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# Re-validation of the Nonviolent Offender Risk Assessment Instrument

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## **Review of Nonviolent Offender Risk Assessment in Virginia**

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## Legislative Directive

- In 1994, as part of the reform legislation that abolished parole and instituted truth-in-sentencing, the General Assembly directed the newly-created Sentencing Commission to:
  - Develop an empirically-based risk assessment instrument predictive of a felon's relative risk to public safety to determine appropriate candidates for alternative sanctions
  - Apply the instrument to non-violent felons recommended for prison
  - Implement the instrument with a goal of placing 25% of these prison bound felons in alternative sanctions

~ § 17.1-803 (5,6) of the *Code of Virginia*

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# Empirical Study of Nonviolent Offender Recidivism

- The Commission studied 1,500 property and drug felons released from incarceration during an 18-month period (July 1991 – December 1992)
- Over 200 unique factors relating to criminal record, substance abuse, education and employment history, family background, etc., were examined
  - Pre/Post-Sentence Investigation (PSI) database
  - Supplemental Data Collection
- Recidivism was defined as a new felony conviction within three years
- A risk assessment worksheet was developed based on the factors that were statistically relevant in predicting recidivism

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## Risk Assessment Pilot Testing

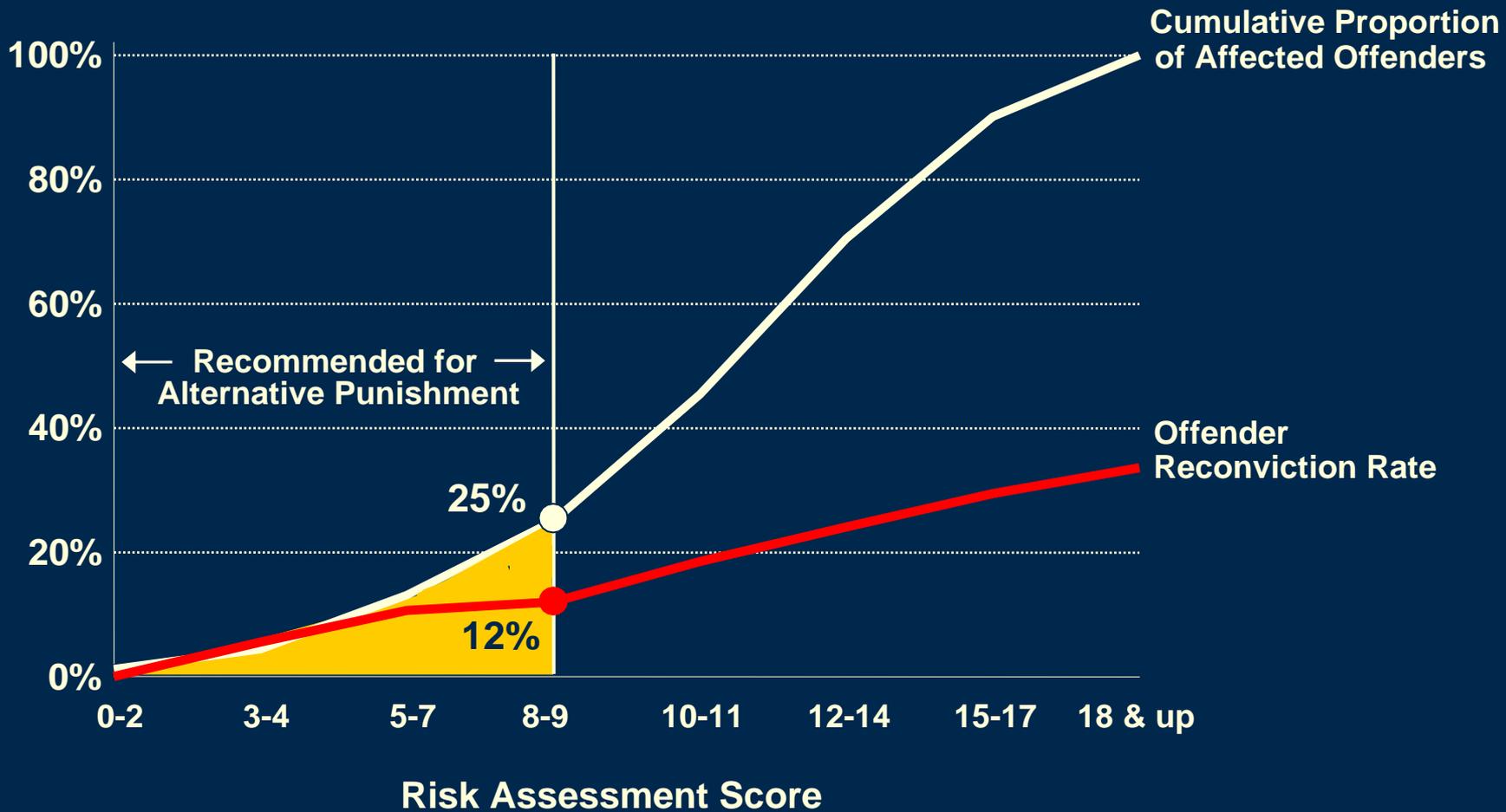
- **Pilot testing began in four circuits in December 1997**
  - **Circuit 5 (Cities of Franklin and Suffolk and counties of Southampton and Isle of Wight)**
  - **Circuit 14 (Henrico)**
  - **Circuit 19 (Fairfax)**
  - **Circuit 22 (city of Danville and counties of Franklin and Pittsylvania)**
  
- **Two additional circuits joined the pilot test in April 1999**
  - **Circuit 4 (Norfolk)**
  - **Circuit 7 (Newport News)**

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# Significant Factors in Assessing Risk

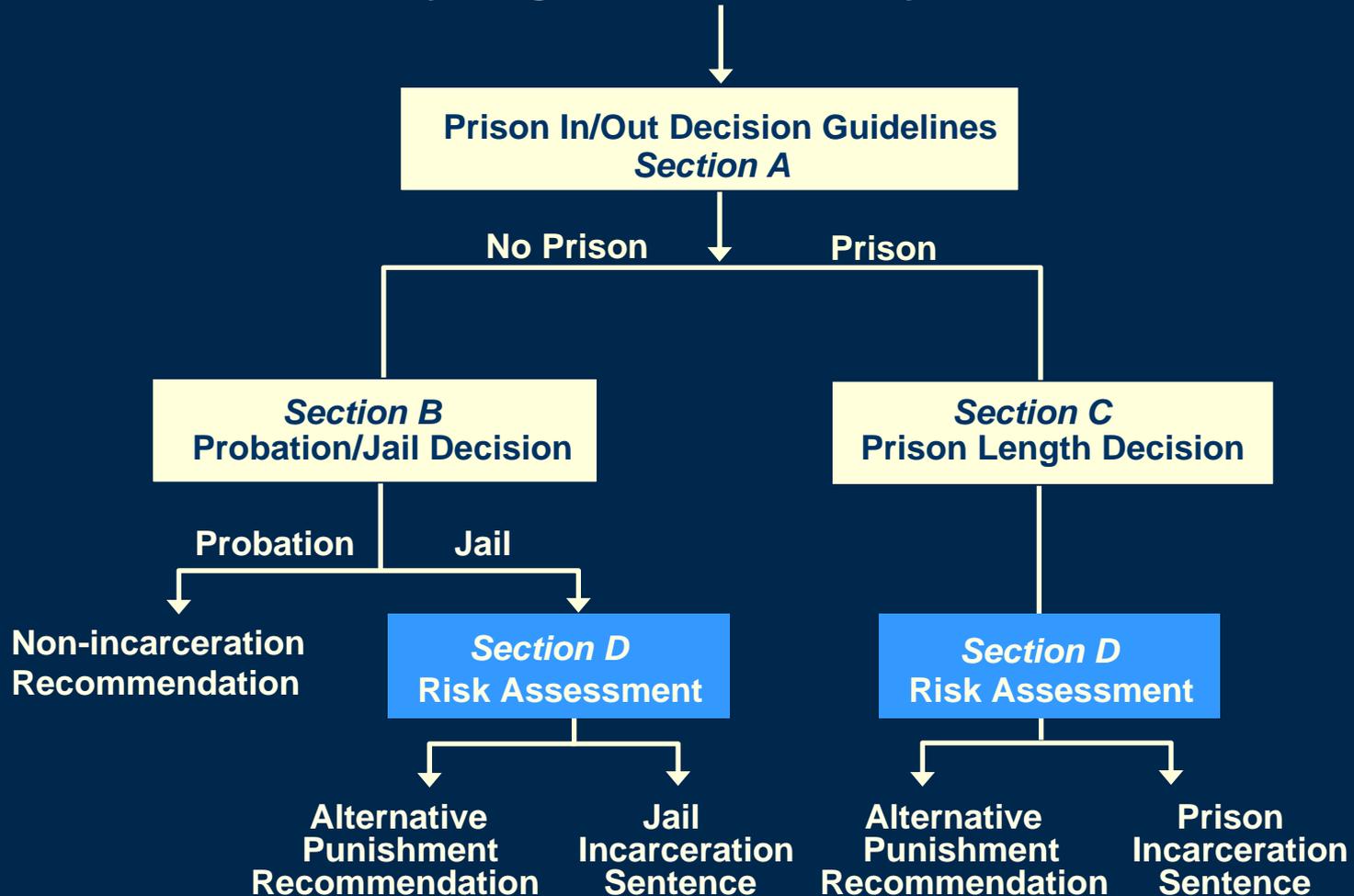


# Offender Reconviction Rates and Cumulative Proportion of Affected Offenders



# Application of Nonviolent Offender Risk Assessment

Felony Drug, Fraud and Larceny Convictions



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## Independent Evaluation by the National Center for State Courts

- ★ **The National Center for State Courts (NCSC) conducted an independent evaluation of the nonviolent risk assessment instrument used in the pilot sites for the period from 1998 to 2001**
- ★ **The evaluation entailed:**
  - ★ **Interviews with judges, prosecutors, defense attorneys, and probation officers**
  - ★ **Statistical validation study of the risk assessment instrument via recidivism analysis of diverted felons**
  - ★ **Cost-benefit analysis**

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## Independent Evaluation by the National Center for State Courts

- ★ Evaluators concluded that the risk assessment instrument is an effective tool for predicting recidivism
- ★ Cost-benefit analysis suggested that reduced use of prison (363 felons diverted) and jail (192 felons diverted) saved an estimated \$8.7 million during the pilot period
  - ★ Cost of alternative sanctions was \$6.2 million, with an additional \$1 million in costs incurred for offenders who recidivated
  - ★ Net benefit in pilot sites was \$1.5 million
  - ★ If expanded statewide, net benefit was estimated at \$3.7 to \$4.5 million
- ★ Evaluators recommended that the instrument be refined based on more recent cases and then expanded statewide

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## Refining the Risk Assessment Instrument

- In 2001, the Commission conducted a validation study of the original risk assessment instrument to test and refine it using more recent felony cases
- New recidivism analysis was based on a sample of nonviolent felons sentenced in 1996
- Offenders recommended for diversion under the refined risk assessment model had a recidivism rate of 12%
- Offenders not recommended for diversion under the refined model had a recidivism rate of 38%
- A score threshold was selected so that 25% of prison bound offenders were recommended for alternative sanctions

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# Refined Risk Assessment Instrument – Significant Factors in Assessing Risk

Relative Degree of Importance



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## Statewide Implementation

- **In its 2001 Annual Report, the Sentencing Commission recommended that the risk assessment program be expanded statewide**
  - **The General Assembly accepted the recommendation**
  - **Statewide implementation began July 1, 2002**

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## Use of Nonviolent Offender Risk Assessment

- **The risk assessment worksheet is completed in larceny, fraud and drug cases for offenders who are recommended for incarceration by the sentencing guidelines who also meet the eligibility criteria**
  - **Excludes offenders with a current or prior violent felony conviction**
  - **Excludes offenders who sell 1 ounce or more of cocaine**
  - **Excludes offenders who must serve a mandatory term of incarceration for their offenses**

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## Use of Nonviolent Offender Risk Assessment

- For offenders who score low enough on the risk scale, the sentencing guidelines cover sheet indicates a dual recommendation
  - Traditional incarceration
  - Alternative punishment
- As with the sentencing guidelines, compliance with the risk assessment recommendation is discretionary
- If a judge follows either sentencing recommendation, he or she is considered in compliance with the guidelines

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## Legislative Directive to Revisit Nonviolent Offender Risk Assessment

- In 2003, the General Assembly directed the Commission to:
  - Identify offenders not currently recommended for alternative punishment options by the assessment instrument who nonetheless pose little risk to public safety
  - Determine, with due regard for public safety, the feasibility of adjusting the assessment instrument to recommend additional low-risk nonviolent offenders for alternative punishment
  - Provide findings to the 2004 General Assembly

# Legislative Directive to Revisit Nonviolent Offender Risk Assessment

	Score	Percent of offenders	Reconviction rate for offenders scoring at or below point value
Old Risk Assessment Threshold 	35	2.5%	12.4%
	36	2.7%	13.9%
	37	2.2%	13.4%
New Risk Assessment Threshold 	38	2.7%	13.6%
	39	5.4%	16.0%
	40	3.0%	18.8%
	More than 40	58.7%	

**By moving the threshold to 38 points, an estimated 511 additional offenders per year would be recommended for alternative punishment, without a significant increase in the rate of recidivism among the recommended group**

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## **Legislative Directive to Revisit Nonviolent Offender Risk Assessment**

- **The Sentencing Commission concluded that the threshold could be raised from 35 to 38 points without significant risk to public safety**
- **Raising the threshold would result in additional offenders being recommended for alternative sanctions**
- **Following approval by the legislature, the change became effective July 1, 2004**

# Nonviolent Risk Assessment Section D

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

## ◆ Ineligibility Conditions

- A. Was the offender recommended for **Probation/No Incarceration** on Section B? .....  Yes  No
- B. Do any of the offenses at sentencing involve the sale, distribution, or possession with intent, etc. of cocaine of a combined quantity of 28.35 grams (1 ounce) or more? .....  Yes  No
- C. Are any prior record offenses violent (Category I/II listed in Table A of the Guidelines Manual)? .....  Yes  No
- D. Are any of the offenses at sentencing violent (Category I/II listed in Table A of the Guidelines Manual)? .....  Yes  No
- E. Do any of the offenses at sentencing require a mandatory term of incarceration? .....  Yes  No

**If answered YES to ANY, go to "Nonviolent Risk Assessment Recommendations" on cover sheet and check Not Applicable. If answered NO to ALL, complete remainder of Section D worksheet.**

## ◆ Offense Type *Select the type of primary offense*

- Drug ..... 3
- Fraud ..... 3
- Larceny ..... 11

## ◆ Additional Offense(s) \_\_\_\_\_ If YES, add 5 →

## ◆ 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

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

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

## ◆ 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

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

## Total Score \_\_\_\_\_ →

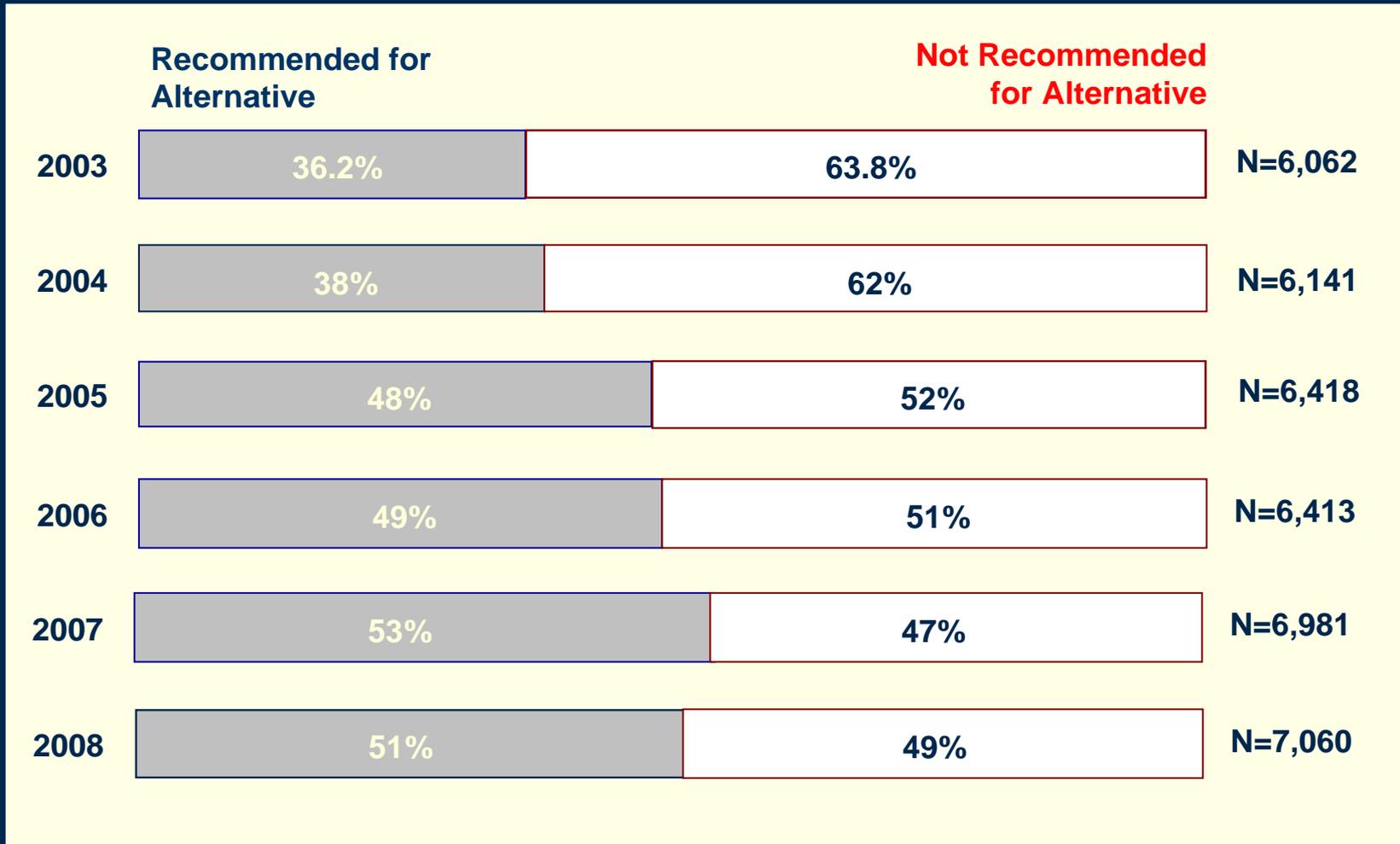
- 38 or less, check Recommended for Alternative Punishment.
- 39 or more, check NOT Recommended for Alternative Punishment.

Drug Schedule I or II  
Section D

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



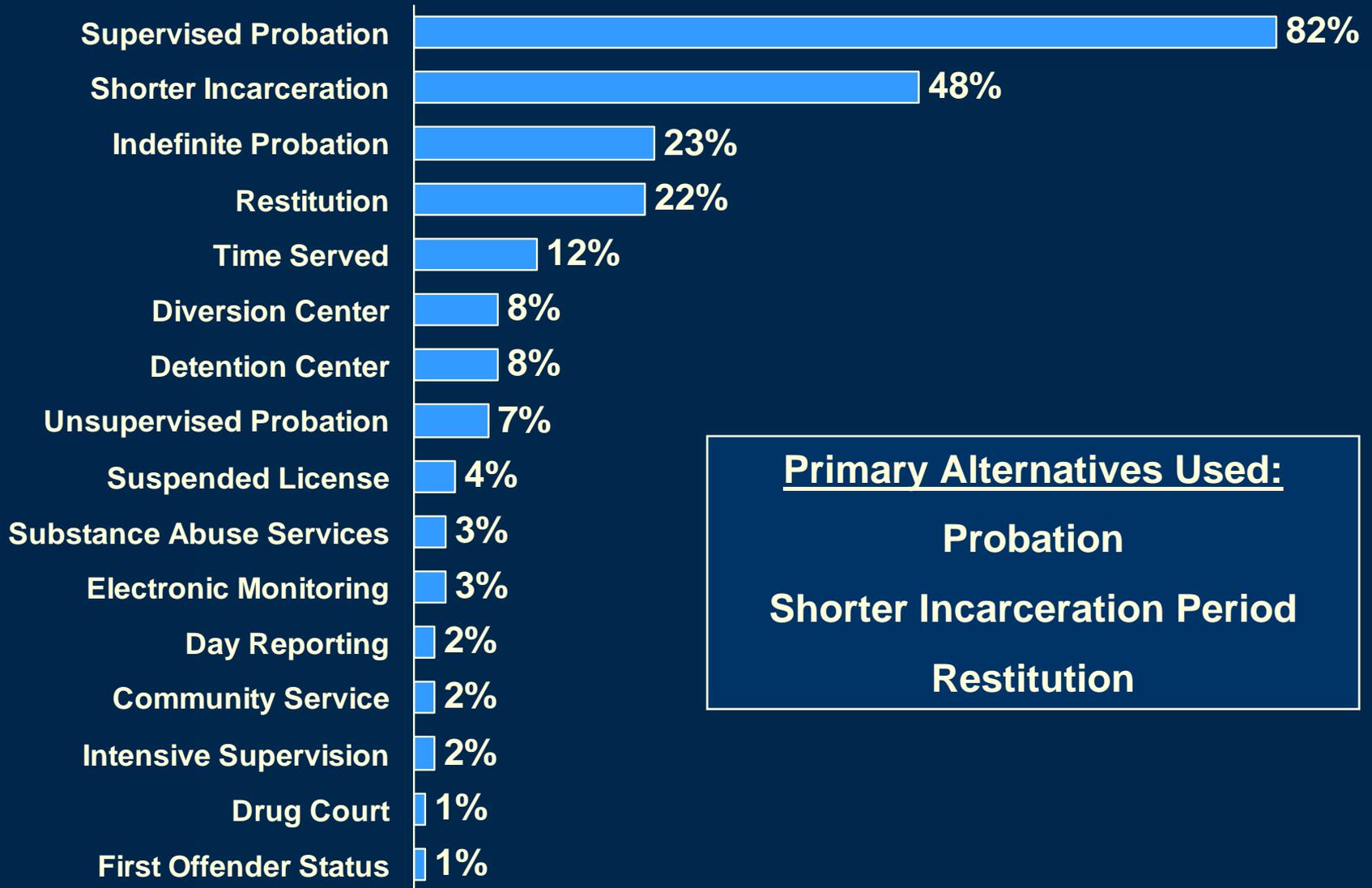
## Risk Assessment Outcomes for Nonviolent Offenders\*



\* Offenders recommended by the sentencing guidelines for prison or jail incarceration



# Alternative Sanctions Utilized under Risk Assessment



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## 2010-2011 Re-Validation Study: Proposed Methodology

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## Offenders to be Studied

- **Felony fraud, larceny, and drug offenders**
- **Sentenced in FY2004 and FY2005**
- **Recommended for incarceration by the sentencing guidelines (jail or prison)**
- **Meet risk assessment eligibility criteria**

**Offenders will be identified from the sentencing guidelines database**

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# Offenders to be Studied



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## Data Sources

- **Pre/Post-Sentence Investigation (PSI) data**
  - **Rich detail on offender, criminal history, employment, substance abuse, etc.**
- **Department of Juvenile Justice**
  - **Inquire as to possibility of getting detailed juvenile criminal history information**
- **Department of Corrections**
  - **Identify release dates for offenders sentenced to prison**
- **Local Inmate Data System (LIDS)**
  - **Identify release dates for offenders sentenced to jail**

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## Data Sources

- **Recidivism activity**
  - **Virginia criminal history repository – “rap sheets” (Virginia State Police)**
  - **Circuit Court and General District Court Automated Information Systems**
  - **Subsequent guidelines and PSI records**
  - **Sentencing Revocation Report database**

**Unless pending federal legislation is approved, the Virginia State Police will not provide national criminal history reports**

**This will limit the search for recidivism activity to Virginia only**

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## Proposed Analysis Plan

- **As with prior studies, recidivism will be measured as a new felony conviction within 3 years**
  - **However, multiple measures of recidivism will be collected**
- **The offenders in the study will be split into two samples:**
  - **One for the development of risk models**
  - **Another for testing the revised instrument**
- **Two analysts will work largely independently of one another using two different statistical techniques**
  - **Staff will discuss and reconcile differences in the two statistical models to develop an improved final model**

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## Proposed Work Plan

- **Data collection will be conducted through the remainder of CY2010 and early CY2011**
  - **Staff remain hopeful that federal legislation will be approved allowing state sentencing commissions to obtain national rap sheets from the FBI**
- **Analysis is planned for spring/summer of CY2011**
- **Staff expect to present the refined risk assessment instrument to the Commission in September 2011**
- **If the Commission approves the new instrument and recommends its adoption, it will be included in the 2011 Annual Report**

