

Virginia State Crime Commission

Juvenile Justice: Transfer and Certification

2009

JUVENILE JUSTICE: TRANSFER AND CERTIFICATION

House Joint Resolution 136, introduced by Delegate Brian J. Moran and passed during the 2006 Session of the Virginia General Assembly, directed the Crime Commission to conduct a two-year study of Virginia's juvenile justice system. The Commission was also to analyze Title 16.1 of the Code of Virginia to determine the adequacy and effectiveness of Virginia's statutes and procedures relating to juvenile delinquency.

During the 2008 Session of the Virginia General Assembly, the Commission was directed to continue its study of Virginia's juvenile justice system, pursuant to House Joint Resolution 113, also introduced by Delegate Moran. At its December 9, 2008, meeting, the Commission voted to continue the juvenile justice study an additional year due to the many issues identified regarding the transfer and certification of juveniles.

This past year, Crime Commission staff completed a comprehensive literature review, collected data regarding the transfer and certification of juveniles, conducted a fifty state review of juvenile justice legislation, and obtained preliminary research and findings on adolescent brain development. Staff provided a detailed presentation to the Crime Commission on June 25, 2009. At that meeting, members were also briefed on the transfer and certification of juveniles by the Virginia Department of Juvenile Justice, the Virginia Criminal Sentencing Commission, ("Sentencing Commission"), and Vincent Culotta, Ph.D., who highlighted some of the recent findings that address neurodevelopmental maturation and how it underlies and drives behavior and cognition in juveniles.

The Sentencing Commission provided an update of Virginia's transfer data. The information provided was a compilation of transfer data from FY2001-FY2008. The Sentencing Commission supplemented the sentencing guideline data with information from the Department of Juvenile Justice, the Department of Corrections, the Virginia Supreme Court, pre-sentence investigation reports, and local/ regional jails.

The total number of juveniles convicted in circuit court from FY2001-FY2008 was 4,591, separated by fiscal year as follows:

- FY01: 572;
- FY02: 515;
- FY03 :575;
- FY04: 524;
- FY05: 498;
- FY06: 532;
- FY07: 678; and,
- FY08: 697.

The ages of the juveniles at the time of the offense were also available. Of the 4,591 juveniles convicted in circuit court from FY2001-FY2008: 185 were 14 years old; 626 were 15 years old; 1,222 were 16 years old; and, 2, 558 were 17 years old.

Juveniles who were convicted in circuit court were broken into groups according to their most serious offense as follows:

- Robbery: 33%;
- Assault: 15%;
- Larceny/fraud: 12%;
- Drug: 8%;
- Murder/manslaughter: 6%;
- Burglary of a dwelling: 6%;
- Rape/forcible sodomy/object penetration: 5%;
- Miscellaneous/other: 4%;
- Burglary other: 3%;
- Sex offense: 3%;
- Weapon: 2%; and,
- Kidnapping: 1%.

The types of disposition for these juveniles were as follows:

- Prison: 45%;
- Jail/Probation (adult): 30%;
- DJJ Determinate: 10%;
- DJJ Indeterminate: 7%;
- DJJ Probation/Other: 6%; and,
- Blended DOC/DJJ: 2%.

Under Virginia Code § 16.1-269.1, a juvenile may be transferred under subsections A, B, or C. Subsection A allows for judicial review and a transfer hearing is held to determine

whether it is proper for the juvenile to remain in JDR court. The court considers age, seriousness of offense, prior juvenile proceedings and adjudications, prior criminal proceedings, use of weapon, extent of physical injury to victim, presence of ancillary charges, whether the juvenile system would be rehabilitative, availability of alternatives, past history with juvenile correction center, mental health, school records/educational history, and physical and emotional condition and maturity. Subsection B allows for an automatic transfer if the juvenile is charged with murder or aggravated malicious wounding. Subsection C allows for prosecutorial discretion in cases involving felony homicide, felonious injury by mob, abduction, malicious wounding, malicious wounding of a law enforcement officer, felonious poisoning, adulteration of products, robbery, carjacking, rape, forcible sodomy, and object sexual penetration. Currently, the Supreme Court is attempting to sort their data so they can determine the number of juveniles who are transferred under each subsection. By collecting and sorting data in this manner, Virginia may be able to ascertain which crimes most commonly result in transfer and certification and at which age and in what localities transfer and certification occurs.

Crime Commission staff also focused their research on national trends regarding the various methods in which juveniles are transferred. Various states have transfer provisions such as prosecutorial discretion, statutory exclusion, reverse waiver, "once an adult/always an adult policy," and blended sentencing. A fifty state review of how states transfer certain juveniles showed that 17 states utilize prosecutorial discretion, 30 states utilize statutory exclusion, 26 states allow for reverse waiver, 34 states utilize "once an adult/always an adult," and 31 states use blended sentencing.

CONCLUSION

The Crime Commission, at its December 15, 2009, meeting, decided to continue the study another year due to the lack of available data in hopes that additional information could be obtained. A final report will be issued for the 2010 study year.