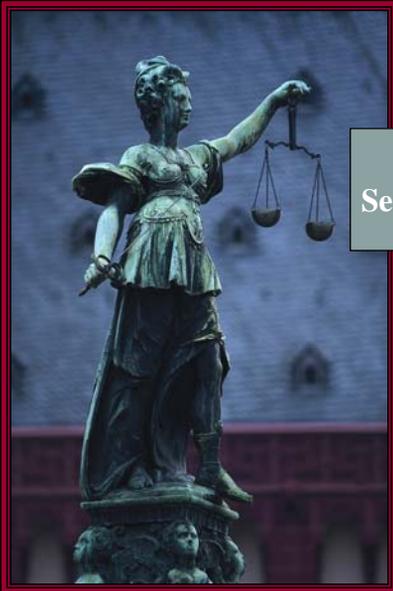


## Overview of Virginia's Truth-in-Sentencing System

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.

Virginia Department of Corrections Presentence Investigation Report Offender Information			
District Number	P01	Prepared By	
Date of Sentencing		Date Prepared	April 17, 2003
<b>OFFENDER SUMMARY</b>	Offenders Name (Last, First, Middle) Sample, Case		
Nickname/Street Name	Alias (AKA)	Maiden Name	
Race	Sex Male	Place of Birth (City or County) LOC / State	Age   Date of Birth
Social Security Number	State ID Number (CCRE)	FBI Number	
Permanent Address			
Local Address (if different)			
<b>COURT INFORMATION</b>	Court RICHMOND CITY	Judge Honorable	
Prosecuting Attorney	Defense Attorney	Type of Counsel <input type="checkbox"/> Court Appointed <input type="checkbox"/> Retained	
Date of Conviction	Method of Adjudication <input type="checkbox"/> Guilty Plea <input type="checkbox"/> Judge <input type="checkbox"/> Jury		
Pretrial Status <input type="checkbox"/> On Bond <input type="checkbox"/> Own Recognizance <input type="checkbox"/> Confinement <input type="checkbox"/> Third Party Release	Source of Bond <input type="checkbox"/> Personal <input type="checkbox"/> Family <input type="checkbox"/> Other <input type="checkbox"/> Bondsman <input type="checkbox"/> N/A		Post Trial Status <input type="checkbox"/> Confined <input type="checkbox"/> Not Confined
Pretrial Jail Status			
<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) VAN2959F4
Offense Date 09/20/2003	No. of Co-Defendants 0	Resisting Arrest Charge No
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 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		Weapon Type
<input type="checkbox"/> None <input type="checkbox"/> Used To Injure <input checked="" type="checkbox"/> Used To Threaten <input type="checkbox"/> Possession		<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		Current Arrest Date 09/20/2003
<input checked="" type="checkbox"/> Alone <input type="checkbox"/> Leader <input type="checkbox"/> Accomplice <input type="checkbox"/> Not Determined		
<b>MOST SERIOUS OFFENSE VICTIM INFORMATION</b>	N/A	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 Relationship to Offender		Physically Handicapped Victim
<input type="checkbox"/> None <input type="checkbox"/> Friend <input type="checkbox"/> Family <input type="checkbox"/> Police Officer		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 Amount		Secondary Drug Amount
N/A		N/A

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>	Prior Adult Record	No. of Prior Felony Sentence Events	No. Prior Felony Convictions For:			
	Yes	0	Crimes Against Person	Property Crimes	Drug Crimes	Other
No. of Prior Felony Convictions For Instant Offense at Conviction		No. of Previous Felon Commitments				
0		Virginia	0	Out-of-State	0	
Most Recent and Serious Prior Criminal Adult Convictions						
Description			Offense Code (VCC)			
1.	Simple assault, against family member		1.	ASL1315M1		
2.	Suspended sentence violation - Misdemeanor		2.	SBV4853M9		
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		
No. of Prior Probations		No. of Prior Paroles		No. of Prior Incarcerations Received		
Completed 0	Revoked 1	Completed 0	Revoked 0	Under One Year 2	One Year or More 0	
Last Previous Arrest Date (Or Release From Confinement)		No. Prior Misdemeanant Convictions				
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]

HEALTH INFORMATION	Physical Health Condition	Physical Handicaps	Mental Health Treatment	Mental Health Commitment
	<input checked="" type="checkbox"/> Good <input type="checkbox"/> Fair <input type="checkbox"/> Poor	No	No	No
Type(s) of Mental Health Treatment	Type(s) of Mental Health Commitment			
<input type="checkbox"/> In-Patient <input type="checkbox"/> Out-Patient <input checked="" type="checkbox"/> N/A	<input type="checkbox"/> Involuntary <input type="checkbox"/> Court-Ordered Evaluation <input type="checkbox"/> Voluntary <input checked="" type="checkbox"/> N/A			
Drug Use Claimed	Drug Abuse Apparent		Drug Treatment	
<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	Yes		No	
Types of Substances Claimed				
<input type="checkbox"/> Net 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"/> NA				
Alcohol Use Claimed	Alcohol Abuse Apparent		Alcohol Treatment	
<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	Yes		No	
Height	Weight	Color Eyes	Color Hair	
5 Ft 8 In.	175 lbs.	<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	<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)

7

## Evolution of Sentencing Reform

Historical Context

- ❖ 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

8

## 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

9

## 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

10

## 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 (intentional murder, drive-by-shootings)</i>	XI	306 291-307	326 279-391	346 295-415	366 312-439	396 329-463	406 346-497	426 363-489
<i>Murder, 2nd Degree (unintentional murder)</i>	X	150 129-180	165 141-199	180 153-216	195 166-234	210 179-252	225 192-270	240 204-288
<i>Criminal Sexual Conduct, 1st Degree 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 Criminal Sexual Conduct, 2nd Degree (c), (d), (e), (f), (h) 1</i>	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 30-42	42 34-48	48 39-54	54 45-64	60 51-72	66 57-79	72 62-86
<i>Criminal Sexual Conduct, 2nd Degree (a) &amp; (b)</i>	VI	21 17-27	27 21-33	33 24-46	39 33-45	45 37-51	51 44-61	57 49-69
<i>Residential Burglary Simple Robbery</i>	V	18 15-23	23 18-28	28 21-39	33 29-39	38 33-45	43 37-51	48 41-57
<i>Nonresidential Burglary</i>	IV	12 <sup>1</sup> 10-15	15 12-18	18 15-21	21 17-29	24 21-29	27 23-32	30 26-36
<i>Theft Crimes (Over \$2,500)</i>	III	12 <sup>2</sup> 10-13	13 11-15	15 12-17	17 17-22	19 18-25	21 19-23	23 20-27
<i>Theft Crimes (\$2,500 or less) Check Forgery (\$200-\$2,500)</i>	II	12 <sup>2</sup> 10-12	12 <sup>2</sup> 11-13	13 11-15	15 13-17	17 15-19	19 18-25	21 18-25
<i>Sale of Simulated Controlled Substance</i>	I	12 <sup>2</sup> 10-12	12 <sup>2</sup> 11-12	12 <sup>2</sup> 11-13	13 11-15	15 13-17	17 15-19	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 [J.E. Mandatory Sentences](#) for policy regarding these sentences controlled by law, including minimum periods of expiration 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 [J.G. Probation Sentences](#) and [J.E. Mandatory Sentences](#).

<sup>1</sup> One year and one day. 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, V, and h is a minimum of 60 months (see [J.C. Transferring Sentences](#) and [J.G. Conditions for Release, Confinement, and Other Sentence Matters](#)). Pursuant to M.S. § 609.345, 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 [J.C. Presumptive Sentences](#).

<sup>2</sup> M.S. § 244.02 requires the Sentencing Guidelines to provide a range of 10% 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.

## 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

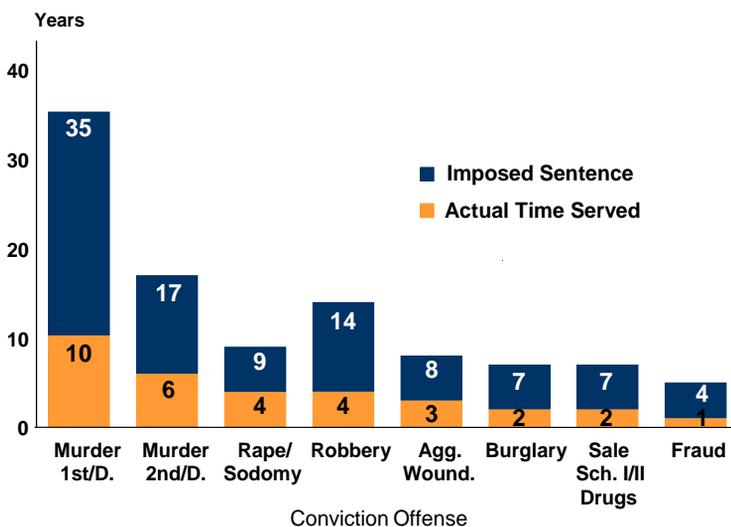
### What Was The Impetus for Parole Reform ?

- ❖ 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?

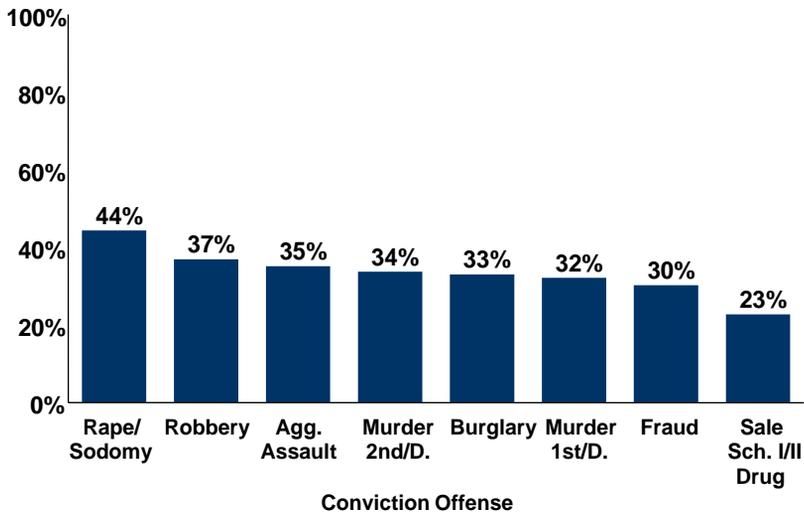
- ❖ Parole Board was viewed as a “release valve” to control prison population
- ❖ Bi-partisan political support for truth in sentencing concept
- ❖ Political negotiation on increased time served for violent and repeat offenders
- ❖ Perception that truth in sentencing would cause prison system to “collapse”–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

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



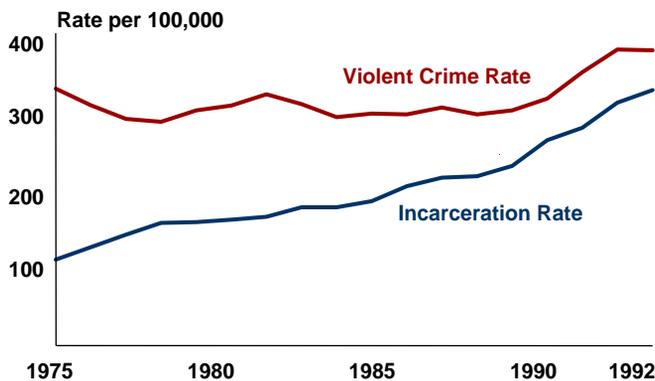
Note: For those released from Virginia prisons in 1993.

### What portion of sentences were being served?



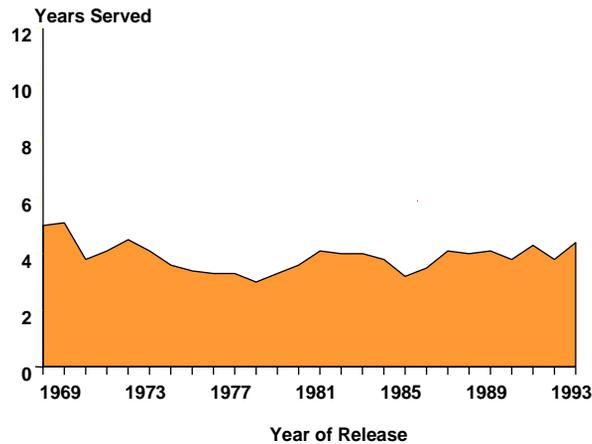
Note: For those released from Virginia prisons in 1993.

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



## Average time served did not vary

(Offenders convicted of robbery 1968 - 1993)



19

## 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

20

## 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.	<b>Parole Abolished</b>
1	1/3 or 13 yrs.	
2	1/2 or 14 yrs.	
>3	3/4 or 15 yrs.	

21

## Inmates Earned Significant Sentence Credit Under Previous System

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

NOTE: All numbers in days

22

## 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

23

## § 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)

24

### § 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

### § 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

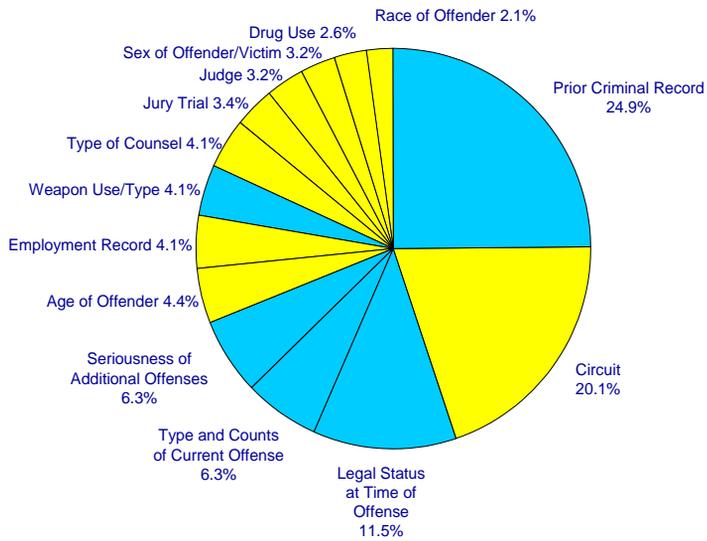
### § 30-19.1:4 Duties of Virginia Criminal Sentencing Commission

- 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

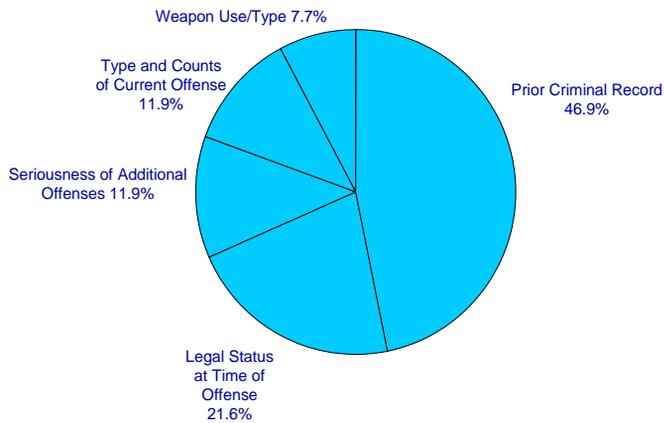
- Analyze historical data to identify all significant factors that influenced past sentencing decisions
- Identify inappropriate factors to eliminate their influence on future sentencing decisions
- Create sentencing guidelines forms that feature remaining significant factors and their relative importance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

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



Guidelines factors shaded in blue

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

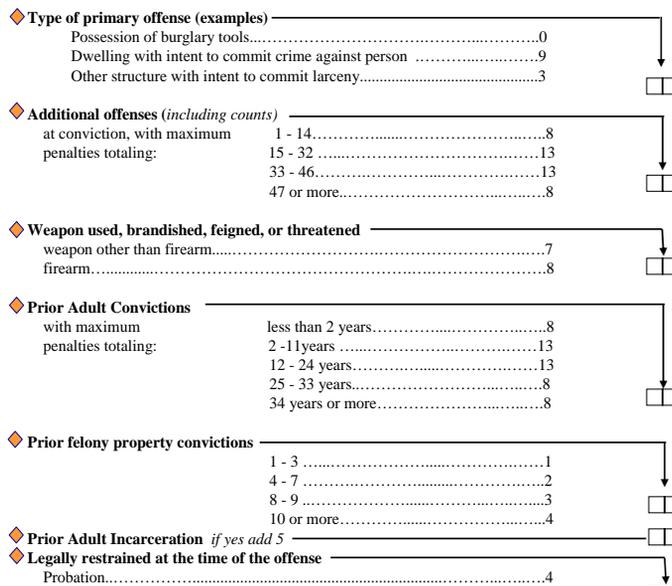


## Factors and weights on sentencing guidelines forms are grounded in history

A		BURGLARY - PRISON IN/OUT DECISION		A	
<b>Type of primary offense:</b>				<b>Add Score</b> <i>cc</i>	
<ul style="list-style-type: none"> <li>possession of burglary tools  <ul style="list-style-type: none"> <li>any number of counts</li> </ul> </li> <li>dwelling or other structure with intent to commit larceny, etc. without deadly weapons other structure with intent to commit larceny, etc. with deadly weapons</li> <li>dwelling at night without deadly weapons</li> <li>1 count</li> <li>2 counts</li> <li>3 or more counts</li> </ul>					
<ul style="list-style-type: none"> <li>dwelling with intent to commit a misdemeanor without deadly weapons</li> <li>1 count</li> <li>2 counts</li> <li>3 or more counts</li> </ul>					
<ul style="list-style-type: none"> <li>dwelling at night with deadly weapons</li> <li>1 count</li> <li>2 counts</li> <li>3 or more counts</li> </ul>					
<ul style="list-style-type: none"> <li>dwelling with intent to commit larceny, etc. with deadly weapons</li> <li>1 count</li> <li>2 counts</li> <li>3 or more counts</li> </ul>					
<ul style="list-style-type: none"> <li>bank, dwelling with intent to commit a misdemeanor with deadly weapons</li> <li>any number of counts</li> </ul>					
<ul style="list-style-type: none"> <li>dwelling or other structure with intent to murder, rape or rob with deadly weapons</li> <li>any number of counts</li> </ul>					
<ul style="list-style-type: none"> <li>dwelling with intent to murder, rape or rob without deadly weapons</li> <li>1 count</li> <li>2 counts</li> <li>3 or more counts</li> </ul>					
<ul style="list-style-type: none"> <li>other structure with intent to murder, rape or rob without deadly weapons</li> <li>any number of counts</li> </ul>					
<b>Additional offenses (including counts)</b>		<b>Years</b>		<b>Add Score</b> <i>cc</i>	
at conviction, with maximum		1-14	.....	8	
penalties totaling:		15-32	.....	13	
		33-46	.....	13	
		47 or more	.....	8	
<b>Weapon used, brandished, feigned, or threatened</b>				<b>Add Score</b> <i>cc</i>	
<ul style="list-style-type: none"> <li>weapon other than firearm</li> <li>firearm</li> </ul>					
<b>Prior adult convictions</b>		<b>Years</b>		<b>Add Score</b> <i>cc</i>	
with maximum penalties totaling:		less than 2	.....	8	
		2-11	.....	13	
		12-24	.....	13	
		25-33	.....	8	
		34 or more	.....	8	
<b>Prior felony property convictions:</b>		<b>Number</b>		<b>Add Score</b> <i>cc</i>	
		1-3	.....	1	
		4-7	.....	2	
		8-9	.....	3	
		10 or more	.....	4	
<b>Prior adult incarceration</b>				<b>If yes, Add 5</b> <i>cc</i>	
<ul style="list-style-type: none"> <li>any</li> <li>other than parole, supervised probation or CCR</li> <li>parole, supervised probation or CCR</li> </ul>					
<b>Legally restrained at time of offense:</b>				<b>Add Score</b> <i>cc</i>	
<ul style="list-style-type: none"> <li>any</li> <li>other than parole, supervised probation or CCR</li> <li>parole, supervised probation or CCR</li> </ul>					
<b>TOTAL SCORE</b>				<b>=</b>	
<p>If total is 10 or less, go to work sheet "B".                      If total is 11 or more, go to work sheet "C".</p>					

31

### 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.

32

## 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	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

33

### Methodology to create historical grounded sentencing guidelines

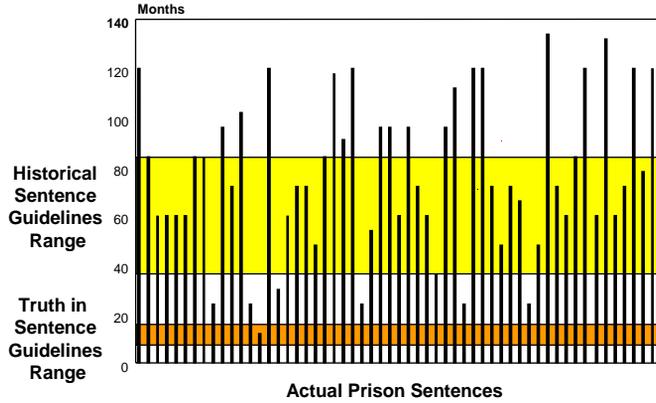
- Initial sentencing guidelines incarceration range
  - Starts with historical **time served**
  - Uses 1988-1992 time served distribution for similarly situated offenders
  - Increases historical time served by 13.4 percent (anticipated sentence reduction for good conduct)
  - Range eliminates upper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

34

## Sentencing Reform

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

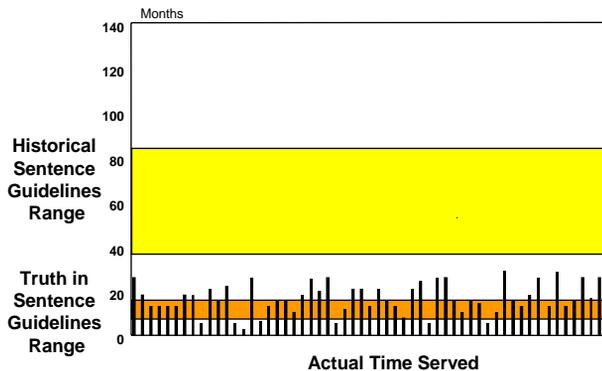
*Sale Schedule I/II Drugs for Profit  
No Prior Record*



## Sentencing Reform

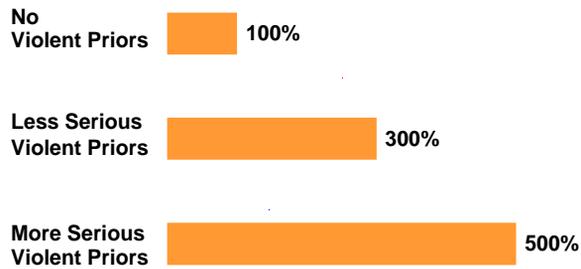
*Comparison of Sentencing Guidelines Recommendation  
Based on Actual Time Served and Those Based on New Legislation*

*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:**



37

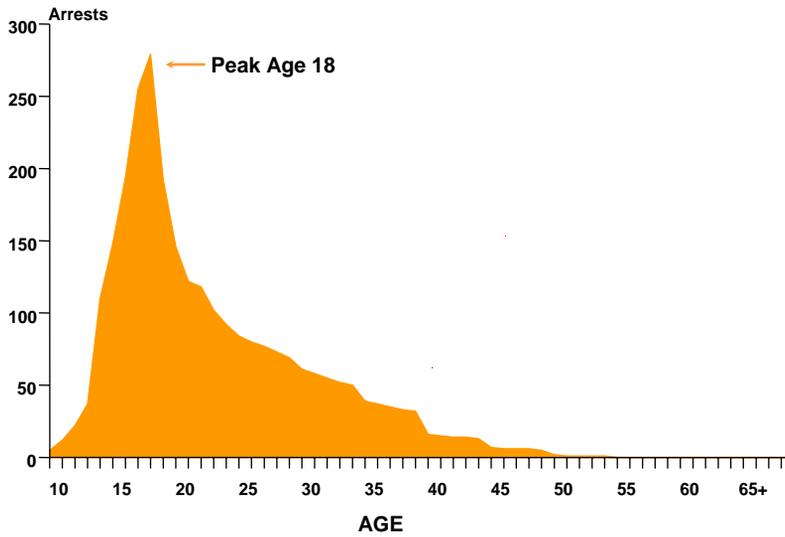
## Sentencing Reform – Features

- ❖ **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**

38

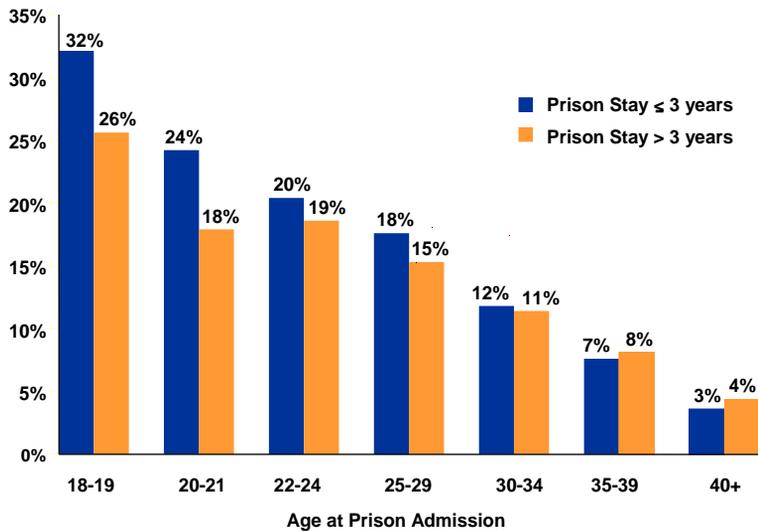
## Sentencing Reform

*Age Distribution for Robbery Arrests in Virginia*



## Sentencing Reform

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



## 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:

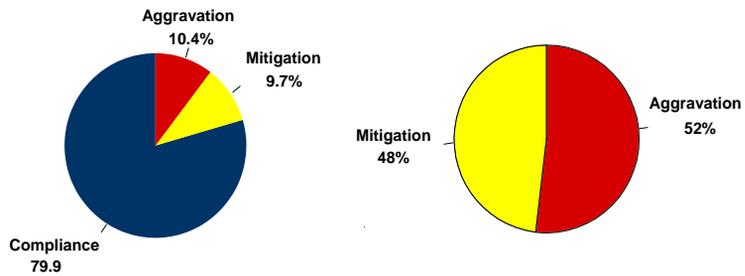
- Shall be in annual report and submitted to the Governor legislature, judiciary and citizens of Virginia.
- Winter legislative session provides opportunity for lawmaker's to veto Commission recommendations
- Shall, unless otherwise provided by law, become effective the following July 1

Virginia Criminal  
Sentencing Commission



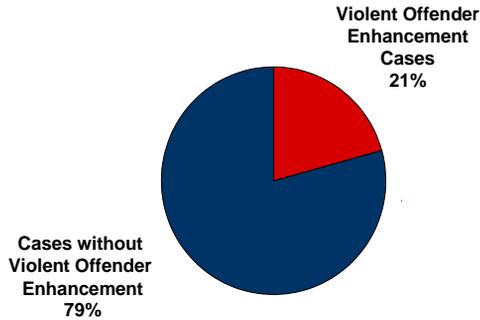
## Sentencing Guidelines Compliance

Sentencing Guidelines Compliance



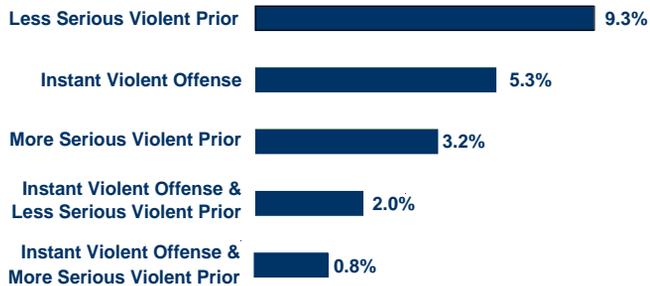
FY2007  
Number of Cases = 25,732

### 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



## *Integration of Offender Recidivism Risk Assessment into Virginia Sentencing Guidelines*

47

### *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



48

## *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.



49

## *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.



50

## *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.



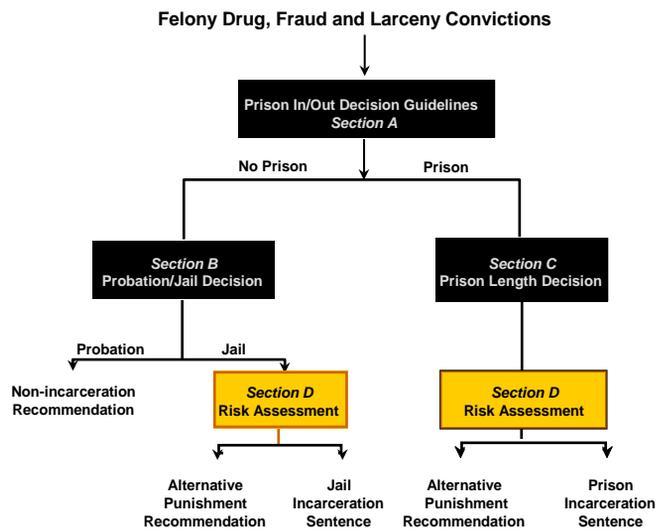
## Legislative Directive

- 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*

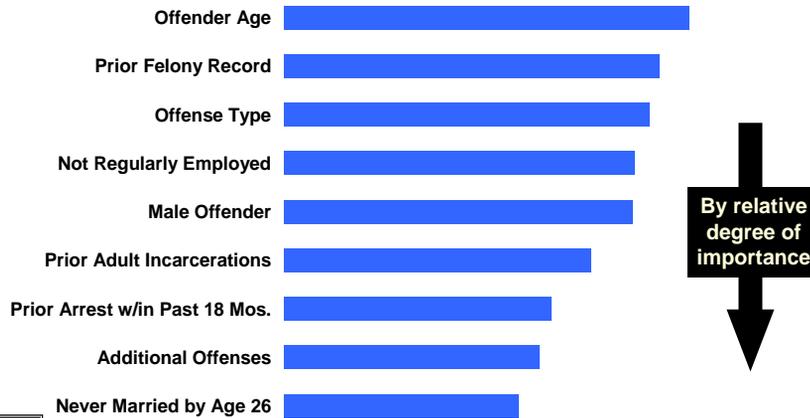


53

## Non-Violent Risk Assessment



## Significant Factors in Assessing Risk for Nonviolent Offenders



Source: Nonviolent Offender Risk Assessment Validation Study, Virginia Criminal Sentencing Commission (2001)

55

## 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="checkbox"/>

◆ **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="checkbox"/>
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 \_\_\_\_\_

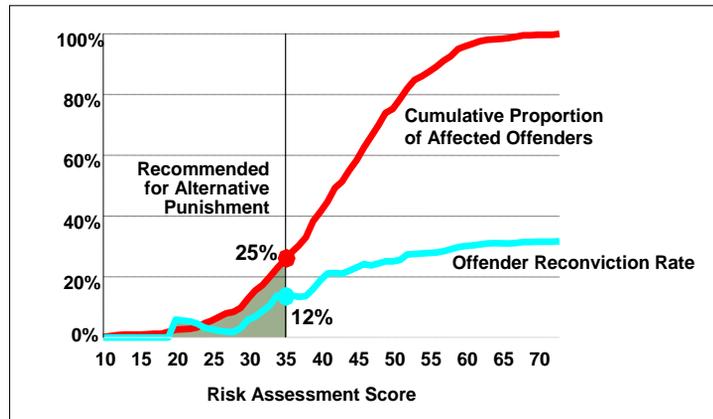
Any Adult Felony Convictions or Adjudications.....	3	
Any Juvenile Felony Convictions or Adjudications.....	6	
Adult and Juvenile Felony Convictions or Adjudications.....	9	<input type="checkbox"/>

◆ **Prior Adult Incarceration** \_\_\_\_\_

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.

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



57

### *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



58

## 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



59

## 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 offenders per year would be recommended for alternative punishment, without a significant increase in the rate of recidivism among the recommended group.

60

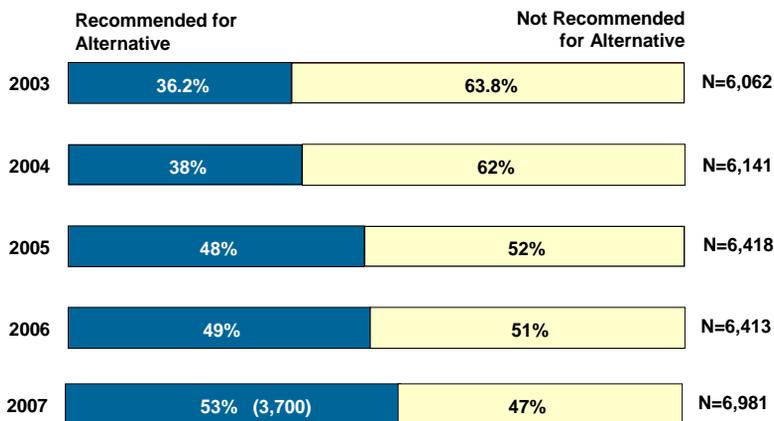
## *Nonviolent Offender Risk Instrument – Examining the Score Threshold*

- 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.



61

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



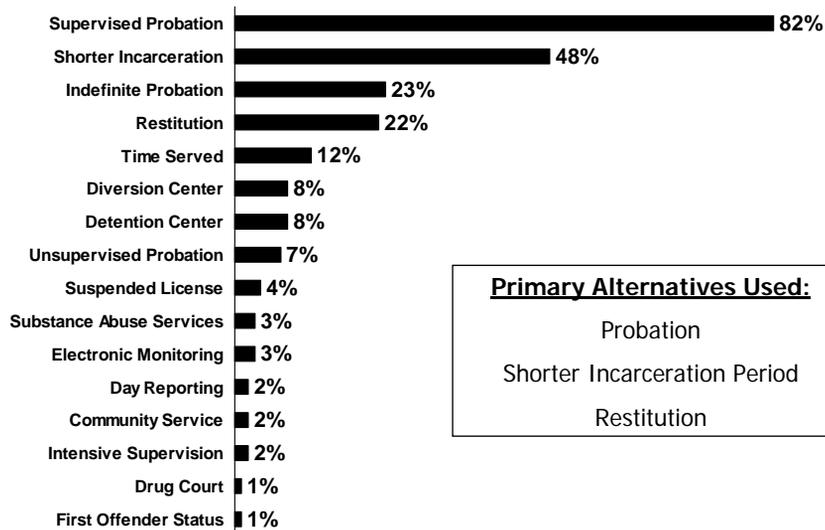
62

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

	Mitigation	Compliance		Aggravation	Number of Cases	Percentage of Combined Compliance
		Traditional Range	Alternative 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%

63

## Less Restrictive Sanctions Utilized under Risk Assessment



64

---

## **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”**

65

---

## **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.**

66



## A Decade of Truth-In-Sentencing in Virginia

### 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.

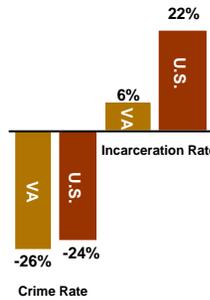
Percent of Prisons Beds Occupied by  
Violent Offenders



# 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.

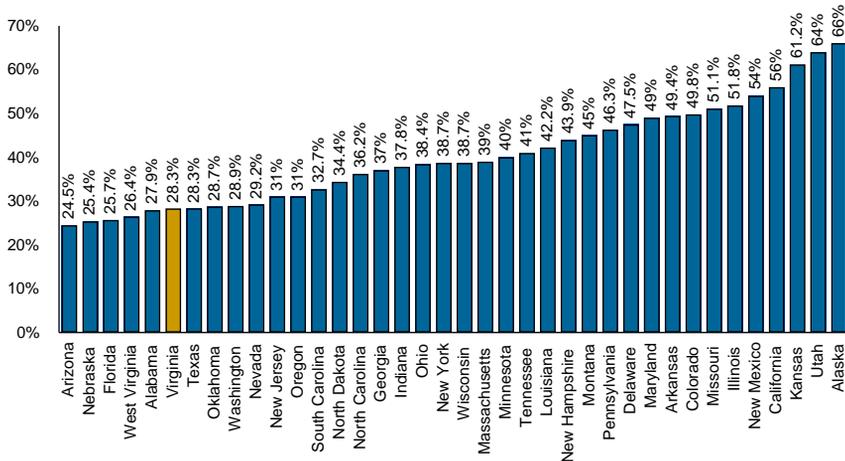
Change in Crime and Incarceration Rates, 1994 to 2000 – Virginia v. U.S.



Risk Assessment Successful

## 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 sixth lowest recidivism rate.





## **Assessing Consistency & Fairness in Sentencing:**

**A Comparative Study in Three States**

**Final Report**



*National Center for State Courts*

### **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

	I Enforceable Rule	II Worksheet Completion	III S.G. Monitors Compliance	IV Departure Rationale	V Written Reason	VI 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
<b>Virginia</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>6</b>
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

Assessing Consistency and Fairness in Sentencing:  
A Comparative Study in Three States

75

## Produced a State Guideline Continuum



**Minnesota:** presumptive, determinate, and tighter ranges

**Michigan:** presumptive, indeterminate, and wider ranges

**Virginia:** voluntary, determinate, and widest ranges

Assessing Consistency and Fairness in Sentencing:  
A Comparative Study in Three States

76

---

## **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 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?**

---

## **National Center for State Courts Evaluation**

### **Research Findings**

**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.**