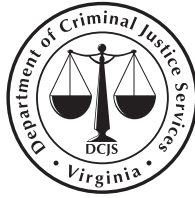



Blueprints for Change: Criminal Justice Policy Issues in Virginia



Virginia Department of Criminal Justice Services
www.dcjs.virginia.gov

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The Department of Criminal Justice Services (DCJS) is the state criminal justice planning agency in Virginia and is responsible for administering state and federal funds dedicated to improving state and local criminal justice practices, preventing crime and delinquency, and ensuring services to crime victims.

In its role as a planning agency, the Department convened six policy sessions over a two day period in May, 2007. The facilitated sessions explored six different leading edge criminal justice issues, chosen by the Department. Each three-hour session brought together a multidisciplinary group of executive-level participants who were selected because of their knowledge of the issue and their ability to advance the discussion of public policy related to the issue.

The discussions in these sessions, and the recommendations that emerged, are recorded in these policy papers.

In publishing these papers, DCJS hopes that they will stimulate further discussions by state and local decision makers and will provide useful guidance for making substantive statutory change where necessary, as well as for decisions on funding, and policy and program development.

The 2007 Blueprints for Change: Criminal Justice Policy Issues in Virginia documents are:

Canine Training and Law Enforcement

Data Mining and Regional Networks as an Investigative Tool: Administrative and Policy Considerations

Evidence-Based Practices in Community Corrections

Sexual Assault Policies in Virginia Law Enforcement Agencies

Using Technology to Guard Against Bias in Policing

Virginia's Response to the JJDP Act's Sight & Sound Separation Requirement

**For additional information on these documents, please visit the
Department of Criminal Justice Services website at: www.dcjs.virginia.gov**

Virginia's Response to the JJDP Act's Sight & Sound Separation Requirement



The Sight and Sound Separation core requirement of the Juvenile Justice and Delinquency Prevention (JJDP) Act mandates that adult inmates must be kept sight and sound separated from juvenile delinquents who are being securely held. “A juvenile who has been transferred, waived, or certified or is otherwise under the jurisdiction of a criminal court may be detained or confined in a juvenile correctional facility or juvenile detention center with other juveniles who are under the jurisdiction of the juvenile court. This is not a violation of the separation requirement because the youth is not a juvenile ‘alleged to be or found to be delinquent’ (he or she has been charged with a criminal not a delinquent act) and the youth is not an ‘adult inmate.’ Once the youth reaches the state’s age of majority, he or she must be separated from the juvenile population within 6 months”.¹

Prior to the 2002 reauthorization, the JJDP Act did not define the term “adult inmate.” Juveniles who were committed to juvenile correctional centers under the control of the Virginia Department of Juvenile Justice (DJJ) could be held until their twenty-first birthday. They did not have to be sight and sound separated from the juvenile population, regardless of which court, J&DR or Circuit, heard their case. The guidance that was provided from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) was that as long as an individual who had been convicted in a circuit court had an uninterrupted stay in the juvenile correctional facility, they could remain in the facility until the age of twenty-one without necessitating separation.

The 2002 reauthorization added a definition to the JJDP Act. Now, “the term ‘adult inmate’ means an individual who, (A) has reached the age of full criminal responsibility under applicable State law; and (B) has been arrested and is in custody for or awaiting trial on a criminal charge, or is convicted of a criminal charge offense.”² In April 2003, as a result of this new definition being added, Virginia was informed by OJJDP that their guidance had changed regarding the Separation core requirement of the JJDP Act. OJJDP’s new guidance is that all juveniles who have been convicted in a circuit court must be sight and sound separated from the juvenile population once they turn 18. If they are not separated from the juvenile population prior to reaching the age of 18.5 years, it is considered to be a violation of the Sight and Sound Separation core requirement of the JJDP Act.

Prior to the 2002 reauthorization, Virginia had consistently been found in compliance with the former guidance. However, OJJDP’s new guidance caused Virginia to be out of compliance with the Sight and Sound Separation core requirement. In order to address Virginia’s non-compliance DJJ led the development of a Final Plan of Corrective Action. This plan, which was implemented in May 2006, was designed to move Virginia toward compliance with the Separation core requirement. The plan called for male wards, over the age of 18, to be housed at Culpeper Juvenile Correctional Center. Additionally, all female wards, over the age of 18, would be held sight and sound separated from the juvenile female wards at Bon Air Juvenile Correctional Center.

¹ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 2002*, January 2007

² Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5603 [Sec. 103.]

As a result of this plan being implemented, sight and sound violations in Virginia have been significantly reduced. However, sight and sound remains problematic in Virginia at the Oak Ridge Juvenile Correctional Center. Oak Ridge is the juvenile correctional center that offers special programs and treatment options for the developmentally delayed juveniles who are committed to the care of DJJ. These juveniles with mental retardation have significantly below average intellectual functioning with IQ testing at or below 70. Due to the limited resources that are available to youth with these special needs, the over 18 year old wards who were convicted in circuit court remain at Oak Ridge Juvenile Correctional Center. Although there are usually only two or three circuit court convicted wards held at Oak Ridge who are over the age of 18.5, these few cases put Virginia at risk of losing some of its federal funding.



POLICY/RESEARCH QUESTIONS

1. Are there changes to language that Virginia might want to propose for consideration of JJDP Act reauthorization, scheduled for this year?
2. Should the court that hears a juvenile's case (Circuit Court vs. Juvenile and Domestic Relations District court) matter in Virginia as to where these individuals should be housed?
3. Are there any code changes that would permit Virginia to be in compliance while protecting this population?
4. Are there any other populations that cause Virginia particular concern with the separation requirement, e.g., female inmates?



DISCUSSION

The 2002 Reauthorization created challenges and hardships that Virginia continues to wrestle with. Finding a simple solution to Virginia's challenges relating to Sight and Sound Separation in the juvenile correctional facilities has not been easy. Once Virginia implemented the "Final Plan of Corrective Action" in May of 2006, significant improvements were made in reducing the number of sight and sound violations in Virginia at the juvenile correctional facilities.

The concept of separating the older wards from the juvenile population in the juvenile correctional centers sounds like it is the most responsible thing to do. However, in practical terms, certain issues may cause "separation" not to be in the best interest of the wards. The challenges that Virginia faces involve the incarceration of the developmentally delayed wards, the female population, and other youth in certain specific and unique circumstances.

Developmentally Delayed Youth

How to best handle the developmentally delayed youth who are committed to the care of DJJ has created a challenge for Virginia. Those with expertise in the field report that developmentally delayed youth have special characteristics and needs, and in the correctional setting, they require different programming from their peers. The developmentally delayed are more easily victimized by their older predatory peers. These youth need special treatment, they need to have their deficits recognized, and the special programming they receive must be appropriate to their special needs. They require special protection from victimization. Their particular needs will not change just because they reach the age of 18.5, and developmentally they will remain more like those who are under 18 years of age. They will continue to require different treatment and special programs than their chronological peers receive, and they will remain vulnerable to predatory victimization.

All of the youth who are classified and held at Oak Ridge fall into this category. They have significantly sub-average intellectual functioning, having an IQ below 70. The youth at Oak Ridge are the type of kids that would not make it at a juvenile correctional center where the older more mature and aggressive wards are held. The youth at Oak Ridge participate in a special program that uses a “token economy”, a program in which rewards are offered for appropriate behavior. This program is not available at other juvenile correctional centers.

The number of youth at this facility who are over the age of 18.5 is very low, usually two to four youth at any given time. However, moving them to another juvenile correction center would not only interfere with them receiving appropriate treatment, but it would significantly jeopardize their safety and create liability for Virginia as well.

Females

Females who are committed to the custody of DJJ present additional challenges and hardships relating to “separation”. Like the developmentally delayed youth who are held at Oak Ridge, females are a group that requires special treatment and programs. Studies have shown that female offenders are more likely than males to have serious mental health disorders and they are twice as likely to suffer from clinical depression and anxiety. Female offenders are more likely to have been abused, both sexually and physically. Usually, their pathways to delinquency involved running away, drug use and prostitution. Co-occurring problems entail family distress and substance abuse. Although females are more likely to suffer from psychiatric disorders, have histories of sexual and physical abuse, have family and relationship problems and have histories of substance abuse, they are less aggressive and violent than male offenders.

Because of their unique problems, females also require special programs and treatment to address their special and unique needs. Since they are less aggressive than males and usually not any bigger and stronger than their younger peers, the need for separating the older female wards from the younger ones does not have to be a main concern. However, the need for those over the age of 18 to receive proper treatment is just as critical as the need for those who are under 18. Medications alone will not solve their needs; they need the same counseling programs, group therapy, and behavioral modification programs that are designed to get these young women back out into the community.

Currently, all female wards in the care of DJJ are held at Bon Air Juvenile Correctional Center. At this facility, those females who are over the age of 18 are housed sight and sound separated from the younger female population. Although clearly the older girls require the same treatment options, Virginia cannot provide the same level of services for the older wards that the younger ones receive because of limited resources and the requirements to provide for sight and sound separation.

Other Challenging Issues

There are other issues that need to be examined when considering the challenges and hardships that Virginia faces in dealing with the sight and sound separation core requirement of the JJDP Act. Requiring that all circuit court convicted youth be held at Culpeper severely restricts the ability of DJJ to offer medical care, protective services, and transitional programs.

DJJ has youth who are committed to their care who have heart problems, seizures, and other serious medical conditions. These youth need to have access to emergency medical care. Currently the central infirmary is located at Bon Air complex and the Virginia Commonwealth University Medical Center is located close by. The young adults who now must be housed at Culpeper do not have access to this caliber of medical service if it is required. This creates a potential liability issue for the state.

A major responsibility of DJJ is to provide for the protection, safety, and security of the wards entrusted to their care. Because of the small number of juvenile correctional centers in Virginia, DJJ has a limited number of places where they can provide protective custody housing. To meet the JJDP Act mandates by only housing the older wards at Culpeper, DJJ's ability to separate enemy residents who are deemed to be a threat to each other is severely limited. By failing to separate wards that are likely to become engaged in a physical confrontation, the danger to the safety of the youth is significantly increased.

DJJ needs to be able to provide transitional programs to wards to help them get back into their communities. Currently the transitional program at Beaumont cannot be made available to the older youth who are housed at Culpeper. Also, by sending all the older youth to Culpeper, family visits and involvement is greatly reduced. Missing out on the transitional programs and greater family separation makes it less likely that youthful offenders will be able to successfully re-enter their communities and become productive citizens.

Another challenge that Virginia faces relates to the classification process. All youth who are committed to DJJ are initially sent to the Reception and Diagnostic Center (RDC) where they are held for approximately thirty days to allow them to go through an extensive classification process. From there, they are transferred to the appropriate juvenile correctional center. Although it has yet to happen, it is foreseeable that a sight and sound violation could occur if a circuit court convicted youth who is awaiting completion of the classification process at RDC turns 18.5.



CONCLUSIONS AND RECOMMENDATIONS

1. Virginia should continue to work with the Coalition on Juvenile Justice in the upcoming Reauthorization of the JJDP Act to address the challenging issues and hardships that were created when the definition of an "adult inmate" was included. The elimination of this definition or having wording added which would cause this definition not to apply to youth who are continuously held in a juvenile correctional facility would resolve Virginia's problems associated with compliance with the JJDP Act relating to the sight and sound provision.
2. Virginia should closely monitor the number of youth who are convicted in circuit court and who are committed to DJJ. We should seek to determine why the number of circuit court wards continues to rise each year and see if this trend can be reversed. At some point, this number will exceed 140, which is the capacity at Culpeper Juvenile Correctional Center where these wards are held separated from the juvenile population
3. Virginia should continue to collaborate with the Office of Juvenile Justice and Delinquency Prevention in an effort to obtain a waiver for the developmentally delayed youth at Oak Ridge, and also explore the possibility of getting a waiver exception for the female population, and for those youth are involved in special circumstances which might negatively impact Virginia's full compliance with the sight and sound core requirement.
4. Virginia should continue to monitor legislation that may have an impact on sight and sound compliance and seek to consider whether changes to state codes or language changes could assist Virginia in becoming fully compliant with the sight and sound core requirement while maintaining what is viewed to be in the best interests of the youth who are committed to DJJ.

Virginia should maintain the highest possible level of compliance with the sight and sound core requirement of the JJDP Act at all juvenile correctional facilities while keeping in mind that Virginia must also:

- Continue to provide for the public safety of our citizens.
- Continue to provide services to the wards and focus on getting youth back into the community in such a manner that they can become productive and law-abiding citizens. This may require that wards with special needs have access to special programs and treatment.
- Keep detainees safe until they can be released, and protect the more vulnerable youth from the older and more aggressive wards.
- House wards with special medical conditions at facilities where emergency medical care is quickly available should it be required.
- Consider all the various liability issues involving places of confinement.



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