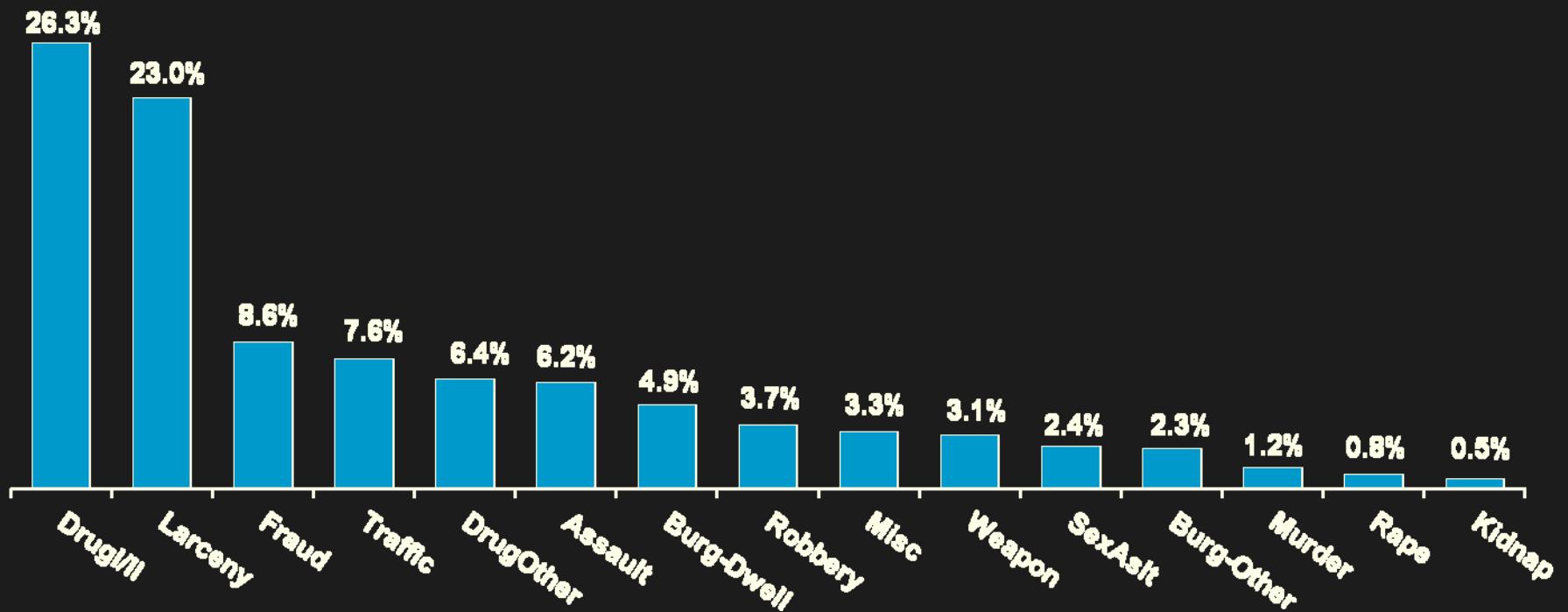




Virginia Sentencing Guidelines Preliminary FY2012 Report

March 19, 2012

Preliminary FY2012 Report
Guideline Worksheets Keyed as of 03/6/2012
(n=5192)



**Preliminary FY2012 Report:
General Compliance**

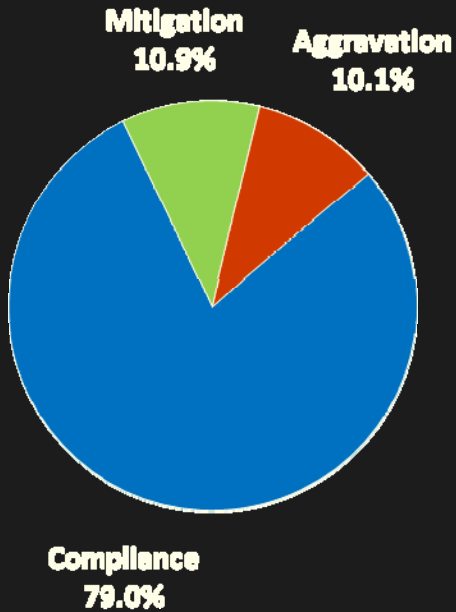


**Preliminary FY2012 Report
Judicial Agreement
with Guideline Recommendations**

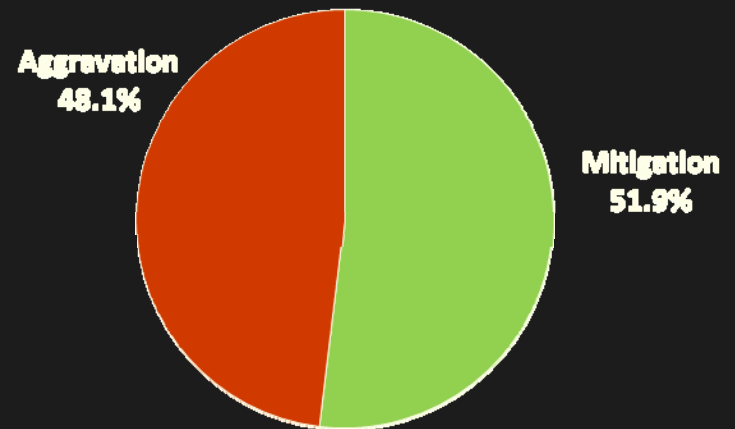
General Compliance:

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

Overall Compliance Rate



Direction of Departures



Preliminary FY2012 Report Judicial Agreement with Type of Recommended Disposition

Dispositional Compliance:

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

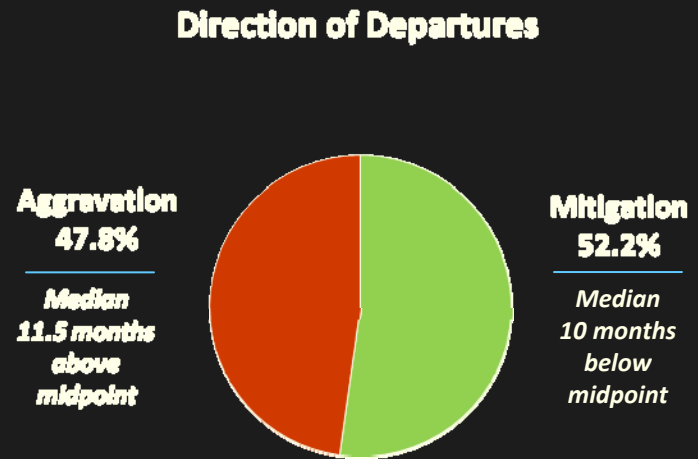
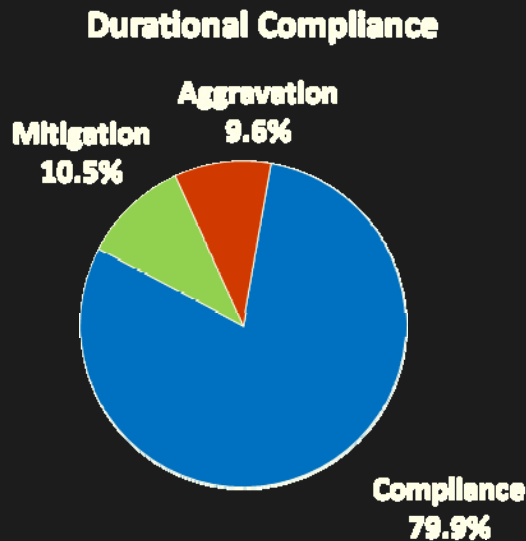
RECOMMENDED DISPOSITION	ACTUAL DISPOSITION		
	Probation/No Incarceration	Incarceration 6 months or less	Incarceration over 6 months
Probation/No Incarceration	72.5%	22.6%	4.9%
Incarceration 6 months or less	12.0%	76.9%	11.1%
Incarceration over 6 months	5.5%	8.9%	85.6%

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=562)

•Plea agreement	200 (36%*)
•Judicial discretion	43 (8%*)
•Cooperated with Authorities	42 (8%*)
•Sentenced to alternative	33 (6%*)
•Facts of the case	33 (6%*)
•Offender to serve sentence in other jurisdiction	30 (5%*)
•Offender health	24 (4%*)
•Recommendation of CA	23 (3%*)

n=126 (22%) missing a departure reason

Aggravation (n=524)

•Plea agreement	130 (25%**)
•Severity/type of prior record	70 (13%**)
•Flagrancy of offense/facts of case	67 (13%**)
•Recommendation of jury	34 (7%**)
•Poor rehabilitation potential	30 (6%**)
•Degree of victim injury	24 (5%**)
•Multiple counts involved in event	24 (5%**)
•Degree of victim injury	24 (5%**)

n=92 (18%) missing a departure reason

* Of mitigating cases requiring 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	78.7%	11.6%	9.7%	207
Virginia Beach	2	79.0%	12.7%	8.3%	229
Portsmouth	3	74.2%	11.8%	14.0%	93
Norfolk	4	76.4%	16.3%	7.3%	246
Suffolk Area	5	80.9%	6.1%	13.0%	131
Sussex Area	6	81.6%	7.9%	10.5%	38
Newport News	7	80.5%	9.5%	10.0%	200
Hampton	8	72.8%	16.0%	11.1%	81
Williamsburg Area	9	73.4%	10.1%	16.5%	109
South Boston Area	10	77.3%	12.6%	10.1%	119
Petersburg Area	11	74.7%	13.3%	12.0%	83
Chesterfield Area	12	77.7%	10.6%	11.7%	273
Richmond City	13	73.7%	17.8%	8.4%	297
Henrico	14	82.1%	7.0%	10.9%	201
Fredericksburg Area	15	77.6%	9.1%	13.4%	352
Charlottesville Area	16	79.2%	7.3%	13.5%	96
Arlington Area	17	84.1%	11.6%	4.3%	69
Alexandria	18	76.3%	16.3%	7.5%	80
Fairfax	19	78.7%	10.7%	10.7%	244
Loudoun Area	20	85.7%	1.8%	12.5%	112
Martinsville Area	21	77.9%	14.7%	7.4%	68
Danville Area	22	77.0%	5.9%	17.1%	152
Roanoke Area	23	74.7%	16.0%	9.3%	194
Lynchburg Area	24	79.5%	12.0%	8.5%	258
Staunton Area	25	74.6%	15.9%	9.5%	201
Harrisonburg Area	26	84.2%	9.9%	5.9%	322
Radford Area	27	89.2%	6.0%	4.7%	232
Bristol Area	28	92.2%	1.6%	6.3%	128
Buchanan Area	29	69.3%	11.7%	19.0%	137
Lee Area	30	81.2%	6.5%	12.3%	138
Prince William Area	31	83.5%	11.3%	5.2%	97

Preliminary FY2012

Most cases received:

-Circuit 15 (Fredericksburg)

-Circuit 26 (Harrisonburg)

-Circuit 13 (Richmond)

Highest compliance:

-Circuit 28 (Bristol) 92.2%

-Circuit 27 (Radford) 89.2%

Lowest compliance:

-Circuit 29 (Buchanan)
69.3%



Circuit Name	Circuit	Compliance	Mitigation	Aggravation	Number of Cases
Bristol Area	28	92.2%	1.6%	6.3%	128
Radford Area	27	89.2%	6.0%	4.7%	232
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Preliminary FY2012

Most cases received:

-Circuit 15 (Fredericksburg)

-Circuit 26 (Harrisonburg)

-Circuit 13 (Richmond)

Highest compliance:

-Circuit 28 (Bristol) 92.2%

-Circuit 27 (Radford) 89.2%

Lowest compliance:

**-Circuit 29 (Buchanan)
69.3%**

Highest aggravation:

**-Circuit 29 (Buchanan)
19.0%**

Highest mitigation:

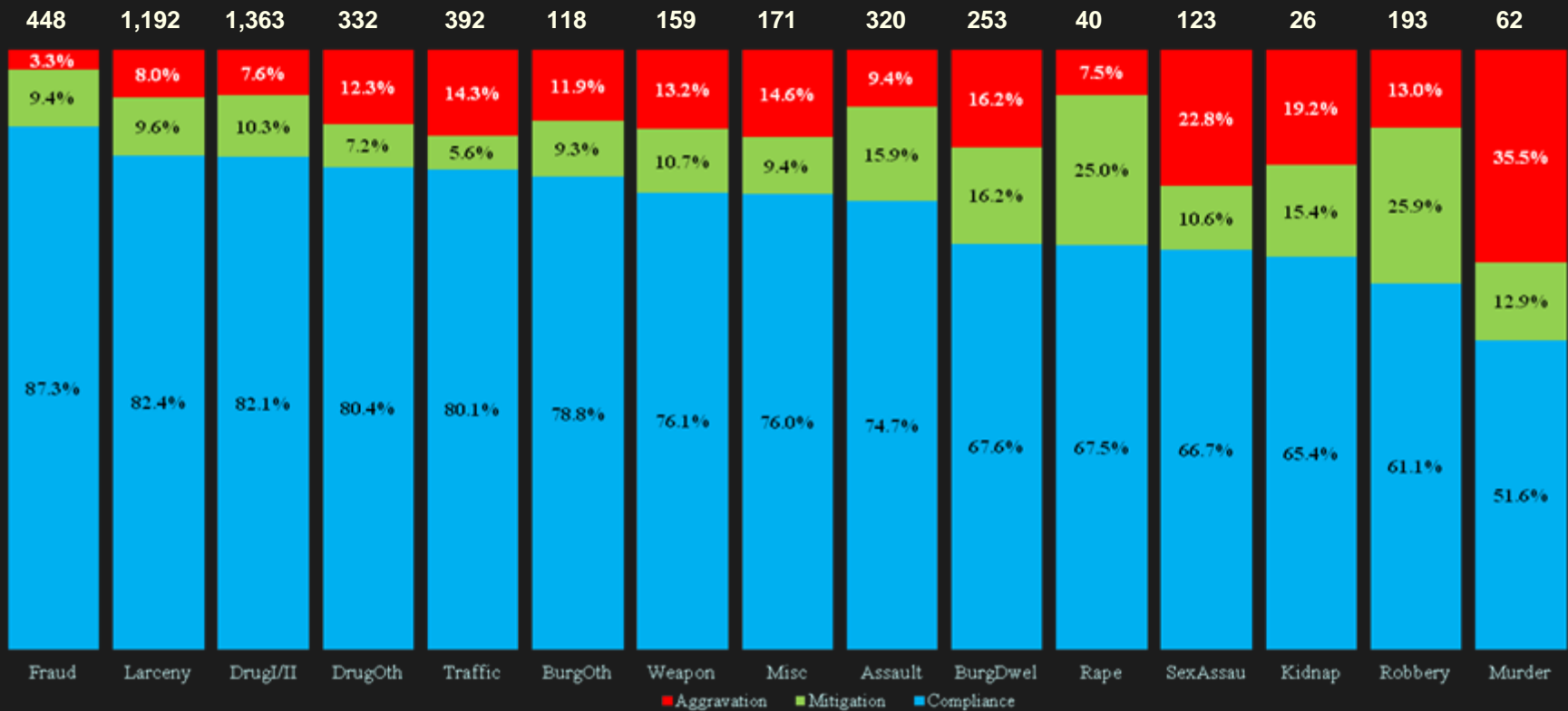
**-Circuit 13 (Richmond City)
17.8%**

Circuit Name	Circuit	Compliance	Mitigation	Aggravation	Number of Cases
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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 (25.9%) *n=50*

- Most frequent departure reasons:
 - Plea agreement
 - Cooperation with authorities
 - Judicial Discretion/Recommendation of CA
 - Sentenced to Dept. of Juvenile Justice

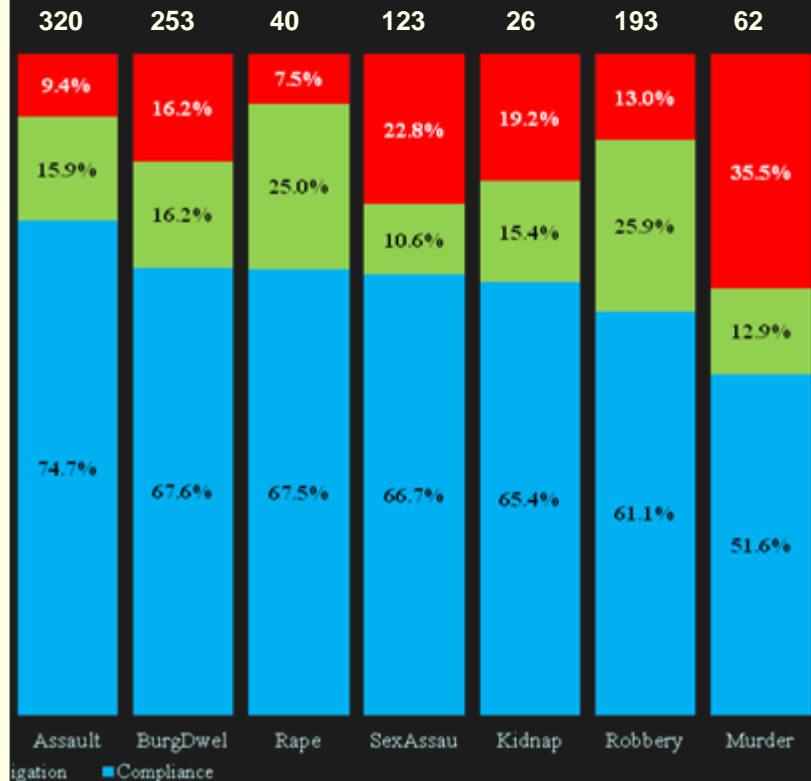
Rape (25.0%) *n=10*

- Most frequent departure reasons:
 - Plea agreement
 - Facts of the case

Highest Aggravation Rate

Murder/Homicide (35.5%) *n=22*
(15 =Voluntary/Involuntary)

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



**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

◆ **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.



◆ 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

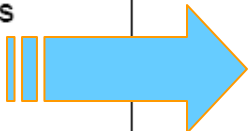
Months

TO

Years

Months

- Recommendation Adjusted for **Mandatory Minimum**

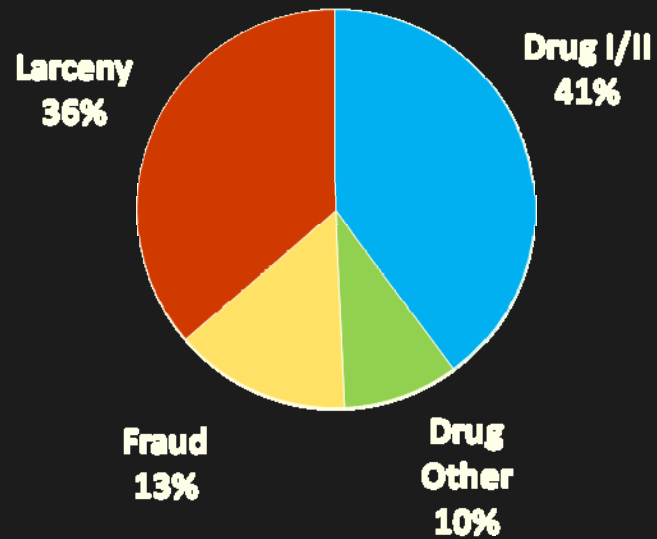


◆ NONVIOLENT RISK ASSESSMENT Section D of Drug, Fraud, and Larceny Worksheets

- Recommended for Alternative Punishment
- NOT Recommended for Alternative Punishment

Not Applicable

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



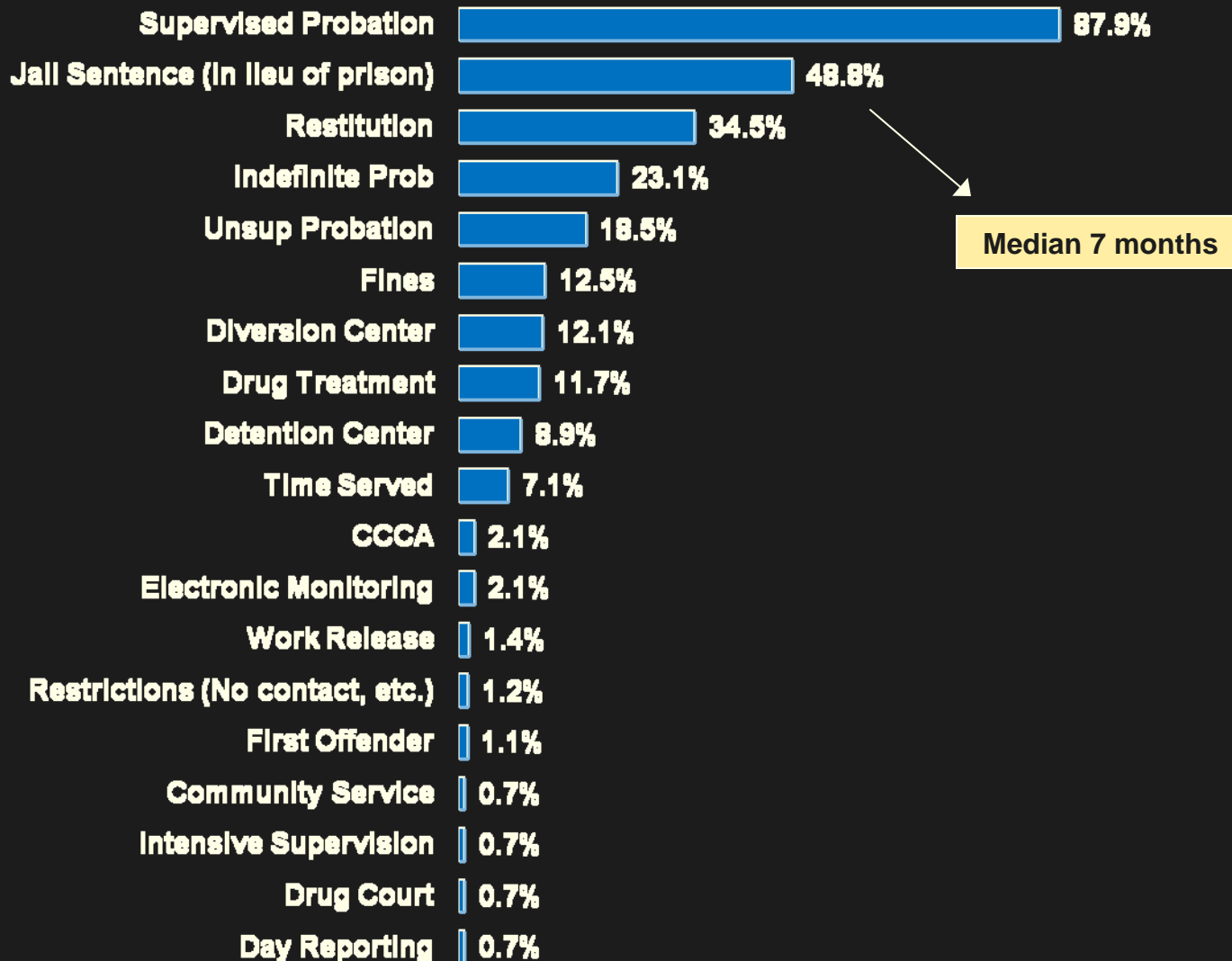
Total = 3,335 cases eligible
1,289 analyzed
(2,046 excluded: Ineligible, Errors, 615 Missing)

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%	61%	86%	25%	635
Fraud	7%	52%	92%	40%	951
Larceny	9%	76%	86%	10%	185
All Risk Cases	7%	65%	87%	22%	1,289

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	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)**
- 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**

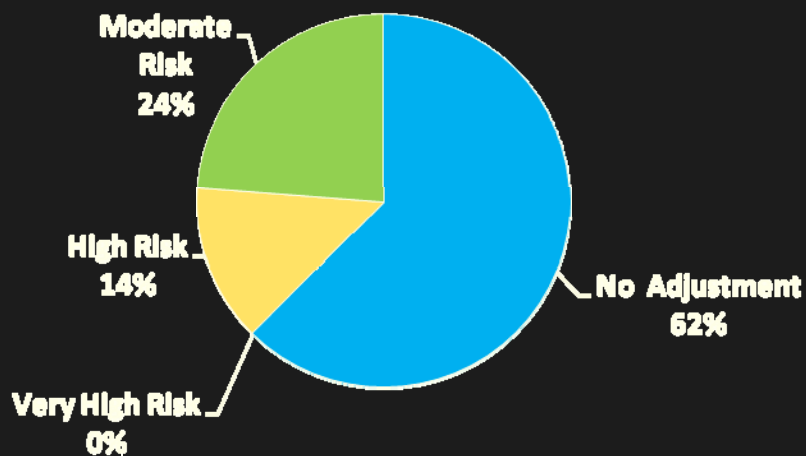
❖ Other Sexual Assault • Section C Recommendation Table

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.	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.

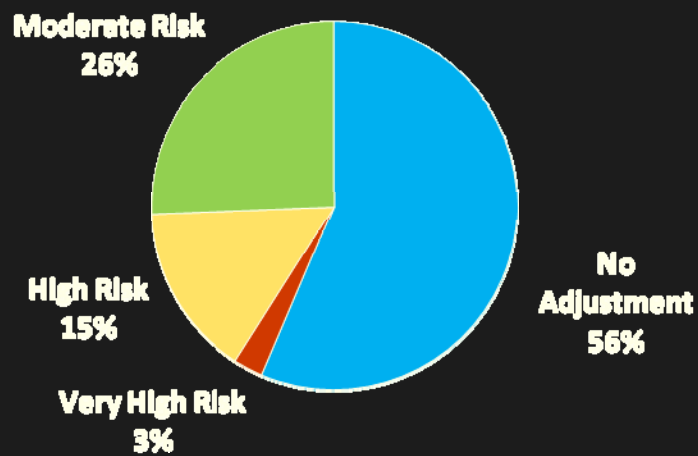
Preliminary FY2012 Report

Sex Offender Risk Assessment Outcomes

**Other Sexual Assault Risk Levels
(n=80*)**



**Rape Risk Levels
(n=39**)**



* 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=39*)

Risk Level	Mitigation	Compliance		Aggravation	Number of Cases
		Traditional	Adjusted		
Very High Risk	0%	0%	100%	0%	1
High Risk	17%	50%	33%	0%	6
Moderate Risk	30%	60%	10%	0%	10
No Level	27%	59%	---	14%	22

* 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=80*)

Risk Level	Mitigation	Compliance		Aggravation	Number of Cases
		Traditional	Adjusted		
Very High Risk	0%	0%	0%	0%	0
High Risk	9%	73%	9%	9%	11
Moderate Risk	11%	68%	16%	5%	19
No Level	2%	54%	---	44%	50

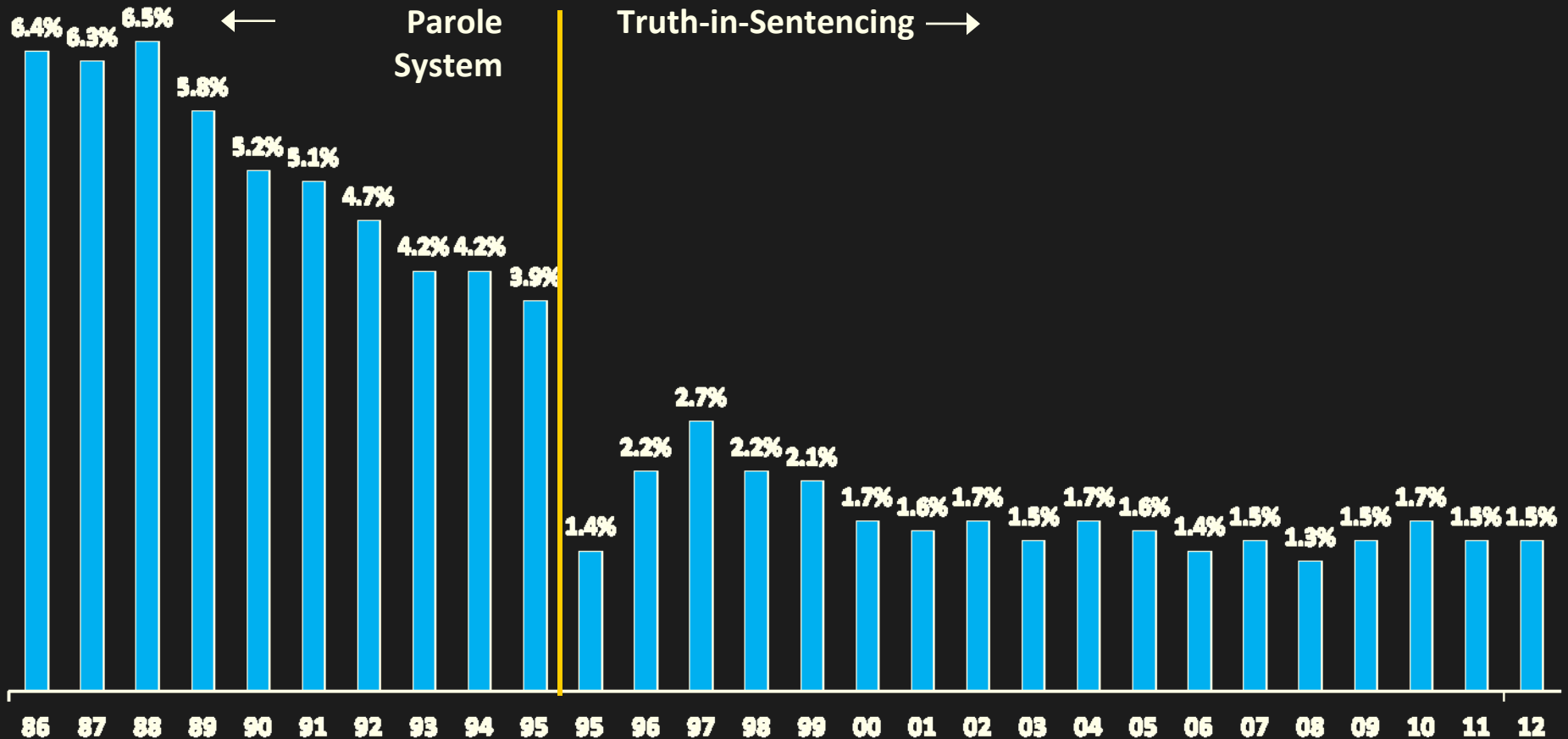
* Excludes Other Sexual Assault cases missing risk assessment and cases in which risk assessment is not applicable (e.g., child pornography and child solicitation offenses)

**Preliminary FY2012 Report:
Jury Sentencing**



FY1986 – Preliminary FY2012

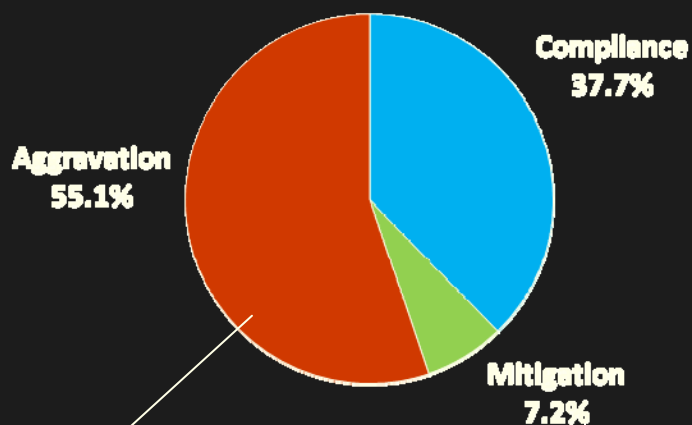
Percentage of Guidelines Cases Adjudicated by Jury Trials Parole System versus Truth-in-Sentencing System



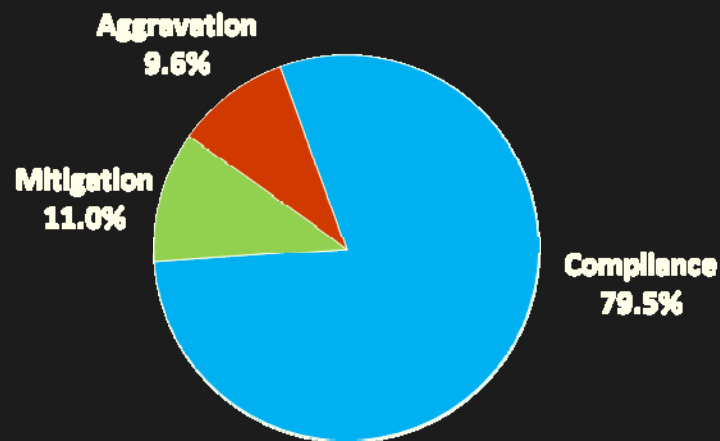
Preliminary FY2012 Report

Jury Recommendation vs. Non-Jury Sentencing

**Jury Cases
(N=70*)**



**Non-Jury Cases
(N=5,122)**



Median departure
1 year 3 months
above high end of
guidelines range

* Excludes 5 jury trials involving juveniles (Included in non-jury sentencing)

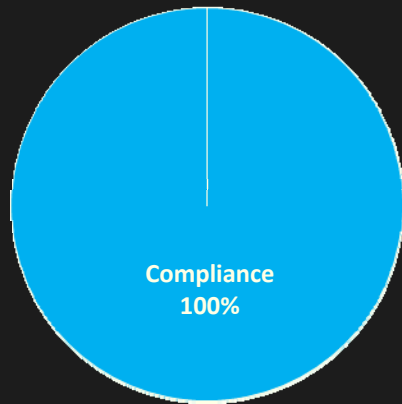
**Preliminary FY2012 Report:
Additions/Changes to the
Guidelines Effective July 1, 2011**



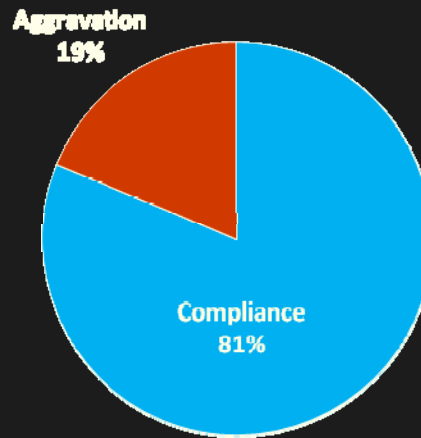
Preliminary 2012 Report

Sex Offender Registry Violations (§ 18.2-472.1)

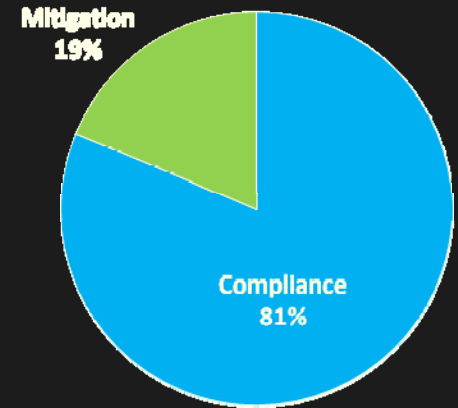
**Nonviolent – 2nd/Subsequent
(n=3) – Class 6 Felony**



**Violent
(n=16) – Class 6 Felony**



**Violent – 2nd /Subsequent
(n=16) – Class 5 Felony**



Actual Disposition	Percentage	Median Sentence
Probation/No Incarceration	66.7%	--
Jail (up to 12 months)	33.3%	1 month
Prison (1 year or more)	0%	--

Actual Disposition	Percentage	Median Sentence
Probation/No Incarceration	25.0%	--
Jail (up to 12 months)	56.3%	6 months
Prison (1 year or more)	18.8%	1.2 years

Actual Disposition	Percentage	Median Sentence
Probation/No Incarceration	18.8%	--
Jail (up to 12 months)	43.8%	6 months
Prison (1 year or more)	37.5%	1.5 years