



Virginia Sentencing Guidelines Preliminary FY2012 Report

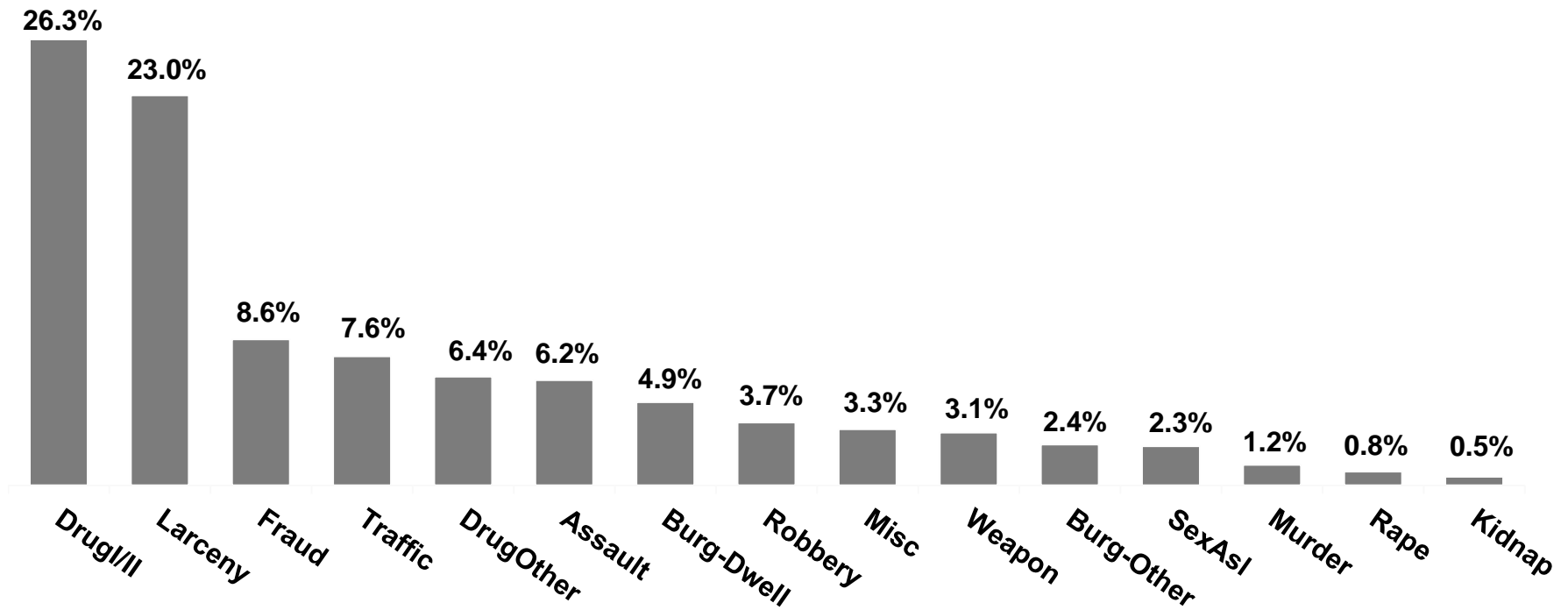
September 10, 2012

FY 2012 - Cases Coded and Keyed

JAN		1928	1928
FEB		1950	1950
MAR		2122	2122
APR		1718	1718
MAY		1239	1239
JUN		57	58
JUL	1776		1776
AUG	2129		2129
SEP	2095		2095
OCT	1958		1958
NOV	1821		1821
DEC	1752		1752
TOTAL	11531	9014	20545*

*19,989 certified for compliance analysis

Preliminary FY2012 Report
Guideline Worksheets Keyed as of 08/30/2012
(n=19,989)



**Preliminary FY2012 Report:
General Compliance**

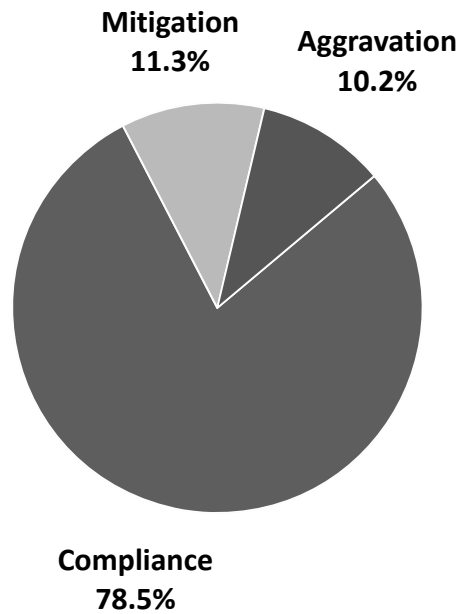


**Preliminary FY2012 Report
Judicial Agreement
with Guideline Recommendations**

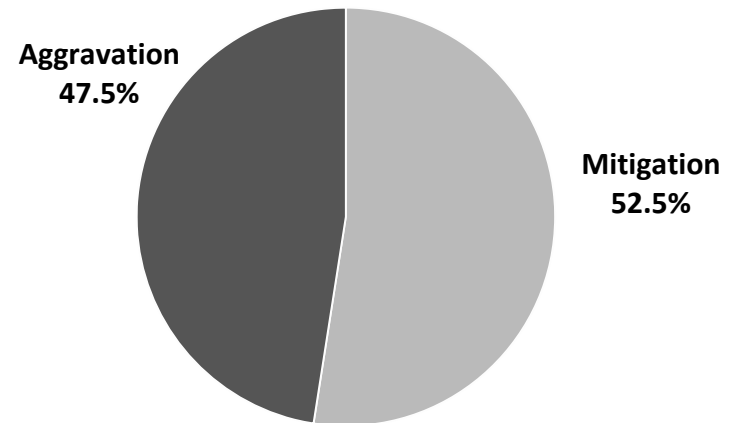
General Compliance:

The degree to which judges agree with the overall guidelines recommendation.

Overall Compliance Rate



Direction of Departures



N=19,989

**Preliminary FY2012 Report
Judicial Agreement
with Type of Recommended Disposition**

Dispositional Compliance:

The degree to which judges agree with the type of sanction recommended.

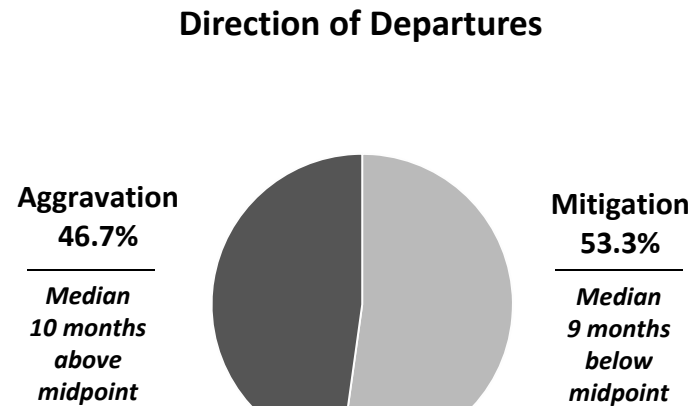
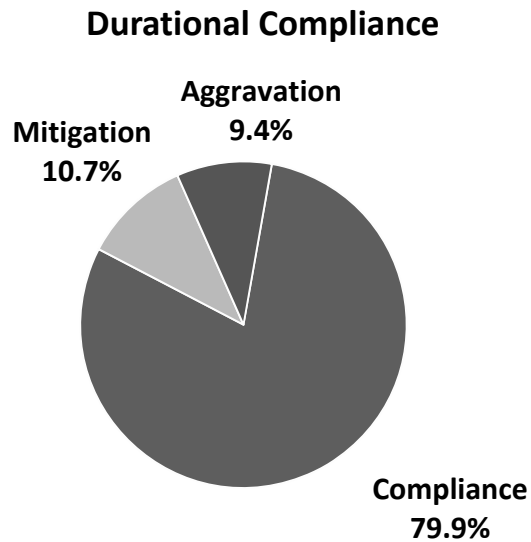
RECOMMENDED DISPOSITION	ACTUAL DISPOSITION		
	Probation/No Incarceration	Incarceration 6 months or less	Incarceration over 6 months
Probation/No Incarceration	71.3%	23.1%	5.5%
Incarceration 6 months or less	12.9%	75.8	11.3%
Incarceration over 6 months	5.8%	8.2%	86.0%

Preliminary FY2012 Report

Judicial Agreement with Sentence Length

Durational Compliance:

The degree to which judges agree with the sentence length in cases in which defendants are recommended for jail/prison and receive at least one day incarceration.



**Preliminary FY2012 Report:
Departure Reasons**



Preliminary FY2012 Report

Most Frequently Cited Departure Reasons

Mitigation (n=2235)

- Plea agreement 780 (35%*)
- Judicial discretion 230 (10%*)
- Cooperated with Authorities 154 (7%*)
- Sentenced to alternative 147 (7%*)
- Facts of the case 135 (6%*)
- Recommendation of CA 118 (6%*)
- Offender health 98 (4%*)
- Court Proceeding: Serve sentence in other case 97 (4%*)

n=481 (22%) missing a departure reason

* Of mitigating cases requiring departure reason

Aggravation (n=2033)

- Plea agreement 501 (25%**)
- Severity/type of prior record 291 (14%**)
- Flagrancy of offense/facts of case 258 (13%**)
- Recommendation of jury 100 (5%**)
- Poor rehabilitation potential 100 (5%**)
- Multiple counts involved in event 100 (5%**)
- Degree of victim injury 78 (4%**)
- Offense involves drugs 66 (3%**)

n=436 (21%) missing a departure reason

** Of aggravating cases requiring departure reasons

**Preliminary FY2012 Report:
Compliance by Circuit**



Preliminary FY2012

Most cases received:

-Circuit 15 (Fredericksburg)

-Circuit 26 (Harrisonburg)

-Circuit 13 (Richmond)

Circuit Name	Circuit	Compliance	Mitigation	Aggravation	Number of Cases
Chesapeake	1	78.5%	9.1%	12.4%	782
Virginia Beach	2	82.0%	10.6%	7.4%	932
Portsmouth	3	72.1%	15.6%	12.3%	391
Norfolk	4	79.5%	13.5%	7.0%	962
Suffolk Area	5	79.0%	9.5%	11.4%	463
Sussex Area	6	74.1%	12.0%	14.0%	301
Newport News	7	81.2%	9.9%	8.8%	645
Hampton	8	75.7%	17.1%	7.2%	333
Williamsburg Area	9	71.8%	12.4%	15.8%	404
South Boston Area	10	79.6%	11.5%	8.9%	515
Petersburg Area	11	83.6%	11.0%	5.5%	365
Chesterfield Area	12	77.9%	11.8%	10.3%	878
Richmond City	13	73.6%	18.6%	7.8%	1,035
Henrico	14	76.0%	10.7%	13.3%	700
Fredericksburg Area	15	74.5%	10.5%	14.9%	1,398
Charlottesville Area	16	78.9%	12.2%	8.8%	441
Arlington Area	17	82.5%	8.6%	8.9%	280
Alexandria	18	80.1%	11.9%	8.0%	261
Fairfax	19	74.3%	12.2%	13.5%	969
Loudoun Area	20	83.2%	4.8%	12.0%	476
Martinsville Area	21	79.6%	12.9%	7.5%	334
Danville Area	22	76.7%	7.6%	15.8%	596
Roanoke Area	23	74.6%	15.8%	9.6%	710
Lynchburg Area	24	79.0%	13.9%	7.1%	930
Staunton Area	25	76.3%	14.3%	9.4%	742
Harrisonburg Area	26	82.0%	9.4%	8.6%	1,148
Radford Area	27	87.4%	7.1%	5.5%	991
Bristol Area	28	87.2%	6.1%	6.7%	538
Buchanan Area	29	72.5%	10.0%	17.5%	571
Lee Area	30	78.6%	7.2%	14.2%	443
Prince William Area	31	85.3%	8.3%	6.4%	435

Preliminary FY2012

Most cases received:

- Circuit 15 (Fredericksburg)
- Circuit 26 (Harrisonburg)
- Circuit 13 (Richmond)

Highest compliance:

- Circuit 27 (Radford)
87.4%
- Circuit 28 (Bristol)
87.2%

Lowest compliance:

- Circuit 9 (Williamsburg)
71.8%



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-Circuit 13 (Richmond)

Highest compliance:

-Circuit 27 (Radford)

87.4%

-Circuit 28 (Bristol)

87.2%

Lowest compliance:

-Circuit 9 (Williamsburg)

71.8%

Highest aggravation:

-Circuit 29 (Buchanan)

17.5%

Highest mitigation:

-Circuit 13 (Richmond City)

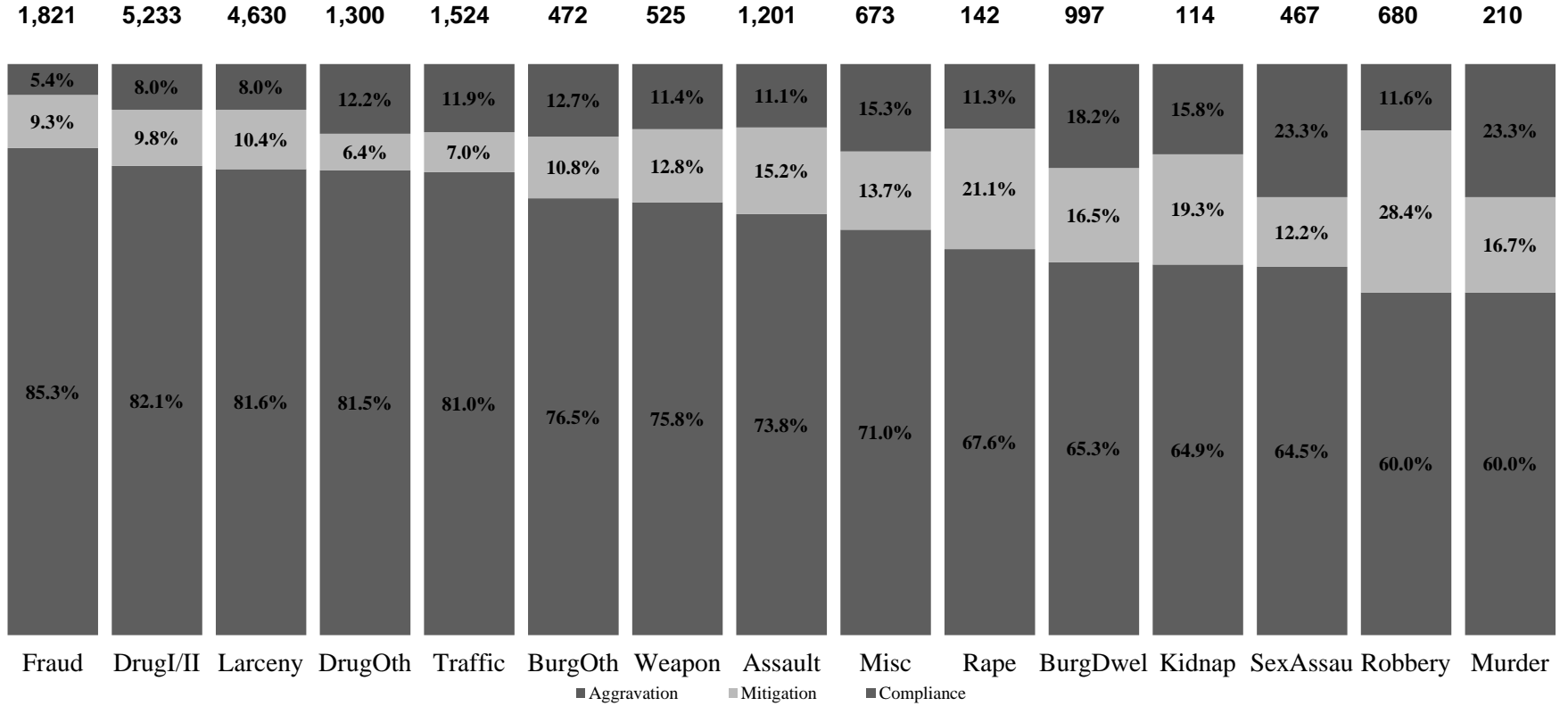
18.6%

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**Preliminary FY2012 Report:
Compliance by Offense Type**



Preliminary FY2012 Report Compliance by Type of Offense



Preliminary FY2012 Report Compliance by Type of Offense

Highest Mitigation Rates

Robbery (28.4%) *n=193*

- Most frequent departure reasons:
 - Plea agreement
 - Cooperation with authorities
 - Judicial discretion
 - CA/Joint recommendation

Rape (21.1%) *n=30*

- Most frequent departure reasons:
 - Plea agreement
 - Facts of the case
 - Victim will not/cannot testify

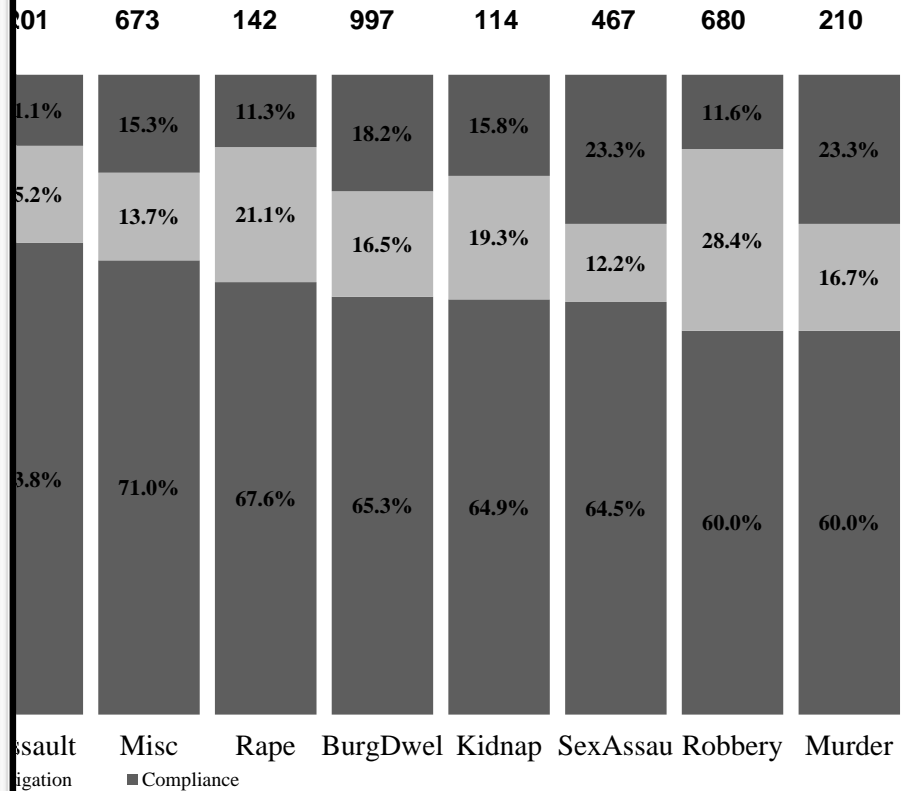
Highest Aggravation Rate

Sexual Assault (23.3%) *n=467*

- Most frequent departure reasons:
 - Plea Agreement
 - Flagrancy of the offense
 - Vulnerability of victim
 - Degree of planning/violation of trust

Murder (23.3%) *n=49*

- Most frequent departure reasons:
 - Flagrancy of the offense
 - Recommendation of jury
 - Poor rehabilitation potential



**Preliminary FY2012 Report:
Nonviolent Offender
Risk Assessment**



Preliminary FY2012 Report **Nonviolent Risk Assessment**

- Risk assessment applies in drug, fraud, & larceny cases
- Offender must meet eligibility criteria
 - Recommended for incarceration
 - No current or violent felony conviction
 - Did not distribute an ounce or more of cocaine
 - Not convicted of crime requiring mandatory minimum term of incarceration
- Purpose: To recommend alternative sanctions for offenders who are statistically less likely to recidivate
- Type of alternative at discretion of judge

Nonviolent Offender Risk Assessment

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
- E. 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.

◆ Offense Type Select the type of primary offense _____

- Drug 3
- Fraud 3

◆ 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 (during 2 years prior to arrest date) 9
- D. Offender age 26 or more and never married (at time of offense) 6

+
+
+
=

Enter A to D Total

Information above not available (i.e., unable to interview defendant, defendant's lack of cooperation, etc.)

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

◆ Prior Adult Incarcerations _____

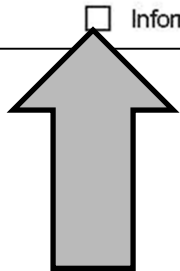
- Number: 1 - 2 3
- 3 - 4 6
- 5 or more 9

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.

Larceny/Section D
EF 7-1-10



◆ SENTENCING GUIDELINES RECOMMENDATIONS

Section B

- Probation / No Incarceration
- Incarceration 1 Day to 3 Months
- Incarceration 1 Day to 6 Months
- Incarceration 3 to 6 Months
- Probation / No Incarceration or Incarceration to 6 Months

Mandatory Minimum _____

Section C

- Life Sentence
- Incarceration *(Enter Midpoint and Range Below)*

Range Midpoint

1	0
<small>Years</small>	<small>Months</small>

Sentence Range

	7	TO	1	4
<small>Years</small>	<small>Months</small>		<small>Years</small>	<small>Months</small>

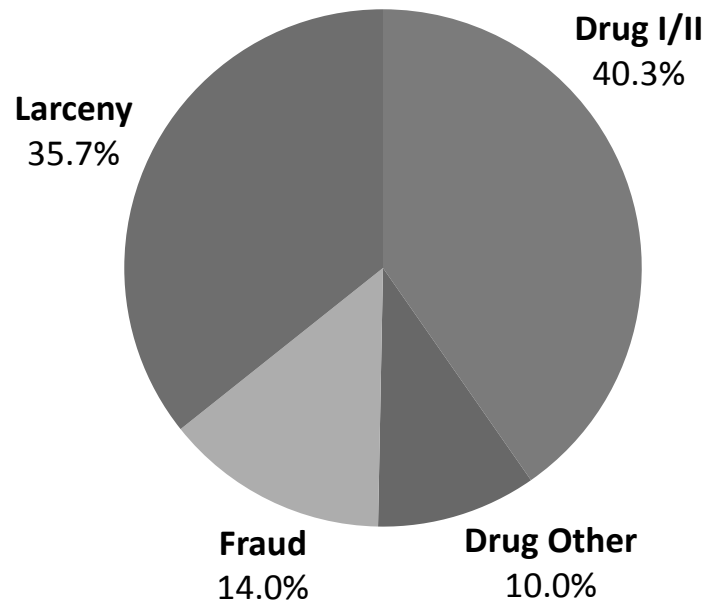
- Recommendation Adjusted for **Mandatory Minimum**

◆ NONVIOLENT RISK ASSESSMENT Section D of Drug, Fraud, and Larceny Worksheets

- | | |
|--|---|
| <input checked="" type="checkbox"/> Recommended for Alternative Punishment | <input type="checkbox"/> Not Applicable |
| <input type="checkbox"/> NOT Recommended for Alternative Punishment | |

Eff. 7-1-07

Preliminary FY2012 Report
Nonviolent Offenders Eligible for Risk Assessment
by Type of Offense

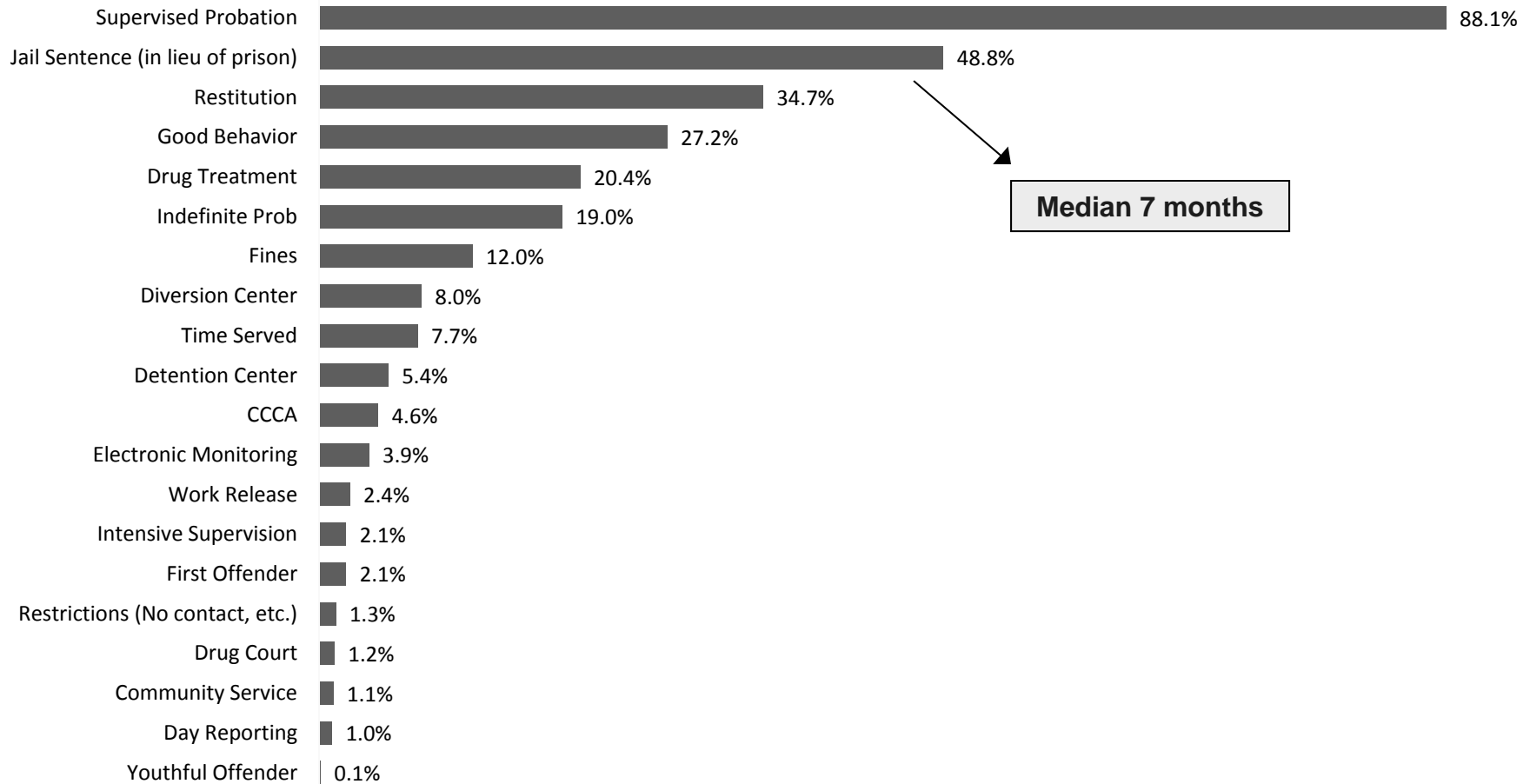


12,984 Drug, Fraud & Larceny Cases
- 7,896 Excluded: Ineligible, Errors, 615 Missing
5,088 Analyzed

Preliminary FY2012
Nonviolent Offenders Eligible for Risk Assessment

<u>Offense</u>	<u>Mitigation</u>	<u>Compliance</u>		<u>Aggravation</u>	<u>Number of Cases</u>
		<u>Traditional</u>	<u>Alternative</u>		
Drug	7%	60%	86%	26%	2,496
Fraud	8%	51%	89%	38%	753
Larceny	9%	74%	84%	10%	1,839
All Risk Cases	8%	64%	86%	22%	5,088

Preliminary FY2012 Report
Most Frequent Sanctions Imposed in Risk Assessment Cases
Recommended for and Receiving Alternative Sanctions



**Preliminary FY2012 Report:
Sex Offender Risk Assessment**



SEX OFFENDER RISK ASSESSMENT

Other Sexual Assault ~~→~~ Section A (Part I) Offender Name: _____

Offenses Not Applicable for Risk Assessment:

Risk Assessment is **NOT APPLICABLE** if the primary offense is adultery, bestiality, bigamy, non-forcible sodomy, or prostitution.
(Go to Section A (Part II))

◆ **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 → 0

◆ **Not Regularly Employed** _____ If YES, add 5 → 0

◆ **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	2	
	Known to victim (not relative or step-parent)	3	
	Stranger	8	
	Step-parent	2	

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

No penetration or attempted penetration of victim	0	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 residence	9	
Location other than listed	3	

◆ **Prior Adult Felony/Misdemeanor Arrests for Crimes Against Person** _____

Number: 0 Felonies	1 - 3 Misdemeanors	1	
	4+ Misdemeanors	8	
1 Felony	0 - 2 Misdemeanors	5	
	3+ Misdemeanors	8	
2+ Felonies	0 - 3 Misdemeanors	8	
	4+ Misdemeanors	15	

◆ **Prior Incarcerations/Commitments** _____ If YES, add 3 → 0

◆ **Prior Treatment** _____

Prior mental health commitment	0	
Prior mental health treatment	2	
Prior alcohol or drug treatment	3	
No prior treatment	4	

Risk Score _____ →

- Risk Level (Risk Score)**
- 44 or more Level 1
 - 34 - 43 Level 2
 - 28 - 33 Level 3
 - up to 27 No Adjustment

Go to **Section A (Part II)**

Preliminary FY2012 Report
Sex Offender Risk Assessment

- **Risk assessment incorporated into the guidelines for Rape & Other Sexual Assault**
- **Purpose: To extend the upper end of the guidelines recommendation for sex offenders who are statistically more likely to recidivate**
- **Enhancements**
 - **Level 1 = 300% Increase in upper end of guidelines range**
 - **Level 2 = 100% Increase in upper end of guidelines range**
 - **Level 3 = 50% Increase in upper end of guidelines range**

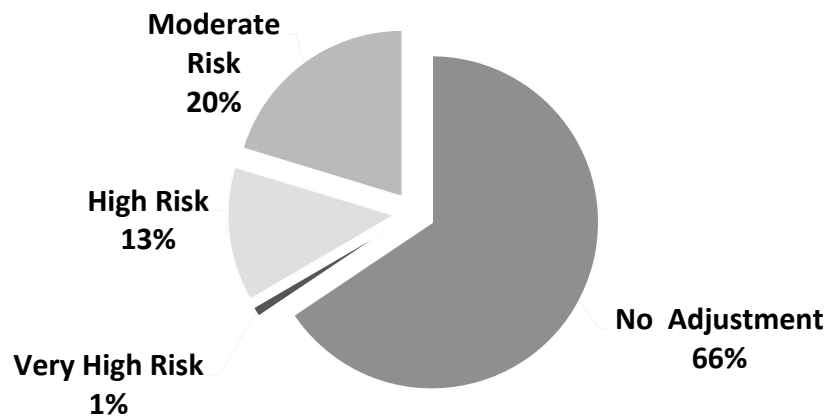
❖ Other Sexual Assault • Section C Recommendation Table

Score	Sentence Range Midpoint	Low	High	Level 3 High	Level 2 High	Level 1 High
up to 7	0 yr. 7 mo.	0 yr. 7 mo.	1 yr. 2 mo.	1 yr. 9 mo.	2 yr. 4 mo.	4 yr. 8 mo.
8	0 yr. 8 mo.	0 yr. 7 mo.	1 yr. 3 mo.	1 yr. 11 mo.	2 yr. 6 mo.	5 yr. 0 mo.
9	0 yr. 9 mo.	0 yr. 7 mo.	1 yr. 4 mo.	2 yr. 0 mo.	2 yr. 8 mo.	5 yr. 4 mo.
10	0 yr. 10 mo.	0 yr. 7 mo.	1 yr. 4 mo.	2 yr. 0 mo.	2 yr. 8 mo.	5 yr. 4 mo.
11	0 yr. 11 mo.	0 yr. 7 mo.	1 yr. 5 mo.	2 yr. 2 mo.	2 yr. 10 mo.	5 yr. 8 mo.
12	1 yr. 0 mo.	0 yr. 7 mo.	1 yr. 6 mo.	2 yr. 3 mo.	3 yr. 0 mo.	6 yr. 0 mo.
13	1 yr. 1 mo.	0 yr. 7 mo.	1 yr. 8 mo.	2 yr. 6 mo.	3 yr. 4 mo.	6 yr. 8 mo.
14	1 yr. 2 mo.	0 yr. 7 mo.	1 yr. 10 mo.	2 yr. 9 mo.	3 yr. 8 mo.	7 yr. 4 mo.
15	1 yr. 3 mo.	0 yr. 7 mo.	2 yr. 0 mo.	3 yr. 0 mo.	4 yr. 0 mo.	8 yr. 0 mo.
16	1 yr. 4 mo.	0 yr. 7 mo.	2 yr. 2 mo.	Level 3	Level 2	Level 1
17	1 yr. 5 mo.	0 yr. 7 mo.	2 yr. 4 mo.			
18	1 yr. 6 mo.	0 yr. 8 mo.	2 yr. 6 mo.			
19	1 yr. 7 mo.	0 yr. 9 mo.	2 yr. 8 mo.	50%	100%	300%
20	1 yr. 8 mo.	0 yr. 9 mo.	2 yr. 9 mo.	4 yr. 2 mo.	5 yr. 6 mo.	11 yr. 0 mo.
21	1 yr. 9 mo.	0 yr. 10 mo.	2 yr. 10 mo.	4 yr. 3 mo.	5 yr. 8 mo.	11 yr. 4 mo.
22	1 yr. 10 mo.	0 yr. 10 mo.	2 yr. 11 mo.	4 yr. 5 mo.	5 yr. 10 mo.	11 yr. 8 mo.
23	1 yr. 11 mo.	0 yr. 11 mo.	3 yr. 0 mo.	4 yr. 6 mo.	6 yr. 0 mo.	12 yr. 0 mo.
24	2 yr. 0 mo.	1 yr. 0 mo.	3 yr. 2 mo.	4 yr. 9 mo.	6 yr. 4 mo.	12 yr. 8 mo.
25	2 yr. 1 mo.	1 yr. 1 mo.	3 yr. 3 mo.	4 yr. 11 mo.	6 yr. 6 mo.	13 yr. 0 mo.
26	2 yr. 2 mo.	1 yr. 1 mo.	3 yr. 5 mo.	5 yr. 2 mo.	6 yr. 10 mo.	13 yr. 8 mo.
27	2 yr. 3 mo.	1 yr. 2 mo.	3 yr. 6 mo.	5 yr. 3 mo.	7 yr. 0 mo.	14 yr. 0 mo.
28	2 yr. 4 mo.	1 yr. 3 mo.	3 yr. 8 mo.	5 yr. 6 mo.	7 yr. 4 mo.	14 yr. 8 mo.
29	2 yr. 5 mo.	1 yr. 4 mo.	3 yr. 9 mo.	5 yr. 8 mo.	7 yr. 6 mo.	15 yr. 0 mo.
30	2 yr. 6 mo.	1 yr. 5 mo.	3 yr. 11 mo.	5 yr. 11 mo.	7 yr. 10 mo.	15 yr. 8 mo.
31	2 yr. 7 mo.	1 yr. 6 mo.	4 yr. 1 mo.	6 yr. 2 mo.	8 yr. 2 mo.	16 yr. 4 mo.

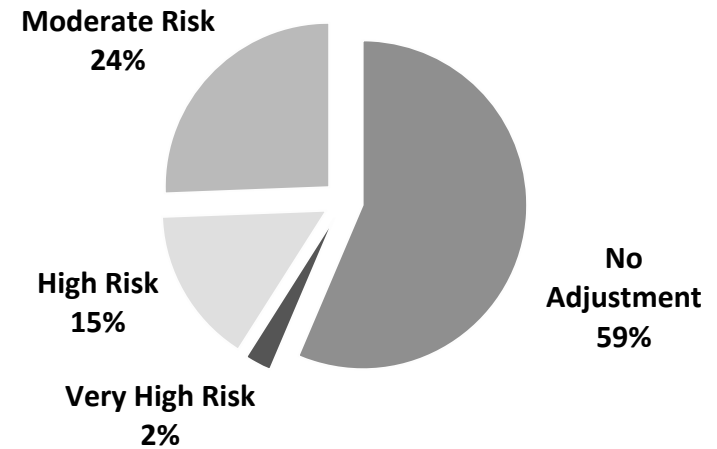
Preliminary FY2012 Report

Sex Offender Risk Assessment Outcomes

Other Sexual Assault Risk Levels
(n=291*)



Rape Risk Levels
(n=141**)



* Excludes Other Sexual Assault cases missing risk assessment and cases in which risk assessment is not applicable (e.g., child pornography and child solicitation offenses)

** Excludes Rape cases missing risk assessment

Preliminary FY2012 Report
Compliance Rates by Risk Level for Rape Offenders
(n=141*)

Risk Level	Mitigation	Compliance		Aggravation	Number of Cases
		Traditional	Adjusted		
Very High Risk	0%	33%	33%	33%	3
		66%			
High Risk	10%	43%	38%	10%	21
		81%			
Moderate Risk	27%	50%	18%	6%	34
		68%			
No Level	23%	64%	---	13%	83
		64%			

* 1 Rape case did not have the Risk Assessment instrument completed

Preliminary FY2012 Report
Compliance Rates by Risk Level for Other Sexual Assault Offenders
(n=291*)

Risk Level	Mitigation	Compliance		Aggravation	Number of Cases
		Traditional	Adjusted		
Very High Risk	0%	0%	0%	100%	3
High Risk	5%	74%	13%	8%	39
Moderate Risk	15%	64%	14%	7%	59
No Level	7%	61%	---	32%	190

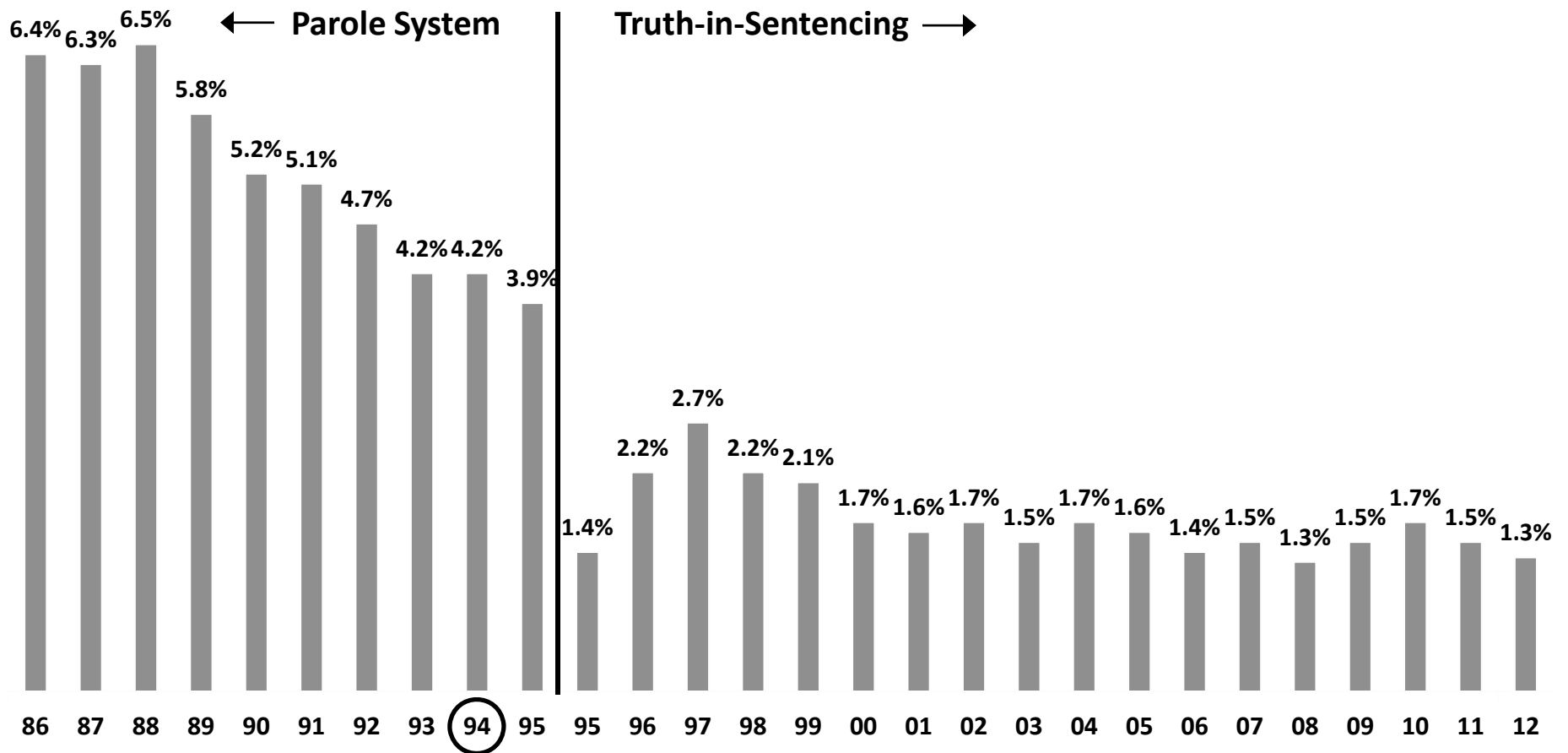
* Excludes Other Sexual Assault cases missing risk assessment and cases in which risk assessment is not applicable (e.g., child pornography and child solicitation offenses)

**Preliminary FY2012 Report:
Jury Sentencing**



FY1986 – Preliminary FY2012

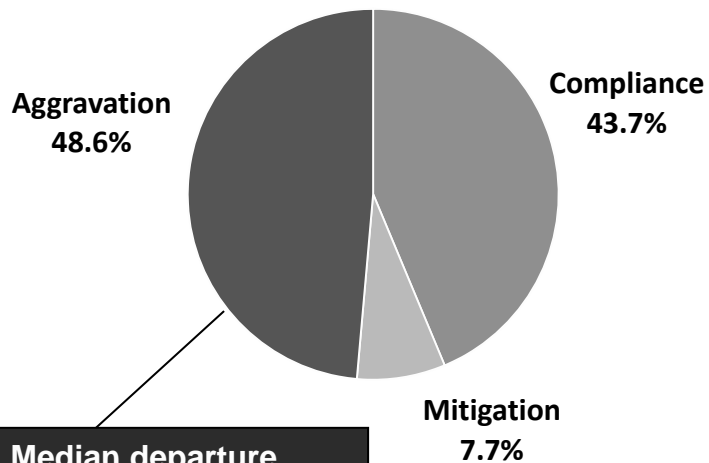
Percentage of Guidelines Cases Adjudicated by Jury Trials Parole System versus Truth-in-Sentencing System



Preliminary FY2012 Report

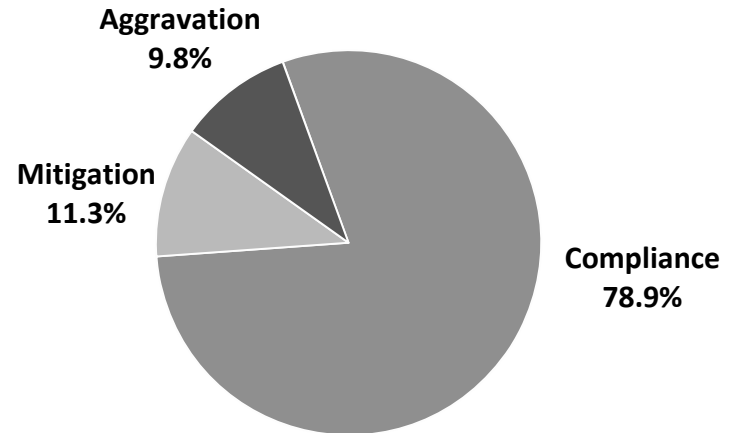
Jury Recommendation vs. Non-Jury Sentencing

**Jury Cases
(N=253*)**



**Median departure
1 year
above high end of
guidelines range**

**Non-Jury Cases
(N=19,736)**



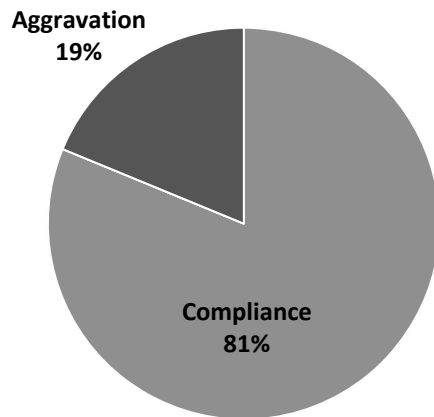
* Excludes 11 jury trials involving juveniles & 5 Jury/Bench trials combined for one sentencing event (Included in non-jury sentencing)

**Preliminary FY2012 Report:
Additions/Changes to the
Guidelines Effective July 1, 2011**

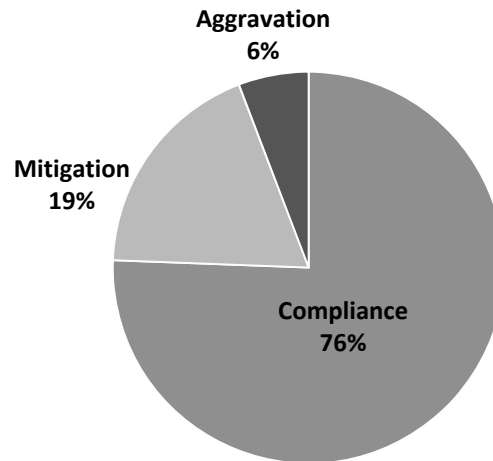


Preliminary 2012 Report Sex Offender Registry Violations (§ 18.2-472.1)

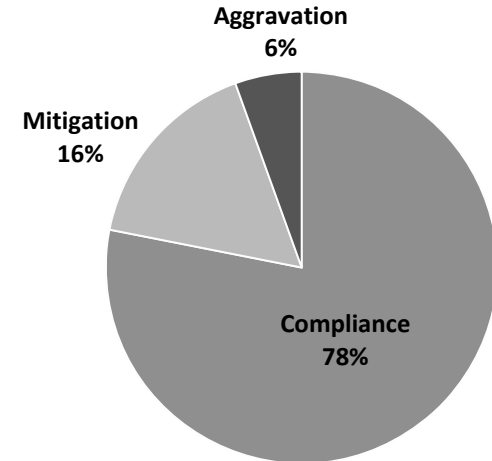
**Nonviolent – 2nd/Subsequent
Class 6 Felony**
n=16



**Violent – 1st Offense
Class 6 Felony**
n=86



**Violent – 2nd /Subsequent
Class 5 Felony**
n=73



Actual Disposition	Percentage	Median Sentence
Probation/No Incarceration	37.5%	--
Jail (up to 12 months)	62.5%	4.5 months
Prison (1 year or more)	0%	--

Actual Disposition	Percentage	Median Sentence
Probation/No Incarceration	34.9%	--
Jail (up to 12 months)	52.3%	6 months
Prison (1 year or more)	12.8%	1 year

Actual Disposition	Percentage	Median Sentence
Probation/No Incarceration	12.3%	--
Jail (up to 12 months)	65.8%	6 months
Prison (1 year or more)	21.9%	1.4 years