Overview of Virginia’s Truth-in-Sentencing System

Richard P. Kern, Ph.D., Director
Virginia Criminal Sentencing Commission

The Evolution of Sentencing Reform in Virginia
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.
Narrative of Current Offense:
The following was taken from the Virginia Beach Police Department's Investigative Summary.

On the morning of January 17, 1970, on the occasion of the Commonwealth's Arraignment of a Defendant.

"I, Officer Midgett, arrived on scene after the incident. I was not a witness to the actual crime. Upon arrival, there was one suspect in the back of a maroon station wagon and one suspect on the curb in front of the house. I was advised by officers on scene of the situation. Apparently, the suspect in the vehicle, who was not a witness to the incident, was advised of the incident by the station wagon driver. The vehicle was not a witness to the incident. The suspect in the vehicle, who was not a witness to the incident, was advised of the incident by the station wagon driver. The vehicle was not a witness to the incident. The suspect in the vehicle, who was not a witness to the incident, was advised of the incident by the station wagon driver. The vehicle was not a witness to the incident. The suspect in the vehicle, who was not a witness to the incident, was advised of the incident by the station wagon driver. The vehicle was not a witness to the incident. The suspect in the vehicle, who was not a witness to the incident, was advised of the incident by the station wagon driver. The vehicle was not a witness to the incident. The suspect in the vehicle, who was not a witness to the incident, was advised of the incident by the station wagon driver.

Narrative of Adult Criminal History Summary:
See Page 10 for Adult Criminal History.
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**

### Historical Context

#### 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 and the General Assembly each form Commission’s to develop sentence/parole reform plan
- 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)
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 that truth in sentencing would cause prison system to “collapse”– risk assessment proposed to divert low-risk offenders

Historical Context

How Did Imposed Sentences and Actual Time Served Compare?

<table>
<thead>
<tr>
<th>Conviction Offense</th>
<th>Imposed Sentence</th>
<th>Actual Time Served</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder 1st/D.</td>
<td>10</td>
<td>35</td>
</tr>
<tr>
<td>Murder 2nd/D.</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Rape/ Sodomy</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>Robbery</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Agg. Wound.</td>
<td>14</td>
<td></td>
</tr>
<tr>
<td>Burglary</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Sale Sch. I/I Drugs</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>Fraud</td>
<td>4</td>
<td></td>
</tr>
</tbody>
</table>

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)

Historical Context

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

**Discretionary Parole Prior to 1995**

<table>
<thead>
<tr>
<th>Prior Incarceration</th>
<th>Parole Eligibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>1/4 or 12 yrs.</td>
</tr>
<tr>
<td>1</td>
<td>1/3 or 13 yrs.</td>
</tr>
<tr>
<td>2</td>
<td>1/2 or 14 yrs.</td>
</tr>
<tr>
<td>&gt;3</td>
<td>3/4 or 15 yrs.</td>
</tr>
</tbody>
</table>

### Parole Eligibility

- Prior to 1995: 1/4 or 12 yrs., 1/3 or 13 yrs., 1/2 or 14 yrs., 3/4 or 15 yrs.

## Inmates Earned Significant Sentence Credit Under Previous System

**Good Conduct Class Level**

<table>
<thead>
<tr>
<th>Class Level</th>
<th>Prior to 1995</th>
<th>Truth-in-Sentencing 1995</th>
</tr>
</thead>
<tbody>
<tr>
<td>One</td>
<td>30 for 30</td>
<td>4.5 for 30</td>
</tr>
<tr>
<td>Two</td>
<td>20 for 30</td>
<td>3.0 for 30</td>
</tr>
<tr>
<td>Three</td>
<td>10 for 30</td>
<td>1.5 for 30</td>
</tr>
<tr>
<td>Four</td>
<td>0 for 30</td>
<td>0 for 30</td>
</tr>
</tbody>
</table>

**NOTE:** All numbers in days
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

§ 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)
§ 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 dangerous of the offender, deterrence of individuals from committing criminal offenses and the use of alternative sanctions, where appropriate

§ 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
§ 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.

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

Analytical Approach

Guidelines factors shaded in blue

Prior Criminal Record
24.9%

Circuit
20.1%

Legal Status at Time of Offense
11.5%

Type and Counts of Current Offense
6.3%

Age of Offender
4.4%

Weapon Use/Type
4.1%

Seriousness of Additional Offenses
6.3%

Type of Counsel
4.1%

Employment Record
4.1%

Seriousness of Additional Offenses
11.9%

Type and Counts of Current Offense
11.9%

Weapon Use/Type
7.7%

Prior Criminal Record
46.9%

Legal Status at Time of Offense
21.6%
Factors and weights on sentencing guidelines forms are grounded in history

### Analytical Approach

#### Burglary – Prison In/Out Decision

<table>
<thead>
<tr>
<th>Type of primary offense (examples)</th>
<th>Add Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Possession of burglary tools</td>
<td>0</td>
</tr>
<tr>
<td>Dwelling with intent to commit crime against person</td>
<td>9</td>
</tr>
<tr>
<td>Other structure with intent to commit larceny</td>
<td>3</td>
</tr>
</tbody>
</table>

#### Additional offenses (including counts)

<table>
<thead>
<tr>
<th>at conviction, with maximum penalties totaling:</th>
<th>Add Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - 14</td>
<td></td>
</tr>
<tr>
<td>15 - 32</td>
<td></td>
</tr>
<tr>
<td>33 - 46</td>
<td></td>
</tr>
<tr>
<td>47 or more</td>
<td></td>
</tr>
</tbody>
</table>

#### Weapon used, brandished, feigned, or threatened

<table>
<thead>
<tr>
<th>weapon other than firearm</th>
<th>Add Score</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Prior Adult Convictions

<table>
<thead>
<tr>
<th>with maximum penalties totaling:</th>
<th>Add Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>less than 2 years</td>
<td></td>
</tr>
<tr>
<td>2 - 11 years</td>
<td></td>
</tr>
<tr>
<td>12 - 24 years</td>
<td></td>
</tr>
<tr>
<td>25 - 33 years</td>
<td></td>
</tr>
<tr>
<td>34 years or more</td>
<td></td>
</tr>
</tbody>
</table>

#### Prior felony property convictions

| 1 - 3                           | Add Score |
| 4 - 7                           |           |
| 8 - 9                           |           |
| 10 or more                      |           |

#### Legally restrained at the time of offense

<table>
<thead>
<tr>
<th>Probation</th>
<th>Add Score</th>
</tr>
</thead>
</table>

**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

<table>
<thead>
<tr>
<th>Score</th>
<th>Recommendation</th>
<th>Percent</th>
<th>OUT Percent</th>
<th>IN Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-3</td>
<td>OUT</td>
<td>9.9%</td>
<td>89.9%</td>
<td>10.1%</td>
</tr>
<tr>
<td>4-6</td>
<td>OUT</td>
<td>31.7%</td>
<td>80.5%</td>
<td>19.5%</td>
</tr>
<tr>
<td>7-8</td>
<td>OUT</td>
<td>40.8%</td>
<td>71.3%</td>
<td>28.7%</td>
</tr>
<tr>
<td>9-10</td>
<td>OUT</td>
<td>49.9%</td>
<td>58.3%</td>
<td>41.7%</td>
</tr>
<tr>
<td>11-13</td>
<td>IN</td>
<td>62.3%</td>
<td>44.8%</td>
<td>55.2%</td>
</tr>
<tr>
<td>14-15</td>
<td>IN</td>
<td>68.8%</td>
<td>29.7%</td>
<td>70.3%</td>
</tr>
<tr>
<td>16-18</td>
<td>IN</td>
<td>78.4%</td>
<td>22.7%</td>
<td>77.3%</td>
</tr>
<tr>
<td>19+</td>
<td>IN</td>
<td>100.0%</td>
<td>9.1%</td>
<td>90.9%</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>100.0%</td>
<td>50.0%</td>
<td>50.0%</td>
</tr>
</tbody>
</table>

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

Historical Sentence Guidelines Range

Truth in Sentence Guidelines Range

Actual Prison Sentences

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

Historical Sentence Guidelines Range

Truth in Sentence Guidelines Range

Actual Time Served
New Sentencing Guidelines for Violent Felons (e.g., Murder, Rape, Robbery, Assault) Increased by:

- No Violent Priors: 100%
- Less Serious Violent Priors: 300%
- More Serious Violent Priors: 500%

Sentencing Reform – Increases Incapacitation Periods for Violent Felons

Analytical Approach

- 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*

- **Peak Age 18**

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

- **Prison Stay ≤ 3 years**
- **Prison Stay > 3 years**

- **Age at Prison Admission**
  - 18-19: 32%
  - 20-21: 26%
  - 22-24: 24%
  - 25-29: 18%
  - 30-34: 19%
  - 35-39: 15%
  - 40+: 11%

- **Age at Prison Admission**
  - 18-19: 7%
  - 20-21: 8%
  - 22-24: 3%
  - 25-29: 4%
  - 30-34: 3%
  - 35-39: 4%
  - 40+: 8%
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

§ 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
Virginia Criminal Sentencing Commission

Dr. Rick Kern, Director

FY2007

Number of Cases = 25,732

Sentencing Guidelines Compliance

Aggravation
Mitigation
Compliance

Mitigation
Aggravation

10.4%
9.7%
79.9%

48%
52%

Overall Compliance

Directions of Departures

Sentencing Guidelines Compliance
**Percentage of Sentencing Guidelines Violent Offender Enhancement Cases**

- Violent Offender Enhancement Cases: 21%
- Cases without Violent Offender Enhancement: 79%

**Type of Sentencing Guidelines Violent Offender Enhancements Received**

- Less Serious Violent Prior: 9.3%
- Instant Violent Offense: 5.3%
- More Serious Violent Prior: 3.2%
- Instant Violent Offense & Less Serious Violent Prior: 2.0%
- Instant Violent Offense & More Serious Violent Prior: 0.8%

**FY2007**
Number of Cases = 25,732

**FY2007**
Number of Cases = 5,299
Integration of Offender Recidivism Risk Assessment into Virginia Sentencing Guidelines

Nature of Risk Assessment

- Criminal risk assessment estimates an individual's likelihood of repeat criminal behavior and classifies offenders based on their relative risk of such behavior.

- In practice, risk assessment is typically an informal process in the criminal justice system
  - Prosecutors when charging
  - Judges at sentencing
  - Probation officers in developing supervision plans
Nature of Risk Assessment

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

Nature of Risk Assessment

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

- Groups are defined by having a number of factors in common that are statistically relevant to predicting the likelihood of repeat offending.

- These groups exhibiting a high degree of re-offending are labeled high risk.

Nature of Risk Assessment

- No risk assessment research can ever predict a given outcome with 100% accuracy.

- The goal is to produce an instrument that is broadly accurate and provides useful additional information to decision makers.

- Individual factors by themselves do not place an offender in a high-risk group.
  - The presence or absence of certain combinations of factors determine the risk group of the offender.
**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*

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**Non-Violent Risk Assessment**

Felony Drug, Fraud and Larceny Convictions

```
<table>
<thead>
<tr>
<th>Section B</th>
<th>Section C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Probation/Jail Decision</td>
<td>Prison Length Decision</td>
</tr>
<tr>
<td>Probation</td>
<td>Jail</td>
</tr>
<tr>
<td>Non-incarceration Recommendation</td>
<td></td>
</tr>
</tbody>
</table>

Section D

<table>
<thead>
<tr>
<th>Alternative Punishment Recommendation</th>
<th>Jail Incarceration Sentence</th>
<th>Alternative Punishment Recommendation</th>
<th>Prison Incarceration Sentence</th>
</tr>
</thead>
</table>
```
Significant Factors in Assessing Risk for Nonviolent Offenders

- Offender Age
- Prior Felony Record
- Offense Type
- Not Regularly Employed
- Male Offender
- Prior Adult Incarcerations
- Prior Arrest w/in Past 18 Mos.
- Additional Offenses
- Never Married by Age 26

By relative degree of importance


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

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

![Graph showing 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

- 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

<table>
<thead>
<tr>
<th>Score</th>
<th>Percent of Offenders</th>
<th>Reconviction Rate for offenders scoring at or below point value</th>
</tr>
</thead>
<tbody>
<tr>
<td>35</td>
<td>2.5%</td>
<td>12.4%</td>
</tr>
<tr>
<td>36</td>
<td>2.7%</td>
<td>13.9%</td>
</tr>
<tr>
<td>37</td>
<td>2.2%</td>
<td>13.4%</td>
</tr>
<tr>
<td>38</td>
<td>2.7%</td>
<td>13.6%</td>
</tr>
<tr>
<td>39</td>
<td>5.4%</td>
<td>16.0%</td>
</tr>
<tr>
<td>40</td>
<td>3.0%</td>
<td>18.8%</td>
</tr>
<tr>
<td>More than 40</td>
<td>58.7%</td>
<td></td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Year</th>
<th>Recommended for Alternative</th>
<th>Not Recommended for Alternative</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>36.2%</td>
<td>63.8%</td>
<td>6,062</td>
</tr>
<tr>
<td>2004</td>
<td>38%</td>
<td>62%</td>
<td>6,141</td>
</tr>
<tr>
<td>2005</td>
<td>48%</td>
<td>52%</td>
<td>6,418</td>
</tr>
<tr>
<td>2006</td>
<td>49%</td>
<td>51%</td>
<td>6,413</td>
</tr>
<tr>
<td>2007</td>
<td>53% (3,700)</td>
<td>47%</td>
<td>6,981</td>
</tr>
</tbody>
</table>
### Sentencing Guidelines Compliance Rates for Non-Violent Offenders Screened with Risk Assessment FY2007

<table>
<thead>
<tr>
<th>Mitigation</th>
<th>Compliance</th>
<th>Alternative Range</th>
<th>Aggravation</th>
<th>Number of Cases</th>
<th>Percentage of Combined Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drug</td>
<td>Mitigation</td>
<td>6%</td>
<td>10%</td>
<td>3,991</td>
<td>84%</td>
</tr>
<tr>
<td></td>
<td>Traditional Range</td>
<td>60%</td>
<td>24%</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Alternative Range</td>
<td></td>
<td></td>
<td></td>
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<td>1,184</td>
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<tr>
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<td>74%</td>
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<tr>
<td>Overall</td>
<td>Mitigation</td>
<td>7%</td>
<td>9%</td>
<td>6,981</td>
<td>84%</td>
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<td>62%</td>
<td>22%</td>
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### Less Restrictive Sanctions Utilized under Risk Assessment

- **Supervised Probation**: 82%
- **Shorter Incarceration**: 48%
- **Indefinite Probation**: 23%
- **Restitution**: 22%
- **Time Served**: 12%
- **Diversion Center**: 8%
- **Detention Center**: 8%
- **Unsupervised Probation**: 7%
- **Suspended License**: 4%
- **Substance Abuse Services**: 3%
- **Electronic Monitoring**: 3%
- **Day Reporting**: 2%
- **Community Service**: 2%
- **Intensive Supervision**: 2%
- **Drug Court**: 1%
- **First Offender Status**: 1%

**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”

2008 Appropriations Act, Item 387 (D)
Directive to the Department of Corrections

D. The Department of Corrections shall report on the potential costs and benefits of steps which would be required to divert up to 50 percent of prison-bound, nonviolent offenders who have scored no more than 38 points on the risk assessment instrument of the Virginia Criminal Sentencing Commission.

The department shall consult with the Commission on developing appropriate steps to secure the input of the Judicial Department in conducting this report.

Copies of the report shall be provided to the Chairman of the Senate Finance and House Appropriations Committees by September 1, 2008.
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 undergoiing 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

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<thead>
<tr>
<th>Year</th>
<th>Percent</th>
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<tr>
<td>1994</td>
<td>58.8%</td>
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<tr>
<td>2004</td>
<td>68.5%</td>
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<td>2007</td>
<td>76.5%</td>
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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.


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

Three Year Re-Imprisonment Rates
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--- judge, court location and offender race etc. are insignificant in determining 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 (SG)

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

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<th>V</th>
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Produced a State Guideline Continuum

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<td>VA</td>
<td>MA</td>
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<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
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</table>

More Voluntary  More Mandatory

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?

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

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

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

“Virginia’s voluntary sentencing guidelines system does not lead to increases in discrimination as many observers might have expected.”

There is no evidence of measurable discrimination in sentences imposed in Virginia’s criminal sentencing system.