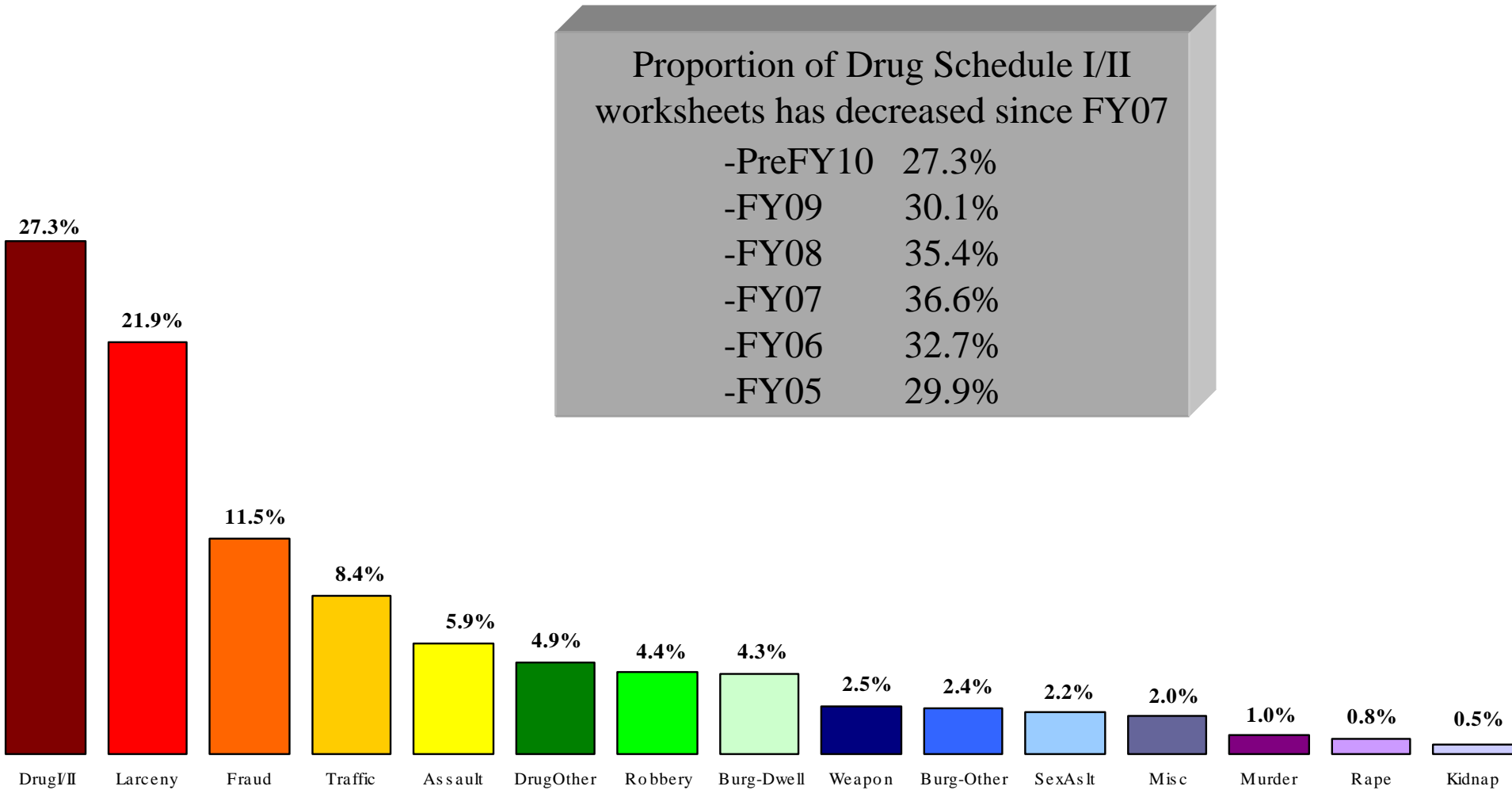


Judicial Concurrence with Sentencing Guidelines

Preliminary FY2010

Preliminary FY2010 Guideline Worksheets Keyed as of 3/9/10 (n=6,597)



General Compliance

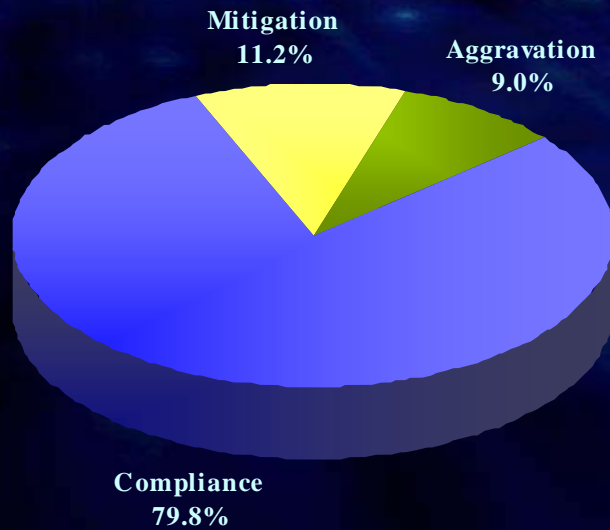
Preliminary FY2010

Preliminary FY2010 Judicial Agreement with Guideline Recommendations

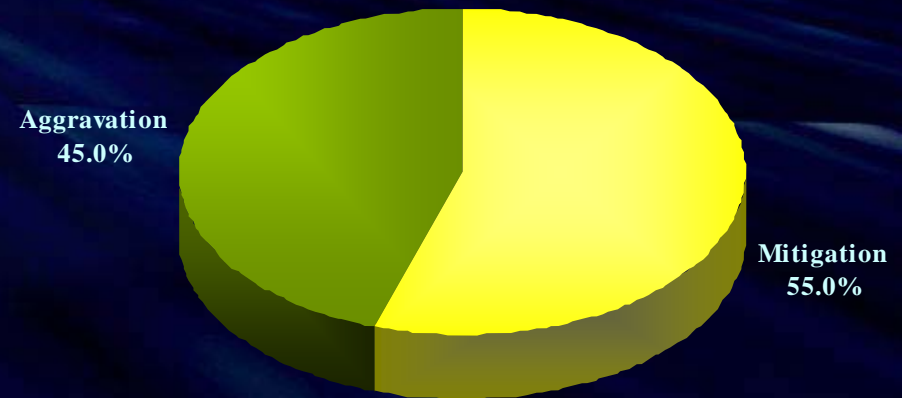
General Compliance:

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

Overall Compliance Rate



Direction of Departures



Preliminary FY2010 Judicial Agreement with Type of Recommended Disposition

Dispositional Compliance:

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

ACTUAL DISPOSITION

RECOMMENDED DISPOSITION	<i>Probation/ No Incarceration</i>	<i>Incarceration 6 months or less</i>	<i>Incarceration over 6 months</i>
<i>Probation / No Incarceration</i>	73.8%	21.7%	4.5%
<i>Incarceration 6 months or less</i>	13.3%	75.4%	11.3%
<i>Incarceration over 6 months</i>	6.4%	7.8%	85.8%

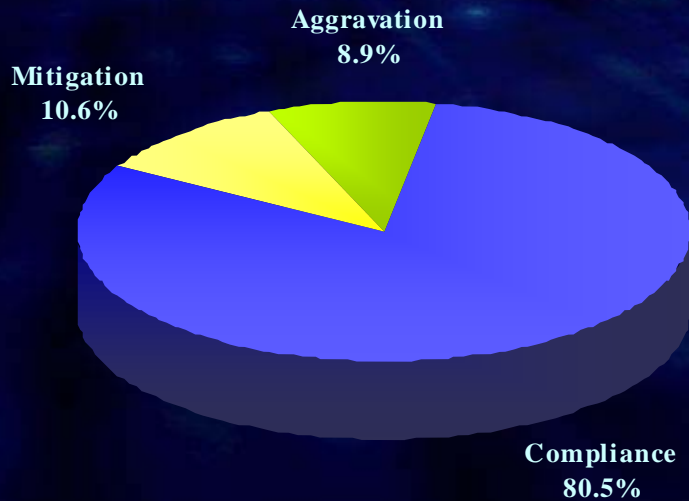
Preliminary FY2010

Judicial Agreement with Sentence Length

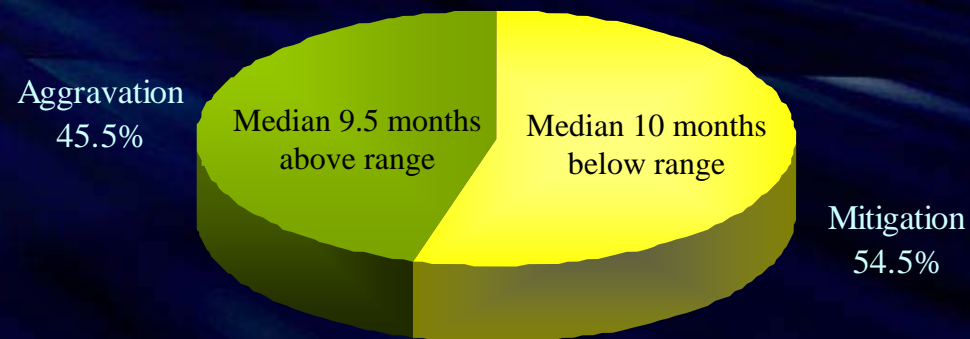
Durational Compliance:

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.

Durational Compliance



Direction of Departures



Departure Reasons

Preliminary FY2010

Preliminary FY2010

Most Frequently Cited Departure Reasons

- **Mitigation (11.2%)**

- Plea agreement
- Facts of case
- Cooperated with authorities
- Minimal prior record
- Sentenced to alternative
- Recommendation of CA
- Offender health

- **Aggravation (9%)**

- Plea agreement
- Severity/type of prior record
- Flagrancy of offense/facts of case
- Poor rehabilitation potential
- Recommendation of jury
- Multiple counts involved in event
- Current offense involved drugs/alcohol

Compliance by Circuit

Preliminary FY2010

Preliminary FY2010

Most cases received:

-Circuit 4 (Norfolk)

-Circuit 15 (Fredericksburg)

-Circuit 19 (Fairfax)

Highest compliance:

-Circuit 27 (Radford) 92.4%

-Circuit 28 (Bristol) 90.9%

Lowest compliance:

-Circuit 13 (Richmond) 72.3%

Highest aggravation:

-Circuit 22 (Danville) 20.2%

Highest mitigation:

-Circuit 13 (Richmond) 18.2%

Circuit Name	Circuit Number	Compliance	Mitigation	Aggravation	Number of Cases
Chesapeake	1	80.6	8.4	10.9	320
Virginia Beach	2	80.8	11.9	7.3	328
Portsmouth	3	77.6	11.5	10.9	183
Norfolk	4	77.9	15.6	6.5	416
Suffolk Area	5	76.3	10.9	12.8	156
Sussex Area	6	78.2	8.1	13.7	124
Newport News	7	82.6	7.7	9.7	155
Hampton	8	78.0	16.9	5.1	118
Williamsburg Area	9	74.3	11.2	14.5	152
South Boston Area	10	82.8	12.9	4.3	116
Petersburg Area	11	82.1	9.0	9.0	78
Chesterfield Area	12	80.2	8.0	11.8	263
Richmond City	13	72.3	18.2	9.5	346
Henrico	14	82.9	8.6	8.6	269
Fredericksburg Area	15	75.9	11.1	13.0	378
Charlottesville Area	16	75.9	12.1	12.1	174
Arlington Area	17	79.4	8.1	12.5	136
Alexandria	18	80.0	7.6	12.4	105
Fairfax	19	78.8	11.4	9.7	359
Loudoun Area	20	84.4	6.4	9.2	141
Martinsville Area	21	80.0	14.1	5.9	85
Danville Area	22	72.9	7.0	20.2	129
Roanoke Area	23	76.7	16.3	7.0	258
Lynchburg Area	24	75.2	17.7	7.1	282
Staunton Area	25	78.2	16.4	5.4	298
Harrisonburg Area	26	84.1	10.7	5.2	345
Radford Area	27	92.4	5.5	2.1	290
Bristol Area	28	90.9	5.1	4.0	176
Buchanan Area	29	81.4	3.3	15.3	183
Lee Area	30	80.0	8.2	11.8	85
Prince William Area	31	87.7	8.9	3.4	146

Preliminary FY2010

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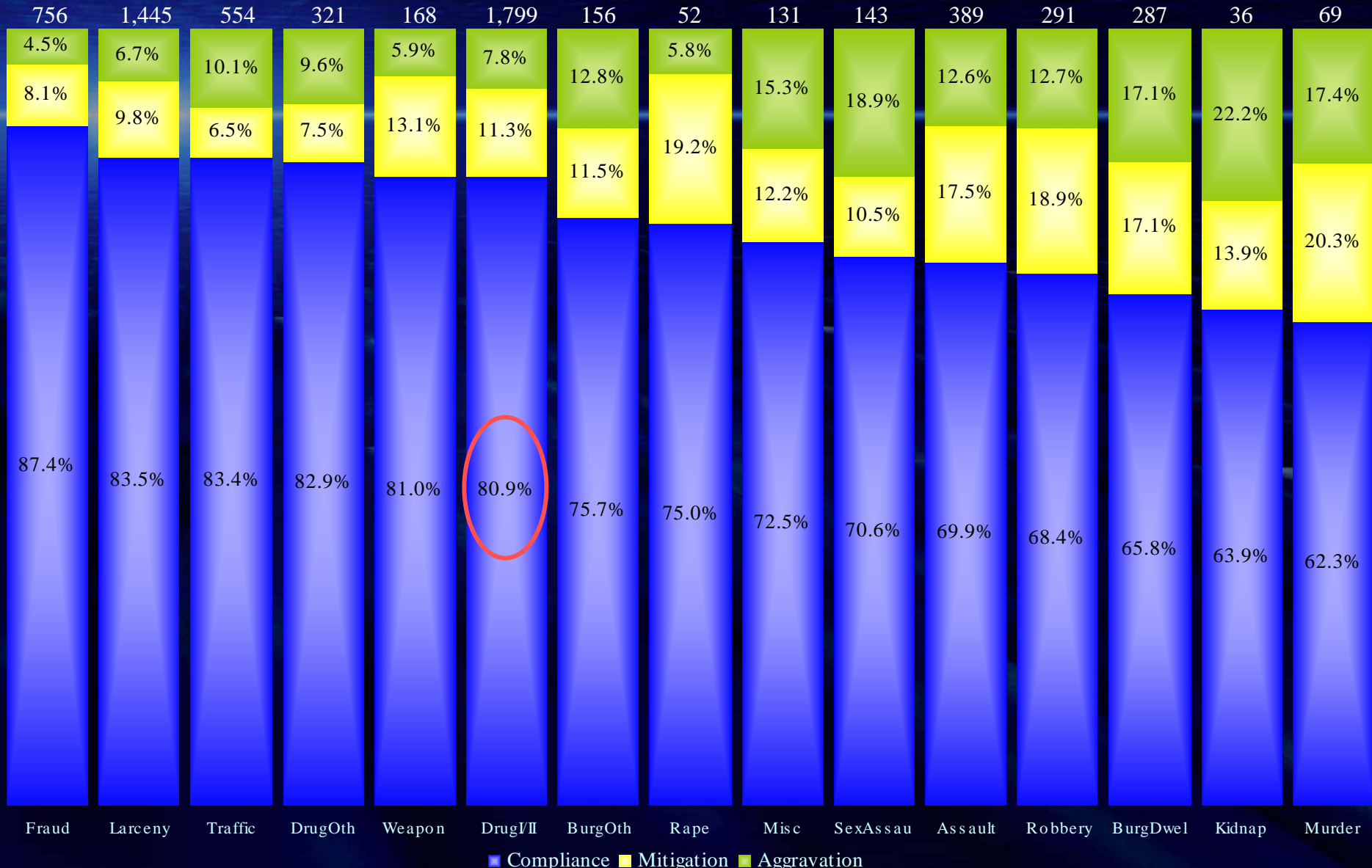
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Compliance by Type of Offense

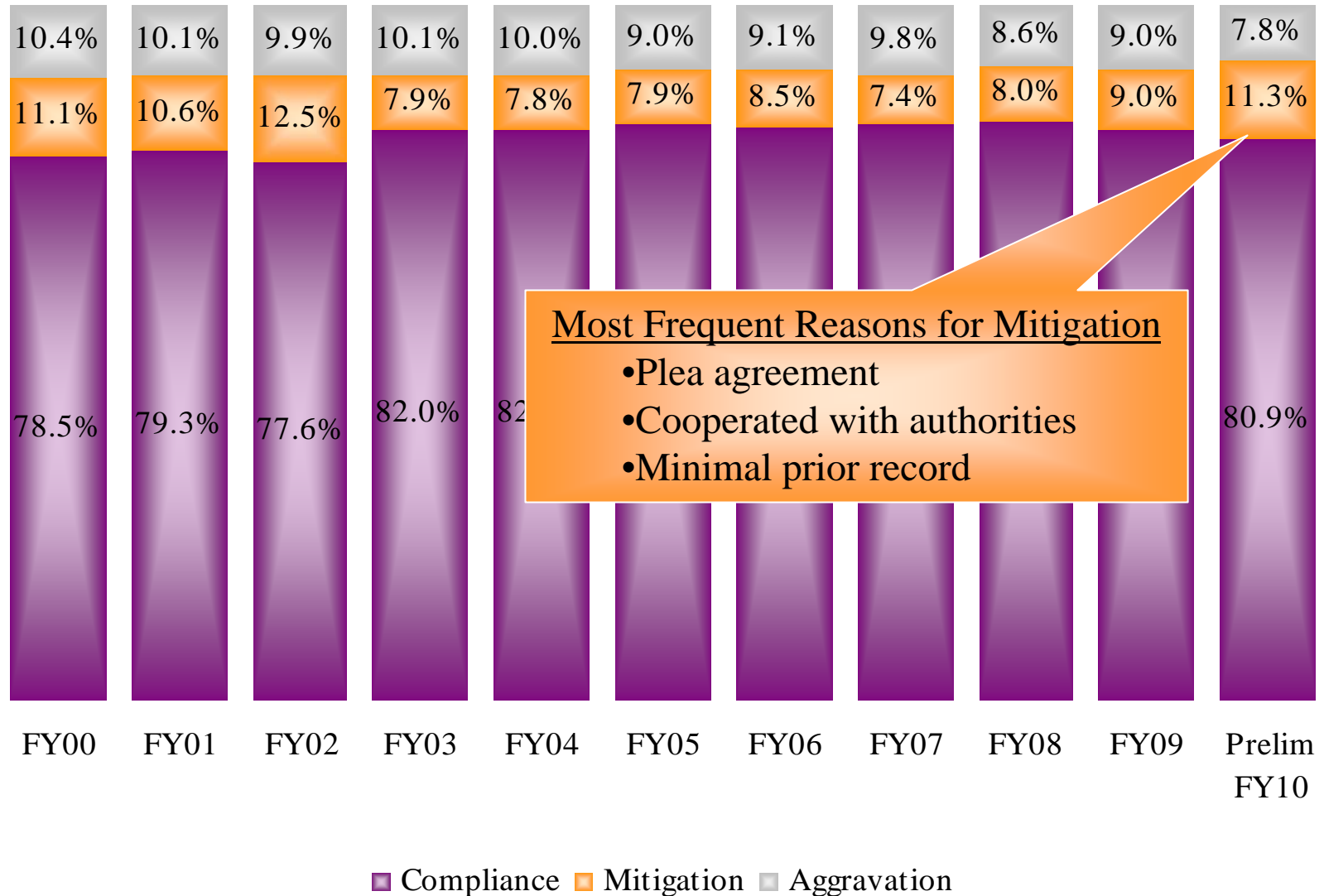
Preliminary FY2010

Preliminary FY2010 Compliance by Type of Offense

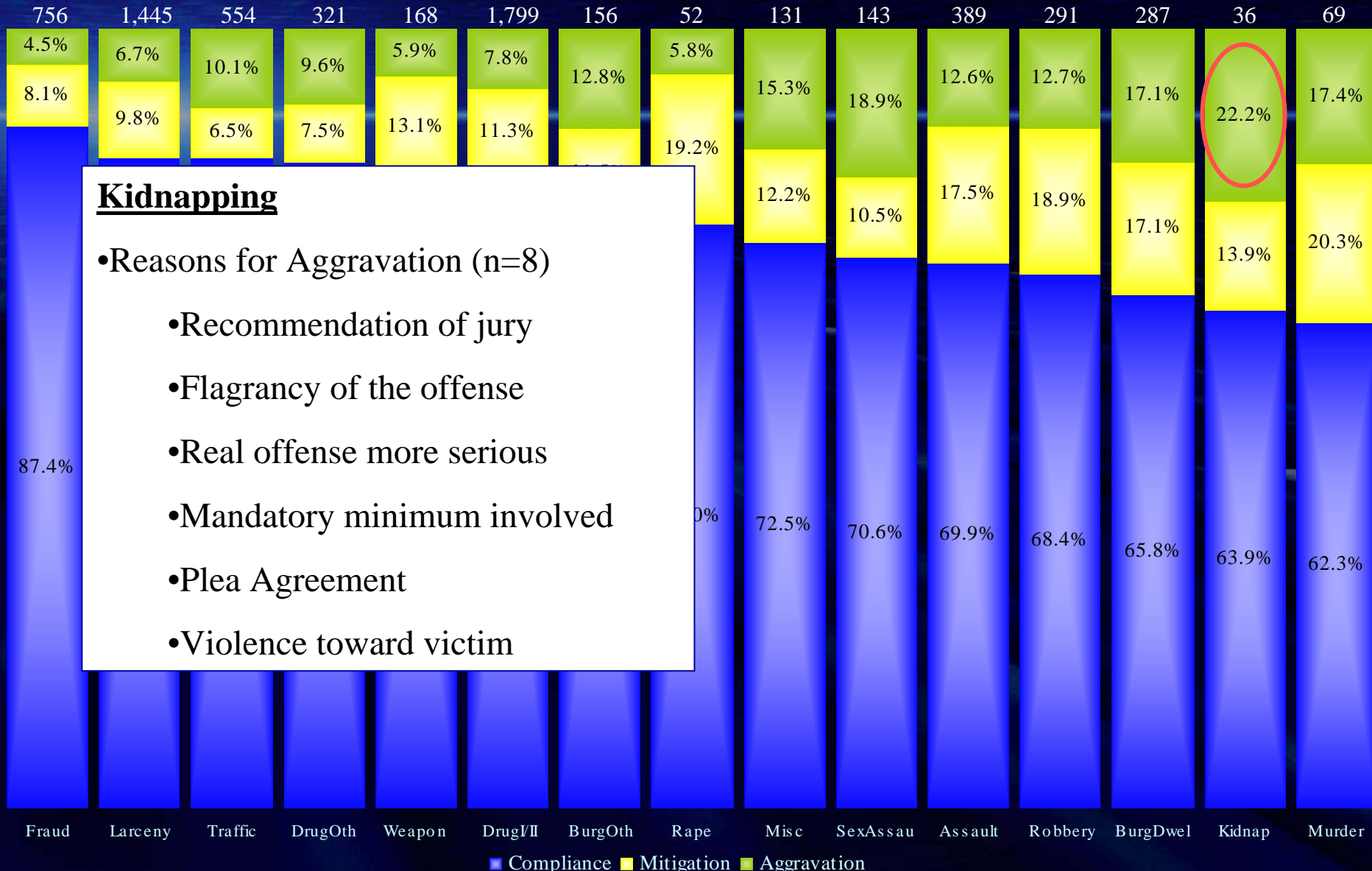


Judicial Concurrence with Drug Schedule I/II Worksheet

FY00 – Preliminary FY10



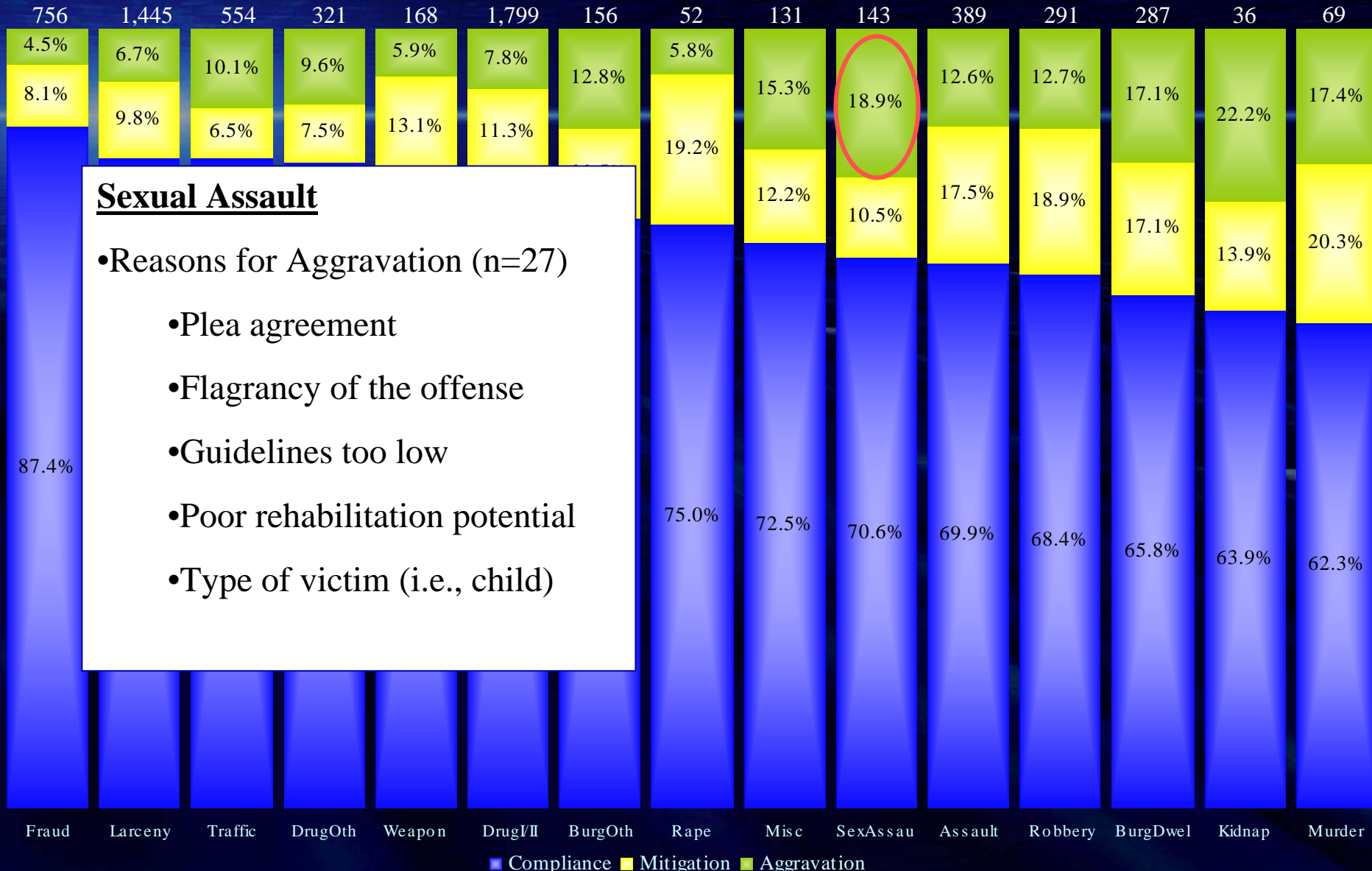
Preliminary FY2010 Compliance by Type of Offense



Kidnapping

- Reasons for Aggravation (n=8)
 - Recommendation of jury
 - Flagrancy of the offense
 - Real offense more serious
 - Mandatory minimum involved
 - Plea Agreement
 - Violence toward victim

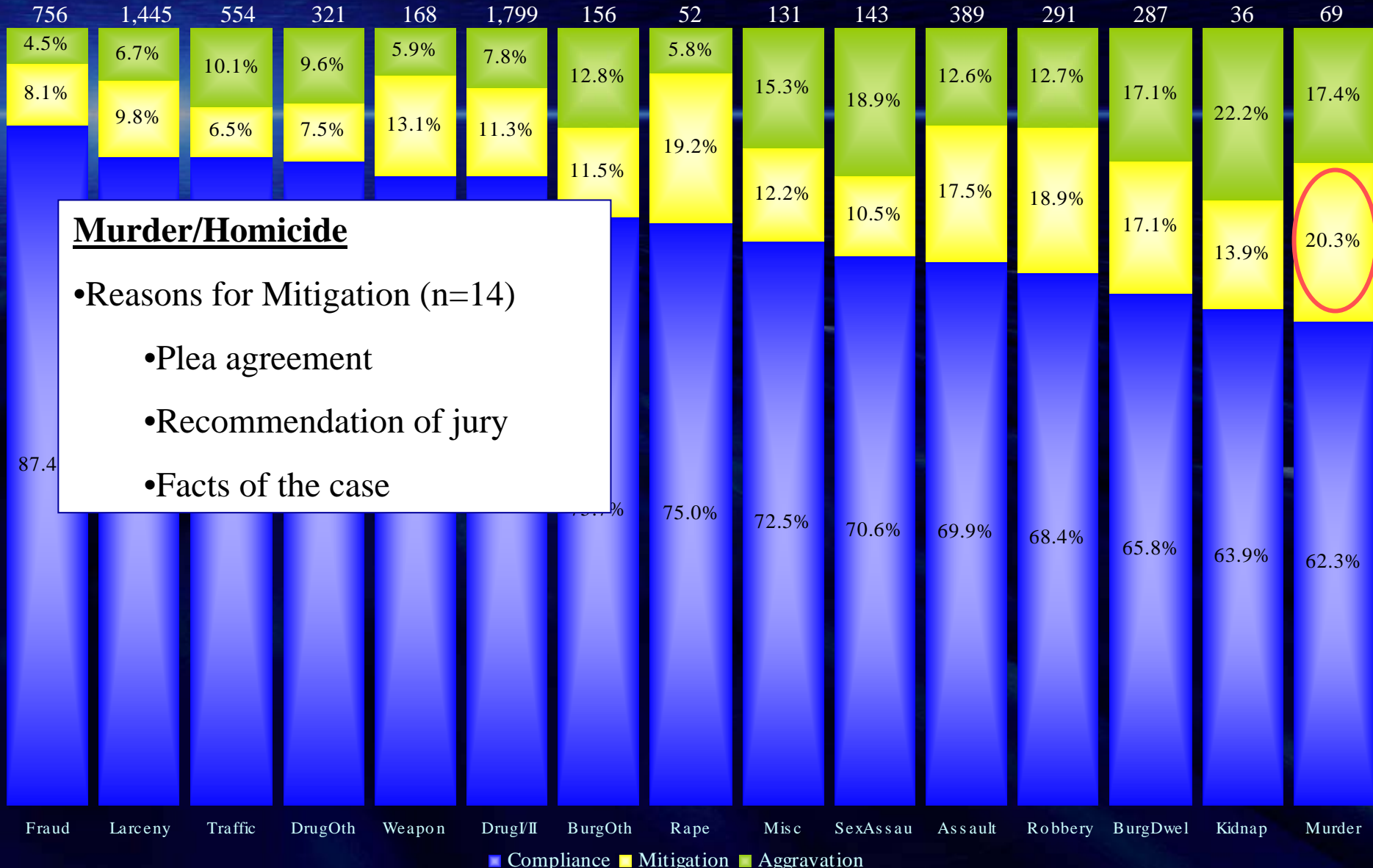
Preliminary FY2010 Compliance by Type of Offense



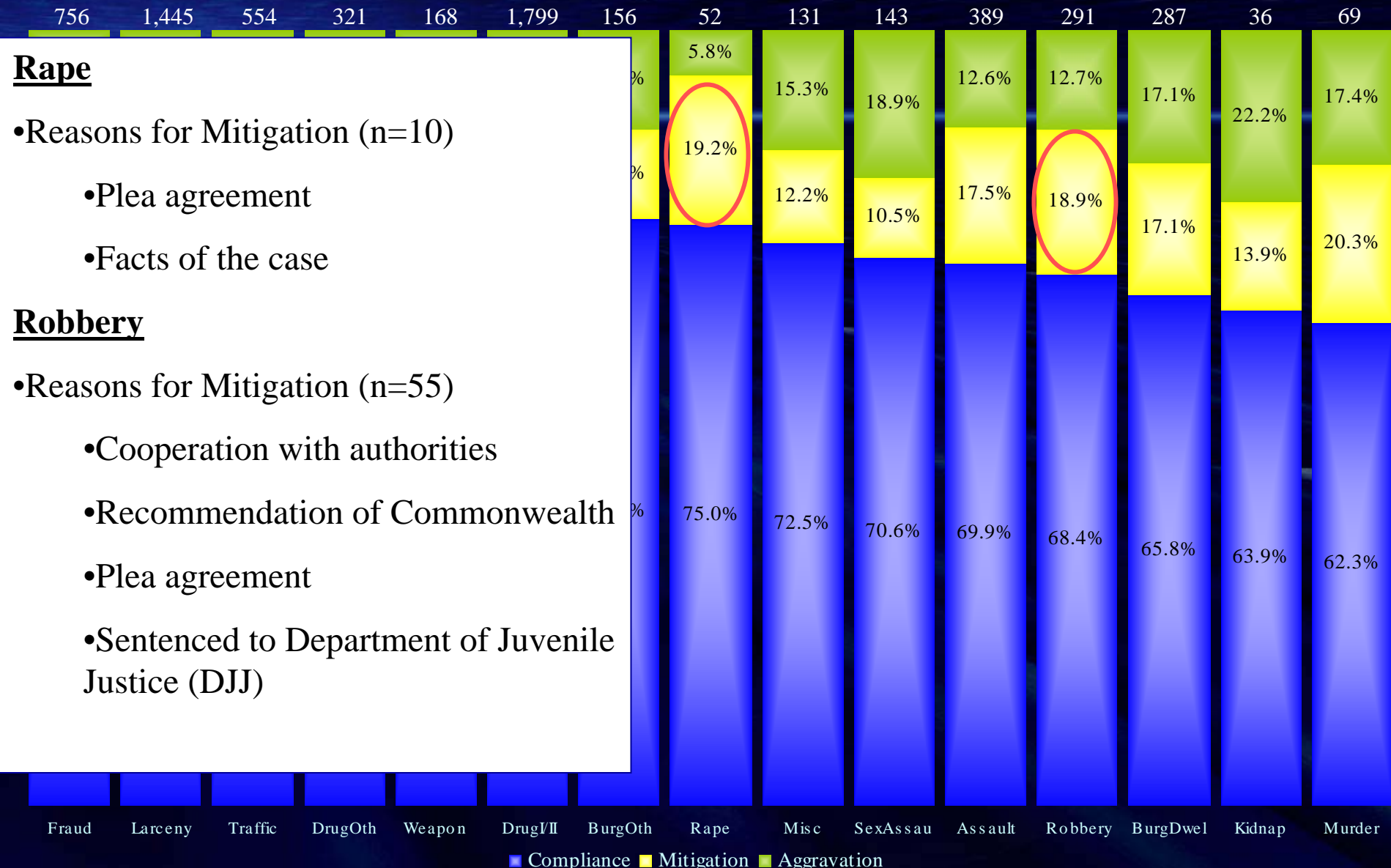
Sexual Assault

- Reasons for Aggravation (n=27)
 - Plea agreement
 - Flagrancy of the offense
 - Guidelines too low
 - Poor rehabilitation potential
 - Type of victim (i.e., child)

Preliminary FY2010 Compliance by Type of Offense



Preliminary FY2010 Compliance by Type of Offense



Rape

•Reasons for Mitigation (n=10)

- Plea agreement
- Facts of the case

Robbery

•Reasons for Mitigation (n=55)

- Cooperation with authorities
- Recommendation of Commonwealth
- Plea agreement
- Sentenced to Department of Juvenile Justice (DJJ)

NONVIOLENT OFFENDER RISK ASSESSMENT

Preliminary FY2010

NONVIOLENT OFFENDER RISK ASSESSMENT

*Implemented statewide
July 1, 2002*

◆ 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 |
- Larceny 11 |

◆ Additional Offense(s) _____ If YES, add 5 → 0

◆ 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 age 26 or more & never married (at time of offense) 6
- = Enter A to D Total |

◆ Arrest or Confinement Within Past 18 Months (prior to instant offenses) _____ If YES, add 6 → 0

◆ 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 _____

- Periods: 1 - 2 3 |
- 3 - 4 6 |
- 5 or more 9 |

Total Score _____ |

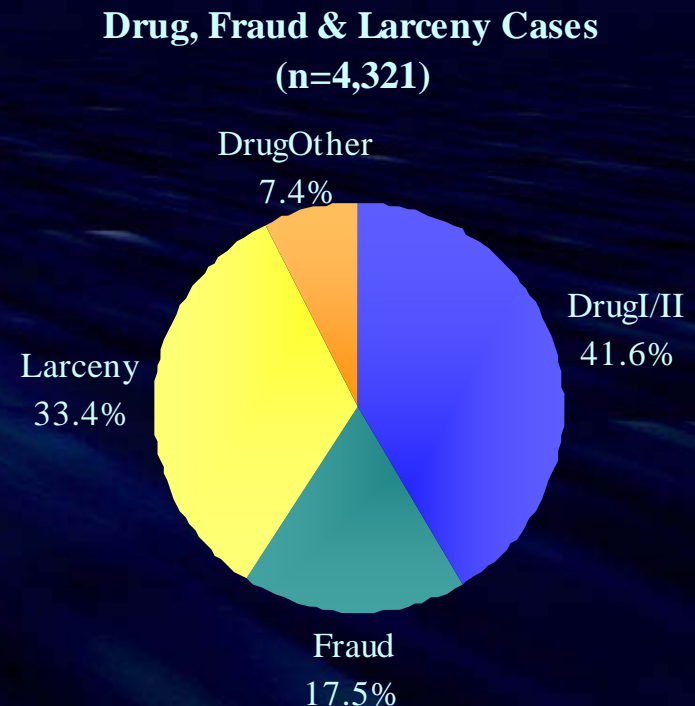
38 or less, check Recommended for Alternative Punishment.
 39 or more, check NOT Recommended for Alternative Punishment.

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

Nonviolent Offender Risk Assessment

Preliminary FY2010

- Drug, Fraud, & Larceny
- Purpose
 - To recommend alternative sanctions for offenders who are recommended for jail or prison and are statistically less likely to recidivate
- Type of alternative at discretion of judge



◆ 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

Years

Months

Sentence Range

Months

TO

Years

Months

- Recommendation Adjusted for **Mandatory Minimum**

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

- Recommended for Alternative Punishment
- NOT Recommended for Alternative Punishment
- Not Applicable

Nonviolent Offenders Eligible for Risk Assessment Evaluation

Preliminary FY2010

Offense	Mitigation	Compliance		Aggravation	Number of Cases
		Traditional	Alternative		
Drug	8%	59%	24%	9%	791
			83%		
Fraud	7%	53%	36%	4%	311
			89%		
Larceny	11%	74%	10%	5%	522
			84%		

Overall	8%	63%	<p><u>Eligible for Assessment</u></p> <ul style="list-style-type: none"> •Recommended for incarceration •No violent offenses—current or prior •No current distribution of >=1 oz cocaine •No current mandatory minimum 		1,624
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Nonviolent Offenders Eligible for Risk Assessment Evaluation

Preliminary FY2010

Offense	Mitigation	Compliance		Aggravation	Number of Cases
		Traditional	Alternative		
Drug	8%	59%	24%	9%	791
Fraud	7%	53%	36%	4%	311
Larceny	11%	74%	10%	5%	522
Overall	8%	63%	22%	7%	1,624

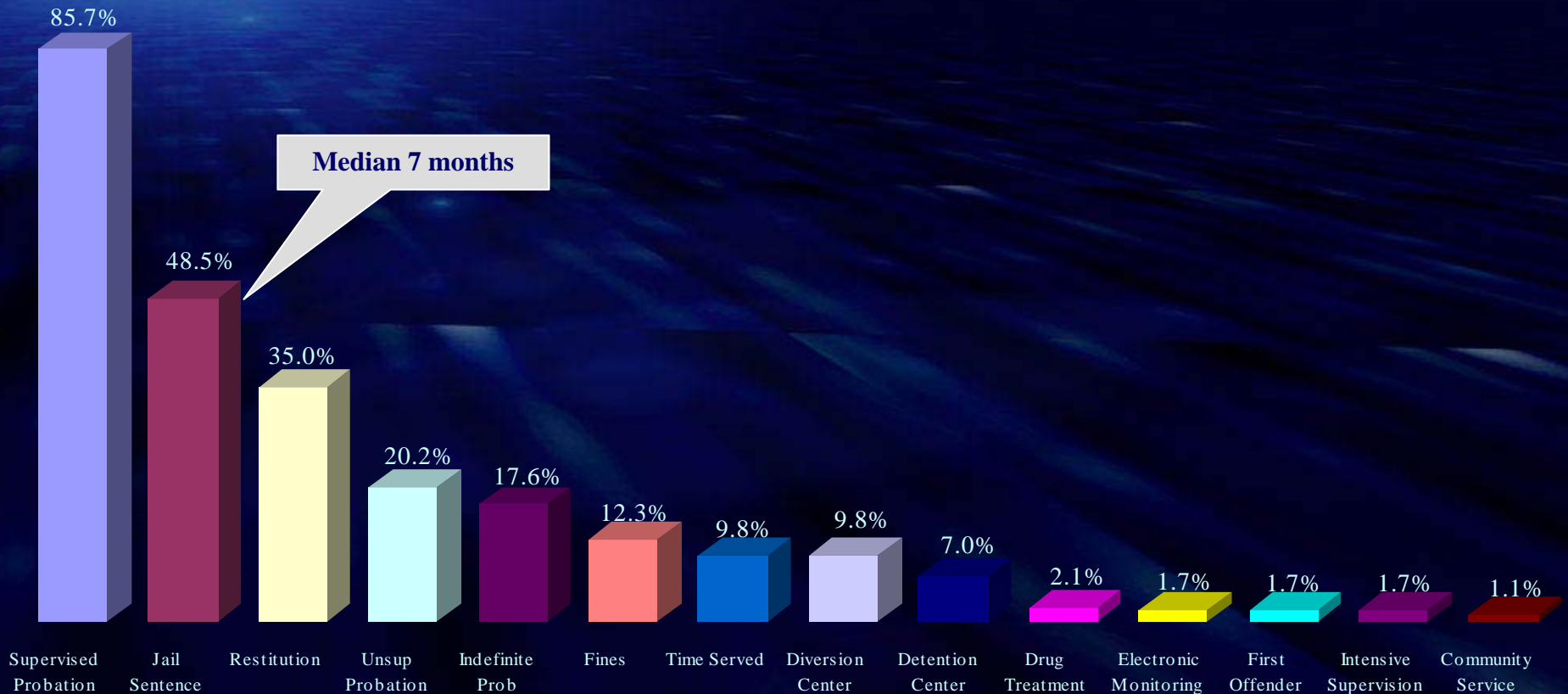
Additional compliance data points shown in the table:

- 83% (between Drug and Fraud Traditional)
- 89% (between Fraud and Larceny Traditional)
- 84% (between Larceny and Overall Traditional)

Preliminary FY2010

Nonviolent Offenders Eligible for Risk Assessment Evaluation

Most Frequent Sanctions Imposed in Risk Assessment Cases Recommended for and Receiving Alternatives
(n=357)



SEX OFFENDER RISK ASSESSMENT

Preliminary FY2010

SEX OFFENDER RISK ASSESSMENT

*Implemented statewide
July 1, 2001*

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

Risk Score _____ → [] []

Risk Level (Risk Score)

<input type="checkbox"/> 44 or more	Level 1
<input type="checkbox"/> 34 - 43	Level 2
<input type="checkbox"/> 28 - 33	Level 3
<input type="checkbox"/> up to 27	No Adjustment

Go to Section A (Part II)

Sex Offender Risk Assessment

Preliminary FY2010

- Rape & Other Sexual Assault Guidelines
- 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

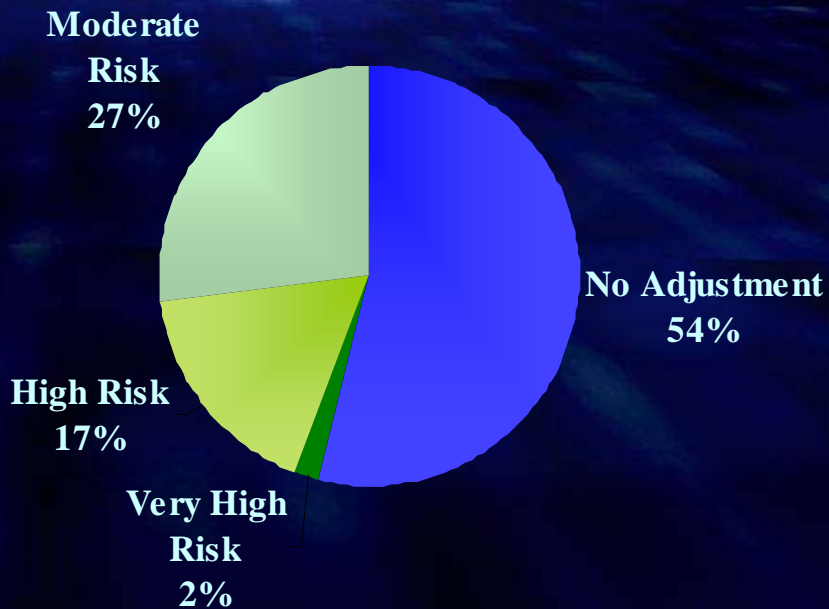
❖ Other Sexual Assault • Section C Recommendation Table

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.	50%	100%	300%
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.			
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.

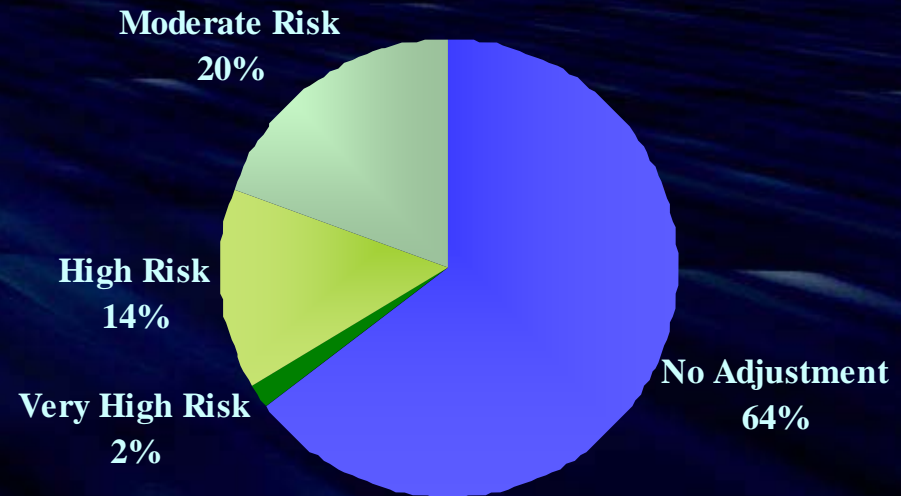
Sex Offender Risk Assessment

Preliminary FY2010

Rape Risk Levels
(n=52)



Other Sexual Assault Risk Levels
(n=113)



Preliminary FY2010

Compliance Rates by Risk Level for Rape Offenders
(n=52)

Risk Level	Mitigation	Compliance		Aggravation	Number of Cases	
		Traditional	Adjusted			
Very High Risk	0%	0%	100%	100%	0%	1
High Risk	22%	33%	78%	45%	0%	9
Moderate Risk	14%	22%	79%	57%	7%	14
No Level	21%	72%	---	---	7%	28

Preliminary FY2010

**Compliance Rates by Risk Level for Other Sexual Assault Offenders
(n=113)**

Risk Level	Mitigation	Compliance			Aggravation	Number of Cases
		Traditional	Adjusted			
Very High Risk	50%	50%	50%	0%	0%	2
High Risk	19%	56%	81%	25%	0%	16
Moderate Risk	14%	77%	86%	9%	0%	22
No Level	5%	66%	---	29%		73

FY2010 Addition to Guidelines

Vandalism of Property, \$1,000 or more

§ 18.2-137(B,ii)

Felony Vandalism, \$1,000 or more (§ 18.2-137(B,ii))
Preliminary FY2010
(n=18)

