

DON'T THROW AWAY THE KEY

REEVALUATE ADULT TIME FOR YOUTH CRIME!

December 9, 2009

Dear Crime Commission Member,



We, the undersigned, write this letter to urge you to reform Virginia's system of trying and incarcerating youth as adults which causes nearly 700 youth a year to receive adult felony convictions in our Commonwealth.

In the mid 1990s, youth violence in Virginia was described as "an evil menace unparalleled in our history" and many warned of an unprecedented escalation of youth violence. Despite the fact that the predicted crime wave never happened and youth crime rates fell, dramatic changes were made to our juvenile justice system.

In 1994, legislators lowered the age of eligibility for transfer to the adult court system to 14; two years later, they dramatically curtailed the traditional role of judges in the transfer process. Specifically, the legislature: (1) created "automatic" certification for homicide and aggravated malicious wounding; (2) delegated to prosecutors the virtually unfettered authority to make transfer decisions when youth are charged with a wide range of felonies covering a broad range of behavior; and, (3) limited traditional judicial decision making after a full, contested hearing to those remaining, less serious felonies. By making these changes, policy makers removed any requirement that factors other than age and the original charge be taken into consideration in the vast majority of transfer cases.

Thirteen years have passed since these changes were made and new findings show that too many young people in Virginia are unnecessarily getting caught up in the adult system. The vast majority of juvenile justice professionals believe the practice of transfer needs to be changed. We hope that after considering the following points you will agree that unless we improve the quality and accountability of decision making about which youth are tried as adults, we will continue to have a system that inappropriately throws away the keys to the future for too many of our children.

Offenders should be held accountable, but a smart response is necessary. Young people transferred to the adult criminal justice system may be held in local jails while awaiting trial. In jail they can be placed in the general population and all too often are denied an education and other important services. Some youth will ultimately end up in adult prisons where they are placed at great risk for physical and sexual assault and suicide. Even if they do not serve adult prison time, all of these youth face increased barriers to rehabilitation as a result of the adult felony convictions on their records. This response is neither smart nor effective.

Research confirms that youth who are tried as adults are more likely to reoffend upon release than similarly situated youth who are treated as juveniles. In August 2008, the federal Office of Juvenile Justice and Delinquency Prevention issued a report finding that trying and treating youth as adults dramatically increases the likelihood of their reoffending. Additionally, a Centers for Disease Control and Prevention 2007 report found that transfer increases the victimization of those youth confined in adult facilities, and contributes to a higher rate of recidivism.

Not all of the youth who are tried and incarcerated as adults in Virginia are long-term, violent offenders. For example, according to recent statistics from the Virginia Criminal Sentencing Commission youth charged with homicide or sexual assault made up only 6% and 8% respectively of the transferred population between 2001 and 2008, while nonviolent drug offenders make up 9%.

When Circuit Court judges have fully considered all critical information about young defendants they often determine that sending them to an adult prison is unnecessary and counterproductive. More than half of the young offenders convicted by Circuit Courts between 2001 and 2008 were not sentenced to adult prison and **1 in 5 of those youth received nothing more than probation.** These sentencing decisions raise strong doubts about whether these young people had to be tried as adults at all.

Virginia's transfer system disproportionately harms the lives of African-American youth and their communities. Although African-American youth only make up 22.8% of youth in the general population and 44.2% of youth at intake, African-American youth are 81.7% of transferred youth in the custody of the Department of Juvenile Justice. Virginia does not have statistics on the number of Latino youth tried as adults.

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Juvenile justice professionals around the Commonwealth also support reform of Virginia's transfer laws. Given what we have explained above, it should not be surprising that according to a Virginia State Crime Commission survey, significant majorities of juvenile and Circuit Court judges, Court Service Unit Directors, and Chief Public Defenders support: (1) giving Juvenile and Domestic Relations District Court judges sole discretion over transfer decisions not mandated by statute; (2) giving Circuit Court judges authority to override transfer or certification to their court ("reverse waiver"); and, (3) in appropriate cases, allowing youth to regain their juvenile statuses even if they were previously tried and convicted as adults. These policy changes would not prevent prosecutors from seeking the transfer of any juvenile 14 and over charged with a felony, but would make sure that courts and court personnel gather and examine as much information as possible before making this momentous and life-changing decision.

For all of these reasons and for the simple fact that children are different than adults, we now call on you to support the following reforms:

- **Make transfer decisions more fair and effective by granting juvenile court judges the authority to make transfer decisions for all offenses except those for which transfer is currently automatic, homicide and aggravated malicious wounding.**
 - Juvenile court judges have the most training and experience and are the best equipped to make transfer decisions. Expanding judicial involvement at the beginning of the process will ensure that Circuit Court resources are reserved for only the most serious and chronic young offenders.
 - Providing juvenile court judges with expanded transfer authority, while giving both the prosecution and the defense the right to appeal their decisions will restore checks and balances to our transfer system, making it more fair, transparent, and accountable.
- **Limit the exposure of young offenders to adult criminal convicts.**
 - Require that youth who have been transferred and are awaiting trial are held in juvenile detention centers rather than adult jails unless they have demonstrated a substantial risk to other detainees.
 - Provide Circuit Court judges with enhanced training on juvenile sentencing options.

By supporting these changes, you will make the juvenile justice system more fair and effective. Juvenile and Domestic Relations District Court judges will retain the ability to transfer the most violent and chronic offenders to the adult system and the time and resources of Circuit Courts will not be wasted on youth that can be handled as juveniles. Most importantly, by supporting such changes you will ensure that we do not throw away the key to the future for hundreds of Virginia's youth.

Sincerely,

Child Advocacy Organizations:

JustChildren, a Program of the Legal Aid Justice Center
Voice's for Virginia's Children
Families & Allies of Virginia's Youth
R.I.H.D. Youth Initiative
Piedmont Court Appointed Special Advocates
Girls Incorporated of the Greater Peninsula
Center for Children's Law and Policy
Campaign for Youth Justice
Greater Prince William Court Appointed Special Advocates
Richmond Court Appointed Special Advocates
Roanoke Youth Advocate Program
Virginia Beach Court Appointed Special Advocates

Education Organizations:

Virginia Education Association
Virginia Parent Teacher Association
Fairfax County Council of PTAs Executive Board
ODU Institute for Community Justice
University of Richmond Children's Law Center
UVA Law Street Law Program
UVA Law Black Law Students Association
UVA Law Child Advocacy Research and Education
(C.A.R.E.)

Civil Rights Groups:

ACLU of Virginia
Virginia NAACP

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Legal Organizations:

Mid-Atlantic Juvenile Defender Center
Virginia Coalition for Juvenile Justice
Virginia Poverty Law Center
Virginia Association of Criminal Defense Lawyers
William B. Reichhardt & Associates
Brownley Law Group

Health and Mental Health Organizations:

Mental Health America, Charlottesville-Albemarle
Virginia Chapter, American Academy of Pediatrics
NAMI Virginia
Virginia Chapter of the American Academy of Child &
Adolescent Psychiatry
NAMI Arlington
Virginia Counselors Association
National Association of Social Workers, Virginia
Chapter

Other Groups:

Virginia Organizing Project
Virginia C.U.R.E.
League of Women Voters of Virginia
Kemba Smith Foundation
Restorative Community Foundation
Richmond P.L.A.C.E.
AdvoCare, Inc.
Prison Ministry Social Justice Committee,
Sojourners United Church of Christ
Virginia First Cities

Faith Based Groups:

Social Action Linking Together (S.A.L.T.)
Virginia Interfaith Center for Public Policy