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# EVALUATION OF THE VIRGINIA EXILE PROGRAM

FINAL REPORT

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*Virginia Department of Criminal Justice Services  
Criminal Justice Research Center*

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# Evaluation of the Virginia Exile Program Final Report

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## I. Executive Summary

On July 1, 1999, three amendments to state law took effect which impose mandatory minimum sentences and increase penalties for certain firearm offenses (see Appendix 1). The Virginia Exile program was implemented in January 2000 to provide grant funds to support the prosecution of these offenses. The program's purpose is to reduce gun-related violence in the participating localities through the arrest, conviction, and sentencing of persons who violate these statutes. The program philosophy also highlights public awareness of the Exile message to deter possible offenders. In 2000, the Department of Criminal Justice Services, Evaluation Unit received a request from the Secretary of Public Safety and the Governor to conduct an evaluation of the Virginia Exile program. An interim evaluation report was submitted in August 2001. This report serves as the final evaluation report on the Virginia Exile program.

It explains the program implementation and operation for ten program sites: the counties of Chesterfield, Halifax, and Henrico, and the cities of Chesapeake, Lynchburg, Petersburg, Portsmouth, Richmond, Roanoke, and Suffolk. Case processing and outcome data are also described and were collected for all Virginia Exile cases prosecuted from January 2000 through June 2002 in the six principal evaluation sites (Chesapeake, Halifax County, Lynchburg, Petersburg, Richmond, and Roanoke). These data, along with interviews of program staff, reveal the complexities of prosecuting the Exile offenses and the types of difficulties encountered in this process.

The evaluation examined 646 Virginia Exile cases in which Exile charges were brought against a defendant. Of the six Virginia Exile offenses, three (*possession of a firearm and possession of Schedule I or II drugs, possession of a firearm by a non-violent felon, and possession of a firearm by a violent felon*) comprised 96% of all Virginia Exile charges brought. The three remaining Exile offenses (*possession of a firearm and distribution of Schedule I or II drugs, possession of a firearm and distribution of more than 1 pound of marijuana, and possession of a firearm while on school property*) were rarely charged. Virginia Exile defendants were most often African-American males between the ages of 18 and 44. Of the 646 cases initiated a total of 172 Virginia Exile cases were ultimately transferred to the federal court system for federal prosecution.

Detailed case processing data were available for 549 of the 646 Virginia Exile cases. Among these cases, there were 638 Virginia Exile charges brought forward for prosecution, 148 of which were transferred to the United States Attorney's Office to be tried in federal court. Of the remaining 490 charges, 174 (36%) resulted in an Exile conviction and full mandatory minimum sentence. Case process data also indicated that of these 549 Virginia Exile cases, 448 cases reported the seizure of at least one firearm, the majority of which (74%) were handguns. In addition, controlled substances were confiscated in 238 cases, with cocaine/cocaine derivative seized in 74% of these cases.

In general, prosecutors and staff responded positively when asked about their experience with the Virginia Exile program and reported that the program had provided them with additional tools to effectively prosecute persons charged with Exile. However, problems were also identified. Some program requirements proved difficult to implement, such as establishing a local non-profit foundation to facilitate public outreach. This was a time-consuming, complex task rarely

achieved independently. Other program requirements instructed prosecutors to object to bail and appeal all adverse bail decisions in Exile cases, however, these requirements were seen as sometimes inappropriate. Prosecutors explained that bail reversals are relatively uncommon, and believed that routine objections and appeals could negatively impact their credibility.

Additionally, questions regarding the functionality of the statutes were raised, suggesting that the actual application of the Virginia Exile statutes is not as straightforward as it may appear. For example, 35% of all Virginia Exile defendants were granted bail, despite the statutory presumption against bail for offenders with these charges. Also, proving statutory elements necessary for conviction were often complicated by errors in search and seizure procedures or delays in the receipt of a defendant's prior felony certification.

Both interviews and case-specific data suggested that the program's deterrent effect could be compromised by the lack of certain punishment. The knowledge that illegal possession of a firearm will result in a long prison sentence is a foundational premise of the Virginia Exile program. However, the certainty of a conviction with a full mandatory minimum sentence may be diminished by the normal practices and discretion inherent in the prosecutorial and judicial processes. Evidentiary issues also impacted the prosecutor's ability to obtain a conviction on the Virginia Exile statutes. Additionally, although the Exile statutes mandate consecutive sentences on multiple convictions, 86% of applicable cases had two years or more suspended from total case sentences. This suggests that the consecutive sentencing requirement may be mitigated or circumvented by suspending time on sentences in cases with multiple convictions. Researchers also examined the possible influence of more serious non-Exile convictions on Exile conviction outcomes, but no notable trends were found.

In an effort to determine whether or not the Virginia Exile grant program's stated goal to reduce gun violence was achieved, firearm violence data from Virginia's Uniform Crime Reports for the six principal evaluation sites were examined. Available data indicated that levels of nearly all violent offenses committed using a firearm increased in both the Exile localities and statewide following program implementation of Virginia Exile. There are several possible interpretations of these results: 1) the Virginia Exile program was simply not effective in achieving its stated goal of reducing gun violence, 2) available firearm violence data are not the most appropriate way to assess the impact of Virginia Exile's goal, 3) the program sites did not fully implement the established program design, and 4) Virginia Exile's stated goal was not suitable given the program requirements and elements of the Exile statutes. Therefore, the program's effect on levels of firearm violence is largely inconclusive.

Although the Virginia Exile program was modeled after the federal Project Exile program, comparisons of conviction outcomes between these two systems are not advised. Project Exile cases prosecuted federally may involve statutory elements different from those in Virginia Exile cases. Also, prosecutors generally characterized the Virginia Exile cases accepted for transfer to the federal court for prosecution as strong cases with accurate charges and evidence sufficient to achieve a conviction. Meanwhile, cases brought forward under Virginia Exile sometimes involved inaccurate charges and compromised evidence, which may have comparatively reduced conviction rates for the local prosecutors.

In sum, these conclusions reveal both positive and challenging aspects of the Virginia Exile program. Based on the findings of this evaluation, recommendations were developed that address a number of issues:

- Modifying the statute to remove the presumption against bail for some cooperating defendants,
- Adjusting the penalties to differentiate the perceived seriousness between possession of and distribution of Schedule I or II drugs,
- Adding explanatory language to statutes to clarify the circumstances under which they apply,
- Developing a coordinated state-level media campaign and foundation,
- Reviewing grant program requirements to assess practicality,
- Reviewing rarely-charged Virginia Exile offenses to clarify program focus,
- Expanding training to reinforce Virginia Exile statute provisions for magistrates and judges, and
- Enhancing training on Virginia Exile issues for local law enforcement.

Specific information that explains and supports each recommendation is found in the complete report.

## II. Report Authority and Purpose

In 1999, the Virginia General Assembly passed legislation (§18.2-308.1, §18.2-308.2, and §18.2-308.4 of the *Code of Virginia*<sup>1</sup>) to impose mandatory minimum sentences for selected firearm-related crimes. In January 2000, the Department of Criminal Justice Services (DCJS) awarded Virginia Exile grant funds to six localities to provide additional resources for the prosecution of these cases. In 2001, four more localities were awarded Virginia Exile funds. The DCJS Research Center, Evaluation Unit was asked by the Secretary of Public Safety to evaluate the Virginia Exile program. This document serves as a final report on the evaluation.

This report describes the implementation and activities of the grant program, and examines program impact in the six original program sites. Recommendations to guide future program planning are also provided.

## III. Program History

The Virginia Exile program was developed to closely model the federal Project Exile initiative. Descriptions of both of these programs are provided below.

### Project Exile

Developed by the U.S. Attorney's Office for the Eastern District of Virginia in coordination with the Richmond Commonwealth's Attorney's Office and the Richmond Police Department, Project Exile was formally initiated in Richmond, Virginia in February 1997. The goal of Project Exile is to reduce firearm-related crime, specifically homicide and other crimes of violence, through the arrest and conviction of persons in illegal possession of a firearm.

The program is designed to coordinate efforts of local, state, and federal law enforcement, and local and federal prosecutors. At the time that Project Exile was implemented, the agencies involved in the coordination of the program included: the U.S. Attorney's Office for the Eastern District of Virginia; the Richmond Police Department and Richmond Commonwealth's Attorney's Office; the Bureau of Alcohol, Tobacco and Firearms (BATF); the Federal Bureau of Investigation (FBI); the Virginia Attorney General's Office; and Virginia State Police. This multi-agency collaboration organized resources to expedite the arrest, prosecution and sentencing of qualified offenders.

The United States Department of Justice (1998) reports that the federal firearm statutes used to convict offenders under Project Exile generally target the following:

- Persons previously convicted of a felony who are in possession of a firearm;
- Persons previously convicted of domestic violence who are in possession of a firearm; and
- Persons in possession of both illegal drugs and a firearm.

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<sup>1</sup> The complete *Code* sections related to Virginia Exile are presented in Appendix 1.



Under the federal Project Exile initiative, when an arrest is made involving a firearm, the officer pages a BATF agent. Together they decide whether a federal statute applies and, if so, federal criminal charges are brought against the defendant. Then, using federal bail statutes designed to keep high-risk detainees in custody, the burden is placed on the defendant to justify his/her pretrial release. If the defendant is eventually tried and found guilty, s/he will be sentenced to serve time in a federal prison. Federal firearm statutes carry stiff sentences that generally range from 5 - 10 years, although some offenses carry terms of 20 years or more.

Project Exile includes an intensive public awareness campaign that uses television, radio, billboard, and bus advertising to relay its message to the community. The program's motto, "An illegal gun will get you five years in a federal prison," is used in all aspects of the promotion for added emphasis. Public service announcements (PSAs) are also used to encourage the community to report illegal firearms to law enforcement. Funding for advertising is raised through the Project Exile Citizen Support Foundation, a tax-exempt organization that promotes the program and works with various individuals, organizations, and businesses in the community who support the program's advertising and outreach efforts.

### **Virginia Exile**

Modeled closely after the federal Project Exile program, the Virginia Exile program seeks to reduce firearm-related crime and remove illegal guns from the community. Virginia Exile was established primarily to support aggressive prosecution of those offenders who violate specific firearm statutes. Supplementary resources also support related law enforcement efforts and local public awareness campaigns that inform the community of enhanced penalties for firearm offenses.

Legislation designed to strengthen penalties for certain firearm offenses was passed by the 1999 General Assembly, and became effective on July 1, 1999. These statutes and their associated mandatory minimum sentences provide the basis for the Virginia Exile program and are listed in Table 1. The penalties that were in effect prior to July 1, 1999 are also listed.

**Table 1**  
**Description of Virginia Exile Offenses and Associated Penalties**

<i>Code of Virginia</i>	Description of Virginia Exile Offense	Mandatory Minimum Effective July 1, 1999	Penalty Range Prior to July 1, 1999
§18.2-308.1(B)	<i>Possession of a firearm while on school property</i>	5 years	1 - 5 years
§18.2-308.2	<i>Possession of a firearm by a violent felon</i>	5 years	1 - 5 years
§18.2-308.2	<i>Possession of a firearm by a non-violent felon</i>	2 – 5 years	1 - 5 years
§18.2-308.4 (A)	<i>Possession of a firearm and possession of Schedule I or II drugs</i>	5 years	1 - 5 years
§18.2-308.4 (B)	<i>Possession of a firearm and distribution of Schedule I or II drugs</i>	5 years	3 years
§18.2-308.4 (B)	<i>Possession of a firearm and distribution of more than 1 pound of marijuana</i>	5 years	3 years

Source: Virginia Criminal Sentencing Commission

The program is administered and funds are distributed through the Department of Criminal Justice Services. DCJS also developed the “Program Guide for the Virginia Exile Program” which sets forth additional program requirements in conjunction with the above described offenses.

Additional legislation (§19.2-120) established a presumption against bail for defendants charged with any of the violations listed in Table 1. The law prohibits pretrial release unless the defendant can prove to the court that s/he should be granted bail. This essentially shifts the burden of proof for bail eligibility from the prosecutor to the defendant. Additionally, the program guide requires the Commonwealth’s Attorney (CA) to oppose granting bail to any defendant charged with these weapons violations.

In an effort to make the public aware of the initiative and generate additional funding, a statewide Virginia Exile Foundation was initiated in June 2000. This foundation was tasked with promoting the program through outreach such as PSAs and publications. Although the foundation received an offer of funds from the National Rifle Association, it never accepted receipt of these funds, and was not able to secure funds from other sources. Eventually the Virginia Exile Foundation transitioned into the Virginia Exile and Project Safe Neighborhoods Foundation to support both state and federal “Exile” programs.

## **Differences Between the State and Federal Exile Programs**

While their objectives are basically the same, the Virginia Exile and Project Exile programs differ in a few respects. First, because firearm offenses targeted by Project Exile are prosecuted federally, convicted offenders serve their mandatory sentences in federal prisons outside of their communities, very possibly in another state. This was considered a likely deterrent, according to a report from the U.S. Attorney's Office for the Eastern District of Virginia (1999). The report stated, "Defendants know that a federal jail term will likely be served elsewhere in the country. This has a major impact because serving a jail sentence among friends and acquaintances is seen by the defendants as much less onerous than serving time in a far away prison." Anecdotal reports from prosecutors suggest that defendants have more concerns about where they will serve out their sentences than whether or not they will be going to prison at all.

The prosecution of Virginia Exile offenders, on the other hand, takes place at the state level. Once convicted, defendants are incarcerated in Virginia correctional facilities where the potential for being "exiled" far from one's community is significantly reduced by state boundaries. Also, many of the Virginia Exile offenders are probably more familiar with the state's criminal justice system than the federal system. This familiarity, as well as incarceration in close proximity to family and friends, may make facing state charges less daunting than a federal prosecution.

Second, the two programs differ slightly in the types of firearm offenses they target. Project Exile statutes require prosecution for those in possession of a firearm who have been convicted previously of domestic violence; Virginia Exile has no such provision. Further, Project Exile also distinguishes between different types of firearms, such as machine guns and unregistered sawed-off shotguns; Virginia's statutes are not as specific. Despite these differences, however, the two programs are fundamentally alike.

### **Project Safe Neighborhoods**

In 2001, the federal government implemented Project Safe Neighborhoods (PSN), a comprehensive national strategy designed to foster safer neighborhoods by reducing gun violence and sustaining the reduction. This initiative provides more than 900 million dollars in federal funds over a three-year period to local, state and federal government agencies for more aggressive enforcement and prosecution of firearm laws (<http://www.psn.gov/about>). PSN incorporates elements from programs such as Richmond, Virginia's Project Exile and Boston, Massachusetts's Operation Ceasefire (<http://www.psn.gov/about>). Funds are made available to each of the 94 United States Attorney's Offices (USAO) for implementing this initiative.

<b>IV. Review of Related Research</b>
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The primary objective of the Virginia Exile grant program, as stated in the program guide (DCJS 1999, 2000, 2001), is to reduce firearm-related violence in participating localities. This objective is to be accomplished via two primary components: 1) mandatory sentencing enhancements that serve to incapacitate gun offenders by lengthening their incarceration, and 2) public awareness campaigns intended to deter potential firearm offenders.

## Research on Mandatory Minimum Sentences

Virginia Exile and other similar programs may be viewed as a response to findings that fatality rates for gun crimes are much higher than for crimes committed without guns (Cook and Moore, 1995). Attempts to address the effects of firearm-related violence generally are based on one of two perspectives. Proponents of gun control suggest that gun owners should relinquish certain firearms rights in the interest of reducing gun-related fatalities. Conversely, anti-control advocates suggest that, in addition to being a constitutional right, gun ownership serves to reduce crime when used as a tool for self-defense. Lengthened mandatory penalties for gun crimes, such as the sentencing statutes that fall under the Virginia Exile program, can be described as a “non-gun control” method of reducing gun-related violence (Cook and Moore, 1995). These methods are popular with lawmakers because they claim to stem gun violence without encroaching on the rights of law-abiding gun owners (Loftin, Heumann, and McDowall, 1983).

The widespread use of mandatory minimums is a product of changing philosophies on criminal justice sentencing that has occurred in recent decades. In the 1970’s, the American criminal justice system was characterized by a sentencing system “in which legislatures set maximum authorized sentences [and] judges chose among imprisonment, probation, and fines and set maximum sentences” (Tonry, 1999a). Tonry suggests, however, that the present American criminal justice system is characterized by past decades of growth in jail and prison populations; reduced judicial discretion in sentencing decisions; lengthened sentences for violent offenders; and a reluctance to promote “soft” policies, such as rehabilitation, in light of the popular “tough on crime” stance that has become the concern of many elected officials (Tonry, 1999b). Some have proposed that such a perspective is favored politically because it communicates to the public that there are certain crimes that deserve more stringent punishment (Parent, Dunworth, McDonald, and Rhodes, 1997).

By 1994, every state had adopted mandatory minimum sentencing laws as one facet of this increasingly rigorous approach to crime. Mandatory minimums, such as those legislated under Virginia Exile, have two main objectives: deterrence of potential offenders and incapacitation of current offenders by incarcerating them for relatively longer periods of time. They are also intended to reduce judicial discretion, thereby decreasing disparity in sentencing for similar crimes (Parent, et al., 1997).

While there is little research aimed at evaluating the effectiveness of mandatory sentencing in reducing firearm-related violence, some supporting evidence exists. A study of the Bartley-Fox Amendment in Massachusetts, which mandated a one-year prison sentence for anyone carrying a gun without a license, indicated a short-term effect of reducing homicide rates as well as assaults and robberies involving firearms. Additionally, criminals became more likely to commit crimes with other types of weapons, resulting in less fatal attacks (Pierce and Bowers, 1981).

In a subsequent study of mandatory sentence enhancements across six cities in three states, McDowall, Loftin, and Wiersema (1992) found that such enhancements were effective in reducing the homicide rate, but did not appear to be effective in reducing the prevalence of other types of gun crimes. These findings could possibly be explained by the level of precision used in compiling homicide data as opposed to robberies and assaults. As with the Bartley-Fox study,

researchers concluded that such mandatory sentence enhancements influence some offenders to replace guns with other types of weapons, resulting in fewer fatal violent crimes.

Despite the positive impression such legislation has made on constituents, caution should be used by policy makers when enacting directives related to mandatory sentencing. Punishment may not be definitive “because officials circumvent [mandatory sentences] if they believe the results are unduly harsh,” particularly with offenders who have little criminal history or mitigating circumstances surrounding the offense (Parent, et al., 1997). A National Institute of Justice review of mandatory sentencing found that arrest rates, indictments, and convictions decline for the types of crimes that would typically receive a mandatory sentence (Parent, et al., 1997). Data support that this is due to reactions by law enforcement, prosecutors, and judges who disagree with a mandatory minimum approach to offender sanctions (Kleck, 1991; Kopel, 1994; Lizotte and Zatz, 1986; Loftin, et al., 1983; McDowall, et al., 1992; Parent, et al., 1997; Tonry, 1999a).

The potential for other adverse effects has also been documented. In his state-level analysis of sentencing policies and prison populations, Wooldredge (1996) found that “sentencing policies focused on ‘getting tough’ with felons may contribute to prison crowding by increasing the number of prison inmates serving more than one year, thereby slowing prison population turnover.” Joyce (1992) and Langan (1991) found similar results with policies that are designed to reduce judicial discretion, increase the number of felons sent to prison, lengthen the duration of their incarceration, and limit parole board discretion. Such an increase in the prison population can lead to inequity in the treatment of inmates, inhibit the inmates’ access to rehabilitative services, and increase the likelihood that inmates will engage in violence or become victims of violence (Wooldredge, 1996). Attention to other collateral effects of imprisonment on prisoners’ later lives, their families, and the larger community may also make some criminal justice officials more reluctant to comply with mandatory sentencing policies (Gainsborough and Mauer, 2000; Hagan and Dinovitzer, 1999; Petersilia and Tonry, 1999).

Perhaps the most comprehensive study of mandatory minimum sentencing laws was detailed in the United States Sentencing Commission’s 1991 report. This study was prompted by a Congressional mandate and examined such sentencing laws at the federal level. Their discovery that prosecutors are exercising discretion in the types of charges that are filed was consistent with other evaluations of mandatory minimums, resulting in the non-prosecution of some crimes that would be eligible for the more rigid sentences. Also consistent with other findings, the Sentencing Commission determined that, in some instances, judges were imposing prison terms that were less than the mandatory minimums prescribed (U.S. Sentencing Commission, 1991).

### **Research on Public Awareness Campaigns**

Virginia Exile is also founded on the premise that offender awareness of consequences will deter the commission of firearms offenses. The efficacy of public awareness campaigns producing behavioral and attitude change has been studied extensively. Public awareness campaigns have been implemented in such diverse fields as public health, smoking cessation, cancer awareness, and drug prevention. Few of these campaigns, however, have directly impacted the field of criminal justice, and even fewer have been systematically evaluated.

However, one such initiative, the McGruff crime prevention campaign, has been evaluated to test the effectiveness of its television, radio, magazine and newspaper advertisements (O'Keefe, 1985; PSA Research <http://www.psaresearch.com/bib4202.html>). The McGruff campaign does not target offenders in particular, but rather endorses public involvement in crime prevention, especially with neighborhood watch programs. Research findings suggested that the McGruff campaign had some influence in promoting cooperative behaviors, deterrence and surveillance activity.

Another program with a public awareness campaign component is Florida's felony firearm law, which stipulates mandatory minimum sentences for felonies committed with a firearm. The publicity campaign was extensive before the law came into effect, enjoying popular support, but lacked adequate evaluation. In 1984, Loftin and McDowall attempted to fill this gap by exploring analytically the deterrent effects of the law. Their findings were inconsistent with the initial reports praising the law, suggesting that it had little impact on violent gun crimes. Thus conclusions that the law was effective in deterring individuals to commit felonies with firearms may have been premature.

Kovandzic (2001) discusses the impact on crime attributed to Florida's habitual offender law and provides an extensive review of the shortfalls of studies previously conducted. Mandatory minimum sentences are an element of this legislation, and are focused on offenders with prior felonies, violent or non-violent. One of the potential validity problems noted with the previous studies was that the media campaign surrounding the law may have had a role in lowering the crime rates, regardless of the law enforcement measures in those specific localities. This is a finding worthy of consideration when examining the Virginia Exile program.

### **Research on the Exile Model**

There are a number of cities across the country that operate firearm reduction programs similar to Project Exile. A component of the Boston Gun Project, specifically Operation Ceasefire, is one of the few programs evaluated extensively (Braga, Kennedy, Waring, and Piehl, 2001; Braga, Kennedy, Peihl, and Waring, 2000). Though having a youth gang focus, this program attempts to achieve a deterrent effect through offender awareness of the program. Implemented in 1996 and in a manner similar to Project Exile, Operation Ceasefire made a direct connection between the specific crime and the advertised consequence of committing that crime. After accounting for the possible influences other city programs and campaigns may have had on their findings, the researchers concluded that the Ceasefire intervention was related to a significant decrease in youth homicides, as well as gun assaults throughout the city. These decreases were not seen in other comparison cities in the nation or the New England area in particular. However, it is important to note that crucial pre- and post-intervention data were not collected for this study, and the evaluation did not use control groups.

Much media attention has also been given to federal Project Exile's reported achievements, and advocates suggest the program had an impact in decreasing the rate of violent crime in the city of Richmond. However, other initiatives implemented in Virginia in the last few years may have influenced the same factors Project Exile seeks to impact. These initiatives include: substantial increases in the number of federal drug prosecutions in the region, an initiative to reduce the

backlog of fugitives wanted for violent offenses in the area, recent state sentencing reforms such as “truth in sentencing”<sup>2</sup> and the abolition of parole, and local public safety initiatives that were implemented during this same period of time.

While the Project Exile program has been the subject of little rigorous evaluation, two reviews of the program were recently conducted by the Pacific Center for Violence Prevention (PCVP, 2002) and by Steven Raphael and Jens Ludwig (2002). The PCVP report provides a detailed response to the federal Project Exile program, and a number of criticisms are presented. One of the primary concerns raised is the issue of Project Exile being heralded a success in the absence of evaluation. The report also suggests that Exile does not prosecute gun violence per se, but rather prosecutes cases in which a felon is in possession of a firearm. In sum, the PCVP evaluation argues that Exile cannot promise to lower crime rates through increased incarceration alone, and that other factors warrant consideration. This fundamental issue is echoed in Raphael and Ludwig’s discussion. As the first scientific attempt to evaluate the Exile program, the primary focus of Raphael and Ludwig’s article is that the reported success of Project Exile is premature and the possibility of alternative causes for the decline in Richmond crime rates must be considered. They comment that the decline in crime rates noted is not unusual and merely signifies continuation of an already declining trend, as can be viewed by data on other cities and the country as a whole.

Essentially, more research is needed to determine the best way to address the high number of firearm-related crimes in the U.S. Existing literature generally suggests that there is scant research on major gun policy proposals (Sherman, 2000; OJJDP report, 1999), especially at the state level. Additionally, little research exists on the effectiveness of mandatory minimums in the prevention of certain types of crimes or their collateral effects on other components of the criminal justice system. Consequently, the role of mandatory minimums in developing effective firearm reduction programs remains unclear.

For the Project Exile program and similarly modeled initiatives in particular, preliminary reports of program success are now being questioned as new research findings emerge. This evaluation is intended to contribute to this area of criminal justice research.

## **V. Evaluation Methodology**

This evaluation of the Virginia Exile program incorporates qualitative and quantitative data from these primary sources:

- Review of administrative documents such as the program guide, grant applications, etc.;
- Site visits and interviews with program attorneys and staff;
- Interviews with local judges and magistrates;
- Case-specific data and quarterly reports received from the program sites;

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<sup>2</sup> This term refers to the policy of mandating offenders to serve at least 85% of the sentence imposed.

- Monthly Uniform Crime Report (UCR) and Incident-Based Report (IBR) data from 1990 through 2001; and
- Virginia Department of Corrections inmate locator data.

Data collected for this evaluation concerned program activities from January 1, 2000 through June 30, 2002. The six principal evaluation sites included in this study are Chesapeake, Halifax County, Lynchburg, Petersburg, Richmond City, and Roanoke City. Site visit information, as well as attorney and staff interview data, were also collected from four secondary evaluation sites that began their programs in 2001: Chesterfield County, Henrico County, Portsmouth, and Suffolk. Each source of data and its contribution to this report are discussed in more detail below.

### **Administrative Document Review**

To become more familiar with the program's elements and design, staff reviewed available documentation on the Virginia Exile program. These documents included the program guide, (which defines the intent of the program and outlines its required elements), grant applications submitted to DCJS by each participating locality, and award letters and agreements for each funded program site.

### **Site Visits and Interviews**

Site visits to program localities and interviews with program staff and court professionals provided extensive information about the day-to-day operations of the Virginia Exile program.

### **Local Programs**

Evaluators conducted a total of three visits to each of the six principal program sites over the three years of program evaluation. Initial site visit meetings were held with program staff in early 2000. This group generally included the Commonwealth's Attorney, a grant-funded prosecutor, support staff, and in some sites, a law enforcement representative. At these meetings, evaluators asked staff a series of questions about local implementation of the program and collected details about the legal process from arrest through conviction. Program staff also provided input on the design of the case tracking data collection form, which was created expressly for collecting case-specific data for the evaluation (see Data Collection Forms section, which follows).

Follow-up site visits were conducted in 2001 and 2002 to continue the assessment of program administration in each locality. Program staff were asked questions about basic program-related topics such as bail, prosecution, and sentencing. Also discussed were issues related to specific program practices and procedures, as well as the strengths and weaknesses of the program. In 2002, visits and interviews were also conducted with program staff in the secondary evaluation sites. Discussions were similar to those conducted with the principal evaluation sites and covered implementation, daily program operations, required program elements, and prosecution-related issues. Site visit findings are discussed in more detail in the Program Description section.



## **Judges and Magistrates**

Also in 2002, Circuit Court judges, General District Court judges, and Chief Magistrates in each of the six principal program evaluation sites were interviewed by phone or responded to a written survey about the major program and statutory components of the Virginia Exile initiative.

Three survey forms were constructed, one for each type of judicial official. Surveys administered to Chief Magistrates contained questions about awareness of the Exile statutes, training received, factors used in bail decision-making, and level of contact with the Exile prosecutor before granting bail. With the exception of contact with the prosecutor, the General District Court judges' surveys contained the same questions. In addition, surveys for this group included more in-depth questions about training, the appropriate scope of the Virginia Exile statutes, transferring cases to the United States Attorney's Office, and benefits and drawbacks of the presumption against bail statute. Surveys for Circuit Court judges were identical to those for General District Court judges, but with additional questions regarding mandatory minimum sentences. All judges and magistrates surveyed were also invited to provide recommendations about the program.

### **Data Collection Forms<sup>3</sup>**

Three data collection forms were created for the Virginia Exile program: a quarterly statistical form, a quarterly narrative form, and a case tracking form.

The statistical and narrative forms were to be submitted every three months by each of the ten programs. The quarterly statistical report summarizes the number of cases, staff, and attorney hours spent on the Virginia Exile program each quarter. The narrative report explains how the program is operating in each locality with regard to activities, staffing, collaborative support, program obstacles and media campaign efforts during a given quarter.

Case tracking forms were used to document detailed information about each Virginia Exile case, and were only required of the six principal evaluation sites. During the design phase of this form at program onset, Commonwealth's Attorneys were surveyed about the processing of felony weapons cases in their localities. This information, as well as information collected from document reviews and site visits, contributed to the final version of the form which tracks each Virginia Exile case from arrest through sentencing. Protocol required that one case tracking form be submitted to DCJS for each Virginia Exile case for which prosecution was initiated. Information provided about each case included defendant demographic information, bail information, types of firearms and drugs seized, charges brought against the defendant, charges for which the defendant was indicted, the disposition of each charge, and sentencing information (if convicted). All data received were reviewed for accuracy and clarity by Research Center staff. Follow-up was conducted with Virginia Exile program staff, as necessary, to clarify the information provided.

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<sup>3</sup> The data collection forms are not included in the report but are available from DCJS upon request.

## **Supplementary Data**

Data contributing to this evaluation included monthly UCR and IBR data. These data, submitted from Virginia towns, cities, and counties to the Virginia State Police, were used to examine trends in firearm-related violent crime in each of the program localities and across the state. Data submitted in IBR format were converted to UCR format so that this information could be reported uniformly for all sites.

Other data sources include the Virginia Department of Corrections Inmate Status Information System. This inmate locator search engine provides information on offender placements to state prisons.

### **VI. Virginia Exile Program Administration**

Fundamental information about the administration of the Virginia Exile program was collected through relevant document reviews and staff interviews. DCJS Grants Administration staff also provided specific information regarding the administrative history of the program. Funding cycles, implementation schedules, and awards/expenditure figures were also reviewed.

#### **Administrative History**

In August 1999, twenty qualified Virginia localities were invited to apply for Virginia Exile funds. Eligibility criteria were established by the Governor's Office. As stated in the 1999 Program Guide for the Virginia Exile Program (DCJS), "Factors taken into account in determining the eligible localities were the numbers of convictions in each locality for offenses specifically targeted by Virginia Exile, such as weapons possession or use, other related or designated offenses, and prior convictions of those arrested." Of the localities that met the criteria in the first year, six applied and were awarded funds. These localities were Chesapeake, Halifax County, Lynchburg, Petersburg, Richmond City, and Roanoke City. Their first year's funding cycle began on January 1, 2000.

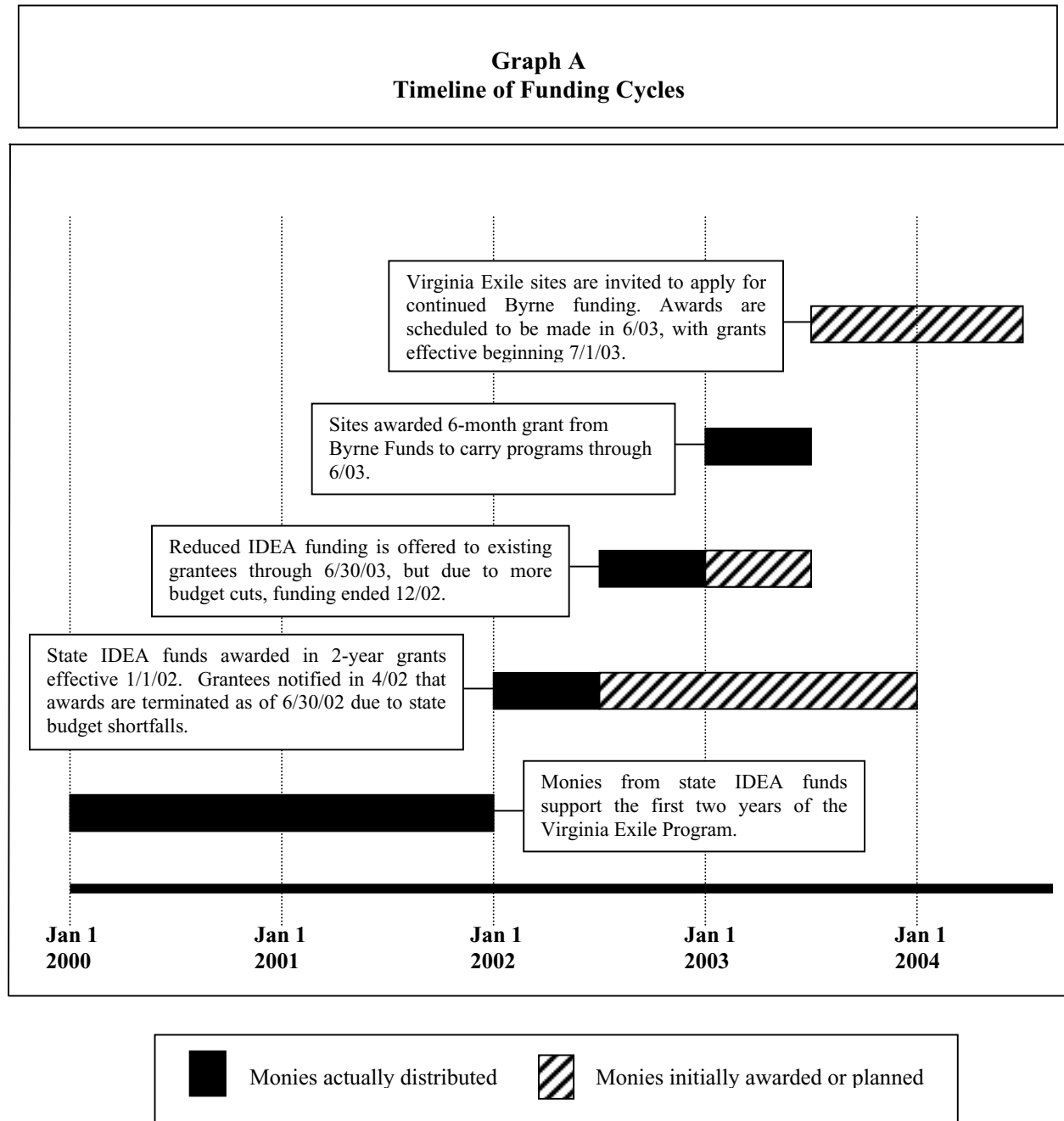
In the second year of the program, all six of the original Virginia Exile sites received continued funding. Continuation funding was recommended if reporting requirements were met, and if "project performance is satisfactory and funds are available" (DCJS, 1999, 2000, 2001). Also in the second year, the 14 qualified localities that did not apply for funds in the first year were again invited to apply for Virginia Exile funds. Of these, four new sites were added to the program. These sites were Chesterfield County, Henrico County, Portsmouth, and Suffolk.

This evaluation will focus primarily on the six initial sites that began the program on January 1, 2000. Information that includes the four additional sites is noted, when applicable.

#### **Description of Funding Cycles**

Originally, state monies from the Intensified Drug Enforcement Act (IDEA) funds were used to finance the Virginia Exile program. Later, when funding cycles were affected by the state's budget shortfall, the program was shifted to federal Byrne funds (Edward Byrne Memorial

Formula Grant Program). The funding cycles for the Virginia Exile program are detailed in Graph A.



It is important to understand that, although access to funds was granted on a given date, programs were not necessarily fully implemented at that time. Practical matters, such as receiving approval from local governing boards and hiring new staff, often created delays in actual program implementation. Most of the six original Virginia Exile program sites implemented their programs in spring 2000 (Chesapeake and Halifax County in March 2000, Lynchburg and Petersburg in April 2000). The exceptions were the cities of Richmond and Roanoke. Richmond was able to begin Virginia Exile program activities immediately on January

1, 2000 since their program implementation primarily consisted of a funding shift from Project Exile to Virginia Exile. Roanoke implemented their program in August 2000.

### Virginia Exile Awards and Expenditures

For the six principal evaluation sites, a summary of state-funded awards and expenditures is provided in Table 2. The requested dollar amount of the grant award is based on an itemized budget projection submitted as part of the application process. All funds requested are not necessarily awarded and all funds awarded are not necessarily spent during the program year. The table displays the amount of state funds awarded to each locality for each funding cycle, as well as the amount of funds spent.

<b>Table 2</b>				
<b>Virginia Exile Awards &amp; Expenditures for Principal Evaluation Sites</b>				
<b>January 2000 – June 2002</b>				
<b>Locality</b>	<b>1/00 – 12/00</b>	<b>1/01-12/01</b>	<b>1/02 – 6/02</b>	<b>Total</b>
<b>Chesapeake</b>				
Award	\$115,955	\$115,955	\$67,057	\$298,967
Expenditures	\$84,348	\$103,235	\$59,645	\$247,228
% of Award Spent	<b>73%</b>	<b>89%</b>	<b>89%</b>	<b>83%</b>
<b>Halifax County</b>				
Award	\$83,884	\$83,884	\$66,713	\$234,481
Expenditures	\$59,812	\$76,741	\$50,885	\$187,438
% of Award Spent	<b>71%</b>	<b>91%</b>	<b>76%</b>	<b>80%</b>
<b>Lynchburg</b>				
Award	\$99,460	\$99,464	\$67,492	\$266,416
Expenditures	\$96,937	\$88,371	\$67,492	\$252,800
% of Award Spent	<b>97%</b>	<b>89%</b>	<b>100%</b>	<b>95%</b>
<b>Petersburg</b>				
Award	\$95,188	\$95,188	\$23,797	\$214,173
Expenditures	\$52,701	\$83,473	\$23,797	\$159,971
% of Award Spent	<b>55%</b>	<b>88%</b>	<b>100%</b>	<b>75%</b>
<b>Richmond</b>				
Award	\$131,530	\$131,264	\$54,522	\$317,316
Expenditures	\$113,281	\$128,278	\$22,107	\$263,666
% of Award Spent	<b>86%</b>	<b>98%</b>	<b>41%</b>	<b>83%</b>
<b>Roanoke</b>				
Award	\$92,759	\$72,191	\$39,153	\$204,103
Expenditures	\$31,887	\$57,711	\$33,818	\$123,416
% of Award Spent	<b>34%</b>	<b>80%</b>	<b>86%</b>	<b>60%</b>
<b>Total</b>				
<b>Awards</b>	\$618,776	\$597,946	\$318,734	\$1,535,456
<b>Expenditures</b>	\$438,966	\$537,809	\$257,744	\$1,234,519
<b>% of Award Spent</b>	<b>71%</b>	<b>90%</b>	<b>81%</b>	<b>80%</b>

Note: Dollar amounts reported in this table reflect state funds only and do not include the 10% match funds the program sites are required to provide.

For the four secondary evaluation sites, a summary of state-funded awards and expenditures is provided in Table 3. The table displays the amount of state funds awarded to each locality for each funding cycle, as well as the amount of funds spent.

<b>Table 3</b>			
<b>Virginia Exile Awards &amp; Expenditures for Secondary Evaluation Sites</b>			
<b>January 2001 – June 2002</b>			
<b>Locality</b>	<b>1/01-12/01</b>	<b>1/02 – 6/02</b>	<b>Total</b>
<b>Chesterfield County</b>			
Award	\$117,996	\$62,499	\$180,495
Expenditures	\$69,022	\$56,224	\$125,246
% of Award Spent	<b>58%</b>	<b>90%</b>	<b>69%</b>
<b>Henrico County</b>			
Award	\$91,237	\$56,757	\$147,994
Expenditures	\$47,547	\$52,936	\$100,483
% of Award Spent	<b>52%</b>	<b>93%</b>	<b>68%</b>
<b>Portsmouth</b>			
Award	\$100,517	\$52,454	\$152,971
Expenditures	\$51,817	\$50,596	\$102,413
% of Award Spent	<b>52%</b>	<b>96%</b>	<b>67%</b>
<b>Suffolk</b>			
Award	\$124,195	\$66,909	\$191,104
Expenditures	\$118,363	\$66,909	\$185,272
% of Award Spent	<b>95%</b>	<b>100%</b>	<b>97%</b>
<b>Total</b>			
<b>Awards</b>	\$433,945	\$238,619	\$672,564
<b>Expenditures</b>	\$286,749	\$226,665	\$513,414
<b>% of Award Spent</b>	<b>66%</b>	<b>95%</b>	<b>76%</b>

Note: Dollar amounts reported in this table reflect state funds only and do not include the 10% match funds the program sites are required to provide.

Continued Virginia Exile funding beginning in July 2002 and provided through the federal Byrne program is not included in the above tables. For more information about continued funding, contact the DCJS Grants Administration section.

## VII. Virginia Exile Program Description

Localities that receive Virginia Exile funds are expected to implement the program model in compliance with statutory mandates and established grant program requirements while tailoring the program design to accommodate local community needs. A review of the Virginia Exile program philosophy, program requirements, and local implementation strategies follows.

## **Program Philosophy**

Virginia Exile seeks to reduce firearm-related crime, in part, by discouraging the illegal possession of guns in the community. As stated in the program guide (DCJS, 1999, 2000, 2001), “The purpose of Virginia Exile is to reduce gun violence and homicide by 1) enabling local prosecutors and law enforcement officials to identify and aggressively prosecute using newly strengthened state law and bail procedures persons charged with illegally possessing and using firearms, and 2) assisting localities in organizing community-based and community-supported public awareness efforts aimed at deterring gun violence by highlighting the enhanced enforcement/prosecution efforts and the certainty of punishment upon conviction.”

Essentially, the Virginia Exile program is a gun-violence reduction initiative that provides supplemental resources to participating localities for the aggressive prosecution of offenders who commit certain weapons offenses. The targeted offenses, previously outlined on page 5, are defined in the *Virginia Code* and each carries a mandatory minimum sentence. The program model incorporates several key principles:

- A program management strategy that coordinates efforts between the Commonwealth Attorney’s Office and law enforcement;
- Vertical prosecution of each Virginia Exile case;
- Enhanced bail restrictions to keep targeted offenders in custody; and
- A media campaign to increase awareness of Virginia Exile among the public, foster community support, and deter future firearm offenses.

## **Program Requirements**

In addition to the statutory elements that provide the foundation for the Virginia Exile initiative, the program guide requires or strongly suggests that localities accomplish certain tasks as a condition of continued financial support. These requirements and suggested elements are outlined in Figure A.

**Figure A**  
**Outline of Required and Suggested Virginia Exile Program Elements**

At a minimum, each grant application for a new program must include the following components and objectives:

**I. Prosecution**

A. Required elements:

1. Commitment of a *full-time experienced assistant prosecutor* for the locality
2. Establishment of direct *leadership and cooperative working partnerships*
3. Provision of *vertical prosecution* for all weapons violations involving felons
4. Appear before the court to *oppose bond for felons* charged with weapons violations
5. *Appeal adverse bond decisions* to appropriate higher courts
6. Organization of a *coordination committee*
7. *Establishment of operating protocols* for all local elements of the project

B. Additional elements:

1. The Commonwealth's Attorney must provide leadership for and participate in training efforts by establishing a *training team* to develop or acquire training and resource materials and conduct training on certain topics.
2. The Commonwealth's Attorney will be expected to support the statewide Virginia Exile *public awareness* program and participate at the local level.
3. Each Commonwealth's Attorney will be responsible for establishing a *local non-profit foundation* or similar entity to direct or facilitate an aggressive public outreach/awareness campaign. This campaign will seek to build community support for mandatory sentencing under both federal and state law, and warn potential violators of the certainty of severe sanctions for Virginia Exile offenses.

**II. Law Enforcement**

A. Must actively support:

1. *Training* all participating law enforcement officers in rapid referral of information on all weapons seized in all drug-related, violent crime; federal laws and rules; new state laws pertaining to Virginia Exile; and required procedures for coordination with Commonwealth's Attorney's Offices.
2. Enhancement or creation of appropriate *local records systems* to facilitate timely data provision for the prosecution of Virginia Exile targeted offenders; provide baseline data on Virginia Exile targeted offenses, arrests, and criminal intelligence; and provide baseline and ongoing updated data on Virginia Exile targeted offenses, arrests, and criminal intelligence as the Department of Criminal Justice Services may require.

Source: Edited from Program Guide for the Virginia Exile Program, (DCJS, 1999, 2000, 2001).

The basic program requirements as defined by *Code* and by the program guide were the same for all program sites. However, as illustrated in the next section, the actual implementation of the program elements varied from site to site.

### **Local Implementation**

Program implementation data was provided by all ten sites in quarterly narrative reports and via interviews conducted by DCJS evaluation staff, unless otherwise noted. A total of eleven Circuit Court judges, fifteen General District Court judges, and six Chief Magistrates, representing the six principal evaluation sites were also interviewed about program implementation.

To better understand how each locality began and maintained its Virginia Exile program, annual interviews with program staff were conducted. Included in these interviews were specific questions about how core components of the program were implemented and general questions about broader program management. Prosecution of Exile cases was discussed in detail; program staff related the problems they encountered while prosecuting these cases as well as how these problems were addressed.

### **Local Program Components**

Table 4 briefly lists details of some core program components as implemented by each program site.



**Table 4  
Specific Components of Core Exile Program Elements, as Described by Each Locality**

Locality	Training Team	Coordination Committee	Partnerships with Federal Agencies	Non-profit Foundation	Media Campaign
<b>P r i n c i p a l E v a l u a t i o n S i t e s</b>					
<b>Chesapeake</b>	<p><i>Members</i></p> <ul style="list-style-type: none"> <li>• Exile prosecutor</li> <li>• Law enforcement (LE) liaison</li> </ul> <p><i>Activities</i></p> <ul style="list-style-type: none"> <li>• Roll call training &amp; memos provided</li> <li>• Program guide reference documents distributed</li> <li>• LE training conducted on drug-related search and seizure and charging accuracy</li> </ul>	<p><i>Members</i></p> <ul style="list-style-type: none"> <li>• Exile prosecutor</li> <li>• Law enforcement liaison</li> </ul>	<ul style="list-style-type: none"> <li>• Regular contact with the USAO</li> <li>• Law enforcement liaison for Exile is assigned to BATF</li> </ul>	<ul style="list-style-type: none"> <li>• Greater Hampton Roads Project</li> <li>• Exile Foundation</li> </ul>	<ul style="list-style-type: none"> <li>• Billboards</li> <li>• Buses</li> <li>• Television ads</li> <li>• Presentations in school system</li> <li>• Community events</li> </ul>
<b>Halifax County</b>	<p><i>Members</i></p> <ul style="list-style-type: none"> <li>• No training team, handled informally</li> </ul> <p><i>Activities</i></p> <ul style="list-style-type: none"> <li>• LE in-service (legal) training provided</li> </ul>	<ul style="list-style-type: none"> <li>• No formal committee, but informal communication between the Exile prosecutor and law enforcement</li> </ul>	<ul style="list-style-type: none"> <li>• No formal partnership, but communicates with the USAO as needed</li> </ul>	<ul style="list-style-type: none"> <li>• None</li> </ul>	<ul style="list-style-type: none"> <li>• Billboards</li> <li>• Essay contest in school system</li> <li>• Advertising partnership with local gun dealers</li> <li>• National Night Out</li> </ul>
<b>Lynchburg</b>	<p><i>Members</i></p> <ul style="list-style-type: none"> <li>• Exile prosecutor</li> </ul> <p><i>Activities</i></p> <ul style="list-style-type: none"> <li>• Program guide reference documents distributed</li> <li>• LE protocol and procedures developed</li> <li>• Roll call training conducted by LE shift supervisor</li> </ul>	<p><i>Members</i></p> <ul style="list-style-type: none"> <li>• Exile prosecutor</li> <li>• Law enforcement liaison</li> </ul>	<ul style="list-style-type: none"> <li>• No formal partnership, but communicates with the USAO as needed</li> </ul>	<ul style="list-style-type: none"> <li>• Received non-profit status Nov 2001, held first board meeting Apr 2002</li> </ul>	<ul style="list-style-type: none"> <li>• Billboards</li> <li>• Buses</li> <li>• Television ads</li> <li>• Press conferences</li> <li>• Public service announcement (PSA) with police chief</li> <li>• National Night Out</li> <li>• Community events</li> </ul>

<b>Locality</b>	<b>Training Team</b>	<b>Coordination Committee</b>	<b>Partnerships with Federal Agencies</b>	<b>Non-profit Foundation</b>	<b>Media Campaign</b>
<b>Petersburg</b>	<p><i>Members</i></p> <ul style="list-style-type: none"> <li>• Exile prosecutor</li> <li>• Law enforcement liaison</li> </ul> <p><i>Activities</i></p> <ul style="list-style-type: none"> <li>• Program guide reference documents distributed</li> <li>• LE training conducted on search and seizure and Exile procedures</li> </ul>	<p><i>Members</i></p> <ul style="list-style-type: none"> <li>• Exile prosecutor</li> <li>• Law enforcement liaison</li> </ul>	<ul style="list-style-type: none"> <li>• No formal partnership, but communicates with the USAO as needed</li> </ul>	<ul style="list-style-type: none"> <li>• None</li> </ul>	<ul style="list-style-type: none"> <li>• Billboards</li> <li>• Buses</li> <li>• Presentations in school system</li> <li>• Participation in civic events</li> <li>• Buddies program in schools</li> </ul>
<b>Richmond</b>	<p><i>Members</i></p> <ul style="list-style-type: none"> <li>• Exile prosecutor</li> <li>• Firearms administrator</li> </ul> <p><i>Activities</i></p> <ul style="list-style-type: none"> <li>• Roll call training provided</li> <li>• LE training conducted on search and seizure and Exile procedures</li> <li>• LE in-service (legal) training provided</li> </ul>	<p><i>Members</i></p> <ul style="list-style-type: none"> <li>• Exile prosecutor</li> <li>• Assistant U.S. Attorney</li> <li>• Paralegal/U.S. Attorney's Office</li> <li>• BATF representative</li> <li>• Law enforcement liaison</li> </ul>	<ul style="list-style-type: none"> <li>• Both USAO and BATF have representation in Richmond's coordination committee</li> </ul>	<ul style="list-style-type: none"> <li>• Incorporated into federal Project Exile Foundation</li> </ul>	<ul style="list-style-type: none"> <li>• Billboards</li> <li>• Buses</li> <li>• Television ads for federal Project Exile</li> </ul>
<b>Roanoke</b>	<p><i>Members</i></p> <ul style="list-style-type: none"> <li>• Exile prosecutor</li> </ul> <p><i>Activities</i></p> <ul style="list-style-type: none"> <li>• Roll call training provided</li> <li>• Program guide reference documents distributed</li> <li>• Training conducted at police academy</li> </ul>	<ul style="list-style-type: none"> <li>• None, carried out by Exile prosecutor</li> </ul>	<ul style="list-style-type: none"> <li>• Regular contact with the USAO</li> <li>• Law enforcement liaison for Exile is assigned to BATF</li> </ul>	<ul style="list-style-type: none"> <li>• None</li> </ul>	<ul style="list-style-type: none"> <li>• Signs on taxicabs</li> <li>• Shares media market with Lynchburg</li> <li>• School presentations</li> <li>• Community presentations with PD community officers</li> </ul>
<b>Secondary Evaluation Sites</b>					
<b>Chesterfield County</b>	<p><i>Members</i></p> <ul style="list-style-type: none"> <li>• Exile prosecutor</li> </ul> <p><i>Activities</i></p> <ul style="list-style-type: none"> <li>• Training conducted at police academy</li> <li>• Roll call training provided</li> <li>• LE in-service (legal) training provided</li> </ul>	<p><i>Members</i></p> <ul style="list-style-type: none"> <li>• Exile prosecutor</li> <li>• Commonwealth's Attorney</li> <li>• Law enforcement liaison</li> </ul>	<ul style="list-style-type: none"> <li>• None</li> </ul>	<ul style="list-style-type: none"> <li>• Uses Chesterfield Police Foundation to house funds</li> </ul>	<ul style="list-style-type: none"> <li>• School presentations</li> <li>• Partnership with Crime Solvers</li> <li>• PSA - television</li> </ul>

Locality	Training Team	Coordination Committee	Partnerships with Federal Agencies	Non-profit Foundation	Media Campaign
<b>Henrico County</b>	<p><i>Members</i></p> <ul style="list-style-type: none"> <li>• Exile prosecutor</li> </ul> <p><i>Activities</i></p> <ul style="list-style-type: none"> <li>• Training conducted at police academy</li> <li>• Roll call training and shift briefings provided</li> <li>• LE in-service (legal) training provided</li> </ul>	<p><i>Members</i></p> <ul style="list-style-type: none"> <li>• No formal committee, but informal communication between the Exile prosecutor and law enforcement liaisons at Police Department and Sheriff's Office</li> </ul>	<ul style="list-style-type: none"> <li>• None</li> </ul>	<ul style="list-style-type: none"> <li>• None, but in the process of organization</li> </ul>	<ul style="list-style-type: none"> <li>• Presentations to local inmates and community groups</li> <li>• Information booth at all local gun shows</li> <li>• School presentations</li> <li>• PSA - radio</li> </ul>
<b>Portsmouth</b>	<p><i>Members</i></p> <ul style="list-style-type: none"> <li>• Exile prosecutor</li> <li>• Law enforcement liaison</li> </ul> <p><i>Activities</i></p> <ul style="list-style-type: none"> <li>• Roll call training provided</li> <li>• Training other ACAs to recognize Exile cases</li> </ul>	<p><i>Members</i></p> <ul style="list-style-type: none"> <li>• Exile prosecutor</li> <li>• Law enforcement liaisons from Crime Prevention, Detective and Narcotics Units, and SWAT</li> <li>• BATF representative</li> </ul>	<ul style="list-style-type: none"> <li>• No formal partnership, but communicates with the USAO as needed</li> </ul>	<ul style="list-style-type: none"> <li>• Greater Hampton Roads Project</li> <li>• Exile Foundation</li> </ul>	<ul style="list-style-type: none"> <li>• School presentations</li> <li>• High school PSA competition</li> <li>• PSA – television</li> <li>• Billboards</li> </ul>
<b>Suffolk</b>	<p><i>Members</i></p> <ul style="list-style-type: none"> <li>• Exile prosecutor</li> <li>• Coordinated through Suffolk Exile Coordination Committee (SECC)</li> </ul> <p><i>Activities</i></p> <ul style="list-style-type: none"> <li>• Training provided to school staff and administration in juvenile law issues and recognizing firearms and ammunition</li> <li>• Train Probation and Parole staff to recognize Exile charges and inform clients</li> <li>• LE Training on <i>Code</i>, charging Exile, evidentiary issues</li> </ul>	<p><i>Members</i></p> <ul style="list-style-type: none"> <li>• Exile prosecutor</li> <li>• Commonwealth's Attorney</li> <li>• Suffolk Police Department</li> <li>• BATF</li> <li>• Suffolk School Board</li> <li>• Probation and Parole</li> <li>• USAO</li> <li>• Suffolk Redevelopment and Housing Authority</li> <li>• Western Tidewater Regional Jail</li> <li>• Fifth District Magistrate's Office</li> <li>• Project Exile Support Foundation</li> <li>• Virginians Against Handgun Violence</li> <li>• Paul D. Camp Community College</li> </ul>	<ul style="list-style-type: none"> <li>• No formal partnership, but communicates with USAO and BATF</li> </ul>	<ul style="list-style-type: none"> <li>• Greater Hampton Roads Project</li> <li>• Exile Foundation</li> </ul>	<ul style="list-style-type: none"> <li>• Posters and pamphlets in magistrate's office, jail, and P&amp;P office</li> <li>• Presentation at Housing Authority residents' meeting</li> <li>• School presentations</li> <li>• PSAs</li> <li>• Parade participation</li> <li>• Television ads</li> <li>• Billboards</li> </ul>

As demonstrated, there is a great deal of variation in the implementation of even core program components among the ten localities. Further details about program implementation are discussed in the following pages.

### **Local Program Management**

In all program sites, either the Commonwealth's Attorney or the Assistant Commonwealth's Attorney (ACA) serves in a leadership role for the Virginia Exile program in their community. Coordination and operational protocols with law enforcement and other agencies are managed by the local Commonwealth's Attorney Office (CAO). Public awareness campaigns are often directed from this office as well. Some CAs and ACAs play a more public role and are very involved in community outreach; others have established a background support role in the program.

All sites employed an Assistant Commonwealth's Attorney whose primary function was the prosecution of Virginia Exile and other firearm-related offenses. In some localities, experienced prosecutors were hired from outside the CAO; in others, an existing staff attorney was designated as the "Exile prosecutor." In the six principal evaluation sites, the Exile prosecutor position turned over at least once during the first three years of program activity. Turnover of this critical position was often accompanied by subsequent delays in reporting while the new prosecutor became familiar with the requirements of the program. This turnover also created a loss of program "institutional memory" for the details of certain cases.

To guide local program management, the program guide requires each Commonwealth's Attorney's Office to "establish a coordination committee of law enforcement, prosecution, and other component agencies of the project to negotiate agreements and establish rules and procedures of operation" (DCJS, 1999, 2000, 2001). Interviews with program administrators revealed some variation in the implementation of this requirement. Half of the sites reported that while no formal committee was established, there was significant collaboration between community agencies. Some CAOs reported meeting with law enforcement prior to program implementation to establish how the program would be handled procedurally. Then, once the process was fine-tuned and made regular practice, the parties would meet only as necessary. Five sites reportedly started the program with a formal coordination committee. These committees met to address any procedural changes that might benefit the overall prosecution of Exile charges, or to discuss legislative changes with potential impact on Virginia Exile. For those sites that worked closely with the U.S. Attorney's Office in their district, meetings were convened to decide which jurisdiction – state or federal – would prosecute each Exile case.

Another requirement included in the program guide stated that law enforcement agencies "enhance or create appropriate local records systems to facilitate timely data provision...." Most law enforcement agencies already have fairly current record keeping systems so it was not reported that any sites required specific enhancements to be able to provide data to the CAO in a timely fashion. However, some CAOs reported making a few alterations in the way they maintain case records for evaluation reporting.

The program guide further suggests that each site establish routine training for law enforcement and other participants in the local program to maintain current knowledge of Virginia and federal law, and ensure understanding of program procedures and protocols. Law enforcement officers

are already required to complete an annual legal in-service training, and in some localities, Exile-related instruction was folded into this mandatory training. Some sites also reported providing informal instruction on Virginia Exile through the use of memos and roll call reminders. Additionally, training officials at the Virginia Supreme Court report that judges and Chief Magistrates are required to attend training each year to review any changes or updates to the *Code of Virginia*.

Seven sites initially provided Exile-specific training to law enforcement through the CAO. Two sites had law enforcement agencies that provided regular, in-house Exile-related training to officers and two others did so on an as-needed basis. Some CAOs scheduled briefings to review Exile statutes and procedures during police department roll call. This instruction was generally used to address a specific problem or to provide updates in legal or program procedures. In half of the sites program staff reported that new law enforcement officers received Exile-specific training at their local police academy. Overall, particular areas for law enforcement instruction were reported to include: evidence handling, specifically drug and firearm evidence in an Exile case; search and seizure procedures in Exile investigations; making a good arrest; and bringing accurate charges against an Exile defendant. Additionally, CAOs reported that they sometimes trained other staff attorneys in how to recognize an Exile case to ensure these cases would be passed to the Exile prosecutor.

Some sites also reported providing information or training to other program participants. Chief Magistrates in most sites were reportedly contacted in the initial stages of program implementation and informed about the new bail procedures for Virginia Exile defendants. As new magistrates were hired after program implementation, some CAOs made an effort to provide them with information about the presumption against bail for Exile defendants. Half of the Chief Magistrates in the six principal Exile sites also reported receiving specific training at a conference or from the CAO. In addition, seven judges (of 26 surveyed) indicated that they received specific training on the statutes used in the Virginia Exile program. All noted that they received this training at a conference, and did not report receiving training at the local level.

There were accounts of some training-related challenges. As an example, one program reported heavy turnover in their local police department, which resulted in a significant number of cases being compromised due to improper search and seizure techniques by inexperienced officers. To address this problem, efforts were made to ensure that new officers were sufficiently trained in areas critical to Exile prosecution. Also noted were incidents of officers inaccurately charging or overcharging defendants with Exile offenses. Overcharging often occurred in incidents involving multiple offenders where more than one person is in a location and possession of the firearm and/or drugs is in question. These problems were usually remedied through supplementary training with officers.

### **Public Awareness Campaign**

Each Commonwealth's Attorney's Office was responsible for developing a public awareness campaign as part of their outreach efforts. The program guide stated that "each Commonwealth's Attorney will be responsible for establishing a non-profit local foundation or similar entity to direct or facilitate an aggressive public outreach and information effort" (DCJS, 1999, 2000, 2001). The purpose of establishing a non-profit foundation was to have an entity to direct fundraising, which in turn would support the public awareness program requirement.

Rather than facilitating the public awareness efforts, this requirement was reported to be a stumbling block in many sites. The rather complex and time-consuming process of applying for non-profit status was an obstacle for many CAOs, with one site describing this requirement as “burdensome,” having taken more than a year to accomplish. One site could not garner enough commitments from community leaders to sit on the foundation board, as those individuals were already overly committed to other projects. Three sites in the Tidewater/Hampton Roads area, however, were able to make use of an existing regional foundation to satisfy this element. In the end, many of the programs were reportedly unable to independently establish a non-profit foundation or did not achieve this element until very late in their program.

A primary source of funds for public awareness campaigns, made available in 2000 to only the six principal evaluation sites, was a one-time \$5,000 grant from the Commonwealth’s Attorney Services Council (CASC). Since most of the CAOs reported that they had neither the manpower nor expertise to engage in continuous fundraising, this, in addition to their program monies, provided the majority of funds spent on public awareness. Other methods used to promote public awareness without spending scarce funds included establishing partnerships with agencies, advertisers, and retailers in their community to assist with public outreach and media campaigns.

Initially, much of the public outreach reportedly consisted of using billboard, bus and taxi advertising as a way to deliver the Exile message to the community. Some programs also used television and radio advertising, or set up information booths at civic events where they would answer questions, distribute information, and pass out novelty items printed with the Virginia Exile message. These promotional efforts were not necessarily expensive. Although some localities initially spent considerable funds on public awareness, most found creative ways to get the message to the public without significant costs.

As the program progressed, many of the sites took their outreach efforts to the schools in their community. Most of the CAOs either plan to present or have already presented information about the Virginia Exile program at school assemblies, and two have organized competitive Exile-themed activities for students. One site encouraged each high school in its district to produce a Virginia Exile PSA, then a video production company combined and edited them, creating a combined PSA that was aired on television. Another site was scheduled to hold an Exile-themed student essay contest, with a scholarship being awarded to the winner.

When the amounts of the grant awards were cut in the last year of programming, six sites cut back on traditional types of public awareness efforts as a cost-saving measure. It was decided that this would have less impact on the programs than if they cut program staff. However, many sites continued to maintain some sort of public awareness campaign through low or no-cost efforts. Four of the programs became more involved in community events where they could set up an information booth, such as citywide festivals, charity events, and National Night Out programs.

As mentioned, efforts were made to establish partnerships with businesses in the community. One site reported that a billboard company offered them one free billboard ad for each billboard ad they purchased. Another program reported that a local bank offered to carry the Exile message on their electronic marquee, and the same site reported that a local car dealer offered to share billboard space with Virginia Exile at no cost to the program.

Signs have been used in some unique places to broadcast the Exile message. For example, one site obtained permission from area gun shops to display Virginia Exile posters and pamphlets in their stores. Another strategy employed by two sites involved partnering with local jails and probation and parole offices to display Virginia Exile posters. Further, some probation and parole offices in Exile localities made it standard procedure to explain the increased sentencing for these offenses to their clients.

There was much variance in the way each locality implemented its public awareness campaigns. Those with access to more resources appeared to have more active public awareness campaigns, and although financial resources naturally helped, so did less obvious resources such as program leadership. Commonwealth's Attorneys who took a strong leadership role in promoting the program and working with other community leaders had programs with more dynamic and diverse community awareness activities.

Due to staff and budget limitations, the effectiveness of the Virginia Exile public awareness campaigns was not specifically measured in this evaluation. Anecdotally, some sites said they found it hard to judge the level of community awareness in their area since they have not noticed any identifiable program effects from the public awareness campaigns, and few offenders have specifically mentioned that they were aware of the program. Others, however, reported that they have received positive feedback from the community about the program, and said they have encountered witnesses and offenders that were aware of the program's increased penalties for firearm offenses.

### ***Deterrence and public awareness***

One site specifically reported that the public awareness campaign initially had a deterrent effect, but that it was not sustained. They surmised that perhaps this was because offenders had adapted to and were no longer intimidated by the threat of punishment. Another site reported observing no deterrent effect from the public's knowledge of the program and speculated that the decision to get involved in drug dealing was primarily economic since it provides significant income for individuals with limited education in a community with little opportunity for sufficient employment.

While prosecutors generally agreed that increased community awareness of the program could have a deterrent or preventative effect, five sites suggested it could also have the unintended effect of increasing the number of constructive possession cases. Proving constructive possession requires proof that the defendant was aware of and had dominion and control over required offense elements, such as drugs and firearms. With greater community awareness of the types of offenses that now have increased penalties, some offenders were believed to have adapted their behavior to reduce their chances of conviction by making the prosecutors' job of proving constructive possession more difficult. The offenders' adaptive behaviors reportedly included: dumping their guns as they flee the scene, wiping off prints, and admitting to possession of controlled substances while denying possession of a firearm.

## **Prosecution Review**

Particular elements involved in the prosecution of Virginia Exile cases were discussed with prosecutors in all ten program sites, and with judges and magistrates in each of the six principal program sites. Specific topics of review included providing vertical prosecution for all Exile cases, how cases were initiated, the application of the presumption against bail statute, determining whether a case would be tried in state or federal court, and the role of discretion in charging decisions, as well as other recurring prosecution issues.

### **Vertical Prosecution**

Vertical prosecution describes a situation where one attorney prosecutes a case from arraignment through sentencing, rather than a succession of prosecutors working on the same case at various stages of the prosecution. The Virginia Exile program guide requires all Exile cases to be tried using a vertical prosecution strategy. All sites maintained this requirement, and in all but one site, the Assistant Commonwealth's Attorney was responsible for prosecution of all Exile cases. This site had multiple attorneys who tried Exile cases, which they referred to as their "Exile Team," but the cases were prosecuted vertically as required.

### **Case Initiation**

As described by Virginia Exile prosecutors, an Exile case begins when law enforcement makes an arrest and brings formal charges against a defendant. For this reason it is important that law enforcement officers bring accurate and provable charges against a suspect. To facilitate this, six localities planned or established a procedure where the Exile prosecutor was to be contacted by phone or pager when an arrest was made and an Exile charge was expected. This idea intended to give the prosecutor an opportunity to discuss the most appropriate charge with the arresting officers. However, some localities said that, in practice, the ACAs were infrequently contacted by arresting officers. In fact, the first notification the ACAs received of an Exile case was usually the next day by means of law enforcement documents detailing the arrest and charges against the defendant.

### **Bail Provisions**

After the decision to charge a suspect is reached, the arresting officer files formal charges with the magistrate. The magistrate takes into account the charges against the defendant and makes a decision on bail. The defendant is subsequently assigned counsel, if needed, after which a bail hearing can occur before a judge.

Section 19.2-120 of the *Code of Virginia* stipulates that when a defendant is charged with an Exile offense "the judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public...." This presumption was legislated to discourage bail for offenders who commit certain offenses. However, the statute allows for a rebuttal, which means that the burden is on the defendant to prove to the court that s/he is not a danger to the community and should be granted bail. All magistrates and most judges (22 of 26) surveyed reported that the factors considered in granting bail for Virginia Exile cases are no different than those considered in granting bail in other cases. Commonly reported considerations include risk of flight, criminal



record/history, seriousness of the offense, community contacts, risk of danger to society, and employment status.

In an effort to ensure that those charged with Virginia Exile offenses remain incarcerated until trial, the Exile program guide requires the prosecutor to oppose all bail decisions for defendants in such cases. Overall, nine of the prosecutors specifically reported opposing bail at most bail hearings. However, they also noted some difficulty with this requirement. For example, few prosecutors are present when bail is first determined in front of a magistrate. All magistrates surveyed for the study further indicated that they do not contact the Exile prosecutor in situations when bail is granted to an Exile defendant.

When bail decisions were made in the court, prosecutors reported that they often noted their objections to bail in Exile cases. However, because consistent objections to bail were thought to possibly diminish attorney credibility, some discretion was exercised. Prosecutors generally agreed that they oppose bond when the crimes were violent and the defendants posed a threat to the community, but might not oppose bond in cases where the defendants had no criminal record. Other situations in which the ACA reported not opposing bail included cases where the judge set the bail amount prohibitively high, or when the defendant's predicate felony was very old. Bail was also reported to be a necessary device when the defendant was cooperating with law enforcement in another case, or in negotiations with defendants who could provide information about another defendant in a more serious case.

Another program requirement that directed the CAO to appeal adverse bail decisions to a higher court reportedly had low compliance among the Exile sites. The prevailing opinion was that decisions to appeal bail are best made on a case by case basis, not as a standing order. Prosecutors noted that the culture of discretion among judges is highly regarded and that many judges were reluctant to overturn another judge's decision unless absolutely necessary. Most CAs said they tried to be realistic about which cases to appeal so as not to waste the court's time. As was the case with opposing bail initially, prosecutors felt that constant appeals in these cases might harm the credibility of the CAO. The only situations specifically reported where the prosecutor appealed bail were (1) if new evidence came to light that might change the judge's decision or (2) if there was an obvious error in the lower court's decision.

### **Types of Trials/Trial Issues**

Prosecutors reported they typically pursue all Exile cases that come to their office, with the exceptions being those cases transferred for federal prosecution. Depending on the circumstances of the case, federal prosecution was elected for some Virginia Exile cases if it was anticipated that the federal courts could attain longer sentences or more certain convictions. In some sites, the decision to prosecute federally was initiated by the USAO or the BATF. In other sites, representatives of the USAO and BATF met regularly with local CAO staff and decided collectively which cases were best suited for which court. Usually the decision to transfer a case to the USAO was made due to the existence of at least one of the following circumstances:

- Large quantities of guns or drugs;
- Evidence of a conspiracy;
- Criminal history of the defendant;

- Prior conviction of domestic violence;
- Possession of a machine gun or unregistered sawed-off shotgun; or
- Defendant is part of an on-going federal investigation.

For cases that are tried in the state system, defendants may request one of two trial types: a bench trial or a jury trial. Bench trials are heard only by a judge, and jury trials are heard by a panel of qualified citizens, presided over by a judge. Initially, many of the Exile grantees thought that, after implementing their Exile program, there would be a much higher number of requests for jury trials among these cases. Since jury trials are often unpredictable and a charge can be acquitted if only one juror chooses not to convict, the CAs assumed that the defense might be more apt to risk a jury trial in Exile cases. Instead, the CAOs reported that the proportion of jury trials to bench trials in Exile cases (9% jury trial, 91% bench trial) is nearly the same as with other criminal cases.

However, in those few trials that were heard by a jury, certain tendencies were cited by program staff. In more urban sites, some juries were reported to be more lenient than the judges in Exile cases, and it was surmised this could be due to some community distrust and skepticism of the police. Other sites reported the opposite; juries were more strict than judges in Exile cases and would sentence beyond the mandatory minimums if given the opportunity. One site noted that juries were tougher on defendants charged with drug-related Exile offenses than those charged with prior felony convictions.

Two CAs specifically mentioned that jury trials require much more preparation than bench trials. They explained that most jurors are not accustomed to hearing evidence and considering legal questions, so the case must be detailed thoroughly, and concepts and legal issues must be carefully defined. In jury trials, twelve people must be convinced, instead of just one in a bench trial. Juries also reportedly respond to visual aids and prefer to see the evidence, where a judge will often prefer to review the reports.

The length of time it took to complete a trial was also discussed and four prosecutors indicated that Exile cases required more time than other firearm cases. One prosecutor suggested that, because of the severe sentencing for Exile convictions, defense attorneys file more motions and often fight harder for their Exile clients, resulting in numerous delays and a lengthy prosecution. It was also reported that some defense attorneys filed for a continuance when their client was out on bail in order to keep them out of jail for as long as possible. Additionally, prosecutors said they occasionally requested continuances in cases where the felony conviction certification was requested from out-of-state and was delayed. Finally, there were a few cases that experienced delays because a defendant either escaped from jail or did not show up at trial, becoming a fugitive for some length of time.

### **Charging Decisions/Use of Discretion**

Although it is generally agreed that the codification of mandatory minimum sentences reduces charging and sentencing options, court officials do find ways to circumvent mandatory sentencing, as cited in the 1997 Department of Justice report (Parent, et.al., 1997). Prosecutors and judges interviewed for this evaluation also reported methods of exercising their discretion when they felt it was appropriate to do so. The most common way discretion was reportedly

used was by reducing or dropping charges for non-Exile offenses, although in a few cases the Exile charge itself was reduced or dropped. Use of this strategy was reported in various situations, the most common being when weak case evidence dictated the need to negotiate with a defendant.

Besides evidentiary considerations, credibility plays a role in the CAO's decision of whether or not to pursue Exile charges against a defendant. Prosecutors specifically cited credibility concerns in cases that did not appear to fit the "spirit" of the Exile statutes. Examples of such cases included:

- A defendant who was very old or fatally ill;
- Defendants with a very old non-violent felony conviction;
- Cases that involved constructive possession of a firearm without intent to possess (i.e., the defendant borrows a friend's car without knowledge that there is a firearm in the trunk); and
- Situations that were not intentionally dangerous (such as hunting).

Three of the Circuit Court judges surveyed cited similar concerns, particularly when the predicate felony conviction is very old.

Although prosecutors and judges had little control of sentencing due to the mandatory minimum sentences, some managed to influence sentences in other ways. Cooperative defendants were sometimes given reduced charges to ensure a conviction. As an example, for some defendants charged with a violent felony, a "legal fiction" was created by stating that "for purposes of this case only" the defendant's prior conviction is a non-violent felony instead of a violent felony. This allows for a mandatory sentencing range of two to five years instead of a mandatory five-year sentence. Two ACAs specifically reported a reluctance to pursue drug residue cases, and four ACAs said they believed that some judges and juries would not convict a defendant under Exile with trace amounts of controlled substances. Additionally, one site mentioned judicial economy as a reason not to pursue an Exile charge when it was accompanied by more serious non-Exile charges in the same case. For example, when a murder charge is brought along with an Exile charge, the Exile charge may be nol prossed<sup>4</sup> as part of an agreement to obtain a guilty plea on the murder charge.

Only when the prosecutor felt the risk of trial was too great due to evidentiary issues were they reportedly willing to consider negotiating the Exile charge. Plea agreements were sometimes sought when the prosecution felt the evidence was not strong enough to guarantee conviction, or in cases with particularly difficult constructive possession issues. While a deal might be negotiated with an informant who had information on a more serious case, one site said they would not make a deal with any defendant involved in a violent crime. Other cases requiring negotiations were those cases where police brought erroneous charges that the prosecutor could not prove. Fortunately, this situation was reported as relatively uncommon.

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<sup>4</sup> See Appendix 3 for a list of legal definitions.

## **Recurring Prosecutorial Challenges**

In discussions with Exile program staff, prosecutors pointed out that trying an Exile case has numerous challenges not typically found in most criminal cases. Prosecutors consider the Exile offenses to be serious charges that require more intensive investigations and preparation to successfully prosecute than many other charges. The most common challenges named by Exile staff are described below and include: proving elements such as possession, firearm operability, and predicate felonies; search and seizure; witness and jury issues; and statutory interpretations.

### ***Proving Possession of Firearms and/or Drugs***

Four attorneys reported that the prosecution of Exile cases was relatively more difficult than other cases because they often required additional preparation, particularly in proving possession. This was often more complicated than simply proving a defendant had actual physical possession of a drug or firearm. There were two types of possession often discussed in regard to Exile cases: constructive possession and simultaneous possession.

#### *Constructive Possession*

Proving constructive possession of firearms and/or drugs was reported to be the biggest obstacle to successful prosecution in Exile cases. In fact, far more cases reportedly involved constructive possession than physical possession among Exile cases. Given the strict evidentiary standards in demonstrating proof beyond a reasonable doubt for constructive possession, this is an area of concern for prosecutors.

To prove constructive possession, the Commonwealth must point to “evidence of acts, statements, or conduct of the accused or other facts or circumstances which tend to show that the defendant was aware of both the presence and character of the weapon [drugs] and that it was subject to his dominion and control.” (Logan v. Commonwealth, 452 S.E.2d at 368-69). Mere proximity to a weapon or drugs is insufficient to establish possession; rather, the court must consider the totality of the circumstances disclosed by the evidence (Birdsong v. Commonwealth, 2002). For a conviction to rest properly on facts and circumstances other than actual possession, an unbroken chain of evidence proving the defendant’s guilt must be established (Gordon v. Commonwealth, 212 Va. App. 298, 300, 183 S.E.2d 735, 737 (1971)).

Additionally, prosecutors in four Exile sites indicated a steady increase in the number of constructive possession cases, presumably due to some awareness on the part of criminals about the strict possession standards required to prove Exile charges. Only one site specifically reported that the number of Exile cases involving constructive possession did not increase, and the same site suggested that this was possibly due to the fact that there was little or no community awareness of the Exile program in their area.

#### *Simultaneous Possession of a Firearm and Drugs*

Simultaneous possession requires proof that the defendant possessed two or more items at the same time. Three of the six Virginia Exile offenses involve simultaneous possession of a firearm and drugs, therefore such cases were not uncommon. Although only one prosecutor specifically

mentioned encountering difficulties proving simultaneous possession of drugs and firearms, five prosecutors agreed that offenders who learned and adapted their behavior by stowing their firearms in a location separate from their narcotics were making simultaneous possession more difficult to prove.

### ***Drug Residue***

Two sites specifically reported problems with Exile cases that involved defendants in possession of only trace amounts of drugs. One prosecutor contended that, in such cases, judges sometimes dismissed the gun charge and tried the defendant only on possession of drug residue. While this situation was noted early in the program's implementation, it reportedly occurred less frequently later in the program. When asked directly about this issue, six sites said they had either encountered some resistance by judges in residue cases, or knew judges that would likely resist if they brought such a case forward.

When judges were asked whether or not they had ever presided over a case that fell legally under the Exile statutes, but given the facts of the case, Exile charges seemed unsuitable, almost half (12 of 26) said they had presided over such a case. However, when asked to describe the specific circumstances that made an Exile change seem inappropriate, most mentioned old prior felony convictions. None specifically noted drug residue.

### ***Firearm Operability***

Firearm operability was identified as an evidentiary issue early in the Exile program. At that time, proof of a firearm's operability was required in an Exile prosecution. Several Virginia Court of Appeals cases (*Jones v. Commonwealth* (1993), *Gregory v. Commonwealth* (1998), and *Williams v. Commonwealth* (2000)) established that, without proof of a firearm's operability, a firearm could not be admitted as evidence. As a result, all firearms had to be test-fired and evidence of operability submitted to the court by either lab reports or expert testimony. So in cases where a firearm was not seized, it was nearly impossible to win the case. Although this element was difficult initially, increased communication and training efforts with the labs and law enforcement helped reduce problems proving firearm operability.

About one year into the program, a Virginia Court of Appeals decision, *Armstrong v. Commonwealth* (2001), set aside the prior rulings and established that a firearm admitted as evidence does *not* have to be proven operable. The *Armstrong* ruling, recently upheld by the Virginia Supreme Court (2002), clearly alleviated the prosecutorial burden to prove operability. As a result, two Exile sites have specifically reported simplified prosecution of Exile cases and, in some cases, more expeditious trials. A few firearm charges have reportedly been tried and convicted even without seizure of the gun. However, when asked about the impact of the *Armstrong* decision, only two Exile prosecutors reported a slight increase in their number of convictions they felt were related to *Armstrong*. Additionally, although they are no longer required to do so, four Exile prosecutors stated that they would continue to request tests of operability in order to present the most solid case possible.

### ***Determination of Defendant's Prior Record***

Two of the Exile offenses require proof of a defendant's prior felony conviction. To prove this element, the prosecutor typically requested certification of the felony from the state where the

defendant was convicted. However, receiving certification of a prior felony conviction was not always easy. Three Exile sites specifically reported at least occasional difficulties in this area, especially when attempting to obtain felony certifications from out-of-state. Additionally, felony certifications that were delayed or never arrived often resulted in trial delays or reduced charges. Further, law enforcement and the CAO commonly use the Virginia Criminal Information Network (VCIN) and National Crime Information Center (NCIC) systems to research an offender's criminal history. Several sites reported that inaccuracies in these databases sometimes led to defendants being charged as convicted felons under Exile when they were not, in fact, convicted felons.

### ***Search and Seizure***

The Fourth Amendment protects against state and federal law enforcement authorities conducting "unreasonable" searches and seizures without a search warrant. Any evidence seized as a result of an improper search cannot be used as direct evidence against a defendant in any criminal prosecution, nor can it be used to discover any other evidence. Although evidence discovered under these circumstances is not permissible as direct evidence in court, evidence seized illegally can be used for other purposes, such as:

- it can be considered by a judge when deciding on an appropriate sentence following conviction;
- it can be admitted in civil and deportation cases; and
- in some circumstances, it can be used by a prosecutor to impeach a witness who testifies in the trial.

Since most Virginia Exile cases involved the seizure of a firearm and/or illicit drug, proper search and seizure techniques were critical to successful prosecutions. Evidentiary problems were reported with law enforcement officers who lacked experience executing proper searches and seizures. This was often remedied with additional training specific to Fourth Amendment issues. One site also reported problems created by inaccurate information on search warrant affidavits. This situation also reportedly improved after increased collaboration between Exile prosecutors, program staff, and law enforcement.

### ***Witnesses***

Similar to other evidentiary problems, CAOs reported that witnesses frequently presented challenges to obtaining a conviction. Six sites reported some witness difficulties, especially when the witness had a close association with the defendant (e.g., friend, family, or spouse). In these cases, prosecutors reported that witnesses sometimes recanted testimony they gave to the grand jury, refused to testify at trial, or failed to show up at all. One prosecutor said that witnesses often distrust the criminal justice system. Another mentioned that, on occasion, they were not able to locate a witness to serve a subpoena.

### ***Jury Nullification***

In criminal cases that proceed to jury trials, a bifurcated proceeding is mandated by law (§19.2-295.1 of the *Code of Virginia*). The first phase of the proceeding determines whether the defendant is guilty or innocent of the offense. If the defendant is found guilty, a second phase

imposes punishment. One problem arose in Exile cases over whether it should be permissible for jurors to have knowledge of Exile's mandatory minimum sentencing requirements prior to or during the trial. The concern was that jurors informed of mandatory sentence lengths prior to the sentencing phase of a trial might nullify the legislatively imposed sentence. Linder (2001) describes jury nullification as follows:

Jury nullification occurs when a jury returns a verdict of "Not Guilty" despite its belief that the defendant is guilty of the violation charged. The jury in effect *nullifies* a law that it believes is either immoral or wrongly applied to the defendant whose fate that they are charged with deciding.

This issue was recently raised in a Virginia Court of Appeals decision which established that it is proper for counsel to inform a given jury panel during voir dire (interviewing potential jurors to assess their position on sentencing requirements) of the sentencing parameters of a given case and to explore whether a bias toward one end of the sentencing range might exist (*Hill v. Commonwealth*, 36 Va. App. 375, 550 S.E.2d 351 (2001)). In this case, the Commonwealth unsuccessfully argued that, by advising a given jury panel of the sentencing range during voir dire, the initial determination of guilt or innocence was corrupted so that jurors might find the mandatory minimum sentence too harsh and might nullify a finding of guilt through acquittal. The Court's reasoning in this instance was that voir dire is the only point in the process where jurors can be questioned as to bias regarding sentencing.

While three Exile prosecutors admittedly felt that knowledge of Exile's mandatory minimum sentences prior to determination of guilt or innocence might cause juries to base their finding on sentencing requirements instead of the facts, two ACAs stated that they deliberately inform the jury of the mandatory sentencing requirements in the process of voir dire. Overall, half of the prosecutors stated that, with or without prior knowledge of Exile's mandatory minimum sentencing, most jurors make every effort to follow the law and base their decisions on the facts in the case. Additionally, almost half (5 of 11) of Circuit Court judges reported that they have presided in cases where juries either had, or seemed to have, prior knowledge of Virginia Exile's mandatory minimum sentences and were aware of the sentencing provisions for Exile charges prior to their finding of the defendant's guilt or innocence. The judges, however, did not report whether they thought this prior knowledge had biased the juries' findings.

### ***Interpretation of Key Statutes***

Although courts have granted convicted felons the right to possess a firearm for the purposes of self-defense,<sup>5</sup> this defense does not give a convicted felon the right to possess a firearm in his/her

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<sup>5</sup> A recent Virginia Court of Appeals decision (*Humphrey v. Commonwealth*, XX Va. App. XX, XX (2001)) held that a defendant charged with possessing a firearm after having been convicted of a felony under §18.2-308.2 can utilize the common law defense of necessity for self-defense to prevent conviction. The essential elements of the necessity defense include: 1) a reasonable belief that the action was necessary to avoid an imminent threatened harm; 2) a lack of other adequate means to avoid the threatened harm; and 3) a direct causal relationship that may be reasonably anticipated between the action taken and the avoidance of the harm. Under the defense of *Buckley v. Commonwealth*, 7 Va. App. at 33, 371 S.E.2d at 827, 828, the felon may possess the weapon only so long as is necessary to protect himself from the imminent threat. It cannot be used in cases where a convicted felon takes possession of a firearm before a threat becomes imminent or retains possession longer than required after the danger has passed.

residence. According to prosecutors from two Exile sites, §18.2-308.2 of the original *Code* was vague and led to confusion as to whether or not it was acceptable for a convicted felon to possess a firearm in his residence. Specifically, the original statute stated that it was unlawful for convicted felons to “knowingly and intentionally possess or transport any (a) firearm or (b) stun weapon or taser as defined by §18.2-308.1, except in such person’s residence or the curtilage thereof...” As originally worded, it was unclear whether the residential exception was applicable to possession of a firearm, stun weapon/taser, or both types of weapon. Uncertainty about the statute’s intent allowed legal challenges to convictions based on this statute. In one Exile site a judge reportedly acquitted an Exile defendant based on the vagueness of this statute.

To remedy this problem, §18.2-308.2 was amended effective July 1, 2001. The statute now reads as follows:

It shall be unlawful for (i) any person who has been convicted of a felony . . . to knowingly and intentionally possess or transport any firearm or to knowingly and intentionally carry about his person, hidden from common observation, any weapon described in subsection A of §18.2-308. However, such person may possess in his residence or the curtilage thereof a stun weapon or taser as defined by § 18.2-308.1 (2001 Va. Acts, chs. 811, 854).

As amended, the statute now clarifies that a convicted felon may possess a stun weapon or taser, but not a firearm, in his residence. Although self-defense remains an exception to this statute, possession (residential or otherwise) in that instance must meet the established legal requirements.

<b>VIII. Opinions/Comments of Criminal Justice Professionals</b>
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In addition to collecting information on the specific procedures involved in Exile case processing and prosecution, criminal justice professionals (Exile prosecution staff from all ten Exile sites, and eleven Circuit Court judges, fifteen General District Court judges, and six Chief Magistrates from the six original Exile localities) were interviewed about their opinions and perspectives on several aspects of the Virginia Exile program.

**Comments on the Virginia Exile Program**

Specific topics of discussion included: mandatory minimum sentencing structures, the presumption against bail for Exile offenses, transferring cases for federal prosecution, and the impact of sudden funding reductions.

**Mandatory Minimum Sentences**

Statutory revisions that took effect in July 1999 converted recommended sentences for certain firearm offenses to mandatory minimum terms of incarceration in state prison. This reform is a cornerstone of the Exile program.



## ***Benefits***

When asked to describe any benefits derived from the mandatory minimum sentencing structure in Exile cases, all ten prosecutors noted some benefit. Some of the benefits specified included:

- Statutes reduce judicial discretion in sentencing;
- Offenders are incapacitated for longer periods of time; and
- Longer sentences may produce a deterrent effect making offenders less likely to carry guns.

Prosecutors also said that the perceived seriousness of Exile charges may sometimes be used as a bargaining tool by prosecutors to induce defendants to plea to other charges.

Nearly two-thirds (7 of 11) of all Circuit Court judges noted some deterrent benefit of mandatory minimums; two specifically cited were (1) communities may become safer through incarceration of dangerous offenders and firearm reductions, and (2) public awareness may assist communities in preventing firearm crimes.

## ***Drawbacks***

Three prosecutors said that convictions are often harder to obtain for offenses with mandatory minimum sentences, and the lack of sentencing flexibility made negotiating with a defendant more problematic for these ACAs. Other obstacles mentioned by prosecutors were that juries sometimes perceived these sentences as too harsh and, in some communities, the risk of a long prison sentence did not outweigh the economic benefit of selling drugs.

Only the Circuit Court judges were questioned about mandatory minimum sentencing as General District Court judges are not involved with sentencing the Exile convictions. Among the Circuit Court judges, all reported some drawbacks with mandatory minimums, and nearly half (5 of 11) said that they generally oppose mandatory minimums. Specific drawbacks mentioned by some of the judges included reduced judicial discretion in sentencing, a lack of consideration for case variability, and increased difficulties obtaining jury convictions. Over half of the judges (6 of 11) surveyed suggested that existing mandatory minimums are too harsh for some situations.

## ***Additional Comments***

Four prosecutors said they thought that judges sometimes moderated the impact of mandatory minimum sentences in cases where they viewed the mandatory minimum punishment as inappropriate. Two ACAs suggested that judges occasionally used acquittal to exert their discretion on a case-by-case basis, such as finding guilt on non-Exile charges coupled with acquittal on the Exile charge. Another reported that judges were more apt to acquit in cases with constructive possession problems. Prosecutors also said that judges consistently sentenced non-violent felons charged with Exile at the low end of the 2 – 5 year range.

When interviewed, almost half of all judges (12 of 26) indicated that the Exile statutes were unsuitable in some situations. Of those judges, three-quarters (9 of 12) reported that the statutes were sometimes inappropriately applied, such as in cases with old predicate felonies. Non-violent felons with minor criminal records were also thought to be an inappropriate target for the

Exile statutes. Consistent with prosecutor perceptions, three judges reported that they sometimes accommodate these types of situations by reducing or acquitting certain charges.

### **The Presumption Against Bail**

Offenses outlined under the Virginia Exile statutes are also applicable under §19.2-120, which directs the judicial officer to presume, subject to rebuttal, that defendants charged with certain firearm offenses should be denied bail. Exile prosecutors, as well as General District and Circuit Court judges and Chief Magistrates in Exile localities, were asked their opinions about the statutory presumption against bail. Prosecution staff were also questioned about Virginia Exile program guidelines that require opposition to bail and appeals for adverse bail decisions.

#### ***Benefits***

All prosecutors felt that a great benefit of the enhanced bail requirement is that it places the burden of proof on the defendant to demonstrate s/he is not a risk to the community. If this is not proven, the defendant is to remain incarcerated. The existence of statutory authority to justify opposition to bail was another cited benefit.

Nearly all judges (22 of 26) who responded to this question mentioned some benefit to the presumption against bail statute. Specific examples frequently cited included:

- General protection of public safety;
- Allows flexibility for discretion/exceptions (via the rebuttal option); and
- Burden of proof is on the defendant.

Other less frequently mentioned benefits were: defendants who are flight risks are kept incarcerated until trial; a formal bond hearing requires that the court receive more case information; the statute catches the defendant's attention; and the statute is easy to use.

All but one of the Chief Magistrates interviewed also named benefits, with half specifically mentioning increased public safety as an advantage. Other stated benefits included: prevention of "an immediate 'revolving door' in and out" of offenders, and receipt of more case information on which to make decisions.

#### ***Drawbacks***

Although four prosecutors reported no drawbacks associated with the presumption against bail statute, others felt that it limited the prosecutor's flexibility and discretion. Such limitations reportedly affected the Commonwealth's ability to negotiate with a defendant as, ordinarily, these are the same defendants that would have been granted pretrial release in absence of the statutory no-bail presumption. Also, prosecutors reported that Exile defendants who cooperate with law enforcement as informants generally need to be out of jail to be helpful. Under these circumstances, the statute may actually act as an impediment to another more serious case.

In addition to the statutory presumption against bail, the Virginia Exile program guide required prosecutors to oppose all bail for Exile defendants regardless of the circumstances of an individual case. Some prosecutors reported that arguing against bail in all cases, with no regard

to circumstances, would damage their credibility with judges. Further, the program required the prosecution to “appeal adverse bail decisions to a higher court.” Six prosecutors reported that they felt this requirement was unrealistic because bail decisions are rarely overturned and said they would only appeal if they found the court’s decision to be in error.

A little more than half the responding judges (13 of 24) reported drawbacks to the presumption against bail for Exile defendants, some of which were:

- Lowered/decreased judicial discretion;
- Mandates that are based on the offense rather than the offender; and
- The statute is not clearly written resulting in administrative inconsistencies from court to court.

Among magistrates, most (5 of 6) indicated that there were no drawbacks to the presumption against bail statute, although one mentioned reduced judicial discretion as a drawback.

### **Transferring Cases for Federal Prosecution**

Transferring qualified cases to the USAO for federal prosecution was an option exercised by some of the CAOs. Seven of the ten program sites have transferred Exile cases for prosecution by the USAO, some more frequently than others. Program staff and judges were asked their opinions about the transfer process.

### ***Benefits***

Among prosecutors, the most frequently stated advantage for transferring a case to the federal courts was that the defendant could be sentenced to more time if convicted. Reportedly, the types of cases most frequently transferred were cases involving large quantities of drugs or firearms, or conspiracy cases. All CAs were generally supportive of this procedure, although two indicated they prefer to keep their cases in state courts whenever possible.

Judges were also asked their opinions on transferring Exile cases. More than one-third (10 of 26) approved of transferring qualified cases to the USAO for federal prosecution, noting the following advantages to the practice:

- Increased likelihood of a conviction;
- Enhanced punishment in the federal system; and
- Use of federal resources saves the state money.

### ***Drawbacks***

More than one-third of the judges (9 of 26) basically disagreed with this strategy, some saying that they felt that Exile cases were adequately tried in the state system. Two judges discussed the role of the General Assembly in setting sentencing policy and its effect on case transfer decisions, specifically citing their belief that the General Assembly is responsible for ensuring that state sentencing structure adequately matches the offense. These judges felt that, if cases are being transferred for the purpose of increasing the potential penalty, the state should adjust its

punishment accordingly rather than shift responsibility to the federal system. About a quarter of the judges (7 of 26) had no particular opinion about the practice.

### **Suggestions for Future Program Development**

Additionally, Exile program staff from all ten sites, Circuit Court and General District Court judges and Chief Magistrates from the six original sites were asked whether they had suggestions about how to improve the Virginia Exile program or the related statutes.

### **Exile Prosecution Staff**

Generally, prosecutors recommended modification of sentencing practices, enhancement of state-level program coordination, and clarification of statutory language and intent. The specific ideas they offered are summarized in Table 5.

**Table 5**  
**Suggestions for Future Exile Program Planning**

<b>Type of Change</b>	<b>Specific Suggestions</b>
<b>Modification of Sentencing Practices</b>	<ul style="list-style-type: none"> <li>• Consider a sentencing differential between possession and selling Schedule I or II drugs.</li> <li>• Make sentencing more flexible for prosecutors. Instead of a mandatory minimum, return to a sentencing range and raise the maximum for these offenses.</li> <li>• Statutes should allow the judge to make a “downward departure” from the mandatory minimums for some cooperative defendants (e.g., in exchange for a guilty plea or information).</li> <li>• Model state sentencing guidelines after the federal guidelines offering reduced time for cooperation within a year after sentencing.</li> </ul>
<b>State-Level Program Coordination</b>	<ul style="list-style-type: none"> <li>• Employ a statewide program coordinator to keep local programs up-to-date on changes in law and related program issues, and to facilitate communication between local program sites and establish best practices.</li> <li>• Utilize the statewide foundation to better accomplish public relations, public awareness, and fundraising. Coordination of these tasks at the state level would improve program consistency and allow prosecutors to concentrate on prosecuting offenders.</li> </ul>
<b>Clarification of Statutory Language and Intent</b>	<ul style="list-style-type: none"> <li>• Clearly define simultaneous possession.</li> <li>• Review suitability of drug possession amounts (e.g., specify how to charge drug residue, consider using the quantity that qualifies as felony possession of marijuana).</li> <li>• Create similar mandatory minimum sentences for offenses such as “use of firearm in the commission of a felony” and certain brandishing offenses.</li> <li>• Add prior domestic violence charge (to include misdemeanor domestic assault and battery) to the state Exile statutes.</li> <li>• Establish and apply a consistent definition of a firearm.</li> <li>• Specify the types of prior felony convictions that are most relevant under the statutes. Consider that some offenses and circumstances may not be appropriate under these statutes.</li> </ul>

### **Judges & Magistrates**

About one-third of the judges (9 of 26) interviewed for this report recommended changes to the Exile statutes and program. All who offered ideas specifically suggested that decisions on bail and sentencing should be shifted back to the court. Other ideas presented by the judges were: eliminate mandatory minimum sentences and return to the previous sentencing guidelines; end

spending on the program; and allow policy decisions about the program to be made by the legislature. Chief Magistrates provided no recommendations for changes to the Exile initiative.

### **Impact of Eliminating Program Funding**

Exile prosecution staff were also asked to reflect on the potential impact of the elimination of state program funds, which was under consideration by the 2003 General Assembly. The uncertainty of continued state funding has reportedly made program planning significantly more difficult. Some sites have already reported cuts in media campaign/public awareness efforts due to this year's reductions in funding. Although Exile staff said rigorous prosecution of these offenses would assuredly continue in the program sites, they anticipated that all media campaign activities and support staff resources would likely be reduced or eliminated. Also, specialized prosecution of Exile offenses would presumably end in some sites. Instead, firearm cases would be distributed to staff prosecutors, who might not bring the consistency and expertise to the Exile cases that the Exile prosecutors have.

## **IX. Review of Virginia Exile Program Data**

As previously stated, the Virginia Exile program provides supplemental resources to improve prosecution of newly strengthened state laws for certain firearm-related offenses. To examine the effectiveness of this effort, the prosecutorial process of these cases was reviewed. Case-specific and charge-specific data were collected and analyzed, and are discussed in this section of the report. The information covers areas such as general case information, defendant demographics, firearm and drug seizures, bail decisions, prosecution of Exile charges, and prosecution of non-Exile charges.

### **Virginia Exile Caseload Information**

The Virginia Exile program formally began on January 1, 2000 when grant funds were released to six selected localities. These six principal sites were the only sites that submitted information about each Exile case prosecuted in their localities from January 2000 through June 2002. This information, which details the processing of every charge in each Exile case through the state courts, was captured on a case tracking form created specifically for this evaluation. In Table 6, the number of Exile cases prosecuted by each locality is shown. Generally, the more densely populated jurisdictions have prosecuted a greater number of Virginia Exile cases, with Richmond having the highest number of cases by far. Lynchburg prosecuted the fewest Exile cases in the group.

The six Exile sites reported that prosecution was initiated for a total of 646 cases. The cases represented a total of 756 Exile charges because multiple Exile charges can be tried in one case. There were an additional 1,051 non-Exile charges brought against the defendants in these cases. Grant funds provided for a monthly average of 124 attorney hours and 61 support staff hours per locality to prosecute Virginia Exile cases.

**Table 6**  
**Number Of Virginia Exile Cases Prosecuted, by Locality**

<b>Locality</b>	<b>Number</b>	<b>Percentage of Total</b>
Chesapeake	114	18%
Halifax County	64	10%
Lynchburg	52	8%
Petersburg	86	13%
Richmond	241	37%
Roanoke	89	14%
<b>Total</b>	<b>646</b>	<b>100%</b>

As explained previously, Virginia Exile cases can be transferred to the U.S. Attorney’s Office for prosecution and the types of cases most often transferred for federal prosecution reportedly involved large quantities of drugs or firearms.

Some localities transferred cases for federal prosecution much more frequently than others. Table 7 displays the number of Virginia Exile cases that were transferred to a U.S. Attorney’s Office for prosecution from each locality. Richmond, which has worked closely with the U.S. Attorney’s Office for the Eastern District of Virginia since the start of the federal Project Exile program, transferred more than half of its Virginia Exile cases for federal prosecution. Overall, 27% of all Virginia Exile cases were transferred to the federal court system for prosecution.

**Table 7**  
**Number of Virginia Exile Cases Transferred to the USAO for Federal Prosecution, by Locality**

<b>Locality</b>	<b>Number of Cases Initiated</b>	<b>Number of Cases Transferred</b>	<b>Percentage of Cases Transferred</b>
Chesapeake	114	16	14%
Halifax County	64	0	0%
Lynchburg	52	2	4%
Petersburg	86	7	8%
Richmond	241	138	57%
Roanoke	89	9	10%
<b>Total</b>	<b>646</b>	<b>172</b>	<b>27%</b>

For the 474 Virginia Exile cases that were not transferred to the USAO, data were collected regarding the type of trial held in state court. Of those, only two-thirds (316) were reported to have resulted in a trial; 289 (91%) of those were bench trials, and 27 (9%) of those were jury trials.

### **Demographics of Virginia Exile Defendants**

Case tracking forms captured demographic information about the Exile defendants including the defendant’s age, gender, and race. These data are presented in Table 8.

For those Exile defendants whose ages were known, ages ranged from 16 to 80. The average age of the Exile defendants in this study was 29 years old, and 78% of all Exile defendants were between the ages of 18 and 44. There were seven Exile defendants under 18 who were tried as adults.

<b>Table 8 Demographic Information for Virginia Exile Defendants</b>		
<b>Demographic Category</b>	<b>Number of Defendants</b>	<b>Percentage of Total</b>
<b>Age</b>		
Under 18	7	1%
18-24	255	39%
25-44	251	39%
45-64	61	9%
65 and over	3	<1%
Age not known	69	11%
<b>Gender</b>		
Male	610	94%
Female	36	6%
<b>Race/Ethnicity</b>		
African-American	527	82%
Caucasian	112	17%
Hispanic	4	1%
Asian-American	2	<1%
Other	1	<1%

Data were also collected about the gender of the Exile defendants. As expected, a large majority (94%) of Exile defendants in the study were male. Lynchburg and Richmond had the highest percentage of female defendants prosecuted under Virginia Exile (both at 8%), while Halifax County had the lowest percentage of female defendants at 2%.



Most Exile defendants (82%) were African-American; Caucasians accounted for most (17%) of the remainder. There were very few Hispanic, Asian or other race/ethnicity defendants in this study. Interestingly, when race/ethnicity was further examined by locality, only Halifax County had a majority of Caucasian defendants.

### Firearms and Drugs Seized

Given that the focus of the Virginia Exile program is to reduce firearm-related violence, data were collected about the numbers and types of firearms seized in these cases. Of the 646 Virginia Exile cases, 549 provided information about the seizure of firearms. Of these, 82% (448 cases) reported the seizure of some sort of firearm, resulting in a total of 593 firearms confiscated. Handguns represented 74% of all firearms seized, but were actually involved in 84% of all cases where a firearm was seized. The types of firearms seized are listed in Table 9.

<b>Table 9</b>		
<b>Firearms Seized in Virginia Exile Cases, by Type</b>		
<b>Type of Firearm</b>	<b>Number</b>	<b>Percentage of Total</b>
Handgun	439	74%
Shotgun	73	12%
Rifle	67	11%
Unknown firearm type	14	2%
<b>Total</b>	<b>593</b>	<b>99%</b>

Note: 1) Total percentage does not equal 100% due to rounding. 2) Although the Exile statutes do not include “air guns” (such as bb and pellet guns), there were five reported on the case tracking forms as “firearm seized.” 3) Unknown firearm type includes cases where a firearm was reported as seized, but the firearm type was not reported.

The Virginia Exile statutes also focus on offenses that involve the possession or distribution of a controlled substance, specifically: 1) *possession of a firearm and possession of Schedule I or II drugs*; 2) *possession of a firearm and distribution of Schedule I or II drugs*; and 3) *possession of a firearm and distribution of more than one pound of marijuana*. Therefore, data were also collected on the types of drugs seized in Virginia Exile cases. In Table 10, the types of drugs and frequency with which they were seized are shown.

**Table 10**  
**Virginia Exile Cases with Drugs Seized, by Type of Drug**

Type of Drug Seized	Number	Percentage of Drug Seizure Cases in Which Drug Type Was Seized
Cocaine/Cocaine Derivative	177	74%
Marijuana	127	53%
Heroin	25	11%
Other	7	3%
Pharmaceutical	6	3%

Note: "Other" includes Methamphetamine, LSD, and Ecstasy

Drug seizure data were available for 549 of the 646 cases. Of these, 238 cases (43%) involved the confiscation of at least one type of controlled substance. Cocaine/cocaine derivative was confiscated in 74% of all cases in which drugs were seized.

### **Bail Information**

In addition to the emphasis on certain firearm statutes, the Virginia Exile program also highlighted a statute that provides for a rebuttable presumption against bail for offenders charged under an Exile statute. This statute<sup>6</sup> specifies that, in regard to the admission of bail, "*The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is currently charged with: ... A violation of §18.2-308.1, §18.2-308.2, or §18.2-308.4 and which relates to a firearm and provides for a minimum, mandatory sentence.*" Essentially, this statute states that offenders charged with any Exile offense are not to be granted bail unless they can provide the court with a reasonable argument to the contrary.

Despite the existence of the statute, bail was frequently granted in the observed cases. In Table 11, the number of cases in which bail was granted is displayed by locality. In the 570 cases in which bail status was known, bail was granted to an Exile defendant in 200 cases (35%). Roanoke and Lynchburg show the highest rates of bail being granted, followed closely by Halifax County and Petersburg. Richmond and Chesapeake have the lowest rates of bail among the six localities.

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<sup>6</sup> §19.2-120, see Appendix 1 for full text of the statute.

**Table 11**  
**Virginia Exile Defendants Granted Bail, by Locality**

Locality	Number of Defendants	Was defendant granted bail?	
		Yes	No
Chesapeake	114	21%	79%
Halifax County	64	41%	59%
Lynchburg	52	52%	48%
Petersburg	63	38%	62%
Richmond	188	26%	74%
Roanoke	89	57%	43%
<b>Total</b>	<b>570</b>	<b>35%</b>	<b>65%</b>

Researchers also examined who initially granted bail. Bail can be granted at virtually any point in the court process between First Appearance and Circuit Court. In most instances, a magistrate hears the charges and makes a determination of bail at First Appearance. Any other determination of bail made after First Appearance is the jurisdiction of a judge.

Data collected from the 200 cases in which bail was granted suggested that, overall, judges granted bail to Virginia Exile defendants in more cases (61%) than did magistrates (39%). However, Halifax County was just the opposite. Among the Exile defendants granted bail in Halifax County, it appears that judges only granted 19% while magistrates granted 81% (see Table 12).

**Table 12**  
**Bail Granted by Judges and Magistrates in Exile Cases, by Locality**

Locality	Who granted bail?	
	Judge	Magistrate
Chesapeake	92%	8%
Halifax County	19%	81%
Lynchburg	63%	37%
Petersburg	54%	46%
Richmond	69%	31%
Roanoke	65%	35%

Data were also collected concerning the dollar amounts of bail granted, as well as the defendant’s ability to make bail (see Table 13). For the 165 cases where the amount of bail was known, data indicate that 70% of defendants were granted bail amounts of \$10,000 or less. Not surprisingly, an inverse relationship exists between the amount of bail granted and whether or not a defendant made bail, e.g., as the bail amount increased, the percentage of defendants who made bail decreased.

<b>Table 13 Dollar Range of Bail Granted to Virginia Exile Defendants</b>		
<b>Dollar Range of Bail</b>	<b>Number of Defendants Granted Bail</b>	<b>Percentage of Defendants Who Made Bail</b>
\$500 - \$5,000	72	90%
\$5,001 - \$10,000	43	79%
\$10,001 - \$50,000	44	73%
\$50,001 - \$750,000	6	33%

Defendant demographics, firearm seizure, and drug seizure information were also considered in regard to bail decisions. After examining the age variable, it appears a relationship exists between a defendant’s age and being granted bail in an Exile case. This is demonstrated in Table 14, as the age of a defendant increases, so does the likelihood that s/he is granted bail.

<b>Table 14 Percentage of Virginia Exile Defendants Granted Bail, by Age</b>	
<b>Age Range</b>	<b>Percentage Granted Bail</b>
Under 18	14%
18 – 24	27%
25 – 44	32%
45 – 64	36%
65 and over	100%

Bail decisions and race/ethnicity of the Exile defendants was similarly reviewed. The analysis examined bail data for only African-American and Caucasian defendants, since only very small numbers of defendants were reported in the other race/ethnicity categories. A difference was observed in the rate of bail between African-Americans and Caucasians. Almost one-third (32%) of African-Americans were granted bail versus almost half (48%) of Caucasian defendants.

In examining bail decisions and gender, there was no indication that the sexes were treated differently in regard to bail. The ratio of defendants granted bail was the same for both male and female defendants in Exile cases (31%).

Bail was also analyzed for those Exile cases where firearms were seized and for cases where drugs were seized. Among cases with available data, neither seizure of firearms nor seizure of drugs appear to have a direct relationship to bail decisions. In cases where at least one firearm was seized, 32% received bail, compared with 34% of cases where no firearms were seized. Additionally, in cases where drugs were seized, 31% received bail versus 34% in cases where no drugs were seized.

The frequency of bail was also examined by the type of Virginia Exile offense charged. Three of the offenses, *possession of a firearm and distribution of more than 1 pound of marijuana*, *possession of a firearm and distribution of Schedule I or II drugs*, and *possession of a firearm while on school property*, only accounted for 3% of the charges for which bail was known. Due to their small numbers, these offenses were excluded from this analysis. The data for the other three offenses, *possession of a firearm and possession of Schedule I or II drugs*, *possession of a firearm by a non-violent felon*, and *possession of a firearm by a violent felon*, were analyzed for their relationship to bail. For this analysis, cases with more than one Exile charge were excluded to eliminate any question of which Exile charge was influencing the bail decision. The analysis showed that the difference in the rate of bail across these three Virginia Exile charge types is small. Among these offenses, the percentage of cases in which bail was granted varied by only 6%. This suggests that the type of Exile charge brought against the defendant had little effect on whether or not bail was granted.

### **General Review of Court Process for Virginia Exile Charges**

The case-specific data used for this study were collected from the six original evaluation localities for a period of approximately 2 years. All 646 cases included in this evaluation were required to have at least one Virginia Exile charge; however, some cases had multiple Virginia Exile charges and many also involved one or more non-Exile charges. Table 15 displays the number of each type of Virginia Exile charge brought in each of the localities.

**Table 15**  
**Frequency of Virginia Exile Charges, by Locality**

<b>Description of Virginia Exile Charge</b>	<b>Chesapeake</b>	<b>Halifax Co.</b>	<b>Lynchburg</b>	<b>Petersburg</b>	<b>Richmond</b>	<b>Roanoke</b>	<b>Total</b>
<i>Possession of a firearm while on school property</i>	0	0	0	2	0	1	<b>3</b>
<i>Possession of a firearm by a violent felon</i>	9	25	17	25	57	29	<b>162</b>
<i>Possession of a firearm by a non-violent felon</i>	69	43	23	39	108	52	<b>334</b>
<i>Possession of a firearm and possession of Schedule I or II drugs</i>	48	5	14	27	114	20	<b>228</b>
<i>Possession of a firearm and distribution of Schedule I or II drugs</i>	0	1	2	6	1	2	<b>12</b>
<i>Possession of a firearm and distribution of more than 1 pound of marijuana</i>	4	4	3	2	4	0	<b>17</b>
<b>Total</b>	<b>130</b>	<b>78</b>	<b>59</b>	<b>101</b>	<b>284</b>	<b>104</b>	<b>756</b>

Overall, there were very few charges of *possession of a firearm while on school property*, *possession of a firearm and distribution of Schedule I or II drugs*, and *possession of a firearm and distribution of more than 1 pound of marijuana*. In fact, combined, these three charges made up only 32 (4%) of all Exile charges brought. Further, the offense *possession of a firearm by a non-violent felon* was charged twice as frequently as *possession of a firearm by a violent felon*.

As shown above, Richmond brought more than twice as many Exile charges as Chesapeake and almost five times as many as Lynchburg. Halifax County brought very few charges involving Schedule I or II drugs, and Chesapeake brought relatively few charges involving violent felons.

## Court Process Data

Court process information was collected for each specific charge brought against a defendant in a Virginia Exile case. Each Exile charge and felony non-Exile charge was followed from preliminary hearing or direct indictment through final disposition. Data were collected for many aspects of the court process for each charge, such as:

- The number of counts of each charge;
- If the charge was certified to Circuit Court;
- Whether or not the grand jury returned a true bill on the charge;
- How the defendant pled to the charge;
- The final disposition of the charge;
- Whether or not the disposition was the result of a plea agreement; and
- The sentencing information for charges resulting in conviction.

The information received early in the program evaluation was gathered using a working (preliminary) draft of the final data collection form. This early draft did not collect all of the specific information captured by the final version, particularly with regard to the court processes involved in Circuit Court. To simplify the reporting of the remaining information, only cases submitted using the final version of the data collection form will be discussed as these data are more complete. Therefore, 97 of the total 646 cases will not be included in the remaining analyses in this report. The remaining 549 cases represent 638 Exile charges and 850 non-Exile charges that were reported on the final data collection form.

Additionally, the data in this section of the report are primarily analyzed with discrete criminal charges as the unit of analysis, as opposed to cases or defendants. This strategy permits an examination of Exile in the context of how individual offenses are processed by the court system. It is important to be aware that individual cases may involve multiple charges, and some persons may be defendants in more than one case. The relationship between these various units of analysis is examined further at the end of the court process section.

In reviewing the frequency of the individual Virginia Exile charges prosecuted, it is clear that three Exile charges were brought against defendants far more frequently than the other charges:

- *Possession of a firearm and possession of Schedule I or II drugs;*
- *Possession of a firearm by a non-violent felon; and*
- *Possession of a firearm by a violent felon.*

These three charges represent 96% of all Virginia Exile charges prosecuted in the six evaluation sites. Of these charges, *possession of a firearm by a non-violent* was the most frequently charged, representing nearly half of all Exile charges. In Table 16, the number and type of Virginia Exile charges that were prosecuted are displayed.

**Table 16**  
**Frequency of Virginia Exile Charges**

<b>Virginia Exile Charge</b>	<b>Frequency</b>	<b>Percentage of Total</b>
Possession of a firearm by a non-violent felon	285	45%
Possession of a firearm and possession of Schedule I or II drugs	189	30%
Possession of a firearm by a violent felon	138	22%
Possession of a firearm and distribution of more than 1 pound of marijuana	16	3%
Possession of a firearm and distribution of Schedule I or II drugs	8	1%
Possession of a firearm while on school property	2	<1%
<b>Total</b>	<b>638</b>	<b>101%</b>

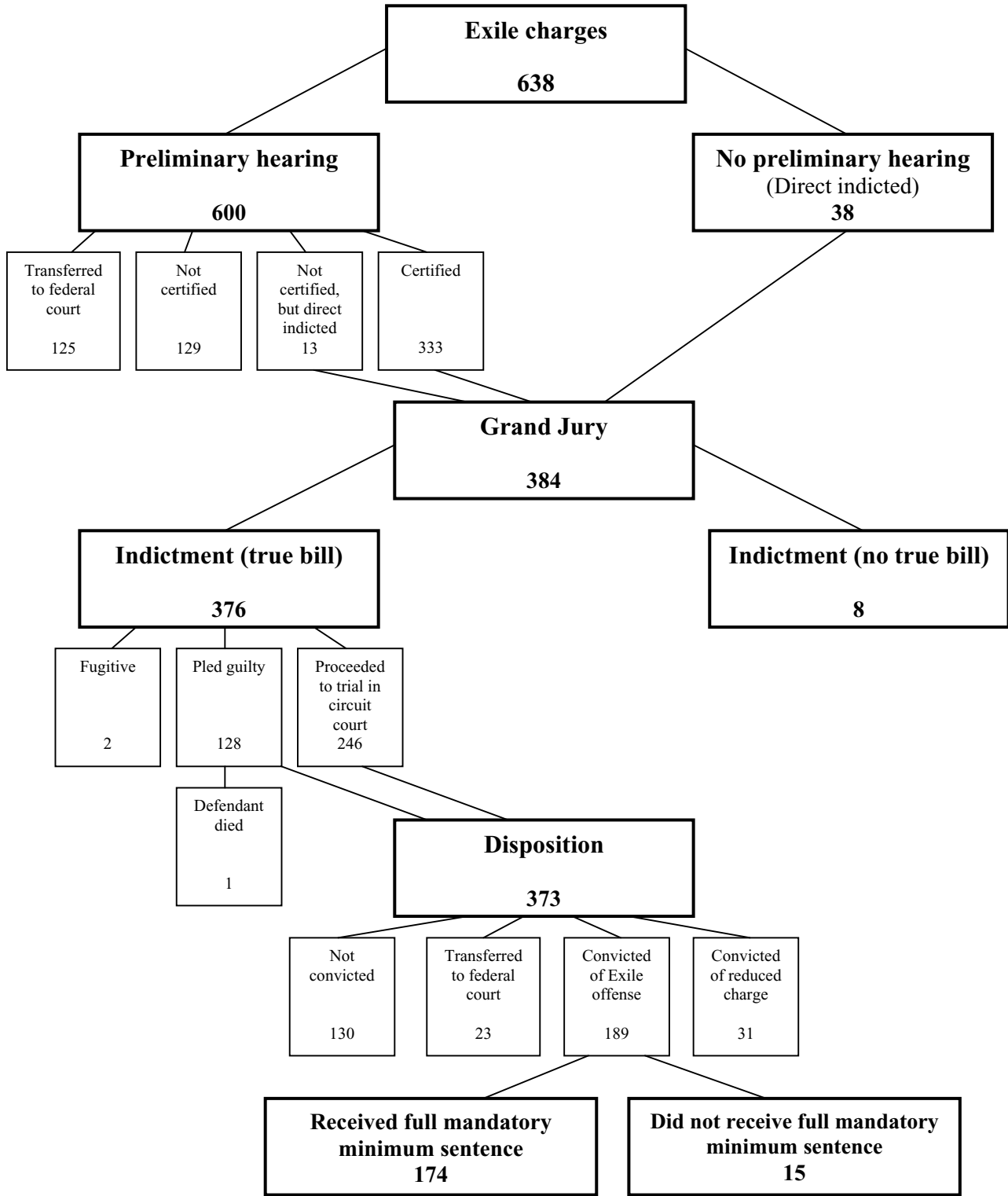
Note: Total percentage does not equal 100% due to rounding.

Details about the prosecution of each charge were collected so that evaluators could examine the progress of each criminal charge through the state courts. Special attention was given specifically to Exile charges in order to understand the range of events that can occur between the time a charge is brought until its final disposition and sentencing.

Figure B basically illustrates the prosecutorial process and depicts how the 638 Virginia Exile charges examined in this study moved through the courts. A brief narrative describing the court procedures for the Virginia Exile charges follows.



**Figure B**  
**The Process of Prosecuting Virginia Exile Charges**



## **Preliminary Hearing/General District Court**

Most criminal cases in Virginia begin the formal process of prosecution with a preliminary hearing in General District Court. At preliminary hearing a judge determines whether or not there is sufficient evidence to justify holding a defendant for a grand jury hearing, (<http://www.courts.state.va.us/cib/cib.htm#district-courts>) and whether felony charges brought against the defendant will be certified to Circuit Court. Of the 638 Virginia Exile charges examined in this court process analysis, 600 had a preliminary hearing in General District Court; 38 charges were direct indicted to Circuit Court including one for which the preliminary hearing was waived at the request of the defendant.

Of the 600 Exile charges heard in preliminary hearing:

- 333 (56%) were certified to Circuit Court;
- 129 (22%) were not certified to Circuit Court because they were either nol prossed, dismissed, or reduced to a misdemeanor charge;
- 125 (21%) were transferred to the U.S. Attorney's Office for federal prosecution; and
- 13 (2%) were not certified by the judge, but were subsequently direct indicted by the Commonwealth's Attorney to Circuit Court.

In sum, of the 638 Exile charges initially brought forward for prosecution, 384 (60%) went on to be heard by a Grand Jury at the state court level.

## **Grand Jury**

If a charge is certified or direct indicted to Circuit Court, a "bill of indictment" is prepared by the Commonwealth's Attorney in which the defendant is formally charged with a specified felony. The Grand Jury then considers the bill of indictment to determine if probable cause exists to require the defendant to stand trial for the charge(s) brought against him/her (<http://www.courts.state.va.us/faq/frame.html>).

There were 384 Exile charges brought before a Grand Jury. Of these, 376 (98%) resulted in the written decision of a Grand Jury finding sufficient evidence to indict (referred to as a "true bill"), and were sent to Circuit Court for trial. For eight (2%) charges that were indicted, no true bill was returned so they were not carried over to the Circuit Court for trial.

## **Circuit Court**

At Circuit Court, the defendant is asked to submit a plea to the charge(s) brought against him/her. If the defendant pleads guilty or *nolo contendere* (no contest) to a charge, s/he is not tried on that charge, and instead the charge proceeds directly to sentencing. If the defendant pleads not guilty to a charge, the charge will be tried in a bench or jury trial. Of the 376 Exile charges indicted to Circuit Court, two charges were never tried because the defendant was a fugitive, and one charge was never sentenced because the defendant died between the time he pled guilty and his sentencing hearing. The remaining 373 Virginia Exile charges continued to Circuit Court for final disposition. Table 17 details these charges and their subsequent

dispositions. Additionally, of these 373 Virginia Exile charges, 128 involved guilty pleas, some of which resulted in Exile convictions and some of which resulted in convictions on non-Exile or reduced charges.

<b>Table 17 Circuit Court Dispositions of Virginia Exile Charges</b>					
<b>Virginia Exile Charge</b>	<b>Type of Disposition</b>				<b>Total charges</b>
	<b>Not convicted</b>	<b>Transferred to USAO</b>	<b>Convicted of Exile offense</b>	<b>Convicted of reduced charge</b>	
<i>Possession of a firearm by a non-violent felon</i>	46	9	101	12	<b>168</b>
<i>Possession of a firearm and possession of Schedule I or II drugs</i>	56	5	31	10	<b>102</b>
<i>Possession of a firearm by a violent felon</i>	22	9	53	6	<b>90</b>
<i>Possession of firearm and distribution of 1 pound or more of marijuana</i>	4	0	3	2	<b>9</b>
<i>Possession of firearm and distribution of Schedule I or II drugs</i>	2	0	1	0	<b>3</b>
<i>Possession of a firearm while on school property</i>	0	0	0	1	<b>1</b>
<b>Total Dispositions</b>	<b>130 (35%)</b>	<b>23 (6%)</b>	<b>189 (51%)</b>	<b>31 (8%)</b>	<b>373</b>

Note: One charge of *possession of a firearm and possession of Schedule I or II drugs*, two charges of *possession of a firearm by a violent felon*, and one charge of *possession of a firearm and distribution of Schedule I or II drugs* were convicted of *possession of a firearm by a non-violent felon*.

After excluding those Exile charges that were transferred to the USAO for prosecution, the data in Table 17 was converted to percentages. This provided the percentages of the most frequent types of Virginia Exile charges brought to Circuit Court that resulted in an Exile conviction, as listed below:

- 65% of *possession of a firearm by a violent felon* charges brought to Circuit Court resulted in an Exile conviction;
- 64% of *possession of a firearm by a non-violent felon* charges brought to Circuit Court resulted in an Exile conviction; and
- 32% of *possession of a firearm and possession of Schedule I or II drugs* charges brought to Circuit Court resulted in an Exile conviction.

*Possession of a firearm and possession of Schedule I or II drugs* has a much lower Exile conviction rate than the other two frequent conviction types. This finding appears to support the prosecutors' claims of experiencing difficulty proving simultaneous possession and constructive possession in the Exile cases.

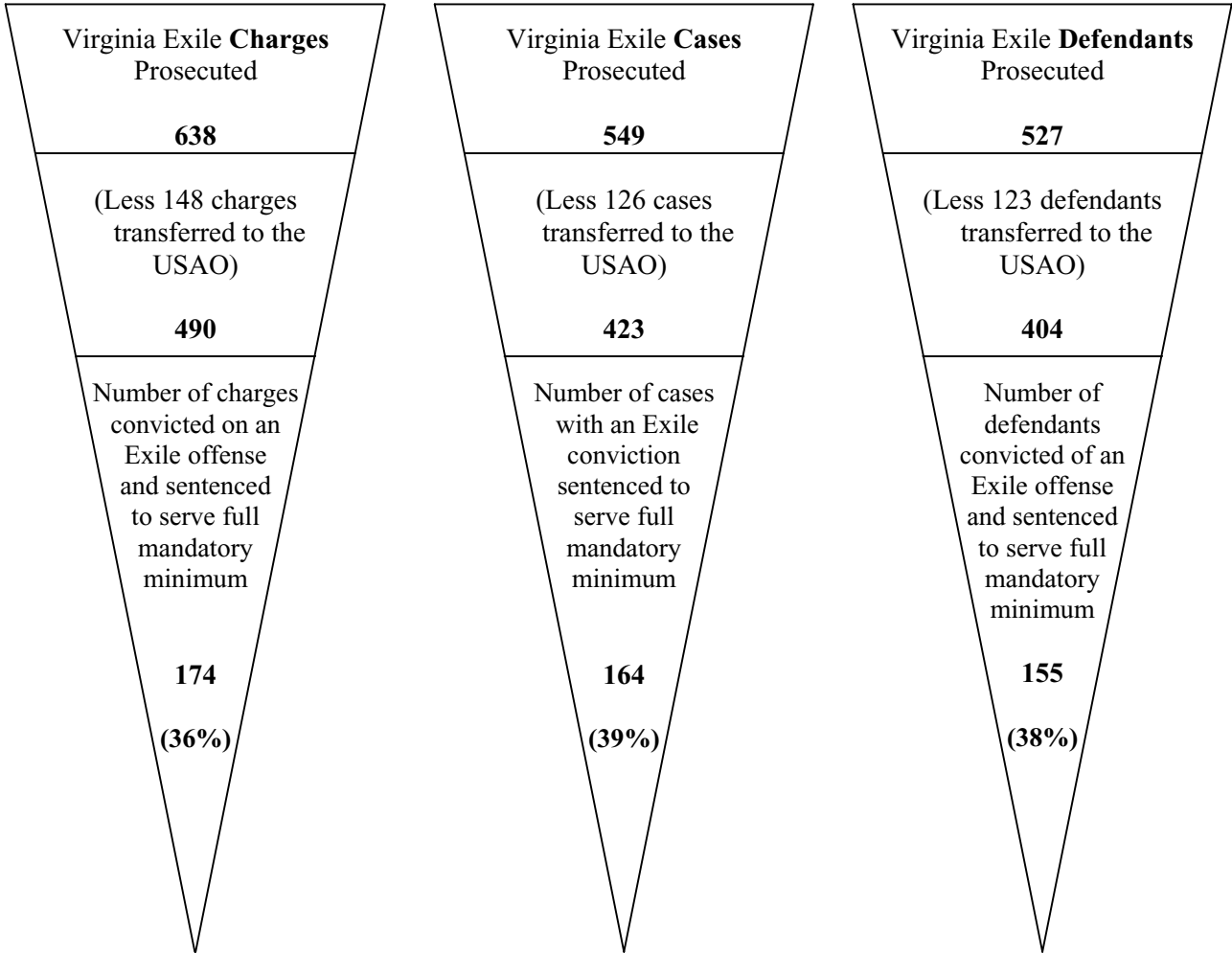
The three Exile offenses with low numbers of charges accounted for only 3% of all Virginia Exile charges brought to Circuit Court. It is important to note that the low numbers for the three types of Exile offenses are not a result of these charges simply not being indicted. These three Exile offenses accounted for only 4% of all Virginia Exile charges for which prosecution was initiated.

Finally, the 189 Virginia Exile charges that resulted in an Exile conviction were required by *Code* to receive the mandatory minimum sentence. However, of the 189 Exile convictions, only 174 (92%) received at least the associated mandatory minimum sentence. The other fifteen convictions were sentenced to serve less time than directed by the statutes.

### **Link Between Charges, Cases, and Defendants**

As stated earlier, multiple Exile charges may exist in a single Exile case; furthermore, an individual defendant may be involved in multiple cases with multiple charges. To further illustrate how the Virginia Exile charges translated to "cases" and "defendants," these relationships are shown in Figure C.

**Figure C**  
**Number of Virginia Exile Charges, Cases, and Defendants**



To summarize, there were 638 Virginia Exile charges in 549 cases brought against 527 defendants. A total of 148 Exile charges were transferred to the USAO for prosecution at some point in the court process. Therefore, of the 490 Virginia Exile charges brought forth for prosecution, 174 (36%) resulted in a conviction in state court and were sentenced to serve the mandatory minimum sentence.

**Detailed Review of Convictions and Sentencing**

As illustrated in the court process section, specific charges brought against a defendant may change between the time the charge is brought and its disposition, or a charge may even be dropped from a case altogether. This occurred with both Virginia Exile charges and non-Exile charges. Detailed analysis of conviction and sentencing information for both Exile charges and non-Exile charges are described in this section of the report.

## How Exile charges were convicted

Although only 189 Exile charges resulted in state Exile convictions, a total of 240 Exile charges ultimately resulted in some sort of conviction. Table 18 shows the various outcomes for these 240 Exile charges.

<p style="text-align: center;"><b>Table 18</b>  <b>Virginia Exile Charges That Were Convicted in State Court,</b>  <b>by Type of Conviction Outcome</b></p>		
<b>Outcome</b>	<b>Frequency</b>	<b>Percentage of Total</b>
Exile charge convicted as charged	183	76%
Exile charge convicted as a different Exile offense	6	3%
Exile charge convicted as a non-Exile felony offense	2	1%
Exile charge convicted as attempted Exile offense	3	1%
Exile charge convicted as a misdemeanor offense	46	19%
<b>Total</b>	<b>240</b>	<b>100%</b>

Of the 240 Exile charges that resulted in some type of state conviction, 189 (79%) resulted in a Virginia Exile conviction, and 51 (21%) resulted in a non-Exile conviction in either the General District Court or Circuit Court. The non-Exile convictions include two non-Exile felony convictions and three “attempted” Exile convictions. Attempted Exile offenses are not subject to the mandatory minimum sentence outlined in the *Code*. Forty-six of the non-Exile convictions were Virginia Exile charges reduced to a misdemeanor. The most frequent of these misdemeanor convictions (93%) was *carrying a concealed weapon*. This offense carries a relatively modest sentencing range of 0 – 12 months.

## How Exile convictions were sentenced

Sentencing data were also collected for every Exile charge and felony charge resulting in a conviction, including the sentence that was imposed and the actual time to serve.

### *Suspended Time*

“Sentence imposed” is the length of sentence handed down for a particular convicted offense. “Actual time to serve” is the effective sentence that the defendant will actually serve in jail or prison. In some cases these two sentences are the same, but when there is a gap between them the difference is called “time suspended.” However, should the defendant violate the terms of his/her post-release supervision (probation), s/he may be required to serve at least some of the time suspended from the sentence originally imposed.

Overall, 67 (35%) of the 189 Virginia Exile convictions received suspended time in amounts ranging from 6 months to 3 years. In other words, 122 (about two-thirds) of the convictions received full mandatory minimum sentences with no time suspended. The average amount of

time suspended for Virginia Exile convictions was 334 days, or just under one year. However, for 78% (52) of the convictions with suspended time, the actual time to serve was still within the mandatory minimum range required by the Code of Virginia. In total, 92% (174) of the 189 Virginia Exile convictions received at least the mandatory minimum sentence in actual time to serve.

For the other fifteen Virginia Exile convictions with suspended time, the actual time to serve did not meet the required mandatory minimum sentence for the offense. Of these convictions, twelve (80%) were *possession of a firearm by a violent felon*, two were *possession of a firearm and possession of Schedule I or II drugs*, and one was *possession of a firearm by a non-violent felon*. The average amount of time suspended from these fifteen convictions was 30 months, or one and one-half years.

***Actual Time to Serve***

Additionally, the actual time to serve for the 189 Exile convictions ranged from 8 months to 5 years, and the average effective sentence for the Virginia Exile convictions was 3.2 years. This average is somewhat affected by the fact that more than half (53%) of the Virginia Exile convictions were for *possession of a firearm by a non-violent felon*, which has a mandatory minimum sentence of only 2 years. Table 19 presents information about actual time to serve for Exile convictions by offense type.

<b>Table 19 Actual Time to Serve for Convicted Exile Offenses</b>				
<b>Convicted Offense</b>	<b>Number of Convictions</b>	<b>Range of Actual Time to Serve</b>	<b>Average of Actual Time to Serve</b>	<b>Mandatory Minimum Sentence</b>
<i>Possession of a firearm by a non-violent felon</i>	104	8 months - 5 years	2.2 years	2 – 5 years
<i>Possession of a firearm by a violent felon</i>	51	2 - 5 years	4.4 years	5 years
<i>Possession of a firearm and possession of Schedule I or II drugs</i>	31	2 - 5 years	4.8 years	5 years
<i>Possession of a firearm and distribution of more than 1 pound of marijuana</i>	3	5 - 5 years	5 years	5 years
<i>Possession of a firearm and distribution of Schedule I or II drugs</i>	0	N/A	N/A	5 years
<i>Possession of a firearm while on school property</i>	0	N/A	N/A	5 years

These findings demonstrate that, although most offenders are required to serve the mandatory minimum sentence in Exile cases, departures have occurred for all three of the most common offense types. For *possession of a firearm and possession of Schedule I or II drugs* and *possession of a firearm by a violent felon*, the average time to serve for these offenders falls

below the mandatory minimum of 5 years. In fact, some offenders convicted of these offense types were required to serve as little as 2 years of the mandatory sentence. Offenders convicted of *possession of a firearm by a non-violent felon* have also received sentences below the mandatory minimum, with time to serve as low as 8 months of the 2 year minimum.

### **How Non-Exile charges were convicted**

In addition to the Virginia Exile charges, data were collected on all non-Exile charges prosecuted in Virginia Exile cases. There were 850 non-Exile charges brought in 388 cases. Non-Exile charges were identified on the case tracking form by recording the Virginia Crime Code (VCC)<sup>7</sup> for each charge. Using this classification system, the non-Exile charges were examined by type of offense, felony and misdemeanor status, and seriousness index.

Unlike the Exile charges, the non-Exile charges were not specifically followed from initial charge through conviction. Therefore, we cannot categorically link charges to specific convictions for this group since some convictions may have resulted from plea agreements or charge reductions. Also, only limited misdemeanor sentencing information was provided.

Table 20 displays the types of non-Exile charges that were brought against the defendants in Virginia Exile cases. By far, the most frequent non-Exile charges brought were narcotics charges (40%). Assaults (18%) and weapons offenses (11%) were the next most frequently brought charges in the Virginia Exile cases. Additionally, of the 850 non-Exile charges brought, 74% were felony charges.

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<sup>7</sup> The VCC consists of 9 letters and numbers: the first three letters are an abbreviation for the broad offense title under which the charge falls (such as NAR for narcotic charges); the next four numbers are used to code the specific offense (such as 3022 for *possession of Schedule I or II drugs*); and the last two positions indicate the seriousness index, which defines the statutory maximum penalty for the crime (where F1 is the most serious and F6 is the least serious) (Sentencing Commission, p. 259 of guidelines).



**Table 20**  
**Non-Exile Charges in Exile Cases, by Offense Category**  
**(Includes felony and misdemeanor offenses)**

Offense Category	Number
Narcotics	338
Assault	157
Weapons Offenses	92
Robbery	52
Larceny	44
Other	40
Vehicular-related	39
Murder	20
Obstruction of Justice	18
Fraud	15
Burglary	14
Vandalism	11
Kidnapping	10
<b>Total</b>	<b>850</b>

Note: 1) The category of “Other” includes offenses with fewer than 10 charges as classified by VCC: DWI, escape, failure to appear, family offense, miscellaneous, money laundering, obscenity, ordinance, perjury, prisoner, rape, trespassing, and violent activity; 2) The category of “Vehicular-related” includes the following offense categories: equipment violation, hit and run, license, and reckless driving.

Further analyses of the three most frequent categories of charges from Table 20 reveal that 79% (268) of narcotics charges were felonies. The most frequent felony narcotics charges were:

- 142 charges of *possession with intent to distribute/sell Schedule I or II drugs*,
- 76 charges of *possession of Schedule I or II drugs*, and
- 42 charges of *possession with intent to sell/distribute marijuana*.

Also, 65% of felony assault charges brought in the Exile cases were *use of a firearm in the commission of a felony*. Of the misdemeanor narcotics charges, most (93%) were *possession of marijuana*, and 64% of the misdemeanor weapons charges were *carrying a concealed weapon*.

Because the Exile cases often involved additional non-Exile charges, evaluators examined the seriousness of these accompanying charges in order to compare them with the seriousness of the Exile charges. One way to examine this is by looking at the statutory maximum penalty assigned to each offense. In reviewing the maximum penalty assigned to each charge, those with longer statutory maximum penalties were considered to be “more serious.”

The examination showed that, of the 632 felony non-Exile charges, 549 (87%) were either equal to or more serious than an Exile charge based on their associated statutory maximum penalties.

These finding illustrate that persons charged with Exile offenses are also frequently charged with other offenses that carry even greater penalties than the Exile offenses.

### How Non-Exile convictions were sentenced

As detailed in Table 21, information was available for 335 non-Exile charges convicted in Virginia state courts. Of these, 70% were narcotics, assault, or weapons convictions.

<b>Table 21</b> <b>Non-Exile Convictions in Exile Cases, by Offense Category</b> <b>(Includes felony and misdemeanor offenses)</b>	
<b>Offense Category</b>	<b>Number</b>
Narcotics	144
Assault	62
Weapons Offenses	30
Robbery	24
Other	19
Larceny	16
Vehicular-related	11
Murder	10
Burglary	9
Vandalism	5
Fraud	4
Obstruction of Justice	1
Kidnapping	0
<b>Total</b>	<b>335</b>

Note: 1) The category of “Other” includes offenses that started with fewer than 10 charges and resulted in at least one conviction, as classified by VCC: Accomplice, disorderly conduct, DWI, escape, failure to appear, family offense, money laundering, paraphernalia, rape, trespassing, and violent activity; 2) The category of “Vehicular-related” includes the following convicted offense categories: license and reckless driving.

Conviction information reveals that, just as the narcotics charges made up most of the non-Exile charges, they were also the most frequent non-Exile convictions, representing 43% of all non-Exile convictions. Assault convictions were again the second most frequent (19%), and weapons convictions accounted for 9% of all non-Exile convictions.

### *Suspended Time*

As with the Virginia Exile convictions, “suspended time” was examined in regard to the sentencing of non-Exile offenses. Suspended time was calculated from sentencing data collected for each felony non-Exile conviction and available misdemeanor non-Exile convictions. Table 22 depicts the number of non-Exile convictions by the amount of time suspended from their sentences.

**Table 22**  
**Non-Exile Convictions in Exile Cases, by Amount of Time Suspended**

<b>Amount of Time Suspended</b>	<b>Number of Non-Exile Convictions</b>	<b>Percentage of Total</b>
Non-Exile convictions with all time suspended	129	39%
Non-Exile convictions with partial time suspended	121	36%
Non-Exile convictions with no time suspended	77	23%
Non-Exile convictions with no time sentenced	7	2%
Non-Exile convictions sentenced to life and no time suspended	1	<1%
<b>Total</b>	<b>335</b>	<b>100%</b>

Of those non-Exile offenses convicted in state courts, 250 (75%) received some amount of time suspended from their sentence. Excluding the three life sentences for which suspended time cannot be calculated, the amount of time suspended from these sentences ranged from 10 days to 50 years. The average amount of time suspended from sentences for non-Exile convictions was 5.1 years<sup>8</sup>.

### *Actual Time to Serve*

Of the 335 non-Exile convictions, there were 199 that received some time to serve ranging from 5 days to life. The average amount of time to serve for these convictions is 3.5 years (excluding one life sentence). If including the 129 convictions with all time suspended, the average amount of time to serve becomes 2.1 years.

### **Relationship of non-Exile convictions to conviction outcomes of the Exile charge**

The maximum sentencing range or “seriousness” of each non-Exile conviction in an Exile case was examined to assess if serious non-Exile convictions might influence whether or not the Exile charge itself is convicted. Of the 312 Exile cases that had at least one Exile or non-Exile charge resulting in a conviction, there were 238 cases with non-Exile convictions that qualified for this analysis.

The seriousness of the non-Exile offenses was determined using the potential sentencing range for each specific type of offense. For each case, the accompanying non-Exile conviction with the highest maximum sentencing range was used to classify the case as either having a non-Exile conviction that is “more serious” or “less serious” than the five-year mandatory minimum

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<sup>8</sup> The range of time suspended and average time suspended is based on a total that excluded three outliers from one case: three robbery convictions, each which had 63 years suspended from its sentence.

sentence for convicted Exile offenses. Next, the conviction outcome of the Exile charge(s) in each case was noted. This examination found that:

- In 174 cases where the non-Exile conviction was “more serious” than Exile, about half (52%) of the cases had a convicted Exile offense and about half (48%) did not have a convicted Exile offense; and
- In 64 cases where the non-Exile conviction was “less serious” than Exile, thirteen (20%) of the cases had a convicted Exile offense and 51 (80%) did not have a convicted Exile offense.

These findings show an overall higher Exile conviction rate for those cases that had a more serious accompanying non-Exile conviction. In those cases with less serious non-Exile convictions, the Exile charge was not convicted as frequently.

A further examination of only those cases with a more serious non-Exile conviction was conducted. The types of Exile charges prosecuted were compared for cases that resulted in an Exile conviction versus those that did not. This analysis showed no notable differences in offense types between the two groups of cases.

### **Relationship of time suspended to Exile convictions**

The *Code of Virginia* requires that Virginia Exile convictions have no time suspended, in whole or in part, from their mandatory minimum sentence and that the Exile sentence be served consecutively with any other sentences in the case. These requirements were not followed for every Virginia Exile conviction. As previously reported, 15 Exile convictions received less than the mandatory minimum sentence, some because of time suspended. Another 52 Exile convictions received suspended time, but still resulted in the mandatory minimum sentence. Additionally, case tracking data indicated that 18% of Virginia Exile convictions would not be served consecutively with other convictions in the case, and that 82% would be served consecutively as required by *Code*<sup>9</sup>.

Although 82% of the Exile cases reportedly met the requirement for serving Exile and non-Exile sentences consecutively, it is possible that the requirement for mandatory minimum sentences in Exile cases may have been mitigated by the amount of time suspended from the non-Exile sentences. In other words, rather than serving two full sentences consecutively, time suspended from the non-Exile sentence could reduce the overall amount of actual time to serve.

To investigate this possibility, two types of Exile cases were examined: 1) cases with at least one Exile conviction and at least one non-Exile conviction, and 2) cases with no Exile conviction and at least one non-Exile conviction (including two cases in which the Exile charges were transferred to the USAO). Cases with life sentences were removed since suspended time cannot be calculated for life sentences. The average amount of time suspended in these two types of

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<sup>9</sup> Specifically, the *Code* states in §18.2-308.1 and §18.2-308.2 that the punishment “shall be served consecutively with any other sentence,” however, in §18.2-308.4 it states that “such punishment... shall be made to run consecutively with any punishment received for the commission of the primary felony.”

cases was calculated to determine if the cases with Exile convictions received more suspended time than cases with only non-Exile convictions. The following was found:

- In 102 cases with at least one Exile conviction and at least one non-Exile conviction, the average amount of time suspended was 9.5 years.
- In 135 cases with no Exile conviction and at least one non-Exile conviction, the average amount of time suspended was 7.5 years.

These findings indicate that cases with Exile convictions generally had about 2 years more time suspended from their sentences than cases without an Exile conviction. This increased suspended time may nullify some or all of the effect of requiring additional sentences to be served consecutively with the Exile sentence. This suggests the possibility that, in cases with Exile convictions, the consecutive sentence requirement may have been somewhat mitigated by suspending more time than is usually suspended in cases without an Exile conviction.

### Other Sentencing Information and Length of Time to Prosecute in Exile Cases

Other Virginia Exile case processing data collected included sentencing assignments to probation and other sentencing programs, and information on dates of case events such as offense, conviction, and sentencing.

Data indicating whether or not each conviction in Exile cases received assignment to probation or other sentencing programs are displayed in Table 23.

<b>Table 23 Percentage of Convictions in Exile Cases Assigned to Probation and Other Sentencing Programs</b>		
<b>Type of Conviction</b>	<b>Percentage of Convictions Assigned</b>	
	<b>Probation</b>	<b>Other Sentencing Programs</b>
Exile Conviction	51%	8%
Non-Exile Conviction	65%	11%
All Convictions (Exile and non-Exile)	60%	10%

The data in Table 23 show that, overall, probation was assigned for 60% of all convicted charges in Exile cases. The percentage assigned to probation for conviction of Exile charges (51%) was slightly lower than that for conviction of non-Exile charges (65%). Further examination of Exile convictions that received probation revealed that the conviction of *possession of a firearm by a non-violent felon* received probation almost twice as often when compared to *possession of a firearm by a violent felon* and *possession of a firearm and possession of Schedule I or II drugs*.

Assignment to other sentencing programs, such as day reporting centers, diversion centers, community-based programs, electronic monitoring, etc., was generally infrequent. Only ten

percent of all convictions in Exile cases were reported to have received any sort of assignment to other sentencing programs.

The length of time required for the state prosecution of the Virginia Exile cases examined in this study varied. Using case tracking form information on offense, conviction, and sentencing dates, it was found that the length of prosecution (defined as the length of time from the earliest offense date of an Exile charge to the earliest date of conviction on any charge in the case) ranged from fifteen days to almost two years. The average length of time it took to prosecute an Exile case with at least one convicted charge was 199 days, or just under seven months. As discussed earlier in this report, various factors may affect the amount of time it takes to prosecute a criminal case, such as the processing of evidence, receipt of felony certifications, and witness problems.

In addition to the length of time it takes to prosecute an Exile case, there is often a lapse of time between the conviction and sentencing phases of a case. For the Exile cases in this report, this amount of time ranged from 0 – 475 days, with an average period of 55 days between the date of conviction and the date of sentencing for any type of charge.

### **Inmate Location Review**

One premise of the federal Project Exile program, from which Virginia Exile was modeled, is that prospective offenders will be deterred from committing weapons offenses when threatened with incarceration in a facility far from their home residence. At the federal level, implementation of this concept was possible since federal prison facilities exist throughout the country.

However, this foundational principle, which reportedly provides the basis for the “Exile” program title, is difficult to implement within the scale of an individual state. The majority of DOC institutions and correctional units are located in the central portion of the state, and are relatively close to all original Virginia Exile sites except Roanoke.

To examine this question further, available information was gathered on the incarceration placement for offenders convicted under the Virginia Exile statutes from January 2000 through July 2002 in the six principal evaluation sites. Of 184 convicted offenders, placement information was available for 131 individuals.

A rudimentary analysis of this information revealed that 93 (71%) of the convicted Exile offenders were placed within approximately two hours of the convicting court. Of these offenders, seventeen were housed in locally administered facilities such as jails or adult detention centers, which often serve as interim placements before transfer to state correctional centers. The other 76 were placed in a Virginia DOC correctional facility.

## **X. Analysis of Firearm Violence Data**

The stated goal of the Virginia Exile grant program is to reduce gun violence. In an effort to determine whether or not this goal was achieved, reported offense data from Virginia’s Uniform Crime Reports and Incident-Based Crime Reports for the six principal evaluation sites (Chesapeake, Halifax Co., Lynchburg, Petersburg, Richmond City and Roanoke City) were

examined for the period from 1990 to 2002. IBR data for the years 1999 through 2002 were collapsed to UCR format to provide offense definitions and counts consistent with the prior 1990 through 1998 UCR offense data.

### **Firearm Violence Analysis**

In this analysis, “firearm violence” was measured by calculating the number and percentage of violent offenses committed with a firearm. The types of violent offenses examined are homicide, robbery and aggravated assault because UCR data documents the type of weapon used for these offenses.<sup>10</sup>

The analysis makes two types of comparisons that may indicate whether Virginia Exile has an effect on violent offenses committed with a firearm:

- 1) Compares the numbers and percentages of violent offenses committed using a firearm in the Virginia Exile program localities to the numbers and percentages of violent offenses committed using a firearm in all Virginia localities; and
- 2) Compares the numbers and percentages of violent offenses committed using a firearm in the pre-Exile program period (1998 and 1999) to the post-Exile program period (2001 and 2002).

### **All Violent Offenses Committed Using a Firearm**

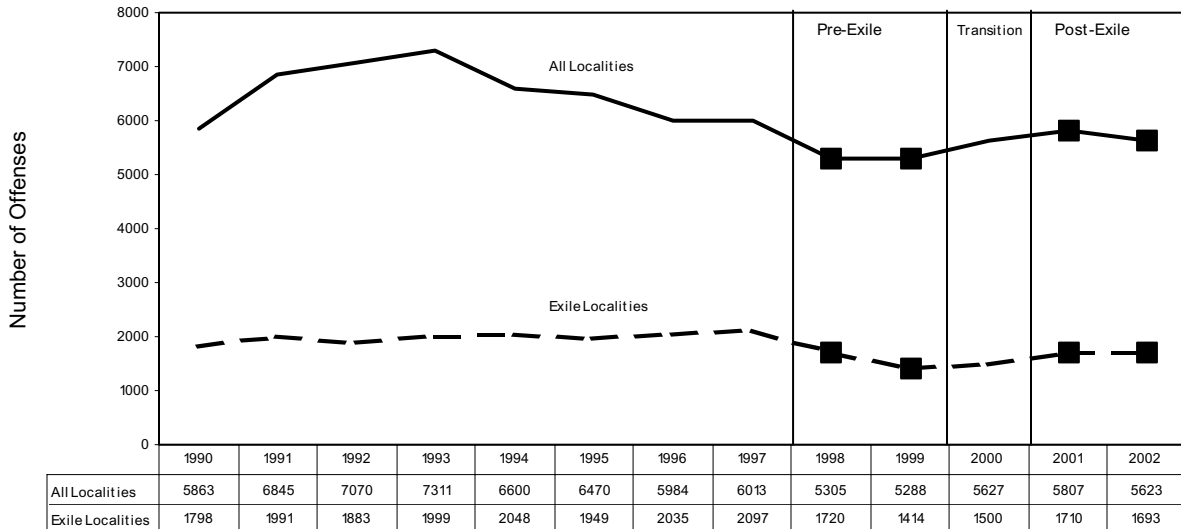
First, the *numbers* of violent offenses committed using a firearm in the Virginia Exile localities were compared with the numbers of violent offenses committed using a firearm in all Virginia localities. Graph B depicts the numbers for each of these groups. Offense counts are shown beginning in 1990 to provide a historical context for the numbers of offenses in these localities well before Virginia Exile was initiated. Offense counts for the two years preceding program implementation (1998-1999, pre-Exile) and the two years following program implementation (2001-2002, post-Exile) are averaged for each period and compared. The year 2000 is considered a “transition” year in this analysis because the program was being put into service and was not fully operational in all sites.

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<sup>10</sup> Offenses for which the weapon type was coded as missing or unknown are not included in this analysis. Therefore, offense counts may be less than the totals reported in Virginia State Police statistics.

## Graph B

**Number of All Violent Offenses Committed Using a Firearm  
All Virginia Exile Localities vs. All Virginia Localities**

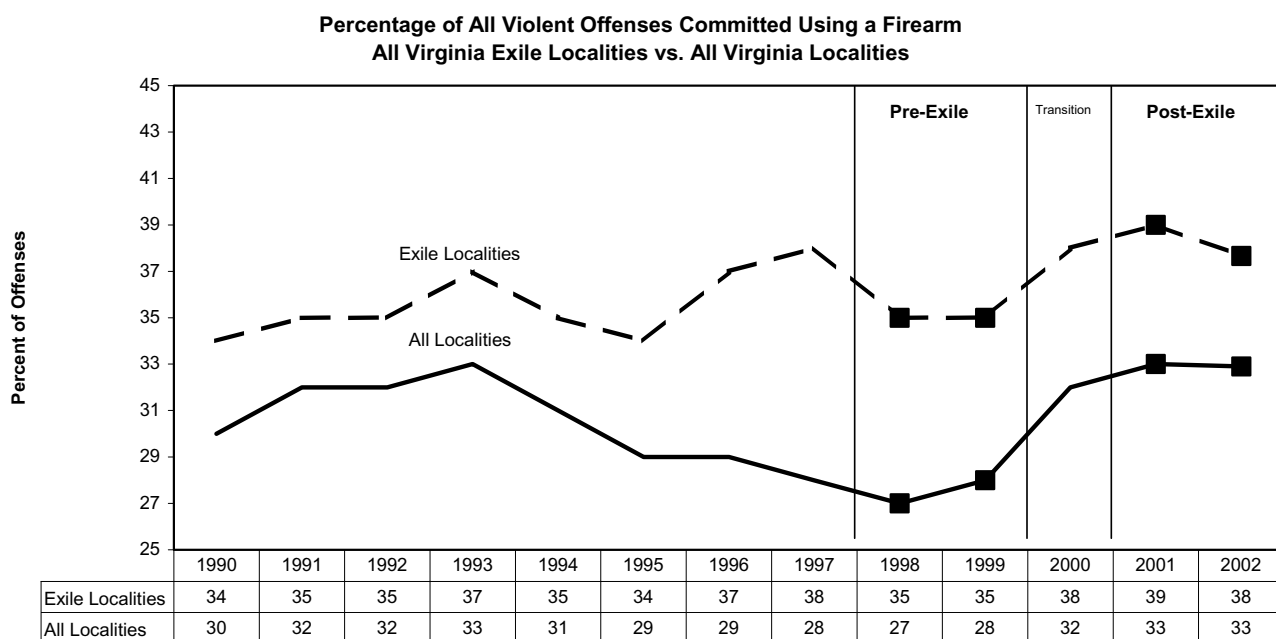


As seen in Graph B, the numbers of violent offenses committed using a firearm generally increased from the pre-Exile years to the post-Exile years, in both the Exile localities and in all localities. The number of these offenses reported in the Exile localities increased by 9% on average from the two-year pre-Exile period to the two-year post-Exile period, and in all localities increased by 8% on average over the same period. It is important to note that in both groups of localities, the number of violent offenses committed using a firearm was declining during the years leading up to the implementation of the Virginia Exile program, but then began to increase in the transition year.

Next, the *percentages* of violent offenses committed using a firearm in the Virginia Exile localities were compared with the percentages of violent offenses committed using a firearm in all Virginia localities. Graph C shows the percentages for both groups of localities for the same pre- and post-Exile time periods.



**Graph C**



As Graph C illustrates, the percentage of violent offenses committed using a firearm was consistently higher in the Virginia Exile localities than among all Virginia localities. Historically, in the Exile localities these offenses ranged from three to eight percentage points higher than in all localities.

When comparing the two-year average percentages in the pre-Exile and post-Exile periods, the percentage of all violent offenses committed using a firearm increased in the post-Exile period in both Exile localities and in all localities. Among the Exile localities, this increased 3.5% from the pre-Exile to the post-Exile period. The increase among all Virginia localities was slightly higher, increasing 5.5% percent from the pre-Exile period to the post-Exile period.

It should be noted that the localities that were invited to participate in the Virginia Exile program were selected because they had some of the highest levels of violent firearm offenses in Virginia. Therefore, it is not surprising that the number and percentage of violent offenses committed using with a firearm remained higher in the Exile localities than in all localities in general, even after the Virginia Exile program was implemented.

**Homicides, Robberies, and Aggravated Assaults Committed Using a Firearm**

The number and percentage of each of the three types of violent offenses committed using a firearm in both the Exile localities and in all localities during the pre- and post-Exile periods are presented in Table 24 and Table 25. Again, all numbers and percentages reported in the tables are averages of the two-year pre- and post-Exile periods.

**Table 24**  
**Average Number of Homicides, Robberies and Aggravated Assaults**  
**Committed Using a Firearm**  
**Virginia Exile Localities vs. All Virginia Localities**

<b>Localities</b>	<b>Pre-Exile period (1998-1999)</b>	<b>Post-Exile period (2001-2002)</b>	<b>Percent Change</b>
	<i>Homicides</i>		
Exile Localities	93	83	- 10.8%
All Localities	281	243	- 13.5%
	<i>Robberies</i>		
Exile Localities	981	1,007	+ 2.7%
All Localities	3,254	3,375	+3.7%
	<i>Aggravated Assaults</i>		
Exile Localities	493	611	+ 23.9%
All Localities	1,761	2,097	+ 19.1%

Table 24 shows that the number of robberies and aggravated assaults committed using a firearm increased from the pre- to the post-Exile period in the Exile localities. However, the number of homicides committed using a firearm in the Exile localities decreased. This decrease is the only noticeable drop in violent firearms offenses seen following the implementation of the program.

The percentages of homicides, robberies and aggravated assaults committed using a firearm in the Exile localities all increased from the pre- to the post-Exile period (see Table 25). It is interesting to note that, although the total number of homicides committed using a firearm decreased in the Virginia Exile localities during the post-Exile period, the proportion of homicides committed using a firearm increased during the same period.

**Table 25**  
**Average Percentage of Homicides, Robberies and Aggravated Assaults**  
**Committed Using a Firearm**  
**Virginia Exile Localities vs. All Virginia Localities**

<b>Localities</b>	<b>Pre-Exile period (1998-1999)</b>	<b>Post-Exile period (2001-2002)</b>
	<i>Homicides</i>	
Exile Localities	80.0%	84.5%
All Localities	73.0%	72.5%
	<i>Robberies</i>	
Exile Localities	51.5%	57.0%
All Localities	47.5%	55.5%
	<i>Aggravated Assaults</i>	
Exile Localities	20.0%	24.0%
All Localities	14.5%	19.0%

Finally, the violent offenses committed using a firearm in all localities followed an overall pattern similar to that in the Exile localities. The numbers and percentages of robberies and aggravated assaults committed using a firearm increased in the post-Exile period for both the Exile localities and all localities statewide. Similarly, the numbers of homicides committed using a firearm decreased in both the Exile localities and all localities.

### **Interpretation of Firearm Violence Analysis**

This examination of firearm violence data indicates that, with only one small exception, the numbers and percentages of violent offenses committed using a firearm increased in both the Exile localities and in all Virginia localities following the implementation of Virginia Exile. There are several possible interpretations of these results.

One interpretation is that the Virginia Exile program was simply not effective in achieving its stated goal of reducing gun violence. Overall levels of violent offenses committed using a firearm actually increased in the Exile localities after implementation of the program. While it may be possible that the number of violent offenses reported could increase in the Exile sites due to added enforcement and detection, this does not explain statewide increases since the statutes apply in all localities.

Another interpretation may be that available measures of firearm violence are not the most appropriate way to assess the impact of Virginia Exile's goal of reducing firearm violence. This report includes an analysis of these data since much of the media attention on both the federal Project Exile and Virginia Exile program has focused on reported changes in levels of offenses

committed with a firearm. While it may at first seem logical to assess the effectiveness of Virginia Exile by comparing levels of offenses committed with a firearm, there are reasons why this might not be the most appropriate way to assess the program's overall effectiveness.

First, the UCR data describe the use of firearms in violent crime, while the statutes focus on the illegal possession of a firearm. Data depicting illegal possession of a firearm may be more appropriate to measure the statutes' effect, however, these are not among the UCR data collected by Virginia State Police. Evaluators sought measures of so-called firearm "carry-rates," but found no reliable definition for this concept or data that record carry rate. Reported drops in carry rates in Richmond appeared to be based on impressions and anecdotes, not on actual measures of firearm possession.

Also, studies of the federal Project Exile in Richmond found that highly publicized drops in Richmond's violent crime rate were not unique to Richmond and that other large urban areas in Virginia and nationwide had similar drops during the same period. Criminological research has long suggested that trends in violent crime at the state and national level may be affected more by macro-level factors such as economic conditions, employment levels, and demographics than they are by individual local initiatives such as Project Exile and Virginia Exile.

Additionally, the findings of this analysis might be influenced by the fact that most of the programs were not fully implemented as designed in the program guide. The Virginia Exile program's design envisioned a vigorous publicity campaign, however, many of the Exile localities did not attain the level of publicity envisioned. Additionally there were problems with other program elements such as opposing bail or appealing adverse bail decisions, proving possession of a firearm, and obtaining full mandatory minimum sentences under the Exile statutes.

Finally, the finding that there were no major reductions in firearm violence in the Virginia Exile localities also raises the question of whether reducing gun violence was the most appropriate goal for the Virginia Exile program. As previously stated, although it appears logical that a reduction in illegal possession of guns would lead to a reduction in violent offenses committed using a firearm, there are various intervening factors that can dilute this effect. In retrospect, it may have been more appropriate to relate the goal of the Virginia Exile program more specifically to the offenses addressed in the Exile statutes.

## **XI. Conclusions**

The Virginia Exile grant program officially began in January 2000, providing grant funds to supplement prosecution of three Virginia Code statutes that became effective July 1, 1999. These statutes were designed to apply mandatory minimum sentences to convictions on specific firearm offenses, thereby increasing previous penalties. The program's stated purpose is to reduce gun-related violence in the participating localities through aggressive law enforcement and prosecution, and through public awareness efforts that highlight the certainty of punishment and enhanced penalties upon conviction (DCJS, 1999, 2000, 2001).

The Department of Criminal Justice Services, Evaluation Unit received a request from the Secretary of Public Safety to conduct an evaluation of the Virginia Exile program. The

evaluation was designed to assess both the program implementation and outcomes. Data collection included a review of case-specific data and program reporting documents, as well as interviews with Exile program staff, Circuit Court and General District judges, and Chief Magistrates. An examination of the data reveals the following primary findings:

### **Achievements**

- The Virginia Exile program was established to support certain laws that target specific firearm offenses. This support is provided in two ways: through financial assistance to prosecutors and law enforcement to enable them to target violators of the firearm statutes; and by assisting localities in their public awareness efforts to inform citizens about the new laws. In the program's first year, six Virginia localities were awarded funds. Four additional localities were also awarded funds in the program's second year.
- An analysis of basic case and defendant information revealed that, from January 2000 through June 2002 in the six principal evaluation sites, there were a total of 646 cases in which Virginia Exile charges were brought against a defendant. Virginia Exile defendants were more likely to be male (94%), African-American (82%), and between the ages of 18 – 44 (88%). Of the 646 Virginia Exile cases initiated, 172 (27%) were transferred to the U.S. Attorney's Office for federal prosecution.
- Detailed information about the state prosecution of each Virginia Exile charge was also collected from the principal evaluation sites. Available data show that, of 638 Virginia Exile charges brought forward for prosecution, 148 were transferred to federal court. Of the remaining 490 charges, 174 (36%) resulted in an Exile conviction and full mandatory minimum sentence.
- Firearm and drug seizure data were available for 549 Virginia Exile cases. These data indicate that 448 (82%) cases involved the seizure of at least one firearm, most of which were handguns (74%). In addition, 238 (43%) cases involved the confiscation of a controlled substance. Cocaine/cocaine derivative was the type most frequently cited, and was seized in 74% of these cases.

### **Challenges**

- Questions regarding the practicality of the Virginia Exile statutes were raised, suggesting that the real world application of the statutes is not as straightforward as it may appear. The statutory presumption against bail for offenders charged with Exile was specifically cited as problematic, particularly the programmatic requirement that prosecutors object to all bail and appeal adverse bail decisions. Also, despite the statutory presumption against bail in these cases, data indicate that about 35% of all Virginia Exile defendants are granted bail.
- Establishing non-profit foundations and media campaigns in each locality had mixed success. Some appeared to put substantial energy into establishing a non-profit foundation to help with fund-raising, while others put more effort into their community awareness campaign. Several localities reported having difficulty setting up foundations

due to the complexities of applying for non-profit status. Because the program design requires a foundation/media campaign component, the problems surrounding its implementation should be noted.

- Of the six Virginia Exile offenses, only three are charged with any regularity (*possession of a firearm and possession of Schedule I or II drugs, possession of a firearm by a non-violent felon, and possession of a firearm by a violent felon*). These three charges represent 96% of all Virginia Exile charges brought forward for prosecution. The other three offenses (*possession of a firearm and distribution of Schedule I or II drugs, possession of a firearm and distribution of more than 1 pound of marijuana, and possession of a firearm while on school property*) were very rarely charged, representing only 4% of all Exile charges.
- Although the stated goal of the Virginia Exile grant program is to reduce gun violence, available firearm violence data suggest that this goal has not been achieved. Data show that levels of nearly all violent offenses committed using a firearm increased in both the Exile localities and statewide in the two years following the implementation of the Virginia Exile program. There are several alternative interpretations of these results: the Virginia Exile program is simply not effective in achieving its stated goal; firearm violence data are not the most appropriate way to assess the impact of Virginia Exile's goal; the program sites did not fully implement the established program design; and the program's stated goal was not suitable given the elements of the Exile statutes. Therefore, the program's effect on levels of firearm violence is largely inconclusive.
- While the Exile statutes mandate that sentences on multiple convictions be served consecutively, 86% of applicable cases had two years or more suspended from total case sentences. This suggests that the consecutive sentencing requirement may be mitigated or circumvented by suspending time on sentences in cases with multiple convictions.
- One factor that could influence the program's deterrent effect is the lack of certain punishment. By the program's philosophy, the knowledge that possessing an illegal firearm will result in a long prison sentence should prevent criminals from carrying a firearm. However, the certainty of conviction with a full sentence is often diminished by the normal practices and discretion that is inherent in the prosecution process. Evidentiary issues involving constructive possession, proper search and seizure techniques, witness reliability and certification of prior felonies, reportedly impact the ability to obtain convictions on the Virginia Exile statutes. Of the 490 Exile charges prosecuted in Virginia state courts, 174 (36%) resulted in an Exile conviction with a full mandatory minimum sentence.

While the Virginia Exile program enjoys popular support due to its focused prosecution of certain firearm offenses, it also has lesser-known impacts, such as increasing prosecutors' workloads with increased burden of proof and required program elements. The program could benefit from a program design and statutory review to better define the program's intent and eliminate unnecessary or impractical components. Additionally, a specific evaluation of the media campaign and public awareness efforts in this and similar programs should be considered to assess possible short-term and long-term effects on the program's targeted outcomes.

Finally, funding of the Virginia Exile program has recently shifted from state grant funds to federal grant funds in an effort to transition the program costs to the individual localities.

## **XII. Recommendations**

These recommendations are founded on case and interview data collected for this evaluation. While all suggestions are designed to target issues for existing Virginia Exile programs, some recommendations are also relevant for any Virginia locality since they apply to the statewide firearm offense statutes that became effective on July 1, 1999. Although reductions in the Virginia fiscal year 2003 and 2004 budget have sharply reduced state funding to localities for Virginia Exile, some localities may continue maintaining Virginia Exile. Therefore, these recommendations focus on program maintenance and possible future program development. They can also be used to help guide program development for similarly constructed programs, particularly those closely tied to statutory requirements and mandatory minimum sentences.

The recommendations generally address topics such as training for all criminal justice professionals involved with the Virginia Exile program, coordination of training and media campaigns, clarification of the programs' goals and intent, and modifications to related sentencing and statutes.

### **Modifications to Sentences and Statutes**

#### **Modify the "Presumption Against Bail" Statute**

***1. The General Assembly should consider modifying §19.2-120 (B), which currently allows for a presumption against bail for Exile defendants, by reviewing the value of maintaining the presumption for defendants who cooperate with prosecutors and law enforcement.***

The statute that requires a presumption against bail for all defendants charged with an Exile offense is reportedly an occasional obstacle for prosecutors in negotiating with and/or gaining cooperation from defendants. It was noted as specifically difficult in Exile cases with multiple defendants, where bail can be an incentive for one defendant to provide information about others charged in the case. Additionally, defendants acting as police informants often need to be out of jail to provide law enforcement with the information that they seek.

Currently Exile defendants face stiff mandatory minimum sentences that do not allow for negotiation of the sentence length. If no incentive is offered through the bail process, the defendant may find no advantage in cooperating with prosecutors. Consequently, some prosecutors stated they need some flexibility to negotiate with defendants. Modifying the statute to allow bail for cooperative defendants might encourage more defendants to enter into plea agreements and/or provide useful information for other cases.

## Modify Penalties

**2. The General Assembly should consider modifying penalties for Virginia Exile offenses concerning selling and possessing Schedule I or II drugs to differentiate the perceived seriousness of the two offenses.<sup>11</sup>**

Currently the mandated minimum penalties for two Exile offenses, *possession of a firearm and distribution of Schedule I or II drugs* and *possession of a firearm and possession of Schedule I or II drugs* are the same: five years. Prosecutors noted concerns about this equality since there is general agreement that selling drugs is a more serious offense. Additionally, among the six Virginia Exile offenses, *possession of a firearm and possession of Schedule I or II drugs* was charged 228 times and *possession of a firearm and distribution of a Schedule I or II drugs* was only charged 12 times.

Prosecutors suggested that the charging discrepancy between the two offenses was due to the fact that the same penalty could be secured for a possession conviction, without having to prove the additional element of “distribution.” Choosing to prosecute on the possession charge instead of the distribution charge is viewed as a logical decision since fewer elements are required to be proven at trial, thereby introducing less risk of acquittal due to evidentiary issues.

## Clarify Statutes

**3. The General Assembly should consider adding explanatory language to §18.2-308.2 and §18.2-308.4 to clarify the circumstances under which these statutes are intended to apply.**

During interviews with Exile program staff, the intent or “spirit” of the statutes was discussed in regard to a number of issues. Two frequently mentioned issues included: (1) defendants with very old felony convictions; and (2) defendants in possession of only trace amounts of drugs or drug residue.

They questioned whether the “prior felony” statutes should apply in all circumstances, such as defendants with very old felony convictions who have not re-offended but who are in possession of a firearm for a non-threatening reason (e.g., hunting or self-protection). This issue should be clarified in §18.2-308.2, where other exceptions to this statute are explained.

In addition, some program staff thought that cases with trace amounts of drugs or drug residue were below the standard of seriousness that is implied by the statutes, in particular, that the statute *possession of a firearm and possession of Schedule I or II drugs* was too harsh for defendants in possession of only trace amounts of drugs or drug residue. To remedy what was viewed as a sentencing inequity, prosecutors reportedly used their discretion in some cases to avoid sentencing a defendant to what they perceived to be an excessive sentence. This issue

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<sup>11</sup> The 2003 session of the General Assembly passed and the Governor approved House Bill 2181, which amends §18.2-308.4 of the *Code of Virginia*. Essentially, this Act revises the statutory penalty for *possession of a firearm and possession of Schedule I or II drugs*, thus differentiating its penalty from the penalty for *possession of a firearm and distribution of Schedule I or II drugs*. This revision addresses the issues raised in this recommendation. The amended statute will take effect July 1, 2003. The full text of the amended statute can be found in Appendix 2.



could be clarified by specifying in the text of §18.2-308.4 the amount of drugs required for two statutes to apply (*possession of a firearm and possession of Schedule I or II drugs* and *possession of a firearm and distribution of Schedule I or II drugs*), similar to how the statute *possession of a firearm and distribution of more than 1 pound of marijuana* specifies the amount of marijuana required for the statute to apply.

## **State-Level Program Coordination**

### **Media Campaign and Non-Profit Foundation**

***4. The local media campaigns should be centralized and coordinated to create a consistent, identifiable statewide Exile message. Additionally, if the media campaign is supposed to be financed through fundraising, perhaps a centralized, state-level non-profit foundation should organize and manage all fundraising activities.***

Virginia Exile grant program guidelines require Commonwealth's Attorneys to establish local non-profit foundations for Virginia Exile to: 1) build community support for mandatory sentencing, 2) increase public awareness via local media resources, and 3) implement marketing strategies that warn potential violators of consequences. However, most sites were not able to establish a non-profit foundation. Exile localities reported significant difficulties identifying potential patrons and resources from which to solicit funds. Furthermore, the localities have reported different types of challenges, in part due to population differences and economic variations. A state-level Virginia Exile foundation was also established which sought broad-based state and national backing, but it too was not successful in realizing its desired level of support.

If the media campaign/non-profit foundation requirement remains a critical component of the program, perhaps the state-level Virginia Exile foundation should be re-established to centralize fundraising efforts and directed by an experienced and professional fundraiser. Commonwealth's Attorneys' Offices would then be free to concentrate on prosecution while a full-time fundraiser could be hired to focus on local, state, and national support. Funds raised could be used to back media campaigns in all sites and provide programs in economically-challenged communities with the same quality of publicity available to more affluent localities. Further, all program localities would benefit from a coordinated media campaign, which would provide a consistent Exile message across the state and create a program with more "brand" recognition.

## **Program Goals and Intent**

### **Remove Program Requirements to Appeal/Oppose Bail**

***5. DCJS should consider removing program requirements that prosecutors oppose all bail and appeal all adverse bail decisions in Virginia Exile cases.***

DCJS's Virginia Exile program guide requires Commonwealth's Attorneys to oppose bail in all Virginia Exile cases and appeal adverse bail decisions to a higher court. Exile prosecutors reported that they did not always oppose bail in all cases. First, they are not usually present at

first appearance when a magistrate initially decides bail, and second, if they oppose all bail without consideration of the facts of the case, their credibility may be questioned.

In addition, adverse bail decisions were rarely appealed to a higher court because of prosecutors' observations that judges generally do not reverse the bail decisions of other judicial officials without specific cause. This circumstance also raised credibility concerns with prosecutors since appealing all adverse bail decisions would rarely result in an overturned bail decision and might be perceived as inefficient use of the court's time.

There is no plan in place to enforce these program requirements, therefore, it is suggested that the program guide be modified to allow for prosecutorial discretion in opposing and appealing bail. This would permit prosecutors to use their experience and judgment to focus their efforts on the serious cases for which this program was intended.

## **Focus Program Goals**

### ***6. State administrators should consider the cost/benefit of retaining three rarely-charged Exile offenses in the program's design.***

Of the six Exile offenses, three offenses comprised 96% of all Exile charges for which prosecution was initiated in the principal program evaluation sites. These offenses were *possession of a firearm and possession of Schedule I or II drugs, possession of a firearm by a non-violent felon, and possession of a firearm by a violent felon.*

The three remaining Exile offenses, *possession of a firearm and distribution of more than 1 pound of marijuana, possession of a firearm and distribution of Schedule I or II drugs, and possession of a firearm while on school property,* were very rarely charged. These offenses either: 1) describe circumstances not often encountered by law enforcement, 2) are similar to another offense but require additional evidence without increased penalty, or 3) are somehow dealt with through police or prosecutorial discretion prior to charging.

The rarely-charged offenses are, however, supported by some program staff who contend that they are beneficial. The most fervent defense was made in regard to *possession of a firearm while on school property.* It was reported that keeping this offense as part of the Exile program would make clear the Commonwealth Attorneys' position that the possession of firearms on school property will not be tolerated. It was also reported that this program element is used by the schools to discourage students and visitors from bringing firearms to school and helps foster goodwill between the schools and the Commonwealth Attorney's office. Additionally, now that the sentence lengths for the offenses *possession of a firearm and possession of Schedule I or II drugs* and *possession of a firearm and distribution of Schedule I or II drugs* have been differentiated, it may result in the latter being charged with more frequency than it has thus far.

On the other hand, program administrators might contemplate the value of retaining these offenses in the Exile program design for two reasons: 1) modifying or eliminating rarely-charged offenses from the program design may provide a clearer program focus, and 2) resources that are used to prosecute these offenses could be redirected to more prevalent problems.

## Training

### Magistrates and Judges

***7. Specific information on statutes that govern Virginia Exile should be consistently reinforced in formal and informal training for magistrates and judges, at both the state and local level.***

According to training officials at the Virginia Supreme Court, judges and Chief Magistrates are required to attend training each year to review any changes or updates to the *Code of Virginia*. In 1999, the General Assembly made a statutory change that established a presumption against bail for offenders charged under Virginia Exile. Presumably, judges and Chief Magistrates received information at training about this change.

However, early in the program, prosecutors' reports from Virginia Exile localities suggested that some magistrates were not aware of the presumption against bail for relevant firearm statutes. Several Commonwealth's Attorneys indicated that they had addressed this with the Chief Magistrate in their district in an effort to remedy the problem, and improvements were noticed. Judges also granted bail in many Exile cases; in fact, judges reportedly set the majority of the bail granted in the Exile cases in this evaluation. Overall, case-specific data revealed that bail was granted in 35% of the Virginia Exile cases.

In addition to the annual training required of judges and Chief Magistrates, supplementary training strategies may be needed at the state and local level to strengthen observance of statutory requirements. It is necessary that all local magistrates and judges are aware of relevant statutory changes that occur prior to program implementation and while the program is on-going, especially those with evidentiary implications for Exile cases.

### Law Enforcement

***8. Curricula for law enforcement training on Exile-related issues should be reviewed to identify areas for potential enhancement, particularly with respect to evidentiary issues.***

Several Exile localities reported that legal issues of search and seizure are among the most frequent problems for law enforcement officers making arrests on Exile charges. Evidence in Exile cases was sometimes inadmissible due to search and seizure errors. A number of different strategies were used to minimize these problems, such as providing additional evidentiary and Fourth Amendment instruction at police roll calls and assigning an Exile liaison officer to assist law enforcement officers in relating current and new search and seizure training to Exile-related legislation and case law.

In an effort to decrease problems and improve consistency, law enforcement training curricula on Exile-related issues could be reviewed by a state-level program coordinator or a cross-jurisdictional team of Exile program staff to identify areas where additional training might be helpful. Strategies should include enhanced training for new law enforcement recruits emphasizing Exile-related charges, evidence handling, and search and seizure issues. Coordination at the state level could also be used to obtain and disseminate clarifications for Exile-relevant Code statutes and influential court rulings.

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## **XV. Appendices**

## Appendix 1

### **§ 18.2-308.1. Possession of firearm, stun weapon, or other weapon on school property prohibited.**

A. If any person possesses any (i) stun weapon or taser as defined in this section, (ii) knife, except a pocket knife having a folding metal blade of less than three inches, or (iii) weapon, including a weapon of like kind, designated in subsection A of § 18.2-308, other than a firearm, upon (i) the property of any public, private or parochial elementary, middle or high school, including buildings and grounds, (ii) that portion of any property open to the public used for school-sponsored functions or extracurricular activities while such functions or activities are taking place, or (iii) any school bus owned or operated by any such school, he shall be guilty of a Class 1 misdemeanor.

B. If any person possesses any firearm designed or intended to propel a missile of any kind while such person is upon (i) any public, private or parochial elementary, middle or high school, including buildings and grounds, (ii) that portion of any property open to the public used for school-sponsored functions or extracurricular activities while such functions or activities are taking place, or (iii) any school bus owned or operated by any such school, he shall be guilty of a Class 6 felony; however, if the person possesses any firearm within a public, private or parochial elementary, middle or high school building and intends to use, or attempts to use, such firearm, or displays such weapon in a threatening manner, such person shall not be eligible for probation and shall be sentenced to a minimum, mandatory term of imprisonment of five years, which shall not be suspended in whole or in part and which shall be served consecutively with any other sentence.

The exemptions set out in § 18.2-308 shall apply, *mutatis mutandis*, to the provisions of this section. The provisions of this section shall not apply to (i) persons who possess such weapon or weapons as a part of the school's curriculum or activities, (ii) a person possessing a knife customarily used for food preparation or service and using it for such purpose, (iii) persons who possess such weapon or weapons as a part of any program sponsored or facilitated by either the school or any organization authorized by the school to conduct its programs either on or off the school premises, (iv) any law-enforcement officer while engaged in his duties as such, (v) any person who possesses a knife or blade which he uses customarily in his trade, or (vi) a person who possesses an unloaded firearm which is in a closed container, or a knife having a metal blade, in or upon a motor vehicle, or an unloaded shotgun or rifle in a firearms rack in or upon a motor vehicle. For the purposes of this paragraph, "weapon" includes a knife having a metal blade of three inches or longer.

As used in this section:

"Stun weapon" means any mechanism that is (i) designed to emit an electronic, magnetic, or other type of charge that exceeds the equivalency of a five milliamp sixty hertz shock and (ii) used for the purpose of temporarily incapacitating a person; and

"Taser" means any mechanism that is (i) designed to emit an electronic, magnetic, or other type of charge or shock through the use of a projectile and (ii) used for the purpose of temporarily incapacitating a person.

(1979, c. 467; 1988, c. 493; 1990, cc. 635, 744; 1991, c. 579; 1992, cc. 727, 735; 1995, c. 511; 1999, cc. 587, 829, 846; 2001, c. 403.)

**§ 18.2-308.2. Possession or transportation of firearms, stun weapons, tasers or concealed weapons by convicted felons; penalties; petition for permit; when issued.**

A. It shall be unlawful for (i) any person who has been convicted of a felony or (ii) any person under the age of twenty-nine who was found guilty as a juvenile fourteen years of age or older at the time of the offense of a delinquent act which would be a felony if committed by an adult, whether such conviction or adjudication occurred under the laws of this Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, to knowingly and intentionally possess or transport any firearm or to knowingly and intentionally carry about his person, hidden from common observation, any weapon described in subsection A of § 18.2-308. However, such person may possess in his residence or the curtilage thereof a stun weapon or taser as defined by § 18.2-308.1. Any person who violates this section shall be guilty of a Class 6 felony. However, any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of a violent felony as defined in § 17.1-805 shall not be eligible for probation, and shall be sentenced to a minimum, mandatory term of imprisonment of five years. Any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of any other felony shall not be eligible for probation, and shall be sentenced to a minimum, mandatory term of imprisonment of two years. The minimum, mandatory terms of imprisonment prescribed for violations of this section shall not be suspended in whole or in part and shall be served consecutively with any other sentence. Any firearm, stun weapon or taser as defined by § 18.2-308.1, or any concealed weapon possessed, transported or carried in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.

B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm or other weapon while carrying out his duties as a member of the armed forces of the United States or of the National Guard of Virginia or of any other state, (ii) any law-enforcement officer in the performance of his duties, or (iii) any person who has been pardoned or whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution of Virginia provided the Governor, in the document granting the pardon or removing the person's political disabilities, may expressly place conditions upon the reinstatement of the person's right to ship, transport, possess or receive firearms.

C. Any person prohibited from possessing, transporting or carrying a firearm, stun weapon or taser under subsection A, may petition the circuit court of the jurisdiction in which he resides for a permit to possess or carry a firearm, stun weapon or taser; however, no person who has been convicted of a felony shall be qualified to petition for such a permit unless his civil rights have been restored by the Governor or other appropriate authority. The court may, in its discretion and for good cause shown, grant such petition and issue a permit. The provisions of this section shall not apply to any person who has been granted a permit pursuant to this subsection.

(1979, c. 474; 1982, c. 515; 1983, c. 233; 1986, cc. 409, 641; 1987, c. 108; 1988, c. 237; 1989, cc. 514, 531; 1993, cc. 468, 926; 1994, cc. 859, 949; 1999, cc. 829, 846; 2001, cc. 811, 854; 2002, c. 362.)

**§ 18.2-308.4. Possession of firearms while in possession of certain controlled substances.**

A. It shall be unlawful for any person unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 to simultaneously with knowledge and intent possess any firearm.

B. It shall be unlawful for any person to possess, use, or attempt to use any pistol, shotgun, rifle, or other firearm or display such weapon in a threatening manner while committing or attempting to commit the illegal manufacture, sale, distribution, or the possession with the intent to manufacture, sell, or distribute a controlled substance classified in Schedule I or Schedule II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 or more than one pound of marijuana.

Violation of this section shall constitute a separate and distinct felony and any person convicted thereof shall be guilty of a Class 6 felony, shall not be eligible for probation, and shall be sentenced to a minimum, mandatory term of imprisonment of five years, which shall not be suspended in whole or in part. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

C. Any firearm possessed in violation of this section shall be forfeited to the Commonwealth pursuant to the provisions of § 18.2-310.

(1987, c. 285; 1990, c. 625; 1992, c. 707; 1993, c. 831; 1999, cc. 829, 846.)

**§ 19.2-120. Admission to bail.**

Prior to conducting any hearing on the issue of bail, release or detention, the judicial officer shall, to the extent feasible, obtain the person's criminal history.

A. A person who is held in custody pending trial or hearing for an offense, civil or criminal contempt, or otherwise shall be admitted to bail by a judicial officer, unless there is probable cause to believe that:

1. He will not appear for trial or hearing or at such other time and place as may be directed, or
2. His liberty will constitute an unreasonable danger to himself or the public.

B. The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is currently charged with:

1. An act of violence as defined in § 19.2-297.1;
2. An offense for which the maximum sentence is life imprisonment or death;
3. A violation of §§ 18.2-248, 18.2-248.01, 18.2-255 or § 18.2-255.2 involving a Schedule I or II controlled substance if (i) the maximum term of imprisonment is ten years or more and the person was previously convicted of a like offense or (ii) the person was previously convicted as a "drug kingpin" as defined in § 18.2-248;

4. A violation of §§ 18.2-308.1, 18.2-308.2, or § 18.2-308.4 and which relates to a firearm and provides for a minimum, mandatory sentence;

5. Any felony, if the person has been convicted of two or more offenses described in subdivision 1 or 2, whether under the laws of this Commonwealth or substantially similar laws of the United States;

6. Any felony committed while the person is on release pending trial for a prior felony under federal or state law or on release pending imposition or execution of sentence or appeal of sentence or conviction;

7. An offense listed in subsection B of § 18.2-67.5:2 and the person had previously been convicted of an offense listed in § 18.2-67.5:2 and the judicial officer finds probable cause to believe that the person who is currently charged with one of these offenses committed the offense charged; or

8. A violation of § 18.2-46.5 or § 18.2-46.7.

C. The court shall consider the following factors and such others as it deems appropriate in determining, for the purpose of rebuttal of the presumption against bail described in subsection B, whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of the public:

1. The nature and circumstances of the offense charged;

2. The history and characteristics of the person, including his character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

3. The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

D. The judicial officer shall inform the person of his right to appeal from the order denying bail or fixing terms of bond or recognizance consistent with § 19.2-124.

(1975, c. 495; 1978, c. 755; 1979, c. 649; 1987, c. 390; 1991, c. 581; 1993, c. 636; 1996, c. 973; 1997, cc. 6, 476; 1999, cc. 829, 846; 2000, c. 797; 2002, cc. 588, 623.)

## Appendix 2

### CHAPTER 949

*An Act to amend and reenact § 18.2-308.4 of the Code of Virginia, relating to possession of firearm while in possession of certain controlled substances; penalty.*

[H 2181]

Approved March 24, 2003

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-308.4 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-308.4. Possession of firearms while in possession of certain controlled substances.

A. It shall be unlawful for any person unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 to simultaneously with knowledge and intent possess any firearm. *A violation of this subsection is a Class 6 felony and constitutes a separate and distinct felony.*

B. *It shall be unlawful for any person unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) to simultaneously with knowledge and intent possess any firearm on or about his person. A violation of this subsection is a Class 6 felony and constitutes a separate and distinct felony and any person convicted hereunder is not eligible for probation and shall be sentenced to a minimum, mandatory term of imprisonment of two years, which shall not be suspended in whole or in part. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.*

C. It shall be unlawful for any person to possess, use, or attempt to use any pistol, shotgun, rifle, or other firearm or display such weapon in a threatening manner while committing or attempting to commit the illegal manufacture, sale, distribution, or the possession with the intent to manufacture, sell, or distribute a controlled substance classified in Schedule I or Schedule II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 or more than one pound of marijuana. ~~A violation of this section subsection shall constitute a separate and distinct felony and any person convicted thereof shall be guilty of~~ *is a Class 6 felony, shall and constitutes a separate and distinct felony and any person convicted hereunder is not be eligible for probation, and shall be sentenced to a minimum, mandatory term of imprisonment of five years, which shall not be suspended in whole or in part. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.*

€ D. Any firearm possessed in violation of this section shall be forfeited to the Commonwealth pursuant to the provisions of § 18.2-310.



### Appendix 3

#### GLOSSARY OF LEGAL TERMS (Webster's Legal Dictionary)

**Advisement:** The initial appearance before a judge in a criminal case. See “arraignment.”

**Arraignment:** The initial appearance before a judge in a criminal case. In some localities, this is also termed “advisement.” At an arraignment, the charges against the defendant are read and counsel is appointed if the defendant cannot afford one. A defendant’s plea is entered at arraignment if it occurs prior to a trial in Circuit Court.

**Circuit Court:** A charge comes to trial in Circuit Court after having been indicted by a grand jury. Typically, felony charges are tried in Circuit Court and may be heard by a judge or a trial jury.

**Direct Indictment:** Also referred to as “straight indictment,” a charge may be directly indicted to a grand jury by the prosecutor, circumventing the Preliminary Hearing.

**First Appearance:** First Appearance refers to the point at which the suspect is brought before a magistrate, charges are filed against him or her, and a determination of bail is made.

**General District Court:** General District Court conducts Preliminary Hearing and hears misdemeanor offenses.

**Grand Jury:** A jury convened in a criminal case to consider the prosecutor’s evidence and determine whether probable cause exists to prosecute a suspect for a felony.

**Indictment:** The formal charge issued by a grand jury stating that there is enough evidence that the defendant committed the crime to justify having a trial.

**Nolle Prosequi (Nol Pros):** An entry made on the record, by which the prosecutor or plaintiff declare that he/she will proceed no further. A nolle prosequi does not operate as an acquittal, for a defendant may be later re-indicted.

**Preliminary Hearing:** The prosecutor presents evidence to a judge in an attempt to show that there is probable cause that a person committed a crime. If the judge is convinced probable cause exists to charge the person, then the prosecution proceeds to the grand jury. If not, the charges are dropped, or direct indicted by the prosecutor to the grand jury.

**Voir Dire:** The act of questioning prospective jurors to determine which are qualified for service on a jury and free of bias on issues relative to the specific case.