

**Parole Abolition and
Sentencing Reform:
A 20-Year Retrospective**

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**Presentation to the Governor's Commission on Parole Review
August 27, 2015**



Overview

- This report assesses the implementation of sentencing reform in Virginia, as measured against the goals and objectives set out in the 1994 special session, when parole was abolished and felony sentencing guidelines were adopted. This report covers:
 - How Virginia’s felony sentencing guidelines work;
 - The operating and capital costs of adult corrections in Virginia;
 - National data comparisons of violent crime, incarceration and recidivism rates, and actual time served in prison;
 - An SFC staff review of sentencing reforms in selected states and the federal sentencing guidelines; and,
 - Findings from SFC staff surveys of judges, prosecutors, public defenders, defense attorneys, and chief probation officers to determine the views of key participants as to how effective Virginia’s reforms have been.



Key Points

- Virginia reformed its sentencing system when parole was abolished and felony sentencing guidelines were implemented as of January 1, 1995.
- These reforms were intended to achieve four objectives:
 - Abolish parole and establish transparency, or “truth-in-sentencing;”
 - Reduce “good time,” so offenders serve at least 85 percent of their sentence;
 - Increase actual time served in prison for violent and repeat offenders; and,
 - Divert up to 25 percent of non-violent offenders to alternative sanctions.
- These objectives have been met, and the policy goals articulated in 1994 have been achieved to a great extent:
 - Crime and recidivism rates have been reduced;
 - Virginia’s rankings compared to other states have improved; and,
 - A higher percentage of expensive prison beds is now occupied by violent offenders, and more lower-risk, non-violent offenders have been diverted.



Background: 1994 Crime Bill

- Violent crime was a front-burner issue in the early 90's.
- Federal Violent Crime Control and Law Enforcement Act of 1994.
 - \$30.2 billion over six years (largest amount ever in a federal crime bill).
- Key provisions included:
 - Community Oriented Policing Services – 100,000 COPS on the streets;
 - Violence Against Women Act;
 - Federal Assault Weapons Ban (allowed to sunset in 2004);
 - Federal death penalty expanded to 60 new offenses (plus three-strikes law);
 - Elimination of Pell grants for inmate higher education;
 - Other programs, including in-school, after-school and anti-gang programs, midnight basketball, drug courts, and substance abuse treatment; and,
 - \$7.9 billion for federal grants to build state prisons for violent offenders, on the condition that states adopt truth-in-sentencing for violent offenders.



Virginia's Previous Parole System

- Parole was based on the idea that inmates could be rehabilitated in prison, and that a panel of citizens could determine when an inmate was ready to be released back into society.
- Under existing law in 1994, inmates served only a fraction of the sentence pronounced by the court before becoming eligible for release.
 - A first-time inmate, for example, became eligible for parole after serving only one-fourth of his pronounced sentence.
 - In addition, inmates could (and most did) earn up to 30 days in “good time” sentence credits for every 30 days served.
 - Half of this sentence credit (up to 15 days for every 30 days served) could be applied towards the offender’s parole eligibility date.
- As a result, some inmates might serve as little as one-fifth of their sentence, which undermined confidence in the system.



Previous Reform Efforts

- By the time the General Assembly abolished parole and adopted felony sentencing guidelines 20 years ago, Virginia already had several years of experience in this area.
 - Governor Robb and the Chief Justice of the Supreme Court appointed task forces in the early 1980's to explore the feasibility of guidelines to reduce sentencing disparities, especially racial disparities.
 - Discretionary guidelines were pilot-tested in several circuits and then adopted (by the Judicial Department) for statewide use beginning in 1991.
 - The General Assembly created a Commission on Sentencing and Parole Reform in 1993 (HJR 464), which was continued in 1994 (HJR 249).
 - Recognized the public's legitimate expectation for longer sentences for violent or serious offenders, consistency in sentencing, and programs to reduce recidivism.
 - In early 1994 Governor Allen created a Commission on Parole Abolition and Sentencing Reform, and called a special session to adopt its recommendations.



Policy Choices in 1994

- In the late 1980's/early '90's, the rate of violent crime had been increasing rapidly, due in part to the growing use and trafficking of crack cocaine.
 - Increased arrests and rapid growth in the offender population led to large expenditures for prison and jail construction.
 - These issues were addressed by Commissions on Prison and Jail Overcrowding under Governor Baliles, and on Violent Crime under Governor Wilder.
 - By 1994, there was agreement that reforms were necessary.
- The policy choices embedded in the 1994 reforms included:
 - Reduction of unwarranted sentencing disparities, i.e. comparable sanctions for offenders with similar crimes and similar criminal histories;
 - Sentence enhancements based on the offense and the criminal history;
 - No change in actual time served for non-violent offenders; and,
 - Alternatives to incarceration for lower-risk, non-violent offenders.



Calculating the Initial Guidelines

- The sentencing system authorized by the General Assembly in 1994 was based on the existing voluntary Judicial Department guidelines. The new guidelines were implemented statewide, effective January 1, 1995.
- The new guidelines included sentencing ranges for each offense:
 - The initial determination of the sentencing range was based on a review of the actual time served in prison by every offender released from prison over five previous years (1988 through 1992). For each offense:
 - The bottom quartile and the top quartile of actual time served were eliminated;
 - The middle two quartiles (50 percent of all cases) provided the range for the new guideline, so the extremes at either end were eliminated; and,
 - The median length of stay marked the midpoint of the new sentencing range.
- Offenders would now serve at least 85 percent of their sentence.
 - Instead of good time, offenders could earn sentence credits of up to 15 percent, i.e. up to 4.5 days off for every 30 days served.



Sentence Enhancements

- Once initial sentencing ranges were calculated, the General Assembly adopted a series of enhancements:
 - Sentence enhancements were based on the nature of the primary offense and the seriousness of the offender’s prior record of violence:
 - For example, for murder, rape, forcible sodomy, object sexual penetration, and aggravated sexual battery, the sentencing range mid-points were increased by:
 - 125% for offenders with no violent prior offenses;
 - 300% for offenders with at least one Category II violent prior (max. < 40 years);
 - 500% for offenders with at least one Category I violent prior (max. ≥ 40 years); and,
 - A “life sentence” was clarified to mean life in prison without parole.
 - Requires conviction for 1st degree murder plus prior Category I conviction.
 - For purposes of the sentencing guidelines, burglary of an occupied dwelling was defined as a violent offense.
 - For non-violent offenders, there were no enhancements, compared to the old parole system (based on actual experience 1988-1992).



Other Features of the 1994 Reforms

- Virginia's guidelines are voluntary; however, the judge must review a worksheet for each case and indicate the reasons for departing (either above or below) the sentencing range.
- Offender's juvenile adjudications of delinquency for felony-level offenses are considered as part of the offender's prior criminal record.
- Parole remained in place for offenders whose crimes were committed prior to January 1, 1995. (*4,360 offenders still eligible for parole, as of 3/31/15*)
- Post-release supervision was maintained.
- A new Virginia Criminal Sentencing Commission was created within the Judicial Department to develop and implement the guidelines.
 - Each year, in its annual report to the General Assembly, the commission may recommend changes in the guidelines. If the changes are not rejected by the General Assembly, the changes go into effect the following July 1.
 - Changes are driven by analysis of actual judicial sentencing practice.

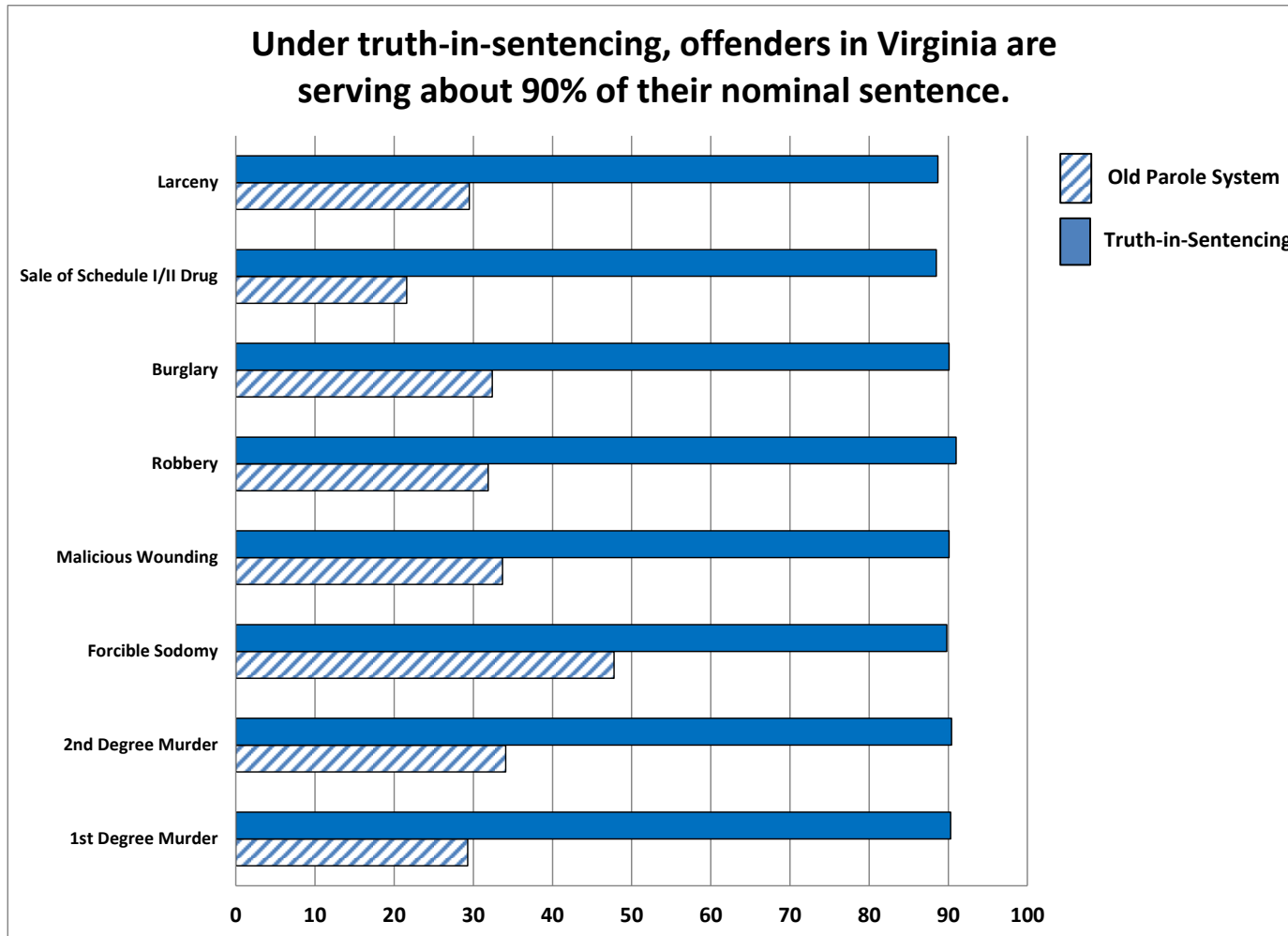


Sentencing Commission

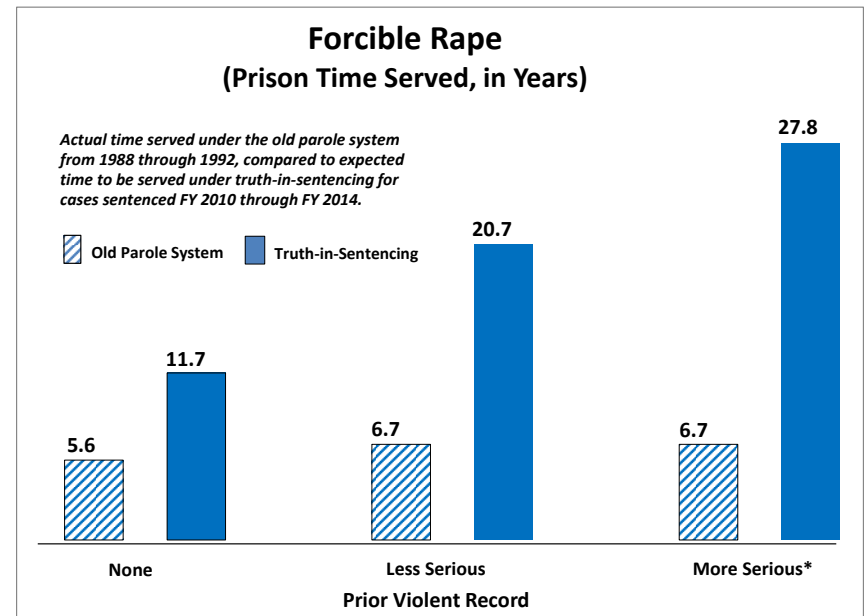
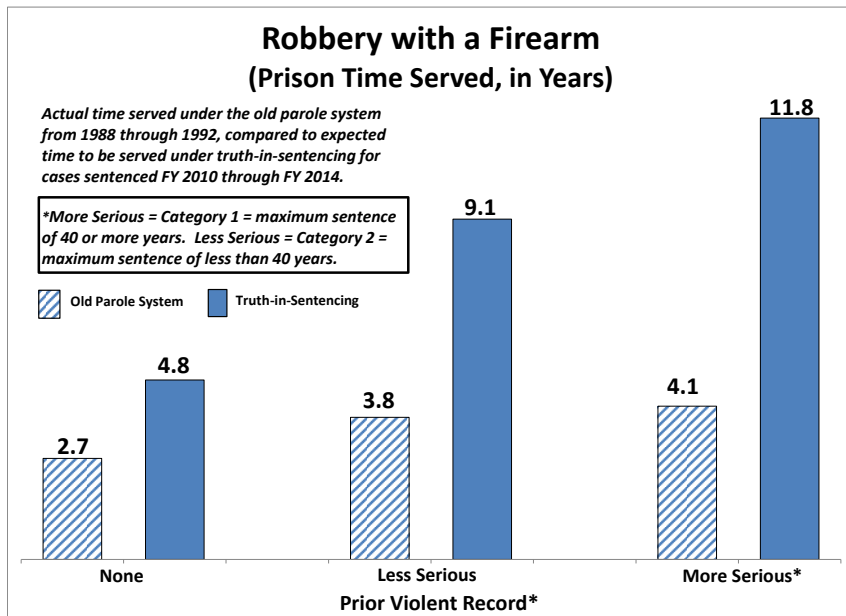
- The Commission is a Judicial Department agency, with 17 members:
 - Chairman appointed by the Chief Justice, confirmed by the General Assembly;
 - Six judges or justices appointed by the Chief Justice;
 - Attorney General or designee;
 - Chairman of Senate Courts plus one appointed by Senate Rules;
 - Chairman of House Courts plus two appointed by the Speaker; and,
 - Four members appointed by the Governor (including a crime victim).
- The Commission has a professional staff which manages a data base of all felony sentencing events, provides training and oversight, and conducts special studies. The staff also assesses the corrections bedspace impact of proposed criminal sentencing bills.
- Virginia's commission is one of the most successful, according to a staff assessment by the National Center for State Courts (NCSC).



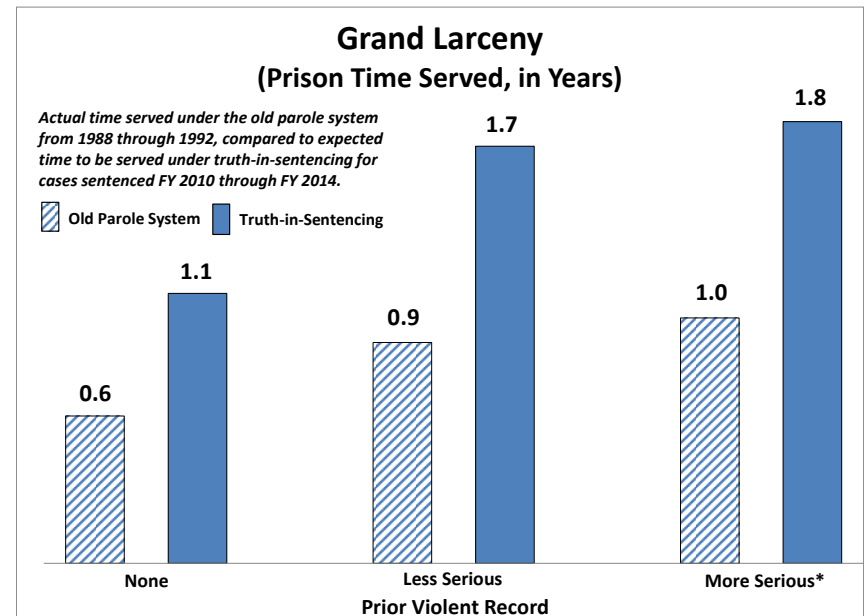
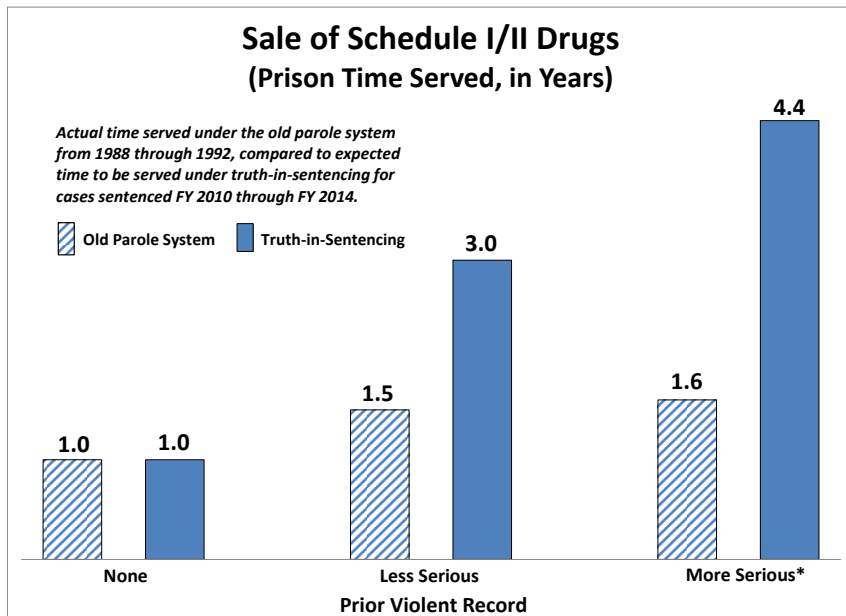
Percentage of Sentence Served (Parole v. Truth-in-Sentencing)



Actual Time Served (Violent Offenses)



Actual Time Served (Nonviolent Offenses)



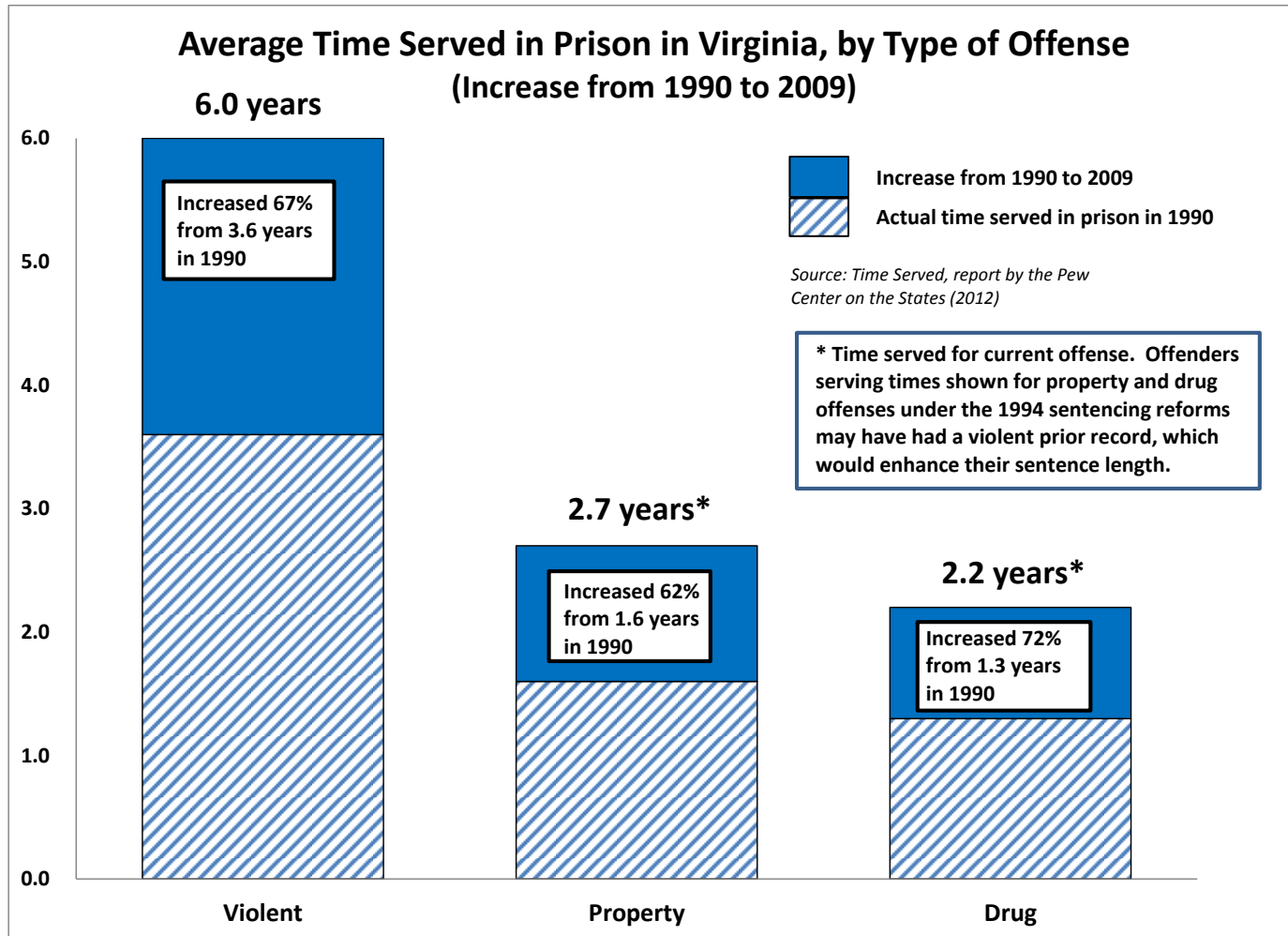
Actual Time Served

(35-State Comparison)

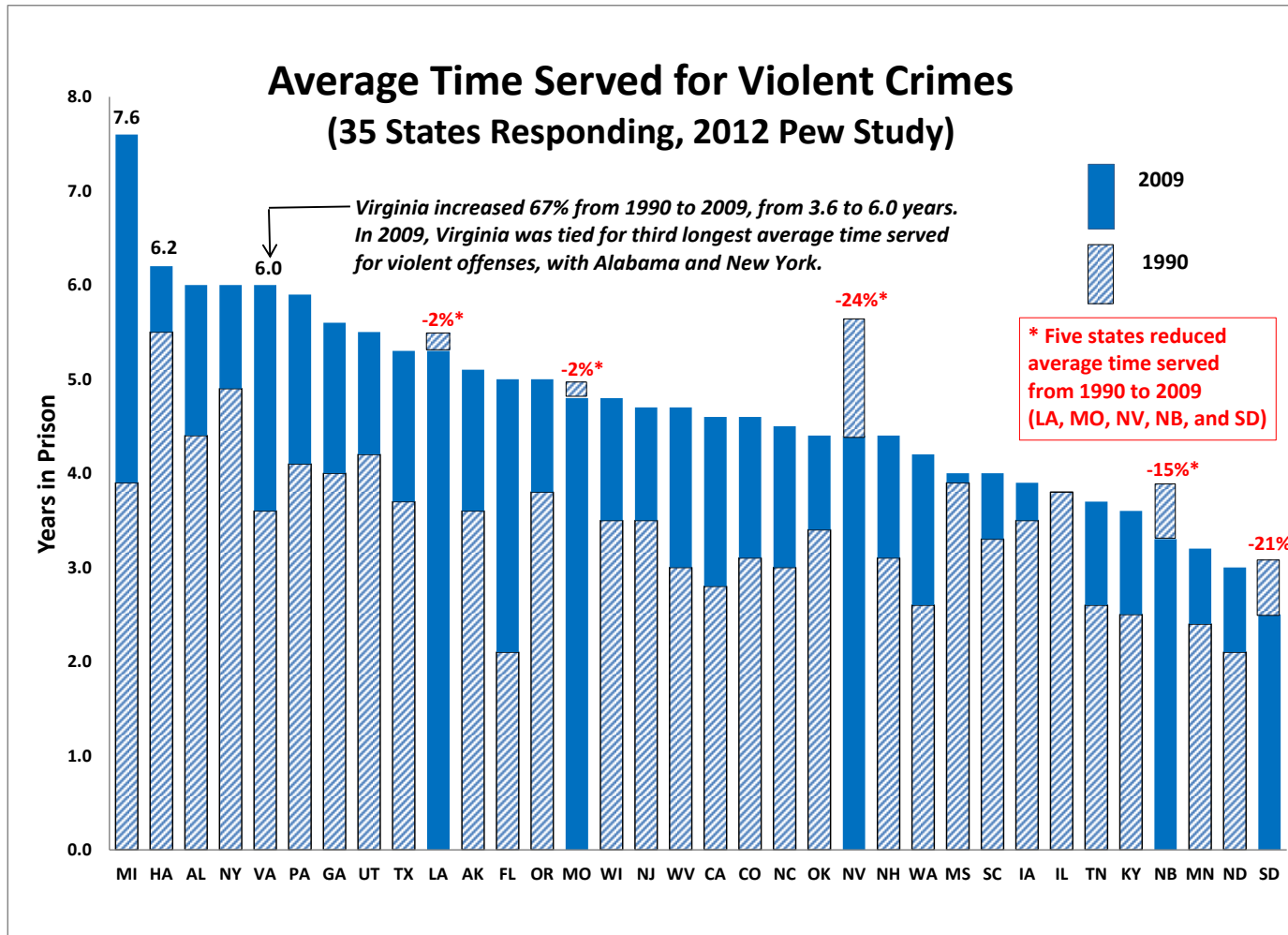
- The Pew Center for the States published a study in 2012 of actual time served in prison; 35 states (including Virginia) provided data.
- From 1990 to 2009, the average actual time served in prison across the 35 states increased 36 percent, from 2.1 to 2.9 years (for all offenses).
- In Virginia, the increase was 91 percent, from 1.7 to 3.3 years.
 - Only Florida had a higher percentage increase (166%, or from 1.1 to 3.0 years).
 - In 1990, Virginia ranked 25th longest in actual time served, among the 35 states responding to the Pew survey.
 - In 2009, Virginia ranked 4th longest in actual time served, behind Michigan (4.3 years), Pennsylvania (3.8 years), and New York (3.6 years).
- For violent offenses, five states (Louisiana, Missouri, Nevada, Nebraska, and South Dakota) reduced actual time served from 1990 to 2009.
 - These five states had an average drop in their violent crime rate of -27.3% and an average increase in their incarceration rate of +62.1% from 1994 to 2013.



Actual Time Served (Virginia)



Actual Time Served (Violent Offenses, 35 States)



So, What Happened?

- Crime rates have fallen dramatically across the nation since 1994, and there has been much discussion as to the causes of the drop in crime.
- Many observers have concluded that greater incarceration, up to a point, has been one of the factors contributing to the drop in crime, but there may be a point of diminishing returns.
 - **This report suggests “selective incapacitation,” that is, focusing longer prison terms on more serious, repeat, and violent offenders, combined with alternative sanctions for lower-risk, non-violent offenders, is more highly associated with the drop in violent crime than merely increasing incarceration across-the-board.**
- The next section of this report will summarize the available evidence, and conclude that Virginia has been moving in the direction of more selective incapacitation, lower crime rates, and lower recidivism rates, and that Virginia compares favorably with other states.



Other Factors at Play

- Sentencing reform was only one of many factors affecting crime and incarceration over the past 20 years. Other factors may have included:
 - Additional police officers and community policing strategies.
 - Increase in local police officers from 8,205 in 1992 to 10,947 in 2008 (up 33.4%).
 - Substance Abuse Reduction Effort (SABRE) under Governor Gilmore.
 - The largest single infusion of general funds into drug treatment ever in Virginia.
 - However, most of the funding was removed during the recession of 2001-02.
 - Additional DOC probation and parole officers.
 - From 488 in 1994 to 764 in 2014 (up 56.5%); caseload per officer up from 70 to 76.
 - FY 2014: Virginia's #offenders/officer ranked 4th lowest among 15 SLC states.
 - Expanded local pre-trial release and community corrections programs.
 - Strong emphasis under Governors Kaine, McDonnell and McAuliffe to expand prisoner re-entry programs, based on evidence-based practices in DOC which have been demonstrated by research to reduce recidivism.



Results

- Here are some of the results for Virginia:
 - Racial disparities in sentencing have for the most part been eliminated;
 - Growth in the rate of incarceration has slowed (and dropped);
 - The proportion of violent offenders in prison has increased from about 60 to 80 percent (and very few of the others are first-time offenders);
 - DOC has closed 5,725 older prison beds, and the percentage of the budget allocated to adult corrections has been fairly stable since the late 1970's.
 - The violent crime rate has dropped over 47 percent since 1994, and Virginia's ranking compared to other states has dropped from 14th to third lowest;
 - Virginia's recidivism rate has fallen to second lowest among the states; and,
 - Virginia's sentencing system has been recognized as one of the best by NCSC.
- However, other states have also experienced lower crime and incarceration rates, so this report will also address interstate comparisons.

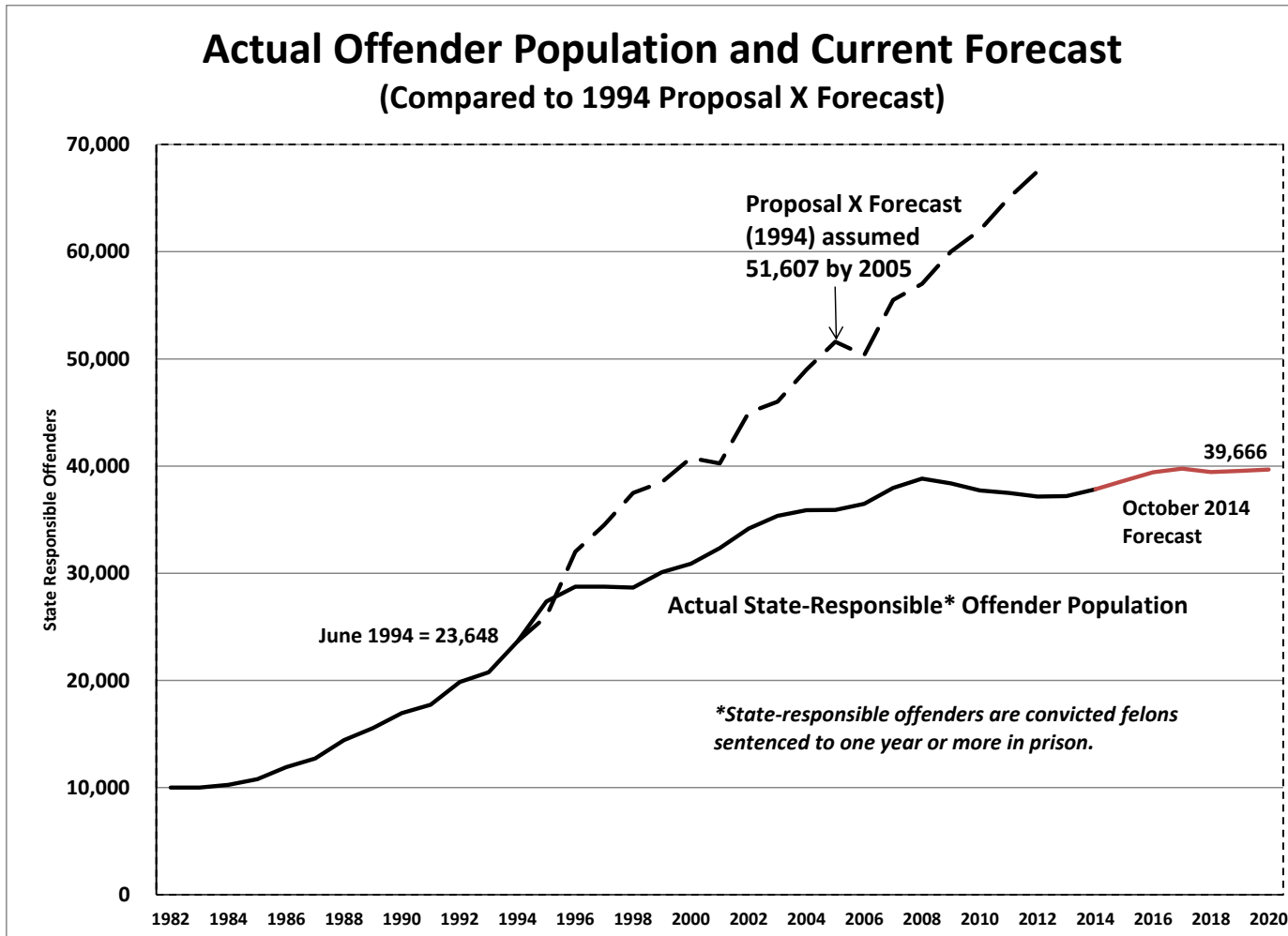


Sentencing and Prison Costs

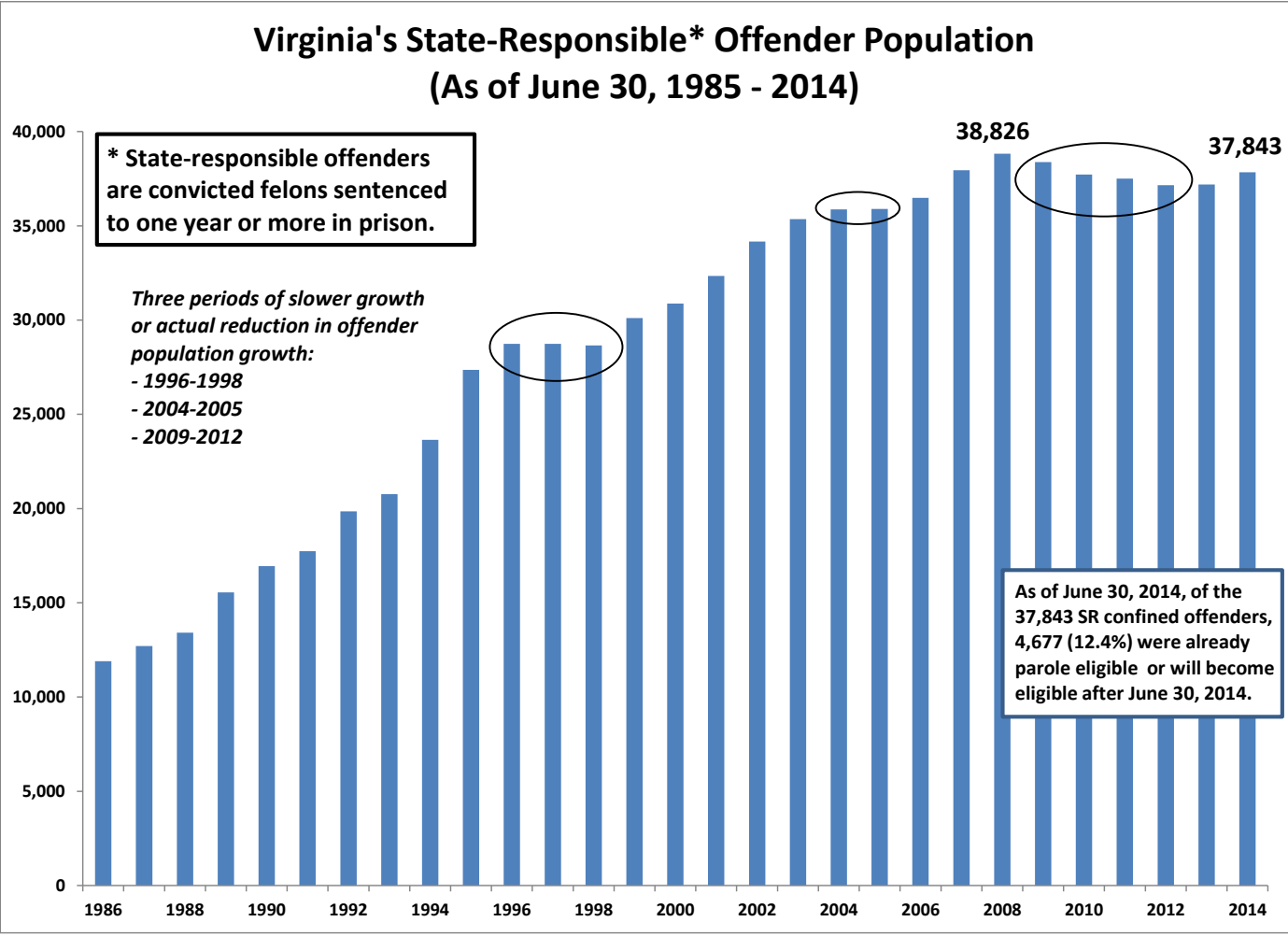
- The 1994 Special Session devoted a great deal of attention to balancing the goals of sentencing reform with the costs of prisons and jails.
 - Actual time served in prison for violent and repeat offenders was intended to be increased, **but for non-violent offenders, actual time served was not to be increased above the actual experience from 1988-1992.**
 - Low-risk, non-violent offenders were to be redirected from expensive prison beds towards less costly alternative sanctions.
- The General Assembly determined that the projected cost of the proposed 1994 sentencing reform was only marginally more expensive than the cost of maintaining the current system.
 - Proposal X, the sentencing reform plan, was projected to increase the state-responsible offender population to 51,000 by 2005, but the baseline forecast (under the old parole system) was already projecting 49,500.
 - However, actual population growth was slower than either 1994 projection.



Offender Population Growth Slowed

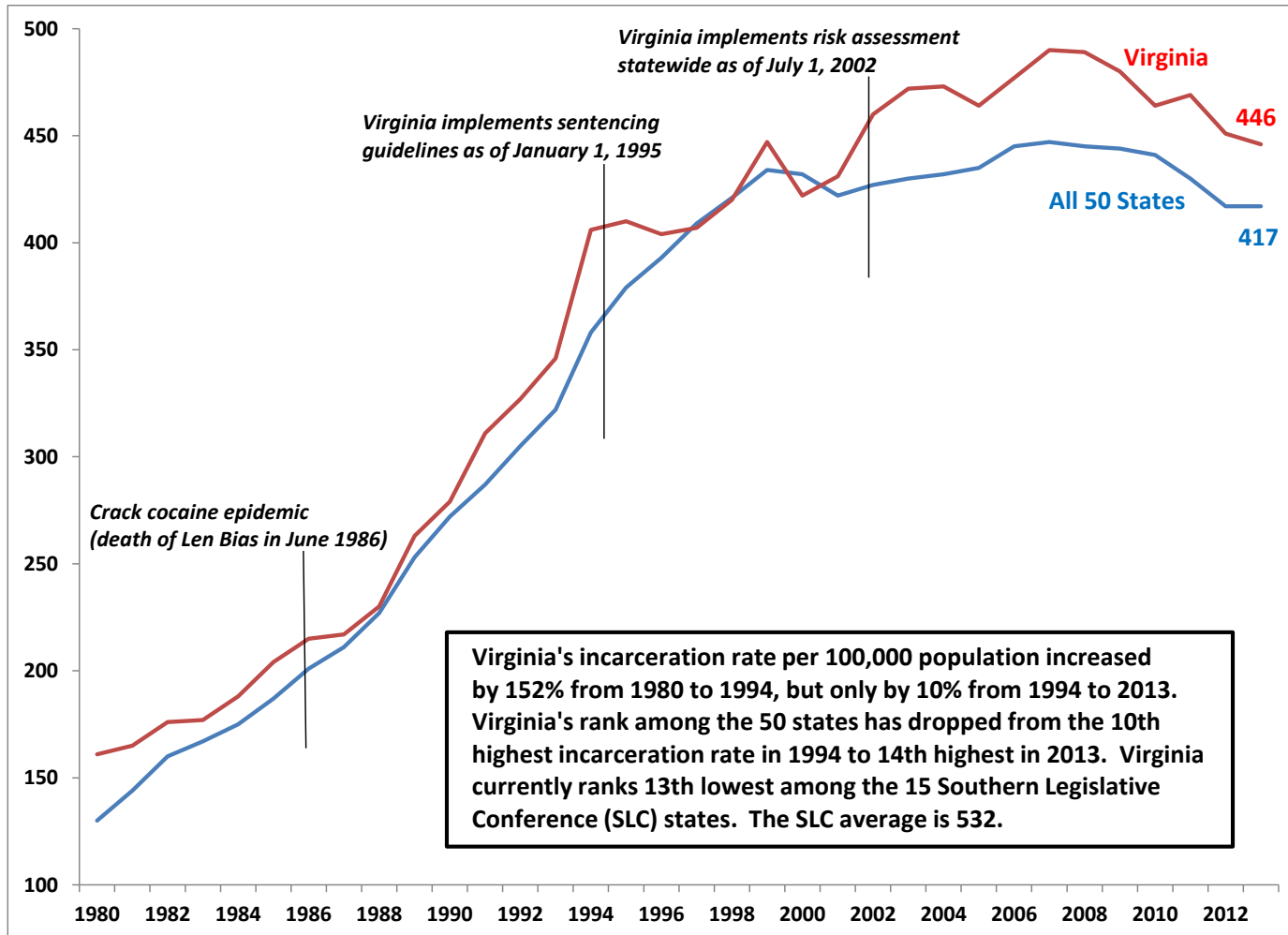


State-Responsible Offenders



Incarceration Rates

(State Prisoners per 100,000 Population)

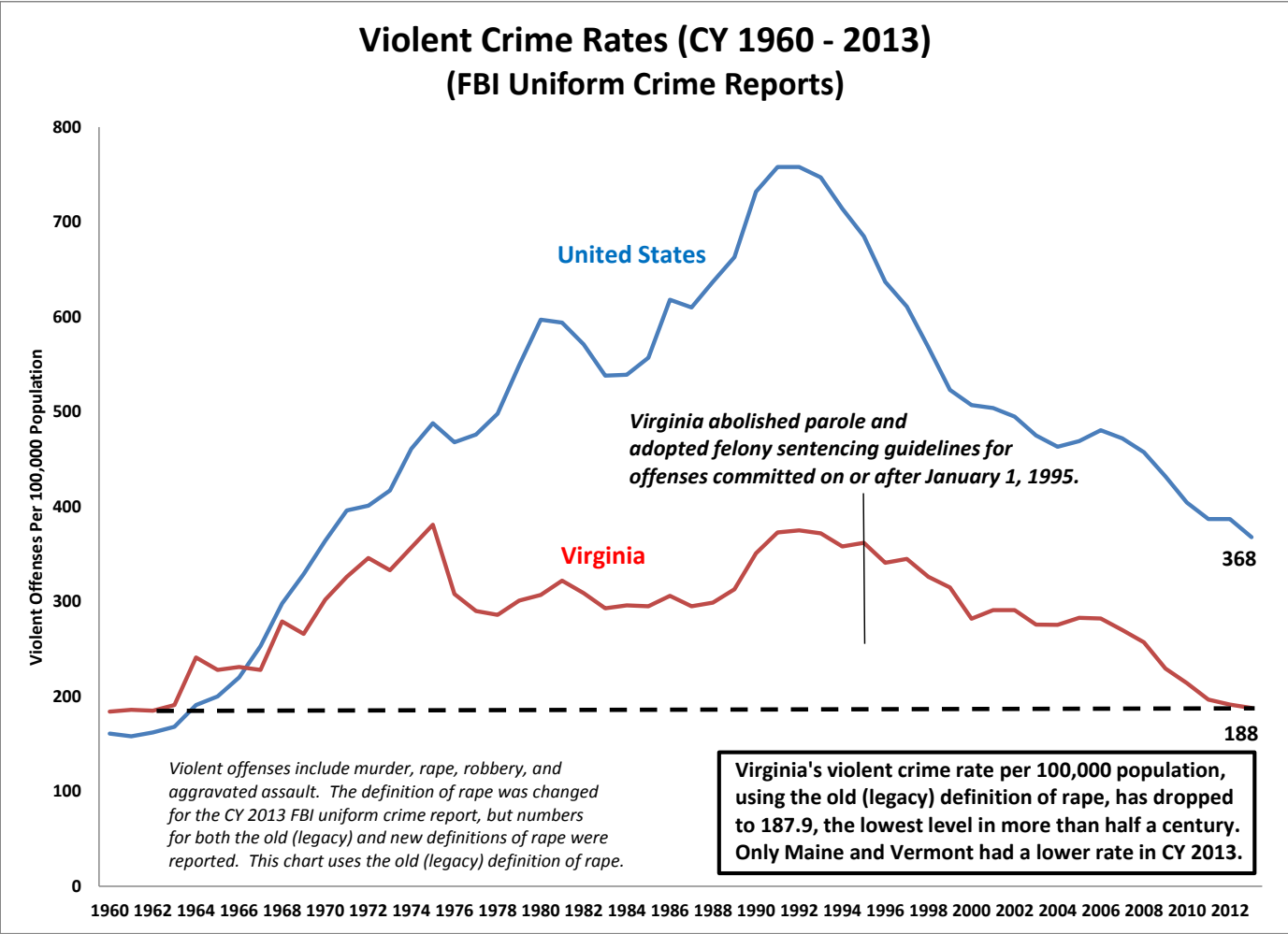


Crime Rates Have Fallen

- Virginia had the third lowest violent crime rate among the 50 states in CY 2013, a significant improvement from 14th lowest in both 1994 and 2004
 - Only Vermont (lowest) and Maine reported lower rates in 2013.
- Virginia had the eighth lowest property crime rate in 2013, compared to 11th lowest in 1994 and 13th lowest in 2004.
 - Only New York (lowest), Idaho, New Jersey, South Dakota, Connecticut, Massachusetts, and Pennsylvania reported lower rates in 2013.
- There are many factors involved in the national drop in crime rates over the past two decades, many of which are not unique to Virginia.
 - In fact, 11 other states experienced a greater percentage drop in their violent crime rates between 1994 and 2013.
- Virginia's emergence as a relatively low-crime state coincided with the rise in per capita income compared to the U.S. since the 1950's.



Violent Crime Rate



Recidivism

- Virginia and 46 other states measure recidivism in terms of re-incarceration within three years of release.
- Virginia's rate has dropped from 28.0 percent for offenders released in FY 2004 to 22.9 percent for those released in FY 2009.
 - Virginia has the second lowest recidivism rate among the states that have a comparable measure.
 - Virginia had the eighth lowest recidivism rate for offenders released in 2004.
- Why has Virginia's position improved? Possible explanations include:
 - Beginning about ten years ago, the incapacitation effect of longer prison terms for violent, repeat offenders began to affect the rate of violent crime; and,
 - Virginia has added significant resources for prisoner re-entry programs, and implemented evidence-based practices in DOC, to assist inmates in making the transition from prison back to the community.

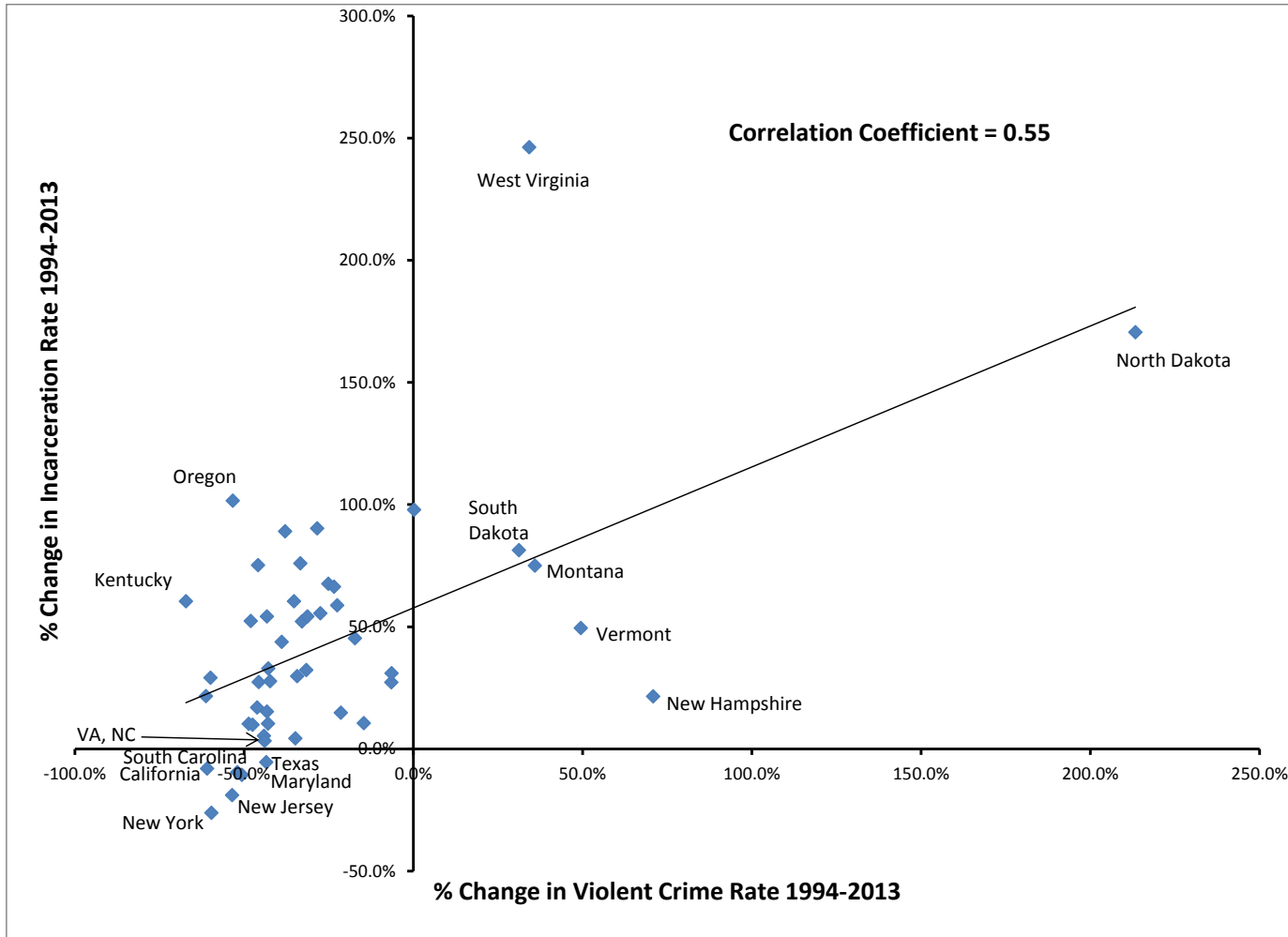


Recidivism by State

Virginia Has the Second Lowest Recidivism Rate Reincarceration within 3 years of release, most recently reported rate (48 states reporting, Hawaii and Maryland not reporting)



Crime and Incarceration Rates



Selected States

Violent Crime Rates, Time Served, Incarceration Rates, and Recidivism by State
(Ranked Highest to Lowest by Percentage Decrease in Violent Crime Rate from 1994 to 2013)

Rank		Violent Crime Rate per 100,000					Time Served (Violent)		Incarceration Rate per 100,000					Recidivism
		1994	2010	2013	% 1994-2013	% 2010-2013	Years (2009)	% 1990-2009	1994	2010	2013	% 1994-2013	% 2010-2013	Most Recent
1	Kentucky	605.3	242.6	198.8	-67.2%	-18.1%	3.6	44.0%	288	458	462	60.4%	0.9%	41.8%
2	Illinois	960.9	435.2	372.5	-61.2%	-14.4%	3.8	0.0%	310	373	377	21.6%	1.1%	47.1%
3	California	1013.0	440.6	396.2	-60.9%	-10.1%	4.6	64.3%	384	439	353	-8.1%	-19.6%	61.0%
4	Florida	1146.8	542.4	460.0	-59.9%	-15.2%	5.0	138.1%	406	556	524	29.1%	-5.8%	33.1%
5	New York	965.6	392.1	389.8	-59.6%	-0.6%	6.0	22.4%	367	286	271	-26.2%	-5.2%	40.9%
6	New Jersey	614.2	307.7	285.6	-53.5%	-7.2%	4.7	34.3%	311	286	252	-19.0%	-11.9%	32.4%
7	Oregon	520.6	252.0	242.9	-53.3%	-3.6%	5.0	31.6%	191	361	385	101.6%	6.6%	27.7%
8	South Carolina	1030.5	597.7	494.8	-52.0%	-17.2%	4.0	21.2%	494	495	447	-9.5%	-9.7%	27.5%
9	Maryland	948.0	547.7	467.8	-50.7%	-14.6%	3.95	387	353	353	-10.6%	-8.8%	27.5%	
10	North Carolina	655.0	363.4	336.6	-48.6%	-7.4%	4.5	50.0%	323	373	356	10.2%	-4.6%	28.9%
11	Louisiana	981.9	549.0	510.4	-48.0%	-7.0%	5.3	-2.0%	556	867	847	52.3%	-2.3%	34.5%
12	Virginia	357.7	213.6	187.9	-47.5%	-12.0%	6.0	66.7%	406	468	446	9.9%	-4.7%	22.8%
13	Georgia	667.7	403.3	359.7	-46.1%	-10.8%	5.6	40.0%	456	550	533	16.9%	-3.1%	26.0%
18	Texas	706.5	450.3	399.8	-43.4%	-11.2%	5.3	43.2%	637	648	602	-5.5%	-7.1%	24.3%
41	Delaware	561.0	620.9	479.1	-14.6%	-22.8%			400	443	442	10.5%	-0.2%	67.3%
42	Hawaii	262.2	262.7	245.3	-6.4%	-6.6%	6.2	12.7%	202	302	257	27.2%	-14.9%	
43	Maine	129.9	122.0	121.6	-6.4%	-0.3%			113	148	148	31.0%	0.0%	30.7%
44	Wisconsin	270.5	248.7	271.1	0.2%	9.0%	4.8	37.1%	187	366	370	97.9%	1.1%	30.1%
45	South Dakota	227.6	268.5	298.7	31.2%	11.2%	2.5	-21.0%	236	416	428	81.4%	2.9%	43.1%
46	West Virginia	215.8	314.6	289.7	34.2%	-7.9%	4.7	56.7%	106	363	367	246.2%	1.1%	28.3%
47	Montana	177.1	272.2	240.7	35.9%	-11.6%			204	378	357	75.0%	-5.6%	44.7%
48	Vermont	96.9	130.2	144.9	49.5%	11.3%			168	265	251	49.4%	-5.3%	40.9%
49	New Hampshire	116.8	167.0	199.6	70.9%	19.5%	4.4	41.9%	177	209	215	21.5%	2.9%	43.2%
50	North Dakota	81.8	225.0	256.3	213.3%	13.9%	3.0	42.9%	78	226	211	170.5%	-6.6%	39.6%

Average for all states reporting	-25.1%	-5.7%	4.7	34.1%	43.4%	-2.2%	37.7%
Average for top 10 States	-56.7%	-10.8%	4.7	40.4%	15.0%	-5.7%	37.8%
Average for bottom 10 States	40.8%	1.6%	4.3	28.4%	81.1%	-2.5%	40.9%



What Conclusions Can We Draw?

- 43 states experienced a drop in the violent crime rate since 1994.
- Several states experienced a large percentage drop in their violent crime rates and at the same time reduced their incarceration rates, including New York, New Jersey, Maryland, South Carolina, and Texas.
- A few other states, like Virginia, experienced large drops in their violent crime rates and relatively small increases in their incarceration rates.
- However, of any of these states, Virginia has by far the lowest violent crime rate and the lowest recidivism rate.
- The most successful states adopted sentencing reforms that are intended to selectively incapacitate violent and serious offenders, divert lower-risk, nonviolent offenders, and expand substance abuse and mental health treatment alternatives – setting priorities for the use of expensive prison beds in order to maintain public safety and control prison costs.



Fiscal Impact in Virginia

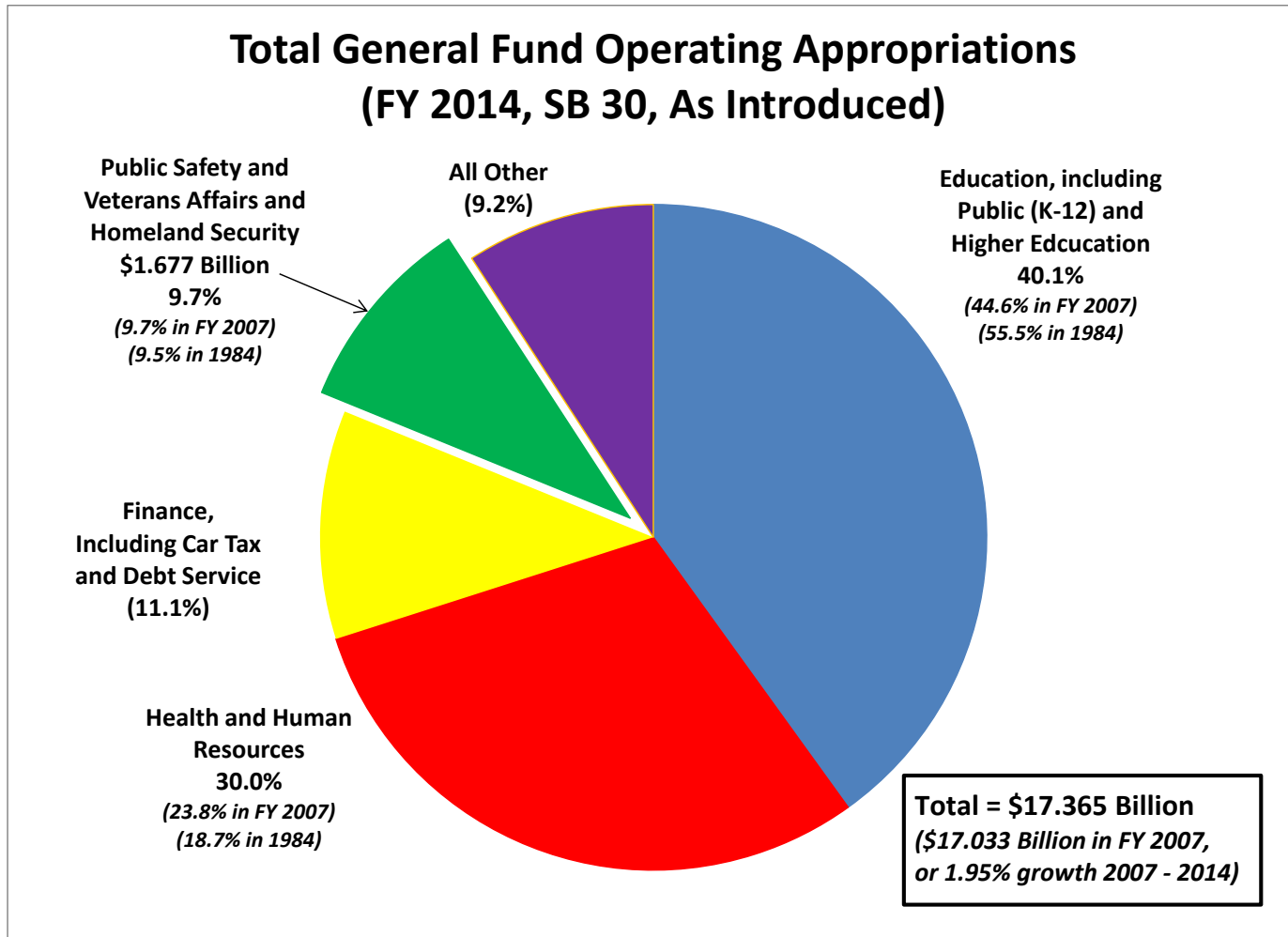
Budget and Debt Implications

Cost Per Inmate

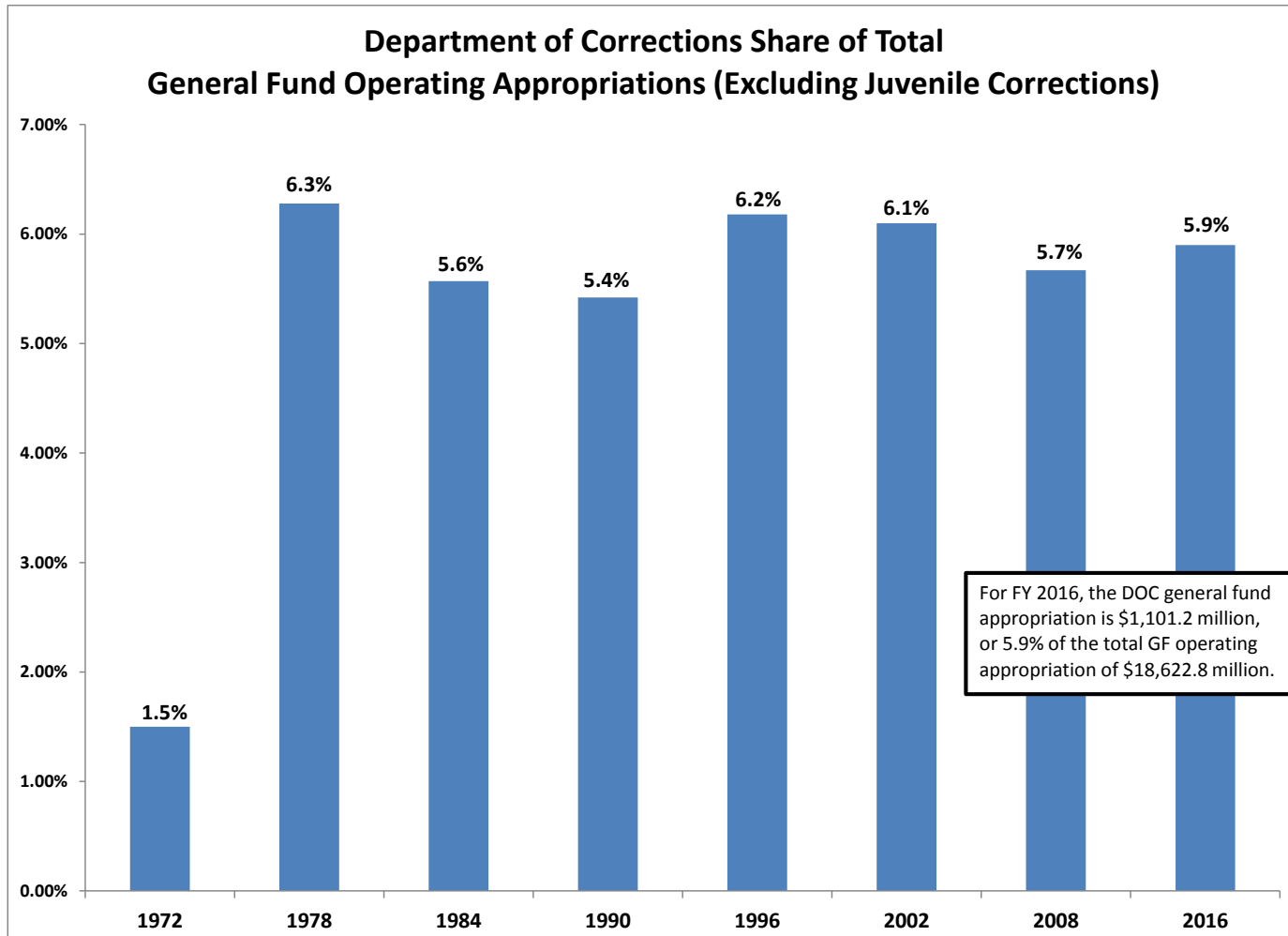
Older Inmates and Medical Costs



Public Safety: 9.7% of the Budget

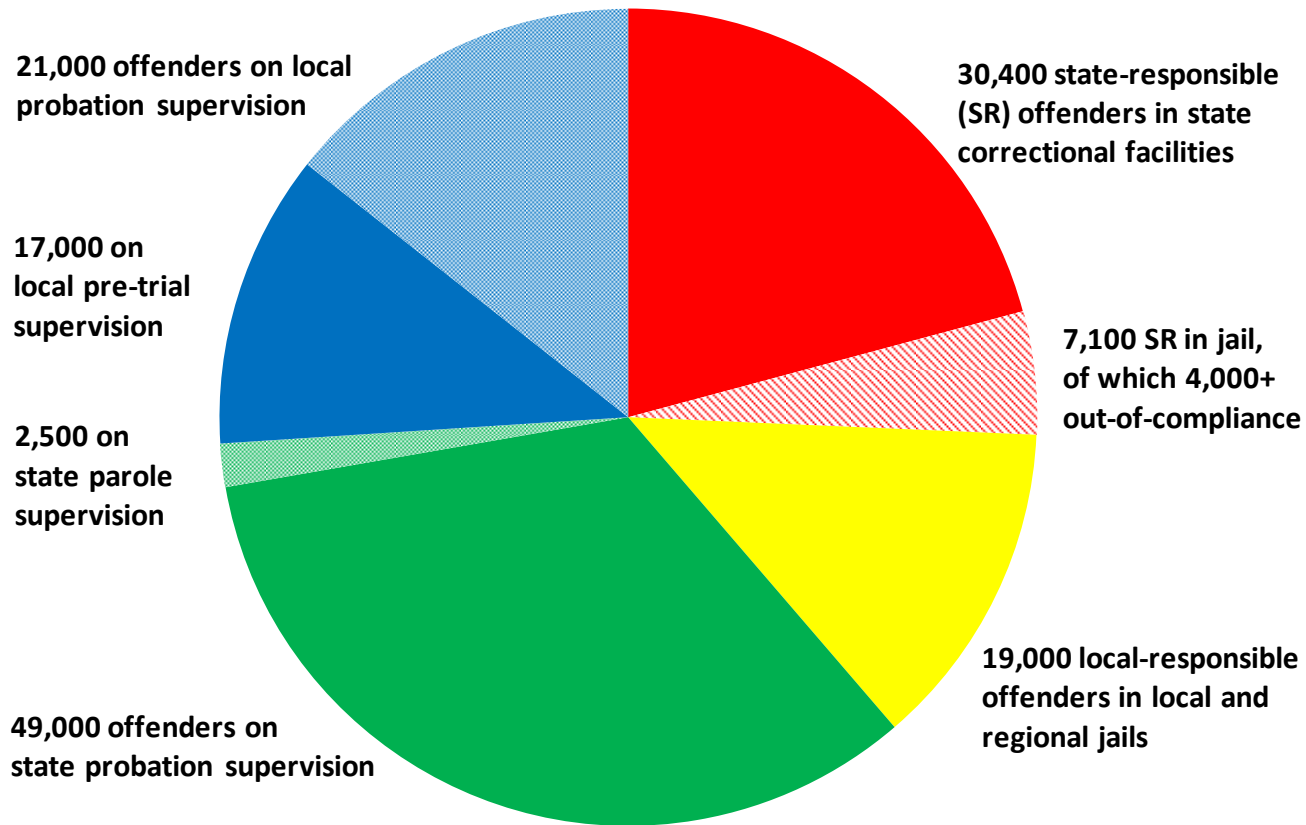


Corrections: About 6% of the Budget

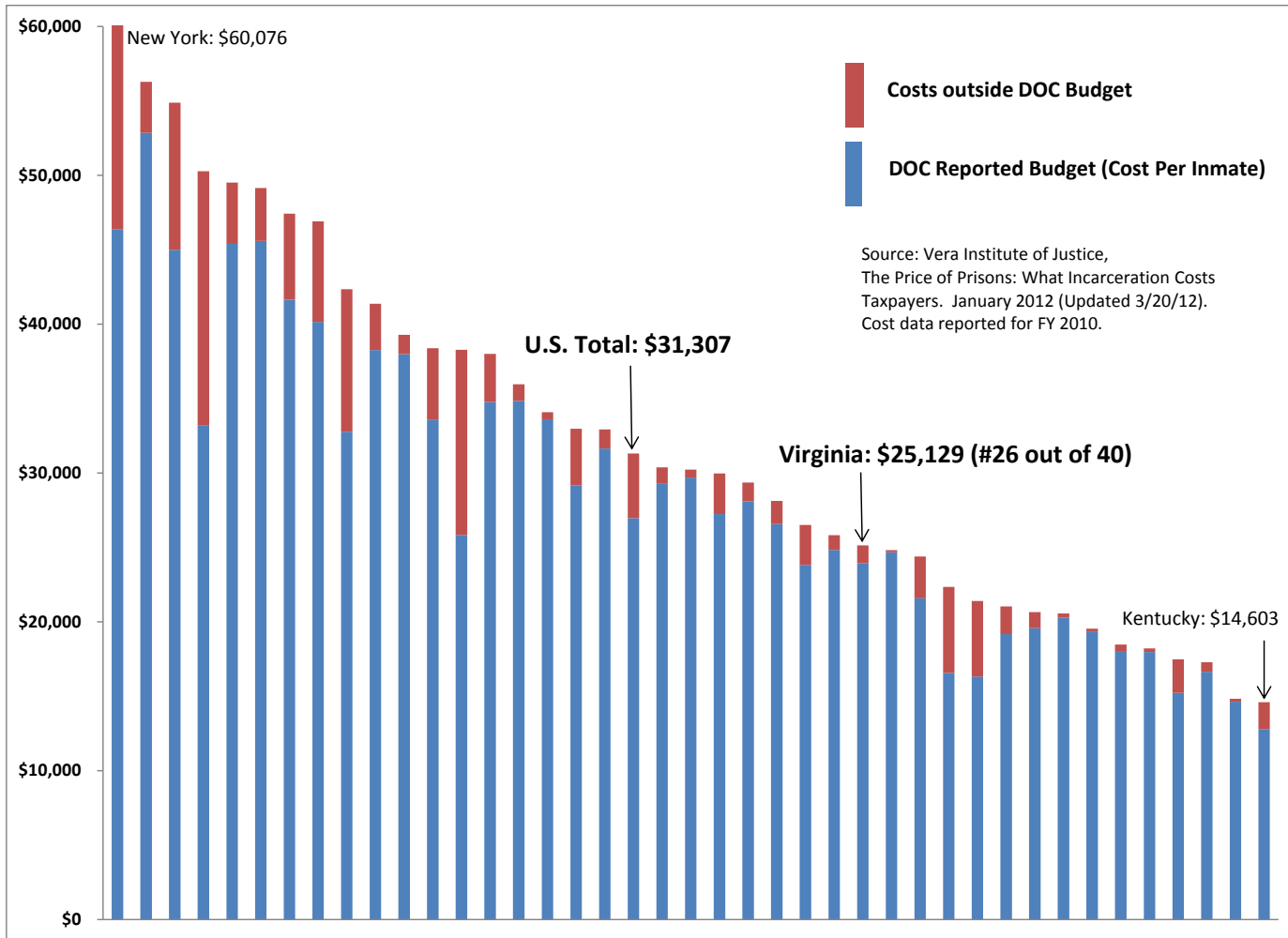


2.4% of Virginia's Adult Population

**146,000 Offenders Under Correctional Supervision
(As of June 30, 2011)**



Total Taxpayer Cost Per Inmate (FY 2010)



Adding (and Subtracting) Capacity

- Virginia's offender population forecasting process has been relatively accurate in the short term, but less accurate in the long term.
- Virginia has responded to changes in the population growth rate by:
 - Building new, more efficient correctional facilities;
 - Increasing (or decreasing) the level of double-bunking; and,
 - Increasing (or decreasing) the out-of-compliance backlog in jails (the number of SR prisoners held in jail 60+ days beyond receipt of sentencing order).
- When there has been excess bed capacity, DOC has contracted to house out-of-state inmates and has closed older, less efficient facilities.
 - There was also one period of about two years where a new prison (in Grayson County) sat vacant.
 - With the closing of 5,725 older beds since 2002, including six major facilities and several smaller units, DOC has modernized its capital stock – thereby improving security as well as staffing and energy efficiency.

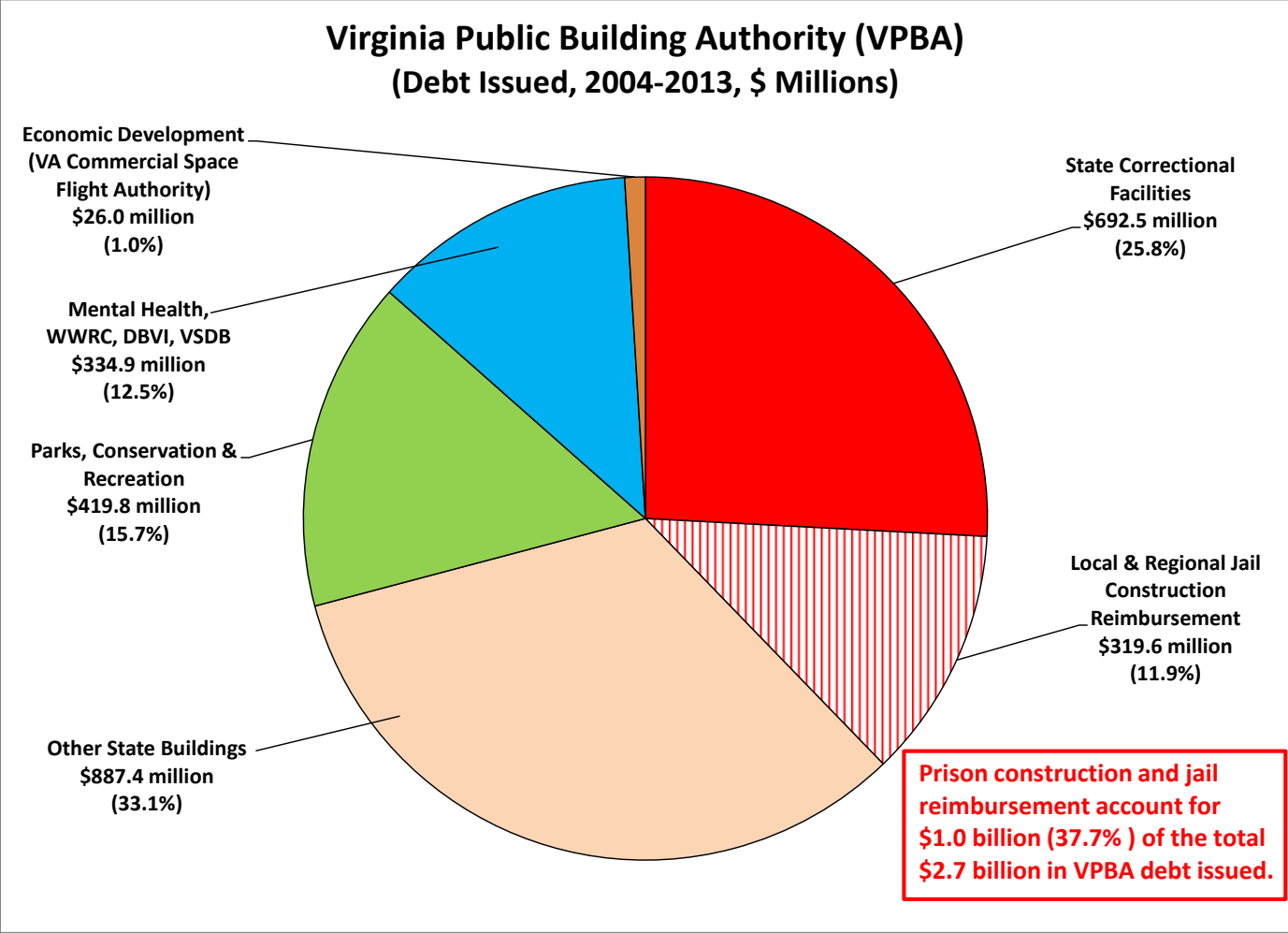


Debt for Prisons

- With the authorization of Greensville and Keen Mountain in 1988, Virginia began to use the Virginia Public Building Authority (VPBA) to finance construction of new correctional facilities.
- Virginia has added about 22,000 new prison beds since 1990 at a capital cost of \$1.1 billion, and over 23,000 new regional and local jail beds since 1993 at a total state and local capital cost of over \$1.5 billion.
- Of the \$2.7 billion in state debt issued by the Virginia Public Building Authority (VPBA) from 2004-2013, \$1.0 billion (37.7%) represents debt for prison construction and local and regional jail reimbursements.
- VPBA debt service for prisons and jails represents \$104.5 million (37.7%) of the FY 2014 annual debt service cost of \$276.8 million for all VPBA bonds outstanding.



VPBA Debt



Impact of Sentencing on Virginia's Prison Population

More Prison Beds Reserved for Violent Offenders
Alternatives for Lower-Risk, Non-Violent Offenders
Risk Assessment
Probation Violators

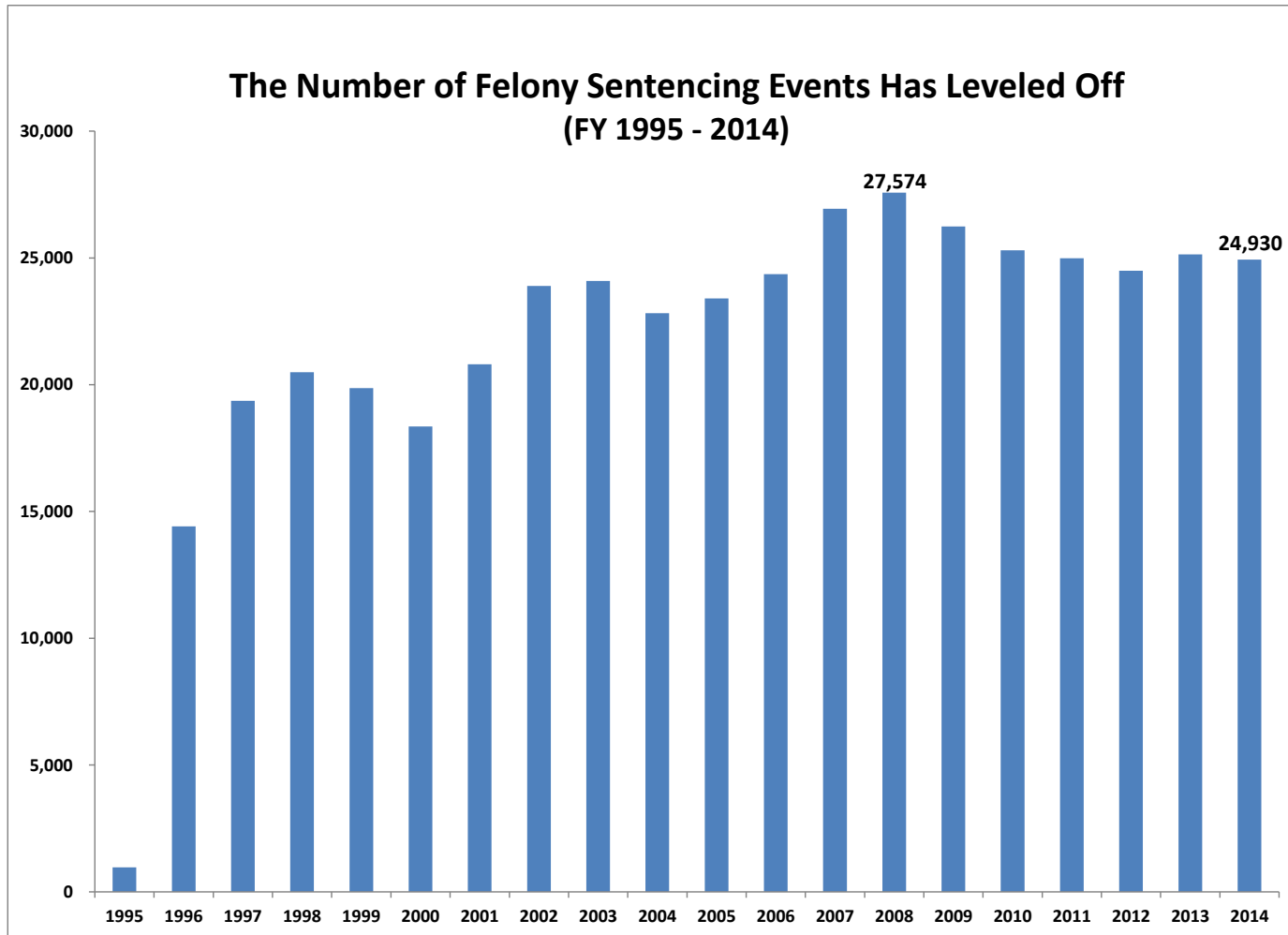


Impact on DOC Facilities

- Virginia's sentencing system has reserved more expensive prison bed space for the more serious violent and repeat offenders, as intended.
 - Since 1994, the proportion of offenders incarcerated in DOC facilities who are deemed violent by the sentencing guidelines (i.e. violent current offense or violent prior offense, including burglary of an occupied dwelling) has increased from about 60 to 80 percent.
- The remaining one-fifth of the inmate population, which is considered non-violent, consists mainly of more serious, repeat offenders.
 - Guidelines do not recommend incarceration for first-time offenders for simple possession of Schedule I/II drugs or grand larceny.
- Adding mandatory-minimum sentences and increasing the number of offenses defined as violent will increase long-term costs.
 - All sentencing bills with corrections bedspace fiscal impact are reviewed by the Public Safety Subcommittees of Senate Finance and House Appropriations.



Felony Sentencing Events



First Time, Non-Violent Offenders

- In FY 2014, there were 24,930 felony sentencing events in Circuit Court, of which over one-third (9,314) were sentenced to prison, over one-third to jail, and the rest to probation, without an active term of incarceration, or sentence was suspended.
- Of the 9,314 sentencing events resulting in a prison term:
 - 446 (or 4.8%) were sentenced to prison for simple possession of Schedule I or II drugs.
 - Of these, *only 15 had no additional felony offense or prior felony conviction.*
 - 1,567 (or 16.8%) were sentenced to prison for grand larceny.
 - Of these, *only 47 had no additional felony offense or prior felony conviction.*
 - The \$200 threshold for grand larceny was last raised in 1980 (from \$100).
 - A recent proposal to raise the threshold to \$500 was projected to save 192 state beds (but would increase the need for jail beds by 91).



Alternatives to Incarceration

- The General Assembly made the policy choice that alternatives to incarceration for lower-risk, non-violent offenders should be expanded.
 - Separate legislation was adopted in 1994 creating a community corrections program for state-responsible offenders under DOC, and authorizing and funding local community corrections and pre-trial release programs for local-responsible offenders through the Department of Criminal Justice Services (DCJS), to be overseen by local boards.
 - The legislation specified that the local programs would not be mandated, so that no locality would be required to provide these programs for local-responsible offenders if state funding was not provided.
- The General Assembly also directed the Sentencing Commission to study the use of risk assessment, to determine if up to 25 percent of non-violent offenders, who would otherwise be incarcerated, could be diverted, “with due regard for public safety.” This objective has been achieved.



Risk Assessment

- In Virginia, risk assessment applies only to non-violent felons (fraud, larceny, and drug offenders), who have already been determined to be prison-bound (or jail-bound) under the sentencing guidelines.
 - Considers current offense, age, gender, and measures of prior record.
 - Education, employment, race, and geographic location are not considered.
- After extensive study, a risk assessment instrument was pilot-tested from 1997-2001 in six circuits, and an evaluation study was conducted of the pilot program by the National Center for State Courts (NCSC).
 - The evaluation concluded Virginia's risk assessment instrument provided an objective, reliable, transparent and more accurate alternative for assessing an offender's potential for recidivism than traditional judicial intuition.
- In 2001, the Commission recommended that risk assessment be expanded statewide, and statewide implementation began July 1, 2002.
 - Virginia was the first state in the nation to apply this process statewide.



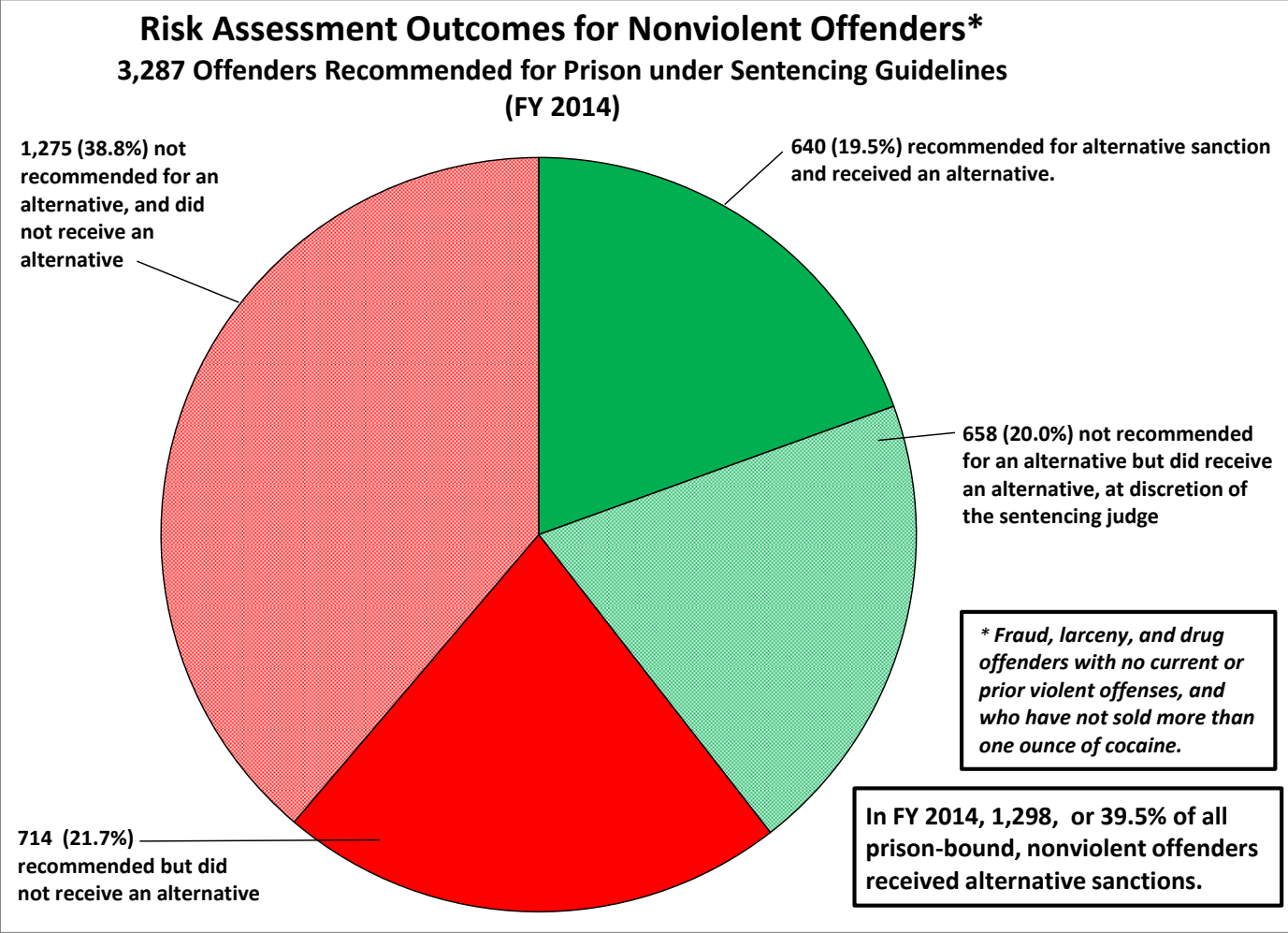
Adjustments in Risk Assessment

- The 2003 General Assembly directed the Sentencing Commission to use the risk assessment process to identify additional offenders who were not at that point being recommended for alternative punishment options, and who would pose no significant risk to public safety.
 - The commission was to determine the feasibility of adjusting the risk assessment scale to divert more low-risk offenders, without increasing the overall recidivism rate.
 - This change went into effect July 1, 2004.

- **Note:** In Virginia, risk assessment only applies in felony fraud, larceny, and drug cases for offenders who are recommended for incarceration by the guidelines and who meet the eligibility criteria.
 - Offenders with a current or prior violent felony conviction and those who sell one ounce or more of cocaine are excluded from risk assessment consideration.



Diversion of Nonviolent Offenders



Review of Sentencing Guidelines

Federal Sentencing Guidelines

Judicial Compliance

Sentencing Guidelines in Other States



Federal Sentencing Guidelines

- U.S. Sentencing Commission created in 1984.
- Mandatory federal sentencing guidelines implemented in 1987.
 - Compliance by federal judges is much lower than in the Virginia system.
 - There are significant disparities in the federal system (e.g. sentencing disparity of 100-1 for crack v. powder cocaine, reduced to 18-1 in 2010).
- The U.S. Supreme Court in *U.S. v. Booker* (2005) essentially made the federal guidelines voluntary.
 - In *Booker*, the Court ruled the Sixth Amendment right to trial by jury requires that (other than prior conviction), only facts admitted by a defendant or proved beyond a reasonable doubt to a jury may be used to calculate a sentence. The maximum sentence a judge may impose is a sentence based on the facts admitted by the defendant or proved to a jury beyond reasonable doubt.
- Post-*Booker*, compliance with federal guidelines has fallen further.

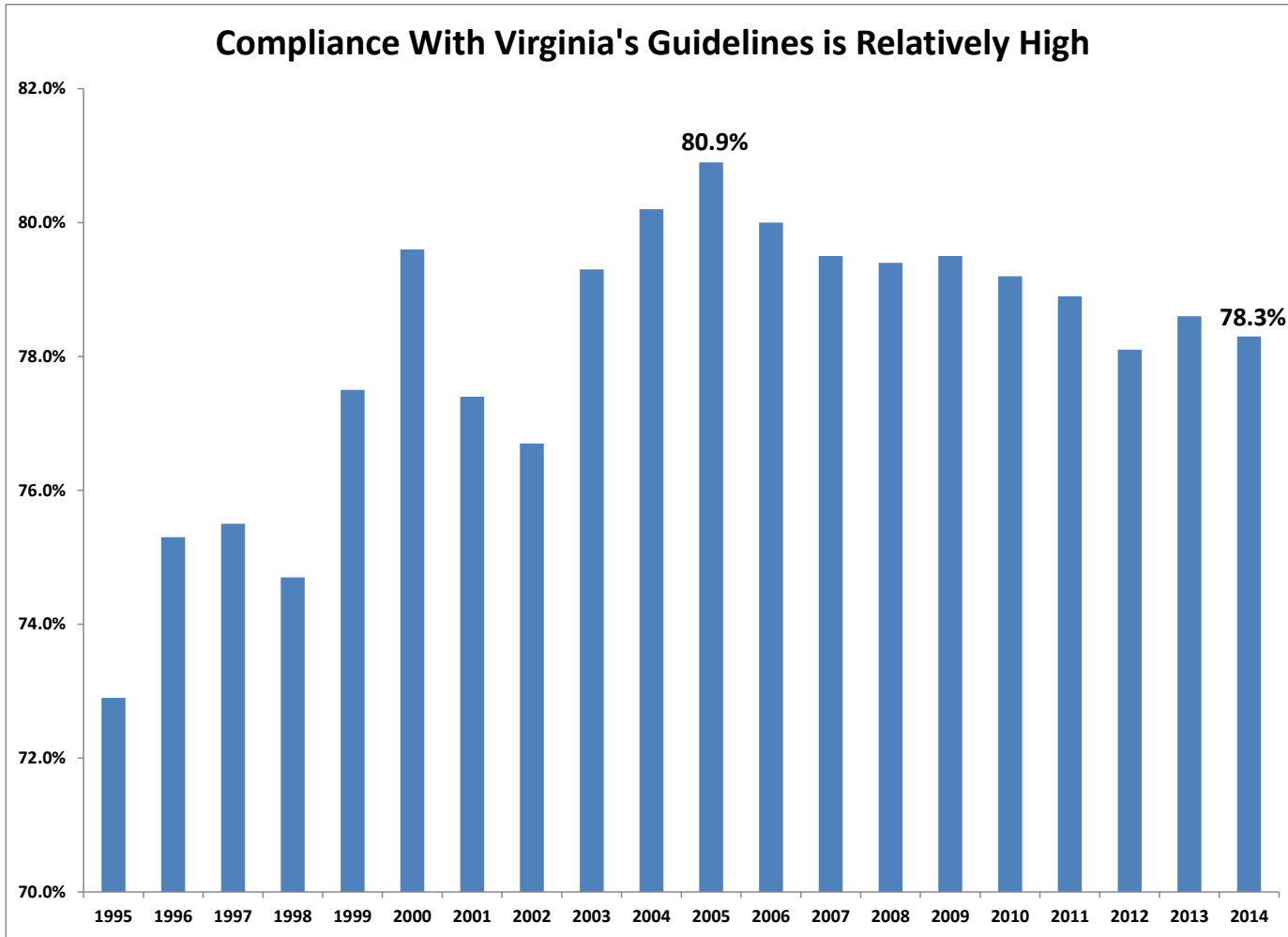


Judicial Compliance

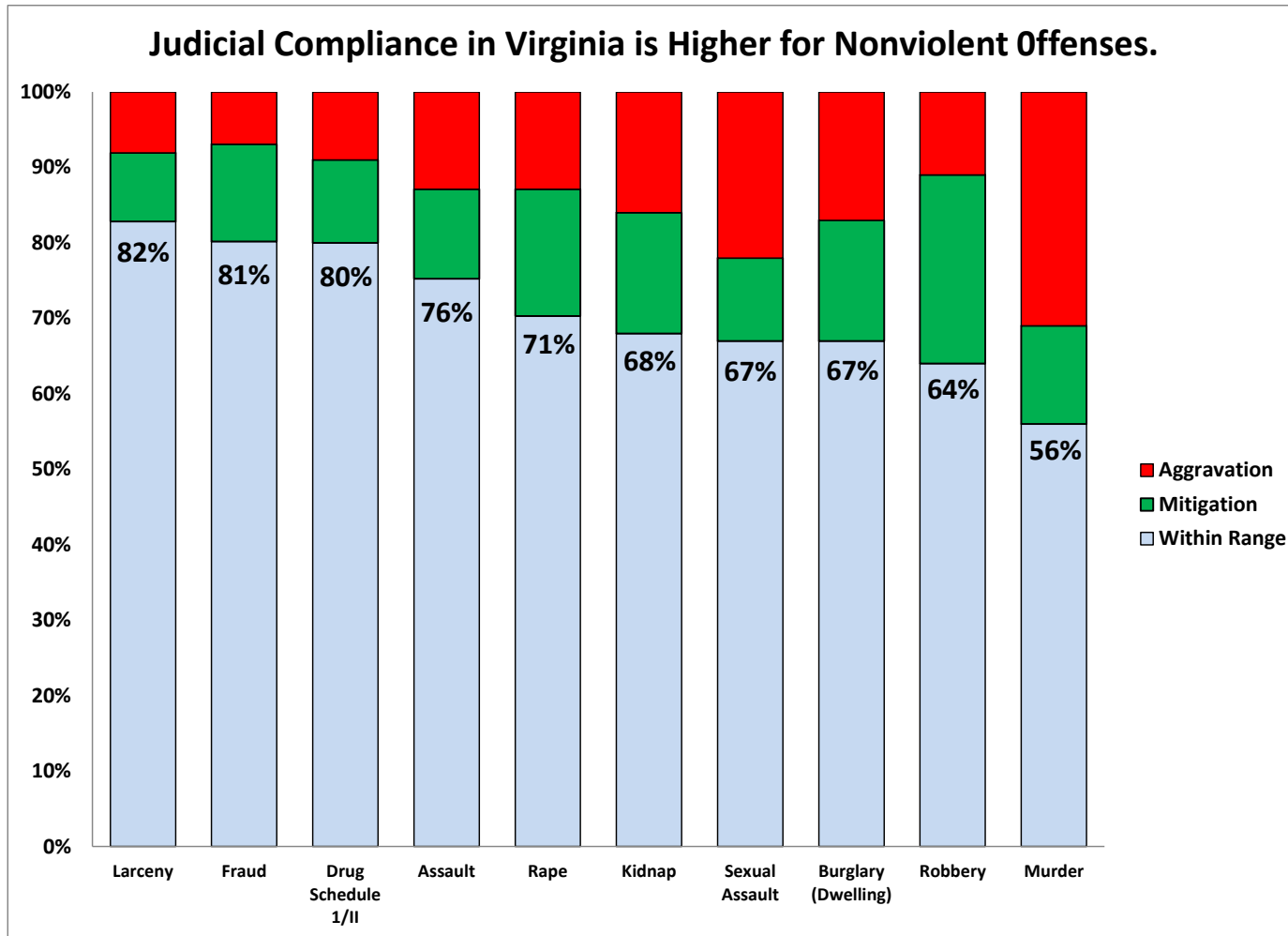
- Under the federal system, post-*Booker*, judicial compliance has declined from 72 percent in FFY 2004 to 51 percent in FFY 2013.
 - Since *Booker*, the percentage of cases sentenced below the guideline range has increased from 27 to 47 percent.
- The U.S. Sentencing Commission has expressed concerns about disparities:
 - Compliance with the federal guidelines varies by federal circuit; and,
 - The influence of demographic factors (race, gender, citizenship) has increased in federal sentencing since *Booker*.
- In Virginia, judicial compliance has been relatively high. In FY 2014, judges sentenced within the guidelines range in over 78 percent of all cases, above range in 10 percent, and below range in 11 percent.
 - Judges are not required to sentence within the range, but are required to specify “aggravating” or “mitigating” factors if they impose sentences above or below the recommended range.



Judicial Compliance in Virginia



Compliance by Offense



Sentencing Guidelines in Other States

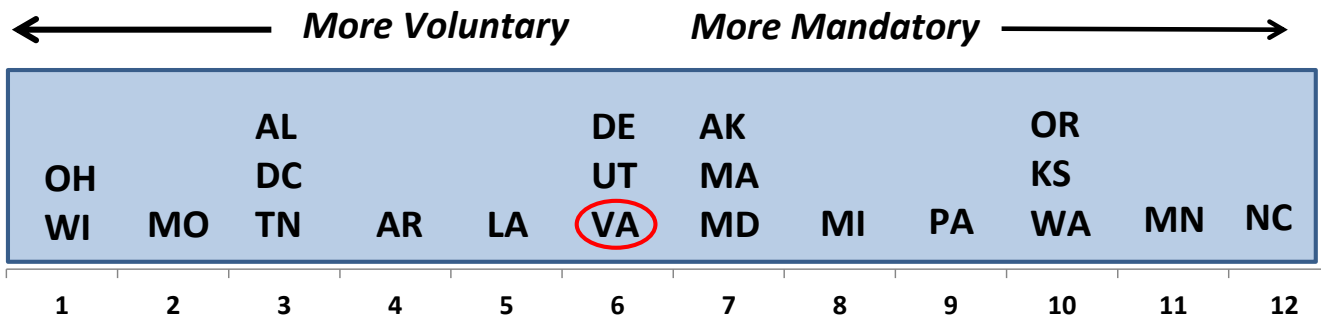
- According to a 2010 study by the National Center for State Courts (NCSC), 21 states had sentencing guidelines systems.
- NCSC concluded that the active participation by a sentencing commission is an essential element of effective guidelines.
 - The commissions play a critical role in designing guidelines, assessing whether guidelines are working as intended, and identifying how needed adjustments might be made.
 - It was not always clear whether a particular state’s guideline system is still operational.
 - Some of the 21 states do not have commissions.
- NCSC found that Virginia is in the middle of a continuum between more voluntary and more mandatory sentencing guidelines systems.
 - NCSC staff considers Virginia’s system to be a national model.



Continuum of State Guidelines

NCSC used the following criteria to place the 21 state guidelines systems along a continuum from purely voluntary to mandatory:

- Is there an enforceable rule related to guideline use?
- Is the completion of a worksheet or structured scoring form required?
- Does a Sentencing Commission regularly report on guideline compliance?
- Are compelling and substantial reasons required for departures?
- Are written reasons required for departures?
- Is there appellate review of defendant-based challenges related to sentencing guidelines?



SFC Survey Results

Circuit Court Judges

Chief Probation Officers

Commonwealth's Attorneys

Chief Public Defenders

Criminal Defense Attorneys



Surveys of Key Stakeholders

- SFC staff conducted a series of surveys in September 2014 to determine the opinions of key stakeholders as to the effectiveness of Virginia's sentencing guidelines:
 - **Circuit Court Judges:** 54 percent response rate (69 out of 128);
 - **Chief Probation Officers:** 93 percent response rate (40 out of 43);
 - **Commonwealth's Attorneys:** 58 percent response rate (70 out of 120);
 - **Chief Public Defenders:** 100 percent response rate (25 out of 25); and,
 - **Criminal Defense Attorneys:** 26 percent response rate (35 out of 135 surveys sent to all private criminal defense attorneys who had attended a sentencing commission guidelines training class in the last two years).
- The response rate was good, with the exception of the private defense attorneys. There is no reason to believe the results would be substantially different with a higher response rate.

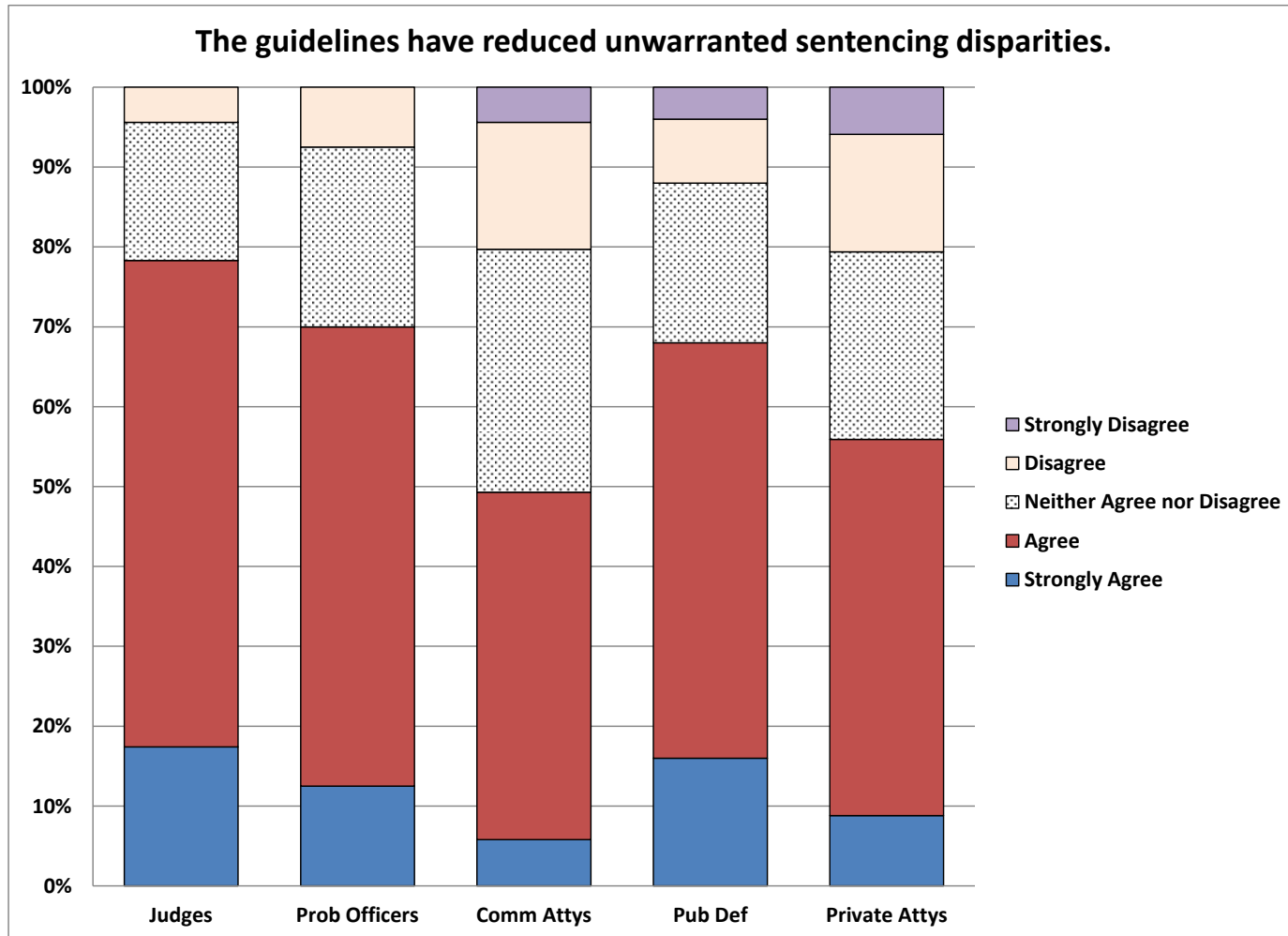


Key Findings

- Most respondents believe sentencing disparities have been reduced.
- Almost 60 percent of judges agree the lengths of sentences for violent and repeat offenders are appropriate.
 - Commonwealth’s Attorneys: more likely to believe sentences are too lenient.
 - Public defenders: more likely to believe sentences are too harsh.
 - This probably suggests the guidelines are just about right. A few specific areas were cited where selective adjustments might be considered.
- More than half of judges and chief PO’s believe risk assessment for non-violent offenders has been helpful in diverting low-risk offenders.
- A large number of respondents believe alternatives to incarceration are not sufficient in their court.
- It has been more difficult to implement sentencing guidelines for technical probation violators. More work is probably needed in this area.

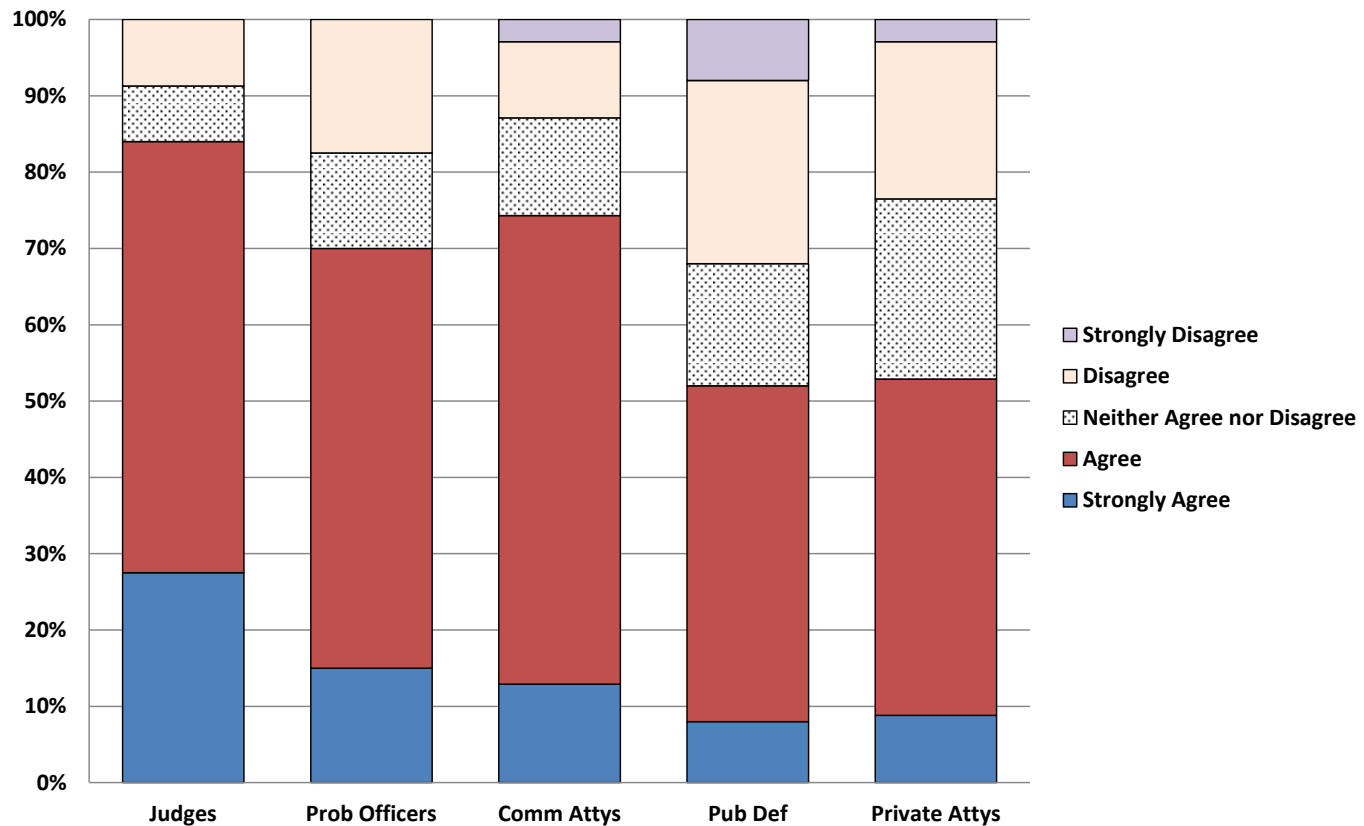


Sentencing Disparities



Comparable Sentences

Sentencing guidelines have resulted in comparable sentences for similar crimes committed by offenders with similar criminal histories, without regard to race, sex, geography, or other unrelated factors.

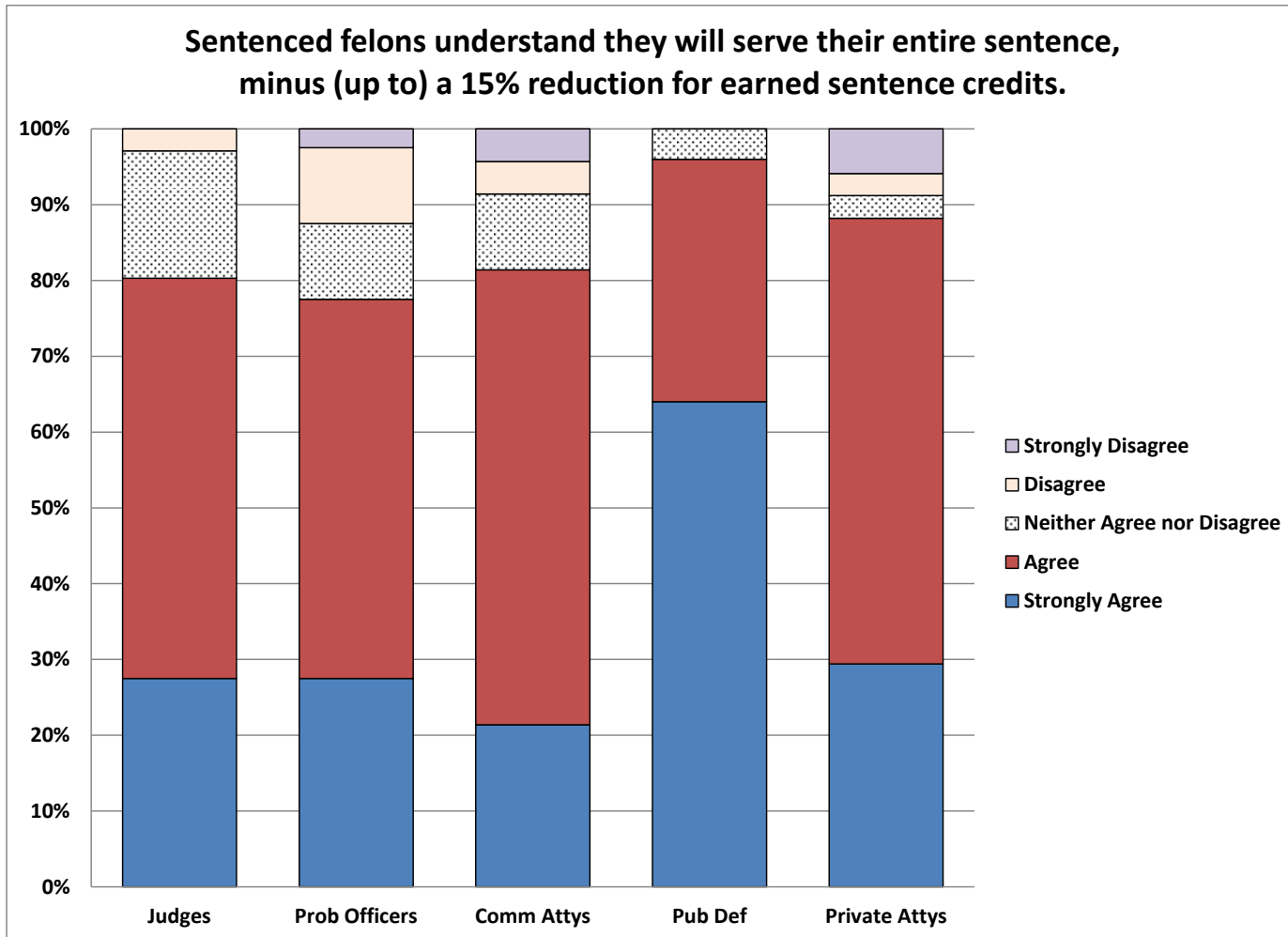


Elimination of Sentencing Disparities

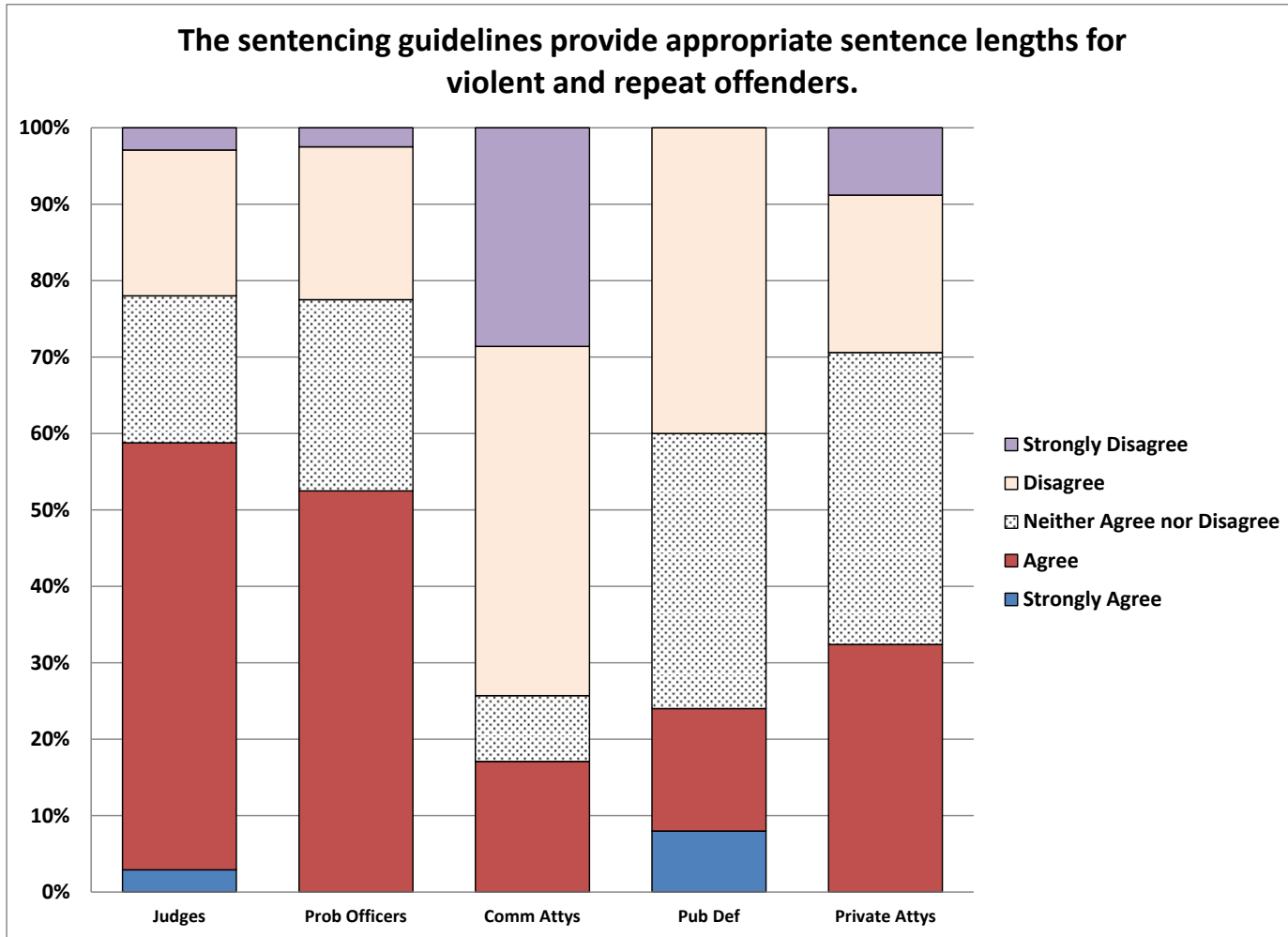
- The National Center for State Courts (NCSC) concluded in 2008 (in a study of Michigan, Minnesota, and Virginia, *Assessing Consistency and Fairness in Sentencing*) that the sentencing guidelines in Virginia...
 - “... have eliminated almost all evidence of racial differences in sentencing across the six crime groups examined with one exception. Black males register a slight increase in predicted sentence length for the Assault crime group.”
 - “... there is no evidence to suggest there is systematic discrimination – that rises to the level of statistical significance – in Virginia. ... a voluntary guideline system, such as the one in Virginia, with substantial sentencing ranges exhibits no measurable discrimination.”
- Elimination of racial disparities in sentencing was a key motivating factor for the original development of guidelines in Virginia in the 1980’s.
- SFC survey results confirm that Virginia has made significant progress towards eliminating sentencing disparities.



Transparency



Length of Sentence

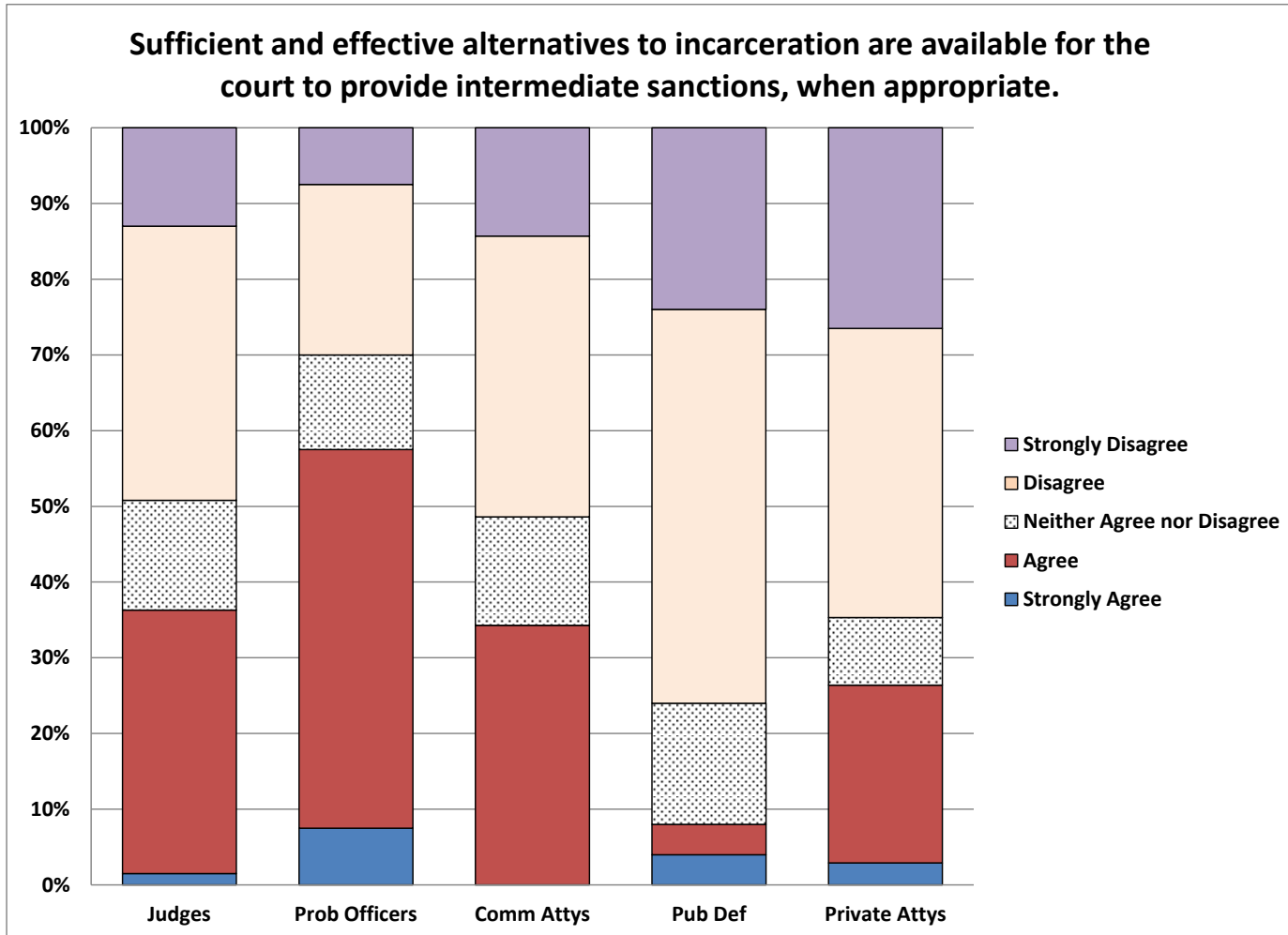


Representative Comments

- Commonwealth's Attorneys:
 - *Guidelines for child sexual assault and repeated larcenies are too low.*
 - *Guidelines for methamphetamine manufacturing are still too light.*
 - *Repeat possession of Schedule I/II offenders should receive more time.*
 - *Breaking and entering should never result in a recommendation of probation.*
- Chief Public Defenders:
 - *Some enhancements seem too extreme.*
 - *Raise threshold for grand larceny from \$200 (last raised in 1980).*
 - *Eliminate/reduce number of minimum mandatory sentences.*
 - *Consider date of previous conviction; e.g. robbery conviction 30 years ago.*
 - *Guidelines make no distinction between prior offense committed six months earlier and one committed 40 years earlier.*



Alternatives to Incarceration

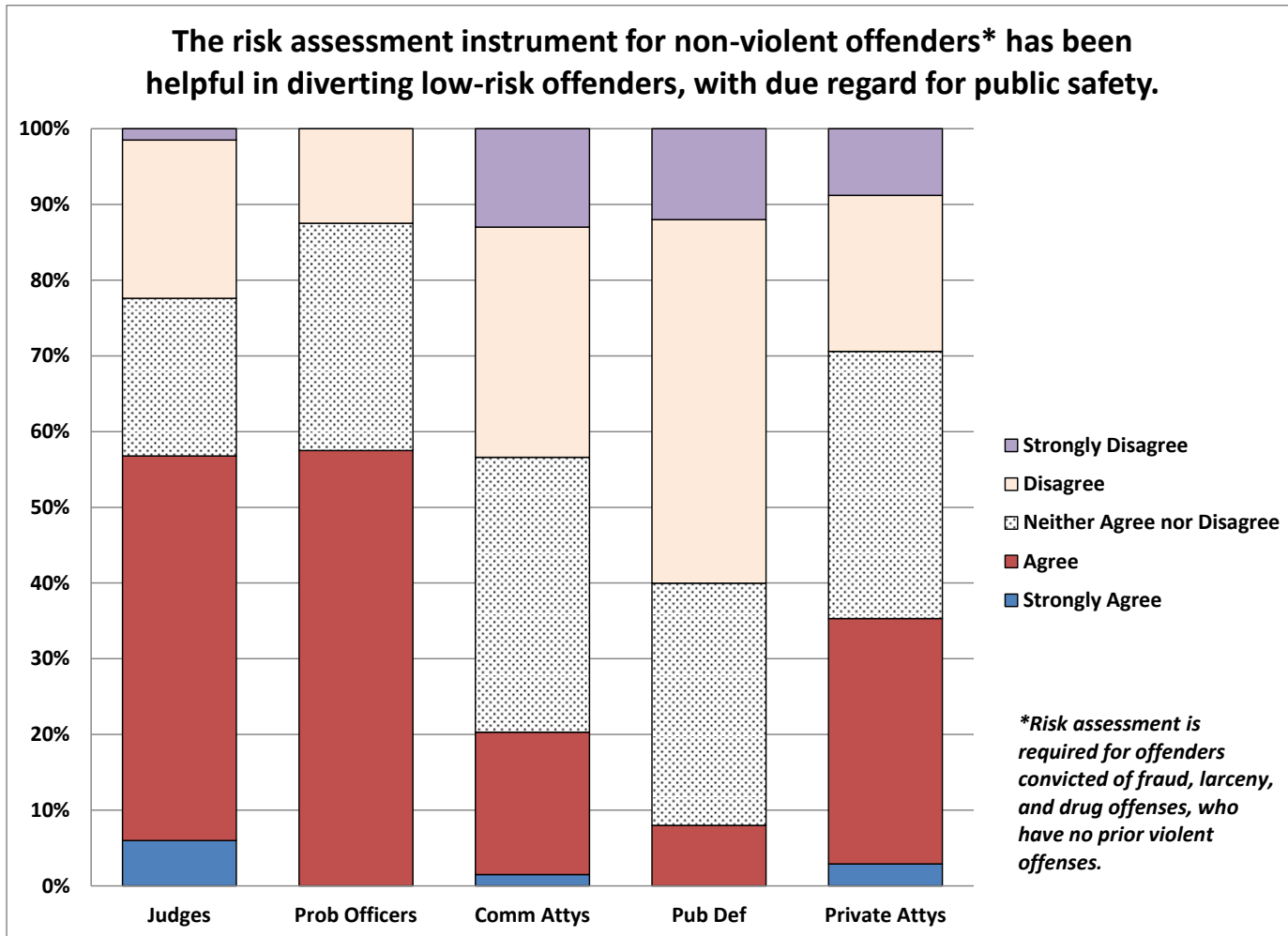


Representative Comments

- Judge:
 - *We still lack the resources to provide adequate substance abuse and mental health treatment for many offenders.*
- Commonwealth's Attorneys:
 - *There are very few alternatives available because of lack of funding.*
 - *Day reporting was the best alternative and it was cut for lack of funding.*
 - *We need long term residential substance abuse (treatment) as an alternative.*
 - *Better funding for drug and mental health programs (in prison or jail).*
- Chief Public Defenders:
 - *No real intermediate sanctions for mentally ill clients. The most glaring gap is the unavailability of treatment options for those suffering from mental illness or substance abuse.*
 - *Day reporting centers are needed.*



Risk Assessment

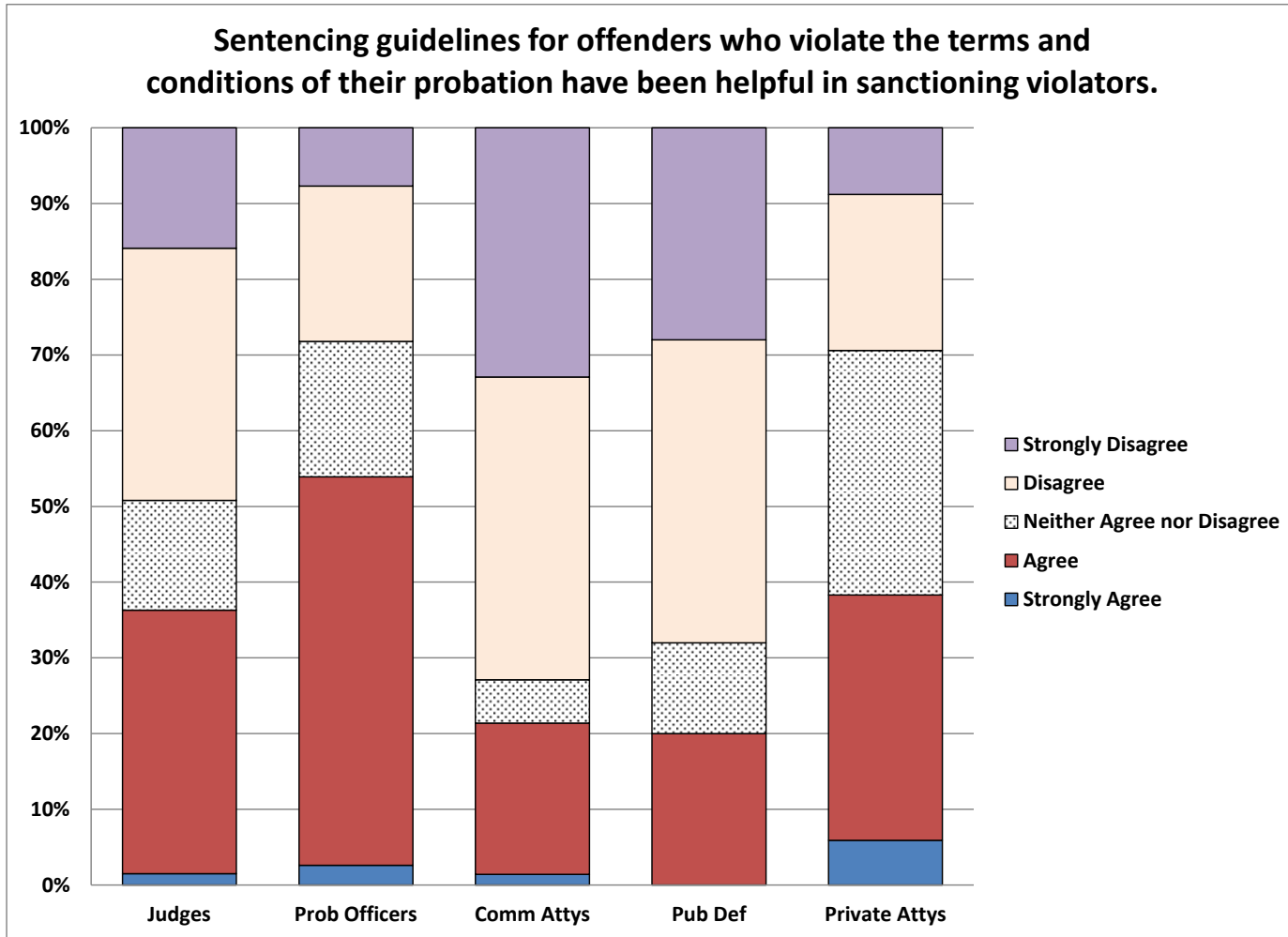


Representative Comments

- Judges:
 - *So helpful!*
 - *It's useless. If I have a full presentence report I don't need some scale to tell me what I should do.*
 - *I generally believe thieves and fraudsters should be punished, not "diverted."*
 - *However, the lack of meaningful drug treatment beyond outpatient services provided by local CSBs prevent the effective use of diversion options.*
- Commonwealth's Attorney:
 - *I don't believe drug offenders are necessarily "low risk." They commit lots of crimes.*
- Chief Probation Officer:
 - *The Court and the Commonwealth give little or no consideration to risk assessments.*



Probation Violators

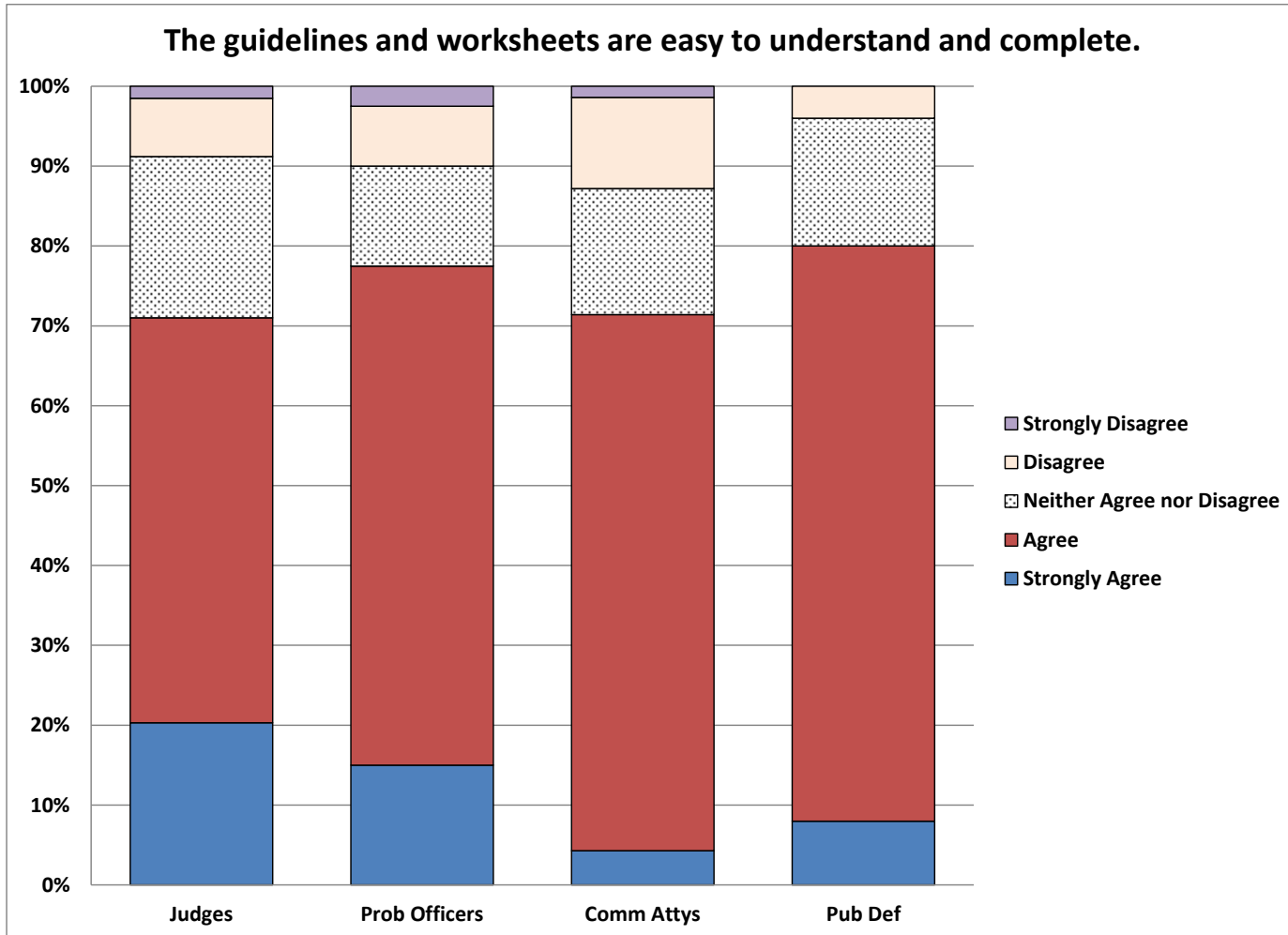


Representative Comments

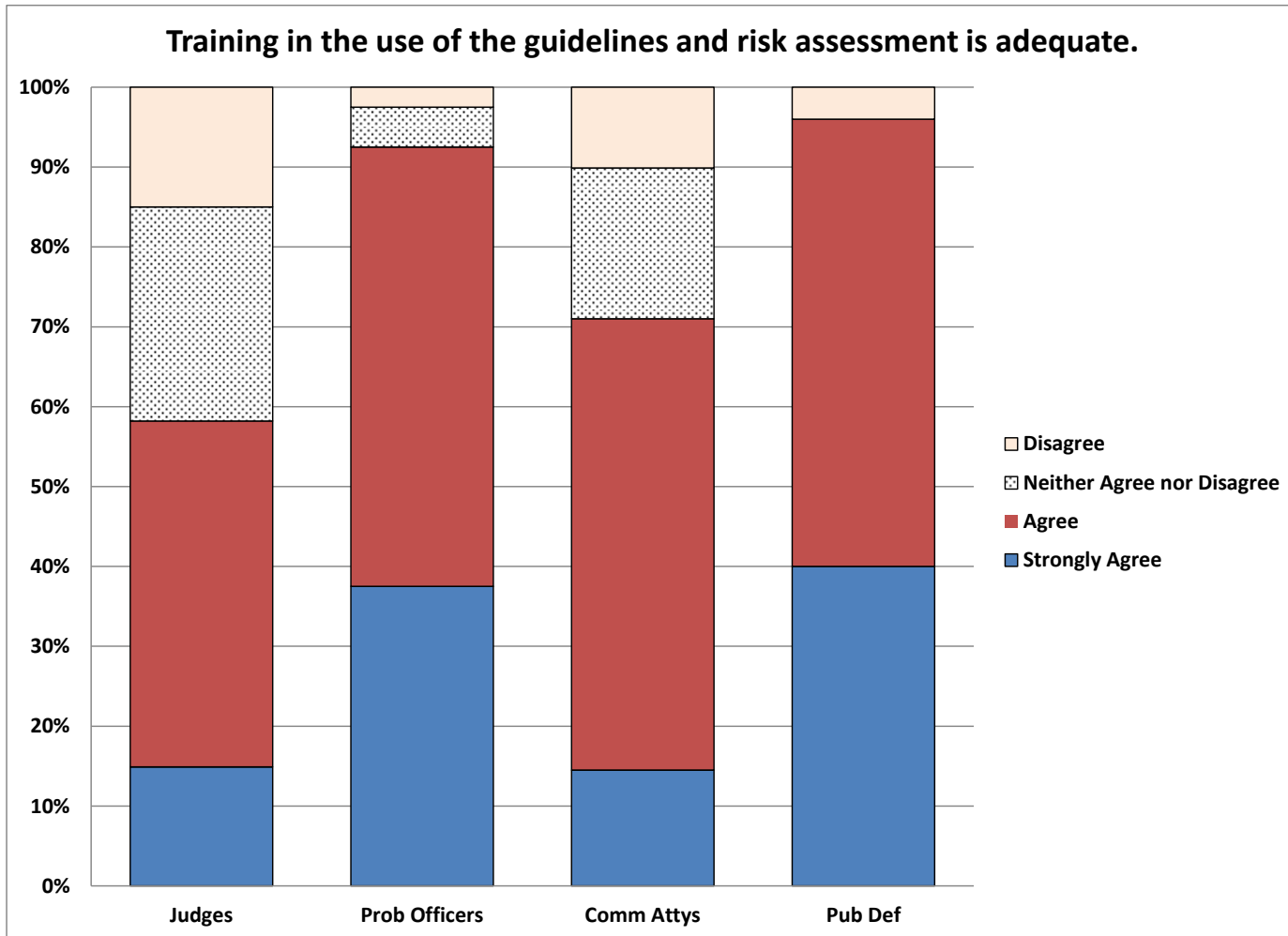
- Judges:
 - *Probation guidelines need much more work.*
 - *Problematic and in need of additional fine tuning by Sentencing Commission.*
 - *Too often recommend lengthy sentences for technical violations by drug users.*
 - *Too low and fail to take seriously the consequences of violating probation.*
 - *Unhelpful, unlike the guidelines in sentencing, and I frequently do not follow them. If I were to make one single recommendation to the Sentencing Commission, it would be to completely overhaul these guidelines (for probation violators).*
- Commonwealth's Attorneys:
 - *Essentially give no meaningful time for those who violate terms of probation.*
 - *The probation guidelines are the most arbitrary ... Way too high for some violations, way too low for others.*



Worksheets



Training



Conclusions

- Virginia is a national leader in sentencing guidelines and risk assessment.
 - Sentencing disparities have for the most part been eliminated.
 - Actual time served in prison has increased for violent and repeat offenders.
 - Prosecutors tend to believe some sentences are too lenient, and public defenders believe some are too harsh; however, almost three-fifths of judges believe sentence length is appropriate.
 - Virginia is diverting almost 40 percent of nonviolent offenders who would otherwise be incarcerated, well above the 1994 goal of up to 25 percent.
 - However, alternatives to incarceration are not sufficiently available (especially for offenders with mental health or substance abuse problems).
- Corrections is expensive, but more prison beds are being reserved for violent and repeat offenders, compared to 1994.
- Virginia has the third lowest violent crime rate and the second lowest recidivism rate in the nation.

