JUVENILE JUSTICE IN VIRGINIA: EVALUATING SYSTEM CONTACT, RACIAL DISPARITIES, AND THE RIGHT TO COUNSEL IN THE VIRGINIA JUVENILE JUSTICE SYSTEM

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DISCLAIMER

The author conducted this study as part of the program of professional education at the Frank Batten School of Leadership and Public Policy, University of Virginia. This paper is submitted in partial fulfillment of the course requirements for the Master of Public Policy degree. The judgments and conclusions are solely those of the author, and are not necessarily endorsed by the Batten School, by the University of Virginia, or by any other agency, including the National Juvenile Defender Center.

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EXECUTIVE SUMMARY

In Virginia, juvenile crime has decreased significantly since its peak around 2000. This has been accompanied by a significant decrease in delinquency cases brought to the court, juveniles subjected to detainment, and juveniles subjected to direct care (incarceration). Although alternatives to direct care have become more commonplace, the Virginia Department of Juvenile Justice (DJJ) projects the number of direct care admissions to flatten out for the next few years, bringing an end to two decades of improvements.

Furthermore, racial disparities permeate the system and have only worsened over time. In 2017, the odds of incarceration were 8.2 times greater for black children than for white children, nearly twice the disparity seen in 2001 (4.7). Disparities are more pronounced the further children move along the process, increasing from 2.7 at intake to 4.5 at detention and 8.2 at incarceration. It is unlikely that these disparities result from different propensities to commit crime between white and black youth.

System contact at each level is associated with negative outcomes that intensify the further one enters the system. Appearing before court or being incarcerated as a juvenile causes dropout rates to increase by 11 and 26 percentage points, respectively. Detainment as a juvenile is associated with low graduation rates, poor mental health, and low economic performance. The evidence shows that the least restrictive option possible should always be used when dealing with juveniles, encouraging wider use of diversion at intake, non-residential alternatives rather than secure detainment, and alternatives to direct care.

Virginia has already made strides to increase the availability of detention and direct care alternatives for court decision-making. However, little effort has been made to increase the role of attorneys as advocates for these less-restrictive options. In partnership with the National Juvenile Defender Center, this document analyzes three policy options to increase the usage of public defenders to reduce the number of system-involved youth at each stage and ensure the juvenile justice process is attendant to their needs.

Option 1: Guarantee the right to counsel at court intake
Option 2: Guarantee access to public defense regardless of income
Option 3: Require juveniles to meet with an attorney before waiving their right to counsel
Option 4: Let present trends continue

I recommend that Virginia eliminate the income eligibility requirement for access to public defense services. Option 2 is likely the only option that would increase the number of children represented when it matters. It would also have the greatest effect on racial disparities by making public defense universally available to all defendants. These options are not mutually exclusive, so it is very much possible that options 1 and 3 could be implemented in the present or the future. However, without an analysis that goes much further in depth, it is impossible to say whether option 1 will be a cost-effective policy for Virginia or whether option 3 will result in more represented children.

ACRONYMS

CPP - Community Placement Program
CSU - Court Service Unit
DAI - Detention Assessment Instrument
DJJ - Virginia Department of Juvenile Justice
DRG - Data Resource Guide
FY - Fiscal Year
J&DR - Juvenile and Domestic Relations
JCC - Juvenile Correctional
JDC - Juvenile Detention Center
LOS - Length of Stay (used for probation, detention, direct care, and parole)
Post-D - Post-Dispositional
Pre-D - Pre-Dispositional
VJCCCA - Virginia Juvenile Community Crime Control Act

* Explanation of juvenile justice process and terminology found in Appendix B

PROBLEM STATEMENT

Too many youth in Virginia come into contact with the juvenile justice system.

There were 41,488 intake cases in FY 2016 (DJJ, 2016) for the 1,058,117 total youth of eligible age (8-17) in Virginia (Ruggles, Genadek, Goeken, Grover, & Sobek, 2017) making the intake rate 3.9 children per 100. Contact with the juvenile justice system is associated with a number of deleterious effects. Initial court contact, pre- and post-trial detention, and incarceration significantly reduce educational attainment, while detention and incarceration additionally reduce gainful employment, increase mental health issues, and increase criminal behavior later in life (Aizer & Doyle, 2015; Hjalmarsson, 2008; Sweeten, 2006; Teplin, 2017).

African-American youth in Virginia are disproportionately impacted.

While Virginia has reduced the overall number of children in contact with the system since the peak in 2000, there remain significant racial disparities. In 2016, black youth made up 22% of the total eligible youth population (ages 8-17) but 71% of incarcerations (DJJ, 2016; Ruggles et al., 2017). For black youth, the odds of intake were 2.7 times greater, the odds of detainment were 4.5 times greater, and the odds of incarceration were 8.2 times greater than white youth.[1] Additionally, African-American youth tend to fare much worse after system contact than those of other races (Rodriguez, 2010; Teplin, 2017), increasing the negative societal impact.

[1] Calculations shown in Appendix F

BACKGROUND

Virginia Juvenile Justice Trends

The number of system-involved children has declined since the early 2000s.
In Virginia, the Department of Juvenile Justice originally opened in 1990 as the Department of Youth and Family Services. Over the course of the decade, the incarcerated youth population steadily increased. In 2000, this peaked with an average daily population of 1,322. The last increase in correctional capacity was the 1999 opening of Culpeper Juvenile Correctional Center (JCC) (DJJ, 2017). Since this peak, the number of juveniles moving through the system has greatly decreased. From 2001 to 2017, intakes decreased 44%, detainments decreased 63%, direct care admissions (incarcerations) decreased 73%, and new probation cases decreased 69%. Graphs showing this decrease for six stages of the system are included in Appendix A.

The recent decline in the number of system-involved children is due to (1) reductions in juvenile crime and (2) purposeful policy change.
Generally, there has been less juvenile crime year after year – not only in Virginia, but nationally. Figure 1 shows that complaints against juveniles (which includes arrests as well as reports to police) remained steady until about 2008, when they began to steadily decline. The complaint rate is not directly affected by DJJ policy[2], demonstrating that there has been a decrease in juvenile crime generally, which would result in less system contact in the first place and further down the line. This trend is also seen nationally, with juvenile crime generally decreasing since 1995 (see Figure 2; Hyland, 2018).

Figure 1: Juvenile Complaints since 1998

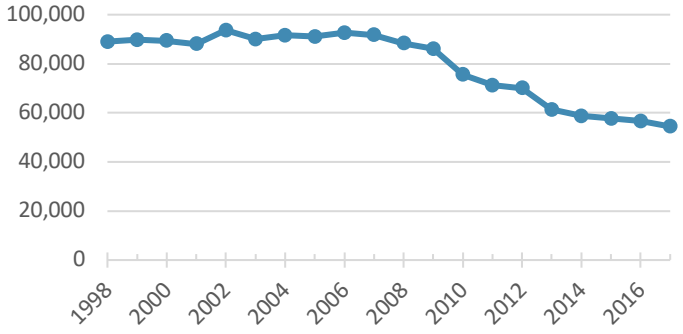
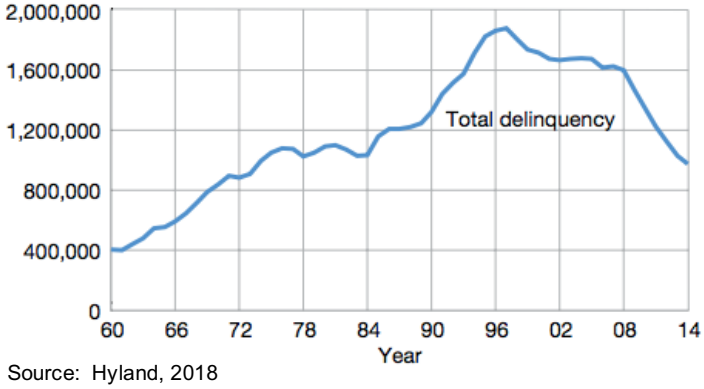


Figure 2: National Juvenile Crime Trends: 1960-2014



Source: Hyland, 2018

Besides lower crime rates, polices to lower the usage of juvenile correctional facilities and increase the availability of alternative placements have also contributed to the recent decline in system-involved children, particularly the incarcerated population.

[2] Though it is important to note that more developmentally sound DJJ policies may lead to fewer children dropping out of school and/ or recidivating, which would indirectly lower the number of children arrested in subsequent years.

2000 – The criteria for DJJ commitment was raised to a minimum of four misdemeanor adjudications (DJJ, 2010).
2003 – The Detention Assessment Instrument (DAI) was implemented statewide, limiting the leeway an intake officer has in deciding to detain a juvenile (DJJ, 2010).
2004 – The use of informal diversion by intake officers was expanded and the appointment of legal counsel for detention hearings was made timelier so that juveniles would have lawyers earlier (DJJ, 2010).
2005 – DJJ established a juvenile work release program and closed Barrett JCC (DJJ, 2010).
2010 – The Natural Bridge JCC was closed (DJJ, 2010).
2013 – Hanover JCC was closed and the program at Oak Ridge JCC was moved to the campus of Beaumont JCC (DJJ, 2017).
2014 – Culpeper JCC was closed and DJJ partnered with four Juvenile Detention Centers (JDCs) to establish Community Placement Programs (CPPs) as alternative placements (DJJ, 2017).
2015 – RDC was closed, two more CPPs were established, and Length of Stay guidelines were revised to reduce sentences (DJJ, 2017).
2016 – Two more CPPs were established (DJJ, 2017).
2017 – Beaumont JCC was closed and a CPP was established in partnership with Prince William JDC (DJJ, 2017).

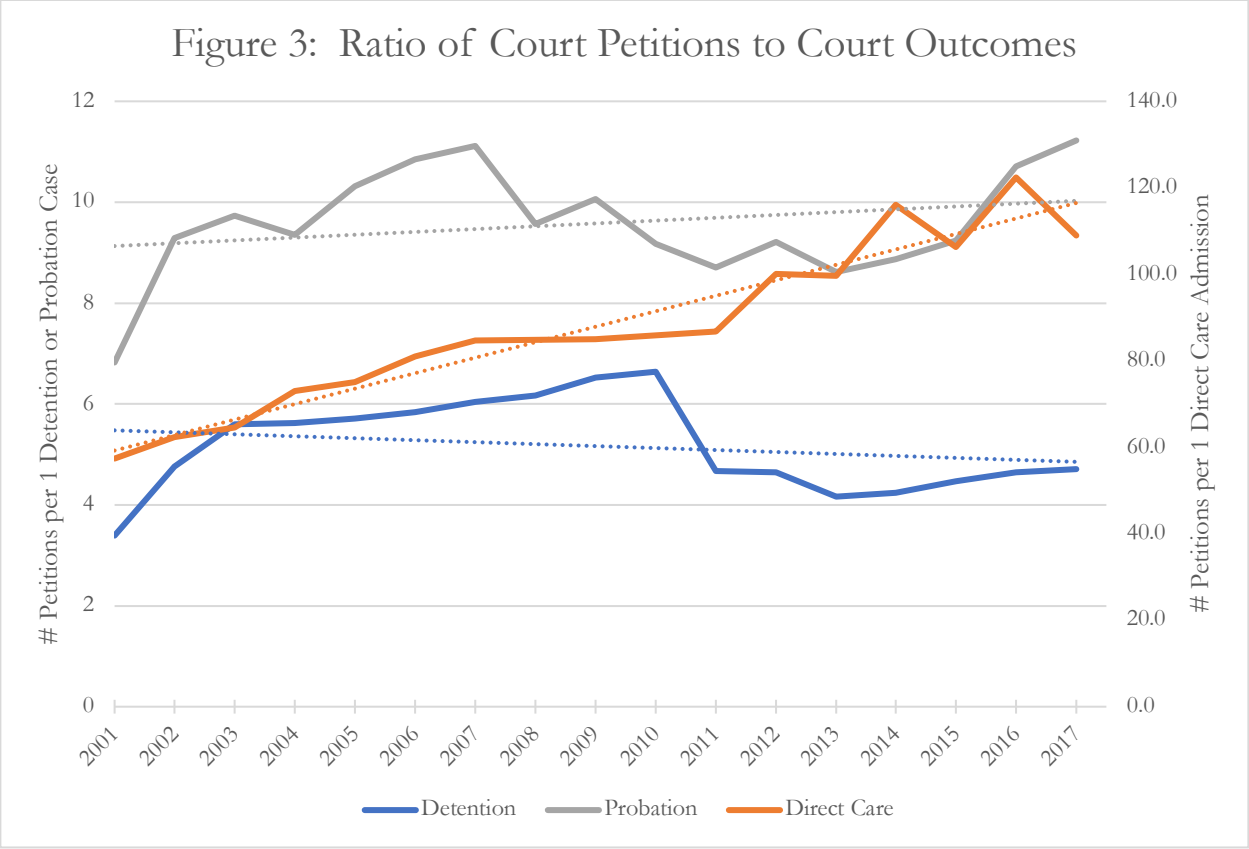
Another important shift in DJJ mindset came in 2010 with the Virginia Department of Juvenile Justice Reentry Initiative. This initiative shifted the mission of DJJ from a punitive model to a "balanced" model geared towards preventing and reducing delinquency. It sought to improve programming at the correctional level to prepare youth to be successful community members upon release (Turfboer, 2010). A similar initiative for the Virginia Department of Corrections is considered to have lowered recidivism to 2nd in the country and gained ground level support with correctional staff (VDOC, 2010; Willison, Rossman, Bieler, & Innes, 2014).

The 2016 Transformation Plan also is likely improve public safety outcomes as it seeks to "reduce" the use of large correctional facilities, "reform" treatment practices, "replace" the large juvenile prisons with smaller, regional rehabilitation-focused facilities, and "sustain" this transformation (DJJ, 2017). With the closing of Beaumont JCC complete, the annual number of JCC commitments is projected to flatten out at the current level (DJJ, 2017). According to DJJ's 2017 Data Resource Guide, these forecasts are produced through "consensus forecasting," which involves policy makers, administrators, and technical experts. They select the official forecast through several stages and committee votes. Since these forecasts go through rigorous processing and are used as budgetary justifications, they will form the basis of assumptions made later in this policy analysis.

Despite overall decline in system-involved youth, detainment and probation are used just as often, though alternatives to direct care have made incarceration less common.

Although probation, direct care, and detainment decreased more than intakes or petitions, this does not necessarily mean fewer children are moving further into the system. The rate at which a court petition results in further system contact has not improved steadily over the years and seems to be flattening out (Figure 3). Detention and probation show very little overall change. Probation rates improved greatly from 2001 to 2007 but slumped from 2008 to 2015 until recently picking back up. A linear trendline shows slight total improvements. In 2010, there was 1 detention for every 4.8 petitions. Now, that rate is 3.4. A linear trendline shows that this detention rate is on a slight decline, meaning detention is becoming a more common result of petition. Direct care has seen marked

improvements, though the ratio today (78.5 petitions to 1 direct care admission) is worse than a few years ago in 2014 (86.6 to 1). Additionally, if crime continues to decrease, DJJ projections for direct care admissions over the next 5 years would see this improvement erased.



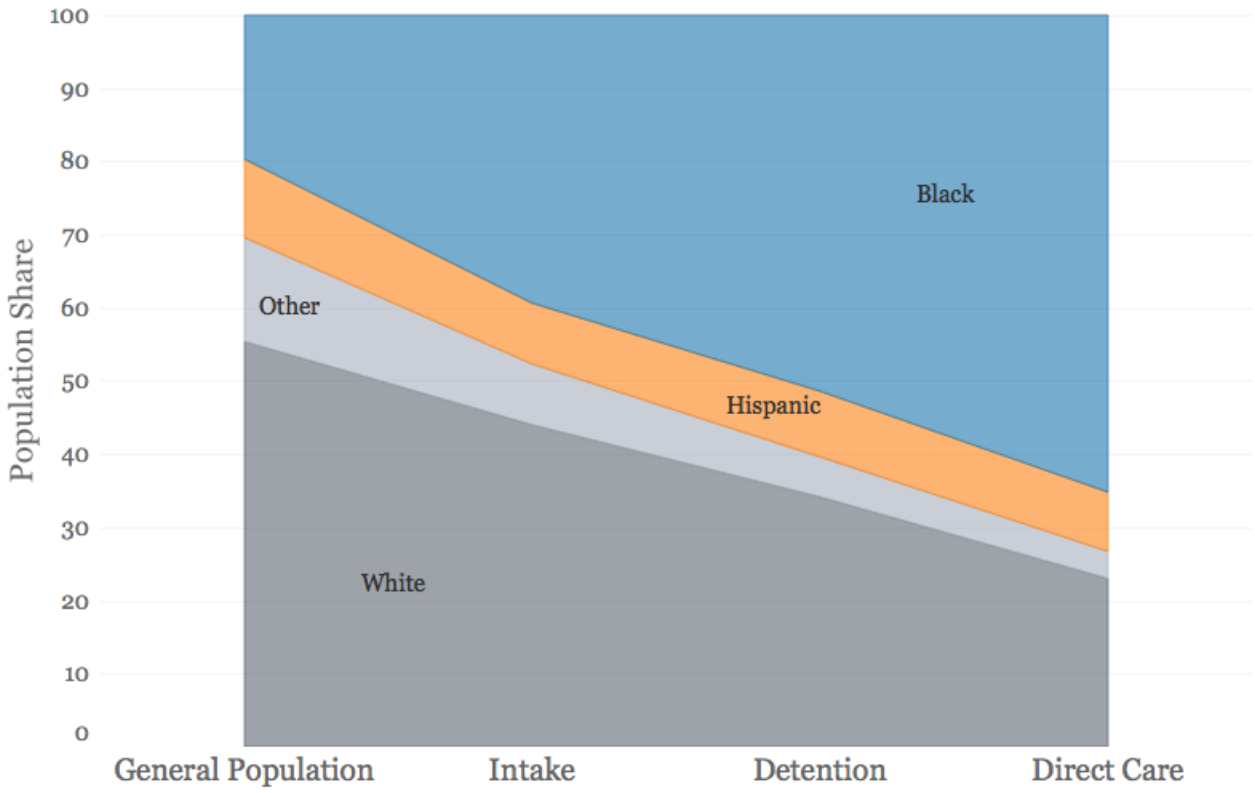
African-Americans are disproportionately affected by the juvenile justice system, with racial disparities increasing over time and deepening the further children move along the process.

While the Virginia Department of Juvenile Justice has reduced the number of children moving through the system, racial disparities have only gotten worse over time. Racial disparities were already a clear feature of the juvenile justice system in 2000. At that time, the odds of detainment and incarceration for African-American youth were 3.2 and 4.7 times greater, respectively, than white youth. In 2016, 319 youth were incarcerated. Of them, 226 were black, 81 were white, and 40 were Hispanic or another race. Compared to whites, the odds for blacks to meet with an intake officer were 2.7 times greater, the odds of detainment were 4.5 times greater, and the odds of incarceration were 8.2 times greater. Figure 4 shows how racial disparities become more and more pronounced as juveniles move further along the process.

The reason why racial disparities exist in the justice system has long been debated. The "differential offending" hypothesis suggests that different races commit crime at different rates. This would explain why the odds of intake in 2016 were 2.7 times higher for blacks than for whites. If African-Americans were more likely to commit crimes than whites, one would expect higher arrest rates reflected in intake rates. It could also theoretically explain the disparity in detention outcomes. Perhaps African-Americans are more likely to commit violent crimes, therefore requiring secure detainment more than whites. However, the differential offending hypothesis is not able to explain

why the disparity nearly doubles between detention and incarceration. If African-Americans committed more violent crime, one would expect similar detention and incarceration rates, as those directly correlate with severity of crime.

Figure 4: Racial Disparities in Virginia's Juvenile Justice System (2016)



Source: Integrated Public Use Microdata Series: Version 7.0, Data Resource Guide FY2016. Data analysis performed in Stata, visual analysis performed in Tableau. Files available upon request.

The differential offending hypothesis fails to explain racial disparities

The evidence suggests that there is some amount of truth to the differential offending hypothesis, but that differential offending is unable to explain a majority of the observed racial disparities in the youth and adult criminal justice systems. Studies of the 1997 National Longitudinal Survey of Youth (NLSY97) show some interesting results. While black youth buy, sell, and use illicit drugs at lower rates than white youth, they are arrested at much higher rates (Kakade et al., 2012). Separate studies have shown that the stereotype of a "dangerous drug offender" leads to harsher sentencing for racial minorities (Leiber, Peck, Lugo, & Bishop, 2017). Black youth also report less shoplifting and vandalism than white youth (Snyder & Sickmund, 2006). On the other side of the coin, these same surveys often show that black youth are overrepresented as violent offenders, including sexual assaults (Huizinga, Loeber, & Thornberry, 1994; Rand, 2008). However, both sides of the evidence show that differential offending, where it exists, is insufficient to account for racial disparities in the juvenile justice system (Bishop & Leiber, 2011). These results are bolstered by evidence that self-reporting reflects real propensity for criminal activity across races (Knight, Little, Losoya, & Mulvey, 2004).

Evidence on the Effects of System Contact

While competing theories predict similar or opposite effects of system contact for juveniles, the average effect can be measured empirically. The most recent and robust studies show that, on average, there are net negative effects of system contact on childhood development. These effects are heterogenous, meaning some children may be positively affected on net while others may have much worse outcomes. However, there is consensus among the literature that the traditional juvenile justice system worsens the educational, health, and socioeconomic outcomes of juveniles.

Arrest and initial court contact worsen educational attainment.

Sweeten (2006) measured the impact of system involvement on high school graduation. He used the National Longitudinal Survey of Youth 1997 (NLSY97) which includes self-reported information on delinquent behaviors and level of juvenile justice system involvement. Sweeten estimated that arrest and court involvement increase the odds of dropping out by 1.75 and 3.6 times, respectively, controlling for sentencing outcomes. This effect is stronger for youth who reported one or zero kinds of delinquency. Those who reported four or more delinquent behaviors were more likely to drop out than their counterparts regardless of court involvement (Sweeten, 2006). Hjalmarsson (2008) built on this research a year later, estimating that being charged (petition) increases the chance of dropping out by 12 percentage points.

Detainment is associated with poor educational, health, and socioeconomic outcomes.

Pre-trial detention, akin to jail for adults, is also detrimental to the development of children. In FY 2017, nearly 1 in 6 intake cases (a total of 6,190) resulted in pre-trial detention with an average stay of 24 days (DJJ, 2016). This is slightly higher than the national average of 22 days (Hockenberry, 2016). In a longitudinal study of previously detained youth, Teplin et al. (2017) showed that positive socioeconomic outcomes are the exception, not the rule. Twelve years after their detainment, only half of the participants had a high-school degree and only 1 in 5 men were gainfully employed. The authors of the study only considered 21% of men to be independently functioning adults. Furthermore, detainment is likely to be excessively confining. Only one in three detained youth nation-wide were accused of violent offenses (National Center for Juvenile Justice (NCJJ), 2017) while approximately 1017 juveniles (21.9%) were detained in Virginia in 2017 without being assessed by the intake officer to need secure detainment or qualifying for a mandatory override.[3]

Direct care worsens educational attainment and increases recidivism.

Once a juvenile has been adjudicated delinquent, Hjalmarsson (2008) estimated that being convicted (Post-D detention, probation, or direct care) increases the chance of dropping out by 16 percentage points. She also found that incarceration increases dropout rates by 26 percentage points. Aizer & Doyle (2015) showed in another quasi-experimental study that incarceration reduced graduation rates from 10% to 2% for court involved youth where the judge had sentencing discretion. They found that many incarcerated youth never returned to school, and those that returned had significantly higher levels of emotional and behavioral disorders. In their sample of all Chicago Public School students, the total graduation rate was 43%, while the graduation rate for incarcerated

[3] Detention Assessment Instrument (DAI) scores are conducted by the intake officer and reported by the CSU. According to the 2017 Data Resource Guide (pp. 34), 56.7% of those detained pre-trial without a judge's order scored in the range indicating "secure detainment." Of the 38% scoring less than the necessary threshold, 42.5% had mandatory overrides (due to use of firearm, escape attempt, or other local court policy). Therefore, 21.85%, or 1017 juveniles, were detained above their recommended confinement level.

youth was 29 percentage points lower, controlling for neighborhood, special education status, and demographic controls. Aizer and Doyle (2015) concludes that "Of the two potential effects of juvenile incarceration on future criminal activity (deterrence of future criminal activity versus reductions in human capital accumulation, social capital and networks, or other factors such as deviant labeling), the latter dominates."

Social and Fiscal Costs of Juvenile Justice System Contact on Virginia

Incarceration has more concentrated effects, but court contact (petition) affects more children overall and drives negative social externalities.

Using the estimates cited above and data compiled from Virginia DJJ publications, we can begin to estimate the social cost of incarceration to Virginia. Assuming the incarceration effect includes the detention effect, which includes the effect of court contact, I will estimate the effect of court contact [detention], after subtracting the number of children who were detained [incarcerated]. In 2017, 332 children were incarcerated, leading to an additional 86 high school dropouts (332 x .26). The court was petitioned 36,166 times. After subtracting those who were also detained or incarcerated, we get an additional 3,379 high school dropouts ((36,166 - 332 - 7677) x .12).

Estimating the number of additional dropouts due to detention is more complicated, as there are no available causal estimates on the effect of detainment. Teplin et al. (2017) showed that half of detained youth never received a high school degree or equivalent. However, without a control sample, there is no way to estimate how many additional children dropped out due to detainment. To compensate for this, I have constructed two effect sizes to provide a likely range of outcomes. Detention is much more restrictive than simply being charged with an offense and freely appearing at court. Therefore, it is reasonable to assume that a lower-bound estimate would apply the effect of petition. Applying Hjalmarsson's (2008) estimate for incarceration, we can find the higher-bound. 7,677 children received pre-trial or post-D detention, bringing the total number of non-incarcerated detained youth to 7,345 (7,677 - 332 incarcerated youth).[4] This produces a lower-bound of 881 and an upper bound estimate of 1,910 additional high school dropouts. In total, I estimate that an additional 4,346 – 5,375 youth will drop out of high school as a result of system contact in 2017.

Direct care is the most significant driver of juvenile justice expenditures

Administering the juvenile justice system is costly. Costs are incurred at each stage, increasing as the intensity of placement increases. In fiscal year 2017, the Department of Juvenile Justice expended $210 million.[5] Figure 5 broadly shows how these funds were allocated. Correctional facility operations reached $66.6 million. Adding $13.2 million in educational spending, the total cost of direct care reached approximately $79.8 million, or $236,093 per capita served.[6] Juvenile detention is less costly to the commonwealth but has a greater impact on localities as DJJ provides less than half the funding needed to operate JDCs. These block grants came in at $34.4 million, or $53,431 per

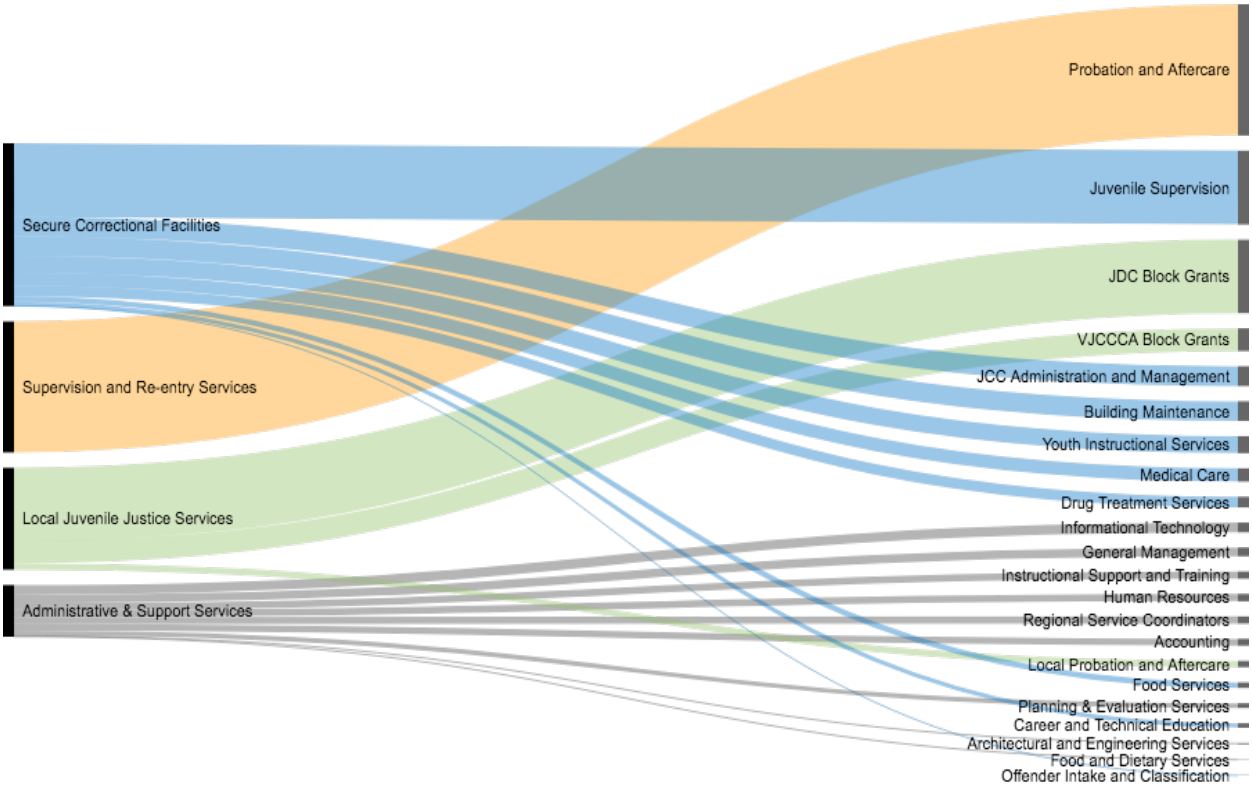
[4] This is a conservative assumption, as not all incarcerated youth were likely detained. Without information on how many incarcerated youth who were detained pre-trial, this is the proper course of action. Furthermore, 10,511 detention orders were made, but not all were carried through. Those who did not receive the actual treatment are not included, as it is unclear what the intent-to-treat (ITT) effect is for detention.

[5] Expenditure data retrieved from datapoint.apa.virginia.gov and stored in Appendix C.

[6] Average daily population is used: $79,799,443 / 338 = $236,093 (DJJ, 2017). Per capita costs do not reflect costs per admission, as average daily population is determined by number of admissions, number of releases, and their length of stay.

capita.[7] To reiterate, the total cost to taxpayers is substantially greater, but total operating costs are not made publicly available. Probation is the stage with the highest average daily population, numbering 3,177 in 2017. $34.5 million were expended in DJJ supervision services, while an additional $2.9 million supported local probation efforts, totaling $37.4 million or $11,789 per capita. This can also be broken down into cost per capita per day (See more in Appendix D). From this standpoint, it is clear to see that direct care is the costliest disposition. Direct care cost the Commonwealth $647 per child per day, 4.4 times as much as detention and 12.5 times as much as probation.

Figure 5: DJJ Expenditures by Program and Service Area, FY2017



Source: Commonwealth Datapoint – FY2017 Expenditures. Data analysis performed in Stata, visual analysis performed in Raw.io. Files available upon request.

Given the average length of stay (LOS) for each disposition, we can begin to construct cost estimates for an individual's stay (Appendix D). Direct care again was by far the highest, with average costs around $280,000. Post-D detention with programs was slightly costlier than probation, coming in at $20,245 and $18,507, respectively. Due to their short length of stays, pre-D detention and post-D detention without programs were much less costly than any other disposition.

It is clear from the findings above that Virginia has indeed made progress in reforming her juvenile justice system. However, overall progress has slowed. In the sections that follow, I will evaluate potential ways to make further progress and address the worsening problem of racial disparities. While past reforms focused on making alternative dispositions more available, the policy options

[7] Average daily population is used: $34,409,867 / 644 = $53,431

presented below will focus on increasing the role of attorneys as advocates for these least-restrictive options. Virginia has made little effort to utilize public defenders to stem the flow of children into JDCs, JCCs, and institutional supervision. Restricting the policy options considered to only right to counsel reforms is a deliberate choice that I will justify morally and fiscally in the following sections.

The Role of Counsel in Juvenile Court Proceedings

> *"Under our Constitution, the condition of being a [child] does not justify a kangaroo court." – U.S. Supreme Court,* In re. Gault

In 2009, the National Juvenile Defender Center (NJDC) released a comprehensive treatise on the role of juvenile defense counsel in delinquency court (Sterling, Crawford, Harrison, & Henning, 2009). As the sole organization representing juvenile defenders countrywide and offshoot of the American Bar Association, NJDC is the national expert and authority on juvenile defense. Their work provides the basis for the following discussion of juvenile rights, specifically their right to counsel.

Juvenile defense counsel is a Constitutional right

In 1967, the Supreme Court decision *In re Gault* held that the right to counsel under the Due Process Clause of the United States Constitution applies to juveniles facing delinquency proceedings (387 U.S. 1987). The Court added that without counsel, juveniles received "the worst of both worlds . . . neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children," (*In re Gault*, 387 U.S. 1, 36 (1967)). The right to counsel was deemed so necessary because any child facing "the awesome prospect of incarceration," needed "the guiding hand of counsel at every step in the proceedings against him," for the same reasons that adults facing criminal charges need counsel (*In re Gault*, 387 U.S. 1, 36 (1967)).

The juvenile defender is the only court actor whose sole purpose is to zealously pursue the expressed interest (not their understanding of the "best interest") of each juvenile client. They defend their client's rights through routine, but important, duties from "interviewing the child outside of the presence of the child's parents, to objecting to inadmissible but informative evidence at adjudicatory hearings, to advocating for the least restrictive alternative at disposition, to pressing, at every stage, for the client's expressed interests," (Sterling et al., 2009). These duties are necessary aspects of any justice system that seeks to hold guilty parties accountable for their actions. Not only does this protect the rights of the innocent, but it works to ensure accountability measures are prudently applied to children in need of services.

Juveniles require counsel to participate in court

Juveniles are much less capable of understanding court proceedings than adults. They are less likely to understand the roles of court officials than adult defendants and are more likely to misunderstand or be ignorant of rudimentary rights, tending to believe judges and police officers can refuse defendants the right to remain silent and the right against self-incrimination (Grisso, 1997). They are more likely to provide inaccurate information to authority figures under pressure than adults (Gudjonsson, 1984, 1992) and are less likely to fully understand Miranda warnings (Viljoen, Zapf, &

Roesch, 2007). Juveniles are more susceptible to peer pressure and are more likely to make decisions in defiance of authorities. They discount future losses far more than adults, especially children living in environments with little opportunity for improving one's position in life, a common situation for juvenile defendants (Gardner, 1993). All this is to say that most juvenile defendants are meaningfully impaired when it comes to participating in legal proceedings (Ficke, Hart, & Deardorff, 2006; McKee, 1999). The presence of competent legal counsel is critical for youth to understand the charges brought against them, the consequences of a plea bargain or delinquent adjudication, and the full range of their legal options (Sterling et al., 2009; Viljoen & Roesch, 2005). If adult defendants cannot do this by themselves, then children certainly cannot.

Juvenile defenders decrease the chance that an intake hearing will result in a court petition or detention order.
At the intake hearing in Virginia, court officials decide whether probable cause exists to charge a child with delinquency. Probable cause is one of the lowest standards applied in court proceedings, only requiring a layman's judgement that, more likely than not, a crime was committed. In US v. Humphries, the Fourth Circuit Court opinion stated "the probable-cause standard is a practical, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act," (Niemeyer, 2004). However, much can be done by the attorney to show insufficient probable cause. By meeting with the child to understand their side of the story, independently investigating the circumstances, and challenging the testimony and reports of police officers, attorneys can show that the facts of the case tip the scale in favor of the child, not the plaintiff. Even if the court is petitioned following intake, probable cause can be challenged again at arraignment, increasing the chances that the case will be dismissed.

If the intake officer finds probable cause, the attorney may push for informal processing, or diversion. Intake officers may be wary of diverting some children, such as those alleged to have committed serious offenses or those who do not appear to be penitent. A defender at this stage could convince the intake officer that diversion will be successful as well as convince the client to cooperate with the diversion plan. Juveniles at risk of being detained pre-trial could also avoid that condition with proper legal defense. Being appointed an attorney at these early stages provides the additional benefit of time to collect evidence and formulate a case for the adjudicatory hearing.

Juvenile defenders decrease the chance that a child will be detained pre-trial
If a juvenile is detained prior to arraignment, the detention hearing and arraignment must be held together within 72 hours of detainment. At this hearing in Virginia, "the judge decides whether to hold him or her in a JDC or release him or her, with or without conditions, until the adjudication," (DJJ, 2016). All juveniles in Virginia are entitled to public defense at this hearing (however arraignment alone is not accompanied by the right to counsel). According to NJDC, the "seemingly impossible goal," of defense counsel at this stage is to "present a history of the client leading up to the present day, along with an individualized release plan that is responsive to the client's expressed interests and that bears in mind the needs of the court," (NJDC, 2014). Counsel has a duty to "explore promptly the least restrictive form of release, the alternatives to detention, and the opportunities for detention review, at every stage of the proceedings where such an inquiry would be relevant," (NJDC, 2014).

The defense standards outlined by NJDC emphasize the role of defenders in challenging assumptions that children pose a risk of flight or are dangerous. They hold judges accountable to only make decisions founded in statutory criteria and have exhausted all other alternatives to

detention. As the detention hearing is coupled with arraignment, defenders are uniquely able to understand the developmental challenges adolescents face in comprehending charges and their rights. Children who understand their rights are more willing to assert them and make all efforts to assist their defenders. Lastly, defenders ensure the client understands the conditions of release and are ready to carry out those obligations.

Juvenile defenders increase the chance of acquittal and lower the severity of sentencing at adjudication and disposition
Adjudicatory and dispositional hearings are the culmination of the court's efforts to separate the guilty from the innocent. At this stage, children have all the constitutional protections that an adult has in criminal court, except right to a jury. The standard used for adjudication is proof beyond a reasonable doubt. Disposition is held the day following an adjudication of delinquency in Virginia, where the judge decides whether a child needs direct care in a JCC, long-term or short-term detention in a JDC, a community placement such as VJCCCA or CPP, or probation.

The role of defense counsel at adjudication is to prepare the client for the hearing and testimony, prepare evidence and witnesses, challenge the prosecution's evidence and cross-examine their witnesses, strike unlawful statements or pieces of evidence from the record, and motion to dismiss the case (Thurau & Goldberg, 2012). Adequate defense counsel not only means higher probability of case dismissal and acquittal, but it creates a court record to be used at disposition if the judge rules the client to be delinquent. At disposition, the role of counsel is to understand the full range of dispositions available for their client, press for the least-restrictive alternative, inform their client of the risks and collateral consequences of each alternative, and listen to the client's desires. Counsel advocates for tailored rehabilitation plans that are cognizant of the developmental harms, evidence of effectiveness, and the fiscal and personal financial burdens associated with such a plan (Thurau & Goldberg, 2012). Zealous advocacy for the client's expressed interest is the best way of ensuring justice is served, public safety is protected, and restrictive options are used as a last resort.

Investing in public defense is fiscally responsible.
Clearly there is a moral imperative to provide legal counsel to children who lives may be forever altered by legal proceedings they are unable to comprehend or fully participate in. This section discusses the fiscal implications of such an imperative.

Table 1: FY2017 Juvenile Court Expenditures

Court Appointed Attorney J&Dr	$25,806,475
Med Cost-Gathering Evidnce-Juv	$515,515
Comp of Experts J&Dr	$65,933
Total attorney-related expenses	$26,387,923
Number of hearings with attorneys	51982
Average attorney compensation per hearing	$477
Average attorney-related expenses per hearing	$508

Note: Attorney compensation ($90/hr) is coded in dataset as "Attorney Services - Exempt" within the Court Appointed Attorney J&Dr service area. The total number of these expenses was used to estimate the number of juvenile cases with court-appointed attorneys. Source: Commonwealth Datapoint - FY 2017 Expenditures.

The policy options in this report were chosen, in part, because attorney services are cheap compared to their possible benefits. Attorneys were compensated approximately 52,000 times for juvenile proceedings in fiscal year 2017, totaling $24.8 million. About $1 million in other expenditures (i.e. reimbursement for travel, office supplies, etc.) were also incurred by court appointed attorneys. The average compensation amount was $477 and the commonwealth expended an average of $508 in attorney-related expenditures per hearing, assuming this 52,000 number represents the number of court hearings where a public defender was present (public defenders

submit timecards after each hearing, not case conclusion). This is less than the cost of incarcerating a child for one day.

Knowing the number of hearings with an attorney present, the number of court petitions and detention orders, and the *a priori* knowledge of court procedure in Virginia, we can begin to determine the proportion of juveniles who received public defense in fiscal year 2017. 36,166 complaints resulted in a court petition. Each court petition is accompanied by two hearings where public defenders may appear – adjudication and disposition – bringing the number of hearings with the right to counsel to 72,332. At detention hearings, all children are eligible for counsel. Assuming each of the 10,511 detention orders resulted in the service of a public defender for one hearing, we find that the number of adjudicatory and dispositional hearings with public defense counsel present was 41,471. This means that public defenders were present at just over half (57%) of all adjudications and dispositions in Virginia in fiscal year 2017. This is a very rough estimate, but is consistent with the findings of the National Juvenile Defender Center's 2002 assessment of the right to counsel in Virginia (The American Bar Association Juvenile Justice Center with the Mid-Atlantic Juvenile Defender Center, 2002)

These figures elucidate that the idea of a tradeoff between robust public defense and tight state budgets is overwrought and largely unfounded. Representing a child in court is much less expensive than supporting their detainment, incarceration, or supervision. The cost of public defense is justified even with minimal likelihood of success. Direct care costs were $236,093 per capita in 2017, though the average length of stay of 14.2 months means the cost per admission hovered around $280,000. Virginia would break-even if public defenders avoided this outcome once every 550 hearings or with over 3,000 hours of defense work. Due to the astonishing difference in cost between direct care and other dispositions, these margins for success remain nearly just as large if an attorney reduced a sentence from direct care to post-D detention with programs or to probation.

Only one stage of the process guarantees the right to an attorney regardless of financial status: the detention hearing. In 2017, 10,511 juvenile complaints had detention orders. For universal public defense (10,511*$508=$5,339,588) to be cost effective, 1,501 detention orders (14%) would have to be reversed (1,501*$3,557=$5,339,588). According to the FY2017 DRG, only 6,190 of these 10,511 complaints resulted in pre-D detention. This means about 4,321 detention orders (41%) were reversed. If we assume only half of these revoked detention orders were revoked due to the advocacy of public defenders, then there are still cost savings of 44%. This goes to show that investing in public defenders for juveniles is not only morally responsible, but fiscally responsible.

EVALUATIVE CRITERIA

The policy options that will follow were formulated based on the work of the National Juvenile Defender Center (NJDC), the client for this APP. NJDC is an organization based out of Washington, D.C. that provides technical assistance to juvenile defenders and advocates for policy change to increase the number of children receiving prepared, qualified, and free juvenile defenders. In their 2017 publication "Access Denied: A National Snapshot of States' Failure to Protect Children's Right to Counsel," they identified 5 types of improvements states could make to increase the access to proper legal counsel. From these recommendations, I identified three policy options that are applicable to the Commonwealth of Virginia. I will evaluate the degree to which each option increases the use of juvenile defense to address the problems identified earlier. It should be noted that these policy options are not mutually exclusive, and some may complement others. The goal for this policy analysis is not to eliminate policy alternatives as viable options for Virginia, but to identify a priority and determine the circumstances where other options should be prioritized, if at all.

I will evaluate the merits of each policy option according to five primary evaluative criteria. **Each criterion will be measured on a scale of Excellent – Good – Neutral – Poor – Bad.**

Cost - Saves taxpayer dollars

This criterion measures the degree to which a given policy option will decrease fiscal expenditures. This not only includes the "sticker price," but considers cost savings due to fewer children in the system. For instance, reducing the number of incarcerated children in Virginia would yield immediate cost savings to the Department of Juvenile Justice. Dollars saved less dollars spent will provide the basis of evaluation.

Effectiveness - Reduces number of system-involved youth

The primary goal of each policy is to reduce the number of children going through the justice process at each stage. The main stages I will examine are the intake hearing, detention hearing, and the adjudication/dispositional hearing. I will look at the effect of each policy on the outcomes of these hearings, including the number of petitions, pre-D detainments, post-D detainments with and without programs, JCC admissions, and new probation cases.

Equity - Reduces racial disparities

The secondary goal of each policy is to reduce the racial disparities present in every level of the juvenile justice process. As an ancillary consideration, it will assess the degree to which each policy makes representation equally accessible to all children, regardless of race or any other factor. An "excellent" policy will make black youth just as likely to receive competent lawyers as white youth.

Political Feasibility – Will pass the legislature

This criterion measures the likelihood that a given policy option will gain the political support necessary to be passed or implemented. Options with opposition in the agencies they affect will be rated poorly. Options favorable to multiple political parties will be rated highly. And options that require little legislative oversight or follow-up will be rated highly.

POLICY ALTERNATIVES

Option 1: Guarantee the right to counsel at court intake and arraignment

Under current Virginia law, the right to counsel only extends to hearings which may result in the loss of freedom: the detention hearing, adjudication, and disposition (DJJ, 2016). In this way, juveniles do not have the same due process rights as adults, who are guaranteed counsel from the start. This option would extend the affirmative right to an attorney to intake proceedings, where court officials determine probable cause and chose to formally petition the court (charge the child), throw the case out, or informally process the complaint (through diversion). Virginia has an abnormally high petition rate compared to other states (67% - 56%), likely because diversion is used less (13% - 27%) (DJJ, 2017; Hyland, 2018). Furthermore, diversion tends to be successful in Virginia – only 11% of diversions result in a court petition – but it is underutilized – only 30% of diversion-eligible complaints were diverted, resolved, or unfounded in 2017 (DJJ, 2017). This option would allow attorneys to work with intake officers and clients to use diversion when possible, prudent, and in the client's expressed interests. This addresses the public policy problem at hand by preventing further involvement in the juvenile justice system once a child begins the process, diverting them from the more harmful dispositions down the road.

This option would also give children access to lawyers at arraignment, where children are informed of the charges against them and their rights. Without an attorney present, most children cannot fully understand the consequences of their charges or their rights, particularly at the typical level of intellectual and psycho-social maturation of system-involved youth (Rincker, Reilly, & Braaten, 1990) (Vacca, 2008). Perhaps most importantly, juveniles may waive their right to counsel at arraignment and enter a guilty plea without any legal advice (DJJ, 2016; The American Bar Association Juvenile Justice Center with the Mid-Atlantic Juvenile Defender Center, 2002).

Cost: This policy option would see an increase in court expenditures as the intake process becomes more complex and public defenders are compensated for more services. The point at which this policy pays for itself is uncertain. Intake is only the beginning of a process with a myriad of possible outcomes and associated costs. Diverting a child who would eventually receive a probation order would save the state about $18,000. This is certainly worth the $90/ hr. in attorney fees. Because the cost savings are promising but uncertain, *this option receives a rating of "good" for this criterion.*

Effectiveness: This policy option could potentially divert or resolve thousands of juvenile complaints per year, preventing hundreds of high school dropouts due to further system contact. However, *this option receives a rating of "good" for the effectiveness criterion* because a defender's efficacy in swaying an intake officer's decision is questionable. The Senior Assistant Public Defender in Henrico County reported that the standard for probable cause is so low, most defenders would struggle to convince an intake officer to dismiss a case (Barbara Rosenblatt, personal communication, 25 April 2018).

Equity: This policy option does not change the type of juvenile defendant who systematically receives representation despite increasing overall rates of representation. Only low-income individuals would be eligible to receive representation and only high-income individuals would provide their own lawyers at this seemingly less important stage. This option is not likely to change the demographic make-up of the system-involved population, *thus receiving a rating of "neutral."*

Political feasibility: This policy option is not likely to gain critical support in the Virginia legislature. The public may be shocked that juveniles do not have the right to a lawyer when the court decides to charge them with a crime, but such support would not likely be strong enough to overcome the institutional barriers. Because this option requires Court Service Units (CSUs) to dramatically change procedure and increase processing times, they are likely to stand in fervent opposition. Because this option increases administrative complexity, is not the strongest media storyline, and has questionable cost-effectiveness, *this option receives a score of "bad" for political feasibility.*

Option 2: Guarantee access to public defense regardless of income

Under Virginia law, only juveniles with a family income less than 125% of the poverty line are considered indigent and are eligible to receive a public defender at adjudication and disposition (Code of Virginia § 19.2-159). At current rates, this is equivalent to $31,375 for a family of 4 (DHHS, 2018). Juveniles who receive state or federal public assistance are automatically eligible, but other families must submit proof of income to the court. Under this system, each application for public defense is associated with more paperwork and administrative cost. By guaranteeing access to public defenders regardless of income, the court would do away with this process of determining indigence, saving the court time and administrative expense.

This option would likely see an increase in the number of public defenders utilized at adjudication and disposition. Regardless of offense severity, competent legal representation at these stages is a necessity, not a privilege. Under this option, every court-petitioned child would be assumed indigent and be appointed counsel following arraignment. While juveniles would still not have the right to counsel at intake, arraignment, or post-dispositional hearings, this option understands that adjudication and disposition are the most important hearings for children to receive representation. Furthermore, this option would alleviate racial disparities, as representation would not be restricted to the poorest of the poor or to those who can afford private attorneys out-of-pocket.

Cost: This policy alternative promises a high likelihood of cost savings. Having estimated above that about 57% of juveniles at trial had public defenders, we can estimate the costs of expanding attorney services for the rest of the population. Assuming 10% of juveniles are represented by private attorneys[8], the cost of providing counsel to the remaining children would be about $12 million (11,814 unrepresented juveniles x 2 hearings x $508 average cost per hearing). The added cost of this defense would be offset completely if defenders avoided a delinquent adjudication for about 6% of all cases.[9] Due to the high sticker price but high chance of fully recuperating costs, *this option is rated "good" for the cost criterion.*

Effectiveness: Eliminating the income requirement for access to public defense would increase the number of children represented in court. Because this option targets a costly stage with high risks of developmental harm, increasing access to counsel is highly effective. The affected population is

[8] Perhaps a high estimate. (Feld, 1989) found that only 5% of juvenile defendants in Michigan privately retained lawyers while (Hartley, Miller, & Spohn, 2010) found 8.5% of adults in Cook County privately retained lawyers.
[9] The costs of all 2017 admissions were found by multiplying the average cost per release found in appendix E with the total number of admissions for each disposition (equaling $188,632,619). $12 million is 6.4% of this cost.

compact, but the fiscal costs and risk for harm are at their highest concentration. Due to this option's targeting of the most at-risk population, *it scores an "excellent" for effectiveness.*

Equity: Option 2 scores highly on the equity criterion. While racial disparities that appear in arrest, intake, and detention would not be mediated, ensuring equal access to public defense at trial would greatly reduce post-dispositional inequities. As incarceration bears the greatest social and personal costs, reducing racial disparities in JCCs should be prioritized over reducing disparities in JDCs. Still, this option only addresses a later stage of the justice process, *resulting in a rating of "good" for reducing racial disparities.*

Political Feasibility: This policy option is not likely to be met with intense institutional opposition. It does not require an administrative overhaul, instead simplifying the process and extending the existing procedure for detention hearings to the adjudication and disposition. Although 11 states have similar laws, including 4 that made this reform since 2010, the General Assembly may be wary of supporting a policy that increases eligibility for an entitlement (National Juvenile Defender Center (NJDC), 2017). Legislators also would likely be suspicious that this policy would indeed save money. The lack of legislation on the right to counsel in the past few decades shows that Virginia politicians may prefer other types of reform, such as the DJJ Transformation Plan, which are specifically designed to save money. Due to the likely skepticism within the legislature and a strong bias towards the status quo, *this option is rated "poor" for political feasibility.*

Option 3: Require juveniles to meet with an attorney before waiving their right to counsel

Outlined in Va. Code Ann. § 16.1-266(c)(3), a child may waive their right to counsel at the arraignment, detention hearing, or subsequent hearing. The child and parent must both sign a written waiver, which is filed in the court records of the case. The court may deny a waiver that is deemed to be inconsistent with the interests of the child. In felony cases, the child must consult with an attorney before waiving the right to counsel, and the court must determine that the waiver is free and voluntary. Under this policy option, all juveniles would be required to consult with a juvenile defender before waiving their right to counsel. Only juvenile defenders are able to explain the role of the attorney, the benefits of counsel, and the consequences of proceeding unrepresented.

This policy option would see an increase in the number of public and private defenders utilized at the detention hearing, adjudication, and disposition. This option would encourage children to purchase private counsel or make use of public defense without restricting their personal sovereignty. This option is in line with the literature on adolescent development and competency, addressing the gap in knowledge and decision-making ability that most juvenile defendants exhibit. However, it is unclear how often waiver of counsel is used. NJDC's 2002 assessment of right to counsel in Virginia found it varied across jurisdictions, with waiver being routine in some areas but unheard of in others. An attorney from Richmond reported that waiver of counsel was almost never allowed in juvenile proceedings (Rosenblatt, personal communication, 25 April 2018).

Cost: The cost and cost savings of this policy option depend heavily on the number of juveniles who currently waive counsel. Assuming that 11,814 juveniles appeared in court without representation, therefore waiving their right to counsel, the cost of attorney meetings at $90/hour would total just over $1 million. However, the cost savings are completely dependent on the number of children who then decide to take advantage of either public or private attorneys. It is assumed

that very few indigent children waive their right to a free attorney, therefore the state would not bear great cost in providing additional public counsel. If enough juveniles hire private attorneys following this meeting, this option could be budget neutral. However, given the high uncertainty regarding the quantity and composition of waiver of counsel, *this option is rated "poor," in the cost metric.*

Effectiveness: Restricting the waiver of counsel has questionable effectiveness in reducing the overall number of children moving throughout the justice process. Again, uncertainty as to exactly how often juveniles waive their right to an attorney in Virginia stalls the critical evaluation of its effectiveness. Overall, it does not pose a great chance of diverting children from system-involvement as it is a limited in who it targets and the likelihood that it will change their outcomes. Due to uncertainty regarding the extent of waivers and its small-scale focus, this option is rated "poor" for effectiveness.

Equity: This option does not systematically change the racial makeup of children receiving lawyers, but it does lessen the chance that lower-income individuals and those without knowledge of the system will be take advantage of. This is especially true for lower-risk cases where a juvenile does not take the proceedings as seriously as they should. However, with such narrowly-focused benefits, *this option is rated "neutral" for the criterion of equity.*

Political feasibility: Option 3 will likely not face strong or united opposition politically. Such a reform may not be universally praised within J&Dr court or the CSUs, but the fact that the waiver process already requires heavy paperwork and such a process already exists for felony cases minimizes the resistance to it. Furthermore, it would likely gain strong support by juvenile defenders, who are bound to zealously advocate for their clients' rights. Because one set of passionate agency actors reform can overcome the dispersed apathy of other actors, *this option has "good" political feasibility.*

Option 4: Let present trends continue

Virginia has made strides in recent years to transform her juvenile justice system from a punitive model to a rehabilitative one. The dramatic decrease in overall system-involved youth is praiseworthy yet belies the troubling trend of racial disproportion and disparate outcomes. Under this policy option, NJDC would not actively advocate for right to counsel reform, instead allowing Virginia and the DJJ to build upon past successes at their own rate.

This option is more logical than it may appear. Clearly the downward population trend for nearly all stages of the justice system cannot go on forever, but the exponential decline may not be levelling off yet. There is no reason to believe the juvenile crime rate will stop declining over the next five years, bringing the promise of continued progress. Although DJJ projections show the incarceration rate flattening out at current levels, other stages would still see population decreases (Appendix). This means Virginia will likely benefit from fewer system contact-related negative externalities without having to exert legislative or administrative effort. The 2016 Transformation Plan and other reforms to the "continuum of care" are just beginning to come into their own. Perhaps the greater use of detention-alternatives and the consolidation of juvenile prisons into one campus will improve offender outcomes and make the juvenile justice system better at serving at-risk youth.

Cost: This option does not diverge significantly from the baseline costs in 2017. Simple momentum will likely contribute to lower incarceration, detention, and supervision costs. This is especially true as Beaumont JCC no longer houses juveniles. Because DJJ expenditures will likely decrease in coming years without policy change, *this option receives a "good," rating for cost.*

Effectiveness: Present trends suggest that the number of juveniles subjected to all stages of the juvenile justice system, barring incarceration, will decline over the next five years. For this to hold, juvenile crime rates would have to continue their decline, and judges would have to continue to support alternative dispositions for juvenile defendants. Because all indications show fewer children will be affected by each stage of the justice process in coming years, *this option receives a "good," rating for effectiveness.*

Equity: Racial disparities in the Virginia juvenile justice system have only increased with time. In 2010, African-American youth faced 3.9 and 6.7 times the odds of detainment and incarceration as white youth. By 2016, these disparities increased to 4.5 and 8.2, respectively. There are currently no indications that this gap in dispositions will stop growing, let alone begin to close. In five years, it is safe to assume that racial disparities will continue to expand unless some intervention is taken. Because present trends show the racial sentencing gap increasing over time, *this option receives a score of "bad," for equity.*

Political Feasibility: Letting present trends continue is not a controversial matter for policymakers. Virginia lawmakers have not demonstrated great enough concern over racial disparities or the harms of system-contact for the status quo to face strong opposition. *This option requires no advocacy or legislative effort therefore receiving an "excellent," political feasibility score.*

OUTCOMES MATRIX

Table 2: Summary Matrix of Policy Options, Criteria, and Performance				
	Cost *Saves Taxpayer Dollars*	**Effectiveness** *Reduces Number of System-involved Youth*	**Equity** *Reduces Racial Disparities*	**Political Feasibility**
1) Guarantee Right to Counsel at Intake	Good	Good	Neutral	Bad
2) Eliminate Indigence Threshold	Good	Excellent	Good	Poor
3) Limit Waiver of Counsel	Poor	Poor	Neutral	Good
4) Let Present Trends Continue	Good	Good	Bad	Excellent

RECOMMENDATION

I recommend that Virginia eliminate the indigence determination process.

This policy option promises the most benefits for the least cost because it targets the most important stages of the juvenile justice process. At adjudication and disposition, children face the greatest dangers of developmental harm and the commonwealth faces the greatest fiscal consequences. The cost of supporting a public defender would equal cost savings if incarceration is avoided or downgraded once every 500 hearings. This break-even threshold is staggering because the costs of incarceration are enormous.

Universal assumption of indigence also stands the best chance of improving racial disparities. Every child is on an equal playing field when income does not determine access to legal representation. This is the only option that ensures children of all races, incomes, and genders are equally defended when in danger of incarceration, the disposition with the deepest racial disparities.

Options 1, 3, and 4 were ultimately not chosen because their promise of cost savings and racial justice fall short of the mark. Option 1 seeks to reduce the number of children charged with crimes and increase the diversion rate but would be costly and administratively complex with less promise of overall effectiveness. Option 3 seeks to increase the number of children receiving lawyers at trial, yet the low number of waivers occurring in Virginia suggest this may be a solution in search of a problem. Neither solution would give African-American children the same access to counsel as white children.

Option 2 is likely the only option that would increase the number of children represented when it matters. It would also have the greatest effect on racial disparities by making public defense universally available to all defendants. These options are not mutually exclusive, so it is very much possible that options 1 and 3 could be implemented in the present or the future. However, without an analysis that goes much further in depth, it is impossible to say whether option 1 will be a cost-effective policy for Virginia or whether option 3 will result in more represented children.

Considerations for Implementation

1) Not all defenders are created equal.

The terms "public defender," "public defense," "defense counsel," "juvenile defender," and "indigent defense," have been used relatively interchangeably in this document thus far despite the important differences in their roles and relationships with the court. Virginia's public defense system uses two primary types of defenders: public defenders - attorneys in the full-time and permanent employment of a public defender office; and court-appointed counsel - private attorneys who, at a reduced fee, take on indigent juvenile cases that exceed the caseload capacity of a region's public defender's office. The Virginia Indigent Defense Commission (VIDC) oversees the 25 public defender offices across the state. VIDC is statutorily responsible for overseeing indigent defense in Virginia, which includes training, certifying, and maintaining a registry of qualified attorneys at law. (Va. Code Ann. § 19.2-163.01).

With a drastic increase in demand for public defense, the court will be forced to rely more and more heavily upon court-appointed counsel to alleviate the caseloads of public defenders. This is not the

optimal path forward for Virginia. While full-time public defenders are shown to perform just as well as privately retained lawyers (Hartley, Miller, & Spohn, 2010), court-appointed counsel consistently underperforms to the detriment of the client, resulting in fewer acquittals, 32% longer sentences, and less favorable plea bargains (Cohen, 2014; Roach, 2014). In order to fully benefit from expanding the access to counsel, Virginia must ensure public defender offices are staffed with numerous skilled, specialized juvenile defenders.

In pursuit of this goal, the General Assembly should appropriate funds to the Juvenile and Domestic Relations Court to permanently staff at least one additional public defender who specializes in juvenile defense. The General Assembly should also direct the Virginia Indigent Defense Commission to assist public defender offices as they prepare for an increased juvenile caseload. A seminally cited reason for the poor performance of court-appointed counsel is the reduced pay they receive compared to privately-retained services – and Virginia has one of the lowest rates in the nation (Bradford, 2013; National Juvenile Defender Center (NJDC), 2017; The American Bar Association Juvenile Justice Center with the Mid-Atlantic Juvenile Defender Center, 2002). If Virginia is serious about investing in juvenile defense, they should reevaluate the incentive structure that discourages court-appointed counsel from spending time on a case, following the standards of their profession, and zealously defending children. Without these investments, Virginia's policy reform could end up a waste of time and money as indigent defenders drown in caseloads, fail to adequately defend their clients, and make little progress in reducing the social externalities associated with system-involvement and massive racial disparities.

2) Virginia should collect and analyze court data on juveniles' right to counsel

It is troubling that Virginia currently lacks a system to systematically review how many children receive lawyers, what type of lawyers they receive, how many children waive counsel, or the accompanying dispositions for juveniles in delinquency court. A system such as the Data Resource Guides for the Department of Juvenile Justice not only informs the public on important public safety and budgetary matters, but guarantees the institutional reflection required to identify problems and evaluate solutions. It should come as no surprise that reviews of Virginia's juvenile and adult justice systems, such as this one, would be drastically easier and more accurate with periodic publications.

3) The National Juvenile Defender Center should supply policymakers with fiscal and political considerations for policy change in addition to excellent qualitative advocacy.

NJDC has already begun to fortify their arsenal of fiscally sound policy justifications. In the coming years, a qualitative data instrument and qualitative juvenile defender survey will allow NJDC to systematically investigate the nation's progress in guaranteeing the constitutional right to counsel for juveniles. The quantitative data instrument presents the unique opportunity to empirically study the effect of adequate juvenile defense counsel on trial outcomes. The current empirical literature on juvenile defense is scattered and difficult to compare across studies. NJDC and partnering organizations should utilize these findings to drive new, targeted, and timely policy reforms.

CONCLUSION

Policymakers speak many different languages when it comes to reform. While some focus on the political and moral dimensions of reform, others may sing the song of budgets. It is important for any advocate to understand the right argument for the right policymaker in the right position of authority. This document represents an initial, and at times timid, attempt to provide fiscal, socio-economic, and moral justifications for three policy options. While much more work must be done to determine the full extent of problems in Virginia's juvenile justice system and perform a comprehensive cost-benefit analysis on possible solutions, the results so far are promising for the state of Virginia and those concerned with juvenile rights.

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APPENDICES

The graphs, tables, and images included in these appendices were created using several data sources, estimation techniques, and softwares. Data were retrieved from three primary sources:

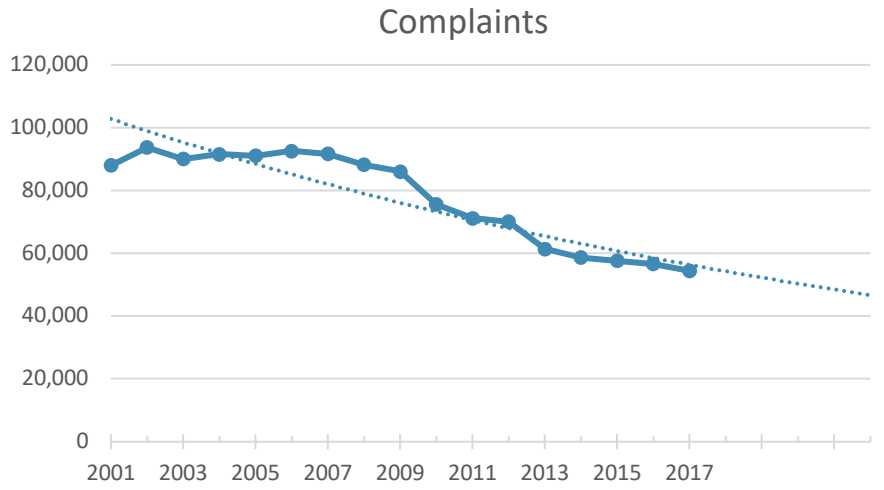
1) Department of Juvenile Justice Data Resource Guides: 2000-2017
2) U.S. Census Bureau IPUMS
3) The Commonwealth Datapoint webtool – Fiscal Year 2017 Expenditures

All data that reference the number of juveniles at any given stage of the juvenile justice process were taken from DJJ Data Resource Guides. These data for each year correspond to the DRG of that fiscal year, except data point prior to 2001, which were retrieved from the 2001 DRG. The process of citing the reference and page of each data point would be overly laborious and obfuscating, however I am more than willing to respond to concerns of data accuracy, as data were collected by hand and may contain mistakes.

IPUMS data were used to determine the juvenile populations for each year referenced in Appendix E and F. Data set and analysis files available upon request.

The Auditor of Public Accounts for Virginia hosts a Commonwealth Datapoint webtool which allows users to explore, visualize, and download public expenditure data. I used these data to determine DJJ expenditures and court costs found in Appendix C and D. Data set and analysis files available upon request.

APPENDIX A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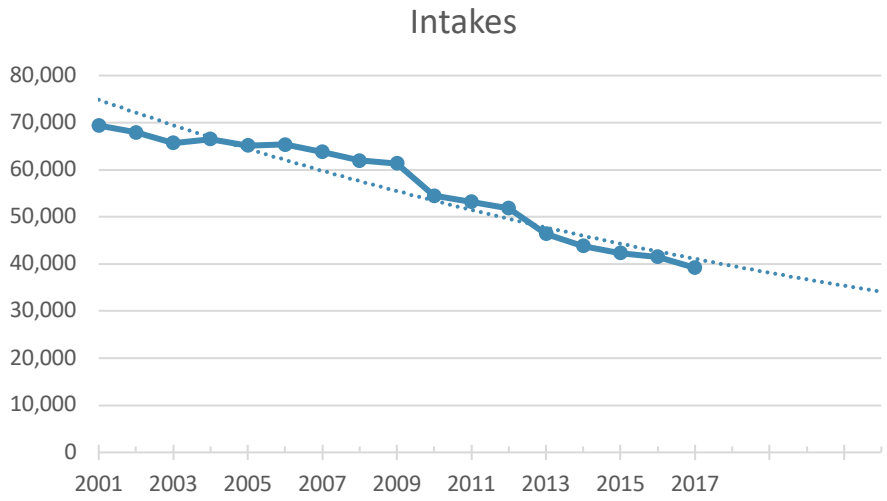
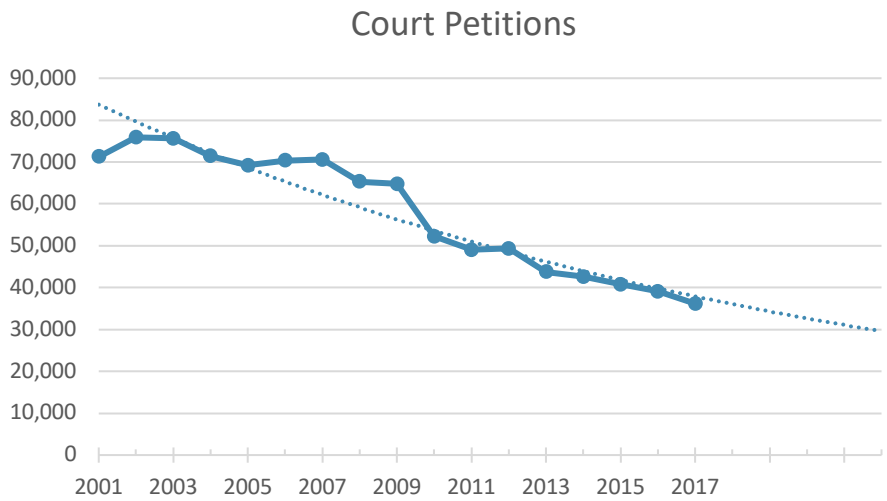
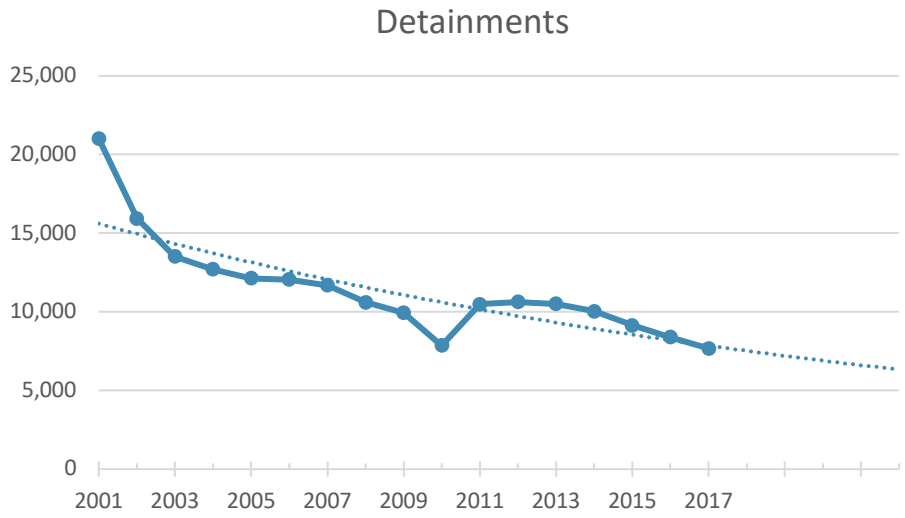
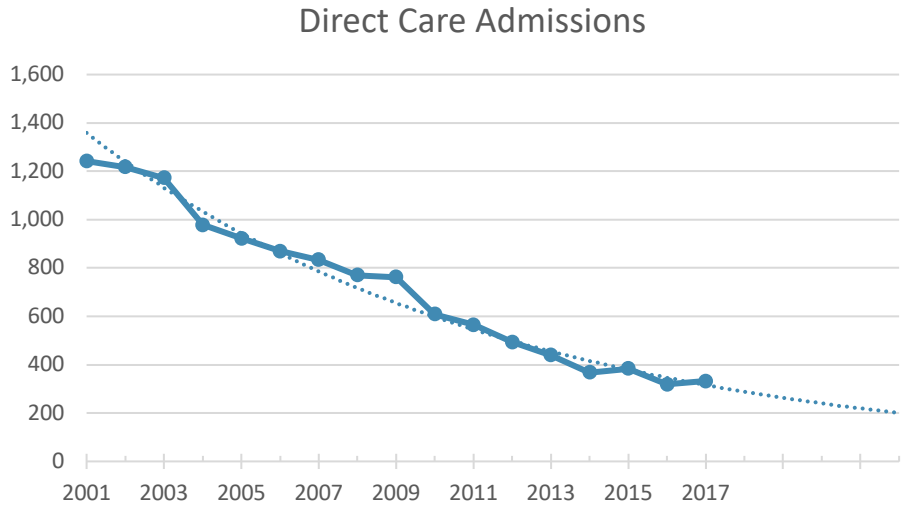
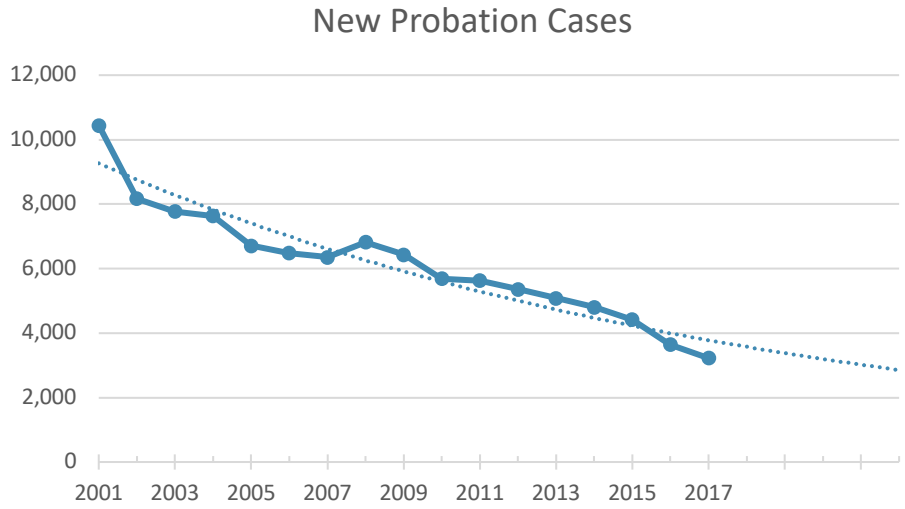
100,000
80,000
60,000
40,000
20,000
0
2001 2003 2005 2007 2009 2011 2013 2015 2017


Intakes
80,000
70,000
60,000
50,000
40,000
30,000
20,000
10,000
0
2001 2003 2005 2007 2009 2011 2013 2015 2017


Court Petitions
90,000
80,000
70,000
60,000
50,000
40,000
30,000
20,000
10,000
0
2001 2003 2005 2007 2009 2011 2013 2015 2017

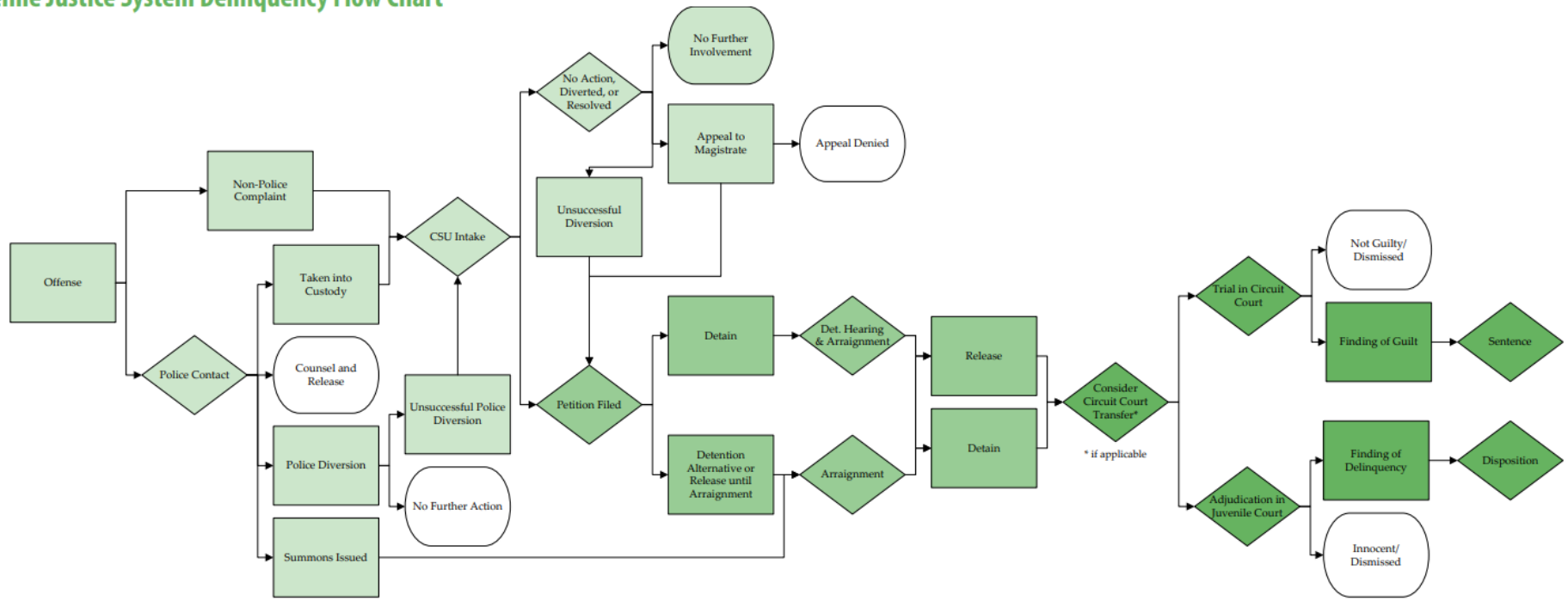

Detainments
25,000
20,000
15,000
10,000
5,000
0
2001
2003
2005
2007
2009
2011
2013
2015
2017


Direct Care Admissions
1,600
1,400
1,200
1,000
800
600
400
200
0
2001
2003
2005
2007
2009
2011
2013
2015
2017


New Probation Cases
12,000
10,000
8,000
6,000
4,000
2,000
0
2001
2003
2005
2007
2009
2011
2013
2015
2017

APPENDIX B
(Source: DJJ, 2016)

Juvenile Justice System Delinquency Flow Chart



Steps in the Juvenile Justice System

Intake

- When an offense is committed, a parent, a citizen, an agency representative, or law enforcement personnel may seek to have a complaint filed against a juvenile with an intake officer.
- When the juvenile has contact with law enforcement, he or she may be taken into custody, summonsed and released until a hearing on the matter, diverted, or counseled and released with no further action taken.
- The intake officer reviews the circumstances of the complaint to determine whether probable cause exists.
- If there is insufficient probable cause, the complaint is resolved with no further action.
- If probable cause exists, in most cases the intake officer has the discretion to informally process or divert the case, file a petition to initiate court action, or file a petition with an order placing the juvenile in a JDC. If the intake officer does not file a petition on a felony or Class 1 misdemeanor offense, the complaining party may appeal this decision to the magistrate.

Petition and Detention

- The filing of a petition initiates official court action on the complaint.
- If the intake officer releases the juvenile, the next court appearance is the juvenile's arraignment, where he or she is informed of the offenses charged in the petition, asked to enter a plea, and advised of his or her right to an attorney. The juvenile does not have the right to an attorney at the arraignment hearing.
- If the juvenile is detained pending the hearing, a detention hearing must be held within 72 hours of the detainment. At the detention hearing, the juvenile has the right to an attorney and is arraigned on the offenses charged in the petition. The judge decides whether to hold him or her in a JDC or release him or her, with or without conditions, until the adjudication.

Adjudication or Trial

- When a juvenile is adjudicated in J&DR district court, he or she has all constitutional protections afforded in criminal court (e.g., the rights to an attorney, to have witnesses, to cross-examination, against self-incrimination), with the exception of the right to a jury trial. All delinquency charges must be proven beyond a reasonable doubt.
- If the judge finds the juvenile to be delinquent, the case is usually continued to another day for the judge to make a dispositional decision. The judge's adjudication and dispositional decision may be appealed by either party to the circuit court for a *de novo* (like new) review.
- When a juvenile is tried in circuit court as an adult, the trial is handled in the same manner as a trial of an adult. In the case of a jury trial, the court determines the sentence. The conviction and sentencing in circuit court may be appealed by either party to the Court of Appeals.

Appendix C

FY2017 DJJ Expenditures		
Treasury Service Area	**Amount**	
Juv Supervision & Mgmt Svcs	$	34,575,951
Juvenile Corrections Ctr Mgmt	$	9,231,968
Physical Plant Services	$	9,066,629
Medical and Clinical Services	$	6,157,546
Juv Rehab & Treatment Svcs	$	4,900,077
Food Services	$	2,550,569
Offndr Classifctn&Time Comptn	$	132,208
Supervision & Mgmt of Inmates	$	46
Rehab & Treatment Svcs-Prisons	$	-
Total: Operation of a Secure Facility	$	66,614,993
Community Residential Programs	$	-
Juvenile Probatn&Aftercare Svc	$	61,468,826
Total: Supervision & Re-entry Services	$	61,468,826
Fin Asst-Juv Confin Local Fac	$	34,409,867
FA-Comm-Based Alt Treat Svc	$	10,517,251
FA-Probation&Parole-Loc Grnt	$	2,877,457
Total: Local Juvenile Justice Services	$	47,804,575
Information Technology Svcs	$	4,454,178
General Management & Direction	$	3,960,723
Human Resources Services	$	3,297,930
Accounting and Budgeting Svcs	$	3,117,952
Planning & Evaluation Services	$	2,163,727
Architectural & Engineer Svcs	$	526,333
Food and Dietary Services	$	162,132
Total: Administrative and Support Services	$	17,682,976
Youth Instructional Services	$	7,906,529
Instruct Leadership&Supprt Svc	$	3,325,252
Career/Tech Instr-Yth/Adlt Sch	$	1,952,670
Total: Instruction	$	13,184,451
Resid/Non-Resid Cust/Treat Svc	$	3,271,339
Total: Community Residential & Non-residential Services	$	3,271,339
Total DJJ Expenditures	**$**	**210,027,158**
Source: Commonwealth Datapoint - Fiscal Year 2017 Expenditures. (Agency = Department of Juvenile Justice. Dataset and Stata programs available upon request)		

Appendix D

Dispositional Costs Per Child Per Day: Fiscal Year 2017					
	ADP	x	Days	=	Days Served
Detention	644		365		235,060
Direct Care	338		365		123,370
Supervision	3,419		365		1,247,935
	Total Cost	/	ADP	=	Cost Per Capita
Detention	$ 34,409,867		644		$ 53,431
Direct Care	$ 79,799,443		338		$ 236,093
Supervision	$ 64,346,283		3,419		$ 18,820
	Total Cost	/	Total Days Served	=	Cost Per Child Per Day
Detention	$ 34,409,867		235,060		$ 146
Direct Care	$ 79,799,443		123,370		$ 647
Supervision	$ 64,346,283		1,247,935		$ 52
	Average Length of Stay (Days)	x	Cost per child per day	=	Average Cost per release
Pre-D detention	24		$ 146		$ 3,557
Post-D w/ Programs	138		$ 146		$ 20,245
Post-D w/o Programs	14		$ 146		$ 2,108
Direct Care	432		$ 647		$ 279,377
Probation	359		$ 52		$ 18,507

Note: Supervision includes ADP for probation and parole. Source for costs = Commonwealth Datapoint - Expenditures FY 2017. Source for ADP = Data Resource Guide FY 2017. (Dataset and Stata programs available upon request)

Juvenile Court Expenditures FY2017		
Court Appointed Attorney J&Dr	$25,806,475	
Med Cost-Gathering Evidnce-Juv	$ 515,515	
Comp of Experts J&Dr	$ 65,933	
Total attorney-related expenses	$26,387,923	
Number of cases with attorneys		51982
Average attorney compensation per case	$ 477	
Average attorney-related expenses per case	$ 508	

Note: Attorney compensation ($90/hr) is coded in dataset as "Attorney Services - Exempt" within the Court Appointed Attorney J&Dr service area. The total number of these expenses was used to estimate the number of juvenile cases with court-appointed attorneys. Source: Commonwealth Datapoint - FY 2017 Expenditures.

Appendix E

2000 Racial Breakdown (count)

	Total	Intakes	JDC	JCC
	979,253		22,026	1,450
Black	222,666		11,189	871
White	620,394		9,603	512
Hispanic	49,872		859	45
Other	86,321		374	22

2000 Racial Disparities (# per 1000)

	Intake	JDC	JCC	Black vs. White sentencing disparities		
		22.5	1.5			
Black		50.3	3.9		3.2	4.7
White		15.5	0.8			
Hispanic		17.2	0.9			
Other		4.3	0.3			

2005 Racial Breakdown (count)

	Total	Intakes	JDC	JCC
	1,009,477	65,127	12,127	922
Black	225,466	29,633	6,233	614
White	643,668	30,610	4,887	249
Hispanic	70,503	3,191	752	40
Other	69,840	1,693	255	19

2005 Racial Disparities (# per 1000)

	Intake	JDC	JCC			
	64.5	12.0	0.9			
Black	131.4	27.6	2.7	2.8	3.6	7.0
White	47.6	7.6	0.4			
Hispanic	45.3	10.7	0.6			
Other	24.2	3.6	0.3			

2010 Racial Breakdown (count)

	Total	Intakes	JDC	JCC
	1,037,696	54,474	7,860	608
Black	231,111	24,295	4,229	394
White	668,162	26,692	3,152	170
Hispanic	100,538	3,868	668	43
Other	138,423	3,486	479	44

2010 Racial Disparities (# per 1000)

	Intake	JDC	JCC			
	52.5	7.6	0.6			
Black	105.1	18.3	1.7	2.6	3.9	6.7
White	39.9	4.7	0.3			
Hispanic	38.5	6.6	0.4			
Other	25.2	3.5	0.3			

2016 Racial Breakdown (count)

	Total	Intakes	JDC	JCC
	1,058,117	41,488	8,400	319
Black	222,348	17,840	4,754	226
White	657,318	19,831	3,158	81
Hispanic	131,469	3,775	874	28
Other	178,451	3,858	487	12

2016 Racial Disparities (# per 1000)

	Intake	JDC	JCC			
	39.2	7.9	0.3			
Black	80.2	21.4	1.0	2.7	4.5	8.2
White	30.2	4.8	0.1			
Hispanic	28.7	6.6	0.2			
Other	21.6	2.7	0.1			

Appendix F

DJJ Racial Demographics												
	CSU Intakes				JDC Detainments				Direct Care Admissions			
	Black	White	Hispanic	Other	Black	White	Hispanic	Other	Black	White	Hispanic	Other
2000					50.8%	43.6%	3.9%	1.7%	60.1%	35.3%	3.1%	1.5%
2001	44.1%	52.0%	2.3%	1.6%	51.5%	42.5%	4.4%	1.6%	61.6%	34.1%	2.9%	1.4%
2002	41.6%	52.5%	3.8%	2.1%	51.2%	42.9%	4.1%	1.7%	60.3%	35.6%	3.0%	1.1%
2003	42.5%	51.0%	4.1%	2.4%	51.2%	41.2%	5.3%	2.2%	63.7%	32.4%	2.7%	1.1%
2004	43.5%	49.1%	4.8%	2.6%	50.4%	41.7%	5.6%	2.3%	64.5%	31.8%	2.6%	1.1%
2005	45.5%	47.0%	4.9%	2.6%	51.4%	40.3%	6.2%	2.1%	66.6%	27.0%	4.3%	2.1%
2006	46.0%	46.2%	5.0%	2.7%	54.2%	37.6%	6.0%	2.1%	67.8%	25.7%	4.5%	2.1%
2007	45.5%	46.5%	5.3%	2.7%	54.3%	37.3%	6.4%	2.1%	66.0%	26.4%	6.4%	1.2%
2008	44.6%	48.0%	6.3%	7.4%	55.0%	36.9%	7.2%	8.1%	66.1%	25.7%	5.5%	8.2%
2009	44.4%	48.9%	6.9%	6.7%	53.7%	38.8%	8.2%	7.5%	66.7%	25.7%	6.0%	7.6%
2010	44.6%	49.0%	7.1%	6.4%	53.8%	40.1%	8.5%	6.1%	64.8%	28.0%	7.1%	7.2%
2011	43.6%	50.0%	7.6%	6.4%	52.0%	41.8%	8.8%	6.1%	65.3%	29.9%	5.0%	4.8%
2012	42.6%	49.8%	7.8%	7.6%	52.1%	41.6%	8.8%	6.3%	69.8%	26.2%	5.5%	4.1%
2013	42.4%	48.1%	7.8%	9.5%	53.5%	40.5%	8.7%	6.0%	65.1%	29.2%	5.2%	5.7%
2014	43.7%	48.1%	8.7%	8.2%	53.7%	39.9%	10.0%	6.4%	70.6%	24.8%	9.5%	4.7%
2015	43.4%	48.0%	9.0%	8.6%	56.4%	37.9%	9.6%	5.7%	67.2%	27.3%	8.9%	5.5%
2016	43.0%	47.8%	9.1%	9.3%	56.6%	37.6%	10.4%	5.8%	70.8%	25.4%	8.8%	3.7%
2017	42.0%	47.3%	9.6%	10.7%	55.2%	38.6%	11.2%	6.2%	68.1%	27.7%	9.6%	4.2%

*DJJ did not report Hispanic demographics until the resource guide for FY2003, retroactively reporting for years 2000, 2001, and 2002. Starting in year 2008, DJJ reported the ethnic Hispanic population separate from racial demographics. Ethnic Hispanics may be included under Black, White, or "Other" for race after 2008.

Eligible Virginia Juvenile Population (Ages 8-17)				
Year	Black	White	Hispanic	Other
2000	22.7%	63.4%	5.1%	8.8%
2005	22.3%	63.8%	7.0%	6.9%
2010	22.3%	64.4%	9.7%	13.3%
2016	21.0%	62.1%	12.4%	16.9%

Appendix G

DJJ Population Statistics									
	Complaints	**Intakes**	**Petitioned**	**# Petitions**	**Resolved**	**Diverted**	**Detainments**	**Direct Care Admissions**	**New Probation Cases**
1996								1,734	
1997								1,701	
1998	88,911						19,643	1,674	
1999	89,762						20,571	1,594	12,292
2000	89,291						22,026	1,450	11,233
2001	87,986	69,381	81.0%	71268		16.0%	21,014	1,242	10,445
2002	93,685	67,968	81.0%	75885		16.0%	15,930	1,218	8,174
2003	90,001	65,681	84.0%	75601		11.0%	13,516	1,172	7,770
2004	91,544	66,483	78.0%	71404		17.0%	12,698	978	7,634
2005	91,051	65,127	76.0%	69199		18.0%	12,127	922	6,707
2006	92,552	65,358	76.0%	70340		19.0%	12,057	869	6,480
2007	91,679	63,784	77.0%	70593		19.0%	11,692	833	6,354
2008	88,255	61,947	74.0%	65309		20.0%	10,598	770	6,822
2009	86,125	61,376	75.2%	64766		20.5%	9,933	762	6,437
2010	75,531	54,474	69.1%	52192		22.0%	7,860	608	5,691
2011	71,240	53,199	68.8%	49013		21.4%	10,492	565	5,629
2012	70,091	51,860	70.4%	49344	7.8%	12.7%	10,631	493	5,359
2013	61,376	46,388	71.3%	43761	6.6%	12.2%	10,504	439	5,081
2014	58,664	43,800	72.6%	42590	5.6%	11.6%	10,034	367	4,800
2015	57,626	42,348	70.8%	40799	7.3%	11.9%	9,139	384	4,416
2016	56,668	41,488	68.9%	39044	9.6%	12.1%	8,400	319	3,647
2017	54,421	39,175	66.5%	36166	10.8%	13.3%	7,677	332	3,222