

2 Risk Assessment Basics: The Virginia Model

Who is eligible for risk assessment?

The risk assessment instrument is designed to identify offenders likely to present the lowest risk to public safety. Judges are asked to view the risk profile as an additional source of information during sentencing.

Enabling legislation and direction from the Virginia Criminal Sentencing Commission (VCSC) provided the criteria for determining which offenders are eligible for risk assessment. The legislation, which called for diverting 25 percent of property and drug offenders to alternative sanctions, was ambiguous, as more than 25 percent of such offenders already receive sentences, such as probation, that do not involve incarceration. The VCSC thus interpreted the legislation to mean diverting *25 percent of property and drug offenders who would otherwise be incarcerated* to alternative sanctions. The legislation also mandated the VCSC develop an empirically based risk assessment instrument to identify offenders with the lowest risk to public safety. Legislators specified that certain types of offenders, namely those with a past or present conviction for a violent felony, be excluded from consideration for diversion.⁴

The VCSC made three further decisions that affect eligibility for risk assessment. First, the legislation called for redirecting felons from *prison* to alternative punishment programs. The VCSC decided to focus on diversion from *incarceration*. Therefore, the pool of eligible felons was expanded to include all offenders recommended for incarceration, including both prison and jail. Second, the Commission decided to exclude drug offenders convicted of selling an ounce or more of cocaine. Third, eligibility for risk assessment was restricted to three types of offenses: drug, fraud, and larceny. Given that many drug, fraud, and larceny offenders, especially first timers, would receive probation, risk assessment targeted only those offenders recommended for incarceration.

Risk assessment eligibility is thus restricted to drug, fraud, and larceny offenders of intermediate seriousness. The offender's current conviction (perhaps in combination with prior history) must be serious enough to warrant a recommendation of incarceration, so few will be first time offenders. On the other hand, their current offenses and/or prior history cannot involve any violent crimes, nor can their current offense involve the sale of an ounce or more of

⁴ The set of felony crimes excluded from consideration for risk assessment is specified in (i) subdivision 1, 2, 3 of subsection A of 17-237 and (ii) subsection C of 17-237 of the Code of Virginia.

cocaine. An offender is deemed diverted if the guidelines recommend *prison* and the judge imposes a sentence of jail, alternative punishment, or probation, or the guidelines recommend *jail* and the judge imposes a sentence of alternative punishment or probation.

☒ How does risk assessment fit within Virginia’s structured sentencing system?

Virginia’s Truth-In-Sentencing (TIS) guidelines provide judges with a sentencing recommendation prior to each felony sentencing event covered by the guidelines. The risk assessment instrument is designed to be an integral part of the TIS guideline system, but is not intended to supplant the guidelines.

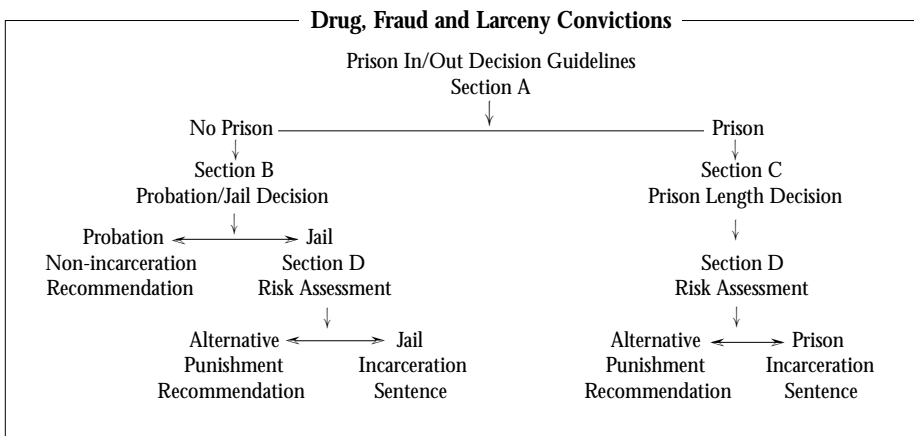
The risk assessment instrument is designed to identify offenders, otherwise recommended for incarceration by the sentencing guidelines, with the lowest probability of being reconvicted of a felony crime. These offenders are then recommended for some form of alternative punishment. Risk assessment is incorporated within the current sentencing guidelines system as an additional worksheet, known as Section D. Probation officers and Commonwealth’s attorneys fill out the worksheet when the primary offense is a drug, fraud, or larceny charge, and the recommended sentence under the current guidelines includes incarceration.

Section D is the last of four integrated worksheets:

- *Section A:* determines whether an offender receives a prison or nonprison recommendation.
- *Section B:* determines whether an offender is recommended for probation or jail (if a nonprison sentence is recommended on Section A).
- *Section C:* determines the length of prison sentence (if a prison sentence is recommended on Section A).
- *Section D:* Risk Assessment Instrument.

The Section A, B, C, and D worksheets are displayed to the left; below is the typical path to risk assessment.

Figure 2.2
Sentencing Guidelines and the Path to Risk Assessment



Source: VCSC 1997 Annual Report

A recommendation for diversion is based on the risk assessment point total. All eligible offenders scoring nine points or less on the instrument are recommended for diversion. Section D results are presented to the judge, along with the sentencing guidelines recommendation from either Section B or C. In addition to the individual section worksheets, the sentencing recommendations are summarized on a fifth form, the guidelines coversheet. Judges have the option of following the diversion recommendation or sentencing in accordance with the original guidelines recommendation.

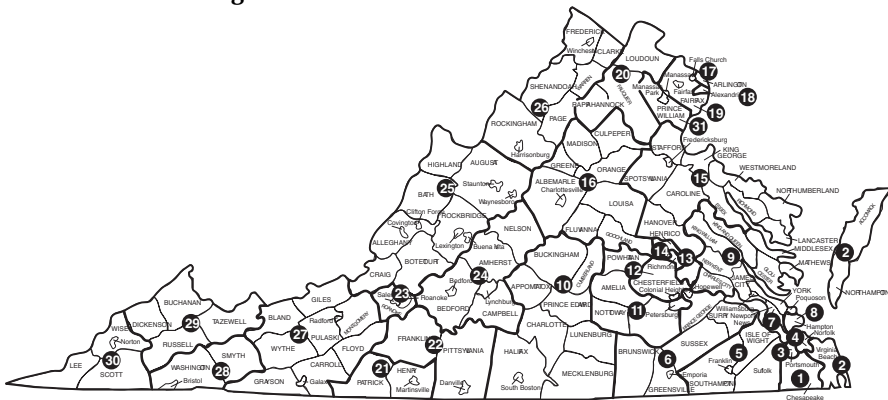
Judges are in compliance with the guidelines if they follow the recommendation for diversion or the original guidelines recommendation. Judges are asked to provide reasons for foregoing alternative sanctions when offenders are recommended for but not sentenced to an alternative. The VCSC views the reasons cited by judges during the pilot project as an important source of feedback on the use and acceptance of risk assessment.⁵

How is the utility of risk assessment being assessed?

The purpose of pilot testing was to document the instrument's effect on judicial decision-making, sentencing outcomes, and criminal justice system resources.

The risk assessment instrument is currently used in six of Virginia's 31 judicial circuits: Fairfax, Norfolk, Newport News, Henrico, Danville, and Suffolk. On December 1, 1997, Circuit 5 (the cities of Franklin and Suffolk and counties of Southampton and Isle of Wight),

Figure 2.3
Judicial Circuits in Virginia



Source: VCSC 1997 Annual Report

⁵ Preliminary results show that judges do not cite a reason for choosing traditional incarceration instead of an alternative sanction in nearly two-thirds of cases that do not follow the risk assessment recommendation. When a reason was cited, judges most often questioned the offender's medical or psychological suitability, or referred to the offender's refusal to participate in alternative punishment programming (9 percent). Other reasons for sentencing offenders to incarceration included the offender's criminal lifestyle or history of criminality, or the offender's previous conviction for the same crime as the instant offense (7 percent). In other cases, judges perceived the quantity or purity of the drug involved in the case to warrant traditional incarceration (4 percent).

Circuit 14 (Henrico), and Circuit 19 (Fairfax) became the first circuits to use the risk assessment instrument. Circuit 22 (the city of Danville and counties of Franklin and Pittsylvania) joined the pilot project three months later. The pilot project was expanded to include Circuit 4 (Norfolk) and Circuit 7 (Newport News) in March of 1999 because the volume of eligible cases in the four original jurisdictions was lower than originally estimated. The results from the pilot experience will determine if statewide implementation of the risk assessment instrument is worthwhile, and enable the Commission to modify the program as necessary.

The six pilot sites were chosen to meet several goals. First, the VCSC believed it was important to select jurisdictions where caseloads were large enough to draw valid conclusions on the application of the risk assessment instrument. Fairfax, Norfolk, Henrico, and Newport News are four of the eight largest judicial circuits in Virginia, and preference was given to larger circuits because state programs tend to be located closer to population centers. Second, the availability of alternative punishment options was an important determinant. Finally, and perhaps most importantly, judges in the pilot jurisdictions more regularly order presentence investigation (PSI) reports. Equitable use of the risk assessment instrument, and correct scoring of Section D, requires the ready availability of complete and accurate information on the offender's current status and prior criminal record. PSI completion rates are in excess of 70 percent in the six pilot circuits, compared to a statewide average of 54 percent. Currently, the rate of PSI completion is set locally, and PSIs tend to be ordered in more serious, violent felony convictions but inconsistently produced for nonviolent offenders. Given that nonviolent property and drug offenders are the target population for risk assessment and alternative sanctions, successful statewide implementation of the program would require many circuits to substantially increase rates of PSIs.⁶

❏ What sentences constitute “alternative punishment” and are counted toward meeting the goal of diverting 25 percent of eligible offenders?

The legislature outlined a wide range of punishments as appropriate candidates for alternative sanction, from unsupervised probation to traditional incarceration. In practice, anything short of a prison sentence qualifies.

The legislature stipulated “appropriate candidates for alternative sanctions which may include, but are not limited to (i) fines and day fines, (ii) boot camp, (iii) local correctional facility incarceration, (iv) diversion center incarceration, (v) detention center incarceration, (vi) home incarceration/electronic monitoring, (vii) day or evening reporting, (viii) probation supervision, (ix) intensive probation supervision, and (x) performance of community service.”⁷ The statute specifies qualifying state operated programs (e.g., detention centers, diversion centers, and boot camp), but is vague on the applicability of locally sponsored alternatives. The VCSC

⁶ Those completing the risk assessment instruments do not report increased workloads. The current evaluation found that probation officers and attorneys felt any increases in workload were negligible, if present at all.

⁷ Section 17-235, Code of Virginia

includes in its definition of alternative punishments a broad range of local programs, many of which are administered by community services boards, including drug and alcohol treatment programs, halfway houses and residential facilities, and job training or release programs. Therefore, for practical purposes, anything short of an actual state prison sentence qualifies as an alternative sanction.

To be specific, an offender who is eligible for risk assessment is considered “diverted” if:

- Sentencing guidelines recommend *prison* and the offender is sentenced to jail, a state or local alternative punishment, and/or probation.
- Sentencing guidelines recommend *jail* and the offender is sentenced to a state or local alternative punishment, and/or probation.

The key is that the offender is recommended for incarceration by the guidelines, but does not receive a prison sentence (if recommended to prison) or a jail sentence (if recommended to jail).

☒ **Alternative Sanctions in Virginia**

Intensive Supervision Program (ISPs)

Intensive Supervision in Virginia involves enhanced surveillance of offenders through increased contacts with the offender and in the community. ISP includes random urinalyses, home electronic monitoring, telephone monitoring, curfews, treatment agency referrals and follow-up, and employment and home checks. Upon completion of ISP, offenders are returned to conventional supervision. Eligibility requirements for ISP include higher risk offenders who require supervision more stringent than conventional supervision. These offenders include community corrections facility graduates and predatory sex offenders. Referrals to ISP can come directly from the courts, the parole board, the probation officer, or from a hearing officer or parole examiner.

ISP was first piloted in 1985, and is now available statewide. The ISP caseload has increased every year since inception, and now operates above capacity, requiring some conventional probation officers to supervise ISP offenders. In June of 1999 the statewide ISP caseload was 2,166 – 1,263 were probation referrals and 903 were parole referrals. In 1999 there were 45 ISP officers, 27 surveillance officers, and 14 senior probation officers responsible for ISP caseloads. The annual cost for an ISP case is \$1,880.

Home Electronic and Telephonic Monitoring (HEM)

The Home Electronic Monitoring program was first piloted for parolees in Richmond and Winchester in 1989. Community corrections expanded the program in 1992 to include both parolees and probationers. The program is now available in all probation district offices and day reporting centers. Home electronic monitoring involves strict curfew monitoring through a tamper resistant transmitter worn on the ankle. Telephonic monitoring involves random paging of offenders requiring them to call the monitoring center from authorized locations. Electronic monitoring is often used in conjunction with both ISP and conventional supervision. Monitored offenders are required to pay a one-time \$30 participation fee.

Telephonic monitoring of sex offenders was successfully piloted in Newport News, Richmond and Manassas in 1998. The program has since been expanded, with nine local sites now using the program. Use of the program has declined with the introduction of other sanctions and the reduction of staff time due to requirements of the Fair Labor Standards Act. In 1999, 1,418 cases were served through home electronic and telephonic monitoring.

Day Reporting Centers

Probation or parole officers staff the day reporting centers. Day reporting includes daily contact with the offender, and monitoring and random checking of daily itineraries, job interviews, counseling attendance and community service. Offenders are provided intensive substance abuse treatment services, aftercare/relapse prevention counseling, AA/NA group therapy, GED/ABE classes, life skills classes, job referrals, and vocational services. Other services, such as parenting skills, are provided as needed. Although some parolees are assigned to day reporting centers, most are probation cases.

The first day reporting center opened in Fairfax in 1993. There are now eight active day reporting centers: Fairfax, Abingdon, Richmond, Norfolk, Newport News/Hampton, Wise County, Martinsville, and Roanoke. Two additional centers, serving Harrisonburg and the Chesapeake areas, are planned. Day reporting center average rated capacities range from about 65 to 170. There were 571 people in day reporting programs in fiscal year 1999.

Boot Camp

There is one male boot camp in the state of Virginia, the Southampton Intensive Treatment Center Facility. Camp capacity is 100 persons, and offenders from across the state are eligible to participate. The program started in 1990, and consists of a disciplined, 17-week boot camp with military style training, control, and ceremony. There is a mandatory period of probation supervision upon release, including an initial intensive supervision period. The program includes short haircuts, no smoking, no speaking without permission, and limited telephone privileges. Offenders participate in physical fitness training, work ethic development, and community service projects. They also attend GED/ABE classes, vocational and job skills development, and life skills and substance abuse education courses. There are probation officers assigned to the camp to provide offenders with counseling and traditional planning services. Participation in the boot camp program is voluntary.

To be eligible for boot camp the offender must have been convicted of a nonviolent offense, as defined by the code of Virginia, or deemed nonviolent by the court. The offender may not be over 24 years old at time of conviction, and there is no minimum age. Offenders can have no more than one prior incarceration and cannot have been a state responsible inmate in the past. Offenders must be mentally and physically capable of participating in the program.

The program was expanded to four months in 1998, to be consistent with diversion and detention center programs and to enhance the chances of transitional success. In 1999, the boot camp received 324 offenders and graduated 229 — 95 offenders were terminated, 50 for medical reasons, 19 for disciplinary reasons, 22 for voluntary reasons, and 4 for other reasons. There is no women's boot camp in Virginia and the state contracts with Michigan for females.

Diversion Centers

The diversion center is a four- to six-month residential program. The program staff monitors offenders working in the community at paid jobs. There is random urinalysis testing, employment counseling, substance abuse education, and NA/AA group therapy, basic education/GED preparation, parenting skills and independent living training, transitional services, and training in coping with domestic violence. Court costs and restitutions are collected, and community service work is regularly performed. There is a mandatory year of probation supervision upon release, including an initial period of intensive supervision.

The offender must have been convicted of a nonviolent offense, as defined in the code of Virginia, to be eligible for a diversion center. There is no age restriction, but the offender must have been tried and convicted as an adult. There is an evaluation period of up to 45 days by the Department of Corrections before an offender is accepted to the program.

The first diversion center for female offenders opened in Richmond in 1996. A diversion center for men opened in Chesterfield County in 1997. In 1999, there were three other diversion centers: Southampton, Harrisonburg, and Chatham. The combined capacity of these centers was 398.

Detention Centers

Detention centers offer four- to six-month programs emphasizing military drill, military discipline, strict hygiene and limited privileges. Detainees perform physical labor as part of organized public works or community service projects. In some instances, work is performed in prison complexes. Detainees participate in random urinalysis testing, medical and psychological counseling, Breaking Barriers programs, transitional services, substance abuse treatment, life skills, GED/ABE classes, and are evaluated for therapeutic treatment groups. There is a mandatory one-year period of probation supervision upon release, following an initial period of intensive supervision. The offender must have been convicted of a nonviolent offense, as defined in the Code of Virginia, to be eligible for a detention center sanction. There are no age restrictions, but the offender must have been tried and convicted as an adult.

There are five detention centers in Virginia: Southampton Men's Detention Center, Stafford Men's Detention Center, Tidewater Detention Center for Women, Appalachian Men's Detention Center, and White Post Work Center. These five detention centers had a capacity of 608 beds in 1999.

Local Sanctions

Offenders in the six pilot sites, as well as across Virginia, can participate in many local alternative programs. The number and type of programs available varies by jurisdiction, although most localities offer some type of mental health, alcohol, and drug treatment programs. Community services boards often aid financially, and coordinate services in conjunction with local probation and parole offices. Services can also include supervised transitional living programs for offenders involved with the criminal justice system. Probation offices often serve as meeting places for many local treatment and counseling programs.

Fairfax County offers a wide range of services, perhaps the most resources, and the widest array of programs. Counseling includes anger management classes. The Men's Program in Fairfax provides assistance in finding alternatives to violence, through verbal resolution of conflicts and constructive (nonviolent) expression of feelings.

The Fairfax Detoxification program provides medical and social detoxification services for adults, as well as methadone detoxification and detoxification diversion. New Beginning is an eight- to 12-week residential treatment program for adults; Crossroads is a nine- to 18-month therapeutic community for adolescents and adults. Outpatient Services are provided at four sites throughout Fairfax County, and consist of individual and group counseling services for adult alcohol and drug abusers and their families. Intensive day treatment is available at four sites, one for men, two for women, and one for persons with both mental health and substance abuse problems.

The community services board in Norfolk provides a coalition of professionals from various public service agencies dedicated to planning services for individuals diagnosed with mental illness, mental retardation, or substance abuse disorders. Prescreening institutional referrals and predischarge planning are also offered. Other pilot sites have similar programs, providing halfway houses, counseling and reintegration services.

Jail Farms are used in two of the pilot sites, Newport News and Danville. These are secure facilities where inmates also work in the community. About 1,500 offenders pass through the Newport News jail farm every year. The inmates do approximately \$3 million of work a year for the city. In addition to saving money, the program can also serve as a rehabilitative program for some offenders. Danville's jail farm is also used as an alternative sanctioning option, with inmates involved in major road maintenance and other community improvement programs.