

# JUDICIAL CONCURRENCE

*FY2010*

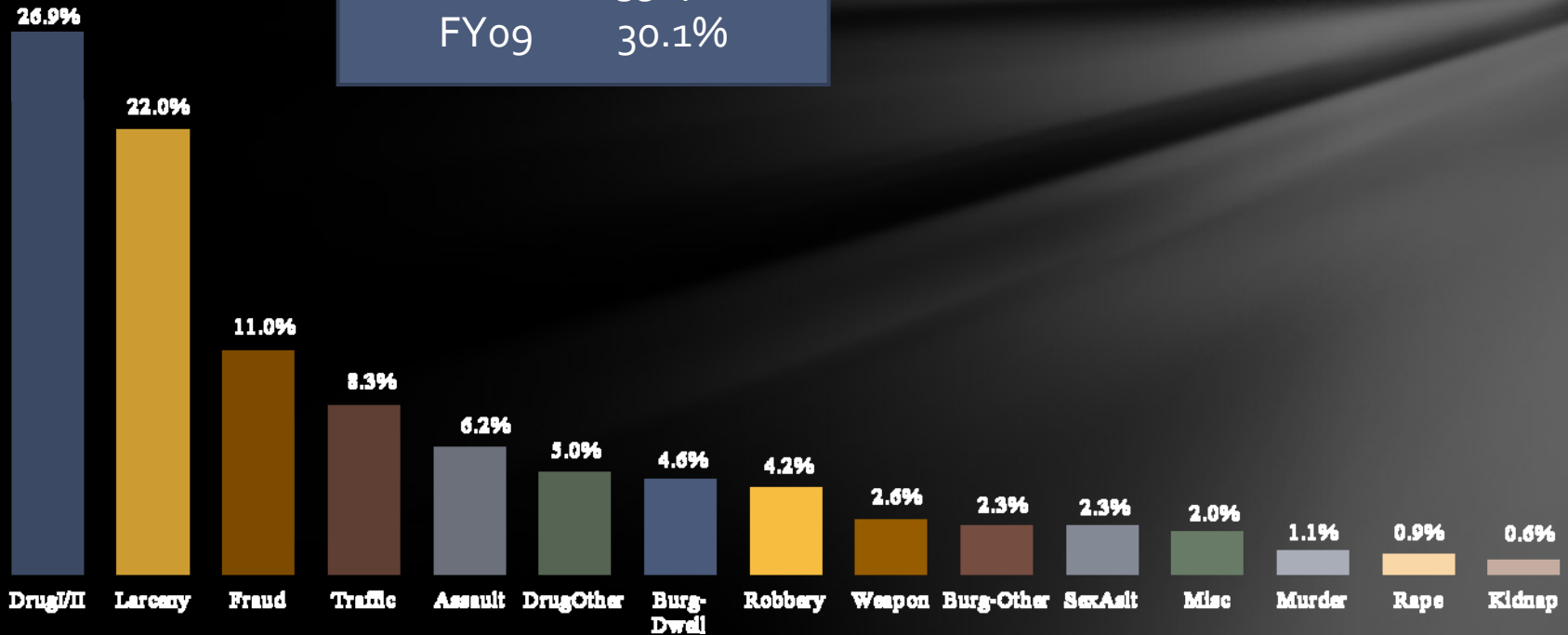
FY2010

# Guideline Worksheets Keyed as of 9/8/10

(n=23,958)

## Drug Schedule I/II Cases

FY07	36.6%
FY08	35.4%
FY09	30.1%



*FY2010*

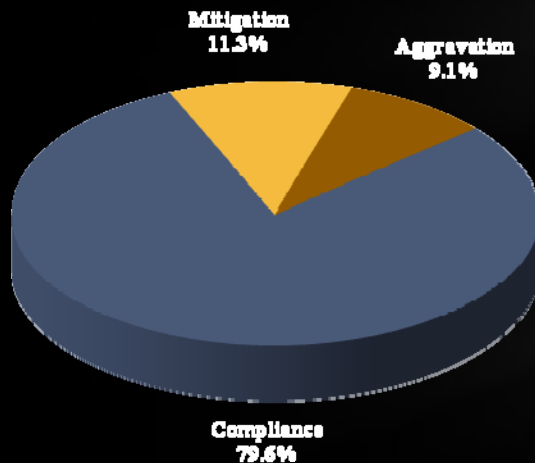
# GENERAL COMPLIANCE

# FY2010 Judicial Agreement with Guideline Recommendations

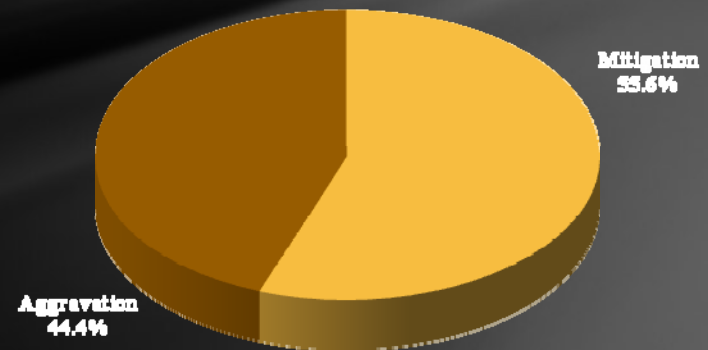
General Compliance:

The degree to which judges agree with the overall guidelines recommendation.

**Overall Compliance Rate**



**Direction of Departures**



FY2010

# Judicial Agreement with Type of Recommended Disposition

Dispositional Compliance:

The degree to which judges agree with the type of sanction recommended.

RECOMMENDED DISPOSITION	ACTUAL DISPOSITION		
	Probation/No Incarceration	Incarceration 6 months or less	Incarceration over 6 months
Probation/No Incarceration	73.5%	21.8%	4.7%
Incarceration 6 months or less	12.8%	76.8%	10.4%
Incarceration over 6 months	5.8%	8.2%	86.0%

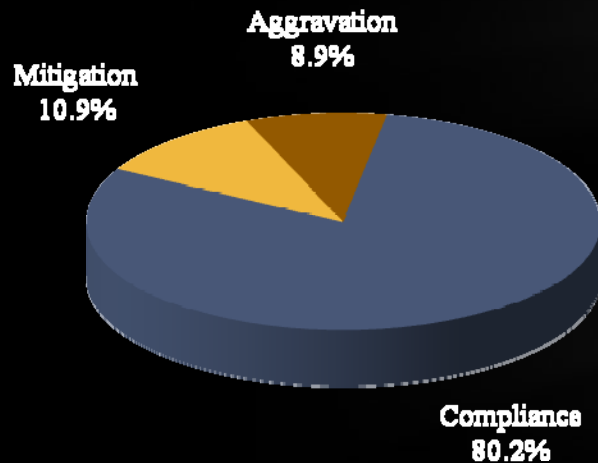
FY2010

# Judicial Agreement with Sentence Length

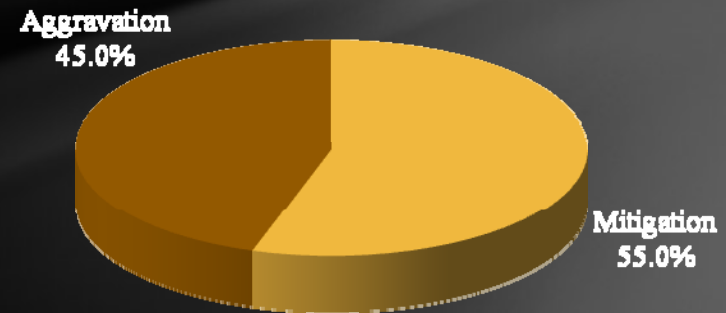
Durational Compliance:

The degree to which judges agree with the sentence length in cases in which defendants are recommended for jail/prison and receive at least one day incarceration.

Durational Compliance



Direction of Departures



*FY2010*

# DEPARTURE REASONS

FY2010

## Most Frequently Cited Departure Reasons

### MITIGATING (11.3%)

- Plea agreement
- Cooperated with authorities
- Facts of the case
- Minimal prior record
- Sentenced to alternative sanction
- Recommendation of Commonwealth
- Offender's health

### AGGRAVATING (9.1%)

- Plea agreement
- Severity/type of prior record
- Flagrancy of offense/facts of case
- Poor rehabilitation potential
- Recommendation of jury
- Number of counts in the event
- Degree of victim injury



The background of the slide features a series of light rays or beams of light that originate from the right side and fan out towards the left, creating a sense of depth and movement. The rays are in shades of gray and white, set against a dark background.

*FY2010*

# COMPLIANCE BY CIRCUIT

**FY2010****Most cases received:****-Circuit 15 (Fredericksburg)****-Circuit 19 (Fairfax)****-Circuit 13 (Richmond)**

Circuit Name	Circuit Number	Compliance	Mitigation	Aggravation	Number of Cases
Chesapeake	1	78.9%	9.4%	11.7%	940
Virginia Beach	2	81.7%	11.5%	6.8%	1149
Portsmouth	3	75.7%	12.2%	12.1%	572
Norfolk	4	78.2%	16.5%	5.3%	1185
Suffolk Area	5	79.0%	9.0%	12.0%	568
Sussex Area	6	80.7%	9.3%	10.0%	450
Newport News	7	82.1%	8.3%	9.6%	687
Hampton	8	80.6%	14.1%	5.3%	454
Williamsburg Area	9	76.0%	9.8%	14.2%	562
South Boston Area	10	78.0%	16.8%	5.2%	578
Petersburg Area	11	81.7%	9.3%	9.0%	322
Chesterfield Area	12	76.8%	9.3%	13.9%	1033
Richmond City	13	74.7%	17.6%	7.8%	1200
Henrico	14	80.7%	10.3%	8.9%	1054
Fredericksburg Area	15	76.4%	9.4%	14.1%	1528
Charlottesville Area	16	72.7%	14.7%	12.5%	719
Arlington Area	17	79.4%	6.6%	13.9%	467
Alexandria	18	81.0%	11.2%	7.8%	268
Fairfax	19	79.6%	11.3%	9.1%	1291
Loudoun Area	20	86.1%	5.7%	8.1%	577
Martinsville Area	21	77.4%	16.1%	6.5%	323
Danville Area	22	73.1%	8.8%	18.2%	628
Roanoke Area	23	74.4%	17.9%	7.7%	957
Lynchburg Area	24	76.0%	17.2%	6.8%	917
Staunton Area	25	78.6%	14.1%	7.3%	863
Harrisonburg Area	26	82.1%	11.7%	6.2%	1192
Radford Area	27	90.7%	6.2%	3.1%	1186
Bristol Area	28	89.1%	4.8%	6.1%	586
Buchanan Area	29	79.1%	5.6%	15.3%	628
Lee Area	30	80.2%	10.4%	9.5%	328
Prince William Area	31	89.0%	7.0%	4.0%	728
	Missing	82.4%	5.9%	11.8%	17

# **FY2010**

## Most cases received:

-Circuit 15 (Fredericksburg)

-Circuit 19 (Fairfax)

-Circuit 13 (Richmond)

## Highest compliance:

-Circuit 27 (Radford) 90.7%

-Circuit 28 (Bristol) 89.1%

## Lowest compliance:

-Circuit 16 (Charlottesville) 72.7%

Circuit Name	Circuit Number	Compliance	Mitigation	Aggravation	Number of Cases
Chesapeake	1	78.9%	9.4%	11.7%	940
Virginia Beach	2	81.7%	11.5%	6.8%	1149
Portsmouth	3	75.7%	12.2%	12.1%	572
Norfolk	4	78.2%	16.5%	5.3%	1185
Suffolk Area	5	79.0%	9.0%	12.0%	568
Sussex Area	6	80.7%	9.3%	10.0%	450
Newport News	7	82.1%	8.3%	9.6%	687
Hampton	8	80.6%	14.1%	5.3%	454
Williamsburg Area	9	76.0%	9.8%	14.2%	562
South Boston Area	10	78.0%	16.8%	5.2%	578
Petersburg Area	11	81.7%	9.3%	9.0%	322
Chesterfield Area	12	76.8%	9.3%	13.9%	1033
Richmond City	13	74.7%	17.6%	7.8%	1200
Henrico	14	80.7%	10.3%	8.9%	1054
Fredericksburg Area	15	76.4%	9.4%	14.1%	1528
Charlottesville Area	16	72.7%	14.7%	12.5%	719
Arlington Area	17	79.4%	6.6%	13.9%	467
Alexandria	18	81.0%	11.2%	7.8%	268
Fairfax	19	79.6%	11.3%	9.1%	1291
Loudoun Area	20	86.1%	5.7%	8.1%	577
Martinsville Area	21	77.4%	16.1%	6.5%	323
Danville Area	22	73.1%	8.8%	18.2%	628
Roanoke Area	23	74.4%	17.9%	7.7%	957
Lynchburg Area	24	76.0%	17.2%	6.8%	917
Staunton Area	25	78.6%	14.1%	7.3%	863
Harrisonburg Area	26	82.1%	11.7%	6.2%	1192
Radford Area	27	90.7%	6.2%	3.1%	1186
Bristol Area	28	89.1%	4.8%	6.1%	586
Buchanan Area	29	79.1%	5.6%	15.3%	628
Lee Area	30	80.2%	10.4%	9.5%	328
Prince William Area	31	89.0%	7.0%	4.0%	728
	Missing	82.4%	5.9%	11.8%	17

# **FY2010**

## Most cases received:

-Circuit 15 (Fredericksburg)

-Circuit 19 (Fairfax)

-Circuit 13 (Richmond)

## Highest compliance:

-Circuit 27 (Radford) 90.7%

-Circuit 28 (Bristol) 89.1%

## Lowest compliance:

-Circuit 16 (Charlottesville) 72.7%

## Highest aggravation:

-Circuit 22 (Danville) 18.2%

## Highest mitigation:

-Circuit 23 (Roanoke) 17.9%

Circuit Name	Circuit Number	Compliance	Mitigation	Aggravation	Number of Cases
Chesapeake	1	78.9%	9.4%	11.7%	940
Virginia Beach	2	81.7%	11.5%	6.8%	1149
Portsmouth	3	75.7%	12.2%	12.1%	572
Norfolk	4	78.2%	16.5%	5.3%	1185
Suffolk Area	5	79.0%	9.0%	12.0%	568
Sussex Area	6	80.7%	9.3%	10.0%	450
Newport News	7	82.1%	8.3%	9.6%	687
Hampton	8	80.6%	14.1%	5.3%	454
Williamsburg Area	9	76.0%	9.8%	14.2%	562
South Boston Area	10	78.0%	16.8%	5.2%	578
Petersburg Area	11	81.7%	9.3%	9.0%	322
Chesterfield Area	12	76.8%	9.3%	13.9%	1033
Richmond City	13	74.7%	17.6%	7.8%	1200
Henrico	14	80.7%	10.3%	8.9%	1054
Fredericksburg Area	15	76.4%	9.4%	14.1%	1528
Charlottesville Area	16	72.7%	14.7%	12.5%	719
Arlington Area	17	79.4%	6.6%	13.9%	467
Alexandria	18	81.0%	11.2%	7.8%	268
Fairfax	19	79.6%	11.3%	9.1%	1291
Loudoun Area	20	86.1%	5.7%	8.1%	577
Martinsville Area	21	77.4%	16.1%	6.5%	323
Danville Area	22	73.1%	8.8%	18.2%	628
Roanoke Area	23	74.4%	17.9%	7.7%	957
Lynchburg Area	24	76.0%	17.2%	6.8%	917
Staunton Area	25	78.6%	14.1%	7.3%	863
Harrisonburg Area	26	82.1%	11.7%	6.2%	1192
Radford Area	27	90.7%	6.2%	3.1%	1186
Bristol Area	28	89.1%	4.8%	6.1%	586
Buchanan Area	29	79.1%	5.6%	15.3%	628
Lee Area	30	80.2%	10.4%	9.5%	328
Prince William Area	31	89.0%	7.0%	4.0%	728
	Missing	82.4%	5.9%	11.8%	17

The top half of the image features a dark background with several bright, white, curved light rays emanating from the right side, creating a sense of motion and depth.

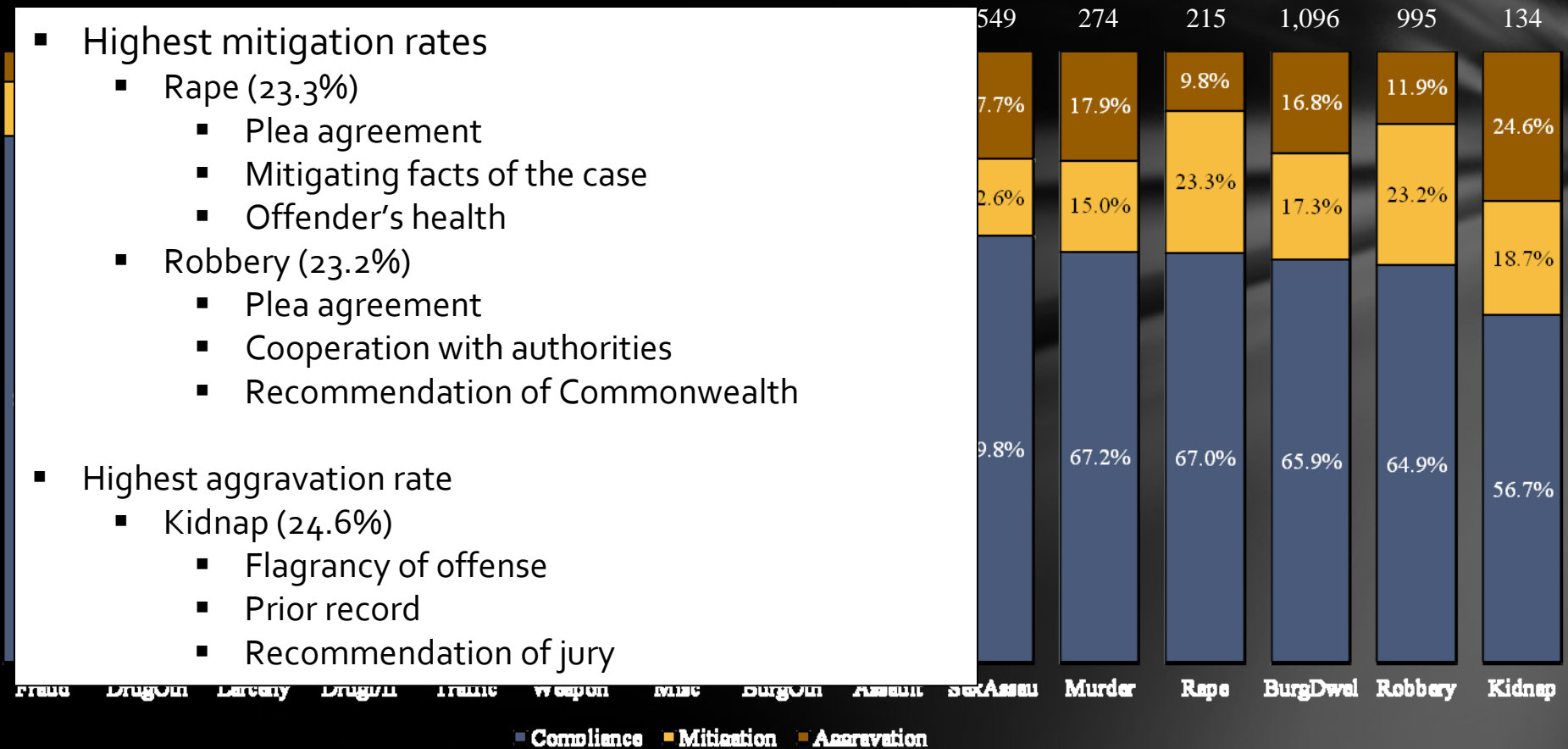
*FY2010*

# COMPLIANCE BY TYPE OF OFFENSE

FY2010

# Compliance by Type of Offense

- Highest mitigation rates
  - Rape (23.3%)
    - Plea agreement
    - Mitigating facts of the case
    - Offender's health
  - Robbery (23.2%)
    - Plea agreement
    - Cooperation with authorities
    - Recommendation of Commonwealth
  
- Highest aggravation rate
  - Kidnap (24.6%)
    - Flagrancy of offense
    - Prior record
    - Recommendation of jury

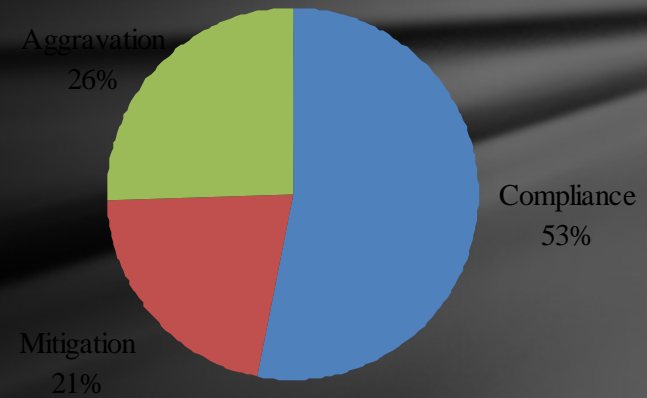
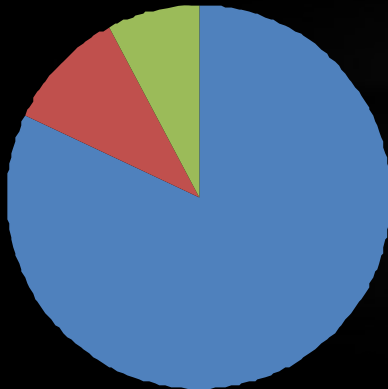


*FY2010*

# ADDITION TO GUIDELINES

# Vandalism of Property \$1,000 or more §18.2-137(B,ii) ~ VAN-2956-F6

Projected Compliance  
from FY08 Annual Report



Actual Disposition	Percentage	Median Sentence
Probation/No Incarceration	39.7%	--
Jail (up to 12 months)	47.8%	5.5 months
Prison (1 year or more)	11.5%	1 year 6 months



The top half of the image features an abstract background of light rays or lens flares emanating from the right side, set against a dark, almost black background. The rays are in shades of gray and white, creating a sense of depth and movement.

*FY2010*

# NONVIOLENT RISK ASSESSMENT

# NONVIOLENT RISK ASSESSMENT

## 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 ..... 2

### ◆ 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  | □ |  |

= Enter A to D Total   

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

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.

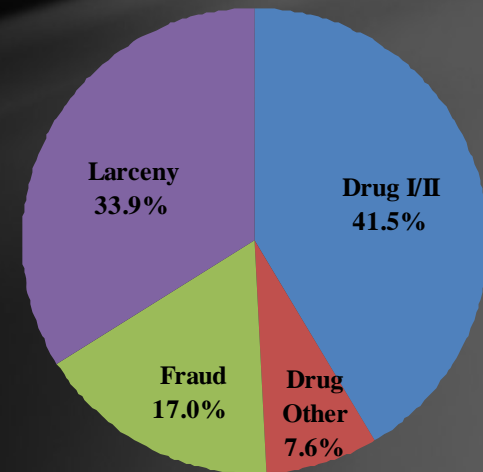
Go to Cover Sheet and fill out Nonviolent Risk Assessment Recommendations.



*FY2010*

## Nonviolent Risk Assessment

- Drug, Fraud, & Larceny
- Purpose
  - To recommend alternative sanctions for offenders who are statistically less likely to recidivate
- Type of alternative at discretion of judge



## ◆ SENTENCING GUIDELINES RECOMMENDATIONS

### Section B

- Probation / No Incarceration
- Incarceration 1 Day to 3 Months
- Incarceration 1 Day to 6 Months
- Incarceration 3 to 6 Months
- Probation / No Incarceration or Incarceration to 6 Months

Mandatory Minimum \_\_\_\_\_

### Section C

- Life Sentence
- Incarceration *(Enter Midpoint and Range Below)*

Range Midpoint

Years

Months

Sentence Range

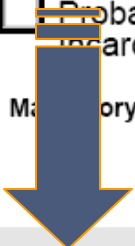
Months

TO

Years

Months

- Recommendation Adjusted for **Mandatory Minimum**



## ◆ NONVIOLENT RISK ASSESSMENT Section D of Drug, Fraud, and Larceny Worksheets

- Recommended for Alternative Punishment
- NOT Recommended for Alternative Punishment

Not Applicable

# FY2010

## Nonviolent Offenders Eligible for Risk Assessment

Offense	Mitigation	Compliance		Aggravation	Number of Cases
		Traditional	Alternative		
Drug	7%	61%	24%	8%	2,946
			85%		
Fraud	7%	52%	36%	4%	1,171
			88%		
Larceny	10%	75%	9%	6%	2,069
			84%		
All Risk Cases	8%	64%	85%		6,186

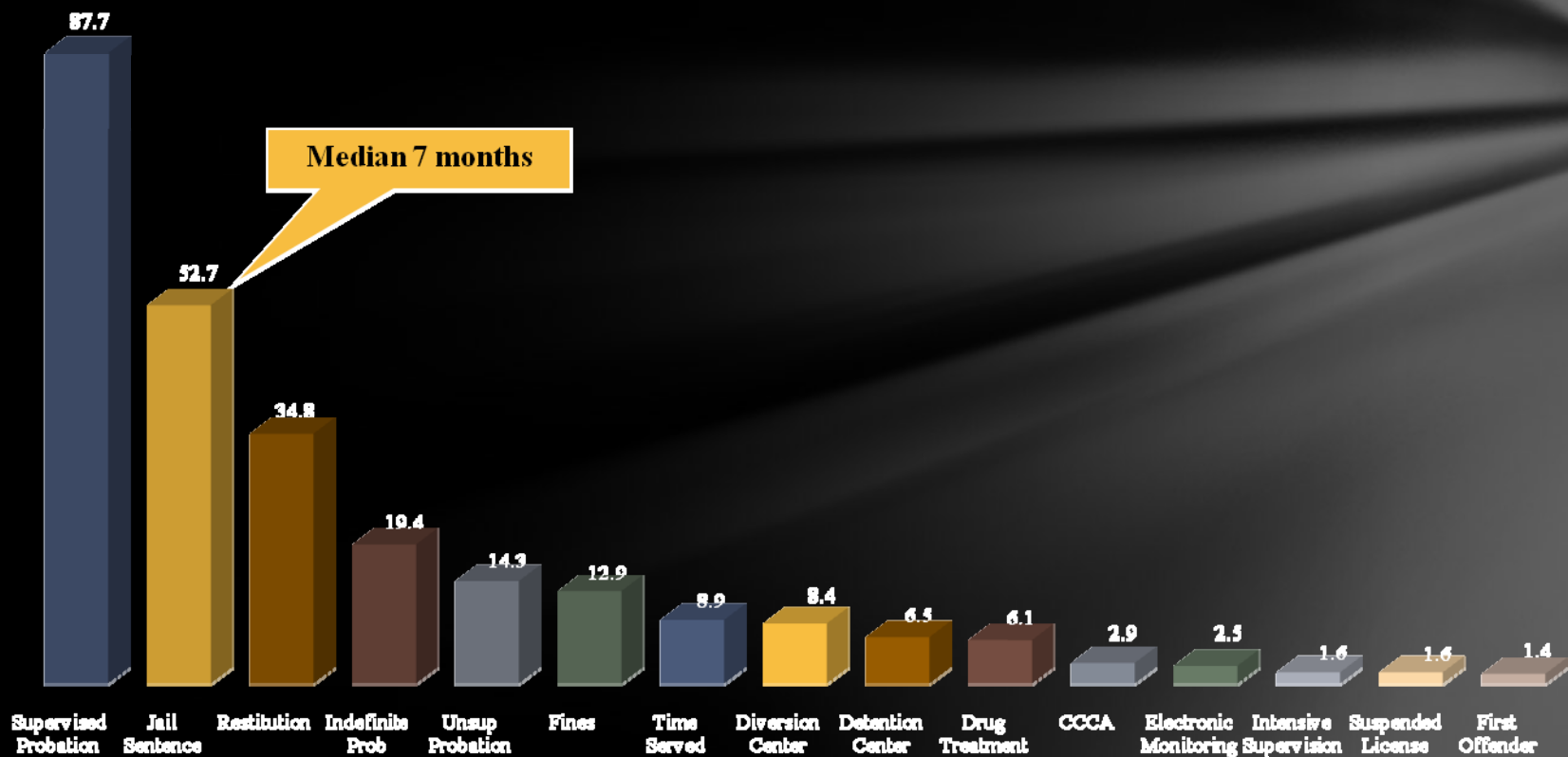
Eligible for Assessment

- Recommended for incarceration
- No violent prior record
- No current distribution of >=1 oz cocaine
- No current mandatory minimum

FY2010

# Nonviolent Offenders Eligible for Risk Assessment

Most Frequent Sanctions Imposed in Risk Cases Recommended for and Receiving Alternatives  
(n=1,333)



*FY2010*

**SEX OFFENDER  
RISK ASSESSMENT**

# SEX OFFENDER RISK ASSESSMENT

## Other Sexual Assault ~~→~~ Section A (Part I) Offender Name: \_\_\_\_\_

### Offenses Not Applicable for Risk Assessment:

Risk Assessment is **NOT APPLICABLE** if the primary offense is adultery, bestiality, bigamy, non-forcible sodomy, or prostitution.  
(Go to Section A (Part II))

◆ **Offender's Age at Time of Offense** \_\_\_\_\_

Younger than 35 years .....	12	
35 to 46 years .....	4	
Older than 46 years .....	0	

◆ **Less than 9th Grade Education** \_\_\_\_\_ If YES, add 4 → 0

◆ **Not Regularly Employed** \_\_\_\_\_ If YES, add 5 → 0

◆ **Offender's Relationship with Victim** \_\_\_\_\_

Victim Under Age 10	Relative .....	0	
	Known to victim (not relative or step-parent) .....	4	
	Stranger .....	4	
	Step-parent .....	9	
Victim Age 10 or more	Relative .....	2	0
	Known to victim (not relative or step-parent) .....	3	
	Stranger .....	8	
	Step-parent .....	2	

◆ **Aggravated Sexual Battery (Primary Offense §18.2-67.3)** \_\_\_\_\_

No penetration or attempted penetration of victim .....	0	0
Penetration or attempted penetration of victim .....	4	

◆ **Location of Offense** \_\_\_\_\_

Place of employment .....	0	0
Shared victim/offender residence .....	3	
Outdoors .....	3	
Motor Vehicle .....	4	
Victim's residence (not offender's) .....	5	
Offender's residence or other residence .....	9	
Location other than listed .....	3	

◆ **Prior Adult Felony/Misdemeanor Arrests for Crimes Against Person** \_\_\_\_\_

Number: 0 Felonies	1 - 3 Misdemeanors .....	1	
	4+ Misdemeanors .....	8	
1 Felony	0 - 2 Misdemeanors .....	5	
	3+ Misdemeanors .....	8	
2+ Felonies	0 - 3 Misdemeanors .....	8	
	4+ Misdemeanors .....	15	

◆ **Prior Incarcerations/Commitments** \_\_\_\_\_ If YES, add 3 → 0

◆ **Prior Treatment** \_\_\_\_\_

Prior mental health commitment .....	0	0
Prior mental health treatment .....	2	
Prior alcohol or drug treatment .....	3	
No prior treatment .....	4	

**Risk Score** \_\_\_\_\_ →  

- Risk Level (Risk Score)**
- 44 or more ..... Level 1
  - 34 - 43 ..... Level 2
  - 28 - 33 ..... Level 3
  - up to 27 ..... No Adjustment

Go to Section A (Part II)



*FY2010*

# Sex Offender Risk Assessment

- Rape & Other Sexual Assault Guidelines
- Purpose:
  - To extend the upper end of the guidelines recommendation for sex offenders who are statistically more likely to recidivate
- Enhancements
  - Level 1
    - 300% Increase in upper end of guidelines range
  - Level 2
    - 100% Increase in upper end of guidelines range
  - Level 3
    - 50% Increase in upper end of guidelines range

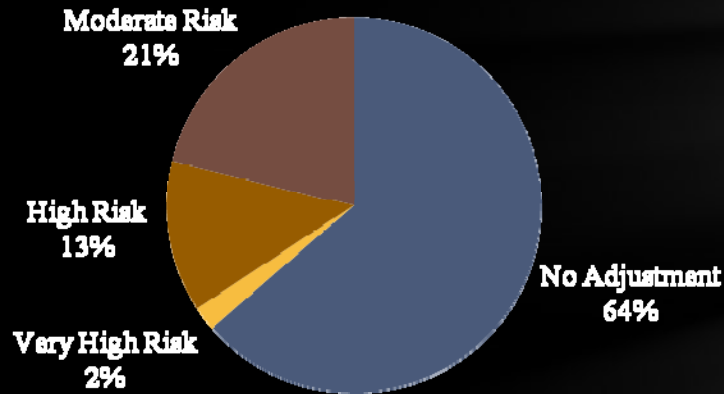
❖ Other Sexual Assault • Section C Recommendation Table

Score	Sentence Range Midpoint	Low	High	Level 3 High	Level 2 High	Level 1 High
up to 7	0 yr. 7 mo.	0 yr. 7 mo.	1 yr. 2 mo.	1 yr. 9 mo.	2 yr. 4 mo.	4 yr. 8 mo.
8	0 yr. 8 mo.	0 yr. 7 mo.	1 yr. 3 mo.	1 yr. 11 mo.	2 yr. 6 mo.	5 yr. 0 mo.
9	0 yr. 9 mo.	0 yr. 7 mo.	1 yr. 4 mo.	2 yr. 0 mo.	2 yr. 8 mo.	5 yr. 4 mo.
10	0 yr. 10 mo.	0 yr. 7 mo.	1 yr. 4 mo.	2 yr. 0 mo.	2 yr. 8 mo.	5 yr. 4 mo.
11	0 yr. 11 mo.	0 yr. 7 mo.	1 yr. 5 mo.	2 yr. 2 mo.	2 yr. 10 mo.	5 yr. 8 mo.
12	1 yr. 0 mo.	0 yr. 7 mo.	1 yr. 6 mo.	2 yr. 3 mo.	3 yr. 0 mo.	6 yr. 0 mo.
13	1 yr. 1 mo.	0 yr. 7 mo.	1 yr. 8 mo.	2 yr. 6 mo.	3 yr. 4 mo.	6 yr. 8 mo.
14	1 yr. 2 mo.	0 yr. 7 mo.	1 yr. 10 mo.	2 yr. 9 mo.	3 yr. 8 mo.	7 yr. 4 mo.
15	1 yr. 3 mo.	0 yr. 7 mo.	2 yr. 0 mo.	3 yr. 0 mo.	4 yr. 0 mo.	8 yr. 0 mo.
16	1 yr. 4 mo.	0 yr. 7 mo.	2 yr. 2 mo.	<b>Level 3</b> <b>50%</b>	<b>Level 2</b> <b>100%</b>	<b>Level 1</b> <b>300%</b>
17	1 yr. 5 mo.	0 yr. 7 mo.	2 yr. 4 mo.			
18	1 yr. 6 mo.	0 yr. 8 mo.	2 yr. 6 mo.			
19	1 yr. 7 mo.	0 yr. 9 mo.	2 yr. 8 mo.			
20	1 yr. 8 mo.	0 yr. 9 mo.	2 yr. 9 mo.	4 yr. 2 mo.	5 yr. 6 mo.	11 yr. 0 mo.
21	1 yr. 9 mo.	0 yr. 10 mo.	2 yr. 10 mo.	4 yr. 3 mo.	5 yr. 8 mo.	11 yr. 4 mo.
22	1 yr. 10 mo.	0 yr. 10 mo.	2 yr. 11 mo.	4 yr. 5 mo.	5 yr. 10 mo.	11 yr. 8 mo.
23	1 yr. 11 mo.	0 yr. 11 mo.	3 yr. 0 mo.	4 yr. 6 mo.	6 yr. 0 mo.	12 yr. 0 mo.
24	2 yr. 0 mo.	1 yr. 0 mo.	3 yr. 2 mo.	4 yr. 9 mo.	6 yr. 4 mo.	12 yr. 8 mo.
25	2 yr. 1 mo.	1 yr. 1 mo.	3 yr. 3 mo.	4 yr. 11 mo.	6 yr. 6 mo.	13 yr. 0 mo.
26	2 yr. 2 mo.	1 yr. 1 mo.	3 yr. 5 mo.	5 yr. 2 mo.	6 yr. 10 mo.	13 yr. 8 mo.
27	2 yr. 3 mo.	1 yr. 2 mo.	3 yr. 6 mo.	5 yr. 3 mo.	7 yr. 0 mo.	14 yr. 0 mo.
28	2 yr. 4 mo.	1 yr. 3 mo.	3 yr. 8 mo.	5 yr. 6 mo.	7 yr. 4 mo.	14 yr. 8 mo.
29	2 yr. 5 mo.	1 yr. 4 mo.	3 yr. 9 mo.	5 yr. 8 mo.	7 yr. 6 mo.	15 yr. 0 mo.
30	2 yr. 6 mo.	1 yr. 5 mo.	3 yr. 11 mo.	5 yr. 11 mo.	7 yr. 10 mo.	15 yr. 8 mo.
31	2 yr. 7 mo.	1 yr. 6 mo.	4 yr. 1 mo.	6 yr. 2 mo.	8 yr. 2 mo.	16 yr. 4 mo.

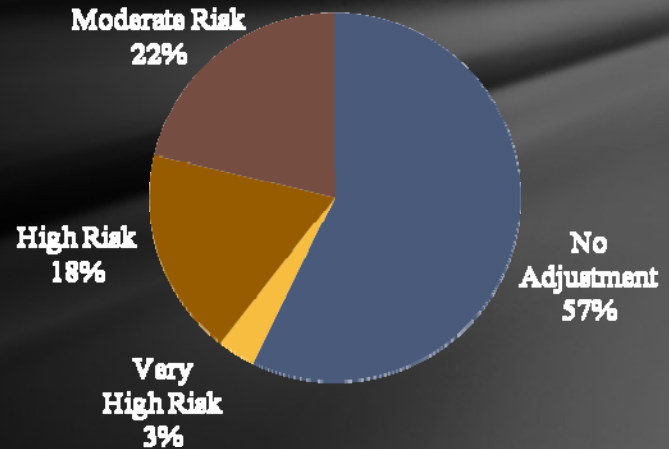
FY2010

# Sex Offender Risk Assessment

**Other Sexual Assault Risk Levels  
(n=432)**



**Rape Risk Levels  
(n=215)**



*FY2010*

# Compliance Rates by Risk Level for Rape Offenders (n=215)

Risk Level	Mitigation	Compliance		Aggravation	Number of Cases
		Traditional	Adjusted		
Very High Risk	43%	14%	57% 43%	0%	7
High Risk	26%	36%	69% 33%	5%	39
Moderate Risk	20%	48%	70% 22%	10%	46
No Level	23%	66%	---	11%	123

*FY2010*

# Compliance Rates by Risk Level for Rape Offenders (n=215)

Risk Level	Mitigation	Compliance		Aggravation	Number of Cases
		Traditional	Adjusted		
Very High Risk	43%	14%	57%	43%	7
High Risk	26%	36%	69%	33%	39
Moderate Risk	20%	48%	70%	22%	46
No Level	23%	66%	---	11%	123

FY2010

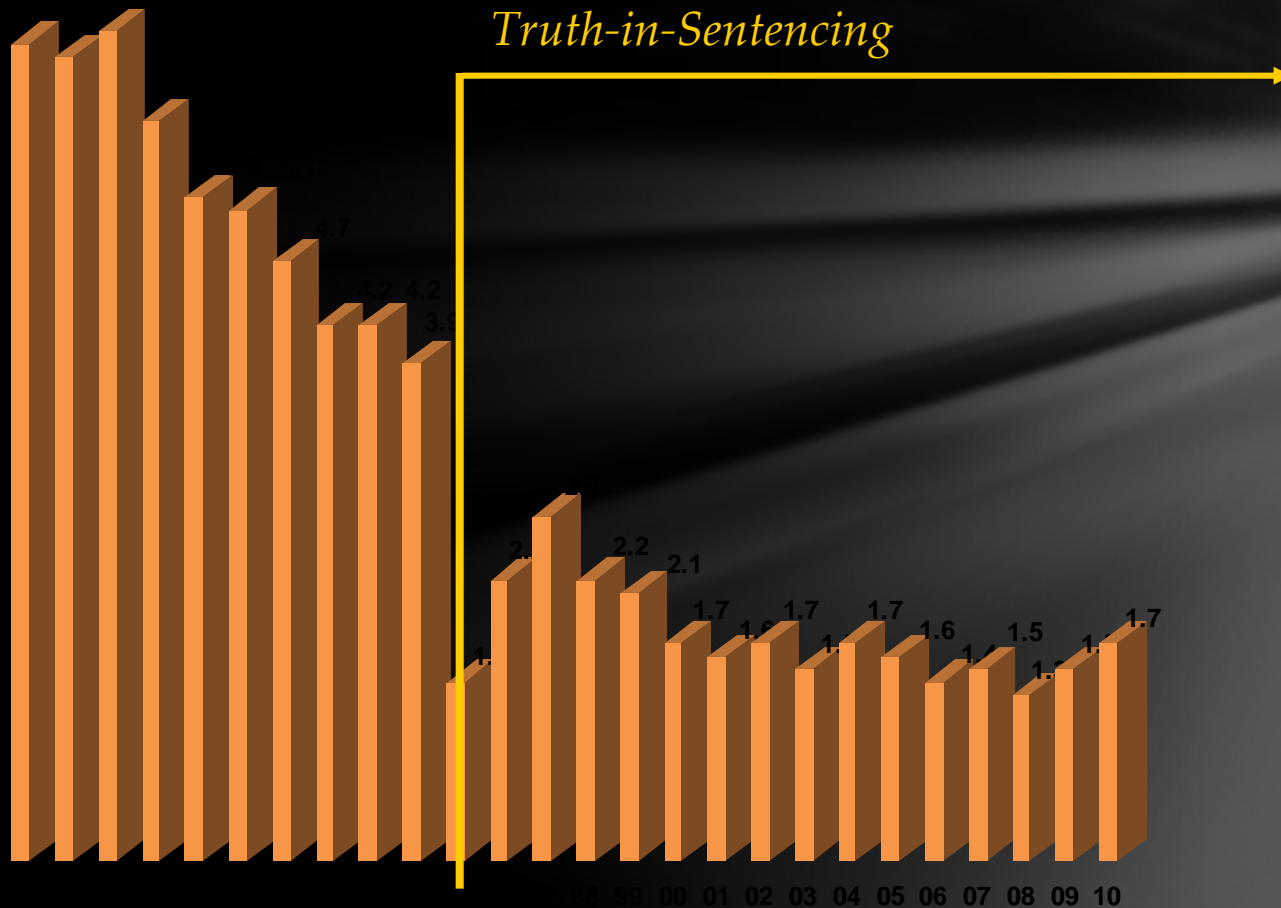
# Compliance Rates by Risk Level for Other Sexual Assault Offenders (n=432)

Risk Level	Mitigation	Compliance		Aggravation	Number of Cases
		Traditional	Adjusted		
Very High Risk	22%	78%	78%	0%	9
High Risk	12%	65%	81%	7%	57
Moderate Risk	15%	72%	84%	1%	91
No Level	10%	66%	---	24%	275

*FY2010*

# JURY SENTENCING

# FY86 – FY10 Jury Sentencing Parole vs. Truth-in-Sentencing





FY2010

# Jury vs. Non-Jury Sentencing

