Re-validation of the Nonviolent Offender Risk Assessment Instrument
Review of Nonviolent Offender
Risk Assessment in Virginia
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
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
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)
Significant Factors in Assessing Risk

Relative Degree of Importance

- Offender Age
- Prior Record
- Prior Juvenile Incarceration
- Prior Arrest within Past 12 mos
- Acted Alone
- Unmarried Offender
- Prior Adult Incarcerations
- Additional Offenses
- Male Offender
- Prior Drug Felonies
- Unemployed Offender
Offender Reconviction Rates and Cumulative Proportion of Affected Offenders

Offender Reconviction Rate

Cumulative Proportion of Affected Offenders

Risk Assessment Score

0-2 3-4 5-7 8-9 10-11 12-14 15-17 18 & up

0% 12% 25% 40% 60% 80% 100%

Recommended for Alternative Punishment

Offender Reconviction Rate

Cumulative Proportion of Affected Offenders
Application of Nonviolent Offender Risk Assessment

Felony Drug, Fraud and Larceny Convictions

Prison In/Out Decision Guidelines

Section A

No Prison

Prison

Section B
Probation/Jail Decision

Section C
Prison Length Decision

Probation

Jail

Non-incarceration Recommendation

Section D
Risk Assessment

Alternative Punishment Recommendation

Jail Incarceration Sentence

Section D
Risk Assessment

Alternative Punishment Recommendation

Prison Incarceration Sentence
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
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.
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.
Refined Risk Assessment Instrument – Significant Factors in Assessing Risk

Relative Degree of Importance

<table>
<thead>
<tr>
<th>Factor</th>
<th>Importance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offender Age</td>
<td>High</td>
</tr>
<tr>
<td>Prior Felony Record</td>
<td>Medium</td>
</tr>
<tr>
<td>Offense Type</td>
<td>Medium</td>
</tr>
<tr>
<td>Not Regularly Employed</td>
<td>Medium</td>
</tr>
<tr>
<td>Male Offender</td>
<td>Medium</td>
</tr>
<tr>
<td>Prior Adult Incarcerations</td>
<td>Medium</td>
</tr>
<tr>
<td>Prior Arrest w/in Past 18 Mos.</td>
<td>Medium</td>
</tr>
<tr>
<td>Additional Offenses</td>
<td>Low</td>
</tr>
<tr>
<td>Never Married by Age 26</td>
<td>Low</td>
</tr>
</tbody>
</table>
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
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
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
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
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.
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 28.55 grams (1 ounce) or more? [ ] Yes [ ] No
C. Are any prior record offenses violent (Category III listed in Table A of the Guidelines Manual)? [ ] Yes [ ] No
D. Are any of the offenses at sentencing violent (Category III 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 20 years ........................................ 13
   20 - 29 years ................................................... 8
   30 - 39 years ................................................... 6
   40 - 49 years ................................................... 8
   Older than 50 years ......................................... 0
C. Offender not regularly employed (during 2 years prior to arrest date) ........................................... 9
D. Offender age 20 or more and never married (at time of offense) ................................................. 6

◆ 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.

Go to Cover Sheet and fill out Nonviolent Risk Assessment Recommendations.
# Risk Assessment Outcomes for Nonviolent Offenders*

<table>
<thead>
<tr>
<th>Year</th>
<th>Recommended for Alternative</th>
<th>Not Recommended for Alternative</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>36.2%</td>
<td>63.8%</td>
<td>6,062</td>
</tr>
<tr>
<td>2004</td>
<td>38%</td>
<td>62%</td>
<td>6,141</td>
</tr>
<tr>
<td>2005</td>
<td>48%</td>
<td>52%</td>
<td>6,418</td>
</tr>
<tr>
<td>2006</td>
<td>49%</td>
<td>51%</td>
<td>6,413</td>
</tr>
<tr>
<td>2007</td>
<td>53%</td>
<td>47%</td>
<td>6,981</td>
</tr>
<tr>
<td>2008</td>
<td>51%</td>
<td>49%</td>
<td>7,060</td>
</tr>
</tbody>
</table>

* Offenders recommended by the sentencing guidelines for prison or jail incarceration
Alternative Sanctions Utilized under Risk Assessment

Primary Alternatives Used:
- Probation
- Shorter Incarceration Period
- Restitution

Supervised Probation: 82%
Shorter Incarceration: 48%
Indefinite Probation: 23%
Restitution: 22%
Time Served: 12%
Diversion Center: 8%
Detention Center: 8%
Unsupervised Probation: 7%
Suspended License: 4%
Substance Abuse Services: 3%
Electronic Monitoring: 3%
Day Reporting: 2%
Community Service: 2%
Intensive Supervision: 2%
Drug Court: 1%
First Offender Status: 1%
2010-2011 Re-Validation Study:
Proposed Methodology
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
Offenders to be Studied

FY2004
- Drug: 3,935
- Larceny: 2,577
- Fraud: 1,482

FY2005
- Drug: 4,026
- Larceny: 2,649
- Fraud: 1,632
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
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
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
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