

**JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION
OF THE VIRGINIA GENERAL ASSEMBLY**

Special Report

**Assessment of the
U.S. Bureau of Justice
Statistics Report on Sexual
Victimization in Juvenile
Correctional Centers**

January 29, 2010

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COMMONWEALTH of VIRGINIA

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January 29, 2010

The Honorable Charles J. Colgan
Chair, Finance Committee
General Assembly Building
Richmond, Virginia 23219

Dear Senator Colgan:

This special report is in response to your request that staff of the Joint Legislative Audit and Review Commission review the findings concerning Virginia's juvenile correctional centers contained in the Bureau of Justice Statistics (BJS) report *Sexual Victimization of Youth in Juvenile Facilities Reported by Youth, 2008-09*.

JLARC staff reviewed the methodology employed in the BJS survey of youth in juvenile facilities, and their findings are contained in this report.

On behalf of the Commission staff, I would like to thank the staff at the Department of Juvenile Justice for their assistance during this review.

Sincerely,

A handwritten signature in black ink that reads "Philip A. Leone".

Philip A. Leone
Director

PAL/mle

cc: The Honorable Janet D. Howell, Chair, Senate Finance Subcommittee on Public Safety
The Honorable Lacey E. Putney, Chair, House Appropriations Committee
The Honorable Beverly J. Sherwood, Chair, House Appropriations Subcommittee on Public Safety
The Honorable M. Kirkland Cox, Chair, JLARC

Special Report: Assessment of the U.S. Bureau of Justice Statistics Report on Sexual Victimization in Juvenile Correctional Centers

In Summary

The data from the BJS study do not sufficiently support the inferences about sexual victimization at juvenile correctional facilities. There may be sexual activity occurring in DJJ facilities, but the BJS report falls short of accurately describing its extent.

- The survey collected only allegations of sexual acts and abuse in juvenile correctional facilities, but the study blurred the distinction between allegation and actual event.
 - The study (at least in Virginia facilities) treated self-selected groups of respondents as though they were representative cross-sections of the incarcerated juvenile populations.
 - The study does not compare similar juvenile populations across the states, and does not try to account or control for these differences.
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On January 15, 2010, the chairman of the Senate Finance Committee requested staff of the Joint Legislative Audit and Review Commission (JLARC) to review a recent report from the U.S. Department of Justice Bureau of Justice Statistics (BJS), *Sexual Victimization in Juvenile Facilities Reported by Youth, 2008-09*. The request (see Appendix A) asked whether the report “fairly reflects the conditions in our state juvenile correctional centers, and whether the data collected actually justifies the conclusions discussed.”

In response to the request, JLARC staff have reviewed the BJS study, met with staff at the Virginia Department of Juvenile Justice (DJJ), and reviewed additional material supplied by DJJ.

The BJS report was prepared in response to a federal law, the Prison Rape Elimination Act (P.L. 108-79). This law establishes a “zero tolerance” standard for prison rape, and among other things, requires a “comprehensive statistical review and analysis of the incidence and effects of prison rape.” Virginia statutes have long defined carnal knowledge involving DJJ staff and youth committed to the department’s custody as a class six felony (*Code of Virginia* §18.2-64.1).

The report stated that nationwide 12 percent of adjudicated youth reported sexual victimization in juvenile facilities during 2008-

2009. Two of Virginia’s juvenile correctional centers (Culpeper and Bon Air) were identified as having “high rates of sexual victimization.” The Virginia research was conducted at four juvenile correctional centers between October and December 2008 and covered the prior 12 months.

JLARC staff have identified several problems with the report. As a result, the report may not fairly reflect conditions in DJJ correctional centers. But even if there are problems with the BJS report, DJJ needs to address the concerns the report raises and ensure that juveniles in its care are afforded a safe environment.

DISTINCTION BETWEEN ALLEGATIONS AND ACTUAL EVENTS WAS BLURRED

Distinguishing between allegations and actual events is fundamental to the criminal justice system. A key weakness of the BJS report is that this distinction is often not made. For example, tables 2, 4, 5, and 6 purport to display juvenile facilities around the country that have “high” or “the highest rates of sexual misconduct” and “high rates of sexual victimization.” These mislead the reader by not accurately portraying the data, which were *allegations* by the youth of these activities. The report even notes that these allegations “may be untrue” (p. 2) and that BJS did not permit any follow-up investigation or substantiation through the review of official records. DJJ staff indicate that neither BJS nor the consultant who collected the data in 2008 referred any of the allegations to the department or any other agency for investigation.

BJS’s treatment of allegations of sexual misconduct as if they were actual events is a key flaw in the report, and may lead readers to draw inaccurate conclusions about the extent of such activity.

Some of the allegations may be true and some youth may remain silent to DJJ about sexual activity in a facility. If that is the case, a problem exists at the facilities, even if the problem is not accurately reflected by the percentages in the report. The BJS report notes that the survey was designed to get these otherwise silent youth to discuss a highly sensitive subject by providing anonymity and confidentiality. But by prohibiting any follow-up investigation of these allegations, BJS prevented their verification and prevented the department from addressing the problems raised by these cases.

DJJ has written procedures for conducting investigations of allegations of sexual activity and abuse. These investigations are conducted by DJJ’s Office of Inspector General or by the State Police. Investigations may include interviews and interrogations, taking written and sworn statements, and result in an official report of

the findings. Results of investigations go to facility superintendents for any disciplinary action, and may entail investigators testifying at court proceedings. In 2008, two incidents of sexual violence were reported and investigated by DJJ at the Bon Air facility and none at the Culpeper facility, although DJJ staff acknowledge that not all suspected sexual incidents result in allegations being made and investigated.

DISSIMILAR STATE JUVENILE POPULATIONS WERE COMPARED

Another problem is that the report does not compare similar populations of youths across the states. For example, the Culpeper Juvenile Correctional Center houses primarily males 18 years of age and older who are sentenced by Circuit Courts (not the Juvenile and Domestic Relations District Courts). In 2008, 84 percent of the Culpeper facility's population was 18 or older. This age group would not be in the juvenile systems of six states: Alaska, Iowa, Kentucky, Nebraska, Oklahoma, and Tennessee all set an upper age limit of 18 for youth to be housed in juvenile facilities. Virginia's upper age limit is 20. The BJS report does not explain these sorts of differences between state juvenile justice system populations, nor does the report's methodology account for these differences.

The BJS report incorrectly classifies Culpeper Juvenile Correctional Center as a facility where juveniles were required to get parental or guardian consent in order to take the survey. Youth over the age of 18, such as 84 percent of the Culpeper facility's population in 2008, are entitled under Virginia law to give their own consent to participate in research studies. However, the report groups the Culpeper facility with facilities where parents or guardians were required to consent to youths' participation. As a result, the Culpeper facility is inappropriately compared to facilities with younger populations.

There are other indications that the Virginia population participating in the study was not similar to the populations from other states. For example, DJJ indicates that the 191 residents of Virginia facilities who participated in the survey had an average period of incarceration of 13.5 months although the report states that the average period for all study respondents was 6.3 months. This difference in length of stay is important because, according to the report, the longer a resident is incarcerated, the more opportunity for inappropriate sexual contact to take place. The BJS report notes (p. 11) that youth incarcerated for 12 months or more were 76 percent more likely to report such contact than those incarcerated six months or less.

STUDY RESPONDENTS MAY NOT BE A REPRESENTATIVE SAMPLE

A principal method of the BJS survey was to select a random sample of juvenile facilities in each state, and then seek consent to survey all youth in the sampled facilities. This research strategy yielded a sample not representative of the youth population. Individual participants were not randomly selected but were included in the survey based on factors such as parental consent and self-selection (individuals could simply opt out). It is not clear that the report controls for this selection bias. The problem of selection bias is especially problematic in a facility such as Culpeper, which houses older youth (ages 18 to 20). According to the BJS report, the consent process resulted in higher response rates among older respondents (79.5 percent nationwide) than among younger respondents (39.8 percent nationwide). As noted above, the Virginia youth who participated had longer periods of incarceration and were older than the overall DJJ population. Table 8 of the BJS report indicates that older youth with longer periods of incarceration are more likely to report sexual victimization. Thus, any state such as Virginia that houses older youth for longer periods will appear to have higher rates of victimization because of selection bias that results in more older youth participating in the survey.

In addition, DJJ staff who assisted with the BJS study indicate that they were instructed to bring youth by housing unit to the area in each facility where the survey was to be administered. Assembling respondents in such groups may have facilitated discussions among the youth about the survey, possibly influencing the results. The report does not indicate whether or how this possibility was managed.

Without further analysis and adjustments, the responses reflect only the specific persons who chose to respond to the survey, and cannot be generalized to the population housed in the facilities.

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CHARLES J. COLGAN, CHAIRMAN

SENATE

January 15, 2010

The Honorable M. Kirkland Cox, Chairman
Joint Legislative Audit and Review Commission
General Assembly Building, 11th Floor
Richmond, Virginia 23219

Dear Kirk:

The purpose of this letter is to request the assistance of JLARC staff in reviewing a recent report concerning Virginia's juvenile correctional centers.

Last week the Bureau of Justice Statistics (BJS) of the United States Department of Justice issued a report entitled, "Sexual Victimization of Youth in Juvenile Facilities Reported by Youth, 2008-09." There has been a great deal of comment about this report in the media over the past week, leading to a discussion of the report at the January 12 meeting of the Board of Juvenile Justice and the ongoing efforts to maintain a safe environment in the state juvenile correctional facilities operated by the Department of Juvenile Justice (DJJ).

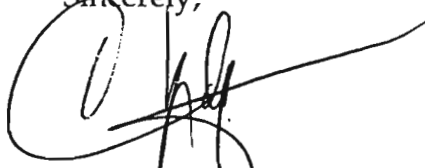
Our preliminary review of this report and our discussions with the agency suggest there are a number of concerns with the validity of the findings of this report. These concerns include the survey methodology utilized, the sample sizes, and the comparisons of data from Virginia's juvenile correctional centers with facilities in other states. We want to know whether this report fairly reflects the conditions in our state juvenile correctional centers, and whether the data collected actually justifies the conclusions discussed in various commentaries in the media over the past week. This is of particular concern to us because of the extensive reductions in the operating budget for the Department of Juvenile Justice over the past year and a half, including the closure of one state juvenile facility and reductions in treatment programs and alternatives to juvenile detention at both the state and local level.

The Honorable M. Kirkland Cox, Chairman
January 15, 2010
Page Two

If possible, Senator Janet Howell would like to address this topic at the January 29 meeting of her subcommittee on public safety. We hope your staff will be able to review the Bureau of Justice Statistics report from a technical perspective, and advise us on this matter, with a brief report to us on Friday morning, January 29. I would also certainly hope that you would share this information with Delegates Lacey Putney and Beverly Sherwood and the staff of the House Appropriations subcommittee on public safety.

Thank you for your assistance on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Colgan', with a long horizontal flourish extending to the right.

Charles J. Colgan

cc: The Honorable Janet D. Howell, Chair
Subcommittee on Public Safety
Phil Leone, Director, JLARC



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