictions

Non-Violent Risk Assessment

National Center for State Courts Evaluation:

- Conducted a cost-benefit analysis of the risk assessment instrument
- Benefits of reduced prison (363 felons diverted) and jail (192 felons diverted) populations saved an estimated \$8.7 million dollars
- Cost of alternative sanctions was \$6.2 million. An additional \$1 million in costs incurred when offenders became recidivists.
- Net benefit in pilot sites of \$1.5 million
- If expanded statewide, estimated net benefit of \$3.7 to \$4.5 million in reduced costs.

Refined Risk Assessment Instrument

- In 2001, the Sentencing Commission completed additional study to refine the risk assessment tool.
- New recidivism study sample of 1996 nonviolent felons.
- Offenders recommended for diversion under the refined risk assessment model had a recidivism rate of 12%.
- Offenders not recommended for diversion under the refined model had a recidivism rate of 38%.
- A score threshold selected so that 25% of prison bound offenders will be recommended for alternative sanctions.



Significant Factors in Assessing Risk for Nonviolent Offenders



Source: Nonviolent Offender Risk Assessment Validation Study, Virginia Criminal Sentencing Commission (2001)

Nonviolent Risk Assessment Instrument for Larceny, Fraud and Drug Offenders

◆ **Offense Type** *Select the offense type of the instant offense*

- Drug.....3
- Fraud.....3
- Larceny.....11

◆ **Offender** *Score factors A-D and enter total score*

- A. Offender is a male.....8
- B. Offender's age at time of offense
 - Younger than 30 years.....13
 - 30 – 40 years.....8
 - 41 - 46 years.....1
 - Older than 46 years.....0
- C. Offender not regularly employed.....9
- D. Offender at least 26 years of age & never married.....6

◆ **Additional Offense**..... **IF YES, add 5**

◆ **Arrest or Confinement Within Past 18 Months** (prior to offense).**IF YES, add 6**

◆ **Prior Felony Convictions and Adjudications** *Select the combination of prior adult and juvenile felony convictions that characterize the offender's prior record*

- Any Adult Felony Convictions or Adjudications.....3
- Any Juvenile Felony Convictions or Adjudications.....6
- Adult and Juvenile Felony Convictions or Adjudications.....9

◆ **Prior Adult Incarceration**

- Number 1 - 2.....3
- 3 – 4.....6
- 5 or more.....9

◆ **Total Score**

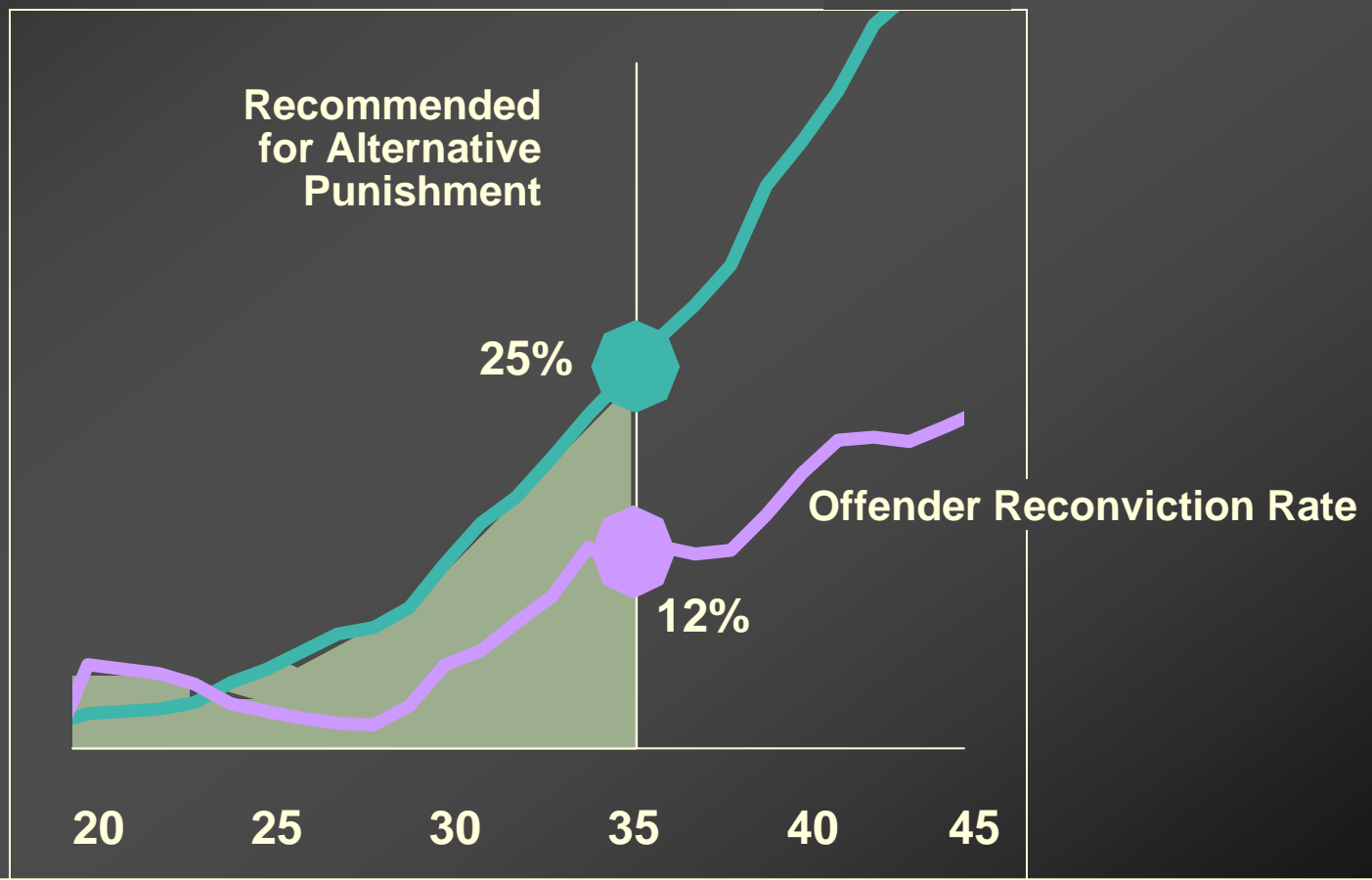
Go to Cover Sheet and fill out Alternative Punishment Recommendations section. If total is 35 or less, check Recommended for Alternative Punishment. If total is 36 or more, check Do NOT Recommend for Alternative Punishment.

Nonviolent Risk Assessment Instrument for Larceny, Fraud and Drug Offenders

◆ **Offender Score factors A-D and enter total score**

| | | |
|----|--|----|
| A. | Offender is a male..... | 8 |
| B. | Offender's age at time of offense | |
| | Younger than 30 years..... | 13 |
| | 30 – 40 years..... | 8 |
| | 41 - 46 years..... | 1 |
| | Older than 46 years..... | 0 |
| C. | Offender not regularly employed..... | 9 |
| D. | Offender at least 26 years of age & never married..... | 6 |

Reconviction Rates and Cumulative Proportion of Affected Offenders under Risk Assessment



Statewide Implementation

- In 2001, the Sentencing Commission recommended that the risk assessment program be expanded statewide.
 - Legislature accepted the recommendation.
 - Statewide implementation began July 1, 2002.



Use of Nonviolent Offender Risk Assessment

- Completed in larceny, fraud and drug cases for offenders who are recommended for incarceration by the sentencing guidelines who also meet the eligibility criteria
 - Excludes those with a current or prior violent felony conviction and those who sell 1 oz. or more of cocaine
- For offenders who score 35 or less, the sentencing guidelines cover sheet indicates a dual recommendation
 - Traditional incarceration
 - Alternative punishment



Use of Nonviolent Offender Risk Assessment

- As with the sentencing guidelines, compliance with the risk assessment recommendation is discretionary
- If a judge follows either sentencing recommendation, he or she is considered in compliance with the guidelines



Legislative Directive - Budget Language (2003)

- Chapter 1042 (Item 40) of the 2003 Acts of Assembly directs the Commission to:
 - Identify offenders not currently recommended for alternative punishment options by the assessment instrument who nonetheless pose little risk to public safety
 - Determine, with due regard for public safety, the feasibility of adjusting the assessment instrument to recommend additional low-risk nonviolent offenders for alternative punishment
 - Provide findings to the 2004 Session of the General Assembly



Offender Risk Assessment Scores

| | Score | Percent of Offenders | Reconviction Rate for offenders scoring at or below point value |
|---------------------------------|--------------|----------------------|---|
| Old Risk Assessment Threshold → | 35 | 2.5% | 12.4% |
| | 36 | 2.7% | 13.9% |
| | 37 | 2.2% | 13.4% |
| New Risk Assessment Threshold → | 38 | 2.7% | 13.6% |
| | 39 | 5.4% | 16.0% |
| | 40 | 3.0% | 18.8% |
| | More than 40 | 58.7% | |

By moving the threshold to 38 points, an estimated 511 per year additional offenders would be recommended for alternative punishment, without a significant increase in the rate of recidivism among the recommended group.

Nonviolent Offender Risk Instrument – Examining the Score Threshold

- The Sentencing Commission concluded that the threshold could be raised from 35 to 38 points without significant risk to public safety.
- Raising the threshold will result in additional offenders being recommended for alternative sanctions.
- Following approval by the legislature, the change became effective July 1, 2004.



Nonviolent Risk Assessment Section D

Offender Name:

◆ Ineligibility Conditions

- A. Was the offender recommended for Probation/No Incarceration on Section B? Yes No
- B. Do any of the offenses at sentencing involve the sale, distribution, or possession with intent, etc. of cocaine of a combined quantity of 28.35 grams (1 ounce) or more? Yes No
- C. Are any prior record offenses violent (Category I/II listed in Table A of the Guidelines Manual)? Yes No
- D. Are any of the offenses at sentencing violent (Category I/II listed in Table A of the Guidelines Manual)? Yes No

If answered **YES** to **ANY**, go to "Nonviolent Risk Assessment Recommendations" on cover sheet and check Not Applicable. If answered **NO** to **ALL**, complete remainder of Section D worksheet.

◆ Offense Type *Select the type of primary offense* _____

- Drug 3
- Fraud 3
- Larceny 11

◆ Additional Offense(s) _____ If YES, add 5 →

◆ Offender *Score factors A to D and enter the total score* _____

- A. Offender is a male 8
 - B. Offender's age at time of offense
 - Younger than 30 years 13
 - 30 - 40 years 8
 - 41 - 46 years 1
 - Older than 46 years 0
 - C. Offender not regularly employed 9
 - D. Offender at least 26 years of age & never married 6
- = Enter A to D Total

◆ Arrest or Confinement Within Past 18 Months (prior to instant offenses) _____ If YES, add 6 →

◆ Prior Felony Convictions and Adjudications *Select the combination of adult and juvenile felony convictions/adjudications that characterizes the offender's prior record.* _____

- Adult felony convictions only 3
- Juvenile felony convictions or adjudications only 6
- Both adult and juvenile felony convictions/adjudications 9

◆ Prior Adult Incarcerations _____

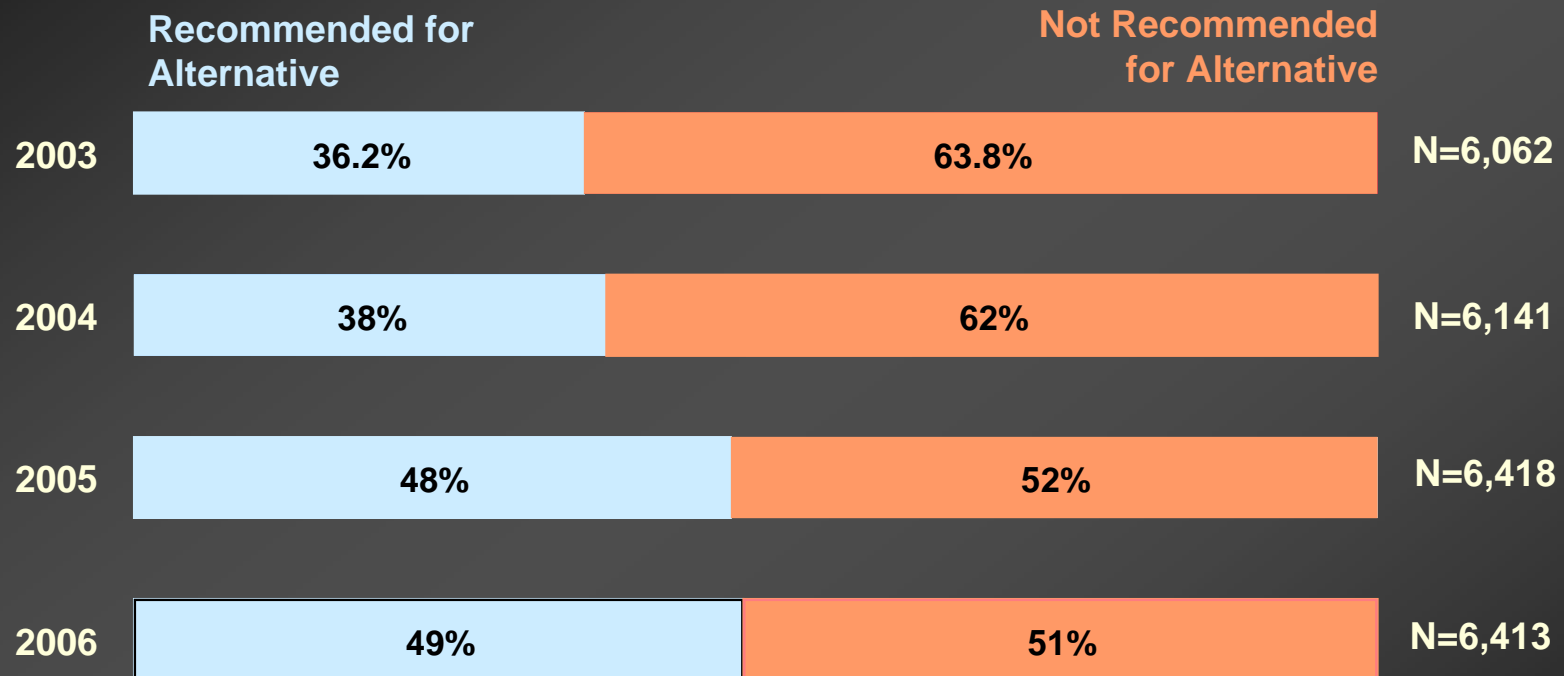
- Number: 1 - 2 3
- 3 - 4 6
- 5 or more 9

Total Score _____

38 or less, check Recommended for Alternative Punishment.
 39 or more, check NOT Recommended for Alternative Punishment.
 Go to Cover Sheet and fill out Nonviolent Risk Assessment Recommendations.

Virginia Nonviolent Risk Assessment

(as applied to those recommended for jail or prison incarceration)

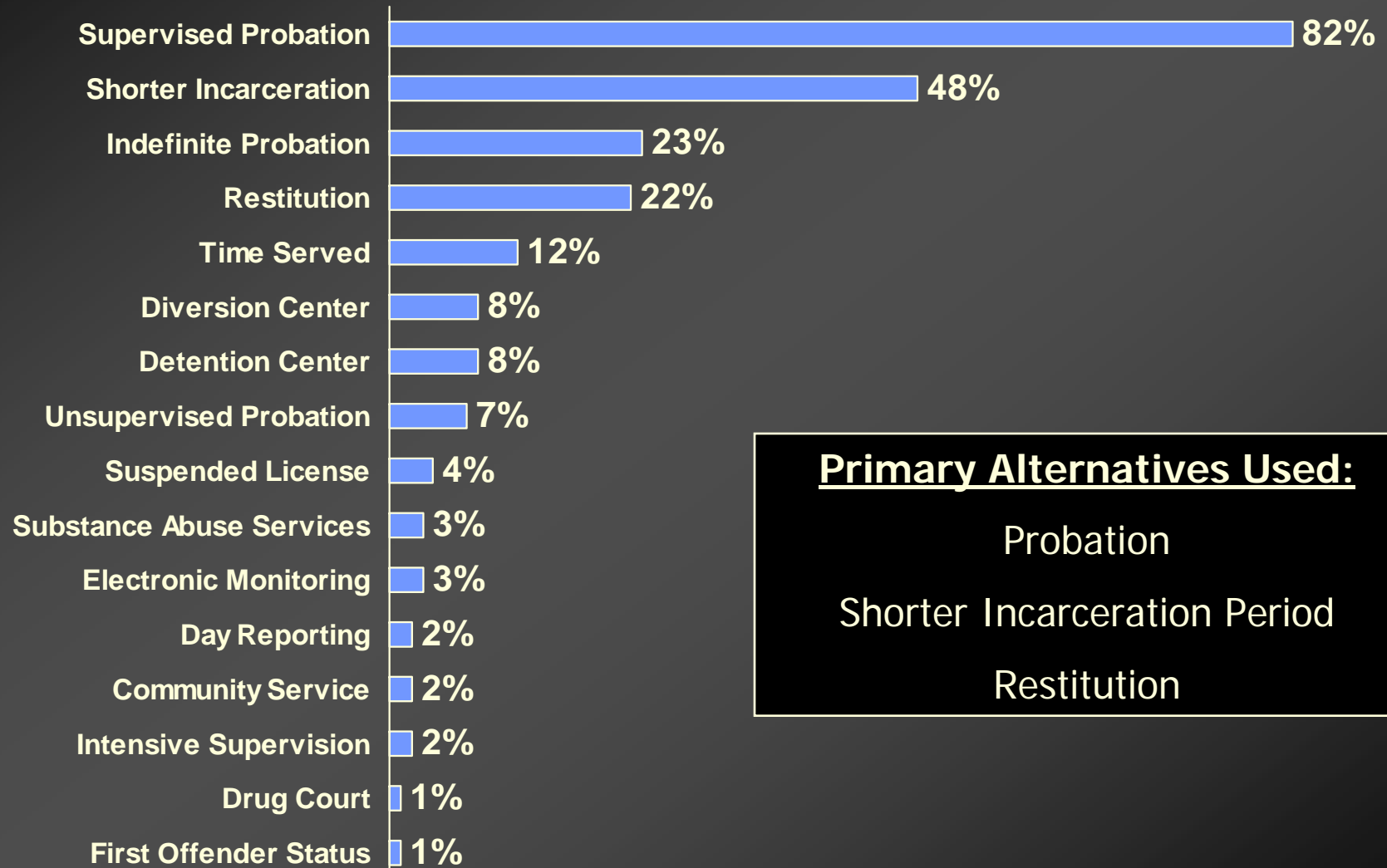


Sentencing Guidelines Compliance Rates for Non-Violent Offenders Screened with Risk Assessment FY 2006

| Offense | Mitigation | Compliance | | Aggravation | Number of Cases |
|---------|------------|-------------|-------------|-------------|-----------------|
| | | Traditional | Alternative | | |
| Drug | 5.8% | 60.7% | 24.3% | 9.2% | 3,259 |
| | | 85% | | | |
| Fraud | 7.7% | 53.8% | 33.9% | 4.6% | 1,175 |
| | | 87.7% | | | |
| Larceny | 8.1% | 76.9% | 7.3% | 7.7% | 1,979 |
| | | 84.2% | | | |
| Cases | 6.8% | 64.5% | 20.8% | 7.9% | 6,413 |
| | | 85.3% | | | |



Less Restrictive Sanctions Utilized under Risk Assessment



Sex Offender Risk Assessment



Sex Offender Risk Assessment

SJR 333 Directive to Sentencing Commission

- ❖ Develop a sex offender risk assessment instrument based on the risk of re-offending and the impact of treatment interventions
- ❖ Integrate a risk assessment instrument into the sentencing guidelines for sex offenses
- ❖ Determine the range of sentences which should be imposed on convicted sex offenders



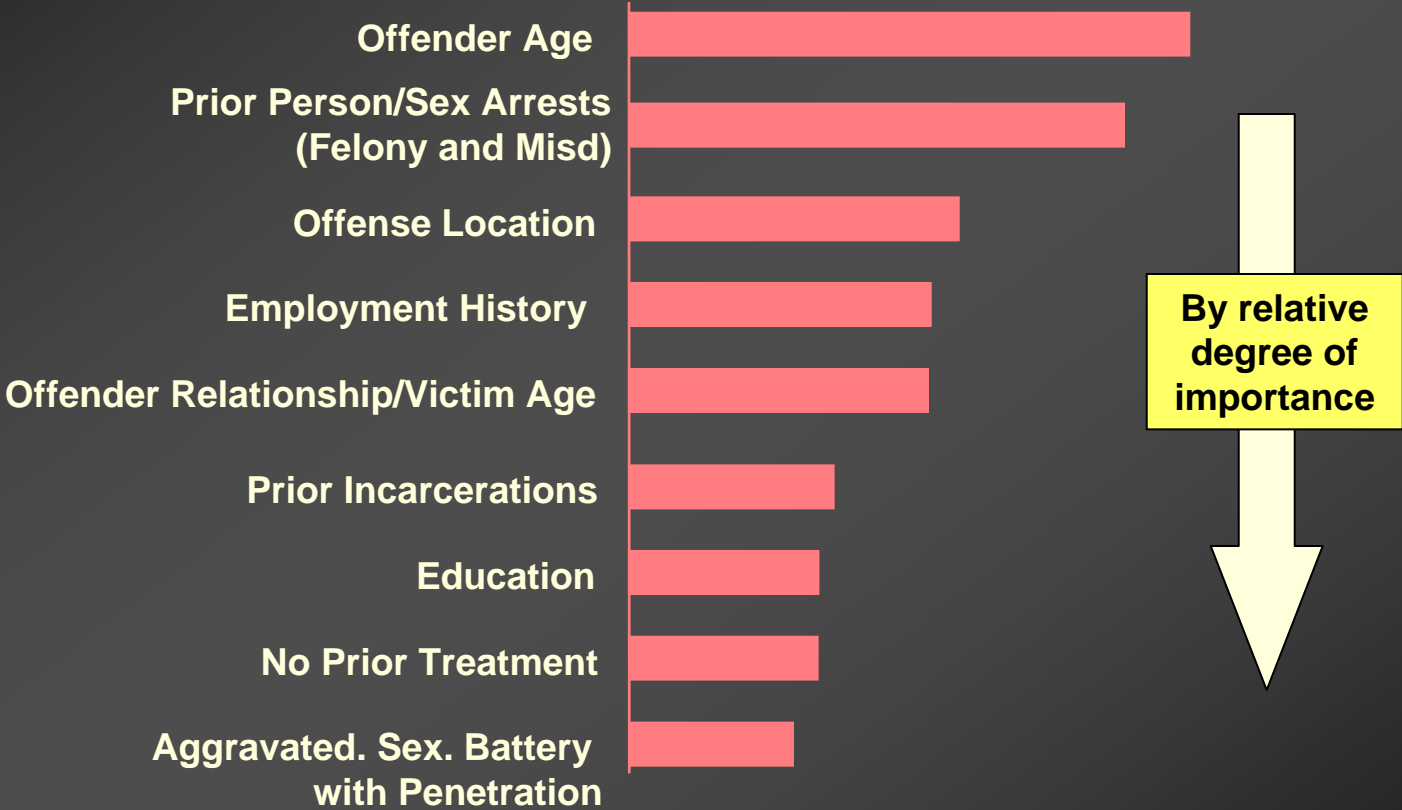
Sex Offender Risk Assessment

❖ Study Method:

- Studied felony sex offenders released from incarceration (or given probation) during 1990 through 1993
- Random sample of 600 cases
- All offenders followed for 5 to 10 years after return to community
 - Previous studies found sex offenders recidivate over a longer period of time prior to detection compared to other offenders
- Recidivism defined as a re-arrest for a sex offense or other crime against the person
 - Using reconviction drastically underestimates recidivism due to difficulties in detection and prosecution of sex offenses
- Studied over 200 factors relating to offense behavior, victim(s), criminal record, education, employment, family history, etc., for each case

Sex Offender Risk Assessment

Significant Factors in Predicting Recidivism



Sex Offender Risk Assessment

◆ Offender's Age at Time of Offense →

Younger than 35 years 12

35 to 46 years 4

Older than 46 years 0

◆ Less Than 9th Grade Education If YES, add 4 →

◆ Not Regularly Employed If YES, add 5 →

◆ Offender's Relationship with Victim →

| | | | |
|---|--|--|--|
| <u>Victim under Age 10</u> | | <u>Victim Age 10 or more</u> | |
| Relative 0 | | Relative/Step-parent 2 | |
| Known to victim (not relative or step-parent) . 4 | | Known to victim (not relative or step-parent). 3 | |
| Stranger 4 | | Stranger 8 | |
| Step-parent 9 | | | |

◆ Aggravated Sexual Battery (Primary Offense §18.2-67.3) →

No penetration or attempted penetration of victim..... 0

Penetration or attempted penetration of victim 4

◆ Location of Offense →

| | |
|---------------------------------------|---|
| Place of employment 0 | Victim's residence (not offender's) 5 |
| Shared victim/offender residence ...3 | Offender's residence or other residence9 |
| Outdoors..... 3 | Location other than listed 3 |
| Motor vehicle 4 | |

◆ Prior Felony/Misdemeanor Arrests for Crimes Against Person →

| | | |
|------------------------------------|----------------------------------|------------------------------------|
| <u>0 Felonies</u> 1-3 Misd 1 | <u>1 Felony</u> 0-2 Misd 5 | <u>2+ Felonies</u> 0-3 Misd 8 |
| 4+ Misd 8 | 3+ Misd 8 | 4+ Misd..... 15 |

◆ Prior Incarcerations/Commitments If YES, add 3 →

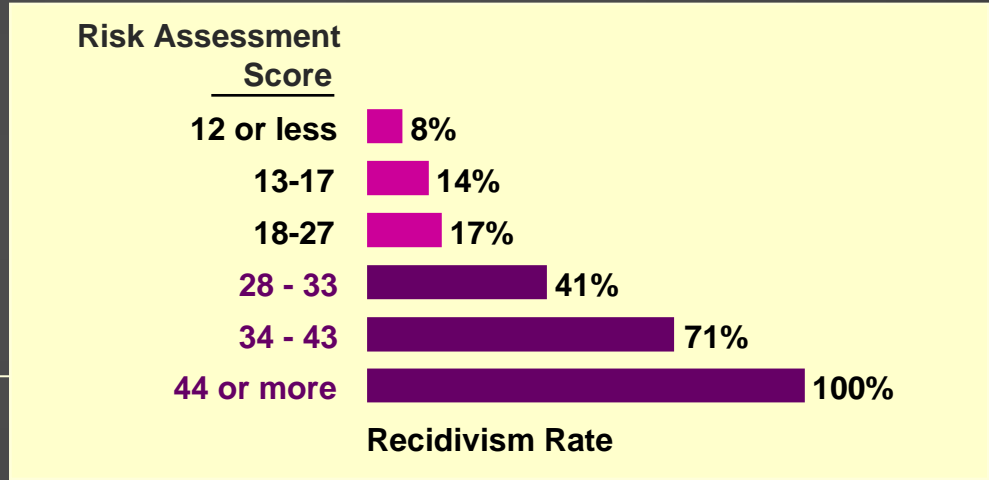
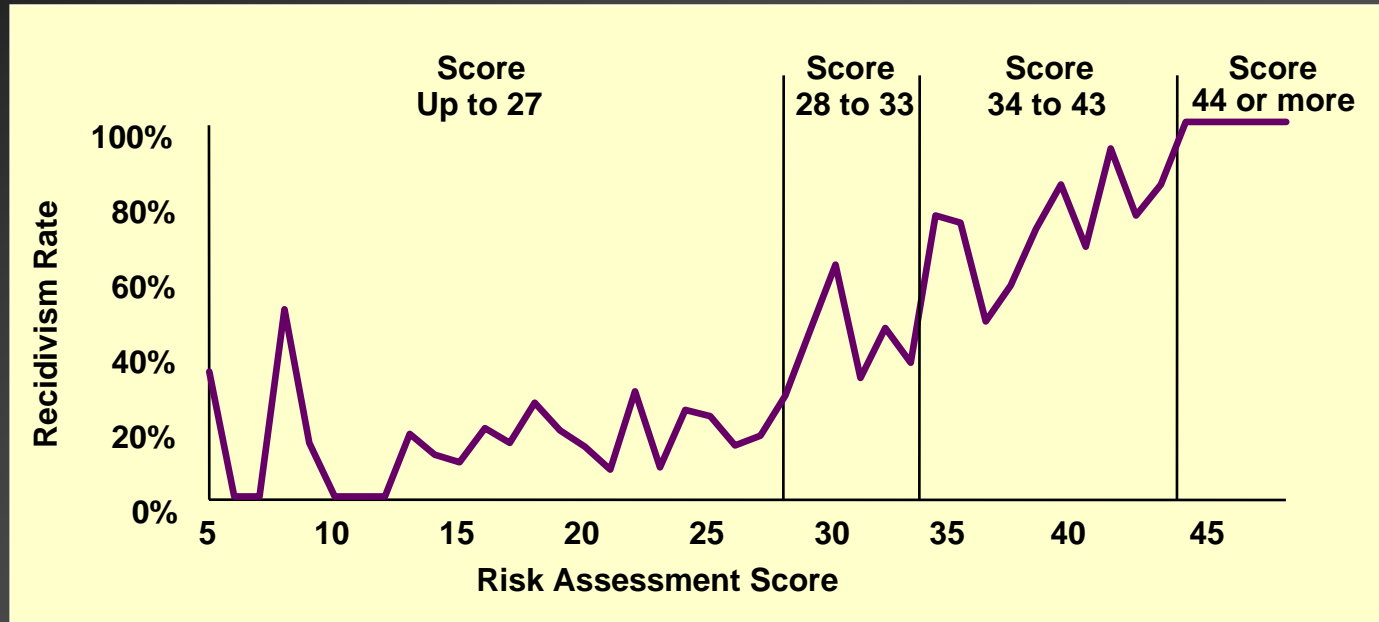
◆ Prior Treatment →

| | |
|--|---------------------------------------|
| Prior mental health commitment 0 | Prior alcohol or drug treatment ... 3 |
| Prior mental health or sex offender treatment .. 2 | No prior treatment 4 |

◆ Risk Score →

Sex Offender Risk Assessment

Rates of Recidivism by Risk Assessment Score



Sex Offender Risk Assessment

Risk Assessment Recommendations

- ❖ Offenders scoring 28 or more are always recommended for prison and the upper end of the recommended prison sentence range is increased as follows:

| Risk Assessment Score | Recommended Range Adjustment |
|------------------------------|-------------------------------------|
| 44 or more | Increase upper end of range by 300% |
| 34 to 43 | Increase upper end of range by 100% |
| 28 to 33 | Increase upper end of range by 50% |
| Up to 27 | No change |

- ❖ Midpoint recommendation and low end of the recommended range remain unchanged.
-

Sex Offender Risk Assessment

Rape: Prison Recommendation Table

| Score | Midpoint | Low | High | Risk Assessment Score: | | |
|-------|--------------|-------------|--|------------------------|--------------|--------------|
| | | | | 28 to 33 | 34 to 43 | 44 or more |
| | | | | High | High | High |
| 144 | 12 yr. 0 mo. | 6 yr. 8 mo. | 14 yr. 5 mo. | 21 yr. 8 mo. | 28 yr. 10mo. | 57 yr. 8 mo. |
| 145 | 12 yr. 1 mo. | 6 yr. 9 mo. | 14 yr. 6 mo. | 21 yr. 9 mo. | 29 yr. 0 mo. | 58 yr. 0 mo. |
| 146 | 12 yr. 2 mo. | 6 yr. 9 mo. | 14 yr. 7 mo. | 21 yr. 11mo. | 29 yr. 2 mo. | 58 yr. 4 mo. |
| 147 | 12 yr. 3 mo. | 6 yr. 10mo. | | | | |
| 148 | 12 yr. 4 mo. | 6 yr. 10mo. | No Change 50% Increase 100% Increase 300% Increase | | | |
| 149 | 12 yr. 5 mo. | 6 yr. 11mo. | 14 yr. 4 mo. | 22 yr. 5 mo. | 29 yr. 5 mo. | 59 yr. 1 mo. |
| 150 | 12 yr. 6 mo. | 7 yr. 0 mo. | 15 yr. 0 mo. | 22 yr. 6 mo. | 30 yr. 0 mo. | 60 yr. 0 mo. |
| 151 | 12 yr. 7 mo. | 7 yr. 0 mo. | 15 yr. 1 mo. | 22 yr. 8 mo. | 30 yr. 2 mo. | 60 yr. 4 mo. |
| 152 | 12 yr. 8 mo. | 7 yr. 1 mo. | 15 yr. 2 mo. | 22 yr. 9 mo. | 30 yr. 4 mo. | 60 yr. 8 mo. |
| 153 | 12 yr. 9 mo. | 7 yr. 1 mo. | 15 yr. 4 mo. | 23 yr. 0 mo. | 30 yr. 8 mo. | 61 yr. 4 mo. |
| 154 | 12 yr. 10mo. | 7 yr. 2 mo. | 15 yr. 5 mo. | 23 yr. 2 mo. | 30 yr. 10mo. | 61 yr. 8 mo. |
| 155 | 12 yr. 11mo. | 7 yr. 2 mo. | 15 yr. 6 mo. | 23 yr. 3 mo. | 31 yr. 0 mo. | 62 yr. 0 mo. |
| 156 | 13 yr. 0 mo. | 7 yr. 3 mo. | 15 yr. 7 mo. | 23 yr. 5 mo. | 31 yr. 2 mo. | 62 yr. 4 mo. |

Sex Offender Risk Assessment

Sentencing Guidelines Recommendations

Section B

- Probation / No Incarceration
 - Incarceration 1 Day to 3 Months
 - Incarceration 3 to 6 Months
- Mandatory Minimum _____

Section C

Incarceration (Enter Midpoint and Range Below)

Range Midpoint **1** **6**
Years Months

Sentence Range **8** TO **2** **6**
Years Months Years Months

Recommendation Adjusted for Mandatory Minimum

Modifications Based on Risk Assessment

The upper end of the sentence range can be adjusted based on the risk assessment level.

Characteristics of the offender and the circumstances of the offense may have correlated with a significant risk of recidivism among other sex offenders. If so, the upper end of the recommended sentence range has been increased by :

Check one

- 300% - Level 1
- 100% - Level 2
- 50% - Level 3
- No Adjustment

Adjusted High End

5 **0**
Years Months

Sex Offender Risk Assessment

Sentencing Guidelines Recommendations

Section B

Probation / No Incarceration

Section C

Incarceration

(Enter Midpoint and Range Below)

Characteristics of the offender and the circumstances of the offense may have correlated with a significant risk of recidivism among other sex offenders. If so, the upper end of the recommended sentence range has been increased by :

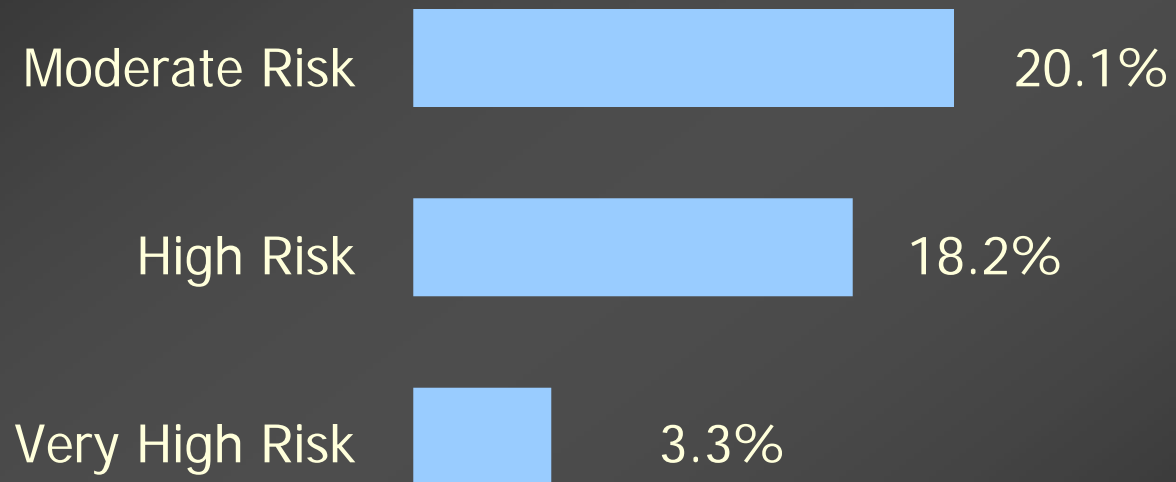
and the circumstances of the offense may have correlated with a significant risk of recidivism among other sex offenders. If so, the upper end of the recommended sentence range has been increased by :

- 300% - Level 1
- 100% - Level 2
- 50% - Level 3
- No Adjustment

Adjusted High End

| | | | | | |
|-------|--|---|--------|--|---|
| | | 5 | | | 0 |
| Years | | | Months | | |

Risk Assessment Levels Rape Offenders FY 2006



Sentencing Guidelines Compliance Rates for Rapists by Risk Assessment Levels FY 2006

| Risk Assessment Level | Mitigation | Compliance | | | Aggravation | Number of Cases |
|-----------------------|------------|-------------|----------|-----|-------------|-----------------|
| | | Traditional | Adjusted | | | |
| No Level | 18% | 65% | --- | 17% | 125 | |
| Moderate Risk | 9% | 58% | 81% | 23% | 9% | 43 |
| High Risk | 23% | 41% | 72% | 31% | 5% | 39 |
| Very High Risk | 14% | 43% | 86% | 43% | 0% | 7 |



Legal Challenges to Offender Risk Assessment Integration into Sentencing Guidelines

American Civil Liberties Union (ACLU)
Urged Virginia Legislators to Block
Implementation of Offender
Risk Assessment (2001)



ACLU – Statistical Correlations are not a Legitimate Basis for Assessing Criminal Penalties

- Basing sentence on the age, education, and employment history of an offender is scientifically unsound & contradicted by U.S. Sentencing Commission's study and policy manual
- Virginia is the first (and maybe only) to base criminal sentences on generalized, actuarial data
- Some statistical relationships could be preposterous showing that recidivism correlates with the food one consumes or the color of one's hair



ACLU ~ Risk Assessment Punishes Offenders Based Upon “Status” in Violation of the Cruel and Unusual Punishment Clause (Eighth Amendment)

- Risk assessment grounds punishment decisions in individual characteristics utterly unrelated to the criminal conduct
- The right to be free from cruel and unusual punishment prohibits government from punishing people for who they are, instead of what they did



ACLU ~ Risk Assessment Violates the Due Process Requirement of Fundamental Fairness in Criminal Proceedings (Fourteenth Amendment)

- Risk assessment classifies individuals on the basis of their affiliation with broad demographic groups disregarding the fact that individuals may deviate substantially from average group behavior
- A sentence is based not on the offender's record or crime, but on the characteristics of other offenders in other crimes

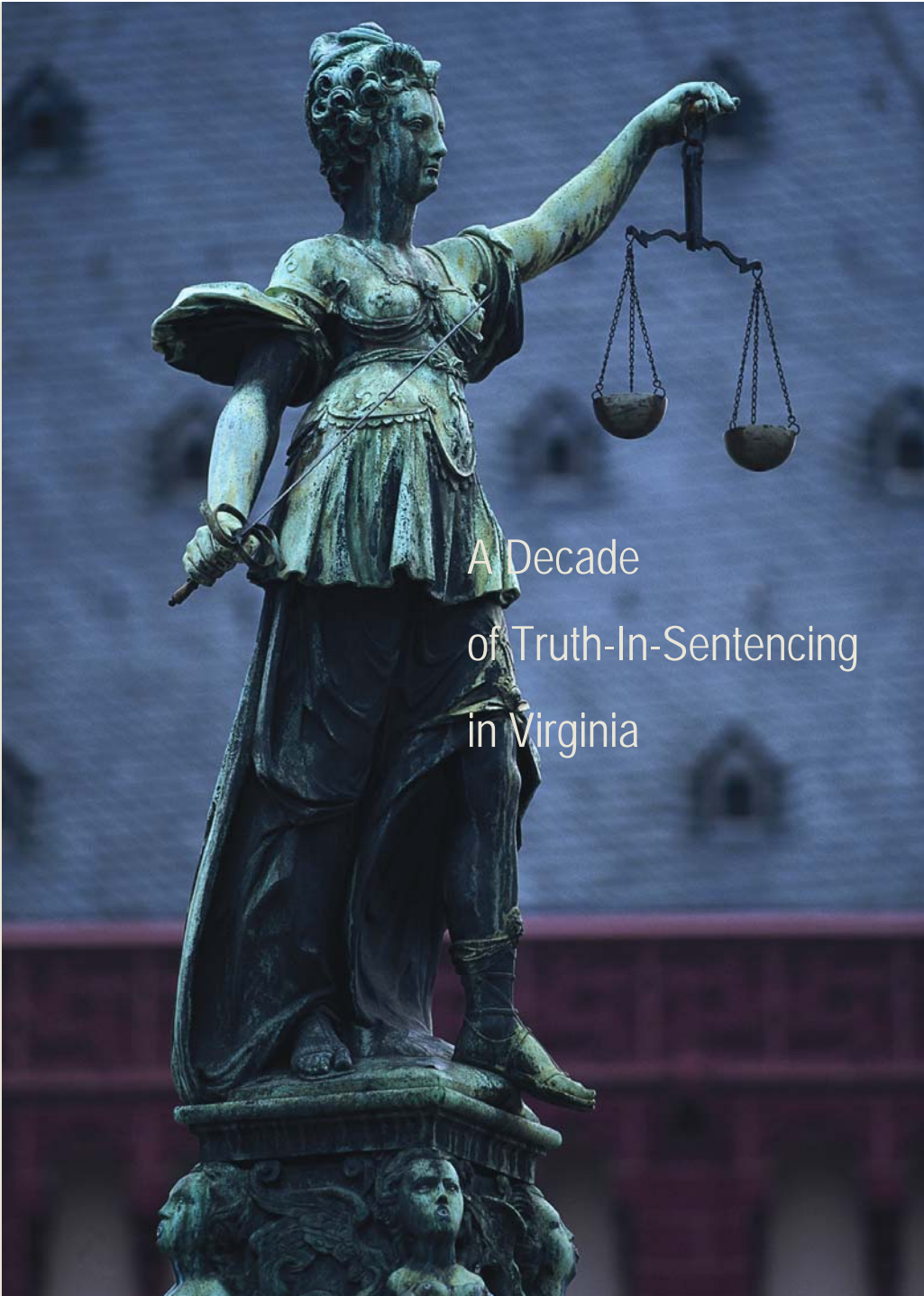


Virginia's Court of Appeals has Repeatedly Refused to Interfere with Judicial Reference to Offender Risk Assessments

Virginia Court of Appeals (2004):

- "The discretionary sentencing guidelines are not binding on the trial judge; rather, the guidelines are merely a tool to assist the judge in fixing an appropriate punishment"
- "When a sentence falls within the statutory limits set by the legislature, this court will not interfere with the judgment"





A Decade
of Truth-In-Sentencing
in Virginia

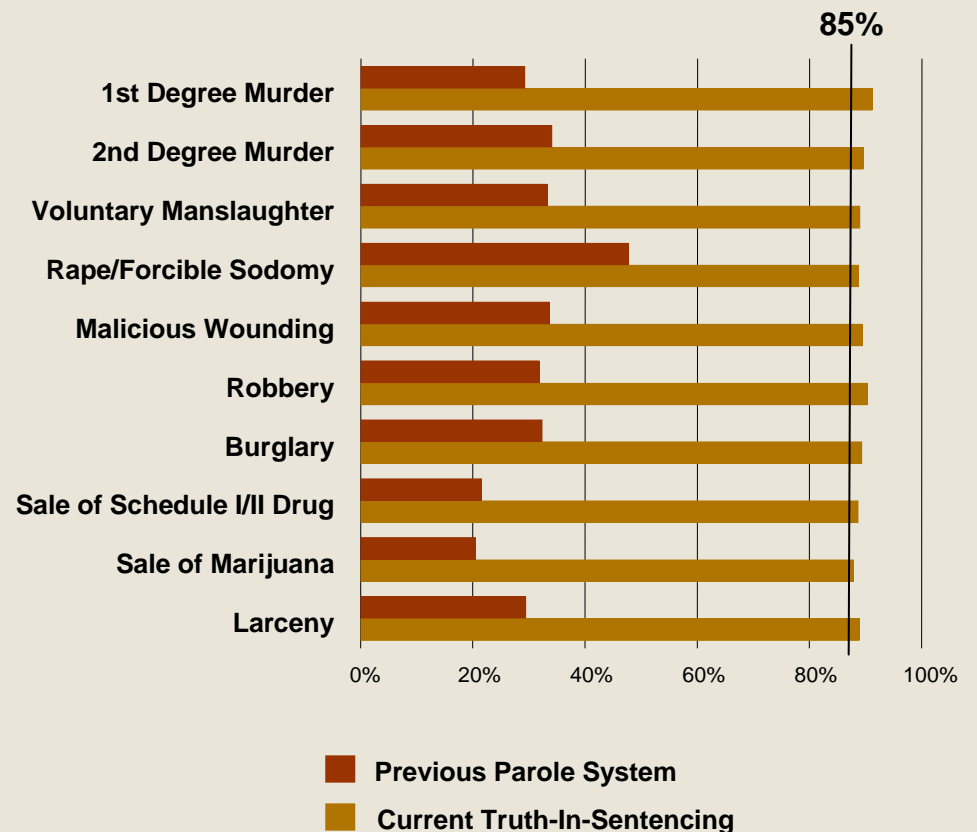


A decade ago, Virginia abolished parole and adopted truth-in-sentencing for convicted felons. Over 200,000 criminals have been punished under no-parole laws. At this milestone, a close look is taken at the performance of our sentencing system.

1 Truth-in-sentencing has been achieved

A primary goal of sentencing reform was to reduce drastically the gap between the sentence pronounced in the courtroom and the incarceration time actually served. Prior to 1995, extensive good conduct credits combined with parole resulted in many inmates serving as little as one-fifth of their sentence. Under truth-in-sentencing, a felon must serve at least 85% of his sentence and, in fact, most felons are now serving 90% of their incarceration terms.

Percentage of Prison Sentence Served



Truth-in-Sentencing Achieved

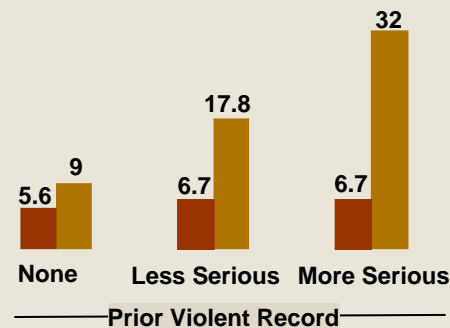
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Under no-parole, violent felons are spending significantly more time in prison

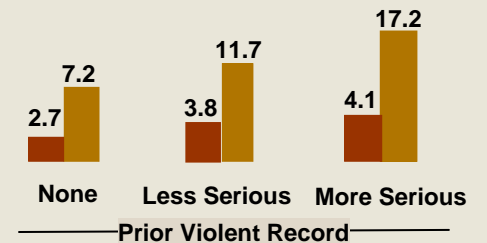
To better ensure public safety, sentence reform targeted violent offenders for longer prison terms. The truth-in-sentencing guidelines were carefully crafted with enhancements designed to yield longer sentencing recommendations for offenders with current or prior convictions for violent crimes. Today, prison stays for violent felons are significantly longer than those historically served and are among the longest in the nation.

Prison Time Served in Years

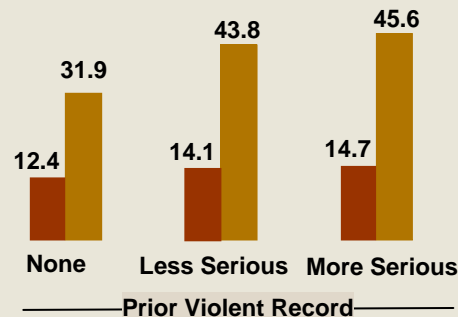
Forcible Rape



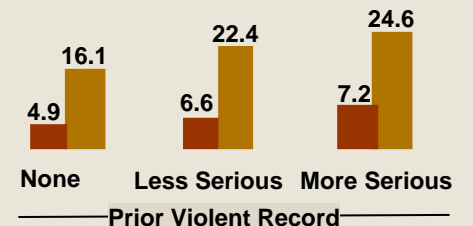
Robbery with Firearm



First-Degree Murder



Second-Degree Murder



Parole System

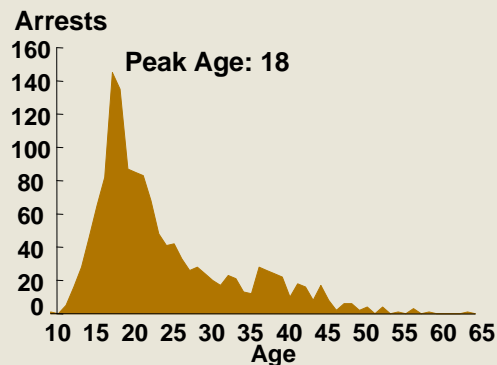
Truth-In-Sentencing (Projected)

3 There are fewer repeat violent offenders

Targeting young violent offenders for longer terms of incarceration incapacitates at-risk offenders during years in which they are most likely to engage in crime. Between the ages of 15 and 24, a person is at greatest risk of becoming involved in violent criminal behavior, such as robbery

Longer prison terms for violent offenders should result in fewer repeat violent offenders. While the full effect will not be realized for years to come, Virginia's courts are already seeing fewer violent recidivists. In 1996, more than 28% of violent offenders had a violent felony record. By 2004, this figure had dropped to 24%.

Age of Robbery Arrestees, 2003



Percentage of Violent Recidivists Convicted in Circuit Courts



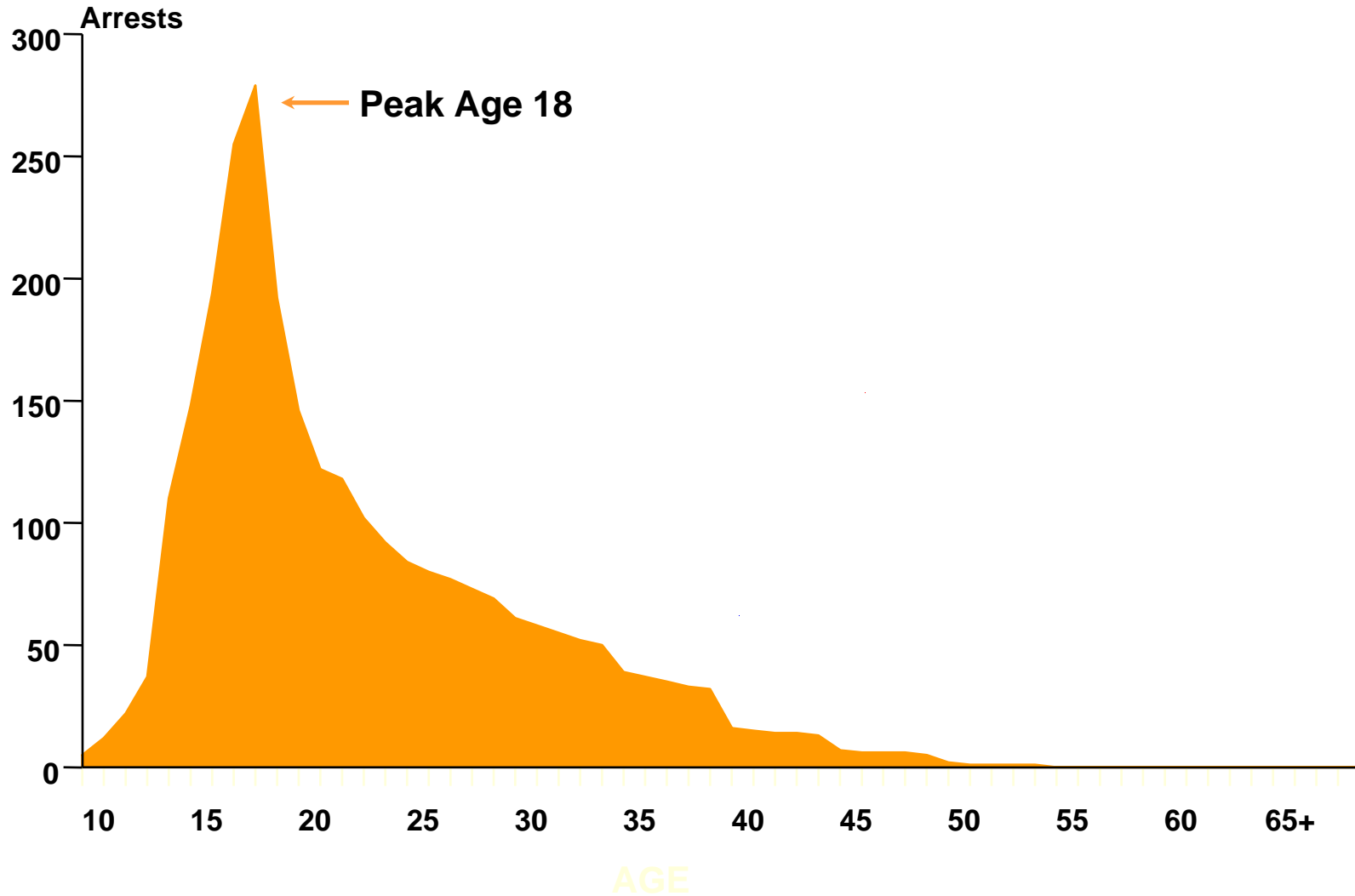
Violent Recidivism Down

Sentencing Reform – Features

- ❖ **Judicial compliance is voluntary**
- ❖ **No appellate review of judicial guidelines departures**
- ❖ **Retain jury sentencing**
- ❖ **Certain burglaries defined as violent crimes**
- ❖ **“Violent” offender definition includes entire criminal history including juvenile delinquency adjudications**

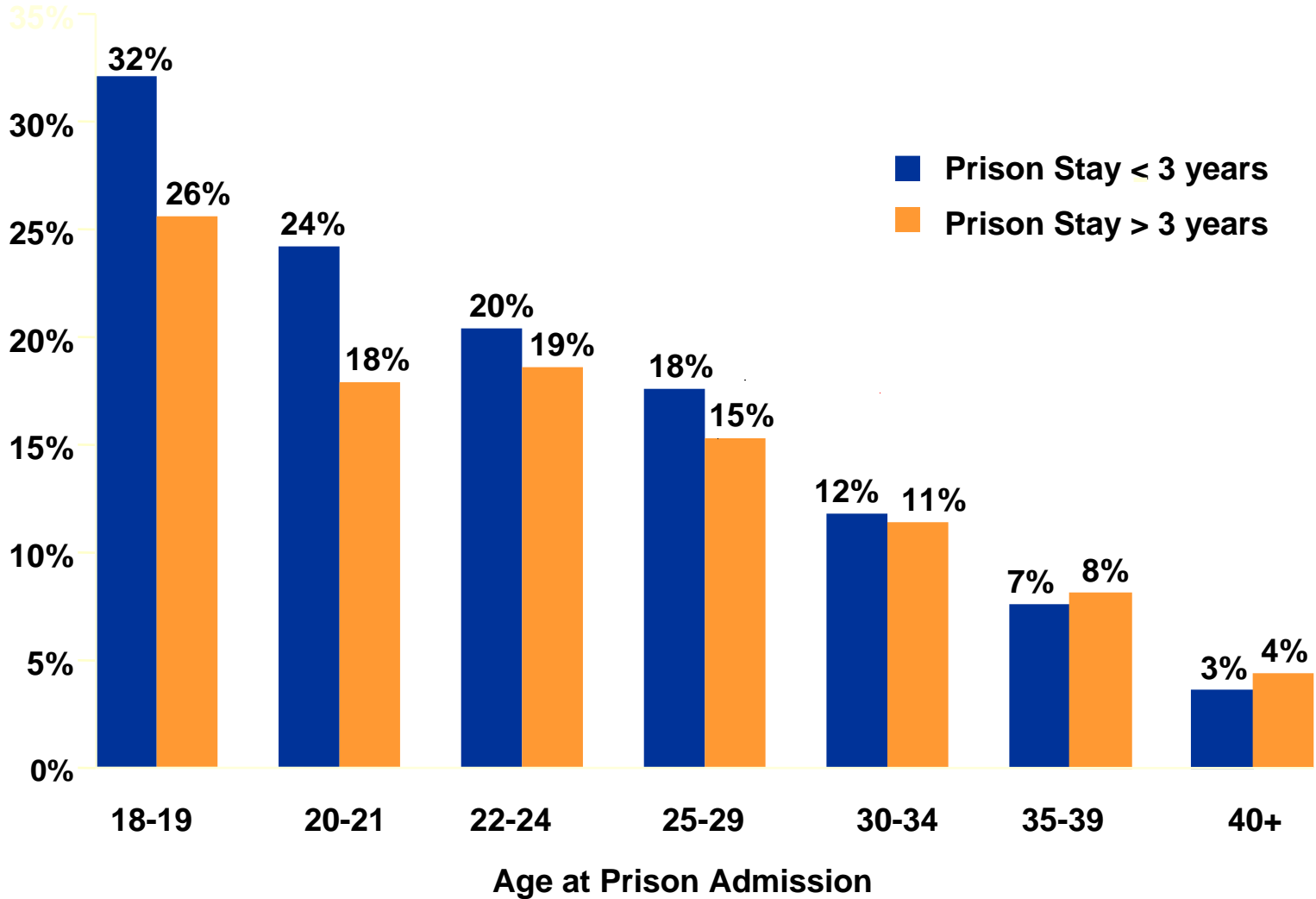
Sentencing Reform

Age Distribution for Robbery Arrests in Virginia



Sentencing Reform

Percentage of Violent Felons Returning to Prison for New Violent Crime within Three Years

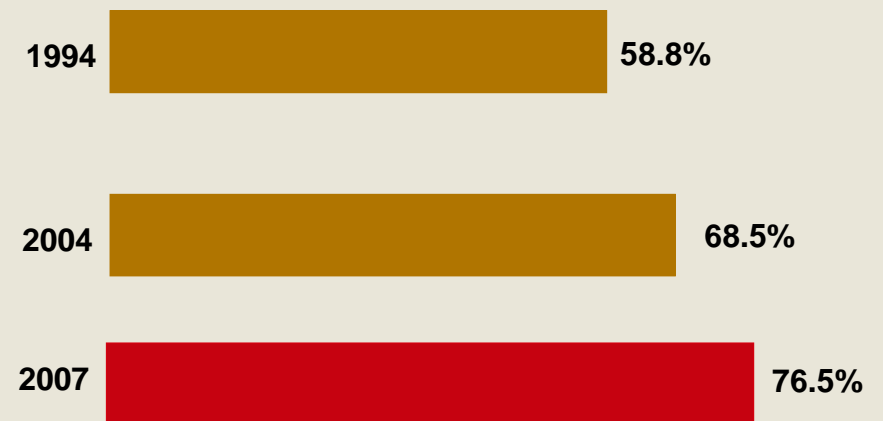


4

A greater share of expensive prison beds are being used by violent felons

Reserving expensive prison beds for the most dangerous offenders was an important objective of the sentencing reforms. Due to the focused use of long incarceration terms for violent felons, it was expected that these criminals would queue up in the prison system. Indeed, after a decade of truth-in-sentencing, the composition of Virginia's prison population is undergoing a dramatic shift, with violent felons now comprising a significantly larger share of costly and limited prison space. This shift is expected to continue.

Percent of Prisons Beds Occupied by Violent Offenders

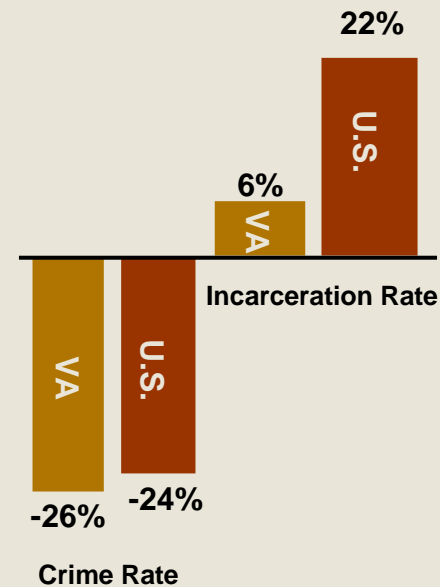


5

Many lower-risk felons are being punished through alternative sanctions in lieu of prison without compromising public safety

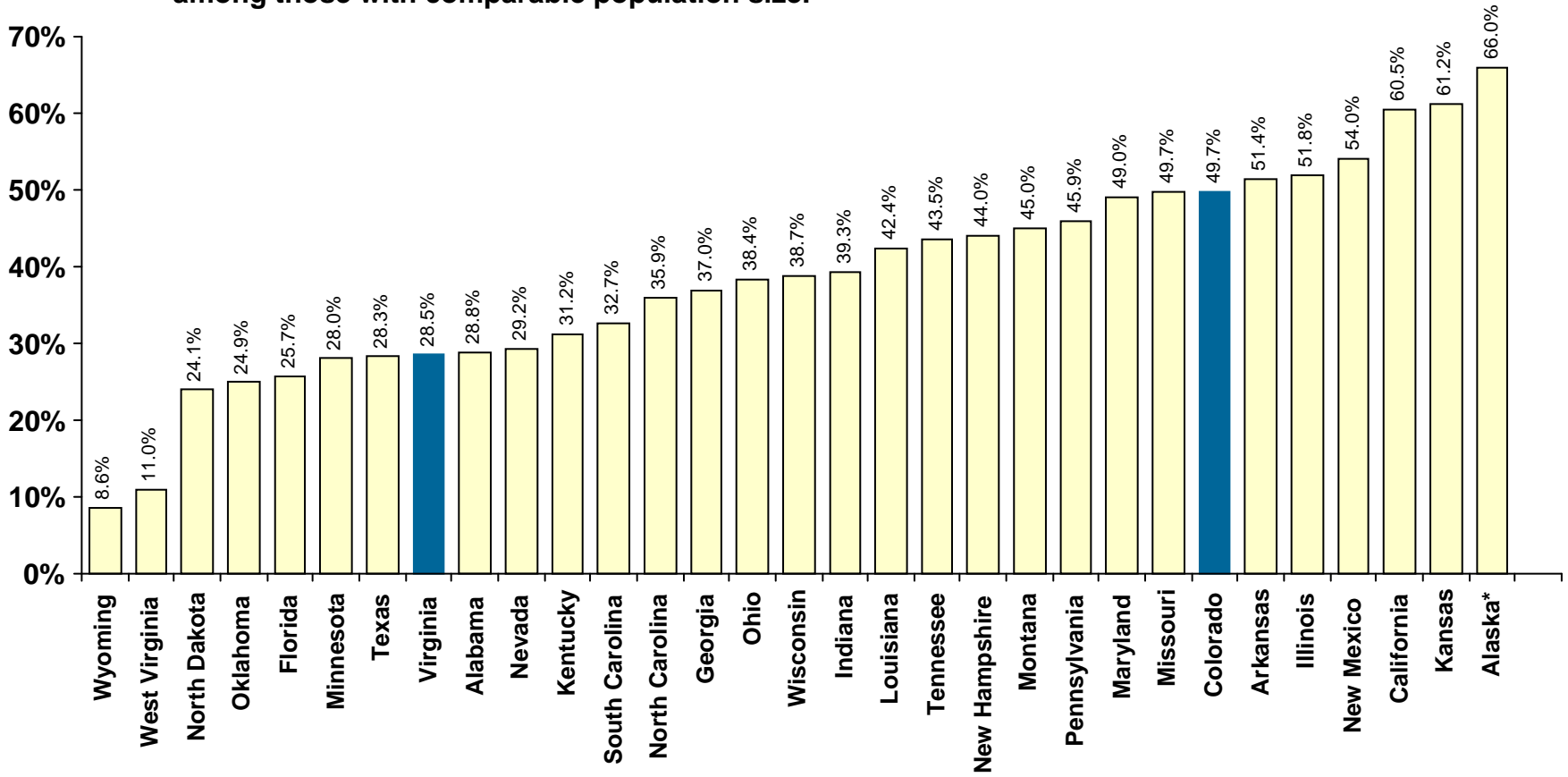
Virginia's sentencing system is unique in that risk assessment, based on the predicted likelihood of future dangerousness, is integrated into the sentencing guidelines. Safely punishing lower-risk nonviolent felons through alternative sanctions is freeing up scarce prison beds to house the more dangerous offenders. According to the Vera Institute of Justice, the 26% drop in Virginia's crime rate has exceeded the decline in crime nationally. At the same time, Virginia's incarceration rate has grown just 6%, well below the national growth rate, indicating greater discipline and benefit in the use of expensive prison beds as sanctions.

Change in Crime and Incarceration Rates, 1994 to 2000 – Virginia v. U.S.



Three- Year Re-Incarceration Rates

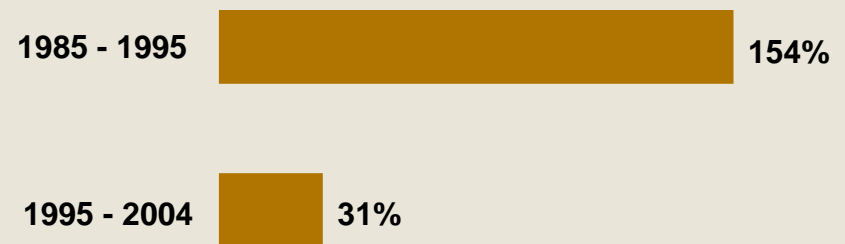
Virginia ranks second lowest among contiguous states, and second lowest among those with comparable population size.



6 Prison population growth has slowed

Despite the unequivocal evidence that violent offenders are serving significant longer incarceration terms than those previously recorded, Virginia's prison population growth has stabilized and become more predictable and manageable. The prison population grew 154% in the decade immediately preceding the adoption of truth-in-sentencing. Since then, the prison population has grown a total of just 31%. Despite substantially longer prison stays for violent offenders, judicial use of risk assessment and alternative punishment options has brought out prison growth under control and made it more predictable.

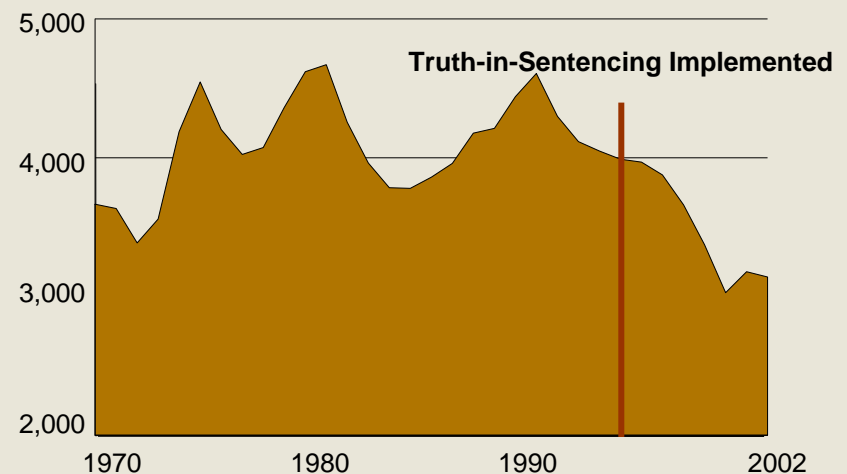
Prison Population Growth



7 The overall crime rate has been declining

On the heels of rising crime rates in the late 1970s, crime in Virginia declined somewhat during the early 1980s. A distinctive turnaround began in 1986 and crime rates rose steeply into the early 1990s. Over the last decade, however, the crime rate has dropped. With the exception of a slight increase in 2001, the downturn is the longest sustained period of decline in the crime rate in more than 35 years. In 2002, the overall serious crime rate was lower than at any point since before 1970. Citizens of the Commonwealth are, today, safer from crime than a decade ago. Virginia's focused approach to sanctioning offenders has reserved scarce and expensive prison beds for the most dangerous offenders and promoted the use of less costly punishment options for less serious offenders – all while maintaining public safety.

Overall Crime per 100,000 Residents



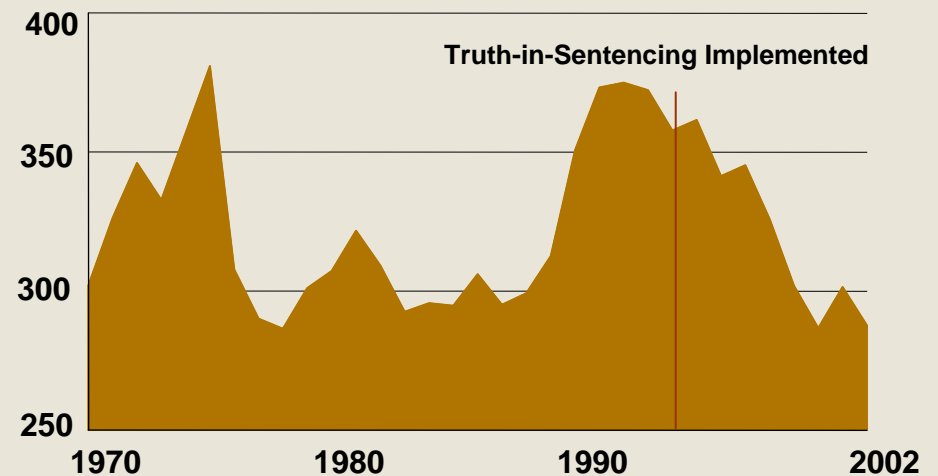
Lower Overall Crime Rate



The violent crime rate has been decreasing

After more than a decade of relative stability, beginning in the late 1980s the violent crime rate grew steeply. Over the past decade, violent crime has declined approximately 20%. Violent crime today is at its lowest since 1978. In 2003, the number of murders was 28% lower than the number in 1994. Similarly, robberies dropped 23%. During the same period, the number of serious assaults declined by 10% and forcible rapes reported in the Commonwealth had decreased by 8%. After ten years of truth-in-sentencing, fewer Virginians are victims of violent crime.

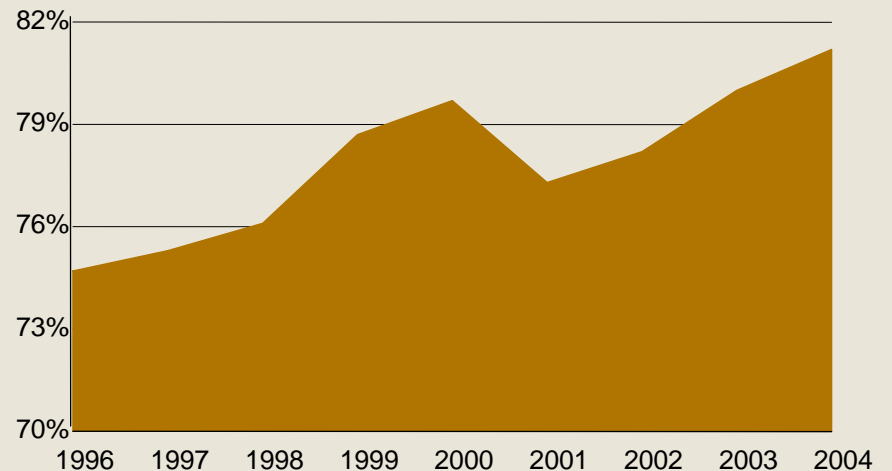
Violent Crime per 100,000 Residents



9 Judges comply with voluntary sentencing guidelines at a very high rate

Sentencing guidelines play a unique and critical role in ensuring the continuing success of the truth-in-sentencing reform. Judicial acceptance of the guidelines has been crucial in the successful transition from sentencing in a scheme based on parole and generous time off for good inmate conduct to a system in which felons must serve at least 85% of the court imposed jail or prison term. Judicial compliance with the guidelines was nearly 75% when first implemented and has climbed nearly every year over the past decade to its highest recorded level in 2004 – 81%. The impressive compliance rate surpasses that found in many other places with mandatory guidelines systems. The ongoing success of voluntary guidelines in Virginia reflects the confidence of the judiciary in these benchmarks.

Guidelines Compliance Trend

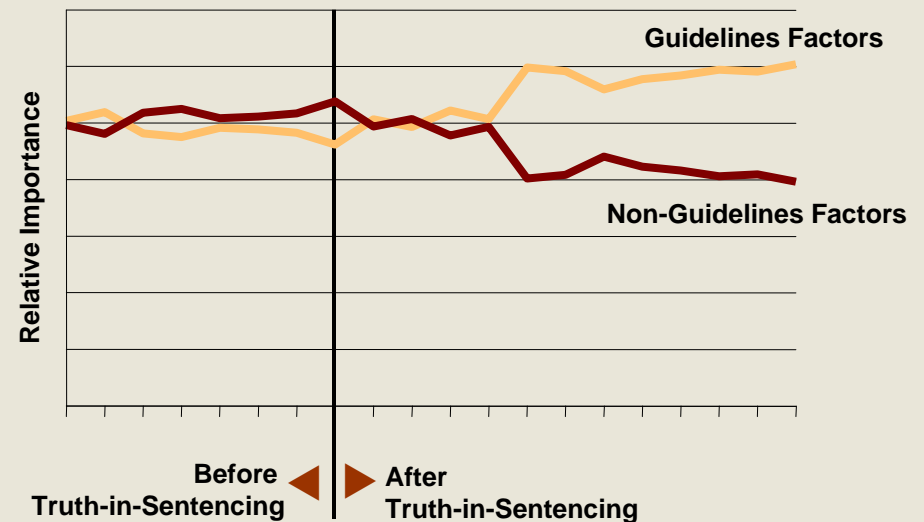


10

Unwarranted sentencing disparity has been significantly reduced

The voluntary sentencing guidelines have greatly alleviated unwarranted sentencing disparities across the Commonwealth. Prior to the adoption of the sentencing guidelines, approximately half of the variation in judicial sentences could be explained by factors unrelated to the nature of the crime or the felon's prior criminal record. Such non-guidelines factors included the identity of the judge, locality and the offender's race. Under the sentencing guidelines system in place today, a significantly larger share of the variation is now attributable to distinctions across crimes and criminals. Virginia's guidelines, despite their discretionary nature, serve to reduce disparity over the long term.

Importance of Factors in Sentencing Decisions

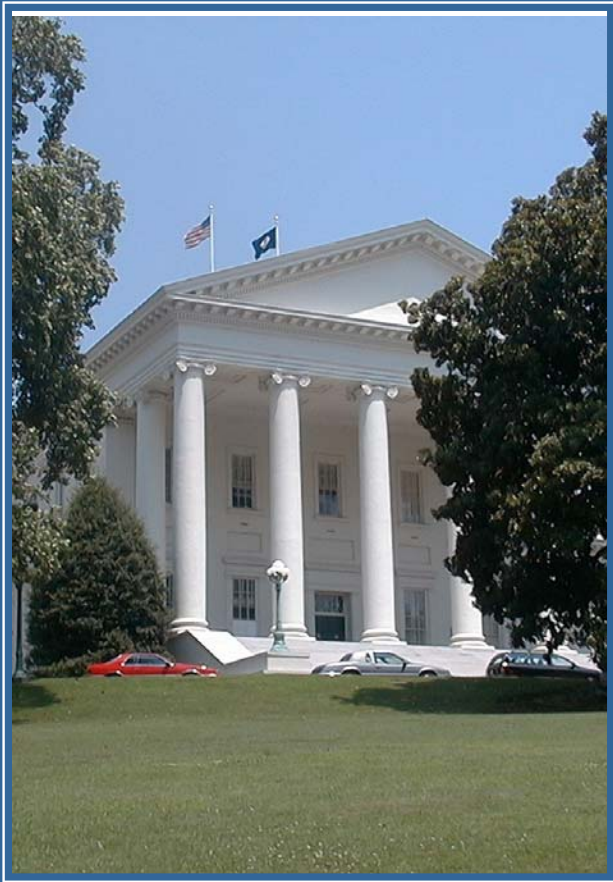


Sentencing Disparity Reduced

By all measures, the sweeping overhaul of the felony sentencing system adopted in 1994 has, to date, been a resounding and unequivocal success. A decade after the historic enactment of truth-in-sentencing legislation in Virginia, there is substantial evidence that the system is achieving what its designers intended.



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Legislative Impact Analysis for the 2007 Virginia General Assembly

Code of Virginia § 30-19.1:4

- The Virginia Criminal Sentencing Commission must prepare a fiscal impact statement for any bill which would result in a net increase in the population of offenders housed in state adult correctional facilities.
- Current law became effective July 1, 2000.
- Effective July 1, 2002, the impact statement must:
 - **Include analysis of the impact on local and regional jails as well as state and local community corrections programs;**
 - **Detail any necessary adjustments to the sentencing guidelines.**

Code of Virginia § 30-19.1:4

- The amount of the estimated increase in operating costs identified in the Commission's impact statement must be printed on the face of the bill.
- For each law enacted that results in a net increase in the prison population, a one-year appropriation must be made.
 - **Appropriation is equal to the highest single-year increase in operating cost for the six years following the effective date of the law.**
- Appropriations per § 30-19.1:4 are deposited into the Corrections Special Reserve Fund.

Legislative Impact Analysis

- The requirement for an impact statement includes, but is not limited to, those proposals that:
 - **Add new crimes for which imprisonment is authorized;**
 - **Increase the periods of imprisonment authorized for existing crimes;**
 - **Raise the classification of a crime from a misdemeanor to a felony;**
 - **Impose minimum or mandatory terms of imprisonment; or**
 - **Modify the law governing release of prisoners.**

Legislative Impact Analysis

- The necessary appropriation is calculated by:
 - **Estimating the net increase in the prison population likely to result from the proposal for the six years following enactment;**
 - **Multiplying the highest single-year figure by the cost of holding a prison inmate for a year (operating costs, not to include capital costs);**
 - **For 2006, the annual operating cost per prison inmate was \$25,709.**
 - **This figure is provided each year by the Department of Planning and Budget.**

2007 General Assembly – 263 Impact Analyses Completed

| Type of Legislative Change | % of Analyses |
|--------------------------------------|---------------|
| Expansion or Clarification of Crime | 44.9% |
| New Crime | 33.1% |
| Increase Felony Penalty | 12.2% |
| Mandatory Minimums | 11.8% |
| Misdemeanor to Felony | 10.6% |
| Increase Misdemeanor Penalty | 1.5% |
| Death Penalty | 0.8% |
| Presumptive Denial of Bail | 0.8% |
| Normative Modification of Guidelines | 0.8% |

Percentages do not add to 100% as proposed legislation can involve multiple types of changes.

Multiple analyses may be performed on each bill, depending on the number of amended and substitute versions that are adopted.

Type of Offenses in Proposed Legislation

- Sex Offenders and Offenses (68 analyses)
 - Established mandatory minimum sentences for many child porn crimes
 - Increased restrictions on Sex Offender Registration (SOR) offenders
 - Increased penalties for several sex crimes
 - Expanded number of SOR offenses
 - Expanded those needing to register with SOR

Type of Offenses in Proposed Legislation

- **Illegal Aliens (30 analyses)**
 - Expanded immigration extortion
 - Targeted human trafficking
 - Defined a new crime for being an illegal alien in Virginia
 - Defined a new felony for DWI by an illegal alien in Virginia

Type of Offenses in Proposed Legislation

- Gang crimes (18 analyses)
 - Defined gang-related terrorism
 - Expanded gang predicate crimes
 - Defined new gang offenses in conjunction with proximity to children

Proposal to Raise Misdemeanor to a Felony

- House Bill 1864 (Stalking)
 - **The proposal amends § 18.2-60.3 by increasing the penalty for a second or subsequent conviction from a Class 1 misdemeanor to a Class 6 felony.**

Proposal to Create New Crime

- House Bill 2978 (Maiming with operating watercraft while intoxicated)
 - The proposed legislation adds § 18.2-51.5 to make it a Class 6 felony for a person to operate a watercraft while intoxicated in a manner that shows reckless disregard for human life and causes serious bodily injury resulting in permanent and serious impairment to another.

Proposal to Expand an Existing Crime

- House Bill 1923 (Sex offender registration of those found not guilty by reason of insanity)
 - The proposed legislation amends § 9.1-901 to require those found not guilty by reason of insanity for offenses that, if found guilty, would require registration with SOR to register.
 - Failure to meet registration requirements could lead to felony convictions.

Proposal to Add Mandatory Minimum Sentences

- Senate Bill 865 (Cocaine)
 - The proposal amends § 18.2-248(C) to increase the penalty for a third or subsequent violation and to add new mandatory, minimum penalties for other violations related to manufacturing, selling, giving, distributing or possessing with intent to manufacture, sell, give or distribute cocaine.
 - The proposal adds a 5-year mandatory, minimum sentence for the first violation and a 15-year mandatory, minimum term for any second violation.

Proposal to Add Mandatory Minimum Sentences

- Senate Bill 865 - continued
 - **Currently, the first and second violations of this provision are punishable by imprisonment of 5 to 40 years and 5 years to life, respectively.**
 - **No mandatory penalties are specified under current law.**
 - **For a third violation, currently subject to a three-year mandatory, minimum sentence, the proposal increases the penalty to a Class 1 felony (punishable by life imprisonment or death).**

Impact Analysis



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

LD #: 05-5403216

Topic: Convictions for the sale of cocaine

Proposed Change:

The proposal amends § 18.2-248(C) to add new and increase existing mandatory, minimum penalties for manufacturing, selling, giving, distributing or possessing with intent to manufacture, sell, give or distribute cocaine. The proposal adds a 5-year mandatory, minimum sentence for the first violation and a 15-year mandatory, minimum term for any second violation. Currently, the first and second violations of this provision are punishable by imprisonment of 5 to 40 years and 5 years to life, respectively; no mandatory penalties are specified under current law. For a third violation, the proposal increases the existing mandatory, minimum sentence from three years to life.

Analysis:

According to fiscal year (FY) 2002 and 2003 Pre/Post-Sentence Investigation (PSI) data, there were 1,490 cocaine-related cases resulting in conviction under § 18.2-248(C) involving offenders who were convicted of a single count and who had no prior convictions this offense. Of these offenders, 23% were given no active term of incarceration, 20% were given a local-responsible (jail) term, and 57% received a state-responsible (prison) term (median sentence of two years).

During the same two-year period, PSI data indicate there were 563 cocaine-related cases under § 18.2-248(C) where the offender was convicted of two counts or the offender was convicted of one count but had a prior conviction under the same statute. Of these, 17% were not given active incarceration and 7% were sentenced to jail; more than three in every four (76%) of these offenders were given a prison term (median sentence of two and a half years).

These PSI data also contain 337 cocaine-related convictions under § 18.2-248(C) where the offender had a total combination of three or more current or prior convictions under the same statute. In these cases, 15% received no active incarceration and 6% were ordered to serve time in jail; more than 79% of these offenders were sentenced to prison (median sentence of three years).

Impact of Proposed Legislation:

By adding and enhancing mandatory, minimum penalties for manufacturing, selling, giving, distributing or possessing with intent to distribute cocaine, the proposed legislation will increase the state-responsible (prison) bed space needs of the Commonwealth. If the proposed mandatory penalties are applied in all eligible cases, it is estimated that the impact of the proposal will be 3,728 beds by FY2011.

Impact Analysis

In addition, the proposal will result in a reduction in the need for local-responsible (jail) bed space, as offenders who historically have received jail terms will receive prison sentences as a result of the proposed mandatory terms. Based on the same methodology, there will be a need

Estimated Six-Year Impact in State-Responsible (Prison) Beds

| FY06 | FY07 | FY08 | FY09 | FY10 | FY11 |
|------|------|------|------|------|------|
| 173 | 673 | 1369 | 2227 | 3148 | 3728 |

Estimated Six-Year Impact in Local-Responsible (Jail) Beds

| FY06 | FY07 | FY08 | FY09 | FY10 | FY11 |
|------|------|------|------|------|------|
| -87 | -190 | -205 | -211 | -217 | -226 |

| FY06 | FY07 | FY08 | FY09 | FY10 | FY11 |
|------|------|------|------|------|------|
| -87 | -190 | -205 | -211 | -217 | -226 |

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$85,209,537 for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2003. For Schedule I or II drug sale offenses, this rate was 9.95%. Release dates for local-responsible felony convictions

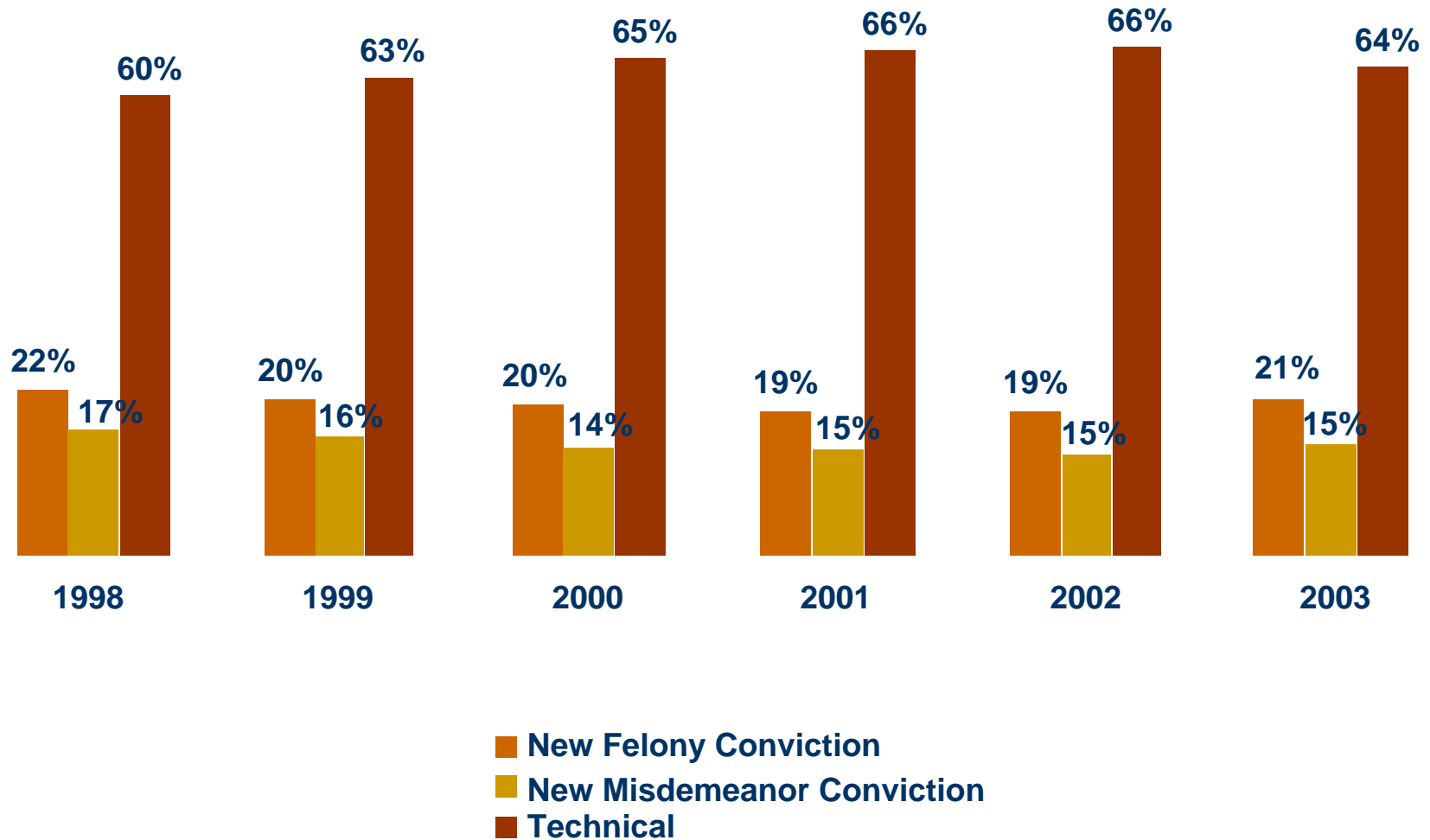


Technical Probation Violator Study and Guidelines

Legislative Directive - Budget Language (2003)

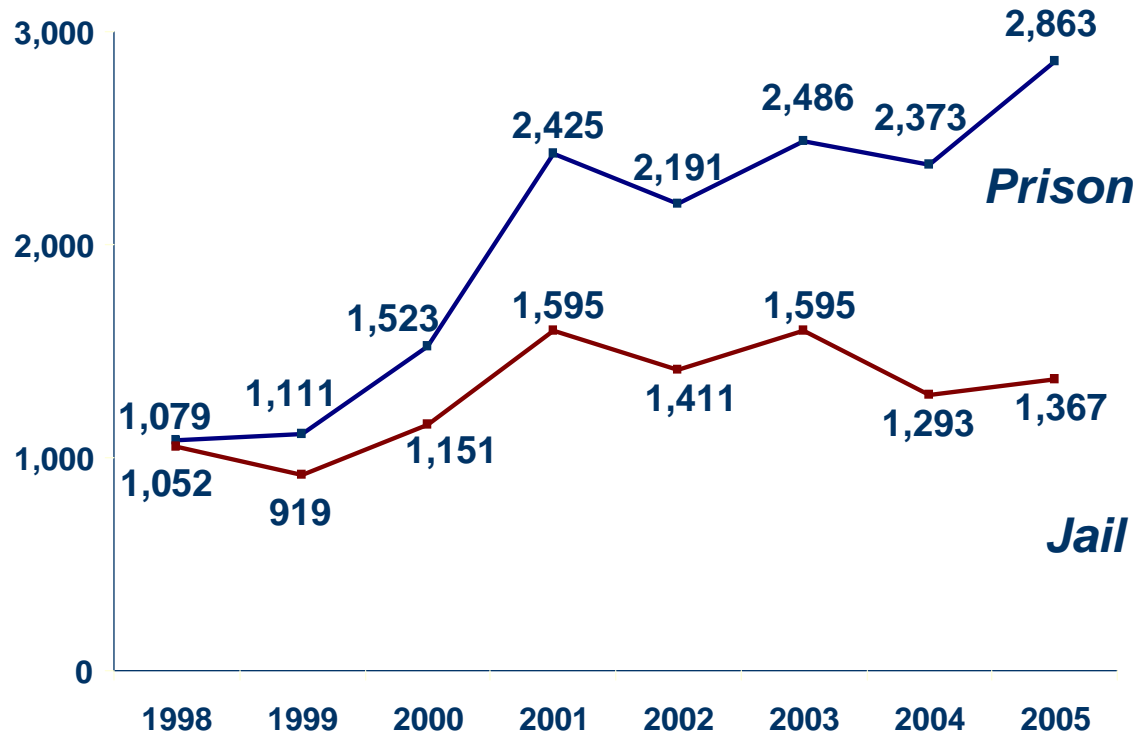
- The Virginia Criminal Sentencing Commission shall:
 - Develop, with due regard for public safety, discretionary sentencing guidelines for probation violators returned to court for reasons other than a new criminal conviction (“technical violators”)
 - Determine recidivism rates and patterns for these offenders
 - Evaluate the feasibility of integrating a risk assessment instrument into the sentencing guidelines for probation violators
 - Report findings to the 2004 General Assembly
 - Chapter 1042 of *2003 Acts of Assembly*

Reasons for Probation Violations, 1998 – 2003

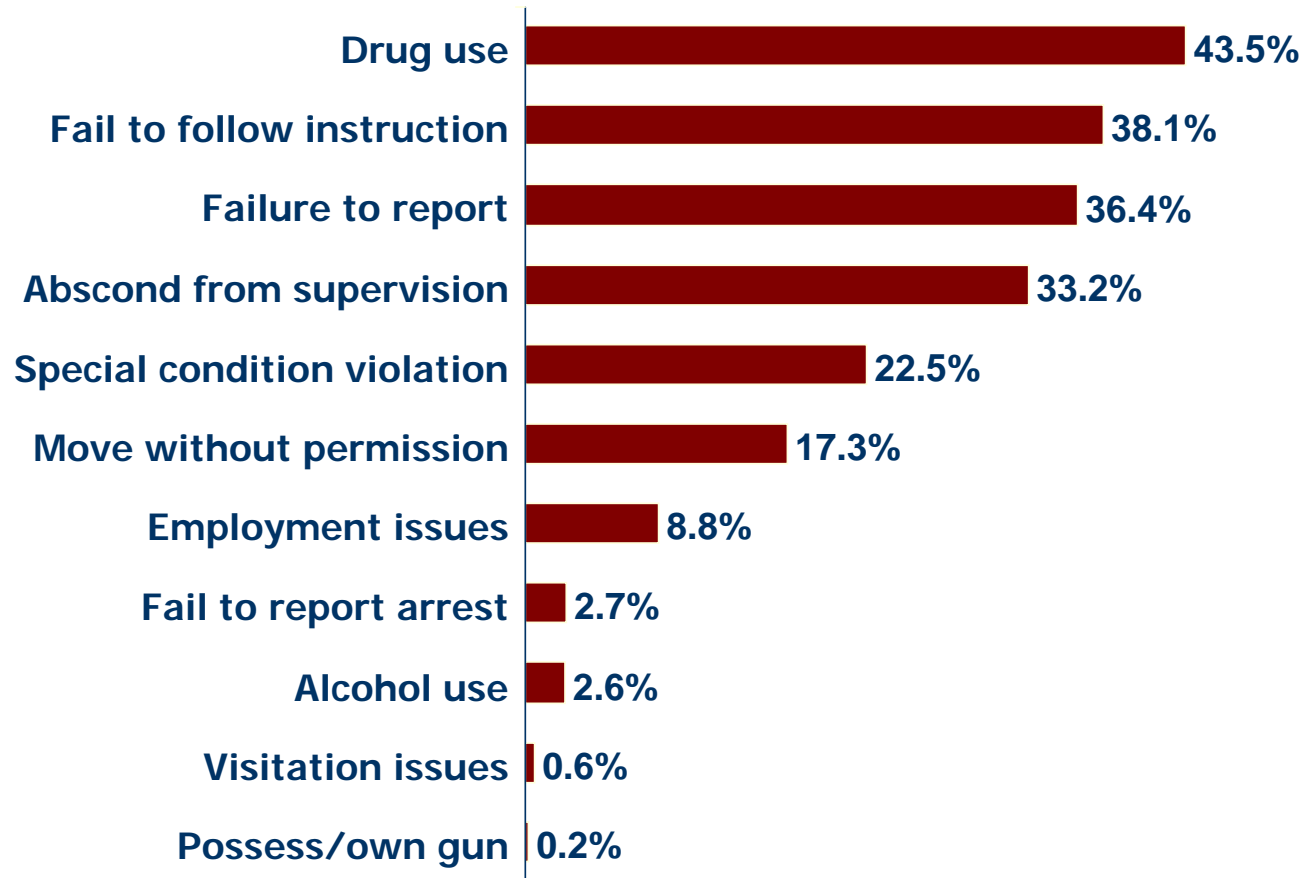


Source: Virginia Criminal Sentencing Commission – Sentencing Revocation Report (SRR) Database, 7/27/2004

Trend in Sanctions Applied to Felony Sentences Revoked due to Technical Grounds 1998 - 2005



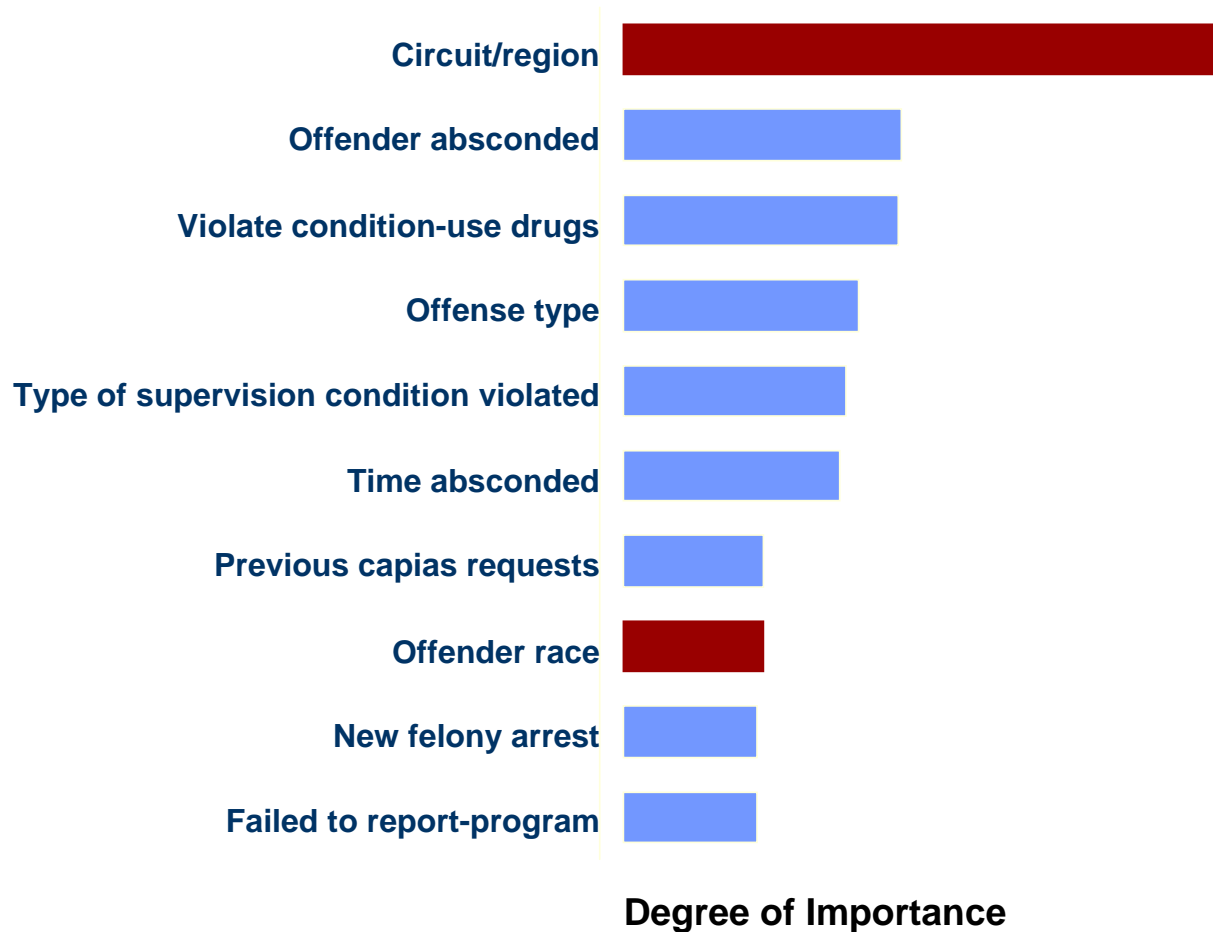
Specific Reasons for Probation Revocations, 2006



Probation Violation Sentencing Guidelines

- Same methodology used in creating sentencing guidelines applied to study of historical probation decisions
 - The Commission studied a sample of violators who were returned to court for reasons other than a new conviction
 - Original crime was a felony
 - Sentenced under truth-in-sentencing (no parole) provisions
 - Department of Corrections Probation & Parole files were reviewed
 - Over 200 unique factors relating to criminal record, substance abuse, education and employment history, family background, etc., on each case
 - Guidelines for probation violations reflect historical sanctioning practices during 1997 – 2001
-

Probation Revocations: Relative Importance of Significant Factors – Incarceration In/Out Decision



Probation Violation Guidelines ❖ Section A Offender Name: _____

1 ♦ **Original Felony Offense Type** *select the type of most serious original felony offense* _____

| | | |
|-------------------------|----|--|
| A. Drug | 10 | Score ▼ <input style="width: 40px; height: 20px; border: 1px solid black;" type="text"/> |
| B. Person | 14 | |
| C. Traffic/Weapon | 24 | |
| D. Other | 0 | |

2 ♦ **Previous Capias/Revocation Requests** _____

| | | |
|-----------------|---|--|
| Number: 1 | 7 | ▼ <input style="width: 40px; height: 20px; border: 1px solid black; text-align: center; font-weight: bold;"/> 0 |
| 2 or more | 9 | |

3 ♦ **New Felony Arrests** _____

| | | |
|---------------------|----|---|
| Number: 1 - 3 | 2 | ▼ <input style="width: 40px; height: 20px; border: 1px solid black;" type="text"/> |
| 4 or more | 16 | |

4 ♦ **Never Reported to following Programs/Unsuccessful Discharge from:** — If YES, add 13 →

Community service, Day Reporting, Detention and/or Diversion Center, Boot Camp, Employment and/or Residential programs

5 ♦ **Condition(s) Violated:** _____ If YES, add 15 →

Fail to report any arrests within 3 days to probation officer
 Fail to maintain employment/report changes in employment
 Fail to report as instructed
 Fail to allow probation officer to visit home or place of employment
 Fail to follow instructions and be truthful and cooperative
 Use alcoholic beverages to excess
 Use, possess, distribute controlled substances or paraphernalia
 Use, own, possess, transport or carry firearm
 Abscond from supervision
 Fail to follow special conditions

6 ♦ **Used, Possessed, Distributed Controlled Substances or Paraphernalia** - If YES, add 15 →

7 ♦ **Absconded from supervision** _____ If YES, add 16 →

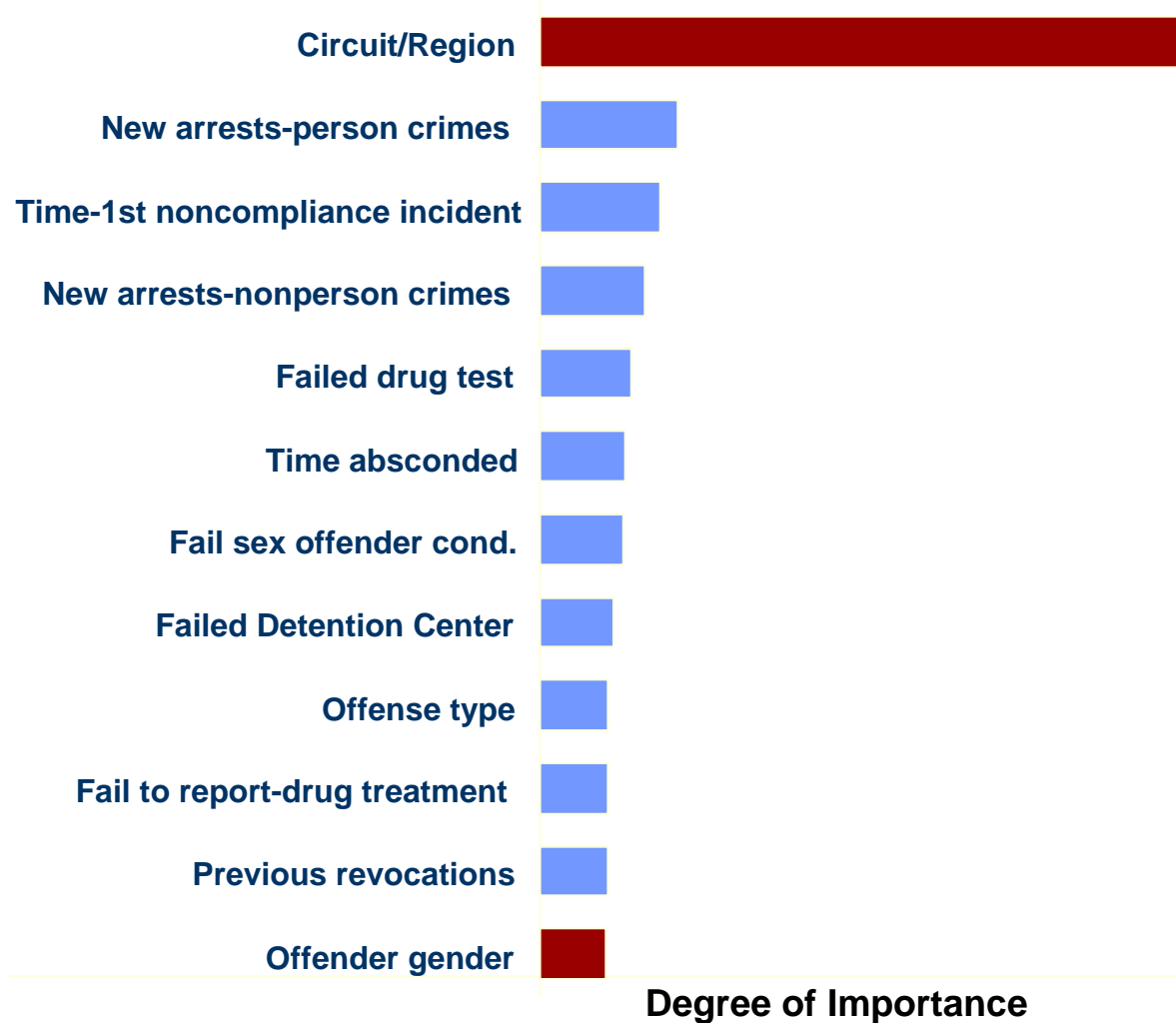
8 ♦ **Time Absconded** _____

| | | |
|-----------------------------|----|---|
| 5 months or less | 0 | ▼ <input style="width: 40px; height: 20px; border: 1px solid black;" type="text"/> |
| 6 months to 12 months | 11 | |
| 13 months or more | 18 | |

9 ♦ **Total Score** _____

If total is 30 or less, the recommendation is Probation/No Incarceration.
 If total is 31 or more, go to **Section C Worksheet**.

Probation Revocations: Relative Importance of Significant Factors – Incarceration Length Decision



Sentence Revocation ♦ Sentence Length

♦ **Original Felony Offense** _____
 Select the type of the original felony offense

| | |
|-------------------------------|----|
| DWI or Habitual Offender..... | 3 |
| Property..... | 4 |
| Drug..... | 5 |
| Person..... | 13 |
| Weapon..... | 16 |
| Other..... | 1 |

♦ **Previous Revocations** _____

| | |
|----------------|----|
| 1 or 2..... | 4 |
| 3 or more..... | 16 |

♦ **New Arrests for Nonperson Crimes** _____

| | |
|----------------|----|
| 0 to 1..... | 0 |
| 2..... | 9 |
| 3 or 4..... | 12 |
| 5 or more..... | 19 |

♦ **New Arrests for Crimes Against Person** _____

| | |
|----------------|----|
| 0..... | 0 |
| 1..... | 4 |
| 2..... | 15 |
| 3 or 4..... | 30 |
| 5 or more..... | 38 |

♦ **Months until 1st Noncompliance Incident** _____

| | |
|---------------------------------------|----|
| 10 months or less..... | 28 |
| More than 10 months to 22 months..... | 22 |
| More than 22 months..... | 0 |

♦ **Unsuccessfully Discharged from Detention Center Program** If YES, add 30 →

♦ **Failed to Report to Drug Treatment Program** _____

| | |
|----------------|----|
| 1..... | 9 |
| 2 or more..... | 16 |

♦ **Positive Schedule I/II or other drug test (not marijuana) — If YES, add 10** →

♦ **Violate Special Sex Offender Conditions** _____ If YES, add 40 →

♦ **Time Absconded** _____

| | |
|--------------------------------------|----|
| 2 months or less..... | 0 |
| More than 2 months to 24 months..... | 9 |
| More than 24 months..... | 12 |

Total Score _____ →

See Sentence Revocation Range Recommendation Table for guidelines sentence range.

Probation Violation Guidelines Sentence Length Recommendation Table

| Score | Guideline Sentence |
|----------|---|
| Up to 36 | 1 Day up to 3 Months |
| 37 – 42 | More than 3 Months up to 6 Months |
| 43 – 45 | More than 6 Months up to 12 Months |
| 46 – 50 | 1 Year up to 1 Year 3 Months |
| 51 – 52 | More than 1 Year 3 Months up to 1 Year 6 Months |
| 53 – 57 | More than 1 Year 6 Months up to 2 Years |
| 58 – 65 | More than 2 Years up to 3 Years |
| 66 – 69 | More than 3 Years up to 4 Years |
| 70 – 82 | More than 4 Years up to 5 Years |
| 83 – 89 | More than 5 Years up to 6 Years |
| 90 + | More than 6 Years |

Implementation of Probation Violation Guidelines

- **Guidelines approved by the Commission**
 - **Recommendation for statewide implementation presented in 2003 Annual Report**
- **Recommendation accepted by 2004 General Assembly**
- **Training seminars held in spring and summer 2004**
- **Statewide use began July 1, 2004**

Probation Violation Risk Assessment Component

- **Legislative directive includes a risk assessment component.**
 - **Risk assessment instrument, based on recidivism rates and patterns for technical violators, is to be integrated into technical violator sentencing guidelines.**
 - **Same methodology in creating sentencing guidelines applied to study of historical violation decisions**
 - **Sentencing guidelines for probation violation cases implemented July 1, 2004.**
 - **Implementation of risk assessment still under development.**
-