

Virginia State Crime Commission

Transfer and Certification of Juveniles

2010

Transfer and Certification of Juveniles

Executive Summary

During the 2006 Session of the Virginia General Assembly, Delegate Brian Moran introduced House Joint Resolution 136 (HJR 136),¹ which directed the Crime Commission to study the Virginia juvenile justice system over a two-year period. Crime Commission members extended the study in December 2008 and again in 2009 to specifically examine the many issues identified regarding the transfer and certification of juveniles.

The Crime Commission utilized several research methodologies to conduct this study including: (i) completing a national and state literature review; (ii) completing a 50 state survey on transfer laws and pending legislation; (iii) gathering relevant juvenile statistics; (iv) researching adolescent brain development; (v) attending statewide juvenile justice meetings, conferences, and trainings; (vi) observing Juvenile and Domestic Relations (JDR) Court proceedings; (vii) surveying professionals in the juvenile justice field and, (viii) meeting with key juvenile justice professionals.

As a result of an increase in violent juvenile crime that occurred in the 1980's, states across the country, including Virginia, began creating tougher penalties and sanctions for juvenile offenders, focusing primarily on juveniles between the ages of 11 and 17 years. Virginia Code § 16.1-269.1, allows a juvenile to be transferred to circuit court in three different ways: judicial discretion, automatic transfer, or prosecutorial discretion. A 50 state review revealed other states that utilize the same transfer mechanisms, as well as other methods including statutory exclusion, reverse waiver, and blended sentencing.

Staff examined academic literature which revealed that a number of states are once again reforming their juvenile justice laws, in an effort to repeal some of the harsher penalties aimed at juvenile offenders. The role of adolescent brain development was also examined including the correlation between juvenile delinquent behavior, brain development, and a juveniles' socioeconomic upbringing. A brief review of juvenile population and arrest trends showed the juvenile population has slightly declined in the past three years while the arrest rate has neither increased nor decreased over the same period of time. In addition to that, the total number of juveniles transferred to circuit court has decreased over the past three years which correlates with the decrease in the number of juveniles convicted in circuit court.

As a result of the study effort, Crime Commission members endorsed the following recommendations:

- Add offenses for which a juvenile is subject to transfer and certification as an adult; and,
- Allow a circuit court judge the ability to give a juvenile, after a transfer of the case to circuit court and a finding of guilt, a "delinquent" finding, after a supervised probation period was successfully completed.

Background

The Crime Commission was originally directed to study Virginia's juvenile justice system in 2006. Specifically, HJR 136 and HJR 113², both introduced by Delegate Brian Moran during the 2006 and 2008 General Assembly Sessions, directed the Crime Commission to conduct a study of Virginia's juvenile justice system. At the Crime Commission's December 9, 2008, meeting and its December 15, 2009, meeting, members voted to continue the juvenile justice study an additional year to specifically

focus on the many issues identified regarding the transfer and certification of juveniles. Additionally, during the 2010 General Assembly Session, Senate Bill 205 (SB 205)³ and Senate Bill 389 (SB 389)⁴ were both referred to the Crime Commission for study. This report highlights the past several years of research related to the transfer and certification of juveniles.

The last major reform to Virginia's juvenile justice system occurred 15 years ago. Legislators across the country began to react to the increase in violent juvenile crime rates seen during the 1980's by reforming their states' overall juvenile justice systems in the mid-to-late-1990's. With both the national and state juvenile crime rates on the rise, many elected officials and political leaders felt the need to create tougher penalties and sanctions for juvenile offenders, focusing primarily on juveniles between the ages of 11 and 17 years. Virginia was no exception. In 1994 and 1996, Virginia made its laws more punitive for transfer provisions, sentencing authority, and confidentiality of juvenile records. Following the findings from the 1994 Commission on Youth's (COY) serious juvenile offenders study and recommendations made by the Juvenile Justice Reform Commission, the Virginia General Assembly adopted many of these recommendations regarding juvenile justice laws.⁵ Senate Bill 520⁶ and House Bill 1243⁷ made the following substantial changes in 1994:

- Lowered the age at which a juvenile may be tried as an adult in circuit court for felonies, from 15 to 14;
- Eliminated the requirement for a juvenile's transfer hearing to show the juvenile is not a proper person to stay in JDR court for the following offenses:

1. A Class 1 or 2 felony violation under Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 or, if the juvenile is 16 years of age or older, a Class 3 felony violation of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 for: (i) murder under Article 1; (ii) mob-

related felony under Article 2; (iii) kidnapping or abduction under Article 3; or (iv) assault or bodily wounding under Article 4; or,

2. Any unclassified felony violation of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 which carries a maximum penalty of imprisonment for life or a term of imprisonment of forty years if committed by an adult;

- Established that once a juvenile is *convicted* as an adult, he will be treated as an adult in all future proceedings;
- Established that only juveniles with felony or Class 1 misdemeanor convictions would be subject to commitment to the Department of Youth and Family Services (DYFS), now the Department of Juvenile Justice (DJJ);⁸
- Specified the hearing for early release of a juvenile from DYFS; and,
- Added the requirement that when a serious offender was to be released from DYFS, the Department notify the court, sheriff, chief of police, and the Commonwealth's Attorney from the locality where the juvenile was sentenced. The Department was also to notify any victim who submitted a written request for notification.⁹

In 1996, more reforms were added to the Code of Virginia. Senate Bill 44 and House Bill 251 made the following changes:

- Established that a juvenile, once *tried* as an adult, would then be treated as an adult in all future proceedings;
- Established the discretion of a Commonwealth's Attorney to determine whether to transfer a juvenile for felony charges under subsection C of Va. Code § 16.1-269.1;

- Required DYFS to notify a juvenile's local school of reentry and work with the school to establish a reenrollment plan;
- Established that court proceedings involving a juvenile over the age of 14 would be open proceedings, unless otherwise determined. It also opened the court records of such proceedings, except for portions kept confidential to protect a witness or another juvenile;
- Limited indeterminate commitments to DYFS to 36 months or the age of 21, with exception for commitments based on murder or manslaughter; and,
- Provided for blood samples to be taken for the state's DNA bank. It also included taking fingerprints and photographs for the Central Criminal Records Exchange (CCRE) of juveniles 14 and older that have committed a felony, or Class 1 or Class 2 misdemeanor. These CCRE records no longer were to be automatically deleted at the age of 29, but kept in cases of firearm purchases, fingerprint comparison, sentencing purposes, and for Court Service Units (CSUs).¹⁰

Literature Review

Staff conducted an extensive literature review of existing academic, national and state juvenile justice studies. The following section includes a brief summary of findings.

Overall Population and Arrest Trends

Between 1990 and 2005, the population of juveniles between the ages of 10 to 17 in the United States, as well as Virginia, saw an overall increase. From 2005 to 2008, that same

population slowly declined.¹¹ The juvenile population in Virginia, as well as in the United States, differs from the adult population in that the adult population experienced at least a slight growth every year, without any decline. The juvenile arrest rate remained fairly steady over the same period of years. Despite a slight increase in overall crime committed by juveniles in 2005 and 2006, the arrest rate has not experienced a significant increase or decrease.¹² According to the FBI's Uniform Crime Reports, violent crime arrests declined 2.3% in 2009 as compared with 2008 arrests, while property crime arrests increased 1.6% when compared with 2008 arrests. Arrests of juveniles for all offenses decreased 8.9% in 2009 when compared with the 2008 number; arrests of adults only declined 1.2%.¹³

Background and Impact of Transfer Laws on Juveniles

Following the increases in violent juvenile crime in the late 1980's and early 1990's, all states except Nebraska expanded their transfer provisions between 1992 and 1999 in order to facilitate prosecuting juveniles in the adult justice system.¹⁴ According to the Center for Disease Control's "Morbidity and Mortality Weekly Report," the reduction of violence through transfer policies may be explained by two mechanisms: specific deterrence and general deterrence.¹⁵ Specific deterrence refers to juveniles who have been subjected to the adult justice system and thus may be less likely to re-offend; whereas, general deterrence refers to all juveniles who might be deterred from offending if they are aware they may be subject to transfer provisions if charged with a crime.

Three other studies evaluated the general deterrence effect of transfer laws or policies.¹⁶ These studies were similar to the specific deterrence studies in that they sought to determine if harsher transfer laws led to a reduced juvenile offense rate. The evidence from

these studies is insufficient to determine whether or not the transfer of juveniles to the adult criminal justice system is effective in preventing or reducing violence in the general juvenile population.

Among some of the growing concerns with juvenile transfer to adult courts is the idea that transferring juveniles to the adult justice system is counterproductive as a strategy for deterring subsequent violence. Strong evidence was found that youth who have been previously tried as adults were more likely to commit additional violent crimes.¹⁷ The weight of evidence shows that youth who are transferred from the juvenile court system to the adult criminal system are approximately 34% more likely than youth retained in the juvenile court system to be re-arrested for violent or other crime.¹⁸ This study suggests that there is insufficient evidence to prove that transferring youth to the adult criminal system prevents youth crime. In addition, there was insufficient evidence found to justify assertions that trying youth as adults prevents youth from committing crimes in the first place.¹⁹ Other violent outcomes may result from the transfer of youth to the adult system. These violent outcomes include an increase in pretrial violence, victimization of juveniles in adult facilities, and elevated suicide rates for juveniles incarcerated in adult facilities.²⁰

An Office of Juvenile Justice Delinquency Prevention Bulletin (OJJDP)²¹ also addressed several possible explanations for the higher recidivism rates of violent juvenile offenders tried in adult court as compared to those adjudicated in juvenile court:

- The stigmatization and other negative effects of labeling juveniles as convicted felons;
- The sense of resentment and injustice juveniles feel about being tried and punished as adults;

- The learning of criminal mores and behavior while incarcerated with adult offenders;
- The decreased focus on rehabilitation and family support in the adult system; and,
- A felony conviction also results in the loss of a number of civil rights and privileges, further reducing the opportunities for employment and community reintegration.²²

A report titled "From Time Out to Hard Time: Young Children in the Adult Criminal Justice System,"²³ released by the Lyndon B. Johnson School of Public Affairs at The University of Texas at Austin in 2009, touched on a number of issues regarding juveniles in the criminal justice system. One of the main topics included the notion that juveniles are considered to be different in nearly every [other] aspect of social life, except when it comes to criminal law. Scientific research shows that neurobiological, cognitive, and psychological development all factor into juveniles' competence and their possible amenability to rehabilitation. The report cited a number of problems associated with trying juveniles in the criminal justice system, including, but not limited to, courtroom issues, locking juveniles in adult jails and prisons, and the failure of the adult system to address public safety needs.²⁴

One of the biggest concerns centered around problems encountered in the courtroom, such as juveniles being too young to actively participate in courtroom proceedings, criminal judges and attorneys often having little experience with young offenders, juveniles having the potential to change substantially as the trial progresses, and the fact that the juvenile could ultimately face a loss of privacy and privileges as a result of the proceedings.

The report stated that by placing juveniles in adult facilities another set of problems was presented, including the lack of

special programming and treatment geared towards juveniles and their rehabilitation. Additionally, the staff levels in the adult facilities are often inadequate and the staff may not be specially trained to handle juveniles. Housing juveniles in adult facilities also increases the risk of sexual and physical assault against a juvenile and can exacerbate mental health issues, which could increase the potential for suicide. The juvenile justice system has been shown to work in the problem areas discussed previously, as the system was formed to focus on rehabilitating the juvenile and providing access to education, vocational, and treatment programs.²⁵

At least six studies were identified that examined the effects of juvenile transfer on subsequent violent offending.²⁶ The studies followed juveniles for periods ranging from 18 months to 6 years to assess rates of recidivism.²⁷ One of the studies determined that the transfer of juveniles to the adult system did, in fact, deter future recidivism.²⁸ Another study found that transfer had no effect,²⁹ and the other four studies determined that juveniles subjected to transfer were found to have a higher likelihood of recidivism than those who were retained in the juvenile system.³⁰ Some research concluded that transferring juveniles to the adult system is counterproductive as a strategy for preventing or reducing violence.³¹

The findings in the Center for Disease Control's "Morbidity and Mortality Weekly Report" indicate that transfer policies have generally resulted in increased arrest for subsequent crimes, including violent crime, among juveniles who were transferred compared with those retained in the juvenile justice system.³² To the extent that transfer policies are implemented to reduce violent or other criminal behavior, available evidence indicates that they likely do more harm than good.³³ It was found that juveniles have the highest suicide rates of all inmates in jails and are 36 times more likely to commit suicide in an adult jail than in a juvenile detention facility.³⁴ It was also noted that placing

youth in the adult criminal justice system increases their likelihood of re-offending. While former trends have shown that crimes against property were the most likely to be waived to criminal court, statistics now show that crimes against persons have a greater chance of being waived.³⁵

Also, between 1985 and 2005, the proportion of waived cases involving youth of a younger age and females increased; however, the majority of waived cases still involve a male 16 years of age or older.³⁶ The report stated that juveniles held in adult correctional facilities are exposed and socialized by the criminal culture.³⁷ Violent juvenile offenders reported daily survival required finding ways to fit into the inmate culture, dealing with difficult and authoritarian relationships with adult inmates, and adjusting to the institution by accepting violence as a part of daily life, and thus, becoming even more violent.³⁸ Evidence shows that individual counseling, interpersonal skills, providing teaching in family homes, and behavioral programs have very positive effects.³⁹ The availability of multiple services, behavioral programs, and restitution with probation/parole also has the ability to have positive effects on a juvenile.⁴⁰

The declining number of juvenile cases that are judicially transferred nationwide is not only a result of decreased violent crime committed by juveniles, but also due to the overall increase of nonjudicial transfer laws.⁴¹ This indicates that instead of prosecutors filing for a waiver, many cases skip the juvenile court entirely and are filed directly in criminal court.⁴² Recent research shows that 45 states have discretionary judicial waiver provisions, while 15 states have presumptive waiver laws and another 15 states provide for mandatory waiver. To meet the requirement of one of the aforementioned waivers, factors such as age, offense, and prior record are usually taken into account. Cases that qualify for mandatory waiver are initiated in juvenile court, but once the statutory

requirements are met they are sent to criminal court.⁴³

The current national trend appears to be reverting away from harsh transfer laws. The idea of transfer being an effective measure of preventing juvenile crime is questionable and some practitioners have realized that they cannot treat juveniles as fully functioning adults. In the absence of a complete reform of the nation's transfer laws, more immediate reforms may be considered. Reforms that include built in "fail-safes" in order to avoid inadvertent consequences, more flexibility in sentencing, and mandated tracking and reporting of basic information would presumably improve state transfer laws.⁴⁴ One report's research indicates that Virginia either does not have enough fail-safe mechanisms available, or that the fail-safe mechanisms that are in place restrict a judges' control in making individual exceptions.⁴⁵

A report by the OJJDP⁴⁶ listed a number of problems facing the juvenile justice system, as well as suggestions:

- Nationally, practitioners must juggle legal and policy inconsistencies both within individual states, at the county level, and between states;
- There are no consistent guidelines on criteria prosecutors should use in determining which children are to be waived to adult court;
- Courts, prosecutors and juvenile system personnel must take seriously brain studies and development issues when determining whether to waive a juvenile. They should not waive juveniles without extensive examination of whether the juvenile is capable and whether they are amenable to rehabilitation and they should not waive cases except in very rare and specific circumstances; and,

- If legislatures create punitive delinquency laws, courts still have powers through case law to establish set guidelines in determining who should not be waived:
 - First offenders;
 - Nonviolent offenders, such as drug users and offenders;
 - Juveniles who never had rehabilitative options in the past;
 - Juveniles who demonstrate incompetency via psychological tests and medical studies; and,
 - Juveniles who demonstrate potential for rehabilitation.⁴⁷

Prosecutorial discretion greatly differs from judicial discretion in that few states take measures to guide or limit a prosecutor's decision on whether to transfer a juvenile.⁴⁸ The Crime Commission distributed and analyzed a brief informal survey in an effort to gauge the opinions of prosecutors regarding the functionality of the current system. Nearly all of the prosecutors opted against allowing judges the sole ability to determine whether a juvenile should be transferred, stating that the present system works well by keeping the judiciary and executive branch powers separated appropriately. Others argued that the judge is not in the best position to determine the strength of the evidence or the severity of the case, as they are not provided enough information. Some prosecutors believe that the transfer and certification procedures in place now allow the decision on the treatment of juveniles charged with violent crimes to be a law enforcement and community safety decision determined by an elected official. Additionally, prosecutors stated that giving JDR judges unfettered discretion with regard to serious charges such as those currently amenable to prosecutorial transfers would lead to sharply inconsistent handling of similar cases from courtroom to courtroom. Overall, the consensus with prosecutors tended to be that the current system is working well and there are enough

safeguards in place to ensure that only the appropriate juveniles are being transferred.

Finally, there has also been much discussion on how practitioners view the law in juvenile transfer cases. Juvenile maturity, competence, judgment, and perception as compared to the adult population must all be considered.⁴⁹ Recent research on adolescent brain development needs to be brought to transfer hearings, in addition to a competency review and the main focus should be placed on a juvenile's amenability to treatment and whether it is more probable than not that the juvenile is unfit for rehabilitation.⁵⁰ In some localities, judges must consider the accessibility of certain facilities in their decision to waive a juvenile to adult court.⁵¹ A study of national juvenile transfer trends shows that an estimated 200,000 juveniles a year are prosecuted as adults and most youth are prosecuted in adult court for non-violent offenses.⁵²

Crime Commission staff also reviewed a risk assessment tool that may be useful in determining the appropriate action for individual juveniles who may be subject to transfer. The Department of Juvenile Justice implemented the use of a risk assessment tool to assist in determining a juvenile's likelihood of recidivism known as the Youth Assessment and Screening Instrument (YASI).⁵³ It proved to be more advanced than previous assessment instruments in that it assesses the risk, needs and protective factors and helps develop case plans for youth. The YASI includes a brief "pre-screening" version that arrives at an overall risk level, as well as separate risk scores for legal history and social history (e.g., family, school and other adjustment domains). The pre-screen generates a risk score on a four-point scale from "No Risk" through "High Risk." The full YASI instrument examines and generates risk and protective scores for each of 10 domains, as well as overall risk classifications. These domains are legal history, family, school, community and peers, alcohol and drugs, mental health, aggression, (pro- and anti-social) attitudes, (social and cognitive) skills,

employment, and free time. Once the YASI has been completed and the data entered into the computer software, the YASI generates several useful products. First, a complete risk and protective factor profile can be displayed in a graphic format, called "The Wheel." It includes ratings of both static (historic and unchangeable), dynamic (changeable) risks and protective factors in each of the 10 domains. Static variables (typically delinquent history) are necessary and efficient predictors of recidivism. Dynamic variables are predictors of recidivism that point to youth characteristics and behavior patterns that can and need to change in order to reduce future problems. The YASI generates a six level risk classification from "Low" through "Very High." The final product is a case (supervision) plan that builds on those areas identified by the YASI and allows the probation officer to prioritize areas to be addressed, establish short- and long-term goals, and specific interventions (with persons responsible and target dates) for those areas.⁵⁴

Adolescent Brain Development

Medical research has recently focused attention on the transfer and certification of juveniles to the adult system. In most aspects, society recognizes the restrictions that need to be placed on adolescents, such as ineligibility to vote, consume alcohol and tobacco, and enter into marriage or form legal contracts. However, when the prospect of a juvenile committing a heinous crime emerges, society tends to treat them as a fully capable adult, despite them being a legal minor. Research shows that adolescent brains are constantly changing, with some adolescents not reaching full development until they have reached their mid-twenties.⁵⁵ Jay Giedd, a researcher at the National Institute of Mental Health, explained that during adolescence the "part of the brain that is helping organization, planning and strategizing is not done being built yet...It's sort of unfair to expect [adolescents] to have adult levels of organizational skills or

decision making before their brain is finished being built.”⁵⁶

Vincent Culotta, Ph.D., ABN, gave a presentation on adolescent brain development at the June 25, 2009, Crime Commission meeting. He briefed members on this issue, as well as brain maturation and criminal culpability. He also presented recent findings that address neurodevelopmental maturation and how it underlies and drives behavior and cognition. He noted that the prefrontal cortex, or the executive control, is the seat of reasoning and the last region of the brain to reach structural maturity. Juveniles’ biological maturation of the brain is what controls their moral reasoning, judgment, impulse control, planning, character, and behavior.

Dr. Culotta noted that there are a number of early risk factors in brain development. A lack of early mother-infant interaction can be detrimental to the development of the orbitofrontal cortex during the first few months of life. In addition to that, stressful early life experiences may permanently damage the orbitofrontal cortex, predisposing the individual to later life neurobehavioral deficits. Severe, early stress induced by deprivation and abuse may also induce changes in the developing brain.⁵⁷ Research shows that volitional control over one’s actions is not innate; it emerges gradually through development. The capacity for volitional behavior depends on the functional integrity of the frontal lobes. In addition, the capacity for volitional control over one’s actions is important, perhaps the central ingredient of social maturity.⁵⁸ Neurodevelopmental immaturity is what mitigates criminal culpability.

A Harvard study examined at teenagers, aged 11 to 17, whose brains were scanned while they were asked to identify emotions on pictures of people’s faces. It was found that the teens often misread facial expressions, observing sadness, anger, and confusion instead of fear. This study revealed that adolescents tend to be more

reactionary and less reasoning, with a different perception of situations than adults.⁵⁹

In Virginia, the transfer of a juvenile to circuit court cannot occur if a juvenile has been found incompetent; however, trial competency may be unrelated to the degree of culpability or amenability to change. The social, emotional, cognitive, and biological development of an adolescent brain could be taken into consideration when deciding whether a juvenile is competent and should be tried as an adult. Adolescence is a time of great transition when change can be dramatic and rapid, which may not always be uniform. Developmental influences are often missed or not considered, despite the magnitude of impact they may have on an adolescent brain.

Another factor that must be considered when taking into account juvenile delinquent behavior is the correlation between socioeconomic upbringing and brain development. Factors such as poverty, childhood abuse and neglect, social and emotional dysfunction, alcohol and drug abuse and crime can greatly stunt an adolescent’s brain maturation, thus causing them to be more susceptible to making poor choices.⁶⁰ Discoveries have been made regarding adolescent brain development that support the idea that juveniles could be more apt to change if given the chance and the opportunity of rehabilitation. It has been mentioned that, unlike their adult counterparts, perhaps juveniles should not be held as blameworthy for their actions as they do not necessarily understand the ramifications of what they are doing. Juvenile practitioners must keep in mind that there is a reason we refer to individuals under the age of 18 as “minors.”

The Transfer Process

Overview of Juvenile Transfer and Certification

There are a number of methods found across the country that can be used to transfer a juvenile to circuit court: prosecutorial discretion, statutory exclusion, reverse waiver, “once an adult/always an adult policy,” and blended sentencing. Prosecutorial discretion is when a prosecutor, rather than a judge, decides whether to file charges in juvenile or criminal court. There is no hearing to determine which forum is appropriate, and usually no specific standards for deciding between them. There are 17 states that utilize prosecutorial discretion.⁶¹ Statutory exclusion allows criminal courts exclusive original jurisdiction over certain classes of cases involving juveniles. If a youth is charged with a crime excluded from juvenile court jurisdiction, the case must originate in criminal court. There are 30 states that utilize statutory exclusion.⁶² Virginia does not have statutory exclusion as all juvenile cases originate in the juvenile court; however, some cases are automatically transferred to circuit court. Reverse waivers allow juveniles whose cases are in criminal court to petition to have them transferred back to juvenile court. Twenty-six states allow for reverse waiver.⁶³

“Once an adult/always an adult” laws require that juveniles who have previously been treated as adults be criminally prosecuted for all subsequent offenses in circuit court, regardless of their nature. Thirty-four states utilize the “once an adult/always an adult” provision.⁶⁴ However, it is important to note that 22 states, including Virginia, utilize this provision only if the juvenile was transferred and previously convicted.⁶⁵

There are two types of blended sentencing, juvenile and criminal. Juvenile blended sentencing provides juvenile courts the authority to impose adult criminal sanctions on certain juvenile offenders; however, the criminal

sentence is typically suspended. There are 15 states that use juvenile blended sentencing.⁶⁶ Criminal blended sentencing allows criminal courts to impose juvenile dispositions. There are 16 states that use criminal blended sentencing.⁶⁷ The practice of blended sentencing, adult sentencing and optional juvenile dispositions has the potential to be beneficial in that it can satisfy all stakeholders, is politically attractive in the community, provides return to the juvenile court when appropriate, and utilizes youthful offender services. It also returns decision-making to youth professionals including juvenile judges, juvenile social workers, lawyers trained in juvenile law, as well as juvenile therapists, educators, and counselors.⁶⁸

Twenty-three states require no minimum age for juvenile transfer.⁶⁹ Kansas and Vermont both have a minimum age of 10. Colorado, Missouri, and Montana have their minimum age set at 12. Six states require a juvenile to be at least 13 years of age: Illinois, Mississippi, New Hampshire, New York, North Carolina, and Wyoming. Sixteen states have a required age of 14.⁷⁰ New Mexico is the only state to have a minimum age requirement of 15.

Overview of Virginia Juvenile Justice System and Transfer Laws

The DJJ annually publishes a Data Resource Guide which includes a variety of information on juveniles and explains how Virginia’s juvenile legal system works.⁷¹ The juvenile justice process begins in Virginia when a juvenile commits an offense, and there is either an arrest, or the offense is reported to a local CSU by a parent, agency, or the police. If the juvenile comes into contact with the police, the officer can decide to arrest the juvenile, release the juvenile back into the care of a parent or guardian, which usually ends the process, or release the juvenile, but still file a complaint to a CSU. If a complaint of criminal activity is made by a parent, another citizen, an agency, or by a police officer, the

juvenile proceeds to intake where an intake officer at the local CSU will then make a decision as to what action needs to be taken. The complaint may be dismissed with no action taken, there may be informal action taken, which may include counseling or outreach, or a formal petition may be filed.

A petition is the equivalent, for juveniles, of a criminal warrant for adults. After a petition is filed the CSU must then decide whether to release the juvenile to his parents or guardians, or if they pose a risk to themselves or others, the juvenile may be detained. If the juvenile is detained, a detention hearing must be held within 72 hours to examine the charges and determine whether the child should remain in detention. For a felony charge, if the prosecutor has indicated a desire to have the case transferred, there will be a preliminary hearing in JDR court that will determine if there is probable cause. The issue of transfer will then be addressed and the case may be certified to circuit court where a juvenile could face an adult sentence.

If the case remains in JDR court, (i.e. is not transferred), then there will be an adjudicatory hearing to determine innocence or guilt. If found "not guilty," then the case is dismissed; if the juvenile is adjudicated delinquent then a dispositional hearing is held. At the dispositional hearing a social history may be reviewed to help determine the appropriate sanctions. Sanctions may include fines, restitution, probation, or commitment to the DJJ. If the case is certified to circuit court, in the event the juvenile is found guilty, he may face an adult sentence.⁷²

Currently, Va. Code § 16.1-269.1, which contains three subsections, A, B, and C, allows a juvenile to be transferred to circuit court in three different ways. A juvenile may be transferred under subsection A, which allows for judicial review for any crime that would be punishable as a felony if committed by an adult. Under subsection A, a judge considers many factors including the age of the offender, the seriousness

of the offense, whether the juvenile would be amenable to treatment, the availability of services and dispositional alternatives, previous criminal record, previous legal custody, mental health and maturity, school record, as well as emotional and physical maturity. Subsection B requires automatic transfer of a juvenile if they are charged with murder or aggravated malicious wounding. Subsection C allows prosecutorial discretion as to whether the juvenile will be tried as an adult for the following twelve crimes: murder, felonious injury by mob, abduction, malicious wounding, malicious wounding of a law-enforcement officer, felonious poisoning, adulteration of products, robbery, carjacking, rape, forcible sodomy, or object sexual penetration.

Virginia law allows for a juvenile to be transferred to circuit court if the following conditions are met:

- The juvenile is 14 years of age or older;
- Notice has been given to parent or legal guardian;
- There is probable cause that the juvenile has committed a crime that would be considered a felony if committed by an adult;
- The juvenile is competent to stand trial; and,
- The court does not consider the juvenile a proper person to remain in the juvenile court system.⁷³

Bill Referrals

Two bills were sent to the Crime Commission for study during the 2010 General Assembly Session: SB 205 and SB 389. Senate Bill 205, introduced by Senator John Edwards, would allow the juvenile or the Commonwealth's

Attorney to request an appeal from a discretionary certification under subsection C. If the appeal were successful, there would be a reverse waiver, and the circuit court would transfer the case back to the juvenile court for trial.⁷⁴ Currently, Va. Code § 16.1-269.6 allows for appeals of transfer decisions from juvenile court to circuit court only for subsection A transfers.⁷⁵ The request must be made within 45 days of “receipt of the case from juvenile court.” The factors for the court to consider are those enumerated in subdivision A(4) of Va. Code § 16.1-269.1, including “whether remanding jurisdiction would not depreciate the seriousness of the offense.” Under SB 205, the circuit court would consider the same factors, those provided in subdivision A(4) of Va. Code § 16.1-269.6, as well as any other factors necessary for a determination of whether or not the juvenile should remain within the jurisdiction of the circuit court. The burden of proof under SB 205 would be with the moving party, presumably the juvenile, using a preponderance of the evidence standard. If the juvenile succeeded in his appeal, he would retain his juvenile status, even if he were later adjudicated delinquent by the juvenile court.

Senate Bill 389, introduced by Senator Ryan McDougle, sought to add new offenses to subsection B, which includes crimes that result in automatic transfer, and to subsection C, which includes crimes that will be transferred if the prosecutor so desires, without any opportunity for judicial oversight or the ability of the juvenile to appeal the prosecutor’s decision. The proposed new offenses to be added to subsection B were any acts “of violence as defined in § 19.2-297.1 if the juvenile has been previously adjudicated delinquent for an offense defined as act of violence in § 19.2-297.1.” The proposed new offenses to be added to subsection C were gang participation in violation of Va. Code § 18.2-48, and felony drug distribution offenses, if the juvenile had previously been adjudicated delinquent of such a drug distribution offense in the past. In an effort to determine the additional

number of juveniles that might be affected by adding these new crimes to subsections B and C, staff reviewed available data from the past few years. It was found that there was an average of 168 juvenile intakes each year from Fiscal Year (FY) 2007 to 2009 that resulted in a charge of a second or subsequent act of violence under Va. Code § 19.2-297.1.⁷⁶ (Under the bill, these charges would be automatically transferred, after a finding of probable cause). According to DJJ, there was an average of 199 juvenile intakes each year from FY07 to FY09 that resulted in a charge of gang participation in violation of Va. Code § 18.2-48.⁷⁷ It was also determined by DJJ that there was an average of 43 juvenile intakes each year from FY07 to FY09 that resulted in a charge of a second or subsequent offense of felony drug distribution.⁷⁸

Juvenile Transfer Data

Juvenile Transfer and Certification Data Limitations

The issue of data collection is critical to understanding the effectiveness of transfer laws. Unfortunately, information regarding the effectiveness and impact of the nation’s transfer laws is lacking, even though policymakers and the public rely on such information to show whether transfer laws are effective. Most states, including Virginia, have large gaps in available data regarding juvenile transfers. This study was extended an additional year in 2009 in an effort to gather data regarding the number of juveniles who are transferred under Virginia’s transfer statute by subsections A, B, and C. One of the data limitations encountered included trying to collect data from four different agencies: DJJ, the Supreme Court of Virginia, the Virginia Criminal Sentencing Commission (VCSC), and the Department of Corrections (DOC). During the course of the study, the VCSC determined that they were not receiving all of the sentencing guideline reports for juveniles transferred to circuit court, which is required by statute.⁷⁹ The

VCSC had to supplement their data with figures from DOC, the Supreme Court of Virginia, presentence investigation reports, and local and regional jails.

Other limitations included having an unknown number of juveniles considered for transfer and an unknown number of juveniles convicted in circuit court broken down by Virginia's transfer statute subsections. Another issue is that other agencies do not have access to all juvenile data and are therefore limited in the information and data they can provide. Additionally, some of Virginia's largest localities are not included in the dataset provided by the Virginia Supreme Court.⁸⁰ Some of this data had to be collected by making individual data requests to those localities. These limitations set the parameters in which findings could be interpreted.

Virginia Juvenile Transfer Data

Transfer reports are completed by local CSU's and may include information such as the juvenile's school and mental health records and prior adjudications and proceedings. Prior to the transfer law change in 1996, transfer reports were required in every instance where a request for transfer was made. After the transfer statute was amended in 1996, the requirement for transfer reports was limited to only those transferred under Va. Code § 16.1-269.1 subsection A. Currently, all requests for transfer under subsections B and C are done without a written transfer report.

Since the transfer changes to the Va. Code in 1996, the number of transfer reports has declined from 1,168 in FY96⁸¹ to 155 in FY10.⁸² After a significant decrease in the number of transfer reports from FY96 to FY97, the difference in the number of reports completed each year has not fluctuated greatly and tends to decrease each year.⁸³ The steady decline in

transfer reports should not be seen as proof that prosecutors are making fewer requests for transfer because currently when they request a transfer, a report is no longer required. There are other possible explanations as to why the number of transfer reports has declined in Virginia; such as the decline in the juvenile population, as well as a decline in the number of juvenile arrests, intakes and offenses.

Much like the number of transfer reports, the number of intake complaints has been slowly decreasing over the years, as illustrated in Figure 1 below:

Figure 1: Juvenile Intake Complaints by Offense Severity, FY07-10

Intake Complaints	FY07	FY08	FY09	FY10
Felony	20,466	18,626	17,884	14,866
Class 1 Misdemeanor	39,035	38,065	37,604	33,417
Class 2-4 Misdemeanor	6,525	6,662	6,372	5,597
CHINS/CHINSup	13,138	12,403	12,264	10,744
Technical Violations	10,451	9,838	9,576	8,527
Traffic	957	1,305	1,281	1,197
Other	1,466	1,354	1,166	1,249
Total Complaints	92,038	88,253	86,147	75,597

Source: Email from DJJ.
January 11, 2011.

A juvenile with one or more intake complaints will then result in an intake case. Again, there has been a slight decline in the number of intake cases throughout the past four years, as shown in Figure 2.

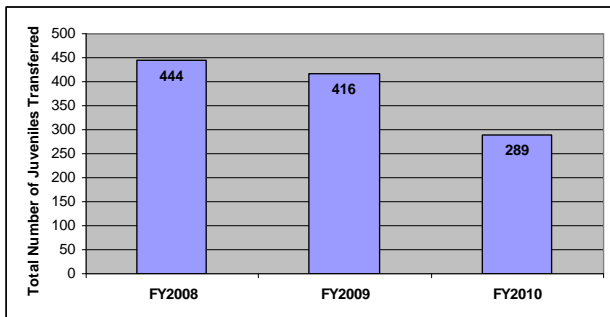
Figure 2: Juvenile Intake Cases by Offense Severity, FY07-10

Intake Cases	FY07	FY08	FY09	FY10
Felony	11,543	10,869	10,214	8,452
Class 1 Misdemeanor	26,489	26,253	26,666	23,988
Class 2-4 Misdemeanor	3,905	3,942	3,895	3,574
CHINS/CHINSup	11,280	10,444	10,437	9,295
Technical Violations	9,088	8,514	8,399	7,371
Traffic	494	800	760	723
Other	1,050	1,121	1,007	1,082
Total Cases	63,849	61,943	61,378	54,485

Source: Email from DJJ.
January 11, 2011.

Staff also requested data from the Supreme Court of Virginia regarding the total number of juveniles who were transferred in Virginia. Unfortunately, they were unable to classify the number of juveniles transferred by subsection; they were only able to do this in a proxy fashion as there is no way to determine transfers by subsections -- this data is not being collected by clerks. Figure 3 shows the total number of juveniles transferred from JDR court to circuit court from FY08 to FY10, including juveniles previously convicted in circuit court. The declining number of juveniles transferred correlates with the decline in the number of complaints and intake cases.

Figure 3: Total Number of Juveniles Transferred, FY08-FY10

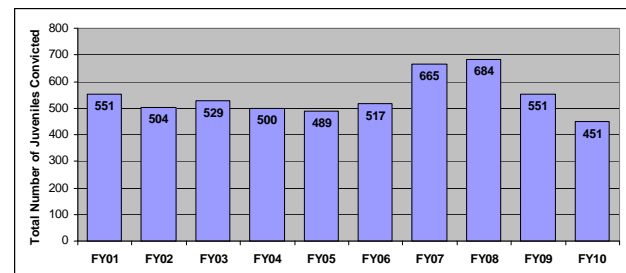


Source: Supreme Court of Virginia - Juvenile Case Management System.

Data was also obtained from the VCSC. After examining this data, it was discovered that the number of juveniles convicted in circuit court has also been on the decline over the past three fiscal years. The VCSC data includes offenders under the age of 18 at the time of the offense (or under the age of 18 for at least one offense in the case), juveniles who were transferred from JDR court, and juveniles automatically prosecuted in circuit court due to a prior conviction as an adult. The analysis focuses on the original felony conviction and excludes subsequent probation hearings for that offense and excludes offenders who were 21 years or older at the time of arrest or filing and therefore must be prosecuted in circuit court. It is important to note that the VCSC analysis is based on sentencing events, not individual juveniles.⁸⁴ The 2010 data uses the same methodology as previous studies; however, there are three differences: the DOC provided replacement data for FY01 to FY08, the DOC is not able to provide automated Pre/Post Sentence Investigation data for cases sentenced after October 2008, and jail data can include juveniles who are ultimately adjudicated in JDR court.

As seen in Figure 4, the total number of juveniles convicted in circuit court from FY01 to FY10 was 5,441, ranging from a high of 684 to a low of 451. It is important to note that the data provided by the VCSC includes juveniles previously tried and convicted as adults; thus, the conviction numbers are higher than the actual number of juveniles transferred each year.

Figure 4: Total Number of Juveniles Convicted in Circuit Court, FY01-10*



Source: Virginia Criminal Sentencing Commission.
*Data for 2010 is preliminary.

These figures can also be broken down by age of juvenile at the time of the offense. The majority of juveniles transferred were 17 years old. Only a small fraction, about one sixth, of juveniles transferred were 15 years old or younger. Of the 5,441 juveniles convicted in circuit court:

- 209 were 14 years old;
- 731 were 15 years old;
- 1,435 were 16 years old; and,
- 3,066 were 17 years old.

As seen in Figure 5, juveniles were transferred for committing robbery more frequently than any other crime and more often than not, juveniles were transferred for more serious crimes.

Figure 5: Juveniles Convicted in Circuit Court by Type of Offense, FY01-FY10*

Offense	Number	Percent
Robbery	1,879	35%
Assault	826	15%
Larceny/Fraud	644	12%
Drug Schedule I/II	428	8%
Murder/Manslaughter	337	6%
Burglary Dwelling	319	6%
Rape/For. Sodomy/Obj. Pen.	295	5%
Miscellaneous/Other	151	3%
Other Sex Offense	146	3%
Burglary Other	135	2%
Weapon	123	2%
Kidnapping	65	1%
Drug Other	53	1%
Traffic	40	1%
Total Juveniles	5,441	100%

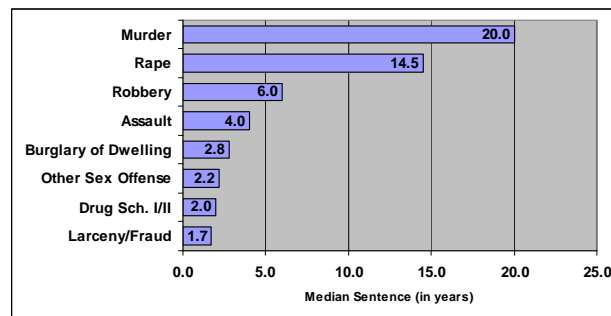
Source: Virginia Criminal Sentencing Commission.

* Data for FY2010 is preliminary.

According to the VCSC, the majority of juveniles who receive adult sentences end up serving their time in prison. Overall, 46% of juveniles convicted in circuit court serve their sentence in prison while 26% are subject to adult jail or probation. Roughly 11% of juveniles received a DJJ determinate sentence, meaning the court specified a length of commitment, while 7% of juveniles received a DJJ indeterminate disposition. Only 7% of juveniles were subject to DJJ probation and the remaining 3% received a blended DOC/DJJ sentence.

Below is the median prison sentence, in years, for a juvenile convicted in circuit court. The most serious offenses, such as murder and rape, are clearly generating the more lengthy prison sentences for juveniles of up to 20 years. On the other hand, the more minor convictions such as larceny, drug offenses, sex offenses, burglary, and assault typically carry a median prison sentence of less than five years.

Figure 6: Median Prison Sentence (In Years) for Juveniles Convicted in Circuit Court, FY01-FY10*



Source: Virginia Criminal Sentencing Commission.

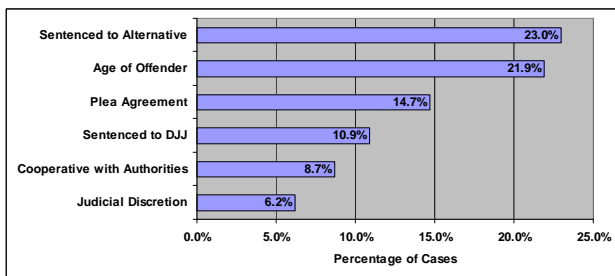
* Data for FY2010 is preliminary.

The overall compliance rate summarizes the extent to which Virginia's judges concur with recommendations provided by the sentencing guidelines, both in type of disposition and in length of incarceration.⁸⁵ In FY10, of the 243,066 adult guideline cases, there was an 80% compliance rate.⁸⁶ There was only a 56% compliance rate for the 3,310 juvenile offenders

convicted in circuit court in the same year.⁸⁷ The rate at which judges sentence offenders to sanctions more severe than the sentencing guidelines' recommendation is known as the aggravation rate.⁸⁸ The aggravation rate for FY10 was 10% for adult offenders and 13% for juvenile offenders.⁸⁹ The mitigation rate, or the rate at which judges sentence offenders to sanctions considered less severe than the guidelines recommendation, was 10% for adult offenders and 31% for juvenile offenders.⁹⁰

Judges can cite multiple reasons for departing from the guidelines. The most frequently cited reasons, shown below in Figure 7, for sentencing guidelines mitigations for juveniles convicted in circuit court include:

Figure 7: Reasons for Sentencing Guidelines Mitigation, FY01-FY10*



Source: Virginia Criminal Sentencing Commission.

* Data for FY2010 is preliminary.

Finally, disproportionate minority contact (DMC) is another issue that appears to be impacting Virginia. This exists when the racial or ethnic proportion of youth who have contact with the juvenile justice system exceeds their proportions in the general population.⁹¹ States are required to ensure equal and fair treatment for juveniles in the juvenile system regardless of their race or ethnicity; however, it was noted that African American youth comprise 30% of those arrested nationally while only representing 17% of the overall youth population.⁹² According to the 2007 Virginia Census, 23.2% of 10-17 year

olds were African American. In 2008, that same group of youth represented:

- 45% of youth at intake;
- 55% of youth at detention; and,
- 66% of youth at commitment.⁹³

Conclusion

As a result of numerous meetings with juvenile justice professionals and a thorough review of the literature and statewide data, staff identified the following policy options for Crime Commission members to consider:

- Endorse or reject the proposed language in SB 205, which seeks to add a reverse waiver possibility for subsection C transfers;
- Endorse or reject the proposed language in SB 389, which seeks to add crimes eligible for transfer under subsections B and C;
- Endorse or reject allowing a judge the ability to give a juvenile a “delinquent” finding in circuit court;
- Create standard criteria for assessing whether transfer is appropriate, such as the YASI tool;
- Improve data collection by requiring transfer reports for transfers under all subsections, and allowing the VCSC access to the JDR court case database maintained by the Virginia Supreme Court; and,
- Provide prosecutors with additional background information on juveniles who are eligible for transfer.

At the December 8, 2010, meeting, Crime Commission members endorsed adding offenses for which a juvenile is subject to transfer and certification as an adult. Senator Ryan McDougle

introduced Senate Bill 914 during the 2011 General Assembly Session. This bill was left in the Senate Courts of Justice Committee.⁹⁴ Additionally, Crime Commission members endorsed allowing a circuit court judge the ability to give a juvenile, after a transfer of the case to circuit court and a finding of guilt, a “delinquent” finding, after a supervised probation period was successfully completed. This would allow the juvenile to avoid having an adult criminal record. Senator Janet Howell introduced Senate Bill 948 during the 2011 General Assembly Session.⁹⁵ This bill was left in the House Courts of Justice Committee.

¹ H.J.R. 136 Gen. Assem., Reg. Sess. (2008).

² H.J.R. 113, Gen. Assem., Reg. Sess. (2006).

³ S.B. 205 Gen. Assem., Reg. Sess. (2010).

⁴ S.B. 389 Gen. Assem., Reg. Sess. (2010).

⁵ REPORT OF THE VIRGINIA COMMISSION ON YOUTH ON THE STUDY OF SERIOUS JUVENILE OFFENDERS, Virginia Commission on Youth, H.D. 81 (1994).

⁶ S.B. 520 Gen. Assem., Reg. Sess. (1994).

⁷ H.B. 1243 Gen. Assem., Reg. Sess. (1994).

⁸ Technically, juveniles are not convicted of crimes, unless they have been transferred. The correct terminology is they have been adjudicated delinquent of a misdemeanor, or adjudicated delinquent of an offense that would be a felony if committed by an adult. However, even many attorneys shorten these lengthy phrases to “convicted of a Class 1 misdemeanor” or “convicted of a felony.”

⁹ 1994 Va. Acts chs. 859 and 949.

¹⁰ 1996 Va. Acts chs. 755 and 914.

¹¹ National Center for Health Statistics (2004). *Bridged-race intercensal estimates of the July 1, 1990-July 1, 1999 United States resident population by county, single-year of age, sex, race, and Hispanic origin*. [Released 7/26/2004; Retrieved 9/15/2004]. Prepared by the U.S. Census Bureau with support from the National Cancer Institute. Available at: http://www.cdc.gov/nchs/nvss/bridged_race.htm, and; National Center for Health Statistics (2009). *Estimates of the July 1, 2000-July 1, 2008, United States resident population from the Vintage 2008 postcensal*

series by year, county, age, sex, race, and Hispanic origin. [Released 9/2/2009; Retrieved 9/3/2009]. Prepared under a collaborative arrangement with the U.S. Census Bureau, available at: http://www.cdc.gov/nchs/nvss/bridged_race.htm.

¹² *OJJDP Statistical Briefing Book*. Online. Available at: <http://ojjdp.ncjrs.gov/ojstatbb/crime/qa05103.asp?qaDate=2007>. Released on October 24, 2008.

¹³ Available at:

<http://www2.fbi.gov/ucr/cius2009/arrests/index.html>.

¹⁴ Sickmund M. *Juveniles in court*. Juvenile offenders and victims bulletin: national report series. Washington, DC: Office of Juvenile Justice and Delinquency Prevention; June 2003; and, Griffin P. Trying and sentencing juveniles as adults: an analysis of state transfer and blended sentencing laws. Pittsburgh, PA: National Center for Juvenile Justice; 2003; and, Bishop D, Frazier C. Consequences of waiver. In: Fagan J, Zimring FE, eds. The changing borders of juvenile justice: transfer of adolescents to the criminal court. Chicago, IL: University of Chicago Press; 2000:227-76; and, Zimring FE. American youth violence. New York, NY: Oxford University Press; 1998; and, Redding RE, Howell JC. Blended sentencing in American juvenile courts. In: Fagan J, Zimring FE, eds. The changing borders of juvenile justice: transfer of adolescents to the criminal court. Chicago, IL: University of Chicago Press; 2000:145-180.

¹⁵ *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System*. CDC. Morbidity and Mortality Weekly Report. November 30, 2007. Vol. 56. No. RR-9.

¹⁶ Singer SI. Recriminalizing delinquency: violent juvenile crime and juvenile justice reform. Cambridge, England: Cambridge University Press; 1996; and, Barnoski, *supra* note 15; and, Jensen EL, Metsger LK. A test of the deterrent effect of legislative waiver on violent juvenile crime. *Crime Delinq* 1994;40:96-104.

¹⁷ Patrick Hoover, Esq., from the National Conference on Juvenile Justice, March 11-14, 2009, citing from *Effects on Violence of Laws and Policy Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System*, was published in the AMERICAN JOURNAL OF PREVENTIVE MEDICINE, April 2007.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*, citing from "Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the

Juvenile Justice System to the Adult Justice System: A Systemic Review," Volume 32, Issue 4, Supplement, p. 7-28, (April 2007).

²¹ *Id.*, citing from *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* OJJDP Juvenile Justice Bulletin, August (2008).

²² *Id.*

²³ Deitch, Michele, et.al. (2009). *From Time Out to Hard Time: Young Children in the Adult Criminal Justice System*, Austin, TX: The University of Texas at Austin, LBJ School of Public Affairs.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Barnoski R. Changes in Washington State's jurisdiction of juvenile offenders: Examining the impact. Olympia, WA: Washington State Institute for Public Policy (2003); Myers DL, Excluding violent youths from juvenile court: The effectiveness of legislative waiver. New York, NY: LFB Scholarly (2001); Podkopacz M.R. The juvenile court's final decision: An empirical examination of transferring juveniles to adult court (1996); Lanza-Kaduce L, Frazier C.E., Lane J, Bishop D.M. Juvenile transfer to criminal court study: Final report. Tallahassee, FL: Florida Department of Juvenile Justice (2002); Winner L, Lanza-Kaduce L, Bishop DM, Frazier CE. The transfer of juveniles to criminal court: Reexamining recidivism of the long term. *Crime Delinq* 43:548-63 (1997); Fagan J. The comparative impacts of juvenile and criminal court sanctions on adolescent felony offenders. *Law Policy* 18:77-119 (1996).

²⁷ Barnoski, *supra* note 26.

²⁸ Winner, *supra* note 26.

²⁹ Barnoski, *supra* note 26.

³⁰ Myers, Lanza-Kaduce, and Fagan, *supra* note 26.

³¹ Barnoski, *supra* note 26.

³² *Id.* *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System*. CDC. Morbidity and Mortality Weekly Report. November 30, 2007. Vol. 56. No. RR-9.

³³ *Id.*

³⁴ Campaign for Youth Justice (November 2007). *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America*, pg.46, available at: http://www.campaign4youthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*, citing from OJJDP, April 2000, *Effective Intervention for Serious Juvenile Offenders Treatment Types in Order of Effectiveness*.

⁴⁰ *Id.*

⁴¹ Benjamin Adams and Sean Addie, OJJDP Fact Sheet: Delinquency Cases Waived to Criminal Court, 1985-2005, U.S. DOJ, OJJDP, March 2009.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Different from Adults: An Updated Analysis of Juvenile Transfer and Blended Sentencing Laws, With Recommendations for Reform*, Models for Change, NCJJ, November 2008.

⁴⁵ *Id.*

⁴⁶ *Id.*, citing from NCJFCJ DELINQUENCY GUIDELINES, Chapter 5, *Motions to Waive Jurisdiction and Transfer to Criminal Court*, p. 102.

⁴⁷ *Id.* This particular suggestion would not be applicable to Virginia, where the legislature can mandate certain juveniles be transferred, with no discretion or review by judges.

⁴⁸ *Id.* *Supra* 43.

⁴⁹ *Id.*, citing from *In Re Trader*, 315 A.2d 528 (Md. App. 1974).

⁵⁰ *Id.*

⁵¹ *Id.*, citing from OJJDP Child Delinquency Bulletin, May 2003.

⁵² Campaign for Youth Justice (March 2007). *The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform*, pg. 4 available at

http://www.campaign4youthjustice.org/Downloads/NEWS/National_Report_consequences.pdf, citing

Woolard, J. (2005). Juveniles within adult correctional settings: legal pathways and developmental considerations. *International Journal of Forensic Mental Health*, 4(1), 18; Coalition for Juvenile Justice. (2005). *Childhood on trial: The failure of trying and sentencing youth in adult criminal court*. Washington, D.C.. Campaign for Youth Justice (March 2007). *The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform*, pg. 6

available at

http://www.campaign4youthjustice.org/Downloads/NEWS/National_Report_consequences.pdf.

⁵³ Available at

<http://www.djj.state.va.us/Initiatives/YASI.aspx>.

⁵⁴ Available at

<http://www.djj.state.va.us/Initiatives/YASI.aspx>.

⁵⁵ *Id.*

Adam Ortiz, ABA Juvenile Justice Center, Cruel and Unusual Punishment: The Juvenile Death Penalty

Adolescence, Brain Development and Legal Culpability, *available at* <http://www.abanet.org/crimjust/juvjus/Adolescence.pdf>.

⁵⁶ *Id.*

⁵⁷ William Killgore & Deborah Yurgelun-Todd, *Unconscious processing of facial affect in children and adolescents*, *Social Neuroscience*, 2 (1), 28 (2007).

⁵⁸ Goldbery, Elkhonon. *The Executive Brain: Frontal Lobes and the Civilized Mind*. 2001.

⁵⁹ *Available at*

<http://www.pbs.org/wgbh/pages/frontline/shows/teenbrain/interviews/todd.html>.

⁶⁰ *Id.*

⁶¹ ARIZ. REV. STAT. ANN. § 13-501 (2009); ARK. CODE ANN. § 9-27-318 (West 2009); CAL. WELF. & INST. CODE § 707 (West 2009); COLO. REV. STAT. ANN. § 19-2-517, § 19-2-518 (West 2009); FLA. STAT. ANN. § 985.557 (West 2009); GA. CODE ANN. § 15-11-28 (West 2009); La. Child. Code Ann. Art. 305 (2009); MASS. GEN. LAWS ANN. Ch. 119, § 54 (2009); MICH. COMP. LAWS ANN. § 712A.2d (West 2009); MINN. STAT. ANN. § 260B.141 (West 2009); MONT. CODE ANN. § 41-5-206 (West 2008); NEB. REV. STAT. § 43-276 (2008); N.H. REV. STAT. ANN. § 169-B:25 (West 2009); OKLA. STAT. ANN. tit. 10 §§ 7306-2.1 to 7306-2.12 (West 2009); VT. STAT. ANN. tit. 33 § 5203 (2009); VA. CODE ANN. § 16.1-269.1 (West 2009); WYO. STAT. ANN. § 14-6-203 (2009). Information gathered June 2009.

⁶² ALA. CODE § 12-15-204 (West 2009); ALASKA STAT. § 47.12.030 (2009); ARIZ. REV. STAT. ANN. § 13-501 (2009); CAL. WELF. & INST. CODE § 602 (West 2009); DEL. CODE ANN. tit. 11 § 1447A (2009); FLA. STAT. ANN. § 985.557 (West 2009); GA. CODE ANN. § 15-11-28 (West 2009); IDAHO CODE ANN. § 20-509 (2009); 705 ILL. COMP. STAT. ANN. 405/5-130 (West 2009); IND. CODE ANN. § 31-30-1-4 (West 2009); IOWA CODE ANN. § 232.8 (West 2009); LA. CHILD. CODE ANN. ART. 305 (2009); MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-03 (West 2009); MASS. GEN. LAWS ANN. Ch. 119, § 74 (2009); MINN. STAT. ANN. § 260B.007 (West 2009); MISS. CODE ANN. § 43-21-151 (West 2009); MONT. CODE ANN. § 41-5-206 (West 2008); NEV. REV. STAT. ANN. § 62B.330 (West 2009); N.M. STAT. ANN. § 32A-2-6 (West 2009); N.Y. CRIM. PROC. LAW § 180.75 (McKinney 2009); OKLA. STAT. ANN. TIT. 10 § 7306-2.5 (West 2009); OR. REV. STAT. ANN. 10 § 137.707 (West 2009); 42 PA. CONS. STAT. ANN. § 6355 (West 2009); S.C. CODE ANN. § 63-19-20 (2008); S.D. CODIFIED LAWS § 26-11-3.1 (2009); TEX. FAM. CODE ANN. § 51.03 (Vernon 2009); UTAH CODE ANN. § 78A-6-701 (West 2008); VT.

STAT. ANN. tit. 33 § 5204 (2009); WASH. REV. CODE ANN. § 13.04.030 (West 2009); WIS. STAT. ANN. § 938.183 (West 2009). Information gathered June 2009.

⁶³ ARIZ. REV. STAT. ANN. § 13-501 (2009); ARK. CODE ANN. § 9-27-318 (West 2009); CAL. WELF. & INST. CODE § 707.2 (West 2009); COLO. REV. STAT. ANN. § 19-2-517 (West 2009); CONN. GEN. STAT. ANN. § 46b-127 (West 2009); DEL. CODE ANN. tit. 10 § 1011 (2009); GA. CODE ANN. § 15-11-28 (West 2009); 705 ILL. COMP. STAT. ANN. 405/5-130 (West 2009); IOWA CODE ANN. § 232.8 (West 2009); KY. REV. STAT. ANN. § 640.010 (West 2009); MD. CODE ANN., CRIM. PROC. § 4-202 (West 2009); MISS. CODE ANN. § 43-21-159 (West 2009); MONT. CODE ANN. § 41-5-206 (West 2008); NEB. REV. STAT. § 43-1816 (2008); NEV. REV. STAT. ANN. § 62B.390 (West 2009); N.H. REV. STAT. ANN. § 169-B:25 (West 2009); N.Y. CRIM. PROC. LAW § 180.75 (McKinney 2009); OKLA. STAT. ANN. tit. 10 § 7306-2.6 (West 2009); OR. REV. STAT. ANN. 10 § 419C.361 (West 2009); 42 PA. CONS. STAT. ANN. § 6322 (West 2009); S.C. CODE ANN. § 63-19-20 (2008); S.D. CODIFIED LAWS § 26-11-3.1 (2009); VT. STAT. ANN. tit. 33 § 5281 (2009); VA. CODE ANN. § 16.1-269.6 (West 2009); WIS. STAT. ANN. § 970.032 (West 2009); WYO. STAT. ANN. § 14-6-237 (2009). Information gathered June 2009.

⁶⁴ ALA. CODE § 12-15-203 (West 2009); ARIZ. REV. STAT. ANN. § 13-501 (2009); CAL. WELF. & INST. CODE § 707.01 (West 2009); COLO. REV. STAT. ANN. § 19-2-517 (West 2009); DEL. CODE ANN. tit. 10 § 1011 (2009); FLA. STAT. ANN. § 985.556 (West 2009); HAW. REV. STAT. § 571-22 (2009); IDAHO CODE ANN. § 20-509 (2009); 705 ILL. COMP. STAT. ANN. 405/5-130 (West 2009); IND. CODE ANN. § 31-30-1-2 (West 2009); IOWA CODE ANN. § 232.45A (West 2009); KAN. STAT. ANN. § 38-2347 (2009); ME. REV. STAT. ANN. tit. 15, § 3101 (2009); MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-03 (West 2009); MICH. COMP. LAWS ANN. § 712A.4 (West 2009); MINN. STAT. ANN. § 260B.007 (West 2009); MISS. CODE ANN. § 43-21-157 (West 2009); MO. ANN. STAT. § 211.071 (West 2009); NEV. REV. STAT. ANN. § 62B.330 (West 2009); N.H. REV. STAT. ANN. § 169-B:27 (West 2009); N.C. GEN. STAT. ANN. § 7B-1604 (West 2008); N.D. CENT. CODE § 27-20-34 (2009); OKLA. STAT. ANN. tit. 10 § 7306-4.3 (West 2009); OR. REV. STAT. ANN. 10 § 419C.364 (West 2009); 42 PA. CONS. STAT. ANN. § 6302 (West 2009); R.I. GEN. LAWS ANN. § 14-1-7.1 (West 2009); S.D. CODIFIED LAWS § 26-11-4 (2009); TENN. CODE ANN. § 37-1-134 (West 2009); TEX. FAM. CODE ANN. § 54.02 (Vernon 2009); UTAH CODE ANN. § 78A-6-702 (West 2008); VA. CODE ANN. § 16.1-269.6 (West 2009); WASH. REV. CODE ANN. § 13.40.020 (West 2009);

Wis. STAT. ANN. § 938.183 (West 2009). Information gathered June 2009.

⁶⁵ Those 22 states include: ALA. CODE § 12-15-203 (West 2009); ARIZ. REV. STAT. ANN. § 13-501 (2009); COLO. REV. STAT. ANN. § 19-2-517 (West 2009); FLA. STAT. ANN. § 985.556 (West 2009); IDAHO CODE ANN. § 20-509 (2009); IOWA CODE ANN. § 232.45A (West 2009); KAN. STAT. ANN. § 38-2347 (2009); ME. REV. STAT. ANN. tit. 15, § 3101 (2009); MINN. STAT. ANN. § 260B.007 (West 2009); MISS. CODE ANN. § 43-21-157 (West 2009); MO. ANN. STAT. § 211.071 (West 2009); NEV. REV. STAT. ANN. § 62B.330 (West 2009); N.H. REV. STAT. ANN. § 169-B:27 (West 2009); OR. REV. STAT. ANN. 10 § 419C.364 (West 2009); 42 PA. CONS. STAT. ANN. § 6302 (West 2009); R.I. GEN. LAWS ANN. § 14-1-7.3 (West 2009); S.D. CODIFIED LAWS § 26-11-4 (2009); TENN. CODE ANN. § 37-1-134 (West 2009); TEX. FAM. CODE ANN. § 54.02 (Vernon 2009); UTAH CODE ANN. § 78A-6-703 (West 2008); VA. CODE ANN. § 16.1-271 (West 2009); WASH. REV. CODE ANN. § 13.40.020 (West 2009). Information gathered June 2009.

⁶⁶ ALASKA STAT. § 47.12.065 (2009); ARK. CODE ANN. § 9-27-506 (West 2009); COLO. REV. STAT. ANN. § 19-2-517 (West 2009); CONN. GEN. STAT. ANN. § 46b-133c (West 2009); 705 ILL. COMP. STAT. ANN. 405/5-810 (West 2009); KAN. STAT. ANN. § 38-2347 (2009); MASS. GEN. LAWS ANN. Ch. 119, § 58 (2009); MICH. COMP. LAWS ANN. § 712A.18 (West 2009); MINN. STAT. ANN. § 260B.130 (West 2009); MONT. CODE ANN. § 41-5-1604 (West 2008); N.M. STAT. ANN. § 32A-2-20 (West 2009); R.I. GEN. LAWS ANN. § 14-1-7.3 (West 2009); TEX. FAM. CODE ANN. § 54.04 (Vernon 2009); VT. STAT. ANN. tit. 33 § 5284 (2009). Information gathered June 2009.

⁶⁷ ARK. CODE ANN. § 9-27-330 (West 2009); CAL. WELF. & INST. CODE § 707 (West 2009); COLO. REV. STAT. ANN. § 19-2-601 (West 2009); FLA. STAT. ANN. § 985.556 (West 2009); IDAHO CODE ANN. § 20-509 (2009); 705 ILL. COMP. STAT. ANN. 405/5-810 (West 2009); IOWA CODE ANN. § 232.45 (West 2009); KY. REV. STAT. ANN. § 640.030 (West 2009); MASS. GEN. LAWS ANN. Ch. 276A, § 2 (2009); MICH. COMP. LAWS ANN. § 712A.18 (West 2009); MO. ANN. STAT. § 211.073 (West 2009); NEB. REV. STAT. § 43-2204 (2008); N.M. STAT. ANN. § 32A-2-20 (West 2009); OKLA. STAT. ANN. tit. 10 § 7306-2.6 (West 2009); VA. CODE ANN. § 16.1-272 (West 2009); W. VA. CODE ANN. § 49-5-13b (West 2009). Information gathered June 2009.

⁶⁸ Patrick Hoover, Esq., from the National Conference on Juvenile Justice, March 11-14, 2009, citing *Effects on Violence of Laws and Policy Facilitating the Transfer of Juveniles from the Juvenile Justice System to*

the Adult Justice System, AMERICAN JOURNAL OF PREVENTIVE MEDICINE, April 2007.

⁶⁹ ALASKA STAT. § 47.12.100 (2009); ARIZ. REV. STAT. ANN. § 13-501 (2009); DEL. CODE ANN. tit. 10 § 1010 (2009); D.C. Code § 16-2307 (2009); FLA. STAT. ANN. § 985.556 (West 2009); GA. CODE ANN. § 15-11-30.2 (West 2009); HAW. REV. STAT. § 571-22 (2009); IDAHO CODE ANN. § 20-508 (2009); IND. CODE ANN. § 31-30-3-1 (West 2009); ME. REV. STAT. ANN. tit. 15, § 3101 (2009); MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-06 (West 2009); NEB. REV. STAT. § 43-276 (2008); NEV. REV. STAT. ANN. § 62B.390 (West 2009); OKLA. STAT. ANN. tit. 10 § 7306-4.3 (West 2009); OR. REV. STAT. ANN. 10 § 419C.349 (West 2009); 42 PA. CONS. STAT. ANN. § 6355 (West 2009); R.I. GEN. LAWS ANN. § 14-1-3 (West 2009); S.C. CODE ANN. § 63-19-1210 (2008); S.D. CODIFIED LAWS § 26-11-4 (2009); TENN. CODE ANN. § 37-1-134 (West 2009); WASH. REV. CODE ANN. § 13.40.110 (West 2009); W. VA. CODE ANN. § 49-5-10; Wis. STAT. ANN. § 938.18 (West 2009).

⁷⁰ ALA. CODE § 12-15-203 (West 2009); Ark. Code Ann. § 9-27-318 (West 2009); CAL. WELF. & INST. CODE § 707 (West 2009); CONN. GEN. STAT. ANN. § 46b-127 (West 2009); IOWA CODE ANN. § 232.45 (West 2009); KY. REV. STAT. ANN. § 640.020 (West 2009); LA. CHILD. CODE ANN. ART. 857 (2009); MASS. GEN. LAWS ANN. Ch. 119, § 54 (2009); MICH. COMP. LAWS ANN. § 712A.4 (West 2009); MINN. STAT. ANN. § 260B.125 (West 2009); NEW JERSEY, N.D. CENT. CODE § 27-20-34 (2009); OHIO REV. CODE ANN. § 2152.10 (West 2009); TEX. FAM. CODE ANN. § 54.02 (Vernon 2009); UTAH CODE ANN. § 78A-6-703 (West 2008); VA. CODE ANN. § 16.1-269.1 (West 2009).

⁷¹ Available at

http://www.djj.virginia.gov/About_Us/Administrative_Units/Research_and_Evaluation_Unit/pdf/FY2010_DRG.pdf.

⁷² *Id.*

⁷³ VA. CODE ANN. § 16.1-269.1 (Michie 2008).

⁷⁴ Presumably, only juvenile defendants would ever make use of such an appeal opportunity; if the prosecutor was uncertain as to the propriety of trying the juvenile as an adult, he probably would not have applied for the case to be certified under subsection C. A prosecutor would not be likely to appeal his own decision.

⁷⁵ As noted earlier, 26 states allow for reverse waiver.

⁷⁶ Fiscal Impact Statement, S.B. 389, available at

<http://lis.virginia.gov/cgi-bin/legp604.exe?111+oth+SB389F160+PDF>. Information provided by the Department of Juvenile Justice.

⁷⁷ Id.

⁷⁸ Id.

⁷⁹ VA. CODE ANN. § 19.2-298.01 (Michie 2008).

⁸⁰ Fairfax, Alexandria, and Virginia Beach are currently on their own system database and are not required to share their information regarding the transfer and certification of juveniles with the Virginia Supreme Court.

⁸¹ DATA RESOURCE GUIDE: FISCAL YEAR 1996, the Virginia Department of Juvenile Justice (1997).

⁸² Email from Lynette Holmes, DJJ. December 7, 2010.

⁸³ Email from Lynette Holmes, DJJ. December 10, 2009.

⁸⁴ According to the VCSC methodology, a sentencing event consists of all offenses (and counts) for which an offender is sentenced before the same court at the same time.

⁸⁵ Virginia Criminal Sentencing Commission 2010 Annual Report.

⁸⁶ Virginia Criminal Sentencing Commission. PowerPoint Presentation 2010.

⁸⁷ Id.

⁸⁸ Id. at 59.

⁸⁹ Id. at 60.

⁹⁰ Id. at 59 and 60.

⁹¹ *Available at*

<http://www.djj.virginia.gov/Initiatives/DMC.aspx>.

⁹² Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, Office of Juvenile Justice and Delinquency Prevention Juvenile Justice Bulletin, 3 (Aug. 2008). U.S. Department of Health and Human Services, Center for Disease Control and Prevention, *Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System* (2007) *available at*

<http://www.cdc.gov/mmwr/PDF/rr/rr5609.pdf>.

⁹³ Barry Green, Director; Sam Abed, Chief Deputy Director; Department of Juvenile Justice, *Juvenile Trends: Successes and Challenges*, Judicial Conference August 2008, pg. 4, *available at*

http://www.djj.state.va.us/Resources/DJJ_Presentations/pdf/JDRTrainingConference-FinalPresentation-08112008.pdf.

⁹⁴ S.B. Gen. Assem., Reg. Sess. (2011).

⁹⁵ S.B. 948 Gen. Assem., Reg. Sess. (2011).