

JUVENILE JUSTICE REFORM IN VIRGINIA

JANUARY 2016

Faced with an unwieldy correctional system and over-extended budgets, legislators nationwide are taking a renewed look at criminal justice reform. By considering the value of community, faith, and family centered options, conservatives in the Commonwealth of Virginia have a unique opportunity to take the lead in becoming smart on crime. In particular, we have a distinctive opportunity to intervene in the case of America's impressionable youths and prevent damage that comes from choosing the wrong methods of intervention.



INTRODUCTION

Faced with an unwieldy correctional system and over-extended budgets, legislators nationwide are taking a renewed look at criminal justice reform. By considering the value of community, faith, and family centered options, conservatives in the Commonwealth of Virginia have a unique opportunity to take the lead in becoming smart on crime. In particular, we have a distinctive opportunity to intervene in the case of America’s impressionable youths and prevent damage that comes from choosing the wrong methods of intervention.

While youth incarceration serves the temporary purpose of incapacitation, many states have been reevaluating the long-term outcomes in terms of safety and fiscal cost. Data shows that extended incarceration in large juvenile prisons far from youth’s families, churches, and communities as a primary crime fighting solution is not deterring crime, not reducing recidivism, and not keeping communities safe¹. According to the Virginia Department of Juvenile Justice, “controlling for offense and risk and protective factors... the probability of re-arrest increased by 32.7% for every additional year” that a youth remains incarcerated in the Commonwealth.²



In other words, youth sent to juvenile correctional centers are not inherently the “most dangerous,” but they become more likely to reoffend the longer they stay there. Punishment should be proportionate to the crime, but must also address the behavior which precipitated the harm. Although costly to the taxpayer, this traditional method of juvenile incarceration in large juvenile prisons far from home does not yield a return of long term safe communities.

¹ SHAENA M. FAZAL, SAFELY HOME, YOUTH ADVOCATE PROGRAMS POLICY & ADVOCACY CENTER, 7 (JUNE 2014), SEE ALSO RICHARD MENDEL, NO PLACE FOR KIDS: THE CASE FOR REDUCING JUVENILE INCARCERATION, ANNIE E. CASEY FOUNDATION, 28, PATRICK KANARY, OHIO’S SUCCESSFUL YOUTH INCARCERATION ALTERNATIVE PROGRAM, <http://info.mstservices.com/blog/ohiosuccessful-youth-incarceration-alternative-program> (JAN 26, 2015). MARK LIPSEY, JAMES HOWELL, ET. AL, IMPROVING EFFECTIVENESS OF JUVENILE JUSTICE PROGRAMS: A NEW PERSPECTIVE ON EVIDENCE BASED PRACTICES, CENTER FOR JUVENILE JUSTICE REFORM 39 (DEC. 2010).

² DEPT OF JUVENILE JUSTICE, GUIDELINES FOR DETERMINING THE LENGTH OF STAY (LOS) OF JUVENILES INDETERMINATELY COMMITTED TO THE DEPARTMENT OF JUVENILE JUSTICE 7 (2015) [hereinafter LOS GUIDELINES], <http://www.djj.virginia.gov/pdf/Admin/2015%20Proposed%20Guidelines%20for%20Determining%20Lenght%20of%20Stay.pdf>.

OPPORTUNITIES FOR MORE EFFECTIVE ACCOUNTABILITY

In recognition of these factors, Virginia’s Department of Juvenile Justice has taken initiative to change their treatment and confinement of youths. After introducing some limited preventative and community based corrections measures, the Commonwealth has found benefits to those test populations affected.³ DJJ has successfully decreased commitments to Virginia’s juvenile correctional centers in the past two decades through a variety of reforms including increasing the minimum criteria required for DJJ commitment; this decrease has resulted in a lower incarcerated youth population and closures of five facilities and two halfway houses since FY2005.⁴

However, two juvenile correctional centers still exist in Virginia, housing a dwindling number of youths committed to state juvenile prison. These correctional centers are distinct from local juvenile detention centers, where short sentences are served and both pre- and post-adjudication detainees are kept, with a maximum stay of 180 days.⁵ Though Virginia has made promising cuts to the number of youths committed to juvenile correctional centers, a reduced population of youth is still held in the Commonwealth’s two youth prison facilities. At this pivotal moment in the Commonwealth of Virginia and in light of long-term public safety benefits, conservative values and fiscal concerns, we seek to address two primary questions: 1) are there remaining youth who can be held accountable more effectively in their homes or communities; and, 2) how should we address the remaining youth who pose the greatest risk to the public?

In order to fully address youth incarceration in Virginia, the Commonwealth must address its school referral problem. Though only a small number of youths are incarcerated directly on the basis of a school referral, this group represents a population of youths who, if handled with the correct intervention, can avoid deep entrenchment in the juvenile correctional system later.

³ VA DEPT OF JUVENILE JUSTICE, THE DJJ FORUM (2015) [HERINAFTER FORUM], http://www.djj.virginia.gov/pdf/Admin/Newsletter~_08062015.pdf.

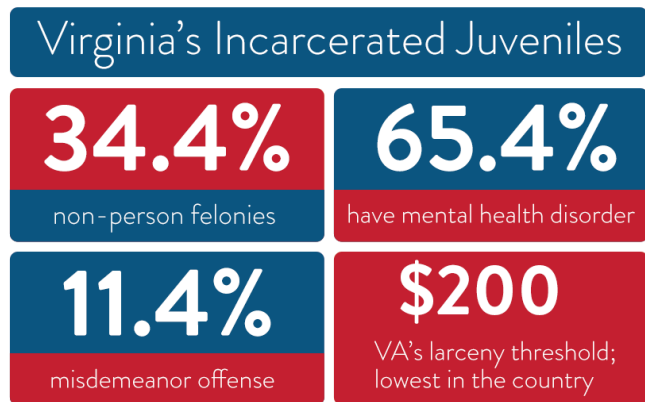
⁴ VA. DEPT OF JUVENILE JUSTICE, DEPARTMENT OF JUVENILE JUSTICE DATA RESOURCE GUIDE 9, 46 (2014) [hereinafter DATA GUIDE], http://www.djj.virginia.gov/pdf/About-DJJ/DRG/FY2014_DRG.pdf.

⁵ VA. DEPT OF JUVENILE JUSTICE, DATA GUIDE 27 (2014).

YOUTH REFERRED BY SCHOOLS:

The Commonwealth’s public schools rank number one in the nation for referring students to courts and police.⁶ Some serious incidents in schools certainly merit law enforcement involvement, but zealous zero-tolerance policies have sometimes resulted in criminalizing playground skirmishes and handcuffing 5th graders for disorderly conduct violations—issues that were once simply handled by parents and faculty in the principal’s office.⁷ While a small portion of youths incarcerated in Virginia are being held on the basis of school referrals to courts and police, the Commonwealth’s referral rate, which doubles the national average, still merits review. This initial contact with the juvenile justice system can result in stigma and exposure to other youth with more serious records, which can fuel progressively increased involvement with the system.

As Virginia approaches the problem of preventing a first brush with the criminal justice system, the Commonwealth also must continue to deal with the current population of its juvenile correctional centers. Though Virginia’s Department of Juvenile Justice has reduced the youth prison population, there are still youths incarcerated who may be safely and proportionately punished within their own communities. In fact, over one third (34.4%) of admissions in 2014 were for non-person felonies, and 11.4% of youths committed to juvenile correctional centers are there primarily on a misdemeanor offense.⁸ Perhaps the best picture of this is the segment of the juvenile correctional center population that is committed on the primary offense of larceny.



⁶ SUSAN FERRISS, VIRGINIA TOPS NATION IN SENDING STUDENTS TO COPS, COURTS: WHERE DOES YOUR STATE RANK? [hereinafter VIRGINIA TOPS NATION], <http://www.publicintegrity.org/2015/04/10/17089/virginia-tops-nation-sending-students-cops-courts-where-does-your-state-rank>.

⁷ Editorial, Felonizing Children, RICH. JOURNAL, Sept. 5, 2015, http://www.richmond.com/opinion/our-opinion/article_6efb4f5a-534c-59f3-989b-c35a97bbc28d.html.

⁸ VA. DEP'T OF JUVENILE JUSTICE, DATA GUIDE 38 (2014).

INCARCERATED NONVIOLENT YOUTH:

The Commonwealth’s larceny threshold, if reformed, presents an opportunity to shrink the existing juvenile prison population and benefit public safety and taxpayers. In 2014, more youths were incarcerated in Virginia on a primary conviction of larceny than any other offense.⁹ This is because Virginia has the lowest threshold in the nation for felony larceny, \$200, unchanged since 1980.¹⁰ Much has changed since this threshold was set: the price of gas has risen nearly two dollars per gallon, and advanced technology has placed iPhones worth an average of \$600 in the hands of many youths. Still, theft of an item worth more than \$200 is a felony that carries potentially significant time in a juvenile correctional center. This population is representative of the youths held in juvenile correctional centers on primary charges that do not present a demonstrated risk to their communities. When such non-violent youths are incarcerated in the current system, they are removed from their family and other community support networks and the likelihood that they will recidivate soars.¹¹

Virginia has the lowest threshold in the nation for felony larceny, \$200, unchanged since 1980.

⁹ VA. DEP’T OF JUVENILE JUSTICE, DATA GUIDE 38 (2014).

¹⁰ VA. CODE ANN. § 18.2-95 (1950), <http://law.lis.virginia.gov/vacode/18.2-95/>.

¹¹ COMMITTEE ON ASSESSING JUVENILE JUSTICE REFORM ET AL., REFORMING JUVENILE JUSTICE: (Nat’l Academies Press 2013).

YOUTH WITH MENTAL HEALTH DISORDERS:

Virginia also must note the negative impact of the current model of youth incarceration on the success of community reentry programs. For example, 65.4% of youths admitted to the Reception and Diagnostic Center for DJJ in 2014 showed significant symptoms of at least one mental health disorder, and 76.8% had a mental health treatment need.¹² Some youths are symptomatic, and others are diagnosed, but this large subset of the juvenile corrections population does not include those diagnosed with illnesses like ADHD, OCD, or even Substance Abuse Disorder.¹³ While some mental health treatment is available during incarceration, these youths are unlikely to experience long-term behavioral change until their serious mental condition is treated.

Even when a structure for mental health treatment is built up in the youth prison, the mere distance of the existing correctional centers from the communities to which most youth will return prevents the creation of meaningful relationships with mental health treatment providers for youths in need of these services. By separating youths with mental health disorders from the comprehensive services they need and the communities where they will have to learn to function upon release, Virginia is failing to seize an opportunity to equip those youths with the tools needed to refrain from future criminal behavior.

... Virginia is failing to seize an opportunity to equip those youths with the tools needed to refrain from future criminal behavior.

¹² VA. DEPT OF JUVENILE JUSTICE, DATA GUIDE 39 (2014).

¹³ ID.

CLOSER TO HOME: THE PUBLIC SAFETY SOLUTION

Youths should be provided tools to assist them during incarceration and upon release back into society. By simply incarcerating youths in state run correctional centers rather than addressing the behavior that causes criminal acts or fostering respect for victims, communities may actually see an increase in the likelihood of future criminal activity.

In 2014, the Commonwealth of Virginia's two juvenile correctional centers held approximately 600 youth.¹⁴ By September 2015, a daily population report shows less than 400 youth are left in Beaumont and the Bon Air correctional centers. This represents the lowest DJJ population in Virginia in the past decade. Given this smaller and more manageable population, the Commonwealth is positioned to choose the best path forward: 1) maintain the status quo by keeping the youths far from family and community support systems in Virginia's two remaining large and outdated facilities, 2) build a few large new facilities that may include extra bed space to accommodate future population growth, or 3) establish several secure, small, and regionally dispersed facilities that allow youth to remain closer to home and reinvest correctional savings into community based services on the local level as populations decline. We propose the latter as the best path forward for the Commonwealth.

By simply incarcerating youths in state run correctional centers rather than addressing the behavior that causes criminal acts or fostering respect for victims, **communities may actually see an increase in the likelihood of future criminal activity.**

¹⁴ VA. DEPT OF JUVENILE JUSTICE, DATA GUIDE 36, 46 (2014).

The current and consistently declining DJJ population is manageable on a regional scale and opens the door to a wide variety of safe, cost effective models. These include secure, regionally dispersed facilities, used with great success in Missouri, where high-risk youths are held in small secure residential units with workers trained in both security and rehabilitation.¹⁵ Small programs like those used in Missouri place high value on secure facilities and rehabilitative techniques while keeping costs low. When a small regional facility is used to secure high-risk youths, the result is a not merely a safer community while youths are held, but also a safer community upon their release. By decentralizing, opting for smaller regional facilities versus large institutions, and prioritizing evidence-based treatment programs, Missouri has demonstrated markedly lower short- and long-term recidivism rates than in comparable states.¹⁶

While Virginia has begun to implement some of the therapeutic practices associated with the Missouri model in wings of its remaining juvenile correctional centers, a truly effective replica requires comprehensively implementing the approach in small community-based facilities with low average bed capacity. This approach will not only yield public safety dividends, but will also benefit the Virginia taxpayers and families. By contrast, even considering the positive changes made in recent years, the current system of youth incarceration is not successfully using taxpayer money. For example, while several states are experiencing lower recidivism rates, Virginia's rearrest rates three years after release from juvenile correctional centers is at approximately 80%.¹⁷

... while several states are experiencing lower recidivism rates, **Virginia's rearrest rates** three years after release from juvenile correctional centers is at **approximately 80%**.

¹⁵ THE ANNIE E. CASEY FOUND., THE MISSOURI MODEL: REINVENTING THE PRACTICE OF REHABILITATING YOUTHFUL OFFENDERS 5 (2010) [hereinafter MISSOURI MODEL],

<http://www.aecf.org/m/resourcedoc/aecf-MissouriModelFullreport-2010.pdf>.

¹⁶ THE ANNIE E. CASEY FOUND., THE MISSOURI MODEL: REINVENTING THE PRACTICE OF REHABILITATING YOUTHFUL OFFENDERS (2010) [hereinafter MISSOURI MODEL],

<http://www.aecf.org/m/resourcedoc/aecf-MissouriModelFullreport-2010.pdf>.

¹⁷ VA. DEPT OF JUVENILE JUSTICE, DATA GUIDE 54 (2014).

RUNAWAY GOVERNMENT SPENDING:

Not only are large youth prisons ineffective at keeping communities safe, but the Commonwealth is also spending a tremendous amount of taxpayer money to run them. 36.6% of the Department of Juvenile Justice (DJJ) budget in FY 2014 was allocated to youth incarceration at state facilities alone.¹⁸ That amounts to a cost of roughly \$28-\$35 million each to operate the two existing juvenile correctional centers in Virginia per year, or approximately \$150,000 per youth per year.¹⁹ This means that while the average American is spending \$240 per day incarcerating one youth, Virginians are paying nearly double that amount.²⁰ Criminal justice and community safety are valued and necessary components of government. However, the average taxpayer in the Commonwealth is paying significantly more than the national average per youth incarcerated, without a proportionate benefit in public safety as a result.

while the average American is spending \$240 per day incarcerating one youth, **Virginians are paying nearly double** that amount.

¹⁸ VA. DEPT OF JUVENILE JUSTICE, DATA GUIDE 65 (2014).

¹⁹ ID AT 66.

²⁰ THE JUSTICE POLICY INST., THE COSTS OF CONFINEMENT: WHY GOOD JUVENILE JUSTICE POLICIES 1 (2009) [hereinafter COSTS OF CONFINEMENT], http://www.justice-policy.org/images/upload/09_05_REP_CostsOfConfinement_JJ_PS.pdf; VA. DEPT OF JUVENILE JUSTICE, DATA GUIDE 66 (2014). Note: this data does not reflect the two recent facility closures.

DISINCENTIVES FUEL STATE OVERREACH:

In many states, including Virginia, localities do not pay the cost of confinement for youths who are committed to the state, i.e. to juvenile correctional centers.²¹ However, those same localities are responsible to pay a majority of the cost of the local detention or community-based treatment of youth within their localities.²² This cost sharing model actually provides an incentive for localities to turn their youth who have been convicted of crime over to the state for incarceration, rather than to seek lasting solutions on a local level, where the youths have access to effective reentry tools, family support systems, and job responsibilities that may continue after release. Though many localities throughout Virginia are unable to shoulder the financial burden of administering justice without some state assistance, there are cost-sharing options that respect the authority and value of the local community, and give youths the chance to obtain long-term future success.

Ohio, for example, has piloted a groundbreaking approach to incentivizing local innovation for juvenile corrections. In 1993, the Ohio Legislature passed a law authorizing the Reasoned and Equitable Community and Local Alternatives to the Incarceration of Minors (RECLAIM) program.²³ This program prioritized local solutions to youth delinquency by diverting a portion of state correctional budgets to counties. The initial pilot was so successful, with a 43 percent reduction in commitment, that the program was rolled out to the remaining 79 of Ohio's counties.²⁴

²¹THE JUSTICE POLICY INST., COSTS OF CONFINEMENT 5 (2009).

²²VA. DEPT OF JUVENILE JUSTICE, DATA GUIDE 26 (2014); THE JUSTICE POLICY INST., COSTS OF CONFINEMENT 5 (2009).

²³ EDWARD LATESSA, BRIAN LOVINS, & JENNIFER LUX. "EVALUATION OF OHIO'S RECLAIM PROGRAMS." (2014), <http://www.dys.ohio.gov/DNN/LinkClick.aspx?fileticket=JtVZ-6JcbUc4%3D&tabid=131&mid=764>.

²⁴ ID.

VALUE OF COMMUNITY-BASED OPTIONS:

While spending 36% of its yearly operating budget per year on systems of youth incarceration, in 2014 DJJ spent a mere 1.3% on community-based services.²⁵ Interestingly, community-based services are shown to produce stronger fiscal reward than incarceration alone.²⁶ In its study “Costs of Confinement”, the Justice Policy Institute demonstrates the value of community-based options judged by dollar-per-dollar investment and return. Its research shows that community-based small group services not only reduce recidivism by 7% to 22%, but produce up to \$13 in benefits per dollar spent.²⁷ By restructuring Virginia’s juvenile justice system to prioritize individual victims’ needs and reflect values of restoration, treatment in the local community, and fiscal conservatism, taxpayers may achieve greater community safety, gain from the contributions of successfully reintegrated youths, and save money doing so.

Texas, rapidly becoming a byword in criminal justice reform, began making serious changes in its approach to incarcerated youths in the late 2000s.²⁸ Through the use of increased community alternatives, i.e. strengthened probation programs, Texas has created diversions from long-term incarceration and lowered the likelihood of recidivism among youths. The state utilized a number of strategies to ensure the success of its endeavor, including evidence-based alternatives, increased scrutiny and reform of school referrals to courts and police, and reduction of incarceration for lower level crimes. Since implementing these reforms, Texas has been able to close several juvenile facilities, saving millions of taxpayer dollars and avoiding future costs that were projected in the billions. Although there are ongoing reforms, great strides in these areas were accomplished years ago, and today the state is experiencing its lowest crime rate since 1968.²⁹

The issue of youth incarceration is not simply a matter of cost/benefit analysis, however. In order to approach reform from a values-based perspective, it is necessary to remain mindful of the dignity and value of every human life. This means holding youths accountable and respecting victims of crime, but also recognizing potential for transformation and understanding the importance of the family unit.

²⁵ ID AT 65. Note: this data does not include percentage of budget provided to VJCCCA, or local CSUs.

²⁶ THE JUSTICE POLICY INST., COSTS OF CONFINEMENT 20 (2009).

²⁷ ID.

²⁸ RIGHT ON CRIME, TEXAS (2013). <http://www.rightoncrime.com/category/state-initiatives/texas/>

²⁹ JERRY MADDEN, “LAWMAKERS GIVE JUSTICE REFORMS IN TEXAS A BOOST” THE HOUSTON CHRONICLE (2015). <http://www.chron.com/opinion/outlook/article/Lawmakers-give-justice-reforms-in-Texas-a-boost-6361712.php>

**POLARIZING COMMUNITIES AND SPLITTING FAMILIES:
PARENTAL RIGHTS ON HOLD:**

The parent-child relationship is God-given and carries inherent responsibility and authority. A properly functioning correctional system reflects and allows for this, promoting the family unit where possible while administering necessary justice. When a youth is incarcerated in Virginia, however, their relationship with their parents is not only strained, it is sometimes prohibited altogether. When a youth is placed in a state-run juvenile correctional center, he or she may be placed in a facility up to five hours away from family members.³⁰ This distance alone easily renders many families unable to see one another. What's more, juvenile correctional centers may withhold parental communication for disciplinary reasons.³¹ Not only does this prohibit contact by the child to the parents, it prioritizes the relationship of the state to the child above the parental relationship. In contrast, community-based services allow for a youth to maintain relationships with family, and many times involve cooperative parents in the method of accountability or supervision applied.

Virginia has tested the value of limiting juvenile incarceration, but has yet to fully embrace a robust community based model. Virginia has the opportunity to push this transformation through to completion by establishing a workable infrastructure of community based options that respect the victim, reform the youth, and protect the family unit.

... community-based services allow for a youth to maintain relationships with family, and many times involve cooperative parents in the method of accountability or supervision applied.

³⁰ Distance from Wise County, VA, the southwestern-most county in Virginia to commit juveniles to a juvenile correctional facility, to Beaumont Juvenile Correctional Center.

³¹ COMMONWEALTH OF VA. DEP'T OF JUVENILE JUSTICE, RESIDENT HANDBOOK INCLUDING REACH PROGRAM (2013) [hereinafter HANDBOOK], http://www.djj.virginia.gov/pdf/Residential/Resident_Handbook.pdf.

RECOMMENDATIONS

Criminal acts must carry proportionate penalties. However, it is imperative that punishment administered by the state reflect the intrinsic dignity and value of both the youth who is responsible for the crime and the victim, and be effective in reducing crime. While costly to the taxpayer, the current model of juvenile incarceration is neither reforming those within the correctional system nor paying dividends of safety to the community. It is time to continue to build a truly community-based system in the Commonwealth of Virginia.

The following recommendations for reform are tailored to Virginia law as it relates to juvenile justice.

1. Task the Department of Juvenile Justice with preparing a plan for investing in community-based alternatives within Virginia localities, beginning with a survey of what space in local detention centers and other community infrastructure and capacity already exists. Based on this survey, align budget to prioritize infrastructure on the community level for probation and secure group home options that offer more local supervision of youth, that prioritize victim restitution, family interaction and personal responsibility, and that offer job training and community services options. Incentivize community-based supervision and treatment options as a diversion from incarceration beginning in the localities that commit the highest number of youths to state incarceration by offering grant money in exchange for decreasing state youth commitments by a workable percentage.
2. Further decrease the number of youths committed to juvenile correctional centers for non-violent theft by reforming the outmoded larceny threshold to a minimum of \$500 to reflect inflation and proportionate accountability.
3. Increase victim participation in the juvenile justice process by involving the harmed party in determining proper restitution amount and structure.
4. Consider the expansion and improvement of protocols to identify serious mental illness in youth, and place a priority on addressing those needs through outpatient treatment plans combined with juvenile probation as an alternative to incarceration.
5. Address the high school-to-law-enforcement referral rate by increasing restorative justice program access in schools and creating an exception to the disorderly conduct code section for behavior of youths within the school environment.



PRISON FELLOWSHIP

Prison Fellowship® was founded in 1976 by Charles Colson, a former aide to President Nixon who served a seven-month sentence for a Watergate-related crime. Today, as the nation's largest outreach to prisoners, former prisoners, and their families, Prison Fellowship is a leading and credible advocate for criminal justice reform. We mobilize the Church to change the law and culture to reflect restorative values—so that communities are safer, victims are respected, and people responsible for crime are transformed.

RIGHT ON CRIME

Right On Crime is the one-stop source for conservative ideas on criminal justice. It is a project of the Texas Public Policy Foundation in cooperation with the American Conservative Union Foundation and Prison Fellowship.

THOMAS JEFFERSON INSTITUTE FOR PUBLIC POLICY

The Thomas Jefferson Institute for Public Policy is a non-partisan research and education organization devoted to improving the lives of the people in Virginia. The Institute was organized in 1996, and was the only state and local government-focused public policy foundation in Virginia based on a philosophy of limited government, free enterprise and individual responsibility.