

# Overview of Virginia's Truth-in-Sentencing System

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Virginia Criminal Sentencing Commission



## The Evolution of Sentencing Reform in Virginia

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## Evolution of Sentencing Reform

- ❖ **December, 1983 – Governor’s Task Force on sentencing issues findings documenting evidence of unwarranted sentencing disparities**
- ❖ **January, 1984 – Chief Justice forms judicial committee to examine task force findings**
- ❖ **January, 1985 – Dept. of Corrections standardizes and automates Pre-sentence Investigation Forms for judicial use and to establish a comprehensive data base on sentencing.**

Virginia Department of Corrections  
**Presentence Investigation Report**  
 Offender Information

District Number P01  
 Date of Sentencing \_\_\_\_\_

Prepared By \_\_\_\_\_  
 Date Prepared April 17, 2003

<b>OFFENDER SUMMARY</b>		<b>Offenders Name (Last, First, Middle)</b> Sample, Case			
<b>Nickname/Street Name</b>		<b>Alias (AKA)</b>		<b>Maiden Name</b>	
<b>Race</b>	<b>Sex</b> Male	<b>Place of Birth (City or County) LOC / State</b>		<b>Age</b>	<b>Date of Birth</b>
<b>Social Security Number</b>		<b>State ID Number (CCRE)</b>		<b>FBI Number</b>	
<b>Permanent Address</b>					
<b>Local Address (if different)</b>					
<b>COURT INFORMATION</b>		<b>Court</b> RICHMOND CITY		<b>Judge</b> Honorable .	
<b>Prosecuting Attorney</b>		<b>Defense Attorney</b>		<b>Type of Counsel</b> <input type="checkbox"/> Court Appointed <input type="checkbox"/> Retained	
<b>Date of Conviction</b>		<b>Method of Adjudication</b> <input type="checkbox"/> Guilty Plea <input type="checkbox"/> Judge <input type="checkbox"/> Jury			
<b>Pretrial Status</b> <input type="checkbox"/> On Bond <input type="checkbox"/> Own Recognizance <input type="checkbox"/> Confinement <input type="checkbox"/> Third Party Release		<b>Source of Bond</b> <input type="checkbox"/> Personal <input type="checkbox"/> Family <input type="checkbox"/> Other <input type="checkbox"/> Bondsman <input type="checkbox"/> N/A		<b>Post Trial Status</b> <input type="checkbox"/> Confined <input type="checkbox"/> Not Confined	
<b>Pretrial Jail Status</b>					

<b>OFFENSE INFORMATION</b>			
Docket Number	Offense at Indictment	Offense Code (VCC)	Plea Per Offense
Offense at Conviction	Offense Code (VCC)	Plea Agreement	Virginia Code Section

<b>CODEFENDANTS</b>	
Names (Last, First, Middle)	Disposition

## Current Offense Information

REF: [REDACTED]

<b>MOST SERIOUS OFFENSE INFORMATION</b>		Most Serious Offense at Indictment Shoot or throw missile at train, car, vessel w/malice		Offense Code (VCC) VAN2939F4	
Offense Date 09/20/2003	No. of Co-Defendants 0	Resisting Arrest Charge No	Type of Offense <input type="checkbox"/> Person <input checked="" type="checkbox"/> Property <input type="checkbox"/> Other		
Legal Status at the Time of Offense (Check all that apply)					
<input type="checkbox"/> Escaped <input type="checkbox"/> Inmate <input type="checkbox"/> Mandatory Parole <input type="checkbox"/> Discretionary Parole <input type="checkbox"/> Probation <input type="checkbox"/> On Bond <input checked="" type="checkbox"/> Summons <input type="checkbox"/> Released on Recognizance <input type="checkbox"/> Post-Release <input type="checkbox"/> Community Program <input type="checkbox"/> Good Behavior <input type="checkbox"/> Unsupervised Probation <input type="checkbox"/> Juvenile Probation <input type="checkbox"/> Missing/Unknown <input type="checkbox"/> Other <input type="checkbox"/> None					
Weapon Use <input type="checkbox"/> None <input type="checkbox"/> Used To Injure <input checked="" type="checkbox"/> Used To Threaten <input type="checkbox"/> Possession		Weapon Type <input checked="" type="checkbox"/> Firearm <input type="checkbox"/> Knife <input type="checkbox"/> Explosive <input type="checkbox"/> Simulated Weapon <input type="checkbox"/> Other <input type="checkbox"/> N/A			
Offender's Role in Offense <input checked="" type="checkbox"/> Alone <input type="checkbox"/> Leader <input type="checkbox"/> Accomplice <input type="checkbox"/> Not Determined				Current Arrest Date 09/20/2003	
<b>MOST SERIOUS OFFENSE VICTIM INFORMATION (CRIME AGAINST PERSON)</b>		N/A			
Victim Relationship to Offender <input type="checkbox"/> None <input type="checkbox"/> Friend <input type="checkbox"/> Family <input type="checkbox"/> Police Officer		Injury to Victim <input type="checkbox"/> Death <input type="checkbox"/> Serious Physical <input type="checkbox"/> Physical <input type="checkbox"/> Emotional <input type="checkbox"/> Threatened <input type="checkbox"/> N/A		Victim Information Sex Race Age	
Victim Impact Statement Requested If Yes, Attach to Last Page of PSI Unknown		Alcohol/Drug Use At Time of Offense <input checked="" type="checkbox"/> None <input type="checkbox"/> Both <input type="checkbox"/> Alcohol <input type="checkbox"/> Drug <input type="checkbox"/> Unknown			
Drug Offense Primary Drug N/A Amount		Secondary Drug N/A Amount			

## Narrative of Current Offense

The following was taken from the Virginia Beach Police Department's Investigative Summary - PD3, dated January 17, 2003, in the absence of the Commonwealth Attorney's Stipulation of Facts:

"I, Officer Midgett, arrived on scene after the incident. I was not a witness to the actual crime. Upon arrival, there was one subject in the back of a marked patrol car and one subject on the curb in handcuffs. I was advised by officers on scene of the situation. Apparently, the subject in the vehicle, [REDACTED] fired a flare from a flare gun from alongside a fence. The vehicle fired upon was an unmarked police vehicle with three officers in uniform.. The subject on the curb did not have anything to do with the firearm violation and was released shortly after my arrival. [REDACTED] had been read his Miranda rights by Officer Haywood while I was present, and questioned regarding as to the location of the firearm and it was retrieved by Officer Nieves. To my understanding, [REDACTED] was transported and charged by Officer Haywood. Case CBA." (SIC)

**Adult Criminal History Summary**

REF: [REDACTED]

<b>ADULT RECORD</b>	<b>Prior Adult Record</b>	<b>No. of Prior Felony Sentence Events</b>	<b>No. Prior Felony Convictions For:</b>								
	Yes	0	Crimes Against Person	Property Crimes	Drug Crimes	Other					
			0	0	0	0					
<b>No. of Prior Felony Convictions For Instant Offense at Conviction</b>			<b>No. of Previous Felon Commitments</b>								
0			Virginia	0	Out-of-State	0					
<b>Most Recent and Serious Prior Criminal Adult Convictions</b>											
			<u>Description</u>		<u>Offense Code (VCC)</u>						
1.	Simple assault, against family member			1.	ASL1315M1						
2.	Suspended sentence violation - Misdemeanor			2.	SSV4853M9						
3.	License revoked - drive while (First Offense)			3.	LIC6809M1						
4.	Less than \$200 not from person			4.	LAR2366M1						
5.	License revoked - drive while (First Offense)			5.	LIC6809M1						
<b>No. of Prior Probations</b>		<b>No. of Prior Paroles</b>		<b>No. of Prior Incarcerations Received</b>							
Completed	0	Revoked	1	Completed	0	Revoked	0	Under One Year	2	One Year or More	0
<b>Last Previous Arrest Date (Or Release From Confinement)</b>				<b>No. Prior Misdemeanant Convictions</b>							
08/04/2003				Criminal		8		Criminal Traffic		5	

**Narrative of Adult Criminal History Summary**

See Page 10 for Adult Criminal History.

## Offender Personal History Continued

REF: [REDACTED]

<b>HEALTH INFORMATION</b>	Physical Health Condition <input checked="" type="checkbox"/> Good <input type="checkbox"/> Fair <input type="checkbox"/> Poor		Physical Handicaps No	Mental Health Treatment No	Mental Health Commitment No
	Type(s) of Mental Health Treatment <input type="checkbox"/> In-Patient <input type="checkbox"/> Out-Patient <input checked="" type="checkbox"/> N/A		Type(s) of Mental Health Commitment <input type="checkbox"/> Involuntary <input type="checkbox"/> Court-Ordered Evaluation <input type="checkbox"/> Voluntary <input checked="" type="checkbox"/> N/A		
Drug Use Claimed <input type="checkbox"/> None Used <input type="checkbox"/> Heavy Use <input type="checkbox"/> Moderate Use <input checked="" type="checkbox"/> Occasional Use <input type="checkbox"/> Extent Unknown		Drug Abuse Apparent Yes		Drug Treatment No	
Types of Substances Claimed <input type="checkbox"/> Not Used <input type="checkbox"/> Hallucinogens <input type="checkbox"/> Heroin <input type="checkbox"/> Opium <input type="checkbox"/> Cocaine <input type="checkbox"/> Synthetic Narcotics <input checked="" type="checkbox"/> Marijuana <input type="checkbox"/> Amphetamines <input type="checkbox"/> Barbiturates <input type="checkbox"/> Type Unknown <input type="checkbox"/> N/A					
Alcohol Use Claimed <input type="checkbox"/> Not Used <input type="checkbox"/> Heavy Use <input type="checkbox"/> Moderate Use <input checked="" type="checkbox"/> Occasional Use <input type="checkbox"/> Extent Unknown		Alcohol Abuse Apparent Yes		Alcohol Treatment No	
Height 5 Ft. 8 In.	Weight 175 lbs.	Color Eyes <input type="checkbox"/> Black <input checked="" type="checkbox"/> Blue <input type="checkbox"/> Brown <input type="checkbox"/> Green <input type="checkbox"/> Grey <input type="checkbox"/> Hazel <input type="checkbox"/> Mismatched <input type="checkbox"/> Pink		Color Hair <input type="checkbox"/> Auburn <input type="checkbox"/> Bald <input type="checkbox"/> Black <input checked="" type="checkbox"/> Blond <input type="checkbox"/> Brown <input type="checkbox"/> Grey <input type="checkbox"/> Other <input type="checkbox"/> Red <input type="checkbox"/> Sandy <input type="checkbox"/> White	
Scars, Marks, Tattoos Tattoos: Upper Back (Dowdy); Right Upper Arm (S.C.D.)					

## Health Information Narrative

The defendant states he began smoking marijuana at the age of 15. By the end of the first year, he was smoking marijuana all day long. He was clean from the age of 16 - 17, but began using the drug daily, again, by the age of 18. He was incarcerated for six months at the age of 18. Upon release he met a girl and states he was doing well in sobriety. He then began associating with the "wrong crowd", again, and then relocated to Tennessee in order to reside with his sister. He returned to Virginia Beach and was smoking marijuana again in October of 2001, on an occasional basis. He last used marijuana in September of 2003. He states prior to the current offense, he was only smoking marijuana occasionally.

At the age of 15, the defendant also used LSD, three or four times per week for approximately three months. He subsequently was caught by his parents. His mother called the police and the defendant was subsequently adjudicated in the Virginia Beach Juvenile and Domestic Relations Court.

[REDACTED] began drinking alcoholic beverages at the age of 15. He states he would imbibe on the weekends and would occasionally reach intoxication, but not intentionally. He continued this rate of consumption until he was 18 years of age until he relocated to Tennessee in order to reside with his sister. At that time he ceased all substance use, legal and illegal due to being on probation in Severe County, TN for a Virginia Beach Juvenile Adjudication of Receiving Stolen Goods. Upon relocating to Virginia Beach, he began associating with old friends, becoming intoxicated. His girlfriend and daughter left him and then began drinking to the point of intoxication three to four times weekly and smoking marijuana, again. He states he then began missing work. Approximately eight months prior

(Continued... See Addendum)

## Evolution of Sentencing Reform

- ❖ **February, 1985 – Chief Justice appoints a Judicial Committee to study sentencing guidelines systems around the nation and make recommendations to Judicial Council of Virginia**
- ❖ **January, 1986 – Judiciary decides to postpone any action on sentencing guidelines until historical sentencing data is analyzed at the direction of a judicial committee**

## **Evolution of Sentencing Reform**

- ❖ **Fall, 1986 – Spring, 1987 – Results of data analysis on historical sentencing decisions documenting strong evidence of unwarranted sentencing disparity is presented to circuit court judges**
- ❖ **June, 1987 - Circuit court judges vote to pursue development and testing of sentencing guidelines**
- ❖ **July, 1987 – Chief Justice forms judicial committee charged with developing a blueprint for a sentencing guidelines system**

## Evolution of Sentencing Reform

- ❖ **January, 1988 – Judicial committee presents features of proposed sentencing guidelines system**
  - **Voluntary compliance**
  - **Historically grounded in past sentencing practices**
  - **Offense-specific guidelines**
  - **Sentencing ranges broader than those found in other guidelines systems**
  - **Rejection of grid-type guidelines models**

# Minnesota Sentencing Grid

## IV. SENTENCING GUIDELINES GRID

Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure. Offenders with non-imprisonment felony sentences are subject to jail time according to law.

SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in italics)	CRIMINAL HISTORY SCORE							
	0	1	2	3	4	5	6 or more	
<i>Murder, 2nd Degree</i> (intentional murder; drive-by-shootings)	XI	306 261-367	326 278-391	346 295-415	366 312-439	386 329-463	406 346-480 <sup>3</sup>	426 363-480 <sup>3</sup>
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree</i> (unintentional murder)	X	150 128-180	165 141-198	180 153-216	195 166-234	210 179-252	225 192-270	240 204-288
<i>Criminal Sexual Conduct, 1st Degree</i> <sup>2</sup> <i>Assault, 1st Degree</i>	IX	86 74-103	98 84-117	110 94-132	122 104-146	134 114-160	146 125-175	158 135-189
<i>Aggravated Robbery 1st Degree</i> <i>Criminal Sexual Conduct, 2<sup>nd</sup> Degree</i> (c),(d),(e),(f),(h) <sup>2</sup>	VIII	48 41-57	58 50-69	68 58-81	78 67-93	88 75-105	98 84-117	108 92-129
<i>Felony DWI</i>	VII	36	42	48	54 46-64	60 51-72	66 57-79	72 62-86
<i>Criminal Sexual Conduct, 2<sup>nd</sup> Degree</i> (a) & (b)	VI	21	27	33	39 34-46	45 39-54	51 44-61	57 49-68
<i>Residential Burglary</i> <i>Simple Robbery</i>	V	18	23	28	33 29-39	38 33-45	43 37-51	48 41-57
<i>Nonresidential Burglary</i>	IV	12 <sup>1</sup>	15	18	21	24 21-28	27 23-32	30 26-36
<i>Theft Crimes (Over \$2,500)</i>	III	12 <sup>1</sup>	13	15	17	19 17-22	21 18-25	23 20-27
<i>Theft Crimes (\$2,500 or less)</i> <i>Check Forgery (\$200-\$2,500)</i>	II	12 <sup>1</sup>	12 <sup>1</sup>	13	15	17	19	21 18-25
<i>Sale of Simulated Controlled Substance</i>	I	12 <sup>1</sup>	12 <sup>1</sup>	12 <sup>1</sup>	13	15	17	19 17-22



Presumptive commitment to state imprisonment. First Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence. See section [II.E. Mandatory Sentences](#) for policy regarding those sentences controlled by law, including minimum periods of supervision for sex offenders released from prison.



Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in this section of the grid always carry a presumptive commitment to state prison. See sections [II.C. Presumptive Sentence](#) and [II.E. Mandatory Sentences](#).

<sup>1</sup> One year and one day

<sup>2</sup> Pursuant to M.S. § 609.342, subd. 2 and 609.343, subd. 2, the presumptive sentence for Criminal Sexual Conduct in the First Degree is a minimum of 144 months and the presumptive sentence for Criminal Sexual Conduct in the Second Degree – clauses c, d, e, f, and h is a minimum of 90 months (see [II.C. Presumptive Sentence](#) and [II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers](#)). Pursuant to M.S. § 609.3455, certain sex offenders are subject to life sentences. Some of these life sentences are life without release, while others are indeterminate life sentences with the minimum term of imprisonment specified by the court and based upon the sentencing guidelines and any applicable mandatory minimums. See [II.C. Presumptive Sentence](#).

<sup>3</sup> M.S. § 244.09 requires the Sentencing Guidelines to provide a range of 15% downward and 20% upward from the presumptive sentence. However, because the statutory maximum sentence for these offenses is no more than 40 years, the range is capped at that number.

Effective August 1, 2005

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## Evolution of Sentencing Reform

- ❖ **July, 1988 – Voluntary sentencing guidelines are pilot tested in six circuits**
- ❖ **September, 1989 – Evaluation completed of sentencing guidelines pilot test and concludes they are very effective in reducing unwarranted sentencing disparities**
- ❖ **January, 1991 – Voluntary sentencing guidelines are fully implemented throughout the Commonwealth**



## The Birth of Truth-in-Sentencing in Virginia

## **What Was The Impetus for Parole Reform ?**

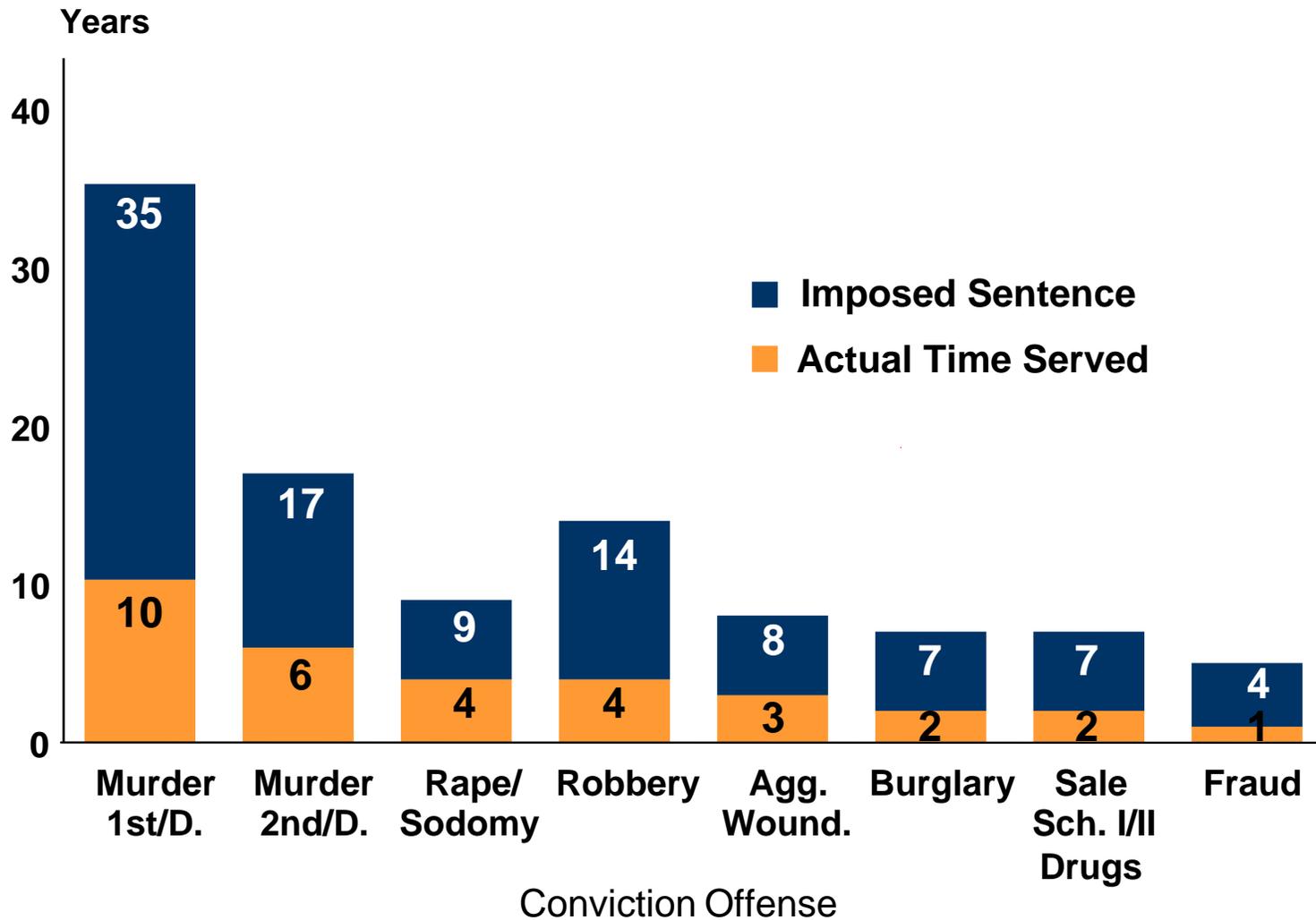
- ❖ **1993 Gubernatorial campaign - parole abolition key issue**
- ❖ **New Governor forms Commission to develop sentence/parole reform plan (January 1994)**
- ❖ **Comprehensive data analysis of sentencing and time served**
- ❖ **Advisory Testimony**
  - **Town hall meetings – concern over lack of Truth-in-Sentencing**
  - **U.S. Sentencing Commission**
  - **Other States (e.g. Florida, North Carolina, Pennsylvania and Texas)**

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## **What Was The Political Environment in Virginia at time of reform?**

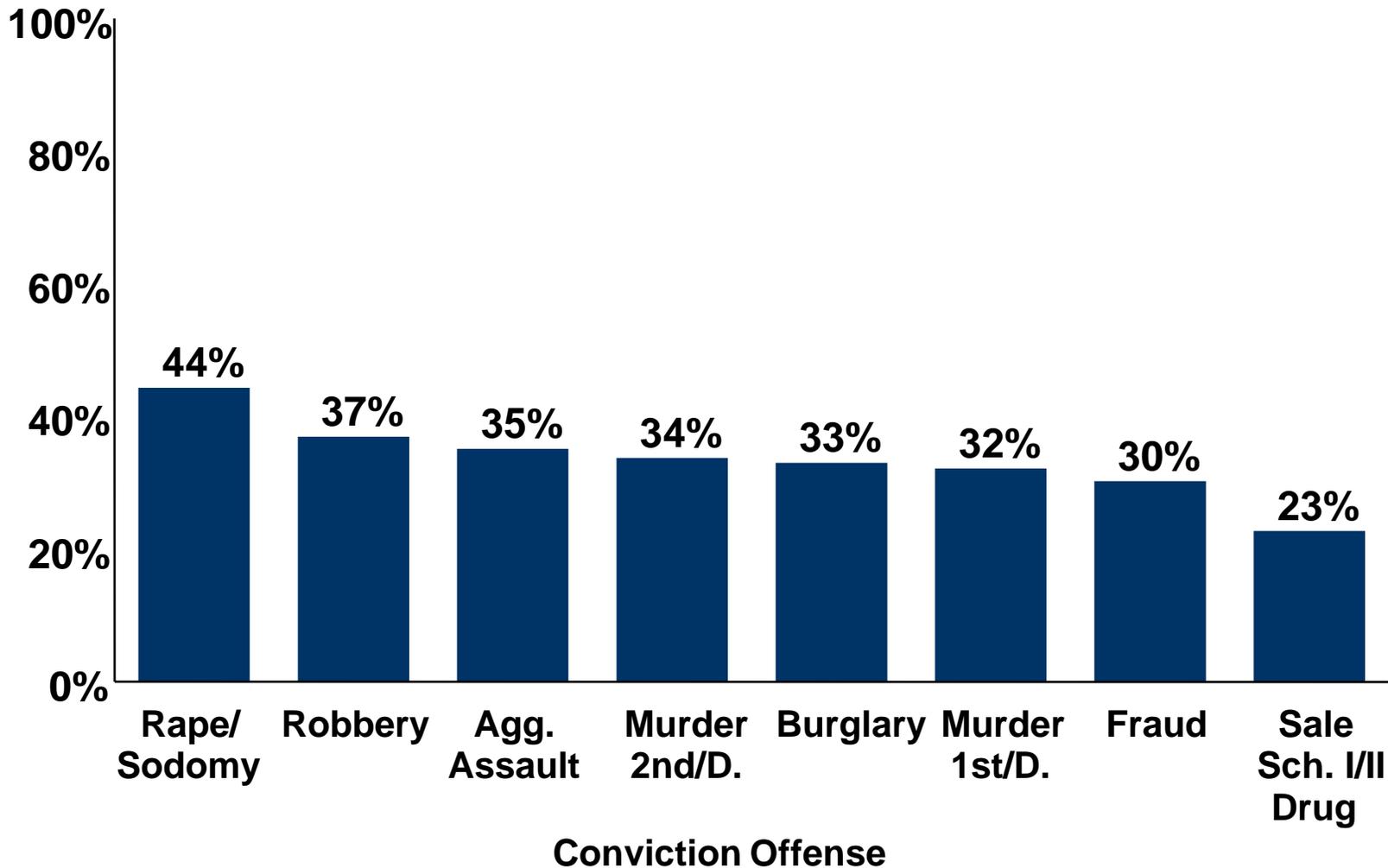
- ❖ **Parole Board was viewed as a “release valve” to control prison population**
- ❖ **Bi-partisan political support for truth in sentencing concept**
- ❖ **Political negotiation on increased time served for violent and repeat offenders**
- ❖ **Perception truth in sentencing would cause system to “collapse”– risk assessment proposed to divert low-risk offenders**

## How Did Imposed Sentences and Actual Time Served Compare?



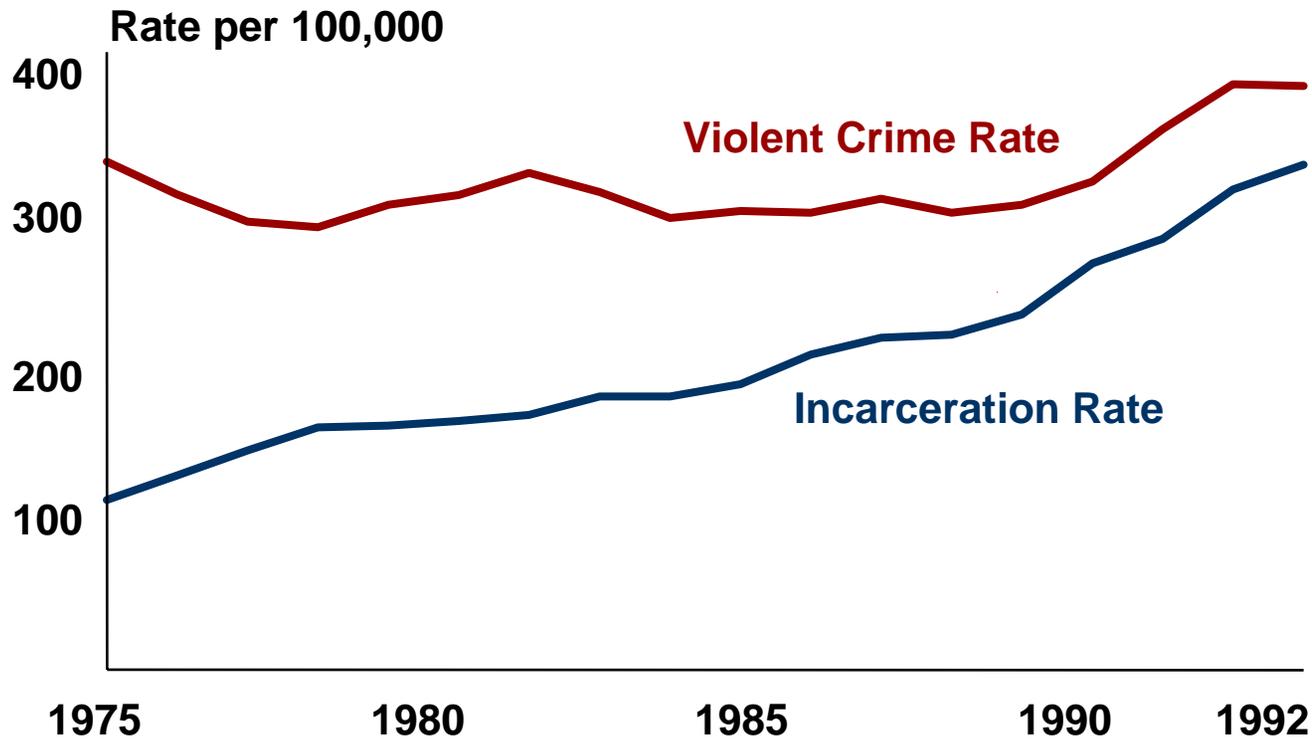
Note: For those released from Virginia prisons in 1993.

## What portion of sentences were being served?



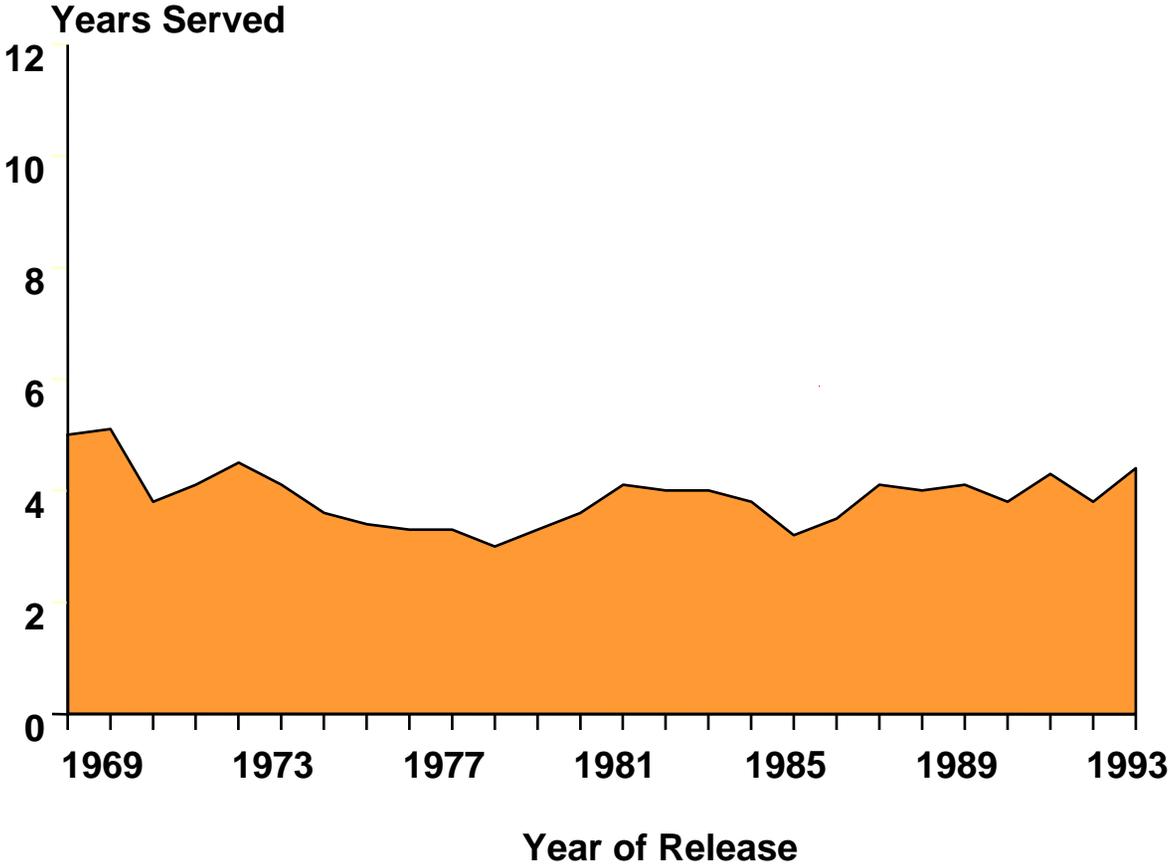
Note: For those released from Virginia prisons in 1993.

# The violent crime rate remained unaffected by a steadily increasing incarceration rate



# Average time served did not vary

(Offenders convicted of robbery 1968 - 1993)



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## The main goals of 1994 sentencing reforms

- ❖ **Abolish parole and establish truth in sentencing**
- ❖ **Target violent felons for more lengthy incapacitation**
- ❖ **Create a sentencing commission to promulgate and oversee a voluntary sentencing guidelines system**
- ❖ **Reduce unwarranted sentencing disparities**
- ❖ **Safely redirect prison-bound low risk offenders to less costly sanctions**
- ❖ **Expand alternative punishment/treatment options for some non-violent felons**

## Discretionary Parole Prior to 1995 vs. Truth-in-Sentencing

<u>Prior Incarceration</u>	<u>Parole Eligibility</u>	<u>Truth-in-Sentencing 1995</u>
0	1/4 or 12 yrs.	
1	1/3 or 13 yrs.	<b>Parole Abolished</b>
2	1/2 or 14 yrs.	
>3	3/4 or 15 yrs.	

## **Inmates Earned Significant Sentence Credit Under Previous System**

<b><u>Good Conduct Class Level</u></b>	<b><u>Prior to 1995</u></b>	<b><u>Truth-in-Sentencing 1995</u></b>
<b>One</b>	<b>30 for 30</b>	<b>4.5 for 30</b>
<b>Two</b>	<b>20 for 30</b>	<b>3.0 for 30</b>
<b>Three</b>	<b>10 for 30</b>	<b>1.5 for 30</b>
<b>Four</b>	<b>0 for 30</b>	<b>0 for 30</b>

NOTE: All numbers in days

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## **Creation of a Sentencing Commission**

- ❖ **Creation of sentencing commission to oversee new discretionary sentencing guidelines system**
- ❖ **17 member Judicial branch commission with representation from all three branches of government**
- ❖ **Develop voluntary sentencing guidelines system that retains adequate judicial discretion – rejection of mandatory sentencing guidelines**

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## **§ 17.1-800 and § 17.1-802 Virginia Criminal Sentencing Commission Legislation**

**Judicial Branch Agency created November, 1994**

**17 members:**

- **1 non-active member of judiciary, appointed Chairman by Chief Justice**
- **6 judges or justices appointed by Chief Justice**
- **3 persons appointed by Speaker of the House of Delegates**
- **2 persons appointed by the Senate Committee on Rules**
- **1 Attorney General or his designee**
- **4 persons appointed by Governor (one shall be from crime victim organization or be a victim)**

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## § 17.1-801 Purpose of Criminal Sentencing Commission

- To ensure the imposition of appropriate and just criminal penalties
- To make the most efficient use of correctional resources especially for the incapacitation of violent criminal offenders
- To achieve greater certainty, consistency, and adequacy of punishment with due regard to the seriousness of the offense, the dangerousness of the offender, deterrence of individuals from committing criminal offenses and the use of alternative sanctions, where appropriate

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## § 17.1-803 Duties of Virginia Criminal Sentencing Commission

- **Develop, maintain, and modify discretionary sentencing guidelines which take into account historical data**
- **Develop and apply an offender risk assessment instrument that will be predictive of a felon's risk to public safety**
- **Monitor sentencing practices, crime trends, correctional facility population trends and make recommendations regarding projected prison capacity requirements**
- **Review all new proposed legislation to determine its fiscal impact on correctional resources**

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## § 30-19.1:4 Duties of Virginia Criminal Sentencing Commission

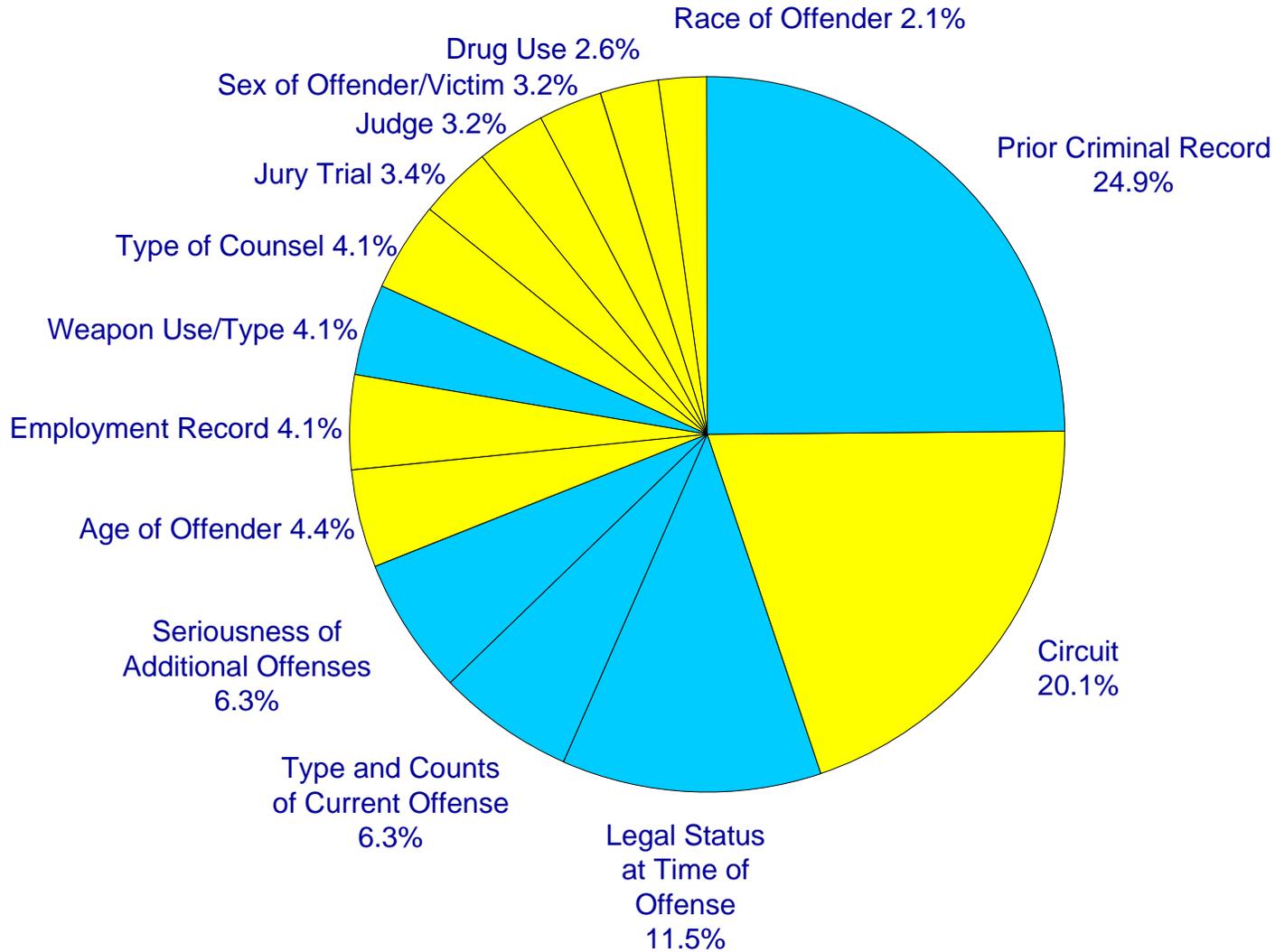
- **The Criminal Sentencing Commission shall place a price tag on all new proposed legislation that may have an impact on correctional resources.**
- **Proposed legislation is debated on its policy merits in the appropriate judiciary committee and then, if successful, it is referred to Senate Finance or House Appropriations Committee.**
- **Proposed legislation with a correctional fiscal impact can not be enacted unless necessary monies are appropriated to address estimated costs.**

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## Methodology to Create Historically Grounded Sentencing Guidelines

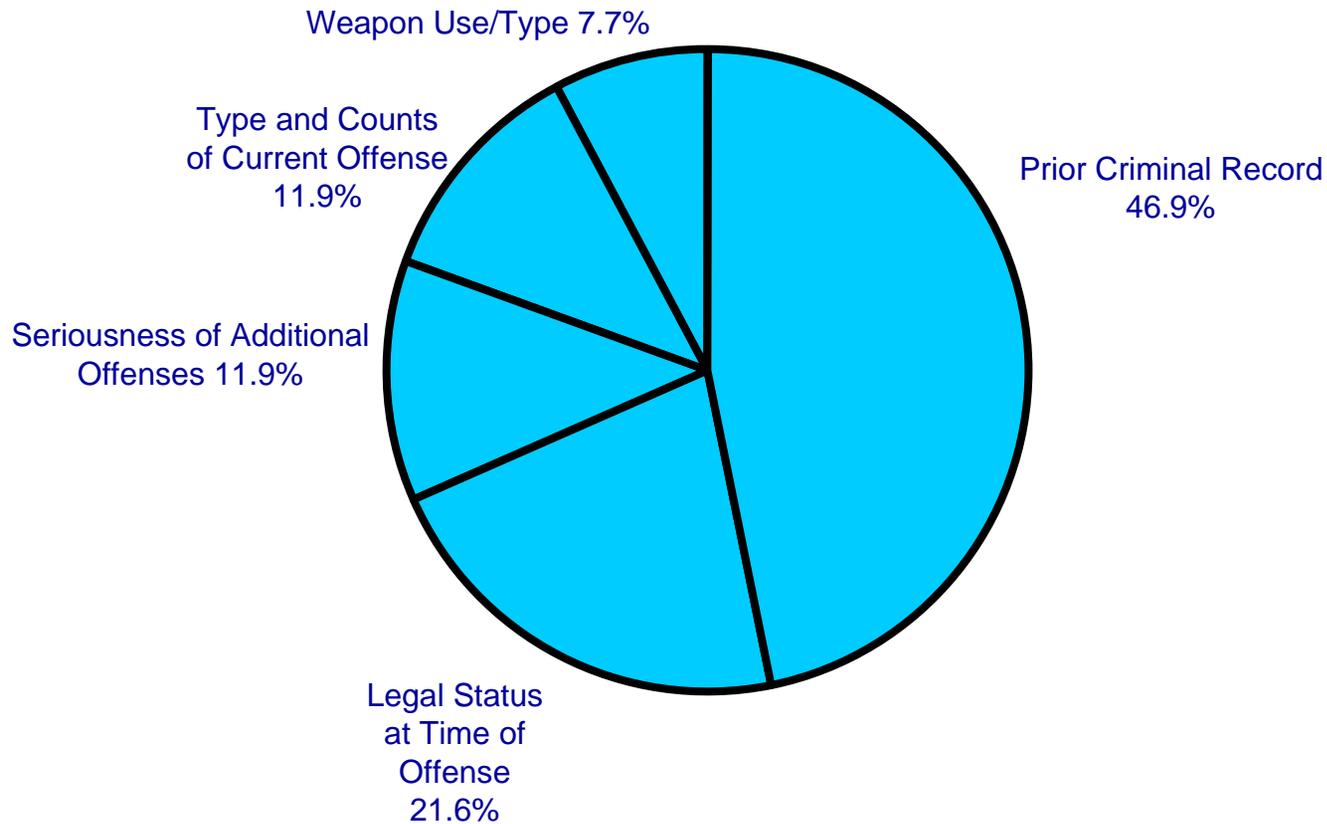
- Analyze historical data to identify all significant factors that influenced past sentencing decisions
- Identify inappropriate factors to eliminate their influence on future sentencing decisions
- Create sentencing guidelines forms that feature remaining significant factors and their relative importance
- Incarceration recommendation (in/out) decision initially tied to past incarceration rate

# Relative Importance of all Significant Factors for Burglary Prison/Non-Prison Sentences



Guidelines factors shaded in blue

## Relative Importance of all Significant Guidelines Factors for Burglary Prison/Non-Prison Sentences



# Factors and weights on sentencing guidelines forms are grounded in history

Type of primary offense:		Add Score	EST
• possession of burglarious tools (any number of counts) .....		0	
• dwelling or other structure with intent to commit larceny, etc. without deadly weapon; other structure with intent to commit larceny, etc. with deadly weapon; dwelling at night without deadly weapon			
1 count .....		2	
2 counts .....		3	
3 or more counts .....		5	
• dwelling with intent to commit a misdemeanor without deadly weapon			
1 count .....		0	
2 or more counts .....		4	
• dwelling at night with deadly weapon (any number of counts) .....		3	
• dwelling with intent to commit larceny, etc. with deadly weapon			
1-2 counts .....		3	
3 or more counts .....		6	
• bank; dwelling with intent to commit a misdemeanor with deadly weapon (any number of counts) .....		6	
• dwelling or other structure with intent to murder, rape or rob with deadly weapon (any number of counts) .....		7	
• dwelling with intent to murder, rape or rob without deadly weapon			
1 count .....		7	
2 counts .....		8	
3 or more counts .....		14	
• other structure with intent to murder, rape or rob without deadly weapon (any number of counts) .....		8	
Additional offenses (including counts)	Years	Add Score	EST
at conviction, with maximum	1 - 14 .....	1	
penalties totaling:	15 - 32 .....	2	
	33 - 46 .....	3	
	47 or more .....	4	
Weapon used, brandished, feigned, or threatened:		Add Score	EST
• weapon other than firearm .....		7	
• firearm .....		8	
Prior adult convictions,	Years	Add Score	EST
with maximum penalties totaling:	less than 2 .....	0	
	2 - 11 .....	1	
	12 - 24 .....	2	
	25 - 33 .....	3	
	34 or more .....	4	
Prior felony property convictions:	Number	Add Score	EST
	1 - 3 .....	1	
	4 - 7 .....	2	
	8 - 9 .....	3	
	10 or more .....	4	
Prior adult incarcerations:		If yes, Add 5	EST
Legally restrained at time of offense:		Add Score	EST
• none .....		0	
• other than parole, supervised probation or CDI .....		4	
• parole, supervised probation or CDI .....		8	
<b>TOTAL SCORE</b>		<b>=</b>	

If total is 10 or less, go to work sheet "B".  
If total is 11 or more, go to work sheet "C".

BHR - 3 rev. 7-1-92

### Burglary Prison In/Out Decision

◆ <b>Type of primary offense (examples)</b>		
Possession of burglary tools.....	0	↓ <input type="checkbox"/>
Dwelling with intent to commit crime against person .....	9	
Other structure with intent to commit larceny.....	3	
◆ <b>Additional offenses (including counts)</b>		
at conviction, with maximum	1 - 14.....	↓ <input type="checkbox"/>
penalties totaling:	15 - 32 .....	
	33 - 46.....	
	47 or more.....	
	8	
◆ <b>Weapon used, brandished, feigned, or threatened</b>		
weapon other than firearm.....	7	↓ <input type="checkbox"/>
firearm.....	8	
◆ <b>Prior Adult Convictions</b>		
with maximum	less than 2 years.....	↓ <input type="checkbox"/>
penalties totaling:	2 - 11 years .....	
	12 - 24 years.....	
	25 - 33 years.....	
	34 years or more.....	
◆ <b>Prior felony property convictions</b>		
	1 - 3 .....	↓ <input type="checkbox"/>
	4 - 7 .....	
	8 - 9 .....	
	10 or more.....	
◆ <b>Prior Adult Incarceration</b> <i>if yes add 5</i>		<input type="checkbox"/>
◆ <b>Legally restrained at the time of the offense</b>		
Probation.....	4	↓ <input type="checkbox"/>
Parole.....	8	
<b>Total Score</b>		<input type="checkbox"/>

**Total Score** = If total is 10 or less, go to worksheet B. If total is 11 or more, go to worksheet B.

# Percentage of Burglary Felons Affected by Sentencing Guidelines Scoring Compared to Historical Cases

## Prison IN/OUT Decision

Sentencing Guidelines		Recommendations Under Sentencing Guidelines		Actual Practices Prior to Sentencing Guidelines	
Score	Recommendation	Percent	OUT Percent	IN Percent	
0-3	OUT	9.9%	89.9%	10.1%	
4-6	OUT	31.7	80.5	19.5	
7-8	OUT	40.8	71.3	28.7	
9-10	OUT	49.9	58.3	41.7	
11-13	IN	62.3	44.8	55.2	
14-15	IN	68.8	29.7	70.3	
16-18	IN	78.4	22.7	77.3	
19+	IN	100.0	9.1	90.9	
TOTAL		100.0	50.0	50.0	

Shaded boxes indicate cases that would be affected by sentencing guidelines

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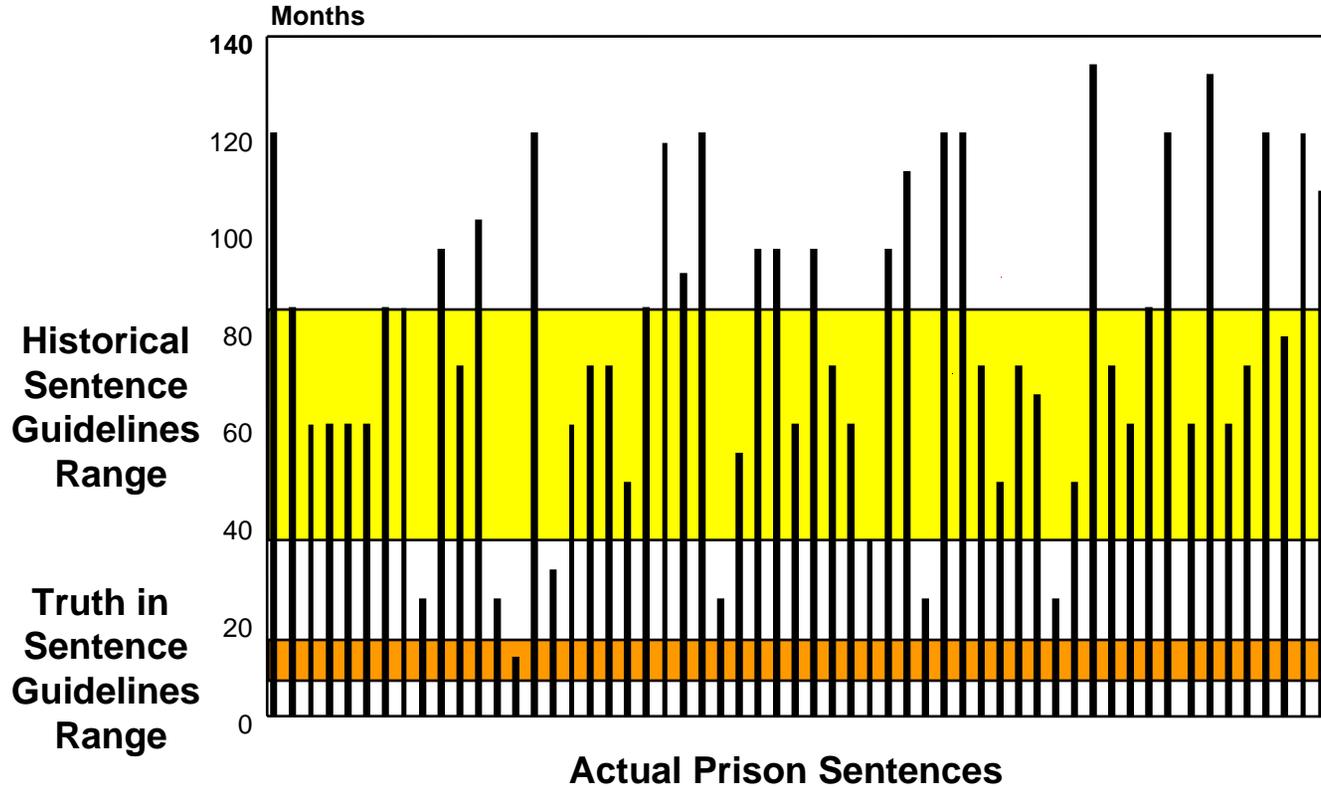
## Methodology to create historical grounded sentencing guidelines

- **Initial sentencing guidelines incarceration range**
  - **Starts with historical **time served****
  - **Uses 1988-1992 time served distribution for similarly situated offenders**
  - **Increases historical time served by 13.4 percent (anticipated sentence reduction for good conduct)**
  - **Range eliminates upper and lower quartiles**
  - **Midpoint of range is median time served for middle two quartiles**

# Sentencing Reform

*Comparison of Sentencing Guidelines Recommendation  
Based on Historical Sentences and Those Based on New Legislation*

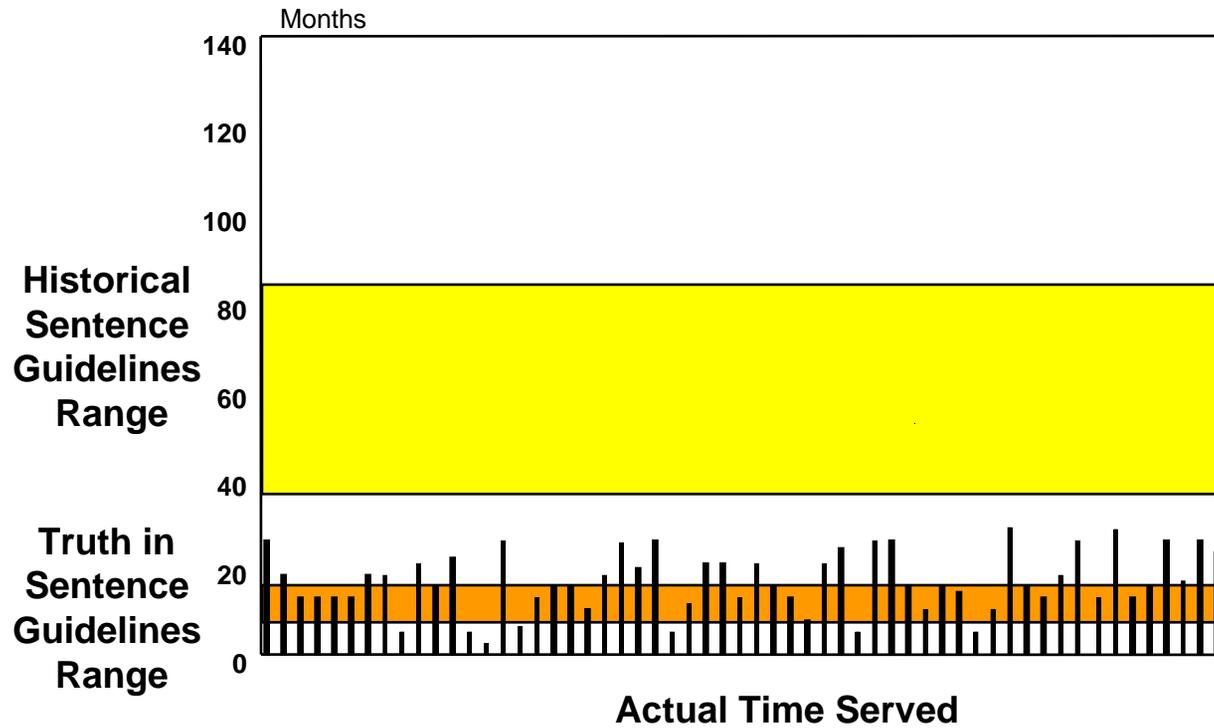
*Sale Schedule I/II Drugs for Profit  
No Prior Record*



# Sentencing Reform

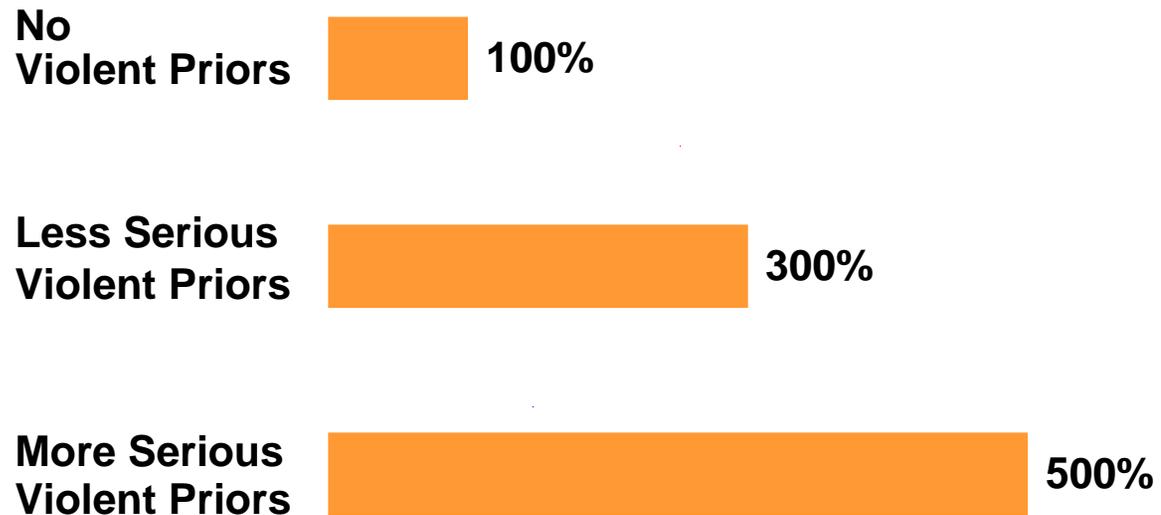
*Comparison of Sentencing Guidelines Recommendation  
Based on Actual Time Served and Those Based on New Legislation*

*Sale Schedule I/II Drugs for Profit  
No Prior Record*



## Sentencing Reform -- Increases Incapacitation Periods for Violent Felons

- ❖ **New Sentencing Guidelines for Violent Felons**  
(e.g., Murder, Rape, Robbery, Assault) Increased by:



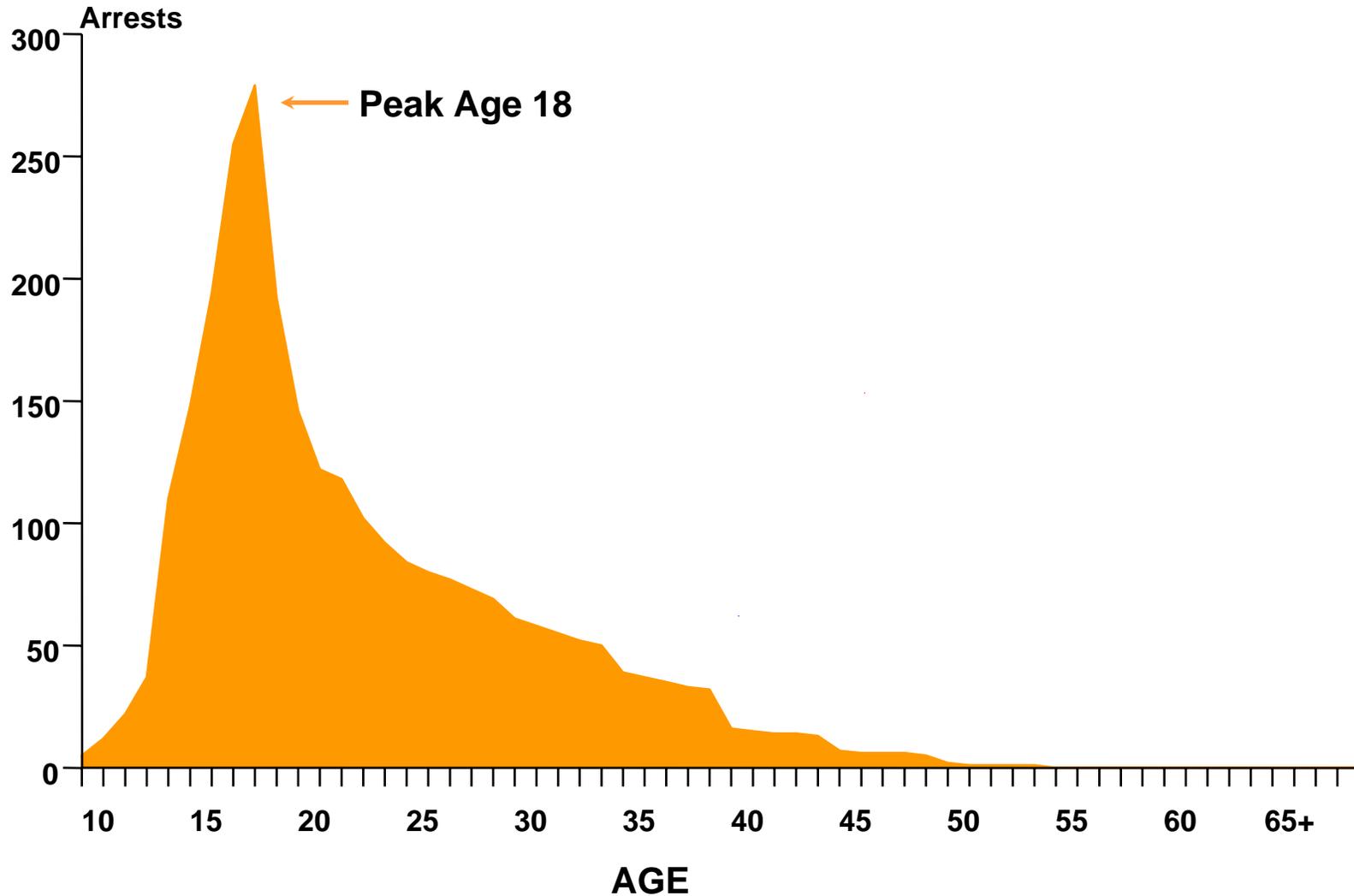
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## **Sentencing Reform – Features**

- ❖ **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**

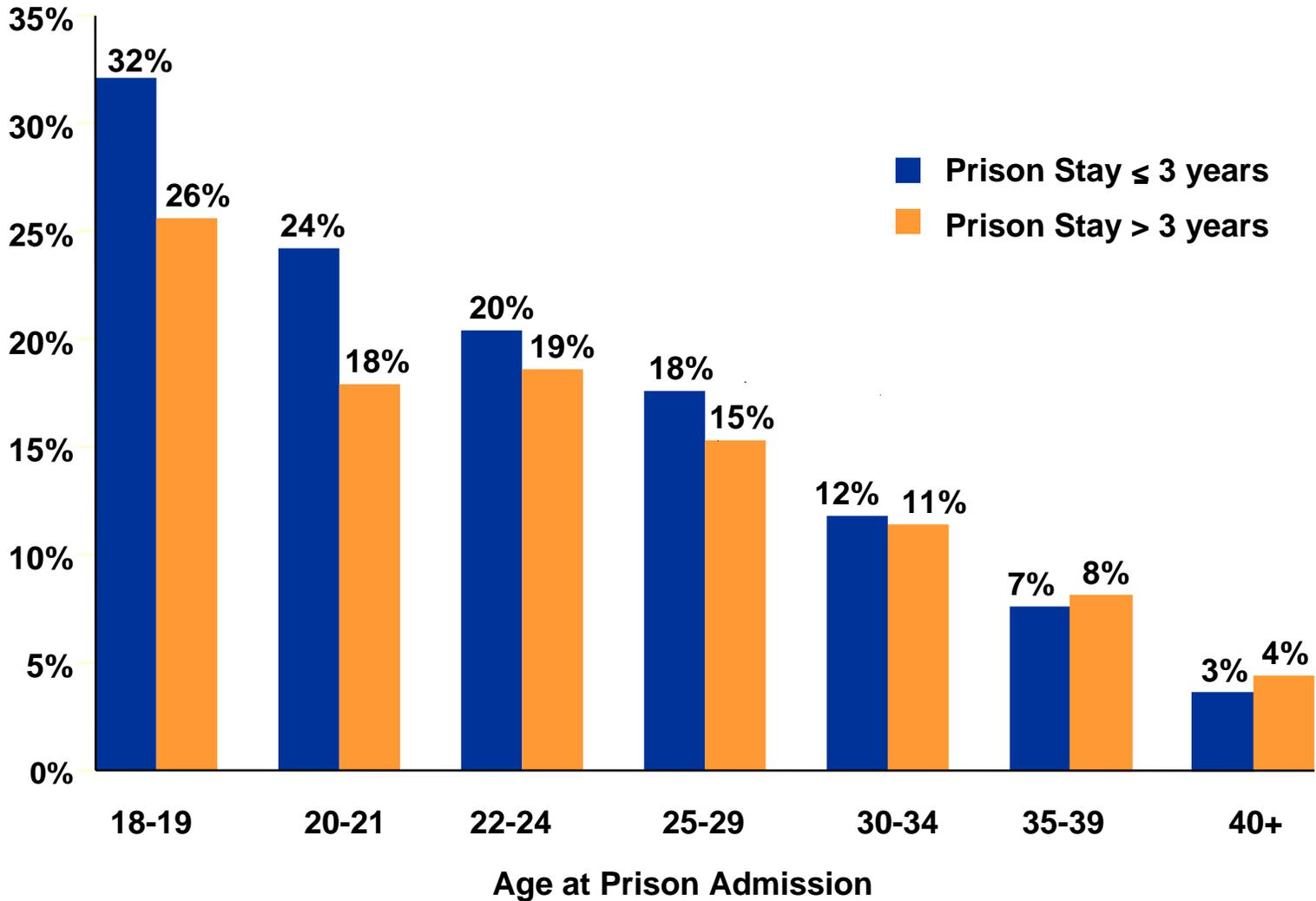
# Sentencing Reform

## Age Distribution for Robbery Arrests in Virginia



# Sentencing Reform

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



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## Sentencing Guidelines Worksheets— 14 Offense Groups

- **Assault**
- **Burglary of Dwelling**
- **Burglary of Structure**
- **Drug / Schedule I/II**
- **Drug / Other**
- **Fraud**
- **Kidnapping**
- **Larceny**
- **Murder/Homicide**
- **Rape**
- **Other Sexual Assault**
- **Robbery**
- **Traffic/Felony**
- **Miscellaneous**

---

## How are the guidelines used in court?

▪The court shall:

- be presented with, review and consider guidelines work sheets
- state for the record that review accomplished
- work sheets become part of the record of the case
- when court departs file a written explanation of departure

▪Jury shall not receive guidelines information

---

## How are the guidelines used in court?

- Probation officer completes guidelines work sheets when:
  - Jury trial
  - Bench (judge) trial
- Prosecutor or probation officer completes guidelines work sheets when:
  - Guilty pleas
- Clerk of Circuit Court sends
  - Final order of conviction and sentence, original guidelines work sheet and any departure reason to Commission

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## § 17.1-806 Sentencing Guidelines Modification

**After adoption of initial guidelines, modifications adopted by Commission:**

- **Shall be in annual report and submitted to the Governor legislature, judiciary and citizens of Virginia.**
- **Winter legislative session provides opportunity for lawmaker's to veto Commission recommendations**
- **Shall, unless otherwise provided by law, become effective the following July 1**



## **Non-Violent Risk Assessment**

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## ***Non-Violent Risk Assessment***

### ***§17.1-803 (5,6) The Sentencing Commission Shall:***

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

---

# ***Non-Violent Risk Assessment***

## ***Nature of Risk Assessment***

- **Risk assessment is practiced informally throughout the criminal justice system (e.g., prosecutors when charging, judges at sentencing, parole board members in making release decisions)**
- **Empirically-based risk assessment, however, is a formal process using knowledge gained through observation of actual behavior within groups of individuals**
- **Groups are defined by having a number of factors in common that are statistically relevant to predicting the likelihood of repeat offending**
- **Groups exhibiting a high degree of re-offending are labeled high risk**

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# ***Non-Violent Risk Assessment***

## ***Nature of Risk Assessment***

- ❖ **The Sentencing 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**
- ❖ **Goal: To produce an instrument that is broadly accurate and improves upon the outcomes of the decisions made without reference to the tool**

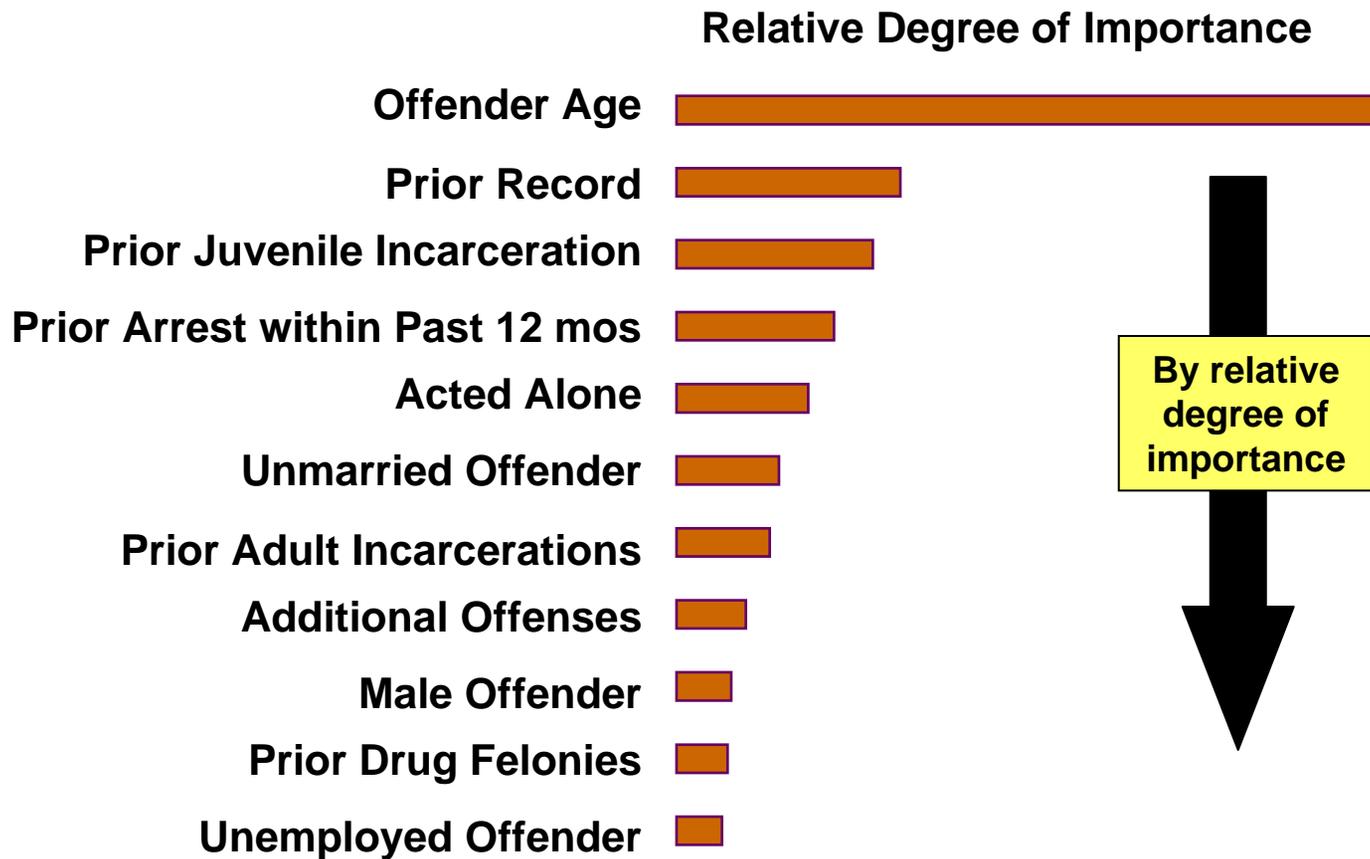
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## ***Non-Violent Risk Assessment***

- ❖ **Studied thousands of property and drug felons released from incarceration in 1991-92**
- ❖ **Over 200 unique factors relating to criminal record, substance abuse, education and employment history, family background, etc. on each case**
- ❖ **Recidivism defined as a reconviction for a felony within three years of release**

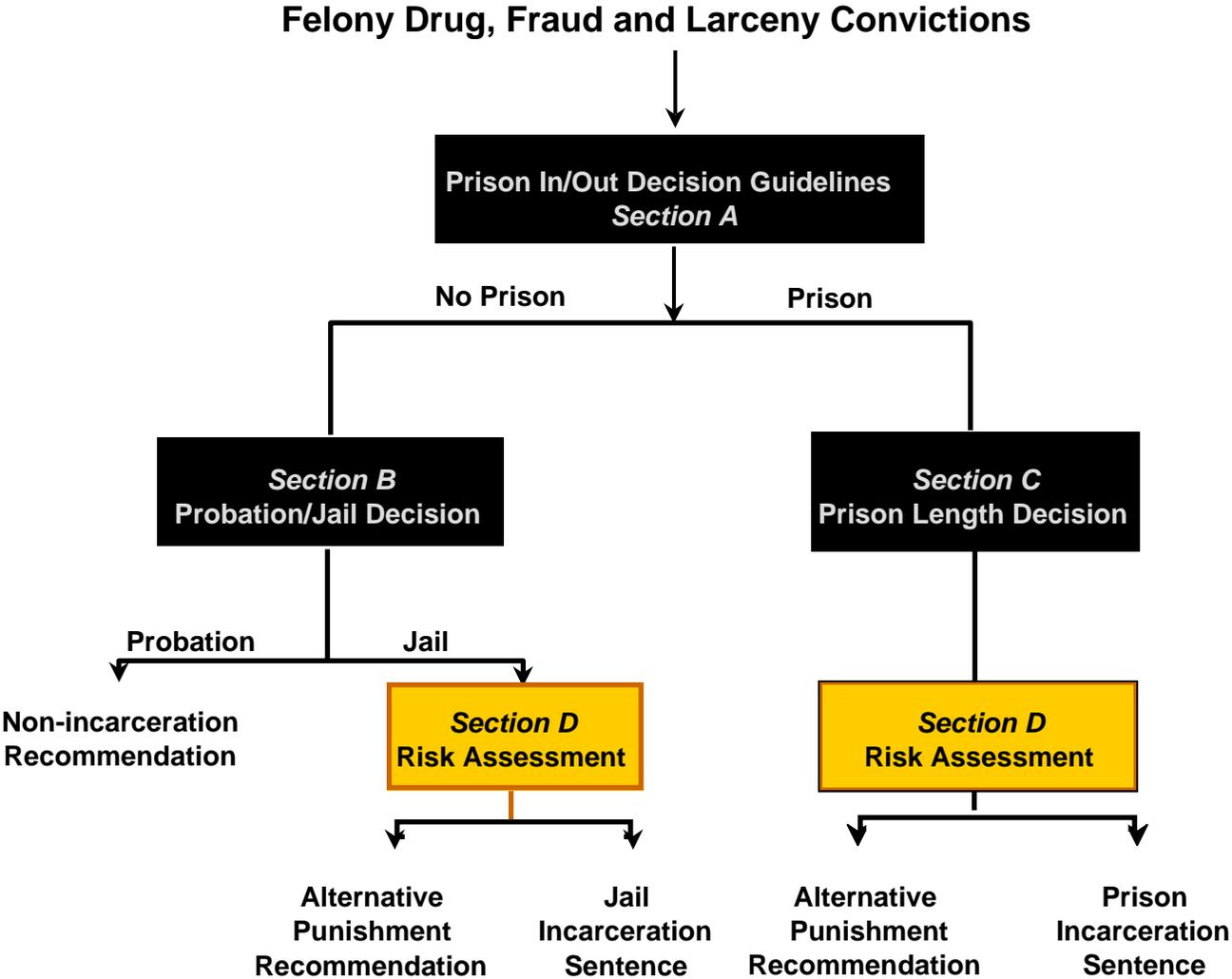
# Non-Violent Risk Assessment

## Significant Factors in Predicting Recidivism



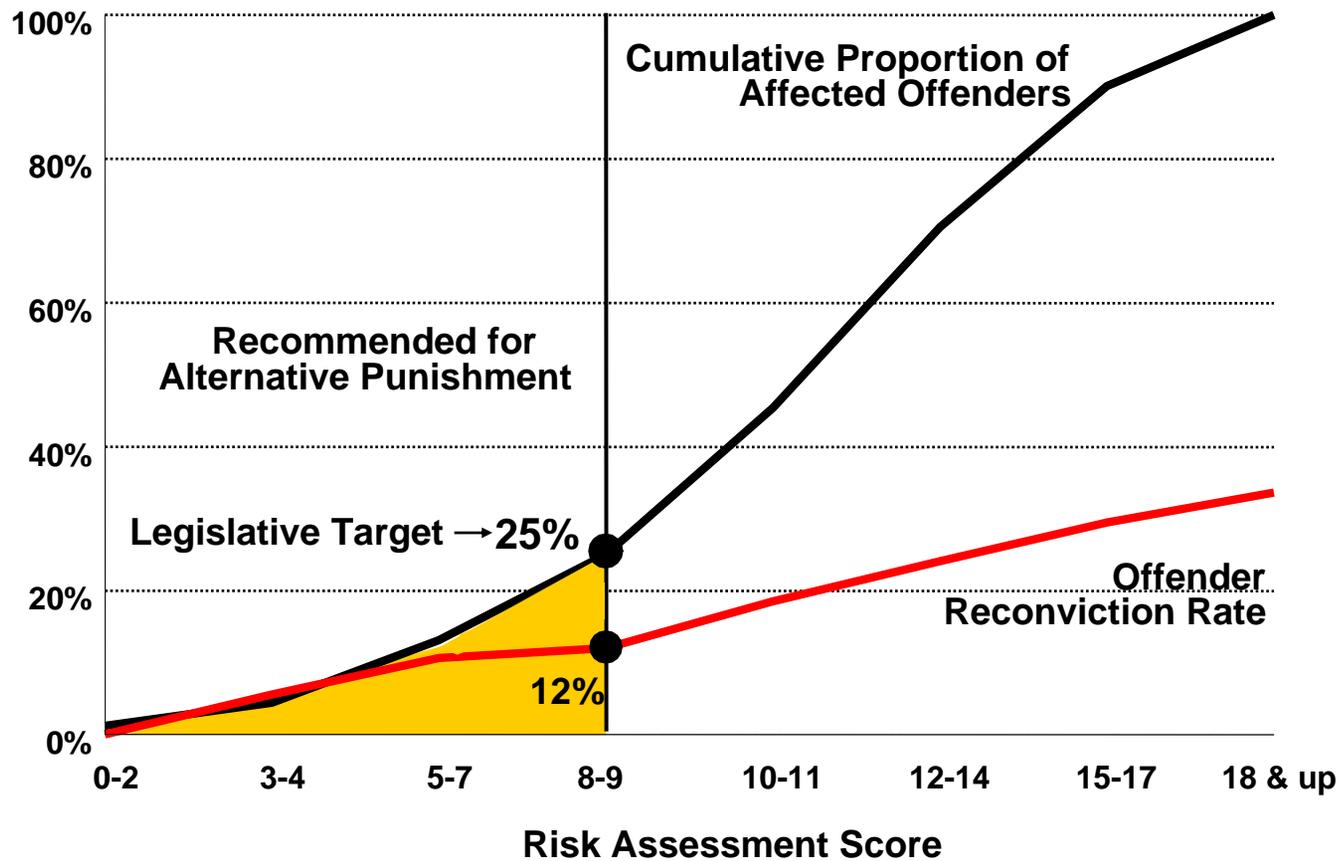
# Non-Violent Risk Assessment

Non-Violent Risk Assessment



# Non-Violent Risk Assessment

**Offender Reconviction Rates and Cumulative Proportion of Affected Offenders by Risk Assessment Score**



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## ***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**

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## ***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**

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## ***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.**

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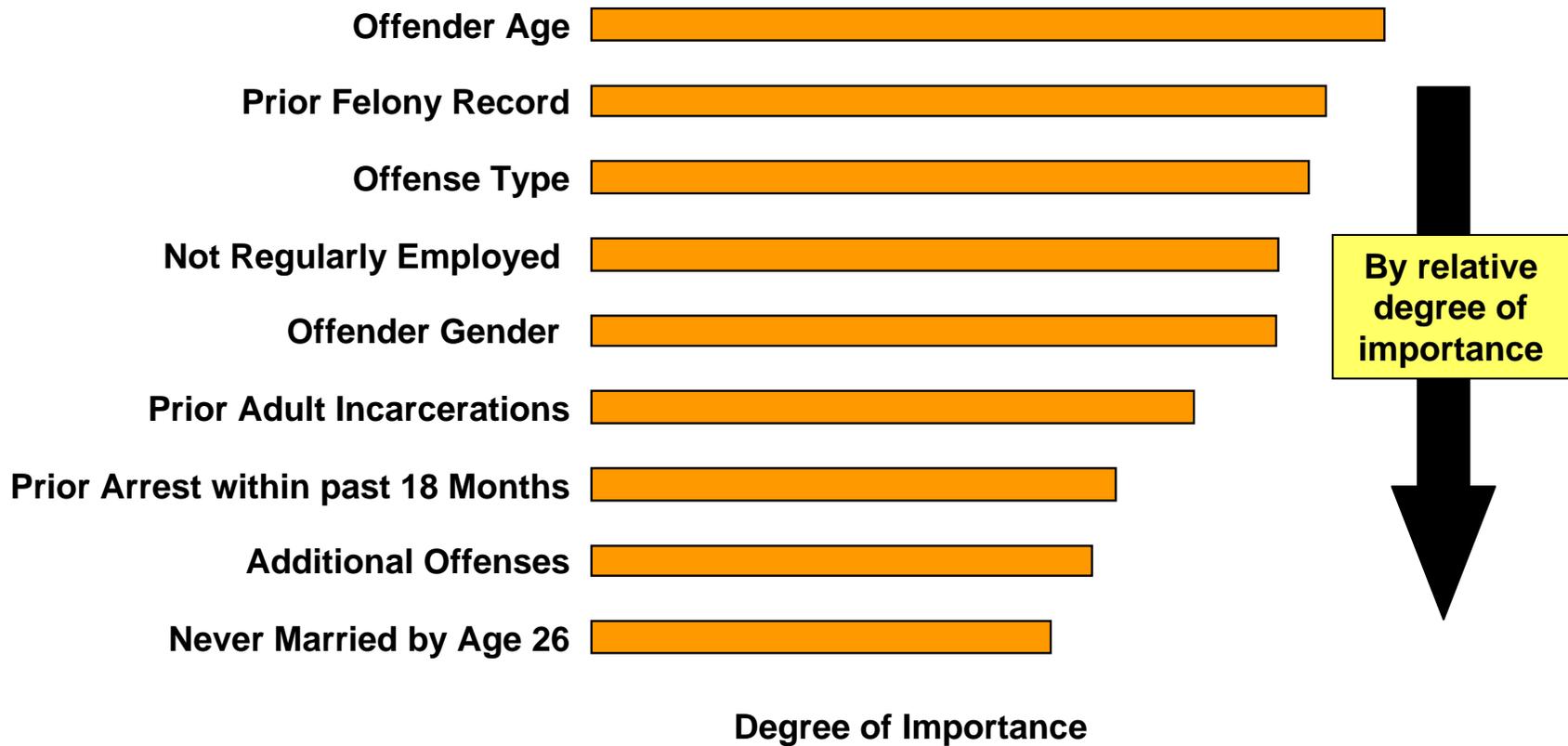
## ***Non-Violent Risk Assessment***

### ***The Refined Risk Assessment Model:***

- ❖ **New recidivism study of 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.**

# **Non-Violent Risk Assessment**

## **Relative Importance of Factors in Predicting Recidivism**



# 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* \_\_\_\_\_

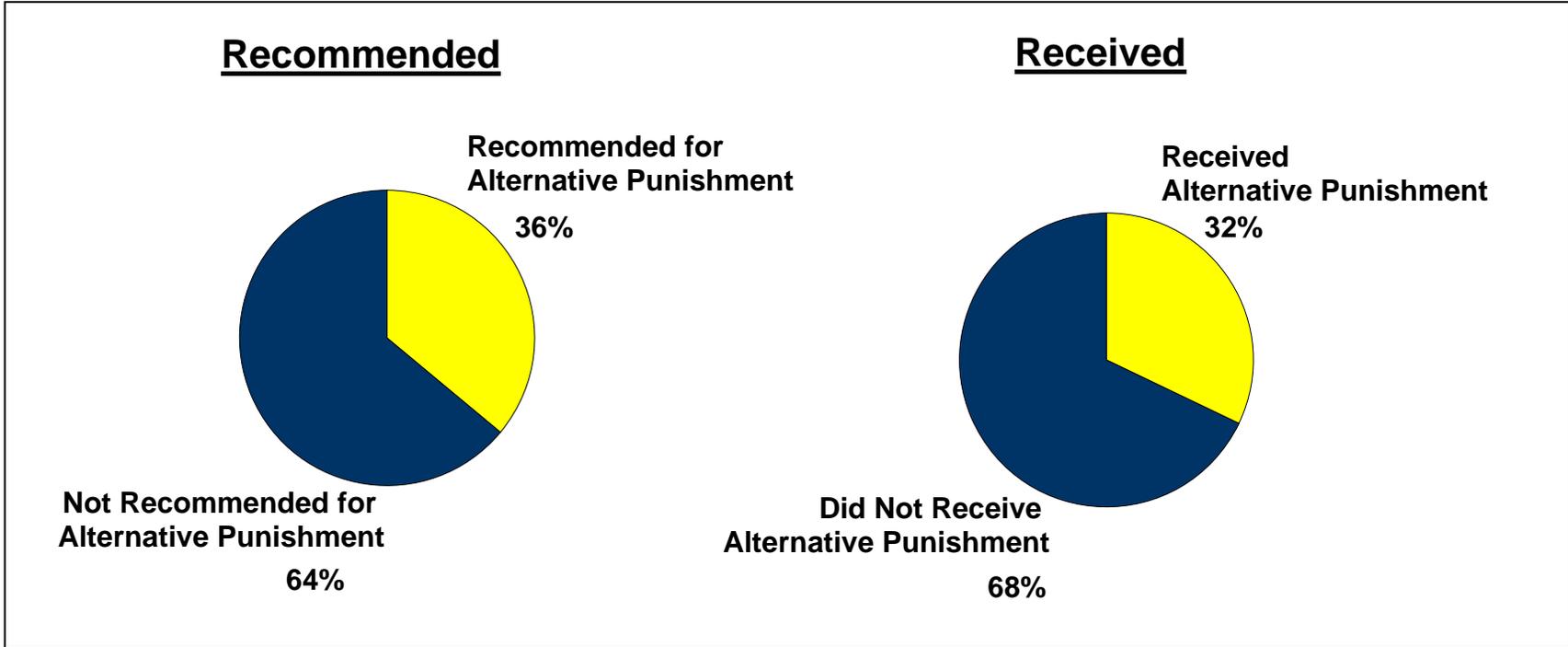
A.	Offender is a male.....	8
B.	Offender's age at time of offense	
	Younger than 30 years.....	13
	30 – 40 years.....	8
	41 - 46 years.....	1
	Older than 46 years.....	0
C.	Offender not regularly employed.....	9
D.	Offender at least 26 years of age & never married.....	6

---

## Use of Risk Assessment

- Risk assessment is completed in larceny, fraud and drug cases for offenders who are recommended for incarceration by the sentencing guidelines and 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 and alternative punishment
- As with the sentencing guidelines, compliance with the risk assessment recommendation is discretionary.
- If a judge follows either sentencing recommendation, the judge is considered in compliance with the guidelines.

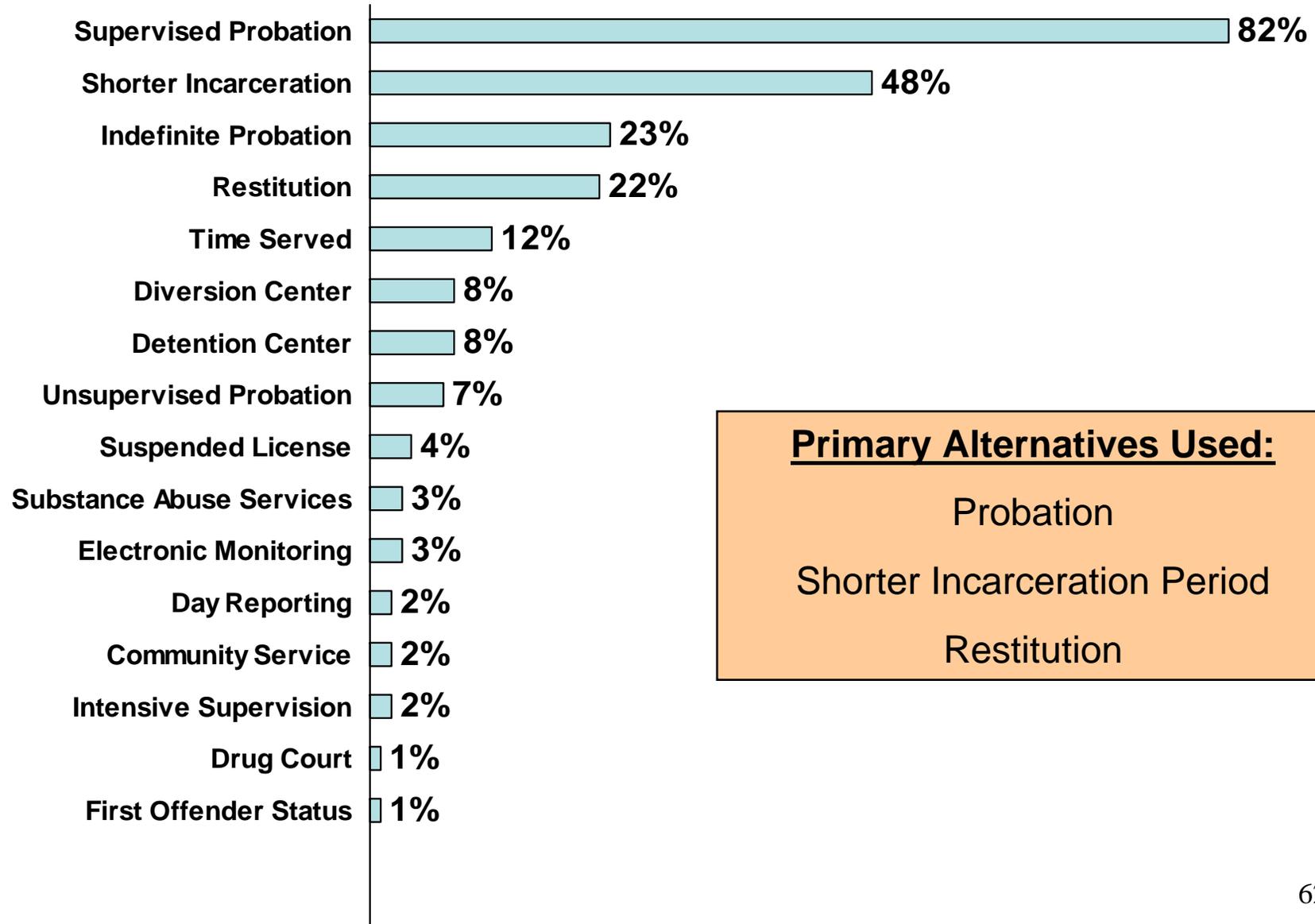
# First-Year Experience with Statewide Nonviolent Offender Risk Assessment



FY2003  
(Number of Cases = 6,062)

Source: Virginia Criminal Sentencing Commission – 2003 Annual Report, 12/1/2003

## Less Restrictive Sanctions Utilized under Risk Assessment





## **Commission Recent Major Initiatives**

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**Sex Offender  
Risk Assessment Guidelines**

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# Sex Offender Risk Assessment

## *Virginia Legislative Initiatives Targeting Sex Offenders*

- ❖ **Legislation authorizing community notification for released sex offenders and allowing public access to sex offender registration information (Megan's Law, 1994)**
  
- ❖ **Legislation authorizing involuntary civil commitment for offenders deemed likely to be a threat to the health and safety of others**
  - Adopted 1999
  - Effective 2003
  
- ❖ **Legislation directing the Criminal Sentencing Commission to develop a sex offender risk assessment instrument for utilization in the sentencing guidelines for sex offenses (1999)**

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# 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**



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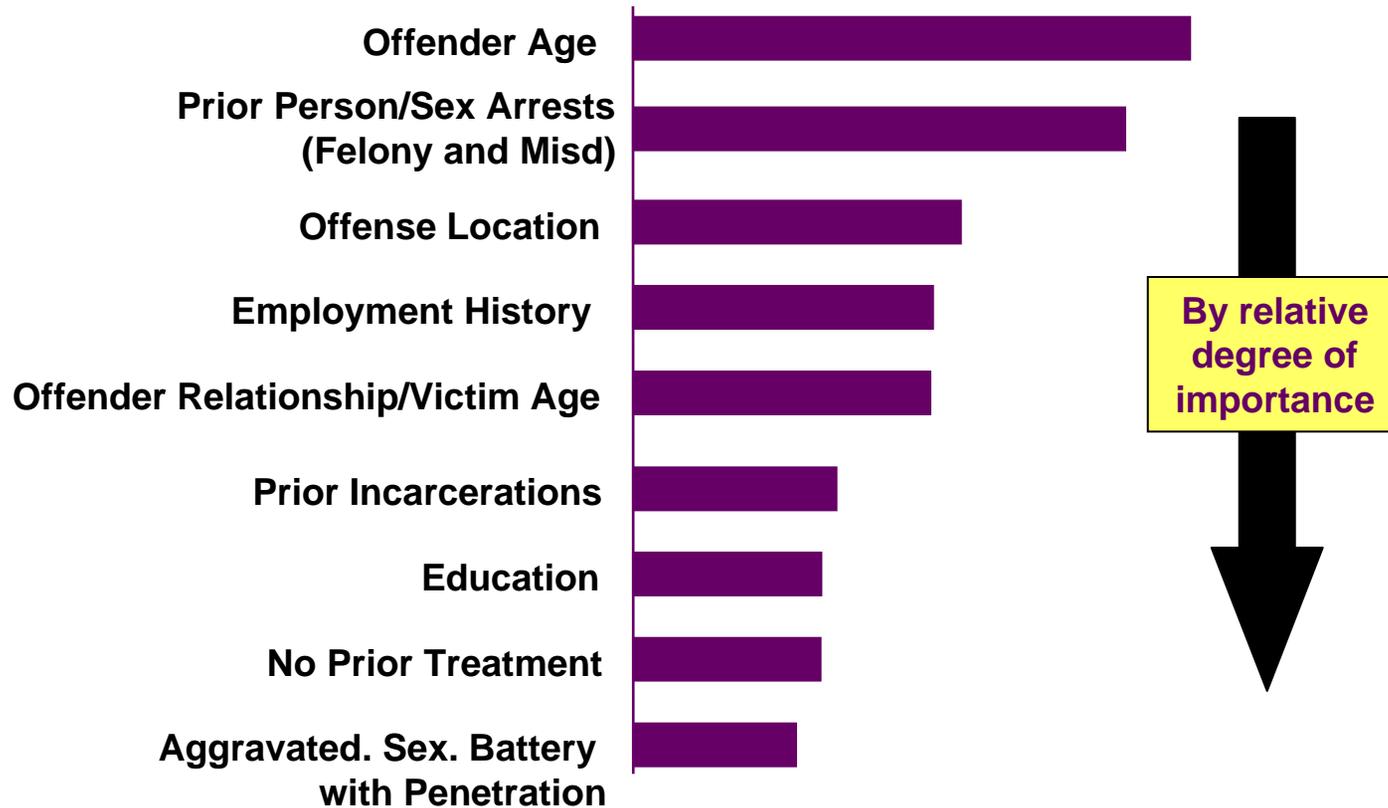
## Sex Offender Risk Assessment

### ❖ 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 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 residence .... 9
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 →

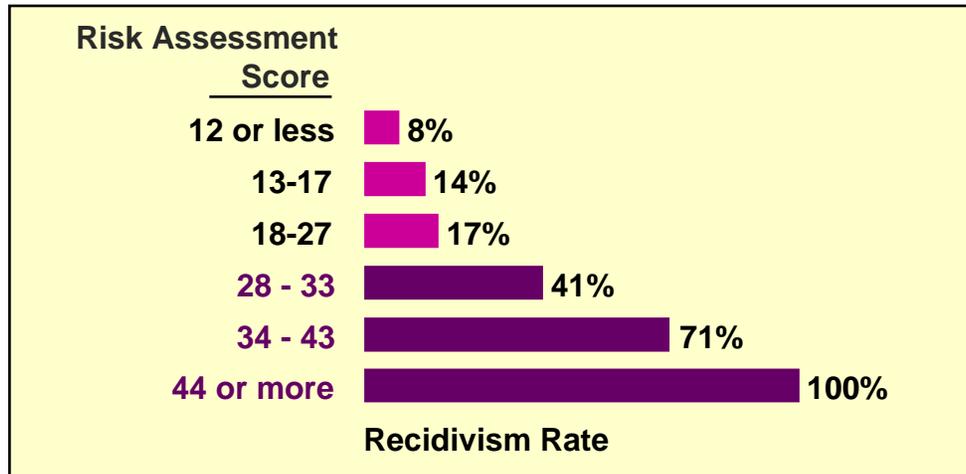
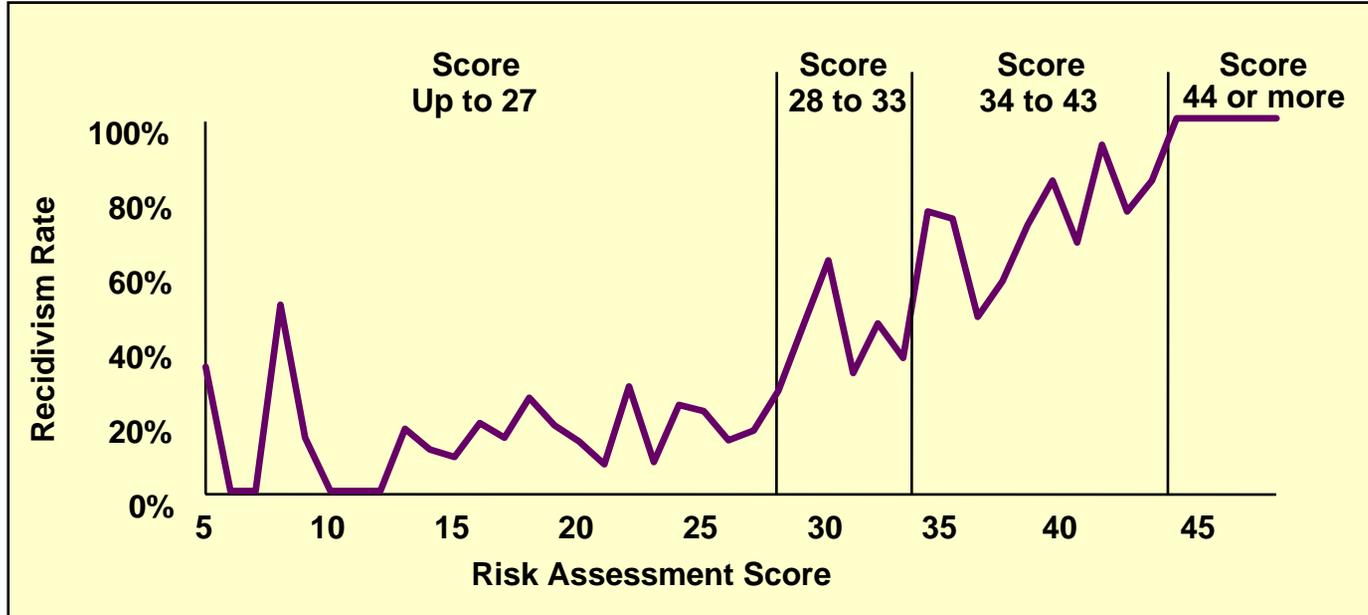
◆ **Prior Treatment** →

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.	No Change	50% Increase	100% Increase	300% Increase
148	12 yr. 4 mo.	6 yr. 10mo.				
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		



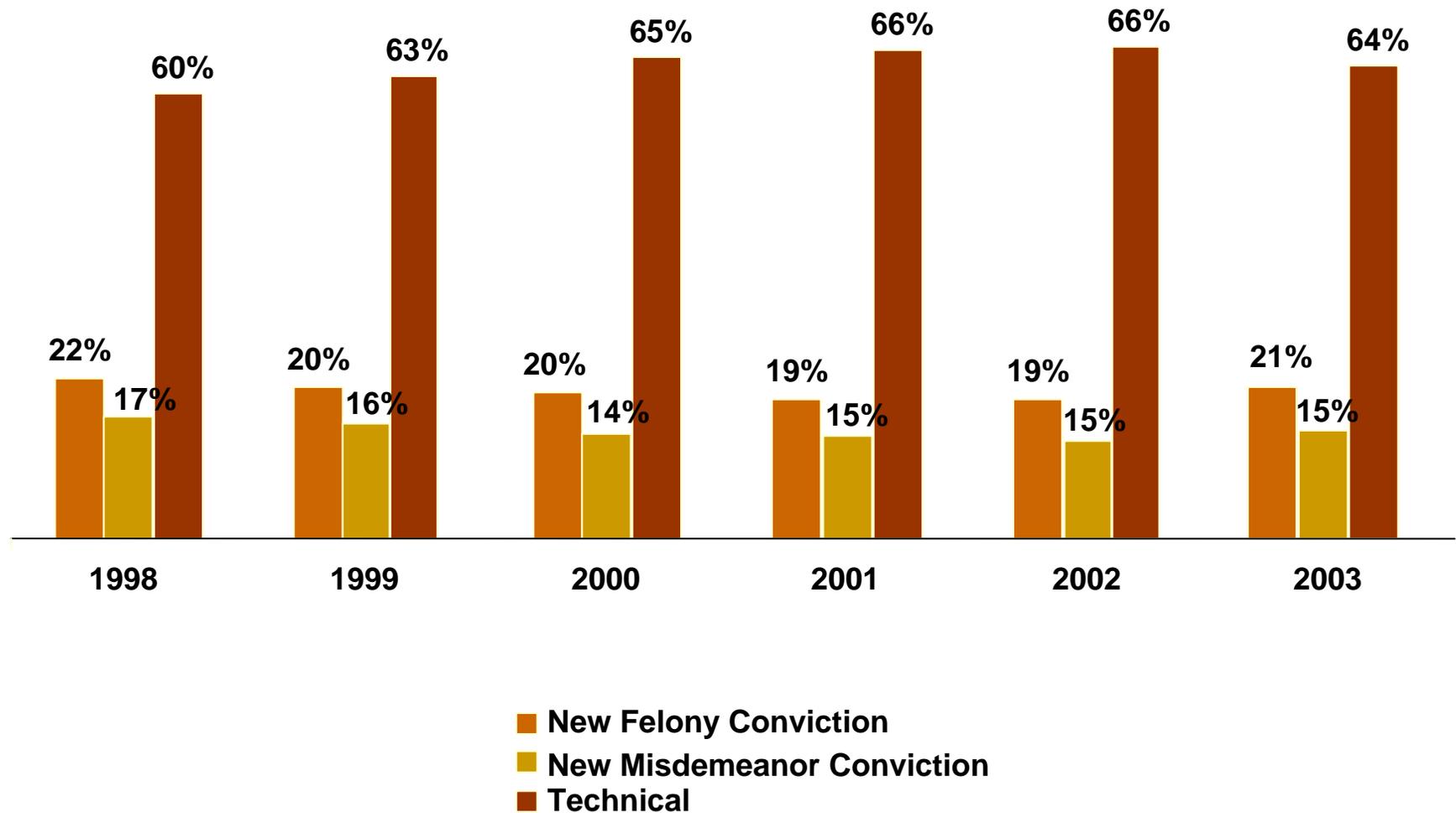
## **Technical Probation Violator Study and Guidelines**

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***Legislative Directive - Budget Language (2003)***

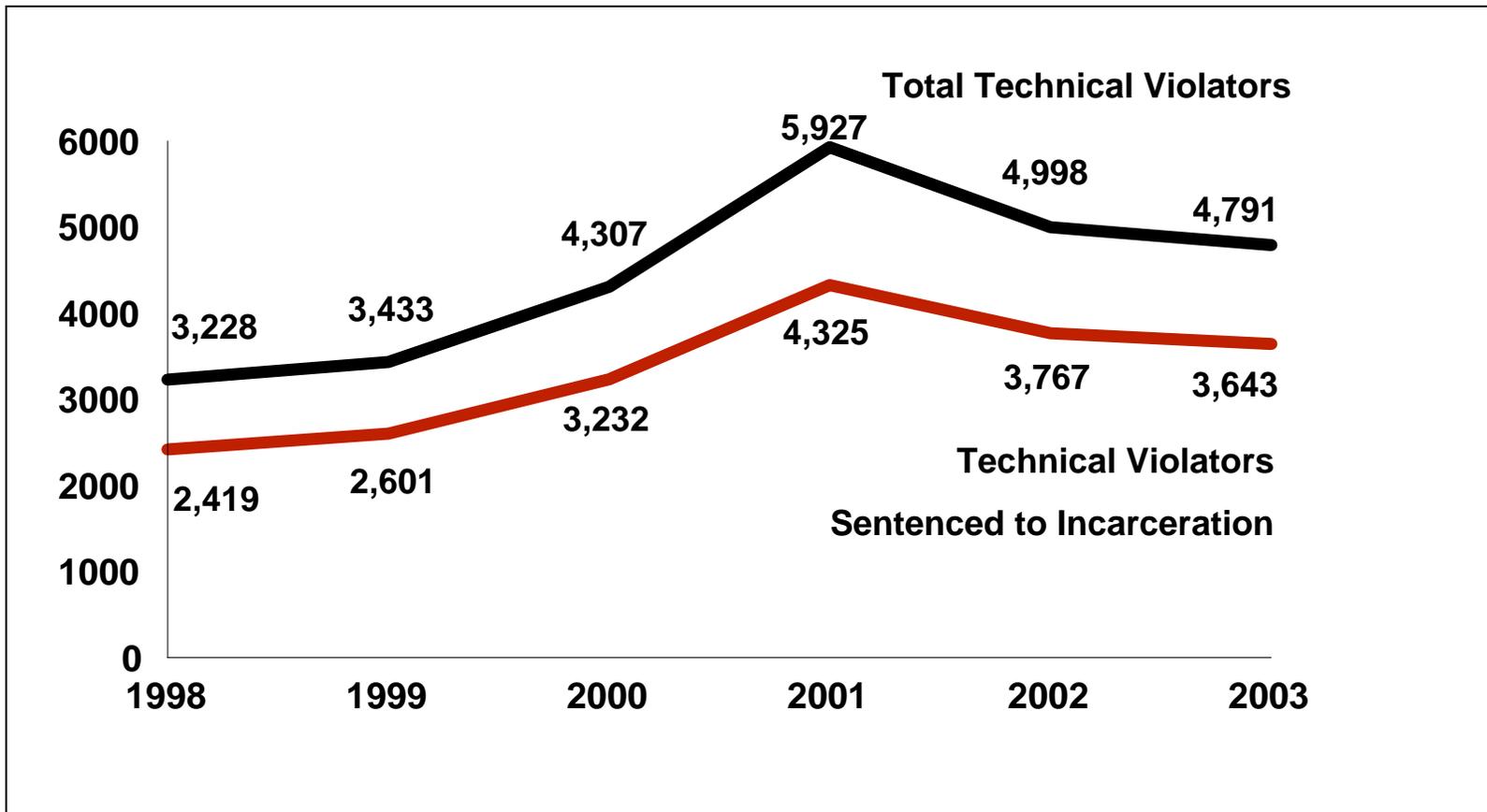
- **The Virginia Criminal Sentencing Commission shall:**
    - **Develop, with due regard for public safety, discretionary sentencing guidelines for probation violators returned to court for reasons other than a new criminal conviction (“technical violators”)**
    - **Determine recidivism rates and 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

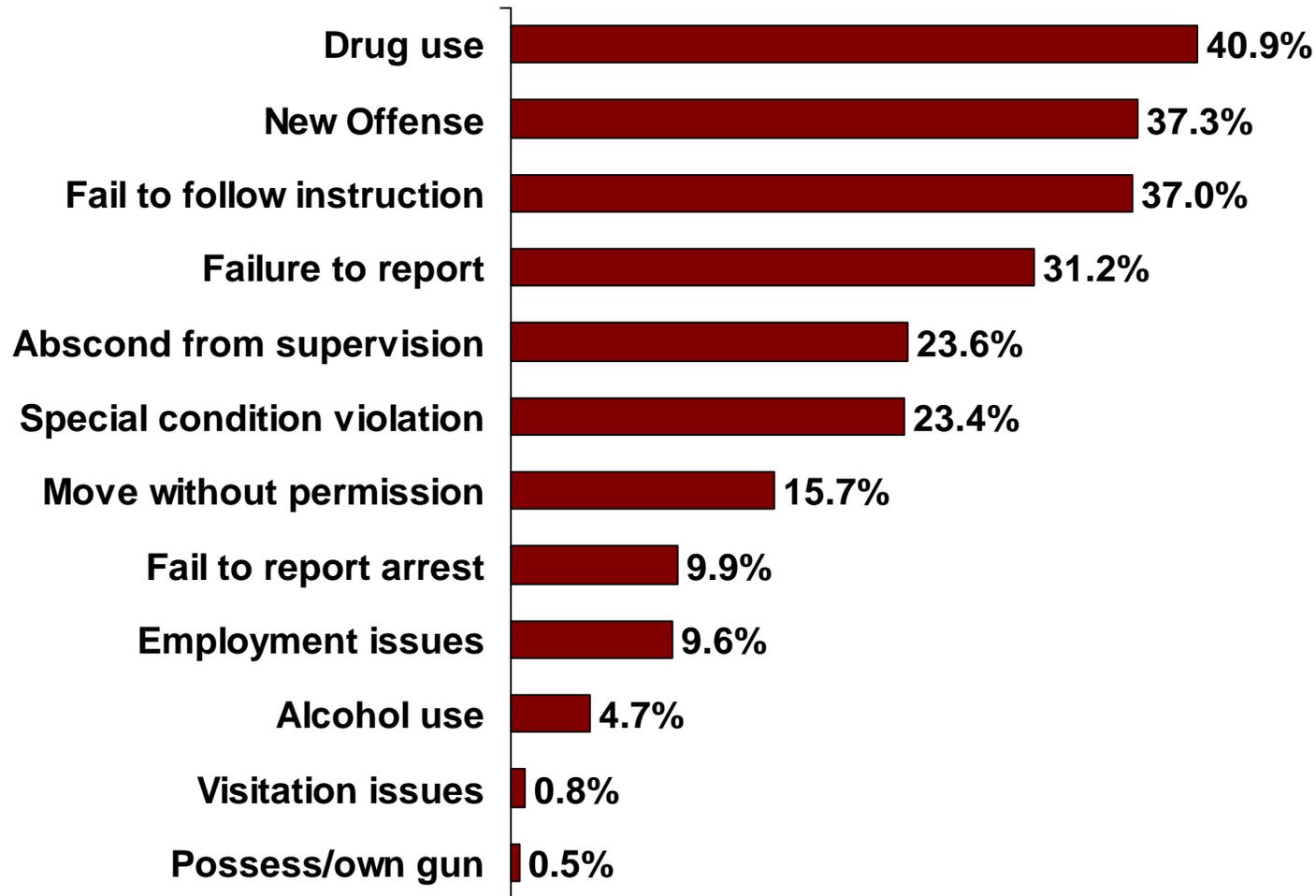


Source: Virginia Criminal Sentencing Commission – Sentencing Revocation Report (SRR) Database, 7/27/2004

## Trend in Felony Sentences Revoked due to Technical Grounds 1998 - 2003



## Specific Reasons for Probation Revocations, 2002-2003

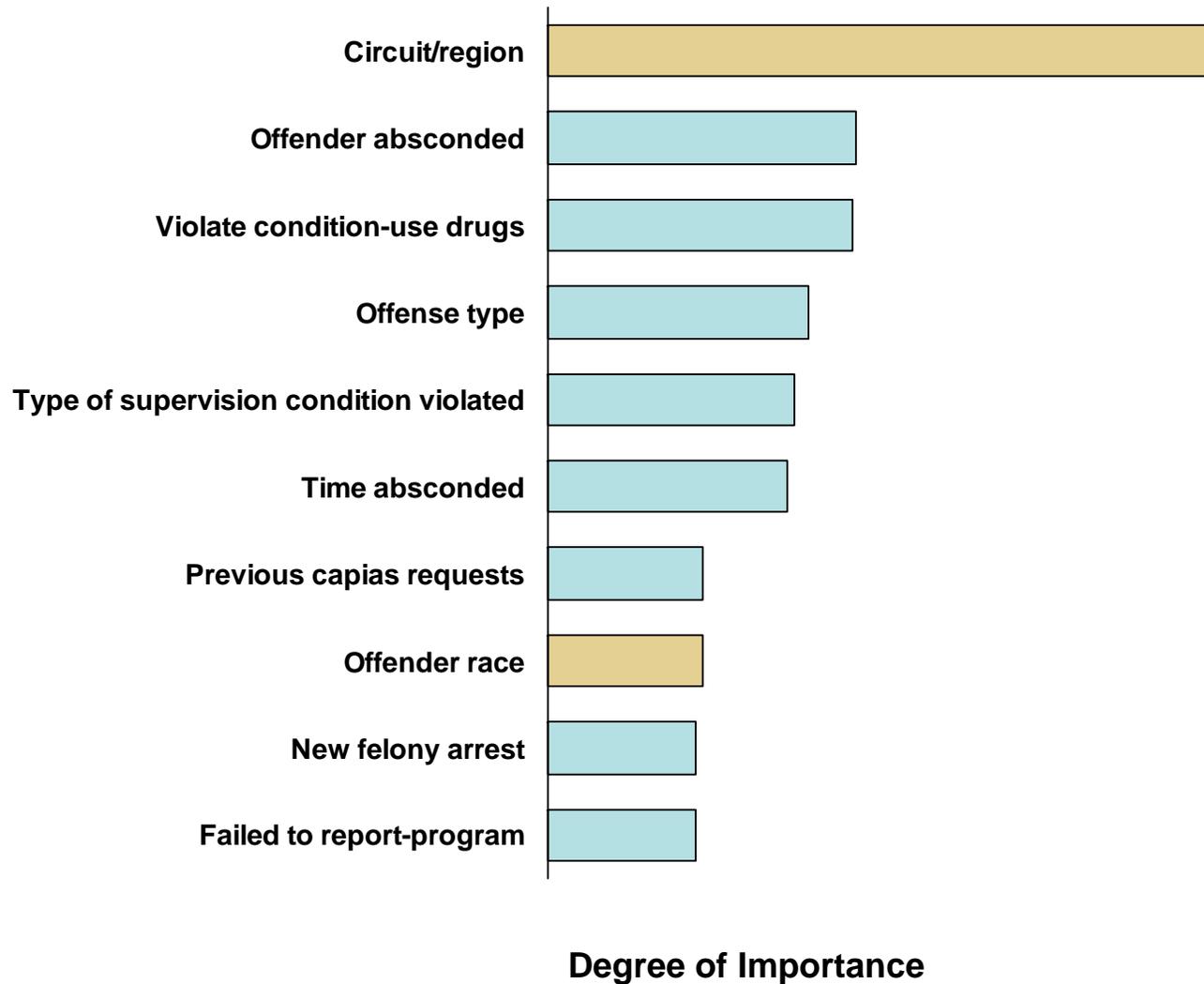


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## ***Probation Violation Sentencing Guidelines***

- **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;"/> 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 →

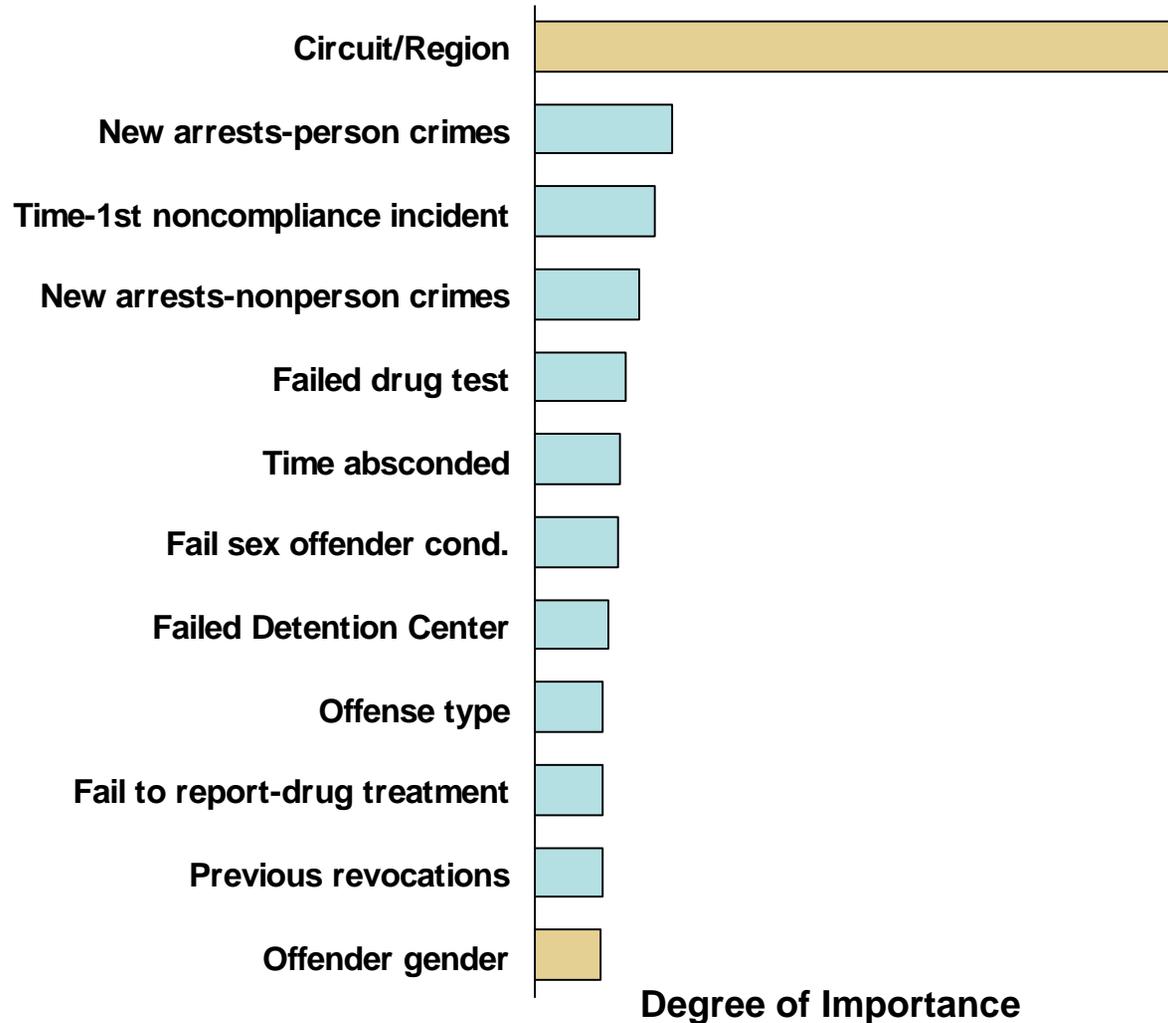
**8** ❖ **Time Absconded** \_\_\_\_\_

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 1<sup>st</sup> 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

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## *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**

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## ***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.**
- **Sentencing Commission reviewed study results in November and made recommendations to General Assembly in its 2004 Annual Report.**

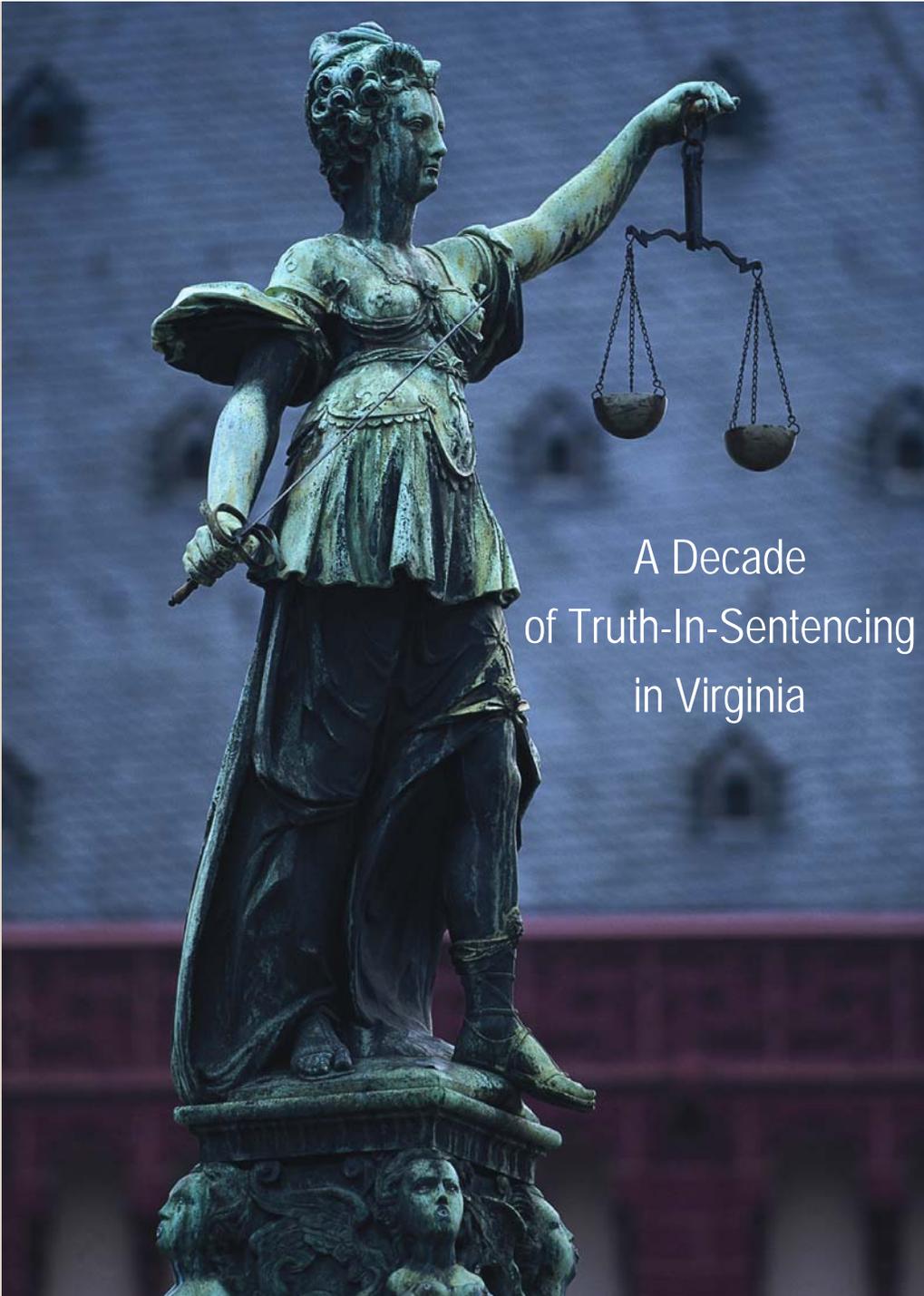
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## Probation Violation Sentencing Guidelines

- ❖ **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 component to be phase in beginning July 1, 2005.**



## Impact of Discretionary Sentencing Guidelines on the Criminal Justice System



A Decade  
of Truth-In-Sentencing  
in Virginia

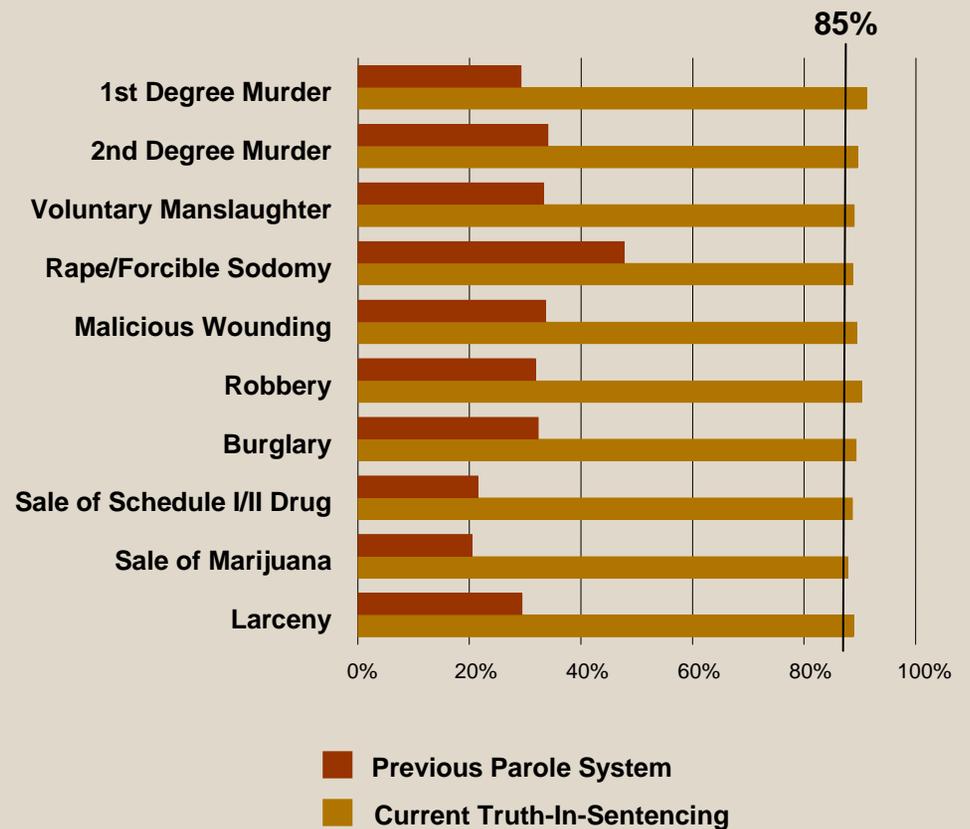


A decade ago, Virginia abolished parole and adopted truth-in-sentencing for convicted felons. Over 200,000 criminals have been punished under no-parole laws. At this milestone, a close look is taken at the performance of our sentencing system.

# 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



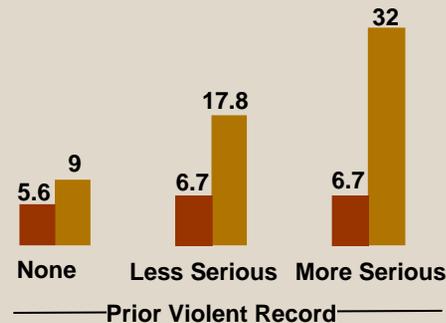
# 2

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

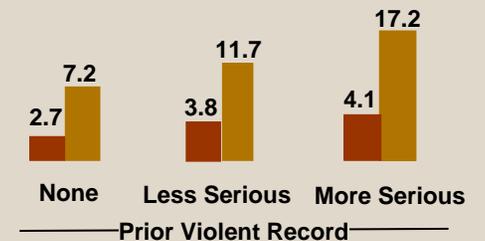
To better ensure public safety, sentence reform targeted violent offenders for longer prison terms. The truth-in-sentencing guidelines were carefully crafted with enhancements designed to yield longer sentencing recommendations for offenders with current or prior convictions for violent crimes. Today, 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

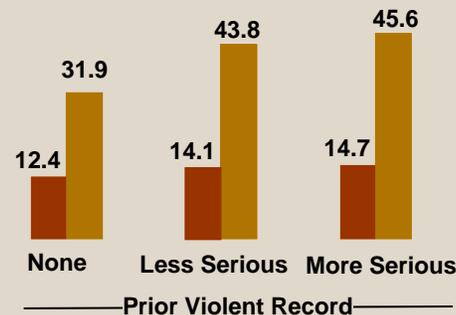
#### Forcible Rape



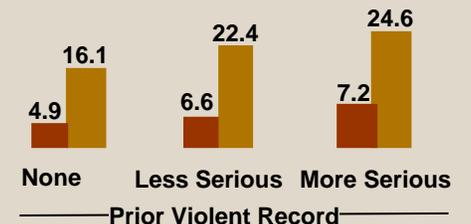
#### Robbery with Firearm



#### First-Degree Murder



#### Second-Degree Murder



■ Parole System

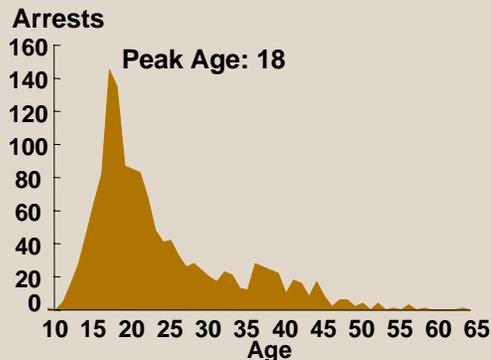
■ Truth-In-Sentencing (Projected)

# 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



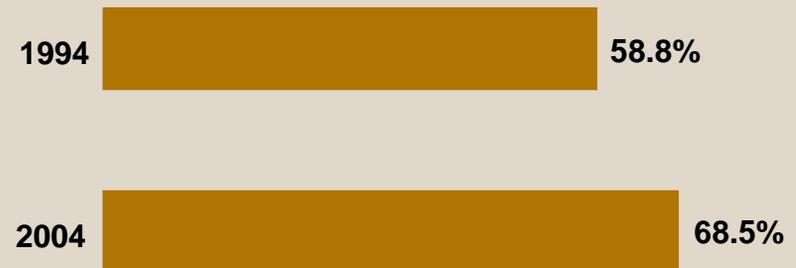
**Violent Recidivism Down**

# 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

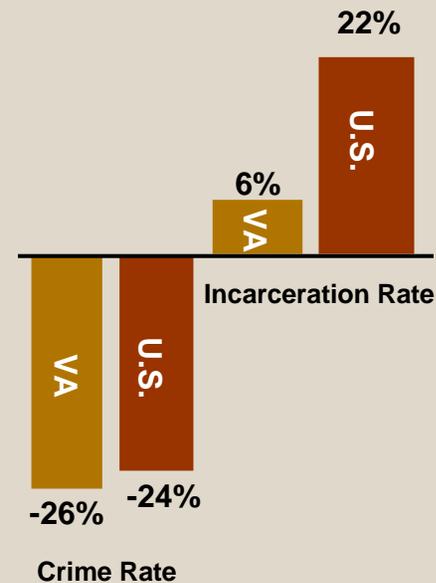


# 5

**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.

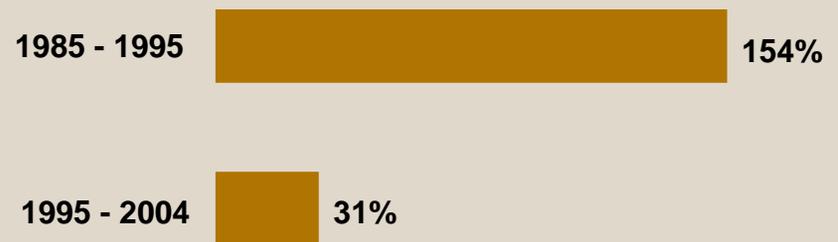
**Change in Crime and Incarceration Rates, 1994 to 2000 – Virginia v. U.S.**



# 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.

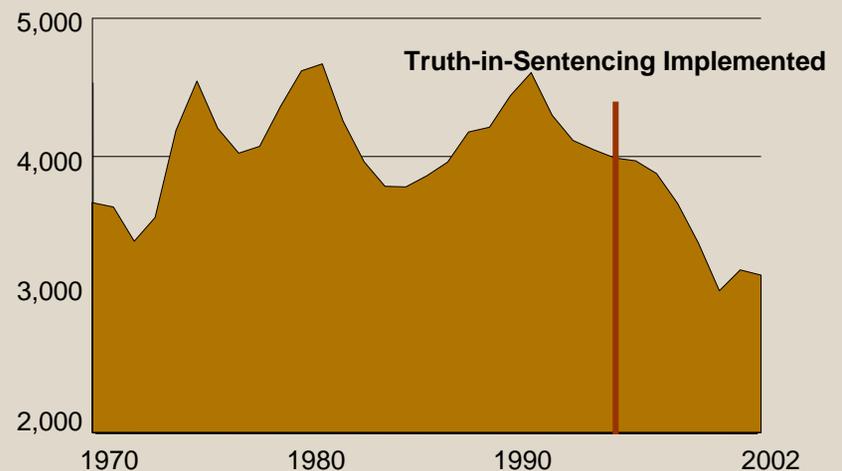
Prison Population Growth



# 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



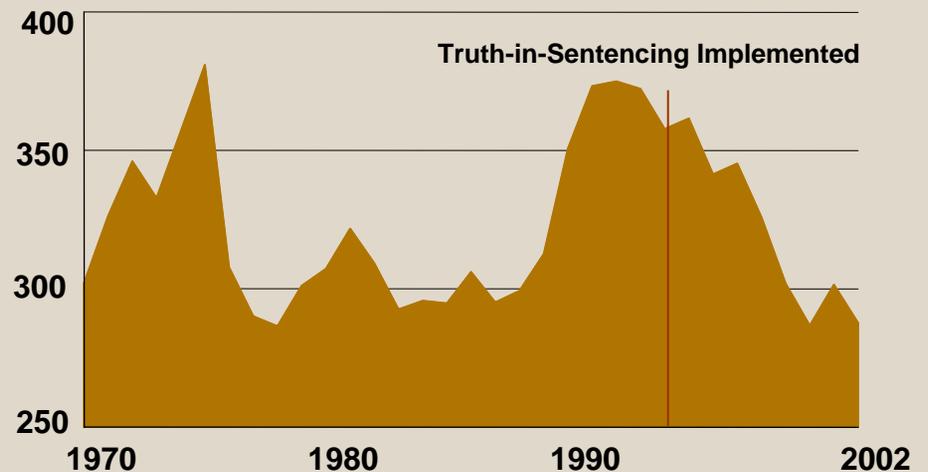
Lower Overall Crime Rate

# 8

## 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.

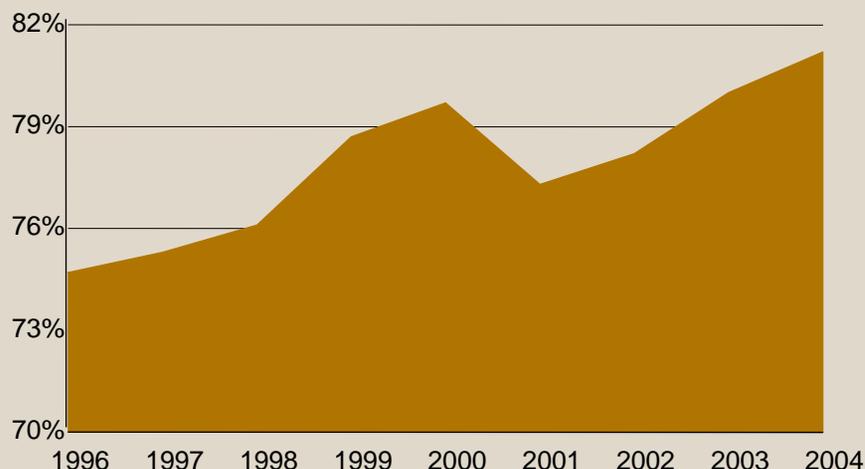
Violent Crime per 100,000 Residents



## 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

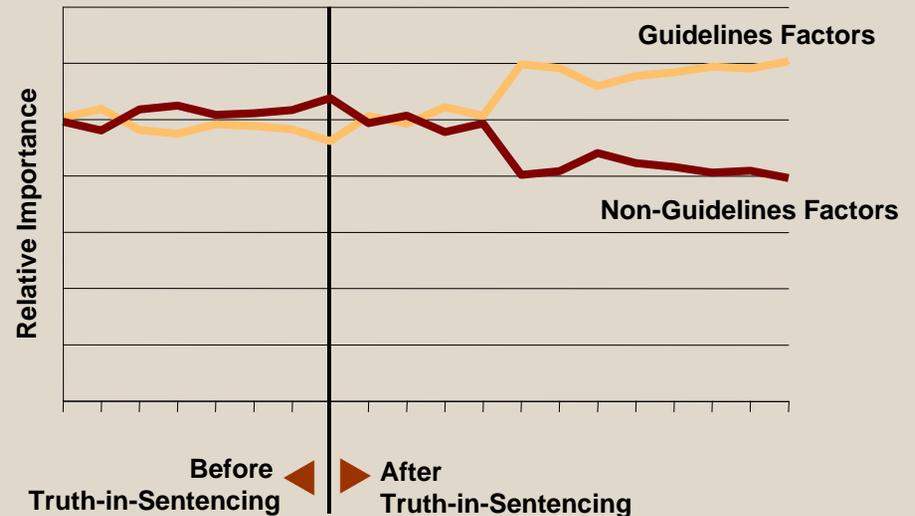


# 10

## 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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