



VIRGINIA CRIMINAL SENTENCING COMMISSION



Review of Guidelines for Heroin Distribution (House Bill 1059)

June 6, 2016

2016 SESSION

CHAPTER 398

An Act to direct the Virginia Criminal Sentencing Commission to study the sentencing guidelines for heroin possession.

[H 1059]

Approved March 11, 2016

Be it enacted by the General Assembly of Virginia:

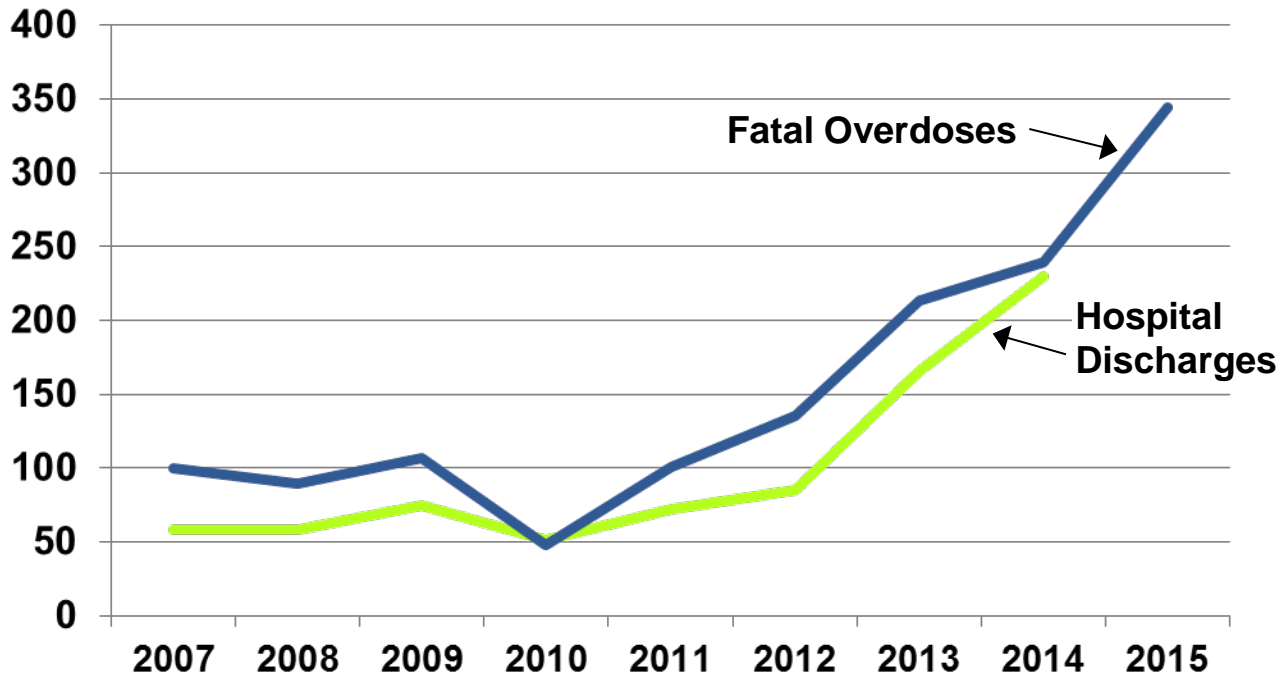
1. § 1. *The Virginia Criminal Sentencing Commission (the Commission) under its powers and duties shall evaluate judge-sentencing and jury-sentencing patterns and practices in cases of manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute heroin across the Commonwealth and recommend adjustments in the sentencing guidelines previously adopted by the Commission.*



Recent Trends in Drug Offenses

Between 2010 and 2014, the number of hospital discharges and fatal overdoses associated with heroin increased between 350% and 400%.

**Hospital Discharges and Fatal Overdoses
Associated with Heroin
CY2007 – CY2015***

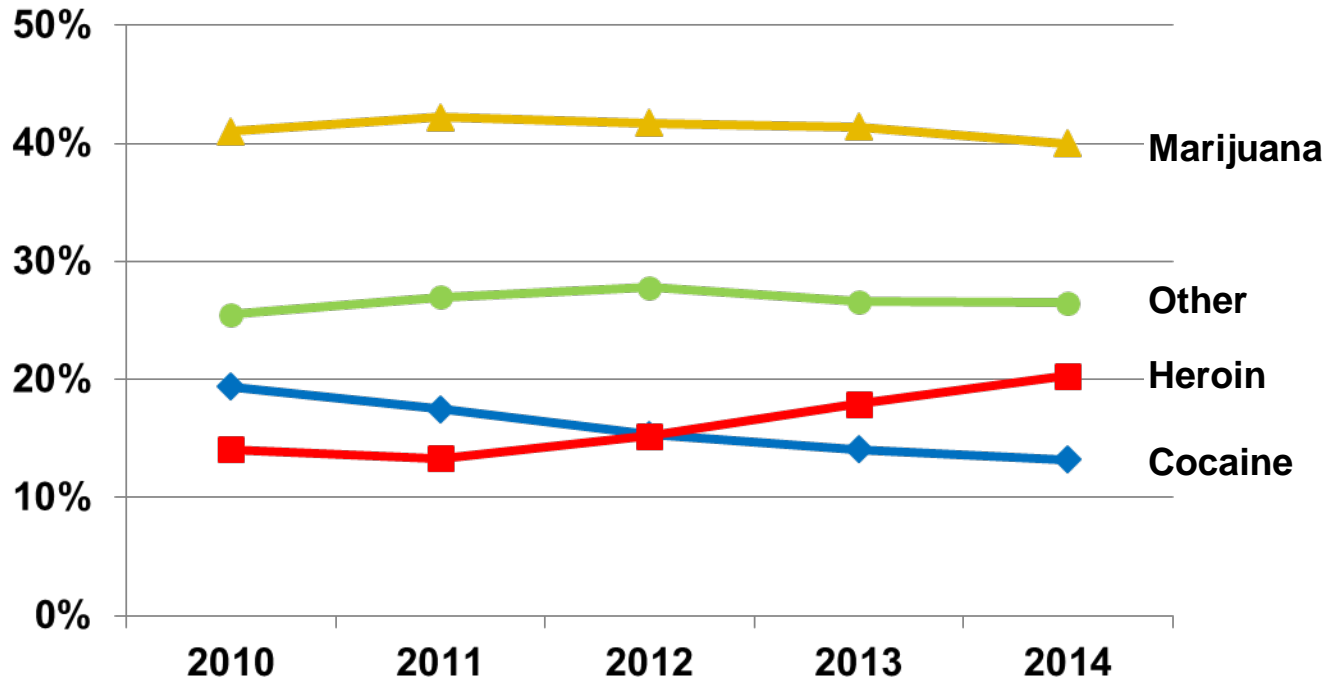


* CY2015 data are projected, preliminary figures.

Source: Department of Health - Office of Family Health Services;
Office of the Chief Medical Examiner

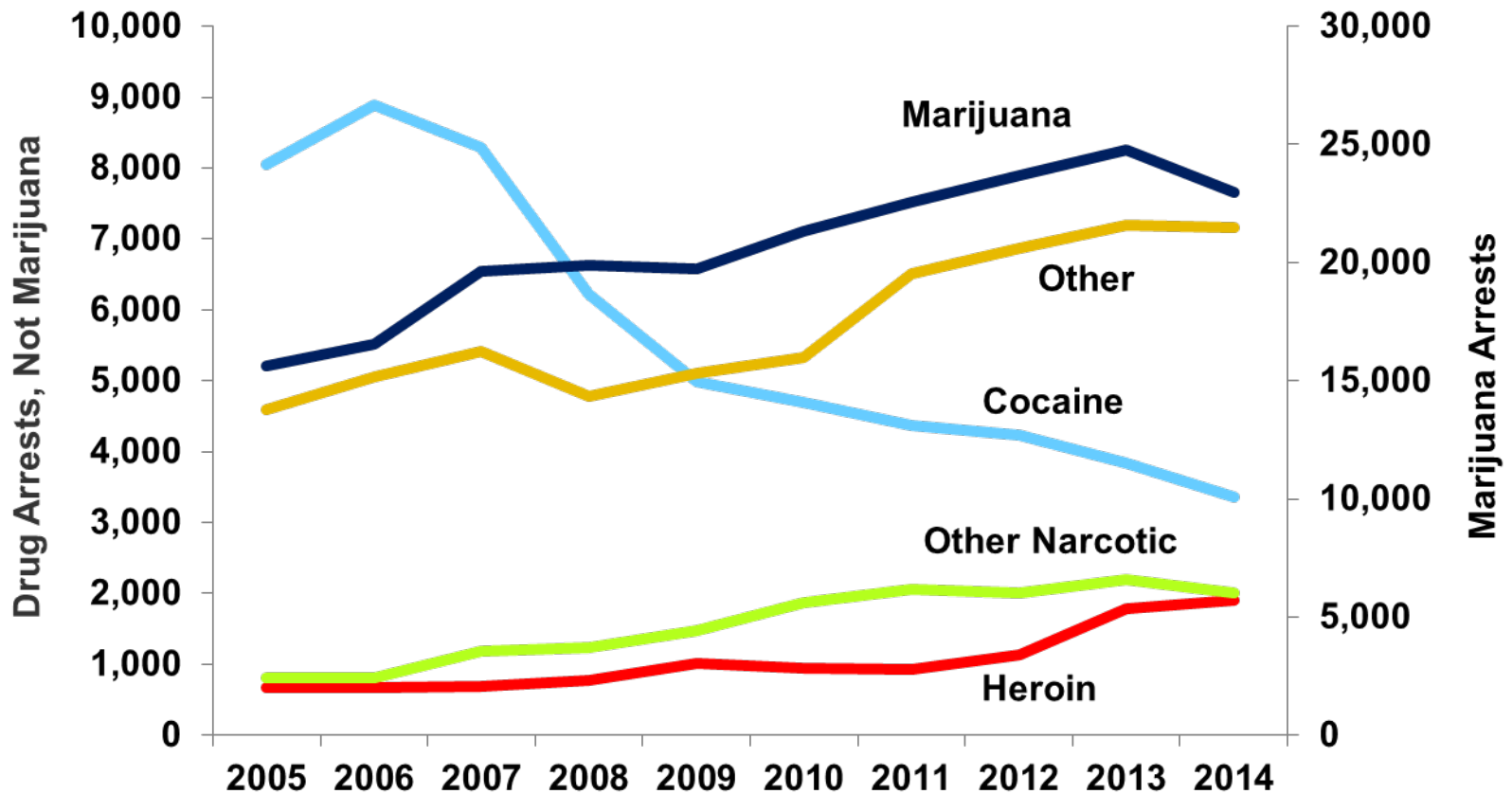
From CY2010 to CY2014, the percentage of substance abuse treatment admissions associated with heroin increased from 14% to 20% of all admissions, surpassing admissions for cocaine.

**Substance Abuse Treatment Admissions in Virginia
By Primary Drug Type
CY2010 – CY2014**



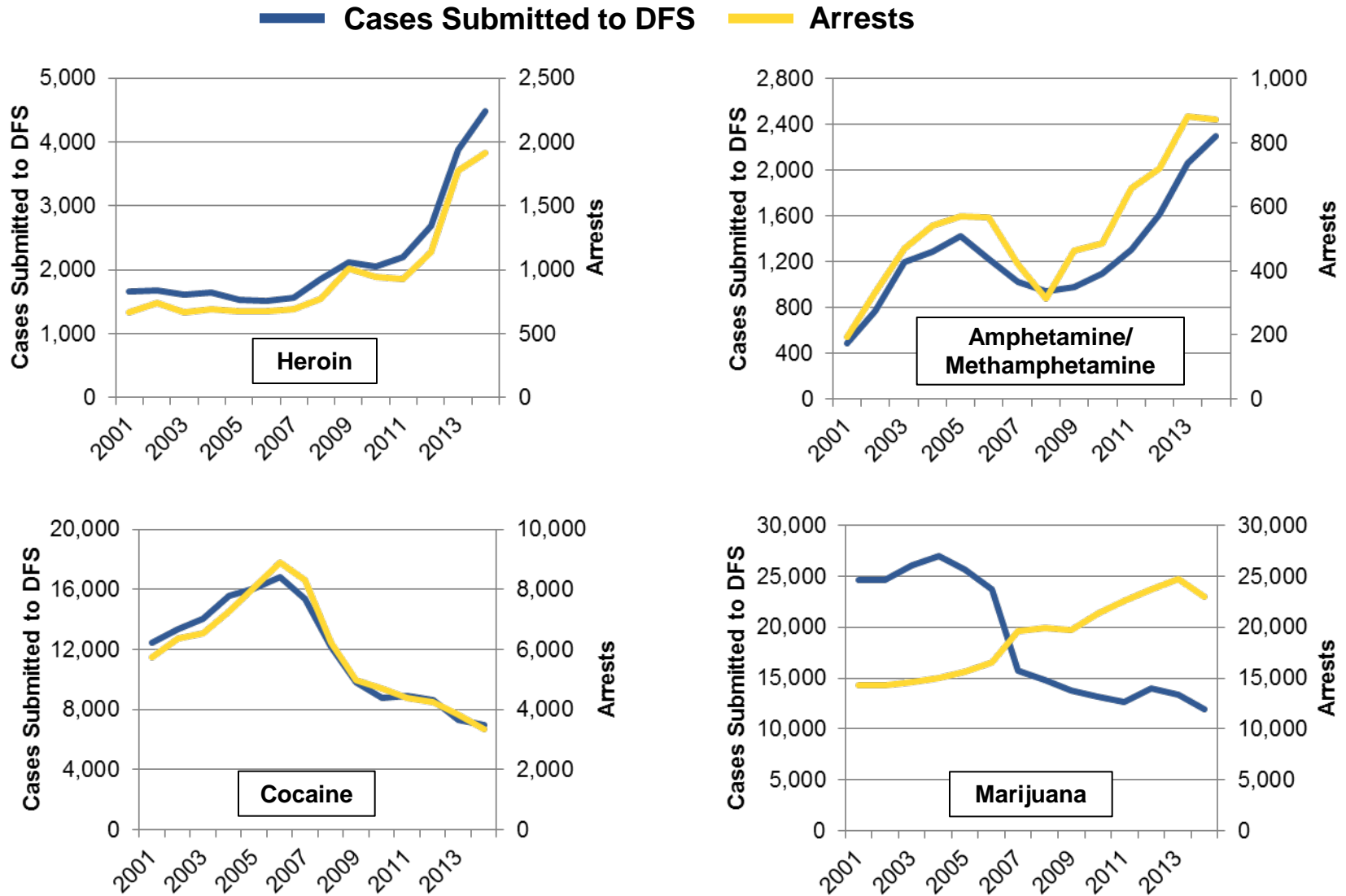
Between 2008 and 2013, the number of arrests increased for nearly all drugs except cocaine. In 2014, arrests dropped for all drugs except heroin.

Number of Drug Arrests in Virginia by Drug Type, 2005-2014



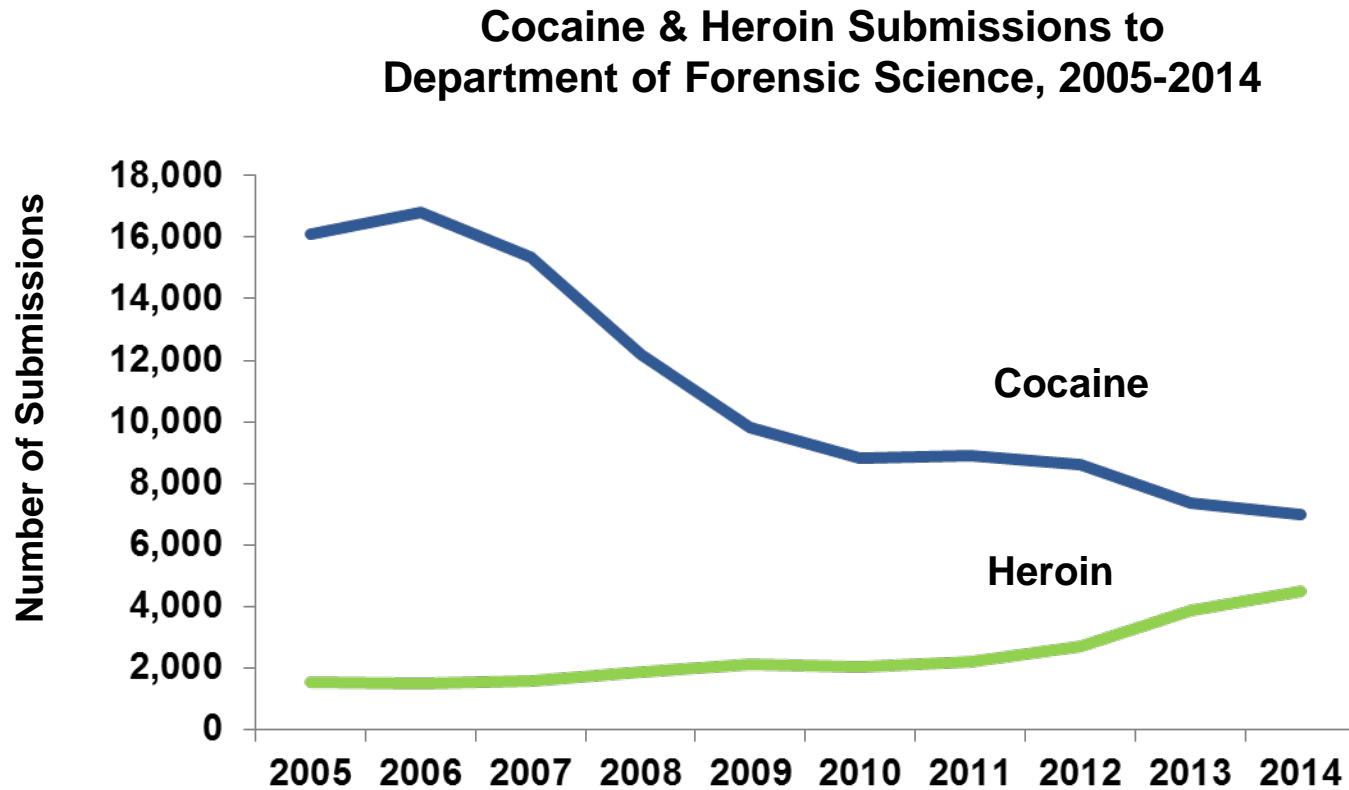
Source: Virginia State Police Incident-Based Crime Reporting Repository System, as analyzed by the Dept. of Criminal Justice Services (DCJS) Research Center (July 30, 2015)

With the exception of marijuana, trends in cases submitted to the Department of Forensic Science (DFS) track trends in drug arrests.



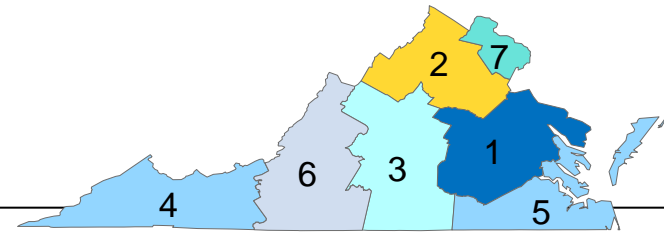
Source: Dept. of Criminal Justice Services (DCJS) Research Center (July 30, 2015)

Cocaine submissions to the Department of Forensic Science (DFS) still outnumber heroin statewide, although the gap has narrowed.

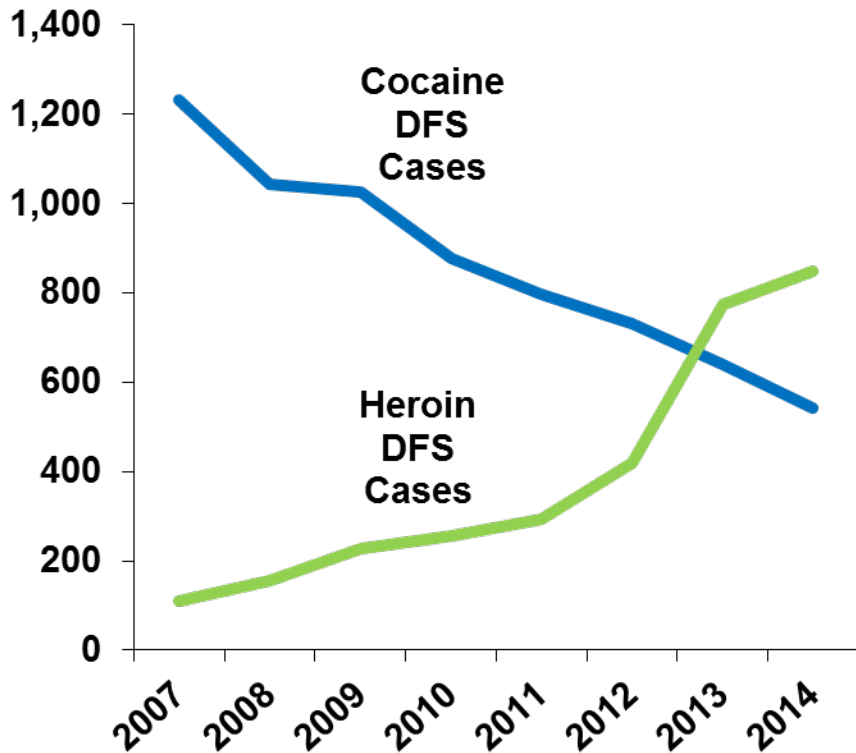


Source: Virginia Department of Forensic Science NFLIS data, as analyzed by the Dept. of Criminal Justice Services (DCJS) Research Center (July 30, 2015)

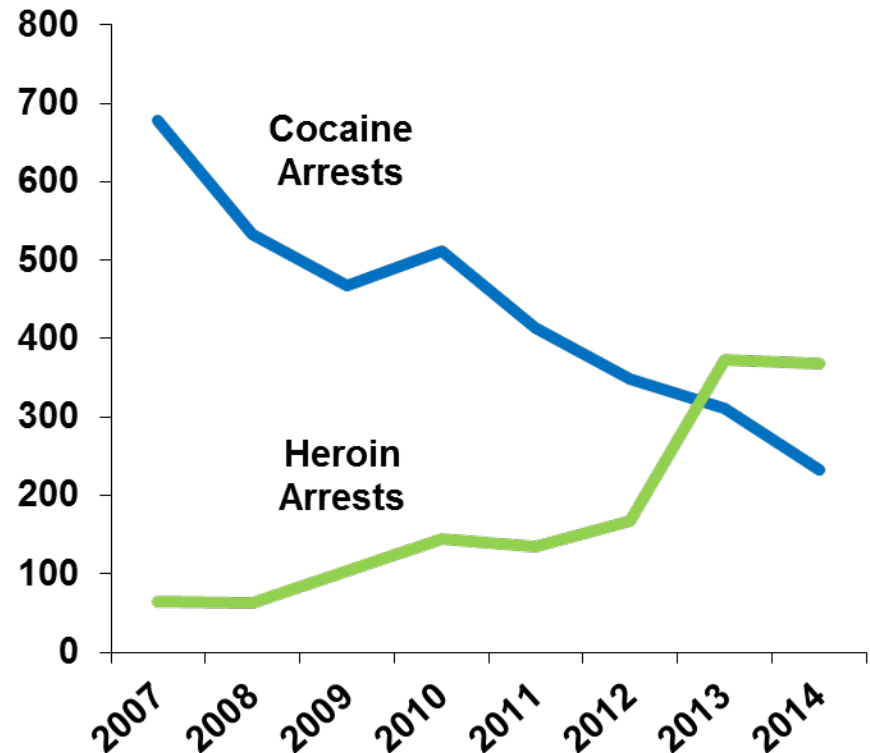
In one area of the state, heroin cases have surpassed cocaine.



**Forensic Science Cases
State Police Division 2**



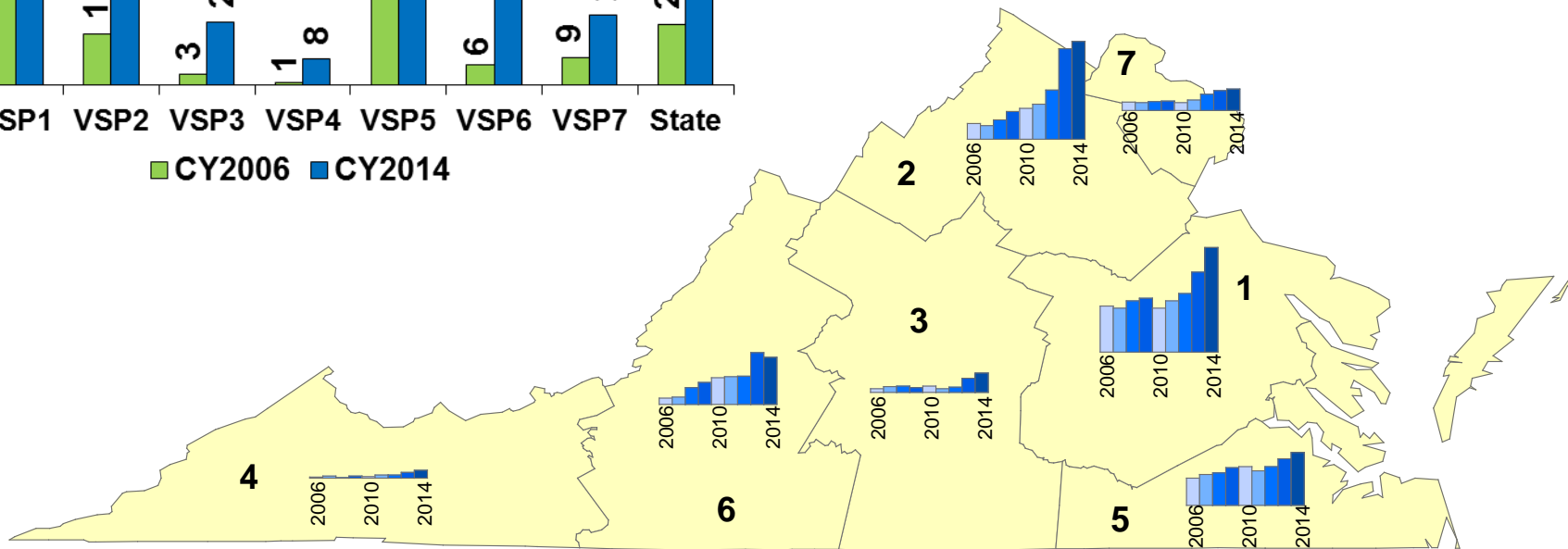
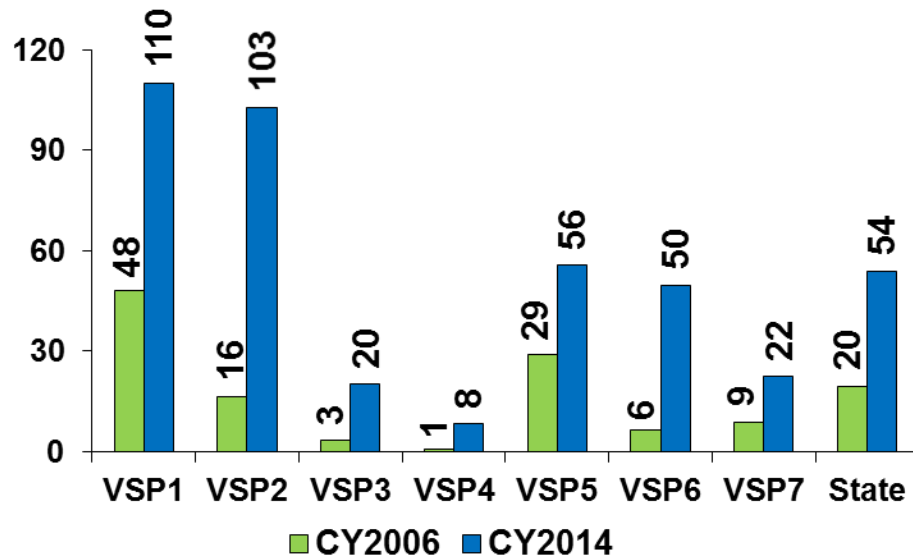
**Arrests
State Police Division 2**



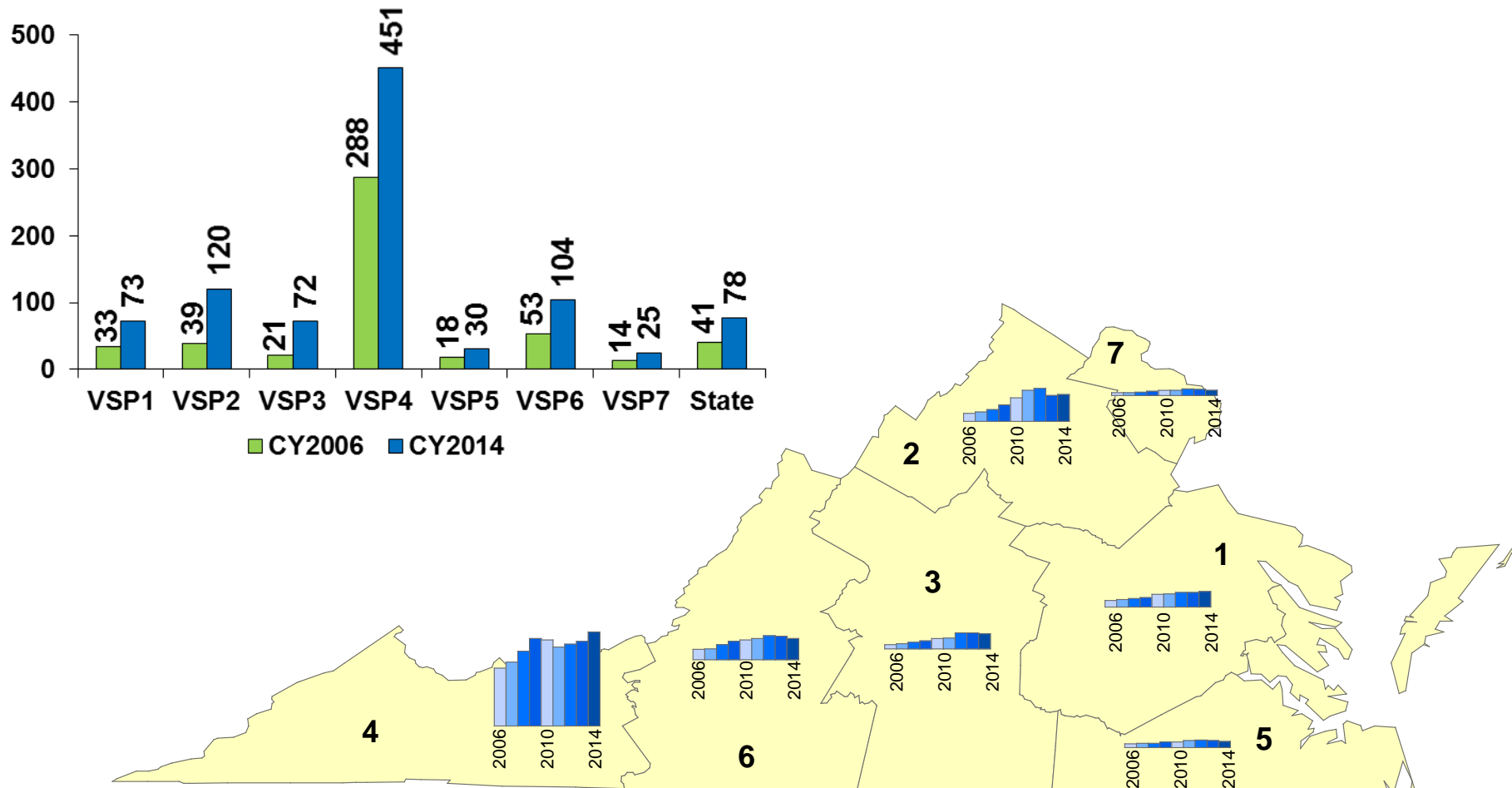
Sources: Virginia Department of Forensic Science NFLIS data, as analyzed by the Dept. of Criminal Justice Services Research Center (July 30, 2015)

Virginia State Police Incident-Based Crime Reporting Repository System as analyzed by the Dept. of Criminal Justice Services Research Center (July 30, 2015)

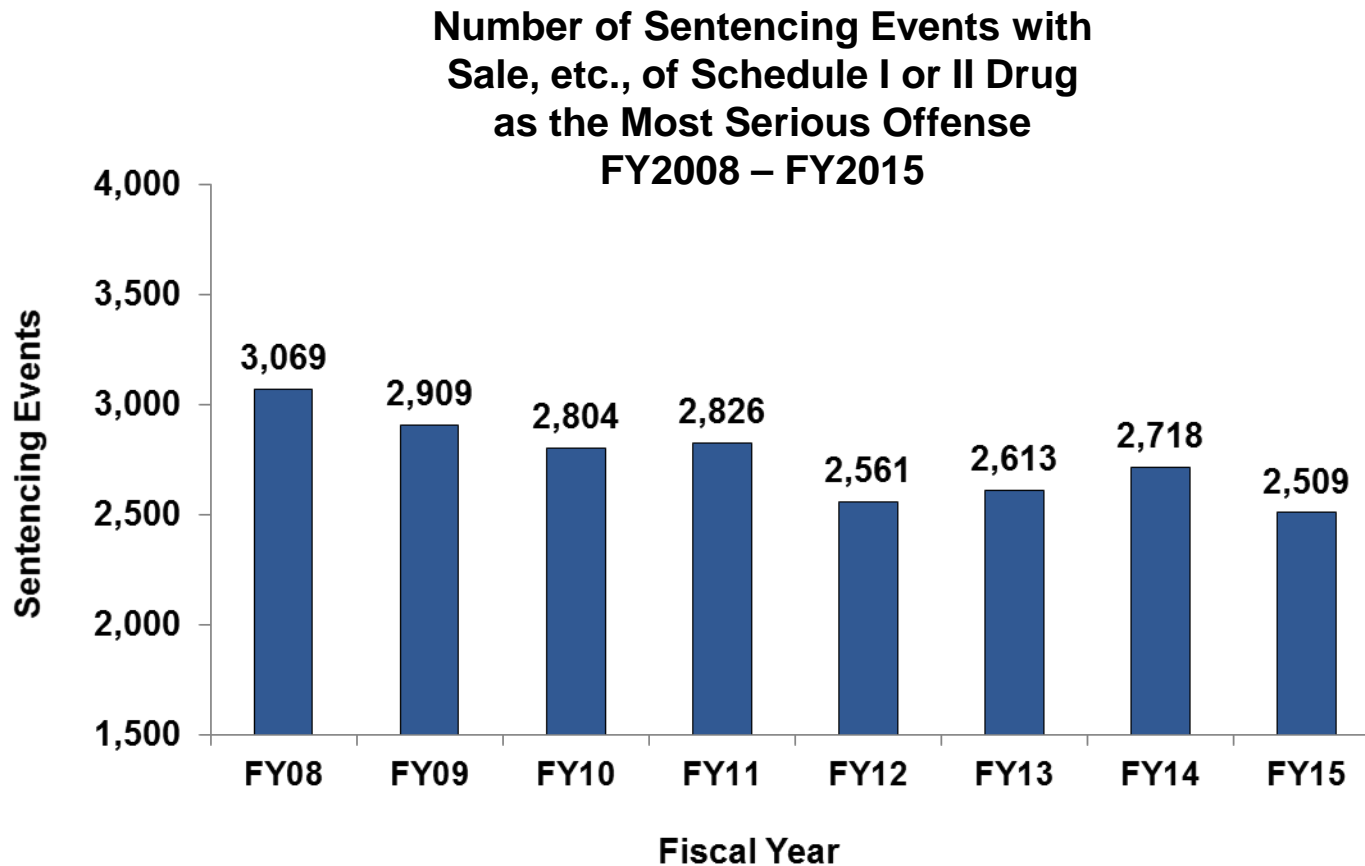
Department of Forensic Science Submission Rate for Heroin by Virginia State Police Division (rate of submissions per 100,000 Population)



Department of Forensic Science Submission Rate for Prescription Opioid by Virginia State Police Division (rate of submissions per 100,000 Population)



The number of sentencing events in which the sale, etc., of a Schedule I/II drug was the most serious offense declined by 18% between FY2008 and FY2015.



Source: Sentencing Guidelines Database, FY2008 – FY2015

Note: Guidelines cases with scoring errors and other types of errors were excluded from the analysis.





1996 Study of Drug Quantity in Schedule I or II Drug Cases

1996 Study of Drug Quantity

In 1996, the Commission received feedback from judges, prosecutors and other criminal justice professionals expressing concern about the sentencing guidelines for drug offenses.

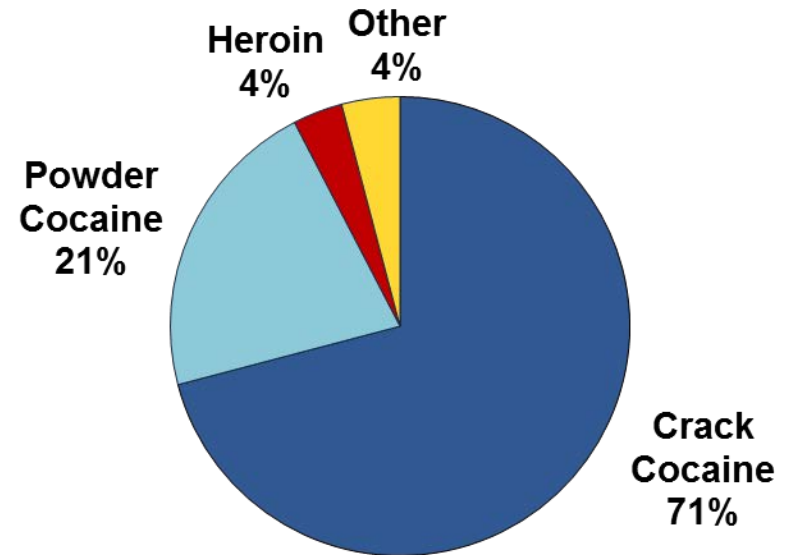
Some argued that drug sales involving larger quantities should receive longer prison term recommendations and the guidelines should be modified to address it.



For its 1996 study, the Commission identified 2,351 sentencing events in FY1995 in which selling, distributing, manufacturing, or possessing with intent to distribute a Schedule I or II drug under § 18.2-248(C) was the most serious offense.

More than 92% of the sentencing events involved some form of cocaine.

Sentencing Events with Sale, etc., of Schedule I or II Drug as the Most Serious Offense by Type of Drug FY1995



Number of cases = 2,351



At the conclusion of the 1996 study, the Commission recommended adding a Quantity of Cocaine factor to the Drug-Schedule I/II Section C worksheet. The General Assembly accepted the recommendation and the new factor was added to the guidelines beginning July 1, 1997.

Drug Schedule I/II Section C Worksheet  **Section C**

**Sale/Quantity of Cocaine (Score if primary offense is B, C, D, or F:
§ 18.2-248(C) or §18.2-255(A))**

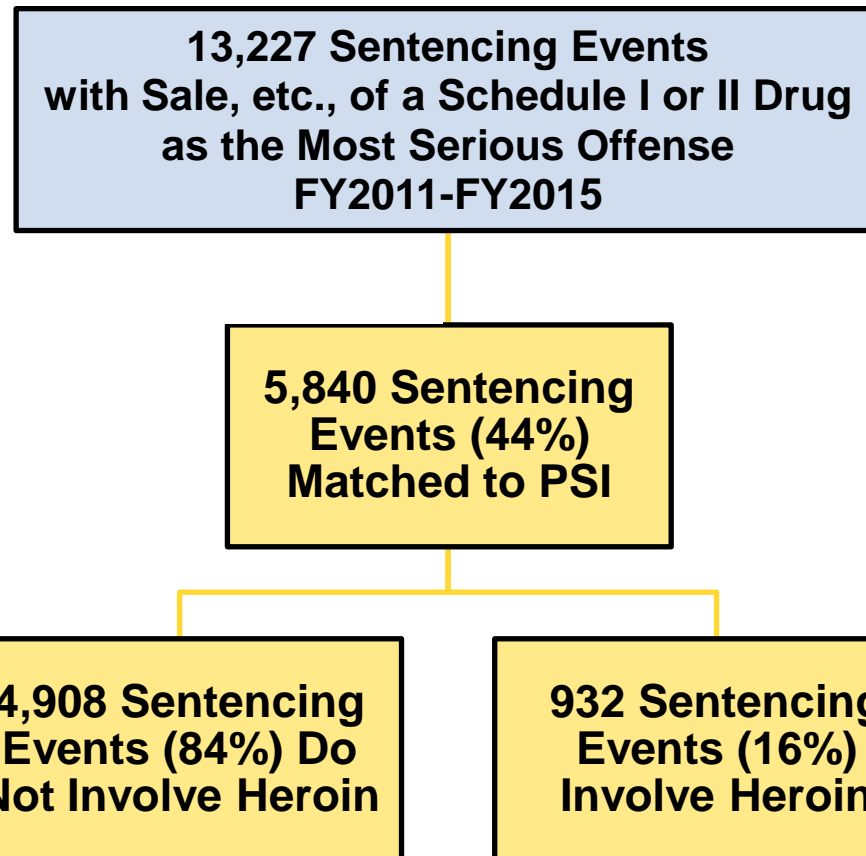
Quantity of Cocaine: Less than 28.35 grams 0 points
28.35 g to less than 226.8 grams 36 points
226.8 grams or more 60 points





2016 Study of Drug Quantity in Heroin Cases

Sentencing Guidelines Matched to Pre-Sentence Investigation (PSI) Reports



Sentencing Guidelines Matched to Pre-Sentence Investigation (PSI) Reports

- **Of the 932 heroin sentencing events identified by matching to PSI records, about 83% have quantity recorded on the PSI report.**
 - **Median quantity of heroin was 0.5 grams.**
- **Approximately 69% of heroin sentencing events list heroin as the only drug type.**
- **About one-third of heroin sentencing events involve multiple counts of sale, etc., of Schedule I or II drug (which may involve other drugs in addition to heroin).**



Sentencing Outcomes for Sale, etc., of Heroin FY2011 – FY2015

Disposition	Percent	Median
Probation/ No Incarceration	10.2%	N/A
Jail – Up to 12 Months	17.6%	8 Mos.
Prison – 1 Year or More	72.2%	3 Yrs.

Number of Sentencing Events = 932
(Sentencing Guidelines Matched to PSI)

Source: Sentencing Guidelines Database, FY2011-FY2015

Pre/Post-Sentence Investigation (PSI) Report System, FY2011-FY2015

Note: Guidelines cases with scoring errors and other types of errors were excluded from the analysis.



Proposed Methodology for Remaining Sentencing Events for Which PSI or Quantity Information Is Unavailable

- **Staff received data from Virginia Department of Forensic Science (DFS) on 5/12/16 for heroin samples submitted to DFS with offense dates between FY2008 and FY2015.**
- **DFS data contain the suspect's name, offense date, and the submitting law enforcement agency.**
- **Staff will match DFS data to SG sentencing events to:**
 - **Identify cases involving the sale, distribution, PWID, etc., of heroin and the quantity of drug based on DFS analysis.**



Analysis

- **Sentencing events involving heroin will be analyzed to determine the relationship between drug quantity and sentencing outcomes.**
- **Based on the results of the analysis, the Commission could consider adding a factor to the sentencing guidelines to account for drug quantity in heroin cases.**

 **Findings will be presented at the Commission's November meeting.**



