



Transfer and Certification of Juveniles

September 8, 2010

Overview



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Study Authorization



- December 2008: Juvenile Justice study mandate extended an additional year to specifically review transfer and certification of juveniles.
- December 2009: Juvenile Transfer and Certification study extended another year to gather additional data on number of juveniles transferred.

Study Authorization



- SB 205 (right in certain violent felony cases to appeal to circuit court) was introduced by Senator Edwards during the Regular Session of the 2010 General Assembly.
- SB 389 (offenses for which juveniles are subject to transfer and trial as an adult) was introduced by Senator McDougle during the Regular Session of the 2010 General Assembly.

Transfer and Certification Statute



Virginia's Transfer and Certification Statute

§ 16.1-269.1:

- A. Judicial review
- B. Automatic transfer
- C. Prosecutorial discretion

Sentencing Commission Data

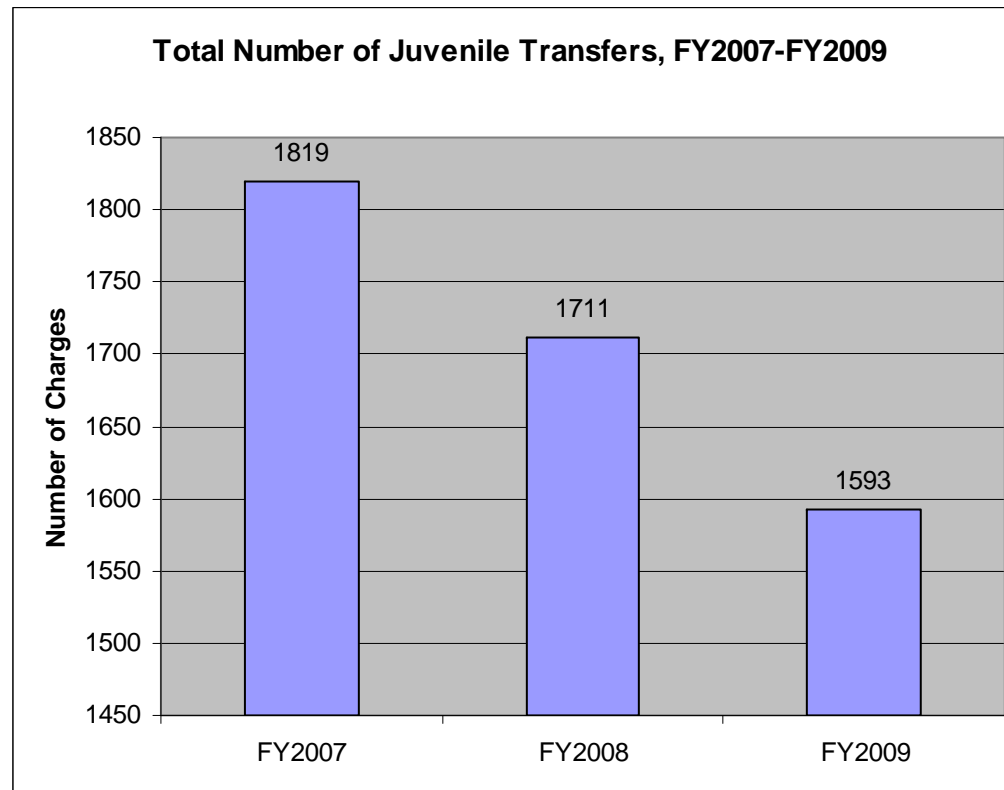


Juveniles Convicted in Circuit Court FY06-FY08 by Most Serious Offense

| Most Serious Offense | FY06 | FY07 | FY08 | Total |
|-----------------------------------|-------------|-------------|-------------|--------------|
| Robbery | 178 | 234 | 289 | 701 |
| Assault | 100 | 129 | 106 | 335 |
| Larceny/Fraud | 59 | 67 | 68 | 194 |
| Drug Schedule I/II | 37 | 44 | 45 | 126 |
| Murder/Manslaughter | 28 | 49 | 32 | 109 |
| Burglary Dwelling | 25 | 39 | 33 | 97 |
| Rape/For. Sodomy/Obj. Pen. | 27 | 37 | 35 | 99 |
| Miscellaneous/Other | 16 | 25 | 19 | 60 |
| Burglary Other | 9 | 10 | 15 | 34 |
| Sex Offense | 21 | 17 | 19 | 57 |
| Weapon | 19 | 17 | 15 | 51 |
| Kidnapping | 6 | 5 | 7 | 18 |
| Drug Other | 4 | 3 | 8 | 15 |
| Traffic | 3 | 2 | 6 | 11 |
| TOTAL | 532 | 678 | 697 | 1907 |

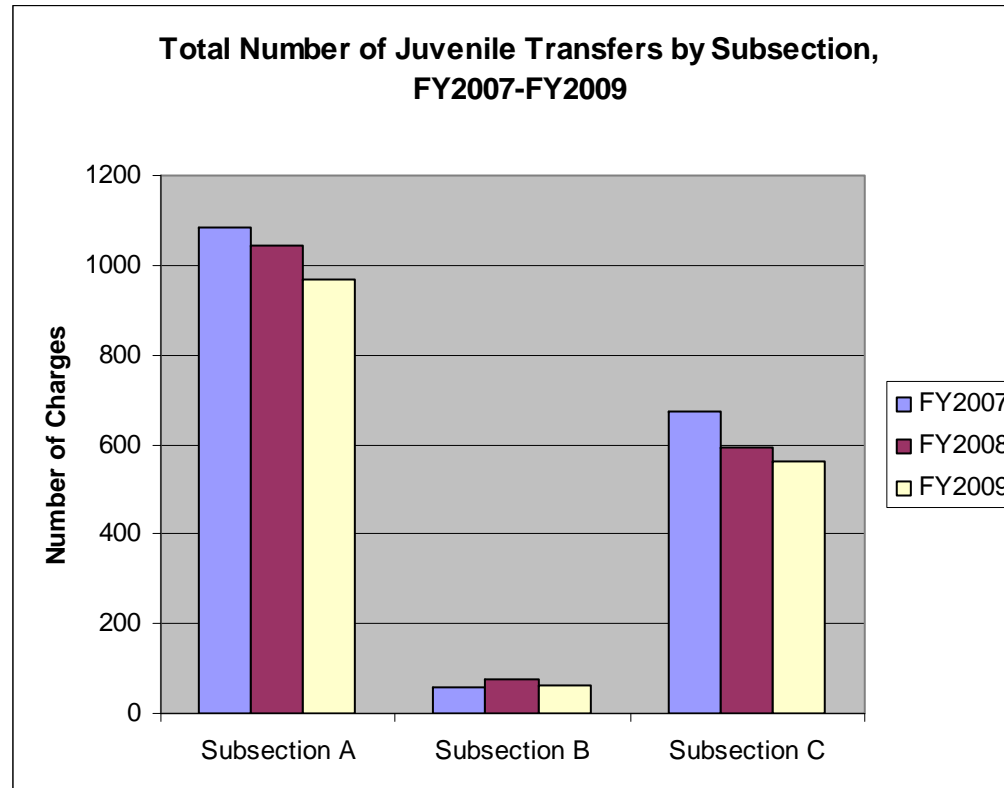


Juvenile Charges Transferred FY07-FY09





Juvenile Charges Transferred by Subsection FY07-FY09





Crimes most commonly transferred under subsection A for FY07-FY09:

1. Use or display of a firearm in commission of certain violent felonies (1,079 charges)
2. Burglary of a dwelling with intent to commit larceny, assault (164 charges)
3. Grand larceny (153 charges)
4. Conspiracy to commit a felony (112 charges)
5. Possession of a firearm by a juvenile(111 charges)



Crimes most commonly transferred under subsection C for FY07-FY09:

1. Robbery (1,200 charges)
2. Malicious/Unlawful Wounding (248 charges)
3. Abduction to extort or defile (62 charges)
4. Forcible Sodomy (62 charges)
5. Rape (49 charges)

Bill Referrals



- SB 205 would allow for an appeal of subsection C certifications and indictments from the juvenile court.
 - This is also known as “reverse waiver.”
- Currently, § 16.1-269.6 allows for appeals of transfer decisions from juvenile court to circuit court for subsection A only.

Bill Referrals



- This bill would allow for the juvenile or the Commonwealth's Attorney to request an appeal for discretionary certification under subsection C.
- The request must be made within 45 days of "receipt of the case from juvenile court."
- The factors for the court to consider are those enumerated in subdivision A(4) of § 16.1-269.1, including "whether remanding jurisdiction would not depreciate the seriousness of the offense."
- 25 states, including Virginia, have reverse waiver.

Bill Referrals



- SB 389 would allow for new offenses to be eligible for certification under subsections B and C.
- Under subsection B, the bill proposes to add any act of violence enumerated in § 19.2-297.1 if the juvenile has been previously adjudicated delinquent for any other act of violence enumerated in that Code section.
- Under subsection C, the bill proposes to add gang participation and drug offenses.

Bill Referrals



- According to DJJ, an average of 500 juvenile intakes in FY07-FY09 resulted in a petition for a **second or subsequent** act of violence defined in § 19.2-297.1.
- Acts of violence enumerated in § 19.2-297.1 transferred in FY07-FY09:
 - Robbery (1,278 charges)
 - Malicious Wounding (362 charges)
 - Sexual Assault (254 charges)
 - Abduction (197 charges)
 - Murder/Manslaughter (114 charges)
 - Mob-related felonies (37 charges)
 - Arson (11 charges) (Source: Supreme Court of Virginia)

Bill Referrals



- According to DJJ, an average of 600 juvenile intakes in FY07-FY09 resulted in a petition for a gang offense defined in § 18.2-46.2.
- The proposed added offense of gang participation to subsection C resulted in 64 charges transferred in FY07-FY09. (Source: Supreme Court of Virginia)

Bill Referrals



- According to DJJ, an average of 130 juvenile intakes in FY07-FY09 resulted in a petition for a **second or subsequent** drug offense.
- The proposed added offenses to subsection C including manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give or distribute controlled substances, methamphetamine, marijuana, anabolic steroids resulted in 103 charges transferred in FY07-FY09. (Source: Supreme Court of Virginia)

National Trends



- Colorado
 - Reduces the use of “direct file” for juveniles to be prosecuted as adults.
 - Increases minimum age for which a juvenile may be transferred without a transfer hearing.
- Connecticut
 - Raised from 16 to 17 the age at which a juvenile is automatically prosecuted as an adult.
 - Judges still have discretion to transfer for felony cases.

National Trends



- Illinois
 - Increased juvenile court age cut off to age 17.
 - Only applies to misdemeanors.
- Mississippi
 - Returns most 17 year olds to juvenile court.
 - Juveniles charged with rape, murder, or armed robbery remain in criminal court.

National Trends



- North Carolina
 - Proposed legislation tried to raise the age of transfer from 16 years old to 18 years old.
 - Bill was rejected.
- Washington D.C.
 - Proposed legislation would make public the identity and records of juveniles who were found guilty of a second violent offense.

Policy Considerations



- Endorse or reject the proposed language in SB 205 which seeks to add reverse waiver for subsection C.
- Endorse or reject the proposed language in SB 389 that seeks to add crimes eligible for transfer under subsections B and C.
- Make risk assessment tool available for all juveniles considered for transfer under subsections A, B, and C.

Policy Considerations



- Require better juvenile data collection methods:
 - Require transfer reports for all subsections, not just subsection A; and,
 - Create tracking mechanisms by juvenile.
- Provide prosecutors with background information on juveniles who are eligible for transfer.



Discussion