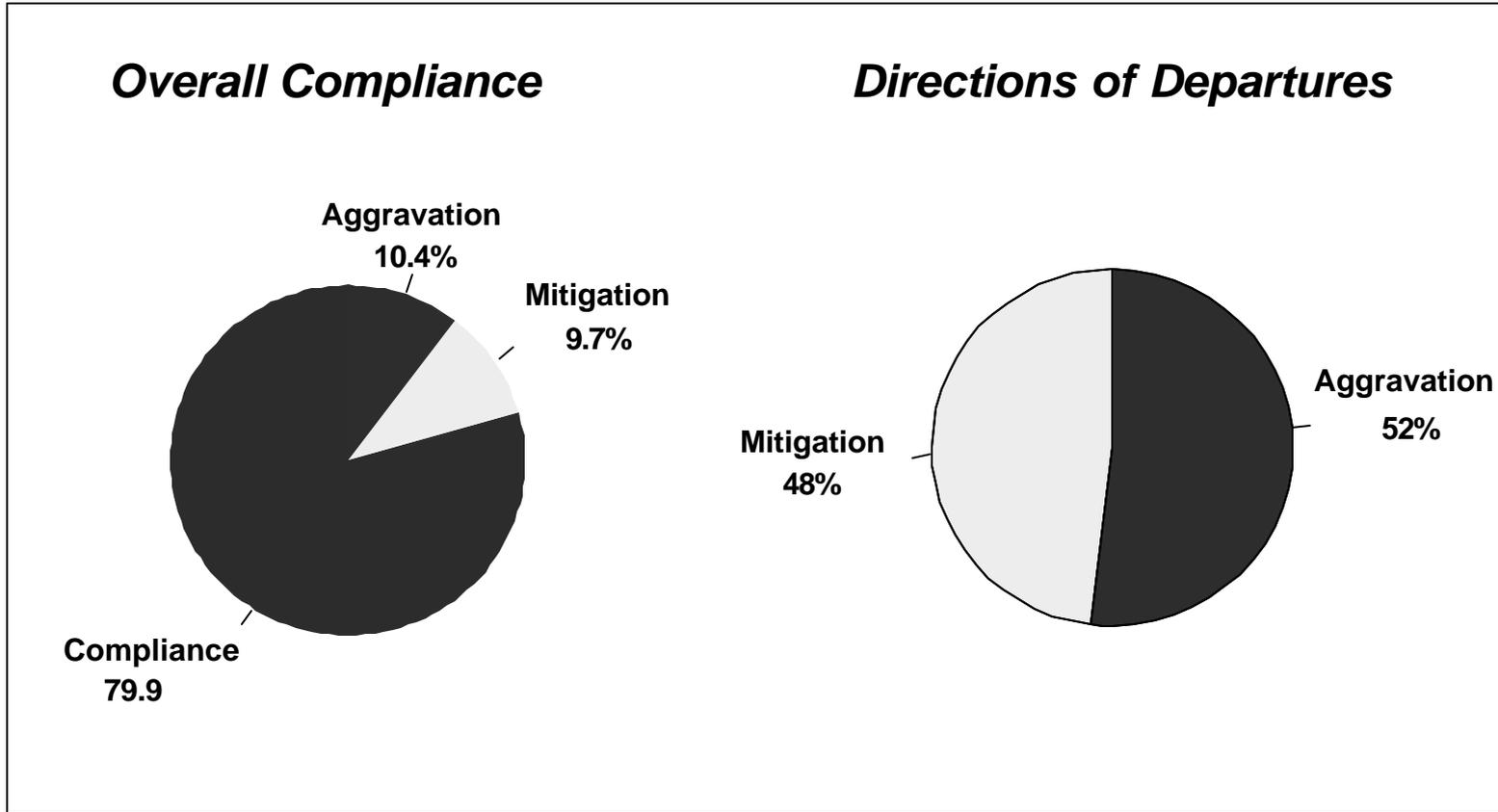


Virginia Criminal Sentencing Commission



Dr. Rick Kern, Director

Sentencing Guidelines Compliance



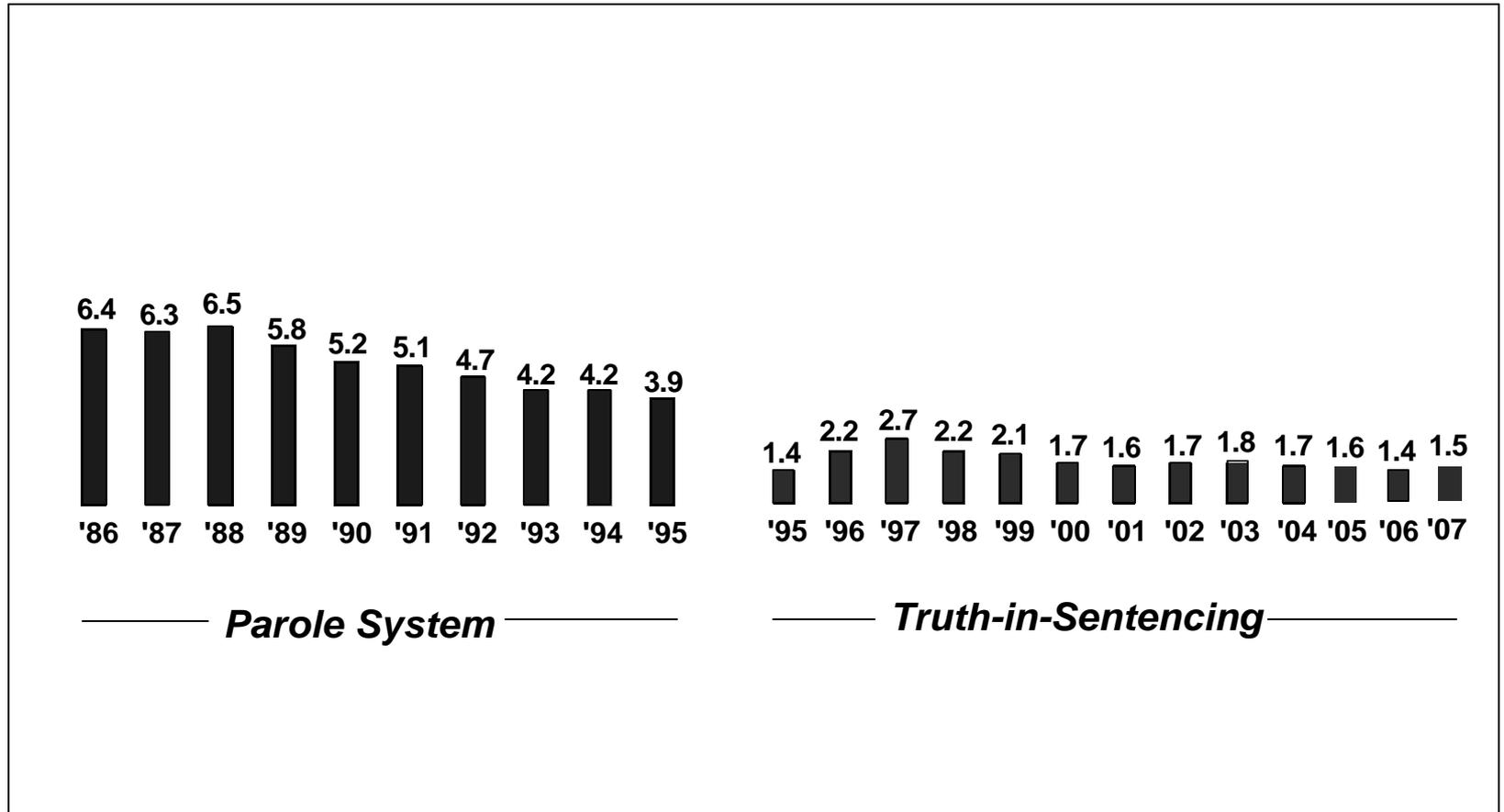
FY2007

Number of Cases = 25,732

Guidelines Compliance by Circuit

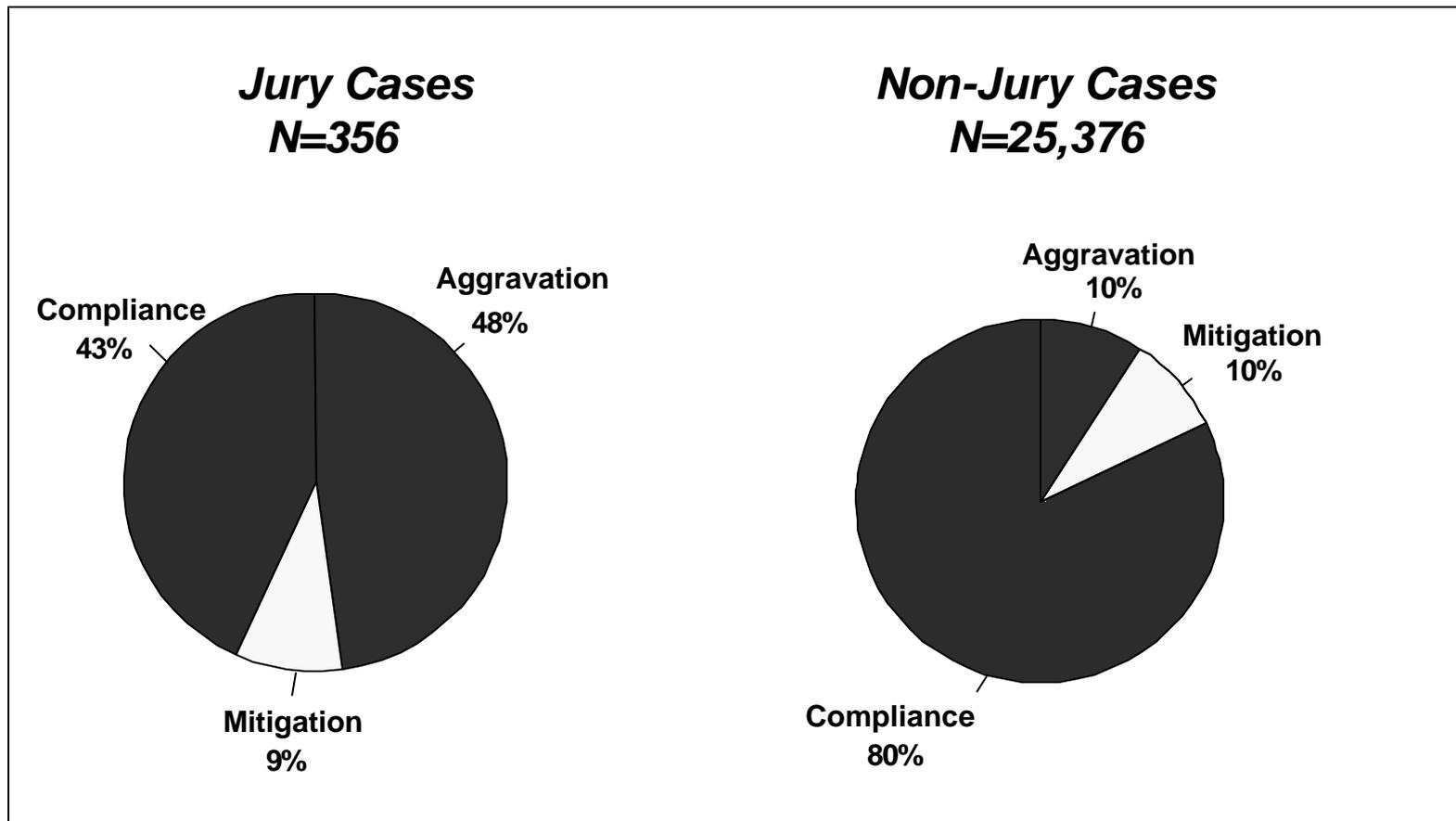
Circuit Name	Circuit	Compliance	Mitigation	Aggravation	Total	
Radford Area	27	91.4%	5.0%	3.7%	929	<ul style="list-style-type: none"> More than two-thirds (68%) of the state's 31 circuits exhibited compliance rates at or above 80%.
Newport News	7	86.5	6.3	7.2	968	
Bristol Area	28	85.2	8.6	6.2	561	
Martinsville Area	21	85.2	12.1	2.7	364	
Lee Area	30	85.0	6.7	8.2	341	
South Boston Area	10	85.0	8.8	6.2	581	
Loudoun Area	20	84.8	7.2	8.0	512	
Prince William Area	31	84.5	6.5	9.0	634	
Hampton	8	82.9	9.0	8.0	697	
Virginia Beach	2	82.6	8.8	8.6	1,702	
Petersburg Area	11	82.4	6.3	11.3	426	
Alexandria	18	81.3	13.9	4.8	396	
Chesapeake	1	81.2	8.3	10.5	771	
Portsmouth	3	80.8	7.5	11.7	983	
Charlottesville Area	16	80.6	10.6	8.8	568	
Staunton Area	25	80.5	9.5	10.0	991	
Harrisonburg Area	26	80.2	10.9	8.9	1,089	
Suffolk Area	5	80.1	8.0	11.9	589	
Arlington Area	17	80.1	7.4	12.6	517	
Henrico	14	79.8	10.1	10.1	1,282	<ul style="list-style-type: none"> Twenty-nine percent reported compliance rates between 70 and 79%. Only one circuit had a compliance rate below 70%.
Richmond City	13	79.7	13.2	7.0	1,308	
Fairfax	19	78.5	7.7	13.8	984	
Norfolk	4	78.1	14.5	7.4	1,900	
Sussex Area	6	77.7	11.5	10.9	470	
Danville Area	22	77.3	7.2	15.5	704	
Lynchburg Area	24	77.0	13.8	9.2	991	
Williamsburg Area	9	76.0	7.1	16.9	492	
Chesterfield Area	12	75.8	7.2	17.0	959	
Roanoke Area	23	74.5	15.4	10.1	954	
Fredericksburg Area	15	71.3	10.2	18.4	1,514	
Buchanan Area	29	64.1	7.8	28.1	552	

Percent of Felony Convictions Adjudicated by Juries Parole v. Truth-in-Sentencing System



FY1986 – FY2007

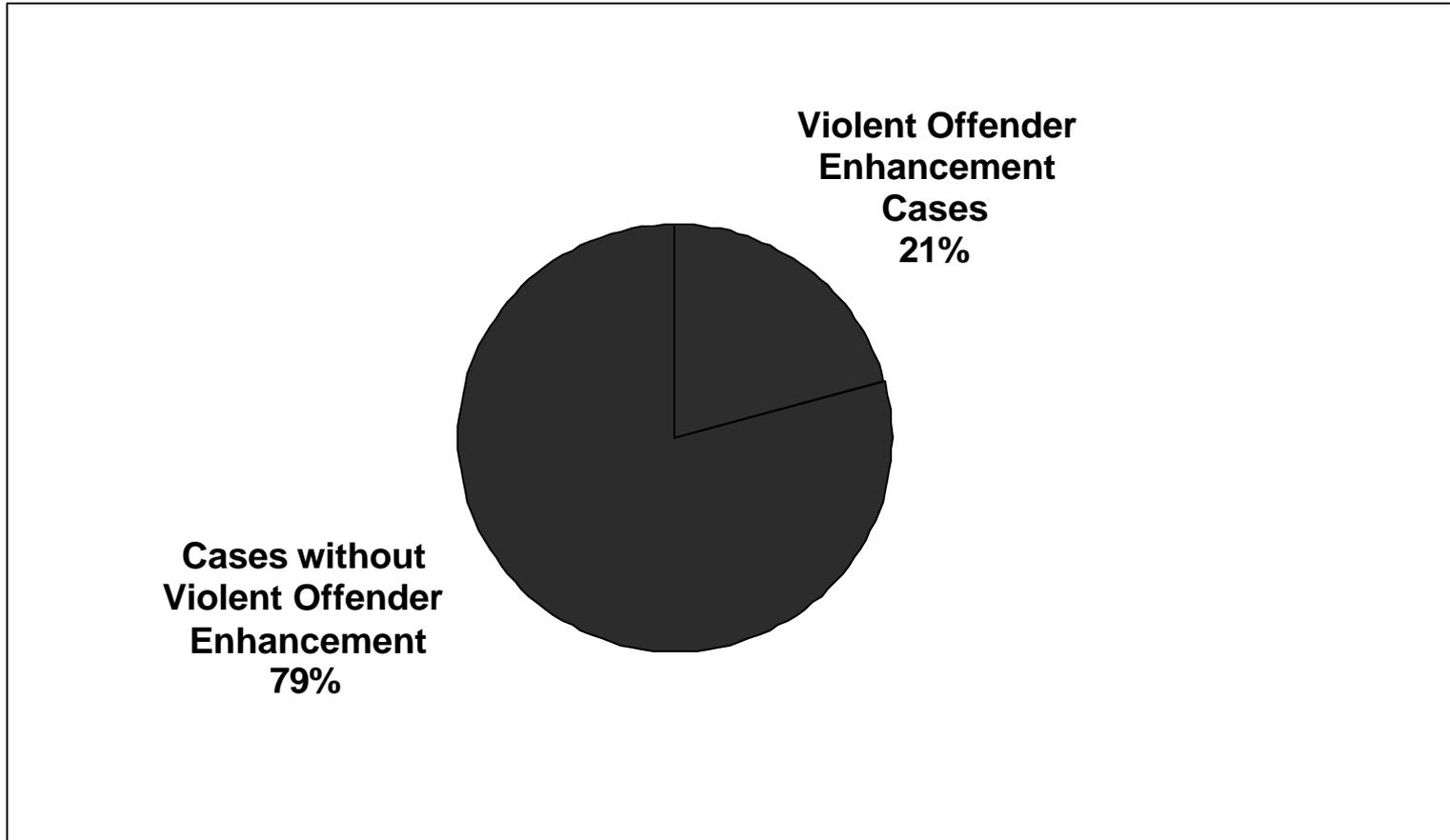
Compliance in Jury Cases and Non-Jury Cases



FY2007

Number of Cases = 25,732

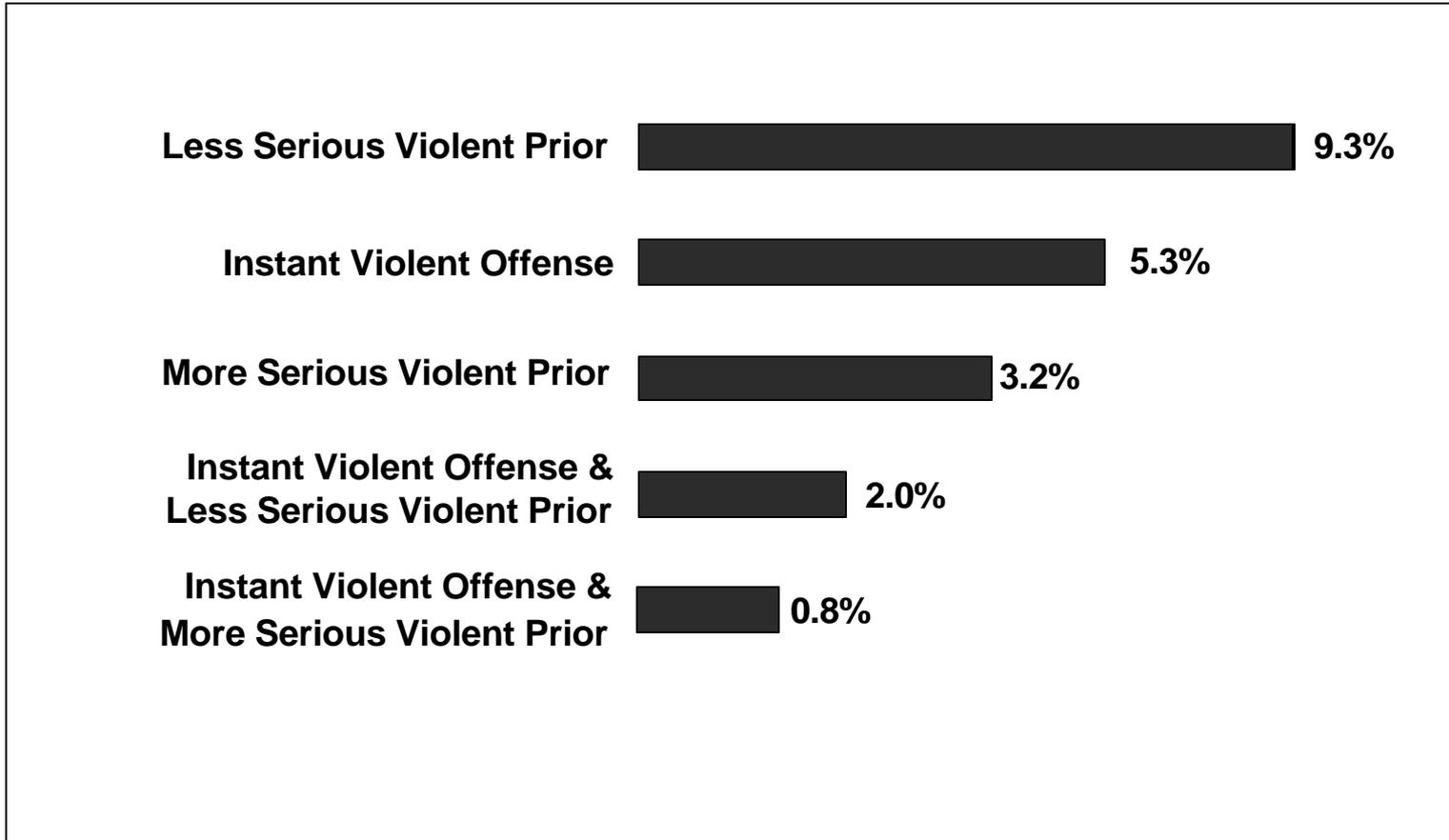
Percentage of Sentencing Guidelines Violent Offender Enhancement Cases



FY2007

Number of Cases = 25,732

Type of Sentencing Guidelines Violent Offender Enhancements Received



FY2007
Number of Cases = 5,299

Compliance by Sentencing Guidelines Violent Offender Enhancement*

Type of Enhancement	Compliance	Mitigation	Aggravation	Number of Cases
None	82.9%	6.0%	11.1%	20,433
More Serious Violent Prior	62.3%	33.0%	4.7%	825
Less Serious Violent Prior	73.8%	19.7%	6.5%	2,398
Instant Violent Offense	65.1%	22.9%	12.0%	1,358
Instant Violent Offense & More Serious Violent Prior	61.6%	32.4%	6.0%	216
Instant Violent Offense & Less Serious Violent Prior	64.1%	25.9%	10.0%	502
Total				25,732

**Violent Offender enhancements prescribe prison sentence recommendations for violent offenders which are significantly greater than historical time served under the parole system during the period 1988 to 1992.*



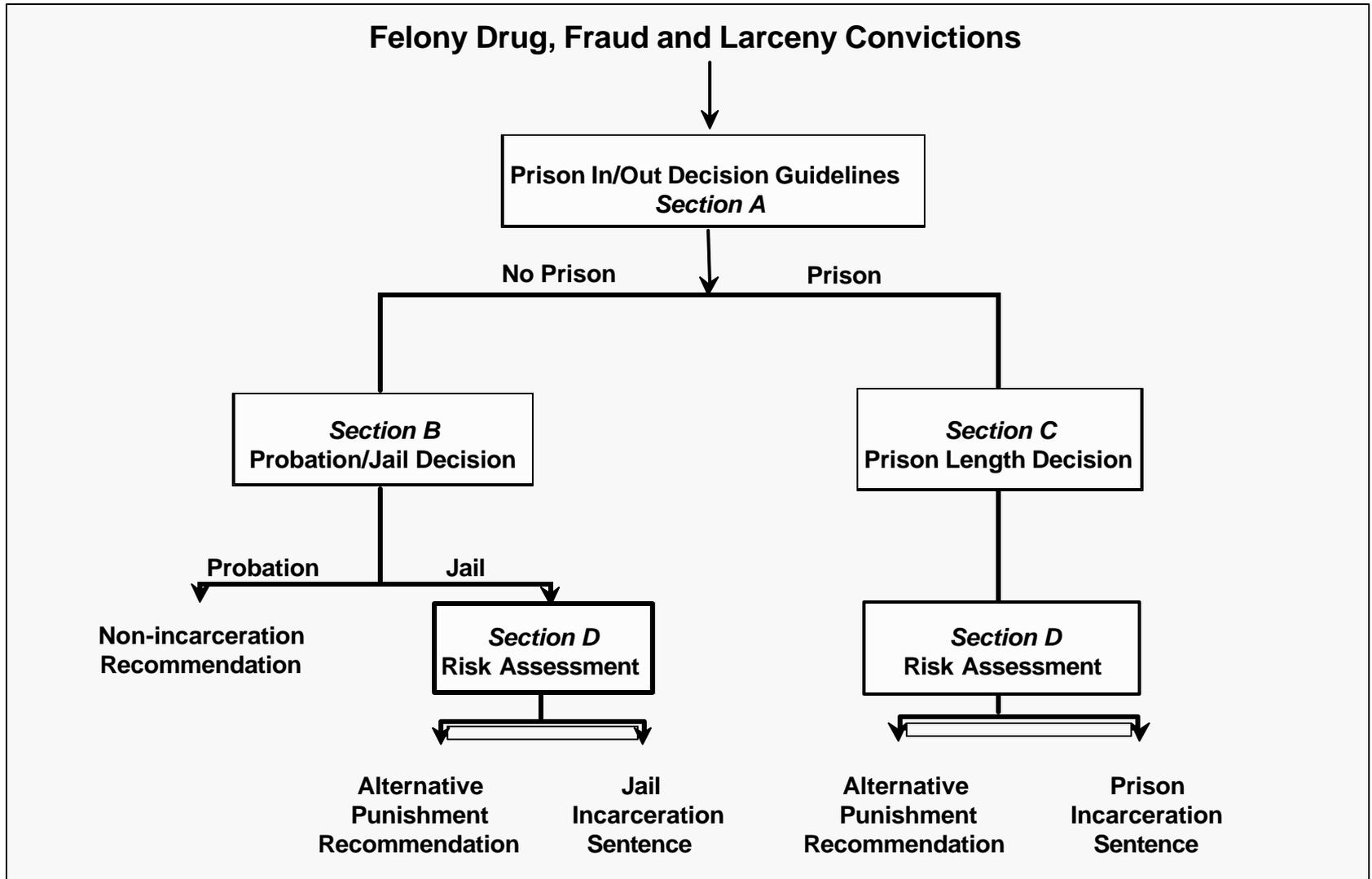
Integration of Offender Recidivism Risk Assessment into Virginia Sentencing Guidelines

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



Significant Factors in Assessing Risk for Nonviolent Offenders



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	<input type="text"/>

◆ **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	<input type="text"/>
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	<input type="text"/>

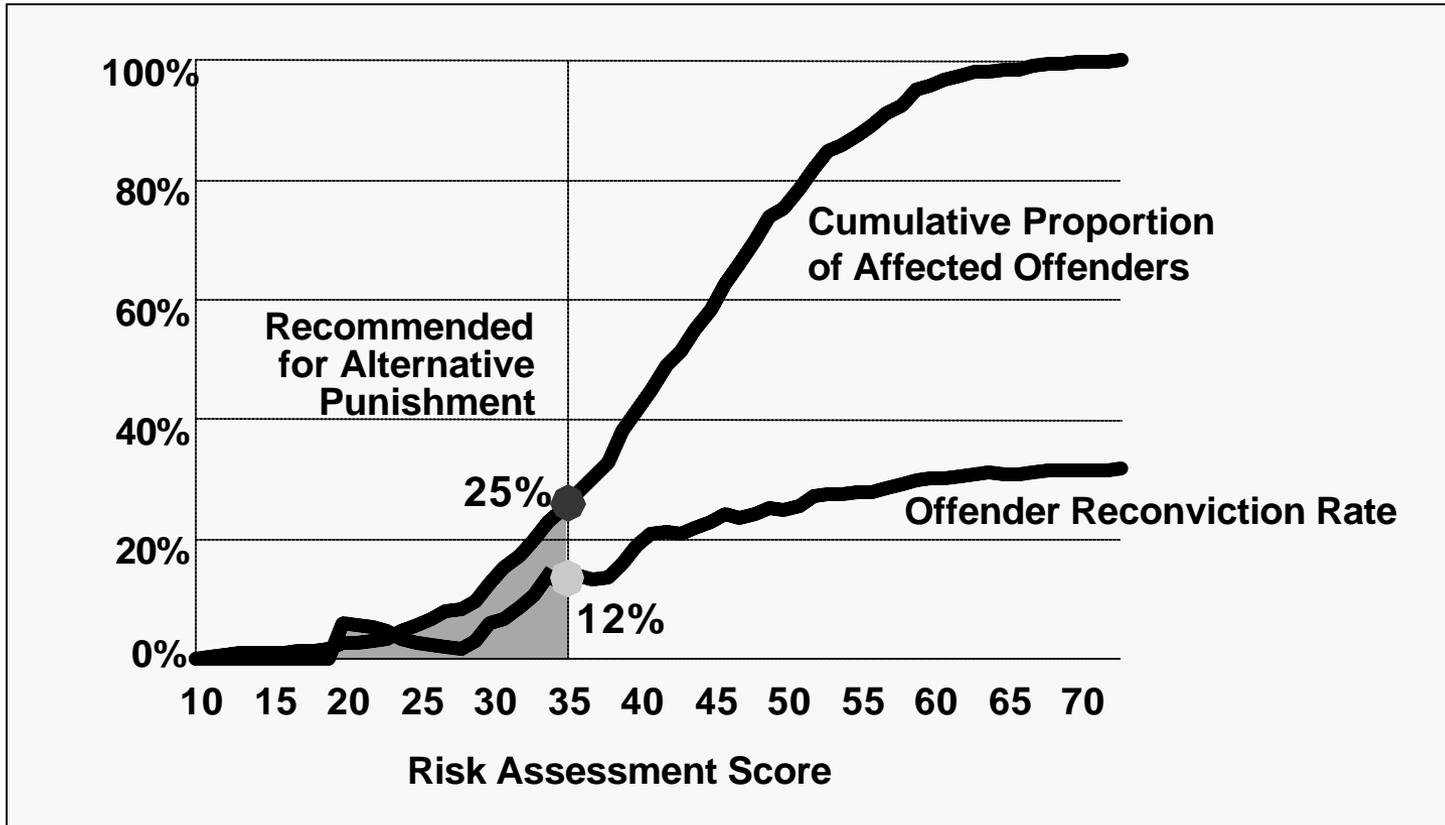
◆ **Prior Adult Incarceration**

Number 1 - 2.....	3	
3 – 4.....	6	<input type="text"/>
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.

Reconviction Rates and Cumulative Proportion of Affected Offenders under 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

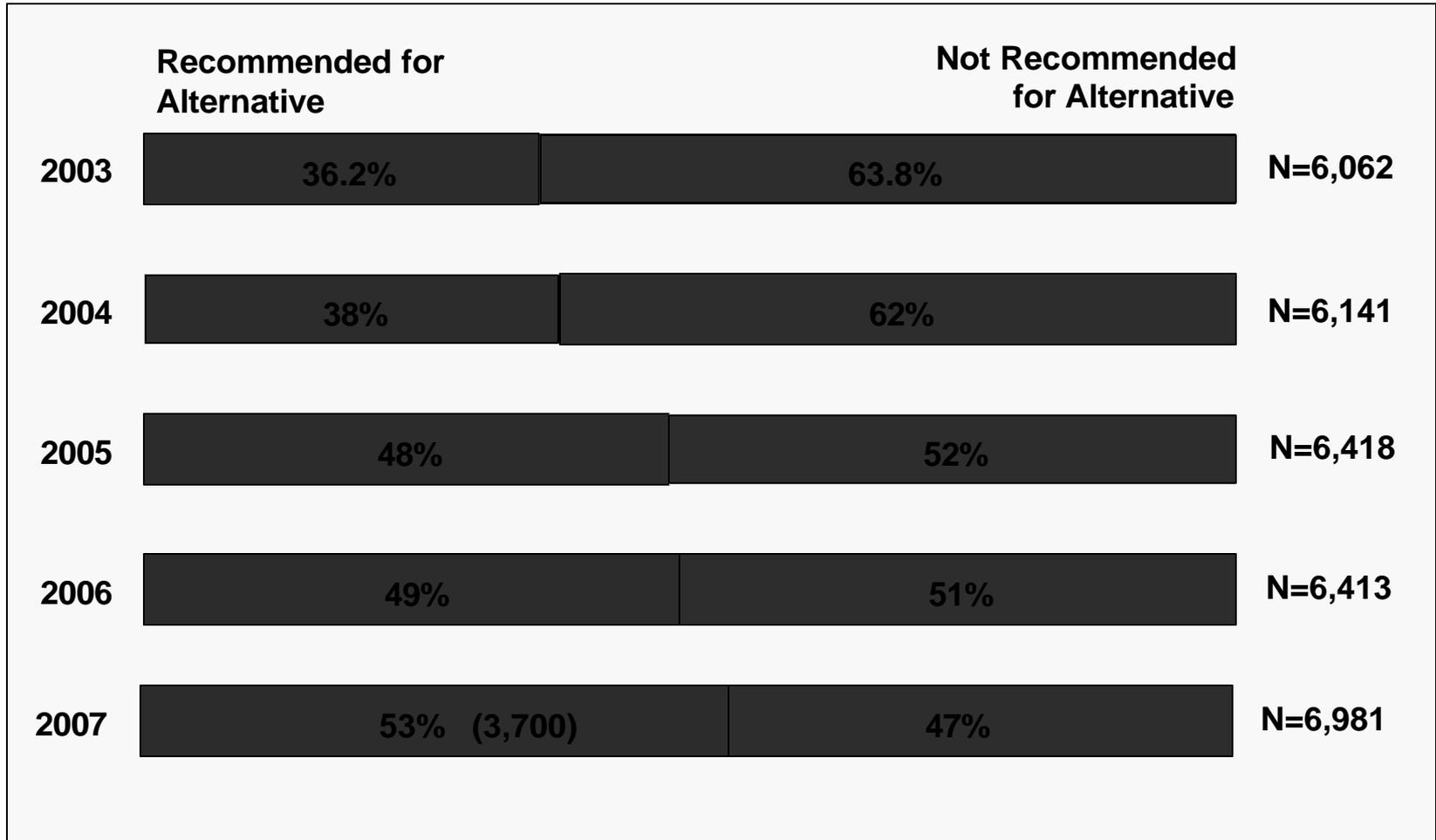
	Score	Percent of Offenders	Reconviction Rate for offenders scoring at or below point value
Old Risk Assessment Threshold →	35	2.5%	12.4%
	36	2.7%	13.9%
New Risk Assessment Threshold →	37	2.2%	13.4%
	38	2.7%	13.6%
	39	5.4%	16.0%
	40	3.0%	18.8%
	More than 40	58.7%	

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.

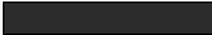
Nonviolent Offender Risk Instrument – Examining the Score Threshold

- **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.**

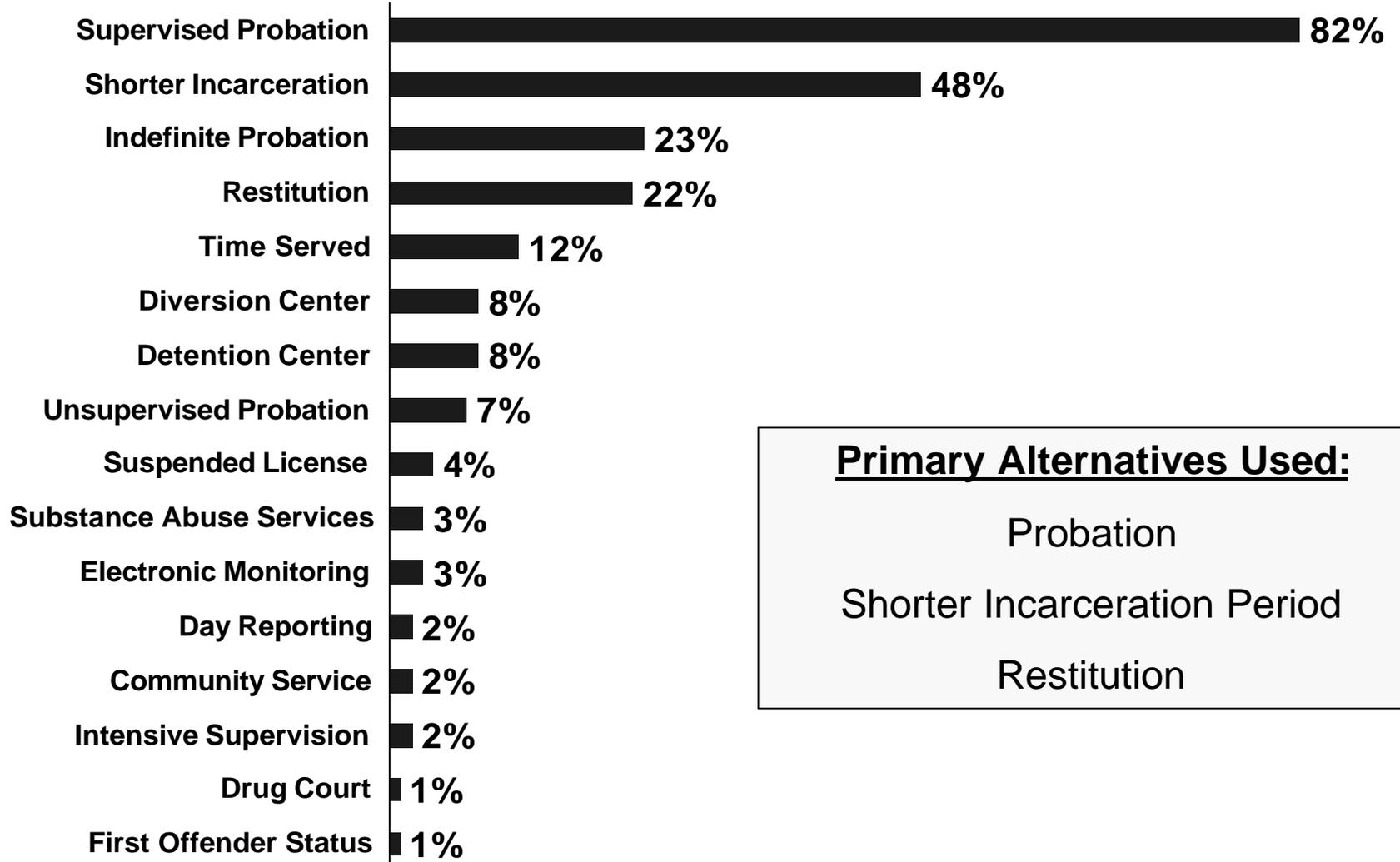
Virginia Nonviolent Risk Assessment (as applied to those recommended for jail or prison incarceration)



Sentencing Guidelines Compliance Rates for Non-Violent Offenders Screened with Risk Assessment FY2007

	Mitigation	Compliance		Aggravation	Number of Cases	Percentage of Compliance Combined
		Traditional Range	Adjusted Range			
Drug	6%	60%	24%	10%	3,991	 84%
Fraud	7%	51%	37%	5%	1,184	 88%
Larceny	8%	74%	9%	9%	1,806	 83%
Overall	7%	62%	22%	9%	6,981	 84%

Less Restrictive Sanctions Utilized under Risk Assessment



Primary Alternatives Used:

- Probation
- Shorter Incarceration Period
- Restitution

National Center for State Courts Evaluation of Virginia's risk assessment instrument

Concluded that our risk assessment component accurately distinguished nonviolent felons less likely to recidivate from those more likely

“Virginia's risk assessment instrument provides an objective, reliable, transparent, and more accurate alternative to assessing an offender's potential for recidivism than the traditional reliance on judicial intuition or perceptual short hand”

“This is a workable tool for managing prison populations. It allows states the flexibility to determine how many offenders they would like to divert while balancing concerns of public safety”



Assessing Consistency & Fairness in Sentencing:

A Comparative Study in Three States

Final Report



What is the research goal?

The degree to which a sentencing system contributes to the maintenance of justice depends in large measure on three central issues:

Consistency--- like cases are treated alike

Proportionality--- more serious offenders are punished more severely

Lack of discrimination--- age, gender and race etc. are insignificant in who goes to prison and for how long

Why Michigan, Minnesota and Virginia?

These states represent three distinct approaches to structuring judicial discretion

- **Well-respected systems**
- **Alternative design strategies**
- **Voluntary and presumptive**
- **Excellent data base systems**

Continuum of sentencing guidelines

Measurement Criteria

- **Enforceable rule related to guideline use**
- **Completion of guideline forms required**
- **Sentencing commission monitors compliance**
- **Compelling and substantial reason for departure**
- **Written reason required for departure**
- **Appellate review**

Produced scheme to assess each SG structure

	I	II	III	IV	V	VI	
	Enforceable Rule	Worksheet Completion	S.G. Monitors Compliance	Departure Rationale	Written Reason	Appellate Review	Total
North Carolina	2	2	2	2	2	2	12
Minnesota	1	2	2	2	2	2	11
Oregon	1	2	1	2	2	2	10
Kansas	1	2	1	2	2	2	10
Washington	1	1	2	2	2	2	10
Pennsylvania	0	2	2	1	2	2	9
Michigan	1	1	0	2	2	2	8
Maryland	0	2	1	2	2	0	7
Massachusetts	0	1	1	1	2	2	7
Alaska	0	2	0	1	2	2	7
Virginia	0	2	2	0	2	0	6
Delaware	0	2	0	2	2	0	6
Utah	0	2	2	1	1	0	6
Louisiana	0	2	0	0	2	1	5
Arkansas	0	2	1	0	0	1	4
Tennessee	0	1	0	0	1	1	3
District of Columbia	0	0	1	0	2	0	3
Alabama	0	2	0	0	1	0	3
Missouri	0	2	0	0	0	0	2
Ohio	1	0	0	0	0	0	1
Wisconsin	0	0	0	0	0	1	1
Average	0.4	1.5	0.9	1.0	1.5	1.0	6.2

Produced a State Guideline Continuum



Minnesota: presumptive, determinate, and tighter ranges

Michigan: presumptive, indeterminate, and wider ranges

Virginia: voluntary, determinate, and widest ranges

National Center for State Courts Evaluation

Research Questions

To what extent do sentencing guidelines contribute to consistency in the sanctioning of convicted felons?

Are similar cases treated in a similar manner?

National Center for State Courts Evaluation

Research Questions

To what extent do sentencing guidelines promote proportionality in the sanctioning of convicted felons?

Do the guidelines provide clear-cut and proportional distinctions between more serious and less serious offenders?

National Center for State Courts Evaluation

Research Questions

To what extent do sentencing guidelines contribute to a lack of discrimination?

Are the characteristics of the offender's age, gender, and race, location of the court, identity of the judge, etc. significant in determining who goes to prison and for how long?

National Center for State Courts Evaluation

Research Findings (soon to be officially released)

Consistency and proportionality in sentencing is being achieved in Virginia.

Similarly situated cases are being treated in similar fashions and the harshness of the sanctions are proportional to the seriousness of the felony cases

National Center for State Courts Evaluation

Research Findings (soon to be officially released)

There is no evidence of systematic discrimination in sentences imposed in Virginia's criminal sentencing system.