



VIRGINIA CRIMINAL SENTENCING COMMISSION



Overview of Virginia's Sentencing Guidelines System

Provided to the
Nevada Sentencing Commission

February 16, 2018

Impetus for Sentencing Guidelines in Virginia

- **In December 1983, a Governor's task force released findings based on a small-scale study suggesting evidence of sentencing disparities.**
- **Virginia's Chief Justice formed a judicial committee to examine the issue.**
- **Pre-Sentence Investigation (PSI) reports were standardized and automated in 1985 to create a comprehensive database on felony sentencing.**
- **In 1987, analysis of historical sentencing decisions revealed evidence of unwarranted sentencing disparity.**
- **Circuit court judges voted to pursue development and testing of sentencing guidelines.**
- **Chief Justice created a judicial committee to develop a blueprint for a sentencing guidelines system.**



Elements of Virginia's Sentencing Guidelines



Voluntary compliance

Historically grounded in past sentencing practices

Offense-specific guidelines

Worksheet rather than grid guidelines

Relatively broad sentencing ranges

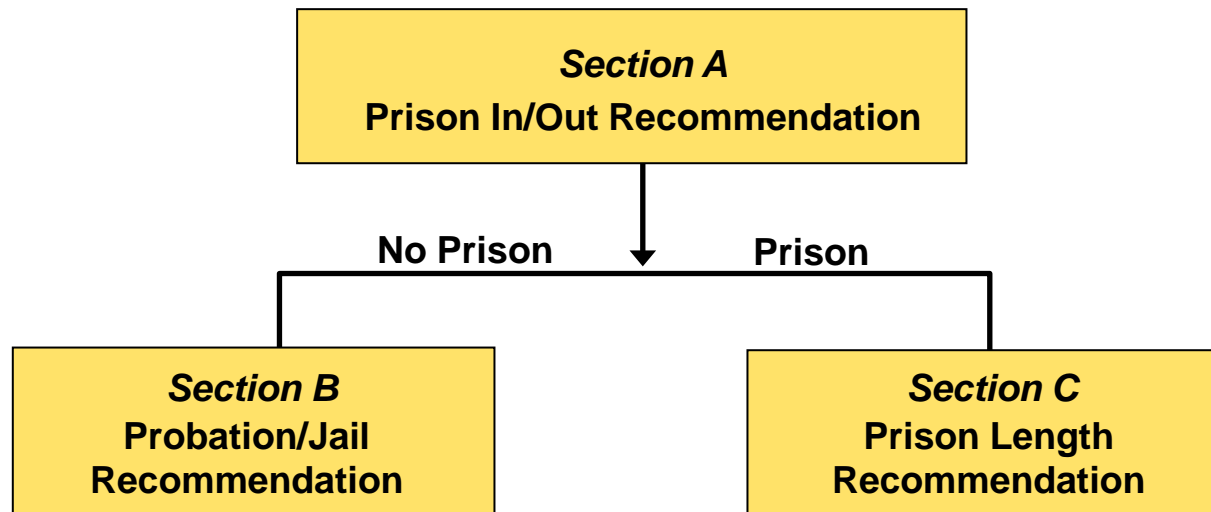
After pilot testing, voluntary guidelines were implemented statewide in January 1991.



Structure of Virginia's Sentencing Guidelines

Analysis of sentencing practices in Virginia found that our judges often consider different factors, or weigh the factors differently, depending on the offense and type of decision being made.

Virginia's Sentencing Guidelines are structured to reflect the judicial decision making process found in our state.



Virginia's Sentencing Reform Legislation (1994)

Goals of Sentencing Reform:

Abolish parole

**Establish truth-in-sentencing
(minimum 85% time served)**

**Target violent felons for longer
terms of incarceration**

**Keep the average time served
the same for nonviolent felons**

**Redirect lowest-risk nonviolent
felons to less costly sanctions**

**Expand alternative punishment
options for nonviolent felons**

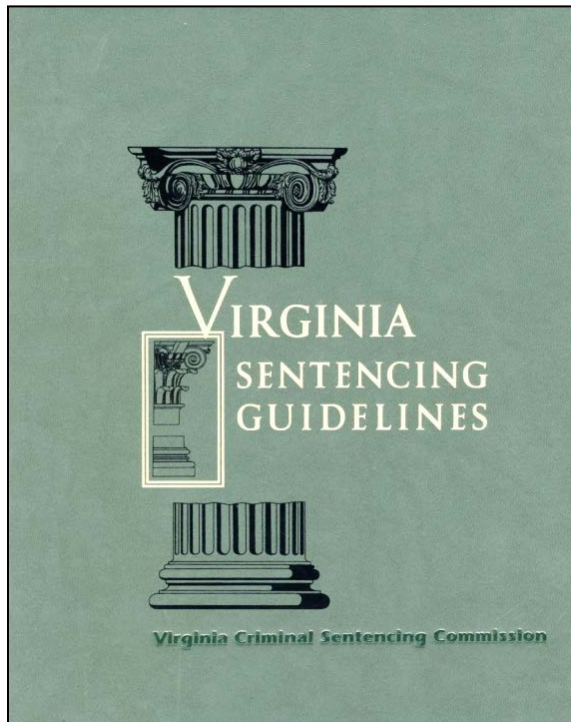
Reduce sentencing disparities

**Create a sentencing commission to
oversee voluntary guidelines system**

**Sentencing reform
provisions took effect for
felonies committed on or
after January 1, 1995.**



Important Features of Virginia's Sentencing Guidelines



Unlike the federal sentencing guidelines, Virginia's guidelines are based on historical practice through ongoing analysis of sentencing data (§ 17.1-803).

The Commission does not set or modify guidelines based on normative decisions.

Compliance with the guidelines is voluntary.

Failure to follow guidelines is not reviewable on appeal (§ 19.2-298.01).



Guidelines Enhancements for Violent Offenders

- Pursuant to the 1994 legislative mandate, violent offenders, as defined in § 17.1-805, were targeted for longer terms of incarceration.
- Per § 17.1-805, the guidelines base recommendation for violent offenders was increased between 100% and 500%, depending on the offender's current and prior felony convictions.
- By statute, “violent offender” is based on the entire criminal history, including juvenile delinquency adjudications; also burglaries are defined as violent crimes.
- Approximately one in five felons receives a guidelines enhancement.



Risk Assessment for Nonviolent Offenders

- Pursuant to the 1994 legislative mandate, the Commission developed an offender risk assessment instrument based on a study of Virginia felons.
- The Commission studied 1,500 property and drug felons and examined over 200 factors relating to criminal record, substance abuse, employment, etc.
- A risk assessment worksheet was developed based on the factors that were statistically relevant in predicting recidivism.
- After pilot testing and refining, risk assessment was implemented statewide in 2002.
- Following a new study of more recent felony cases, revised risk assessment instruments became effective July 1, 2013.

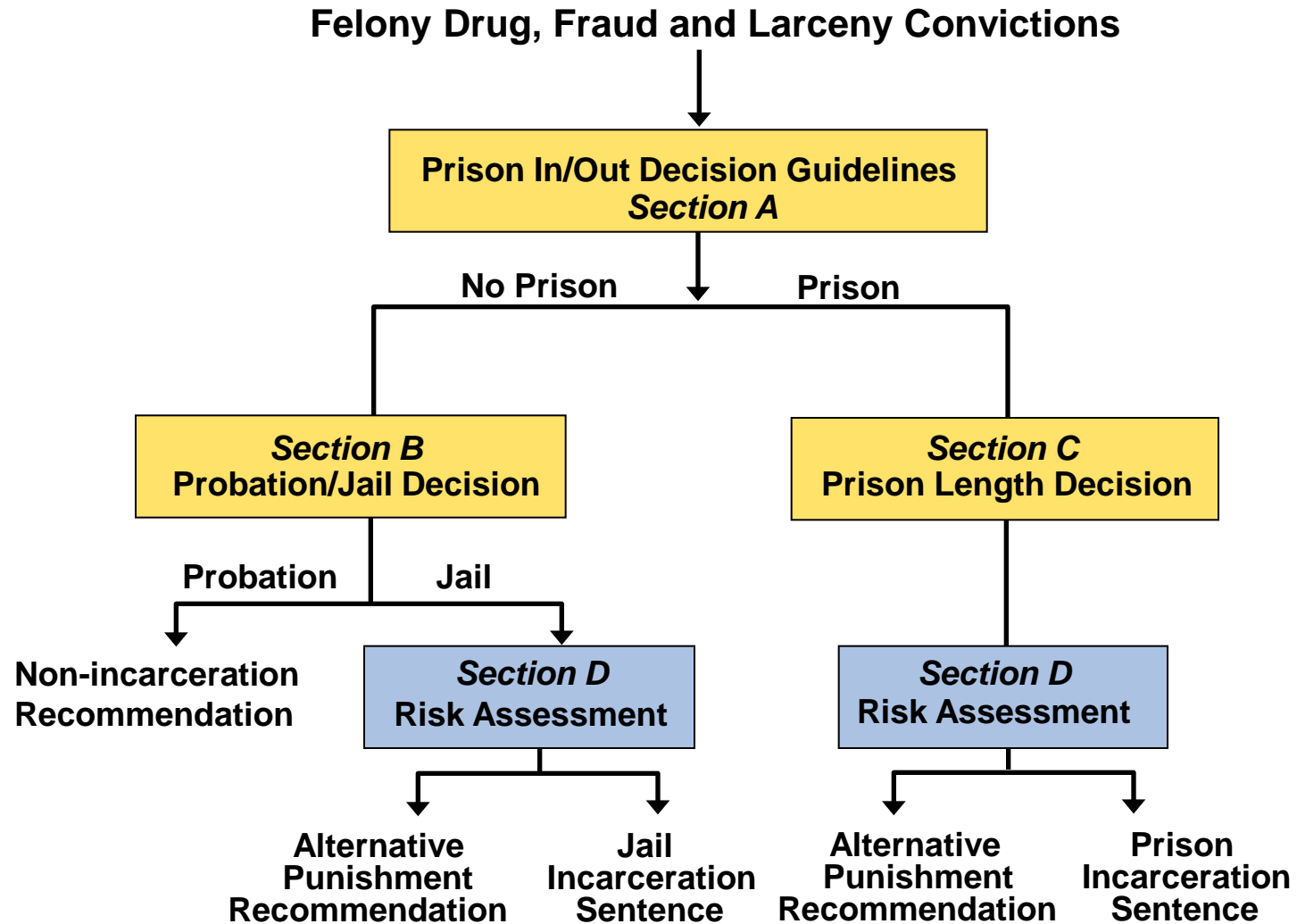


Use of Nonviolent Offender Risk Assessment

- **The risk assessment is completed in larceny, fraud and drug cases for offenders who are recommended for incarceration by the sentencing guidelines.**
- **Offenders must also meet the eligibility criteria (e.g., offenders with current or prior violent felony convictions are excluded from risk assessment).**
- **For offenders who score low enough on the risk scale, the sentencing guidelines cover sheet indicates a dual recommendation:**
 - **Traditional incarceration**
 - **Alternative sanction**
- **As with the sentencing guidelines, compliance with the risk assessment recommendation is discretionary.**



Use of Nonviolent Offender Risk Assessment



Sex Offender Risk Assessment

- In 1999, the General Assembly directed the Commission to develop a sex offender risk assessment instrument, based on the risk of re-offending, and integrate it into the sentencing guidelines for sex offenses.
- The Commission studied 600 felony sex offenders released from incarceration (or given probation).



- Offenders were tracked for 5-10 years after return to the community.
- Recidivism was defined as a re-arrest for a sex offense or other crime against the person (due to concern that reconviction drastically underestimates recidivism due to difficulties in detection/prosecution of sex offenses).

Integration of Sex Offender Risk Assessment

Offenders scoring above the specified threshold will always be recommended for prison AND the upper end of the recommended prison sentence range is increased as follows:

Risk Assessment Score

**44 or more
34 to 43
28 to 33
Up to 27**

Adjustment to Guidelines Range

**Increase upper end of range by 300%
Increase upper end of range by 100%
Increase upper end of range by 50%
No change**

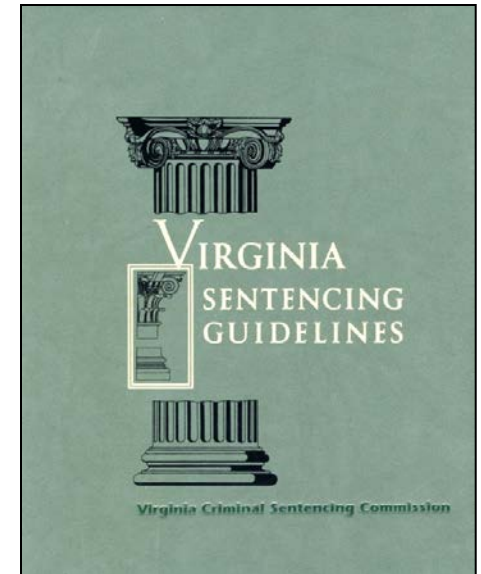
Midpoint recommendation and low end of the recommended range remain unchanged.



Preparation of Sentencing Guidelines

§ 19.2-298.01

- **In cases tried by a jury and felony cases tried by the court upon a plea of not guilty, a probation officer typically prepares the sentencing guidelines.**
- **In felony cases involving a guilty plea, including cases which are the subject of a plea agreement, the guidelines are most often prepared by the prosecutor.**



Use of Sentencing Guidelines

§ 19.2-298.01

- **The court shall:**
 - **Be presented with, review and consider guidelines work sheets;**
 - **State for the record that the review was completed;**
 - **File a written explanation of departure when sentencing outside of the guidelines range (on the back of the guidelines cover sheet).**
- **Juries may not receive guidelines information.**
- **Clerk of the Circuit Court is required to send the court order, guidelines work sheets, and any departure reason to the Commission.**
- **Worksheets become part of the record of the case.**
- **Failure to follow guidelines is not reviewable on appeal.**

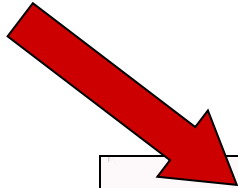


Ongoing Analysis of Sentencing Guidelines

Sentencing guidelines are evaluated and revised by continual analysis of new sentencing data.

The Commission analyzes departure reasons provided by judges.

Departure reasons are not limited in any way, but detailed/specific reasons are the most helpful.



◆ REASON FOR DEPARTURE Must be completed pursuant to §19.2-298.01(B)									
	<i>Gang Related Criminal activity is not adequately weighted by Guidelines</i>								
◆ SENTENCING DATE									
	09	/	17	/	09				
	Month		Day		Year				
									<i>James H. Hunter</i> /Judge's Signature

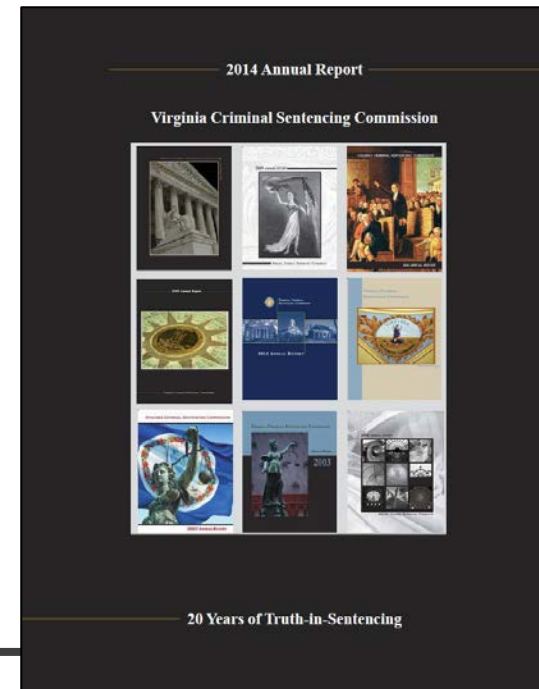


Revisions to Sentencing Guidelines § 17.1-806

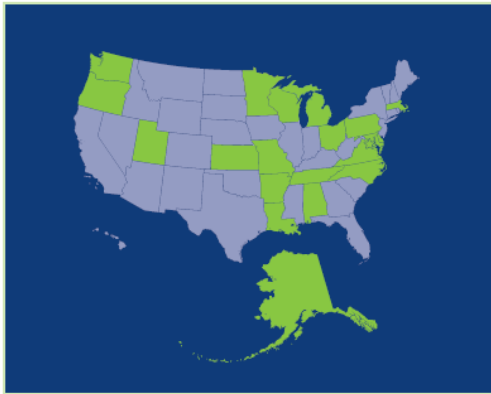
The Commission recommends revisions to the guidelines based on review of judges' departure reasons and analysis of sentencing data.

Modifications recommended by the Commission must be presented in an annual report and submitted by December 1 to the Governor, Chief Justice, and the General Assembly.

Winter legislative session provides opportunity for lawmakers to veto Commission recommendations. The Commission's recommendations shall, unless otherwise provided by law, become effective the following July 1.



State Sentencing Guidelines *Profiles and Continuum*



■ States with Sentencing Guidelines Systems

Sentencing Guidelines Systems Comparative Factors

Is there an enforceable rule related to guideline use?

Is the completion of a worksheet or structured scoring form required?

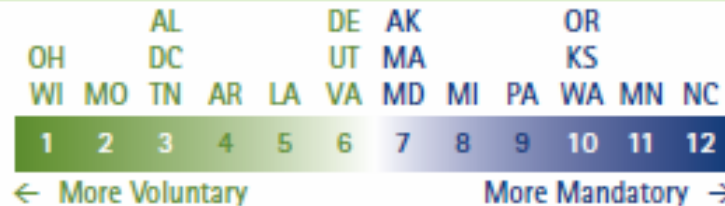
Does a Sentencing Commission regularly report on guideline compliance?

Are compelling and substantial reasons required for departures?

Are written reasons required for departures?

Is there appellate review of defendant-based challenges related to sentencing guidelines?

A Continuum of
State Sentencing
Guideline Systems



SCORE

Varies
from
1-12

Virginia's Geriatric Release Provision § 53.1-40.01



The geriatric release provision was enacted as part of the abolition of parole and truth-in-sentencing reform package passed by the General Assembly in 1994.

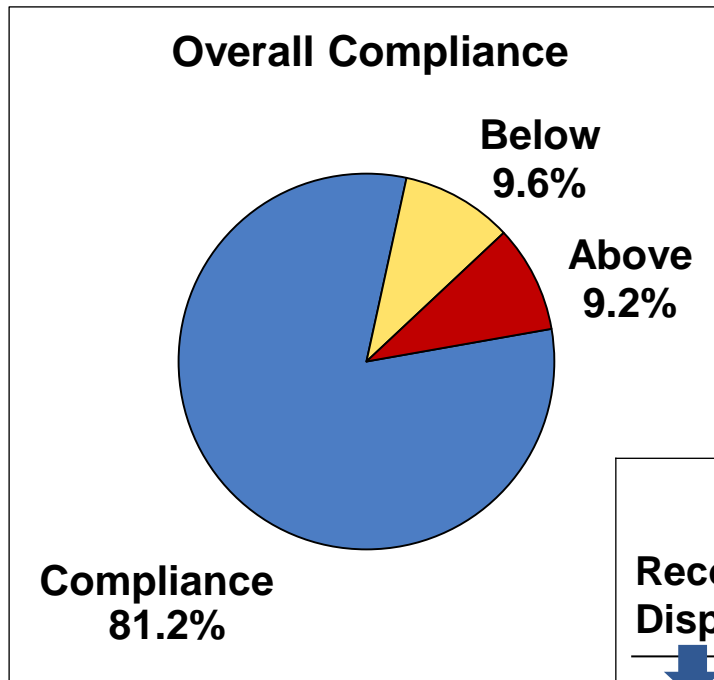
Under § 53.1-40.01, any person serving a sentence for a felony offense other than a Class 1 felony (i) who has reached the age of sixty-five or older having served at least five years of his sentence or (ii) who has reached the age of sixty or older having served at least ten years of his sentence may petition the Parole Board for conditional release.





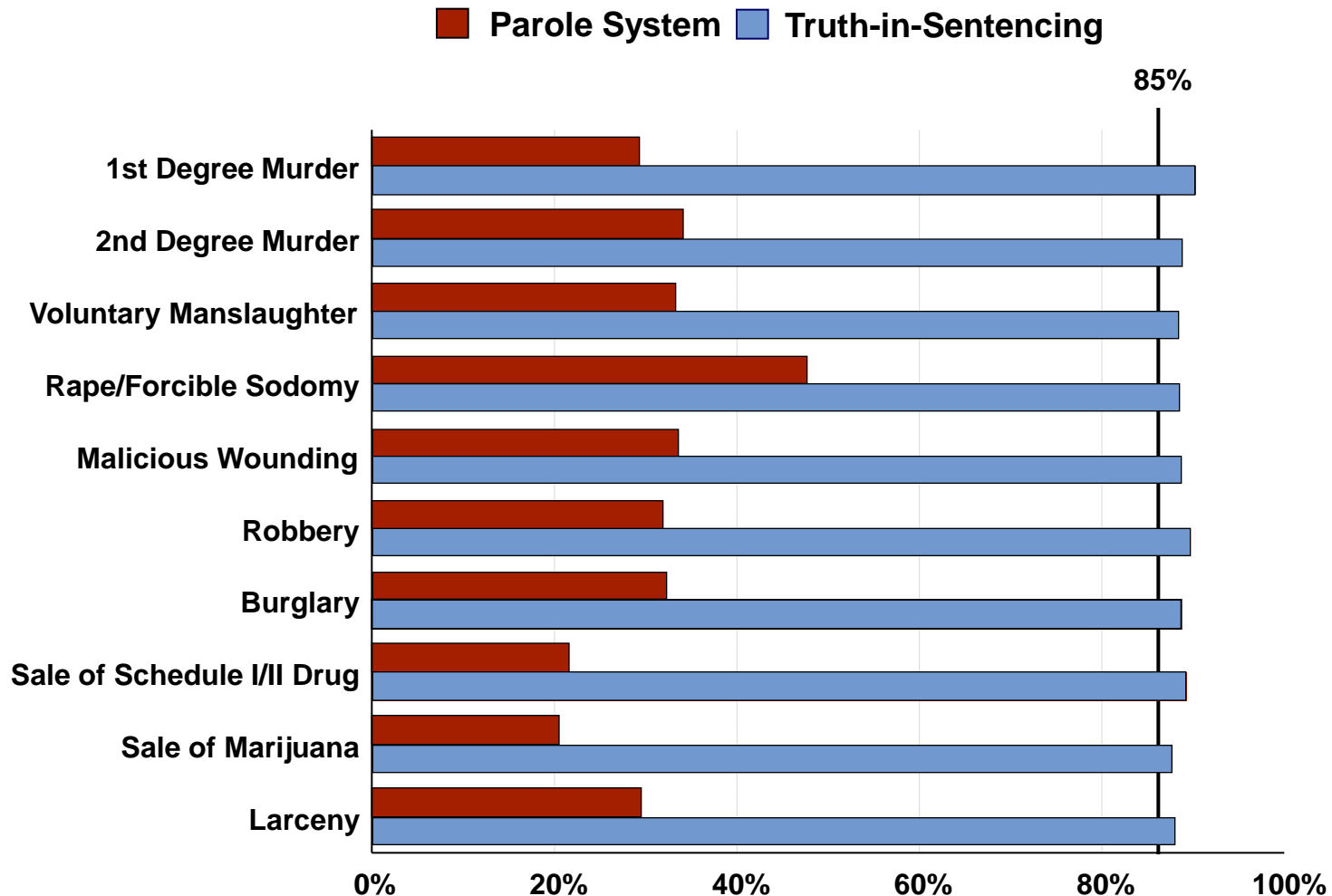
What Do the Data Show?

In FY2017, Circuit Court judges continued to comply with the Sentencing Guidelines at a high rate overall.



Recommended Disposition	Actual Disposition		
	Probation	Incarceration 1 day to 6 mos.	Incarceration > 6 mos.
Probation	73.6%	22.5%	4.0%
Incarceration 1 day to 6 mos.	11.1%	79.9%	9.0%
Incarceration > 6 mos.	5.6%	7.5%	87.0%

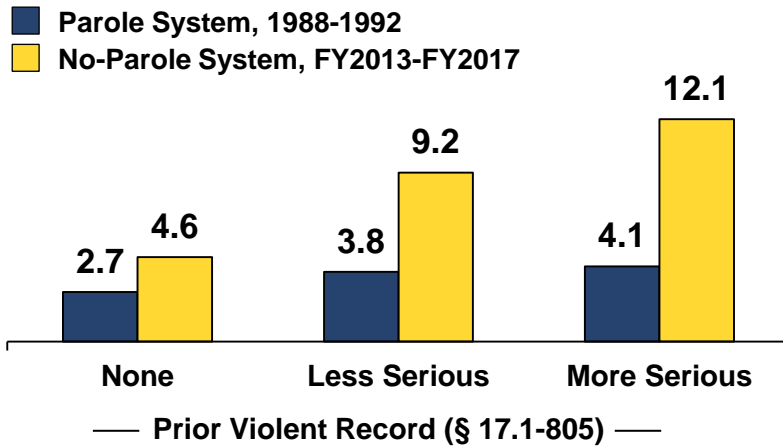
Under truth-in-sentencing, felons are serving more than 85% of the incarceration sentence ordered by the court.



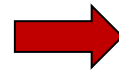
Parole system data represent FY1993 prison releases; truth-in-sentencing data is derived from the rate of sentence credits earned among prison inmates as of December 31, 2007

Prison Time Served (in years)

Robbery of Business with Firearm

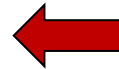


Source: Sentencing Guidelines Data, FY2013-2017

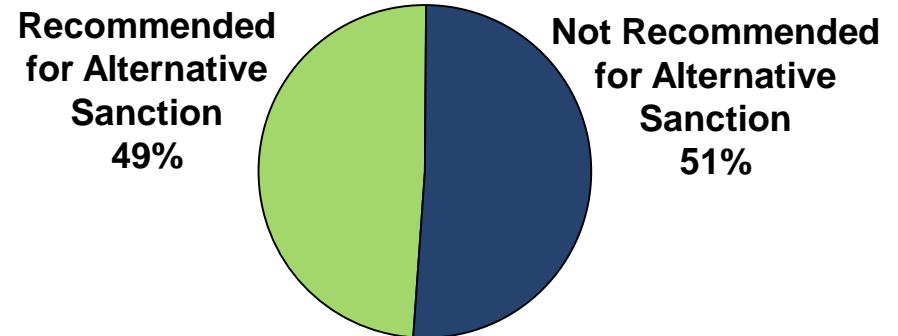


Violent offenders, particularly repeat violent offenders, are serving longer under truth-in-sentencing.

Through legislatively-mandated risk assessment, roughly 3,000 low-risk drug and property offenders are recommended for alternative sanctions each year.



Risk Assessment Outcomes 6,803 Eligible Offenders

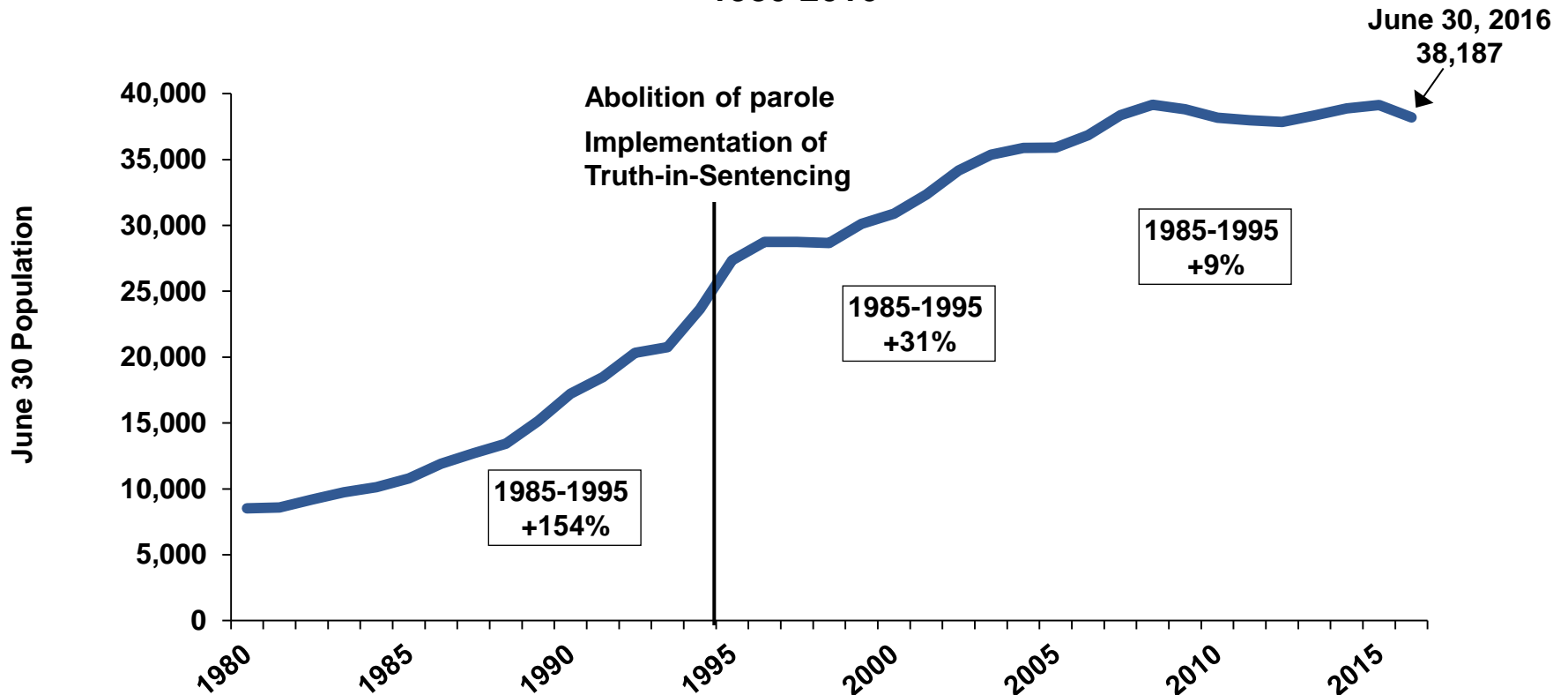


Source: Virginia Criminal Sentencing Commission – 2017 Annual Report

Analysis is based on offenders recommended by the sentencing guidelines for prison or jail incarceration.

After the abolition of parole, Virginia's state-responsible inmate population did not explode, as some had feared.

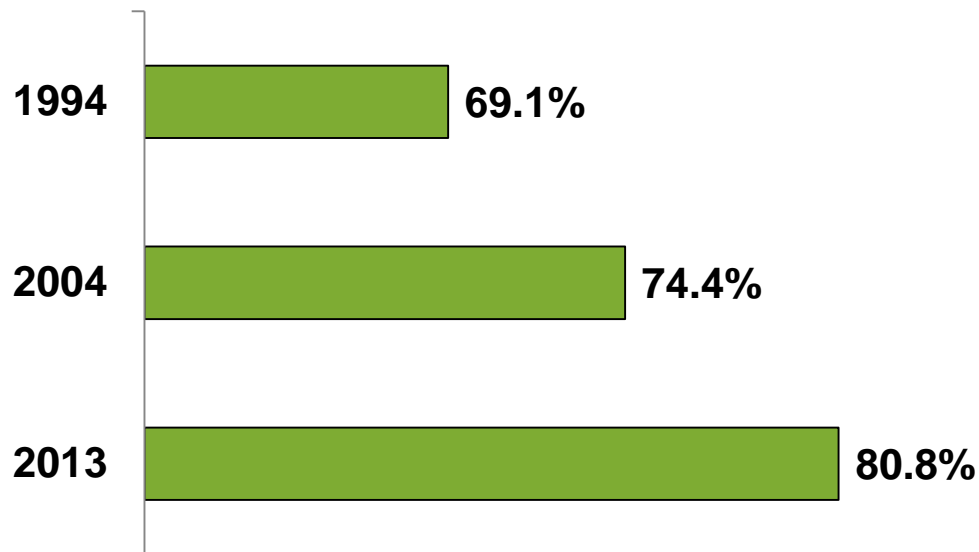
Virginia State-Responsible Inmate Population 1980-2016



Note: Figures reflect the population on June 30 of each year
Source: Virginia Department of Corrections (September 5, 2017)

The state inmate population is now composed of a larger percentage of violent offenders than in 1994.

Percent of State Prison Beds Holding Violent Felons



Analysis is based on the definition of a violent offender set forth in § 17.1-805, which considers both current and prior record offenses.




Research suggests that unwarranted sentencing disparities have been reduced.

Findings

Guidelines effectively limit undesirable sentencing disparity by reducing the role of factors that should not play a role in the sentencing decision.

There is no evidence that guidelines must be mandatory in order to have an impact on undesirable racial, gender, age, or geographical disparities.

Virginia showed no substantively significant discrimination in sentencing outcomes.



NCSC
National Center for State Courts

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



States with Sentencing Guidelines Systems





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