

# Blueprints for Change: Criminal Justice Policy Issues in Virginia

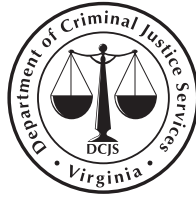


Virginia Department of Criminal Justice Services  
[www.dcjs.virginia.gov](http://www.dcjs.virginia.gov)

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- The 2006 Blueprints for Change: Criminal Justice Policy Issues in Virginia documents are:
- Disproportionate Minority Contact (DMC) with the Juvenile Justice System •
  - Domestic Violence, Protective Orders, and Firearms • Drug Enforcement Status in Virginia •
  - Enhancing Virginia's Campus Security and Safety • Mental Health Issues in Jails and Detention Centers •
    - Regional Crime Information Sharing Networks •

For additional information on these documents, please visit the  
Department of Criminal Justice Services website at: [www.dcjs.virginia.gov/blueprints](http://www.dcjs.virginia.gov/blueprints)



The Department of Criminal Justice Services (DCJS) is the state criminal justice planning agency in Virginia and is responsible for administering state and federal funds dedicated to improving state and local criminal justice practices, preventing crime and delinquency, and ensuring services to crime victims.

In its role as a planning agency, the Department convened six policy sessions over a two day period in August, 2006. The facilitated sessions explored six different leading edge criminal justice issues, chosen by the Department. Each three-hour session brought together a multidisciplinary group of executive-level participants who were selected because of their knowledge of the issue and their ability to advance the discussion of public policy related to the issue.

The discussions in these sessions, and the recommendations that emerged, are recorded in these policy papers.

In publishing these papers, DCJS hopes that they will stimulate further discussions by state and local decision makers and will provide useful guidance for making substantive statutory change where necessary, as well as for decisions on funding, and policy and program development.



## Drug Enforcement Status in Virginia



Drug enforcement is a long-standing, serious issue for Virginia law enforcement agencies. They are faced with drug trafficking and illegal drug use fueled by the ready availability of crack cocaine, the increased popularity of methamphetamine, so-called club drugs, and prescription pain medication abuse. The illegal drug problem contributes to other crime problems as well; and a growing proportion of the violent and property crimes reported to law enforcement appears to be drug-related. All of which places significant demands on the time and resources law enforcement agencies.

Virginia has historically been known as a “consumption state” in the drug arena. Primarily, the drugs of choice have been marijuana and crack cocaine. While marijuana and crack use continue to be an issue, the illegal use of the prescription drug oxycontin has become a problem in selected areas of the state. In some parts of Virginia the use of methamphetamine has surpassed all of the other drugs as the drug of choice.

A recent survey of Virginia law enforcement agencies and the federal Drug Enforcement Administrations’ Virginia Office conducted by the Department of Criminal Justice Services (DCJS) showed that marijuana, crack cocaine and methamphetamine are the top selling drugs in their jurisdictions.

Drug dealers have used a variety of methods to bring drugs into the Commonwealth. Throughout the 1980s and 1990s, Interstate 95 was a well-known and constant corridor for the transport of drugs along the east coast. That continues to be the case. But there are other means of importing drugs as well, including airports, the Port of Norfolk, and other interstate highways, like I-81 and I-64. Additionally, the Postal Service and package shipping companies are often used.

In addition to the state’s longstanding problems with marijuana cultivation, Virginia has become a methamphetamine manufacturing state. Drug enforcement task forces have taken down numerous clandestine laboratories in the last four years. The ease with which the ingredients needed to manufacture meth can be procured led the Governor to issue Executive Directive #8 in September 2005, limiting access to certain key methamphetamine precursor ingredients. At the same time the State Health Commissioner also issued an Emergency Order that restricted the sale of products containing ephedrine and pseudoephedrine, the primary ingredients used in the manufacture of methamphetamine.

Law enforcement agencies face other challenges in drug enforcement such as manpower shortages, the capacity to test substances promptly after they are seized, and the ability to share information among neighboring jurisdictions. Coordination with prosecutors and the time required for officers to appear in court are also concerns.



## POLICY/RESEARCH QUESTIONS

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In order to address these problems, the Blueprints Policy Meeting brought together representatives with diverse backgrounds, roles and responsibilities within the criminal justice system. They were encouraged to share their perspectives on the issues and problems noted above and the impact they have on their roles and functions. The group was also asked to identify shortfalls, successful strategies and, most importantly, ways they could work together to foster better communication to ensure greater success at each juncture within the system.

Participants were asked to focus their efforts in answering questions in three areas: 1) Is law enforcement effective in its drug enforcement efforts? 2) Does the *Code of Virginia*, as currently written, provide sufficient support for enforcement efforts? 3) What policy issues need to be addressed to improve drug enforcement efforts?



## DISCUSSION

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### Law Enforcement Effectiveness

The participants pointed out several areas of concern with regard to the effectiveness of law enforcement efforts to address drug issues. The general consensus was that law enforcement is as effective as it can be, given the current level of resources available. The group identified drug task forces, increased incarceration rates and community support as the primary factors that contribute to the overall effectiveness of drug enforcement efforts.

Multi-jurisdictional task forces have been successful and have fostered the exchange of information, which has enhanced enforcement. These task forces are comprised of law enforcement personnel from neighboring jurisdictions and often include agents from the Drug Enforcement Administration or the Department of Alcohol, Tobacco, Firearms and Explosives. This partnership approach has been particularly effective in disrupting methamphetamine labs, targeting street sales and other criminal activities operating in multiple jurisdictions.

The DCJS survey also showed that rental properties and subsidized public housing are the areas where most drug arrests occur. By focusing on these known high-risk areas for drug activity, task forces are able to deter and reduce street sales. However, participants pointed out that arrests alone cannot curb the problem of continued drug distribution and consumption.

Effectively addressing drug problems requires a united effort by law enforcement, the courts, legislators and the community. Utilization of groups like Boys and Girls Clubs and education in schools will assist the community and eradicate false perceptions about drugs. Drug sales tend to be glorified through media messages on television, videos, movies and music and claim that drugs are cool and an easy way to make money.

Incarceration rates for drug trafficking and violent crimes have increased. This is partly due to the efforts of the drug task forces and law enforcement doing a better job of presenting good cases to the Commonwealth's Attorneys. The Commonwealth's Attorneys Services Council and DCJS have partnered for over ten years to present an annual drug enforcement training program to teams of drug investigators and the prosecutors with whom they work to help them collaborate more effectively in preparing cases. Initiatives to partner with the United States Attorney's Offices in both the Eastern and Western Districts for prosecution of cases under federal law have also been very effective in maximizing the penalties for drug offenders. Reducing the amount of time needed by the Department of Forensic Science to analyze evidence and submit the results to the courts would help to further this effort.

### Effectiveness of Support from the *Code of Virginia*

Participants did not feel that the *Code of Virginia*, as it is currently written, presented the most significant problems for investigating and prosecuting drug crime. Rather they agreed that the most serious challenges occur after cases are brought to trial. Of particular concern to this focus group was the amount of time to bring cases forward, soft penalties, and lack of jail space for those convicted.

Participants felt that judges tend to stay on the minimum side of penalties, often giving sentences and then suspending the jail time repeatedly for the same defendants, same crimes or for probation violations. Mandatory sentences for drug offenses apply primarily where large quantities are involved, and even then there are numerous exceptions and opportunities to avoid the minimums provided in the *Code of Virginia* (18.2-248). Participants agreed that penalties have not kept pace with the changes in patterns of drug use and sales. The example was given of penalties for methamphetamine crimes being typically less than those for crack cocaine although methamphetamine is considered a very dangerous, highly addictive illegal substance like cocaine. Participants also discussed the value of drug courts as an alternative means of dealing with lower level offenders and reducing drug crime.

Due to the backlog of evidence awaiting testing by Department of Forensic Science, there is often a delay in getting lab results to the court. Schedule III drugs such as hydrocodone and lortab need to be analyzed more quickly. The time allotted for filing charges is not currently sufficient to allow receipt of lab analysis. Some judges will not convict defendants without having the results of the analysis back from the lab.

There is a need for local law enforcement agencies to work with the U.S. Attorneys, and their Commonwealth's Attorneys in a unified system that enhances cases and maximizes convictions and penalties for offenders. Criminal justice professional associations should be used to emphasize the need for changes in sentencing guidelines and stiffer penalties for drug offenses. The group proposed seeking more and continuing support from the professional associations to educate the public on how the use and sale of drugs impacts their quality of life and to encourage them to cooperate with law enforcement in the investigation and prosecution of drug cases.

The group speculated that the lack of jail space to house prisoners could be a reason that penalties for drug crimes are not as stiff as they could be. It was noted that there is a moratorium on building new jails within the Commonwealth. The evaluation of proposed laws by the Department of Planning and Budget, to determine their fiscal impact before they are passed, was cited as a possible reason that the moratorium on building new jails has not been removed.

### Policy Issues That Need to be Addressed

Participants cited several areas where current policies should be reviewed. One area was in the selection of jury pools for prosecution of drug cases. Participants believe that some juries acquit defendants with strong cases because of their lack of understanding the level of proof that is required for a conviction. They would like to focus on drug education for the public to increase community awareness that might then improve the rate of convictions in jury trials. Methamphetamine was suggested as one drug to focus on for this purpose. Professional law enforcement and criminal justice associations should take the lead and move this process forward. Emphasis should be placed on education about drugs, the impact drugs have on the community and citizens' quality of life.

Participants offered a variety of suggestions including requesting a study of sentencing in drug cases by the State Crime Commission. Participants suggested one means of making the sale of drugs less attractive was

to impose a tax on drugs seized from defendants. There is a model of such a program in the State of Tennessee and in the State of North Carolina . It was also proposed that drugs be reviewed for rescheduling to make penalties more severe. Additionally, it was proposed that Virginia consider mirroring federal legislation (21 U.S.C. 856), which makes it unlawful to maintain drug-involved premises.

While participants were somewhat critical of what they perceive as judicial leniency in sentencing, they nevertheless recognized a need for more flexibility in the state *Code of Virginia* to allow prosecutors to move for a reduced sentence in cases that meet appropriate criteria. This process, already in progress in federal courts and known as “Rule 35,” would allow more sentencing flexibility in return for cooperation by defendants with on-going criminal investigations.

Another avenue recommended was to utilize the annual training and policy conferences for Virginia’s judiciary to engage them in dialogue about mandatory sentencing guidelines. Educational programs to inform judges of the patterns and current effects that drugs like methamphetamine are having on our communities would be helpful and informative to judges that may not see the problem as closely as law enforcement, prosecutors and others see it.



## RESOURCES/RECOMMENDATIONS

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Participants discussed resources available to law enforcement in drug enforcement. One positive new resource that was identified is the Drug Court concept. Drug Courts have proven very effective in communities like Henrico and Charlottesville and others throughout the Commonwealth. They allow offenders to opt-in to a sanction-based 12-month plus program with the consent of the judge. Drug Courts operate to focus attention on a drug abuser’s rehabilitation both medically and socially. They have the immediate advantage of keeping judges directly involved and informed about the status of the offenders, with the constant threat of incarcerating those who do not meet program requirements of the court.

All agreed that additional funding from the federal government, for multi-jurisdictional task forces and better equipment, is needed. In recent years, the amount of grant funding provided through proven federal programs such as the Edward Byrne Memorial Fund and its successor, the Justice Assistance Grants program, have been drastically reduced by more than half. Along with funding from the federal COPS Office, these were major sources of task force and equipment funding for state and local law enforcement. Increasing the number of law enforcement personnel and prosecutors dedicated to drug enforcement and prosecution beyond the current level would help to improve the rates of conviction and case enhancements.

The participants also recognized that probation and parole officers are critical resources. In order to be more effective, they need more support in the form of staffing, salaries and technology. The work of these officers supports the needs of local law enforcement by their preparation of pre-sentencing reports that can be used to enhance sentences.





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