Virginia Criminal Sentencing Commission

2007 Annual Report

VIRGINIA CRIMINAL SENTENCING COMMISSION

2007 ANNUAL REPORT

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and Confirmed by the General Assembly

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SUPREME COURT OF VIRGINIA
VIRGINIA CRIMINAL SENTENCING COMMISSION

December 1, 2007

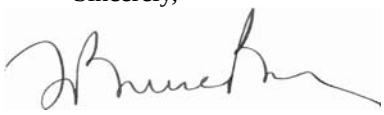
To: The Honorable Leroy Rountree Hassell, Sr., Chief Justice of Virginia
The Honorable Timothy M. Kaine, Governor of Virginia
The Honorable Members of the General Assembly of Virginia
The Citizens of Virginia

Section 17.1-803 of the *Code of Virginia* requires the Virginia Criminal Sentencing Commission to report annually upon its work and recommendations. Pursuant to this statutory obligation, we respectfully submit for your review the *2007 Annual Report* of the Criminal Sentencing Commission.

This report details the work of the Commission over the past year. The report presents the results of a comprehensive examination of the latest data on the drug methamphetamine and its impact in Virginia. The report includes a detailed analysis of judicial compliance with the felony sentencing guidelines during fiscal year 2007. The Commission's recommendations to the 2008 session of the Virginia General Assembly are also contained in this report.

The Commission wishes to sincerely thank those of you in the field whose diligent work with the guidelines enables us to produce this report.

Sincerely,



F. Bruce Bach
Chairman

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1 Introduction

Virginia's approach has proven to be one of the most successful and effective avenues for reform.

Overview

The Virginia Criminal Sentencing Commission is required by § 17.1-803 of the *Code of Virginia* to report annually to the General Assembly, the Governor and the Chief Justice of the Supreme Court of Virginia. To fulfill its statutory obligation, the Commission respectfully submits this report, the thirteenth in the series.

The report is organized into four chapters. The remainder of the Introduction chapter provides a general profile of the Commission and an overview of its various activities and projects during 2007. The Guidelines Compliance chapter provides a comprehensive analysis of compliance with the sentencing guidelines during fiscal year (FY) 2007. The chapter on Methamphetamine Crime in Virginia documents the results of the Commission's most recent study of this drug and its impact on the Commonwealth. In the report's final chapter, the Commission presents its recommendations for revisions to the felony sentencing guidelines system.

Commission Profile

The Virginia Criminal Sentencing Commission is comprised of 17 members as authorized in the *Code of Virginia* § 17.1-802. The Chairman of the Commission is appointed by the Chief Justice of the Supreme Court of Virginia, must not be an active member of the judiciary and must be confirmed by the General Assembly. The Chief Justice also appoints six judges or justices to serve on the Commission. The Governor appoints four members, at least one of whom must be a victim of crime or a representative of a crime victim's organization. In the original legislation, five members of the Commission were to be appointed by the General Assembly, with the Speaker of the House of Delegates designating three members and the Senate Committee on Privileges and Elections selecting two members. The 2005 General Assembly modified this provision. Now, the Speaker of the House of Delegates has two appointments, while the Chairman of the House Courts of Justice Committee, or another member of the Courts Committee appointed by the chairman, must serve as the third House appointment. Similarly, the

Commission Meetings

The full membership of the Commission met four times during 2007. These meetings, held in the Supreme Court of Virginia building, were held on March 19, June 11, September 17 and November 13. Minutes for each of these meetings are available on the Commission's website (www.vcsc.virginia.gov).

Senate Committee on Rules makes only one appointment and the other appointment must be filled by the Chairman of the Senate Courts of Justice Committee or a designee from that committee. The 2005 amendment did not affect existing members whose appointed terms had not expired; instead this provision became effective when the terms of two legislative appointees expired on December 31, 2006. The Chairman of the Senate Courts of Justice Committee joined the Commission in 2007, as did a member of the House Courts of Justice Committee. The final member of the Commission is Virginia's Attorney General, who serves by virtue of his office.

The Virginia Criminal Sentencing Commission is an agency of the Supreme Court of Virginia. The Commission's offices and staff are located on the Fifth Floor of the Supreme Court Building at 100 North Ninth Street in downtown Richmond.

Monitoring and Oversight

Section 19.2-298.01 of the *Code of Virginia* requires that sentencing guidelines worksheets be completed in all felony cases for which there are guidelines. This section of the *Code* also requires judges to announce during court proceedings for each case that the guidelines forms have been reviewed. After sentencing, the guidelines worksheets are signed by the judge and become a part of the official record of each case. The clerk of the circuit court is responsible for sending the completed and signed worksheets to the Commission.

The sentencing guidelines worksheets are reviewed by the Commission staff as they are received. The Commission staff performs this check to ensure that the guidelines forms are being completed accurately. Through this review process, errors or omissions are detected and resolved.

Once the guidelines worksheets are reviewed and determined to be complete, they are automated and analyzed. The principal analysis performed with the automated guidelines database relates to judicial compliance with sentencing guidelines recommendations. This analysis is conducted and presented to the Commission on a semiannual basis. The most recent study of judicial concurrence with the sentencing guidelines is presented in the next chapter.

Training, Education and Other Assistance

The Commission provides sentencing guidelines assistance in a variety of forms: training and education seminars, training materials and publications, a website, and assistance via the "hot line" phone system. Training and education are on-going activities of the Commission. The Commission offers training and educational opportunities in an effort to promote the accurate completion of sentencing guidelines. Training seminars are designed to appeal to the needs of attorneys for the Commonwealth and probation officers, the two groups authorized by statute to complete the official guidelines for the court. The seminars also provide defense attorneys with a knowledge base to challenge the accuracy of guidelines submitted to the court. In addition, the Commission conducts sentencing guidelines seminars for new members of the judiciary and other criminal justice system professionals. Having all sides equally versed in the completion of guidelines worksheets is essential to a system of checks and balances that ensures the accuracy of sentencing guidelines.

In 2007, the Commission offered 55 training seminars across the Commonwealth. As in previous years, Commission staff conducted training for attorneys and probation officers new to Virginia's sentencing guidelines. The six-hour seminar introduced participants to the sentencing guidelines and provided instruction on correct scoring of the guidelines worksheets. The seminar also introduced new users to the probation violation guidelines and the two offender risk assessment instruments that are incorporated into Virginia's guidelines system. Seminars for experienced guidelines users were also provided. A "What's New" course, designed to update experienced users on recent changes to the guidelines, was offered in several locations during the spring. All of the courses described above are approved by the Virginia State Bar, enabling participating attorneys to earn Continuing Legal Education credits. This year, training staff focused considerable time and effort towards developing a guidelines-related ethics class. The Virginia State Bar assisted in the development of the class material and participated with Commission training staff in the presentation of the seminar. The Virginia State Bar has approved this class for one hour of Continuing Legal Education Ethics credit. Finally, the Commission regularly conducts sentencing guidelines training at the Department of Corrections' Training Academy as part of the curriculum for new probation officers.

Commission staff traveled throughout Virginia in an attempt to offer training that was convenient to most guideline users. Staff continues to seek out facilities that are designed for training, forgoing the typical courtroom environment for the Commission's training programs. The sites for these seminars included a combination of colleges and universities, libraries, state and local facilities, a jury assembly room, a museum and criminal justice academies. Many sites, such as the Roanoke Higher Education Center, were selected in an effort to provide comfortable and convenient locations at little or no cost to the Commission.

The Commission will continue to place a priority on providing sentencing guidelines training on request to any group of criminal justice professionals. The Commission is also willing to provide an education program on guidelines and the no-parole sentencing system to any interested group or organization. If an individual is interested in training, he or she can contact the Commission and place his or her name on a waiting list. Once there is enough interest, a seminar is presented in a locality convenient to the majority of individuals on the list.

In addition to providing training and education programs, the Commission maintains a website and a "hot line" phone system. By visiting the website, a user can learn about upcoming training sessions, access Commission reports, look up Virginia Crime Codes (VCCs) and utilize on-line versions of the sentencing guidelines forms. The "hot line" phone (804.225.4398) is staffed from 7:45 a.m. to 5:15 p.m., Monday through Friday, to respond quickly to any questions or concerns regarding the sentencing guidelines. The hot line continues to be an important resource for guidelines users around the Commonwealth.

Projecting the Impact of Proposed Legislation

Section 30-19.1:4 of the *Code of Virginia* requires the Commission to prepare fiscal impact statements for any proposed legislation that may result in a net increase in periods of imprisonment in state correctional facilities. These impact statements must include details as to the impact on adult, as well as juvenile, offender populations and any necessary adjustments to sentencing guideline recommendations. Additionally, any impact statement required under § 30-19.1:4 must include an analysis of the impact on local and regional jails and state and local community corrections programs.

During the 2007 General Assembly session, the Commission prepared 263 impact statements on proposed legislation. These proposals fell into five categories: 1) legislation to increase the felony penalty class of a specific crime; 2) legislation to increase the penalty class of a specific crime from a misdemeanor to a felony; 3) legislation to add a new mandatory minimum penalty for a specific crime; 4) legislation to expand or clarify an existing crime; and 5) legislation that would create a new criminal offense. The Commission utilizes its computer simulation forecasting program to estimate the projected impact of these proposals on the prison system. The estimated impact on the juvenile offender population is provided by Virginia's Department of Juvenile Justice. In most instances, the projected impact and accompanying analysis of a bill is presented to the General Assembly within 48 hours after the Commission was notified of the proposed legislation. When requested, the Commission provides pertinent oral testimony to accompany the impact analysis.

Prison and Jail Population Forecasting

Forecasts of offenders confined in state and local correctional facilities are essential for criminal justice budgeting and planning in Virginia. The forecasts are used to estimate operating expenses and future capital needs and to assess the impact of current and proposed criminal justice policies. Since 1987, the Secretary of Public Safety has utilized an approach known as "consensus forecasting" to develop the offender population forecasts. This process brings together policy makers, administrators and technical experts from all branches of state government. The process is structured through committees. The Technical Advisory Committee is composed of experts in statistical and quantitative methods from several agencies. While individual members of this Committee generate the various prisoner forecasts, the Committee as a whole carefully scrutinizes each forecast according to the highest statistical standards. Select forecasts are presented to the Policy-Technical Liaison Work Group. Chaired by the Deputy Secretary of Public Safety, the Work Group evaluates the forecasts and provides guidance and oversight for the Technical Advisory Committee. It includes deputy directors and senior managers of criminal justice and budget agencies, as well as staff of the House Appropriations and Senate Finance Committees. Forecasts accepted by the Work Group then are presented to the Policy Advisory Committee. Led by the Secretary of Public Safety, the Policy Advisory Committee reviews the various forecasts, making any adjustments deemed necessary to account for emerging trends or recent policy changes, and selects the official forecast for each prisoner population. This Committee is made up of agency directors, lawmakers and other top-level officials from Virginia's executive, legislative, and judicial branches, as well as representatives of Virginia's law enforcement and prosecutorial associations.

While the Commission is not responsible for generating the prison or jail population forecast, it is included in the consensus forecasting process. In years past, Commission staff members have served on the Technical Advisory Committee and the Commission's Deputy Director has served on the Policy Advisory Committee. In 2007 (as in 2006), the Commission's Deputy Director was appointed by the Secretary of Public Safety to chair the Technical Advisory Committee. The Secretary presented the most recent prisoner forecasts to the General Assembly in a report submitted in October 2007.

Sentencing Guidelines Software

The Commission's website www.vcsc.virginia.gov offers a variety of helpful tools for those who prepare or use Virginia's sentencing guidelines. A visitor to the website can learn about upcoming training sessions, register for a training seminar, access Commission reports, and look up Virginia Crime Codes (VCCs). In addition, the website provides on-line versions of the sentencing guidelines forms. The guidelines forms available on-line allow a user to print blank forms to his or her local printer or to fill in the form's blanks on screen so that the completed form can be printed locally.

The current system, however, is limited. Users must still select which forms to prepare, determine each score to enter, sum the points, enter the total score, look up the guidelines recommendation corresponding to the total score and insert the guidelines range on the cover sheet of the form. No information is saved or stored by the system once the user prints and exits the on-line screen.

The Commission has been working closely with a software development company, Cross Current Corporation, to enhance and expand the functionality of the current system. The Commission is striving to fully automate the preparation of the sentencing guidelines forms and provide this service on-line to users. The development of sentencing guidelines software is proceeding in phases. Phase 2 is nearing completion. Phase 2 will provide users with additional features beyond what is currently available through the Commission's website. For example, it will total the scores automatically and fill in the appropriate guidelines sentence range for the case on the cover sheet of the form. It will also allow users to run multiple charging scenarios, save prepared guidelines forms to a local computer, send completed forms to the Commission electronically, and search the guidelines database for previously completed forms for a particular offender. The software will be available through the website to all prosecutors, probation officers, public defenders and defense attorneys who register with the Commission and receive a log-in identification and password. As funds permit, the Commission hopes to pilot test this phase of the software and make it available statewide during the coming year.

Methamphetamine Crime in Virginia

Methamphetamine, a derivative of amphetamine, is a potent psychostimulant that affects the central nervous system. A man-made drug (unlike other drugs such as cocaine that are plant derived), methamphetamine can be produced from a few over-the-counter and low-cost ingredients. In the United States, the use of methamphetamine is most prevalent in the West, but it is becoming increasingly popular in the Midwest as well. Concern over the potential impact of methamphetamine-related crime in the Commonwealth prompted the 2001 Virginia General Assembly to direct the Commission to examine the state's felony sentencing guidelines for methamphetamine offenses, with specific focus on the quantity of methamphetamine seized in these cases (Chapters 352 and 375 of *The Acts of the Assembly 2001*). The Commission conducted a second detailed study in 2004. Many public officials in Virginia have remained concerned about methamphetamine in the years since the Commission's last study. In response, the Commission this year has completed a third study, and the most comprehensive to date, on this specific drug.

In its 2001 and 2004 studies, the Commission found that the number of convictions involving methamphetamine, although increasing, represented at that time a small fraction of the drug cases in the state and federal courts in the Commonwealth. Overall, the Commission's analysis revealed sentencing in the state's circuit courts was not driven primarily by the quantity of methamphetamine seized. The Commission carefully considered the sentencing guidelines and existing statutory penalties applicable in methamphetamine cases. With no evidence to suggest that judges were systematically basing sentences on the amount of methamphetamine seized, the Commission did not recommend any adjustments to Virginia's historically-based sentencing guidelines to account for the quantity of this drug.

The chapter of this report entitled Methamphetamine Crime in Virginia presents the most recent data available on use of the drug, lab seizures, and arrests and convictions in the Commonwealth. In addition, the results of a new analysis comparing quantity and sentencing outcome are provided.

National Study of Consistency and Fairness in Sentencing

In 2007, the National Center for State Courts (NCSC) in Williamsburg, Virginia, conducted groundbreaking research to examine the impact of different sentencing guidelines systems on consistency and fairness in judicial sanctioning. The primary goal of the study was to provide a comprehensive assessment of sentencing outcomes in three states that employ a range of alternative approaches to shaping and controlling judicial discretion through sentencing guidelines. With long-established and respected guidelines systems, Virginia, Michigan, and Minnesota were selected by the NCSC as the subjects of this unique comparative study. These states vary according to the presumptive versus voluntary nature of the respective guidelines systems and differ in basic design and mechanics of the guidelines. Classifying state guidelines systems along a continuum from most voluntary to most mandatory, Virginia ranks among the most voluntary systems. Minnesota is considered one of the most mandatory guidelines systems in the nation. Michigan falls in between Virginia and Minnesota on this continuum. Moreover, Minnesota's guidelines generally produce smaller ranges for recommended sentences than the guidelines in Michigan and Virginia. In contrast to the two-dimensional sentencing grids used in Michigan and Minnesota, Virginia employs a list, or tariff, style scoring system to determine the recommended punishment.

Funded by the National Institute of Justice (NIJ), the NCSC's study examines the extent to which each state's system promotes consistency and proportionality and minimizes discrimination. The following questions were considered of primary importance:

- To what extent do sentencing guidelines contribute to consistency? Are similar cases treated in a similar manner?
- To what extent do sentencing guidelines contribute to a lack of discrimination? Is there evidence of discrimination that is distinct from inconsistency in sentencing? Are the characteristics of the offender's age, gender, and race significant in determining who goes to prison and for how long?

The NCSC has issued a preliminary report presenting the results of this very significant research. The report, pending final NIJ approval, contains two important findings for the Commonwealth. First, the study shows that consistency in sentencing has been achieved in Virginia. The researchers concluded that Virginia's guidelines system is achieving its goal of overall consistency in sanctioning practices. Second, there is no evidence of systematic discrimination in sentences imposed in Virginia in regards to race, gender, or the location of the court. According to NCSC's preliminary report, virtually no evidence of discrimination arises within the confines of Virginia's criminal sentencing system.

NIJ is expected to officially release the NCSC report in early 2008.

Violent Offenders in the Prison Inmate Population

January 1, 2008, will mark the thirteenth anniversary of the abolition of parole and the institution of truth-in-sentencing in the Commonwealth of Virginia. Sentencing reform dramatically changed the way felons are sentenced and serve time in Virginia. For felonies committed on or after January 1, 1995, the practice of discretionary parole release from prison was abolished and inmates were limited to earning no more than 15% off their sentences. Virginia's felons now must serve at least 85% of their prison or jail sentences. A critical component of the new system was the integration of sentencing guidelines for use in felony cases tried in the state's circuit courts. Originally adopted by Virginia's judges several years before, the voluntary sentencing guidelines were revised to be compatible with the truth-in-sentencing system. Primary features of the new guidelines were codified in 1995. The Commission was created to implement and oversee the new truth-in-sentencing guidelines, to monitor criminal justice trends, and to examine key issues at the request of policymakers.

Abolishing parole and achieving truth-in-sentencing were not the only goals of sentencing reform. Ensuring that violent criminals serve longer terms in prison was also a priority. The General Assembly adopted modifications to Virginia's sentencing guidelines to increase the sentences recommended for violent offenders. The sentencing enhancements built into the guidelines prescribe prison sentences for violent offenders that are significantly longer than historical time served by these offenders under the parole system.

Unlike other initiatives, which typically categorize an offender based on the current offense alone, the truth-in-sentencing legislation defines an offender as violent based on the totality of his criminal career, both the current offense and the offender's prior criminal history, including juvenile adjudications (§ 17.1-805). Section 17.1-805 of the *Code of Virginia* defines violent offenses for the purposes of the truth-in-sentencing guidelines. Included in the definition are offenders convicted of burglary of a dwelling and burglary while armed with a deadly weapon. The definition also includes offenders who have been convicted of any burglary in the past. For nonviolent offenders, the sentencing guidelines recommend terms roughly equal to the terms they served prior to the abolition of parole. In addition, as directed by the General Assembly, the Sentencing Commission has developed and implemented an empirically-based risk assessment instrument to identify the lowest risk, incarceration-bound, drug and property offenders for alternative (non-prison) sanctions.

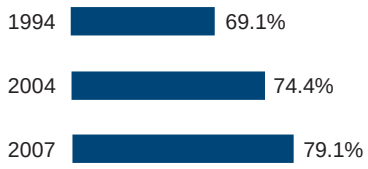
Sentencing reform has resulted in longer prison terms for violent offenders. This approach to reform was expected to alter the composition of the state's prison population. Over time, violent offenders are queuing up in the system due to longer lengths of stay than under the previous system. Nonviolent offenders sentenced to prison, by design, are serving about the same amount of time on average as they did under the parole system. Moreover, with the use of risk assessment, a portion of nonviolent offenders receive alternative sanctioning in lieu of prison. As a result, the composition of the prison population has been undergoing a dramatic shift.

The Commission examined this change in the make-up of the inmate population in 2004 and again in 2007. Using the definition of a violent offender set forth in § 17.1-805, the prison population is now composed of a larger percentage of violent offenders than when parole was abolished. On June 30, 1994, 69.1% of the state-responsible (prison) inmates classified by the Department of Corrections (DOC) were violent offenders. At that time, nearly one in three inmates was in prison for a nonviolent crime and had no prior conviction for a violent offense. By May 30, 2004, the percent of the inmate population defined as violent had increased to 74.4%. As of June 13, 2007, 79.1% of the inmate population was defined as violent under § 17.1-805 (Figure 1).

A clear shift has taken place. Because violent offenders are serving significantly longer terms under truth-in-sentencing provisions than under the parole system and time served by nonviolent offenders has been held relatively constant, the proportion of the prison population composed of violent offenders relative to nonviolent offenders has grown. As violent offenders continue to serve longer terms and risk assessment identifies low-risk nonviolent offenders for alternative punishment options, the proportion of violent offenders housed in Virginia's prison system should continue to increase over the next several years. The Commission will continue to monitor this trend.

Figure 1

Percent of Violent Offenders (as defined by § 17.1-805) in Virginia's Prison System



Note: Analysis compares state-responsible (prison) inmates classified by the Department of Corrections as of June 30, 1994, May 30, 2004, and June 13, 2007. Improvements in data systems and increases in the number of records available for analysis provided a more detailed profile of inmates in 2007.

Sources: Virginia Department of Corrections' FAST and CORIS data systems, the Pre/Post-Sentence Investigation (PSI) reporting system, and the Virginia Criminal Sentencing Commission's Sentencing Guidelines (SG) database.

2 Guidelines Compliance

In the Commonwealth, judicial compliance with the truth-in-sentencing guidelines is voluntary.

Introduction

On January 1, 2008, Virginia's truth-in-sentencing system will reach its thirteen-year anniversary. Beginning January 1, 1995, the practice of discretionary parole release from prison was abolished and the existing system of sentence credits awarded to inmates for good behavior was eliminated. Under Virginia's truth-in-sentencing laws, convicted felons must serve at least 85% of the pronounced sentence and they may earn, at most, 15% off in sentence credits, regardless of whether their sentence is served in a state facility or a local jail. The Commission was established to develop and administer guidelines in an effort to provide Virginia's judiciary with sentencing recommendations in felony cases under the new truth-in-sentencing laws. Under the current no-parole system, guidelines recommendations for nonviolent offenders with no prior record of violence are tied to the amount of time they served during a period prior to the abolition of parole. In contrast, offenders convicted of violent crimes and those with prior convictions for violent felonies are subject to guidelines recommendations up to six times longer than the historical time served in prison by similar offenders. In the more than 260,000 felony cases sentenced under truth-in-sentencing laws, judges have agreed with guidelines recommendations in more than three out of every four cases.

This report will focus on cases sentenced during most recent fiscal year, FY2007 (July 1, 2006, through June 30, 2007). Compliance is examined in a variety of ways in this report, and variations in data over the years are highlighted throughout.

Figure 2

Number and Percentage of Cases Received by Circuit, FY2007

Circuit	Total	Percent	Rank
1	792	3.0%	15
2	1,739	6.5	2
3	1,001	3.8	10
4	1,941	7.3	1
5	597	2.2	20
6	486	1.8	27
7	995	3.7	11
8	715	2.7	17
9	550	2.1	24
10	598	2.2	19
11	438	1.6	28
12	972	3.6	13
13	1,322	5.0	4
14	1,309	4.9	5
15	1,617	6.1	3
16	592	2.2	21
17	534	2.0	25
18	400	1.5	30
19	1,175	4.4	6
20	517	1.9	26
21	403	1.5	29
22	728	2.7	16
23	979	3.7	12
24	1,007	3.8	9
25	1,019	3.8	8
26	1,127	4.2	7
27	965	3.6	14
28	567	2.1	23
29	575	2.2	22
30	347	1.3	31
31	685	2.6	18
Total	26,692		

Case Characteristics

In FY2007, five judicial circuits contributed more guidelines cases than any of the other judicial circuits in the Commonwealth. Those circuits, which include Norfolk (Circuit 4), Virginia Beach (Circuit 2), the Fredericksburg area (Circuit 15), Richmond City (Circuit 13), and Henrico County (Circuit 14), comprised nearly one-third (30%) of all worksheets received in FY2007 (Figure 2). In addition, five other circuits submitted over 1,000 guideline forms during the year: Fairfax (Circuit 19), Portsmouth (Circuit 3), and three circuits in the western part of the state: the Lynchburg area (Circuit 24), the Staunton area (Circuit 25), and the Harrisonburg area (Circuit 26).

During FY2007, the Commission received a total of 26,692 sentencing guideline worksheets. Of the total, however, 960 worksheets contained errors or omissions that affect the analysis of the case. For the purposes of conducting a clear evaluation of sentencing guidelines in effect for FY2007, the remaining sections of this chapter pertaining to judicial concurrence with guideline recommendations focus only on those 25,732 cases for which guidelines recommendations were calculated correctly.

Compliance Defined

In the Commonwealth, judicial compliance with the truth-in-sentencing guidelines is voluntary. A judge may depart from the guidelines recommendation and sentence an offender either to a punishment more severe or less stringent than called for by the guidelines. In cases in which the judge has elected to sentence outside of the guidelines recommendation, he or she must, as stipulated in § 19.2-298.01 of the *Code of Virginia*, provide a written reason for departure on the guidelines worksheet.

The Commission measures judicial agreement with the sentencing guidelines using two classes of compliance: strict and general. Together, they comprise the overall compliance rate. For a case to be in strict compliance, the offender must be sentenced to the same type of sanction (probation, incarceration up to six months, incarceration more than six months) that the guidelines recommend and to a term of incarceration that falls exactly within

the sentence range recommended by the guidelines. When risk assessment for nonviolent offenders is applicable, a judge may sentence a recommended offender to an alternative punishment program or to a term of incarceration within the traditional guidelines range and be considered in strict compliance. A judicial sentence would also be considered in general compliance with the guidelines recommendation if the sentence 1) meets modest criteria for rounding, 2) involves a sentence to time already served in certain instances, or 3) complies with statutorily-permitted diversion options in habitual traffic offender cases.

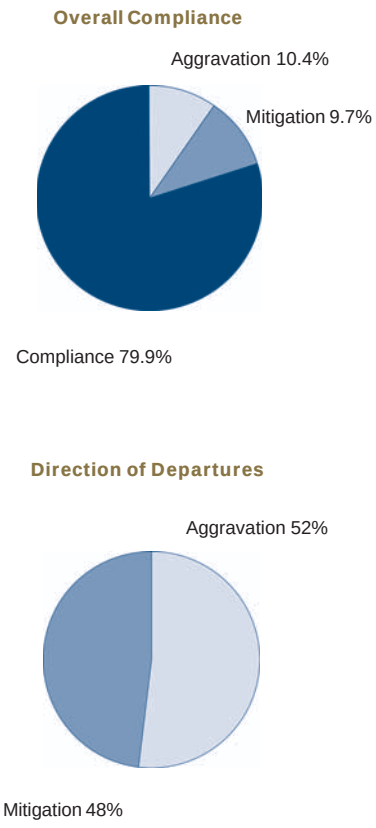
Compliance by rounding provides for a modest rounding allowance in instances when the active sentence handed down by a judge or jury is very close to the range recommended by the guidelines. For example, a judge would be considered in compliance with the guidelines if he sentenced an offender to a two-year sentence based on a guidelines recommendation that goes up to 1 year 11 months. In general, the Commission allows for rounding of a sentence that is within five percent of the guidelines recommendation.

Time served compliance is intended to accommodate judicial discretion and the complexity of the criminal justice system at the local level. A judge may sentence an offender to the amount of pre-sentence incarceration time served in a local jail when the guidelines call for a short jail term. Even though the judge does not sentence an offender to post-sentence incarceration time, the Commission typically considers this type of case to be in compliance. Conversely, a judge who sentences an offender to time served when the guidelines call for probation is also regarded as being in compliance with the guidelines because the offender was not ordered to serve any incarceration time after sentencing.

Compliance by special exception arises in habitual traffic cases as the result of amendments to §46.2-357(B2 and B3) of the *Code of Virginia*, effective July 1, 1997. The amendment allows judges to suspend the 12-month mandatory minimum incarceration term required in felony habitual traffic cases conditioned upon a sentence to a Detention Center or Diversion Center Incarceration Program. For cases sentenced since the effective date of the legislation, the Commission considers either mode of sanctioning of these offenders to satisfy the criteria for judicial compliance with the sentencing guidelines.

Figure 3

Overall Guidelines Compliance and Direction of Departures FY2007 (25,732 cases)



Overall Compliance with the Sentencing Guidelines

The overall compliance rate summarizes the extent to which Virginia's judges concur with recommendations provided by the sentencing guidelines, both in type of disposition and in length of incarceration. Between FY1995 and FY1998, the overall compliance rate remained around 75%, increased steadily between FY1999 and FY2001, and then decreased slightly in FY2002. For the past four fiscal years, the compliance rate has hovered around 80%. During FY2007, judges continued to agree with the sentencing guidelines recommendations in approximately 80% of the cases (Figure 3).

In addition to compliance, the Commission also studies departures from the guidelines. The rate at which judges sentence offenders to sanctions more severe than the guidelines recommendation, known as the "aggravation" rate, was 10.4% for FY2007. The "mitigation" rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 9.7% for the fiscal year. Thus, of the FY2007 departures, 52% were cases of aggravation while 48% were cases of mitigation.

Dispositional Compliance

Since the inception of truth-in-sentencing in 1995, the correspondence between dispositions recommended by the guidelines and the actual dispositions imposed in Virginia's circuit courts has been quite high. Figure 4 illustrates judicial concurrence in FY2007 with the type of disposition recommended by the guidelines. For instance, of all felony offenders recommended for more than six months of incarceration during FY2007, judges sentenced 86% to terms in excess of six months (Figure 4). Some offenders recommended for incarceration of more than six months received a shorter term of incarceration (one day to six months), but very few of these offenders received probation with no active incarceration.

Judges have also typically agreed with guidelines recommendations for other types of dispositions. In FY2007, 77% of offenders received a sentence resulting in confinement of six months or less when such a penalty was recommended. In some cases, judges felt probation to be a more appropriate sanction than the recommended jail term, and in other cases offenders recommended for short-term incarceration received a sentence of more than six months. Finally, 73% of offenders whose guidelines recommendation called for no incarceration were given probation and no post-dispositional confinement. Some offenders with a "no incarceration" recommendation received a short jail term, but rarely did offenders recommended for no incarceration receive jail or prison terms of more than six months.

Since July 1, 1997, sentences to the state's Boot Camp, Detention Center and Diversion Center programs have been defined as incarceration sanctions for the purposes of the sentencing guidelines. Although the state's Boot Camp program was discontinued in 2002, the Detention and Diversion Center programs have continued as sentencing options for judges. The Commission recognized that these programs are more restrictive than probation supervision in the community. In 2005, the Virginia Supreme Court concluded that participation in the Detention Center program is a form of incarceration (*Charles v. Commonwealth)*. Because the Diversion Center program also involves a period of confinement, the Commission defines both the Detention Center and the Diversion Center programs as incarceration terms under the sentencing guidelines. The Detention and Diversion Center programs have been counted as six months of confinement. Effective July 1, 2007, the Department of Corrections extended these programs by an additional four weeks.

Figure 4

Recommended Dispositions and Actual Dispositions, FY2007

	Actual Disposition		
Recommended Disposition	**Probation**	**Incarceration 1 day-6 mos.**	**Incarceration >6 mos.**
Probation	72.9%	23.4%	3.7%
Incarceration 1 day - 6 months	11.0%	76.5%	12.5%
Incarceration > 6 months	5.7%	8.4%	85.9%

Durational Compliance

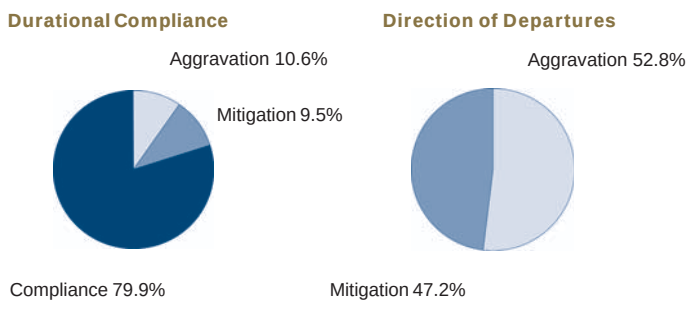
In addition to examining the degree to which judges concur with the type of disposition recommended by the guidelines, the Commission also studies durational compliance, defined as the rate at which judges sentence offenders to terms of incarceration that fall within the recommended guidelines range. Durational compliance analysis considers only those cases for which the guidelines recommended an active term of incarceration and the offender received an incarceration sanction consisting of at least one day in jail.

Durational compliance among FY2007 cases was approximately 80%, indicating that judges agree with the length of incarceration recommended by the guidelines in the majority of jail and prison cases (Figure 5). Among FY2007 cases not in durational compliance, there were slightly more aggravation sentences (53%) than mitigation sentences (47%).

For cases recommended for incarceration of more than six months, the sentence length recommendation derived from the guidelines (known as the midpoint) is accompanied by a high-end and low-end recommendation. The sentence ranges recommended by the guidelines are relatively broad, allowing judges to utilize their discretion in sentencing offenders to different incarceration terms while still remaining in compliance with the guidelines. When the guidelines recommended more than six months of incarceration and judges sentenced within the recommended range, 15% of offenders in FY2007 were given prison terms equivalent to the midpoint recommendation (Figure 6). Most (66%) of the cases in durational compliance with recommendations of more than six months resulted in sentences below the recommended midpoint. For the remaining 19% of these incarceration cases sentenced within the guidelines range, the sentence exceeded the midpoint recom-mendation. This pattern of

Figure 5

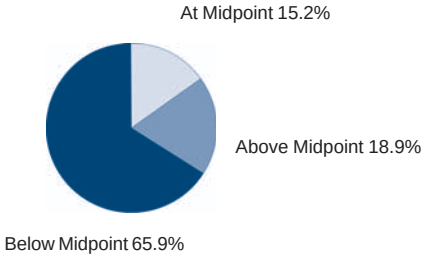
Durational Compliance and Direction of Departures, FY2007*



** Analysis includes only cases recommended for and receiving an active term of incarceration.*

Figure 6

Distribution of Sentences within Guidelines Range, FY2007*



** Analysis includes only cases recommended for more than six months of incarceration.*

sentencing within the range has been consistent since the truth-in-sentencing guidelines took effect in 1995, indicating that judges, overall, have favored the lower portion of the recommended range.

Overall, durational departures from the guidelines are typically less than one year above or below the recommended range, indicating that disagreement with the guidelines recommendation is, in most cases, not extreme. Offenders receiving incarceration, but less than the recommended term, were given effective sentences (sentences less any suspended time) short of the guidelines by a median value of 10 months (Figure 7). For offenders receiving longer than recommended incarceration sentences, the effective sentence exceeded the guidelines range by a median value of nine months.

Reasons for Departure from the Guidelines

Compliance with the truth-in-sentencing guidelines is voluntary. Although not obligated to sentence within guidelines recommendations, judges are required by § 19.2-298.01 of the *Code of Virginia* to submit to the Commission their reason(s) for sentencing outside the guidelines range. Each year, as the Commission deliberates upon recommendations for revisions to the guidelines, the opinions of the judiciary, expressed through their departure reasons, are an important part of the analysis. Virginia's judges are not limited by any standardized or prescribed reasons for departure and may cite multiple reasons for departure in each guidelines case.

Figure 7

Median Length of Durational Departures, FY2007

In FY2007, 9.7% of guideline cases resulted in sanctions below the guidelines recommendation. The most frequently cited reasons for sentencing below the guidelines recommendation were: the acceptance of a plea agreement, the defendant's cooperation with law enforcement, the defendant's potential for rehabilitation, minimal offense circumstances, a sentence recommendation provided by the Commonwealth's Attorney or probation officer, and the fact that the defendant was already sentenced to serve incarceration in another case. Although other reasons for mitigation were reported to the Commission in FY2007, only the most frequently cited reasons are noted here. For 464 of the 2,487 mitigating cases, a departure reason could not be discerned.

Judges sentenced 10.4% of the FY2007 cases to terms more severe than the sentencing guidelines recommendation. The most frequently cited reasons for sentencing above the guidelines recommendation were: the acceptance of a plea agreement, the flagrancy of the offense, a sentencing guidelines recommendation the judge felt was too low, a sentence recommended by a jury, the defendant's poor potential for being rehabilitated, and the use of special sanctioning programs, such as the Detention Center Incarceration program. Many other reasons were cited by judges to explain aggravation sentences but with much less frequency than the reasons listed here. For 497 of the 2,683 cases sentenced above the guidelines recommendation, the Commission could not ascertain a departure reason.

Appendices 1 and 2 contain detailed summaries of the reasons for departure from guidelines recommendations for each of the 15 guidelines offense groups.

Compliance by Circuit

Since the onset of truth-in-sentencing, compliance rates and departure patterns have varied somewhat across Virginia's 31 judicial circuits. Data for FY2007 is shown in Figure 8. The map and accompanying table on the following pages identify the location of each judicial circuit in the Commonwealth.

In FY2007, nearly two-thirds (19) of the state's 31 circuits exhibited compliance rates at or above 80%, while 11 reported compliance rates between 70% and 79%. Only one circuit had a compliance rate below 70%. There are likely many reasons for the variations in compliance across circuits. Certain jurisdictions may see atypical cases not reflected in statewide averages. In addition, the availability of alternative or community-based

Figure 8

Compliance by Circuit - FY 2007

Circuit Name	Circuit	Compliance	Mitigation	Aggravation	Total
Radford Area	27	91.4%	5.0%	3.7%	929
Newport News	7	86.5	6.3	7.2	968
Bristol Area	28	85.2	8.6	6.2	561
Martinsville Area	21	85.2	12.1	2.7	364
Lee Area	30	85.0	6.7	8.2	341
South Boston Area	10	85.0	8.8	6.2	581
Loudoun Area	20	84.8	7.2	8.0	512
Prince William Area	31	84.5	6.5	9.0	634
Hampton	8	82.9	9.0	8.0	697
Virginia Beach	2	82.6	8.8	8.6	1,702
Petersburg Area	11	82.4	6.3	11.3	426
Alexandria	18	81.3	13.9	4.8	396
Chesapeake	1	81.2	8.3	10.5	771
Portsmouth	3	80.8	7.5	11.7	983
Charlottesville Area	16	80.6	10.6	8.8	568
Staunton Area	25	80.5	9.5	10.0	991
Harrisonburg Area	26	80.2	10.9	8.9	1,089
Suffolk Area	5	80.1	8.0	11.9	589
Arlington Area	17	80.1	7.4	12.6	517
Henrico	14	79.8	10.1	10.1	1,282
Richmond City	13	79.7	13.2	7.0	1,308
Fairfax	19	78.5	7.7	13.8	984
Norfolk	4	78.1	14.5	7.4	1,900
Sussex Area	6	77.7	11.5	10.9	470
Danville Area	22	77.3	7.2	15.5	704
Lynchburg Area	24	77.0	13.8	9.2	991
Williamsburg Area	9	76.0	7.1	16.9	492
Chesterfield Area	12	75.8	7.2	17.0	959
Roanoke Area	23	74.5	15.4	10.1	954
Fredericksburg Area	15	71.3	10.2	18.4	1,514
Buchanan Area	29	64.1	7.8	28.1	552

- Nearly two-thirds (19) of the state's 31 circuits exhibited compliance rates at or above 80%.

- Eleven circuits reported compliance rates between 70% and 79%. Only one circuit had a compliance rate below 70%.

Virginia Localities and Judicial Circuits

Madison 16
Manassas 31
Martinsville 21
Mathews 9
Mecklenburg 10
Middlesex 9
Montgomery 27

Nelson 24
New Kent 9
Newport News 7
Norfolk 4
Northampton 2
Northumberland 15
Norton 30
Nottoway 11

Orange 16

Page 26
Patrick 21
Petersburg 11
Pittsylvania 22
Poquoson 9
Portsmouth 3
Powhatan 11
Prince Edward 10
Prince George 6
Prince William 31
Pulaski 27

Radford 27
Rappahannock 20
Richmond City 13
Richmond County 15
Roanoke City 23
Roanoke County 23
Rockbridge 25
Rockingham 26

Russell 29

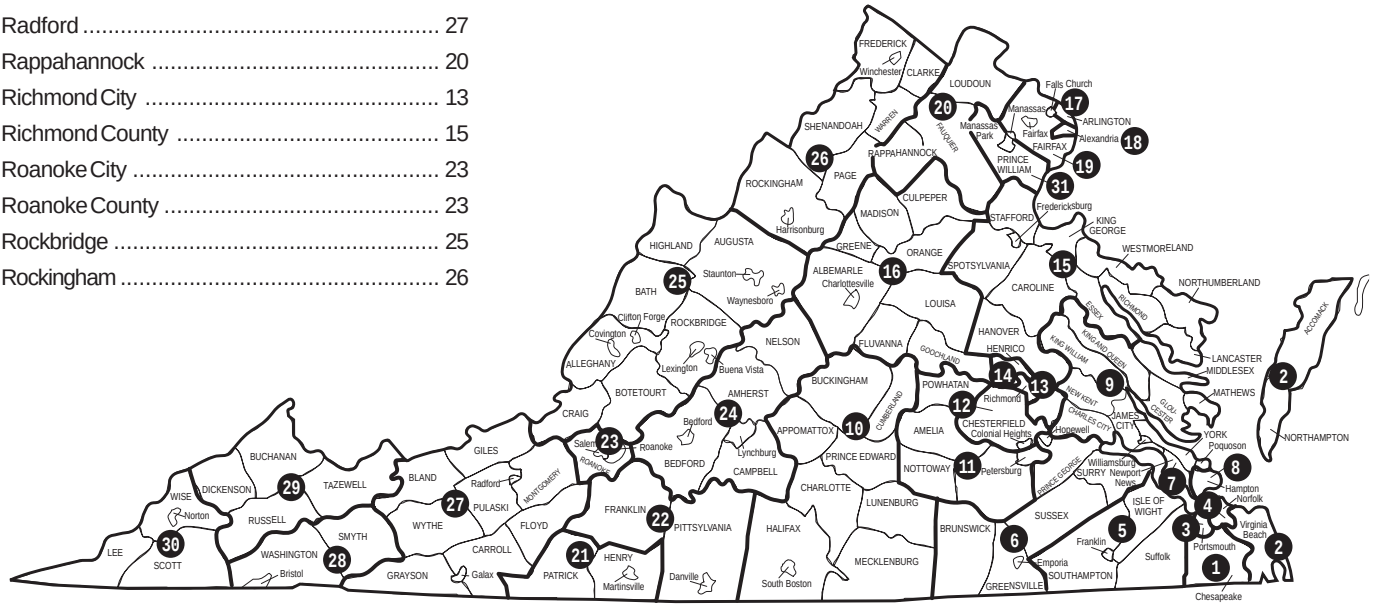
Salem 23
Scott 30
Shenandoah 26
Smyth 28
South Boston 10
Southampton 5
Spotsylvania 15
Stafford 15
Staunton 25
Suffolk 5
Surry 6
Sussex 6

Tazewell 29

Virginia Beach 2

Warren 26
Washington 28
Waynesboro 25
Westmoreland 15
Williamsburg 9
Winchester 26
Wise 30
Wythe 27

York 9



programs differs from locality to locality. The degree to which judges agree with guidelines recommendations does not seem to be primarily related to geography. The circuits with the lowest compliance rates are scattered across the state, and both high and low compliance circuits can be found in close geographic proximity.

In FY2007, the highest rate of judicial agreement with the sentencing guidelines (91%) was in Circuit 27 (Radford area). Concurrence rates of 85% or higher were also found in Circuit 7 (Newport News), Circuit 10 (South Boston area), Circuit 21 (Martinsville area), Circuit 28 (Bristol area), and Circuit 30 (Lee area). The lowest compliance rates among judicial circuits in FY2007 were reported in Circuit 29 (Buchanan, Dickenson, Russell and Tazewell counties), Circuit 15 (Fredericksburg, Stafford, Hanover, King George, Caroline, Essex, etc.), and Circuit 23 (Roanoke area).

In FY2007, the highest mitigation rates were found in the Circuit 23 (Roanoke area) and Circuit 4 (Norfolk). Each of these circuits had a mitigation rate around 15% during the fiscal year. With regard to high mitigation rates, it would be too simplistic to assume that this reflects areas with lenient sentencing habits. Intermediate punishment programs are not uniformly available throughout the Commonwealth, and those jurisdictions with better access to these sentencing options may be using them as intended by the General Assembly. These sentences generally would appear as mitigations from the guidelines. Inspecting aggravation rates reveals that Circuit 29 (Buchanan County area) had the highest aggravation rate at 28%, followed by Circuit 15 (Fredericksburg, Stafford, Hanover, King George, Caroline, Essex, etc.) at 18% and Circuits 12 (Chesterfield) and 9 (Williamsburg area) at 17%. Lower compliance rates in these latter circuits are a reflection of the relatively high aggravation rates.

Appendices 3 and 4 present compliance figures for judicial circuits by each of the 15 sentencing guidelines offense groups.

Compliance by Sentencing Guidelines Offense Group

In FY2007, as in previous years, variation exists in judicial agreement with the guidelines, as well as in judicial tendencies toward departure, when comparing the 15 offense groups (Figure 9). For FY2007, compliance rates ranged from a high of 86% in the fraud offense group to a low of 63% in robbery cases. In general, property and drug offenses exhibit rates of compliance higher than the violent offense categories. The violent offense groups (assault, rape, sexual assault, robbery, homicide and kidnapping) had compliance rates at or below 75% whereas many of the property and drug offense categories had compliance rates above 80%.

Judicial concurrence with guideline recommendations remained stable, fluctuating less than two percent, for most offense groups. Although compliance increased dramatically for the kidnapping offense group, the change is mostly a function of the small number of cases involving kidnapping as the primary, or most serious, offense; kidnapping offenses comprise less than one percent of all guideline worksheets received in a given year. In FY2007, the compliance rate for the miscellaneous offense group was significantly lower than the rate recorded the previous year (66% in FY2007 versus 74% in FY2006). This sudden change is most likely due to the creation of a new guidelines offense group for many of the crimes previously covered by the

Figure 9

Compliance by Offense - FY2007

Offense	Compliance	Mititgation	Aggravation	Total
Fraud	85.9%	8.3%	5.8%	2,763
Drug/Schedule I/II	82.8	7.4	9.8	9,418
Larceny	82.7	8.0	9.4	4,716
Drug/Other	82.5	5.5	12.0	988
Traffic	80.7	6.4	12.9	2,119
Assault	74.6	13.0	12.4	1,455
Weapon	73.0	14.8	12.3	488
Burg./Other Structure	72.5	15.1	12.3	641
Kidnapping	69.7	12.3	18.0	122
Rape	68.4	23.0	8.6	187
Sexual Assault	68.1	15.7	16.2	470
Miscellaneous	66.2	16.6	17.2	308
Burglary/Dwelling	65.4	19.4	15.2	888
Murder/Homicide	64.3	17.7	18.0	283
Robbery	63.1	26.3	10.6	885
Total				**25,732**

miscellaneous guidelines and the addition of new crimes to the guidelines system. Effective July 1, 2006, weapon offenses were removed from the miscellaneous worksheet and a separate guideline worksheet for weapon offenses was created. In addition, three new guideline offenses were added to the miscellaneous worksheet in FY2007: extortion by letter, communication, or electronic message; arson of an unoccupied dwelling; and escape from a correctional facility. Compliance for these offenses ranged from 61% for arson of an unoccupied dwelling to 100% for escape from a correctional facility.

Since 1995, departure patterns have differed across offense groups, and FY2007 was no exception. During the time period, the robbery and rape offense groups showed the highest mitigation rates with approximately one-quarter of cases (26% and 23%, respectively) resulting in mitigation sentences. This mitigation pattern has been consistent with both rape and robbery offenses since the abolition of parole in 1995. The most frequently cited mitigation reasons provided by judges in robbery cases include the defendant's cooperation with law enforcement, the involvement of a plea agreement, or that the sentence was recommended by the Commonwealth's attorney or probation officer. The most frequently cited mitigation reasons provided by judges in rape cases include the acceptance of a plea agreement, the victim's request that the offender receive a more lenient sentence, the defendant's minimal prior record, and the defendant's potential for rehabilitation.

In FY2007, offenses with the highest aggravation rates were kidnapping (18%) and murder/homicide (18%). With respect to kidnapping, the high aggravation rate is primarily a function of the small number of kidnapping cases rather than a true departure pattern; however, judges cited the acceptance of a plea agreement in 9 of the 22 aggravation departures. In murder/homicide cases, the influence of jury trials, and extreme case circumstances have historically contributed to higher aggravation rates.

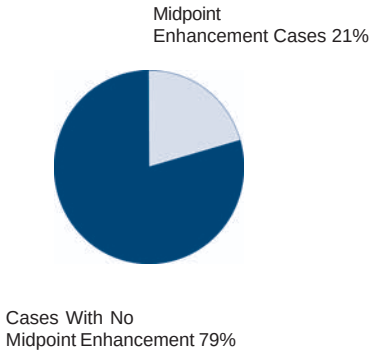
Compliance under Midpoint Enhancements

Section 17.1-805, formerly §17-237, of the *Code of Virginia* describes the framework for what are known as "midpoint enhancements," significant increases in guidelines scores for cases involving violent offenders that elevate the overall sentence recommendation in those cases. Midpoint enhancements are an integral part of the design of the truth-in-sentencing guidelines. By design, midpoint enhancements produce sentence recommendations for violent offenders that are significantly greater than the time that was served by offenders convicted of such crimes prior to the enactment of truth-in-sentencing laws. Offenders who are convicted of a violent crime or who have been previously convicted of a violent crime are recommended for incarceration terms up to six times longer than the terms served by offenders fitting similar profiles under the parole system. Midpoint enhancements are triggered for homicide, rape, or robbery offenses, most assaults and sexual assaults, and certain burglaries, when any one of these offenses is the current most serious offense, also called the "instant offense." Offenders with a prior record containing at least one conviction for a violent crime are subject to degrees of midpoint enhancements based on the nature and seriousness of the offender's criminal history. The most serious prior record receives the most extreme enhancement. A prior record labeled "Category II" contains at least one violent prior felony conviction carrying a statutory maximum penalty of less than 40 years, whereas a "Category I" prior record includes at least one violent felony conviction with a statutory maximum penalty of 40 years or more.

Because midpoint enhancements are designed to target only violent offenders for longer sentences, enhancements do not affect the sentence recommendation for the majority of guidelines cases. Among the FY2007 cases, 79% of the cases did not involve midpoint enhancements of any kind (Figure 10). Only 21% of the cases qualified for a midpoint enhancement because of a current or prior conviction for a felony defined as violent under § 17.1-805. The proportion of cases receiving midpoint enhancements has not fluctuated greatly since the institution of truth-in-sentencing guidelines in 1995.

Figure 10

Application of Midpoint Enhancements, FY2007



Of the FY2007 cases in which midpoint enhancements applied, the most common midpoint enhancement was for a Category II prior record. Approximately 45% of the midpoint enhancements were of this type, applicable to offenders with a nonviolent instant offense but a violent prior record defined as Category II (Figure 11). In FY2007, another 16% of midpoint enhancements were attributable to offenders with a more serious Category I prior record. Cases of offenders with a violent instant offense but no prior record of violence represented 26% of the midpoint enhancements in FY2007. The most substantial midpoint enhancements target offenders with a combination of instant and prior violent offenses. About 10% qualified for enhancements for both a current violent offense and a Category II prior record. Only a small percentage of cases (4%) were targeted for the most extreme midpoint enhancements triggered by a combination of a current violent offense and a Category I prior record.

Since the inception of the truth-in-sentencing guidelines, judges have departed from the sentencing guidelines more often in midpoint enhancement cases than in cases without enhancements. In FY2007, compliance was 68% when enhancements applied, significantly lower than compliance in all other cases (83%). Thus, compliance in midpoint enhancement cases is suppressing the overall compliance rate. When departing from enhanced guidelines recommendations, judges are choosing to mitigate in nearly three out of every four departures.

Among FY2007 midpoint enhancement cases resulting in incarceration, judges departed from the low end of the guidelines range by an average just over two years (Figure 12). The median mitigation departure (the middle value, where half of the values are lower and half are higher) was 15 months.

Figure 11

Type of Midpoint Enhancements Received, FY 2007

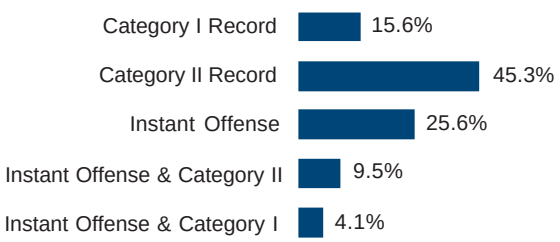
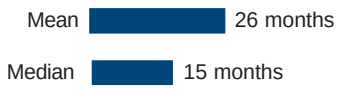


Figure 12

Length of Mitigation Departures in Midpoint Enhancement Cases, FY2007



Compliance, while generally lower in midpoint enhancement cases than in other cases, varies across the different types and combinations of midpoint enhancements (Figure 13). In FY2007, as in previous years, enhancements for a Category II prior record generated the highest rate of compliance of all midpoint enhancements (74%). Compliance in cases receiving enhancements for a Category I prior record was significantly lower (62%). Compliance for enhancement cases involving a current violent offense was 65%. Those cases involving a combination of a current violent offense and a Category II prior record yielded a compliance rate of 64%, while those with the most significant midpoint enhancements, for both a violent instant offense and a Category I prior record, yielded a lower compliance rate of 62%.

Analysis of departure reasons in cases involving midpoint enhancements focuses on downward departures from the guidelines. Judges sentence below the guidelines recommendation in one out of every four midpoint enhancement cases. The most frequently cited reasons for departure include the acceptance of a plea agreement, the defendant's cooperation with law enforcement, minimal offense circumstances, and an incarceration term already imposed in another case.

Figure 13

Compliance by Type of Midpoint Enhancement*, FY2007

	Compliance	Mitigation	Aggravation	Number of Cases
None	82.9%	6.0%	11.1%	20,433
Category I Record	62.3	33.0	4.7	825
Category II Record	73.8	19.7	6.5	2,398
Instant Offense	65.1	22.9	12.0	1,358
Instant Offense & Category I	61.6	32.4	6.0	216
Instant Offense & Category II	64.1	25.9	10.0	502
Total				**25,732**

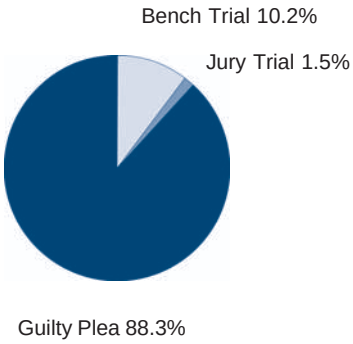
** Midpoint enhancements prescribe prison sentence recommendations for violent offenders which are significantly greater than historical time served under the parole system during the period 1988 to 1992.*

- Overall, judges sentence below the guidelines recommendation in one out of every four midpoint enhancement cases.

Juries and the Sentencing Guidelines

Figure 14

Percentage of Cases Received by Method of Adjudication, FY 2007



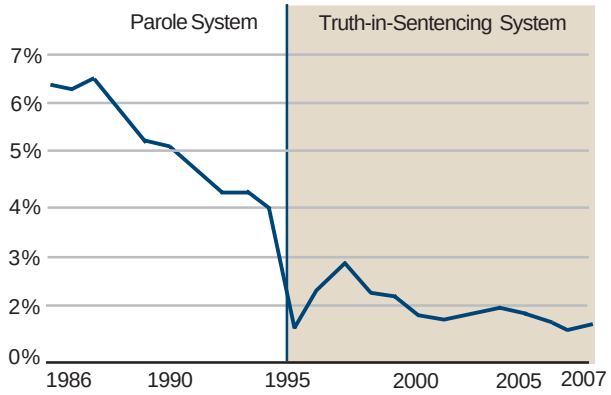
There are three general methods by which Virginia's criminal cases are adjudicated: guilty pleas, bench trials, and jury trials. Felony cases in the Commonwealth's circuit courts overwhelmingly are resolved through guilty pleas from defendants or plea agreements between defendants and the Commonwealth. During the last fiscal year, 88% of guidelines cases were sentenced following guilty pleas (Figure 14). Adjudication by a judge in a bench trial accounted for 10% of all felony guidelines cases sentenced. During FY2007, less than 2% of felony guidelines cases involved jury trials. Under truth-in-sentencing, the overall rate of jury trials has been approximately half of the jury trial rate that existed under the last year of the parole system.

Since the implementation of the truth-in-sentencing system, Virginia's juries typically have handed down sentences more severe than the recommendations of the sentencing guidelines. In FY2007, as in previous years, a jury sentence was far more likely to exceed the guidelines recommendation than a sentence given by a judge following a guilty plea or bench trial. By law, juries are not allowed to receive any information regarding the sentencing guidelines.

Since FY1986, there has been a generally declining trend in the percentage of jury trials among felony convictions in circuit courts (Figure 15). Under the parole system in the late 1980s, the percent of jury trials was as high as 6.5% before starting to decline in FY1989. In 1994, the General Assembly enacted provisions for a system of bifurcated jury trials. In bifurcated trials, the jury establishes the guilt or innocence of the defendant in

Figure 15

Percent of Felony Convictions Adjudicated by Juries FY1986-FY2007
Parole System v. Truth-in-Sentencing (No Parole) System



- Since FY1986, there has been a generally declining trend in the percentage of jury trials among felony convictions in circuit courts.
- When the bifurcated trials became effective on July 1, 1994 (FY1995), jurors in Virginia, for the first time, were presented with information on the offender's prior criminal record to assist them in making a sentencing decision.

the first phase of the trial, and then, in a second phase, the jury makes its sentencing decision. When the bifurcated trials became effective on July 1, 1994 (FY1995), jurors in Virginia, for the first time, were presented with information on the offender's prior criminal record to assist them in making a sentencing decision. During the first year of the bifurcated trial process, jury convictions dropped slightly to fewer than 4% of all felony convictions, the lowest rate since the data series began.

Among the early cases subjected to the new truth-in-sentencing provisions, implemented during the last six months of FY1995, jury adjudications sank to just over 1%. During the first complete fiscal year of truth-in-sentencing (FY1996), just over 2% of the cases were resolved by jury trials, half the rate of the last year before the abolition of parole. Seemingly, the introduction of truth-in-sentencing, as well as the introduction of a bifurcated jury trial system, appears to have contributed to the reduction in jury trials. The percentage of jury convictions rose in FY1997 to nearly 3%, but has since declined to under 2%.

Inspecting jury data by offense type reveals very divergent patterns for person, property and drug crimes. Under the parole system, jury cases comprised 11%-16% of felony convictions for person crimes. This rate was typically three to four times the rate of jury trials for property and drug crimes (Figure 16). However, with the implementation of truth-in-sentencing, the percent of convictions decided by juries dropped dramatically for all crime types. Under truth-in-sentencing, jury convictions for person

Figure 16

Percent of Felony Convictions Adjudicated by Juries
FY1986-FY2007
Parole System v. Truth-in-Sentencing (No Parole) System

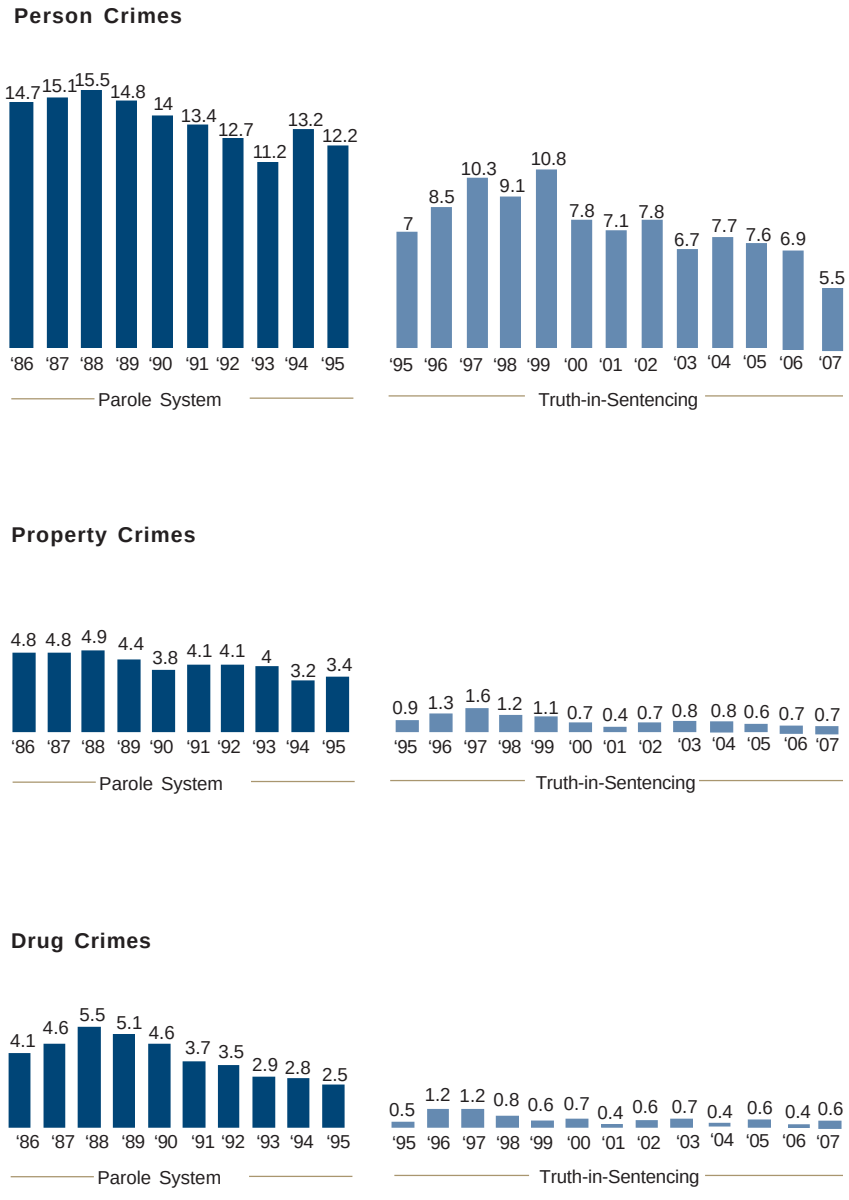
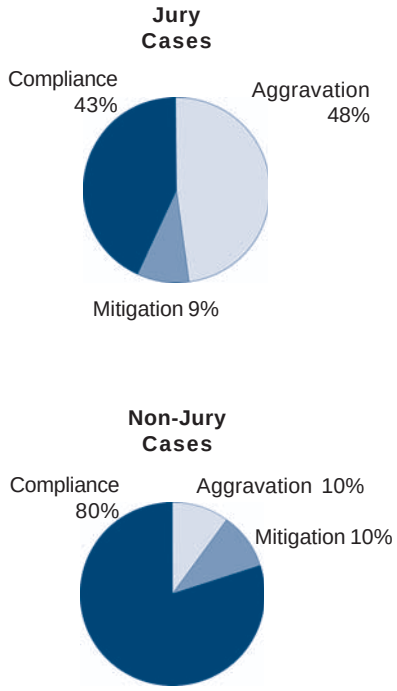


Figure 17

Sentencing Guidelines Compliance in Jury and Non-Jury Cases, FY2007



crimes varied from 7% to 11% of felony convictions for those crimes. In FY2007, this rate dropped to its lowest since truth-in-sentencing was enacted, less than 6%. The percent of felony convictions resulting from jury trials for property and drug crimes declined to less than 1% under truth-in-sentencing.

In FY2007, the Commission received 356 cases adjudicated by juries. While the compliance rate for cases adjudicated by a judge or resolved by a guilty plea was at 80% during the fiscal year, sentences handed down by juries concurred with the guidelines only 43% of the time (Figure 17). In fact, jury sentences fell above the guidelines recommendation in nearly half (48%) of all jury cases. This pattern of jury sentencing vis-à-vis the guidelines has been consistent since the truth-in-sentencing guidelines became effective in 1995.

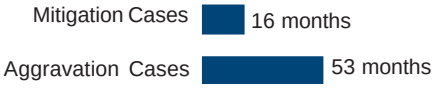
In those jury cases in which the final sentence fell short of the guidelines, it did so by a median value of 16 months (Figure 18). In cases where the ultimate sentence resulted in a sanction more severe than the guidelines recommendation, the sentence exceeded the guidelines maximum recommendation by a median value of nearly four and a half years.

A small portion of the jury cases received by the Commission (3%) involved juvenile offenders tried as adults in circuit court. According to §16.1-272 of the *Code of Virginia*, juveniles may be adjudicated by a jury in circuit court; however, any sentence must be handed down by the court without the intervention of a jury. Therefore, juries are not permitted to recommend sentences for juvenile offenders. Rather, circuit court judges are responsible for formulating sanctions for juveniles. There are many options for sentencing these juveniles, including commitment to the Department of Juvenile Justice. Because judges, and not juries, must sentence in these cases, they are excluded from the previous analysis.

In cases of adults adjudicated by a jury, judges are permitted by law to lower a jury sentence. Typically, however, judges have chosen not to amend sanctions imposed by juries. In FY2007, judges modified 22% of jury sentences.

Figure 18

Median Length of Durational Departures in Jury Cases, FY2007



Compliance and Nonviolent Offender Risk Assessment

In 1994, as part of the reform legislation that instituted truth-in-sentencing, the General Assembly directed the Commission to study the feasibility of using an empirically-based risk assessment instrument to select 25% of the lowest risk, incarceration-bound, drug and property offenders for placement in alternative (non-prison) sanctions. By 1996, the Commission developed such an instrument and implementation of the instrument began in pilot sites in 1997. The National Center for State Courts (NCSC) conducted an evaluation of nonviolent risk assessment in the pilot sites for the period from 1998 to 2001. In 2001, the Commission conducted a validation study of the original risk assessment instrument to test and refine the instrument for possible use statewide. In July 2002, the nonviolent risk assessment instrument was implemented statewide for all felony larceny, fraud, and drug cases. This section will review the most recent fiscal year of statewide data, FY2007.

Between July 1, 2006 and June 30, 2007, more than two-thirds of all guidelines received by the Commission were for nonviolent offenses. However, only 39% of these nonviolent offenders were eligible for risk assessment evaluation. The goal of the nonviolent risk assessment instrument is to divert low-risk offenders, who are recommended for incarceration on the guidelines, to an alternative sanction other than prison or jail. Therefore, nonviolent offenders who are recommended for probation/no incarceration on the guidelines are not eligible for the assessment. Furthermore, the instrument is not to be applied to offenders convicted of distributing one ounce or more of cocaine and those who have a current or prior violent felony conviction. In addition to those not eligible for risk assessment, there were 3,205 nonviolent offense cases for which a risk assessment instrument was not completed and submitted to the Commission.

Figure 19

Percentage of Eligible Nonviolent Risk Assessment Cases Recommended for Alternatives, FY2007 (6,981 cases)

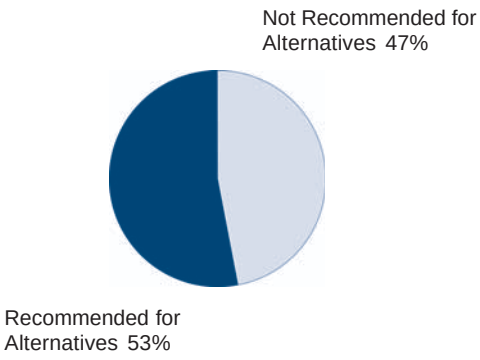
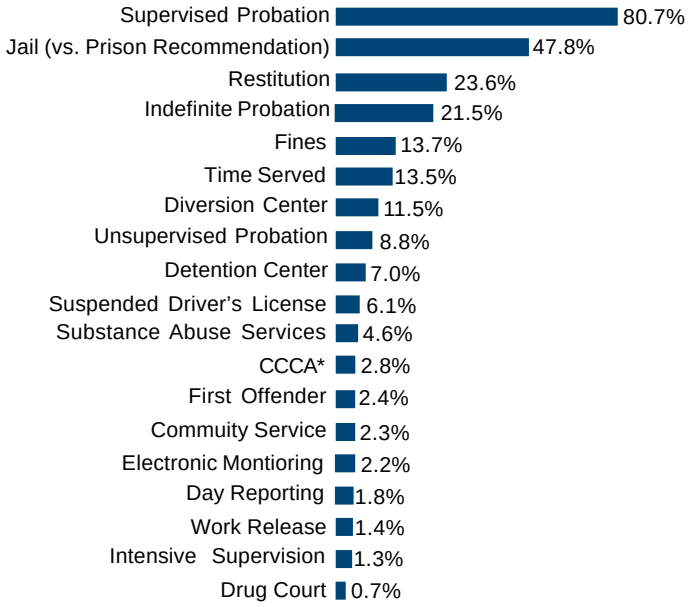


Figure 20

Types of Alternative Sanctions Imposed, FY2007



** Any program established through the Comprehensive Community Corrections Act*

Among the FY2007 eligible offenders for whom a risk assessment form was received (6,981 cases), 53% were recommended for an alternative sanction by the risk assessment instrument (Figure 19). A large portion of offenders recommended for an alternative sanction through risk assessment were given some form of alternative punishment by the judge. In FY2007, nearly 42% of offenders recommended for an alternative were sentenced to an alternative punishment option.

Among offenders recommended for and receiving an alternative sanction through risk assessment, judges utilized supervised probation more often than any other option (Figure 20). In addition, in nearly half of the cases in which an alternative was recommended, judges sentenced the offender to a shorter term of incarceration in jail (less than twelve months) rather than the longer prison sentence recommended by the traditional guidelines range. Other frequent sanctions included restitution (24%), indefinite probation (22%), fines (14%), and a sentence of time served while awaiting trial (14%).

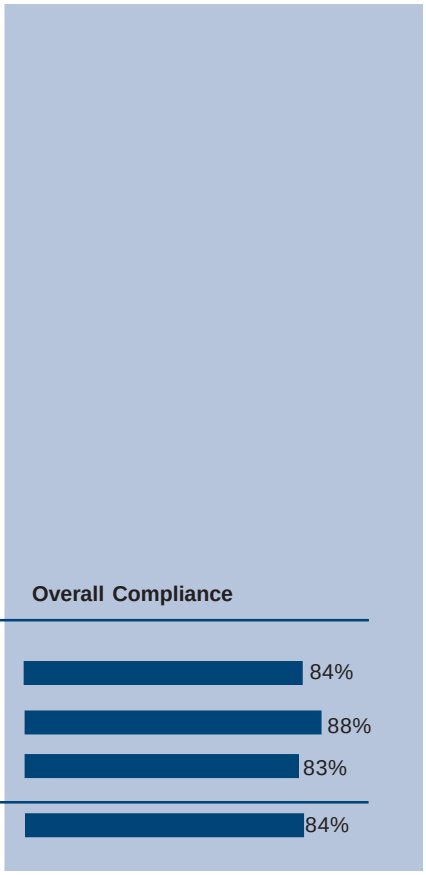
The Department of Corrections' Diversion Center program was cited in 12% of the cases, while the Detention Center program was cited as an alternative sanction 7% of the time. Less frequently cited alternatives include unsupervised probation, suspension of the offender's driver's license, substance abuse services, programs under the Comprehensive Community Corrections Act (CCCA), first offender status under §18.2-251, and community service, etc.

When a nonviolent offender is recommended for an alternative sanction via the risk assessment instrument, a judge is considered to be in compliance with the guidelines if he chooses to sentence the defendant to a term within the traditional incarceration period recommended by the guidelines or if he chooses to sentence the offender to an alternative form of punishment. For drug offenders eligible for risk assessment evaluation, the overall compliance rate is 84%, but a portion of this compliance reflects the use of an alternative punishment option as recommended by the risk assessment tool (Figure 21). In 24% of these drug cases, judges have complied with the recommendation for an alternative sanction. Similarly, in fraud cases with offenders eligible for risk assessment evaluation, the overall compliance rate is 88%. In 37% of these fraud cases, judges have complied by utilizing alternative punishment when it was recommended. Finally, among larceny offenders eligible for risk assessment, the compliance rate is 83%. Judges utilized an alternative, as recommended by the risk assessment tool, in 9% of larceny cases. The lower usage of alternatives for larceny offenders is due primarily to the fact that larceny offenders are recommended for alternatives at a lower rate than drug and fraud offenders. The National Center for State Courts, in its evaluation of Virginia's risk assessment tool, and the Commission, during the course of its validation study, found that larceny offenders are the most likely to recidivate among nonviolent offenders.

Figure 21

Compliance Rates for Nonviolent Offenders Eligible for Risk Assessment, FY2007

	Mitigation	Compliance: Traditional Range	Compliance: Adjusted Range	Aggravation	Number of Cases	Overall Compliance
Drug	6%	60%	24%	10%	3,991	84%
Fraud	7%	51%	37%	5%	1,184	88%
Larceny	8%	74%	9%	9%	1,806	83%
Overall	7%	62%	22%	9%	6,981	84%



Compliance and Sex Offender Risk Assessment

In 1999, the Virginia General Assembly requested the Virginia Criminal Sentencing Commission to develop a sex offender risk assessment instrument, based on the risk of re-offense, which could be integrated into the state's sentencing guidelines system. Such a risk assessment instrument could be used as a tool to identify those offenders who, as a group, represent the greatest risk for committing a new offense once released back into the community. The Commission conducted an extensive study of felony sex offenders convicted in Virginia's circuit courts and developed an empirical assessment tool based on the risk that an offender would be re-arrested for a new sex offense or other crime against the person.

Effectively, risk assessment means developing profiles or composites based on overall group outcomes. Groups are defined by having a number of factors in common that are statistically relevant to predicting repeat offending. Those groups exhibiting a high degree of re-offending are labeled high risk. Although no risk assessment model can ever predict a given outcome with perfect accuracy, the risk instrument, overall, produces higher scores for the groups of offenders who exhibited higher recidivism rates during the course of the Commission's study. In this way, the instrument developed by the Commission is indicative of offender risk.

The risk assessment instrument was incorporated into the sentencing guidelines for sex offenders beginning July 1, 2001. For each sex offender identified as a comparatively high risk (those scoring 28 points or more on the risk tool), the sentencing guidelines have been revised such that a prison term will always be recommended. In addition, the guidelines range (which comes in the form of a low end, a midpoint and a high end) is adjusted. For offenders scoring 28 points or more, the high end of the guidelines range is increased based on the offender's risk score, as summarized below.

- For offenders scoring 44 or more, the upper end of the guidelines range is increased by 300%.
- For offenders scoring 34 through 43 points, the upper end of the guidelines range is increased by 100%.
- For offenders scoring 28 through 33 points, the upper end of the guidelines range is increased by 50%.

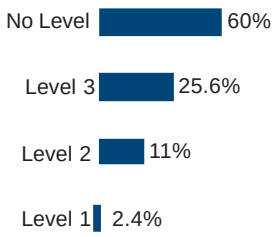
The low end and the midpoint remain unchanged. Increasing the upper end of the recommended range provides judges the flexibility to sentence higher risk sex offenders to terms above the traditional guidelines range and still be in compliance with the guidelines. This approach allows the judge to incorporate sex offender risk assessment into the sentencing decision while providing the judge with flexibility to evaluate the circumstances of each case.

During FY2007, there were 470 offenders convicted of an offense covered by the sexual assault guidelines (this group does not include offenders convicted of rape, forcible sodomy or object penetration). More than half (60%) were not assigned a level of risk by the sex offender risk assessment instrument (Figure 21). Approximately 26% of sexual assault guidelines cases resulted in a Level 3 risk classification, with an additional 11% assigned to Level 2. Just over 2% of offenders reached the highest risk category of Level 1.

Under sex offender risk assessment, the upper end of the guidelines range is extended by 300%, 100% or 50% for offenders assigned to Level 1, 2 or 3, respectively. Judges have begun to utilize these extended ranges when sentencing sex offenders. For sexual assault offenders reaching Level 1 risk, 27% were given sentences within the extended guidelines range (Figure 22). Judges used the extended guidelines range in 14% of the Level 2 and 16% of Level 3 risk cases. Judges rarely sentenced Level 1, 2 or 3 offenders to terms above the extended guidelines range provided in these cases. However, offenders who scored less than 28 points on the risk assessment instrument (who are not assigned a risk category and receive no guidelines adjustment) were less likely to be sentenced in compliance with the guidelines (64%) and the most likely to receive a sentence that was an upward departure from the guidelines (22%).

Figure 21

Sex Offender Risk Assessment Levels for Sexual Assault Offenders, FY2007*



**Excludes cases missing the sex offender risk assessment portion of the Other Sexual Assault worksheet.*

Figure 22

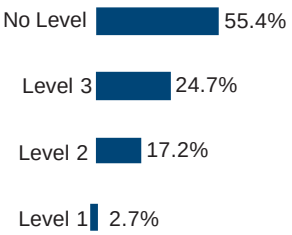
Other Sexual Assault Compliance Rates By Risk Assessment Level, FY2007*

		Compliance				
	Mitigation	Traditional Range	Adjusted Range	Aggravation	Number of Cases	Percent of Compliance Combined
Level 1	18%	55%	27%	0%	11	82%
Level 2	24%	60%	14%	2%	50	74%
Level 3	19%	56%	16%	9%	117	73%
No Level	14%	64%	---	22%	278	64%
Overall	16%	61%	6%	16%	456	68%

**Excludes cases missing the sex offender risk assessment portion of the Other Sexual Assault worksheet.*

Figure 23

Sex Offender Risk Assessment Levels for Rape Offenders, FY2007*



**Excludes cases missing the sex offender risk assessment portion of the Rape worksheet.*

In FY2007, there were 187 offenders convicted of offenses covered by the rape guidelines (which include the crimes of rape, forcible sodomy, and object penetration). Among offenders convicted of these crimes, over one-half (55%) were not assigned a risk level by the Commission's risk assessment instrument. Approximately 25% of rape cases resulted in a Level 3 adjustment—a 50% increase in the upper end of the traditional guidelines range recommendation (Figure 23). An additional 17% received a Level 2 adjustment (100% increase). The most extreme adjustment (300%) affected 3% of rape guidelines cases.

Four of the five rape offenders reaching the Level 1 risk group were sentenced within the guidelines range, with one judge using the extended upper end of the guidelines range (Figure 24). However, 28% of offenders with a Level 2 risk classification, and 15% of offenders with a Level 3 risk classification, were given prison sentences within the adjusted range of the guidelines. With extended guidelines ranges available for higher risk sex offenders, judges rarely sentenced Level 1, 2 or 3 offenders above the expanded guidelines range.

Figure 24

Rape Compliance Rates By Risk Assessment Level, FY2007*

		Compliance				
	Mitigation	Traditional Range	Adjusted Range	Aggravation	Number of Cases	Overall Compliance
Level 1	20%	60%	20%	0%	5	80%
Level 2	16%	47%	28%	9%	32	75%
Level 3	26%	59%	15%	0%	46	74%
No Level	24%	63%	---	13%	103	63%
Overall	23%	59%	9%	9%	186	68%

**Excludes cases missing the sex offender risk assessment portion of the Rape worksheet.*

Sentencing Revocation Reports (SRRs)

The most complete resource regarding revocations of community supervision in Virginia is the Sentencing Commission's Community Corrections Revocations Data System, also known as the Sentencing Revocation Report (SRR) database. First implemented in 1997 with assistance from the Department of Corrections (DOC), the SRR is a simple form designed to capture the reasons for, and the outcomes of, community supervision violation hearings. The probation officer (or Commonwealth's attorney) completes the first part of the form, which includes the offender's identifying information and checkboxes indicating the reasons why a show cause or revocation hearing has been requested. The checkboxes are based on the list of eleven conditions for community supervision established for every offender, but special supervision conditions imposed by the court can also be recorded. Following the violation hearing, the judge completes the remainder of the form with the revocation decision and any sanction ordered in the case. The completed form is submitted to the Commission, where the information is automated. A revised SRR form was developed and implemented in 2004 to serve as a companion to the new probation violation sentencing guidelines introduced that year.

In FY2007, there were 11,497 felony violations of probation, suspended sentence, and good behavior for which a SRR report was submitted to the Commission. The circuits submitting the largest number of SRRs in FY2007 were Circuit 4 (Norfolk), Circuit 1 (Chesapeake), and Circuit 19 (Fairfax). Circuit 6 (Sussex County area), Circuit 11 (Petersburg area) and Circuit 30 (Lee County area) submitted the fewest SRRs in FY2007 (Figure 25).

Figure 25

Number and Percent of Sentencing Revocation Received by Circuit—FY2007

Circuit	Circuit Name	Number	Percent
4	Norfolk	1,024	8.9%
1	Chesapeake	631	5.5
19	Fairfax	539	4.7
3	Portsmouth	526	4.6
27	Radford Area	520	4.5
22	Danville Area	503	4.4
13	Richmond City	481	4.2
26	Harrisonburg Area	478	4.2
15	Fredericksburg Area	473	4.1
14	Henrico	437	3.8
5	Suffolk Area	406	3.5
23	Roanoke Area	389	3.4
7	Newport News	388	3.4
31	Prince William Area	376	3.3
9	Williamsburg Area	374	3.3
21	Martinsville Area	342	3.0
29	Buchanan Area	323	2.8
24	Lynchburg Area	317	2.8
25	Staunton Area	315	2.7
8	Hampton	313	2.7
18	Alexandria	304	2.6
12	Chesterfield Area	302	2.6
10	South Boston Area	283	2.5
16	Charlottesville Area	283	2.5
28	Bristol Area	253	2.2
20	Loudoun Area	238	2.1
2	Virginia Beach	222	1.9
17	Arlington Area	182	1.6
6	Sussex Area	142	1.2
11	Petersburg Area	105	0.9
30	Lee Area	28	0.2

Probation Violation Guidelines

In 2003, the General Assembly directed the Commission to develop, with due regard for public safety, discretionary sentencing guidelines for felony offenders who are determined by the court to be in violation of their probation supervision for reasons other than a new criminal conviction (Chapter 1042 of the Acts of Assembly 2003). Often these offenders are referred to as "technical violators." In determining the guidelines, the Commission was to examine historical judicial sanctioning patterns in revocation hearings.

Early use of the probation violation guidelines, effective July 1, 2004, indicated that the guidelines needed further refinement to better reflect current judicial sentencing patterns in the punishment of supervision violators. Therefore, the Sentencing Commission's *2004 Annual Report* recommended several adjustments to the probation violation guidelines. Changes included assigning additional points on the Section A worksheet for offenders found in violation of certain conditions of probation. Also, defendants who admitted to using drugs, other than marijuana or alcohol, during their current supervision period, would be assigned the same number of points on the Section C worksheet as those who had a positive drug test. Lastly, the Section C recommendation table was adjusted based on sentences judges imposed during the months following the implementation of the probation violation guidelines. These proposed changes were accepted by the General Assembly and became effective for technical probation violators sentenced July 1, 2005, and after. The same probation violation guidelines remained in effect for both FY2006 and FY2007. FY2007 cases are examined below.

For FY2007, the Commission received 5,774 probation violation guideline forms. The worksheets include cases in which the court found the defendant in violation of the conditions of probation (except Condition 1, a new law violation), cases that the court decided to take under advisement until a later date, and cases in which the court did not find the defendant in violation. Approximately 42% of these offenders were on probation for a felony property offense and another 39% were being supervised as a result of a felony drug offense (Figure 26). A smaller portion (12%) of the offenders were on probation for a crime against the person.

Figure 26

Probation Violation Worksheets Received by Type of Most Serious Original Offense—FY2007*

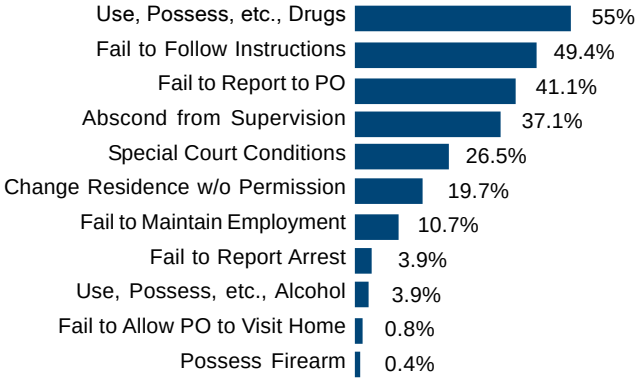
Original Offense Type	Percent Received
Property	41.9%
Drug	38.5
Person	11.9
Traffic	5.8
Other	1.8
Total	100.0

**Includes FY2007 worksheets received regardless of disposition.*

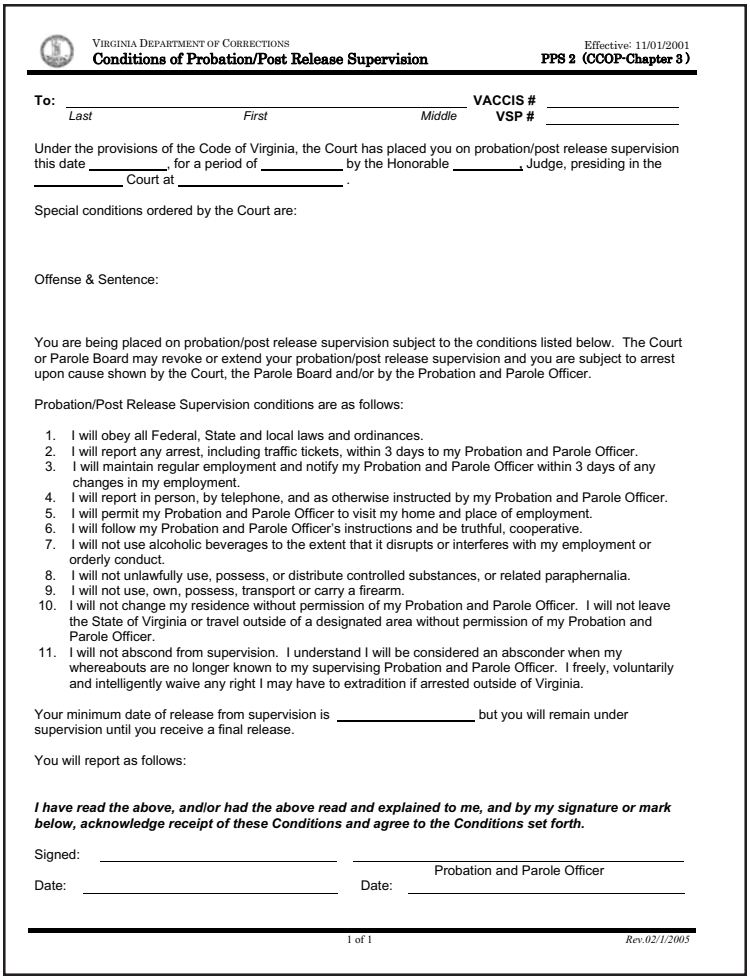
When examining the alleged violations, over half (55%) were cited for using, possessing, or distributing a controlled substance (Condition 8 of the *DOC Conditions of Probation*) (Figure 27). Violations of Condition 8 may include a positive test (urinalysis, etc.) for a controlled substance or a signed admission. In nearly half of the cases (49%), offenders were cited for failing to follow their probation officer's instructions. Other frequently cited violations included failing to report to the probation office in person or by telephone when instructed (41%) and absconding from supervision (37%). In more than one-quarter of the violation cases (27%), offenders were cited for failing to follow special conditions imposed by the court, such as failing to pay court costs and restitution, failing to comply with court-ordered substance abuse treatment, or failing to successfully complete alternatives such as Detention Center, Diversion Center, or Day Reporting. It is important to note that defendants may be, and typically are, cited for more than one violation of their probation conditions.

Figure 27

Violation Conditions Cited by Probation Officers, Excluding New Law Violations, FY2007*



**Includes worksheets received in FY2007 regardless of disposition (not in violation, etc).*



VIRGINIA DEPARTMENT OF CORRECTIONS
Conditions of Probation/Post Release Supervision

Effective: 11/01/2001
PPS 2 (CCOP-Chapter 3)

To: _____ **VACCIS #** _____
Last *First* *Middle* **VSP #** _____

Under the provisions of the Code of Virginia, the Court has placed you on probation/post release supervision this date _____, for a period of _____ by the Honorable _____, Judge, presiding in the _____ Court at _____.

Special conditions ordered by the Court are:

Offense & Sentence:

You are being placed on probation/post release supervision subject to the conditions listed below. The Court or Parole Board may revoke or extend your probation/post release supervision and you are subject to arrest upon cause shown by the Court, the Parole Board and/or by the Probation and Parole Officer.

Probation/Post Release Supervision conditions are as follows:

1. I will obey all Federal, State and local laws and ordinances.
2. I will report any arrest, including traffic tickets, within 3 days to my Probation and Parole Officer.
3. I will maintain regular employment and notify my Probation and Parole Officer within 3 days of any changes in my employment.
4. I will report in person, by telephone, and as otherwise instructed by my Probation and Parole Officer.
5. I will permit my Probation and Parole Officer to visit my home and place of employment.
6. I will follow my Probation and Parole Officer's instructions and be truthful, cooperative.
7. I will not use alcoholic beverages to the extent that it disrupts or interferes with my employment or orderly conduct.
8. I will not unlawfully use, possess, or distribute controlled substances, or related paraphernalia.
9. I will not use, own, possess, transport or carry a firearm.
10. I will not change my residence without permission of my Probation and Parole Officer. I will not leave the State of Virginia or travel outside of a designated area without permission of my Probation and Parole Officer.
11. I will not abscond from supervision. I understand I will be considered an absconder when my whereabouts are no longer known to my supervising Probation and Parole Officer. I freely, voluntarily and intelligently waive any right I may have to extradition if arrested outside of Virginia.

Your minimum date of release from supervision is _____ but you will remain under supervision until you receive a final release.

You will report as follows:

I have read the above, and/or had the above read and explained to me, and by my signature or mark below, acknowledge receipt of these Conditions and agree to the Conditions set forth.

Signed: _____ _____
Probation and Parole Officer

Date: _____ Date: _____

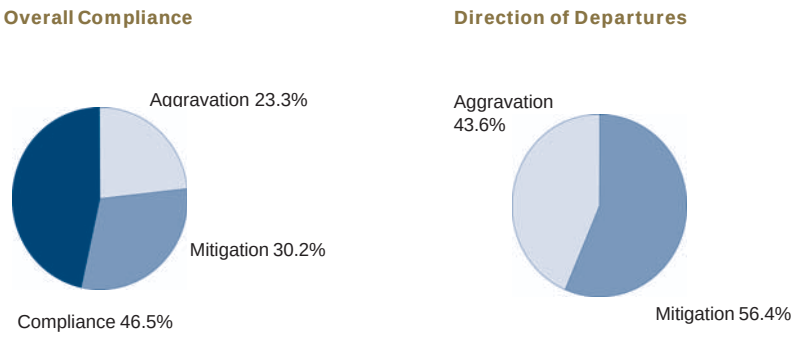
1 of 1 *Rev.02/1/2005*

Of the 5,774 probation violation cases received by the Commission for FY2007, there were 5,433 cases in which the defendant was found in violation of a condition of probation other than a new law violation and the guidelines form was prepared completely and accurately. For the remaining 341 cases, the judge took the matter under advisement until a later date, the offender was not found in violation of probation conditions, an outdated form was prepared, or the worksheets were incomplete or missing; these 341 cases are excluded from the following analysis.

The overall compliance rate summarizes the extent to which Virginia's judges concur with recommendations provided by the probation violation guidelines, both in type of disposition and in length of incarceration. For FY2007, the overall compliance rate was nearly 47%, slightly higher than the 45% compliance rate for FY2006 and significantly higher than the compliance rate of 35% during FY2005 (Figure 28). The aggravation rate, or the rate at which judges sentence offenders to sanctions more severe than the guidelines recommendation, was 23% during FY2007. The mitigation rate, the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 30%.

Figure 28

Probation Violation Guidelines Overall Compliance and Direction of Departures, FY2007 (5,433 Cases)*



**Includes FY2007 cases found to be in violation that were completed accurately on current guideline forms*

Figure 29 illustrates judicial concurrence with the type of disposition recommended by the probation violation guidelines for the most recent fiscal year. There are three general categories of sanctions recommended by the probation violation guidelines—probation/no incarceration, a jail sentence up to twelve months, or a prison sentence of one year or more. Data for FY2007 reveal that judges agree with the type of sanction recommended by the probation violation guidelines in 55% of the cases. When departing from the dispositional recommendation, judges were more likely to sentence below the guidelines recommendation than above it. Consistent with the traditional sentencing guidelines, sentences to the Detention Center and Diversion Center programs are defined as incarceration sanctions under the probation violation guidelines. The Detention and Diversion Center programs are counted as six months of confinement. In the previous discussion of dispositional compliance, imposition of one of these programs is categorized as incarceration of six months.

Another facet of compliance is durational compliance. Durational compliance is defined as the rate at which judges sentence offenders to terms of incarceration that fall within the recommended guidelines range. Durational compliance analysis considers only those cases for which the guidelines recommended an active term of incarceration and the offender received an incarceration sanction consisting of at least one day in jail. Data reveal that durational compliance for FY2007 was approximately 50% (Figure 30). For FY2007 cases not in durational compliance, mitigations were more prevalent than aggravations.

When judges sentenced offenders to incarceration, but to an amount less than the recommended time, offenders were given "effective" sentences (sentences less any suspended time) short of the guidelines range by a median value of nine months. For offenders receiving longer than recommended incarceration sentences, the effective sentence exceeded the guidelines range by a median value of nine months as well. Thus, durational departures from the guidelines are typically less than one year above or below the recommended range.

Figure 29

Probation Violation Guidelines Dispositional Compliance, FY2007

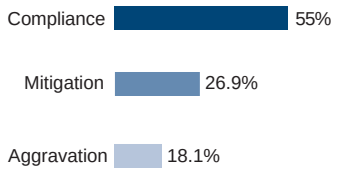
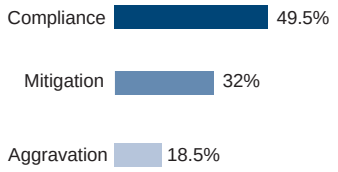


Figure 30

Probation Violation Guidelines Durational Compliance, FY2007*



**Compliance in cases that are recommended for, and receive, an active jail or prison sentence.*

Similar to the traditional felony sentencing guidelines, sentencing in accordance with the recommendations of the probation violation guidelines is voluntary. With respect to the traditional sentencing guidelines, Virginia's judges are required by § 19.2-298.01 of the *Code of Virginia* to submit reasons for departure when they sentence outside of the guidelines range. Currently, there is no statutory provision mandating the preparation and submission of the probation violation guidelines, nor are judges required to provide written reasons for departure when giving a sentence above or below the guidelines. Because the opinions of the judiciary, as reflected in their departure reasons, are of critical importance when revisions to the guidelines are considered, the Commission has requested that judges enter departure reasons on the probation violation guidelines form, even though they are not statutorily required to do so. Many judges have responded to the Commission's request. Ultimately, the types of adjustments to the probation violation guidelines, those that would allow the guidelines to more closely reflect judicial sentencing practices across the Commonwealth, are largely dependant upon the judges' written reasons for departure.

According to FY2007 data, 47% of probation violation guidelines cases resulted in sentences that fell within the guidelines recommendation. With judges departing from these guidelines at such a high rate, written departure reasons are an integral part of understanding judicial sentencing decisions. An analysis of the 1,639 mitigation cases revealed that nearly half (49%) did not include a departure reason. For the mitigation cases in which departure reasons were provided, judges were most likely to cite the defendant's progress in rehabilitation, the recommendation of the Commonwealth's Attorney, a guidelines recommendation that was too high, or the utilization of an alternative punishment option, such as the Detention or Diversion Center program.

Examining the 1,266 aggravation cases, the Commission once again found that half (51%) did not include a departure reason. When a departure reason was provided in aggravation cases, judges were most likely to cite the defendant's prior record including previous probation violations, a poor potential for rehabilitation, substance abuse problems, or that the guidelines recommendation was too low.

In its *2006 Annual Report*, the Commission recommended further refinement of the probation violation guidelines. These changes were accepted by the 2007 General Assembly and became effective on July 1, 2007. Early FY2008 data suggest that the changes will improve compliance rates. As with the felony sentencing guidelines first implemented in 1991, the development of useful sentencing tools for judges to deal with probation violators will be an iterative process, with improvements made over several years. Feedback from judges is of critical importance to this process. Changes proposed by the Commission are made with the goal of enhancing the usefulness of these guidelines for Virginia's circuit court judges as they make difficult sanctioning decisions.

3 Methamphetamine Crime in Virginia

Unlike other drugs that are plant derived, such as cocaine, methamphetamine is a man-made drug that can be produced from a few over-the-counter and low-cost ingredients.

Introduction

Methamphetamine, a form of amphetamine, is a highly addictive stimulant that affects the central nervous system. In addition to feelings of excitement and euphoria, methamphetamine can cause severe paranoia, confusion, anxiety, hallucinations, and violent behavior. Partly due to the toxic nature of some of the ingredients used to create methamphetamine, prolonged use can lead to serious health problems, including long-term changes in brain chemistry, the destruction of brain cells, oral infections, and an increased risk of stroke and kidney failure (DrugInfo Clearinghouse, 2007; National Institute on Drug Abuse, 2006).

Unlike most other drugs, methamphetamine is typically manufactured in clandestine laboratories using common household ingredients, including battery acid and pseudoephedrine. The methods used to manufacture methamphetamine in clandestine laboratories can be extremely dangerous to the community, since laboratories produce toxic chemicals and sometimes explode. Methamphetamine can be ingested orally, snorted, smoked or injected intravenously. "Ice," the only form of methamphetamine that can be smoked, is crystalline in appearance and typically resembles shards of glass or chunks of ice. Ice tends to have a higher purity and, consequently, an even greater potential for addiction than the tablet and powder forms of the drug (Scott & Dedel, 2006; DrugInfo Clearinghouse, 2007).

Because of the potential for physical and psychological abuse and its limited medical applications, methamphetamine is listed as a Schedule II narcotic under the Controlled Substances Act, Title II, of the Comprehensive Drug Abuse Prevention and Control Act of 1970. Although methamphetamine use is more common in the Western region of the United States, its popularity has increased in many communities in the Midwest and South. Areas in the Northeast and Mid-Atlantic have also experienced a slight rise in the use of the drug (Hunt, Kuck, & Truitt, 2006). Amid concern over methamphetamine-related crime in the Commonwealth, the 2001 General Assembly directed the Virginia Criminal Sentencing Commission to examine the state's felony sentencing guidelines for Schedule I and II drug offenses, with a particular focus on methamphetamine (Chapters 352 and 375 of *The Acts of the Assembly 2001*). The Commission was directed to examine the quantity of methamphetamine seized in these cases and its impact on sentencing outcomes in Virginia's circuit courts.

In its 2001 study, the Commission found that although the number of cases involving methamphetamine in Virginia had increased since the early 1990s, these cases remained a small percentage of drug cases in state and federal courts in the Commonwealth. The Commission's analysis showed that sentencing in the Commonwealth's circuit courts was primarily driven by an offender's prior criminal record rather than the quantity of methamphetamine involved. This was especially true in cases where the offender had previously been convicted of a violent offense. As part of its investigation, the Commission thoroughly examined the sentencing guidelines, including the factors that account for the offender's criminal record and the built-in enhancements that increase the sentence recommendation for offenders with prior convictions for violent offenses. Analysis did not reveal statistical evidence that judges systematically base sentences on the amount of methamphetamine involved in a case. Therefore, the Commission concluded that Virginia's historically-based sentencing guidelines should not be adjusted to include methamphetamine quantity at that time (Virginia Criminal Sentencing Commission, 2001).

In 2004, the Commission revisited the methamphetamine issue and repeated the study using the most recent data available. The Commission observed a continuing increase in the number of methamphetamine cases in the Commonwealth but the proportion of these cases, relative to other Schedule I or II drugs, remained low. The Commission found that the nature of an offender's prior record and the number of charges resulting in a conviction were the most important factors in determining the sentencing outcome. The amount of methamphetamine seized was still not a significant factor in sentencing decisions in Virginia's circuit courts. Since the sentencing guidelines already account for the number of counts and the offender's prior record, the Commission did not make any recommendations for revisions to the sentencing guidelines in 2004 (Virginia Criminal Sentencing Commission, 2004).

Methamphetamine crime in Virginia has continued to be an issue of concern for the general public, legislators, and other officials over the past several years. In response to this concern, the Commission has conducted a third detailed study of methamphetamine crime. This chapter of the Commission's 2007 *Annual Report* describes the Commission's most recent findings, including the latest analysis of methamphetamine quantity and sentencing outcomes. This section also includes information on methamphetamine-related crime in the Commonwealth and details the most recent research regarding methamphetamine use, lab seizures, arrests, and convictions in the state.

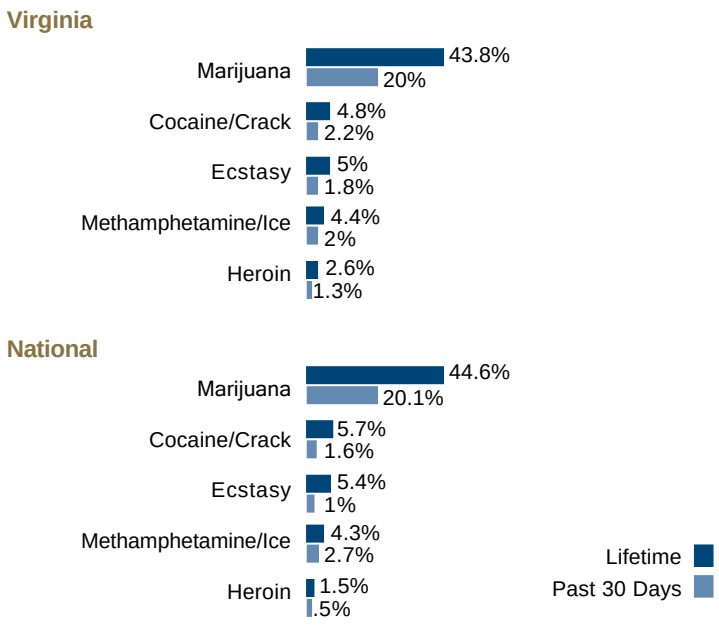
Drug Use in Virginia

According to results from the National Survey on Drug Use and Health (NSDUH), formerly the National Household Survey on Drug Abuse, the percentage of Virginians reporting use of any illicit drug in the past month was lower than the national average in 2005. Conducted by the Substance Abuse and Mental Health Services Administration (SAMHSA), a division of the U.S. Department of Health and Human Services, the NSDUH interviews approximately 70,000 Americans over the age of 11 each year. This survey has provided information on the use of alcohol, tobacco, and illicit drugs by the civilian, non-institutionalized population since 1971. Between 2003 and 2005, the percentage of Virginians surveyed who reported use of an illicit drug in the past month, considered current drug use, declined from 7.7% to 6.8%. A smaller decrease of .3% was observed on the national level from 2003 to 2005. The percentage of Virginians between the ages of 12 and 17 who reported drug use in the past month declined from 11.9% to 8.3% between 2003 and 2005. The change among this demographic was mirrored on the national level, with a fall from 11.4% to 10.2% during the same time span (Wright & Sathe, 2005; Wright, Sathe, & Spagnola, 2007).

National and state surveys suggest that, among students surveyed in 2005, the percentage of Virginia's twelfth graders reporting methamphetamine or ice use at least once in their lifetime was slightly higher than the national rate. However, the rate of use in the past month was lower among Virginia's twelfth grade students than nationally (Figure 31). Monitoring the Future has provided information on illicit drug use by American students in the twelfth grade since 1975. Eighth and tenth grade students were included in the national sample beginning in 1991.

Figure 31

Use of Illicit Drugs by 12th Graders, 2005



Sources: Moore, Honnold, Derrig, Glaze, & Ellis, (2006); Monitoring the Future 2005 Online Data

The Virginia Community Youth Survey (CYS) is administered by the Virginia Commonwealth University Center for Public Policy and is funded by the Virginia Department of Mental Health, Mental Retardation, and Substance Abuse Services. Modeled after the Monitoring the Future project, the CYS duplicated questions from the national survey for the local study, which was administered in 2000, 2003, and 2005. According to the 2005 surveys, high school students in Virginia use methamphetamine less frequently than other drugs. While the lifetime use of cocaine, crack or ecstasy was lower among twelfth graders in Virginia than nationally in 2005, use of these drugs in the past month was higher in Virginia than for the nation as a whole. The proportion of Virginia's twelfth grade students reporting lifetime or current use of marijuana, however, was lower than the national average.

Figure 32

Percent of High School Students in Virginia Reporting Methamphetamine or Ice Use, 2000 v. 2005

State	2000	2005	Percent Change
Lifetime Use			
8th Grade	1.8%	1.2%	-0.6%
10th Grade	3.6%	4.5%	+0.9%
12th Grade	6.0%	4.4%	-1.6%
Used in the Past 30 Days			
8th Grade	0.6%	0.5%	-0.1%
10th Grade	1.4%	2.3%	+0.9%
12th Grade	2.0%	2.0%	none

Sources: Moore, Glaze, Honnold, Ellis, & Rives (2004); Moore, et al. (2006); Monitoring the Future 2005 Online Data

Between 2000 and 2005, lifetime use of methamphetamine among eighth and twelfth grade students in Virginia declined, while past-month use remained stable (Figure 32). Only tenth graders reported an increase in both lifetime and current use of methamphetamine during this time period. In 2005, a slightly larger percentage of tenth grade students (2.3%) had used methamphetamine or ice in the past 30 days than twelfth grade students (2%), showing a shift from 2000 (Moore, Honnold, Derrig, Glaze, & Ellis, 2006; Moore, Glaze, Honnold, Ellis, & Rives, 2004; Monitoring the Future: A Continuing Study of American Youth: 2005 Online Data).

Use of methamphetamine among high school students is more common in the Southwest and Northwest areas of the state than elsewhere (regions shown in Figure 33). A larger proportion of high school students in the Southwest region of Virginia reported lifetime or past month use of methamphetamine or ice than students in the other areas of the state in 2005 (Figure 34). Among high school students from Southwest Virginia who completed the 2005 survey, 6% reported having ever used methamphetamine or ice and 2.6% reported current methamphetamine or ice use. The Northwest region had slightly lower rates of use than the Southwest, with 4.6% of students in the Northwest acknowledging use of methamphetamine or ice during their lifetime and 2.4% admitting use in the past 30 days. The percentage of high school students reporting methamphetamine use in other areas of the state was significantly lower than in these two regions (Moore, et al., 2006).

The agency responsible for conducting the NSDUH, SAMHSA, also gathers information regarding demographic and substance abuse characteristics of admissions to substance abuse treatment programs. In Virginia, the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) submits this information to SAMHSA, which compiles the information in the Treatment Episode Data Set (TEDS). Emergency admissions are not included in the figures provided to SAMHSA by DMHMRSAS.

DMHMRSAS collects information about publicly-funded providers of mental health, mental retardation, and substance abuse services from Community Service Boards (CSBs). CSBs are established and administered by localities and serve as the single point of entry into publicly-funded providers of mental health, mental retardation, and substance abuse services. A change in the method of data collection by DMHMRSAS in fiscal year 2004 resulted in a change in the number of providers reporting to the CSBs than in past years, which may have artificially inflated the number of admissions reported to SAMHSA. The change in data reporting has resulted in difficulties comparing raw numbers before and after FY2004, since differences, to some extent, may be attributed to changes in data collection practices rather than actual changes in the number of admissions. Percentages can be a more accurate method of comparing prior years of data in these circumstances.

Figure 33

Virginia's Health Planning Regions

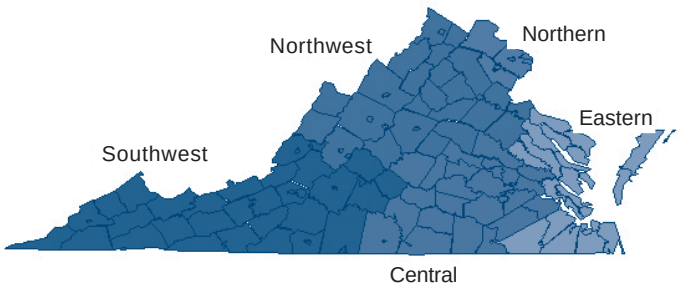
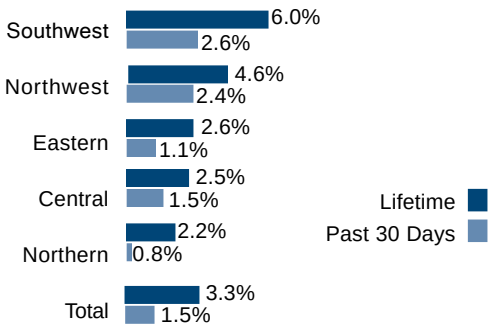


Figure 34

Reported Methamphetamine or Ice Use Among High School Students in Virginia by Region, 2005



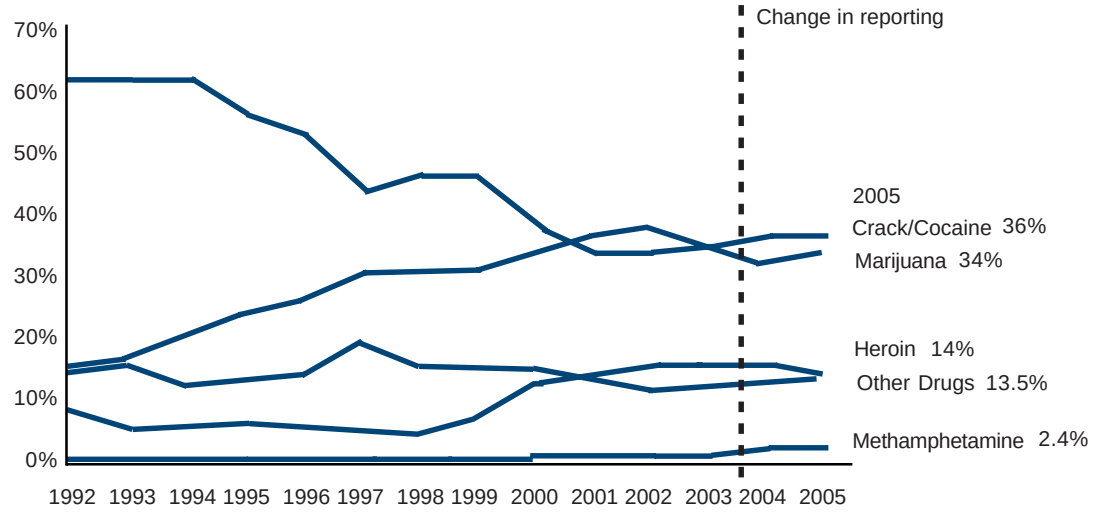
Source: Moore, et al. (2006)

The percentage of treatment admissions for methamphetamine remains very low in comparison to other drugs. Figure 35 shows that, between 1992 and 2005, the proportion of treatment admissions for methamphetamine rose from 0.2% to 2.4%. The percent of treatment admissions involving cocaine or crack decreased from 61% to 36% between 1992 and 2005. The proportion of treatment admissions attributed to marijuana use has more than doubled and, for three years (2001, 2002, and 2003), marijuana accounted for more admissions than cocaine. In 2005, marijuana and cocaine together comprised more than two-thirds of substance abuse admissions in Virginia.

The primary source of treatment admissions referrals for methamphetamine abuse has shifted since the early 1990s. The proportion of admissions stemming from individual referrals, including self-referrals, has decreased substantially since 1995 (Figure 36). Since 2000, criminal justice agencies have replaced individuals as the primary source of admissions for methamphetamine. In 1999, legislation known as the Substance Abuse Reduction Effort (SABRE) allocated funds for the screening and assessment of offenders for substance abuse problems. SABRE also allotted money for placement in treatment services, which may explain the rise in the percentage of admissions from criminal justice agencies in 2000.

Figure 35

Substance Abuse Admissions in Virginia by Primary Drug Type 1992-2005



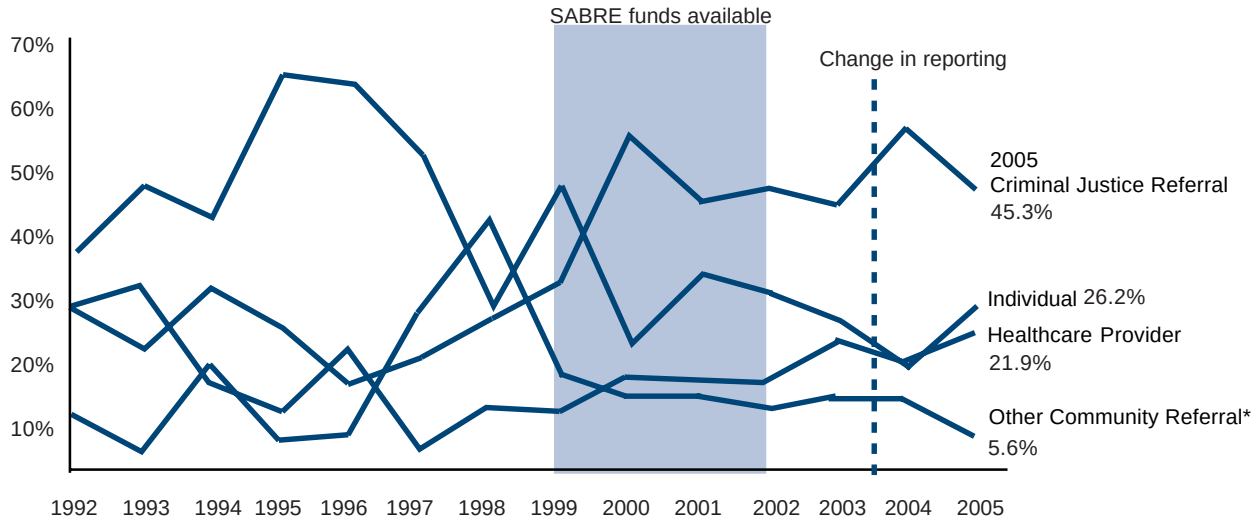
Source: Treatment Episode Data Set (TEDS), 1992-2005

Although funding for this program was virtually eliminated in 2002, criminal justice agencies continue to account for the most referrals for methamphetamine in Virginia's publicly-funded substance abuse services facilities.

Although TEDS does not include information regarding specific types of methamphetamine, the form of ingestion provides an indicator of the prevalence of ice methamphetamine. Because ice is the only smokable form of methamphetamine, the percentage of methamphetamine admissions related to smoking the drug is an indication of ice use in the Commonwealth. Between 2000 and 2005, the proportion of methamphetamine admissions related to smoking the drug increased from 10% to 48.5%, which suggests a rise in use of the ice form of the drug among individuals admitted for methamphetamine abuse in Virginia.

Figure 36

Methamphetamine Admissions in Virginia by Source of Referral 1992-2005



*Includes referrals from self-help groups, religious organizations, and federal, state, and local agencies providing aid in the areas of poverty relief, unemployment, shelter and social welfare.
Note: Schools and employers are not shown because each comprised a small percentage of referrals. In 2005, schools and employers combined accounted for less than 1% of the total number of methamphetamine treatment admissions.
Source: Treatment Episode Data Set (TEDS), 1992-2005

Forensic Analysis in Virginia

The Virginia Department of Forensic Science (DFS) collects detailed information regarding substances submitted to the agency for analysis. The number of cases involving substances testing positive for methamphetamine rose from 366 cases in 2000 to 1,084 cases in 2006 (Figure 37). Although the number of substances identified as methamphetamine has increased over the years, cases involving other Schedule I or II drugs have increased as well. For instance, the number of cocaine-related cases rose from 12,471 to 19,089 between 2004 and 2006. Methamphetamine remains a very small proportion of the substances analyzed by the Department of Forensic Science and marijuana, cocaine, and heroin cases continue to outnumber cases involving methamphetamine.

According to information provided by DFS, the average amount of methamphetamine submitted per case in 2006 was 4.5 grams (Figure 38). Between 2000 and 2006, methamphetamine was second only to marijuana in the average amount of drug seized per case. The average weight of methamphetamine per case has declined since its peak in 2001 and now is roughly equal to the average weight of cocaine per case. Averages such as these can be strongly influenced by unusual cases and a few cases with abnormally large drug amounts can significantly increase the average amount reported.

Figure 37

Substances Submitted to the Virginia Department of Forensic Science

Substance	2000	2001	2002	2003	2004	2005	2006	Percent Change 2000-2006
Methamphetamine	366	335	584	907	979	1,141	1,084	196%
Cocaine	12,588	11,807	12,612	12,893	12,471	15,905	19,089	52
Marijuana	25,751	24,104	23,856	24,582	22,462	26,338	28,066	9
Heroin	1,654	1,576	1,675	1,470	1,395	1,532	1,754	6

Note: Multiple types of drugs can be reported in each case.
Source: Virginia Department of Forensic Science

Figure 38

Average Weight of Drug per Case (in grams) Analyzed by the Department of Forensic Science

Year	Marijuana	Methamphetamine	Cocaine	Heroin
2000	64.4	9.9	6.9	0.8
2001	56.5	12.2	7.4	2.5
2002	47.4	8.6	6.9	0.9
2003	55.1	8.6	5.3	4.6
2004	55.6	6.8	6.3	0.8
2005	83.6	5.3	5.1	1.2
2006	43.0	4.5	4.6	0.7

Source: Virginia Department of Forensic Science

The Commonwealth of Virginia provides data to the National Forensic Laboratory Information System (NFLIS), a national reporting system that gathers data from many sites across the nation. Currently, almost all states have at least one participating forensic laboratory. Figure 39 shows the regions used for this reporting system. The West is the only region in which substances testing positive for methamphetamine are more common than any other drug. According to annual NFLIS publications, 38% of drug items analyzed in the Western region of the United States tested positive for methamphetamine in 2004 (Figure 39). This percentage decreased to about 36% in 2006. Nearly half of the total drug items analyzed in the Midwest in 2004 were cannabis and this drug continues to be the most frequently identified drug in the region. Methamphetamine-positive tests have remained between 5% and 10% in this area. Cocaine is still the most commonly identified drug in the Northeast and the South, accounting for more than a third of substances testing positive for drugs in these regions in 2006. Methamphetamine, recorded in less than 7% of the cases in the South in 2006, is nearly nonexistent in the Northeast.

Figure 39

Percent of Substances Submitted to the National Forensic Laboratory Information System by Region

West

Substance	2004	2005	2006
Methamphetamine	38.4%	40.9%	35.8%
Cannabis	22.0	21.4	23.2
Cocaine	20.1	20.0	20.8
Heroin	3.5	3.5	3.5

Midwest

Substance	2004	2005	2006
Methamphetamine	8.7	8.9	6.4
Cannabis	48.4	45.9	45.4
Cocaine	26.0	26.4	28.8
Heroin	4.9	5.2	4.5

Northeast

Substance	2004	2005	2006
Methamphetamine	0.5	0.3	0.6
Cannabis	31.7	32.0	25.9
Cocaine	37.8	41.5	33.4
Heroin	11.9	12.0	9.0

South

Substance	2004	2005	2006
Methamphetamine	7.7	8.7	6.9
Cannabis	32.9	31.1	29.9
Cocaine	38.2	39.6	40.7
Heroin	4.2	2.9	4.2

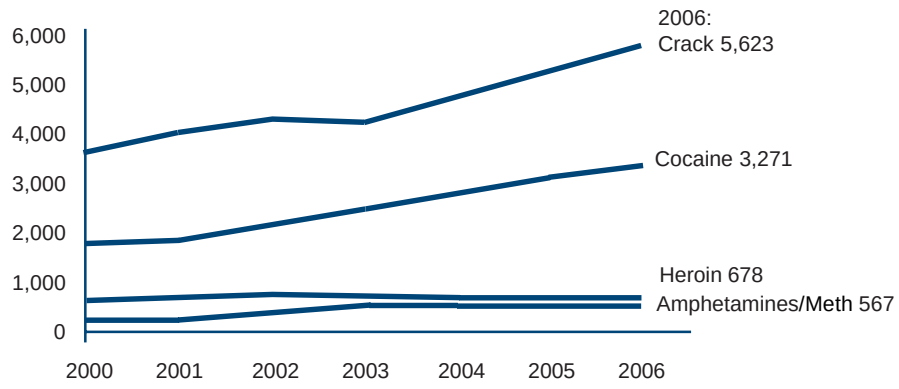
Note: Data include state and federal sources.
Sources: Weimer et al. (2007); Weimer, Wong, Sannerud, Eicheldinger, Ancheta, Strom, & Rachal (2006); Weimer, Wong, Strom, Forti, Eicheldinger, Bethke, Ancheta, & Rachal (2004)

Drug Arrests in Virginia

All law enforcement agencies in the state are required to report crimes and arrests to the Virginia State Police. The State Police organize the data and publish an annual report containing these statistics. According to the Virginia State Police, the number of arrests for drug violations in Virginia rose from 23,181 to 32,000 between 2000 and 2006. The number of arrests for offenses involving amphetamines, including methamphetamine, nearly tripled between 2000 and 2006, reaching 567 in 2006 (Figure 40). However, amphetamines have remained a small proportion of narcotics arrests in the Commonwealth and growth has slowed in recent years. Other types of drugs comprise the vast majority of narcotics arrests in Virginia. Between 2000 and 2006, marijuana (not shown in Figure 40) accounted for more than half of all drug arrests each year. The proportion of arrests for the second most common drug, crack cocaine, has remained between 15% and 18% during this time period. Approximately 10% of the drug arrests between 2000 and 2006 were associated with powder cocaine. Amphetamine arrests have accounted for less than 3% of all drug arrests in the Commonwealth since 2000.

Figure 40

Drug Arrests in Virginia (Excluding Marijuana), 2000-2006



Sources: Virginia Department of State Police Crime in Virginia Reports, 2000 through 2006

Between 2000 and 2006, very few juveniles were arrested for amphetamine-related offenses within the Commonwealth, with the number of juvenile arrests for these crimes reaching only 22 in 2006 (Figure 41). Marijuana, followed by crack and powder cocaine, consistently accounted for the majority of juvenile drug arrests across all six years. In 2006, for instance, 76.6% of drug arrests of individuals under the age of 18 were for marijuana-related offenses. However, juveniles comprised a small proportion of all marijuana arrests in the Commonwealth. Only 12.8% of individuals arrested for marijuana in 2006 were below 18 years of age. Among juveniles, crack accounted for 4.8% of drug arrests and powder cocaine comprised 2.4% of arrests in 2006. Amphetamines made up less than 1% of drug arrests that year.

Figure 41

Juvenile Drug Arrests by Drug Type, 2006

Drug Type	Arrests	Percent
Marijuana	2,119	76.6%
Unknown	303	11.0
Crack	133	4.8
Other	121	4.4
Cocaine	66	2.4
Amphetamines/Methamphetamine	22	0.8
Heroin	3	0.1
Total	**2,767**	**100.0**

Source: Virginia Department of State Police (2007)

Methamphetamine Laboratory Seizures

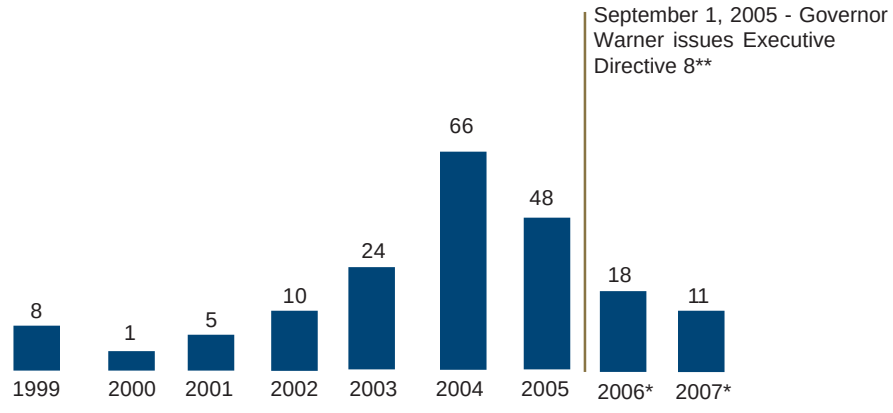
Methamphetamine can be produced using a fairly simple process and common household products, including over-the-counter cold medications. As a consequence, methamphetamine laboratories can be operated in houses, mobile homes, apartments, hotel rooms, and automobiles by individuals without formal training. Laboratories used to manufacture methamphetamine can cause considerable harm to persons and the environment. Physical injury to manufacturers, occupants, emergency responders, cleanup crews, and neighbors can result from explosions, fires, chemical burns, and inhalation of toxic fumes emitted during methamphetamine production. Methamphetamine laboratories and remnants thereof also pose a risk to the surrounding environment, since much of the waste can be dangerous if not disposed of properly (Scott & Dedel, 2006). According to a publication from the Office of National Drug Control Policy (2004), approximately 5 to 6 pounds of toxic byproducts are produced for every pound of methamphetamine created. If these hazardous materials are discarded improperly, as is typically the case, they can enter into the water table and poison nearby residents and wildlife.

The El Paso Intelligence Center (EPIC), a division of the U.S. Drug Enforcement Administration (DEA), maintains the National Clandestine Laboratory Seizure System, which collects information from local, state, and federal agencies regarding clandestine laboratory seizures. This database contains statistics regarding the number, type, and location of laboratories, manufacturing byproducts, and equipment seized. In instructions issued to law enforcement agencies, EPIC defines clandestine laboratories as "an illicit operation consisting of a sufficient combination of apparatus and chemicals that either has been or could be used in the manufacture or synthesis of controlled substances." EPIC also collects information regarding the number of children affected by meth-amphetamine laboratories and production.

The number of methamphetamine laboratory seizures by federal or local agencies in Virginia has decreased substantially in the past few years, from a peak of 66 in 2004 to 18 in 2006 (Figure 42). Data for 2006 are considered preliminary. As of August 31, 2007, 11 methamphetamine lab seizures had been reported to the DEA for 2007. Since the figures for 2007 only include laboratory seizures reported through August 31, 2007, they are incomplete and are expected to change as EPIC continues to receive reports. For the most part, methamphetamine laboratory seizures within Virginia have historically been clustered in the Southwest region of the state, particularly along the I-81 corridor. Of the 18 lab seizures in 2006, 16 were located in Southwest Virginia. This pattern may be attributable to the common borders shared with Tennessee and Kentucky, both of which have been listed among the top ten states in methamphetamine lab seizures for the past three years.

Figure 42

Methamphetamine Lab Seizures in Virginia, 1999-2007



* Data for 2006 are preliminary and data for 2007 are incomplete – due to lags in reporting time, the number of seizures known to the DEA may change over time. Data for 2007 only include laboratory seizures submitted to EPIC prior to September 1, 2007.
** Executive Directive 8 required the development of restrictions on the sale and purchase of products containing key ingredients used in the manufacture of methamphetamine.
Source: U.S. Drug Enforcement Administration – El Paso Intelligence Center Clandestine Laboratory Seizure System

Figure 43

State Rankings for Methamphetamine Lab Seizures, 2000-2006

State	2000	2001	2002	2003	2004	2005	2006*
Missouri	3	3	2	1	1	1	1
Indiana	11	10	9	7	5	3	2
Illinois	16	13	11	10	7	5	3
Arkansas	12	9	6	5	3	6	4
Kentucky	20	18	15	12	10	4	5
Tennessee	10	8	5	3	2	2	6
California	1	1	1	2	4	7	7
Alabama	21	17	16	14	13	8	8
Oklahoma	7	4	4	4	9	19	9
Michigan	31	23	19	21	19	12	10
Georgia	23	28	24	18	17	11	11
Florida	32	29	20	17	16	10	12
Ohio	25	24	28	25	20	15	13
Iowa	13	11	10	8	8	13	14
North Carolina	30	30	33	22	14	14	15
Texas	5	5	7	9	12	16	16
Mississippi	18	16	14	16	15	20	17
Washington	2	2	3	6	6	9	18
West Virginia	39	35	32	30	23	23	19
Colorado	15	15	13	15	21	22	20
South Carolina	38	38	37	31	22	21	21
Kansas	4	7	12	13	18	18	22
Oregon	9	6	8	11	11	17	23
New York	43	41	39	40	36	36	24
Arizona	6	12	17	23	24	24	25
Pennsylvania	35	37	36	34	29	31	26
New Mexico	22	25	21	20	26	28	27
Nevada	8	14	26	24	34	33	28
Virginia	**42**	**40**	**40**	**37**	**30**	**26**	**29**
Idaho	19	22	27	33	37	38	30
Minnesota	17	20	18	19	25	27	31
Louisiana	29	34	29	28	27	29	32
North Dakota	27	26	23	26	31	30	33
Nebraska	24	21	25	27	28	25	34
Utah	14	19	22	29	33	34	35
Wisconsin	34	32	35	35	38	35	36
Montana	28	27	30	32	35	40	37
Hawaii	37	39	41	41	40	37	38
New Jersey	**	47	42	46	47	47	39
New Hampshire	44	44	45	45	46	42	40
Alaska	26	36	34	36	32	32	41
Connecticut	**	45	43	44	**	44	42
Maine	40	42	**	**	44	46	43
South Dakota	36	33	38	39	41	39	44
Wyoming	33	31	31	38	39	41	45
Massachusetts	**	46	46	48	43	43	46
Rhode Island	**	48	47	47	**	**	47
Maryland	**	43	44	43	45	45	48
Vermont	**	**	**	**	49	48	**
Delaware	41	**	**	42	42	**	**
D. C.	**	**	**	**	48	**	**

- The decrease in the number of methamphetamine lab seizures seen in Virginia has also been observed across the nation, with the total number of lab seizures falling from 10,294 in the peak year of 2003 to 3,548 in 2006.

* Data for 2006 are preliminary.
** State did not report for the given year.

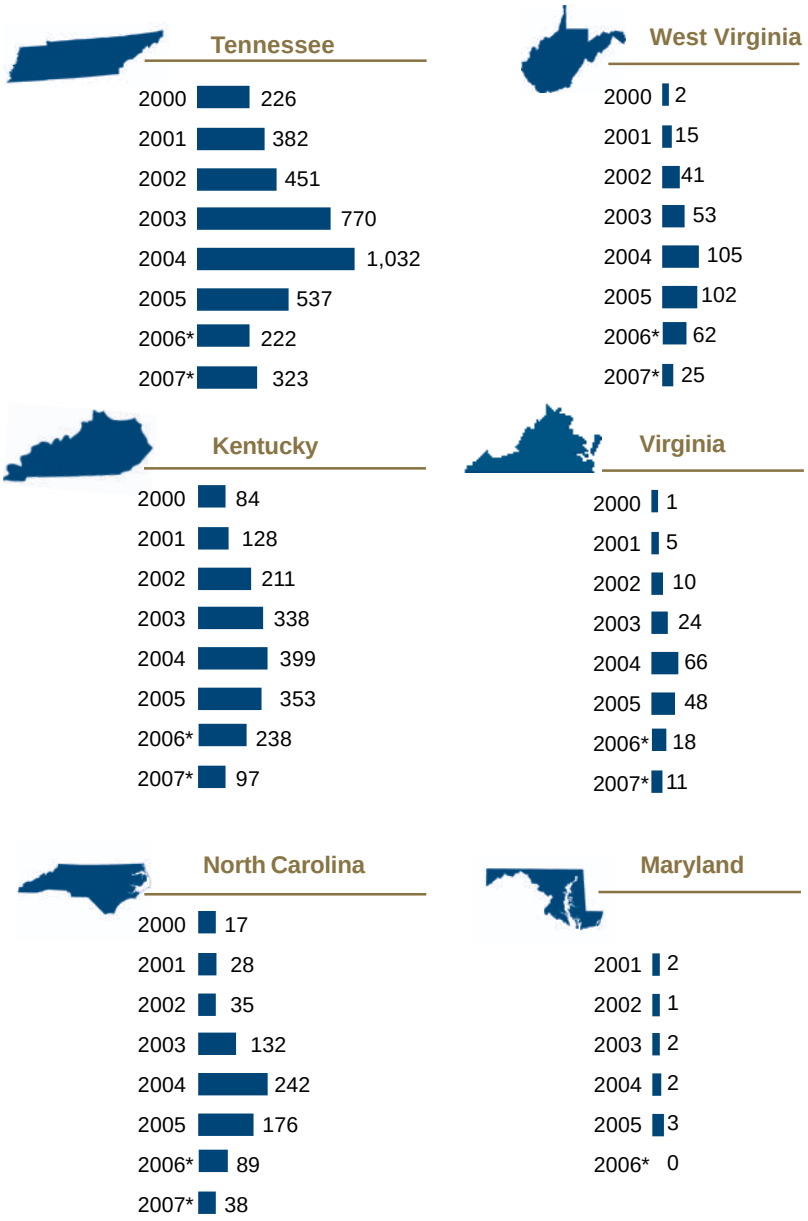
Source: U.S. Drug Enforcement Administration – El Paso Intelligence Center Clandestine Laboratory Seizure System

The decrease in the number of methamphetamine lab seizures seen in Virginia has also been observed across the nation, with the total number of lab seizures falling from 10,294 in the peak year of 2003 to 3,548 in 2006. Only Idaho, New Jersey, and New York reported an increase in the number of methamphetamine lab seizures between 2005 and 2006, and all of these states reported increases of fewer than 11 labs. Virginia ranked 29th among states in methamphetamine laboratory seizures reported to the DEA in 2006, compared to a ranking of 26th in 2005 (Figure 43).

A few states accounted for a large majority of laboratory seizures in 2006. For instance, the state ranked first in the nation between 2003 and 2006, Missouri, accounted for more than ten percent of all reported lab seizures each year. However, the number of laboratory seizures in the state has fallen considerably, from 1,116 in 2004 to 404 in 2006. The top five states represented 43% of lab seizures and the top ten states comprised 65% of lab seizures in 2006. Early data for 2007 suggest that the pattern is continuing with Missouri, Arkansas, Indiana, and Illinois remaining among the top five. However, the rankings may change as EPIC continues to receive additional information. Officials in Missouri recently reported that they expect Missouri to lead the nation in methamphetamine laboratory seizures again in 2007 (Pruneau, 2007).

Figure 44

Methamphetamine Lab Seizures, Virginia and Surrounding States



* Data for 2006 are preliminary and data for 2007 are incomplete. Data for 2007 only include laboratory seizures submitted to EPIC prior to September 1, 2007.
Note: Data for Maryland are not available for 2000 and 2007. Data for Washington, D.C. are only available for 2004, during which one laboratory seizure was reported.
Source: U.S. Drug Enforcement Administration – El Paso Intelligence Center Clandestine Laboratory Seizure System

Between 2000 and 2007, four states sharing a common border with Virginia, namely North Carolina, Tennessee, Kentucky, and West Virginia, reported more methamphetamine lab seizures than the Commonwealth (Figure 44**)**. Maryland and Washington, D.C. did not consistently report to EPIC during this time period. Gaps in reporting may indicate that law enforcement agencies did not seize any methamphetamine labs in these areas during years they did not report. For years where data are available, Maryland and Washington, D.C. reported very few lab seizures. Only Tennessee experienced an increase in the number of laboratories reported between 2006 and 2007, from 222 to 323 seizures, respectively. However, the number of laboratories seized in Tennessee in 2007 remains below lab seizures reported in the state between 2001 and 2005.

Many individuals attribute the recent decrease in the number of methamphetamine laboratories seized in the U.S. to laws restricting certain ingredients necessary to the manufacturing process. Over the past several years, the majority of states and the federal government have enacted measures addressing the sale of precursor chemicals that are ingredients used in the production of methamphetamine. By November 3, 2006, 41 states, including Virginia, had passed legislation restricting over-the-counter sales and purchases of products containing pseudoephedrine, a common precursor chemical (National Alliance for Model State Drug Laws [NAMSDL], 2007a).

These laws have generally included provisions restricting who can sell and purchase the products, how they can be displayed, the quantity that can be sold within a particular time period, and how the products can be packaged. On the federal level, the Combat Methamphetamine Epidemic Act of 2005 (CMEA) was passed as part of the reauthorization of the U.S. Patriot Act and was signed into law on March 9, 2006. The CMEA adopted pieces from many of the existing state laws and created baseline restrictions on how products containing ephedrine, pseudoephedrine or phenyl-propanolamine can be sold within the United States. The section in this chapter entitled "Responses to Methamphetamine" contains additional information regarding laws and policies targeting methamphetamine production, distribution, and use.

In addition to gathering general information regarding the number of methamphetamine laboratories, dumpsites, and equipment seized in an area, the El Paso Intelligence Center also collects statistics related to the number of children who are injured or killed in connection with a methamphetamine laboratory and the number of children residing in or visiting a location containing a laboratory. Following the same pattern as the number of methamphetamine labs seized, the number of children affected by methamphetamine laboratories nationally has decreased substantially since the peak year of 2003, from 3,683 in 2003 to 1,243 in 2006. Missouri experienced the largest decrease between 2003 and 2006, from 442 children in 2003 to 125 children in 2006. Tennessee, the state reporting the third-highest number of children affected in 2003, saw a dramatic decline, from 301 children in 2003 to 25 in 2006. Relative to neighboring states, the number of children affected in Virginia has remained low (Figure 45).

Figure 45

Number of Children Affected by Clandestine Methamphetamine Laboratories, Virginia and Surrounding States

State	2003	2004	2005	2006*
Tennessee	301	293	52	25
North Carolina	69	127	100	45
Kentucky	55	82	86	42
West Virginia	20	36	36	19
Virginia	10	36	19	5

* Data for 2006 are preliminary
Note: Data for Maryland and Washington, D.C., are not available.
Source: U.S. Drug Enforcement Administration – El Paso Intelligence Center Clandestine Laboratory Seizure System

A recent informal study conducted by law enforcement and a local news outlet in Georgia suggests that simply the use of methamphetamine in a location, absent a working methamphetamine laboratory, can deposit harmful chemicals that remain in areas long after drug use has ceased. The report notes that methamphetamine residue was located in a home where methamphetamine was smoked nearly four years prior to the test and methamphetamine was not known to have been manufactured in the immediate area. This finding suggests that the act of smoking methamphetamine releases toxic chemicals that can remain in the surrounding area for an extended period of time (Saltzman, 2007). Reports from Utah and Montana also point to the potential hazards of exposure to residual chemicals left from methamphetamine smoke (Romboy, 2007; Gevock, 2006). Steps taken by Virginia and other states to address laboratory cleanup and the long term effects of methamphetamine production are summarized in the "Responses to Methamphetamine" section of this chapter.

Methamphetamine Production in Mexico

The number of methamphetamine laboratories seized in the United States has decreased considerably over the past few years. However, national reports suggest that methamphetamine supply has not waned proportionally. Officials attribute this to an increase in the production of the drug in Mexico and importation into the U.S. According to a report released by the National Drug Intelligence Center (NDIC) in 2006, the amount of methamphetamine seized at points of entry along the U.S.-Mexico border increased from 2,706 pounds in federal fiscal year 2003 to 4,346 pounds in FY2005. A report by the United States Government Accountability Office (GAO) estimates that the amount of methamphetamine seized within Mexico increased from 560 kilograms in calendar year 2000 to 980 kilograms in 2005, which is equivalent to 1,235 and 2,161 pounds, respectively. This amount decreased to 600 kilograms (1,323 pounds) in 2006, potentially due to increased restrictions on precursor chemicals in Mexico (GAO, 2007).

Federal agencies report that, as domestic methamphetamine laboratory seizures have declined in recent years, Mexican Drug Trafficking Organizations (DTOs) have supplanted domestic suppliers and expanded to sustain the markets that were previously supplied by domestic laboratories. The NDIC attributes decreases in methamphetamine-related seizures and arrests in the United States to the decline in domestic methamphetamine production and a shift in DEA strategy to focus upon fewer but higher priority targets, rather than a decrease in the availability of the drug (NDIC, 2005; NDIC, 2006). Representatives from Mexico have also noted an increase in the number of methamphetamine laboratory seizures within their borders through 2005. At a conference in December of 2005, an official from Mexico's Office of the Attorney General stated that the number of laboratory seizures in Mexico rose from 11 in 2002 to 21 in 2004. Data for 2005 show a further increase to 28 laboratory seizures (Lopez, 2005).

The NDIC and DEA argue that Mexican DTOs' capability to produce higher purity methamphetamine in superlabs located in Mexico has led to an increase in the prevalence of the ice form of methamphetamine in the U.S. In federal fiscal year 2005, border agents in the Southwest seized 1,423 pounds of ice, compared to 260 pounds in FY2003. The 2007 National Methamphetamine Threat Assessment, published by the NDIC, cites this 447% increase in the amount of ice seized as the source of a national increase in methamphetamine-related treatment admissions, since ice tends to be more potent and, consequently, more addictive than powder methamphetamine.

Although some research suggests that an increase in the availability and use of the ice form of methamphetamine in the United States is due to the importation of more ice from Mexico, the source of methamphetamine seized in Virginia can be difficult to identify. Due to the distance from the Mexican-American border, imported drugs may change hands numerous times before reaching the Commonwealth. Consequently, characteristics related to the offender can be poor indicators of the source of drugs seized in the state. However, the variable representing the defendant's place of birth is the only potential indicator of possible ties with Mexican DTOs that is available. Only two of the five individuals sentenced in Virginia's circuit courts for transporting methamphetamine into the Commonwealth (§ 18.2-248.01) between fiscal years 2000 and 2006 identified a locality in Mexico as their place of birth. The remaining three offenders sentenced in Virginia's circuit courts for transporting methamphetamine were born in the U.S. but outside the Commonwealth.

According to data from the United States Sentencing Commission, the percentage of federal defendants convicted of trafficking methamphetamine who claimed Mexican citizenship peaked around 20% nationally in calendar year 2002. This percentage declined to 12% in 2003 and then increased again to 18% in 2004. In Virginia, Mexican citizens comprised 10% of individuals who were convicted in federal courts in 2005 for methamphetamine trafficking. Preliminary data for 2006 suggest that the percentage of offenders convicted of trafficking methamphetamine in Virginia's federal courts who claimed Mexican citizenship was slightly more than 12%. Other areas of the country have experienced much higher rates of Mexican nationals convicted for trafficking methamphetamine. In 2005, Mexican nationals comprised 36.7% of convictions for this crime in the Southwest and 30.9% in the Northwest.

Methamphetamine production in Mexico is expected to decrease soon due to restrictions placed upon precursor chemicals by the Mexican government. In 2004, the Mexican Federal Commission for the

Protection against Sanitary Risk (COFEPRIS), a Division of the Mexican Department of Health, concluded that Mexico's imports of pseudoephedrine products far exceeded legitimate domestic requirements. As a result, the Mexican government introduced regulations relating to the importation of products containing pseudoephedrine, leading to a reduction of imports from 216 metric tons of pseudoephedrine in 2004 to 70 metric tons in 2006 (GAO, 2007; U.S. Bureau for International Narcotics and Law Enforcement Affairs, 2007). However, an unknown amount of pseudoephedrine is also imported into Mexico through illegal channels (Randewich, 2007).

Recently, Mexican officials implemented restrictions on precursors similar to requirements established in the U.S. in an attempt to reduce the amount of methamphetamine produced within the country. Beginning on September 1, 2007, products containing pseudoephedrine must be kept behind pharmacy counters in Mexico and, similar to laws in Oregon, can only be purchased with a valid prescription. Mexican officials asked pharmacies to limit the amount of pseudoephedrine per transaction to 60 milligrams or less during the time between the announcement of the prescription-only policy in July of 2007 and its implementation in September ("Mexico Tightens Restrictions," 2007). Effective January 2008, the importation of pseudoephedrine and ephedrine into Mexico will no longer be permitted and all use of products containing the chemicals will be illegal by January 2009 (U.S. Office of National Drug Control Policy, 2007).

Mexican DTOs have adapted to legislation restricting precursor chemicals in Mexico by creating new routes of obtaining precursor chemicals, importing non-restricted chemical derivatives, using alternative production methods, and mislabeling packages to avoid inspection by Mexican law enforcement officials (NDIC, 2007). Nevertheless, recent information suggests that the laws have impacted methamphetamine production in Mexico and in the U.S. More specifically, a U.S. Attorney in Knoxville, Tennessee, noted that an upturn in laboratory seizures in the state over the past few months may be a result of precursor restrictions in Mexico, which have affected the production of methamphetamine in that country and subsequent importation into the United States. According to officials, domestic producers of methamphetamine must now fill the supply gap created by the reduction in imported methamphetamine, as the demand for the drug in Tennessee has remained high (Poovey, 2007).

Responses to Methamphetamine

The Commonwealth of Virginia classifies methamphetamine as a Schedule II controlled substance due to the potential for physical and psychological abuse and its limited medical applications. Section 54.1-3448 of the *Code of Virginia* also lists one methamphetamine precursor chemical, phenylacetone (also referred to as P2P, phenyl-2-propanone, phenylpropanone or benzylmethylketone), as a Schedule II controlled substance. Since the 1980s, restrictions placed upon phenylacetone have greatly increased the difficulty of obtaining this chemical. As a result, the majority of domestic methamphetamine manufacturers have shifted to the red phosphorous or sodium reduction (Nazi) methods, which rely upon ephedrine or pseudoephedrine as the primary precursor chemical. In addition to creating a purer and more potent form of the drug, the latter two techniques produce meth-amphetamine in a shorter amount of time and the precursor chemicals are easier to obtain (Scott & Dedel, 2006; McEwen & Uchida, 2000).

In response to rising concern regarding the large number of methamphetamine laboratory seizures over the past several years, the United States Congress and many states, including Virginia, have restricted the sale of ephedrine, pseudoephedrine, and phen-ylpropanolamine. For instance, in April 2004, Oklahoma implemented restrictions mandating that only pharmacies can sell products containing pseudoephedrine, that these products must be kept behind the counter or in locked cabinets, that retailers must verify and maintain records of purchasers' identification, and that an individual cannot obtain more than 9 grams of products containing pseudoephedrine within any 30-day period. Tennessee's methamphetamine precursor law, which went into effect on March 31, 2005, is more expansive and encompasses more precursors, in that it regulates all products containing pseudoephedrine, ephedrine or phenylpropanolamine (U.S. Office of National Drug Control Policy, 2006).

During the 2005 legislative session, Virginia's General Assembly identified the possession of two or more chemicals used in the production of methamphetamine, including ephedrine, pseudoephedrine, and phenylpropanolamine, with the intent to manufacture methamphetamine, as a Class 6 felony. On September 1, 2005, Governor Mark R. Warner issued Executive Directive 8, mandating that the Virginia Department of Health issue an order restricting the sale of products containing precursor ingredients. In addition, the Emergency Order required that certain state agencies develop further comprehensive educational efforts to help curb methamphetamine use and that the Virginia Department of Mental Health, Mental Retardation, and Substance Abuse Services develop a plan for treating methamphetamine addiction.

The subsequent Order Finding Imminent Danger to the Public Health and Requiring Corrective Action, issued by the Department of Health, detailed restrictions on ephedrine and pseudoephedrine sales. Pursuant to the mandate, between October 1, 2005, and July 1, 2006, retailers were required to keep products with ephedrine or pseudoephedrine as the only active ingredient behind a store counter and they could not sell more than nine grams of these precursor ingredients in one transaction. In addition, retailers were obligated to collect and maintain records of sales of ephedrine and pseudoephedrine and purchasers had to provide identification in order to obtain the products. In 2006, the General Assembly created §18.2-248.8 to address this issue prior to the expiration of the Emergency Order. The General Assembly adopted the requirements set forth in the Department of Health's Order and broadened them to include any product containing ephedrine or pseudoephedrine. Additionally, the General Assembly limited the total amount of ephedrine or pseudoephedrine a purchaser could obtain to 3.6 grams per day and expanded the amount of time retailers are required to maintain records of sales from one year to two years.

The federal Combat Methamphetamine Epidemic Act (CMEA) was signed into law in March of 2006 and incorporated elements of states' preexisting laws regulating products containing ephedrine, pseudoephedrine or phenylpropanolamine (PPA). The CMEA established minimum standards for restricting the sale of certain chemicals that can be used in the manufacture of methamphetamine. The Food and Drug Administration (FDA) had already taken steps to remove PPA from all drug products and has requested that companies reformulate all medications containing the chemical (FDA, 2005). Although the requirements established in the CMEA apply to products containing PPA, most of these products have already been removed from retail outlets.

The CMEA became effective in stages and came into full effect on September 30, 2006. Beginning on April 10, 2006, retailers cannot sell more than 3.6 grams of ephedrine, pseudoephedrine or PPA-based products to a single customer in a day and not more than 9 grams per month. Likewise, it is unlawful for any individual to purchase more than 3.6 grams of products containing these ingredients in a day or more than 9 grams in 30 days. All such products, excluding liquids, may only be sold in blister packaging, which makes the removal of large amounts of medications from the packaging more difficult and time consuming. Effective September 30, 2006, retailers must keep products

containing ephedrine, pseudoephedrine or PPA behind the counter or in a locked cabinet. In addition, sellers of these products must receive training in procedures set forth in the CMEA regarding the appropriate method of dispensation. Relevant procedures include verifying the customer's identity based on a government-issued photo ID and maintaining a logbook containing certain information regarding the purchaser and the product sold.

Some states have adopted controls on precursor chemicals that supplement the requirements enumerated in the CMEA. Oregon, for instance, requires that purchasers of products containing pseudoephedrine present retailers with a valid prescription prior to obtaining the medication. As noted above, in 2005, Virginia's General Assembly made the possession of any two methamphetamine precursor chemicals, as defined in § 18.2-248(J) *Code of Virginia*, with the intent to manufacture methamphetamine a Class 6 felony. As of January 2, 2007, eleven states (Arizona, Illinois, Iowa, Kansas, Minnesota, Missouri, New Mexico, Oklahoma, Oregon, West Virginia, and Wisconsin) listed pseudoephedrine and/or ephedrine as Schedule V controlled substances. In 2005, Oregon classified ephedrine, pseudoephedrine, and phenylpropanolamine as Schedule III controlled substances (NAMSDL, 2007b). On the federal level, ephedrine, pseudoephedrine, and PPA are regulated as List I chemicals.

List I chemicals are substances that have been identified as having legitimate uses but that are also diverted for use in the manufacture of a controlled substance. The regulations associated with List I chemicals include requiring manufacturers, distributors, importers, and exporters of these chemicals to register with the federal government and placing these entities under increased scrutiny (21 *Code of Federal Regulations* 1313; DEA, 2005).

Numerous law enforcement officials and agencies have reported that the CMEA and similar laws restricting the sale of precursor chemicals contain a critical loophole. More specifically, law enforcement officers have encountered barriers in their efforts to prevent the unlawful acquisition of these chemicals because some retailers do not maintain the logbooks required under the CMEA in an electronic format (Roser, 2007). Consequently, legislators in several states, including Oklahoma, Arkansas, Missouri, Kentucky, and Virginia, have suggested amendments to the laws to require retailers to maintain logbooks electronically. In Virginia, legislation requiring electronic logbooks was introduced in 2007 (SB 879) but failed to pass in the General Assembly. Kentucky implemented such a requirement in 2007 and electronic records of all purchases relating to pseudoephedrine and ephedrine in the state will be accessible by law enforcement officials and pharmacies by the end of the year

(§ 218A.1446(3)(c), *Kentucky Revised Statutes*). Arkansas also passed legislation in 2007 (§ 5-64-1106, *Code of Arkansas*) mandating that pharmacies enter transaction information regarding met-hamphetamine precursors into a real-time electronic logbook maintained by the Arkansas Crime Information Center. However, this requirement is subject to available funding, whereas Kentucky has already provided the resources required to implement the program ("Big Brother Entering Meth Fight in Kentucky," 2007). Oklahoma has contracted with a private vendor to enter information from logbooks into a central database that is accessible to law enforcement officers (Roser, 2007). Many pharmacies already maintain electronic logbooks, but the records in most states are not connected to a single database that allows pharmacies to access information from other retailers. The U.S. Congress is currently considering a bill that would provide grants to states that wish to develop electronic logbook systems (S. 1276).

The proliferation of methamphetamine laboratory seizures over the past decade has also led to local policies and legislation designed to protect the public from the lingering effects of methamphetamine laboratories. The instruments, chemicals, and residue left behind after an individual has manufactured methamphetamine can lead to considerable health problems and environmental pollution years after the laboratory has been dismantled. In response, a number of states have developed legislation that requires owners of residential property to notify potential buyers or tenants if a property has been the site of a clandestine laboratory. By January 11, 2007, 14 states, including California and Colorado, had enacted disclosure laws, although the strictness of the duty to disclose and whether this duty still applies if a location has been deemed suitable for habitation varies across states (NAMSDL, 2007c; "Cooking Up Solutions to a Cooked Up Menace," 2006).

In addressing the contamination of areas by methamphetamine laboratories, some states have created feasibility-based standards and set forth specific criteria that a location must meet before being considered decontaminated (NAMSDL, 2007c). In addition, many states and localities have implemented programs to ensure that residual toxins are removed from properties affected by meth-amphetamine laboratories. In some areas, the cost of met-hamphetamine laboratory cleanup has placed a significant financial burden on property owners and the local government. The 2005 Virginia General Assembly acknowledged this cost and specified that judges may order an offender convicted of manufacturing any controlled substance, including met-hamphetamine, to reimburse the Commonwealth, the locality or an innocent property owner for costs associated with the cleanup, removal, remediation or repair of the affected property (§18.2-248(C1) and § 19.2-305.1(B1), *Code of Virginia*). While some states do not require disclosure to buyers or tenants, they

make the information available to all interested persons in the form of laboratory registries (NAMSDL, 2007c). The federal government and several states collect and publish information regarding locations that have been used for the manufacture of methamphetamine. On December 5, 2006, the DEA announced the creation of the National Clandestine Laboratory Register, which lists the addresses of locations where methamphetamine labs, dumpsites or equipment were discovered, in order to help protect neighbors and potential home buyers (DEA, 2006). Nine of the fourteen states with registries, including Arkansas and Tennessee, have established procedures for removing properties from the list, usually after rigorous testing has shown that the location is safe and free from toxic residue. To date, Virginia has not enacted legislation requiring that property owners disclose prior use of a property for methamphetamine production and the Commonwealth does not maintain a publicly-accessible list of such locations. However, addresses of locations where laboratories have been seized in Virginia are available through the National Clandestine Laboratory Register.

A few states have also created methamphetamine offender registries that, like sex offender registries, make information regarding individuals convicted of certain crimes available to the public. In 2005, Tennessee's General Assembly passed the Meth-Free Tennessee Act, mandating that the Tennessee Bureau of Investigations create a registry containing information about all individuals convicted of selling or manufacturing methamphetamine after March 30, 2005. Minnesota's governor signed an executive order in 2006 that established a similar registry, with the hopes that law enforcement could use it as a tool and the public would be better equipped to protect themselves from potential dangers in their communities (Minnesota Bureau of Criminal Apprehension, 2006).

In addition to other dangers faced by law enforcement officers as a result of the illegal manufacture of methamphetamine, operators of such laboratories sometimes construct 'booby traps' designed to discourage or prevent entry of the premises by government agents. Under current Virginia law, individuals are prohibited from maintaining or operating a fortified drug house, as defined in § 18.2-258.02, *Code of Virginia*. A fortified drug house is a structure used for the manufacture or distribution of illegal narcotics that is reinforced with the purpose of impeding, deterring or delaying entry by law enforcement officers and that is the object of a valid search warrant. Maintaining a fortified drug house in Virginia is a Class 5 felony and is punishable by imprisonment for up to 10 years.

A rise in concern and awareness regarding children affected by methamphetamine spurred numerous legislative actions over the past several years. An article in a recent edition of the Virginia Child Protection Newsletter notes that children are especially vulnerable to harms caused by the toxic byproducts of methamphetamine laboratories because of their small size and high metabolic and respiratory rates. In addition to the physical effects of exposure to toxic chemicals produced during the manufacture of methamphetamine, children can also suffer from neglect and abuse from parents involved in methamphetamine manufacture, use or distribution ("Methamphetamine and Child Maltreatment," 2007).

Numerous groups have formed across the nation with the purpose of protecting children from the harms of methamphetamine. Children affected by drugs, including methamphetamine, are commonly referred to as "Drug Endangered Children" (DEC). In recent years, programs have emerged nationwide to assist law enforcement, healthcare professionals, and child welfare workers in providing services to children affected by methamphetamine (U.S. Office of National Drug Control Policy, 2005). These programs often focus specifically upon children affected by methamphetamine laboratories, but some include children affected by parental drug production and use in general. The federal government has developed a standardized training program to teach local officials how to coordinate resources and services to assist children found in drug production environments, especially methamphetamine laboratories. The national DEC initiative also provides funding to assist states in developing programs and in responding to children affected in this manner (DEA, 2003).

Many states, including Virginia, have instituted heightened penalties for the sale and manufacture of methamphetamine in the presence of a child. Virginia's General Assembly passed legislation in 2005 that expanded the definition of child abuse to include permitting a child to be present during the manufacture or attempted manufacture of a Schedule I or II controlled substance, such as methamphetamine (§ 16.1-228(1) and § 63.2-100(1), *Code of Virginia*). Further, § 18.2-248.02 states that a custodian of a child under the age of 18 who allows the child to be present during the manufacture or attempted manufacture of methamphetamine is guilty of a felony punishable by a term of imprisonment from 10 to 40 years.

Virginia, along with most states, has also incorporated the sale or distribution of methamphetamine in the presence of a child into its legislation regarding child abuse. Specifically, § 16.1-228(1) and § 63.2-100(1) state that the act of allowing a child to be present during the unlawful sale of a Schedule I or II controlled substance is child abuse. Some states have expanded the definition of child abuse or child endangerment to include witnessing adult use of methamphetamine and allowing children to ingest methamphetamine. Wyoming, for instance, enacted legislation in 2004 providing penalties for custodians who permit children to be present in a location where methamphetamine is possessed, stored or ingested (§ 6-4-405(b), *Wyoming Statutes*). In addition, § 6-4-405(a), *W.S.*, defines child endangerment, in part, as causing or permitting a child to ingest methamphetamine or allowing a child to be present in a location where the hazardous waste produced by methamphetamine is nearby or where methamphetamine is manufactured, sold or stored. This part of Wyoming law does not mandate that the person be a custodian of the child in order for the penalties to apply. In 2006, Hawaii passed legislation to expand its child endangerment statute to include any act that causes or allows a child to ingest methamphetamine (§ 709-904(1)(b), *Hawaii Revised Statutes*). Hawaii's law states that this statute is applicable whether or not the person is "charged with the care or custody of a minor" (§ 709-904(1)(b), *H.R.S.*).

In addition to increasing penalties and expanding legislation related to methamphetamine, many states have developed treatment and prevention efforts targeted at users of methamphetamine and individuals at risk for abuse. Methamphetamine has been described as an extremely destructive and addictive drug. Brain damage and changes in brain chemistry resulting from methamphetamine use can further complicate treatment and recovery ("Methamphetamine and Child Maltreatment," 2007). The Director of the Division of Epidemiology, Services, and Prevention research at the National Institute on Drug Abuse, Dr. Wilson M. Compton, recently noted that "without treatment, 70 to 90 percent of those addicted to methamphetamine will relapse" ("Methamphetamine and Child Maltreatment," 2007, p. 19). Anecdotal reports also suggest that methamphetamine users are more difficult to supervise by probation and parole officers due to the nature of the addiction. Several federal district court judges have observed that methamphetamine addicts tend to fail at a higher rate than individuals addicted to other drugs and therefore require more intense supervision in the community (Administrative Office of the U.S. Courts, 2004).

Many states and the federal government have provided funds for the development and implementation of various treatment programs aimed at curbing methamphetamine abuse and decreasing the likelihood of relapse. In 2005, the Substance Abuse and Mental Health Services Administration (SAMHSA) announced the award of $16.2 million in grants for methamphetamine abuse treatment in areas particularly affected by methamphetamine use (U.S. Department of Health and Human Services, 2005). In some instances, federal grants are awarded to assist states in developing innovative programs. At other times, grants are distributed as a means of aiding states in expanding existing treatment and prevention programs. For instance, SAMHSA recently awarded Arizona an $8.3 million Access to Recovery Grant to expand and enhance methamphetamine treatment through drug courts (State of Arizona Executive Office of the Governor, 2007). While Virginia has received numerous grants from SAMHSA for substance abuse treatment programs, these grants have not specifically focused upon methamphetamine treatment in the Commonwealth.

Programs designed to prevent methamphetamine use, particularly among teenagers, have proliferated over the past few years. The federal government and, at times, private philanthropists and corporations, have assisted states in developing programs designed to inform the public about the harms of methamphetamine. One of the more prominent attempts to prevent teenagers from experimenting with methamphetamine, the Montana Meth Project, is currently funded by a combination of federal, state, and private donations (Florio, 2007). The radio and television commercials are designed to emphasize the severe consequences of methamphetamine use and have been described by some as too graphic (Brandt, 2006). The strategy, consisting primarily of public service announcements, has shown some promise in discouraging methamphetamine use and experimentation in Montana. Results from the 2007 Montana Youth Risk Behavior Survey indicate a significant decrease in the proportion of high school students reporting methamphetamine use at least once in their lifetime. More specifically, the percentage of high school students who reported trying methamphetamine fell from 14% in 1999 to 5% in 2007 (Montana Office of Public Instruction, 2007). As a result of the positive reports from Montana, other states, including Kansas and Missouri, are currently considering funding similar prevention efforts (Bauer, 2007).

Mandatory Penalties for Schedule I or II Drug Offenses in Virginia

The *Code of Virginia* contains many mandatory minimum penalties related to Schedule I or II drugs. Figure 46 describes the mandatory minimum penalties applicable to meth-amphetamine crimes. The 2000 General Assembly passed several of these laws as part of the legislative package known as the Substance Abuse Reduction Effort (SABRE). Under the SABRE initiative, the General Assembly revised the drug kingpin statute and added methamphetamine to the list of drugs covered by this law.

The drug kingpin statute currently consists of a series of increased penalties based upon certain case characteristics, including the type and amount of drug involved. For instance, under § 18.2-248(H) of the *Code of Virginia*, any individual who manufactures, distributes, sells or possesses with the intent to sell at least 100 grams of pure methamphetamine or at least 200 grams of a mixture containing methamphetamine is subject to a mandatory minimum sentence of 20 years of imprisonment. The drug kingpin laws were expanded in 2006 to include mandatory minimum sentences for another group of offenders. Specifically, § 18.2-248(C) now requires that judges impose a mandatory minimum penalty of 5 years of imprisonment if an offender manufactures, sells, distributes or possesses with the intent to distribute 10 grams or more of meth-amphetamine or 20 grams or more of a methamphetamine mixture. Both sections outline five criteria that may exempt an individual from particular mandatory minimum penalties, including an offender's lack of a prior violent record and cooperation with authorities. The mandatory minimum penalties set forth in § 18.2-248(H) and § 18.2-248(C) cannot be suspended if an offender operates a continuing criminal enterprise.

Different penalties are applicable for offenders who are the principal administrators or leaders of a continuing criminal enterprise involved in the manufacture, sale, distribution or possession with the intent to sell certain amounts of Schedule I or II drugs. Section 18.2-248(H1) establishes a mandatory minimum sentence of 20 years for these individuals if the offense involves at least 100 grams but less than 250 grams of methamphetamine or at least 200 grams but less than 1 kilogram of a methamphetamine mixture within a 12-month period. Section 18.2-248(H2) pertains to principal administrators of criminal enterprises that engage in the manufacture, sale, distribution or possession with the intent to sell at least 250 grams of methamphetamine or at least 1 kilogram of a methamphetamine mixture. An offender meeting these requirements must be sentenced to life imprisonment, with few exceptions. The law allows a judge to reduce this sentence to 40 years if the offender cooperates with law enforcement authorities.

Figure 46

Mandatory Minimum Sentencing Laws in Virginia Related to Methamphetamine

Offense	Statute	Amount of Methamphetamine	Mandatory Penalty
Manufacture, sell, give, distribute or possess with intent to distribute quantities of a Schedule I or II drug defined in 18.2-248(C)	§ 18.2-248(C)	10 grams or more pure, 20 grams or more mixture	5 years*
Manufacture, sell, give, distribute or possess with intent to distribute quantities of a Schedule I or II drug defined in 18.2-248(H)	§ 18.2-248(H)	100 grams or more pure, 200 grams or more mixture	20 years*
Manufacture, sell, give, distribute or possess with the intent to sell quantities of a Schedule I or II drug defined in 18.2-248(H1) during any 12 month period as administrator, organizer or leader of a continuing criminal enterprise	§ 18.2-248(H1)(ii)	100-249 grams pure, 200-999 grams mixture	20 years*
Manufacture, sell, give, distribute or possess with the intent to sell quantities of a Schedule I or II drug defined in 18.2-248(H2) during any 12 month period as administrator, organizer or leader of a continuing criminal enterprise	§ 18.2-248(H2)(ii)	250 grams or more pure, 1,000 grams or more mixture	Life**
Gross $100,000 but less than $250,000 during any 12 month period as administrator, organizer or leader of a continuing criminal enterprise	§ 18.2-248(H1)(i)	No requirement	20 years*
Gross $250,000 or more within any 12 month period as administrator, organizer or leader of a continuing criminal enterprise	§ 18.2-248(H2)(ii)	No requirement	Life**
Manufacture, sell, give, distribute or possess with intent to distribute a Schedule I or II (third or subsequent conviction)	§ 18.2-248(C)	No requirement	5 years
Manufacture methamphetamine (third or subsequent conviction)	§ 18.2-248(C1)	No requirement	3 years
Transport 1 ounce or more of a Schedule I or II drug into the Commonwealth with intent to sell or distribute	§ 18.2-248.01	1 ounce or more	3 years
Transport 1 ounce or more of a Schedule I or II drug into the Commonwealth with intent to sell or distribute (second or subsequent conviction)	§ 18.2-248.01	1 ounce or more	10 years
Sell a Schedule I or II drug to a minor at least 3 years younger than offender	§ 18.2-255(A)	No requirement	5 years
Cause minor to assist in the sale of a Schedule I or II drug	§ 18.2-255(A)	No requirement	5 years
Manufacture, sell, distribute or possess with intent to sell any drug on or near certain properties	§ 18.2-255.2	No requirement	1 year
Possess a Schedule I or II drug while possessing firearm on or about the person	§ 18.2-308.4(B)	No requirement	2 years
Manufacture, sell, distribute, possess with intent to distribute a Schedule I or II drug while in possession of a firearm	§ 18.2-308.4(C)	No requirement	5 years

* These mandatory minimum penalties may be suspended if the following conditions are met: the offender has never been convicted of a violent felony, the offender did not use or threaten violence or possess a weapon in connection with the offense, the offender was not an organizer or administrator of a continuing criminal enterprise, the offense did not result in death or serious bodily injury, and the offender cooperates with authorities.
** Judges may reduce this sentence to 40 years if the offender cooperates with law enforcement authorities.

Several mandatory minimum laws relating to subsequent drug convictions became effective on July 1, 2000. After this date, offenders who received a third or subsequent conviction for selling a Schedule I or II drug were subject to a three-year mandatory minimum sentence under § 18.2-248(C). In 2006, the General Assembly modified this section and increased the mandatory minimum penalty from three years to five years. The 2005 General Assembly added subsection C1 to § 18.2-248, which created a mandatory minimum term of imprisonment of three years for individuals who receive a third or subsequent conviction for manufacturing methamphetamine.

An offender who transports one ounce or more of a Schedule I or II drug into the Commonwealth must serve a minimum of three years of imprisonment and individuals who receive a second conviction must serve at least 10 years in prison (§18.2-248.01). Selling, distributing or possessing with the intent to sell a Schedule I or II drug while possessing a firearm subjects the offender to a five-year mandatory minimum penalty. The minimum sentence for simple possession of a Schedule I or II drug in conjunction with a firearm is two years of imprisonment if the offender carries a firearm on his person.

Mandatory sentences set forth by the General Assembly take precedence over the discretionary sentencing guidelines system. When scoring the guidelines, preparers are instructed to substitute the mandatory minimum for any value of the recommended range (low, midpoint or high) that falls below the specified minimum. This practice ensures that the guidelines recommendation comply with applicable mandatory minimum penalties.

Methamphetamine Convictions in Virginia

For the present study of methamphetamine convictions in Virginia, the Commission collected information from the state and federal judicial systems. Since some criminal offenses carried out in the state of Virginia are processed in the federal system, the inclusion of federal data allows for a more complete analysis of the prevalence of and trends in methamphetamine convictions. The United States Sentencing Commission provides data regarding federal convictions in all U.S. states and territories. In the federal system, preparation of sentencing guidelines is mandatory and pre-sentence investigation reports (PSIs) are filed in nearly every case. Due to the nature of conviction data collection on the state and federal levels, there is sometimes a lag before data can be considered relatively complete for a given year. Federal data are complete through federal fiscal year 2006 (September 30, 2006).

In Virginia's circuit courts, the preparation of sentencing guidelines is required in every case that involves an offense for which guidelines have been developed. The completion of a PSI is not mandatory within the state judicial system and an offender can waive the preparation of the report. In these cases, the judge is only provided with the guidelines at the time of sentencing. In most felony cases, a post-sentence report will be completed and submitted after sentencing if a pre-sentence report has not been prepared. Post-sentence reports can be submitted months and even years after an individual has been sentenced. In some felony cases, a report is never prepared, as can be the case when the offender never comes to the attention of the Department of Corrections. This can occur when an offender does not serve any prison time and is not placed on supervised probation. Due to the lack of reports for some cases and significant lags in reporting time, the data system used to collect information from PSIs is incomplete and does not account for all convictions in Virginia's circuit courts. Since Virginia's sentencing guidelines encompass nearly all felony drug offenses, guidelines data are more complete and up-to-date than PSI data. However, the guidelines forms do not identify the particular type of drug involved in a case. This lack of information precludes any analysis based upon specific drug type using

the sentencing guidelines database. PSI data, on the other hand, identify up to two drug types and the corresponding quantities of drugs for each case. PSI data also provide a more detailed account of the instant offense, as well as the offender's criminal, social, and educational history.

The drug type and quantity have not been recorded in every narcotics-related case in the PSI database. The proportion of drug cases in which the drug type field on the PSI was left blank increased from a low of 1.7% in 1997 to 7.5 % in 2004. When preparing the report, probation officers may also input vague descriptors that identify the general class of drug rather than the particular type. For instance, the current study revealed that many methamphetamine cases were labeled as amphetamine cases, which is a more general term that includes methamphetamine and a number of other stimulants. Also, probation officers sometimes identify the drug type as simply a Schedule I or II drug. For drug convictions sentenced in 2004, the percentage of cases missing the drug type or using a non-specific descriptor was 12.5%. Although data for 2005 and 2006 should be considered incomplete, analysis suggests further increases in the proportion of cases with unclear or missing drug types in these years.

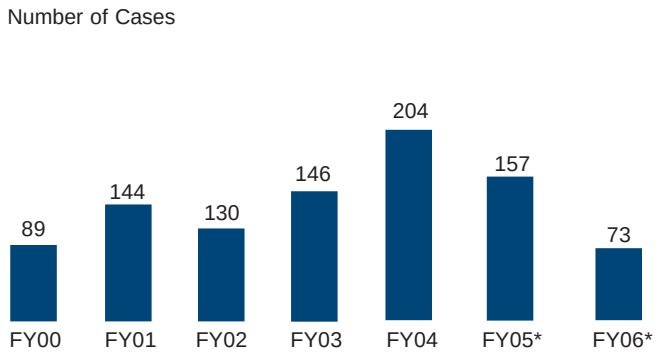
Review of PSI offense narratives revealed that probation officers sometimes misidentify other drugs as methamphetamine and vice versa. For example, preparers occasionally recorded that a case involved ecstasy (3,4-methylenedioxymethamphetamine or MDMA) or Ritalin (methylphenidate) when, in actuality, the drug was methamphetamine. This miscoding is most likely due to the similarity of these drugs' chemical names. Although these drugs are chemically distinct, they are all stimulants and can be categorized under the umbrella term of "amphetamines." In addition, drugs with a crystalline structure that tested positive for methamphetamine were frequently categorized as methamphetamine, although ice is the only form of the drug that exhibits such an appearance. Since ice is the only form of methamphetamine that can be smoked (Scott & Dedel, 2006), methamphetamine residue detected on a smoking instrument should have been categorized as ice as well.

Reviewing the PSI offense narratives for each case that was identified as involving methamphetamine, ice, ecstasy or amphetamines allowed the Commission to verify the drug type and amount, if sufficient detail was available. In the two prior studies in this series, only methamphetamine and ice narratives were selected for verification and, since ice was not as large of a concern at the time of these studies, distinctions between the two forms of methamphetamine were not addressed. Automated PSI narratives have only been available since fiscal year 2000. Consequently, the form of methamphetamine present for convictions prior to July 1, 1999, could not be confirmed. The PSI data system is the only source of drug-specific information and, therefore, is the most useful resource for the present study.

According to available PSI data, the number of cases involving methamphetamine in the Commonwealth's circuit courts increased between FY2000 and FY2004 (Figure 47). For the purposes of this report, a case includes all convictions handled together in the same sentencing hearing. In FY2000, 89 cases involved manufacturing, distributing, selling, possessing with the intent to sell, selling for accommodation or possessing (without the intent to sell) methamphetamine. This number increased dramatically in FY2001 and peaked in FY2004 at 204 reported cases. Data for FY2005 and FY2006 suggest a downward turn in the number of methamphetamine convictions in Virginia's circuit courts. However, figures for recent years are subject to change due to lags in reporting. Although the numbers for each year may increase as additional reports are received, it is unlikely that FY2006 cases will exceed the number of cases recorded in FY2004.

Figure 47

Methamphetamine Convictions in Virginia's Circuit Courts, Fiscal Years 2000-2006



*Data are incomplete. While the figures for prior years may increase slightly as post-sentence reports are received, the figures for FY2005 and FY2006 should be considered incomplete and subject to greater increases.
Note: A case includes all convictions that are handled together in the same sentencing hearing.
Source: Pre/Post-Sentence Investigation (PSI) Report Database

Figure 48

Percent of Drug Cases in Virginia's Circuit Courts by Type of Offense, 2002 and 2005

Marijuana	2002	2005*
Sale/Manufacturing	61.7%	64.6%
Possession	24.3	22.5
Accommodation	1.0	1.1
Crack		
Sale/Manufacturing	41.2	41.1
Possession	49.8	51.8
Accommodation	4.1	2.8
Cocaine		
Sale/Manufacturing	38.3	41.0
Possession	54.0	51.7
Accommodation	3.0	1.9
Heroin		
Sale/Manufacturing	33.3	30.4
Possession	57.0	59.7
Accommodation	1.7	0.0
Meth		
Sale/Manufacturing	60.1	53.9
Possession	29.7	38.5
Accommodation	5.8	3.8
Ecstasy		
Sale/Manufacturing	39.2	55.7
Possession	50.8	37.7
Accommodation	3.8	3.3

*Data are incomplete.
Note: Percentages do not add to 100% because a small number of miscellaneous offenses are not shown.

Source: Pre/Post-Sentence Investigation (PSI) Database

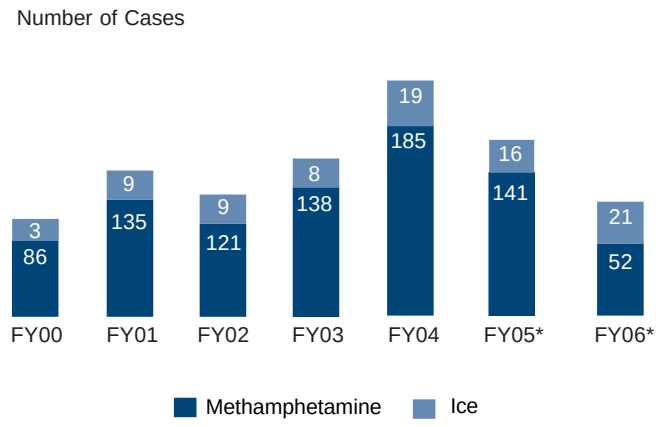
According to PSI data, well over half (60%) of convictions for methamphetamine in FY2002 were for the sale, manufacture or possession with the intent to distribute the drug (Figure 48). These crimes are defined in § 18.2-248(C) and (C1) of the *Code of Virginia* and carry a statutory penalty of 5 to 40 years or, for manufacturing methamphetamine, 10 to 40 years of incarceration. Almost 30% of methamphetamine convictions in FY2002 were for simple possession. Possession, defined by § 18.2-250, carries a statutory penalty range of 1 to 10 years of imprisonment. In contrast, in cases involving crack, powder cocaine, ecstasy or heroin, convictions for simple possession outnumbered convictions for sales-related offenses. For instance, sales and manufacturing offenses constituted 41% of all crack cases in FY2002 while possession convictions accounted for 50% of the crack cases in that year. Like methamphetamine cases, most marijuana cases in circuit court in FY2002 involved sales or production of the drug. With the exception of ecstasy cases, these overall patterns did not change in FY2005. However, the percentage of methamphetamine cases accounted for by sales-related offenses decreased to 54% and the proportion involving possession rose to nearly 39%. While more than half of ecstasy convictions in FY2002 were for possession of the drug, possession cases dropped to 38% in 2005, with a corresponding increase in the percent of sales-related cases.

The ice form of methamphetamine has garnered increasing attention in recent years, particularly since Mexican Drug Trafficking Organizations are reportedly transporting more ice into the country than in prior years (NDIC, 2006). Information from the PSI database is consistent with data from the Treatment Episode Data Set, which have suggested a rise in ice use among individuals seeking treatment for methamphetamine. Similarly, the number of methamphetamine convictions relating to ice has risen over the past few years. Specifically, in FY2000, ice accounted for only 3 of the 89 methamphetamine convictions in Virginia's circuit courts (Figure 49). In comparison, preliminary data for FY2006 show that more than one in four cases (21 out of 73 cases) involved ice.

This apparent increase in ice convictions may be partially accounted for by changes in the amount and type of detail contained in the PSI offense narratives. During review of the offense narratives, strict standards

Figure 49

Methamphetamine Convictions in Circuit Courts by Type of Methamphetamine



*Data are incomplete.
Note: A case includes all convictions that are handled together in the same sentencing hearing.
Source: Pre/Post-Sentence Investigation (PSI) Report Database

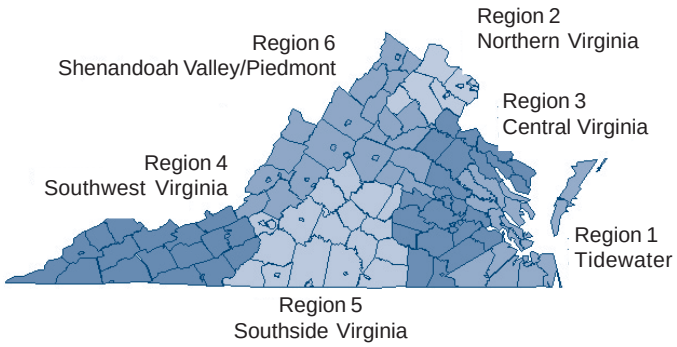
were used to determine if the drug described in the PSI narrative was ice. The substance was only considered ice if a crystalline structure or residue on a smoking device was specifically mentioned. If an offense narrative only noted that items tested positive for methamphetamine and the PSIs did not contain additional information regarding the nature of the substance, the case was coded as meth-amphetamine.

Results from the PSI database are consistent with reports from the Virginia Community Youth Survey, which suggest that the prevalence of methamphetamine varies across regions of the state. The roughly 130 localities that comprise Virginia's circuit court system are grouped into six administrative regions that represent the main geographical areas of the state: Tidewater (Region 1), Northern Virginia (Region 2), Central Virginia (Region 3), Southwest Virginia (Region 4), Southside Virginia (Region 5), and the Shenandoah Valley/Piedmont area (Region 6). The boundaries for these judicial regions have been established by the Supreme Court of Virginia and are displayed in Figure 50.

The regional distribution of methamphetamine cases in Virginia's circuit courts changed considerably between FY1995 and FY2006 (Figure 51). In FY1995, the largest share (24%) of methamphetamine-related convictions occurred in the Central Virginia region, followed closely by the Shenandoah Valley region (21%). Over the next five years, Virginia experienced an increase in the proportion of methamphetamine cases from circuit courts in Shenandoah Valley. More than 70% of methamphetamine cases in FY2000 occurred in one of the three circuit courts that comprise this region (Circuits 16, 25, and 26), while cases in Central Virginia dropped to less than 5% of methamphetamine convictions in the state.

Figure 50

Supreme Court of Virginia Judicial Regions



Regional shifting continued after FY2000, with a rise in cases from the Southwest region of the state. The Shenandoah Valley and Southwest regions accounted for 113 of the 157 (72%) methamphetamine convictions in FY2005. That year, the proportion of cases in the Southwest region rose to 21%. Available data for FY2006 indicate a slight rise in the proportion of methamphetamine cases in Northern and Southside Virginia and a decrease in the Southwest. Overall, however, well over half of the methamphetamine cases between FY2000 and FY2006 occurred in the Shenandoah Valley area. These regional patterns are reflected in data related to methamphetamine laboratory seizures and self-reported methamphetamine use. As described above, most of the methamphetamine laboratory seizures between 2000 and 2006 occurred in the Southwest or Shenandoah Valley regions of the state. In addition, the 2005 Virginia Community Youth Survey indicates that high school students in the Shenandoah Valley and Southwest areas of the state reported the highest rates of lifetime and current use of methamphetamine.

Figure 51

Methamphetamine Cases in Virginia's Circuit Courts by Judicial Region

Fiscal Year	Tidewater	Northern Virginia	Central Virginia	Southwest Virginia	Southside Virginia	Shenandoah Valley/Piedmont	Cases
1995	16.7%	11.9%	23.8%	9.5%	16.7%	21.4%	42
1996	9.9%	7.9%	5.9%	11.9%	18.8%	45.5%	101
1997	9.2%	9.2%	15.4%	24.6%	18.5%	23.1%	65
1998	13.0%	14.0%	11.0%	14.0%	11.0%	37.0%	100
1999	8.8%	4.0%	10.4%	16.8%	12.0%	48.0%	125
2000	2.2%	3.4%	4.5%	9.0%	10.1%	70.8%	89
2001	5.5%	7.5%	4.8%	8.2%	11.0%	63.0%	144
2002	7.7%	5.4%	9.2%	7.7%	9.2%	60.8%	130
2003	4.1%	9.6%	1.4%	8.9%	12.3%	63.7%	146
2004	10.2%	14.1%	3.4%	8.8%	7.8%	55.6%	204
2005*	8.3%	10.2%	3.8%	21.0%	5.7%	51.0%	157
2006*	6.8%	13.7%	0.0%	11.0%	11.0%	57.5%	73

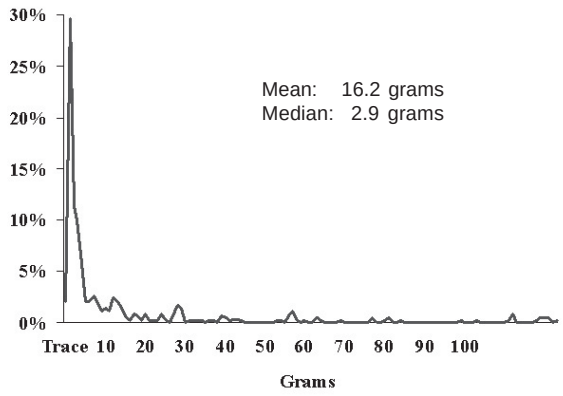
*Data are incomplete.
Source: Pre/Post-Sentence Investigation (PSI) Report Database

Among convictions for manufacturing, distributing, selling, and possessing with the intent to sell methamphetamine, the majority of cases sentenced in the state's circuit courts involved relatively small amounts of the drug. Information on drug quantity was not available for all methamphetamine cases in the PSI database. Between January 1, 1992, and September 18, 2006, 573 methamphetamine cases sentenced in Virginia's circuit courts involved manufacturing or sales-related offenses, including distribution and possession with intent to sell. The amount of methamphetamine was not available for 150 of these cases.

The mean seizure amount for methamphetamine cases sentenced between 1992 and 2006 was 16.2 grams. The mean, however, is sometimes not an accurate representation of the typical case, in that a few large seizure amounts can inflate the average significantly. In the current analysis, the amount of methamphetamine was above 200 grams in 8 cases. Approximately 95% of the cases were associated with amounts lower than 65 grams. One-third of the cases involved less than 1.05 grams of the drug (Figure 52). The median amount is very useful in this instance, since it is not heavily affected by extreme values. The median identifies the center value in a range of numbers, where half of the cases fall above the value and half of the cases fall below. The median amount of methamphetamine seized between 1992 and 2006 was 2.9 grams.

Figure 52

Quantity of Methamphetamine in Manufacture/Sale Cases in Virginia's Circuit Courts, 1992-2006



Note: Analysis includes manufacture, distribution, sale, and possession with intent to sell methamphetamine.
Source: Pre/Post-Sentence Investigation (PSI) Report Database

An analysis of the quantity of methamphetamine involved in manufacture and sales-related cases sentenced in Virginia's circuit courts revealed geographical differences in the amount of drug seized. For instance, the mean seizures in the Northern, Southwest, and Shenandoah Valley/Piedmont areas exceeded 15 grams, with Northern Virginia yielding the highest average amount at 33.7 grams (Figure 53). The number of sales and manufacturing cases from Northern and Central Virginia was relatively small, with only 16 and 9 cases, respectively. The data show that several cases involved very large amounts of methamphetamine, which can have a large impact upon the mean values. This is particularly true if there is a small number of cases, as in Northern Virginia. The median quantities of methamphetamine indicate that manufacture and sales-related cases typically involved the largest amounts in the Tidewater area, followed by the Southside Virginia region.

Figure 53

Quantity of Methamphetamine in Manufacture/Sales Cases in Circuit Courts by Region, 1999-2006

Judicial Region	Mean (in grams)	Median (in grams)	Cases
Tidewater (1)	12.7	3.9	27
Northern Virginia (2)	33.7	1.8	16
Central Virginia (3)	11.4	0.9	9
Southwest Virginia (4)	16.9	1.5	62
Southside Virginia (5)	13.0	3.2	29
Shenandoah Valley/Piedmont (6)	16.4	3.0	205
TOTAL			**348**

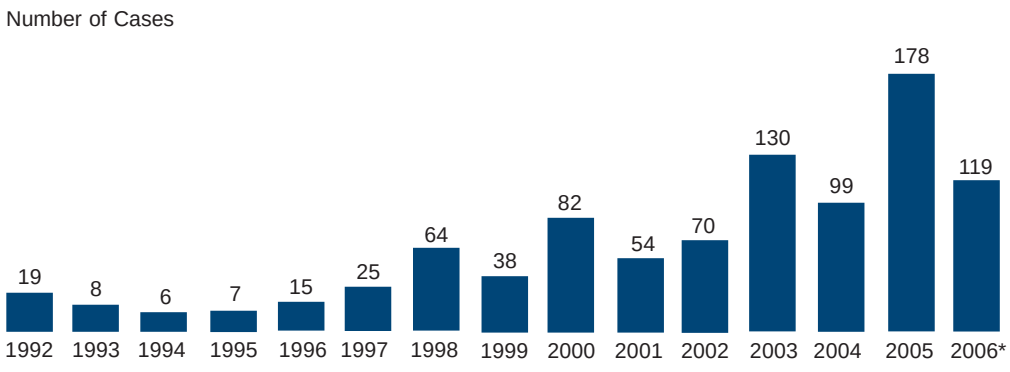
Note: Analysis includes manufacture, distribution, sale, and possession with intent to sell methamphetamine.
Source: Pre/Post-Sentence Investigation (PSI) Report Database

Only some felony offenses committed in Virginia are prosecuted in Virginia's circuit courts. The federal judicial system maintains jurisdiction over some crimes committed in the Commonwealth and officials may choose to prosecute individuals in federal courts. Analysis of federal data shows that methamphetamine cases processed in the federal court system tend to exhibit different characteristics than cases in the circuit courts. The number of convictions for methamphetamine-related offenses in federal courts in the Commonwealth increased from 7 in 1995 to 178 in 2005, which is similar to the pattern seen in Virginia's circuit courts (Figure 54). However, the number of convictions has increased more sharply overall in federal courts than in state courts and with greater fluctuations from year to year. For instance, between calendar years 2001 and 2003, the number of methamphetamine convictions in federal courts increased from 54 to 130 but dropped the following year to 99. This figure then peaked at 178 in 2005. Federal data for 2006 suggest another fall in the number of convictions, but this dataset is only complete through the end of the federal fiscal year and it is very likely that the numbers will increase.

Virginia is divided into two judicial districts that guide administration of justice in the federal system (Figure 55). The federal district responsible for the majority of convictions for methamphetamine-related offenses varied considerably in the late 1990s. While nearly 86% of methamphetamine cases in federal courts in Virginia were concentrated in the Eastern district in 1995, the Western

Figure 54

Methamphetamine Cases in Federal Courts in Virginia, 1992-2006



*Data for 2006 are complete through September 30, 2006.
Source: United States Sentencing Commission Data Set

district accounted for the majority of methamphetamine-related cases in 1996 and 1997 (Figure 56). The pattern shifted again in 1998 and 66% of methamphetamine convictions in federal courts occurred in the Eastern region of Virginia. In 2000, the gap between the two districts closed and the cases were almost equally split across districts. The following year marked a shift in the distribution of cases across districts and, since then, the majority of federal methamphetamine convictions have occurred in the Western district of the state.

Virginia circuit court data can also be grouped based upon the boundaries of the federal judicial districts. State circuit court data show much less variation from year to year. More specifically, methamphetamine cases in the Commonwealth have been concentrated in the Western district since 1995. The percentage of convictions occurring in the circuit courts in the Eastern region peaked at slightly over a third of the cases in 1998.

Nearly all methamphetamine-related cases processed in federal courts in Virginia between 1999 and 2006 involved trafficking as the primary offense. With the exception of cases in 2004 and 2006, the percentage of cases relating to trafficking charges did not fall below 90% during this time period. In 2004, cases for which trafficking was the highest charge comprised 78.8% of the federal methamphetamine cases and in 2006, based upon preliminary data, this percentage was 88.2%. In comparison, the proportion of cases in Virginia's circuit courts involving the sale or manufacture of methamphetamine remained below 61% for each year between 1992 and 2006. The fact that possession cases comprise a larger proportion of methamphetamine convictions in state circuit courts versus federal courts suggests that many of the cases involving the sale of methamphetamine are funneled into the federal system.

Figure 55

Federal Judicial Circuits in Virginia

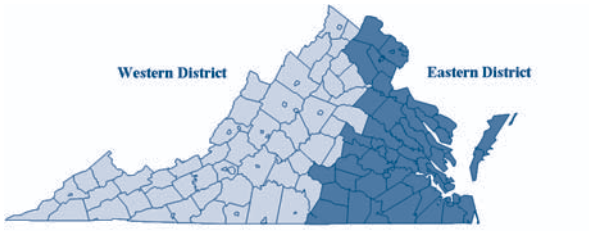


Figure 56

Methamphetamine Cases in Federal and State Courts in Virginia by Federal District

	Virginia Circuit Courts			Federal District Courts	
Year	Eastern	Western	Year	Eastern	Western
1995	32.8%	67.2%	1995	85.7%	14.3%
1996	33.3	66.7	1996	26.7	73.3
1997	25.7	74.3	1997	24.0	76.0
1998	35.2	64.8	1998	65.6	34.4
1999	14.8	85.2	1999	65.8	34.2
2000	16.9	83.1	2000	56.1	43.9
2001	15.6	84.4	2001	20.4	79.6
2002	21.9	78.1	2002	30.0	70.0
2003	18.9	81.1	2003	13.8	86.2
2004	28.0	72.0	2004	25.3	74.7
2005*	29.1	70.9	2005	24.7	75.3
2006*	14.1	85.9	2006*	20.2	79.8

*Data are incomplete.
Sources: Pre/Post-Sentence Investigation (PSI) Report Database; United States Sentencing Commission Data Set

Differences also exist between federal and state cases in terms of the amount of methamphetamine seized. Available data show that methamphetamine convictions in Virginia's federal courts tend to involve larger drug quantities than cases in circuit courts. For methamphetamine trafficking cases sentenced in federal courts between 1999 and 2006, the mean and median quantities of methamphetamine were 63,432.9 grams and 534.9 grams, respectively. On average, federal trafficking cases in the Eastern district of Virginia involved larger quantities of the drug than cases in the Western district during this time (Figure 57). A very large seizure of methamphetamine occurred in the Eastern district in 2006 and drastically increased the mean value. However, the median values for the Eastern and Western districts also indicate that, on average, larger amounts of methamphetamine were seized in the Eastern district than the Western district between 1999 and 2006. In sales and distribution cases in Virginia's circuit courts, the mean weight of methamphetamine was 16.6 grams and the median was 2.9 grams. None of the methamphetamine cases in the circuit courts involved amounts greater than 500 grams.

Figure 57

Quantity of Drug in Methamphetamine Trafficking Cases in Federal Courts in Virginia, 1999-2006*

Amount	Eastern District	Western District	Total
Less than 50g	13.3%	14.8%	14.3%
50g to 199g	22.2	19.4	20.2
200g to 349g	5.9	7.4	7.0
350g to 499g	4.4	5.5	5.2
500g to 1,499g	20.0	21.2	20.9
1,500g to 5,000g	17.8	19.4	18.9
More than 5,000g	16.3	12.3	13.5
Mean	209,778g	2,643.3g	63,432.9g
Median	590.5g	529.1g	534.9g
Number of Cases	140	326	466

*Data for 2006 are complete through September 30, 2006.
Note: Data do not include trafficking cases for which quantity was not recorded.
Source: United States Sentencing Commission Data Set

Relative Prevalence of Methamphetamine

Indicators of drug prevalence within the Commonwealth show that methamphetamine remains much less pervasive than other Schedule I or II drugs. Although methamphetamine convictions on the state level increased between the early 1990s and 2004, preliminary data for fiscal years 2005 and 2006 suggest a recent decline. Moreover, methamphetamine accounted for a very small percentage of Schedule I or II drug convictions during this time period. Data collected using the Virginia Community Youth Survey indicate a decrease between 2000 and 2005 in the percentage of twelfth graders who reported using methamphetamine at least once in their lifetime . In addition, current use of methamphetamine by twelfth graders was lower than marijuana and cocaine in 2005. Treatment admission statistics for Virginia show that, although the percentage of admissions relating to methamphetamine use increased between 1995 and 2005, the majority of admissions during this time period were associated with marijuana or cocaine.

Information provided by the Virginia Department of Forensic Science shows an increase in the number of cases involving methamphetamine. The agency processed 366 cases that were related to methamphetamine in 2000, compared to 1,084 cases in 2006. However, the overall number of cases related to marijuana, cocaine, heroin or methamphetamine increased from 40,085 to 43,266 between 2000 and 2006. The number of cases associated with marijuana or cocaine continues to far exceed the number of cases related to methamphetamine. Reports from the Virginia State Police show a general increase in drug arrests between 2000 and 2006, with marijuana accounting for the majority of these arrests, followed by crack and powder cocaine. Although arrests for amphetamines grew from 203 to 567 during this time period, these cases only comprised 2% of drug arrests in 2006.

Crack and powder cocaine offenses have accounted for the majority of drug convictions in Virginia's circuit courts during the past decade. Among cases involving the most commonly reported drugs (cocaine, heroin, ecstasy, and methamphetamine), 95% were related to cocaine in FY1995. In comparison, cocaine was listed as either the primary or secondary drug in 87% of these cases in FY2005. Methamphetamine was recorded as one of the two drug types in less than 2% of the cases in FY2000. Of the cases related to cocaine, heroin, ecstasy or methamphetamine in FY2005, 5% involved methamphetamine. The percentage of cases associated with heroin rose from 6% in FY1995 to 12% in FY2003, before decreasing to 10% in FY2005.

Analysis of circuit court conviction data for cocaine (including crack), heroin, ecstasy or methamphetamine cases revealed distinct regional variations in the prevalence of these drugs. Cocaine was reported in more than 90% of these cases in all of the Commonwealth's judicial regions in FY1995. Although the percent of cases associated with cocaine has declined somewhat since that time, cocaine continues to represent the majority of drug cases (Figure 58). Since FY1995 the prevalence of heroin relative to other drugs examined has doubled in the Tidewater, Northern Virginia and Central Virginia regions.

Overall, methamphetamine cases have comprised a much smaller percentage of drug cases compared to cocaine. However, the Shenandoah Valley/ Piedmont and Southwest areas of the state experienced a large increase in the percentage of cases involving methamphetamine between FY1992 and FY2006. Specifically, the percentage of cases involving methamphetamine as either the primary or secondary drug in the Shenandoah Valley rose from 1.2% in FY1992 to more than 45% of the cases in FY2006 (Figure 58). In FY2005, this figure was 25.6%, suggesting a large increase in the proportion of cases relating to methamphetamine in the Shenandoah Valley between FY2005 and FY2006. In Southwest Virginia, the percentage of cases relating to methamphetamine decreased from a peak of 45% in FY2005 to 35% in FY2006. In FY2006, methamphetamine cases accounted for less than 7% of drug cases in the other four regions of the state. Although data for fiscal years 2005 and 2006 are fairly complete, PSI reports concerning cases sentenced during this time period continue to be received and these figures may change slightly. In general, the majority of cocaine, heroin, methamphetamine, and ecstasy-related cases in Virginia continue to involve cocaine as either the primary or secondary drug. Although marijuana is not discussed here and is not included in the analysis described above, the number of marijuana convictions in circuit court has typically remained below one-fifth of the number of cases involving cocaine.

Figure 58

Drug Cases in Virginia's Circuit Courts by Judicial Region, FY2006*

Judicial Region	Cocaine	Heroin	Methamphetamine	Ecstasy
Tidewater (1)	87.3%	13.3%	1.5%	1.5%
Northern Virginia (2)	79.9	9.0	6.9	5.6
Central Virginia (3)	95.4	8.6	0.0	0.0
Southwest Virginia (4)	73.9	0.0	34.8	0.0
Southside Virginia (5)	95.3	0.7	5.3	0.0
Shenandoah Valley/Piedmont (6)	56.5	0.0	45.7	0.0
Virginia Total	85.3	8.0	8.2	1.5

*Data are incomplete.
Note: Up to two drug types can be reported in each case.
Data include the most common drugs as reported in FY2006, with the exception of marijuana.
Source: Pre/Post-Sentence Investigation (PSI) Report Database

Federal conviction data also show that powder and crack cocaine have remained the most predominant drugs in the state over the past several years. In 2000, cocaine was identified as the most serious drug in 554 of the 841 (66%) drug convictions for which the primary drug type was available. By 2005, the proportion had decreased slightly to 64% . Cocaine was recorded as one of the five drug types in 65% of the cases in 2005 and 2006 (Figure 59). Federal conviction data for Virginia indicate an overall increase in the number of methamphetamine and ice convictions between 1997 and 2005. However, methamphetamine cases have never accounted for more than 16% of all federal drug cases in Virginia.

When marijuana is excluded, powder and crack cocaine comprise 79-80% of the federal cases. Methamphetamine was identified as one of the five drug types in slightly more than 18% of these cases in 2006 (excluding marijuana). As in circuit courts, more cases in the Western portion of the state involved methamphetamine. Specifically, in 2006, nearly 40% of cocaine, heroin, methamphetamine, and ecstasy convictions in the Western district were associated with meth-amphetamine, compared to 7% in the Eastern district. Conversely, 90% of the cases in the Eastern district were related to cocaine in 2006 while only 59.7% of the cases in the Western district involved cocaine in that year. These regional differences were consistent between 1999 and 2006. Although the number of methamphetamine convictions in Virginia's federal courts has increased since the mid-1990s, powder and crack cocaine continue to be the most prevalent drugs.

Figure 59

Drug Cases in Federal Courts in Virginia, 2003-2006*

	2003	2004	2005	2006*
Cocaine	61.3%	64.6%	65.0%	65.3%
Marijuana	22.5	23.7	19	22.5
Heroin	12.3	8.8	4.8	5.1
Meth	11.3	9.3	15.2	15.2
Ecstasy	3.1	2.8	2.2	0.6

* Data for 2006 are complete through September 30, 2006.
Note: Up to five drug types can be reported in each case.
Source: United States Sentencing Commission Data Set

Virginia Sentencing Guidelines for Drug Offenses

After the abolition of parole in 1994, Virginia's General Assembly directed the Commission to develop and oversee a system of sentencing guidelines that were compatible with the newly developed sanctioning system. The General Assembly sought to establish truth-in-sentencing in Virginia and to target violent offenders for longer terms of incarceration. Truth-in-sentencing requires that offenders serve all or nearly all of the time imposed at the sentencing hearing. Felony offenders who committed crimes on or after January 1, 1995, must now serve at least 85% of their prison or jail sentence.

Prior criminal history plays an important role in Virginia's sentencing guidelines. The guidelines were formulated to target violent offenders for periods of incarceration that are longer than terms served under the parole system. All offenders with a current or prior conviction for a violent felony are subject to enhanced sentence recommendations under the existing guidelines. More specifically, sentence recommendations for these offenders can be up to six times longer than the time served before 1995. Guidelines recommendations for individuals who have never been convicted of a violent crime are roughly equivalent to the average time served by similar offenders prior to the abolition of parole in Virginia.

Figure 60

Primary Offense Factor on Section C of the Schedule I or II Drug Sentencing Guidelines

Drug/Schedule I/II — **Section C**

Offender Name: _____

◆ **Primary Offense** _____ Prior Record Classification: ☐ Category I ☐ Category II

Other

		Category I	Category II	
A. Possess Schedule I or II drug - Attempted, conspired or completed:				
	1 count	20	10	5
	2 counts	28	14	7
	3 counts	36	18	9
B. Sell, Distribute, possession with intent, Schedule I or II drug				
Completed:	1 count	60	36	12
	2 counts	80	48	16
	3 counts	95	57	19
	4 counts	130	78	26
Attempted or conspired:	1 count	48	24	12
	2 counts	64	32	16
	3 counts	76	38	19
	4 counts	104	52	26
C. Sell, etc. Schedule I or II drug, subsequent offense; third and subsequent offense				
Completed:	1 count	110	66	22
	2 counts	310	186	62
Attempted or conspired:	1 count	88	44	22
	2 counts	248	124	62
D. Sell, etc. Schedule I or II drug to minor				
Attempted, conspired or completed:	1 count	60	30	15
E. Accomodation–Sell, etc. Schedule I or II drug - Attempted, conspired or completed:				
	1 count	32	16	8
	2 counts	40	20	10
F. Sell, etc. imitation Schedule I or II drug - Attempted, conspired or completed:				
	1 count	12	6	3
	2 counts	20	10	5

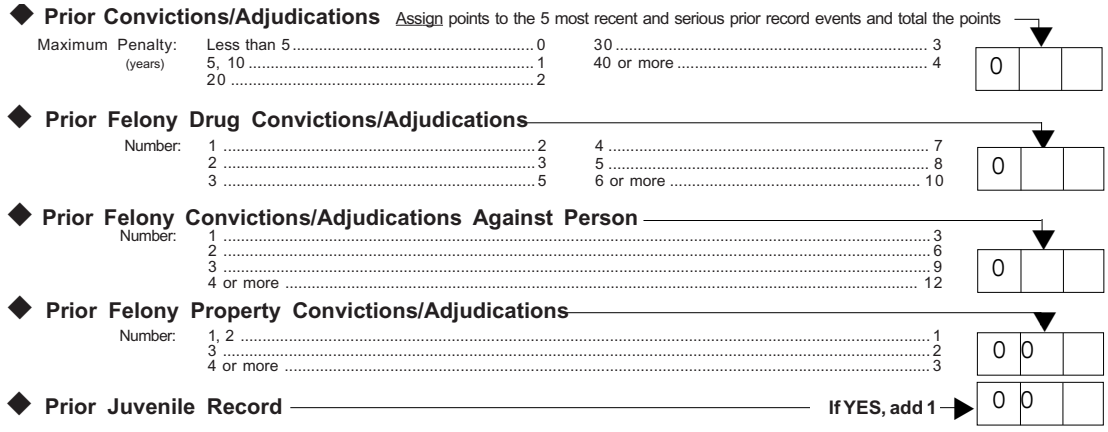
Score ▼ ☐☐☐

The guidelines worksheets that take into account an offender's prior record and the nature of the current offense. An offender convicted of one count of selling a Schedule I or II drug who has never been convicted of a violent felony will receive a guidelines score of 12 for the primary offense factor on the Section C (prison sentence length) worksheet (Figure 60). Scores on this worksheet are equivalent to months of imprisonment. An offender with a prior conviction for a violent felony that carries a statutory maximum penalty of less than 40 years is classified as a Category II offender. For an individual with a Category II prior record, the guidelines score for this factor is increased to 36 months. Category I offenders, individuals with a prior conviction for a violent felony carrying a statutory maximum penalty of 40 years or more, receive a score of 60 months for this factor. The scores for additional offenses, weapon use, and other prior record factors are added to the primary offense score to determine the final sentence recommendation.

In addition to the enhancements for a violent prior record, the Section C worksheet for Schedule I or II drug offenses also contains several factors relating to other aspects of an offender's criminal history. The Prior Convictions/Adjudications factor accounts for the seriousness of an offender's prior adult convictions and juvenile adjudications, including nonviolent offenses (Figure 61). Scores are also generated for the number of prior felony drug, person, and property convictions and adjudications and further increase the sentence recommendation. The presence of a prior juvenile record adds one point to the final score for this section. Offenders convicted of possessing a Schedule I or II drug receive additional points if they have two or more prior convictions for offenses involving Schedule I or II drugs.

Figure 61

Prior Record Factors on Section C of the Schedule I or II Drug Sentencing Guidelines



Most felony offenses involving a Schedule I or II drug are covered by Virginia's sentencing guidelines. With the exception of cocaine offenses, the quantity of the drug seized does not affect the guidelines recommendation. On July 1, 1997, the Commission implemented guidelines enhancements for offenders convicted of manufacturing, distributing, selling or possessing with the intent to sell certain amounts of cocaine. At that time, cocaine represented approximately 90% of all Schedule I or II drug convictions in Virginia's circuit courts. As noted above, cocaine continues to comprise a large proportion of drug convictions in the Commonwealth. Based on analysis of historical data, the Commission concluded that the quantity of cocaine was related to sentencing outcomes. Cocaine was therefore selected for enhancements. A factor on the prison sentence length (Section C) worksheet increases the midpoint recommendation by 3 years for cocaine distribution involving 28.35 grams (1 ounce) up to 226.7 grams. For the distribution of a half-pound of cocaine (226.8 grams) or more, the midpoint recommendation is increased by 5 years. These threshold amounts were the result of statistical analyses that revealed a relationship between the amount of cocaine seized in a case and the sentence outcome.

Comparing Virginia and Federal Sentencing Guidelines

The United States Sentencing Commission (USSC) administers the system of federal sentencing guidelines. As in Virginia, the federal guidelines were adopted in order to promote greater consistency in sentences and eliminate unwarranted disparity. The two guidelines systems also share the common goal of targeting specific offenders, particularly violent offenders, for more severe penalties. Both the state and federal guidelines take into account the defendant's criminal record and the seriousness of the current offense when calculating the final sentence recommendation.

From the full implementation of the federal sentencing guidelines in 1989 until the landmark decision in *United States v. Booker* in 2005, the guidelines recommendations were viewed as compulsory and federal judges were only allowed to depart from the recommended range in specified circumstances. In *Booker*, the United States Supreme Court declared that mandatory sentencing

enhancements based upon judicial fact finding violated the Sixth Amendment right to trial by jury. In other words, judges were sometimes called upon to determine factual elements of the case that were not admitted by the defendant nor found by the jury, as in a case where the amount of drug involved is questionable and the jury never determined the exact amount. In this example, for an individual to score the federal guidelines appropriately, someone must make the determination as to the drug quantity. Consequently, the federal guidelines, like Virginia's guidelines, are now viewed as advisory rather than mandatory, with the purpose of providing sentencing judges with another factor to weigh during sentencing (Campbell & Bemporad, 2006).

Although numerous similarities exist between the two guidelines systems, the federal guidelines differ from Virginia's system in several respects. For one, the sentence ranges recommended by the federal guidelines are limited by the Sentencing Reform Act of 1984, which mandates that the top of each guidelines range cannot exceed the bottom by more than six months or 25 percent, whichever is greater. The formats of the sentencing guidelines are different as well. As noted above, the federal guidelines take into account the offender's criminal record and the severity of the current offense, referred to as the "offense level" in the guidelines. In creating and implementing the guidelines, the USSC designed a grid based upon scores representing the offense level and prior record. The table includes 43 offense levels and 6 criminal history categories. The recommended range of imprisonment is located at the intersection of the relevant offense level and criminal history scores. The table is divided into four zones, which represent alternatives to imprisonment. For instance, Zone A includes ranges of sentence recommendations between zero and six months, but judges may impose any sentence from probation to imprisonment without departing from the guidelines if the offender falls into this category. The other zones, with the exception of cells falling within the most serious zone, offer more restrictive alternatives to imprisonment (Hofer, Loeffler, Blackwell, & Valentino, 2004).

In cases involving drug trafficking, the offense level score in the federal guidelines is directly linked to the amount and type of drug involved in a particular case. The USSC identified the quantity thresholds based, in part, upon the Anti-Drug Abuse Act of 1986 (ADAA), which established mandatory minimum penalties for trafficking in certain amounts and types of drugs. The USSC has incorporated 17 different drug quantity groupings into the guidelines, including those specified in the ADAA. The amount categories are associated with varying scores for the offense level and, consequently, the severity of the recommended sentence.

The specific rationale behind the USSC's development of drug quantity categories that are not associated with mandatory minimum sentences is unclear. The USSC may have designed these categories in order to create a more refined spectrum of quantities that more closely links the relative harmfulness of the drug amount to the recommended sentence. The incorporation of numerous quantity ranges also helps avoid instances where minute differences in quantity result in substantial differences in sentence recommendations. Other than the mandatory penalties specified in the ADAA, the basis for the cutoff weights in the federal guidelines is unclear (Hofer et al., 2004). In contrast to the federal system, Virginia's guidelines only take into account the amount of the drug if the case involved the distribution of relatively large amounts of cocaine. Virginia's threshold points for quantity of cocaine were determined based upon statistical analysis of historical sentencing patterns.

Unlike Virginia's guidelines, the federal guidelines differentiate between powder and crack cocaine. More specifically, the amount of powder cocaine that triggers particular penalty enhancements for federal defendants differs from the amount of crack cocaine necessary to reach the same offense level score. The cocaine factor that qualifies the offender for sentence enhancements in the Commonwealth's guidelines does not distinguish between the types of cocaine involved. In cases involving other drugs, the drug type and amount do not impact the sentence recommendation.

In addition to taking into account the amount of methamphetamine in a case, the federal guidelines also differentiate between the specific type and purity of methamphetamine involved. For example, legislation enacted by the U.S. Congress mandates that convictions for offenses relating to smokable crystal methamphetamine (ice) will receive a higher offense level score on the guidelines than cases involving other forms of methamphetamine (U.S. Sentencing Commission, 2007). While Virginia's guidelines do not account for the purity or type of drug, Virginia's drug kingpin laws distinguish between pure methamphetamine and a methamphetamine mixture in specifying the amounts that trigger mandatory minimum sentences.

Quantity of Methamphetamine and Sentencing in Virginia's Circuit Courts

The Commission continuously monitors sentencing practices in Virginia's circuit courts and the state's sentencing guidelines system. Each year, the Commission considers possible changes to the guidelines that may increase the usefulness of this tool for judges. This year, the Commission once again examined the relationship between the quantity of methamphetamine and sentencing outcome to determine what impact, if any, the amount of methamphetamine has had on sentencing decisions.

The present analysis, as in to prior studies, focused on individuals convicted in Virginia's circuit courts. Federal cases were excluded from this analysis because the federal sentencing guidelines specifically account for drug quantity. In addition, the recommended sentence ranges in the federal guidelines are very narrow and, until recently, these guidelines were treated as compulsory, with few exceptions. Consequently, the drug amount in a particular case has historically affected sentencing decisions in federal courts. Virginia's sentencing guidelines, on the other hand, are relatively broad and have been discretionary since their inception. The relationship between drug quantity and sentence outcome in the Commonwealth's circuit courts is not as clearly defined as it is in the federal system. Analysis of Virginia's circuit court cases allows the Commission to examine the role of the quantity of methamphetamine in an environment where judges have been able to consider the amount of the drug involved and incorporate this into the sentencing decision at their discretion.

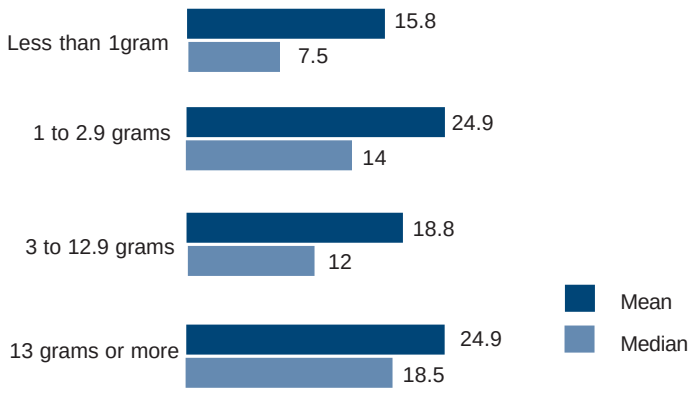
The sentencing decision occurs within the context of many other factors and, consequently, the current analysis takes into consideration additional factors that have been shown to impact sentences, such as an offender's prior record and weapon use. The Commission's examination of sentencing patterns in Virginia's circuit courts revealed that, for individuals convicted of manufacturing, selling, distributing or possessing with the intent to sell methamphetamine, the amount of the drug does not play a significant role in the sentencing decision. As in prior studies, the Commission did not observe a consistent relationship between larger quantities of methamphetamine and sentence length in these sale/manufacture cases.

The Commission categorized offenders and amounts of methamphetamine in various ways in order to determine if drug quantity is related to sentence outcome in circuit courts. Since this aspect of the study focused specifically upon the quantity of methamphetamine, cases where the drug amount was unknown were excluded from the analysis. As part of the analysis, the Commission created four equally-sized groups of cases based upon the drug amount. Each group represented one quarter of the methamphetamine sale/manufacture cases sentenced under Virginia's truth-in-sentencing provisions. The mean sentence for the 25% of methamphetamine cases representing the smallest quantities (less than one gram) was 15.8 months of imprisonment (Figure 62). The median sentence for this group was 7.5 months, meaning that half of these offenders received sentences that were shorter than 7.5 months while the other half received sentences that were longer than 7.5 months. In comparison, the mean sentence length for cases involving the seizure of 1 to 2.9 grams was nearly 25 months, with a median of 14 months.

The mean and median sentence length for the third group of offenders, which was comprised of cases associated with amounts of methamphetamine between 3 and 12.9 grams, were lower than for cases involving 1 to 3 grams. The average sentence for the group of offenders selling or manufacturing the largest quantities of methamphetamine was not higher than the sentence for offenders arrested with smaller amounts of the drug. Specifically, the mean sentence for offenders with 13 grams or more of methamphetamine was equal to the average sentence for offenders apprehended with 1 to 2.9 grams of the drug. The median sentence for the fourth group was 4.5 months longer than the median sentence for the second group and 6.5 months longer than the third group, indicating an irregular and unsteady relationship between the amount of methamphetamine and the length of the sentence received. This suggests that the average sentence length was not consistently higher for offenders who were arrested with larger amounts of the drug.

Figure 62

Sentence Length in Methamphetamine Sale/Manufacture Cases in Virginia's Circuit Courts (in months)



Note: Analysis is based on cases sentenced under Virginia's truth-in-sentencing/no-parole system from 1995 through 2006.
Data include the offenses of manufacture, sale, distribution, and possession with intent to sell.
Source: Pre/Post-Sentence Investigation (PSI) Database

The Commission also examined the relationship between drug amount and sentence length within the context of offenders' criminal records. This stage of the analysis focused on offenders with no prior felony record who were only convicted of one count of selling or manufacturing methamphetamine. These cases were grouped using the same amounts as above. Sentencing patterns indicate that offenders arrested with less than 1 gram of methamphetamine received, on average, substantially lower sentences than individuals convicted of sales and manufacturing offenses involving between 1 and 2.9 grams of the drug (Figure 63). The mean and median sentences for defendants in the second and third groups, involving 1 to 2.9 grams and 3 to 12.9 grams, were nearly equal. The mean and median sentences for cases involving the largest quantities were greater than the average sentences for the other groups, but only slightly.

Offenders with a prior felony record who were convicted of one count of the sale or manufacture of methamphetamine received considerably longer sentences than defendants without a prior record. In particular, the median sentence for offenders with a prior record who were arrested with 13 grams or more of methamphetamine was 12 months longer than the median sentence for offenders without a prior record (Figure 64). However, the mean sentence for offenders with a prior felony record who were arrested with less than l gram of methamphetamine was higher than the average sentence for offenders with 1 to 2.9 grams of methamphetamine. Examining the nature of the offender's prior record, offenders with a prior violent record who were convicted of one count received longer sentences, on average, than offenders without a prior violent record.

Figure 63

Sentence Length in Methamphetamine Sale/Manufacture Cases in Virginia's Circuit Courts (in months)

Offenders with no prior felony record convicted of 1 count

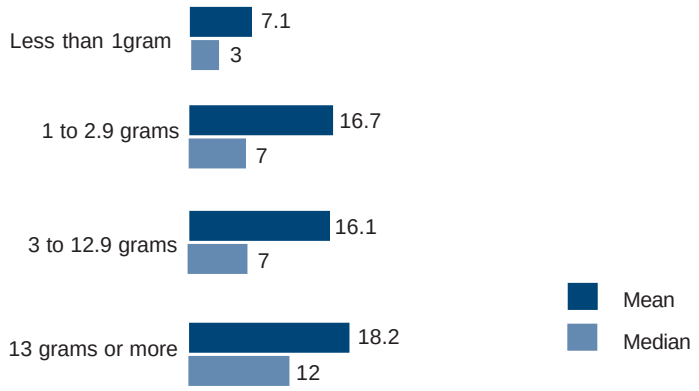
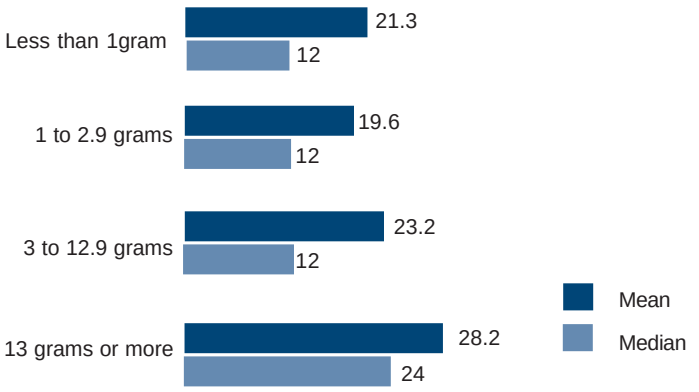


Figure 64

Sentence Length in Methamphetamine Sale/Manufacture Cases in Virginia's Circuit Courts (in months)

Offenders with a prior felony record convicted of 1 count



Note: Analysis is based on cases sentenced under Virginia's truth-in-sentencing/no-parole system from 1995 through 2006. Data include the offenses of manufacture, sale, distribution, and possession with intent to sell
Source: Pre/Post-Sentence Investigation (PSI) Database

The Commission considered various other means of categorizing the cases based upon drug quantity. As discussed above, Virginia's General Assembly has developed mandatory minimum laws based upon specific amounts of drugs. The Department of Forensic Science reports that nearly all methamphetamine cases in Virginia's circuit courts are associated with methamphetamine mixtures and very few cases involve pure methamphetamine. Therefore, the Commission focused its analysis on the amounts set forth by the General Assembly for methamphetamine mixtures. Of the cases sentenced in Virginia's circuit courts between 1995 and 2006 associated with the sale or manufacture of methamphetamine, only 8 cases involved more than 200 grams of methamphetamine and none of the cases involved more than 1,000 grams, the most serious threshold for a methamphetamine mixture established by the General Assembly. Offenders convicted of selling 200 grams or more of methamphetamine received shorter sentences on average than offenders who were arrested for selling between 20 and 199 grams (Figure 65). However, the small number of offenders with 200 grams or more makes it difficult to draw firm conclusions.

Results of analyses with other cutoff points also do not support the hypothesis that individuals who are convicted of selling the largest amounts of methamphetamine receive the longest sentences. For instance, the Commission examined the relationship between the amounts specified in the current cocaine factor on the sentencing guidelines and sentence length in methamphetamine cases. More specifically, the average sentence for the seven defendants who were convicted of selling 226.8

Figure 65

Sentence Length in Methamphetamine Sale/ Manufacture Cases in Virginia's Circuit Courts (in months)

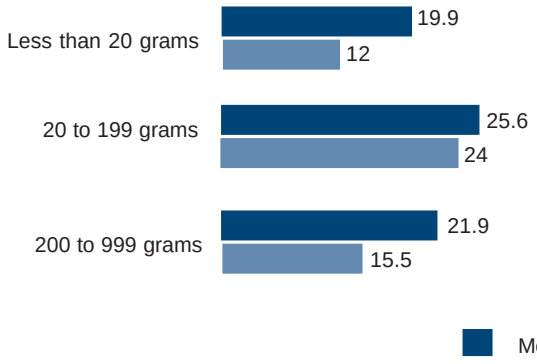
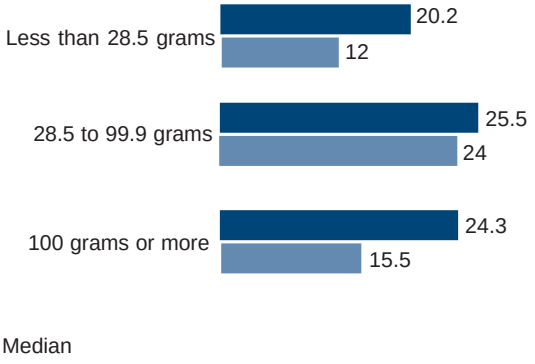


Figure 66

Sentence Length in Methamphetamine Sale/Manufacture Cases in Virginia's Circuit Courts (in months)



Note: Analysis is based on cases sentenced under Virginia's truth-in-sentencing/no-parole system from 1995 through 2006. Data include the offenses of manufacture, sale, distribution, and possession with intent to sell.
Source: Pre/Post-Sentence Investigation (PSI) Database

grams (one-half pound) or more of methamphetamine was less than a month longer than the average sentence for individuals with less than 226.8 grams. The median sentence for both groups was 12 months. Furthermore, individuals who were arrested with at least 28.35 grams (1 ounce) but less than 100 grams of methamphetamine tended to receive longer sentences than offenders with 100 grams or more (Figure 66).

Analyses of sentencing patterns that take into consideration all relevant factors available in the data do not support the conclusion that individuals convicted of selling or manufacturing the largest amounts of methamphetamine receive the longest sentences in Virginia's circuit courts. Several models were generated using factors that have been shown to impact sentencing decisions in the past. This portion of the Commission's study incorporated variables representing the amount of methamphetamine seized, the presence of a firearm, the role of the defendant in the offense, prior criminal history, the nature and number of charges at conviction, and whether the offender was part of a 'drug ring,' in addition to many other factors.

Numerous categorizations and permutations of the amount of methamphetamine, including the groupings described above, were formulated in order to identify any points at which the quantity may have affected the length of sentence imposed by the judges, controlling for other factors related to the offender and offense. Rigorous testing, using the same methodology and statistical techniques employed during the development of Virginia's historically-based guidelines, did not reveal a statistically significant relationship between the quantity of methamphetamine and the sentence outcome. The analyses yielded no empirical evidence that circuit court judges are basing sentences on the amount of methamphetamine seized in a case.

As in other types of cases, sanctioning in methamphetamine cases was largely driven by the nature of the offender's criminal history, whether the offender was in possession of a firearm at the time of the offense, and the number of charges resulting in a conviction. Virginia's sentencing guidelines specifically account for the number of charges and the defendant's juvenile and adult criminal history. In measuring criminal record, the guidelines take into consideration the number and nature of prior offenses, including the degree of seriousness. The guidelines also account for the possession of a firearm at the time of the offense.

Commission Deliberations

Each year, the Commission monitors the sentencing guidelines system and considers possible modifications to increase the usefulness of the guidelines. The Commission analyzes changes and trends in judicial sentencing practices in order to identify specific areas where the guidelines may not be consistent with judicial thinking. This year, the Commission examined the sentencing guidelines in relation to methamphetamine offenses. The Commission found that there is no empirical evidence at this time to support revisions to the sentencing guidelines based on the quantity of methamphetamine.

Analyses conducted by the Commission focused upon individuals convicted of the sale or manufacture of methamphetamine who were sentenced under truth-in-sentencing provisions. Available PSI data indicate that the quantity of methamphetamine involved in a case is not a significant factor in judicial sentencing decisions, after controlling for other case and offender characteristics. The nature of the offender's prior record and the number of charges at conviction appear to be the most important factors in determining the effective sentence. The sentencing guidelines take these two factors into account when determining the final recommended sentence. The built-in midpoint enhancements in the guidelines significantly increase the recommended sentence for offenders with prior convictions for violent crimes. Other factors included on the worksheets increase the sentence recommendation based upon the number and type of prior convictions.

Virginia's General Assembly has developed numerous mandatory minimum penalties for offenses involving Schedule I or II drugs, including methamphetamine. These laws take precedence over the discretionary guidelines system when the guidelines recommendation is lower than the mandatory minimum. Consequently, in cases where mandatory minimum penalties apply, the guidelines recommendations are adjusted to coincide with legislative mandates.

The Commission has not observed sufficient evidence to recommend changes to the sentencing guidelines relating to Schedule I or II drugs at this time. However, the Commission will continue to monitor and examine patterns in the sentencing of methamphetamine cases and the impact of drug quantity.

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Weimer, B.J., Wong, L., Strom, K., Forti, A., Eicheldinger, C., Bethke, A., Ancheta, J., & Rachal, V. (2004). *The National Forensic Laboratory Information System: Year 2004 Annual Report.* Washington, DC: U.S. Drug Enforcement Administration, Office of Diversion Control.

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4 Recommendations of the Commission

Unless otherwise provided by law, the changes recommended by the Comission become effective on the following July 1.

Introduction

The Commission closely monitors the sentencing guidelines system and, each year, deliberates upon possible modifications to enhance the usefulness of the guidelines as a tool for judges as they make their sentencing decisions. Under § 17.1-806 of the *Code of Virginia*, any modifications adopted by the Commission must be presented in its annual report, due to the General Assembly each December 1. Unless otherwise provided by law, the changes recommended by the Commission become effective on the following July 1.

The Commission draws on several sources of information to guide its discussions about modifications to the guidelines system. Commission staff meet with circuit court judges and Commonwealth's attorneys at various times throughout the year, and these meetings provide an important forum for input from these two groups. In addition, the Commission operates a "hot line" phone system, staffed Monday through Friday, to assist users with any questions or concerns regarding the preparation of the guidelines. While the hot line has proven to be an important resource for guidelines users, it has also been a rich source of input and feedback from criminal justice professionals around the Commonwealth. Moreover, the Commission conducts many training sessions over the course of a year and these sessions often provide information that is useful to the Commission. Finally, the Commission closely examines compliance with the guidelines and departure patterns in order to pinpoint specific areas where the guidelines may need adjustment to better reflect current judicial thinking. The opinions of the judiciary, as expressed in the reasons they write for departing from the guidelines, are very important in directing the Commission's attention to areas of the guidelines that may require amendment.

The Commission has adopted three recommendations this year. Each of these is described in detail on the pages that follow.

Recommendation 1

Add a factor to Section C of the sentencing guidelines for Schedule I/II and other drugs to increase the prison sentence recommendation for offenders who have an accompanying weapons offense requiring a mandatory minimum term.

Issue

In 1999, the Virginia General Assembly enacted legislation known as Virginia Exile, followed by the Substance Abuse Reduction Effort (SABRE) in 2000. These two pieces of legislation created new mandatory minimum terms for certain weapons offenses and increased existing mandatory minimum terms for other weapon crimes. Virginia's sentencing guidelines, which are based on historical practices, were developed prior to the implementation of the Exile and SABRE mandatory penalties. As a result, the guidelines sometimes yield sentence recommendations that fall below the mandatory minimum sentence that a judge must now impose. When this occurs, mandatory sentences specified in the *Code of Virginia* take precedence over the guidelines. Guidelines preparers are instructed to replace any part of the recommended sentence range (low, midpoint or high) that falls below the mandatory minimum with the mandatory minimum required by law. This type of adjustment must often be made when an offender is convicted of a drug crime together with an Exile or SABRE weapons charge. With several years of sentencing data under Exile and SABRE provisions now available, the Commission is in a position to examine the judicial sentencing patterns that have emerged in order to determine if any revisions to the guidelines are warranted.

Discussion

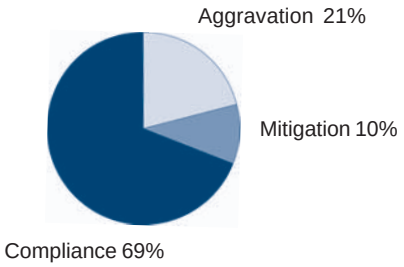
As detailed in §17.1-805 of the *Code of Virginia*, the initial set of discretionary felony sentencing guidelines was grounded in a comprehensive analysis of sentencing and prison time-served for felons released from incarceration between 1988 and 1992. This analysis formed a baseline set of sentencing midpoints and ranges upon which enhancements were applied to increase the recommendations for offenders with current or prior convictions for violent crimes. These guidelines have been in place since January 1, 1995. The Commission has relied on judicial compliance and departure patterns, as well as judges' written reasons for departure, as the basis for recommending revisions to the guidelines.

The Exile and SABRE legislation (enacted in 1999 and 2000, respectively) created new and raised existing mandatory minimum penalties for numerous weapons offenses defined in the *Code of Virginia*. Because the sentencing guidelines are based on historical practices prior to the implementation of the new mandatory penalties, the guidelines sometimes produce sentence recommendations that fall below the mandatory minimum sentence required by law. Since mandatory sentences take precedence over the guidelines, the Commission instructs guidelines preparers to replace any part of the recommended sentence range (low, midpoint or high) that falls below the mandatory minimum with the required mandatory minimum. For example, if the guidelines recommend a range of one year to two years and three months (with a midpoint of two years), but a five-year mandatory minimum sentence is required, the preparer should replace the low, midpoint, and high guidelines recommendation (shown on the guidelines coversheet) with five years. This type of adjustment is frequently necessary when an offender is convicted of a drug crime together with an Exile or SABRE weapons charge. The Commission's analysis revealed that nearly three in four drug cases with an accompanying Exile or SABRE weapons offense require an adjustment to the guidelines range.

At only 69%, compliance in cases with drug and weapon convictions is much lower than overall compliance in drug cases, which exceeds 80%. During FY2003 through FY2006, judges sentenced above the guidelines in 21% of cases involving drug and weapon convictions (Figure 67). The Commission's analysis of sentencing practices in drug cases indicates that judges often give offenders some additional time to serve for the drug conviction, beyond the statutorily-prescribed mandatory minimum term for the accompanying weapons charge. It is evident that the guidelines could be adjusted to more accurately reflect judicial sentencing in these specific circumstances.

Figure 67

Guidelines Compliance for Drug Crimes Accompanied by Weapons Offenses Requiring a Mandatory Minimum Term, FY2003 – FY2006
(653 cases)



To accomplish this, the Commission recommends adding a new factor to Section C of the Schedule I/II and other drug guidelines. This factor would add points when there is an additional conviction for an Exile or SABRE weapons charge (Figures 68 and 69). Specifically, the factor would add 13 points if the weapons charge carries a two-year mandatory minimum sentence and 32 points if the weapons charge carries a five-year minimum mandatory sentence. These points, when added to the primary offense score for the drug offense and the scores for prior record and other factors, will result in a guidelines recommendation for most affected offenders that is at least as high as the mandatory minimum that the judge must impose.

Figure 68

Proposed Drug Schedule I/II Section C Worksheet

Drug/Schedule I/II — **Section C** Offender Name:_____

◆ **Primary Offense** — Prior Record Classification: Category I ☐ Category II ☐

Other

A. Possess Schedule I or II drug - Attempted, conspired or completed:

1 count	20	10	5
2 counts	28	14	7
3 counts	36	18	9

B. Sell, Distribute, possession with intent, Schedule I or II drug

Completed: 1 count	60	36	12
2 counts	80	48	16
3 counts	95	57	19
4 counts	130	78	26
Attempted or conspired: 1 count	48	24	12
2 counts	64	32	16
3 counts	76	38	19
4 counts	104	52	26

C. Sell, etc. Schedule I or II drug, subsequent offense; third and subsequent offense

Completed: 1 count	110	66	22
2 counts	310	186	62
Attempted or conspired: 1 count	88	44	22
2 counts	248	124	62

D. Sell, etc. Schedule I or II drug to minor
Attempted, conspired or completed: 1 count ... 60 ... 30 ... 15

E. Accomodation–Sell, etc. Schedule I or II drug - Attempted, conspired or completed:

1 count	32	16	8
2 counts	40	20	10

F. Sell, etc. imitation Schedule I or II drug - Attempted, conspired or completed:

1 count	12	6	3
2 counts	20	10	5

Score ▼ [ ][ ][ ]

◆ **Primary Offense Additional Counts** Assign points to each count of the primary not scored above and total the points

Maximum Penalty (years): 5, 10 ... 1; 40 or more ... 5 → [ ][ ][ ]

◆ **Additional Offenses** Assign points to each additional offense (including counts) and total the points

Maximum Penalty (years): Less than 5 ... 0; 5, 10 ... 1; 20 ... 2; 30 ... 4; 40 or more ... 5 → [ ][ ][ ]

◆ **Mandatory Firearm Conviction for Current Event** Assign points to each additional offense with a mandatory minimum and total the points — New factor

2 Year Mandatory Minimum ... 13
5 Year Mandatory Minimum ... 32

→ [ ][ ][ ]

◆ **Firearm in Possession at Time of Offense** — If YES, add 5 → [0][0][ ]

◆ **Prior Convictions/Adjudications** Assign points to the 5 most recent and serious prior record events and total the points

Maximum Penalty (years): Less than 5 ... 0; 5, 10 ... 1; 20 ... 2; 30 ... 3; 40 or more ... 4 → [0][ ][ ]

◆ **Prior Felony Drug Convictions/Adjudications**

Number: 1 ... 2; 2 ... 3; 3 ... 5; 4 ... 7; 5 ... 8; 6 or more ... 10 → [0][ ][ ]

◆ **Prior Felony Convictions/Adjudications Against Person**

Number: 1 ... 3; 2 ... 6; 3 ... 9; 4 or more ... 12 → [0][ ][ ]

◆ **Prior Felony Property Convictions/Adjudications**

Number: 1, 2 ... 1; 3 ... 2; 4 or more ... 3 → [0][0][ ]

◆ **Prior Juvenile Record** — If YES, add 1 → [0][0][ ]

◆ **Legally Restrained at Time of Offense** — If YES, add 3 → [0][0][ ]

*SCORE THE FOLLOWING FACTORS **ONLY** IF PRIMARY OR ADDITIONAL OFFENSE INVOLVES THE **SELL, ETC. OF COCAINE***

◆ **Sale/Quantity of Cocaine** **(§18.2-248(C) or §18.2-255(A) convictions only)**

Quantity of Cocaine: Less than 28.35 grams ... 0; 28.35 grams to less than 226.8 grams ... 36; 226.8 grams or more ... 60 → [0][ ][ ]

Total Score → [ ][ ][ ][ ]

See **Drug/Schedule I/II Section C Recommendation Table** for guidelines sentence range.
Then go to **Section D Nonviolent Risk Assessment** and follow the instructions.

Drug Schedule I or II/ Section C Eff. 7-1-07

By amending the guidelines in this way, judicial concurrence with the guidelines is projected to improve. The modification is also expected to yield a more balanced split between aggravation and mitigation departures. Given the judicial sentencing practices from FY2003 through FY2006, compliance with the guidelines is anticipated to increase from 69% to 72%, while aggravating departures should decline from 21% to approximately 13% (Figure 70).

The Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines; therefore, no impact on correctional bed space is anticipated.

Figure 69

Proposed Drug Other Section C Worksheet

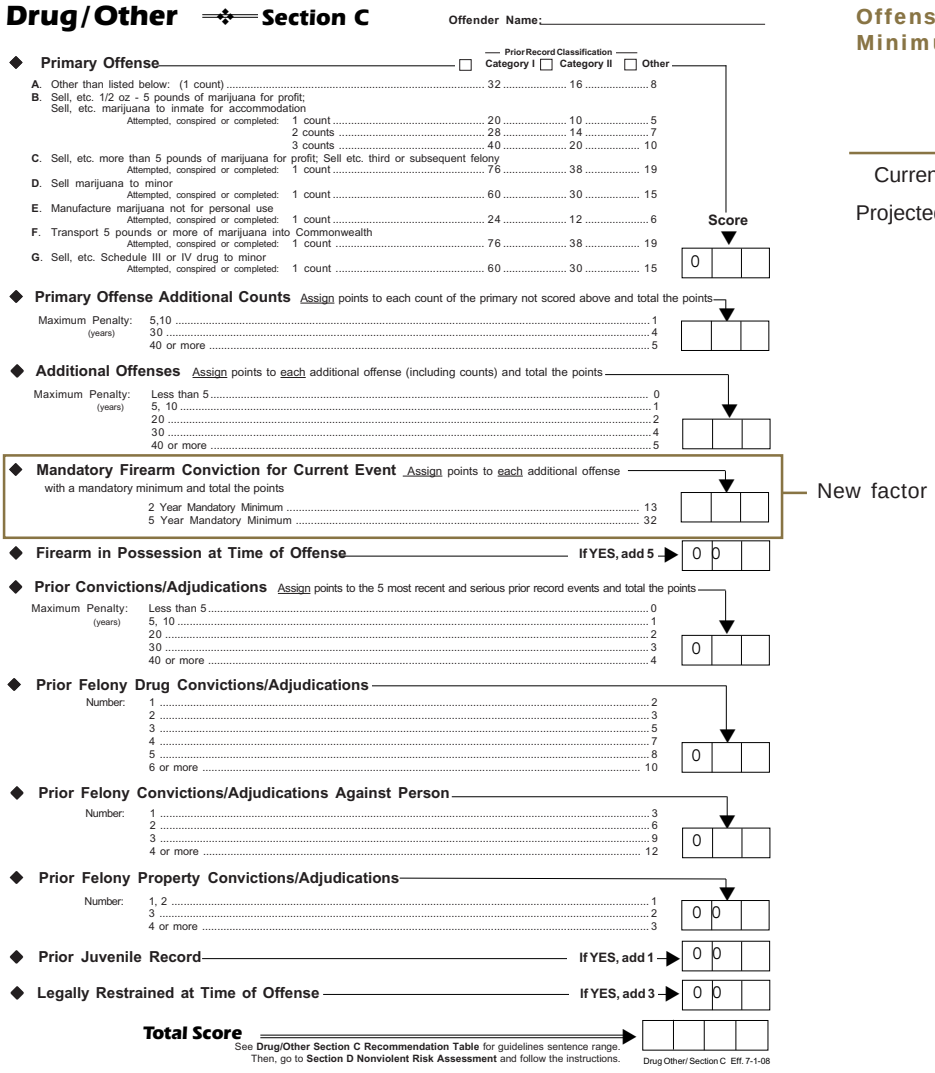


Figure 70

Current and Projected Sentencing Guidelines Compliance Rates for Drug Crimes Accompanied by Weapons Offenses Requiring a Mandatory Minimum Term

	Compliance	Mitigation	Aggravation
Current	69%	10%	21%
Projected	72%	15%	13%

Recommendation 2

Revise the weapons sentencing guidelines to increase the likelihood that some offenders convicted of making a false statement on a criminal history consent form required for purchasing a firearm (§ 18.2-308.2:2(K)) will be recommended for probation or up to six months of incarceration rather than incarceration for a term of more than six months.

Issue

The crime of making a false statement on a criminal history consent form required for purchasing a firearm (§ 18.2-308.2:2(K)) was added to the guidelines system effective July 1, 2006. While overall compliance with the guidelines for weapons offenses is fairly high, compliance is lower in cases involving this particular offense. In addition, when judges depart from the recommendation, they nearly always give the offender a sentence below the guidelines recommendation. This suggests that the guidelines could be refined to more closely reflect judicial thinking in these cases.

Discussion

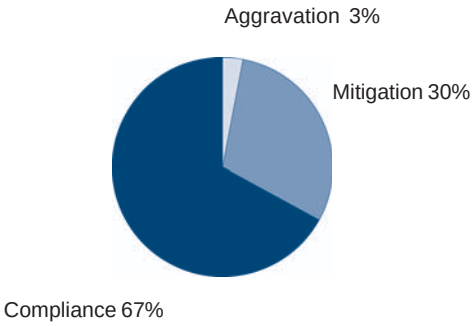
Under § 18.2-308.2:2(K), any person who wishes to purchase a firearm from a dealer must consent in writing, on a form provided by the Virginia State Police, to have the dealer obtain a criminal history record check. The State Police form asks the potential buyer if he has ever been convicted of a felony offense or found guilty or adjudicated delinquent as a juvenile 14 years of age or older (at the time of the offense) of a crime that would be a felony if committed by an adult. The form also asks the potential buyer if he is subject to a protective order or a court order restraining the applicant from harassing, stalking, or threatening his child or intimate partner, or a child of such partner. A form required by the federal government must also be completed. The federal form asks the potential buyer additional questions not found on the state form. For example, the federal form asks if the buyer has ever been convicted of a misdemeanor domestic violence offense, if he has ever been adjudicated mentally defective, or if he is under indictment for a felony. The potential buyer must show identification to the firearm dealer and sign the forms.

The dealer then submits the criminal history consent form to the State Police, which performs a check of the applicant's criminal history, the status of any protective orders, outstanding warrants, prior adjudications for mental deficiency, etc. The firearm dealer can complete the transaction only if authorized by the State Police. If the State Police, when it checks the criminal history and other criteria for purchasing a firearm, determines that the applicant has made a false statement on either the state or federal form, the agency can initiate an investigation that may ultimately result in conviction under § 18.2-308.2:2(K).

This crime has been covered by the sentencing guidelines since July 1, 2006. The Commission closely monitors the implementation of new guidelines to determine if, based on judicial acceptance in the form of compliance and departures, any adjustments are needed. During the first year of implementation, compliance for making a false statement on a consent form was lower than expected, at only 67% (Figure 71). Mitigations, or sentences below the guidelines, comprised nearly all of the remaining cases (30%). The most common reasons judges cited for mitigating were: the minimal circumstances of the case, acceptance of a plea agreement, the lack of a serious prior record in the offender's background, or that the sentence had been recommended by the Commonwealth's attorney. Although the most common reasons for mitigation cited by judges do not point to a specific factor or factors to evaluate for possible revision, they do suggest that there are circumstances in which judges find a sentence below the guidelines to be the most appropriate for the case.

Figure 71

Guidelines Compliance for Making a False Statement on a Consent Form Required for Purchase of a Firearm, FY2007 (66 cases)



The Commission's analysis indicates that judges are departing below the guidelines most often when the guidelines recommend a term of incarceration of more than six months. When the guidelines recommend more than six months of incarceration for an offender convicted of this crime, judges concur with that recommendation in less than 37% of the cases (Figure 72). In 63% of the cases, judges are imposing lesser sanctions, such as a short jail term or probation without an active term of incarceration. In contrast, when the guidelines recommend probation without active incarceration for an offender convicted of this crime, judges agree with that disposition in the vast majority of cases (79%).

To examine these cases in further detail, the Commission contacted the Virginia State Police. The State Police maintains files on all firearms transaction requests and the results of the state and federal criminal history searches, as well as searches for protective orders, outstanding warrants, and adjudications of mental deficiency. Records are kept for approximately 12 months and then destroyed. Commission staff requested copies of these records for persons convicted of making a false statement in order to gain a better understanding of the characteristics of these cases.

Figure 72

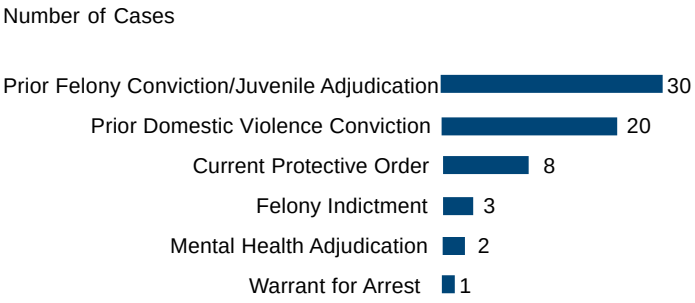
Recommended Dispositions and Actual Dispositions for Offenders Convicted of Making a False Statement on a Consent Form Required for Purchase of a Firearm, FY2007

	Actual Disposition		
Recommended Disposition	Probation	Incarceration 1 day-6 mos.	Incarceration >6 mos.
Probation	79.3%	20.7%	0.0%
Incarceration > 6 months	36.8%	26.3%	36.9%

The State Police was able to provide firearm transaction records for 61 of the 70 offenders under examination. Of the 61 offenders for whom records were available, 30 were found to have a prior felony conviction or juvenile adjudication for a felony that would preclude purchase of a firearm (Figure 73). According to the records, 10 of these offenders had failed to disclose an out-of-state felony conviction, while 8 offenders did not report a prior juvenile adjudication. Twenty of the 61 offenders had been convicted of a domestic violence misdemeanor in the past. Eight of the offenders were denied the transaction because they were the subject of a protective order at the time they wanted to purchase a firearm. Only three of the offenders were found to be under felony indictment and one had an outstanding warrant. Two were denied the purchase of a firearm because they had previously been adjudicated mentally defective. Multiple reasons could be cited for each offender.

Figure 73

Basis of Firearm Transaction Denial for Offenders Convicted of Making a False Statement on a Consent Form Required for Purchase of a Firearm, FY2007 (61 Offenders)



Source: Virginia State Police
Note: Firearm transaction records were available for 61 of the 70 offenders examined at this stage of the analysis. Multiple reasons may be cited in each case.

The Commission found that judicial compliance with the guidelines varies depending on the reason that the firearm transaction was denied. Judges complied with the guidelines most often if the offender was under felony indictment, was the subject of a warrant, or had a previous mental health adjudication. Although only six offenders met these criteria, judges complied with the guidelines in all six cases (Figure 74). For offenders subject to an active protective order, judges were also more likely to comply with the guidelines recommendation, as six of the eight cases were sentenced within the recommended range (75%). Judges complied with the guidelines in 70% of the cases in which the offender had a prior misdemeanor domestic assault conviction. In contrast, the compliance rate in cases in which the offender had a prior felony or a prior juvenile adjudication was as low as 60%, with mitigation accounting for 40% of the sentences.

Figure 74

Basis of Firearm Transaction Denial and Guidelines Compliance, FY2007

	Compliance	Mitigation	Aggravation	Cases
Felony Conviction or Juvenile Adjudication	60%	40%	0%	30
Domestic Violence Conviction	70	25	12.5	20
Protective Order	75	12.5	12.5	8
Felony Indictment, Warrant or Mental Health Adjudication	100	0	0	6

Source: Virginia State Police
Note: Firearm transaction records were available for 61 of the 70 offenders examined at this stage of the analysis. Multiple reasons may be cited in each case.

Figure 75

Basis of Firearm Transaction Denial and Guidelines Compliance for Offenders with a Prior Felony Conviction or Juvenile Adjudication for a Felony, FY2007

	Compliance	Mitigation	Aggravation	Cases
No Prior Felony Person Crime	55%	45%	0%	22
Prior Felony Person Crime	75	25	0%	8

Source: Virginia State Police
Note: Firearm transaction records were available for 61 of the 70 offenders examined at this stage of the analysis. Multiple reasons may be cited in each case.

When the Commission further explored the subset of offenders who had a prior felony conviction or juvenile adjudication, 8 of the 30 were found to have a prior felony conviction or adjudication for a crime against a person. When a prior person crime was noted in the record, judges complied with the guideline in 75% of the cases (Figure 75). Judges complied less often (55%) and mitigated at a substantially higher rate (45%) if the offender's prior record included only nonviolent felonies.

The Commission also found divergent compliance patterns based on the age of the offender's felony record (Figure 76). Offenders who had a felony conviction or juvenile adjudication within the last four years were more likely to receive a sentence within the guidelines range (75%). When the offender's felony conviction/adjudication was more than four years old, judges sentenced within the guidelines at a significantly lower rate (43%) and gave sentences below the guidelines in all remaining cases (57%). The Commission analyzed numerous cutoff points for the age of prior felony convictions and determined that a cutoff at four years demonstrated the greatest distinctions in sentencing patterns.

Figure 76

Age of Prior Felony Conviction/Adjudication for Offenders Convicted of Making a False Statement on a Consent Form Required for Purchase of a Firearm, FY2007

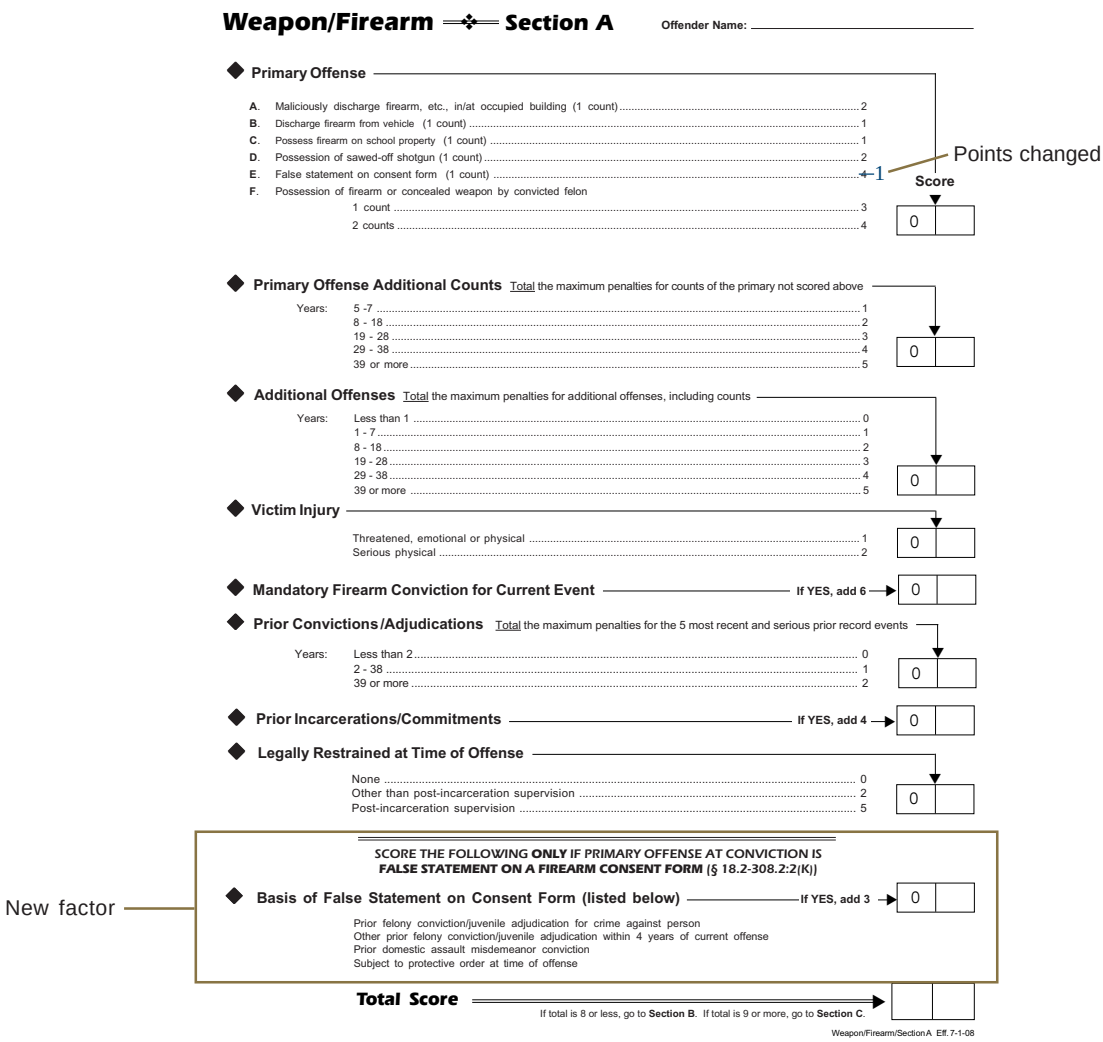
	Compliance	Mitigation	Aggravation	Cases
Prior Felony Conviction or Juvenile Adjudication within Last 4 Years	75%	25%	0%	16
Prior Felony Conviction or Juvenile Adjudication More than 4 Years Ago	43	57	0%	14

Source: Virginia State Police
Note: Firearm transaction records were available for 61 of the 70 offenders examined at this stage of the analysis. Multiple reasons may be cited in each case.

Through this analysis, the Commission was able to identify several factors that judges appear to use to differentiate offenders who make a false statement on a firearm consent form. This has led the Commission to recommend revising Section A of the weapons guidelines specifically for this crime. This recommendation entails decreasing the points assigned to the primary offense factor on Section A (from 4 points to 1) and adding a factor to increase the score (by 3 points) for offenders with a prior felony conviction or juvenile adjudication for a crime against a person, a conviction/adjudication for any other felony within the last four years, a prior domestic assault misdemeanor conviction, or an outstanding protective order. The proposed worksheet is shown in Figure 77. For offenders meeting any of the above conditions, the revision will have no impact on the guidelines

Figure 77

Proposed Weapon Section A Worksheet



recommendation. For the remaining offenders, the Section A total score will be lower and, as a result, the guidelines will be less likely to recommend a term of incarceration in excess of six months and more likely to recommend probation or incarceration up to six months in jail.

While the proposal reduces the Section A score for some offenders, the recommended changes more accurately reflect judicial practice. With these revisions, judicial concurrence with the guidelines is expected to improve. Given judicial practices during FY2007, compliance with the guidelines for this crime is anticipated to increase from 67% to 70%. While this is a modest improvement in the compliance rate, this change is expected to reduce the disproportionate rate at which judges have been sentencing below the guidelines. Mitigation departures are expected to decline from 30% to 17%, resulting in a more balanced departure pattern above and below the guidelines.

The Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines; therefore, no impact on correctional bed space is anticipated.

Figure 78

Current and Projected Sentencing Guidelines Compliance Rates for Making a False Statement on a Consent Form Required for Purchase of a Firearm

	Compliance	Mitigation	Aggravation
Current	67%	30%	3%
Projected	70%	17%	13%

Recommendation 3

Amend the miscellaneous sentencing guidelines to:
1) add the offenses of gross, wanton, or reckless care for a child (§ 18.2-371.1(B)) and cruelty and injuries to children (§ 40.1-103), and 2) adjust the points assigned to the current child abuse felony covered by this worksheet, child abuse/neglect resulting in serious injury (§ 18.2-371.1(A)), to increase the sentence recommendation in certain cases, particularly those resulting in physical injury to a child.

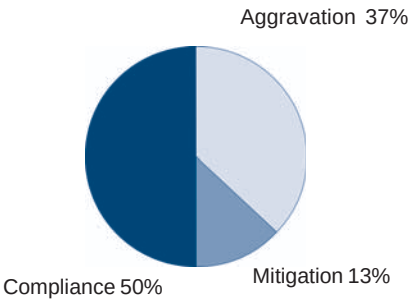
Issue

The current guidelines cover the crime of child abuse/neglect resulting in serious injury, a Class 4 felony (§ 18.2-371.1(A)). Two related lesser offenses, including one defined in the same statute as the current guidelines offense, are not covered.

Compliance for the offense that is currently covered by the guidelines is significantly lower than the compliance rate for most other crimes, with most of the departure sentences exceeding the guidelines recommendation. The guidelines can be revised to be more closely aligned with judges' actual sentencing practices.

Figure 79

Guidelines Compliance for Child Abuse and Neglect Resulting in Serious Injury (§ 18.2-371.1(A)) (216 cases)



Discussion

Each year, the Commission closely analyzes compliance with the guidelines by offense, including departure patterns, to pinpoint specific areas where the guidelines may need adjustment to better reflect current judicial thinking. With a compliance rate of only 50% and an aggravation rate of 37%, the guidelines for the crime of child abuse/neglect resulting in serious injury (§ 18.2-371.1(A)) are clearly out of sync with judicial practice (Figure 79). When departing above the guidelines, judges are most often citing the extreme violence in the case, which was noted in nearly half of the aggravation departures. Judges also frequently cite the victim's vulnerability and the flagrancy of the offense when giving a sentence above the guidelines.

Using the departure reasons provided by judges, the Commission examined the current guidelines for this offense. Numerous possible score revisions were tested. The objective was to identify the best fit for the sentencing data, in order to maximize compliance with the guidelines and, if possible, produce a balance between mitigation and aggravation de-

partures. The Commission found that sentencing practices for child abuse/neglect resulting in serious injury vary considerably, making the identification of factors that are consistently used by judges more difficult.

The Commission has developed a recommendation to at least marginally improve compliance for this offense. The Commission recommends increasing the primary offense score and the victim injury score on Section A of the miscellaneous guidelines. In addition, the Commission recommends increasing the score for the primary offense factor on the Section B worksheet. On Section C, the Commission recommends revising the primary offense scores for this crime downward but this change would be accompanied by increases in the scores for victim injury. The recommended revisions are presented in Figure 80, 81, and 82.

Figure 80

Proposed Miscellaneous Section A Worksheet

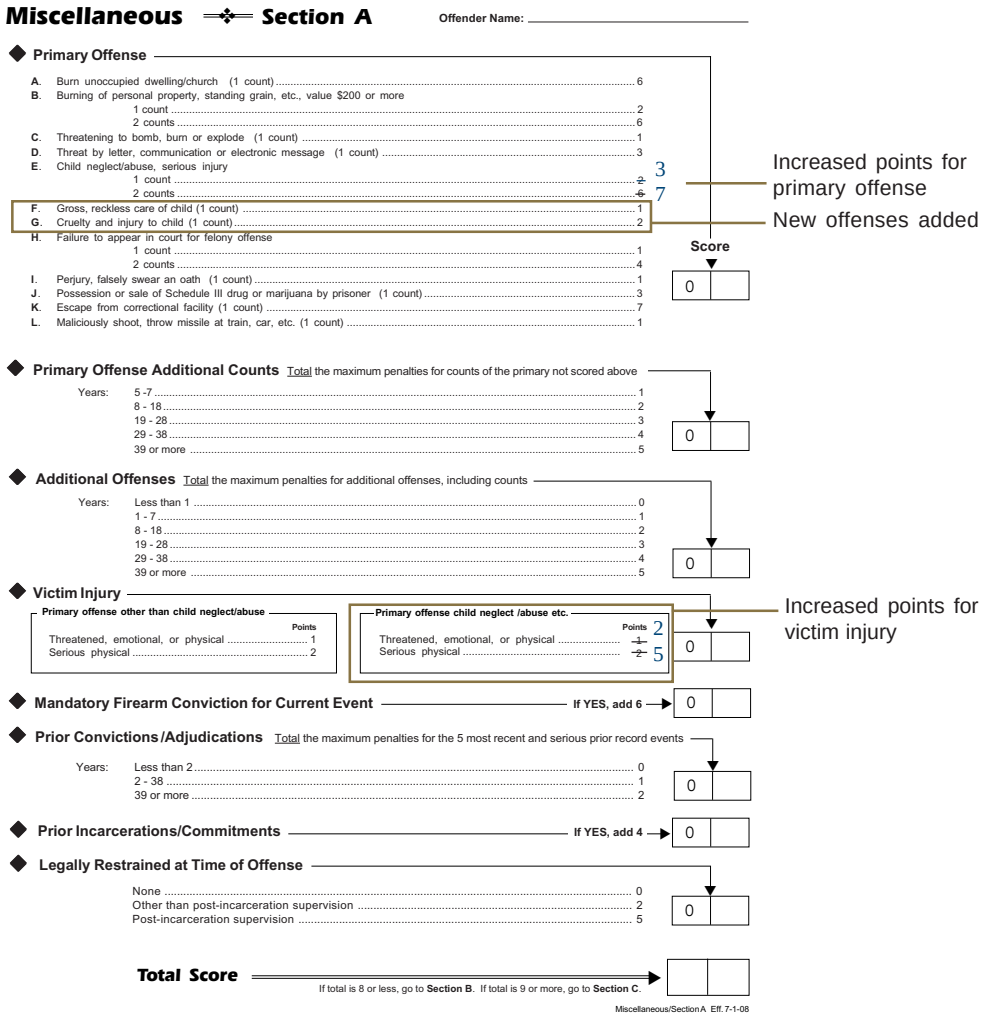
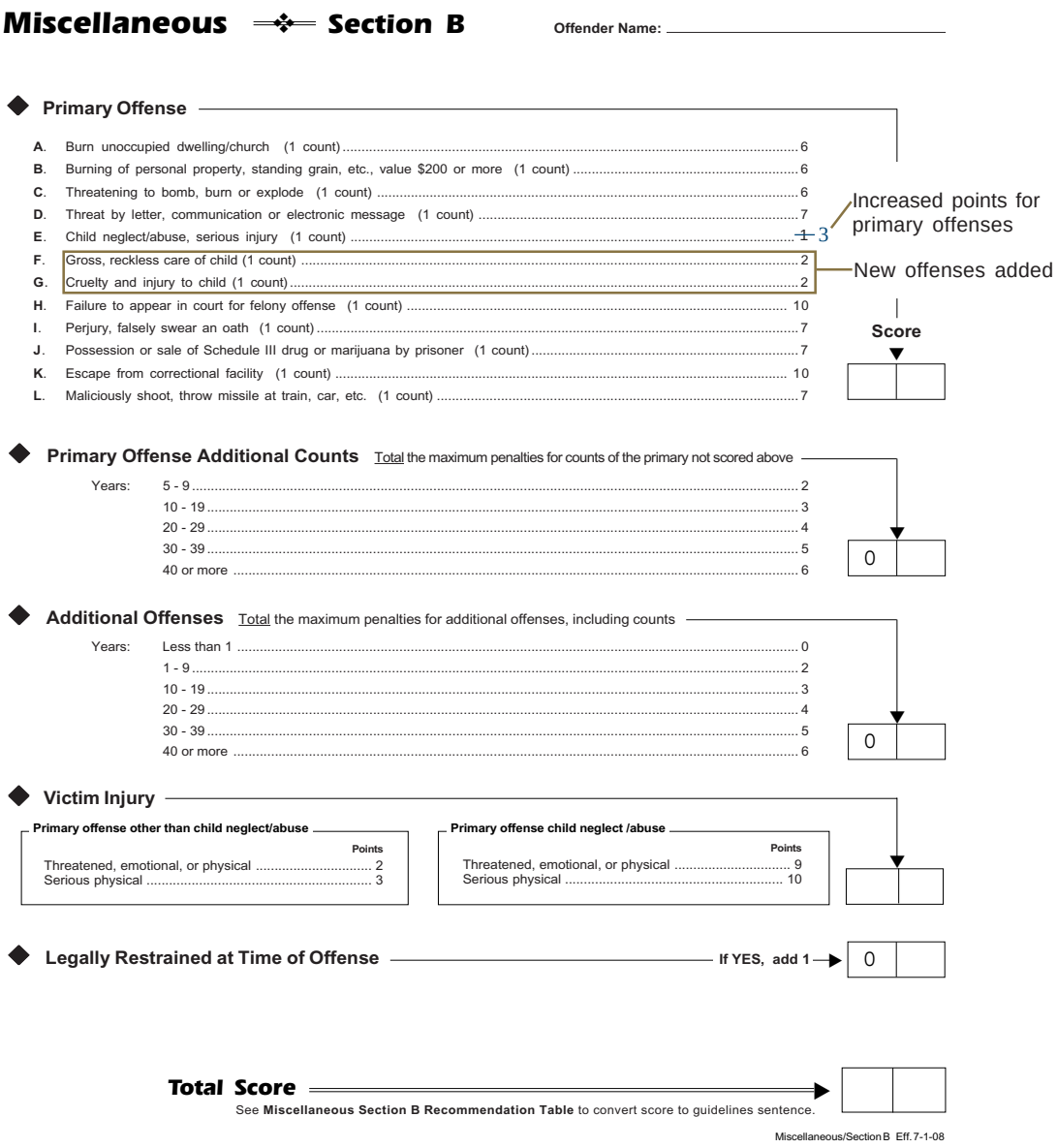


Figure 81

Proposed Miscellaneous Section B Worksheet



Miscellaneous — Section B

Offender Name: _____

Primary Offense

A.	Burn unoccupied dwelling/church (1 count)	6
B.	Burning of personal property, standing grain, etc., value $200 or more (1 count)	6
C.	Threatening to bomb, burn or explode (1 count)	6
D.	Threat by letter, communication or electronic message (1 count)	7
E.	Child neglect/abuse, serious injury (1 count)	~~1~~ 3
F.	Gross, reckless care of child (1 count)	2
G.	Cruelty and injury to child (1 count)	2
H.	Failure to appear in court for felony offense (1 count)	10
I.	Perjury, falsely swear an oath (1 count)	7
J.	Possession or sale of Schedule III drug or marijuana by prisoner (1 count)	7
K.	Escape from correctional facility (1 count)	10
L.	Maliciously shoot, throw missile at train, car, etc. (1 count)	7

Increased points for primary offenses

New offenses added

Score

Primary Offense Additional Counts Total the maximum penalties for counts of the primary not scored above

Years:		
	5 - 9	2
	10 - 19	3
	20 - 29	4
	30 - 39	5
	40 or more	6

0

Additional Offenses Total the maximum penalties for additional offenses, including counts

Years:		
	Less than 1	0
	1 - 9	2
	10 - 19	3
	20 - 29	4
	30 - 39	5
	40 or more	6

0

Victim Injury

Primary offense other than child neglect/abuse

	Points
Threatened, emotional, or physical	2
Serious physical	3

Primary offense child neglect /abuse

	Points
Threatened, emotional, or physical	9
Serious physical	10

Legally Restrained at Time of Offense — If YES, add 1 → 0

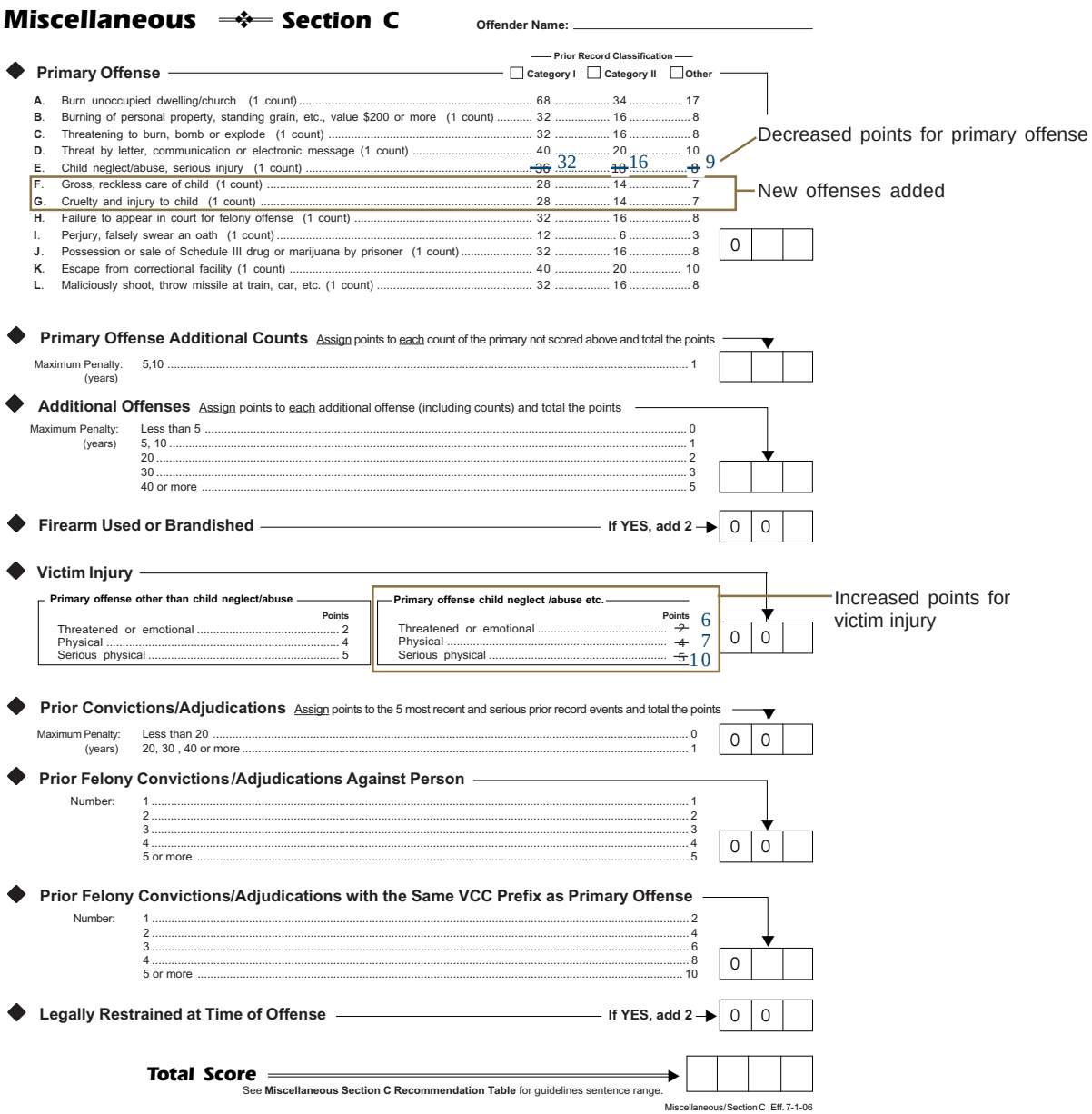
Total Score

See **Miscellaneous Section B Recommendation Table** to convert score to guidelines sentence.

Miscellaneous/Section B Eff. 7-1-08

Figure 82

Proposed Miscellaneous Section C Worksheet



With the recommended changes in place, compliance is expected to improve, albeit modestly (Figure 83). It is anticipated, however, that the proposal will provide an improved departure pattern, as it should reduce the aggravation rate from 37% to 29%. The Commission has directed staff to continue examining this offense in the hopes that the guidelines can be further improved. This will likely be an iterative process with improvements made over several years. Continued feedback from judges will be of critical importance to this process.

Figures 80, 81 and 82 also show the proposed guidelines for the offenses of gross, wanton, or reckless care for a child (§ 18.2-371.1(B)) and cruelty and injuries to children (§ 40.1-103), both Class 6 felonies. The Commission found that approximately 43% of offenders convicted of a Class 6 felony child abuse receive probation without an active term of incarceration. Nearly 30% are given an incarceration term up to six months in jail; the median sentence in these cases is three months. The remaining 27% are sentenced to more than six months of incarceration; the median sentence for these offenders is two years. Similar to the Class 4 felony child abuse offense discussed above, the Commission's analysis revealed considerable variation in sanctioning practices for these two Class 6 felony offenses. Based on recent sanctioning practices, the Commission developed guidelines for these crimes that would maximize judicial concurrence, although compliance is expected to be lower than the compliance rate for most other offenses (Figure 84). The proposed guidelines balance departures above and below the guidelines to the extent possible. As noted above, child abuse crimes will be the subject of ongoing study by Commission staff.

The Commission's proposal is designed to integrate current judicial sanctioning practices into the guidelines; therefore, no impact on correctional bed space is anticipated.

Figure 83

Current and Projected Sentencing Guidelines Compliance Rates for Child Abuse/Neglect Resulting in Serious Injury (§ 18.2-371.1(A))

	Compliance	Mitigation	Aggravation
Current	50%	13%	37%
Projected	56%	15%	29%

Figure 84

Projected Sentencing Guidelines Compliance Rates for Gross, Wanton, or Reckless Care for a Child (§ 18.2-371.1(B)) and Cruelty and Injuries to Children (§ 40.1-103)

	Compliance	Mitigation	Aggravation
Projected	54%	25%	21%

5 APPENDICES

Appendix 1

Judicial Reasons for Departure from Sentencing Guidelines Property, Drug and Miscellaneous Offenses

Reasons for MITIGATION	Burg. of Dwelling (N=172)	Burg. Other Structure (N=97)	Sch. I/II Drugs (N=697)	Other Drugs (N=54)	Fraud (N=229)	Larceny (N=375)	Misc (N=51)	Traffic (N=136)	Weapon (N=72)
No reason given	24	15	140	13	39	83	13	38	11
Minimal property or monetary loss	1	0	0	0	1	5	0	0	1
Minimal circumstances/facts of the case	14	9	30	1	17	16	2	10	15
Offender not the leader	1	1	2	0	0	0	0	0	0
Small amount of drugs involved in the case	0	0	20	1	2	0	1	0	0
Offender and victims are relatives/friends; Victim Request	1	0	0	0	4	1	0	0	0
Little or no injury/offender did not intend to harm; victim requested lenient sentence	6	0	0	0	5	7	0	0	0
Offender has no prior record	1	2	5	0	0	1	0	0	0
Offender has minimal prior record	7	1	12	2	4	5	0	2	5
Offender's criminal record overstates his degree of criminal orientation	1	2	13	0	1	2	1	1	2
Offender cooperated with authorities	23	9	80	7	15	20	3	6	4
Offender is mentally or physically impaired	6	1	23	3	9	16	2	5	3
Offender has emotional or psychiatric problems	1	3	4	0	1	0	0	1	0
Offender has drug or alcohol problems	0	2	3	1	4	1	0	3	0
Offender needs counseling	0	1	7	0	1	1	0	1	0
Offender has good potential for rehabilitation	12	4	42	2	22	35	3	7	7
Offender shows remorse	3	0	3	1	2	2	0	2	0
Age of Offender	8	2	9	0	1	4	0	1	0
Jury sentence	1	0	4	0	1	4	1	3	1
Multiple charges are being treated as one criminal event	1	1	2	0	1	0	0	0	0
Guilty plea	3	0	9	2	3	5	0	1	2
Sentence recommended by Comm. Atty or probation officer	11	5	36	3	13	17	3	5	7
Weak evidence or weak case	4	2	25	0	3	8	0	2	2
Plea agreement	31	14	151	17	52	97	17	31	15
Sentencing consistency with co-defendant or with similar cases in the jurisdiction	2	6	4	0	3	2	1	2	0
Time served	3	3	6	0	8	8	0	0	0
Offender already sentenced by another court or in previous proceeding for other offenses	17	12	48	3	22	20	1	3	2
Offender will likely have his probation revoked	3	0	1	0	0	0	0	0	0
Offender is sentenced to an alternative punishment to incarceration	13	9	38	2	9	16	0	3	0
Attempted act, not completed	0	0	0	0	1	0	0	0	1
Guidelines recommendation is too harsh	2	5	4	0	2	2	1	7	1
Guidelines recommendation exceeded the statutory maximum	0	0	0	0	0	0	0	0	0
Judge rounded guidelines minimum to nearest whole year	0	0	1	0	0	0	0	0	0
Other mitigating factors	2	4	33	1	5	9	2	4	1

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 1

Judicial Reasons for Departure from Sentencing Guidelines Property, Drug and Miscellaneous Offenses

Reasons for AGGRAVATION	Burg. of Dwelling (N=135)	Burg. Other Structure (N=79)	Sch. I/II Drugs (N=922)	Other Drugs (N=119)	Fraud (N=160)	Larceny (N=441)	Misc (N=53)	Traffic (N=274)	Weapon (N=60)
No reason given	20	9	185	21	33	94	9	54	9
Extreme property or monetary loss	0	2	0	0	6	26	0	0	0
The offense involved a high degree of planning	3	2	1	0	3	16	0	2	0
Aggravating circumstances/flagrancy of offense	54	18	62	8	23	49	9	34	9
Offender used a weapon in commission of the offense	1	1	2	0	0	2	0	1	3
Offender was the leader	1	0	0	0	0	2	0	0	0
Offender's true offense behavior was more serious than offenses at conviction	4	1	15	5	2	8	2	2	3
Offender is related to or is the caretaker of the victim	0	0	0	0	0	1	0	0	0
Extraordinary amount of drugs or purity involved in the case	0	0	29	5	0	0	0	9	0
Aggravating circumstances relating to sale of drugs	0	0	4	1	0	0	0	0	0
Drugs were involved	0	0	6	0	0	2	0	0	0
Offender immersed in drug culture	0	0	17	1	0	0	0	0	0
Unprovoked attack	0	0	0	0	0	0	0	0	0
Victim vulnerability	1	0	0	1	3	6	2	1	0
Victim request	8	3	2	1	2	5	2	11	0
Victim injury	1	0	0	0	0	2	7	5	0
Previous punishment of offender has been ineffective	1	3	22	3	1	12	1	5	3
Offender was under some form of legal restraint at time of offense	1	0	23	1	0	3	0	2	1
Offender has a serious juvenile record	0	1	1	0	0	0	0	0	0
Offender's criminal record understates the degree of his criminal orientation	5	5	44	2	3	15	3	14	1
Offender has previous conviction(s) or other charges for the same type of offense	5	3	32	7	6	22	0	36	0
New crime committed after current offense	1	1	13	2	3	4	0	3	0
Offender failed to cooperate with authorities	2	1	19	0	4	17	2	5	0
Offender has mental health problems	1	0	0	0	1	0	1	0	0
Offender has drug or alcohol problems	0	0	12	2	1	1	0	12	0
Offender has poor rehabilitation potential	5	3	47	1	5	24	1	27	2
Offender shows no remorse	5	1	15	0	1	13	8	5	5
Age of offender	0	0	2	0	0	0	0	0	0
Jury sentence	4	6	36	7	11	16	2	17	2
Sentence recommended by Comm. Attorney or probation officer	2	1	12	0	2	6	0	3	2
Plea agreement	18	14	179	27	30	65	9	32	21
Community sentiment	1	0	6	0	4	2	1	1	0
Sentencing consistency with codefendant or with other similar cases in the jurisdiction	1	2	7	1	3	2	0	0	0
Teach offender a lesson	0	1	4	0	0	1	0	1	0
Offender is sentenced to an alt. punishment to incarceration	4	3	72	10	10	23	0	11	0
Guidelines recommendation is too low	17	9	70	14	15	54	7	24	6
Mandatory minimum penalty is required in the case	0	0	7	0	0	1	0	6	3
Judge rounded guidelines minimum to nearest whole year	1	0	3	0	1	0	0	0	0
Other reason for aggravation	2	1	17	4	2	11	0	6	0

Note: Figures indicate the number of times a departure reason was cited.
Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines
Offenses Against the Person

Reasons for Mitigation	Assault (N=189)	Homicide (N=49)	Kidnapping (N=15)	Robbery (N=233)	Rape (N=43)	Sexual Assault (N=74)
No reason given	32	2	2	42	4	6
Minimal property or monetary loss	0	0	0	0	0	0
Minimal circumstances/facts of the case	15	7	0	16	3	10
Offender was not the leader or active participant in offense	1	2	0	5	0	0
Offender and victim are related or friends	2	0	0	0	1	0
Little or no victim injury/offender did not intend to harm; victim requested lenient sentence	21	0	1	4	6	3
Victim was a willing participant or provoked the offense	4	0	0	0	2	2
Offender has no prior record	2	0	0	4	0	3
Offender has minimal prior criminal record	3	1	1	15	5	5
Offender's criminal record overstates his degree of criminal orientation	3	0	0	41	0	0
Offender cooperated with authorities or aided law enforcement	3	8	0	0	1	3
Offender has emotional or psychiatric problems	2	0	2	1	0	3
Offender is mentally or physically impaired	9	1	0	5	2	6
Offender has drug or alcohol problems	1	0	1	0	0	0
Offender needs counseling	0	0	0	0	0	0
Offender has good potential for rehabilitation	12	2	0	14	5	4
Offender shows remorse	1	1	0	3	1	1
Age of offender	2	2	0	13	2	8
Multiple charges are being treated as one criminal event	0	0	0	2	0	0
Guilty plea	3	1	1	1	1	1
Jury sentence	2	4	2	2	2	1
Sentence was recommended by Comm. atty or probation officer	14	4	0	20	4	5
Weak evidence or weak case against the offender	9	3	1	5	3	5
Plea agreement	37	12	7	22	12	18
Sentencing consistency with codefendant or with other similar cases in the jurisdiction	0	2	0	7	0	1
Time served	5	0	0	3	0	0
Offender already sentenced by another court or in previous proceeding for other offenses	5	2	1	6	0	2
Offender will likely have his probation revoked	0	0	0	0	0	0
Offender is sentenced to an alt. punishment to incarceration	6	0	0	4	1	0
Guidelines recommendation is too harsh	1	0	0	3	1	1
Attempt, not a completed act	0	0	0	0	0	0
Guidelines recommendation exceeded the statutory maximum	0	0	0	0	0	0
Judge rounded guidelines minimum to nearest whole year	0	0	0	0	0	0
Other reasons for mitigation	2	1	0	8	1	0

Note: Figures indicate the number of times a departure reason was cited.

Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 2

Judicial Reasons for Departure from Sentencing Guidelines
Offenses Against the Person

Reasons for AGGRAVATION	Assault (N=151)	Homicide (N=51)	Kidnapping (N=22)	Robbery (N=94)	Rape (N=16)	Sexual Assault (N=76)
No reason given	31	7	2	13	3	7
The offense involved a high degree of planning	0	1	0	2	1	2
Aggravating circumstances/flagrancy of offense	25	12	6	28	3	14
Offender used a weapon in commission of the offense	3	1	0	3	0	0
Offender was the leader	2	1	1	1	0	0
Offender's true offense behavior was more serious than offenses at conviction	5	0	0	2	1	2
Offender is related to or is the caretaker of the victim	0	0	1	1	1	7
Offender immersed in drug culture	1	0	0	0	0	0
Offense was an unprovoked attack	4	0	0	0	0	0
Offender knew of victim's vulnerability	5	2	1	4	2	12
The victim(s) wanted a harsh sentence	4	0	0	1	0	4
Extreme violence or severe victim injury	40	3	3	3	1	1
Previous punishment of offender has been ineffective	1	1	0	2	1	0
Offender was under some form of legal restraint at time of offense	2	0	0	0	0	1
Offender has a serious juvenile record	1	0	0	1	0	0
Offender's record understates the degree of his criminal orientation	5	2	0	1	0	0
Offender has previous conviction(s) or other charges for the same offense	7	0	0	2	0	1
New crime committed after current offense	0	1	0	0	0	0
Offender failed to cooperate with authorities	2	0	0	2	0	1
Offender has mental health problems	0	0	0	0	0	0
Offender has drug or alcohol problems	1	1	0	1	0	0
Offender has poor rehabilitation potential	6	1	1	10	2	8
Offender shows no remorse	11	3	0	5	1	6
Age of offender	1	0	0	0	0	0
Jury sentence	16	21	2	16	3	3
Sentence was recommended by Comm, atty or probation officer	1	1	0	1	0	0
Plea agreement	33	1	9	6	0	16
Community sentiment	0	0	0	0	0	0
Offender is sentenced to an alt. punishment to incarceration	1	0	0	0	0	0
Guidelines recommendation is too low	22	7	1	14	1	14
Mandatory minimum penalty is required in the case	0	1	0	1	0	1
Judge rounded guidelines minimum to nearest whole year	0	0	0	1	0	0
Other reasons for aggravation	1	1	0	0	1	5

Note: Figures indicate the number of times a departure reason was cited.
Because multiple reasons may be cited in each case, figures will not total the number of cases in each offense group.

Appendix 3

Sentencing Guidelines Compliance by Judicial Circuit: Property, Drugs, and Miscellaneous Offenses

BURGLARY OF DWELLING

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	52.2%	30.4%	17.4%	23
2	59.0	23.0	18.0	61
3	79.2	12.5	8.3	24
4	62.2	28.9	8.9	45
5	55.2	17.2	27.6	29
6	78.1	18.8	3.1	32
7	79.2	8.3	12.5	24
8	66.7	20.0	13.3	30
9	85.7	0.0	14.3	21
10	80.8	11.5	7.7	26
11	73.3	0.0	26.7	15
12	60.0	25.0	15.0	20
13	71.4	19.1	9.5	21
14	51.0	24.5	24.5	53
15	65.7	8.6	25.7	35
16	69.0	20.7	10.3	29
17	36.4	0.0	63.6	11
18	43.8	25.0	31.3	16
19	66.7	9.1	24.2	33
20	66.7	13.3	20.0	15
21	75.0	25.0	0.0	16
22	55.2	17.2	27.6	29
23	48.6	45.7	5.7	35
24	60.9	34.8	4.3	46
25	73.0	21.6	5.4	37
26	65.8	26.3	7.9	38
27	80.0	15.6	4.4	45
28	76.0	8.0	16.0	25
29	54.8	9.7	35.5	31
30	90.9	9.1	0.0	11
31	75.0	8.3	16.7	12
Total	**65.4**	**19.4**	**15.2**	**888**

BURGLARY - OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	72.4%	10.4%	17.2%	29
2	69.4	25.0	5.6	36
3	78.6	0.0	21.4	14
4	77.8	16.6	5.6	18
5	76.4	11.8	11.8	17
6	90.9	0.0	9.1	11
7	93.7	6.3	0.0	16
8	90.9	9.1	0.0	11
9	61.5	23.1	15.4	13
10	80.0	13.3	6.7	15
11	75.0	8.3	16.7	12
12	77.8	16.6	5.6	18
13	84.0	8.0	8.0	25
14	79.3	13.8	6.9	29
15	53.3	17.8	28.9	45
16	56.2	31.3	12.5	16
17	87.4	6.3	6.3	16
18	66.7	0.0	33.3	9
19	57.2	21.4	21.4	14
20	80.0	20.0	0.0	10
21	87.5	12.5	0.0	16
22	65.0	35.0	0.0	20
23	48.4	29.0	22.6	31
24	57.8	21.1	21.1	19
25	78.1	0.0	21.9	32
26	72.2	16.7	11.1	36
27	89.7	2.6	7.7	39
28	62.1	31.0	6.9	29
29	63.1	15.8	21.1	19
30	80.0	6.7	13.3	15
31	81.8	18.2	0.0	11
Total	**72.5**	**15.1**	**12.3**	**641**

DRUG/OTHER

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	82.1%	3.6%	14.3%	28
2	90.4	2.6	7.0	115
3	80.8	7.7	11.5	26
4	86.0	3.5	10.5	57
5	88.9	0.0	11.1	18
6	81.2	12.5	6.3	16
7	78.1	9.4	12.5	32
8	90.0	0.0	10.0	20
9	77.8	0.0	22.2	9
10	83.3	0.0	16.7	12
11	76.9	7.7	15.4	13
12	76.9	2.6	20.5	39
13	75.0	20.8	4.2	24
14	83.8	2.7	13.5	37
15	66.7	6.3	27.0	63
16	94.4	0.0	5.6	18
17	90.4	4.8	4.8	21
18	100.0	0.0	0.0	5
19	84.1	4.8	11.1	63
20	96.2	0.0	3.8	26
21	86.7	13.3	0.0	15
22	84.6	0.0	15.4	13
23	71.1	6.7	22.2	45
24	62.5	12.5	25.0	32
25	86.8	9.4	3.8	53
26	75.6	13.3	11.1	45
27	97.6	0.0	2.4	42
28	88.9	2.8	8.3	36
29	56.5	0.0	43.5	23
30	85.7	14.3	0.0	14
31	89.3	7.1	3.6	28
Total	**82.5**	**5.5**	**12.0**	**988**

SCHEDULE I/II DRUGS

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	85.4%	5.0%	9.6%	280
2	85.9	6.4	7.7	597
3	81.3	6.1	12.6	628
4	81.0	11.9	7.1	893
5	84.1	3.8	12.1	214
6	79.1	3.5	17.4	115
7	91.7	3.2	5.1	571
8	87.6	5.8	6.6	362
9	81.1	8.4	10.5	143
10	89.7	5.9	4.4	136
11	88.1	5.2	6.7	135
12	70.3	6.0	23.7	266
13	81.7	12.1	6.2	811
14	80.0	7.6	12.4	355
15	69.9	7.6	22.5	432
16	81.6	9.2	9.2	195
17	85.5	6.2	8.3	145
18	79.4	16.7	3.9	102
19	85.5	7.0	7.5	242
20	85.6	5.8	8.6	139
21	87.5	7.3	5.2	96
22	73.5	3.3	23.2	181
23	83.7	9.6	6.7	375
24	79.5	10.4	10.1	355
25	82.0	6.8	11.2	322
26	88.2	5.3	6.5	356
27	93.2	3.4	3.4	351
28	82.8	9.7	7.5	186
29	63.4	6.1	30.5	131
30	86.3	4.2	9.5	95
31	86.4	5.3	8.3	206
Missing	66.7	0.0	33.3	3
Total	**82.8**	**7.4**	**9.8**	**9,418**

FRAUD

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	86.4%	4.5%	9.1%	66
2	93.4	4.4	2.2	137
3	81.3	4.7	14.0	43
4	84.1	10.9	5.0	119
5	76.6	12.8	10.6	47
6	90.0	6.0	4.0	50
7	82.4	12.3	5.3	57
8	75.9	6.9	17.2	29
9	89.1	0.0	10.9	46
10	89.4	8.7	1.9	104
11	89.5	1.5	9.0	67
12	81.4	6.7	11.9	135
13	91.8	4.1	4.1	49
14	87.3	8.5	4.2	142
15	77.7	10.7	11.6	233
16	83.6	11.5	4.9	61
17	82.7	9.6	7.7	52
18	85.7	12.9	1.4	70
19	87.8	6.8	5.4	148
20	90.4	8.4	1.2	83
21	89.2	8.1	2.7	37
22	95.2	2.4	2.4	85
23	74.2	22.9	2.9	105
24	83.5	14.3	2.2	91
25	86.0	7.3	6.7	150
26	83.1	12.7	4.2	142
27	95.9	4.1	0.0	122
28	91.3	6.2	2.5	81
29	80.0	6.0	14.0	100
30	91.1	8.9	0.0	45
31	95.5	0.0	4.5	67
Total	**85.9**	**8.3**	**5.8**	**2,763**

LARCENY

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	84.6%	6.4%	9.0%	156
2	86.0	8.5	5.5	308
3	82.8	8.6	8.6	93
4	76.8	17.3	5.9	306
5	85.0	6.0	9.0	100
6	80.6	12.9	6.5	62
7	85.3	9.8	4.9	82
8	85.1	12.6	2.3	87
9	73.1	5.6	21.3	108
10	87.8	3.7	8.5	82
11	82.9	0.0	17.1	70
12	77.6	6.1	16.3	246
13	81.3	13.8	4.9	123
14	86.3	7.8	5.9	358
15	76.8	8.5	14.7	307
16	86.6	6.7	6.7	89
17	84.1	5.1	10.8	158
18	91.7	6.4	1.9	109
19	79.5	6.3	14.2	240
20	93.8	0.9	5.3	114
21	85.0	13.7	1.3	80
22	79.1	6.8	14.1	192
23	78.0	10.1	11.9	159
24	87.1	8.8	4.1	147
25	90.5	5.1	4.4	158
26	81.9	10.4	7.7	183
27	94.9	3.2	1.9	157
28	93.0	4.2	2.8	71
29	58.9	8.2	32.9	146
30	82.8	7.1	10.1	99
31	88.1	4.8	7.1	126
Total	**82.7**	**8.0**	**9.4**	**4,716**

Appendix 3

Sentencing Guidelines Compliance by Judicial Circuit: Property, Drugs, and Miscellaneous Offenses

TRAFFIC

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	82.2%	5.1%	12.7%	79
2	80.2	4.8	15.0	147
3	76.2	14.3	9.5	42
4	85.3	10.8	3.9	102
5	86.8	0.0	13.2	38
6	83.0	7.5	9.5	53
7	76.9	5.8	17.3	52
8	77.1	2.9	20.0	35
9	78.1	3.1	18.8	64
10	94.6	2.7	2.7	75
11	76.4	11.8	11.8	34
12	81.8	5.7	12.5	88
13	75.5	14.0	10.5	57
14	82.5	7.0	10.5	86
15	74.3	8.1	17.6	148
16	77.6	8.3	14.1	85
17	68.2	4.5	27.3	44
18	73.7	26.3	0.0	19
19	71.9	4.5	23.6	89
20	79.4	1.6	19.0	63
21	90.9	6.1	3.0	33
22	88.0	3.0	9.0	67
23	72.2	15.3	12.5	72
24	84.6	9.6	5.8	104
25	75.0	7.6	17.4	92
26	80.0	5.6	14.4	125
27	93.3	1.7	5.0	60
28	96.8	1.6	1.6	61
29	57.1	0.0	42.9	28
30	90.9	0.0	9.1	22
31	85.5	1.8	12.7	55
Total	**80.7**	**6.4**	**12.9**	**2119**

MISCELLANEOUS

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	80.0%	20.0%	0.0%	5
2	72.2	0.0	27.8	18
3	80.0	20.0	0.0	5
4	85.7	9.5	4.8	21
5	50.0	50.0	0.0	4
6	33.3	50.0	16.7	24
7	75.0	8.3	16.7	12
8	60.0	20.0	20.0	5
9	75.0	0.0	25.0	8
10	66.7	0.0	33.3	3
11	70.6	11.8	17.6	17
12	85.8	7.1	7.1	14
13	33.3	55.6	11.1	9
14	71.4	14.3	14.3	14
15	53.6	21.4	25.0	28
16	100.0	0.0	0.0	6
17	40.0	20.0	40.0	5
18	0.00	0.0	0.0	0
19	50.0	0.0	50.0	6
20	77.8	11.1	11.1	9
21	100.0	0.0	0.0	5
22	78.6	7.1	14.3	14
23	55.6	22.2	22.2	9
24	69.2	23.1	7.7	13
25	77.8	11.1	11.1	9
26	62.4	18.8	18.8	16
27	60.0	0.0	40.0	5
28	100.0	0.0	0.0	2
29	42.9	21.4	35.7	14
30	100.0	0.0	0.0	3
31	80.0	0.0	20.0	5
Total	**66.2**	**16.6**	**17.2**	**308**

WEAPONS

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	88.9%	11.1%	0.0%	9
2	73.5	8.8	17.7	34
3	79.0	10.5	10.5	19
4	94.2	2.9	2.9	34
5	70.6	17.6	11.8	17
6	80.0	6.7	13.3	15
7	75.0	16.7	8.3	12
8	80.0	10.0	10.0	10
9	60.0	0.0	40.0	5
10	75.0	14.3	10.7	28
11	66.7	0.0	33.3	3
12	68.7	12.5	18.8	16
13	61.1	16.7	22.2	18
14	76.0	8.0	16.0	25
15	80.0	6.7	13.3	30
16	100.0	0.0	0.0	4
17	75.0	25.0	0.0	4
18	100.00	0.0	0.0	3
19	80.0	0.0	20.0	5
20	41.7	58.3	0.0	12
21	66.7	33.3	0.0	12
22	55.6	18.5	25.9	27
23	66.7	11.1	22.2	9
24	60.5	26.3	13.2	38
25	72.4	13.8	13.8	29
26	52.6	26.3	21.1	19
27	76.9	23.1	0.0	13
28	91.7	8.3	0.0	12
29	64.3	28.6	7.1	14
30	100.0	0.0	0.0	9
31	100.0	0.0	0.0	3
Total	**73.0**	**14.8**	**12.3**	**488**

Appendix 4

Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

ASSAULT

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	73.2%	12.2%	14.6%	41
2	83.1	6.0	10.9	83
3	82.3	5.9	11.8	51
4	73.6	18.7	7.7	91
5	84.0	4.0	12.0	50
6	74.0	13.0	13.0	54
7	71.7	13.1	15.2	46
8	76.5	2.9	20.6	34
9	67.8	16.1	16.1	31
10	76.9	15.4	7.7	52
11	72.4	17.2	10.4	29
12	79.1	8.3	12.6	48
13	81.4	5.7	12.9	70
14	69.3	14.8	15.9	88
15	72.2	15.6	12.2	90
16	68.5	22.9	8.6	35
17	70.5	11.9	17.6	17
18	86.7	13.3	0.0	30
19	77.8	4.4	17.8	45
20	71.4	14.3	14.3	14
21	83.9	12.9	3.2	31
22	77.1	8.3	14.6	48
23	62.9	27.4	9.7	62
24	65.2	16.7	18.1	72
25	64.6	25.0	10.4	48
26	67.2	16.4	16.4	61
27	82.9	9.8	7.3	41
28	78.6	10.7	10.7	28
29	88.2	5.9	5.9	17
30	62.5	12.5	25.0	16
31	75.0	9.4	15.6	32
Total	**74.6**	**13.0**	**12.4**	**1,455**

KIDNAPPING

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	66.7%	0.0%	33.3%	3
2	75.0	0.0	25.0	4
3	100.0	0.0	0.0	3
4	81.8	0.0	18.2	11
5	50.0	0.0	50.0	2
6	66.7	33.3	0.0	3
7	80.0	20.0	0.0	5
8	77.8	22.2	0.0	9
9	0.0	0.0	100.0	2
10	0.0	0.0	0.0	0
11	0.0	0.0	0.0	0
12	40.0	0.0	60.0	5
13	100.0	0.0	0.0	3
14	85.7	0.0	14.3	7
15	73.4	13.3	13.3	15
16	100.0	0.0	0.0	1
17	100.0	0.0	0.0	2
18	66.70	0.0	33.3	3
19	45.4	27.3	27.3	11
20	50.0	50.0	0.0	2
21	0.0	0.0	0.0	0
22	100.0	0.0	0.0	1
23	100.0	0.0	0.0	2
24	62.5	25.0	12.5	8
25	100.0	0.0	0.0	4
26	60.0	0.0	40.0	5
27	50.0	50.0	0.0	2
28	100.0	0.0	0.0	1
29	33.4	33.3	33.3	3
30	0.0	0.0	0.0	0
31	60.0	20.0	20.0	5
Total	**69.7**	**12.3**	**18.0**	**122**

HOMICIDE

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	83.3%	0.0%	16.7%	6
2	82.6	4.4	13.0	23
3	100.0	0.0	0.0	3
4	42.4	21.2	36.4	33
5	80.0	20.0	0.0	10
6	0.0	0.0	0.0	0
7	71.4	14.3	14.3	7
8	55.6	33.3	11.1	9
9	70.0	20.0	10.0	10
10	55.6	33.3	11.1	9
11	77.8	11.1	11.1	9
12	62.5	25.0	12.5	8
13	75.0	7.1	17.9	28
14	50.0	25.0	25.0	8
15	37.5	37.5	25.0	8
16	100.0	0.0	0.0	2
17	50.0	50.0	0.0	4
18	66.70	33.3	0.0	6
19	50.0	14.3	35.7	14
20	33.3	0.0	66.7	3
21	75.0	0.0	25.0	4
22	66.6	16.7	16.7	6
23	70.0	10.0	20.0	10
24	60.0	40.0	0.0	10
25	63.6	27.3	9.1	11
26	63.6	27.3	9.1	11
27	66.7	0.0	33.3	6
28	57.1	28.6	14.3	7
29	85.7	0.0	14.3	7
30	80.0	0.0	20.0	5
31	66.7	0.0	33.3	6
Total	**64.7**	**17.3**	**18.0**	**283**

Appendix 4

Sentencing Guidelines Compliance by Judicial Circuit: Offenses Against the Person

ROBBERY

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	64.2%	31.0%	4.8%	42
2	60.2	34.0	5.8	103
3	75.0	15.0	10.0	20
4	61.5	28.2	10.3	117
5	55.0	30.0	15.0	20
6	66.7	20.8	12.5	24
7	69.6	17.4	13.0	23
8	75.0	20.0	5.0	40
9	59.1	22.7	18.2	22
10	53.3	26.7	20.0	15
11	75.0	18.7	6.3	16
12	71.8	15.4	12.8	39
13	57.4	35.2	7.4	54
14	65.5	30.9	3.6	55
15	47.1	29.4	23.5	34
16	75.0	16.7	8.3	12
17	69.6	21.7	8.7	23
18	57.9	26.3	15.8	19
19	60.5	23.7	15.8	38
20	72.7	27.3	0.0	11
21	72.7	27.3	0.0	11
22	70.0	20.0	10.0	10
23	43.5	34.8	21.7	23
24	66.7	14.3	19.0	21
25	55.6	22.2	22.2	9
26	68.7	25.0	6.3	16
27	88.2	11.8	0.0	17
28	77.8	11.1	11.1	9
29	28.6	14.3	57.1	7
30	66.7	33.3	0.0	3
31	53.1	34.4	12.5	32
Total	**63.1**	**26.3**	**10.6**	**885**

RAPE

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	0.0%	100%	0.0%	1
2	66.7	0.0	33.3	6
3	25.0	75.0	0.0	4
4	66.7	33.3	0.0	15
5	83.3	16.7	0.0	6
6	100.0	0.0	0.0	4
7	75.0	25.0	0.0	12
8	71.4	28.6	0.0	7
9	33.3	0.0	66.7	3
10	57.1	28.6	14.3	7
11	100.0	0.0	0.0	1
12	83.3	0.0	16.7	6
13	50.0	50.0	0.0	8
14	87.5	12.5	0.0	8
15	66.7	25.0	8.3	12
16	75.0	12.5	12.5	8
17	100.0	0.0	0.0	3
18	33.3	66.7	0.0	3
19	77.8	0.0	22.2	9
20	100.0	0.0	0.0	4
21	66.7	33.3	0.0	3
22	33.4	33.3	33.3	3
23	66.7	0.0	33.3	3
24	55.6	22.2	22.2	9
25	50.0	40.0	10.0	10
26	64.3	35.7	0.0	14
27	66.6	16.7	16.7	6
28	100.0	0.0	0.0	2
29	100.0	0.0	0.0	4
30	0.0	0.0	0.0	0
31	83.3	16.7	0.0	6
Total	**68.4**	**23.0**	**8.6**	**187**

OTHER SEXUAL ASSAULT

Circuit	Compliance	Mitigation	Aggravation	# of Cases
1	66.7%	0.0%	33.3%	3
2	73.3	10.0	16.7	30
3	62.5	37.5	0.0	8
4	65.8	23.7	10.5	38
5	70.6	23.5	5.9	17
6	71.4	14.3	14.3	7
7	70.6	5.9	23.5	17
8	66.7	33.3	0.0	9
9	57.1	0.0	42.9	7
10	76.5	17.6	5.9	17
11	60.0	40.0	0.0	5
12	90.9	0.0	9.1	11
13	100.0	0.0	0.0	8
14	64.7	11.8	23.5	17
15	58.8	11.8	29.4	34
16	100.0	0.0	0.0	7
17	58.4	8.3	33.3	12
18	100.0	0.0	0.0	2
19	48.2	18.5	33.3	27
20	57.1	28.6	14.3	7
21	80.0	20.0	0.0	5
22	37.5	25.0	37.5	8
23	57.2	21.4	21.4	14
24	80.0	16.0	4.0	25
25	55.6	25.9	18.5	27
26	68.2	18.2	13.6	22
27	73.9	17.4	8.7	23
28	63.6	18.2	18.2	11
29	50.0	12.5	37.5	8
30	75.0	25.0	0.0	4
31	82.5	5.0	12.5	40
Total	**68.1**	**15.7**	**16.2**	**470**