

Virginia State Crime Commission

Transfer & Certification of
Juveniles

June 25, 2009

Overview



- Background
- Minimum Ages
- Transfer & Certification Provisions
- Pending Legislation
- Policy Issues

Background



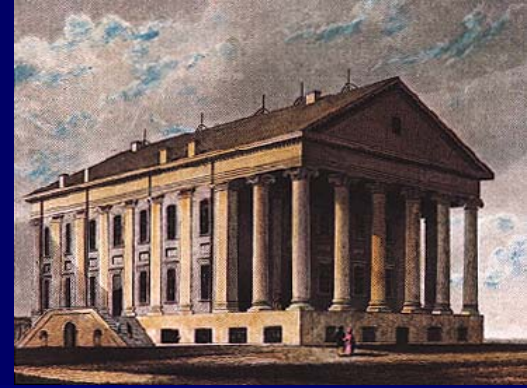
- Study Authority: At the December 9, 2008, Crime Commission meeting members requested that the Juvenile Justice study be extended an additional year to specifically review transfer and certification of juveniles, with a focus on adolescent brain development and other states' laws.

Background



- During the 1990's, almost every state legislature took steps to transform their juvenile justice systems, by either creating new, or expanding current transfer mechanisms, and shifting authority over transfer from judges to prosecutors.

Background



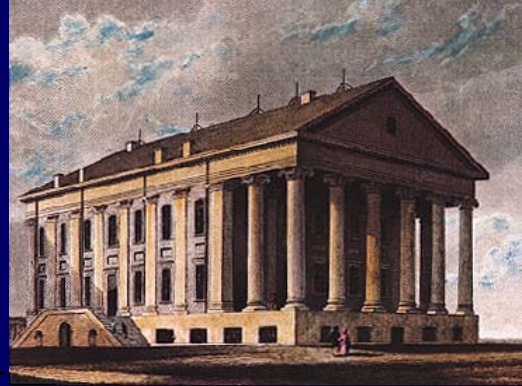
- Virginia's Transfer statutes (§ 16.1-269.1) were amended in the mid-1990's and:
 - Reduced eligible age for transfer from 15 to 14 years old;
 - Provided a distinction between automatic and discretionary transfer eligible crimes from JDR to Circuit Court;
 - Expanded list of criteria in the consideration of transfer in subsection A; and,
 - Removed judicial discretion to allow for prosecutorial discretion in subsection C for twelve crimes – felony homicide, felonious injury by mob, abduction, malicious wounding, malicious wounding law-enforcement officer, felonious poisoning, adulteration of products, robbery, carjacking, rape, forcible sodomy, and object sexual penetration.

Minimum Age to Transfer



- No minimum age: 23 states
- Age 10: 2 states
- Age 12: 3 states
- Age 13: 6 states
- Age 14: 16 states (including Virginia)
- Age 15: 1 state

Transfer Provisions: Prosecutorial Discretion



- Prosecutors decide whether to file charges in juvenile or criminal court. There is no hearing to determine which forum is appropriate, and usually no specific standards for deciding between them.
- 17 states, including Virginia, allow for prosecutorial discretion.

Transfer Provisions: Statutory Exclusion



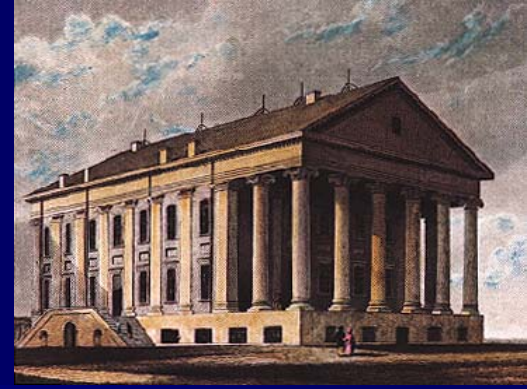
- Allows criminal courts exclusive original jurisdiction over certain classes of cases involving juveniles. If a youth is charged with a crime excluded from juvenile court jurisdiction, the case must originate in criminal court.
- 30 states, not including Virginia, have statutory exclusion.
 - Virginia does have certain crimes that automatically transfer to circuit court, but they start in juvenile court.

Transfer Provisions: Reverse Waiver



- Allows juveniles whose cases are in criminal court to petition to have them transferred to juvenile court.
- 26 states, including Virginia, have reverse waiver.
 - Virginia only allows for reverse waiver for subsection A transfers.

Transfer Provisions: Once Adult/Always Adult



- These laws require that juveniles who have previously been treated as adults be criminally prosecuted for all subsequent offenses, regardless of their nature.
- 34 states, including Virginia, have once an adult/always an adult provisions.
 - 25 states, including Virginia, have this provision only if the juvenile was transferred and convicted.

Transfer Provisions: Blended Sentencing



■ Juvenile Blended

-Provides juvenile courts the authority to impose adult criminal sanctions on certain juvenile offenders.

- Typically, the criminal sentence is suspended.

-15 states, not including Virginia, use juvenile blended sentencing

■ Criminal Blended

-Allows criminal courts to impose juvenile dispositions

-17 states, including Virginia, use criminal blended sentencing

Pending Legislation



- 10 states have proposed legislation that either expand the jurisdiction of the criminal court system over minors or restrict the jurisdiction of the juvenile court.
 - Illinois
 - Adds a provision that if one criminal charge is filed before the trial or a plea, all charges arising out of that same incident will be tried in state criminal court.
 - Indiana
 - Adds a category of defendants that would be statutorily excluded from the juvenile court's jurisdiction.
 - Any minor that is alleged to have committed an offense that would be a felony or misdemeanor were it committed by an adult, is at least 10 years of age, and has at least 6 prior felony, misdemeanor convictions, or adjudications for violations that would be felonies or misdemeanors were they committed by an adult

Pending Legislation



- New York
 - Expand the range of crimes that require district attorney approval to transfer from criminal court to family court.
 - Expand the types of sexual offenses that will prevent a juvenile defendant from obtaining the youthful offender status.
 - Lower the age for criminal responsibility for certain sex crimes to 13 years of age.
- Oklahoma
 - Require that a juvenile be convicted of an offense in order to be treated as an adult in the future.

Pending Legislation



- 7 states have proposed legislation that either restrict the jurisdiction of the criminal court over minors or expand the jurisdiction of the juvenile court
 - Hawaii
 - Allow circuit court to use a reverse waiver.
 - Iowa
 - Would raise the maximum age for youthful offender status eligibility from age 15 to age 17.
 - Nebraska
 - Increase the age at time of alleged commission of crime from 18 to 21 for purposes of reverse waiver.
 - Increase the time limit for reverse waiver from 15 to 30 days.

Pending Legislation



- North Carolina
 - Would raise the maximum defined age of a delinquent juvenile from the current age of 16 to the age of 18.
 - Between June 30, 2012 and June 30, 2015, the definitional age of delinquent juveniles will be raised by 6 months until the age is set at 18.
- Vermont
 - Would raise the maximum age for both discretionary waiver and reverse waiver to 18.
 - Make all reverse waivers mandatory if the child appears to have been under the age of 18 at the time of the alleged offense.
- Wisconsin
 - Would reduce the burden on the juvenile by reducing the scope of what the juvenile has to prove.
 - Add factors that a juvenile court must consider both in retaining jurisdiction and in waiving jurisdiction.
 - Factor's a juvenile's maturity and whether that increases the likelihood that an adult institution would harm the child.

Pending Legislation



- Wyoming
 - Would clarify the role of the district attorney in channeling juveniles into either the juvenile court system or the criminal court system.
- Recently Enacted:
 - Nevada
 - Passed a bill that allows for the trial of an alleged offender as an adult if the alleged offense was committed when the person was between 16 and 18 years of age and they were charged with the offense between 20 years, 3 months and 21+ years of age. (*note: effective October 1, 2009*).
 - Passed a bill that raises the minimum age when mandatory waiver may apply from 14 to 16 years of age.
 - Washington
 - Passed a bill that will change their once an adult/always an adult provision to require a conviction (*note: effective July 26, 2009*).

Policy Issues



- Staff disseminated brief surveys regarding attitudes towards policy options. Response rates are as follows:
 - 56% (14 of 25) Chief Public Defenders;
 - 30% (46 of 153) Circuit Court Judges;
 - 48% (57 of 120) Commonwealth's Attorneys;
 - 86% (30 of 35) Court Service Unit Directors; and
 - 40% (45 of 113) JDR Court Judges.

Policy Issues



- Allow JDR Judges sole discretion to transfer, with the exception of mandatory transfer crimes under subsection B.
 - 79% (11 of 14) of Chief Public Defenders;
 - 73% (32 of 44) of Circuit Court Judges;
 - 26% (15 of 57) of Commonwealth's Attorneys;
 - 87% (26 of 30) of Court Service Unit Directors;
 - 80% (36 of 45) JDR Court Judges.

Policy Issues



- Allow Circuit Court judges the ability to send subsection C transfers back to JDR Court for adjudication (reverse the transfer).
 - 93% (13 of 14) of Chief Public Defenders;
 - 84% (37 of 44) of Circuit Court Judges;
 - 19% (11 of 57) of Commonwealth's Attorneys;
 - 77% (23 of 30) of Court Service Unit Directors;
 - 53% (24 of 45) of JDR Court Judges.

Policy Issues



- Allow for a device to restore a juvenile's status (currently, once transferred and convicted, juvenile is always considered an adult).
 - 93% (13 of 14) of Chief Public Defenders;
 - 64% (28 of 44) of Circuit Court Judges;
 - 7% (4 of 57) of Commonwealth's Attorneys;
 - 67% (20 of 30) of Court Service Unit Directors;
 - 44% (20 of 45) of JDR Court Judges.

Discussion