



Virginia State Crime Commission

HJR 113
Virginia's Juvenile Justice System

October 14, 2008



Overview

- Study Mandate: HJR 136 & HJR 113
- Current Trends
- Methodology
- Problems Addressed by General Assembly
- Study Issues & Recommendations

Study Mandate



- House Joint Resolutions 136 (2006) and 113 (2008) patroned by Delegate Moran, directed the Crime Commission to study Virginia's juvenile justice system.
- The resolutions specifically directed focus on:
 - Recidivism;
 - Disproportionate minority contact;
 - Improving the quality of, and access to, legal counsel;
 - Accountability in the courts;
 - Diversion;
 - School issues and truancy;
 - Mental health services;
 - Rehabilitation and re-entry methods; and,
 - Review of Title 16.1.

JDR Philosophy



- The purpose of the Juvenile & Domestic Relations Courts (JDR) is to act "in the interests of the child," with a focus on rehabilitation rather than punishment.
- "This [JDR] law shall be construed liberally and as remedial in character...to effect the beneficial purposes herein set forth." (§ 16.1-227).

Current Trends



- Nationally, juvenile crime has dropped since the mid 1990's. Between 1994 and 2003, all juvenile arrests fell by 18%. In comparison, adult arrests rose 1% during that time.

Source: Office of Juvenile Justice and Delinquency Prevention, Juvenile Offenders and Victims: 2006 National Report.

- In Virginia, there were 59,281 total juvenile arrests in 1996 and 38,599 in 2006 (34% drop).

Source: Virginia State Police, Uniform Crime Reports.

Current Trends



- The juvenile population in Virginia, aged ten to seventeen, rose from 637,222 in 1990, to 816,204 in 2006 (28%). Virginia's juvenile complaints, as reported by local CSUs, has recently remained consistent with the number only increasing from 90,137 complaints in 2003 to 91,679 in 2007 (1%).

Source: Virginia Department of Juvenile Justice (DJJ), Data Resource Guide: Fiscal Year 2007.

- "The practice of transferring juveniles for trial and sentencing in adult criminal court has, however, produced the unintended effect of increasing recidivism, particularly in violent offenders, and thereby of promoting life-course criminality."

Source: OJJDP's Juvenile Justice Bulletin. "Juvenile Transfer Laws: An Effective Deterrent to Delinquency?" 2008.

Methodology



- Conducted a national and state background literature review;
- Gathered relevant juvenile justice statistics;
- Attended statewide juvenile justice meetings, trainings, and conferences;
- Met with juvenile justice professionals;
- Analyzed Title 16.1;
- Conducted focus groups in nine localities;

Methodology



- Observed JDR Court proceedings;
- Convened JDR judge workgroup;
- Distributed statewide survey of JDR judges; and,
- Partnered with the College of William & Mary Public Policy graduate students to conduct statewide surveys of:
 - Diversion programs;
 - Court Service Unit Directors; and,
 - Mental health and substance abuse services.

Methodology: Focus Groups



- Conducted focus groups at various court districts with the following representatives:
 - Advocate Groups;
 - Commonwealths' Attorneys' Offices;
 - Court Services Units (Intake and probation officers);
 - Diversion Program Coordinators;
 - JDR Judges;
 - JDR and/or Circuit Court Clerks;
 - Law Enforcement Agencies;
 - Public Defenders and/or Court Appointed Attorneys;
 - Student Services/Education and/or SRO Officers; and,
 - Other individuals that would contribute to goals of focus group.

Methodology: Focus Groups



- Focus group locations:
 - 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.

Methodology: JDR Judge Survey



- Response rate: 76% (89 of 117)
- Survey categories included:
 - Quality of representation, 16.1 statutory provisions, truancy and CHINS, transfer, DMC, juvenile services and diversion opportunities, and judicial decision-making.

Methodology: CSU Director Survey



- Response rate: 100% (35 of 35)
- Survey categories were similar to JDR judge survey, but sections were added for:
 - Mental health and substance abuse services and programs.

Problems Addressed by General Assembly



- Serious juvenile offenders
 - Juveniles, convicted as an adult and sentenced to an active term of incarceration with DJJ, and followed by an active term of incarceration with DOC, gain earned sentence credits while serving the juvenile portion of the sentence in a juvenile correctional center.
- Court-appointed counsel compensation
 - 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.
- County or city offices are able to supplement compensation of public defenders.
- Representation may not be waived without a consultation with a lawyer if the charge is a felony.

Problems Addressed by General Assembly



- Commitment of minors; appointment of counsel and guardians ad litem.
 - A court shall appoint a GAL and counsel for a minor in involuntary commitment hearings and proceedings for admission for inpatient treatment of a minor fourteen years of age or older over his objections.
- Juvenile certification; only certified upon conviction.
 - Juvenile court retains jurisdiction over a juvenile for subsequent offenses, even if the juvenile's case was transferred, if the juvenile is ultimately found not guilty.
- The Omnibus Mental Health Bill
 - Changed the criteria for emergency custody orders, temporary detention orders, and involuntary commitment proceedings.

Study Issues: Title 16.1



- Title 16 was replaced by Title 16.1 in 1977.
 - Approximately 100 statutes in Title 16.1, Chapter 11 (JDR Courts) of the Code of Virginia are related to juvenile justice.
 - Majority of the 100 statutes relate to criminal procedure in delinquency proceedings.

Study Issues: Title 16.1



- **Problem:** Study results indicate that some statutes are confusing, hard to locate, and conflicting:
 - 55% (47 of 86) JDR judges and 54% (19 of 35) CSU Directors reported that statutes were "somewhat adequate."
 - Focus groups also voiced similar concerns that Title 16.1 needed to be reviewed for consistency and consolidation.

Study Issues: Title 16.1



- For instance, JDR judges identified several sections in the Code that are problematic and in need of clarification:
 - CHINS and CHINSup;
 - Expungement and confidentiality of records; and,
 - Possession of alcohol and loss of driver's license/privileges.

Study Issues: Title 16.1



- **Remedy:** Reorganize Title 16.1, Chapter 11.
- **Options:**
 1. Appoint a workgroup, agency, or commission to re-codify Title 16.1; or,
 2. Review specific sections that need to be reorganized or amended.

Study Issues: Transfer

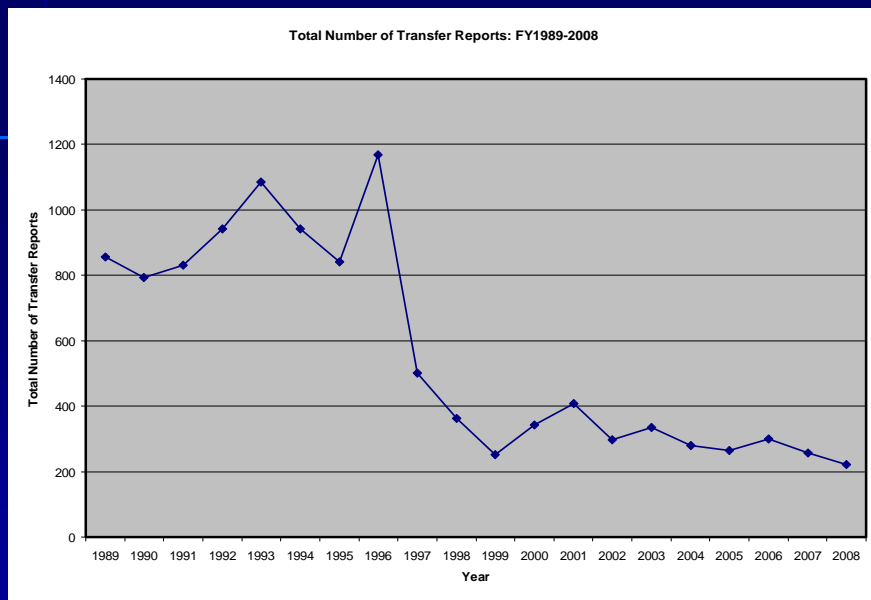


- Transfer statutes (§ 16.1-269.1) were amended in the mid-1990's:
 - Provided a distinction between automatic and discretionary transfer eligible crimes from JDR to Circuit Court;
 - Reduced eligible age for transfer from 15 to 14 years old;
 - Expanded list of criteria in the consideration of transfer in subsection A; and,
 - Removed judicial discretion to allow for prosecutorial discretion in subsection C for twelve crimes – 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.

Study Issues: Transfer



- DJJ Transfer Reports Data:
 - Transfer reports account for the number of juveniles *considered* for transfer in each fiscal year under subsection A.
 - Numbers leading up to 1996 represent all transfer reports (because there were no subsections).
 - Data from 1997 to present represent subsection A only.
- Beginning July 1, 2009, the Supreme Court database will have the ability to separate the three subsections under which a juvenile can potentially be transferred.



Source: Virginia Department of Juvenile Justice; Data represents number of juveniles considered for transfer under § 16.1-269.1 subsection A.

Study Issues: Transfer



- Virginia Criminal Sentencing Commission provided data for juveniles who were transferred and convicted in Circuit Court FY06 and FY07.
- There were 411 juveniles tried and convicted as adults in FY07 as compared to 313 in FY06.
 - Large increases were seen from FY06 to FY07 for both robbery (94 to 140) and homicide offenses (15 to 33).

Study Issues: Transfer



Convictions for Juveniles Tried as Adults by Type of Offense: FY2007

	Type of Offense	Percent of Total Convictions*	Total Number of Convictions*
1	Robbery offenses	34.0%	140
2	Assault offenses	15.8%	65
3	Narcotics offenses	9.9%	41
4	Larceny offenses	9.9%	41
5	Sexual assault offenses	9.2%	38
6	Burglary	8.7%	36
7	Homicide offenses	8.0%	33
8	Fraud	1.7%	7
9	Hit & Run, Abduction, License, Weapons, Sex crime	Less than 1% each	10

Source: Virginia Criminal Sentencing Commission

* N= 411

Study Issues: Transfer



- **Problem:**
 1. Study results indicate that transfer is being used as a plea bargaining tool, requiring juveniles to plead guilty to avoid being transferred to Circuit Court;
 2. When transferred under subsection C, juveniles are not provided with all remedies available in the juvenile justice system; and,
 3. 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.

Study Issues: Transfer



- **Remedy:** Re-examine transfer statutes
- **Options:**
 1. Allow JDR judges sole discretion to transfer, with the exception of mandatory transfer crimes under subsection B;
 2. Remove certain crimes eligible for transfer in subsection C (robbery and malicious wounding);
 3. Allow Circuit Court judges the ability to use reverse waiver for subsection C transfers;
 4. Allow device to restore juvenile's status (currently, once transferred, juvenile is always considered an adult); and,
 5. Clarify § 16.1-269 (B): "hearing to take further evidence" either to allow de novo hearings on suitability for transfer or only allow completely new evidence to be presented.

Study Issues: Transfer



- **Best Practices:**
 1. Provide additional, mandatory juvenile specific training and resources for Circuit Court judges;
 2. Provide juvenile-specific training for Commonwealths' Attorneys; and,
 3. CSU should maintain a list of resources and options to assist Circuit Court judges with available dispositional options.

Study Issues: Juvenile Records



- **Problem:**

1. Availability/accessibility of juvenile records impact a juvenile's ability to get a job, join the military, and go to college.

2. Study results indicate that the Code sections related to juvenile records are confusing and difficult to locate.

Study Issues: Juvenile Records



- **Remedy:** Amend statutes.

- **Options:**

1. Require that the Court retain records for only violent felonies in § 16.1-306;

2. Combine confidentiality of juvenile records sections for dealing with confidentiality of juvenile records (DJJ, courts, law enforcement) into one;

3. Re-title §§ 16.1-300, 16.1-301 and 16.1-305 to clarify confidentiality of records are for juveniles; and,

4. Incorporate § 16.1-309.1 (Exception as to confidentiality) with the above sections.

Study Issues: Juvenile Records



■ Best Practices:

1. Court should develop a policy on how the juvenile docket is treated.
 - Whether it should be posted, televised, open courtroom, announced, etc.
2. Court should develop a policy on whether juvenile records “open to inspection” include copies of documents (§ 16.1-305(A)).

Study Issue: Compensation Rates



- **Problem:** Juvenile court appointed attorneys receive considerably lower compensation rates than those attorneys who represent adults.
 - VA’s compensation rate, per charge, is capped at \$120 in JDR court and \$158 in Circuit court.
 - 55% (49 of 89) of JDR judges feel there is a problem with the number of court-appointed counsel available to accept cases; specifically, the vast majority indicate there is a “moderate” to “serious” level of shortage in their court district.
 - VA Indigent Defense Commission maintains a current list of certified court appointed counsel and also provides training.
 - Total of 1,187 eligible to date; a reduction of 255 since April 2007.

Study Issue: Compensation Rates



- Court appointed attorneys can request a waiver of this cap up to \$650 in JDR court (almost half of adult rate).
- Monetary incentive to not appeal a JDR felony conviction to Circuit Court in some cases.
- 73% (65 of 89) JDR judges feel that rate of compensation is a "serious problem."
- Focus groups all cited this issue as a major problem.

Study Issue: Compensation Rates



- **Remedy:** Amend statutes
- **Options:**
 1. Allow compensation amounts in juvenile cases to be identical to adult cases (§ 19.2-163).
 2. Provide waivers for juvenile Circuit Court appeals at least identical to JDR waivers (§ 19.2-163).
 3. Include CHINS and termination of parental rights cases for waiver of fee caps (§ 16.1-267).
- **Best Practice:**
 1. Trainings for attorneys should include overview of statutory changes regarding waivers made in 2008.

Study Issue: Truancy and CHINSup



- **Problems:**
 1. Disagreement on whether truancy belongs in the courts.
 2. Truancy cases negatively impact the JDR court docket.
 3. Truancy cases take a long time to exhaust school process before coming to court on a petition.
- In 2005, almost 4,900 petitions were referred to court for truancy. Seventy-one percent of those were petitioned to court as CHINSup (children in need of supervision).

Source: 2005 Annual Report of the Virginia Juvenile Justice Advisory Counsel.
- CHINS/CHINSup complaints increased 4% from FY05 to FY07 (DJJ Data Guide).

(Note: CHINS refers to services and CHINSup refers to supervision)

Study Issue: Truancy and CHINSup



- 82% (68 of 83) of JDR judges sentence juveniles to detention "occasionally" to "sometimes" who are in contempt of court for failure to obey a court order to attend school.
- 47% (38 of 81) of JDR judges believe there is a current problem with CHINSup provisions that could be improved.
- 53% (44 of 85) of JDR judges and 54% (19 of 35) of CSU Directors report that school failure to expeditiously send to the courts cases for truancy is a "moderate" to "serious" problem in their court district.

Study Issue: Truancy and CHINSup



- **Remedy:** Address truancy issues.
- **Options:**
 1. Determine if truant juveniles should be adjudicated as delinquent.
 2. Follow-up on criminal justice and public safety recommendations identified by Commission on Youth study.
- **Best practices:**
 1. Courts and schools should establish preventative programs and collaborative approaches to truancy at an early age.
 2. Schools should consider offering vocational programs for non-college bound students.
 3. Localities should explore implementing truancy teams, truancy court, community truancy meetings, and truancy dispute resolutions.

Study Issue: Parental Accountability



- 27% (23 of 85) of JDR judges and 49% (17 of 35) of CSU Directors report that holding parents/guardians accountable for not sending children to school is a "moderate" problem in their court district.
- Focus groups cited lack of parental involvement and parental accountability as factors that contribute to truancy.

Study Issue: Parental Accountability



- There are statutes that address this, 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; § 16.1-241.2 (contempt of court).
- Data from the Compensation Board indicates that at least a handful of localities are making use of them.

Study Issue: Barriers to Service



- Problems:
 1. Consistency of services across the state
 - Varies greatly by locality and available resources, especially for rural localities.
 2. Funding
 - Lack of stability and consistency impacts staffing, equipment, and community programs/services
 - 78% (26 of 33) of CSU Directors feel that funding for overall services is a “moderate” to “serious” problem.

Study Issue: Barriers to Service



■ Problems:

3. Confusion of JDR system
 - Difficult to navigate, terms are different than for adult court (adjudication v. conviction).

4. Transportation (to and from programs and services)
 - 84% (28 of 33) of CSU Directors feel that transportation for overall services is a "moderate" to "serious" problem.
 - Focus groups cited regional disparities, especially among rural areas. Some localities share services, so while services may be available, travel to them may be problematic.

Study Issue: Barriers to Service



- Remedy: Support community programs and services; Amend statute (§ 16.1-260).

■ Options:

1. Increase/stabilize community based program funding (VJCCCA);
2. Fund and encourage prevention strategies, parenting skills courses, and evidence-based practice programs;
3. Allow more than one diversion opportunity for felonies; and,
4. Clarify that unlimited diversions are available for misdemeanors.

Study Issue: Barriers to Service



■ Best Practices:

1. Programs and services for juveniles also need to focus on family issues;
2. DJJ should develop policy to clarify definition of informal diversion and include its use in trainings for CSU staff;
3. DJJ should develop public information guides for parents and juveniles navigating the juvenile justice system, and make them available in JDR courts and CSU offices;
4. DJJ and localities should develop initiatives to address transportation issues;
5. DJJ should encourage localities to offer programs to neighboring localities when possible or develop a statewide system for diversion opportunities; and,
6. DJJ should consider providing each CSU with a substance abuse specialist/counselor and mental health psychologist.

Study Issue: Disproportionate Minority Contact (DMC)



- Problem: Minorities are disproportionately represented at certain stages of the juvenile justice system (e.g. court intake, detention, and juvenile correctional center commitments).
- African-Americans are more than twice as likely to be committed to juvenile correctional centers.

Source: 2005 Annual Report of the Virginia Juvenile Justice Advisory Council.

Study Issue: Disproportionate Minority Contact (DMC)



- JDR judges were asked the extent to which DMC is a problem in their locality:
 - 45% (38 of 84) “not a problem”
 - 42% (35 of 84) “small problem”
 - 11% (9 of 84) “moderate problem”
 - 2% (2 of 84) “serious problem”
- 54% (19 of 35) of CSU Directors feel that DMC is a “moderate” to “serious” problem in their locality.
- Focus groups voiced little concern about the issue.

Study Issue: Disproportionate Minority Contact (DMC)



- **Remedy:** Continue to monitor and address DMC
- 74% (57 of 74) of JDR Judges and 63% (21 of 33) of CSU Directors rated the Detention Assessment Instrument (DAI) as a combination of “somewhat effective” and “very effective” in reducing DMC.
- DMC may result from school policies, targeting of crime-ridden neighborhoods, inability of the indigent to retain paid counsel, and lack of available prevention opportunities and alternatives to detention in economically deprived communities.

Source: 2005 Annual Report of the Virginia Juvenile Justice Advisory Counsel.

Study Issue: Disproportionate Minority Contact (DMC)



■ Best Practices:

1. DJJ should continue the use of the DAI unless more effective measures can be identified;
2. Priority should be given to evidence-based programs for alternatives to detention;
3. Systematic approach to addressing underlying family issues for "at-risk" juveniles (social services, mental health, substance abuse, domestic violence, etc.); and,
4. Review results and recommendations from DCJS Juvenile Services Section Three-Year DMC plan.

Miscellaneous Issue: Disparity Between DOC and DJJ Probation Officers



- **Problem:** Probation and Intake Officers at DJJ receive less benefits and have a higher turnover rate than Probation Officers at DOC.
 - While the salary pay bands are comparable, DOC Probation Officers receive almost double the amount of retirement benefits (VaLORS) than DJJ Probation Officers, 19% to 11%, respectively.
 - DJJ Probation Officers have more extensive core requirements and responsibilities than DOC Probation Officers.
 - Over the past five years, DJJ has an average of 11.24% of turnovers per FY compared with an average of 10.78% at DOC.
- **Remedy:** Provide DJJ Probation and Intake Officers with comparable benefits to their counterparts at DOC.

Miscellaneous Issue: Appeals to Circuit Court



- **Problem:** Inconsistency in Code.
- **Remedy:** Amend statute (§ 16.1-298).
- **Options:**
 1. No penalties are suspended pending appeal.
 2. All penalties are suspended pending appeal (post-dispositional detention, commitment as a serious offender, suspension of driver's license and participation in gang program).

Miscellaneous Issue: Previous DOC Time



- **Problem:** Juveniles who have served time in DOC are eligible for commitment to DJJ.
- **Remedy:** Prior time in DOC makes one ineligible for commitment to DJJ (§ 16.1-287)
 - Juvenile would return to DOC for future serious offenses.

Miscellaneous Issue: Misdemeanor Crimes



- **Problem:** Juveniles can be placed in post-dispositional detention for a Class 2 misdemeanor.
 - Examples: Hunting and fishing crimes, possession of alcohol on school grounds, driving without a license, inhaling paint or other fumes with the intent to become intoxicated, and disregarding signal to stop from law enforcement.
- **Remedy:** Limit eligibility requirement to Class 1 misdemeanors and felonies (§ 16.1-284.1)

Miscellaneous Issue: Unfunded Mandates



- **Problem:** Unfunded mandates
- **Remedy:** Provide funding or amend requirements
- **Examples:**
 1. CSU standards requirement for staff and personnel (example: substance abuse counselor);
 2. Transportation of detained youth;
 3. Mental health screening of juveniles;
 4. Delinquency prevention programs; and/or,
 5. Community based juvenile services.

Miscellaneous Issue: Gang Statutes



- **Problem:** Gang statutes are confusing.
- **Remedy:** Review and amend statutes.
- **Option:**
 1. Crime Commission staff is currently reviewing gang statutes.

Miscellaneous Issue: Sight and Sound Requirements in DOC



- **Problem:** OJJDP Act "Sight and Sound" requirements expire unless reauthorized by federal government.
- **Remedy:** If federal government fails to reauthorize OJJDP Act, Virginia can require the same sight and sound requirements.
- **Option:**
 1. Follow federal legislation to determine if the OJJDP Act is reauthorized.

Discussion