

Virginia State Crime Commission

Juvenile Justice

2007

JUVENILE JUSTICE

House Joint Resolution 136, introduced by Delegate Brian Moran and passed during the 2006 Virginia General Assembly Session, directed the Virginia State Crime Commission to study the Virginia Juvenile Justice System over a two year period. Specifically, the Commission was to examine recidivism, disproportionate minority contact with the juvenile justice system, improving the quality of and access to legal counsel based on American Bar Association recommendations, accountability in the courts, and diversion. The Commission was also tasked with analyzing 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 2007, Commission staff met with a group of Juvenile and Domestic Relations District Court ("JDR") judges, surveyed Virginia's JDR court judges, provided a study update to the Virginia Advisory Committee on Juvenile Justice ("VACJJ"), met with local juvenile justice professionals around the state, attended Court Service Unit ("CSU") directors' meetings, consulted with multiple juvenile justice professionals and advocacy groups, and attended both national and statewide trainings provided for juvenile justice professionals. During the 2008 Virginia General Assembly Session, staff monitored juvenile justice legislation directly related to issues studied during the 2007 year.

Focus Groups and Juvenile and Domestic Relations District Court Observations

Staff members visited nine localities during 2007. The localities were selected with the goal of obtaining a diverse geographic and demographic representation to include:

- Augusta County;
- City of Alexandria;
- City of Bristol;
- City of Fairfax;
- City of Richmond;
- City of Virginia Beach;
- Henry County;
- New Kent County; and,
- Roanoke County.

There, staff observed JDR court proceedings and participated in focus groups with local juvenile justice professionals. In every locality, all interested parties were invited to send representatives to the focus groups. The following individuals were requested to attend: school representatives, including truancy officers, school resource officers and program directors; CSU employees, including directors, intake officers and program coordinators; judges, both circuit court and JDR court; law enforcement representatives; and any interested parties from juvenile-oriented groups, such as representatives from advocacy or locality specific programs.

Topics discussed included the issues cited in HJR 136, as well as additional issues brought forth by the focus group participants. The following is a summary of the current juvenile justice issues that the participating localities mentioned in the focus groups.

Funding

The top issue from every locality was lack of funding. Localities mentioned the need for funding for programming, additional and expansion capabilities, and positions. The most frequently cited programs in need of funding were prevention programs, halfway homes, mental health and substance abuse programs. The most frequently cited needs in regard to manpower were to raise the rate of compensation for court appointed attorneys and to allot more positions in CSU.

Truancy and Children in Need of Services ("CHINS")

A few of the localities cited the possibility of lowering the mandatory school attendance age; however, only a minority of the focus groups had this sentiment. Virginia raised its school attendance requirement from 16 years of age to 18 during the 1990's. Truancy cases were mentioned as having a high impact on every court docket. Almost all the localities mentioned the need for faster turnaround between a juvenile's truancy infraction and his or her court appearance. Most of the localities mentioned time spans of months between the infraction and the court appearance, making the judgment less effective - juveniles respond better to immediate sanctions. Some of the participants even suggested the possibility of creating immediate sanctions within the school system instead of having to go to the courts for truancy.

Prevention and reduction of truancy was a major concern in all of the localities due to the fact that most high school aged juveniles were being charged for

truancy infractions, but in reality, they had a pattern of frequent absences since elementary school. CHINS court workers and judges both agreed that the courts need more authority to take action on parents who don't send their young children to school.

School Involvement in Juvenile Justice System

Localities that mentioned high involvement and cooperation by the school system cited fewer problems with truancy cases. Most of the localities' JDR courts that reported an active level of cooperation with the schools also noted that the schools maintained working alternative programs, such as alternative education, GED courses, and trade programs. School systems that invest and apply these alternative programs are able to attract non-traditional or non-college bound students. When localities do not provide these services, students that are not college bound have little incentive to participate in their education. The localities that reported low to no cooperation with the school system cited higher problems with truancy cases and few to no alternative programs in the schools.

Mental Health and Mental Resources ("MH/MR")

All of the nine localities voiced the need for more mental health resources for juveniles, both within the juvenile justice system and immediately in the community. The provision of MH/MR services was one of the issues that differentiated the localities that staff visited in Virginia. As was expected, more affluent localities had their own MH/MR programs in place. These programs were funded by the localities, but they mentioned that the need persists to serve more people. Most of the rural localities had few resources to provide sufficient, if any, MH/MR services.

One issue that some localities mentioned was the need to determine mental health status before adjudication. They noted that juveniles are not usually given an assessment until they reach detention, where a mental health evaluation can shape their treatment, but is too late to affect their outcome in court.

Transfer

Since the authority of transferring a juvenile to circuit court was changed in the 1990's, juveniles are automatically transferred for some charges. For other charges, the Commonwealth's Attorney has the ability to determine whether to charge a juvenile as an adult. The authority once rested solely on JDR court

judges.

It was often repeated that the authority for transfer should be reverted to JDR court judges for two reasons. First, it was suggested that any discretion for transfer be removed from Commonwealth's Attorneys' offices as they are not as specialized in juvenile justice matters as JDR court judges. Second, it was suggested that the authority be removed from Commonwealth's Attorneys as they frequently use the threat of transfer as a plea bargaining tool with juveniles.

Juvenile Detention Alternatives Initiative ("JDAI")

Most participants in the focus groups supported JDAI. While only one locality staff visited was actively involved as a test site for JDAI, most of the other localities employed the JDAI detention assessment instrument, which helps determine whether an apprehended juvenile should be detained. There were a few problems noted, with either JDAI or the assessment instrument, in the focus groups. They included:

- The instrument does not have the juvenile's history or family/ living situation as weighted options for determining whether to detain a juvenile.
- Local CSU workers need a blanket system for override authority on the instrument.
- There is no legal holding area for juveniles once it has been determined that they will not be detained. The police officers who brought the juvenile in must then stay with the juvenile until the parents arrive to pick up the juvenile. Police officers lose hours on a shift when they apprehend a juvenile. They note that the process is too complicated and the process time required takes away from their regular patrol.
- Law enforcement and juvenile workers aren't always in communication about juveniles' needs and detention. For the communities that had regular meetings and/or open dialogue between the CSU and law enforcement, they were able to solve many of the obstacles that other communities had not discussed.

Disproportionate Minority Contact ("DMC")

Disproportionate Minority Contact was acknowledged to be an issue by many of the localities, but causes were not clear. Representatives from CSUs and judges stated that they work with juveniles only after they enter the system and that this population already contains a disproportionately large percentage of

minorities at intake. In one locality, a law enforcement officer addressed this issue by mentioning that their office had done its own study a couple years before on the subject. The study found that many juvenile crimes are not directly witnessed by law enforcement officers, but are reported to the police by citizens.

Study findings concluded that citizen phone calls are a primary reason for disproportionate minority contact with the courts. While most of the localities were not current JDAI test sites, they frequently used the JDAI intake assessment tool as a method of reducing DMC.

Office on Youth

A few of the rural localities mentioned the need to reestablish the Office on Youth, once a statewide program that assisted in juvenile issues, providing social and delinquency services. One of the localities visited was able to continue their Office on Youth and its services, albeit at a much lower capacity, through federal grants. The localities cited that when the offices were fully funded and operational, the services they provided greatly supplemented the needs for delinquents and CHINS.

Corroboration of all Local Offices Involved in Juvenile Justice

Overall, the localities with positive relationships among its court system, schools, and law enforcement agencies reported fewer problems and a higher level of ability to provide juveniles with programs and services. Some of these localities had even established regularly scheduled meetings with representatives from schools, JDR courts, law enforcement, CSU, non-profits with juvenile programming, and other community members active in youth services. One of the courts even had its own volunteer program that helped lighten the load for regular employees of the JDR court.

Prevention

Some localities mentioned the current use of early prevention programs and all localities insisted on the need to start prevention programs, especially related to truancy at an elementary level. When records of truant and delinquent children were examined, it was shown that problems arose during elementary school years. The most troubling issue mentioned was that many delinquent children had received some sort of advisement for mental health treatment at an early age. For example, one group mentioned that often a delinquent's elementary school record shows that a teacher recommended the juvenile for mental

health services.

Parental Involvement

A major issue brought to light by all the localities was cyclical delinquency as a result of inadequate parenting, which usually results in a multi-generational pattern of the same. A few localities mentioned the need for mandatory parenting skills classes to be required of all parents of truant children, delinquent children, CHINS and children in need of supervision ("CHINSup").

Another pattern of parental instability was the lack of parental ability to enforce school attendance. Again, this was mentioned as a problem that starts at the elementary level. A suggestion noted, as a corrective method, was to sanction the parents of elementary aged truant children. This suggestion would require the proactive cooperation of school systems to inform the courts in a timely manner of a child missing from school. The courts would need clear enforcement of attendance with the power to impose sanctions, including jail time, for those not taking young children to school.

Substance Abuse Reduction Effort ("SABRE")

A few of the rural localities mentioned the usefulness of the SABRE program, which is now extinct. This statewide program, cut due to budgetary issues, addressed drug dependency through each CSU. SABRE required mandatory drug treatment for first-time offenders. It also provided for retesting, treatment, and reintegration programs. The localities referring to this program insisted on its success and wanted the program to be reinstated.

Diversion

When discussing diversion opportunities, participants noted that diversion is limited due to Virginia's law of allowing only one official diversion opportunity per juvenile. While some localities had active diversion programs, most of the rural localities had few to no diversion programs. These localities mentioned their only option is to divert a juvenile without being able to provide treatment or services for improvement.

Counsel

The lack of ability for court appointed counsel and public defenders to meet with their juveniles before trial was mainly attributed to transportation issues and inadequate contact information. Especially in the rural localities, counsel mentioned that either juveniles have no access to transportation or, when they

are being detained before trial, the detention center is in a distant locality. Counsel did have a solution to this problem - allow counsel to videoconference with the juvenile, via the internet, from the local courthouse to the detention center. Many times, the inability to meet was stated as the fault of incorrect contact information for the juvenile, as it was not current or became outdated due to the transient lifestyle of the caretakers. It should be noted that both court appointed counsel and public defenders had heavy caseloads, as observed by Commission staff and mentioned in the focus groups. Other difficulties faced by appointed counsel were the inadequate pay and the requirement to attend court multiple times (usually stated to be around four to six appearances) so that the reimbursement rate of \$120 only covered travel expenses.

Juvenile and Domestic Relations District Court Judge Survey

Following the courtroom observations and focus groups, Commission staff met with a work group of JDR judges to discuss relevant issues faced in the juvenile justice system. A preliminary draft of the judicial survey was given to the judge's workgroup for them to review and make suggestions. The Commission then sent an in-depth survey to all JDR judges in the Commonwealth during the fall. To date, the response rate stands at 74%. Included in the survey were questions focused on the adequacy of Virginia's statutes, overall perceptions of Virginia's juvenile justice system, and juvenile access to counsel and quality of representation. The surveys are in the final stages of analysis and detailed results are expected this fall.

Intake Officer Survey

The Crime Commission partnered with graduate students from the School of Public Policy at the College of William and Mary to survey CSU employees. The purpose of the survey was to determine the type of diversion programs available, their effectiveness and their implementation methods. The students were able to send surveys to intake officers from 33 of the 35 Virginia CSUs. Using a web based survey, 51 officers from 15 CSUs responded. While many of the goals of the survey were unable to be further studied due to lack of statewide recording, the survey was able to establish some consistent placement factors used by intake officers. The students completed their survey and presented the findings to Commission staff on December 6, 2007.

Multiple State Survey of Attorneys' Fees

A survey of surrounding states was conducted by staff to compare Virginia's compensation rate of attorneys' fees for court-appointed attorneys in juvenile justice cases. Out of the six states surveyed, Virginia has the lowest reimbursement rate, due to low initial cap limits, for court appointed attorneys handling juvenile cases. Kentucky is the only state in the survey, like Virginia, that has a fixed cap for court-appointed fees. While Kentucky has fixed caps, the caps are significantly higher than Virginia's and range from \$300 to \$900 per case. The other four states in the survey (Maryland, North Carolina, Tennessee, and West Virginia) have no fixed caps and allow for a waiver either by a judicial or administrative official.

The following is a synopsis of each state's compensation rates:

- Virginia has a fixed cap of \$120 per case and allows an extra \$120 with a judge's discretion at a rate of \$90 per hour. An additional waiver may be requested, but requires the approval of both the presiding judge and the chief judge of the court. There is no cap in capital murder cases.
- Kentucky provides a rate of \$40 per hour with caps ranging from \$300 to \$900, dependent on the type of case. For violent felonies, the hourly rate is \$50 with the caps ranging from \$1,200 to \$1,500.
- Maryland provides an hourly rate of \$50 with waiveable caps dependent on the discretion of agency heads.
- North Carolina's compensation gives an hourly rate of \$65 without caps. The vouchers must be approved by the judge.
- Tennessee's system provides a more elaborate compensation plan dependent on the type of charge and in-court versus out-of-court rates. The compensation rate is \$40 out-of-court and \$50 in-court with the caps ranging from \$3,000 to \$4,000 dependent on the charge. For capital cases, the hourly rate ranges from \$60 to \$100 based on the counsel and location.
- West Virginia provides \$45 per hour for in-court time and \$65 per hour for out-of-court time with ambiguous caps.

Continuation

Because of the detailed information that was produced during the study, another year is needed to fully examine the newly-identified issues in

conjunction with the current ones cited in the resolution. The goals for the continuation of the study through 2008 include: ascertaining juvenile justice related training opportunities for Commonwealth's Attorneys and their assistants; examining the role of Commonwealth's Attorneys offices in the JDR court; determining the training provided for Intake Officers; reviewing juvenile law training provided for circuit court judges; discovering truancy patterns and exploring Department of Education programs directed toward truancy issues; determining the number of juveniles identified as having mental health and/or substance abuse needs in detention centers and Virginia Department of Juvenile Justice correctional facilities; monitoring juvenile justice legislation; re-entry back into the community; and creating a list of proven practices for CSUs.

During the 2008 Virginia General Assembly Session, House Joint Resolution 113, patroned by Delegate Brian Moran, directed the Crime Commission to continue its study of juvenile justice. This resolution also incorporated House Joint Resolution 160, introduced by Delegate Clarence Phillips, that specifically requested additional study items as follows: (i) review the severity of offenses committed by juveniles in the Commonwealth; (ii) evaluate the effects on the learning environment and educational process, particularly for other students, when juvenile offenders are returned to the public school classroom; (iii) identify and examine more effective methods of rehabilitating juveniles, particularly juveniles who commit serious offenses; and (iv) recommend such changes as the Commission may deem necessary to provide a more effective juvenile justice system.

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