

Overview of Virginia's Truth-in-Sentencing System

Richard P. Kern, Ph.D., Director
Meredith Farrar-Owens, Deputy Director
Virginia Criminal Sentencing Commission

Virginia Criminal Sentencing Commission

**Appointed by the Chief Justice of the Supreme Court
and Confirmed by the General Assembly**
Judge F. Bruce Bach, Chairman, Fairfax County

Appointments by the Chief Justice of the Supreme Court

Judge Robert J. Humphreys, Vice Chair, Virginia Beach
Judge Joanne F. Alper, Arlington
Judge Junius P. Fulton, Norfolk
Judge Lee A. Harris, Jr., Henrico
Judge Dennis L. Hupp, Woodstock
Judge Larry B. Kirksey, Bristol

Attorney General

The Honorable Bill Mims
(Martin L. Kent, Attorney General's Representative)

Senate Appointments

Eric J. Finkbeiner, Richmond
Senator Henry L. Marsh, III, Richmond

House of Delegates Appointments

The Honorable Linda D. Curtis, Hampton
Delegate C. Todd Gilbert, Woodstock
Esther J. Windmueller, Richmond

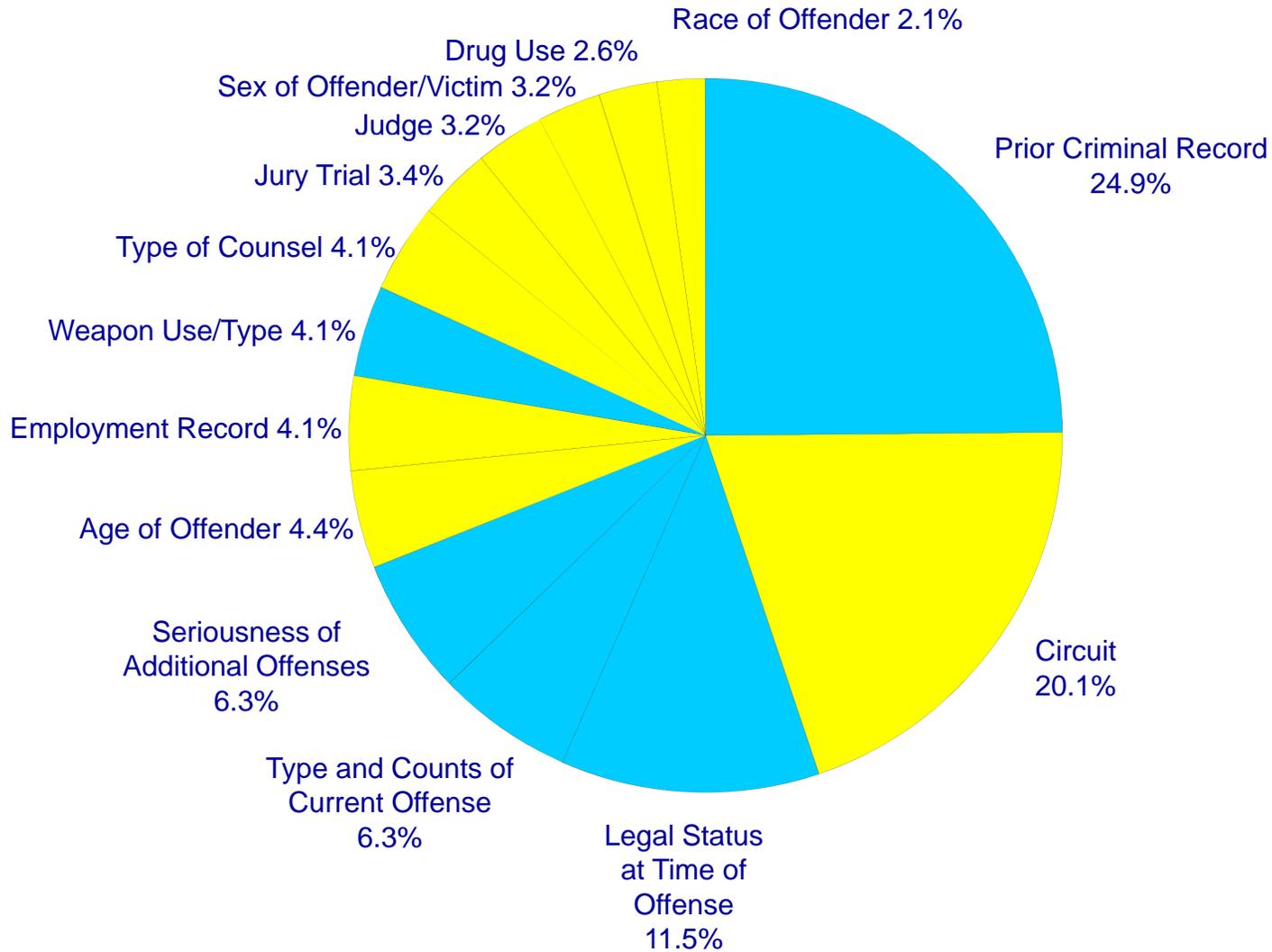
Governor's Appointments

Francine L. Horne, Richmond
Robert C. Hagan, Jr., Daleville
Andrew M. Sacks, Norfolk
Judge John R. Doyle, III, Norfolk

Methodology to Create Historically Grounded Sentencing Guidelines

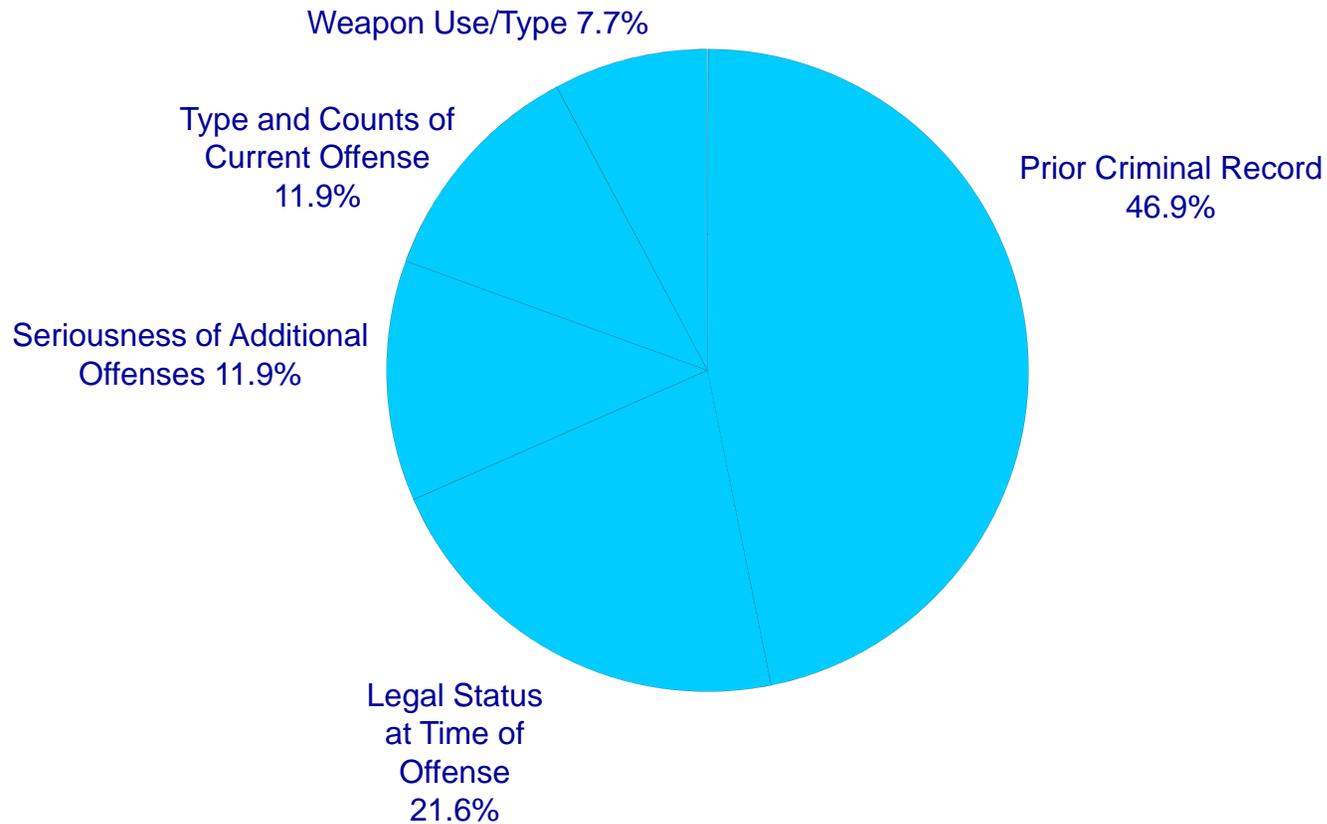
- **Analyze historical data to identify all significant factors that influenced past sentencing decisions**
- **Identify inappropriate factors to eliminate their influence on future sentencing decisions**
- **Create sentencing guidelines forms that feature remaining significant factors and their relative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

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

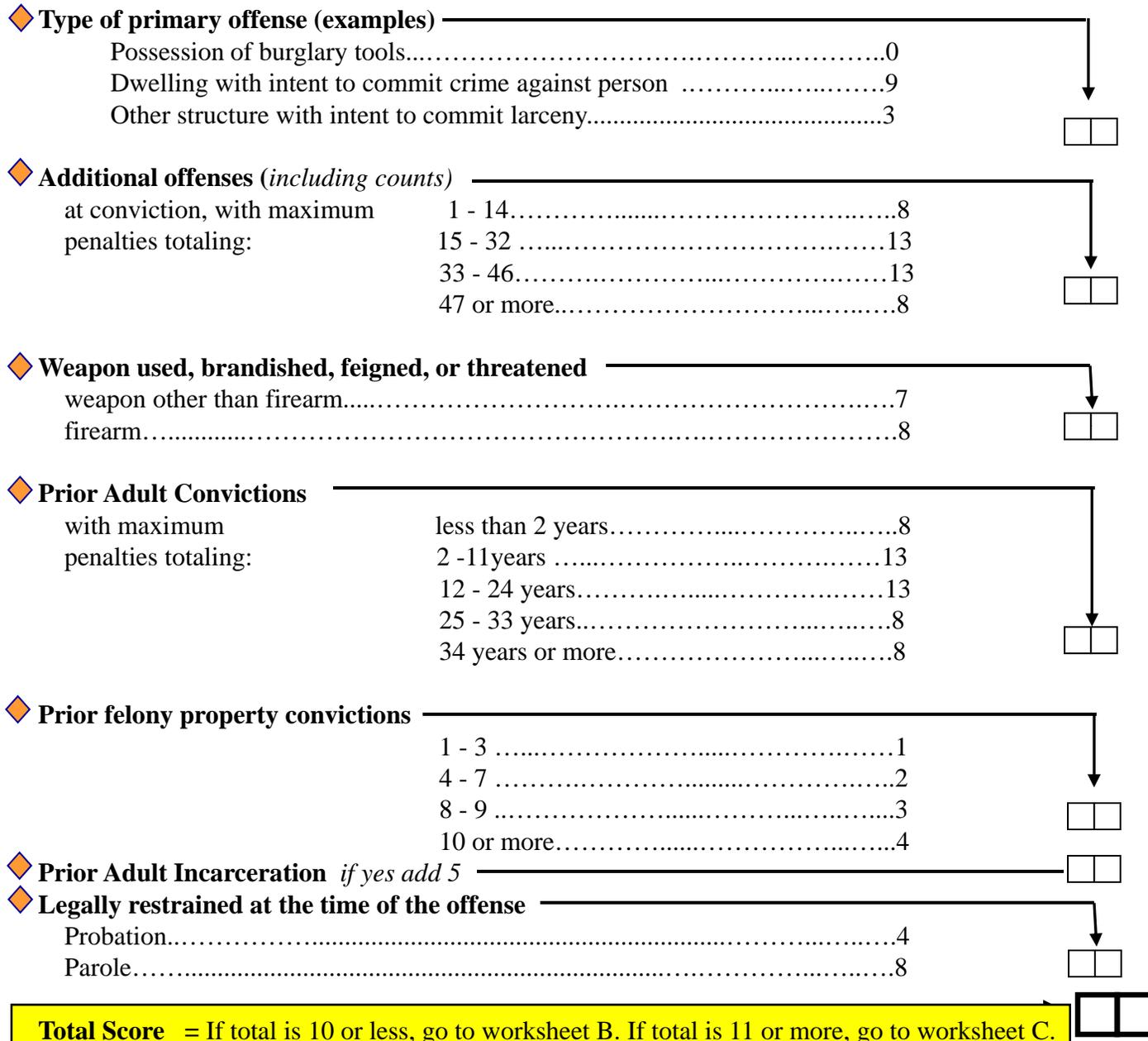


Guidelines factors shaded in blue

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



Burglary – Prison In/Out Decision



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

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

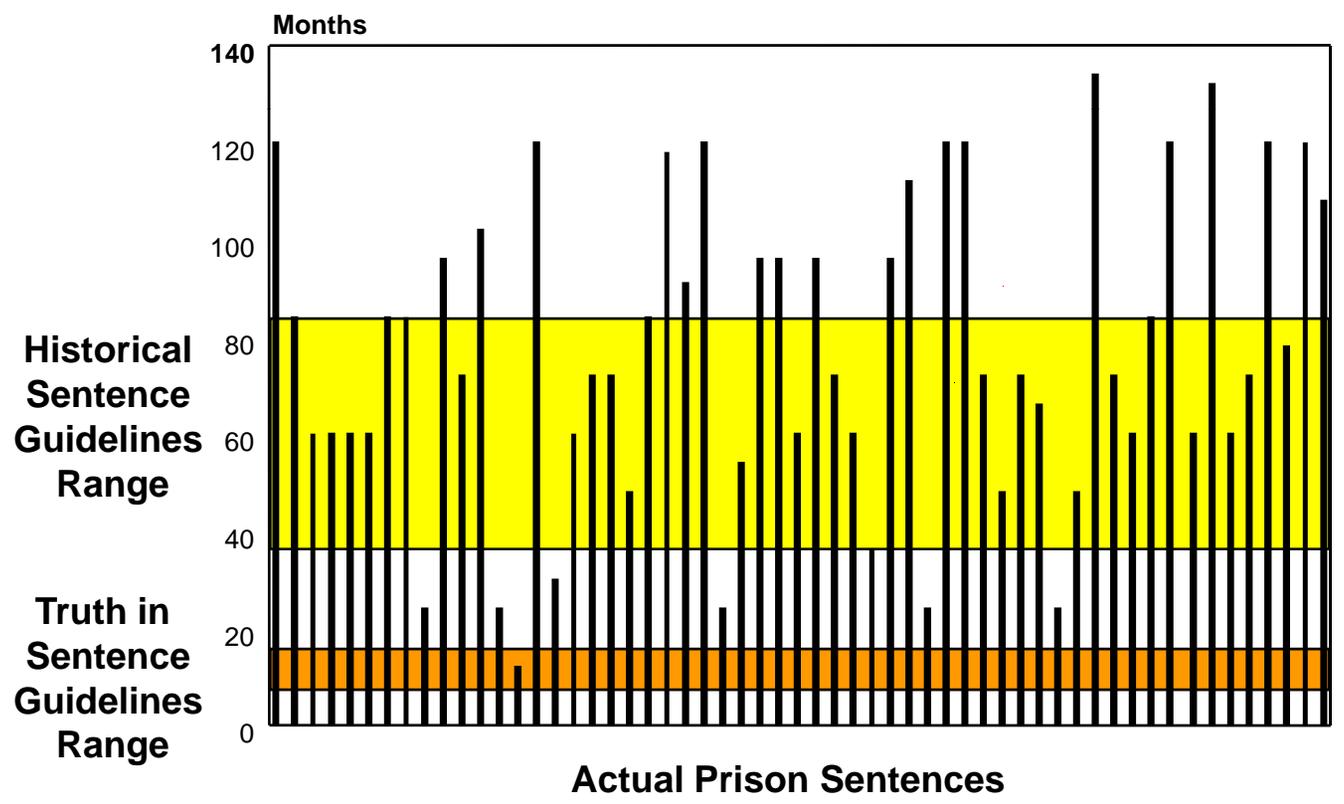
Methodology to create historical grounded sentencing guidelines

- Initial sentencing guidelines incarceration range
 - Starts with historical **time served**
 - Uses 1988-1992 time served distribution for similarly situated offenders
 - 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*

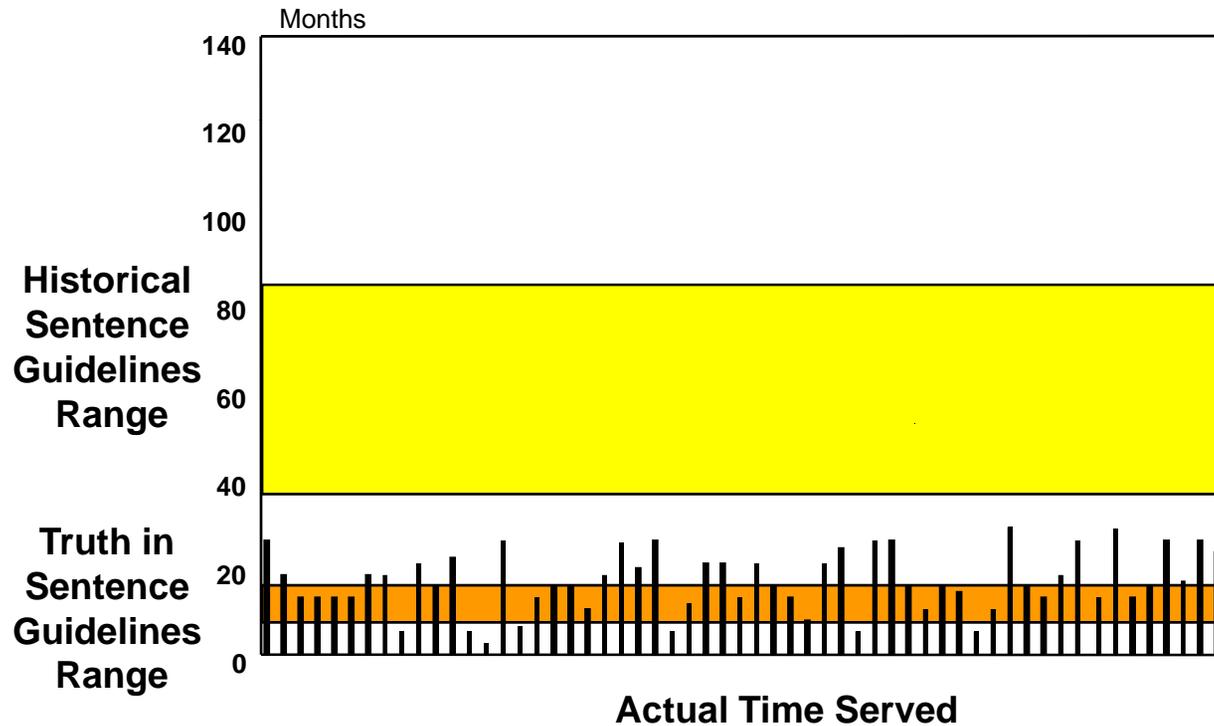
*Sale Schedule I/II Drugs for Profit
No Prior Record*



Sentencing Reform

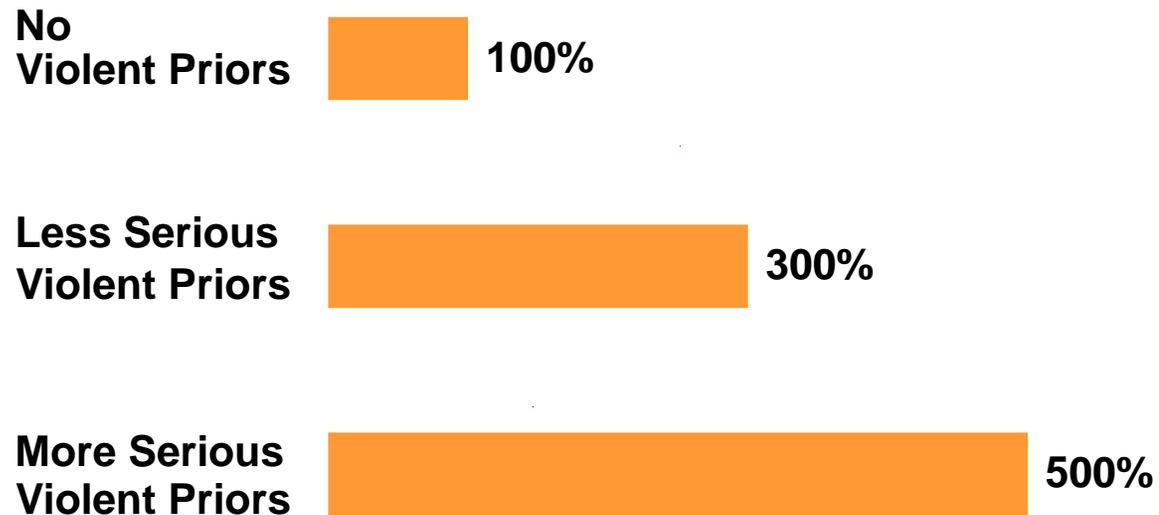
*Comparison of Sentencing Guidelines Recommendation
Based on Actual Time Served and Those Based on New Legislation*

*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:

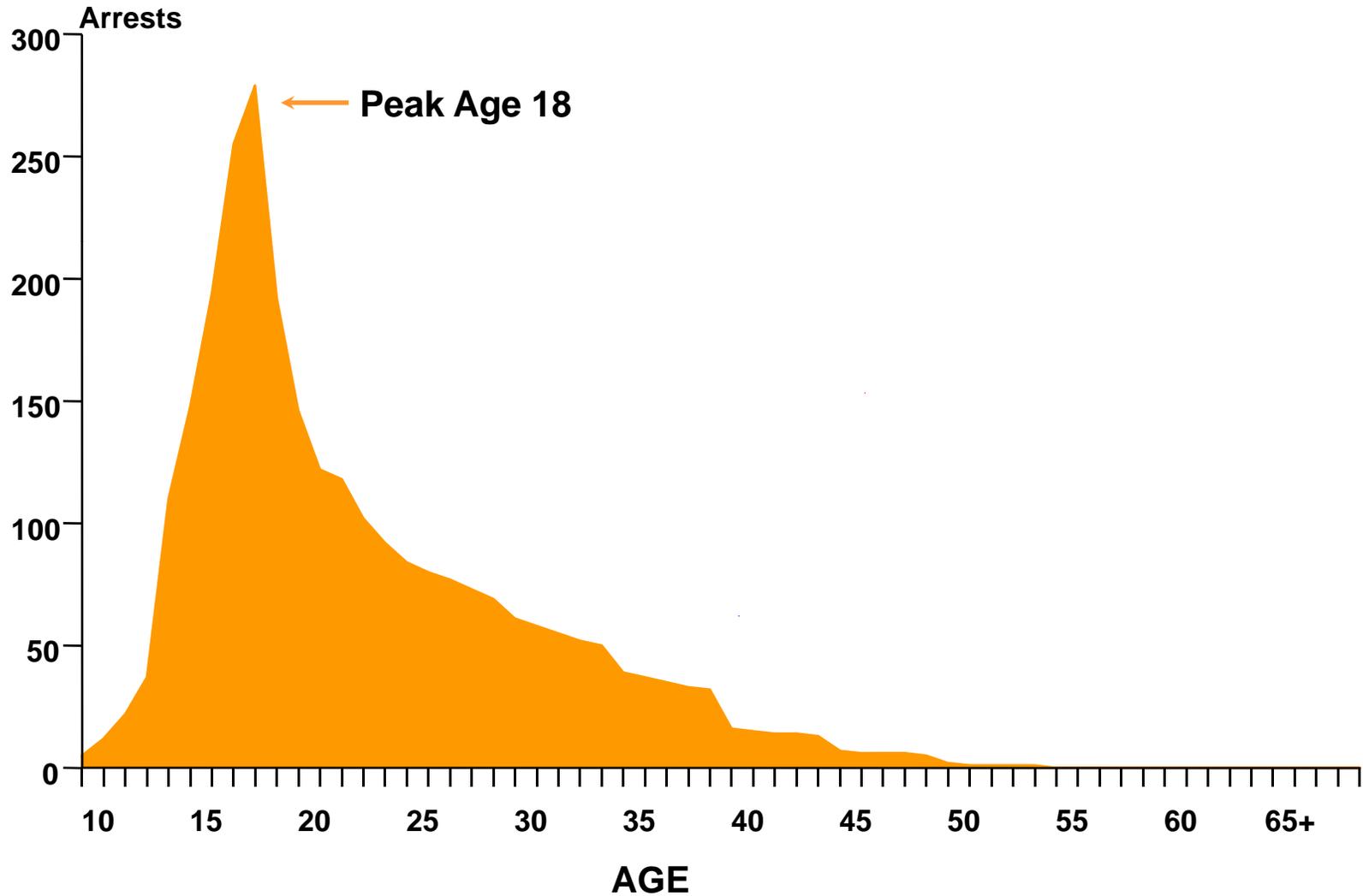


Sentencing Reform – Features

- ❖ **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**

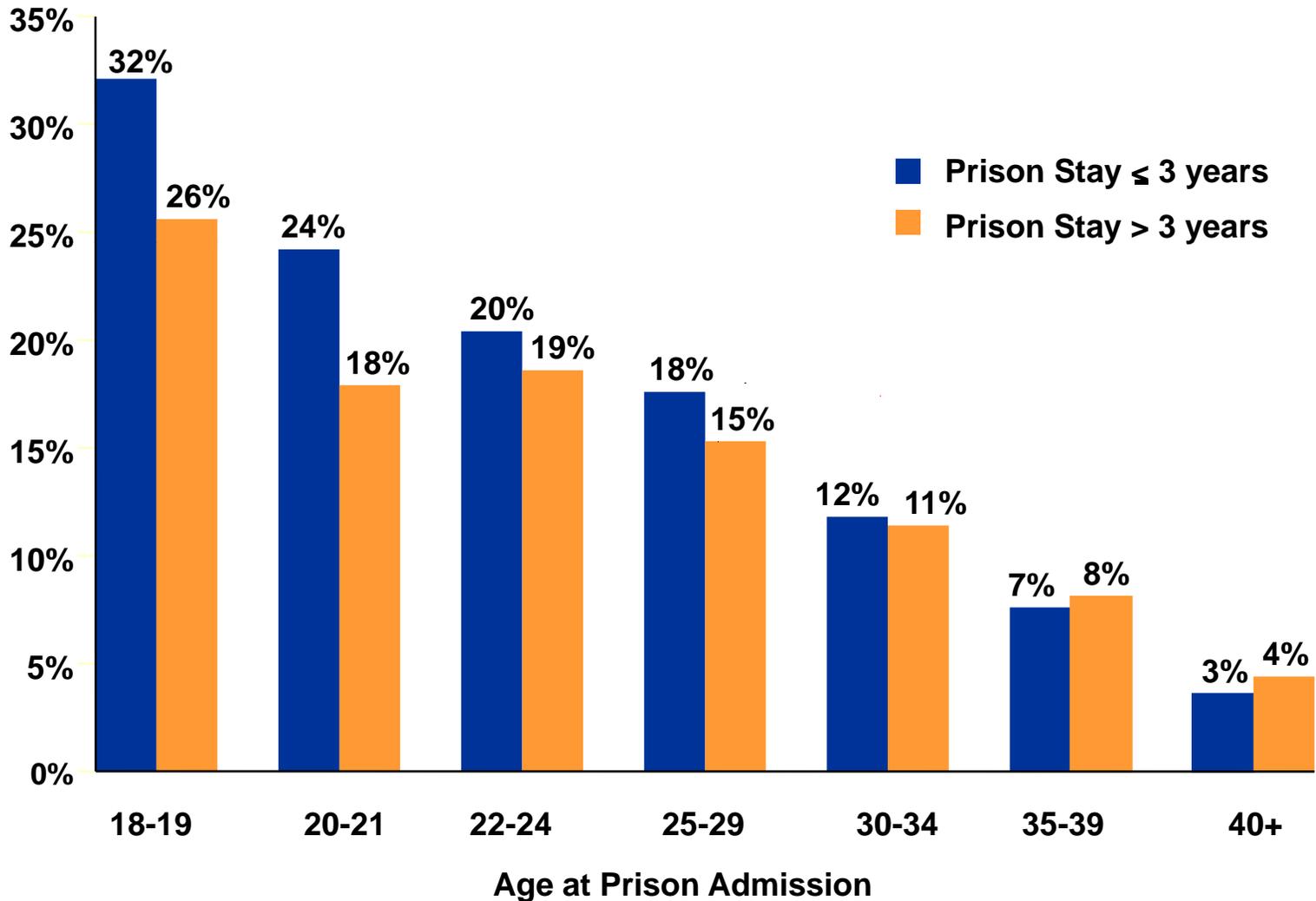
Sentencing Reform

Age Distribution for Robbery Arrests in Virginia



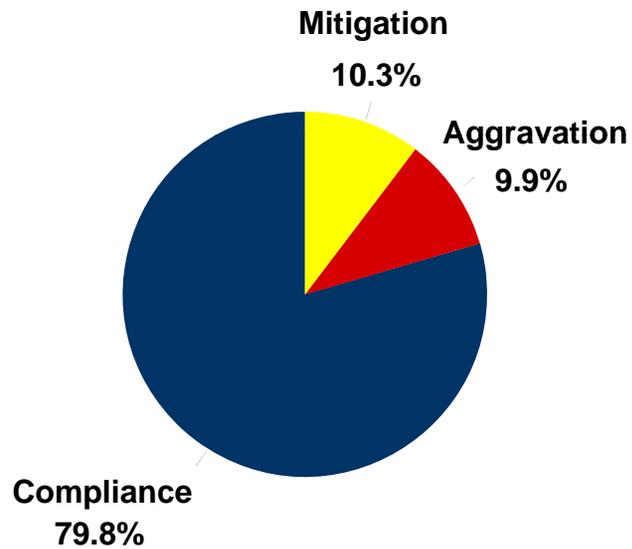
Sentencing Reform

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

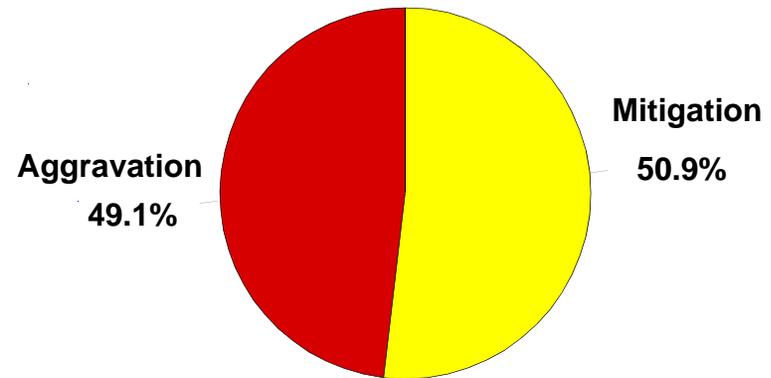


Sentencing Guidelines Compliance

Overall Compliance

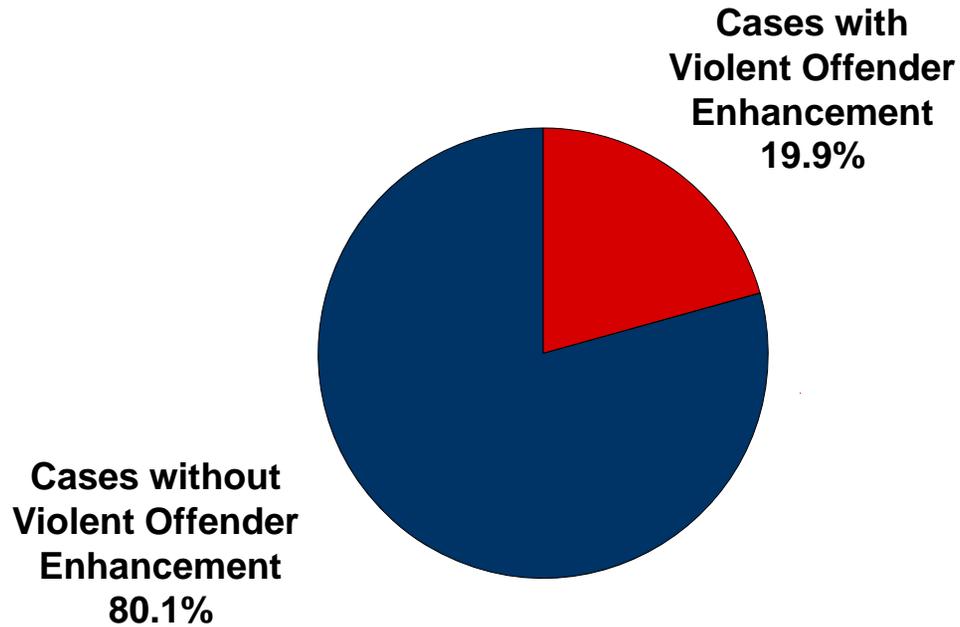


Directions of Departures



FY2008
Number of Cases = 26,418

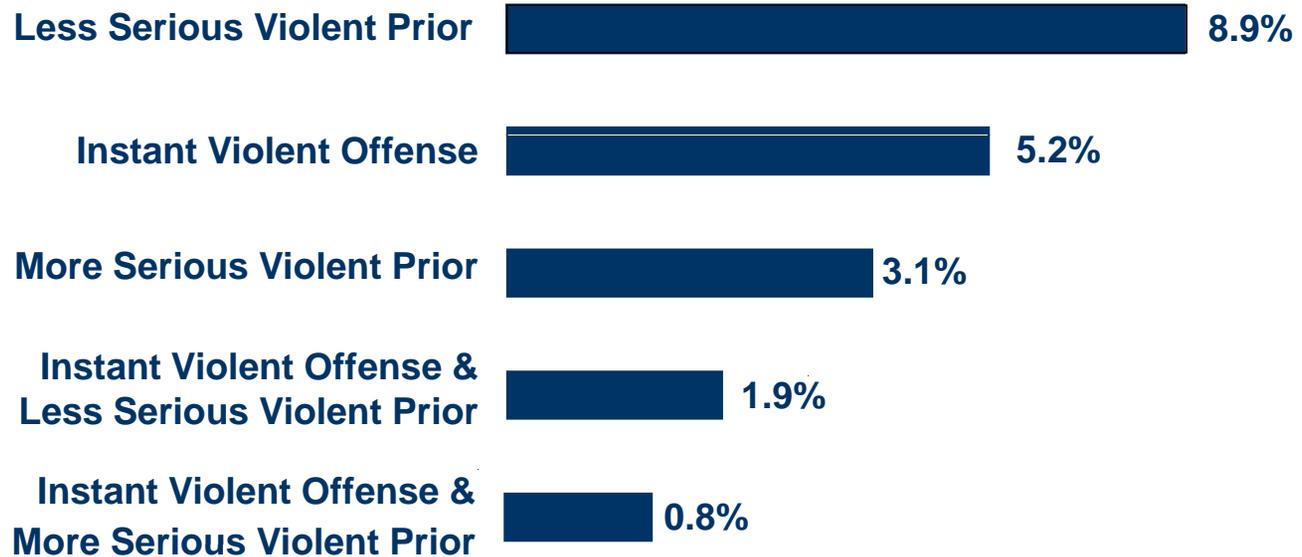
Percentage of Sentencing Guidelines Violent Offender Enhancement Cases (as defined by § 17.1-805)



FY2008

Number of Cases = 26,418

Type of Sentencing Guidelines Violent Offender Enhancements (as defined by § 17.1-805)



FY2008

Number of Cases = 5,249

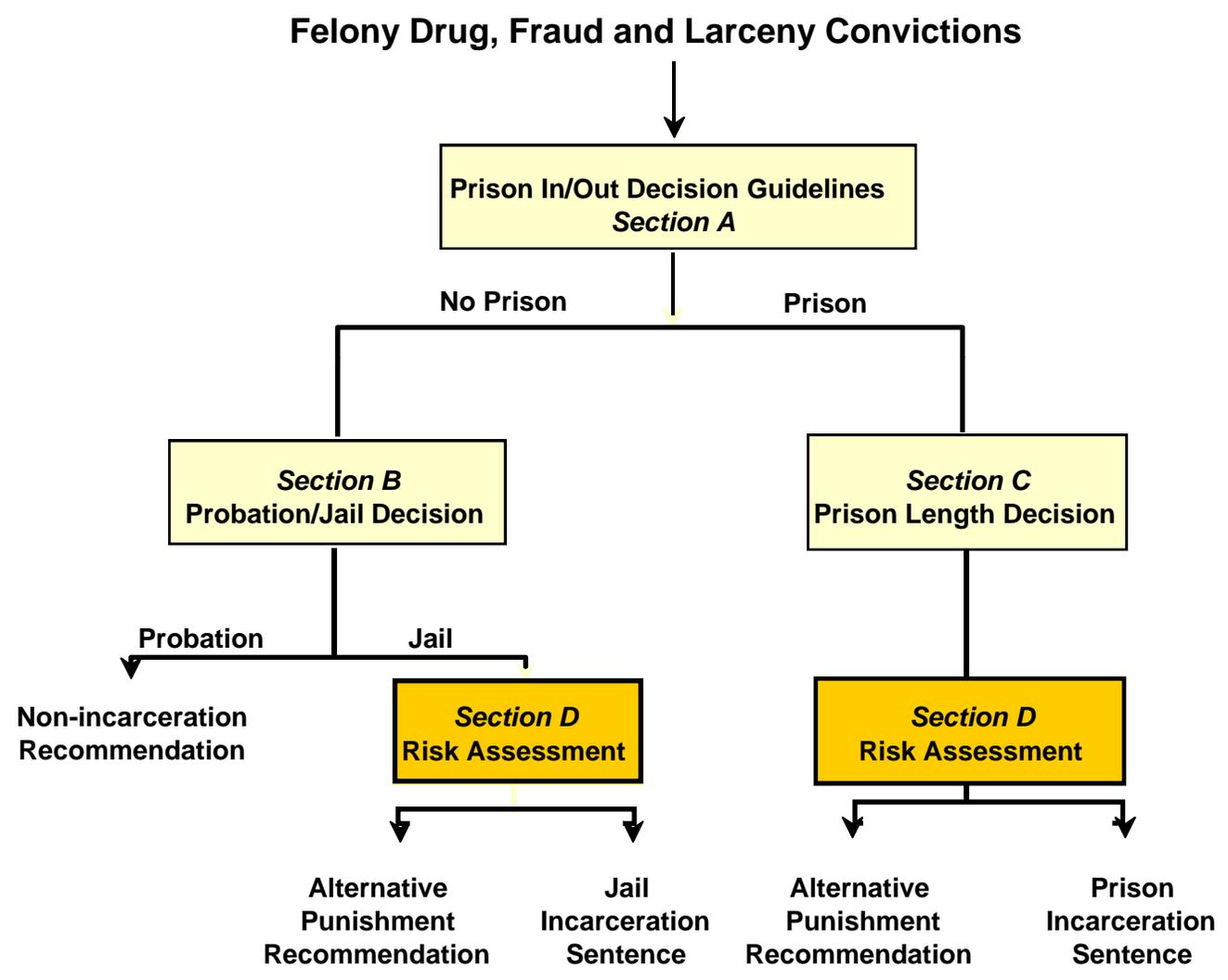


Integration of Offender Recidivism Risk Assessment into Virginia Sentencing Guidelines

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***

Non-Violent Risk Assessment



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**

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

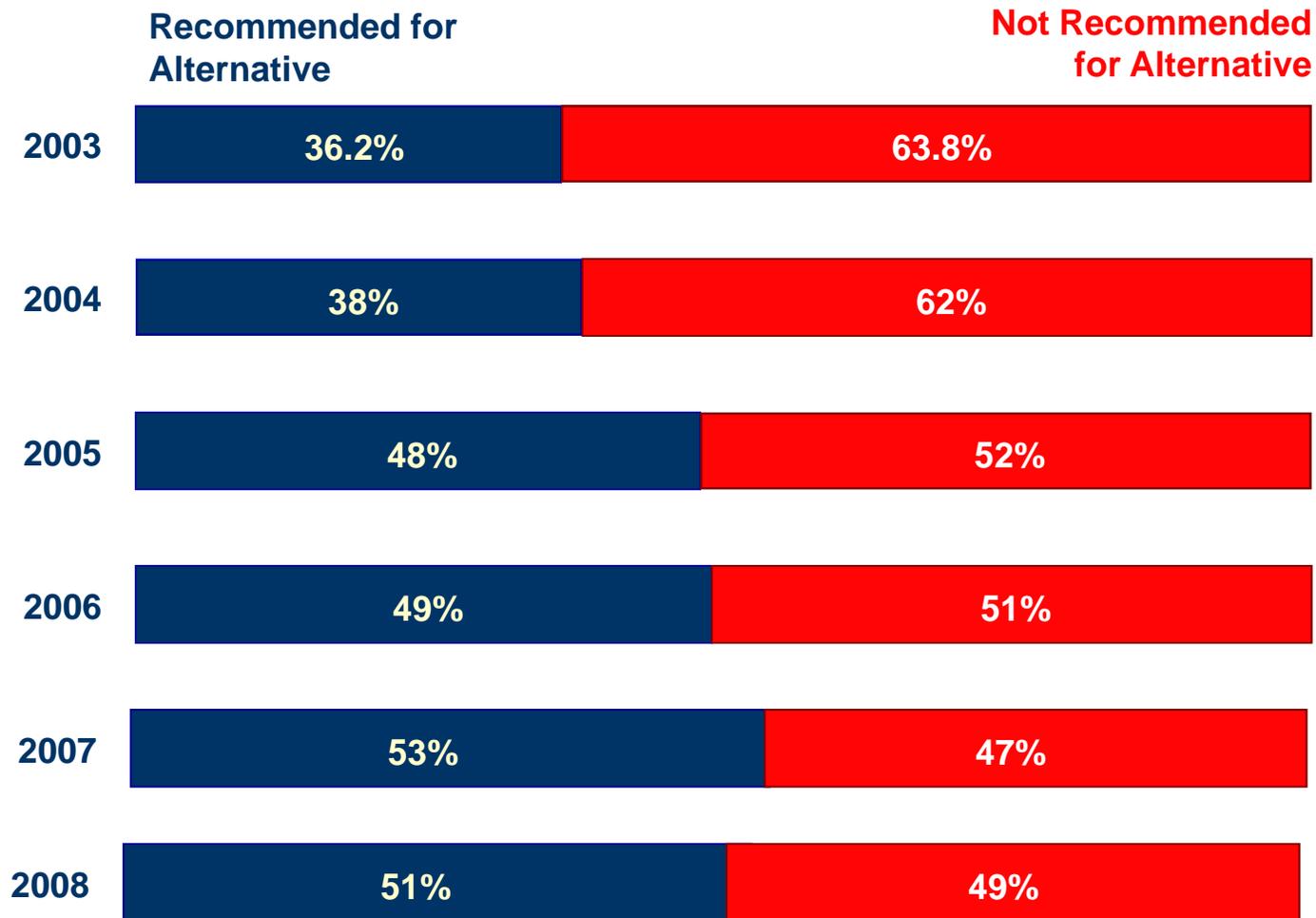
	Score	Percent of Offenders	Reconviction Rate for offenders scoring at or below point value
Old Risk Assessment Threshold →	35	2.5%	12.4%
	36	2.7%	13.9%
	37	2.2%	13.4%
New Risk Assessment Threshold →	38	2.7%	13.6%
	39	5.4%	16.0%
	40	3.0%	18.8%
	More than 40	58.7%	

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

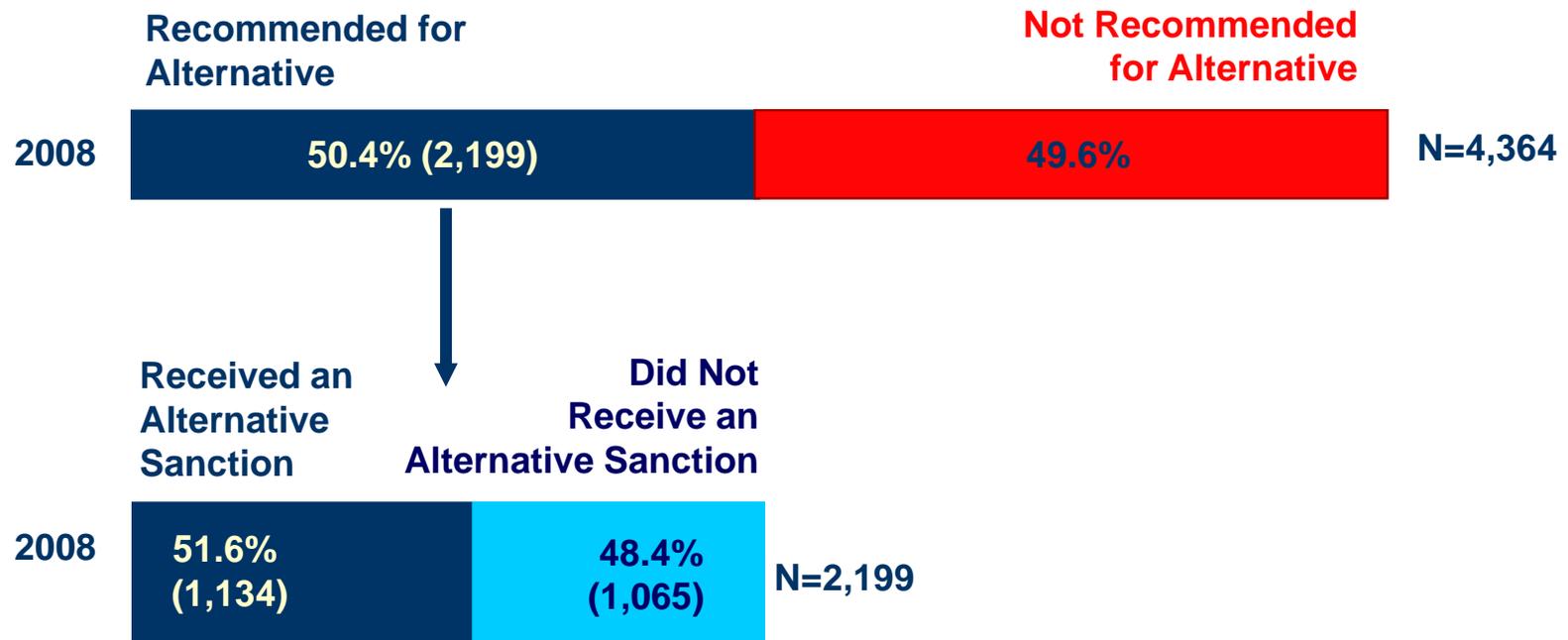
Nonviolent Offender Risk Instrument – Examining the Score Threshold

- **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.**

Virginia Nonviolent Offender Risk Assessment (as applied to those recommended for jail or prison incarceration)



Virginia Nonviolent Offender Risk Assessment (as applied to those recommended for **prison** incarceration)*

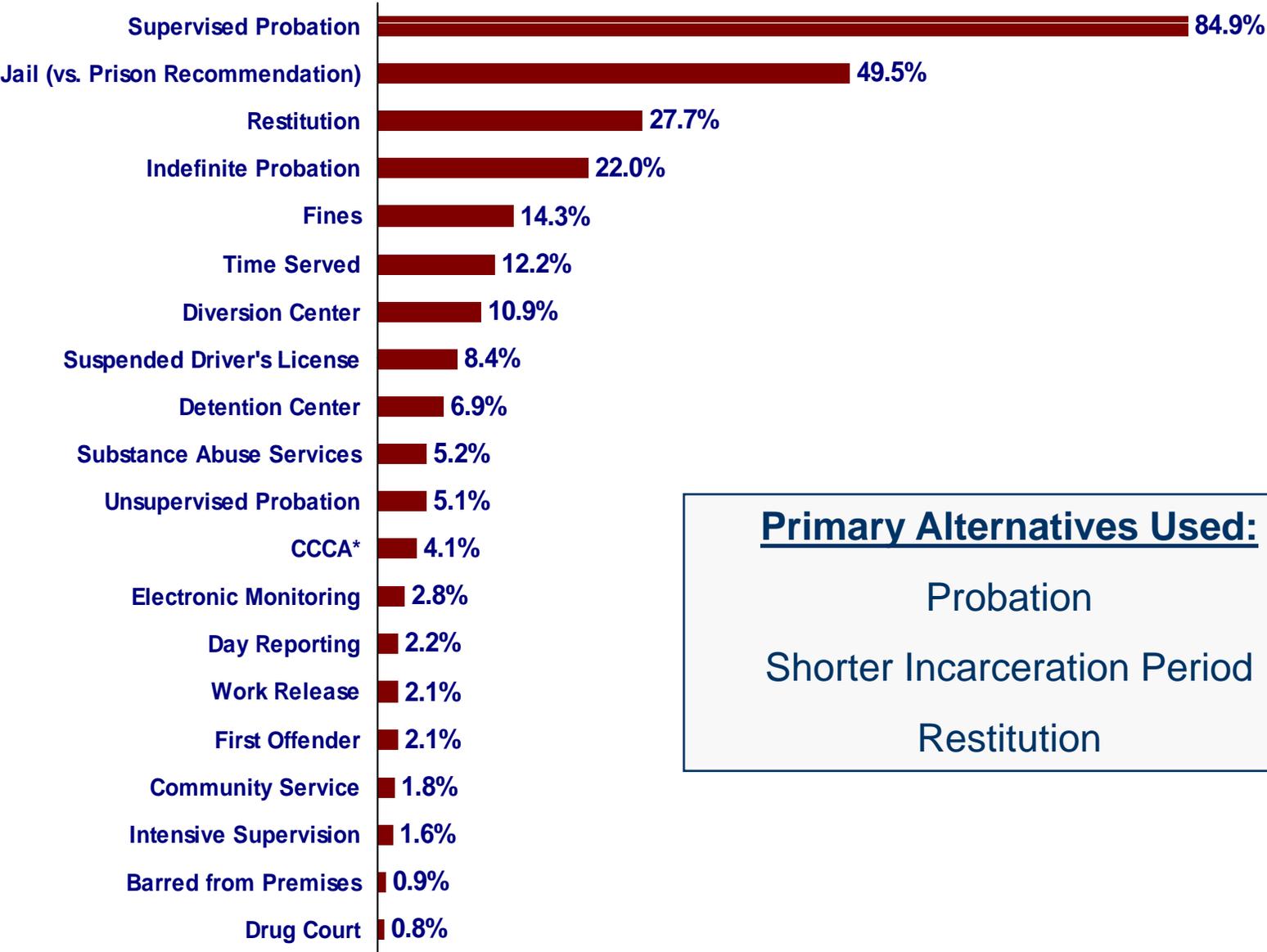


*Sentencing guidelines recommendation is for incarceration with a midpoint of one year or more.

Sentencing Guidelines Compliance Rates for Nonviolent Offenders Screened with Risk Assessment FY2008

	Mitigation	Compliance		Aggravation	Number of Cases	Percentage of Compliance Combined
		Incarceration Range	Alternative Sanction			
Drug	7%	62%	22%	9%	3,890	 84%
Fraud	8%	51%	36%	5%	1,215	 87%
Larceny	9%	74%	9%	8%	1,955	 83%
Overall	8%	63%	21%	8%	7,060	 84%

Less Restrictive Sanctions Utilized under Risk Assessment



Primary Alternatives Used:

- Probation
- Shorter Incarceration Period
- Restitution

*Any program established through the Comprehensive Community Corrections Act