

VIRGINIA JUVENILE JUSTICE SYSTEM REFERRALS: HAVE THE 2002 ABA
RECOMMENDATIONS BEEN ADDRESSED?

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ABSTRACT

This study evaluated one recommendation from the American Bar Association 2002 assessment of the juvenile justice system in the Commonwealth of Virginia. This recommendation stated that:

The Commonwealth should address the increase in mental health and school related referrals to juvenile court and evaluate their appropriateness, especially as this impacts minority youth. (American Bar Association (ABA), 2002, p. 44)

The Virginia Advisory Committee on Juvenile Justice identified priorities for the 2006-2008 fiscal years that included addressing the issues of disproportionate minority contact, the criminalization of juveniles with mental health issues, and the reduction in the number of juveniles coming into the system with school related attendance and behavior issues.

Demographic data on Virginia's juvenile justice population over a five year period was reviewed to determine if these issues are being addressed in a meaningful way. The following methodologies were implemented to collect and analyze data on race, mental health, special education status, and school discipline/referrals for juvenile offenders. These included a review of existing online data for Virginia's juvenile justice population, a data request from the Virginia Department of Education, a data request from the Virginia Department of Juvenile Justice (DJJ) and/or the Virginia Department of Criminal Justice Services, a data request from an individual court services unit, and a survey of the 26 public defender offices. Multiple sources of data were used in an attempt to validate data received from any one source.

School discipline data showed that not only did overall referrals to law enforcement increase but the percentages of African Americans and students with disabilities also rose between 2005 and 2009. While the number of long term suspensions decreased the percentage of African American students saw a slight increase. Short term suspensions saw an almost 20%

decrease but the percentage of African American short term suspensions remained fairly static. Expulsions showed an even greater decrease between 2005 and 2009 with over 30% fewer expulsions. The percentage of African American expulsions decreased while students with disabilities and African American students with disabilities showed a slight increase.

Overall the caseload, intake, detention and commitment data is moving in a positive direction. Data on disability and mental health is not collected at the intake level. The DJJ does collect data on number of complaints but does not break these down by race until the juvenile intake case is opened. While the total number of intake complaints fell between 2005 and 2009, this figure is not broken down by race, special education placement, or mental health diagnosis. The number of intake cases also decreased during this same time period but the percentage of black intake cases increased. Despite a 51.3% decrease in commitments between FY1998 and FY 2009 the percentage of black admissions and admissions with a diagnosed mental health disorder increased. The percentage of JCC admissions with a special education placement dropped slightly between 2004 and 2009.

The schools provide data on the number of students referred to law enforcement broken down by race and special education status. The court services units do not collect information on special education status or mental health status until after adjudication and only if the judge orders a pre-dispositional social history report. This leaves a gaping hole between referral to law enforcement and post adjudication when this vital information could be used to make more informed decisions at the pre adjudication or pre complaint stage in light of the research that shows that any processing in the juvenile system can be detrimental. Additional research must be done on the connection between school discipline, school referrals, and juvenile complaints. In addition to improved data collection the Commonwealth must use evidence based programs in

school and the juvenile justice system such as Positive Behavior Supports, Functional Family Therapy, and Multisystemic therapy in an effort to decrease the impact on children with special education and/or mental health needs. There must be an increased reliance on community based programs as opposed to congruent care. Policy makers must work to change legislation and practices that exacerbate disproportionate minority contact (DMC). DMC program evaluation must focus on outcomes rather than just identification and finding the contact point where DMC begins.

“If we could fix schools we’d fix delinquency by 75%.” (ABA, 2002, p. 34, quoting a public defender)

INTRODUCTION

As a former juvenile public defender I felt that many of my clients had several things in common: a minority background, mental health issues, a special education classification and/or a school related referral. My prior experience as a special education advocate meant that I was particularly attuned to the consequences of unaddressed special education and/or mental health issues. Maybe I only noticed the particularly egregious cases. Does the data really support this supposition? The 2002 ABA Report on the Quality of Representation in Delinquency Proceedings for Virginia seemed to mirror my concerns. Several disturbing findings came out of this review of Virginia’s Juvenile Justice System including the amount of discretion and decision making authority granted to the Court Services Unit employees during the intake process and dispositional phase. Decisions on which juveniles to divert from the system were made by these intake officers and judicial decisions on dispositions were routinely based on the recommendations made by these executive branch employees. Another finding was that:

Despite the diversity of individuals interviewed for this assessment, a consistent view emerged that the juvenile justice system was being loaded down with inappropriate referrals—particularly mental health and school-related cases.

Several recommendations came out of this assessment. Recommendation number nine stated:

The Commonwealth should address the increase in mental health and school related referrals to juvenile court and evaluate their appropriateness, especially as this impacts minority youth. (ABA, 2002, p. 44)

The Virginia Advisory Committee on Juvenile Justice has identified seven priorities for the 2006-2008 fiscal years. They include:

1. Reducing recidivism of adjudicated juveniles released from secure confinement;
2. Addressing criminalization of juveniles with mental health/substance abuse needs;

3. Disproportionate minority contact with the juvenile justice system;
4. At-risk children and young juvenile offenders aged 13 and younger;
5. Providing alternatives to detention;
6. Reducing system involvement of truants and juveniles with other negative school-related behaviors;
- and
7. Legal representation of juveniles

(Virginia Department of Criminal Justice Services, 2008, October, p. 5).

Clearly the issues of minority background, mental health issues, and special education or school related referrals are of paramount importance to the state of Virginia as reflected in these reports. The question remains, does the data indicate that these issues are being addressed in a meaningful way?

Numerous state and national studies show that minorities are overrepresented at every point in the juvenile justice process. Studies also indicate that African Americans are overrepresented in suspensions, expulsions, and school related arrests (See Arya & Augarten, 2008; Knoll & Sickmund, 2010; and Snyder & Sickmund, 2006). The juvenile justice population has high percentages of juveniles with special education needs, mental health issues, and low intellectual functioning. A few recent studies indicate that any processing in the juvenile justice system has an adverse effect (Gatti & Vitaro, 2009). Zero tolerance policies are blamed for having led to the criminalization of school disciplinary problems and for exacerbating the disproportionate minority impact and the higher incidence of special education or mental health youth in the juvenile justice system. Studies indicate that special education, mental health, and behavior issues can more effectively be addressed at the family and community level. What is the principal point where the overrepresentation of minority youth and youth with special

education or mental health needs enter the system: law enforcement and arrest, school referrals, a lack of appropriate community services, or some combination? If too many school referrals are occurring or too many arrests are occurring with students who are out of school on suspensions or expulsions could this be a critical intervention point in changing the demographics of the juvenile justice population? How does the intake process further exacerbate these issues?

Virginia has a Juvenile and Domestic Relations (JDR) Court that has jurisdiction over any cases involving a juvenile as either a victim or a defendant. Cases can be appealed de novo to the Circuit Court which is a court of record. If a juvenile is transferred to adult court the preliminary hearing occurs in the Juvenile and Domestic Relations Court and the trial in the Circuit Court. This paper does not deal with the issue of juvenile transfer to adult court which has been addressed by other studies indicating that 4,591 juveniles between the ages of 14 and 17 have been convicted in Virginia Circuit Courts between 2001 and 2008 (See Block & Duvall, 2009 and Farrar-Owens, 2009).

There are 32 JDR districts in Virginia and each district has a Court Services Unit (CSU). In addition there are three locally operated units. Typically the CSU workers have a great deal of influence in determining the disposition including deferral. The CSU intake officer also makes the initial determination on detention pending the detention hearing which must be held within 72 hours. If the juvenile is adjudicated delinquent the CSU prepares a pre-dispositional report. Juveniles may be committed to the Department of Juvenile Justice once they have been adjudicated for four separate instances of a Class 1 misdemeanor, one Class 1 misdemeanor if there is a prior felony, or a felony offense. Once committed to the Department of Juvenile Justice the juvenile is sent to the Reception and Diagnostic Center (RDC) for assessment. At this

point a determination is made on “custody classification, length of stay, treatment needs, and placement.” (Virginia Department of Criminal Justice Services, 2006, p.18)

In examining the issues addressed by the ABA study, it is important to note the purposes of the Virginia Juvenile Justice System. The law is meant to be remedial in nature and to take into account the welfare of the child, the family, the victim and the safety of the community at large.

This law shall be construed liberally and as remedial in character, and the powers hereby conferred are intended to be general to effect the beneficial purposes herein set forth. It is the intention of this law that in all proceedings the welfare of the child and the family, the safety of the community and the protection of the rights of victims are the paramount concerns of the Commonwealth and to the end that these purposes may be attained, the judge shall possess all necessary and incidental powers and authority, whether legal or equitable in their nature.

This law shall be interpreted and construed so as to effectuate the following purposes:

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

(Code § 16.1-140)

Several public defender offices opened in the intervening years since the ABA published the initial assessment. Currently there are 26 public defender offices in the state. Jurisdictions

that do not have a public defender office use a court appointed system. Court appointed attorneys are also used to handle conflict cases in the jurisdictions with public defender offices.

Do these same issues still exist or has there been some progress since this assessment was completed. Each of the following examples occurred at school and was assigned to a public defender's office during its initial years of operation in 2005 and 2006:

- An African American student is sent to a private day school for emotionally disturbed students. She is charged with an assault on a teacher in one city and is placed in a juvenile facility in another city. Here she pulls some blinds down and is charged with destruction of property. She is assigned a public defender in one city and a court appointed attorney in the other. Both attorneys request a competency exam and the student is found not competent to stand trial in either city. She is assigned to restoration services for six months and at the end of this time it is determined that due to her low functioning she will never be restored to competency. This pointless exercise caused a disruption in services for this child and accomplished nothing at a great cost to the taxpayer. Two separate court systems were involved, two attorneys were appointed, numerous hearings and examinations were scheduled involving a whole cadre of professionals. The child's guardian was forced to attend hearings and appointments in both cities.
- An African American student is sent to a private day school for emotionally disturbed children. He is accused of making a bomb threat as he is pushed into a windowless cinder block room. His guardian has already been charged with beating him with a belt and is on a deferred finding. She is finding the child more than she can handle. The child is evaluated and found not competent to stand trial. The child is sent to a residential facility for emotionally disturbed children. This could have been accomplished through an appropriate school meeting and evaluation process without involving the court system, the court services unit, the public defender's office, and the forensic evaluator. The process was traumatizing for the student and accomplished little that could not have been done through an appropriate school placement.
- A 14 year old African American student is referred to his probation officer for throwing toilet paper at the light in the boy's room at school. He has been diagnosed with ADHD but has not been receiving his medication as there was a glitch with his Medicaid. The juvenile court commits him to the Department of Juvenile Justice. The public defender appeals the case to the circuit court and finds a residential placement in a local facility. The child is being held in the detention center during the entire period. The circuit court permits the public defender to pursue the community placement if funding can be secured. The probation officer tells the public defender that her efforts are only keeping the child locked up for a longer period of time and that the Family Assessment Planning Team (FAPT) will not allow a court involved child to be placed in residential treatment. At the FAPT meeting, the probation officer announces that in reviewing the child's file

he found that he set a fire at age 10 and so is ineligible for a community placement. The child is then committed to the Department of Juvenile Justice which is not considered a residential placement.

- A twelve year old special education student takes a Yugioh card from another special education student and is charged with robbery. Following a guilty plea the child receives a one year deferred finding. Any additional school discipline referrals could send the child back to court on a probation violation resulting in a felony conviction.
- Several special education students are loitering unsupervised in the hallway. A male student kicks the female student (both are age twelve) in the butt and is charged with aggravated sexual battery since the female is under the age of thirteen. The charge is reduced to misdemeanor assault but the introduction to the juvenile justice system has been harsh for this student.

Virginia has numerous data collections and reports on the juvenile justice system prepared by the Virginia Department of Education, the Virginia Department of Criminal Justice Services, the Virginia Department of Juvenile Justice, the Virginia State Police and the Virginia Youth Violence Project. Despite the large amount of data and research the following questions remain unanswered: Is there a correlation between disproportionate minority contact (DMC), mental health/special education issues, and school referrals? Has there been a change in the mental health/special education population and the overrepresentation of minority youth in the juvenile justice system since the ABA made their recommendation in 2002? Are youth with unmet special education or mental health needs being sent to the juvenile justice system because of a lack of appropriate school or community services? Do school discipline policies have an adverse effect on minority youth and youth with special education or mental health needs? Do these practices coincide with the purpose of the juvenile justice system? This project will begin with a review of the national research and data on minority, special education and mental health referrals to the juvenile justice system and examine school discipline policies. The focus will then turn to Virginia's juvenile justice system and school discipline practices in an effort to shed some light on these questions.

LITERATURE REVIEW

The latest census of youth in residential custody shows “94,875 children under age 21 were held in 3,257 publically and privately operated facilities throughout” the nation. (Leone & Weinburg, 2010 citing Livsey, Sickmund, & Sladky, 2009, p. 6) This model of congruent care has been found to be costly and ineffective. According to the JDAI News, detention reform and alternatives to incarceration are more cost effective than the confinement model. (2009, August) The high cost of confining juveniles with mental health issues is also addressed by the Justice Policy Institute (JPI) (2009, May). A JPI brief claims that moving away from large congruent care can actually save money, improve outcomes for youth, and increase public safety. The JPI policy brief details how states can reduce costs by moving from large state facilities to community and family based treatment models. Greenwood’s (2008) and Foster’s (2004) reviews of evidence based programs came to similar conclusions about the importance of using programs that include community and family based treatment models such as Functional Family Therapy (FFT) and Multisystemic therapy (MST).

Our results were derived from only 2 communities and are subject to other limitations, but they suggest that community-based care coordinated across child-serving agencies can reduce or delay entry into the juvenile justice system as well as recidivism among those who have been involved in the system. These relationships were stronger for more serious offenses. (Foster, 2004, p. 864)

As these studies indicate, community based care has been found to be more effective in preventing delinquency and in reducing recidivism.

Several recent reports point to the damage caused by any juvenile court processing. This damage may include a crimogenic effect, deviant peer contagion, delay in aging out of delinquent behavior, risk of sexual victimization, risk of suicide, educational disruption, and a negative effect on future employment. These disruptive effects can be particularly serious for

juveniles with special education or mental health needs where a continuation of services is of critical importance (National Juvenile Justice Network, 2010, Gatti, 2009). This same view is espoused by a frustrated juvenile court judge in Sullivan's 2010 book:

We know what works. We know that treatment is better than incarceration, and that prevention is better than treatment. We know diversion is better than detention. Every judge in this room knows that. We've known what works and what doesn't work for years. We just can't get the legislature, the governor, the county commissioners, the folks with the money, to pay for what works. (p. 92)

This judge clearly expresses an understanding of the importance of using evidence based programs rather than outmoded policies based on retribution and fear.

One positive consequence of the current economic climate is a renewed spirit of bipartisan support for reducing the costs of adult and juvenile corrections through evidence based programs. By focusing on programs that are cost effective and successful in reducing recidivism, juvenile justice systems may be able to survive the intense cuts that are occurring in states across the country. One program in Maryland that recognized the iatrogenic effect of contact with the juvenile justice system uses a community based supervision model that meets low-risk clients in community or church facilities rather than probation offices. This program known as the Proactive Community Supervision (PCS) showed that 32.1 percent of participants were rearrested as compared to 40.9 percent of the control group under traditional probation supervision. The underlying theory of this program is that by meeting the youth in a "more welcoming, traditionally noncriminal justice environment" the negative effects of juvenile justice processing can be reduced (Clement, Schwarzfeld, & Thompson, 2011, p. 45).

A review of evidence based programs in the juvenile justice system by the Center for Juvenile Justice Reform reached a similar conclusion.

If reducing the subsequent criminal behavior of offenders with its associated benefits for public safety is the goal, the implications of these findings are that (1) juvenile offenders

with low risk for reoffending should be diverted from the juvenile justice system; (2) offenders with moderate or high risk for reoffending should be subject to the minimal level of supervision and control consistent with public safety and be provided with appropriate, effective therapeutic services; and (3) subjecting juvenile offenders to punishment beyond that which is inherent in the level of control necessary for public safety is likely to be counter-productive to reducing recidivism. (Lipsey, Howell, Kelly, Chapman, & Carver, 2010, p. 12)

This report concludes that diversion, minimal levels of supervision and therapeutic services are much more effective than punitive programs.

Mental Health

Numerous studies indicate that 65 to 70 per cent of youth in the juvenile justice system have a diagnosable disorder. Among males the most common diagnoses are disruptive disorders. Howard N. Snyder, Ph.D., director of Systems Research at the National Center of Juvenile Justice found that:

68% of committed males were diagnosed with a mental health disorder, and research indicates that the percentage is greater for females in commitment facilities.

50% of committed males had a substance abuse diagnosis.

32% of committed males had a disruptive diagnosis (e.g., conduct disorder or attention deficit hyperactivity disorder).

10% of committed males had a mood disorder (e.g., depression) (Katner, 2006, p. 510).

Estimates indicate that one in five youth in the juvenile justice system has a serious mental disorder (Skowrya & Coccozza, 2007, pp. 1-2). A diagnosis most often comes into play during the sentencing phase after the child has been adjudicated delinquent (Loney & Counts, 2005, pp. 167-168). Efforts are being made to address these mental health issues earlier in the process.

The National Center for Mental Health and Juvenile Justice addresses the problem of mental health issues in the juvenile justice system with a Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with

the Juvenile Justice System. This report provides a framework for juvenile justice and mental health agencies to use when developing policies and programs aimed at improving mental health services for youth in the juvenile justice system. It summarizes what is known about the best way to identify and treat mental disorders among youth in the juvenile justice system, and offers recommendations, guidelines and examples for how best to do this. The study identifies the four cornerstones of collaboration, identification, diversion, and treatment. Six critical intervention points are also identified: Initial contact with law enforcement, intake, detention, judicial processing, disposition, and reentry (Skowyra, 2007).

Thomas Grisso reports that the failure of the community mental health care system is at least in part responsible for the high numbers of youth with mental health issues in the juvenile justice system and in fact the juvenile justice system may be used as an alternative to appropriate community services (Grisso & Underwood, 2004, p. 79). Grisso points out the importance of community based programs for juveniles with mental health diagnoses so that they are able to learn to function more appropriately in their daily lives (Grisso, 2008, p. 153). Rashim Goel notes that poorer children and children of color may not have received an appropriate diagnosis prior to entering the juvenile justice system and so are more likely to receive more severe sanctions such as detention. Additionally, even if they are diagnosed while in custody there is little continuity between treatment during periods of detention and return to the community (Goel, 2009).

Funding for mental health services is a problem for many states. A 2003 survey prepared for Rep. Henry A. Waxman and Sen. Susan Collins, U.S. Congress, House Committee on Government Reform and Oversight found that:

Three hundred and forty-seven juvenile detention facilities (66%) report that their facilities hold youths who do not need to be in detention as they wait for mental health

services outside of the juvenile justice system. These facilities are located in 47 states. . . Juvenile detention administrators report that incarcerated youth who are waiting for community mental health services suffer from a range of serious mental disorders, including depression (noted in 315 facilities), substance abuse (315 facilities), attention deficit hyperactivity disorder (302 facilities), retardation and learning disorders (234 facilities), and schizophrenia (137 facilities) (United State Congress, 2004, p.4).

Accessing appropriate services either through community mental health agencies or educational agencies continues to be an issue for juveniles with mental health issues. A thorough assessment and screening are necessary before appropriate services are provided. Grisso and Underwood (2004) prepared a resource guide for practitioners. Grisso notes in the best practices section that there are considerable variations among states and even jurisdictions within one state as to when screening and assessment take place. He notes that more extensive screenings typically occur after the youth have been sentenced and are in a long term placement as opposed to during the pre-trial stage (Grisso, 2004, p.74).

Studies on the effect of trauma on children indicate that children who have experienced trauma at a young age are more likely to experience symptoms of mental illness such as Attention Deficit Disorder (ADD), depression, anxiety, and posttraumatic stress disorder (PTSD). Other neurological impairments may include lower intellectual functioning and learning disabilities. While the overall trauma victimization rate for children in the United States is 34%, the rate for youth in the juvenile justice system is between 75 and 93% (Justice Policy Institute, 2010, July, p. 1). Most commentators agree that juveniles with disruptive disorders such as ADD and conduct disorders are overrepresented in the juvenile justice system. While many argue that disruptive disorders should not be included in the list of mental disorders found in juvenile justice systems, Grisso points out that this would not change the data in a significant way as most youth with disruptive disorders also exhibit another mental disorder (Grisso, 2005, p. 6).

Grisso reviews what he considers to be the best three studies on prevalence of mental disorders and concludes that all are in agreement that 60-70% of youth in detention or post adjudication commitment met the criteria for a psychiatric disorder (Grisso, 2005, p. 7). Similarly, a large percentage of incarcerated youth receive special education services under the Individuals with Disabilities Education Act (IDEA). A national survey based on reports by the heads of 51 state juvenile correctional agencies found that during the 2000-2001 school year 33.4% of the juvenile corrections population were identified as needing special education and services. The public school population for ages 6-21 had 8.8% of students served under the IDEA during this same time period. Quinn argues that the corrections estimate is low because states do not have the ability or the desire to identify these students in the juvenile justice population (Quinn, Rutherford, Leone, Osher, & Poirer, 2005).

In 2008 1,680 Virginia children were on a waiting list at local Community Service Boards (CSBs). The CSBs are the point of entry for publically funded treatment for mental health, intellectual disabilities, or substance abuse in the state. Six of the 40 CSBs had no child or adolescent department. According to the National Alliance on Mental Illness (NAMI) Virginia, only 7% of mental health expenditures in Virginia go to children under 18 years of age. NAMI also points to a shortage of in-home and community-based services and reports that 87 localities had no child psychiatrist. (NAMI Virginia, 2008). A 2007 Virginia report prepared for the governor and general assembly points out that with deinstitutionalization:

Juvenile Correction Centers now care for many mentally ill youths. In 2005, 41 percent of juveniles (387 persons) had a diagnosed mental health disorder at the time of admission. (JLARC, 2007, p. 101)

The JLARC report seems to indicate that this is an accepted manner of caring for Virginia's mentally ill youth population and list it as a service provided by other state and local agencies such as special education services available in public schools. (p. 101).

School Referrals

While efforts are being made to identify best practices in assessment, screening and treatment the climate that followed the 1990s effort to get tough on juvenile crime and the zero tolerance policies in schools have made changes to the system difficult to effectuate (Annie E. Casey Foundation, 2008; Stenhjem, 2005). Research on the zero tolerance policies indicates that not only is there little data to support the effectiveness of or need for such policies but they have a similar disproportionate effect on minority students and students with disabilities (Skiba et al., 2008). Under Va. Code §22.1-279.3:1 the following incidents must be reported to law enforcement:

(ii) the assault and battery which results in bodily injury, sexual assault, death, shooting, stabbing, cutting, or wounding of any person on a school bus, on school property, or at a school-sponsored activity; (iii) any conduct involving alcohol, marijuana, a controlled substance, imitation controlled substance, or an anabolic steroid on a school bus, on school property, or at a school-sponsored activity, including the theft or attempted theft of student prescription medications; (iv) any threats against school personnel while on a school bus, on school property or at a school-sponsored activity; (v) the illegal carrying of a firearm, as defined in § 22.1-277.07, onto school property; (vi) any illegal conduct involving firebombs, explosive materials or devices, or hoax explosive devices, as defined in § 18.2-85, or explosive or incendiary devices, as defined in § 18.2-433.1, or chemical bombs, as described in § 18.2-87.1, on a school bus, on school property, or at a school sponsored activity; (vii) any threats or false threats to bomb, as described in § 18.2-83, made against school personnel or involving school property or school buses

The following incidents may be reported to law enforcement officials:

(i) the assault or assault and battery, without bodily injury, of any person on a school bus, on school property, or at a school-sponsored activity;

Virginia followed the national trend by passing school discipline laws that treated school related incidents harshly. The overrepresentation of minorities and students with disabilities in school suspensions and expulsions as well as the juvenile justice system are a continuing and possibly interrelated concern. Wald and Losen (2003) found that when examining students with disabilities, black students were suspended at three times the rate of white students and given a correctional placement at four times the rate (p.3).

The Models for Change Initiative has studied the issue of the relationship between school referrals and disproportionate minority representation in the juvenile justice system in Louisiana. In a 2007 study 33% of juvenile cases originated with a school referral. In a follow-up study examining 325 school related arrests, 57% involved a charge for disturbing the peace and 64% of these referrals were African American. A 45% reduction in disturbing the peace referrals followed collaboration between the school system and the Department of Juvenile Services to implement Positive Behavior Supports in the school system (Johnson, 2009). Clayton Georgia came up with a similar collaborative approach between law enforcement and the schools to reduce school related referrals for misdemeanor offences.

The Parties acknowledge that certain misdemeanor delinquent acts defined herein as the focused acts can be handled by the School System in conjunction with other Parties without the filing of a complaint in the Court (Clayton County Cooperative Agreement).

A similar program in Memphis, Tennessee also has shown promising preliminary results. The School House Adjustment Program Enterprise (S.H.A.P.E.) is a collaborative program between the school, law enforcement and other agencies that provides alternative sanctions for students who have committed minor offences such as assault or disorderly conduct. The juvenile court data for 2009 indicates that arrests from the targeted schools have been reduced by 30% in the

first year and the 2010 data is expected to be even more promising (Juvenile Court of Memphis, 2009; SHAPE).

The December/January 2011 Juvenile Justice Update (JJ Update) highlights several programs focusing on DMC reduction and school referral reduction. A Connecticut DMC reduction program focused on the “police contact decision point.” Their DMC demographics showed that while Black and Hispanic juveniles comprised 22% of the population they represented 49% of juveniles referred to court. In order to address this discrepancy at the earliest possible contact point they implemented a training program for police officers called “Effective Police Interventions with Youth.” The curriculum focuses on changing police behavior and attitudes to ensure more positive outcomes in interaction with youth. An evaluation used to test the effect on police officers knowledge and attitudes showed a statistically significant change in knowledge scores and positive attitudes questionnaires as compared to a control group. The study did not look at whether or not there were actual reductions in DMC. (Sontheimer, 2010-2011).

Another program cited in the JJ Update was a school related program meant to reduce referrals from school based incidents due to the increase in referrals based on zero tolerance policies. A civil citation was implemented in a large Florida county to address this problem. The county noticed that a rise in school related referrals began in 2004/2005 with 18% of all referrals being school based. The civil citation system was put into place in 2006/2007. In addition to reducing school related referrals the program outcome measures focus on reducing minority referrals and recidivism. The program evaluation found a 70% greater chance of reoffending for the control group as compared to the program participants (Sontheimer, 2011)

One study on the disproportionate discipline of minorities in school focused on the point where disproportionate minority contact occurred in the school setting. Once a student was referred to the office there was little difference in the type of punishment or length of punishment for students of different races. The overrepresentation occurred at the classroom referral level and not during the administrative punishment. Another interesting finding was that white students were sent to the office for objective behaviors such as smoking, leaving the room, obscenity or vandalism. African American students were sent to the office for subjective offenses including loitering, being disrespectful, excessive noise, and threatening behavior. The higher rate of African American office referrals accounted for the disproportionate minority discipline and there was no evidence that the behavior of African American students was more serious or disruptive than their white counterparts. Additionally, socioeconomic status did not significantly affect these outcomes (Skiba, 2002).

Why is the over inclusion of minorities and students with disabilities in the school disciplinary process of such concern? In a 2007 Texas study discretionary school discipline policies were analyzed. The study referenced the following report:

A study published by Texas A&M University's Public Policy Research Institute in 2005 concluded that, among the "risk factors" commonly associated with future involvement in the juvenile justice system, the ***single most important predictor is a history of disciplinary referrals at school.*** (Carmichael, 2005 quoted in Texas Appleseed, 2007, p. 2).

Like so many states, Texas saw an increase in school discipline sanctions including suspensions and removals to Disciplinary Alternative Education Programs (DAEPs) following the 1990s. Minority students and special education students both were significantly overrepresented in the discretionary discipline referrals (Texas, 2007). The Texas studies found that in discretionary discipline cases, African American students were particularly overrepresented in the area of

subjective offenses such as “serious or persistent misbehavior.” A compounding factor was found for students who were a minority with special education needs so that an African American special education student was more than three times as likely to be expelled as other students (Texas, 2010).

A study in Connecticut also found disproportionately high rates of discipline for minority and special education students Connecticut Appleseed (2007-08). Additionally, school disciplinary practices have been correlated with testing practices suggesting that No Child Left Behind and accountability may be encouraging schools to remove troublesome or low performing students during testing periods. Figlio (2006) found that while punishments to less academically inclined students always tended to be harsher, this discrepancy was exacerbated during periods of standardized testing. Figlio concludes that pressure on schools to meet test score benchmarks may be encouraging disciplinary removal of lower performing students during the testing period.

One of the most recent assessments of a juvenile justice system focused on South Carolina and found that the charge of “disturbing schools” which can include fighting, non cooperation or obscenity was the most common referral to the Department of Juvenile Justice. Interviews of juvenile court professionals indicated that the presence of a school resource officer contributed to this high rate of school related referrals (National Juvenile Defender Center, 2010). The 2009 assessment of Nebraska’s juvenile system included a recommendation that prosecutors develop a set of criteria for school referrals so that most of the cases are no longer referred to juvenile court (National Juvenile Defender Center, 2009, p. xii).

Clearly the issue of school related referrals continues to be an issue that other states are finding impacts their juvenile justice populations. A national survey administered by the

Coalition for Juvenile Justice (CJJ) and the Justice Policy Institute found that one third of respondents thought their state laws and policies encouraged disproportionate minority contact at all stages of the juvenile justice system (Coalition for Juvenile Justice, 2009). A survey of Virginia judges and Court Services Unit Directors concluded that 74% of the judges and 63% of the CSU Directors believed the existing assessment instrument to be “very” or “somewhat” effective in reducing disproportionality in the system (Virginia’s Three Year Plan, 2009-2011, p. 62).

The connection between school referrals and the juvenile justice system is mainly anecdotal as most states do not collect or report this data. A recent study used the National Juvenile Court Data Archives but only found five states with data that could be used in distinguishing the referral source as a school between 1995 and 2004. The researchers looked at the number of school referrals per 1000 students and whether the referral was for school misbehavior. They also looked at the presence of School Resource Officers and the effect of gender and race. The findings were variable between the five states without consistent patterns leading the researchers to conclude that school referrals to the juvenile justice system must be studied at the state and even local level (Krezmien, Leone, Zablocki, & Wells, 2010).

Unfortunately, Virginia was one of the states that do not collect this data. Florida does track the school related referrals and found that of the over 20,000 school related referrals in 2007-2008, 47% were for black students who represented only 22% of the 10-17 year olds in the state. Additionally, 40% of these referrals were for disorderly conduct or misdemeanor assault charges. In the past these types of behaviors would have been dealt with through the school disciplinary process (Florida, 2009).

The Virginia Youth Violence Project at the Curry School of Education, University of Virginia has done extensive analysis on the issue of student suspensions/expulsions in Virginia based on the Virginia High School Safety study. Their findings include a suspension rate for African American students that is almost double the rate for White students. They also found that a school's suspension rate was predictive of the dropout rate for all students even when they controlled for demographics and attitudes that contributed to breaking school rules. The suspension rates between schools showed a high degree of variability even when controlled for demographics and this practice was counterproductive in terms of improving student performance or behavior. "Structure in the form of zero tolerance expulsion practices or security measures was not associated with better safety conditions." Virginia had one of the five highest suspension/expulsion rates in the country (Virginia High School Safety Study, 2008). The Virginia High School Safety Study did not examine the correlation between this high suspension/expulsion rate and the juvenile justice system or the correlation between the disproportionate minority rate for both school discipline and juvenile justice contact nor did they examine the special education rates.

Recent research in the area of implicit or unconscious bias indicates that biases that individuals do not realize they have can affect behavior. Because some research indicates that Afro-centric facial features in criminal defendants affects sentencing, courts are beginning to incorporate implicit bias training into their judicial education curriculum (Kang 2009). The Civil Rights Project at Harvard has expressed concern that implicit bias affects a number of decisions at school including discipline. The American Psychological Association (APA) task force on zero tolerance policies concluded that the emphasis on these "zero tolerance policies have created unintended consequences for students, families, and communities." (Skiba, Eckes, &

Brown, 2010, p. 860 quoting Skiba, 2008). The effect of these policies is to turn school discipline into an expensive criminal justice process that does not take into account basic child development.

Research in the area of disproportionate minority school discipline indicates that the higher rates of suspensions and expulsions for minority students do not correlate with higher rates of misbehavior or more serious misbehavior (Skiba, 2010). Similar findings on the suspension rates for students with disabilities indicate that these students are suspended or disciplined at higher rates for behavior that is not disciplined in nondisabled students (Skiba, 2002, February). Payne and Welch (2010, November) analyzed aggregate level discipline data across schools to test the racial threat hypothesis based on conflict theory. This hypothesis theorizes that as the percentage of black students increase more punitive discipline policies also increase while restorative discipline decreases. Their research found that racial composition was the strongest predictor of more punitive punishment and was not related to increased levels of school related crime or delinquency. The authors refer to this process as “increasing the prisonization of schools and criminalization of students” (Payne, 2010). Because of the correlation between school discipline policies and juvenile justice contact it is important to examine these policies and any possible disproportionate impact on minority or special education students.

Minorities in the Juvenile Justice System

Studies by national advocacy groups and the Virginia Department of Criminal Justice Services show that minorities are overrepresented at every stage of the juvenile justice process. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) found that although African American youth represented 16 percent of youth between the ages of 10-17, they represented 28

percent of arrests, 30 percent of delinquency adjudications, 37 percent of the secure detention placements, and 58 percent of the commitments (Snyder and Sickmund 2006). In 2007, black youth accounted for 16% of the juvenile population and 33% of the cases handled by the juvenile court. The most recent data on disproportionate minority contact examines the rate at which youth of different races are impacted by the juvenile justice process:

The rate at which black youth were referred to juvenile court for a delinquency offense was about 140% greater than the rate for white youth. The rate at which referred cases were petitioned for formal processing was 12% greater for black youth than for white youth. The rate at which petitioned cases were adjudicated was about 8% less for black youth than for white youth. The rate at which petitioned cases were waived to criminal court was 9% greater for black youth than the rate for white youth. The rate at which youth in adjudicated cases were ordered to residential placement was 27% greater for black youth than for white youth, but the rate at which they were ordered to probation was 14% less for black youth than for white youth. (Knoll, 2010, p. 2)

Additionally, while white youth represented 73% of the caseload in 1985, that had dropped to 64% in 2007. For African American youth the percentage had risen from 25% to 33% during the same time period. (Puzzanchera, 2010)

This overrepresentation of minority youth in the juvenile justice system was addressed in 1988 through the Juvenile Justice and Delinquency Prevention Act (JJDPA) (Hsai, 2006). Originally, the focus was on the overrepresentation of minority youth in confinement but the emphasis was changed in 2002 to the overrepresentation at all points of contact. So while the acronym stayed the same (DMC) the name changed from disproportionate minority confinement to disproportionate minority contact representing the importance of pinpointing exactly where this disproportionality begins. Several measures have been developed since 1998 to measure DMC. The most recent iteration is the Relative Rate Index (RRI) which has been defined as “a calculation of the proportion of minority youth in each stage compared with the proportion in the previous stage” (Orchowsky, Poulin, & Iwama, 2010). The differential involvement versus

differential selection hypotheses or some combination of these two each have their proponents but because data on self reports and official reports do not typically follow the same cohort over any period of time, no definitive conclusion has been reached. (Piquero, 2008)

The national RRI data shows that minority overrepresentation continues to be particularly high at the time of arrest, detention and waiver to adult court. The data shows that minority youth are more likely to be petitioned and to receive a placement outside of the home but less likely to be adjudicated. Some researchers point to the fact that minority youth are less likely to be adjudicated as possible evidence of minorities being overcharged. Even with minorities being less likely to be adjudicated, the high rate of arrest and petitions means that minorities are still overrepresented throughout the system. The RRI is not meant to be used as an assessment tool but to show where the overrepresentation occurs. It does not show why DMC occurs in a particular jurisdiction and if the appropriate data is not used or if the percentages are too small in a particular jurisdiction is not even able to do that. Because many states do not have or use the appropriate data they cannot pinpoint the contact point where the overrepresentation occurs (Leiber & Rodriguez, 2011).

After twenty years DMC continues to plague juvenile justice systems around the country. (Arya, 2008) A National Council on Crime and Delinquency report (2007) found that:

From 2002 to 2004, African Americans represented:

- 16% of youth.
- 28% of juvenile arrests.
- 30% of referrals to juvenile court.
- 37% of the detained population.
- 34% of youth formally processed by the juvenile court.
- 30% of adjudicated youth.
- 35% of youth judicially waived to criminal court.
- 38% of youth in residential placement.
- 58% of youth admitted to state adult prison. (p. 3)

Because twenty years of data collection on DMC has not led to significant changes in the state juvenile justice populations, the Racial Justice Institute has instituted a plan to force states to address the issue by using a 1989 Supreme Court ruling based on “deliberate indifference to civil rights” City of Canton v. Harris 489 U.S. 378 (1989). Whether or not this novel legal theory will be effective in court, it still indicates the level of frustration that advocates feel in the face of continued resistance to effective juvenile justice policies (Kelly, 2010).

Most recently juvenile advocates were alarmed when the federal Youth PROMISE Act (Prison Reduction through Opportunities, Mentoring, Intervention, Support, and Education) was merged with the Gang Abatement and Prevention Act. The original PROMISE act focused on providing evidence based community programs to keep youth out of the gang lifestyle that could lead to incarceration while the original Gang Abatement act took a more punitive approach that included incarceration in adult facilities. It remains to be seen whether the compromise bill will pass at all or whether the evidence based prevention approach will prevail over the more politically popular punitive approach. (Kelly, 2010)

Virginia’s data on disproportionate minority contact follows the national trends. The 2007 census shows the African American population age 10-17 in Virginia at 23.2%. The percentage of African Americans found at various contact points in the process was 44.6% at intake, 55% in detention centers and 66.1% of commitments. (Virginia Department of Criminal Justice Services, 2008, p.1) The Virginia Department of Criminal Justice Services has created a database using 2005 data that looks at the racial disparity by locality at different points in the system including intake, detention, and commitment to the Department of Juvenile Justice. The 2008 Blueprint report on DMC concludes that minority children who are placed in foster care are less likely to be returned to their families and because of the lack of mental health services in the

foster care and education systems so that “the juvenile court has become the mental health service provider for poor children in Virginia” (p.1). Unfortunately, an earlier Blueprints report on the mental health system concludes that jails and juvenile detention centers are not equipped to deal with the mental health needs of their inmates. (Virginia Department of Criminal Justice Services, 2006). In 2006 Virginia ranked 28th out of the 50 states and the District of Columbia with 283 per 100,000 juveniles residing in juvenile detention and correctional facilities. (KIDS COUNT Data Center)

Virginia has conducted a study of the juvenile system in part in response to the ABA’s 2002 assessment. Study issues included: Transfer and Certification of Juveniles, Juvenile Record, Court-Appointed Counsel: Training and Compensation Rate, Disproportionate Minority Contact, Barriers to Service, Truancy and Child in Need of Supervision (CHINSup), and Parental Involvement and Accountability. While disproportionate minority contact was addressed as a study issue, the connection between school referrals, special education, or mental health was not discussed despite the fact that the initial study pointed to the “impact” of these practices on minorities. The report summary states that: “Overall, the study on juvenile justice revealed that professionals who participate in the juvenile justice field are satisfied with the way the system works” (Virginia State Crime Commission, 2008, p. 31).

While this conclusion may be gratifying it is difficult to completely justify when compared to Virginia juvenile justice demographic trends including an increase in the number of minorities in the juvenile justice system, a 12% increase in juveniles with mental health disorders between 2005 and 2007 (see Green, 2008, August) and a large percentage of the committed population with a Full Scale IQ score of 89 or below including nearly 10% with a score below 70 (see Virginia Department of Juvenile Justice, 2010, April). In addition the study acknowledged

that while the number of minorities in detention and correctional facilities continue to increase, the number of whites continues to decrease. Finally, the Virginia Department of Juvenile Justice and the local Court Services Units do not track school related referrals, special education status at the intake level, or mental health status at the intake level so that these important state and national concerns are not being measured at all until the commitment phase.

With regard to juveniles in corrections, the Virginia juvenile custody rate (per 100,000) for whites is 143, while the rate for blacks is 715 and 273 for Hispanics. According to the DJJ, the number of black and Hispanic youth in Virginia detention homes and correctional centers continues to increase while the numbers for white youth have been decreasing. In addition, these minority juveniles were more likely than white juveniles to be held under locked arrangements (Virginia State Crime Commission 2008, p. 25).

Clearly, the continued emphasis on documenting minority representation in the juvenile justice system has not led to significant improvements in the area of disproportionate minority contact or confinement.

A 2010 report by Justice Research and Statistics Association looked at the DMC programs in Virginia and Iowa. The project was funded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and used the OJJDP DMC reduction elements of “identification, assessment/diagnosis, intervention, evaluation, and monitoring” to assess the DMC programs in these two states. The first finding was that while both states provide the Relative Rate Index (RRI) data there was no analysis or discussion of how the data would be used to implement improvement plans. In analyzing the existing RRI a problem with Virginia’s data was noted because arrest data is not included due to concerns about accuracy. Based on existing RRI data Virginia appears to have overrepresentation of minorities at the referral and commitment phases. Because the RRI for the referral stage is based on population rather than arrest data it may not accurately represent the contact point in need of intervention (Orchowsky, 2010).

At the time of the study Virginia had not conducted an assessment and the authors noted that a solicitation that went out in January 2010 failed to adequately identify the connection between the identification and assessment process based on RRI data. In addition the report states that the interventions Virginia has been using such as the Juvenile Detention Alternatives Initiative (JDAI) pilot programs and the Burns Institute program have not “been objectively and rigorously evaluated, and there is little objective evidence that interventions designed to reduce DMC actually do so” (Orchowsky ,2010 Page viii). This report also noted that Virginia did not include an evaluation component in their three year plan.

METHODOLOGY

This study gathered demographic data on Virginia’s juvenile justice population for a five year period between 2005 and 2009. Five areas were identified as potential sources of information on race, mental health, special education status, and school discipline/referrals for juvenile offenders. These included a review of existing online data for Virginia’s juvenile justice population, a data request from the Virginia Department of Education, a data request from the Virginia Department of Juvenile Justice and/or the Virginia Department of Criminal Justice Services, a data request from an individual court services unit, and a survey of the 26 public defender’s office. Multiple sources of data were used in an attempt to validate data received from any one source. This data proved much more difficult to locate than anticipated. The process began with exploratory emails trying to identify the available data. These emails met with little to no success.

Online Review of Existing Data

A review of existing online data for the Virginia Department of Juvenile Justice proved tedious as there did not appear to be one place where all the data could be identified for a five

year period. The Profiles of Committed Youth 2004-2008 gave an overview of committed youth but did not address the youth at other parts of the juvenile justice process. Additionally, different data appeared in different reports or formats so that much of the data was not comparable from year to year or even within one year. Data collections were based on Fiscal Year, Calendar Year, School Year, and One Day Data Reports further complicating comparison of reports. Still the available data provides an overview of the juvenile justice population.

Virginia Department of Education

The data request to the Virginia Department of Education provided much of the requested data. The request for information on juveniles with special education status was provided by the Director of the Office of Special Education Data and Finance. The Data Administrator Manager for Discipline, Crime, and Violence provided additional information on available data for school referrals. Terminology had to be clarified in terms of “students” versus “juveniles.” The request for data on school suspensions, expulsions and referrals to law enforcement broken down by race and special education status was turned over to the Educational Applications Manager and the information was provided at no cost. The fact that the Virginia Department of Education was able to provide much of the requested data shows that they understand the importance of measuring these variables so that they can be addressed by policy makers.

Individual Court Services Unit Request for Data

The data request form for an individual court services unit was pretested on fellow CEDP participants. Sending this request to an individual court service unit provided a quick response and some valuable insights:

Mental health status/diagnosis data are not tracked at the intake level.

Special education status is not tracked or collected at the intake stage.

At the Intake level complaints are processed generically; school complaint information does not get reported separately.

Virginia Department of Juvenile Justice

The data requests to the Virginia Department of Juvenile Justice (DJJ) and the Virginia Department of Criminal Justice Services (DCJS) turned out to be the most difficult and frustrating part of the project. The data request included questions on the number of complaints, racial breakdown, mental health diagnosis, and special education status for 2004 to 2009. Initially no response was received to requests for information or guidance. Following the response to the request for information from the individual court services unit it became clear that most of this information is not collected at the local or state level. Once this was clarified and the appropriate contact information provided, the request was reformatted to focus on commitment data rather than intake and complaints.

Survey of Public Defenders Offices

Because data on special education status, mental health diagnoses and school referrals is not available at the local court services unit or the state level a survey was prepared for the Virginia public defender offices. According to the DCJS the public defender offices represented 8,708 juveniles charged with 14,077 offenses in 2005. (DCJS 2006) A simple survey tool was emailed to the 26 public defender offices for the state of Virginia. The survey asked for information on the past year since hard data for the past five years does not exist.

FINDINGS

Virginia has numerous data sources for information on school discipline, education placements, and juvenile justice. Additional data was collected through queries to various state agencies. Comparing and analyzing this plethora of data proved to be difficult to accomplish due

to differences in data collection methods, definitions, and reporting periods between and within various agencies. Data sources included:

- 1) A review of existing online data for Virginia's juvenile justice and school age population.
- 2) A data request from the Virginia Department of Education.
- 3) A data request from the Virginia Department of Juvenile Justice and the Virginia Criminal Justice Services.
- 4) A data request from an individual court services unit.
- 5) An opinion survey of the 26 public defender's office.

Existing Online and Print Data

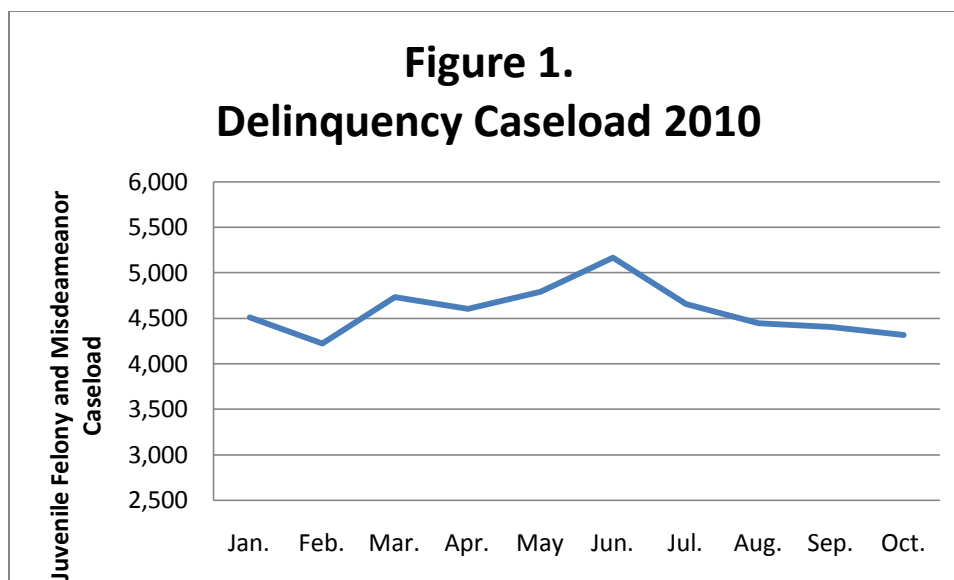
Data collection has been a priority for Virginia education and justice agencies. The Department of Juvenile Justice (DJJ), the Department of Criminal Justice Services (DCJS), the Virginia State Crime Commission, the DCJS Center for School Safety, the Virginia Youth Violence Project, the Virginia Court System, and the Virginia Department of Education (DOE) all track juvenile data that can be used to address the issues raised in the ABA's 2002 Assessment on "mental health and school related referrals to juvenile court and evaluate their appropriateness, especially as this impacts minority youth." Each of these data sources provides a piece of the puzzle that needs to be carefully analyzed and placed in position. For example the number of juveniles or cases entering the system can be examined from the perspective of juvenile arrests, juvenile complaints, juvenile intake cases, and juvenile delinquency court caseload. Even then DJJ reports offer different statistics for the same data elements with explanations such as: "Data may not be comparable to previous presentations due to methodological changes" (Virginia Department of Juvenile Justice, 2010, October, p. 5). Similarly, the FY 2009 Statistical Information Report and the FY 2008 report provide different

data for total number of juvenile complaints and intake cases. With these caveats in mind the following data elements are available online and/or in print:

1.Caseload Data

Caseload Data is available on the Virginia Supreme Court website for juvenile delinquency cases filed between 1990 and 2007. The caseload data for Juvenile and Domestic Relations District Court showed a peak in 1998 of 91,616 cases in the juvenile delinquency category. The caseload decreased 13% between 1998 and 2003 with a low of 75,010 cases in 2002. From 2003 to 2007 there was an overall increase of 5.3%. This was not a linear increase but with a few dips shows an overall increase even with a 2007 dip to 79,726.

An interesting tool that has been added for 2010 shows new cases by month between January and October of 2010. This allows an examination of misdemeanor and felony delinquency cases by month which might assist in determining if there is a correlation with school attendance periods. A 2001 analysis by DJJ showed that juvenile detentions were lower during school vacation periods and were somewhat higher during the traditional school attendance months in the fall and spring. (DJJ May 2001 page 10) Figure 1 looks at the 2010 juvenile delinquency caseload for felonies and misdemeanors by month. Because the data is not complete and looks at caseload rather than detention population it would be difficult to make any comparisons but there does seem to be a summer decline as reported in the 2001 report.



2. Intake and Detention, Data

As noted above the online intake and detention data is somewhat variable between different reports. Because of this variability I requested data from JCC and was provided updated information which will be addressed in the JCC Data Request Section. Initially intake data is broken down by intake complaints and intake cases. What happens between these two points of contact is not completely clear from the online data. An email from the JCC indicates that “One juvenile could have multiple intake cases during one fiscal year” and “one intake case could involve multiple intake complaints/offenses.” Again this makes it difficult to compare and analyze this data against detention or commitment data. Additionally intake cases are broken down by race and ethnicity while intake complaints are not. This leaves some question as to the demographics of the 20% to 21.7% of the complaints that are resolved or diverted. (DJJ FY 2008 and 2009 Statistical Information) Intake data also does not include information on mental health diagnoses or special education status.

3. Commitment Data

Overall the commitment data is moving in a positive direction. A 2009 DJJ Presentation shows a 51.3% decrease in commitments between FY1998 and FY 2009 and notes the 2000 change in eligibility which made commitments less likely. In 2008 black youth comprised 66.1% of the committed population (Green, 2008). Waite and Neff (2004) found that the percentage of committed black youth as follows: 58.3% in 1999, 60.1% in 2000, 61.6% in 2001, 60.2% in 2002 and 63.8% in 2003 (p. 6). So while the overall number of committed youth has been reduced by more than half, the percentage of black juveniles and juveniles with mental health issues continues to rise. Looking at the committed population on July 1, 2008, 63% required mental health treatment. The percentage of these juveniles that required mental health treatment rose 12% between 2005 and 2007 even when excluding those with Conduct Disorder, Oppositional Defiant Disorder, and Substance Abuse/Dependence Disorder. (Green, 2008)

The DJJ report Profiles of Committed Juveniles Fiscal Years 2004 -2008 (2010) provides an extensive analysis of these juveniles following commitment. Of the committed juvenile population 37-41% needed special education services as compared to 13.6% of all 3-21 year olds in the United States. In addition 58-65% had an FSIQ score less than 90, compared to 25% of the general population. Moreover, 10% of these juveniles had a score below 70. This report also looks at school related behaviors and attendance and compares them to earlier data. The findings indicate that each of these school related attendance and behavior problems have increased between 1999 and 2008 for the committed juvenile population. Issues with severe attendance or not attending school at all increased from 42.0% to 52.5%. Serious school behavior issues increased from 41.1% to 56.8%. When researchers looked at moderate and severe school

behavior the percentage rose from 82% to 87% and moderate to severe attendance issues rose from 79% to 84%.

Mental health data showed that over 70% of the committed population was diagnosed with conduct disorder as compared to 2.1% of 8-15 year olds nationally. When Attention Deficit Disorders, Conduct Disorders, and Oppositional Defiant Disorders were combined 86.1% of the committed juveniles were impacted as compared to 8.6% of 8 to 15 year olds nationally. Even when these attention, conduct, and substance abuse disorders were excluded, 57.1% of the committed population had at least one other significant mental health symptom that met the Diagnostic and Statistical Manual of Mental Disorders-IV (DSM-IV) criteria at the time of admission (Profiles 2010). The number of committed juveniles with mental health needs increased by 14% between 2005 and 2008 according to a Department of Juvenile Justice presentation of data from the Research and Evaluation Section (Virginia Department of Juvenile Justice, 2009, July, p. 14).

4. Disproportionate Minority Contact (DMC)

“Any evaluation of a DMC initiative should have as its primary outcome measure the reduction of DMC” (Orchowsky 2010, p. xii). The 2009 FY report on DMC notes overrepresentation in nearly every stage of the process including intakes, petitions, pre-dispositional detention, adjudication, and commitment. Minority underrepresentation was found in the areas of diversion and probation. (DMC 2010) Unfortunately, the report does not address arrest as a point of contact despite the fact that law enforcement is the first point of contact with the juvenile justice system for most youth and is also the point at which the first diversion decision can be made. The 2008 study of VA’s juvenile justice system shows that while minorities represent 23% of the juvenile population they are found at much higher percentages as

they enter the juvenile justice system: intake (38%); secure detention admissions (50%); and commitments (66%). (Virginia State Crime Commission, 2008) In 2009 these percentages had risen to 44.2%, 53.8%, and 66.7% respectively. While this project did not look at the issue of juvenile transfers, it should be noted that in 2009 81.7% of juveniles committed in circuit court were African American. (Virginia Department of Juvenile Justice, 2009, October, p. 15).

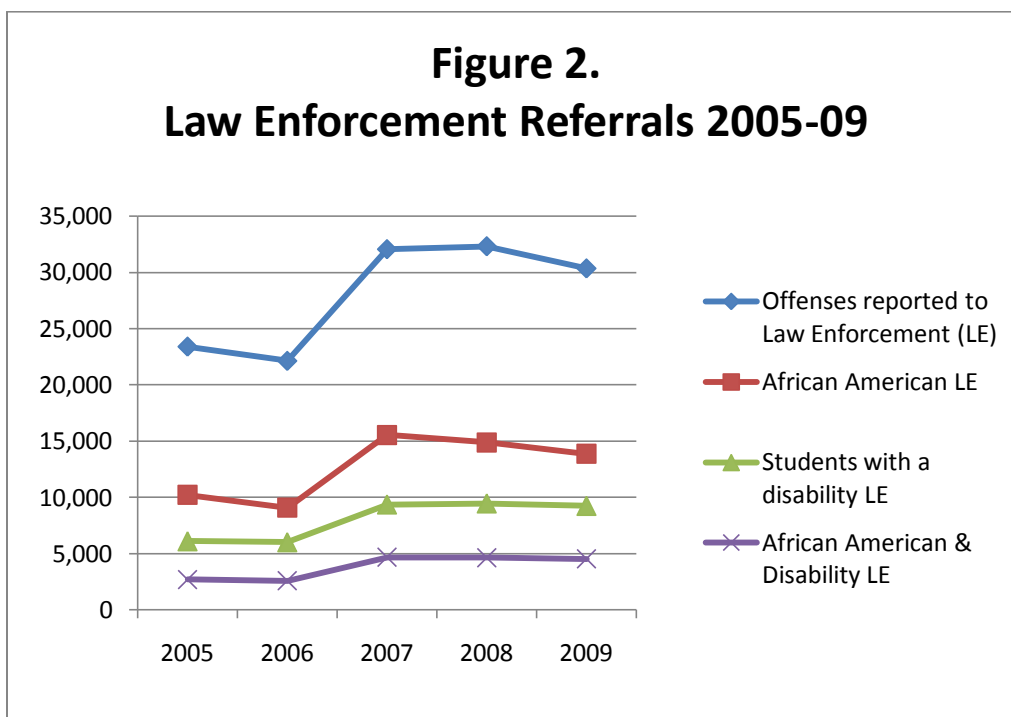
5. School Discipline Data

Suspensions and expulsions in Virginia increased following the passage of the 1990s zero tolerance laws. Between the 2002/03 school year and the 2006/07 school year short-term suspensions rose by 17%, long term suspensions by 29%, and expulsions 39%. (Advancement Project 2010) The Virginia High School Safety Study reported that Virginia has one of the top five expulsion rates in the nation based on 2004 data from the National Center for Education Statistics (.169/1,000 students) (Virginia High School Safety Study, 2008). To further refine the school discipline data I requested information from the Virginia Department of Education (VDOE).

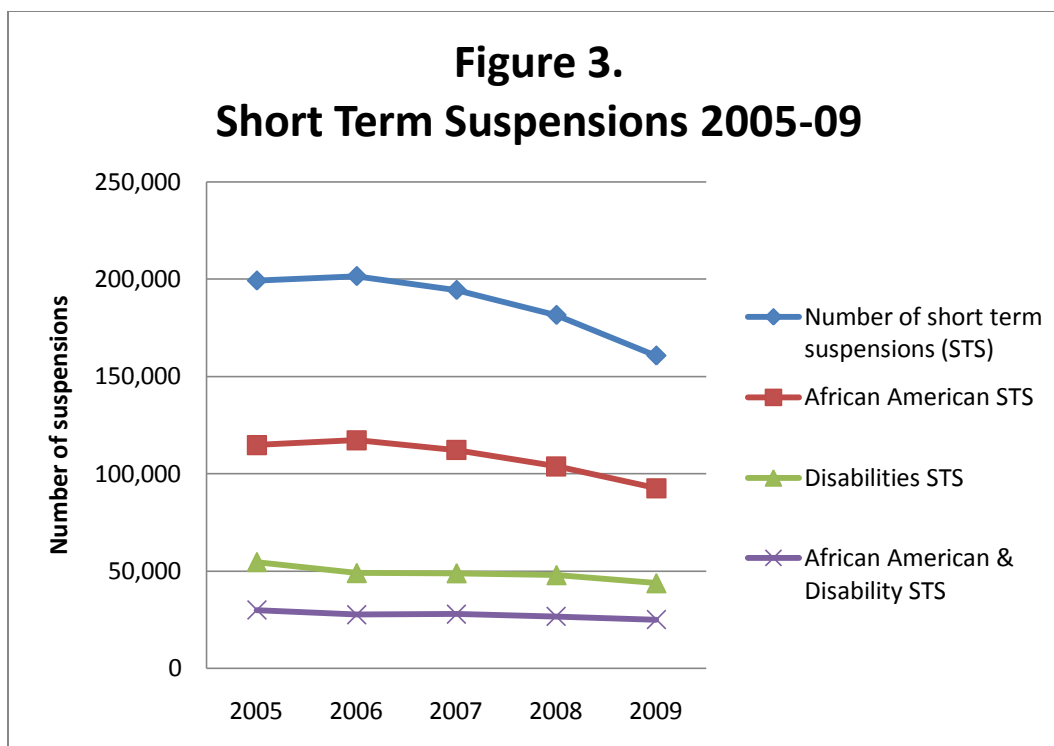
Virginia Department of Education Data Requests

Surprisingly, getting the data from the Virginia Department of Education turned out to be easier than getting data from the Virginia Department of Juvenile Justice or the Virginia Department of Criminal Justice Services. The Virginia Department of Education was able to provide data on the number of short (10 days or less) and long term suspensions, expulsions, and referrals to law enforcement broken down by race and disability. Between 2005 and 2009 the number of suspensions and expulsions dropped while referrals to law enforcement increased. Figure 2 shows an overall increase in referrals to law enforcement from 23,407 in 2005 to 30,352 in 2009. The percentages of African American and students with disabilities also rose. In 2005

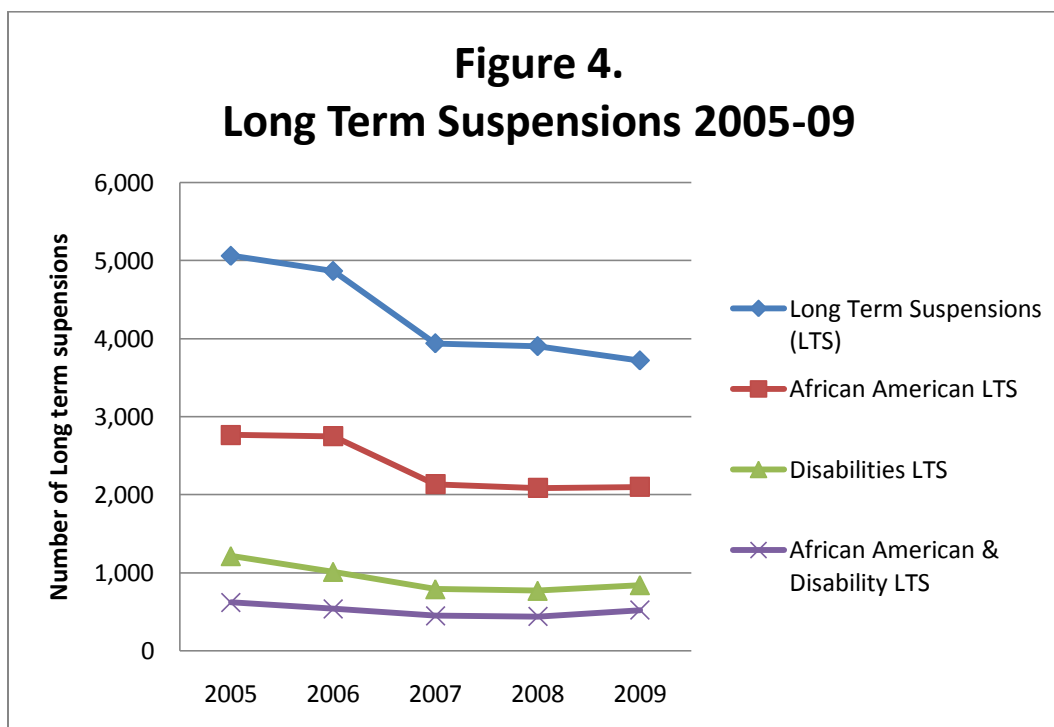
43.7% of referrals to law enforcement were for African Americans, 26.1% were for students with disabilities, and 11.6% were for African American students with disabilities. These percentages had increased to 45.7% for African Americans, 30.4% for students with disabilities and 15.0% for African American students with disabilities by 2009.



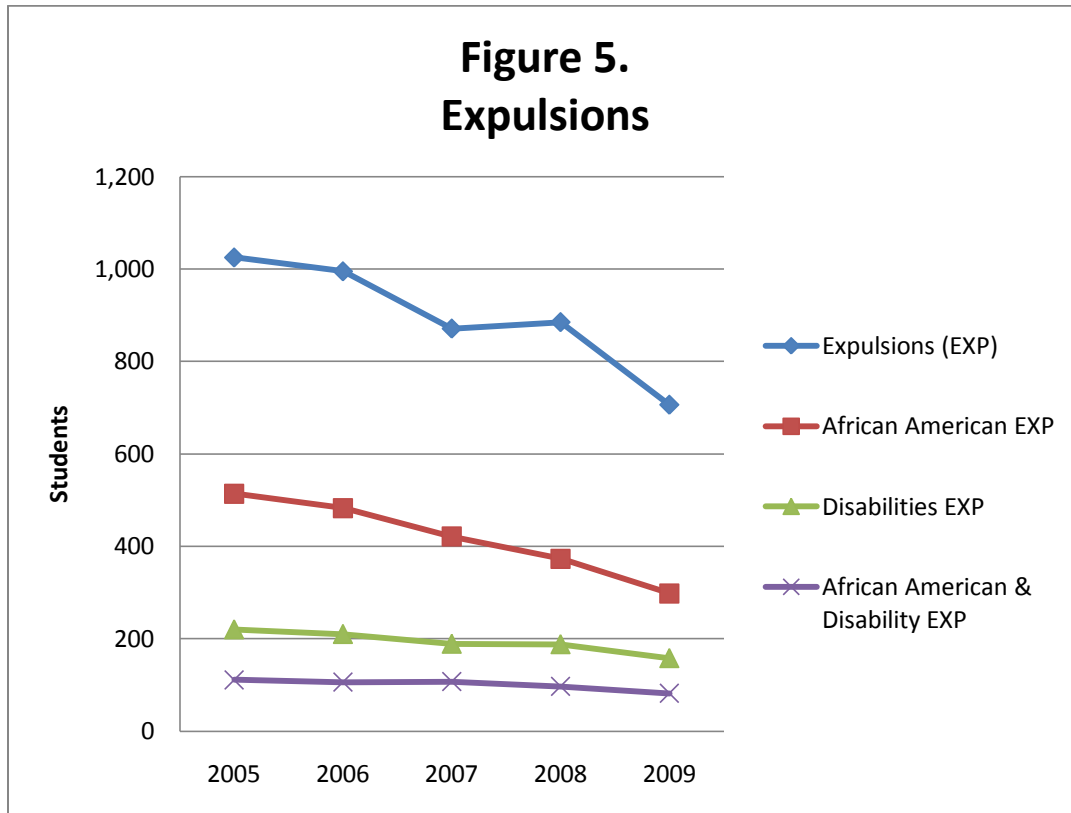
Figures 3 through 5 look at the changes in short term suspensions, long term suspensions, and expulsions between 2005 and 2009. All three of these categories showed a decrease during the 2005-2009 time period. Figure 3 shows that short term suspensions saw an almost 20% decrease from 199,230 in 2005 to 160,705 in 2009 but the percentage of African American short term suspensions remained fairly static at 57.6%. The 2007 census shows the African American population age 10-17 in Virginia to be 23.2%.



While the number of long term suspensions decreased by 26.5% from a high of 5,060 in 2005 to 3,718 in 2009, the percentage of African American students saw a slight increase from 54.7% to 56.5% (See Figure 4).

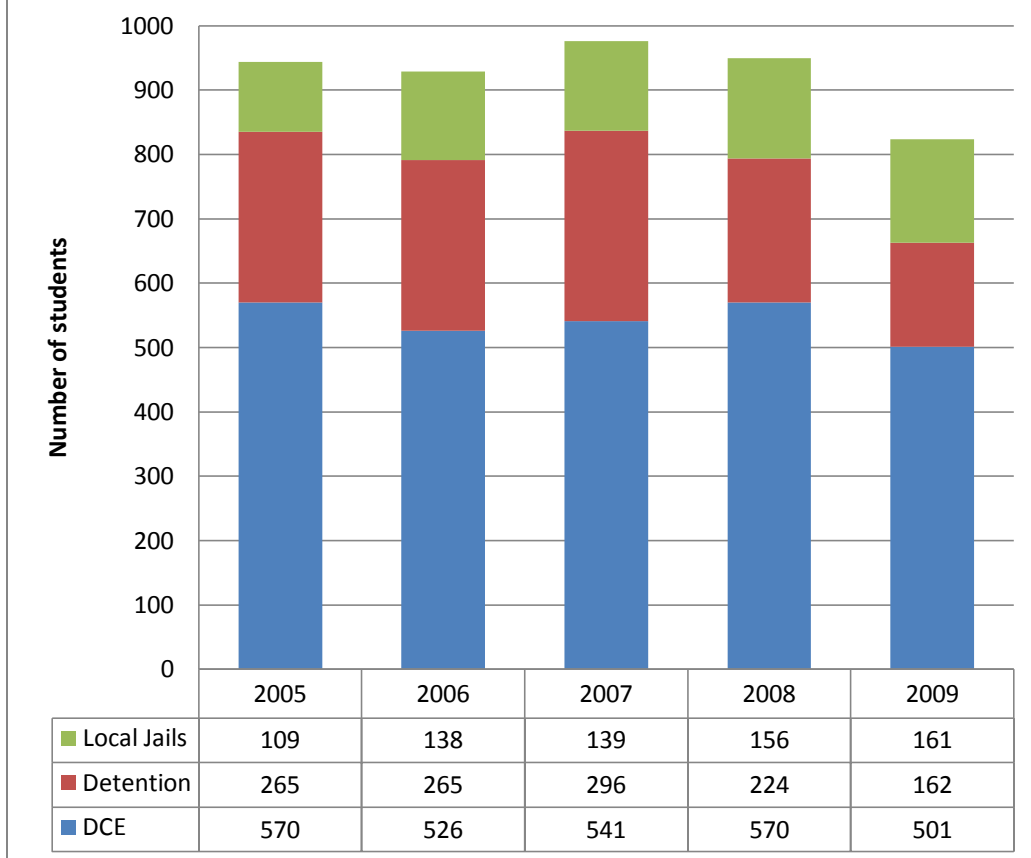


Expulsions showed an even greater decrease between 2005 and 2009 with over 30% fewer expulsions. The percentage of African American expulsions decreased from 50.1% to 42.2% but students with disabilities showed a slight increase from 21.5% to 22.4%.



The Virginia Department of Education was also able to provide the number of students in the corrections system with a special education classification. While the number of special education students decreased overall the number in local jails increased. Figure 6 shows that in 2005 the one day special education child count was 265 for detention facilities and 109 for local jails. By 2009 the detention figure had decreased to 162 while the local jail figure had increased to 161.

**Figure 6. Special Education Placements
in VA Correctional Facilities on Dec. 1**



Court Services Unit Data Request

While the data request from the individual court services unit did not provide the hard data that I had hoped for, it did provide much needed insight into the process and contact information for the state level request. It was also the quickest response with a two day turn around which was much appreciated at this point in the project. The data request focused on four areas: mental health status, special education status, school related referrals, and race. (See Appendix A) The CSU Director clarified that mental health information is not tracked at the intake level. A mental health screening is only performed if the juvenile is found guilty of an offense at the adjudication stage. While this data was not tracked the CSU director gave a

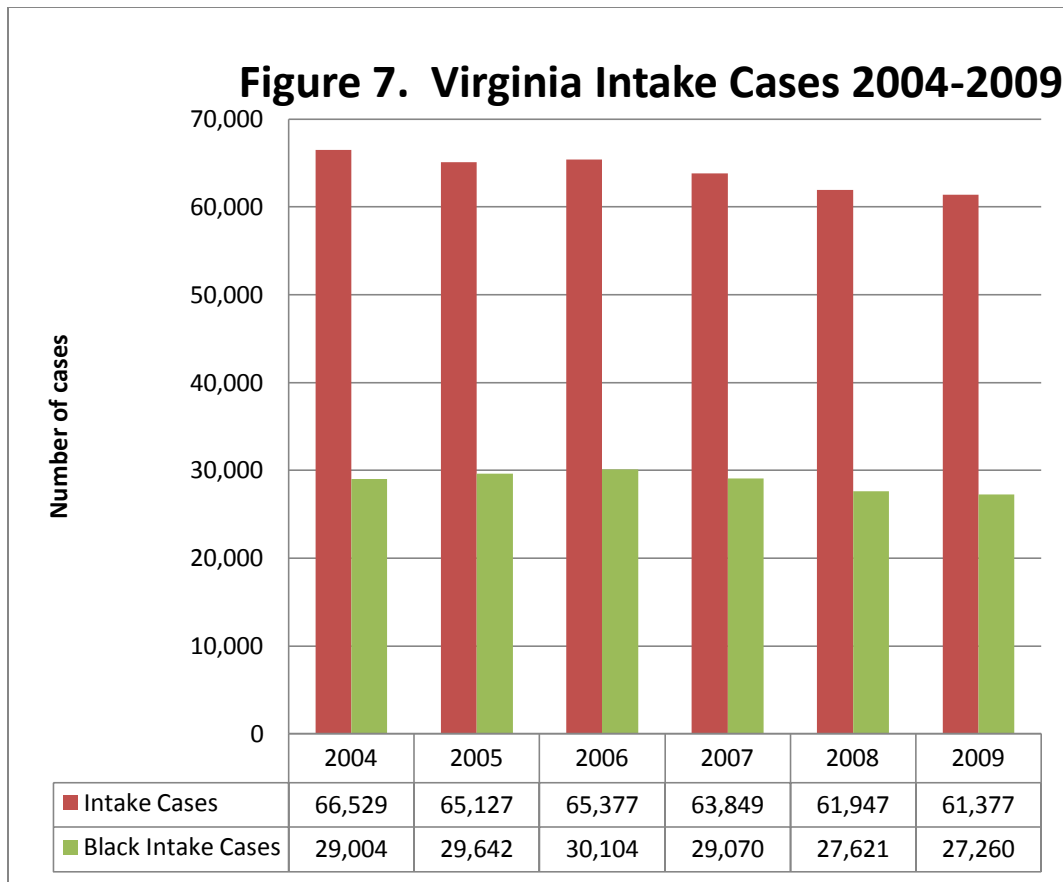
conservative estimate of 25-30% of adjudicated juveniles. Special education status is also not tracked or collected at the intake stage:

We don't know that information on a juvenile until after adjudication and only if the judge orders a pre-dispositional social history report. We don't have archived data concerning special education status. In order to find this information a person would have to check each report completed manually. We complete about 150 reports each year, which is just a small portion of juveniles compared to the number that are referred to us. A conservative estimate would be approximately 35 to 45%. (Email from CSU director dated 10/18/2010)

As far as school related referrals all intake complaints are processed generically and there is no record of school related referrals so that this information is not available at the local or state level. This information received in 2010 indicates that any efforts that have been made since the 2002 Assessment to address an increase in mental health and school related referrals and their impact on minority youth cannot be measured because critical pieces of data are missing.

Virginia Department of Juvenile Justice Data Request

The Virginia Department of Juvenile Justice Research Director confirmed that data on disability and mental health is not collected at the intake level. DJJ does collect data on number of complaints but does not break these down by race until the juvenile intake case is opened. Much more extensive data is available for the committed population. Based on this available data several trends are apparent. The total number of intake complaints fell from 91,103 in 2005 to 86,132 in 2009 but this figure is not broken down by race, special education placement, or mental health diagnosis. As Figure 7 indicates the number of intake cases fell from 66,529 in 2004 to 61,377 in 2009. During the same time period the percentage of black intake cases rose from 43.6% in 2004 to 46.0% in 2006 and then back to 44.4% in 2009.



While the number of admissions to JCC (excluding appealed cases) dropped from 978 in 2004 to 762 in 2009, the percentage of black admissions rose from 64.5% in 2004 to 67.9% in 2009. Figure 8 compares the total number of admissions to the number of black admissions.

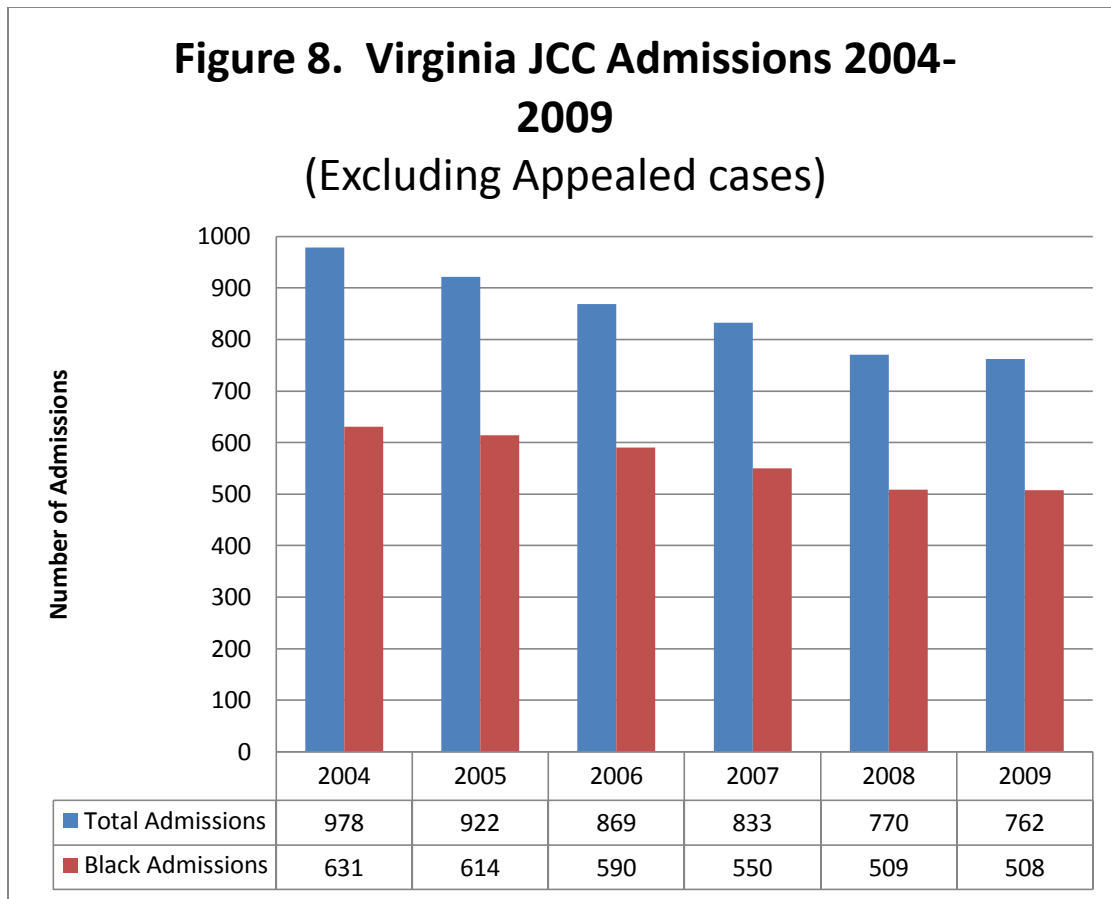
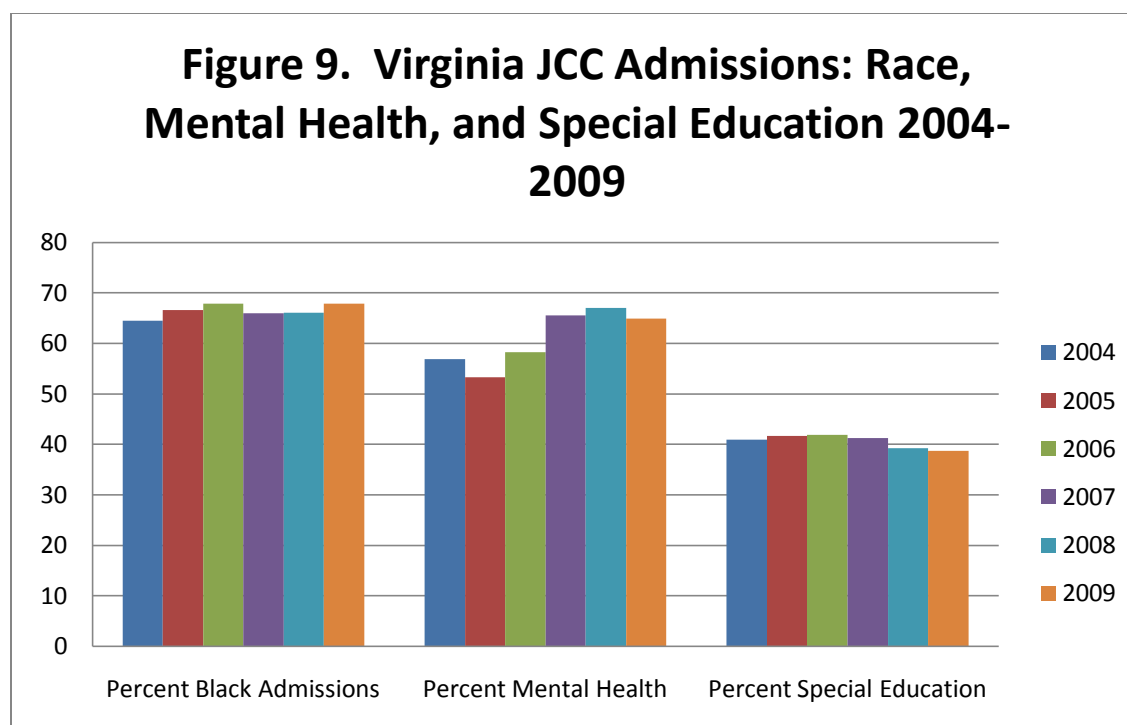


Figure 9 looks at the percentage of black admissions, mental health admissions, and special education admissions between 2004 and 2009. The percentage of admissions with a diagnosed mental health disorder rose from 57% to 65% while the number of black admissions with a mental health diagnosis rose from 51% in 2004 to 63% in 2009. While the percentage of JCC admissions with a special education placement dropped slightly during this same period from 41% in 2004 to 38.7% in 2009, the percentage of black admissions with a special education placement rose during this time from 67% to 69.2%. For the complete data on JCC Admissions 2004-2009 see Appendix E.



Public Defender Survey

One survey was sent to each of the 26 public defender offices. Seventeen surveys were returned but that included four surveys from one of the larger offices. Based on these responses, over 70% reported that more than half of their juvenile caseload was African American. Just over 40% reported that between one quarter and one half of their juvenile clients had a mental health diagnosis. Thirty five percent reported that over one half of their juvenile clients had a special education classification. Twenty three percent found that over 50% of their cases arose out of a school related incident. Some offices were able to provide an exact number in response to the question: “How many juveniles did your office represent last year?” Other offices did not know or provided rough estimates. Altogether the responses from these offices represented approximately 9,000 juveniles (excluding offices that did not know, answered more than one survey or provided a rough estimate).

CONCLUSION AND RECOMMENDATIONS

Virginia, like many states, is facing budget cuts to their juvenile justice system and related agencies. DJJ reported a 5% reduction or \$2.5 million in 2009 that would affect local community alternatives, detention centers, and court services units. In addition other agencies that impact juvenile justice are also facing budget cuts such as the \$12.2 million reduction for local community services boards that provide mental health treatment. The 2009 DJJ Statistical Information report shows the total cost of holding one juvenile for one year to be \$120,167.00. Despite or because of these budget cuts the four cornerstones identified by the Blueprint for Change must be further integrated into Virginia's juvenile justice system. Collaboration, identification, diversion, and evidence based treatment must become the norm and not the ideal.

In reexamining the original recommendation made by the ABA 2002 Assessment several conclusions can be reached:

CONCLUSION ONE: NECESSARY DATA ON MENTAL HEALTH, SPECIAL EDUCATION STATUS, AND SCHOOL RELATED REFERRALS IS NOT BEING TRACKED AT EARLY STAGES OF THE JUVENILE JUSTICE PROCESS.

Contact with a local court services unit and DJJ confirmed that school referral information, special education placements and mental health status is not collected at the intake level. Additionally, race is not reported for juvenile intake complaints but is reported for intake cases. On the other hand, the Virginia Department of Education was able to provide data on school referrals to law enforcement, suspensions, and expulsions broken down by race and disability. The data that is missing is how many of these school referrals to law enforcement continue on as juvenile intake complaints and what is the demographic profile of the complaints that are resolved or diverted before reaching the juvenile court. Additionally, the DMC report

does not address arrest as a point of contact because of concerns with accuracy of juvenile arrest data.

A phone conversation with the Research Manager for DJJ confirmed that while they collect data on the committed youth they do not have this type of data at the intake level. “Once they are committed we evaluate them head to toe” (Phone conversation 11/22/10) “These juveniles undergo an extensive evaluation process that does not occur at any other decision point in our system, therefore we have more information on these juveniles” (Email communication 11/23/10). As Ron Stupak a consultant in the area of organizational management and change pointed out at the 2010 4th National Court Management Symposium “What gets measured gets done.” Without this data the connection between school referrals, mental health, special education status, and juvenile justice cannot be addressed. The fact that this data is not available is indicative of a basic inability to address the problems that were identified in the 2002 ABA Assessment.

RECOMMENDATION ONE: DATA ON JUVENILE COMPLAINTS AND INTAKE CASES BASED ON RACE, MENTAL HEALTH INFORMATION, SPECIAL EDUCATION STATUS, SCHOOL REFERRALS AND INITIAL POINT OF CONTACT MUST BE TRACKED.

Currently the court services units do not collect information on special education status or mental health status until after adjudication and only if the judge order a pre dispositional social history report. This leaves a gaping hole between referral to law enforcement and post adjudication when this vital information could be used to make more informed decisions at the pre adjudication stage in light of the research that shows that any processing the juvenile system can be detrimental. In addition data on the demographics of the 20% of complaints that are resolved or diverted from the system should be analyzed in an effort to shed some light on this part of the process. By tracking and analyzing this data at the referral to law enforcement and

complaint stage, the goals of identification, diversion and treatment can begin much earlier in the process. Data sharing between agencies must occur during these early points of contact in order to prevent inappropriate referrals and processing of juveniles. Testing the committed juveniles head to toe is the most ineffective method of dealing with these issues. The more deeply entrenched the juvenile becomes in the system the more difficult and costly it is to provide necessary treatment.

CONCLUSION TWO: THE VIRGINIA DEPARTMENT OF EDUCATION DATA INDICATES THAT NOT ONLY ARE SCHOOL REFERRALS TO LAW ENFORCEMENT INCREASING BUT THE PERCENTAGE OF MINORITY AND SPECIAL EDUCATION REFERRALS ARE ALSO INCREASING.

Not only should early identification of students with special education or behavior issues become a priority for schools but efforts at keeping these students in school and away from the juvenile justice system should also be implemented. Schools must take back control of their own discipline process and stop handing children over to law enforcement and the courts where they become entrenched in the juvenile justice revolving door. Legislators must be courageous enough to address these problems with evidence based programs rather than slogans and outdated theories of punishment. Children who enter the juvenile justice system because they lack adequate community based mental health treatment or are pushed out of school do not disappear. They return to our communities and public safety is not enhanced by having introduced them to the juvenile and/or adult justice system without providing them with the skills to become productive citizens. Virginia reports a recidivism rate at 12 months of 41.5% for juveniles released from a DJJ facility (Virginia Commission on Youth, 2010, p. 1).

RECOMMENDATION TWO: USE EVIDENCE BASED PROGRAMS IN SCHOOLS TO REDUCE RELIANCE ON PUNITIVE DISCIPLINARY PROCEDURES FOR DISABLED AND NON DISABLED STUDENTS.

The use of positive behavior supports in schools and a collaborative approach between law enforcement and the schools has reduced referrals to law enforcement in several jurisdictions. Studies show that school safety is not enhanced by the use of zero tolerance practices. High suspensions rates are predictive of higher dropout rates and disciplinary referrals at school have been associated with a higher risk of involvement with the juvenile justice system. Monthly detention admissions should be evaluated to see if there is any correlation with the school calendar as the 2001 report found. The goal of collaboration between schools, law enforcement and the juvenile justice system must become a priority. Supporting legislation that allows alternatives to punitive discipline and focuses on evidence based positive behavior supports should also be encouraged.

A recent example of the effect of a zero tolerance policy in a Virginia school was reported in the Washington Post on February 1, 2011. A 14-year-old used an old pen casing to spit some small plastic pellets at other students in the cafeteria and was expelled for possession and use of a weapon and charged with three counts of misdemeanor assault. Because Virginia does not collect information on referral source this would not have been identified during the intake process as a school related incident. The case was appealed from JDR Court to the Circuit Court in addition to a school board hearing (Sieff, 2011, February 1). A case of misbehavior was turned into a major incident involving multiple hearings, court cases, and the serious disruption of a student's education. Programs that focus on reducing school referrals such as Florida's civil citation program and training programs that focus on increasing knowledge of positive behavior supports for both law enforcement and school personnel should be implemented.

CONCLUSION THREE: WHILE MINORITY OVERREPRESENTATION OR DMC CONTINUES TO BE A FOCUS OF THE JUVENILE JUSTICE SYSTEM, EVALUATION AND IMPLEMENTATION STRATEGIES HAVE NOT BEEN ADEQUATELY DEVELOPED.

The data shows that minorities continue to be overrepresented at every stage of the process. While the data on minority overrepresentation is collected at the intake case level it should be examined even earlier in the process. Because special education, mental health, and school referral or discipline data is not collected at the intake level it is difficult to know if there is a connection and/or impact on minorities in the juvenile justice system. Surveys of judges, court services unit directors and other focus groups indicated that disproportionate minority contact was not considered to be a serious problem and professionals in the field tended to be satisfied with the way the system works. This seems to point to a disconnect between attitudes and available data. The Virginia Crime Commission indicated that nearly half of judges (45%) report that DMC is not a problem while over half the CSU Directors (54%) describe it as a moderate to severe problem. Meanwhile the percentage of minorities in detention and correctional facilities continues to increase (Virginia Department of Criminal Justice Services 2009, October).

RECOMMENDATION THREE: MEASURING DMC IS NOT ENOUGH. POLICY MAKERS MUST WORK TO MAKE CHANGES THAT LEAD TO DECREASED DMC.

As the review of Virginia's DMC program indicates, an improvement plan with the goal of a reduction in DMC has yet to be developed. Measuring DMC is just the first step. In addition, judges, educators, law enforcement and other professionals need to be educated about the continued DMC at every stage of the process and be part of the improvement plan to reduce DMC. Legislation such as zero tolerance policies and anti gang laws that may have a disproportionate effect on minority youth must be reexamined. Policy makers must encourage diversion at the school level before a referral to law enforcement occurs. Law enforcement officers, who deal with juveniles as school resource officers or in the community, must be

trained in techniques to deescalate encounters. Program evaluation must focus on outcomes rather than just identification.

CONCLUSION FOUR: MINORITIES AND JUVENILES WITH SPECIAL EDUCATION AND/OR MENTAL HEALTH ISSUES CONTINUE TO BE COMMITTED AT MUCH HIGHER PERCENTAGES THAN THEIR PEERS.

Preventing unnecessary contact with law enforcement should be the goal so as to keep children out of the revolving door of intake, detention, judicial processing, disposition, and reentry. The connection between school, lack of community mental health services, and the juvenile justice system must be addressed. As Thomas Grisso points out:

For most delinquent youth with mental disorders, the most successful methods involve community-based interventions that assist them in the context of their everyday social interactions while they live in the community (p. 153).

Keeping children in the community and in their family system through evidence based programs has been shown to be more effective than large congruent care.

RECOMMENDATION FOUR: CONTINUE TO FOCUS ON EVIDENCE BASED COMMUNITY PROGRAMS INSTEAD OF CONGRUENT CARE.

Community and family based programs such as Functional Family Therapy (FFT) and Multisystemic Therapy (MST) have been evaluated and found to be more effective than congruent care for juveniles. Studies have shown that any processing in the juvenile justice system can have a negative impact. Prevention through early identification and evidence based treatment of high risk youth should be promoted whenever possible. Diversion and treatment at all levels of the school and juvenile justice systems must become the norm.

The Virginia Juvenile Justice system and the courts must address the continuing issue of special education students and youth with unmet mental health needs being inappropriately referred to the juvenile justice system. The impact of these referrals on minorities must also be

addressed. Data analysis at the earliest point of contact must look at race, gender, mental health, special education status, and any history of trauma. Data sharing between agencies must occur at these early stages in order to prevent inappropriate referrals and to provide treatment or family/community services as an alternative to expensive and less effective processing through the juvenile justice system.

Appendix A: Data Collection Form for Individual Court Services Unit and JCC

2004 2005 2006 2007 2008 2009

1. How many juvenile complaints did your office receive in:

1. A. How many of these juveniles were African American?

1. B. How many of these juveniles had a mental health diagnosis?

1. C. How many of the juveniles with a mental health diagnosis were African American?

2. How many of the juveniles referred to your office had a special education classification?

2. A. How many of the special education juveniles were African American?

3. How many complaints arose out of a school related incident (i.e. occurred on a school bus, on school property, or at a school-sponsored activity)?

3. A. How many of the juveniles referred from a school related incident were African American?

3. B. How many of the juveniles referred from a school related incident had a special education classification?

3. C. How many of the juveniles referred from a school related incident were African American and had a special education classification?

3.D. How many of the juveniles referred from a school related incident were African American, had a mental health diagnosis and had a special education classification?

Comments:

Appendix B: Data Collection Form Virginia School Discipline

	2004	2005	2006	2007	2008	2009
1. How many juveniles were referred to law enforcement for a school related offense (i.e. occurred on a school bus, on school property, or at a school-sponsored activity)?						
1. A. How many of these juveniles were African American?						
1. B. How many of these juveniles were students with a disability?						
1. C. How many of these juveniles were both African American and students with a disability?						
2. How may suspensions occurred in:						
2. A. How many of the suspensions involved African American students?						
2. B. How many of the suspensions involved students with a disability?						
2. C. How many of the suspensions involved students who were both African American and students with a disability?						
3. How many expulsions occurred in:						
3. A. How many of the expulsions involved African American students?						
3. B. How many of the expulsions involved students with a disability?						
3. C. How many of the expulsions involved students who were both African American and students with a disability?						
Comments:						

Appendix C: Public Defender Survey

Survey – Juvenile Representation

How many juveniles did your office represent during the past year? _____

How many of these juveniles were African American?

0-24%____ 25-49%____ 50-74%____ 75-100%____ DK____

How many of these juveniles had a mental health diagnosis?

0-24%____ 25-49%____ 50-74%____ 75-100%____ DK____

How many of these juveniles had a special education classification?

0-24%____ 25-49%____ 50-74%____ 75-100%____ DK____

How many cases arose out of a school related incident?

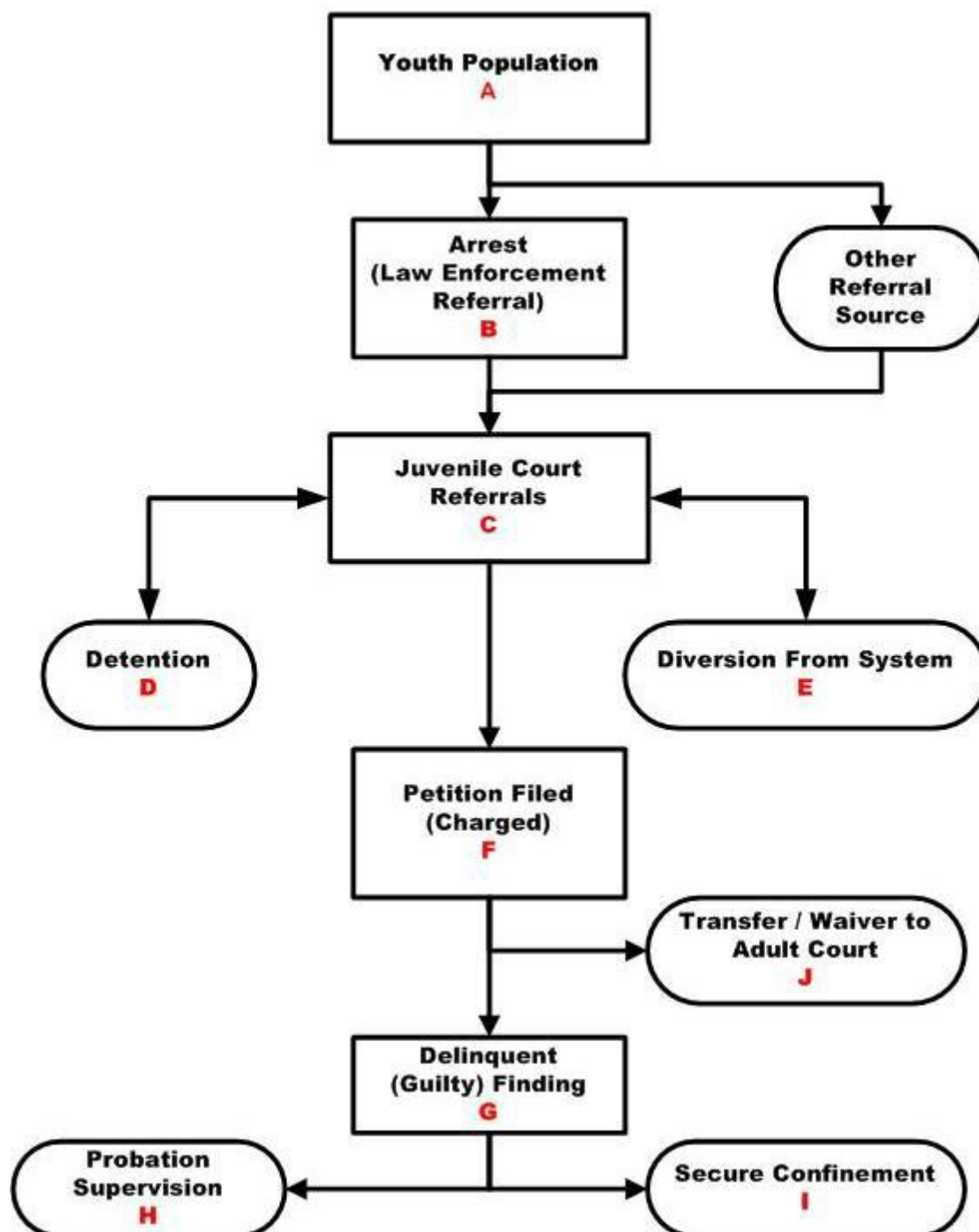
0-24%____ 25-49%____ 50-74%____ 75-100%____ DK____

Please include your city or county. _____

Appendix D: Virginia School Discipline Data (prepared by Virginia Department of Education)

'STUDENT OFFENSES REPORTED TO LAW ENFORCEMENT'	BEG_ SCH_ YR	ALL_ STUDENT S	BLACK_ STUDENTS	DISABLED_ STUDENTS	BLACK_ DISABLED_ STUDENTS
Student offenses reported to law enforcement	2004	9	9	4	4
Student offenses reported to law enforcement	2005	23,407	10,228	6,115	2,716
Student offenses reported to law enforcement	2006	22,138	9,084	6,029	2,599
Student offenses reported to law enforcement	2007	32,058	15,550	9,369	4,668
Student offenses reported to law enforcement	2008	32,319	14,896	9,462	4,655
Student offenses reported to law enforcement	2009	30,352	13,868	9,242	4,539
Student received expulsion	2004	1,014	480	230	116
Student received expulsion	2005	1,025	514	220	111
Student received expulsion	2006	995	483	210	106
Student received expulsion	2007	871	421	189	107
Student received expulsion	2008	885	373	188	97
Student received expulsion	2009	706	298	158	82
Student received long term suspension	2004	4,661	2,566	1,073	532
Student received long term suspension	2005	5,060	2,766	1,217	623
Student received long term suspension	2006	4,866	2,748	1,015	540
Student received long term suspension	2007	3,938	2,135	793	451
Student received long term suspension	2008	3,901	2,086	772	442
Student received long term suspension	2009	3,718	2,102	845	522
Student received short term suspension	2004	200,937	115,635	55,774	30,231
Student received short term suspension	2005	199,230	114,835	54,625	29,933
Student received short term suspension	2006	201,511	117,220	49,036	27,689
Student received short term suspension	2007	194,383	112,120	48,939	27,939
Student received short term suspension	2008	181,555	103,780	47,984	26,676
Student received short term suspension	2009	160,705	92,519	43,853	25,040

Appendix F: Relative Rate Index (RRI) Data Elements (taken from DMC Technical Assistance Manual, 4th Edition • Chapter 1: Identification and Monitoring)



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