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JUVENILE JUSTICE

Valerie Slater *

This Article serves as a review of recent juvenile justice law and legislative trends in Virginia.¹ This Article will review both codified changes and relevant proposed legislation that did not pass the Legislature to more fully identify trends in juvenile justice. While this Article does not capture every proposed or codified change to Virginia juvenile justice law, it does identify and present the most significant changes and trends over the last two legislative sessions to the laws governing the entrance of youth into the criminal legal system, the treatment of Virginia's youth directly involved in the criminal legal system, and the treatment of youth convicted or adjudicated delinquent by a Virginia tribunal and serving a sentence in a designated facility. This Article further discusses the potential ramifications of such legislative changes on youth and their families and what practitioners must be aware of when representing youth facing charges of unlawful behavior in the Commonwealth of Virginia.

I. LEGISLATION PASSED WITH POTENTIAL POSITIVE IMPACT FOR YOUTH

A. *School Discipline and Reporting Requirements*

Senate Bill 1020, sponsored by Senator William M. Stanley, Jr.,² passed during the 2020 legislative session to amend the Virginia Code by adding a section numbered 22.1-279.3:3.³ This new section

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1. This Article encompasses legislative changes adopted during the 2020 and 2021 special legislative session by the Virginia General Assembly.

2. *SB 1020 Public Schools; Alternative School Discipline Process*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB1020> [<https://perma.cc/AK4M-HX9S>].

3. S.B. 1020, Va. Gen. Assembly (Reg. Sess. 2020) (enacted as Act of Apr. 8, 2020, ch. 876, 2020 Va. Acts 1540, 1540). VA. CODE ANN. § 22.1-279.3:3 (Cum. Supp. 2020).

allows school boards to adopt an alternative school discipline process to provide a principal and parties involved in an incident involving assault, or assault and battery without bodily injury that occurs on a school bus, on school property, or at a school-sponsored event,⁴ an option to enter into a mutually agreed-upon process between the involved parties as an alternative to reporting such incident to law enforcement.⁵ The bill provides that a principal in a school division with such an alternative accountability process may attempt to engage the parties involved in such an incident in the process prior to reporting the incident to the local law enforcement agency and prohibits, if provided for by the school board, a principal from reporting a party who successfully completes the alternative school discipline process.⁶ The process outlined in Senate Bill 1020 is more commonly known as restorative justice practices.

The restorative justice theoretical framework views crime as a violation of people and relationships. These violations in turn create an obligation to make things right. Restorative justice aims to reestablish the balance that has been offset as a result of a crime by involving the primary stakeholders (i.e., victim, offender, and the affected community) in the decision-making process of how best to restore this balance. The focus is on healing as opposed to punishment. Other important principles of restorative justice include offender accountability for wrongdoing, respect for all participants, and the centrality of the victim throughout the process.⁷

Richmond Public Schools has adopted restorative justice as a model for dispute resolution under the leadership of Dr. Ram Bhagat, Manager of School Culture and Climate Strategy for Richmond Public Schools.⁸ “His primary role is to envision, design, implement, and evaluate trauma-responsive practices and restorative practices throughout the division.”⁹

4. § 22.1-279.3:1 (Cum. Supp. 2020).

5. *Id.* § 22.1-279.3:3 (Cum. Supp. 2020).

6. *Id.*

7. DAVID B. WILSON, AJIMA OLAGHERE & CATHERINE S. KIMBRELL, NAT'L CRIM. JUST. REFERENCE SERV., EFFECTIVENESS OF RESTORATIVE JUSTICE PRINCIPLES IN JUVENILE JUSTICE: A META ANALYSIS 2 (2017), <https://www.ojp.gov/pdffiles1/ojjdp/grants/250872.pdf> [<https://perma.cc/F87W-L72A>].

8. *About*, DR. RAM BHAGAT, <https://www.rambhagat.com/about> [<https://perma.cc/5LXB-WKBG>].

9. *Id.*

Dr. Ram Bhagat said,

I think it[,] trauma[,] is something that connects us on a universal level. Teachers are becoming more aware of it[,] administrators are becoming more aware of it. It's like the crucible where we can create change or we can create some transformative change because once teachers are powered through knowing more about the impact of trauma on learning and then also how to use restorative practices to strengthen the relationships in their classroom then we can improve and enhance academic achievement for all students and close the achievement gap.¹⁰

Embracing restorative practices and other positive behavior interventions to address student behavior provides opportunities for youth to learn prosocial behaviors as well as positive ways to deal with emotions and conflict, thus, fulfilling the mission of schools to educate every child, preparing them to become productive and functioning adult members of society.

Also impacting school discipline and a school division's reporting requirement to law enforcement, House Bill 257,¹¹ sponsored by Delegate Michael P. Mullin,¹² and Senate Bill 729,¹³ sponsored by Senator Jennifer L. McClellan,¹⁴ passed during the 2020 legislative session to amend and re-enact section 22.1-279.3:1 of the Virginia Code, concerns incident reports filed by school principals. This section now eliminates the requirement that school principals report to law enforcement certain enumerated acts that may constitute a misdemeanor offense, including misdemeanor marijuana possession.¹⁵

The ability of school officials to handle misdemeanor offenses in school rather than requiring they be reported to law enforcement strengthens the ability to create a culture of learning in school that moves away from involving youth in the justice system. Keeping youth out of the justice system and in the classroom increases the

10. Catherine Komp, *Virginia Schools Take Steps to Implement Restorative Practices*, VPM (Nov. 19, 2017), <https://vpm.org/news/articles/2800/virginia-schools-take-steps-to-implement-restorative-practices> [<https://perma.cc/ZA7K-HH7E>].

11. H.B. 257, Va. Gen. Assembly (Reg. Sess. 2020) (enacted as Act of Mar. 12, 2020, ch. 335, 2020 Va. Acts 520, 520–21).

12. *HB 257 School Principals; Incident Reports*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB257> [<https://perma.cc/9UUR-VRNY>].

13. S.B. 729, Va. Gen. Assembly (Reg. Sess. 2020) (enacted as Act of Mar. 6, 2020, ch. 173, 2020 Va. Acts 241, 241–42).

14. *SB 729 School Principals; Incident Reports*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB729> [<https://perma.cc/6P3X-W4RB>].

15. Ch. 335, 2020 Va. Acts at 520 (codified as amended at VA. CODE ANN. § 22.1-279.3:1 (Cum. Supp. 2020)).

likelihood that students will graduate from high school. National statistics indicate that adults aged twenty-five and older without a high school education or equivalent are three times more likely than those with a college education to die before age sixty-five.¹⁶

Rounding out school discipline and laws impacting students while in school, on school buses, or at school sponsored events, House Bill 292,¹⁷ sponsored by Delegate Schuyler T. Van Valkenburg,¹⁸ and Senate Bill 221,¹⁹ sponsored by Senator Mamie E. Locke,²⁰ passed during the 2020 legislative session to amend and re-enact section 22.1-280.2:3 of the Virginia Code, regarding the term length of a memorandum of understanding between school boards and law enforcement agencies. This amended section shortens from every five years to every two years the frequency of the review period for memorandums of understanding between school boards and local law enforcement agencies.²¹ The section also requires local school boards to conspicuously publish the current division memorandum of understanding on its division website and provide notice and opportunity for public input during each memorandum of understanding review period.²²

These three laws seem to signal a growing trend away from the use of law enforcement and the legal system to address youth misbehavior in school. This trend continues to move Virginia schools back towards viewing all children in school as children who need support and guidance in making more appropriate choices when they find themselves in conflict rather than law and punishment.

16. EMILY ZIMMERMAN ET AL., CTR. ON SOC'Y & HEALTH, HEALTH EQUITY IN RICHMOND, VIRGINIA 8 (2016), <https://societyhealth.vcu.edu/media/society-health/pdf/RVAHealthEquityFINAL.pdf> [<https://perma.cc/CR26-YDKY>] (citing Melonie Heron, Donna L Hoyert, Sherry L Murphy, Jiaquan Xu, Kenneth D Kochanek & Betzaida Tejada-Vera, *Deaths: Final Data for 2006*, CDC, 57 NAT'L VITAL STAT. REPS. 12 (2009)).

17. H.B. 292, Va. Gen. Assembly (Reg. Sess. 2020) (enacted as Act of Mar. 2, 2020, ch. 52, 2020 Va. Acts 63, 63).

18. *HB 292 School Boards and Local Law-Enforcement Agencies; Memorandums of Understanding, Frequency of Review*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=hb292> [<https://perma.cc/3J2W-KAJA>].

19. S.B. 221, Va. Gen. Assembly (Reg. Sess. 2020) (enacted as Act of March 6, 2020, ch. 171, 2020 Va. Acts 240, 240).

20. *SB 221 School Boards and Local Law-Enforcement Agencies; Memorandums of Understanding, Frequency of Review*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB221> [<https://perma.cc/XQ6V-GB46>].

21. Ch. 171, 2020 Acts at 240 (codified as amended at VA. CODE ANN. § 22.1-280.2:3 (Cum. Supp. 2020)).

22. § 22.1-280.2:3 (Cum. Supp. 2020).

B. *Charges*

House Bill 256,²³ sponsored by Delegate Michael P. Mullin,²⁴ and Senate Bill 3,²⁵ sponsored by Senator Jennifer L. McClellan,²⁶ passed during the 2020 legislative session to amend and re-enact section 18.2-415 of the Virginia Code related to school children and the charge of disorderly conduct. This section now provides that an elementary or secondary school student is not guilty of disorderly conduct in a public place if the disorderly conduct occurred on the property of an elementary or secondary school, on a school bus, or at any activity conducted or sponsored by any elementary or secondary school.²⁷

The charge of disorderly conduct was previously used in schools to charge one or both parties to physical altercation when it was unclear who was the initial aggressor. Removing this charge from school will now allow practices such as restorative justice and other positive behavior interventions to once again replace law enforcement and the court system in resolving conflicts in school settings.

House Bill 995,²⁸ sponsored by Delegate Joseph C. Lindsey,²⁹ and Senate Bill 788,³⁰ sponsored by Senator Jennifer L. McClellan,³¹ passed during the 2020 legislative session to amend and re-enact sections 18.2-23, 18.2-80, 18.2-81, 18.2-95 through 18.2-97, 18.2-102, 18.2-103, 18.2-108.01, 18.2-145.1, 18.2-150, 18.2-152.3, 18.2-162, 18.2-181, 18.2-181.1, 18.2-182, 18.2-186, 18.2-186.3, 18.2-187.1, 18.2-188, 18.2-195, 18.2-195.2, 18.2-197, 18.2-340.37, 19.2-289, 19.2-290, 19.2-386.16, and 29.1-553 of the Virginia Code

23. H.B. 256, Va. Gen. Assembly (Reg. Sess. 2020) (enacted as Act of Mar. 8, 2020, ch. 199, 2020 Va. Acts 287, 288).

24. *HB 256 Disorderly Conduct; Students*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=hb256> [<https://perma.cc/F84Q-GNDF>].

25. S.B. 3, Va. Gen. Assembly (Reg. Sess. 2020) (enacted as of Act of Mar. 12, 2020, ch. 355, 2020 Va. Acts 542, 542).

26. *SB 3 Disorderly Conduct; Students*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB3> [<https://perma.cc/G7T6-SRPL>].

27. § 18.2-415 (Cum. Supp. 2020).

28. H.B. 995, Va. Gen. Assembly (Reg Sess. 2020) (enacted as Act of Mar. 3, 2020, ch. 89, 2020 Va. Acts 124).

29. *HB 995 Grand Larceny; Increases Threshold Amount*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=hb995> [<https://perma.cc/K33Z-B8VU>].

30. S.B. 788, Va. Gen. Assembly (Reg. Sess. 2020) (enacted as Act of Mar. 23, 2020, ch. 401, 2020 Va. Acts 599).

31. *SB 788 Grand Larceny; Increases Threshold Amount*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB788> [<https://perma.cc/9PZ5-EQ4G>].

related to the felony larceny threshold. This legislation increased the grand larceny threshold from \$500 to \$1000.³² This is a change in the Virginia law that will have a significant impact on youth. Prior to the 2020 session, the grand larceny threshold in Virginia increased from \$200 to \$500 in 2018.³³ A grand larceny threshold of \$500 through the perspective of the cost of living in the 21st century almost guaranteed a felony charge for most theft incidents involving cell phones and many other items highly sought after, especially by youth. While this raise in the threshold is not the \$2000 sought by Delegate Alfonso Lopez, sponsor of incorporated House Bill 263³⁴ during the 2020 legislative session, it still greatly increases the chances that fewer youth will be charged with offenses that would be a felony if committed by an adult.

C. Arrest

House Bill 746,³⁵ sponsored by Delegate Vivian E. Watts,³⁶ passed during the 2020 legislative session to amend the Virginia Code by adding a section numbered 16.1-247.1 related to parental notification prior to custodial interrogation of a minor child. This new section requires that prior to the custodial interrogation of a child who has been arrested by a law enforcement officer for a criminal violation, the child's parent, guardian, or legal custodian be notified of the child's arrest and the child have contact with his parent, guardian, or legal custodian.³⁷

Preventing the custodial interrogation of youth without parental notice is a step in the right direction. However, conversations a child in custody has with his or her parent is not privileged.³⁸ Parents are not typically legal strategists or lawyers, and on many occasions have inadvertently provided errant advice to their own child. This piece of legislation would be made stronger by

32. Ch. 89, 2020 Va. Acts at 124 (codified as amended at § 18.2-95 (Cum. Supp. 2020)).

33. See Act of Apr. 4, 2018, ch. 764, 2018 Va. Acts 1169, 1169 (codified as amended at § 18.2-95 (Cum. Supp. 2018)).

34. H.B. 263, Va. Gen. Assembly (Reg. Sess. 2020).

35. H.B. 746, Va. Gen. Assembly (Reg. Sess. 2020) (enacted as Act of Mar. 27, 2020, ch. 480, 2020 Va. Acts 480).

36. *HB 746 Custodial Interrogation of a Child; Parental Notification and Contact*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=hb746> [<https://perma.cc/MG3V-BPDK>].

37. § 16.1-247.1 (Repl. Vol. 2020).

38. See *Under Seal v. United States*, 755 F.3d 213 (4th Cir. 2014).

preventing the custodial interrogation of a children without the presence of counsel.

House Bill 1544,³⁹ sponsored by Delegate Lee J. Carter,⁴⁰ passed during the 2020 legislative session to amend and re-enact section 19.2-59.1 of the Virginia Code related to the strip search of children under arrest. This section provides that no child under the age of eighteen shall be strip searched or subjected to a search of any body cavity by a law enforcement officer, as defined in section 9.1-101,⁴¹ or a jail officer unless the child is in custodial arrest and there is reasonable cause to believe on the part of a law-enforcement officer or jail officer authorizing the search that the child is concealing a weapon.⁴² Exceptions apply “for children committed to the Department of Juvenile Justice or confined or detained in a secure local facility for juveniles or a jail or other facility for the detention of adults and except as provided in subsection E.”⁴³

D. *Intake*

House Bill 1324,⁴⁴ sponsored by Delegate Jennifer Carroll Foy,⁴⁵ passed during the 2020 legislative session to amend and re-enact Virginia Code section 16.1-260 related to the intake process in Juvenile and Domestic Relations Court. This amended section changed the intake procedures for the domestic relations district court, to (i) allow an intake officer to defer filing a petition to develop and allow a youth to complete a truancy plan or program if a youth is alleged to be truant; (ii) change the notice requirement so intake officers advise youth and their parents that any subsequent complaint may result in the filing of a petition with the court when informal action has been taken on a complaint alleging that a youth is in need of services, supervision, or delinquent; and (iii) add possession of alcohol to the existing offense of possession of

39. H.B. 1544, Va. Gen. Assembly (Ex. Sess. 2020) (enacted as Act of Apr. 22, 2020, ch. 1236, 2020 Va. Acts 2854).

40. *HB 1544 Children; Strip Searches*, VA.’S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=hb1544> [https://perma.cc/FJZ9-KMWB].

41. § 9.1-101 (Cum. Supp. 2021).

42. *Id.* § 19.2-59.1 (Cum. Supp. 2021).

43. *Id.*

44. Act of Apr. 6, 2020, ch. 753, 2020 Va. Acts 1163 (codified as amended at § 16.1-260 (Cum. Supp. 2021)).

45. *HB 1324 Juvenile and Domestic Relations District Court; Intake Procedures*, VA.’S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=hb1324> [https://perma.cc/MET8-4ZVR].

marijuana if charged by summons, a youth is entitled to have the charge referred to intake for consideration of informal proceedings.⁴⁶

House Bill 1878,⁴⁷ sponsored by Delegate Clinton L. Jenkins,⁴⁸ passed during the 2021 special legislative session to amend and reenact Virginia Code sections 16.1-256 and 16.1-260 related to appeal of juvenile intake and petition to magistrates. Amended section 16.1-260 limits the ability to appeal a decision by an intake officer not to authorize a petition relating to an offense that, if committed by an adult, would be punishable as a Class 1 misdemeanor or felony.⁴⁹ The section now specifies that if an intake officer finds (i) probable cause and (ii) the matter is appropriate for diversion, the intake officer's decision is final, and the complainant shall not have the right to appeal the decision to a magistrate.⁵⁰

E. *Diversion*

House Bill 2017,⁵¹ sponsored by Delegate Michael P. Mullin,⁵² passed during the 2021 special legislative session to amend and reenact section 16.1-260 of the Virginia Code by adding a section numbered 16.1-309.11 to Article 12.1 of Chapter 11 of Title 16.1. This new section authorizes any jurisdiction to establish a youth justice diversion program, defined in the bill as

a diversionary program that (i) is monitored by a local youth justice diversion program advisory committee; (ii) uses juvenile volunteers as lawyers, jurors, and other court personnel; (iii) uses volunteer attorneys as judges; (iv) conducts peer trials, [subject to the juvenile and domestic relations court's jurisdiction,] of juveniles who are referred to the program by the intake officer; and (v) imposes various sentences

46. § 16.1-260 (Cum. Supp. 2021).

47. Act of Feb. 25, 2021, ch. 30, 2021 Va. Acts __, __ (codified as amended at §§ 16.1-256, -260 (Cum. Supp. 2021)).

48. *HB 1878 Juvenile Intake and Petition; Appeal to a Magistrate on a Finding of No Probable Cause*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=hb1878> [<https://perma.cc/R7JP-R854>].

49. § 16.1-260(E) (Cum. Supp. 2021).

50. *Id.*

51. Act of Mar. 31, 2021, ch. 457, 2021 Va. Acts __, __ (codified as amended at §§ 16.1-260, -309.11 (Cum. Supp. 2021)).

52. *HB 2017 Juvenile Offenders; Youth Justice Diversion Programs*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=hb2017> [<https://perma.cc/KV7D-J78Q>].

emphasizing restitution, rehabilitation, accountability, competency building, and education, but not incarceration.⁵³

The diversionary program enumerated in this new Virginia Code section is more commonly known as Youth Courts. These Youth Court programs allow youth to adjudicate cases involving their peers. Youth Courts are localized volunteer-staffed programs that use positive peer pressure in a peer judgment setting to help address antisocial, delinquent, and criminal behavior of youth offenders.⁵⁴ Global Youth Justice, the renowned leader in designing and providing implementation supports for Youth Court programs worldwide, attests that allowing youth to hold their peers accountable for harms they have caused in this unique and youth-led way contributes to the overall success of Youth Court programs worldwide.⁵⁵

Embracing this model of peer accountability as an alternative to the traditional criminal legal system for some youth who have committed a judicable offense is yet another signal that Virginia is on the path to embracing rehabilitation and restoration over punishment and other punitive measures.

F. *Trial*

House Bill 477,⁵⁶ sponsored by Delegate Elizabeth R. Guzman,⁵⁷ amended Virginia Code sections 16.1-241 and 16.1-269.1 such that the age a juvenile can be tried as an adult

increases from 14 years of age to 16 years of age the minimum age at which a juvenile must be tried as an adult in circuit court for murder or aggravated malicious wounding; however, if the juvenile is 14 years of age or older but younger than 16 years of age, the court, on motion of the attorney for the Commonwealth, shall hold a transfer hearing. The minimum age is also raised from 14 to 16 for certain charges requiring notice of intent to try such juvenile as an adult by the attorney for the Commonwealth. In order to be tried as an adult in circuit court for the charges that under current law require notice of intent to

53. § 16.1-309.11 (Cum. Supp. 2021).

54. *About*, GLOB. YOUTH JUST., <https://www.globalyouthjustice.org/about/> [https://perma.cc/J9CN-C4S2].

55. *Id.*

56. H.B. 477, Va. Gen. Assembly (Reg. Sess. 2020) (enacted as Act of Apr. 9, 2020, ch. 987, 2020 Va. Acts 1888).

57. *HB 477 Juveniles; Trial as Adult; Minimum Age*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=hb477> [https://perma.cc/FY4L-HAZQ].

proceed with trial as an adult by the attorney for the Commonwealth, the bill requires that (i) a report concerning the juvenile be prepared by the court services unit or other qualified agency and (ii) the attorney for the Commonwealth provide written notice that he intends to proceed with a preliminary hearing for trial of such juvenile as an adult, including affirmation that he has read the report.⁵⁸

Keeping youth in Juvenile and Domestic Relations Court recognizes the differences between the adult and youth brain and allows the system in place to address youth offenders to work to rehabilitate a youth. The collateral consequences associated with being charged as an adult are far-reaching and long-lasting. A youth charged as an adult will forever be treated as an adult in the justice system.⁵⁹ The barriers associated with a felony conviction have significant consequences to include disqualifying individuals for federal financial aid, public housing assistance, and is a bar to some employment avenues.⁶⁰ This newly enacted legislation will allow youth as young as fourteen to rehabilitate without carrying these and other collateral consequences before they even reach the age of majority.

G. Sentencing

House Bill 744,⁶¹ sponsored by Delegate Vivian E. Watts,⁶² passed during the 2020 legislative session to amend and re-enact section 16.1-272 of the Virginia Code, relating to the sentencing of youth tried as adults. The amended section provides that a court

58. *Id.*; § 16.1-269.1 (Cum. Supp. 2021).

59. § 16.1-271 (Repl. Vol. 2020).

60. See generally *Students with Criminal Convictions Have Limited Eligibility for Federal Student Aid*, FED. STUDENT AID, <https://studentaid.gov/understand-aid/eligibility/requirements/criminal-convictions> [<https://perma.cc/J7XY-MMPP>] (explaining disqualifications and limitations on federal financial aid for someone convicted of a felony); U.S. DEP'T OF HOUS. & URB. DEV., OFFICE OF GENERAL COUNSEL GUIDANCE ON APPLICATION OF FAIR HOUSING ACT STANDARDS TO THE USE OF CRIMINAL RECORDS BY PROVIDES OF HOUSING AND REAL ESTATE-RELATED TRANSACTIONS (2016), https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF [<https://perma.cc/F4CN-R6XN>] (explaining the challenges faced by people with felony conviction to obtain housing); VA. DEP'T OF CORR. EDUC., RESTRICTIONS TO EMPLOYMENT FOR INDIVIDUALS WITH CRIMINAL HISTORIES (2006) <https://dls.virginia.gov/GROUPS/reentry/meetings/072706/BarrierCrimes.pdf> [<https://perma.cc/SV3P-RH3J>] (outlining different jobs and their associated criminal record restrictions in Virginia).

61. H.B. 744 Va. Gen. Assembly (Reg. Sess. 2020) (enacted as Act of Mar. 23, 2020, ch. 396, 2020 Va. Acts 594).

62. *HB 744 Juvenile; Sentencing When Tried as Adult*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=hb744> [<https://perma.cc/6JYW-T5YK>].

may, in the case of a youth tried as an adult and convicted of a felony, “depart from any mandatory minimum sentence required by law or suspend any portion of an otherwise applicable sentence.”⁶³ The amended section also requires the court to consider any exposure to adverse childhood experiences, any early childhood trauma, any child welfare agency with which the youth may have been engaged, and the differences between youth and adult offenders before sentencing a youth as an adult.⁶⁴

Similar to amended Virginia Code sections 16.1-241 and 16.1-269.1, this new law will also work to recognize the difference between a youth and adult by giving the court discretion to depart from mandatory minimums when sentencing a youth found guilty of an offence that would be a felony if committed by an adult.

H. *Commitment*

Senate Bill 1456,⁶⁵ sponsored by Senator David W. Marsden,⁶⁶ passed during the 2021 special legislative session to amend and reenact sections 16.1-248.1, 16.1-249, 16.1-278.7, and 16.1-278.8 of the Virginia Code. These amended sections provide that a youth may only be committed to the Department of Juvenile Justice (“DJJ”) if he is (1) eleven years of age or older and has been adjudicated delinquent of a violent juvenile felony or (2) fourteen years of age or older.⁶⁷ Youth under eleven years of age may only be detained in an approved foster home, a facility operated by a licensed child welfare agency, or another suitable place designated by the court and approved by the DJJ, “but under no circumstances shall such juvenile be detained . . . in a secure detention facility.”⁶⁸

House Bill 1912,⁶⁹ sponsored by Delegate Patrick A. Hope,⁷⁰ passed during the 2021 special legislative session to amend and re-

63. § 16.1-272 (Cum. Supp. 2020).

64. *Id.*

65. S.B. 1456, Va. Gen. Assembly (Spec. Sess. 2021) (enacted as Act of Mar. 12, 2021, ch. 115, 2021 Va. Acts __, __).

66. *SB 1456 Juveniles; Eligibility for Commitment to the Department of Juvenile Justice*, VA.’S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=sb1456> [https://perma.cc/7LCL-WLNF].

67. § 16.1-249 (Cum. Supp. 2021).

68. *Id.*

69. H.B. 1912, Va. Gen. Assembly (Spec. Sess. 2021) (enacted as Act of Mar. 18, 2021, ch. 283, 2021 Va. Acts __, __).

70. *HB 1912 Child Support Payments; Juvenile in Custody of or Committed to the Department of Juvenile Justice*, VA.’S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604>.

enact sections 16.1-263, 16.1-286, and 16.1-290 of the Virginia Code related to the collection of child support from the families of youth who have been committed into the custody of the DJJ. This amended Virginia Code section ends the collection of child support from families so charged by the Commonwealth of Virginia because their child has been adjudicated delinquent and remanded into the custody of the DJJ.⁷¹

The mission of Virginia's DJJ is to help court-involved youth become productive citizens.⁷² This mission is best accomplished through individually tailoring the right mix of accountability and rehabilitation to meet the identified risk and need levels for every youth. DJJ also accomplishes its mission by providing the youth in its care with the things every adolescent needs to grow into a healthy, productive adult.⁷³

Ultimately youth in the care of the DJJ return to their communities and to their families. Charging parents of youth remanded into the custody of the DJJ undermines both the successful transition of youth back into their families and strains the economic health of families who are often times under resourced. Ending the practice of charging child support to families of incarcerated youth brings to an end the imposition of a punitive tax on families for the actions of their children. Further, ending this practice will help to provide a healthier atmosphere for reunification when youth return home knowing they have not been the cause of an additional financial strain on the family's resources.

I. *Parole Eligibility*

House Bill 1991,⁷⁴ sponsored by Delegate Jerrauld C. "Jay" Jones,⁷⁵ passed during the 2021 special legislative session to amend and re-enact sections 16.1-285.1 and 16.1-285.2 of the Virginia Code related to serious offender review hearings and plea

exe?ses=212&typ=bil&val=hb1912 [https://perma.cc/5K7R-CE8U].

71. § 16.1-286 (Cum. Supp. 2021).

72. *About Virginia DJJ*, VA. DEP'T OF JUV. JUST., <http://www.djj.virginia.gov/pages/about-djj/about-djj.htm> [https://perma.cc/DTK4-4EGM].

73. *Id.*

74. H.B. 1991, Va. Gen. Assembly (Spec. Sess. 2021) (enacted as Act of Mar. 18, 2021, ch. 284, 2021 Va. Acts __, __).

75. *HB 1991 Juveniles; Release and Review Hearing for Serious Offender, Plea Agreement or Commitment Order*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=hb1991> [https://perma.cc/N8En-EEV8].

agreements. This amended Virginia Code section clarifies that the DJJ may petition a committing court for a hearing for an earlier release when good cause exists for earlier release of a committed youth, as permitted under current law.⁷⁶ Further, this amended section clarifies that the DJJ shall petition the committing court for a determination as to the continued commitment of each youth committed as a serious offender at least sixty days prior to the youth's second commitment date anniversary and at least sixty days prior to each annual anniversary date thereafter, as required under current law.⁷⁷ The terms of any plea agreement shall not negate the right of every youth committed as a serious offender to a serious offender review hearing.⁷⁸

House Bill 35,⁷⁹ sponsored by Delegate Joseph C. Lindsey,⁸⁰ passed during the 2020 legislative session to amend and re-enact sections 19.2-387, -389, -391, 53.1-136, and 53.1-165.1 of the Virginia Code related to parole eligibility of youth offenders. The amended Virginia Code sections provide that any person sentenced to a term of life imprisonment for a single felony offense or multiple felony offenses committed while that person was under the age of eighteen and who has served at least twenty years of such sentence, and any person with active sentences that total more than twenty years for a single felony offense or multiple felony offenses committed while that person was under the age of eighteen and who has served at least twenty years of such sentences shall be eligible for parole.⁸¹

J. Racial Equity

House Joint Resolution 537,⁸² sponsored by Delegate Lashrecse D. Aird,⁸³ passed during the 2021 special legislative session. This

76. § 16.1-285.2 (Cum. Supp. 2021).

77. *Id.* § 16.1-285.1(F) (Cum. Supp. 2021).

78. *Id.* § 16.1-285.2(E) (Cum. Supp. 2021).

79. H.B. 35, Va. Gen. Assembly (Reg. Sess. 2020) (enacted as Act of Feb. 24, 2020, ch. 2, 2020 Va. Acts 1).

80. *HB 35 Juvenile Offenders; Eligibility for Parole*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=hb35> [<https://perma.cc/SCZ6-D7CQ>].

81. § 53.1-165.1(E) (Repl. Vol. 2020).

82. H.J. Res. 537, Va. Gen. Assembly (Spec. Sess. 2021).

83. *HJ 537 Racism; General Assembly to Recognize as a Public Health Crisis*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?212+sum+HJ537> [<https://perma.cc/9ZNR-X6RZ>].

Joint Resolution recognizes racism as a public health crisis in Virginia.⁸⁴

House Bill 837,⁸⁵ sponsored by Delegate Jennifer Carroll Foy,⁸⁶ passed during the 2020 legislative session to amend and re-enact sections 22.1-276.01 and 22.1-279.6 of the Virginia Code related to dress and grooming codes. These amended sections require any dress or grooming code included in a school board's code of student conduct or otherwise adopted by a school board to

(i) permit any student to wear any religiously and ethnically specific or significant head covering or hairstyle, including hijabs, yarmulkes, headwraps, braids, locks, and cornrows; (ii) maintain gender neutrality by subjecting any student to the same set of rules and standards regardless of gender; (iii) not have a disparate impact on students of a particular gender; (iv) be clear, specific, and objective in defining terms, if used; (v) prohibit any school board employee from enforcing the dress or grooming code by direct physical contact with a student or a student's attire; and (vi) prohibit any school board employee from requiring a student to undress in front of any other individual, including the enforcing school board employee, to comply with the dress or grooming code.⁸⁷

II. LEGISLATION WITH POTENTIAL POSITIVE IMPACT FOR YOUTH THAT FAILED

A. *Department of Juvenile Justice*

Budget Item 391#2h⁸⁸ was not adopted during the 2021 special legislative session. This budget amendment would have directed the Secretary of Public Health and Human Resources and the Secretary of Public Safety and Homeland Security to convene a work

84. *Id.*

85. H.B. 837, Va. Gen. Assembly (Reg. Sess. 2020) (enacted as Act of Apr. 6, 2020, ch. 678, 2020 Va. Acts 1013).

86. *HB 837 Dress or Grooming Codes in Schools; School Boards May Include in its Code of Student Conduct*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=hb837> [<https://perma.cc/3LMT-5RPE>].

87. VA. CODE ANN. §§ 22.1-276.01, -279.6 (Repl. Vol. 2020).

88. VA. GEN. ASSEMBLY, *Budget Amendments—HB 1800 (Member Request) Item 391 #2h*, (2021), <https://budget.lis.virginia.gov/amendment/2021/1/HB1800/Introduced/MR/391/2h/> [<https://perma.cc/DGW8-Y7NF>]; H.B. 1800, Va. Gen. Assembly ch. 552 item 391 (Spec. Sess. 2021), <https://budget.lis.virginia.gov/item/2021/2/HB1800/Chapter/1/391/PDF/> [<https://perma.cc/SG6X-XPNV>] (identifying the adopted budget items).

group to study the feasibility and benefits of transferring the DJJ to the Public Health and Human Services Secretariat.⁸⁹

Every Virginia locality in the top ten in their rate of sending youth into the custody of the DJJ has a child poverty rate above the state average and a higher-than-average share of teenagers ages fifteen to seventeen who are Black.⁹⁰ This translates to communities with the highest numbers of youth involved with the juvenile justice system sharing four disturbing, underlying factors: a high incidence of poverty, economic insecurity, unstable or substandard housing, and a high proportion of people of color.⁹¹ So, while Black youth aged fifteen to seventeen make up 21% of Virginia's teen population, they account for 57% of young people suspended in Virginia and over 90% of suspended youth in Richmond Public Schools, 49% of youth in Virginia reported to juvenile courts by school authorities, 42% of youth reported to intake officers, 54% of youth detained in local youth jails, and 68% of youth sent to the custody of DJJ.⁹²

The DJJ's Data Resource Guide ("DRG") details the information collected on all youth who have come into contact with its systems through intake, probation, diversion, court involvement, commitment, etc. Data in the 2020 DRG shows that an overwhelming majority of committed youth were diagnosed with some form of mental illness.⁹³ At some point in their lives, 70.1% of committed youth were prescribed psychotropic medication.⁹⁴ At the time of admission, 32.1% had current or newly prescribed psychotropic medication.⁹⁵ The majority of youth, 73.1%, appeared to have significant

89. VA. GEN. ASSEMBLY, *Budget Amendments—HB 1800 (Member Request) Item 391 #2h*, (2021), <https://budget.lis.virginia.gov/amendment/2021/1/HB1800/Introduced/MR/391/2h/> [<https://perma.cc/DGW8-Y7NF>].

90. Gary Broderick & Valerie Slater, *Ending the Cycle of Incarceration for Black Youth*, THE COMMONWEALTH INST. & RISE FOR YOUTH, <https://thecommonwealthinstitute.org/research/ending-the-cycle-of-incarceration-for-black-youth/> [<https://perma.cc/VP84-V4P6>].

91. *See id.*

92. These statistics are based on data from the DJJ and Virginia's Department of Education in the years 2015–2020. *Id.*; Kenya Hunter, *Richmond Schools Use Long-Term Suspensions Far More Often Than Neighboring Counties. New Policies Aim to Change That*, RICH. TIMES-DISPATCH (Nov. 13, 2020), https://richmond.com/news/local/education/richmond-schools-use-long-term-suspensions-far-more-often-than-neighboring-counties-new-policies-aim/article_edb6a727-6dca-58ac-b8d7-6ae47d166a17.html [<https://perma.cc/ALY4-PAQ4>]; VALERIE P. BOYKIN, VA. DEP'T OF JUV. JUST., DATA RESOURCE GUIDE FISCAL YEAR 2020 49 (2020), https://www.djj.virginia.gov/documents/about-djj/DRG/FY2020_DRG.pdf [<https://perma.cc/YY98-6JGB>].

93. BOYKIN, *supra* note 92, at 54.

94. *Id.*

95. *Id.*

symptoms of a mental health disorder at the time of admission.⁹⁶ Of committed youth, 94.9% appeared to have significant symptoms of Attention Deficit Hyperactivity Disorder, Conduct Disorder, Oppositional Defiance Disorder, or substance use disorder.⁹⁷

Available data outlines both racial disparities and a health crisis as it relates to juvenile justice system involvement for communities and youth of color, especially Black youth.

The DJJ is the only youth-serving agency in the Commonwealth that is not housed under the Health and Human Resources Secretary.⁹⁸ The Commonwealth recognizes the Secretary of Health and Human Resources as the appropriate place to house all other youth serving agencies, it is time to move the DJJ under this more appropriate Secretariate as well to address the disparities that prevail in every stage of the Commonwealth's juvenile justice system.

House Bill 551⁹⁹ and Senate Bill 1033,¹⁰⁰ sponsored by Delegate Jeion A. Ward and Senator Mamie Locke, failed during the 2020 legislative session.¹⁰¹ These identical pieces of proposed legislation would have created small (thirty beds or less), secure facilities to house youth committed to the custody of the DJJ that are close to the communities with the highest commitment rates of youth.¹⁰²

Youth in trouble need the support and continued involvement of their family and support networks. The only remaining juvenile correctional facility in Virginia, Bon Air Juvenile Correctional, is more than a one-hour drive away from many of the incarcerated youth it serves.¹⁰³ The Hampton Roads/Tidewater region accounts for a significant percentage of all youth incarcerated at Bon Air

96. *Id.*

97. *Id.*

98. *See Agency Information, SEC'Y OF HEALTH AND HUM. RES.*, <https://www.hhr.virginia.gov/agencies/> [<https://perma.cc/5JJY-5GUG>] (listing agencies under the Secretary of Health and Human Resources).

99. H.B. 551, Va. Gen. Assembly (Reg. Sess. 2020).

100. S.B. 1033, Va. Gen. Assembly (Reg. Sess. 2020).

101. *2020 Session HB 551 Juvenile Community Correctional Centers; Establishment, Placement of Juveniles*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=hb551> [<https://perma.cc/3F2U-N7BH>] (noting House Bill 551 was left in Appropriations); *2020 Session SB 1033 Juvenile Community Correctional Centers and Facilities; Establishment, Placement of Juveniles*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB1033> [<https://perma.cc/E5VB-T692>] (noting Senate Bill 1033 was continued to 2021 in Finance and Appropriations).

102. H.B. 551, Va. Gen. Assembly (Reg. Sess. 2020); S.B. 1033, Va. Gen. Assembly (Reg. Sess. 2020).

103. BOYKIN, *supra* note 92, at 41.

Juvenile Correctional Center.¹⁰⁴ Placing facilities closer to home for committed youth would keep youth closer to family and would allow families to participate meaningfully in their young person's rehabilitation process.

B. *Prevention and Diversion*

House Joint Resolution 568,¹⁰⁵ sponsored by Delegate Karrie K. Delaney, failed during the 2021 legislative session. This proposed legislation would have “direct[ed] the Virginia State Crime Commission to study methods and solutions to prevent girls who are victims of violence from entering the juvenile justice system.”¹⁰⁶

House Bill 2056,¹⁰⁷ sponsored by Delegate Don L. Scott, failed during the 2021 special legislative session.¹⁰⁸ This proposed legislation would have eliminated a court's ability to detain status-offending youth in a secure facility for violating a court order or a term of probation.

The Juvenile Justice and Delinquency Prevention Act of 1974 (“JJDP”) was created by the Office of Juvenile Justice and Delinquency Prevention (“OJJDP”) to address inconsistencies in the administration of juvenile justice across the United States.¹⁰⁹ OJJDP provides funding to states for their juvenile justice systems, so long as states comply with the JJDP's core requirements, which include the deinstitutionalization of status offenders.¹¹⁰ Status offenses are actions that are not crimes for adults, and only apply to youth.¹¹¹ Examples include skipping school, running away from

104. *Id.* at 47.

105. H.J. Res. 568, Va. Gen. Assembly (Reg. Sess. 2021); *2020 Session HJ 568 Juvenile Justice; Prevention of Girls Who are Victims of Violence from Entering System*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=211&typ=bil&val=HJ568> [<https://perma.cc/5MF7-W4RX>].

106. H.J. Res. 568, Va. Gen. Assembly (Reg. Sess. 2021),

107. H.B. 2056, Va. Gen. Assembly (Spec. Sess. 2021).

108. *2021 Special Session HB 2056 Status Offenders; Willful and Material Violation of Court Order or Terms of Probation*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=hb2056> [<https://perma.cc/3VGG-4BCH>].

109. Juvenile Justice and Delinquency Prevention Act, Pub. L. No. 93-415, 88 Stat. 1109, 1109, 1112 (1974).

110. *JJDP Core Requirements*, OFF. OF JUV. JUST. & DELINQ. PREVENTION, https://www.ojjdp.gov/OJSTATBB/structure_process/qa04301.asp?qaDate=2013 [<https://perma.cc/BZU8-YAHY>].

111. *Literature Review: Status Offenders*, OFF. OF JUV. JUST. & DELINQ. PREVENTION, <https://ojjdp.ojp.gov/mpg/literature-review/status-offenders.pdf> [<https://perma.cc/8GRF-8UPS>].

home, and using tobacco or alcohol.¹¹² The JJDPa requires that state courts do not incarcerate youth for status offenses.¹¹³ In 1980, however, the JJDPa was amended to establish the valid court order (“VCO”) exception, which allows judges to detain youth who are under the court’s jurisdiction for status and other minor offenses if the offense violates a valid court order.¹¹⁴

In 2016, 32 states and territories reported 0 uses of the VCO; 16 states reported between 1 and 100 uses of the VCO, and only 8 states and territories reported more than 100 uses of the VCO—Utah, Tennessee, Kentucky, Ohio, Michigan, Arkansas, Washington, and Virginia. Of those, Washington passed a law in 2019 that phases out the state’s use of the VCO by July of 2021.¹¹⁵ Virginia incarcerated 357 youth in 2017, 384 youth in 2018, and 233 youth in 2019 using the VCO exception.¹¹⁶ Incarceration of youth for status offenses is not an effective deterrent to offending behavior. In fact, research suggests the exact opposite.

Status offense behaviors are often the result of unmet child and family needs including falling behind in school because an unsafe school environment; child abuse or neglect; or mistreated or undiagnosed disabilities. . . . Research shows that locking up youth who commit status offenses worsens outcomes for individual children and for their communities. . . . Incarceration does not help to resolve the factors that led to the status offense. . . . Incarceration can even aggravate these factors because children held in secure facilities are exposed to negative influences and subject to social stigma.¹¹⁷

It is imperative that the Commonwealth end the use of the valid court order exception as a deterrent to status offending behavior.

112. *Id.*

113. *Id.*

114. *Id.*; *JJDPa Timeline*, OFF. OF JUV. JUST. & DELINQ. PREVENTION, https://www.ojjdp.gov/ojstatbb/structure_process/qa04302.asp?qaDate=2013 [<https://perma.cc/4ASD-YQRU>].

115. Act of May 8, 2019, ch. 312, 2019 Wash. Sess. Laws 1801.

116. DEP’T OF JUV. JUST., VIRGINIA JUVENILE DETENTION CENTERS VIOLATION SUMMARY (2017) (on file with author); DEP’T OF JUV. JUST., JUVENILE DETENTION CENTERS VIOLATION SUMMARY (2018) (on file with author); DEP’T OF JUV. JUST., JUVENILE DETENTION CENTERS VIOLATION SUMMARY (2019) (on file with author).

117. COAL FOR JUV. JUST., MAKING THE CASE FOR STATUS OFFENSE SYSTEM CHANGE: A TOOLKIT 4, (2021), <http://www.juvjustice.org/sites/default/files/resource-files/Judicial%20Leadership%20Toolkit%20Web.pdf> [<https://perma.cc/6K74-96D3>].

C. School Resource Officers

Budget Item 144 #6h¹¹⁸ and companion amendment 406 #1h,¹¹⁹ sponsored by Delegate Kaye Kory, failed during the 2021 legislative session.¹²⁰ These budget amendments would have taken \$4.7 million dollars allocated to support local school resource officer programs and reallocated those dollars to create a grant program to fund support staff positions in local school divisions.¹²¹

House Bill 5126,¹²² sponsored by Delegate Kaye Kory, failed during the 2020 special legislative session. This proposed legislation would have clarified that school resource officers (“SROs”) are sworn law enforcement officers employed by local law enforcement agencies for the sole purposes of providing law enforcement and security services to Virginia public schools and are prohibited from enforcing school board discipline policies that have no connection to the provision of the aforementioned services.¹²³

House Bill 718,¹²⁴ sponsored by Delegate David A. Reid, failed during the 2020 legislative session. This proposed legislation would have prevented SROs from interrogating students without the written consent of a parent or guardian.¹²⁵

The debate over the need for SROs must turn on creating safe environments that are the most conducive to learning for all

118. VA. GEN. ASSEMBLY, *Budget Amendments—HB 1800 (Member Request) Item 144 #6h*, (2021), <https://budget.lis.virginia.gov/amendment/2021/1/HB1800/Introduced/MR/144/6h/> [<https://perma.cc/497G-F7BV>].

119. VA. GEN. ASSEMBLY, *Budget Amendments—HB 1800 (Member Request) Item 406 #1h*, (2021), <https://budget.lis.virginia.gov/amendment/2021/1/HB1800/Introduced/MR/406/1h/> [<https://perma.cc/V27N-92JY>].

120. H.B. 1800, Va. Gen. Assembly, ch.552, item 144 (Spec. Sess. 2021), <https://budget.lis.virginia.gov/item/2021/2/HB1800/Chapter/1/144/PDF/> [<https://perma.cc/4RZP-DFHX>] (identifying the adopted budget amendments for item 406); H.B. 1800, Va. Gen. Assembly ch. 552 item 406, (Spec. Sess. 2021), <https://budget.lis.virginia.gov/item/2021/2/HB1800/Chapter/1/406/PDF/> [<https://perma.cc/V7C6-YVUU>] (identifying the adopted budget amendments for item 406).

121. *Supra* notes 117–18.

122. H.B. 5126, Va. Gen. Assembly (Spec. Sess. 2020); *2020 Session House Public Safety Failed Legislation*, VA’S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?202+com+H15N06> [<https://perma.cc/2QCM-STPB>] (listing House Bill 5126 among the failed legislation).

123. H.B. 5126, Va. Gen. Assembly (Spec. Sess. 2020).

124. H.B. 718, Va. Gen. Assembly (Reg. Sess. 2020); *2020 Session House Education Failed Legislation*, VA’S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?201+com+H9N06> [<https://perma.cc/N8YS-M7CL>] (listing House Bill 718 among the failed legislation).

125. H.B. 718.

children and recognizing that education encompasses more than just academics, but also includes social and emotional learning. School divisions with SROs have higher incidents of students being referred to law enforcement and SROs handling discipline matters that are not acts of unlawful behavior.¹²⁶ Law enforcement officers are able to lie to students and assert that a student must answer all questions asked in a school setting, even when a student's action might lead to self-incrimination. Requiring parental consent would at least provide a buffer for a student to preserve their right against self-incrimination.

D. *Solitary Confinement*

Senate Bill 1301,¹²⁷ sponsored by Joseph D. Morrissey, failed during the 2021 special legislative session. This proposed legislation would have prohibited the use of solitary confinement, with certain explicit exceptions, in juvenile and adult detention facilities.¹²⁸

The use of solitary confinement is detrimental to the health and wellbeing of any individual. As noted in a report to the Department of Justice:

Regardless of what they have done, they are in an uncertain, unformed state of social identity. . . . Not only are you putting them in a situation where they have nothing to rely on but their own, underdeveloped internal mechanisms, but you are making it impossible for them to develop a healthy functioning adult social identity. You're basically taking someone who's in the process of finding out who they are and twisting their psyche in a way that will make it very, very difficult for them to ever recover.¹²⁹

126. See Jason P. Nance, *Students, Police, and the School-to-Prison Pipeline*, 93 WASH. U. L. REV. 919, 949–50 (2016).

127. S.B. 1301, Va. Gen. Assembly (Spec. Sess. 2021); *2020 Session House Appropriations Failed Legislation*, VA.'S LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?212+com+H2N06> [<https://perma.cc/3CD5-Q78E>] (listing Senate Bill 1301 among the failed legislation).

128. S.B. 1301.

129. KRISTY N. MATSUDA, U.S. DEP'T OF JUSTICE, *THE IMPACT OF INCARCERATION ON YOUNG OFFENDERS* 30 (2009), <https://www.ojp.gov/pdffiles1/nij/grants/227403.pdf> [<https://perma.cc/XC2Y-SP5V>] (citation omitted).

CONCLUSION

Virginia has embraced the need for a paradigm shift in juvenile justice. As we continue to grapple with creating a system that holds youth accountable and encourages positive growth and development while allowing youth to make mistakes and recover from them, it is imperative to ensure the laws enacted do not have devastating consequences on the youth they are intended to support and protect.

Positive trends such as recognizing that young people are not small adults, as evidenced in the recent legislation to raise the age of transfer to circuit court, with exceptions, and codifying that youth under the age of eleven years shall not be committed to a juvenile correctional facility are examples of concrete steps that Virginia must continue to make.

Now is the time to recognize that youth involvement in the juvenile justice system is a result of a much larger issue. The state of communities, schools, and support systems are failing the majority of justice-system-involved youth. The public health crisis created by these failures can only be addressed by the recognition that justice system involvement is indeed a public health crisis. Virginia must begin to more fully address this crisis by moving the Department of Juvenile Justice to the Secretariat that has already been identified as the appropriate placement for all other youth serving agencies in the Commonwealth, the Secretary of Health and Human Resources.

In Virginia and around the world, a healthy thriving community is the greatest deterrent to youth justice system involvement. Addressing youth justice through a health and human services lens shifts the focus from a punitive perspective to a healing and restorative one that addresses underlying issues and not merely the symptoms.