

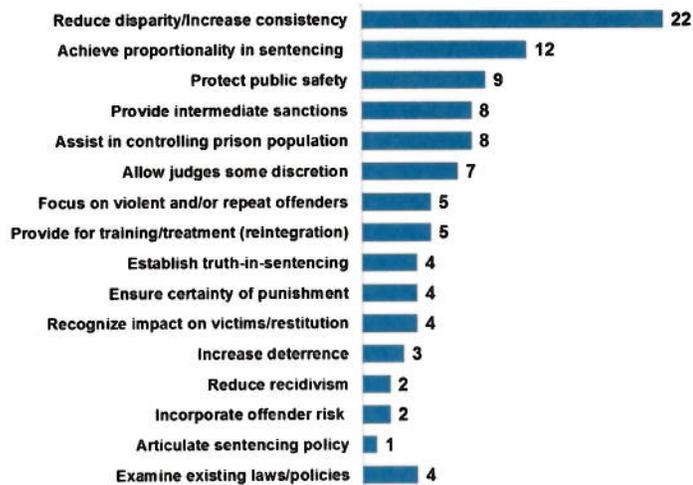
Sentencing Guidelines Systems

- Twenty states and the District of Columbia have a system of sentencing guidelines.
- Sentencing guidelines systems differ in many respects, including:
 - Articulated purpose
 - Method of development
 - Structure
 - Application



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Articulated Purpose/Objectives of Sentencing Guidelines



Sources: National Center for State Courts, *State Sentencing Guidelines – Profiles and Continuum*, July 2008
National Association of Sentencing Commissions, www.thenasc.org (accessed February 6, 2014)

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Application of Sentencing Guidelines



- **Mandatory preparation**
- **Presumptive or discretionary**
- **Departure rules**
- **Mandatory minimums**
- **Appeals**



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State Sentencing Guidelines

Profiles and Continuum



■ States with Sentencing Guidelines Systems

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NCSC examined 21 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?

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Guidelines systems were scored on comparative factors

	0 = No		1 = Yes, Weak		2 = Yes, Strong		Total
	Enforceable Rule	Worksheet Completion	SC Monitors Compliance	Departure Rationale	Written Reason	Appellate Review	
North Carolina	2	2	2	2	2	2	12
Minnesota	1	2	2	2	2	2	11
Oregon	1	2	1	2	2	2	10
Kansas	1	2	1	2	2	2	10
Washington	1	1	2	2	2	2	10
Pennsylvania	0	2	2	1	2	2	9
Michigan	1	1	0	2	2	2	8
Maryland	0	2	1	2	2	0	7
Massachusetts	0	1	1	1	2	2	7
Alaska	0	2	0	1	2	2	7
Virginia	0	2	2	0	2	0	6
Delaware	0	2	0	2	2	0	6
Utah	0	2	2	1	1	0	6
Louisiana	0	2	0	0	2	1	5
Arkansas	0	2	1	0	0	1	4
Tennessee	0	1	0	0	1	1	3
District of Columbia	0	0	1	0	2	0	3
Alabama	0	2	0	0	1	0	3
Missouri	0	2	0	0	0	0	2
Ohio	1	0	0	0	0	0	1
Wisconsin	0	0	0	0	0	1	1

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MO
 Missouri Sentencing Advisory Commission
 www.mosac.mo.gov

GUIDELINES
 Grid or Worksheet Structure
 Single grid, 3 offense and 5 prior record levels



State Corrections Systems

- State corrections systems differ in many respects that affect the length of time offenders serve in prison, including:
 - Parole release
 - Sentence credits
 - Minimum time served required
 - Geriatric release





VIRGINIA CRIMINAL SENTENCING COMMISSION



Virginia's Sentencing Guidelines System

Impetus for Sentencing Guidelines

- In December 1983, a Governor's task force released findings of a small-scale study documenting sentencing disparities.
- Virginia's Chief Justice formed judicial committee to examine the issue.
 - Analysis of historical sentencing decisions revealed evidence of unwarranted disparity.
- Circuit court judges voted to pursue development of sentencing guidelines, and the Chief Justice established 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

Rejection of grid-type guidelines models

Sentencing ranges broader than in other systems

Virginia's sentencing guidelines system were implemented statewide in 1991.



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Analysis of Historical Sentencing Decisions

- **No statewide sentencing data were available for the judicial committee to examine.**
- **The Virginia Department of Corrections (DOC) was directed to standardize and automate the pre-sentence investigation (PSI) report, establishing a comprehensive database on sentencing (1985).**



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Analysis of Historical Sentencing Decisions

PSI reports provide detailed information on:

- Offense(s)
- Victim characteristics and injury
- Prior adult convictions / juvenile adjudications
- Family environment
- Educational background / military service
- Employment
- Religious activities
- Substance use and mental health history
- Community plan / restitution plan



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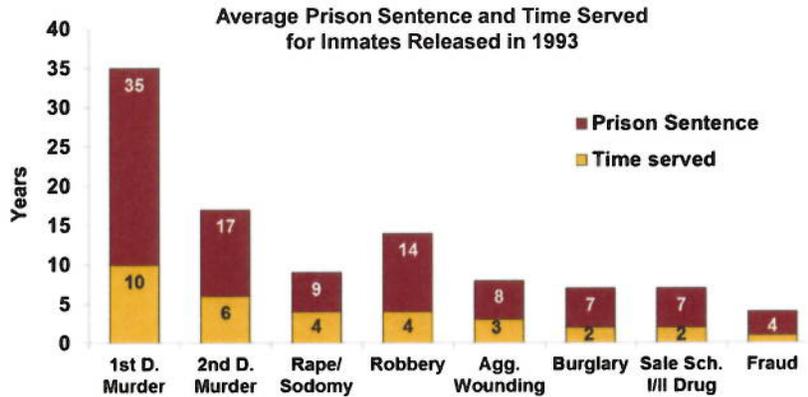
Sentencing Reform in Virginia

- The abolition of parole was a key issue in the 1993 gubernatorial campaign
 - Truth-in-sentencing
 - Transparency
- Soon after his inauguration, the new governor formed a task force to develop a comprehensive sentencing reform plan
- Task force staff conducted a thorough review of historical sentencing and time served



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Under the parole system, Virginia's inmates were serving a fraction of the sentences ordered by the court.



Virginia's Sentencing Reform Legislation (1994)

Adopted during a Special Session of the General Assembly, the sentencing reform provisions took effect for felonies committed on or after January 1, 1995



Goals of Sentencing Reform:

- Abolish parole
- Establish truth-in-sentencing (minimum 85% time served)
- Target violent felons for longer terms of incarceration
- Redirect prison-bound low-risk offenders to less costly sanctions
- Expand alternative punishment options for some nonviolent felons
- Reduce sentencing disparities
- Create a sentencing commission to oversee a voluntary sentencing guidelines system

Under the truth-in-sentencing system, violent offenders were targeted for longer terms of incarceration.

Historical time served was increased or “enhanced” by 100%, 300%, or 500% for offenders with current or prior violent felony convictions



Note: Certain burglaries are defined by § 17.1-805 as violent crimes.
Violent offender definition includes including juvenile adjudications.

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Features of Truth-in-Sentencing (No Parole) Guidelines

- Judicial compliance is voluntary
- No appellate review of guidelines departures
- Jury sentencing is retained
- Certain burglaries are defined as violent crimes
- “Violent” offender definition is based on the entire criminal history including juvenile delinquency adjudications



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Use of Sentencing Guidelines

§ 19.2-298.01

- The court must:
 - Be presented with, review and consider guidelines work sheets,
 - State for the record that review accomplished,
 - File a written explanation of departure when sentencing outside of the recommended guidelines range.
- Juries must not receive guidelines information.
- Work sheets become part of the record of the case.



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VIRGINIA CRIMINAL
SENTENCING COMMISSION



**Sentencing Guidelines
for Sexual Assault Offenses**

Other Sexual Assault ← Section A (Part II)

Offender Name: _____

Primary Offense

A. Other than listed below, all attempted or completed offenses (1 count)	1
B. Non-hostile sodomy, penetrative to anal or genital age 13 to 17 (7 count)	7
C. Non-hostile sodomy, no penetrative relationship	3
1 count	3
2 counts	4
3 counts	13
D. Incest (heroin, etc.) (2 count)	2
3 counts	3
E. Non-hostile sexual knowledge of child age 13, 14 (statutory rape)	2
1 count	2
2 counts	8
3 counts	12
F. Aggravated sexual battery	3
1 count	3
2 counts	6
3 counts	9
G. Incest with own child/grandchild (1 count)	5
H. Incest with own child/grandchild age 13 to 17 (1 count)	2
I. Production, publication, sale or financing child pornography (1 count)	2
J. Possess child porn (1st Offense) (1 count)	6
K. Possess child porn (2nd or subsequent) (1 count)	5
L. Reproduction, transport, sell, etc., child porn (1 count)	3
M. Possess act by communication system - child solicitation (1 count)	6

Score:

Primary Offense Remaining Counts Total the maximum penalties for counts of the primary not scored above

Years: 0-20	1
21-30	2
31 or more	3

Score:

Total Score

If total is 9 or less, go to Section B. If total is 9 or more, go to Section C.

Victim Injury

Theftened or arrested	2
Physical or the Restoring	4

Score:

Prior Convictions/Adjudications Total the maximum penalties for the 5 most recent and serious prior record events

Years: Less than 3	1
3-10	2
11-20	3
21-30	4
31 or more	5

Prior Felony Sexual Assault Convictions/Adjudications

Number of Counts: 1	1
2	2
3 or more	3

Prior Incarcerations/Commitments IF YES, add 3

Legally Restrained at Time of Offense

None	0
Other than post-conviction, supervised probation or CCSA	2
Parole/probation, supervised probation or CCSA	3

Score:

Risk Assessment Score (From Section A Part I)

Less than 30	0
30 or more (level 1, 2, or 3)	8

Score:

Total Score

If total is 0 or less, go to Section B. If total is 9 or more, go to Section C.

Prison recommendation threshold is drawn so that the guidelines recommended the same proportion of offenders to prison as historically went to prison.

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Other Sexual Assault ← Section B

Offender Name: _____

Primary Offense

A. Other than listed below (1 count)	1
B. Aggravated sexual battery	2
1 count	2
2 counts	4
3 counts	6
C. Production, publication, sale or financing child pornography (1 count)	1
D. Possess child porn (1st Offense) (1 count)	1
E. Reproduction, transport, sell, etc., child porn (1 count)	1
F. Possess act by communication system - child solicitation (1 count)	1

Score:

Primary Offense Remaining Counts Total the maximum penalties for counts of the primary not scored above

Years: 0-7	2
8-11	3
12-15	4
16-19	5
20-23	6
24-26	7
27-30	8
31-33	9
34-37	10
38-41	11
42 or more	12

Score:

Additional Offenses Total the maximum penalties for additional offenses, including counts

Years: Less than 1	0
1-2	1
3-7	2
8-11	3
12-15	4
16-19	5
20-22	6
23-26	7
27-30	8
31-34	9
35-37	10
38-41	11
42 or more	12

Score:

Victim Less than Age 13 at Time of Offense IF YES, add 3

Prior Convictions/Adjudications Total the maximum penalties for the 5 most recent and serious prior record events

Years: Less than 3	0
3-10	1
11-20	2
21-30	3
31 or more	4

Prior Incarcerations / Commitments IF YES, add 1

Total Score

See Other Sexual Assault Section C Recommendation Table to convert score to guideline sentence.

Points	Recommendation
0 - 3	Probation
4 - 5	1 day to 3 months
6+	3 to 6 months

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Other Sexual Assault ← Section C

Offender Name: _____

Misdemeanor Felony Other
(See Other Sexual Assault Section C Recommendation Table for additional offense codes)

◆ Primary Offense

A. Attempted or completed sexual assault (1 count)	(24)	(12)	(6)
B. Completed sexual assault other than listed below (1 count)	36	18	9
C. Non-felicitous sodomy, no parental relationship			
1 count	24	12	6
2 counts	48	24	12
3 counts	72	36	18
D. Non-felicitous sodomy, parent/guardian to child/guardian age 13 - 17			
1 count	36	18	9
E. Incest (marital with child)			
1 count	24	12	6
2 counts	48	24	12
3 counts	72	36	18
F. Non-felicitous sexual knowledge of child age 13 - 14 (statutory rape)			
1 count	24	12	6
G. Incest with non-child/guardian (1 count)	104	52	26
H. Incest with non-child/guardian age 13 - 17 (1 count)	104	52	26
I. Aggravated sexual battery			
1 count	60	30	15
2 counts	120	60	30
3 counts	180	90	45
J. Entice, etc., minor to perform in porn; take part in child porn			
1 count	60	30	15
K. Produce child porn; finance child porn			
1 count	100	50	25
L. Possess child porn (1st Offense)			
1 count	60	30	15
M. Possess child porn (2nd or subsequent)			
1 count	100	50	25
N. Penetrate, insert, ball, etc., child porn			
1 count	100	50	25
O. Propose act by communication system - child solicitation			
1 count	60	30	15

Score:

◆ Primary Offense Remaining Counts Assign points to each count of the primary not scored above and total the points

Maximum Penalty (years)	10	5	10
1	10	5	10
2	20	10	20
3	30	15	30
4	40	20	40
5	50	25	50
10	100	50	100
20	200	100	200
30	300	150	300
40 or more	400	200	400

Score:

◆ Additional Offenses Assign points to each additional offense (including counts) and total the points

Maximum Penalty Less than 1 (years)	0	1	2
1	0	1	2
2	0	2	4
3	0	3	6
4	0	4	8
5	0	5	10
10	0	10	20
20	0	20	40
30	0	30	60
40 or more	0	40	80

Score:

◆ Weapon Used, Brandished, Feigned or Threatened If YES, add 4 →

◆ Victim Injury

Threatened or emotional	6	3	3
Physical or life threatening	6	3	3

Score:

◆ Prior Convictions/Adjudications Assign points to the 5 most recent and include prior record points and total the points

Maximum Penalty Less than 2 (years) 2, 3, 4, 5	0	1	2
1	0	1	2
2	0	2	4
3	0	3	6
4	0	4	8
5 or more	0	5	10

Score:

◆ Prior Felony Sexual Assault Convictions/Adjudications

Number of Counts	1	2	3 or more
1	0	10	20
2	0	20	40
3 or more	0	30	60

Score:

◆ On Post-Incarceration Supervision If YES, add 5 →

Total Score →

See Other Sexual Assault Section C Recommendation Table for guideline sentence range

Rape ← Section C

Offender Name: _____

Misdemeanor Felony Other
(See Rape Section C Recommendation Table for additional offense codes)

◆ Primary Offense

A. Attempted or completed forcible rape, forcible sodomy or object sexual penetration (1 count)	(60)	(30)	(15)
B. Forcible rape or object sexual penetration, victim under age 13			
1 - 2 counts	210	105	52.5
3 counts	315	157.5	78.75
C. Forcible sodomy, victim under age 13			
1 - 2 counts	354	177	88.5
3 counts	531	265.5	132.75
D. Forcible rape or object sexual penetration, victim age 13 or older			
1 count	422	211	105.5
2 counts	844	422	211
E. Forcible sodomy, victim age 13 or older			
1 count	324	162	81
2 counts	648	324	162

Score:

◆ Primary Offense Remaining Counts Assign points to each count of the primary not scored above and total the points

Maximum Penalty (years)	10	5	10
1	10	5	10
2	20	10	20
3	30	15	30
4	40	20	40
5	50	25	50
10	100	50	100
20	200	100	200
30	300	150	300
40 or more	400	200	400

Score:

◆ Additional Offenses Assign points to each additional offense (including counts) and total the points

Maximum Penalty Less than 2 (years)	0	1	2
1	0	1	2
2	0	2	4
3	0	3	6
4	0	4	8
5	0	5	10
10	0	10	20
20	0	20	40
30	0	30	60
40 or more	0	40	80

Score:

◆ Weapon Used, Brandished, Feigned or Threatened If YES, add 20 →

◆ Victim Injury

Threatened or emotional	3	1.5	1.5
Physical	20	10	10
Life threatening	76	38	19

Score:

◆ Prior Felony Sexual Assault Convictions/Adjudications

Number of Counts	1	2	3 or more
1	0	13	26
2	0	26	52
3 or more	0	39	78

Score:

Total Score →

See Rape Section C Recommendation Table for guideline sentence range
If necessary, on this sheet also enter the adjusted high end of the guideline sentence range based on Risk Level: 1 2 3

Nature of Offender Risk Assessment

- In practice, risk assessment is typically an informal process in the criminal justice system
 - Prosecutors when charging
 - Judges at sentencing
 - Probation officers in developing supervision plans
- Empirically-based risk assessment, however, is a formal process using knowledge gained through observation of actual behavior within groups of individuals
 - No risk assessment tool can ever predict a given outcome with 100% accuracy



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Risk Assessment in Virginia

- In Virginia, risk assessment has become an increasingly formal (empirical) process
 - Nonviolent offender risk assessment
 - Sex offender risk assessment
- The goal is to produce an instrument that is broadly accurate and provides additional useful information to judges
- Risk assessment is integrated into the sentencing guidelines.



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Legislative Directive for Sex Offender Risk Assessment

- Develop a sex offender risk assessment instrument based on the risk of re-offending and the impact of treatment interventions,
- Integrate a risk assessment instrument into the sentencing guidelines for sex offenses, and
- Determine the range of sentences that should be imposed on convicted sex offenders.



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Development of Sex Offender Risk Assessment

- Studied 600 felony sex offenders released from incarceration (or given probation)
- Offenders followed for 5-10 years after return to the community
- Recidivism defined as a re-arrest for a sex offense or other crime against the person
 - Concern that reconviction drastically underestimates recidivism due to difficulties in detection/prosecution of sex offenses

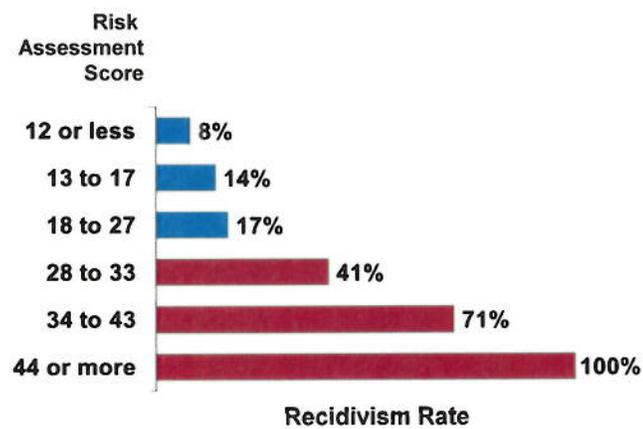


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Significant Factors in Assessing Risk for Sex Offenders



Rates of Recidivism by Risk Assessment Score



Integration of Sex Offender Risk Assessment

Offenders scoring 28 or more are always 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

Recommended Range Adjustment

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



SENTENCING GUIDELINES RECOMMENDATIONS

Section C

Incarceration (Enter Midpoint and Range Below)

Life Sentence

Range Midpoint Years Months Days

Sentence Range Years Months Days TO Years Months Days

Recommendation Adjusted for Mandatory Minimum

Modifications Based on Risk Assessment

The upper end of the sentencing range can be adjusted based on the risk assessment level.

Characteristics of the offender and the circumstances of the offense may have correlated with a significant risk of recidivism among other sex offenders. If so, the upper end of the recommended sentence range can be increased by:

Check one
 100% - Level 1
 50% - Level 3
 No Adjustment

Adjusted High End

Years Months

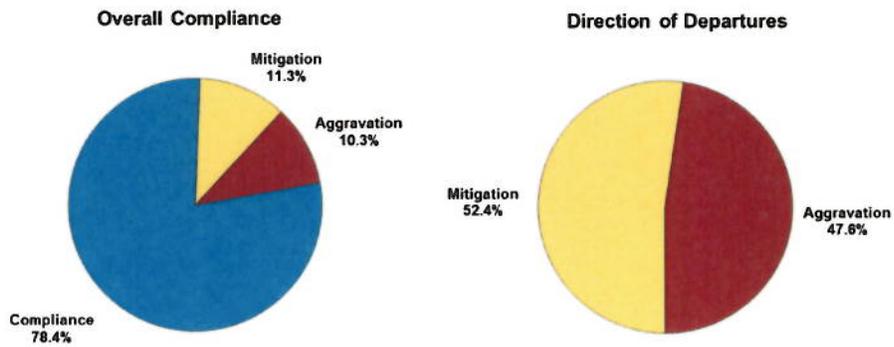


VIRGINIA CRIMINAL SENTENCING COMMISSION



Impact of Sentencing Guidelines on Virginia's Criminal Justice System

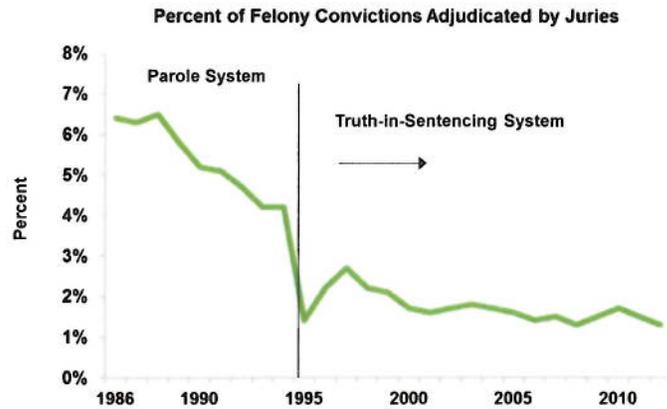
Judicial compliance with Virginia's sentencing guidelines approaches 80%.



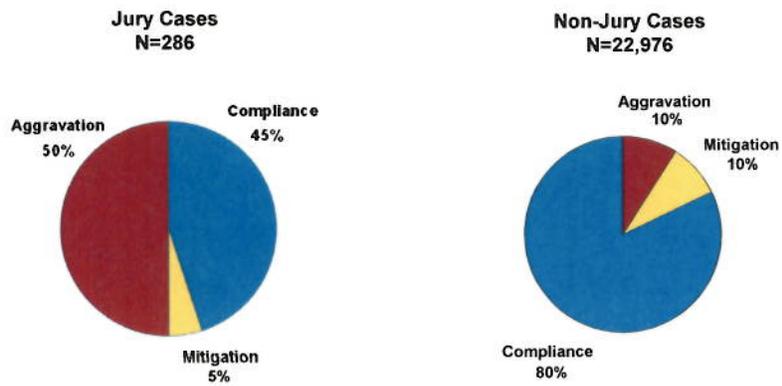
FY2012
Number of Cases = 23,262



The percent of felony conviction cases adjudicated by juries has declined under truth-in-sentencing.



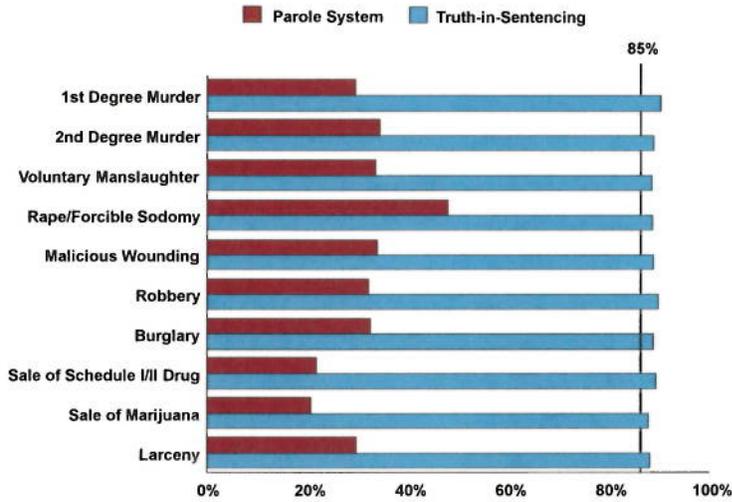
Juries are more likely to return a sentence that is above the guidelines than within the guidelines range.



FY2012
Number of Cases = 23,262



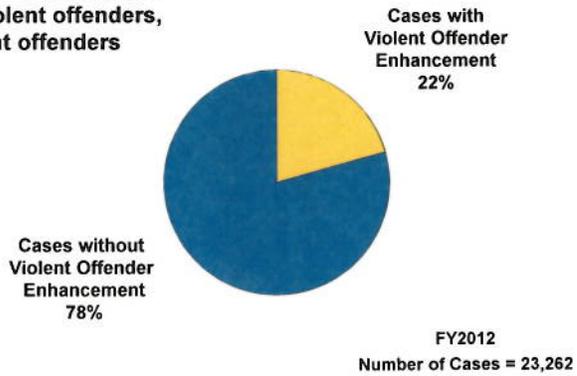
Under truth-in-sentencing, felons are serving at least 85% of the sentence ordered by the court.



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

Guidelines Midpoint Enhancements for Violent Offenders (as defined in § 17.1-805)

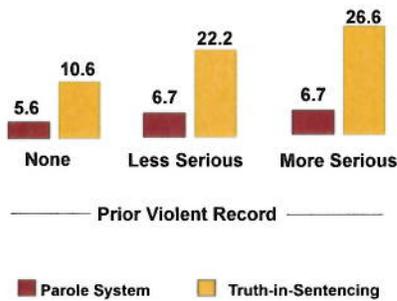
Midpoint enhancements are built into the guidelines to increase the sentence recommendations for violent offenders, particularly repeat violent offenders



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

Prison Time Served (in years)

Forcible Rape

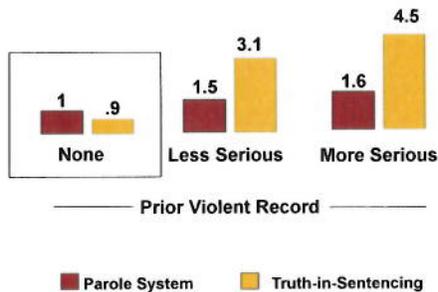


These figures present values of actual incarceration time served under parole laws (1988-1992) and expected time to be served under truth-in-sentencing provisions for cases sentenced FY2004 through FY2008. Time served values are represented by the median (the middle value, where half the time served values are higher and half are lower). Truth-in-sentencing data include only cases recommended for, and sentenced to, incarceration of more than six months.

Nonviolent offenders are serving about the same amount of time, on average, as they did prior to the abolition of parole.

Prison Time Served (in years)

Sale of a Schedule I/II Drug



These figures present values of actual incarceration time served under parole laws (1988-1992) and expected time to be served under truth-in-sentencing provisions for cases sentenced FY2004 through FY2008. Time served values are represented by the median (the middle value, where half the time served values are higher and half are lower). Truth-in-sentencing data include only cases recommended for, and sentenced to, incarceration of more than six months.

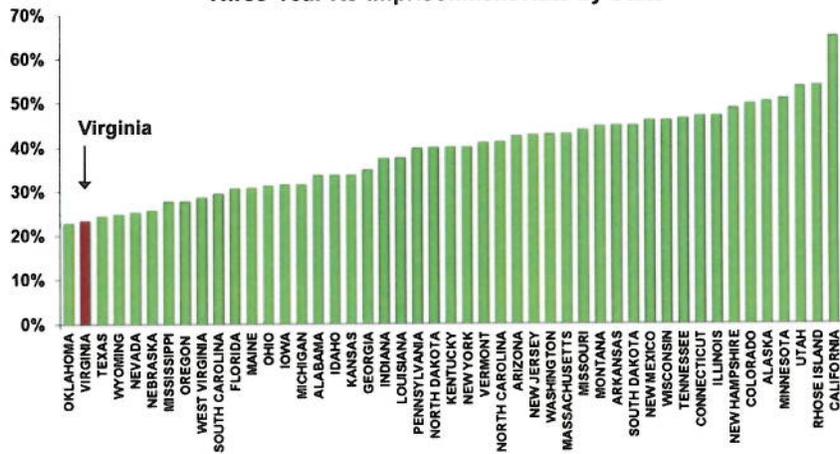
The percent of violent felony offenders who are recidivists has declined under truth-in-sentencing.



Sources: Virginia Criminal Sentencing Commission, *A Decade of Truth-in-Sentencing, 2004*

Comparing states that use the three-year re-imprisonment rate, Virginia ranks second lowest.

Three-Year Re-Imprisonment Rate by State



Note: Missouri's recidivism rate excludes the release of parole violators who have previously been returned to prison for a violation of supervision within the commitment.

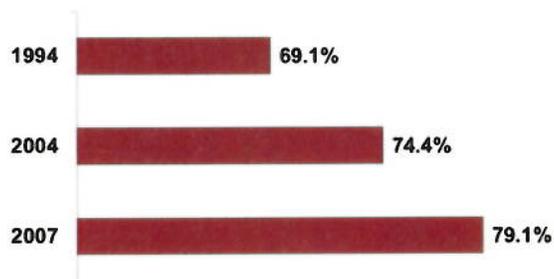
Virginia's overall crime rate has dropped significantly since 1995, while its incarceration rate has increased less than 10%.

Jurisdiction	Change in Crime Rates	Change in Incarceration Rates
	1995-2012	1995-2012
HAWAII	-54.0%	25.2%
ARIZONA	-51.7%	23.3%
FLORIDA	-51.1%	19.9%
NEW JERSEY	-50.3%	-19.2% ←
IDAHO	-50.2%	79.5%
NEW YORK	-48.9%	-26.8% ←
MARYLAND	-48.7%	-9.5% ←
NEVADA	-48.1%	missing data
UTAH	-47.5%	45.8%
OREGON	-47.1%	89.9%
CONNECTICUT	-46.2%	2.5% ←
CALIFORNIA	-45.4%	-12.7% ←
ILLINOIS	-45.1%	missing data
COLORADO	-44.5%	36.6%
MICHIGAN	-42.4%	1.6% ←
WYOMING	-42.2%	39.9%
ALASKA	-41.9%	36.9%
MASSACHUSETTS	-41.1%	10.6%
VIRGINIA	-41.0%	9.5%
MONTANA	-40.5%	72.9%

20 states with the largest drop in crime rates

A larger share of expensive prison beds are occupied by violent felons.

Percent of State Prison Beds Holding Violent Felons





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



■ ■ ■ States with Sentencing Guidelines Systems



MN MI VA
**Assessing Consistency
And Fairness in Sentencing:**
A Comparative Study in Three States

**A Continuum of
State Sentencing
Guideline Systems**





Examining the practices in three states, the researchers asked three questions:

- (1) Are actual sentences predictable using the prescribed elements and mechanics of guidelines systems?
- (2) Do more serious offenders receive proportionally greater punishment as prescribed by guidelines?
- (3) Are sentences under the aegis of guidelines fair in the sense of being non-discriminatory, thereby minimizing the effects of extra-legal elements, such as age, race, gender, and geographic location of offenders?

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Three criteria guided the evaluation:

- (1) Do similarly situated offenders as defined by the guidelines receive similar sentences?
- (2) Do the guidelines provide meaningful and proportional distinctions between more serious and less serious offenders?
- (3) Is there discrimination in sentencing?

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Findings

(1) Guidelines make sentences more predictable in determining who goes to prison and for how long.

- Predictability in sentencing outcomes is correlated with location on the sentencing guidelines continuum.
- More mandatory the sentencing guidelines, more predictability.

Findings

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

- No evidence of a direct relationship between location on the continuum and undesirable racial, gender, age, or geographical disparities.
- Minnesota (more mandatory) and Virginia (more voluntary) show no substantively significant discrimination.
- Michigan (between Minnesota and Virginia) shows evidence of substantive discrimination.



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

Findings

- (3) Guidelines make sentencing patterns more transparent by clarifying the factors to be considered during sentencing and how the factors are to be scored in terms of their gravity.
- (4) State officials have options when designing guidelines that allow policy makers to incorporate multiple design considerations about how best to shape judicial discretion.
- (5) Active participation by a Sentencing Commission is an essential element of effective guidelines.

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