



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.



Nonviolent Offender Risk Assessment



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*

Empirical Study of Nonviolent Offender Recidivism

- The Commission studied 1,500 property and drug felons released from incarceration during 2-year period
- Over 200 unique factors relating to criminal record, substance abuse, education and employment history, family background, etc., were examined.
 - Pre/Post-Sentence Investigation (PSI) database
 - Supplemental Data Collection



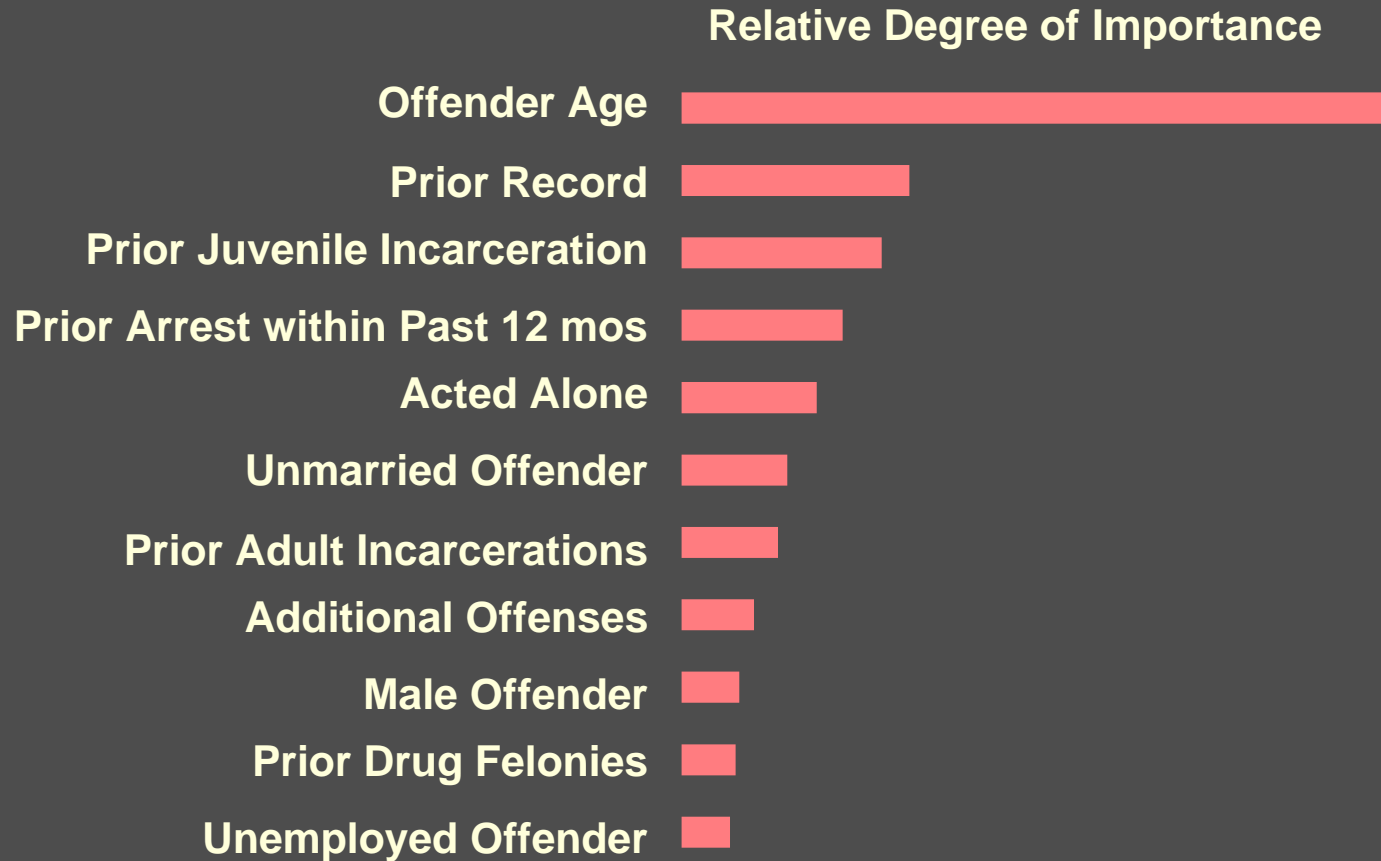
Empirical Study of Nonviolent Offender Recidivism

- Recidivism was defined as a reconviction for a felony within three years of release.
- A risk assessment worksheet was developed based on those factors that were statistically relevant in predicting recidivism.
- Pilot testing began Dec. 1997 and included six judicial circuits.



Non-Violent Risk Assessment

Significant Factors in Assessing Risk



Non-Violent Risk Assessment

◇ **Offense Type** _____
Select the offense type of the instant offense

Drug.....	3	
Fraud.....	3	<input type="checkbox"/>
Larceny.....	6	<input type="checkbox"/>

◇ **Offender is Male** _____ **IF YES, add 3** →

◇ **Additional Offense** _____ **IF YES, add 2** →

Go to Cover Sheet and fill out Alternative Punishment Recommendations section.

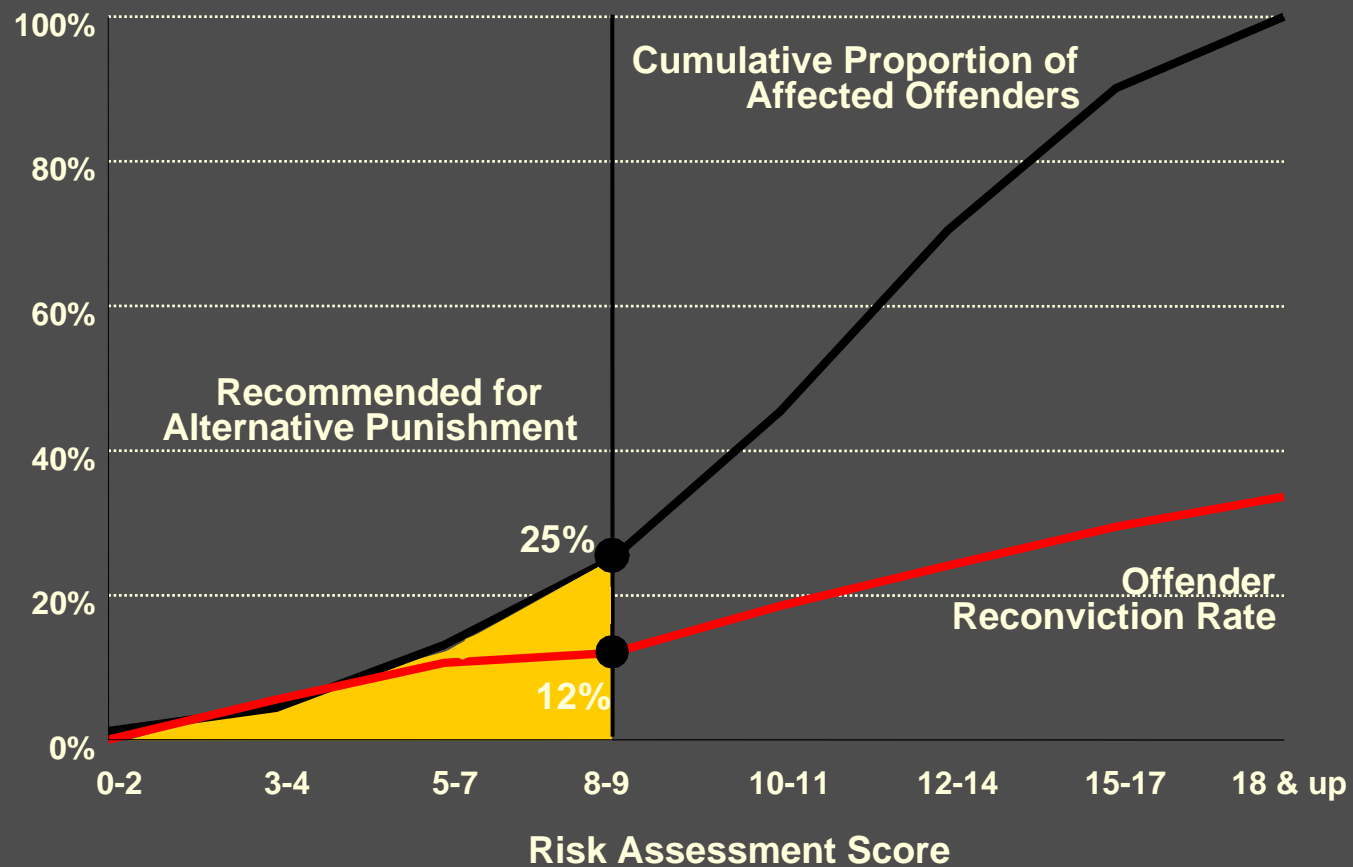
If total is 9 or less, check Recommended for Alternative Punishment.

If total is 10 or more, check Do NOT Recommend for Alternative Punishment.

If total is 9 or less, check Recommended for Alternative Punishment.
If total is 10 or more, check Do NOT Recommend for Alternative Punishment.

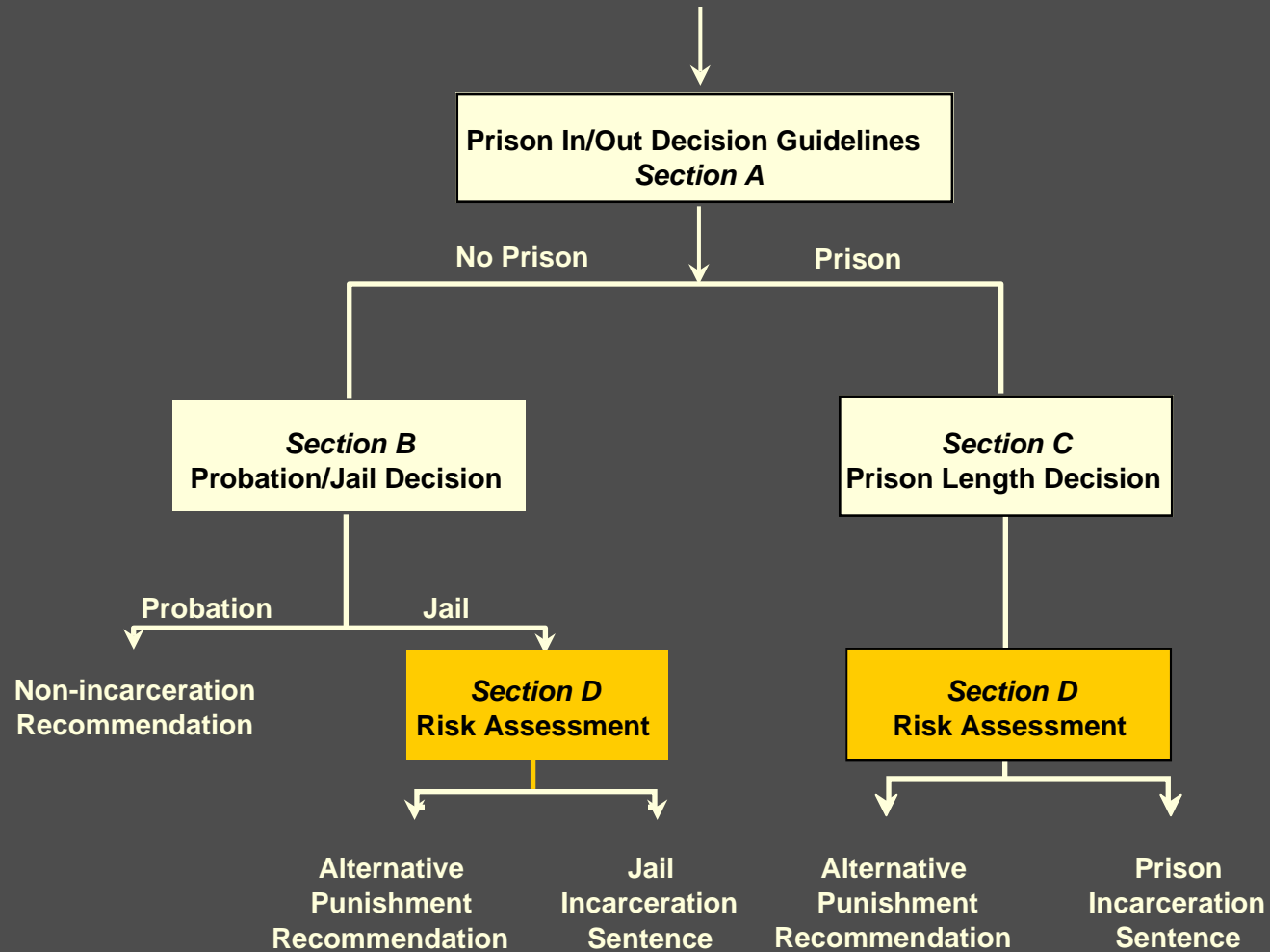
Non-Violent Risk Assessment

Offender Reconviction Rates and Cumulative Proportion of Affected Offenders



Non-Violent Risk Assessment

Felony Drug, Fraud and Larceny Convictions



Refined Risk Assessment Instrument

- In 2001, the Sentencing Commission completed additional study to refine the risk assessment tool.
- New recidivism study sample of 1996 nonviolent felons.
- Offenders recommended for diversion under the refined risk assessment model had a recidivism rate of 12%.
- Offenders not recommended for diversion under the refined model had a recidivism rate of 38%.
- A score threshold selected so that 25% of prison bound offenders will be recommended for alternative sanctions.

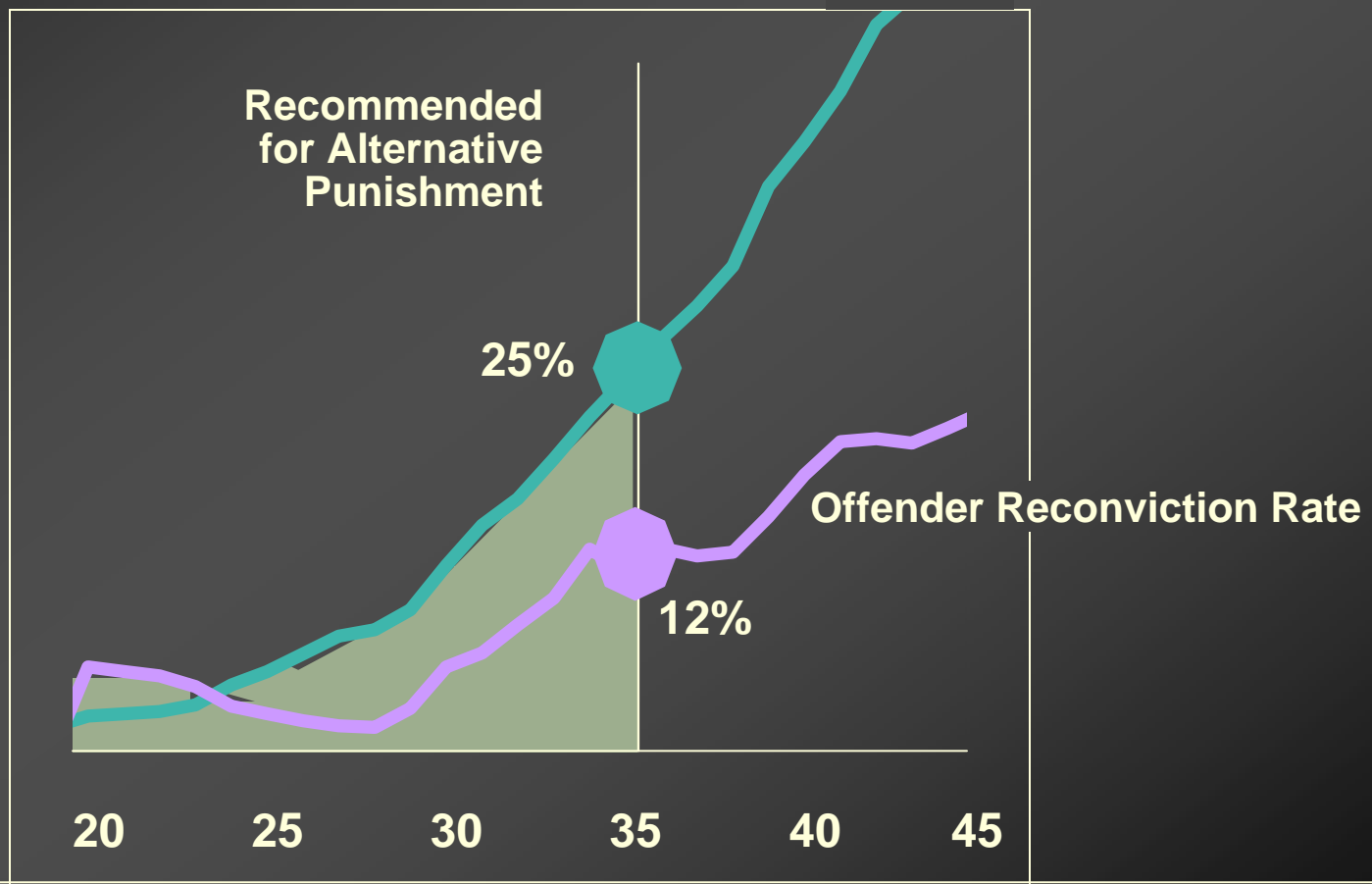


Significant Factors in Assessing Risk for Nonviolent Offenders



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

Reconviction Rates and Cumulative Proportion of Affected Offenders under Risk Assessment



Statewide Implementation

- In 2001, the Sentencing Commission recommended that the risk assessment program be expanded statewide.
 - Legislature accepted the recommendation.
 - Statewide implementation began July 1, 2002.



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



Use of Nonviolent Offender Risk Assessment

- As with the sentencing guidelines, compliance with the risk assessment recommendation is discretionary
- If a judge follows either sentencing recommendation, he or she is considered in compliance with the guidelines



Legislative Directive - Budget Language (2003)

- Chapter 1042 (Item 40) of the 2003 Acts of Assembly directs the Commission to:
 - Identify offenders not currently recommended for alternative punishment options by the assessment instrument who nonetheless pose little risk to public safety
 - Determine, with due regard for public safety, the feasibility of adjusting the assessment instrument to recommend additional low-risk nonviolent offenders for alternative punishment
 - Provide findings to the 2004 Session of the General Assembly



Offender Risk Assessment Scores

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

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

Nonviolent Offender Risk Instrument – Examining the Score Threshold

- The Sentencing Commission concluded that the threshold could be raised from 35 to 38 points without significant risk to public safety.
- Raising the threshold will result in additional offenders being recommended for alternative sanctions.
- Following approval by the legislature, the change became effective July 1, 2004.



Nonviolent Risk Assessment Section D

Offender Name:

◆ Ineligibility Conditions

- A. Was the offender recommended for Probation/No Incarceration on Section B? Yes No
- B. Do any of the offenses at sentencing involve the sale, distribution, or possession with intent, etc. of cocaine of a combined quantity of 28.35 grams (1 ounce) or more? Yes No
- C. Are any prior record offenses violent (Category I/II listed in Table A of the Guidelines Manual)? Yes No
- D. Are any of the offenses at sentencing violent (Category I/II listed in Table A of the Guidelines Manual)? Yes No

If answered **YES** to **ANY**, go to "Nonviolent Risk Assessment Recommendations" on cover sheet and check Not Applicable. If answered **NO** to **ALL**, complete remainder of Section D worksheet.

◆ Offense Type *Select the type of primary offense* _____

- Drug 3
- Fraud 3
- Larceny 11

◆ Additional Offense(s) _____ If YES, add 5 →

◆ Offender *Score factors A to D and enter the 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
- = Enter A to D Total

◆ Arrest or Confinement Within Past 18 Months (prior to instant offenses) _____ If YES, add 6 →

◆ Prior Felony Convictions and Adjudications *Select the combination of adult and juvenile felony convictions/adjudications that characterizes the offender's prior record.* _____

- Adult felony convictions only 3
- Juvenile felony convictions or adjudications only 6
- Both adult and juvenile felony convictions/adjudications 9

◆ Prior Adult Incarcerations _____

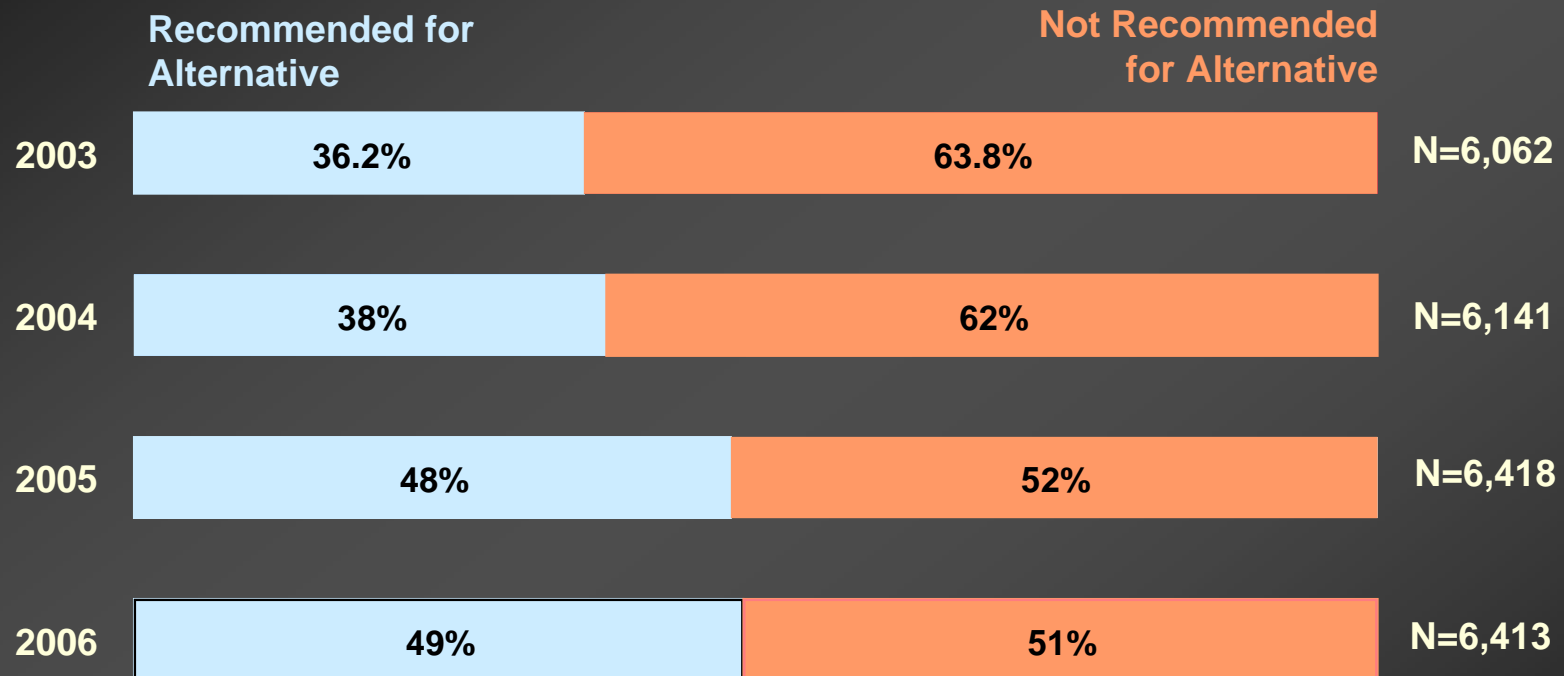
- Number: 1 - 2 3
- 3 - 4 6
- 5 or more 9

Total Score _____ →

38 or less, check Recommended for Alternative Punishment.
 39 or more, check NOT Recommended for Alternative Punishment.
 Go to Cover Sheet and fill out Nonviolent Risk Assessment Recommendations.

Virginia Nonviolent Risk Assessment

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



Sentencing Guidelines Compliance Rates for Non-Violent Offenders Screened with Risk Assessment FY 2006

Offense	Mitigation	Compliance		Aggravation	Number of Cases
		Traditional	Alternative		
Drug	5.8%	60.7%	24.3%	9.2%	3,259
		85%			
Fraud	7.7%	53.8%	33.9%	4.6%	1,175
		87.7%			
Larceny	8.1%	76.9%	7.3%	7.7%	1,979
		84.2%			
Cases	6.8%	64.5%	20.8%	7.9%	6,413
		85.3%			



Sex Offender Risk Assessment



Sex Offender Risk Assessment

SJR 333 Directive to Sentencing Commission

- ❖ Develop a sex offender risk assessment instrument based on the risk of re-offending and the impact of treatment interventions
- ❖ Integrate a risk assessment instrument into the sentencing guidelines for sex offenses
- ❖ Determine the range of sentences which should be imposed on convicted sex offenders



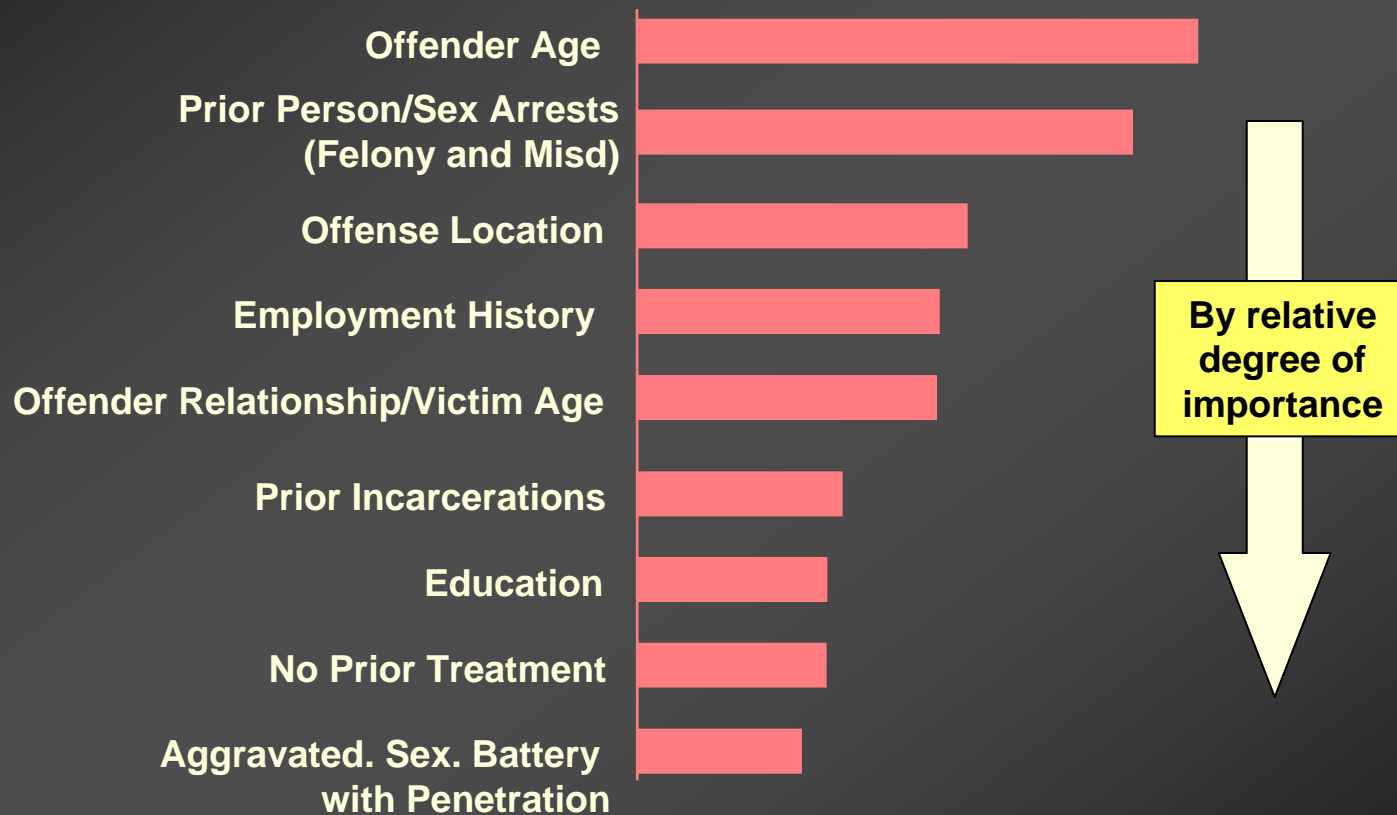
Sex Offender Risk Assessment

❖ Study Method:

- Studied felony sex offenders released from incarceration (or given probation) during 1990 through 1993
- Random sample of 600 cases
- All offenders followed for 5 to 10 years after return to community
 - Previous studies found sex offenders recidivate over a longer period of time prior to detection compared to other offenders
- Recidivism defined as a re-arrest for a sex offense or other crime against the person
 - Using reconviction drastically underestimates recidivism due to difficulties in detection and prosecution of sex offenses
- Studied over 200 factors relating to offense behavior, victim(s), criminal record, education, employment, family history, etc., for each case

Sex Offender Risk Assessment

Significant Factors in Predicting Recidivism



Sex Offender Risk Assessment

◆ Offender's Age at Time of Offense

 Younger than 35 years 12

 35 to 46 years 4

 Older than 46 years 0

◆ Less Than 9th Grade Education If YES, add 4

◆ Not Regularly Employed If YES, add 5

◆ Offender's Relationship with Victim

Victim under Age 10

 Relative 0

 Known to victim (not relative or step-parent) . 4

 Stranger 4

 Step-parent 9

Victim Age 10 or more

 Relative/Step-parent 2

 Known to victim (not relative or step-parent). 3

 Stranger 8

◆ Aggravated Sexual Battery (Primary Offense §18.2-67.3)

 No penetration or attempted penetration of victim..... 0

 Penetration or attempted penetration of victim 4

◆ Location of Offense

 Place of employment 0

 Shared victim/offender residence ...3

 Outdoors..... 3

 Motor vehicle 4

 Victim's residence (not offender's) 5

 Offender's residence or other residence9

 Location other than listed 3

◆ Prior Felony/Misdemeanor Arrests for Crimes Against Person

<u>0 Felonies</u>	1-3 Misd 1	<u>1 Felony</u>	0-2 Misd 5	<u>2+ Felonies</u>	0-3 Misd 8
	4+ Misd 8		3+ Misd 8		4+ Misd..... 15

◆ Prior Incarcerations/Commitments If YES, add 3

◆ Prior Treatment

 Prior mental health commitment 0

 Prior mental health or sex offender treatment .. 2

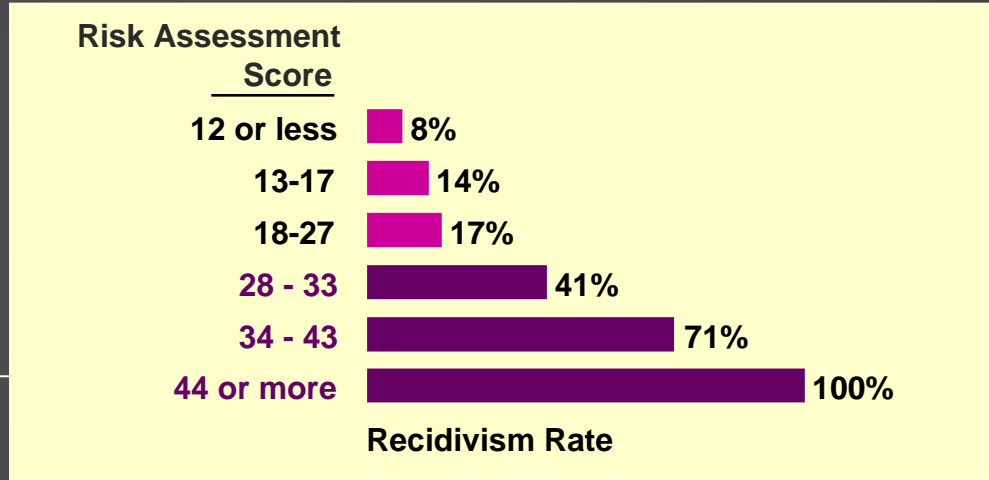
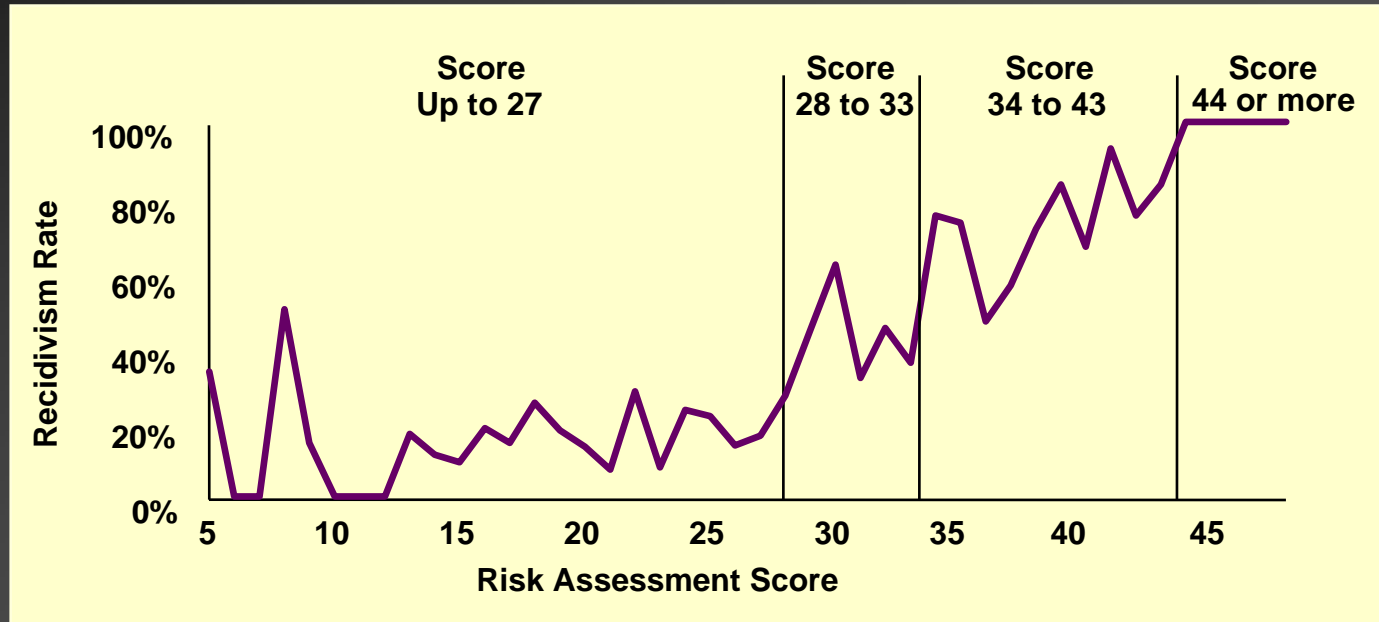
 Prior alcohol or drug treatment ... 3

 No prior treatment 4

◆ Risk Score

Sex Offender Risk Assessment

Rates of Recidivism by Risk Assessment Score



Sex Offender Risk Assessment

Risk Assessment Recommendations

- ❖ Offenders scoring 28 or more are always recommended for prison and the upper end of the recommended prison sentence range is increased as follows:

Risk Assessment	Recommended Range Adjustment
Score	
44 or more	Increase upper end of range by 300%
34 to 43	Increase upper end of range by 100%
28 to 33	Increase upper end of range by 50%
Up to 27	No change

- ❖ Midpoint recommendation and low end of the recommended range remain unchanged.
-

Sex Offender Risk Assessment

Rape: Prison Recommendation Table

Score	Midpoint	Low	High	Risk Assessment Score:		
				28 to 33	34 to 43	44 or more
				High	High	High
144	12 yr. 0 mo.	6 yr. 8 mo.	14 yr. 5 mo.	21 yr. 8 mo.	28 yr. 10mo.	57 yr. 8 mo.
145	12 yr. 1 mo.	6 yr. 9 mo.	14 yr. 6 mo.	21 yr. 9 mo.	29 yr. 0 mo.	58 yr. 0 mo.
146	12 yr. 2 mo.	6 yr. 9 mo.	14 yr. 7 mo.	21 yr. 11mo.	29 yr. 2 mo.	58 yr. 4 mo.
147	12 yr. 3 mo.	6 yr. 10mo.				
148	12 yr. 4 mo.	6 yr. 10mo.	No Change 50% Increase 100% Increase 300% Increase			
149	12 yr. 5 mo.	6 yr. 11mo.	14 yr. 4 mo.	22 yr. 5 mo.	29 yr. 5 mo.	59 yr. 1 mo.
150	12 yr. 6 mo.	7 yr. 0 mo.	15 yr. 0 mo.	22 yr. 6 mo.	30 yr. 0 mo.	60 yr. 0 mo.
151	12 yr. 7 mo.	7 yr. 0 mo.	15 yr. 1 mo.	22 yr. 8 mo.	30 yr. 2 mo.	60 yr. 4 mo.
152	12 yr. 8 mo.	7 yr. 1 mo.	15 yr. 2 mo.	22 yr. 9 mo.	30 yr. 4 mo.	60 yr. 8 mo.
153	12 yr. 9 mo.	7 yr. 1 mo.	15 yr. 4 mo.	23 yr. 0 mo.	30 yr. 8 mo.	61 yr. 4 mo.
154	12 yr. 10mo.	7 yr. 2 mo.	15 yr. 5 mo.	23 yr. 2 mo.	30 yr. 10mo.	61 yr. 8 mo.
155	12 yr. 11mo.	7 yr. 2 mo.	15 yr. 6 mo.	23 yr. 3 mo.	31 yr. 0 mo.	62 yr. 0 mo.
156	13 yr. 0 mo.	7 yr. 3 mo.	15 yr. 7 mo.	23 yr. 5 mo.	31 yr. 2 mo.	62 yr. 4 mo.

Sex Offender Risk Assessment

Sentencing Guidelines Recommendations

Section B

- Probation / No Incarceration
 - Incarceration 1 Day to 3 Months
 - Incarceration 3 to 6 Months
- Mandatory Minimum _____

Section C

Incarceration (Enter Midpoint and Range Below)

Range Midpoint **1** **6**
Years Months

Sentence Range **8** TO **2** **6**
Years Months Years Months

Recommendation Adjusted for Mandatory Minimum

Modifications Based on Risk Assessment

The upper end of the sentence range can be adjusted based on the risk assessment level.

Characteristics of the offender and the circumstances of the offense may have correlated with a significant risk of recidivism among other sex offenders. If so, the upper end of the recommended sentence range has been increased by :

Check one

- 300% - Level 1
- 100% - Level 2
- 50% - Level 3
- No Adjustment

Adjusted High End

5 **0**
Years Months

Sex Offender Risk Assessment

Sentencing Guidelines Recommendations

Section B

Probation / No Incarceration

Section C

Incarceration

(Enter Midpoint and Range Below)

Characteristics of the offender and the circumstances of the offense may have correlated with a significant risk of recidivism among other sex offenders. If so, the upper end of the recommended sentence range has been increased by :

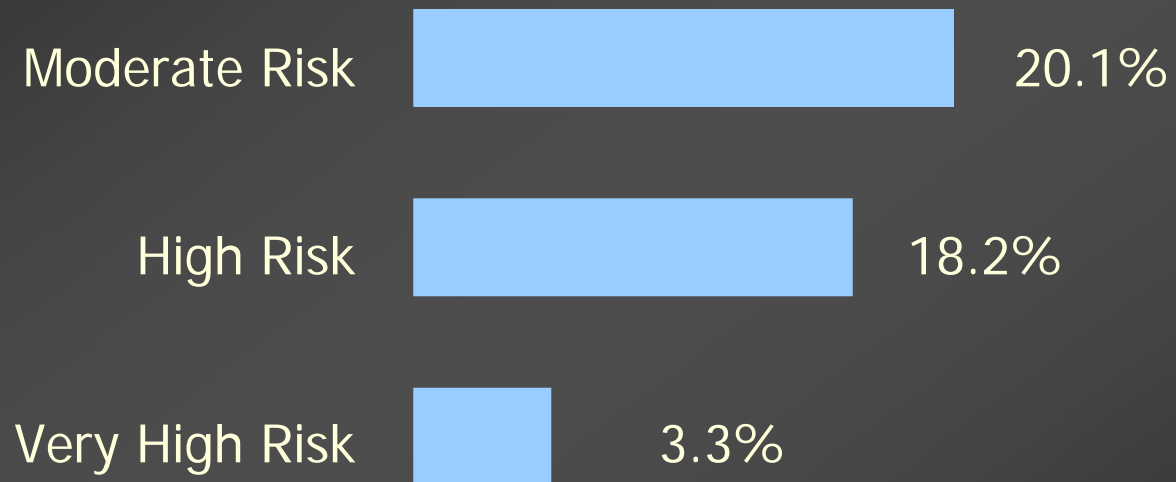
and the circumstances of the offense may have correlated with a significant risk of recidivism among other sex offenders. If so, the upper end of the recommended sentence range has been increased by :

- 300% - Level 1
- 100% - Level 2
- 50% - Level 3
- No Adjustment

Adjusted High End

		5			0
Years			Months		

Risk Assessment Levels Rape Offenders FY 2006



Sentencing Guidelines Compliance Rates for Rapists by Risk Assessment Levels FY 2006

Risk Assessment Level	Mitigation	Compliance			Aggravation	Number of Cases
		Traditional	Adjusted			
No Level	18%	65%	---	17%	125	
Moderate Risk	9%	58%	81%	23%	9%	43
High Risk	23%	41%	72%	31%	5%	39
Very High Risk	14%	43%	86%	43%	0%	7



Legal Challenges to Offender Risk Assessment Integration into Sentencing Guidelines

American Civil Liberties Union (ACLU)
Urged Virginia Legislators to Block
Implementation of Offender
Risk Assessment (2001)



ACLU – Statistical Correlations are not a Legitimate Basis for Assessing Criminal Penalties

- Basing sentence on the age, education, and employment history of an offender is scientifically unsound & contradicted by U.S. Sentencing Commission's study and policy manual
- Virginia is the first (and maybe only) to base criminal sentences on generalized, actuarial data
- Some statistical relationships could be preposterous showing that recidivism correlates with the food one consumes or the color of one's hair



ACLU ~ Risk Assessment Punishes Offenders Based Upon "Status" in Violation of the Cruel and Unusual Punishment Clause (Eighth Amendment)

- Risk assessment grounds punishment decisions in individual characteristics utterly unrelated to the criminal conduct
- The right to be free from cruel and unusual punishment prohibits government from punishing people for who they are, instead of what they did



ACLU ~ Risk Assessment Violates the Due Process Requirement of Fundamental Fairness in Criminal Proceedings (Fourteenth Amendment)

- Risk assessment classifies individuals on the basis of their affiliation with broad demographic groups disregarding the fact that individuals may deviate substantially from average group behavior
- A sentence is based not on the offender's record or crime, but on the characteristics of other offenders in other crimes



Virginia's Court of Appeals has Repeatedly Refused to Interfere with Judicial Reference to Offender Risk Assessments

Virginia Court of Appeals (2004):

- “The discretionary sentencing guidelines are not binding on the trial judge; rather, the guidelines are merely a tool to assist the judge in fixing an appropriate punishment”
- “When a sentence falls within the statutory limits set by the legislature, this court will not interfere with the judgment”

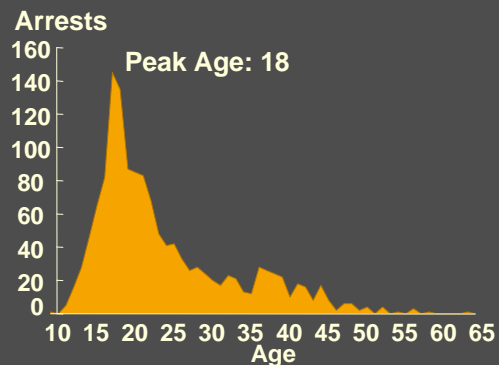


There are fewer repeat violent offenders

Targeting young violent offenders for longer terms of incarceration incapacitates at-risk offenders during years in which they are most likely to engage in crime. Between the ages of 15 and 24, a person is at greatest risk of becoming involved in violent criminal behavior, such as robbery.

Longer prison terms for violent offenders should result in fewer repeat violent offenders. While the full effect will not be realized for years to come, Virginia's courts are already seeing fewer violent recidivists. In 1996, more than 28% of violent offenders had a violent felony record. By 2004, this figure had dropped to 24%.

Age of Robbery Arrestees, 2003



Percentage of Violent Recidivists Convicted in Circuit Courts



Violent Recidivism Down

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

