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**NONVIOLENT RISK ASSESSMENT IN VIRGINIA SENTENCING:  
THE SENTENCING COMMISSION DATA**

A REPORT OF THE VIRGINIA CRIMINAL JUSTICE POLICY REFORM PROJECT

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## EXECUTIVE SUMMARY

### *Background:*

In 1994, the General Assembly directed the Virginia Criminal Sentencing Commission (VCSC) to develop an instrument to identify drug and property offenders who were at the lowest risk of committing a new crime. Those low risk offenders were to be recommended for alternative interventions, including non-incarceration and rehabilitative interventions, such as outpatient drug or mental health programs. Accordingly, the VCSC developed a Nonviolent Risk Assessment (NVRA) instrument that since 2002 has been one of the sentencing worksheets completed for all eligible offenders convicted of one of four crimes—Larceny, Fraud, Drug Schedule I/II, and Drug/Other (i.e., marijuana distribution). Based on the score on the NVRA worksheet, an eligible offender convicted of one of these four crimes is either “recommended” for an alternative intervention (if scored as “low risk”) or “not recommended” for an alternative intervention (if not scored as “low risk”). See Appendix A for an illustrative worksheet. The ultimate sentence imposed, however, is within the discretion of the individual Circuit Court judge.

The purpose of this Report is to assess how NVRA is working in practice.

*Methodology:* Publically available information on all NVRA and all imposed sentences for persons convicted of Larceny, Fraud, Drug Schedule I/II, and Drug/Other for Fiscal 2016 was provided by the VCSC.

### *Key Findings:*

1. Of the entire population of 8,443 offenders eligible for the NVRA, 3,396 or 40.2% scored in the category of low risk offenders, and were therefore eligible for an alternative sentence. 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. Of those for whom NVRA information was missing, typically cases in which a commonwealth’s attorney prepared the sentencing information and in which there was a plea bargain, 39.7% (408 people) received an alternative sentence.
2. 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, and 48.3% of those for whom the NVRA was missing received an alternative sentences (Table 10).
3. Judicial circuits varied widely in the percent of offenders receiving an alternative sentence (from 18.9% to 54.1%), in the percent of offenders missing NVRAs (from 0.9% to 31.6%%), and in the imposition of alternative

sentences on offenders scored as low risk (21.7% to 67.4%) versus higher risk by the NVRA (from 11.1% to 50.9%)

4. Individual Circuit Court Judges also varied widely in the percent of offenders receiving an alternative sentence (from 11.1% to 64.8%), in the percent of offenders missing NVRAs (from 0.0% to 71.2%), and in the imposition of alternative sentences on offenders scored as low risk (7.4% to 84.6%) versus higher risk by the NVRA (from 0.0% to 60.0%)

*Implications:* Additional individuals could be diverted from prison, as 42.2% of eligible low-risk offenders received alternative sentences. Additional individuals could also be diverted from jail to community-based alternatives, where for half of the eligible low-risk offenders who received an alternative sentence, the alternative received was jail. However, the use of the NVRA varies as between Circuits and judges, including for reasons that we describe in our survey of judicial attitudes and approaches towards the NVRA. If the goals of the NVRA include expanded diversion both from prison and jail, as well as achieving greater uniformity among Judicial Circuits and among individual Circuit Court judges, both these sentencing data and judicial survey data suggest that (1) further guidance to judges, and (2) additional resources to support alternatives sentences could assist in accomplishing those goals.

## **I. Nonviolent Risk Assessment (NVRA) and Alternative Sanctions: Overall Findings**

### **A. Introduction**

In 1994, the Virginia Legislature adopted truth-in-sentencing legislation to abolish parole in the state. At the same time, the Legislature directed the newly-formed Virginia Criminal Sentencing Commission (VCSC) to develop an empirically-based risk-assessment instrument.<sup>1</sup> In the words of the newly-revised Model Penal Code, “On risk assessment as a prison-diversion tool, Virginia has been the leading innovator among American states.”<sup>2</sup> In order to avert a resulting fiscal “collapse”<sup>3</sup> of the state’s prison system, risk assessment was adopted at the same

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<sup>1</sup> For a description of this process, see Virginia Criminal Sentencing Commission, *2005 Annual Report* 35 (2015), at <https://rga.lis.virginia.gov/Published/2005/RD42/PDF>.

<sup>2</sup> Model Penal Code: Sentencing (Am. Law Inst., Final Draft, approved May 24, 2017) at 375.

<sup>3</sup> Richard Kern, Overview of Virginia’s Truth-in-Sentencing System, at 15, 20. at [http://sfc.virginia.gov/pdf/committee\\_meeting\\_presentations/June%2019%20meeting/Virginia%20Felony%20Sentencing%20Guidelines.pdf](http://sfc.virginia.gov/pdf/committee_meeting_presentations/June%2019%20meeting/Virginia%20Felony%20Sentencing%20Guidelines.pdf)

time “to reduce the use of incarceration for nonviolent criminals, in order to offset the increased prison stays for violent offenders that were built into the original Virginia guidelines.”<sup>4</sup> The overall goal lawmakers set out for the VCSC was to divert 25% of the “lowest-risk, incarceration-bound, drug and property offenders” from prison to alternative sanctions such as jail, release, probation, community service, outpatient substance-abuse treatment, or electronic monitoring.<sup>5</sup> In the words of Richard Kern, the first Director of the VCSC, among the “main goals of the 1994 sentencing reforms” was to “expand alternative punishment/treatment options for some non-violent felons” by adopting statistical instruments “to divert low risk offenders” from prison.<sup>6</sup>

The instrument was adopted statewide in July 2002, for all felony larceny, fraud, and drug cases.<sup>7</sup> Thus, in 2002, the NVRA was included as one of the sentencing worksheets to be completed for all eligible offenders convicted of one of four drug and property crimes—Larceny, Fraud, Drug Schedule I/II, and Drug/Other (i.e., marijuana distribution). If the offender’s total score on the instrument is below the cut-off, the offender is recommended for an alternative sanction. If the offender’s score on the instrument is above that cut-off, the prison or jail term recommended by the sentencing guidelines remains in effect. Since the NVRA instrument was adopted as part of the adjusted sentencing guidelines, use of the NVRA is not considered a departure from the sentencing guidelines. An alternative sentence when provided using the NVRA is considered in compliance with the guidelines. After the NVRA is filled out, judges have complete discretion whether to follow the recommendation for an alternative sentence. Judges also have discretion regarding which alternative sentence, if any, to provide.

In recent years, less than half of the eligible offenders for whom a risk assessment was conducted were assessed as “low risk,” and received an alternative sanction. For example, in FY 2016, the year that we studied, the VCSC reports that

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<sup>4</sup> Kevin Reitz, “Risk Discretion” at Sentencing, 30 Federal Sentencing Reporter 68, 70 (2017). See also Richard Kern and Mark Bergstrom, A View from the Field: Practitioners’ Response to Actuarial Sentencing: An “Unsettled” Proposition, 25 Federal Sentencing Reporter 185, 188 (2013) (the adoption of risk assessment in Virginia was driven in large part by “budgetary concerns”); Richard Kern and Meredith Farrer-Owens, Sentencing Guidelines with Integrated Offender Risk Assessment, 16 Federal Sentencing Reporter 165, 169 (2004) (“The non-violent risk assessment tool adopted as part of the discretionary sentencing guidelines serves to safely divert a significant share of low risk felons away from expensive prison beds into less costly alternative punishment programs.”)

<sup>5</sup> Richard P. Kern & Meredith Farrar-Owens, *Sentencing Guidelines with Integrated Offender Risk Assessment*, 16 Fed. Sent’g. Rep. 165, 165 (2004); Meredith Farrar-Owens, *The Evolution of Sentencing Guidelines in Virginia: An Example of the Importance of Standardized and Automated Felony Sentencing Data*, 25 Fed. Sent’g. Rep. 168, 170 (2013).

<sup>6</sup> Kern, *supra*.

<sup>7</sup> *Id.*

among the eligible offenders for whom a risk assessment form was received (6,787 cases), 49% were recommended for an alternative sanction by the risk assessment instrument, but of those 42% were sentenced to an alternative punishment option.<sup>8</sup> However, of the entire group of persons convicted of eligible offenses, 25% or more received non-prison sentences, in accordance with the general goal of the Legislature.

## B. Main Study Findings

We reviewed FY 2016 sentencing data shared with us by the VCSC concerning the use of the NVRA instrument. Over 8,000 people were convicted of eligible offenses in Virginia in fiscal 2016. Of those, 6,787 people were eligible offenders for whom a risk assessment form was received. Over a thousand additional offenders were eligible but a risk assessment form was not filled out or shared by the judge with the VCSC. Table 1 below displays our analysis of the receipt of alternative sentences under the NVRA in fiscal 2016.

**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

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

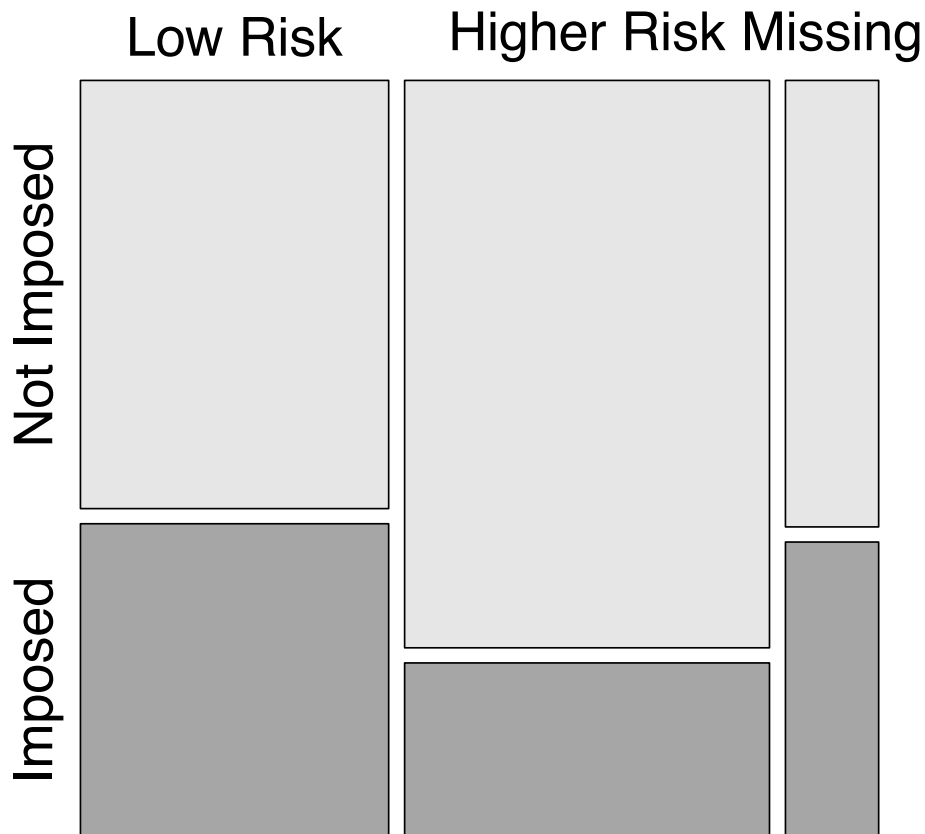
Of the entire population of 8,443 offenders eligible for risk assessment under the NVRA, 3,396 of 40.2% scored in the low risk category and were therefore eligible for an alternative sentence. Of those, only 42.2% (1,433 people) did in fact receive such an alternative sentence. Of higher risk offenders, 23.4% (941 people) received alternative sentences. Thus, a total of 2,782 received alternative sanctions, which is well over 25% of the group.

Of the group of offenders for whom NVRA information was missing, 39.7% (408 people) received alternative sentences. Figure 1, below, illustrates these data. For that group, the NVRA information was not included in the sentencing record;

<sup>8</sup> Virginia Criminal Sentencing Commission, 2016 Annual Report (2017), at <http://www.vcsc.virginia.gov/2016Annualreportfinal.pdf>.

however it is not known whether that information was considered or not. The cases in which the NVRA was missing are systematically different than those in which the NVRA was filled out in the following main ways: the sentencing information was far more likely to be prepared by a commonwealth attorney (83% vs. 53%); the cases were far more likely to include a written plea agreement (62% vs. 39%) and/or a guilty plea (94% vs. 87%). It is possible that commonwealth's attorneys and defense attorneys sometimes considered the NVRA when negotiating plea bargains, even if the NVRA was not filled out. Further research could examine whether and how the NVRA informs plea negotiations.

**Figure 1: Alternative Sanctions by NVRA Recommendation**



## II. Nonviolent Risk Assessment and Alternative Sanctions, by Type of Alternative Sanction

Second, we examined what types of alternative sentences were offered under the NVRA. Those alternatives range from jail-time to release for time served or under supervised probation, and they also include rehabilitative options such as drug treatment. Table 2, below, displays for all eligible offenders who received an alternative sentence in FY 2016, which type of alternative sentences were imposed. Since cases may, and often do, involve more than one type of alternative sanction, the totals add up to more than 100% of cases.

**Table 2: Types of Alternative Sanctions Imposed in NVRA Cases**

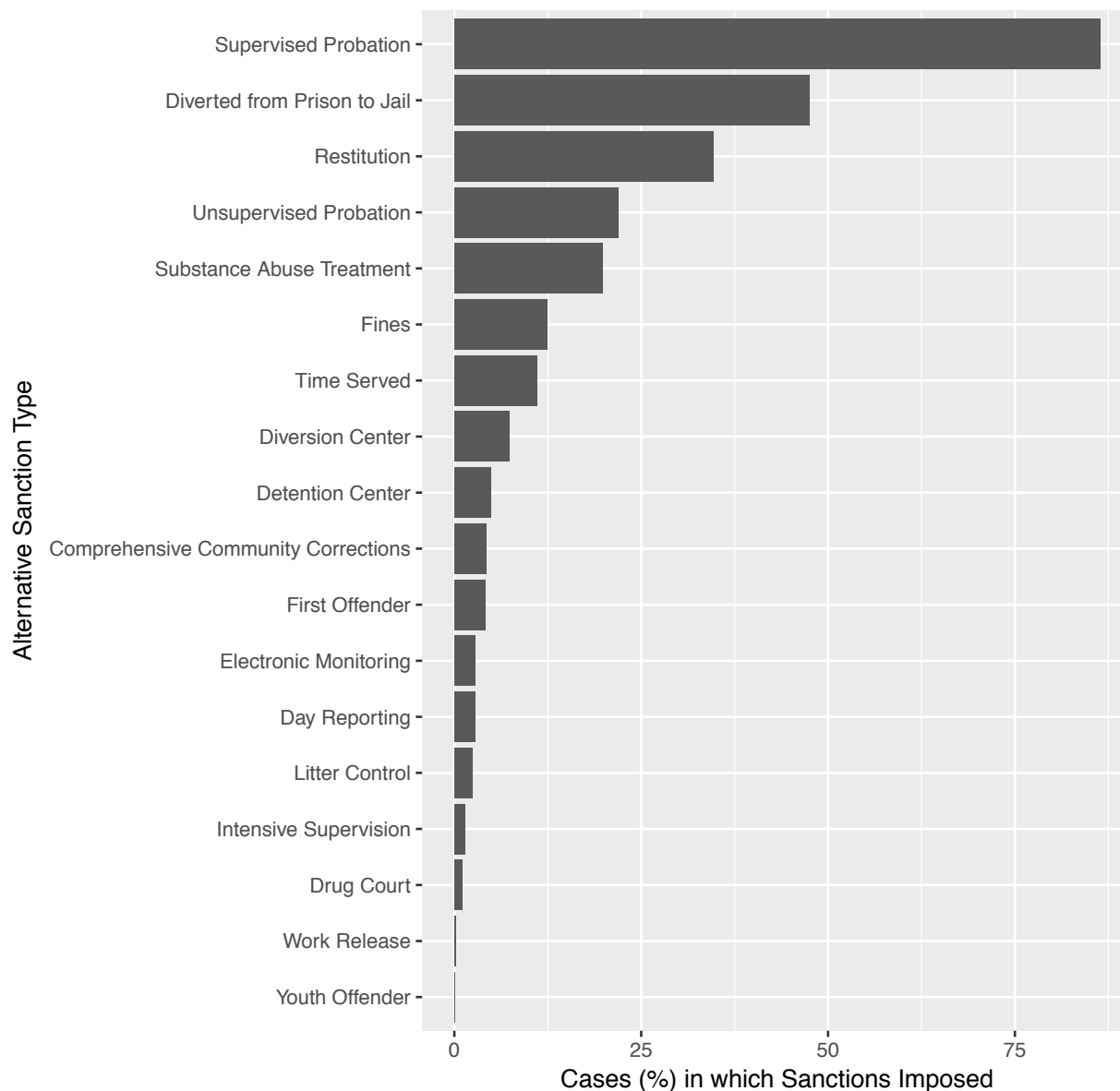
Sanction	Cases (N)	Cases (%)
Supervised Probation	1,238	86.39
Diverted from Prison to Jail	680	47.45
Restitution	496	34.61
Unsupervised Probation	314	21.91
Substance Abuse Treatment	284	19.82
Fines	178	12.42
Time Served	159	11.10
Diversion Center	105	7.33
Detention Center	69	4.82
Comprehensive Community Corrections	61	4.26
First Offender	59	4.12
Electronic Monitoring	40	2.79
Day Reporting	40	2.79
Litter Control	35	2.44
Intensive Supervision	20	1.40
Drug Court	15	1.05
Work Release	3	0.21
Youth Offender	1	0.07

Sample: Individuals who were recommended for, and received, alt. sanction(s)

Total Observations: 1,433.



**Figure 2: Types of Alternative Sanctions Imposed in NVRA Cases**



As the VCSC has reported, the most common alternative sanction offered was supervised probation, with almost half of those receiving alternative sentences receiving jail-time. Jail, as opposed to prison, while they both involve incarceration, may be a somewhat more lenient option in that it may be easier for relatives to maintain visits. We also conducted an analysis of the intersection between offenders receiving an alternative sentence based on the NVRA, and what type of alternative sentences, if any, they receive. For some types of alternative sentences, the score on the NVRA appeared to matter far more than for others. Tables displayed in Appendix B display these relationships. There was little variation among persons assigned to drug treatment, as shown in Appendix B. Drug treatment, as a form of

rehabilitative treatment, may be most needed by those who at the same time pose the greatest risk for re-offending. Treatment alternatives should perhaps be considered separate and apart from alternatives to incarceration.

### **III. Nonviolent Risk Assessment and Alternative Sanctions, by Judicial Circuit**

The variation between judicial districts and judges was also striking. There are 120 Circuit Courts in Virginia, organized into 31 Circuits. Table 3 below shows the variation between the judicial Circuits that had more than fifty cases during fiscal 2016. The Circuits are referred to in an anonymous fashion using randomly assigned letters. The variation between judges is displayed in Table 4.

**Table 3: Summary of Alternative Sanctions in NVRA Cases by Circuit**

Circuit	Cases (N)	Missing NVRA (%)	Diverted (%)	Low Risk Diverted (%)	Higher Risk Diverted (%)	Missing Diverted (%)
UN	340	6.5	27.4	32.5	24.0	31.8
ZV	351	14.0	23.9	36.0	13.8	18.4
FY	137	16.1	43.8	52.5	38.7	45.5
JZ	316	19.0	30.4	43.6	17.3	45.0
YH	163	9.2	27.6	43.7	11.7	33.3
RT	95	7.4	18.9	23.1	11.1	28.6
YZ	158	31.6	24.1	21.7	24.2	26.0
HI	110	26.4	34.5	52.2	27.6	34.5
EN	193	15.5	30.1	42.9	19.0	40.0
JO	210	11.9	31.9	40.8	15.9	48.0
RC	88	28.4	35.2	47.6	35.7	24.0
YA	518	4.4	26.1	30.5	24.1	13.0
JF	318	10.7	54.1	62.8	50.9	41.2
UJ	420	8.6	25.0	25.3	21.8	44.4
FX	723	23.8	26.8	35.8	21.4	25.0
GL	302	11.9	27.8	42.4	13.5	38.9
GT	123	20.3	30.1	45.7	15.9	44.0
WN	60	13.3	35.0	56.0	14.8	37.5
BP	283	8.5	41.0	61.1	30.2	41.7
LS	215	3.7	29.3	34.6	24.8	50.0
OC	115	0.9	50.4	67.4	39.4	100.0
GW	234	8.1	31.2	40.4	19.0	63.2
OB	260	12.7	28.5	36.8	22.1	33.3
OG	278	10.4	34.9	46.9	22.3	34.5
HV	385	21.3	45.7	51.5	21.6	85.4
RW	529	8.3	36.7	50.4	23.2	34.1
AA	423	14.9	45.4	60.7	19.9	49.2
ZS	230	1.3	27.0	32.6	20.0	0.0
WX	351	6.0	33.3	34.2	26.7	57.1
ZI	281	7.8	36.7	43.0	17.5	54.5
NE	232	4.3	34.5	43.0	28.7	30.0
Mean	272	12.5	33.1	43.2	23.1	40.4
Min.	60	0.9	18.9	21.7	11.1	0.0
Max	723	31.6	54.1	67.4	50.9	100.0

Missing NVRA = Share of total offenders with missing/incomplete NVRAs

Diverted = Offenders diverted to an alt. sanction as a share of all cases

Low Risk Diverted = Low risk offenders diverted to an alt. sanction as a share of all cases involving low risk offenders

Higher Risk Diverted = Higher risk offenders diverted to an alt. sanction as a share of all cases involving not low risk offenders

Missing Diverted = Offenders with missing/incomplete NVRAs diverted as a share of all cases involving offenders with missing/incomplete NVRAs

Circuit identifiers have been randomly assigned.

**Table 4: Summary of Alternative Sanctions Imposed in NVRA Cases by Judge**

Judge	Cases (N)	Missing NVRA (%)	Diverted (%)	Low Risk Diverted (%)	Higher Risk Diverted (%)	Missing Diverted (%)
PTC	75	10.7	28.0	23.8	30.4	25.0
JBE	57	1.8	40.4	63.0	20.7	0.0
AVR	44	15.9	47.7	66.7	45.5	14.3
DYV	81	6.2	39.5	58.7	16.7	0.0
LTK	55	5.5	41.8	55.6	12.5	33.3
QKB	75	2.7	34.7	47.2	21.6	50.0
DCE	41	7.3	31.7	58.3	15.4	66.7
EIX	72	0.0	31.9	40.0	21.9	0.0
ZMH	45	31.1	20.0	13.3	25.0	21.4
ZOY	64	1.6	32.8	46.3	9.1	0.0
KMT	78	10.3	24.4	32.1	19.0	25.0
OUI	87	1.1	46.0	54.5	38.1	0.0
LDM	48	33.3	16.7	9.1	23.8	12.5
PWR	71	18.3	18.3	38.1	8.1	15.4
DPI	41	14.6	56.1	61.5	54.5	50.0
KZC	63	15.9	30.2	40.0	17.4	30.0
OAQ	41	4.9	48.8	66.7	27.8	50.0
CQL	41	2.4	43.9	64.7	30.4	0.0
PFN	48	18.8	39.6	61.1	4.8	77.8
OJV	54	5.6	14.8	21.4	13.5	0.0
QOR	87	2.3	29.9	37.5	24.4	0.0
EBF	43	18.6	25.6	30.8	18.2	37.5
INC	40	27.5	30.0	33.3	0.0	90.9
SSU	70	0.0	47.1	62.5	39.1	0.0
DSH	51	2.0	31.4	50.0	9.1	0.0
GAN	48	16.7	41.7	62.5	12.5	37.5
NPP	60	5.0	31.7	37.5	27.3	33.3
CPR	65	7.7	26.2	36.7	13.3	40.0
DZH	82	3.7	30.5	30.8	32.1	0.0
UCQ	52	9.6	32.7	33.3	27.6	60.0
WUI	52	13.5	23.1	31.0	12.5	14.3
VGX	130	6.9	21.5	19.6	22.7	22.2
MZD	63	6.3	38.1	48.6	18.2	50.0
YJS	44	13.6	25.0	41.2	14.3	16.7
ISG	51	19.6	41.2	40.0	9.1	80.0
BRL	52	13.5	32.7	31.8	21.7	71.4
JOV	75	9.3	26.7	43.5	8.9	85.7
LDT	66	36.4	37.9	70.6	24.0	29.2
WRC	93	4.3	36.6	39.3	28.6	50.0
SAX	49	4.1	16.3	18.7	16.1	0.0
PGD	56	12.5	46.4	57.1	35.7	57.1
QSH	63	19.0	52.4	62.9	50.0	25.0
FQL	94	9.6	36.2	40.6	28.3	66.7
VPH	65	9.2	40.0	47.6	5.9	83.3
OIK	51	3.9	33.3	32.0	33.3	50.0
RTK	41	26.8	39.0	84.6	5.9	36.4
SUP	59	1.7	23.7	33.3	14.7	100.0
BGJ	57	3.5	35.1	50.0	21.2	100.0
TDD	51	31.4	31.4	43.8	15.8	37.5
VRE	98	5.1	36.7	39.1	29.2	40.0
LFF	74	9.5	27.0	29.0	27.8	14.3
QLW	48	2.1	64.6	70.6	60.0	100.0
WEV	52	7.7	21.2	17.6	22.6	25.0
UVN	88	0.0	64.8	77.8	32.0	0.0
ZQX	56	25.0	28.6	38.1	14.3	35.7
UUL	47	10.6	36.2	72.2	8.3	40.0
YQE	108	7.4	19.4	19.4	17.2	37.5
WAX	53	3.8	22.6	29.2	11.1	100.0
OWR	43	16.3	30.2	66.7	14.8	42.9
ETE	62	4.8	12.9	12.0	14.7	0.0
FFQ	49	8.2	36.7	53.8	28.1	50.0
SWG	73	71.2	64.4	50.0	6.7	82.7

Judge	Cases (N)	Missing NVRA (%)	Diverted (%)	Low Risk Diverted (%)	Higher Risk Diverted (%)	Missing Diverted (%)
JYI	65	35.4	38.5	37.5	23.1	56.5
IMN	45	17.8	40.0	42.9	30.4	62.5
OOD	45	20.0	31.1	47.6	13.3	22.2
TPP	89	22.5	47.2	57.1	14.6	100.0
KOO	54	42.6	14.8	23.1	16.7	8.7
JGZ	46	10.9	30.4	34.8	27.8	20.0
CFU	46	2.2	37.0	35.5	42.9	0.0
SDI	42	19.0	38.1	50.0	22.7	62.5
YVE	119	3.4	38.7	54.5	25.0	25.0
HIR	53	7.5	13.2	7.4	18.2	25.0
XFR	85	20.0	32.9	58.6	15.4	29.4
WQC	55	29.1	34.5	61.5	26.9	25.0
ZVT	54	9.3	11.1	10.5	10.0	20.0
CYS	53	9.4	39.6	41.9	35.3	40.0
ZEX	120	5.0	25.8	28.0	20.5	33.3
YHH	46	13.0	26.1	44.4	19.4	33.3
CET	91	7.7	14.3	9.1	13.7	42.9
HHP	51	9.8	11.8	10.0	11.5	20.0
BRJ	58	46.6	43.1	61.5	16.7	51.9
SOR	65	0.0	47.7	54.5	40.6	0.0
FXE	79	1.3	25.3	22.4	31.0	0.0
ODC	69	8.7	29.0	40.0	18.2	33.3
YTQ	48	0.0	41.7	46.9	31.3	0.0
KBX	59	18.6	23.7	41.2	19.4	9.1
TZM	82	3.7	23.2	28.6	21.6	0.0
CIM	74	6.8	32.4	38.7	23.7	60.0
PVD	51	19.6	33.3	33.3	23.5	50.0
GTR	57	12.3	29.8	33.3	30.4	14.3
POP	77	5.2	26.0	30.8	23.4	25.0
OZZ	41	7.3	26.8	42.1	10.5	33.3
ALR	46	4.3	30.4	31.8	27.3	50.0
YPL	49	4.1	40.8	42.9	34.6	100.0
TRJ	59	44.1	11.9	11.1	8.3	15.4
OTL	43	0.0	32.6	50.0	10.5	0.0
YCR	70	21.4	30.0	34.8	25.0	33.3
RJZ	43	27.9	30.2	31.2	6.7	58.3
XTQ	46	10.9	13.0	21.1	4.5	20.0
Mean	62	12.6	32.4	41.4	21.5	35.3
Min.	40	0.0	11.1	7.4	0.0	0.0
Max.	130	71.2	64.8	84.6	60.0	100.0

Missing NVRA = Share of total offenders with missing/incomplete risk assessments

Diverted = Offenders diverted to an alt. sanction as a share of the total number of observations

Low Risk Diverted = Low risk offenders diverted to an alt. sanction (as a share of all alt. sanctions assigned)

Higher Risk Diverted = Higher risk offenders diverted to an alt. sanction (as a share of all alt. sanctions assigned)

Missing Diverted = Offenders with missing/incomplete risk assessments diverted to an alt. sanction (as a share of all alt. sanctions assigned)

Judge identifiers have been randomly assigned.

# Appendix A: Nonviolent Risk Assessment Worksheet and Sentencing Guidelines Cover Sheet for the Crime of Fraud

## Fraud ❖ Section C

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

◆ **Primary Offense** \_\_\_\_\_ Prior Record Classification  
 Category I  Category II  Other

A. Other than listed below				
1 count	.....	24	.....	12
2 counts	.....	28	.....	14
3 counts	.....	40	.....	20
4 counts	.....	56	.....	28
B. Credit card theft (1 count)		36	.....	18
C. Welfare fraud or food stamp fraud (\$200 or more); false application for public assistance				
1 count	.....	12	.....	6
2 counts	.....	20	.....	10
D. Forging coins, checks or bank notes, other writings; Uttering; Making or possessing forging instruments				
1 count	.....	28	.....	14
2 - 3 counts	.....	32	.....	16
4 counts	.....	40	.....	20
E. Construction fraud (1 count)		36	.....	18
F. Use identifying information to defraud, > \$200 (1 count)		36	.....	18
G. Obtain identifying information with intent to defraud, 2nd or subsequent (1 count)		16	.....	8
H. Receiving stolen credit card or credit card number with the intent to use or sell (1 count)		24	.....	12

**Score**  
▼  
0

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

Maximum Penalty:	5	.....	0
(years)	10, 20	.....	1

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

Maximum Penalty:	Less than 10	.....	0
(years)	10, 20	.....	1
	30	.....	2
	40 or more	.....	3

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

Maximum Penalty:	Less than 5	.....	0
(years)	5, 10	.....	1
	20	.....	2
	30	.....	3
	40 or more	.....	4

0

◆ **Prior Felony Fraud Convictions/Adjudications**

Number of Counts:	1	.....	1
	2	.....	2
	3, 4	.....	3
	5	.....	4
	6	.....	5
	7	.....	6
	8	.....	7
	9 or more	.....	8

0

◆ **Prior Juvenile Record** \_\_\_\_\_ If YES, add 4

◆ **On Parole/Post-Release, Supervised Probation, or CCCA at Time of Offense** If YES, add 5

**Total Score** \_\_\_\_\_

See Fraud Section C Recommendation Table for guidelines sentence range. Then, go to Section D Nonviolent Risk Assessment and follow the instructions. Fraud/Section C

# 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	<div style="border: 1px solid black; width: 40px; height: 40px; margin: 0 auto;"></div>
21 to 29 years .....	16	
30 to 43 years .....	7	
Older than 43 years .....	1	

## ◆ Gender \_\_\_\_\_

Offender is Female .....	1	<div style="border: 1px solid black; width: 40px; height: 40px; margin: 0 auto;"></div>
Offender is Male .....	10	

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

Number of Counts: 0 .....	0	<div style="border: 1px solid black; width: 40px; height: 40px; margin: 0 auto;"></div>
1 - 2 .....	5	
3 or more .....	15	

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

Number: 0 .....	0	<div style="border: 1px solid black; width: 40px; height: 40px; margin: 0 auto;"></div>
1 - 9 .....	4	
10 or more .....	32	

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

If YES, add 6 → 0

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

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

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

Fraud/Section D

## Appendix B. Additional Tables

**Table 5: Supervised Probation by NVRA Recommendation**

(a) All Offenses

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	1,238 86.4%	757 80.4%	324 79.4%	2,319
Not Imposed	195 13.6%	184 19.6%	84 20.6%	463
Total	1,433 51.5%	941 33.8%	408 14.7%	2,782

$\chi^2 = 19.84, p < 0.001$

(b) Drug (Other)

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	149 92.0%	24 88.9%	30 88.2%	203
Not Imposed	13 8.0%	3 11.1%	4 11.8%	20
Total	162 72.6%	27 12.1%	34 15.2%	223

$\chi^2 = 0.654, p = 0.640$

(c) Drug Schedule I/II

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	712 87.6%	223 79.4%	166 82.2%	1,101
Not Imposed	101 12.4%	58 20.6%	36 17.8%	195
Total	813 62.7%	281 21.7%	202 15.6%	1,296

$\chi^2 = 12.474, p < 0.01$

(d) Fraud

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	228 82.6%	171 79.5%	32 80.0%	431
Not Imposed	48 17.4%	44 20.5%	8 20.0%	100
Total	276 52.0%	215 40.5%	40 7.5%	531

$\chi^2 = 0.786, p = 0.675$

(e) Larceny

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	149 81.9%	339 81.1%	96 72.7%	584
Not Imposed	33 18.1%	79 18.9%	36 27.3%	148
Total	182 24.9%	418 57.1%	132 18.0%	732

$\chi^2 = 5.014, p = 0.082$



**Table 6: Diverted from Prison to Jail by NVRA Recommendation**

(a) All Offenses

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	680 47.5%	587 62.4%	199 48.8%	1,466
Not Imposed	753 52.5%	354 37.6%	209 51.2%	1,316
Total	1,433 51.5%	941 33.8%	408 14.7%	2,782

$\chi^2 = 53.725, p < 0.001$

(b) Drug (Other)

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	68 42.0%	15 55.6%	15 44.1%	98
Not Imposed	94 58.0%	12 44.4%	19 55.9%	125
Total	162 72.6%	27 12.1%	34 15.2%	223

$\chi^2 = 1.733, p = 0.420$

(c) Drug Schedule I/II

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	380 46.7%	146 52.0%	86 42.6%	612
Not Imposed	433 53.3%	135 48.0%	116 57.4%	684
Total	813 62.7%	281 21.7%	202 15.6%	1,296

$\chi^2 = 4.355, p = 0.113$

(d) Fraud

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	189 68.5%	166 77.2%	27 67.5%	382
Not Imposed	87 31.5%	49 22.8%	13 32.5%	149
Total	276 52.0%	215 40.5%	40 7.5%	531

$\chi^2 = 4.986, p = 0.083$

(e) Larceny

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	43 23.6%	260 62.2%	71 53.8%	374
Not Imposed	139 76.4%	158 37.8%	61 46.2%	358
Total	182 24.9%	418 57.1%	132 18.0%	732

$\chi^2 = 75.971, p < 0.001$

**Table 7: Restitution by NVRA Recommendation**

(a) All Offenses

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	496 34.6%	263 27.9%	144 35.3%	903
Not Imposed	937 65.4%	678 72.1%	264 64.7%	1,879
Total	1,433 51.5%	941 33.8%	408 14.7%	2,782

$\chi^2 = 13.258, p < 0.01$

(b) Drug (Other)

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	74 45.7%	7 25.9%	17 50.0%	98
Not Imposed	88 54.3%	20 74.1%	17 50.0%	125
Total	162 72.6%	27 12.1%	34 15.2%	223

$\chi^2 = 4.263, p = 0.119$

(c) Drug Schedule I/II

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	219 26.9%	25 8.9%	49 24.3%	293
Not Imposed	594 73.1%	256 91.1%	153 75.7%	1,003
Total	813 62.7%	281 21.7%	202 15.6%	1,296

$\chi^2 = 39.215, p < 0.001$

(d) Fraud

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	128 46.4%	102 47.4%	19 47.5%	249
Not Imposed	148 53.6%	113 52.6%	21 52.5%	282
Total	276 52.0%	215 40.5%	40 7.5%	531

$\chi^2 = 0.061, p = 0.970$

(e) Larceny

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	75 41.2%	129 30.9%	59 44.7%	263
Not Imposed	107 58.8%	289 69.1%	73 55.3%	469
Total	182 24.9%	418 57.1%	132 18.0%	732

$\chi^2 = 11.276, p < 0.01$

**Table 8: Unsupervised Probation by NVRA Recommendation**

(a) All Offenses

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	314 21.9%	185 19.7%	91 22.3%	590
Not Imposed	1,119 78.1%	756 80.3%	317 77.7%	2,192
Total	1,433 51.5%	941 33.8%	408 14.7%	2,782

$\chi^2 = 2.068, p = 0.356$

(b) Drug (Other)

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	43 26.5%	2 7.4%	7 20.6%	52
Not Imposed	119 73.5%	25 92.6%	27 79.4%	171
Total	162 72.6%	27 12.1%	34 15.2%	223

$\chi^2 = 4.907, p = 0.086$

(c) Drug Schedule I/II

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	155 19.1%	55 19.6%	37 18.3%	247
Not Imposed	658 80.9%	226 80.4%	165 81.7%	1,049
Total	813 62.7%	281 21.7%	202 15.6%	1,296

$\chi^2 = 0.12, p = 0.942$

(d) Fraud

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	74 26.8%	46 21.4%	12 30.0%	132
Not Imposed	202 73.2%	169 78.6%	28 70.0%	399
Total	276 52.0%	215 40.5%	40 7.5%	531

$\chi^2 = 2.51, p = 0.285$

(e) Larceny

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	42 23.1%	82 19.6%	35 26.5%	159
Not Imposed	140 76.9%	336 80.4%	97 73.5%	573
Total	182 24.9%	418 57.1%	132 18.0%	732

$\chi^2 = 3.069, p = 0.216$

**Table 9: Substance Abuse Treatment by NVRA Recommendation**

(a) All Offenses

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	284 19.8%	148 15.7%	94 23.0%	526
Not Imposed	1,149 80.2%	793 84.3%	314 77.0%	2,256
Total	1,433 51.5%	941 33.8%	408 14.7%	2,782

$\chi^2 = 11.523, p < 0.01$

(b) Drug (Other)

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	34 21.0%	3 11.1%	8 23.5%	45
Not Imposed	128 79.0%	24 88.9%	26 76.5%	178
Total	162 72.6%	27 12.1%	34 15.2%	223

$\chi^2 = 1.681, p = 0.431$

(c) Drug Schedule I/II

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	192 23.6%	56 19.9%	57 28.2%	305
Not Imposed	621 76.4%	225 80.1%	145 71.8%	991
Total	813 62.7%	281 21.7%	202 15.6%	1,296

$\chi^2 = 4.495, p = 0.106$

(d) Fraud

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	30 10.9%	26 12.1%	6 15.0%	62
Not Imposed	246 89.1%	189 87.9%	34 85.0%	469
Total	276 52.0%	215 40.5%	40 7.5%	531

$\chi^2 = 0.639, p = 0.648$

(e) Larceny

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	28 15.4%	63 15.1%	23 17.4%	114
Not Imposed	154 84.6%	355 84.9%	109 82.6%	618
Total	182 24.9%	418 57.1%	132 18.0%	732

$\chi^2 = 0.429, p = 0.807$

**Table 10: Any Alternative Other Than Diversion to Jail by NVRA Recommendation**

(a) All Offenses

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	717 50.0%	328 34.9%	197 48.3%	1,242
Not Imposed	716 50.0%	613 65.1%	211 51.7%	1,540
Total	1,433 51.5%	941 33.8%	408 14.7%	2,782

$\chi^2 = 55.515, p < 0.001$

(b) Drug (Other)

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	88 54.3%	11 40.7%	17 50.0%	116
Not Imposed	74 45.7%	16 59.3%	17 50.0%	107
Total	162 72.6%	27 12.1%	34 15.2%	223

$\chi^2 = 1.775, p = 0.412$

(c) Drug Schedule I/II

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	417 51.3%	125 44.5%	110 54.5%	652
Not Imposed	396 48.7%	156 55.5%	92 45.5%	644
Total	813 62.7%	281 21.7%	202 15.6%	1,296

$\chi^2 = 5.517, p = 0.063$

(d) Fraud

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	80 29.0%	46 21.4%	12 30.0%	138
Not Imposed	196 71.0%	169 78.6%	28 70.0%	393
Total	276 52.0%	215 40.5%	40 7.5%	531

$\chi^2 = 3.982, p = 0.137$

(e) Larceny

Alt. Sanction	NVRA Recommendation			Total
	Low Risk	Higher Risk	Missing	
Imposed	132 72.5%	146 34.9%	58 43.9%	336
Not Imposed	50 27.5%	272 65.1%	74 56.1%	396
Total	182 24.9%	418 57.1%	132 18.0%	732

$\chi^2 = 72.434, p < 0.001$