

Virginia State Crime Commission

Juvenile Justice

2008

JUVENILE JUSTICE

Executive Summary

During the 2006 Session of the Virginia General Assembly, Delegate Brian Moran introduced House Joint Resolution 136 (HJR 136), which 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 within the juvenile justice system, quality of and access to legal counsel, 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 current statutes and procedures relating to juvenile delinquency.

Because of the detailed information that was produced during the first two years of the study, an additional year was needed to fully examine the newly-identified issues in conjunction with the current matters cited in the initial resolution. The goals for the continuation of the study through 2008 included: ascertaining juvenile justice related training opportunities for Commonwealth's Attorneys and their assistants; examining the role of Commonwealth's Attorneys offices in the Juvenile and Domestic Relations (JDR) courts; 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 DJJ correctional facilities; monitoring juvenile justice legislation; re-entry back into the community; and creating a list of proven practices for Court Service Units. During the 2008 Session of the Virginia General Assembly, the Commission was directed to continue its study of Virginia's juvenile justice system for a third year under House Joint Resolution 113 (HJR 113) as introduced by Delegate Brian Moran. Under this new resolution, the Commission was directed to continue to examine the issues

outlined in HJR 136, as well as some additional concerns identified throughout the first part of the study. HJR113 also incorporated House Joint Resolution 160 (HJR 160), introduced by Delegate Clarence Phillips, which provided for a two-year study of the juvenile justice system to: (i) review the severity of offenses committed by juveniles in the Commonwealth; (ii) evaluate the effects on the learning environment and educational process 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. The Crime Commission utilized several research methodologies to address the directives of the mandates regarding the juvenile justice system in the Commonwealth, including: (i) completing a literature review; (ii) attending local, regional and national professional juvenile justice meetings and conferences; (iii) conducting focus groups of juvenile justice professionals; (iv) field visits to Juvenile and Domestic Relations (JDR) courts; (v) surveys of key juvenile justice professionals; and, (vi) analysis of Title 16.1 of the Code of Virginia.

Legislative initiatives and best practice recommendations were presented and discussed by the Crime Commission at the October 14, 2008, December 9, 2008, and January 13, 2009, meetings. Commission members endorsed legislation for introduction regarding amendments to Title 16.1 during the 2009 Session of the Virginia General Assembly. Additionally, the study was approved for continuation for an additional year to devote attention solely to juvenile certification and transfer issues.

Background

A. Study History

The Crime Commission's study of juvenile justice was initiated, in part, due to a report on juvenile counsel published by the American Bar Association (ABA) Juvenile Justice Center and the Mid-Atlantic Juvenile Defender Center. In 2002, these organizations published a joint report entitled "Virginia: An Assessment of

of Access to Counsel and Quality of Representation in Delinquency Proceedings,” that cited numerous problems with the juvenile justice system in the Commonwealth. The report asserted that quality representation is lacking in delinquency proceedings due to timing of appointment, uninformed waiver of counsel, lack of public defender offices in some localities, untrained and inexperienced counsel, lack of ancillary resources, and the perception that juvenile court is seen as a “kiddy court.” It should be noted that while the report provided the impetus for a lengthy study of the juvenile criminal justice system in Virginia, it was published four years before the Crime Commission was directed to perform the study. In the interim, some of the problems identified had already been partially addressed, or completely remedied, by the legislature. The list below delineates key findings as stated in the ABA report.

- *Timing of Appointment of Counsel*

Under Virginia law, counsel is not appointed until after the initial hearing, referred to as the advisement hearing. For detained youth the advisement hearing is combined with the detention hearing. Defense counsel’s inability to participate early in the process hinders representation.

- *Waiver of Counsel*

A related outcome of absence of counsel is the high incidence of children waiving their right to counsel without prior consultation with a lawyer or trained advocate.

- *Untrained and Inexperienced*

In both appointed counsel and public defender office jurisdictions there is a lack of required juvenile specific training and experience. While some training opportunities exist, attorneys reported that issue-specific training was not required, unavailable and even unnecessary.

- *Inadequate Ancillary Resources*

A lack of ancillary resources, including the assistance of support staff, investigators, paralegals and social workers was present throughout the system; it was recognized, however, that the entire juvenile justice system in Virginia is underfunded and overburdened.

- *Inappropriate Referrals*

A consistent view emerged that the juvenile justice system was being loaded down with inappropriate referrals—particularly mental health and school-related cases.

- *Second-Rate Status*

Many people view juvenile court as “kiddy court” and the overall practice of delinquency law as unimportant.

- *Over Reliance on Court Service Units*

In Virginia, the Department of Juvenile Justice (DJJ) is a powerful executive branch agency that manages community programs and services, community supervision, case management, and the custody and care of committed juveniles. The DJJ’s case management division or Court Service Unit (CSU) bears enormous responsibility in juvenile court, making decisions that affect children at every stage of the process. CSU employees were found to be, at times, performing functions traditionally slated for judges and prosecutors, such as keeping a child out of the system by means of informal dispositions, authorizing detention, presenting the detention case to the court, advising youth of their rights, and presenting misdemeanor petitions to the court. Youth are left confused about the roles of court personnel and the system overall.

- *Prosecutorial Discretion*

Defenders in several jurisdictions reported abuse of prosecutorial discretion by some Commonwealth’s Attorneys in leveraging negotiations by threatening to transfer cases to circuit court.

- *Overrepresentation and Disparate Treatment*

Disparate treatment of minority youth and the sentiment that skin color matters in Virginia were pervasive and glaring. Despite demographic differences, there was agreement in every jurisdiction that children and youth of color are overrepresented in Virginia’s juvenile justice system.

- *Attorney Compensation*

One of the lowest in the country, the \$112 maximum paid to defense counsel to see a child’s case through the delinquency system inadvertently place a premium on high volume and dispensing with cases quickly, typically through a hurried plea process.

Additionally, it should be mentioned that the last major reform to the Virginia juvenile justice system was conducted over a decade ago. Legislators across the country reacted in the mid-to-late-1990s to the increase in violent juvenile crime rates seen during the 1980s by reforming their states' overall juvenile justice system. 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 youth between the ages of eleven and seventeen 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 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. With the exception of one dissension from the commission, there was an overwhelming push for tougher laws on juveniles in reaction to the rising crime rates. In 1994, Senate Bill 520 and House Bill 1243 made the following substantial changes:

- Lowered the age from fifteen to fourteen at which a juvenile may be tried as an adult in circuit court for felonies;
- Dissolved the requirement for a juvenile's transfer hearing to show the juvenile is not a proper person to stay in JDR court if the following charges were made:
 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 sixteen 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);
- 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, that 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 if the victim submitted a written request for notification.

In 1996, more reforms were added to Virginia's juvenile code. 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 B of §16.1-269.1 of the Code of Virginia;
- 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 fourteen 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 of juveniles fourteen and older having committed a felony, or Class 1 or Class 2 misdemeanor for the Central Criminal Records Exchange (CCRE). Those 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

Given the issues identified in the ABA report and the reforms adopted in the mid-1990s in Virginia, a comprehensive review of the current juvenile justice system was appropriate. Before carrying out any formal study activities, a literature review was conducted to gain a better understanding of factors affecting juvenile delinquency, and to gather relevant national and state statistics.

B. Literature Review

During the first year of its study, staff conducted an extensive literature review of existing national, state and academic juvenile justice studies. The following section includes a brief summary of findings from the literature review.

Juvenile Justice Reform

There is much discussion in academic literature on the treatment of juveniles in delinquency and criminal cases. States across the nation are experimenting with new policies and efforts to minimize juvenile crime and detention, and looking into redirecting efforts towards the "front-end versus the back-end approach," (i.e. concentrating more on prevention than punishment and incarceration). Some studies have reported that prevention programs can be successful in reducing juvenile delinquency and other behaviors, such as truancy, that may contribute to delinquent behavior. Recent research has also shown that a juvenile's brain development is very different from that of an adult. Neurological and physiological changes occur during adolescent brain development that offers explanations for risk taking behaviors and the lack of emotional maturity seen in juveniles. The frontal lobe of the brain is the last part of the brain to develop, typically not mature until the mid 20s, and is responsible for cognitive skill development, such as decision making, planning for the future,

impulsivity, judgment, and foresight of consequences. These discoveries support the assertion that adolescents are less morally culpable for their actions than competent adults and are more capable of change and rehabilitation. The bulk of the evidence suggests that transfer laws, at least as currently implemented and publicized, have little or no general deterrent effect in preventing serious juvenile crime. Evidence also suggests that the transfer of juveniles to adult court may have harmful effects, such as increasing recidivism rates, limiting a juvenile's ability to successfully participate in society, and promoting life-course criminality.

National-Level Trends

Based on U.S. Census Data for the period of time between 1990 and 2000, the juvenile population, ages 10-17, increased 23% from 637,222 to 781,196. Since then, the juvenile population has continued to rise and as of the July 1, 2007, it was estimated at 815,207.

Since the passage of numerous "get tough" juvenile crime laws during the 1990s, both nationally and in Virginia, juvenile arrests have steadily been on the decline. It is unknown whether arrests declined as a result of the stricter penalties or other causes. Following almost a decade of consistency, the juvenile Violent Crime Index arrest rate began to rise in 1989 and soared in 1994, so that it was 61% above its 1988 level. However, between 1994 and 1997, the juvenile Violent Crime Index arrest rate dropped 23%, and by 1997, it had nearly returned to the 1989 level. Between 1994 and 2003, national juvenile arrests fell by 18%. In comparison, adult arrests rose 1% during that time. It is important to note that between 1980 and 1997, Violent Crime Index arrest rates increased substantially for all ages, and at a higher rate for adults than juveniles.

State-Level Trends

In the ten-year period from the 1990 to the 2000 U.S. Census, the Virginia population increased by about 865,000 people. During this time, the juvenile population increased 14.4% from 1,519,127 juveniles in 1990 to 1,738,262 juveniles in 2000. According to the Virginia State Police, there were 59,281 total juvenile arrests in 1996 and 38,599 in 2006, representing a decrease of 34%. Virginia's juvenile arrest rate

for violent crime in 2006 was 171 per 100,000, ranking the Commonwealth the 16th lowest nationally. The U.S. average was 315 arrests for violent crime per 100,000 youths. In 2006, Virginia's juvenile property crime arrest rate was 905 per 100,000, ranking Virginia the 10th lowest in the United States. The national average was 1,256 per 100,000.

JDR courts in Virginia have jurisdiction over all matters involving children under the age of eighteen, including, for example, crimes where the child is a victim, crimes where the child is alleged to have committed the offense, custody, visitation, and support matters of children, social service petitions including children in need of services cases, and parental termination cases. This is not to say that JDR courts have exclusive jurisdiction over these matters. Circuit courts can also hear these types of cases and are the courts where all appeals from JDR courts will be heard.

Prior to 1990, Virginia's juvenile corrections were administered by the Virginia Department of Corrections, which also administers adult corrections. The Virginia Department of Youth and Family Services was created in 1990 by the General Assembly and later renamed as the Virginia Department of Juvenile Justice (DJJ) with its primary responsibility as the oversight of the juvenile justice system. As part of the agency's integrated approach to addressing juvenile justice in Virginia, the DJJ oversees statewide juvenile correctional centers, provides services and programs, and collaborates with local officials and community providers. The juvenile justice system as a whole is very different from the adult criminal justice system with numerous differences in terminology and varying sentencing options available, which makes the juvenile justice system complex and oftentimes challenging to navigate. The DJJ Annual Data Resource Guide provides information related to Virginia's juvenile justice system.

Virginia is fortunate that the DJJ maintains extensive data related to juveniles. It publishes a Data Resource Guide each year with detailed information regarding juvenile demographics, CSU intake complaints, dispositions, offenses, length

of stay, and other detailed case information. Based on data contained in this report, the DJJ commitments have dropped from 1,463 in FY2000 to 863 in FY2007. The DJJ's overall population has decreased over the past seven years and only the more serious offenders are being detained and treated at DJJ detention facilities. More offenders committing and recommitting crimes of lower severity are under community supervision supported by local resources.

A few things are apparent when looking at the demographics of those who are admitted to DJJ. First, males comprise the vast majority of admissions to the DJJ. Second, black youth comprised nearly two-thirds of admissions every year from 2004-2007. Finally, sixteen and seventeen year olds account for the largest proportion of admissions each year.

DJJ divides Virginia into three main regions: Western, Northern, and Eastern. The DJJ also uses these regions to group Court Service Unit districts for organizational purposes. While more juveniles come from the Eastern Region (48.1%) than the other two regions, the Eastern Region contains two more CSU districts than the other regions. Of the 35 regions, the Western Region contains 11 CSU districts and the lowest general population, the Northern Region contains 11 CSU districts, and the Eastern Region contains 13 districts.

Recidivism has declined over six percent in the past two years from 41.7% in 2004 to 35.3% in 2006. The DJJ defines recidivism by reconviction. As is consistent with the regular admissions to the DJJ, black youth show the highest reconviction rate in FY2005, making up 40.1% of the JCC release and 32.4% of the probation placement recidivist populations. Males are also more likely to be reconvicted than females. The data for the group of 18 or older is incomplete because the DJJ currently does not have the capability to track all juveniles once they are over the age of 18. Once the DJJ and the Department of Corrections are able to streamline their data, DJJ will be able to show more accurate numbers for its recidivist population.

Methodology

A. Overview of Research Plan

The spring of 2006, Crime Commission staff began activities pursuant to the HJR 136 mandates. During the initial year of study, staff focused on the collection of information from juvenile justice professionals in Virginia. Staff also conducted several focus groups and courtroom observations at JDR courtrooms across the Commonwealth and attended national and statewide juvenile justice meetings and conferences. A JDR court judge workgroup was created to help identify the most pressing concerns within the juvenile justice system. Based on the information gathered from professionals in the field and the workgroup, staff developed a comprehensive survey that was distributed to all JDR court judges and Court Service Unit (CSU) Directors across the Commonwealth. Finally, staff conducted a thorough analysis of Title 16.1 of the Code of Virginia. The information gathered from the aforementioned activities resulted in a number of legislative recommendations and best practices. Each activity is briefly summarized below.

B. Attendance at Professional Meetings and Conferences

Staff attended numerous professional meetings, trainings, and conferences at the local, state, and national levels. As this study was supported by a federal grant, staff had the opportunity to attend two national conferences, one sponsored by the National Council of Juvenile and Family Court Judges and the National District Attorneys Association and the second sponsored by the Center for the Study and Prevention of Violence. Staff consistently attended juvenile justice meetings throughout Virginia hosted by agencies and individuals such as the Virginia Department of Criminal Justice Services (DCJS), the Virginia Coalition for Juvenile Justice, the DJJ CSU directors, the DJJ Judicial Liaison Committee, the Advisory Committee on Juvenile Justice, and the Board of the DJJ. Additionally, staff participated in state and local trainings sponsored by the National Center for Family Law at the University of Richmond T.C. Williams School of Law, the Virginia Indigent Defense Commission, the Supreme

Court of Virginia, the Virginia Commission on Youth, and the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services. Again, the information obtained at these meetings helped to identify the most pressing issues to focus upon in the current study.

C. Courtroom Observations and Focus Groups

Staff was given an opportunity to observe JDR courtroom proceedings in various court districts representative of the diverse demographics and regions of the Commonwealth. The localities selected included:

- 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.

In each locality, staff observed JDR court proceedings and participated in focus groups with local JDR court professionals. The following individuals were requested to attend in each locality: school representatives (e.g., truancy officers, school resource officers and program directors); Court Service Unit employees (e.g., directors, intake officers, and probation officers); JDR and Circuit Court judges; law enforcement representatives; and any other participants in the juvenile justice process, such as members from advocacy groups or heads of locality-specific programs. Each focus group averaged 12-15 members and lasted approximately two hours. Topics discussed included the issues cited in HJR 136, as well as funding, truancy and Children in Need of Services (CHINS), school involvement in the juvenile justice system, mental health and resources (MH/MR), transfer, Juvenile Detention Alternatives Initiative (JDAI), collaboration of local offices involved in juvenile justice, prevention, parental involvement and accountability, challenges within the juvenile justice system, and initiatives, services, and

programs that have proven successful or have shown promise. Despite differences in population size and geographic location, all of the localities brought up similar topics, concerns, and issues. This consensus further justified the issues chosen to be the focus of the current study in addition to those already mandated.

D. Surveys

As part of the study, staff surveyed all JDR court judges and CSU directors to collect opinions and information related to the juvenile justice system in the Commonwealth. In developing measures for the survey, an academic literature review was conducted and a special meeting with a work group of JDR court judges was held to discuss relevant issues faced in the juvenile justice system. A preliminary draft of the JDR judge survey was provided to the work group for review and suggestions.

Juvenile and Domestic Relations (JDR) Court Judges' Survey

All JDR court judges in the Commonwealth were asked to complete a comprehensive survey regarding several juvenile justice issues. The survey was divided into the following sections: Judge and court profile, quality of representation for juveniles, § 16.1 statutory provisions, truancy and CHINS, judicial decision-making, juvenile services and diversion opportunities, and disproportionate minority contact (DMC). The survey was distributed to all 117 JDR court judges across the Commonwealth. The response rate was 76% (89 of 117). All of the responding judges presided over criminal cases. The average amount of experience serving as a JDR court judge was 7.5 years. The range of experience was between less than one year to 22 years of experience. Detailed, aggregate responses were collected; however, only the most relevant findings are cited throughout this report to provide further support or illustration of key recommendations.

CSU Directors' Survey

All CSU directors were asked to complete a survey similar to the one given to the JDR judges, but with additional sections addressing mental health and substance abuse services and

programs. Crime Commission staff partnered with the College of William and Mary Thomas Jefferson Program in Public Policy graduate students to disseminate the survey on behalf of the Crime Commission. Responses were received from all (35 of 35) CSU Directors. Again, detailed, aggregate responses were collected; however, only the most relevant findings are cited throughout this report to provide further support or illustration of key recommendations.

E. Analysis of Title 16.1

A preliminary statutory review of Virginia's juvenile code was completed during the first year of study. Over 100 sections of the Code of Virginia, Title 16.1, Chapter 11, were reviewed and compiled. The goal of this process was to identify statutes that were duplicative, conflicting, unnecessary, ambiguous, or in need of relocation within the Code. During the second year, statutes were analyzed while taking into consideration survey results, written comments, and recommendations from juvenile justice professionals to determine whether there were any changes necessary to improve the juvenile criminal process. Overall, study results confirmed some of the preliminary analysis findings that some statutes are confusing, hard to locate, and contradictory.

Some of the greatest concerns centered among statutes regarding CHINS and CHINSup. Study participants stated that these sections were scattered throughout Chapter 11 and in need of reorganization. Additionally, many juvenile justice professionals felt that CHINS and CHINSup sections were confusing and lacked sufficient enforcement provisions. Other problematic issues identified within Title 16.1 include expungement and confidentiality of juvenile records, the confusing provisions related to possession of alcohol by minors and the resulting loss of driving privileges, and pre-trial diversions. Options available to the Commission included appointing a work group, agency, or Commission to further examine and complete a re-write or re-codification of Title 16.1, Chapter 11, or for staff to review specific sections in need of amendments or reorganization. The Commission voted to approve the latter approach, resulting in the identification and compilation of a wide variety of statutes with procedural and substantive issues. Recommendations to Title 16.1, Chapter 11, were introduced as a part of the Crime Commission's

legislative package during the 2009 Session of the Virginia General Assembly.

During the review of Title 16.1, it was discovered that § 16.1-298 provides for the suspension of some, but not all, judgments that are imposed by a JDR court in criminal cases, pending the *de novo* appeal to the circuit court. For instance, fines, suspensions of drivers' licenses, and commitments to the DJJ are suspended, while any disposition involving the participation in a public service project, or placement in a local juvenile detention facility, is not suspended. Thus, a juvenile who appeals his commitment is potentially able to return to his home, pending the outcome of the circuit court trial, while a juvenile who is given the lesser disposition of a month in the local detention facility must remain incarcerated while waiting for his trial date in the circuit court. Commission members requested an official advisory opinion from the Office of the Attorney General as to whether or not this aspect of § 16.1-298 was constitutional. In a letter dated, January 8, 2009, an informal opinion was rendered, stating that § 16.1-298 of the Code of Virginia is constitutional and does not violate the rights of a juvenile defendant to due process or equal protection.

F. Summary of Methodology

During the Commission's study of Virginia's juvenile justice system, staff developed and compiled a number of legislative and best practice recommendations in an effort to identify improvements upon current policies, practices, and procedures. All of the study results and information obtained are reflective of the literature review, professional meetings, trainings, conferences, JDR courtroom observations, analysis of the Code of Virginia, focus groups, and survey results that were brought to the staff's attention, or previously mentioned. The study issues and recommendations are a result of the culmination of information received from a wide variety of individuals, resources, and data, both qualitative and quantitative. Due to the enormity of the statewide juvenile justice system, only issues cited in the study mandate were included in this study.

Study Issues and Recommendations

A. Study Issues

Transfer and Certification of Juveniles

The perception of serious juvenile crime rose in the late 1980s and early 1990s. States, in turn, decided to address the rising crime rates by making juvenile laws more punitive. With regard to transfer provisions, sentencing authority, and confidentiality, all but three states changed their laws for one or all of these issues between 1992 and 1997. Nationally, transfer laws became more punitive in the mid 1990s throughout many states. As of 2006, fourteen states and the District of Columbia, allowed for prosecutorial direct-file for transfer, while all states allowed for some form of transfer or adult sanctions depending on the crime. The National Coalition for Juvenile Justice recently reported that in forty-seven states, youth can be charged in adult court through judicial waiver and twenty-nine states have statutory exclusion laws that mandate some children be charged in adult court for certain offenses.

Currently, both at the national and state levels of government, the issue of juvenile transfer has received widespread attention. Since the authority of transferring a juvenile to circuit court was changed by the Virginia General Assembly over ten years ago, research has been conducted to evaluate the successfulness of changes to juvenile laws, specifically the practice of transfer. The transfer process in Virginia creates three categories of crimes for which the transfer and certification of juveniles is permitted, referred to as subsections A, B, and C in the Code of Virginia. Transfer under subsection A provides for a transfer hearing where a judge reviews a list of criteria to determine if the juvenile is eligible for transfer. The criteria include: the juvenile's age; the seriousness and number of alleged offenses; whether the juvenile can be retained in the juvenile justice system long enough for effective treatment and rehabilitation; the appropriateness and availability of the services and dispositional alternatives; the record and previous history of the juvenile; whether the juvenile has previously absconded from the legal custody of a juvenile correctional entity; the extent, if any, of the juvenile's degree of mental retardation or mental illness; the juvenile's school record and education; the juvenile's mental and emotional maturity; and the juvenile's physical condition

and physical maturity. Mandatory transfer is required, without exception, for all the crimes under subsection B, all of which involve murder. The final category under subsection C allows for prosecutorial discretion in certification for twelve crimes including: felony homicide, felonious injury by mob, abduction, malicious wounding, malicious wounding law-enforcement officer, felonious poisoning, adulteration of products, robbery, carjacking, rape, forcible sodomy, and object sexual penetration. Transfer under subsection C is one of the only instances in all of Virginia law where an attorney (the Commonwealth's Attorney) in a case has more authority than the judge. Once transferred, juveniles will be considered as adults for all future crimes if a juvenile is convicted in circuit court.

One of the main policy decisions facing Virginia is the authority of Commonwealth's Attorneys and their level of discretion when determining to transfer cases to adult court. When a juvenile is transferred and convicted under subsection C, juveniles may not be considered for all of the dispositional alternatives available in the juvenile justice system. Study results indicate that the movement of juveniles to adult court could reduce opportunities for a juvenile to be treated or offered an array of programs designed specifically for youth offenders. The juvenile justice system offers a wide variety of competency and skill building services specially designed to address juvenile issues, such as substance abuse problems, mental health needs, and anger management classes. Services and programs vary greatly by locality. Professionals in the adult criminal justice system who do not routinely handle juvenile cases may not be aware of the numerous sentencing options available. Circuit Court judges do not receive detailed and intensive juvenile specific training and handle far fewer juvenile criminal cases, as compared to JDR court judges who predominantly hear juvenile cases and receive many hours of juvenile specific training. Commonwealth's Attorneys and their assistants typically do not receive much juvenile specific training. It should be acknowledged that prosecutors may seek additional training offered from outside approved training sources, such as the National District Attorney Association, the National College of District Attorneys, the Virginia State Bar or the Virginia CLE organization.

Instances may arise where a juvenile may be persuaded to plead guilty in the JDR court in order to avoid the possibility or threat by a Commonwealth's Attorney to transfer the case to the circuit court. Data received from the Virginia Criminal Sentencing Commission shows that of all twelve crimes eligible for transfer, robbery is transferred more often than any other crime. In Fiscal Year 2006, a total of 313 juveniles were transferred to and convicted in circuit court and a total of 411 juveniles were transferred and convicted in Fiscal Year 2007. Large increases were seen from Fiscal Year 2006 to Fiscal Year 2007 for both robbery (94 to 140) and homicide offenses (15 to 33), respectively, followed by assault offenses, narcotics, and larceny offenses.

Prior to the transfer law change in 1996, transfer reports were completed for a total of 1,168 juveniles in Fiscal Year 1996. After the transfer statute was amended in 1996, the requirement for transfer reports was greatly reduced. Whereas before, a transfer report was required in every instance, now transfer reports are only required for those that proceed under subsection A. All applications for transfer under subsection B and C are done without a transfer report being written. The number of transfer reports has steadily decreased to a low of 257 in Fiscal Year 2007, but this should not be seen as proof that prosecutors are making fewer requests for transfer. Now, many times when they request a transfer, a report is no longer required.

Numerous articles reviewed in the national literature dealt with recent findings by the medical community regarding adolescent brain development, juvenile behavior, and the moral culpability of adolescents. The American Medical Association, American Psychological Association, American Psychiatric Association and the American Academy of Child and Adolescent Psychiatry all argue that the adolescent brain is still developing even at ages sixteen and seventeen, which impacts a juvenile's ability to make reasonable decisions. The American Bar Association has also taken a stance on the juvenile death penalty issue and stated that for social and biological reasons, teens have increased difficulty making mature decisions and understanding the consequences of their actions.

A recent study, focused on transfer laws, was conducted in August of 2008 by the Office of Juvenile Justice Delinquency Prevention (“OJJDP”) and states that “although the limited extant research falls far short of providing definitive conclusions, the bulk of the empirical evidence suggests that transfer laws, as currently implemented, probably have little general deterrent effect on would-be juvenile offenders.” In Florida, for example, the report indicates that their state has experienced a 34% increase in recidivism rates of juvenile offenders who had been transferred to circuit court. Another recent study, conducted by the Center for Disease Control, also supports the OJJDP research and states that “available evidence indicates that transfer to the adult criminal justice system typically increases rather than decreases rates of violence among transferred youth.” Both of these reports provide support for the need to re-evaluate Virginia’s transfer laws.

In determining whether revisions to the transfer statute would be necessary or beneficial, it is crucial to evaluate available options, as well as review past and current endeavors. Many states in the last few years have decided to re-examine their transfer statutes. During the past few Sessions of the Virginia General Assembly, legislation has been introduced regarding juvenile offenders, but none to revise the transfer statutes. The General Assembly has passed significant legislation in the last few years that may demonstrate a change in attitude toward serious juvenile offenders. For instance, during the 2008 Session of the Virginia General Assembly, legislation was passed that allowed juveniles, convicted as adults in circuit court and given a “blended sentence,” i.e. sentenced to serve time both in a Juvenile Correctional Center and the Department of Corrections, to gain earned sentence credits while serving the juvenile portion of the sentence in a juvenile correctional center. At its December 9, 2008, meeting, the Commission 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.

Juvenile Records

The access and availability of juvenile records has continuously been expanded and amended over the years. The Code of Virginia specifies how juvenile records are treated in Title 16.1,

specifically §§ 16.1-300, 16.1-301, 16.1-305, 16.1-306, and 16.1-309.1. . These statutes require that juvenile records be available to certain individuals based on the type of criminal offense involved. Three groups of entities maintain criminal juvenile records: law enforcement, courts, and the DJJ, all of which have authority to disseminate confidential records and reports to certain additional entities. Currently, a large number of agencies, individuals, and members of the public, such as school personnel and private organizations, have a right to juvenile records, including some that are “confidential.”

Study results indicate that the availability of juvenile records may impact a juvenile’s ability to get a job, join the military, and go to college. Many study participants voiced concerns that Code sections related to juvenile records are confusing and difficult to locate. Specifically, statutes related to the confidentiality of juvenile records and exceptions as to confidentiality were identified as being titled in a confusing manner and not located beside one another in an orderly way. Furthermore, study participants had concerns regarding the growing list of individuals with access to confidential juvenile records.

During JDR court observations, staff noted how differently localities treat the placement of the court docket for juvenile cases. Some jurisdictions opt to post the entire docket in the hallway of the courthouse or hold open court sessions, while others announce or televise case information prior to the hearing. The treatment of the docket by publicly posting sensitive and identifying information appears to be in conflict with certain statutes regarding the confidentiality of juvenile records. Additionally, study results indicated that a discrepancy existed in the interpretation of § 16.1-305(A), related to whether juvenile records that are “open to inspection” may be photocopied. This issue was also discussed and reviewed by the Supreme Court’s Committee on District Courts. In their review, it was determined that a change to the statute was necessary to authorize copies of juvenile records. Legislation was introduced to address this problem during the 2009 Session of the Virginia General Assembly by Senator Henry Marsh.

Court-Appointed Counsel: Training and Compensation Rates

The Virginia Indigent Defense Commission (“IDC”) is responsible for developing and certifying training courses for attorneys seeking eligibility to serve as court-appointed counsel, as well as maintaining a statewide list of certified court-appointed counsel. In addition, in certain localities chosen by the General Assembly, the IDC is primarily responsible for providing representation to indigent defendants. As part of the obligation for providing training, the IDC provides multiple continuing legal education opportunities for juvenile defenders statewide. In response to the claim made by the ABA report that quality representation is lacking in delinquency proceedings, staff reviewed training opportunities and curriculum to determine both the availability and quality of training. During the past few years, numerous juvenile specific training opportunities were sponsored monthly in both the Richmond and Northern Virginia areas by the IDC. The Virginia CLE organization, the Virginia State Bar, the Mid-Atlantic Juvenile Defender Center, and local bar associations also sponsor similar juvenile specific trainings throughout the year, some of which are available online. All attorneys in Virginia must complete twelve continuing legal education credits per year, two of which must be in ethics. If an attorney wishes to do court-appointed work, he must complete a basic six hour course in criminal law. If an attorney desires to handle juvenile delinquency court-appointed cases, he must complete an additional four-hour introductory course in juvenile criminal law and JDR court procedures. After initially meeting these qualifications, an attorney shall maintain his eligibility by completing at least four hours of juvenile specific training every other year. Staff attended the initial four hour juvenile certification training sponsored by the IDC for court-appointed attorneys in order to personally observe training materials and procedures.

Based on information received from the IDC, as of December 9, 2008, a total of 1,187 court-appointed attorneys were eligible to accept cases. This number reflects a reduction of 255 court-appointed attorneys since April 2007. The shortage of court-appointed counsel by court district is a concern for more than half (49 of 89) of JDR court judges as indicated in the judicial survey.

The IDC has informally identified several likely reasons that cumulatively contribute to the decline:

- Juvenile law is complicated and representation of juvenile clients can take a lot more time, making these cases less cost effective for private attorneys;
- Juvenile cases were not initially included in the fee cap waiver legislation;
- Many juvenile lawyers tend toward guardian ad litem cases (which are paid hourly, with no cap); and,
- The first recertification cycle for attorneys first certified in 2005, when the list was set up, occurred in 2007. The initial certification could be waived by statute. Many waivers of the certification requirements were granted to attorneys who had been practicing. The language for recertification does not specifically provide for the same waiver. Many attorneys did not want to meet the recertification requirements for the juvenile cases.

Sections 19.2-163 and 16.1-267 of the Code of Virginia provides the fee schedule for court-appointed counsel. Virginia’s compensation rate when representing a juvenile client is capped at \$120 per charge in JDR court and \$158 in circuit court. The JDR court, in its discretion, may waive the limitation of fees and authorize additional compensation up to the supplemental statutory waiver amount when the effort and time expended warrant such a waiver. A request can also be made for additional compensation exceeding the supplementary statutory waiver, referred to as an “extraordinary waiver.” The presiding judge determines whether the amount is necessary and justified, and, if so, forwards the request for final approval to the chief judge. By contrast, a circuit court does not have the authority to grant a supplemental waiver to the \$158 limit for juvenile cases that exists for that court, although an extraordinary waiver is theoretically permissible.

During the 2008 Session of the Virginia General Assembly, House Bill 536, introduced by Delegate Christopher Peace, and identical to Senate Bill 610, introduced by Senator Kenneth Stolle, addressed the issue of compensation for

court-appointed counsel. The bill sought to provide increased compensation in district courts for attorneys defending juvenile offenders. Compensation for court-appointed counsel, especially for juveniles, has long been a problematic issue, as counsel receives only \$120 per juvenile charge. The bill proposed allowing court-appointed counsel to request a waiver on the compensation cap if they are appointed to defend a juvenile in district court for an offense that would be a felony punishable by confinement of 20 years or more if committed by an adult. The amount of the waiver is dependent on the charges being defended and the effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warranting such a waiver.

The maximum amounts of the waivers initially were to be identical to the waivers available to attorneys representing adults in circuit court. Due to budget issues, the House Appropriations Committee decreased the proposed waiver amount by over 50%. Court-appointed counsel may now only seek up to a total of \$650 inclusive of the \$120 already given, as compared with the amount up to \$1,235 available for defending adults for identical charges.

Even though this issue was addressed during the 2008 Session of the Virginia General Assembly, the increase for JDR court cases was nominal and totals about half of the amount available if attorneys represent adults in both district and circuit court for an offense that would be a felony if committed by an adult. Seventy-three percent (65 of 89) of JDR court judges indicated that they feel that the rate of compensation is a "serious problem." Participants from all of the focus groups each cited compensation rates as a major problem. A survey of surrounding states was conducted by staff to compare Virginia's compensation rate of court-appointed attorneys in juvenile justice cases. Out of the six states surveyed, Virginia has the lowest reimbursement rate 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 in Virginia 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 allows an hourly rate of \$90 with a fixed cap of \$120 per case and allows an extra \$120 in misdemeanor and simple felony cases, or an extra \$650 for more serious felonies with a judge's discretion. An additional waiver may be requested, but requires the approval of both the presiding judge and the chief judge of the court. (There is an unlimited 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.

A close examination of the court-appointed counsel fee schedule reveals that juvenile court-appointed counsel receive considerably lower compensation rates than court-appointed counsel who represent adults. Attorneys who are appointed to defend a juvenile in district court for an offense that would be a felony if committed by an adult, can request a waiver on the compensation cap up to a total of \$650. By means of illustration, if an attorney is representing a juvenile for a first offense felony distribution of narcotics in a JDR court, counsel could potentially receive up to \$770 (The authorized amount of \$120, plus the supplemental waiver amount of \$650). Yet, if an attorney is representing an adult for the same

offense, counsel could potentially receive up to \$2,325 because the initial statutory fee provided for adults is ten times higher than the fee for representing juveniles. If the court-appointed counsel appeals the case to circuit court, a supplemental waiver is not available. This discrepancy may create a monetary incentive for an attorney to not appeal a JDR court juvenile felony conviction to circuit court in some cases. In the previous illustration, the attorney handling the narcotics distribution case, who received \$770 in JDR court, could only receive an additional \$158 for appealing the case to the circuit court, and re-trying it. This could lead the attorney to discourage his client from pursuing the appeal.

Information was obtained from the Office of the Executive Secretary of the Supreme Court of Virginia to ascertain how often these extraordinary waivers are requested and granted in all courts. During Fiscal Year 2008, a total of 6,126 waiver requests were submitted by court-appointed counsel, of which a total of 5,952 were approved, for a total cost of \$1,845,171. Of the 5,952 waivers approved, a total of 1,080 were for juvenile offenders, resulting in a cost of \$185,442. For the first quarter (July 1 – September 2008) of Fiscal Year 2009 a total of 1,250 extraordinary waivers were requested in all courts. Of those, 1,227 were processed for payment above the statutory waiver amount. No extraordinary waivers were requested for juvenile delinquency appeals in circuit court during this time period.

Many focus group participants voiced concerns regarding the complexity of forms necessary to request waivers and the lack of promotion regarding statutory changes made in 2008 to expand criteria and funding for permissible waivers. Additionally, concerns were raised regarding the exclusion of CHINS and termination of parental rights cases for waiver of fee caps. Available options to remedy issues associated with court-appointed compensation rates include the following proposals:

- Allow compensation amounts in juvenile cases to be identical to adult cases;
- Provide waivers for juvenile circuit court appeals that are at least identical to JDR waivers; and,

- Include CHINS and termination of parental rights cases as eligible for waiver of fee caps.

Disproportionate Minority Contact

Disproportionate Minority Contact (DMC), a problem which gained recognition as early as 1988, is a major concern in Virginia, as well as throughout the country, affecting many social and criminal justice systems. There is racial disparity at almost every level of the juvenile justice system in Virginia. Based on a report of Virginia's Advisory Committee on Juvenile Justice (VACJJ), the Commonwealth's juvenile justice system faces important challenges, especially DMC within the juvenile justice system. According to VACJJ, although only 23% of the juvenile population are minorities, they represent disproportionate percentages throughout the juvenile justice system: minorities comprise 38% of intake offenders, 45% of intake and technical and delinquent offenders, 50% of secure detention admissions, and 66% of commitments to juvenile correctional centers. In 2002, blacks constituted 16% of the national juvenile population, but 29% of the national delinquency caseload. With regard to juveniles in corrections, the Virginia juvenile custody rate (per 100,000) for whites is 143, while the rate for blacks is 715 and 273 for Hispanics. According to the DJJ, the number of black and Hispanic youth in Virginia detention homes and correctional centers continues to increase while the numbers for white youth have been decreasing. In addition, these minority juveniles were more likely than white juveniles to be held under locked arrangements.

In 2003, Virginia began a partnership with the Annie E. Casey Foundation to implement the Juvenile Detention Alternatives Initiative (JDAI). Currently, the following eight jurisdictions are involved in the initiative: Newport News, Hampton, City of Richmond, Petersburg, Hopewell, Lynchburg, Bedford City and County, and Norfolk. JDAI seeks to detain only the juveniles who most present a public safety risk prior to trial. According to DJJ, the goals are to protect public safety, reduce the unnecessary or inappropriate use of secure detention, and to re-direct public finances to more effective purposes. Most participants in the focus groups supported JDAI. While only one locality that staff visited was actively involved as a test site for JDAI, most of the other localities utilized the

JDAI detention assessment instrument, which helps determine whether an apprehended juvenile should be detained. A few problems were noted by focus group participants with either JDAI or the assessment instrument that included:

- The JDAI 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 expend many hours on a shift to apprehend a juvenile and some admit to avoiding arresting juveniles because the process is too complicated and the amount of time required takes away from their regular patrol duties.
- A lack of communication and collaboration exists between the numerous local departments and agencies that handle juveniles.

Barriers to Service

Many of the local focus groups cited specific problems that hinder services to juveniles in the community. The following section summarizes programs, initiatives, and services that have suffered budget cuts or elimination over the past years:

Substance Abuse Reduction Effort (SABRE): Several rural localities mentioned the usefulness of the SABRE program, which is no longer in existence. 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 that mentioned this program cited its successfulness and need for the program to be reinstated.

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 by providing social and

delinquency services. One of the localities visited was able to continue their Office on Youth and its cases, services, albeit at a much lower capacity, through federal grants. The localities stated that when the offices were fully funded and operational, the services they provided greatly helped the needs of juvenile delinquents and CHINS

Local Corroboration: 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, CSUs, nonprofits 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.

Truancy and CHINSup

During the 2006-2007 school year, there were 39,099 attendance incidents reported statewide. This number represents 10.51% of all discipline, crime, and violence incidents reported. The Virginia Department of Education (DOE) reported that the efforts of attendance officers, school resource officers, school child study/student assistance teams, Family Assessment and Planning Teams (FAPT), and juvenile courts are frequently used by all localities to address truancy. According to the DOE's study, they found the following regarding the activity of truancy intervention:

- School resource officers (SRO) were reported as routinely involved in attendance cases in 22% of school divisions, occasionally involved in 48%, and rarely or never involved in 30%.
- Community-based agencies were reported to be routinely involved in intervention efforts by 24% of school divisions, occasionally involved by 48%, and rarely/never involved by 16%.
- Thirty-nine percent of school divisions reported that inter-agency reviews were conducted before approaching juvenile court intake, 23% reported reviews occurred after a judicial hearing but before disposition, and 13% reported the reviews occurred as part of the juvenile court intake process. Another 16% reported variable

timelines, depending on case circumstances.

- In exploring the process and criteria used by school divisions to determine whether to pursue court action against a child or a parent, it was found that fewer than half the attendance officers interviewed reported consulting with a school board or city/county attorney, 15% reported always consulting and 33% reported consulting “as needed.” Just over one-third reported having written procedures or guidelines for pursuing court action; upon closer examination, however, guidelines reviewed typically were found to be re-statements of statutory requirements rather than detailed procedures or guidance documents. Where the attendance officers consulted with a school board or city/county attorney, the school divisions were three times as likely to report written guidelines.

- Eighty-six percent of school divisions reported filing at least one CHINSup petition in the past school year; the number filed ranged from 1 to over 200. Fifty-nine percent of school divisions reported filing at least one complaint against a parent; the number of such complaints ranged from 1 to 92. Educational neglect complaints were reported to have been filed by only ten school divisions.”

The study also noted that 66% of attendance officers surveyed said there were inadequate personnel to respond to truancy cases in a timely and intensive manner. The study concluded that, because practices addressing truancy were so diverse throughout the state, localities could benefit from receiving model guidelines about comprehensive approaches to the issue of truancy.

Focus group participants stated that they believed one of the contributing factors of truancy was due to a perceived notion regarding the value of a high school diploma. This was, in part, related to the number and types of available vocational or technical education programs. Participants voiced concerns that students in high schools without these programs felt that a high school diploma served little or no purpose in the “real world.” In 2007, the Virginia General Assembly passed House Bill 2039 and Senate Bill 1147, which required the DOE to establish technical education degrees. The DOE is currently amending their standards of accreditation to include these technical degrees, which will allow non-college bound students the opportunity to

obtain a meaningful diploma for employment.

As was noted by most study participants, either by discussion or through survey, truancy negatively impacts the juvenile justice system. Truant juveniles are often sent to court and are more inclined to become delinquent than non-truant youth. Chronic truant juveniles are seven times more likely to be arrested than non-truants. In 2005, almost 4,900 petitions were referred to court for truancy. Seventy-one percent of those were petitioned to court as CHINSup. As reported in the DJJ Data Resource Guide, CHINS and CHINSup complaints increased 4% from FY05 to FY07. Additionally, focus group participants voiced concerns regarding the long time requirements necessary to exhaust remedies through the school before coming to court on a petition.

The Commission on Youth is currently conducting a two-year extensive study regarding truancy and plans to issue a detailed report with recommendations regarding similar issues as discussed above. Available options to remedy issues associated with truancy and CHINSup include the following proposals:

Parental Involvement and Accountability

A major issue, often linked with truancy and CHINSup cases, is that of parental involvement and accountability. All of locality focus groups cited 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, and children subject to CHINS and CHINSup orders. Another pattern of parental instability was the lack of parental ability to enforce school attendance. Again, this was mentioned as a problem that starts early on at the elementary school level. A suggested corrective method would be to sanction the parents of elementary aged truant children. This option 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. Reducing the compulsory school attendance age was also a suggestion discussed by many focus groups participants.

In response to the many complaints and problems regarding parental accountability, staff reviewed current law to determine the adequacy and availability of penalties. Based on this analysis, staff identified ten statutes in the Code of Virginia that address parental accountability, with some allowing for jail time: § 18.2-371, §§ 22.1-254, 22.1-255, 22.1-258, 22.1-262, 22.1-263, 22.1-265, 22.1-267, 22.1-279.3 and § 16.1-241.2. Data obtained from the Virginia Compensation Board for FY03 – FY08 indicated that at least a handful of localities are making use of the statutes that allow parents to be criminally charged for repeatedly allowing their children to be truant. It appears that, should judges opt to punish parents, there are adequate statutory remedies available.

B. Recommendations

As a result of numerous meetings with juvenile justice professionals and a thorough review of survey results and written comments, staff identified the following best practices as potential methods to address specific issues within the juvenile justice system. Due to the wide range of issues cited as problematic and the fact that many overlap, each of the best practices listed below may not be applicable statewide because of the diverse nature of localities in Virginia. This list of recommended best practices was disseminated to all relevant agencies to consider for adoption. It is underscored that these best practices were not formally adopted by the Crime Commission, but rather approved for dissemination to the professional juvenile justice community for consideration.

Commonwealth's Attorneys' Services Council

- The Commonwealth's Attorneys' Services Council should provide additional juvenile specific training for Commonwealth's Attorneys and their assistants.

Supreme Court of Virginia

- The Court should develop a policy on how the juvenile docket is treated, e.g. whether it should be posted, televised, announced;
- The Court should provide additional mandatory juvenile specific training and resources for circuit court judges;

- The Court should develop a policy on whether juvenile records "open to inspection" include copies of documents (§ 16.1-305(A)); and,
- Courts should consider the establishment of preventative programs and collaborative approaches to truancy at an early age.

The Department of Juvenile Justice

- CSU Directors should maintain a list of resources, programs, services, and options, specific to each jurisdiction, to assist JDR and circuit court judges in the identification of available dispositions;
- The Department of Juvenile Justice should encourage the participation and implementation of truancy teams in localities;
- The Department of Juvenile Justice should encourage and provide programs and services that focus on family and underlying issues that contribute to juvenile delinquency;
- The Department of Juvenile Justice should have a systematic approach to address underlying family issues for "at-risk" juveniles;
- The Department of Juvenile Justice should clarify the definition of "informal diversion" and include its use in trainings for CSU staff;
- The Department of Juvenile Justice should develop public information guides for parents and juveniles to be made available in JDR courts and CSU offices to aid them in the navigation of the overall juvenile justice system and in procedures specific to their locality;
- The Department of Juvenile Justice should work with localities to develop initiatives addressing the transportation difficulties that parents and children may face when it comes to attending programs and services;
- The Department of Juvenile Justice should encourage localities to offer programs/services to neighboring localities, when possible, or develop a statewide system for diversion opportunities so that programs/services can be consistent throughout the state;

- The Department of Juvenile Justice should consider providing each CSU with direct access to a substance abuse counselor and mental health psychologist;
- The Department of Juvenile Justice should continue the use of the Detention Assessment Instrument unless more effective measures can be identified; and,
- The Department of Juvenile Justice should give priority to evidence-based programs for alternatives to detention.

Due to the current budget issues facing Virginia, the following list of best practices were identified as part of the study as having significant fiscal impact and therefore were not reported to specific agencies or addressed by the Crime Commission.

- Courts and schools should establish preventative programs and collaborative approaches to truancy at an early age;
- Schools should offer vocational programs for non-college bound students;
- Localities should explore the implementation of truancy teams, truancy court, community truancy meetings and truancy dispute resolutions;
- Programs and services for juveniles also need to focus on family issues;
- Priority should be given to evidence-based programs for alternatives to detention;
- A systematic approach to addressing underlying family issues for “at-risk” juveniles should be considered (social services, mental health, substance abuse, domestic violence, etc.);
- Allow compensation amounts in juvenile cases to be identical to adult cases;
- Provide waivers for juvenile circuit court appeals at least identical to JDR court waivers;
- Include CHINS and termination of parental rights cases for waiver of fee caps;

- Follow-up on results and recommendations from DCJS Juvenile Services Section Three-Year DMC plan;
- Follow-up on criminal justice and public safety recommendations identified by the Commission on Youth truancy and CHINS study;
- Fund CSU standards requirement for staff and personnel (example: substance abuse counselor);
- Fund transportation of detained youth;
- Fund mental health screenings of juveniles;
- Fund delinquency prevention programs; and,
- Fund community-based juvenile services.

Conclusion

Overall, the study on juvenile justice revealed that professionals who participate in the juvenile justice field are satisfied with the way the system works. Several issues were identified throughout the entire study, both at the state and local levels, that may require more attention and improvement, such as truancy, mental health, and various barriers to service. One of the greatest concerns held by many juvenile justice practitioners was the disparate treatment juveniles receive based on the locality in which they reside. Funding for juvenile programs and services was also a major issue in many localities. Because the juvenile justice system is so complex and different from that of the adult criminal justice system, it would be beneficial for juveniles and their families to have information provided to them that would aid in the navigation of the overall juvenile justice system, including practices and procedures specific to their locality. While it is impractical to implement statewide requirements and oversight for all of the identified problematic issues, some aspects of the system could be remedied by increasing collaboration within localities, as well as neighboring localities, implementing programs and services that focus on family issues, and mandating juvenile specific training for individuals who work with juveniles on a limited basis.

Additionally, revisions to Title 16.1 were identified as part of the study, both substantive and technical, that may be necessary to clarify certain statutes, such as CHINS.

One of the difficulties in studying the transfer and certification of juveniles to circuit court was the lack of data on juvenile offenders who have been transferred to circuit court. Currently, data is not available from the Supreme Court of Virginia to determine, by Code subsection, the number of juvenile cases transferred to circuit court. Because of the data limitations with the Court's tracking of juvenile offenders, it is unable to provide a true count of juveniles who committed a crime prior to turning age eighteen and are transferred, but who are eighteen years old when their case is heard in court. This scenario creates a "black hole," in that juveniles are not being counted because they are no longer considered juveniles at the time of trial. Also, DJJ cannot provide a breakdown of crimes for which a court has ordered a transfer. Data is only available for cases where there has been a transfer report, meaning that the transfer occurred under subsection A of § 16.1-269.1. Any transfers made under subsections B and C are not currently documented in detail by DJJ. As there is no statewide databank that captures all of the transfer data by jurisdiction, there is no means, short of going to each locality to review juvenile case files in Commonwealth's Attorneys' offices, to obtain this information. As part of the continued study in 2009, staff plans to continue to review literature related to adolescent brain development, conduct a fifty state review on other states' transfer laws, and obtain additional transfer data from the Supreme Court and DJJ.

Acknowledgements

Over the three years that the Crime Commission has been involved with this detailed, lengthy study, we have received assistance from hundreds of people who generously gave their time, insights, and opinions. This study absolutely would not have been possible without their help. So many professionals working in this area willingly provided their particular insights that it is impossible to adequately thank everyone who made this report possible.