

# UNLOCKING THE TRUTH



11/10/2010

Real Stories About the Trial and Incarceration of  
Youth as Adults in Virginia

With a Foreword by R. Dwayne Betts

JustChildren

A Program of the Legal Aid Justice Center

The JustChildren program of the Legal Aid Justice Center is Virginia's largest children's law center and has staff in offices in Charlottesville, Richmond and Petersburg. For the past twelve years, JustChildren has been employing a range of strategies to improve Virginia's public education, juvenile justice, and foster care systems. Much of our recent juvenile justice work has focused on youth who are being tried or incarcerated as adults in Virginia. We have immersed ourselves in this issue by representing individual youth at different points in the system, gathering and reviewing data, talking to policymakers about the practice of transfer in Virginia, and meeting with families, community members, and attorneys. All of these experiences inform this report.

We would like to thank all of the youth, families, individuals, and organizations, in particular the Campaign for Youth Justice and Families & Allies of Virginia's Youth, who have taught us about this issue, shared information with us, and supported us in this effort. This report was made possible with funding from several private sources, including the Public Welfare Foundation.

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REAL STORIES ABOUT THE TRIAL AND INCARCERATION OF YOUTH  
AS ADULTS IN VIRGINIA

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## FOREWORD BY R. DWAYNE BETTS

I hated prison. While there, I woke up in the mornings dreaming of going home and then I went to sleep at night dreaming of being locked up. It was a condition, something that clung to my skin and cleaved to my sense of self. As a juvenile, in some of Virginia's worst prisons – how was I to see myself outside of the violence and insanity around me. Someone is reading this wondering what crime I'd committed to find myself within a prison with men. They will speculate that I must have committed the most violent offense. I didn't. My crime was carjacking, and though I cannot diminish the pain I caused my victim I know that the aim of the justice system has to have a longer vision than short-term torture. As last year's report *Don't Throw Away the Key* shows, most juveniles tried as adults in Virginia are tried for robbery and non-sexual assaults. These are juveniles who will be one day released back into society, and the ultimate question is will they be released better equipped to not be threats to society.

I remember my Judge. The Honorable Judge Bach, from the Fairfax County Circuit Court, looked at my family and me from the height of the bench and rustled a small sheath of paper moments before he sentenced me. "I am under no illusion that sending you to prison will help you, but you can get something out of it if you want," Judge Bach said. This is the truth that families know but society at large doesn't. There is no illusion that prison will help juveniles, and if it doesn't help juveniles, how can it be good for the society they will return to? What the Judge did not tell my family is what I would come home with. He did not mention the nightmares, he did not mention that inescapable memory of violence and pain. This report, *Unlocking the Truth: Real Stories About the Trial and Incarceration of Youth As Adults in Virginia*, talks about those nightmares, talks about them with a sense that by understanding this pain we, as a community, can make decisions that will help young people who have made terrible decisions. This is not about excusing crime, but about understanding how our current approach is counterproductive, and fails us all.

Twelve years ago, Dwayne Betts went from being an honor student who had never been in trouble with the law to a convicted felon in three months. At 16 he drove to Fairfax, Virginia, with a group of friends and used a gun to carjack a man sleeping in his car. He was arrested the next day and sentenced as an adult. Dwayne spent nine years in prison, but he would not let it ruin his life. Dwayne spent much of his time reading, working as a law clerk, and teaching himself Spanish. He began writing poetry. After his release he enrolled in Prince George's Community College. He recently graduated from the University of Maryland, where he served as the graduation speaker, and has been awarded the Holden Fellowship, a full tuition scholarship to attend graduate school at Warren Wilson College where he will study poetry. Dwayne is an accomplished author having published two books. His memoir *A Question of Freedom* earned him the 2010 NAACP Image Award for Literary Debut. *Shahid Reads His Own Palm*, a poetry collection, won the Beatrice Hawley Award. Dwayne is a spokesperson for the Campaign for Youth Justice, a national organization dedicated to ending the practice of trying, sentencing and incarcerating youth in the adult criminal justice system. Dwayne is also a devoted husband and father.

For more information about Dwayne and his many accomplishments, please visit:  
[www.rdwaynebetts.com](http://www.rdwaynebetts.com).

## INTRODUCTION

In November 2009, JustChildren released *Don't Throw Away the Key: Reevaluating Adult Time for Youth Crime in Virginia*, calling on Virginia policymakers to reexamine the state's system for trying youth as adults. The report examined mid-1990s' legislative changes, which dramatically curtailed the decision making power of juvenile court judges, and found the current state of the law to be overly broad, unbalanced, unfair, and ineffective. While the report effectively analyzed the history and law surrounding this issue, JustChildren advocates repeatedly received requests from policymakers and others around the state for the "real" stories of how the practice of trying and incarcerating youth as adults impacts youth, families, and communities. In an effort to deliver on these requests and to tell the untold and often overlooked stories of these youth, JustChildren has compiled this report.

## TRYING AND INCARCERATING YOUTH AS ADULTS IN VIRGINIA

In the mid-1990s, changes to the juvenile justice system in Virginia made the system more punitive by allowing younger youth (14 and over) and more youth to be tried as adults while limiting judicial oversight. Virginia now has three ways that youth can be tried in adult court:\*

- Judicial discretion transfer. Under Virginia Code §16.1-269.1(A), a judge makes the ultimate decision after a full and impartial hearing the result of which can be appealed by either party.
- Automatic or legislative certification. Under §16.1-269.1(B), youth charged with murder or aggravated malicious wounding have only a preliminary hearing in juvenile court before being automatically certified to adult court.
- Prosecutorial certification. Under §16.1-269.1(C), a prosecutor may request certification of a youth charged with one of 12 listed felonies. A juvenile court judge must certify the juvenile if probable cause is found during the preliminary hearing. While youth have no right to appeal under either Subsections B or C, prosecutors may circumvent a failure to find probable cause by seeking a "direct indictment" in the Circuit Court.

After reviewing more than a decade's worth of research about the effectiveness of transfer and certification laws and new scientific developments pertaining to adolescent brain development, Delegate Brian Moran asked the Virginia State Crime Commission ("the Crime Commission") to conduct a study of the Commonwealth's juvenile justice system.<sup>1</sup> This study has spanned several years and made significant findings related to Virginia's system of trying and incarcerating youth as adults. Most significantly, the Crime Commission has found:

- Trial and sentencing youth in adult courts results in increased recidivism;<sup>2</sup>
- Youth convicted as adults are offered fewer dispositional alternatives and youth specific therapeutic services than their peers who remain in juvenile court;<sup>3</sup>
- Juvenile justice professionals support reform of the system;<sup>4</sup> and
- The threat of trial as an adult is used as a plea bargaining tool by Commonwealth's Attorneys with little to no judicial oversight.<sup>5</sup>

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\* The Virginia Code defines the various routes to Circuit Court for juvenile offenders as both transfer and certification. "Transfer" typically refers to a judge's authority to transfer a youth to Circuit Court under Va. Code § 16.1 -269.1(A). "Certification" refers to the legislature's authority or the prosecutor's authority under Va. Code § 16.1-269.1(B) and Va. Code § 16.1-269.1(C). For clarity's sake, "transfer" will refer to both "transfer" and "certification" throughout the report, except when one or the other is clearly designated.

Other organizations and governmental agencies, including the federal Centers for Disease Control and Prevention<sup>6</sup> and the Office of Juvenile Justice and Delinquency Prevention<sup>7</sup> as well as the Virginia Department of Juvenile Justice<sup>8</sup> have engaged in independent analyses of the process and effects related to trying youth as adults. There is consistency across the board in all of the findings including those findings detailed in the stories contained in this report.

## A Timeline of Youth Transfer in Virginia

- 1994 legislative changes\*
  - Minimum transfer age reduced from 15 to 14;\*
  - A “once an adult, always an adult” provision was added so that youth transferred to Circuit Court for any crime, whether found guilty or not, remained under Circuit Court jurisdiction for all future charges and,\*
  - Juvenile and Domestic Relations District Court judges given more punitive sentencing options with the ability to sentence serious offenders for up to seven years or until the age of 21.\*
- 1996 legislative changes
  - Created “automatic” transfer for homicide and aggravated malicious wounding; and,\*
  - Created prosecutorial certification without judicial review for a list of specific felonies
- 2002 legislative change – Creation of blended sentence option for youth convicted as adults in Circuit Court
- April 2006 – Crime Commission study of juvenile justice system approved
- 2007 legislative change- “Once an adult, always an adult” provision amended to allow youth tried but not convicted in Circuit Court to regain juvenile status
- March 2008 – Crime Commission study extended to focus specifically on the issue of trying and incarcerating youth as adults
- October/December 2008 – Crime Commission releases data pertaining to transfer and results of survey of juvenile court professionals regarding policy proposals
- 2008 legislative change – Juveniles convicted as adults with blended sentences to both the Department of Juvenile Justice and the Department of Corrections to earn sentence credits while incarcerated in the Department of Juvenile Justice
- November 2009 – *Don’t Throw Away the Key: Reevaluating Adult Time for Youth Crime in Virginia* released
- December 2009 – Crime Commission study of juvenile transfer extended for another year
- 2010 legislative change - Youth age 14 or over who are being tried as adults must be held in a juvenile detention center pending trial *unless* the judge finds that the youth is a security or safety risk.

\*Virginia Commission on Youth, *Report to the Governor and the General Assembly of Virginia: Study of Juvenile Justice System Reform*, H. Doc. No. 37, at 33 (1996).

## METHODOLOGY

Over the summer and fall of 2010, JustChildren engaged in a listening tour across the Commonwealth of Virginia, meeting with youth, families, community members, and attorneys to gather stories about the trial and incarceration of youth as adults.

We convened two community forums in Richmond and Newport News in July and August respectively. Both forums were advertised publicly for close to a month beforehand through free calendar listings with media outlets, posting on [www.dontthrowawaythekey.org](http://www.dontthrowawaythekey.org) and Facebook, and circulation to various contact lists. Over thirty people attended the two forums. In addition, we held a telephonic community forum in October in which ten individuals participated, and we gathered personal stories from interviews with JustChildren clients, former clients, and families of clients. Finally, we reviewed letters from individuals incarcerated as youth in Virginia sent to the Campaign for Youth Justice and provided to JustChildren.<sup>†</sup>

Another facet of the listening tour included individual meetings with attorneys who regularly prosecute or represent youth in Juvenile and Domestic Relations District Courts and Circuit Courts across the Commonwealth. These conversations focused on the attorneys' experiences with transfer and certification in the jurisdictions in which they practice.

Additional information was gathered from defense attorneys during a two year long project of the Juvenile Law and Policy Clinic at the University of Richmond School of Law under the supervision of the Clinic Director, Melissa Goemann. During the 2007 – 2009 academic years, students involved in the clinic contacted juvenile defense attorneys by telephone and interviewed them about the trial and incarceration of youth as adults in Virginia. The students shared the content of these interviews with JustChildren.

Stories were gathered from more than fifty individuals in preparing this report. However, not all of those stories are being shared here. Instead, we have chosen to include a limited selection from individual speakers that we believe are representative of all that we learned.

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<sup>†</sup> In some cases, the names of youth and or family members have been changed at their request to protect their identities.

## WHAT WE LEARNED

The stories we heard across the Commonwealth confirmed many of our concerns about the trial and incarceration of youth as adults. Youth tried and incarcerated as adults in Virginia are put at a significant disadvantage upon their return home due to a lack of services and opportunities. Thus, these youth are often tempted to reengage in criminal activity. Young people are not safe when incarcerated with adults. Judicial oversight over the decision of which youth will be tried as adults is lacking, and Commonwealth's Attorneys have virtually unlimited authority over certification decisions for a wide array of offenses. As a result, Commonwealth's Attorneys have a lot of bargaining power when it comes to negotiating pleas, and local practice varies greatly from jurisdiction to jurisdiction in how this power is exercised. In sum, Virginia's system of trying youth as adults is unfair, unsafe, and ineffective.

### ❖ **Adult convictions undermine successful reentry.**

Parents and youth both relayed the difficulties youth face when forced to grow up in the prison system. Not only did they express that there was a lack of services to teach youth appropriate skills to succeed upon their release, but also that the youth missed out on real life experiences that could facilitate their transitions home.

Youth, families, and community members often experienced firsthand the fact that the consequences of an adult criminal conviction are vastly different, longer lasting, and more punitive than those that come with a juvenile adjudication. The collateral consequences of an adult felony conviction include: youth's criminal record becomes a public record<sup>9</sup>; trouble finding a job and loss of potential earnings<sup>10</sup>; difficulty obtaining a higher education because schools are unwilling to accept convicted felons and it is nearly impossible for them to qualify for student loans<sup>11</sup>; loss of the right to vote<sup>12</sup>; and ineligibility for public assistance and housing<sup>13</sup>.

Many of the individuals we spoke with also expressed concern about the troubling consequences this could lead to for their communities. The lack of opportunities for youth with adult felony convictions when they return home can lead to future criminal behavior and decreased public safety.

### ❖ **Adult correctional institutions are not safe places for young people.**

Fears about the safety of youth incarcerated with adult inmates were repeatedly expressed. Individuals noted that youth are often subject to physical, sexual, and emotional assault when housed in the general population of adult correctional facilities. On the other end of the spectrum, family members told of their concerns about the practice of isolating youth or placing them in solitary confinement to protect them from adults.

### ❖ **There is a lot of variation in local practice around making certification decisions.**

All of the individuals we spoke with told vastly different stories about the trial and treatment of youth as adults across jurisdictions. The time and attention paid to the decision to try a youth as an adult often varied from jurisdiction to jurisdiction. In some jurisdictions, if a youth is charged with a certifiable offense, Commonwealth's Attorneys will attempt to certify the case to Circuit Court seemingly without considering the individual facts or circumstances. In other jurisdictions, Commonwealth's Attorneys only

attempt to certify or transfer the most serious cases or cases involving older defendants. Thus, similar youth charged with similar offenses are facing extremely dissimilar outcomes based on the jurisdiction in which they are tried. We were told about very young first offenders who engaged in schoolyard fights being threatened with transfer and other youth facing trial as an adult for stealing a bicycle from another youth. While these cases were not the standard across the Commonwealth, they reveal the inconsistencies present in our current system.

Defense attorneys also repeatedly noted feeling that the wrong youth were being tried as adults. First time offenders and youth who could have benefitted from the rehabilitative services available in the juvenile justice system were being sent to Circuit Court and the adult criminal justice system. All the prosecuting attorneys we spoke with expressed a desire to see the “right” youth tried in adult court. However, the same attorneys varied in their definition of the “right” youth and the process they each used to identify these youth.

### ❖ **Unequal bargaining power produces unjust results.**

A majority of defense attorneys expressed frustration with the intrinsic unfairness of Virginia’s prosecutorial certification statute. They reported the unequal bargaining position this gave Commonwealth’s Attorneys and the defense bar’s inability to pursue a meaningful defense for their young clients who were facing such serious consequences. Stories about the use of the threat to certify a youth’s case to Circuit Court as a plea bargaining tool were repeated across the state by defense attorneys. Many of the prosecutors and former prosecutors we spoke with admitted to this practice or knowledge of the fact that their peers were doing it. The defense attorneys also raised concerns about the lack of judicial oversight over the significant decision to try a youth as an adult.

In many jurisdictions, it was reported that judicial transfer hearings under Virginia Code §16.1-269.1(A) are rarely held. Instead, Commonwealth’s Attorneys are making the decision as to which youth should be tried as adults through their discretion under Virginia Code §16.1-269.1(C). In one instance, a defense attorney described appearing before a judge in a transfer hearing and having the opportunity to plead a case for why the youth should not be tried as an adult as few as one or two times a year. Youth in those jurisdictions are not receiving the benefit of a fair and impartial juvenile hearing where all the facts and circumstances are taken into consideration prior to being tried in Circuit Court.

In addition to those findings noted above, the following concerns were regularly repeated across Virginia and are important to note. Many individuals expressed frustration with the Commonwealth’s willingness to treat young people as adults when they commit crimes while recognizing the inherent differences between youth and adults in other areas of the law. The state recognizes that youth are too young to vote, drink or serve alcohol, serve in the military, or marry, but it fails to recognize that youth should also be treated as youth when they get into trouble with the law. Those surveyed felt that the state needed to act with more consistency.

Lastly, a majority of the defense attorneys, families, and community members we spoke with noted the disproportionate numbers of poor, African-American youth being tried as adults across the Commonwealth.

\* \* \* \*

The stories that follow unlock the truth behind the statistics and data reported by the Virginia State Crime Commission and our 2009 report, *Don't Throw Away the Key: Reevaluating Adult Time for Youth Crime in Virginia*. But the anecdotes, data, and research all point in the same direction: it's time to reevaluate Virginia's system of trying and incarcerating youth as adults.

## PROBLEMS ASSOCIATED WITH REENTRY

Adult convictions undermine successful reentry.

### Mother of a Youth with an Adult Felony Conviction

- ❖ It's like you never truly pay for your crime. Once you get out, you don't pay for your crime. You pay until the day you die.

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

Virginia State Crime Commission, *HJR 113: Virginia's Juvenile Justice System*, (Dec. 9, 2008) available at [http://vscc.virginia.gov/CrimeCommission/December%209%202008/HJR113JuvenileJusticePolicies\\_files/frame.htm](http://vscc.virginia.gov/CrimeCommission/December%209%202008/HJR113JuvenileJusticePolicies_files/frame.htm) quoting Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, Office of Juvenile Justice and Delinquency Prevention Juvenile Justice Bulletin (Aug. 2008).

### Letter from an Individual Sentenced at the age of 17 to Serve a 68 year Prison Sentence in Virginia

❖ I had to learn fast in an adult system...[there was] no mercy because of my age. I've seen it all. I know what hard time is like, but I don't know what life is like beyond these walls. I've never had a real job. I don't even know how to drive a car. I hear guys talk of marriage, being in love...I can't relate to this. I'm almost 31 years old and I've never been in a relationship. **All I know, all I've experienced was prison, is prison....** I went up for parole after serving about 12 years [of my] sentence as a youthful offender. I was denied [then and in three subsequent years] solely because of the 'serious nature and circumstances of youthful offenses.' My institutional record is commended every year, [with] no violent history.... My release plans are solid. [I have] a place to go [in a] viable

environment. I have strong family support [and] a job lined up.... I am worthy of early release but the parole board can't get past my youthful offenses.... [This] is about a second chance at life, to experience all the things I dream about. I have earned this. I am not asking the State for a handout.

### Father of a Youth Tried and Convicted as an Adult at 17 for his First Offense

- ❖ It seems like the state of Virginia just doesn't care.
- ❖ Here's a kid, he knows no life...when he comes out, he's got a felony, never had a job. Once they put them in, they want 'em to be grown men but because they aren't grown men, they don't act the way the guards or the facility think they should, and they get a bunch of charges that down the road they pay for.

## Eastern Virginia Defense Attorney

- ❖ In a jurisdiction where I formerly practiced, youth were often being threatened with certification as an adult for statutory rape even though the sex had been consensual.
- ❖ Turning state's evidence can get you out of certification as an adult.
- ❖ **Prior to the recent change in the law, youth being tried as adults were going to jail automatically. These youth were housed separately from the adults but were not receiving any kind of educational services including special education services. The only education available to them was a GED program with the adult inmates. I had one case in 10 years of experience where a youth awaiting trial as an adult was allowed to stay in the detention center. This was decided by a substitute judge. I told my clients in this situation, you are going to adult jail and need to prepare for this.**

## Mother of a Youth Convicted as an Adult at age 17 and Released at 24

- ❖ **It's been the little things that she doesn't know. How to write a check, little things like that. There have been plenty of hurdles and there are plenty to come.** She's trying to work anywhere that will hire her, but so many won't because of her record. ... She's also taken one course at a community college and signed up for a full course load this fall. She aspires to go to a four year college, but right out of prison she had to jump on whatever she could get.

## Law Student and Former Volunteer at an Alternative School

- ❖ I worked with kids reentering the community and trying to figure out what they would do. Got the sense from many of the kids that they felt they really had nowhere to go. One of the students would get excited about things but then stop and say no wait I don't think I can do this, I have a felony. Seeing how other people perceived them. Seeing how they continued to suffer from the consequences of their mistakes and their experiences.

## Individual Convicted as an Adult at 17 and Released from the Adult System at 24

- ❖ I don't think I deserved to be tried as an adult. I just feel like there's such a difference between the two systems that if I had been tried as a juvenile, it would've been more like rehabilitation and lesson learning than just punitive punishment. If you're not an adult, it's not fair to try you as an adult.
- ❖ I can't get a job anywhere. I'm lucky to have this job. I can't get a job, I can't go into the military, I can't vote. **It doesn't really make me sad, but it bothers me that I'm limited in my future because of something I already served time for in my past.**

## **Adult Mentor who is a reverend and Father of Six Adult Children. He Served as a Big Brother to a Young Man who was Arrested at the Age of 14 for his First Offense and Tried as an Adult.**

- ❖ I feel Jim is a young black male now caught up in a legal system not really looking out for his best interest nor [taking] the time to investigate the history of this young man....My greatest fear about what has happened is that this criminal system is doing the opposite of what it is designed to do, and Jim will end up being another angry young black male with no dream and no future. Because in his mind society has demonstrated that he is of little value. **It's hard to believe we have a justice system that is designed to strip a young man of his self-worth at such a young age and call it rehabilitation.** When and where does common sense come into play?

## **Mother of a Youth Convicted as an Adult at age 17 and Released at 21 With Suspended Adult Time**

- ❖ When they leave the house, we don't have an idea what they're walking into. The world is corrupt. They're getting influenced by older kids, they're at a vulnerable stage and they don't know any better. To get charged with a crime that an adult was involved in and have the child get the same sentence as the adult ... I think the adult should be held a little more responsible.
- ❖ He's still being judged. Look at your background, your schooling, it's hard to even get a job at a fast food restaurant. I wish that the system wasn't so quick to take these kids off the street and put them behind bars. Some kids that have some mental issues or stronger issues, we need to get them help other than taking away their life and making it even harder when they get out.
- ❖ **He feels like dirt. That's how my son feels. Like people don't want you, people are going to judge you.**

## **Northern Virginia Juvenile Sentencing Expert**

- ❖ Adult probation doesn't have the right services even for a 21 year old youth who has been institutionalized for years.

**“[T]ransfer policies have generally resulted in increased arrest for subsequent crimes, including violent crime, among juveniles who were transferred compared with those retained in the juvenile justice system. To the extent that transfer policies are implemented to reduce violent or other criminal behavior, available evidence indicates that they do more harm than good.”**

Angela McGowan, et al., U.S. Department of Health and Human Services, Center for Disease Control and Prevention, *Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System (2007)*, Summary, at 9, available at <http://www.cdc.gov/mmwr/PDF/rr/rr5609.pdf>.

## **Individual Convicted as an Adult at 17 and Released at 21 with Suspended Adult Time**

- ❖ As soon as I went in the courtroom for arraignment, I heard them talking and I asked my lawyer 'What are they talking about trying me as an adult?' And I was like wow, how am I going to be able to get a job now? It was like my whole life was going down the drain.
- ❖ I can't even get a job, I've been trying every day, no one responds. It hurts because I'm like, what was the juvenile system for? It was supposed to help me, it was supposed to build me up and transition me, but now I'm just collecting cardboard just to have a little change in my pocket.
- ❖ **Every time I put in an application they're judging me because I'm a felon. They don't want to get to know the real you, the entire you, they just want to know are you a felon. And then once they find out you're a felon they think you're a bad person.**

## **Current Middle School Teacher**

- ❖ When we get to a child who has been incarcerated, the child needs special help or a special program and counseling. **These children are being set back and they need to be brought back.** And if you take a daughter out of the world at 15 and they come back at 40, what do they do? I think education needs to be looked at to help the situation before they get incarcerated but also during, in order to get out and get back into society. It's crazy to think that someone can come back with no chance.
- ❖ How can you have a child locked up in a facility and not think about rehabilitation? That should be part of the whole situation. I don't see how rehabilitation wouldn't be a part of public safety anyway. **You're not throwing someone in a dungeon forever, they are going to come home eventually.**

## **Member of Criminal Justice Reform Organization and Former Educator**

- ❖ Look at how many more things are felonies than even ten years ago. Not only is it more terrible for our kids to carry the label; it's much easier for them to carry the label.

## SAFETY CONCERNS

Adult correctional institutions are not safe places for young people.

### Father of a Youth Tried and Convicted as an Adult at 15

- ❖ I'm retired military. I'll let you know that I have never been afraid of anything in my entire life, ever. When my son started going through this process, I was afraid, I was scared to death. I didn't know what to expect, what to anticipate, and I became very emotional.

### Former Prosecutor Currently Practicing as a Defense Attorney

- ❖ When I was a prosecutor, the decision to certify or not certify a youth was made by the Assistant Commonwealth's Attorney on duty the morning the youth was arraigned. Lack of information isn't the issue, decisions are being made to win. The Commonwealth's Attorney is not charged with the duty of making a decision that is best for the kid.

#### **A minor in Virginia cannot do the following without parental consent:**

- Buy or use legal tobacco products;
- Buy, use, possess, or serve alcohol;
- Get a tattoo;
- Marry;
- See an "R" rated movie or movie preview;
- Vote; or,
- Use a cell phone – even with a hands-free device – while driving on a highway.

Va. Code Ann. § 18.2-386.2 ; 21 U.S.C § 158; Va. Code Ann. § 18.2-386.3; Va. Code Ann. § 20-48; Va. Code Ann. § 18.2-386; Va. Code Ann. § 24.2-403; Va. Code Ann. § 46.2-334.01(C1).

- ❖ **A counselor at a Department of Juvenile Justice facility who used to work in the Department of Corrections once told me that a kid would be victimized in under a week if they were sent to the Department of Corrections. This is barbaric. I have told this to Commonwealth's Attorneys and they don't care. The last time I checked, forcible sodomy was not a penalty for criminal behavior.**

### Youth Convicted as an Adult at the Age of 15 and Released at Age 20 with a Suspended Adult Sentence

- ❖ I feel like youth should be given more opportunities while they are incarcerated. I just think that the staff, officers, and counselors should be more dedicated to trying to help everybody rather than just standing around. **Also, if you are waiting for court [in an adult jail] and are inside a room with someone who might be a pedophile or whatever, your chances for rehabilitation might be destroyed just by what happens in that room with an older inmate.**

- ❖ I think I had a mandatory certification, but to be honest my attorney at the time was a court-appointed attorney ... he really didn't do too much. He didn't explain anything to me, it was just a

real confusing situation, especially when my family would come to talk to me and I couldn't even describe what was going on.

- ❖ **Looking back now, I really was somewhat scared. A lot of the things I was getting into, especially since I didn't understand what it was to be respectful to another man or something of that nature that could get you into a lot of trouble. Messing with the older guys – they've been to the prison before, they could have housed me with traffic offenders or stuff like that, but they put me in a place when a majority of the guys had been there and back, it just really wasn't a good situation.**
- ❖ I wish I could tell you how many applications I turned in, Cici's pizza is the only one that even spoke to me. It's disappointing, but I don't mean to really complain because I guess a lot of people don't have jobs.

I went to the DMV, I applied to vote – I knew what was going to happen - they sent me a letter saying I couldn't because I had a felony. It's extremely frustrating. I just feel like they lock you up to reform you, to treat you and such and to get you back on the right track, but I was just 15 years old when I committed my crime and I was labeled as an adult. I'm labeled a criminal felon now for the rest of my life for something I did when I was 15 years old.

- ❖ I'm smarter than this. But there are the guys who really are not that smart and wouldn't know what to do with themselves [once they get out]. I mean, I know how to sell drugs, and it probably would be easier for me to go out and get a couple ounces and sell it, instead of hustling every day looking for a job. It's hard. I'm just glad that I'm smart enough that I know that that's not what I want to do.

## **Mother of a Youth Convicted as an Adult at 16 and Currently Serving Time in Adult Prison**

- ❖ As a mother of an incarcerated child in the adult prison, I had the worst experiences of my life. I would like to share with you what happened when my child was put through the adult criminal system.

John was 16 years old at the time. Even though I am John's mother and have legal rights in every other system where he is considered a minor, I was not allowed any access to information about my son through all of this because he was considered an "adult". This "adult" would cry to me and ask me why they keep transferring him around. He was in three different jail facilities totaling at least 7 moves in a year and a half.

During one visit, John was sobbing loudly with no holding back, his tears running down on his face, his body shaking. On his face was the look of a child who is scared and does not know what to expect. The "unknown" is the most scary part. Put yourself in his shoes as a child in an adult jail or prison. On the other side of the window, I could only watch and cry for my son, I could not touch, could not hug, or give him comfort. This horrible image will stay with me forever.

I always wonder: is he safe? Is he experiencing the sexual, physical, or emotional abuse that I have heard about that young inmates experience when they are placed in adult prison? I was scared and concerned for John, so next day after that visit, I called the jail and asked to speak with the captain, to explain the situation of John's mental health. His response was "This is a jail, this is not a summer camp, he's in here for a reason". I was appalled by his responses. **The sad thing is, I can't do anything for my child. I feel so helpless, hopeless, and devastated that I cannot help and protect my child....**

This whole experience taught me that nobody cares what happens to John, or other children in the adult prison. Tragically, research has shown the adult inmates often prey upon the young: between 13% - 21% (depending upon sex) of all substantiated victims of inmates-on-inmates sexual violence in jails in 2005 and 2006, were youths under the age of 18. Should our system of "rehabilitation" really be a place that is so harmful for John? I fear that his "rehabilitation" is actually placing him in harms way and forcing him to endure abuses that will only haunt him later. I fear that he will turn into an angry child who I will not recognize and who has no hopes or dreams and no opportunities for the future.

Here is the question I want to ask you- whose child would be next? Could it be your child, your grandchildren, your nephew, your friend's child, or your neighbor's child. Put yourselves in these shoes. What decisions would you make for your child? How would you want your child to be treated? The consequences [are] not minor- I know because I'm still walking this long, hard road. I hope no parents have to go through what I had to go through. (Excerpts from a letter)

### **Mother of a Youth Who Served Time in an Adult Jail**

- ❖ As soon as he went to adult jail, everything changed. I really wasn't concerned at first, I said, "Well he'll get his studies in there. We're talking four weeks before school ended." **I asked him, "Are you reading anything?" He said, "I'm not reading anything, we got murderers and everything in here. I'm watching them."**

### **Clinical Nurse Specialist with Experience Working with Youth and Individuals with Serious Mental Health Needs**

- ❖ In my line of work we have a gentleman who is a guard at [a local adult] jail and he was speaking to me with tears in his eyes about the young boys who start crying when the lights go out at 6 o'clock. Issues that just hurt my heart terribly. He had to transfer out himself because of the cries that he heard and he can't get to every part of the jail to protect these young people. Hard thing for him to deal with because he had heard from some of the youth what was happening to them. Not only physical assaults but sexual assaults.

## Child Advocate Relaying a Story that was Shared with her by a Family Member of a Young Person

- ❖ Another story having to do with someone who was transferred is a young man who was put in adult jail at the age of 16. Good student, not causing any problems, but because he had been transferred he was given the choice of being in isolation or held in the general adult population. He was concerned about his mental health if he was in isolation, so he “chose” to be in the general adult population.

## Grandmother of a Youth Convicted as an Adult and Currently Serving Time in Virginia’s Largest Adult Prison

- ❖ It was the first time he was in trouble. And he took a plea agreement even though we had asked him not to because it was a first time offense. Now he's in prison, he has a five year sentence. He's 16 at this time. He's in Greensville. For some time he was being held in solitary because he was young and they didn't know what to do. I emailed the warden at the facility and within two days he was moved because I questioned why he was in solitary. He said he'd rather be in the general population than there alone. I know there have been incidences of children who have committed suicide in these facilities and that was a great, great fear. This is a place that does executions and here he is at 16 with the worst criminals - I don't think children should be incarcerated like that. They should be with children of their own age.

The kids that have really fallen through the cracks are the kids who are in the adult system. Facilities are overcrowded. **You have kids who are with pedophiles and rapists. They**

**aren't separated from these people, they are sleeping in a room with them sometimes.** If we had a person who was in our home who was a pedophile or had raped a kid they'd have us downtown for child abuse. How can the state take children and put them in that environment?

### According to the most recent data available, African American youth in Virginia represented:

- **22.8% of the entire youth population**
- **44.2% of youth at intake**
- **53.8% of youth at detention**
- **66.7% of youth at commitment**
- **81.8% of youth convicted by adult courts in the custody of the Department of Juvenile Justice**
- **In the same year, white youth made up only 10.8% of youth convicted by adult courts in the custody of the Department of Juvenile Justice.**

Barry Green and Sam Abed, *Juvenile Justice Trends; Provisions Related to Transfer to Circuit Court*, Presentation to Virginia Association of Commonwealth's Attorneys, at 9 (July 31, 2009) available at [http://www.djj.state.va.us/Resources/DJJ\\_Presentations/pdf/CA%20presentation-finalbarrysam.pdf](http://www.djj.state.va.us/Resources/DJJ_Presentations/pdf/CA%20presentation-finalbarrysam.pdf).

## VARIATION IN LOCAL PRACTICE

There is a lot of variation in local practice around making certification decisions.

### Northern Virginia Defense Attorney

- ❖ Basically, the rule seems to be, if there is any bleeding, even from a minor scratch or abrasion, then it is charged as malicious [wounding]...**The element of intent or other surrounding circumstances are apparently not given any thought, much less due consideration.**

**“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.”**

Virginia State Crime Commission, *HJR 113: Virginia’s Juvenile Justice System*, (Dec. 9, 2008) available at [http://vsc.virginia.gov/CrimeCommission/December%202008/HJR113JuvenileJusticePolicies\\_files/frame.htm](http://vsc.virginia.gov/CrimeCommission/December%202008/HJR113JuvenileJusticePolicies_files/frame.htm).

❖ I believe some prosecutors appear to use the charge to unfair advantage. If the defendant is over fourteen, the Commonwealth serves notice of intent to certify on the malicious wounding charges and immediately gains leverage in the fear factor of trial as an adult. In some jurisdictions I have served in this seems almost automatic. Everywhere there seems to be some truly ethical prosecutors who look at a case objectively and amend the charges in appropriate cases to unlawful wounding or assault and battery without prompting, then stick to their guns in working out a deal. Often it seems that within the same jurisdiction, there may be those who are, in my opinion, hyper-zealous, or lazy, or motivated by other reasons that have nothing to do with a particular case. They seem to use the power just because they can, thereby gaining an immediate advantage regardless of the duty to see justice.

Then, when the defense attorney proposes a plea agreement, the first offer is to keep the case in juvenile court if the defendant pleads guilty. Again, leverage and fear.

### Central Virginia Assistant Commonwealth’s Attorney

- ❖ We have internal standards in our office. We will not usually seek trial as an adult for kids under 16 but this will depend on the charges. We look at each individual case and specific things like was this a violent offense, was a gun involved, does the youth have a record or history with the court, and the youth’s amenability to treatment by juvenile services.
- ❖ **I file the notice if I know I’m seriously considering trial as an adult. I certainly don’t file in 100% of cases. Take malicious wounding for example, lots of these cases don’t rise to the level of transfer.**
- ❖ I have a preference for acting under subsection C (prosecutorial certification) rather than subsection A (judicial discretion transfer).

- ❖ My reason for transferring is often not the penalty. I use the Department of Juvenile Justice in sentencing because we want youth to be able to take advantage of the services available there. My concern is rather the duration of community supervision and services available [through juvenile court probation].

### Father of a Youth Convicted as an Adult at Age 17 and Released at 24

- ❖ We hired a lawyer based on someone saying he was good, but I found a lot of lawyers don't go outside the box: they just follow the direction of the Commonwealth's Attorney and hope for the best. That's the impression I got. I really got the dog and pony aspect of it when there was a hearing to determine whether she would be tried as an adult and the attorney said "I'm not questioning anyone, it's just a formality," and we didn't get to present a case because the decision had already been made prior to the hearing. That was my first awakening with what I used to call the justice system.
- ❖ Spending the extra two years [in adult prison] did harm to her psyche, to her whole being. We fought for so many things and when we would go to the adult system they would say we aren't about rehabilitation. **What a terrible attitude - put 'em in a box . . .**

### Northern Virginia Defense Attorney

- ❖ Certification is completely arbitrary.
- ❖ Juvenile cases are only going up to Circuit Court through subsection B (automatic certification) and C (prosecutorial certification) of Virginia Code §16.1-269.1. I only see 1 or 2 cases a year going up through subsection A (judicial discretion transfer) of Virginia Code §16.1-269.1.

### Current High School Teacher

- ❖ I often attribute it to circumstances. The school as a system really failed these kids in terms of

### “Issues with transfer under 16.1-269.1(C) as identified by the Virginia Department of Juvenile Justice:

- **Only area of law where state action is not subject to judicial review.**
- **Wide variation in its application between localities.**
- **Prosecutor need only overcome probable cause hearing to transfer but once there the juvenile is subsequently an “adult” even if the charge is reduced to something that would not have qualified for transfer under this section.**
- **No standard criteria for assessing whether transfer is appropriate.**
- **Ability of Circuit Court to review and return these cases where appropriate would address these issues.”**

Barry Green and Sam Abed, *Juvenile Justice Trends; Provisions Related to Transfer to Circuit Court*, Presentation to Virginia Association of Commonwealth's Attorneys, at 32 (July 31, 2009) available at [http://www.djj.state.va.us/Resources/DJJ\\_Presentations/pdf/CA%20presentation-finalbarrysam.pdf](http://www.djj.state.va.us/Resources/DJJ_Presentations/pdf/CA%20presentation-finalbarrysam.pdf).

having a good environment for these kids growing up. It was the school that threw these kids away and said they're headed to jail.

## **Testimony of a Former Childcare Provider to the Virginia State Crime Commission on September 8, 2010**

- ❖ When I was growing up in a small town in the late fifties and sixties, my friends and I started drinking, early, around 13 or 14. Out of that came driving too fast, wrecking cars, breaking into cars and trucks, mainly, for cigarettes and alcohol.

There was a general recklessness to our lives. We were fatalistic and unfocused; as far ahead as we thought was hoping to "get lucky" on a Saturday night. Yet, somehow, we found our way through. Four out of five of us got degrees, and we all settled into the broad mainstream of American life.

I suspect, had I been a young black man rather than a young white man, I would be a convicted felon now. It was my luck to be white because I know "blind justice" is not blind when it comes to the color of a person's skin...and, if you are poor as well as black, you have two strikes against you before the game even starts.

I retired a couple of years ago, having worked 30 years in childcare. I often wonder how differently things would have turned out had I been a convicted felon. I suspect my life of family, friends and meaningful work would have been much different. Instead of life in the mainstream, it would have been a meager life on the margins.

Abraham Lincoln, in his first inaugural address, asked us to find "the better angels of our nature." As you consider the futures of our lost and wayward young, I hope you keep that thought in mind. They may have messed up and done some real damage, but, in fact, regardless of how they look, they are still children. I beg of you, please "don't throw away the key."

## **Former Juvenile Probation Officer Currently Practicing as a Defense Attorney**

- ❖ **An economic disparity in which kids are tried as adults is evident. Families with money can get services for their kids immediately. This gives them a better negotiation point from the beginning.**
- ❖ I worked as a juvenile probation officer five years ago for three years and never wrote a transfer report. I rarely saw subsection A transfers then and rarely see them now. Prosecutors will hardly ever bother to go for [subsection A transfers].

## UNFAIR PLEA BARGAINING POWER

Unequal bargaining power produces unjust results.

### Eastern Virginia Defense Attorney

- ❖ Commonwealth's Attorneys are using the threat to transfer a case to adult court as a plea bargaining tool in 50% of my cases.
- ❖ **Subsection A, judicial discretion transfers, are not even one quarter of the cases going up to Circuit Court.**
- ❖ If she doesn't tell us what we want to hear, we will transfer her and she will be in city jail.

(Relaying the threat of a Commonwealth's Attorney to try her client as an adult)

**“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.”**

Virginia State Crime Commission, *HJR 113: Virginia's Juvenile Justice System*, (Dec. 9, 2008) available at [http://vsc.virginia.gov/CrimeCommission/December%2008/HJR113JuvenileJusticePolicies\\_files/frame.htm](http://vsc.virginia.gov/CrimeCommission/December%2008/HJR113JuvenileJusticePolicies_files/frame.htm).

- ❖ **The black boys are going up and the white boys aren't.**

- ❖ Facts and history now drive the decision to certify a youth as an adult. This has changed in the past year because a new Commonwealth's Attorney has taken office. It used to be common practice for Commonwealth's Attorneys to attempt to certify every eligible kid. (Commenting on the changes she has seen in transfer and certification practices in her jurisdiction with a changing of the chief Commonwealth's Attorney)

### Northern Virginia Assistant Commonwealth's Attorney

- ❖ In my jurisdiction individual prosecutors have discretion in how they handle [transfer and certification] cases. The head of the department doesn't tell them how to handle these cases.
- ❖ In about 100% of the cases that require notice to be filed (prosecutorial certification under Virginia Code §16.1-269.1(C)) prosecutors in my office will do so just to preserve the option. For some, it also has the purpose of in fact putting the heat on the defense. **I won't say it is routine but it is not uncommon for this to be used as a plea bargaining chip.**
- ❖ It is much easier to not look at these cases on a case by case basis.... Since the changes of the 1990s, we don't have to look at the kid or consider options other than a felony conviction....Anytime we have to do more work or think about it, we're not going to like it. Don't want to give up our ultimate authority.

- ❖ **A prosecutor is going to do anything they can do to get a case into direct file (subsection C). A transfer hearing is an hour of my life I can't get back.**
- ❖ It is like letting the fox guard the hen house. Commonwealth's Attorneys know better than the defense bar what is happening in cases that go up to Circuit Court. There is a lot of ignorance in the defense bar about what actually happens in Circuit Court. They think the sentences are going to be much worse when really they aren't. Perhaps the defense bar should be more concerned about arguing guilt versus innocence than avoiding going to Circuit Court.
- ❖ If you can improve the chance of our making the right decision and not increase costs [through changes to the transfer/certification laws], I don't see the problem.

### **Northern Virginia Defense Attorney**

- ❖ Prosecutors will often say, "Plead to the robbery as a juvenile or we'll certify you." **They are only making the decision based on the charge and not the facts of the case.** Not catching the right kids in the certification process. The rehabilitation services offered by the juvenile court are not being used.
- ❖ Judges routinely allow Commonwealth's Attorneys to continue a case at the trial date because they forgot to certify at the appropriate time. If the continuance request is denied, the Commonwealth's Attorney will nolle prosequi the charges and then refile so that they can certify the youth.

### **Central Virginia Defense Attorney**

- ❖ Prosecutors will say, 'If they plead guilty today, they can stay in juvenile court.' There shouldn't be mandatory transfer. The charges alone don't tell the whole story. It gives the prosecution an unfair bargaining chip.
- ❖ A colleague of mine represented a youth who along with his brother was charged with robbery and grand larceny for pushing another child off his bike and taking the bike. Both boys were tried as adults and the jury found them guilty of a misdemeanor offense. Technically it was robbery but it's ludicrous to try them as an adult.

## Northern Virginia Defense Attorney

- ❖ **On incredibly weak probable cause evidence kids are becoming adults in the eyes of the law. Even kids who have not been in trouble before.**
- ❖ We are making strategic decisions like no detention review, motion to suppress, or discovery requests, essentially waiving our client's rights, so as to avoid trial as an adult.

**“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.”**

*Virginia State Crime Commission, HJR 113 (2008) Final Report: Study of Virginia's Juvenile Justice System, H. Doc. No. 12, at 17 (2009).*

## CONCLUSION

The need for reforming Virginia's system of trying youth as adults is made clear by the stories told in this report. Virginia's current system unnecessarily burdens youth with adult felony convictions at early ages. The consequences for our communities are equally troubling. The lack of opportunities for youth with felony convictions when they are returned to society can lead to future criminal behavior and decreased public safety. Research from both the federal Office of Juvenile Justice and Delinquency Prevention and the Centers for Disease Control and Prevention confirms that youth who are tried as adults are more likely to reoffend upon release than similarly situated youth who are treated as juveniles.<sup>14</sup>

Youth, families, and community members are questioning the necessity and efficacy of the laws currently in place. They are experiencing firsthand the struggle of returning home with an adult conviction. They also question whether there is justice in a system that recognizes the inherent differences between youth and adults in so many other areas but not in the transfer system.

Deciding whether a youth will be tried as an adult is hugely significant, with serious, lifelong consequences for those youth who are convicted. In some jurisdictions, this decision is made based on a blanket policy to try every eligible youth as an adult – not with a thoughtful examination of the facts and circumstances of each case. Youth and their defense attorneys are put at a serious disadvantage. In these cases, faced with the prospect of an unappealable transfer of their case to adult court and a potential adult felony conviction, they are making the decision to waive important rights during the trial process or are pleading guilty to crimes they may not have committed.

**We need a better system to distinguish between youth whose offenses and criminal history are so serious that they require trial and treatment as adults and youth who would be better served in the juvenile system.** The majority of youth tried and incarcerated as adults in Virginia are not long-term, violent offenders. According to recent statistics from the Virginia Criminal Sentencing Commission, youth charged with homicide or sexual assault made up only 6% and 8% respectively of the transferred population between 2001 and 2008, while nonviolent drug offenders make up 9%.<sup>15</sup> Moreover, most youth convicted as adults in Virginia are not given adult prison sentences.<sup>16</sup> In fact, 1 in 5 received only probation, while another 1 in 5 served their sentence in juvenile facilities.<sup>17</sup> While those youth were protected from the consequences of serving significant time in an adult prison, an adult felony conviction on their records will be a permanent barrier to future opportunities and rehabilitation.

In last year's report, *Don't Throw Away the Key: Reevaluating Adult Time for Youth Crime in Virginia*, three recommendations for reform were put forward. One of these recommendations, eliminating or greatly reducing the use of adult jails for the pre-trial detention of transferred youth, was achieved in large part during the 2010 General Assembly session. A new law went into effect on July 1, 2010 stating that youth awaiting trial in Circuit Court should be placed in a juvenile detention center, unless there has been a hearing and a judge has found them to be a safety or security risk in the juvenile facility. JustChildren still holds to the other two recommendations and believes they are necessary for improving Virginia's transfer system. These recommendations are:

**Recommendation 1: Restore authority over transfer decisions to Juvenile and Domestic Relations District Court judges, except in those cases currently requiring automatic certification;**

**Recommendation 2: Increase training regarding youthful offenders and disposition for Circuit Court judges;**

For this report, in addition to gathering stories from those individuals most directly impacted by the Commonwealth's transfer and certification laws, we discussed options for reform with them. Through these discussions, it became clear that the most broad based support and prospects for change are with other recommendations for reform. These additional recommendations include:

### **Recommendation 3: Oppose Measures That Would Expand the Number of Youth who are Tried as Adults;**

- During the 2010 session of Virginia's General Assembly, two bills were introduced but did not pass that would have greatly increased the number of crimes eligible for automatic and prosecutorial certification to adult court. By requiring that more cases be automatically certified and expanding the authority of prosecutors to make unilateral certification decisions in even more cases, these bills could have increased the number of youth tried in adult courts in Virginia by almost 60% (400 additional youth) a year and increased costs to Virginia taxpayers.<sup>18</sup> Nearly 700 youth a year, some as young as 14, are currently convicted as adults in Virginia.
- All of the youth these bills proposed to try as adults can already be tried as adults through the judicial transfer process. Changes such as these would only exacerbate the problems identified in this report.

### **Recommendation 4: Grant Youth the Right to Appeal Prosecutorial Certification Decisions ("Reverse Waiver"); and**

Amend Virginia Code §16.1-296.6 to provide youth with a right to appeal to the Circuit Court a prosecutor's decision to certify the case to Circuit Court.

- Prosecutors have the ability to circumvent a juvenile court's failure to find probable cause in a certification case. However, youth are not able to appeal the decision of the prosecutor to certify their charge.
- **A significant portion of juvenile justice system professionals support this reverse waiver option: the former Director of the Department of Juvenile Justice, 93% of Chief Public Defenders, 84% of Circuit Court Judges, 77% of Court Service Unit Directors, and 53% of juvenile court judges.**<sup>19</sup> A majority of surveyed Commonwealth's Attorneys did not approve of this option.<sup>20</sup>

### **Recommendation 5: Grant Circuit Court Judges Authority to Issue Juvenile Adjudications.**

Amend Virginia Code § 16.1-272 to grant Circuit Court judges the authority to give juvenile adjudications for transferred/certified youth consistent with the sentences they impose.

- Currently, Circuit Court judges may sentence youth transferred to their courts under Virginia Code § 16.1-272 to juvenile or adult sentences, or a combination of both. However, Circuit Court judges lack the authority to treat these charges as juvenile delinquency charges. This means youth convicted in Circuit Court are given adult felony convictions and all of the collateral consequences and barriers to reentry that flow from adult convictions.

- As noted above, the majority of youth sentenced by the Circuit Courts of Virginia between 2001 and 2008 did not receive adult prison sentences.<sup>21</sup>

It is clear from the stories gathered in this report and from the years of research done by the Crime Commission as well as other organizations, that Virginia's system of trying youth as adults is flawed. As Governor McDonnell has recognized with his creation of the Virginia Prisoner and Juvenile Offender Re-entry Council, successful reentry of formerly incarcerated individuals is paramount to public safety.<sup>22</sup> We must give Circuit Court judge more options for returning youth to the juvenile system and reducing the barriers to reentry posed by adult felony convictions. In short, we must enact changes that make Virginia's transfer and juvenile justice systems safe, fair, and effective – for the sake of our youth and for the sake of our communities.

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<sup>1</sup> Virginia State Crime Commission, *HJR 113 (2008) Final Report: Study of Virginia's Juvenile Justice System*, H. Doc. No. 12, at 1 (2009).

<sup>2</sup> Virginia State Crime Commission, *HJR 113: Virginia's Juvenile Justice System*, (Dec. 9, 2008) available at [http://vscc.virginia.gov/CrimeCommission/December%209%202008/HJR113JuvenileJusticePolicies\\_files/frame.htm](http://vscc.virginia.gov/CrimeCommission/December%209%202008/HJR113JuvenileJusticePolicies_files/frame.htm) quoting Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, Office of Juvenile Justice and Delinquency Prevention Juvenile Justice Bulletin (Aug. 2008).

<sup>3</sup> Virginia State Crime Commission, *supra* note 1, at 17.

<sup>4</sup> Virginia State Crime Commission, *supra* note 2.

<sup>5</sup> *Id.*

<sup>6</sup> Angela McGowan, et al., U.S. Department of Health and Human Services, Center for Disease Control and Prevention, *Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System* (2007), Summary, available at <http://www.cdc.gov/mmwr/PDF/rr/rr5609.pdf>.

<sup>7</sup> Richard E. Redding, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?*, Office of Juvenile Justice and Delinquency Prevention Juvenile Justice Bulletin (Aug. 2008).

<sup>8</sup> Barry Green and Sam Abed, *Juvenile Justice Trends; Provisions Related to Transfer to Circuit Court*, Presentation to Virginia Association of Commonwealth's Attorneys, at 32 (July 31, 2009) available at [http://www.djj.state.va.us/Resources/DJJ\\_Presentations/pdf/CA%20presentation-finalbarrysam.pdf](http://www.djj.state.va.us/Resources/DJJ_Presentations/pdf/CA%20presentation-finalbarrysam.pdf).

<sup>9</sup> Va. Code §16.1-305.

<sup>10</sup> Employment applications often ask whether an applicant has been convicted of a crime, and can even ask whether an individual has ever been arrested. Va. Code Ann. §32.1-162.9.1.

<sup>11</sup> Kristen Henning, *Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities be Notified?*, 79 N.Y.U. L. Rev 520, 547 (2004) (noting that “[a]t least nineteen states now require courts or law enforcement agencies to provide criminal or delinquency information to schools”).

<sup>12</sup> Va. Code §24.2-427.

<sup>13</sup> Henning, *supra* note 11 at 570.

<sup>14</sup> McGowan, *supra* note 6. Redding, *supra* note 7.

<sup>15</sup> Meredith Farrar-Owens, Virginia Criminal Sentencing Commission, *Juveniles Convicted in Circuit Court FY2001-FY2008*, Presentation to the Virginia State Crime Commission (June 25, 2009).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Virginia Criminal Sentence Commission, *Fiscal Impact Statement for Proposed Legislation: Senate Bill 389*, available at <http://leg1.state.va.us/cgi-bin/legp504.exe?101+oth+SB389F160+PDF> (January 2010).

<sup>19</sup> Virginia State Crime Commission, *supra* note 2.

<sup>20</sup> *Id.*

<sup>21</sup> Farrar- Owens, *supra* note 15.

<sup>22</sup> Robert F. McDonnell, Governor, Executive Order No. 11, (May 11, 2010) available at <http://www.governor.virginia.gov/Issues/ExecutiveOrders/2010/EO-11.cfm>.