

Blueprints for Change:
Criminal Justice Policy
Issues in Virginia



Virginia Department of Criminal Justice Services
www.dcjs.virginia.gov

August 28-29, 2006
Charlottesville, Virginia



The Department of Criminal Justice Services (DCJS) is the state criminal justice planning agency in Virginia and is responsible for administering state and federal funds dedicated to improving state and local criminal justice practices, preventing crime and delinquency, and ensuring services to crime victims.

In its role as a planning agency, the Department convened six policy sessions over a two day period in August, 2006. The facilitated sessions explored six different leading edge criminal justice issues, chosen by the Department. Each three-hour session brought together a multidisciplinary group of executive-level participants who were selected because of their knowledge of the issue and their ability to advance the discussion of public policy related to the issue.

The discussions in these sessions, and the recommendations that emerged, are recorded in these policy papers.

In publishing these papers, DCJS hopes that they will stimulate further discussions by state and local decision makers and will provide useful guidance for making substantive statutory change where necessary, as well as for decisions on funding, and policy and program development.

The 2006 Blueprints for Change: Criminal Justice Policy Issues in Virginia documents are:

- **Disproportionate Minority Contact (DMC) with the Juvenile Justice System** •
- **Domestic Violence, Protective Orders, and Firearms** • **Drug Enforcement Status in Virginia** •
- **Enhancing Virginia's Campus Security and Safety** • **Mental Health Issues in Jails and Detention Centers** •
- **Regional Crime Information Sharing Networks** •

**For additional information on these documents, please visit the
Department of Criminal Justice Services website at: www.dcjs.virginia.gov/blueprints**

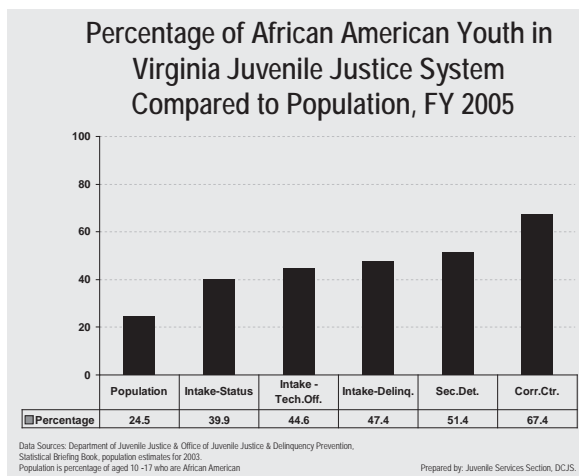
Disproportionate Minority Contact with the Juvenile Justice System



Disproportionate minority contact (DMC) with the juvenile justice system occurs when more juvenile members of minority groups come into contact with the juvenile justice system than would be predicted based on their numbers in the population within the community.

DMC is a national, state, and local problem. Sometimes it occurs when arrest, intake and adjudication decisions are based on criteria that are not racially neutral. Disproportionate minority contact is not necessarily based on racial discrimination. It can result from zero tolerance policies in schools, from enhanced enforcement in crime-ridden neighborhoods with higher minority populations, from the lack of availability of effective legal representation for indigent juveniles, and from lack of available prevention opportunities and alternatives to detention in economically deprived communities.

In Virginia and nationally, African American youth have been disproportionately represented at all stages in the juvenile justice system in comparison to their proportions in the juvenile population. In Virginia, African American youth constitute just one-quarter (24.5%) of the juvenile population aged 10-17, but two-thirds of admissions to juvenile correctional facilities. As the chart shows, they are overrepresented at all stages of the juvenile justice system and, at each step further into the juvenile justice system, the percentage of African American youth increases.



QUESTIONS FOR DISCUSSION

1. How can we protect the rights of all children who have contact with Virginia's juvenile justice system?
2. What should be done at the state level to assist localities in addressing DMC?
3. What actions can be taken at the local level to reduce DMC?
4. What information would be helpful to localities to increase understanding of the DMC issue?
5. Should we concentrate DMC reduction efforts in Virginia localities with the largest minority populations or should all localities be encouraged to address any existing problem?



Protect the Rights of Children by Improving Legal Representation

Improving the legal representation of children is important to protect their rights. Young lives are at stake, and everyone, including defense attorneys, needs to work harder to ensure that juveniles get fair treatment. There are two types of defense attorneys for indigent children: public defenders, who have more consistent training in representing juveniles and appear to provide better representation; and court-appointed attorneys, who need more training and an increase in compensation in order to be able to provide adequate representation. To improve representation by court-appointed counsel, policy makers need to recognize that Juvenile Court is not the same as Traffic Court and thus attorneys should not be compensated in the same manner. A court-appointed attorney receives the same compensation for a juvenile delinquency case as for a general district court case representing someone with habitual parking violations. Compensation of court-appointed attorneys in delinquency cases should be the same as for guardians *ad litem*, without a cap, with an in-court hourly rate and an out-of-court hourly rate.

Poor compensation of public defenders leads to high turnover. There is a reported disparity between compensation of public defenders and prosecutors, with public defenders receiving on average 23% less pay than prosecutors. To improve representation by public defenders, separate Juvenile Court caseload standards for them should be set, allowing them to know what is expected of them when representing indigent juvenile defendants. The Indigent Defense Commission (IDC) recently started increasing its training for juvenile defenders. Training for public defenders in juvenile court casework by the IDC is minimal at this point but is a step in the right direction.

Protect the Rights of Children by Increasing Accountability of Juvenile Courts

Another area in which inadequate training and case preparation time becomes evident is in the area of competency to stand trial. There are cases where competency to stand trial is an issue but the lawyers do not raise it, either because they do not know to raise it, or they do not spend enough time with the child prior to a hearing to recognize that it exists. There is no procedural or statutory requirement mandating that the Court Service Unit question competency at intake, so this is done intermittently and inconsistently.

In addition to increasing compensation and training of attorneys, Juvenile Courts should be *courts of record*, which would increase accountability and improve legal representation. As the system currently operates, any party appealing a decision in juvenile court will have a hearing *de novo* in circuit court, where all of the evidence must be presented anew. Since there is no record of the juvenile court proceedings, it is not possible to review them. This situation encourages a feeling of immunity on the part of attorneys representing kids – whatever is done in juvenile court can be undone in circuit court, so the attorneys are less responsible for the ultimate outcome. This perception ignores the real consequences to the juvenile, which sometimes includes a delay in provision of services.

Another way of improving outcomes for juveniles is to give Juvenile Courts continuing jurisdiction over committed children. The children's cases could be subject to review similar to the that required by the Serious Offender Statute¹ to ensure that the children are receiving the services they need. This would permit the Court to modify treatment programs and time as appropriate, based on the child's behavior in the system.

¹ Virginia Code § 16.1-285.1

More youth are being certified to Circuit Court than ever before and blended sentences are more common. Often a Circuit Court is not aware if the defendant is a child of 14 or an adult aged 50. The courts should devise a system to inform judges when there are youth awaiting processing in order to prompt them to expedite the hearings for these defendants.

In addition to the training needs of lawyers, there is a concern about substitute (often retired) judges who are not accustomed to the juvenile justice system and whose knowledge may be dated. These judges need training to increase awareness of juvenile justice issues and concerns.

Protect the Rights of Children by Ensuring Equal Access to Services

The Comprehensive Services Act (CSA)² was enacted in 1992 “to create a collaborative system of services and funding that is child-centered, family-focused and community-based when addressing the strengths and needs of troubled and at-risk youth and their families.” Funds from seven existing programs that were generally used to purchase residential and nonresidential services for children were pooled. The funds are directed to programs and services for “mandated” populations (DSS and Special Education). Any remaining funds then go to “non-mandated” populations (juvenile justice youth and youth with mental health issues but with access to Medicaid). A change in the *Code of Virginia* is needed to include juvenile justice youth in the mandated category so that these children have equal access to care because, once the needs of the mandated youth are met, there is seldom money remaining for non-mandated youth.

Additional changes to the Code are needed so that the Department of Social Services (DSS) is not able to return youth home from incarceration without services. If a child in foster care is committed to the Department of Juvenile Justice (DJJ), once custody transfers from DSS to DJJ, DSS does not see the youth again until he or she comes back into the community. Often DSS will place these youth back with their families, which wasn’t an appropriate setting before they went into DJJ custody.

Every stakeholder of the system should address how youth get into the juvenile justice system and how they are rehabilitated. Putting children into detention does not rehabilitate them; they are rehabilitated with appropriate services. By providing these services earlier, some problem behaviors, including delinquency, might be prevented.

The Annie E. Casey Foundation’s Juvenile Detention Alternatives Project report, “Consider the Alternatives,”³ is a good monograph on cost savings. Alternative placements can save localities money and the youth who are placed in alternative services are less likely to come back into the juvenile correctional system.

Professionals throughout the juvenile justice system must be sensitive to the cultural and language barriers that may play a role in a child being locked up. Some children are locked up because of miscommunication resulting from the language barrier. More bilingual services are needed for Hispanic children.

² *Virginia Code* § 2.2-2649

³ www.aecf.org/publications/data/4_consider.pdf

Involving Family Members in the Process can Reduce DMC

Family members should be involved in the juvenile justice process but are often left out. They need to be able to understand what is happening to their children and receive training on how they can help their children through the process and upon their return to their homes and communities after incarceration. Family members and community members need more learning opportunities; they can prevent youth from coming into the juvenile justice system or from returning to it. Resources in targeted areas must be increased to “help communities help their children.”

The juvenile justice system would benefit from the best practices court model implemented in the foster care and child dependency systems. This model enables localities to better identify problems, identify services and gaps, and identify areas of overlap within the system. With best practice strategies, appropriate professionals can be consulted when help is needed. Community members and professionals must come together to share ideas and collaborate on issues.

Families need help and guidance to deal with issues that are more appropriately handled at home. Courts are flooded with problems originating in schools that could better be addressed at home. Children leaving facilities must be engaged in their communities immediately upon return. Re-enrollment regulations, now finalized, require that children have a reenrollment plan in place within two days of leaving correctional facilities.

Involving Community Resources can Reduce DMC

The law enforcement officers present indicated that they want more communication about children they take into custody. They want feedback about outcomes in order to do their jobs more effectively; otherwise all they know is that, “Junior is back on the corner.” Law enforcement reform needs to focus on dealing with nonviolent youth differently. One forum participant offered that the Virginia Coalition for Juvenile Justice is an example of an organization that could help an interagency group with legislation to deal with DMC issues.

To cite poverty as a cause of DMC can paralyze people and limit discussion of the problem because everyone understands that poverty will not be eradicated any time soon. Juvenile justice system professionals must maintain focus in addressing DMC without thinking that we have to cure poverty to make progress. Poverty is just a part of the problem. The Commonwealth must seek short-term gains using practical solutions and available resources. Private organizations outside the system are needed to advocate for changes.

One way to deal with DMC locally is to use the available information. Data show where the high-risk populations reside. There are systems in place at the state and local levels to coordinate prevention efforts. The challenge is to commit to the earlier stage of prevention.

Group members expressed excitement at the initial discussion, but felt that in order to sustain momentum, there should be an infrastructure at the state level that supports the work of an interagency group and ensures that the recommendations coming from this policy summit can be implemented.

Local juvenile justice system stakeholders should tap into the strengths of their communities and recognize the informal leadership within those communities – faith-based organizations, community groups, etc. They should urge those informal leaders to share information and collaborate.

Rural localities would benefit from some guidance about how to deal with their kids, who are often too few in number to support a prevention or community-based intervention program.

Line staff in localities needs training on research-based best practices. Decision makers in localities need to be provided with information about how the detention alternatives programs being funded by some cities can save localities money in the long run by reducing the need for expensive detention placements. They need to be provided with information about how to sustain local programs once grant money ends.

Localities should be directed to their DMC statistics and those with minority overrepresentation should be asked to address their DMC and be provided with technical assistance in order to do so. The web page of the Juvenile Services Section of DCJS has a link to DMC data by locality, and could be used in determining the extent of the problem.

Making an Impact on DMC

In order to have the largest impact across the Commonwealth, DCJS and other funders and technical assistance providers should concentrate DMC reduction efforts in those Virginia localities with the largest minority populations **and** encourage all localities to address any existing problems.



RECOMMENDATIONS

Improve the legal representation and court processing of children

- Increase compensation for court-appointed attorneys to equal that of guardians *ad litem* without a cap and with an in-court hourly rate and an out-of-court hourly rate.
- Improve training for court-appointed attorneys.
- Raise awareness of the intricacies of juvenile court representation so that policy makers understand that representing clients in Juvenile Court is not the same as in Traffic Court and should not be compensated in the same manner.
- Set separate caseload standards for public defenders, making clear the expectations for lawyers representing juveniles in delinquency and status offense hearings.
- Make the juvenile courts *courts of record*.
- Give juvenile courts continuing jurisdiction over committed children.
- Provide training to retired/substitute judges.
- Provide bilingual services to Hispanic children and their families.

Continue to develop and enhance race-neutral assessment instruments

- The Department of Juvenile Justice should utilize software that reports daily to intake officers about their decisions, using standardized assessment instruments, to increase their awareness of the frequency with which they override the decisions suggested by the instrument.

Assess children's competency early in the process

- Implement a procedure to address competency at intake.

Involve families in prevention and when their children enter and leave the juvenile justice system

- Provide learning opportunities for parents to prevent children from entering the juvenile justice system.
- Ensure that families understand the process when their children do come into contact with the juvenile justice system.
- Provide training to families to assist reentry of children who are being released after confinement in the juvenile justice system.

Address needs of children who are certified to circuit court

- Make judges and clerks aware of whether juveniles, rather than adults, are awaiting trial in circuit court so that children can be processed quickly and appropriately.
- Provide training to circuit court judges about juvenile justice issues and concerns.

Provide funding for mental health services for children in the juvenile justice system

- Change the *Code of Virginia* to ensure that services to juvenile justice children are mandated under the Comprehensive Services Act.
- Change the *Code of Virginia* to require the Department of Social Services to provide uninterrupted services to children returning home from incarceration.

Establish a state-level Interagency group to share ideas and focus on issues

- Ensure that the group includes representation from sheriffs and other law enforcement professionals.
- Involve the Virginia Coalition for Juvenile Justice on legislative issues.

Commit to Prevention

- Commit funding and resources to prevention for children, families, and communities.



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