

Report to the Governor and the General Assembly of Virginia

# Virginia's Juvenile Justice System

2021



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### **JLARC staff**

Hal E. Greer, Director

Justin Brown, Associate Director  
Drew Dickinson, Project Leader  
Brittany Utz  
Tess Hinteregger  
Kapria Lee

Information graphics: Nathan Skreslet  
Managing Editor: Jessica Sabbath

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# Summary: Virginia’s Juvenile Justice System

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## WHAT WE FOUND

### Far fewer youth are in Virginia’s system because of several factors

There are 70 percent fewer youth in Virginia’s juvenile justice system than a decade ago (9,551 in 2011 to 2,980 in 2021). This decline of youth in Virginia’s system is at least partially attributable to several factors, including a decline in youth arrests and complaints and DJJ’s transformation efforts. The decline in Virginia is consistent with national trends.

### Recidivism has improved for lower risk youth but remains about the same for higher risk youth

There is a promising reduction in recidivism among lower risk youth, which may be partially attributable to DJJ’s transformation efforts. For example, two-year rearrest rates declined

- from 23 percent to 19 percent between FY15 and FY19 among youth who successfully completed diversion plans and
- from 49 percent to 44 percent between FY15 and FY19 for youth who were released from probation.

However, the COVID-19 pandemic makes it difficult to reach definitive conclusions about the sustainability of the decline in any reconviction or rearrest rates. Referrals from law enforcement dropped by 41 percent between FY20 and FY21, which was by far the steepest decline in referrals from law enforcement over the past decade.

Recidivism among high-risk youth released from DJJ custody has remained about the same. Two-year rearrest and reconviction rates for youth released from secure residential facilities (i.e., juvenile detention centers or juvenile correctional centers) have remained stable or have shown no clear pattern over the last five years.

### Not all youth receive quality legal representation, particularly those represented by court-appointed attorneys

All youth have access to an attorney as required by law, but stakeholders, including judges and attorneys, expressed serious concern about the quality of representation some youth receive. Stakeholders noted that many attorneys do not adequately understand juvenile law or spend enough time with their clients. As one judge lamented, “We have plenty of attorneys—we have enough attorneys to get us by. What we don’t have are quality attorneys.”

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## WHY WE DID THIS STUDY

In November 2020, the Joint Legislative Audit and Review Commission (JLARC) directed its staff to review Virginia’s juvenile justice system.

## ABOUT JUVENILE JUSTICE IN VIRGINIA

Virginia’s juvenile justice system exists to respond to allegations of illegal acts committed by youth. The Department of Juvenile Justice (DJJ) is primarily responsible for administering and overseeing juvenile justice services. DJJ operates 30 of 32 court service units (CSUs) and the Bon Air Juvenile Correctional Center. Localities also operate 24 juvenile detention centers (JDCs). About 3,000 youth are involved in the juvenile justice system, most of whom are in the community on a diversion plan, probation, or parole. About \$250 million state and federal funds were spent on juvenile justice services in FY20.

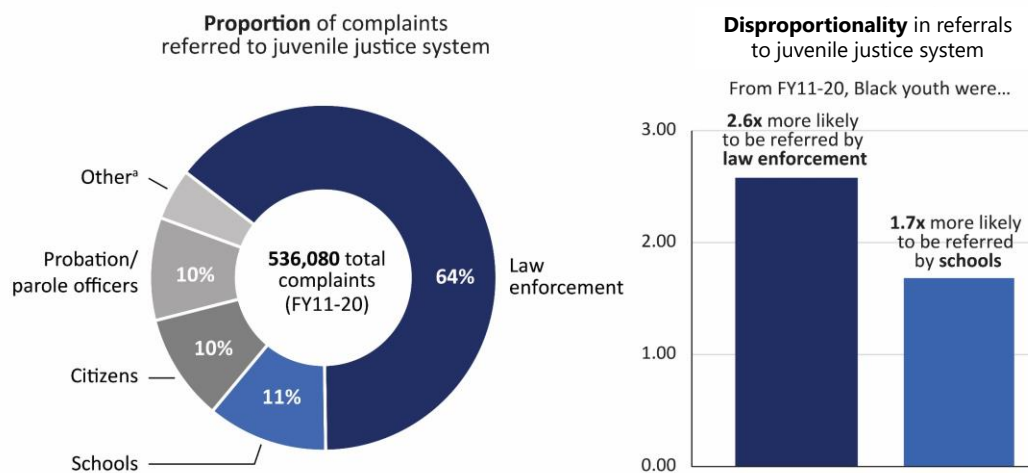
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Inadequate representation appears to be most prevalent among court-appointed counsel and is at least partially due to low compensation and insufficient training. Virginia's compensation for court-appointed attorneys is lower than other states. Required training is minimal and does not sufficiently address key topics, such as the intake process and detention hearings.

### Black youth are more likely than white youth to be referred to Virginia's juvenile justice system

During the last decade, Black youth were about 2.5 times more likely than white youth to be referred to the juvenile justice system. This trend holds true for all types of offenses (e.g., felonies, misdemeanors, status offenses, etc.). Law enforcement refers the majority of complaints to the system, and the racial disproportionality is greatest for these referrals (figure). Racial disproportionality in referrals was found in each of the state's 34 court service unit (CSU) districts, but the rate of disproportionality in referrals varied across the state.

### Most youth referred to juvenile justice system by law enforcement or schools, with law enforcement as greatest contributor to disproportionality



SOURCE: JLARC staff analysis of DJJ intake complaint data, FY11–20.

NOTE: <sup>a</sup> Other category includes juvenile detention centers, group homes, courts, commonwealth's attorneys, and social services agencies.

### Juvenile detention centers meet safety and security standards but appear ill equipped to provide fully effective rehabilitative programs

Youth in juvenile detention centers (JDCs) appear to be in a relatively safe and secure environment. Through its oversight, DJJ uses a standardized approach, as required, to ensure JDCs meet statutory and regulatory requirements for security, health, and safety. DJJ conducts on-site certification audits during a two- to five-day period, at least once every three years.

However, high recidivism rates among youth released from JDC rehabilitative programs indicate that these programs are not particularly effective at reducing the likelihood that youth reoffend. The majority (68 percent) of youth released from a JDC rehabilitative program between FY16 and FY18 were reconvicted within two years. The majority of these reconvictions occurred within the first year of a youth's release.

Many JDCs do not appear to provide rehabilitative programming that research indicates is effective, which could contribute to high recidivism rates. Only five JDCs reported using programs that have been assessed and found to be effective for youth in residential settings. Eleven JDCs reported not using evidence-based programming to reduce recidivism and not evaluating the effectiveness of their programming on reducing recidivism.

### **Educational programming in JDCs misses opportunity to provide instruction during the summer, and gaps exist in vocational programs**

The adherence to a traditional school year precludes JDCs from providing educational programming to youth during the summer. Youth in JDCs, many who are already academically behind their peers not in the juvenile justice system, would benefit from remedial or other educational programming during the summer. According to the National Institute of Corrections, "educational services should occupy the maximum amount of time allowed" and that "a detention education program should operate on a 52-week schedule."

According to a recent Virginia Detention Association of Post-Dispositional Programs survey of 18 JDCs, 14 facilities reported offering vocational training services—with eight offering career education services and 10 offering specific trade and/or certification trainings. Nearly all JDCs (22 of 24) reported that increasing the availability of vocational training services for youth in their facilities would help reduce recidivism.

### **DJJ's rehabilitative programming is less than fully effective and unlikely to reduce reoffending**

The rehabilitative programming provided at Bon Air Juvenile Correctional Center includes some effective elements. For example, DJJ currently conducts risk and needs assessments for youth using the Youth Assessment and Screening Instrument (YASI), which research indicates accurately identifies risk factors that are predictive of reoffending. DJJ has also designed its own sex offender treatment program, which uses a comprehensive approach to addressing youths' identified risk factors.

However, DJJ's current approach to rehabilitative programming at Bon Air JCC does not appear to maximize its ability to reduce recidivism. The two primary rehabilitative programs used for most youth (85 percent) appear unlikely to reduce reoffending based on existing data and research. Additionally, DJJ's current approach to determining length of stay for indeterminately committed youth may be undermining its rehabilitative goals. DJJ could also better leverage its strong data capabilities to evaluate

and improve the effectiveness of its rehabilitative programming for youth committed to its custody.

### Rehabilitative programming for DJJ-committed youth includes some, but not all, key elements for effectiveness

	Key element for effectiveness	Status of DJJ programming
Youth assessment & process	1. Comprehensively assess individual youth risk and needs	●
	2. Use individual youth's risk level and treatment needs to inform length of stay in facility	◐
Treatment program design	3. Provide rehabilitative treatment programming likely to reduce reoffending	◑
Program evaluation	4. Collect data to monitor and evaluate programming on an ongoing basis	◐

SOURCE: JLARC comparison of DJJ programming to program elements cited as best or recommended practice.

Additionally, training for front-line Bon Air staff known as residential specialists has yet to reflect the full scope of their new responsibilities, and DJJ is having increasing difficulty recruiting and retaining staff for the job. For example, residential specialists have had therapeutic responsibilities since 2017, but training standards for these staff still did not reflect these new skills as of December 2021. In addition, nearly 35 percent of the 248 residential specialist positions were vacant as of October 2021, and turnover in the position was 27 percent in FY21.

### DJJ's re-entry efforts have improved, but youth released from custody still face barriers to successful re-entry

DJJ takes some important and appropriate steps to plan for and facilitate youths' re-entry into the community after they are released from DJJ custody. For example, each youth has a treatment team that develops the youth's re-entry plan upon admission to DJJ custody. Preliminary data suggests educational outcomes are improving for youth at Bon Air JCC. In addition, family engagement, a key factor in successful re-entry, has improved recently at Bon Air JCC, and this is likely attributable to DJJ's recent reforms, including its free transportation program to help families to visit youth.

Despite progress in re-entry efforts, there are not enough step-down opportunities for youth in DJJ custody. Step-down opportunities can include both housing and other programming, such as short-term furloughs or work release programs. Because step-down housing opportunities are not widely available, they are offered only to youth who do not have other options for living arrangements upon release.

Virginia does not expunge or seal the felony equivalent records of juveniles adjudicated in juvenile and domestic relations district court, which can be a barrier to youth seeking educational and employment opportunities after release. Retaining felony

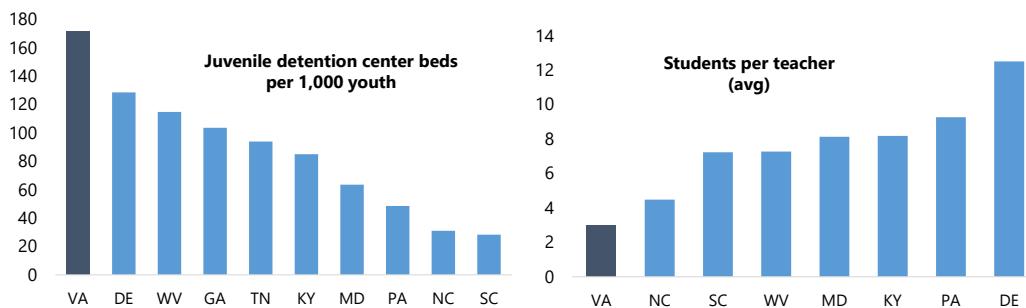
equivalent records grants prospective employers and educational institutions potential access to these records. Requiring these records to be made available for all felony adjudications appears inconsistent with the juvenile justice system's goals of rehabilitation. It is also inconsistent with how other states treat juvenile records and Virginia's recently amended law for adult records.

### **JDCs have far too much capacity, and majority of JDCs are not implementing educational efficiency strategies**

Though JDCs are local or regional facilities (not state facilities), the state pays about one-third of JDC operation and maintenance costs and 100 percent of JDC education costs. State spending on JDCs totaled about \$74 million in FY20 and was the largest state juvenile justice expenditure that year. The state spent \$25 million on education at JDCs, resulting in spending per student ranging from \$23,000 to \$88,000.

JDCs have not reduced their capacity as the number of youth in the system has declined, and most have not implemented strategies to provide education more efficiently. Only about 30 percent of Virginia's JDCs' capacity is currently being used, and Virginia JDCs have more beds than any other state in the region (figure). Additionally, Virginia JDCs appear to employ substantially more teachers per student than surrounding states and the majority of JDCs report not implementing strategies that could improve efficiency, such as sharing teachers or using part-time staff.

### **Compared with other states, Virginia's juvenile detention centers appear to have a higher capacity and a lower average student-to-teacher ratio**



SOURCE: JLARC staff review of other states' websites, annual reports, Prison Rape Elimination Act audit reports, and news articles regarding recent closures or openings; analysis of data from The Office of Juvenile Justice and Delinquency Prevention's Easy Access to Juvenile Populations Dataset (2019); and analysis of collected by the U.S. Department of Education's Civil Rights Data Collection for the 2017–18 school year.

### **Bon Air Juvenile Correctional Center should be replaced with smaller facilities, but full needs are currently unclear**

Bon Air Juvenile Correctional Center (Bon Air JCC) is not ideal for effective rehabilitative programming for several reasons: its size, its distance from youths' home communities, and its lack of appropriately designed treatment space. The Bon Air JCC appears to be among the largest secure juvenile facilities in the region and nationally, and was not designed to support effective rehabilitative programming. Although DJJ's free transportation program mitigates the costs incurred by families to visit youth at Bon Air JCC and appears to have resulted in greater levels of family engagement, it can take families considerable time and effort to travel to and from the facility.

Stakeholders generally agree that the Bon Air facility is not adequately meeting the needs of committed youth and should be replaced. However, there is disagreement on the size, number, and locations of future secure treatment facilities. Replacing the oversized and aging Bon Air facility and building several other small facilities around the state would more closely align with national best practices, but the construction and operation of multiple smaller facilities would require considerable additional resources.

DJJ should transition to a new, smaller treatment-oriented facility on the Bon Air JCC campus and not wait for the size, number, and location of other facilities to be determined.

## **WHAT WE RECOMMEND**

### **Legislative action**

- Increase the maximum compensation for court-appointed attorneys in juvenile delinquency cases.
- Direct the Virginia Indigent Defense Commission to strengthen training requirements for court-appointed counsel in juvenile delinquency cases.
- Require the Department of Criminal Justice Services to expand training standards for law enforcement to address implicit bias, cultural diversity, and protective responses when interacting with juveniles.
- Require juvenile detention centers providing post-dispositional rehabilitative programming to youth to provide evidence-based programs and services to the maximum extent practicable.
- Direct VDOE to develop a plan for an extended school year model that provides structured summer programming in juvenile detention centers.
- Direct VDOE to convene a workgroup to assess and improve the adequacy of current training, certification, and placement assistance services available in juvenile detention centers.
- Direct DJJ to provide rehabilitative treatment programs based on the best available evidence of effectiveness at reducing the likelihood of reoffending for youth committed to secure residential settings.

- Establish a process to allow records for certain less serious, non-violent felony equivalent offenses for youth adjudicated delinquent in juvenile and domestic relations district court to be automatically sealed after a period of years specified by the General Assembly up to age 29, and then subsequently expunged.
- Direct VDOE to work with the Virginia Department of Planning and Budget to implement cost-effective education staffing methods at juvenile detention centers to reduce educational spending per youth.

### **Executive action**

- Ensure indeterminately committed youths' treatment needs and progress in treatment are adequately and fully considered before youth are released.
- Implement an ongoing process to evaluate and improve the effectiveness of rehabilitative programming for DJJ-committed youth.
- Develop and implement a plan to improve re-entry programming, including expansion of step-down opportunities, consistent with the recommendations of the DJJ Successful Transitions workgroup.
- Construct a smaller juvenile treatment facility on the Bon Air Juvenile Correctional Center property while locations for other facilities are being determined.

The complete list of recommendations is available on page ix.





# Recommendations and Options: Virginia's Juvenile Justice System

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JLARC staff typically make recommendations to address findings during reviews. Staff also sometimes propose policy options rather than recommendations. The three most common reasons staff propose policy options rather than recommendations are: (1) the action proposed is a policy judgment best made by the General Assembly or other elected officials, (2) the evidence indicates that addressing a report finding is not necessarily required, but doing so could be beneficial, or (3) there are multiple ways in which a report finding could be addressed and there is insufficient evidence of a single best way to address the finding.

## Recommendations

### RECOMMENDATION 1

The General Assembly may wish to consider amending § 19.2-163 of the Code of Virginia to increase the maximum compensation for court-appointed attorneys in juvenile delinquency cases. (Chapter 3)

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### RECOMMENDATION 2

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Indigent Defense Commission (VIDC) to develop a plan to strengthen training requirements for court-appointed counsel in juvenile delinquency cases that also identifies additional staff resources needed to implement the strengthened requirements. VIDC should submit the plan to the House Appropriations and Senate Finance and Appropriations committees no later than November 1, 2022. (Chapter 3)

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### RECOMMENDATION 3

The General Assembly may wish to consider amending § 19.2-163.03 of the Code of Virginia to strengthen training requirements for certification of court-appointed attorneys in juvenile delinquency cases, based on the requirements proposed by the Virginia Indigent Defense Commission. (Chapter 3)

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### RECOMMENDATION 4

The General Assembly may wish to consider amending § 16.1-269.6 of the Code of Virginia to specify a timeframe, such as 45 calendar days, in which juvenile delinquency cases must be adjudicated in circuit court, provided that the time limitation may be extended for good cause or when a jury trial is requested. (Chapter 3)

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### **RECOMMENDATION 5**

The General Assembly may wish to consider amending the Code of Virginia to allow juveniles who are not sentenced to an adult correctional facility to receive credit for time spent in juvenile detention while awaiting trial in circuit court. (Chapter 3)

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### **RECOMMENDATION 6**

The General Assembly may wish to consider amending § 9.1-102 of the Code of Virginia to require the Department of Criminal Justice Services to amend its training standards for law enforcement to address implicit bias, cultural diversity, and protective responses specifically when interacting with juveniles. (Chapter 4)

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### **RECOMMENDATION 7**

The Department of Juvenile Justice (DJJ) should develop a report detailing (i) its findings from the work conducted pursuant to its grant award from the federal Office of Juvenile Justice and Delinquency Prevention and (ii) changes in the number and disproportionality of school referrals to the juvenile justice system following the implementation of SB 3 and SB 729 (2020). Based on its findings, the report should identify any changes that could be made, including statutory changes, to further mitigate racial disproportionality in juvenile justice system referrals. DJJ should ensure this report is made available on its website no later than December 1, 2024. (Chapter 4)

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### **RECOMMENDATION 8**

The Department of Juvenile Justice (DJJ) should assess the effectiveness of its Standardized Disposition Matrix (SDM) statewide and refine the tool, as appropriate. When evaluating the SDM, DJJ should incorporate data measuring the extent to which disposition recommendations and decisions align with the tool, as well as solicit feedback on the tool from attorneys and judges. (Chapter 4)

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### **RECOMMENDATION 9**

The Department of Criminal Justice Services should regularly report information on racial disparities in Virginia's juvenile justice system by collecting and reporting data on (i) disparities by offense type; (ii) disparities by region, CSU, or locality, as appropriate; and (iii) the extent of disparities at each decision point in the system. This information should be incorporated into its three-year plan submitted to the federal Office of Juvenile Justice and Delinquency Prevention and reported publicly each year on its website. (Chapter 4)

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### **RECOMMENDATION 10**

The General Assembly may wish to consider including language in the Appropriation Act directing the Department of Juvenile Justice (DJJ) to (i) conduct a needs assessment of community-based services across the state; (ii) develop a plan for expanding such services to improve the consistency in treatment of youth across the state for similar offenses; and (iii) estimate the staffing and additional appropriations necessary. DJJ should submit the plan and estimate to the House Appropriations and Senate Finance and Appropriations committees no later than November 1, 2022. (Chapter 4)

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### **RECOMMENDATION 11**

The Department of Juvenile Justice should develop and implement statewide policies for court service units to use in making diversion and probation and parole violation decisions. Diversion policies should clearly specify the types of offenses for which youth may be diverted and the number of times a youth is eligible for diversion. Probation and parole policies should include graduated sanctions for violations based on national best practices and clearly specify conditions in which a youth should be petitioned for a violation. (Chapter 4)

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### **RECOMMENDATION 12**

The Department of Juvenile Justice (DJJ) should require court service units to develop and maintain comprehensive inventories of available services within their jurisdictions. Inventories should be updated regularly and made available to judges at least semi-annually, as well as made available on DJJ's website. DJJ should also require court service units to include recommendations for specific programming that aligns with disposition recommendations provided to judges as part of the Standardized Disposition Matrix. (Chapter 4)

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### **RECOMMENDATION 13**

The Department of Juvenile Justice should ensure all probation officers receive adequate guidance and coaching on how to use the full range of tools included in the EPICS case management model. (Chapter 5)

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### **RECOMMENDATION 14**

The Department of Juvenile Justice should require all court service unit (CSU) staff to participate in implicit bias and cultural competency training that includes research-based material and is designed to improve staff's ability to work with youth from all backgrounds. (Chapter 5)

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### **RECOMMENDATION 15**

The Department of Juvenile Justice should develop and implement a pilot program in select court service units to evaluate the impact of providing more comprehensive motivational interviewing training to probation officers, including impacts on youth responsivity and outcomes. The department should assess the results of the pilot and determine the feasibility of providing motivational interviewing training to all probation officers. (Chapter 5)

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### **RECOMMENDATION 16**

The Department of Juvenile Justice should consolidate all of its quality assurance activities and staff resources into its quality assurance unit. (Chapter 5)

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#### **RECOMMENDATION 17**

The General Assembly may wish to consider amending §16.1-284.1 of the Code of Virginia to specify that if a juvenile detention center provides post-dispositional rehabilitative programming to youth, the center shall use evidence-based programs and practices to the maximum extent practicable. (Chapter 6)

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#### **RECOMMENDATION 18**

The General Assembly may wish to consider including language in the Appropriation Act directing the Board of Juvenile Justice to promulgate regulations that establish specific training requirements for front line staff of juvenile detention centers needed to effectively support youth in rehabilitative programs, including post-dispositional programs and community placement programs. (Chapter 6)

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#### **RECOMMENDATION 19**

The General Assembly may wish to consider amending §66-3.2 of the Code of Virginia to authorize the Department of Juvenile Justice to regularly conduct quality assurance reviews of juvenile detention centers' post-dispositional rehabilitative programs and provide technical assistance as needed to ensure the centers meet statutory and regulatory requirements. (Chapter 6)

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#### **RECOMMENDATION 20**

The General Assembly may wish to consider including language in the Appropriation Act (i) directing the Virginia Department of Education (VDOE) to reinstate its on-site monitoring reviews of the educational programs at juvenile detention centers; improve its collection of student outcomes data; and report annually on the effectiveness and quality of programs for youth in detention centers to the Senate Education and Health and the House Education committees; and (ii) establishing and funding an additional staff position at VDOE to assist with these oversight responsibilities. (Chapter 6)

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#### **RECOMMENDATION 21**

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Education to develop a plan to implement an extended school year model that provides structured summer programming in juvenile detention centers and estimate any additional appropriations required. The plan should be submitted to the House Appropriations and Senate Finance and Appropriations committees no later than November 1, 2022. (Chapter 6)

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#### **RECOMMENDATION 22**

The Department of Juvenile Justice should update and improve training for residential specialists to address the therapeutic responsibilities of the role during the initial five-week training, including training on the specific rehabilitative treatment programs provided to youth at Bon Air Juvenile Correctional Center. (Chapter 7)

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### **RECOMMENDATION 23**

The Department of Juvenile Justice should work with the Department of Human Resource Management to identify and address the root causes of recruitment and retention challenges for its residential specialist position. (Chapter 7)

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### **RECOMMENDATION 24**

The Department of Juvenile Justice should establish a process to ensure indeterminate committed youths' treatment needs and progress are adequately and fully considered before youth are released. (Chapter 7)

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### **RECOMMENDATION 25**

The General Assembly may wish to consider amending Chapter 2 of Title 66 of the Code of Virginia to require the Department of Juvenile Justice to provide rehabilitative treatment programs for youth in its custody based on the best available evidence of effectiveness at reducing the likelihood of reoffending for youth committed to secure residential settings. (Chapter 7)

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### **RECOMMENDATION 26**

The Department of Juvenile Justice (DJJ) should implement a process to evaluate and improve the effectiveness of its rehabilitative programming for DJJ-committed youth on an ongoing basis. At a minimum, this process should determine (i) the extent to which current rehabilitative programming is addressing the criminogenic risk factors of youth, (ii) the extent to which rehabilitative programming adheres to prevailing national best practices and evidence-based research, and (iii) any aspects of programming that may be negatively affecting youth outcomes. DJJ should make the results of the evaluations publicly available on its website. (Chapter 7)

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### **RECOMMENDATION 27**

The General Assembly may wish to consider including language in the Appropriation Act to (i) create and fund a position at the Department of Juvenile Justice to manage and oversee use of community placement programs, and (ii) require management and oversight to include ongoing review of community placement programs and recidivism rates and a process to hold programs accountable for low performance. The Department of Juvenile Justice should be required to report annually to the Senate Rehabilitation and Social Services and House Health, Welfare, and Institutions committees on the performance of the community placement programs. (Chapter 7)

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### **RECOMMENDATION 28**

The Department of Juvenile Justice should develop and implement a plan to improve its re-entry programming, including expansion of step-down opportunities, consistent with the recommendations of its Successful Transitions workgroup. (Chapter 8)

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## **RECOMMENDATION 29**

The General Assembly may wish to consider amending § 16.1-306 of the Code of Virginia to (i) establish a process to allow records for certain less serious, non-violent felony equivalent offenses of youth adjudicated delinquent in juvenile and domestic relations district court to be automatically sealed after a period of years specified by the General Assembly up to age 29, and then subsequently expunged; (ii) determine the types of offenses eligible for sealing; and (iii) establish other necessary eligibility criteria. (Chapter 8)

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## **RECOMMENDATION 30**

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Education (VDOE) to determine the extent to which each juvenile detention center currently implements or could further implement cost-effective staffing methods. VDOE should be directed to work with the Virginia Department of Planning and Budget to determine the potential cost savings and feasibility of implementing each method and propose specific actions along with the estimated cost savings to the secretary of finance no later than June 30, 2023. (Chapter 9)

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## **RECOMMENDATION 31**

The Department of Juvenile Justice should proceed with constructing a smaller juvenile treatment facility on the Bon Air Juvenile Correctional Center property while locations for other facilities are being determined. (Chapter 9)

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# **Policy Options to Consider**

## **POLICY OPTION 1**

The General Assembly could amend § 19.2-163.01 of the Code of Virginia to require the Virginia Indigent Defense Commission to evaluate the legal services provided to juveniles by public defenders on a biennial basis, to ensure youth are receiving quality representation. Along with conducting the evaluation, VIDC could be required to develop and implement a plan to address any identified gaps in the quality of legal representation provided by juvenile public defenders. (Chapter 3)

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## **POLICY OPTION 2**

The General Assembly could include language in the Appropriation Act directing the Office of the Executive Secretary of the Virginia Supreme Court (OES) to ensure juvenile and domestic relations and circuit court clerks consistently record attorney type for juvenile delinquency cases in their case management systems. OES could be required to report this information annually to the Virginia Indigent Defense Commission. (Chapter 3)

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### **POLICY OPTION 3**

The General Assembly could include language in the Appropriation Act directing the Virginia Indigent Defense Commission to develop a plan to establish a state-operated system of regional juvenile public defender offices, including the additional staffing and resources that would be required, and to submit this plan to the House Appropriations and Senate Finance and Appropriations committees. (Chapter 3)

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### **POLICY OPTION 4**

The General Assembly could amend § 16.1-278.8 of the Code of Virginia to require juvenile and domestic relations district court judges to consider any time youth have spent in detention prior to their adjudication when making disposition decisions. (Chapter 3)

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### **POLICY OPTION 5**

The General Assembly could include language in the Appropriation Act directing the secretary of public safety and homeland security to convene a workgroup, including representatives from the Office of the Executive Secretary of the Virginia Supreme Court, the Virginia Indigent Defense Commission, the Department of Juvenile Justice, and the Department of Criminal Justice Services, to develop and make available an implicit bias and cultural competency training specifically tailored to the roles and responsibilities of attorneys and judges within the juvenile justice system. (Chapter 4)

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### **POLICY OPTION 6**

The General Assembly could include language in the Appropriation Act directing the Virginia Department of Education to convene a workgroup that includes personnel from Virginia's juvenile detention centers, the Department of Juvenile Justice, the Department for Aging and Rehabilitative Services, the Virginia Community College System, and local workforce investment boards to assess the adequacy of current training, certification, and placement assistance services available in juvenile detention centers and identify opportunities to expand service offerings. VDOE would report the findings from the workgroup to the Senate Education and Health and the House Education committees no later than December 1, 2022. (Chapter 6)

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### **POLICY OPTION 7**

If the General Assembly authorizes salary increases for corrections officers at the Virginia Department of Corrections, it could similarly increase salaries for residential specialists at the Department of Juvenile Justice. (Chapter 7)

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### **POLICY OPTION 8**

The General Assembly could amend Chapter 23.2 of the Code of Virginia to reduce the waiting period to seal juvenile criminal records maintained by circuit courts for eligible offenses under current law. (Chapter 8)

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### **POLICY OPTION 9**

The General Assembly could amend Chapter 23.2 of the Code of Virginia to automatically seal juvenile records maintained by circuit courts for eligible offenses under current law, rather than require a petition to be filed requesting the records be sealed. (Chapter 8)

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### **POLICY OPTION 10**

The General Assembly could consider establishing a two-tiered reimbursement rate in the Appropriation Act for the construction and operation of juvenile detention centers. Juvenile detention centers that are operated regionally could receive higher reimbursement rates than those operated by a single jurisdiction. (Chapter 9)

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### **POLICY OPTION 11**

The General Assembly could consider including language in the Appropriation Act directing the Department of Juvenile Justice and the Virginia Department of Education to provide lower funding for juvenile detention centers that are consistently operating under a certain capacity, such as 50 percent, and are located within a certain distance, such as a 45-minute drive, of other facilities that are also operating under capacity. (Chapter 9)

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### **POLICY OPTION 12**

The General Assembly could consider including language in the Appropriation Act directing the Department of Juvenile Justice (DJJ) to implement a process to identify specific juvenile detention centers that should be closed or consolidated to better align facility capacities with regional needs. DJJ could be directed to report to the General Assembly on the results of the process and specific facilities identified for closure or consolidation. (Chapter 9)

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### **POLICY OPTION 13**

The General Assembly could consider including language in the Appropriation Act directing the Department of Juvenile Justice to evaluate the costs, benefits, and feasibility of transitioning juvenile detention centers to either specialize in (i) short-term detention or (ii) longer-term rehabilitative programming. The Virginia Department of Education could be required to develop a plan to align the educational programming to meet the different needs of youth in the two types of facilities. (Chapter 9)

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# 1 Virginia's Juvenile Justice System

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In November 2020, the Joint Legislative Audit and Review Commission (JLARC) directed its staff to review Virginia's juvenile justice system. Staff were directed to review various aspects of the juvenile justice system, including intake, petition, adjudication, and disposition processes; regional and racial disparities in the treatment of youth; the Department of Juvenile Justice's (DJJ's) recent reforms; educational services; the adequacy of DJJ oversight; funding for juvenile detention centers; and future facility needs.

To address the mandate, JLARC staff conducted several research activities. Staff analyzed data, including: data on youth needs, risks, services, and recidivism; data on federal and state spending on juvenile justice services; and data on utilization of juvenile correctional and detention centers. JLARC staff interviewed staff at DJJ, the Virginia Department of Education (VDOE), and other state agencies; juvenile detention center leadership and staff; leadership of court service units; probation officers; representatives of youth and family advocacy groups; juvenile and domestic relations court judges; commonwealth's attorneys, defense attorneys, and other stakeholders, including juvenile justice experts in Virginia and other states.

JLARC staff also surveyed (1) youth at Bon Air Juvenile Correctional Center; (2) leadership and probation officers of court service units; (3) leadership and staff of juvenile detention centers; and (4) youth and families with direct knowledge of Virginia's juvenile justice system. Staff also reviewed national research and information on juvenile justice topics and programs. (See Appendix B for a detailed description of research methods.)

## Juvenile justice system should protect public safety, reduce unlawful behavior, and ensure fairness

As in all other states, Virginia's juvenile justice system exists to respond to allegations of illegal acts committed by youth. The juvenile justice system is separate from, and substantially different in purpose than, the system for adults accused of committing illegal acts. Adult criminal law is punitive and includes certain punishments for specific offenses. In contrast, juvenile law is intended to be remedial and affords juvenile and domestic relations judges much more discretion in handling delinquent behavior than in adult criminal law.

Juvenile law and proceedings as outlined in the Code of Virginia should:

- divert as many youth as possible from the juvenile justice system, consistent with public safety, to be cared for through alternative programs;

*“ Juvenile proceedings are corrective in nature rather than penal, and the primary function of the juvenile courts is not conviction or punishment for crime, but crime prevention and juvenile rehabilitation. ”*

**– Virginia Court of Appeals (2005)**

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**The U.S. Supreme Court has held that juveniles should be considered to be different from adults because of their (1) lack of maturity, (2) vulnerability to influences, and (3) ability to change their character.** Considering these traits, youth should generally be viewed as having lesser culpability for their illegal acts than adults (*Miller v. Alabama, 2012*).

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**Two of Virginia's 32 court service units are locally operated.** These court service units are operated by Fairfax County and Arlington County, but are overseen by DJJ.

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**Probation officers may have responsibilities beyond probation,** including juvenile intake, diversion, and parole responsibilities. In larger localities, some probation officers may not have a probation caseload. Instead, for example, they may focus only on intake responsibilities.

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- provide judicial procedures that are fair and that respect youth's constitutional and other rights;
- separate children from their parents only if they cannot safely remain in their homes and only after considering alternatives to out-of-home placements; and
- protect the community against harmful acts by juveniles, reduce the incidence of delinquent behavior, and hold youth accountable for behavior.

States are not required by federal law to maintain a juvenile justice system, but all states do. Relatively few federal laws govern juvenile justice systems, especially compared with functions such as foster care or education (sidebar).

DJJ is the state agency primarily responsible for administering and overseeing juvenile justice services in Virginia. DJJ operates 30 of 32 court service units (CSUs) throughout Virginia and Bon Air Juvenile Correctional Center (sidebar). DJJ investigates complaints against youth and decides whether to charge ("petition") youth and temporarily detain youth. DJJ also provides judges with information about the youth's case and circumstances, supervises youth on probation and parole, and connects youth with services. While the state's juvenile detention centers are locally and regionally owned and operated, DJJ is responsible for overseeing their compliance with applicable laws and regulations. DJJ also contracts for services and alternative placement options for youth, including services in the community and at juvenile detention centers.

As of July 2021, DJJ employed more than 1,300 staff throughout the state, and most staff work in court service units or at the Bon Air Juvenile Correctional Center. About 55 percent of DJJ staff work at one of DJJ's 30 court service units, and most of these staff are "probation officers" (sidebar). An additional 36 percent of DJJ staff work at Bon Air Juvenile Correctional Center, and the largest proportion are "residential specialists" who work directly with youth daily.

The State Board of Juvenile Justice is a regulatory and advisory board. The board, which is appointed by the governor and subject to confirmation by the General Assembly, has several powers and duties, including establishing regulations necessary to carry out Virginia juvenile justice laws.

Although DJJ is the primary state agency in Virginia's juvenile justice system, several other state agencies play important roles in the system. VDOE is responsible for providing, supervising, and evaluating educational and training programs in local and regional juvenile detention centers. The Department of Criminal Justice Services (DCJS) is responsible for ensuring state compliance with certain federal requirements. The Office of the Executive Secretary of the Supreme Court (OES) provides administrative support for all courts in the state, including juvenile and domestic relations courts.

Other organizations or individuals involved in juvenile justice include juvenile and domestic relations judges, local and regional detention centers, providers of rehabilitative services, attorneys, law enforcement officers, school staff, and the youth's family.

## Juvenile justice system uses a range of interventions to respond to delinquent behavior

Statute specifies that the juvenile justice system should use graduated sanctions and services that correspond to the severity of the youth's offense and treatment needs. Specific responses to delinquency will depend in part on the severity of the youth's offense but also on the programs and services available in the community. Interventions may include, but are not limited to, issuing a warning, requiring that the youth participate in community service or pay restitution as part of a diversion plan, placing the youth on probation, or incarcerating the youth (Table 1-1).

**TABLE 1-1**  
**Key juvenile justice terms**

<b>General terms</b>	
"Offense"	A violation of federal or state law or local ordinance by a youth. "Delinquent offenses" are acts that would be misdemeanors or felonies if committed by adults. "Status offenses" are acts prohibited by law that would not be a crime if committed by an adult, such as skipping school or running away.
"Complaint"	A formal allegation made to a court service unit that a youth committed a specific offense. Complaints are typically made by law enforcement, schools, or other community members.
<b>Court service unit terms</b>	
"Intake officers"	Court service unit staff responsible for receiving complaints and investigating them.
"Probable cause"	Determination by intake officer after investigation that there are reasonable grounds to believe the youth committed the alleged offense.
"Divert"	Decision by intake officer to handle the complaint without court involvement. Diversion decision may require youth to participate in community service, counseling, restitution, or participation in other programs.
"Petition"	Decision by intake officer to charge the youth with a crime and initiate court action.
"Detain"	Decision by intake officer to hold a youth at a detention center prior to the youth's adjudicatory hearing.
<b>Court hearings and related terms</b>	
"Detention hearing"	Court hearing to determine whether detention continues to be necessary while youth awaits adjudicatory hearing.
"Adjudicatory hearing"	Court hearing to determine whether youth is guilty of alleged offense.
"Dispositional hearing"	Court hearing to determine what juvenile justice intervention will be used to address delinquent act.
"Adjudicated delinquent"	Determination by judge that youth is guilty of the alleged offense.
"Disposition"	Intervention imposed by a judge in response to delinquent act. Interventions can vary from a warning to commitment to DJJ.

SOURCE: JLARC staff review of the Code of Virginia and DJJ documents.

DJJ is required to develop and maintain a statewide plan for juvenile services. The goal of the plan is to help ensure “the establishment and maintenance of a range of institutional and community-based, diversion, pre-disposition and post-dispositional services to be reasonably accessible to each court.”

## Complaints are filed against youth, and system responses range from diversion to incarceration

Before youth interact with Virginia's juvenile justice system, a law enforcement officer, school employee, or other community member generally must file a formal complaint against them. The complaint is sent to (“referred to”) a juvenile intake officer working for one of 32 court service units. The complaint alleges that a youth has committed an offense, which can range from non-violent offenses or technical offenses (e.g. truancy, vandalism, or petit larceny) to violent felonies (e.g. armed robbery, aggravated assault, or murder).

In FY20, more than 41,000 juvenile complaints were made to intake officers. About two-thirds of these complaints were for “delinquent offenses” that would be considered crimes if the youth were an adult, such as assault, larceny, narcotics, and vandalism (sidebar). The remaining third of complaints included technical offenses, such as contempt of court (5 percent of all complaints) and probation violations (3 percent of all complaints), traffic offenses (9 percent of all complaints), and other offenses, including Child in Need of Supervision offenses (6 percent of all complaints) (sidebar).

After receiving the complaint, the juvenile justice system involvement begins when an intake officer investigates the complaint to determine whether there is probable cause to believe the juvenile committed the alleged act (Figure 1-1). Generally, if intake officers determine probable cause exists, they may decide to either (1) charge (“petition”) the youth with an offense and proceed with a formal court hearing or (2) divert the youth by developing a diversion plan that youth and parents must agree to (sidebar). In FY20, the majority of complaints (60 percent) resulted in a petition against the youth.

Youth may be detained temporarily at a local or regional juvenile detention center while they await a court hearing if the officer determines probable cause exists and believes the youths are a threat to themselves or public safety. If an intake officer decides to detain the youth, the youth must be provided an attorney and a detention hearing must be held within 72 hours.

At the detention hearing, a juvenile and domestic relations judge decides (1) whether probable cause exists to believe the youth committed the delinquent act and, if so, (2) whether detention is necessary while the youth awaits the next court hearing (called an “adjudicatory hearing”). If probable cause does not exist, or if detention is not necessary, the youth must be released from the detention center.

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**Multiple complaints can be made in an individual case against a youth.** In FY20, the median number of complaints per youth was 1, however there were a total of more than 41,000 complaints for more than 29,000 individual cases.

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**Child in Need of Supervision status offense** cases include cases in which youth are accused of habitually skipping school without justification or running away from family members or court-ordered placement at a residential facility.

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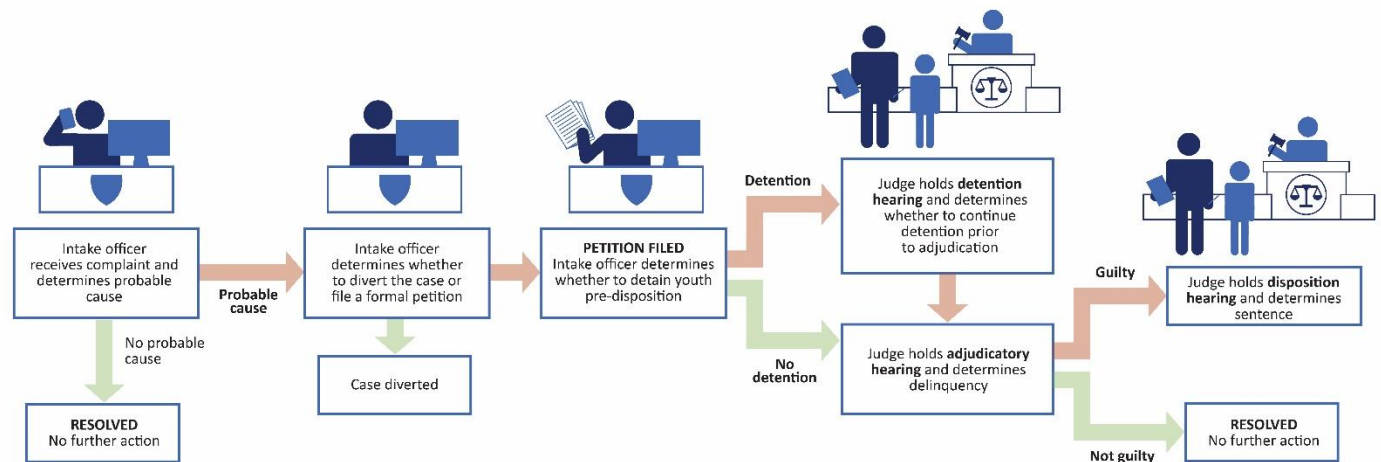


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**A diversion plan can include several alternatives to court involvement,** including participation in counseling programs, completing community service, or paying restitution to the victim.

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**FIGURE 1-1**  
**Process to resolve allegations against youth includes multiple steps**



SOURCE: JLARC staff review of the Code of Virginia and DJJ documents.

NOTE: Process simplified for clarity. For example, figure does not show the process for transferring the case to circuit court.

If an adjudicatory hearing is necessary, a juvenile and domestic relations judge hears the case and decides whether the evidence indicates the youth committed the delinquent act. If the judge finds the youth to be delinquent, a separate hearing is held to determine the specific intervention that will be used to respond to the delinquent act (“disposition”). Interventions may range from a warning to incarceration at a juvenile correctional center through a commitment to DJJ.

Under certain circumstances, a case can be transferred from a juvenile and domestic relations court to a circuit court so the youth will be tried as an adult. Certain criteria must be met to transfer a juvenile to circuit court, including that probable cause exists to believe the youth committed the delinquent act, the youth is at least 14 years old at the time of offense, and the alleged offense would be a felony if committed by an adult. The juvenile and domestic relations judge must also consider several relevant circumstances, including the seriousness and number of alleged offenses, a youth’s prior offenses, and whether the youth would be in the juvenile justice system for enough time to receive effective rehabilitation programming.

### **Programming intended to reduce likelihood of re-offending is provided to youth in the community and in secure facilities**

A key goal of the juvenile justice system is to reduce the likelihood that youth who committed a delinquent act will re-offend in the future. Consistent with this goal, youth who are adjudicated delinquent may be required to participate in programming intended to reduce the incidence of delinquent behavior, and this programming may be offered in the community or in a secure facility. Research demonstrates that programs

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**Examples of national resources on community- and facility-based programs for delinquent youth**, include Blueprints for Health Youth Development (of the University of Colorado Boulder), the Washington State Institute for Public Policy's Cost-Benefit Analyses, and the U.S. Office of Juvenile Justice and Delinquency Prevention's Model Programs Guide.

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**The primary purpose of juvenile detention centers is to detain youth temporarily prior to court hearings.** However, almost all JDCs in Virginia also offer longer-term rehabilitative programming for youth who have been adjudicated delinquent. Chapter 6 provides more information about JDCs.

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**Youth CPPs are not placed back in the community.** Instead, youth are confined at one of nine participating juvenile detention centers rather than Bon Air Juvenile Correctional Center.

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**DJJ closed six of its seven juvenile correctional centers between 2005 and 2017.** Only one correctional center, Bon Air Juvenile Correctional Center, remains open.

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that are designed, staffed, and implemented well can reduce the likelihood that youth re-offend (sidebar).

Rehabilitative programs in the community and secure facility vary based on location, but services should be individualized to the extent possible to meet the youth's needs. Examples of rehabilitative programs include family- or community-based therapy (e.g., Functional Family Therapy and Multisystemic Therapy), cognitive behavioral therapy (e.g., Dialectical Behavior Therapy), sexual offender treatment programs, and substance abuse programs.

Judges may order a youth be placed at one of 24 locally or regionally operated juvenile detention centers as a disposition for a delinquent act. Youth who stay longer than 30 days ("post-dispositional programs") must receive rehabilitative programming appropriate to meet their needs (sidebar).

Judges can also decide to send youth to DJJ custody, and all youth in DJJ custody receive rehabilitative programming. Youth in DJJ custody either stay at the Bon Air Juvenile Correctional Center or are placed in community placement programs (CPPs) at certain juvenile detention centers (sidebar). Before 2015, virtually all youth in DJJ custody were held at one of the state's juvenile correctional centers for rehabilitative programming. To allow more youth in the juvenile justice system to stay closer to home, DJJ began placing some youth in its custody at CPPs to receive rehabilitative programming. Currently, nine JDCs offer CPPs. Youth in DJJ custody may also be placed in alternative secure placements, such as private residential facilities, but youth in these facilities comprise only a small proportion of youth in DJJ custody.

## DJJ began a transformation effort in 2016

The 2016 General Assembly directed DJJ to develop and implement a plan to improve the effectiveness and efficiency of the juvenile justice system. The main goals of the "transformation" were to (1) increase the availability of local placement options and community-based programs; (2) ensure youth receive rehabilitative services that meet their needs and reduce the risk they reoffend; and (3) reduce the number of youth in state correctional centers, consistent with public safety.

In pursuit of these goals, DJJ began a number of substantial reforms, including

- closing the state's Beaumont correctional center (as part of a longer-term effort to close state juvenile correctional centers, sidebar);
- contracting with local and regional juvenile detention centers to place a greater portion of youth committed to DJJ custody closer to home;
- implementing a new rehabilitative model for working with youth in juvenile correctional centers and shifting away from the correctional model used for adults;
- revising length-of-stay guidelines for youth committed to DJJ custody;

- standardizing its approach to working with youth on probation statewide; and
- contracting with two private regional service coordinators to expand access to community-based programs for youth in the juvenile justice system across Virginia.

The legislature also authorized DJJ to retain funds from closing facilities and use them to implement the plan.

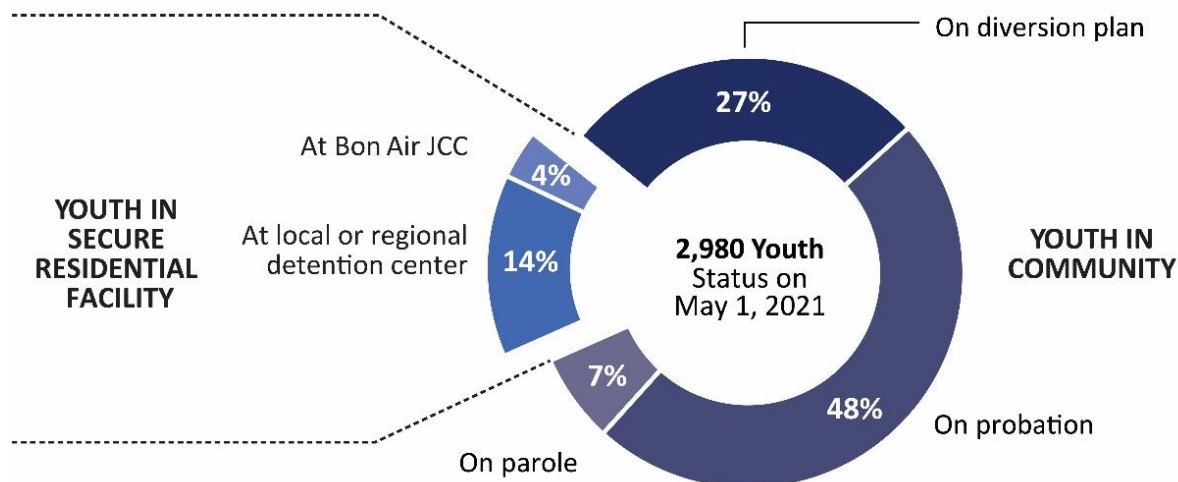
## About 3,000 youth are in Virginia's juvenile justice system

In May 2021, 2,980 youth were in the juvenile justice system statewide. Most of these (82 percent) youth were in the community, whether on a diversion plan, on probation, or on parole. Following national patterns, the most common disposition among youth adjudicated delinquent is probation; about 1,440 youth (48 percent) were on probation (Figure 1-2).

The remaining 18 percent of youth were confined. Fourteen percent were being held in a local or regional juvenile detention center, and 4 percent were being held in Bon Air Juvenile Correctional Center. Nearly half of youth in local or regional detention centers were awaiting an adjudicatory or dispositional hearing. Nearly all youth at Bon Air had committed a felony, and more than two-thirds had been adjudicated delinquent for multiple offenses.

**FIGURE 1-2**

**Most youth in the juvenile justice system were in the community rather than secure facilities**



SOURCE: JLARC analysis of DJJ data as of May 1, 2021

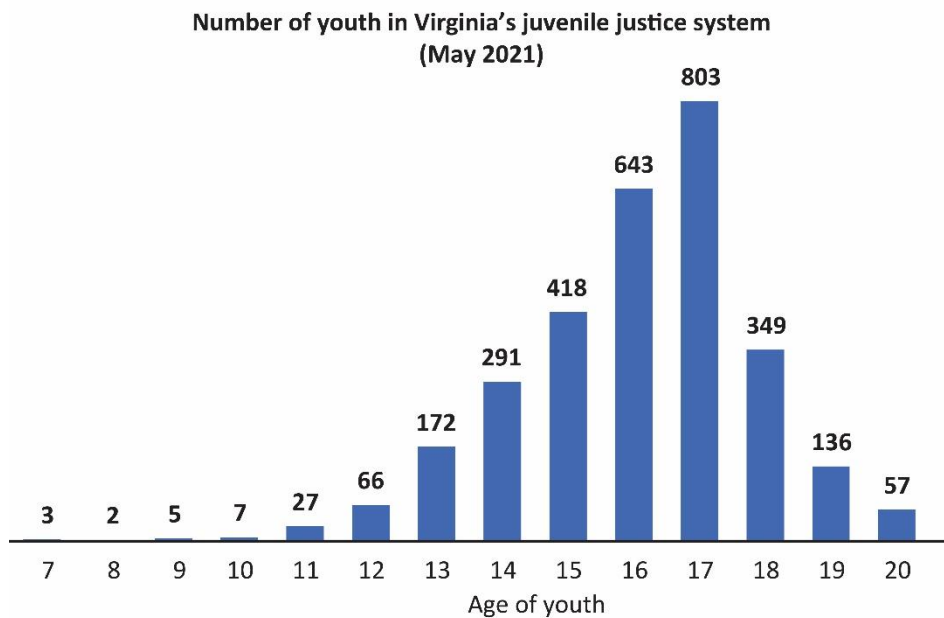
NOTE: Bon Air JCC = Bon Air Juvenile Correctional Center. Figure includes five youth (less than a half of 1 percent of all youth) who were in DJJ's custody and who were in alternative secure placements on May 1, 2021.

Most youth in Virginia's system are male and over 16 years old. Males comprised most of the youth in the system (80 percent) and youth in juvenile detention centers (88 percent), and nearly all youth at Bon Air Juvenile Correctional Center (99 percent). Youth may remain in the juvenile justice system until they turn age 21, and most youth (67 percent) who were in the juvenile justice system in May 2021 were 16 years or older (Figure 1-3). Fewer than 10 percent were younger than 14 years old. Racial composition of youth in Virginia's system is analyzed in Chapter 4.

Consistent with national trends, the number of youth in Virginia's juvenile justice system has dropped substantially over the past decade. For example, there were 70 percent fewer youth in the system in May 2021 (2,980) than in May 2011 (9,551), and the number of youth has declined each year since 2011. The largest one-year decline (a reduction of 28 percent from the prior year) occurred between May 2020 and May 2021—reflecting changes in law enforcement and court operations during the COVID-19 pandemic. Additional information on trends in Virginia's juvenile justice system, including the role of specific DJJ transformation reforms that affected the trends, can be found in Chapter 2.

**FIGURE 1-3**

**Most youth in Virginia's juvenile justice system are 16 years old or older**



SOURCE: JLARC analysis of DJJ data as of May 1, 2021.

NOTE: Excludes one youth who was 21 on snapshot date.



## Virginia spent over \$240 million in state funds on juvenile justice facilities, staffing, and services

In FY20, \$248 million in state and federal funds were spent on juvenile justice services, according to DJJ and VDOE data (Figure 1-4). Almost all (98 percent) were state general funds. Only an estimated \$4.4 million (1.6 percent) was from federal sources.

Juvenile justice spending includes facility, staffing, and operational costs and the purchase of community-based services. About half of state spending on juvenile justice services was for the Bon Air correctional center and the 34 court service units (sidebar). Another 30 percent of spending (\$74 million) was for regional and local juvenile detention centers, including funding through both DJJ and VDOE. Funding for community-based services totaled about \$24 million. The remaining \$20 million was for DJJ central office operations.

The decline in the number of youth in secure facilities has increased the state's spending per youth. In FY15, the state spent, on average, \$123,000 per youth in its two juvenile correctional centers. Though the state now operates only the Bon Air facility, the quick decline in the number of youth by FY20 has resulted in the state spending about \$243,000 per youth (sidebar). This doubling of spending per youth in five years is part of the basis for the study resolution directing JLARC to review facility costs.

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**In 2021, DJJ closed two CSUs, decreasing the total number of CSUs statewide from 34 to 32.**

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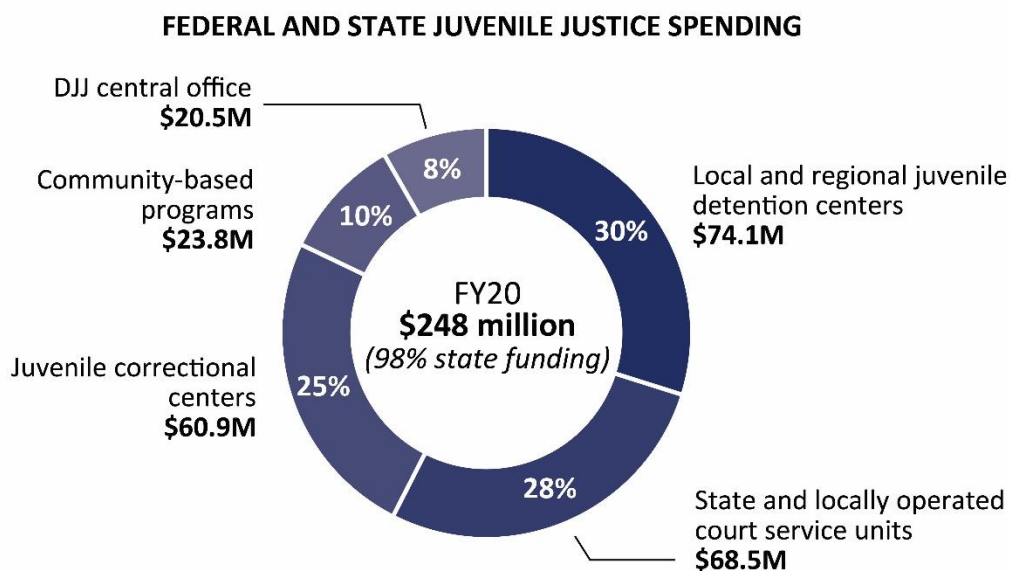
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**Average per-inmate spending for the five smallest adult correctional centers in Virginia** was about \$40,800 in FY19 (the most recent data available). Across 24 correctional centers for which spending and population data is available, the average per-inmate spending was about \$31,800.

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**FIGURE 1-4**

**Estimated state and federal spending on juvenile justice services was \$248 million in FY20**



SOURCE: JLARC analysis of DJJ data.

NOTE: Spending on local and regional detention centers includes DJJ Block Grant and Community Placement Program expenditures, as well as VDOE education expenditures. Juvenile correctional center expenditures include expenditures for facilities, operations, and education, and correctional facilities not currently occupied by youth (e.g., Beaumont Juvenile Correctional Center). Community-based programs expenditures includes spending on Virginia Juvenile Community Crime Control Act and DJJ continuum funding. Spending data includes \$4.4M in federal funds.



## 2 Juvenile Justice Trends and Recidivism

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As a backdrop to the subsequent chapters of this report, this chapter provides historical trends on the number and risk levels of youth in Virginia’s juvenile justice system. This chapter also provides historical trends about the key outcome for system effectiveness—recidivism. Subsequent report chapters will address programs, services, and facilities.

Research has shown that time spent in secure facilities should be reserved for the relatively small number of youth who have the highest risk of reoffending. These youth have better outcomes if their time in secure facilities is focused on rehabilitative treatment and services, rather than punishment. Lower-risk youth who commit less serious offenses should be diverted or placed on probation to receive rehabilitative services, tailored to their individualized needs, in the community.

Aligning juvenile justice policies and practices with this growing body of research on effective juvenile interventions should result in fewer youth in secure facilities and less recidivism over time. Aligning policies with this research underpinned much of the General Assembly’s direction to transform Virginia’s juvenile justice system.

### **Fewer youth are in Virginia’s system, most are at moderate or high risk of reoffending**

Substantial changes have occurred over the past decade in the number and risk of youth involved in Virginia’s juvenile justice system, and the changes were accelerated by the COVID-19 pandemic. Fewer youth are involved in the juvenile justice system today than a decade ago, and the vast majority now appear to be at a moderate or high risk of reoffending. These trends follow national trends and are likely partially due to declining referrals to the system. However, certain reforms by the Department of Juvenile Justice (DJJ) have also likely contributed to the decline.

### **Following national trends, fewer youth are in Virginia’s juvenile justice system than a decade ago**

Compared with a decade ago, far fewer youth are in Virginia’s juvenile justice system (Figure 2-1). The number of youth in Virginia’s system has decreased 70 percent during the last decade (9,551 youth in May 2011 to 2,980 youth in May 2021). Fewer youth are participating in all juvenile justice interventions, including diversion plans, probation, juvenile detention center (JDC) post-dispositional programs, commitment to the Department of Juvenile Justice, and parole (sidebar). Virginia trends follow national

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**Post-dispositional programs** are secure residential interventions for youth who have been adjudicated delinquent and required by a judge to complete a rehabilitative program in a juvenile detention center. (See Chapter 6 for more discussion).

A diversion plan can include several alternatives to court involvement, including participation in counseling programs, completing community service, or paying restitution to the victim.

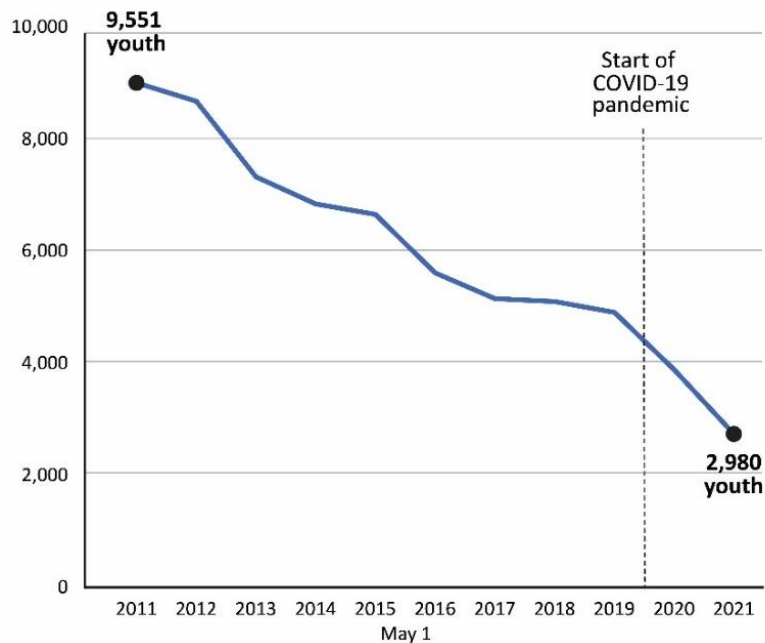
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trends as youth in juvenile justice systems nationwide decreased by 46 percent between 2010 and 2019.

As would be expected, the number of youth in Virginia's system declined quickly during the COVID-19 pandemic (May 2019 and May 2020). During the pandemic there have been fewer complaints, detainments, and placements in residential programs for delinquent youth. The number of youth in Virginia's system will likely increase to some extent after the pandemic. However, available projections of youth placements in juvenile detention centers and in DJJ custody indicate that the number of youth in the juvenile justice system may remain below pre-pandemic levels through FY27.

**FIGURE 2-1**

**The number of youth in Virginia's juvenile justice system has steadily declined**



SOURCE: JLARC analysis of DJJ May 1st snapshot data.

NOTE: Data shown includes youth who are placed in pre-dispositional detention in a JDC; youth required by a court to complete probation, a post-dispositional program at a JDC, a commitment to DJJ or parole upon release from DJJ commitment; and youth who were formally diverted.

### **Reductions in number of youth in Virginia's system partially attributable to declines in referrals to the system and arrests**

Reasons for declines in the number of youth in the juvenile justice system in Virginia and nationally are not fully understood, but are at least partly a result of declines in referrals and juvenile arrest rates. Fewer complaints are being referred to Virginia's juvenile justice system than a decade ago. Between FY11 and FY20, the number of intake complaints filed against youth decreased 42 percent from about 71,000 to 42,000 complaints (sidebar). The decline in complaints occurred across all offense types (e.g., felony, Class 1 Misdemeanor, and status offenses). Virginia's complaint

**An average of 1.4 complaints are filed per youth intake case.** Between FY11 and FY20 the total number of intake cases decreased by 45 percent.

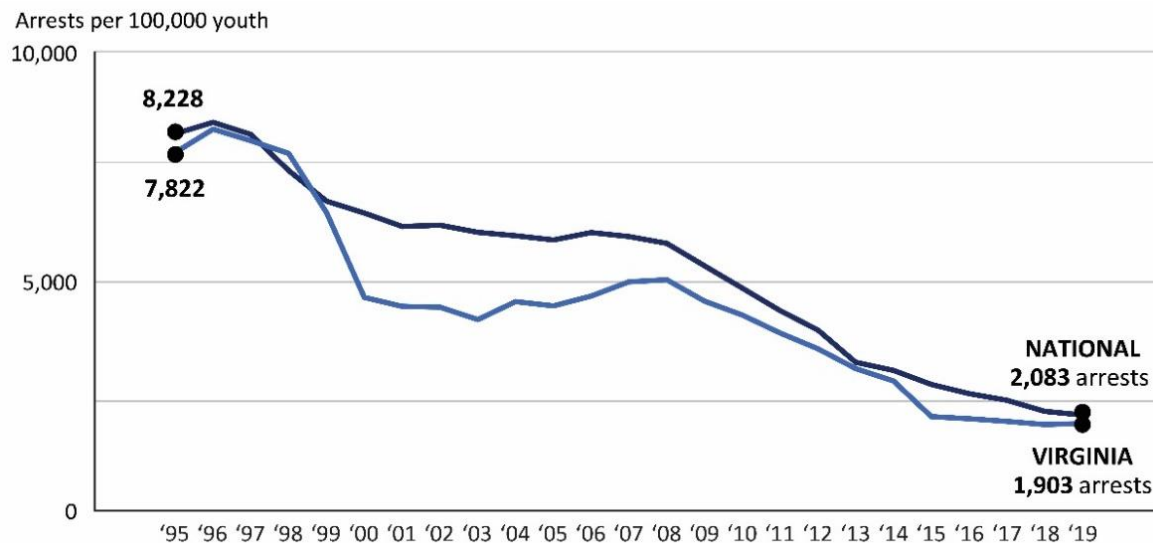
trends are similar to those nationally as the number of delinquency cases filed across the country declined by 45 percent between 2010 and 2019.

Juvenile arrest rates have declined substantially in Virginia and nationally. Since their peak in 1996, youth arrest rates in Virginia declined by 77 percent (8,326 to 1,903 arrests per 100,000). This trend mirrors the 75 percent decline in juvenile arrests nationally over the same time period, particularly arrests for violent crimes (Figure 2-2) (sidebar).

Subject matter experts cite other potential reasons for declining system involvement. One key reason cited is an improved understanding of the negative implications of unnecessary system involvement on adolescent development. Shifting patterns in how youth interact (i.e., remotely, through cell phones and online video games, rather than outside of their homes in the community) may have also contributed to reductions in involvement, as this would have led to fewer opportunities for interactions between youth and law enforcement.

**FIGURE 2-2**

**Juvenile arrests have declined both in Virginia and nationally**



SOURCE: JLARC analysis of FBI arrest data.

NOTE: Arrest rates includes arrests for all crimes for persons age 17 and under.

### **DJJ reforms also contributed to decline in the number of youth in Virginia's juvenile justice system**

DJJ's policy reforms from its 2016 transformation plan have also likely contributed to declines in the number of youth in Virginia's juvenile justice system and shifts in the use of certain juvenile justice interventions. The reforms include:

- training intake staff to prioritize diversion when appropriate;

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**Most complaints to the juvenile justice system are made by law enforcement.** Between FY11 and FY20, 64 percent of complaints were referred by law enforcement.

**National juvenile arrest rates increased in the late 1980s and 1990s** in response to a "wave of juvenile violence" experienced during that period (National Academies 2013). Since the mid-1990s, juvenile violent crime arrest rates have declined substantially.

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**The Detention Assessment Instrument (DAI)** is a screening tool that court service unit staff use to determine whether detention is necessary.

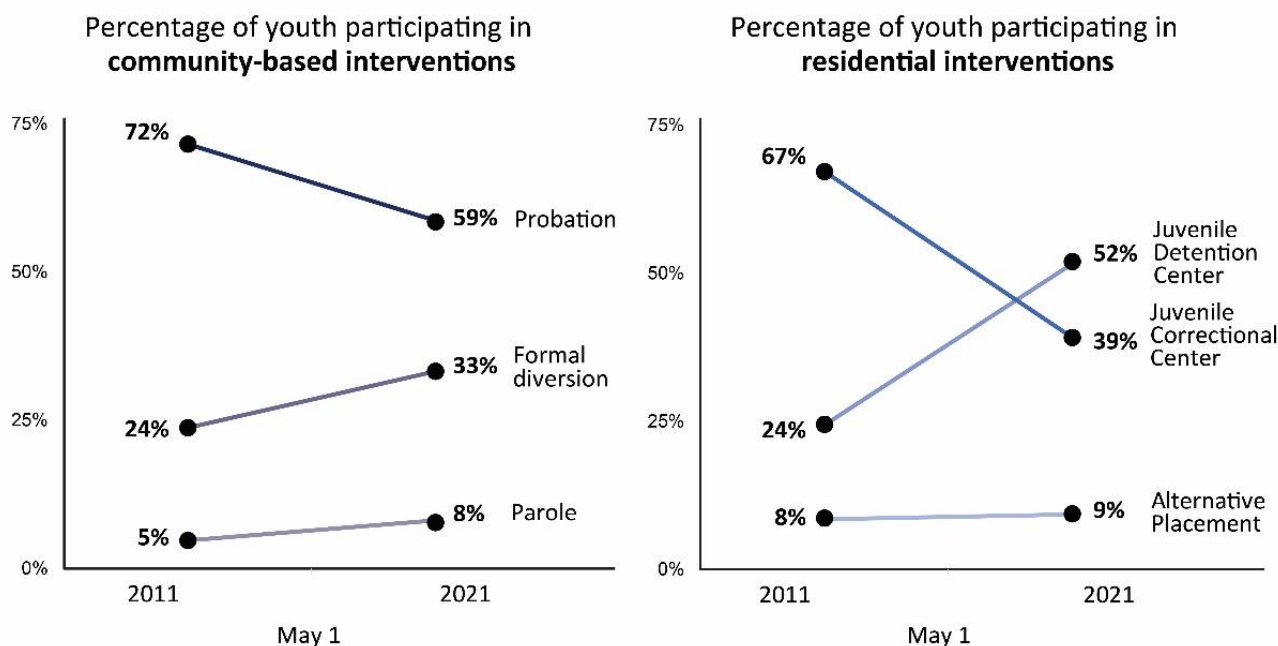
**The Youth Assessment and Screening Instrument (YASI)** is used to classify an individual's risk of reoffending.

- implementing new procedures and trainings to guide the use of the Detention Assessment Instrument;
- training and coaching court service unit (CSU) staff on the Youth Assessment and Screening Instrument to assess the risks and needs of youth; and
- developing the Standardized Disposition Matrix and training CSU staff to use this tool for making disposition recommendations for youth (sidebar).

Perhaps the best indication of the effects of these reforms is the shift in the type of juvenile justice interventions used between 2011 and 2021 (Figure 2-3). For example, DJJ's efforts to prioritize diversion when possible has contributed to a higher proportion of youth receiving community-based interventions through formal diversion plans. Similarly, DJJ's efforts to develop alternative placements for youth in state custody and keep youth closer to home has also contributed to the decline in the use of secure confinement at juvenile correctional centers and an increase in the use of juvenile detention centers for youth who require secure residential placements.

**FIGURE 2-3**

The use of juvenile justice interventions has shifted over the past decade



SOURCE: JLARC analysis of DJJ May 1st snapshot data.

NOTE: "Juvenile Detention Center" includes Post-D detention, Post-D programs and Community Placement Programs. Examples of alternative placements include group homes and residential treatment centers.

## Vast majority of youth in system are now high or moderate risk of reoffending, and greatest shift occurred during COVID-19 pandemic

As the number of youth in the system has declined, a higher proportion of youth in the juvenile justice system are at a high risk of reoffending, while fewer are at a low risk (Figure 2-4) (sidebar). The system is essentially prioritizing its focus more on high and moderate-risk youth than on low-risk youth. As of May 2021, 85 percent of assessed youth were considered to have a high or moderate risk of reoffending. The greatest shift in youth risk occurred in 2020 and 2021, during the COVID-19 pandemic. This trend holds for all types of juvenile justice interventions.

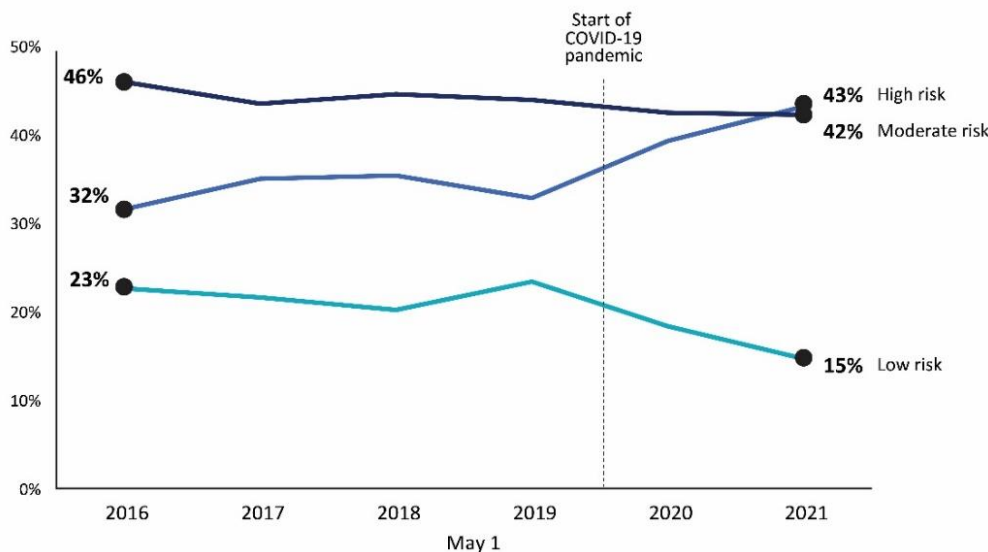
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**Youths' risk of reoffending is assessed by CSU staff using the YASI.** Prior to 2015, available information on youth assessments were limited, but have since substantially improved.

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**FIGURE 2-4**

**An increasing proportion of youth in the juvenile justice system are assessed to have a higher risk of reoffending**



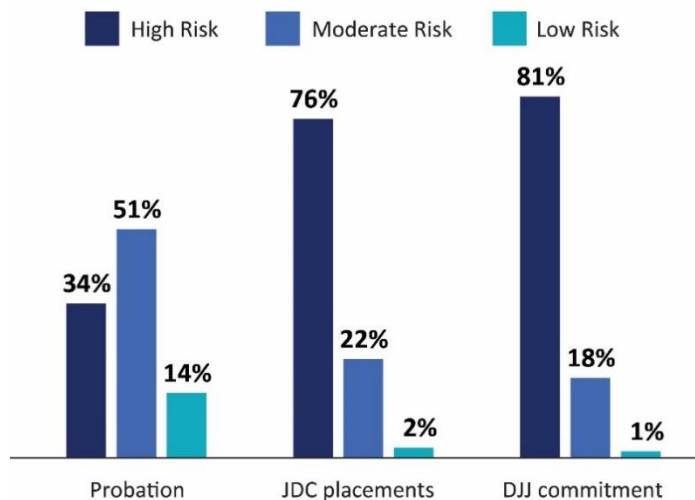
SOURCE: JLARC analysis of DJJ May 1st snapshot data.

In conjunction with the increasing proportion of high-risk youth in the system, the proportion of youth in the system who committed severe offenses also increased between May 2011 and May 2021. In May 2021, 46 percent of all delinquent youth had committed a felony as their most serious offense, an 11 percentage point increase since 2011.

Youth at a high risk of reoffending are more likely to be placed in secure confinement residential programs, while youth at a lower risk of reoffending are more likely to be diverted or placed on probation (Figure 2-5). In May 2021, most youth who received a formal risk assessment and were placed in residential programs were assessed to be at a high risk of reoffending, while the majority of youth that were placed on probation were at a moderate risk of reoffending.

FIGURE 2-5

Youth on probation are more commonly assessed with a moderate to low risk of reoffending than youth placed in juvenile detention centers or committed to DJJ



SOURCE: JLARC analysis of DJJ May 1st snapshot data (2021).

NOTE: DJJ commitment includes youth in residential programs at both Bon Air JCC and those placed in community placement programs at JDCs. JDC placements include youth awaiting trial, generally in pre-D detention, or whose dispositions put them in post-D programs at JDCs.

## Recidivism is declining for youth on diversion and probation, but pandemic prevents definitive conclusions

There is no national definition of recidivism or centralized repository of recidivism data. The lack of a standard definition or methodology for computing recidivism confounds simple comparisons of recidivism across states. Even though some states may similarly define and measure recidivism, differences among juvenile justice interventions, and whom those interventions may apply to, vary, making comparisons difficult.

An effective juvenile justice system should rehabilitate youth so they are no longer a threat to public safety and do not reoffend. The best single measure of this is the rate at which delinquent youth reoffend after their involvement in the system. Measuring recidivism is complex, and no national standard exists to measure states' recidivism rates (sidebar). Measuring recidivism in Virginia requires using DJJ data, but also data from the Virginia State Police, Virginia Criminal Sentencing Commission, Virginia Department of Corrections, and State Compensation Board.

DJJ tracks youth for three years after their completion of a juvenile justice intervention (such as their release from probation or a juvenile correctional center) to determine if they have been rearrested, reconvicted, or recommitted for an offense. Nearly all youth (97 percent) released from (or completing) one of the system's interventions are included in the state's recidivism rates. Importantly, DJJ excludes technical violations such as probation and parole violations or contempt of court.



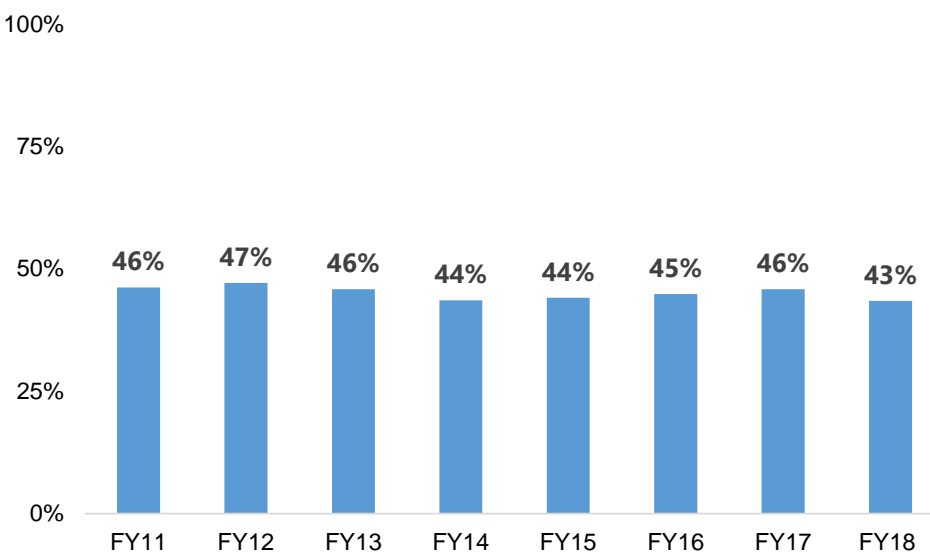
While recidivism rates are a key measure of the system's effectiveness, they only partially indicate whether Virginia's juvenile justice system meets its two primary objectives of public safety and rehabilitation. Recidivism is a measure of the system's long-term effectiveness but does not account for the short-term impact of juvenile justice interventions. For example, youth placed in juvenile detention centers and juvenile correctional centers have been convicted of serious offenses, and these placements prevent youth, at least temporarily, from committing further crimes in the community (sidebar).

### Long-term overall recidivism trend has remained fairly stable

An indicator of Virginia's system becoming more effective would be fewer youth reoffending over time after they have been in the system. However, since 2011, two-year reconviction rates have remained relatively stable, fluctuating between 43 percent and 47 percent (Figure 2-6). Forty-three percent of youth who completed a juvenile justice intervention in FY18 (~1,726 youth) had been reconvicted within two years of their release (sidebar).

**FIGURE 2-6**

**Two-year reconviction rates remained about the same over the last decade**



SOURCE: JLARC analysis of DJJ recidivism data.

NOTE: COVID-19 pandemic effects on two-year reconviction rates began with FY18 cohort. Includes youth who were released from probation, post-D program, DJJ custody, and parole. Does not include youth who completed diversion plans.

### Recidivism rates have recently declined for some interventions, but pandemic prevents reaching definitive conclusions about trend

Within the overall recidivism rates shown above there are substantial differences by type of intervention. DJJ indicates that the positive impact of some of its reforms are

#### Lengths of stay in juvenile detention and correctional centers vary.

Over the last decade, incarcerated youth spent an average of 5 months in a post-D program, 9 months in a CPP, and 17 months in a juvenile correctional center.

Limited information is available on the types of offenses youth are reconvicted of, but **existing data suggests that most youth are reconvicted for serious offenses.** Between FY11 and FY20, of youth with available re-offense information: 56 percent were reconvicted for felony offenses; 40 percent were reconvicted for a class 1 misdemeanor; and only 4 percent were reconvicted for a violation (e.g., vandalism, narcotics).

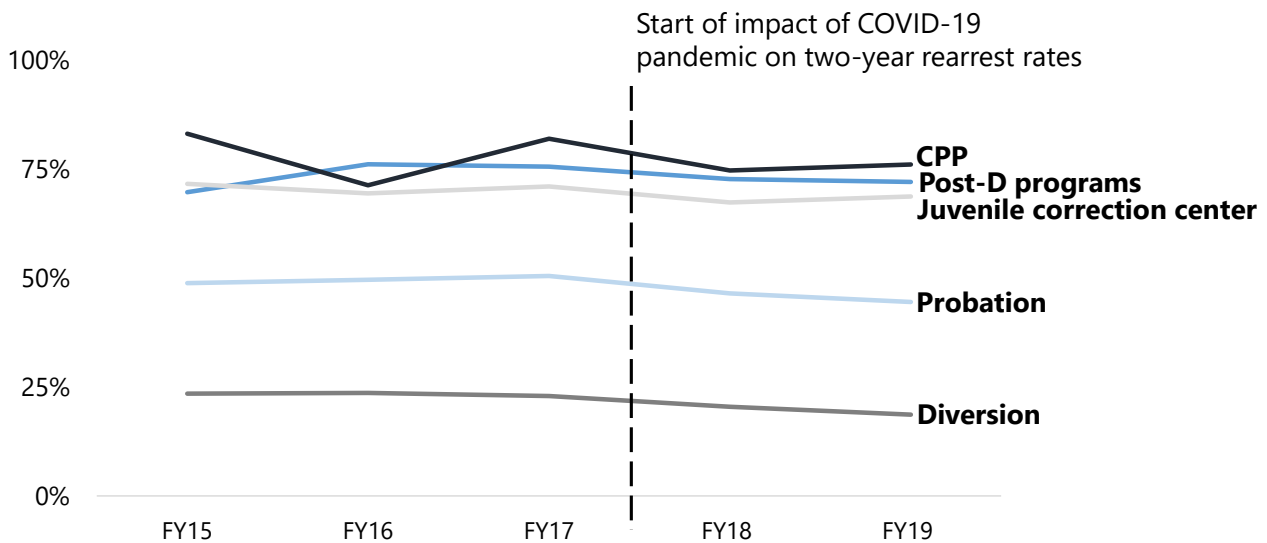
evident beginning with youth released from the system in FY18. The data does show some recent reduction in recidivism for certain types of interventions. For example, two-year rearrest rates declined

- from 23 percent to 19 percent between FY15 and FY19 among youth who successfully completed diversion plans; and
- from 49 percent to 44 percent between FY15 and FY19 for youth who were released from probation.

However, the COVID-19 pandemic makes it difficult to reach definitive conclusions about the sustainability of the decline in any reconviction or rearrest rates over the last few years (Figure 2-7). Complaints referred to the juvenile justice system by law enforcement dropped 41 percent between FY20 and FY21, from 28,228 to 16,619. This was by far the steepest year-to-year decline in referrals from law enforcement over the past decade. This reduction in law enforcement activity has likely contributed to the reduced number of youth who are re-arrested and then reconvicted. It is not possible to quantify how much of these reductions in rearrests can be attributed to DJJ reforms and how much are the result of reduced law enforcement activity.

**FIGURE 2-7**

**Two-year rearrest rates over the last five years vary by type of intervention**



SOURCE: JLARC analysis of DJJ recidivism data.

NOTE: Rearrest rates, rather than reconviction rates, used to allow additional full year of data to be available. COVID-19 pandemic effects on two-year rearrest rates began with FY18 cohort. Recidivism data for youth who successfully completed a diversion plan started being collected in FY12. Community placement programs (CPPs) were developed in FY14, and, therefore, recidivism data started being collected in FY15.

## Recidivism among youth placed in secure residential facilities remains largely unchanged in recent years or shows no clear trend

In contrast with other types of interventions, two-year rearrest rates for youth released from secure residential facilities (i.e., juvenile detention centers or juvenile correctional centers) have remained stable or have shown no clear pattern over the last five years (Figure 2-7). This is also consistent with two-year reconviction rates for youth released from these facilities. (Additional information on recidivism rates by type of intervention is available in Appendix C.)

Notably, DJJ's increased reliance on juvenile detention centers for rehabilitative programming, a key initiative during the transformation, has not yet materially reduced recidivism. Seventy-two percent of youth committed to DJJ who were released from a CPP and 65 percent of youth released from a post-dispositional program between FY16 and FY18 were reconvicted within two years (Figure 2-8) (sidebar). These recidivism rates exceed those of juvenile correctional centers. This is surprising because youth in juvenile correctional centers are more likely to be at a higher risk of reoffending than youth placed in either a CPP or post-dispositional program at JDCs. (More discussion about factors that may contribute to relatively high recidivism from juvenile detention centers is provided in Chapters 6 and 7.)

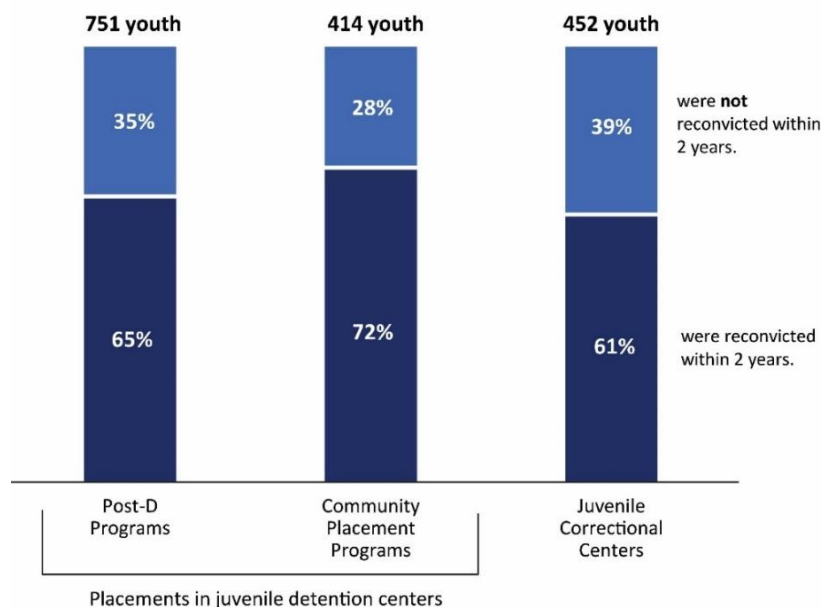
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**Despite the program's name, youth in community placement programs (CPPs) are not placed back in the community.** Instead, youth are confined at one of nine participating juvenile detention centers rather than Bon Air Juvenile Correctional Center.

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**FIGURE 2-8**

**Two-year reconviction rates are highest for youth who participate in rehabilitative programs in juvenile detention centers (youth released in FY16, FY17, and FY18)**



SOURCE: JLARC analysis of DJJ recidivism data.

NOTE: Youth in state custody are generally either placed in a Community Placement Program or a juvenile correctional center.



# 3 Due Process Issues in Juvenile Justice

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When youth are alleged to have committed a delinquent act, they have many of the same due process rights and constitutional protections as adults in criminal court. These include the right to an attorney, the right to call and cross-examine witnesses, and the right to refrain from self-incrimination. Many of these due process rights for youth were affirmed in the U.S. Supreme Court decision *In re Gault* (1967). Additionally, the Code of Virginia expressly requires the courts to provide judicial procedures in which youth are assured a fair hearing and their constitutional and other rights are recognized and enforced.

Due process rights are particularly important for youth, as they are less likely than adults to understand legal proceedings and advocate for their own best interests. For example, according to research from the National Academies of Sciences, Engineering, and Medicine, youth are more likely than adults to overestimate their own understanding of a situation and make judgments based on incomplete or inaccurate information. Youth also have a heightened sensitivity to immediate incentives and less ability to consider long-term consequences. Because their brains are not yet fully developed, it can be difficult for youth to determine and advocate for their own best interests during legal proceedings (e.g., deciding whether it is in their best interest to accept a plea deal on their case). This underscores the importance of qualified and competent legal representation for youth in delinquency cases.

## Youth do not consistently receive adequate legal representation

Youth in Virginia are entitled to attorney representation in delinquency proceedings, although when attorneys become involved in a case varies based on whether the youth is detained prior to adjudication. For youth who are detained prior to adjudication, statute requires the court to appoint a “qualified and competent attorney-at-law” to represent them before the detention hearing if they have not retained their own private attorney (sidebar). For youth who are not detained, an attorney is appointed before the adjudicatory hearing if the youth is determined to be indigent (sidebar).

Youth who cannot afford to hire their own attorney may be represented by a public defender or by a court-appointed attorney, depending primarily on where they live in the state. Localities served by public defenders are enumerated in statute (sidebar), and youth in these localities are typically appointed a public defender. Youth in other localities are represented by a court-appointed attorney, chosen from a list of certified attorneys maintained by the Virginia Indigent Defense Commission (VIDC). However, youth in localities served by public defender offices may still be represented by

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**Pursuant to the Code of Virginia, a youth’s indigence is presumed for the purposes of a detention hearing.**

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**Youth may waive the right to an attorney, however, if they are alleged to have committed an offense that would be a felony if committed by an adult, youth are required to consult with an attorney before waiving this right.**

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**There are currently 56 localities served by 28 public defender offices and two satellite offices across the state. Adding public defender offices requires a change to state law.**

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court-appointed attorneys under certain circumstances, such as cases that have multiple codefendants, where public defenders cannot represent multiple youth involved in the same case.

All youth in Virginia likely have access to legal representation, as required by law, but this cannot be quantitatively verified because of data limitations. During interviews with staff from the Office of the Executive Secretary of the Virginia Supreme Court (OES), as well as more than 15 commonwealth's attorneys, defense attorneys, and juvenile and domestic relations (J&DR) district court judges, all indicated that youth nearly always have attorney representation in delinquency cases. However, the full extent of attorney representation cannot be quantitatively measured, as neither the Department of Juvenile Justice (DJJ) nor OES maintain comprehensive data on juvenile attorney representation.

### **Not all youth receive quality legal representation, particularly those represented by court-appointed attorneys**

Youth in delinquency cases need representation from attorneys who have specialized knowledge. Attorneys must have knowledge of both juvenile and adult criminal laws and court rules and procedures, as cases may be adjudicated in either J&DR court or transferred to circuit court. Attorneys must also be knowledgeable about the child welfare system, the educational system and school disciplinary policies, adolescent brain development, and childhood mental health issues. If attorneys do not have the specialized knowledge needed to adequately represent youth in these cases, they may be unprepared or not adequately present their client's case in court.

A common and consistent concern raised by stakeholders during interviews with JLARC staff was the adequacy of representation some youth receive. Individuals from a variety of perspectives—including J&DR judges, commonwealth's attorneys, public defenders, VIDC staff, DJJ leadership and staff, and representatives from advocacy groups—expressed concerns that some youth are receiving very poor quality representation. For example:

We have plenty of attorneys—we have enough attorneys to get us by. What we don't have are quality attorneys. (J&DR judge)

They consistently misadvise [youth and parents] on the law. I have spent my entire career telling youth and parents that felony convictions will stick with youth their entire life. That's not what they're hearing from court-appointed attorneys. It is bad. (public defender)

I spent time as a public defender and know the demands generally to defend cases. It is disheartening coming to a smaller county where those taking cases are not prepared to meet the demands of the case or the youth's needs. (commonwealth's attorney)

Stakeholders indicated that many attorneys do not have the knowledge needed or spend the time necessary to provide youth with quality legal representation. They also

indicated many attorneys do not spend adequate time with their clients prior to hearings, with some meeting the youth only minutes before their hearing. Others reported concerns regarding attorneys lacking sufficient knowledge of juvenile law, with some advocating for plea deals that were not in the youth's best interest.

Inadequate representation appears to be most prevalent among court-appointed counsel. Court-appointed attorneys are less likely to have the specialized knowledge necessary, especially in less populous parts of the state. Stakeholders indicated that public defenders tend to provide higher quality representation than court-appointed counsel, as public defender offices generally have more resources and better-trained attorneys for juvenile delinquency cases. Larger public defender offices may also have one or more attorneys who work solely on juvenile delinquency cases, which allows them to specialize in this area of law.

The quality of attorney representation in juvenile delinquency cases appears to be a longstanding issue in Virginia. A 1979 report from the Virginia State Crime Commission examining Virginia's juvenile justice system found that many attorneys (1) came to court unprepared, (2) saw their clients only minutes before a hearing, (3) did not take time to subpoena witnesses, and (4) were not sufficiently aware of community resources or dispositional alternatives that may be appropriate for their clients. Similarly, in 2002, the American Bar Association reviewed the quality of attorney representation in Virginia's juvenile delinquency proceedings and concluded that "vigorous representation is not widespread." The review cited (1) a flawed appointment process, (2) inadequately prepared attorneys, and (3) a tendency to accept plea offers rather than aggressively protect the rights of youth.

Inadequate representation in juvenile delinquency cases can result in negative outcomes for youth. Although it is not possible to quantify the consequences of inadequate representation, stakeholders indicated that poor quality representation can and does negatively affect youth. Some examples of poor outcomes that reportedly result from inadequate representation include inappropriate (1) use of detention prior to adjudication; (2) use of plea deals; (3) transfer of cases to circuit court; or (4) commitment to DJJ from a lack of awareness of alternative dispositions or services available within the community.

### **Current system does not compensate court-appointed attorneys for the amount of time needed to adequately represent juveniles**

Inadequate compensation, especially given the amount of work required for each case (sidebar), likely contributes to the poor quality of attorney representation for youth. According to workload analyses conducted by the American Bar Association, "to provide competent representation and deliver reasonably effective assistance of counsel under prevailing professional norms," attorneys should spend at least five hours on a status offense case, 10 hours on a misdemeanor case, and 23 hours on a felony case (not including murder cases or cases transferred to circuit court). The complexity of juvenile cases is demonstrated by VIDC's Standards of Practice for Juvenile Defense

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In this section, the term "case" refers to a single charge. Although youth may have multiple charges filed against them, most cases involve only one charge. For example, 73 percent of cases in FY20 had one charge.

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Counsel, which outline the obligations of attorneys at various points in a case (Figure 3-1).

**FIGURE 3-1**

**Defense attorneys have numerous responsibilities when representing youth in delinquency cases**



**1. Initial Interview**

- Meet with juvenile and family
- Explain charge, elements of underlying offense, juvenile court process and timelines, and possible dispositions
- Obtain information from juvenile concerning facts of arrest and charge and any other relevant information



**2. Detention Hearing**

- Prior to hearing, be familiar with elements of alleged offense, as well as detention facilities, community placements, and other services available in jurisdiction
- Prepare juvenile for hearing
- During hearing, elicit information with regard to the facts and circumstances of the case
- If probable cause found to detain juvenile, argue for least restrictive placement pending adjudication



**3. Investigation & Discovery**

- Research relevant statutes and case law
- Interview all witnesses
- Determine whether assistance of an expert is needed in preparation of defense
- Examine any available police reports, documents, and statements obtained through discovery or other means



**4. Adjudicatory Hearing**

- Prior to hearing, develop theory of case and be prepared to deliver opening statement and closing argument and to conduct direct and cross-examination of witnesses
- File any pretrial motions
- Prepare juvenile for hearing
- During hearing, ensure state bears its burden of proving allegations beyond a reasonable doubt
- Present juvenile's case, including presentation of evidence and direct examination or redirect of witnesses



**5. Disposition Hearing**

- Prior to hearing, be familiar with and consider available dispositional alternatives and any community services that may be appropriate, sentencing recommendation, and potential collateral consequences
- Prepare juvenile for hearing
- During hearing, present evidence to support proposed disposition plan
- When disposition decision has been reached, explain nature, obligations, and consequences of disposition to juvenile and family



**6. Post-Dispositional Representation**

- Be prepared to represent and inform juvenile with respect to proceedings to review, reopen, or modify adjudicative or dispositional orders

**Court-appointed attorneys may request a waiver of the \$120 maximum fee** “when the effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver.” (§ 19.2-163). Courts approved 730 waivers in FY21, which accounted for approximately 7 percent of juvenile charges.

**The maximum rate of compensation for court-appointed attorneys is higher for cases that are transferred to circuit court.** For example attorneys receive \$1,235 for an offense that would be a felony if committed by an adult that is punishable by more than 20 years.

SOURCE: Virginia Indigent Defense Commission's Standards of Practice for Juvenile Defense Counsel.

Despite the time required to handle these cases, court-appointed attorneys generally receive a maximum of \$120 per case in J&DR court (sidebar). The Virginia Supreme Court has established a rate of \$90 per hour for court-appointed counsel for time spent both in and out of court, including staff time and office overhead. At this current maximum amount and rate of hourly compensation, court-appointed attorneys



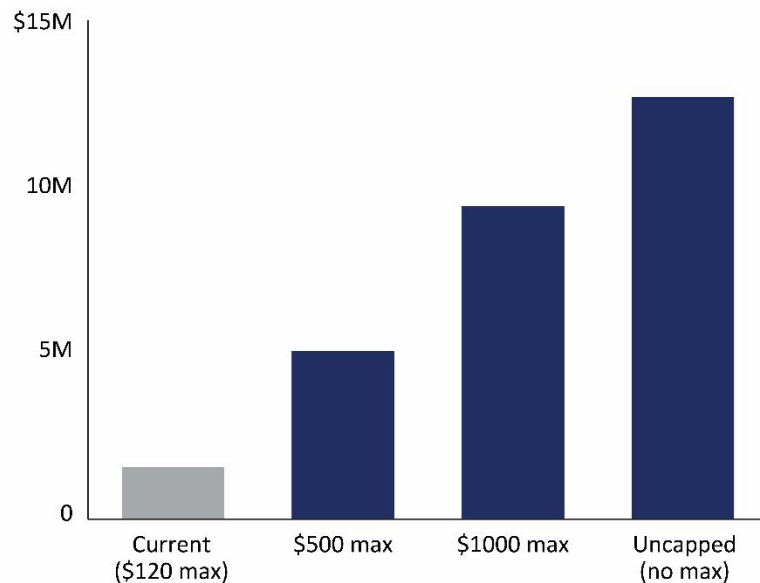
are paid for less than two hours of time per case. However, the amount of work expected for a typical case suggests that this compensation is inadequate.

Virginia's compensation for court-appointed attorneys is also lower than many other states. Twenty-seven states, including Virginia, have a statewide maximum fee for court-appointed counsel in juvenile delinquency cases. Virginia's \$120 maximum is the lowest of all other states, according to a 2019 report from the Mid-Atlantic Juvenile Defender Center and the Georgetown Juvenile Justice Initiative. VIDC's FY21 annual report also indicates that Virginia's \$120 cap on court-appointed compensation is the lowest in the nation. Of the 26 other states that have statewide maximum fees for court-appointed counsel in juvenile court, the median maximum fee amount is \$1,850.

To align Virginia with other states and more closely compensate court-appointed attorneys for the amount of work required, the General Assembly should increase the statutory maximum fee for court-appointed counsel in juvenile delinquency cases. The state has several options to increase compensation (Figure 3-2). Virginia's current costs for court-appointed counsel in juvenile delinquency cases totaled \$1.6 million in FY21. Increasing the maximum fee using one of these options could cost an additional \$3.5 million to \$11.2 million per year, depending on the option chosen.

**FIGURE 3-2**

**Cost examples for increasing court-appointed compensation based on \$500, \$1,000, and uncapped reimbursement**



SOURCE: OES Quarterly Report on Court-Appointed Counsel, July 2021; JLARC staff analysis.

NOTE: Cost estimates calculated based on the number of hours expected for each case type, as determined by the American Bar Association. Cost estimates assume no expansion of juvenile public defenders, which would reduce the demand for court-appointed counsel in delinquency cases.

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**Massachusetts does not set a cap on the maximum fee per case but caps total billable hours at 1,650 per year.**

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When deciding on a maximum fee, the state should consider the amount of time attorneys are required to spend on more serious and complex cases. A \$1,000 cap, for example, would fully compensate an attorney for the 10 hours that are, on average, recommended by the American Bar Association for a misdemeanor case. The same cap, though, would only compensate an attorney for less than half of the 23 hours recommended for a felony case. A cap of more than \$1,000 would better compensate attorneys for the time spent on more complex misdemeanor cases or felony cases. Additional parameters could be set to limit costs incurred by the state, such as an annual cap on billable hours per attorney (sidebar).

### **RECOMMENDATION 1**

The General Assembly may wish to consider amending § 19.2-163 of the Code of Virginia to increase the maximum compensation for court-appointed attorneys in juvenile delinquency cases.

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### **Minimal training requirements for court-appointed attorneys do not reflect the complexity of juvenile cases**

Another factor likely contributing to poor quality representation is insufficient training requirements for court-appointed attorneys. Currently in Virginia, attorneys must complete 12 hours of continuing legal education to qualify for the court-appointed list maintained by VIDC, and only four hours are specific to representing juveniles (sidebar).

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**Court-appointed attorneys must complete statutorily required continuing legal education, both for initial certification and for recertification every two years.**

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VIDC staff, who provide training to court-appointed attorneys in Virginia, indicated that the current number of training hours does not allow enough time to sufficiently cover important topics. For example, training materials indicate less than one hour of time is spent covering both the intake process and detention hearings—which determine whether youth continue to be held in secure detention until their adjudication—and VIDC staff report this is not enough time to adequately cover this material.

Virginia should increase training requirements for certification to better ensure attorneys have the knowledge required to represent youth in delinquency cases. More robust training requirements would also align with the practices of some other states, which require more training to represent youth in complex and serious cases. North Carolina, for example, has a three-tier system that requires attorneys to receive additional training if they wish to represent youth accused of more serious offenses. Virginia could increase training requirements for all court-appointed attorneys representing youth in delinquency cases or develop additional training requirements for attorneys who intend to represent youth in more complex and serious cases.

The General Assembly should direct VIDC to develop a plan outlining enhanced training required for attorneys who can be appointed to represent youth referred to the juvenile justice system. The plan should (1) describe the minimum number of hours of training that should be required and (2) the curriculum to be covered. The VIDC

should also consider whether differentiated requirements should apply depending on whether an attorney plans to take only misdemeanor and status offense cases or plans to accept felony cases. In developing this plan, VIDC should consider national best practices in juvenile attorney representation, as well as training requirements for court-appointed counsel in other states. VIDC staff report that one additional staff position would likely be needed to improve and implement the enhanced training requirements for court-appointed attorneys.

## **RECOMMENDATION 2**

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Indigent Defense Commission (VIDC) to develop a plan to strengthen training requirements for court-appointed counsel in juvenile delinquency cases that also identifies additional staff resources needed to implement the strengthened requirements. VIDC should submit the plan to the House Appropriations and Senate Finance and Appropriations committees no later than November 1, 2022.

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## **RECOMMENDATION 3**

The General Assembly may wish to consider amending § 19.2-163.03 of the Code of Virginia to strengthen training requirements for certification of court-appointed attorneys in juvenile delinquency cases, based on the requirements proposed by the Virginia Indigent Defense Commission.

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### **Additional information about youths’ attorney representation could facilitate consideration of expanding access to public defenders**

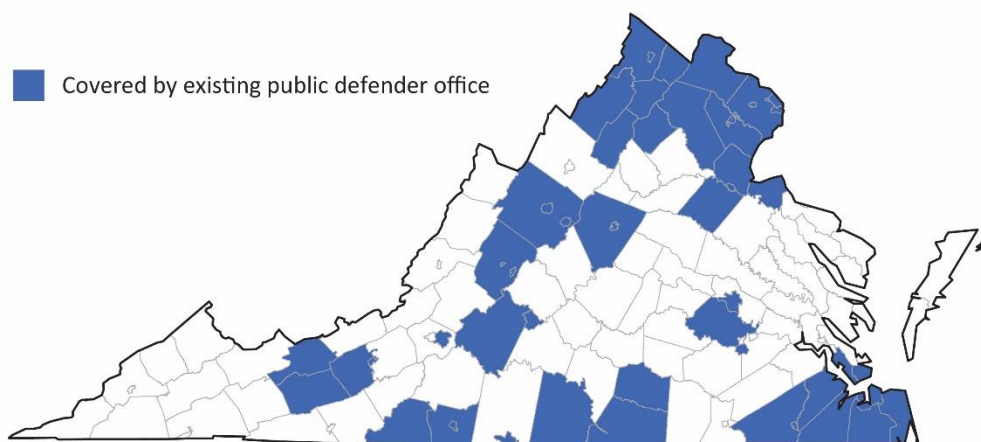
Even if Virginia increases compensation and training requirements for court-appointed attorneys, youth in rural areas may still have limited access to quality representation. The relatively low number of juvenile delinquency cases in these areas may make it less feasible for court-appointed attorneys to acquire the specialized knowledge needed to provide quality representation in these cases. From FY17–19, approximately 31 percent of petitioned (i.e., “charged”) cases (~6,700 cases per year) were in localities not covered by existing public defender offices. Many of the localities that are not currently covered by existing public defender offices—and therefore rely more heavily on court-appointed attorneys—are in rural areas of the state (Figure 3-3).

A more direct way to improve the quality of juvenile representation in rural areas would be to increase the number of public defenders in the state. This would, though, be a more substantial change to Virginia’s approach to providing representation for juveniles. As part of its 2002 assessment of the quality of representation in juvenile delinquency proceedings, the American Bar Association recommended that Virginia create a statewide juvenile public defender system, “staffed by full-time public defenders with specialized training and expertise to provide comprehensive representation to children.” Expanding access to juvenile public defenders could allow Virginia to ensure

more consistent access to representation across the state, as well as better monitor the quality of representation that youth receive. However, even if the state chooses to expand access to public defenders, it should still increase compensation and training for court-appointed attorneys because court-appointed representation will still be needed in certain cases (such as those with multiple codefendants).

**FIGURE 3-3**

**Many localities not currently covered by existing public defender offices are in rural areas of the state**



SOURCE: Code of Virginia.

Adding more public defenders to cover rural areas would also align Virginia with how attorney representation is provided to youth in other nearby states. Several nearby states provide legal representation to all juveniles through public defender systems, including Kentucky, Pennsylvania, Tennessee, South Carolina, and West Virginia. Although these public defender systems are not juvenile-specific, some states also have legal services that are specific to juveniles, allowing attorneys to specialize in this area. For example, Kentucky has a specific juvenile branch in its post-trial division, which specializes in providing representation to youth in appeals and resentencing hearings, as well as assistance in securing any services youth may need after being released from confinement.

To adequately consider the feasibility of expanding access to public defenders, Virginia could start by collecting some additional information about attorney representation for juveniles. Although stakeholders have indicated that public defenders typically provide better representation to youth than their court-appointed counterparts, VIDC is not required to monitor or assess the quality of public defenders. VIDC could assess the extent to which attorneys are adhering to its Standards of Practice for Juvenile Defense Counsel, as well as other national defense standards as appropriate, such as

the American Bar Association's Criminal Justice Standards for Defense. Better understanding the quality of public defender representation would help to validate stakeholder opinions of the quality of juvenile defenders.

### **POLICY OPTION 1**

The General Assembly could amend § 19.2-163.01 of the Code of Virginia to require the Virginia Indigent Defense Commission to evaluate the legal services provided to juveniles by public defenders on a biennial basis, to ensure youth are receiving quality representation. Along with conducting the evaluation, VIDC could be required to develop and implement a plan to address any identified gaps in the quality of legal representation provided by juvenile public defenders.

The General Assembly could also require that additional data be collected to better understand the proportion of total youth represented by public defenders. This is not currently possible because attorney representation information is not consistently recorded in the case management systems maintained by OES (sidebar). Although OES reports that court clerks are required to enter attorney type into their case management system upon conclusion of a case, over 95,000 records that JLARC received from OES for this study did not include attorney representation information. OES could be directed to ensure that court clerks are consistently entering this information into their case management systems, as required. Complete and reliable data on the proportion of representation by court-appointed attorneys or public defenders would allow more precise consideration of the magnitude and proportion of all juveniles represented by each type of attorney.

### **POLICY OPTION 2**

The General Assembly could include language in the Appropriation Act directing the Office of the Executive Secretary of the Virginia Supreme Court (OES) to ensure juvenile and domestic relations and circuit court clerks consistently record attorney type for juvenile delinquency cases in their case management systems. OES could be required to report this information annually to the Virginia Indigent Defense Commission.

To fully consider the feasibility of expanding juvenile public defenders in areas of the state not served by existing public defender offices, Virginia would need to better understand how many public defenders may be needed. Using several assumptions, 30 to 40 new public defenders could be needed statewide (sidebar). Based on this range of additional public defenders, this expansion could cost \$4 million to \$5 million annually (excluding support staff) (sidebar). However, the exact number of attorneys needed would depend on the number and location of juvenile public defender offices established, determined based on the caseloads in each region. Additional staff positions would also likely be needed in each office, including investigators, administrative staff, and social workers (sidebar).

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**Alexandria and Fairfax circuit courts do not use the case management system maintained by OES**, and would therefore need to record attorney representation information in their own case management systems and make this data available to OES.

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**Applying caseload standards to estimated number of cases yields 30 to 40 new public defenders.** In localities not covered by existing public defender offices, there have recently been about 6,500 total cases per year. The American Bar Association indicates attorneys should take on no more than 200 juvenile delinquency cases per year.

**Costs to expand access to juvenile public defenders** would be partially offset by funds currently spent on court-appointed counsel, although court-appointed counsel would still be needed in some cases.

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**In setting up a juvenile public defender system in Virginia**, the 2002 American Bar Association report recommended that "each office should provide access to support staff, investigators, social workers and other necessary resources."

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VIDC could be tasked with developing a plan for a state-operated, regional juvenile public defender system. The plan would need to address the (1) adequacy of current public defender staffing for juvenile cases, (2) number and location of new regional public defender offices, including whether existing public defender offices could be leveraged to accommodate additional juvenile public defenders; (3) number of new attorneys needed in each office to ensure caseloads are manageable to provide quality representation; (4) additional support staff needed for each office; and (5) estimated one-time and ongoing funding necessary. VIDC could be directed to oversee this new system, as well as assist with planning and implementation. VIDC staff report that additional staff would likely be needed to develop a plan to expand access to juvenile public defenders and evaluate the quality of legal services provided.

### POLICY OPTION 3

The General Assembly could include language in the Appropriation Act directing the Virginia Indigent Defense Commission to develop a plan to establish a state-operated system of regional juvenile public defender offices, including the additional staffing and resources that would be required, and to submit this plan to the House Appropriations and Senate Finance and Appropriations committees.

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## Small proportion of youth experience long waits in detention centers before guilt has been determined

When youth are alleged to have committed offenses, they may be held in detention prior to adjudication. The specific conditions are enumerated in statute, but youth generally may be held in secure detention before adjudication only if they present a risk to themselves or public safety. The initial decision to hold youth in detention is made by the intake officer at the local court service unit. If the intake officer determines the youth should be detained, a judge will then hold a formal detention hearing within 72 hours of detainment to determine whether the youth should continue to be detained until the adjudicatory hearing.

Youth whose cases are adjudicated in J&DR court generally do not appear to spend a long time in detention before their adjudicatory hearing. From 2012–2021, youth spent a median of 18 days in detention awaiting an adjudicatory hearing in J&DR court. These wait times are in line with the Code of Virginia, which specifies youth held continuously in secure detention must have an adjudicatory hearing within 21 days of the date they were first detained.

However, some youth whose cases are transferred to circuit court spend a long time in detention centers awaiting their adjudicatory hearing (sidebar). For example, on May 1, 2021, 15 youth had spent at least 150 days in juvenile detention centers awaiting trial in circuit court (Figure 3-4) (sidebar). Youth who spend a long time in detention awaiting their adjudicatory hearings are generally those charged with more serious felony

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**Cases may generally only be transferred to circuit court if (1) the juvenile is at least 14 years of age and (2) is alleged to have committed an offense that would be a felony if committed by an adult.**

**Because wait times were measured at the time the data was pulled, the number of days youth spend in detention prior to their adjudication in circuit court may be understated to some extent.**

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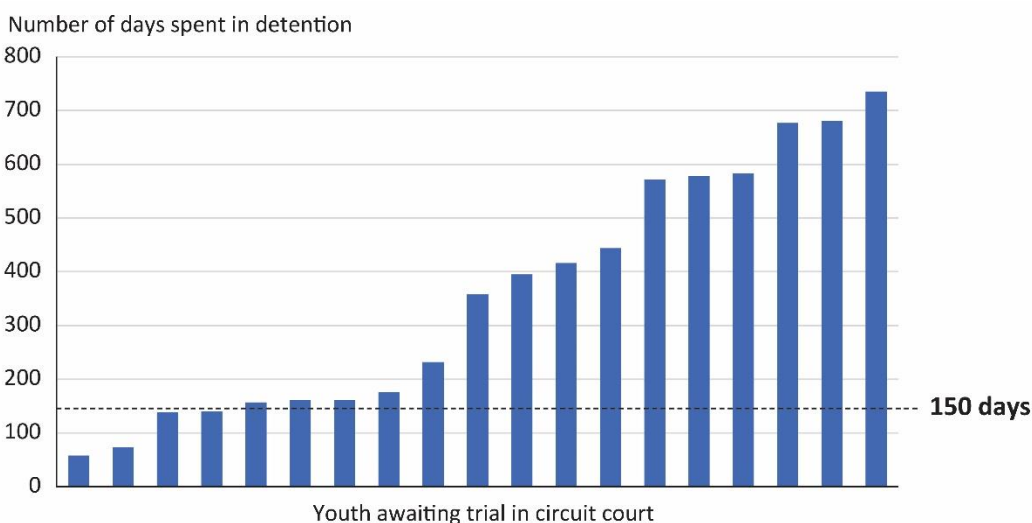
offenses, including murder, robbery, and assault. Long wait times appear to be a problem primarily in the Eastern region, as the jurisdictions with the longest wait times include Norfolk, Newport News, Chesapeake, Virginia Beach, and Richmond.

This problem also disproportionately affects Black youth. Of the 15 youth who were awaiting trial in circuit court for more than 150 days as of May 1, 2021, 14 were Black. (For additional discussion of disproportionate representation of Black youth within the juvenile justice system, see Chapter 4.)

Long waits in detention centers pending circuit court adjudication are not a result of the COVID-19 pandemic, as similar patterns in delays have persisted for at least the past 10 years. From 2012–2021, an average of 18 youth per year waited in detention at least 150 days pending their adjudication in circuit court.

**FIGURE 3-4**

**As of May 1, 2021, 15 youth had spent at least 150 days in detention awaiting circuit court trial**



SOURCE: DJJ juvenile detention center snapshot data, May 1, 2021.

Although this problem affects only a small number of youth at any given time, this situation presents several concerns. Most importantly, these youth are spending a long time in detention *before* they are found guilty of any offenses. Additionally, any time spent in detention pre-adjudication generally cannot be counted towards the youth's final sentence in juvenile correctional or juvenile detention centers. This differs from how adult cases are handled, in which time spent in jail awaiting trial is typically counted toward any time that must be served as part of a final sentence. Currently in Virginia, youth can only have time spent in a juvenile detention center deducted from their final sentence if they are sentenced to an adult correctional facility upon conviction. Youth also generally do not receive any rehabilitative programming when they are detained while awaiting their circuit court hearing.

Delays appear to be a result of busy circuit court dockets, in addition to a lack of a statutorily specified timeframe for adjudicating juvenile cases that are transferred to circuit court. During interviews, attorneys indicated that jurisdictions with busier circuit court dockets and/or fewer circuit court judges may be more likely to experience long wait times. Additionally, while state law requires a hearing to be held within 21 days to decide whether to transfer the case to circuit court, once the case is transferred, there are no timelines specified in which the case must be adjudicated.

Because relatively few youth wait these lengths of time, Virginia should prioritize these cases on circuit court dockets by requiring these cases to be adjudicated within a certain timeframe. State law already prioritizes youths' appeals of circuit court transfer decisions and appeals for cases in which the juvenile is found to be delinquent. In both of these instances, the circuit court must hold a hearing within 45 days. Juveniles must be released from confinement if they are continuously held in secure detention and a hearing has not been held on the merits of the case within this timeframe. However, the court may extend the time for good cause.

The exact number of days in which these cases should be adjudicated is ultimately a policy decision, but the state could use the existing 45-day timeframe for appeals as a benchmark for adjudicating delinquency cases in circuit court. However, time limitations should be allowed to be extended for good cause or when a jury trial is requested. According to OES, jury trials cannot be scheduled as quickly by circuit courts, which could make it difficult to meet any statutorily specified timeframes in these cases.

#### **RECOMMENDATION 4**

The General Assembly may wish to consider amending § 16.1-269.6 of the Code of Virginia to specify a timeframe, such as 45 calendar days, in which juvenile delinquency cases must be adjudicated in circuit court, provided that the time limitation may be extended for good cause or when a jury trial is requested.

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For youth whose cases are transferred to circuit court, Virginia should also amend the Code to allow any time spent in secure confinement prior to adjudication to be subtracted from the youth's final sentence. In making the decision to transfer a case to circuit court, the judge has determined that the youth should be tried as an adult. Allowing these youth to receive credit for time spent in detention while awaiting trial would be consistent with how adults in similar circumstances are treated.

#### **RECOMMENDATION 5**

The General Assembly may wish to consider amending the Code of Virginia to allow juveniles who are not sentenced to an adult correctional facility to receive credit for time spent in juvenile detention while awaiting trial in circuit court.

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Several surrounding states explicitly require youth to receive credit for time spent in detention while awaiting their adjudication (sidebar). Doing so in Virginia would be a

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**Georgia, South Carolina, and West Virginia require youth who are adjudicated delinquent to receive credit for time spent in detention prior to their adjudication.**

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substantial policy change, but Virginia could expressly require judges to consider the amount of time a youth has already spent in detention when making their disposition decisions. Because there is currently no expectation that youth receive credit for time spent in detention prior to adjudication, the system may be overly punitive in some cases by requiring youth to spend a longer time in secure confinement than necessary for accountability and rehabilitative purposes.

#### **POLICY OPTION 4**

The General Assembly could amend § 16.1-278.8 of the Code of Virginia to require juvenile and domestic relations district court judges to consider any time youth have spent in detention prior to their adjudication when making disposition decisions.

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# 4 Racial and Regional Disparities in Juvenile Justice

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The study resolution directed JLARC to determine whether there are racial or regional disparities in the treatment of youth within the juvenile justice system. In general, youth who commit similar offenses should be treated similarly within the juvenile justice system. In establishing the purpose and intent of the juvenile justice system, the Code of Virginia requires the fair and appropriate treatment of youth. Some variation will be inevitable because of differences across the state in available services or less access to detention alternatives, such as home electronic monitoring or shelter care. However, general consistency in the treatment of youth who commit similar offenses should be expected, regardless of race or where they are in the state.

Any potential disparities in the treatment of youth could occur at several key decision points. (Figure 4-1). Disparities could potentially first occur at the point at which youth are referred to a court service unit (CSU) by law enforcement, schools, or other community members. After reviewing the allegations (“complaints”) against the youth, the intake officer generally has the discretion to divert the case or file charges (“petition”), and to determine whether the youth should be detained prior to the youth’s hearing (sidebar).

After a case has been petitioned, a judge determines whether youth should continue to be held in secure detention until their adjudication, and, if applicable, whether the case should be transferred to circuit court for the youth to be tried as an adult. The judge then makes a determination as to whether the youth is guilty of the alleged offense. If the youth is found guilty, or “adjudicated delinquent,” the judge determines the youth’s sentence, including whether the youth should be committed to custody of the Department of Juvenile Justice (DJJ) (sidebar).

This chapter analyzes available data to better understand whether disparities within the juvenile justice system exist between Black and white youth and across each region of the state. Reaching definitive conclusions, though, about the actual extent of disparity and the full reasons why any disparities occur is not possible. However, several analytical techniques can be used to highlight when in the process disparities are more likely occurring by race and by region. The analyses presented in this chapter use these techniques, but these analyses are shown with the understanding that many factors in addition to race and region of the state may explain apparent disparities, such as differences in:

- law enforcement presence and practices;
- history of parental incarceration;
- family incomes and structures; and

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**Racial disparities in juvenile justice is a longstanding problem in Virginia and nationally.**

The pervasiveness of the disparities has prompted the federal government to incentivize states to reduce disparities as a condition to receive funding through the Juvenile Justice and Delinquency Prevention Act. Thus far though, these efforts have been largely unsuccessful in meaningfully reducing disparities.

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**Alleged offenses in the juvenile justice system are referred to as juvenile complaints.** Youth may have more than one complaint per case.

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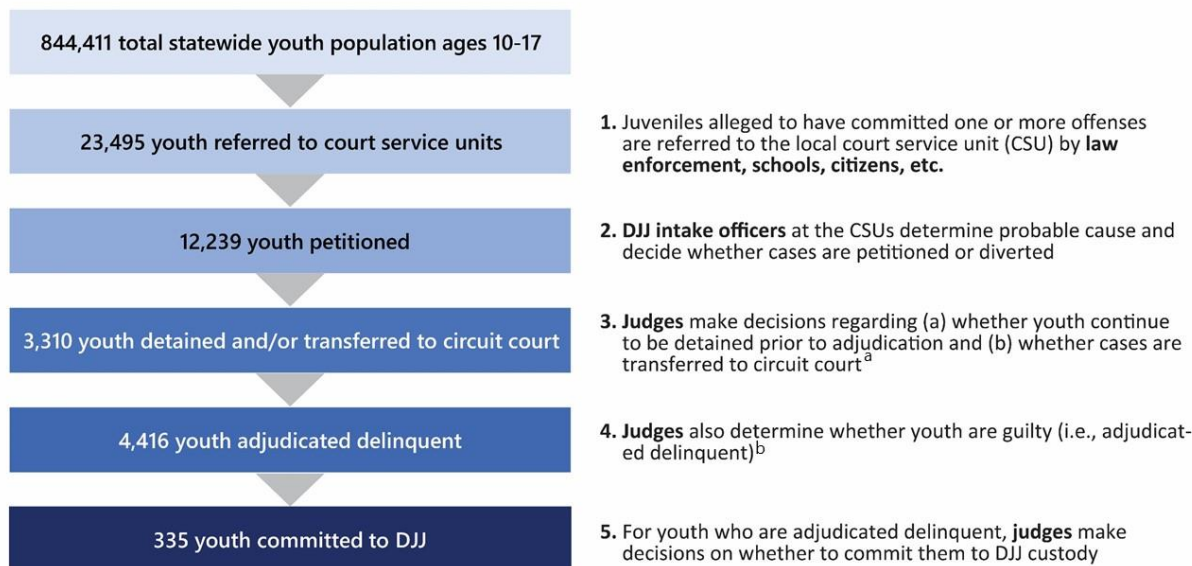
**Some youth whose cases are transferred to circuit court may be tried by a jury.** However, sentencing decisions are made by a judge, pursuant to § 16.1-272 of the Code of Virginia.

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- availability of alternatives to detention in a secure facility.

**FIGURE 4-1**

**Variation in the treatment of youth within the juvenile justice system could potentially occur at several key decision points**



SOURCE: DJJ intake complaint data, FY19. JLARC staff interviews with DJJ staff and review of DJJ documents.

NOTE: <sup>a</sup> Different statutory criteria are used to determine whether youth should be detained prior to adjudication (§ 16.1-248.1) or whether they should be transferred to circuit court (§ 16.1-269.1). Youth whose cases are transferred to circuit court represent a small proportion of youth involved in the juvenile justice system (~1 percent of petitioned cases in FY19). <sup>b</sup> Some youth whose cases are transferred to circuit court may be tried by a jury rather than a judge.

**Throughout this analysis, complaints are used rather than cases to control for offense severity.** Disparities are not attributable to differences in number of complaints, as white and Black youth have a comparable number of complaints per case. From FY11–20, both white and Black youth had a median of one complaint per case. There were 36,123 white youth and 39,340 Black youth with more than one complaint per case during this time period.

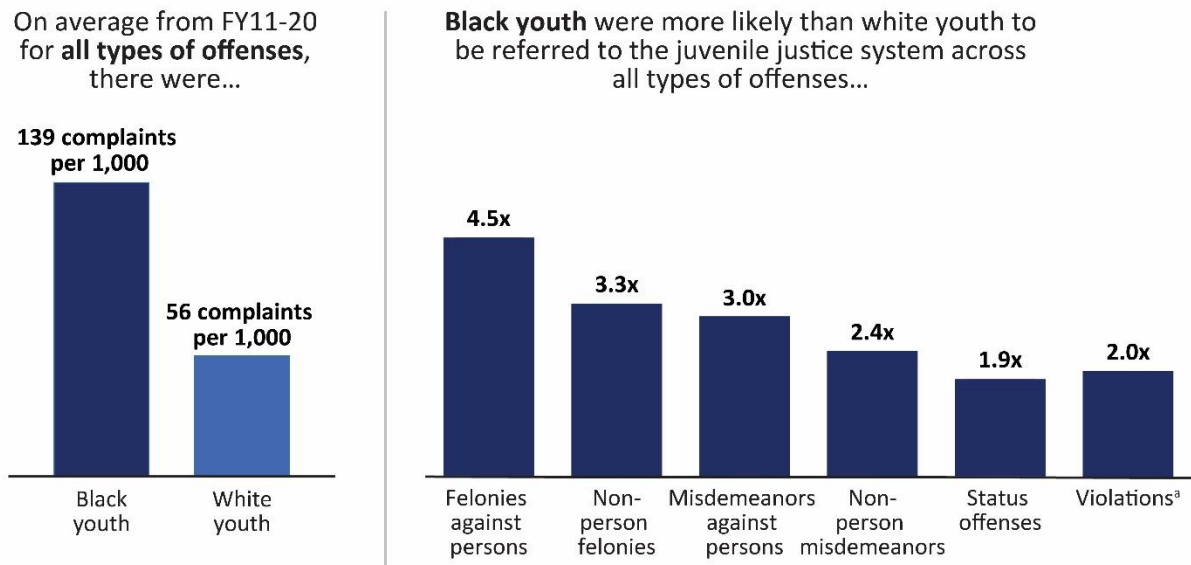
Highlighting the points in the process at which disparities are more likely occurring by race or region is necessary to develop targeted solutions to mitigate disparities in the future. Because disparities can occur at various stages, involve different decision-makers, and have different causes, pinpointing areas of the system that are the greatest contributors to disparities can be helpful in developing and targeting solutions to minimize disparities in the future.

## **Black youth are more likely than white youth to be referred to Virginia’s juvenile justice system**

From FY11–20, Black youth were about 2.5 times more likely than white youth to be referred to the juvenile justice system. During this time period, Black youth were referred at a rate of, on average, 139 complaints per 1,000 Black youth. White youth were referred at a much lower rate relative to the population, at an average rate of 56 complaints per 1,000 white youth (sidebar). This higher likelihood of Black youth being referred holds true for all types of offenses (e.g., felonies, misdemeanors, status offenses, etc.) (Figure 4-2).

**FIGURE 4-2**

**Black youth are far more likely than white youth to be referred to the system across all types of offenses**



SOURCE: DJJ intake complaint data, FY11–20.

NOTE: Referrals shown are per 1,000 youth, by race. Differences in referrals by offense type were calculated by dividing the Black referral rate per 1,000 by the white referral rate per 1,000 for each type of offense. <sup>a</sup> Violations include probation/parole violations, court order violations, and other violations.

The majority of complaints are referred by law enforcement, and complaints by law enforcement are more likely to be about Black youth than white youth. Of all complaints referred to the juvenile justice system from FY11–20, 64 percent were referred by law enforcement, 11 percent were referred by schools, and 10 percent were by the public. From FY11–20 for all types of offenses, Black youth were an average of 2.6 times more likely than white youth to be referred to the juvenile justice system by law enforcement and 1.7 times more likely to be referred from schools (Figure 4-3). National data indicates Virginia's juvenile arrest rates are higher than about half of other states (sidebar).

Black youth have been more likely to be referred to the juvenile justice system in all of the state's CSU districts, but the likelihood varied by CSU (Figure 4-4). For example, in Alexandria, Black youth were 1.3 times more likely to be referred to the CSU, whereas in Richmond they were 4.7 times more likely (sidebar). Additional information on the rate of disproportionality in referrals by CSU can be found in Appendix D.

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**Juvenile arrest data from the Federal Bureau of Investigation** indicates that Virginia's juvenile arrest rate was 8.6 per 1,000 youth in FY19.

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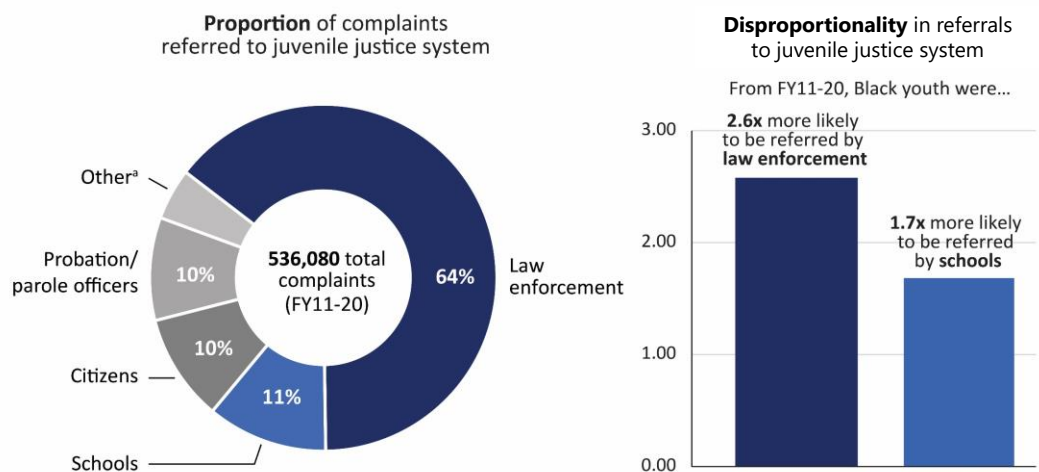
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**The rate of disproportionality** was calculated by dividing the CSU referral rate of Black youth per 1,000 by the CSU referral rate of white youth per 1,000. Additional details in Appendix D.

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**FIGURE 4-3**

**Most youth referred to juvenile justice system by law enforcement or schools, with law enforcement as greatest contributor to disproportionality**

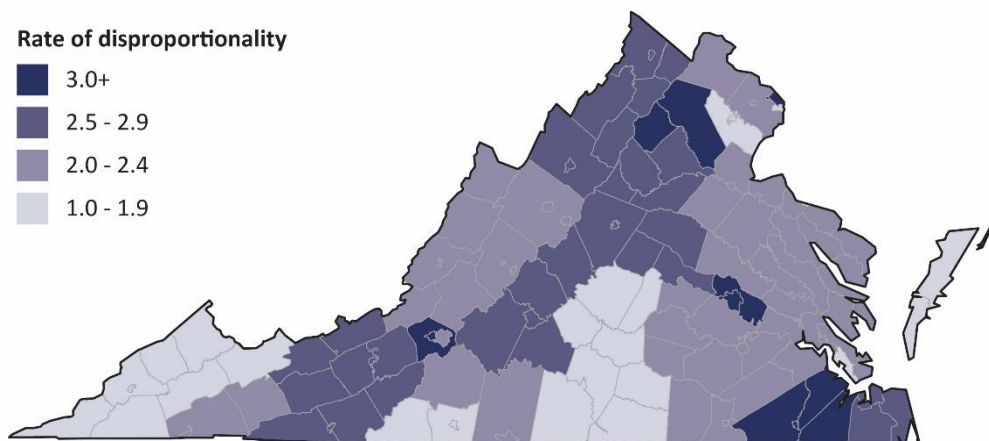


SOURCE: JLARC staff analysis of DJJ intake complaint data, FY11-20.

NOTE: <sup>a</sup> Other category includes juvenile detention centers, group homes, courts, commonwealth's attorneys, and social services agencies.

**FIGURE 4-4**

**Rate of disproportionality in referrals of Black youth to court service units varied**



SOURCE: DJJ intake complaint data, FY11-20.

NOTE: The rate of disproportionality was calculated by dividing the CSU referral rate of Black youth per 1,000 by the CSU referral rate of white youth per 1,000. Additional details in Appendix D.

The reasons for disproportionate law enforcement referrals of Black youth to the juvenile justice system are complex and beyond the scope of this study of the juvenile justice system. However, one potential contributing factor may be that law enforcement historically has not received training that sufficiently covers several topics that

may relate to disproportionate enforcement: cultural competency, implicit bias, and different protective responses Black youth may have than white youth when interacting with law enforcement.

Recent changes in law enforcement training standards will help address some of the topics that may relate to disproportionate enforcement, including cultural competency and implicit bias. Cultural competency training teaches behaviors, attitudes, and policies that enable individuals to effectively interact with people across different groups or cultures. Implicit bias training makes participants more aware of actions that are unconsciously and unintentionally biased toward others. Law enforcement training standards—developed by the Department of Criminal Justice Services (DCJS)—have previously covered cultural diversity and the potential for biased policing to some extent, however the General Assembly passed legislation during the 2020 Special Session to expand these training requirements. The legislation requires DCJS to establish compulsory training standards for law enforcement officers on systemic and individual racism and cultural diversity, including recognizing implicit biases in interacting with persons who have a mental illness, substance use disorder, or a developmental or cognitive disability.

Although the adoption of these new training standards is an important step to improve law enforcement training, none of the new standards specifically relate to youth. The systemic and individual racism and cultural diversity standards apply to adults, rather than specifically to youth. In addition, the standards do not expressly require training to educate officers about research on the different protective responses Black youth may have compared with white youth. Research from the National Academies of Sciences, Engineering, and Medicine indicates that part of adolescent brain development involves internalizing legal rules and norms and that negative contacts and interactions with law enforcement may produce cynicism and undermine “legal socialization.” As a result, youth may employ several protective responses to reduce or manage their interactions with law enforcement, such as systematic evasion, overt resistance with verbal or physical challenges, or disregard for police commands. This research suggests that Black youth in particular, who tend to experience more interactions with law enforcement, may be more likely to adopt these protective responses than other groups.

At least three other states (Nevada, New Jersey, and Utah) have passed legislation in recent years that requires law enforcement officers to receive implicit bias and cultural competency training specific to working with youth, covering aspects such as sensitivity to the needs of children, historical inequities in the juvenile justice system, and the impact of trauma and adverse child experiences on the decision making and behaviors of children.

It is unclear how much, if at all, the lack of training on the above topics may be contributing to the disproportionate referrals by law enforcement. However, to mitigate any potential disproportionality, it appears reasonable to modify recent legislative changes to ensure law enforcement officers are equipped to effectively interact with youth—especially Black youth—in their communities. To do so, the General Assembly

“Implicit bias... is influenced by attitudes and stereotypes that we all hold based on our experiences. Implicit bias influences how we act in a subconscious way, even if we renounce prejudices or stereotypes in our daily lives.”

– American Bar Association (2017)

should require law enforcement training on implicit bias and cultural competency to expressly cover working with juveniles, and how to interact with Black youth given their protective responses.

### RECOMMENDATION 6

The General Assembly may wish to consider amending § 9.1-102 of the Code of Virginia to require the Department of Criminal Justice Services to amend its training standards for law enforcement to address implicit bias, cultural diversity, and protective responses specifically when interacting with juveniles.

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#### A 2017 study by Virginia Tech

found that the measure used by the federal government to identify law enforcement referrals from schools across states is not sufficiently precise to understand what proportion of youth are ultimately referred to the juvenile justice system. However, the study did conclude that Black youth are disproportionately referred to Virginia's juvenile justice system from schools.

The referral rate was calculated as the number of students referred to law enforcement in proportion to the total student enrollment count.

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#### The General Assembly also passed legislation in 2020

that requires school resource officers and school security officers to receive training on awareness of cultural diversity and implicit bias.

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#### The federal grant from OJJDP

also includes funding for restorative justice training for DJJ staff and community-based providers.

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Schools make up a much smaller proportion of referrals statewide, but Virginia schools appear to refer a larger proportion of youth to law enforcement than other states. Virginia schools refer a higher proportion of youth to law enforcement than surrounding states, according to available federal data (sidebar). In 2017, Virginia schools referred 1.4 percent of all students to law enforcement, in comparison to 0.5 percent in Kentucky and Maryland, 0.4 percent in North Carolina and South Carolina, and 0.2 percent in West Virginia (sidebar). When looking at disproportionality in the referral rates by race, however, Virginia's rate of disproportionality is similar to that of other states.

Recent legislative changes may decrease the number of referrals from schools but not necessarily the higher rates at which Black youth are referred by schools. The General Assembly passed two laws in 2020 aimed at reducing juvenile justice system referrals from schools (sidebar). One prevents students from being charged with disorderly conduct during school, on buses, or at school-sponsored events, but this could consequently increase referrals for other types of offenses, such as assault. The other law removes the requirement that school principals report certain student offenses that constitute a misdemeanor to law enforcement. However, schools still have discretion to report these acts to law enforcement, which may affect disproportionality in who is referred to the juvenile justice system.

DJJ has recently received a federal grant that may help to reduce disproportionality in referrals to the juvenile justice system. In November 2021, DJJ was awarded a \$1 million grant from the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) to conduct a three-year project focusing on improving equity and outcomes of referrals to Virginia's juvenile justice system. Focusing on both referrals from law enforcement and schools, the project will include data collection from law enforcement and analyses of youths' initial interactions with the system to identify opportunities to (1) expand options for youths' participation in diversion programming; (2) reduce and eliminate entry of low-risk youth into the juvenile justice system; and (3) reduce racial disproportionality throughout Virginia's juvenile justice system and improve outcomes for all youth (sidebar).



After DJJ has completed this project, it should develop a report outlining its findings and make this report available on its website. In addition to the work conducted pursuant to the grant project, DJJ should also include in its report any changes in the number and disproportionality of school referrals as a result of recent legislative changes. Based on its findings, the report should identify any changes that could be made, including statutory changes, to further mitigate racial disproportionality in juvenile justice system referrals.

#### RECOMMENDATION 7

The Department of Juvenile Justice (DJJ) should develop a report detailing (i) its findings from the work conducted pursuant to its grant award from the federal Office of Juvenile Justice and Delinquency Prevention and (ii) changes in the number and disproportionality of school referrals to the juvenile justice system following the implementation of SB 3 and SB 729 (2020). Based on its findings, the report should identify any changes that could be made, including statutory changes, to further mitigate racial disproportionality in juvenile justice system referrals. DJJ should ensure this report is made available on its website no later than December 1, 2024.

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## Black youth are somewhat more likely than white youth to move forward once in the system

Within the juvenile justice system, differences in treatment of Black and white youth are far less pronounced than in the referral process. Differences in outcomes between Black and white youth are substantially smaller at various decision points in the juvenile justice system process but do exist. Black youth are still more likely than white youth to move forward in the process at all key decision points, though to varying degrees. For example, Black and white youth are about equally likely to be petitioned (charged), but Black youth are more likely to be adjudicated delinquent than white youth.

Figure 4-5 illustrates the differences in treatment of Black and white youth within the juvenile justice system for non-person felonies (sidebar), although similar trends persist for other types of offenses. Additional information on disparities within the juvenile justice system for felonies against persons, misdemeanors against persons, and non-person misdemeanors can be found in Appendix D.

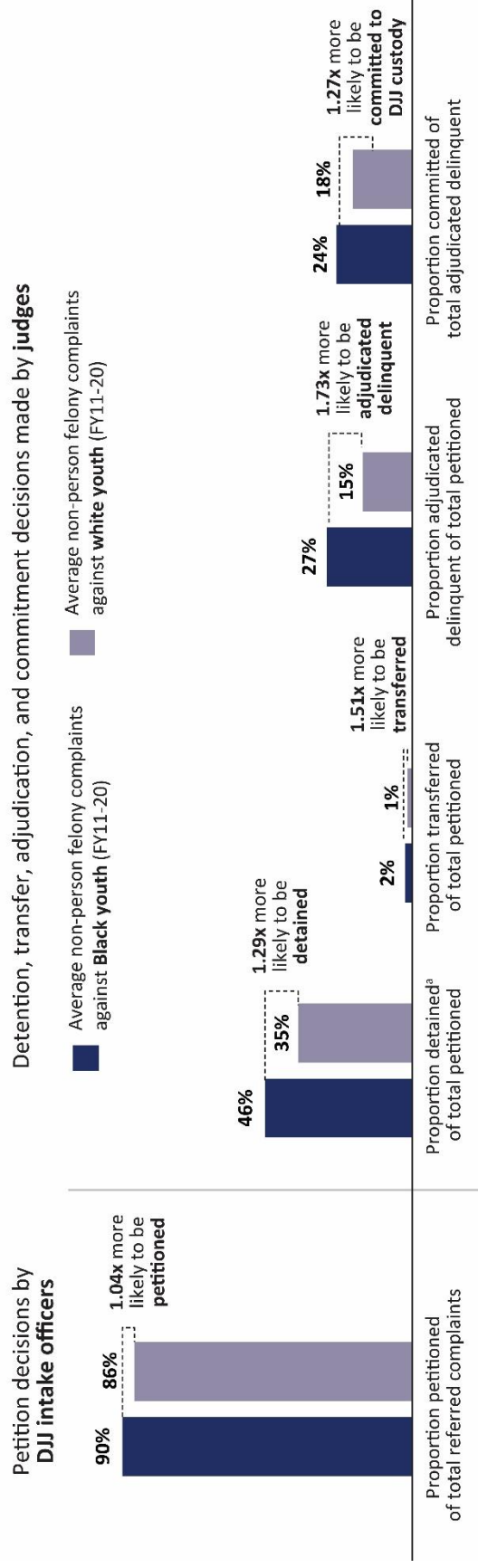
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**Non-person felonies** are serious offenses, but do not involve the use of force and do not result in physical injury to another individual. The most common non-person felony offense committed by juveniles is larceny, or stealing something valued at more than \$200.

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FIGURE 4-5

Within the juvenile justice system, Black youth are somewhat more likely to move forward at each key decision point



SOURCE: DJJ intake complaint data for non-person felony offenses, FY11-20.

NOTE: Analysis assumes similar likelihood of committing a non-person felony offense for Black and white youth, based on National Academies 2013 report concluding that Black and white youth commit crimes at similar rates, with the exception of serious felonies against persons. The underlying research for the National Academies report is more than 15 years old, and societal and criminal justice factors may have changed since the research was completed. However, it is unlikely that societal and criminal justice factors have changed such that the effects shown in the 2013 National Academies report are invalid as of 2021. Not all of the difference shown here can be attributed to race alone. While some amount of difference can be attributable to race, the exact amount cannot be determined. However, at each of the decision points shown above, there is a statistically significant relationship between race and the likelihood to move forward at each step of the process.

<sup>a</sup> Initial detention decision is made by DJJ intake officer at the court service unit, but this decision is then reassessed by a judge within 72 hours of the initial detainment to determine whether youth should continue to be held in secure detention until the youth's adjudicatory hearing.

## Black and white youth are equally likely to be petitioned by DJJ CSUs

There are not substantial disparities in the decisions whether to petition youth for adjudication based on their race. This trend is consistent statewide across all types of offenses. Some minor disparities exist regionally or locally, but they are still small.

Although disparities in decisions made by intake officers are not a substantial concern statewide, DJJ currently does not require specific statewide training on implicit bias or probable cause determinations (sidebar). The lack of uniform and required training on these topics increases the risk that there is unnecessary inconsistency across CSUs. CSUs may have some policies that govern which cases are eligible for diversion, but intake officers generally have wide latitude in determining probable cause and deciding whether to petition or divert a youth. This latitude creates a risk that implicit bias may influence decisions about whether to divert a youth or determine that there is not probable cause. In a JLARC staff survey, most CSU staff with intake responsibilities reported receiving adequate training, though some noted the need for additional training on making probable cause determinations (18 percent) and implicit bias (24 percent). To mitigate the risk of disparities in petition decisions, DJJ could consider monitoring intake decision making and providing additional training for all CSU staff with intake responsibilities as needed.

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**JLARC staff did not assess individual probable cause determinations made by DJJ intake officers as part of this study.**

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“ One area that I’d like to see improvement is the probable cause issue and how to determine probable cause...Not a lot of information about hearing a statement from a police officer and whether that constitutes probable cause. Would be nice to get more training on nuts and bolts of the law. ”

– DJJ intake officer

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## Black youth are somewhat more likely to be detained, transferred, adjudicated delinquent, or committed

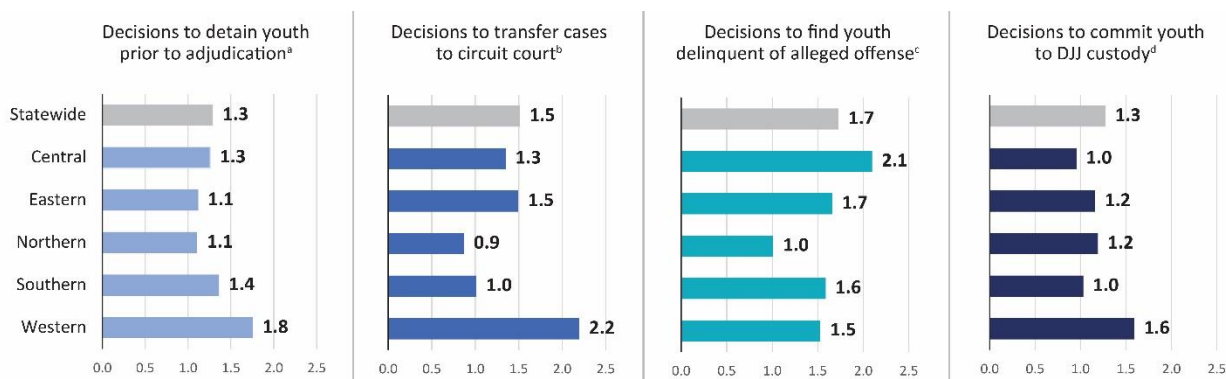
Black youth are somewhat more likely than white youth to be detained, transferred to circuit court, adjudicated delinquent, or committed to DJJ custody. However, the existence or extent of disparities at these decision points varies across the state (Figure 4-6). For example, for non-person felony offenses, Black youth were actually slightly *less* likely than white youth to be transferred to circuit court in the Northern region. Further, Black youth in the Central and Southern regions were equally likely as white youth to be committed to DJJ.

Black youth have been more likely to be detained, transferred, and ultimately committed to DJJ for non-person felony offenses in the Western region than any other region of the state. In the Western region, Black youth were 1.8 times more likely to be detained before adjudication and 1.6 times more likely to be committed to DJJ.

Black youth were more likely than white youth to be adjudicated delinquent in the Central and Eastern regions than in the other regions for non-person felony offenses. In the Central region, Black youth were 2.1 times more likely to be adjudicated delinquent and in the Eastern region 1.7 times more likely.

**FIGURE 4-6**

**Black youth are more likely than white youth to move forward within the system for non-person felony offenses, but differences vary across regions, FY11–20**



SOURCE: DJJ intake complaint data for non-person felony offenses, FY11–20.

NOTE: Racial disparities across regions determined by dividing the proportion of Black youth moving forward at each decision point by the proportion of white youth moving forward at each decision point. For example, a rate of 1.5 indicates that Black youth are 50 percent more likely than white youth to move forward at that decision point. <sup>a</sup> Rate of detention based on total number of petitioned complaints.

<sup>b</sup> Rate of transfer based on total number of petitioned complaints. <sup>c</sup> Rate of delinquent adjudications based on total number of petitioned complaints. <sup>d</sup> Rate of commitment based on total number of complaints adjudicated delinquent.

**Adjudication decisions may be made by a jury** for some youth whose cases are transferred to circuit court. However, sentencing decisions are made by a judge.

**Data from the U.S. Census American Community Survey** indicates that, on average, Black Virginians have lower incomes than white Virginians. In 2019, the average annual income for Black Virginians was \$28,000, in comparison to \$45,000 for white Virginians.

Although these decisions within the juvenile justice system are ultimately made by judges (sidebar), they can be influenced by several factors—one of which may be the quality of legal representation youth receive. As discussed in Chapter 3, some youth in Virginia are not receiving quality attorney representation, particularly those represented by court-appointed attorneys. Because Black youth are more likely to come from low income families (sidebar), they are therefore more likely to be represented by court-appointed attorneys. Although there is currently no comprehensive data in Virginia on the type of attorney representation youth receive, limited available data suggests that Black youth are more likely than white youth to be represented by court-appointed counsel and less likely to retain their own attorney.

Poor quality attorney representation can negatively affect youth outcomes at each of these key decision points within the juvenile justice system—but especially those involving a judge. If youth have poor quality representation, they may be more likely to be detained prior to their adjudication or transferred to circuit court if the attorney is not sufficiently advocating for their client's best interests. If the attorney is unprepared to present the facts of the case, youth may be more likely to be adjudicated delinquent. Finally, if the attorney is not adequately aware of alternative disposition options within the community to present them at the disposition hearing, youth may be more likely to be committed to DJJ custody. Improving the quality of representation youth receive could help to mitigate any disparities occurring within the juvenile justice system as a result of poor quality representation.

Similar to disproportionality in the referral process, some disparities in decisions made within the juvenile justice system may also be a result of implicit biases. The American

Bar Association (ABA) has recognized implicit bias as a factor that can affect decisions made by prosecutors, defense attorneys, and judges, stating:

For the legal profession, understanding implicit bias and ways to debias one's approach to law-related issues and decisions is critical to a fair and representative perception and reality of access to justice and equity.

Other states are beginning to consider and implement policies intended to address implicit bias among attorneys and judges, specifically as it relates to their role in the juvenile justice system. For example, Nevada passed legislation in 2021 requiring juvenile justice stakeholders—including law enforcement, attorneys, probation officers and juvenile correctional officers—to complete cultural competency and implicit bias training once every two years. The Nevada law also authorizes its supreme court to provide similar training to judges who routinely come into contact with youth involved in the juvenile justice system. Other states that have implemented similar policies to make implicit bias training available to judges include California and Utah.

Additionally, in 2015, the ABA formed the Diversity & Inclusion 360 Commission to review and analyze the state of diversity and inclusion in the legal profession and develop policies and practices to best advance diversity and inclusion efforts. As part of this initiative, the commission focused on addressing implicit bias within the justice system and developed various training materials and videos to reduce bias among key players in the system, including judges, prosecutors, and public defenders.

To address any potential implicit bias within the juvenile justice system among attorneys and judges, Virginia could develop an implicit bias and cultural competency training specifically tailored to the roles and responsibilities of attorneys and judges within the juvenile justice system. The General Assembly could direct the secretary of public safety and homeland security to convene a workgroup—including representatives from DJJ, the Office of the Executive Secretary of the Virginia Supreme Court (OES), the Virginia Indigent Defense Commission, and DCJS—to work with national experts and academic researchers to develop relevant implicit bias and cultural competency training and make this training available to attorneys and judges. OES reports that it has previously offered some training to judges on related topics, which could be used as a starting point for developing these new training materials. The workgroup could also incorporate materials previously developed by ABA.

## **POLICY OPTION 5**

The General Assembly could include language in the Appropriation Act directing the secretary of public safety and homeland security to convene a workgroup, including representatives from the Office of the Executive Secretary of the Virginia Supreme Court, the Virginia Indigent Defense Commission, the Department of Juvenile Justice, and the Department of Criminal Justice Services, to develop and make available an implicit bias and cultural competency training specifically tailored to the roles and responsibilities of attorneys and judges within the juvenile justice system.

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DJJ has also recently attempted to address variation specific to judges' disposition decisions, but it is too soon to know whether these efforts will help standardize disposition decisions by race across the state. Incorporating perspectives from both judges and commonwealth's attorneys, DJJ developed its Standardized Disposition Matrix (SDM) to provide judges with a suggested disposition based on the youth's risk level and severity of the offense. Rollout was delayed because of the COVID-19 pandemic, but the SDM is now fully implemented across the state. Feedback from judges has been mixed, but DJJ pilot testing data shows the SDM may improve the consistency of dispositions decisions, including for white and Black youth.

Because the SDM has only recently been implemented statewide, DJJ should ensure the SDM is evaluated and revised, as appropriate, on an ongoing basis. When evaluating the SDM, DJJ should collect and evaluate data measuring the extent to which (1) probation officer recommendations to judges align with the matrix based on youths' risk level and offense severity and (2) judges' disposition decisions align with or deviate from the disposition recommendations. DJJ has already started to update its data system to be able to track this information across CSUs, which will allow it to measure the consistency with which the SDM is being implemented across the state. DJJ should also solicit feedback from attorneys and judges as part of its ongoing assessment of the SDM.

#### RECOMMENDATION 8

The Department of Juvenile Justice (DJJ) should assess the effectiveness of its Standardized Disposition Matrix (SDM) statewide and refine the tool, as appropriate. When evaluating the SDM, DJJ should incorporate data measuring the extent to which disposition recommendations and decisions align with the tool, as well as solicit feedback on the tool from attorneys and judges.

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## Persistent racial disparities warrant additional transparency moving forward

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Every three years, DCJS is required to develop and submit a plan to reduce disparities within Virginia's juvenile justice system as part of its reporting to OJJDP. However, the specific requirements for this plan are set by the federal government and do not materially address the concerns presented in this chapter.

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A lack of reported data about the prevalence of disparities at certain decision points in the juvenile justice system may contribute to difficulties in reducing disparities within the system. DCJS is required to report on disparities within Virginia's juvenile justice system, as well as develop and submit a plan to reduce disparities to OJJDP (sidebar). While technically meeting federal reporting requirements, much of the current reporting is highly aggregated (e.g. the proportion of youth diverted by race for all types of offenses statewide). This aggregate data is not precise enough to understand the specific decision points of the system, nor the parts of the state in which disparities are occurring. During interviews, judges, DJJ staff, and CSU staff also reported a lack of specific data to understand disparities within the system. Absent this type of specific data, it is much more difficult to develop and implement effective strategies to help reduce disparities by race.

Moving forward, DCJS should increase the specificity of its analysis of and reporting on disparities within Virginia’s juvenile justice system. As presented in this chapter, it is important to measure disparities at each point in the system, by type of offense, and by region or CSU. This transparency will allow for a more informed analysis and better targeting of solutions that may help to mitigate disparities. Utilizing data from DJJ, DCJS should begin to more thoroughly analyze and report data on disparities within the juvenile justice system, including (1) disparities by offense type; (2) disparities by region, CSU, or locality, as appropriate; and (3) the extent of disparities at each decision point. This information should be incorporated into its three-year plan submitted to OJJDP, as well as reported publicly on an annual basis to increase transparency around disparities within Virginia’s juvenile justice system.

*“We haven’t looked at disproportionate minority contact enough here...not saying it’s not important, but we try and look at each case individually. Know it’s an issue though...I am not as aware as I should be.”*

– CSU director

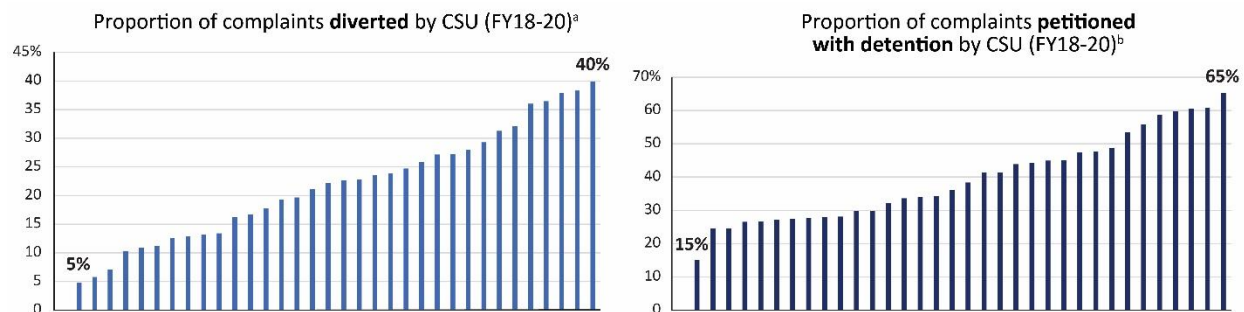
### RECOMMENDATION 9

The Department of Criminal Justice Services should regularly report information on racial disparities in Virginia’s juvenile justice system by collecting and reporting data on (i) disparities by offense type; (ii) disparities by region, CSU, or locality, as appropriate; and (iii) the extent of disparities at each decision point in the system. This information should be incorporated into its three-year plan submitted to the federal Office of Juvenile Justice and Delinquency Prevention and reported publicly each year on its website.

## Youth who commit similar offenses are treated differently across Virginia

Separately from race, youth in different regions of the state are treated differently for similar offenses, and reasons likely vary. Between FY18–FY20, CSUs varied widely in handling complaints against youth (Figure 4-7). For example, youth in some CSU districts were over six times more likely to be diverted as others. During the same time period, youth were nearly three times more likely to be detained prior to their adjudicatory hearings in some CSU districts as in others. This variation in handling juvenile complaints across CSUs persists, even after controlling for the type of offense.

Several factors appear to be contributing to the inconsistent treatment of youth across the state, including variation in (1) community-based disposition options available to intake officers and judges; (2) CSU policies; and (3) judicial preferences and awareness of disposition options.

**FIGURE 4-7****CSUs divert and petition youth with detention at widely varying rates**

SOURCE: DJJ intake case data, FY18–20.

NOTE: <sup>a</sup> Percentage of complaints diverted of total eligible. <sup>b</sup> Percentage of complaints petitioned with a detention order of total complaints eligible for detention.

### **Differences in availability of community-based services likely contribute to regional variation**

One of DJJ’s responsibilities is to ensure adequate availability of community-based services for youth involved in the juvenile justice system across the state. As part of the transformation, one of DJJ’s goals was to expand the continuum of community-based services to (1) reduce an over-reliance on more restrictive placements; (2) increase the array and availability of services for youth and families across the state; and (3) create geographic equity. The Code also requires DJJ to “devise, develop and promulgate a statewide plan for the establishment and maintenance of a range of institutional and community-based, diversion, pre-dispositional and post-dispositional services to be reasonably accessible to each court.” DJJ primarily works to assess and expand availability of community-based services through its two regional service coordinators, AMI Kids and Evidence-Based Associates.

Although DJJ is tasked with ensuring adequate availability of community-based services, evidence suggests that these services are not consistently available across the state. This can hinder the ability of some jurisdictions to maximize the use of diversion and alternatives to placing youth in secure detention facilities, consistent with public safety. Varying availability of community-based services is likely a significant factor in differences of treatment of youth across the state.

Data on specific gaps in community-based services is limited, but survey results indicate there are specific types of programs and services that, if made more available, would help youth receive more appropriate and consistent treatment. For example, in JLARC’s survey of CSU staff—including probation officers, intake officers, and CSU directors—about half (53 percent) of respondents indicated that if additional services were made available to youth in their districts, it would reduce the need to place youth in detention centers. Staff indicated services they would like to see more widely available included mental health treatment programs, mentoring programs, restorative justice programs, and shelter and/or respite care.



Another indication of gaps in community-based services is Virginia’s relatively high use of the “valid court order exception” (VCO) to detain status offenders (sidebar). A recent effort to eliminate the use of the VCO exception was met with opposition because some judges use the exception when they lack adequate community-based alternatives. States that have eliminated the use of the VCO exception, such as Washington, have done so primarily by building out additional community services and alternatives to detention, including semi-secure and non-secure out-of-home placement options, community-based mentoring, and behavioral health services.

To expand the continuum of community-based services and improve the consistency of youth treatment across the state for similar offenses—including reducing Virginia’s reliance on the VCO exception—the General Assembly should direct DJJ to conduct a comprehensive assessment to identify gaps in community-based services. Using the results of this assessment, it should develop a plan to expand (or assist other agencies in expanding) services where gaps are most prevalent or severe. This assessment and plan should focus on ensuring adequate service availability to expand the use of diversion and alternatives to placing youth in secure detention facilities.

DJJ has recently partnered with Child Trends to evaluate its regional service coordinator model and map where services are available to help identify where service gaps exist by geographic location. This will serve as a useful starting point from which to begin a broader assessment. Some similar work is also being conducted in this area by the Office of Children’s Services for its annual Children’s Services Act Service Gap Survey, and DJJ could expand upon this work to identify gaps in services specific to youth involved in the juvenile justice system.

Expanding the availability of community-based services will likely require additional resources. In FY20, DJJ spent approximately \$24 million on community-based services. Although DJJ was authorized to reinvest savings from the closure of its juvenile correctional centers into expanding community-based services as part of the transformation, further expansion of these services may be limited without additional resources. DJJ should be directed to include an estimate of additional appropriations needed to reduce gaps in community-based services as part of its plan submitted to the General Assembly.

#### **RECOMMENDATION 10**

The General Assembly may wish to consider including language in the Appropriation Act directing the Department of Juvenile Justice (DJJ) to (i) conduct a needs assessment of community-based services across the state; (ii) develop a plan for expanding such services to improve the consistency in treatment of youth across the state for similar offenses; and (iii) estimate the staffing and additional appropriations necessary. DJJ should submit the plan and estimate to the House Appropriations and Senate Finance and Appropriations committees no later than November 1, 2022.

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**The federal Juvenile Justice and Delinquency Prevention Act** provides that youth charged with status offenses (e.g., truancy, running away, curfew violation, etc.) cannot be placed in secure detention or locked confinement. However, the law includes an exception that allows judges to detain a juvenile adjudicated for a status offense if they violate a direct order from the court, known as the VCO exception.

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### **Some discretion currently allowed for CSU staff appears unnecessary and also likely contributes to regional variation in treatment of youth**

Another factor that likely contributes to regional variation in treatment of youth is inconsistent policies across CSUs. Current DJJ policies allow CSUs to have wide latitude to set their own policies on diversion, probation, and parole, such as determining which types of cases are eligible to be diverted and setting conditions in which youth may be charged with a probation or parole violation. Frontline staff at CSUs can also have significant discretion in deciding whether to divert cases or whether to petition youth for probation or parole violations.

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**JLARC staff surveyed CSU staff in summer 2021.** The survey posed several scenarios to intake staff and asked them to indicate whether they would divert or petition the case for each scenario. The survey response rate was 64 percent. (See Appendix B for more information.)

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These inconsistent policies are exemplified through how CSU staff reported they would handle the same type of complaint (sidebar). For example, when asked about a youth referred to intake after stealing a laptop valued at \$1,300, 53 percent of intake officers who responded indicated they would divert the case, while 29 percent said they would file a petition. Either diversion or petition may be appropriate, but the differences in responses illustrate variation in handling complaints across CSUs. Staff across CSUs responded more uniformly, though, when asked about how they would handle other complaints, such as truancy.

Flexibility for frontline staff to use their discretion is reasonable and a necessary part of a statewide system, however, some of this discretion may not be necessary and could be addressed through more clear and consistent guidance. DJJ should standardize its policies for diversion, probation, and parole decisions statewide to the maximum extent practicable across all CSUs. For example, DJJ should more clearly specify the circumstances in which youth should or should not be diverted, including the types of offenses for which youth may be diverted and the number of times a youth is eligible for diversion. For probation and parole decisions, DJJ should clearly articulate graduated sanctions for violations—as informed by national best practices—and the conditions in which a youth should be petitioned for a violation.

#### **RECOMMENDATION 11**

The Department of Juvenile Justice should develop and implement statewide policies for court service units to use in making diversion and probation and parole violation decisions. Diversion policies should clearly specify the types of offenses for which youth may be diverted and the number of times a youth is eligible for diversion. Probation and parole policies should include graduated sanctions for violations based on national best practices and clearly specify conditions in which a youth should be petitioned for a violation.

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### **Judicial preferences and awareness of available services may also contribute to regional variation**

Differing judicial preferences in the appropriate treatment of youth who commit certain offenses likely also contributes to regional disparities. DJJ staff, CSU staff, and

stakeholders reported during interviews that judges can have different philosophies on the use of diversion, and judges' expression of their philosophies appears to sometimes influence decisions made by intake staff. For example, some judges do not allow certain offenses to be diverted within their jurisdictions, such as truancy or marijuana offenses. Anecdotally, judges seem less likely to prefer the use of diversion in jurisdictions with lighter dockets because they have more time available to adjudicate a larger proportion of cases. However, by statute, intake officers at CSUs make diversion decisions, not judges. Efforts by DJJ to standardize CSU diversion policies will help to ensure consistency across diversion decisions (Recommendation 11).

“According to our judges, we are not allowed to divert marijuana offenses.”

– DJJ intake officer

It is also likely that not all judges have adequate and up-to-date information about the disposition options and services available within their jurisdictions. Judges currently rely primarily on prior experience to know what disposition options are available, but there is no formal mechanism for the CSUs to make judges aware of new services or disposition options. During interviews with JLARC staff, both attorneys and judges indicated that jurisdictions do not maintain a comprehensive list of available services and disposition options, but that having one could be helpful when making disposition decisions. Though most CSU staff believed judges had adequate information, some CSU staff (19 percent) believed that judges in their jurisdictions do not appear to adequately understand the full range of services available in the community for youth who are involved in the juvenile justice system.

To ensure all judges are fully aware of the disposition options available, DJJ should require each CSU to develop and maintain a comprehensive inventory of services available within their jurisdictions. DJJ is already in the process of mapping out available services, and plans to develop inventories for use by judges and other stakeholders as part of this initiative. Once developed, these inventories should be updated regularly and provided to judges at least quarterly, as well as made available on the CSU pages of DJJ's website. To further aid judges in making disposition decisions, DJJ should require the CSUs to include recommendations for specific programming that align with their disposition recommendations provided to judges as part of the SDM.

## RECOMMENDATION 12

The Department of Juvenile Justice (DJJ) should require court service units to develop and maintain comprehensive inventories of available services within their jurisdictions. Inventories should be updated regularly and made available to judges at least semi-annually, as well as made available on DJJ's website. DJJ should also require court service units to include recommendations for specific programming that aligns with disposition recommendations provided to judges as part of the Standardized Disposition Matrix.



# 5 Juvenile Probation

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Probation involves placing a youth under community supervision with a court service unit (CSU). Probation requires youth to comply with specific rules and conditions; failure to follow those rules can lead to probation violations. Depending on the specific violation, violating the rules and conditions of probation can lead to a range of sanctions, including a longer probation term or incarceration. Probation is different for each youth and usually includes, at a minimum, case management and supervision (sidebars).

Probation officers are expected to identify and arrange appropriate services for youth and their families based on their needs. These services are intended to address behavioral issues and help reduce the risk of reoffending. Services for youth on probation could include mental health, substance use, anger management, community service, or other programs. These youth may receive services through various entities including the Department of Juvenile Justice (DJJ), the Children's Services Act, and Medicaid.

Virginia has seen a major decline in youth on probation in the last 10 years, though probation remains the most common disposition in Virginia. There were 1,390 youth on probation in 2021 compared with 5,682 in 2011—a 75 percent decrease. Nearly half of all youth in the juvenile justice system were placed on probation in 2021. Youth in Virginia are on probation for an average of about one year, and the average youth on probation is 15 years old. Youth at all risk levels are placed on probation, though the average youth on probation is assessed as having a medium risk of reoffending.

Though far fewer youth are on probation than a decade ago, the percentage of youth on probation that reoffend remains about the same. For example, 41 percent of youth released from probation in FY17 (1,490 youth) were reconvicted within two years of their release—the same rate as youth released in FY11. As referenced in Chapter 2, there was a slight decline in two-year reconviction rates of youth released in FY18 to 38 percent, though it is unclear the extent to which recidivism has been affected by the COVID-19 pandemic. There are many factors that influence recidivism among youth on probation, but research indicates that effective case management and community-based rehabilitative programs can reduce the likelihood youth reoffend.

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**There are different levels and types of probation.** A youth can receive probation levels one through five, with intensity of supervision increasing with each level. Youth usually only receive probation, though some receive probation after being released from detention centers.

**Case management** is the process of conducting assessments, planning, care coordination, facilitation, evaluation, and advocacy for services to meet an individual's and family's needs.

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**Much of this chapter also applies to parole.** Most of the youth on parole are supervised by probation staff, and these youth can usually receive identical case management and community programs as youth on probation.

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## **DJJ uses a nationally recognized community supervision model, but not all youth respond**

An effective probation program requires adopting and properly implementing a case management model. Managing the “case” of each youth on probation should be based on practices research has shown can effectively rehabilitate youth. Especially in a statewide program, probation officers need to be well trained and provided adequate guidance to consistently and effectively implement the model in all parts of the state. Within the consistent implementation of the model, though, there needs to be appropriate discretion and flexibility to address the individual needs of each youth on probation.

### **DJJ uses a nationally recognized case management model and provides adequate guidance and training to staff on the model**

As part of its transformation, DJJ standardized its probation case management model across the state. A standardized model aims to ensure that all youth, regardless of region or court service unit (CSU), receive comparable and effective case management services during probation.

DJJ chose to use Effective Practices in Community Supervision (EPICS), which is a nationally recognized model used in states and localities across the U.S. (sidebar). The case management model includes several tools and evidence-based practices to provide cognitive behavioral interventions to youth on probation and parole. EPICS aligns with best practices, including using relationship building and cognitive behavioral techniques to address problem behaviors. It is listed as a promising program by NIJ Crime Solutions (sidebar).

DJJ provides staff training and guidance to implement the EPICS model consistently statewide. DJJ has created a Practice Improvement Unit in the Division of Community Programs that provides statewide implementation, coaching, and technical assistance to probation officers and CSUs. These regional coaches focus primarily on EPICS (and risk assessment) coaching support for probation officers. According to DJJ, all 30 state-operated CSUs received an initial training on the EPICS model by the end of 2017. Ninety-four percent of staff with probation responsibilities reported receiving training on EPICS within the past three years.

Staff with probation responsibilities also reported receiving adequate guidance and being held accountable for effective case management. For example, 91 percent indicated they receive clear and consistent guidance on how to perform probation responsibilities well. A similar proportion of respondents (91 percent) agreed that they were held accountable for providing effective case management for youth on probation (Figure 5-1).

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**The EPICS model was designed by the University of Cincinnati in 2008 and is intended to help probation and parole officers incorporate core correctional practices into their daily interactions with youth.**

**Core correctional practices are intended to help individuals on probation through techniques that have been shown to increase positive outcomes.**

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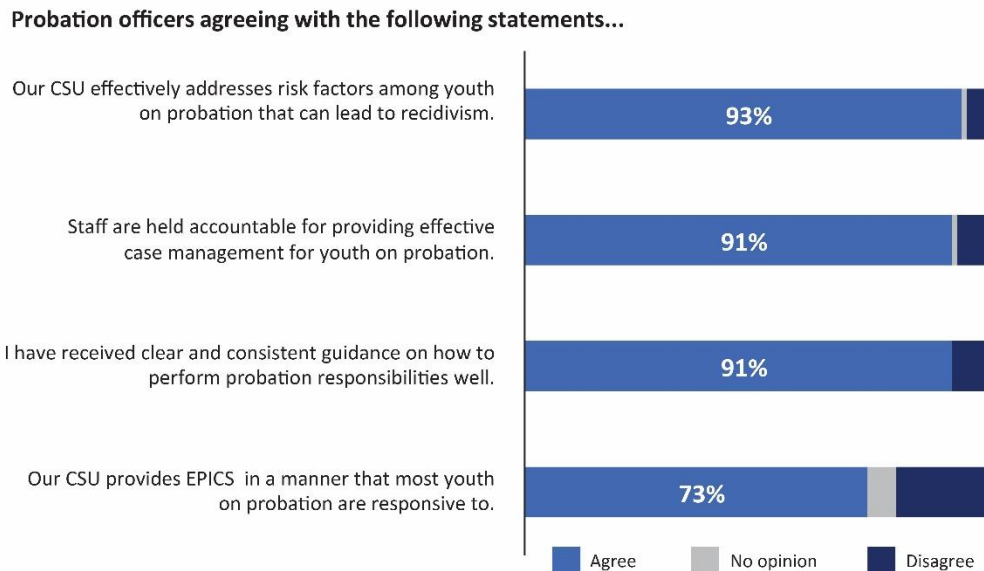
**NIJ Crime Solutions is one of several national organizations that review and rate a program's ability to achieve intended outcomes based on rigorous research studies. A promising rating means while there is one evaluation demonstrating effectiveness, more studies are needed.**

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**JLARC staff conducted a survey of staff at all state-operated CSUs and both locally operated CSUs. JLARC received responses from 390 CSU staff across the state, including 211 staff with probation responsibilities. The survey response rate was 64%. (See Appendix B for more information.)**

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**FIGURE 5-1**  
**Probation officers generally report positive feedback on guidance**



SOURCE: JLARC CSU Staff Survey.

NOTE: Includes staff who indicated they have probation responsibilities. Does not include staff who may be considered probation officers, but indicated they only perform duties such as parole, diversion, or intake.

### **Youth responsiveness to EPICS can be improved through better coaching, bias training, and motivational interviewing**

Youth's responsiveness is critical to the effectiveness of EPICS, as well as other juvenile justice interventions, because it focuses on tailoring delivery of the material to the learning style, personality, motivation, and strengths of the individual receiving the intervention (sidebar). Research demonstrates that the way probation and parole officers interact with individuals on community supervision influences the willingness of an individual to participate in (and learn from) activities focused on behavioral change. About 73 percent of staff with probation responsibilities reported that their CSU implements the EPICS model in a manner in which most youth are responsive to—indicating opportunities to improve its implementation in Virginia.

Implementing a single case management model that all youth are responsive to is extremely challenging. The thousands of Virginia youth on probation each year may respond differently to services or interventions. Though the average youth on probation is assessed at medium risk of reoffending, youth of low and high risk are also on probation. Youth come from all parts of the state, different socio-economic statuses, and varying degrees of family stability. Most importantly, within these broad categorizations, youth have their own personality traits, mental health history, and motivational response to interventions. Therefore, it is critical that probation officers have the proper training to effectively interact with youth in several challenging circumstances and to use the best techniques to encourage youth responsivity to probation services.

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**The Risk-Needs-Responsivity model**, which is incorporated into EPICS, has empirical evidence demonstrating its effectiveness in reducing recidivism when implemented effectively. It focuses on accurately identifying an individual's risk level, addressing identified needs, and providing cognitive behavioral interventions in a way that individuals are responsive to.

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***Not all staff are experienced or familiar with the full range of EPICS tools***

Staff may not be fully knowledgeable about all of EPICS's tools. The EPICS model includes several techniques including problem solving, cognitive restructuring, cost-benefit analysis, skill building, and prosocial modeling. Thus, staff using the EPICS model have a wide range of tools to use when working with youth and may change techniques if youth do not respond to a certain technique.

While staff have access to a variety of tools, DJJ leadership noted that some officers may have difficulty understanding how and when to use different tools for different individuals. For example, some probation officers may not understand the best tool to use for a youth with particularly challenging behaviors.

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**Probation supervisors are expected to monitor and give feedback on EPICS practices.** For example, supervisors are required to review taped sessions between probation officers and youth, then provide feedback to probation officers. This process is known as **coding**.

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Additional coaching on the model would likely help ensure all probation staff are aware of EPICS's various tools. Staff said during interviews and on survey feedback that they see coaching as beneficial. Research indicates that coaching improves implementation, helps probation officers master skills learned during training, and helps build confidence about when and how to use new skills. Recording and then coding intervention sessions is an effective way for supervisors to give specific feedback (sidebar). Though providing this specific feedback is required, some CSU and DJJ staff and leadership expressed concerns that supervisors do not always have time to provide this type of detailed feedback in addition to their other responsibilities.

DJJ should ensure that all staff with probation responsibilities receive adequate feedback about their use of EPICS through coaching. The coaching feedback should ensure that staff are aware of the full range of EPICS's tools and able to identify the most effective tools for each youth. CSU survey data on responsivity suggests some CSUs may need coaching and additional support more than other CSUs. A decrease in workload during the pandemic may provide more time for probation officers to focus on coaching. More than half (56 percent) of probation officers reported experiencing a significant or slight decrease in the volume of work because of the pandemic. The decline in caseloads makes it feasible to require supervisors to fulfill the existing coaching requirement, or even to shift certain senior probation officers or supervisors to coaching-only roles.

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**Implicit bias** is based on the belief that people can behave in ways that are unintentionally biased toward others.

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**RECOMMENDATION 13**

The Department of Juvenile Justice should ensure all probation officers receive adequate guidance and coaching on how to use the full range of tools included in the EPICS case management model.

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**Cultural competency** is defined as the ability to understand, appreciate, and interact with people who have different cultures or belief systems than one's own.

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***Cultural competency and implicit bias training could improve staff's ability to understand and meet the needs of youth on probation***

Increased knowledge of implicit bias and cultural competency could improve relationships between probation officers and youth (sidebars). Implicit biases can affect decision-making, and research shows that in fields like juvenile justice where there is wide



discretion, implicit biases can lead to worse outcomes for those who are affected by those biases. Cultural competency can also help improve relationships between youth and probation officers by helping staff learn and understand cultural differences rather than making judgments about certain behaviors or thought processes.

Emerging research shows that training and knowledge on these concepts can improve interactions and could allow youth to be more responsive to probation interventions. Several other states, including Nevada, Missouri, and Utah, have incorporated implicit bias and cultural competency curricula into their required training for probation officers.

In survey responses, Virginia probation officers cited a need for additional cultural and bias training to help staff meet youth needs, and many staff seem to recognize the ways in which these differences show up in practice. Fifty-three percent of probation officers who responded to JLARC's survey reported that racial, cultural, and ethnic differences between probation and parole staff and youth affect their ability to meet youth's needs to some extent (sidebar). According to survey respondents:

I think it is very difficult to not impart personal values into our work. I don't think that any probation or parole staff intentionally works through a lens of bias, but .... we have to make sure we respect the direction a client and family want to go and not force a path that we prefer. Training staff must be paramount.

I feel that a lot of probation officers come from stable home environments where there is structure and parental support and guidance, and they struggle with dealing with families whose home environments [do] not mirror those of the probation officers. This makes it difficult for them to sometimes relate to the challenges their people face on a daily basis.

Racial, ethnic, and cultural training should be a mandatory yearly training. Training should include ways to access community resources with barriers. Cultural diversity training would benefit all staff, especially, those in leadership. Community training can be done so staff understand what the youth are going through in their perspective communities.

Among probation officers who responded to the JLARC survey and who believed additional training would be helpful, implicit bias training was the most requested type of training.

DJJ currently provides staff with bias training, but the training is primarily focused on interactions among coworkers. Some CSU directors have required their staff to participate in local training on implicit bias or cultural competency. However, implicit bias training is not one of DJJ's mandatory trainings, though some DJJ and CSU staff reported it should be.

DJJ has also created an equity workgroup, and DJJ leadership reports that this workgroup has made substantial progress in developing a statewide training focused

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**Statewide DJJ probation officer demographics generally align with those among youth on probation**, although there are greater proportion of Hispanic youth on probation (15 percent) than Hispanic probation officers (4 percent).

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on implicit bias. However, according to DJJ leadership, COVID-19 delayed the implementation of this training.

#### **RECOMMENDATION 14**

The Department of Juvenile Justice should require all court service unit (CSU) staff to participate in implicit bias and cultural competency training that includes research-based material and is designed to improve staff's ability to work with youth from all backgrounds.

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#### ***Expanding the use of motivational interviewing techniques would also likely improve responsivity of youth on probation***

A technique called motivational interviewing can help improve youth behaviors because it is intended to help youth problem solve and identify solutions and is a rehabilitative (rather than coercive) approach. Motivational interviewing is an evidence-based approach to working with individuals that involves an empathetic, non-judgmental, and goal-directed style of interaction that prioritizes listening and guiding people in their decision-making. Youth may be more responsive to the more empathetic communication style associated with motivational interviewing. The technique gives youth decision-making power over their future and can better engage youth. Research is beginning to support the use of motivational interviewing for youth in the juvenile justice system, though studies specifically on its use in juvenile justice are limited.

While motivational interviewing was designed for individuals with substance use disorder, the practice continues to be incorporated into criminal and juvenile justice system settings (sidebar). For example, as part of its juvenile justice reforms, Pennsylvania has explicitly focused on improving responsivity of youth to juvenile justice interventions. As part of these efforts, it has incorporated the use of motivational interviewing into its probation model. As of 2019, 97 percent of its local departments had implemented motivational interviewing into their programs, and there were 152 staff across the state designated as motivational interviewing coaches.

In interviews and survey responses, DJJ leadership and probation officers expressed an interest in additional training on motivational interviewing. Thirty-nine percent of probation officers who thought additional training would be helpful reported wanting more training on motivational interviewing, and it was among the most commonly requested type of training (second only to implicit bias training). According to DJJ training staff, all staff have received at least some form of motivational interviewing training, but have varying levels of expertise with the technique.

Consistent training and coaching is essential to build confidence and use the motivational interviewing technique effectively, and expanding its use initially through a pilot program in select CSUs may be the most prudent approach. The technique is complex and requires multiple trainings to learn it, apply it in practice, and then receive individualized feedback. DJJ leadership also confirmed that it takes years to build competency

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**NIJ Crime Solutions rates motivational interviewing** as effective for individuals with substance use disorder. An effective rating means that at least one rigorous study demonstrates the program has achieved the intended outcomes.

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in motivational interviewing and stated they recognize the desire for more coaching in this area.

#### **RECOMMENDATION 15**

The Department of Juvenile Justice should develop and implement a pilot program in select court service units to evaluate the impact of providing more comprehensive motivational interviewing training to probation officers, including impacts on youth responsivity and outcomes. The department should assess the results of the pilot and determine the feasibility of providing motivational interviewing training to all probation officers.

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### **More services now available for youth on probation, though quality assurance only recently started**

As part of the transformation, DJJ was authorized to re-invest funds from the closure of juvenile correctional centers to expand access to community-based services for youth involved in the juvenile justice system (sidebar). Starting in 2016, DJJ contracted with two regional service coordinators (RSCs), AMI Kids and Evidence Based Associates, to expand services for youth on probation. Both AMI Kids and Evidence Based Associates operate in other states.

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**Services available through the RSC** are also available to youth in direct care and detention facilities.

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Through these contracts, RSCs coordinate with direct service providers to establish a range of services for youth involved in the juvenile justice system. AMI Kids is responsible for overseeing service providers in the eastern and southern regions of the state. Evidence Based Associates is responsible for overseeing service providers in the central, western, and northern regions of the state.

RSC contracts outline expectations and goals for the services. RSCs are expected to oversee direct service providers and submit quarterly and annual reports, utilization reports, financial reports, compliance and quality assurance reports, and procurement reports to DJJ. RSC contracts were initially signed for a two-year period, but RSCs received an annual renewal for an additional three years, for a total of five years.

The RSC model was established to meet several goals, including increasing service availability and ensuring services are effective.

### **Youth on probation have access to more services now than before transformation**

One of the key goals of the RSC model, as well as the transformation, was to “increase the array and availability of services for youth and families across the commonwealth.” Expanding access to community services can help ensure youth are served in the least restrictive environment possible and that they receive services needed to help reduce the likelihood they reoffend.

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**Multi-systemic therapy is an evidence-based intervention** for youth ages 12–17 aimed at empowering youth and their families while viewing them as members of various systems, such as school, community, peer, and family.

**Functional family therapy is an evidence-based intervention** for youth 11–18 designed to help youth and their families address behavioral problems and target specific risk and protective factors.

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The RSC model successfully expanded access to several services, including assessments, psychological evaluations, individual therapy, and group therapy (sidebar). Youth on probation now have greater access to certain national evidence-based models with demonstrated effectiveness in reducing recidivism—specifically multi-systemic therapy (MST) and function family therapy (FFT) (sidebar). Both of these programs, which are three- to five-months long, are supported by several national organizations. Before transformation, few localities had access to MST or FFT services. The majority of probation officers responding to the JLARC survey indicated they have access to FFT (81 percent) and MST (70 percent) all or most of the time.

According to DJJ, the number of direct service providers contracting with AMI Kids and Evidence Based Associates increased from 78 in FY17 to 140 in FY21, a 79 percent increase.

Responses to the CSU staff survey indicate that probation officers are able to access services that match youth’s needs and access these services in a timely manner. For example, 87 percent of probation officers responding agreed they are able to access services that meet the specific needs of youth on their caseloads. The same percentage also agreed they are able to access services in a timely manner.

### **DJJ initially expanded access without quality assurance mechanisms in place, although work has started**

The quality of program implementation is critical for positive outcomes for probation youth. To reduce reoffending through providing targeted interventions, DJJ should ensure youth receive quality programming. According to the National Academies of Sciences, quality programming is one of the few factors shown to reduce recidivism. Programs that are not implemented well can do more harm than good to participants.

DJJ reported to the Board of Juvenile Justice that it planned to begin assessing the quality of services for youth starting in 2017. However, DJJ’s quality assurance efforts were not formalized until August 2020. DJJ leadership noted that staff constraints and lack of specific personnel to oversee quality assurance delayed its implementation.

Under the quality assurance approach, RSCs are responsible for ensuring quality services. Quality assurance measures vary based on type of provider, but can include client case file reviews, surveys of CSU staff about the provider, reviews of billing and financial data, self-reviews, and reviews of the quality of monthly reports on youth (sidebar). These formal and informal processes are intended to help RSCs identify whether providers are meeting expectations and providing quality services. For example, one RSC reported that through document review they were able to identify a provider who was having trouble incorporating YASI risk assessment data into the treatment planning.

Currently, DJJ’s Division of Community Programs is responsible for RSC quality assurance. This division has several other responsibilities, such as providing coaching and technical assistance to CSUs. These other responsibilities were one reason for the

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**MST and FFT are based on national models** and have their own quality assurance and monitoring to ensure they are implemented with fidelity.

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delay in quality assurance, according to DJJ leadership. However, DJJ has a quality assurance unit that could better oversee these responsibilities (sidebar). Moving quality assurance responsibilities for the RSCs to the quality assurance unit could help ensure that proper attention is given to reviews of RSCs.

To ensure evaluations are objective, improve the efficiency of evaluations, and ensure quality assurance receives sufficient attention, DJJ should transfer responsibilities and staffing for quality assurance for RSCs into the agency's quality assurance unit, which reports to the chief deputy director. In interviews, DJJ leadership noted that it would be beneficial to have all quality assurance efforts centralized in the quality assurance unit.

#### **RECOMMENDATION 16**

The Department of Juvenile Justice should consolidate all of its quality assurance activities and staff resources into its quality assurance unit.

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**DJJ's quality assurance unit** currently focuses on assessing Community Placement Programs, but helped develop the quality assurance plan for the RSCs.

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**Other types of services RSCs can provide** include anger management, family-focused sex offender treatment, and family-focused substance abuse treatment.

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# 6 Juvenile Detention Center Rehabilitative and Education Programming

Juvenile detention centers (JDCs) are intended to provide temporary secure confinement of youth who are believed to be a threat to themselves or public safety. Generally, youth confined in a JDC either (1) are suspected to have committed a delinquent act and are awaiting their court hearings or (2) have been adjudicated delinquent by a judge.

Virginia currently has 24 locally and regionally operated juvenile detention centers that securely confine and provide services for youth (Table 6-1). All JDCs hold youth awaiting their hearings (“youth in pre-D detention”) or youth placed in post-dispositional *detention* for up to 30 days. Twenty-one JDCs also house youth who judges have ordered to participate in rehabilitative *programs* (including “youth in post-D programs” or “youth in community placement programs”) (sidebar). All youth in JDCs must receive educational programming. Youth required to participate in rehabilitative programs must also receive treatment services for their rehabilitation.

The length of time youth spend in a JDC varies, but most youth do not stay more than a few weeks. In FY20, 70 percent of youth were released from a JDC within 30 days of their initial placement. Youth who stay short periods of time are generally only in pre-D detention and/or post-D detention. Youth placed in rehabilitative programs after adjudication generally have much longer lengths of stay in JDCs.

**The primary difference between Post-D programs and CPPs is who determines the placement.** Youth in post-D programs are adjudicated delinquent and placed directly in these programs by a judge. Youth in CPPs are adjudicated delinquent, committed to DJJ, and placed in these programs by DJJ. Both programs are rehabilitative programs, intended to meet youths’ treatment needs.

**JDCs also provide** Central Admission and Placement (CAP) and detention re-entry placements for youth committed to DJJ.

**TABLE 6-1**  
**Juvenile detention centers provide various placements for youth**

Description		Total youth (FY20)	Median length of stay (FY20)
<b>Pre-D detention</b>	Placement for youth awaiting adjudicatory or dispositional hearings	3,104	18 days
<b>Post-D detention</b>	Court-ordered post-dispositional placement for up to 30 days ( <i>without rehabilitative programming</i> )	725	10 days
<b>Post-D program</b>	Court-ordered post-dispositional placement ( <i>with rehabilitative programming</i> )	246	5 months
<b>Community placement program (CPP)</b>	Post-dispositional placement for youth committed to DJJ <sup>a</sup> ( <i>with rehabilitative programming</i> )	478	6 months

SOURCE: JLARC synthesis of JDC placement and analysis of DJJ juvenile detention center population data and length-of-stay data.

NOTE: The individual counts for each placement cannot be summed because youth may have been in multiple placements, and, therefore would be double counted. <sup>a</sup> JDCs provide services and support for youth in CPPs, but DJJ is ultimately responsible for youth placed in these programs.

The term “committed youth” refers to youth who are committed by a judge to DJJ’s custody.

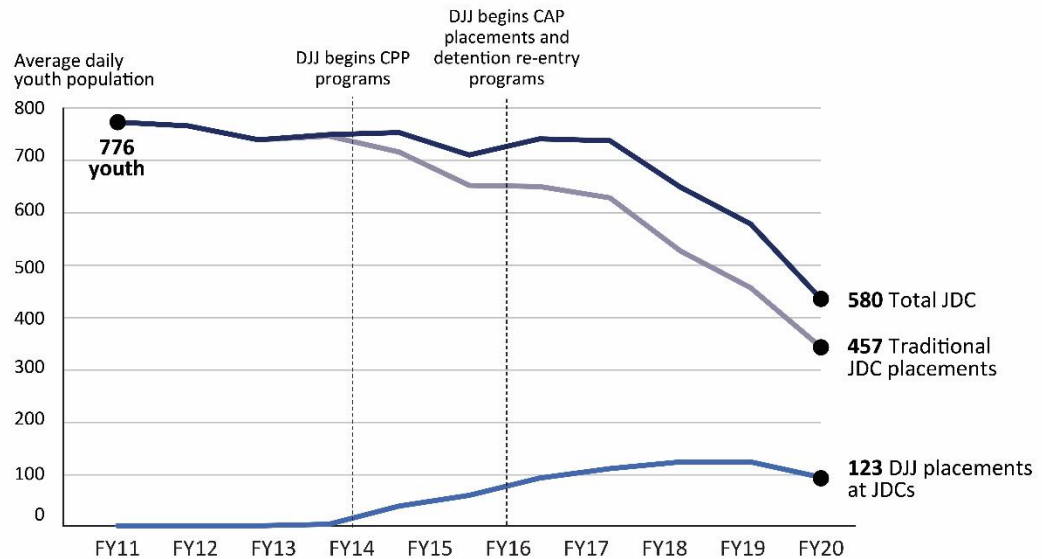
The eighteen JDCs providing placements for youth in state custody operate CPPs, CAP placements, and/or detention reentry programs. All of these JDCs provide CAP placements, nine operate CPPs, and eight operate detention reentry Programs.

The JDC population has decreased during the last decade. The statewide average daily population in JDCs decreased from 776 youth in FY11 to 580 youth in FY20—a 25 percent decrease (Figure 6-1). However, the decline was slowed to some extent by DJJ’s decision to begin placing youth at JDCs as part of its reform efforts to decrease the number of youth placed in juvenile correctional centers. In FY14, DJJ began contracting with JDCs to place some committed youth in CPPs, CAP placements, and detention reentry programs, instead of in juvenile correctional centers (sidebar). Since then, DJJ has placed an increasing number of DJJ-committed youth in JDCs. Eighteen JDCs now provide placements for youth in state custody (sidebar).

The JDC population appears to have more substantial support needs than five years ago. JDCs now house more youth who (1) are required to receive rehabilitative programming, (2) are assessed to have a high risk of reoffending, and (3) are assessed to have substantial mental health and substance abuse needs, according to DJJ data.

**FIGURE 6-1**

**The average daily population in JDCs has decreased but has been somewhat offset by DJJ’s use of JDCs for committed youth**



SOURCE: JLARC analysis of DJJ JDC population data.

NOTE: Traditional placements include pre-D detention, post-D detention, post-D programs, other detention statuses such as circuit court transfers, and youth awaiting placement in post-dispositional programs.

As a result of the COVID-19 pandemic, DJJ has begun virtual certification audits in place of on-site audits. Virtual audits review the same aspects of JDC facilities as on-site audits, but the new process takes much longer to complete.

## JDCs generally meet requirements and address health and safety problems in a timely manner

Most fundamentally, it appears youth in JDCs are in a relatively safe and secure environment. DJJ uses a standardized approach, as required, to ensure JDCs meet statutory and regulatory requirements for security, health, and safety (sidebar). DJJ conducts on-



site certification audits that occur during a two- to five-day period, at least once every three years (sidebar). The audits cover 353 compliance areas, such as the health and safety of residents and staff; security; residents' rights; and the physical environment. Methods used during these audits include documentation reviews of juvenile case files, staffing records, and written procedures; observations of the physical condition of the facility and interactions between staff and residents; and interviews with staff and residents. DJJ also conducts less intensive monitoring visits annually, employing some of the same methods used in its certification audits.

The most recent audit cycle found JDCs were generally in compliance with state laws and regulations. The audits did, though, also find instances of non-compliance, the majority of which were related to not adhering to documentation requirements. Other examples of non-compliance included JDCs not facilitating required assessments or screenings; administering medication appropriately; or ensuring staff received necessary training and evaluations.

DJJ requires JDCs to resolve instances of non-compliance in a timely manner. Upon the completion of an audit, DJJ reports its findings of non-compliance and develops a plan with the JDC to address identified problems. Once a plan is developed, DJJ conducts status reviews to ensure cases of non-compliance are being addressed and continues these reviews until the identified problems are resolved. In cases where problems are not resolved, DJJ has the authority to decertify facilities (sidebar). However, on average, cases of noncompliance are resolved within four months of the initial audit.

## Virginia JDCs appear ill-equipped to provide effective rehabilitative programming

Statute requires that youth placed in JDC rehabilitative programs, including post-D programs and CPPs, receive individualized treatment services appropriate for their rehabilitation. These services are generally provided by the JDCs but may be provided or facilitated through other entities, such as court service units, community services boards, or local social service agencies. Treatment services available at Virginia's JDCs vary widely, but examples include anger management, substance abuse treatment, family therapy, and life skills training.

According to juvenile justice research, effective rehabilitative programs can reduce the likelihood of reoffending and promote positive post-release outcomes for youth. To develop such programs subject matter experts emphasize the need to adopt programs that have demonstrated their effectiveness at reducing future delinquency and employ well-trained staff to implement these programs with fidelity. In addition, these programs should be monitored, and staff should receive technical assistance to ensure necessary program improvements are made.

High recidivism rates among youth released from JDC rehabilitative programs indicate that they are not particularly effective at reducing the likelihood that youth reoffend.

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**The Board of Juvenile Justice is required under state law to certify and monitor JDCs and has delegated this responsibility to DJJ.**

**The Department of Criminal Justice Services also conducts monitoring activities in JDCs to ensure they comply with federal laws and regulations.**

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Most recently, DJJ decertified the Richmond JDC in FY12 in response to persistent problems and complaints regarding the physical conditions of the facility, staff training, and residents' safety. The facility remained closed until it was recertified in FY14.

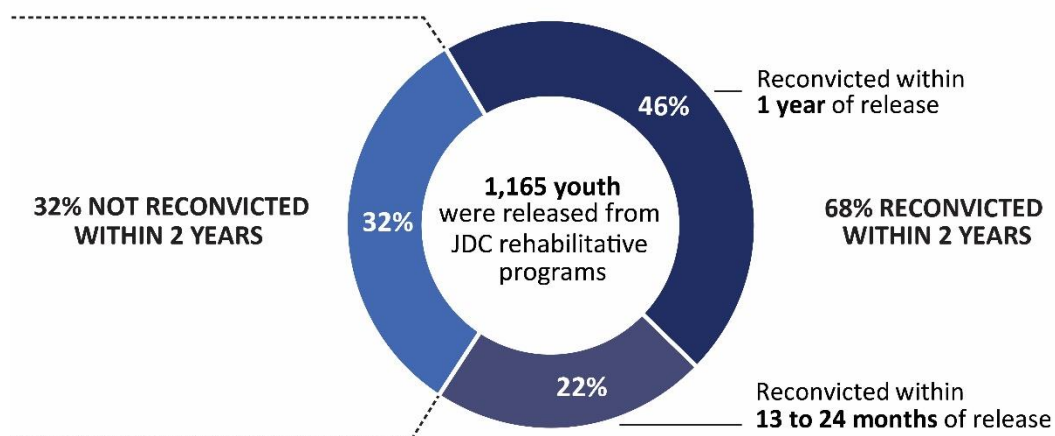
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The majority (68 percent) of youth released from a JDC rehabilitative program between FY16 and FY18 were reconvicted within two years (Figure 6-2). The majority of these reconvictions occurred within the first year of a youth's release.

Youth released from post-D programs or a CPP at JDCs reoffend at a higher rate than youth released from the state juvenile correctional centers (JCCs). Between FY16 and FY18, 61 percent of youth released from Bon Air or Beaumont JCCs were reconvicted within two years. The higher recidivism rate among youth released from rehabilitative programs at JDCs is especially concerning because the youth in JDCs were generally assessed to have a lower risk of reoffending than youth placed in the JCCs. (Additional information on recidivism rates for post-D and CPP programs is available in Appendix C.)

**FIGURE 6-2**

**Sixty-eight percent of youth released from post-D programs or CPPs between FY16 and FY18 were reconvicted within two years**



SOURCE: JLARC analysis of DJJ recidivism data.

NOTE: JDC rehabilitative programs include youth released from post-D programs and CPPs.

### Many JDCs lack evidence-based programs to reduce recidivism

A likely contributing factor to high recidivism rates is that many JDCs do not appear to provide rehabilitative programming that is evidence-based (sidebar). For instance,

- About half (11 of 21) of JDCs that operate rehabilitative programs reported not using evidence-based programming to reduce recidivism; and
- None of these 11 JDCs without evidence-based programs reported evaluating how effectively their own program rehabilitates youth and reduces recidivism.

Programs determined to be evidence-based have been scientifically evaluated and determined to positively affect youths' justice-related outcomes. These determinations are made by subject-matter experts through a structured review process that includes, but is not limited to, a literature review of each program's design, a review of evidence from studies that compare the program's outcomes to a control group, and an assessment of these studies' research design, outcomes, and fidelity.

Among the 10 JDCs that did report using evidence-based programs, some use programs that appear unlikely to reduce recidivism, according to the best available research and subject matter experts (sidebar). For example, several JDCs reported offering Aggression Replacement Training, which previously showed evidence of promising outcomes for youth, but that more recent research indicates it may not be as effective as initially thought. (See Chapter 7 for more information on Aggression Replacement Training.) Some JDCs also reported offering programs that have been found to be effective but that are not designed for residential settings, such as Safe Dates and Life Skills Training.

In fact, only five JDCs reported using programs that have been assessed and determined to be effective in residential settings. These programs include Cognitive Behavioral Therapy, Dialectical Behavior Therapy, and Functional Family Therapy (sidebar).

State law does not require JDCs to use evidence-based rehabilitative programming. For post-D programs, the Code of Virginia directs the Board of Juvenile Justice to establish rehabilitative programming requirements, but the board never did. The board's only requirement for post-D programs is that post-D programming must be *different* than what is provided to youth in pre-D detention. There is no direction provided in law or regulation regarding rehabilitative programming for CPPs. (More discussion on CPP programming is included in Chapter 7.)

Other states are increasingly requiring that juvenile justice entities use practices and programs that are supported by juvenile justice research and that have been demonstrated to reduce recidivism. More than 30 states require evidence-based practices for juvenile justice services, either through law or regulations, according to the National Center for Juvenile Justice (2014).

The General Assembly should require that JDC rehabilitative programs use evidence-based programming and practices to the maximum extent possible. Transitioning to more evidence-based programming would likely be challenging for some JDCs to implement immediately. Therefore, the requirements could be phased in over several years (sidebar).

### RECOMMENDATION 17

The General Assembly may wish to consider amending §16.1-284.1 of the Code of Virginia to specify that if a juvenile detention center provides post-dispositional rehabilitative programming to youth, the center shall use evidence-based programs and practices to the maximum extent practicable.

### Training requirements for JDC staff working with high-risk youth are insufficient

JDCs are required to serve youth with varying needs, and some JDCs are increasingly serving youth who would otherwise be at a juvenile correctional center (JCC). A single JDC may house youth who have not yet been found delinquent, but also youth who

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**JLARC reviewed subject matter experts' determinations of programs' effectiveness** such as those published in OJJDP's Model Programs Guide and Blueprints for Healthy Youth Development. (See Appendix B for more detail.)

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**Existing information on JDC rehabilitative programs does not allow for a comparison of the effectiveness of different rehabilitative programs across JDCs.** For example, data does not exist to understand when each JDC first implemented each program, which youth participated in each program, or whether the programs were implemented as designed.

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**In 2007, the Tennessee legislature prohibited state funding for programs for delinquent juveniles unless they were evidence-based.** The law included a definition of "evidence-based programs" and allowed the requirements to be *phased in over a four-year period*. The law also allowed funding to be used for research purposes to support programs with promising approaches.

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have been adjudicated delinquent for serious offenses. However, existing regulatory training requirements for JDC staff do not reflect this variation and appear to be inadequate. All front line staff of Virginia's JDCs have the same regulatory training requirements, regardless of whether staff work with youth in pre-D detention or rehabilitative programs.

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**Some JDCs have recognized that the 40-hour minimum requirement is insufficient.** According to the Virginia Juvenile Detention Association, at least 10 JDCs provide more training than the 40-hour minimum requirement. Some JDCs reportedly provide 50–65 hours of training to staff annually.

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Training requirements for JDC staff are less stringent than those for staff at the state's Bon Air Juvenile Correctional Center, even though some JDCs are working with youth with similar needs and risks. Front line staff at Bon Air are required by state regulations to receive 120 hours of initial training, and, in practice, receive 180 hours of training for their role. In contrast, staff at JDCs are required to receive only 40 hours of initial training (sidebar). These JDC staff are increasingly supporting youth who would otherwise receive programming at Bon Air because of the 2016 transformation initiative. Staff of both JDCs and Bon Air JCC are required to receive 40 hours of annual retraining.

Virginia's minimum training requirements for front line JDC staff (40 hours of initial training and 40 hours of annual retraining) are also lower than national standards. For example, both the American Correctional Association and the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative suggest staff working with youth in JDCs should receive 40 hours of training prior to assuming job responsibilities, 120 hours of training during the first year of employment, and 40 hours annually for retraining.

Front-line staff at JDCs are also not required to be trained on factors that could help them effectively understand and support youth with challenging behaviors. For example, staff at Bon Air are required to receive adolescent development training, but JDC staff are not. Juvenile justice research indicates that providing juvenile justice services in accordance with established principles of adolescent development can help staff meet youths' individualized needs and reduce recidivism.

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**Virginia juvenile detention centers have requested and received a variance from the Board of Juvenile Justice to meet the 40 hour training requirements for part-time and relief front line staff.** The Virginia Juvenile Detention Association reported that JDCs have encountered logistical and financial obstacles to meeting the training requirements for these types of staff.

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The Board of Juvenile Justice should be required to develop specific training requirements for JDC staff supporting youth in rehabilitative programs, including post-D programs and CPPs. The most apparent gap is that staff of JDCs with CPPs, who work with adjudicated delinquent youth, are not required by regulations to have nearly as much training as staff at the JCCs who are serving youth with similar needs and risks (40 hours vs. 120 hours). Training requirements for JDCs with rehabilitative programs should more closely align with requirements for staff of other residential rehabilitative programs.

DJJ could help facilitate, at least in part, the additional trainings that will be required of staff working with post-dispositional youth. JDCs are currently responsible for facilitating the required trainings for their staff, but evidence suggests that these facilities face challenges providing the current 40 hours of required training to some staff (sidebar). DJJ's training and organizational unit appears equipped to provide necessary

trainings for staff of residential rehabilitative programs as they currently facilitate all trainings for JCC staff (sidebar). Because additional training requirements may be challenging for some JDCs to implement immediately, they could be phased in over a two-year or three-year period.

### **RECOMMENDATION 18**

The General Assembly may wish to consider including language in the Appropriation Act directing the Board of Juvenile Justice to promulgate regulations that establish specific training requirements for front line staff of juvenile detention centers needed to effectively support youth in rehabilitative programs, including post-dispositional programs and community placement programs.

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**DJJ's training and organizational unit facilitates a few of the trainings required of JDC staff.** Currently, DJJ's efforts are limited to the required Handle-With-Care Instructor trainings and voluntary case management training for CPP staff.

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### **DJJ conducts only limited oversight of JDC rehabilitative programming**

DJJ's oversight of JDCs meets regulatory requirements but is not sufficient to ensure JDCs' rehabilitative programs are effective for youth. Through its overall facility certification efforts discussed at the beginning of this chapter, DJJ reviews aspects of JDCs' post-dispositional programs to ensure they comply with state laws and regulations. However, these reviews are generally limited to ensuring that JDCs maintain required documentation, such as individualized treatment plans for youth, and develop adequate treatment teams. Virginia's lack of specific regulatory rehabilitative programming requirements limits DJJ's authority to conduct in-depth reviews of the rehabilitative programs.

In 2018, DJJ's quality assurance unit began conducting in-depth, on-site monitoring and technical assistance for JDCs that operate CPPs. During these reviews, DJJ:

- analyzes youth and facility level data to assess, for example, the alignment between services youth receive and their identified needs, the progress youth make over the course of their placement, and recidivism rates;
- reviews documentation, such as youth case records, family visitation, treatment team notes, service plans, and incident reports;
- interviews youth and JDC staff;
- surveys affiliated probation and parole officers; and
- reviews facilities' self-assessments.

Upon completion of a review, DJJ issues a report outlining their findings and recommendations for program improvement.

These quality assurance reviews appear to be a valuable addition to oversight of JDCs, but too few JDCs are subject to these reviews. When conducted, DJJ has identified critical problems with the rehabilitative programming provided, including that JDCs are not implementing evidence-based programs with fidelity. Coupled with technical assistance, such efforts are likely to lead to program improvements in JDCs. However,

currently these reviews are limited to the nine community placement programs in JDCs. The 18 post-D programs across the state's JDCs are not evaluated.

DJJ's quality assurance efforts should be expanded to include *all* rehabilitative programs in JDCs, not only CPPs, but additional statutory authority would be needed. The department is aware of some of the challenges these facilities face with operating rehabilitative programs, and leadership indicated they are willing to take on additional oversight and technical assistance responsibilities. However, DJJ does not have the authority to require that JDCs participate in its program improvement efforts other than for programs supporting youth in DJJ's custody (i.e. CPP, CAP, and detention re-entry placements).

#### RECOMMENDATION 19

The General Assembly may wish to consider amending §66-3.2 of the Code of Virginia to authorize the Department of Juvenile Justice to regularly conduct quality assurance reviews of juvenile detention centers' post-dispositional rehabilitative programs and provide technical assistance as needed to ensure the centers meet statutory and regulatory requirements.

#### Improving rehabilitative programming could be a resource intensive effort under existing structure

Regulatory changes may not be enough to improve the rehabilitative programming of some JDCs as they face additional challenges to providing effective rehabilitative programming. For example, some JDCs do not have needed treatment space for rehabilitative services and would require considerable resources to develop this space, which may not be feasible.

Because 21 JDCs now provide rehabilitative programs, undertaking the recommendations of this section may require substantial additional resources. In its efforts to improve these programs, DJJ may find that some JDCs are in a better position than others to implement evidence-based rehabilitative curricula and ensure staff are sufficiently trained. Other JDCs' rehabilitative programs may not be able to be improved without additional staffing or funding (sidebar). Additionally, DJJ central office staff indicated that expanding quality assurance reviews to all post-D programs would require additional staff.

The financial impact of these recommendations, though, may be less resource intensive if (1) some JDCs decide to no longer operate rehabilitative programs, or (2) the state chooses to alter the JDC structure so that these facilities either specialize in pre-D detention or rehabilitative programs (as discussed in Chapter 9). In either case, fewer JDCs would operate rehabilitative programs and be required to implement the recommendations of this section.

#### Educational programming lacks adequate oversight, continuity, and vocational services

Under federal and state law, all youth in JDCs are required to receive educational programming that is comparable to programming in the public school system. The Virginia Department of Education (VDOE) is statutorily responsible for delivering, supervising, and evaluating academic and vocational services in juvenile detention

centers. VDOE contracts with local school divisions to staff and administer these services across Virginia's JDCs but essentially functions as the school division for these programs and is ultimately responsible for the provision of education in JDCs (sidebar).

JDCs' educational programs are similar to a public school. Educational programs are provided for youth in JDCs over a traditional 180-day school year for an average of six hours per day and five days per week. These programs are typically provided in a classroom setting, and youth with different grade levels and placement statuses (e.g., pre-D detention, CPPs, and post-D programs) receive educational services together. However, the specific instruction and support each youth receives is expected to be individualized. Youth begin participating in the education program within 24 hours of their admission to a JDC (or by the next school day).

Providing effective education and training services to youth in detention helps promote positive youth outcomes, particularly given the population's characteristics. Juvenile justice research has found that effective education and training services for youth in residential facilities can help promote academic engagement, skills development, and a successful transition back into the community—each of which have been shown to reduce recidivism. These programs are particularly beneficial for youth in secure confinement facilities because these youth are more likely to have historically poor academic performance (e.g., grade level retention, expulsion, and truancy) and intensive support needs, such as special education (sidebar).

### **VDOE meets federal oversight requirements but does not fully ensure youth receive quality or effective educational programming**

Under federal and state law, VDOE is responsible for supervising and evaluating JDCs' educational programs. There are some positive aspects of VDOE's oversight. For example, the U.S. Department of Education found that VDOE meets the supervisory requirements related to compliance with the federal Every Student Succeeds Act (ESSA) and the Individuals with Disabilities Education Act (IDEA). In addition, VDOE collects some data from JDCs about the educational performance and outcomes of youth who have been in JDCs (sidebar). Self-reported information from JDCs is also generally positive, according to a JLARC staff survey and interviews. For example, when asked by JLARC, nearly all JDC directors reported that their facility was able to provide services to fully meet the educational needs of youth.

Despite some positive aspects, VDOE oversight does not fully ensure that youth in JDCs are receiving effective educational programming. For example, the data it currently collects does not provide adequate information about the quality or effectiveness of educational services at JDCs. The key federally required data that VDOE collects on student performance in the JDC is only for a small proportion (12 percent) of all youth placed in JDCs (i.e., youth in JDCs for more than 90 days). Other data collected by VDOE provides information about certain outcomes that cannot be directly attributed to the educational program of the JDC, given most youth have short

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**Teachers in juvenile detention centers** are employed by the local school divisions. VDOE contracts with these divisions to provide educational services in JDCs. These teachers are generally full-time staff and are licensed in specific subject areas, such as English or Math, like teachers in public schools.

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Approximately, **35 percent of youth in Virginia's JDCs are eligible for special education and related services** compared with 13 percent of youth in public schools.

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**Youth in JDCs are excluded from VDOE's annual publicly reported statewide performance reports** such as School Quality Profiles.

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**Louisiana established annual publicly available report cards for educational programs in juvenile justice facilities in 2016.** These report cards include various data points to measure students' and the educational programs' performance. Examples include students' academic progress while in these facilities, credit accumulation, and success in post-release educational or vocational programs.

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**VDOE's inadequate oversight was identified both as a special education issue and agency-wide issue in two recent JLARC reports, *Operations and Performance of the Virginia Department of Education* (2020) and *K-12 Special Education in Virginia* (2020).**

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stays (e.g., number of youth who acquired a high school diploma and SOL test scores). The lack of useful data limits VDOE's ability to adequately evaluate JDC educational program quality and effectiveness and hold school divisions accountable. It also makes it challenging for legislators and other stakeholders to hold VDOE accountable for ensuring youth receive effective educational programming in JDCs.

Although collecting useful data for these programs can be challenging, other states have taken steps to improve their data collection efforts and the transparency of how well these programs perform (sidebar). Examples of useful data include data on the academic progress of *all* youth in a JDC and data on the post-release outcomes for youth, including youth reenrollment in public schools and youth participation in post-secondary education or vocational training.

VDOE's oversight is also limited because it no longer conducts on-site program quality reviews, which are critical to effective oversight (sidebar). VDOE previously conducted structured on-site evaluations of the quality of educational programming in JDCs, but these efforts were discontinued in 2016 because of staffing constraints. Methods used during these on-site evaluations included reviews of student case files, policies, procedures, and instructional practices; interviews with administrators, teachers, students and residential staff; observations of staff interactions, instruction and the physical condition of classrooms; and an analysis of available student outcomes data. Upon the completion of these on-site evaluations, VDOE issued reports that outlined its findings and recommendations for program improvement.

To provide adequate oversight of JDC educational programs and offer technical assistance as needed, VDOE should expand its data collection efforts and reinstate its on-site evaluations. To reinstate on-site evaluations, VDOE would likely require an additional staff position. Currently, VDOE has one staff person responsible for supervising and evaluating all 46 state-operated programs, including programs operated in the juvenile detention centers, hospitals, state health clinics and mental health facilities. Since 2016, VDOE has requested an additional staffing position through a Budget Decision Package stating that:

Leadership of the [state-operated] programs, including teacher professional development unique to SOP settings, compliance with state and federal requirements, and human resource issues, has suffered due to the increased demands on the current specialist.

## RECOMMENDATION 20

The General Assembly may wish to consider including language in the Appropriation Act (i) directing the Virginia Department of Education (VDOE) to reinstate its on-site monitoring reviews of the educational programs at juvenile detention centers; improve its collection of student outcomes data; and report annually on the effectiveness and quality of programs for youth in detention centers to the Senate Education and Health and the House Education committees; and (ii) establishing and funding an additional staff position at VDOE to assist with these oversight responsibilities.

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## Lack of consistent educational programming during summer misses remedial and other educational opportunities

The adherence to a traditional school year precludes JDCs from providing education programming to youth during the summer. This is a missed opportunity to provide remedial and other programming to youth in JDCs, many of whom are already academically behind their peers not in the juvenile justice system. The lack of educational programming during the summer is also contrary to the National Institute of Corrections, which emphasizes that “educational services should occupy the maximum amount of time allowed” and that “a detention education program should operate on a 52-week schedule.”

Twenty-one of the 23 JDC directors who responded to JLARC’s survey reported that their facilities’ educational programs followed a traditional, 180-day school year (sidebar). When VDOE’s educational programming is not provided, youth may receive “zero education exposure”—as was indicated by one JDC—and instead receive programming created by facility staff. However, facility staff do not have the expertise to operate a school program, and research indicates that programs developed by these staff for the summer months can be problematic.

Operating school personnel-led educational programs during the summer would likely benefit the youth in JDCs because they provide remediation, credit recovery, and enrichment opportunities (sidebar). In 2012, JLARC found that additional instruction time can help prevent learning loss and reinforce academic concepts, particularly for at-risk youth who make up a large proportion of the JDC population. Most (85 percent) JDC directors who responded to JLARC’s survey, and did not already operate on an extended school year schedule, felt that adopting this schedule would have a “positive effect” or “strong positive effect” on youth in their facility. JDC directors noted that:

Any additional instruction can only have a positive effect on the youth. It provides constructive activities and can assist in helping the youth work on areas of need or to get them on track for the [grade levels] they should be in.

So many of our youth thrive in the school setting at JDC but did not do so in regular school. An extended year would provide them with more opportunities to learn, gain great skill sets, and become more accustomed to learn.

School calendars that provide instruction during the summer months are becoming more common in juvenile facilities and regular school settings. As of the 2017–18 school year, 18 states operated educational programs for 200 days or more in comparable residential facilities and provided these services for a median of 128 hours more than Virginia’s JDCs (~4 weeks). Many Virginia school divisions have also extended the length of their school year and provide summer programming through the General Assembly’s Extended School Year Incentive Program (§22.1-98.1 of the Code of Virginia).

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In addition to education services provided during the traditional school year, **some JDCs also provide summer enrichment programs.** However, these programs are not equivalent to programming provided during the traditional school year.

**Educational personnel in JDCs are hired on an 11-month contract,** making an extended school year more feasible to implement.

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**Extended school year programming may need to look different** across Virginia’s JDCs.

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**RECOMMENDATION 21**

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Education to develop a plan to implement an extended school year model that provides structured summer programming in juvenile detention centers and estimate any additional appropriations required. The plan should be submitted to the House Appropriations and Senate Finance and Appropriations committees no later than November 1, 2022.

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**Many JDCs lack adequate vocational training services**


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On May 1, 2019, 65 percent of youth in JDCs were either 16 or 17 years old. This proportion has remained relatively stable since FY11.

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Upon their release from a juvenile detention center, the majority of youth will or soon will transition into adulthood but face many barriers to acquiring postsecondary education or gainful employment (sidebar). Nationally, common barriers for youth released from juvenile detention centers include historically low academic performance and little to no job experience or employable skills. These youth also need to overcome challenges of a conviction record during their search for employment.

To overcome these barriers, youth require effective supports, including vocational training services and assistance finding jobs. Vocational training services can be provided to youth in (1) short-term placements through career exploration classes and (2) long-term placements through specific certification and trade trainings. These services can expose youth to the job market and employment opportunities, help them acquire workforce skills, and facilitate their successful transition back into their communities.

Under state law, VDOE is required to provide vocational services to youth in JDCs. VDOE currently provides several vocational trainings at juvenile detention centers including: career exploration courses, employment skill development (e.g., WorkKeys, Microsoft Office), workplace health and safety trainings (i.e., OSHA Industry credentials, First Aid/CPR), and specific trade skill trainings. The specific vocational programs offered vary across detention centers (sidebar).

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According to VDOE, vocational training offerings can vary across JDCs because of differences in the facilities' policies, such as internet access policies, and access to supplies and equipment.

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The availability of vocational training varies across JDCs. According to a recent Virginia Detention Association of Post-Dispositional Programs (VDAPP) survey of 18 JDCs, only 14 facilities reported offering vocational training services—eight of these offered career education services and 10 offered specific trade and/or certification trainings. Interviews with JDC staff also indicated that vocational services were not available to all youth within a facility and depend upon resource availability, including funding and partnership opportunities. Moreover, nearly all, 22 of the 24 JDCs (92 percent), reported that increasing the availability of vocational training services for youth in their facilities would help reduce recidivism.

Vocational trade trainings are particularly beneficial for youth in long-term placements, but such opportunities appear scarce across Virginia's JDCs. Trade trainings can help youth develop skills needed for certain occupations, yet the trainings offered in JDCs are generally limited to food handling, retail employability skills, and COVID-19 tracing. Research suggests that there are various other trade skills that youth can acquire

while in long-term residential placement, such as construction, landscaping, and welding skills. Some JDCs may be providing additional trade training through coordination with community college career and technical education courses, but these opportunities depend upon local resources.

In addition to providing vocational training services, job placement assistance would also help youth overcome employment barriers. Employment connections can be facilitated by establishing periodic job fairs for youth (an opportunity already available at some JDCs), developing employment programs in JDCs that may include internships, job shadowing or work experience, or partnering with local employers to secure post-release job opportunities for residents. The extent to which these opportunities are currently available across the state's facilities is unknown, but they should be considered as part of VDOE's efforts to improve vocational services for youth in JDCs.

#### **POLICY OPTION 6**

The General Assembly could include language in the Appropriation Act directing the Virginia Department of Education to convene a workgroup that includes personnel from Virginia's juvenile detention centers, the Department of Juvenile Justice, the Department for Aging and Rehabilitative Services, the Virginia Community College System, and local workforce investment boards to assess the adequacy of current training, certification, and placement assistance services available in juvenile detention centers and identify opportunities to expand service offerings. VDOE would report the findings from the workgroup to the Senate Education and Health and the House Education committees no later than December 1, 2022.

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# 7 Rehabilitative Programming for Youth in DJJ Custody

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After youth are committed to DJJ (sidebar), its Central Admissions and Placement Unit places delinquent juveniles at either its Bon Air Juvenile Correctional Center (JCC) or at alternative placements. Most youth in alternative placements are in community placement programs (CPPs), which are secure residential programs located at, and operated by, local or regional juvenile detention centers (JDCs). While these youth are detained at JDCs and receive rehabilitative services from local providers, they are technically still considered under DJJ custody. DJJ also uses contracted alternative placements for a very small proportion of youth in its custody, such as group homes and residential treatment centers.

Most youth in DJJ custody are placed at Bon Air JCC, but an increasing proportion are placed in JDCs. Of the youth in DJJ's custody in 2021, 54 percent were placed at Bon Air JCC, and 46 percent had an alternative placement. Most youth in alternative placements are in CPPs at JDCs, which allow some youth to be closer to home. Only 2 percent of youth were placed in alternative programs like group homes or residential treatment centers.

The number of youth in DJJ custody has decreased by 71 percent over the past decade, from 746 youth in 2012 to 220 youth in 2021 (Figure 7-1). Although substantially fewer youth are placed in DJJ custody, most have committed serious offenses. Of those youth committed to DJJ as of May 2021, 94 percent had committed at least one felony offense (sidebar).

As part of the transformation, DJJ is expected to prioritize its rehabilitative programming for youth in its custody to improve youth outcomes and reduce the risks of reoffending (sidebar). DJJ has three primary approaches to rehabilitative programming for DJJ-committed youth:

- A “Community Treatment Model” as its daily approach to working with youth and improving their thought processes and behaviors (for youth at Bon Air JCC).
- One or more specific rehabilitative treatment programs intended to address youths’ criminogenic risk factors, such as substance abuse treatment.
- Where possible, placing youth in DJJ custody at CPPs, which can allow youth to receive rehabilitative services closer to home.

Recidivism (measured by reconviction rates) has remained about the same or slightly increased among high- and moderate-risk youth in state custody. Recidivism has actually slightly increased among high-risk and moderate-risk youth released from DJJ custody since the start of DJJ’s recent reforms (Figure 7-2). Similar trends persist for

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**Courts can commit youth to DJJ custody** for a determinate or indeterminate length of time. Youth may only be committed to DJJ if they are at least 14 years old (§ 16.1-278.7).

**In 2021, the top five types of offenses committed by youth in DJJ custody** were assault, robbery, larceny, weapons offenses, and sexual abuse. The average number of offenses committed was 3.2 per youth.

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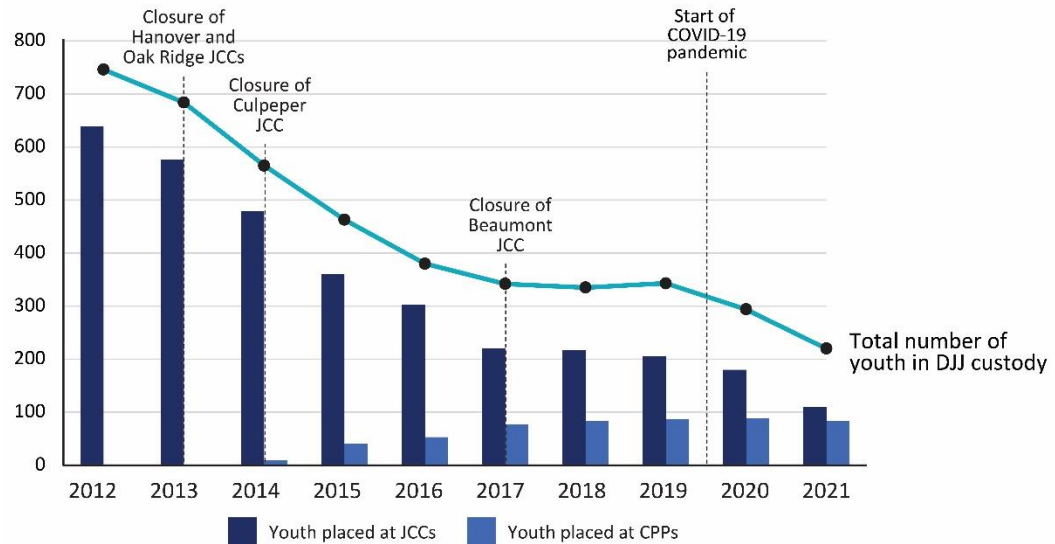
**In authorizing the transformation, the General Assembly specified that DJJ was to provide appropriate levels of rehabilitative and other programming** to “reduce the risks for reoffending for juveniles supervised or committed to the Department and to improve and promote the skills and resiliencies necessary for the juveniles to lead successful lives in their communities.”

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**Health, safety, and education at Bon Air.** JLARC staff also assessed DJJ's processes to ensure the health and safety of youth at Bon Air (Appendix E), as well as the education services provided to youth while in DJJ custody (Appendix F).

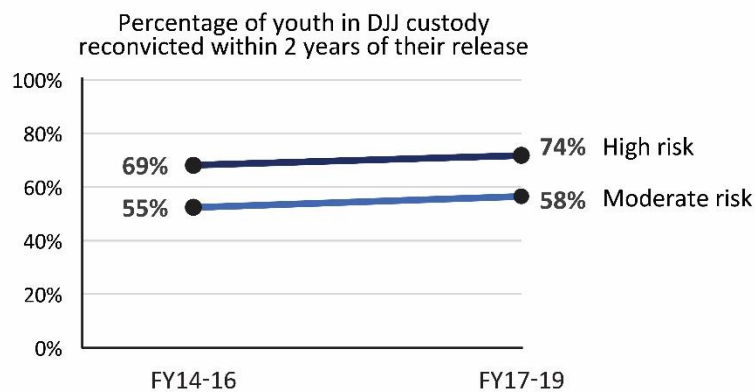
rearrest and reincarceration rates. A growing proportion of youth committed to DJJ have been placed at a CPP, and these programs have worse recidivism outcomes than the JCCs, which appear to be driving the increase in recidivism rates for DJJ-committed youth as a whole.

**FIGURE 7-1**  
Number of youth in DJJ custody has declined over the past decade (2012–2021)



SOURCE: DJJ snapshot data for youth in DJJ custody, 2012–2021.

**FIGURE 7-2**  
Two-year reconviction rates for youth in DJJ custody have not improved following the DJJ transformation



SOURCE: JLARC staff analysis of DJJ recidivism data, FY14–19.

NOTE: Reconvection rates measured as the proportion of youth who were reconvicted within two years following their release from DJJ custody out of all youth released between FY14–16 and FY17–19. Rates exclude youth who commit technical offenses, such as parole violations. JLARC staff excluded years prior to FY14 because DJJ data on youths' risk levels was not consistently available in earlier years, although risk levels were also missing for a small proportion of youth reflected in the years shown. From FY14–19, an average of 10 percent of youth each year did not have assigned risk levels.

## **Effectiveness of CTM has not been verified and may be compromised by issues with key frontline staff**

DJJ's core approach to providing rehabilitation to youth at Bon Air JCC is its behavior management program, known as the Community Treatment Model (CTM), which was implemented as part of the DJJ transformation. DJJ previously used a model similar to adult corrections, in which corrections officers generally did not interact with residents—focusing primarily on security. However, best practices in juvenile justice indicate that developing positive relationships with staff in a therapeutic environment is a better approach to supporting youths' rehabilitation. In recognition of this, DJJ shifted to the CTM, which focuses on incorporating a structured daily schedule of several therapeutic activities (e.g., mutual help groups), along with consistent staffing in each unit to promote youth rehabilitation.

DJJ developed the CTM based on a similar model used in Missouri, however, this model has not undergone a rigorous evaluation for its effectiveness. Much of the work suggesting the effectiveness of Missouri's approach cites the state's relatively low recidivism rates when compared with other states. However, several aspects of how Missouri measures recidivism may at least partially explain its low rates of reoffending—such as excluding youth from recidivism metrics who are over age 17 or who do not complete treatment programs. Therefore, it cannot be concluded that the outcomes reported validate the effectiveness of the model.

The General Assembly's 2016 task force to consider future capital and operational requirements for Virginia's juvenile correctional centers has also reported on the lack of evidence demonstrating the effectiveness of Missouri's approach, stating:

As noted by the National Academy of Sciences, there has not to date been any rigorous scientific study of the Missouri model's effects on recidivism (nor, for that matter, of any comprehensive approach to juvenile corrections) that controls for youth-specific and system-specific factors.

Even if the CTM is an effective approach for working with committed youth, its effectiveness may be compromised because of problems with the frontline staff who are responsible for implementing the model. Most notably, effectiveness of the CTM hinges on staff developing trusting relationships with youth. However, in JLARC's survey of youth at Bon Air JCC, only 42 percent of youth reported feeling they could trust the staff who work there (sidebar). Additionally, evidence suggests these frontline staff are not fully trained on the therapeutic responsibilities of their role before they begin working with youth, and that DJJ lacks the number of staff needed to implement the CTM as intended.

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**JLARC staff surveyed youth at Bon Air JCC in summer 2021.** In the survey, only 54 percent of youth reported that staff follow the rules, and 58 percent reported that staff treat youth with respect. (See Appendix B for more information.)

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## **Residential specialists do not receive adequate or timely training needed for their multi-faceted role**

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Although the residential specialists engage youth in therapeutic activities, the primary clinical services youth receive are provided by case managers and/or therapists assigned to each housing unit.

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Prior to the transformation, training standards for these staff were the responsibility of the Department of Criminal Justice Services. DJJ sought legislation in 2019 to transfer the authority to develop these training standards back to the Board of Juvenile Justice.

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In its transition to the CTM, DJJ shifted its juvenile corrections officer (JCO) positions to residential specialist (RS) positions for staff working at Bon Air JCC. The primary responsibilities of the JCOs were to ensure safety and security of the residents and staff at the JCCs. However, in shifting to the RS role, staff are required to fulfill all the traditional responsibilities of a corrections officer *in addition to* engaging residents in therapeutic activities to promote their rehabilitation, such as leading daily “circle-ups” and mutual help groups as part of the CTM (sidebar).

Despite the changes in responsibilities for these frontline staff, DJJ has not updated its training standards to incorporate training on the therapeutic responsibilities now included in the RS role. Although the CTM was fully implemented in all housing units at Bon Air JCC by 2017, DJJ did not begin updating training standards for these staff until early 2019 (sidebar). In December 2020, the Board of Juvenile Justice approved the new training standards and authorized DJJ to implement them, however, regulatory action on the new training standards was not initiated by DJJ until June 2021. As a result, the new standards have yet to be implemented as of December 2021—four years after the CTM was fully implemented.

Additionally, RSs do not appear to receive adequate training on the specific treatment programs being provided to youth (e.g., aggression management, substance abuse). Best practices suggest that all staff should be trained on the programming youth receive to help encourage consistent application of terms and concepts, which can reinforce lessons youth are learning in their treatment programs. Although DJJ leadership reports that RSs are eventually trained on the therapeutic aspects of their role, they do not receive this training in a timely manner. RSs are not trained on the CTM until they arrive at the facility (after their initial five-week training is complete). This means staff are working with youth before they are fully trained on effective and appropriate interactions with youth that are beneficial for their rehabilitation.

In interviews, leadership and staff at Bon Air JCC expressed frustration with the current approach to training RSs and general confusion about how to balance and implement the security and therapeutic aspects of the RS role. For example, Bon Air JCC leadership criticized the training that is currently provided to RSs, stating:

The training right now doesn’t teach them how to engage the kids, it just teaches them how to do things like how to escort the kids or how to put on handcuffs... They aren’t getting the training they need to be successful here. We have to train them when they get here. I think that’s a real downfall for the agency.

To ensure front-line staff are well trained to positively affect youth’s rehabilitation, DJJ should implement its updated training standards for the RS position to train staff on the therapeutic responsibilities of their role. In implementing the new training standards, DJJ should ensure RSs receive sufficient training related to the therapeutic as-



pects of their role during their initial five-week training, including training on the specific rehabilitative treatment programs provided to youth at Bon Air JCC, to minimize the amount of time RSs are working with youth before being properly trained.

## RECOMMENDATION 22

The Department of Juvenile Justice should update and improve training for residential specialists to address the therapeutic responsibilities of the role during the initial five-week training, including training on the specific rehabilitative treatment programs provided to youth at Bon Air Juvenile Correctional Center.

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### **Bon Air JCC does not have enough residential specialists**

DJJ has also had substantial difficulty recruiting and retaining RS staff. During interviews, DJJ leadership reported difficulty in recruiting RS staff, despite having taken additional steps to broaden recruitment efforts, such as conducting additional recruiting on college campuses. Nearly 35 percent of the 248 RS positions were vacant as of October 2021. Moreover, the turnover rate for RS staff has increased in recent years, from 19 percent in FY17 to 27 percent in FY21.

The impact of the high RS vacancy rate on operations at Bon Air JCC is likely partially offset by the relatively low population of youth currently committed to DJJ custody (sidebar). The total number of youth committed to DJJ custody has been steadily declining over the past decade and is at a historic low, due at least in part to the COVID-19 pandemic. It is unclear what the population of DJJ-committed youth will be after the pandemic, but it is possible that it will increase to some extent. If DJJ continues to experience similar recruitment and retention challenges, the higher vacancy rate for RSs may become more problematic as the population of youth committed to DJJ custody increases.

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**DJJ regulations require minimum staffing ratios of 1:10 residents during waking hours and 1:16 residents during sleeping hours (6VAC35-71-830).**

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Despite the lower number of youth being placed at Bon Air JCC, the high vacancy rate is already causing substantial disruption and increasing workload for current RS staff. Current RSs must work additional shifts to cover vacant positions, which is reportedly resulting in staff burnout. During an interview with JLARC staff, one RS reported:

A lot of staff are getting burnt out with the shortages. We have what's called the "draft." If you're going to call off you have to do it within two hours of the start of the shift, so if someone calls off then the staff who are there have to stay until they can get someone to relieve you.

DJJ's recruitment and retention problems with residential specialists are consistent with what other public safety agencies are facing. Virginia State Police, the Department of Corrections (DOC), and local and regional jails are also experiencing substantial problems recruiting and retaining an adequate number of law enforcement and security staff. The General Assembly directed the creation of two workgroups to review how those agencies could address those problems, including through salary increases.

DOC, which identifies DJJ as a competitor agency against which to benchmark salaries, is proposing substantially increasing starting salaries for its corrections officers. Corrections officer starting salaries are about \$35,000, and the DOC's proposal would increase these salaries by 25 percent to \$44,000.

Though several factors are contributing to DJJ's difficulty recruiting and retaining RS staff, its relatively low starting salaries are likely a factor. DJJ is offering a starting salary for RSs at about \$37,000, which is slightly above the current DOC starting salary but would be below the proposed DOC salary. DJJ has also previously offered \$2,500 sign-on bonuses, which is consistent with the bonuses DOC is offering new correctional staff. It is unclear whether these bonuses had an impact on reducing DJJ's vacancy problem, and it is also unclear how long these staffing shortages (at DJJ and other state agencies) will continue.

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**Using several assumptions,** the low end of the estimate for increasing RS staff salaries assumes raising salaries for current staff, while the high end assumes all vacancies will eventually be filled.

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If the General Assembly increases starting or current salaries for DOC corrections officers, it could also consider similar salary increases for DJJ residential specialists. Because DOC and DJJ compete to recruit staff for these positions, increasing salaries for new DOC employees without raising DJJ salaries may only further exacerbate DJJ's recruitment challenges for RSs. Similarly, increasing salaries for existing DOC corrections officers may make it more difficult for DJJ to retain RS staff. Increasing salaries for RSs by 25 percent, including for both existing and new staff, could cost between \$2 million and \$6 million (sidebar).

### **POLICY OPTION 7**

If the General Assembly authorizes salary increases for corrections officers at the Virginia Department of Corrections, it could similarly increase salaries for residential specialists at the Department of Juvenile Justice.

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Although low salaries are likely a contributing factor in DJJ's recruitment and retention challenges for RSs, these difficulties may indicate the responsibilities of this position could be met more effectively as two separate positions. Some of the difficulty may result from recruitment and retention challenges in corrections generally but may also stem from a lack of clarity in responsibilities for the RS role and difficulty in finding individuals who have both the security and therapeutic skills needed for the role.

DJJ should identify the root cause(s) of its recruitment and retention challenges for RSs. DJJ should work with the Department of Human Resource Management, and consider contracting with a third-party compensation and classification expert, to determine the causes. After the causes of these challenges have been identified, DJJ should develop a plan to address them, and should consider (1) assigning the therapeutic and security responsibilities of the RS to separate positions; (2) increasing compensation; and (3) addressing other factors that may be contributing (e.g. organizational culture, supervisory deficiencies, lack of work/life balance, etc.) as appropriate. If the decision is made to eliminate the RS position as currently defined and to have

separate security and therapeutic positions, the level of responsibility, training, and labor market would need be considered to set salaries that reflect the separate job roles.

### RECOMMENDATION 23

The Department of Juvenile Justice should work with the Department of Human Resource Management to identify and address the root causes of recruitment and retention challenges for its residential specialist position.

## DJJ's rehabilitative programming is less than fully effective and unlikely to reduce reoffending

National best practices indicate rehabilitative programming should have several elements to be most effective. These key elements relate to services provided to individual youth and program design and evaluation. Although a key goal of DJJ's transformation was to reform rehabilitative practices for youth in its custody, its current rehabilitative programming lacks some of these key elements. (Table 7-1).

**TABLE 7-1**  
**Rehabilitative programming for DJJ-committed youth lacks some of the key elements related to youth services, program design, and evaluation**

	Key element for effectiveness	Status of DJJ programming
Youth assessment & process	1. Comprehensively assess individual youth risk and needs	●
	2. Use individual youth's risk level and treatment needs to inform length of stay in facility	◐
Treatment program design	3. Provide rehabilitative treatment programming likely to reduce reoffending	◑
Program evaluation	4. Collect data to monitor and evaluate programming on an ongoing basis	◐

SOURCE: JLARC comparison of DJJ programming to program elements cited as best or recommended practice.

## Each youth is individually and comprehensively assessed when taken into DJJ custody

Conducting comprehensive assessments is critical to determine youths' rehabilitative treatment needs. National best practices indicate that all youth should be thoroughly assessed upon admission to a residential facility—including face-to-face interviews, testing, and behavior observations—to determine a youth's treatment needs and risks of reoffending. The primary goals of assessing youth are to ascertain (1) the context of the youth's early development; (2) the context of the current delinquent behavior;

(3) the youth's social functioning and emotional stability, behavioral patterns and control, cognitive abilities, and mental status; and (4) the youth's willingness to accept and engage in treatment.

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**Risk factors are characteristics that predict further delinquent behavior** (e.g., prior criminal history, substance abuse, etc.), while protective factors are strengths that reduce the likelihood of further delinquent behavior, such as strong family or community supports.

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DJJ currently conducts risk and needs assessments for youth using the Youth Assessment and Screening Instrument (YASI). The YASI is used by several other states and appears to be an effective tool, as research indicates it accurately identifies risk factors that are predictive of reoffending. Upon commitment to DJJ, DJJ's Central Admissions and Placement (CAP) Unit coordinates the intake and assessment process to identify youths' needs and assign them a placement for their duration of time in DJJ custody (e.g., Bon Air JCC, CPP). As part of this process, DJJ conducts psychological evaluations of each youth and assesses youth using the YASI, which evaluates youth to identify their risk and protective factors and predict their likelihood of reoffending (sidebar).

### **Length of stay is not adequately informed by treatment needs**

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**Except in cases of murder or manslaughter, youth may not be held longer** than 36 continuous months or after they have reached the age of 21, whichever comes first (§ 16.1-285).

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As part of the transformation, DJJ revised its length-of-stay guidelines in 2015 to shorten lengths of stay and reduce the number of youth in its custody. For youth who are committed to DJJ but whose lengths of stay were not determined by a judge, DJJ decides the youth's length of stay and when the youth is ready to be released (sidebar). Of those youth admitted to DJJ custody in FY20, 68 percent were committed to DJJ for an indeterminate amount of time. DJJ's guidelines appear to have been effective at reducing the average length of stay. The average length of stay for youth in DJJ custody declined from 18.7 months to 14.2 months (24 percent) between FY14 and FY20.

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**Juveniles who have been assessed as needing inpatient sex offender treatment** are not assigned a projected length of stay and are eligible for consideration for release upon completion of the designated treatment program.

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Youth are initially assigned an estimated length of stay by court service unit staff upon commitment to DJJ custody in consideration of (i) risk level and (ii) severity of offense(s). At this point, though, treatment needs have not been fully identified and obviously progress in treatment has yet to occur. This length-of-stay determination occurs *before* the youth's treatment needs have been decided. Although DJJ's CAP Unit can modify youths' estimated length of stay during the assessment process or override the length of stay under certain circumstances (sidebar), DJJ staff report that most length-of-stay projections do not change from the original estimate provided by court service unit staff.

There is currently no consensus on an ideal length of stay, but research indicates that both stays that are too long or too short can each result in bad outcomes for youth. Lengths of stay should be appropriately tailored to the amount of time needed to provide rehabilitative treatment to youth. Therefore, focusing primarily on *reducing* the amount of time spent in DJJ custody may not be the most effective approach.

DJJ's revised approach to length of stay may be undermining its rehabilitative goals. DJJ staff expressed concerns that the push to shorten stays can conflict with successfully completing treatment. For example, during interviews, staff reported concerns

about how the current emphasis on short stays may be compromising their ability to meet youths' rehabilitative needs:

I feel like we have to tailor our programs to meet the length of stay...so we crunch the treatment down because we don't want to keep them past the length of stay.

If they're past their length of stay, there might be a push to get them out, but they're not always ready. We are not always able to meet the youths' treatment needs given their length of stay.

Additionally, data shows that youth who reoffended in recent years stayed, on average, at Bon Air JCC for a shorter period of time than youth who did not reoffend.

To better address youths' risk factors and likelihood to reoffend, DJJ should refine its approach to determining length of stay. Regardless of the length of stay that youth are originally assigned, DJJ should establish a process to ensure youths' treatment needs, as well as their progress in treatment, are adequately and fully considered before youth are released. This could be accomplished by requiring the youth's primary behavioral services clinician to evaluate the youth's progress in treatment and readiness for release prior to the youth's 90-day re-entry meeting. As part of this assessment, the clinician could report to the youth's treatment team on whether the youth is ready to be released, and if not, recommend what additional rehabilitative services should be provided (sidebar).

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**DJJ's sex offender program includes a review process to measure youths' progress and determine readiness for release**, which could be used as a starting point for developing a similar process for other youth in DJJ custody.

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#### **RECOMMENDATION 24**

The Department of Juvenile Justice should establish a process to ensure indeterminate committed youths' treatment needs and progress are adequately and fully considered before youth are released.

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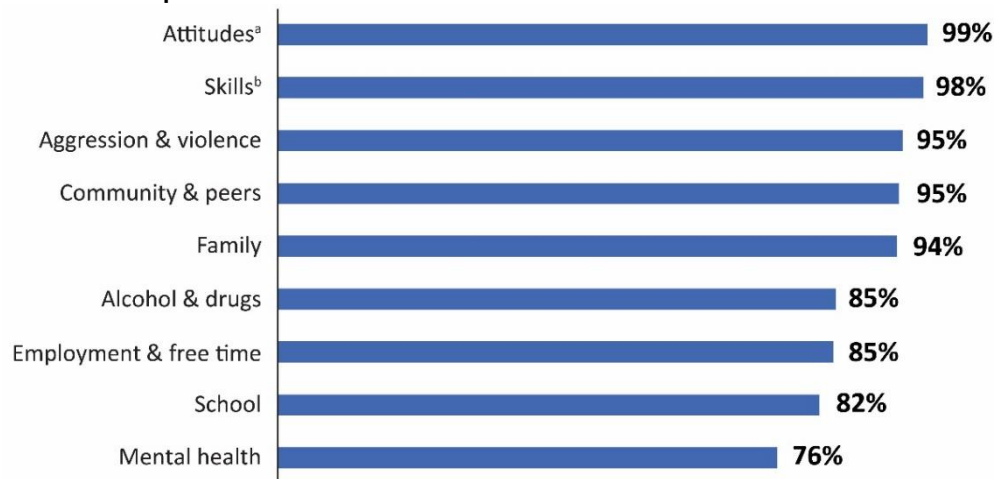
#### **Although no program can be fully effective, rehabilitative programming provided by DJJ appears unlikely to reduce reoffending**

The reasons youth offend are complex and likely reflect multiple interrelated risk factors specific to each youth. Youth in DJJ custody have complex and multiple risk factors and needs (Figure 7-3). Most youth have more than five risk factors, some of which need to be addressed through different types of rehabilitative treatment. For example, most youth have risk factors related to their environment (e.g., family and peer group) and their individual psychological condition (e.g., attitude, aggression and violence).

Providing rehabilitative treatment programs that address each youth's full range of risk factors is challenging, especially because DJJ has a limited amount of time to positively affect youth in its custody. To the extent practicable, though, rehabilitative programs and practices need to reflect the risk factors specific to each youth and seek to effectively address the root cause(s) of the delinquent behavior.

FIGURE 7-3

**Most youth committed to DJJ have identified criminogenic risks and needs across multiple domains**



SOURCE: DJJ YASI Assessment data for youth in DJJ custody, 2016–2020.

NOTE: Percentages shown are proportion of youth in DJJ custody with any identified risk for each domain, regardless of the extent of the risk. <sup>a</sup> Attitudes domain includes pro-social attitudes, such as positive attitudes toward legal authority and acceptance of responsibility. <sup>b</sup> Skills domain includes skill sets such as problem-solving, social skills, consequential thinking, impulse control, planning, and goal setting.

DJJ's ART program design includes 10 weeks of 1-hour group treatment sessions (30 hours total) focusing on (1) social skills, (2) anger control, and (3) moral reasoning.

In 2021, OJJDP renamed its evaluations of ART to "WSART" to clarify that existing evaluations have focused ART as implemented in Washington state. Washington's program design is very similar to DJJ's. For example, it includes 10 weeks of one-hour group treatment sessions (30 hours total), and focuses on (1) social skills; (2) anger control; and (3) moral reasoning.

OJJDP has also reviewed ART for youth in runaway shelters and found one study that indicates positive impacts on anti-social behaviors. However, this program is a condensed version of ART and appears to be materially different than what DJJ uses.

DJJ's current rehabilitative programming for most youth in its custody appears to not maximize its ability to decrease recidivism. DJJ's rehabilitative programming currently focuses on its two primary treatment programs: (1) aggression management and (2) substance abuse. DJJ assigns most youth (85 percent) to one or both of these programs. However, neither program is sufficiently supported by evidence as being effective at reducing reoffending.

DJJ uses Aggression Replacement Training (ART) as its primary aggression management program, including for youth placed at CPPs, and there are increasing doubts about its effectiveness (sidebar). ART previously showed evidence of promising outcomes for youth, however, more recent research indicates it may not be as effective as initially thought. Several nationally recognized organizations regularly assess evidence of effective rehabilitative programs, and the most recent research from these organizations suggests there are reasons to question its effectiveness. For example:

- The Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Model Programs Guide downgraded its assessment of ART, as implemented in the state of Washington, in March 2021 from "Effective" to "No Effects" (sidebars).
- Blueprints for Healthy Youth Development currently rates ART as having insufficient evidence to demonstrate its effectiveness.

- The California Evidence-Based Clearinghouse (CEBC) has rated ART as a “promising” program, but it has not reached its “supported” or “well-supported” rating (sidebar).
- Cost-benefit analyses from the Washington State Institute for Public Policy (WSIPP) have shown a trend of declining return on investment from ART as the cost-benefit ratio has been declining. Most recently in 2019, WSIPP found ART to be ineffective for youth in state institutions but updated cost-benefit results have yet to be released.

Furthermore, research assessing the effectiveness of *ART as implemented by DJJ*, including analyses conducted as part of this study, question ART’s effectiveness.

- The Urban Institute conducted a study assessing the effectiveness of ART for youth committed to DJJ. Although the Urban Institute found positive effects of ART for youth who received the program from 2008–2010 (when it was initially adopted by DJJ), the study found no similar positive effects for a larger cohort of youth who received ART in later years, from 2011–2015.
- JLARC staff analyses of DJJ treatment and recidivism data indicates that two-thirds of youth who had completed ART and were released from FY14 to FY18 were reconvicted within 36 months of being released from DJJ custody (Figure 7-4).

No single program can be fully effective at reducing or eliminating recidivism for all youth. National organizations have identified some programs better supported by current research evidence, including one DJJ uses for certain youth. For example, cognitive behavioral therapy has been rated as an effective practice by OJJDP for reducing aggression and anger expression, and improving self-control, problem-solving, and social competencies. Another program, dialectical behavioral therapy (DBT), which focuses on enhancing youth behavioral skills in dealing with difficult situations and motivating youth to change dysfunctional behaviors, has been demonstrated as effective by WSIPP in reducing further delinquent behavior for youth in state institutions. DJJ has used DBT in a limited capacity for some youth in its custody and could consider expanding its use of DBT as an alternative to ART.

There is also minimal evidence on the effectiveness of Cannabis Youth Treatment (CYT) used by DJJ (sidebar). Some limited research suggests CYT may be effective in reducing marijuana and alcohol use, however, DJJ uses CYT for all youth with substance abuse treatment needs, regardless of whether they have previously used marijuana (sidebar). The effectiveness of CYT has also not been evaluated by Blueprints for Healthy Youth Development, OJJDP’s Model Programs Guide, the CEBC, and WSIPP. Reconviction data for youth who complete DJJ’s substance abuse program also suggests CYT is not substantially reducing the risk of recidivism for these youth after being released from DJJ custody (Figure 7-4).

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**The California Evidence-Based Clearinghouse (CEBC) rating scale is as follows:** (1) well-supported; (2) supported; (3) promising; (4) evidence fails to demonstrate effect; and (5) concerning practice.

**The most recent research used by CEBC to determine ART’s effectiveness rating is based on programs implemented for youth in other countries,** including in the Netherlands and Turkey. Research cited assessing the outcomes of youth in the United States is dated, with the most recent being from 1999.

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**For CYT, youth receive one session per week** for either five weeks or 12 weeks, depending on the severity of the youth’s needs.

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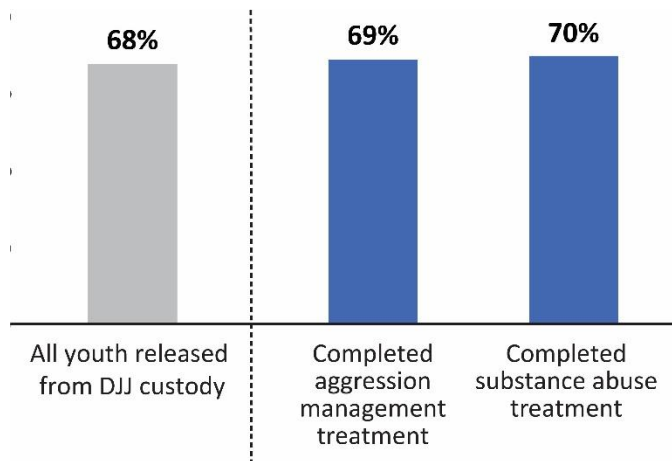
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**The curriculum for CYT includes suggestions for addressing both drug and alcohol use,** but the program was not designed for treating youth with polysubstance dependence or those who use other substances on a weekly basis.

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**FIGURE 7-4**

**More than two-thirds of youth completing DJJ's two primary treatment programs were reconvicted within 36 months of their release**



SOURCE: JLARC staff analysis of DJJ treatment and recidivism data, FY14–18.

NOTE: Reconviction rates measured as the proportion of youth who were reconvicted within 36 months of their release from DJJ custody out of all youth released from FY14–18 who completed each treatment program. Rates exclude youth who commit technical offenses, such as parole violations.

To ensure its rehabilitative programming is maximally effective at reducing reoffending, DJJ should provide programs that are evidence based and consistent with the most up-to-date expert research for providing treatment to committed youth in secure residential facilities. There is currently no consensus on the ideal program for committed youth, and research on program effectiveness can be fluid. Therefore, DJJ should select programs based on the *strength* of the best available evidence demonstrating effectiveness, such as by incorporating programs and practices that have been identified as effective by leading national organizations, such as WSIPP, the OJJDP's Model Programs Guide, and Blueprints for Healthy Youth Development.

#### **RECOMMENDATION 25**

The General Assembly may wish to consider amending Chapter 2 of Title 66 of the Code of Virginia to require the Department of Juvenile Justice to provide rehabilitative treatment programs for youth in its custody based on the best available evidence of effectiveness at reducing the likelihood of reoffending for youth committed to secure residential settings.

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**Youth at Bon Air JCC are assigned a mental health therapist** for individual therapy and other behavioral health services.

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Opportunities likely exist to provide programming that is more individualized and that more comprehensively addresses youths' identified criminogenic risk factors. After youths' risk factors are determined upon commitment to DJJ, staff develop case plans for each youth that outline strategies to address these risk factors while in DJJ custody. Although other risk factors may be addressed through alternative approaches, such as individual therapy (sidebar), ART and CYT directly address only two of youths' identified risk factors. Selecting different evidence-based treatment programs may allow



DJJ to provide more individualized treatment as well as address a greater number of youths' identified risk factors through its core treatment programming.

DJJ already provides more individualized and comprehensive programming to a small proportion of committed youth at Bon Air JCC who are identified as having sex offender treatment needs (15 percent), and data suggests this type of program design may be more effective in reducing reoffending. Similar to other youth, DJJ staff develop an individualized treatment plan for youth in its sex offender treatment program, which includes specific, measurable goals for the youth to work toward while at Bon Air. However unlike what is offered to most committed youth, DJJ's sex offender treatment program appears to be more intensive, individualized, and comprehensive. This program also appears to result in better outcomes for youth, as a smaller proportion of youth who completed DJJ's sex offender program were reconvicted within the 36 months following their release than those who completed the aggression management and/or substance abuse programming (sidebar).

### **DJJ collects recidivism data but does not integrate it with treatment data to systematically evaluate and improve rehabilitative services**

Experts stress the importance of ongoing evaluations to assess the quality of rehabilitative treatment programs and identify potential programmatic improvements. Regularly evaluating rehabilitative treatment provided to youth can help identify gaps or programmatic aspects that may be negatively affecting youth and ensure programs are as effective as possible. Conducting ongoing evaluations requires both (1) collecting quality data on program outcomes and (2) using data to inform program improvements.

DJJ does a good job collecting data on recidivism outcomes for youth who were in the juvenile justice system, including those previously in DJJ custody, and evidence suggests this data is of good quality in comparison with other states. DJJ collects and maintains rearrest, reconviction, and reincarceration data for all youth for a period of 36 months following their release from DJJ custody (sidebar). According to the National Center for Juvenile Justice (NCJJ), Virginia's recidivism data is more comprehensive than many other states. For example, NCJJ highlights Virginia in its Juvenile Justice, Geography, Policy, Practice, and Statistics—an online repository comparing various aspects of juvenile justice systems across states—as one of only a few states that reports recidivism data for youth while under parole supervision in addition to after supervision is complete. National subject matter experts also complimented Virginia and DJJ's data collection efforts during interviews with JLARC staff as part of this study.

However, DJJ does not use this data to identify potential improvements to its rehabilitative treatment programming. DJJ regularly analyzes its recidivism data and reports on recidivism outcomes as part of its annual Data Resource Guide. However, it does not have a process to use its recidivism data or data on the treatment services youth

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**Lower recidivism rates among youth committing sexual offenses cannot be attributed to a lower propensity to reoffend** than youth who commit non-sexual offenses. Research comparing recidivism rates of juveniles who commit sexual offenses and those who commit other types of offenses is inconsistent, so it is not possible to draw conclusions about the propensity of one group to re-offend relative to the other.

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**DJJ uses its own data on reoffending**, as well as receives data from external agencies (i.e., the Virginia Department of Corrections, Virginia State Police, etc.) to ensure recidivism records are complete. DJJ also participates in the Virginia Longitudinal Data System, although it has not begun to systematically track any additional youth outcomes, such as educational or career attainment.

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receive to assess the quality of its rehabilitative treatment programs and to identify potential programmatic improvements.

DJJ should develop a rigorous process to evaluate and improve the effectiveness of its rehabilitative programming on an ongoing basis to ensure programming is most effective. This process could help DJJ identify gaps in its current programming and make necessary improvements. At a minimum, this process should include:

1. an assessment of the criminogenic risk factors of the DJJ-committed population and the extent to which current rehabilitative programming is addressing them;
2. an assessment of the extent to which rehabilitative programming adheres to prevailing national best practices and evidence-based research; and
3. an analysis of key metrics as they relate to recidivism outcomes, such as specific treatment programs completed and the youth's length of stay, to identify programmatic aspects that may be negatively impacting youth outcomes.

DJJ is already taking some steps to improve data collection for its rehabilitative treatment services, including by tracking treatment dosage, which could be used as part of this analysis. DJJ should use this analysis to determine what, if any, changes should be made to its rehabilitative programming to reduce recidivism and improve outcomes for youth in DJJ custody. The results of this assessment should then be made publicly available on DJJ's website, such as through its annual Data Resource Guide, including any improvements made to the rehabilitative programming provided.

#### RECOMMENDATION 26

The Department of Juvenile Justice (DJJ) should implement a process to evaluate and improve the effectiveness of its rehabilitative programming for DJJ-committed youth on an ongoing basis. At a minimum, this process should determine (i) the extent to which current rehabilitative programming is addressing the criminogenic risk factors of youth, (ii) the extent to which rehabilitative programming adheres to prevailing national best practices and evidence-based research, and (iii) any aspects of programming that may be negatively affecting youth outcomes. DJJ should make the results of the evaluations publicly available on its website.

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### **CPPs move youth closer to communities, but do not appear to be contributing to positive outcomes**

As part of the transformation, DJJ increased the number of youth committed to DJJ who are placed in CPPs across the state. The goals of the increased use of CPPs were to reduce the use of juvenile correctional centers and locate more youth in facilities closer to home, consistent with public safety. CPPs are residential programs operated out of certain JDCs for youth who would otherwise be placed at Bon Air JCC. As of May 2021, 38 percent youth in DJJ custody (84 youth) had a CPP placement (sidebar).

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Nine of the 24 JDCs operate community placement programs: Blue Ridge, Chesterfield, Lynchburg, Merrimac, Northern Virginia, Prince William, Rappahannock, Shenandoah Valley, and Virginia Beach.

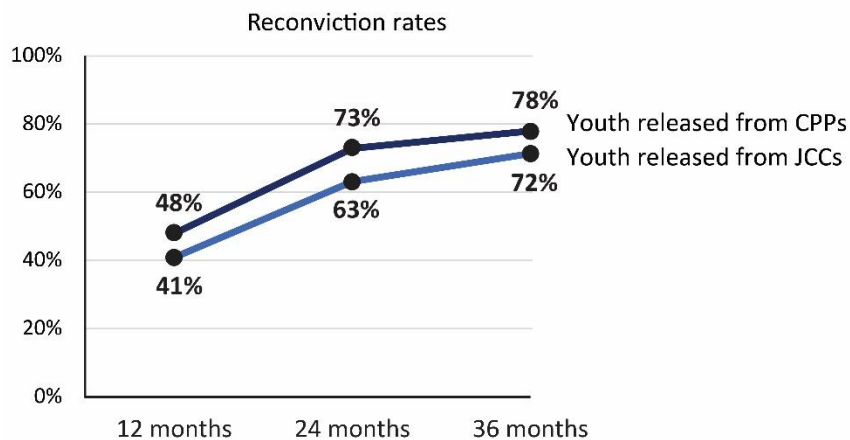
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The goal of locating youth closer to home is based on several factors. The first is that family and friends may be more likely to visit the youth while in custody, thereby maintaining a sense of connection to the community. A second is that this connection to the community may make it more likely that youth will be successful after release from the facility and less likely to reoffend.

Although CPPs have helped locate more youth closer to home, they have not reduced recidivism. Youth released from CPPs have been rearrested, reconvicted, and recommitted at higher rates than youth released from a JCC (FY15–FY19). During this time period, about 73 percent of youth released from a CPP were reconvicted within two years, in contrast with 63 percent of youth released from a JCC. (Figure 7-5).

**FIGURE 7-5**

**From FY15–19, youth released from CPPs had higher reconviction rates than those released from JCCs**



SOURCE: JLARC staff analysis of DJJ recidivism data, FY15–19.

NOTE: Reconviction rates measured as the proportion of youth who were reconvicted within 12, 24, and 36 months of their release from DJJ custody out of all youth released from FY15–19. Rates exclude youth who commit technical offenses, such as parole violations.

This high recidivism for youth released from CPPs appear to stem, at least in part, from inconsistent rehabilitative programming across JDCs (see Chapter 6). DJJ did not ensure CPPs had adequate or effective programming prior to placing youth in these programs.

The higher recidivism of youth released from CPPs is especially concerning because youth placed in CPPs are generally expected to be lower risk than youth in state juvenile correctional centers. DJJ's YASI risk assessment data indicates CPP placements include relatively lower risk youth. For example, from 2014–2021, youth in CPPs had lower dynamic risk scores on average than those in JCCs, which would suggest youth in CPPs are at a relatively lower risk to reoffend. Additionally, DJJ staff reported during interviews that DJJ-committed youth placed in CPPs are typically those with lower

risk levels and shorter lengths of stay, because the structure and design of many JDCs are generally better suited for short stays.

Although DJJ did not initially ensure CPPs had adequate or effective programming, it has since started to evaluate CPPs and work with them to improve program deficiencies. DJJ established a Quality Assurance Unit in 2018 to oversee the CPPs. The quality assurance staff conduct annual monitoring reviews of the CPPs, evaluating areas such as treatment services, education and post-secondary offerings, family engagement, and case management. Based on the findings and recommendations of the monitoring review, quality assurance staff work with the CPP to develop a Continuous Quality Improvement plan, as well as conduct quarterly checks to monitor progress.

Quality assurance staff appear to be identifying important problems within the CPPs and taking steps to address them. For example, quality assurance staff have identified concerns within *all* of the CPPs that staff are not implementing rehabilitative programming as prescribed (sidebar). Quality assurance staff have:

- provided guidance to the CPPs to increase the fidelity of their treatment programming, and fidelity among several CPPs seems to be improving;
- entered into shorter-term contracts with several CPPs that were underperforming, and ended a contract with one CPP that was unable to provide basic services to meet the needs of youth; and
- recently developed CPP performance measures and is in the process of updating DJJ's data system to be able to track these measures consistently across all CPPs.

DJJ's quality assurance staff have also recently adopted the Standardized Program Evaluation Protocol (SPEP) to evaluate CPP performance (sidebar). SPEP is a process developed by Vanderbilt University to determine how well an existing program or service aligns with the research evidence for the effectiveness of reducing recidivism. SPEP focuses on four key features in evaluating a program's effectiveness: (1) the primary service provided; (2) the quantity of service; (3) the quality of service delivery; and (4) the risk level of the youth served. DJJ's quality assurance staff have completed SPEP training and are planning to begin SPEP evaluations next year.

Given the high recidivism rates for youth released from CPPs relative to those released from the JCCs, DJJ should continue to closely monitor CPPs to ensure the quality of programming improves. DJJ currently does not have centralized oversight and management of the CPPs. CPPs technically fall within DJJ's residential services division, however, the quality assurance unit is responsible for program and contract oversight. Although this unit seems to be appropriately evaluating the CPPs through its monitoring reviews, DJJ should also establish a staff position within its residential services division that is solely responsible for management and oversight of the CPPs. DJJ should also be directed to report annually to the General Assembly on the quality and performance of CPPs, including their recidivism rates, and cease operating those with rates that are not at least comparable to those of Bon Air JCC. Additional factors may

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**The most common fidelity concerns appear to be related to the provision of ART, such as providing the program sessions out of order or not for the full one-hour period as prescribed.**

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**In addition to evaluating CPPs, DJJ also intends to use SPEP to evaluate rehabilitative programming provided to youth at Bon Air JCC.**

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also need to be considered in determining any CPP closures, such as risk levels and treatment needs of youth at the CPP and whether sufficient alternative placements are available for those youth.

**RECOMMENDATION 27**

The General Assembly may wish to consider including language in the Appropriation Act to (i) create and fund a position at the Department of Juvenile Justice to manage and oversee use of community placement programs, and (ii) require management and oversight to include ongoing review of community placement programs and recidivism rates and a process to hold programs accountable for low performance. The Department of Juvenile Justice should be required to report annually to the Senate Rehabilitation and Social Services and House Health, Welfare, and Institutions committees on the performance of the community placement programs.

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# 8 Re-entry from DJJ Custody

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In addition to providing high quality rehabilitative programming (sidebar), effectively planning for and facilitating the re-entry of youth in the custody of the Department of Juvenile Justice (DJJ) helps maximize the likelihood that youth will successfully transition back into their communities upon release. Re-entry consists of two phases: (1) *planning* for youths' re-entry while they are still in DJJ's custody and (2) *facilitating* youths' re-entry into the community.

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**For additional information on the rehabilitative programming provided to youth in DJJ custody, see Chapter 7.**

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Planning for committed youth to re-enter their communities should ideally begin upon admission to DJJ custody. The planning phase may include activities such as determining where youth will live after they are released from DJJ custody or establishing relationships with providers for any services they will receive in the community. Because the length of stay for youth committed to DJJ has decreased in recent years, beginning re-entry planning early has become even more important to maximize youths' chance of success upon release.

The facilitation phase of re-entry involves taking steps to ensure youths' transition back into the community goes as smoothly as possible. This may include activities such as providing youth with sufficient step-down opportunities (e.g., group homes) to allow them to practice living independently prior to release, or meeting with school administrators in the community to reenroll youth in school.

A key indicator of the successfulness of re-entry programs is recidivism. As noted in Chapter 7, nearly half (45 percent) of youth released from DJJ custody [including youth at the state's Bon Air Juvenile Correctional Center (JCC) and in community placement programs (CPPs) at local and regional detention centers], are reconvicted within 12 months of their release. The majority of youth who ultimately reoffend do so within the first year of their release. Many factors affect why youth reoffend, yet reoffending so soon after release is likely partially driven by challenges with re-entry.

Successful re-entry usually requires youth to be adequately reconnected to a community and engaged with their family. Particularly for youth who lack family support, they also need sufficient step-down opportunities to help them incrementally adjust to living independently in the community prior to their release from confinement. Older youth, especially those who are adults when they are released from DJJ custody, also need to become gainfully employed. Doing so is often more difficult, even if they have employable skills, because a record of prior offenses can be a substantial impediment that reduces available employment opportunities.

## **DJJ's re-entry efforts have improved but lack adequate step-down housing and programming**

DJJ takes some appropriate steps to plan for and facilitate youths' re-entry into the community after they are released from DJJ custody. Each youth has a treatment team—including the youth's family, parole officer, teacher, behavioral services clinician, and community counselor—which develops the youth's re-entry plan upon admission to DJJ custody. Ninety days prior to a youth's proposed release date, the treatment team holds a transition re-entry meeting to determine the youth's community school placement (if applicable), housing placement, and any community treatments or services needed upon release.

DJJ has also taken some steps in recent years to improve continuity of services upon release, including partnerships with the Department of Medical Assistance Services to help youth apply for Medicaid health insurance prior to their release and with the Department of Motor Vehicles to allow the learner's permit test to be administered to committed youth at Bon Air JCC.

### **Educational and vocational programming appear to be helping improve career readiness for youth at Bon Air JCC**

Ensuring youth continue their education and/or obtain employment upon release are key to effective re-entry. According to DJJ risk assessment data, a high proportion of youth in DJJ custody have school (82 percent) and employment/free time (85 percent) as identified risk factors when they are first assessed upon admission to DJJ custody. Ensuring these risk factors are adequately addressed (e.g., sending youth to a different school to develop new friendships, promoting new activities to reduce idle time) helps to minimize the likelihood youth will reoffend after they are released.

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**DJJ-committed youth who participate in CPPs** receive education services through the juvenile detention center (JDC) where the CPP is located. For additional information on education services provided in JDCs, see Chapter 6.

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DJJ provides education services to youth at Bon Air JCC (sidebar), and preliminary data suggests educational outcomes are improving for these youth. For youth who have not completed high school, DJJ's education division operates the Yvonne B. Miller High School, staffed by administrators and teachers who are licensed by the Virginia Department of Education. Data on educational outcomes for youth in DJJ custody is limited, but available data suggests outcomes are improving. For example, from the 2016–17 school year to the 2018–19 school year, Standards of Learning (SOL) pass rates have increased from 20 percent to 52 percent in Algebra I, from 40 percent to 56 percent in Earth Science, and from 54 percent to 62 percent in Writing, according to DJJ education reports. Moreover, during the 2019–20 school year, all 35 eligible youth at Bon Air JCC graduated high school. Additional information on education services provided to youth at Bon Air JCC can be found in Appendix F.

For youth who have completed high school, the education division also operates post-secondary programs to provide college and career training. Youth at Bon Air JCC may



elect to enroll in community college courses to further their education and career readiness, covering topics such as business and entrepreneurship. During the 2019–20 school year, 46 youth enrolled in and completed one or more post-secondary courses during their stay at Bon Air. DJJ also provides several vocational opportunities to youth at Bon Air JCC to train for and obtain occupational credentials, including forklift and upholstery certifications.

### Family engagement has improved in recent years

Effective re-entry also requires maintaining and strengthening ties to families and other natural supports within the community. Removing youth from their community and placing them in a residential facility, especially for long-term stays, can strain family relationships and disconnect youth from their communities. However, if youth plan to return to their communities upon release, it is important to engage families and strengthen these relationships to ensure youth have adequate support when they return home.

DJJ has recently taken steps to improve family engagement among youth at Bon Air JCC. As part of the transformation, DJJ revised its visitation procedures to (1) allow non-family members to visit, encouraging mentors and other non-family community representatives to stay engaged with a committed youth and (2) prohibit the loss of visitation as a disciplinary sanction. DJJ also started a free transportation initiative to provide transportation for families to visit youth at Bon Air, and 980 individuals participated in the program in FY20.

Youth in DJJ custody generally report more positive feedback about family engagement than prior to the transformation, and key indicators of family engagement have improved among youth at JCCs surveyed from 2015–2021 (Figure 8-1) (sidebar).

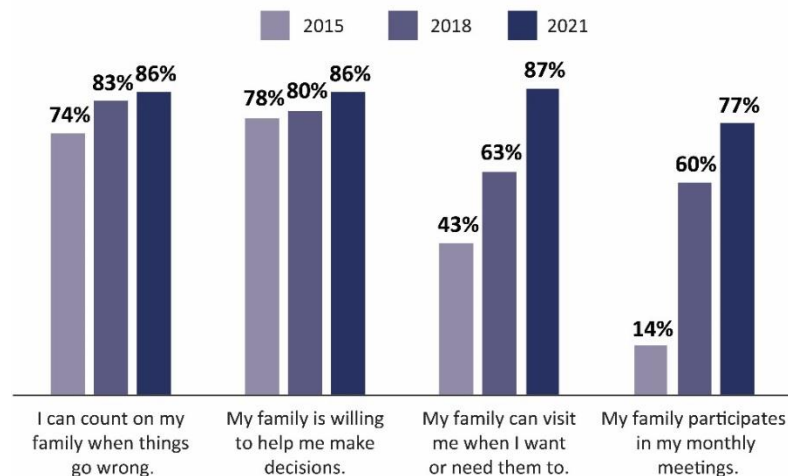
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JLARC staff surveyed youth at Bon Air JCC in summer 2021. See Appendix B for more information.

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**FIGURE 8-1**

**Family engagement has improved for youth at JCCs (2015 to 2021)**



SOURCE: 2015 and 2018 data from surveys conducted by the Vera Institute. 2021 data from JLARC staff survey of youth at Bon Air JCC.

## Youth released from DJJ custody have limited access to step-down opportunities, including housing and other beneficial programming

Providing youth with step-down opportunities promotes a successful re-entry by allowing youth to practice newly developed life skills and incrementally adjust to living in the community prior to their release from confinement. Step-down opportunities can include both housing and other programming, such as short-term furloughs or work release programs. Step-down housing programs can vary in design, but are typically non-secure residential placements where youth have easy access to services and supports (e.g., group homes or halfway houses) that provide an interim transition between being in a secure facility and living independently.

Although some elements of DJJ's re-entry programming have improved, step-down opportunities should be more widely available. Currently, step-down opportunities for youth in DJJ custody are not consistently available across the state. For example, because step-down housing is not widely available, it is only offered to youth who do not have other options for living arrangements upon release. This approach reasonably prioritizes the state's limited statewide availability, however, DJJ staff reported that additional step-down housing should be made available to increase the likelihood that youth transition back into their communities successfully. Not all youth are eligible for step-down housing—such as those who have been sentenced to serve time in an adult prison following their commitment to DJJ—but most youth released from DJJ custody could benefit from participation in these programs.

Currently, DJJ generally uses two types of step-down housing programs, but neither are widely used. Through its detention re-entry program, DJJ contracts with JDCs to place youth closer to home when they are within 30 to 120 days of their scheduled release. However, the average daily population in detention re-entry in FY20 was three youth. Through its regional service coordinators (RSCs), DJJ may also place youth in one of several residential placements across the state. For example, DJJ may place up to eight youth at a time at Intercept Summit House, a transitional living program providing services including clinical interventions (e.g., individual, group, and family therapy) and life skills training (e.g., strengths and needs assessments). Of youth released from DJJ custody in FY20, 22 percent (72 youth) participated in one of these residential placements through DJJ's RSCs.

DJJ should explore how to make additional step-down opportunities available, including the possibility of providing youth in DJJ custody the option to relocate to a different community upon release, as appropriate. Although several approaches could be used to increase available step-down housing, using the RSCs would likely be the most direct way to increase access to these programs across the state. DJJ's RSCs are already tasked with expanding DJJ's continuum of community-based services, which could include step-down housing for youth released from DJJ's custody (sidebar). DJJ staff also report that increasing availability of additional step-down opportunities, such as work release programs and short-term furloughs, would be beneficial for helping

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**One potential gap in step-down housing** is placements for youth over age 18, which was cited as an area of concern during interviews with DJJ staff as part of this study.

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youth practice life skills and incrementally adjust to being in the community prior to release.

DJJ should also review opportunities to expand the availability of Functional Family Therapy (FFT) for youth after they are released from DJJ custody. FFT is a structured, family-based intervention that works to enhance protective factors and reduce risk factors within the family unit, and it has been found by national subject-matter experts and organizations to be among the most effective programs for youth in the juvenile justice system. The Washington State Institute for Public Policy (WSIPP) has evaluated the use of FFT for youth post-release and identified it as one of the most cost-effective interventions for youth who were involved with the juvenile justice system (sidebar). As part of DJJ's reforms, it expanded access to FFT for youth served in the community, including youth on probation and parole. Currently, FFT is offered to some youth upon release from DJJ custody, but there may be opportunities to expand availability. Only 21 percent of youth released from DJJ custody were referred to FFT in FY20 (68 youth) (sidebar).

There is recognition that re-entry can be improved and a recent workgroup can serve as a starting point for that improvement. DJJ recently convened its own Successful Transitions workgroup to identify opportunities to improve re-entry outcomes for youth in its custody. The workgroup produced a final report with several reasonable recommendations that DJJ should implement, including:

- increasing the number of available step-down opportunities and alternative placement options, and requiring all eligible youth to participate in a step-down placement prior to release;
- improving services, treatment, and resources available to families, such as including the youth's family in the development of a 72-hour release plan outlining activities that will occur within the first 72 hours of release;
- allowing community-based services to begin 60 days prior to release when appropriate and when possible; and
- instituting a periodic case study process to identify barriers to successful re-entry and improve re-entry programming.

Using the workgroup's recommendations as a starting point, DJJ should develop and implement a plan to further improve its re-entry programming for youth released from DJJ custody. The plan should specify steps to address current gaps in DJJ's re-entry programming and implement the recommendations of its Successful Transitions workgroup, such as expanding the availability of step-down opportunities. DJJ should also develop a process to assess the effectiveness of its re-entry programming moving forward, such as through periodic case studies.

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**As part of its analyses, WSIPP calculates the likelihood that program benefits will exceed costs.** In its assessment of FFT for youth post-release, WSIPP determined there is a 100 percent chance the program will produce benefits greater than the costs.

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**An additional 9 percent of youth on parole were referred to Multisystemic Therapy (MST) by DJJ in FY20.** MST, which DJJ expanded access to during its recent reforms, is another evidence-based program that WSIPP has evaluated and determined to be cost-effective for youth released from secure confinement. WSIPP estimates total benefits, including costs of the program, are positive (\$17,083) but lower than FFT (\$140,361).

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## RECOMMENDATION 28

The Department of Juvenile Justice should develop and implement a plan to improve its re-entry programming, including expansion of step-down opportunities, consistent with the recommendations of its Successful Transitions workgroup.

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**Youth who are not committed to DJJ but who are adjudicated delinquent of a felony offense face similar collateral consequences.**

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**Youth who are tried as adults must disclose convictions when applying for an occupational license (e.g., barber, electrician), which may then be used as the basis to deny their application.**

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**In addition to the record of the felony equivalent offense, records of any ancillary offenses must also be retained and are excluded from expungement.**

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**Sealing refers to a process in which both paper and electronic records are removed from public view but are still retained for any authorized dissemination purposes (e.g., Virginia State Police for employment screening). In contrast, expungement refers to a process in which records are completely destroyed.**

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**Surrounding states in this analysis** included North Carolina, South Carolina, Georgia, Tennessee, Kentucky, West Virginia, Maryland, Pennsylvania, and Delaware.

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## **Delinquency record hinders successful re-entry for some youth upon release from DJJ custody**

Some youth released from DJJ custody may face additional barriers because of their juvenile and/or criminal records, which likely hinder their ability to be successful in their communities upon release (sidebar). These barriers are commonly referred to as “collateral consequences,” which are additional adverse impacts that result from having a record, separate from any formal sanctions or time served. These typically make it more difficult for youth to obtain employment, apply for student loans, or join the military (sidebar).

Requiring youth who have been adjudicated delinquent to carry the record of their offenses into adulthood seems contrary to the statutory intent of the juvenile justice system. The juvenile justice system is primarily intended to rehabilitate youth and prevent further delinquent behavior so that youth may live successful lives in their communities.

## **Records of adjudicated delinquency for felony equivalent offenses are not expunged**

Virginia currently expunges juvenile records for misdemeanor and status offenses but not felonies. Once youth reach 19 years of age and five years have elapsed since the date of their last hearing (including hearings for any subsequently committed offenses), juvenile and domestic relations (J&DR) district courts are required to automatically expunge their delinquency records. However, this requirement does not apply to youth who are found guilty of a delinquent act that would be a felony if committed by an adult. These felony equivalent records are retained and excluded from the automatic expungement process (sidebar). Additionally, for youth adjudicated delinquent of a felony equivalent offense at age 14 or older, these records are generally open to the public.

Virginia’s lack of expungement or sealing records of juvenile equivalent felonies is in contrast to many surrounding states’ laws. At least nine surrounding states allow at least some juvenile felony equivalent records to be sealed or expunged (sidebar). Records of felony offenses in these states are generally eligible to be sealed or expunged after an applicable waiting period, ranging from one year in Tennessee and West Virginia, to seven years for more serious offenses in Delaware. Although certain exclusions apply, such as for violent felonies and/or sexual offenses, Virginia is an outlier among neighboring states by excluding all juvenile felony equivalent offenses from being eligible for expungement.

Furthermore, Virginia now has more lenient legal requirements for maintaining records of adults who have committed felonies than for youth. During the 2021 Special Session, the General Assembly passed HB 2113, which sets up a process for sealing criminal records for certain types of adult criminal offenses, including certain felonies (sidebar), as well as some records for juveniles tried in circuit court. Criminal records for felonies will be sealed for individuals who file a petition with the court after a 10-year waiting period for eligible offenses, provided that the individual has not been convicted of any additional offenses during this period.

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**Felony offenses eligible for sealing under HB 2113** include Class 5 or 6 felonies, such as perjury or credit card fraud of \$500 or more.

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To align policy with other states and how Virginia now handles adult felony convictions, the General Assembly should establish a process to allow certain less serious, non-violent felony equivalent offenses for which youth are adjudicated delinquent in J&DR court to be expunged. To avoid conflicts with an existing state law, records would first need to be sealed until the individual is 29 years old, at which point they could be expunged. The Code of Virginia prohibits individuals under age 29 who were adjudicated delinquent of felony offenses from possessing or transporting a firearm (§ 18.2-308.2). Sealing records until the individual turns 29 would allow these records to be viewed only for authorized purposes, such as by law enforcement officers.

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**Additional information on expungement of juvenile records** can be found in Appendix G.

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In establishing this process, the General Assembly would need to determine (1) the period of time individuals must wait before their records are eligible to be sealed, such as five years, which would align with the waiting period for other juvenile delinquency records; (2) which felony equivalent offenses committed by youth should be eligible; (3) and other eligibility requirements. For example, it may be appropriate for some more serious or violent felony offenses to not be eligible for expungement or to be eligible only after a longer period of time than less serious felony offenses. Additionally, the General Assembly would need to determine what, if any, additional eligibility requirements should apply, such as not being convicted or adjudicated delinquent of any additional offenses during the applicable waiting period.

From FY11–20, youth were adjudicated delinquent of nearly 16,000 non-violent felony offenses in J&DR courts. Allowing for these records to be sealed, and then eventually expunged, would benefit more than 6,000 youth from the past decade.

The Office of the Executive Secretary of the Supreme Court of Virginia (OES) reports that allowing additional juvenile records to be sealed (and then eventually expunged) would require additional resources, primarily because it changes the scope of work currently in progress by OES to implement the sealing provisions outlined in HB 2113. Although the sealing of additional juvenile records could be built into this process, it would require OES to expand the programming changes to its juvenile and domestic relations case management system. However, the exact modifications and resources needed could vary depending on which offenses are eligible.

## RECOMMENDATION 29

The General Assembly may wish to consider amending § 16.1-306 of the Code of Virginia to (i) establish a process to allow records for certain less serious, non-violent felony equivalent offenses of youth adjudicated delinquent in juvenile and domestic relations district court to be automatically sealed after a period of years specified by the General Assembly up to age 29, and then subsequently expunged; (ii) determine the types of offenses eligible for sealing; and (iii) establish other necessary eligibility criteria.

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### **Records from circuit courts require petition and waiting period to be sealed**

As noted above, current law has a process to expunge juvenile records for all types of offenses, with the exception of felony offenses. However, this process applies only to youth whose cases are adjudicated in J&DR court and has not historically applied to youth whose cases are adjudicated in circuit court. The newly established process under HB 2113 will allow for some of these records to be sealed.

HB 2113 sets forth a 7- to 10-year waiting period before a record is eligible to be sealed, depending on the severity of the offense, which may be inconsistent with the statutory goal to rehabilitate youth. In almost all cases, the waiting period will occur while a youth is attempting to build a new life in their community upon release from the system. Until these records are sealed, educational institutions and employers may seek access to these records. As long as the record remains accessible, youth will likely have a more difficult time (who in most cases will be adults) successfully re-entering society after being in secure confinement. Additionally, this 7- to 10-year waiting period is longer than the waiting period for expungement of delinquency records in J&DR courts, which is currently set at five years.

## POLICY OPTION 8

The General Assembly could amend Chapter 23.2 of the Code of Virginia to reduce the waiting period to seal juvenile criminal records maintained by circuit courts for eligible offenses under current law.

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Individuals are not required to pay any fees to have their record sealed if they are determined to be indigent by the court, pursuant to § 19.2-159 of the Code of Virginia.

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HB 2113 also sets forth that after the waiting period, the record may be sealed only upon petition (rather than through an automatic process). Petition-based processes are generally considered to be less equitable than automatic processes because they can be time consuming and difficult to navigate without an attorney. The petitioner must obtain several documents (e.g., official copy of criminal record, fingerprints), file the petition in court, pay court fees (sidebar), and attend a hearing before a judge. Many individuals likely do not have the time and resources to complete the process, and therefore are unable to have their records sealed. The petition requirement is different from the automatic expungement process used for most juvenile records, as noted above.

**POLICY OPTION 9**

The General Assembly could amend Chapter 23.2 of the Code of Virginia to automatically seal juvenile records maintained by circuit courts for eligible offenses under current law, rather than require a petition to be filed requesting the records be sealed.

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# 9 Number and Location of Juvenile Justice Facilities

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The study resolution directed JLARC staff to review Virginia’s juvenile justice facility needs, including the locations and sizes of facilities. Facility design, location, and size are important, but facility improvement alone will not improve youth outcomes. Youth outcomes are driven much more fundamentally by the adequacy of programming and staff, which prior chapters of this report have found need improvement.

Generally, Virginia currently uses two types of secure facilities to hold youth either (1) temporarily while they are awaiting their court hearing or (2) after they have been adjudicated delinquent for an offense. These facilities include a juvenile correctional center (JCC), which is located in Chesterfield County, and juvenile detention centers (JDCs), which are located throughout the state.

In Virginia, the Department of Juvenile Justice (DJJ) responded to declining utilization by closing six of its seven juvenile correctional centers between 2005 and 2017—leaving one large secure facility (Bon Air Juvenile Correctional Center). Other states, including Georgia, Maryland, Vermont, and Oklahoma, have also responded to declining use by closing, repurposing, or consolidating some of their secure care facilities.

In contrast, Virginia’s 24 JDCs have not responded similarly to declining utilization, although some localities are beginning to explore their options. JDCs are owned and operated by one or more localities but receive state funding. JDCs have historically been used mostly to hold youth temporarily while they await court hearings. However, a growing proportion of youth are placed in Virginia’s JDCs to receive rehabilitative programming after being adjudicated delinquent.

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**Average annual per youth costs of Bon Air Juvenile Correctional Center in FY20** were about \$243,000. This includes educational expenditures.

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## JDCs have far too much capacity, and Virginia has more facilities than other states

Even though JDCs are locally or regionally operated, the state has a substantial financial investment in them. Spending on JDCs comprised the largest single juvenile justice category from state resources in FY20. Total estimated state expenditures on JDCs, including education expenditures, were around \$74 million in FY20 (sidebar). The state pays for about one-third of JDC operation and maintenance costs and 100 percent of JDC education costs. The average daily population of JDCs has *decreased* 25 percent since FY11. DJJ funding, though, for detention centers has *increased* about 29 percent, adjusted for inflation (\$38 million to \$49 million). This increase was driven by DJJ community placement program (CPP) funding, which started being allotted in FY16. Historical data on state funding for education in juvenile detention centers (about \$25

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**Average estimated annual per youth costs of juvenile detention centers in FY20** ranged from about \$130,000 (Piedmont JDC) to about \$580,000 (Loudoun JDC). This includes education expenditures through VDOE.

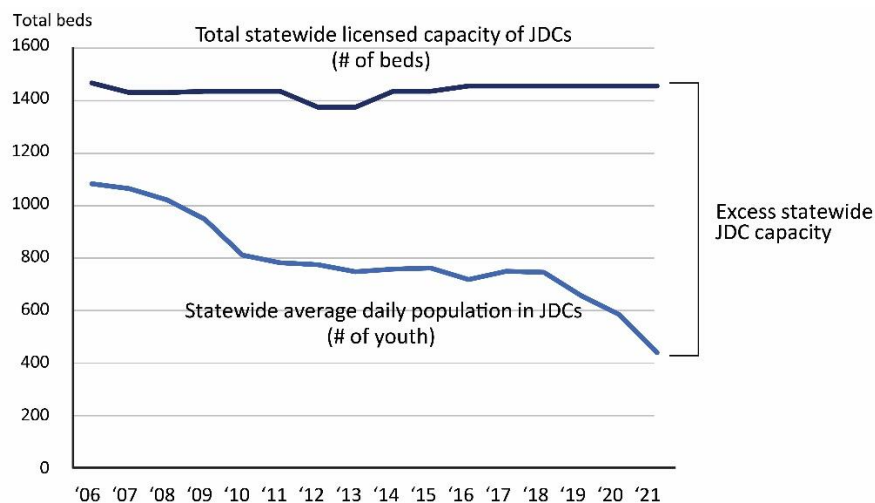
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million in FY20) is limited but indicates state support has remained relatively stable since FY17.

Collectively, only 30 percent of Virginia JDCs' capacity is being used in part because these local and regional facilities have not responded to the decline in the juvenile population. Between FY06 and FY21, the average daily population across JDCs statewide declined 59 percent—from 1,075 youth to 436 youth—but the total capacity of these facilities decreased only 1 percent. As of FY21, the average statewide JDC use was about 30 percent of total statewide capacity (Figure 9-1).

**FIGURE 9-1**

**JDC capacity has remained stable, while the population of youth in JDCs has declined by 60 percent (2006–2021)**

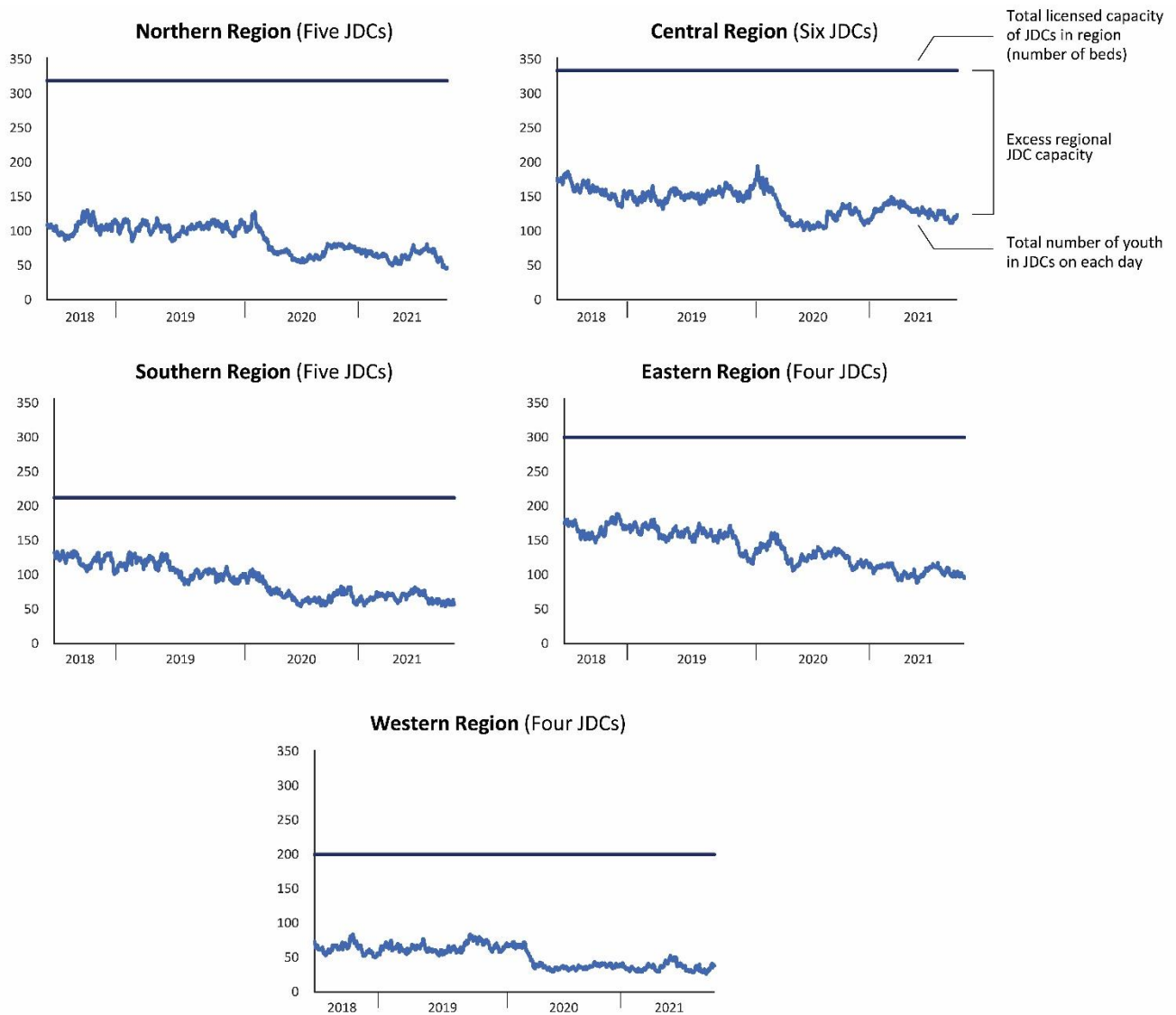


SOURCE: JLARC staff analyses of JDC daily population data between July 2018 and September 2021.

Daily utilization rates show that excess JDC capacity exists across JDCs in each region of the state. Between July 2018 and September 2021, none of the five DJJ regions came close to reaching their maximum juvenile detention center capacities (Figure 9-2). For example, the collective utilization of the five juvenile detention centers in Northern Virginia during this period ranged from 27 percent to 41 percent of available capacity. The COVID-19 pandemic, though, has likely temporarily and artificially reduced the population to some extent.

**FIGURE 9-2**

**Excess juvenile detention center (JDC) capacity exists in each DJJ region, indicating opportunities to consolidate or repurpose some facilities (July 2018–September 2021)**



SOURCE: JLARC staff analyses of JDC daily population data between July 2018 and September 2021.

NOTE: Regions are DJJ regions.

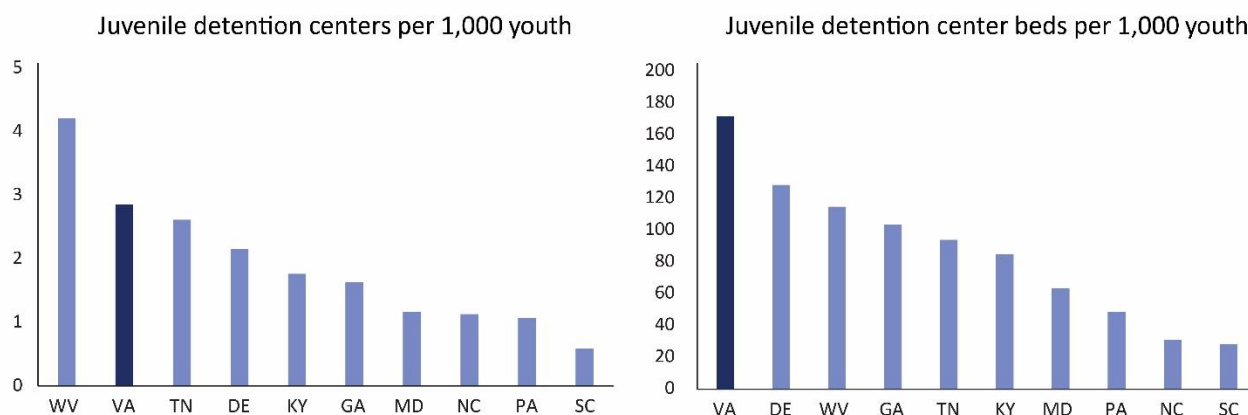
Compared with nine nearby states, Virginia has both the most juvenile detention centers and highest statewide juvenile detention capacity (i.e., number of beds). On a per 100,000 youth basis, Virginia has the second-highest number of detention centers and highest number of beds (Figure 9-3). Most other nearby states operate juvenile detention centers on a more regional basis than Virginia (sidebar). Maryland, North Carolina, and Kentucky, for example, have between seven and 10 JDCs statewide—less than half of Virginia’s 24.

**The 10 states in this analysis** included Virginia, North Carolina, South Carolina, Georgia, Tennessee, Kentucky, West Virginia, Maryland, Pennsylvania, and Delaware.

A key difference between Virginia’s approach to juvenile detention centers and those in neighboring states is that most nearby states operate all, or most, of their juvenile detention centers. Kentucky, Georgia, West Virginia, Delaware, and Maryland, for example, operate all of their juvenile detention centers, and North Carolina operates seven of its 12 detention centers. In contrast, juvenile detention centers in Virginia are locally or regionally operated, but receive state funding.

**FIGURE 9-3**

**Virginia has the second-most juvenile detention centers and the highest capacity compared with nearby states (per 1,000 youth)**



SOURCE: JLARC staff review of other states’ websites, annual reports, Prison Rape Elimination Act audit reports, and news articles regarding recent closures or openings and analysis of data from The Office of Juvenile Justice and Delinquency Prevention’s Easy Access to Juvenile Populations Dataset (2019).

NOTE: Figure is as of October 2021. “Youth” defined as individuals ages 10 through 17.

## State has multiple options to reduce JDC spending

Continuing to maintain so much excess capacity is not an efficient use of limited financial resources. Virginia could pursue several options to lower total JDC costs, including the state’s contribution. The options include making JDC’s educational operations more efficient, which are 100 percent funded through state dollars. The options also relate more broadly to JDC operations, for which the state also contributes substantial funding.

### State’s educational model uses more teachers than other states, and many JDCs are not fully implementing potential efficiency strategies

Education makes up a large percentage of state spending on JDCs. In the 2019–20 school year, an estimated \$25 million in state funds was used to provide educational services in JDCs. This represents about 30 percent of total state spending on JDCs. Funding for education in JDCs has remained relatively stable over the past five years, even as the average daily population has declined (sidebar).

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Required staffing ratios for teachers in JDCs are tied to facilities’ licensed bed capacities rather than the average daily population. However, over the past 10 years the utilization of JDCs has steadily declined, while the licensed capacity has remained stable.

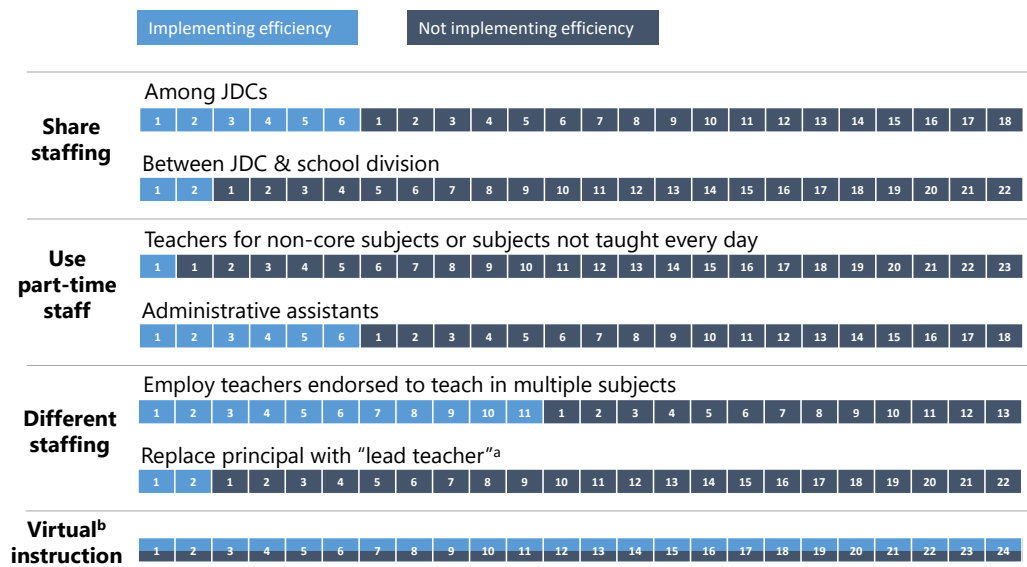
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Spending per youth at JDCs is much higher than school division spending, which is to be expected given the much smaller size of JDCs' population compared with even the smallest school division. Based on the average daily population, education funding provided by the state ranged from \$23,000 to \$88,000 per youth in JDC educational programs in 2019–20. In comparison, school divisions spent between \$10,000 and \$21,000 per youth in Virginia's public schools that year.

As with any educational operation, the vast majority of spending is on staffing. Spending on staffing is largely determined by the number of staff employed and their salary and benefit costs. Most (88 percent) of the funding for JDCs' educational programs is used for personnel. Several analyses indicate that educational spending at JDCs could be reduced through several efficiency strategies, including potentially reducing the number of educational staff per student.

The majority of JDCs are not using strategies that could increase efficiency of educational programming and thereby reduce their educational costs (Figure 9-4). A VDOE workgroup and JLARC both identified strategies that JDCs could use to deliver educational programming more efficiently. These strategies include sharing staff with school divisions or across JDCs in relative proximity. For example, only two of the 24 JDCs appear to share staff with their school division. Some JDCs use part-time teaching or administrative positions.

**Figure 9-4**  
**Many JDCs are not implementing potential efficiencies that could reduce costs**



SOURCE: JLARC synthesis of VDOE SOP staffing data (FY20) and review of VDOE reports to the Commission on Youth.  
NOTE: <sup>a</sup> One JDC has a staff member who is both the principal and an English teacher for the facility's education program. <sup>b</sup> VDOE reported to the Commission on Youth that virtual learning is currently provided for elective courses that youth are required to receive for graduation but that school staff are not certified to teach. However, they did not specify how many juvenile detention centers provide virtual learning. Use of virtual learning may be especially efficient for elective courses or those needed by very few students.

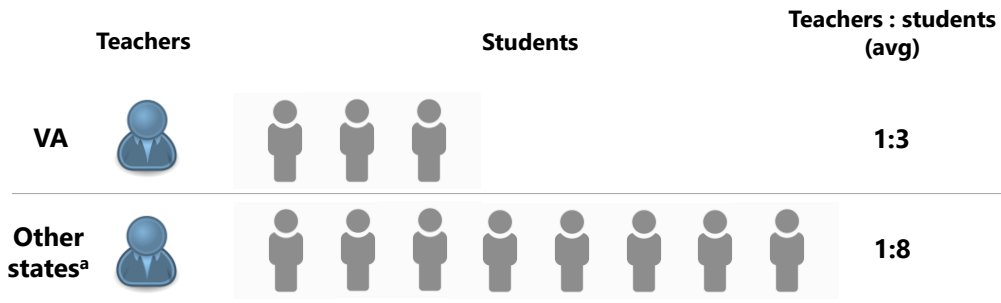
Between FY16 and FY20, the number of teaching positions across the 24 JDCs has declined about 7 percent, from 248.5 to 231, according to VDOE.

Reductions to JDC school personnel can be made while still meeting state staffing standards. Many JDC educational programs are staffed far above the state standard of 12 licensed beds per teacher. The JDCs' median school staffing ratio is seven licensed beds for every teacher.

Virginia JDCs also appear to have fewer students per teacher than other states (Figure 9-5). Virginia's average ratio across all JDCs is one teacher for every three students. Other surrounding states, on average, have more than twice as many students for each teacher, resulting in a ratio of one teacher for every eight students. Virginia's higher ratios compared with other states suggest there may be opportunities to employ fewer educational staff without adversely affecting students' educational experiences and outcomes (sidebar).

**Figure 9-5**

**Other states appear to have higher JDC teacher to student ratios than Virginia**



SOURCE: JLARC analysis of VDOE data and data collected by the U.S. Department of Education's Civil Rights Data Collection for the 2017-2018 school year.

NOTE: <sup>a</sup> Other states used for comparison are: North Carolina, West Virginia, Maryland, Kentucky, South Carolina, Pennsylvania, and Delaware.

Because \$25 million in state funds is spent on education at JDCs, educational spending per student in a JDC is \$23,000 to \$88,000, and few JDCs use efficiency strategies, a meaningful and comprehensive assessment of opportunities to implement these efficiency strategies appears warranted. Some JDCs may not have any additional opportunities to reduce educational staffing. However, other JDCs could likely reduce staffing because many JDCs have not adopted the efficiency strategies noted above.

VDOE should work with the Department of Planning and Budget to identify and propose specific education spending cost reductions at JDCs. VDOE should assess the feasibility of using fewer teachers generally and identify why many JDCs are not using current efficiency strategies. VDOE should also clearly articulate the barriers that currently exist to implementing these strategies in JDCs, such as geographic characteristics that make sharing staff infeasible or specific statutory or regulatory requirements and propose solutions to overcome them where possible.

**RECOMMENDATION 30**

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Education (VDOE) to determine the extent to which each juvenile detention center currently implements or could further implement cost-effective staffing methods. VDOE should be directed to work with the Virginia Department of Planning and Budget to determine the potential cost savings and feasibility of implementing each method and propose specific actions along with the estimated cost savings to the secretary of finance no later than June 30, 2023.

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**Financial incentive or requirement to consolidate could lower total JDC spending**

Under state regulations, the Board of Juvenile Justice prioritizes state funding for *new* JDCs that are operated regionally (by three or more localities). However, no difference in funding exists for state support for *existing* detention centers. Absent a more meaningful state incentive (or requirement) to reduce total JDC capacity statewide, there has been mixed success in doing so. Prince William County has itself recognized the need to reduce the size of its facility. Prince William conducted a needs assessment in 2018 regarding its detention center and plans to replace its 72-bed detention center with a smaller (48-bed maximum) juvenile detention center that is co-located with its juvenile shelter. In September 2020, the Board of Juvenile Justice approved the planning study, allowing Prince William to move into the design phase for the facility.

Other recent efforts to consolidate JDCs have met resistance. Alexandria and Falls Church evaluated the feasibility of closing the Northern Virginia JDC by transferring youth in the facility to the Fairfax County JDC. The report cited a 72 percent reduction in the number of juveniles in their shared facility and identified the Fairfax County Juvenile Detention Center as a feasible option for consolidation. However, the report noted that there was limited interest among Fairfax County officials in the consolidation.

Spending on JDCs could likely be lowered through consolidating some facilities. JLARC staff estimate that at least three facilities within a 45-minute drive of other detention centers could be closed and consolidated. (See Appendix B for assumptions and methodology.) Savings would depend on the specific JDCs that were closed but are estimated to be \$7 million to \$14 million per year in state funds, including both DJJ and VDOE funding. However, some proportion of these savings would likely need be reallocated to facilities that take on additional youth.

Because the state does not own these facilities, it can either use financial incentives or restrictions to encourage consolidation over time or create a process that would identify juvenile detention centers that should be closed or consolidated.

***State could follow regional jail model and offer financial incentives for JDC consolidation***

The state has historically been successful using financial incentives to encourage consolidation of adult correctional facilities. The state began the regional jails program in 1989 with the objective of encouraging the consolidation of small, independently run jails. Under this program, the state funded construction costs for new regional jails at twice the rate it funded the construction of local jails. The result was 21 regional jails built to modern design specifications, a reduction in many small local jails, and a substantial reduction in the state's cost of reimbursing jails overall because of the economies of scale from having fewer total jails.

The General Assembly could follow the regional jail model and offer financial incentives for JDC consolidation. This could include substantially higher reimbursement rates for the construction of new regional facilities and higher ongoing reimbursement rates for regional facilities' operating costs.

**POLICY OPTION 10**

The General Assembly could consider establishing a two-tiered reimbursement rate in the Appropriation Act for the construction and operation of juvenile detention centers. Juvenile detention centers that are operated regionally could receive higher reimbursement rates than those operated by a single jurisdiction.

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***State could reduce funding for facilities that are within a certain distance of other facilities and consistently below a certain utilization level***

Instead of incentives, the state could restrict funding to juvenile detention centers in areas where consolidation is possible. Specifically, the state could direct DJJ and VDOE to provide lower funding to juvenile detention centers that are consistently operating under capacity and are located within a certain distance of other detention centers that are also operating under capacity. This approach would put financial pressure on localities to more strongly consider consolidating facilities, similar to the pressure DJJ faced and that contributed to the closure of six juvenile correctional centers. The restriction could apply to both funding for new construction and for operations.

Restricting funding solely based on utilization is not advisable. Some detention centers, such as Highlands Juvenile Detention Center (located in Bristol, VA), are not close to other facilities.

**POLICY OPTION 11**

The General Assembly could consider including language in the Appropriation Act directing the Department of Juvenile Justice and the Virginia Department of Education to provide lower funding for juvenile detention centers that are consistently operating under a certain capacity, such as 50 percent, and are located within a certain distance, such as a 45-minute drive, of other facilities that are also operating under capacity.

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***State could create a task force to identify specific JDCs that should be closed or consolidated***

Rather than use financial incentives or restrictions, the state could establish a process to evaluate and then identify specific juvenile detention centers that should be consolidated or repurposed. This process could be similar to the Base Realignment and Closure (BRAC) process periodically used at the federal level to close or consolidate military bases. Under this process, a task force studies current and future needs to identify bases that should be closed or consolidated.

A similar process in Virginia could use a task force to determine the most strategic approach to consolidating or repurposing juvenile detention facilities. The process could be facilitated by DJJ, which has access to much of the data and information needed to make these decisions. Other local stakeholders could also be on the task force, but perhaps from areas with no facilities or with facilities that are not likely to be closed or consolidated. This would at least partially remove the challenge of those who operate a facility being tasked with deciding to close or consolidate their own facility.

A fundamental challenge with such a task force, though, is that unlike the BRAC process where the federal government owns the facilities it consolidates or closes, Virginia does not own JDCs. A task force could identify a list of closures or consolidations and develop an objective data driven process to support the recommendations. Ultimately, though, whether to maintain these facilities is a local or regional decision.

To make the most strategic recommendations, the task force would need to consider several factors in its review, including the facility's age, remodeling needs, distance from youths' home communities, staff turnover rates, quality of treatment programming, and availability of treatment space.

**POLICY OPTION 12**

The General Assembly could consider including language in the Appropriation Act directing the Department of Juvenile Justice (DJJ) to implement a process to identify specific juvenile detention centers that should be closed or consolidated to better align facility capacities with regional needs. DJJ could be directed to report to the General Assembly on the results of the process and specific facilities identified for closure or consolidation.

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**State could narrow role of JDCs and develop a fully regional model**

In contrast with the options above to reduce the number of JDCs, Virginia also has the option to develop a new service delivery model that would likely improve the quality of rehabilitative services provided. Virginia is unusual compared with surrounding

states because it keeps youth who are adjudicated delinquent in juvenile detention centers. This effectively broadens the mission of JDCs by creating the need to offer rehabilitative programming. All nearby states, except West Virginia, hold youth who are adjudicated delinquent separately from those who have not had a court hearing. Youth who are adjudicated delinquent are transferred to regional secure treatment facilities for confinement and rehabilitation. Virginia does not have any similar regional secure treatment facilities. If delinquent juveniles need rehabilitative programming, they either stay at JDCs or are placed at Bon Air Juvenile Correctional Center in Chesterfield.

The regional model used by other states has several advantages. First, facilities can specialize in providing either short-term detention services or longer-term rehabilitative programming, rather than needing to provide (and staff for) both types of services. (See Chapter 6 for a discussion on gaps in JDC rehabilitative programming in Virginia.) Staff and services for youth who need rehabilitative programming can be consolidated to those facilities required to provide this programming. Youth in DJJ custody who would otherwise be placed in CPPs at JDCs could be placed in facilities that specialize in rehabilitative programming.

*“A key lesson of the developmental research is that association with antisocial peers should be limited; interaction should either be avoided or highly structured, visible, and transparent.”*

– National Research Council of National Academies of Sciences (2013)

Separating youth who have been adjudicated delinquent and those awaiting trial would better align Virginia’s approach with best practices. Currently, youth who have not yet been found guilty of an offense and those who have attend classes together. National research, however, indicates that interactions with antisocial peers (including youth who have been adjudicated delinquent) should be avoided as much as possible (sidebar).

Separating youth would also allow for programming to be more tailored to meet youths’ needs. For example, it could reduce the need to un-enroll youth from their home school division when placed in JDCs for very short stays (as is currently the practice in Virginia). Instead, the state could explore different approaches, such as using homebound instruction, to educate youth awaiting trial while also maintaining their connections with their home schools (sidebar).

A disadvantage of consolidation and the regional model is that some youth may be placed farther away from their home communities to receive rehabilitative programming. It is unclear, however, whether Virginia’s current approach of providing rehabilitative programming in 21 of 24 detention facilities is realistic without substantial additional resources. Evidence does show, however, that youth who are released from rehabilitative programming at JDCs have the worst recidivism rates of any type of juvenile justice intervention (Chapter 2) and that only about half of JDCs report providing evidence-based programming (Chapter 6). Addressing these issues fully and improving rehabilitative programming at juvenile detention centers may not be possible solely through adopting additional regulations.

Shifting to a specialized regional model that separates juvenile detention and juvenile treatment programming would be a dramatic change from current practice. Several questions would need to be addressed, including

**Homebound instruction** is designed to help students continue to make progress in their home school while they are confined at home or in a health-care facility for health reasons.

Homebound instruction, or an approach similar to homebound instruction, for youth in JDCs for short durations would likely still meet the statutory requirement that education in JDCs be “at least comparable” to instruction provided to children in the public school system.

- who would own and operate the regional treatment facilities;
- whether JDCs that could potentially serve as regional treatment facilities are appropriately designed and equipped to provide rehabilitative programming effectively;
- how the regional treatment facilities would be funded; and
- whether the state would consolidate its post-dispositional programs and commitment programs into a single program for youth who need rehabilitative programming.

However, having single purpose facilities would allow each type of facility to focus on the needs of youth they serve and could facilitate the provision of these services on a more efficient and effective basis.

Depending on several factors, the state might continue to pay about the same or even more than it does currently. A similar number of facilities may exist under a specialized regional model, with some focusing solely on rehabilitation programming. The costs of operating pre-dispositional detention facilities would likely be lower because they no longer would need to provide rehabilitative programming. In contrast, the costs of JDCs that solely focus on rehabilitative programming may be higher, especially considering the improvements to the quality of programming and staffing recommended in Chapter 6.

If the General Assembly wanted to pursue a specialized regional juvenile detention model, it could direct DJJ to evaluate the benefits, costs, and feasibility of transitioning to a regional model. DJJ could be directed to identify the statutory changes that would be required to shift to the specialization model, the number of JDCs that could be consolidated as a result of the change, and the expected savings or costs that would result from the shift. If this option is chosen, VDOE should also be directed to participate and determine how best to align educational programming to meet the different needs of youth in the two types of facilities. VDOE's evaluation could be informed by approaches in other states to educating youth in short-term detention and youth in longer-term rehabilitative programs, as well as approaches used in Virginia to educate students who cannot attend school on a short-term basis, such as homebound instruction.

### **POLICY OPTION 13**

The General Assembly could consider including language in the Appropriation Act directing the Department of Juvenile Justice to evaluate the costs, benefits, and feasibility of transitioning juvenile detention centers to either specialize in (i) short-term detention or (ii) longer-term rehabilitative programming. The Virginia Department of Education could be required to develop a plan to align the educational programming to meet the different needs of youth in the two types of facilities.

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## Bon Air JCC should be replaced with smaller facilities, but full needs are currently unclear

Most stakeholders agree Bon Air JCC does not cost-effectively meet the needs of the youth committed to state custody. In 2016, the General Assembly established a task force to consider the future capital and operational requirements for Virginia’s juvenile correctional centers. Bon Air is the state’s only remaining facility and is located in Chesterfield—a location more than 75 miles away from where the majority of youth in state custody reside.

Though the state closed multiple facilities as the juvenile population declined, the single facility remaining at Bon Air still has far fewer youth than its capacity, and the age of the Bon Air JCC contributes to its high costs. The oldest buildings on the Bon Air campus currently being used, which are being used as housing units, were built in 1930, and the most recent building expansion on the campus was completed in 1996. The facility was designed to provide secure confinement, not necessarily foster a positive rehabilitative environment for youth.

Despite consensus about the inadequacy of the Bon Air facility, there is not necessarily consensus on how to address the problem. It is also unclear how best to transition away from the Bon Air facility, including how many new facilities to construct, what capacity they should have, and where they should be located. The state has faced challenges finding other locations that local residents will approve of through the zoning process.

The eventual number, sizes, and locations of state-operated secure treatment facilities needed in Virginia will depend partially on the ability of juvenile detention centers to meet the needs of youth in community placement programs (CPPs) (sidebar). As mentioned, beyond placing youth closer to home, recent data suggests this approach may not be serving youth well, and greater attention is needed on the quality and effectiveness of rehabilitative programming at the CPPs. If JDCs are unable or unwilling to serve youth effectively and recidivism remains higher than at Bon Air JCC, DJJ should end CPPs at these facilities. (See Chapters 6 and 7 for more information about problems with JDC programming and outcomes of youth placed at CPPs.)

### Bon Air JCC is the largest secure treatment facility among nearby states and does not support effective rehabilitative programming

Several factors make Bon Air JCC not ideal, including its size, its distance from youths’ home communities, and its lack of appropriately designed treatment space. There is no national standard for the appropriate size of secure treatment facilities or maximum distance from youths’ home communities. However, smaller secure treatment facilities that are closer to youths’ home communities are preferable, according to the National Academies of Sciences (sidebar).

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The term “secure treatment facility” is used in this section because other states generally do not use the term “correctional center,” like Virginia, to describe facilities for the most serious offenders.

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“For the small proportion of youth who require confinement in residential facilities, proximity to their communities is likely to be less disruptive of developmental progress than commitment to distant families. Large facilities that are located far from young offenders’ home may be particularly harmful.”

– National Research Council of National Academies of Sciences (2013)

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The Bon Air JCC appears to be among the largest secure juvenile facilities in the region and nationally. Among the 33 secure treatment facilities for the most serious offenders in Virginia and nine nearby states, Bon Air JCC appears to be the largest (Figure 9-6). As of November 2021, Bon Air JCC's capacity (272 beds) was six times larger than the median size of secure treatment facilities in nearby states (45 beds). Nationally, only 1 percent of facilities that held juveniles in 2018 had more than 200 beds.

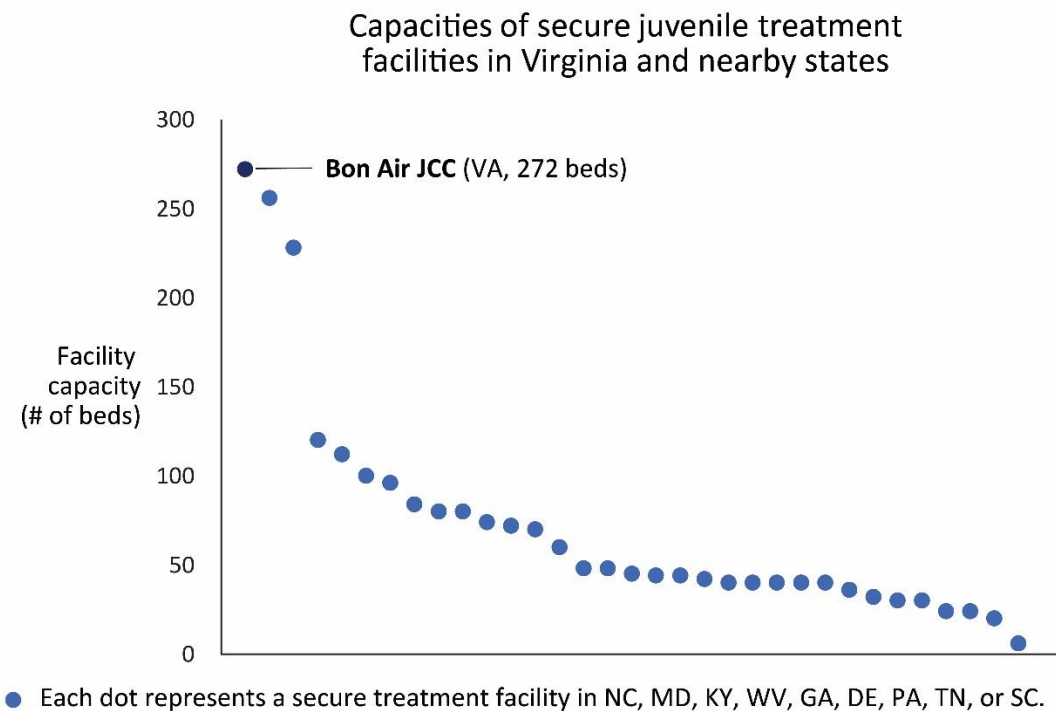
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**The 10 states in this analysis** included Virginia, North Carolina, South Carolina, Georgia, Tennessee, Kentucky, West Virginia, Maryland, Pennsylvania, and Delaware.

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**FIGURE 9-6**

**Bon Air JCC is larger than all other secure treatment facilities operated in nine nearby states**



SOURCE: JLARC staff review of DJJ documents and other states' websites, annual reports, news releases, and Prison Rape Elimination Act audit reports. Delaware's three "cottages" are identified as separate facilities but were combined into one facility for this analysis because they are separate buildings in the same location.

Other nearby states generally operate smaller secure treatment facilities, having several located regionally rather than one large facility in a single location. For example, Maryland has five secure treatment facilities located throughout the state, ranging in size from six beds (a secure treatment facility for girls) to 48 beds. Similarly, North Carolina has four facilities, three of which have capacities of 44 beds or smaller. Six of Kentucky's seven regional secure treatment facilities (known as youth development centers) have 42 or fewer beds. Only one nearby state (South Carolina) operates a single secure treatment facility.

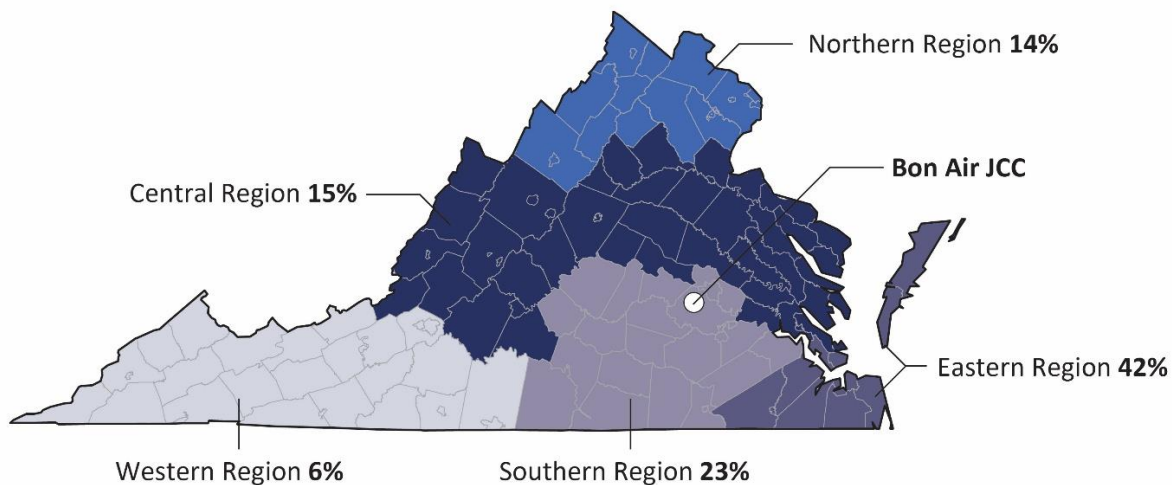
***Single facility results in families having to travel substantial distances to visit***

Having only one facility results in more families being farther away from youth when they are in custody, which is inconsistent with best practice. Longer distances from the facility to the youth's community make it less likely that family or others will visit the youth while in custody. Long distances also make it more difficult for parents (or individuals willing to serve in the parent role) to be engaged in the treatment programming. According to existing national research, programs that are “most effective at reducing recidivism involve an emphasis either on parental involvement or on providing a parent-like alternative when parents are unable or unwilling to assume a positive role.”

Although Bon Air JCC's location in Chesterfield is relatively close to the communities of committed youth from the Southern and Central regions, it is not close to communities in the Eastern region, where the largest proportion of committed youth are from (Figure 9-7). The Eastern region includes Newport News, Norfolk, Virginia Beach, Hampton, and Chesapeake. Though fewer youth in custody come from the Western region, travel time for their families can be more than eight hours round trip.

**FIGURE 9-7**

**Between 2017 and 2021, 42 percent of youth committed to DJJ were from the Eastern region**



SOURCE: DJJ snapshot data for youth in DJJ custody.

DJJ has made efforts to help families visit youth and stay engaged in their youth's rehabilitation. DJJ started a free transportation initiative in 2016 to provide transportation for families to visit youth at Bon Air, and approximately 980 individuals participated in the program in FY20. Although the transportation program mitigates the costs incurred by families to visit youth at Bon Air JCC, it can take families in the Eastern region more than four hours round trip to travel to and from the facility.

DJJ has also used its CPPs to locate certain lower risk youth at JDCs. However, the Chesapeake JDC has recently closed its CPP, leaving space for only 20 committed youth in the Eastern region at the CPP operated by the Virginia Beach JDC.

### ***Converted space in Bon Air not fully consistent with best practice***

Bon Air JCC was also not designed to support effective rehabilitative programming. Most apparent is the lack of dedicated treatment space for groups or individuals. DJJ has attempted to repurpose vacant cells for treatment programs. This has created more dedicated treatment space, but there are still concerns about the noise and echoing in the rooms because the walls are cinder block with no noise-reducing material. The rooms also lack windows and consequently have no natural light (sidebar).

### **Replacing Bon Air JCC is reasonable, but size, number, and locations of future facilities have yet to be finalized**

Stakeholders generally agree that the current Bon Air facility is not adequately meeting the needs of committed youth and should be replaced by at least two facilities. According to the 2017 juvenile correctional center task force report, “it would be nearly as expensive to keep the [Bon Air] facility operating as it would be to build the two new facilities and is certainly more expensive than building a new 96-bed facility” and “even with [Bon Air JCC] renovations, DJJ would still be operating an oversized and inefficient facility with design features that fall short of those needed to provide a treatment and rehabilitation environment consistent with emerging best practice standards.”

However, there is disagreement on the size, numbers, and locations of future secure treatment facilities moving forward. The task force recommended two facilities be built for up to 156 youth—one 60-bed facility in the Eastern region and one facility of up to 96 beds on the current Bon Air property in the Southern region. Total estimated operating costs were expected to be about \$28 million (\$12.6 million for the 60-bed facility and \$15.4 million for the 96-bed facility) in 2017 (sidebar). The task force estimated total construction costs of \$50.1 million for the 96-bed facility on the Bon Air property and did not estimate the costs of the smaller Eastern region facility.

The task force also considered a third 36-bed facility in Northern Virginia that, if built, would reduce the size of a new Bon Air JCC facility to 60 beds. Adding the third facility would bring estimated total annual operating costs for secure treatment facilities to about \$40 million per year. This option was dismissed because DJJ estimated it would add \$12 million more per year in operating costs and would require additional construction funds.

More recently, there has been legislative interest in building much smaller facilities closer to youths’ home communities. SB 1033 (2020) would have required any juvenile correctional center built after July 1, 2020 to be located in a locality in which at least 5 percent of all statewide commitments occur and be designed to confine 30 juveniles

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**Best practices suggest facilities should incorporate design characteristics that are trauma-informed and promote youth rehabilitation,** such as open interior spaces with views to the outside; natural lighting; movable furnishings that permit changing use of space throughout the day; and familiar and variable construction materials that do not present an overt expectation of damaging behavior.

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**In FY17, total spending on Bon Air JCC and Beaumont JCC was about \$63.8 million.**

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or fewer. According to the fiscal impact statement for SB 1033 (2020), six new facilities would be needed, rather than the two recommended by the task force.

All three approaches (building two, three, or six facilities) would more closely align with the national best practices than having a single Bon Air JCC, but the construction and operation of many smaller facilities would require considerable additional resources. According to the fiscal impact statement for SB 1033, total annual operating costs are estimated to be \$112 million—about 2.5 times higher than the operating costs for Bon Air JCC. Total estimated construction costs for the six facilities would be \$210 million.

“*Instead of the perfect being the enemy of the good, the perfect has been the best friend of the status quo. As we fight about the facilities being smaller, we end up doing nothing. And where are the kids? Still in Bon Air.*”

– Juvenile justice stakeholder

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**DJJ has preliminary approval to construct the first of the original two planned secure treatment facilities.** DJJ has been authorized to build a 60-bed facility, although the location had not been determined. As of early 2021, total estimated construction costs were expected to be about \$53.5 million, and annual operating costs were expected to be about \$22.2 million.

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An additional challenge to locating multiple smaller facilities throughout the state may be overcoming resistance from communities about placing a secure treatment facility (sidebar). DJJ has twice attempted to site a new 60-bed facility in the Eastern region—first in Chesapeake and then in Isle of Wight—but these efforts were unsuccessful after local leaders decided they were no longer interested in hosting the new facility.

### **DJJ should move forward with a smaller, treatment-oriented, facility in Central Virginia and develop options for citing other facilities**

DJJ should move forward with transitioning to a new treatment-oriented facility on the Bon Air JCC campus and not wait for the size, number, and location of other facilities to be determined. A smaller facility, such as the 60-bed facility proposed by the task force, would still be larger than most facilities in other states, but would be about one-quarter the size of the current facility. It would also allow about half of the youth placed at Bon Air JCC (119 as of May 2021) to receive treatment in a more therapeutic environment. DJJ could begin construction on the new facility on the property while still operating the Bon Air JCC and planning for facilities for other youth (sidebar). The Bon Air campus is large enough to allow for future facility expansion, if needed, to meet the needs of youth.

Although it would be preferable to open an Eastern region facility before the Central Virginia location, survey responses from youth at Bon Air JCC indicate that families are generally able to visit youth, even during the COVID-19 pandemic and despite the time commitment involved. In responses to a JLARC survey in July 2021, 87 percent of youth at Bon Air JCC reported that their families can visit them when they want or need them to. This is a 38 percent increase from when the survey was last conducted in 2018.

### **RECOMMENDATION 31**

The Department of Juvenile Justice should proceed with constructing a smaller juvenile treatment facility on the Bon Air Juvenile Correctional Center property while locations for other facilities are being determined.

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Until DJJ opens one or more additional secure treatment facilities, some parts of the existing Bon Air facility would need to remain open for youth who cannot be placed



in either the smaller juvenile treatment facility on the Bon Air property or in a CPP. As other facilities are opened, or as CPPs demonstrate their ability to effectively support youth committed to DJJ, youth in the Bon Air property could be transferred to these other facilities.

Although it would be a substantial change from the current practice, narrowing the role of JDCs and switching to a fully regional treatment model for rehabilitation (see Policy Option 13 above) could mitigate challenges DJJ has experienced in siting new secure treatment facilities (sidebar). If some JDCs are transitioned to focus solely on rehabilitation—rather than providing both short-term detention and rehabilitation—it is possible that some JDC capacity would be available to accommodate more youth committed to DJJ custody. If so, this would reduce the capacity needed solely for youth committed to DJJ.

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**The Department of General Services has reviewed potential properties, including state owned properties, for a new secure treatment facility in the Eastern region.** However it has encountered several barriers, including local government opposition, wetlands restrictions, and construction requirements for buildings in areas projected to be affected by future sea level rise.

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## Appendix A: Study resolution

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### Review of the Juvenile Justice System

Authorized by the Joint Legislative Audit and Review Commission on November 16, 2020

WHEREAS, the mission of the Department of Juvenile Justice (DJJ) is to protect the public by helping court-involved youth become productive citizens; and

WHEREAS, on any given day, DJJ has between 4,000 and 5,000 youth under some type of supervision, with about 90% of youth being supervised through diversion, probation, or parole; and

WHEREAS, DJJ operates a juvenile correctional facility and provides a continuum of community-based services to youth in the juvenile justice system through partnerships with localities, non-profits, and private entities; and

WHEREAS, the proportion of minority youth in the juvenile justice system is greater than in the general population, and the proportion of youth in the system from certain regions is greater than the proportion of youth in those regions generally; and

WHEREAS, the 2016 General Assembly authorized reform of the juvenile justice system, including allowing DJJ to reinvest operational savings from the recent closures of juvenile correctional centers into treatment, education, and alternative placement options and planning for two new juvenile correctional centers; now, therefore be it

RESOLVED by the Joint Legislative Audit and Review Commission that staff be directed to review Virginia's juvenile justice system, including the Department of Juvenile Justice.

In conducting its study, staff shall (i) assess Virginia's juvenile justice system process, including intake, petition, detention, and adjudication and disposition; (ii) determine whether there are racial or regional disparities in the treatment of youth in the juvenile justice system; (iii) determine whether there are disproportionate impacts on youth with cognitive or behavioral health disabilities in the juvenile justice system; (iv) assess the status of DJJ's recent reforms and whether the reforms have improved outcomes for youth, including rearrest rates, recidivism, and educational outcomes; (v) assess whether DJJ facilities are adequately staffed and whether staff are sufficiently trained; (vi) evaluate future facility needs, including considerations regarding the placement of committed youth relative to their primary residence and the appropriate size of future facilities; (vii) evaluate the effectiveness of educational and training services provided at juvenile correctional centers and juvenile detention centers and whether funding levels appropriately reflect the population of youth in these facilities; (viii) determine whether DJJ adequately oversees community-based services provided to youth and if sufficient community-based services are available throughout the state; and (ix) assess the extent to which DJJ ensures that appropriate services are consistently provided and best practices are followed at juvenile detention centers throughout the state.

JLARC shall make recommendations as necessary and review other issues as warranted.

## Appendix B: Research activities and methods

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Key research activities JLARC performed for this study include:

- structured interviews with leadership and staff of the Virginia Department of Juvenile Justice (DJJ) and other state agencies, Juvenile and Domestic Relations (J&DR) District Court judges, attorneys, leadership and staff of Virginia's juvenile detention centers, other juvenile justice stakeholders, and subject-matter experts nationally and in Virginia;
- surveys of court service unit (CSU) leadership and staff, juvenile detention center leadership and staff, residents of the Bon Air Juvenile Correctional Center, and youth and parents with direct knowledge of Virginia's juvenile justice system;
- analysis of DJJ data and national data;
- site visits to Bon Air JCC and juvenile detention centers;
- reviews of national research; and
- reviews of federal and state documentation, such as those related to laws, regulations, and policies relevant to the provision of juvenile justice in Virginia.

### Structured interviews

Structured interviews were a key research method for this report. JLARC conducted about 100 interviews. Key interviewees included:

- central office staff of DJJ and other state agencies;
- leadership and staff of DJJ's court service units;
- leadership and staff of DJJ's juvenile correctional center;
- J&DR District Court judges and attorneys;
- juvenile detention center directors and staff;
- regional service coordinator directors; and
- stakeholders and subject-matter experts in Virginia and nationally.

### *Central office staff of DJJ and other state agencies*

JLARC staff conducted 37 structured interviews with DJJ central office staff. Topics varied across interviews but were primarily designed to understand DJJ's oversight functions, including ongoing quality assurance reviews, ongoing certification audits, training and technical assistance, and other support activities. DJJ staff were also asked about their roles and responsibility in implementing DJJ's transformation plan and for their perspective on opportunities to further improve Virginia's juvenile justice system.

JLARC staff conducted structured interviews with the Virginia Department of Education's (VDOE) State Operated Programs staff. These interviews were designed to understand VDOE's supervisory and administrative responsibilities of the educational programs in juvenile detention centers, including ongoing monitoring, support activities, and service provisions.

JLARC also interviewed staff of the Virginia Department of Criminal Justice Services (DCJS) to understand DCJS's roles and responsibilities in the juvenile justice system and opportunities to improve the system.

JLARC staff also interviewed staff of the Office of the Executive Secretary of the Supreme Court of Virginia, the Auditor of Public Accounts, the Virginia Indigent Defense Commission, and the Department of General Services.

### ***Leadership and staff of DJJ's court service units***

JLARC staff conducted 13 individual and group interviews with directors, supervisors, and intake, probation and parole officers of Virginia's court service units in different areas of the state and of various sizes, including:

- District 4 CSU – Norfolk,
- District 14 CSU – Henrico,
- District 16 CSU – Charlottesville,
- District 17 CSU – Arlington,
- District 18 CSU – Alexandria,
- District 19 CSU – Fairfax, and
- District 27 CSU – Pulaski.

Interview topics focused on various aspects of court service units' responsibilities and services, including training, support, and guidance for frontline staff, including training and implementation of EPICS—DJJ's community supervision model. Interviews also gathered staff perspectives on case-loads and workloads, access to community-based services, recruitment and retention of staff, coordination with district judges, effects of COVID-19, and any unique challenges or practices within their district.

### ***Leadership and staff of DJJ's juvenile correctional center***

JLARC conducted 10 individual and group interviews with leadership and staff of the Bon Air juvenile correctional center. Topics varied across interviews but were primarily designed to understand staff roles and responsibilities in the facility and challenges providing juvenile justice interventions to committed youth. Interviews with front line staff focused on topics including basic services provided to youth (e.g., education, health care); processes to ensure residents' rights are respected and resident grievances are investigated; the adequacy of the current facility and rehabilitative programming provided to youth; job satisfaction; staff training, recruitment, and retention; and any opportunities to improve the services or interventions provided to youth.

### ***JD&R district court judges and attorneys***

JLARC staff conducted 10 individual and group interviews with J&DR judges, commonwealth's attorneys, and defense attorneys. The purpose of these interviews was to gather judges' and attorneys' perspectives on several topics, including the quality of attorney representation provided to youth and the timeliness of the juvenile justice system in resolving juvenile delinquency cases. JLARC staff interviewed five J&DR judges in different regions of Virginia and conducted group interviews with

commonwealth’s attorneys representing 10 localities in different regions of Virginia and of different sizes. JLARC staff also conducted a group interview with Virginia public defenders who practice in juvenile law and several interviews with staff of the Virginia Indigent Defense Commission.

### ***Juvenile detention center directors and staff***

JLARC staff conducted individual and group interviews with directors and post-dispositional program managers of 13 juvenile detention centers in Virginia of various sizes, in different areas of the state, and providing different placement options for youth, including:

- Chesterfield Juvenile Detention;
- Crater Juvenile Detention Home;
- Fairfax Juvenile Detention Center;
- Highlands Juvenile Detention;
- Loudoun County Juvenile Detention Center;
- Merrimac Center;
- Northern Virginia Juvenile Detention Center;
- Northwestern Regional Juvenile Detention Center;
- Newport News Department of Juvenile Services;
- New River Valley Juvenile Detention Center;
- Prince William County Juvenile Detention Center;
- Rappahannock Juvenile Detention Center; and
- Richmond Juvenile Detention Center.

Interview topics focused on various aspects of juvenile detention centers’ operations and services, including the impact of DJJ’s transformation, other juvenile justice trends and the COVID-19 pandemic, provision of educational and rehabilitative programming; transition and re-entry practices for post-dispositional youth; and satisfaction with DJJ guidance, monitoring, and technical assistance. Interviews also covered challenges juvenile detention centers encounter in providing placements and services for youth in the juvenile justice system.

### ***Regional Service Coordinator directors***

JLARC staff conducted virtual interviews with the directors from both Regional Service Coordinators —AMIkids and Evidence Based Associates. Interview topics included an overview of contractual obligations for regional service coordinators and direct service providers; processes for vetting, selecting, and removing service providers; quality assurance and monitoring systems; and a review of service gaps analysis conducted by regional service coordinators.

### ***Stakeholders and subject-matter experts***

JLARC staff interviewed various Virginia stakeholder groups and subject-matter experts, including representatives of:

- RISE for Youth;

- The Children’s Defense Clinic of the University of Richmond School of Law;
- The Legal Aid Justice Center;
- The Virginia Advisory Committee on Juvenile Justice;
- The Virginia Association of Commonwealth’s Attorneys;
- The Virginia Association of Criminal Defense Lawyers;
- The Virginia Detention Association of Post-Dispositional Programs; and
- The Virginia Juvenile Detention Association.

JLARC staff interviewed various national subject-matter experts, including representatives of:

- The Annie E. Casey Foundation;
- The Council of Juvenile Justice Administrators;
- The Council of State Governments;
- The National Center for Juvenile Justice;
- The National Conference of State Legislatures;
- The Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice;
- The Pew Charitable Trusts; and
- The Vera Institute of Justice.

These interviews covered various topics to understand national juvenile justice trends in system involvement; common challenges and concerns juvenile justice systems encounter; opportunities to improve juvenile justice systems; and actions taken in other states to address challenges. Interviewees who had previously been contracted to provide assistance to Virginia’s juvenile justice system also provided insights into common challenges and concerns they had identified through their work with the system.

## **Surveys**

For this study, JLARC staff conducted surveys of: (1) court service unit directors, supervisors, and frontline staff, (2) juvenile detention center staff, (3) residents of the Bon Air juvenile correctional center, and (4) youth and parents directly with direct knowledge of Virginia’s juvenile justice system.

### ***Survey of court service unit directors, supervisors, and frontline staff***

The survey of court service unit staff was administered electronically to CSU directors, supervisors, and staff with juvenile intake, diversion, probation, and/or parole responsibilities in all 34 CSUs.

The survey was designed to obtain leadership and staff perspectives on several topics, including staff responsibilities, support, training, and accountability; experiences during the COVID-19 pandemic; EPICS training and implementation; staffing and recruitment; collaboration with judges; community-based services; caseload and workload; job satisfaction; and any additional training needs.

The survey response rate was 64 percent, and JLARC staff received responses from 29 directors, 90 supervisors, and 260 staff with juvenile intake, diversion, probation, and/or parole responsibilities.

### ***Survey of juvenile detention center staff***

The survey of juvenile detention center staff was administered electronically to juvenile detention center directors in all 24 juvenile detention centers and to post-dispositional programs managers of the 21 facilities with post-dispositional programs.

Most topics covered in the survey of directors were also covered in the post-dispositional programs managers' survey. These topics included their facility's experiences during the COVID-19 pandemic; experiences and processes providing mental health, substance abuse, and behavioral services and supports; processes and challenges supporting residents' transitions upon release from their facility; and rehabilitative services to reduce recidivism. The survey also asked about their satisfaction with DJJ's oversight and technical assistance and educational services provided in their facility.

JLARC received at least one response from all 24 juvenile detention centers in the state. Twenty-three of the 24 directors (96 percent) responded to the survey. JLARC received responses from post-dispositional programs managers from 19 of the 21 (90 percent) juvenile detention centers who had post-dispositional program placements.

### ***Survey of residents of the Bon Air juvenile correctional center***

JLARC staff administered an on-site paper survey of residents of Bon Air Juvenile Correctional Center on July 21 and July 23, 2021. To ensure all youth had an opportunity to provide feedback, JLARC staff read the survey aloud to small groups of youth, were available to answer any questions, and provided both English and Spanish versions of the survey. Translation assistance was also available to youth taking the Spanish version of the survey.

To understand whether youth perspectives have changed since DJJ's recent reforms, JLARC's survey included similar questions to those asked in surveys conducted in 2015 and 2018 among youth in Virginia's juvenile correctional centers. Survey topics included residents' perspectives on the safety, physical condition, services, and staff of the facility; whether residents were treated fairly in the facility; and family engagement.

Of the 105 residents in the facility on the dates the survey was administered, 90 residents participated (~86 percent).

### ***Survey of youth and parents with direct knowledge of Virginia's juvenile justice system***

JLARC staff administered an electronic survey to youth and parents of youth with direct experiences with Virginia's juvenile justice system over the past five years.

The survey was designed to collect youth's and parents' perspectives of the juvenile justice system based on their direct experience, including any concerns or positive experiences they may have had with specific aspects of the juvenile justice system, including attorneys, probation, juvenile detention centers, juvenile correctional centers, and re-entry.

The survey was posted on JLARC's website and made publicly available for about 40 days.

There is no statewide list of youth and families who have had experiences with Virginia's juvenile justice system, so JLARC staff worked with RISE for Youth and DJJ to promote the survey statewide. RISE for Youth, an organization that advocates for youth in the juvenile justice system, shared the



survey link through social media (Facebook, Instagram, and Twitter), on its website, and with its partner youth-serving organizations. DJJ distributed the survey to parents of youth at Bon Air Juvenile Correctional Center for whom they had email addresses; asked probation officers statewide to notify families about the survey; and provided the information to DJJ's regional service coordinators for distribution to families with whom they work.

Despite these efforts, JLARC staff received only 15 responses from youth and parents with direct involvement in the juvenile justice system.

## **Data Collection and analysis**

JLARC staff collected several types of data from DJJ, VDOE, and the Office of the Executive Secretary (OES) to analyze for this study. JLARC received youth-level data from DJJ on intake complaints, juvenile justice involvement, youth demographics, recidivism, and Youth Assessment and Screening Instrument (YASI) assessments. JLARC received additional data from DJJ on the utilization of juvenile detention centers, serious incidents reports, and direct care grievances. JLARC also received youth-level case file data from OES, and personnel and expenditure data from VDOE regarding the educational programs of juvenile detention centers.

JLARC staff also accessed data from the U.S. Office of Juvenile Justice and Delinquency Prevention (OJJDP).

### ***Analysis of juvenile complaints and offenses (Chapter 1, 2, 3, 4)***

JLARC used DJJ intake data to analyze trends in the number of complaints filed in Virginia's juvenile justice system overall and by offense type, race, locality, and region between FY11 and FY21.

JLARC also used data available through OJJDP's Statistical Briefing Book (Easy Access to Juvenile Court Statistics and FBI Arrest Statistics) to compare trends in Virginia's arrests and complaints to those nationally.

### ***Analysis of juvenile justice system involvement (Chapter 1, 2, 3, 5, 6, 7, 9)***

JLARC used juvenile justice involvement snapshot data from DJJ to calculate overall system involvement and the number and proportion of youth in the system by intervention setting and risk level on May 1 each year between 2011 and 2021. Juvenile justice intervention settings include formal diversion, probation, post-dispositional detention, post-dispositional programs, juvenile detention centers' (JDCs) community placement programs, juvenile correctional centers, and parole. JLARC also analyzed the number of youth placed in detention awaiting trial on May 1 each year between 2011 and 2021. Risk levels included high-, moderate-, and low-risk of reoffending, and youths' risk levels were determined by DJJ using the Youth Assessment and Screening Instrument. JLARC primarily focused on risk level data for 2013 to 2021 since prior to this assessment data was limited.

JLARC staff used DJJ length-of-stay data to calculate the average, median, minimum, and maximum length of time youth spent in each intervention between FY11 and FY21.

JLARC used juvenile court statistics data available through OJJDP's Statistical Briefing Book to compare trends in Virginia's juvenile justice involvement to those nationally.

### ***Analysis of recidivism (Chapter 2, 5, 6, and 7)***

JLARC staff used recidivism data from DJJ to calculate one-, two-, and three-year rearrest, reconviction, and recommitment rates for youth who had completed a juvenile justice intervention between FY11 and FY19. As defined by DJJ, youth are rearrested when they have a “petitioned juvenile intake complaint for a new delinquent act or an adult arrest for a new criminal offenses, regardless of the court’s determination of delinquency or guilt;” youth are reconvicted when they have a “delinquent adjudication for a new delinquent act or a guilty conviction for a new criminal offense;” and youth are reincarcerated when they “return to commitment, incarceration, or secure confinement subsequent to a rearrest, and reconviction for a new delinquent act or criminal offense.” Annual recidivism rates are based on the cohort of youth that were released from a juvenile justice intervention that year. For example, FY17 two-year reconviction rates for probation were calculated as follows:

$$\frac{\text{\# youth released from probation in FY17 who were reconvicted within two years}}{\text{total \# youth released from probation in FY17}}$$

Recidivism rates were calculated overall as well as recidivism rates by intervention including probation releases, JDC post-dispositional programs, community placement programs, juvenile correctional centers, and successful diversions for FY11 through FY19. Recidivism rates for post-D programs and community placement programs were compared across JDCs. Recidivism rates were also compared for treatment programs in juvenile correctional centers, including aggression management, substance abuse, and sex offender treatment programs.

JLARC also used recidivism data to analyze the offenses youth were rearrested, reconvicted, or re-committed for over time and by intervention.

### ***Analysis of racial disproportionality in juvenile justice system involvement (Chapter 4)***

Because referrals are the greatest contributor to disproportionality within the juvenile justice system statewide (see Chapter 4), JLARC staff assessed disproportionality in referrals at the CSU level from FY11 to FY20. Disproportionality at the CSU level was determined by comparing the rate of complaints referred per 1,000 Black youth to the rate of complaints referred per 1,000 white youth for each CSU. The resulting rates of disproportionality reflect how many times more likely a Black youth was to be referred to the CSU than a white youth during the same time period.

It is important to control for offense severity when examining disproportionality within the juvenile justice system, as national research indicates Black youth tend to offend more than white youth with respect to serious person crimes (e.g., felonies). Analyzing disproportionality by type of offense accounts for differences in offending patterns across racial groups. To the extent that disproportionality persists across all types of offenses, they cannot be attributed to differences in patterns of offending.

### ***Analysis of YASI data (Chapters 2, 6, and 7)***

JLARC staff analyzed youth-level youth assessment and screening instrument (YASI) data collected by DJJ. YASI data provides information on youths risk and protective factors, and overall risk level based on those factors. Risk and protective factors assessed pertain to various domains including legal history; family, school, community and peers; alcohol and drugs; aggression and violence; attitudes (e.g., pro-social attitudes); skills (e.g., problem-solving, or consequential thinking); employment and

free time; and mental health. Each domain consists of multiple subcomponents that are used to determine the youth's risk score on that domain and overall risk score. A higher risk score indicates, if unaddressed, youth are more likely to reoffend upon release. This data was available for FY11 through FY21.

JLARC used YASI data to analyze youths' support needs, overall and by domain, in the juvenile justice system. Staff also analyzed the differences in the number and proportion of youth assessed to have high-, moderate-, and low-risk scores, overall and by domain, across interventions and over time.

### ***Analysis of juvenile justice spending (Chapter 1 and 9)***

JLARC staff analyzed juvenile justice expenditure data collected by DJJ and VDOE. This data included federal and state spending in the juvenile justice system. Expenditure data includes juvenile justice spending for DJJ central office, local and regional juvenile detention centers, state- and locally operated court service units, juvenile correction centers, and community-based services (such as VJCCCA and DJJ continuum spending). JLARC also analyzed total expenditures, including state, federal and local spending, on local and regional juvenile detention centers. DJJ data was available for FY11 to FY20, while VDOE data, which included educational funding data for juvenile detention centers, was available for FY17 to FY22.

### ***Analysis of juvenile detention center educational programs' staffing and spending (Chapter 9)***

JLARC staff analyzed working budget and staffing data collected by VDOE for educational programs in juvenile detention centers. This working budget data included federal and state funding for educational programs in these facilities overall and by JDC for FY17 to FY22. The staffing data included salary, benefits, and job descriptions for all school personnel in juvenile detention centers in FY19 and FY20.

JLARC used juvenile detention center population data from DJJ and education staffing data from VDOE to calculate the student-to-teacher ratios in JDCs both statewide and by JDC. JLARC also collected school enrollment and staffing data for juvenile justice facilities in other states available through the U.S. Department of Education (Civil Rights Data Collection) to calculate and compare student-to-teacher ratios in other states' juvenile justice facilities to those of Virginia's JDCs.

### ***Estimates of consolidation savings for juvenile detention centers (Chapter 9)***

To identify consolidation opportunities for juvenile detention centers, JLARC staff used DJJ utilization data to calculate JDCs' unused capacity, and Google Maps to calculate the distance between these facilities. The unused capacity was calculated by subtracting each facility's maximum daily population between FY17 and FY21 from their respective licensed capacity. The team then determined which JDC's could have their maximum daily populations met by the unused capacity of other JDCs within a 30-, 45-, and 60- minute driving distance.

Through these calculations JLARC determined that at least three JDCs could be closed. However, various aspects of JDCs could not be accounted for in these determinations and should be considered through further study before consolidation decisions are made. Aspects that should be considered include, but are not limited to, each facility's age, remodeling needs, distance from youths' home communities, staff turnover rates, quality of treatment programming, and availability of treatment space.

The estimated savings were determined using JDCs' annual operating costs and educational expenditures—information which was provided by DJJ and VDOE. However, estimated savings did not account for costs of operating placements for youth committed to DJJ custody, which would likely increase such estimates.

## Site visits

JLARC staff visited the Bon Air Juvenile Correctional Center. During this site visit, JLARC staff conducted structured interviews with JCC leadership and staff, which focused on daily operations in the facility; staff satisfaction; challenges providing interventions and support; and opportunities for improvement. Staff also toured the Bon Air facility, including the residents' units, treatment space, education classrooms, the health unit, cafeteria, and communal and recreational areas.

JLARC staff also visited three juvenile detention centers:

- Blue Ridge Juvenile Detention,
- Merrimac Center, and
- Prince William County Juvenile Detention Home.

During these site visits, JLARC staff toured each facility, including residential units, treatment space, education classrooms, and communal and recreational areas.

## Review of national research

JLARC staff reviewed numerous publications and resources on juvenile justice from national organizations, including resources from:

- The Annie E. Casey Foundation;
- The Council of Juvenile Justice Administrators;
- The Council of State Governments;
- The National Center for Juvenile Justice;
- The National Conference of State Legislatures;
- The National Institute of Corrections;
- The National Research Council of the National Academies of Sciences;
- The Pew Charitable Trusts; and
- The Vera Institute of Justice.

JLARC staff also reviewed academic research from other sources, such as government agencies and advocacy groups. For example, JLARC reviewed articles and publications by:

- Evident Change (formerly the National Council on Crime and Delinquency and Children's Research Center);
- The Center for Juvenile Justice Reform at Georgetown University;
- The John Jay College of Criminal Justice;
- The National Technical Assistance Center for the Education of Neglected or Delinquent Children and Youth;

- The Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice;
- The U.S. Department of Education; and
- The Urban Institute's Justice Policy Center.

JLARC also reviewed national inventories of evidence-based programs and practices maintained by the Office of Juvenile Justice and Delinquency Prevention (Model Programs Guide), the Institute of Behavioral Science at the University of Colorado Boulder (Blueprints for Healthy Youth Development), the Washington State Institute for Public Policy, and the Substance Abuse and Mental Health Services Administration.

### **Document review**

JLARC staff reviewed numerous other documents and literature pertaining to juvenile justice in Virginia and nationwide, such as:

- Virginia laws, regulations, and policies relating to the responsibilities and requirements of DJJ, VDOE, J&DR district courts, and juvenile detention centers;
- federal laws, regulations, and policies relating to the responsibilities of state juvenile justice agencies and state education agencies as they relate to the juvenile justice system; and
- other states' juvenile justice laws, regulations, policies processes, and facilities, such as their juvenile justice intervention options, implementation of evidence-based practice requirements, and secure facilities.

## Appendix C: Rearrest, reconviction, and reincarceration rates

Chapter 2 of this report provides summary information on recidivism trends over time. This appendix provides additional details on recidivism in Virginia by type of juvenile justice intervention. For each type of juvenile justice intervention, rearrest, reconviction, and reincarceration rates are reported for 12-, 24-, and 36-month periods after release. (Note: reincarceration rates are not available for youth released from probation or diversion plans because they were not previously incarcerated.)

The Department of Juvenile Justice (DJJ) tracks youth for three years after their completion of a juvenile justice intervention (such as their release from probation or a juvenile correctional center) to determine if they have been rearrested, reconvicted, or reincarcerated for an offense. Nearly all youth (97 released from one of the system's interventions) are included in the state's recidivism rates. DJJ recidivism data includes data from the Virginia State Police, Virginia Criminal Sentencing Commission, Virginia Department of Corrections, and the State Compensation Board.

Technical violations, such as probation and parole violations or contempt of court, are excluded from recidivism rates.

### Recidivism among youth released from probation

**TABLE C-1**  
Rearrest rates among youth released from probation

Re-arrested within...	Youth released in...									
	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20
12 months	32.4%	34.6%	33.2%	31.9%	33.1%	33.9%	34.5%	32.7%	31.7%	26.6%
24 months	49.5%	50.3%	48.9%	48.0%	48.8%	50.0%	51.1%	47.2%	44.5%	
36 months	59.5%	59.4%	58.7%	58.2%	58.2%	58.6%	59.0%	55.2%		

SOURCE: DJJ recidivism data.

**TABLE C-2**  
Reconviction rates among youth released from probation

Re-convicted within...	Youth released in...									
	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20
12 months	26.1%	27.6%	26.5%	24.6%	25.1%	25.9%	62.2%	24.7%	22.4%	
24 months	41.4%	42.5%	41.1%	38.9%	39.8%	40.2%	41.3%	37.8%		
36 months	52.3%	21.9%	51.8%	49.0%	49.7%	49.4%	50.0%			

SOURCE: DJJ recidivism data.

## Recidivism among youth released from post-dispositional programs at juvenile detention centers

TABLE C-3

Rearrest rates among youth released from post-dispositional programs at juvenile detention centers

Re-arrested within...	Youth released in...									
	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20
12 months	49.8%	55.8%	51.3%	53.2%	46.6%	58.9%	56.8%	54.4%	59.1%	59.5%
24 months	72.1%	74.3%	70.3%	71.3%	69.7%	76.2%	75.9%	73.0%	72.0%	
36 months	83.6%	82.9%	79.1%	77.1%	78.1%	83.9%	84.2%	79.7%		

SOURCE: DJJ recidivism data.

TABLE C-4

Reconviction rates among youth released from post-dispositional programs at juvenile detention centers

Re-convicted within...	Youth released in...									
	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20
12 months	42.4%	47.5%	43.1%	43.0%	38.1%	46.4%	46.2%	40.5%	44.6%	
24 months	66.9%	66.7%	60.9%	61.8%	60.9%	67.7%	66.2%	62.0%		
36 months	78.6%	77.6%	72.2%	69.4%	69.4%	79.8%	76.7%			

SOURCE: DJJ recidivism data.

TABLE C-5

Reincarceration rates among youth released from post-dispositional programs at juvenile detention centers

Reincarcerated within...	Youth released in...									
	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20
12 months	15.8%	19.5%	21.6%	21.7%	18.1%	21.8%	21.8%	17.3%	26.9%	
24 months	30.0%	39.5%	36.6%	38.2%	32.5%	42.3%	35.7%	31.2%		
36 months	33.7%	52.8%	45.9%	46.5%	42.2%	50.0%	45.1%			

SOURCE: DJJ recidivism data.

## Recidivism among youth released from DJJ custody

Youth committed to DJJ custody are generally placed either at Bon Air Juvenile Correction Center or at one of nine juvenile detention centers that operate a community placement program (CPP). DJJ contracts with juvenile detention centers to provide community placement programs for youth committed to DJJ custody.

This section shows recidivism rates among youth released from DJJ custody overall, from juvenile correctional centers, and from community placement programs.

### *Recidivism among youth released from DJJ custody (overall)*

TABLE C-6

Rearrest rates among youth released from DJJ custody

Re-arrested within...	Youth released in...									
	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20
12 months	48.6%	50.4%	53.5%	51.9%	53.1%	49.9%	55.0%	56.3%	54.4%	49.7%
24 months	69.9%	68.9%	71.6%	58.9%	72.4%	71.6%	75.4%	71.3%	72.2%	
36 months	76.9%	78.1%	77.4%	76.2%	79.5%	78.6%	82.7%	78.8%		

SOURCE: DJJ recidivism data.

TABLE C-7

Reconviction rates among youth released from DJJ custody

Re-convicted within...	Youth released in...									
	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20
12 months	42.8%	43.5%	45.6%	44.2%	43.7%	40.1%	45.3%	46.6%	46.0%	
24 months	63.8%	63.4%	66.8%	62.0%	64.2%	66.9%	68.7%	62.8%		
36 months	73.8%	74.2%	72.6%	70.6%	74.0%	74.7%	77.5%			

SOURCE: DJJ recidivism data.

TABLE C-8

Reincarceration rates among youth released from DJJ custody

Reincarcerated within...	Youth released in...									
	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20
12 months	7.3%	13.6%	21.0%	20.3%	20.5%	15.5%	21.6%	23.1%	17.8%	
24 months	18.4%	34.3%	42.1%	43.0%	36.0%	36.2%	41.3%	39.7%		
36 months	27.3%	50.5%	56.8%	51.0%	47.9%	47.0%	52.9%			

SOURCE: DJJ recidivism data.



## Youth released from DJJ-operated juvenile correctional centers

TABLE C-9

Rearrest rates among youth released from juvenile correctional centers

Re-arrested within...	Youth released in...									
	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20
12 months	47.4%	49.6%	53.0%	52.6%	50.8%	47.3%	51.9%	52.5%	52.5%	43.9%
24 months	69.0%	68.1%	71.7%	69.7%	71.6%	69.5%	70.2%	68.3%	68.7%	
36 months	76.2%	77.3%	77.7%	77.0%	78.5%	75.5%	78.6%	77.2%		

SOURCE: DJJ recidivism data.

NOTE: Only one juvenile correctional center (Bon Air Juvenile Correctional Center) remains open in 2021.

TABLE C-10

Reconviction rates among youth from juvenile correctional centers

Re-convicted within...	Youth released in...									
	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20
12 months	42.2%	43.3%	45.1%	45.0%	42.9%	37.7%	42.7%	40.6%	43.4%	
24 months	63.1%	63.2%	67.5%	62.3%	62.8%	65.0%	61.1%	53.5%		
36 months	73.3%	73.9%	73.4%	71.1%	72.2%	72.3%	71.8%			

SOURCE: DJJ recidivism data.

NOTE: Only one juvenile correctional center (Bon Air Juvenile Correctional Center) remains open in 2021.

TABLE C-11

Reincarceration rates among youth released from juvenile correctional centers

Reincarcerated within...	Youth released in...									
	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20
12 months	6.8%	13.4%	20.2%	20.8%	21.1%	12.3%	18.3%	19.8%	15.2%	
24 months	18.0%	34.4%	41.6%	44.5%	35.0%	35.0%	34.4%	32.7%		
36 months	27.0%	50.2%	27.7%	51.8%	46.4%	45.5%	46.6%			

SOURCE: DJJ recidivism data.

NOTE: Only one juvenile correctional center (Bon Air Juvenile Correctional Center) remains open in 2021.

## Youth in DJJ custody released from CPP programs at juvenile detention centers

TABLE C-12

Rearrest rates among youth released from CPP programs

Re-arrested within...	Youth released in...									
	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20
12 months					67.6%	48.1%	60.4%	61.1%	59.1%	57.9%
24 months					83.1%	71.3%	81.9%	75.9%	76.0%	
36 months					85.9%	79.6%	86.8%	81.5%		

SOURCE: DJJ recidivism data.

NOTE: Nine juvenile detention centers operated CPP programs as of November 2021.

TABLE C-13

Reconviction rates among youth from CPP programs

Re-convicted within...	Youth released in...									
	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20
12 months					50.7%	41.7%	50.0%	51.2%	50.3%	
24 months					73.2%	67.6%	78.5%	69.1%		
36 months					83.1%	75%	84.7%			

SOURCE: DJJ recidivism data.

NOTE: Nine juvenile detention centers operated CPP programs as of November 2021.

TABLE C-14

Reincarceration rates among youth released from CPP programs

Reincarcerated within...	Youth released in...									
	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20
12 months					19.7%	20.4%	24.3%	25.9%	19.9%	
24 months					43.7%	37.0%	46.5%	45.7%		
36 months					57.7%	50.0%	58.3%			

SOURCE: DJJ recidivism data.

NOTE: Nine juvenile detention centers operated CPP programs as of November 2021.

## Recidivism among youth released from parole

TABLE C-15

Rearrest rates among youth released from parole

Re-arrested within...	Youth released in...									
	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20
12 months	53.5%	57.2%	56.7%	59.6%	54.2%	56.6%	53.5%	55.5%	57.6%	52.3%
24 months	72.1%	73.6%	74.9%	74.0%	69.0%	69.9%	69.7%	71.8%	66.2%	
36 months	81.2%	82.8%	80.8%	79.7%	77.0%	76.7%	78.3%	79.4%		

SOURCE: DJJ recidivism data.

TABLE C-16

Reconviction rates among youth from parole

Re-convicted within...	Youth released in...									
	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20
12 months	50.4%	51.4%	50.2%	54.8%	47.4%	47.2%	49.4%	48.2%	50.7%	
24 months	67.9%	68.3%	71.2%	69.9%	62.5%	62.4%	65.0%	67.1%		
36 months	79.0%	79.0%	78.3%	75.8%	71.8%	70.2%	72.9%			

SOURCE: DJJ recidivism data.

TABLE C-17

Reincarceration rates among youth released from parole

Reincarcerated within...	Youth released in...									
	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20
12 months	7.3%	14.9%	20.7%	27.0%	25.2%	14.9%	19.1%	21.9%	18.6%	
24 months	18.2%	33.8%	42.9%	48.8%	40.5%	34.7%	36.3%	38.9%		
36 months	26.8%	50.3%	56.4%	57.1%	52.1%	48.0%	47.8%			

SOURCE: DJJ recidivism data.

## Recidivism among youth who completed diversion plans

TABLE C-18

### Rearrest rates among youth who completed diversion plans

Re-arrested within...	Youth released in...									
	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20
12 months		13.6%	14.6%	14.5%	13.3%	13.6%	13.1%	12.2%	12.4%	8.8%
24 months		22.9%	24.4%	24.7%	23.2%	23.2%	21.7%	19.9%	18.7%	
36 months		29.9%	32.1%	32.6%	31.0%	30.4%	28.2%	25.5%		

SOURCE: DJJ recidivism data.

NOTE: Recidivism data for youth who successfully completed a diversion plan started being collected in FY12.

TABLE C-19

### Reconviction rates among youth who completed diversion plans

Re-convicted within...	Youth released in...									
	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20
12 months		6.2%	6.9%	6.7%	6.1%	6.1%	5.9%	5.0%	4.7%	
24 months		12.8%	13.7%	13.6%	13.1%	12.7%	12.6%	9.8%		
36 months		18.7%	20.8%	20.8%	20.1%	19.0%				

SOURCE: DJJ recidivism data.

NOTE: Recidivism data for youth who successfully completed a diversion plan started being collected in FY12. Diversion measure shows proportion of youth who completed a diversion plan and were convicted, rather than reconvicted, within two years.

## Appendix D: Racial disparities in the juvenile justice system

Chapter 4 of this report discusses various aspects of racial disparities between Black and white youth in Virginia's juvenile justice system. This appendix provides additional details regarding racial disparities, including: (1) disproportionality in complaints referred to the juvenile justice system by court service unit (CSU) and (2) disparities within the juvenile justice system by offense type and region.

In these analyses, complaints were used rather than cases to control for offense severity. In the context of an overall case, a single complaint is the equivalent of a charge in the adult criminal system, meaning youth may have more than one complaint as part of a single case. However, disparities are not attributable to differences in number of complaints, as white and Black youth have a comparable number of complaints per case. From FY11–20, white youth had an average of 1.4 complaints per case, while Black youth had an average of 1.5 complaints per case.

### *Disproportionality in complaints referred to the juvenile justice system*

Because referrals are the greatest contributor to disproportionality within the juvenile justice system statewide, JLARC staff assessed disproportionality in referrals to each CSU. Complaints can be referred to CSUs by any member of the public, but are most commonly referred by law enforcement and schools. From FY11 to FY20, Virginia's 133 localities were served by 34 CSUs (Table D-1). Some CSUs serve a single locality, such as Virginia Beach or Henrico County, while others serve multiple localities. During this 10-year period, there were 583,000 total juvenile complaints statewide, or an average of 1,700 complaints per CSU per year. Total complaints vary by CSU, ranging from an average of 400 complaints per year for Accomac CSU to over 4,000 complaints per year for Fairfax CSU.

**TABLE D-1**

**From FY11–20, Virginia's 133 localities were served by 34 court service units (CSUs)**

<b>CSU number</b>	<b>CSU name</b>	<b>Localities in CSU district</b>
1	Chesapeake	Chesapeake
2	Virginia Beach	Virginia Beach
2A	Accomac	Accomack County; Northampton County
3	Portsmouth	Portsmouth
4	Norfolk	Norfolk
5	Suffolk	Franklin; Isle of Wight County; Southampton County; Suffolk
6	Hopewell	Brunswick County; Emporia; Greenville County; Hopewell; Prince George County; Surry County; Sussex County
7	Newport News	Newport News
8	Hampton	Hampton
9	Williamsburg	Charles City County; Gloucester County; James City County; King and Queen County; King William County; Mathews County; Middlesex County; New Kent County; Poquoson; Williamsburg; York County
10	Halifax	Appomattox County; Buckingham County; Charlotte County; Cumberland County; Halifax County; Lunenburg County; Mecklenburg County; Prince Edward County

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11	Petersburg	Amelia County; Dinwiddie County; Nottoway County; Petersburg; Powhatan County
12	Chesterfield	Chesterfield County; Colonial Heights
13	Richmond	City of Richmond
14	Henrico	Henrico County
15	Fredericksburg	Caroline County; Essex County; Fredericksburg; Hanover County; King George County; Lancaster County; Northumberland County; Richmond County; Spotsylvania County; Stafford County; Westmoreland County
16	Charlottesville	Albemarle County; Charlottesville; Culpeper County; Fluvanna County; Goochland County; Greene County; Louisa County; Madison County; Orange County
17	Arlington	Arlington County; Falls Church
18	Alexandria	Alexandria
19	Fairfax	City of Fairfax; Fairfax County
20L <sup>a</sup>	Loudoun	Loudoun County
20W <sup>a</sup>	Warrenton	Fauquier County; Rappahannock County
21	Martinsville	Henry County; Martinsville; Patrick County
22	Rocky Mount	Danville; Franklin County; Pittsylvania County
23 <sup>a</sup>	Salem	Roanoke County; Salem
23A <sup>a</sup>	Roanoke	City of Roanoke
24	Lynchburg	Amherst County; Bedford County; Campbell County; Lynchburg; Nelson County
25	Staunton	Alleghany County; Augusta County; Bath County; Botetourt County; Buena Vista; Covington; Craig County; Highland County; Lexington; Rockbridge County; Staunton; Waynesboro
26	Winchester	Clarke County; Frederick County; Harrisonburg; Page County; Rockingham County; Shenandoah County; Warren County; Winchester
27	Pulaski	Bland County; Carroll County; Floyd County; Galax; Giles County; Grayson County; Montgomery County; Pulaski County; Radford; Wythe County
28	Abington	Bristol; Smyth County; Washington County
29	Tazewell	Buchanan County; Dickenson County; Russell County; Tazewell County
30	Gate City	Lee County; Norton; Scott County; Wise County
31	Manassas	Manassas; Manassas Park; Prince William County

SOURCE: DJJ website.

NOTE: <sup>a</sup> DJJ consolidated CSUs 20L and 20W, as well as CSUs 23 and 23A as of July 1, 2021, for a total of 32 CSUs statewide.

Disproportionality at the CSU level was determined by comparing the rate of complaints referred per 1,000 Black youth to the rate of complaints referred per 1,000 white youth for each CSU district. The resulting rates of disproportionality reflect how many times more likely a Black youth was to be referred to the CSU than a white youth during the same time period. Racial disproportionalities were found in all CSU districts, but the extent of that disproportionality varied across the state. For example, in Alexandria, Black youth were 1.3 times more likely to be referred to the CSU, whereas in Richmond they were 4.7 times more likely. Rates of disproportionality at the CSU level for all types of offenses are shown in Table D-2.

TABLE D-2

From FY11–20, rate of disproportionality in referrals to DJJ varied across the state by CSU

CSU number	CSU name	Percent Black youth population	Black referral rate per 1,000	Percent white youth population	White referral rate per 1,000	Rate of disproportionality
1	Chesapeake	32%	102.8	56%	37.7	2.73
2	Virginia Beach	24	111.4	58	42.6	2.61
2A	Accomac	36	118.9	48	88.6	1.34
3	Portsmouth	66	166.0	27	62.4	2.66
4	Norfolk	57	191.1	31	69.2	2.76
5	Suffolk	44	104.6	49	30.9	3.38
6	Hopewell	49	130.3	42	55.4	2.35
7	Newport News	52	199.4	33	118.3	1.69
8	Hampton	59	165.9	30	79.0	2.10
9	Williamsburg	15	122.4	74	51.8	2.36
10	Halifax	36	111.1	59	63.2	1.76
11	Petersburg	39	188.9	55	81.9	2.31
12	Chesterfield	26	166.1	59	71.5	2.32
13	Richmond	68	160.8	21	34.1	4.71
14	Henrico	35	153.9	49	49.2	3.13
15	Fredericksburg	20	107.7	67	47.4	2.27
16	Charlottesville	15	126.4	74	44.9	2.81
17	Arlington	11	278.9	58	58.5	4.77
18	Alexandria	28	132.7	39	101.0	1.31
19	Fairfax	11	96.5	50	38.7	2.49
20L <sup>a</sup>	Loudoun	8	85.1	59	41.1	2.07
20W <sup>a</sup>	Warrenton	8	98.0	80	30.0	3.26
21	Martinsville	25	97.5	65	62.7	1.55
22	Rocky Mount	28	159.6	67	67.5	2.36
23 <sup>a</sup>	Salem	8	244.0	84	79.0	3.09
23A <sup>a</sup>	Roanoke	40	182.3	46	88.2	2.07
24	Lynchburg	21	155.9	73	55.6	2.80
25	Staunton	7	137.1	87	66.0	2.08
26	Winchester	6	189.1	79	70.9	2.67
27	Pulaski	5	180.0	89	67.2	2.68
28	Abington	3	161.6	93	74.7	2.16
29	Tazewell	2	151.7	95	89.8	1.69
30	Gate City	2	86.0	96	81.6	1.05
31	Manassas	22	89.7	41	61.1	1.47

SOURCE: Referral data via DJJ intake complaint data; locality youth population data via the Office of Juvenile Justice and Delinquency Prevention.

NOTE: Rate of disproportionality calculated by dividing CSU referral rate of Black youth ages 10–17 per 1,000 by CSU referral rate of white youth ages 10–17 per 1,000. Includes referrals for all types of offenses (e.g., felonies, misdemeanors, status offenses, violations).

<sup>a</sup> DJJ consolidated CSUs 20L and 20W, as well as CSUs 23 and 23A as of July 1, 2021, for a total of 32 CSUs statewide. These CSUs are shown separately here because they were not consolidated until after the time period used for this analysis.

### ***Disparities within the juvenile justice system by offense type and region***

It is important to control for offense severity when examining disparities within the juvenile justice system, as research suggests Black youth tend to offend more than white youth with respect to serious person crimes (e.g., violent felonies). Analyzing disparities by type of offense helps to account for differences in offending patterns across racial groups. To the extent that disparities persist across all types of offenses, they cannot be attributed solely to differences in patterns of offending. As shown in the following figures, similar trends in racial disparities persist across each type of offense, including felonies against persons, non-person felonies, misdemeanors against persons, and non-person misdemeanors.

As discussed in Chapter 4, differences in the treatment of Black and white youth within the juvenile justice system are far less pronounced than in the referral process. Black youth are much more likely to be referred to the system than they are to be petitioned, detained prior to their adjudication, transferred to circuit court, adjudicated delinquent, or committed. However, Black youth are still more likely than white youth to move forward in the process across key decision points, though to varying degrees.

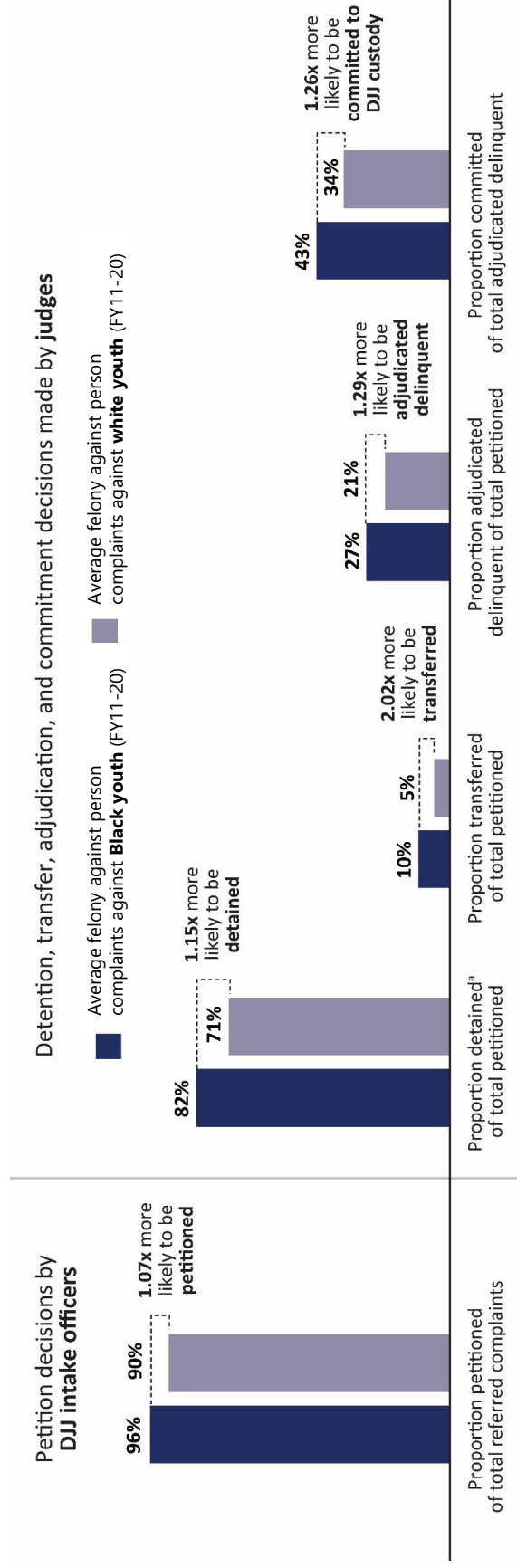
In addition to measuring the extent of racial disparity at each decision point within the juvenile justice system, JLARC staff also assessed the statistical significance of these disparities. Reaching definitive conclusions about the extent of disparity that can be attributed solely to race is not possible, as there are many other factors that may also contribute to disparities within the juvenile justice system, such as family income or law enforcement presence and practices. However, to conclude that at least some portion of disparities observed are attributable to race, JLARC staff assessed the relationship between race and the decision to move forward at each step of the process, and for each type of offense, to determine whether there was a statistically significant relationship between race and each decision to move forward within the juvenile justice system. The results of this analysis found that there is generally a statistically significant relationship between race and the likelihood to move forward at each step of the process, with the exception of some decisions in the process for misdemeanors against persons, which are identified in the footnote of Figure D-3.

Finally, JLARC staff also assessed the rates of disparity at each step of the process across regions by type of offense (Figure D-5, Figure D-8). While JLARC staff were able to calculate rates of disparity for most offense types across regions, some rates were not calculated because of insufficient data. Regions were determined to have insufficient data if there were fewer than 10 complaints per year at that particular decision point. For example, rates are not shown for transfer decisions for any misdemeanor complaints, because so few misdemeanors complaints are transferred to circuit court each year for adjudication. Requiring regions to have a minimum average of 10 complaints per year at a particular decision point ensures there is sufficient data upon which to draw meaningful conclusions about the disparities within that region.



FIGURE D-1

Racial disparities between Black and white youth in the juvenile justice system for felonies against persons



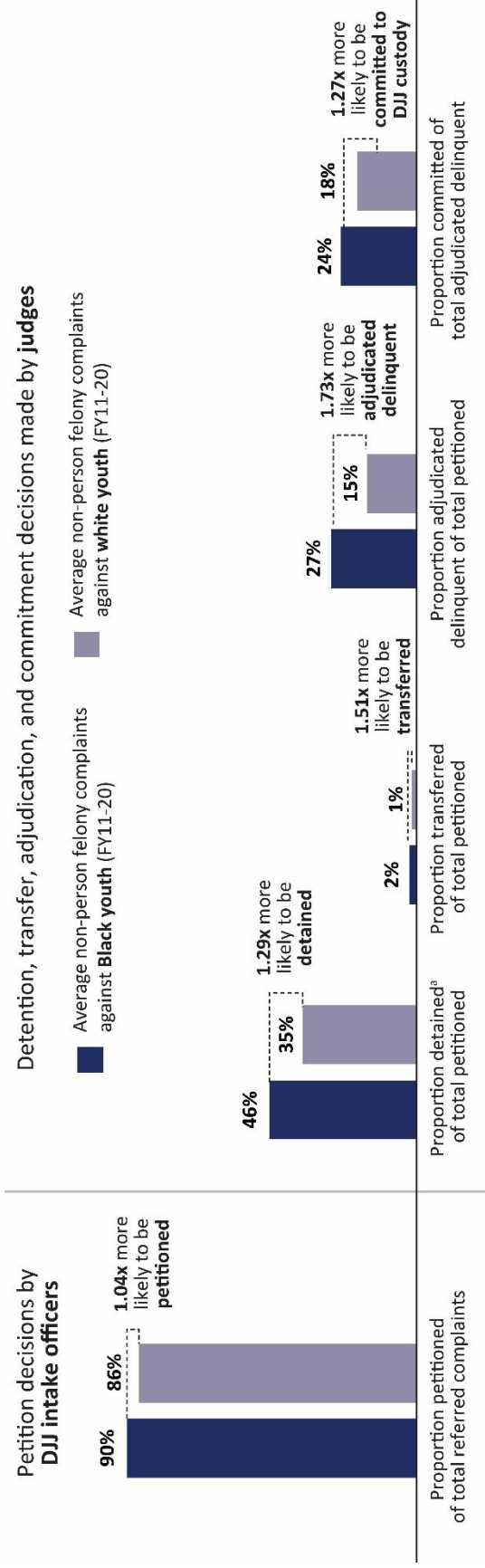
SOURCE: DJJ intake complaint data for felonies against persons, FY11–20.

NOTE: Not all of the difference shown here can be attributed to race alone. While some amount of difference can be attributable to race, the exact amount cannot be determined. However, at each of the decision points shown above, there is a statistically significant relationship between race and the likelihood to move forward at each step of the process.

<sup>a</sup> Initial detention decision is made by DJJ intake officer at the court service unit, but this decision is then reassessed by a judge within 72 hours of the initial detention to determine whether youth should continue to be held in secure detention until their adjudicatory hearing.

FIGURE D-2

Racial disparities between Black and white youth in the juvenile justice system for non-person felonies

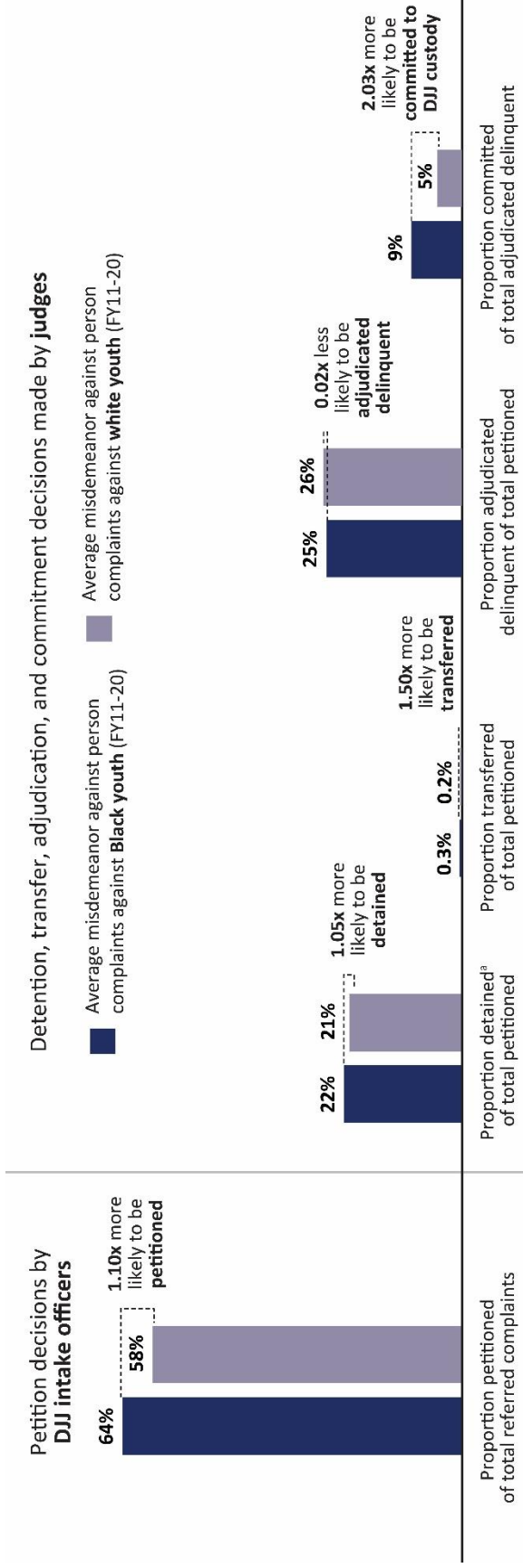


SOURCE: DJJ intake complaint data for non-person felonies, FY11–20.

NOTE: Not all of the difference shown here can be attributed to race alone. While some amount of difference can be attributable to race, the exact amount cannot be determined. However, at each of the decision points shown above, there is a statistically significant relationship between race and the likelihood to move forward at each step of the process.

<sup>a</sup> Initial detention decision is made by DJJ intake officer at the court service unit, but this decision is then reassessed by a judge within 72 hours of the initial detention to determine whether youth should continue to be held in secure detention until their adjudicatory hearing.

**FIGURE D-3**  
**Racial disparities between Black and white youth in the juvenile justice system for misdemeanors against persons**

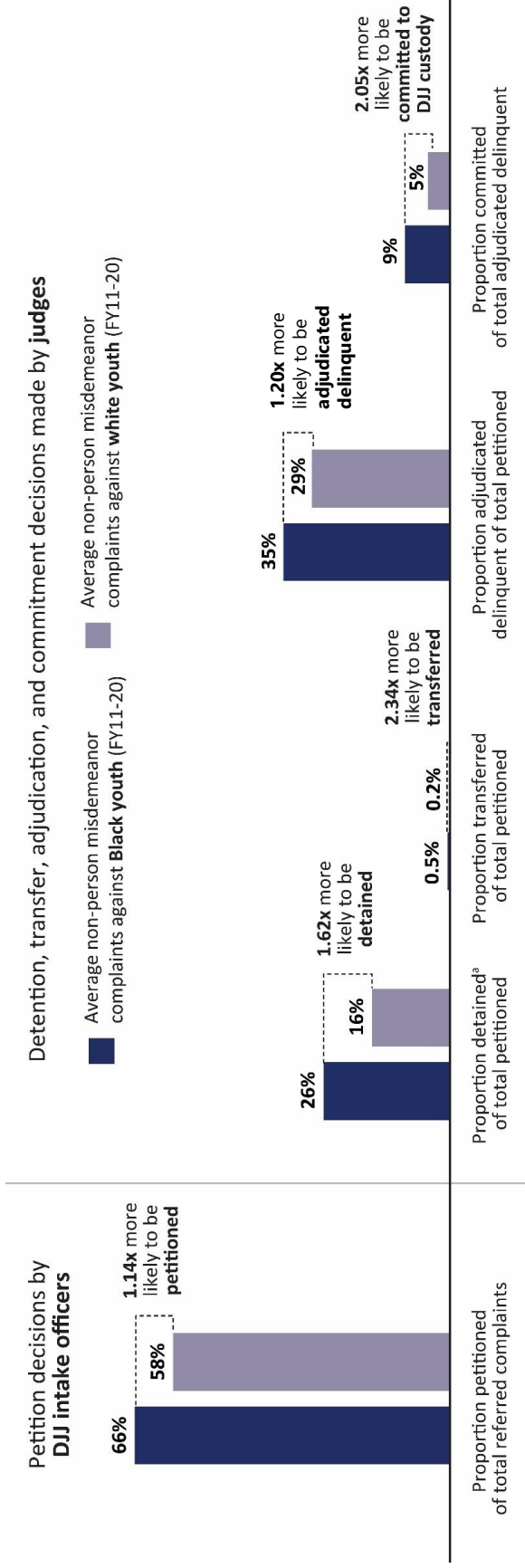


SOURCE: DJJ intake complaint data for misdemeanors against persons, FY11–20.

NOTE: Not all of the difference shown here can be attributed to race alone. While some amount of difference can be attributable to race, the exact amount cannot be determined. When assessing the statistical significance of each step of the process, there is a statistically significant relationship between race and the likelihood to be (1) petitioned and (2) committed to DJJ custody. However, the relationship is not statistically significant for the likelihood to be (1) detained prior to adjudication, (2) transferred to circuit court, or (3) adjudicated delinquent.

<sup>a</sup> Initial detention decision is made by DJJ intake officer at the court service unit, but this decision is then reassessed by a judge within 72 hours of the initial detention to determine whether youth should continue to be held in secure detention until their adjudicatory hearing.

**FIGURE D-4**  
**Racial disparities between Black and white youth in the juvenile justice system for non-person misdemeanors**



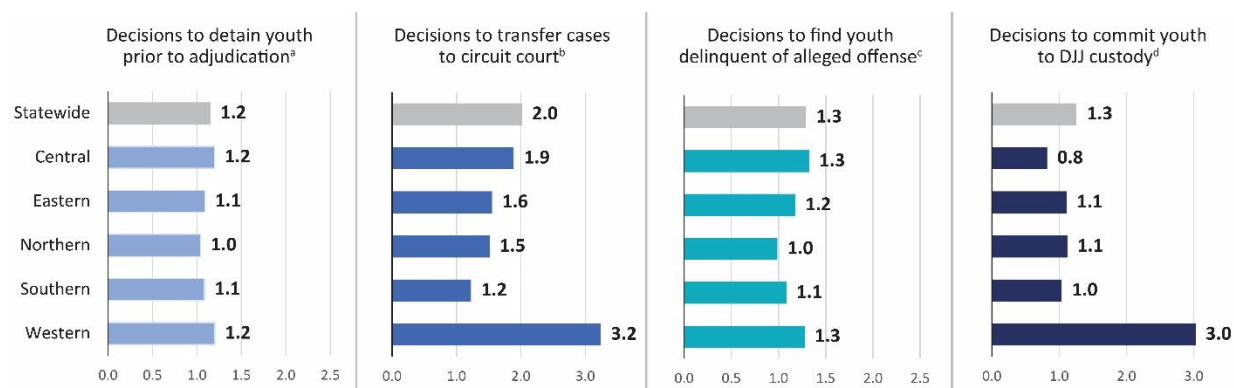
SOURCE: DJJ intake complaint data for non-person misdemeanors, FY11–20.

NOTE: Not all of the difference shown here can be attributed to race alone. While some amount of difference can be attributable to race, the exact amount cannot be determined. However, at each of the decision points shown above, there is a statistically significant relationship between race and the likelihood to move forward at each step of the process.

<sup>a</sup> Initial detention decision is made by DJJ intake officer at the court service unit, but this decision is then reassessed by a judge within 72 hours of the initial detention to determine whether youth should continue to be held in secure detention until their adjudicatory hearing.

FIGURE D-5

### Racial disparities between Black and white youth in the juvenile justice system across regions for felonies against persons



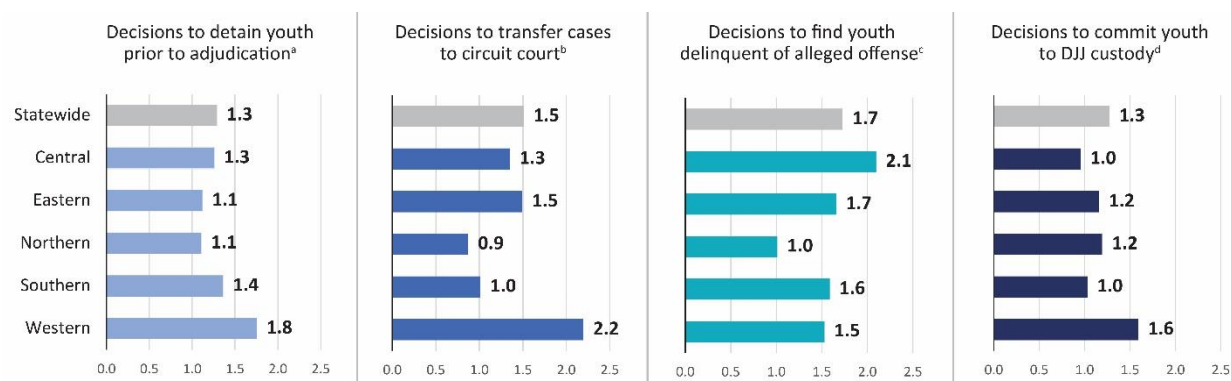
SOURCE: DJJ intake complaint data for felonies against persons, FY11–20.

NOTE: Racial disparities across regions determined by dividing the proportion of Black youth moving forward at each decision point by the proportion of white youth moving forward at each decision point. For example, a rate of 1.5 indicates that Black youth are 50 percent more likely than white youth to move forward at that decision point. <sup>a</sup> Rate of detention based on total number of petitioned complaints.

<sup>b</sup> Rate of transfer based on total number of petitioned complaints. <sup>c</sup> Rate of delinquent adjudications based on total number of petitioned complaints. <sup>d</sup> Rate of commitment based on total number of complaints adjudicated delinquent.

FIGURE D-6

### Racial disparities between Black and white youth in the juvenile justice system across regions for non-person felonies

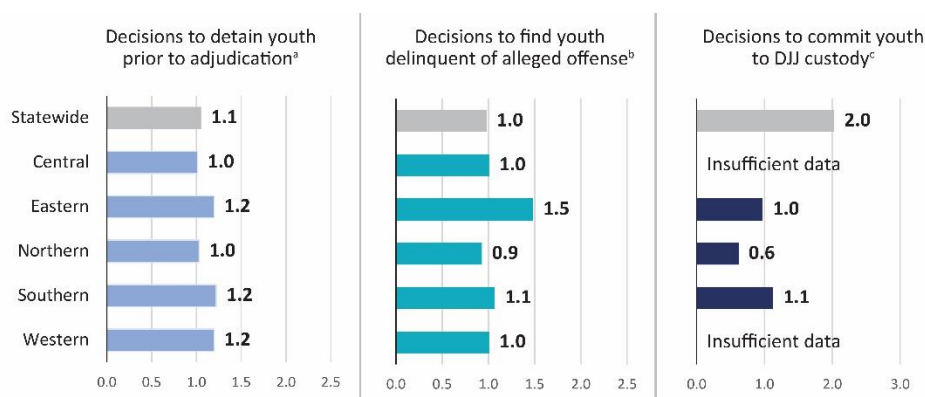


SOURCE: DJJ intake complaint data for non-person felonies, FY11–20.

NOTE: Racial disparities across regions determined by dividing the proportion of Black youth moving forward at each decision point by the proportion of white youth moving forward at each decision point. For example, a rate of 1.5 indicates that Black youth are 50 percent more likely than white youth to move forward at that decision point. <sup>a</sup> Rate of detention based on total number of petitioned complaints. <sup>b</sup> Rate of transfer based on total number of petitioned complaints. <sup>c</sup> Rate of delinquent adjudications based on total number of petitioned complaints. <sup>d</sup> Rate of commitment based on total number of complaints adjudicated delinquent.

FIGURE D-7

### Racial disparities between Black and white youth in the juvenile justice system across regions for misdemeanors against persons

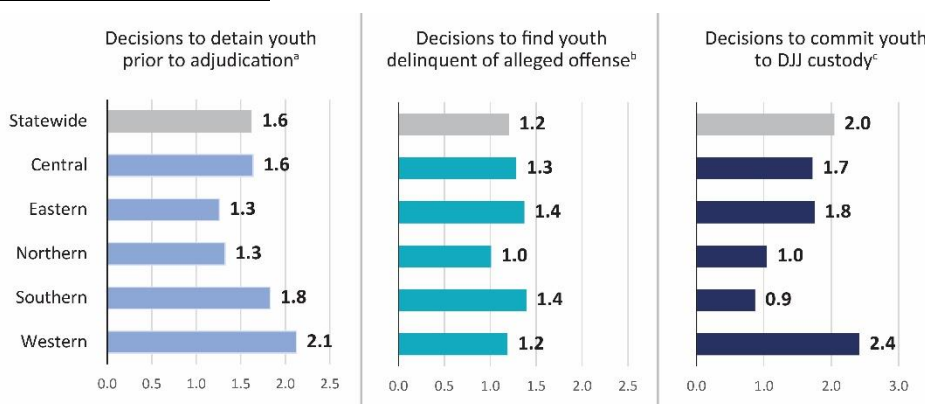


SOURCE: DJJ intake complaint data for misdemeanors against persons, FY11–20.

NOTE: Racial disparities across regions determined by dividing the proportion of Black youth moving forward at each decision point by the proportion of white youth moving forward at each decision point. For example, a rate of 1.5 indicates that Black youth are 50 percent more likely than white youth to move forward at that decision point. Decisions to transfer complaints to circuit court for adjudication are not shown because of insufficient data. <sup>a</sup> Rate of detention based on total number of petitioned complaints. <sup>b</sup> Rate of delinquent adjudications based on total number of petitioned complaints. <sup>c</sup> Rate of commitment based on total number of complaints adjudicated delinquent.

FIGURE D-8

### Racial disparities between Black and white youth in the juvenile justice system across regions for non-person misdemeanors



SOURCE: DJJ intake complaint data for non-person misdemeanors, FY11–20.

NOTE: Racial disparities across regions determined by dividing the proportion of Black youth moving forward at each decision point by the proportion of white youth moving forward at each decision point. For example, a rate of 1.5 indicates that Black youth are 50 percent more likely than white youth to move forward at that decision point. Decisions to transfer complaints to circuit court for adjudication are not shown because of insufficient data. <sup>a</sup> Rate of detention based on total number of petitioned complaints. <sup>b</sup> Rate of delinquent adjudications based on total number of petitioned complaints. <sup>c</sup> Rate of commitment based on total number of complaints adjudicated delinquent.

## Appendix E: Youth safety at Bon Air JCC

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The Department of Juvenile Justice (DJJ) has processes to ensure the health and safety of committed youth at Bon Air Juvenile Correctional Center (JCC). For example, DJJ's Certification Unit conducts formal audits of Bon Air JCC every three years, as well as annual monitoring visits, to ensure the facility complies with the safety and security standards outlined in DJJ's regulations. DJJ's regulations also detail the rights of residents (e.g., sanitary living conditions, visitation, activities) while committed to a juvenile correctional center, and DJJ staff provide a copy of these rights and review them with youth upon their admission to Bon Air JCC.

DJJ also has a Rights and Accountability Unit, which investigates grievances from youth at Bon Air JCC to help ensure youth are being treated appropriately and that any issues that arise are addressed in a timely manner. Grievances may be submitted by youth at any time, and DJJ policies require all grievances to be investigated within seven days. The Rights and Accountability Unit operates independently of DJJ's Residential Services Division.

The federal government also requires juvenile facilities to be audited once every three years to ensure they are in compliance with federal standards. These audits consist of site visits, staff and resident interviews, and document reviews. Bon Air JCC was most recently audited in fall 2020, and the federal audit found that the facility was in compliance with relevant federal standards. Notably, Bon Air JCC exceeded standard requirements for promptly notifying residents of their rights upon admission to the facility.

Grievances have declined in recent years, and more youth report feeling safe at Bon Air. The number of resident grievances at Bon Air JCC has declined since the start of DJJ's transformation. From 2016–2020, the number of resident grievances at Bon Air JCC has declined by 76 percent, from 1.5 grievances per youth in 2016, to 0.3 grievances per youth in 2021. JLARC survey results of youth at Bon Air JCC are consistent with improved safety. According to surveys of youth at Bon Air JCC, a higher proportion of youth report feeling safe now than in recent years. In 2015, only 43 percent of these youth responded positively to the statement: "I feel safe here." However, this proportion grew to 79 percent of youth in 2021.

## Appendix F: Education at Bon Air JCC

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One of the basic and required services DJJ provides to youth placed at Bon Air Juvenile Correctional Center (JCC) is education services. DJJ's education division operates the Yvonne B. Miller High School at Bon Air JCC, staffed by administrators and teachers who are licensed by the Virginia Department of Education. For youth who have already completed high school, the education division also offers post-secondary programs to provide college and career training opportunities, such as forklift and welding simulators and community college courses in business and entrepreneurship.

Compared with the statewide student population, a higher proportion of youth placed at Bon Air JCC receive special education services. For example, in 2019, the proportion of students with disabilities at Bon Air JCC was 42 percent, in comparison to 13 percent of Virginia's total student population. Of students receiving special education services at Bon Air JCC, the largest proportion (38 percent) have an emotional disability, which is similar to trends observed across middle and high school students receiving special education services statewide.

Quantitatively measuring education outcomes over time for youth at Bon Air JCC is challenging. Because youth are placed at and released from Bon Air JCC throughout the year, DJJ has had difficulty monitoring education outcomes, because there is not a traditional cohort of students for which progress can be measured from year to year. DJJ has recently improved its data collection about educational outcomes to improve the availability of educational outcome data.

The latest cohort of eligible youth at Bon Air all graduated from high school. All 35 eligible high seniors graduated during the 2019–2020 school year. The majority of these youth (21) earned standard high school diplomas. The remainder earned Penn Foster High school diplomas (six), GED certificates (six), or applied studies diplomas (two). Many youth also completed at least one post-secondary course while at Bon Air.

Despite the challenges with using historical educational outcomes, there is some evidence of recent improvement in certain Standards of Learning (SOL) test scores. A higher proportion of youth who had been placed at Bon Air JCC passed SOL tests in 2019 than in 2017, for example:

- Algebra I pass rates increased from 20 percent to 52 percent; and
- Earth science pass rates increased from 54 percent to 62 percent.

Youth at Bon Air also respond more positively about the education they receive when compared with prior years. For example, the proportion of youth responding when surveyed that their “school program is good” more than doubled from 31 percent to 64 percent, in 2015 compared with 2021. Additionally, a higher percentage of youth in Bon Air are positive about their teachers. When asked whether “teachers [at Bon Air] care about students learning,” 79 percent of youth responded favorably in 2021. This is an increase over the 75 percent and 64 percent responding favorably in 2018 and 2015, respectively.



## Appendix G: Expungement of juvenile records

A lack of an expungement process for certain juvenile records likely creates barriers to youth successfully re-entering their communities upon release. These barriers are known as collateral consequences, which are defined by the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) as “sanctions and disqualifications that can place an unanticipated burden on rehabilitated youth transitioning back to their communities following out-of-home placement.” Common examples of collateral consequences for youth include difficulty (1) obtaining employment, (2) finding and maintaining housing, (3) accessing higher education, or (4) joining the military (Table G-1).

**TABLE G-1**

**Collateral consequences may hinder the ability of youth to successfully re-enter their communities upon release**

<b>Collateral consequence</b>	<b>Example of negative impact</b>
1. Difficulty obtaining employment	Employers may ask youth to disclose any prior criminal convictions or delinquency adjudications on job applications and may decline to hire applicants based on past criminal history.
2. Difficulty finding and maintaining housing	Landlords may ask youth and families to disclose juvenile and criminal records as part of the prescreening process and use them as the basis to deny housing. These records may also be used to evict youth and families, even if courts dismiss charges.
3. Difficulty accessing higher education	Many higher education institutions use the Common Application, in which youth may be asked to disclose any prior criminal convictions or delinquency adjudications. It is estimated that about 20 percent of institutions that ask applicants about their criminal history deny admission to applicants with juvenile records.
4. Difficulty joining the military	Pursuant to federal requirements, the military has full access to criminal and juvenile records for admission to the Army, Navy, Air Force, and Marine Corps. The military also has a “moral qualification” for admission, and while youth can request a waiver if they have a juvenile record, it may not apply for certain offenses, such as assault and battery.

SOURCE: Office of Juvenile Justice and Delinquency Prevention.

To mitigate the impact of collateral consequences, states can seal or expunge juvenile delinquency and criminal records. Sealing and expunging are two similar, but distinct processes. Sealing refers to a process in which both paper and electronic records are removed from public view but are still retained for any authorized dissemination purposes (e.g., Virginia State Police for employment screening). In contrast, expungement refers to a process in which records are completely destroyed. Sealing or expunging records of juvenile offenses reduces the circumstances in which youth have to publicly report the existence of such records. For example, youth whose prior records have been expunged no longer have to disclose information regarding past convictions on most job applications.

Currently in Virginia, only some juvenile delinquency and criminal records are eligible to be sealed/expunged. This appendix outlines the circumstances in which records are currently eligible for sealing/expungement, as well as changes that could be made to increase the number of youth who are able to benefit from these processes. The specific recommendations and policy options to implement these changes are discussed further in Chapter 8, and if implemented, could benefit over 6,000 youth.

### **Expungement of juvenile felony records for cases adjudicated in J&DR court**

Most youths' cases are adjudicated in juvenile and domestic relations (J&DR) district courts and are eligible to be automatically expunged after certain conditions are met. For less serious offenses (e.g., misdemeanors, status offenses), the Code of Virginia requires courts to automatically expunge delinquency records once a year for all youth who have reached 19 years of age (or 29 for certain offenses that must be reported to the Department of Motor Vehicles), if five years have passed since the date of their last hearing (including hearings for any subsequently committed offenses). Because this process is "automatic," no action is required by the individual to have his or her record expunged. After records have been expunged, the court and law enforcement agencies are expected to act as if these records never existed, and the youth does not have to report that any such record existed. From FY11–20, nearly 40,000 youth were adjudicated delinquent in J&DR court for non-felony offenses eligible for automatic expungement.

However, youth who are adjudicated delinquent in J&DR court for felony equivalent offenses are not eligible to have these records expunged. Statute explicitly states that records are to be retained for juveniles who are adjudicated delinquent of a felony offense. As a result, these youth are more likely to experience collateral consequences from the continued existence of these records. Unlike other juvenile records, which are generally treated as confidential, these records are open to public inspection for youth who are over age 14, unless ordered by a judge to remain confidential. While these youth may answer on applications that they have not been "convicted" of a crime, because these records are open to the public, potential employers and others may still search court records for these types of juvenile adjudications. The general public also may not discern the difference between being found "guilty" and "adjudicated delinquent," which may further exacerbate youths' collateral consequences from these records. Over the past decade from FY11–20, approximately 9,600 youth were adjudicated delinquent for felony equivalent offenses in J&DR court.

Modifying expungement eligibility for youth adjudicated delinquent of felony equivalent offenses in J&DR court would likely require the establishment of a separate process for these records, so as not to conflict with other aspects of existing state law. The Code of Virginia prohibits individuals under age 29 who were adjudicated delinquent of felony equivalent offenses from possessing or transporting a firearm (§ 18.2-308.2). Therefore, these records may first need to be sealed until the individual is 29 years old (to allow them to remain available for authorized dissemination purposes), at which point they could be expunged. However, this process could still be set up to be automatic, rather than petition-based, to align with how other juvenile delinquency records are treated.

The General Assembly would also need to determine the period of time individuals must wait before their records are eligible to be sealed, which felony equivalent offenses committed by youth should be eligible for sealing, as well as any other eligibility requirements. For example, it may be appropriate for some more serious felonies to not be eligible or only after a longer period of time. Additionally, the

General Assembly needs to determine what, if any, additional eligibility requirements should apply, such as not being convicted or adjudicated delinquent of any additional offenses during the applicable waiting period.

### **Sealing of criminal records for youth tried as adults in circuit court**

While most youths' cases are adjudicated in J&DR court, some are transferred to circuit court for adjudication. Cases may generally only be transferred to circuit court if (1) the juvenile is at least 14 years of age and (2) is alleged to have committed an offense which would be a felony if committed by an adult. However, after a youth has been tried and convicted as an adult for one offense, he or she must be tried as an adult in all future criminal cases, including felonies as well as other types of offenses. From FY11–20, approximately 700 youth were found guilty of one or more offenses in circuit court.

Similar to felony offenses in J&DR court, records for youth tried as adults in circuit court are not treated as confidential, and until recently, were generally not eligible to be sealed or expunged. Prior to 2021, adult criminal records and records for youth tried as adults in circuit court could only be expunged in very limited circumstances in which the individual was acquitted or the charge was *nolle prosequied* (i.e., not prosecuted).

However, during the 2021 Special Session, the General Assembly passed HB 2113, which sets up a process for sealing criminal records for certain types of offenses, including for youth tried as adults in circuit court. Some offenses are eligible to be sealed automatically—such as petit larceny, trespassing, disorderly conduct, and marijuana possession—while others, including other misdemeanor offenses and certain Class 5 or 6 felonies, are eligible to be sealed via petition. The petition-based process requires individuals to submit a petition to the court containing information pertinent to the record to be sealed (i.e., arresting agency, date of final disposition of the charge or conviction, etc.), as well as attend a hearing before a judge. Records may only be sealed after a seven-year waiting period for misdemeanors and a 10-year waiting period for felonies, provided that the individual has not been convicted of any additional offenses during this period. Additionally, individuals may only have two petitions granted pursuant to these provisions within their lifetime. Records are no longer open to the public after they have been sealed, and, except for authorized dissemination purposes, individuals whose records have been sealed may deny or not disclose such an arrest, charge, or conviction occurred.

While this new sealing process takes important steps to reduce collateral consequences of criminal records, it may still be insufficient for juvenile offenders given the rehabilitative goals of the juvenile justice system. The juvenile justice system is distinctly different from the adult criminal system because it is intended to rehabilitate youth and prevent further delinquent behavior, so that youth may live successful lives in their communities. However, these rehabilitative goals may be hindered because of the petition-based nature of the sealing process and long waiting periods. A petition-based process is generally considered to be less equitable than an automatic process because it can be time consuming and difficult to navigate without an attorney. Many individuals may be unable to have their records sealed if they do not have the time and resources needed to complete this process. Additionally, the continued existence of these records for 7–10 years following youths' release from DJJ custody could

negatively affect youth by limiting their ability to attend college or obtain employment, which seems contrary to the rehabilitative goals of the juvenile justice system.

To further reduce collateral consequences and promote the rehabilitative goals of the juvenile justice system, the General Assembly could modify the process for sealing criminal records for juveniles tried as adults in circuit court. In doing so, the General Assembly could consider (1) reducing the waiting period to seal juvenile criminal records maintained by circuit courts and (2) adding these records to the automatic process to eliminate the need for youth to file a petition to have their records sealed. This would align the treatment of these records with the existing process for expunging juvenile delinquency records in J&DR court.

## Appendix H: Serious or Habitual Offender Comprehensive Action Program

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House Bill (HB) 1777 was referred to JLARC during the 2021 Session by the chair of the House Courts of Justice Committee to be considered as part of JLARC's juvenile justice review. The bill proposed to expand the population of youth who could be eligible for the Serious or Habitual Offender Comprehensive Action Program (SHOCAP).

SHOCAP is an interagency case management and information system that is intended to help the juvenile justice system, schools, and social services agencies share information about certain high-risk youth in the juvenile justice system. It is intended to improve the supervision and rehabilitation efforts and provide a more coordinated approach to addressing juvenile delinquency. The program is optional for localities and was allowed in Virginia beginning in 1993.

HB 1777 would make changes to both to the list and frequency of offenses that could qualify a youth for the program. The list of offenses for which youth would be eligible would change from “murder, attempted murder, armed robbery, felony sexual assault or malicious wounding, or felony violation of a gang-related crime” to “any offense that would be a felony if committed by an adult”. It would also allow youth to be eligible for SHOCAP if they had been adjudicated delinquent of two or more offenses that would be Class 1 misdemeanors, rather than requiring three or more offenses that would be felonies or Class 1 misdemeanors, as is currently in statute.

Although SHOCAP is based off a national concept that was promoted by Office of Juvenile Justice and Delinquency Prevention (OJJDP) in the 1990s, there are no national eligibility standards, and the small group of states that appear to have SHOCAP programs vary in who they define as SHOCAP eligible. JLARC staff reviewed state statutes and identified only four other states with the program, including Florida, Illinois, Utah, and California. SHOCAP programs in these states have eligibility requirements that are both more prescriptive and less prescriptive than the requirements proposed in HB 1777 (Table H-1). For example, Illinois's statute includes no statewide eligibility standards; local SHOCAP committees are authorized to define eligibility for the program in their communities.

Very few Virginia localities appear to participate in the SHOCAP program. For example, only one court service unit (CSU) director (of the 29 who responded to the JLARC survey) indicated that a locality in their district has an operational SHOCAP program or has had an operational program in the past five years. Some Virginia localities list the SHOCAP program on their website, but interviews with individuals in some of these localities indicate that the program is not currently operating or fully functioning. A CSU director of one large locality interviewed by JLARC staff noted that his locality was in the process of revamping its SHOCAP program out of concerns about its effectiveness. Another locality interviewed about their program noted they had a program, but that it was minimally used.

There is very limited national research on the effectiveness of SHOCAP affecting juvenile offending. SHOCAP is not included in any of the national inventories of evidence-based programs and practices (Office of Juvenile Justice and Delinquency Prevention's Model Programs Guide, the University of

Colorado Boulder's Blueprints for Healthy Youth Development, or the Washington State Institute for Public Policy).

**TABLE H-1**  
**Examples of state criteria for SHOCAP (or equivalent program) eligibility**

State	SHOCAP eligibility requirements
Florida	<p>Youth is adjudicated delinquent and meets one or more of the following criteria:</p> <ol style="list-style-type: none"> <li>1. Is arrested for a capital, life, or first degree felony offense or sexual battery.</li> <li>2. Has five or more arrests, at least three of which are for felony offenses. Three of such arrests must have occurred within the preceding 12-month period.</li> <li>3. Has 10 or more arrests, at least 2 of which are for felony offenses. Three of such arrests must have occurred within the preceding 12-month period.</li> <li>4. Has four or more arrests, at least one of which is for a felony offense and occurred within the preceding 12-month period.</li> <li>5. Has 10 or more arrests, at least 8 of which are for any of the following offenses: <ol style="list-style-type: none"> <li>a. petit theft;</li> <li>b. misdemeanor assault;</li> <li>c. possession of a controlled substance;</li> <li>d. weapon or firearm violation; or</li> <li>e. substance abuse.</li> </ol> <p>Four of such arrests must have occurred within the preceding 12-month period.</p> </li> <li>6. Meets at least one of the criteria for criminal gang membership.</li> </ol>
California	<p>Youth who has been adjudicated delinquent and</p> <ol style="list-style-type: none"> <li>1. has accumulated five total arrests, three arrests for crimes chargeable as felonies and three arrests within the preceding 12 months.</li> <li>2. has accumulated 10 total arrests, two arrests for crimes chargeable as felonies and three arrests within the preceding 12 months.</li> <li>3. has been arrested once for three or more burglaries, robberies, or sexual assaults within the preceding 12 months; or</li> <li>4. has accumulated 10 total arrests, eight or more arrests for misdemeanor crimes of theft, assault, battery, narcotics or controlled substance possession, substance abuse, or use or possession of weapons, and has three arrests within the preceding 12 months.</li> </ol>
Illinois	Local discretion – “The [county] SHOCAP committee shall adopt, by a majority of the members criteria that will identify those who qualify as a serious habitual juvenile offender.”
Utah	Local discretion – No specific eligibility requirements other than they be “youthful offenders.”

SOURCE: JLARC review of other states' statutes.

According to proponents of the bill, the purpose of HB 1777 was to find a way to increase information-sharing capabilities across agencies and, as a result, improve localities' prevention and early intervention capabilities. As one proponent mentioned: “We didn't want SHOCAP, but SHOCAP is the framework that provides the information sharing that we're looking for.” The proponent cited an example of using the SHOCAP program to identify and provide services to siblings of youth in SHOCAP as a way prevent them from also becoming juvenile offenders.

The state could take different approaches to improve information sharing across agencies and possibly pursue the goals of HB 1777 more directly. For example, Missouri statute requires their juvenile courts

and departments of social services, mental health, elementary and secondary education, and health, to share information about children who have been involved with the state's juvenile justice system. Certain restrictions apply, including that the department of education and secondary education is only allowed to share information about students who have committed an act that would be a felony or misdemeanor if committed by an adult. Missouri statute also includes provisions regarding the confidentiality of these records.

An approach used by the 2021 General Assembly to explore options to improve data sharing among youth involved in both the child welfare system and the juvenile justice system ("crossover youth") could be used to identify strategies to improve information sharing for the purposes of crime prevention. The General Assembly directed the Commission on Youth to convene a workgroup that included representatives from the Department of Juvenile Justice, the Department of Social Services, the Department of Behavioral Health and Developmental Services, the Department of Education, youth and families with experience in the juvenile justice and child welfare systems, representatives of Virginia juvenile justice advocacy groups, representatives of local public defender offices, and representatives from other relevant state or local entities.

The workgroup was directed to "review current data and record sharing provisions with regard to youth served by the juvenile justice and child welfare systems and make recommendations on best practices for the sharing, collection, and use of such data and records while respecting the privacy interests of youth and families."

If the goal of HB 1777 is to improve information sharing across local agencies for the purposes of crime prevention, and the General Assembly wishes to move forward with that goal, it could direct the Commission on Youth to conduct a similar review. The commission could be directed to recommend changes, where appropriate, that could be made to statute or regulations to improve information sharing among local agencies, including law enforcement, while protecting the privacy interests of youth and families and confidentiality of juvenile records. In addition to the members on the Commission on Youth's 2021 crossover youth workgroup, the General Assembly could include representatives of local and state law enforcement agencies.

## Appendix I: Agency responses

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As part of an extensive validation process, the state agencies and other entities that are subject to a JLARC assessment are given the opportunity to comment on an exposure draft of the report. JLARC staff sent an exposure draft of relevant sections of the report to staff from the following organizations:

- Department of Criminal Justice Services,
- Department of Juvenile Justice,
- Office of the Executive Secretary, Supreme Court of Virginia,
- secretary of public safety and homeland security,
- Virginia Department of Education, and
- Virginia Indigent Defense Commission.

Appropriate corrections resulting from technical and substantive comments are incorporated in this version of the report. This appendix includes a response letter from the Department of Juvenile Justice.





Valerie P. Boykin  
Director

**COMMONWEALTH OF VIRGINIA**  
*Department of Juvenile Justice*

P.O. Box 1110  
Richmond, VA 23218  
(804) 371.0700  
Fax: (804) 371.6497  
[www.djj.virginia.gov](http://www.djj.virginia.gov)

December 7, 2021

Mr. Hal E. Greer, Director  
Joint Legislation Audit and Review Commission  
919 East Main Street  
Suite 2101  
Richmond, VA 23219

Dear Director Greer:

Thank you for the opportunity to review the exposure draft of the JLARC report, *Improving Virginia's Juvenile Justice System*. We, at the Department of Juvenile Justice (DJJ), would like to express our appreciation for the collaborative atmosphere in which the JLARC team approached this comprehensive review. It is evident that the research and interviews conducted led to very thoughtful recommendations.

DJJ firmly believes justice-involved youth deserve the most effective approaches at all stages of the juvenile justice system. Although DJJ has the primary responsibility for juvenile justice in Virginia, it is just one part of the entire juvenile justice system. Our response will focus on the recommendations that most directly impact DJJ and the youth we serve. It is important to note that this report comes while we are nearly two years into responding to the COVID-19 pandemic and thus our progress in many of our initiatives has been impacted by our need to respond and adjust to the pandemic.

Overall, the DJJ is supportive of the recommendations that are specific to our agency. We pride ourselves as a learning organization, welcoming the opportunity to review feedback and suggestions; enhancing public safety by seeking better ways to provide services to youth, families, and the community. In that vein, we offer the comments below.

We find it important to reiterate that we certainly want to provide services that are effective in rehabilitating youth and use evidence based principles. Aggression Replacement Therapy (ART) is used as one of our options for addressing aggression management as well as skill building. There are varying expert opinions regarding ART as an evidence-based program that provides positive outcomes in juvenile justice populations. When held to fidelity, ART remains a promising program recognized by the Office of Juvenile Justice and Delinquency Prevention and the California Clearing House. We are, however, closely monitoring the most recent literature and fidelity to the model and prepared to make adjustments as necessary.

Mr. Hal Greer, Director  
December 7, 2021  
Page Two

We agree that recidivism is an important measure within juvenile justice systems, and there is need for improvement. While recidivism rates have not decreased substantially, there are some promising signs of improvements, such as decreasing rearrest rates for youth on diversion plans. DJJ is focusing on one-year rearrest rates for closest to real-time feedback of our work. The one-year rearrest rates provide the quickest method of monitoring if our changes to programming might be impacting outcomes. In addition to recidivism, we are incorporating other outcome measures into our agency performance measures and quality assurance work.

We value the need to evaluate programs, policies, and processes and support the recommendations that include these initiatives such as a needs assessment of community-based services, the Standardized Dispositional Matrix, and quality of services. In fact, work is underway in these areas. It may be worth noting that completing comprehensive assessments and evaluations in numerous areas will require additional resources or prioritizing.

In response to recommendations made regarding training of our Court Service Unit staff to improve staff proficiency of the Effective Practices in Community Supervision (EPICS) skills and implicit bias and cultural competency training is ongoing. Our Practice and Improvement Unit offers multiple coaching opportunities through state level coaches and implementation specialists who regularly meet with staff and supervisors for guided practice and coaching. Our Equity Work Group Chairs developed introductory Race Equity Awareness Training and Discussion Sessions that were to be deployed regionally but were delayed due to the pandemic. Much of our work to sustain our transformation efforts are part of our strategic planning process and will continue as we move forward.

Again, we thank you for the opportunity to review the JLARC report and provide our perspective to this comprehensive review of Virginia's Juvenile Justice system. We look forward to continued collaboration to implement your recommendations accepted by the General Assembly. There continues to be much work to be done to improve outcomes for justice-involved youth.

Sincerely,

A handwritten signature in cursive script that reads "Valerie P. Boykin".

Valerie P. Boykin

cc: The Honorable Brian Moran, Secretary of Public Safety and Homeland Security  
Jae K. Davenport, Deputy Secretary of Public Safety and Homeland Security  
Justin C. Brown, Senior Associate Director, JLARC  
Drew Dickinson, Chief Legislative Analyst, JLARC





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919 East Main Street Suite 2101 Richmond, VA 23219