

Virginia Criminal Sentencing Commission



Dr. Rick Kern, Director

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 Kenneth T. Cuccinelli, II

Senate Appointments

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

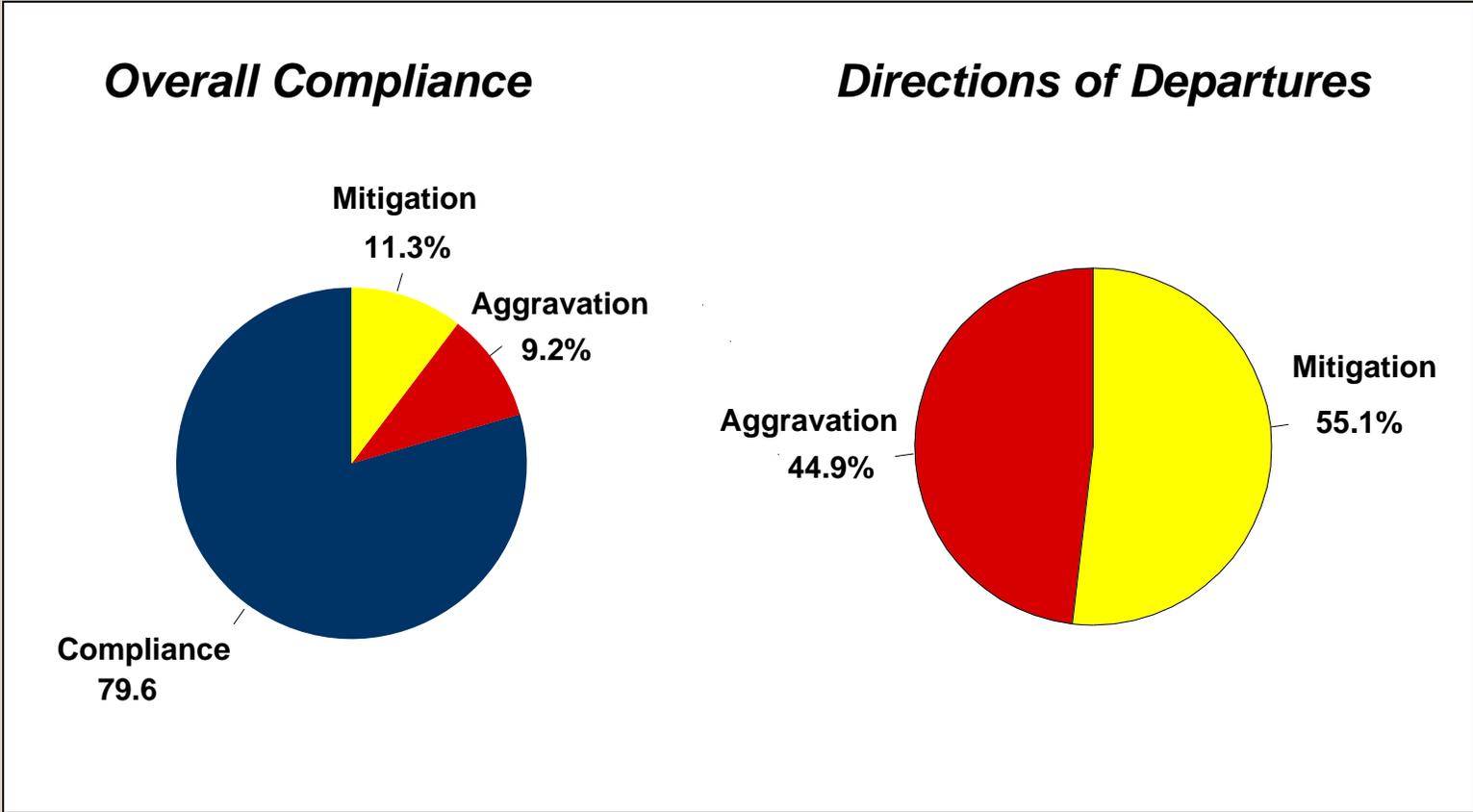
House of Delegates Appointments

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

Governor's Appointments

Debbie Smith, Richmond
Robert C. Hagan, Jr., Daleville
Marsha Garst, Harrisonburg
Harvey Bryant, Virginia Beach

Sentencing Guidelines Compliance



FY2010
Number of Cases = 24,014

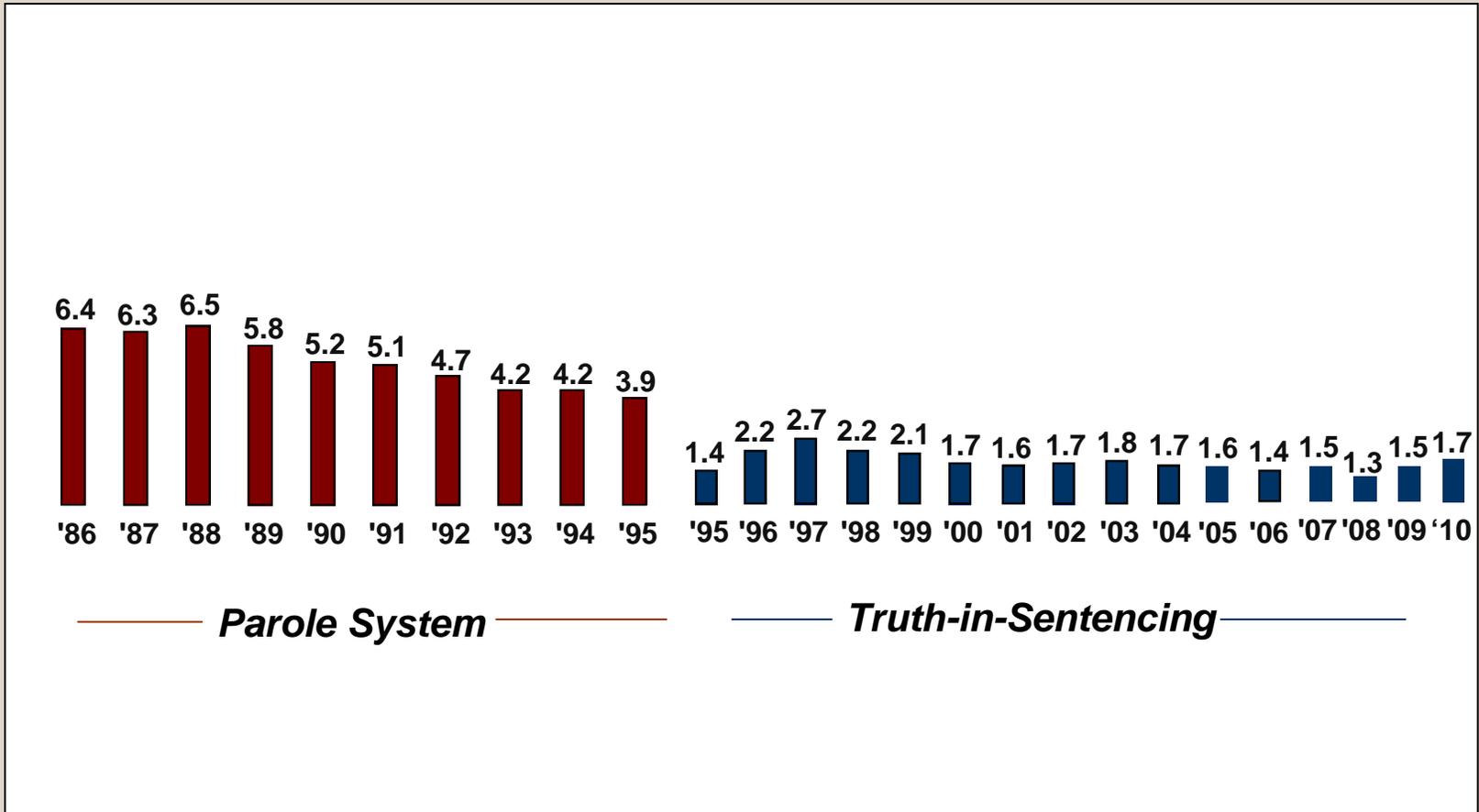
Guidelines Compliance by Circuit

Circuit Name	Circuit	Compliance	Mitigation	Aggravation	Total
Radford Area	27	90.6%	6.1%	3.2%	1,187
Bristol Area	28	89.1	4.8	6.1	586
Prince William Area	31	89.1	6.9	4.0	728
Loudoun Area	20	86.3	5.6	8.2	576
Newport News	7	82.1	8.3	9.6	687
Harrisonburg Area	26	82.1	11.6	6.3	1,188
Virginia Beach	2	81.9	11.4	6.8	1,154
Petersburg Area	11	81.5	9.4	9.1	319
Alexandria	18	81.0	11.2	7.8	268
Hampton	8	80.9	13.8	5.3	450
Henrico	14	80.7	10.3	8.9	1,054
Sussex Area	6	80.4	9.5	10.1	454
Arlington Area	17	79.7	6.4	13.9	467
Lee Area	30	79.6	10.8	9.6	333
Suffolk Area	5	79.5	8.3	12.2	567
Fairfax	19	79.5	11.4	9.1	1,292
Buchanan Area	29	79.1	5.6	15.3	628
Chesapeake	1	79.0	9.4	11.7	941
Staunton Area	25	78.4	14.2	7.4	857
Norfolk	4	78.2	16.5	5.3	1,184
South Boston Area	10	77.6	16.8	5.5	595
Martinsville Area	21	77.5	16.0	6.5	324
Chesterfield Area	12	77.0	9.1	14.0	1,046
Fredericksburg Area	15	76.4	9.4	14.2	1,525
Lynchburg Area	24	76.1	17.2	6.8	915
Williamsburg Area	9	75.8	10.0	14.2	562
Portsmouth	3	75.4	12.4	12.2	582
Richmond City	13	74.6	17.6	7.8	1,201
Roanoke Area	23	74.5	17.6	7.9	960
Danville Area	22	73.2	8.8	18.0	635
Charlottesville Area	16	72.8	14.8	12.4	731

- Over half (16) of the state's 31 circuits exhibited compliance rates above 80%.

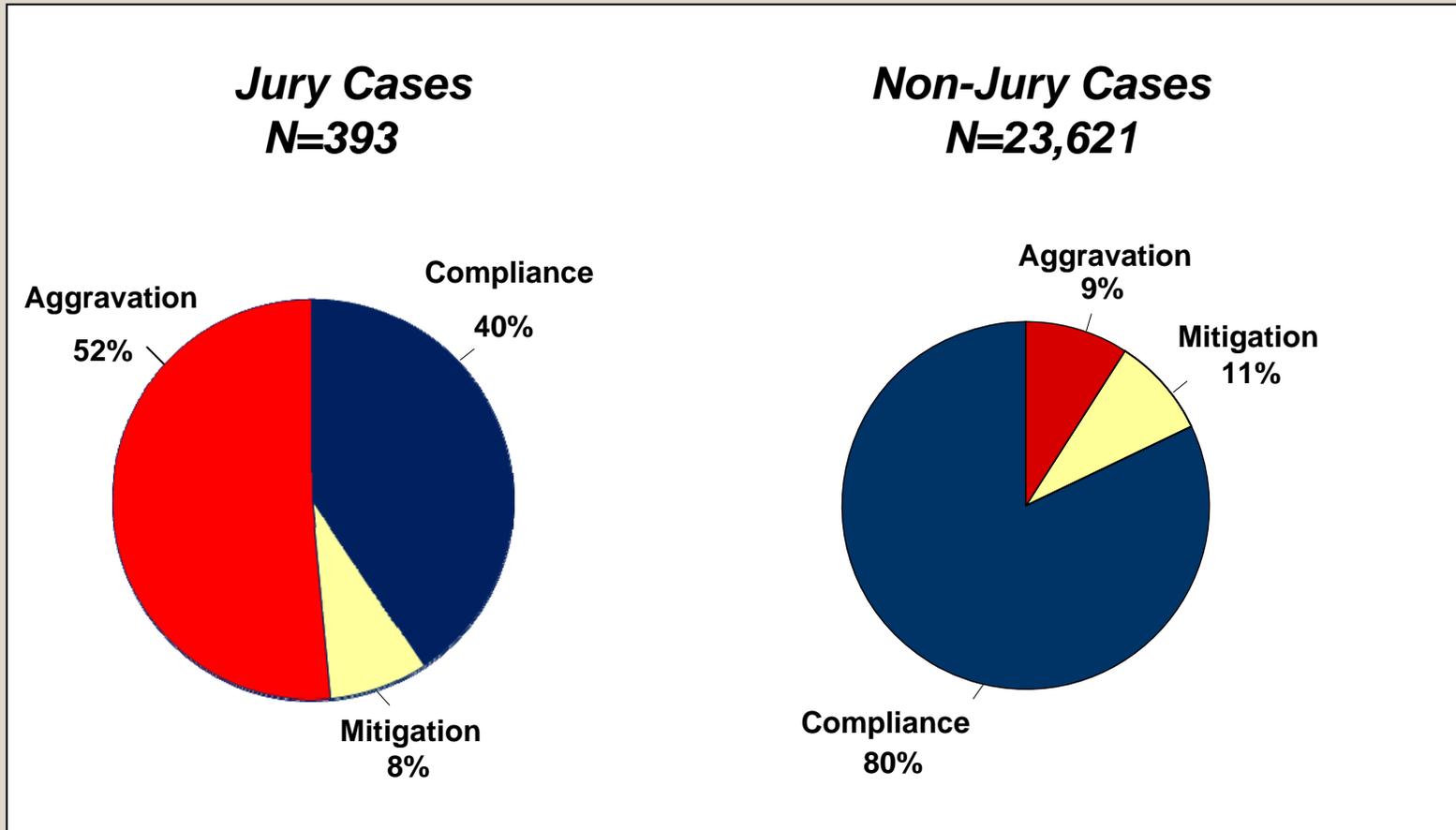
- Fifteen circuits reported compliance rates between 70 and 79%.

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



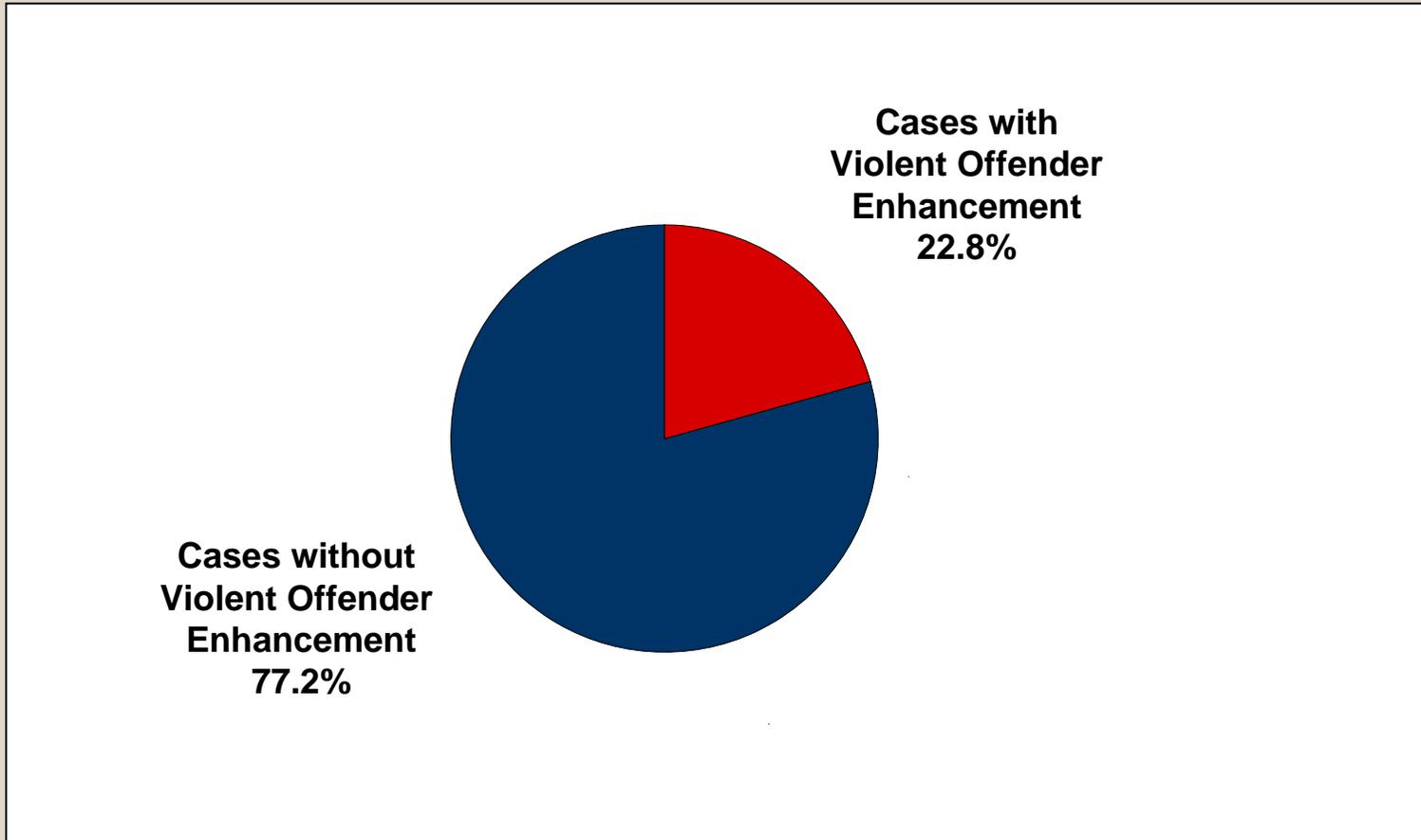
FY1986 – FY2010

Compliance in Jury Cases and Non-Jury Cases



FY2010
Number of Cases = 24,014

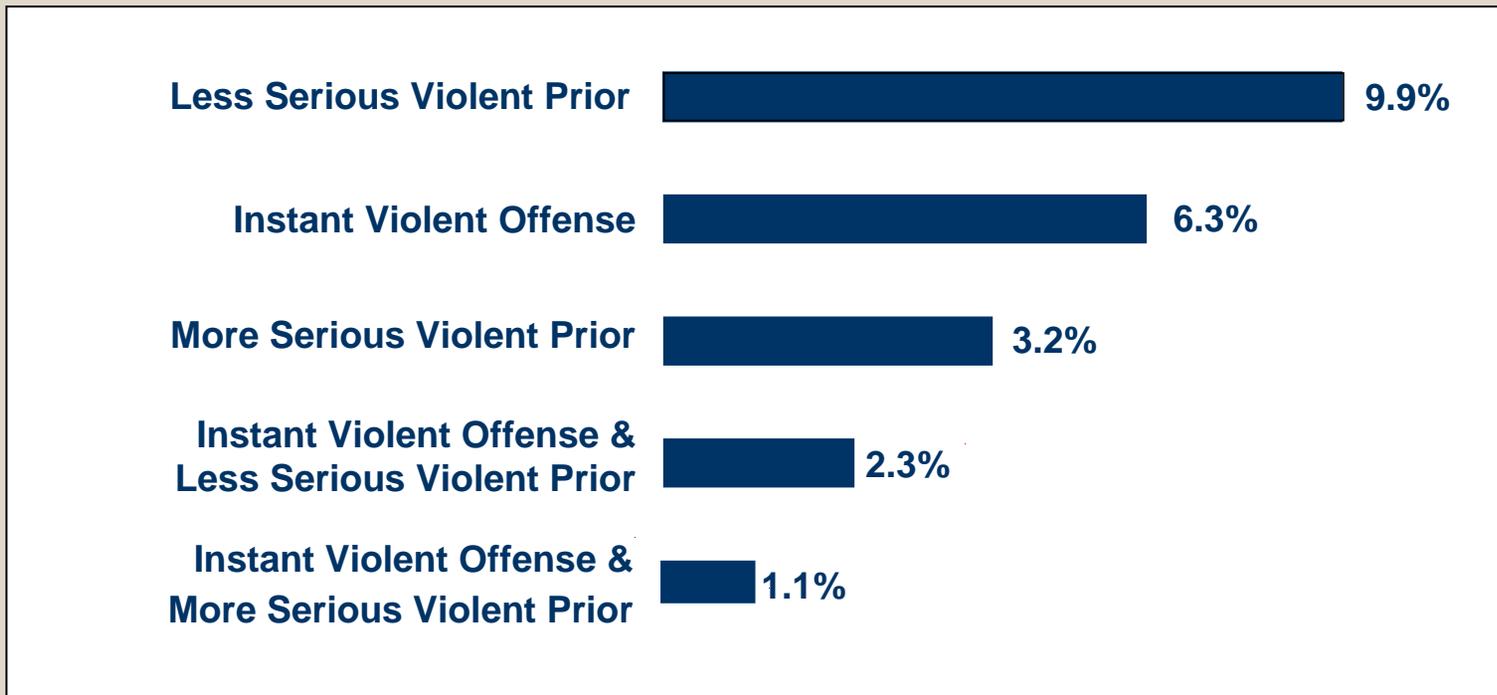
Percentage of Sentencing Guidelines Violent Offender Enhancement Cases (as defined by § 17.1-805)



FY2010

Number of Cases = 24,014

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

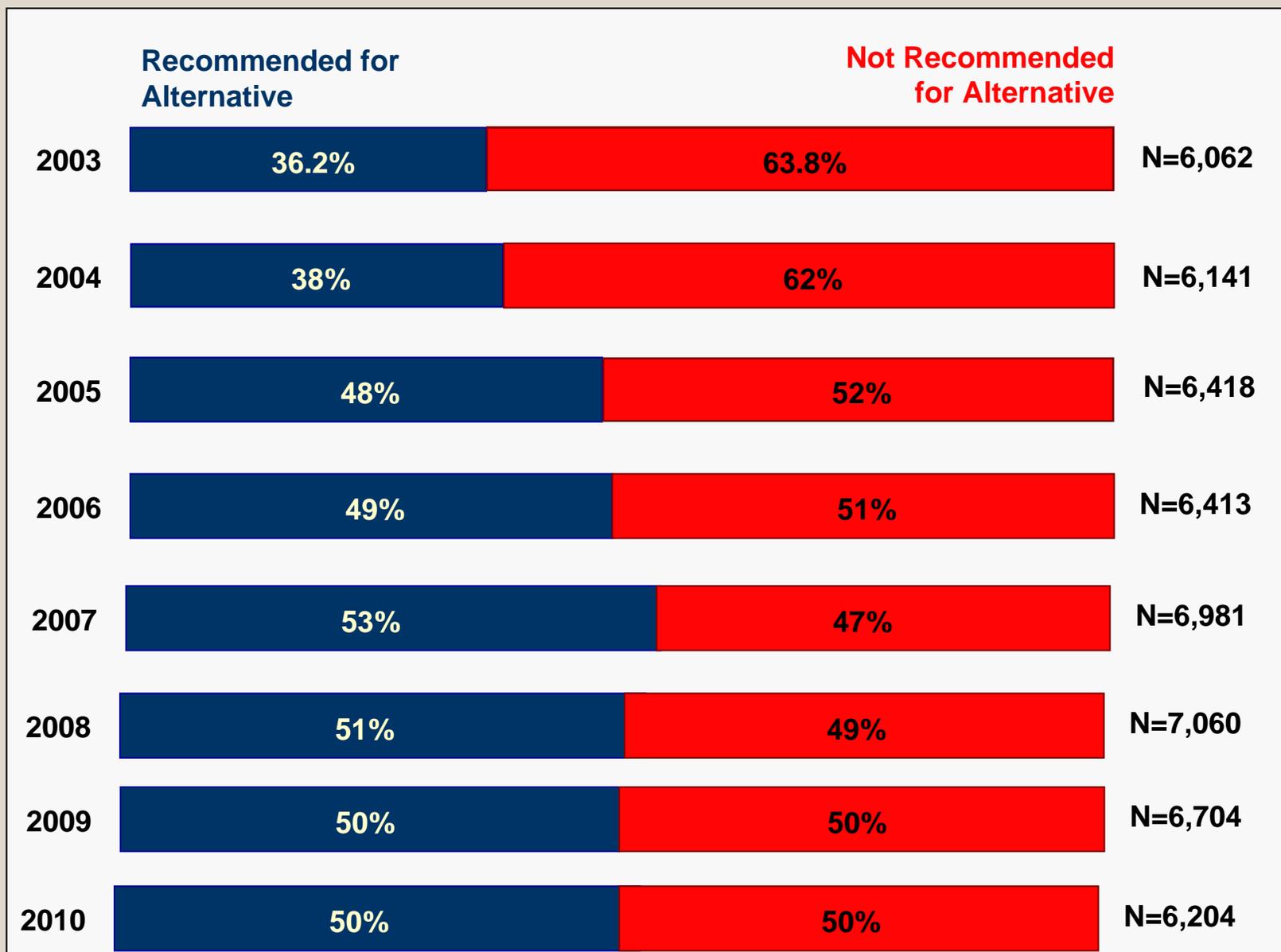


FY2010
Number of Cases = 5,480

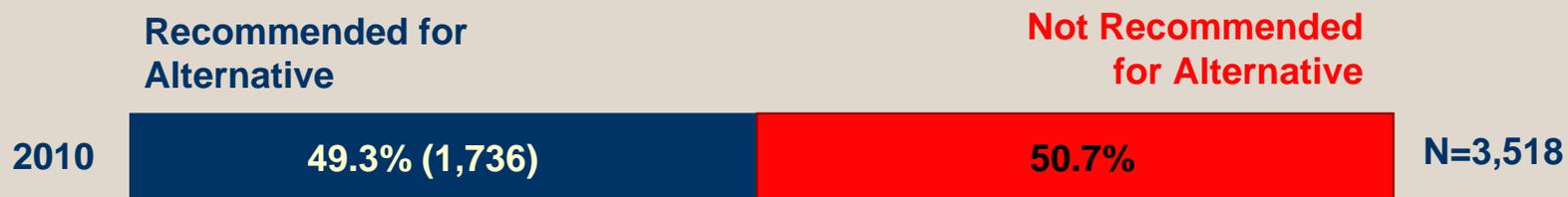


Integration of Offender Recidivism Risk Assessment into Virginia Sentencing Guidelines

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)*

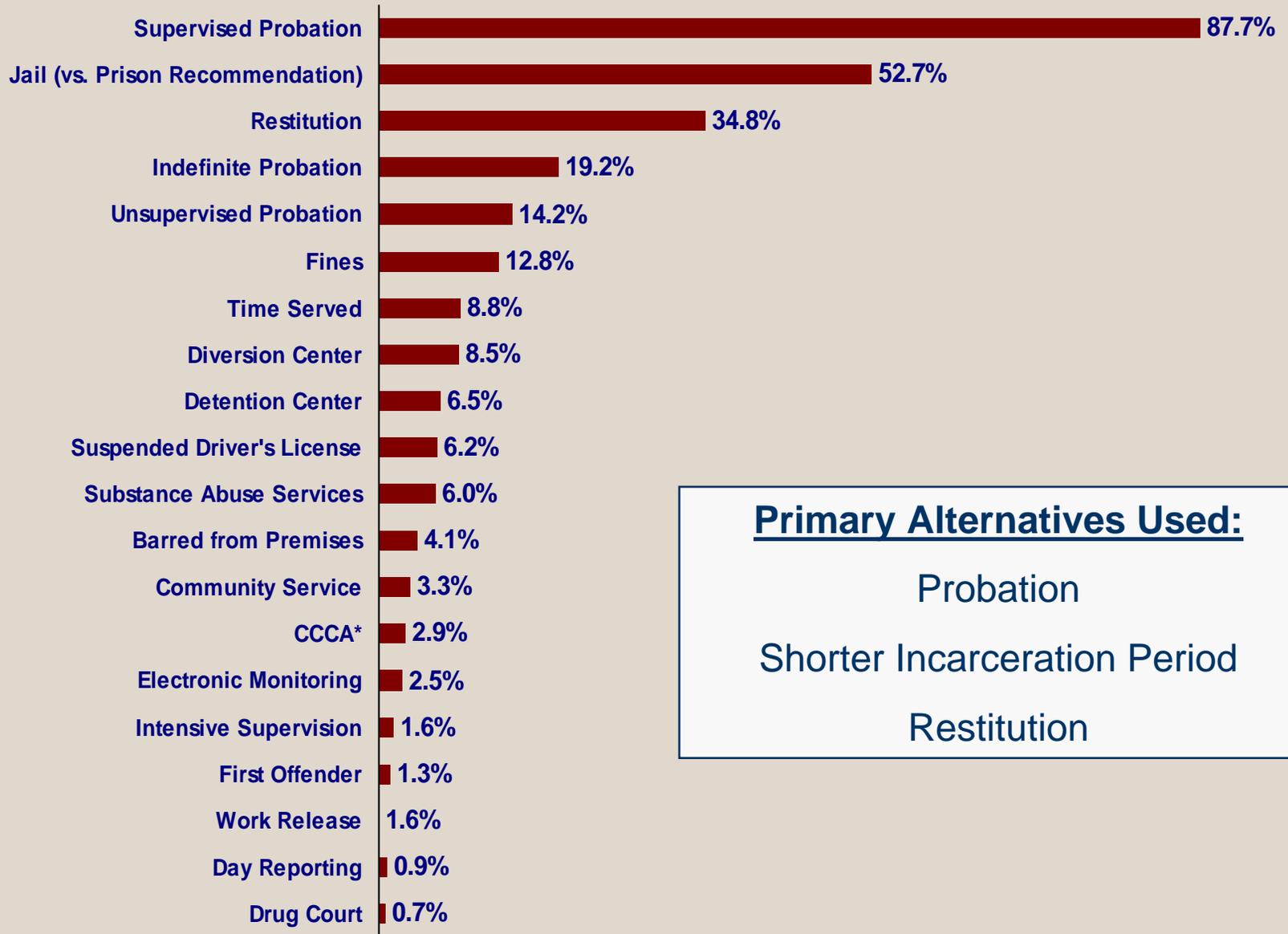


*Sentencing guidelines recommendation is for incarceration with a midpoint of one year or more.

Sentencing Guidelines Compliance Rates for Nonviolent Offenders Screened with Risk Assessment FY2010

	Mitigation	Compliance		Aggravation	Number of Cases	Percentage of Compliance Combined
		Incarceration Range	Alternative Sanction			
Drug	7%	60%	25%	8%	2,960	 85%
Fraud	7%	52%	36%	5%	1,171	 88%
Larceny	10%	75%	9%	6%	2,073	 84%
Overall	8%	64%	21%	7%	6,204	 8%

Less Restrictive Sanctions Utilized under Risk Assessment



Primary Alternatives Used:

- Probation
- Shorter Incarceration Period
- Restitution

*Any program established through the Comprehensive Community Corrections Act

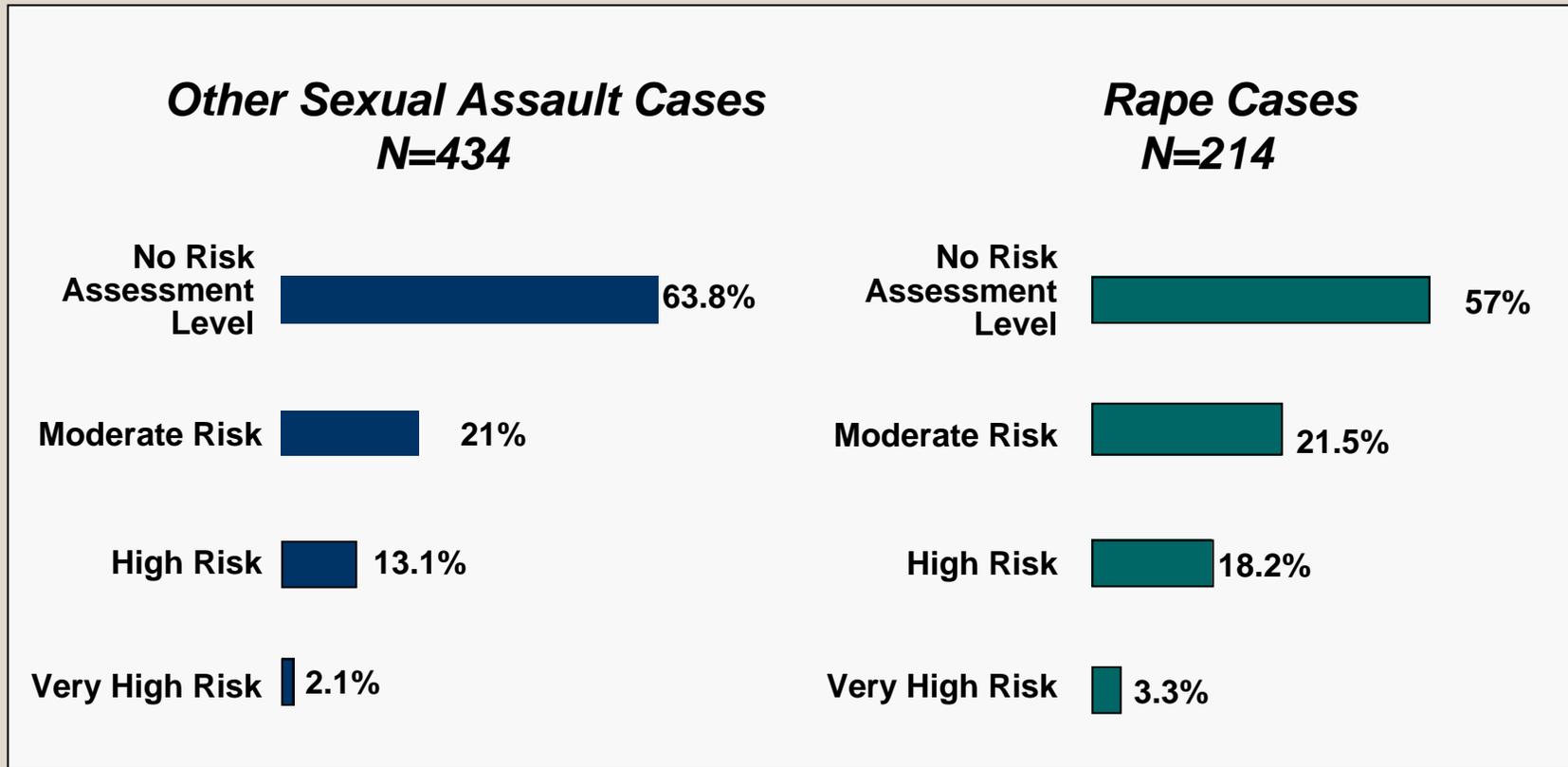
National Center for State Courts Evaluation of Virginia's risk assessment instrument

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”

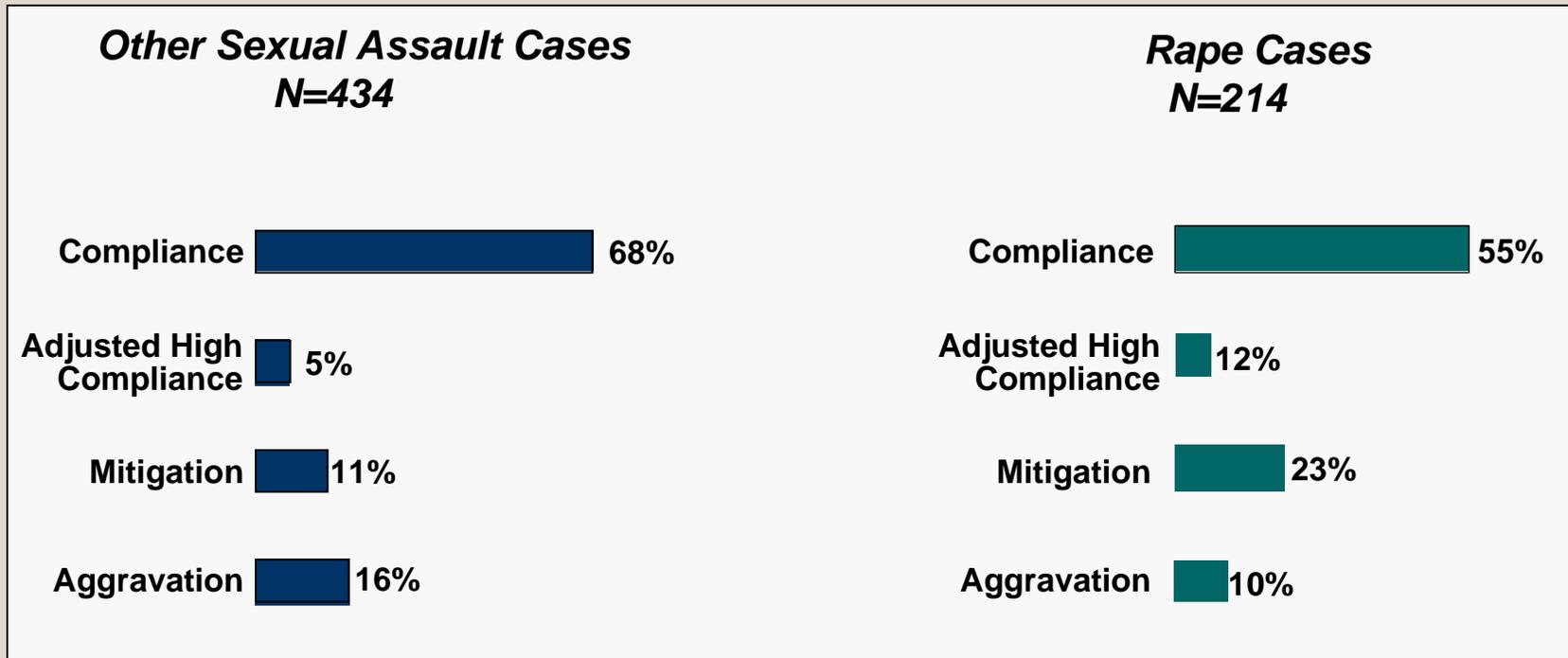
“This is a workable tool for managing prison populations. It allows states the flexibility to determine how many offenders they would like to divert while balancing concerns of public safety”

Sex Offender Risk Assessment Levels



FY 2010

Sex Offenses Compliance Rate with Sex Offender Risk Assessment

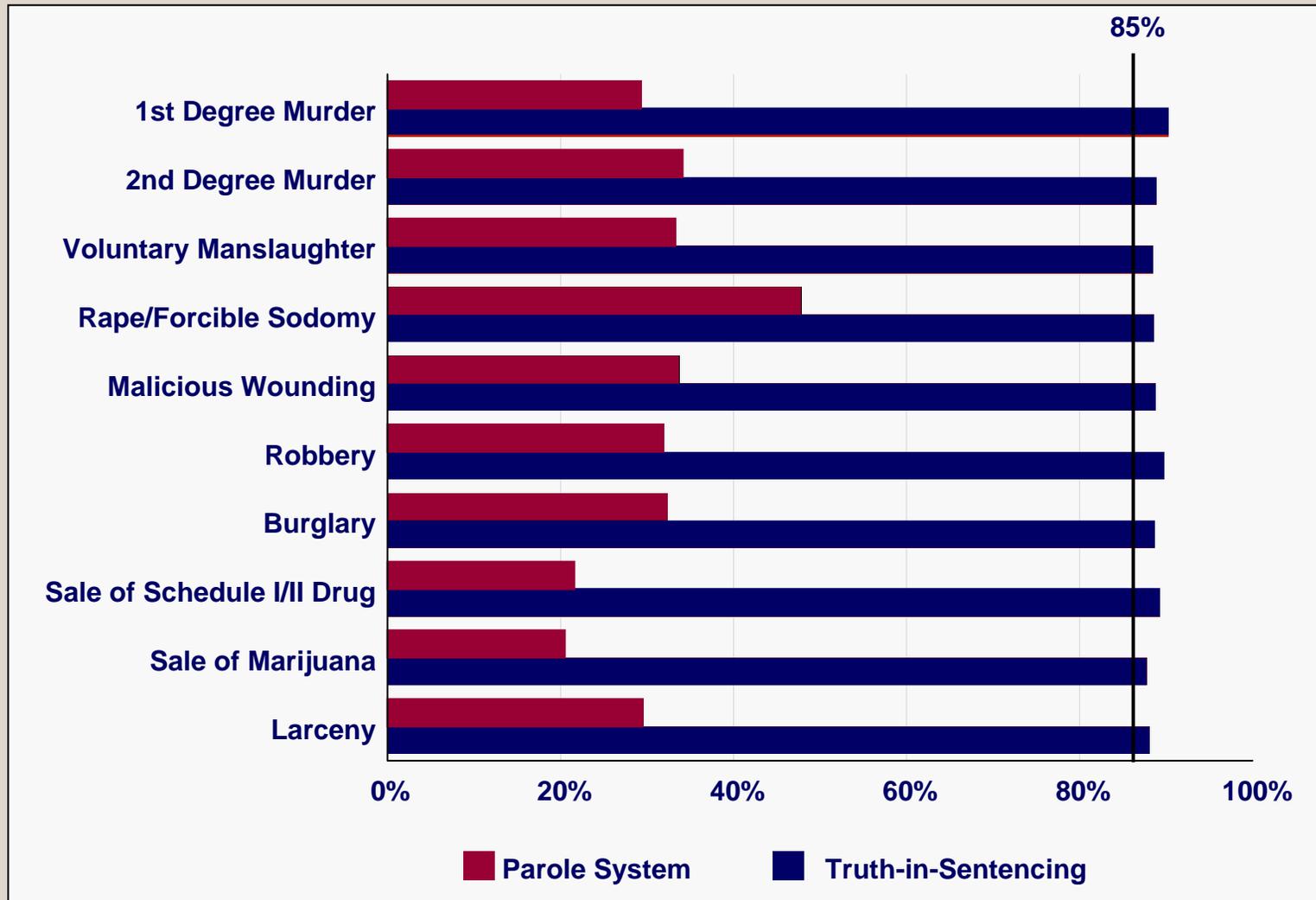


FY 2010



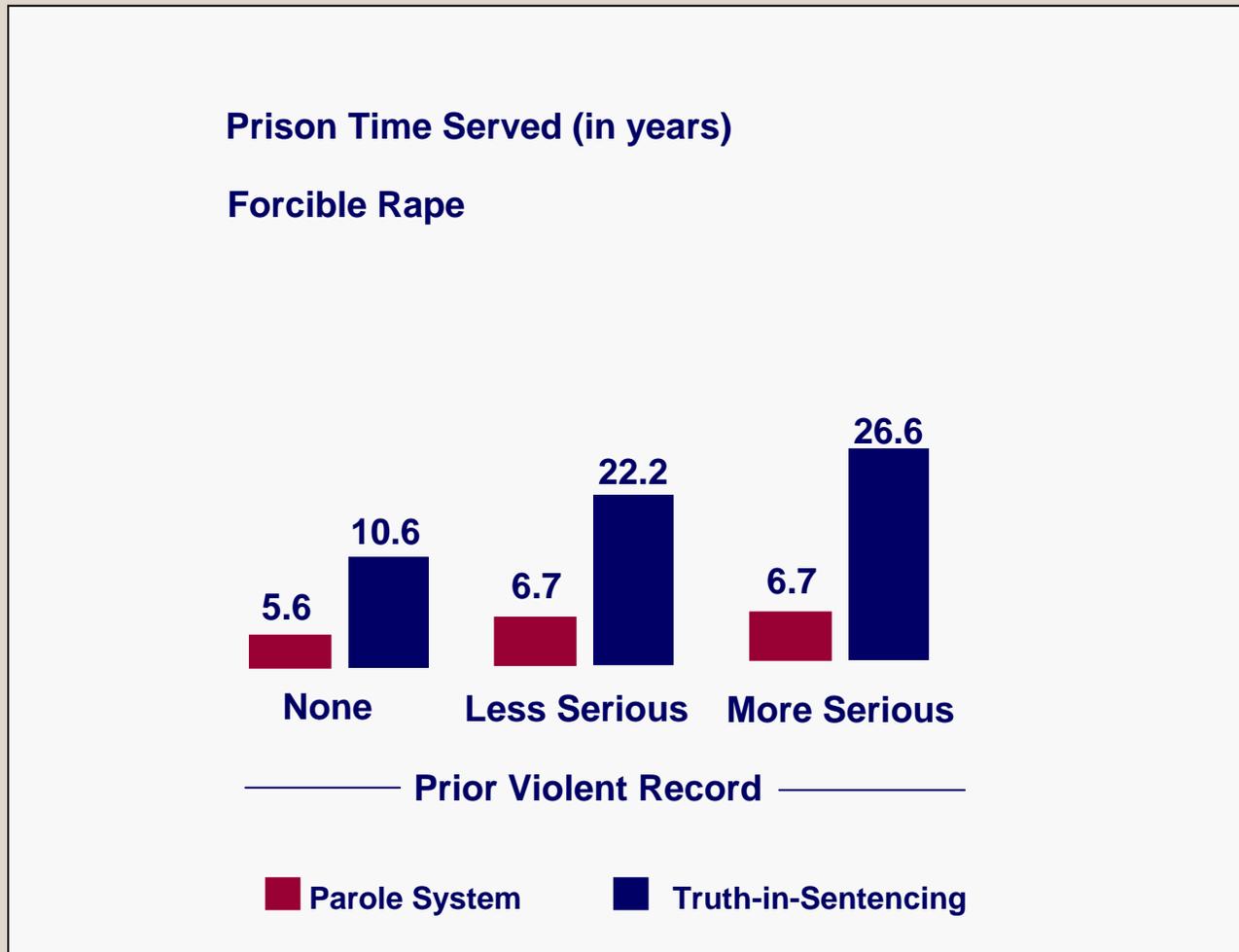
Impact of Truth-in-Sentencing

Percent of Prison Sentences Served Parole System v. Truth-in-Sentencing



Parole system data represent FY1983 prison releases; truth-in-sentencing data is derived from the rate of sentence credits earned among prison inmates as of December 31, 2007.

Prison Time Served Parole System v. Truth-in-Sentencing



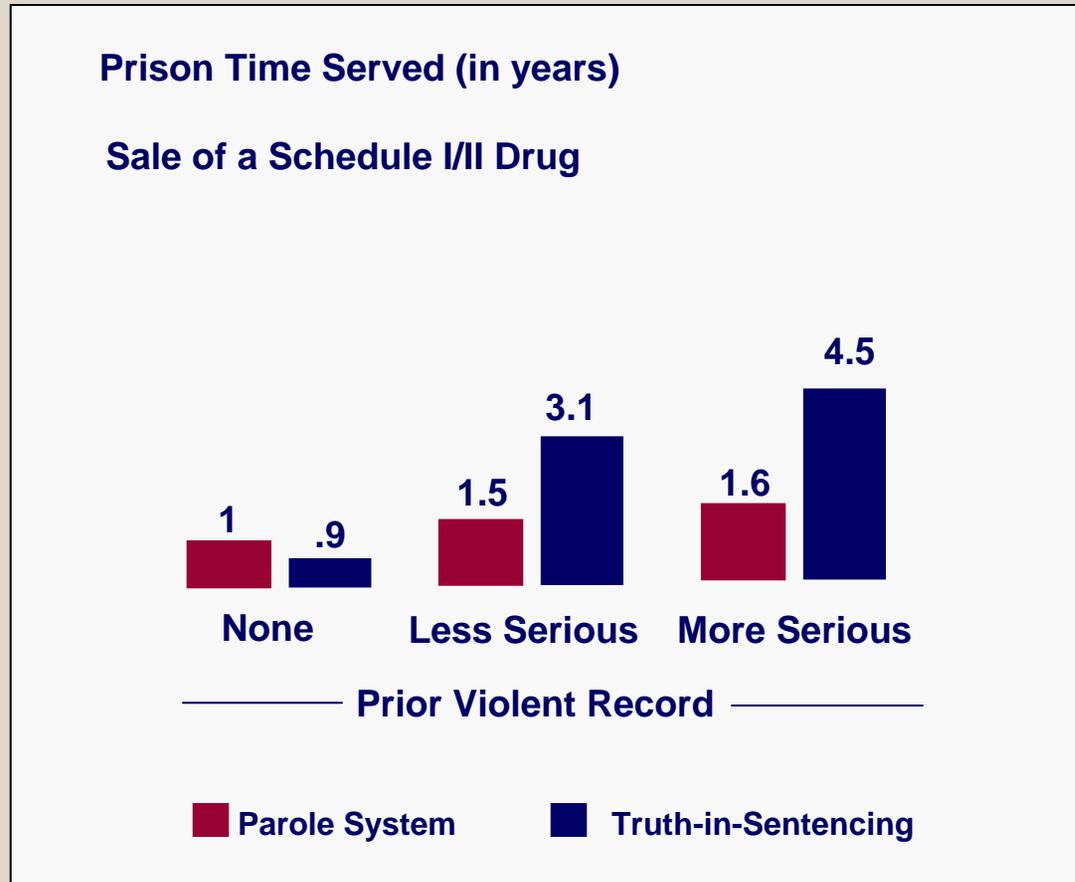
These figures present values of actual incarceration time served under parole laws (1988-1992) and expected time to be served under truth-in-sentencing provisions for cases sentenced FY2004 through FY2008. Time served values are represented by the median (the middle value, where half the time served values are higher and half are lower). Truth-in-sentencing data include only cases recommended for, and sentenced to, incarceration of more than six months.

Prison Time Served Parole System v. Truth-in-Sentencing



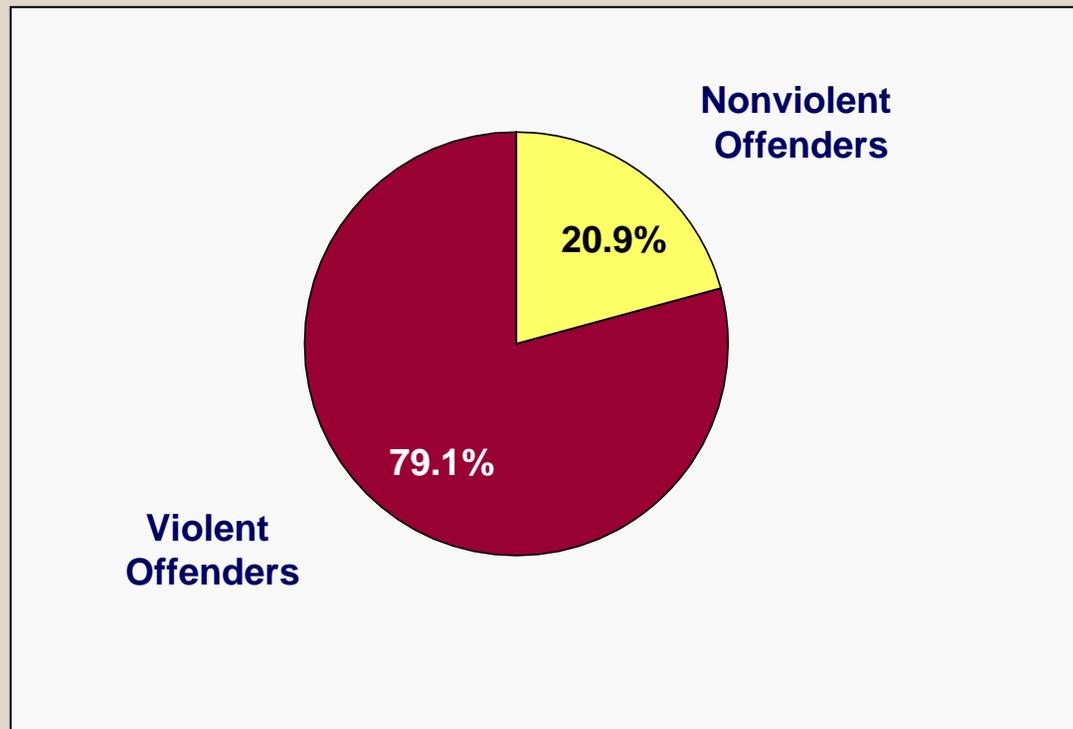
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Prison Time Served Parole System v. Truth-in-Sentencing



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Profile of Offenders (Violent vs. Nonviolent as defined in § 17.1-805) in Virginia's Prison System 2007

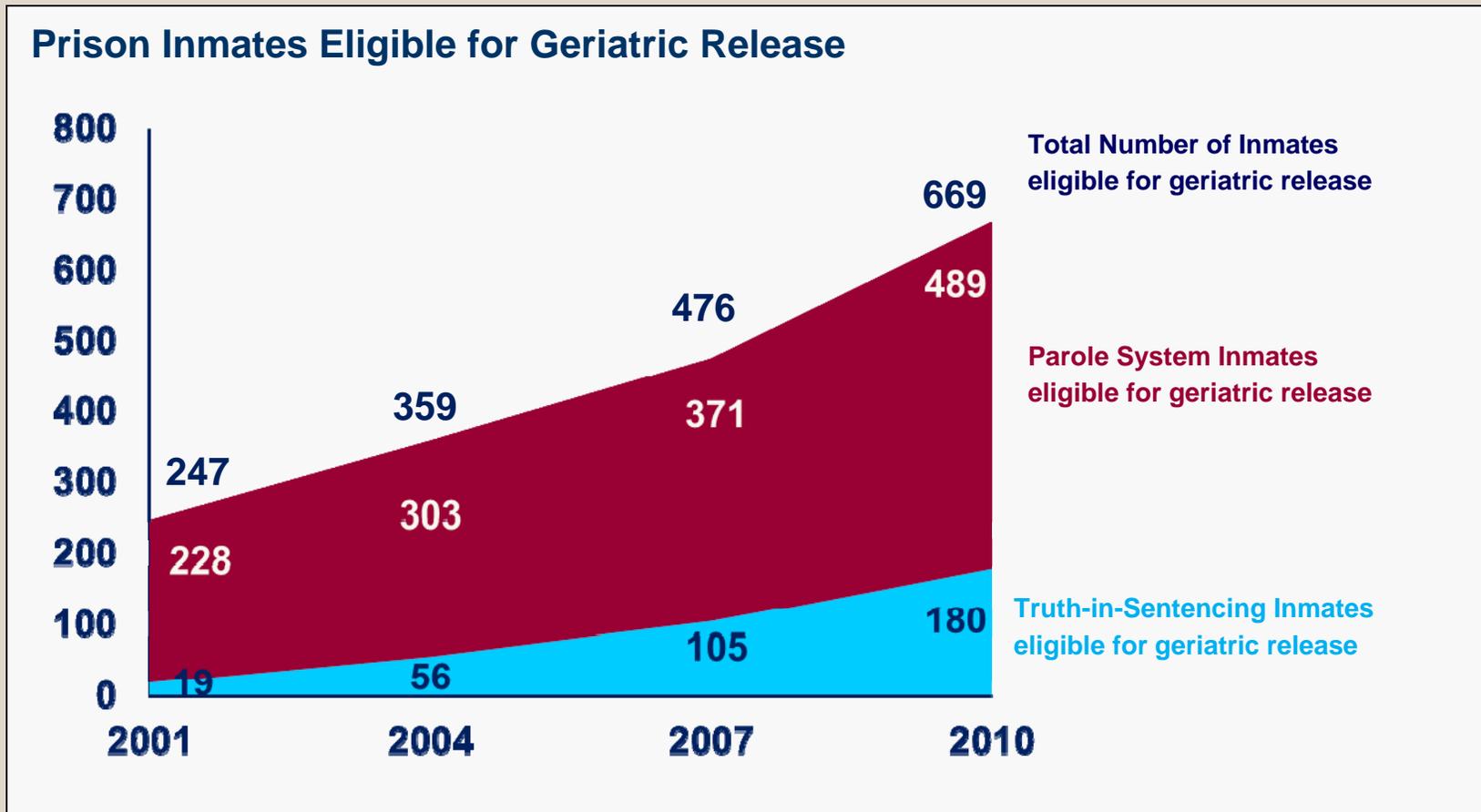


Sources: Virginia Department of Corrections' FAST and CORIS data systems, the Pre/Post-Sentence Investigation (PSI) reporting system, and the Virginia Criminal Sentencing Commission's Sentencing Guidelines (SG) database.

Virginia's Geriatric Release Provision

Under § 53.1-40.01, any person serving a sentence imposed upon a conviction for a felony offense other than a Class 1 felony, (i) who has reached the age of sixty-five or older and who has served at least five years of the sentence imposed or (ii) who has reached the age of sixty or older and who has served at least ten years of the sentence imposed may petition the Parole Board for conditional release. Originally applicable only to offenders sentenced under truth-in-sentencing laws, the 2001 General Assembly expanded this provision to apply to all prison inmates.

Virginia's Geriatric Release Provision



Virginia's Geriatric Release Provision

Inmates Eligible for Geriatric Release by Age and Time Served

Age 60 to 64 and served at least 10 years

Year	Number of Inmates	Avg. Time Served
2001	114	19.5 yrs.
2004	175	20.5 yrs.
2007	233	21.4 yrs.
2010	336	23.1 yrs.

Age 65 or more and served at least 5 years

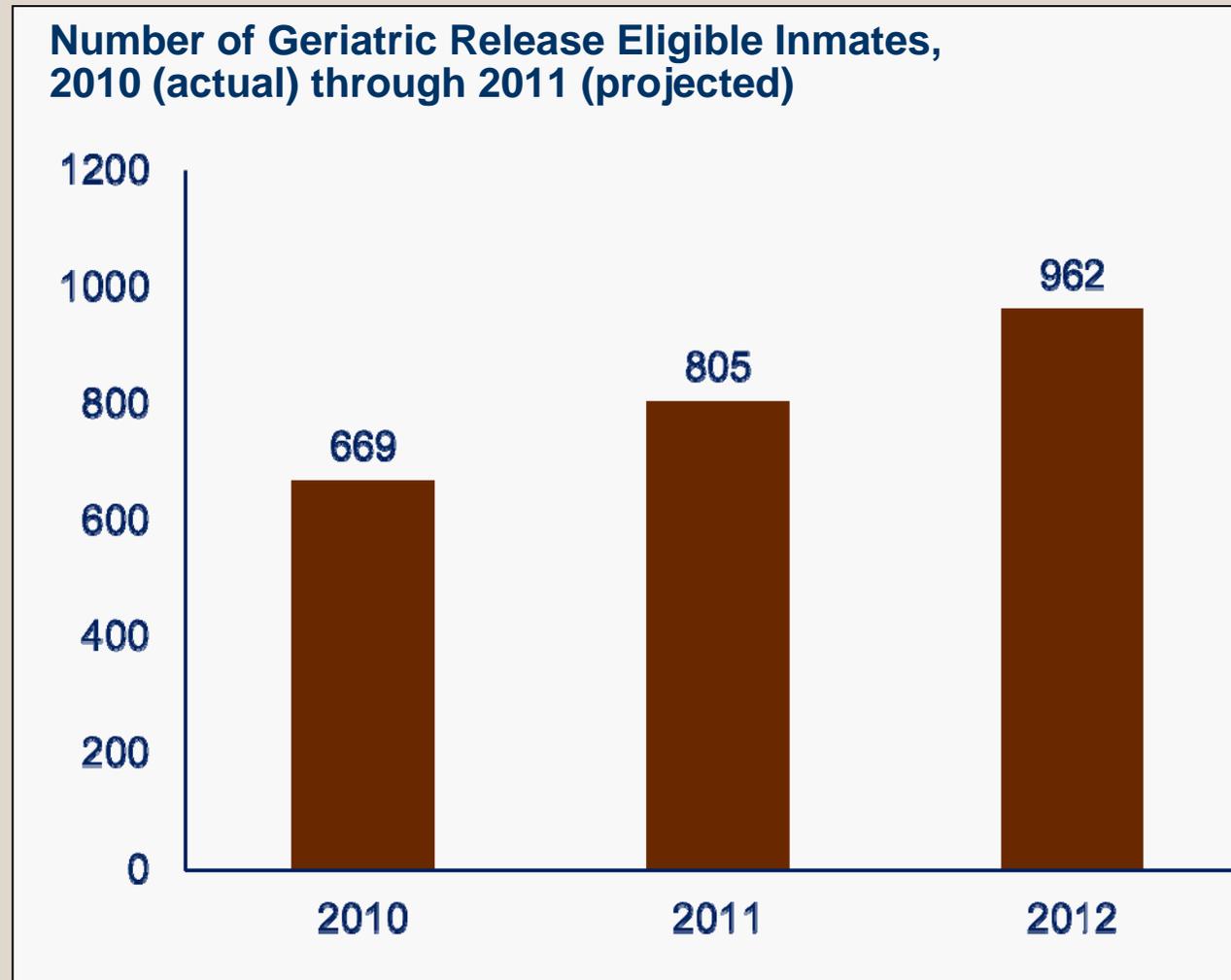
Year	Number of Inmates	Avg. Time Served
2001	133	11.7 yrs.
2004	184	13.6 yrs.
2007	243	15.2 yrs.
2010	333	18.4 yrs.

Virginia's Geriatric Release Provision

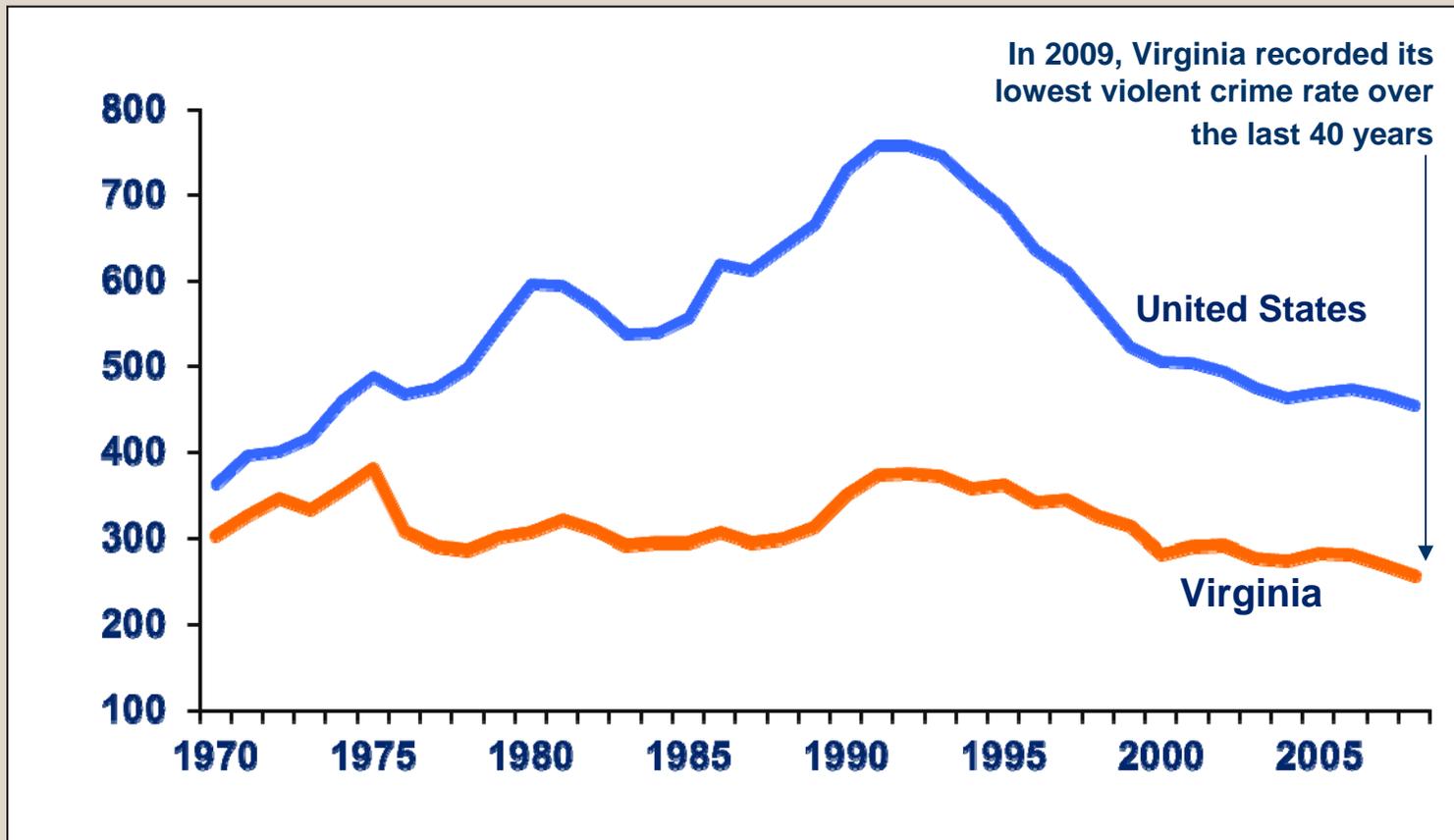
Geriatric Release in Practice

	Inmates Eligible for Geriatric Release	Inmates Who Applied	Geriatric Release Granted
2004	359	39 (11%)	2
2007	476	52 (11%)	2
2008	541	61 (11.2%)	5
2010	669	129 (19.2%)	8

Virginia's Geriatric Release Provision



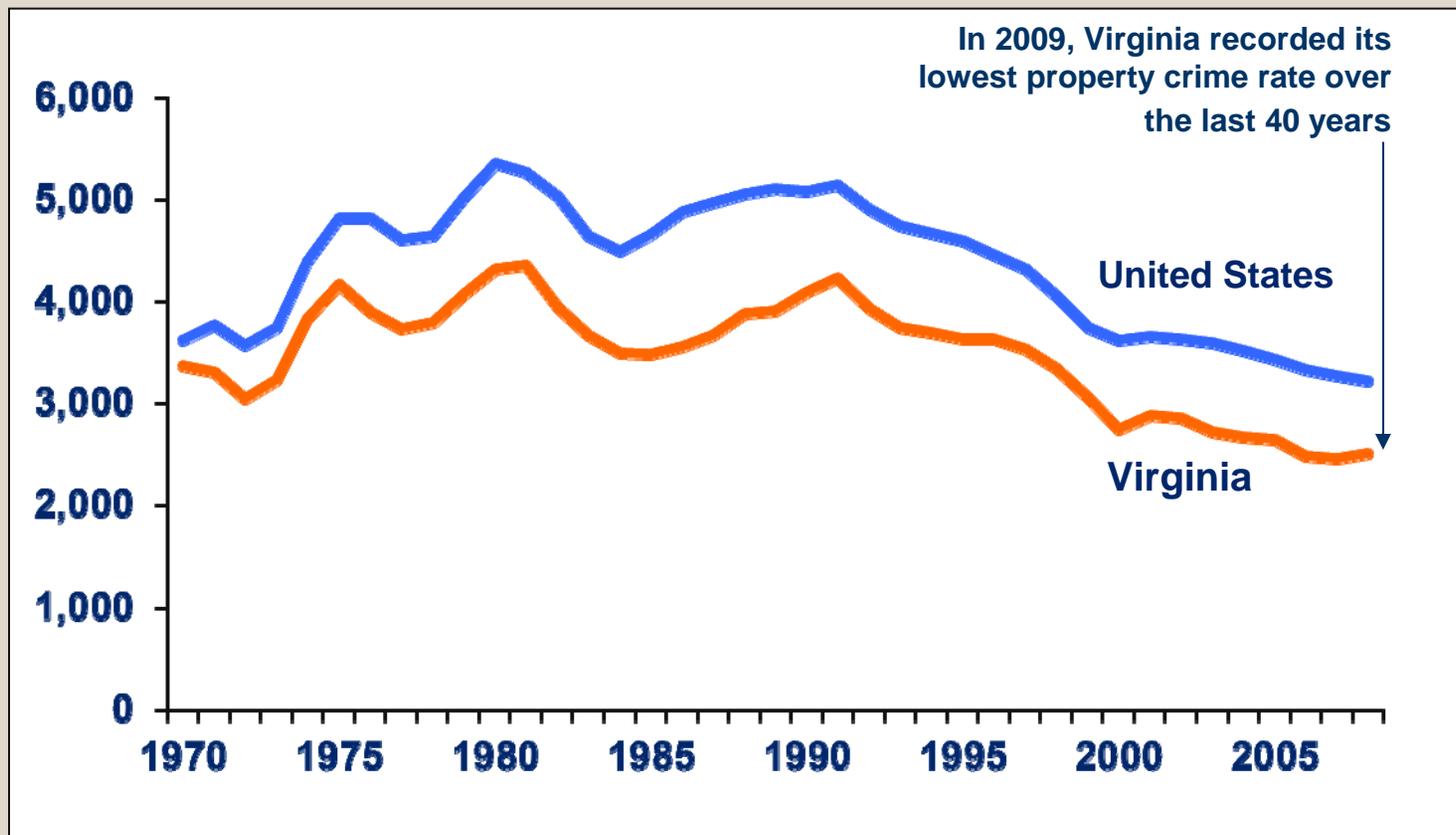
Violent Crime Rates in Virginia and the US*, 1970 – 2009



*Per 100,000 Inhabitants

Violent crimes under the Uniform Crime Reporting System include reported murder and non negligent manslaughter, forcible rape, robbery, and aggravated assault.

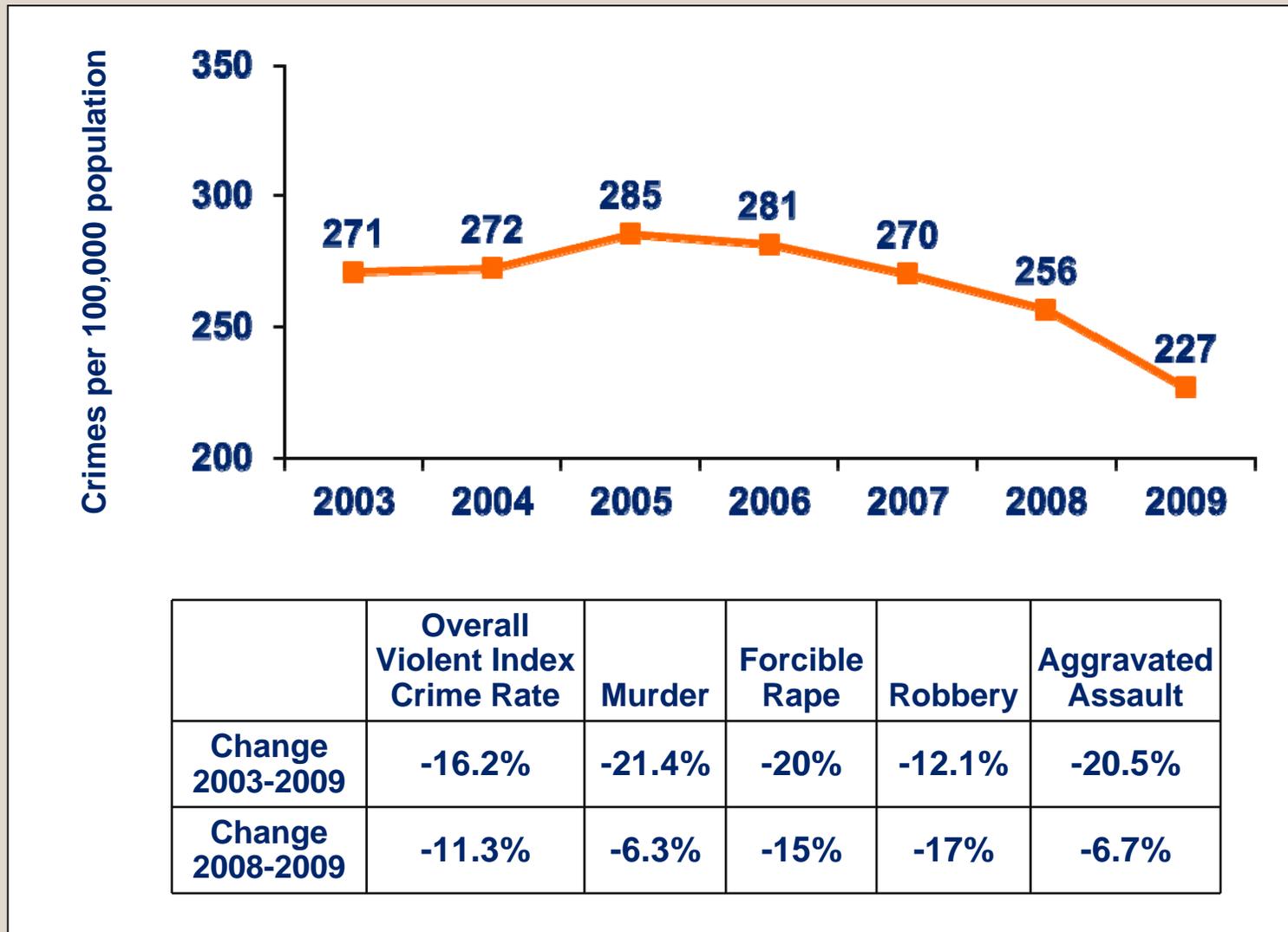
Property Index Crime Rates in Virginia and the US, 1970 – 2009



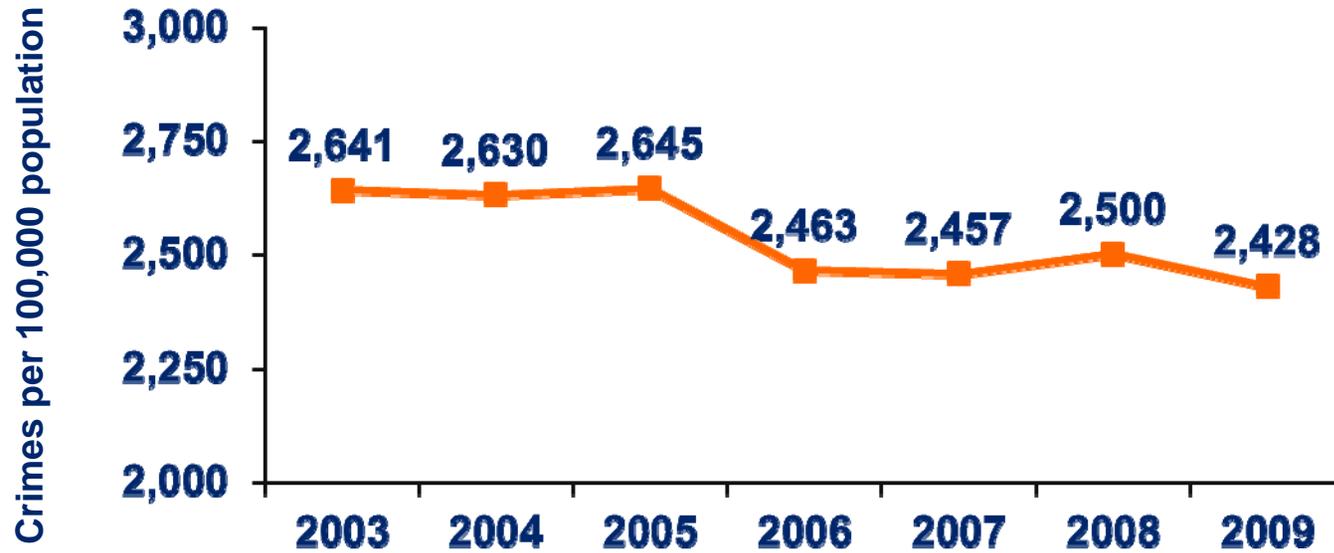
*Per 100,000 Inhabitants

Property crimes include burglary, larceny-theft, and motor vehicle theft.

Violent Index Crime Rates in Virginia, 2003 – 2009

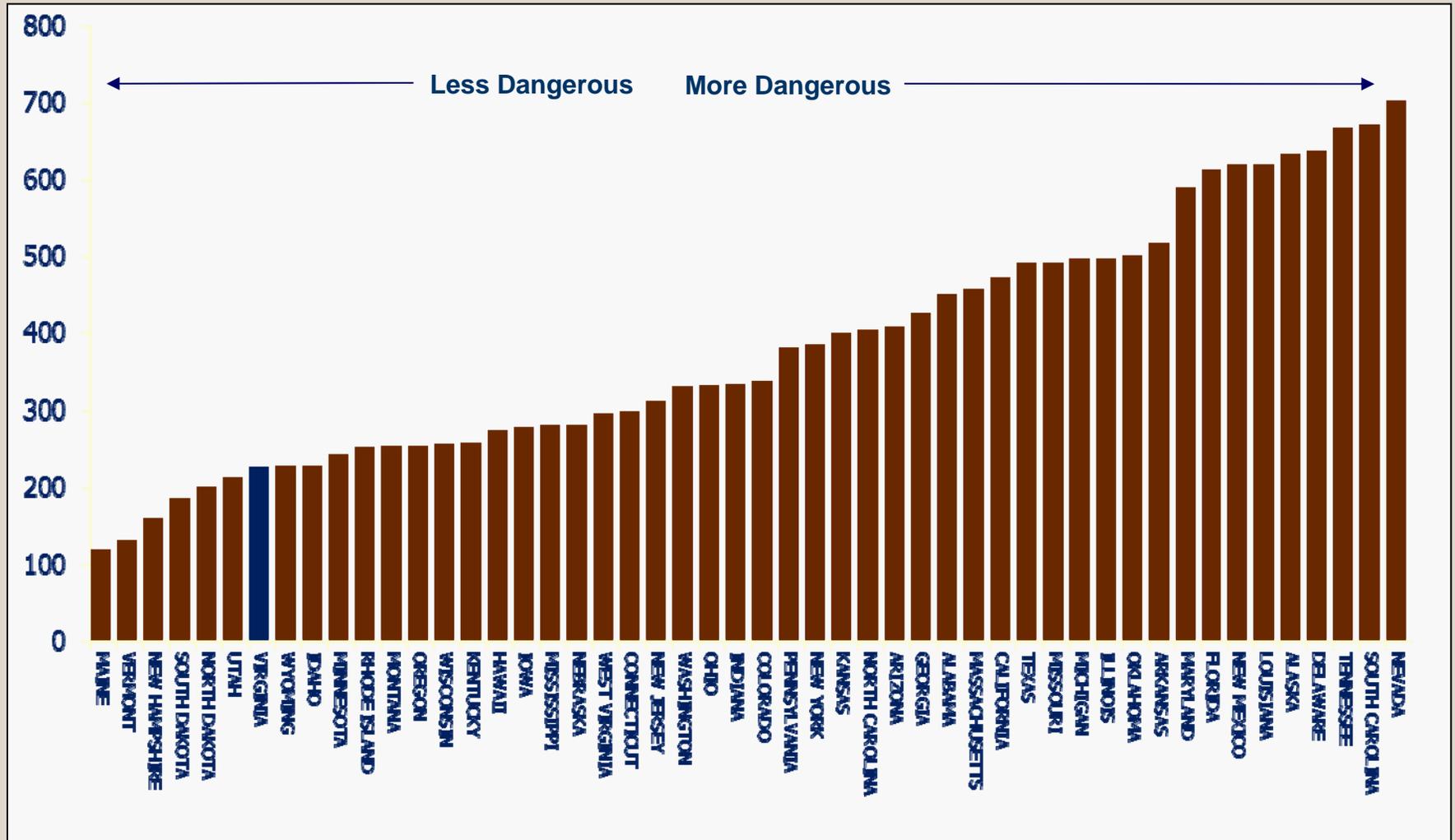


Property Index Crime Rates in Virginia, 2003 – 2009



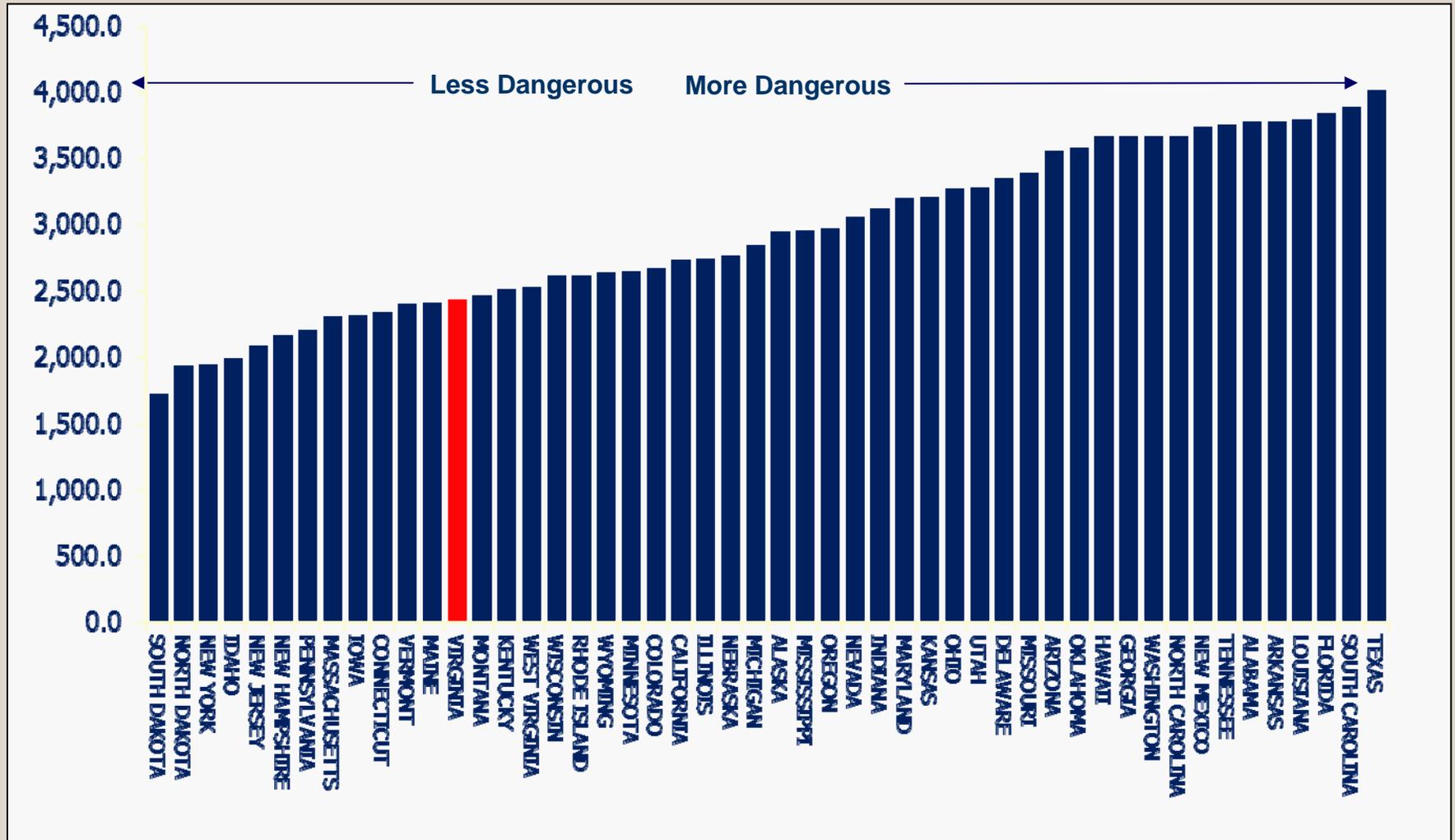
	Overall Property Index Crime Rate	Burglary	Larceny	Motor Vehicle Theft
Change 2003-2009	-8.4%	+2.3%	-9.01%	-40.2%
Change 2008-2009	-3.3%	-2.7%	-2.7%	-15.1%

Violent Crime Rates Across the United States 2009



Crime rates are the number of crimes reported per 100,000 population.
Violent crimes are murder, forcible rape, robbery and aggravated assault.

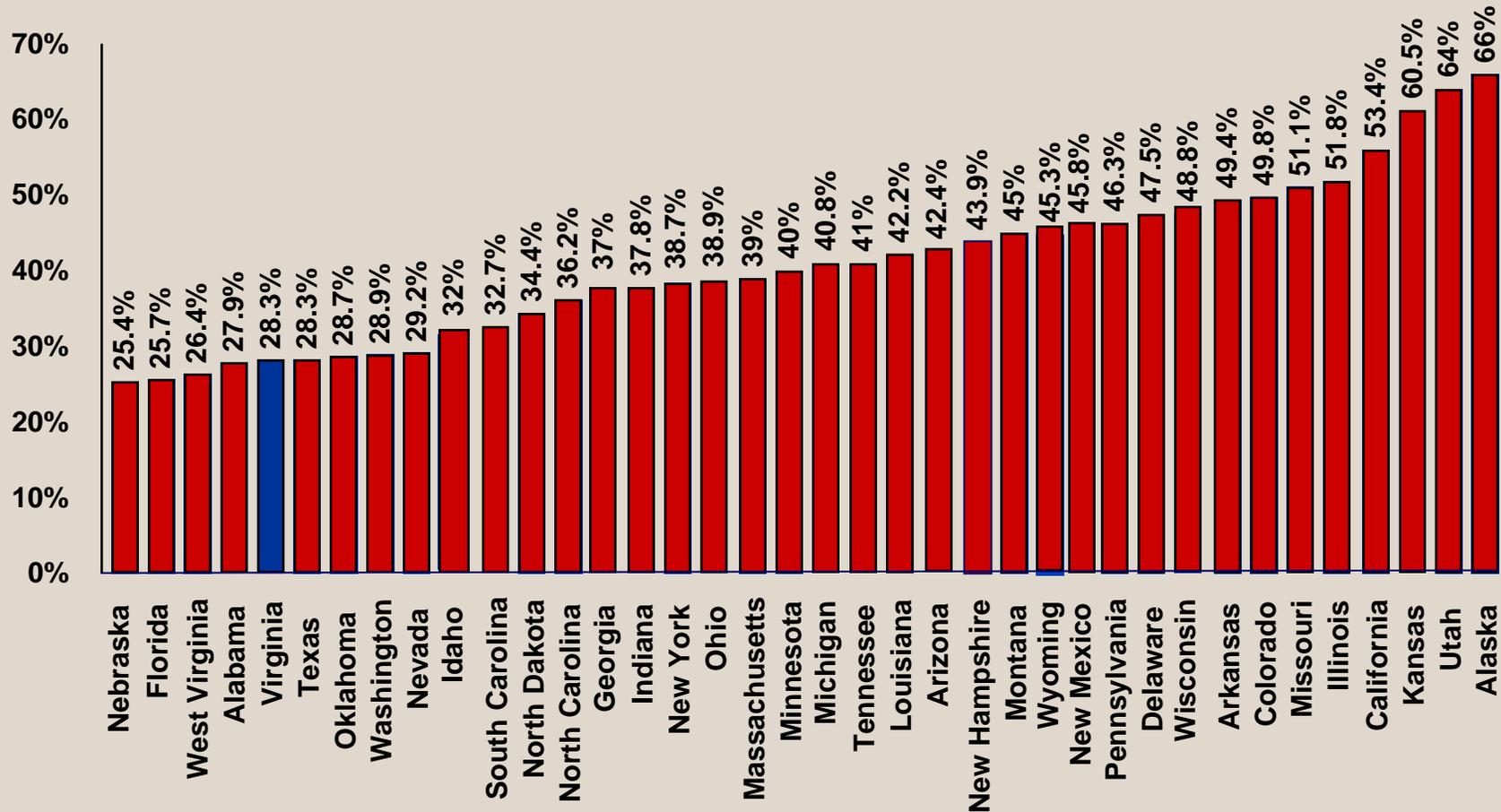
Property Crime Rates Across the United States 2009

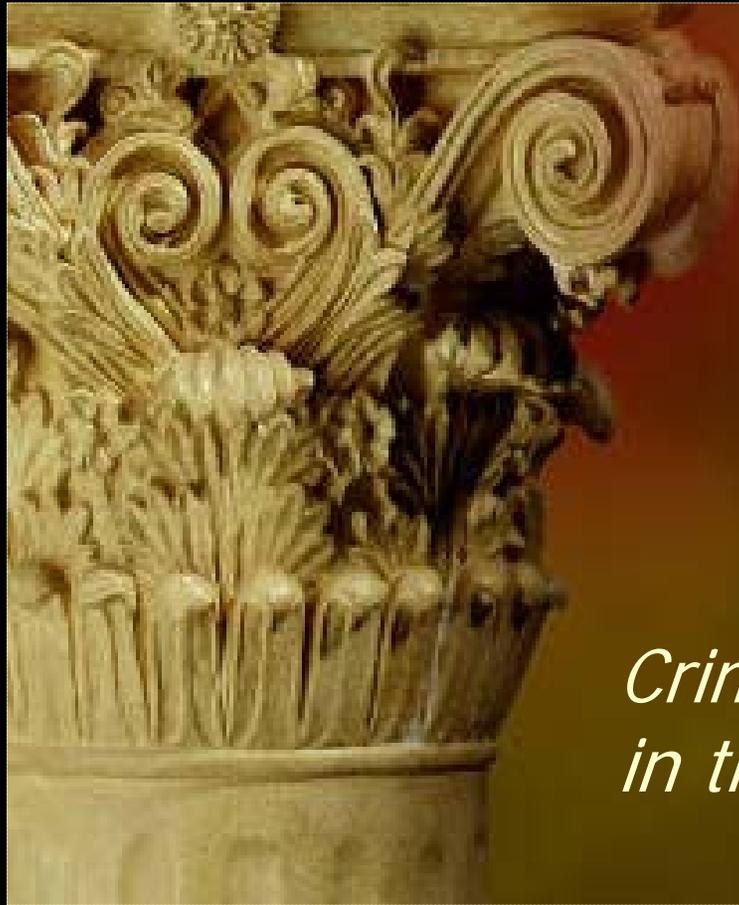


Crime rates are the number of crimes reported per 100,000 population.
Property crimes are burglary, larceny-theft, and motor vehicle theft.

Three Year Re-Imprisonment Rates

Among the 38 states that report felon recidivism as re-imprisonment within three years of release, Virginia ranks in a tie for the fifth lowest recidivism rate.





*Crimes Committed
in the Presence of Children*

Crimes Committed in the Presence of Children

- **Witnessing crimes can have a profound effect on the health and welfare of children**
- **The Sentencing Commission voted to conduct a comprehensive study of crimes committed in the presence of children**



Crimes Committed in the Presence of Children

Study Objectives

- To identify crimes witnessed by children
- To describe the nature of such crimes
- To determine how courts respond to and utilize information concerning the presence of children during the commission of a crime
- To review the criminal code of other states and identify provisions relating to children as witnesses



Crimes Committed in the Presence of Children

- **The Sentencing Commission will work cooperatively with the Commonwealth's Attorneys to identify appropriate cases and gather the necessary information on cases where the crime was committed in the presence of children**



Virginia Criminal Sentencing Commission

Identification of Crimes Committed in the Presence of Children

Cases identified on this form should meet the following criteria:

- The offender committed a felony in the presence (within sight or sound) of any child under the age of 18; or
- A child is the first to discover the victim after the offense; or
- The offender committed an act of larceny or shoplifting that involved the participation of a child; or
- The offender committed any crime (e.g., a drug offense under § 18.2-248) in which he used a child to further or disguise the offense;

and

- The presence/participation of the child during the commission of the crime was a circumstance made known to the judge.

OFFENDER

First _____ Middle _____ Last _____ Suffix _____

Date of Birth _____ / _____ / _____
Month Day Year

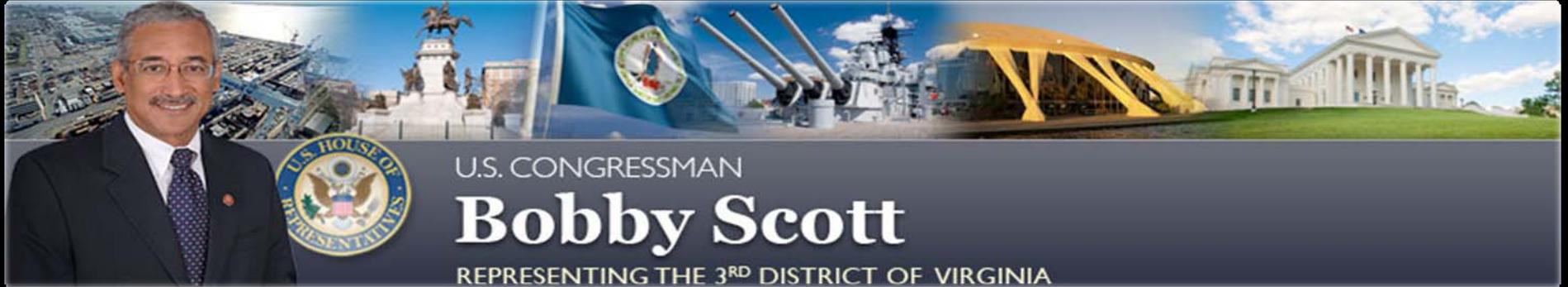
COURT

Circuit _____ City/County _____

Sentencing Date _____ / _____ / _____
Month Day Year

Child Witness Cases Reported through January 10, 2011

ACCOMACK	3	FREDERICKSBURG	3	PITTSYLVANIA	5
ALBEMARLE	3	GLOUCESTER	2	PORTSMOUTH	12
ALEXANDRIA	3	GOOCHLAND	1	PRINCE GEORGE	3
AMHERST	1	GRAYSON	1	PRINCE WILLIAM	16
ARLINGTON	4	GREENE	1	PULASKI	1
AUGUSTA	3	HALIFAX	1	RADFORD	3
BEDFORD	9	HAMPTON	10	RICHMOND CITY	12
BOTETOURT	16	HANOVER	7	ROANOKE CITY	8
BRUNSWICK	2	HENRICO	23	ROANOKE COUNTY	1
BRISTOL	6	HENRY	2	ROCKBRIDGE	1
BUCHANAN	4	HOPEWELL	1	ROCKINGHAM	3
CAMPBELL	5	ISLE OF WIGHT	1	SALEM	2
CAROLINE	1	JAMES CITY	1	SCOTT	2
CHARLOTTE	7	LOUDOUN	6	SMYTH	4
CHARLOTTESVILLE	5	LUNENBURG	2	SOUTHAMPTON	1
CHESTERFIELD	6	LYNCHBURG	27	SPOTSYLVANIA	19
CHESAPEAKE	8	MADISON	2	STAFFORD	6
CLARKE	2	MECKLENBURG	6	SUFFOLK	20
COLONIAL HEIGHTS	1	MIDDLESEX	1	TAZEWELL	6
CULPEPER	3	MONTGOMERY	5	VIRGINIA BEACH	12
DICKENSON	1	NELSON	1	WARREN	1
DINWIDDIE	3	NEW KENT	1	WASHINGTON	9
FAIRFAX COUNTY	19	NEWPORT NEWS	8	WILLIAMSBURG	2
FAUQUIER	6	NORFOLK	26	WYTHE	5
FLOYD	4	NORTHUMBERLAND	6	YORK	6
FLUVANNA	1	PAGE	3	TOTAL	450
FRANKLIN COUNTY	5	PATRICK	3		
FREDERICK	6	PETERSBURG	2		



12.21.10 | Scott Statement on Final Passage of Access to Criminal History Records for State Sentencing Commissions Act

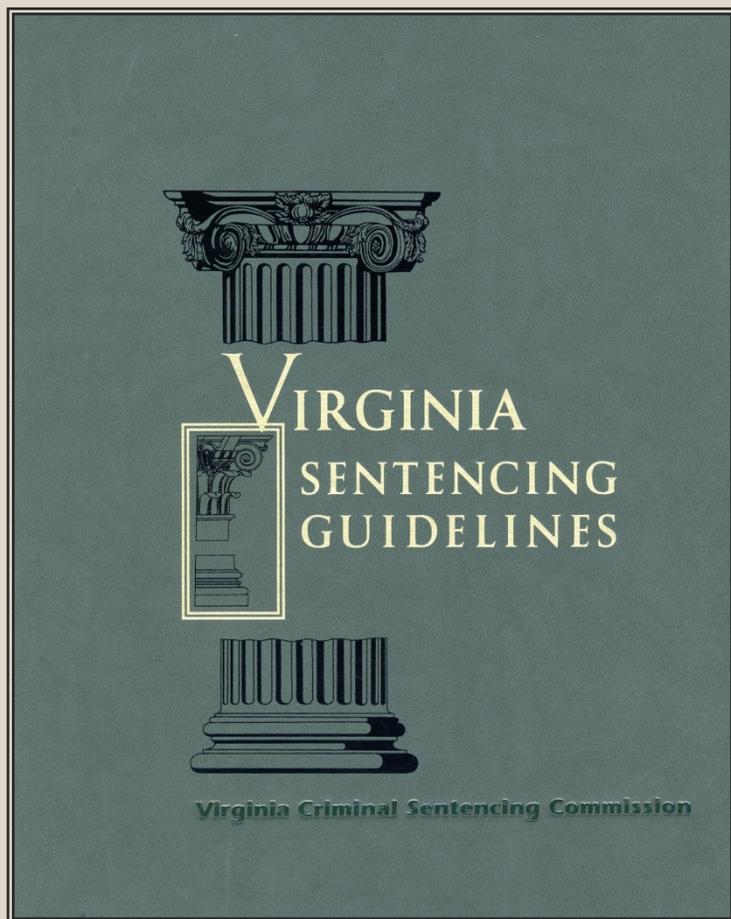
2010,” by unanimous consent, readying the bill to be signed into law by the President. This bill, introduced by Congressman Robert C. “Bobby” Scott, was passed by the House of Representatives on December 9, 2010 and will make an important change to the law to allow state sentencing commissions direct access to the national database of criminal history record information maintained by the U.S. Department of Justice. State commissions will receive the same type of access to this information already afforded to the United States Sentencing Commission.

Sentencing commissions need the criminal history records maintained at the national level, which includes records of federal offenses and offenses committed in other states. If a state commission has access only to the records of offenses committed in its own state, it lacks the information about offenders it needs to make important policy recommendations and to evaluate the recidivism of offenders who may commit crimes out of state. Providing state sentencing commissions with direct access to national criminal record systems will improve the administration of justice by:

- Enhancing the effectiveness of sentencing decisions and program placements for individual offenders, based on complete and accurate criminal history information; and
- Improving evaluation research on sentencing outcomes and program effectiveness, based on large numbers of offenders, in order to better inform policy makers.

After Senate passage of H.R. 6412, Congressman Scott stated, “This bill will allow state sentencing commissions access to information they need to develop more accurate and effective sentencing policies. I applaud the cooperation of colleagues on both sides of the aisle which made quick enactment of this important legislation possible.”

Richard Kern, Ph.D., Director of the Virginia Criminal Sentencing Commission stated, “Congressman Scott’s leadership in the passage of H.R. 6412 is greatly applauded by the many sentencing commissions across the nation. In Virginia, the research work of our sentencing commission has been severely constricted due to a lack of legal access to out-of-state criminal history information. Virginia is bordered by five states and the District of Columbia and, as such, this increases the likelihood that offenders may have criminal records outside of Virginia. Consequently, Virginia judges, legislators, and other policy makers may make major decisions based on inaccurate/incomplete information on the convicted felon population. This groundbreaking legislation championed by Congressman Scott will make the important work of all sentencing commissions more accurate and, in turn, make all of our citizens safer.”

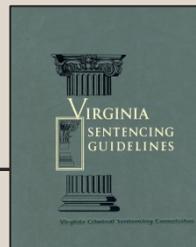


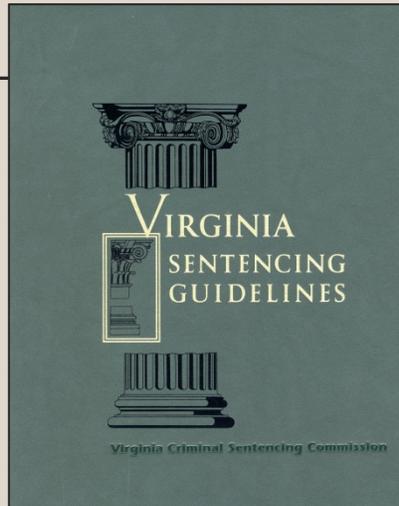
Proposed Recommendations for Guidelines Revisions

2010 Annual Report

Proposals for New Guidelines Offenses or Revisions of Existing Guidelines

- **Proposals reflect the best fit for the historical data**
- **Proposals are designed to closely match the historical rate of incarceration in prison and jail**
- **Current guidelines worksheets serve as the base for scoring historical cases, but the points assigned to those factors may be adjusted and new factors may be added**



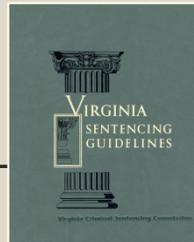


Proposed Recommendation 1:

*Modify the Guidelines Instructions to Recommend
Mandatory Minimum Sentences Be Run Consecutively*

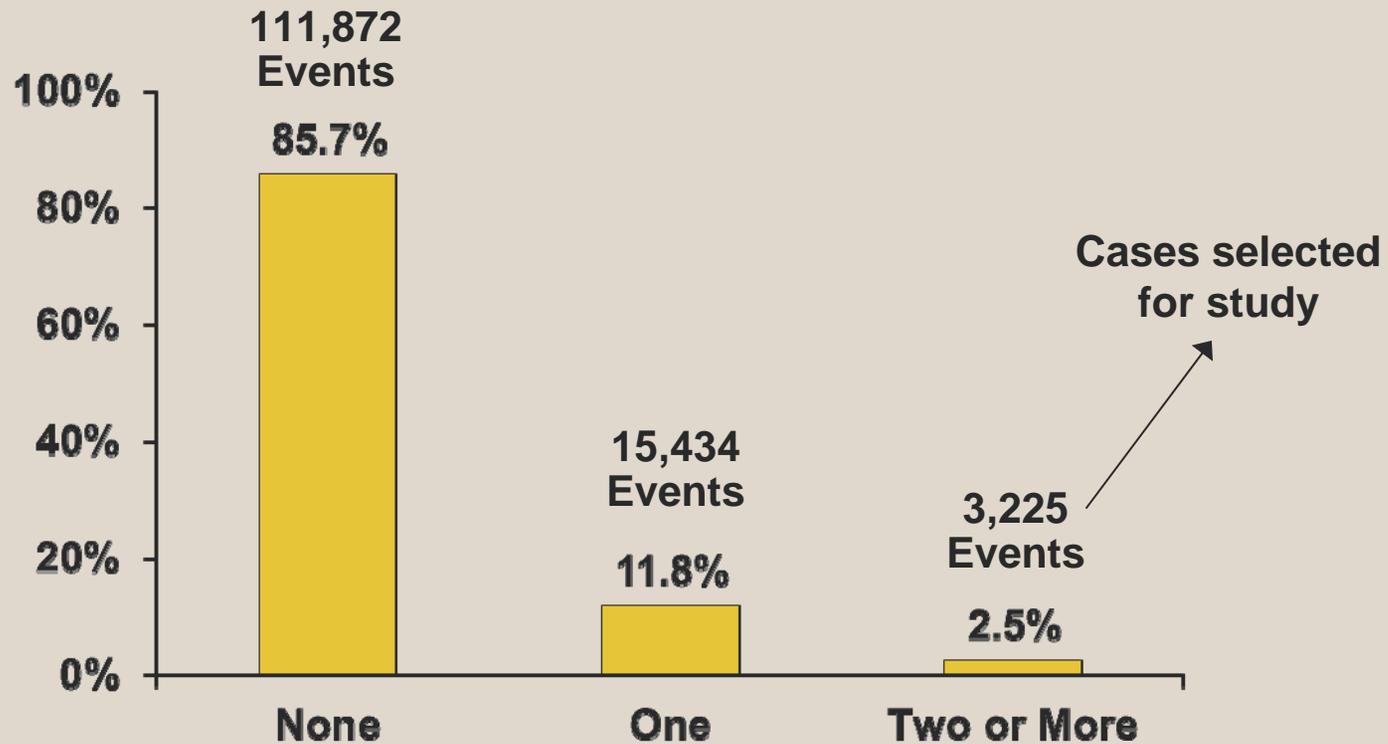
Mandatory Minimum Sentences in the Code of Virginia

- **Currently, there are 109 felony and 46 non-felony mandatory minimum sentences defined in the *Code of Virginia***
- **Many mandatory minimum penalty statutes specify that a sentence under that particular provision must be run consecutively to the sentences for all other charges; however, not all statutes clearly state this**



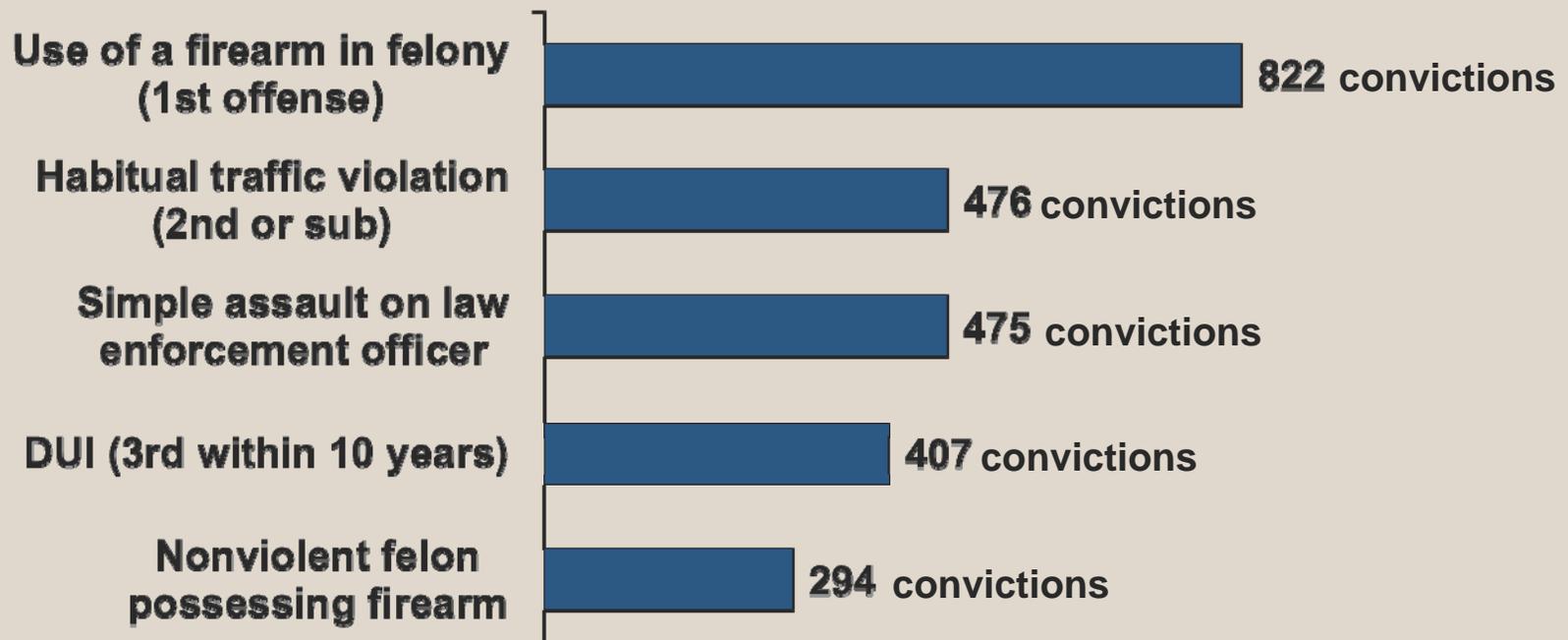
Felony Sentencing Events FY2006 – FY2010

Number of Convictions in the Sentencing Event Requiring a Mandatory Minimum Sentence



**Felony Sentencing Events
with Two or More Convictions Requiring a
Mandatory Minimum Sentence
FY2006 – FY2010**

Most Frequent Mandatory Minimum Offenses

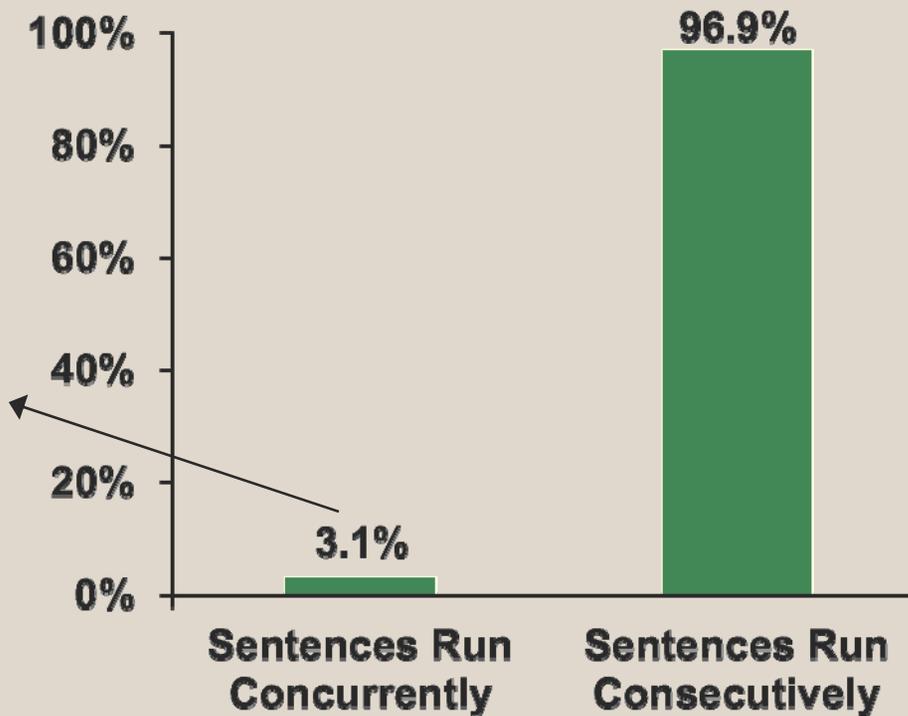


Felony Sentencing Events with Two or More Convictions Requiring a Mandatory Minimum Sentence FY2006 – FY2010

Concurrent versus Consecutive Sentences

Offenses here are most often:

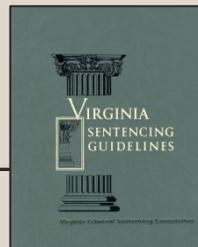
- Sale Schedule I or II drug (3rd/sub.)
- Habitual traffic violation (2nd/sub.)
- Simple assault on law enforcement officer

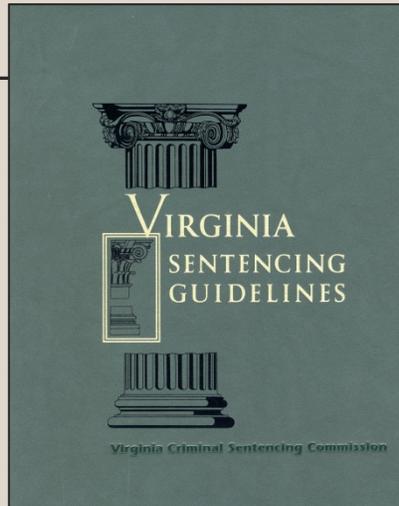


Proposed Recommendation 1

Revise the sentencing guidelines manual to instruct preparers to adjust any part of the guidelines recommendation that falls below the sentence needed to run all mandatory minimum sentences consecutively

The low, midpoint, and high recommendation must be at least equal to the sentence needed to run the mandatory sentences consecutively



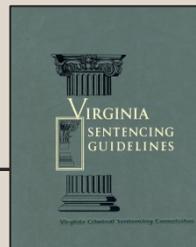


Proposed Recommendation 2:

*Add Sex Offender Registry Violations (§ 18.2-472.1)
to the Miscellaneous Guidelines*

Sex Offender Registry Violations (§ 18.2-472.1)

- **Currently, Sex Offender Registry violations are not covered by the sentencing guidelines**
- **There are more felony convictions for Sex Offender Registry violations than for any other felony not currently covered by the guidelines**



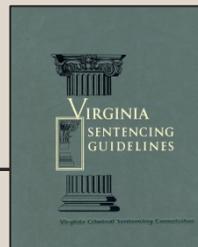
Background

- **The General Assembly has revisited Chapter 9 of Title 9.1 (Sex Offender and Crimes Against Minors Registry Act) several times in recent years**
- **In 2006, the General Assembly added to the list of offenses requiring registration and increased the penalties for second Registry violations**
 - **In addition, the *Code* was changed to allow Juvenile and Domestic Relations courts to require a juvenile who has been adjudicated delinquent for a Registry offense to register**



Background

- **During the 2007 session, the information required of registrants was expanded and the list of crimes requiring registration was expanded and reorganized**
- **In the 2008 session, the crimes requiring registration were restructured**



**Sex Offender Registry Violations (§ 18.2-472.1)
FY2008 – FY2009
646 Cases**

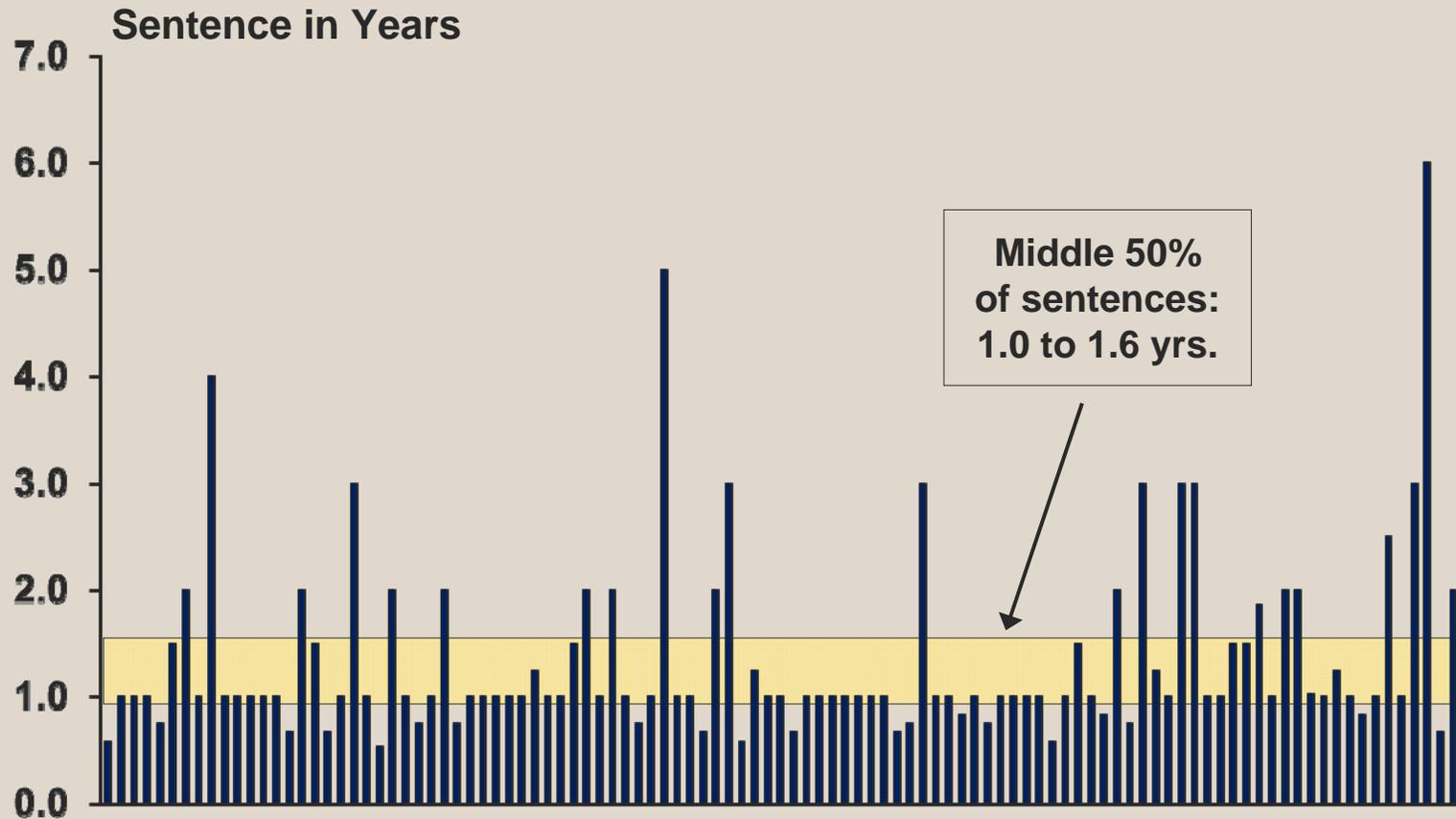
Disposition	Percent	Median Sentence
No Incarceration	34%	NA
Incarceration Up to 6 Months	39%	4 Months
Incarceration More than 6 Months	27%	1 Year

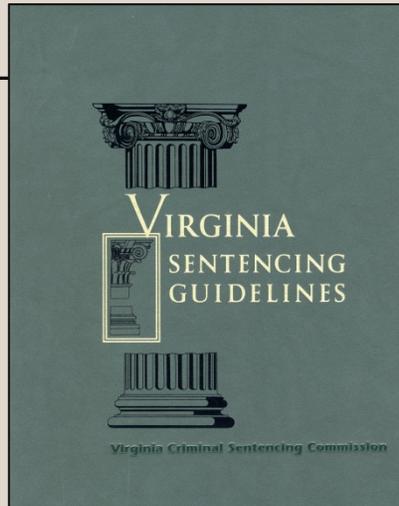
**Note: Data reflect cases in which this offense was the primary
(or most serious) offense at sentencing**

**Source: Supreme Court of Virginia, Circuit Court Automated
Information System (CAIS)**

Sex Offender Registry Violations (§ 18.2-472.1) FY2008 – FY2009

Offenders Sentenced to Incarceration of More than 6 Months 177 Cases



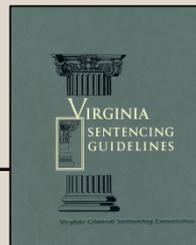


Proposed Recommendation 3:

Revise the sentencing guidelines manual to state that the amount or value in embezzlement cases is to be scored based on the amount determined by the trial court.

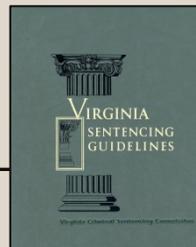
Factor for Embezzlement Amount

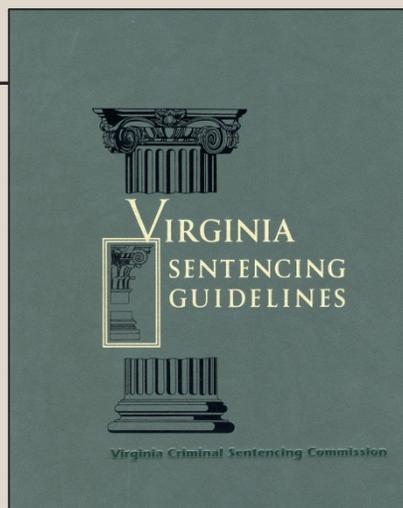
- **Judges have written to express their concern over the scoring of the embezzlement factor when the indictment is written in a general way (i.e., the amount is greater than \$200):**
 - **When there is a guilty plea, “there is often a stipulation as to the facts and [scoring the embezzlement factor] is not an issue”**
 - **In a jury trial, however, “the jury does not define a specific amount, as their general verdict only indicates whether they make a finding of guilt or innocence”**



Factor for Embezzlement Amount

- According to the judges, “there can be a legitimate dispute between the Commonwealth and the defendant regarding what the amount is for scoring”
- “Ironically restitution can be determined by a separate hearing and only requires proof beyond a preponderance of the evidence. But the [guidelines] instructions say that the embezzlement amount is scored based on the amount for which the defendant was convicted, suggesting it has to be the amount for which he was found guilty beyond a reasonable doubt”



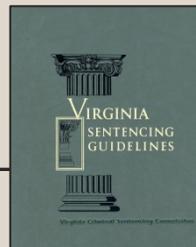


Proposed Recommendation 4:

*Split the Miscellaneous Sentencing Guidelines
into Two Offense Groups*

Miscellaneous Sentencing Guidelines

- **Splitting the miscellaneous guidelines into two offense groups will allow for more refined analysis in the future, which could result in improvements to the guidelines for particular offenses**
- **The current proposal does not modify the guidelines scores and will not change the sentence recommendation for any offender**



Proposed Split of the Miscellaneous Offense Group

Person and Property Offenses

Child Abuse
Vandalism
Arson
Extortion/Threats
Gang (added in FY2011)

**376 Sentencing Events
in FY2010**

Prisoner and Other Offenses

Failure to Appear
Perjury
Prisoner
Escape

**135 Sentencing Events
in FY2010**

**Proposal to add Sex Offender
Registry violations beginning
FY2012**