

Re-validation of the Nonviolent Offender Risk Assessment Instrument



March 21, 2011

Review of Nonviolent Offender Risk Assessment in Virginia



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*

Empirical Study of Nonviolent Offender Recidivism

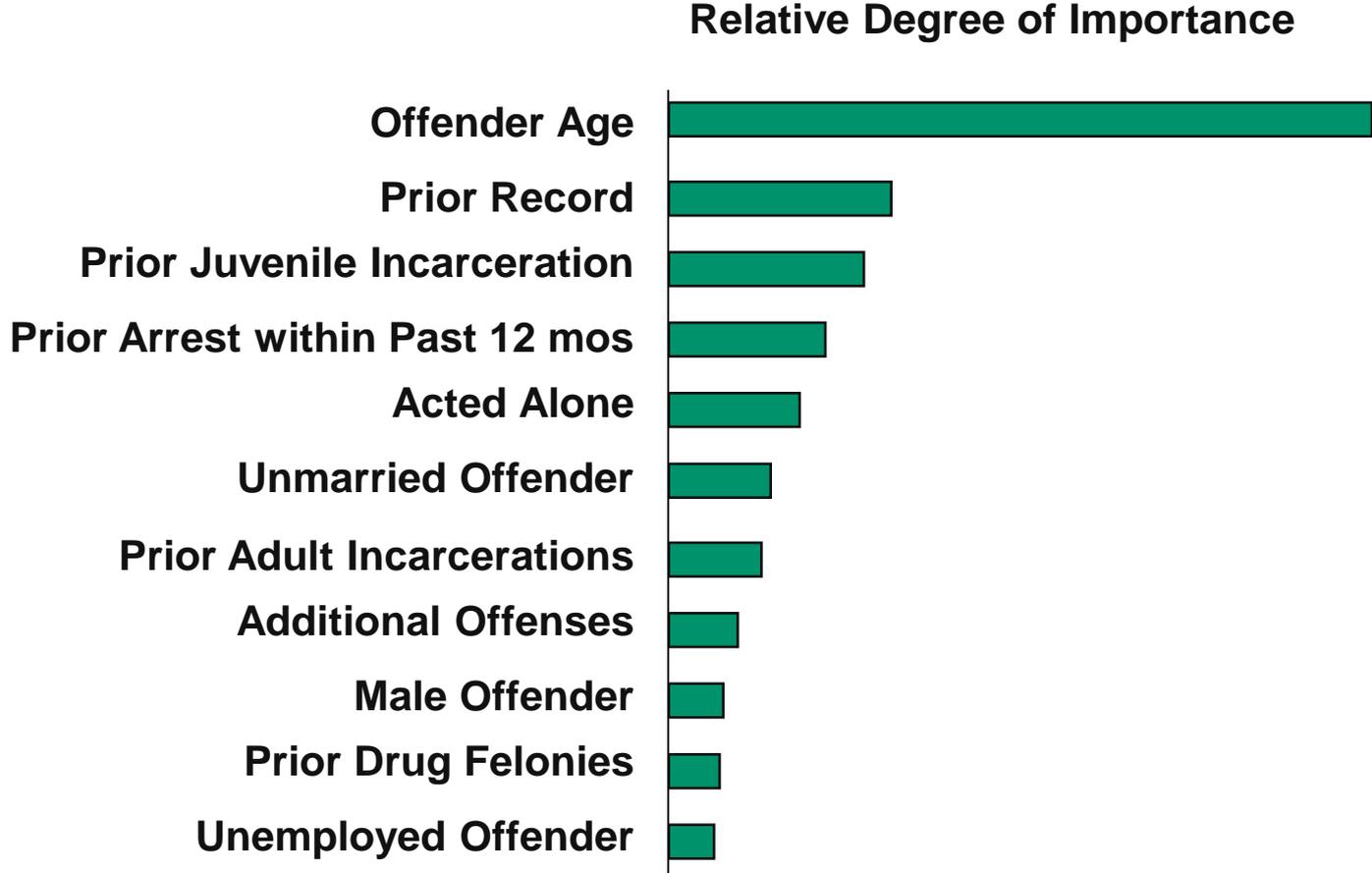
- **The Commission studied 1,500 property and drug felons released from incarceration during an 18-month period (July 1991 – December 1992)**
- **Over 200 unique factors relating to criminal record, substance abuse, education and employment history, family background, etc., were examined**
 - **Pre/Post-Sentence 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

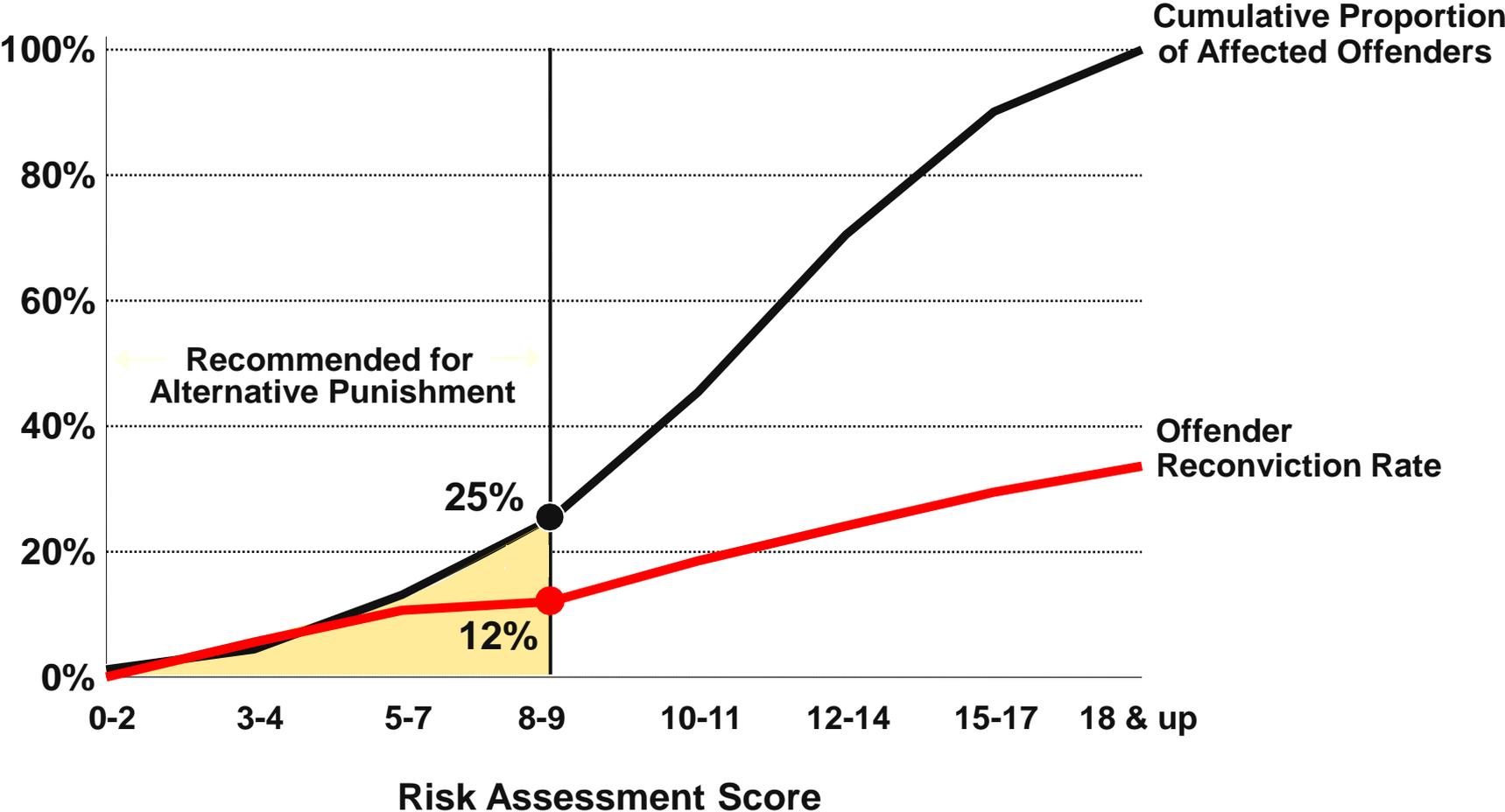
- **Pilot testing began in four circuits in December 1997**
 - **Circuit 5 (Cities of Franklin and Suffolk and counties of Southampton and Isle of Wight)**
 - **Circuit 14 (Henrico)**
 - **Circuit 19 (Fairfax)**
 - **Circuit 22 (city of Danville and counties of Franklin and Pittsylvania)**

- **Two additional circuits joined the pilot test in April 1999**
 - **Circuit 4 (Norfolk)**
 - **Circuit 7 (Newport News)**

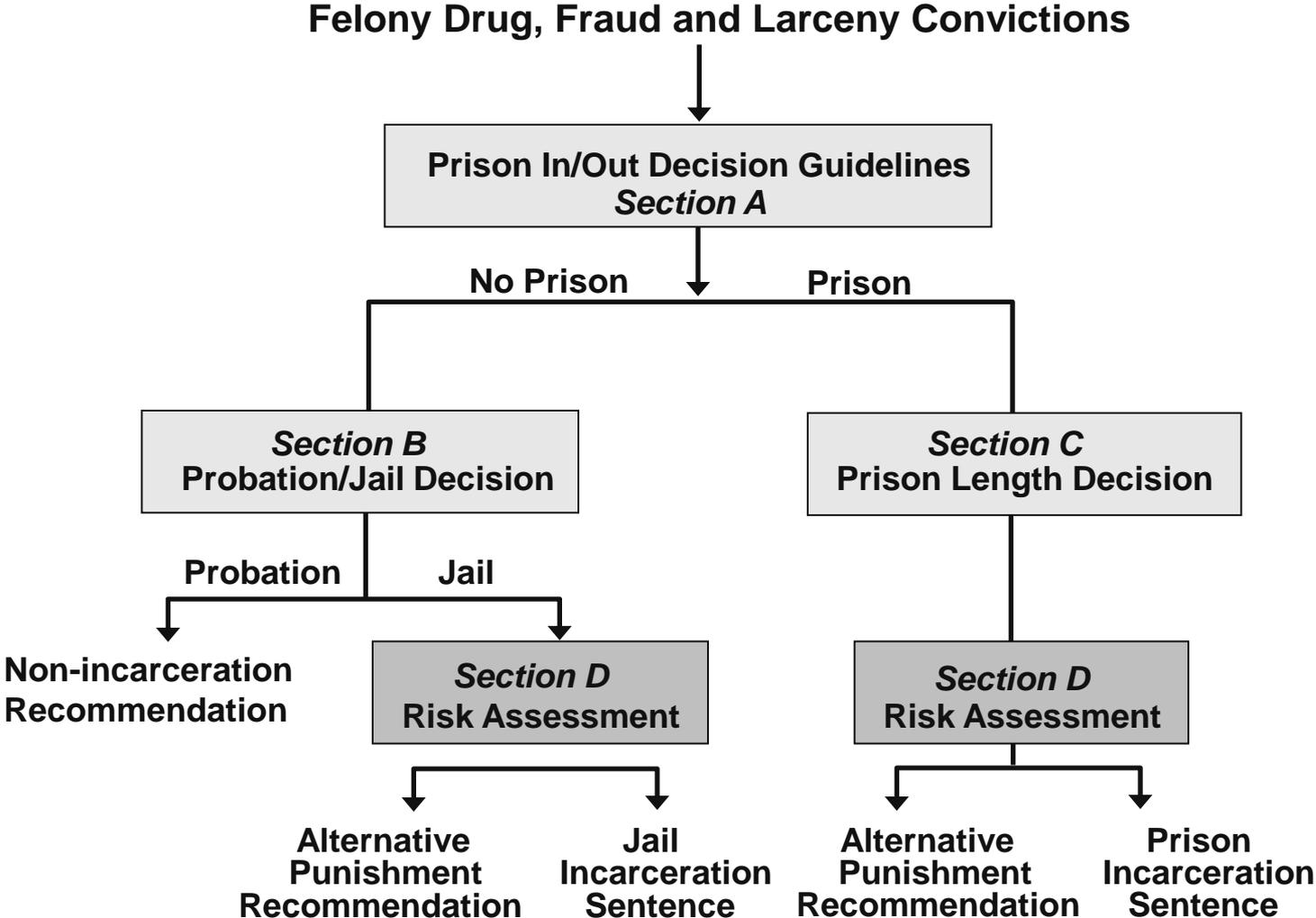
Significant Factors in Assessing Risk



Offender Reconviction Rates and Cumulative Proportion of Affected Offenders



Application of Nonviolent Offender Risk Assessment



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

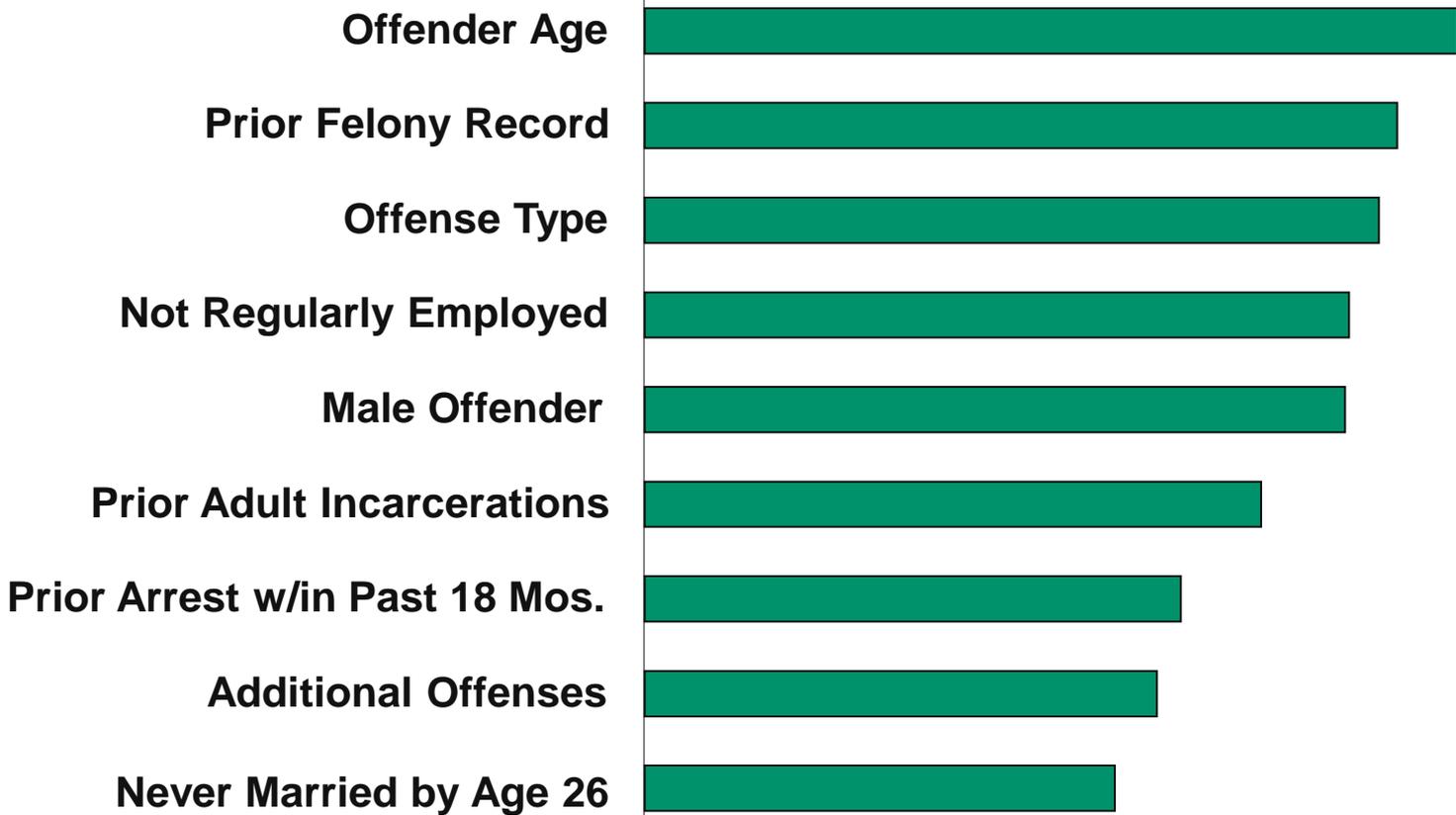
- ★ Evaluators concluded that the risk assessment instrument is an effective tool for predicting recidivism
- ★ Cost-benefit analysis suggested that reduced use of prison (363 felons diverted) and jail (192 felons diverted) saved an estimated \$8.7 million during the pilot period
 - ★ Cost of alternative 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



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

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

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 → 0

◆ Offender *Score factors A to D and enter the total score* _____

- | | | | | |
|---|----|--------------------------|---|--|
| A. Offender is a male | 8 | <input type="checkbox"/> | | |
| | | + | | |
| B. Offender's age at time of offense | | | | |
| Younger than 30 years | 13 | <input type="checkbox"/> | | |
| 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 | <input type="checkbox"/> | | |
| | | + | | |
| D. Offender age 26 or more and never married (at time of offense)..... | 6 | <input type="checkbox"/> | = | |

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 → 0

◆ 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 _____ 0

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

Drug Schedule I or II
Section D

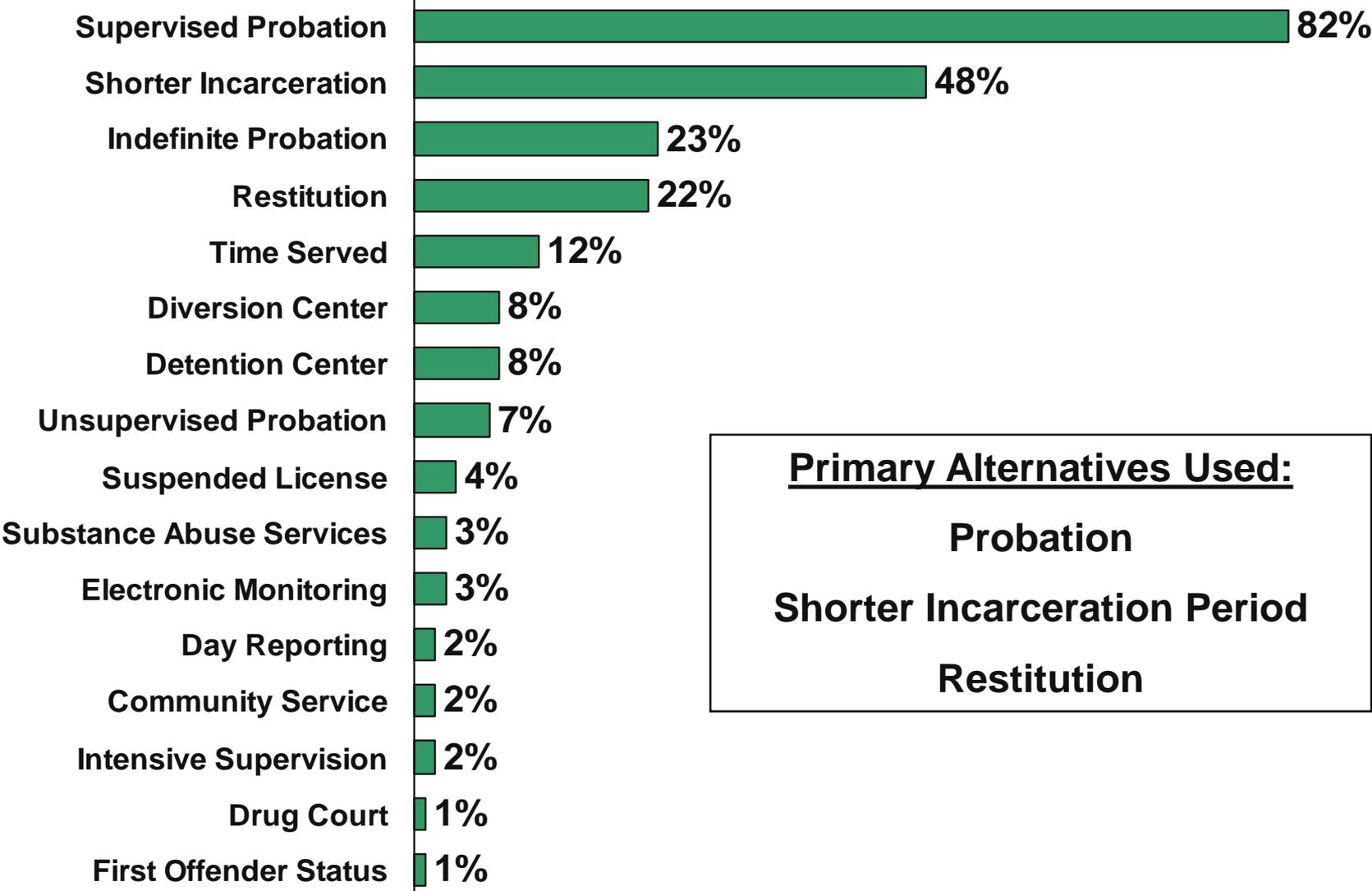
Go to **Cover Sheet** and fill out **Nonviolent Risk Assessment Recommendations**.

Risk Assessment Outcomes for Nonviolent Offenders*

	Recommended for Alternative	Not Recommended for Alternative	
2003	36%	64%	N=6,062
2004	38%	62%	N=6,141
2005	48%	52%	N=6,418
2006	49%	51%	N=6,413
2007	53%	47%	N=6,981
2008	51%	49%	N=7,060
2009	50%	50%	N=6,704
2010	50%	50%	N=6,204

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

Alternative Sanctions Utilized under Risk Assessment



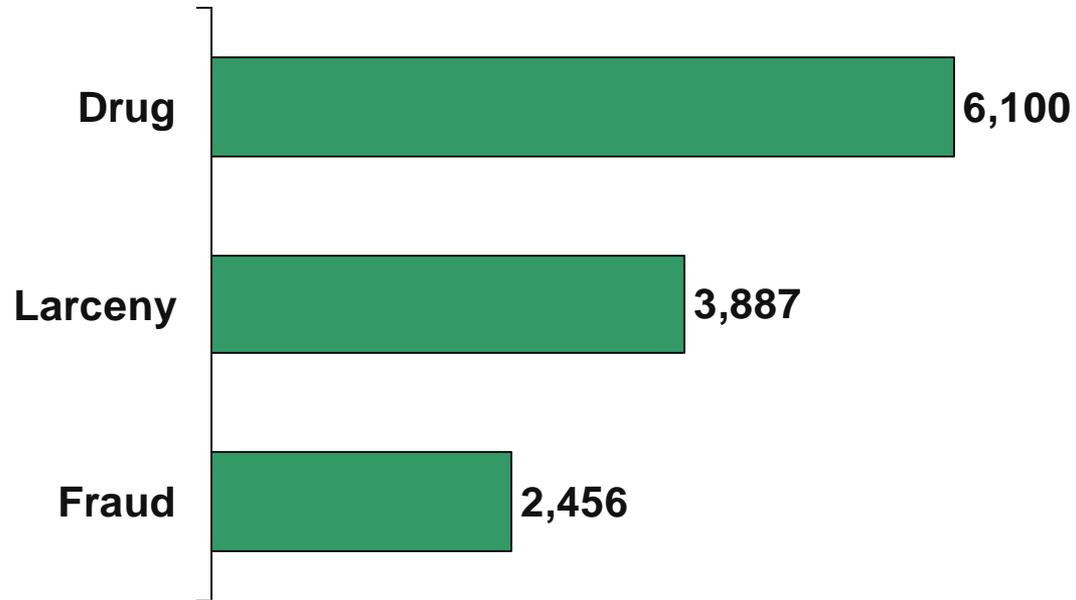
**2010-2011 Re-Validation Study:
Proposed Sampling Strategy
and Updated Work Plan**



Identification of Offenders for Study

- **Offenders have been identified from the sentencing guidelines database**
- **Selection criteria:**
 - **Felony fraud, larceny, and drug offenders**
 - **Sentenced in FY2005 and FY2006 (most recent that can be used)**
 - **Recommended for incarceration by the sentencing guidelines (jail or prison)**
 - **Meet risk assessment eligibility requirements**
 - **No worksheet errors**

Offenders Meeting Selection Criteria by Most Serious Offense



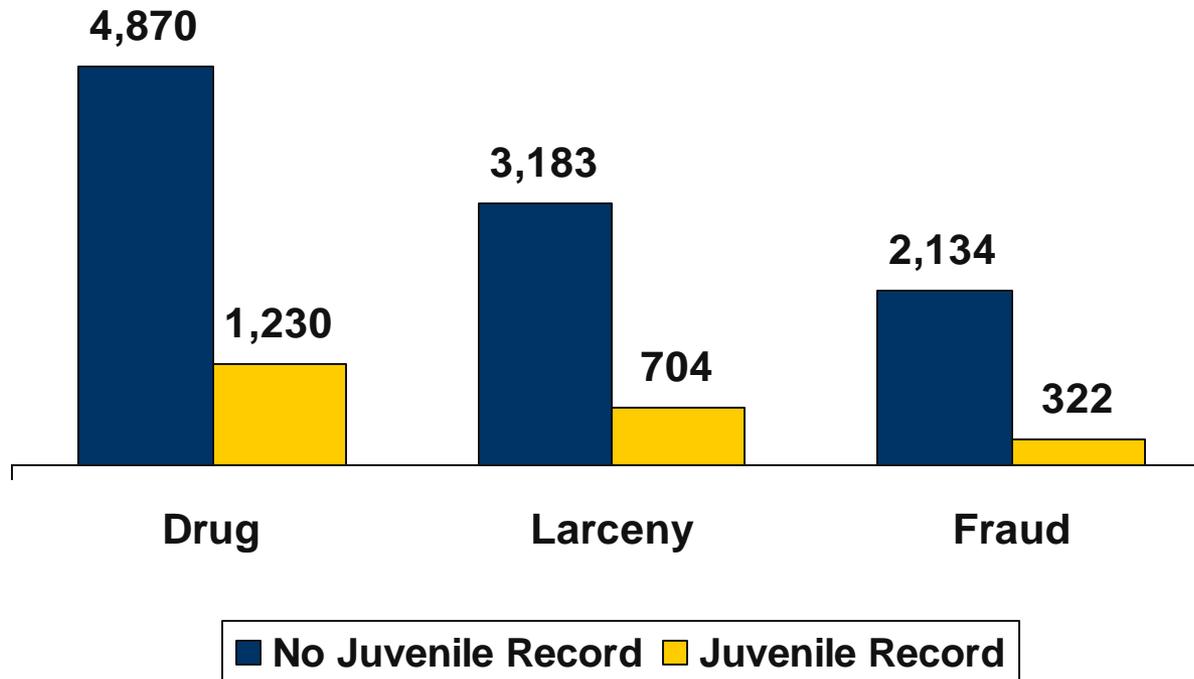
Total = 12,443

Proposed Sampling Design

- **Staff would like to draw a sample of 1,800 offenders who meet the selection criteria**

- **Instead of selecting a simple random sample, the staff suggest a stratified random sampling technique to increase the likelihood of including offenders with juvenile adjudications of delinquency**
 - **Criminological studies have shown that juvenile record and the age of first contact with the juvenile justice system are often correlated with subsequent offense behavior as an adult**

Offenders Meeting Selection Criteria by Most Serious Offense and Juvenile Record



Total = 12,443

Note: Juvenile record was identified based on the score entered for the juvenile record factor found on Section A of the sentencing guidelines.

Proposed Sampling Design

To ensure that the sample includes a sufficient number of offenders who have a juvenile record, staff would like to draw a sample as follows:

	No Juvenile Record	Juvenile Record
Drug	300	300
Larceny	300	300
Fraud	300	300
Total sample size as proposed: 1,800 offenders		

The sampled cases will then be weighted to reflect each subgroup's actual proportion in the population

Proposed Sampling Design

- **A large sample is preferred, as staff expect that some cases will be eliminated in subsequent stages**
 - **Supplemental data may reveal a prior conviction for a violent felony**
 - **Offender may still be incarcerated**
 - **Offender may have died**
 - **Available data may be insufficient to include the offender**

- **The proposed strategy is similar to the original risk assessment study completed in 1997**

Additional Data Sources

- **Pre/Post-Sentence Investigation (PSI) data**
 - **Rich detail on offender, criminal history, employment, substance abuse, etc.**
 - **Automated PSI records have been identified for roughly 65% of offenders meeting the selection criteria**
 - **For offenders without a PSI, staff will conduct file reviews at the Department of Corrections and will request information from probation offices**

- **Department of Juvenile Justice**
 - **Inquire as to possibility of getting detailed juvenile criminal history information**

Additional Data Sources

- **Department of Corrections (DOC)**
 - **Identify release dates for offenders sentenced to prison**

- **Local Inmate Data System (LIDS)**
 - **Identify release dates for offenders sentenced to jail**

- **Court Automated Information System (CAIS)**
 - **Supplement other data if needed (e.g., gender, race, offense at indictment)**

Additional Data Sources

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

Additional Data Sources

- **Recidivism activity**
 - **Federal legislation (HR 6412) was approved by Congress and signed by the President in January 2011, giving state sentencing commissions access to national criminal history reports maintained by the FBI**
 - **In-state and out-of-state records will be searched for recidivism activity**
 - **Prior record can be supplemented with additional information as well**

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**

- **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 continue, likely through May or June 2011**
- **The FBI has been contacted in order to establish the process for requesting criminal history records**
- **Analysis is planned for summer of 2011**
- **Staff expect to present the results 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**