JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION
OF THE VIRGINIA GENERAL ASSEMBLY

Juvenile Delinquents and Status Offenders: Court Processing and Outcomes

Senate Document No. 14 (1996 Session)
A Report in a Series on the Administration of Justice

Preface

Senate Joint Resolution 263, passed during the 1995 General Assembly session, requested the Joint Legislative Audit and Review Commission (JLARC) to conduct a comprehensive review of the State's juvenile justice system. This review was prompted by concerns generated as a result of the rising rate of juvenile crime. A special concern has been expressed in the Commonwealth about the growing rate of juvenile arrests for serious violent crimes.

JLARC's review of the juvenile justice system is being conducted in two phases. This report provides the findings of the first phase of the review, which has been focused on court processing and outcomes for juvenile delinquents and status offenders. In conducting this review, almost 3,000 court files were examined from the court service units across the State.

Our analysis of the juvenile justice system in this phase of the review has resulted in three key findings. First, the legislative intent expressed in the juvenile code appears appropriate for most juveniles addressed by the system. The intent, which puts a focus on the "welfare of the child and the family," but within a stated context of public safety and community protection, appears generally appropriate for a system in which 19 of 20 juveniles at court intake have not committed a violent offense.

Second, the juvenile code needs to be amended to provide judges with tougher sanctioning authority for the small but increasing segment of the juvenile offender population which commits violent offenses. Rather than revamping the entire system to address the problems posed by the few, however, consideration should be given to linking the juvenile and adult courts to enable the imposition of longer sentences where appropriate.

Third, the system has other weaknesses that need to be addressed, including:

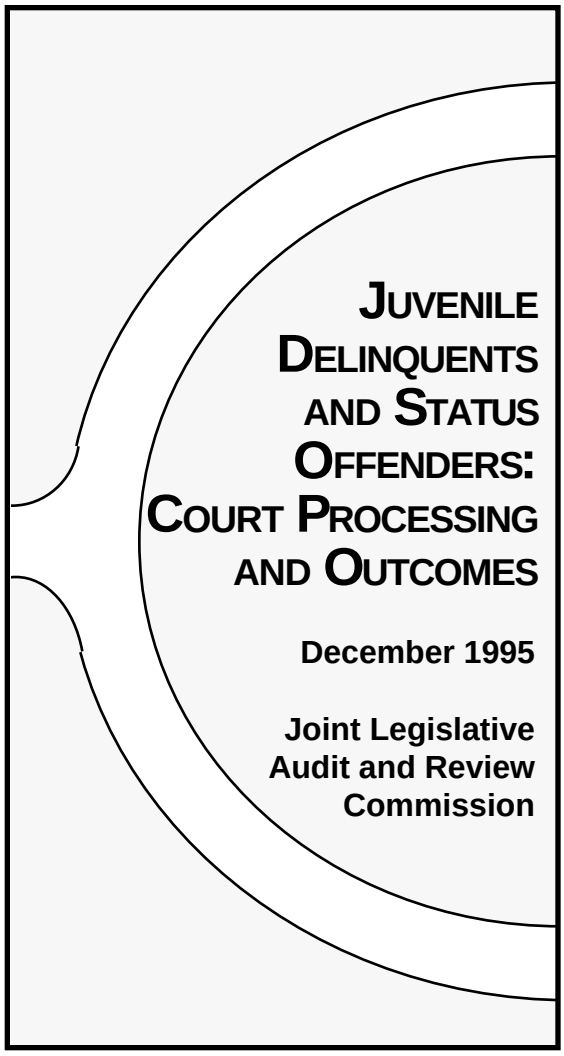
- **a potentially overly-restrictive diversion process from formal adjudication for young, non-threatening offenders;**
- **recidivism rates that could be improved;**
- **limited availability of graduated sanctions and treatment programs to combat recidivism and help juveniles take responsibility for their actions in the face of frequently devastating problems; and**
- **evidence that even after controlling for a number of key factors, the race of the juvenile appears to play a role in judicial decisions.**

On the behalf of JLARC staff, I wish to express our appreciation for the assistance and cooperation provided by the Department of Youth and Family Services and its court service unit staff.

Philip A. Leone
Director

December 20, 1995

JLARC Report Summary



In 1995, the Virginia General Assembly passed Senate Joint Resolution 263 directing the Joint Legislative Audit and Review Commission (JLARC) to initiate a functional area review of the administration of justice. One particular focus of this mandate is the State's juvenile justice system. In Virginia, as in most other states, the welfare of the child is the "paramount" focus of the juvenile code. As a guide to persons charged with the administration of the juvenile system, four basic purposes are articulated in the juvenile code to promote the welfare of the child. In summary, they are:

(1) To divert from the juvenile justice system, to the extent possible, consistent with the protection of public safety, those children who can be cared for or treated through alternative programs;

(2) To provide judicial procedures through which the provisions of this law are executed and enforced and in which the parties are assured a fair hearing . . .;

(3) To separate a child from parents, legal guardians . . . only when the child's welfare is endangered or it is in the interest of public safety;

(4) To protect the community against those acts of its citizens which are harmful to others and reduce the incidence of delinquent behavior.

This separate system for juveniles with its statutory focus on the welfare of the child is a reflection that juvenile delinquents are not miniature adults, but young immature adolescents whose criminal behavior is considered malleable because it is often rooted in family dysfunction. Accordingly, the juvenile code requires both intake officers and judges to give strong consideration to the possibility of community treatment as an alternative to the more restrictive forms of punishment, while also citing in three of the four purposes of the code that public safety must be protected.

To ensure that this intent is implemented, the General Assembly has given intake officers the authority to divert juvenile

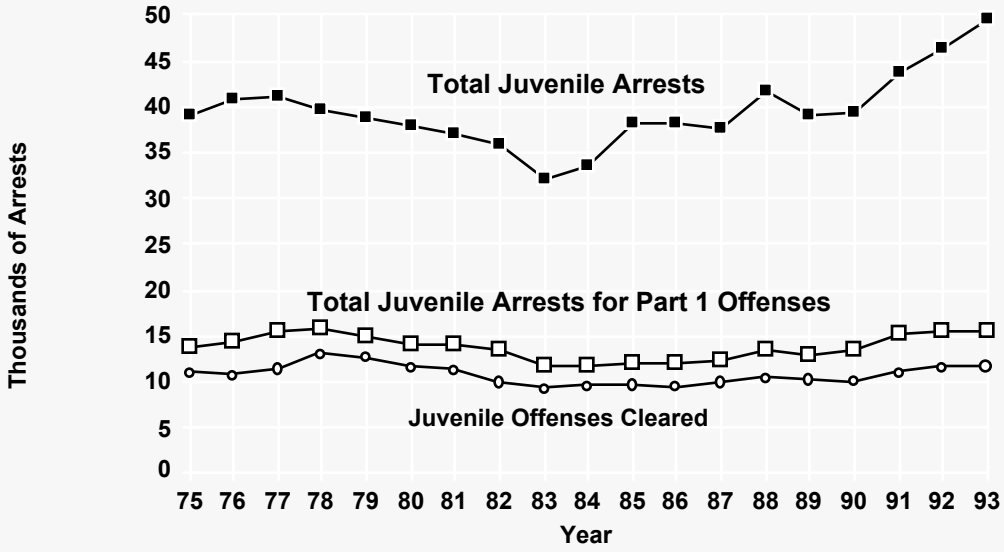
offenders away from the formal adjudication process and into various programs of community treatment. When juvenile cases are adjudicated in court, judges can choose from a range of sanctions — formal reprimands, community service, probation, restitution, counseling, residential treatment — which do not involve secure confinement.

In recent years, several concerns have emerged regarding the juvenile justice system in Virginia. The basis for these concerns can be found in the increases in juvenile arrests (see figure below), which may suggest increasing levels of juvenile crime. After a six-year decline (1978-1983), there has been a 48 percent increase in the number of juvenile arrests in the State.

Further, since 1975, despite a decline in the number of persons in the 13 to 17 year old cohort, juvenile arrests for violent crimes have increased 36 percent. Although arrests for these types of crimes are only a small proportion of the total number of juvenile arrests, it is the recent and precipitous increase in serious crime that has simultaneously heightened public concern, brought the juvenile justice system under scrutiny, and raised questions about the intent and impact of the juvenile code.

Until now, questions concerning the future direction of the juvenile system have proceeded without data on the performance of this system. This study provides a comprehensive examination of the system that is based on a JLARC staff review of almost 3,000 juvenile records from court service units located across the State. These records provided detailed information on the criminal history of those juveniles who came into contact with the court, as well as the particular sanctions used by the court in response to the youths' criminal behavior. In addition, the study also included an analysis of juvenile recidivism for both delinquent offenders and youths charged with status offenses — acts such as truancy, which would not be a crime if committed by an adult. Significant findings of this report include the following:

Juvenile Arrest Trends in Virginia, 1975 to 1993



Source: JLARC staff analysis of data compiled by Uniform Crime Reporting Section, Department of State Police.

- In recognition of the juvenile code requirements pertaining to the protection of public safety, intake officers do not divert large numbers of juvenile offenders from the formal adjudication process. Specifically, almost three-quarters of all young offenders (and nearly half of all status offenders) are required to appear in court to answer charges made against them. The court referral rate for juveniles accused of a violent crime is 96 percent.

- Once juveniles appear in court, about 76 percent are convicted. Moreover, about one-third of young offenders who appear in court and are charged with a violent offense are either confined in a State or local facility or transferred to circuit court to be tried as an adult.

- There is little evidence to indicate that legislative intent regarding the use of community treatment has been fully embraced across the State. In FY 1992, structured programs — counseling, residential and non-residential services — were provided to less than two of every ten juveniles charged with delinquency.

- With few available options for treatment, judges are often forced to rely on traditional juvenile sanctions such as probation, community service, or court-ordered restitution, even if the young offender has a demonstrated record of repeated failures with these sanctions.

- Judicial decisions to impose the sanction of secure confinement do not appear to be entirely race neutral. Specifically, black youths are more likely to be placed in secure confinement even after other factors such as the seriousness of offense, prior criminal record, and level of family and individual dysfunction are taken into account.

- Concerning the issue of recidivism, approximately 52 percent of delinquent offenders return to court following their initial contact with the system.

- Although serious violent crimes made up less than one-sixth of all recidivist offenses, there is a substantial portion (about one-third) of delinquent recidivists who escalate the seriousness of the crimes they commit over time.

- Over half of first-time status offenders were rearrested or returned to the court service unit within a three-year period. Further, approximately 85 percent of these non-criminal offenders who recidivated were later charged with an offense more serious than a status offense.

- While it does appear that residential and non-residential community programs have the capacity to play a significantly larger role in the provision of community treatment services for young offenders, there are significant inequities in the amount of funds available to court service units to purchase these services. Moreover, these inequities are likely to persist under current State programs which are designed to pay for treatment services.

Legislative Intent Appears Appropriate for Most Juveniles Addressed by the System

The basis for having a separate juvenile justice system is that juveniles are viewed as being fundamentally different from adults. In accordance with their age, juveniles are expected to be relatively immature and impressionable individuals, less likely to accurately anticipate and understand the consequences of their actions, less likely to genuinely form criminal intent, and more likely to have the capacity to grow and change. This concept of the juvenile helps explain the provisions of the *Code of Virginia* that make the "welfare of the child and the family" the priority of the juvenile justice system.

Still, there is nothing in the stated intent for the system that precludes the possibility that highly structured or tough sanctions may be required; in fact, the "welfare of the child" may clearly require that a strong message is received by the juvenile that criminal activity is not tolerated and is not to be repeated.

Nonetheless, whether the system's emphasis on community treatment makes sense depends upon the nature of the juvenile population that appears before the system. If most of these juveniles are not as previously described, but rather are hardened, violent criminals, then the current intent of the juvenile code would be considered inappropriate.

As cited in this report, this is not the case in Virginia. Approximately 29 of every 30 arrested juveniles are arrested for a non-violent offense. At intake, this number is still 19 of every 20 juveniles seen by the system. Furthermore, while recidivism among juveniles is a significant problem, 87 percent of all juveniles who enter the system for the commission of a non-violent offense do not recidivate to a violent felony offense. Of recidivating juveniles who first touched the system for a violent felony offense, 72 percent did not recidivate to an additional felony offense against a person within three subsequent years.

These data do not support the view that the juvenile population is by and large a hardened, violent criminal population. Therefore, the intent of the juvenile code appears appropriate for most of the juveniles encountered by the system. This is supported by findings from a survey of juvenile court judges conducted by the Virginia Commission on Youth. Specifically, 93 percent of the judges surveyed indicated that the intent of the juvenile code should not be changed.

Juvenile Court Judges Need Tougher Sanctioning Authority for Violent Offenders

While the sanctions imposed in juvenile court match the circumstances of the majority of juveniles brought to the system, there is a small but increasingly violent segment of the juvenile population which the system is not presently equipped to address. For example, some violent offenses committed by juveniles show little evidence of mitigating circumstances, and the offenses committed appear to be calculated. Under current law, juvenile court judges cannot provide sentences that last beyond seven years or past the offender's twenty-first birthday. As a consequence, many young offenders who commit serious offenses such as murder are tried in circuit court and, upon a finding of guilt, are placed in adult prisons where the already remote prospect of rehabilitation is further reduced.

A potential solution to this problem would be to link the juvenile and adult systems. Authority might be given to the juvenile courts to impose sentences that could extend past the age of 21, when the juvenile could be transferred to the adult correctional system to continue serving a longer sentence if necessary.

Recommendation. *The General Assembly may wish to consider the concept of concurrent or extended jurisdictional au-*

thority as one alternative for juvenile court sanctioning of violent offenders.

Additional Weaknesses in the System Need to Be Addressed

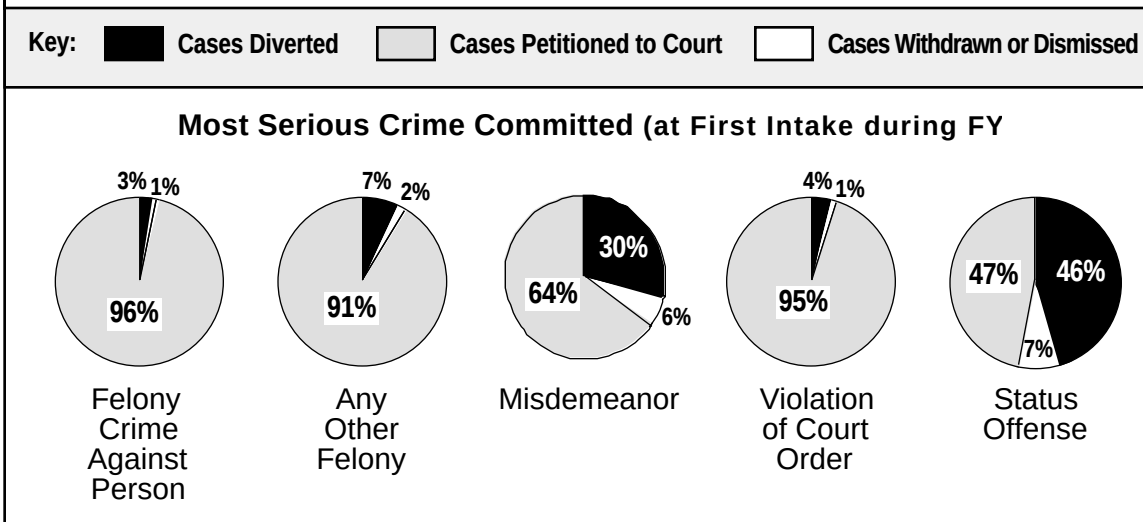
In addition to the problem of the violent juvenile offender, there are several other issues discussed in this report that need to be addressed. These issues include diversion, recidivism, and race-neutral justice.

Diversion at Intake. Despite the emphasis in the juvenile code on the diversion of the low-risk offender, intake staff across the State do not appear inclined to handle the majority of the juvenile complaints informally, even when processing cases which involve minor acts of delinquency (see figure below). While this cautious approach to the handling of juvenile complaints does ensure that most young offenders will have to appear before a judge, it undercuts one of the cornerstones of the juvenile code — the diversion of the young, non-threatening offender away from the formal adjudication process. At the same time, it places an added weight on a juvenile system already overburdened with crowded dockets for child custody and abuse cases.

Recommendation. *In an effort to ensure more consistent implementation across court service units, the General Assembly may wish to amend § 16.1-260 of the* Code of Virginia *to clarify its intent for the discretionary authority of intake staff in making diversion decisions.*

Recidivism. Juvenile recidivism for both delinquents and status offenders appears high and could be reduced. While there may be a number of factors driving these recidivism rates which are outside of the control of the juvenile system, the limited ability of juvenile court judges to increase the severity of sanctions for some repeat

Association Between Juveniles' Criminal Records and the Decision by Intake Staff to Divert Cases from the Juvenile Court System, FY 1992



Note: The figures reported in this table are based on a sample of 2,920 cases. The chi-square values for the crosstabulations shown were significant at a 5 percent level of significance.

Source: JLARC analysis of data collected from juvenile court records in 35 court service units.

offenders is likely to contribute to this problem. When the juvenile reoffends and escalates his criminal behavior but does not face a graduated sanction, this may not convey the progressively stern message that many experts believe is necessary to reach some juveniles. This sanctioning pattern may tend to embolden an already recalcitrant juvenile and increase the likelihood of additional criminal activity.

Under the current system, a relatively non-intensive form of probation is a heavily used and often repeated sanction. This use stems, in part, from a lack of satisfactory alternatives in a number of court service units. The use of more structured community treatment services could play a key role in a program of graduated sanctions, but more funding is needed to accomplish this. Many of the juveniles that come before the system have devastating problems — broken families, parents who harm rather than nurture their children, poor living conditions, few positive role models, psychological problems, and problems succeeding in school.

It is not suggested that treatment will ever be a panacea for addressing this issue. But in an effort to improve the juvenile justice system and address the recidivism problem, this appears to be a component that must receive substantial attention. Accordingly, consideration should be given to expanding the role of the private sector in the provision of treatment-related sanctions for juvenile offenders who can be served in the community without serious risk to public safety. Such a strategy could also reduce the need for additional bedspace in State correctional facilities, as almost a third of the youths presently housed in these facilities appear to be good candidates for treatment in a residential setting.

Recommendation. *In part to address the issue of recidivism, the General Assembly may wish to consider enhancing juvenile court access to a broader range of sanctions, with more opportunities for treatment and the availability of more resources for stronger sanctions, including the use of more intensive probation services and structured community treatment services.*

Recommendation. *The General Assembly may wish to consider the increased use of community treatment for currently confined, non-violent offenders who meet specific criteria as a part of a comprehensive approach to the capacity concerns related to the violent offender population.*

Race-neutral Justice. Currently in Virginia, black youth are almost 5.5 times more prevalent in the State's juvenile correctional center population as they are in the general population, and black males are more than seven times as likely to be in a secure confinement population. There are a number of factors that could potentially lead to this result, not all of which are related to juvenile court processing. For example, a high incidence of poverty and serious crime among minorities, and police arrest patterns which are often targeted on the source of urban crime, undoubtedly increase the likelihood that black youth will be brought to juvenile courts in disproportionately high numbers. Once in court, however, both the intake practices and sanctioning patterns of juvenile court judges directly impact whether black youth will be confined in large numbers relative to their percentage in the population.

This study found that after controlling for a number of factors such as the nature of the instant offense, prior record, and family and individual dysfunction, the race of the juvenile does play a role in judicial decisions concerning the use of secure confinement. While this analysis could not address whether this bias is intentional, the finding clearly suggests that this is an issue which needs to receive attention in the system.

Recommendation. *Judges in the juvenile justice system may wish to consider a broad-based voluntary effort to define some*

general principles or guidelines for use in achieving the goal of race-neutral decisionmaking. These guidelines should consider and address some of the barriers that may exist to achieving this result, such as the issue of juvenile demeanor. The Office of the Supreme Court may wish to consider involvement in helping to initiate, coordinate, or facilitate such an effort by interested judges within the juvenile justice system.

Automated Data System Needed to Support a Continuing Review of the System

In a 1955 report, the Virginia Commission to Study Juvenile Delinquency cited problems in locating quantitative data on Virginia's system and its performance. Forty years later, there remains a need for the routine collection of court processing data. DYFS is currently in the process of implementing an automated intake system, but plans to track the detailed outcomes of the adjudication process, recidivism, and information on the social history of juvenile offenders have not been finalized. The availability of such data would permit an ongoing, objective assessment of juvenile court processing and whether the system is working as effectively as intended.

Recommendation. *The Department of Youth and Family Services needs to implement an effective, ongoing system for the statewide collection of meaningful data about the circumstances and offenses of juveniles brought to the system, and the intake and court processing dispositions of their cases. Provisions should be made for the periodic analysis of these data, including specific analyses to assess the outcomes of alternative dispositions, and juvenile justice system changes or reform.*

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Introduction

In 1995, the Virginia General Assembly passed Senate Joint Resolution 263 directing the Joint Legislative Audit and Review Commission (JLARC) to initiate a functional area review of the administration of justice. One particular focus of this mandate is a performance assessment of the juvenile justice system in Virginia. Over the last few years, Virginia has joined a growing number of states which are considering major legislative reforms to their juvenile justice systems.

The impetus behind the proposed reforms can be found in the increases in juvenile arrests, which may suggest increasing levels of juvenile crime. After a six-year decline (1978-1983), there has been a 48 percent increase in the number of juvenile arrests in the State. Further, since 1975, despite a 12 percent decline in the number of persons in the 13 to 17 year old cohort, juvenile arrests for violent crimes have increased 36 percent. Although arrests for these types of crimes are a small proportion of the total number of juvenile arrests, it is the recent and precipitous increase in serious crime that has heightened public concern and brought the juvenile justice system under scrutiny.

Since 1950, when the General Assembly established Virginia's first statewide system of juvenile courts, the primary goal of the system has been to rehabilitate young offenders by diverting them from the formal adjudication process into community treatment and counseling programs. With the recent increase in the number of arrests for violent crime, some critics of the current system contend that this approach to juvenile justice is not working well. While acknowledging that the system needs to continue to pursue rehabilitation as a part of its mission, those in favor of a major overhaul of the juvenile code point to high recidivist rates among an increasingly violent juvenile offender population as evidence of the need for tougher and longer periods of punishment.

Other critics take issue with this perspective and suggest that the State's juvenile justice system has faltered because it never fully embraced its mission to rehabilitate. These individuals contend that previous attempts to rehabilitate juvenile offenders have been short-circuited by overcrowding in detention homes and State correctional centers, unreasonably high caseloads for probation officers, and an under-funded, fragmented system of community services. Consequently, it is noted that many young delinquents who graduated to a life of serious and sometimes violent crime never benefited from a comprehensive program of rehabilitation. Therefore, it is argued that before the State increases its commitment to institutional punishment for youthful offenders, a greater focus on community treatment is needed to determine the efficacy of these programs in reducing juvenile crime.

Until now, the debate on the reforms needed in the juvenile justice system has proceeded without the benefit of data on the actual performance of the system. This report addresses that problem by providing an analysis of juvenile court processing activities and recidivism using data collected from each of the State's 35 court service units. It also looks at the funding and availability of community treatment programs. The remainder of this chapter provides a brief discussion of juvenile crime trends along

with an overview of the evolution of the State's juvenile justice system. Also included is a brief summary of the oversight role of the Department of Youth and Family Services.

JUVENILE CRIME TRENDS IN VIRGINIA

A review of crime statistics from the Uniform Crime Report (UCR) reveals two important dimensions to the problem of juvenile crime in Virginia. On the one hand, the State's arrest data suggests that after an extended period of decline, juvenile crime is on the rise in the Commonwealth. In 1993, more than 49,000 juvenile arrests were made across the State. This number is 26 percent higher than the last peak in juvenile arrests which occurred in the mid 1970s.

There has also been an upward trend in juvenile arrests for violent crimes. Current data show that arrests for violent offenses have increased by approximately 36 percent since 1975. Further, these increases have occurred during a period in which the size of the State's youth population actually decreased. Criminologists in Virginia raise the specter of a worsening problem of violent crime among juveniles by pointing to data which indicate that over the next two decades, the cohort of youth who are most likely to commit violent crime is projected to increase by 20 percent.

On the other hand, despite these much publicized increases in violent juvenile crime, it should be recognized that less than four percent of the arrests for juvenile delinquency in 1993 involved a violent offense. This means that on average, about 29 of every 30 juveniles who come in contact with the court do so to answer complaints that do not allege violence.

Both the Number and Rate of Juvenile Arrests in Virginia Are Rising

There are two broad categories of offenses for which a youth can be required to appear in one of the State's 35 juvenile court service units (CSUs). The first type of offense is referred to as a status offense. This is an act committed by a juvenile which would not be a crime if committed by an adult. Status offenses can include curfew violations, possession of tobacco or alcohol, or more commonly, acts such as truancy or running away from home. As these acts are not considered criminal, they are typically not included in juvenile crime trend analyses. In Virginia, however, those status offenders who were arrested by local police are included in the Uniform Crime Report arrest data.

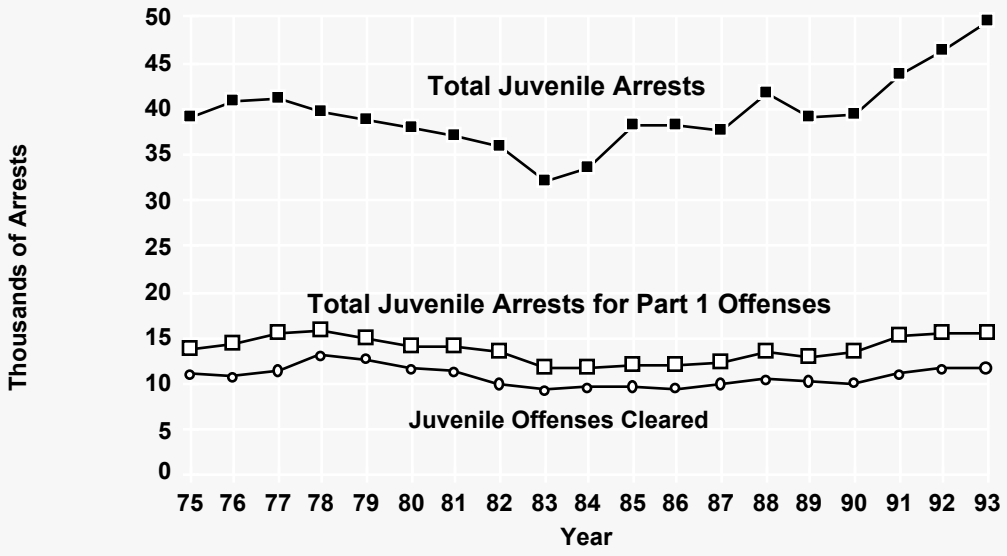
The second offense category is typically referred to as delinquency. Delinquent offenses are any acts committed by a juvenile that would be crimes if committed by an adult. This includes all felonies such as aggravated assault or auto theft, as well as misdemeanors, such as trespassing and vandalism. For reporting purposes, the UCR separates arrest data for delinquency according to Part I and Part II offenses. Part I offenses include both the more serious crimes against persons (for example, murder,

rape, and robbery) and most felony property and drug crimes. Part II offenses are mostly misdemeanor crimes and local ordinance violations.

Number of Juvenile Arrests. **By almost any measure, the arrest data for Virginia indicate that juvenile delinquency is on the rise. Figure 1 illustrates the trend in the number of juvenile arrests in the State over the last 18 years. In 1975, almost 39,000 juvenile arrests were made for delinquent acts committed in the State. Two years later, this figure reached 41,000, which at that time was the highest number of juvenile arrests ever recorded for the Commonwealth.**

Figure 1

Juvenile Arrest Trends in Virginia, 1975 to 1993



Source: JLARC staff analysis of data compiled by Uniform Crime Reporting Section, Department of State Police.

Following this peak, there was a six-year decline in juvenile arrests. In one year during this time period (1983), the number of arrests dropped by almost 30 percent to 32,000. However, in the period from 1990 to 1993, the State witnessed a sharp and consistent rise in the number of juvenile arrests. Specifically, the number of arrests increased from 39,268 in 1990 to 49,408 by 1993 — a 27 percent increase. So while the total number of arrests since 1975 has grown by 26 percent, much of this increase has occurred in the last four years. The trend for Part I arrests has moved along similar lines, but the rate of growth has been slower. For example, during the four-year time period in which the total number of juvenile arrests increased by 27 percent (1990-1993), the increase for Part I offenses was 14 percent.

Juvenile Arrests Compared to Reported Crimes. **In analyzing juvenile arrest data as a measure of the amount of juvenile crime, two factors should be**

considered. First, juveniles often commit crimes in groups, and this impacts the overall number of arrests that are reported through UCR. For example, if five juveniles burglarized a home, law enforcement in the relevant locality will treat this as one crime when reported by the victim. If the five juveniles are subsequently arrested, law enforcement will report that one crime has been cleared. However, UCR data will show five arrests for that one crime. In the aggregate, this has the potential to generate a misleading picture about the magnitude of juvenile crime. To account for this, data on the number of crimes that were cleared by law enforcement should be examined in conjunction with UCR arrest data.

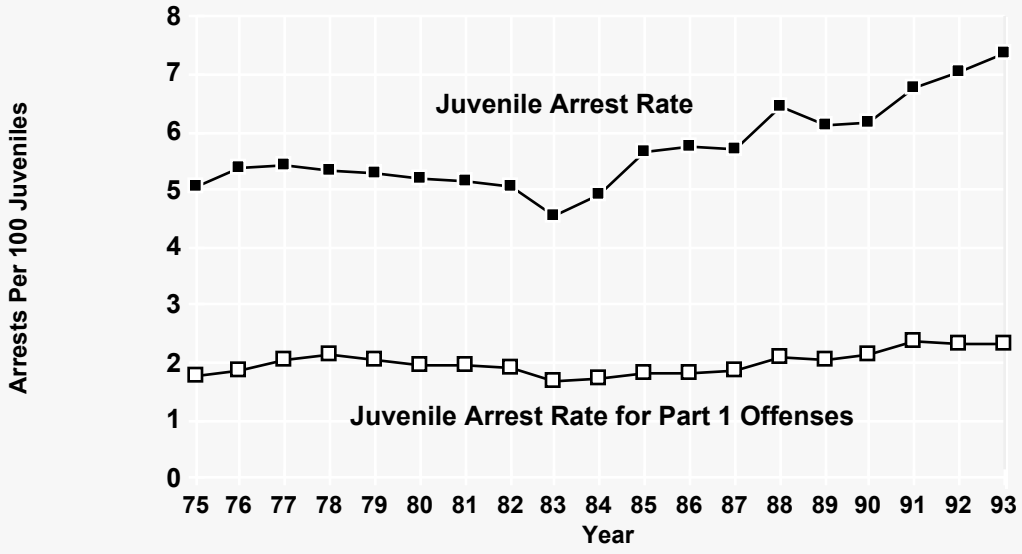
As illustrated in Figure 1, when this analysis is conducted, the trends for juvenile arrests and reported crimes are somewhat similar, but there is a substantial difference in magnitude. For example, the 39,000 juvenile arrests made in 1975 are more than twice the number of crimes that were reported to law enforcement and later cleared. In 1993, the peak year for juvenile arrests (almost 50,000), there were only about 15,000 crimes cleared, producing a clearance rate of approximately 37 percent. In some cases, this difference may be due to the procedures used to clear crimes in which both a juvenile and an adult were involved. Such arrests are cleared as an adult arrest by law enforcement although UCR arrest data will reflect a separate arrest for both the adult and juvenile. However, this difference also suggests that a portion of the increases in juvenile arrests can be attributed to acts of crime committed by juveniles in groups rather than a surge in the number of juveniles involved in criminal activity. The research which has been conducted on this issue also indicates that the juvenile "clearance rate" differs significantly according to the seriousness of the offense. Specifically, the difference between total arrests for violent crimes and total violent crimes "cleared" is typically smaller. This suggests, according to juvenile justice experts, that young offenders who commit violent crimes are less likely to do so in groups.

Second, there is no reliable way to adjust the crime data for changes in the enforcement practices of local police. If local police decide to more aggressively enforce certain laws (for example, illegal drug sales and purchases), there will be a resulting increase in juvenile arrests even if there has been no real increase in the number of juveniles involved in criminal activity.

Rate of Juvenile Arrests. **Another key question when examining juvenile arrest data is whether increases in the number of arrests are driven by increases in the juvenile population. One strategy for examining this issue is to standardize the number of juvenile arrests using data on the State's 10 to 17 year old population. In effect, this allows for the calculation of a State delinquency arrest rate. For this study, JLARC staff examined the number of juvenile arrests per 100 juveniles. When this is done, Figure 2 reveals that Virginia's delinquency arrest rate increased from 5.06 percent in 1975 to 7.36 percent in 1993. This represents a growth rate of 45 percent, indicating that juvenile arrests are currently growing at a faster rate than the juvenile population.**

Figure 2

Juvenile Arrest Trends in Virginia Per 100 Juveniles 1975 to 1993



Source: JLARC staff analysis of data collected by the Department of Criminal Justice Services. Arrest data compiled by Uniform Crime Reporting Section, Department of State Police.

Juvenile Arrest Rate for Violent Crimes Grew 56 Percent from 1975 to 1993

Perhaps more serious than increases in total and Part I offenses is the rate at which violent crime appears to be increasing among the juvenile population in Virginia, as suggested by the rising arrests rates for these crimes. In general, violent crimes are categorized as crimes against persons. However, this broad classification scheme can produce inflated estimates of violent crime because it includes arrests made for less serious offenses such as simple assault. To avoid this problem, the Federal Bureau of Investigations (FBI) developed a subcategory of violent crime defined as the more serious offenses of murder or non-negligent manslaughter, forcible rape, robbery, and aggravated assault.

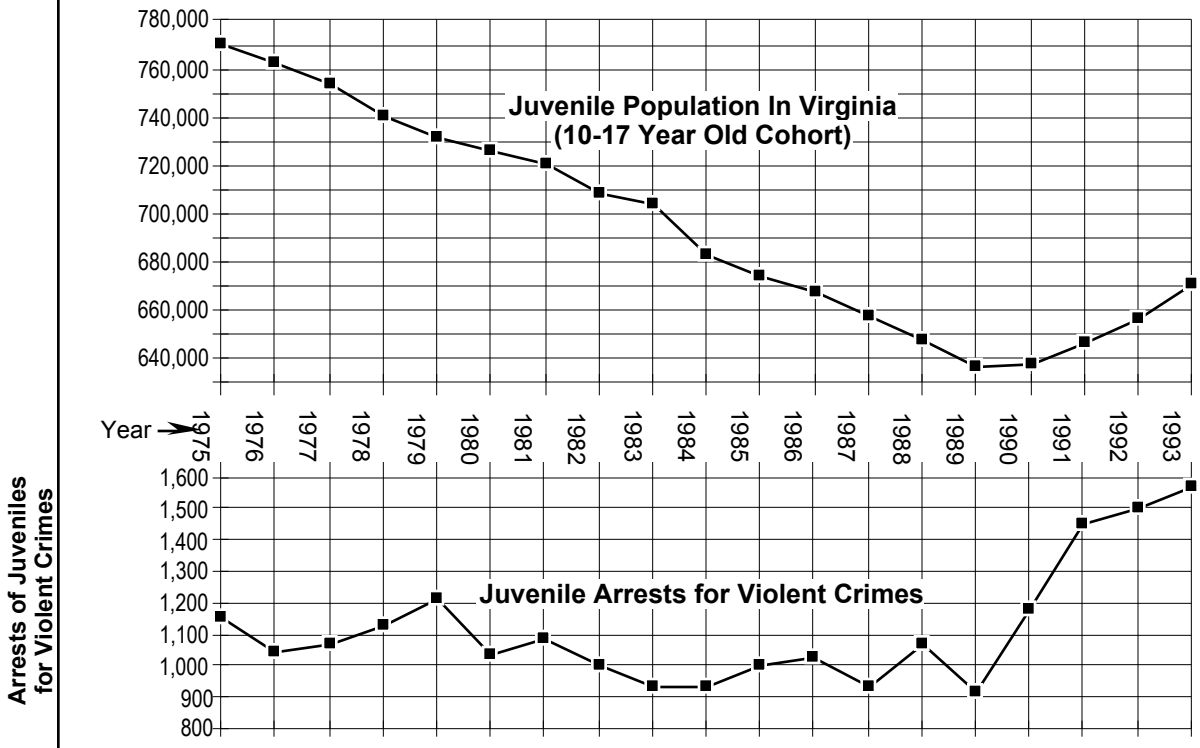
Of all categories of juvenile crime in Virginia, arrests for these more serious violent crimes appear to be growing at the fastest rate. Since 1975, the number of arrests for violent crime has increased by 36 percent. When decreases in the juvenile population are considered, the rate of increase is actually higher. Specifically, in 1975, the violent juvenile crime rate per 100 juveniles was .150 percent. By 1993, this figure had grown to .234 percent — an increase of 56 percent.

Another way to examine data on violent crime arrests is to compare the trend in this phenomenon to population trends for the 13 to 17 year old cohort. This age group is chosen because youth in this cohort are considered to be most at risk for committing violent offenses. As shown by Figure 3, the increase in arrests for juvenile violent crime has occurred during a period in which the number of persons in the 13 to 17 year old age group dropped significantly.

Further, over the next two decades, population projections indicate that the number of persons in this cohort will grow by 20 percent. According to the State's criminologist in 1994, this anticipated spike in the juvenile population will likely result in additional growth in all types of juvenile crime. Moreover, unless measures are taken to address the causes of violent crime among juveniles, an even larger portion of future juvenile arrests could involve serious offenses. It is this prospect of a larger, more violent youth population that has raised a number of questions about the capability of the State's juvenile justice system to effectively manage this problem.

Figure 3

Trends in Juvenile Population and Juvenile Violent Crimes



Note: **Because of magnitude differences, the scale of the lower graph uses smaller increments than the upper graph in order to make the trend visible. The two cannot be directly compared.**

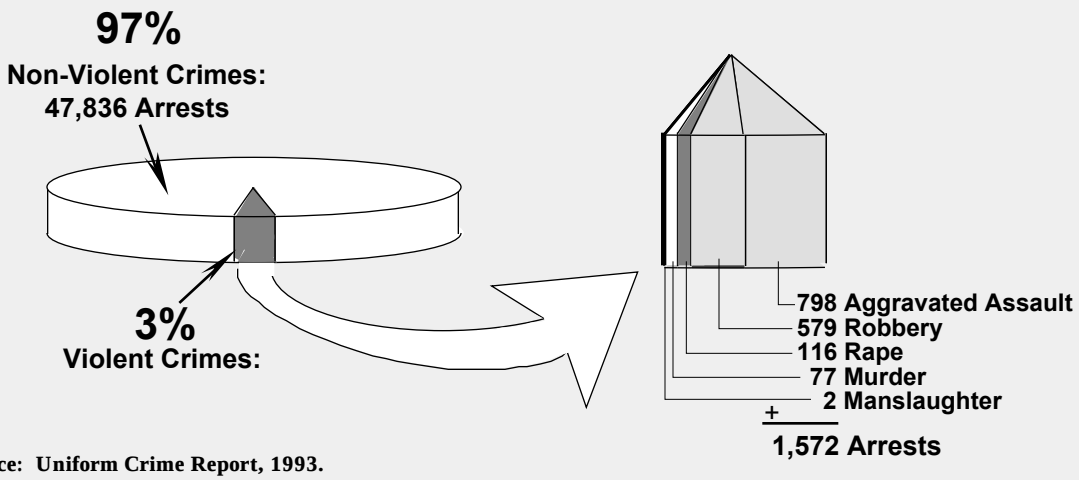
Source: **JLARC staff analysis of data collected from the Department of Criminal Justice Services. Arrest data compiled by Uniform Crime Reporting Section, Department of State Police.**

Most Youths in the Juvenile System Are Not Charged with a Violent Crime

With juvenile arrests for violent crime increasing by a substantial percentage, it is easy but inaccurate to assume that the majority or even a significant minority of youths who come into contact with the juvenile system do so because of an act of violence. UCR data reveal that arrests for serious acts of violence among teenagers is a small proportion of juvenile arrests in the State. Of the 49,408 complaints alleging juvenile delinquency in 1993, three percent involved a felony act of violence (Figure 4). Additionally, while the State has experienced an 83 percent increase in the number of juveniles arrested for murder or non-negligent manslaughter, the total number of these arrests in 1993 was 79. For rapes the number was 116.

Figure 4

Juvenile Arrests for Violent Crimes as a Proportion of All Juvenile Arrests in Virginia



Source: Uniform Crime Report, 1993.

These numbers demonstrate that because arrests for violent crimes constitute a small portion of total juvenile arrests, large percentage increases in these types of arrests do not translate into comparably large numbers of violent crimes. These small numbers in no way diminish the seriousness of these crimes. But ultimately the effectiveness of the State's juvenile system will be determined in large measure by how it handles the problems presented by those 29 of every 30 juveniles in the system whose crimes, while serious, do not rise to the level of murder, rape, robbery or aggravated assault.

CHARACTERISTICS OF THE JUVENILE OFFENDER IN VIRGINIA

Unlike the adult criminal justice system, the primary goal of the State's juvenile justice system has been to rehabilitate the young offender. The underlying premise of

this goal is that juvenile criminal behavior is malleable because it has its roots in a host of family and individual problems which can often be addressed in structured treatment programs while the offender is still young. As a result, when considering sanctions, juvenile court judges are required to base their dispositions on individual and social factors along with the nature and circumstances of the crime committed by the juvenile.

In Virginia, this obligation in judicial sanctioning to consider factors other than the crime is made especially difficult because of the diverse problems of many of the juveniles in the system. Table 1 reports the socio-demographic characteristics of a representative sample of juveniles who had a court intake in FY 1992 and summarizes their criminal record. As shown, in FY 1992, the typical young offender was white (55 percent), male (79 percent), and was in the 15 to 16 year old cohort (35 percent). In terms of their criminal record, only five percent of juveniles came to the system in FY 1992 for a violent offense. The majority (49 percent) were charged with misdemeanor offenses. Another 25 percent were charged with non-violent felonies. Just over one-third of these juveniles had a record of prior offenses (35 percent). The average number of convictions for juveniles with a prior criminal record was three. For approximately eight percent of these juveniles, their offenses committed prior to FY 1992 involved violence against a person.

The family and social problems that some of these juveniles have are summarized in Table 2. These figures are reported for juvenile offenders who were found guilty by a judge of either a delinquent or status offense following their first contact with the court in FY 1992. In terms of their family environment, a significant proportion of these youth (55 percent) lived with fewer than two parents. Moreover, the parents or legal guardians for a number of these juveniles abused drugs (39 percent) and/or had a criminal record (36 percent).

Among the juveniles themselves, more than half (53 percent) were considered truants and 45 percent had repeated at least one grade at the time they committed their offense in FY 1992. Almost one-third of these juveniles were believed to be abusing either drugs or alcohol. Similarly, approximately 33 percent had an identified mental or psychological disability such as attention deficit disorder, depression, or a learning disability. The following case example, selected from one of the social history reports of the juveniles in JLARC's study sample, underscores the impact of these problems on the development of the juvenile.

> ***Richard (a fictitious name to protect confidentiality) is a 14 year old male who has been convicted by the juvenile court of two counts of malicious wounding and six assault and battery charges. At the time of his court intake in 1991, Richard lived with his mother, her boyfriend, and three siblings. There have been a number of changes to Richard's family structure over the past few years. Richard's biological father is an alcoholic who abandoned the family several years prior to 1991. He provides no financial support and maintains no family contact. Richard was "badly beaten" by his father when he was a young child. His father was criminally charged but not convicted. Richard's***

Table 1

Characteristics of Juveniles Who Had a Court Intake in FY 1992

Characteristics	*Proportion of FY 1992 Intakes (Percent)*
Sex	
Male	**79**
Female	**21**
Race	
White	**55**
Black	**41**
Other	**4**
Age	
10 Years Or Younger	**1**
11 and 12 Years	**4**
13 and 14 Years	**16**
15 and 16 Years	**35**
16 and 17 Years	**22**
Over 17	**22**
Most Serious Offense at Intake	
Felony Against Person	**5**
Other Felonies	**25**
Misdemeanor Against Person	**15**
Other Misdemeanors	**34**
Violation of Court Order	**6**
Status Offense	**15**
Prior Criminal Record	**36**
Average Number of Criminal Convictions Prior to FY 1992	**3**
Prior Crime Was Violent Felony Against Person	**8**
Total Number of Unweighted Cases	**2,920**

Notes: **The reported sample proportions are weighted according to each CSU's proportion of statewide caseload. The proportions in this table do not include missing values.**

Source: **JLARC staff analysis of juvenile court records collected from 35 CSUs.**

Table 2

Characteristics of Juveniles Who Were Found Guilty in Juvenile Court of the First Offense They Were Charged With in FY 1992

Characteristics	*Proportion of Total Cases (Percent)*
Family structure	
Living with two parents	**45**
Living with mother only	**37**
Other family structure	**18**
Parents or legal guardian with a criminal record	**36**
Parents or legal guardian abuse drugs or alcohol	**39**
Child ever involved in custody case	**21**
Juvenile abused drugs or alcohol	**32**
Juvenile is a truant	**53**
Juvenile repeated at least one grade	**45**
Juvenile had mental or psychological disability	**33**
Total number of unweighted cases	**1,297**

Notes: **The reported sample proportions are weighted according to each CSU's proportion of statewide caseload. The proportions reported in this table do not include missing values.**

Source: **JLARC staff analysis of juvenile court records collected from 35 CSUs.**

mother is addicted to cocaine and does not have an effective relationship with her children. Because of her substance abuse, Richard's mother was displaced from her home and the children were placed in foster care on two separate occasions. At the time of this report, she was still homeless and addicted to cocaine. Richard has not been identified as a substance abuser but his probation officer concluded that the likelihood of chemical dependency was high. Richard is considered emotionally disturbed and has been in special education classes since 1984. His educational progress has been slowed by truancy and expulsions for fighting. While Richard shows little remorse for his crimes, in court he "presents as tearful and often sucks his thumb." As of this study, Richard had been committed to DYFS on two separate occasions.

EVOLUTION OF VIRGINIA'S JUVENILE JUSTICE SYSTEM

Virginia's juvenile justice system has undergone several major reforms since it was first established more than 80 years ago. The impetus for the reforms in most instances was a concern that the system was not properly designed to address the complex problems associated with juvenile crime. For example, prior to 1950, there was no statewide system of juvenile courts in the Commonwealth. Youthful offenders were tried in adult courts, and if found guilty, were sentenced to indeterminate sentences in private facilities. The *Code of Virginia* was later amended to create separate courts for juveniles, but use of these courts was primarily limited to large urban areas.

In 1950, the General Assembly adopted legislation which created a statewide juvenile justice system based on a newly-established, comprehensive juvenile code. Although there have been several amendments to the juvenile code since that time, many of the key provisions in current law can be traced to the sweeping legislative changes that were put in place in 1950. Notably, this includes language which first gave intake officers the authority to divert youthful offenders away from the criminal adjudication process.

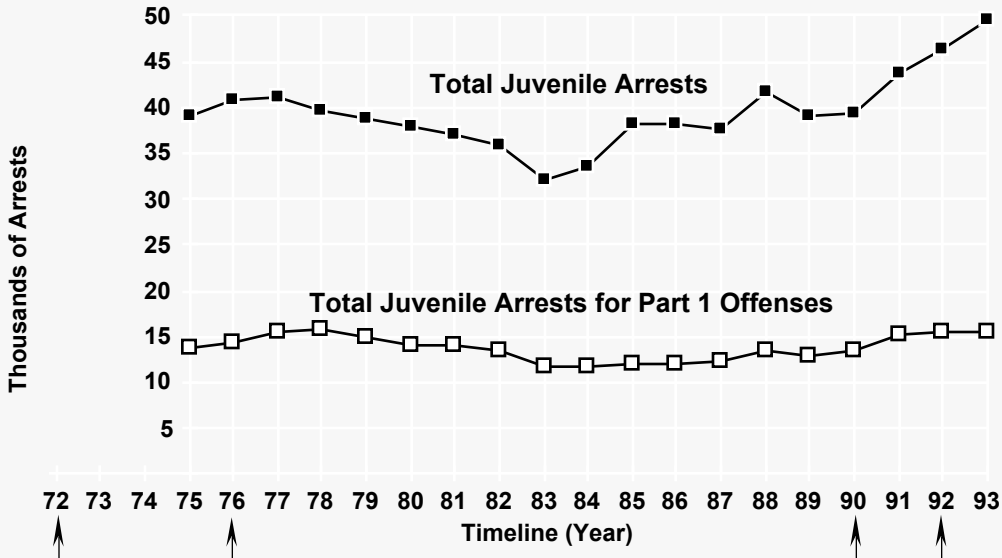
In the early 1970s, partly in response to the rising juvenile crime rates and the growing complexity of delinquency, the General Assembly made major revisions to the juvenile code but maintained the philosophy of diversion and community treatment. As a part of these amendments, both juvenile court judges and intake officers were vested with a significant amount of discretion in deciding the nature of punishment for juvenile offenders. In effect, these changes magnified the emphasis on community diversion as the preferred approach for dealing with young offenders who were not considered a threat to their community.

In 1994, however, the General Assembly appeared to change direction. With arrests for juvenile crime returning to the high levels witnessed in the 1970s, the General Assembly moved to strengthen the punishment provisions in the juvenile code. While not eliminating the emphasis on diversion, these amendments provided juvenile court judges with the authority to impose stricter punishments on serious juvenile offenders. In addition, this legislation lowered the age at which juveniles could be transferred to circuit court for trial and authorized longer sentences for youths placed in correctional facilities.

Although these provisions were enacted less than two years ago, additional amendments to the juvenile code are now being considered. As with the 1994 amendments, the proposals under development are focused on strengthening juvenile court sanctions as a solution to the persistently high juvenile crime rates of the last four years. Figure 5 simultaneously shows the timing of the past reforms over the last 20 years and juvenile crime trends during those years.

Figure 5

Juvenile Arrests Trend Data and Key Legislative Changes to the Juvenile Code



System of State-operated courts established

Legal distinctions created for offenders who were: (1) abused or neglected, (2) in need of services, or (3) delinquent

Parents of juvenile offenders brought under jurisdiction of the court

Criteria for custody and detention of juveniles narrowed

Discretion of intake staff codified

Judge given authority to compel State agencies to cooperate with the court

Criteria for taking youths into custody broadened

Age of serious offender reduced from 15 to 14

Criteria for commitment of juvenile to learning centers broadened

Judge given authority to impose determinate sentences

Criteria for transferring youth to circuit court broadened

Source: JLARC staff graphic, based on analysis of data compiled by Uniform Crime Reporting Section, Department of State Police, and analysis of changes in the juvenile

First Juvenile Courts in Virginia Were Not Part of a Statewide System

Virginia's juvenile justice system had its genesis in 1914, when the General Assembly established the first juvenile courts in the large urban areas of the State. Prior to that time, in Virginia and most of the country, all juvenile offenders were tried in existing criminal courts. A key exception was the juvenile court established in Cook County by the Illinois legislature in 1899. The legislation that created the Illinois system required that a separate juvenile court be established for court proceedings involving youthful offenders. In addition, the Illinois legislature created correctional institutions for those youths whose court-ordered punishment was secure confinement.

The first juvenile system in Virginia differed from the model established in Cook County in two notable ways. First, all court proceedings involving juveniles were still adjudicated in regular criminal court. According to State statute, any city with a population of at least 50,000 residents was authorized to elect a "special justice of the peace" to serve a four-year term. This special justice was then granted exclusive jurisdiction over the following types of cases:

- **all criminal offenses or local ordinance violations by persons less than 18 years of age;**
- **any case where an adult was alleged to have contributed to the delinquency of a minor; and**
- **child custody cases.**

Second, the General Assembly stopped short of creating separate secure confinement facilities for juvenile offenders. However, in recognition of the need to protect juvenile offenders from adults who were convicted of crimes and incarcerated, the *Code of Virginia* provided special justices or judges with the authority to commit juveniles to privately operated facilities. Under State statute, a judge could commit the juvenile offender to private, racially separate reformatories, orphanages, industrial schools, or family homes (known today as foster homes).

Before any of these institutions could be used for the placement of a juvenile, they had to be approved by the State Board of Charities and Prisons (SBCP). Moreover, once a child was placed in one of these institutions, the SBCP was required to conduct regular inspections to ensure the proper care of committed juveniles. As an alternative, the judge, with the consent of the parent, could have the child "whipped" by the local sheriff in lieu of other punishment.

Statewide System Created. **In 1950, following a two-year study by the Virginia Advisory Legislative Council (VALC), the General Assembly authorized a restructuring of the State's juvenile justice system. At this time, the juvenile court system consisted primarily of several regional juvenile and domestic relations courts and a few individually operated courts in large urban areas. The most basic change which**

followed VALC's study was the establishment of a statewide system of juvenile courts that had exclusive jurisdiction over all cases involving youthful offenders. Specifically, the *Code of Virginia* stated that "in every county and in every city of the State there shall be a Juvenile and Domestic Relations Court." Subsequently, locally funded and operated juvenile courts were established as a part of the existing county courts across the State. These courts were supplements to the already existing regional and urban courts.

In addition, using standards established by the National Council on Crime and Delinquency, the General Assembly crafted a comprehensive set of statutes to govern major aspects of the juvenile court process. For example, the jurisdiction of the court was expanded to cover child runaways, children who were considered incorrigible by their parents, habitual truants, family disputes where one member had another arrested (except for cases of murder and manslaughter), and any offenses that "contributed to the disruption of marital relations or a home."

Also, for the first time, language was added to the *Code of Virginia* which addressed the process of diverting cases from court. Court personnel were now required to conduct an investigation of any charges made against a juvenile before filing a petition against the child with the court. Moreover, even if the facts of the investigation revealed that the charges against the juvenile had merit, the General Assembly gave court personnel the authority to "proceed informally and make such adjustment as is practicable without a petition." This aspect of the revised juvenile code was an early recognition by the General Assembly of the adverse psychological and social impact that formal criminal proceedings could potentially have on a youthful offender.

Language was also added to the juvenile code in 1950 that detailed the procedures for the arrest and temporary custody of youthful offenders and the possible transfer of cases from the jurisdiction of the juvenile court to the adult court. Finally, the juvenile code specified the range of punishments that a judge could impose for cases that were petitioned to court and fully adjudicated. They included the following:

- **Place the child on probation under conditions specified by the court;**
- **Leave the child in his or her home;**
- **Place the child in an alternative home;**
- **Take custody of the child and commit the offender to the State Board of Welfare and Institutions, where the director would determine the appropriate institutional placement for the child;**
- **Take custody and commit the child to a private agency;**
- **Impose a fine; or,**
- **Order the appropriate treatment or medical care.**

Juvenile Court System and Code Reorganized in the 1970s. **In 1972, the General Assembly revisited the issue of the structure of the court system and decided to create a State-operated juvenile court system to parallel the Commonwealth's circuit and general district courts. Now, as a result of this change, there are 35 court service units (CSUs) in three regions of the State. All but three of these CSUs are State-operated. The three CSUs which have remained local entities serve Arlington, Falls Church, and the city and county of Fairfax (Figure 6).**

Two years following this structural change to the system, the VALC was directed by the General Assembly to "make a study and report on devising a system of comprehensive planning for the delivery of services to youthful offenders . . . ." During this time, Virginia, like many other states, was experiencing high rates of juvenile crime. Moreover, because the evidence indicated that many juvenile delinquents and status offenders were reared in dysfunctional families, the emerging research on this issue tended to underscore the importance of developing comprehensive treatment programs to combat juvenile crime by stabilizing the family unit.

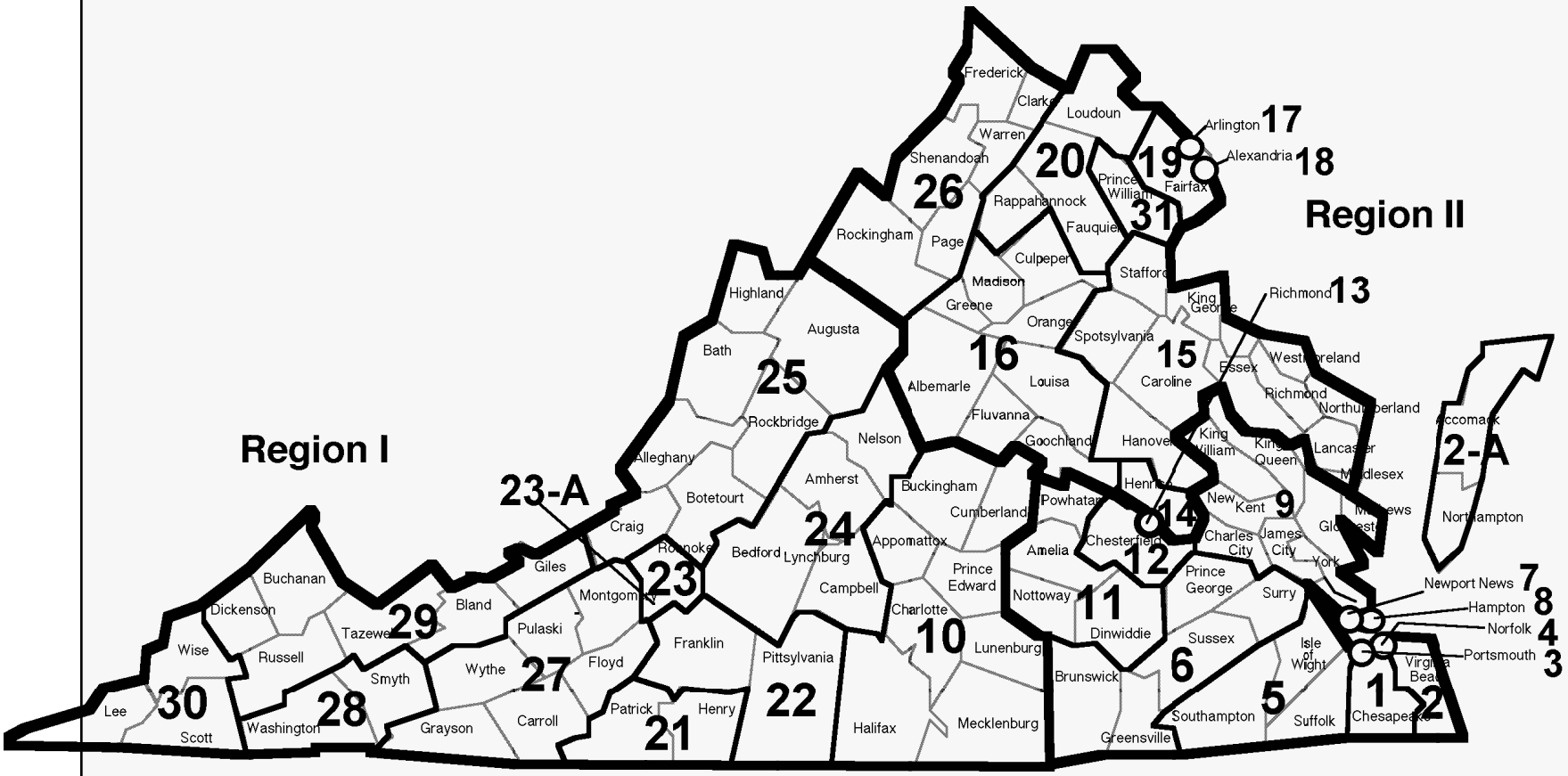
The work of VALC was also influenced by several landmark cases regarding the issue of due process for juveniles. These cases were decided in the U.S. Supreme Court, the federal appellate courts, and Virginia's appellate courts, and generally stated that juveniles should not be denied the Constitutional protections of due process. These rulings then forced Virginia and other states to re-examine their juvenile codes to determine if youthful offenders were being provided the same due process protections as their adult counterparts. Based largely on the decisions of the higher court, amendments were added to the State's juvenile code which established the right of young offenders to receive notice of the charges brought against them, the right to counsel, the right to confront an accuser, and protection from self-incrimination.

However, in its report to the General Assembly, VALC concluded that these amendments had been added to the juvenile code in a "piecemeal" fashion. Further, the Council suggested that the emergence of new concepts of juvenile justice had left Virginia's juvenile justice laws in "a less than orderly and comprehensive fashion." Therefore, with the intention of expressing a consistent juvenile justice philosophy through State statutes, VALC recommended a reorganization of the juvenile code. As an excerpt from its report to the General Assembly indicates, the goal of VALC in developing these recommendations was to sharpen the focus of the juvenile code toward treating the juvenile offender in the community as a means of rehabilitation and for the purpose of maintaining the family unit:

> **Of crucial importance in dealing with children and parents is the maintenance and support, wherever possible, of the family unit. There is a considerable price to pay, both financially and emotionally, when a child is removed from his natural home or a home is otherwise broken up. Where in-home services, family counseling, and other rehabilitative tools can be used to heal a broken family or support a foundering home, this should be the first line of defense. When it is necessary to remove a child from a bad home situation to protect the child, the**

Figure 6

Virginia Department of Youth and Family Services
Court Service Units and Administrative Regions



Source: Department of Youth and Family Services.

> **parent, or the community, every effort should be made to return the child home or place him in another stable residential placement as quickly as is practicable. When a child comes before the court as a result of his or her misbehavior or difficulties in the home, parents need to become more involved in the programs designed to resolve the child's difficulties. A child does not grow up in a vacuum . . . .**

Based on this philosophy, VALC made recommendations for juvenile code revisions that were principally designed to create a trained intake unit in each court. The primary mission of this unit would be to divert youthful offenders from the juvenile justice system if they had the potential to be successfully treated in the community. Only if diversion was determined to be a risk to the community should the court consider more restrictive alternative sanctions. This discretionary authority for intake officers and judges is now both the most criticized and the most celebrated aspect of the State's juvenile justice system. Some of the key issues addressed by VALC that were later passed into law to emphasize the intent of the juvenile code towards diversion rather than institutional punishment are listed below:

- ***Defining Categories of Juveniles.*** **VALC recommended that three categories of children be defined: (1) the abused and neglected child; (2) the child in need of services; and (3) the delinquent child. The first two categories are designated for children who are brought under the purview of the court because of difficulties that do not involve the violation of criminal laws. For example, they could be truants, runaways, or they may be the target of physical abuse. By making distinctions and mandating the appropriate treatment or care, VALC suggested that the stigma of being treated as a delinquent could be avoided.**

- ***Jurisdiction of the Juvenile Court.*** **The jurisdiction of juvenile court was expanded to include the parent, guardian, legal custodian or persons acting on behalf of the parents. The intention of this amendment was to give the court the authority to sanction the parents in cases where the court determined that the behavior of the parent is a contributing factor to the child's problems.**

- ***Criteria for Detention Following Arrest.*** **Specific criteria were established governing the situations under which a child could be taken into custody and placed in secure detention. In summary, the purpose of these amendments was to limit the number of youth offenders eligible for placement in detention homes to those considered a danger to themselves or the public.**

- ***Discretion of Intake Officers.*** **VALC recommended that the sections of the *Code of Virginia* governing the intake process be amended to clearly indicate that petitions should only be filed for those cases in which there is both probable cause that a crime was committed and a clear indication that such a petition would be in the best interests of the juvenile offender and the community. Otherwise the case should be diverted or completely deflected (if there is no probable cause) from the system.**

- ***Disposition of Cases.*** **Language was recommended that would give judges the authority to order any State, county, or municipal officer or agency to render the services needed to carry out the aims of the juvenile code. Because the court was vested with the sole responsibility to ensure the proper care, treatment, or punishment of the youthful offender, VALC concluded that judges needed the authority to compel the cooperation of agencies and persons who had the means to address the needs of the offenders.**

Two years after the study was initiated, VALC submitted its report to the General Assembly. In 1976, through House Bill 518, the General Assembly adopted virtually all of the suggested amendments. Presently, these revisions, along with other amendments adopted since 1976, define both the structure and primary philosophy of the State's juvenile justice system.

Recent Amendments Toughen Punishment. **More recently, the General Assembly joined a growing number of states whose legislatures decided to pass a series of laws aimed at increasing the penalties for some juvenile offenses. Two of the amendments in the Commonwealth dealt with redefining the "serious offender" and lowering the age at which a juvenile offender could be transferred to circuit court to be tried as an adult. Under previous law, in order to be considered a serious offender, a juvenile had to be at least 15 years of age and commit certain violent crimes, or violate parole by committing another felony. The new law reduced the age requirement to 14 and expanded the list of felonies that would qualify a youth as a serious offender.**

Regarding the transfer process, prior to 1994, judges could only order a transfer if a juvenile was at least 15 years of age and the judge determined that: (1) there was probable cause that the accused committed the crime; (2) the juvenile was competent to stand trial; (3) the juvenile was a threat to the community; and (4) the youth was no longer amenable to treatment. The 1994 legislation eliminated the amenability requirement, lowered the age at which a transfer would be allowed to 14, and made transfers automatic for juveniles who are at least 16 years of age and commit especially violent crimes.

Also, judges can now impose longer sentences for certain juvenile offenders who are committed to correctional centers. Basically, any juvenile who is at least 14 years of age and commits a violent felony or comits any felony offense while on parole for a previous felony can be required to serve a seven-year sentence or be committed to the correctional center until he or she reaches 21 years of age. Previously, judges could only commit juveniles to the Department of Youth and Family Services for a minimum of six to 12 months and the director of DYFS would determine when the juvenile would be released. In most cases, juveniles were released shortly after serving a 12-month sentence.

Supporters of tougher youthful offender laws note that this legislation does not substantially weaken the system's focus on rehabilitation. Rather, it is suggested that these new laws are a response to a growing perception that some juvenile offenders simply are not responding to programs of rehabilitation and are not held accountable for their chronic delinquency. Instead of "recycling" habitual and violent offenders through

a system that is designed to use more restrictive punishment as the last line of defense, proponents of stiffer punishment contend that the new laws give judges the much needed authority to take these offenders off of the streets before they generate an extensive and violent criminal record. According to many of those who share this view, the juvenile justice system that was created by pre-1950s legislation never envisioned the type of young offenders that are processed in today's juvenile court system. Consequently, under this viewpoint, the efforts of many states to toughen punishment for juveniles are deemed justified.

THE OVERSIGHT ROLE OF THE DEPARTMENT OF YOUTH AND FAMILY SERVICES

In Virginia, responsibility for dealing with juvenile offenders at the State level has shifted across several agencies since the 1940s. Prior to 1948, the Department of Public Welfare was responsible for "delinquent, dependent and destitute children." In 1948, the Department of Welfare and Institutions was given responsibility for juvenile offenders following the consolidation of the Department of Public Welfare and the Department of Corrections. Then in 1974, the Virginia General Assembly created a separate Department of Corrections and responsibility for juvenile corrections was placed within that department. Finally in 1990, the Department of Youth and Family Services (DYFS) was created by the Virginia General Assembly.

DYFS was established to provide for the confinement and rehabilitation of juvenile offenders that are committed to State custody by the juvenile courts. It was created as a separate agency so that rehabilitation efforts for the youthful offender received the attention demanded by the magnitude and special nature of the problem.

Separate Agency Created to Administer Youth Corrections in Virginia

For 16 years prior to the creation of DYFS, youth corrections issues had been the responsibility of the State Department of Corrections (DOC). For years, one of the primary criticisms of this arrangement was that youth policy and programming efforts did not receive either the attention or funding they deserved due to the demands of the adult system. Because the adult correctional system has a completely different philosophy and is so much larger than juvenile corrections, a number of legislators also raised concerns that neither the policy-making Board of Corrections, nor the administration within DOC, were able to develop the types of programs that properly served the young offender.

As a result of this concern, the 1990 General Assembly adopted legislation which created DYFS to administer the State's juvenile correctional system. In addition, the General Assembly created a State Board of Youth and Family Services as the policy-making body for DYFS. According to the *Code of Virginia*, some of the powers and duties of the Board are as follows:

(1) To develop programmatic and fiscal policies governing the operation of programs and facilities for which DYFS is legally responsible.

(2) To ensure the development and implementation of long-range youth services policies.

(3) To review and comment on DYFS' budget requests and applications for federal funds.

(4) To monitor the activities of DYFS and its effectiveness in implementing the policies of the Board.

(5) To advise the Governor, Director and General Assembly on youth services issues.

(6) To promulgate regulations to carry out the requirements of juvenile law.

Current Responsibilities of the Department of Youth and Family Services

The Department of Youth and Family Services' most important responsibilities are to operate the State correctional centers in which young offenders are confined, to develop and implement rehabilitation programs for offenders in the juvenile correctional centers, to oversee locally-operated detention centers, to establish a network of group homes or other residential care facilities as a part of a community service system, and to staff the State's CSUs which support the juvenile and domestic relations courts.

Specifically, the *Code of Virginia* grants DYFS the authority to receive children who have been committed to some form of State custody by the juvenile court system. In turn, DYFS is charged with the specific responsibilities of maintaining secure confinement facilities while developing rehabilitation programs that allow the agency to effectively carry out the primary mission of the juvenile justice system. In terms of secure confinement, DYFS is directly responsible for six juvenile correctional centers across the State. Juvenile offenders are committed to these facilities by juvenile and domestic relations court judges for either a determinate (fixed) or indeterminate (unspecified) sentence.

Because some youthful offenders must be temporarily detained while awaiting trial, the *Code of Virginia* requires DYFS to facilitate the operation of local detention homes throughout the State. There are 17 juvenile detention homes which are locally operated. DYFS contributes to both the construction and operating costs of these homes, and is also responsible for the certification of these facilities.

Additionally, Chapter 3 of the State Youth and Family Services Act expands DYFS' responsibility for youth programming beyond juvenile correctional centers into the community. In light of the juvenile code's focus on rehabilitation, the General Assembly requires the director of DYFS to both develop and supervise delinquency

prevention and youth development programs in local communities across the State. The *Code of Virginia* allows the director of DYFS to support, with grant funding, those local programs that are consistent with the community rehabilitation goals and polices established by the State Board.

Finally, DYFS is responsible for staffing and overseeing the majority of CSUs. Court service units are responsible for supporting the operation of juvenile and domestic relations courts by providing intake services, pre-disposition information and evaluations, and post-disposition services. Since this report deals with the processing and disposition of juvenile cases, it will focus on the operations of the CSUs and overall court system performance.

STUDY MANDATE

The recent growth in juvenile arrests has focused considerable attention on the State's juvenile justice system and raised concerns about the philosophy of the juvenile code as well as the effectiveness of the system which it governs. Based on this concern, JLARC was directed by the 1995 General Assembly through Senate Joint Resolution 263 (Appendix A) to conduct a review of the juvenile justice system. This review is a part of a larger functional area evaluation of the Administration of Justice and will be conducted in two phases. The first phase of the study focuses on the juvenile court processing activities of the State's CSUs and is the subject of this report. The second phase of this study, which is scheduled to begin in January of 1996, will focus on the organization and management of DYFS and the operation and impact of the State correctional centers.

STUDY APPROACH

Although Virginia spends about $114 million a year on its juvenile justice programs and activities, there has been no comprehensive study of how the system is implemented and the outcomes associated with attempts to rehabilitate young offenders. This section of the chapter briefly outlines JLARC's study approach for the review of the juvenile justice system in Virginia and the methods used to obtain data on the system's performance.

Given the structure of Virginia's juvenile courts, any assessment of the juvenile justice system should begin with an analysis of court processing activities in each of Virginia's CSUs. Each year, these offices formally process more than 120,000 complaints and court petitions involving juveniles. Just under half of these cases typically involve complaints of delinquency or status offenses. While the staff in these offices must follow DYFS policies and general guidelines when carrying out their responsibilities, these guidelines do not prescribe how either intake staff or judges are to exercise their legal discretion when deciding whether and how juvenile complaints should be adjudicated.

This means that decisions which determine the appropriate treatment and punishment for young offenders occur largely outside of the control of DYFS' central office staff.

The initial phase of this study was broadly designed to assess the process and outcomes of juvenile court processing in the State's CSUs. To accomplish this, JLARC staff identified the following broad areas of inquiry for juvenile court processing: (1) the use of discretion by intake staff when deciding whether and how juvenile complaints should proceed through the system; (2) the judicial sanctioning process, including the use of secure confinement and community treatment sanctions by juvenile court judges; (3) the magnitude and nature of recidivism among first-time status offenders and delinquents; and (4) the use of alternative treatment programs by the CSUs. Some of the key questions that were examined in this report were:

(1) At what rate are juvenile offenders diverted from the court system and is the diversion process implemented in a manner that is consistent with legislative intent?

(2) What type of sanctions do judges employ for juveniles found guilty of either a status offense or delinquent act? How do judges adjust their sanctions when faced with repeat offenders?

(3) How often and under what circumstances is community treatment used as a sanction for juvenile delinquents or status offenders? Is the emphasis placed by the *Code of Virginia* on community treatment reflected in the judicial sanctioning process?

(4) What factors are associated with judicial decisions to impose secure confinement as a sanction for certain offenders?

(5) What is the magnitude and nature of recidivism for first-time status offenders and delinquents?

(6) Is greater use of community treatment, possibly through the private sector, a practical consideration for Virginia's juvenile system?

In conducting this study, JLARC staff collected data on the court intake and sanctioning processes from a sample of the files maintained on each juvenile in the system; implemented structured interviews with judges, CSU directors, intake staff, and probation workers; surveyed community service providers regarding their linkages with the court system; and collected data on the State's funding and use of alternative programs.

Examining Court Processing Activities

The major portion of this study was JLARC staff's analysis of juvenile court processing activities. To conduct this analysis, data were collected from extensive file

reviews and structured interviews with key personnel in the CSUs. In terms of the file reviews, each CSU in the State maintains case files on all of the juveniles against whom complaints are formally filed. These files provide information on criminal charges against the youth, previous criminal history, and the results of both intake and adjudication hearings involving the charges. For a subset of juveniles in the system, these case files contain information on the juvenile's family background which is collected as a part of the social history reports typically ordered by the judges before the imposition of court sanctions.

All CSUs Visited. **Because DYFS does not maintain an automated data system, JLARC developed its database for the study of court processing by visiting each of the CSUs in the State and collecting data from a total of 2,920 juvenile court files. The decision to collect data from the universe of court service units was made based on the diversity that likely characterizes the way in which the individual juvenile courts operate. At various stages of the process, intake officers and judges can either dismiss the case before them based on a determination that there is no probable cause, divert the juvenile offender from the formal adjudication process by imposing any of a number of allowable community sanctions, or, in the case of judges, commit the youth to a State correctional center.**

While some differences may exist in court processing according to certain factors (for example, whether the juvenile courts serve localities that are highly populated) there are numerous other factors which impact the decisionmaking of the key players in the system that defy easy measurement. These include variations in judicial philosophy concerning the efficacy of treatment, differences in community attitudes towards punishment of young offenders, variations in court practices regarding the handling of status offenders, and the uneven level of community funding for local programs.

Without reliable proxy measures of these factors, it was difficult to select a sample of court service units that would be representative of such a diverse system. Therefore, the sample was selected by treating each CSU as a separate stratum and randomly selecting FY 1992 intake cases at each site. Generally, if the total number of intakes involving delinquency or status offenses exceeded 3,000 cases in any CSU, 120 cases were selected. For those offices with less than 3,000 cases, the study team selected 80 files for review. The sample size for each CSU is presented in Table 3.

Using these files, the results of both the juvenile intake and court sanctioning processes were documented. As the approach used to select the cases for this study was a disproportionate stratified sample — more files were collected from the sites with smaller caseloads relative to their proportion of total State caseload — the results presented in this report were then appropriately weighted to ensure that the "smaller" sites would not have a disproportionate impact on the analysis results.

Structured Interviews Conducted at a Subset of Courts. **To supplement the data collected from the file reviews, the team conducted structured interviews with judges, CSU directors, intake officers, and probation officers in the court service units. These interviews were used to gain some insight into how these individuals make**

Table 3

FY 1992 Intake Data and Sample Size for Each Court Service Unit in Virginia

Name Of CSU	CSU Status Offense and Delinquent Intake Complaints	Size of CSU Sample
Chesapeake	858	80
Virginia Beach	5,255	120
Portsmouth	1,905	80
Norfolk	3,301	120
Suffolk	719	80
Hopewell	991	80
Newport News	3,159	80
Hampton	1,937	80
Williamsburg	1,682	80
Appomattox	1,929	80
Petersburg	1,348	80
Chesterfield	3,962	120
Richmond	2,535	80
Henrico	2,425	80
Fredericksburg	2,545	80
Charlottesville	1,837	80
Arlington/Falls Church	1,759	80
Alexandria	786	80
Fairfax	5,501	120
Warrenton	294	80
Martinsville	1,074	80
Rocky Mount	2,142	80
Salem	1,705	80
Lynchburg	1,573	80
Staunton	1,537	80
Winchester	1,720	80
Pulaski	1,455	80
Abingdon	1,063	80
Pearisburg	1,067	80
Gate City	993	80
Manassas	3,115	120
Accomack	261	80
Loudoun	795	80
Roanoke City	1,705	80
Totals	64,933	2,920

Source: Intake data provided by the Department of Youth and Family Services for all CSUs except Chesapeake and Fairfax. DYFS organizes intake complaint data from Arlington and Falls Church under the same office code. Consequently, JLARC staff could make no distinction between these offices when selecting the study sample.

decisions concerning the processing of juvenile offender cases. Intake staff were asked to describe the intake polices of the CSU and discuss their criteria for diverting cases away from the adjudication process.

Probation staff were questioned about their caseload size and monitoring and counseling responsibilities. In addition, each probation officer in the State was asked to complete a survey in which they were requested to estimate the amount of time they spent on different activities during a typical week.

Judges were interviewed about the court sanctioning process and were asked to discuss the major factors they consider when imposing sanctions. Special attention was given to how judges attempt to balance the legislative mandate emphasizing the importance of treating most juveniles in the community, with their charge to ensure public safety.

Evaluating Recidivism Among Juvenile Offenders

One of the most important goals of any criminal or juvenile justice system is the prevention of and deterrence of young offenders from additional criminal or delinquent activity. In the Commonwealth, the *Code of Virginia* establishes a reduction in recidivism as one of the four primary purposes of juvenile court law. Accordingly, a key aspect of this study is an evaluation of recidivism among both delinquents and status offenders.

To accomplish this using the study sample of 2,920 juveniles, JLARC identified all status offenders and juvenile delinquents who committed their first offense for which there was an official intake contact in FY 1992. These cases were then examined to determine if the offenders had any further contact with the court for a three year period following FY 1992. For every identified case of recidivism, data were collected on the number of status or criminal offense charges received in this follow-up period and the outcomes associated with the adjudication of those charges.

In order to obtain an accurate assessment of juvenile court processing across the State, the team contacted each CSU to determine whether the juveniles identified in the sample committed previous or subsequent crimes in adjacent jurisdictions that were not identified by the courts because of the lack of an automated data system. In addition, the Department of Corrections provided JLARC with a list of all the juveniles who were either on probation, incarcerated, or on parole supervision in the adult correctional system during the follow-up period used for the study. These research activities allowed JLARC staff to evaluate differences in recidivism rates across the various types of sanctions that the juveniles received upon their first contact with the system.

The Funding and Use of Alternative Community Sanctions

The final issue examined in this study was an assessment of the State's support and use of alternative community programs for juvenile offenders. Some of the research activities conducted to address this issue included a review of documents on the structure and funding of the Comprehensive Services Act (CSA) and the Virginia Juvenile Community Crime Control Act (VJCCCA), a mail survey of residential treatment facilities used by the juvenile court as alternatives to secure detention or confinement, and an analysis of the characteristics of the juveniles who are committed to State correctional centers.

Analysis of the CSA and the VJCCCA. **The first objective of this analysis was to determine if the recently adopted Comprehensive Services Act has been successful in remedying long-standing funding problems which have slowed the provision of treatment services for juvenile offenders in past years. JLARC staff conducted interviews with State and local personnel who are responsible for the implementation of CSA and analyzed financial records to determine if the funding disparities that previously existed across localities have been mitigated by CSA.**

Similarly, JLARC staff reviewed preliminary information on the recently approved VJCCCA. These data, along with interviews with State personnel responsible for implementing the act, were used to determine what changes in funding for community services could be anticipated for FY 1996.

Survey of Residential Programs. **As the cost of incarcerating young offenders increases, an emerging issue is whether there are a sufficient number of residential programs in Virginia that can provide services to juveniles who are at-risk of secure confinement. Through mail surveys, information was collected on the capacity and current utilization rate for these facilities, and whether they are structured to potentially serve a significant number of juveniles who are in the State youth correctional centers. A total of 99 residential treatment centers were surveyed and the response rate was 63 percent.**

Analysis of Data on Youths in State Correctional Centers. **Assuming that alternative residential programs do possess both the capacity and programs to serve more juveniles, there is still a question of whether the State should rely more heavily on these programs to meet the rehabilitative needs of Virginia's juvenile offender population. A key concern in this area is public safety and whether there are a significant number of juveniles in State correctional centers that could be transferred to private and locally-run programs without great risk.**

To conduct this analysis, JLARC staff used the DYFS "Client Profile System" database to generate a profile of correctional center admissions from June 1, 1994 to May 31, 1995. Then, using a combination of eligibility criteria, a conservative estimate of the number of "transferable" juveniles was developed.

REPORT ORGANIZATION

The four remaining chapters in this report present the results of an analysis of juvenile court processing and the use of alternative treatment programs. Chapter II focuses on court processing activities, including the judicial use of secure confinement. Chapter III examines juvenile recidivism for delinquents and status offenders. Chapter IV discusses issues related to the funding of treatment programs for juvenile delinquents, the capacity and utilization of private programs, and the potential for an expanded use of these types of programs. Chapter V provides some summary conclusions based on the data presented throughout this report.

II. Juvenile Court Processing in Virginia

Under Virginia's current Juvenile and Domestic Relations District Court Law, four purposes are articulated to promote "the welfare of the child" in administering juvenile justice. These purposes are:

> **(1) to divert from or within the juvenile justice system, to the extent possible, consistent with the protection of public safety, those children who can be cared for or treated through alternative programs;**
>
> **(2) to provide judicial procedures through which . . . parties are assured a fair hearing . . .;**
>
> **(3) to separate a child from such child's parents, guardian, legal custodian or other person standing in loco parentis only when the child's welfare is endangered or it is in the interest of public safety and then only after consideration of alternatives to out-of-home placement which afford effective protection to the child, his family, and the community; and**
>
> **(4) to protect the community against those acts of its citizens which are harmful to others and reduce the incidence of delinquent behavior.**

The overall thrust of the statute is that juveniles differ from adults in important ways, and their relative immaturity and capacity for growth and development argues for the use of a range of approaches that promote their return to a law-abiding path. Thus, the articulated purposes of the system provide that, when possible, the diversion of juveniles to alternative programs should be accomplished, while the use of sanctions which separate children from parents (such as secure confinement) should be minimized. Still, it is important to note that in three of the four purposes identified in existing statute, the need for public safety and community protection are cited.

This chapter initiates the JLARC staff assessment of the performance of the current juvenile justice system. While all issues that are raised by the juvenile justice statutes could not be addressed within the scope of this study, it was possible to assess the extent to which some of the identified purposes of the statute are met through a detailed examination of court processing issues, as is done in this chapter, and of juvenile recidivism, which is addressed in the next chapter.

With regard to the issue of the court diversion process, the current system appears to be operated in recognition of the need stated in the *Code of Virginia* to protect public safety. In the JLARC study sample, 96 percent of the cases at intake that involved the allegation that a juvenile had committed a felony crime against person were petitioned to court. In fact, the system appears to be implemented so cautiously that questions can be raised as to whether legislative intent for diversion is met. This is because almost three of four (71 percent) of all juveniles who reach intake are petitioned to court, including 67 percent of all those accused of a misdemeanor offense and 46

percent of those accused of a status offense (an offense that is not relevant to adults or would not be a crime if committed by an adult, such as a runaway offense or a curfew violation).

As for the judicial adjudication process, once young offenders are referred to court, about 76 percent are convicted. Further, almost 33 percent of all juveniles convicted of a serious offense are either confined in a State or local facility or transferred to Circuit Court to be tried as an adult. In light of the seriousness of some juvenile crimes, however, consideration should be given to extending the authority of juvenile court judges for sanctioning violent offenders.

Still, it appears that legislative intent could be better met in a least two broad and important ways. First, despite the juvenile code's emphasis on community treatment, there is little evidence to indicate that this philosophy has been fully embraced across the State. In FY 1992, structured treatment programs — counseling, residential and non-residential services — were provided to less than two of every 10 juveniles charged with delinquency. Yet judges do not have full control over this matter, because the resources available to purchase treatment services appear limited. Consequently, with few available options for treatment, judges are often forced to rely on conditional sanctions such as probation, community service, or court-ordered restitution, even if the young offender has a demonstrated record of repeated failures with these sanctions. The system, therefore, could be better-equipped to apply in practice the range of alternatives that appear contemplated by the statue. This suggests the need for a program of graduated sanctions that prominently feature structured community treatment services.

Second, while this study was not a review of judicial procedures, there is evidence from the study analysis that the legislative intent to achieve fairness in the system could be more fully met by addressing the issue of race-neutral justice. Based on the data, judicial decisions to impose the sanction of secure confinement do not appear to be entirely race neutral. Specifically, black youths are more likely to be placed in secure confinement, even after other factors such as the seriousness of offense, prior criminal record, and level of family and individual dysfunction are taken into account.

This chapter presents the results of JLARC staff's analysis of juvenile court processing activities in each of the State's court service units. Included is a review of the intake decisionmaking process, focusing on the use of diversion. This is followed by a discussion of judicial adjudication and sanctioning, with a detailed look at the use of secure confinement.

THE JUVENILE COURT DIVERSION PROCESS

One of the cornerstones of the juvenile justice system is the intake diversion process. Under the discretionary authority granted by the Juvenile and Domestic Relations District Court Law, intake staff in Virginia's court service units (CSUs) have

the authority to resolve juvenile complaints without initiating a formal court action. The primary intent of this law is to facilitate the treatment of low-risk young offenders in the community while preserving the court's resources for the more difficult juvenile cases.

The major question currently surrounding intake diversion in Virginia is whether this process is implemented in a way that threatens public safety and reduces the ability of the court to hold juveniles accountable for their actions. The findings of this study indicate that the court intake process in Virginia is tightly controlled and cautiously implemented, so much so that in some instances, diversion is not carried out in accordance with legislative intent.

Intake staff in more than half of the State's CSUs face either internal or external policy limits which greatly reduce their options in processing juvenile complaints. In some cases, the external limits appear to have weakened the authority that the General Assembly has vested in court intake officers by requiring these officers to file court petitions for most all felony complaints. However, even in those CSUs which operate without such restraints, intake staff typically limit diversion efforts to cases involving status offenses and a small proportion of juveniles who have been charged with misdemeanor crimes. Accordingly, 96 percent of all juveniles who are charged with a violent crime in this State are required to appear before a judge.

The Intake Diversion Process Is a Key Feature of the Juvenile System

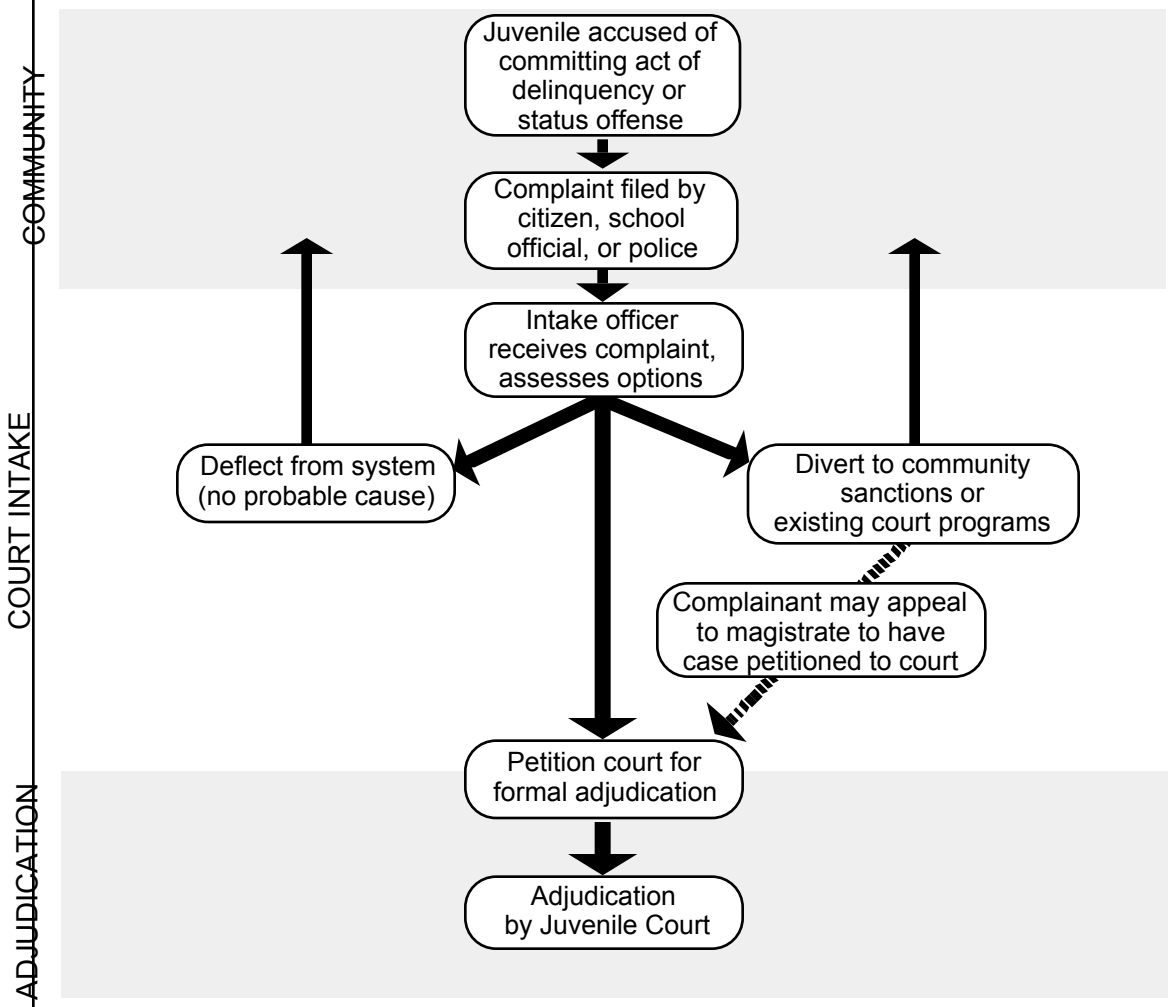
Perhaps the most unique feature of the State's juvenile justice system is the discretion the *Code of Virginia* provides intake officers in deciding how to handle complaints lodged against juveniles that allege acts of delinquency or status offenses. While the juvenile code does permit local Commonwealth Attorneys to file petitions involving delinquency directly with the clerk of the court, the *Code of Virginia* clearly states that the "complaints, requests, and the processing of petitions to initiate a case shall be the responsibility of the intake officer."

The Intake Officer as Gatekeeper. **Under current State law, local police, school officials, and citizens can file a complaint accusing a juvenile of an act of delinquency or a status offense. Upon receiving such a complaint, intake officers can pursue three options: (1) deflect the complaint from the system based on a determination that sufficient probable cause does not exist to support the charges; (2) divert the youth to other organizations or existing court programs for services based on a finding that a formal adjudication hearing is not in the best interests of the juvenile; or (3) after a finding of probable cause, file a petition with the court for formal adjudication of the complaint (Figure 7).**

If, after finding probable cause to support the complaint, an intake officer refuses to file a petition, the complainant reserves the right to appeal this decision to the local magistrate. If the magistrate determines that probable cause does exist, he or she must then issue a warrant requiring the intake officer to file the petition.

Figure 7

Intake Process of the Juvenile System



Source: ***Code of Virginia*****, Section 16.1-260.**

When intake officers divert cases from the court, juvenile justice experts indicate that several important objectives of the juvenile code are fulfilled. First, the statute requirement is met which states that when consistent with public safety, young offenders should be "cared for and treated through alternative programs." Second, the offender avoids the negative labeling often associated with being involved with the juvenile justice system. According to "labeling theory," youths who have extensive involvement with the juvenile court are more likely to view themselves as delinquents and engage in additional criminal behavior. Third, the burden on the juvenile court docket is reduced which, in theory, increases the resources that are available to address the problems of more serious, high risk offenders.

However, the legislation governing the diversion process does not identify the types of juvenile cases that should be considered threats to public safety and are there-

fore unsuitable for community treatment. This places a special burden on intake staff, who must evaluate the circumstances of each complaint and make a decision regarding how the case should be processed in the juvenile justice system.

Recently, questions have been raised concerning the wisdom of providing intake officers with the authority to informally handle juvenile complaints or otherwise divert young offenders away from the adjudication process. With no clear guidelines which prescribe the types of cases that should be diverted, critics of this aspect of the juvenile code contend that public safety is compromised by high diversion rates for potentially serious juvenile offenders.

CSU Intake Process Is Implemented Cautiously But Not Always Consistently with Legislative Intent

To examine intake diversion practices in Virginia's juvenile courts, JLARC staff reviewed intake policy manuals and conducted structured interviews with intake officers in each of the State's CSUs. Also, a representative sample of juvenile court records were examined for 2,920 youths who had at least one contact with an intake officer during FY 1992.

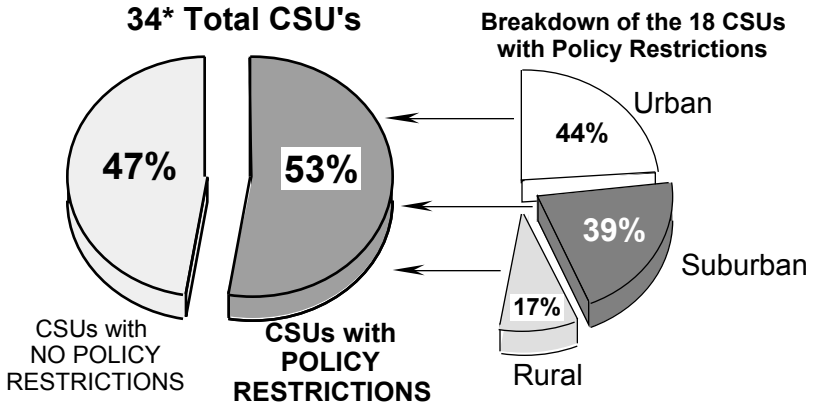
CSU Intake Policies. **As Figure 8 indicates, although the *Code of Virginia* grants juvenile court intake officers a significant amount of discretion in deciding how juvenile complaints are to be handled, intake staff in 53 percent of the State's CSUs face either internal or external policy limits which reduce their options in processing juvenile complaints. These restrictions have typically been put in place to ensure that intake officers will initiate a formal court action when presented with a complaint alleging that a juvenile has committed a felony offense.**

Variations in CSUs intake policies were examined by JLARC staff according to differences in the density of the population served by the court districts. The CSUs were divided into an upper, middle, and lower third based on population density. Thus, CSUs that served areas which had at least 717 residents per square mile were considered large or "urban." Those with at least 87 but not more than 716 residents per square mile were considered medium sized or "suburban." Similarly, CSUs with not more than 86 residents per square mile were treated as small or "rural" sites. Using these classifications, it was determined that among those CSUs with policy restrictions, the largest group (44 percent) were "urban." Approximately 39 percent were medium size or "suburban" offices and 17 percent were small or "rural" CSUs.

These observed differences in CSU intake policies may be related to two factors. First, due to community perceptions about the increased seriousness of juvenile crime in "urban" CSUs, staff in these districts may be concerned with the problems that could result if persons charged with felony offenses are not required to appear in court. In several of the CSUs which restrict intake officer authority, it was made clear that intake staff are not to take chances with felony cases. One staff member noted:

Figure 8

Proportion and Population Types of Court Service Units with Intake Policy Restrictions



***For this analysis, the Falls Church and Arlington offices were combined.**

Notes: **It is important to note that in many "rural" and "suburban" court service units there are numerous localities, some of which have their own intake offices. In some cases, these offices face external policy limits which may be peculiar to that jurisdiction and not the entire court service unit.**

Source: **JLARC staff analysis of structured interview data and document reviews collected from each CSU. The population data used to classify the CSUs as "urban," "suburban," and "rural" was collected from the *Virginia Statistical Abstract,* 1992-93 Edition.**

> **If a felony complaint is filed, especially a serious felony, the intake officer should not make the [decision] to put the [youth] back into the community. If a judge wants the case handled in that way, let him make the call and take the heat.**

A staff member in another "urban" CSU pointed out that while diversion was a useful tool, "it is important to understand that it is standard practice [in this CSU] to send all felony cases to court. These cases will be adjudicated." In still another CSU, a staff member acknowledged that "for obvious reasons," intake staff are aware that felony complaints should not be diverted.

Clearly, many of the "rural" and some of the "suburban" CSUs have a different philosophy regarding this issue. In one such CSU, the supervisor stated that the only policy restraints his staff face are in the *Code of Virginia*. Indeed, on the subject of diversion, the agency's policy manual indicates that the "primary function of intake is to resolve some conflict situations without resorting to the legal process." This, however, "should not exclude the diversion of more serious legal offenses." In another "suburban" CSU, intake staff are instructed to consider "other factors relating to the child and the family" when processing a complaint.

Source of Policy Restraints. **In more than half (56 percent) of the CSUs with intake restrictions, the policy restraints have been established in response to the wishes**

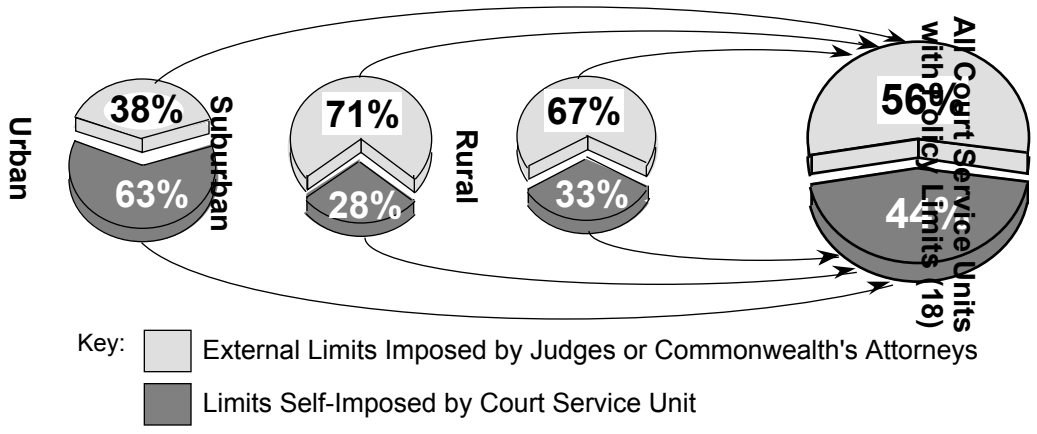
of both local prosecutors and juvenile court judges (Figure 9). This is especially common in the "suburban" and "rural" CSUs. In some cases, however, these practices appear to be in conflict with legislative intent that intake officers have the responsibility for "complaints, requests, and the processing of petitions." For example, intake staff in at least four CSUs stated that local Commonwealth attorneys have required the filing of petitions for all felony complaints. In another CSU, approval for the decision not to file a complaint must come from either the judge or the Commonwealth attorney. While the *Code of Virginia* gives Commonwealth attorneys the authority to file petitions directly with the clerk of the court, it does not require intake staff to seek their permission before a decision is made on whether to resolve a felony complaint informally.

Still, in a few other CSUs, the juvenile court judges have established a narrow set of criteria that intake staff must employ when processing serious felony complaints. For example, in one CSU, the judges have indicated that any juvenile charged with the possession, concealment, or brandishing of a firearm must be detained in the local detention home and required to appear in court. In other cases, however, the criteria are broader and typically preclude an intake officer from diverting almost all felony cases.

For the remaining CSUs in which explicit policy limits have been established (44 percent), these restraints represent the self-imposed polices of the CSU directors. These restraints are more prevalent in "urban" CSUs. The following language from the

Figure 9

Sources of Intake Policy Limits for Virginia's Court Service Units*



***For this analysis, the Falls Church and Arlington offices were combined.**

Notes: **It is important to note that in many "rural" and "suburban" court service units, there are numerous localities, some of which have their own intake offices. In some cases, these offices face external policy limits which may be peculiar to that jurisdiction and not the entire court service unit.**

Percentages do not add to 100 due to rounding.

Source: **JLARC staff analysis of structured interview data and document reviews collected from each CSU. The population data used for this analysis to classify the CSUs as "urban," "suburban," and "rural" was collected from the *Virginia Statistical Abstract*, 1992-93 Edition.**

policy manual of one such CSU underscores the office's cautious approach to the issue of diversion:

> ***While the* Code of Virginia *does allow the Intake Officer discretion in the filing of felony petitions, our own policy is that felony petitions will only be refused if the Intake Officer does not believe that probable cause exists or when the child is 12 years of age or younger and the child's needs meet other criteria for unofficial handling.***

Juvenile Justice Diversion Rates. **One of the central questions about the diversion process in Virginia's juvenile system is: how frequently do intake officers decide to handle complaints informally? It is important to note that these officers do not have the legal authority to impose any sanctions without the consent of the juvenile who is the subject of the complaint. Therefore, before a case can be resolved at intake, the offender must admit his or her guilt and agree to accept the course of action proposed by the intake officer. Should they refuse to admit guilt or accept the sanction, the intake officer has the option of dropping the matter or filing a court petition.**

Critics of this aspect of juvenile law point out that if complaints against large numbers of juvenile delinquents are resolved informally, punishment for juvenile crime becomes less certain, the integrity of the judicial system is compromised, and deterrence is weakened. This, it is suggested, emboldens the young offender and perpetuates chronic criminal behavior.

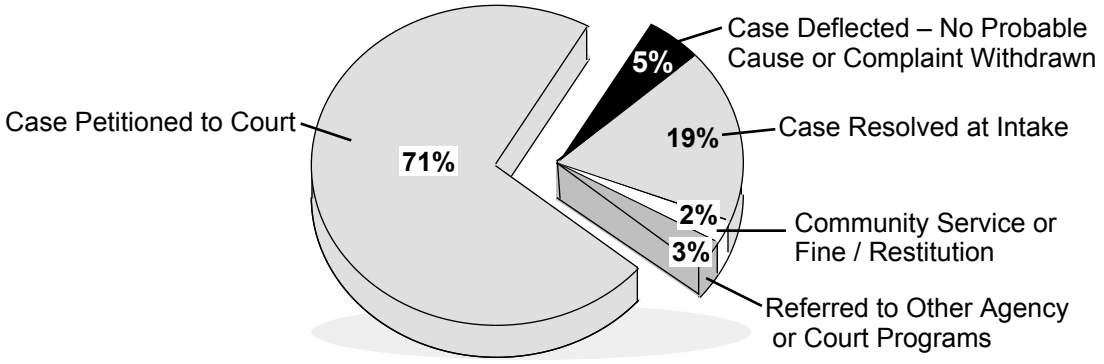
JLARC staff examined the frequency with which juvenile complaints are diverted from juvenile courts across the State using the previously mentioned study sample of 2,920 juveniles. Figure 10 presents the results from this analysis. As shown, the evidence from this analysis indicates that most juveniles who are charged with a crime in Virginia face formal court proceedings.

Specifically, almost three-quarters of all juveniles (71 percent) were required to appear in court to answer the first complaint filed against them in FY 1992. In only five percent of the cases were the complaints against these juveniles withdrawn by the complainant or dismissed by intake staff due to lack of probable cause. For the remaining cases, 19 percent were resolved at intake with the intake officer providing a warning or unofficial counseling to the juvenile. Two percent were resolved through the agreed use of community service or restitution, and three percent through the referral of the juvenile to other agencies.

Diversion Rates Based on Population Density and Geography. **Despite the previously discussed differences in the intake policies of "urban," "suburban" and "rural" CSUs, no variation was observed in the actual intake diversion rate when population density is used as a measure of standardization (Table 4). With less restrictive intake policies and caseloads that possibly include a larger proportion of less serious offenders, a higher diversion rate for the "rural" CSUs was anticipated. The absence of such differences seems to suggest that the diversion practices for those CSUs that do not have explicit intake policy limits are similar in nature to those CSUs that**

Figure 10

Intake Processing of Juvenile Delinquency and Status Offense Complaints, FY 1992



Notes: **The reported sample proportions are weighted according to each CSU's proportion of the statewide caseload. The method used to calculate these statistics and the associated sampling errors are presented in a technical appendix which is available from JLARC upon request.**

Source: **JLARC analysis of data collected from juvenile court records in 35 court service units.**

Table 4

Intake Decisions Made for First Complaint Filed Against a Juvenile in FY 1992 According to the Size of the CSU

Intake Outcomes	*Size of Court Service Unit*		
	Large "Urban"	*Medium "Suburban"*	*Small "Rural"*
Cases resolved at intake or diverted to other agency or program for services	**25%**	**25%**	**25%**
Cases deflected out of system (no probable cause) or complaint withdrawn	**7%**	**2%**	**2%**
Cases petitioned to court	**68%**	**74%**	**73%**
Total number of unweighted cases	**1,240**	**800**	**878**

Note: **The reported sample proportions are weighted according to each CSU's proportion of statewide caseload. The chi-square value for the relationship presented in this table was 75.020, which is significant at the 5 percent level.**

Source: **JLARC analysis of data collected from juvenile court records in 35 court service units.**

operate under more prescriptive restrictions. This is an indication that, regardless of size, intake staff in CSUs across the State cautiously use the discretion granted by the juvenile code to divert cases from court. In some cases, it may also be an indication that CSUs do not have access to programs which would allow diversion of a larger number of juveniles.

JLARC staff also examined whether CSUs in certain regions of the State are more likely to divert cases from formal adjudication than others. To conduct this analysis, each CSU was grouped into one of seven geographic regions (Appendix B). Next, diversion rates were calculated for each region. When this is done, some regional differences in diversion rates emerge. In particular, CSUs in Central Virginia divert slighty more than four of every 10 juveniles against whom a complaint is lodged (Figure 11). By comparison, CSUs in Northern Virginia divert only 16 percent of their cases. For the five other regions, diversion rates range from 21 to 28 percent.

The relatively high diversion rate for Central Virginia reflects the aggressive diversion policies in place in several CSUs in this region. Most notably, these CSUs work to divert status offenders. For example, intake staff in one CSU stated that juveniles who are classified as "Children In Need Of Services" (CHINS) will be diverted four to five times before their cases are sent to court. To do otherwise, these staff indicated, would be inconsistent with the community treatment intent of the juvenile code.

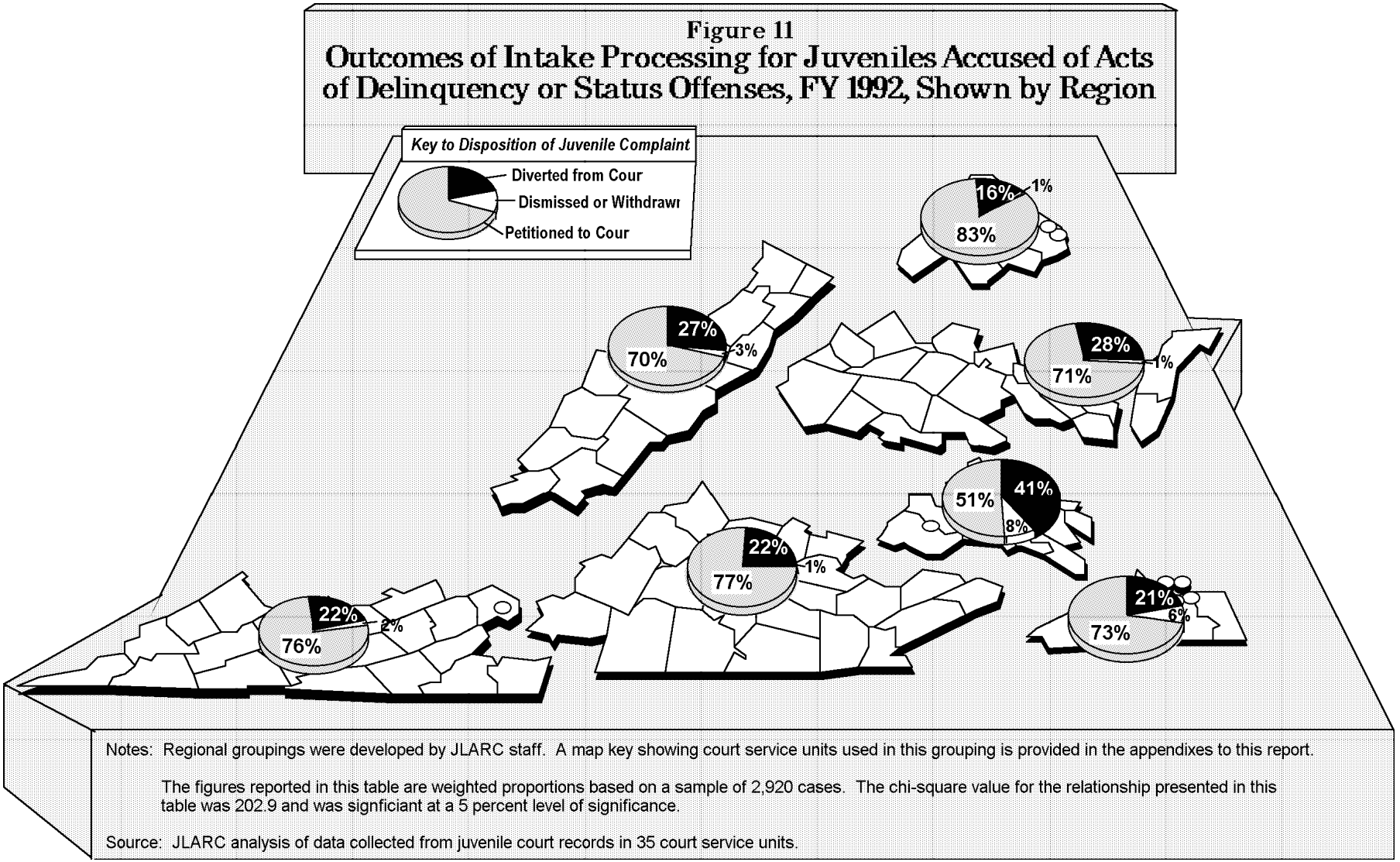
In another CSU in this region, all CHINs, first time drug users, and shoplifters are automatically referred to a community mental health service, a substance abuse treatment program, or a court-operated shoplifters program. Moreover, in contrast to the policies of many other CSUs, staff in this office are not constrained by policies which limit their ability to divert specific types of cases.

The Influence of Legal Factors. **Ultimately, judgments about the appropriateness of the State's overall diversion rate must consider the type of young offenders whose cases are resolved at intake. If the system has a large number of juvenile offenders who are considered low-risk, a correspondingly high diversion rate should be neither surprising nor considered inconsistent with legislative intent.**

Conversely, if the system has a high proportion of young offenders who have extensive criminal records, including evidence of violent behavior and a lack of responsiveness to community treatment, legitimate questions could be raised if a significant number of these offenders were repeatedly diverted from the adjudication process. In interviews with intake workers, JLARC staff were told that the key factors which influence intake decisionmaking are the nature and circumstances of the crime and the juvenile's prior criminal record.

To determine how a juvenile's criminal record might influence the initial handling of a case, JLARC staff analyzed diversion rates in relation to other variables. This analysis controlled for factors such as the juvenile's prior criminal record and the nature of the offense for which a complaint was filed. A variable, called the "most serious crime," was used to account for situations in which juveniles received more than one

Figure 11
Outcomes of Intake Processing for Juveniles Accused of Acts of Delinquency or Status Offenses, FY 1992, Shown by Region



Notes: Regional groupings were developed by JLARC staff. A map key showing court service units used in this grouping is provided in the appendixes to this report.

The figures reported in this table are weighted proportions based on a sample of 2,920 cases. The chi-square value for the relationship presented in this table was 202.9 and was signficiant at a 5 percent level of significance.

Source: JLARC analysis of data collected from juvenile court records in 35 court service units.

charge for each arrest (the data collection instrument used for this study recorded as many as five offenses per arrest for each juvenile intake and up to 35 offenses for those juveniles who had a criminal record prior to their first intake in FY 1992).

Table 5 indicates the strategy that was developed to create this "most serious crime" variable. As shown, six broad categories of offenses were established, which rank crimes from the most to least serious. Next, within each of the broad crime categories, smaller groups of offenses were constructed. For example, the category of "Felony Crimes

Table 5

Classification to Identify Most Serious Crime Committed by Juveniles in JLARC Study Sample

Broad Crime Category	Specific Crimes
Felony Crimes Against Persons	Murder Robbery Sexual Assault Aggravated Assault Kidnapping
Felony Property Crimes and All Other Felonies	Arson Burglary Larceny Drugs Forgery Vandalism Other Felonies
Misdemeanor Crimes Against Person	Sex Offenses Assault Curse and Abuse
Misdemeanor Property Crimes and Other Misdemeanors	Arson Larceny Drugs Vandalism Other Misdemeanors
Court Violations	Probation Violations Parole Violations Violations Of Court Order
Status Offenses	CHINS CHINSUP Possession of Alcohol Possession of Tobacco Beyond Parental Control Curfew Violation

Against Persons" was defined to include murder and attempted murder, robbery, sexual assault, aggravated assault, and kidnapping.

Using these six categories, intake staff across the State do not appear to be inclined to handle the majority of the juvenile complaints informally, even when processing cases involving minor acts of delinquency (Figure 12). Moreover, despite the widely held perception that violent offenders are diverted from the system in large numbers, the data show that this does not appear to be the case. When processing juveniles who are accused of a felony or who have a criminal record, the diversion rate is quite small. For example, among those juveniles who had one prior offense, the intake diversion rate was 19 percent. If the prior offense was a felony, however, the diversion rate dropped to eight percent. The diversion rate for juveniles that were accused of a violent crime (a "Felony Crime Against a Person") was three percent.

While the intake diversion rates for non-serious offenses surpass the rates for the violent offenses, these figures are modest given the nature of some of the crimes and the criminal background of the juveniles. Specifically, about 64 percent of the misdemeanor cases were petitioned to court. Likewise, 63 percent of juveniles with no prior record were required to appear in court in FY 1992. Only those juveniles with a status offense as their most serious charge in FY 1992 were diverted from the court in relatively large proportions (46 percent).

Some intake staff indicate that they do not divert some cases because of the appeals process. Several intake workers pointed out that if they do not file a petition for a case in which probable cause has been established, the complainant will simply go to the magistrate's office and appeal the decision. According to one worker, "this simply means more paperwork for intake so the petition is filed to avoid the hassle."

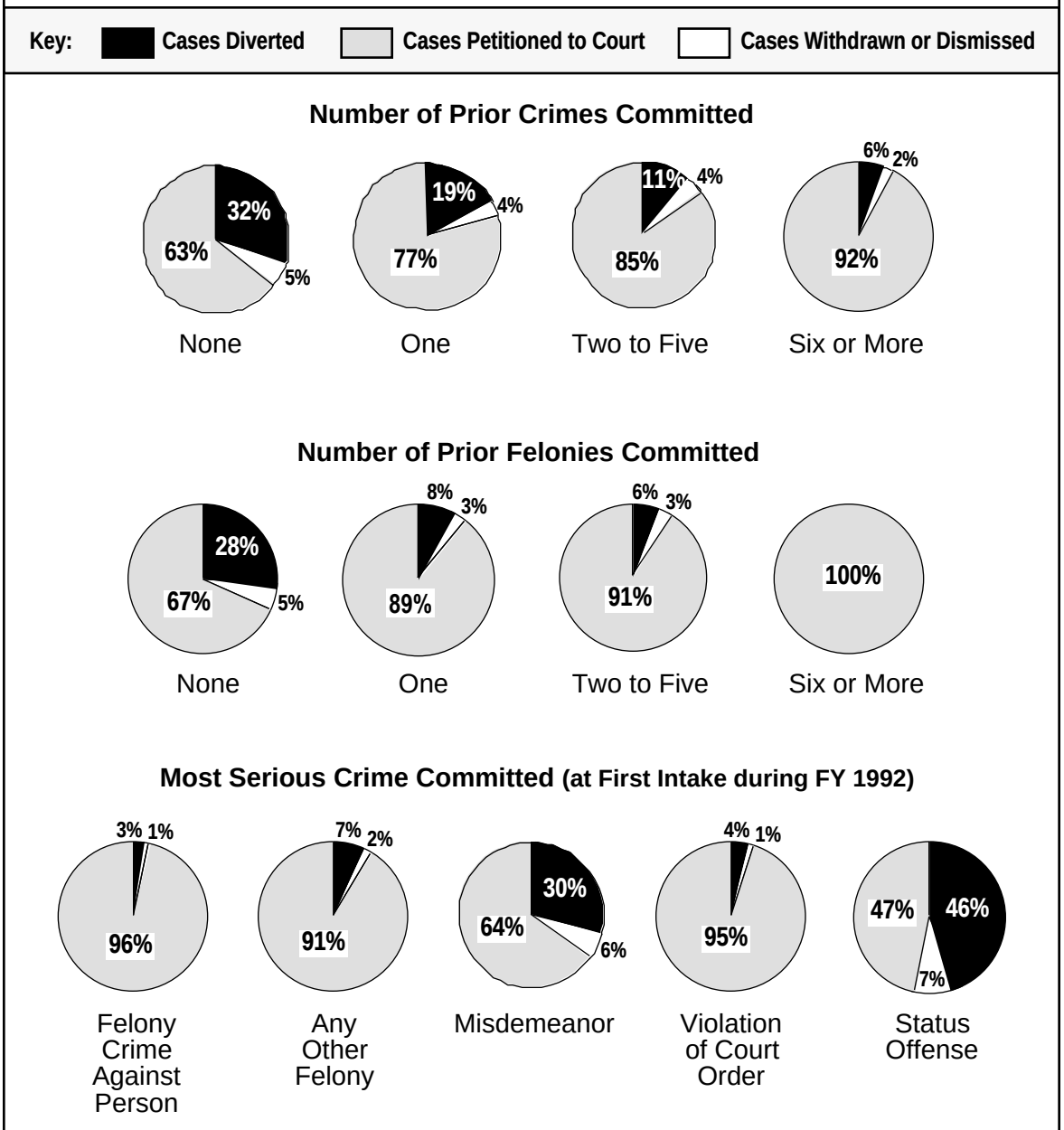
While this cautious approach to the handling of juvenile complaints does ensure that most young offenders will have to appear before a judge, it undercuts one of the cornerstones of the juvenile code — the diversion of the young, non-threatening offender away from the formal adjudication process. At the same time, it places an added weight on a juvenile system already overburdened with crowded dockets for domestic cases.

JUDICIAL ADJUDICATION AND SANCTIONING OF JUVENILE OFFENDERS

Another important feature of the juvenile justice system in Virginia is the wide latitude given judges for sanctioning youths who are petitioned to court and found guilty of the charges against them. Under current law, in which the welfare of the child is "paramount," judges must give strong consideration to the possibility of community treatment if it is determined that the young offender is not a threat to public safety. As a result of this focus on the welfare of the child in court sanctioning, questions have been raised about the willingness of judges to convict young offenders and impose tough punishment for those juveniles who commit serious offenses.

Figure 12

Association between Juveniles' Criminal Records and the Decision by Intake Staff to Divert Cases from the Juvenile Court System, FY 1992



Note: **The figures reported in this table are based on a sample of 2,920 cases. The chi-square values for the crosstabulations shown were significant at a 5 percent level of significance.**

Source: **JLARC analysis of data collected from juvenile court records in 35 court service units.**

While the JLARC staff analysis of the adjudication process found little reason for concern in the conviction rates produced by the system, there are a number of problems with the judicial sanctioning process. These problems, however, appear to be more related to shortcomings within the system rather than flaws in the structure and intent of the juvenile code. For example, despite the rehabilitation objectives articulated by the juvenile code, most youths who are sanctioned by juvenile court judges do not receive the benefit of structured community treatment services.

Due in part to this absence of treatment programs, judges are constrained by the lack of meaningful sanctions for juvenile offenders whose criminal records are not serious enough to warrant confinement. This lack of sanctions has resulted in an over-reliance on the use of probation, when both the young offender and the community might have been better served through more structured treatment programs.

A review of the use of sanctions does reveal, however, that approximately 33 percent of all youths who are convicted of a serious felony receive a sanction of secure confinement or are transferred to Circuit Court to be tried as an adult. Because of the seriousness of some of these crimes, however, it may be beneficial to give juvenile court judges the discretion to impose longer periods of confinement or probation for certain offenders.

Despite High Conviction Rates, Most Juvenile Offenders Are Returned to the Community Without the Benefit of Structured Treatment

As demonstrated in the previous analysis of the intake diversion process, seven out of every 10 juvenile intakes are petitioned to court. At that time, a judge finding a young offender guilty is permitted by the juvenile code to impose a wide range of sanctions. In some cases, judges can apply nominal sanctions — which typically involve a warning or formal reprimand of the accused. This approach is normally utilized when the offender has committed a minor offense, has no prior record with the court, and has no demonstrated need for services.

In other cases, judges can require the juvenile to meet certain conditions both as punishment for the offense and as an alternative to secure confinement. These sanctions might include any combination of community service work, probation, payment of restitution, a suspended commitment to the Department of Youth and Family Services (DYFS), or a referral to an individual or family counselor. Moreover, while these sanctions might be used for both serious and non-serious offenders, they typically do not incorporate the kind of structure that juveniles from troubled or dysfunctional families would require.

Finally, juvenile court judges can impose custodial sanctions. The least restrictive of these sanctions are the residential and non-residential group homes or foster care placements. More treatment-oriented than detention centers or jails, these programs are usually designed to address the range of personal or family problems that are believed

associated with delinquency. For other juveniles, however, more restrictive custodial sanctions are selected, including the State correctional centers, local jails, and secure detention facilities. Similarly, judges are now beginning to use electronic monitoring to place juveniles under house arrest. These more restrictive sanctions represent the last line of defense in the juvenile system and judges are charged by the *Code of Virginia* with the responsibility to employ these sanctions only when they believe the juvenile can not be successfully treated in the community without creating a risk to public safety.

Court Processing Outcomes in Virginia. **Before imposing a sanction in cases of delinquency, it is the obligation of the court to determine that the youth's behavior was not the result of external social conditions, but rather a willful failure of the child to conform with the law. In such cases, the law requires that judges consider the welfare of the child before dispensing punishment. This focus on the welfare of the child raises the potential issues of whether judges will too often dismiss cases where there is sufficient evidence to convict; or whether they will impose sanctions that are much too lenient given the multiple and serious nature of the crimes being committed. In effect, a potential concern is that juveniles may not be given appropriate punishment.**

To examine the adjudication and sanctioning processes, JLARC staff used data collected from its review of juvenile records. The first goal in this analysis was to develop a "snapshot" of juvenile court processing by examining how the court responded to juveniles upon their initial contact with the court in FY 1992. For each of these cases, the study team determined whether the case was adjudicated in juvenile court, transferred to Circuit Court, or taken under advisement by the judge.

Then, for those cases that were formally adjudicated, JLARC staff tracked the outcome of the hearing and identified the nature of the sanction that was used for juveniles found guilty of the charges against them. If the judge imposed multiple sanctions (for example, probation and court-ordered counseling), information was collected on each sanction. This permitted an analysis of the "most restrictive" disposition imposed when more than one sanction was used, as well as an assessment of the range of sanctions that were levied against a given juvenile.

In order to identify the "most restrictive" disposition, JLARC used a ranking strategy that was similar to the approach used to identify the "most serious crime." In this case, judgments were made about the relative severity of each sanction in terms of the requirements imposed on the offenders and the restrictions typically associated with the sanctions.

Table 6 provides a list of the major judicial sanctions used by juvenile court judges and the order in which they were ranked for this analysis. As shown, custodial sanctions that involve secure confinement have the highest rank while community treatment programs and other conditional sanctions that do not greatly restrict the juvenile were given a lower ranking. The lowest rankings were reserved for cases in which the judge's sanction was a reprimand or warning.

Table 6

Judicial Sanctions Ranked from the Least to the Most Restrictive

Sanction Category	*Type of Sanction*
Nominal	**Warning or Reprimand**
Conditional	**Case Taken Under Advisement** **Community Service, Payment of Fine or Restitution** **Referral to Counseling** **Placed on Probation**
Non-Secure Custodial	**Placed in Residential or Non-Residential Program**
Conditional	**Given Suspended Commitment to DYFS or Jail** **Or Placed Under House Arrest**
Secure Custodial	**Placed in Secure Detention or Jail** **Commitment to DYFS**
Release Jurisdiction	**Transferred to Circuit Court**

Source: Order of rank developed by JLARC staff.

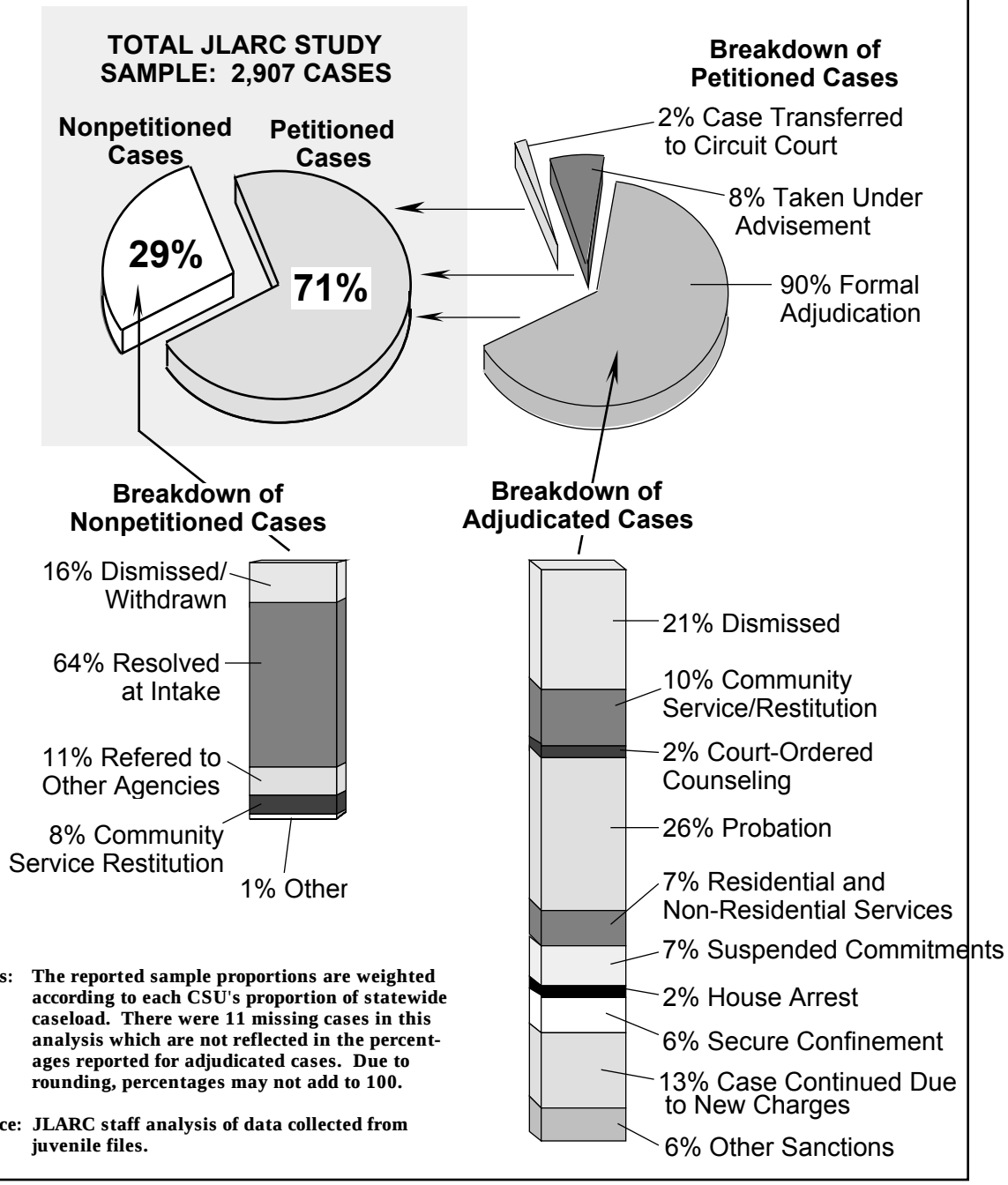
Figure 13 summarizes the results of this analysis using the "most restrictive" sanction that a juvenile received. As shown, there is no evidence from this analysis to support the view that a significant number of juvenile cases are taken under advisement or otherwise dismissed by juvenile court judges. Based on their initial contact with the juvenile court in FY 1992, 71 percent of all juveniles were required to appear in court. Approximately nine out of 10 of these juveniles (90 percent) had their cases formally adjudicated. The remaining cases were either transferred to circuit court (two percent) or taken under advisement by the judge (eight percent). It is important to note that that the proportion of juvenile offenders who face possible transfer to Circuit Court to be tried as an adult will likely increase in future years. At the time the sanctions reported in this reported were imposed, juvenile court judges could only order the transfer of juveniles charged with certain violent offenses if they were at least 15 years of age. This age requirement has since been lowered to 14.

For cases that are taken under advisement, the juvenile code allows the judge, with the consent of the juvenile and his attorney, to defer disposition of the case for a maximum of 12 months. During the deferral period, the juvenile must adhere to any conditions imposed by the court. If the youth successfully meets these conditions, the charges are dismissed without a finding of guilt.

Among juveniles who faced formal adjudication, only 21 percent had their cases dismissed or were found not guilty. This means that, excluding the cases that were continued because the juvenile was charged with additional offenses, the conviction rate for juveniles appearing in juvenile court is about 76 percent.

Figure 13

Juvenile Court Processing Outcomes in Virginia



Notes: **The reported sample proportions are weighted according to each CSU's proportion of statewide caseload. There were 11 missing cases in this analysis which are not reflected in the percentages reported for adjudicated cases. Due to rounding, percentages may not add to 100.**

Source: **JLARC staff analysis of data collected from juvenile files.**

The Use of Alternative Sanctions. **Although judges can use a variety of sanctions after a finding of guilt, the data presented in Figure 13 suggest that only a small number of juveniles were required to participate in structured community treatment programs as the final disposition of their first intake in FY 1992. While most offenders were not detained by the courts, in the majority of cases the youths were returned to their community without the benefit of a structured program of treatment.**

To illustrate, in only seven percent of the cases did the "most restrictive" disposition involve treatment in a structured, non-residential or residential program. Similarly, in only two percent of the cases did the court order that the juveniles receive family or mental health counseling services. Moreover, it was clear from the review of juvenile case records that the courts do not always monitor the juvenile's response to these referrals. Thus, judges are unable to impose sanctions in all cases of non-compliance unless the juvenile returns to court after having been charged with additional offenses.

When these data are separated by the juvenile's most serious offense in FY 1992, it is revealed that community treatment is used slightly more often for status offenders, but the use of non-treatment related sanctions is still most prevalent (Figure 14). Approximately 10 percent of status offenders are ordered to receive counseling as their most severe sanction, compared to only two percent of juvenile delinquents. Also, more than twice the proportion of status offenders (15 compared to six percent) are placed in structured residential or non-residential programs.

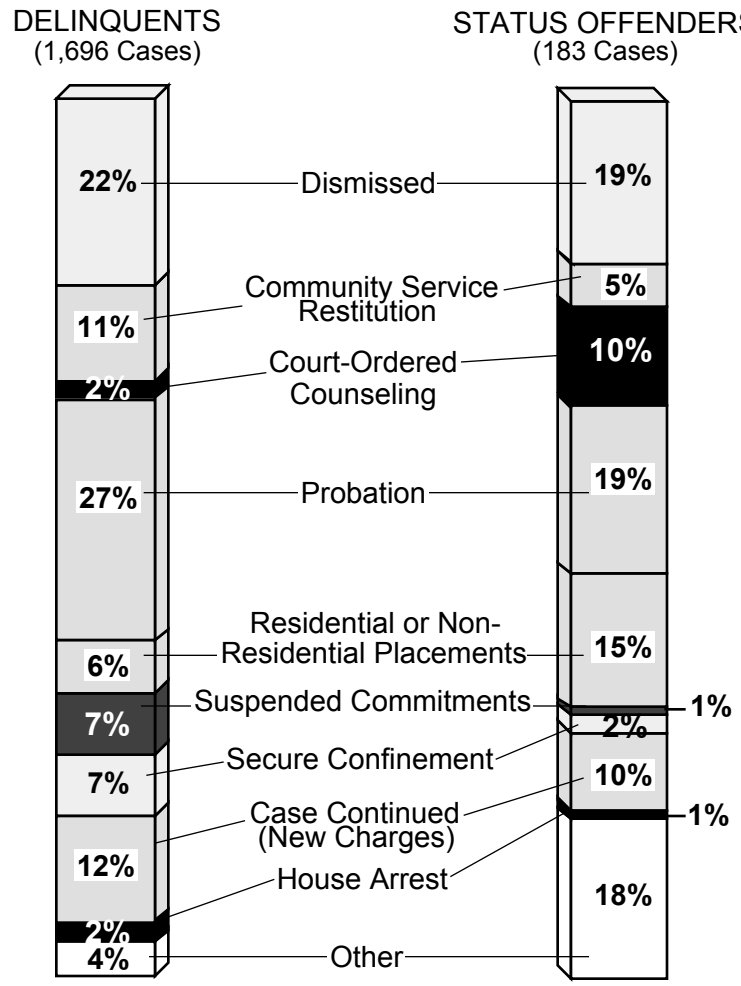
As would be expected, a higher proportion of youths who are charged with delinquency were given suspended commitments, placed on probation, or locked up in secure confinement. Under current law, only when status offenders violate a court order (for example, by running away from a group home) are they subject to a minimal stay in secure detention.

About 18 percent of the status offenders received sanctions that are classified as "other" in Figure 14. This typically included judicial reprimands or court orders requiring the status offender to "be of good behavior." If truancy was the basis for the complaint, the judge would sometimes order the juvenile to return to school, or release him or her from the compulsory school attendance requirement.

A key question when examining these numbers is whether this "snapshot" of judicial sanctions misrepresents the magnitude in which structured treatment services are typically provided. This could be possible for two reasons. First, many of the youths in the study sample may have had contact with the court prior to FY 1992 and may have previously received intensive treatment services. Second, it is possible that some juveniles may have received multiple dispositions in which community treatment sanctions were imposed but not as the most severe disposition. For example, juvenile court judges will sometimes impose a suspended commitment sanction and require the youth to receive services from a non-residential treatment program. In these circumstances, some of the treatment emphasis of the system would be lost in an analysis that focused on the most severe disposition.

Figure 14

Judicial Sanctions for Juveniles Whose Most Serious Offense in FY 1992 Was a Delinquent Act or a Status Offense



Notes: **The reported sample populations are weighted according to each CSU's proportion of the statewide caseload. The number of cases shown does not include juveniles whose cases were taken under advisement or transferred to circuit court. The chi-square value of 143.096 for the figures presented in this table is significant at a 5 percent level of significance.**

Source: **JLARC analysis of data collected from juvenile court records in 35 court service units.**

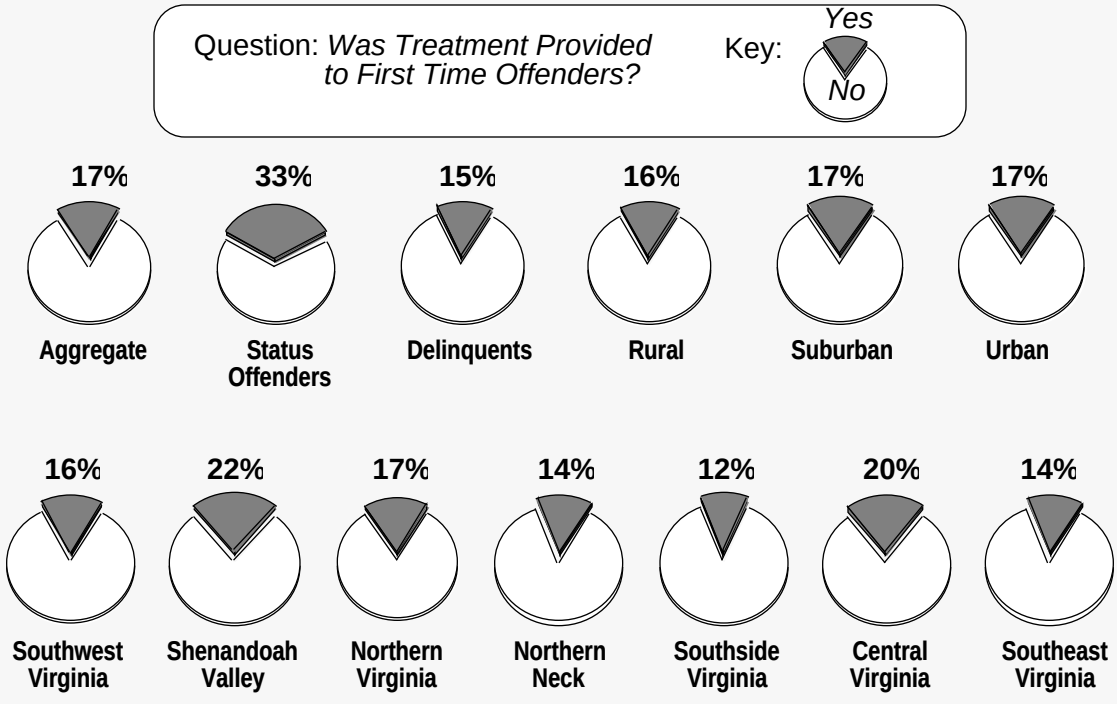
To address this problem, JLARC staff examined the "most restrictive" sanction along with all other dispositions imposed for juvenile offenders who had no prior record at the time of their first intake in FY 1992. The results from this analysis are consistent with the figures presented earlier and thus underscore the problems that judges face when imposing sanctions designed to rehabilitate the juvenile through programs of community treatment.

As illustrated in Figure 15, among first time offenders, community treatment was provided to approximately 17 percent of all juveniles. This includes those youths whose only exposure to treatment was a referral to individual or family counseling. Status offenders received treatment sanctions at more than twice the rate of juvenile delinquents (33 compared to 15 percent). Further, there were no obvious differences in the use of treatment sanctions based on the population density of the court service district or the region of the State in which the CSUs were located. In a regional analysis, the percentage of juveniles who received a community treatment sanction ranged from a low of 12 percent (Southside Virginia) to a high of 22 percent (Shenandoah Valley).

The juvenile system's limited use of structured treatment programs is especially striking given the family and personal dysfunction of many of these juveniles. The following case examples illustrate the magnitude of the problems that many of these youths bring to court. The names used in the case examples are fictitious to protect the confidentiality of the juveniles and their families.

Figure 15

Proportion of First Time Offenders Who Received a Treatment Sanction in FY 1992



Notes: Figures are based on 1,067 sample cases that were formally adjudicated in FY 1992. The reported sample proportions are weighted according to each CSU's proportion of the statewide caseload.

Source: JLARC analysis of juvenile records from 35 court service units.

David is a 15 year old male who was found guilty of assault in FY 1992. Prior to this conviction, David lived with his mother and two younger brothers. David does not have a positive relationship with any of the adults in his life. His mother has a substance abuse problem that so disrupted her relationship with David that he has run away from home and been locked out of the house by his mother. Because of these problems, David was temporarily placed in the custody of the Department of Social Services. After a short stay in foster care, David moved back and forth between the home of his paternal aunt, who was addicted to crack cocaine, and his mother. David has no relationship with his father who physically abused him as a child and forced him to take drugs and alcohol. His father is now serving time in the State's penal system for rape. Perhaps as a result of these problems, David has performed poorly in school, and has a record that includes excessive absences, fighting, and disrespectful behavior towards teachers. In 1992 he was listed as a 7th grader with a learning disability and his report card indicated that he failed every subject.

* * *

William is a 15 year old male who was arrested in FY 1992 for petty larceny, two counts of robbery, damaging property, escaping custody, and hit and run. At the time of his arrest, William lived in a trailer with his mother and several of his 15 siblings. There has been very little stability in his life. His father and his mother have been married twice and are now separated. His father, who comes to live with the family for short periods of time, is an alcoholic who reportedly drinks every day, and has been convicted of both driving under the influence and domestic battery and assault. He provides no financial support. In the five year period prior to his arrest, William's family moved seven times due to evictions. William's mother is unemployed, a chronic alcoholic, and has a criminal record. Her most serious charge and conviction was sodomy with a 16 year old boy. Prior to William's arrest in FY 1992, his mother lived in an "intoxicated state" with a young man who was married to one of her daughter's best friends. Fourteen of William's 15 siblings have criminal records and some have been committed to DYFS. According to the probation officer, this extremely dysfunctional family has caused severe emotional problems for William. He has "borderline" intelligence and his social skills are "primitive." He only completed five years of school and has failed five times. Following his arrest in FY 1992, William set fire to a school causing extensive damage. Shortly afterwards, he was arrested for assaulting a family member.

* * *

James is a 18 year old male who lived with his father at the time of his arrest in FY 1992 for burglary. James was initially raised by his

paternal grandfather who died four or five years prior to FY 1992. The house in which James lived with his father was condemned shortly after the social history report was complete. According to the probation officer, "the house was the worst I have ever visited . . . It was a wood and tar paper structure that was literally falling apart. Housekeeping standards were terrible and the home was filthy." The death of James' grandfather appeared to have had a profound effect on him. While he was fairly close to his father he also appeared embarrassed by him. At the time of James' intake with the court, his father had pending charges of shoplifting and driving without insurance. Educationally, James has repeated the 1st and 5th grades. Truancy was an issue in the 5th, 6th, and 8th grades — the grade at which he was released from his compulsory school attendance. James has an alcohol problem that played a role in his truancy and the property offense for which he is charged. James admitted that at one point he drank every day for more than a year.

Constraints on Judges May Limit Use of Graduated Sanctions for Repeat Offenders

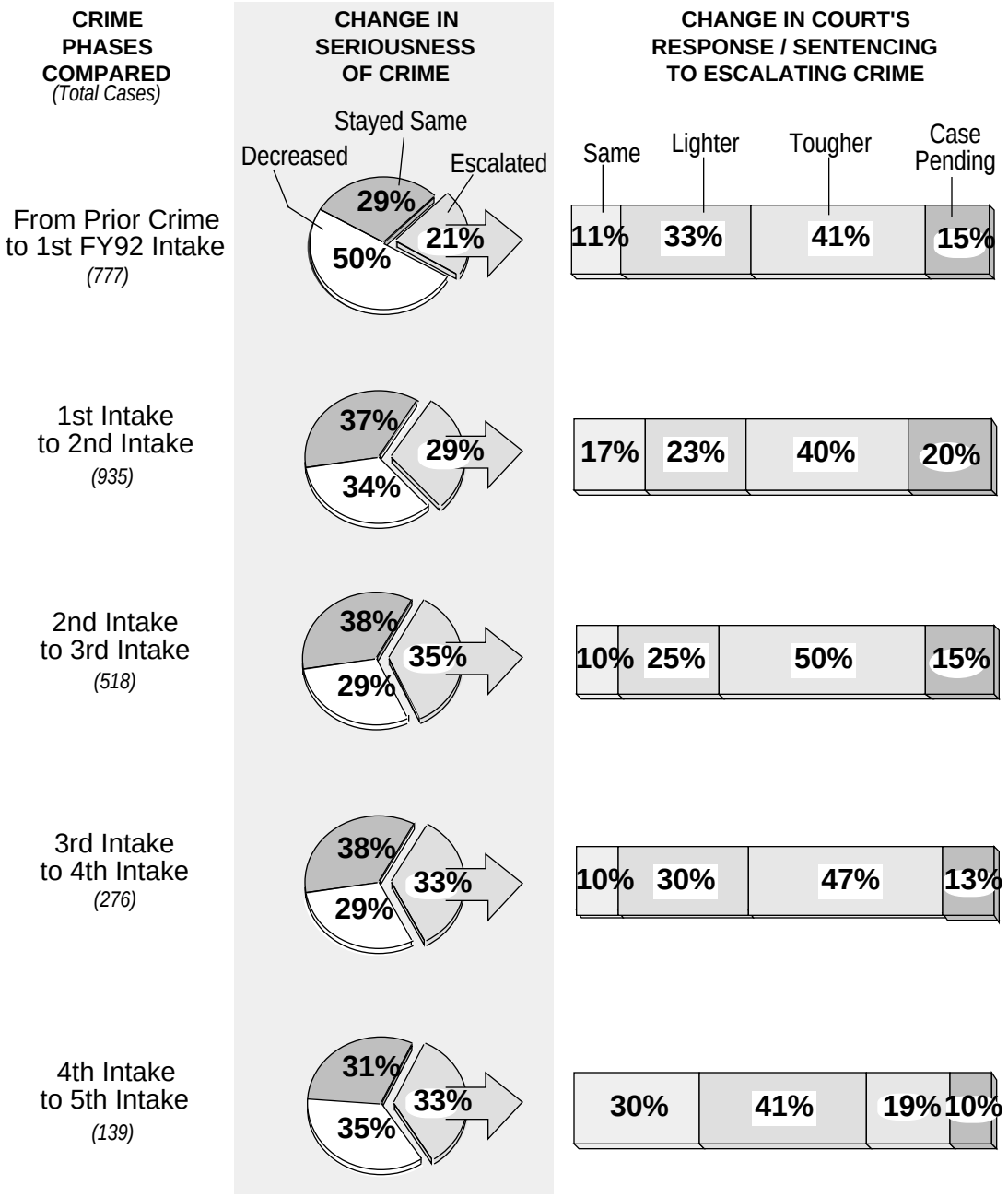
One often expressed concern about the juvenile justice system is that it coddles chronic offenders through nominal sanctions such as warnings, or conditional sanctions (for example probation, community service, referrals to family counseling) when more restrictive measures should be taken. If the juvenile system is properly implemented in accordance with State statute, judges should use a range of sanctions to deal with young offenders. Except in cases where the offender is perceived as a threat to the community, Virginia's law indicates that judges should initially lean towards the treatment of juveniles with the least restrictive sanction. If those who are returned to the community commit additional crimes, the sanctions should become increasingly severe.

Graduated Sanctions. **To assess how the court responded when faced with repeat offenders, JLARC staff tracked the crimes and associated sanctions for the sample of juveniles who were repeat offenders. By comparing the seriousness of their past and present crimes, it was possible to determine whether these youths escalated their criminal behavior. Next, for those whose crimes appeared to increase in severity, JLARC staff examined the court's response to determine if there was a corresponding increase in the judicial sanctions.**

As Figure 16 demonstrates, the juvenile court may respond to repeat offenders who escalate their criminal behavior with more severe sanctions, but it sometimes does not. A significant number of repeat offenders do not face tougher sanctions when they reoffend. As shown, in 21 percent of the cases, the first crime committed by those juveniles in FY 1992 who also had a record of prior offenses was more serious than their prior crimes. However, for 44 percent of these juveniles, the court sanction either stayed the same (11 percent) or decreased (33 percent). For 29 percent of those juveniles who had at least two separate contacts with the court in FY 1992, the seriousness of their

Figure 16

The Juvenile Courts' Response to Repeat Offenders, FY 1992



Notes: **The reported sample proportions are weighted according to each CSU's proportion of the statewide caseload.**

Source: **JLARC staff analysis of juvenile court records from 35 court service units.**

criminal behavior also increased. Still, for approximately 40 percent of these juveniles, the court sanctions they ultimately received decreased in severity (23 percent) or were about the same (17 percent).

The court's inability to establish a program of graduated sanctions is most visible for the chronic offender — those who had at least five court contacts in FY 1992. In approximately 33 percent of these cases, the fifth crime committed by these juveniles was more serious than their preceding offense. Nonetheless, 71 percent of this group did not face tougher sanctions. For a number of these offenders (41 percent) the severity of the sanction decreased.

The Use of Conditional Sanctions. **In only a small number of cases, the court failed to increase the sanction because the juvenile had already received the toughest punishment possible — secure confinement — without being transferred to Circuit Court. This was especially true for those juveniles who had three separate intakes in FY 1992 (Figure 17). As shown, for 15 percent of these juveniles, the judge did not increase their sanction but returned them to secure confinement.**

However, for other offenders who committed more serious offenses but received lighter punishment, judges typically imposed a conditional sanction and placed these offenders back into the community without the benefit of structured treatment services. Under these circumstances, judges either continued the offenders on probation, community service, or a plan for payment of restitution.

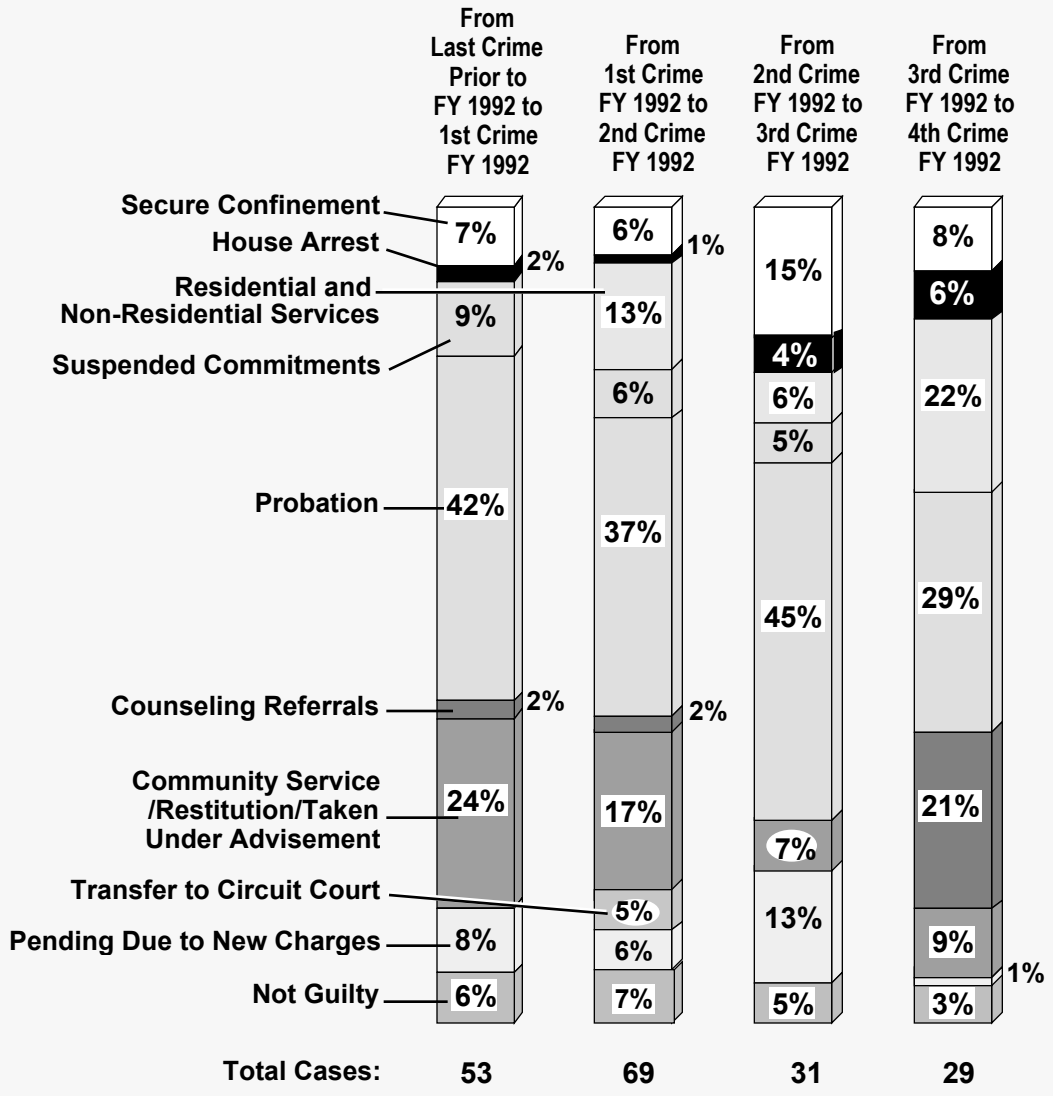
This sanctioning pattern for repeat offenders illustrates one of the most pressing problems in the State's juvenile system. Many of the youths who return to the system for the second or third time have already been exposed to probation or other conditional sanctions. While they may not have committed the type of crimes that warrant a custodial sanction such as commitment to DYFS, their persistent delinquency is a clear indication of a need for a sanction that is both more restrictive and more intensive than probation, community service, restitution, or counseling referrals.

Nonetheless, as most CSUs do not have programs of intensive supervision or have the resources to purchase the services provided through privately-run residential programs, judges have little choice but to impose the same type of conditional sanction that was employed when the young offender first came in contact with the juvenile justice system. As a result, probation is one of the most widely used sanctions in the juvenile system, regardless of the offender's criminal record, regional location of the court, and subsequent experiences with the juvenile justice system (Figure 18).

The problems created by this type of judicial sanctioning are intensified by the numerous responsibilities of probation officers. In a response to a JLARC survey of their workload, probation staff around the State indicated that they can only spend approximately one-third of their time monitoring caseload and providing individual or group counseling services because of their other duties. Much of their remaining time is either spent writing reports, attending court, providing intake services, or attending meetings.

Figure 17

Judicial Sanctions Used When Juvenile's Crimes Escalated and Sanctions Either Stayed the Same or Decreased



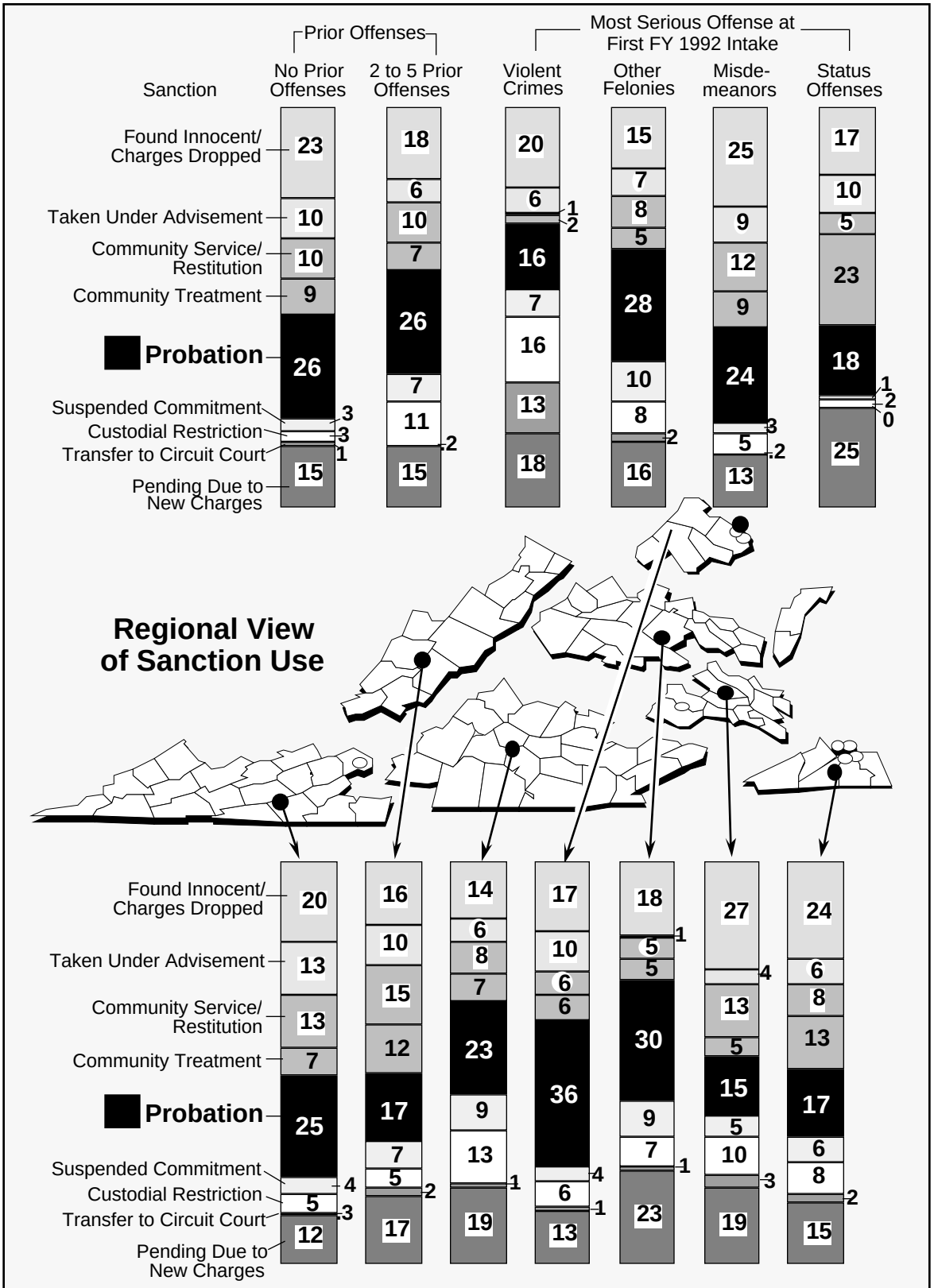
Notes: The reported sample proportions are weighted according to each CSU's proportion of statewide caseload.

Source: JLARC staff analysis of data collected from juvenile files.

At the same time, from 1989 to 1994, there has been a 52 percent increase in court supervision cases, but only a 2.7 percent increase in CSU staff (this does not include local CSUs). Moreover, the difficulties of managing the resultant probation and parole caseloads are deepened by the severity of the problems that many of the juveniles now bring to the system. The following comments (page 56) from a probation officer illustrate this endemic problem.

Figure 18

Use of Probation as a Judicial Sanction in Virginia, FY 1992



Notes: **All numbers shown are percentages. "Violent crimes" means felony crimes against person. See Appendix B for map groupings key.**

Source: **JLARC staff analysis of juvenile court records.**

> **There are three types of youths in the system. The first is the "green youth" who is a first time offender who plays hooky from school, gets involved in minor mischief, and is a pain for his parents. The second type of youth is the "yellow youth" who is a criminal. This youth has committed a delinquent act or two but has not resorted to a life of crime. In many cases, these youths are "wannabes" who will become career criminals without the necessary interventions. The third type of youth is the "red youth" who is a full blown career criminal who may also be violent. This youth comes from a dysfunctional family, lives at the margin of society, and is virtually beyond rehabilitation. If they change it will have little to do with the system.**
>
> **The weakness of the [probation] system is that probation officers are being forced to spend an inordinate amount of resources on youths that were never considered to be the focus of the system. The juvenile justice system was originally designed to deal with the "green youths" and "yellow youths" through programs of intensive probation. The reality today is that the "green youths" don't even get into the system, they are diverted. The "yellow youths" are typically placed on probation, and the "red youths" are both placed on probation and detained. Even intensive probation, which has never been fully funded in this State, is almost powerless against the problems of the "red youths." Because of the nature of their problems, probation officers spend a disproportionate amount of time on these cases. However, this time is largely spent on case management as opposed to the delivery of counseling services. This is a prescription for failure. The "red youths" get most of the attention although they are the least likely to be rehabilitated. The "yellow youths" receive only marginal attention, while the youths who stand to benefit most from community treatment services — the "green youths" — receive nothing. In some cases, they graduate first to yellow then red status.**

If these problems are to be effectively addressed, some attention must be given to establishing a more structured process that gives judges more of an opportunity to fully implement programs of graduated court sanctions. However, this can only be achieved if the system has a sufficient range of sanctions to deal with the problems of a diverse juvenile population. As presently implemented, the system can accommodate only the small number of youth who are violent and should be detained, or the juveniles who have relatively few family problems commit minor offenses, and do not typically recidivate. Unfortunately, most of the juveniles in the system do not neatly fit into either of these categories.

KEY FACTORS INFLUENCING THE USE OF SECURE CONFINEMENT

One of the most severe sanctions available to juvenile court judges is the placement of youth in secure facilities. When such a sanction is imposed, the judiciary's

actions are shaped by the *Code of Virginia's* concurrent charges of advancing the child's interest and protecting the community's interest. In balancing these dual charges, the opinion of the Court should reflect either that the youth is not amenable to treatment or rehabilitation, or that the youth or community is placed at risk as a result of the youth remaining in the community.

The data collected for this aspect of the study reveals that about one of three juveniles who appear in court and are charged with a violent offense are either confined in a secure facility or transferred to Circuit Court. In some cases, where violent offenders are not confined, judges appear to give consideration to the nature and circumstances of the crime and other mitigating factors which support their decision to use community treatment programs. Nonetheless, the juvenile justice system could benefit if judges had greater sanctioning authority for the small number of especially violent young offenders that exist in the system.

There are concerns about the overrepresentation of minorities in secure confinement facilities and the extent to which these facilities are used for females whose risk to society is questionable. While factors related to the nature and circumstances of the crimes committed by females seem to explain the use of secure confinement for this group, based on the evidence from this study, race appears to be a key factor in current decisions about whether to confine black youths in correctional centers or local jails.

Approximately One-Third of Juveniles in Court Charged with Violent Crimes Are Either Locked Up or Transferred to Circuit Court

Judges have a substantial amount of discretion in the use of secure confinement sanctions. While they are limited by age restrictions, and to some extent by offense type, judges are empowered by the *Code of Virginia* to impose secure confinement sanctions in instances of misdemeanor and felony offenses, as well as parole, probation and court violations.

Confinement Rates for Violent Crimes. **As shown in Table 7, judges give considerable weight to the nature of the offense for which youths are convicted and their prior experience with the court in deciding whether to place offenders in secure confinement. Youth committing violent offenses in Virginia are over twice as likely to receive secure confinement sanctions as youth committing property or drug offenses, but are not as likely to be placed in secure confinement for a violent offense as a youth who violates a court order. This may reflect the dim view judges take of juveniles who willfully violate a specific order from the court.**

Only two percent of status offenders were placed in secure confinement. Because of statute provisions which prevent a judge from detaining first-time status offenders, these juveniles were probably confined for no more than 10 days based on the violation of a court order.

Table 7

Proportion of Juveniles Who Received Secure Confinement by Instant Offense (FY 1992)

Instant Offense Type	*Secure Confinement*		*Total of All Juveniles*
	Yes	*No*	*(n=1,529)*
Violent Offenses	**17%**	**83%**	**5.6%**
Property or Drug Offenses	**7%**	**93%**	**62.1%**
Other Misdemeanors	**10%**	**90%**	**13%**
Violation of Court Orders	**19%**	**81%**	**8.4%**
Status Offenses	**2%**	**98%**	**10.3%**

Data: Analysis based on each individual youth in sample not diverted at the intake process and who were found guilty of the charges against them. Percentage may not add to 100% due to round-off error. There are a total of 1,529 juveniles in this sample, with 132 juveniles receiving a secure confinement sanction.

Note[1]: Property crimes include both felonies and misdemeanors.

Note[2]: The sample has been weighted according to each CSU's proportion of the statewide caseload. Sanctions based on the first intake for fiscal year 1992 (bold figures) are significant at the .001 level based on the chi-square statistical test.

Source: JLARC staff analysis of data collected from juvenile files.

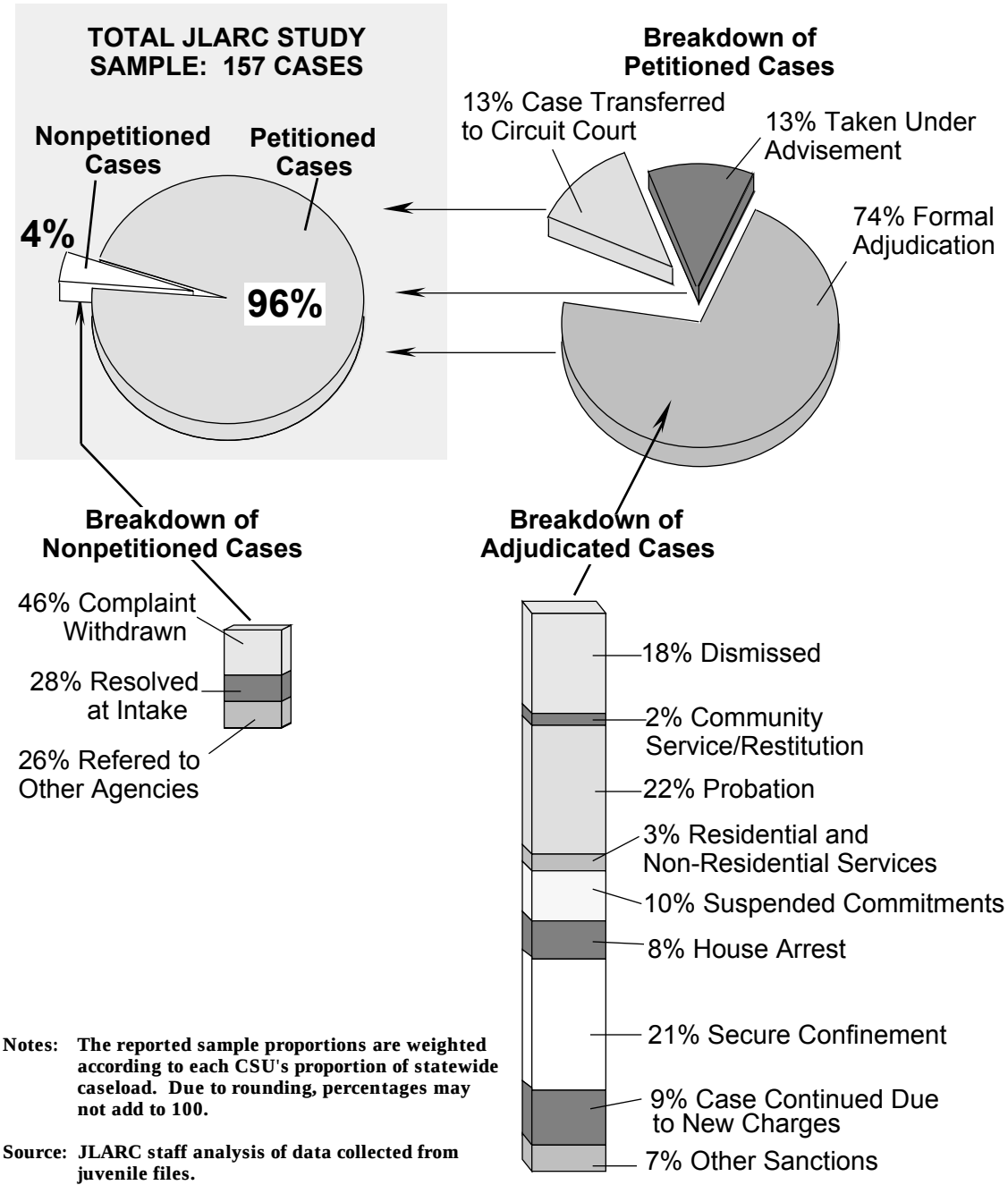
While these findings indicate that judges consider the seriousness of the crime when deciding whether to confine a youth, these results also point out that most violent offenders are not placed in secure confinement. To get a more comprehensive picture of the court's response to violent offenders, JLARC staff examined the sanctions that were applied for all such cases (Figure 19). As reported earlier, 96 percent of all cases involving violent offenses are petitioned to court. For approximately 13 percent of the violent offenders who are petitioned to court, juvenile court judges decide to transfer the case to Circuit Court. A further examination of the data indicated that just over 40 percent of these cases involved juveniles who were charged with murder. Among the violent cases that were formally adjudicated by the juvenile court, the judges imposed a sanction of secure confinement 21 percent of the time. This includes those juveniles whose cases may have been initially continued because they were charged with additional offenses while their first charge was pending. This means that about one-third of juveniles who were charged with a violent crime were either transferred to Circuit Court or detained.

These findings raise some important questions. For example, under what circumstances do juvenile court judges use community sanctions for violent offenders? Also, are these decisions consistent with that aspect of the juvenile code which establishes public safety as a factor in judicial decisionmaking? JLARC staff examined these issues by reviewing a random sample of cases for juveniles who were convicted of a violent offense but were not committed by the judge.

These file reviews provided some insight into the complexity of the problem faced by judges when deciding on the appropriate sanction for juveniles found guilty of a violent offense. In many cases, the juveniles were from extremely dysfunctional families. Typically, the judges appeared to conclude that the offenders' crippling

Figure 19

Juvenile Court Processing Outcomes in Virginia for Juveniles Accused of Violent Crimes, FY 1992



Notes: **The reported sample proportions are weighted according to each CSU's proportion of statewide caseload. Due to rounding, percentages may not add to 100.**

Source: **JLARC staff analysis of data collected from juvenile files.**

environment was a mitigating factor in his criminal behavior and some type of treatment was needed which could be provided in the community without a risk to public safety. For example, one youth who was accused of sexually molesting a young neighbor was not placed in secure confinement when the court discovered that the juvenile did not understand the inappropriateness of his behavior because his father had been routinely molesting him. The following case study illustrates other cases of serious offenses in which the court considered apparent mitigating circumstances. Sometimes the age of the juvenile is a key factor.

> ***In one such case a 12 year old boy was charged with sodomizing his 10 year old cousin. Rather than send the juvenile to a correctional center, the judge committed him to the Pines — a residential facility for sex offenders. In a similar case, a 12 year old boy was charged with breaking into a a neighbor's house with a friend and fondling a 12 year old girl. The judge placed the juvenile on probation, ordered a psychiatric evaluation, and required the youth to enter a counseling program.***
>
> *** * ***
>
> ***In another case a 12 year old juvenile was charged with "robbery by force of violence" for taking $1.40 from another youth. His prior record included petty larceny and simple assault. The judge decided to place the juvenile on probation after learning that he was under the care of a child psychiatrist and was taking the prescribed drug Imipramine to correct a chemical imbalance. In addition, the probation officer in the case strongly recommended probation based on the child's progress while under the doctor's care.***
>
> *** * ***
>
> ***The youth in this case was charged and later convicted of a "strong-arm" robbery. The social history report revealed that, as children, the youth and his brother had been abandoned by their alcoholic and drug addicted parents and left alone in an apartment. The father was subsequently jailed and the Department of Social Services awarded custody of the children to their grandmother despite her statements that she really did not want them. When she eventually assumed custody, the two boys were forced to share living quarters with 12 other people. On the advice of the probation officer, the juvenile was given a suspended commitment to DYFS and placed on indefinite probation with numerous rules of behavior that had to be followed.***

Finally, if a CSU offers special programs for serious offenders, judges will sometimes rely on these programs as an alternative to secure confinement. This is illustrated by the following case study.

Ronald (a fictious name) was 14 years old when he had his first contact with the court. In May of 1992, Ronald had to appear in court to answer charges of disorderly conduct and use of a firearm in two robbery attempts in which he stole a jacket and a watch from his victims. Ronald was from a single parent family. His mother received no support from Ronald's father and she reportedly "hustled" to make a living. Ronald had been expelled from school after numerous in-school suspensions, and according to the social history report, showed little remorse for his actions. Because he had no prior offenses, the probation offficer recommended that Ronald be given a suspended commitment to DYFS, and be required to participate in a program for at-risk youth. The judge agreed with this recommendation and also placed Ronald on indefinite probation and required him to perform 25 hours of community service.

While not all cases involving judicial use of community sanctions are characterized by these types of mitigating circumstances, these cases are not rare. As such, they point out the important role of judicial discretion in the juvenile system.

The Need for Tougher Sanctions. **Under current juvenile law (based on 1994 legislation), a juvenile who is at least 14 can be sentenced to State correctional centers for a determinate sentence of seven years or until his 21st birthday. The crimes which would trigger such a commitment are any felonies that carry at least a 20 year sentence in adult court, or any felonies that the juvenile committed while on parole or in a group home.**

This law was passed to address concerns that the juvenile code did not contain the provisions needed to allow judges to impose harsher penalties for youths who were especially violent or chronic offenders. In combination with the State's newly adopted transfer statutes, these laws give juvenile court judges several additional options for cases that involve exceptional juvenile crimes.

Still, there are circumstances where it may be beneficial to grant juvenile court judges concurrent or extended jurisdictional sentencing authority with the adult system. Presently, if a juvenile is close to his 21st birthday and is either a habitual offender or commits an especially violent crime, he would only serve a few years in a State correctional center even if the judge imposed a determinate sentence. At the same time, if the youth is transferred to the adult system at such a young age (as is usually the case) and subsequently incarcerated, there is a considerable likelihood that he will be victimized by the older inmates. Under these circumstances, the already slight prospects for rehabilitation grow smaller.

As an alternative to these options, the General Assembly could grant judges the authority to sentence the youth to a juvenile correctional center until age 21, after which the youth would be transferred to the adult system to serve additional time or possibly be released on parole based on good behavior while in the juvenile system. Although this type of sanction would not be appropriate for the great majority of the young offenders

who are in the system, and have not committed a violent offense, it recognizes that there are juveniles with a high capacity for violence and destructive behavior. Many of these juveniles come from such difficult backgrounds that rehabilitation through the juvenile system is all but impossible. The following is one such case example:

> ***In FY 1992 Ralph was a 14 year old male with a long history of violent crime seemingly spawned by serious family dysfunction. When he was two years of age, the Department of Social Services filed a petition to have Ralph removed from the custody of his parents for fear that his environment would leave him either maimed or disfigured. Ralph had his first court contact for delinquency at the age of seven for shoplifting. During this time, Ralph was already reported to be smoking marijuana and stealing to pay for the drug. During his many early contacts with the juvenile court he would brag about having traveled all over the city (unsupervised) at this young age. By the time he was nine years old he had been charged with statutory burglary, malicious bodily injury and grand larceny and had spent time in a State correctional facility. Before he reached the age of 14, Ralph had been convicted of five felonies, five misdemeanors, and two probation violations. Ralph was brought before the court in July of 1991 and charged with grand larceny, brandishing a firearm, wearing body armor during the commission of a violent crime, and attempted larceny. Two years later he was charged with and convicted of attempted murder and robbery having shot another young male in the face.***
>
> ***Ralph's family background undoubtedly played a role in his criminality. His father was a drug dealer and was incarcerated for murder prior to 1992. His mother was an alcoholic who attempted to take over her husband's drug business upon his arrest and was subsequently shot in the head and killed. Shortly after his mother was murdered, the man who was believed to have killed her was himself murdered. The local police have always suspected Ralph as the killer. In fact, while in one of the State's correctional centers, Ralph confessed in a letter to his probation officer that he had avenged his mother death. Having since been transferred to Circuit Court for attempted murder at the age of 16, Ralph is now serving time in the State prison system.***

Under these rare circumstances, it is clear that the juvenile system offers little in the way of rehabilitation for an offender with problems on this scale. Rather than have a juvenile with these problems stay in a correctional center until the age of 21 and be released or alternatively face a transfer to the adult system as a teenager, both the juvenile and the community would be better served by the sanctions that would be possible under concurrent sentencing.

Race Appears to Have an Effect on Secure Confinement Decisions

Members of the juvenile population that reach the juvenile court system vary in a number of characteristics. This variation includes differences in demographic factors such as age, gender, race and ethnicity, as well as in indicators of problems in the youth's family or personal background. Juvenile justice scholars note that these characteristics, in conjunction with the offense that led to a finding of guilt, appear to play a substantial role in determining whether a youthful offender receives a commitment to a secure confinement facility.

Of particular interest in this study are the characteristics of gender and race. It has been suggested, both nationwide and in Virginia, that there is a bias (possibly unintentional) in the system that results in harsher treatment for minorities and females. For example, during the course of this study, one judge stated in an interview that "without mentioning specific names, I know that some judges take a more severe look at a case when minorities are involved." JLARC staff conducted an analysis using the data collected for this study on juveniles and court dispositions, in order to test whether or not there is statistical evidence of a race effect. This issue takes on special meaning in Virginia as the General Assembly considers proposals designed to strengthen the punishment aspect of the State's juvenile system. Under a more punitive system, the importance of ensuring that sanctions are applied consistently is heightened.

Confinement Rates for Selected Groups. **The secure confinement rates for certain subgroups among juveniles who appear in court reveal some of these differences. As shown in Table 8, males are two and one-half times more likely to receive a secure confinement sanction than females, and black youth are almost 3 times more likely to receive a secure confinement sanction than a white youth. While these characteristics illustrate differences, it is important to note that race and gender indicators, when used alone, can lead to false conclusions about the relationship between these factors and the probability of confinement. Therefore, it is important to examine a number of variables that can aid in explaining judicial decisions related to the use of secure confinement sanctions.**

More directly, contrasting youths in secure confinement with those who are not provides some additional perspective. As illustrated in Table 9, certain characteristics are more prevalent among youth who received secure confinement sanctions than those who did not. With respect to prior involvement with the juvenile justice system, a youth in secure confinement is more than twice as likely to have a prior record than a juvenile who is not. Further, these youths are almost four times as likely to have been convicted of a prior violent offense. This suggests that youths who can be classified as habitual serious offenders are strong candidates for confinement.

In addition to prior involvement with the juvenile justice system, it is also possible to examine the role of the youth's environment and their past behavior on the judge's use of secure confinement as a sanction. Many experts in the area of juvenile justice and family services suggest that a secure confinement sanction is often used to move a youth away from a negative home or neighborhood environment.

Table 8

Secure Confinement Rates for Youths in Certain Sub-Groups

Gender	
Male (n=1,222)	10%
Female (n=261)	4%
Race	
White (n=835)	5%
Black (n=588)	15%
Other (n=60)	3%
Age	
12 and Under (n=55)	5%
12-14 (n=208)	4%
15-17 (n=851)	8%
17 and Over (n=369)	13%

Notes: These categories are significant at the .05 level.

Due to the use of a disproportionate sampling strategy, contingency analysis has been appropriately weighted according to each CSUs proportion of the statewide caseload.

Source: JLARC staff analysis based on court files for each individual youth petitioned to court. These figures are based on 1,483 youth who appeared in court and whose cases were not dismissed or transferred to circuit court.

JLARC's analysis of this issue points to differences across a number of these factors. Juveniles in secure confinement are much more likely to have been through a custody dispute, lived in a household where a family member has been involved with the criminal justice system, or have a parent who abuses drugs or alcohol. Youth receiving secure confinement sanctions are also about twice as likely to have suffered from some form of abuse by a family member, as well as twice as likely to abuse drugs or alcohol. In addition, three-quarters of the youth receiving secure confinement sanctions are characterized by scholastic challenges and about forty percent have been diagnosed with some type of mental problem.

Disproportionate Minority Representation. **As has been shown in this study, blacks are more likely to be placed in secure confinement than their white counterparts. This is consistent with numerous studies which indicate that a disproportionate number of minorities and females are held in secure confinement relative to their representation in their age cohort. A number of factors could account for this result. While some have little to do with court processing activities — poverty rates among blacks, crime rates among blacks, police arrest patterns — other factors such as the sanctioning decisions of juvenile court judges are within the control of the court.**

Table 9

Dysfunctional Characteristics of Youth Who are Petitioned to Court

	Percentage in Secure Confinement with Characteristic (n=132)	*Percentage with Non-Secure Sanction with Characteristic (n=1,368)*
Prior Involvement with Juvenile System		
Prior Criminal Record	**83%**	**37%**
Prior Violent Record	**11%**	**2%**
Prior Secure Confinement Sanction	**41%**	**5%**
Family Structure		
Two Parent Household	**35%**	**43%**
Single Parent Household	**50%**	**37%**
Family Dysfunction		
Contested Custody	**33%**	**19%**
Stressed Family Resources[Δ]	**43%**	**35%**
Criminal Record	**53%**	**32%**
Substance Abuse	**39%**	**25%**
Individual Dysfunction		
Report of Abuse	**22%**	**12%**
Substance Abuse	**35%**	**21%**
Scholastic Challenges▪	**78%**	**59%**
Mental Problems	**40%**	**24%**

[Δ] **Due to incomplete family income data available from social histories, this construct is used to illustrate "impoverished" families. Given the large proportion of youth in the sample living in poverty or in families receiving government assistance, this variable attempts to generally capture impoverishment based on total family size and assumed resources (financial and psychic) a child can receive.**

▪ **Indicates youth with recorded histories of truancy, out of school suspensions or repeating a grade.**

Notes: **Differences in percentages between groups for variables are significant at the .05 level.**

Due to the use of a disproportionate sampling strategy, contingency analysis has been appropriately weighted according to each CSU's proportion of the statewide caseload.

Column sections will not add to 100 since they are not mutually exclusive.

Source: **JLARC staff analysis based on court files for each individual youth petitioned to court and whose cases were not dismissed or transferred to circuit court (n=1,483).**

The figures in Table 10 highlight this disproportionate minority representation. Specifically, black youth are almost 5.5 times more prevalent in the State's correctional center population as they are in the general population, and more than seven times as

Table 10

Secure Confinement Population by Race and Gender for FY 1992

	State Juvenile Population	*Correctional Center Confinement*	*Rate per 100,000*	*Index Score*[†]
White				
Male	**250,176**	**414**	**.004**	**0.76**
Female	**235,620**	**59**	**.001**	**0.11**
Black				
Male	**73,193**	**866**	**.009**	**5.43**
Female	**69,645**	**66**	**.001**	**0.43**
Other				
Male	**15,090**	**27**	**—**	**0.83**
Female	**14,359**	**1**	**—**	**0.05**
Total				
Male	**338,459**	**1316**	**.013**	**1.78**
Female	**319,624**	**117**	**.001**	**0.17**

[†] **Index score is percentage in custody of DYFS divided by percentage of state population.**

Source: Severe confinement data was collected from the DYFS research and planning unit. The population data used for this analysis was collected from the Virginia Sentencing Commission and *Virginia Statistical Abstract, 1994-1995 Edition*, and the Correctional Center admissions from 1992 from the DYFS. These are ages 10-17.

likely as white males to be in the State's secure confinement population. Table 10 also indicates that males, regardless of race, are about twice as likely to be seen in the juvenile correctional centers as they are in the general population, while females are almost six times less likely to be seen in a correctional center environment as they are in the general population.

The disproportional representation of blacks in the system suggests that race may be an important factor in the use of secure confinement sanctions. What is not known is whether this characteristic remains important after other factors measuring the offenders' crimes and background characteristics have been taken into account. It has also been shown that youths who are placed in secure confinement have more extensive criminal records and higher levels of family and individual dysfunction. Thus, an important question is whether black youth are more likely to be placed in secure confinement than their white counterparts because of a higher level of criminal behavior, or because of other factors such as family dysfunction. Similarly, there are questions about the use of secure confinement for females.

To examine this issue for this study, an attempt was made to determine the probability of a juvenile being placed in secure confinement given his race, after simultaneously controlling for the factors that judges indicated they explicitly consider when making these decisions. Because the dependent variable for this study was a dichotomous variable (0= no confinement, 1= yes confinement), logistical regression analysis was used to calculate the parameters for the model. By the specification of this model, some insight is gained into the relative simultaneous effects of several variables that may be associated with imposition of a secure confinement sanction.

The Influence of Race. **With respect to black youth, many suggest that the high rates of minority youth incarceration is not a reflection of racial bias but can instead be attributed to their greater involvement in serious criminal behavior. Others suggest that higher minority involvement in serious or habitual criminal behavior is related to factors associated with environmental, family and individual deficits. These factors, in addition to the related criminal behavior, is thought by some to play a part in the decision by judges to use secure confinement as a sanction for black youth. Still others suggest that secure confinement outcomes are a result of explicit or implicit race-based choices on the part of the judiciary.**

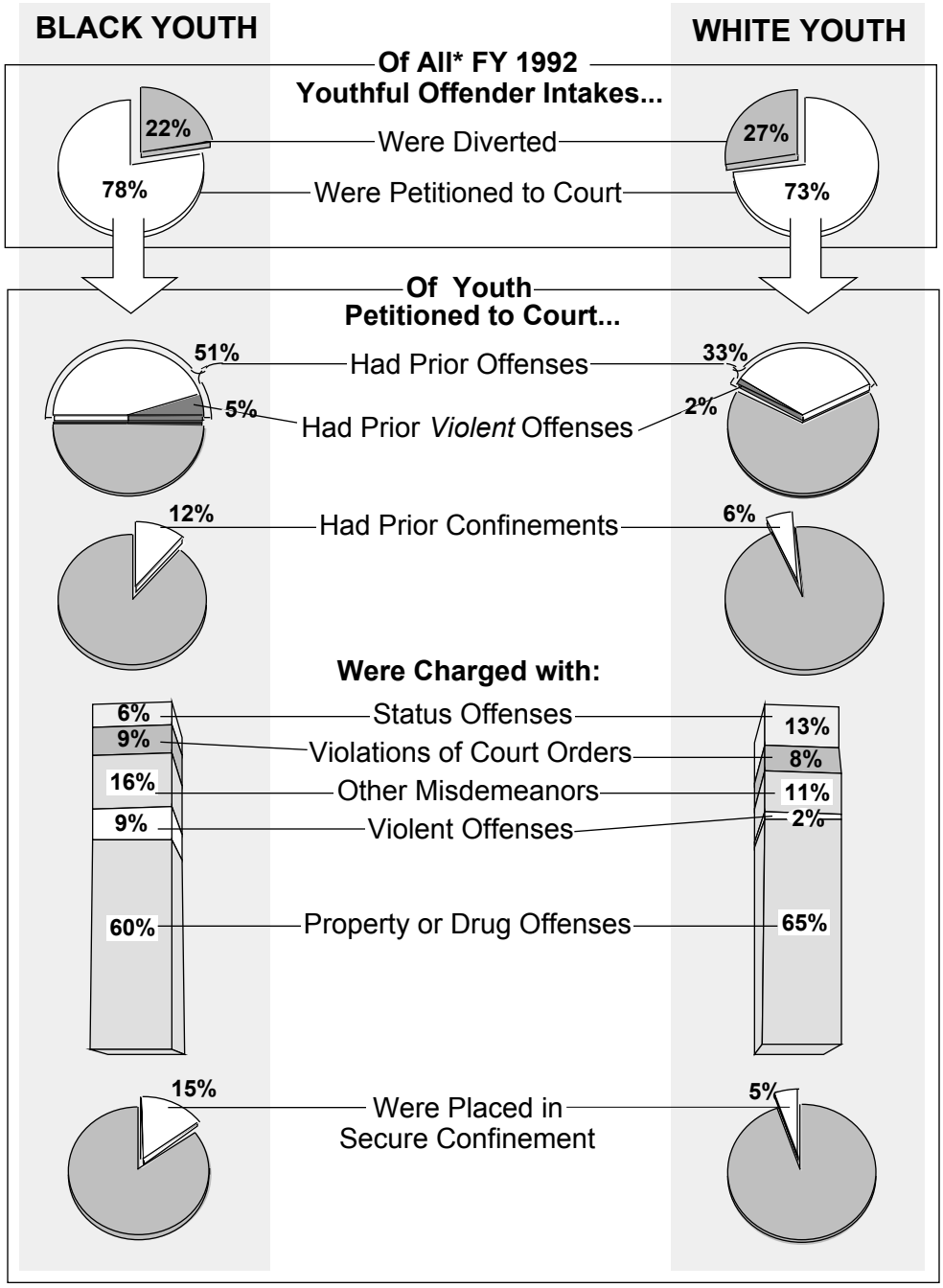
Figure 20 presents a comparison of the criminal backgrounds for black and white youth who were required to appear in court for a delinquent act or status offense in FY 1992. These figures indicate that black youth were more likely to have a prior record that included violence and were more likely to have been confined at least once in a jail or detention facility. There were also sharp differences in the type of crime for which they were first arrested in FY 1992. As shown, the percentage of black youth charged with a violent offense was about four times as great as the percentage of white youth. The question in this analysis is whether these differences are substantial enough to explain the high rates of confinement that black youth apparently face once they appear in court.

The multivariate models, which included both logistical regression and analysis of variance, and accounted for differences in factors that might explain higher rates of confinement for blacks, suggest that race does play a role in dispositions judicial decisions concerning the imposition of secure confinement sanctions. While variables measuring the nature of juvenile criminal behavior, amount of previous criminal behavior, weapons offenses, previous institutionalization, and personal problems are significant factors considered by judges when deciding whether a youth should be confined, race remains a significant independent factor (Table 11).

It is important to note that only five percent of the youth in the sample received a secure confinement sanction. The predicted probabilities from the logit model suggest, however, that black youth are more likely to receive such a sanction even when other factors such as prior offenses and past secure confinement sanctions are taken into account. For example, a black youth, all other factors being equal, is almost 2 1/2 times as likely (49.5 percent probability) to receive a secure confinement for aggravated assault as a white youth (27 percent probability).

Figure 20

Demographics of Youthful Offenders, by Race, FY 1992



***Youth of other racial backgrounds (Asian, Hispanic, etc.) have been purposely deleted from this graphic due to the difficulty of accurately showing very small percentages. The total intake "Other" race component was less than 4 percent.**

Note: The reported sample proportions are weighted according to each CSU's proportion of the statewide caseload Percentages may not add to 100 due to rounding.

Source: JLARC staff analysis of data collected from juvenile court records in 35 court service units.

Table 11

Variables for Multivariate Analysis of Factors Associated with the Decision to Impose Secure Confinement Sanctions

Analysis Variables	*Logistic Standardized Parameter Estimate*	*Significance Level*
Dependent Variable		
Indicator of whether a youth received a secure confinement disposition (1=Yes, 0=No)		
Independent Variables		
Most serious offense	**.2210**	**.0005**
Total number of instant offense charges	**.0447**	**.4271**
Prior violent offense	**.0522**	**.1953**
Total number of prior offenses	**.1399**	**.0143**
Prior secure confinement disposition	**.2619**	**.0001**
Present or prior weapons possession charge	**.1033**	**.0145**
Race dummy variable	**.2583**	**.0001**
Two parent household	**-.0217**	**.7897**
Blended family household	**-.0122**	**.8761**
Age dummy (younger than 12 years old)	**.0404**	**.4619**
Family dysfunction	**-.0365**	**.5244**
Individual dysfunction	**.2159**	**.0004**

Notes: **The multivariate model, whose unit of analysis is each individual youth receiving a judicial sanction at disposition, is significant at 0.0001 level. N=1,478.**

Family Dysfunction is a composite indicator that is the sum of dysfunction variables recorded for the youth. These indicators include whether a youth was involved in a contested custody, a family member had a criminal record, a parent abused either drugs or alcohol, or the youth lived in a household with stressed family resources.

Individual Dysfunction is a composite indicator that is the sum of dysfunction variables recorded for the youth. These indicators include whether the reported some form abuse at home, was scholastically challenged, abused drugs, or diagnosed with some form mental deficit.

Source: **JLARC staff analysis of data collected from juvenile court records in 35 court service units.**

In interpreting these results, it is important to remember that the model used in this analysis has not fully explained the decisionmaking process as it relates to secure confinement. The data available to JLARC only included information contained in court records and social histories. It is possible that other activities, such as the juvenile's interaction and attitude toward court officers (especially the presiding judge), played a substantial role in the decisionmaking process. A key factor here could be the demeanor

of the juvenile. Some research has indicated that because of their jaundiced view of the court system, black youth will sometimes present themselves to the judge in a hostile, disdainful, and disrespectful manner. In response, judges will sometime impose sanctions that are tougher than they would otherwise use given the nature of the crime. This is illustrated by the following case study.

> ***A youth named Mary received a secure confinement sanction for the non-felonious offense of "Injury to Private Property." Mary's family was dysfunctional but she was not known to the juvenile court system for any delinquent offenses. The judge committed her to the Department of Youth and Family Services. According to the probation officer, most telling in the actions of the court was that Mary did not demonstrate remorse for her actions. Moreover, when asked by the judge what she thought her sanction should be, Mary reportedly told the judge to "do what you want to do."***

Factors of this nature are not easily quantified and represented in the multivariate model. Moreover, is it not clear that the strong statistical effect observed in this study would be substantially changed by the inclusion of such data, were it available.

In summary, when controlling for a number of factors simultaneously, such as the nature of the instant offense, prior record, and family and individual dysfunction, race still emerges as having a statistically significant effect, suggesting that it does have a role in judicial decisions. In interpreting this result, however, it needs to be recognized that there is no clear evidence that this outcome results from a conscious intent to discriminate based on race. However, the finding does clearly suggest that this is an issue which needs to receive attention in the system.

The Influence of Gender. **As was the concern with disproportional minority representation, there are questions about the use of secure confinement for females. As has been shown in this study, young women are far less involved in criminal activities as compared to their male counterparts and are therefore underrepresented in secure confinement. Of concern, however, is whether females are much more likely to receive secure confinement sanctions for minor offenses relative to their male counterparts. The use of secure confinement sanctions for minor offenses by females is sometimes described as a means of protecting them from victimization.**

As Table 12 demonstrates, the multivariate models used in this study suggests that the most significant factors influencing the probability that a youth will be placed in secure confinement are: the number of crimes committed by the juveniles prior to their first intake in FY 1992; both the number and seriousness of the offenses on which the adjudication hearing was based; whether the juveniles had been previously confined in a jail or State correctional facility; the use of a firearm in the commission of a past or current offense; and the level of individual dysfunction — drug use, problems in school, and mental deficits.

Most important in this case, however, is that gender is not significant in the role it plays when accounting for these other factors. Further, the predicted probability that

Table 12

Variables for Multivariate Analysis of Factors Associated with the Decision to Impose Secure Confinement Sanctions

Analysis Variables	*Logistic Standardized Parameter Estimate*	*Significance Level*
Dependent Variable		
Indicator of whether a youth received a secure confinement disposition (1=Yes, 0=No)		
Independent Variables		
Most serious offense	**.2454**	**.0001**
Total number of instant offense charges	**.0470**	**.4020**
Prior violent offense	**.0680**	**.0898**
Total number of prior offenses	**.1621**	**.0042**
Prior secure confinement disposition	**.2625**	**.0001**
Present or prior weapons possession charge	**.1161**	**.0054**
Gender dummy variable	**-.0185**	**.7970**
Two parent household	**-.0927**	**.2367**
Blended family household	**.0013**	**.9869**
Age dummy (younger than 12 years old)	**.0519**	**.3434**
Family dysfunction	**-.0287**	**.6127**
Individual dysfunction	**.1988**	**.0008**

Notes: The multivariate model, whose unit of analysis is each individual youth receiving a judicial sanction at disposition, is significant at 0.0001 level. N=1,478.

Family Dysfunction is a composite indicator that is the sum of dysfunction variables recorded for the youth. These indicators include whether a youth was involved in a contested custody, a family member had a criminal record, a parent abused either drugs or alcohol, or the youth lived in a household with stressed family resources.

Individual Dysfunction is a composite indicator that is the sum of dysfunction variables recorded for the youth. These indicators include whether the reported some form abuse at home, was scholastically challenged, abused drugs, or diagnosed with some form mental deficit.

Source: JLARC staff analysis of data collected from juvenile court records in 35 court service units.

a female will receive a secure confinement sanction for a minor offense is slightly less than that for a male (for example, the probability of a female receiving a secure confinement sanction for a status offense based on the logit probability generated by the multivariate analysis is 2.7 percent, while the figure for males of 2.9 percent is only slightly different). For this reason, it does not appear as if gender has a statistically significant effect on judicial sanctioning decisions.

III. Juvenile Recidivism in Virginia

Section 16.1-227 of the *Code of Virginia* specifically states that one of the primary objectives of the juvenile justice system is to reduce the incidence of delinquent behavior. In light of this goal, one of the best measures of the performance and effectiveness of the system is the rate at which first-time young offenders return to the system at a later date because of additional criminal behavior. Recently, increases in juvenile crime have raised questions about the impact of recidivism. Therefore, a key aspect of JLARC's review of the system was an analysis of juvenile recidivism and the success with which the juvenile justice system appears to arrest the development of young offenders into more serious criminals.

The findings from this review indicate that delinquent recidivism is a problem in the Commonwealth. Approximately half of all juvenile delinquents return to court or intake within three years for additional offenses. In most cases, there is little variation in the rate of recidivism according to the particular method used by the courts for sanctioning the young offenders, and the delinquent behavior of a substantial portion of these juveniles appears to become increasingly serious over time. However, about 87 percent of all juveniles who enter the system with a non-violent delinquent offense do not recidivate to a violent felony offense. About 14 percent of all recidivist offenses involve a violent felony as the most serious offense.

In terms of status offenders, JLARC staff first examined the methods used by CSUs around the State for processing these types of cases. While most CSUs attempt to divert a substantial number of status offenders from the courts, there is little consistency in the activities undertaken by CSUs to ensure that these offenders actually receive the services intended by the juvenile code. Possibly as a consequence, the recidivism rate for status offenders is strikingly similar to the rate observed for delinquents. Additionally, a substantial proportion of those who recidivated did so by committing offenses that were more serious than their initial status offense.

This chapter will detail study findings regarding recidivism among juvenile delinquents and status offenders. Recidivism among both groups is examined on the basis of its magnitude and nature, with a particular focus on how these rates varied according to the actions of the court and the degree to which the crimes committed by these young offenders escalated during the study follow-up period.

RECIDIVISM AMONG JUVENILE DELINQUENTS

Although the reduction of delinquent behavior is one of the primary objectives of the juvenile code, to date, there have been no systematic studies of juvenile recidivism in Virginia. Therefore, this study includes an analysis of delinquent recidivism in Virginia as one measure for determining how effective Virginia's juvenile justice system has been in meeting its statutory objective.

This analysis of delinquent recidivism in Virginia examined both the magnitude and nature of this phenomenon. Magnitude was measured on the basis of the overall recidivism rate and other related characteristics such as the number of times that a given juvenile returned to the system. The nature of delinquent recidivism was examined on the basis of the types of crimes committed and whether these youths subsequently committed additional offenses that tended to be more severe in nature.

This analysis revealed that in terms of magnitude, the recidivism rate among delinquent juveniles was approximately 52 percent. Typically, those juveniles who recidivated had at least two subsequent contacts with the juvenile court in the three-year period following their first arrest.

When the nature of the recidivist offenses was examined, the data revealed that felony crimes against persons (the types of crimes typically considered to be the serious violent crimes) made up less than one-sixth of all recidivist offenses. The data are also clear however, that a substantial portion of delinquent recidivists (about 45 percent of misdemeanants and 15 percent of those committing a felony crime against property) escalate the seriousness of the crimes they committed over time.

Study findings regarding the effectiveness of court sanctions in reducing delinquent recidivism showed recidivism rates to be relatively high regardless of the court sanction that had been given. This may be due in part, however, to the fact that judges are often unable to use the treatment alternative which would be most appropriate in dealing with a particular delinquent offender.

Recidivism Among Delinquent Juvenile Offenders Is a Significant Problem

As stated in Section 16.1-227 of the *Code of Virginia*, one of the primary purposes of the juvenile justice system is to "protect the community against those acts of its citizens which are harmful to others and to reduce the incidence of delinquent behavior." Clearly delinquent recidivism is both a major focus of the juvenile justice system and a concern among those charged with its administration.

As a result, one of the purposes of this study was to determine the magnitude and nature of recidivism among delinquent offenders. Those juveniles in the study sample whose first intake was during fiscal year 1992 and included a delinquency charge were identified as the group to review for delinquent recidivism purposes. Consequently, juveniles were eliminated from the study sample if they had at least one offense prior to fiscal year 1992 which was resolved at intake, or petitioned to court, without being dismissed or withdrawn.

For juveniles in this delinquent group, the team determined whether they committed subsequent offenses for which there was an official intake contact during a three-year follow-up period. This was accomplished by recording all offenses noted in the juveniles' case files and by contacting adjacent court service units to determine whether the juveniles identified as non-recidivists had actually committed offenses within other

jurisdictions. All delinquents within the study sample were also checked against printouts supplied by the Department of Corrections which listed anyone within an identified age range that was on probation, incarcerated, or on parole to determine whether they had committed any recidivist offenses as adults.

***The Magnitude of Delinquent Recidivism*. In examining the magnitude of delinquent recidivism, it was found that approximately 52 percent of juveniles charged with a delinquent offense were subsequently accused of additional offenses within the study's three-year follow-up period. For this group of juveniles, there was additional interest in determining the number of subsequent contacts and associated criminal charges they had with the juvenile court system. By examining these factors, it was possible to determine whether the system has a problem with habitual or chronic offenders or a recidivist population characterized by few subsequent contacts and a limited number of criminal charges.**

The study findings regarding this issue, presented in Figure 21, are somewhat mixed. It appears the system convicted most of those charged with a recidivist act (81 percent). Further, the typical juvenile who had an additional court contact following his or her initial arrest in FY 1992 was back in juvenile court within four months of that first intake. Moreover, the median number of subsequent court contacts was two and involved charges for at least three offenses.

As indicated in Figure 21, about half of the delinquents returned once or twice to the system within three years. However, there is also a substantial portion of juvenile recidivists whose behavior appears chronic. For example, Figure 21 demonstrates that a third of young offenders who were re-arrested had at least four separate contacts with the court. This was more than one arrest per 12 months of follow-up.

***The Nature of Delinquent Recidivism*. Questions regarding the nature of recidivism were also reviewed focusing primarily on what types of crimes were committed by those who re-offended and whether they showed evidence of increasing violence. As with the issue of the habitual offender, this has important policy implications. Clearly a different mix of sanctions are needed within the system if the majority of delinquent recidivists commit minor property crimes as compared to what would be needed for a violence-prone group of offenders.**

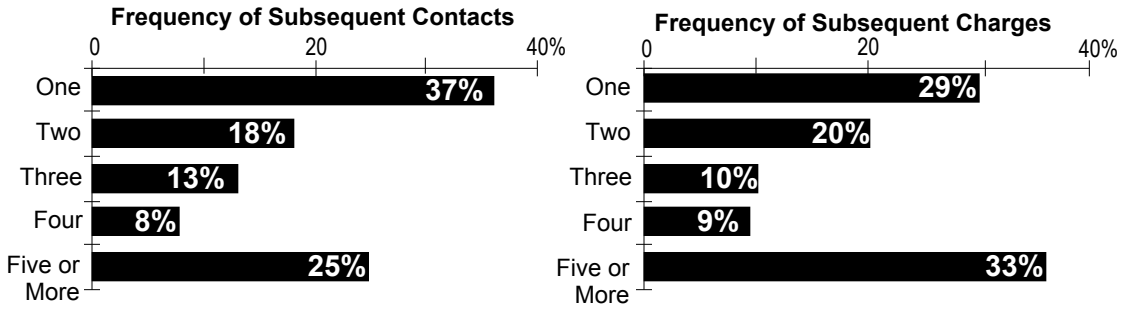
For this analysis, specific offenses were evaluated based on the following categories:

- **felony crimes against person;**
- **felony crimes against property;**
- **misdemeanors;**
- **probation, parole, or court violations; and**
- **status offenses.**

Felony crimes against property were the most frequently committed delinquent recidivist offenses at 40.5 percent (Figure 22). Felony crimes against persons accounted

Figure 21

Descriptive Data on Delinquent Recidivists



Median Values for All Delinquent Recidivists

Two intake contacts involving three charges as a recidivist

Intake Summary

Joey Jones

One count of simple assault--assaulted schoolmate on school grounds

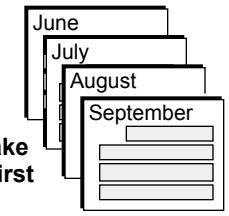
Intake Summary

Joey Jones

One count of felony larceny--stole more than $200 of merchandise from store

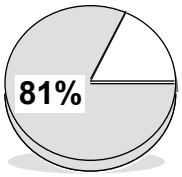
One count of burglary--broke into store for the purpose of larceny

Time from first intake to second intake (first recidivist arrest):



4 months

Overall conviction rate for recidivist charges:



Notes: **The figures reported in this graphic are based on a sample of 783 cases from 35 court service units. The reported sample proportions are weighted according to each CSU's proportion of the statewide caseload. The time frame for follow-up on recidivist charges extended until June 30.**

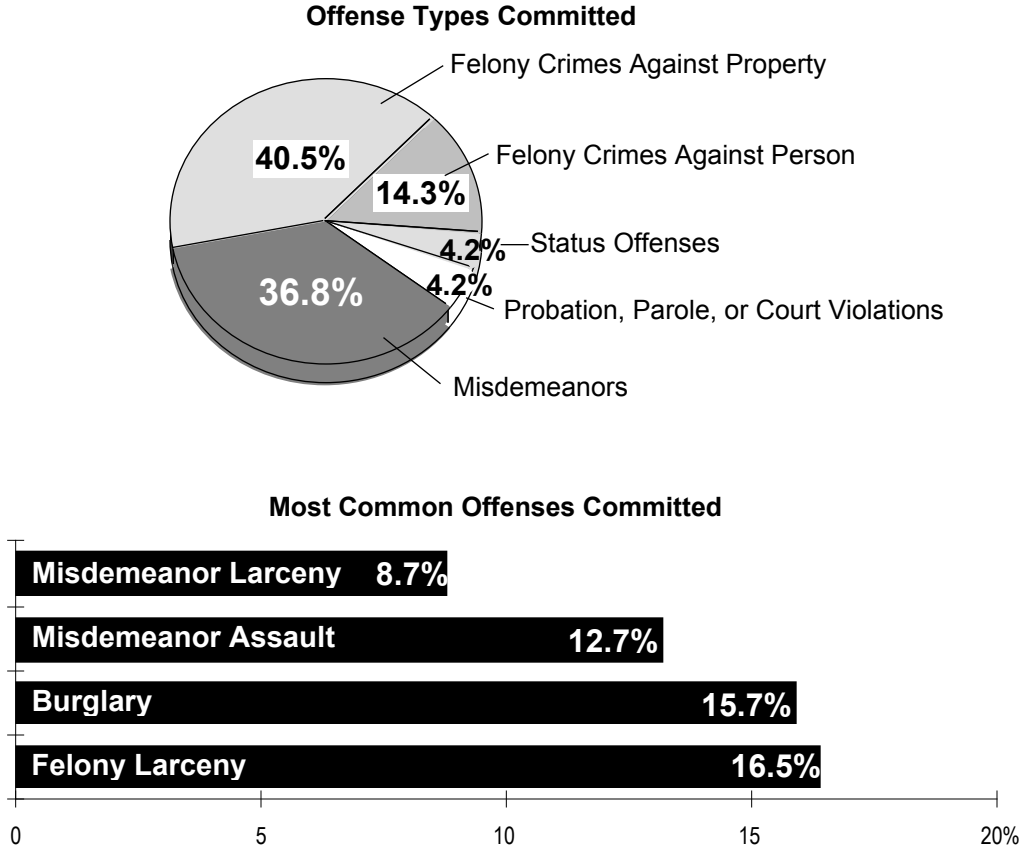
Source: **JLARC analysis of data collected from juvenile court records in 35 court service units and data supplied by the Department of Corrections regarding adults who were on probation or parole or who were incarcerated.**

for 14.3 percent of the offenses. When specific offenses were examined within these broad categories, the most frequently committed crimes were felony larceny, burglary, misdemeanor assault, and misdemeanor larceny. Together these four offenses accounted for more than one-half of all delinquent recidivist offenses.

Escalation In Crime Among Delinquent Recidivists. **Another way to examine the nature of these offenses is to determine how these recidivist crimes compare with the crimes committed by the same group of delinquent recidivists at first intake. This comparison will allow for evaluating any changes in the overall composition of committed offenses as delinquent behavior continues. In other words, if there is a**

Figure 22

Offense Types and Frequencies for Delinquent Recidivists



Notes: **The figures reported in this graphic are based on a sample of 783 cases from 35 court service units. The reported sample proportions are weighted according to each CSU's proportion of the statewide caseload. The time frame for follow-up on recidivist charges extended until June 30.**

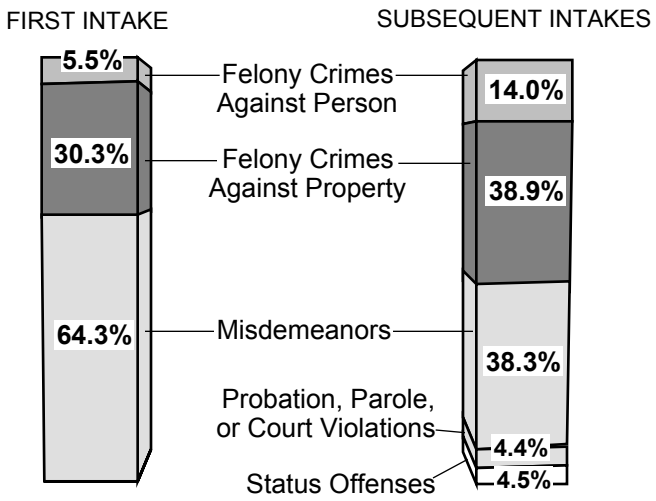
Source: **JLARC analysis of data collected from juvenile court records in 35 court service units and data supplied by the Department of Corrections regarding adults who were on probation or parole or who were incarcerated.**

noticeable trend or change in the recidivists' offenses when compared with their initial offense, this would suggest that the youths become more or less violent as they continue to re-offend.

Comparing the categories of offenses committed at first intake and during subsequent intakes showed that more serious crimes make up a larger proportion of overall crime as delinquency grows. For example, felony crimes against persons, the most serious category of offenses, increased 155 percent from 5.5 percent of the most serious crimes committed at first intake to 14 percent of the most serious crimes committed during the three year period of follow-up (Figure 23). Felony crimes against property, the second most serious category of crimes committed, increased by 28 percent from 30.3 percent at first intake to 38.9 percent of subsequent intakes. Misdemeanors, which were

Figure 23

Comparison of Most Serious Offense Categories at First Intake and Subsequent Intakes



Notes: **The figures reported in this graphic are based on the most serious offense charged within a sample of 739 intakes from 35 court service units (intakes which included charges for which the juvenile was not found guilty were excluded from this analysis). The reported sample proportions are weighted according to each CSU's proportion of the statewide caseload.**

Source: **JLARC analysis of data collected from juvenile court records in 35 court service units and data supplied by the Department of Corrections regarding adults who were on probation or parole or who were incarcerated.**

the most common category of crime committed at first intake at 64.3 percent, decreased by 40 percent to 38.3 percent.

This crime comparison distinctly showed that serious crimes do comprise a larger proportion of overall crime as delinquency continues. Table 13 shows the categories of crimes committed by delinquent juveniles who continue to recidivate. Juveniles, whose first offense was a felony against person, committed another violent felony 28 percent of the time with approximately 40 percent of the remaining offenses involving non-violent felonies and about 30 percent involving misdemeanors. Juveniles who committed a felony crime against property committed another non-violent felony 51 percent of the time, a violent felony 15 percent of the time, and a misdemeanor about one-quarter of the time. Juveniles whose first intake was for a misdemeanor offense committed another misdemeanor 45 percent of the time, a violent felony 13 percent of the time, and a non-violent felony 33 percent of the time.

Figure 24 summarizes the findings from Table 13 by showing how the severity of crimes committed changed for the three groups of juveniles. For those whose first intake included a felony against person, 72 percent decreased the severity of their crimes. The results were not as favorable for the other two groups however. Only 34 percent of delinquents committing a felony crime against property and ten percent of misdemeanants

Table 13

Composition of Crimes Charged Against Delinquent Recidivists

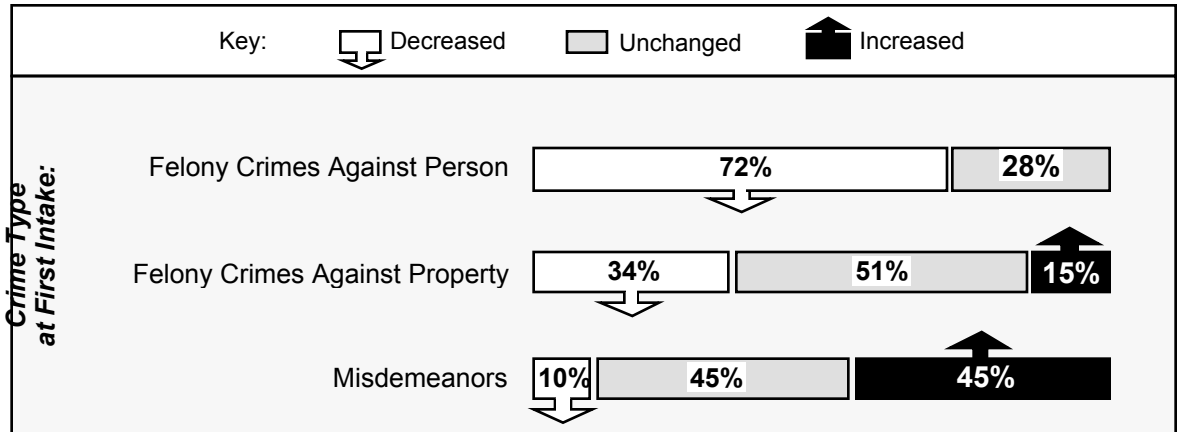
First Intake		Subsequent Intakes: Most Serious Category of Recidivist Crime				
Most Serious Category of Crime	*Percentage of Juveniles*	*Felony - Person*	*Felony - Property*	*Misde-meanor*	*Court Violation*	*Status Offense*
Felony Crimes Against Person	**5.3%**	**28%**	**41%**	**29%**	**2%**	**0%**
Felony Crimes Against Property	**30.4%**	**15%**	**51%**	**26%**	**5%**	**4%**
Misdemeanors	**64.3%**	**13%**	**33%**	**45%**	**4%**	**5%**

Notes: **The figures reported in this graphic are based on the most serious offense charged within a sample of 739 intakes from 35 court service units (intakes which included charges for which the juvenile was found not guilty were excluded from this analysis). The reported sample proportions are weighted according to each court service unit's proportion of statewide caseload. The chi-square value of 39.894 for the figures presented in this table is significant at a 5 percent level of significance.**

Source: **JLARC analysis of data collected from juvenile court records in 35 court service units and data supplied by the Department of Corrections regarding adults who were on probation or parole or who were incarcerated.**

Figure 24

Changes in the Severity of Crimes Committed Over Delinquent Recidivist Careers



Notes: **The figures reported in this graphic are based on the most serious offense charged within a sample of 739 intakes from 35 court service units (intakes which included charges for which the juvenile was found not guilty were excluded from this analysis). The reported sample proportions are weighted according to each CSU's proportion of the statewide caseload.**

Source: **JLARC analysis of data collected from juvenile court records in 35 court service units and data supplied by the Department of Corrections regarding adults who were on probation or parole or who were incarcerated.**

decreased the seriousness of their recidivist behavior. Clearly a substantial portion of juvenile recidivists escalate the seriousness of their delinquent behavior over time.

Recidivism Rates Are High Regardless of Court Sanction Given

The numbers presented thus far indicate that delinquent recidivism in Virginia is a serious problem. Examining the recidivism rates associated with various court sanctions could be useful in responding to the problem of delinquent recidivism, particularly if certain sanctions were associated with extremely low recidivism rates. Accordingly, recidivism rates were examined for juveniles in the study based on the court sanctions they received at the time of their first intake in FY 1992.

It should be noted that background data on the juveniles considered in this analysis was generally not available. This means that in evaluating recidivism rates across juvenile court sanctions, adjustments could not be made to these outcomes based on differences in the types of offenders that receive various sanctions. Without these adjustments, an assessment of the relative effectiveness of court sanctions could not be fully completed.

Recidivism Rates for Juveniles Receiving Certain Sanctions. **Recidivism rates for delinquent juveniles were found to be 48 percent when any type of sanction was given (Table 14). This percentage differs from the 52 percent recidivism figure for all juveniles charged with a delinquent offense, because this analysis only includes persons who either admitted their guilt to the charges at intake or were found guilty by a juvenile court judge (including cases that were taken under advisement and later dismissed). This means only those youth in the original group who were convicted or whose case was taken under advisement are included in this analysis.**

Specific recidivism rates ranged from 37 percent for juveniles whose case was taken under advisement to 62 percent for juveniles placed in a non-residential community alternative or on probation supervision. The higher recidivism rates for juveniles on probation may be a function of both the types of youths being placed on probation — high risk — and the heavy workloads of the probation staff around the State. At the same time, the lower rates of recidivism for those juveniles whose cases were taken under advisement or resolved at intake may simply reflect the low-risk nature of the juveniles receiving those sanctions.

The use of less than optimal sanctions may contribute to the recidivism rates noted earlier and shown by sanction type in Table 14. Despite the diversity of problems presented by juveniles who come before the court, juvenile court judges are often constrained in the types of sanctions that can be used. There are few specialized community treatment alternatives used, which generally leaves less restrictive sanctions such as community service work or restitution, probation supervision, or restrictive confinement as options. Thus, judges may be forced to use sanctions that are not the most appropriate for certain juveniles. This problem was expressed during interviews with court service unit staff and judges.

Table 14

Recidivism Rates for Juvenile Delinquents Controlling for the Most Severe Initial Court Sanction

Court Sanctions	*Recidivism Rates*
Resolved at intake (n=417)	40%
Taken under advisement (n=130)	37%
Community service work or restitution or fine (n=99)	44%
Non-residential community alternative (n=70)	62%
Probation supervision (n=315)	62%
Restrictive community conditions (n=61)	57%
Any type of sanction (n=1,132)	48%

Notes: The figures reported in this table are based on a sample of 1,132 dispositions from 35 court service units. The reported sample proportions are weighted according to each court service unit's proportion of statewide caseload. The total population size for the "any type of sanction" category includes juveniles who received dispositions involving secure confinement or residential community treatment, although those dispositions are not reflected elsewhere in the table due to the limited number of cases.

Source: JLARC analysis of data collected from juvenile court records in 35 court service units and data supplied by the Department of Corrections regarding adults who were on probation or parole or who were incarcerated.

One court service unit director noted that "there are always problems fitting the kid to the program." Some of the problems he noted included getting the juvenile accepted in the appropriate program and finding the funding to pay for the program. The director noted further that there are some juveniles who cannot be placed. Having a full continuum of services is something they continue to work toward but in the meantime "at times a kid will be sent to a [correctional] center who could benefit from community placement if the appropriate placement and funding were available."

* * *

One judge noted that if there is no community alternative that can be accessed, the juvenile will receive detention before the hearing and commitment afterwards. The judge noted that he had one bright child that he did not want to give up on who received a scholarship to a community residential program. The judge noted that if the scholarship had not come through "it would have been a fight between the court service unit and [himself]" since the probation officer wanted the juvenile committed and the judge wanted funding to be devoted to a residential placement for the juvenile.

Valid recidivism rates could not be determined for the sanctions involving secure confinement or residential community treatment since very few juveniles in the

study sample received those sanctions after the first intake. Moreover, because JLARC staff did not have any information on how long juveniles who were given a custodial sanction were actually in the respective programs or correctional centers, there was no way to ensure that this group had a comparable period of follow-up as those for whom a different set of sanctions were imposed.

Therefore during the next study phase, comparable samples of offenders who have received residential community placement, secure detention, or juvenile correctional center commitment will be studied to determine associated recidivism patterns.

RECIDIVISM AMONG STATUS OFFENDERS

Since the 1950's, the juvenile court has had jurisdiction over abused or abandoned children, incorrigibles, and children charged with violation of federal, State or local laws. However, the law did not provide any distinction in the disposition of these cases based on the nature of offense. For example, juveniles found to be truants or runaways could be punished in a manner similar to juveniles charged with a misdemeanor offense.

In 1974, the federal government began a movement away from similar justice for dissimilar crimes by passing the Juvenile Justice and Delinquency Prevention Act. This Act called for the removal of status offenders from secure detention and correctional facilities and a shift towards treating these youths through community-based programs. Virginia later revised its juvenile code to reflect this effort.

Since the deinstitutionalization of status offenders more than 20 years ago, there has been an increased awareness and concern for the extent to which these juveniles re-offend and subsequently re-enter the juvenile court system. While these acts alone may not impact public safety, high recidivism rates among status offenders may be an indicator of a larger problem or a predictor of future delinquency.

There were several key findings in the analysis of the processing and recidivism of status offenders. First, although CSUs typically divert a substantial number of status offenders back into the community for treatment, in many cases no effort is made to ensure that this treatment is provided. Second, the rate of recidivism for status offenders is 53 percent, and many of these offenders appear to escalate the seriousness of their criminal behavior.

Policy Regarding Processing of Status Offenders Varies Across State

In 1974, a Subcommittee on Juvenile Code Revision was appointed by the Virginia Advisory Legislative Council's Committee Studying Services to Youthful Offenders. Since the laws governing juvenile and domestic relations courts had not been revised as a whole by the General Assembly since 1956, this Subcommittee was charged

with recommending changes and revisions to the law as necessary. The resulting legislation became effective in 1978 and restated the concern of the Commonwealth for the welfare of the child, but also emphasized the welfare of the family. To this end, the law gave the juvenile court jurisdiction over the parent, guardian, or legal custodian of a child in an effort to "get at the root of a child's behavioral problems which often begin in the home." Further distinctions were made between children who committed delinquent acts versus those who were status offenders. Also, the law placed an emphasis on treating the problems of status offenders rather than punishing the child.

Distinguishing Delinquency from Status Offenders. **Critics of the early juvenile code complained that the procedures for dealing with any child carried the stigma of delinquency, even if the act committed involved no violation of the criminal laws. As a result, a definition of the abused and neglected child was set up to correspond with the comprehensive child abuse and neglect act found in the welfare laws of the *Code of Virginia.* Specifically, the term "children in need of services" was created to define a child who was truant from school, disobedient of his or her parents, a runaway, or a person charged with committing an act designated a crime only if committed by a child. It was felt that these formal definitions would eliminate the gray areas between delinquent behavior and acts that would not be considered criminal if committed by an adult.**

As noted by the Division of Legislative Services, the term "child in need of services" (CHINS) was redefined in 1987 to include only those children whose behavior, conduct or condition results in a serious threat to their well-being, or physical safety. In addition, the category "children in need of supervision" (CHINSup) was created to include children who are habitually truant and for whom "reasonable effort has been made to effect school attendance" and children who are habitual or chronic runaways. This revision, however, resulted in jurisdictional problems for other types of status offenders such as those charged with curfew violation or possession of alcohol. Status offenders were not considered CHINS or CHINSup. In 1989, the definition of CHINS was revised to once again include youth who committed offenses that would not be criminal if committed by an adult. In 1990, the General Assembly dealt specifically with this problem, formally recognizing status offenders by adding this classification to the *Code of Virginia,* and authorizing disposition in the same manner as "children in need of services."

The *Code of Virginia* currently defines a CHINS as a child whose behavior or conduct presents a threat to his own safety. To determine whether a child is a CHINS, the court must: (1) find that the child's conduct is a clear danger to his or her health; (2) determine that the child or his or her family is in need of treatment; and (3) conclude that the intervention of the court is necessary to facilitate the provision of that treatment.

The *Code of Virginia* also explicitly outlines how the State's juvenile courts should process cases involving CHINS and CHINSup. It is the intent of the law that status offenders should not be subject to judicial sanctions until all efforts to treat these juveniles in the community have been exhausted. Accordingly, a key question concerning status offenders is whether court service units have established the appropriate

policies to ensure that CHINS and CHINSup receive community treatment before any judicial action is taken.

To address this issue, JLARC staff contacted intake officers from 34 court service units to determine how they handle status offenders. To assess the differences, the team identified two specific groups of non-criminal offenders: (1) CHINS and CHINSup, and (2) all other status offenders such as curfew violators, or youths who illegally possess alcohol or tobacco.

How Court Service Units Process CHINS Cases. **As revealed in Table 15, the majority of first time CHINS cases are diverted from the court process with a service plan for treatment. In developing the service plan, the intake officer schedules a meeting with the juvenile and his or her parents, discusses the problem and determines how the case can best be resolved out of court.**

This may include referrals to counseling services provided by the court service unit or other agency, or some other community treatment program. Court service units which divert without a court service plan, usually make referrals to other agencies for treatment without formally meeting with the family.

Half of all of the court service units indicated that they make some attempt to contact the family after referrals to determine whether services were actually received. If a family refuses treatment services, the case may be petitioned to court. In the other court service units, it appears as if high caseloads and limited staff have limited follow-up on services received. As a result, if there has been no attempt to communicate after

Table 15

CSU Policies for Processing CHINS Complaints

CSU Policy	*Geographic Characteristic of CSU*			*Total*
	Urban (n=13)	*Suburban (n=10)*	*Rural (n=11)*	*(n=34)*
First-Time CHINS Complaints				
Divert without court service plan	31%	10%	9%	18%
Divert with court service plan	69%	90%	91%	82%
Follow-up on Diverted Cases				
Yes	23%	70%	64%	50%
No	76%	30%	36%	50%

Notes: **It is important to note that in many "rural" and "suburban" court service units there are numerous localities, some of which have their own intake offices. In some cases, these offices face external policy limits which may be peculiar to that jurisdiction and not the entire court service unit.**

Source: **Data based on telephone interviews with intake staff in 34 court service units (for this analysis, the Falls Church and Arlington offices were combined).**

the initial referral, then CSU staff are generally unaware of a juvenile's status until he or she re-offends and is returned to court. At this time, the court intake officer will verify whether the juvenile actually participated in the counseling or treatment programs to which they were initially referred.

JLARC staff found that the majority of court service units divert first time CHINS cases with a court service plan. However, only half attempt to determine whether the juvenile actually receives the services. This raises questions as to whether the integrity of the diversion process is weakened by the perception on the part of the juvenile that there will be no follow-up (or consequences) to detect non-compliance.

How Court Service Units Process Children in Need of Supervision. **Unlike with CHINS, the *Code of Virginia* specifically requires that a reasonable effort be made to exhaust all community services before a CHINSup case is petitioned to court. This law increases the likelihood that juveniles brought to intake as CHINSup will be diverted. Not surprisingly, Table 16 reveals that only six percent of all first time CHINSup complaints are petitioned directly to court because all other options have been exhausted prior to intake. Eighty percent of the court service units stated that they continue to divert these cases from the court process even if some services have been attempted. Some court service units require intake staff to complete an affidavit which serves as a check list to verify that a reasonable effort has been made to provide services**

Table 16

CSU Policies for Processing CHINSup Complaints

CSU Policy	*Geographic Characteristic Of CSU*			*Total*
	Urban (n=13)	*Suburban (n=10)*	*Rural (n=11)*	*(n=34)*
First-Time CHINS Complaints				
Divert without court service plan	8%	0%	9%	6%
Divert with court service plan	69%	80%	73%	74%
Petition to court because other options exhausted	8%	0%	9%	6%
Other	15%	20%	9%	15%
Follow-up on Diverted Cases				
Yes	46%	80%	80%	67%
No	54%	20%	20%	33%

Notes: **It is important to note that in many "rural" and "suburban" court service units there are numerous localities, some of which have their own intake offices. In some cases, these offices face external policy limits which may be peculiar to that jurisdiction and not the entire court service unit.**

Due to rounding, percentages may not total 100.

Source: **Data based on telephone interviews with intake staff in 34 court service units (for this analysis, the Falls Church and Arlington offices were combined).**

outside of the court system. Fifteen percent of the intake officers reported that diversion of first time CHINSup depends on the circumstances surrounding the case.

Greater Accountability for Diverted CHINSup Cases. **A child classified as a CHINSup generally indicates a chronic problem. Therefore, the *Code of Virginia* authorizes the use of the community policy and management teams (CPMT) to provide resources for services through the Comprehensive Services Act (CSA). Some court service units rely on the CSA to provide treatment for status offenders. Through this Act, each local government is required to appoint a CPMT which consists of representatives of the court service unit, community services board, department of social services, school system, and department of health.**

The CPMTs appoint members to their family assessment and planning teams (FAPTs) which evaluate a particular case and make funding recommendations. The goal of these efforts is to reduce out-of-home placements by purchasing community based, family-focused intervention services. The involvement of the CPM and FAP teams ensures that a juvenile's case will be monitored. If the child or family fails to respond to services, then court intervention is sought to address the problem. Thus, while court service units divert CHINSup cases in a manner similar to CHINS, the involvement of the CPM ensures that the service referrals the juvenile receives are more closely tracked.

Recidivism Among First Time Status Offenders Is Substantial

Recidivism among juveniles may be an indication that the system has failed in its efforts to rehabilitate and deter the juvenile from further misconduct. It may also, however, be an indication of other social, mental or familial problems that are continually impacting a juvenile's decisionmaking. For this reason, legislators revising the *Code of Virginia* in the 1970s felt strongly that treatment or punishment of a child would seldom be effective if the issues surrounding a dysfunctional home environment were not addressed.

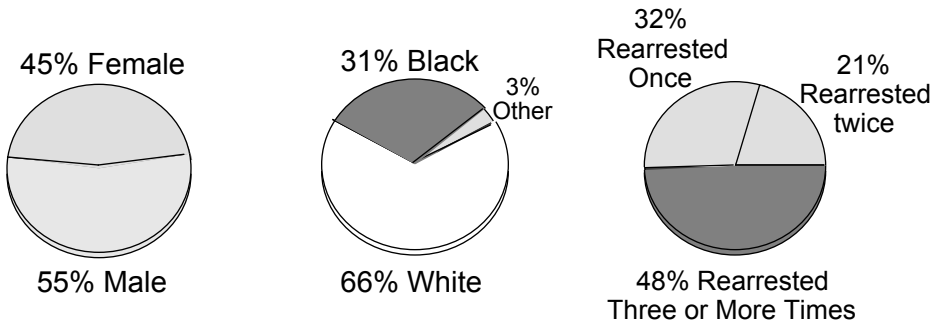
JLARC staff's analysis for recidivism among status offenders was based on 306 records collected statewide from court files on juveniles whose first recorded contact with the juvenile court was for a status offense in fiscal year 1992. To understand the seriousness of the problem, JLARC staff measured its magnitude as reflected in the proportion of status offenders who recidivated. In addition, the team considered the extent to which these non-criminal offenders were later charged with more serious crimes.

Magnitude of Recidivism Among Status Offenders. **The findings from this review indicate that 53 percent of all first-time offenders whose most serious crime in 1992 was a status offense re-offended within a three-year period. On average, these juveniles were charged with additional offenses six months from the date of their original intake. Further, almost half of the juveniles were re-arrested three or more times (Figure 25).**

Some court service unit staff interviewed for this study suggested recidivism rates would be high among status offenders given the limited authority of the court for

Figure 25

Selected Characteristics of First-Time Status Offenders Who Re-Offended within a Three-Year Period



Notes: **The reported sample proportions are weighted according to each CSU's proportion of the statewide caseload. For the sex characteristic, the statistical relationship reported was not significant at a 5 or 10 percent level of significance. For the race characteristic, the chi-square value of 5.157 for the figures presented in this grpahic is significant at a 5 percent level of significance.**

Source: **Results based on 164 records collected statewide from court files on juveniles whose first recorded contact with the juvenile court was for a status offense in FY 1992. Totals may not equal 100% due to rounding.**

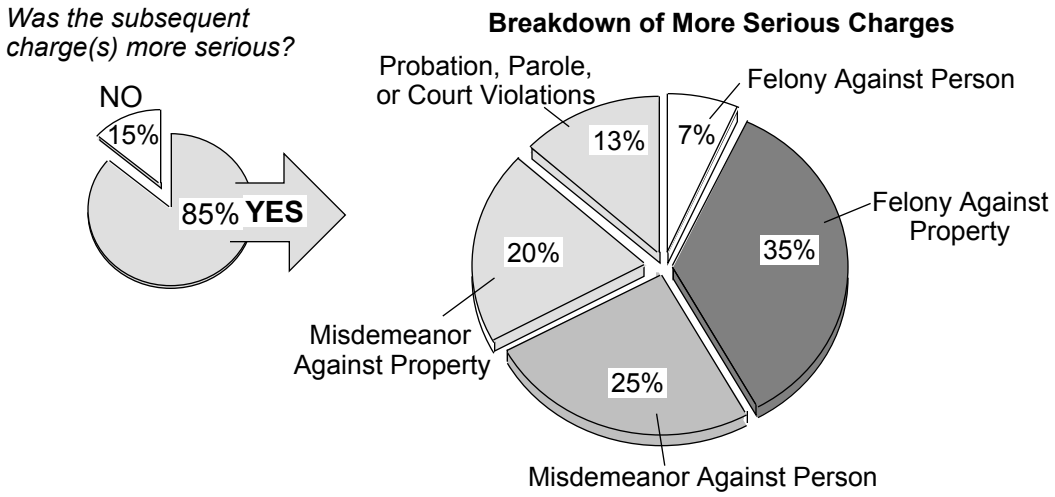
sanctioning these juveniles. As a result, these staff contend that statutory changes are needed to enforce stricter sanctions on status offenders to deter further misconduct.

The study findings concerning the processing of status offense cases do not indicate, however, that most CSUs have consistently implemented diversion or treatment programs to address the problems of this population. With an increasing workload resulting from the need to monitor more serious offenders, probation officers have little time or resources to either treat the status offender population or establish an effective monitoring program to ensure that intake referrals are carried out. As a result, a status offender may not get the attention that is needed until a delinquent offense is committed. Before changes are made to restore the powers of the court to use more restrictive sanctions, the problems which may be related to inadequate diversion practices in some of the CSUs should be addressed.

Nature of Recidivism. **Even though status offenders are not considered criminal, there is a growing concern that youths whose problems originate as status offenses soon escalate into full blown problems of delinquency. As a result, a key issue in this study was whether the status offenders moved on to commit more serious crimes. Figure 26 indicates that almost nine of every ten status offenders who recidivate will commit a crime that is more serious than a status offense. About 45 percent of those who increased their criminal behavior did so by committing a misdemeanor, and about 42 percent by committing a felony. In seven percent of the cases, former status offenders committed a violent crime. Twenty-one percent of these youths were placed in a State correctional center or local secure detention facility. Three first-time status offenders were later convicted of crimes in the adult system.**

Figure 26

Most Serious Charge for Status Offenders Who Re-Offended within a Three-Year Period



Note: **The reported sample proportions are weighted according to each CSU's proportion of the statewide caseload.**

Source: **Results based on 164 records collected statewide from court files on juveniles whose first recorded contact with the juvenile court was for a status offense in FY 1992.**

Still, there is substantial variability in the backgrounds and types of escalating offenses that status offenders commit. For example:

> ***Kim (a fictitious name) was 16 years old when she was brought to intake as a runaway. Her case was petitioned to court and ultimately dismissed. Less than two months later, she ran away again and was placed in a residential community program. When Kim ran away again she was charged with violating a court order. Three months later she was charged with petit larceny and sent to a secure detention facility. A year later, Kim was charged again with violation of a court order and subsequently ran away. Although Kim recidivated 11 times, her most serious charge was petit larceny. The court's information on Kim, who reportedly lived in a nice home in a middle-income neighborhood with her father, stepmother and brother, suggests that Kim suffered long-term emotional damage from the desertion of the family by her biological mother while Kim was at an early age. It was suggested that her runaway behavior was an attempt to have the court place her with her mother.***
>
> *** * ***
>
> ***John (a fictitious name), a male from an urban area, was almost 14 years old at the time of his first intake. At the time of this intake, John***

lived with his mother, two siblings, and his mother's boyfriend. (John's father has an extensive criminal record and was incarcerated in New York for drug sales). The family lived in an area known for its high crime rate and low socioeconomic status, and John's mother received Aid to Dependent Children and was having difficulty paying her bills. John was petitioned to court as a child in need of services and the petition was ultimately dismissed.

Less than two months later, John was charged with simple assault and receiving stolen property. He was again petitioned to court and the charges were dismissed. A month later John committed his first felony: auto theft. For this crime and an additional larceny charge, he was committed to a correctional center. One year later John was charged with simple assault, assault using a firearm, and abduction, for which he was again sent to a correctional center. Over a three-year period, John committed eight recidivist acts.

Unfortunately, very little social history data was available for most of the status offender population, so no systematic analysis can be conducted and no conclusions can be drawn as to what factors appear to have the greatest impact on recidivism.

Recidivism for Sanctions Imposed at Intake and in Court Are Similar

Because the *Code of Virginia* emphasizes the treatment and rehabilitation of juveniles who commit non-criminal acts, JLARC staff examined the recidivism rates of first time status offenders to consider whether sanctions imposed by intake officers and juvenile court judges seem to affect recidivism rates. Overall, this review revealed that recidivism was high for cases resolved at intake as well as those petitioned to court.

Sanctions Imposed at Intake. **As discussed previously, the intake officer has the discretion to determine what services would best serve the interest of the juvenile and his or her family. Treatment-oriented options may include intake referrals to counseling, or placement in non-residential and residential community programs. Other sanctions imposed may include unofficial counseling conducted by court service unit staff, payment of fines, or community service work.**

In many CSUs, treatment referrals do not rise to the level of a court order; more often counseling or treatment is only suggested or recommended. Juveniles and their families apparently suffer no consequences for failure to comply with referrals made at intake. Further, if court service units do not follow up on referrals, juveniles and their families may not be inclined to take such efforts seriously. This may explain why the recidivism rate for those cases resolved at intake is 56 percent.

While diversion of non-criminal offenses should be encouraged, efforts should be made to ensure that community treatment is not only recommended but received. Many have argued that early intervention is the best method to prevent further

delinquent behavior. If the intent is to divert juveniles away from the court process and provide treatment services, more emphasis must be placed on giving intake officers stricter guidelines to follow, as well as imposing sanctions with serious consequences. This may not only help reduce the number of cases petitioned to court, but the rate at which these juveniles re-offend.

Sanctions Imposed in Court. **Although the *Code of Virginia* encourages diversion to the extent possible, 40 percent of first-time status offenders were petitioned to court. This could be the result of differences in court service unit intake policies, lack of treatment options at the intake level, or a large number of cases in which intake officers felt court intervention was necessary.**

Failure to abide by a court ordered sanction can result in more severe consequences. For example, if a juvenile is considered a CHINS or is found guilty of another status offense, some of the sentencing alternatives provided by the *Code of Virginia* include: requiring agencies to provide services to the juvenile's family, requiring the family's participation in treatment, and removing the juvenile from the home including the transfer of legal custody if necessary. In addition, a juvenile's parent may be fined and sentenced to up to ten days in jail for contempt of court if a juvenile violates a court order.

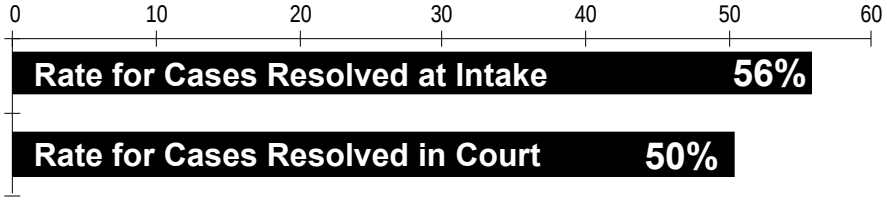
If a juvenile is considered a CHINSup, the case is referred to the FAP team to evaluate the service needs. The judge may or may not follow the recommendations of the FAP team at the disposition hearing. In addition, the judge may place a CHINSup on probation and order the child and/or the parent to participate in treatment programs.

The authority of the judge to charge a parent for violation of an order resulting from a status offense addresses the concern that parents should be made more accountable for their children's actions and take a more active role in the modification of their behavior. Any violation of court orders imposed as a result of a juvenile's offense may result in a fine of up to $2,500 or a jail sentence of up to 12 months for the parent.

Still, as Figure 27 shows, the possibility of more serious sanctions imposed by judges did not significantly lower recidivism among status offenders who were required to appear in court. Without additional information, it is difficult to assess the real impact sanctions have on status offenders or consider what factors drive recidivism. A complete social history was available for only 33 percent of first-time status offenders. Therefore, it is not possible to separate the effect of the court sanctions on recidivism from the possible adverse influences of family dysfunction or the problems of the juvenile. This is an area where the more comprehensive collection of information by DYFS could permit greater analysis of what appears to be a fairly significant problem.

Figure 27

Recidivism Rates for Status Offenders for Cases Resolved at Intake and in Court



Note: **The reported sample proportions are weighted according to each CSU's proportion of the statewide caseload. The chi-square value for the relationship presented in ths table was 1.308 which is not significant at 10 percent level of signifiance.**

Source: **Results based on 306 records collected statewide from court files on juveniles whose first recorded contact with the juvenile court was for a status offense in FY 1992.**

IV. Community Treatment and Rehabilitation Programs

Section 16.1-227 of the *Code of Virginia* states that the first purpose and intent of the Juvenile and Domestic Relations District Court Law is to:

> **divert from or within the juvenile justice system, to the extent possible, consistent with the protection of public safety, those children who can be cared for or treated through alternative programs.**

To this end, judges are further instructed to:

> **separate a child from such child's parents, guardian, legal custodian or other person standing in loco parentis only when the child's welfare is endangered or it is in the interest of public safety and then only after consideration of alternatives to out-of-home placement which afford effective protection to the child, his family, and the community.**

Legislative intent is therefore quite clear. Juveniles who are found guilty of a status or delinquent offense are to be treated in their own community, assuming the placement of the child in this treatment does not pose a threat to public safety.

The community treatment options available to judges may include sanctions such as probation, court-ordered counseling, or placement in a residential or non-residential program. As shown in Chapter II, probation is the most widely implemented community treatment sanction; yet it may not be a highly effective tool in the reduction of recidivism. As indicated in Chapter III, the recidivism rate for juvenile delinquents in the study sample receiving probation supervision is 62 percent. Probation officers facing high caseloads and other court-related responsibilities simply may not be able to treat the severity of problems that many juveniles now bring to the system. Given this inability, it may be that judges need to consider using other, more intensive, treatment alternatives to combat the serious problem of juvenile recidivism.

Judges, however, report that in many cases they do not have access to alternative treatment sanctions. Although treatment is generally regarded as an important aspect in the "balanced approach" to juvenile justice, it is not a realistic option in many courts. Consider the comments of two judges from urban areas:

> **The weakness of the court is the lack of resources we have. We do not have enough resources to meet the mental health needs of the people we see in court. About one-third of all the cases I get in court could benefit from mental health counseling. This type of counseling is really deficient in this court.**

*** * ***

> **Money typically runs out for non-mandated juvenile offenders in December of the fiscal year. When this happens, I turn to supervised probation that is characterized by periodic reviews of juveniles' behavior, substance abuse prevention programs, and family counseling.**

This absence of treatment options occurs for two reasons — treatment is expensive and it is not well funded. In terms of its expense, JLARC survey data of residential treatment programs indicates that the average cost of providing a juvenile with residential treatment services for an average length of stay (37 weeks) is nearly $55,000. When this cost is compared with the funding made available for non-mandated services through the Comprehensive Services Act, only 20 localities (15 percent) would have had adequate resources in FY 1994 to send at least one juvenile to a residential treatment center. Judges therefore can not sanction that juveniles participate in these treatment programs when the resources to support their stay do not exist.

Recognizing that the funding of treatment services for children and their families needed to be re-examined, the Virginia General Assembly recently adopted two major pieces of legislation to improve the funding of community programs. These two acts, the Comprehensive Services Act and the Virginia Juvenile Community Crime Control Act, were implemented to expand local autonomy and flexibility in serving youth populations, while improving the planning and case management of treatment services. It appears that in these respects the legislation was successful. However, it does not appear as if the current funding levels for these legislative initiatives are able to address all access and disparity problems that currently impede the provision of treatment. Without sufficient funding, the availability of community treatment alternatives is likely to remain problematic.

It is important to recognize, however, that if these funding problems are addressed, the State may be able to avoid committing as many juveniles to secure confinement for lack of other acceptable alternatives. In turn, some of the projected expansion of the State's juvenile correctional centers that is being considered could possibly be avoided. Residential community treatment programs could be used as an alternative to commitment for those juveniles who require intensive treatment but do not pose a significant threat to public safety. Residential care options for court-involved juveniles are already available and under-utilized in most areas of the Commonwealth. While the cost and effectiveness of these programs is presently unknown, the potential of these programs will be further explored by JLARC staff in phase II of this study.

For now, this preliminary assessment of community treatment will provide an overview of the State's funding for the treatment and rehabilitation of juvenile justice populations. Additionally, it will examine the availability and use of Virginia's residential treatment programs. Finally, it will explore the role that alternative providers could assume in the development of a continuum of judicial sanctions for juvenile offenders.

FUNDING FOR JUVENILE TREATMENT AND REHABILITATION

A judicial decision to use community treatment as a legal sanction is influenced by three factors: (1) the balance between the best interests of the child and the potential threat to public safety; (2) the availability of appropriate treatment programs; and (3) the courts' access to funding to pay for treatment. Since the development of juvenile courts in the 1950's, the Virginia General Assembly has recognized the importance of funding treatment and has assumed partial responsibility for providing these services to juvenile delinquents and status offenders. Accordingly, since 1950 several fund sources have been established to support treatment and secure detention services at the local level. It became apparent, however, that these sources were generally not sufficient to provide services to a growing juvenile offender population. Moreover, it was believed that the existing fund structure might be generating service disparities across localities.

In an effort to address a number of problems with the funding structure for treatment, the General Assembly passed the Comprehensive Services Act (CSA) in 1993 and the Virginia Juvenile Community Crime Control Act (VJCCCA) in 1995. Through CSA, it appears that the General Assembly has successfully shifted the authority for funding decisions to local communities, while increasing communication across the State and local agencies that provide services to troubled youths and their families. However, there are still significant funding disparities for treatment across the State and continuing problems of access to services. Similarly, the VJCCCA, which was enacted to enhance funding for treatment services, will only minimally impact problems of funding disparities and access at its current funding level.

Several Funding Sources Exist, but Historical Problems of Limited Access and Disparities Remain

Since the 1950's, the General Assembly has used a number of programs to fund its commitment to community treatment for juvenile offenders. Although the agency responsible for overseeing these programs has changed several times (from the Department of Welfare and Institutions to the Department of Corrections to the Department of Youth and Family Services), the programs have changed very little. The first programs used by the State to fund community treatment were the 294, 286, and 239 programs (named according to their location within Section 16.1 of the *Code of Virginia*). Then in 1982, the General Assembly added the block grant program to provide additional funding for pre- and post-trial community treatment and secure detention services. In 1993, the State altered this funding structure by consolidating the 286 and 239 programs into the Comprehensive Services Act. Finally, in 1995, the block grant program for non-secure treatment alternatives was revised to the Virginia Juvenile Community Crime Control Act. Accordingly, this chapter does not provide an in-depth analysis of the soon-to-be-eliminated block grant program for community alternatives.

Funding Sources for Treatment Programs Prior to FY 1994. **Prior to FY 1994, funding for community treatment was provided through the block grant program,**

the 294 program, and the now-defunct 286 and 239 programs. Each of these funding streams provided targeted services specifically to juvenile offenders. The first of these fund sources, the block grant program, was developed to fund pre- and post-dispositional placements, with an emphasis on secure detention. Therefore, less than half of this program's resources were directed toward the provision of community treatment. In FY 1993, for example, the total block grant allocation was approximately $43 million — $23.2 million for secure detention and $19.8 million for other alternatives, only some of which were treatment-oriented.

Conversely, the 294 program was designed to focus on community treatment, purchasing services for juveniles who were returned to the custody of the court for parole supervision and were either in need of treatment or an acceptable place to live. This program, however, was never allocated a significant amount of funding. Prior to FY 1994, funding never exceeded $1 million dollars. For example, in 1990, only $70,894 was made available for 294 services. While this allocation was increased in FY 1993 to $386,517, the program was still only able to serve 39 juveniles.

The third and fourth funding sources, the 286 and the 239 programs, were also designed with community treatment as their primary goals. Specifically, the 286 program allocated funds for the purchase of services for juveniles by private or locally-operated treatment facilities when the court determined that these juveniles could "not be dealt with in [their] own locality or with the resources of [their] locality." Similarly, to assist in the provision of 286 services, the 239 program paid for the travel expenses of court officers in counties and cities providing specialized court service programs. Funding levels for the 286 and 239 programs were more substantial than those for the 294 program, reaching $10.2 million in FY 1993. These funding levels were not, however, any better able to meet the demand for their services — the 286 program operated at a serious deficit in FY 1991. Ultimately, these programs were eliminated in FY 1994 with the adoption of CSA.

Historically, expenditures for treatment services for juvenile justice populations suggest that prior to FY 1994, funding was not sufficient to meet the full demand for treatment services. Although the *Code of Virginia* was amended in 1976 to reinforce the premise that treatment is a fundamental aspect of the juvenile justice system, funding has been lacking. One funding program has even run a deficit in order to meet the needs of a small number of juvenile offenders. Since access to treatment has been limited for the majority of court-referred juveniles in most localities, it is difficult to draw conclusions about the impact of treatment in Virginia on recidivism. Moreover, funds have not been distributed to localities in an equitable manner. Therefore, as a result of this funding structure, a continuum of treatment services did not exist.

The Passage of the Comprehensive Services Act (CSA). **In 1993, the General Assembly passed CSA in an attempt to address some of the problems with the funding structure for at-risk youth and their families. This act, which became effective July 1, 1993, established a pool of State funds to "be expended for public or private residential or non-residential services for troubled youths and families." CSA funds were initially generated by consolidating the following funding streams:**

- **Department of Social Services' State and local foster care funds, as well as foster care purchased services' funds;**

- **Department of Education's private tuition funds and interagency assistance funds;**

- **Department of Youth and Family Services' (DYFS) 286 and 239 funds;**

- **Department of Mental Health, Mental Retardation, and Substance Abuse Services' funds for purchased beds for adolescents; and**

- **Interagency Consortium funds.**

These funds were combined in an effort to create a collaborative system of services for troubled youth and their families. Staff from the areas of education, social services, mental health, and the juvenile courts were directed to work together to provide complementary services to dysfunctional families.

Given this consolidation, CSA funds are allocated to youth and their families based on program eligibility criteria. Under these criteria, juveniles who need special education or foster care services are classified as "mandated," and are legally guaranteed that funds will be available to serve them. Juvenile offenders, on the other hand, are classified as "targeted" but "non-mandated" — meaning that they can be served with CSA funds, but only after the mandated population has been served. While CSA has been amended to allow localities to set aside a limited portion of their funds for non-mandated services, the provision of treatment to juvenile delinquents remains a small part of CSA's total funding. In FY 1994, for example, CSA funds totaled $103,552,686. Of this, only $9,886,933 (10 percent) were used to provide treatment services to the non-mandated population, of which the majority are court-involved youth.

Total Funding for Non-Mandated Juveniles Under CSA. **The decision to consolidate fund sources under CSA did not result in a significant loss of funding for non-mandated services. Nor, however, did CSA expand treatment dollars for non-mandated services. In FY 1993, the year before CSA was implemented, "special placement" funds for juveniles (who would later be classified as non-mandated) totaled $10,242,117 (Table 17). These funds were provided through the 286 and 239 programs and were administered by DYFS. In FY 1994, under CSA, funds for non-mandated juveniles totaled $9,886,993. As these numbers indicate, the consolidation of the 286 and 239 programs into the CSA resulted in a small decrease in non-mandated expenditures of approximately 3 percent ($355,184).**

This decrease in expenditures for non-mandated services was not the result of a State-level decision to reduce total spending. Instead, it occurred because not all localities chose to spend as much on non-mandated services in FY 1994 as they were permitted under the protection levels established by CSA. If localities had protected up to their maximum protection levels (which were set equal to their actual expenditures for 286 and 239 in FY 1993), expenditures for FY 1994 would have been equal to FY 1993.

Table 17

Expenditures for Non-Mandated CSA Services

	FY 1992	*FY 1993*	*FY 1994*
State Cost	$7,678,707	$10,242,117	$6,048,826
State Share	100%	100%	61.2%
Local Cost	$0	$0	$3,838,107
Local Share	0%	0%	38.8%
Total Cost	$7,678,707*	$10,242,117	$9,886,933

*Total expenditures for non-mandated services for FY 1992 are artificially low due to a deficit that was run for services purchased in FY 1991. Non-mandated expenditures for FY 1991 were $11,823,429. An average for both years is therefore equal to $9,751,068.

Source: Expenditure data provided by the Department of Education, May 1995.

Moreover, localities that did not use all of their mandated funds on special education and foster care could have allocated the remaining money toward the provision of additional non-mandated services. This last contingency means that it was possible that under CSA spending on non-mandated services in FY 1994 could have exceeded expenditures in FY 1993.

CSA and Changes in Intergovernmental Funding Responsibilities. **While CSA did not significantly affect total spending for non-mandated services, it did alter the structure of funding responsibilities between the State and local governments. In FY 1993, prior to the implementation of CSA, local governments were responsible for paying almost half (44 percent) of the cost of mandated services (Table 18) and none of the costs of non-mandated services (Table 17). At the same time, the State paid 56 percent of the**

Table 18

Expenditures for Mandated CSA Services

	FY 1992	*FY 1993*	*FY 1994*
State Cost	$37,232,921	$44,001,195	$57,304,708
State Share	56.2%	55.8%	61.2%
Local Cost	$29,030,313	$34,859,344	$36,361,045
Local Share	43.8%	44.2%	38.8%
Total Cost	$66,263,234	$78,860,539	$93,665,753

Source: Expenditure data provided by the Department of Education, May 1995.

costs of mandated services and 100 percent of the costs of non-mandated services. With the switch to CSA in FY 1994, local governments became slightly less responsible for funding mandated services (their share went from 44 percent to 39 percent), but they became responsible for funding 39 percent of the costs of non-mandated services. In turn, the State became responsible for paying 61 percent of the costs of both services.

As shown in Table 19, the total fiscal burden of providing treatment services under CSA has increased significantly for localities. Between FY 1993 and FY 1994, for example, the local share of the cost of these services increased 15 percent. This increased burden is not, however, due to the structure of the new funding system. In fact, the new funding system actually requires localities to pay a slightly smaller share (38.8 percent as opposed to 39.2 percent) of the total allocation than they were paying prior to CSA. The increased fiscal burden is instead caused by rapid increases in the number of juveniles requiring mandated services. Growth in the numbers of juveniles needing special education or foster care services has necessitated that both the State and local governments allocate more total dollars to these services in FY 1994 than ever before. Total expenditures for mandated services increased 41 percent between FY 1992 and FY 1994 (Table 18). Accordingly, local governments are feeling increased fiscal pressure.

Table 19

Expenditures for Both Mandated and Non-Mandated CSA Services

	FY 1992	*FY 1993*	*FY 1994*
State Cost	$44,911,628	$54,243,312	$63,349,017
State Share	60.7%	60.9%	61.2%
Local Cost	$29,030,313	$34,859,344	$40,203,669
Local Share	39.3%	39.1%	38.8%
Total Cost	$73,941,941	$89,102,656	$103,552,686

Source: Expenditure data provided by the Department of Education, May 1995.

Funding Disparities Continue to Exist Under CSA. **A review of non-mandated expenditures by locality indicates that the CSA has been unable to achieve its objective of reducing disparity in accessing services for court-involved youth. This problem can probably be attributed to another provision of the CSA, which allows localities to make choices about how much money, if any, they will set aside for the provision of non-mandated services. As a review of expenditure data from FY 1994 indicates, localities are exercising their ability to make different funding choices.**

In many cases, localities are choosing not to set aside any funds for the provision of non-mandated services. Their reason for making this choice is simple — the funding of non-mandated services is optional, while the funding of mandated services is not. As

a result, in FY 1994, 49 localities (37 percent) allocated no funds for the provision of non-mandated services (Figure 28). JLARC staff analysis of these localities indicates that when population density is considered, rural localities are less likely than urban or suburban localities to fund services for non-mandated juveniles. This may reflect their general limited capacity to meet local match requirements. Similarly, a regional analysis reveals that localities in the Shenandoah Valley are much less likely than localities in other regions (particularly those in Northern Virginia, Southside Virginia, and Southeast Virginia) to make non-mandated funding available.

Even when localities do decide to allocate funds toward the provision of non-mandated services, the amount of their allocations differ markedly. A review of local expenditures, standardized by the number of juvenile delinquent and status offense intakes per fiscal year, yielded two findings (Table 20). First, rural localities outspend urban and suburban localities on a per intake basis. This is surprising, given the number of rural localities that choose not to allocate any funds toward the provision of non-mandated services.

Second, funding per intake in Southeast Virginia is three times that of Central Virginia or the Shenandoah Valley. Variations this large are likely to account for more than differences in the characteristics of the intake populations, or the cost of purchasing

Table 20

Variation in Non-Mandated Funding Per Intake by Degree of Local Urbanization and Geographic Region

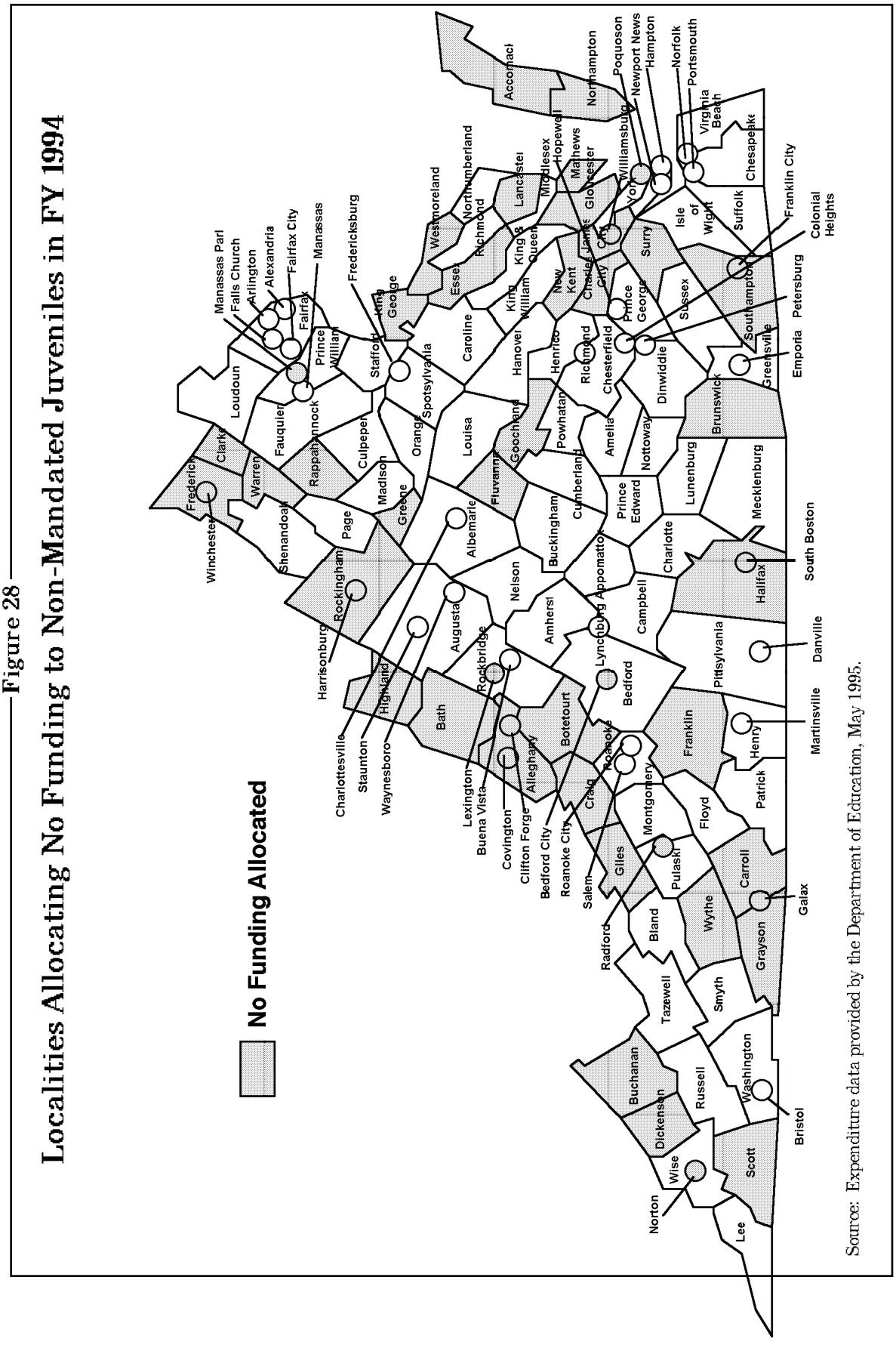
	Average Funding Per Intake FY 1994 (CSA)
Type of Locality	
Urban	$102.37
Suburban	$72.51
Rural	$113.70
Region	
Southwest Virginia	$111.51
Shenandoah Valley	$53.51
Northern Virginia	$123.10
Northern Neck	$90.89
Southside Virginia	$98.95
Southeast Virginia	$184.46
Central Virginia	$62.62

Note: A map key showing these seven regions and the court service units located in each is provided in Appendix B.

Source: Expenditure data provided by the Department of Education, May 1995.

Figure 28

Localities Allocating No Funding to Non-Mandated Juveniles in FY 1994



Source: Expenditure data provided by the Department of Education, May 1995.

services. Most likely, juveniles in Southeast Virginia have a better chance, on average, of receiving non-mandated CSA services. Given these differences in non-mandated expenditures per intake, it would seem as if a juvenile's access to non-mandated services depends, at least in part, on where he or she lives.

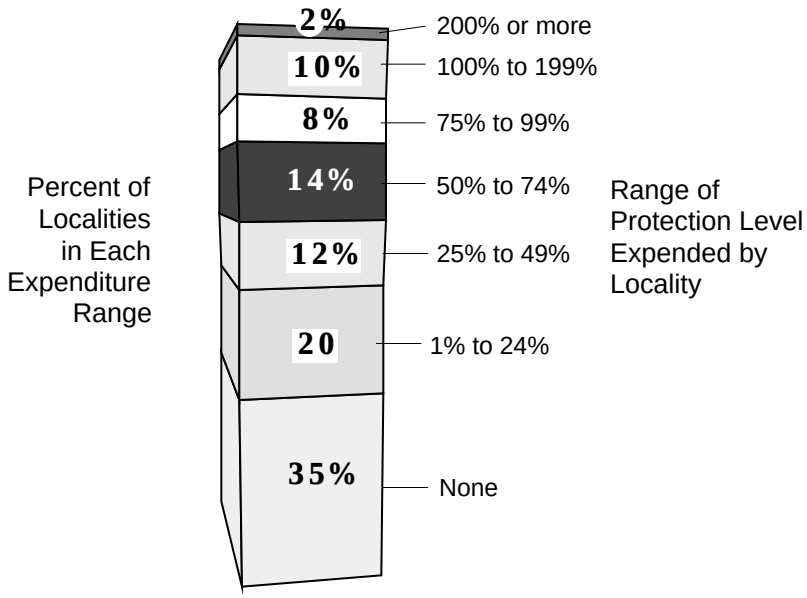
Recent Changes to CSA Are Not Likely to Address Disparity Issue. **Although the State Executive Council (SEC) for the CSA has implemented several changes to its initial funding regulations in an effort to increase local spending on non-mandated services, these changes do not appear to have been successful. In its first year of operation, the SEC permitted each locality to set aside a small portion of their total CSA allocation for the provision of non-mandated services. Since that time, the SEC has tried to effect increases in funding for non-mandated services by increasing the maximum levels localities can set aside for their non-mandated populations. In FY 1995, for example, instead of permitting localities to set aside an amount equal to their 286 and 239 expenditures, localities were allowed to set aside either $10,000 or 12 percent of their total CSA allocation, whichever amount was greater.**

Unfortunately, this idea will not work. Because the provision of non-mandated services is optional, many localities choose not to protect funds for non-mandated services. This decision makes the idea of increasing protection levels virtually ineffective. As evident in FY 1995, 88 percent of all localities spent less on non-mandated services than their existing protection levels permitted. Moreover, 68 percent spent less than half of the amount permitted by their protection levels (Figure 29). Therefore, it is doubtful that a decision to further increase protection levels will increase spending in a large majority of localities. Given data from FY 1995, it would increase funding in only 16 localities (12 percent).

With CSA Most Juveniles Still Do Not Receive Community Services. **The combination of CSA funds with the two remaining funding programs — 294 and the block grant program— provided approximately $35 million for community treatment services in FY 1994 (Table 21). While this is not an insignificant amount of funding, Chapter II depicts that these funds appear insufficient to treat all juveniles in need of community services. Only two out of every 10 delinquent juveniles receives a court sanction involving some form of community treatment. This limited use of treatment sanctions is supported by FY 1994 expenditure data for CSA, which indicates that funds for non-mandated services were made available to only 759 juveniles. The 294 program served even fewer — 351 paroled juveniles, or less than 30 percent of the paroled population, received treatment through this program in FY 1994. Finally, it should also be noted that this $35 million is not entirely allocated to "treatment" services — some of the block grant funds are used to provide electronic monitoring services, outreach detention services, and house arrest services. Access to structured treatment therefore remains problematic.**

Figure 29

Percentage of FY 1995 Protection Level Expended by Localities for Non-Mandated Youth



Note: **Percentages do not add to 100 due to rounding.**

Source: ***Report to State Executive Council on the Provision of Services to Non-Mandated Youth*, State Management Team for the Comprehensive Services Act, October 27, 1995.**

Table 21

Overview of Funding for Community Treatment Services FY 1994

Fund Source	*Contribution*	*Contribution*	*Expenditures*
Block Grant*	**$11,494,788**	**$11,403,196**	**$22,897,984**
Comprehensive Services Act (non-mandated)	**$6,048,826**	**$3,838,107**	**$9,886,933**
294	**1,961,069**	**$0**	**$1,961,069**
Total	**$19,504,683**	**$15,241,303**	**$34,745,986**

***Note:** **The block grant funds listed above do not include expenditures made for the provision of secure detention. Also, the local contribution for the block grant program is an estimate derived from the State and local proportional contributions to the block grant program in FY 1993.**

Source: **Fiscal data on the Comprehensive Services Act was provided by the Department of Education. The Department of Youth and Family Services provided the fiscal data on block grant funds and the 294 program.**

The Virginia Juvenile Community Crime Control Act May Not Eliminate Funding Problems

Recognizing the need to improve the community-based system of services and sanctions, the 1995 Virginia General Assembly enacted the Virginia Juvenile Community Crime Control Act (VJCCCA). The act was adopted to accomplish the following purposes:

- **Promote an adequate level of services to be available to every juvenile and domestic relations district court.**
- **Ensure local autonomy and flexibility in addressing juvenile crime.**
- **Encourage a public and private partnership in the design and delivery of services for juveniles who come before the court on child in need of services, child in need of supervision, and delinquent charges.**
- **Emphasize parental responsibility and provide community-based services for juveniles and their families which hold them accountable for their behavior.**
- **Establish a locally driven statewide planning process for the allocation of State resources.**
- **Promote the development of an adequate service capacity for juveniles before the court on petitions alleging status or delinquent offenses.**

Once implemented (January 1996), the VJCCCA will replace the State's block grant program, except for those block grant funds specifically designated for secure detention services. It will award funds to localities based on a formula that measures juvenile arrests and residential/non-residential program utilization. However, if localities were receiving more funding under the previously-existing block grant program, then a "hold harmless" amount will be used in place of their formula allocation.

A review of the total appropriation for the VJCCCA for FY 1996 indicates that the act will increase the amount of funds available to localities for community treatment, but the net gain is not substantial. Of the approximately $3.9 million appropriated to the VJCCCA for January through June 1996, $1 million represents a block grant cut restoration. Only the remaining $2.8 million represents additional funds with which localities can improve their provision of treatment services. While this amount will increase to approximately $5.7 million in FY 1997 (the first full year of the Act's implementation), the VJCCCA permits localities to use these additional funds to "guarantee access to a secure detention facility." This means that a significant portion of the new funds might not, in fact, be allocated to community treatment services. If localities choose to use their funds for secure detention, access to community treatment is not likely to improve.

Further, a review of preliminary budget estimates prepared by DYFS indicates that when the VJCCCA funds for the second half of FY 1996 are combined with the CSA funds for FY 1996, local funding disparities continue to exist. It appears as if some of this disparity stems from the "hold harmless" provision of the Act, which permits the continuation of disparities which existed under the old block grant program. As shown in Table 22, the combination of the CSA and VJCCCA fund sources results in urban localities receiving almost twice as much money per juvenile delinquent and status offense intake as suburban localities. Similarly, localities in Northern Virginia continue to receive more than twice as much funding per intake as localities in the Shenandoah Valley and Central Virginia. As a result, it appears as if access and funding disparity problems may continue under this new funding structure.

Table 22

CSA and VJCCCA Funds Per Intake for FY 1996

	Average CSA Plus VJCCCA Funds Per Intake FY 1996
Degree of Local Urbanization	
Urban	**$303.13**
Suburban	**$162.26**
Rural	**$190.44**
Region	
Southwest Virginia	**$252.66**
Shenandoah Valley	**$130.50**
Northern Virginia	**$363.47**
Northern Neck	**$223.56**
Southside Virginia	**$218.21**
Southeast Virginia	**$295.67**
Central Virginia	**$144.15**

Notes: **Intakes for FY 1996 were projected using an average rate of growth from FY 1992 to FY 1994. CSA funds are FY 1994 expenditures, which were assumed to stay constant for FY 1996. VJCCCA funds are for the period January 1, 1996 to June 30, 1996. These funds can be expected to double in FY 1997, the first full year of the program's implementation.**

Source: **Intake and VJCCCA data was provided by the Department of Youth and Family Services. CSA expenditures were provided by the Department of Education.**

THE AVAILABILITY AND USE OF RESIDENTIAL TREATMENT PROGRAMS

The limited provision of community treatment in the Commonwealth could be the result of insufficient funding or insufficient program availability. The preceding

section indicated that funding is, in fact, a significant obstacle to the provision of community treatment. However, if more funding were available, could community treatment programs be better utilized by the State to serve juvenile delinquents and status offenders?

Data reviewed by JLARC staff seem to indicate that community treatment services, specifically residential programs, are available and could be better utilized if funding were provided. Using the 1995 "Residential Facilities for Juveniles in Virginia" directory, as well as a survey of all court service unit directors, JLARC staff identified 99 residential programs in Virginia which offer services to minimum and medium security juvenile delinquents and status offenders. These facilities are both privately and publicly operated, and include services ranging from short-term emergency foster care to long-term placement in a group home or residential treatment center. Each facility was surveyed by JLARC staff in order to determine its current capacity, utilization, and ability to expand services. Collectively, this information revealed that for many services, more juveniles could be served by existing residential programs.

Residential Programs Have the Capacity to Serve Additional Juveniles

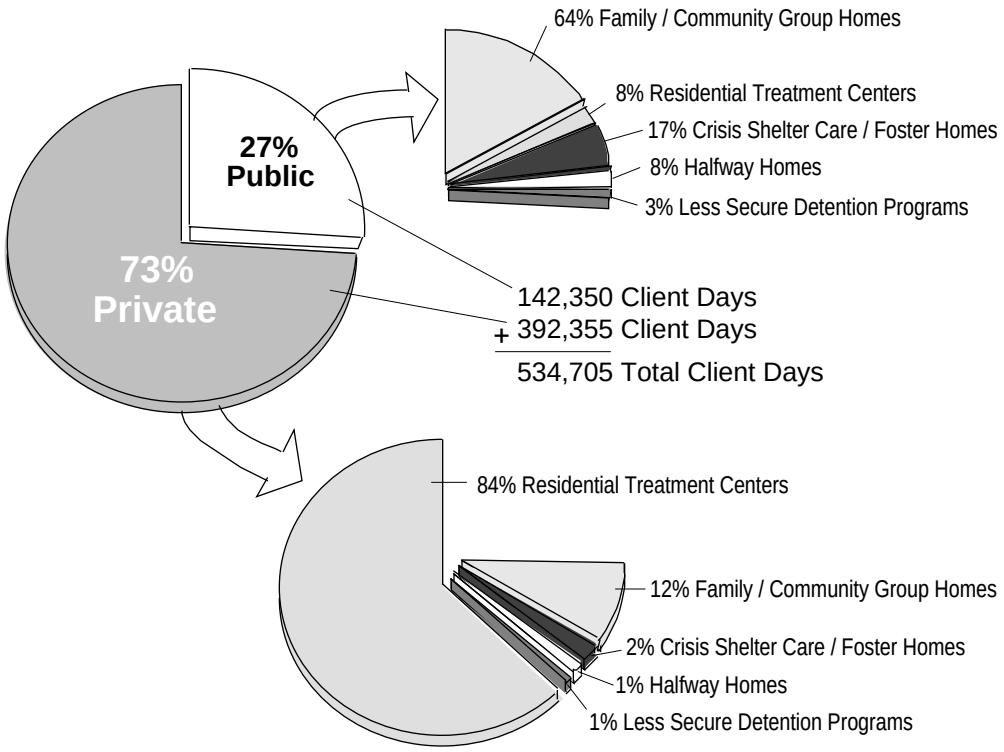
In order to assess program availability, JLARC staff analyzed capacity information to determine which types of residential programs have the space and resources to treat juvenile delinquents and status offenders. Survey data indicated that 73 percent of all statewide residential capacity (measured in client days) is offered by the private sector (Figure 30). Likewise, most of this capacity is limited to two types of programs — residential treatment centers for substance abuse, psychiatric, and sex offender services, and family/community group homes. Residential treatment centers comprise 64 percent of all statewide capacity, while family/community group homes comprise 25 percent (Table 23). Capacity in the four other types of programs — crisis shelter care/foster homes, halfway homes, less secure detention programs, and independent living programs — appears to be much more limited, representing only 11 percent of total capacity when combined.

Depending on utilization rates, these capacity numbers may suggest that viable alternatives to secure confinement already exist in Virginia. While many types of residential programs could be used as alternatives to secure confinement, those that provide medium security and long-term placements are more likely to be suitable. These are the residential treatment centers and the group homes. Fortunately, these are also the programs that appear to have the largest residential capacity. Still, before any assumptions about the use of these programs can be made, it was necessary to review facility utilization data to determine if existing space is available for additional placements.

This review indicated that most residential programs are not currently operating at capacity. While the utilization rate of residential programs varies by program type (Table 24), the average utilization rate for the State is 81 percent of capacity. More importantly, examination of available capacity at residential facilities by program type

Figure 30

Residential Capacity by Program Type



Source: JLARC survey of residential programs, summer 1995.

Table 23

Statewide Residential Capacity by Program Type

*Type of Program**	*Residential Capacity in Client Days*	*Percent of Statewide Residential Capacity*
Residential Treatment Centers (17)	**340,545**	**64%**
Family/Community Group Homes (29)	**136,875**	**25%**
Crisis Shelter Care/Foster Homes (8)	**33,215**	**6%**
Halfway Homes (4)	**16,070**	**3%**
Less Secure Detention Programs (1)	**4,380**	**1%**
Independent Living Programs (1)	**3,620**	**1%**
Total for All Responding Facilities (60)	**534,705**	**100%**

***Note: These programs include those administered by private providers, localities, and the State.**

Source: JLARC survey of residential programs, Summer 1995.

Table 24

Utilization of Residential Programs

Type of Program	*Utilization Rate*
Residential Treatment Centers (17)	78%
Family/Community Group Homes (29)	85%
Crisis Shelter Care/Foster Homes (8)	92%
Halfway Homes (4)	83%
Less Secure Detention Programs (1)	100%
Independent Living Programs (1)	70%
Total for All Responding Facilities (60)	81%

Source: JLARC survey of residential programs, Summer 1995.

(Table 25) indicates that 73 percent of all available capacity (73,083 client days) is in the residential treatment centers. With an average length of stay reported by these facilities of 37 weeks, this suggests that in FY 1995 an additional 282 juveniles could have been served before full capacity would have been reached.

To provide an additional measure of available capacity, JLARC staff also surveyed residential programs concerning their need to implement a waiting list for

Table 25

Available Capacity at Residential Facilities by Program Type

Type of Program	*Number of Available Client Days**	*Percent of Total Available Client Days*
Residential Treatment Centers (17)	73,083	73%
Family/Community Group Homes (29)	20,231	20%
Crisis Shelter Care/Foster Homes (8)	2,779	3%
Halfway Homes (4)	2,768	3%
Less Secure Detention Programs (1)	0	0%
Independent Living Programs (1)	1,083	1%
Total for All Responding Facilities (60)	99,944	100%

*When calculating available client days by program type, it was noted that some individual facilities reported utilization rates of more than 100 percent (over-capacity). For these facilities, the number of available client days was a negative number. These negative numbers have therefore been subtracted from the total available client days, in order for the summation in the table above to provide an accurate reflection of the number of available client days if all facilities were operating at exactly 100 percent of capacity.

Source: JLARC survey of residential programs, Summer 1995.

services. Survey results indicated that 55 percent of all residential facilities do not currently use a waiting list, and many others have minimal waiting lists. Of greater import is the fact that 76 percent of the residential treatment programs do not currently employ a waiting list for services. This suggests that many residential programs are able to serve all juveniles who require their services without delay.

Residential Capacity Could Be Expanded to Meet Increases in Demand

As a final step in the assessment of program availability, residential programs were surveyed concerning their ability to expand their services to meet potential increases in demand. As shown in Table 26, most programs (77 percent) reported that if demand for their services were to increase by 30 percent, they could take the necessary steps to meet that increased demand within two years. In fact, the average time needed

Table 26

Capability of Residential Programs to Expand Capacity

Type of Program	*Percent of Facilities That Could Expand Capacity by 30 Percent Within Two Years*
Residential Treatment Centers (17)	88%
Family/Community Group Homes (29)	79%
Crisis Shelter Care/Foster Homes (8)	38%
Halfway Homes (4)	75%
Less Secure Detention Programs (1)	0%
Independent Living Programs (1)	0%
Total for All Responding Facilities (60)	77%

Source: JLARC survey of residential programs, Summer 1995.

was only 6 months. Furthermore, residential treatment centers were even better able to expand their services — 88 percent reported that they could meet an increase of 30 percent within two years. It therefore seems as if alternative treatment programs would be able to adjust their service provision to match changes in demonstrated need within a relatively short period of time.

THE ROLE FOR ALTERNATIVE PROVIDERS IN SERVING JUVENILE OFFENDERS

Given the emphasis in the *Code of Virginia* on diverting "those children who can be cared for or treated through alternative programs," an important question is whether

the State should expand its use of alternative residential placements in lieu of committing juveniles to secure confinement. Virginia is currently facing serious overcrowding in its secure detention and correctional facilities. A January 1995 report by DYFS indicates that the State currently needs three new medium security facilities for juvenile delinquents in order to keep up with anticipated growth in juvenile crime. But a review of the records of committed juveniles indicates that as many as 27 percent (of 1,512) are non-violent offenders who could be served in alternative placements. Similarly, a review of the admissions criteria used at residential programs indicates that many committed juveniles are eligible for placement in their programs.

Anticipated Demand for Treatment Services Suggests that Alternative Placements Should Be Considered

In a 1995 presentation made to the House Appropriations Committee of the General Assembly, DYFS reported that a serious gap is developing between capacity at the State's juvenile correctional centers and the projected numbers of juveniles who will be committed in future years. DYFS numbers indicate that within the next four years the State will need 906 more beds than are presently available. In the next nine years, it will need 1,815, or twice as many additional beds.

DYFS has proposed to close this gap in two ways — through the development of more than 500 community treatment slots and through facility expansion and the construction of new facilities. In FY 1997, for example, it proposes adding 50 beds to the Beaumont facility and building a new 180 bed medium security facility at an existing State site. Similarly, in FY 1998, it proposes privatizing the building of a new 225 bed medium security facility. In FY 1999, it proposes building a new 225 bed maximum security facility. Even with the proposed privatization of one of these facilities, the projected cost of construction is almost $38 million dollars.

Profiles of Committed Juveniles Indicate that Many Could Be Served in Alternative Residential Placements

Before the decision is made to build additional correctional facilities, it should be determined if some committed juveniles could be served in alternative community programs without threatening public safety. Accordingly, the records of juvenile delinquents who were committed to the DYFS between June 1, 1994 and May 31, 1995 were reviewed by JLARC staff in an effort to make such a determination. These records suggest that the potential for serving some committed juveniles in alternative residential facilities is significant. Depending upon which criteria are used for selection, between 20 and 27 percent of all committed juveniles could be served in residential community programs.

These estimates were generated by employing a series of restrictions which removed juveniles from consideration for alternative treatment if they were in violation

of any of the terms. Under alternative I, for example, candidates were denied consideration for treatment in another residential facility if they:

- **had committed a violent felony; or**
- **had a history of running away from a secure facility, group home, or foster home; or**
- **had a history of unprovoked assault, assault resulting in physical injury, assault using a weapon or object, or assault while in custody; or**
- **had a history of fire setting.**

The use of these criteria left 410 juveniles (27 percent) as possible candidates for specialized residential treatment (Table 27).

Next, a second set of more restrictive criteria were implemented (alternative II) to further reduce any threat to public safety which might come from expanding the use of alternative residential facilities. These additional criteria removed from consideration any juveniles who:

- **had committed a drug dealing felony; or**
- **were classified by DYFS as requiring an average length of stay in a correctional facility of greater than 9 months due to their offense severity, the chronic nature of their crimes, or other aggravating factors; or**
- **had been identified as a prior or current sex offender.**

Adding these criteria to the previous four, 308 juveniles (20 percent) were identified as potential candidates for residential treatment (Table 28). In either case, several hundred juveniles could be treated in the community without significantly threatening public safety. This suggests that the potential for serving juvenile delinquents in the private sector should be further explored.

Admissions Criteria Suggest that Many Committed Juveniles Are Eligible for Alternative Placements

The first two steps in the analysis of alternative residential placements indicated that: (1) the capacity for serving additional juveniles in other residential facilities exists, and (2) many juveniles committed to correctional centers could be served in other residential facilities without threatening public safety. The final step was to determine whether the admissions criteria used by residential facilities would accept juveniles similar to those in alternatives I and II. A review of survey data from residential programs indicates that the answer is yes.

Table 27

Alternative I: DYFS Correctional Center Juveniles Who Could Be Served in Other Residential Facilities

Alternative I Exclusion Criteria

(a) Juveniles whose committing or prior offenses include one or more violent felonies (murder, forcible rape, aggravated assault, armed robbery, non-negligent manslaughter)

(b) Juveniles who have a history of running away from a secure facility, a group home, or a foster home

(c) Juveniles who have a history of unprovoked assault, assault resulting in physical injury, assault using a weapon or object, or assault while in custody

(d) Juveniles who have a history of fire setting

Characteristics of Alternative I Juveniles

Sex:	
Male	397 (96.8 percent)
Female	13 (3.2 percent)
Race:	
White	142 (34.6 percent)
Black	259 (63.2 percent)
Other	9 (2.2 percent)
Age:	
Less Than 14	23 (5.6 percent)
14-16	136 (33.2 percent)
16-19	251 (61.2 percent)
Juvenile Was Sexually Abused:	
Yes	16 (3.9 percent)
No	394 (96.1 percent)
Juvenile Was Physically Abused:	
Yes	45 (11 percent)
No	365 (89 percent)
Juvenile Was Emotionally Abused:	
Yes	91 (22.2 percent)
No	319 (77.8 percent)
Total Number of Offenses Committed:	
Less than 5	113 (27.6 percent)
5 - 10	227 (55.4 percent)
More than 10	70 (17 percent)

Family Structure at Time of Commitment:	
Two Natural Parents	63 (15.3 percent)
Blended Family	67 (16.3 percent)
Single Parent	207 (50.4 percent)
Relative	33 (8 percent)
Adoptive Parents	4 (1 percent)
Other	37 (9 percent)
Dysfunction in Juvenile's Original Family:	
Adequate	15 (3.7 percent)
Minimal	32 (7.8 percent)
Moderate	144 (35.1 percent)
Severe	219 (53.4 percent)
Juvenile's School Adjustment - Last 12 Months:	
No Discipline Problems	30 (7.3 percent)
Minor Rule Infractions	158 (38.5 percent)
Verbally/Physically Aggressive	77 (18.8 percent)
Major Rule Infractions	51 (12.4 percent)
Other	94 (23 percent)
Previous Outpatient Treatment Efforts:	
Individual Therapy	189 (46.1 percent)
Family Therapy	138 (33.7 percent)
Group Therapy	85 (20.7 percent)
Substance Abuse Therapy	68 (16.6 percent)

Total Number of Juveniles in Group I: 410 (27.1 percent)

Source: JLARC staff analysis of the Department of Youth and Family Services' Client Profile database.

Table 28

Alternative II: DYFS Correctional Center Juveniles Who Could Be Served in Other Residential Facilities

Alternative II Exclusion Criteria

Criteria (a) through (d) from Table 27 also apply. In addition:

(e) **Juveniles whose committing or prior offenses include one or more drug-dealing felonies**

(f) **Juveniles classified by DYFS as needing an average length of stay (LOS) in a correctional center of greater than 9 months due to their offense severity, offense chronicity, or other aggravating factors**

(g) **Juveniles who are identified as prior or current sexual offenders**

Characteristics of Alternative II Juveniles

Sex:

Male	295 (95.8 percent)
Female	13 (4.2 percent)

Race:

White	98 (31.8 percent)
Black	204 (66.2 percent)
Other	6 (2 percent)

Age:

Less Than 14	16 (5.2 percent)
14-16	111 (36 percent)
16-19	181 (58.8 percent)

Juvenile Was Sexually Abused:

Yes	8 (2.6 percent)
No	300 (97.4 percent)

Juvenile Was Physically Abused:

Yes	32 (10.4 percent)
No	276 (89.6 percent)

Juvenile Was Emotionally Abused:

Yes	66 (21.4 percent)
No	242 (78.6 percent)

Total Number of Offenses Committed:

Less than 5	84 (27.3 percent)
5 - 10	182 (59.1 percent)
More than 10	42 (13.6 percent)

Family Structure at Time of Commitment:

Two Natural Parents	42 (13.6 percent)
Blended Family	48 (15.6 percent)
Single Parent	160 (52 percent)
Relative	25 (8.1 percent)
Adoptive Parents	3 (1 percent)
Other	30 (9.7 percent)

Dysfunction in Juvenile's Original Family:

Adequate	13 (4.2 percent)
Minimal	23 (7.5 percent)
Moderate	110 (35.7 percent)
Severe	162 (52.6 percent)

Juvenile's School Adjustment - Last 12 Months:

No Discipline Problems	21(6.8 percent)
Minor Rule Infractions	120 (39 percent)
Verbally/Physically Aggressive	61(19.8 percent)
Major Rule Infractions	40 (13 percent)
Other	66 (21.4 percent)

Previous Outpatient Treatment Efforts:

Individual Therapy	140 (45.5 percent)
Family Therapy	106 (34.4 percent)
Group Therapy	65 (21.1 percent)
Substance Abuse Therapy	55 (17.9 percent)

Total Number of Juveniles in Group II: 308 (20.3 percent)

Source: JLARC staff analysis of the Department of Youth and Family Services' Client Profile database.

In fact, many respondents are not likely to use admissions criteria as restrictive as those implemented by JLARC staff. For example, 55 percent of the survey respondents indicated they had no restrictions on accepting convicted sex offenders, 58 percent had no restrictions on accepting juveniles with felonious assault charges, and 66 percent had no restrictions on accepting juveniles with a history of drug distribution charges. Yet under alternative II, a juvenile with any one of these problems would be removed from consideration.

Survey responses indicated that the two most often cited admissions' restrictions were that the juvenile was convicted of murder (82 percent of respondents), and that the juvenile is not the appropriate age for the program (83 percent of respondents). Obviously, violent felons were not considered to be candidates for alternative treatment under either alternative I or II. Moreover, almost all of the age restrictions cited by residential facilities applied to juveniles either under the age of 14 or over the age of 19, which accounts for only 6 percent of the juveniles considered in alternative I, and 5 percent in alternative II. It therefore appears that juveniles considered under either alternative I or alternative II would generally meet the admissions criteria of the facilities and placement would not be difficult.

The Cost and Effectiveness of Treating Juvenile Offenders in the Private Sector Needs to Be Further Explored

In the near future, the General Assembly will be asked to decide how many new juvenile correctional facilities need to be built in the Commonwealth. DYFS would like the State to build three new facilities and an additional 680 beds over the next three years — an increase of 70 percent over existing capacity. Before making this choice, however, the General Assembly may wish to consider the possibility of using other community alternatives to satisfy at least part of the projected needs.

Ideally, juvenile sanctioning decisions should be made based on a balance between the need to protect public safety and the best interests of the child. When it is determined that a juvenile must be securely confined in order to protect public safety, placement in a maximum security correctional center seems to be the only alternative. For these juveniles, the State will certainly need to maintain adequate confinement facilities.

For other juveniles, however, the choice about confinement may not be as clear. As the preceding review of juvenile records indicated, not all juveniles currently committed to DYFS represent a significant threat to public safety. In these cases, the decision to commit may have been made due to a lack of other funded alternatives. Because commitment is essentially free to localities, judges may be forced to select its use more often than is necessary, or beneficial to the child and the community.

If some commitments are being made for reasons other than the protection of public safety, then it may be desirable to explore alternatives to commitment in lieu of

building more correctional facilities. For minimum and medium security risk juveniles, the selection of an appropriate judicial sanction should be made based on what is expected to be more effective in reducing recidivism and can be provided at the least cost.

At the current time, it is not known which type of program is more effective in treating juvenile offenders. Neither DYFS central office nor the CSUs actively evaluate the effectiveness of the treatment programs they use — whether they be administered internally or externally. For this reason, it will be the objective of JLARC staff in phase II of this study to assess the impacts of treatment programs and secure confinement upon the juvenile populations receiving those dispositions. This information could be of use to policy-makers in determining the extent to which it wishes to emphasize and provide funding between the two dispositions, or in determining how it wishes to allocate its treatment funding to maximize the use of more effective treatments.

V. Conclusions

Few problems have caused greater concern among the citizens of the nation in recent years than 'juvenile delinquency' . . . . Each year [since seven years ago] has seen a mounting number of youthful offenders brought to the attention of the law. [Last year's estimate of children and youth] brought to the attention of the law . . . represented a 58 percent increase over estimates for [seven years ago], although the youth population in the age brackets 10 to 17 had increased only 13 percent during that six-year period. The national crime rate . . . has shown an annual increase each recent year, particularly among youth under 18. Reports from 1,389 cities for [last year] showed, for example, that juveniles under 18 accounted for 57.6 percent of the arrests for auto thefts. Juveniles figured in 49 percent of the burglary arrests, and 43.6 percent of the larceny arrests . . . ." [Report to the Governor and the General Assembly by the Virginia Commission to Study Juvenile Delinquency, October 1955]

In the mid-1990s, as in the 1950s and in the 1970s, Virginia is poised to make potentially major changes in the juvenile justice system. A central tenant of this report is that the nature and magnitude of the changes should stem from a realistic assessment of the long-term history of the juvenile delinquency problem, as well as from a consideration of comprehensive data about the current system's performance. For this reason, JLARC staff conducted a data-intensive review of Virginia's juvenile justice system court processing activities under the study mandate passed by the 1995 General Assembly, Senate Joint Resolution 263. JLARC staff also reviewed the history, philosophy, and intent of Virginia's law. Four major findings result from this review.

1. **Legislative intent for the juvenile justice system appears generally sound, providing a framework that appears appropriate for most juveniles brought to the system.**

2. **Nonetheless, the system needs to be better-equipped to address the problems posed by the small but growing segment of the juvenile delinquent population which commits violent crime.**

3. **Further, there are other weaknesses in the system that need to be addressed. For example, there are some areas in which an apparent mismatch exists between current legislative intent and actual practice. Also, high recidivism rates require attention through enhancements to treatment and the overall availability and implementation of increasingly strict or graduated sanctions. Further, the issue of potential inequities in sanctions that appear related to race needs to receive attention in the system.**

4. **Finally, juvenile delinquency is a difficult and persistent problem that the juvenile justice system did not create and cannot realistically be expected**

to fully address or solve on its own. However, improvements in the system can still be made. A balanced approach to change is desirable to fit the range of issues which the system confronts. The approach to change that is taken needs to be as specific as possible about the improvements that are sought, with provisions to obtain data and apply appropriate methods to assess their accomplishment.

Legislative Intent Appears Appropriate for Most Juveniles Addressed by the System

The basis for having a separate juvenile justice system is that juveniles are viewed as being fundamentally different than adults. In accordance with their age, juveniles are expected to be relatively immature and impressionable individuals, more vulnerable to mistreatment, more likely to take risks and act impulsively and unwisely, more likely to test authority, less likely to accurately anticipate and understand the consequences of their actions, less likely to geniunely form criminal intent, and more likely to have the capacity to grow and change, than adults. Long historical experience has shown that in part as a consequence of such factors, juveniles have exhibited behaviors and committed acts that have brought them to the attention of the justice system. The commission report from 40 years ago, cited at the start of this chapter, illustrates that even at a time now remembered as a low crime era, juveniles (at least in urban areas) were engaging in more than their share of crime, including some serious crimes such as auto theft and burglary, and were raising the concern and consternation of their elders.

It is the long-standing concept of the juvenile that helps to explain the provisions of the *Code of Virginia* that make the "welfare of the child and the family" the priority of the juvenile justice system, a system which is also responsible for domestic and custody issues. In this endeavor, the *Code* makes clear that public safety must be protected, citing this need in three of the four specific purposes enumerated at the start of the juvenile justice provisions. The hope, however, appears to be that through a responsive system which "fits" justice to the circumstances of the juvenile and the juvenile's family, many juveniles can be directed to a more law-abiding path. There is nothing in the stated intent that precludes the possibility that highly structured or tough sanctions may be required; in fact, the "welfare of the child" may clearly require sending a strong message to the juvenile that criminal activity is not tolerated and is not to be repeated.

Whether or not this intent generally (and ultimately) makes sense depends upon the nature of the juvenile population that appears before the system. If most of these juveniles are not as previously described, but rather are hardened, violent criminals, then the current intent of the *Code* makes little sense. There are data to test this proposition.

As cited in this report, approximately 29 of every 30 arrested juveniles are arrested for a non-violent offense. At intake, this number is still 19 of every 20 juveniles seen by the system. Data collected for this study also reveal that while recidivism among

juveniles is a significant problem, 87 percent of all juveniles who enter the system with a non-violent offense do not recidivate to a violent felony offense. Of recidivating juveniles who first touched the system with a felony offense against a person, 72 percent did not recidivate to any additional felony offense against a person within three subsequent years, but to a lesser category of offense. The data do not support the view that the juvenile population is by and large a hardened, violent criminal population. Further, these numbers are consistent with the views of juvenile court judges regarding the question of whether the focus and intent of the juvenile code need to be revised. With the knowledge that most juvenile offenders are not violent criminals, 93 percent of these judges indicated in a recent survey conducted by the Virginia Commission on Youth that they were not in favor of changing the intent or focus of the juvenile code.

The Current System Needs to Be Better-Equipped to Deal with the Problem of the Violent Juvenile Offender

The previous section indicates that the current intent of the *Code* appears generally sound and mostly matches the circumstances of the majority of juveniles brought to the system. The words "generally" and "mostly" are very important — because it is appropriate <u>in part</u> to assess the effectiveness of a system by how it addresses its more extreme cases.

The fact that 29 of 30 arrests are for a non-violent charge leaves the one in 30 that is violent. The fact that 19 of 20 intakes are for a non-violent charge leaves the one in 20 that is violent. And the best available trend data for Virginia (the arrest and clearance data shown in Chapter I of this report) indicate that while the portions of arrests and clearances that are for violent offenses are still small, there has been a substantial rate of increase, especially in recent arrests. The system needs to respond effectively to these juveniles.

As with other portions of the juvenile offender population, a key question to ask with regard to the juvenile violent offender population is: "what should the system accomplish with regard to this population that it is not currently accomplishing?" One answer is that to the extent violent felony offenders have previously touched the system for lesser offenses, perhaps the system should be more effectively equipped in its attempts to prevent the escalation by juveniles to more serious offenses. Another answer is that perhaps the system does not adequately provide for the punishment of some of these juveniles once they have committed the violent offenses.

The System Could Be Better-Equipped to Address the Issue of Juvenile Crime Escalation. **In the sample data for this study, 87 percent of juveniles whose initial intake was for a non-violent offense did not recidivate to a violent felony offense within a three-year period — but 13 percent did. The juvenile justice system in and of itself cannot be credited with all of the success or held accountable for all of the failure conveyed in these two numbers. But changes in the magnitude of this failure rate directly impact the incidence of violent juvenile crime. In reducing the level of such recidivism, instances of violent victimization could be reduced. As has been discussed in Chapter II**

of this report, the system needs to have more or better options available to it to treat and/ or apply graduated and more structured sanctions upon juveniles. In this sense, the juvenile justice system could be better equipped to address the problem of juvenile escalation to violent felony offenses.

The System Could Be Better-Equipped to Impose Stronger Sanctions When a More Punitive Approach Is Needed. **As previously discussed, there are instances in which the generally-sound premise and approach of the current juvenile justice statute does not appear to make sense. For example, there are cases in which violent offenses are committed by juveniles for which there is little evidence of mitigating circumstances and the offenses committed appear to be calculated. Under current law, if the alleged offender is not transferred to Circuit Court to be tried as an adult, the juvenile court judges can not impose sentences that last beyond seven years or past the offender's twenty-first birthday. This limitation does not make sense for unmitigated violent offenders.**

A potential approach to address this problem would be to link the juvenile and adult systems. Authority might be given to the juvenile courts to impose sentences that could extend past the age of 21, when the juvenile could be transferred to the adult correctional system to continue serving a longer sentence if necessary.

Recommendation (1). **The General Assembly may wish to consider the concept of concurrent or extended jurisdictional authority as one alternative for juvenile court sanctioning of violent offenders.**

Additional Weaknesses in the System Need to be Addressed

In addition to the problem of the hardened, violent juvenile offender, there are several other issues discussed in this report that need to be addressed. These issues include: diversion, recidivism, and race-neutral justice.

Diversion at Intake. **Part of the focus of this report was to examine the extent to which the current legislative intent for the juvenile system is being implemented. The current juvenile statute states that one of the law's four primary purposes is "to divert from or within the juvenile justice system, to the extent possible, consistent with the protection of the public safety, those children who can be cared for or treated through alternative programs." Chapter II documents that under current practice, it does not appear that diversion is being performed at intake to the extent possible, consistent with the protection of the public. Perhaps in fear of public outcry at any mistake, many court service units have policies severely limiting diversion at intake, and almost three-quarters of all offenders are petitioned to court. The General Assembly may wish to consider whether there is a need to provide additional, more specific statutory language in an effort to more consistently achieve implementation of legislative intent. More consistent achievement of legislative intent could help alleviate some of the current overburdening of the system, and enable the system to focus more on serious offenses.**

Recidivism: The Need for Graduated Sanctions and Treatment. **As documented in Chapter III of this report, juvenile recidivism rates could be improved. The ability of the system to effectuate this change is not truly known, as there are many factors beyond the system's full control, such as the attitudes of the juvenile themselves and their families. But it appears that the system could do more to attempt to improve upon existing outcomes.**

A balanced approach to this issue would appear to be desirable. Graduated sanctions need to be available and implemented. As documented in Chapter II of this report, often sanctions are not escalated for juveniles as their offenses escalate. This may not convey the progressively stern message that may be needed to reach some juveniles. Yet judges themselves do not have full control over this problem, because the treatments or sanctions they can impose are limited by their availability. A relatively unintensive form of probation is a heavily used and often repeated sanction in the current system, and this use in part appears to stem from a lack of satisfactory alternatives. The concept of graduated sanctions needs to include the availability of more structured, meaningful sanctions for repeat offenders, rather than the unstructured nominal or conditional sanctions so common in the juvenile system.

This is important because many of the juveniles that come before the system have devastating problems — broken families, parents who do not provide for their care, parents who actually do them harm with physical or sexual or continual verbal abuse, poor living conditions, few positive role models, psychological problems, and problems succeeding in school. As documented in Chapter I, the juvenile delinquent files reviewed by JLARC staff for this study were replete with these types of cases; but the data analyzed for this study indicated that about two in ten delinquent juveniles receives a court sanction involving some form of treatment. These underlying conditions, left unaddressed, seem unlikely to facilitate a return by a juvenile to a more law-abiding path. With limited treatment available, when the juvenile has not yet committed an offense that might merit a sanction such as confinement, the system may in essence wait for the more serious offense to occur. This neither promotes public safety nor the welfare of the child.

It is not suggested that treatment will ever be a panacea for addressing juvenile delinquency. But in an effort to improve the juvenile justice system and the recidivism problem, treatment appears to be a component that must receive substantial attention. A focus needs to be placed on identifying and utilizing the most effective programs to achieve various rehabilitative purposes, so that funding provided is used most effectively. As documented in a preliminary assessment of certain treatment issues in Chapter IV of this report, a JLARC staff survey of treatment providers indicates that there is a capacity in the private sector to provide more services.

Race-Neutral Justice. **Nationwide, numerous corrections analysts have noted that a disproportionate number of adult and juvenile minorities are held in secure confinement relative to their representation in the overall population. There are a number of factors that could potentially lead to this result. Some of these possible factors**

are outside of the control of the court (minority poverty and crime rate), while other possible factors (intake and court sanctioning decisions) are within the court system's control. National data has indicated, for example, that blacks constitute 35 percent of drug possession arrests but 74 percent of prison sentences for that offense. A two-part analysis was conducted for this study to assess whether equal justice appears to be afforded through court processing in Virginia's juvenile justice system.

The first step in this analysis was to identify whether minority "overrepresentation" exists in the system. If it exists, the second step was to assess whether there is evidence that court processing contributes to this outcome.

As documented in Chapter II, black youth are almost 5.5 times more prevalent in the State's juvenile correctional center population as they are in the general population, and black males are over seven times as likely to be in a secure confinement population. JLARC staff constructed a model to assess the potential influence of race in court sanctioning decisions, controlling for a number of factors simultaneously such as the nature of the instant offense, prior record, and family and individual dysfunction. The finding was that race has a statistically significant effect, suggesting that it does play a role in judicial decisions. In interpreting this result, however, it needs to be recognized that: (1) no statistical model can fully explain the decisionmaking process that relates to secure confinement, and (2) there is no clear evidence that this outcome results from a conscious intention to discriminate based on race. However, the finding clearly suggests that this is an issue which needs to receive attention in the system.

Recommendation (2). **In an effort to ensure more consistent implementation across court service units, the General Assembly may wish to amend § 16.1-260 of the *Code of Virginia* to clarify its intent for the discretionary authority of intake staff in making diversion decisions.**

Recommendation (3). **In part to address the issue of recidivism, the General Assembly may wish to consider enhancing juvenile court access to a broader range of sanctions, with more opportunities for treatment and the availability of more resources for stronger sanctions, including the use of more intensive probation services and structured community treatment services.**

Recommendation (4). **Judges in the juvenile justice system may wish to consider a broad-based voluntary effort to define some general principles or guidelines for use in achieving the goal of race-neutral decisionmaking. These guidelines should consider and address some of the barriers that may exist to achieving this result, such as the issue of juvenile demeanor. The Office of the Supreme Court may wish to consider involvement in helping to initiate, coordinate, or facilitate such an effort by interested judges within the juvenile justice system.**

A Balanced Approach Is Needed to Bring Improvement to the System

Data in this report indicate that while the juvenile justice system is generally sound in intent, there are a number of areas where improvements could be made. Therefore, a balanced approach to change appears desirable.

In the short-term, incremental changes to the system should be made based on the best information available and on basic principles of what "makes sense" for the system, relative to its mission as expressed in statute. But in the long-term, it should be possible to considerably expand the data that are available and the scope of analysis beyond what has been accomplished in this report. To assist in this objective, the second phase of this study is planned to examine the effectiveness of various treatment programs as well as the administration of secure confinement by the Department of Youth and Family Services (DYFS). But further, there is a need for the routine collection by the court service units and DYFS of similar data as contained in this report. The availability of such data would permit an on-going, objective performance assessment of the juvenile justice system, and whether the intended changes that have been made are working as effectively as intended, or are in need of adjustment.

A Balanced Approach to the Issues Is Desirable. **This report has made a case that the juvenile population brought to the attention of the system has some diversity, and therefore a "one size fits all" approach, and/or an approach geared to address only one problem, is not likely to produce optimal results. Thus, the argument is made, for example, that the problem of recidivism needs to be addressed through a balanced approach of graduated sanctions that include greater treatment opportunities and greater access to stricter sanctions.**

An example of the way in which balance could be achieved in policy-making is illustrated through the problem of addressing a violent offender population that, although a small portion of total cases, is nonetheless increasing in size. Evidence is presented in Chapter IV of this report that an approach of increased private sector provision of treatment to non-violent offenders otherwise committed to incarceration might be used in combination with increases in secure confinement space to help address this problem. As indicated in this assessment, the use of some fairly strict criteria still indicates that between approximately 308 and 410 juveniles (about one-fifth to one-quarter) of the current population securely confined by DYFS might be eligible for a treatment-based placement. Further, many private providers surveyed indicated that the type of juvenile population identified using these strict criteria could be served by their programs and facilities and the capacity would be available to provide these services.

Need for the Routine Collection of Data and Further Analyses of System Effectiveness. **The 1955 report of the Virginia Commission to Study Juvenile Delinquency, cited at the start of this chapter, described the juvenile delinquency issue and its growth in terms of national trends and data. Forty years ago, this report indicated a difficulty in locating quantitative data on Virginia's system and its performance. The report indicated that:**

> **Data collected from the court system at this time are too incomplete to permit any detailed analysis. The Department of Welfare and Institutions in 1954 began to use a newly designed reporting form, which will ultimately bring in more information, but data are not now complete enough to give a clear picture, and there are no comparable data from earlier years to provide a basis for estimating trends.**

Forty years later, systematic data from the court systems are still needed. Therefore, for this study, a review of more than 2,900 files in the 35 court service units was conducted to address this limitation. However, the lack of routine collection of the data continues to present a problem. There is a lack of data from prior years for comparison purposes. There is a lack of certainty that similar data will be available in the future from the court service units themselves. DYFS is currently in the process of automating data collected on complaints made at each CSU intake office. While there are plans to capture detailed information on the judicial adjudication and sanctioning process and social history data, they have not been finalized.

A commitment to address the problem of data limitations must include the provision of technical assistance to implement and maintain management information systems and databases, the commitment and on-going provision of staff resources to maintain information about youth in the juvenile justice system at the court service unit level, the willingness to share the information, and the ability to preserve the confidentiality of the information. With such an effort, the Commonwealth's ability to assess the performance of its own juvenile justice system should be enhanced.

Such data will also permit analyses of juvenile justice system changes. It may be that some ideas, although having limited popular appeal, may actually work well. Or it may be that some ideas, although popular or well-intended, may not perform as effectively as thought. Without comprehensive data and analyses to test propositions and programs in the system, information about the system's performance in the future could be limited to the few most compelling and publicized outcomes that the system produces — outcomes which may be by far the exception rather than the rule. The attention of a portion of the system's resources to the collection of data that permits a realistic assessment of its performance appears to be in the best interest of the system and the Commonwealth.

Recommendation (5). **The General Assembly may wish to consider the increased use of community treatment for currently confined, non-violent offenders who meet specific criteria as a part of a comprehensive approach to the capacity concerns related to the violent offender population.**

Recommendation (6). **The Department of Youth and Family Services needs to implement an effective, on-going system for the statewide collection of meaningful data about the circumstances and offenses of juveniles brought to the system, and the intake and court processing dispositions of their cases. Provisions should be made for the periodic analysis of these data, including specific analyses to assess the outcomes of alternative dispositions, and juvenile justice system changes or reform.**

JLARC
Suite 1100
General Assembly Building
Capitol Square
Richmond, Virginia 23219
(804) 786-1258 Fax: 371-0101