

# **NONVIOLENT RISK ASSESSMENT IN SENTENCING: VIRGINIA CRIMINAL SENTENCING COMMISSION DATA**

Brandon L. Garrett, Alexander Jakubow, and John Monahan  
Virginia Criminal Sentencing Commission

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- “In 1994, the General Assembly required the Virginia Criminal Sentencing Commission to develop an empirically-based risk-assessment instrument for use in diverting 25 percent of the “lowest-risk, incarceration-bound, drug and property offenders” to non-prison sanctions such as jail, probation, community service, outpatient substance-abuse or mental health treatment, or electronic monitoring
  - Kern & Farrar-Owens, 2004; Farrar-Owens, 2013

# Nonviolent Risk Assessment ❖ Fraud Section D

Offender Name: \_\_\_\_\_

## ◆ Ineligibility Conditions

- A. Was the offender recommended for **Probation/No Incarceration** on Section B? .....  Yes  No
- B. Are any prior record offenses violent (Category I/II listed in Appendix A of the Guidelines Manual)? .....  Yes  No
- C. Are any of the offenses at sentencing violent (Category I/II listed in Appendix A of the Guidelines Manual)? .....  Yes  No
- D. Do any of the offenses at sentencing require a mandatory term of incarceration? .....  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.**

## ◆ Offender Age at Time of Offense \_\_\_\_\_

- Younger than 21 years ..... 22
  - 21 to 29 years ..... 16
  - 30 to 43 years ..... 7
  - Older than 43 years ..... 1
- |  |  |
|--|--|
|  |  |
|--|--|

## ◆ Gender \_\_\_\_\_

- Offender is Female ..... 1
  - Offender is Male ..... 10
- |  |  |
|--|--|
|  |  |
|--|--|

## ◆ Prior Adult Felony Convictions \_\_\_\_\_

- Number 0 ..... 0
  - of Counts: 1 - 2 ..... 5
  - 3 or more ..... 15
- |  |  |
|--|--|
|  |  |
|--|--|

## ◆ Prior Adult Incarcerations \_\_\_\_\_

- Number: 0 ..... 0
  - 1 - 9 ..... 4
  - 10 or more ..... 32
- |  |  |
|--|--|
|  |  |
|--|--|

## ◆ Legally Restrained at Time of Offense \_\_\_\_\_

If YES, add 6 →

0	
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## Total Score \_\_\_\_\_

- 31 or less, check Recommended for Alternative Punishment.
- 32 or more, check NOT Recommended for Alternative Punishment.

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Fraud/Section D

Go to **Cover Sheet** and fill out **Nonviolent Risk Assessment Recommendations**.

# Key findings: Analysis of FY 2016 data

- We examined the entire population of 8,443 offenders eligible for the NVRA
- 3,396 or 40.2% scored in the low risk category of offenders.
- Of those, 42.2% (1,433 people) did in fact receive an alternative sentence.
- Of offenders who scored in the higher risk category, 23.4% (941 people) received an alternative sentence.
- Fifty percent of eligible low risk offenders received alternative sentences that did not involve jail, while 34.9% of the higher risk offenders received alternative sentences that did not involve jail

**Table 1. NVRA Eligible Offenders Who Received an Alternative Sanction**

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	1,433 42.2%	941 23.4%	408 39.7%	2,782
Not Imposed	1,963 57.8%	3,079 76.6%	619 60.3%	5,661
Total	3,396 40.2%	4,020 47.6%	1,027 12.2%	8,443

$\chi^2 = 318.45, p < 0.001$

Figure 1: Alternative Sanctions by NVRA Recommendation

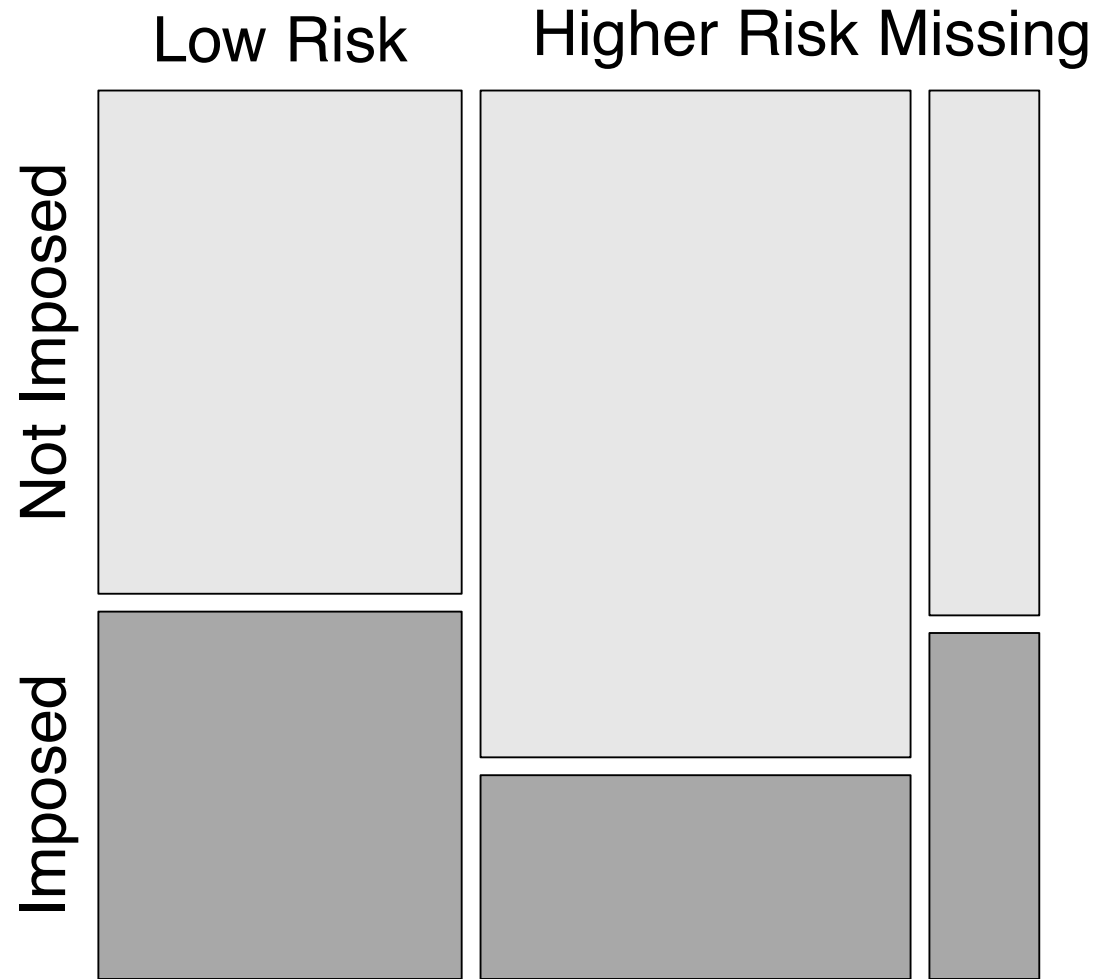
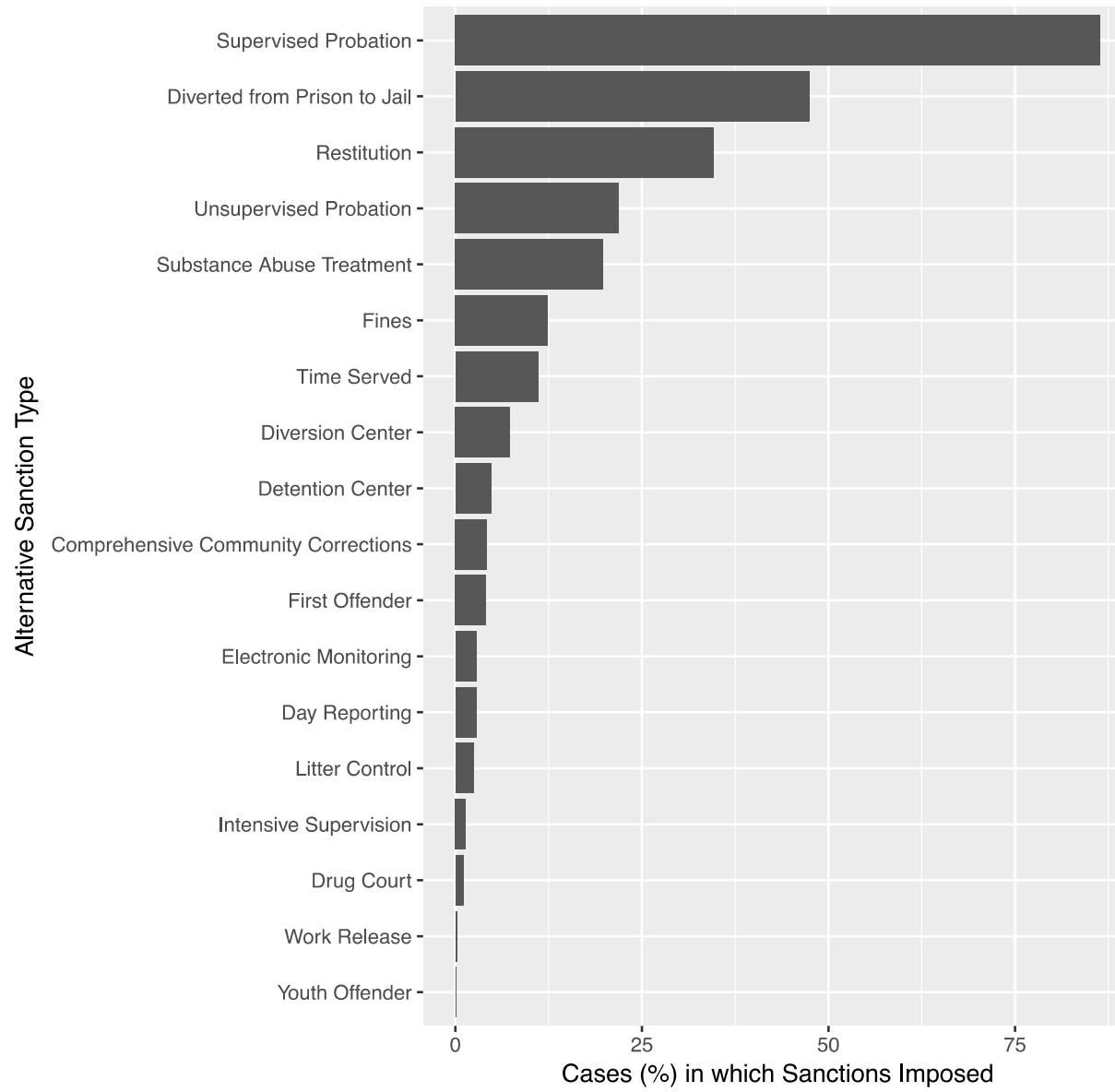


Figure 2: Types of Alternative Sanctions Imposed in NVRA Cases



# Variation by Circuit

- The 31 Circuits had a mean alternative sentencing rate of 33%, with a minimum of 19% and a maximum of 54%
  - Low risk alternative sentencing rates varied from **22% to 67%**
  - Higher risk alternative sentencing rates varied from **11% to 51%**
- Judges had a mean alternative sentencing rate of 32%, with a minimum of 11% and a maximum of 65%
  - Low risk alternative sentencing rates varied from **7% to 85%**
  - Higher risk alternative sentencing rates varied from **0% to 60%**



# Variation by Judge

- Judges had a mean alternative sentencing rate of 32%, with a minimum of 11% and a maximum of 65%
  - Low risk alternative sentencing rates varied from **7% to 85%**
  - Higher risk alternative sentencing rates varied from **0% to 60%**

# **Nonviolent Risk Assessment in Sentencing: A Survey of Virginia Circuit Court Judges**

John Monahan, Anne Metz, and Brandon L. Garrett

Virginia Criminal Sentencing Commission

April 9, 2018

- American Law Institute, *Model Penal Code* (2017):
  - “On risk assessment as a prison-diversion tool, Virginia has been the leading innovator among American states”
- Judges in Virginia are the primary “consumers” of risk assessment at sentencing, yet their views are rarely solicited
- Survey of all 161 Circuit Court judges (Nov 2017—Jan 2018)
- Response rate: 53%
- Thank you, Chief Justice Lemons!

# Judges' Views of, and Experience with, the Non-Violent Risk Assessment (NVRA)

- ~80% agree: sentencing should be based *not only* on the seriousness of past crime, *but also* on the risk of future crime
- ~80% are “familiar” or “very familiar” with the NVRA
- ~50% “always” or “almost always” consider the NVRA; ~30% “usually” do
- ~50% rely *equally* on the NVRA *and* on their judicial experience; ~30% rely *primarily* on judicial experience.

# Judges' Opinions About the Availability of Alternative Community Sanctions

- ~70% rate the availability of alternative sanctions as “less than adequate,” and ~5% rate them as “virtually non-existent”
- ~About 80% believe an increase in availability of alternative sanctions would change sentencing practices.

# Requiring Written Reasons for Departure from NVRA Sentence Recommendations

- ~60% believe a policy requiring a written reason for declining to impose an alternative sanction on a “low risk” would increase the use of alternative sanctions
- ~60% oppose the adoption of such a policy.

# (1) The Great Majority of Judges Endorse and Consult the NVRA; A Significant Minority Do Not

- “Constitutes a useful tool within the general sentencing scheme.”
- “I support the use of risk assessments [provided that] the risk assessment is used to *reduce* and not to *increase* incarceration”
- “Frankly, I pay very little attention to the [NVRA] worksheets. Attorneys argue about them, but I really just look at the Guidelines. I also don’t go to psychics.”

## **(2) The Great Majority of Judges Find the Availability of Alternative Interventions to be Inadequate at Best**

- “The assessment is useful. The problem is the lack of useful alternatives. In several counties in my Circuit, there are no inpatient treatment options”
- “We need more alternative options—lack sufficient treatment programs and follow-up. Unfortunately, that costs money which communities are reluctant to provide”
- Referral to local mental health takes 13 weeks for the initial interview. Who knows how long to start treatment... We need a statute which requires all areas of the state have equal access to drug treatment.”



### **(3) The Majority of Judges Oppose Written Reasons for Departing from NVRA Sentence Recommendations**

- “Having to write out reasons for Guidelines departure is already a burden on the sentencing process. To add another requirement would simply complicate sentencing even more
- “Requiring a reason in writing for a disposition should *not* be used as a way to compel more alternative punishments! At some point someone must realize that adding more paperwork...takes time away from hearing cases, deciding cases, reading, signing orders, etc.”
- “Requiring judges to take 3-10 minutes per such sentencing to explain will be an unnecessary drag on our criminal dockets.”