

JDR Committee Annual Bench-Bar CLE

September 21, 2023 ~ Advanced Technology Center

8:30a-5:30pm

Schedule	Topic/Event
8:30am-9am	Registration and Continental Breakfast
9:00am-10:30am	Issues in Custody and Support Cases When a Party or New Spouse is a Military Member (1.5)
10:30am-10:45am	15-Minute Break
10:45am-12:15pm	Criminal Competency & Culpability Overrides (1.5)
12:15pm-1:45pm *12:30pm-1:45pm	LUNCH – PIZZA *Pending: Guest Speaker from DJJ (1.5)
1:45pm-3:15pm	Hot Topics in DHS Land: CASA, ICWA, Office of the Children's Ombudsmen, Kinship Foster Care, Marijuana, Relief of Custody, Q&A (1.5)
3:15pm-3:30pm	15-minute Break
3:30pm-5:30pm	Hot Topics in Ethics- AI in the Law??? ChatGPT??? and More..... (2.0)
Total Pending Credits: 8.0 (2 ethics)	



Virginia Military Parents Equal Protection Act and Service Member's Civil Relief Act (SCRA)

by: Regina F. Amick, Esq.
Wolcott Rivers Gates and
Allison Anders, Esq.
Chaing Anders

I. The Virginia Military Parents Equal Protection Act in a Nutshell

- a. The Virginia Military Parents Equal Protection Act provides protections and procedures to ensure military parents are able to maintain contact with their children during their deployment.
- b. The Act is comprised of four statutes: Virginia Code Sections 20-124.7 through 20-124.10, and accomplishes the following objectives:
 - i. It defines “deploying parent” and “deployment.”
 - ii. It allows a military parent who already has court ordered visitation to delegate his/her time to a family member during his deployment. If the military parent already has court ordered physical custody, it allows him/her to provide visitation rights to a family member, however, neither of these create a separate right to visitation in the family member.
 - iii. The family member must have a “close and substantial” relationship with the child; and the Court must find that such delegation is in the child’s best interest.
 - iv. In the absence of any prior order for custody, visitation, or support order, the Act mandates an expedited hearing.
 - v. The Act mandates all temporary orders entered pursuant to this statute shall provide specific language for the non-deploying parent to facilitate communication and contact between deploying parent and child during the deployment, and that the deploying parent provide information regarding his/her leave schedule.

II. The Virginia Military Parents Equal Protection Act - Broken Down

1. Section 20-124.7. Definitions.

“Deploying parent or guardian” means a parent of a child under the age of 18 whose parental rights have not been terminated by a court of competent jurisdiction or a guardian of a child under the age of 18 who is deployed or who has received written orders to deploy with the United States Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, or any other reserve component thereof.

“Deployment” means compliance with military orders received by a member of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, or any other reserve component thereof to report for combat operations or other active service for which the deploying parent or guardian is required to report unaccompanied by any family member.

- *Noteworthy:* The Act was enacted in 2008 and was last amended in 2011. In 2019, Space Force was established, which is a separate and distinct branch of the armed forces. It is organized under the Department of the Air Force, similar to how the Marine Corps is organized under the Department of the Navy. The statute has not yet been amended to expressly include “Space Force,” in the definition, however, this has been brought to the attention of the Family Law Coalition
- *Noteworthy:* The definition of “deployment” states “or other active service for which the deploying parent or guardian is required to report unaccompanied by any family member.” Some tours may be accompanied but it is not realistic for the child to go.

2. Section 20-124.8. Deployment; temporary order.

§20-124.8(A) Any court order limiting previously ordered custodial or visitation rights of a deploying parent or guardian due to the parent’s or guardian’s deployment shall specify the deployment as the basis for the order and shall be entered by the court as a temporary order. Any such order shall further require the nondeploying parent or guardian to provide the court with

30 days advance written notice of any change of address and any change of telephone number.

- ***Real-Life Scenario:*** Suppose Jimmy, a dedicated Marine who happens to have primary physical custody of his children, receives orders to Bahrain for one year. Jimmy's ex-wife files for primary physical custody during the deployment. The Court awards Mother physical custody. The order must state that Jimmy's deployment is the basis for the order, and that it is temporary.

§20-124.8(B) The court, on motion of the deploying parent or guardian to delegate visitation to a family member, including a stepparent, with whom the child has a close and substantial relationship and upon finding that such delegation is in the best interests of the child, may enter an order delegating visitation that:

(1) **Delegates** all or a portion of the deploying parent's or guardian's *visitation* rights to such family member, if the deploying parent or guardian had visitation rights with the child prior to the deployment; or

(2) **Provides** visitation rights to such family member, if the deploying parent or guardian had *physical custody* of the child prior to the deployment and the nondeploying parent or guardian, or a family member of the nondeploying parent or guardian, is awarded physical custody during the deployment.

An order delegating or providing visitation rights to a family member pursuant to this subsection does not create a separate right to visitation in the family member to whom visitation rights are delegated or provided. The deploying parent or guardian may at any time, and the nondeploying parent or guardian may upon a showing of a material change in circumstances, file a motion to rescind the order delegating or providing visitation rights to a family member and such order shall terminate by operation of law upon the return of the deploying parent or guardian from deployment. Written notice of the return of the deployed parent or guardian and the termination of the delegated visitation shall be provided by the previously deployed parent or guardian to any family member whose visitation is thereby terminated

- ***Real life scenarios:***
 - Jimmy, as deploying parent, must file the Motion - not the family member or non-deploying parent.

- Jimmy should file well before he leaves so he can provide evidence of a “close and substantial” relationship, however, if he has to leave quickly, the statute provides for telephone or video appearance pursuant to Virginia Code Section 20-124.9(B).
- “Close and substantial” is undefined by statute or caselaw. Jimmy’s attorney should provide proof of frequency of contact, photograph and video evidence of the children lovingly interacting with the family member, perhaps present evidence of drawings and cards the kids made for the family member, and have the family member testify as to his/her relationship with the children and the frequency of contact.
- When Jimmy comes home from deployment, the family member’s visitation is terminated by operation of law. Jimmy is required to provide written notice of termination of the delegated visitation to the family member.
- What if something goes wrong with the family member’s visitation during deployment? The non-deploying parent may file a Motion to Amend based upon a material change in circumstances; Jimmy may rescind visitation at any time.
- Now that the family member has had court ordered visitation, haven’t we opened the door to his/her filing for more visitation in the future? No, an order delegating or providing visitation rights to a family member pursuant to this subsection does not create a separate right to visitation. Even though this is in the statute, it’s worth writing in the order.

§20-124.8(C) The court, on motion of the deploying parent or guardian returning from deployment seeking to amend or review the custody or visitation order entered based upon the deployment, shall set a hearing on the matter that shall take precedence on the court’s docket, and shall be set within 30 days of the filing of the motion. For purposes of this hearing, the nondeploying parent or guardian shall bear the burden of showing that reentry of the custody or visitation order in effect before the deployment is no longer in the child’s best interests.

§20-124.8(D) This section shall not otherwise preclude a parent or guardian from petitioning for a modification of a custody or visitation order based upon a change in circumstances.

- *Real-Life Scenario:* Jimmy gets home from deployment and his ex has primary physical custody of the children pursuant to the temporary order entered before he left. Jimmy must file a motion to amend this order, and the court SHALL set a hearing on the matter that shall take precedence on the court's docket and shall be set withing 30 days of filing the motion. It would be best for Jimmy to have his lawyer do this in advance so he gets the kids back upon his return.

3. Section 20-124.9. When no order is in place; expedited hearing; conduct of hearing.

§20-124.9 (A) If no court order exists as to the custody, visitation, or support of a child of a deploying parent or guardian, any petition filed to establish custody, visitation, or support for a child of a deploying parent or guardian shall be so identified at the time of filing by the deploying parent or guardian to ensure that the deploying parent or guardian has access to the child, and that reasonable support and other orders are in place for the protection of the parent-child or guardian-child relationship, consistent with the other provisions of this chapter. Such petition shall be expedited on the court's docket in accordance with § 20-108.

§20-124.9 (B) In any proceeding under this chapter where a deploying parent or guardian is reasonably unable to appear as a result of his/her deployment, the court, upon motion of the deploying parent or guardian and for good cause shown, may conduct any hearing using a telephonic communication system or an electronic audio and video communication system to provide for the appearance of any parties and witnesses.

4. § 20-124.10. Contents of temporary custody or visitation order.

Any order entered pursuant to § 20-124.8 shall provide that (i) the nondeploying parent or guardian shall reasonably accommodate the leave schedule of the deploying parent or guardian, (ii) the nondeploying parent shall facilitate opportunities for telephonic and electronic mail contact between the deploying parent or guardian and the child during the deployment period, and (iii) the deploying parent or guardian shall provide timely information regarding his/her leave schedule to the nondeploying parent or guardian.

Real-Life Scenario: This is required language that must go in the order. In addition, while the applicability of this Act is limited to a specific set of circumstances, however, this language is useful for drafting custody and visitation agreements.

5. **Does this Act apply to Relocation cases when the military member gets orders out of state?**

No, the Act only applies to situations where one parent deploys in accordance with military orders. *Rubino v. Rubino*, 64 Va. App. 256, 262 (2015)(holding that the Circuit court abused its discretion in considering the Virginia Military Parents Equal Protection Act when it awarded primary physical custody of the parties' children to the father unless the mother relocated to Virginia because the Act did not apply where the father was not deployed when his orders permitted his family to accompany him).

III. Service Member's Civil Relief Act (SCRA) 50 USC §3911 et seq.

§3912 - Jurisdiction and Applicability

SCRA applies to any judicial or administrative proceeding commenced in the United States including each state and political subdivisions thereof, and all territories subject to the jurisdiction of the United States.

§3918 - Waiver of Rights

A servicemember (SM) may waive his/her rights provided by SCRA.

§3920 - Legal Representatives

Legal representatives include an attorney acting on behalf of the SM or a person possessing a power of attorney.

§3931 - Protection of SM Against Default Judgments

- Applies to any civil action including child custody proceeding.
- Requires the plaintiff/petitioner to file an affidavit with the court stating:
 - Whether or not the defendant is in the military and the facts supporting the affidavit, or
 - That the plaintiff is unable to determine if the defendant is in the military.
- If the defendant is in the military, the court may not enter a judgment until after the court appoints an attorney to represent the defendant.
- If the court is unable to determine if the defendant is in the military, before entering judgment, the court may require the plaintiff to file a bond. If the

defendant is later found to be in the military, the bond is available to indemnify the defendant against any loss or damage suffered by reason of the judgment. The bond shall remain in effect until expiration of the appeal period.

- The court shall grant a stay of the proceedings for a minimum of 90 days upon application of counsel or on the court's own motion, if the court determines that:
 - there may be a defense to the action and the defense cannot be presented without the presence of the defendant; or
 - after due diligence, counsel appointed for the defendant has been unable to contact the defendant or otherwise determine if a meritorious defense exists.
- A SM has 90 days after the date of termination or release from military service to submit an application for the court to vacate or set aside a judgment if it appears that the SM:
 - was materially affected by reason of the military service in making a defense to the action; and
 - has a legal defense to the action or some part of it.

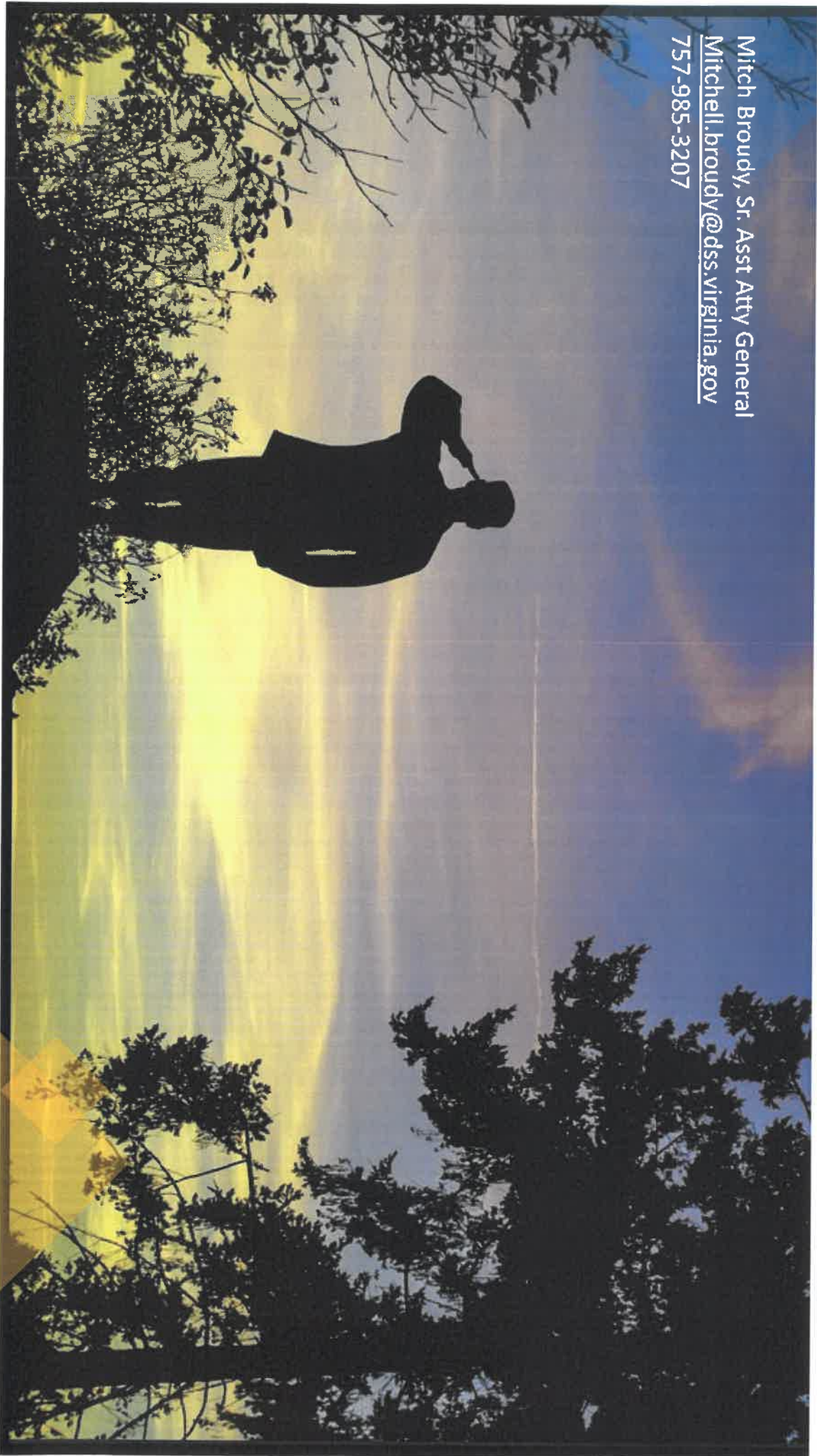
§3932 – Stay of Proceedings When SM Has Notice

- Applies to any civil action including child custody proceedings in which the SM at the time of filing was in the military or within 90 days after termination of or release from military service and has received notice of the action or proceeding.
- A stay may be granted for a period of not less than 90 days if:
 - A letter or communication which sets forth the manner in which the SM's current military duty requirements materially affect his/her ability to appear and includes a date in which the SM will be available to appear;
 - A letter or other communication from the SM's commanding officer stating that the SM's current military duty prevents his/her appearance, and that military leave is not authorized for the SM at the time of the letter.
- An application for a stay does not constitute an appearance for jurisdictional purposes and is not a waiver of any substantive or procedural defenses.
- The SM may apply for an additional stay if his/her military duty continue to affect his/her ability to appear. The application for an additional stay may be made at the time of the initial application or when it appears that the SM will be unavailable to prosecute or defend the action. If the court refuses to grant the additional stay, then counsel shall be appointed for the SM.

§3938 - Child Custody Protection

- If a temporary order is entered based solely on a deployment or anticipated deployment of a SM parent, the temporary order shall expire no later than the period justified by the deployment of the SM.
- The court shall not consider the absence of a SM due to deployment or the possibility of deployment as the sole factor in determining the best interest of the child.
- If a state law applicable to child custody provides a higher standard of protection to the rights of the SM parent deploying than this section of the SCRA, then the court shall apply the higher standard.
- Deployment is defined as the movement or mobilization of a servicemember to a location for a period longer than 60 days and not longer than 540 days pursuant to temporary or permanent official orders, and:
 - The orders are designated as unaccompanied; or
 - The orders do not authorize dependent travel; or
 - The orders do not permit the movement of family members to that location.

Mitch Broudy, Sr. Asst Atty General
MITCHELL.BROUDY@dss.virginia.gov
757-985-3207





Military & Child Support

Discussion Topics

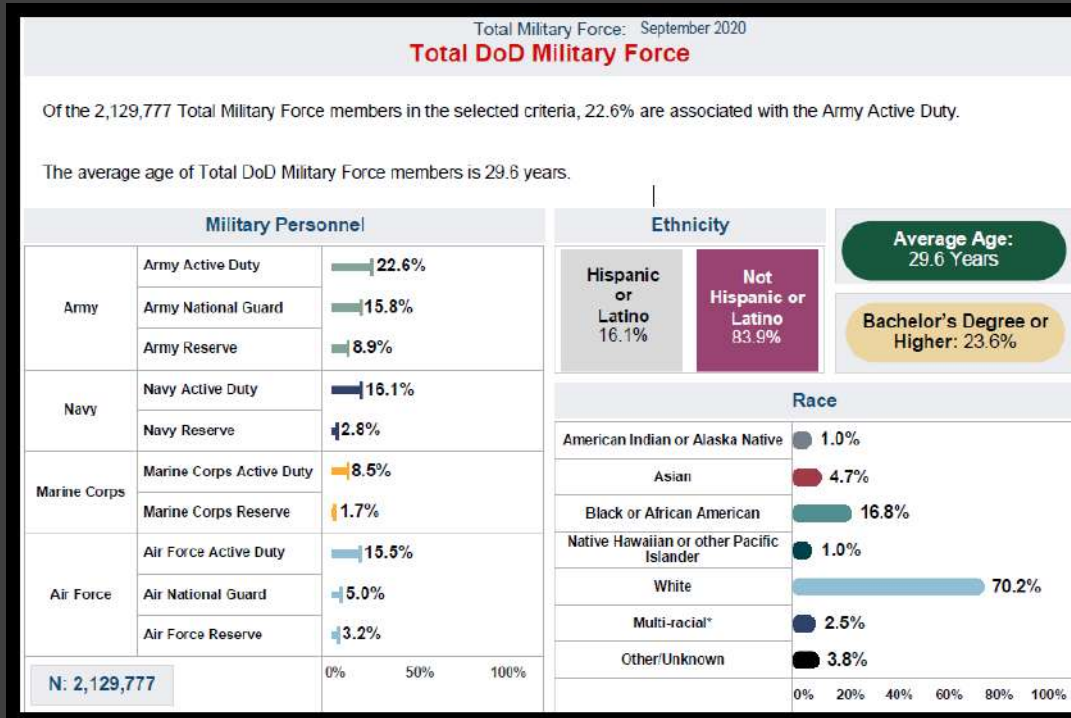
- Military Make-Up
 - Locating Servicemembers
 - Contacting Command
 - Administrative Complaints of nonsupport
 - Service of Process
 - SCRA
 - Paternity Cases
 - Income Evidence
 - Enforcing Support Orders
-



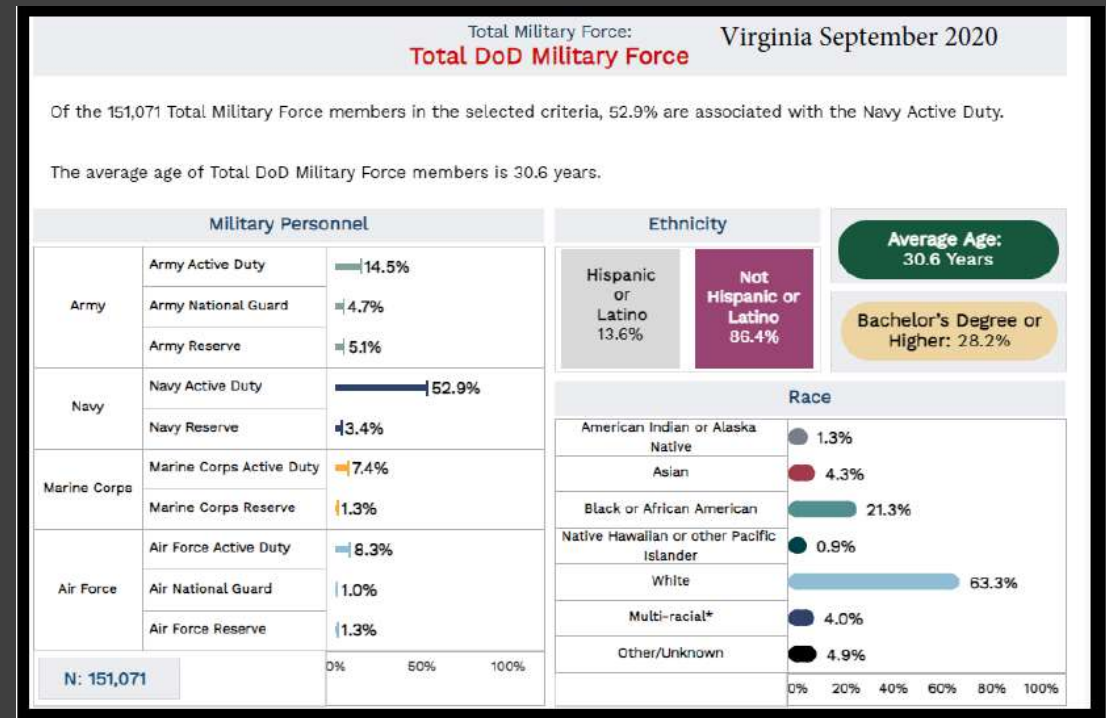
Military Force Makeup in US & VA

Sept 2020

Total Military Force Makeup



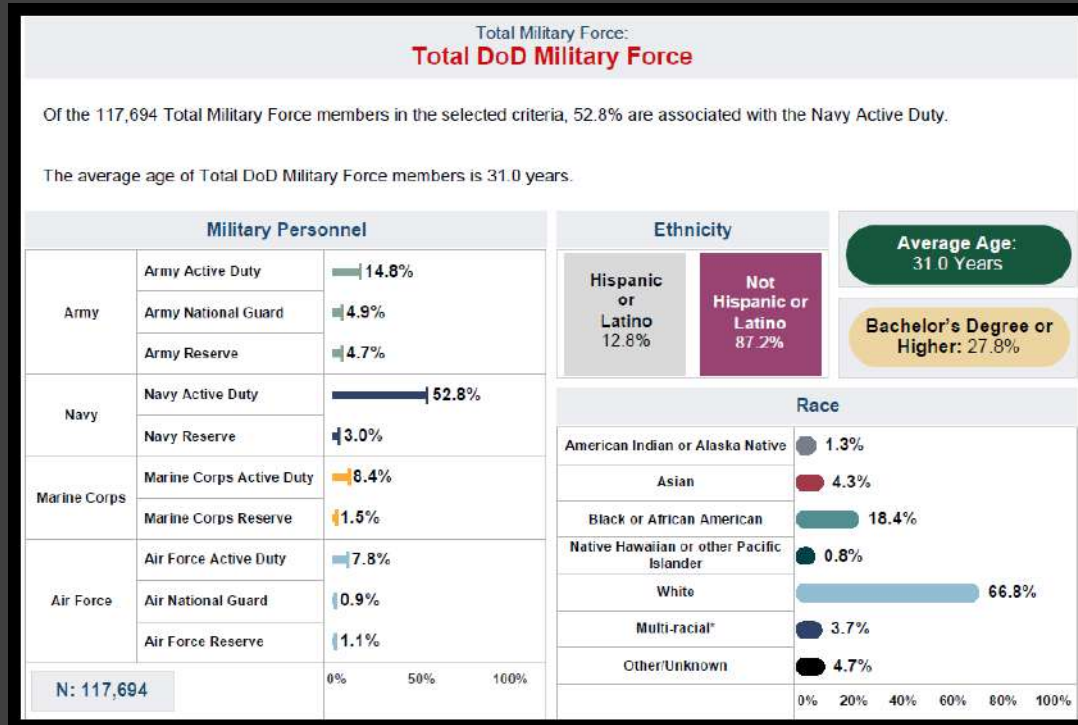
Total Military Force Makeup in VA



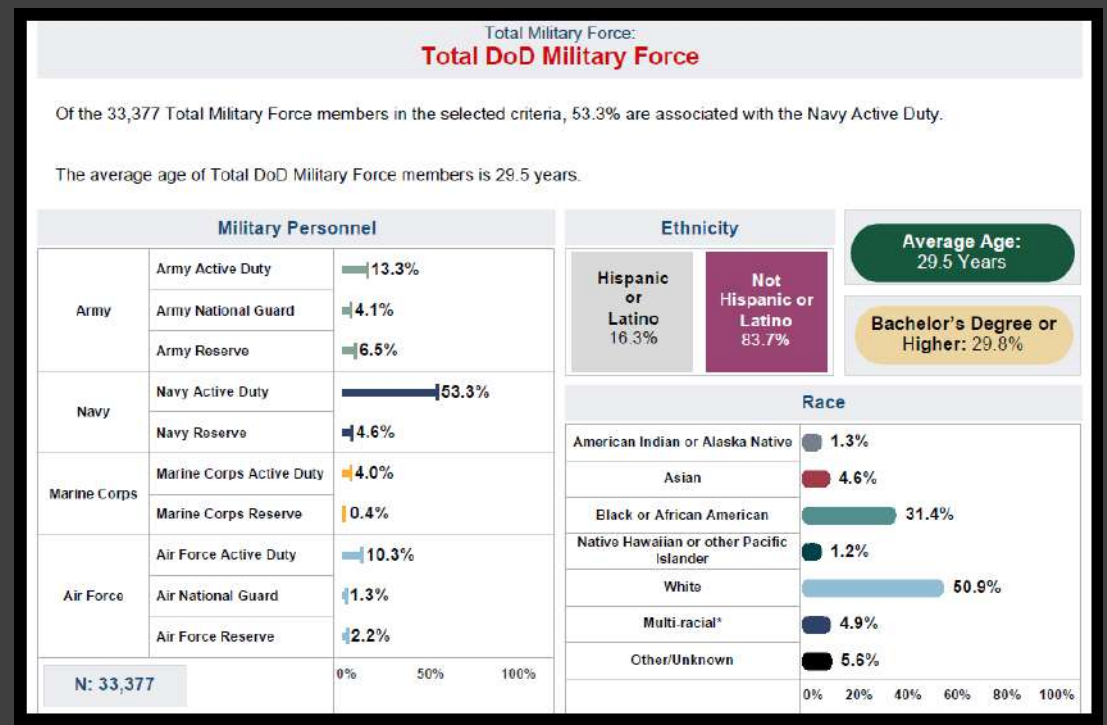
Men & Women serving in the Military in Virginia

Sept 2020

Virginia: 117,694 Males in Military

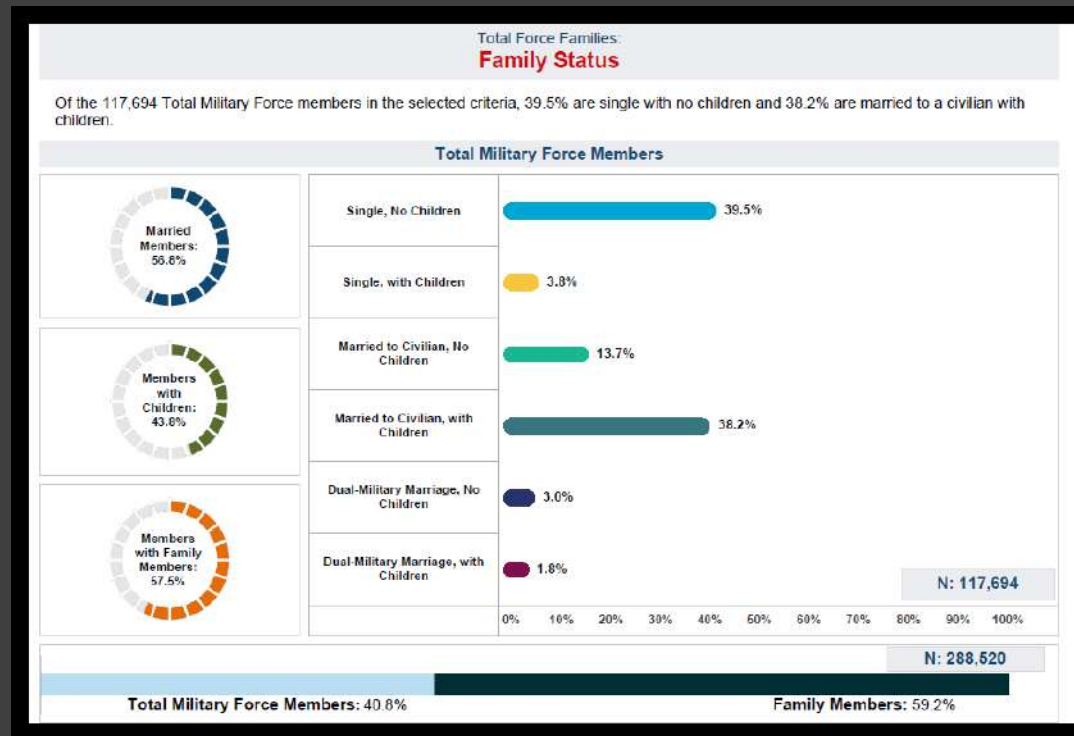


Virginia: 33,377 Females in the Military

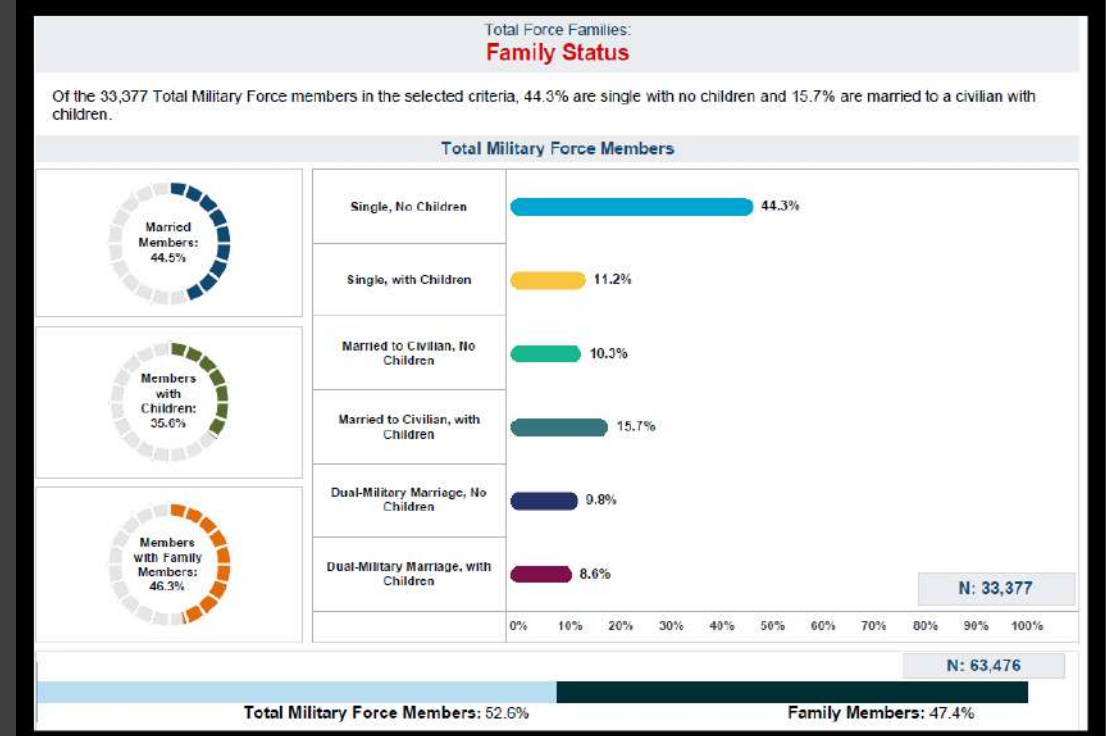


Military Family Status in Virginia Sept 2020

Males: Family Status



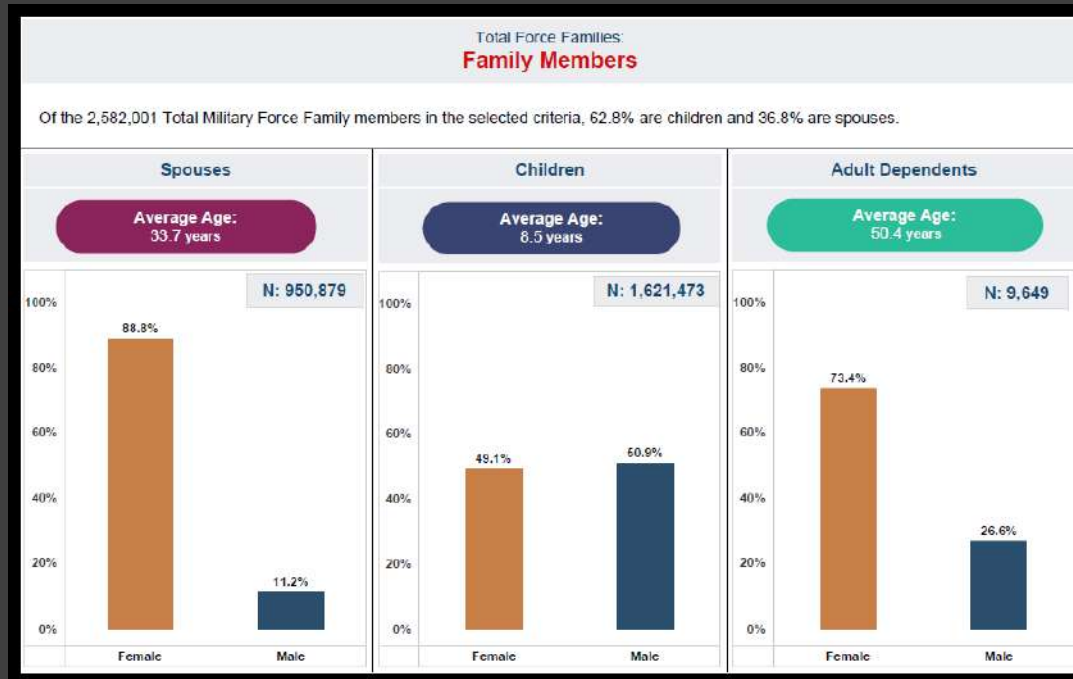
Women: Family Status



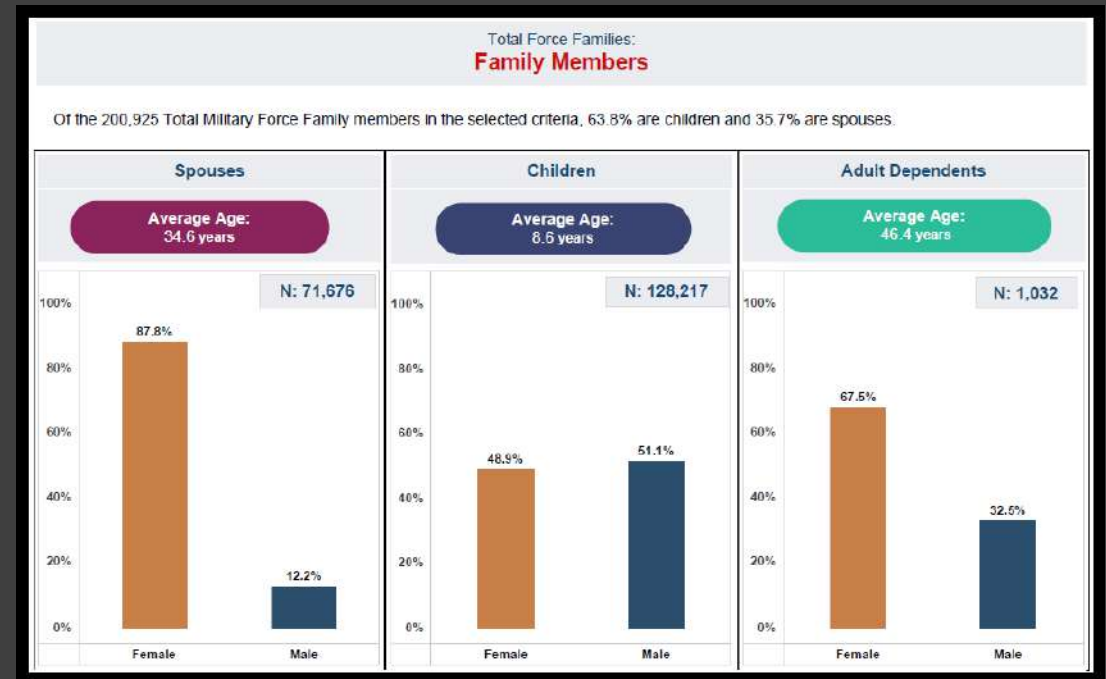
Military Families Makeup in US & VA

Sept 2020

Total Military Family Members



Total Military Family Members in VA





**WE CONNECT VIRGINIA'S VETERANS AND THEIR FAMILIES
TO FEDERAL AND STATE BENEFITS, SUPPORT, QUALITY CARE,
AND RECOGNITION THEY HAVE EARNED.**



VIRGINIA'S VETERAN POPULATION AT A GLANCE

- There are over 780,000 veterans in the Commonwealth of Virginia.
- Gulf War veterans are Virginia's largest veteran demographic.
- There are more than 107,000 women veterans in the Commonwealth of Virginia.

Annually
1/3 of the military
personnel
have permanent change in
stations (PCS)

Military is Transient



MILITARY BASES



- | | | |
|--|---|---|
| NSWC Dahlgren Naval Base
Dahlgren, VA | Finance Center Coast Guard Base
Chesapeake, VA | Langley Air Force Base
Hampton, VA |
| NS Norfolk Naval Base
Norfolk, VA | National Maritime Center Coast Guard
Arlington, VA | Fort Belvoir Army Base
Fairfax, VA |
| Norfolk Naval Shipyard Navy Base
Portsmouth, VA | National Pollution Center Coast Guard
Arlington, VA | Fort Eustis Army Base
Newport News, VA |
| NAS Oceana Naval Base
Virginia Beach, VA | Navigation Center Coast Guard Base
Alexandria, VA | Fort Lee Army Base
Prince George, VA |
| NWS Yorktown Navy Base
Yorktown, VA | Sector Hampton Roads Coast Guard Base
Portsmouth, VA | Fort Monroe Army Base
Hampton, VA |
| Joint Expeditionary Fort Story Naval Base
Little Creek, VA | Telecom Systems Command Coast Guard
Alexandria, VA | Fort Meyer Army Base
Arlington, VA |
| Medical Center Portsmouth Navy Base
Portsmouth, VA | Training Center Yorktown Coast Guard Base
Yorktown, VA | Fort AP Hill Army Base
Bowling Green, VA |
| NSA Norfolk Navy Base
Norfolk, VA | Henderson Hall Marine Corps Base
Arlington, VA | Fort Pickett Army Base
Blackstone, VA |
| NSA Northwest Annex Navy Base
Chesapeake, VA | Quantico Military Reservation Marine Corps
Triangle, VA | Radford Army Ammunition Plant Army Base
Radford, VA |
| SCSC Wallops Island Navy Base
Wallops Island, VA | NAB Little Creek Navy Base
Norfolk, VA | Warrenton Training Center Army Base
Alexandria, VA |



Navy



Marine Corp



Air Force



Army



Coast Guard



Headwinds for Military Families



Yearlong Absence

Mod 1-4

Multiple Deployments



Multiple Deployments

Mod 1-5

Staggering Numbers*

Since the attack of September 11

- 875,000 moms and dads have deployed
- 245,000 have deployed twice
- 91,000 three times
- 48,000 four+ times



* Source: National Military Family Assoc. 2011

Mod 1-6

PTSD/TBI



Möd 117

Locating the Servicemember



Locating which Branch the Servicemember is serving

SCRA Affidavit

**AFFIDAVIT – DEFAULT JUDGMENT
SERVICEMEMBERS CIVIL RELIEF ACT**
Commonwealth of Virginia VA CODE § 8.01-15.2

Case No. [REDACTED] RETURN DATE AND TIME: 09/06/2022 8:30 am

NEWPORT NEWS [REDACTED] Circuit Court General District Court
 Juvenile and Domestic Relations District Court

I, Mitchell D. Broudy, the undersigned affiant, states the following under oath:
 [X] The defendant/respondent is in military service. is not in military service.
 The affiant is unable to determine whether or not the defendant/respondent is in military service.

The following facts support the statement above:
 Based on the DMDC certificate of military service

Pursuant to 50 U.S.C. § 3931, if the court is unable to determine whether the defendant/respondent is in military service based upon the affiant's statement, the court, before entering judgment, may require the plaintiff/petitioner to file a bond in an amount approved by the court.

DATE: [REDACTED] AFFIANT'S SIGNATURE: [REDACTED]
 The above-named affiant personally appeared this day before the undersigned, and upon duly being sworn, made oath that the facts stated in this affidavit are true to the best of his or her knowledge, information and belief.

DATE: [REDACTED] CLERK DEPUTY CLERK MAGISTRATE JUDGE NOTARY OFFICER

FOR NOTARY PUBLIC'S USE ONLY:
 State of [REDACTED] [] City [] County of [REDACTED]
 Acknowledged, subscribed and sworn to before me this [REDACTED] day of [REDACTED], 20 [REDACTED].

NOTARY REGISTRATION NUMBER: [REDACTED] NOTARY PUBLIC: [REDACTED] (My commission expires: [REDACTED])

NOTICE REGARDING APPOINTMENT OF COUNSEL TO REPRESENT ABSENT SERVICEMEMBER:
 Where appointment of counsel is required pursuant to 50 U.S.C. § 3931 or § 3932 or another section of the Servicemembers Civil Relief Act, the court may assess reasonable attorney fees and costs against any party as the court deems appropriate, including a party aggrieved by a violation of the Act, and shall direct in its order which of the parties to the case shall pay such fees and costs, except the Commonwealth unless it is the party that obtains the judgment. Further, counsel appointed pursuant to the Servicemembers Civil Relief Act shall not be selected by the plaintiff or have any affiliation with the plaintiff.

FOR COURT USE ONLY:
 ORDER OF APPOINTMENT OF COUNSEL
 I find that appointment of counsel is required pursuant to 50 U.S.C. § 3931 or § 3932 or another section of the Servicemembers Civil Relief Act and therefore, I appoint the lawyer indicated below to represent the absent servicemember named as defendant/respondent above.
 The lawyer shall be paid a fee of \$ [REDACTED] for serving as counsel for the absent servicemember.

NAME, ADDRESS, COUNTY, ZIP CODE, CREDITED AFFIDAVIT: [REDACTED] NEXT HEARING DATE AND TIME: [REDACTED]
 DATE: [REDACTED] JUDGE: [REDACTED]

STAY OF PROCEEDINGS
 I find that a stay of proceedings is required pursuant to 50 U.S.C. § 3931 and, therefore, such a stay, for a minimum period of 90 days, is ordered until [REDACTED].

DATE: [REDACTED] JUDGE: [REDACTED]


FORM DC-418 (REVISED 1/18)

DMDC Military Verification

Department of Defense Manpower Data Center Results as of: Aug-22-2022 12:14:27 PM
 GORA 5.14

**Status Report
Pursuant to Servicemembers Civil Relief Act**

SSN: [REDACTED]
 Birth Date: [REDACTED]
 Last Name: [REDACTED]
 First Name: [REDACTED]
 Middle Name: [REDACTED]
 Status As Of: Aug-22-2022
 Certificate ID: F6GGG6WC9MW4924



On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
Aug-29-2018		SRV Service	Yes Army Active Duty
This response reflects the individual's active duty status based on the Active Duty Status Date			

Left Active Duty Within 367 Days of Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects when the individual left active duty status within 367 days preceding the Active Duty Status Date			

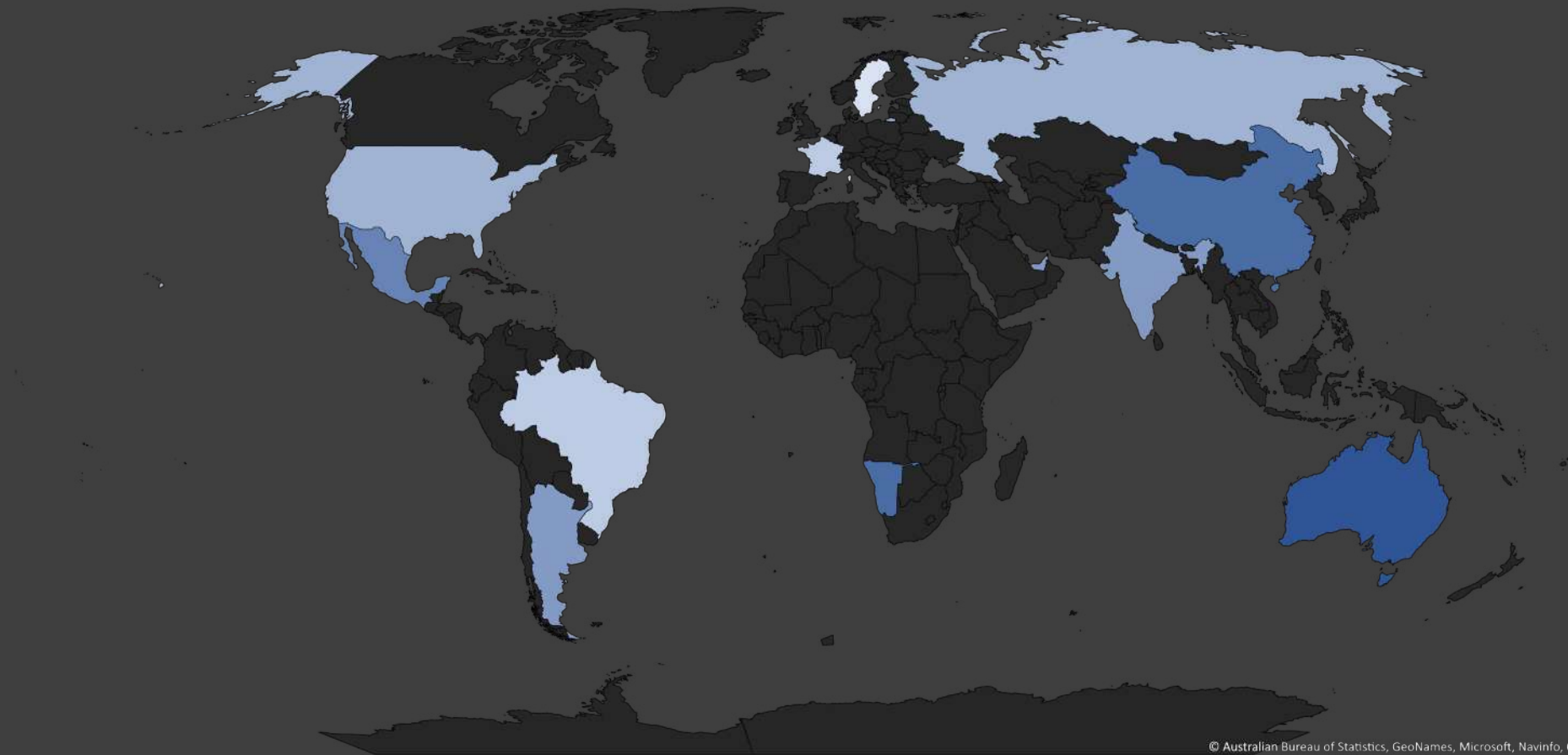
The Member or His/Her Unit Was Notified of a Future Call-Up to Active Duty on Active Duty Status Date			
Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA
This response reflects whether the individual or his/her unit has received early notification to report for active duty			

Upon searching the data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the status of the individual on the active duty status date as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard). This status includes information on a Servicemember or his/her unit receiving notification of future orders to report for Active Duty.

Michael V. Sorrento
 Michael V. Sorrento, Director
 Department of Defense - Manpower Data Center
 400 Gigling Rd.
 Seaside, CA 93955

Military Worldwide Locator Services

See Appendix 1



Military Legal Services in Virginia – Military One Source See Appendix 2

Location (Branch)	Contact Information
(USAR) Alexandria, Virginia (Army)	151st Legal Operations Detachment 6901 Telegraph Rd Alexandria, VA 22310 Phone: 703-960-7393 111-1111 usarmy.userc.usarlegalcmd.lst151st-la@mail.mil
Fort Belvoir (Army)	Fort Belvoir Legal Office 9900 Belvoir Drive Fort Belvoir, VA 22000 Phone: 703-805-2856 None http://www.belvoir.army.mil/SJA/NewSite/default.asp
Fort Eustis (Air Force)	Joint Base Langley Eustis Legal Office 2732 Madison Ave. Newport News, VA 23604 Phone: 757-978-3031 829-3031 http://www.jble.af.mil/Fort-Eustis-Legal-Assistance/
Fort Lee (Army)	Office of the Staff Judge Advocate 701 27th Street Bldg 8136 Fort Lee, VA 23801 Phone: 804-765-1500 539-1500 http://www.lao.army.mil/sja/Local%20Assistance.html
Fort Myer (Army)	Legal Assistance Office of the SJA Joint Forces HQ-NCR/US Army Military District of Washington 292 Custer Road Fort Myer, VA 22211 Phone: 703-596-0761 NA http://www.mdw.army.mil/sja/index.htm
Henderson Hall (Marine Corps)	Henderson Hall Legal Assist. Office 1555 Southgate Road Building 29, rm 301 Arlington, VA 22214 Phone: 703-614-1266 DSN 224-1266

Langley AFB (Air Force)	Langley Law Center 33 Sweeney Blvd. Langley AFB, VA 23665 Phone: 757-764-3277 574-3277 http://www.jble.af.mil/Units/Air-Force/Langley-Law/
MCB Quantico (Marine Corps)	Marine Corps Combat Development Command 3250 Cattin Ave, Suite 133 Quantico, VA 22134 Phone: 703-784-3122/3126 DSN 278-3122/3126 http://www.quantico.usmc.mil/
NAS Oceana (Navy)	NLSO MIDLANT Branch Office Oceana 799 Hornet Drive, Suite 100 Virginia Beach, VA 23460 Phone: 757-433-2230 433-2230 http://www.jag.navy.mil/legal_services/riso/riso_mid_atlantic.htm
NAVSTA Norfolk (Navy)	NLSO Mid-Atlantic 9620 Maryland Avenue, Suite 100 Norfolk, VA 23511 Phone: 757-341-4489 341-4489 http://www.jag.navy.mil/html/NLSOMidlantnewmain.htm
USCG Portsmouth (Coast Guard)	Legal Assistance Office, USCG Base Portsmouth 4000 Coast Guard Blvd Portsmouth, VA 23703 Phone: 757-295-2308 295-2308 https://www.uscg.mil/Resources/legal/LMA/Legal_Assistance/
USCG TRACEN Yorktown (Coast Guard)	Commanding Officer USCG Training Center ATTN: Legal Assistance Office Yorktown VA Yorktown, VA 23690 Phone: 757-856-2374 http://www.uscg.mil/legal/lar/



Federal Office of Child Support Enforcement

- [Federal Parent Locator Service](#)
 - The FPLS obtains and transmits information about the location of absent parents to enforce child support or visitation or to determine child custody or investigate parental kidnapping
- See Appendix 3 FPLS Request



Contacting
Servicemember's
Commander

Military Unit -
Command



U.S. Department of Defense





A GUIDE TO U.S. ARMY UNITS

Field Army <small>Last used: Desert Storm 1991</small>	50K+ SOLDIERS	Commanded By: ★★★★★ GENERAL
Corps	2+ DIVISIONS <small>20 - 45K Soldiers</small>	Commanded By: ★★★★ LIEUTENANT GENERAL
Division	3 BRIGADES <small>10 - 15K Soldiers</small>	Commanded By: ★★★ MAJOR GENERAL
Brigade OR Regiment	3-5 BATTALIONS <small>2-5K Soldiers</small>	Commanded By: ★ ★ BRIGADIER GENERAL OR COLONEL
Battalion	3-5 COMPANIES <small>100 - 1K Soldiers</small>	Commanded By: ★ LIEUTENANT COLONEL
Company OR Battery OR Troop	3-4 PLATOONS <small>60-200 Soldiers</small>	Commanded By: CAPTAIN OR FIRST LIEUTENANT OR MAJOR
Platoon	3-4 SQUADS <small>18-50 Soldiers</small>	Commanded By: SECOND LIEUTENANT
Squad	6-10 SOLDIERS	Commanded By: SERGEANT

Contacting Unit Commander



Non-Commissioned Officers: Senior Enlisted

PAYGRADE	Navy	Army	Air Force	Marine Corps	Coast Guard
E1	Seaman Recruit (SR)	Private (PVT)	Airman Basic (AB)	Private	Seaman Recruit (SR)
E2	Seaman Apprentice (SA)	Private E-2 (PV2)	Airman (Amn)	Private First Class (PFC)	Seaman Apprentice
E3	Seaman (SN)	Private First Class (PFC)	Airman First Class (A1C)	Lance Corporal (LCpl)	Seaman (SN)
E4	Petty Officer 3rd Class	Corporal OR	Senior Airman (SrA)	Corporal (Cpl)	Petty Officer 3rd Class
E5	Petty Officer 2nd Class	Sergeant (SGT)	Staff Sergeant (SSgt)	Sergeant (Sgt)	Petty Officer 2nd Class
E6	Petty Officer 1st Class	Staff Sergeant (SSG)	Technical Sergeant	Staff Sergeant (SSgt)	Petty Officer 1st Class
E7	Chief Petty Officer (CPO)	Sergeant First Class (SFC)	Master Sergeant (MSgt)	Gunnery Sergeant (Gy Sgt)	Chief Petty Officer
E8	Senior Chief Petty Officer (SCPO)	Master Sergeant (MSG)	Senior Master Sergeant (SMSgt)	Master Sergeant (M Sgt)	Senior Chief Petty Officer (SCPO)
E8		1st Sergeant (1SG)	1st Sergeant	First Sergeant	
E9	Master Chief Petty Officer (MCPO)	Sergeant Major (SGM)	Chief Master Sergeant (CMSgt)	Master Gunnery Sergeant (MGySgt)	Senior Master Chief Petty Off. (MCPO)
E9	Fleet/Command Master Chief Petty Officer	Command Sergeant Major (CSM)	First Sergeant or Command Chief Master Sergeant	Sergeant Major (SgtMaj)	
E9	Master Chief Petty Officer of the Navy (MCPON)	Sergeant Major of the Army (SMA)	Chief Master Sergeant of the Airforce (CMSAF)	Sergeant Major of the Marine Corps (SgtMajMC)	Master Chief Petty Officer of the Coast Guard (MCPOCG)

Contacting Command Company Grade Officer

MILITARY RANK AND GRADE

Officer Pay Grades

US military officer ranks include commissioned officers and warrant officers. The commissioned ranks are the highest. These officers hold presidential commissions and are confirmed at their ranks by the Senate. Army, Air Force and Marine Corps officers are called company grade officers in the pay grades of O-1 to O-3, field grade officers in pay grades O-4 to O-6 and general officers in pay grades O-7 and higher. The equivalent officer groupings in the Navy are called junior grade, mid-grade, and flag. See www.defense.gov/about/insignias.

Note: O=Officer E=Enlisted W=Warrant Officers

PAYGRADE	Navy	Army	Air Force	Marine Corps	Coast Guard
O1	Ensign (ENS)	2nd Lieutenant (2LT)	2nd Lieutenant (2d Lt)	2nd Lieutenant (2ndLt)	Ensign (ENS)
O2	Lieutenant Junior Grade (LTJG)	1st Lieutenant (1LT)	1st Lieutenant (1st Lt)	1st Lieutenant (1stLt)	Lieutenant Junior Grade (LTJG)
O3	Lieutenant (LT)	Captain (CPT)	Captain (Capt)	Captain (Capt)	Lieutenant (LT)
O4	Lieutenant Commander (LCDR)	Major (MAJ)	Major (Maj)	Major (Maj)	Lieutenant Commander (LCDR)
O5	Commander (CDR)	Lieutenant Colonel (LTC)	Lieutenant Colonel (Lt Col)	Lieutenant Colonel (LtCol)	Commander (CDR)
O6	Captain (CAPT)	Colonel (COL)	Colonel (Col)	Colonel (Col)	Captain (CAPT)
O7	Rear Admiral Lower Half (RDML)	Brigadier General (BG)	Brigadier General (Brig Gen)	Brigadier General (BGen)	Rear Admiral Lower Half (RDML)
O8	Rear Admiral Upper Half (RADM)	Major General (MG)	Major General (Maj Gen)	Major General (MajGen)	Rear Admiral Upper Half (RADM)
O9	Vice Admiral (VADM)	Lieutenant General (LTG)	Lieutenant General (Lt Gen)	Lieutenant General (LtGen)	Vice Admiral (VADM)
O10	Admiral (ADM)	General (GEN)	General (Gen)	General (Gen)	Admiral (ADM)

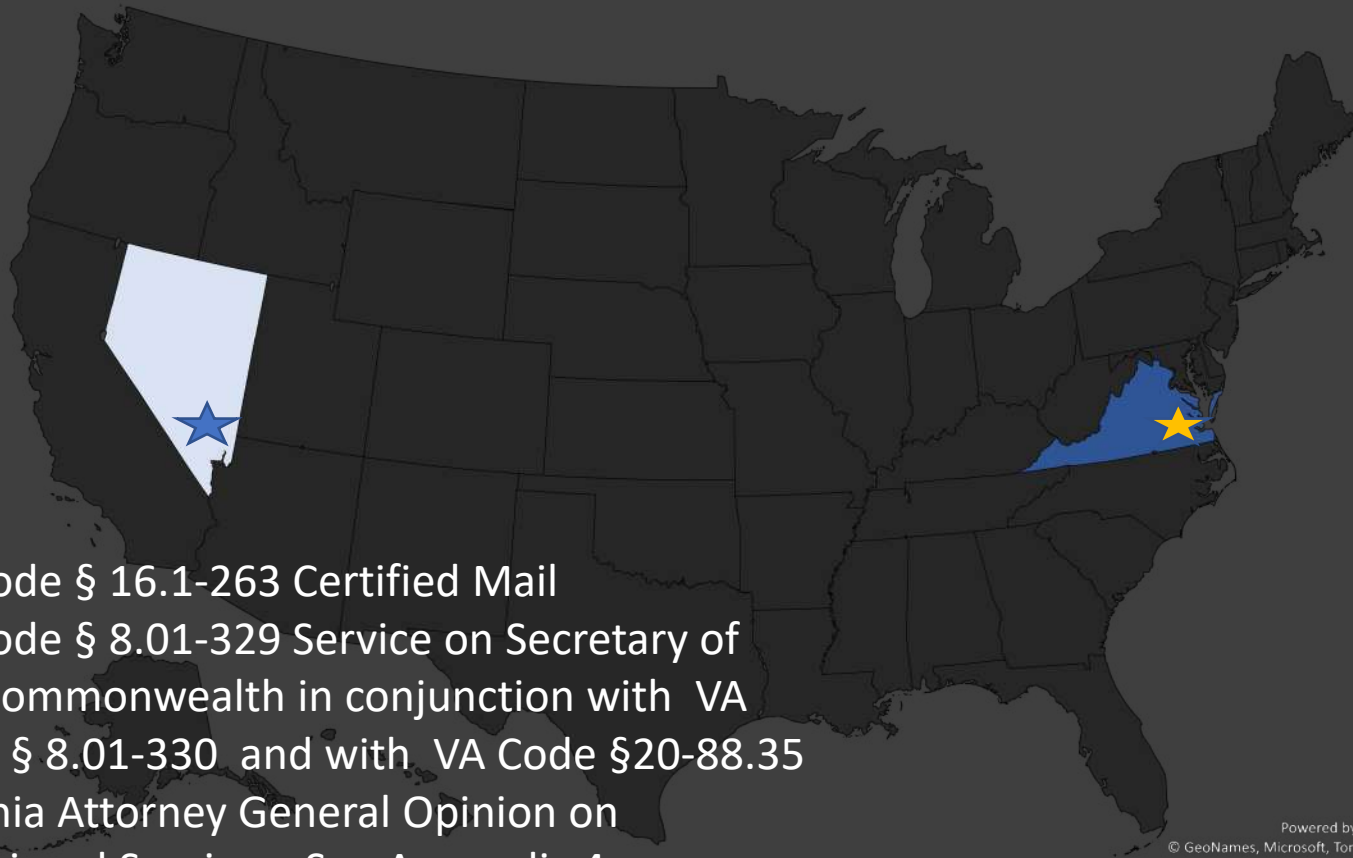
Complaints of
Nonsupport/Inadequate
support

Military Support Regulations



Military Support Regulations	
Army	<u>Army Regulation 608 – 99</u>
Airforce	<u>Department of Airforce Instruction 36-2906</u>
Coast Guard	<u>COMDTINST M1600.2E</u>
Marines	<u>MCO 5800.16</u>
Navy	<u>MILPERSMAN (Naval Military Personnel Manual) 1754-030</u>

Service of Process

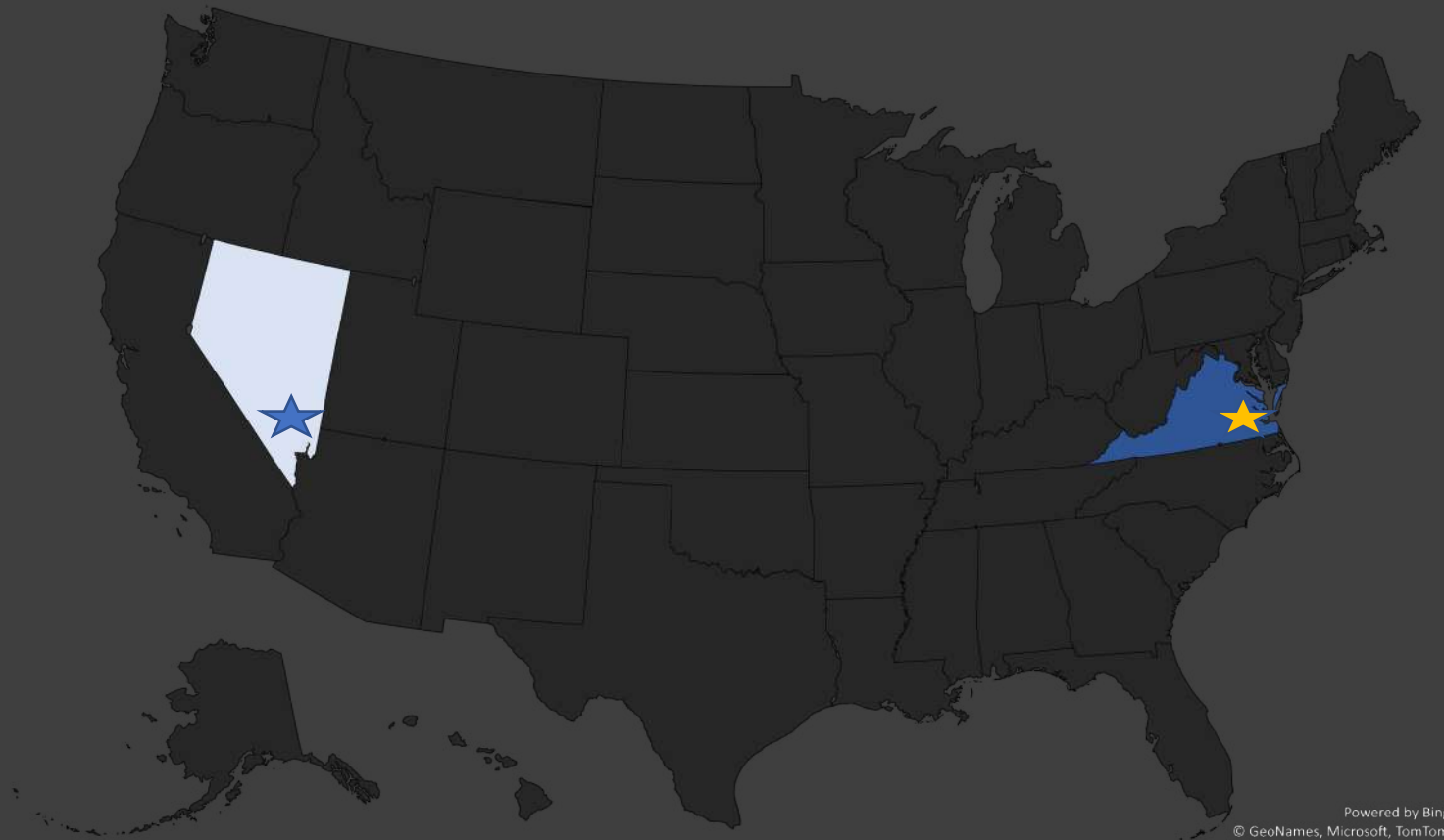


VA Code § 16.1-263 Certified Mail
VA Code § 8.01-329 Service on Secretary of
the Commonwealth in conjunction with VA
Code § 8.01-330 and with VA Code §20-88.35
Virginia Attorney General Opinion on
Unclaimed Service – See Appendix 4
Military Regulations relating to service of
process on military installations.

Wife and
children
moved to
Hampton due
to PCS to
Langley
Airforce Base;
husband stays
in Vegas

Jurisdictional Issues: Child Custody & Support

Wife and children moved to Hampton due to PCS to Langley Airforce Base; husband stays in Vegas



VA Code §20-88.32 et al... UIFSA
VA Code §20-146.1 et al... UCCJEA

Wife is in Virginia and Husband is stationed in Australia – How do you serve him without violating international law

Domicile v. Residence

[The HAGUE CONVENTION](#) ON THE SERVICE ABROAD OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS – See Appendix 5

[See USPS on International Mail](#)





Servicemember Civil Relief Act

- Stay of Actions 50 USC § 3931
- Default Judgments 50 USC § 3932
- Violations 50 USC § 4041 & 4042



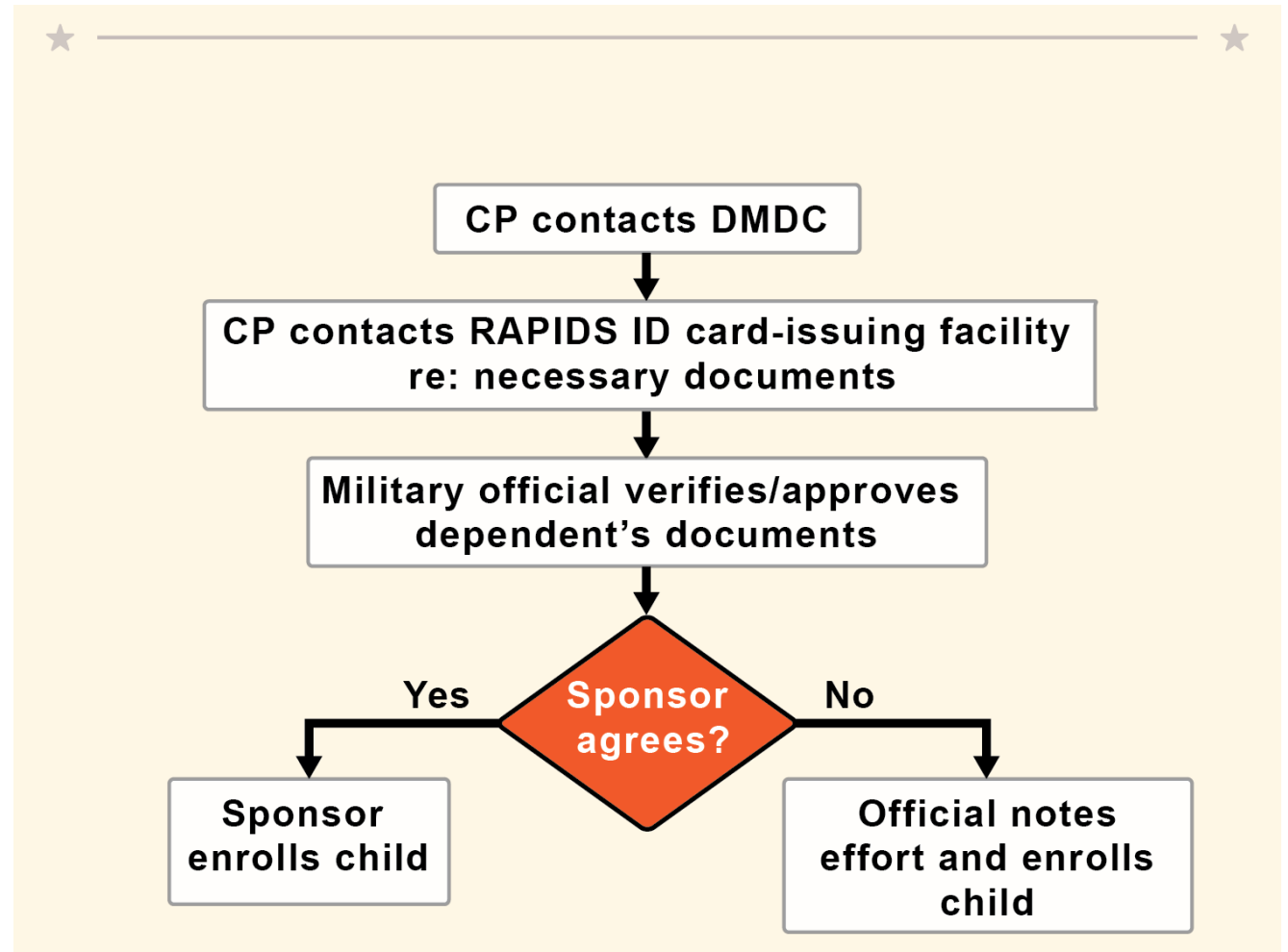
Paternity & the Military

- Tricare – [DEERS enrollment](#)
 - Acknowledgment of Paternity or
 - Court Order
- Military - provides little assistance in gaining servicemember's cooperation
- Labcorp can arrange DNA testing at military installations around the world.



Enrolling Child in DEERS

Defense Enrollment
Eligibility Reporting
System
1-800-538-9552



If unable to find an appointment, please click Help then review the FAQs prior to contacting your local RAPIDS ID Card Office



ID Card Office Locator & Appointments

Search for Site by Address Alternative Search Search for Existing Appointment

Enter Location
City, State, Zip, Country
23451

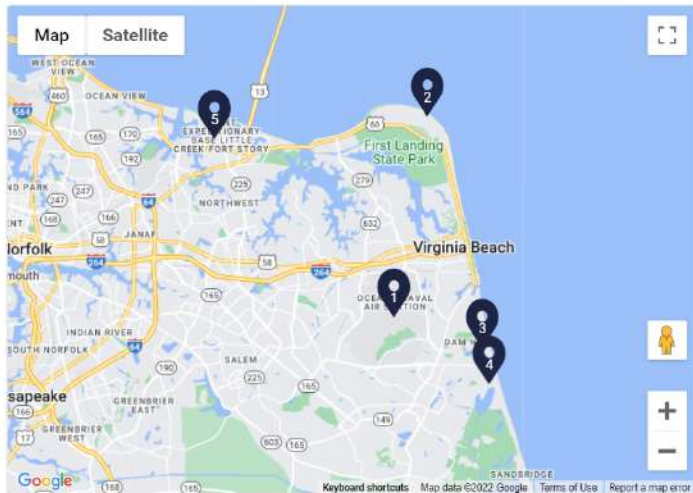
Radius
10 miles

Search For
 All Appointments Walk-ins

Time
Begin Time: 8:00 AM End Time: 1:00 PM

Date Range
Begin Date: 2022-09-04 End Date: 2022-09-30

RESET SEARCH



- 1 3.98 Miles
NAS OCEANA
1161 D Avenue
Bldg 326
VIRGINIA BEACH, VA 23461
(757) 433-2184
SELECT
- 2 4.18 Miles
Fort Story JEB Little Cree
517 Solomons RD
VIRGINIA BEACH, VA 23461
(757) 422-7752
SELECT
- 3 5.12 Miles
NSWDG Virginia Beach
1670 SHRIKE COURT
ATTN ENOCH MOFFETT
VIRGINIA BEACH, VA, VA 23461
(757) 862-0124
SELECT

Servicemember does not cooperate in enrolling child in DEERS

- The custodial parent can also enroll the child by going to a Uniformed Services ID card issuance site and presenting the appropriate documents to the official who verifies dependent status. The custodial parent needs to bring the appropriate documentation.
- – Paternity Tests are insufficient proof.

Military Income – Understanding LES

- The LES is a comprehensive document that provides a wealth of information that is critical to the order establishment process. The LES has 78 separate fields that include, among other things, the following information:
- Member's name and Social Security number [fields 1 – 2]
- All pay the member receives (Base, Special, Incentive, and Bonus) [field 19]
- All allowances and entitlements the member earns [field 10]
- Member's leave balances [fields 25 – 32]
- Type(s) of dependents the member claims [field 51]
- Member's declared state of domicile [field 44]
- [Understanding Military LES](#)

DEFENSE FINANCE AND ACCOUNTING SERVICE MILITARY LEAVE AND EARNINGS STATEMENT																	
NAME (LAST, FIRST, MI)		SOC SEC. NO.	GRADE	PAY DATE	YRS SVC	ETS	BRANCH	ADSN/DSSN	PERIOD COVER								
1		2	3	4	5	6	7	8	9	ENTITLEMENTS		DEDUCTIONS		ALLOTMENTS		SUMMARY	
FE	AMOUNT	TYPE		AMOUNT	TYPE		AMOUNT	+ AMT FWD									
	10			11			12										
										+ TOT ENT		13					
										- TOT DED		14					
										- TOT ALMT		15					
										= NET AMT		16					
										- CR FWD		17					
										= EOM PAY		18					
										DEMS		19					
										EST P		20					
TOTAL		20		21		22		23		24							
RF BAL	ERND	USED	CR BAL	ETS BAL	LV LOST	LV PAID	USE/LOSE	FED TAXES		WAGE PERIOD	WAGE YTD	M/S	EX	ADD'L TAX			
25	26	27	28	29	30	31	32	33		34	35	36	37				
WAGE PERIOD	SOC WAGE YTD	SOC TAX YTD		MED WAGE YTD	MED TAX YTD		STATE TAXES		ST	WAGE PERIOD	WAGE YTD	M/S	EX	TAX			
39	40	41		42	43		44		45	46	47	48	49				
BAQ TYPE	BAQ DEPN	VHA ZIP	RENT AMT	SHARE	STAT	IFTR	DEPN	2D IFTR	BAS TYPE	CHARITY YTD	TPC	PACED					
50	51	52	53	54	55	56	57	58	59	60	61	62					
BASE PAY RATE		BASE PAY CURRENT		SPEC PAY RATE		SPEC PAY CURRENT		INC PAY RATE		INC PAY CURRENT		BONUS PAY RATE		BONUS PAY CT			
63		64		65		66		67		68		69		70			
CURRENTLY NOT USED				TSP YTD DEDUCTIONS		DEFERRED		EXEMPT		CURRENTLY NOT USED							
71				72		73		74		75							
RKS		YTD ENTITLE				YTD DEDUCT											
		77				78											

Military Income Evidence for Child Support

[2022 Military Pay Tables.pdf](#) - Military Rank and # of years of Service

[BAH Calculator](#) - Basic Allowance for Housing (Based on Zipcode)

[BAS](#) - Basic Allowance for Subsistence

DCSE – Receives all income for Servicemembers through Directory of New Hires

Va. Code § 20-108.2 “Gross income” means all income from all sources – includes even nontaxable income such as BAS

DFAS may honor a court order requiring DFAS to produce a current LES



Bonus

- Individual Ready Reserve Bonuses – Servicemembers who leave military and join a reserve unit
- Prior Service Enlistment Bonus – Servicemember re-enlists after being out of the service
- Selective Reenlistment Bonus – paid to enlisted members with needed skills who reenlist.
- Enlistment and Reenlistment bonus to encourage enlistment
- Aviator retention bonus
- Bonuses are paid at the field level and not through DFAS – will not clearly show up on LES

Retired Pay

- [Military Retirement](#)
 - Defined Benefit – 50% of Base Pay at 20 years of service. Multiplier 2.5% x the number of years.
- [Concurrent Retirement & Disability Payments \(CRDP\) and Combat-Related Special Compensation \(CRSC\)](#)
 - The Department of Defense (DoD) is, and has been, making extra payments to retirees to overcome some or all the offset from retired pay associated with receipt of disability compensation from the Department of Veterans Affairs (VA) –50% VA disabilities or greater; or Combat related disability



VA Disability

- *Alwine v. Alwine*, 70 Va. App. 599 (2019)
Father's gross income could be based on the income he received from all sources including veteran's disability benefits
-



Individuals serving an aggregate period of active duty after September 10, 2001, of:	Percentage of Maximum Benefit Payable
At least 36 months	100%
At least 30 continuous days and discharged due to service-connected disability	100%
At least 30 months < 36 months	90%
At least 24 months < 30 months	80%
At least 18 months < 24 months	70%
At least 12 months < 18 months	60%
At least 6 months < 12 months	50%
At least 90 days < 6 months	40%

- Cost of tuition and fees, not to exceed the most expensive in-state undergraduate tuition at a public institution of higher education (paid to school);
 - Monthly housing allowance*** equal to the basic allowance for housing payable to a military E-5 with dependents, in the same zip code as your school (paid to you);
 - Yearly books and supplies stipend of up to \$1000 per year (paid to you); and
 - A one-time payment of \$500 paid to certain individuals relocating from highly rural areas.
- How many months of assistance can I receive?**
Generally, you may receive up to 36 months of entitlement under the Post-9/11 GI Bill.



Monthly Housing Allowance.

Your housing allowance is also based on your training time, AND you must be training at greater than 1/2 time training to receive a Monthly Housing Allowance.

If you are taking undergraduate classes your training time is determined as follows:

If 12 credits is considered full-time, a course load of 6 credits yields a training time of 50% ($6 \div 12 = .50$), whereas a course load of 7 credits yields a training time of 58% ($7 \div 12 = .58$). In this scenario, a veteran would need to enroll for at least 7 credits (such as two 3-credit classes and a 1-credit lab) in order to receive the housing allowance benefits.

Post 9-11 Housing Allowance Explained



Enforcing Child Support Orders

- Wage Withholding -
 - Maximum Amt allowed in Virginia: federal Consumer Credit Protection Act (CCPA) range from 50 – 65 percent of disposable pay depending upon the presence of dependents and the length of time the noncustodial parent is in arrears.
 - It is not able to attach BAH and/or BAS/Sep Rats.
 - Switching from Active Duty/Retired Pay creates delays in payments.
 - Keep an eye on Reservist/Guards being called up to active duty – there is no mechanism for it to automatically happen
- Federal Statutory Military Allotment for active-duty military
 - 2 months of arrears accrued
 - Request made by attorney/court
 - Collects full amount of support owed
 - See Appendix 6 Sample Letter





Enforcing Support Orders: Veteran Benefits

Only in very limited situations
will the VA honor garnishments

Permissible to garnish veteran's bank account
containing VA Disability benefits

Veteran will argue 38 USC 5301 prohibits garnishment
of veteran benefits but caselaw says otherwise:

Rose v. Rose, 481 US 619 (1987)

Sayers v. Powell, 2015 U.S. Dist. Lexis 77971 (2015)

Alwine v. Alwine, 70 Va. App. 599 (2019)

Closing Thoughts

- FPLS Request
 - Worldwide Locator Services
 - Contact servicemember's NCO/Commander
 - Make Interim Support Complaints
 - Utilize Military Legal Assistance
 - Service on Military Installations – instate v. out of state installations
 - Hague Convention on service of Process
 - Paternity/Enroll DEERS
 - Understand LES - Keep an eye out for Bonuses
 - Get more support from an involuntary allotment than from a wage withholding.
 - Check out Appendix 8 for additional resources
-



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Mitchell.broudy@dss.virginia.gov
757-985-3207



MILITARY LOCATOR SERVICES

MILITARY LOCATOR SERVICES

Addresses for Military Locator Services

Note: Generally, requests for information by state or federal agencies or law enforcement must be in writing and on official letterhead.

Air Force Active Duty, Reserve, Retired, or Air National Guard

Air Force Personnel Center
Attn: DPDXIDL
550 C Street West, Suite 50
Randolph AFB, TX 78150-4752
(210) 565-2660

<http://www.afpc.af.mil/library/airforcelocator.asp>

Army Active Duty Only

(By mail only)
Army World Wide Locator Service
Enlisted Records & Evaluation Center
8899 East 56th Street
Indianapolis, IN 46249-5301

<http://www.army.mil/contact/>, “Additional Frequently Asked Questions” section,
“Locator Service”

Marine Corps

Marine Locator
Headquarters US Marine Corps
Personnel Management Support Branch (MMSB-17)
2008 Elliot Road
Quantico, VA 22134-5030
(703) 784-3941 / 3942 / 3943
(800) 268-3710

<http://www.marines.mil/FAQs.aspx>, “Personnel Locator”

Navy

Navy Active Duty, Reserve, or Retired

Navy Worldwide Locator

Bureau of Naval Personnel

PERS 1

5720 Integrity Drive

Millington, TN 38055-3120

(901) 874-5672

(866) 827-5672

Note: The Navy does not release unit addresses over the telephone. Submit your request in writing or call the commercial number for further instructions.

<http://www.public.navy.mil/bupers-npc/organization/npc/csc/Pages/NavyLocatorService.aspx>

Coast Guard

(By mail or e-mail only)

Commander

Personnel Service Center

US Coast Guard Stop 7200

4200 Wilson Blvd., Suite 1100

Arlington, VA 20598-7200

Email: ARL-PF-CGPSCCGlocator@uscg.mil

<http://www.uscg.mil/locator/>

Note: *The military locator services provide the member's military address.*

This information is current as of August 2013.

Most large military bases maintain legal assistance offices. Duties of the legal assistance attorneys include helping military spouses and dependent children obtain the service member's military address. The attorneys are not legally required to assist parents who have never been married to the service member.



[Home](#)

AF Legal Services Locator

* If a location needs to be updated, please submit your request to: [✉ Web Admin](#)

There are 12 Armed Forces legal offices located in Virginia.

Miles	Location (Branch)	Contact Information
Map	(USAR) Alexandria, Virginia (Army)	151st Legal Operations Detachment 6901 Telegraph Rd Alexandria, VA 22310 Phone:703-960-7393 111-1111 usarmy.usarc.usar-legal-cmd.list.151st-la@mail.mil
Map	Fort Belvoir (Army)	Fort Belvoir Legal Office 9990 Belvoir Drive Fort Belvoir, VA 22060 Phone:703-805-2856 None http://www.belvoir.army.mil/SJA/NewSite/default.asp
Map	Fort Eustis (Air Force)	Joint Base Langley Eustis Legal Office 2732 Madison Ave. Newport News, VA 23604 Phone:757-878-3031 826-3031 http://www.jble.af.mil/Fort-Eustis-Legal-Assistance/
Map	Fort Lee (Army)	Office of the Staff Judge Advocate 701 27th Street Bldg 8135 Fort Lee, VA 23801 Phone:804-765-1500 539-1500 http://www.lee.army.mil/sja/Legal%20Assistance.html
Map	Fort Myer (Army)	Legal Assistance Office of the SJA Joint Forces HQ-NCR/US Army Military District of Washington 202 Custer Road Fort Myer, VA 22211 Phone:703-696-0761 NA http://www.mdw.army.mil/sja/index.htm
Map	Henderson Hall (Marine Corps)	Henderson Hall Legal Assist. Office 1555 Southgate Road Building 29, rm 301 Arlington, VA 22214 Phone:703-614-1266 DSN 224-1266
Map	Langley AFB (Air Force)	Langley Law Center 33 Sweeney Blvd. Langley AFB, VA 23665 Phone:757-764-3277 574-3277 http://www.jble.af.mil/Units/Air-Force/Langley-Law/
Map	MCB Quantico (Marine Corps)	Marine Corps Combat Development Command 3250 Catlin Ave, Suite 133 Quantico, VA 22134

Map	NAS Oceana (Navy)	Phone:703-784-3122/3126 DSN 278-3122/3126 http://www.quantico.usmc.mil/ NLSO MIDLANT Branch Office Oceana 799 Hornet Drive, Suite 100 Virginia Beach, VA 23460 Phone:757-433-2230 433-2230 http://www.jag.navy.mil/legal_services/rlso/rlso_mid_atlantic.htm
Map	NAVSTA Norfolk (Navy)	NLSO Mid-Atlantic 9620 Maryland Avenue, Suite 100 Norfolk, VA 23511 Phone:757-341-4489 341-4489 http://www.jag.navy.mil/html/NLSOMidlantnewmain.htm
Map	USCG Portsmouth (Coast Guard)	Legal Assistance Office, USCG Base Portsmouth 4000 Coast Guard Blvd Portsmouth, VA 23703 Phone:757-295-2308 295-2308 https://www.uscg.mil/Resources/legal/LMA/Legal_Assistance/
Map	USCG TRACEN Yorktown (Coast Guard)	Commanding Officer USCG Training Center ATTN: Legal Assistance Office Yorktown VA Yorktown, VA 23690 Phone:757-856-2374 http://www.uscg.mil/legal/la/

[Legal Assistance Disclaimer and External Links Notice](#)

This DoD Web page is compliant with Section 508 standards

AG Op. COURTS NOT OF RECORD: JUVENILE AND, 1990 Va. AG 117

COURTS NOT OF RECORD: JUVENILE AND DOMESTIC RELATIONS COURTS.

CIVIL REMEDIES AND PROCEDURE: PROCESS — PERSONAL JURISDICTION IN CERTAIN ACTIONS.

Valid service of summons by certified mail, return receipt requested, effected even though return receipt signed by person as agent for party being served, or marked refused or unclaimed, if statutory requirements met.

DATE: January 18, 1990

SDATE: 900118

REQUESTOR: The Honorable Herbert I.L. Feild, Judge, York County Juvenile and Domestic Relations District Court

CITE: 1990 117

You ask whether the service of a summons by certified mail, return receipt requested, pursuant to § 16.1-264 of the Code of Virginia, is valid when the receipt is returned signed by a person as the agent of the party being served, or marked refused or unclaimed. You state that you do not include other possible returns from mailing which may be made by the post office, such as "moved — left no forwarding address," "insufficient address" or "addressee unknown," because you conclude that these returns would not constitute valid service. **[Page 118]**

I. Applicable Statutes

Section 16.1-264(A) provides that, under certain circumstances, a summons may be served on a party by mailing a copy of the summons to the party by certified mail, return receipt requested:

If a party designated to be served in § 16.1-263 is within the Commonwealth and cannot be found, but his address is known or can with reasonable diligence be ascertained, the summons may be served upon him by mailing a copy thereof by certified mail return receipt requested. If he is without the Commonwealth but can be found or his address is known, or can with reasonable diligence be ascertained, service of summons may be made either by delivering a copy thereof to him personally or by mailing a copy thereof to him by certified mail return receipt requested.

Section 16.1-263 requires the juvenile and domestic relations district court (the "juvenile court") to direct the issuance of summonses to those persons determined by the juvenile court to be necessary parties to appear personally to answer or testify before the court concerning allegations in a petition filed pursuant to § 16.1-260, the statute describing intake petitions under the Juvenile and Domestic Relations District Court Law.

The question presented by your inquiry is whether sufficient notice is provided by the mailing provisions of § 16.1-264 to meet due process requirements.¹

II. Valid Service is Effected in Facts Presented by Compliance With Statutory Service Procedure

To be consistent with due process standards, notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 314 (1950). Under the *Mullane* test, a statutory method of notice is constitutionally adequate if it is "reasonably calculated to reach interested parties." *Id.* at 318.

While the Supreme Court of Virginia has not addressed the sufficiency of service by mail under § 16.1-264, the Court has considered an analogous question involving service of process pursuant to §§ 8.01-308 and 8.01-312. These statutes authorize service on nonresident motorists by the Commissioner of the Division of Motor Vehicles, as statutory agent, and provide that such substituted service on the Commissioner "shall have the same legal force and validity as if served within the Commonwealth personally upon the person for whom it is intended" if a copy of the process is sent by registered or certified mail, return receipt requested, to the person named in the process. Section 8.01-312(A). This form of service was held constitutional by the Supreme Court of Virginia in *Carroll v. Hutchinson*, 172 Va. 43, 200 S.E. 644 (1939). Compliance with a statute which requires service by certified mail, return receipt requested, is presumed to provide adequate notice. *Id.* at 50, 200 S.E. at 647.

Service under Virginia's long arm statute, as provided in § 8.01-329, also formerly allowed for service by certified mail return receipt requested.² Service of a summons and complaint, as prescribed by the long arm statute, was held by the Fourth Circuit Court of Appeals to be sufficient to support a default judgment, when the receipt was returned marked "refused," "return to sender." *Virginia Lime Co. v. Craigsville Distributing*, 670 F.2d 1366 (4th Cir. 1982).

If the requirements of the statute prescribing the method of service are met, service is complete and conclusive. *See Basile v. American Filter Service, Inc.*, 231 Va. 34, 38, [Page 119] 340 S.E.2d 800, 802 (1986) (default judgment upheld despite no actual knowledge of litigation by the defendant, where requirements of § 8.01-329 were met).³ In *Basile*, both the notice of motion for judgment and notice of default judgment were sent by certified mail, return receipt requested, and each was returned unclaimed. *Id.* at 36, 340 S.E.2d at 801.

In cases decided under statutes which require the return receipt to be filed as an exhibit, service generally is valid if the return receipt is signed by an authorized agent. Annotation, *Statutory service on nonresident motorists: return receipts*, 95 A.L.R.2d 1033, 1050-53 (1964).

In summary, the mailing provisions of § 16.1-264 provide notice which is reasonably calculated to inform the addressee of the proceedings. Since actual receipt or knowledge is not required, the form of the return receipt does not determine whether there has been valid service. It is my opinion, therefore, that if the requirements of § 16.1-264 are met, valid service may be made even though the return receipt for the mailing demonstrates that it was signed by a person as agent for the party to be served, or was marked refused or unclaimed.

FOOTNOTES

1 For purposes of this Opinion, I assume that the party to be served is a resident of the Commonwealth.

2 This statute was amended by the 1987 Session of the General Assembly to permit service by regular mail, rather than by registered or certified mail, return receipt requested. *See* Ch. 449, § 8.01-329(B), 1987 Va. Acts 579, 580 (Reg. Sess.).

3 *See also Texas Real Estate Com'n v. Howard*, 538 S.W.2d 429, 433 (Tex. 1976) ("[w]here service of notice by registered mail is expressly authorized by statute, service is effected when the notice is properly stamped, addressed, registered and mailed").

THE TEN MOST COMMONLY ASKED QUESTIONS REGARDING SERVING PROCESS ON MILITARY PERSONNEL DEPLOYED ABROAD

1. Does either Federal or International Law prohibit a plaintiff from utilizing substitute service on a family member of a servicemember deployed outside the United States? No. There are two international treaties relating to service process. These are (1) the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters¹ (Hague Service Treaty) and (2) Inter-American Convention on Letters Rogatory, with Protocol². Neither of these treaties prohibits substitute service on a family member. The United States Supreme Court ruled in *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 699 (1988) that the “internal law of the state” and not Hague Service Treaty applies. From a United States Constitutional perspective, the answer depends on whether such notice would be “reasonably calculated, under all the circumstances, to apprise interested party of the pendency of the action and to afford him an opportunity to present his objections.”³ The question would be framed as to whether it would be reasonably calculated that the servicemember would receive the pleadings from the family member in such a manner that he would be timely apprised of the pendency of the action and have time to respond.

In *Schlunk*, a husband and wife were killed in automobile accident. Their estates sued the manufacturer Volkswagen, which was located in Germany. The estate served its subsidiary in the United States. Illinois law authorized service on a subsidiary. Volkswagen sought a dismissal arguing that the Hague Service Treaty required the estate to serve Volkswagen in Germany in a manner approved by the Hague Convention. The Supreme Court in interpreting the Hague Service Treaty held that although the Supremacy Clause of the United States Constitution requires state courts to follow its mandates, the Hague Service Treaty did not set forth the circumstances in which service of process was to occur abroad. In other words, the convention failed to set forth the standard for determining the legal sufficiency of service of process on the defendant so as to charge the defendant with notice of the pending action. Consequently, the internal state law is controlling whether service within the United States is legally sufficient to charge the Defendant with notice of the hearing; however, if the internal state law requires the plaintiff to serve the defendant abroad, then the Hague Service Treaty applies, assuming that the foreign country in which the servicemember is located is a signatory of the Hague Service Treaty.⁴

¹Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361.

The Hague Service Treaty is a multilateral treaty that was formulated in 1964 by the Tenth Session of the Hague Conference of Private International Law. The Convention revised parts of the Hague Conventions on Civil Procedure of 1905 and 1954. The revision was intended to provide a simpler way to serve process abroad, to assure that defendants sued in foreign jurisdictions would receive actual and timely notice of suit, and to facilitate proof of service abroad. *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 699 (1988).

² Inter-American Convention on Letters Rogatory, with Protocol, Jan. 30, 1975, S. TREATY DOC. No. 27, 98th Cong., 2d Sess. (1984).

³ *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 306 (1950).

⁴ *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 700 (1988).

Although *Schlunk* dealt with service of process on a foreign corporation, it has application to family law cases. Instead of serving a subsidiary corporation, the plaintiff is serving a family member or posting process on the servicemember's residence while he is deployed. Although no uniformity of law exists among the states regarding substitute service on deployed servicemembers, the issue is consistently framed in the same manner, that being substitute service is valid if the service is effectuated at the defendant's "dwelling or usual place of abode".

The majority of written opinions address substitute service of process stemming from motor vehicle accidents. The Federal approach is a liberal one which approves substitute service when the deployed servicemember actually receives service.⁵ On the other side of the continuum, some state courts take an extremely restrictive approach which requires the defendant to be physically residing with family member.⁶ These courts would clearly require service to be conducted on the servicemember abroad. In *Whetsell v. Gosnell*, the Defendant's grandfather was served with process while he was attending the U.S. Naval Academy. The defendant filed an affidavit with the court stating that he did not intend to return to reside with his grandfather. The Delaware Court dismissed the motion for judgment on the grounds the defendant did not physically reside with his grandfather. While the Federal Approach is very liberal and the Delaware approach is very restrictive, Georgia has a middle ground.

The Georgia Rule requires an *animus revertendi* or a showing that the servicemember intends to return home to the place where substitute service had been effectuated. Georgia sets forth a general proposition that "where a party maintains a residence with a member of his family, but travels about or lives at various other places, the permanent residence may, on the facts, be his usual place of abode."⁷ In military cases, the Georgia Courts presumes that if the servicemember is a career servicemember, he has an intention not to return to home but if he is in the military on a temporary basis, such as a reservist or guardsman, then he has an intention to return home. However, it would appear that the substitute service on a deployed servicemember's spouse would be effective assuming that the servicemember and spouse are not estranged since there would be a clear intention to return home. In comparing the Georgia Case with the Delaware Case, Georgia defines "dwelling or usual place of abode" in terms of domicile while the Delaware defines the phrase in the most restrictive sense, not merely defined as residence but the defendant's actual physical residence.

2. If state law requires the defendant to be served abroad, does the Hague Service Convention treaty necessarily apply? No, there are 55 countries that have signed this multilateral treaty and there are approximately 195 countries in the world. The majority of the countries are not signatories and the Hague Service Treaty does not apply to them. In regards to the Middle East, there are only four signatory countries, Kuwait, Egypt, Israel, and Turkey. Consequently, service of process in Iraq and Afghanistan are not

⁵ *Rovinski v. Rowe*, 131 F.2d 687 (W.D. Mich. 1942).

⁶ *Whetsell v. Gosnell*, 181 A.2d 91 (1962).

⁷ *Tolbert v. Murrell*, 322 S.E.2d 487 (Ga. Supr. Ct. 1984).

controlled by any international treaty; however, many signatory countries maintain United States military installations, including Germany, Japan, Italy, Kuwait and Spain. The full list of signatories can be found on Hague Service Treaty website: <http://hcch.e-vision.nl> or in the Martindale-Hubbel Law Digest, "Selected International Treaties". The Inter-American Convention on Letters Rogatory, with Protocol is a multilateral treaty which pertains solely to Latin American countries and the United States. The signatories to the latter treaty include: United States, Argentina, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, Uruguay, and Venezuela.⁸

3. If no international treaties on service of process apply, what laws apply in effectuating service of process? It depends on where the judgment is to be enforced. If the judgment is to be enforced solely in the United States, then the internal state law would apply; however, if the judgment was intended to be enforced not only in the United States but in the foreign country where the Defendant is located, then it would be necessary to follow both the service of process laws in the state as well as in the foreign country. Some civil law countries regard service of process as a sovereign act that requires service through government officials. American process servers and other agents may not be authorized by the laws of the foreign country to effect service abroad, and such action could result in their arrest and/or deportation.⁹

4. What is the one method under the Hague Service Convention Treaty which every signatory country has agreed to as valid service of process? Service of process through the Central Authority is the one method every signatory country has agreed to. Each signatory country has established a Central Authority. These Central Authorities receive all incoming request for service of process directly from the parties. Parties requesting service of process should execute the USM-94 form or the new interactive Service Convention form available on the Hague Service Convention Treaty website. The requesting party should either be an attorney or clerk of court and should provide their titles on the form. The request should state as follows: "service is requested pursuant to Rule 4(c) (2), U.S. Federal Rules of Civil Procedure and pursuant to _____, state law."

The Central Authority first determines whether there are objections to the service of process. If there are none, then the Central Authority will serve the pleading on the party in conformity within its own laws; the requesting party may request that the pleading be served in a particular manner. The serving party should verify with the Central Authority whether the pleading should be translated into that country's language. The Central Authority will serve the document in the manner requested unless the method of service is in contravention with the country's own laws. Unless specifically asked to serve process in a particular method, the Central Authority will serve process by merely asking the defendant to accept service, known as "remise simple."¹⁰ or by postal channels.

⁸ Service of Legal Documents Abroad, (visited May 12, 2008) <www.travel.state.gov/law/info/judicial/judicial_680.html>.

⁹ Id at <www.travel.state.gov/law/info/judicial/judicial_680.html>.

¹⁰ Major Allen L. Cook, *The Armed Forces as a Model Employer in Child Support Enforcement A Proposal to Improve Service of Process on Military Members*, 155 Mil. L. Rev 153 (February 1998).

Service of process generally takes approximately three months and the cost is minimal. After the service is completed, the Central Authority would complete a certificate and forward the certificate to the requesting party.

5. What are the other alternative means to service process under the Hague Service Treaty and how is it determined whether a country has authorized such optional means?

There are five other means of effectuating service under the treaty. Each signatory country has notified the Hague as to whether it has elected to allow service of process through any of these alternatives. This information is located on the Hague Conference on Private International Law website.¹¹ These alternatives are as follows:

(1) service directly through diplomatic or consular agents, provided the receiving state does not object--although objections shall not apply to service upon a national of the state in which the documents originate; (Note: Employees of the U.S. Foreign Service are prohibited from serving documents unless specifically authorized by the State Department.¹²);¹³

(2) service through consular channels (or diplomatic channels in exceptional circumstances) by forwarding documents to those authorities of another contracting state designated by the latter for this purpose;¹⁴

(3) service by postal channels, provided the receiving state does not object;¹⁵

(4) the freedom of judicial officers, officials, other competent persons, or any person interested in the litigation to effect service of process through the judicial officers, officials or other competent persons of the receiving state, provided the receiving state does not object;¹⁶ and

(5) service by mutually acceptable means pursuant to agreement between the sending and receiving state.¹⁷

Realistically, out of the five alternative options to serving the Central Authority, there are two available -- service by postal channels and by following the foreign countries' service of process laws. Again, the signatory country has the authority to accept or reject these forms of service of process.

6. What is the analysis to determine if service by postal channels is valid under the Hague Service Convention Treaty with a signatory country?

There are several issues that need to be addressed.

1. Does the country of destination authorize service of process through postal channels? The Hague Service Treaty's website contains this information for each of the signatory countries.

¹¹ The Hague Convention on Private International Law, (visited May 12, 2008) < <http://hcch.e-vision.nl>>.

¹² 22 CFR 92.85.

¹³ Id. at 20 U.S.T. 361, 19, art. 8.

¹⁴ Id. at 20 U.S.T. 361, 19 art. 9.

¹⁵ Id. at 20 U.S.T. 361, 19 art. 10 (a).

¹⁶ Id. at 20 U.S.T. 361, 20 art. 10.

¹⁷ Id. at 20 U.S.T. 361, 20 art 11.

2. Does the state law permit service of process through postal channels, namely certified mail? This issue varies among the states. If the state law does not permit service through the mail, then service through the postal channels is not an option.
3. Even if the state law authorizes service of process through postal channels, does the state court interpret the Hague Service Treaty as authorizing service of process through postal channels? There is no uniformity among the states as to the interpretation of Article 10(a) of the treaty. The conflict among the courts center on the definition “send”. Some courts interpret “send” literally and hold that “send” does not mean service of process.¹⁸ Other courts interpret “send” to mean service of process.¹⁹ The rationale for the broad view include (1) every signatory country support this view to include service of process; (2) the drafters indicate that send was intended to mean service of process; (3) the purpose and the history of the treaty lead to the conclusion “send” means service of process; and (4) the United States State Department supports this view.²⁰ The opposing view supports the proposition that although the word “send” does not mean service of process for the initial pleading, it does authorize service of process for post initial pleadings such as motions and notices relating to the proceeding.. The arguments for this position focus on statutory construction: (1) if the drafters intended service of process to effectuate it through postal channels, they would have expressly said so. One of the basic rules of statutory construction that being “Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive.”; (2) Because the drafters used the terms service of process in some portions of the treaty and did not use the words in Rule 10(a), as a matter of statutory construction, it was presumed to be intentionally left out.²¹
4. Finally, is there a mechanism to actually serve process through the postal channels within the foreign country? The military maintains a postal service (Military Postal Service Agency²²) to deliver mail to servicemembers. Certified mail is available through the military mail. If mail is attempted through a foreign postal service, it should be confirmed with the local post office to determine whether certified mail is available.

7. If service of process is accomplished in contravention of the Hague Service Treaty, what recourse is available to the aggrieved party? Under Article 16 of the treaty, the time period for appeal is tolled upon the following:

1. The aggrieved party shows that he is without any fault that he did not have knowledge of the process in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal;
2. The aggrieved party has a prima facie defense to the action; and

¹⁸ *Bankston v Toyota Motor Corp.*, 889 F.2d 172, 174 (8th Cir. 1989).

¹⁹ *Ackerman v. Levine*, 788 F.2d 830 (2d Cir. 1986).

²⁰ *Brockmeyer v. May*, 383 F.3d 798, 803 (9th Cir. Cal. 2004).

²¹ *Bankston v Toyota Motor Corp.*, 889 F.2d 172, 174 (8th Cir. 1989).

²² MPSA – Military Postal Service Agency (visited May 12, 2008)

<<http://hqdainet.army.mil/mpsa/index.htm>>.

3. The aggrieved party acted within a reasonable time after he received notice of the judgment.

The state laws may provide for additional relief. Typically, when default judgments are entered, the defendant may attack the order as being voidable when service of process was not effectuated.

8. Will the military branches assist in serving process on the servicemember who are stationed abroad?

The military will not serve process on the servicemember. The military personnel will advise the servicemember of the process and he will be permitted an opportunity to seek advice from counsel. If the servicemember is willing to accept service, the command will act as a conduit for him to accept service. If he rejects service of process, the requesting party will be advised to serve process in accordance with laws of the country in which the military installation is located. Consequently, if a Central Authority under the Hague Service Convention only has access to the servicemember on the military installation, then service can only be obtained through a remise simple – voluntary acceptance of service. On the other hand, the court will have to consider whether the refusal of service of process is sufficient notice to proceed to trial. Under the *Mullane* decision, the U.S. Supreme Court only requires that the service of process be reasonably calculated to apprise the party of the pendency of the proceeding. Here, service of process was reasonably calculated to advise the defendant of the pendency of the proceeding but the defendant chose not to seize the opportunity to be provided with the notice. In *Barclay v. Crown Building and Development, Inc.*²³, the Michigan Court of Appeals sets forth a digest of court opinions from around the country on the issue reflecting the proposition that as long as the defendant is advised of the process and the process is left in near proximity to the defendant, he is deemed to have received personal service even if he refuses the document.

A more expeditious approach is service through certified mail where authorized by law. Although the military personnel will not act as a process server, they will see to it that the mail is delivered to the servicemember and that he signs for mail receipt (green card). For even better results, the party may request restricted delivery so that only the servicemember would be authorized to sign the green card. Other suggestions include forwarding the certified letter to a senior enlisted member of the command, and requesting assistance or sending a letter to the command post master and requesting assistance. Senior enlisted personnel include senior chief petty officers or the first sergeant. To check on the status of the green card, a party can utilize the postal website – usps.com for status of the mail by inputting the tracking number. Some courts have utilized the print out from the U.S. postal website as the return of service when the green card has not been returned. Certified mail may be the only feasible manner to serve the party, if he is deployed on a ship.

9. How would a party serve a servicemember deployed to Iraq or Afghanistan?

First, determine whether the servicemember could be served by substitute service within the United States. An example is serving the servicemember's current spouse or parent.

²³ *Barclay v. Crown Building and Development, Inc.*, 617 N.W.2d 373 (Mich. Ct. App. 2000).

As previously stated, Hague Service Treaty does not apply with either country. Second, determine whether the state allows service through mail. If service of process is available through mail, forward the pleading to the servicemember at his Fleet Post Office (FPO) address or Army/Air Force Post Office (APO) address. In addition, communicate with his superiors to see that he actually receives the mail as stated in the above question. Even if the servicemember does not actually receive notice of the hearing by substitute service or through the mail, the court is still required to appoint an attorney under the Servicemember Civil Relief Act, who is responsible for making meaningful contact with the Defendant. Third, it is recommended to mail the pleadings to the defendant by regular mail and if possible email the pleadings to him as well. Providing the servicemember with a return email address will assist in facilitating cooperation so he can communicate his position and also assist him in setting up a telephonic hearing if possible and appropriate.

10. Provide samples of how to practically handle service of process in countries which are Hague Service Treaty members and where there is a large U.S. Military presence?

Germany: Each German State has its own Central Authority. The addresses can be found on the Hague Service Treaty website. There are two types of personal service – simple and formal service. Simple service is voluntary acceptance of service and formal service is compulsory service. To obtain the formal service, the documents must be translated in German. Unless otherwise requested, the Central Authority most likely will serve process through postal channels. The time period for service of process is usually three months including shipping time. The cost is minimal that being the cost for registered mail or reimbursement for hiring the official to serve process.

Germany has objected to all alternative types of service of process provided for under the Hague Service Treaty -- through postal channels, consular agents or diplomatic channels and directly through the German Courts or competent process servers. For all practical purposes, all service of process must be effectuated by the German Central Authorities.²⁴

Italy: The Italian Central Authority is L'Ufficio Unico Degli Ufficiali Giudiziari, Presso La Corte D'Appello di Roma, Viale Giulio Cesare, 52, 000192 Rome, Italy. The telephone number is 011-39-06-328367521. The staff speaks Italian, French and English. All documents forwarded to the Italian Central Authority must be in duplicate and translated into Italian. The cost for having service performed by a bailiff is 6,000 lira. The approximate time to effectuate service of process is one to three months. Italy does not oppose any alternative forms of service of process, including certified mail; however, under Italian law, only court officials are authorized to serve process. Consequently, neither private attorneys nor individuals are authorized to serve process. Unless one can

²⁴ Judicial Assistance Germany, (visited May 12, 2008) <http://travel.state.gov/law/info/judicial/judicial_648.html>; Germany – Central Authority and Practical Information, (visited May 12, 2008) <http://hcch.e-vision.nl/index_en.php?act=authorities.details&aid=257>.

communicate with an Italian court, the practical approach for serving process would be through the Central Authority or through postal channels.²⁵

Japan: The Japanese Ministry of Foreign Affairs is the Central Authority for Japan. Its address is 2-2-1 Kasumigaseki Chiyoda-ku, Tokyo 100-8919 Japan. The contact point is the Consular Policy Division, and employees speak both Japanese and English. The phone number is +81 3 5501 8152. Japan requires the documents and attachments to be translated into Japanese for both informal and formal deliveries. The Japanese formal service process proceeds with the Ministry of Foreign Affairs transmitting the documents to local Japanese Court. The clerk of the court then effectuates service through a special postal channel. The Japanese informal service provides for the Ministry of Foreign Affairs to transmit the documents to a local court. The clerk of court then informs the addressee to present himself to the court or he can request the documents be forwarded to him. If the person refuses to accept process, after three weeks the documents will be returned to the sender. The Japanese Central Authority will honor a request for personal service. In most instances, Japan will bear the cost for service of process; however, if service requires a marshal to deliver the documents, the Central Authority will seek reimbursement (1800 yen for service during weekday hours and 4200 yen for evening, weekend and holidays.) The time period for obtaining service of process is usually 90 days.

Regarding alternative means of service of process, Japan does not oppose service of process through postal channels; however, Japan may not enforce the judgment if obtained through mail. Japan has objected to service of process that is sent directly to judicial officers and other competent process servers in Japan. Japan does not oppose service of process through consular agents and diplomatic channels; however as stated above, the United States forbids Foreign Service employees from serving process unless specifically authorized by the State Department. Japan also opposes obtaining service of process by directly contacting judicial officers or other competent judicial officers. Practically speaking, service of process can be effectuated through postal channels or through Japanese Central Authority.²⁶

Kuwait: The Kuwait Central Authority is the Ministry of Justice, International Relations Department, Ministries Complex, Building No. 14, P.O. Box Safaat 13001, Kuwait City, Kuwait. The phone number is 965-248-6039. The employees speak both Arabic and English. Unless the respondent voluntarily accepts service of process, the pleading should be translated in Arabic. There is no charge for service of process and Kuwait has indicated that service of process can be effectuated in within a week. Like Germany and

²⁵ Italy Judicial Assistance, (visited May 12, 2008)
<http://travel.state.gov/law/info/judicial/judicial_653.html>;

Italy-Central Authority and Practical Information, (visited May 12, 2008) <http://hcch.e-vision.nl/index_en.php?act=authorities.details&aid=245>.

²⁶ Japan Judicial Assistance, (visited May 12, 2008)
<http://travel.state.gov/law/info/judicial/judicial_678.html#service>; Japan-Central Authority and Practical Information, (visited May 12, 2008) <http://hcch.e-vision.nl/index_en.php?act=authorities.details&aid=261>.

South Korea, it opposes all other alternative means of service of process available through the Hague Service Treaty.²⁷

South Korea: The only authorized mechanism of service of process is through South Korea's Central Authority. The Central Authority information is as follows: National Court Administration, Attn.: Director of International Affairs, 967, Seocho-dong, Seocho-gu, Seoul 137-750, Republic of Korea. The telephone number is +82- (2) 3480 1734. Employees of the Central Authority speak both English and Korean.²⁸

Spain: The Spanish Central Authority is Subdireccion General de Cooperacion Juridica, Internacional, Ministerio de Justicia, c/ San Bernardo N° 62, 29071 Madrid, Spain. The telephone number is 34 91 390 2228. The employees speak Spanish, French and English. The Central Authority forwards the document to the local court and the process is served on the party. The Central Authority does not provide an informal service of process. It requires all documents to be translated into Spanish. There is no cost to effectuate service of process. Spain has not objected to any of the alternative means of service of process. However, Spain requires the documents to be translated into Spanish no matter what means of service of process is used unless the party voluntarily accepts service. Practically speaking, service of process can be effectuated through certified mail, sending the documents to judicial officers or other competent individuals who can service process or through the Spanish Central Authority.²⁹

²⁷ Kuwait Judicial Assistance, (visited May 12, 2008)

<http://travel.state.gov/law/info/judicial/judicial_2756.html#service>;

Kuwait-Central Authority and Practical Information (visited May 12, 2008) <http://hcch.e-vision.nl/index_en.php?act=authorities.details&aid=286>.

²⁸ Korea-Central Authority and Practical Information (visited May 12, 2008) <http://hcch.e-vision.nl/index_en.php?act=authorities.details&aid=262>.

²⁹ Spain Judicial Assistance, (visited May 12, 2008)

<http://travel.state.gov/law/info/judicial/judicial_684.html>; Spain-Central Authority and Practical Information (visited May 12, 2008) <http://hcch.e-vision.nl/index_en.php?act=authorities.details&aid=273>.



REQUEST FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS

DEMANDE
AUX FINS DE SIGNIFICATION OU DE NOTIFICATION À L'ETRANGER
D'UN ACTE JUDICIAIRE OU EXTRAJUDICIAIRE

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965.

Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matière civile ou commerciale, signée à La Haye, le 15 novembre 1965.

Identity and address of the applicant
Identité et adresse du requérant

Address of receiving authority
Adresse de l'autorité destinataire

The undersigned applicant has the honour to transmit -- in duplicate-- the documents listed below and, in conformity with article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, i.e., (identity and address)

Le requérant soussigné a l'honneur de faire parvenir--en double exemplaire--à l'autorité destinataire les documents ci-dessous énumérés, en la priant, conformément à l'article 5 de la Convention précitée, d'en faire remettre sans retard un exemplaire au destinataire, à savoir:
(identité et adresse)

- (a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention.*
a) selon les formes légales (article 5 alinéa premier, lettre a).
- (b) in accordance with the following particular method (sub-paragraph (b) of the first paragraph of article 5)*:
b) selon la forme particulière suivante (article 5, alinéa premier, lettre b) :

- (c) by delivery to the addressee, if he accepts it voluntarily (second paragraph of article 5)*:
c) le cas échéant, par remise simple (article 5, alinéa 2).

The authority is requested to return or to have returned to the applicant a copy of the documents and of the annexes with a certificate as provided on the reverse side.
Cette autorité est priée de renvoyer ou de faire renvoyer au requérant un exemplaire de l'acte - et de ses annexes - avec l'attestation figurant au verso.

List of documents
Énumération des pièces

Done at _____, the _____
Fait à _____, le _____

Signature and/or stamp
Signature et/ou cachet

*Delete if inappropriate
Rayer les mentions inutiles.

**CERTIFICATE
ATTESTATION**

The undersigned authority has the honour to certify, in conformity with article 6 of the Convention,
L'autorité soussignée a l'honneur d'attester conformément à l'article 6 de ladite Convention,

1) that the document has been served *

1) *que la demande a été exécutée*

-- the (date) -- *le (date)* _____

-- at (place, street, number) - *à (localité, rue, numéro)* _____

-- in one of the following methods authorized by article 5:

-- *dans une des formes suivantes prévues à l'article 5:*

(a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention*.
a) selon les formes légales (article 5. alinéa premier, lettre a)

(b) in accordance with the following particular method:
b) selon la forme particulière suivante: _____

(c) by delivery to the addressee, who accepted it voluntarily.*
c) par remise simple.

The documents referred to in the request have been delivered to:

Les documents mentionnés dans la demande ont été remis à:

- *(identity and description of person)*

- *(Identité et qualité de la personne)*

- relationship to the addressee family, business or other

- *liens de parenté de subordination ou autres avec le destinataire de l'acte:*

2) that the document has not been served, by reason of the following facts*:

2) *que la demande n'a pas été exécutée, en raison des faits suivants:*

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement*

Conformément à l'article 12, alinéa 2, de ladite Convention, le requérant est prié de payer ou de rembourser les frais dont le détail figure au mémoire ci-joint.

ANNEXES

Annexes

Documents returned:

Pieces renvoyées

In appropriate cases, documents establishing the service:

Le cas échéant, les documents justificatifs de l'exécution:

Done at _____, the _____
Fait à _____, le _____

Signature and/or stamp
Signature et/ou cachet

SUMMARY OF THE DOCUMENT TO BE SERVED
ÉLÉMENTS ESSENTIELS DE L'ACTE

Convention on the service abroad of judicial and extrajudicial documents In civil or commercial matters, signed at The Hague, November 15, 1965.

Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matière civile ou commerciale, signée à La Haye, le 15 novembre 1965.

(article 5, fourth paragraph)
(article 5, alinéa quatre)

Name and address of the requesting authority:
Nom et adresse de l'autorité requérante:

Particulars of the parties:
Identité des parties:

JUDICIAL DOCUMENT
ACTE JUDICIAIRE

Nature and purpose of the document:
Nature et objet de l'acte:

Nature and purpose of the proceedings and, where appropriate, the amount in dispute:
Nature et objet de l'instance, le cas échéant, le montant du litige:

Date and place for entering appearance:
Date et lieu de la comparution:

Court which has given judgment:**
Jurisdiction qui a rendu la décision:

Dale of judgment:**
Date de la décision:

Time limits stated in the document:**
Indication des délais figurant dans l'acte:

EXTRAJUDICIAL DOCUMENT
ACTE EXTRAJUDICIAIRE

Nature and purpose of the document:
Nature et objet de l'acte:

Time limits stated in the document:**
Indication des délais figurant dans l'acte:



PREVENTIVE LAW SERIES

GARNISHMENTS/ INVOLUNTARY ALLOTMENTS



Prepared by:
Legal Assistance Department
Region Legal Service Office Southwest

WHAT IS AN INVOLUNTARY ALLOTMENT?

Invuntary allotments, also known as garnishments, are one way deductions from a servicemember's pay can be made. Usually, a previous valid court order exists that indicates that the person has an obligation to pay a certain amount of money.

INVOLUNTARY ALLOTMENT FOR FAMILY SUPPORT

An involuntary allotment can be initiated against an active duty servicemember to pay for child support or a combination of spousal and child support, **but not spousal support only**. (However, for those members who have only a spousal support order, this rule is not a shield against a contempt of court action. The court which issued the spousal support order can, and likely will, hold you in contempt of court for failure to pay spousal support once it has been ordered.) The servicemember must be under a court or administrative order to make the payments and the total amount in arrears must be greater than or equal to two months of payments. Pay that is subject to this type of allotment is: Basic Pay, BAH, BAS, Special Pay, Proficiency Pay or Special Duty Pay, Submarine Pay, Flight Pay, and Career Sea Pay.

A state child support enforcement agent or court sends a letter or order to the military finance center requesting an allotment be started. The military finance center will notify the servicemember of the involuntary allotment petition in order to give the servicemember an opportunity to respond in case there has been some type of error. Arrearages can be collected but there must be a second court order requiring payment of the arrearages by involuntary allotment. To start payments, contact DFAS.

MAXIMUM AMOUNT OF INVOLUNTARY ALLOTMENT

- 50% if member is supporting other family members and is in **arrears** (unpaid, overdue debt or unfulfilled obligation).
- 55% if member is supporting other family members and is in **arrears**.
- 60% if member is not supporting other family members and is in **arrears**.
- 65% if member is not supporting other family members and is in **arrears**.

A service member can assert by affidavit that he or she is supporting other family members.

In the event that your support order (or collective support orders) exceed the maximum amount allowed to be withheld by federal or state law, you are still responsible for the full amount of the child or spousal support as ordered in the state court. **MAXIMUM INVOLUNTARY ALLOTMENT PROVISIONS DO NOT SHIELD YOU FROM THE STATE COURT ORDER TO PAY A SPECIFIED SUPPORT ORDER.** You are still responsible for those excess amounts, even though it won't come directly out of your military paycheck. The percentages that can be garnished are separate and distinct from the amount of child support or spousal support, or both, that can be ordered to be paid by a person under state child and spousal support laws. Failure to pay the ordered amounts that are in excess of the above percentages can and may result in issuance of a tax Intercept, inability to get a U.S. passport, negative reports to the major credit reporting agencies, suspension of the your driver's license, and or suspension of the your professional license.

MILITARY PAY SUBJECT TO INVOLUNTARY ALLOTMENT

- For officers and warrant officers – basic pay, special pay, most bonuses, BAS, BAH
- For E-7 and above – basic pay, special pay, most bonuses, BAH

For E-6 and below – basic pay, special pay, most bonuses, and BAH for members with dependents.

DO NOT START A VOLUNTARY ALLOTMENT UPON RECEIVING NOTIFICATION OF AN INVOLUNTARY ALLOTMENT ACTION. OTHERWISE, THE RESULT WILL SIMPLY BE THAT TWO ALLOTMENTS WILL BE DEDUCTED FROM MILITARY PAY.

INVOLUNTARY ALLOTMENT FOR JUDGMENT INDEBTEDNESS

This type of involuntary allotment may occur when there is a judgment against the servicemember for a specific amount of money from a creditor. In these circumstances, the creditor sends an involuntary allotment application to the military finance center along with a copy of the court order. In addition the creditor must certify that the judgment has not been modified or set aside, that it complies with all requirements imposed by the Servicemembers' Civil Relief Act, that the servicemember's pay can be garnished, that the debt has not been discharged in bankruptcy, and that the creditor agrees to repay the servicemember within 30 days if payment made was erroneous.

The amount which may be deducted is a maximum of twenty-five percent (25%) of the disposable earnings of the servicemember (or lower depending on state law). The military pay which is subject to involuntary allotment due to judgment indebtedness is: Basic Pay, Special and Incentive Pay, Accrued Leave Payments, Readjustment Pay, Severance Pay, Lump-sum Reserve Bonus, and Inactive Duty Training Pay.

When the creditor sends the petition to the military finance center, they will notify the servicemember and his/her Commanding Officer. If applicable, the servicemember may invoke any of the following defenses:

- Failure to comply with the Servicemembers' Civil Relief Act
- Exigencies of military duties caused the servicemember's absence from the proceedings
- Information is false or erroneous
- The judgment has been satisfied, set aside, or materially amended
- Legal protection against establishing an involuntary allotment exists

The determination of whether exigencies of military duties do or do not exist rest solely on the servicemember's Commanding Officer. Final determination of all other asserted defenses rests with the military finance center. Note that the DoD Financial Management Regulation prohibits allotments on vehicles, appliances or household goods, electronics, and other consumer items that are tangible and movable.

RESOURCES

Defense Finance Accounting Service: (866) 859-1845; www.dfas.mil/garnishment.html

Allotments from Pay for Child and Spousal Support Owed by Members of Uniformed Services on Active Duty, 42 U.S.C. § 665 (2012)

Consumer Credit Protection Laws, 15 U.S.C. §§ 1601 et seq. (2012)

DoD Implementing Regulations, 32 C.F.R. Part 54 (2013)

DoD Financial Management Regulation, DoD 7000.14-R, Vol. 7A, Chapters 40 and 42

Indebtedness of Military Personnel, 32 C.F.R. Parts 112–113 (2013)

Indebtedness of Military Personnel, DoD Directive 1344.09 (2008)

7-2 SAMPLE LETTER REQUESTING FEDERAL STATUTORY MILITARY ALLOTMENT (NOT AN OFFICIAL FORM)

SAMPLE STATUTORY ALLOTMENT REQUEST

[Use agency letterhead]

Commander

[Appropriate Military Payment Processing Center Address]

Reference: [Name and SSN of military member]

Dear Sir or Madam:

This letter is notice of delinquent support payments and a request for the initiation of the statutory allotment pursuant to 42 U.S.C. § 665.

[Identify military member] is subject to a court or administrative order (certified copy enclosed) requiring him/her to pay current child support in the amount of [identify amount and payment schedule] [if appropriate, add “plus an amount of xxx toward elimination of arrears of xxx”]. He/She has failed to meet this obligation and arrears exceed the total amount due under the order for two months. [If appropriate, insert “In addition, a portion of the arrearage pertains to payments that are more than 12 weeks overdue.”]

I request initiation of a statutory allotment from the member’s active duty pay in the amount of [identify amount], the monthly support obligation [if appropriate, add “and arrearage payment”] due under the order. Please direct the payment to this address:

[Provide the name/address of the appropriate state payment location and explain what information must accompany the payment.]

Please continue the allotment until [insert termination date] or such earlier date as this agency may later advise you.

I certify that I am an “authorized person” as defined by 42 U.S.C. § 655(b) and 32 C.F.R. Part 54. I am an agent of a state with an approved Title IV-D program under the Social Security Act, and my duties include seeking recovery of child and spousal support. Thank you for your attention to this matter.

[Authorized agent signature]

Enclosure (certified copy of court or administrative child support order)

Additional Internet Resources

Handbook on Child Support and Military Families

https://www.acf.hhs.gov/sites/default/files/documents/ocse/a_handbook_for_military_families_version.pdf

Army Support explained

<https://youtu.be/tcAzgdY2nsM>

BAH Housing Rates

<https://www.defensetravel.dod.mil/site/bah.cfm>

<https://www.defensetravel.dod.mil/site/bahCalc.cfm>

Post 911 GI Bill

[Calculating the Post 9-11 GI Benefit](#)

DFAS

Pay tables

<https://www.dfas.mil/militarymembers/payentitlements/Pay-Tables/>

Understanding LES

<https://www.dfas.mil/MilitaryMembers/payentitlements/aboutpay/>

DFAS Garnishment Forms

<https://www.dfas.mil/Garnishment/Forms/>

Starting Garnishment through DFAS

<https://www.dfas.mil/Garnishment/childsupportalimony/startpayment/>

Military Installation Info

[Military Installations](#)

[Legal Services Offices Locations](#)

[Military Child Care Locations](#)

[Rapids ID Office](#)

Federal Office of Child Support Enforcement

[State DCSE Contacts](#)

<https://ocsp.acf.hhs.gov/irg/>

Hague Convention on Service Abroad of Judicial and Extrajudicial Documents...

<https://www.hcch.net/en/instruments/conventions/specialised-sections/service>

MILITARY LOCATOR SERVICES

MILITARY LOCATOR SERVICES

Addresses for Military Locator Services

Note: Generally, requests for information by state or federal agencies or law enforcement must be in writing and on official letterhead.

Air Force Active Duty, Reserve, Retired, or Air National Guard

Air Force Personnel Center
Attn: DPDIDL
550 C Street West, Suite 50
Randolph AFB, TX 78150-4752
(210) 565-2660

<http://www.afpc.af.mil/library/airforcelocator.asp>

Army Active Duty Only

(By mail only)
Army World Wide Locator Service
Enlisted Records & Evaluation Center
8899 East 56th Street
Indianapolis, IN 46249-5301

<http://www.army.mil/contact/>, "Additional Frequently Asked Questions" section,
"Locator Service"

Marine Corps

Marine Locator
Headquarters US Marine Corps
Personnel Management Support Branch (MMSB-17)
2008 Elliot Road
Quantico, VA 22134-5030
(703) 784-3941 / 3942 / 3943
(800) 268-3710

<http://www.marines.mil/FAQs.aspx>, "Personnel Locator"

Navy

Navy Active Duty, Reserve, or Retired

Navy Worldwide Locator

Bureau of Naval Personnel

PERS 1

5720 Integrity Drive

Millington, TN 38055-3120

(901) 874-5672

(866) 827-5672

Note: The Navy does not release unit addresses over the telephone. Submit your request in writing or call the commercial number for further instructions.

<http://www.public.navy.mil/bupers-npc/organization/npc/csc/Pages/NavyLocatorService.aspx>

Coast Guard

(By mail or e-mail only)

Commander

Personnel Service Center

US Coast Guard Stop 7200

4200 Wilson Blvd., Suite 1100

Arlington, VA 20598-7200

Email: ARL-PF-CGPSCCGlocator@uscg.mil

<http://www.uscg.mil/locator/>

Note: The military locator services provide the member's military address.

This information is current as of August 2013.

Most large military bases maintain legal assistance offices. Duties of the legal assistance attorneys include helping military spouses and dependent children obtain the service member's military address. The attorneys are not legally required to assist parents who have never been married to the service member.


[Home](#)

AF Legal Services Locator

* If a location needs to be updated, please submit your request to: [Web Admin](#)

There are 12 Armed Forces legal offices located in Virginia.

Miles	Location (Branch)	Contact Information
Map	(USAR) Alexandria, Virginia (Army)	151st Legal Operations Detachment 6901 Telegraph Rd Alexandria, VA 22310 Phone:703-960-7393 111-1111 usarmy.usarc.usar-legal-cmd.list.151st-la@mail.mil
Map	Fort Belvoir (Army)	Fort Belvoir Legal Office 9990 Belvoir Drive Fort Belvoir, VA 22060 Phone:703-805-2856 None http://www.belvoir.army.mil/SJA/NewSite/default.asp
Map	Fort Eustis (Air Force)	Joint Base Langley Eustis Legal Office 2732 Madison Ave. Newport News, VA 23604 Phone:757-878-3031 826-3031 http://www.jble.af.mil/Fort-Eustis-Legal-Assistance/
Map	Fort Lee (Army)	Office of the Staff Judge Advocate 701 27th Street Bldg 8135 Fort Lee, VA 23801 Phone:804-765-1500 539-1500 http://www.lee.army.mil/sja/Legal%20Assistance.html
Map	Fort Myer (Army)	Legal Assistance Office of the SJA Joint Forces HQ-NCR/US Army Military District of Washington 202 Custer Road Fort Myer, VA 22211 Phone:703-696-0761 NA http://www.mdw.army.mil/sja/index.htm
Map	Henderson Hall (Marine Corps)	Henderson Hall Legal Assist. Office 1555 Southgate Road Building 29, rm 301 Arlington, VA 22214 Phone:703-614-1266 DSN 224-1266
Map	Langley AFB (Air Force)	Langley Law Center 33 Sweeney Blvd. Langley AFB, VA 23665 Phone:757-764-3277 574-3277 http://www.jble.af.mil/Units/Air-Force/Langley-Law/
Map	MCB Quantico (Marine Corps)	Marine Corps Combat Development Command 3250 Catlin Ave, Suite 133 Quantico, VA 22134

[Map](#)**NAS Oceana
(Navy)**

Phone:703-784-3122/3126
DSN 278-3122/3126
<http://www.quantico.usmc.mil/>

NLSO MIDLANT Branch Office Oceana
799 Hornet Drive, Suite 100
Virginia Beach, VA 23460
Phone:757-433-2230
433-2230

http://www.jag.navy.mil/legal_services/rfso/rfso_mid_atlantic.htm

[Map](#)**NAVSTA Norfolk
(Navy)**

NLSO Mid-Atlantic
9620 Maryland Avenue, Suite 100
Norfolk, VA 23511
Phone:757-341-4489
341-4489

<http://www.jag.navy.mil/html/NLSOMidlantnewmain.htm>

[Map](#)**USCG Portsmouth
(Coast Guard)**

Legal Assistance Office, USCG Base Portsmouth
4000 Coast Guard Blvd
Portsmouth, VA 23703
Phone:757-295-2308
295-2308

https://www.uscg.mil/Resources/legal/LMA/Legal_Assistance/

[Map](#)**USCG TRACEN Yorktown
(Coast Guard)**

Commanding Officer USCG Training Center ATTN: Legal Assistance Office
Yorktown VA
Yorktown, VA 23690
Phone:757-856-2374

<http://www.uscg.mil/legal/la/>

[Legal Assistance Disclaimer and External Links Notice](#)

This DoD Web page is compliant with Section 508 standards

AG Op. COURTS NOT OF RECORD: JUVENILE AND, 1990 Va. AG 117

COURTS NOT OF RECORD: JUVENILE AND DOMESTIC RELATIONS COURTS.

CIVIL REMEDIES AND PROCEDURE: PROCESS — PERSONAL JURISDICTION IN CERTAIN ACTIONS.

Valid service of summons by certified mail, return receipt requested, effected even though return receipt signed by person as agent for party being served, or marked refused or unclaimed, if statutory requirements met.

DATE: January 18, 1990

SDATE: 900118

REQUESTOR: The Honorable Herbert L.L. Feild, Judge, York County Juvenile and Domestic Relations District Court

CITE: 1990 117

You ask whether the service of a summons by certified mail, return receipt requested, pursuant to § 16.1-264 of the Code of Virginia, is valid when the receipt is returned signed by a person as the agent of the party being served, or marked refused or unclaimed. You state that you do not include other possible returns from mailing which may be made by the post office, such as "moved — left no forwarding address," "insufficient address" or "addressee unknown," because you conclude that these returns would not constitute valid service. [Page 118]

I. *Applicable Statutes*

Section 16.1-264(A) provides that, under certain circumstances, a summons may be served on a party by mailing a copy of the summons to the party by certified mail, return receipt requested:

If a party designated to be served in § 16.1-263 is within the Commonwealth and cannot be found, but his address is known or can with reasonable diligence be ascertained, the summons may be served upon him by mailing a copy thereof by certified mail return receipt requested. If he is without the Commonwealth but can be found or his address is known, or can with reasonable diligence be ascertained, service of summons may be made either by delivering a copy thereof to him personally or by mailing a copy thereof to him by certified mail return receipt requested.

Section 16.1-263 requires the juvenile and domestic relations district court (the "juvenile court") to direct the issuance of summonses to those persons determined by the juvenile court to be necessary parties to appear personally to answer or testify before the court concerning allegations in a petition filed pursuant to § 16.1-260, the statute describing intake petitions under the Juvenile and Domestic Relations District Court Law.

The question presented by your inquiry is whether sufficient notice is provided by the mailing provisions of § 16.1-264 to meet due process requirements.¹

II. *Valid Service is Effected in Facts Presented by Compliance With Statutory Service Procedure*

To be consistent with due process standards, notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 314 (1950). Under the *Mullane* test, a statutory method of notice is constitutionally adequate if it is "reasonably calculated to reach interested parties." *Id.* at 318.

While the Supreme Court of Virginia has not addressed the sufficiency of service by mail under § 16.1-264, the Court has considered an analogous question involving service of process pursuant to §§ 8.01-308 and 8.01-312. These statutes authorize service on nonresident motorists by the Commissioner of the Division of Motor Vehicles, as statutory agent, and provide that such substituted service on the Commissioner "shall have the same legal force and validity as if served within the Commonwealth personally upon the person for whom it is intended" if a copy of the process is sent by registered or certified mail, return receipt requested, to the person named in the process. Section 8.01-312(A). This form of service was held constitutional by the Supreme Court of Virginia in *Carroll v. Hutchinson*, 172 Va. 43, 200 S.E. 644 (1939). Compliance with a statute which requires service by certified mail, return receipt requested, is presumed to provide adequate notice. *Id.* at 50, 200 S.E. at 647.

Service under Virginia's long arm statute, as provided in § 8.01-329, also formerly allowed for service by certified mail return receipt requested.² Service of a summons and complaint, as prescribed by the long arm statute, was held by the Fourth Circuit Court of Appeals to be sufficient to support a default judgment, when the receipt was returned marked "refused," "return to sender." *Virginia Lime Co. v. Craigsville Distributing*, 670 F.2d 1366 (4th Cir. 1982).

If the requirements of the statute prescribing the method of service are met, service is complete and conclusive. See *Basile v. American Filter Service, Inc.*, 231 Va. 34, 38, [Page 119] 340 S.E.2d 800, 802 (1986) (default judgment upheld despite no actual knowledge of litigation by the defendant, where requirements of § 8.01-329 were met).³ In *Basile*, both the notice of motion for judgment and notice of default judgment were sent by certified mail, return receipt requested, and each was returned unclaimed. *Id.* at 36, 340 S.E.2d at 801.

In cases decided under statutes which require the return receipt to be filed as an exhibit, service generally is valid if the return receipt is signed by an authorized agent. Annotation, *Statutory service on nonresident motorists: return receipts*, 95 A.L.R.2d 1033, 1050-53 (1964).

In summary, the mailing provisions of § 16.1-264 provide notice which is reasonably calculated to inform the addressee of the proceedings. Since actual receipt or knowledge is not required, the form of the return receipt does not determine whether there has been valid service. It is my opinion, therefore, that if the requirements of § 16.1-264 are met, valid service may be made even though the return receipt for the mailing demonstrates that it was signed by a person as agent for the party to be served, or was marked refused or unclaimed.

FOOTNOTES

¹ For purposes of this Opinion, I assume that the party to be served is a resident of the Commonwealth.

² This statute was amended by the 1987 Session of the General Assembly to permit service by regular mail, rather than by registered or certified mail, return receipt requested. See Ch. 449, § 8.01-329(B), 1987 Va. Acts 579, 580 (Reg. Sess.).

³ See also *Texas Real Estate Com'n v. Howard*, 538 S.W.2d 429, 433 (Tex. 1976) ("[w]here service of notice by registered mail is expressly authorized by statute, service is effected when the notice is properly stamped, addressed, registered and mailed").

THE TEN MOST COMMONLY ASKED QUESTIONS REGARDING SERVING PROCESS ON MILITARY PERSONNEL DEPLOYED ABROAD

1. Does either Federal or International Law prohibit a plaintiff from utilizing substitute service on a family member of a servicemember deployed outside the United States? No. There are two international treaties relating to service process. These are (1) the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters¹ (Hague Service Treaty) and (2) Inter-American Convention on Letters Rogatory, with Protocol². Neither of these treaties prohibits substitute service on a family member. The United States Supreme Court ruled in *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 699 (1988) that the “internal law of the state” and not Hague Service Treaty applies. From a United States Constitutional perspective, the answer depends on whether such notice would be “reasonably calculated, under all the circumstances, to apprise interested party of the pendency of the action and to afford him an opportunity to present his objections.”³ The question would be framed as to whether it would be reasonably calculated that the servicemember would receive the pleadings from the family member in such a manner that he would be timely apprised of the pendency of the action and have time to respond.

In *Schlunk*, a husband and wife were killed in automobile accident. Their estates sued the manufacturer Volkswagon, which was located in Germany. The estate served its subsidiary in the United States. Illinois law authorized service on a subsidiary. Volkswagon sought a dismissal arguing that the Hague Service Treaty required the estate to serve Volkswagon in Germany in a manner approved by the Hague Convention. The Supreme Court in interpreting the Hague Service Treaty held that although the Supremacy Clause of the United States Constitution requires state courts to follow its mandates, the Hague Service Treaty did not set forth the circumstances in which service of process was to occur abroad. In other words, the convention failed to set forth the standard for determining the legal sufficiency of service of process on the defendant so as to charge the defendant with notice of the pending action. Consequently, the internal state law is controlling whether service within the United States is legally sufficient to charge the Defendant with notice of the hearing; however, if the internal state law requires the plaintiff to serve the defendant abroad, then the Hague Service Treaty applies, assuming that the foreign country in which the servicemember is located is a signatory of the Hague Service Treaty.⁴

¹Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361.

The Hague Service Treaty is a multilateral treaty that was formulated in 1964 by the Tenth Session of the Hague Conference of Private International Law. The Convention revised parts of the Hague Conventions on Civil Procedure of 1905 and 1954. The revision was intended to provide a simpler way to serve process abroad, to assure that defendants sued in foreign jurisdictions would receive actual and timely notice of suit, and to facilitate proof of service abroad. *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 699 (1988).

²Inter-American Convention on Letters Rogatory, with Protocol, Jan. 30, 1975, S. TREATY DOC. No. 27, 98th Cong., 2d Sess. (1984).

³*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 306 (1950).

⁴*Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 700 (1988).

Although *Schlunk* dealt with service of process on a foreign corporation, it has application to family law cases. Instead of serving a subsidiary corporation, the plaintiff is serving a family member or posting process on the servicemember's residence while he is deployed. Although no uniformity of law exists among the states regarding substitute service on deployed servicemembers, the issue is consistently framed in the same manner, that being substitute service is valid if the service is effectuated at the defendant's "dwelling or usual place of abode".

The majority of written opinions address substitute service of process stemming from motor vehicle accidents. The Federal approach is a liberal one which approves substitute service when the deployed servicemember actually receives service.⁵ On the other side of the continuum, some state courts take an extremely restrictive approach which requires the defendant to be physically residing with family member.⁶ These courts would clearly require service to be conducted on the servicemember abroad. In *Whetsell v. Gosnell*, the Defendant's grandfather was served with process while he was attending the U.S. Naval Academy. The defendant filed an affidavit with the court stating that he did not intend to return to reside with his grandfather. The Delaware Court dismissed the motion for judgment on the grounds the defendant did not physically reside with his grandfather. While the Federal Approach is very liberal and the Delaware approach is very restrictive, Georgia has a middle ground.

The Georgia Rule requires an *animus revertendi* or a showing that the servicemember intends to return home to the place where substitute service had been effectuated. Georgia sets forth a general proposition that "where a party maintains a residence with a member of his family, but travels about or lives at various other places, the permanent residence may, on the facts, be his usual place of abode."⁷ In military cases, the Georgia Courts presumes that if the servicemember is a career servicemember, he has an intention not to return to home but if he is in the military on a temporary basis, such as a reservist or guardsman, then he has an intention to return home. However, it would appear that the substitute service on a deployed servicemember's spouse would be effective assuming that the servicemember and spouse are not estranged since there would be a clear intention to return home. In comparing the Georgia Case with the Delaware Case, Georgia defines "dwelling or usual place of abode" in terms of domicile while the Delaware defines the phrase in the most restrictive sense, not merely defined as residence but the defendant's actual physical residence.

2. If state law requires the defendant to be served abroad, does the Hague Service Convention treaty necessarily apply? No, there are 55 countries that have signed this multilateral treaty and there are approximately 195 countries in the world. The majority of the countries are not signatories and the Hague Service Treaty does not apply to them. In regards to the Middle East, there are only four signatory countries, Kuwait, Egypt, Israel, and Turkey. Consequently, service of process in Iraq and Afghanistan are not

⁵ *Rovinski v. Rowe*, 131 F.2d 687 (W.D. Mich. 1942).

⁶ *Whetsell v. Gosnell*, 181 A.2d 91 (1962).

⁷ *Tolbert v. Murrell*, 322 S.E.2d 487 (Ga. Supr. Ct. 1984).

controlled by any international treaty; however, many signatory countries maintain United States military installations, including Germany, Japan, Italy, Kuwait and Spain. The full list of signatories can be found on Hague Service Treaty website: <http://hcch.e-vision.nl> or in the Martindale-Hubbel Law Digest, "Selected International Treaties". The Inter-American Convention on Letters Rogatory, with Protocol is a multilateral treaty which pertains solely to Latin American countries and the United States. The signatories to the latter treaty include: United States, Argentina, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, Uruguay, and Venezuela.⁸

3. If no international treaties on service of process apply, what laws apply in effectuating service of process? It depends on where the judgment is to be enforced. If the judgment is to be enforced solely in the United States, then the internal state law would apply; however, if the judgment was intended to be enforced not only in the United States but in the foreign country where the Defendant is located, then it would be necessary to follow both the service of process laws in the state as well as in the foreign country. Some civil law countries regard service of process as a sovereign act that requires service through government officials. American process servers and other agents may not be authorized by the laws of the foreign country to effect service abroad, and such action could result in their arrest and/or deportation.⁹

4. What is the one method under the Hague Service Convention Treaty which every signatory country has agreed to as valid service of process? Service of process through the Central Authority is the one method every signatory country has agreed to. Each signatory country has established a Central Authority. These Central Authorities receive all incoming request for service of process directly from the parties. Parties requesting service of process should execute the USM-94 form or the new interactive Service Convention form available on the Hague Service Convention Treaty website. The requesting party should either be an attorney or clerk of court and should provide their titles on the form. The request should state as follows: "service is requested pursuant to Rule 4(c) (2), U.S. Federal Rules of Civil Procedure and pursuant to _____, state law."

The Central Authority first determines whether there are objections to the service of process. If there are none, then the Central Authority will serve the pleading on the party in conformity within its own laws; the requesting party may request that the pleading be served in a particular manner. The serving party should verify with the Central Authority whether the pleading should be translated into that country's language. The Central Authority will serve the document in the manner requested unless the method of service is in contravention with the country's own laws. Unless specifically asked to serve process in a particular method, the Central Authority will serve process by merely asking the defendant to accept service, known as "remise simple."¹⁰ or by postal channels.

⁸ Service of Legal Documents Abroad, (visited May 12, 2008) <www.travel.state.gov/law/info/judicial/judicial_680.html>.

⁹ Id at <www.travel.state.gov/law/info/judicial/judicial_680.html>.

¹⁰ Major Allen L. Cook, *The Armed Forces as a Model Employer in Child Support Enforcement A Proposal to Improve Service of Process on Military Members*, 155 Mil. L. Rev 153 (February 1998).

Service of process generally takes approximately three months and the cost is minimal. After the service is completed, the Central Authority would complete a certificate and forward the certificate to the requesting party.

5. What are the other alternative means to service process under the Hague Service Treaty and how is it determined whether a country has authorized such optional means? There are five other means of effectuating service under the treaty. Each signatory country has notified the Hague as to whether it has elected to allow service of process through any of these alternatives. This information is located on the Hague Conference on Private International Law website.¹¹ These alternatives are as follows:

(1) service directly through diplomatic or consular agents, provided the receiving state does not object--although objections shall not apply to service upon a national of the state in which the documents originate; (Note: Employees of the U.S. Foreign Service are prohibited from serving documents unless specifically authorized by the State Department.¹²);¹³

(2) service through consular channels (or diplomatic channels in exceptional circumstances) by forwarding documents to those authorities of another contracting state designated by the latter for this purpose;¹⁴

(3) service by postal channels, provided the receiving state does not object;¹⁵

(4) the freedom of judicial officers, officials, other competent persons, or any person interested in the litigation to effect service of process through the judicial officers, officials or other competent persons of the receiving state, provided the receiving state does not object;¹⁶ and

(5) service by mutually acceptable means pursuant to agreement between the sending and receiving state.¹⁷

Realistically, out of the five alternative options to serving the Central Authority, there are two available -- service by postal channels and by following the foreign countries' service of process laws. Again, the signatory country has the authority to accept or reject these forms of service of process.

6. What is the analysis to determine if service by postal channels is valid under the Hague Service Convention Treaty with a signatory country?

There are several issues that need to be addressed.

1. Does the country of destination authorize service of process through postal channels? The Hague Service Treaty's website contains this information for each of the signatory countries.

¹¹ The Hague Convention on Private International Law, (visited May 12, 2008) < <http://hcch.e-vision.nl> >.

¹² 22 CFR 92.85.

¹³ Id. at 20 U.S.T. 361, 19, art. 8.

¹⁴ Id. at 20 U.S.T. 361, 19 art. 9.

¹⁵ Id. at 20 U.S.T. 361, 19 art. 10 (a).

¹⁶ Id. at 20 U.S.T. 361, 20 art. 10.

¹⁷ Id. at 20 U.S.T. 361, 20 art 11.

2. Does the state law permit service of process through postal channels, namely certified mail? This issue varies among the states. If the state law does not permit service through the mail, then service through the postal channels is not an option.
3. Even if the state law authorizes service of process through postal channels, does the state court interpret the Hague Service Treaty as authorizing service of process through postal channels? There is no uniformity among the states as to the interpretation of Article 10(a) of the treaty. The conflict among the courts center on the definition “send”. Some courts interpret “send” literally and hold that “send” does not mean service of process.¹⁸ Other courts interpret “send” to mean service of process.¹⁹ The rationale for the broad view include (1) every signatory country support this view to include service of process; (2) the drafters indicate that send was intended to mean service of process; (3) the purpose and the history of the treaty lead to the conclusion “send” means service of process; and (4) the United States State Department supports this view.²⁰ The opposing view supports the proposition that although the word “send” does not mean service of process for the initial pleading, it does authorize service of process for post initial pleadings such as motions and notices relating to the proceeding. The arguments for this position focus on statutory construction: (1) if the drafters intended service of process to effectuate it through postal channels, they would have expressly said so. One of the basic rules of statutory construction that being “Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive.”; (2) Because the drafters used the terms service of process in some portions of the treaty and did not use the words in Rule 10(a), as a matter of statutory construction, it was presumed to be intentionally left out.²¹
4. Finally, is there a mechanism to actually serve process through the postal channels within the foreign country? The military maintains a postal service (Military Postal Service Agency²²) to deliver mail to servicemembers. Certified mail is available through the military mail. If mail is attempted through a foreign postal service, it should be confirmed with the local post office to determine whether certified mail is available.

7. If service of process is accomplished in contravention of the Hague Service Treaty, what recourse is available to the aggrieved party? Under Article 16 of the treaty, the time period for appeal is tolled upon the following:

1. The aggrieved party shows that he is without any fault that he did not have knowledge of the process in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal;
2. The aggrieved party has a prima facie defense to the action; and

¹⁸ *Bankston v Toyota Motor Corp.*, 889 F.2d 172, 174 (8th Cir. 1989).

¹⁹ *Ackerman v. Levine*, 788 F.2d 830 (2d Cir. 1986).

²⁰ *Brockmeyer v. May*, 383 F.3d 798, 803 (9th Cir. Cal. 2004).

²¹ *Bankston v Toyota Motor Corp.*, 889 F.2d 172, 174 (8th Cir. 1989).

²² MPSA – Military Postal Service Agency (visited May 12, 2008)

<<http://hqdainet.army.mil/mpsa/index.htm>>.

3. The aggrieved party acted within a reasonable time after he received notice of the judgment.

The state laws may provide for additional relief. Typically, when default judgments are entered, the defendant may attack the order as being voidable when service of process was not effectuated.

8. Will the military branches assist in serving process on the servicemember who are stationed abroad?

The military will not serve process on the servicemember. The military personnel will advise the servicemember of the process and he will be permitted an opportunity to seek advice from counsel. If the servicemember is willing to accept service, the command will act as a conduit for him to accept service. If he rejects service of process, the requesting party will be advised to serve process in accordance with laws of the country in which the military installation is located. Consequently, if a Central Authority under the Hague Service Convention only has access to the servicemember on the military installation, then service can only be obtained through a remise simple – voluntary acceptance of service. On the other hand, the court will have to consider whether the refusal of service of process is sufficient notice to proceed to trial. Under the *Mullane* decision, the U.S. Supreme Court only requires that the service of process be reasonably calculated to apprise the party of the pendency of the proceeding. Here, service of process was reasonably calculated to advise the defendant of the pendency of the proceeding but the defendant chose not to seize the opportunity to be provided with the notice. In *Barclay v. Crown Building and Development, Inc.*²³, the Michigan Court of Appeals sets forth a digest of court opinions from around the country on the issue reflecting the proposition that as long as the defendant is advised of the process and the process is left in near proximity to the defendant, he is deemed to have received personal service even if he refuses the document.

A more expeditious approach is service through certified mail where authorized by law. Although the military personnel will not act as a process server, they will see to it that the mail is delivered to the servicemember and that he signs for mail receipt (green card). For even better results, the party may request restricted delivery so that only the servicemember would be authorized to sign the green card. Other suggestions include forwarding the certified letter to a senior enlisted member of the command, and requesting assistance or sending a letter to the command post master and requesting assistance. Senior enlisted personnel include senior chief petty officers or the first sergeant. To check on the status of the green card, a party can utilize the postal website – usps.com for status of the mail by inputting the tracking number. Some courts have utilized the print out from the U.S. postal website as the return of service when the green card has not been returned. Certified mail may be the only feasible manner to serve the party, if he is deployed on a ship.

9. How would a party serve a servicemember deployed to Iraq or Afghanistan?

First, determine whether the servicemember could be served by substitute service within the United States. An example is serving the servicemember's current spouse or parent.

²³ *Barclay v. Crown Building and Development, Inc.*, 617 N.W.2d 373 (Mich. Ct. App. 2000).

As previously stated, Hague Service Treaty does not apply with either country. Second, determine whether the state allows service through mail. If service of process is available through mail, forward the pleading to the servicemember at his Fleet Post Office (FPO) address or Army/Air Force Post Office (APO) address. In addition, communicate with his superiors to see that he actually receives the mail as stated in the above question. Even if the servicemember does not actually receive notice of the hearing by substitute service or through the mail, the court is still required to appoint an attorney under the Servicemember Civil Relief Act, who is responsible for making meaningful contact with the Defendant. Third, it is recommended to mail the pleadings to the defendant by regular mail and if possible email the pleadings to him as well. Providing the servicemember with a return email address will assist in facilitating cooperation so he can communicate his position and also assist him in setting up a telephonic hearing if possible and appropriate.

10. Provide samples of how to practically handle service of process in countries which are Hague Service Treaty members and where there is a large U.S. Military presence?

Germany: Each German State has its own Central Authority. The addresses can be found on the Hague Service Treaty website. There are two types of personal service – simple and formal service. Simple service is voluntary acceptance of service and formal service is compulsory service. To obtain the formal service, the documents must be translated in German. Unless otherwise requested, the Central Authority most likely will serve process through postal channels. The time period for service of process is usually three months including shipping time. The cost is minimal that being the cost for registered mail or reimbursement for hiring the official to serve process.

Germany has objected to all alternative types of service of process provided for under the Hague Service Treaty -- through postal channels, consular agents or diplomatic channels and directly through the German Courts or competent process servers. For all practical purposes, all service of process must be effectuated by the German Central Authorities.²⁴

Italy: The Italian Central Authority is L'Ufficio Unico Degli Ufficiali Giudiziari, Presso La Corte D'Appello di Roma, Viale Giulio Cesare, 52, 000192 Rome, Italy. The telephone number is 011-39-06-328367521. The staff speaks Italian, French and English. All documents forwarded to the Italian Central Authority must be in duplicate and translated into Italian. The cost for having service performed by a bailiff is 6,000 lira. The approximate time to effectuate service of process is one to three months. Italy does not oppose any alternative forms of service of process, including certified mail; however, under Italian law, only court officials are authorized to serve process. Consequently, neither private attorneys nor individuals are authorized to serve process. Unless one can

²⁴ Judicial Assistance Germany, (visited May 12, 2008) <http://travel.state.gov/law/info/judicial/judicial_648.html>; Germany – Central Authority and Practical Information, (visited May 12, 2008) <http://hcch.e-vision.nl/index_en.php?act=authorities.details&aid=257>.

communicate with an Italian court, the practical approach for serving process would be through the Central Authority or through postal channels.²⁵

Japan: The Japanese Ministry of Foreign Affairs is the Central Authority for Japan. Its address is 2-2-1 Kasumigaseki Chiyoda-ku, Tokyo 100-8919 Japan. The contact point is the Consular Policy Division, and employees speak both Japanese and English. The phone number is +81 3 5501 8152. Japan requires the documents and attachments to be translated into Japanese for both informal and formal deliveries. The Japanese formal service process proceeds with the Ministry of Foreign Affairs transmitting the documents to local Japanese Court. The clerk of the court then effectuates service through a special postal channel. The Japanese informal service provides for the Ministry of Foreign Affairs to transmit the documents to a local court. The clerk of court then informs the addressee to present himself to the court or he can request the documents be forwarded to him. If the person refuses to accept process, after three weeks the documents will be returned to the sender. The Japanese Central Authority will honor a request for personal service. In most instances, Japan will bear the cost for service of process; however, if service requires a marshal to deliver the documents, the Central Authority will seek reimbursement (1800 yen for service during weekday hours and 4200 yen for evening, weekend and holidays.) The time period for obtaining service of process is usually 90 days.

Regarding alternative means of service of process, Japan does not oppose service of process through postal channels; however, Japan may not enforce the judgment if obtained through mail. Japan has objected to service of process that is sent directly to judicial officers and other competent process servers in Japan. Japan does not oppose service of process through consular agents and diplomatic channels; however as stated above, the United States forbids Foreign Service employees from serving process unless specifically authorized by the State Department. Japan also opposes obtaining service of process by directly contacting judicial officers or other competent judicial officers. Practically speaking, service of process can be effectuated through postal channels or through Japanese Central Authority.²⁶

Kuwait: The Kuwait Central Authority is the Ministry of Justice, International Relations Department, Ministries Complex, Building No. 14, P.O. Box Safaat 13001, Kuwait City, Kuwait. The phone number is 965-248-6039. The employees speak both Arabic and English. Unless the respondent voluntarily accepts service of process, the pleading should be translated in Arabic. There is no charge for service of process and Kuwait has indicated that service of process can be effectuated in within a week. Like Germany and

²⁵ Italy Judicial Assistance, (visited May 12, 2008) <http://travel.state.gov/law/info/judicial/judicial_653.html>; Italy-Central Authority and Practical Information, (visited May 12, 2008) <http://hcch.e-vision.nl/index_en.php?act=authorities.details&aid=245>.

²⁶ Japan Judicial Assistance, (visited May 12, 2008) <http://travel.state.gov/law/info/judicial/judicial_678.html#service>; Japan-Central Authority and Practical Information, (visited May 12, 2008) <http://hcch.e-vision.nl/index_en.php?act=authorities.details&aid=261>.

South Korea, it opposes all other alternative means of service of process available through the Hague Service Treaty.²⁷

South Korea: The only authorized mechanism of service of process is through South Korea's Central Authority. The Central Authority information is as follows: National Court Administration, Attn.: Director of International Affairs, 967, Seocho-dong, Seocho-gu, Seoul 137-750, Republic of Korea. The telephone number is +82- (2) 3480 1734. Employees of the Central Authority speak both English and Korean.²⁸

Spain: The Spanish Central Authority is Subdireccion General de Cooperacion Juridica, Internacional, Ministerio de Justicia, c/ San Bernardo N° 62, 29071 Madrid, Spain. The telephone number is 34 91 390 2228. The employees speak Spanish, French and English. The Central Authority forwards the document to the local court and the process is served on the party. The Central Authority does not provide an informal service of process. It requires all documents to be translated into Spanish. There is no cost to effectuate service of process. Spain has not objected to any of the alternative means of service of process. However, Spain requires the documents to be translated into Spanish no matter what means of service of process is used unless the party voluntarily accepts service. Practically speaking, service of process can be effectuated through certified mail, sending the documents to judicial officers or other competent individuals who can service process or through the Spanish Central Authority.²⁹

²⁷ Kuwait Judicial Assistance, (visited May 12, 2008)

<http://travel.state.gov/law/info/judicial/judicial_2756.html#service>;

Kuwait-Central Authority and Practical Information (visited May 12, 2008) <http://hcch.e-vision.nl/index_en.php?act=authorities.details&aid=286>.

²⁸ Korea-Central Authority and Practical Information (visited May 12, 2008) <http://hcch.e-vision.nl/index_en.php?act=authorities.details&aid=262>.

²⁹ Spain Judicial Assistance, (visited May 12, 2008)

<http://travel.state.gov/law/info/judicial/judicial_684.html>; Spain-Central Authority and Practical Information (visited May 12, 2008) <http://hcch.e-vision.nl/index_en.php?act=authorities.details&aid=273>.



REQUEST FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS

DEMANDE AUX FINS DE SIGNIFICATION OU DE NOTIFICATION À L'ETRANGER D'UN ACTE JUDICIAIRE OU EXTRAJUDICIAIRE

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965.

Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matière civile ou commerciale, signée à La Haye, le 15 novembre 1965.

Identity and address of the applicant
Identité et adresse du requérant

Address of receiving authority
Adresse de l'autorité destinataire

The undersigned applicant has the honour to transmit -- in duplicate-- the documents listed below and, in conformity with article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, i.e., (identity and address)

Le requérant soussigné a l'honneur de faire parvenir--en double exemplaire--à l'autorité destinataire les documents ci-dessous énumérés, en la priant, conformément à l'article 5 de la Convention précitée, d'en faire remettre sans retard un exemplaire au destinataire, à savoir:
(identité et adresse)

- (a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention.*
a) selon les formes légales (article 5 alinéa premier, lettre a).
- (b) in accordance with the following particular method (sub-paragraph (b) of the first paragraph of article 5)*:
b) selon la forme particulière suivante (article 5, alinéa premier, lettre b) :

- (c) by delivery to the addressee, if he accepts it voluntarily (second paragraph of article 5)*:
c) le cas échéant, par remise simple (article 5, alinéa 2).

The authority is requested to return or to have returned to the applicant a copy of the documents and of the annexes with a certificate as provided on the reverse side.

Cette autorité est priée de renvoyer ou de faire renvoyer au requérant un exemplaire de l'acte - et de ses annexes - avec l'attestation figurant au verso.

List of documents
Énumération des pièces

Done at _____, the _____
Fait à _____, le _____

Signature and/or stamp
Signature et/ou cachet

*Delete if inappropriate
Rayer les mentions inutiles.

CERTIFICATE ATTESTATION

The undersigned authority has the honour to certify, in conformity with article 6 of the Convention,
L'autorité soussignée a l'honneur d'attester conformément à l'article 6 de ladite Convention,

1) that the document has been served *

1) *que la demande a été exécutée*

- the (date) -- *le (date)* _____

- at (place, street, number) - *à (localité, rue, numéro)* _____

-- In one of the following methods authorized by article 5:

-- *dans une des formes suivantes prévues à l'article 5:*

(a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention*.
a) selon les formes légales (article 5. alinéa premier, lettre a)

(b) in accordance with the following particular method:
b) selon la forme particulière suivante: _____

(c) by delivery to the addressee, who accepted it voluntarily.*
c) par remise simple.

The documents referred to in the request have been delivered to:

Les documents mentionnés dans la demande ont été remis à:

- (identity and description of person)

- *(identité et qualité de la personne)*

- relationship to the addressee family, business or other

- *liens de parenté de subordination ou autres avec le destinataire de l'acte:*

2) that the document has not been served, by reason of the following facts*:

2) *que la demande n'a pas été exécutée, en raison des faits suivants:*

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement*

Conformément à l'article 12, alinéa 2, de ladite Convention, le requérant est prié de payer ou de rembourser les frais dont le détail figure au mémoire ci-joint.

ANNEXES

Annexes

Documents returned:

Pieces renvoyées

In appropriate cases, documents establishing the service:

Le cas échéant, les documents justificatifs de l'exécution:

Done at _____, the _____
Fait à _____, le _____

Signature and/or stamp
Signature et/ou cachet

SUMMARY OF THE DOCUMENT TO BE SERVED
ÉLÉMENTS ESSENTIELS DE L'ACTE

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965.

Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matière civile ou commerciale, signée à La Haye, le 15 novembre 1965.

(article 5, fourth paragraph)
(article 5, alinéa quatre)

Name and address of the requesting authority:
Nom et adresse de l'autorité requérante:

Particulars of the parties:
Identité des parties:

JUDICIAL DOCUMENT
ACTE JUDICIAIRE

Nature and purpose of the document:
Nature et objet de l'acte:

Nature and purpose of the proceedings and, where appropriate, the amount in dispute:
Nature et objet de l'instance, le cas échéant, le montant du litige:

Date and place for entering appearance:
Date et lieu de la comparution:

Court which has given judgment:**
Jurisdiction qui a rendu la décision:

Date of judgment:**
Date de la décision:

Time limits stated in the document:**
Indication des délais figurant dans l'acte:

EXTRAJUDICIAL DOCUMENT
ACTE EXTRAJUDICIAIRE

Nature and purpose of the document:
Nature et objet de l'acte:

Time limits stated in the document:**
Indication des délais figurant dans l'acte:



PREVENTIVE LAW SERIES
**GARNISHMENTS/
 INVOLUNTARY ALLOTMENTS**



Prepared by:
 Legal Assistance Department
 Region Legal Service Office Southwest

WHAT IS AN INVOLUNTARY ALLOTMENT?

Involutary allotments, also known as garnishments, are one way deductions from a servicemember's pay can be made. Usually, a previous valid court order exists that indicates that the person has an obligation to pay a certain amount of money.

INVOLUNTARY ALLOTMENT FOR FAMILY SUPPORT

An involuntary allotment can be initiated against an active duty servicemember to pay for child support or a combination of spousal and child support, **but not spousal support only**. (However, for those members who have only a spousal support order, this rule is not a shield against a contempt of court action. The court which issued the spousal support order can, and likely will, hold you in contempt of court for failure to pay spousal support once it has been ordered.) The servicemember must be under a court or administrative order to make the payments and the total amount in arrears must be greater than or equal to two months of payments. Pay that is subject to this type of allotment is: Basic Pay, BAH, BAS, Special Pay, Proficiency Pay or Special Duty Pay, Submarine Pay, Flight Pay, and Career Sea Pay.

A state child support enforcement agent or court sends a letter or order to the military finance center requesting an allotment be started. The military finance center will notify the servicemember of the involuntary allotment petition in order to give the servicemember an opportunity to respond in case there has been some type of error. Arrearages can be collected but there must be a second court order requiring payment of the arrearages by involuntary allotment. To start payments, contact DFAS.

MAXIMUM AMOUNT OF INVOLUNTARY ALLOTMENT

- 50% if member is supporting other family members and is in **arrears** (unpaid, overdue debt or unfulfilled obligation).
- 55% if member is supporting other family members and is in **arrears**.
- 60% if member is not supporting other family members and is in **arrears**.
- 65% if member is not supporting other family members and is in **arrears**.

A service member can assert by affidavit that he or she is supporting other family members.

In the event that your support order (or collective support orders) exceed the maximum amount allowed to be withheld by federal or state law, you are still responsible for the full amount of the child or spousal support as ordered in the state court. **MAXIMUM INVOLUNTARY ALLOTMENT PROVISIONS DO NOT SHIELD YOU FROM THE STATE COURT ORDER TO PAY A SPECIFIED SUPPORT ORDER.** You are still responsible for those excess amounts, even though it won't come directly out of your military paycheck. The percentages that can be garnished are separate and distinct from the amount of child support or spousal support, or both, that can be ordered to be paid by a person under state child and spousal support laws. Failure to pay the ordered amounts that are in excess of the above percentages can and may result in issuance of a tax intercept, inability to get a U.S. passport, negative reports to the major credit reporting agencies, suspension of the your driver's license, and or suspension of the your professional license.

MILITARY PAY SUBJECT TO INVOLUNTARY ALLOTMENT

- For officers and warrant officers – basic pay, special pay, most bonuses, BAS, BAH
- For E-7 and above – basic pay, special pay, most bonuses, BAH

- For E-6 and below – basic pay, special pay, most bonuses, and BAH for members with dependents.

DO NOT START A VOLUNTARY ALLOTMENT UPON RECEIVING NOTIFICATION OF AN INVOLUNTARY ALLOTMENT ACTION. OTHERWISE, THE RESULT WILL SIMPLY BE THAT TWO ALLOTMENTS WILL BE DEDUCTED FROM MILITARY PAY.

INVOLUNTARY ALLOTMENT FOR JUDGMENT INDEBTEDNESS

This type of involuntary allotment may occur when there is a judgment against the servicemember for a specific amount of money from a creditor. In these circumstances, the creditor sends an involuntary allotment application to the military finance center along with a copy of the court order. In addition the creditor must certify that the judgment has not been modified or set aside, that it complies with all requirements imposed by the **Servicemembers' Civil Relief Act**, that the servicemember's pay can be garnished, that the debt has not been discharged in bankruptcy, and that the creditor agrees to repay the servicemember within 30 days if payment made was erroneous.

The amount which may be deducted is a maximum of twenty-five percent (25%) of the disposable earnings of the servicemember (or lower depending on state law). The military pay which is subject to involuntary allotment due to judgment indebtedness is: Basic Pay, Special and Incentive Pay, Accrued Leave Payments, Readjustment Pay, Severance Pay, Lump-sum Reserve Bonus, and Inactive Duty Training Pay.

When the creditor sends the petition to the military finance center, they will notify the servicemember and his/her Commanding Officer. If applicable, the servicemember may invoke any of the following defenses:

- Failure to comply with the **Servicemembers' Civil Relief Act**
- Exigencies of military duties caused the servicemember's absence from the proceedings
- Information is false or erroneous
- The judgment has been satisfied, set aside, or materially amended
- Legal protection against establishing an involuntary allotment exists

The determination of whether exigencies of military duties do or do not exist rest solely on the servicemember's Commanding Officer. Final determination of all other asserted defenses rests with the military finance center. Note that the DoD Financial Management Regulation prohibits allotments on vehicles, appliances or household goods, electronics, and other consumer items that are tangible and movable.

RESOURCES

Defense Finance Accounting Service: (866) 859-1845; www.dfas.mil/garnishment.html

Allotments from Pay for Child and Spousal Support Owed by Members of Uniformed Services on Active Duty, 42 U.S.C. § 665 (2012)

Consumer Credit Protection Laws, 15 U.S.C. §§ 1601 et seq. (2012)

DoD Implementing Regulations, 32 C.F.R. Part 54 (2013)

DoD Financial Management Regulation, DoD 7000.14-R, Vol. 7A, Chapters 40 and 42

Indebtedness of Military Personnel, 32 C.F.R. Parts 112–113 (2013)

Indebtedness of Military Personnel, DoD Directive 1344.09 (2008)

7-2 SAMPLE LETTER REQUESTING FEDERAL STATUTORY MILITARY ALLOTMENT (NOT AN OFFICIAL FORM)

SAMPLE STATUTORY ALLOTMENT REQUEST

[Use agency letterhead]

Commander

[Appropriate Military Payment Processing Center Address]

Reference: [Name and SSN of military member]

Dear Sir or Madam:

This letter is notice of delinquent support payments and a request for the initiation of the statutory allotment pursuant to 42 U.S.C. § 665.

[Identify military member] is subject to a court or administrative order (certified copy enclosed) requiring him/her to pay current child support in the amount of [identify amount and payment schedule] [if appropriate, add "plus an amount of xxx toward elimination of arrears of xxx"]. He/She has failed to meet this obligation and arrears exceed the total amount due under the order for two months. [If appropriate, insert "In addition, a portion of the arrearage pertains to payments that are more than 12 weeks overdue."]

I request initiation of a statutory allotment from the member's active duty pay in the amount of [identify amount], the monthly support obligation [if appropriate, add "and arrearage payment"] due under the order. Please direct the payment to this address:

[Provide the name/address of the appropriate state payment location and explain what information must accompany the payment.]

Please continue the allotment until [insert termination date] or such earlier date as this agency may later advise you.

I certify that I am an "authorized person" as defined by 42 U.S.C. § 655(b) and 32 C.F.R. Part 54. I am an agent of a state with an approved Title IV-D program under the Social Security Act, and my duties include seeking recovery of child and spousal support. Thank you for your attention to this matter.

[Authorized agent signature]

Enclosure (certified copy of court or administrative child support order)

Additional Internet Resources

Handbook on Child Support and Military Families

https://www.acf.hhs.gov/sites/default/files/documents/ocse/a_handbook_for_military_families_version.pdf

Army Support explained

<https://youtu.be/tcAzgdY2nsM>

BAH Housing Rates

<https://www.defensetravel.dod.mil/site/bah.cfm>

<https://www.defensetravel.dod.mil/site/bahCalc.cfm>

Post 911 GI Bill

[Calculating the Post 9-11 GI Benefit](#)

DFAS

Pay tables

<https://www.dfas.mil/militarymembers/payentitlements/Pay-Tables/>

Understanding LES

<https://www.dfas.mil/MilitaryMembers/payentitlements/aboutpay/>

DFAS Garnishment Forms

<https://www.dfas.mil/Garnishment/Forms/>

Starting Garnishment through DFAS

<https://www.dfas.mil/Garnishment/childsupportalimony/startpayment/>

Military Installation Info

[Military Installations](#)

[Legal Services Offices Locations](#)

[Military Child Care Locations](#)

[Rapids ID Office](#)

Federal Office of Child Support Enforcement

[State DCSE Contacts](#)

<https://ocsp.acf.hhs.gov/irg/>

Hague Convention on Service Abroad of Judicial and Extrajudicial Documents...

<https://www.hcch.net/en/instruments/conventions/specialised-sections/service>

Competency

VBBA JDR CLE

September 21, 2023

TCC

Juvenile Competency §16.1-356

- **Who:**
 - The Court sua sponte
 - Counsel for the juvenile
 - Counsel for the Commonwealth
- **When:**
 - After Attorney retained or appointed, AND
 - Before the end of the trial

Juvenile Competency §16.1-356

- **Standard:**
 - Hearing evidence or representations of counsel
 - Probable Cause
 - Juvenile lacks substantial capacity
 - Understand proceeding against him OR
 - Assist attorney in own defense
 - If probable cause finding, the court *shall order*

Juvenile Competency

- **If Agreed:**
 - Motion or letter to Court
 - Request Competency Evaluation
 - Stating Counsel Agreed
 - Provide available dates 25 – 40 days out for review
 - If ordered, Form DC-522

Juvenile Competency

- **If Not Agreed:**
 - Motion or letter to Court
 - Request Competency Evaluation
 - Provide available dates for hearing OR
 - Request will be heard at next hearing date
- If Ordered, Form DC-522

Juvenile Competency §16.1-356

- **Provider:**
 - Psychiatrist
 - Clinical psychologist
 - Licensed professional counselor
 - License clinical social worker
 - Licensed marriage and family therapist
 - Qualified by training and experience
 - Approved by the Commissioner of BHDS

Juvenile Competency §16.1-356

- **Provider:**
 - If outpatient
 - Dr. Weare Zweamer
 - Lisa Duez
- Turning Point Counseling & Consulting
757.347.8840
5301 Providence Road, VB 23464

Juvenile Competency §16.1-356

- **Where:**
 - Outpatient
 - Community Services Board
 - Behavioral Health Authority
 - Juvenile Detention Home
 - Juvenile Justice Facility

Juvenile Competency §16.1-356

- **Where Exception:**
 - Outpatient evaluation requires hospitalization
 - Juvenile is currently psychiatrically hospitalized
 - Court may order juvenile sent to hospital designated by DBHDS

Juvenile Competency §16.1-356

- **Next 96 Hours to Evaluator:**
 - **CWA**
 - Petition
 - Names and addresses of CWA, DC, and Judge
 - Information about offense
 - **Defense Attorney**
 - Psychiatric records
 - Other relevant information
 - **Moving Party**
 - Summary of reasons for the request

Juvenile Competency §16.1-356

- **Report:**
 - To Court and attorneys of record
 - Juvenile's capacity to understand the proceedings
 - Need for services if found incompetent
 - Description of suggested necessary services for restoration
 - Least restrictive setting for restoration

Juvenile Competency §16.1-356

- **Competency Hearing:**
 - **Not required**
 - **CWA may request**
 - **Defense attorney may request**
 - **When Court sending juvenile to hospital**
 - **Burden on moving party**
 - **Preponderance of the evidence**

Juvenile Competency §16.1-356

- **No Finding of Incompetence:**
 - Solely on
 - Juvenile's age
 - Juvenile's developmental factors
 - Juvenile's claim of memory loss around alleged offense
 - Juvenile under influence of medication

Juvenile Competency §16.1-357

- **Restoration Services:**
 - Restore competency
 - Nonsecure community setting, or
 - Secure facility
 - Up to 3 months if foreseeable restoration
 - Set review date for 60 days out
 - Form DC-523

Juvenile Restorable §16.1-358

- **Incompetent but restorable:**
 - Restoration Services
 - 3 months from original date of restoration services
 - Set for review date within 3 months (VBJDR)
 - Form DC-570

Juvenile Unrestorable §16.1-358

- **Incompetent for the foreseeable future:**
 - Report to court
 - Involuntary Commitment
 - Certified as Person with Intellectual Disability
 - Provided other services
 - Released

Juvenile Unrestorable §16.1-358

- **Court Shall:**
 - **Make a Competence Finding**
 - **Involuntary Commitment**
 - **Certified as Person with Intellectual Disability**
 - **CHNS petition**
 - **Released**

Juvenile Unrestorable §16.1-358

- **Charges:**
 - Dismissed without prejudice
 - Misdemeanor – 1 year from date of arrest
 - Felony – 3 years from date of arrest

Adult Competency §19.2-169(A)

- **Who:**
 - Counsel for the defendant
 - Counsel for the Commonwealth
- **When:**
 - After Attorney retained or appointed, AND
 - Before the end of the trial

Adult Competency §19.2-169.1

- **Standard:**
 - Hearing evidence or representations of counsel
 - Probable Cause
 - Defendant lacks substantial capacity
 - Understand proceeding against him OR
 - Assist attorney in own defense
- If probable cause finding, the court *shall order*

Adult Competency

- **If Agreed:**
 - Motion or letter to Court
 - Request Competency Evaluation
 - Stating Counsel Agreed
 - Provide available dates 25 – 40 days out for review
 - No Form

Adult Competency

- **If Not Agreed:**
 - Motion or letter to Court
 - Request Competency Evaluation
 - Provide available dates for hearing OR
 - Request will be heard at next hearing date
 - May also be raised in Court without prior Motion

Adult Competency §19.2-169.1

- **Provider:**
 - Psychiatrist
 - Clinical psychologist
 - Has performed forensic evaluations
 - Has successfully completed training
 - Has demonstrated competence
 - Included on list of approved evaluators

Adult Competency §19.2-169.1

- **Provider:**
 - If outpatient
 - Dr. Weare Zweamer
 - Bay Forensics

Adult Competency §19.2-169.1

- **Where:**
 - Outpatient
 - Mental Health Facility
 - Jail

Adult Competency §19.2-169.1

- **Where Exception:**
 - Outpatient evaluation requires hospitalization
 - Defendant is currently in custody of DBHDS

Adult Competency §19.2-169.1

- **Next 96 Hours to Evaluator:**
 - **CWA**
 - Warrant or Indictment
 - Names and addresses of CWA, DC, and Judge
 - Information about crime
 - Summary of reasons for the request
 - **Defense Attorney**
 - Psychiatric records
 - Other relevant information

Adult Competency §19.2-169.1

- **Time Limits:**
 - Promptly upon completion of report
 - Report submitted 5 days before Review Date (VBJDR)
 - Review date 25 – 30 days out (VBJDR)

Adult Competency §19.2-169.1

- **Report:**
 - Defendant's capacity to understand proceedings
 - Ability to assist attorney
 - Need for treatment if found incompetent
 - Whether inpatient or outpatient recommended

Adult Competency §19.2-169.1

- **Competency Hearing:**
 - **Not required**
 - **CWA may request**
 - **Defense attorney may request**
 - **When hospitalization is anticipated**
 - **Burden on moving party**
 - **Preponderance of the evidence**

Adult Competency §19.2-169.1

- **No Finding of Incompetence:**
 - **Solely on**
 - **Defendant's claim of memory loss around alleged offense**
 - **Defendant under influence of medication**

Adult Competency §19.2-169.2

- **Restoration Services:**
 - Restore competency
 - Outpatient basis - Bay Forensics
 - Jail – Bay Forensics
 - Inpatient hospital by finding of Court – ESH/CSH
 - Defendant shall be transferred within 10 days
 - Set review date for 60 days out
 - Form 345

Adult Restorable §19.2-169.3

- **Incompetent but restorable:**
 - **Restoration Services**
 - **Set for review date within 6 months of restoration services (VBJDR)**
 - **Review hearings every 6 months thereafter**
 - **Form 345**

Adult Unrestorable §19.2-169.3

- **Incompetent for the foreseeable future:**
 - Report to court
 - Involuntary Commitment
 - Sexually Violent Predator Commitment
 - Certified as Person with Intellectual Disability
 - Provided other services
 - Released

Adult Unrestorable §19.2-169.3

- **Court Shall:**
 - Involuntary Commitment
 - Certified as Person with Intellectual Disability
 - Released
 - If sexually violent offense – *Shall* be screened for sexually violent predator commitment

Adult Unrestorable §19.2-169.3

- **Charges:**
 - Misdemeanors – Report after 45 days of restoration services
 - Misdemeanors – Court may dismiss the charges
 - Felony (exceptions) – Dismissed 5 years from date of arrest or date of maximum sentence, *whichever is sooner*
- Commonwealth may initiate charges after restoration

Adult Unrestorable §19.2-169.3

- **Charges:**
 - Aggravated murder – shall not be dismissed
 - May order continued treatment in secure facility

2023 DHS DOCKET ~ HOT TOPICS



Christianna Cunningham, Esq.

Bretta Lewis, Esq.



HOT TOPIC 1: ICWA

- ICWA didn't get overturned In June of this year, SCOTUS held (7-2) that ICWA does not impermissibly impose a federal mandate on traditional state-regulated areas of power.
- What is ICWA again? The Indian Child Welfare Act, known as ICWA, was enacted in 1978 after a congressional investigation found that over the course of the preceding 30 years, over 1/3 of all Native children had been removed from their homes, some forcibly, and placed with non-Indian families and institutions with no ties to the tribes. To ensure that would never happen again, the law established three preferences for the placement of Native children when they are adopted or put in foster care: the first preference is for placement with the child's extended family, then to other members of the tribe, and if neither of those is available, to members of another tribe.

- What was the challenge to ICWA?

- *Haaland v. Brackeen, et al.*, 143 S.Ct. 1609 (2023) : the case arose out of 3 separate custody proceedings that fell under ICWA. The petitioners (families in TX) challenged ICWA as unconstitutional on multiple grounds, specifically claiming that: (1) Congress lacks authority to enact ICWA and that several of ICWA's requirements violate the anticommandering principle of the Tenth Amendment; (2) Sec. §1915(c) of ICWA-the provision that allows tribes to alter the prioritization order for placement of children—violates the nondelegation doctrine; and (3) ICWA employs racial classifications that unlawfully hinder non-Indian families from fostering or adopting Indian children.

SCOTUS HELD

- 1. ICWA is not unconstitutional; Congress' power to legislate with respect to Indian Tribes is "plenary and exclusive," and supersedes both state and tribal authority. This power is inherent in both the Commerce Clause and the Treaty Clause as well as to the constitutional principals that have historically been held to empower Congress to act in the field of Indian Affairs. This power extends to areas generally reserved to the states, including the area of domestic relations. Where state law conflicts, federal controls. The "anticommandeering" challenge was also rejected; the Court found that ICWA evenhandedly applied to both state and private actions.
- 2. SCOTUS did not reach the merits on the nondelegation challenge or the equal protection challenge- finding the petitioners did not have standing to raise those issues.

DID THAT CHANGE ANYTHING?

- No- but it reinforced the principle that States must comply with ICWA and many have fallen short on those obligations- Virginia being one of them.
- However- in 2021, VDSS set up a statewide work group to look at ICWA compliance across the State, and to identify issues and solutions to those issues, many face when trying to comply with ICWA in a VA case. Here are 3 issues discussed:
 - * State forms not in compliance
 - * JDR is not a court of record/ lack of *transcript/record*
 - * Lack of access to “expert testimony”

CHANGES AND RECOMMENDATIONS

- OES is changing the state DC forms to comply with ICWA
- Where forms are not yet changed, Courts are recommended to make all necessary findings on DC 570(s) or in a separate written pleading – this will help VA comply with the “written findings on the record” requirement.
- VDSS has outreached “experts” from various federally recognized tribes to be of assistance in statewide cases
- LDS are recommended to use all BIA Notice forms to contact potential tribes and continue to send such notices for every hearing until written confirmation is received from the tribe that the child is not eligible for membership
- LDS are required to ask ICWA questions at outset of investigation to try and get the tribes involved before court action (if at all possible)
- Training reminding all stakeholders that ICWE standard of proof is higher - CCE

HOT TOPIC 2: OFFICE OF THE CHILDREN'S OMBUDSMEN

- Established in 2021 via Virginia Code Sec. 2.2-439, the OCCO was established to:
- effect changes in policy, procedure, and legislation;
- educate the public;
- investigate and review actions of VDSS, local departments, child-placing agencies, or child-caring institutions; and
- monitor and ensure compliance with relevant statutes, rules, and policies pertaining to child protective services and the placement, supervision, and treatment of, and improvement of delivery of care to, children in foster care and adoptive homes.

WHAT CAN THE OCCO DO?

- The OCCO has statutory authority to receive complaints regarding cases involving children who (i) have been alleged to have been abused or neglected, (ii) are receiving child protective services, (iii) are in foster care, or (iv) are awaiting adoption.
- The OCCO can investigate complaints alleging that an agency's action was:
 - in violation of a law, rule, or policy;
 - imposed without an adequate statement of reason; or
 - based on irrelevant, immaterial, or erroneous grounds.

OCCO CAN ALSO

- Pursue all necessary action, including legal action, to protect the rights and welfare of children receiving child protective services, in foster care, or placed for adoption
- Advocate for legislative changes to improve Virginia's child welfare system
- Review policies and procedures related to any child-serving agency's involvement with a child and make recommendations for improvement

OCCO CANNOT...

- Address complaints related to:
 - Any court decision, court order, or the actions of judges or attorneys
 - Child custody, visitation, or child support cases
 - School issues or educational services
 - The actions of Law Enforcement Officers
 - Employment or personnel issues within an agency

OCCO CAN AND DOES...

- Refer parties to:
 - * *Virginia State Bar*
 - * *Judicial Inquiry and Review Commission*
 - * *VDSS Constituent Services*

WHAT ARE THE CURRENT ISSUES FOR WHICH OCO IS MOST FOCUSED ?

- 1.) “Diversion Cases” - cases where the LDSS requests the family make a safety plan for the child. Generally, voluntary compliance with safety plans has always been seen as “least restrictive measures,” however OCO has raised a concern that safety plans implicate a parent’s constitutional rights when the LDSS requests a safety plan without then petitioning the court to make the plan “legal.” Thus, OCO opines that out of home safety plans where the child needs to be out of the home for an extended period of time (weeks/months) should be subject to court approval.

- 2. Foster Care Service Plans Must be Family Specific – Many LDSS were using “cookie-cutter plans” - not tailoring plans for each family and each child to remedy the reasons the child came into care- using specifics from the original affidavit. Not everyone needs the same services. See Virginia Code Sec. 63.2-906 & 16.1-281
- 3. Visitation- Ensuring visits happen timely with family in an appropriate setting considering the circumstances – **OCO acknowledged this issue was largely drive by resources (\$\$) and staffing issues plaguing the LDSS across the state.

COURT APPOINTED ATTORNEY EDUCATION AND COMPENSATION- both CACs and GALs-

This is an acknowledged problem! Work group established to look at changes and increase compensation to at least the level of felony representation in adults! Also- looking at establishing a certification necessary to get on the DHS CAC/GAL list.

Take-Aways: The DHS docket is not mere family law- do not think just anyone can jump in and do it without study. What you do not know- do not assume- you will hurt your client- you will get a bar complaint.

NEW TO THE PRACTICE AREA??? Ask your fellow CAC colleagues and city attorneys for help! Ask for the Prior "Bootcamp" Training!

HOT TOPIC 3: "KINSHIP" FOSTER CARE: 4 OPTIONS IN VA

SEE VA CODE SEC. 63.2-100 & 63.2-1305

- 1. The court could transfer custody of the child to a kinship care provider. (no \$\$)
- 2. The local department of social services, who has custody of the child, could approve the kinship care provider as a foster parent. (\$\$)
- 3. The kinship care provider, who is an approved foster parent, may be able to adopt the child if the court terminates the rights of the child's parents and approves the goal of adoption. (\$\$)
- 4. The kinship care provider, who is an approved foster parent, may become permanent legal custodian and receive continuing financial support through the Kinship Guardianship Assistance Program (KinGAP) (\$\$)

HOT TOPIC 4: MARIJUANA ... IT'S LEGAL- RIGHT?

Well...

- 1) You cannot drive high just like you cannot drive drunk... so transporting your child to daycare while high is not legal.
- 2) You should not be parenting while high just like you should not be parenting while drunk. This also goes for prescribed substances that may have an effect on one's ability to be a caretaker. If a parent "needs" to take any substance that could affect their ability to parent, they should have a "designated caretaker" akin to a designated driver to be in charge whilst consuming such substances.
- 3) Marijuana is illegal for all minors- so minors testing positive (whether for consumption or exposure) is a problem.
- 4) Medical Marijuana Cards- if your client is taking antipsychotics and medical marijuana- they will need an opinion from the prescribing psychiatrist that there is no negative interference possible (not from an opinion from the med mj prescriber).

HOT TOPIC 5 RELIEF OF CUSTODY

- Virginia Code Sec. 16.1-278.3 provides that any parent or custodian of a child may file for relief of custody and the same may be granted if in the best interests of the child. ROC is highly disfavored and should only be used where all other options have failed, i.e.) Return Home is Impossible or Abuse/Neglect is present.
- Other options? PARENTAL AGREEMENT THROUGH CHILD & YOUTH (child placed out of the home but not in foster care)
- **“Mandated services pursuant to CSA may be provided to eligible children who are in need of such mental health services without their parents having to relinquish custody to local social services agencies” 2006 Va AG Lexis 50.**

QUESTIONS FOR CLIENTS SEEKING ROC

- 1) What is the problem you are trying to solve?
- 2) What services have you sought?
- 3) What recommendations have you received?
- 4) Have you filed a CHINS?
- 5) Are you saying that you never will reconcile with the child- ever?
- 6) For parents- are you seeking TPR?
- 7) Are you aware that foster care may equal child support?

Q & A ???? ?



VIRGINIA BEACH

WHO WE ARE AND WHAT WE DO 😊

Legal authority for CASA Program: Virginia Code §9.1-151 *et seq.* of the Code of Virginia

Virginia Code §9.1-151:

The Program shall provide services in accordance with this article to children who are subjects of judicial proceedings (i) involving allegations that the child is abused, neglected, in need of services, or in need of supervision or (ii) for the restoration of parental rights pursuant to § 16.1-283.2 and for whom the juvenile and domestic relations court judge determines such services are appropriate.

Statutory Requirements to be a CASA § 9.1-153(D) and (E)

- Compliance with state regulations
- DCJS grant conditions
- National CASA standards

Duties of a CASA: § 9.1-153(B) Volunteer court-appointed special advocates; powers and duties; assignment; qualifications; training.

- a. Investigating the case to which he is assigned to provide independent factual information to the court.
- b. Submitting to the court of a written report of his investigation in compliance with the provisions of § 16.1-274.

§ 9.1-151. Court-Appointed Special Advocate Program; appointment of advisory committee.

A. There is established a Court-Appointed Special Advocate Program (the Program) that shall be administered by the Department. The Program shall provide services in accordance with this article to children who are subjects of judicial proceedings (i) involving allegations that the child is abused, neglected, in need of services, or in need of supervision or (ii) for the restoration of parental rights pursuant to [§ 16.1-283.2](#) and for whom the juvenile and domestic relations district court judge determines such services are appropriate. Court-Appointed Special Advocate volunteer appointments may continue for youth 18 years of age and older who are in foster care if the court has retained jurisdiction pursuant to subsection Z of [§ 16.1-241](#) or [§ 16.1-242](#) and the juvenile and domestic relations district court judge determines such services are appropriate. The Department shall adopt regulations necessary and appropriate for the administration of the Program.

B. The Board shall appoint an Advisory Committee to the Court-Appointed Special Advocate Program, consisting of 15 members, one of whom shall be a judge of the juvenile and domestic relations district court or circuit court, knowledgeable of court matters, child welfare, and juvenile justice issues and representative of both state and local interests. The duties of the Advisory Committee shall be to advise the Board on all matters relating to the Program and the needs of the clients served by the Program, and to make such recommendations as it may deem desirable.

§ 9.1-152. Local court-appointed special advocate programs; powers and duties.

A. The Department shall provide a portion of any funding appropriated for this purpose to applicants seeking to establish and operate a local court-appointed special advocate program in their respective judicial districts. Only local programs operated in accordance with this article shall be eligible to receive state funds.

B. Local programs may be established and operated by local boards created for this purpose. Local boards shall ensure conformance to regulations adopted by the Board and may:

1. Solicit and accept financial support from public and private sources.
2. Oversee the financial and program management of the local court-appointed special advocate program.
3. Employ and supervise a director who shall serve as a professional liaison to personnel of the court and agencies serving children.
4. Employ such staff as is necessary to the operation of the program.

§ 9.1-153. Volunteer court-appointed special advocates; powers and duties; assignment; qualifications; training.

A. Services in each local court-appointed special advocate program shall be provided by volunteer court-appointed special advocates, hereinafter referred to as advocates. The advocate's duties shall include:

1. Investigating the case to which he is assigned to provide independent factual information to the court.
2. Submitting to the court of a written report of his investigation in compliance with the provisions of [§ 16.1-274](#). The report may, upon request of the court, include recommendations as to the child's welfare.
3. Monitoring the case to which he is assigned to ensure compliance with the court's orders.
4. Assisting the guardian ad litem appointed to represent the child in providing effective representation of the child's needs and best interests.
5. Reporting a suspected abused or neglected child pursuant to [§ 63.2-1509](#).

B. The advocate is not a party to the case to which he is assigned and shall not call witnesses or examine witnesses. The advocate shall not, with respect to the case to which he is assigned, provide legal counsel or advice to any person, appear as counsel in court or in proceedings which are part of the judicial process, or engage in the unauthorized practice of law. The advocate may testify if called as a witness.

C. The program director shall assign an advocate to a child when requested to do so by the judge of the juvenile and domestic relations district court having jurisdiction over the proceedings. The advocate shall continue his association with each case to which he is assigned until relieved of his duties by the court or by the program director. The program director may assign an advocate to attend and participate in family partnership meetings as defined by the Department of Social Services and in meetings of family assessment and planning teams established pursuant to [§ 2.2-5208](#), multidisciplinary child sexual abuse response teams established pursuant to [§ 15.2-1627.5](#), individualized education program teams established pursuant to Article 2 ([§ 22.1-213](#) et seq.) of Chapter 13 of Title 22.1, and multidisciplinary teams established pursuant to [§§ 63.2-1503](#) and [63.2-1505](#).

D. The Department shall adopt regulations governing the qualifications of advocates who for purposes of administering this subsection shall be deemed to be criminal justice employees. The regulations shall require that an advocate be at least twenty-one years of age and that the program director shall obtain with the approval of the court (i) a copy of his criminal history record or certification that no conviction data are maintained on him and (ii) a copy of information from the central registry maintained pursuant to [§ 63.2-1515](#) on any investigation of child abuse or neglect undertaken on him or certification that no such record is maintained on him. Advocates selected prior to the adoption of regulations governing qualifications shall meet the minimum requirements set forth in this article.

E. An advocate shall have no associations which create a conflict of interests or the appearance of such a conflict with his duties as an advocate. No advocate shall be assigned to a case of a child whose family has a professional or personal relationship with the advocate. Questions concerning conflicts of interests shall be determined in accordance with regulations adopted by the Department.

F. No applicant shall be assigned as an advocate until successful completion of a program of training required by regulations. The Department shall set standards for both basic and ongoing training.

§ 9.1-154. Immunity.

No staff of or volunteers participating in a program, whether or not compensated, shall be subject to personal liability while acting within the scope of their duties, except for gross negligence or intentional misconduct.

§ 9.1-155. Notice of hearings and proceedings.

The provision of [§ 16.1-264](#) regarding notice to parties shall apply to ensure that an advocate is notified of hearings and other proceedings concerning the case to which he is assigned.

§ 9.1-156. Inspection and copying of records by advocate; confidentiality of records.

A. Upon presentation by the advocate of the order of his appointment and upon specific court order, any state or local agency, department, authority, or institution, and any hospital, school, physician, or other health or mental health care provider shall permit the advocate to inspect and copy, without the consent of the child or his parents, any records relating to the child involved in the case. Upon the advocate presenting to the mental health provider the order of the advocate's appointment and, upon specific court order, in lieu of the advocate inspecting and copying any related records of the child involved, the mental health care provider shall be available within seventy-two hours to conduct for the advocate a review and an interpretation of the child's treatment records which are specifically related to the investigation.

B. An advocate shall not disclose the contents of any document or record to which he becomes privy, which is otherwise confidential pursuant to the provisions of this Code, except (i) upon order of a court of competent jurisdiction or (ii) if the advocate has been assigned pursuant to subsection C of [§ 9.1-153](#) to attend and participate in family partnership meetings as defined by the Department of Social Services or in meetings of family assessment and planning teams established pursuant to [§ 2.2-5208](#), multidisciplinary child sexual abuse response teams established pursuant to [§ 15.2-1627.5](#), individualized education program teams established pursuant to Article 2 ([§ 22.1-213](#) et seq.) of Chapter 13 of Title 22.1, or multidisciplinary teams established pursuant to [§§ 63.2-1503](#) and [63.2-1505](#), the advocate may verbally disclose any information contained in such document or record related to the child to which he is assigned at such meetings, provided that such information shall not be disclosed further.

§ 9.1-157. Cooperation of state and local entities.

All state and local departments, agencies, authorities, and institutions shall cooperate with the Department and with each local court-appointed special advocate program to facilitate its implementation of the Program.



Find a Commonwealth Resource

EXECUTIVE STAFF

Amy Floriano was appointed as director of the Department of Juvenile Justice by Gov. Glenn Youngkin in January, 2022. She went to Old Dominion University for her undergraduate studies and obtained her law degree from the University of Richmond. She began her legal experience by working with the defense on the Commonwealth vs. Lee Boyd Malvo case, before returning to Chesapeake to be closer to her family. Amy has spent most of her career working as a prosecutor at both Portsmouth and Chesapeake Commonwealth Attorney's offices. Amy's focus has been on addressing gang related crime and violence. She was a member of several multi-jurisdictional task forces and delivered numerous presentations on the presence of gangs in Hampton Roads. Amy was also the 2018 Virginia Gang Investigations Association state gang prosecutor of the year.



Dale Holden Jr. was appointed DJJ's Chief Deputy Director in May of 2022. He has worked for DJJ as a probation and parole officer for 25 years in the 1st District CSU in the City of Chesapeake. During his tenure at the CSU Dale worked in collaboration with various community partners to serve the citizens of his home city. Dale served on the Chesapeake Commission on Substance Abuse and two terms on the Chesapeake Family Assessment and Planning Team. In addition to his roles within the CSU, Dale provided implementation, training, consultation on EPICS, as well as participation in DJJ Certification Teams. A native of Virginia and graduate of Old Dominion University, Dale holds a bachelor of science degree in criminal justice. In addition to his years of state service, Dale also worked in a residential community as a residential supervisor and counselor. He later moved into the role of intensive in-home counselor, working with at-risk children and families, where he was first introduced to DJJ as a contracted service provider. Dale has experience providing services to court-involved youth, facilitating substance abuse and adolescent sexual offender groups alongside skilled and talented clinicians while collaborating with probation and parole officers across Hampton Roads.



Linda McWilliams is the Deputy Director of Community Programs. She has over 35 years of experience in the juvenile justice field. She began her career with the Department of Juvenile Justice where she provided supervision and case management services for youth and she held progressive positions of responsibility and management. She served as case manager supervisor, residential division administrative assistant and as superintendent for the Oak Ridge and Bon Air facilities for over 10 years. She most recently served as a Deputy Secretary for the Maryland Department of Juvenile Services for over seven years where she had oversight of 13 residential facilities and 32 court service offices. Ms. McWilliams has extensive knowledge and experience in policy, program, and standards development and implementation. She has served as an elected member of the American Correctional Association delegate assembly for 15 years. She is a strong advocate for the

implementation of reforms that support positive changes in the lives of our youth. Ms. McWilliams holds a bachelor of science degree in psychology from Virginia Commonwealth University.



Joyce E. Holmon is the Deputy Director of Residential Services and has been an invested leader in the agency's transformation. Ms. Holmon has been employed by DJJ since 2004. During her tenure, she has held numerous titles as she ascended through the ranks of the department, including counselor supervisor, Assistant Superintendent for Programs, Superintendent Senior for Oak Ridge Juvenile Correctional Center and the Reception and Diagnostic Center, Regional Program Manager for the Southern Region, Residential Program Manager, and, in April of 2017, she assumed her current role after serving as Acting Deputy Director for one month. Prior to her tenure with DJJ, she served the North Carolina counties of Vance, Franklin, Warren and Granville (VFWG) in various capacities, including Therapeutic Home Supervisor, Case Manager, Therapeutic Mentor and Child Mental Health Clinic Screening Coordinator. In addition, she assisted in establishing a non-profit human service agency that provided HIV/AIDS case management as well as other supportive services for residents of VFWG counties. A Farmville, VA, native, Ms. Holmon earned a bachelor's degree in sociology with a

minor in criminal justice from Longwood College where she also became a member of the Alpha Kappa Alpha Sorority Inc. Ms. Holmon is a leader committed to excellence in public safety, as she believes in a youth's capacity to change and our ability to promote a healthier and safer community.



Ashaki McNeil is the Deputy Director of Reentry, Education and Intervention. Having led DJJ's reentry unit since 2011, she most recently served as Director of Reentry Services, spearheading the design and implementation of a workforce development program for youth. She brings more than 25 years of experience working in the criminal justice field. Ms. McNeil began her career as a correctional officer with the Virginia Department of Corrections. She first joined DJJ in 1997 as a juvenile correctional officer, leaving to work for the Virginia Department of Correctional Education as a substitute instructor and special projects coordinator. She subsequently went to the Governor's Office for Substance Abuse Prevention as the Kidsafe initiative coordinator. In 2005, she joined the Department of Criminal Justice Services as a grants coordinator to manage federal funds supporting juvenile justice delinquency prevention and intervention programs. Ms. McNeil returned to DJJ as the reentry program manager tasked with managing the development and implementation of a statewide reentry service delivery system that supports the effective transition of juvenile offenders from

commitment to parole. She also has experience working in community residential programs with at-risk females.

Nikla D. Jones is the Deputy Director of Administration and Finance. She joined DJJ in 2021 as the budget manager, providing oversight of the agency's \$230 million annual budget and directing agency appropriated resources to achieve efficiency in meeting strategic goals while serving the needs of youth. Her professional journey, which began as a correctional officer at Pamunkey Regional Jail, has included progressive roles across multiple agencies such as the Richmond Police Department and the federal Transportation Security Administration. Prior to joining DJJ, she served as the cross functional and strategic initiatives manager for the Virginia Department of Transportation's Budget and Funds Management Division, where she was responsible for leading strategic initiatives to ensure successful fund management of the agency's \$1 billion federal program. Other previous roles include assistant division administrator and budget team



lead for VDOT's Asset Management Division, budget and seized assets director for Virginia State Police and information technology budget manager for Virginia State University. Ms. Jones holds a bachelor's degree in criminal justice from Virginia Commonwealth University and a master's degree in public administration from Strayer University.



Michael Favale, Deputy Director of Policy, has been a member of DJJ's Policy Team since 2013, first as a legal specialist and then as a manager of the Human Rights Team. Working primarily with partners in Residential Operations, Human Resources, the Investigative Unit, and the Training Center, his job duties have varied from handling resident and employee grievances, to instructing staff on PREA and civil liability, to working with the Procedures Committee to ensure compliance with policy and the law. Before joining DJJ, Mr. Favale served seven years at the Virginia Attorney General's Office working on crime prevention programs and public safety legislation, spearheading initiatives to combat human trafficking and prescription drug abuse, as well as producing two anti-gang videos. Before coming to Virginia, he was a practicing attorney in New York, where he began his career as a prosecutor in a local district attorney's office. He also practiced as a criminal defense attorney before moving. Mike received his bachelor's degree from Cornell University and J.D. from Cornell Law School.



Andrea McMahon is the Deputy Director of Placement and Program Implementation. In her previous role as the agency's Director of Quality Assurance, she led, managed and ensured cross divisional quality assurance and fidelity of agency and statewide continuum of community-based and residential services, including the implementation of a validated, data-driven evaluation tool known as the Standardized Program Evaluation Protocol (SPEP™). Ms. McMahon has more than 28 years of experience working in the juvenile justice field. Her prior experience includes work within the community and residential divisions of DJJ. She began her career as a probation officer within the Roanoke City Court Service Unit and also had the opportunity to work as a probation and parole officer at the Chesterfield CSU for approximately 10 years. Subsequently, she transitioned to DJJ's central office, where she gained experience in a variety of capacities to include the transition services specialist, detention specialist, and the interstate compact specialist. Under the residential division, she had the opportunity to work on system reform within the future planning group as the

administrative services program specialist and was instrumental in creating the CAP unit. Andrea holds an undergraduate degree in psychology and criminal justice and a master's degree in criminal justice from Radford University.



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(/documents/about-djj/DJJ-Org-Chart-020723.pdf) Organization Chart (/documents/about-djj/DJJ-Org-

Chart-020723.pdf)



(<https://www.datapoint.apa.virginia.gov/dashboard.php>) Expenditures

(<https://www.datapoint.apa.virginia.gov/dashboard.php>)

Virginia Department of Juvenile Justice's Historical Timeline

The information below presents a history by CY of the juvenile justice system in Virginia. See the Virginia Department of Juvenile Justice's (DJJ's) current Data Resource Guide (DRG) for an abbreviated timeline.

1891: The Prison Association of Virginia opened the first privately operated, state-subsidized juvenile facility as the Laurel Industrial School for White Boys in Laurel, Virginia (Henrico County).

1897: The Virginia Manual Labor School was established by John Henry Smyth in Hanover County.

1908: The General Assembly created the State Board of Charities and Corrections to administer a penitentiary and several adult penal farms and to oversee the industrial schools.

The State Board of Charities and Corrections, in conjunction with Richmond Associated Charities, purchased a farm in Bon Air, Virginia (Chesterfield County) and created the Virginia Home and Industrial School for Girls.

1912: The City of Richmond established the first juvenile court in Virginia by dedicating a section of its police court to juveniles.

1914: The General Assembly enacted legislation allowing courts of record, police, and justice courts to hear cases concerning juveniles and judge them delinquent, neglected, or dependent.

1915: Janie Porter Barrett and the Virginia State Federation of Colored Women's Clubs opened the Industrial Home School for Wayward Colored Girls at Peake in Hanover County.

1920: Due to financial hardship, control, and direction issues, oversight of the three industrial schools transferred to the Commonwealth of Virginia, and facility names changed to the following: the Laurel Industrial School became the Virginia Industrial School for Boys, the Industrial Home School for Wayward Colored Girls at Peake became the Virginia Industrial School for Colored Girls, and the Virginia Manual Labor School became the Virginia Manual Labor School for Colored Boys.

1922: The General Assembly required every city and county in Virginia to establish a juvenile court.

The Virginia Industrial School for Boys moved to Beaumont, Virginia (Powhatan County).

The General Assembly merged the State Board of Charities and Corrections with the newly created State Board of Public Welfare. A Children's Bureau was formed to oversee juveniles committed to state care.

1927: The Department of Public Welfare was created to administer the adult prison system and the industrial schools.

1942: The General Assembly created VADOC and the Parole Board as independent agencies, and oversight of the industrial schools was given to the State Board of Public Welfare.

1948: VADOC and the Parole Board were merged into the Department of Welfare and Institutions.

1950: The Virginia Industrial School for Colored Girls was renamed the Janie Porter Barrett Industrial School.

1951: The Bureau of Juvenile Probation and Detention was created within the Department of Welfare and Institutions with its core functions dedicated to the juvenile probation system.

1952: The Division of Youth Services was formed within the Department of Welfare and Institutions.

Due to lack of control and protection, the state purchased the private Chesterfield Study Home for White Boys and operated it through the Department of Welfare and Institutions.

1954: The Mobile Psychiatric Clinic was created and originally directed by the Medical College of Virginia and then by the Department of Mental Hygiene and Hospitals. The clinic traveled to facilities holding juveniles committed to state care for the purpose of providing diagnosis, treatment, and staff instruction.

1964: Natural Bridge Youth Learning Center opened in Natural Bridge, Virginia (Rockbridge County).

1965: Natural Bridge Youth Learning Center became the first Virginia juvenile facility to be racially integrated.

The Janie Porter Barrett Industrial School was racially integrated.

1966: Administration of the Mobile Psychiatric Clinic transferred to the Division of Youth Services within the Department of Welfare and Institutions.

1969: RDC opened in Bon Air, Virginia (Chesterfield County), resulting in the closure of the Mobile Psychiatric Clinic.

1972: The General Assembly established 31 Juvenile and Domestic Relations (J&DR) court districts with full-time judges who were appointed by the General Assembly to six-year terms.

The General Assembly enacted legislation creating state-operated probation services to be administered by the Division of Youth Services under the Department of Welfare and Institutions. Localities were given the option to remain locally operated or allow the state to assume control.

1974: The Department of Welfare and Institutions was separated into the Department of Welfare, later to be the Virginia Department of Social Services (DSS) and VADOC. Three major responsibilities were given to VADOC: youth, adult services, and probation and parole services.

1982: Oak Ridge Youth Learning Center opened in Bon Air, Virginia (Chesterfield County), serving mentally disabled, developmentally delayed, and emotionally disturbed youth.

1990: The Department of Youth and Family Services began operations as a separate agency from VADOC, along with a State Board of Youth and Family Services.

1991: The Rehabilitative School Authority and the Board of the Rehabilitative School Authority were renamed the Department of Correctional Education and the Board of Correctional Education, respectively, providing a broad array of educational programs to Virginia's state-responsible adult and juvenile populations.

1996: The Department of Youth and Family Services and the Board of Youth and Family Services were renamed DJJ and the Board of Juvenile Justice, respectively. DJJ's learning centers were renamed juvenile correctional centers (JCCs).

1999: Culpeper JCC opened in Mitchells, Virginia (Culpeper County), designed for maximum security to house older, higher-risk males.

2000: The criteria for indeterminate commitments were amended from being adjudicated delinquent for two Class 1 misdemeanors to four Class 1 misdemeanors that were not part of a common act, transaction, or scheme.

2003: DJJ implemented the After-Hours Video Intake Program.

2005: Barrett JCC was closed and mothballed.

2010: Natural Bridge JCC was closed and mothballed.

2012: A portion of the former Department of Correctional Education merged with DJJ and became DJJ's Division of Education.

2013: Hanover JCC was closed and repurposed as the VPSTC.

The program serving youth with mental disabilities, developmental delays, and emotional disturbances at Oak Ridge JCC was relocated to an autonomous section of Beaumont JCC, RDC was moved to the former Oak Ridge JCC building, and the former RDC building was repurposed as an administrative building.

2014: Hampton Place and Abraxas House, DJJ's two halfway houses, were closed. (The facilities were closed to youth in December 2013.)

Culpeper JCC was closed and transferred to VADOC.

DJJ partnered with Blue Ridge, Chesapeake, Rappahannock, and Virginia Beach JDCs to establish CPPs as alternative placements for youth in direct care.

2015: RDC was closed and mothballed.

Youth in the Oak Ridge Program were gradually integrated with the general population at Beaumont JCC for educational services and other programming while retaining specialized housing.

The Board of Juvenile Justice revised the LOS Guidelines.

CTM was piloted.

DJJ partnered with Merrimac and Shenandoah Valley JDCs to establish CPPs.

2016: DJJ partnered with Chesterfield and Lynchburg JDCs to establish CPPs.

DJJ contracted with two experienced service coordination agencies, AMI and EBA, to develop a state-wide continuum of evidence-based services and additional alternatives to placement in secure facilities.

2017: Beaumont JCC was closed and mothballed.

DJJ partnered with Prince William JDC to establish a CPP.

CTM was fully implemented at Bon Air JCC.

RSCs implemented systems for managing centralized referrals, service coordination, billing, and reporting.

2019: DJJ partnered with Northern Virginia JDC to establish a CPP for females.

2020: Governor Northam declared a state of emergency due to the COVID-19 pandemic on March 12.

2021: Chesapeake CPP closed.

2022: Lynchburg and Northern Virginia CPPs closed.

DJJ began creating and implementing pre-court services.

Family Orientation Packet

Revised: May 2022



Bon Air JCC

1900 Chatsworth Avenue
Bon Air, Virginia 23235
804-323-2800
www.djj.virginia.gov

"We believe in the capacity to change to promote a healthier and safer community."

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Mission Statement

The Virginia Department of Juvenile Justice protects the public by preparing court-involved youth to be successful citizens.

Vision Statement

The Virginia Department of Juvenile Justice (DJJ) is committed to excellence in public safety by providing effective interventions that improve the lives of youth, strengthening both families and communities within the Commonwealth. We strive to achieve this excellence by meeting the needs of our youth and staff in the following areas:

- **Safety:** Youth and staff need to feel safe in their environment and need a sense of physical and emotional well-being.
- **Connection:** Youth and staff need to feel connected to supportive and caring adults, whether they are family, staff, or coworkers.
- **Purpose:** Youth and staff need to have goals to strive toward, skills to hone, and a sense that they have a valuable role to play in the lives of people and the community around them.
- **Fairness:** Youth need to perceive their environment and interactions as fair and transparent. They need to be held accountable in a manner proportionate to their offense and offense history and similar to other youth in their situation. Staff need to feel that they are treated fairly, compensated adequately, and supported in their efforts to meet the expectations of the department.



Our Facility

Bon Air currently has 17 units that can house approximately 12-16 residents each at any given time. There are security staff members, also called **Resident Specialists** or **RSs**, in the housing units at all times. Other staff members within each unit include **counselors** and **BSU clinicians (therapists)**. The units will also typically have a **Recreation Staff (Rec. Staff)** member. Each unit is managed by a **Community Coordinator (CC)**, and groups of units (usually 3-4) are overseen by the **Community Manager (CM)**. These staff members will also be referred to as the **Unit Staff Team**.

Your child's **Parole/Probation Officer (PO)** and **counselor** will always be the initial contact for any questions you may have during your child's commitment. If the PO or counselor cannot answer a question or accomplish what you need, they will be able connect you with someone who can.

Community Treatment Model (CTM)

Community Treatment Model (CTM) is the behavioral program used at Bon Air. Its purpose is to provide your child with a safe and rehabilitative environment that will foster beneficial, personal life changes. This model uses a relationship-oriented approach that will allow your child to gain the necessary skills to identify and resolve a variety of difficulties. Your child will participate in four therapeutic phases, each consisting of certain tasks and privileges.

Education

If your child has not graduated high school, they will be attending Yvonne B. Miller High School on the Bon Air campus, which is recognized as a public school division by the Virginia Department of Education. Both middle and high school students will attend Yvonne B. Miller High School. There are many ways for your child to complete their high school studies, including standard, advanced, and applied

studies diploma options or GED certificate. The Student Academic Support Service team will work with your child to decide the right option for them based on their educational history, length of stay, and career goals. If your child has an IEP or 504 plan, they are allowed a number of credit accommodation options to earn the verified credits required for a standard diploma. English Language Services, Gifted Services, and Transition services can also be provided. We also offer Advanced Placement courses and College Entrance Exams. The Division of Education (DOE) also provides opportunities for your child if they have already received a high school diploma or alternate. Through various post-secondary programs, your child may be able to obtain certificates, industry certifications, college credits, and/or participate in enrichment opportunities. All students across high school and post-secondary programs participate in our Positive Behavioral Interventions and Supports (PBIS) program. It provides behavioral expectations created by staff and students to be used across the education settings. Students can earn points for meeting these expectations, and use these points to purchase items from a weekly menu, and receive these items in their units. For more information about education, please see page 26 in the Resident Handbook.

Family / Natural Support Involvement

Families and other natural supports are a major cornerstone for a resident's successful reentry. You are valued and appreciated as stakeholders in your child's future. Your involvement and support is one of the most powerful tools we have in making a difference in your child's life; therefore, our intervention efforts within the facility are far more likely to be successful if you are a part of them. As such, family engagement will be a significant part of daily CTM culture, and we look forward to partnering with you to ensure your child's successful reentry. The following are just a few ways you can get involved.

Treatment Team

Treatment Team will be held a minimum of once per month for each resident to assess individual progress and case management needs. Treatment Team will also make initial recommendations for release. Members of the treatment team include your child's Unit Staff Team, your child's Parole/Probation Officer, and, most importantly, you. **It is crucial for you to attend these meetings to participate in critical discussions and decisions about your child** (e.g. prescribed treatments and medications, Phase advancement, off-campus trips, furloughs, etc.). If you are unable to attend in person, you may contact your child's counselor to attend by phone.



Personal Action Plan (PAP)

The Personal Action Plan is an individualized outline of short and long-term goals that each resident develops with the help of the counselor and other unit staff team members. Your child will be asked to consider past, present, and future circumstances that may affect the achievement of these goals. The PAP will be updated throughout your child's commitment, allowing for personal growth. However, your child should not stop making progress in the PAP goals and action steps when released from direct care. The Reentry Advocate will address the PAP upon release and again periodically thereafter. It is imperative that you also assist your child in continuing to strive toward the goals identified in the PAP. This will help ensure that your child's reentry into the community is a success.



Family Engagement Committee

If you are interested in playing a more active role, we encourage you to join the Family Engagement Committee. This group meets monthly and consists of select residents, facility staff, and, most importantly, residents' family members and other natural supports. The goal of the Family Engagement

Committee is to provide a voice for families / natural supports to bridge the gap between what they know about the commitment process and what they feel they need to know. As a part of this group, you will share your concerns, help find ways to make the process more transparent, and work to improve overall family/natural support engagement.

If you would like to find out more about the Family Engagement Committee, email DJJ4families@djj.virginia.gov OR contact one of the following representatives for more details:

Diane Leiter—Family Engagement Coordinator
Phone: 804-314-5242
Email: diane.leiter@djj.virginia.gov

Tamla Brookins—Parent Advocate
Phone: 804-916-0146
Email: tamla.brookins@djj.virginia.gov



Phone Calls

We encourage you to be available for regular phone calls from your child. Although residents may not receive personal incoming calls, all residents will be allowed to make outgoing calls each week. There are two ways residents may make phone calls. Residents may schedule time with their counselor to make supervised phone calls using the “black phone” in the counselor’s office. There is no cost to use these phones. Use of the “blue phones” (described below) is based on your child’s phase privileges. It is important to remember that these privileges (as with all privileges) can be revoked based on resident and/or unit behavior. However, we hope you will encourage your child to achieve higher phases and improved behavior, so you may have more frequent contact. More details on phone use and related phase privileges can be found on pages 30-31 of the Resident Handbook.

All DJJ facilities use Global Tel*Link (GTL) phone services. Residents often refer to the GTL phones as the “blue phone.” Residents may add up to ten (10) numbers to their Approved Call List. These numbers must be approved by your child’s counselor and then the numbers will be sent to GTL. **Once numbers are approved, each person listed must call 877-650-4249 and select option 4 to set up an Advance Pay Account. A minimum of \$25 is required to start the account.** All call types (collect and prepaid) and rate types (local, intrastate, and out of state) cost approximately 4 cents (\$0.0409) per minute. The above phone number can also be used to reload the account as necessary.

If residents need to add and/or remove numbers on their Approved Call List, they should speak with their counselor.

For more information about GTL services, accounts, and payments, please visit their website at www.gtl.net



Mail

Your child will be allowed to send and receive mail while in our facility. Please use the address on the front of this packet when sending mail to your child. All incoming mail will be monitored and any inappropriate content or contraband will be confiscated and returned to sender. Contraband can include (but is not limited to) any weapon, electronic devices (including phones), any drug, gang-related or vulgar images/ paraphernalia, and any other items that may be considered a threat to safety and security. You may not send cash or checks to your child in the mail. **If you would like to send money, you must do so through a money order (made out to your child), which can be obtained at Western Union, any Post Office, and many grocery stores.**

Visitation

It is Bon Air Juvenile Correctional Center's policy to enable and encourage all residents to have visits from family members and other natural supports. Through visitations, your child is able to continue and build relationships that will be beneficial for reentry into the community. For more information, please read the Visitation Reference Guide below.

Visitation Reference Guide

To assure the safety of residents and visitors, the facility visitation guidelines must be strictly followed. Failure to do so may result in the suspension of visitation privileges.

Please refer to the Visitation Rules and Privileges packet for the full visitation policy—**this is only a quick reference guide**. You are expected to abide by all guidelines provided in the full packet. This information may also be found on DJJ's website under the Residential Programs tab.

Visitation Times

Sunday: 8:30 a.m. – 11:00 a.m., 1:00 p.m. – 3:30 p.m.*

Wednesday: 5:00 p.m. – 7:30 p.m.

*Visitors may attend both visitation sessions on Sundays but may **NOT** stay on campus between 11:00 a.m. and 1:00 p.m.



Registration

Only approved visitors will be allowed to attend. The visitation list is developed during a resident's initial intake. If you need to update this list, contact your child's counselor.

Visitors must be registered at least 30 minutes prior to the end of each session. No one arriving after that time will be allowed to visit.

Visitation hours may be shortened on visiting day due to lack of available space, number of visitors, or staff limitations due to emergencies occurring at the facility. Every effort will be made to allow each family a minimum of one hour to visit with their child. In many cases, you will be able to stay throughout the duration of the visitation window.

Admission Requirements

All visitors are searched by a JCC staff member of the same gender identity. If, after the initial search, it is believed that an additional search is necessary, it may be requested with the approval of the shift commander, administrator on call, or superintendent.

Visitors refusing to be searched as requested will be denied entry for the day, and approval for future visits may be reviewed by the superintendent.

All visitors must adhere to the dress code provided in the Visitation Rules and Privileges packet—if a visitor does not meet the dress standards, he or she will be offered a smock. Visitors refusing to wear the smock will be denied entry.

Directions

From the West:

Follow I-64 E. Take exit 186 to I-195 S / Laburnum Avenue toward Powhite Parkway/VA-76. Continue on I-195 S approximately two (2) miles and merge onto Powhite Parkway/VA-76 (\$0.70). In approximately five (5) miles, take the exit for Midlothian Turnpike / US-60 W (\$0.25).

From Midlothian Turnpike (Rt. 60), go West through four (4) traffic lights and turn right at the fifth (5th) light onto Robious Road (watch for Car Pool Car Wash on the right and/or a Four Points by Sheraton on the left. These will be near your turn onto Robious). Turn right at the first (1st) light onto Old Bon Air Road. Continue approximately one (1) mile and turn right at the blue state sign labeled “Bon Air Juvenile Correctional Center.”



From the Southwest:

Follow Route 360 E past Brandermill to VA-288. Take VA-288 N to Powhite Parkway/VA-76. Continue on Powhite Parkway (\$0.75), and after approximately five (5) miles, exit at Midlothian Turnpike / US-60 W. Then follow the directions in **bold** above.

From the South:

Follow I-95 N to exit 67B for VA-150 N/Chippendale Parkway toward US-60/US-360 W. Continue on VA-150 for approximately eight (8) miles and take the exit for Midlothian Turnpike/US-60 W toward Midlothian. From this point, follow the directions in **bold** above.

From the East:

Follow I-64 W (left) and take exit 190 for I-95 S toward Petersburg. In approximately one (1) mile, take exit 74A for VA-195/Downtown Expressway toward Powhite Parkway. Follow signs for Powhite Parkway/VA-150/US-60/VA-288 then merge to stay on VA-76 S (Powhite Parkway). After going through the toll plaza (\$0.70), follow Powhite Parkway to the exit for Midlothian Turnpike/US-60 W (\$0.25). Then follow the directions in **bold** above.

From the North:

Follow I-95 S to exit 79 for I-195 S /I-64 W toward Powhite Parkway/VA-76. Continue following signs for I-195 S/Powhite Parkway/US-60/US-360 W. Continue on I-195 and merge onto Powhite Parkway/VA-76 S (\$0.70). Continue on VA-76 S to the exit for Midlothian Turnpike/US-60 W (\$0.25). From this Point, follow the directions in **bold** above.

For GPS, Phone, or Car Navigation Systems:

If you are using a navigation device, input the address located on the cover page. Your system may register our location as North Chesterfield but will still provide correct directions. Many GPS devices also offer toll-free options if you would like to avoid tolls. Please be aware, these routes often take longer than those with tolls.

Need assistance with transportation? Contact your child’s PO for information on our free transportation service.

In Case of Emergency

Notifications: If there is a local disaster (e.g., weather event), your child’s counselor will contact you as soon as possible to notify you of your child’s status. If the event leads to evacuation, you will be notified of the temporary housing location, to include contact information, upon our arrival at the new facility. You will be provided updates as they are available, and you will be notified again when residents are returned to Bon Air JCC.

You may also check the DJJ website (www.djj.virginia.gov) for any notifications and updates regarding emergencies at the facility. We will update information there as we are able.

Emergency Contact: You are encouraged to share emergency contact information with your child's counselor. This may include the phone number and address of a relative/friend with whom you might stay if there is an event that forces you to leave your home.

During Visitation: If there is an emergency while you are at the facility for visitation or other family event, please follow the direct instruction of security staff. You will be directed to a safe location to shelter-in-place until the event subsides and all residents, personnel, and visitors can be accounted for. We do not advise anyone to attempt leaving campus during an emergency unless directly instructed to do so.

Additional Information

Additional information can be found on DJJ's website (the web address is located on the cover page). Many commonly used acronyms and their explanations can be found in the Data Resource Guide located in the "DJJ Resources" section at the bottom right of the DJJ homepage. You will also find the Resident Handbook under the "For Our Families" section at the bottom left of the homepage.


In addition to this orientation document, you should also receive a letter with more information about your child's commitment and the following additional resources: Visitation Rules and Privileges, disAbility Law Center information, two PREA brochures (How to Report Sexual Abuse, Ombuds Program), and the Resident Handbook. *If you do not receive all of these documents upon your child's commitment, please contact your child's counselor.*

While many topics are covered in the Resident Handbook, here are items that may be important to you:

- CTM information and Phase Systems: pp. 2-9
- Appearance Standards: pp. 16-19
- Behavior Interventions and Discipline Reports: pp. 20-23
- Medical and Mental Health Services: pp. 24-25
- Education Services: pp. 26
- Prison Rape Elimination Act (PREA): pp. 33-41

Frequently Asked Questions

Court Process:

- 1. My child has been charged with a crime. What happens in court?** A youth will typically have at least two hearings after being charged with a crime. Those hearings are a pre-trial or detention hearing and an adjudication hearing. If the youth is found guilty/delinquent, there will also be a disposition hearing. A pre-trial hearing is held in order to schedule the youth's adjudication hearing and detention hearings are held to determine whether the youth will be detained until the adjudication hearing. The adjudication hearing is held to determine the guilt or innocence of the youth on the charges that have been filed. If the youth is found guilty/delinquent, the disposition hearing is held to determine the penalty or sentence. A judge will sometimes hold two or more of these hearings right after one another on the same day. 
- 2. Who do I go to with questions while my child's case is pending?** The best person to talk to is your child's attorney. The attorney will know what is going on in your child's case and may be able to help you make a plan to support your child. The Court Service Unit (CSU) in the district of the court hearing your child's case can also provide some information on the process prior to court. The intake officer, who works in the CSU, will likely be your first point of contact.
- 3. Am I able to speak up in court on my child's behalf?** A judge may allow parents to speak up in court, but it might be best to speak to your child's attorney first about what you might like to say. However, you must remember that the attorney works for your child. Attorneys must always represent their clients' best interests, which may conflict with your statements to the court, so they may recommend against it. If you have questions after the hearing, ask your child's attorney or probation officer, or call the CSU if a PO has not yet been assigned.
- 4. Will these charges be on my child's record as an adult?** It depends. Juvenile records have special confidentiality rules attached to them, in order to protect your child's future opportunities. In many cases, these records will be expunged (destroyed) after a certain amount of time. In addition, the court may expunge certain charges if the youth was found innocent/not guilty or the proceeding was otherwise dismissed, and the youth files a motion with the court to destroy the records. However, state law requires that if a child 14 years of age or older is adjudicated delinquent for a felony or if a child is convicted in circuit (adult) court, the court records regarding that adjudication or conviction will be open to the public (unless the judge closes certain records to protect victims or witnesses) and they are not expunged. Also, certain information may be made public for youth adjudicated delinquent of other felony offenses, regardless of their age. In addition, law enforcement may be able to access your child's record for any offense, under certain circumstances. Please ask your child's attorney for guidance on what applies to your child. You can also visit njdc.info to review the Collateral Consequences (CC) guide for Virginia.

If Committed:

- 5. What happens if my child is committed to the Department of Juvenile Justice (DJJ)?** After the disposition hearing, your child will be taken to the local detention home or jail, depending on their age. A commitment packet, which includes basic information about the youth, is completed by the probation officer and forwarded to the Central Admission and Placement (CAP) Unit, who will assist in evaluating your child to determine their treatment needs. The probation officer will reach out to you about scheduling an Initial Family Meeting to orient you to the commitment process and answer any questions you may have. An additional meeting (referred to as the Initial Staffing Team Meeting) will be held soon after commitment to determine, based on your child's treatment needs, where your child will be placed, what services they will receive, and, if they received an indeterminate commitment, how long they will likely remain committed. Parents are highly encouraged to participate in this meeting. However, if your child is 18 years of age or older and they do not consent to sharing confidential information with you, you may not be allowed to participate in portions of this meeting where confidential information will be discussed.
- 6. How long is my child going to be committed?** There are two kinds of commitments: indeterminate and determinate.




- a. **Indeterminate:** If a youth is committed to DJJ for an indeterminate period of time, then they will have their time calculated by the Central Admission and Placement (CAP) Unit. The initial calculation will be based on the youth's overall risk to re-offend and their most serious charges. Additional factors, including the youth's behavior while in direct care, may affect the amount of time that they remain committed. Except for youth committed for murder or manslaughter, the maximum amount will be no longer than 36 months or until the youth's 21st birthday, whichever comes first. Youth indeterminately committed for murder or manslaughter may be held until their 21st birthday.
- b. **Determinate:** If a youth is committed to DJJ for a determinate period of time, then the Judge orders a specific period of commitment. Pursuant to § 16.1-285.1, the release date can be no later than your child's 21st birthday or seven years from the date of commitment. However, DJJ may petition the court for a review hearing periodically, and must petition the court every year beginning with the second year after commitment. At a review hearing, the judge decides whether an earlier release is appropriate for the youth.


Note that if your child was sentenced in circuit court, they may have a blended sentence—serving time with both DJJ and the Department of Corrections (DOC).

- 7. When can I see my child?** You will be allowed to see your child according to the visitation policy of the facility in which they are placed. During the Initial Family Meeting, the probation/parole officer will work with you to develop a visitation plan. In addition, within 24 hours of your child's admission to the initial intake facility, their counselor will contact you with information on the visitation policy. If your

child has been placed at the Juvenile Correctional Center (JCC), the visitation procedure and rules are also available online at www.djj.virginia.gov, along with information about transportation assistance.

8. **Who notifies the family about movement to a facility?** Within 24 hours of your child's transport to a facility, a counselor will contact you to provide contact information and answer other questions, as applicable and appropriate. You may also receive a notification from the Court Service Unit of the transfer. 
9. **Can my child be put on medication without my knowledge?** Yes. While your child is in DJJ custody, state law requires that the legal authority to consent to medical treatment is temporarily transferred to DJJ. However, parents are often able to stay informed and involved in decisions by participating in treatment team meetings, which you will be invited to each month if your child is under age 18. After age 18, parents can be informed if the youth has provided approval to release the information. Note that state and/or federal law gives your child, regardless of age, the ability to keep certain mental health, substance abuse, family planning, and contagious or infectious disease information confidential, even from a parent.
10. **My child will be over 18 when they are released. Do they have to return to my home?** No. If your child has turned 18 years of age or will become 18 while they are committed, you do not have to allow them to return to your home. However, we encourage families to participate in treatment and rehabilitative efforts for the youth during their commitment. We provide numerous services in the community when the youth is released in order to assist with the transition home. If a parent declines to have a youth return home, DJJ will help the youth find housing and they may be placed in a halfway home, independent living program, or homeless shelter.

If Placed on Probation or Parole:

11. **My child is on probation/parole; do I need to meet with their Probation/Parole Officer (PO)?** Yes. Typically, if the youth resides in the home or is under the age of 18, the parent's participation is required by court order. In addition, probation/parole officers work very hard to involve the family in the development of the supervision plan because parents/legal guardians are a very important part of the probation/parole and rehabilitation process. 

Please note that if your child is placed on adult probation with the Department of Corrections (DOC), you will need to contact DOC with any questions regarding supervision.

12. **Why do you have to come to my house?** Home visits are an important part of probation/parole. Your child's PO has two main goals when they come to your house: to ensure that your child is actually living at the home, and to provide assistance in making your home a safe, structured, and supportive place for your child to make progress. The PO must also be aware of any barriers to the youth's progress in the community.

- 13. Do I have to participate in counseling and why?** A judge may require you to participate in counseling and/or other services. Youth who are placed on probation or parole will often be provided with ongoing treatment to help them succeed. Your participation in the counseling services will help your child. Your participation in counseling is very important for long-term sustainability. Parents also play a vital role in helping counselors learn how to better assist their client.
- 14. Why can't my child drive anymore (if they had a license)?** As a condition of being placed on probation or parole, or as a result of their specific offense, your child's license may be suspended. A youth can request a restricted license at the disposition hearing or the assigned PO can ask the presiding Judge to reinstate the license or grant a restricted license. You can also learn how they can apply for a restricted license by visiting www.dmv.virginia.gov and clicking on "License Reinstatement."
- 15. If I feel that my child's PO is not advocating for my child, who do I go to?** If you feel that the youth's PO is not adequately serving your child, then you should contact the CSU and request a meeting with the PO's supervisor to discuss your concerns. Please remember that your child's PO is not only concerned with your child's success, but also with the community's safety and the PO may be making decisions with both interests in mind.

Additional Questions?

If you still have questions, please feel free to contact your child's PO, counselor, or another representative at the Bon Air facility. Be sure to read this document thoroughly as some of your answers may be found in other sections. Refer to the "Additional Information" section on page six for a list of other resources.

Important Acronyms and Definitions

Alternative Placements—Direct care residential facilities, other than JCCs, where juveniles are contractually housed for the purpose of specialized treatment programming or transitions from the JCC system back to the community.

BADGE: Balanced Approach Data Gathering Environment—an electronic case management and data system containing the case record on each juvenile beginning at the initial contact with the court and continuing until release from supervision.

Blended Sentence— Circuit Court judges may sentence juveniles transferred or certified to their courts to juvenile or adult sentences, including adult prison time, jail time, or both. When a juvenile receives a blended sentence, the court orders the juvenile to serve the beginning of his or her sentence with DJJ and a later portion in an adult correctional facility. On release from DOC, the youth is typically placed on state probation.

BSU: Behavioral Services Unit—provides intake and exit risk assessment evaluations and treatment services such as mental health, aggression management, sex offender treatment, and substance abuse treatment.

CAP— Central Admission and Placement: responsible for receipt and review of all commitment packets as well as the intake, orientation, and evaluation phase of a resident's direct care admission.

CC: Community Coordinator— supervises the counselors and resident specialist staff in a designated unit. Contact person for families and POs.

CCRC: Central Classification and Review Committee— makes case management decisions involving residents' movement within the residential system (transfers to other facilities, etc.), recommendations for services, requests for off-campus trips, and recommendations for release of major offenders and special decision cases.

CEST— Classification and Evaluation Services Team: The CAP staff, BSU) evaluator, community coordinator, DOE evaluator, and counselor) and supervising Parole Officer who evaluate and interact with the juvenile and who make recommendations under case management procedures concerning the juvenile's treatment, length of stay (LOS), classification, and placement.

CHINS— Child in Need of Services: a child whose behavior, conduct, or condition presents or results in a serious threat to (i) the wellbeing and physical safety of that child or, (ii) if under the age of 14, the well-being and physical safety of another person.

CM: Community Manager— oversees a group of units referred to as a cluster. Direct supervisor of CCs.

Counselor— helps residents work toward reentry.

CPP: Community Placement Program— allows residents to be closer to their home communities while addressing treatment needs, risk factors, and competencies in education, job readiness, life skills, and social skills.

CRCP: Comprehensive Reentry Case Plan—outlines direct care, parole goals, and action steps developed for each resident based on the YASI.

CSU: Court Services Unit— responsible for intake, investigations, domestic relations, custody investigations, and probation/parole services.

CTM: Community Treatment Model— a unit-centric behavior management program that helps residents achieve positive behavior in a constructive, safe manner in accordance with program expectations, treatment goals, resident and staff safety, and the residents' CRCP.

Detention Reentry— The Detention Re-Entry Program shall transition residents from a JCC to a local detention facility thirty (30) to 120 days prior to the residents' scheduled release date from direct care. The goal of the program is to establish connections with communities and families.

Determinate Commitment— Commitment of a juvenile 14 years of age or older as a serious offender. The court specifies the length of stay, has continuing jurisdiction, and must conduct periodic reviews if the juvenile remains in direct care for longer than 24 months. The court may also order a period of determinate or indeterminate parole supervision. The total period of commitment and probation cannot exceed seven years or the juvenile's twenty-first birthday, whichever comes first.

DOE: Division of Education— DOE's goal is to provide residents with quality instruction to improve performance, become college/career ready, and prepare to reenter the community as productive citizens

DJJ: Department of Juvenile Justice

DSP: Direct Service Provider— “sub-contractors,” working through the RSCs to ensure that youth and families have access to a wide array of services, delivered in close geographical proximity to where the youth and families reside, based on their needs as directed by individual service plans.

ERD: Early Release Date— the projected date at which an indeterminately committed juvenile will first be eligible for release consideration as calculated by length of stay guidelines.

FFT: Functional Family Therapy— family-based program that focuses on delinquency, treating maladaptive and acting-out behaviors, and identifying obtainable changes.

ICRC: Institutional Classification and Review Committee— makes decisions about residents' treatment and CTM progress, including phase advancement. They also refer residents to CCRC for larger case management decisions such as off-campus trips and release.

Indeterminate Commitment— the juvenile's length of stay (LOS) range is calculated based on statutory requirements and the LOS guidelines. The commitment may not exceed 36 continuous months, except in cases of murder or manslaughter, or extend past the juvenile's 21st birthday.

IEP: Individualized Education Plan— a written statement designed to meet a student's unique needs, and must be in effect:

- At the beginning of each school year;
- Before special education and related services are provided for a student; and
- As soon as possible after a parent consents to the IEP.

The IEP is a very important document for students with disabilities and for those who are involved in educating them. The IEP should provide information specific to the student and improve teaching, learning and results. Each student's IEP describes, among other things, the educational program that has been designed to meet their unique needs. State and federal regulations provide information on what must be included in the IEP, but do not specify any required form. There are federal and state requirements for the IEP team and content.

IWP: Institutional Work Program— residents may apply for and attain jobs within the facility.

JCC: Juvenile Correctional Center— secure residential facilities that house post-dispositional juveniles who have been committed to DJJ.

JDC: Juvenile Detention Center —: a local or regional secure residential facility that has construction fixtures designed to prevent escape and to restrict the movement and activities of juveniles held in lawful custody. JDCs may house Pre-D and Post-D juveniles.

LOS: Length of Stay— the length of time a juvenile remains in a facility or in direct care. Factors that affect a juvenile's length of stay include the seriousness of the offense, the juvenile's history of offense behavior, the juvenile's behavior while in direct care, and the juvenile's progress toward completing treatment goals.

LRD: Late Release Date— the date after which an indeterminately committed juvenile will not be kept in direct care except when the juvenile has not completed a mandatory treatment need or has been found guilty through an administrative due process hearing of an institutional infraction within a specified time.

MHG: Mutual Help Groups— residents and staff come together to discuss issues that help the group develop and mature, are important to the group, and will help the residents make better decisions in the future.

MHSTP: Mental Health Services Transition Plan— developed to help ensure the continuity of services upon release. It is required for all individuals in our care who have a psychological disorder and/or are taking medications for a psychological disorder. Recommended services could include psychiatric medication management, substance abuse relapse, mentor/life skills coach, individual therapy, and sex offender relapse prevention services.

MST: Multi-Systemic Therapy— Family-based treatment that addresses behaviors driven primarily by peer, school, or community factors. Focus is on empowering caregivers.

PA: Personal Advocate— a positive, caring role model and “go-to” person assigned to each resident within his or her housing unit. PAs are typically Resident Specialists; however, counselors, BSU clinicians, and CCs may occasionally serve as PAs.

PAP: Personal Action Plan— resident-created plan for reentry to include personal goals and any strengths, weaknesses, or needs for support a resident identifies as significant in achieving those goals. Residents will review this plan with their PAs at least every 90 days and update it as necessary.

PBIS: Positive Behavioral Interventions and Supports— an evidence-based practice for behavior management through which residents can earn points for meeting behavioral expectations during class time and use those points to purchase items from the “Cougar Menu” each week.

Phase System— as a part of the CTM, residents must complete four phases through which they will have certain goals and privileges to attain. Residents must complete phase IV prior to release.

PO: Parole/Probation officer—probation officers provide supervision and monitoring of a juvenile following a court-ordered disposition placing a juvenile under the supervision of a CSU in the community. Parole officers provide supervision and monitoring of juveniles in the community following their release from commitment.

Post-D— Post-Dispositional: placement of an juvenile, age 14 or older who was adjudicated delinquent of an offense that would be a Class 1 or Class 2 misdemeanor or a nonviolent felony, in a secure local detention facility (1) for up to 30 days or (2) for longer than 30 days but less than six months. A juvenile who has been released from custody of the Department within the previous eighteen months is not eligible for placement in a post-dispositional detention program. If a juvenile is placed in post-dispositional detention for over 30 days, then the program is required to provide “separate services for their rehabilitation.”

Pre-D— “Pre-dispositional Detention” means a juvenile has been placed in local detention facility prior to a dispositional hearing. The decision whether or not to detain a juvenile in a local detention facility prior to trial will be made by the judge, intake officer, or magistrate. A juvenile may be detained if there is probable cause to believe that he committed a felony or a Class 1 misdemeanor.

PREA: Prison Rape Elimination Act of 2003— a federal law that helps officials detect, prevent, and address sexual abuse and sexual harassment against those who are in correctional facilities.

QMIT: Quality Monitoring and Implementation Team— reviews facility and program practices, offers suggestions for improvement, and tracks progress.

RS: Resident Specialist— RS IIs (shift supervisors) and RS Is ensure residents’ safety by providing supervision and support within each unit.

RSC: Regional Service Coordinators— serve as a “general contractor”, providing a single point of contact for services to juveniles in communities. DJJ currently contracts with AMIkids and EBA (Evidence Based Associates) to oversee providers in Virginia, to ensure

that youth and families have access to a wide array of services, delivered in close geographical proximity to where the youth and families reside.

SGA: Student Government Association— the association of residents elects peer leaders and gives residents the chance to serve their peers. When youth have an issue, they can seek relief through the SGA, which advocates for them with the facility administration. The SGA helps youth build leadership, problem-solving, and life skills that will aid them in successfully reentering their communities and continuing on productive paths. SGA members also serve as tour guides for groups and individuals, and are active members of the Family Engagement Committee, working with DJJ and family members to enhance family involvement.

Serious Offender— Residents committed as Serious Offenders are sentenced for a determinate period of time and remain under the jurisdiction of the committing court judge until released or transferred to the adult system. Residents are released from the JCC by the committing court as a result of judicial review or having completed the sentence as specified by the court.

Serious Offenders must be released on the date that completes their sentence or as ordered by the judge at the review hearing regardless of institutional adjustment. Residents committed until a specified birthday shall be released the day before the actual date of their birthday. Completion of identified treatment needs and parole supervision is not required.

SOL: Standards of Learning — a public school standardized testing program in the Commonwealth of Virginia. The standards represent what many teachers, school administrators, parents, and business and community leaders believe schools should teach and students should learn.

Treatment Team—reviews resident progress, case management needs, and the CRCP. Team includes resident's PO, housing unit staff, and parent(s)/guardian(s)

YASI: Youth Assessment and Screening Instrument— a tool used to classify a resident's risk of reoffending by assessing risk, need, and protective factors. Information gathered from the assessment is used to help develop case plans. The YASI is re-administered approximately every 90 days to measure growth.

COURTROOM EXPECTATIONS

These guidelines should be considered general, and not all inclusive. Please contact your Court Service Unit (CSU) for more specific information.

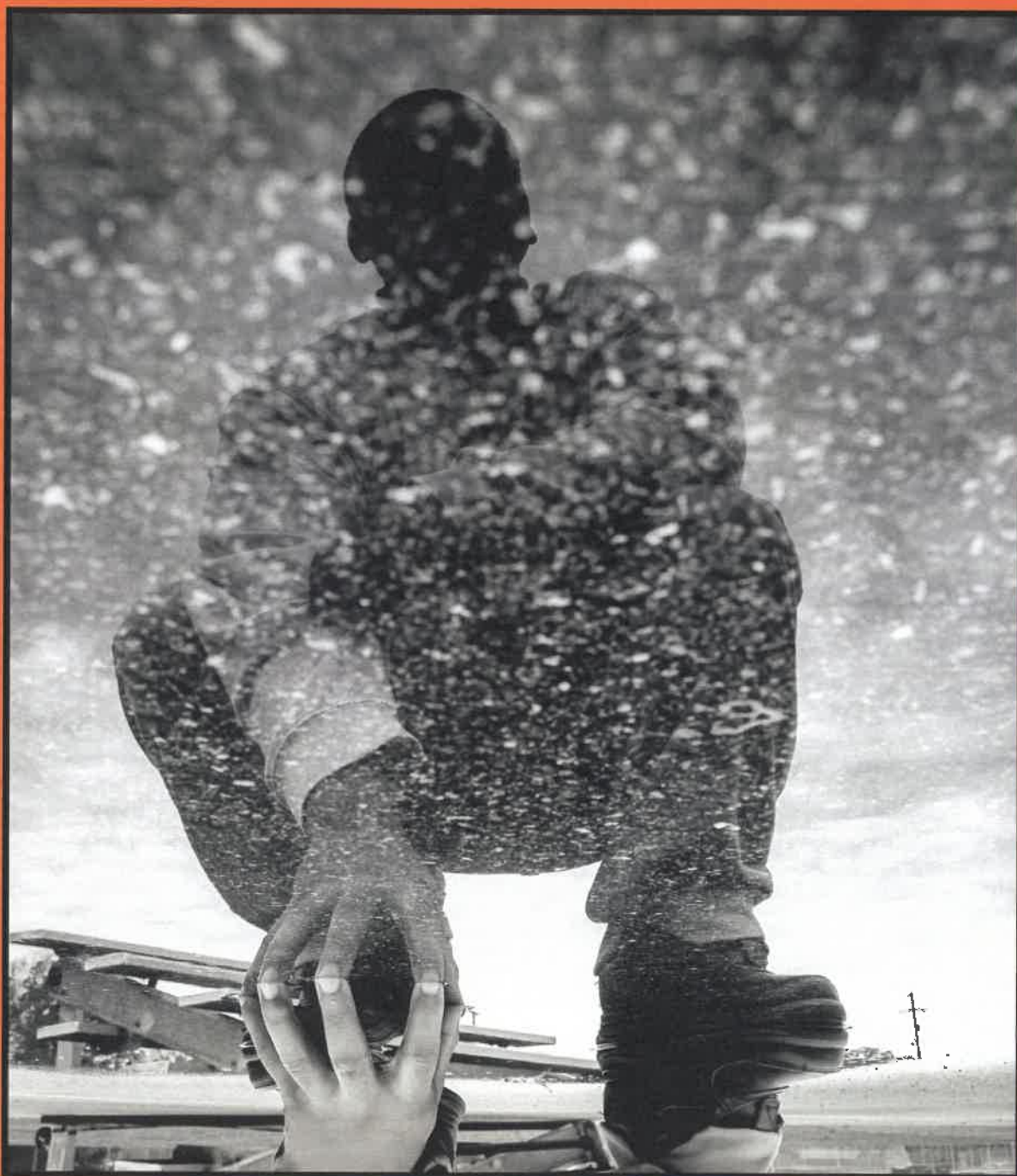
- Allow yourself ample time to arrive at your court appointment. Traffic, parking and security procedures can slow the process. If you do not show up or are going to be late, a bench warrant can be issued. If you cannot make your court appointment, notify the clerk of the court and your lawyer as soon as possible before the scheduled time. Remember to write down the name of the person you speak with.
- Only juveniles involved in the case, or whose presence is requested or required, should be brought to the courthouse.
- Dress appropriately for the courtroom. Ensure that your clothing does not appear to promote violence or hate of any kind. Business casual is appropriate for the courtroom.
- All persons entering the courthouse will pass through a metal detector. Handbags, briefcases, backpacks, etc. will be searched. Ensure you have brought in nothing which could be considered a possible weapon.
- Many courts will not allow cell phones in the courthouse. Check with your local CSU for guidance.
- Court appointments may be scheduled for specific times, but delays can occur. You may be at the courthouse for several hours.
- Speak clearly, so that your answers can be heard by all involved. This way, further questions or explanations may be unnecessary. Use courteous and appropriate language, such as "Yes, your honor," and "No, your honor."
- Respond to all the questions put to you by the court personnel, with advice from your attorney. If you believe you need more time with your attorney to talk about your defense, you can request it.



Virginia Department of Juvenile Justice website: www.djj.virginia.gov

Profiles of Committed Youth

Fiscal Years 2014-2018



Virginia Department of Juvenile Justice

Profiles of Committed Youth



Fiscal Years 2014-2018

Virginia Department of Juvenile Justice
Valerie Boykin, Director
June 2019

The photographs throughout this report, including the cover, are the original creations of students in the *Introduction to Photography* and *Advanced Photography* courses at Bon Air Juvenile Correctional Center (JCC). Additionally, students in the *Advertising Design* course were asked to develop designs for this title page. The selected design incorporated orange into the logo and utilized stock images of teenagers playing sports and reading. Images of actual JCC residents playing soccer, graduating high school, and creating a quilt were then added into the final design.



Executive Summary

This report provides an overview of the characteristics of committed youth admitted to the Department of Juvenile Justice's (DJJ's) direct care between fiscal year (FY) 2014 and FY 2018:

Overall Trends, FY 2014-2018

- » The percentage of youth who lived with both parents at any point prior to commitment decreased from 41% in FY 2014 to 27% in FY 2018.
- » An average of 12% of youth belonged to a gang, and 26% associated with gang members.
- » An average of 54% of youth had bullied or threatened others, 31% had displayed a weapon, and 28% had engaged in violent destruction of property.
- » Youth had an average of 4.3 out-of-school suspensions and 2.5 in-school suspensions prior to commitment.
- » An average of 64% of youth had been a victim of physical assault, 15% of youth had been bullied, and 13% of youth had been a victim of sexual assault.
- » Based on rankings established by the Virginia Criminal Sentencing Commission (VCSC), the percentage of admissions with a person offense as the committing most serious offense (MSO) increased from 56% to 60%.

Trends by Race, FY 2014-2018

- » A lower percentage of Black youth lived with both parents at any point prior to commitment.
- » A higher percentage of Black youth had parents involved in criminal activity and incarcerated while a higher percentage of White youth had parents with a history of outpatient mental health treatment and psychiatric hospitalization.
- » A lower percentage of White youth reported never being employed.
- » A higher percentage of White youth were perpetrators of sexual assault while a higher percentage of Black youth were perpetrators of physical assault.
- » A higher percentage of White youth chronically used alcohol, reported that substance abuse interfered with their daily life, reported substance use was linked to their offense, and previously received inpatient substance abuse treatment.
- » A lower percentage of White youth had a history of attendance problems, academic problems, and had engaged in disruptive behavior on school property.
- » A higher percentage of Black youth had a history of behavior problems in school and problems with school staff.
- » A higher percentage of White youth reported being bullied and sexually assaulted.
- » A higher percentage of White youth had attempted suicide, had suicide ideations, engaged in non-suicidal self-injurious behavior (SIB), and had a prior psychiatric hospitalization.
- » Black youth had a higher average number of prior supervisions (e.g., probation).

Trends by Sex, FY 2014-2018

- » A lower percentage of females lived with both parents at any point prior to commitment compared to males.
- » A higher percentage of females reported parents and parental figures with a history of outpatient mental health treatment and history of psychiatric hospitalization.
- » Females had a higher average number of runaways.
- » A higher percentage of females had documented homicidal urges or intent.
- » A higher percentage of males were perpetrators of sexual assault while a higher percentage of females were victims of physical assault, sexual assault, and bullying.
- » A higher percentage of females had significant symptoms of depressive disorder and Cluster B personality disorders.
- » A higher percentage of females had attempted suicide and engaged in non-suicidal SIB.

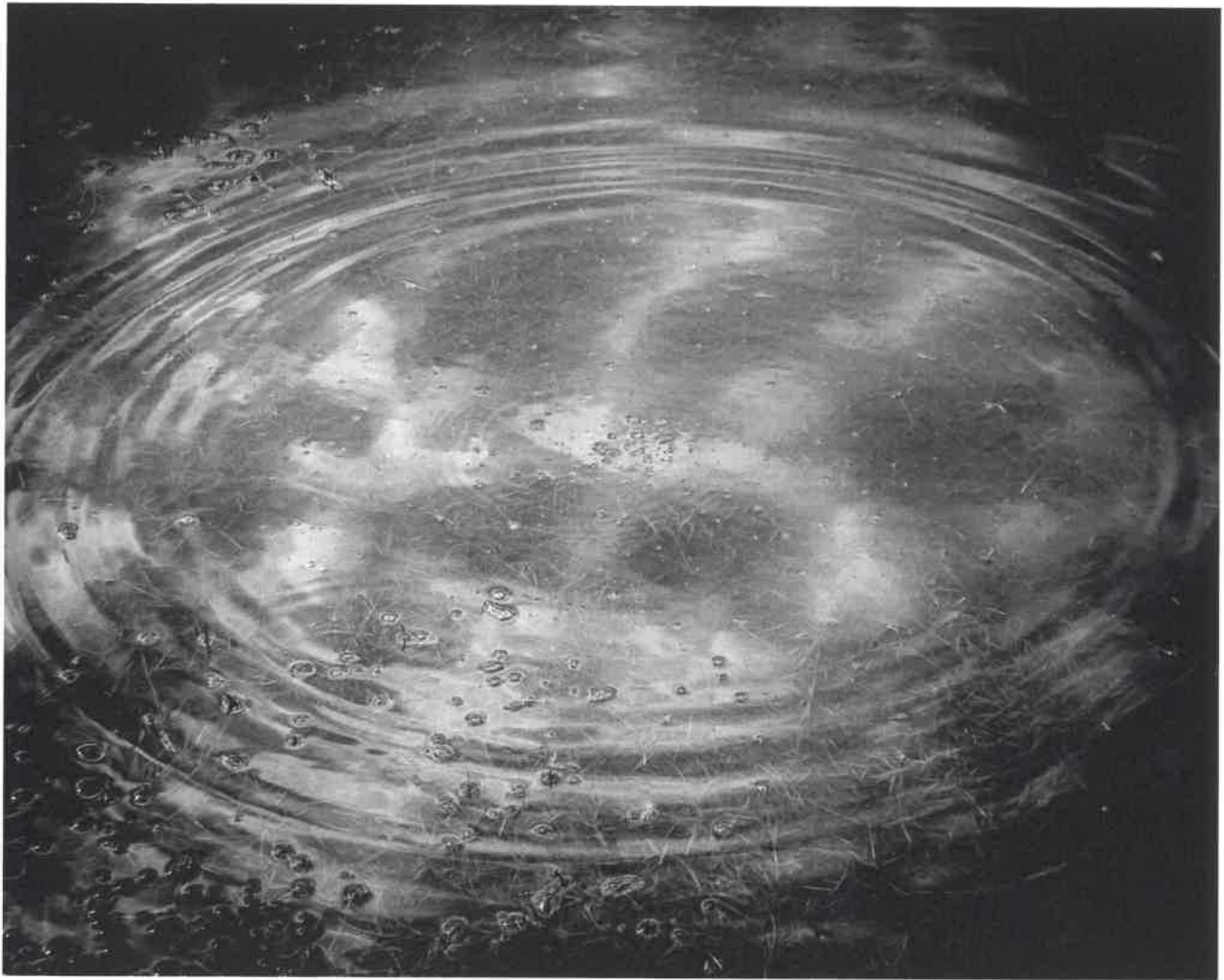




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The photographs throughout this report are the original creations of Bon Air JCC students in the *Introduction to Photography* and *Advanced Photography* courses.

1 Introduction

The Department of Juvenile Justice (DJJ) provides services to youth and families by operating 32 court service units (CSUs) and Bon Air Juvenile Correctional Center (JCC). Culpeper JCC was closed and transferred to the Virginia Department of Corrections (VADOC) in fiscal year (FY) 2014, the Reception and Diagnostic Center (RDC) was closed in FY 2015, and Beaumont JCC was closed in FY 2017. DJJ audits and certifies 34 CSUs, including two locally operated units; 24 juvenile detention centers (JDCs); Bon Air JCC; nine community placement programs (CPPs); 13 detention reentry programs; and 15 group homes, shelters, and independent living programs. The Board of Juvenile Justice regulates and provides oversight for these programs and facilities.

Guiding Principles

In order to be successful, DJJ recognized the need to focus on both the positive development of the young people in the system and the positive development and sustainability of the staff who serve them. DJJ identified four guiding principles to meet the needs of youth and staff:

- » *Safety:* Youth and staff need to feel safe in their environment and need a sense of physical and emotional well-being.
- » *Connection:* Youth and staff need to feel connected to supportive and caring adults, whether they are family, staff, or coworkers.
- » *Purpose:* Youth and staff need to have goals to strive toward, skills to hone, and a sense that they have a valuable role to play in the lives of people and the community around them.
- » *Fairness:* Youth need to perceive their environment and interactions as fair and transparent. They need to be held accountable in a manner proportionate to their offense and offense history, and similar to other youth in their situation. Staff need to feel that they are treated fairly, compensated adequately, and supported in their efforts to meet the expectations of DJJ.

Agency Transformation

DJJ strives to improve and meet the changing demands of juvenile justice through responsible resource management, performance accountability, and sound intervention strategies. In order to fulfill this mission, DJJ is currently in the process of transforming its approach to juvenile justice. The goals of the transformation are as follows:

- » *Reduce:* Safely reduce the use of state-operated JCCs by reforming probation practices, utilizing data and research to modify length of stay (LOS) policies, and developing successful alternative placements to JCCs.
- » *Reform:* Expand, improve, and strengthen the services and supports provided to youth in custody both during their commitment and upon their return to the community.
- » *Replace:* Provide youth across Virginia with opportunities for rehabilitation in the least restrictive setting by replacing large, old JCCs with a statewide continuum of evidence-based services, alternative placements, and new smaller therapeutic correctional settings.
- » *Sustain:* Maintain safe, healthy, inclusive work places; continue to recruit, retain, and develop a team of highly skilled and motivated staff; and align procedures, policies, and resources to support the team in meeting the goals of transformation.

In order to safely reduce the use of JCCs, DJJ has made an effort to ensure that all CSUs use evidence-based practices from intake through parole, keeping youth in the community and avoiding placement in secure confinement whenever possible. In addition, the Board of Juvenile Justice revised the LOS Guidelines for Indeterminately Committed Juveniles (LOS Guidelines) on October 15, 2015. Under the former guidelines, 12-18 months was the most commonly assigned LOS for indeterminate direct care admissions. Under the current guidelines, 6-9 months is the most commonly assigned LOS.

In order to reform treatment and rehabilitation practices in the JCCs, DJJ began implementing the Community



Treatment Model (CTM) in May 2015. The main tenets of the model include conducting highly structured, meaningful, therapeutic activities; maintaining consistent staffing in each housing unit; and keeping youth in the same unit throughout their stays. CTM uses a blend of positive peer culture and the group process to address concerns and accomplishments within the unit. In doing so, staff develop treatment-oriented relationships with the youth and act as advocates. CTM was fully implemented in early 2017.

Additionally, the Division of Education has worked to strengthen content delivery, increase student achievement, and expand opportunities for post-secondary youth. As such, the master schedule for the 2017-2018 school year was revised to reflect the Division of Education's Personalized Learning Model and to align with CTM. Students now stay together for content courses and move for elective courses based on their diploma needs. In February 2018, Tier 1 of Positive Behavioral Interventions and Supports (PBIS) was implemented across the education setting. PBIS identifies proactive strategies for defining, teaching, and supporting appropriate student behaviors to create a positive classroom and school environment. The Division of Education also established partnerships with the nine CPPs to support post-secondary programming for direct care youth in their placements.

DJJ is working to replace large, outdated JCCs with new placement options that are safer, closer to affected populations, smaller in scale, and designed for rehabilitative treatment and education. Beaumont JCC was closed to youth on June 2, 2017, and DJJ utilized the savings from the closure to award contracts to two regional service coordinators, AMIkids and Evidence-Based Associates, to develop a statewide continuum of evidence-based services and additional alternatives to placement in secure facilities.

Direct Care

Direct care programs are responsible for youth committed to DJJ, ensuring that they receive treatment and educational services while in a safe and secure setting. The Behavioral Services Unit (BSU), Health Services, Food Services, and Maintenance provide support to the JCC. DJJ's Division of Education provides educational and vocational services to meet the needs of committed youth. Programs within the JCC offer community reintegration and specialized services in a secure residential setting.

Case management and treatment program staff use the Youth Assessment and Screening Instrument (YASI) for risk-based case planning and provide oversight of treatment needs, security requirements, LOS, and facil-

ity placements in direct care. Staff facilitate psycho-educational groups, assess progress achieved, and manage classifications and residential placements. They are responsible for ensuring that all needed services (including mental health, substance abuse, sex offender, and aggression management treatment and independent living skills development) are available, and they serve as a liaison between the field and the administrative offices for procedures and resources. These staff also work with the community to provide a transition and parole plan for reentry, the Comprehensive Reentry Case Plan (CRCP).

Admission

The Central Admission and Placement (CAP) Unit was established upon the closure of RDC. The unit's core functions include the receipt and review of all commitment packets as well as the coordination of the admission, orientation, and evaluation process.

Youth admitted to direct care are evaluated at either a JCC or JDC for approximately three weeks. The process includes medical, psychological, behavioral, educational and career readiness, and sociological evaluations. A team meets to discuss and identify youth's treatment and mental health needs, determine LOS and placement recommendations, and develop a reentry plan.

Youth may be assigned to one or more treatment programs, including aggression management, substance abuse, and sex offender treatment, depending on the youth's individual needs. Although treatment needs are generally identified during the evaluation process, a youth can be reassessed at any time during a commitment.

Placement recommendations at the conclusion of the evaluation process may include a referral to a CPP or other alternative placement. If a youth is eligible, a referral is submitted through the case management review process, and upon approval, transfer is coordinated. The CAP Unit maintains case management responsibilities for these youth throughout their direct care stay and acts as a liaison between the CPPs, other alternative placements, and CSUs.

CTM

In May 2015, the JCCs began implementing CTM as a way to support juvenile rehabilitation while decreasing inappropriate behaviors during commitment. Given that many youth in state custody have experienced significant exposure to adverse childhood experiences, CTM integrates elements of trauma-informed care to promote the development of healthy resiliency and improve self-regulation, decision-making, moral reasoning, and skill



building. As part of CTM, youth progress through a phase system (Phase I through Phase IV) with clearly defined behavioral expectations. With each phase, the youth receives additional expectations, responsibilities, and privileges. On the higher phases, youth can earn off-campus trips and furloughs.

In order to reflect the change in responsibilities, most security staff positions were changed from correctional model titles and roles (e.g., major, sergeant, juvenile correctional officer) to CTM titles and roles (e.g., community manager, community coordinator, resident specialist). Staff teams received intensive training before starting CTM in their housing units, with one unit trained at a time to ensure fidelity to the program guidelines. All housing units at Bon Air JCC currently operate under CTM.

Division of Education

The Division of Education operates the Yvonne B. Miller High School and Post-Secondary Programs, which provides education for middle school, high school, and post-secondary students. The school is staffed by administrators and teachers who are licensed by the Virginia Department of Education (VDOE). The Division of Education also provides college and career training opportunities at the JCC.

Youth are admitted to direct care at various points in their academic career, with some deficient in one or more educational areas at the time of admission. DJJ works with local school divisions to obtain youth's school records upon notification of commitment to DJJ. All youth who have not earned a high school diploma or high school equivalency credential are evaluated and placed in an appropriate educational program. The Division of Education uses a Personalized Learning Model to meet students' unique needs. Teachers provide instruction aligned to the Standards of Learning tests and actively track the progress of students.

The Division of Education offers an array of high school completion routes that include an Advanced Studies Diploma, Standard Diploma, Applied Studies Diploma, Penn Foster High School Diploma, or General Educational Development (GED®). For youth who have obtained a high school diploma or GED®, the Division of Education also offers a range of VDOE-recognized career and technical education (CTE) certifications and credentialing opportunities. These offerings prepare youth for productive employment futures while simultaneously meeting the Commonwealth's need for well-trained and industry-certified technical workers.

BSU

BSU is the organizational unit responsible for providing clinical treatment services to youth at the JCC. The primary services provided by BSU staff include mental health, aggression management, substance abuse, and sex offender treatment, as well as intake psychological evaluations and pre-release risk assessments. BSU conducts comprehensive psychological evaluations for all youth committed to DJJ. At the facility, BSU provides 24-hour crisis intervention; individual, group, and family therapy; mental status evaluations; case consultations and development of individualized behavior support protocols; program development and implementation; and staff training.

Health Services

The Health Services Unit provides quality healthcare services to youth in the JCC. When initially admitted to DJJ, each youth goes through comprehensive medical history and physical evaluations. DJJ maintains a staff of physicians, dentists, and nurses on-site who provide assessment, treatment, and care to meet the medical and dental needs of the population housed in the facilities. In addition, contracted psychiatrists and optometrists provide healthcare services to the youth. On-site staff are supplemented by a network of hospitals, physicians, and transport services to ensure all medically necessary healthcare services delivered are consistent with community standards.

CPPs, Detention Reentry, and Other Alternative Placements

CPPs are residential programs operated for committed youth in JDCs as an alternative to the JCC. A goal of the CPPs is to place youth closer to the community in smaller settings to facilitate an easier transition after release. CPPs focus on positive youth development and increasing competency in the areas of education, vocational preparation, life and social skills, thinking skills, employability skills, and anger management. Services focus on dynamic risk factors using cognitive-behavioral techniques and are tailored to meet the individual needs outlined in the youth's CRCP. Additionally, CPPs deliver aggression management and substance abuse treatment services. Youth are housed in units separate from the JDC population.

Additionally, some JDCs provide detention reentry programs for youth in direct care, allowing them to begin transitioning back to the community 30 to 120 days before their scheduled release date. Similar to CPPs, the programs facilitate parole planning services with the as-



signed parole officers and allow for increased visitation with families. The objectives of the program are to prepare youth for progressively increased responsibility and freedom, bridge services between the JCC and the community, facilitate increased family engagement, and establish relationships with targeted community support systems. These objectives are met by an individualized case plan that incorporates family and community involvement. Youth in detention reentry are housed with the rest of the JDC population instead of in a separate unit.

Finally, some youth in direct care are placed in other contracted placements based on individual characteristics, such as offense severity, commitment type, risk level, and treatment or service needs. While the JCC, CPPs, and detention reentry programs provide secure placement options for juveniles in direct care, the continuum of services offers secure and non-secure placement options.

Juvenile Profile

DJJ has collected detailed information on youth admitted to direct care using the Juvenile Profile since July 1, 1992. These data are reported every five years to provide an overview of the characteristics of committed youth. The current report focuses on admissions during FYs 2014 to 2018. The Juvenile Profile contains information collected from the multi-disciplinary teams responsible for evaluating all youth admitted to DJJ. These teams include counselors, psychologists, resident specialists, educational evaluators, and medical personnel. The information generated from these evaluations is used to assist in the development of treatment plans and to provide detailed data about youth committed to the department.

The Juvenile Profile has undergone changes over time in an effort to improve the reliability and validity of the data collected. Some items have been eliminated or modified, and new items have been added depending on departmental needs.

In addition to the Juvenile Profile, this report uses information from DJJ's electronic data management system, including information related to youth's committing offenses, type of commitment, number of commitments, and type of committing court. This report also uses various items from YASI.

Juvenile Profile Description

The Juvenile Profile contains data elements from the following:

- » A detailed social history regarding the youth's development, living situations, family background, and history of substance abuse, physical abuse, and sexual abuse.
- » A physical health assessment and evaluation that includes a medical history, physical examination, dental evaluation, vision and hearing evaluation, and screening for certain diseases.
- » An educational assessment that includes school history and educational needs.
- » A psychological assessment that includes current and historical information on the youth's mental health status and treatment needs.

Interpreting this Report

The data in this report are collected from youth evaluated during the admission process, so only admissions during the reporting period are represented.

Each youth's evaluation involves multiple forms that are completed and entered into the Juvenile Profile; however, some youth may have missing individual sections of data. Percentages were calculated out of the total number of admissions, unless otherwise noted due to more than 10% missing responses.

Successfully appealed, canceled, and rescinded cases were excluded from the data. (See the table on the following page for the number of youth included in this report for each FY.)

It is also important to evaluate the data with respect to the nature of its source. With the exception of the medical/physical screenings, the majority of the information collected is self-reported. As with any self-report data source, youth may over- or under-represent the truth on certain topics. Other limitations to this report include form changes that were implemented between FY 2014 and FY 2018. With the exception of the Medical History and Physical Examination forms, each Juvenile Profile form underwent at least one revision between FY 2014 and FY 2018. (See Appendices A through E for copies of the current forms). This report only presents data for variables that were consistent across all FYs.

One must also be mindful of the impact of an evaluator's perspective. Though staff are trained on how to conduct the evaluations, and the agency strives for a high level of inter-rater reliability, there can be interpretive differences between evaluators.

Lastly, Juvenile Profile data are stored in a live database that is constantly being updated and cleaned. For that reason, it is important to note that all data presented in this book were generated in May 2019. Any updates or changes occurring after that date will not be represent-



ed. Furthermore, percentages may not always add to 100% due to rounding.

The current publication organizes the data into themes (e.g., family and parenting, education). Each page presents the 5-year trend for a variable or set of related variables, followed by demographic breakdowns by race and sex. Race was grouped into “White,” “Black,” and “Other,” and sex was grouped into “Female” and “Male.” Though race

was separated into three groups, it is important to keep in mind that the “Other” group is much smaller in number than White and Black. “Other” races include Asian or Pacific Islander, American Indian or Alaskan Native, Other, and Unknown. Sex represents sex assigned at birth. Race and sex differences are presented only for those variables with statistical significance ($p < .05$ level) as determined by chi-square tests, t-tests, and analysis of variance tests (ANOVAs).

Admission Demographics, FY 2014-2018

	2014	2015	2016	2017	2018
Race					
White	92	105	82	92	74
Black	259	258	226	226	233
Other	16	21	11	14	18
Sex					
Female	30	26	19	23	23
Male	337	358	300	309	302
<i>Total Admissions</i>	367	384	319	332	325

Terminology

Acronyms and terms commonly used by DJJ are defined below.

Acronyms

ADHD: Attention-Deficit/Hyperactivity Disorder

AECF: Annie E. Casey Foundation

ANOVA: Analysis of Variance

AWOL: Absent Without Leave

BSU: Behavioral Services Unit

CAP: Central Admission and Placement

CD: Conduct Disorder

CPP: Community Placement Program

CRCP: Comprehensive Reentry Case Plan

CSU: Court Service Unit

CTE: Career and Technical Education

CTM: Community Treatment Model

DAI: Detention Assessment Instrument

DJJ: Virginia Department of Juvenile Justice

DSM: Diagnostic and Statistical Manual

ERD: Early Release Date

FY: Fiscal Year

GED®: General Educational Development

HEENT: Head, Eyes, Ears, Nose, and Throat

ID: Intellectual Disability

J&DR: Juvenile and Domestic Relations

JCC: Juvenile Correctional Center

JDC: Juvenile Detention Center

LOS: Length of Stay

LOS Guidelines: Length of Stay Guidelines for Indeterminately Committed Juveniles

LRD: Late Release Date

MHSTP: Mental Health Services Transition Plan

MSO: Most Serious Offense

ODD: Oppositional Defiant Disorder



OJJDP: United States Office of Juvenile Justice and Delinquency Prevention

PBIS: Positive Behavioral Interventions and Supports

RDC: Reception and Diagnostic Center

SASSI: Adolescent Substance Abuse Subtle Screening Inventory

SIB: Self-Injurious Behavior

VADOC: Virginia Department of Corrections

VCSC: Virginia Criminal Sentencing Commission

VDOE: Virginia Department of Education

YASI: Youth Assessment and Screening Instrument

Definitions

Admission: the date on which a youth officially enters the direct care population.

ANOVA: a statistical test used to analyze differences between multiple groups. A significant finding indicates that at least one of the groups has a mean that is significantly different from the other groups. Using prescribed psychotropic medication and race as an example, an ANOVA will determine if there is a statistical difference in the likelihood of being prescribed psychotropic medications based on one's race.

Blended Sentence: a sentencing option for a youth convicted in circuit court, which combines a youth disposition with an adult sentence. For example, the circuit court may impose an adult sentence with a portion of that sentence to be served in the custody of DJJ; the judge may suspend the adult sentence pending successful completion of the juvenile disposition. See § 16.1-272 of the *Code of Virginia*. The exact use of this term can vary; in this report, blended sentence data reflect youth with an active VADOC sentence at the time of commitment to DJJ.

Chi-Square Test: a statistical test used to analyze differences between two categorical groups. A significant finding indicates that the groups' frequencies are significantly different. Using YASI overall risk level and sex as an example, a chi-square test will determine if there is a statistical difference between the likelihood of males and females having different risk levels.

Commitment: the court-ordered disposition placing a youth in the custody of DJJ for a determinate or indeterminate period of time. To be eligible for commitment, a youth must be 11 years of age or older and adjudicated delinquent or convicted of a felony offense, a Class 1 misdemeanor and a prior felony, or four Class 1 misdemeanors that were not part of a common act, transaction, or scheme. See § 16.1-278.8 of the *Code of Virginia*. A commitment to DJJ differs from an admission. An admission may occur days or weeks after the youth is committed to DJJ (during which time the youth is held in a JDC). A single admission could be the result of multiple commitments to DJJ (for example, a youth may be committed to DJJ by more than one court). For these reasons, the number of commitments to DJJ in a FY may be different from the number of admissions.

CPP: a direct care residential program in a JDC. The goal of CPPs is to place residents closer to their home communities. CPPs focus on addressing specific treatment needs and risk factors and developing competency in the areas of education, job readiness, and life and social skills.

Criminal Street Gang: any ongoing organization, association, or group of three or more persons, whether formal or informal, (i) which has as one of its primary objectives or activities the commission of one or more criminal activities; (ii) which has an identifiable name or identifying sign or symbol; and (iii) whose members individually or collectively have engaged in the commission of, attempt to commit, conspiracy to commit, or solicitation of two or more predicate criminal acts, at least one of which is an act of violence, provided such acts were not part of a common act or transaction.

Delinquent Offense: an act committed by a youth that would be a felony or misdemeanor offense if committed by an adult as designated under state law, local ordinance, or federal law. Delinquent offenses do not include status offenses. See § 16.1-228 of the *Code of Virginia*.

Detention Reentry: a direct care residential program in a JDC. The goal of detention reentry is to allow youth in direct care to begin transitioning back to their community 30 to 120 days before their scheduled release date.

Determinate Commitment: the commitment of a youth 14 years of age or older to DJJ as a serious juvenile offender. The court specifies the length of the



commitment, has continuing jurisdiction over the youth, and must conduct periodic reviews if the youth remains in direct care for longer than 24 months. A youth may be committed to DJJ as a serious juvenile offender for up to seven years, not to exceed the youth's 21st birthday. See § 16.1-285.1 of the *Code of Virginia*.

DSM: a manual produced by the American Psychiatric Association that provides standard classification of mental disorders and contains a listing of diagnostic criteria for psychiatric disorders.

Direct Care: the time during which a youth who is committed to DJJ pursuant to §§ 16.1-272, 16.1-278.8(A)(14), 16.1-278.8(A)(17), or 16.1-285.1 of the *Code of Virginia* is under the supervision of staff in a juvenile residential facility operated by DJJ or an alternative placement.

ERD: the estimated minimum amount of time that indeterminately committed youth are expected to be in direct care, starting from their date of commitment.

FY: the time period measured from July 1st of one year to June 30th of the following year. For example, FY 2018 began July 1, 2017, and ended June 30, 2018.

Indeterminate Commitment: the commitment of a youth to DJJ in which the youth's LOS range (ERD to LRD) is calculated based on statutory requirements and the LOS Guidelines. The commitment may not exceed 36 continuous months except in cases of murder or manslaughter or extend past a youth's 21st birthday. See §§ 16.1-285 and 16.1-278.8(A)(14) of the *Code of Virginia*.

JCC: a DJJ secure residential facility that has construction fixtures designed to prevent escape and to restrict the movement and activities of youth held in lawful custody. JCCs house youth who have been committed to DJJ. See §§ 16.1-278.8, 16.1-285, and 16.1-285.1 of the *Code of Virginia*.

JDC: a local or regional secure residential facility that has construction fixtures designed to prevent escape and to restrict the movement and activities of youth held in lawful custody. See §§ 16.1-248.1, 16.1-278.8, and 16.1-284.1 of the *Code of Virginia*.

LOS Guidelines: a framework established by the Board of Juvenile Justice, as mandated by § 66-10 of the *Code of Virginia*, to determine the length of time a youth indeterminately committed to DJJ will re-

main in direct care. Factors that affect a youth's LOS include the seriousness of the committing offense(s) and YASI risk level.

LRD: the estimated maximum amount of time that indeterminately committed youth are expected to be in direct care, starting from their date of commitment.

Psychotropic Medication: prescribed drugs that affect the mind, perception, behavior, or mood. Common types include antidepressants, anxiolytics or anti-anxiety agents, antipsychotics, and mood stabilizers.

Statistical Significance: a mathematical concept used to determine whether an outcome of an analysis is likely the result of a relationship between variables or the result of chance. If the *p*-value (i.e., the probability that the observations occurred due to chance) is less than the standard significance level of .05, then there is 95% confidence that the outcome is due to a relationship instead of chance.

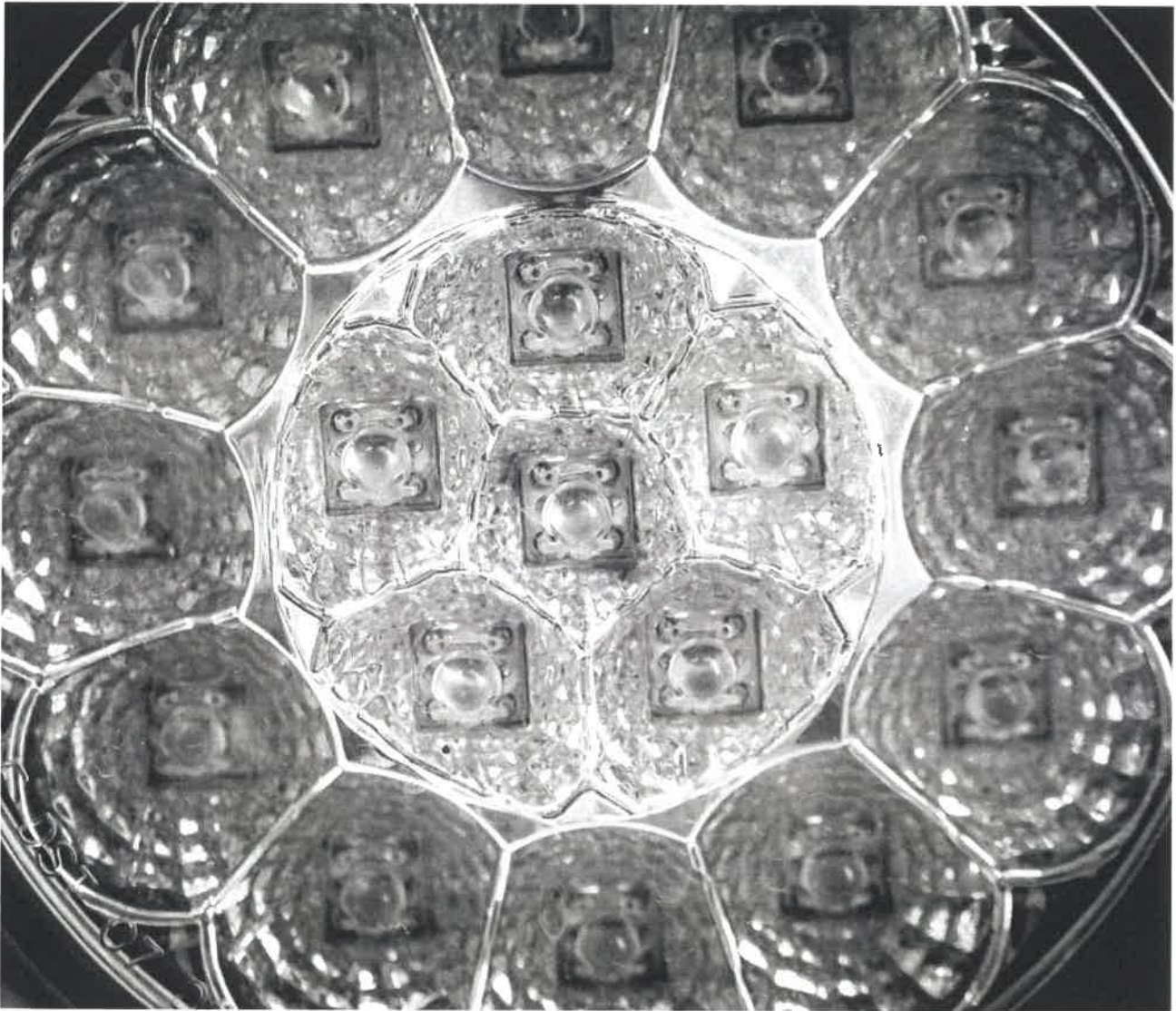
Subsequent Commitment: commitments to DJJ received after the youth was admitted to direct care that require a recalculation of the original LOS. These commitments may be associated with an offense that occurred prior to admission but was not processed by the court until after admission or with an offense that occurred after admission while in direct care. An offense that occurred while in direct care may also result in an adult jail or prison sentence rather than a subsequent commitment to DJJ.

T-Test: a statistical test used to analyze differences between two groups. A significant finding indicates that the groups' means are significantly different. Using prescribed psychotropic medication and sex as an example, a t-test will determine if there is a statistical difference between the likelihood of males and females being prescribed psychotropic medication.

Variable: an operationally defined attribute (e.g., overall risk level, prescribed psychotropic medication).

YASI: a validated tool that provides an objective classification of an individual's risk of reoffending by assessing both static and dynamic risk and protective factors in 10 distinct functional domains.





2 Family & Parenting

The Family & Parenting section includes information from the *Family* domain of YASI and the Social History Information (Appendix A) and Medical History (Appendix D) forms, which assess the youth's family and home life prior to commitment.

Family and Delinquency

A youth's family and the environment in which they grow up can have a tremendous impact on their well-being (Wallman, 2010). The family is responsible for providing emotional support, learning opportunities, moral guidance, self-esteem, and physical necessities. However, when a family exhibits traits such as poor parenting skills, home discord, child maltreatment, and antisocial behavior, the youth is at a greater risk for delinquency (Lipsey & Derzon, 1998; Petrosino, Derzon, & Lavenberg, 2009; Thornberry, Smith, Rivera, Huizinga, & Stouthamer-Loeber, 1999). Other factors that could put a youth at risk include the family having a lower socioeconomic status, less interest in education, and poor or unstable housing (Glaze & Maruschak, 2010; Travis & Waul, 2003). Parental mental illness is also an important risk factor, and youth whose parents have a mental illness are at risk for developing social, emotional, and/or behavioral problems (Travis & Waul, 2003).

Family Structure

Research also suggests that the structure of a youth's family may impact their risk for delinquency (Apel & Kaukinen, 2008; Price & Kunz, 2003). For example, youth who have non-traditional living situations may be at a greater risk for delinquency. Price and Kunz (2003) found that youth from divorced families had higher rates of status offenses, crimes against persons, felony theft, general delinquency, and tobacco and drug use. In addition, youth who live in cohabitating households are more likely to engage in delinquent behavior compared to those who live with both biological parents (Apel & Kaukinen, 2008; Kierkus, Johnson, & Hewitt, 2010; Manning & Lamb, 2003). According to Hoeve and colleagues (2009), one of the strongest links between parenting and delinquency is parental monitoring. Research suggests that parental monitoring may be higher in families with

both biological parents (Fisher, Leve, O'Leary, & Leve, 2003). Fisher and colleagues (2003) conducted a study to examine the levels of parental monitoring among three different categories: stepmother, stepfather, and two biological parent households. The researchers found that families with both biological parents had higher levels of parental monitoring than stepfather families. However, there was no significant difference between stepmother households and those with both biological parents.

Parental Criminal Behavior

In 2009, there were 2.7 million youth under age 18 with an incarcerated parent (The Pew Charitable Trusts, 2010). In addition, millions of other youth had parents involved in the criminal justice system. This is problematic because youth whose parents exhibit criminal behavior have a higher risk of committing crimes themselves. The timing of a parent's criminal behavior might also have an impact on youth. For example, if a crime was committed before the youth was born, it is thought that the child will be less likely to offend. However, when parents are more frequent offenders, youth have more opportunities to observe and imitate their parents' criminal behavior and motivations (Murray, Farrington, Sekol, & Olsen, 2009).

Family Engagement at DJJ

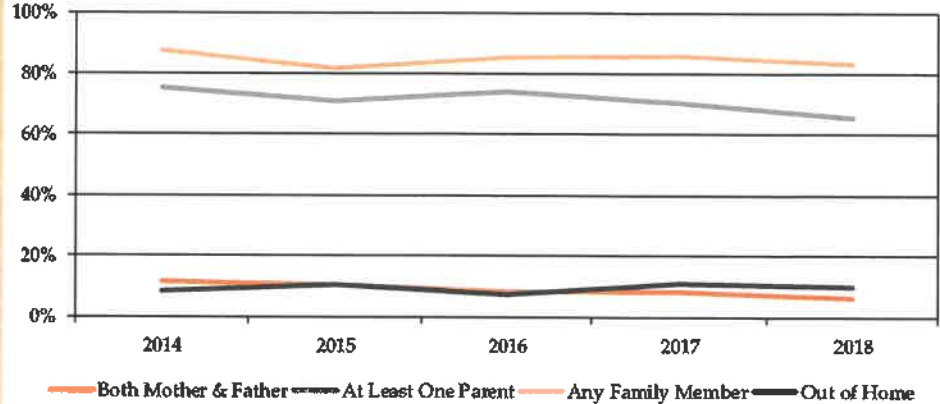
Research suggests that greater family engagement leads to more positive results in treatment and upon release (Agudelo, 2013). As such, a major part of DJJ's transformation effort has been an increased focus on family engagement. Most committed youth live more than a one-hour drive from Bon Air JCC, and the distance has posed a barrier to families wishing to visit. To address this issue, DJJ established video visitation sites in Roanoke and Danville. In addition, DJJ partnered with transportation companies to provide free transportation to families of committed youth with pick-up sites located in Chesterfield, Danville, Hampton, Henrico, Manassas, Newport News, Norfolk, Portsmouth, Richmond, Roanoke, Virginia Beach, and Woodbridge.



Living Situation*

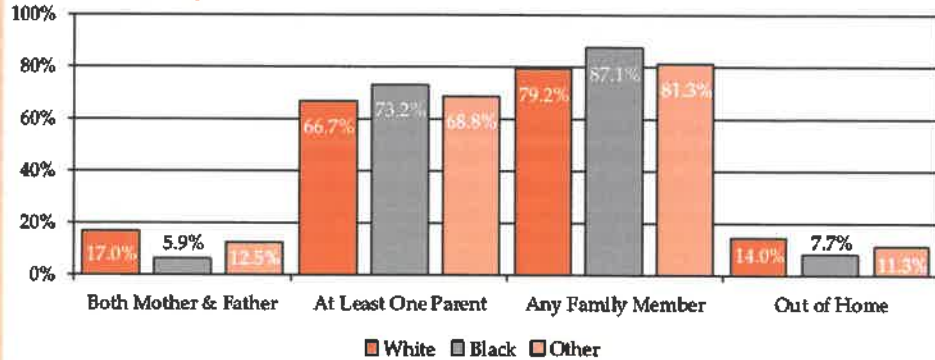
- » Since FY 2014, an average of 85% of youth lived with any family member immediately prior to commitment, 71% lived with at least one parent, less than 10% of youth lived with both biological parents, and less than 10% lived in an out of home placement.
- » A lower percentage of Black youth lived with both parents before commitment compared to White youth and youth of other races.
- » A higher percentage of females lived in out of home placements before commitment compared to males.

Living Situation Immediately Prior to Commitment, FY 2014-2018*

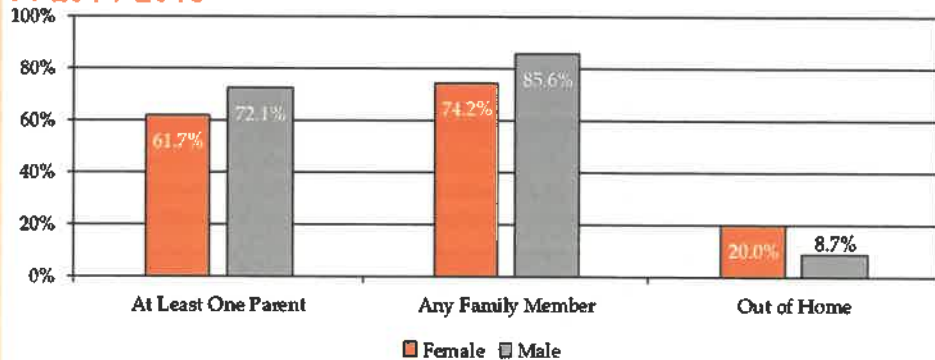


* "Both Mother & Father" includes both biological parents. "At Least One Parent" includes at least one biological parent. "Any Family Member" includes any biological family member, step-parent, and adoptive parents.

Living Situation Immediately Prior to Commitment by Race, FY 2014-2018



Living Situation Immediately Prior to Commitment by Sex, FY 2014-2018

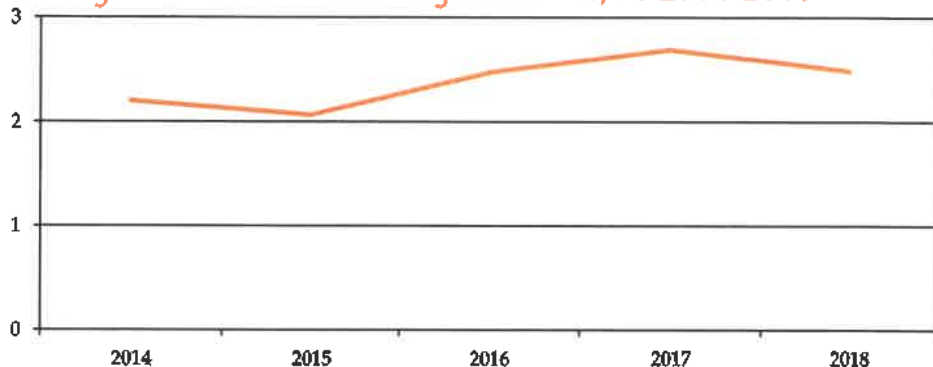


* Data on youth with a living situation immediately prior to commitment described as absent without leave (AWOL) are not presented in this analysis.



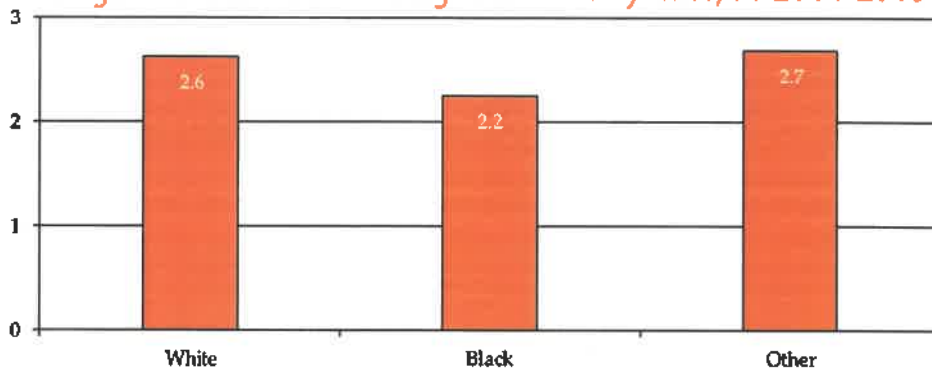
Prior Living Situations

Average Number of Prior Living Situations, FY 2014-2018



- » Youth admitted since FY 2014 had an average of 2.4 prior living situations before commitment.
- » Black youth had a lower average number of prior living situations compared to White youth and youth of other races.

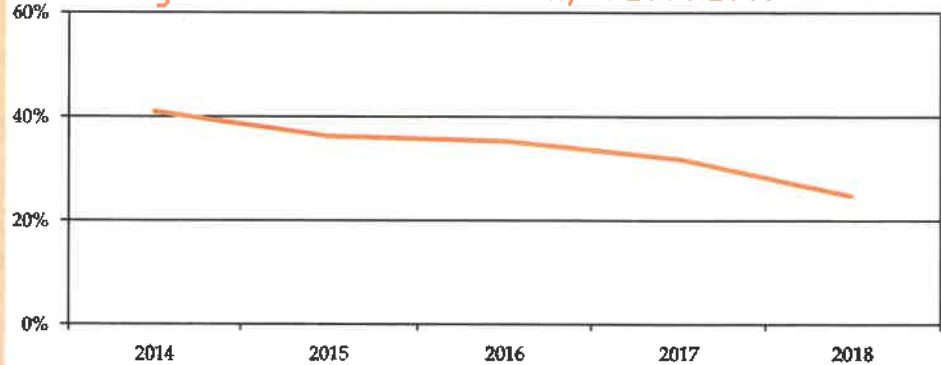
Average Number of Prior Living Situations by Race, FY 2014-2018



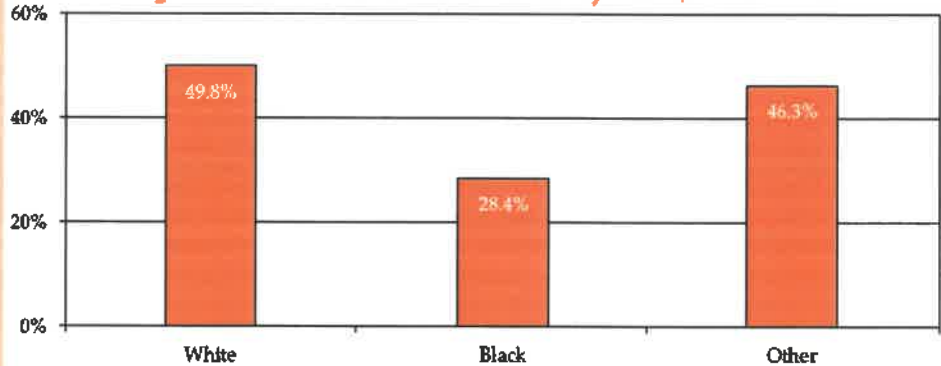
Prior Living Situations, cont.

- » The percentage of youth who lived with both parents at any point prior to commitment decreased from 41% in FY 2014 to 27% in FY 2018.
- » A lower percentage of Black youth lived with both parents at any point prior to commitment compared to White youth and youth of other races.
- » A lower percentage of females lived with both parents at any point prior to commitment compared to males.

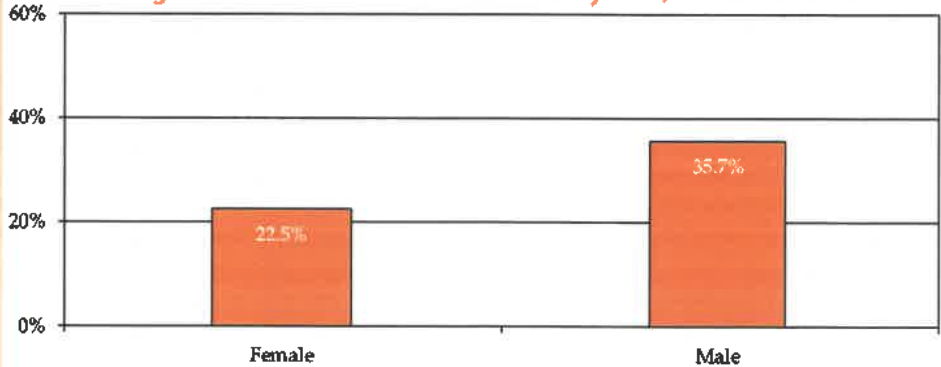
Prior Living Situation with Both Parents, FY 2014-2018



Prior Living Situation with Both Parents by Race, FY 2014-2018



Prior Living Situation with Both Parents by Sex, FY 2014-2018

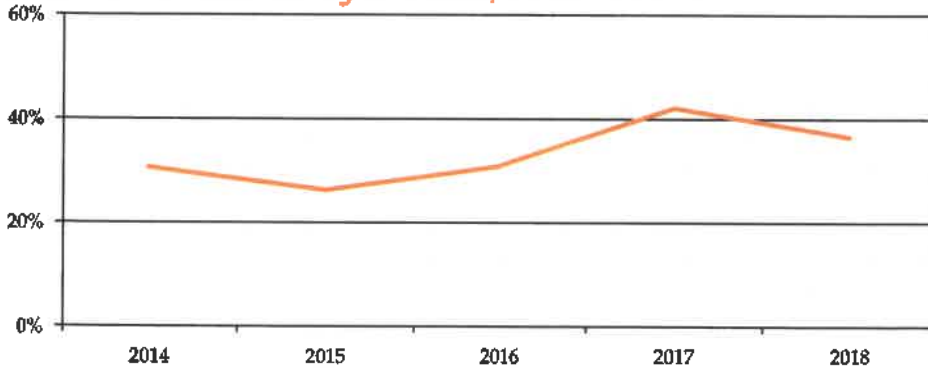


Data presented on this page are collected on the Social History Information form.



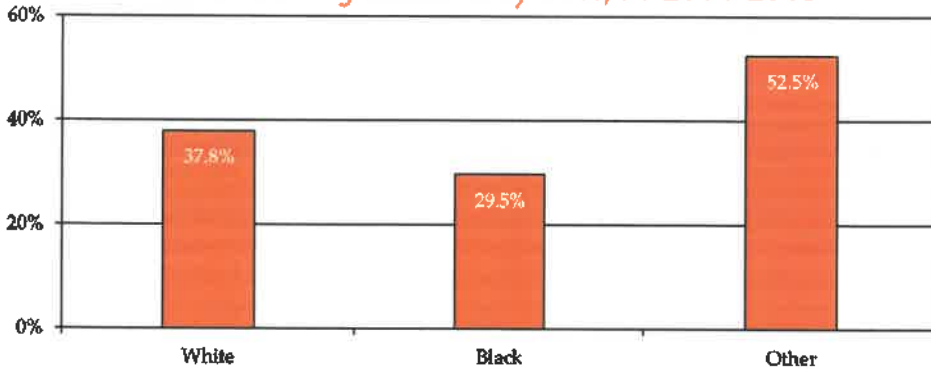
Prior Living Situations, cont.

Prior Out of Home Living Situation, FY 2014-2018

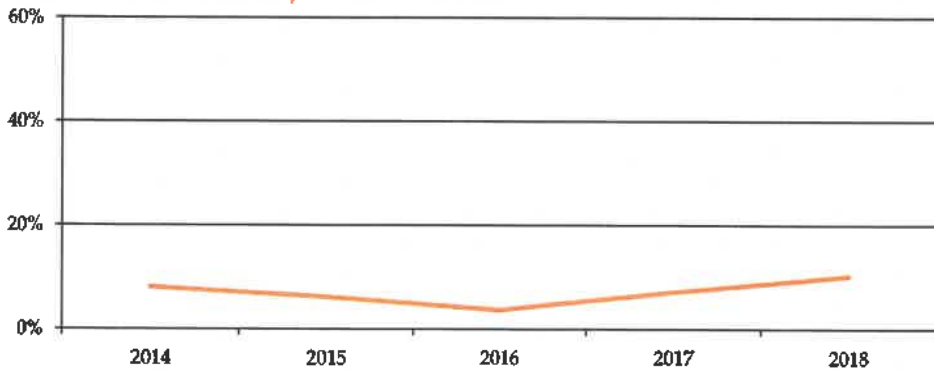


- » An average of 33% of youth lived out of home at any point prior to commitment since FY 2014.
- » A lower percentage of Black youth lived out of home at any point prior to commitment.

Prior Out of Home Living Situation by Race, FY 2014-2018



Youth with Children, FY 2014-2018



Children

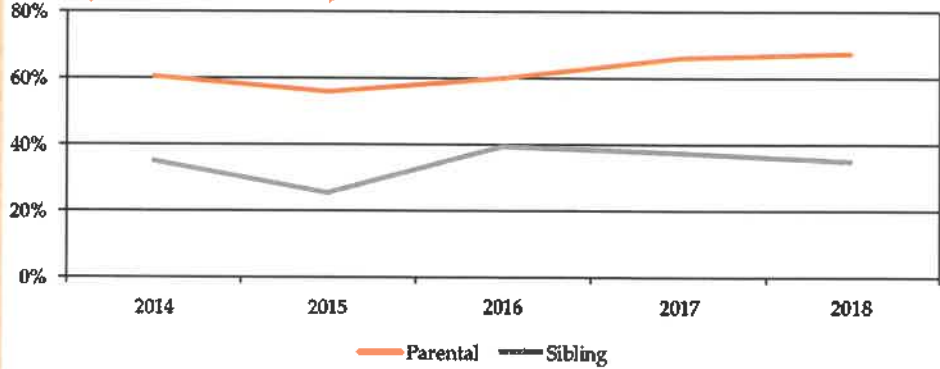
- » An average of 7% of youth had children at the time of commitment since FY 2014.



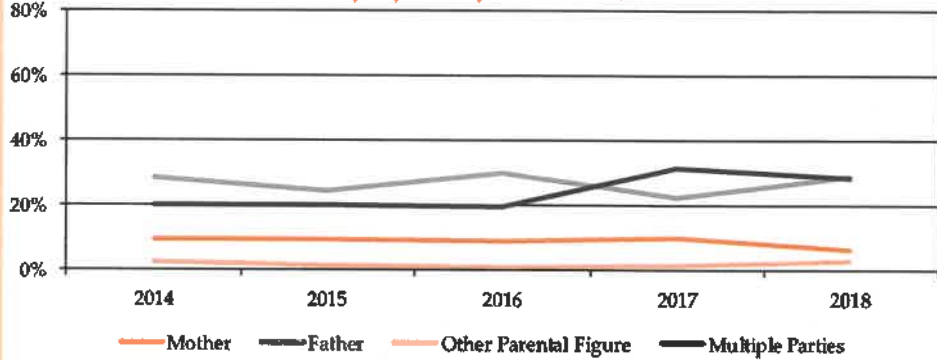
Family Criminal Activity

- » Since FY 2014, an average of 62% of youth had parents involved in criminal activity, and 34% had siblings involved in criminal activity.
- » An average of 27% of youth reported their father was involved in criminal activity, making fathers the parent involved most often.
- » A higher percentage of Black youth had parents involved in criminal activity compared to White youth and youth of other races.

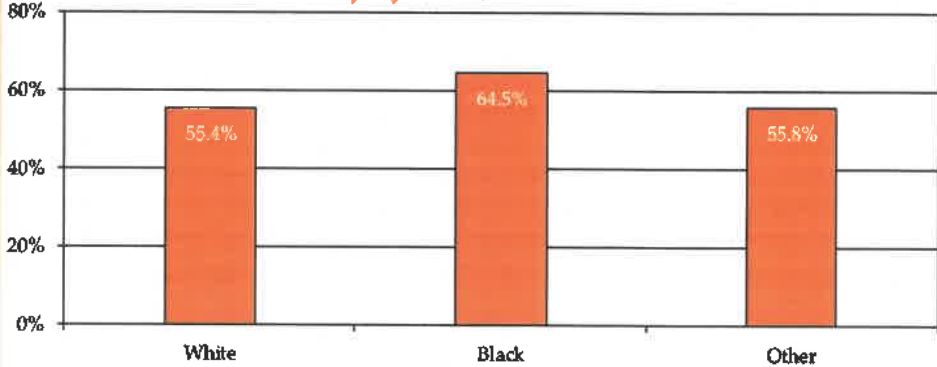
Family Criminal Activity, FY 2014-2018



Parental Criminal Activity by Party Involved, FY 2014-2018

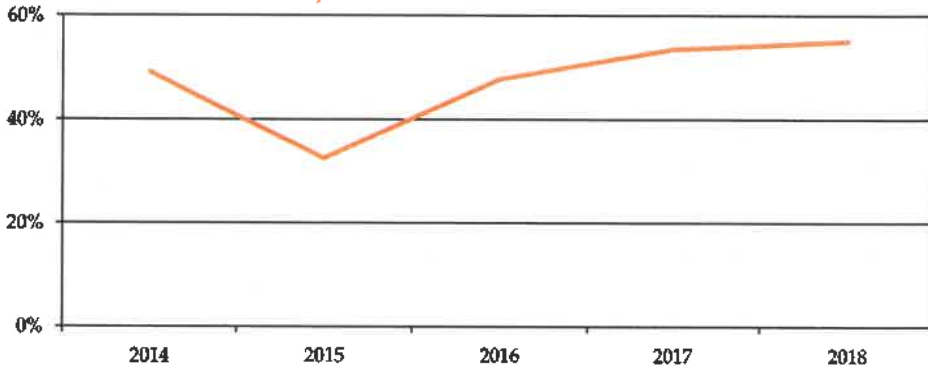


Parental Criminal Activity by Race, FY 2014-2018



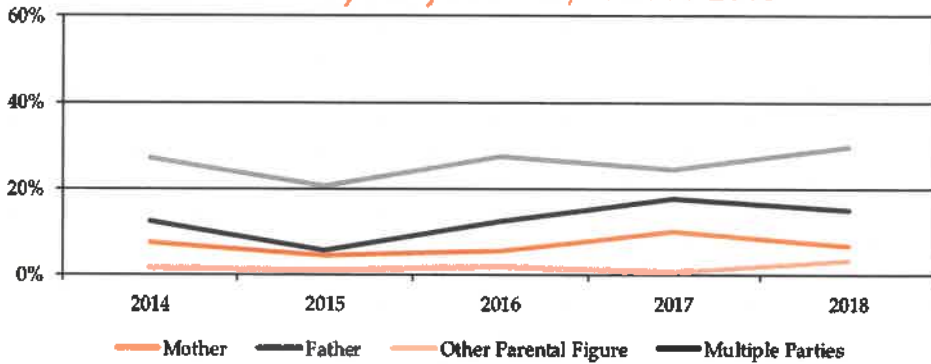
Parental Incarceration

Parental Incarceration, FY 2014-2018



- » Since FY 2014, an average of 48% of youth had parents who had been incarcerated.
- » An average of 26% of youth reported their father had been incarcerated, making fathers the incarcerated parent most often.

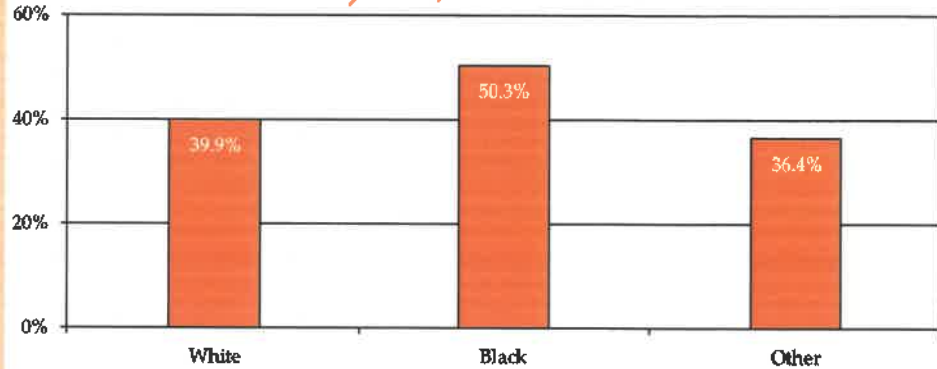
Parental Incarceration by Party Involved, FY 2014-2018



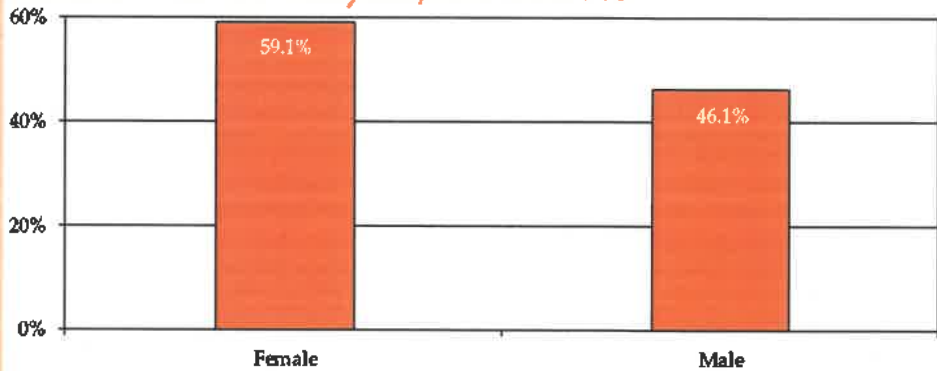
Parental Incarceration, cont.

- » A higher percentage of Black youth had parents who had been incarcerated compared to White youth and youth of other races.
- » A higher percentage of females had parents who had been incarcerated compared to males.

Parental Incarceration by Race, FY 2014-2018

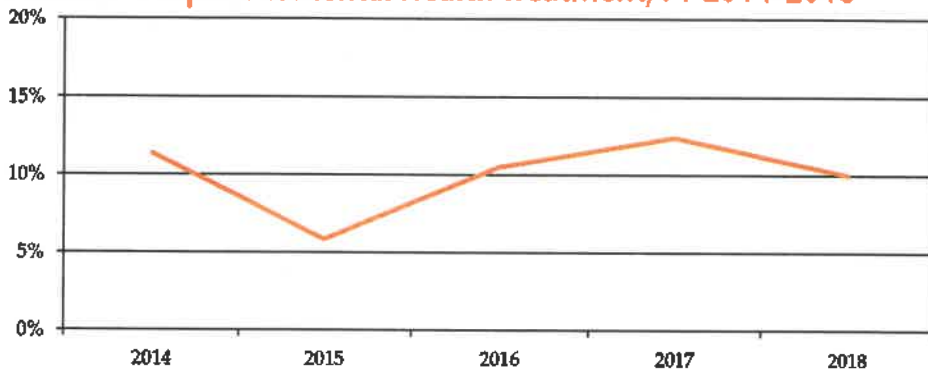


Parental Incarceration by Sex, FY 2014-2018



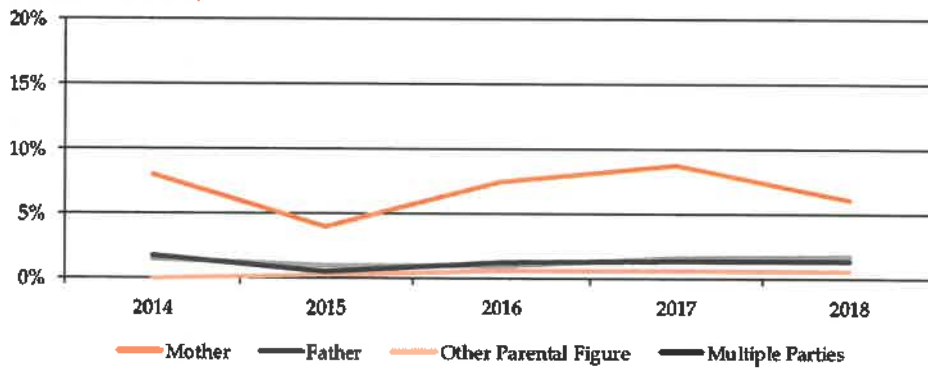
Parental Outpatient Mental Health Treatment

Parental Outpatient Mental Health Treatment, FY 2014-2018



- » Since FY 2014, an average of 10% of youth reported parents with a history of outpatient mental health treatment.
- » An average of 7% of youth reported their mother had undergone outpatient mental health treatment, making mothers the treated parent most often.

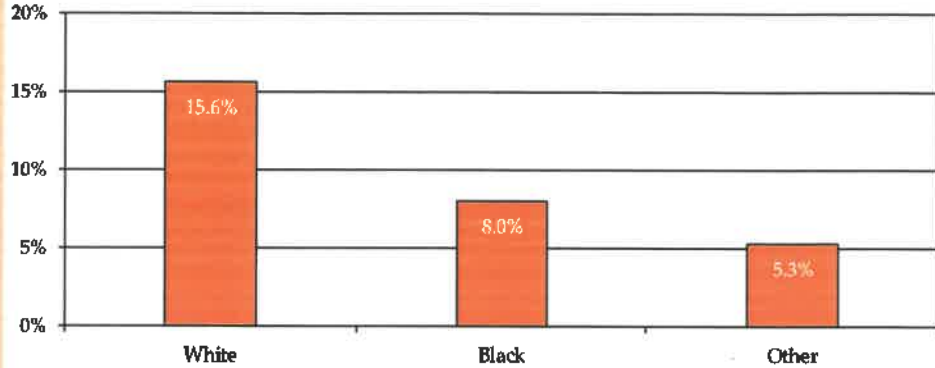
Parental Outpatient Mental Health Treatment by Party Involved, FY 2014-2018



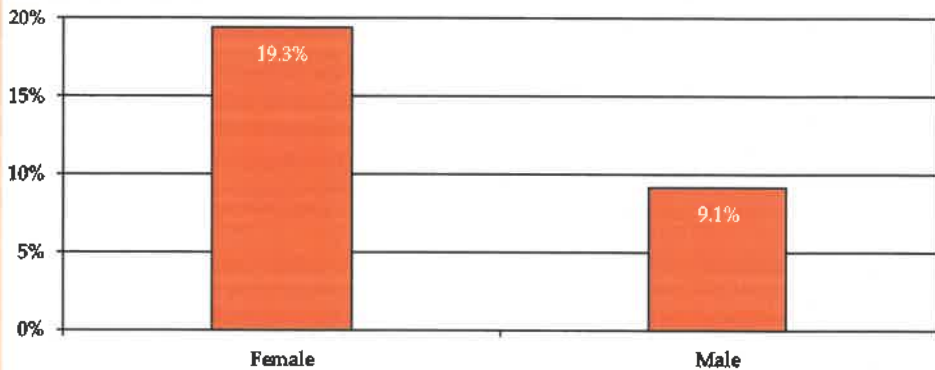
Parental Outpatient Mental Health Treatment, cont.

- » A higher percentage of White youth reported parents with a history of outpatient mental health treatment compared to Black youth and youth of other races.
- » A higher percentage of females reported parents with a history of outpatient mental health treatment compared to males.

Parental Outpatient Mental Health Treatment by Race, FY 2014-2018

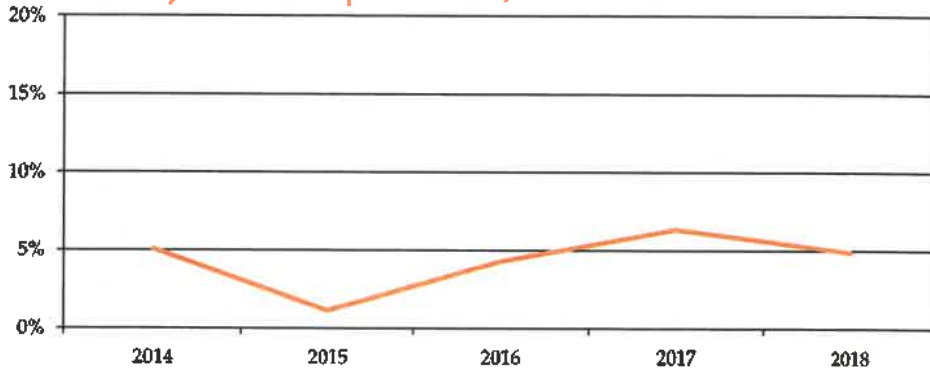


Parental Outpatient Mental Health Treatment by Sex, FY 2014-2018



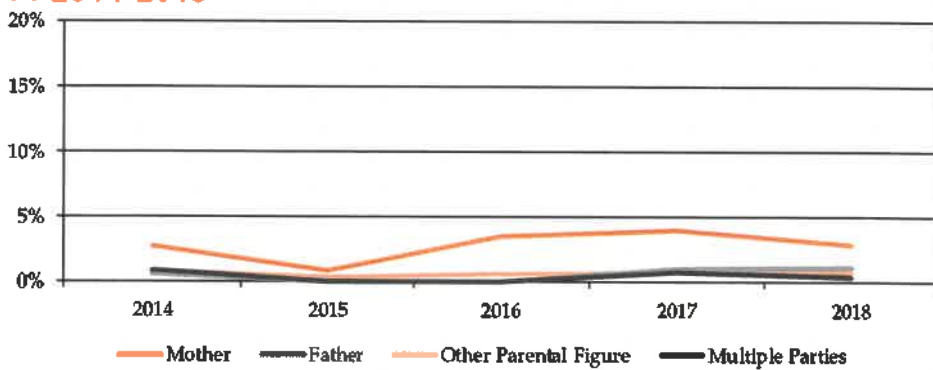
Parental Psychiatric Hospitalization

Parental Psychiatric Hospitalization, FY 2014-2018



- » Since FY 2014, an average of 4% of youth reported parents with a history of psychiatric hospitalization.
- » An average of 3% of youth reported their mother had a history of psychiatric hospitalization, making mothers the hospitalized parent most often.

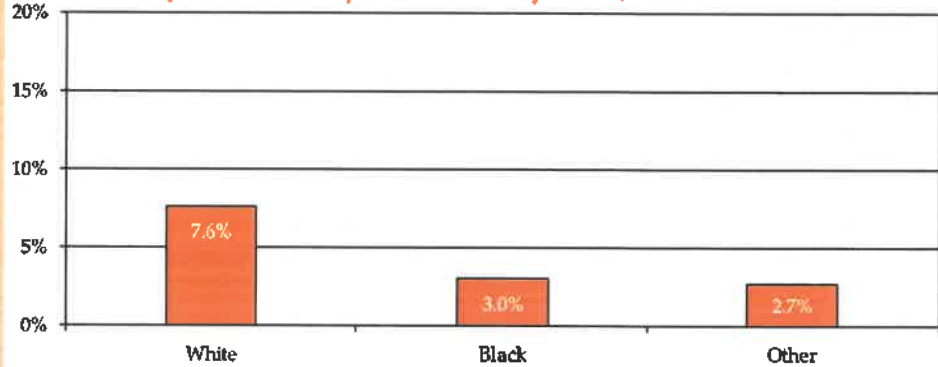
Parental Psychiatric Hospitalization by Party Involved, FY 2014-2018



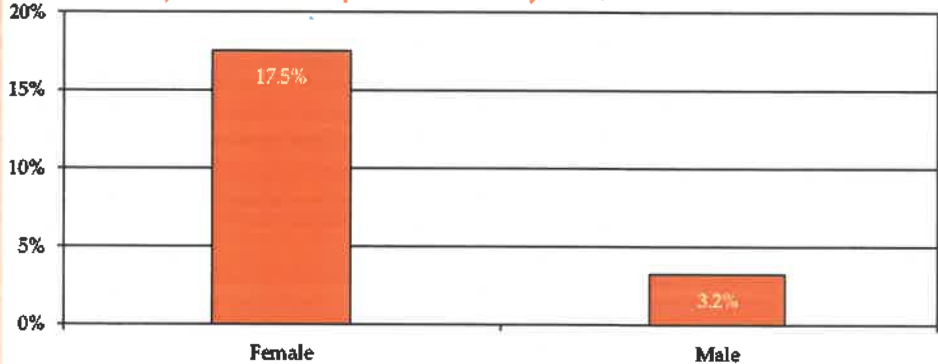
Parental Psychiatric Hospitalization, cont.

- » A higher percentage of White youth reported parents with a history of psychiatric hospitalization compared to Black youth and youth of other races.
- » A higher percentage of females reported parents with a history of psychiatric hospitalization compared to males.

Parental Psychiatric Hospitalization by Race, FY 2014-2018

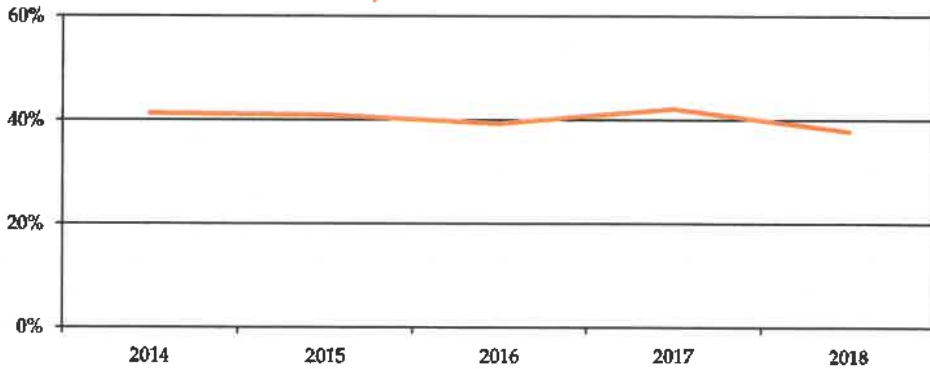


Parental Psychiatric Hospitalization by Sex, FY 2014-2018



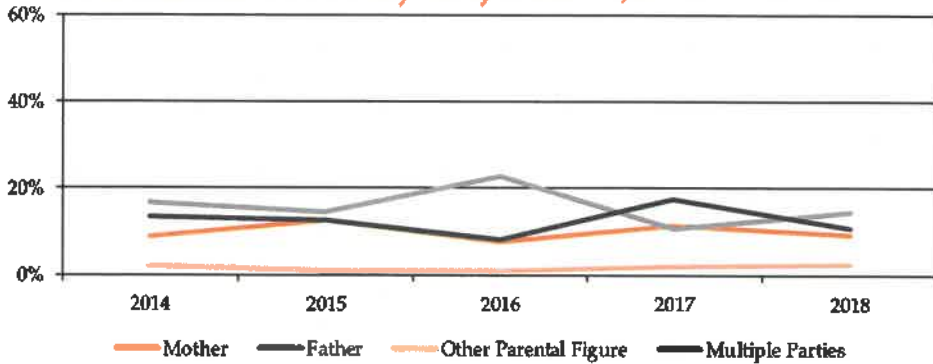
Parental Substance Abuse

Parental Substance Abuse, FY 2014-2018



- » Since FY 2014, an average of 40% of youth reported parental substance abuse.
- » An average of 16% of youth reported their father had a substance abuse problem, making fathers the parent who abused substances most often.

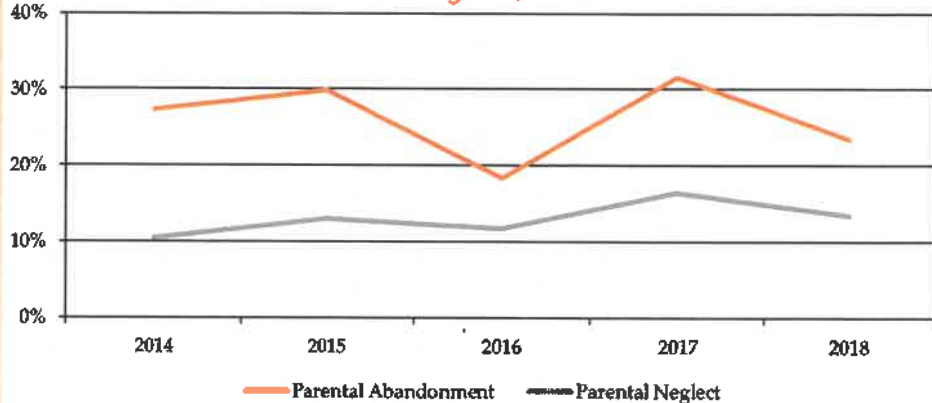
Parental Substance Abuse by Party Involved, FY 2014-2018



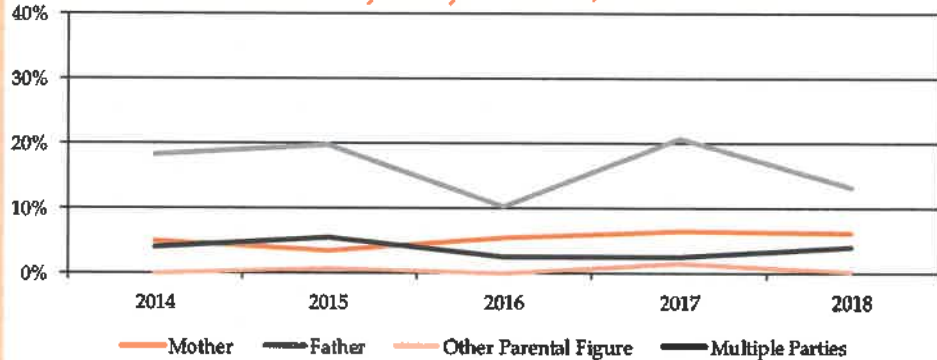
Parental Abandonment and Neglect

- » Since FY 2014, an average of 26% of youth reported parental abandonment, and 13% reported parental neglect.
- » An average of 16% of youth reported their father had abandoned them, making fathers the abandoning parent most often.
- » A higher percentage of youth from other races reported parental abandonment compared to White youth and Black youth.

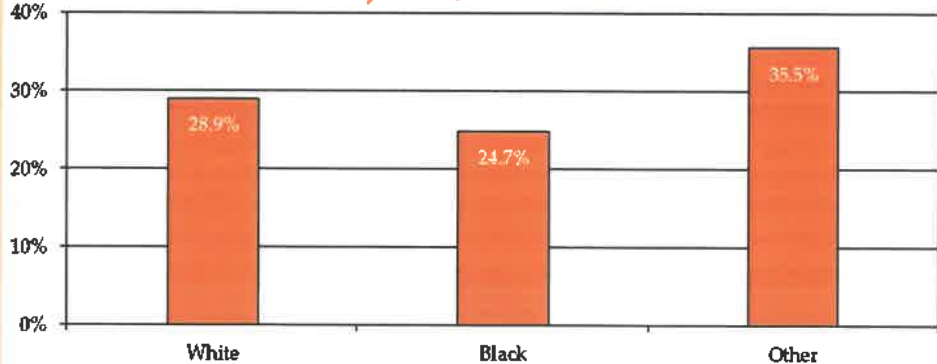
Parental Abandonment and Neglect, FY 2014-2018



Parental Abandonment by Party Involved, FY 2014-2018



Parental Abandonment by Race, FY 2014-2018

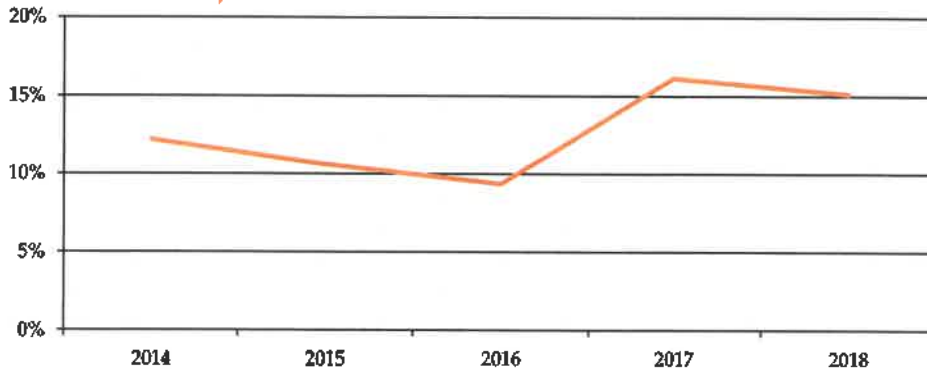


Data presented on this page are collected on the Social History Information form and YASI.



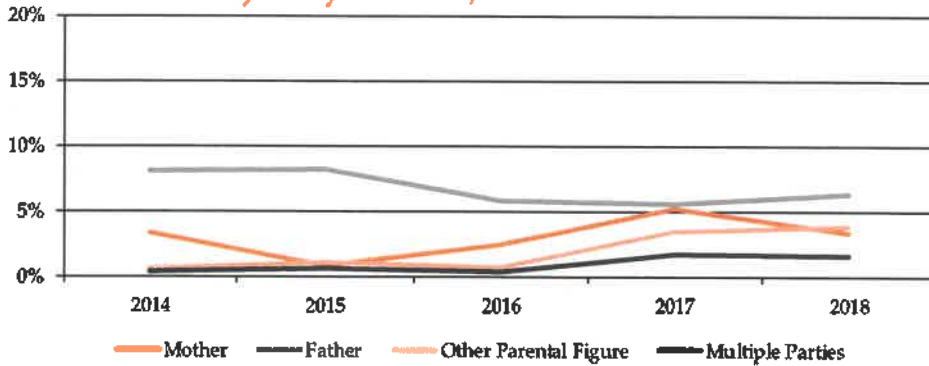
Parental Death

Parental Death, FY 2014-2018



- » Since FY 2014, an average of 13% of youth had a parent die prior to commitment.
- » An average of 7% of youth reported their father had died, making fathers the deceased parent most often.

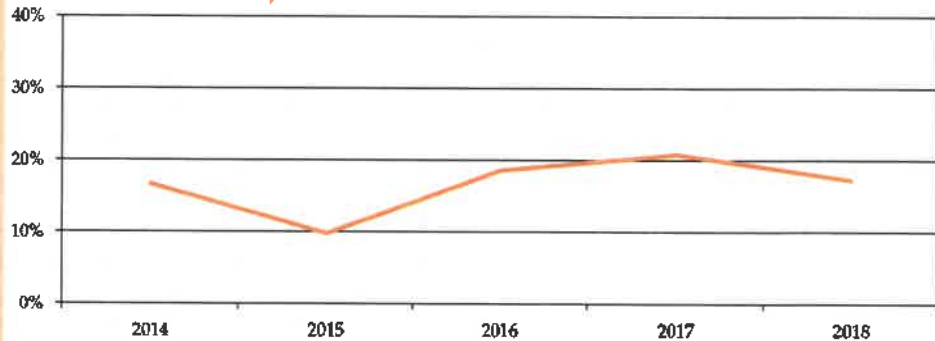
Parental Death by Party Involved, FY 2014-2018



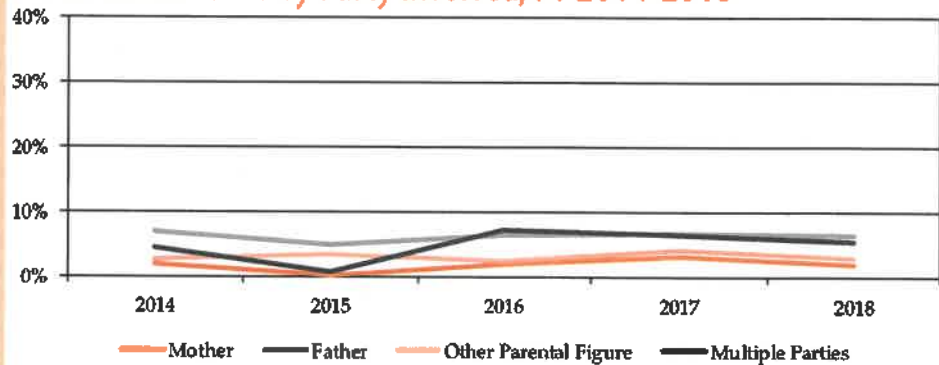
Domestic Violence

- » Since FY 2014, an average of 17% of youth experienced domestic violence.
- » An average of 6% of youth reported their father was the perpetrator of domestic violence, making fathers the most frequent perpetrators.

Domestic Violence, FY 2014-2018

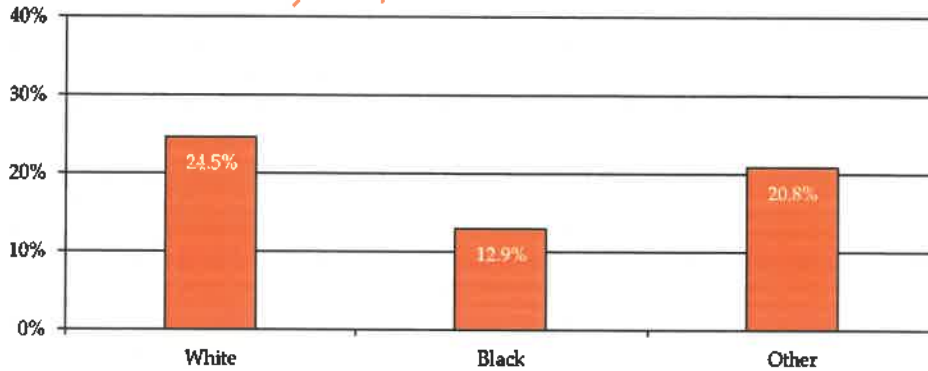


Domestic Violence by Party Involved, FY 2014-2018



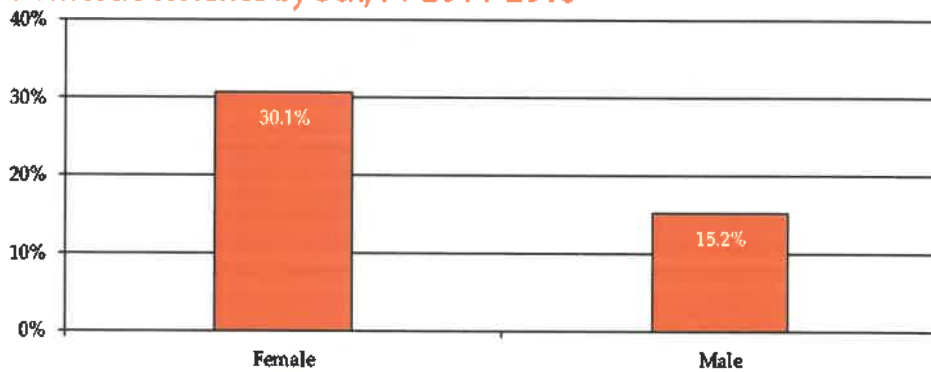
Domestic Violence, cont.

Domestic Violence by Race, FY 2014-2018



- » A lower percentage of Black youth experienced domestic violence compared to White youth and youth of other races.
- » A higher percentage of females experienced domestic violence compared to males.

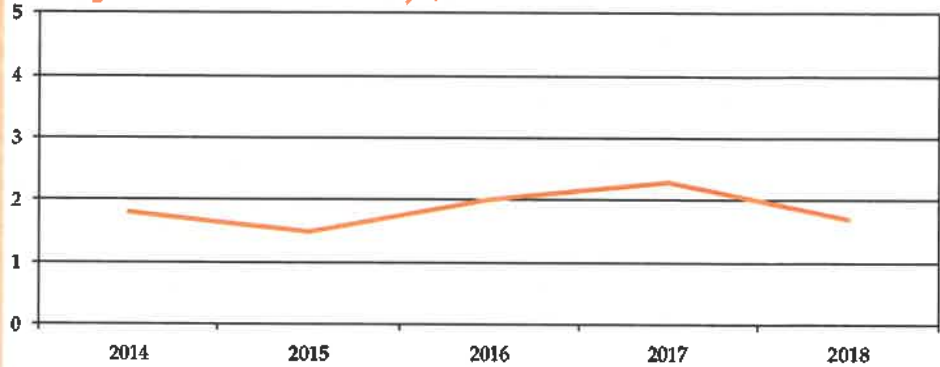
Domestic Violence by Sex, FY 2014-2018



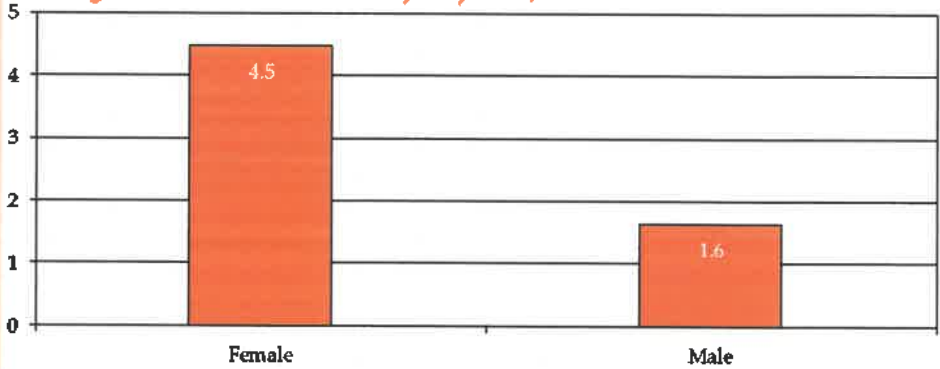
Runaways

- » Since FY 2014, youth had previously run away an average of 1.9 times.
- » Females had a higher average number of runaways compared to males.

Average Number of Runaways, FY 2014-2018



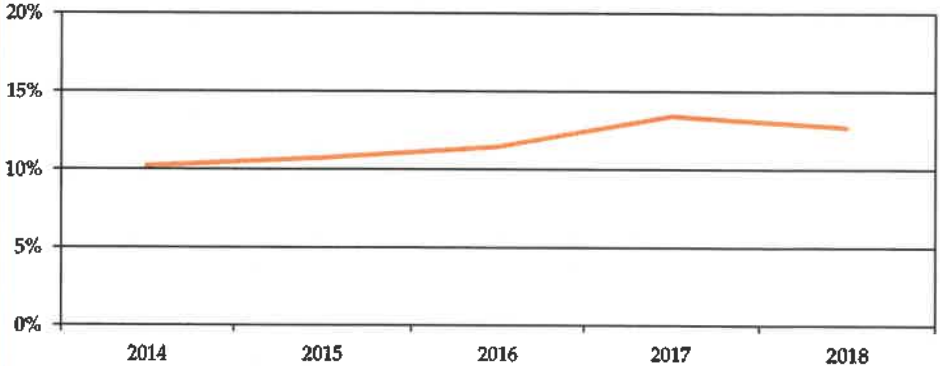
Average Number of Runaways by Sex, FY 2014-2018



Kicked Out of Home

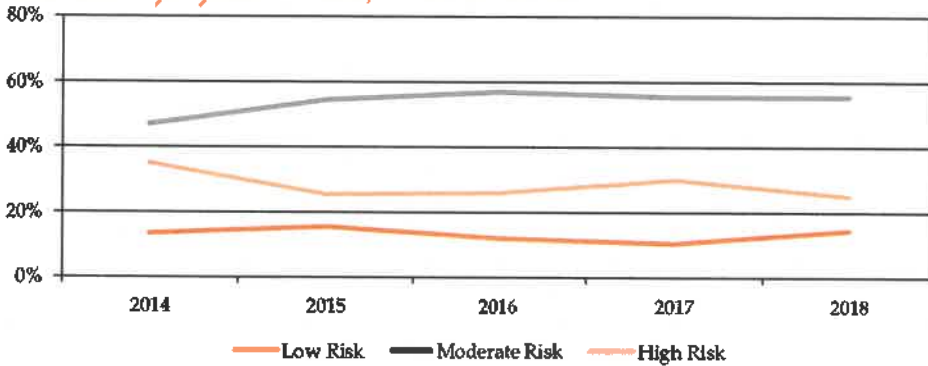
- » Since FY 2014, an average of 12% of youth reported being kicked out of home.

Kicked Out of Home, FY 2014-2018



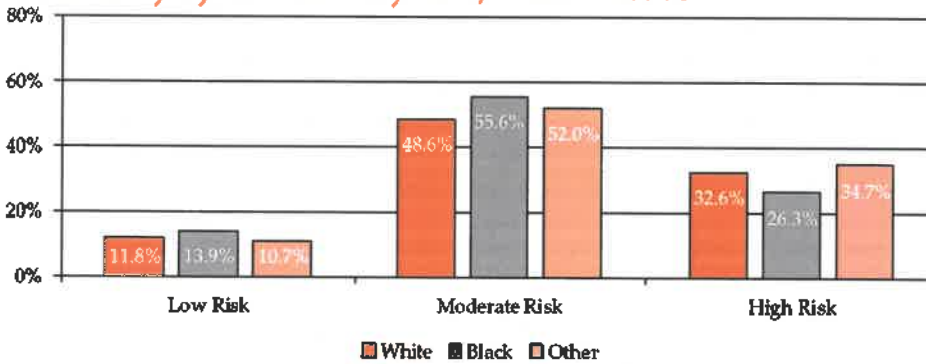
Family Risk (from YASI)

YASI Family Dynamic Risk, FY 2014-2018

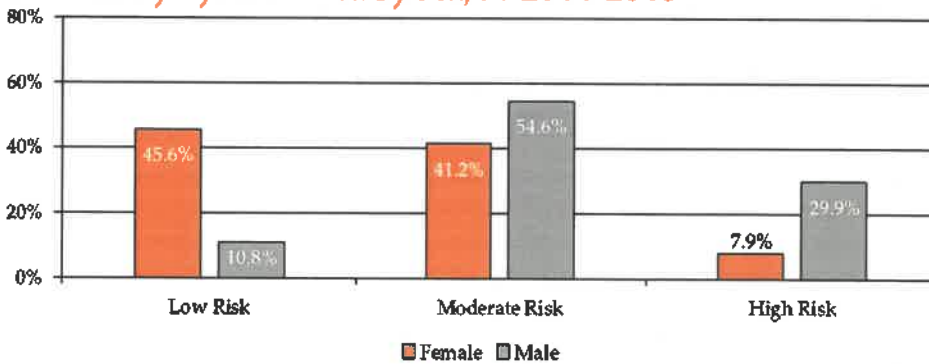


- » Since FY 2014, an average of 54% of youth were classified as moderate risk in the Family dynamic risk domain.
- » A lower percentage of Black youth were high risk compared to White youth and youth of other races.
- » A lower percentage of females were moderate or high risk compared to males.

YASI Family Dynamic Risk by Race, FY 2014-2018



YASI Family Dynamic Risk By Sex, FY 2014-2018





The photographs throughout this report are the original creations of Bon Air JCC students in the *Introduction to Photography* and *Advanced Photography* courses.

3 Community & Peers

The Community & Peers section includes information from the Employment and Free Time and Community and Peers YASI domains. The section discusses topics such as employment history, structured and unstructured recreational activities, gang and delinquent peer associations, and positive adult relationships in the community. The information is collected primarily during interviews with youth during their YASI assessment.

Employment and Delinquency

The relationship between employment, free time, and delinquency has been a topic of interest for many researchers. While anecdotal evidence suggests employment should reduce the opportunities for youth to engage in delinquent behavior, some research does not support this position. For example, studies have found that youth employed for more than 20 hours per week were more involved in delinquency than those who worked less or not at all (Bachman et al., 2008; Mortimer, 2003; Staff & Uggen, 2003). A potential explanation is that youth who work have more financial resources and autonomy to engage in unsupervised leisure activities (Osgood, Wilson, O'Malley, Bachman, & Johnston, 1996; Osgood, 1999). Without parental supervision, it is more likely that these youth will participate in delinquent behaviors with their peers (Osgood et al., 1996). However, employment status is often considered in a youth's risk profile and is included in YASI.

Peers and Delinquency

Youth's community and peer associations in early life can greatly influence their behavior. One study found that communities with weak structural organization can indirectly lead to delinquency through inconsistent parenting behavior and delinquent peer influence (Chung & Steinberg, 2006). Another study found delinquent peers were a consistent risk factor for youth violence and aggression (Ferguson, Miguel, & Hartley, 2009). Many youth with unstructured leisure time, limited positive interests, and lack of connection or accountability to the communities in which they live tend to associate with delinquent peers and engage in negative activities. On some occasions, association with delinquent peers can

contribute to youth's participation in criminal or violent activities as well as gang involvement.

Gang Involvement

There is a strong association between gang involvement and delinquency. A 2004 study reported by the United States Office of Juvenile Justice and Delinquency Prevention (OJJDP) of adolescent boys in Rochester, New York, attributed this link to two factors. First, gangs attract individuals who exhibit anti-social behavior and are more likely to perform delinquent acts; second, the gang facilitates its members' involvement in delinquent acts. The study found that boys had higher rates of violent offenses, drug sales, and illegal gun ownership during the years they were involved with gangs compared to years before or after they were involved. The study also found that gang members were more likely to drop out of school, become parents in their teenage years, and have unstable employment (Thornberry, Krohn, Lizotte, & Smith, 2003). In addition to negatively influencing youth's participation in delinquent activity, gang involvement can exacerbate risk factors that contribute to future criminality in adulthood. Another study found that gang involvement during adolescence had direct and indirect impacts such as economic hardships, family issues, recidivism, and rearrests (Krohn, Ward, Thornberry, Lizotte, & Chu, 2011).

Risk-Needs-Responsivity Model

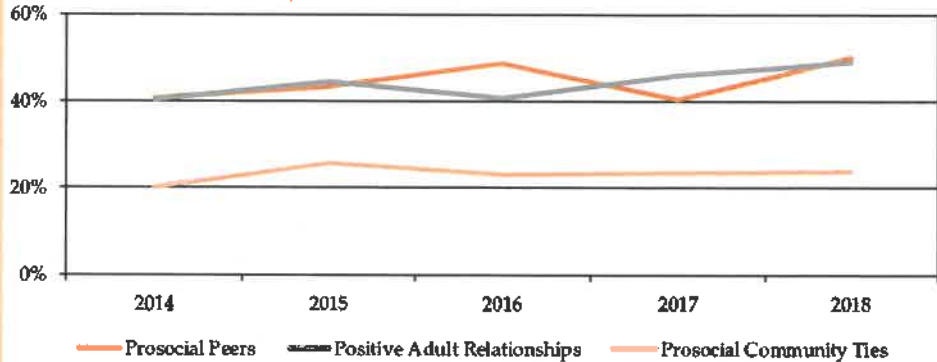
DJJ understands the need to address risk factors through individualized case planning and to direct resources toward youth at the highest risk of future delinquent behaviors. Successful outcomes require services that are individualized to the strengths and needs of youth, so case planning throughout DJJ is based on risk, criminogenic needs, and protective factors as determined by scores on YASI. Utilizing a standardized assessment, such as YASI, provides objective information that helps facilitate individual treatment needs for youth (OJJDP, 2015). YASI has a Community and Peers component, which covers such topics as peer influence and positive adult relationships.



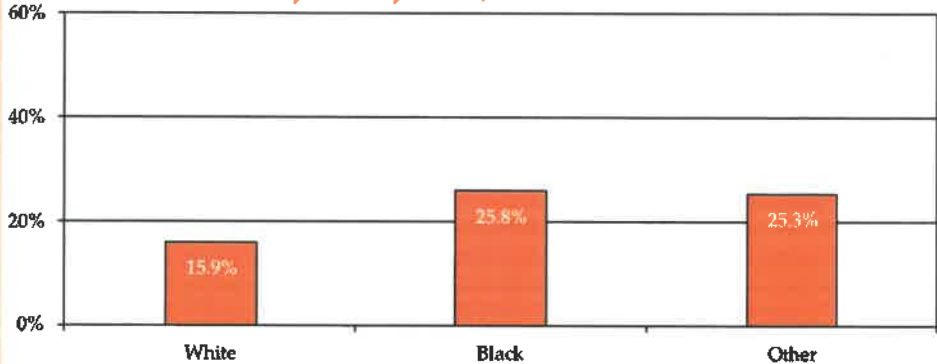
Prosocial Influences

- » The percentage of youth with prosocial peers increased from 41% in FY 2014 to 50% in FY 2018.
- » Since FY 2014, an average of 44% of youth had at least one positive adult relationship, and 23% had prosocial community ties.
- » A lower percentage of White youth had prosocial community ties compared to Black youth and youth of other races.

Prosocial Influences, FY 2014-2018



Prosocial Community Ties by Race, FY 2014-2018

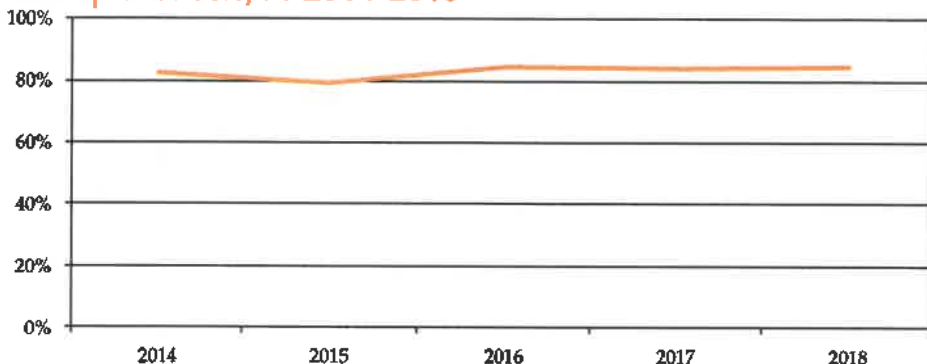


Positive adult relationships refer to adults who provide support and model prosocial behavior, such as religious leaders, community members, mentors, or previous employers. Prosocial community ties refer to youth being involved in community organizations that provide explicit opportunities for learning prosocial behavior and attitudes (e.g., church, community service clubs, and volunteer activities).



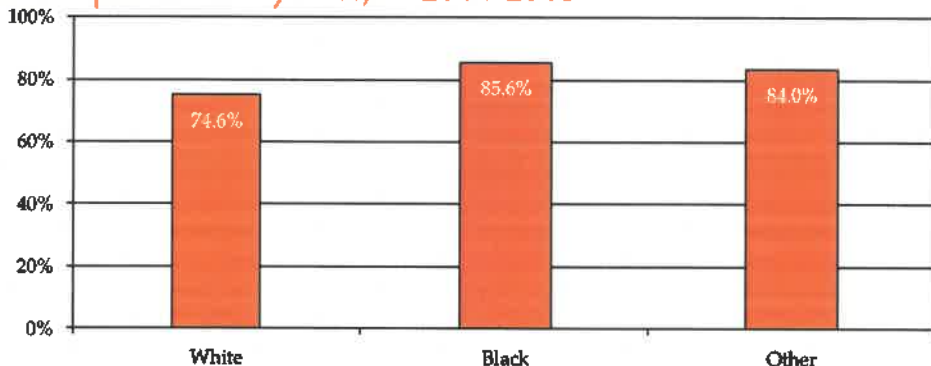
Delinquent Peers

Delinquent Peers, FY 2014-2018

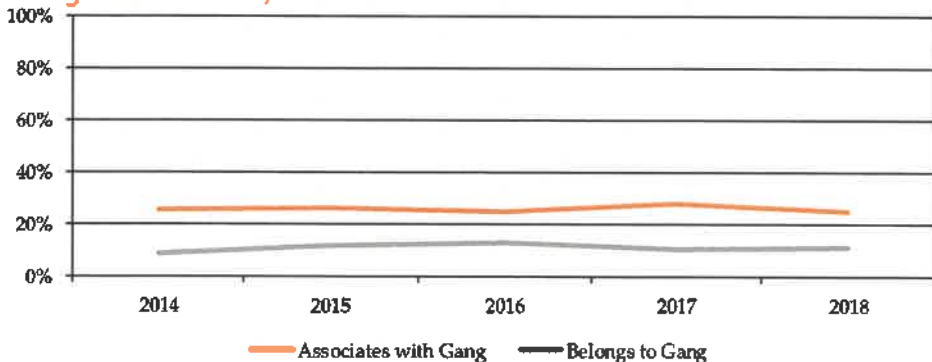


- » Since FY 2014, an average of 83% of youth associated with peers who had a negative or delinquent influence.
- » A lower percentage of White youth had delinquent peers compared to Black youth and youth of other races.

Delinquent Peers by Race, FY 2014-2018



Gang Involvement, FY 2014-2018



Gang Involvement

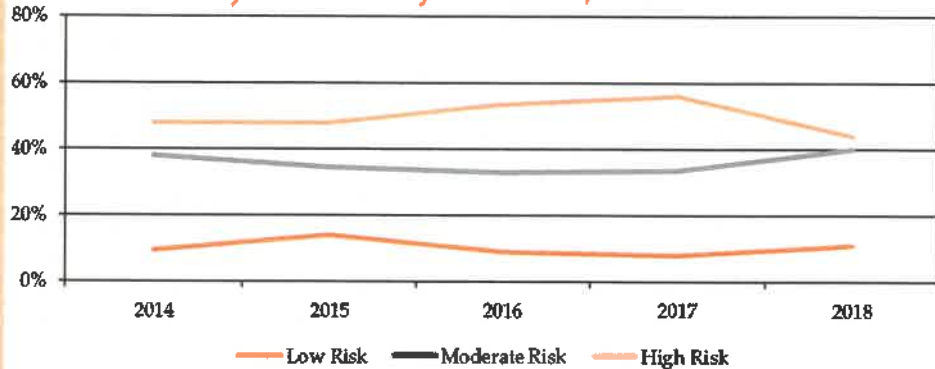
- » Since FY 2014, an average of 12% of youth belonged to a gang, and 26% associated with gang members.



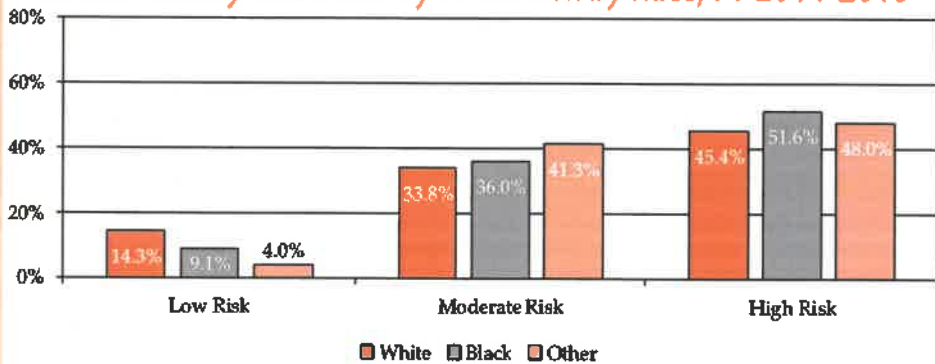
Community and Peers Risk (from YASI)

- » Since FY 2014, an average of 50% of youth were classified as high risk in the Community and Peers dynamic risk domain.
- » A lower percentage of White youth were high risk compared to Black youth and youth of other races.
- » A higher percentage of females were low or moderate risk compared to males.

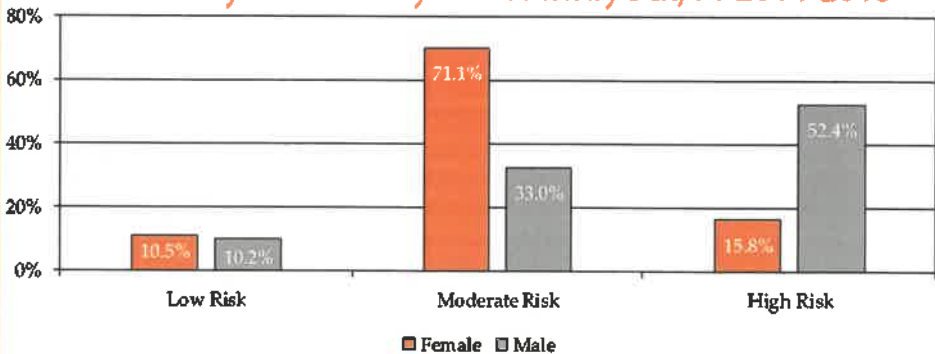
YASI Community and Peers Dynamic Risk, FY 2014-2018



YASI Community and Peers Dynamic Risk by Race, FY 2014-2018



YASI Community and Peers Dynamic Risk by Sex, FY 2014-2018

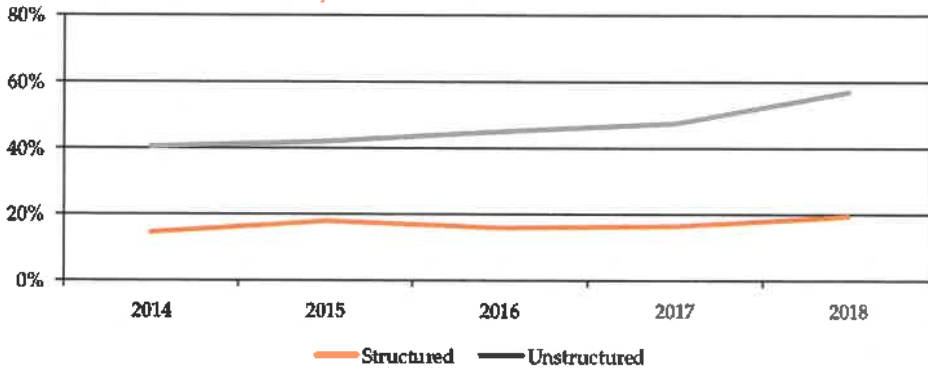


Data presented on this page are collected with YASI.



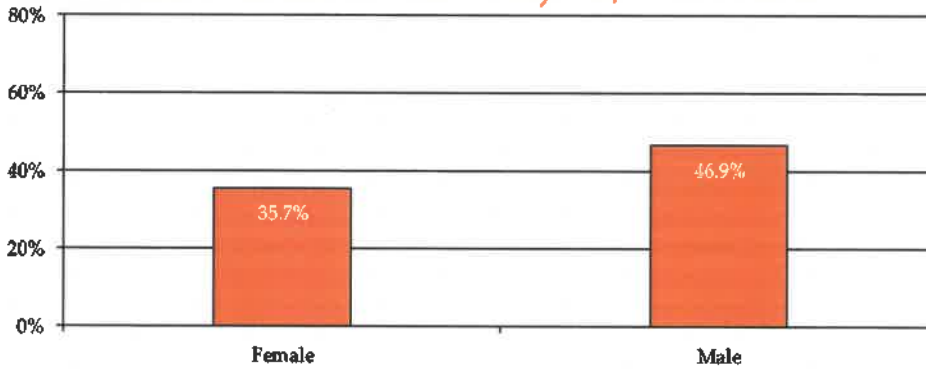
Recreational Activities

Recreational Activities, FY 2014-2018



- » Since FY 2014, an average of 17% of youth were involved in at least one structured recreational activity.
- » The percentage of youth who were involved in at least one unstructured recreational activity increased from 41% in FY 2014 to 57% in FY 2018.
- » A higher percentage of males reported being involved in at least one unstructured recreational activity compared to females.

Unstructured Recreational Activities by Sex, FY 2014-2018



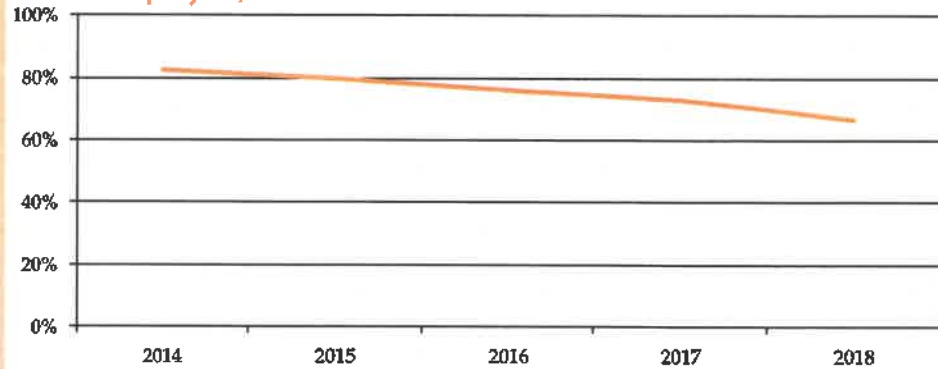
Structured recreational activities consist of supervised prosocial community activities such as church, clubs, and athletics. Unstructured recreational activities refer to positively influencing independent activities such as reading, art, and other hobbies.



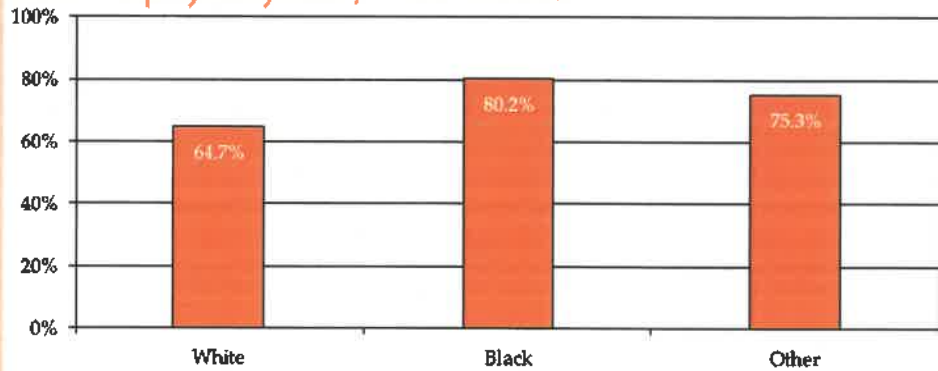
Employment

- » The percentage of youth who reported never being employed decreased from 82% in FY 2014 to 67% in FY 2018.
- » A lower percentage of White youth reported never being employed compared to Black youth and youth of other races.

Never Employed, FY 2014-2018

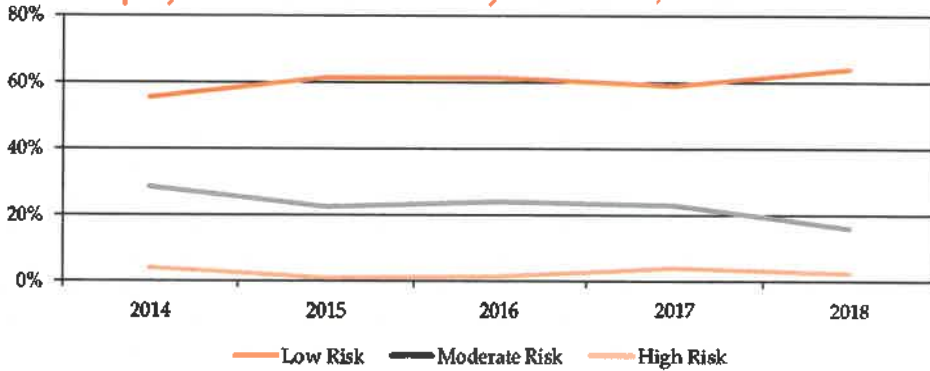


Never Employed by Race, FY 2014-2018



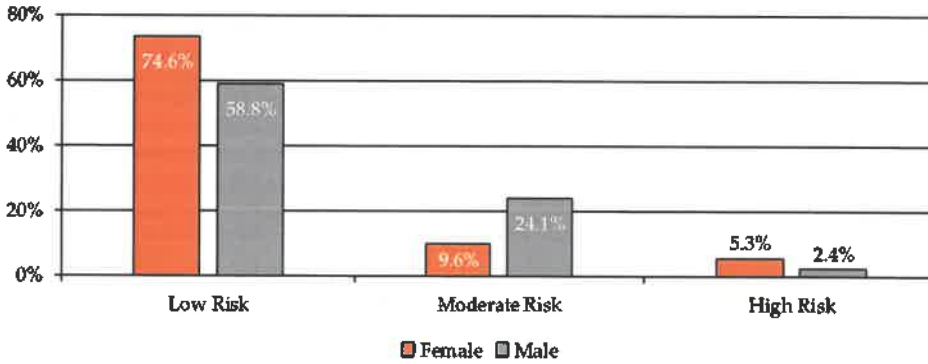
Employment and Free Time Risk (from YASI)

YASI Employment and Free Time Dynamic Risk, FY 2014-2018



- » Since FY 2014, an average of 60% of youth were classified as low risk in the Employment and Free Time dynamic risk domain.
- » A higher percentage of females were low or high risk compared to males.

YASI Employment and Free Time Dynamic Risk by Sex, FY 2014-2018





The photographs throughout this report are the original creations of Bon Air JCC students in the *Introduction to Photography* and *Advanced Photography* courses.

4 Education

The Education section includes information from the *School* domain of YASI and the Educational Information form (Appendix C). This section discusses youth's school problem history, last grade completed, and educational needs. Objective measures are either assessed upon admission or collected from existing school records. Subjective measures are either self-reported by the youth or determined by staff conducting educational assessments.

Education and Delinquency

Several studies have examined the relationship between education and delinquency. For example, youth who struggle academically and have a low commitment to school are more likely to engage in delinquent behavior (Borowski, Ireland, & Resnick, 2002; Lochner & Moretti, 2004; Wasserman et al., 2003). Also, youth who come into contact with the juvenile justice system tend to perform below grade level on standardized tests and to have been suspended or expelled before they entered custody (Foley, 2001; Sedlak & McPherson, 2010).

An important factor in this relationship is the "school-to-prison pipeline," a series of policies and practices which funnel students into the juvenile and criminal justice systems (Wald & Losen, 2003). The pipeline primarily operates through "zero tolerance" policies which result in exclusionary discipline practices such as suspension, expulsion, and disciplinary transfer (Skiba, 2014). Findings from numerous studies demonstrate the negative implications of the pipeline. For example, youth who are transferred to disciplinary alternative schools experience increased police surveillance on or around school property (Reck, 2015; Rios, 2011). In addition, research suggests that suspension is associated with subsequent arrests and system involvement (Cuellar & Markowitz, 2015; Mowen & Brent, 2016). The pipeline disproportionately affects youth of color, those with disabilities, and youth from low-income communities (Skiba, Michael, Nardo, & Peterson, 2002; Wald & Losen, 2003).

Educational Programming in the Juvenile Justice System Nationwide

In 2016, OJJDP conducted the biennial Juvenile Residential Facility Census, which collects data on the programming and populations of all juvenile residential facilities in the country. The types of educational services, screening for grade and academic need, student participation, quality of education services, and student academic and vocational outcomes varied across facilities. Almost all facilities (88%) reported that some of the youth attended school whether inside or outside of the facility (Hockenberry & Sladky, 2018). In addition, 88% of facilities administered and reported educational screening information. Of these facilities, 92% used previous academic records, 63% used written intake tests, and 60% conducted interviews upon admission by an education specialist. Also, 87% of facilities provided high school education, and 80% provided middle school education. In those facilities, 76% offered special education services, and 67% offered GED® preparation. Additionally, 36% of facilities provided vocational or technical education, and 33% provided post-secondary education. Lastly, 88% of facilities provided educational status information to new school placements for youth being released from the facility.

Educational Services at DJJ

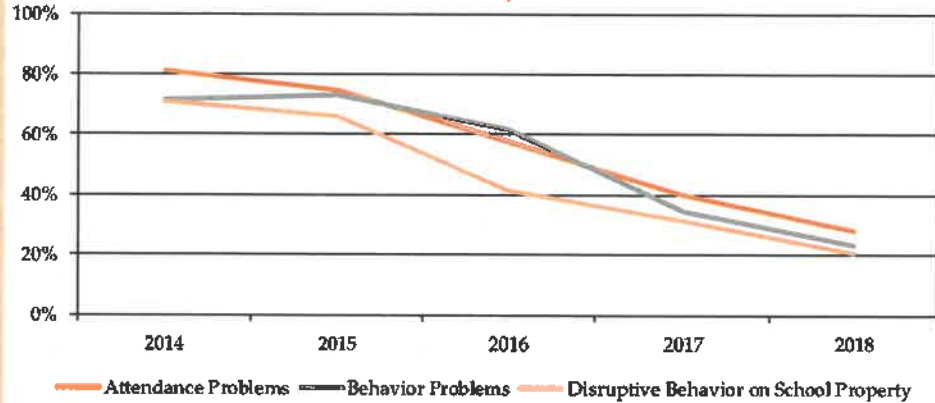
Youth are admitted to direct care at various points in their academic career, with some deficient in one or more educational areas at the time of admission. All youth who have not earned a high school diploma or high school equivalency credential are evaluated and placed into an appropriate educational program. These youth may also enroll in classes that will prepare them to participate in high school equivalency testing or work toward the Penn Foster diploma. DJJ also provides post-secondary career and college readiness programs for youth. Post-secondary courses are geared toward the attainment of industry certifications, credentials, or college course completion.



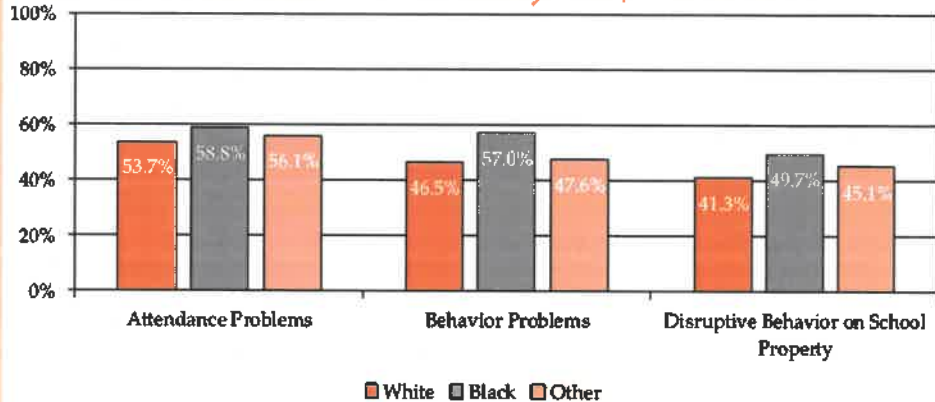
School Problem History

- » From FY 2014 to FY 2018, the percentage of youth with attendance problems prior to commitment decreased from 81% to 28%, the percentage with behavior problems decreased from 72% to 23%, and the percentage who engaged in disruptive behavior on school property decreased from 71% to 21%.
- » A lower percentage of White youth had attendance problems, behavior problems, or engaged in disruptive behavior on school property compared to Black youth and youth of other races.

Attendance and Behavior Problems, FY 2014-2018



Attendance and Behavior Problems by Race, FY 2014-2018

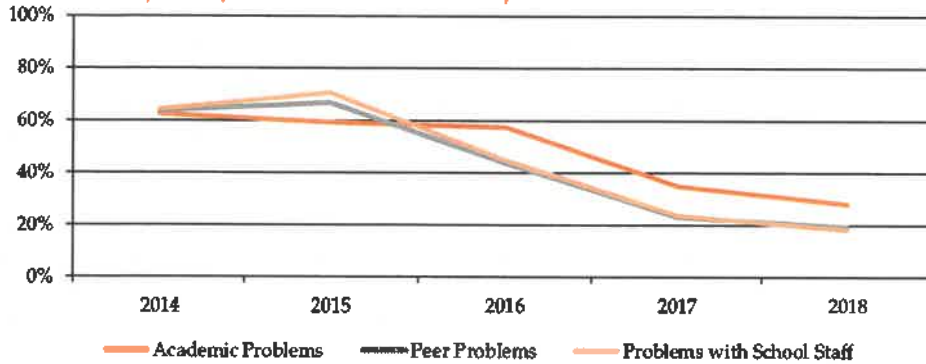


Only those school problems considered "Moderate" or "Severe" were included in these analyses.



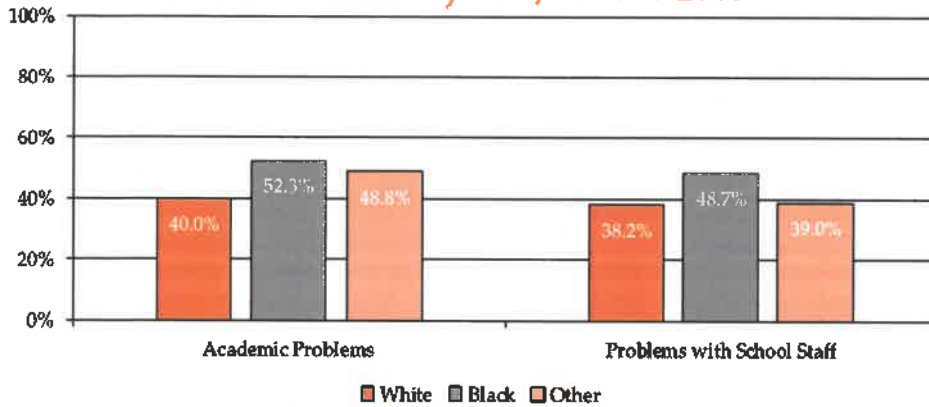
School Problem History, cont.

Academic, Peer, and Staff Problems, FY 2014-2018



- » From FY 2014 to FY 2018, the percentage of youth with academic problems prior to commitment decreased from 62% to 28%, the percentage with peer problems decreased from 64% to 19%, and the percentage who had problems with school staff decreased from 64% to 18%.
- » A higher percentage of Black youth had academic problems or problems with school staff compared to White youth and youth of other races.

Academic and Staff Problems by Race, FY 2014-2018



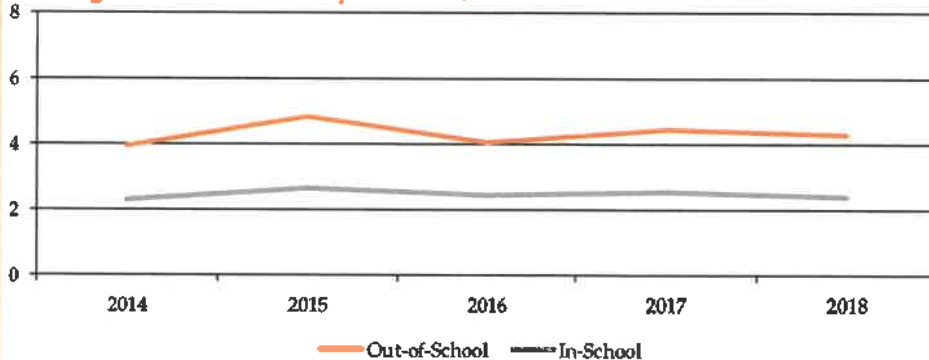
Only those school problems considered "Moderate" or "Severe" were included in these analyses.



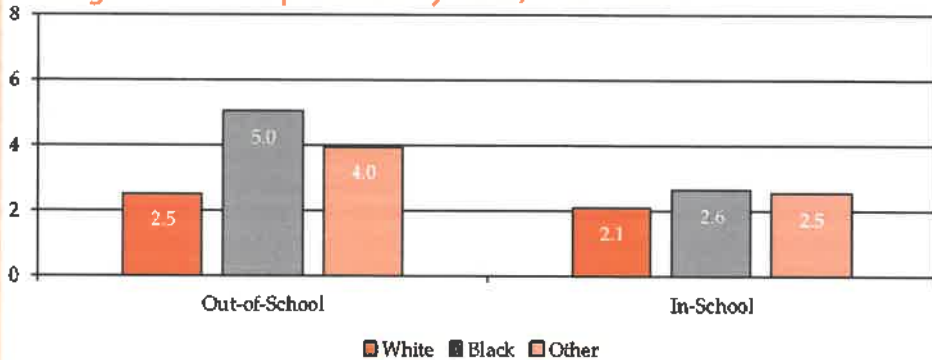
School Suspension History

- » Since FY 2014, youth had an average of 4.3 out-of-school suspensions and 2.5 in-school suspensions prior to commitment.
- » White youth had a lower average number of suspensions compared to Black youth and youth of other races.

Average Number of Suspensions, FY 2014-2018



Average School Suspensions by Race, FY 2014-2018

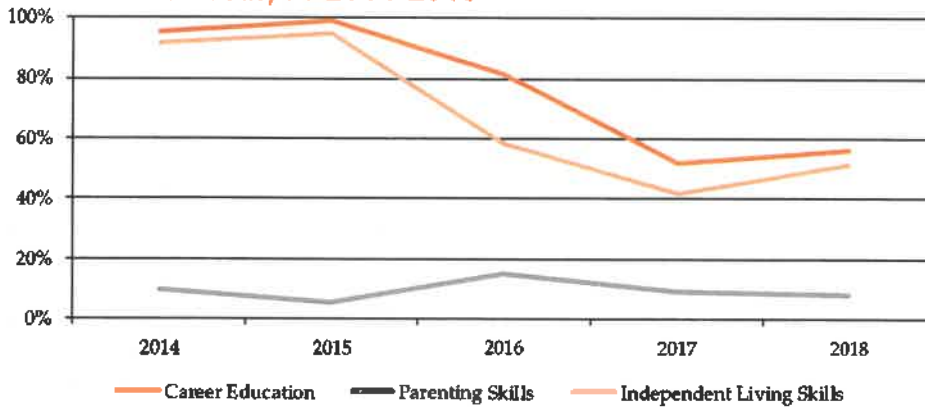


Data presented on this page are collected with YASI.
Averages are based on youth with responses to these items; 12% had missing data.



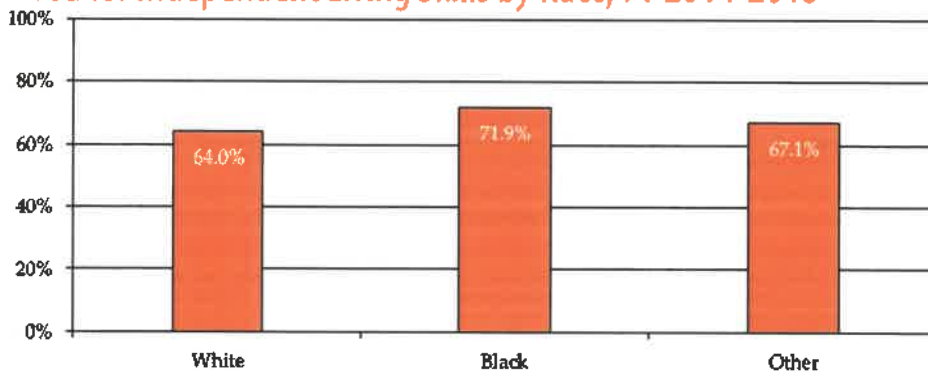
Educational Needs

Educational Needs, FY 2014-2018



- » From FY 2014 to FY 2018, the percentage of youth needing employability/career education decreased from 95% to 59% while the percentage needing independent living skills declined from 92% to 55%.
- » An average of 10% of youth needed parenting skills.
- » A higher percentage of Black youth needed independent living skills compared to White youth and youth of other races.
- » A higher percentage of females needed parenting skills compared to males.

Need for Independent Living Skills by Race, FY 2014-2018



Need for Parenting Skills by Sex, FY 2014-2018



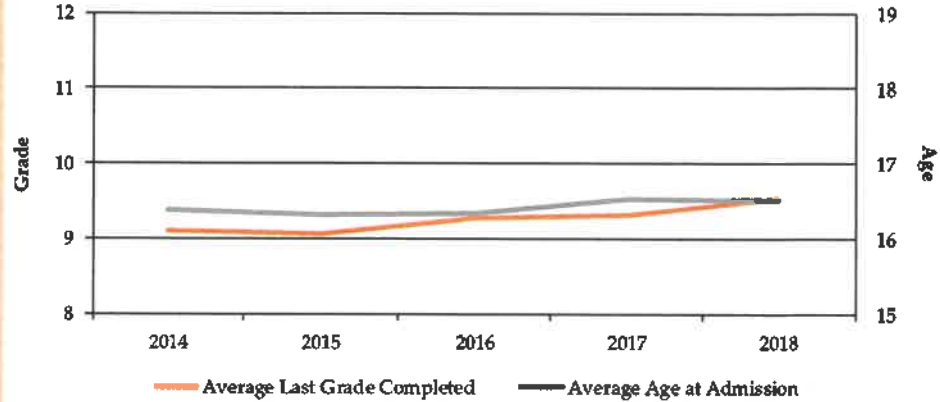
Data presented on this page are collected on the Educational Information form. Percentages are based on youth with responses to these items; 12% had missing data.



Last Grade Completed

- » The 5-year trending graph shows the average last grade completed by youth before admission along with the average age at admission. The scale for grade level is on the left, and the scale for age is on the right. The appropriate grade is aligned with the appropriate age (e.g., nationally most 16 year olds who had not been retained in any grade have completed at least 9th grade). Youth with diplomas or GEDs® were included as completing grade 12. Youth in ungraded or alternative programs or with unknown grades were excluded.
- » Since FY 2014, the average last grade completed was 9.2, and the average age of youth at admission was 16.4.

Average Last Grade Completed and Average Age at Admission, FY 2014-2018



Last Grade Completed by Age at Admission, FY 2014-2018*

Age	Grade						
	≤7th	8th	9th	10th	11th	12th	
13	12	1	0	0	0	0	
14	44	33	7	0	0	0	
15	23	104	54	10	1	1	
16	9	128	160	68	9	12	
17	7	105	165	146	72	78	
18	1	25	29	24	45	52	
19	0	0	1	2	2	9	

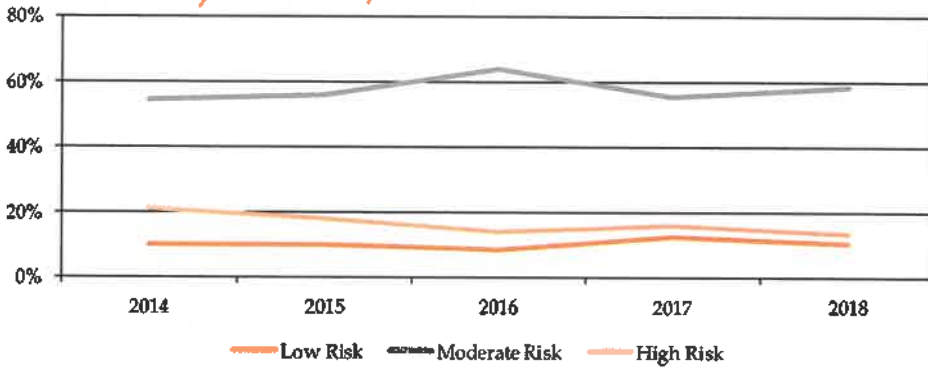
* Ages 12 and 20 were excluded due to low counts. Youth in ungraded or alternative programs or with missing data were also excluded.

Youth are admitted at various points in their academic careers. DJJ provides educational services appropriate for each individual, including middle school, high school, and post-secondary programs.



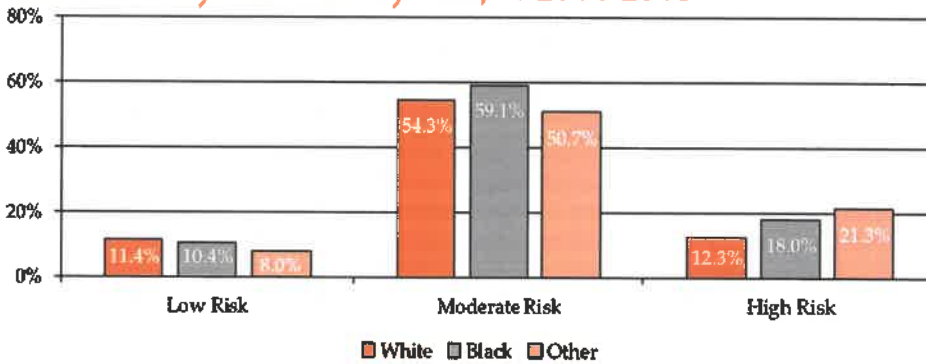
School Risk (from YASI)

YASI School Dynamic Risk, FY 2014-2018

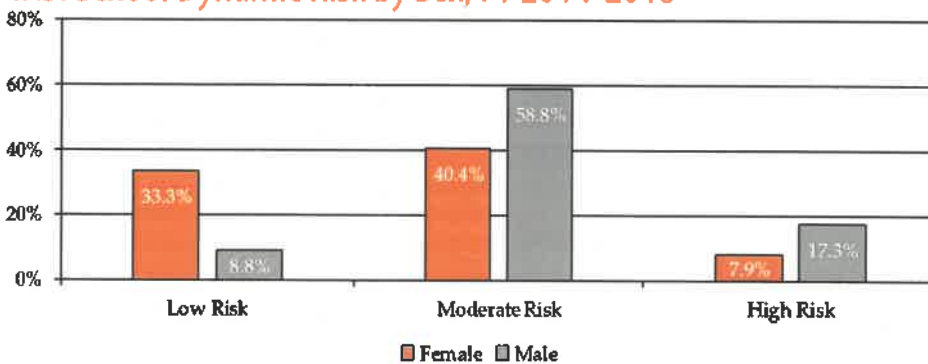


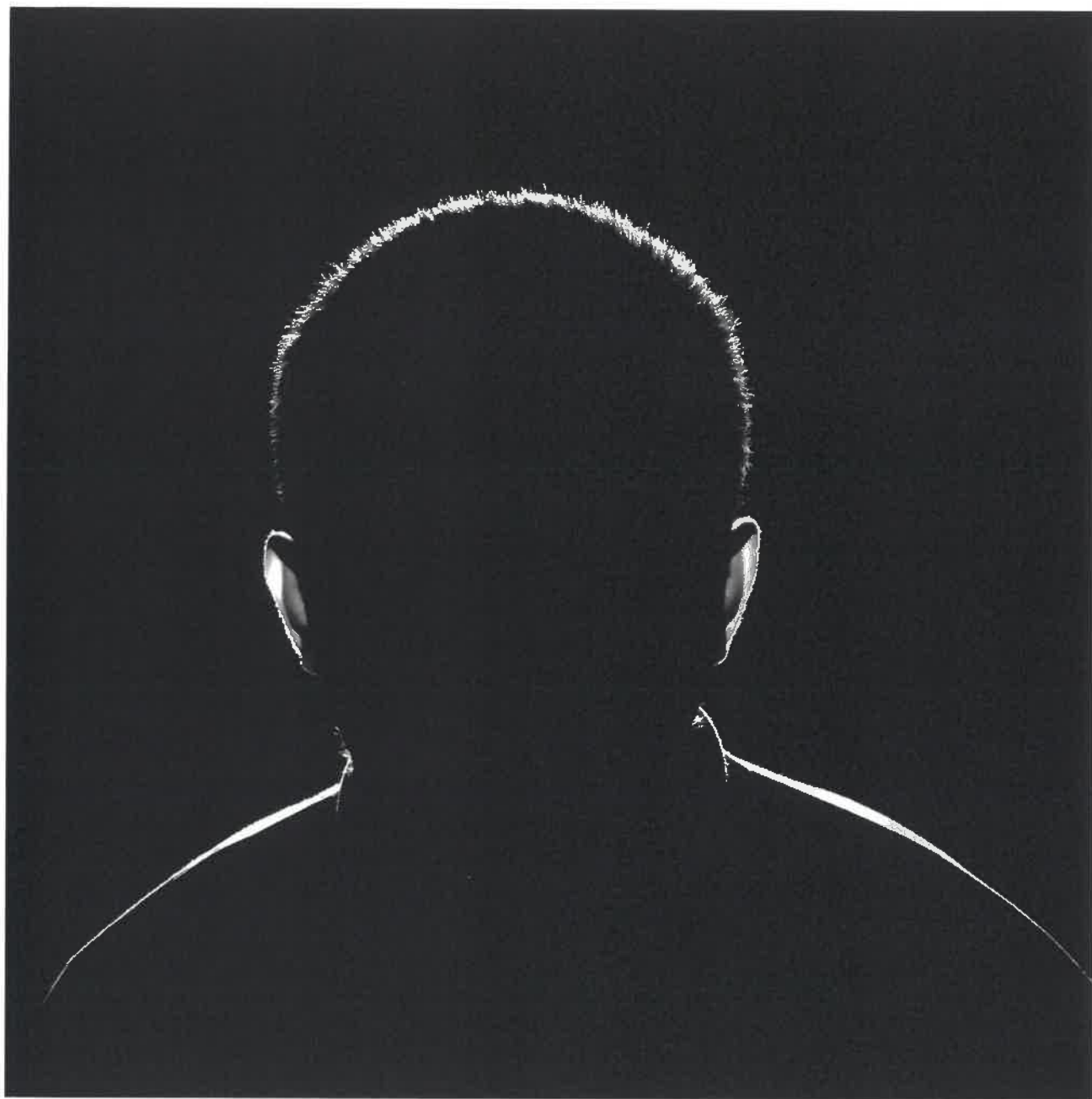
- » Since FY 2014, an average of 58% of youth were classified as moderate risk in the School dynamic risk domain.
- » A lower percentage of White youth were high risk compared to Black youth and youth of other races.
- » A lower percentage of females were moderate or high risk compared to males.

YASI School Dynamic Risk by Race, FY 2014-2018



YASI School Dynamic Risk by Sex, FY 2014-2018





The photographs throughout this report are the original creations of Bon Air JCC students in the *Introduction to Photography* and *Advanced Photography* courses.

5 Mental & Physical Health

The Mental & Physical Health section includes information from the *Mental Health* domain of YASI, the Social History Information (Appendix A), Psychological Information (Appendix B), Medical History (Appendix D), and Physical Examination (Appendix E) forms. Topics include abuse and victimization, mental health disorders, and results from medical and physical examinations.

Mental Health and Delinquency

Youth with mental health disorders are overrepresented within the juvenile justice system (Meservy & Skowrya, 2015; Shufelt & Coccozza, 2006; Teplin et al., 2015). For example, about two-thirds of youth in custody have at least one diagnosable mental health disorder, compared to 9 to 22% of youth in the general population (Schubert & Mulvey, 2014; Schubert, Mulvey, & Glasheen, 2011). The mental health needs of these youth have often gone unrecognized and untreated due to inadequate screenings and assessments before admission (Annie E. Casey Foundation, 2013a). Mental health disorders that are frequently seen in the juvenile justice system include intellectual disability (ID), anxiety, mood, and substance disorders (Council of Juvenile Correctional Administrators, 2014).

Trauma and Mental Health

Research suggests that exposure to traumatic life events is a common feature of childhood and adolescence (Fairbank, 2008). These types of events include physical and sexual abuse, child neglect, and witnessing violence in one's home or community (Briggs et al., 2012). While most youth exposed to traumatic events do not develop significant behavioral issues, some experience negative outcomes such as physical health problems, risky sexual behaviors, low academic achievement, mental health and substance disorders, and delinquency (Brown, Henggeler, Brondino, & Pickrel, 1999; Finkelhor, Turner, Ormrod, & Hamby, 2009; Irish, Kobayashi, & Delhanty, 2010; Lansford et al., 2002; Smith, Leve, & Chamberlain, 2006).

Sprague (2008) notes that the majority of youth involved with the juvenile justice system have experienced trau-

matic events. However, a key distinction between youth in the juvenile justice system and their peers is that system-involved youth have often experienced "poly-victimization," or exposure to multiple types of traumatic events (Abram et al., 2013; Finkelhor, Ormrod, & Turner, 2007; Ford, Elhai, Connor, & Frueh, 2010). Compared to youth who experienced only one type of traumatic event, those who have experienced poly-victimization are at greater risk for subsequent trauma exposure; mental health disorders; chronic medical issues; and family, legal, and vocational problems (Cook et al., 2005; Heim, Shugart, Craighead, & Nemeroff, 2010).

Mental Health Services at DJJ

BSU conducts comprehensive psychological evaluations of all youth committed to DJJ. BSU provides 24-hour crisis intervention; individual, group, and family therapy; case consultations and development of individualized behavior support protocols; program development and implementation; and staff training. Risk assessments are completed for all serious offenders, sex offender special decision cases, and other special decision cases by request.

Medical History Assessment at DJJ

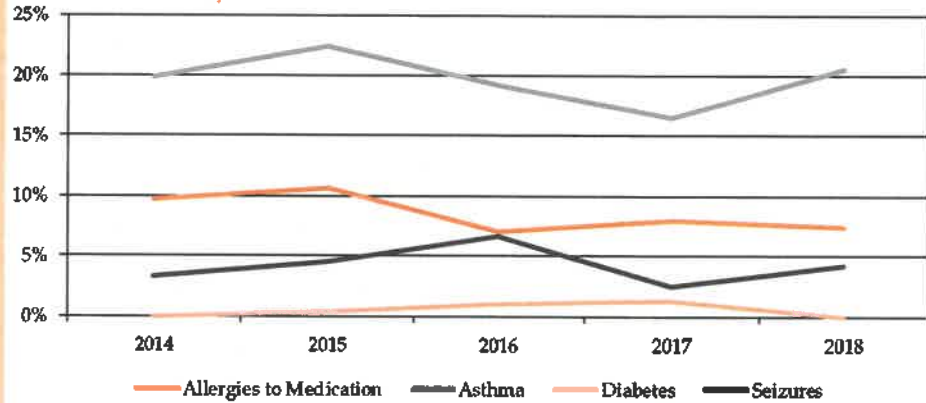
The Medical History form collects information regarding current and historic medical issues at the time of admission, including known allergies, asthma, and diabetes. Information is also captured regarding gunshot and stab wounds. The Physical Examination form includes information regarding the HEENT (head, eyes, ears, nose, and throat) examination, lab results, referrals, as well as each youth's height and weight. Identifying and assessing needs, as well as providing comprehensive services to address the youth's medical needs, plays an important role in rehabilitation and the process of reentry back into the community (Acoca, Stephens, & Van Vleet, 2014; American Academy of Pediatrics, 2011; McCord, Widom, & Crowell, 2000).



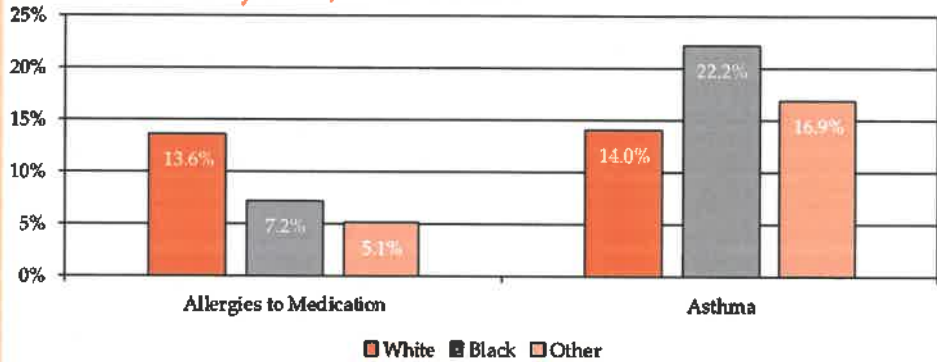
Medical Issues

- » Since FY 2014, an average of 20% of youth had asthma, 9% had allergies to medication, 4% had seizures, and 1% had diabetes.
- » A higher percentage of White youth had allergies to medication compared to Black youth and youth of other races.
- » A higher percentage of Black youth had asthma compared to White youth and youth of other races.

Medical Issues, FY 2014-2018

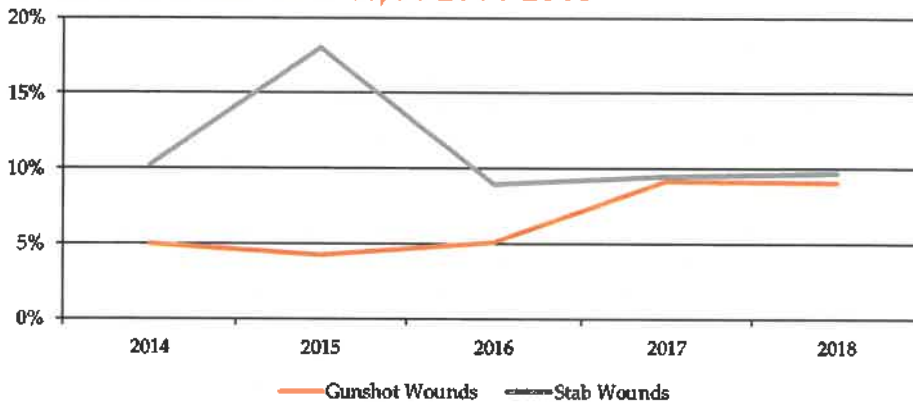


Medical Issues by Race, FY 2014-2018



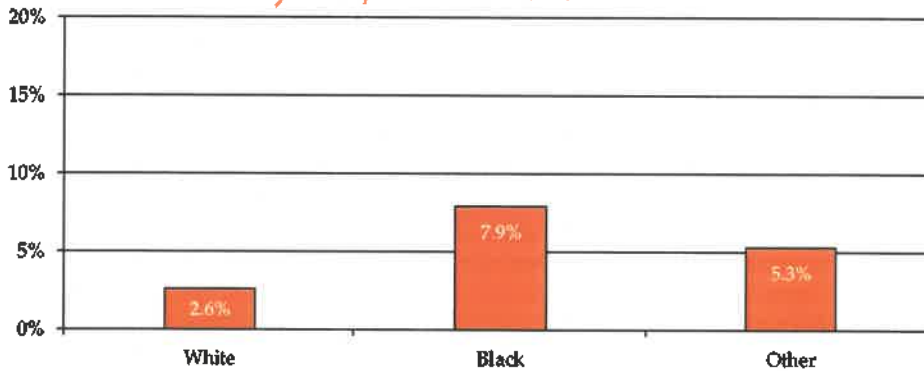
Gunshot and Stab Wounds

Gunshot and Stab Wounds, FY 2014-2018

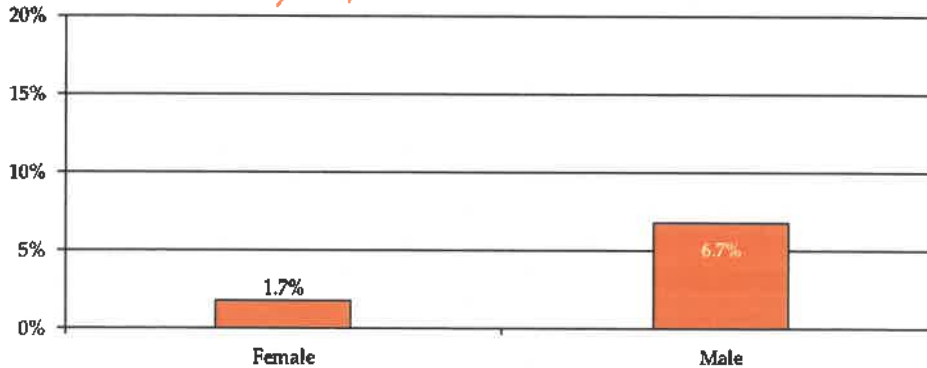


- » Since FY 2014, less than 10% of youth had suffered a gunshot wound. The percentage of youth who suffered from a stab wound remained stable at 10%, with the exception of FY 2015, in which 18% suffered from a stab wound.
- » A lower percentage of White youth suffered from a gunshot wound compared to Black youth and youth of other races.
- » A higher percentage of males suffered from a gunshot wound compared to females.

Gunshot Wounds by Race, FY 2014-2018



Gunshot Wounds by Sex, FY 2014-2018



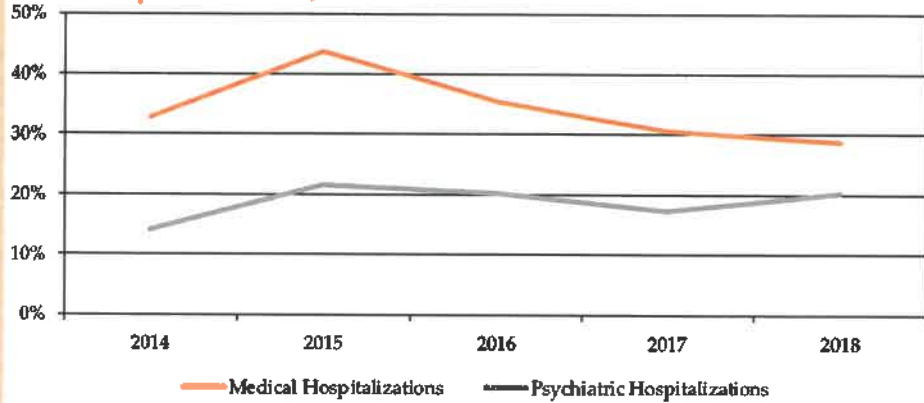
Data presented on this page are collected on the Medical History form.



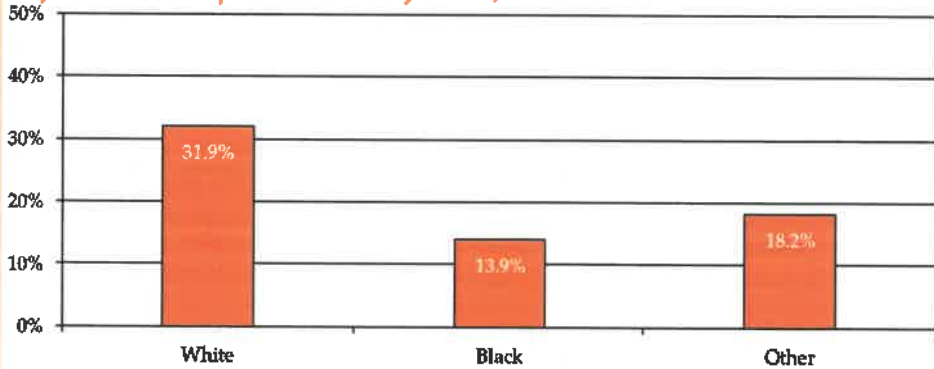
Prior Hospitalizations

- » Since FY 2014, an average of 35% of youth had a prior medical hospitalization, and 19% had a prior psychiatric hospitalization.
- » A higher percentage of White youth had prior psychiatric hospitalizations compared to Black youth and youth of other races.
- » A higher percentage of females had prior psychiatric hospitalizations compared to males.

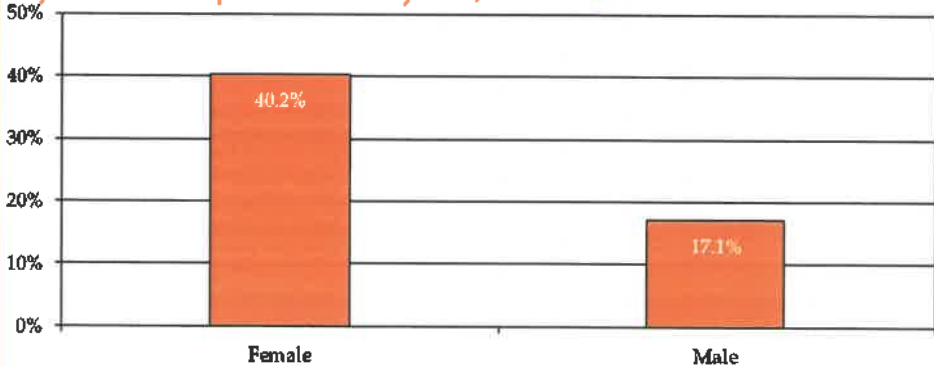
Prior Hospitalizations, FY 2014-2018



Psychiatric Hospitalization by Race, FY 2014-2018



Psychiatric Hospitalization by Sex, FY 2014-2018

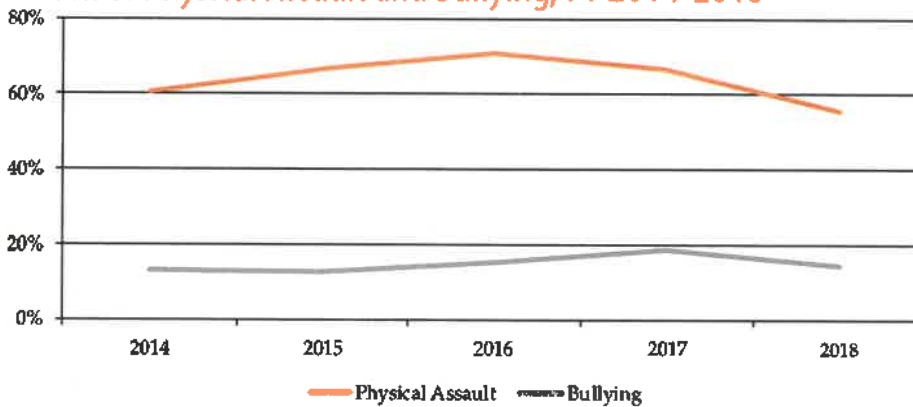


Data presented on this page are collected on the Medical History form.



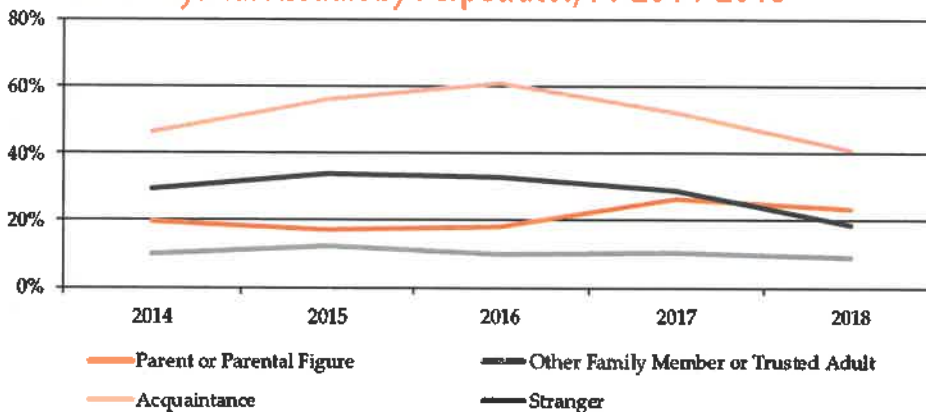
Victimization

Victim of Physical Assault and Bullying, FY 2014-2018



- » Since FY 2014, an average of 64% of youth had been a victim of physical assault, and 15% had been bullied.
- » An average of 52% of youth had been physically assaulted by an acquaintance, making them the most frequent perpetrators.
- » A higher percentage of females were victims of physical assault compared to males.

Victim of Physical Assault by Perpetrator, FY 2014-2018



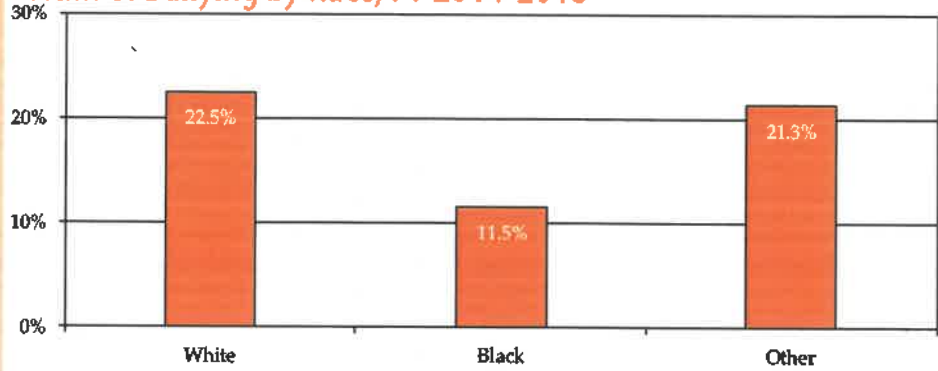
Victim of Physical Assault by Sex, FY 2014-2018



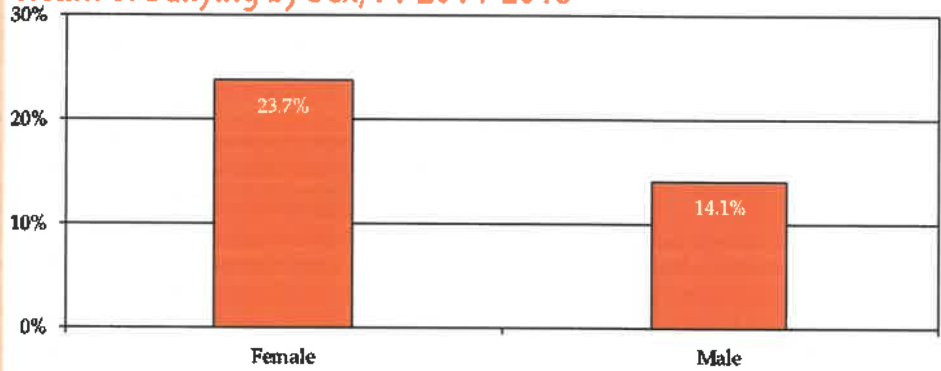
Victimization, cont.

- » A lower percentage of Black youth reported being bullied compared to White youth and youth of other races.
- » A higher percentage of females reported being bullied compared to males.

Victim of Bullying by Race, FY 2014-2018

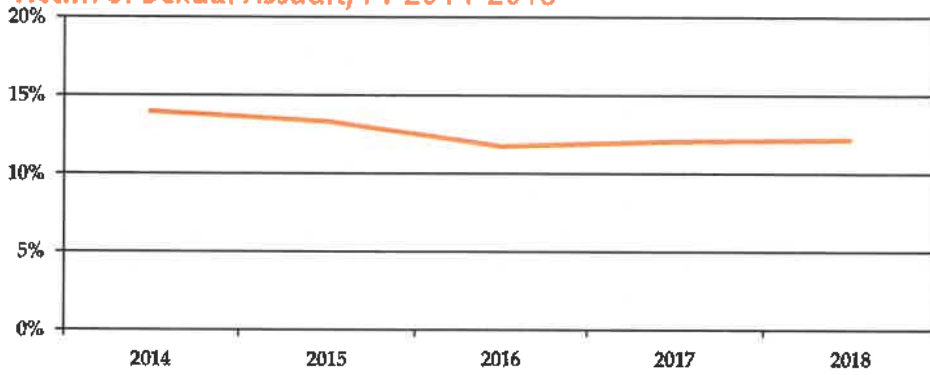


Victim of Bullying by Sex, FY 2014-2018



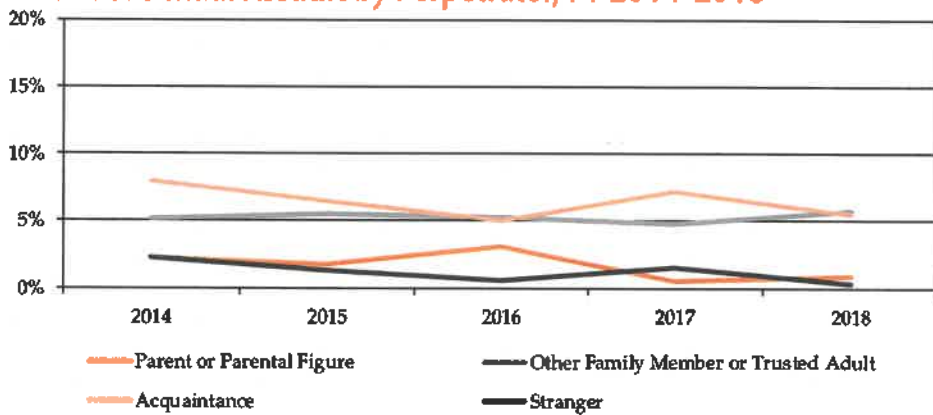
Victimization, cont.

Victim of Sexual Assault, FY 2014-2018



- » Since FY 2014, an average of 13% of youth had been a victim of sexual assault.
- » An average of 7% of youth had been sexually assaulted by an acquaintance, making them the most frequent perpetrators.

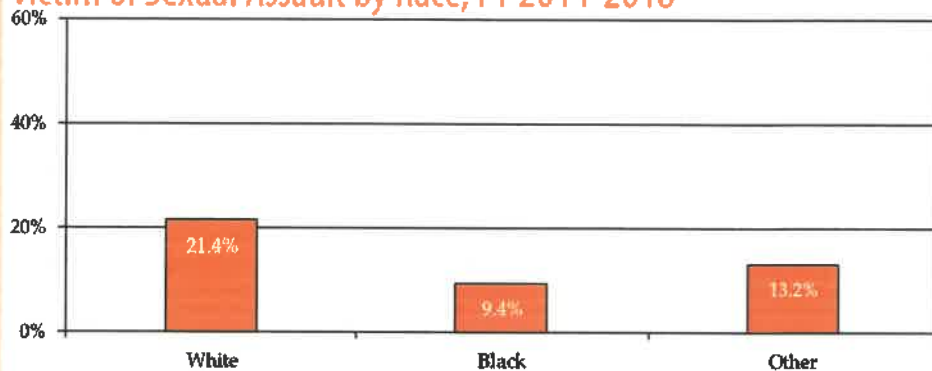
Victim of Sexual Assault by Perpetrator, FY 2014-2018



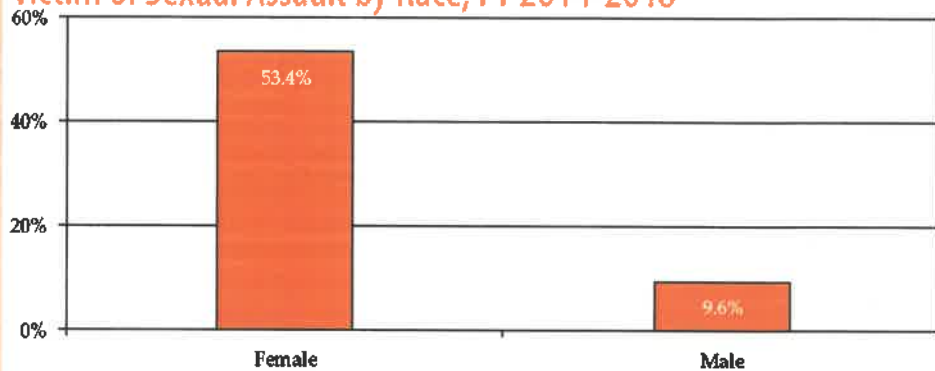
Victimization, cont.

- » A higher percentage of White youth reported being a victim of sexual assault compared to Black youth and youth of other races.
- » A higher percentage of females reported being a victim of sexual assault compared to males.

Victim of Sexual Assault by Race, FY 2014-2018

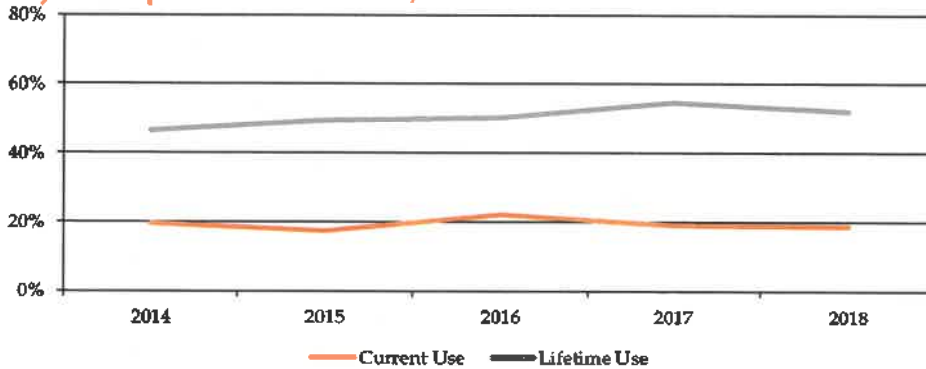


Victim of Sexual Assault by Race, FY 2014-2018



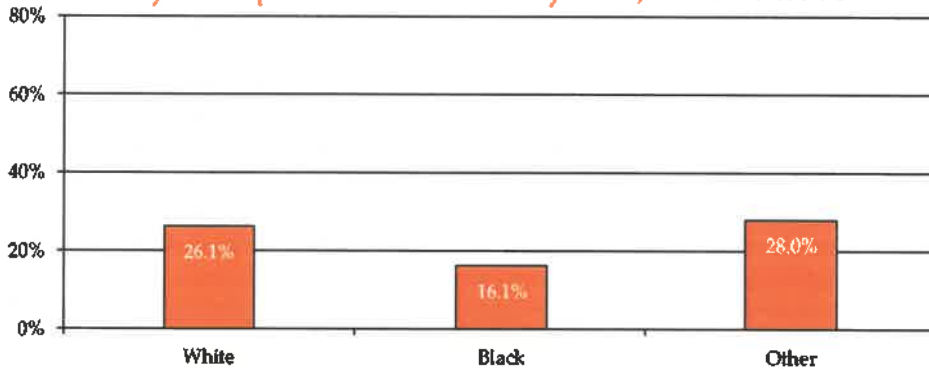
Psychotropic Medication

Psychotropic Medication Use, FY 2014-2018

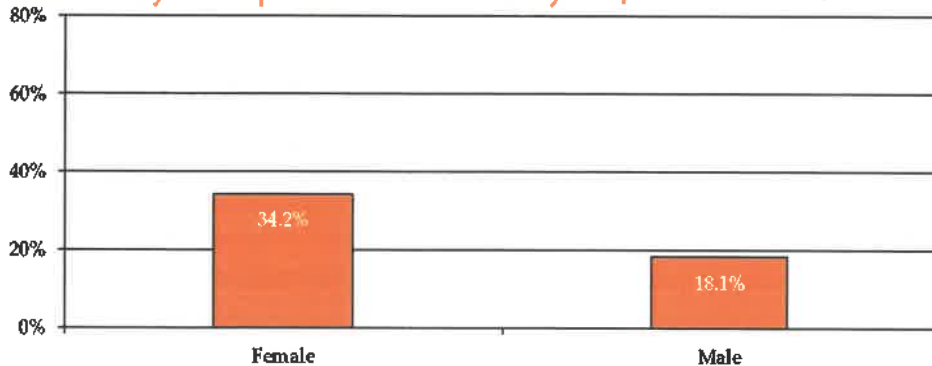


- » Since FY 2014, an average of 19% of youth were currently using psychotropic medication, and 51% had used psychotropic medication at some point during their lifetime.
- » A lower percentage of Black youth were currently using psychotropic medication at the time of admission compared to White youth and youth of other races.
- » A higher percentage of females were currently using psychotropic medication at the time of admission compared to males.

Current Psychotropic Medication Use by Race, FY 2014-2018



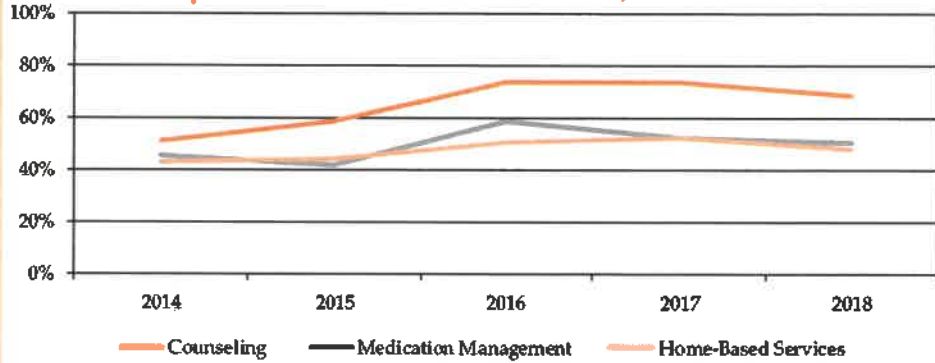
Current Psychotropic Medication Use by Sex, FY 2014-2018



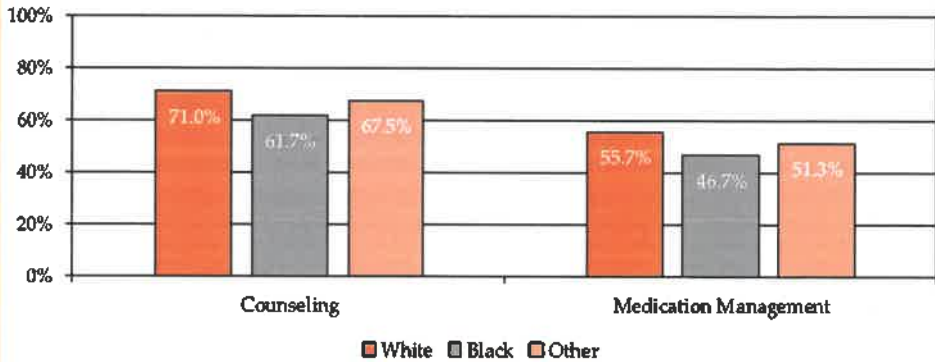
Previous Outpatient Mental Health Services

- » The percentage of youth who previously received counseling services increased from 51% in FY 2014 to 69% in FY 2018.
- » In addition, an average of 49% of youth previously received medication management, and 47% received home-based services.
- » A lower percentage of Black youth previously received counseling services and medication management compared to White youth and youth of other races.
- » A higher percentage of females had previously received counseling, medication management, and home-based services compared to males.

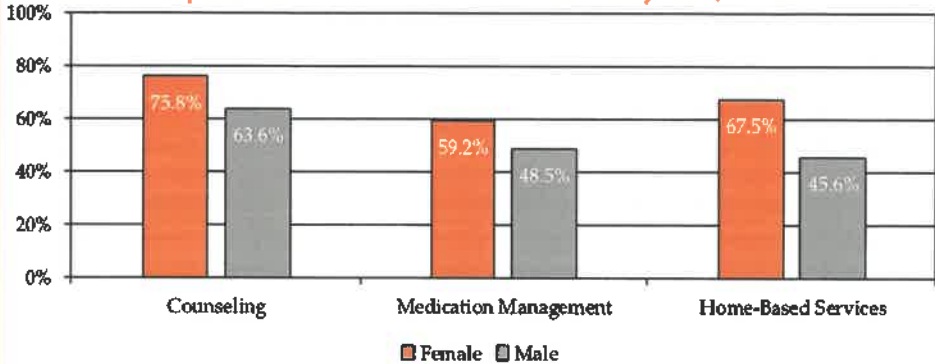
Previous Outpatient Mental Health Services, FY 2014-2018



Previous Outpatient Mental Health Services by Race, FY 2014-2018



Previous Outpatient Mental Health Services by Sex, FY 2014-2018

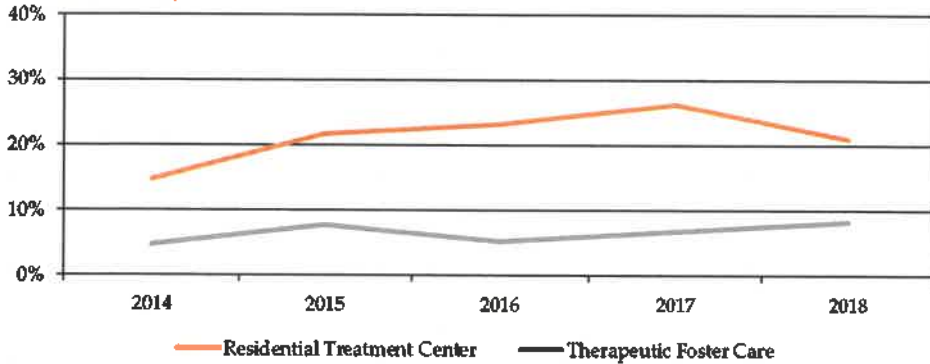


Data presented on this page are collected on the Social History Information form.



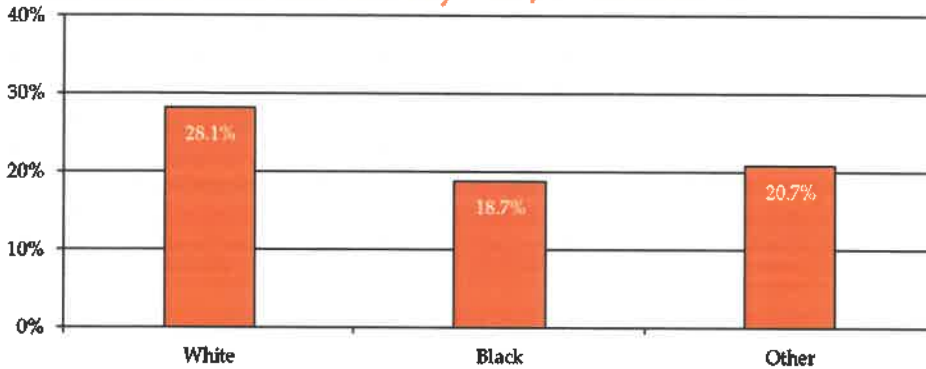
Other Previous Services

Residential Treatment Center and Therapeutic Foster Care Placements, FY 2014-2018

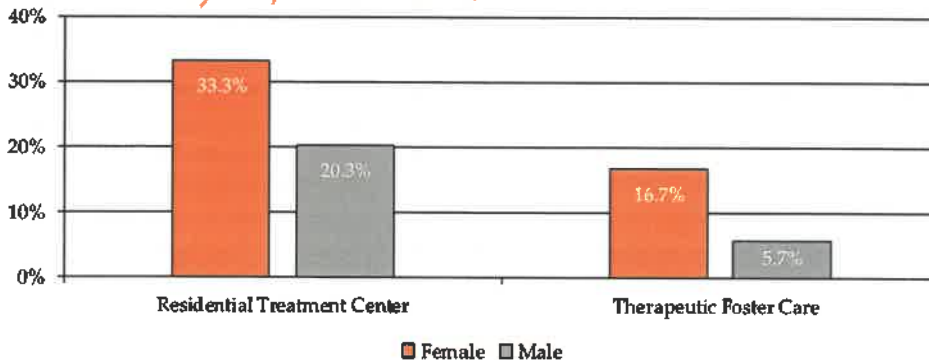


- » Since FY 2014, an average of 21% of youth had a residential treatment center placement, and 7% had a therapeutic foster care placement.
- » A higher percentage of White youth had a prior residential treatment center placement compared to Black youth and youth of other races.
- » A higher percentage of females had a prior residential treatment center or therapeutic foster care placement compared to males.

Residential Treatment Center by Race, FY 2014-2018



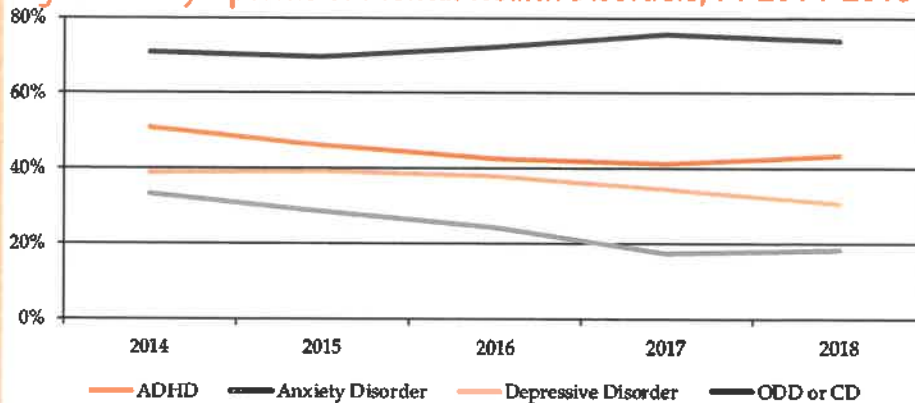
Residential Treatment Center and Therapeutic Foster Care Placements by Sex, FY 2014-2018



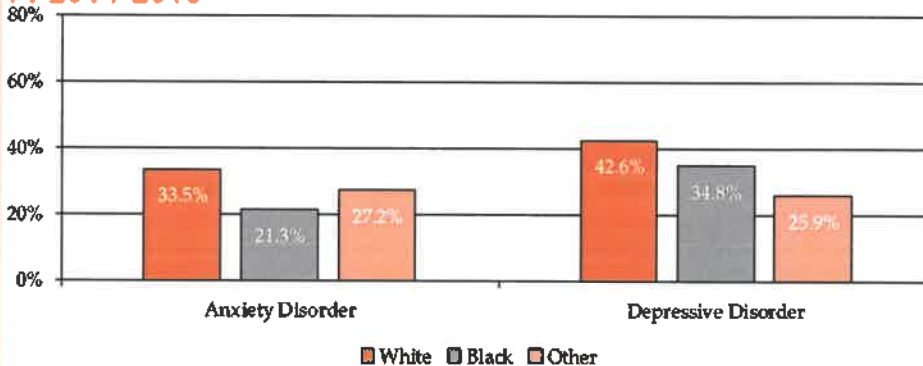
Mental Health Disorders

- » Since FY 2014, youth most often exhibited significant symptoms of Attention-Deficit/Hyperactivity Disorder (ADHD), Anxiety Disorder, Depressive Disorder, and Oppositional Defiant Disorder (ODD) or Conduct Disorder (CD).
- » An average of 72% of youth exhibited significant symptoms of ODD or CD.
- » In addition, 45% of youth exhibited significant symptoms of ADHD, 36% exhibited symptoms of Depressive Disorder, and 25% exhibited symptoms of Anxiety Disorder.
- » A lower percentage of Black youth exhibited significant symptoms of Anxiety Disorder compared to White youth and youth of other races.
- » A lower percentage of youth of other races exhibited significant symptoms of Depressive Disorder compared to White youth and Black youth.
- » A higher percentage of females exhibited significant symptoms of Depressive Disorder compared to males.

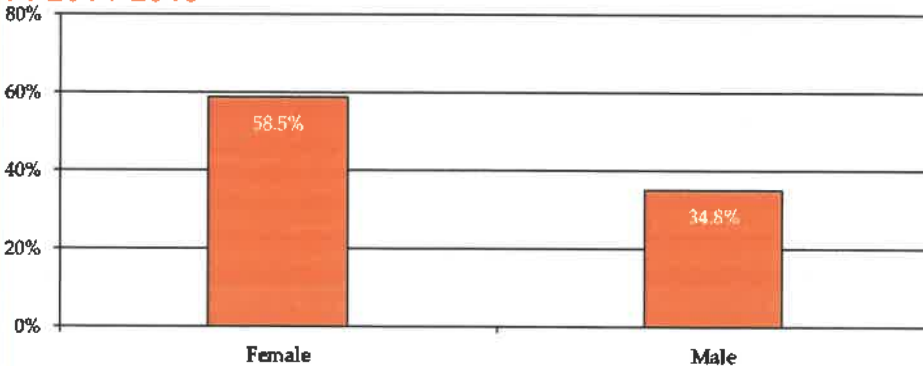
Significant Symptoms of Mental Health Disorders, FY 2014-2018



Significant Symptoms of Mental Health Disorders by Race, FY 2014-2018



Significant Symptoms of Depressive Disorder by Sex, FY 2014-2018

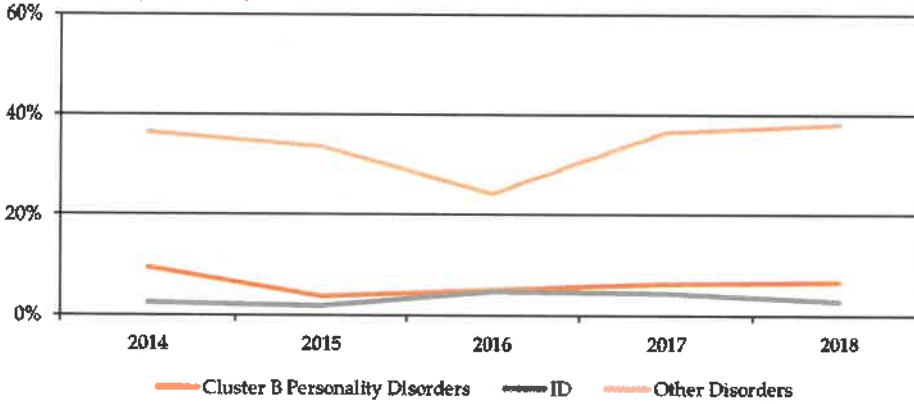


Data presented on this page are collected on the Psychological Information form.

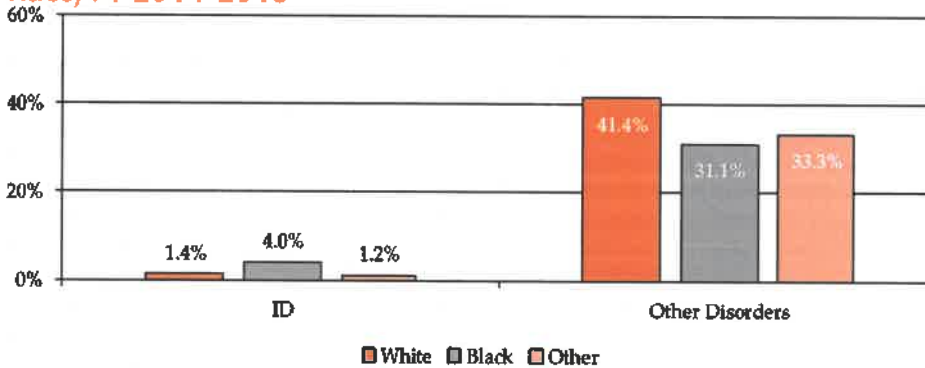


Mental Health Disorders, cont.

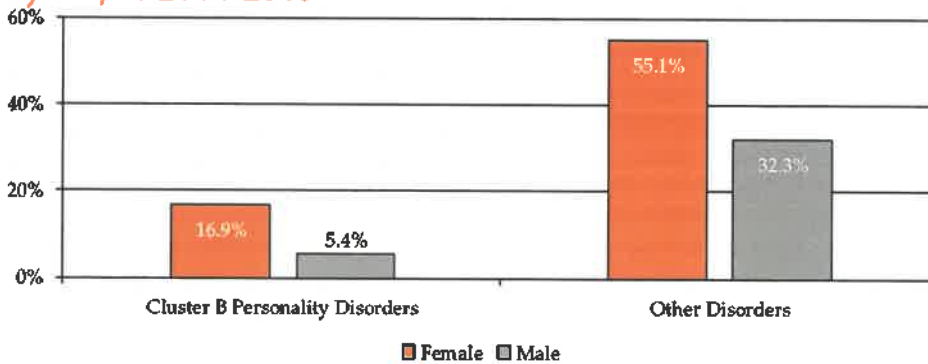
Significant Symptoms of Cluster B Personality Disorders, Other Disorders, and ID, FY 2014-2018*



Significant Symptoms of ID and Other Disorders by Race, FY 2014-2018*



Significant Symptoms of Cluster B Personality and Other Disorders by Sex, FY 2014-2018*



- » Since FY 2014, an average of 34% of youth exhibited significant symptoms of other disorders, 6% exhibited symptoms of Cluster B Personality Disorders, and 3% exhibited symptoms of ID.
- » A higher percentage of Black youth exhibited significant symptoms of ID compared to White youth and youth of other races.
- » A higher percentage of White youth exhibited significant symptoms of other disorders compared to Black youth and youth of other races.
- » A higher percentage of females exhibited significant symptoms of Cluster B Personality Disorders and other disorders compared to males.

There are four recognized Cluster B Personality Disorders: Antisocial Personality Disorder, Borderline Personality Disorder, Histrionic Personality Disorder, and Narcissistic Personality Disorder.

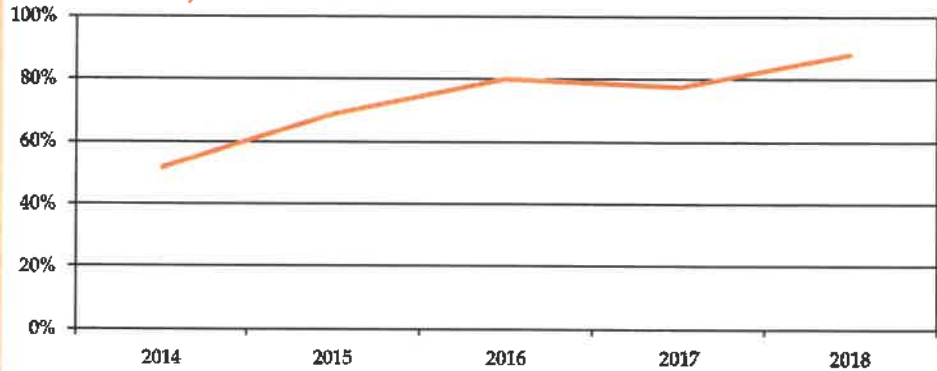
* "Other Disorders" includes Bipolar/Cyclothymic Disorder, Adjustment Disorder, Dissociative Disorder, Psychotic Disorder, Cluster A and Cluster C Personality Disorders, Eating Disorder, Substance Use Disorder, Paraphilic Disorder, and other mental health disorders. It does not include Depressive Disorder, Anxiety Disorder, Cluster B Personality Disorder, ADHD, ODD, CD, and ID, which are presented separately.



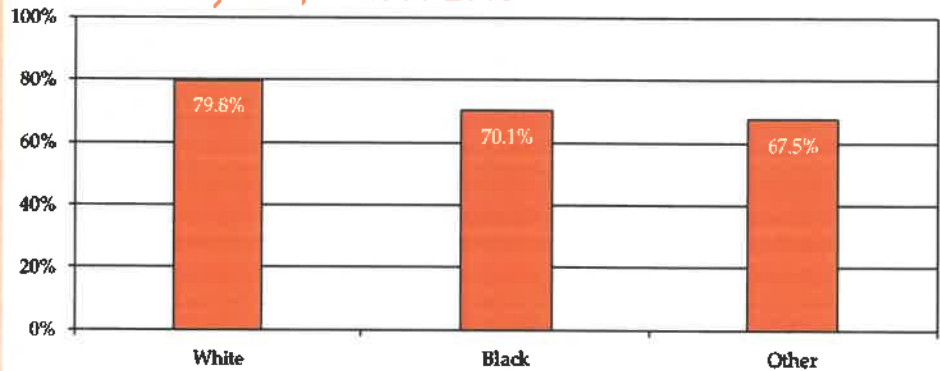
Mental Health Services Transition Plan (MHSTP) Alert

- » The percentage of youth with an MHSTP alert increased from 52% in FY 2014 to 88% in FY 2018.
- » A higher percentage of White youth had an MHSTP alert compared to Black youth and youth of other races.
- » A higher percentage of females had an MHSTP alert compared to males.

MHSTP Alert, FY 2014-2018

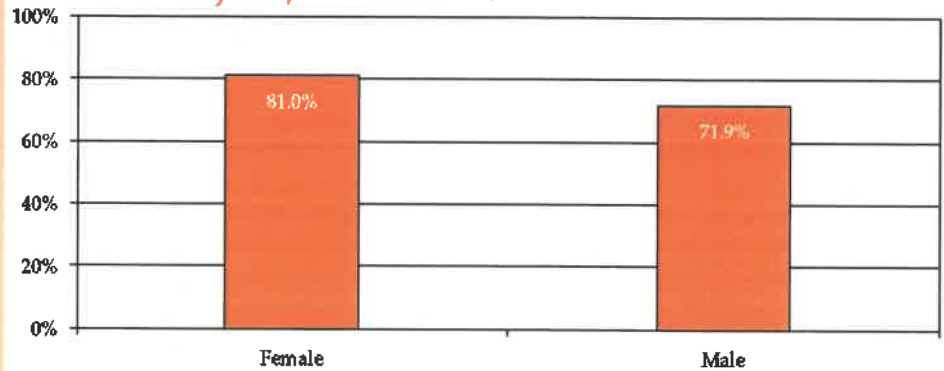


MHSTP Alert by Race, FY 2014-2018



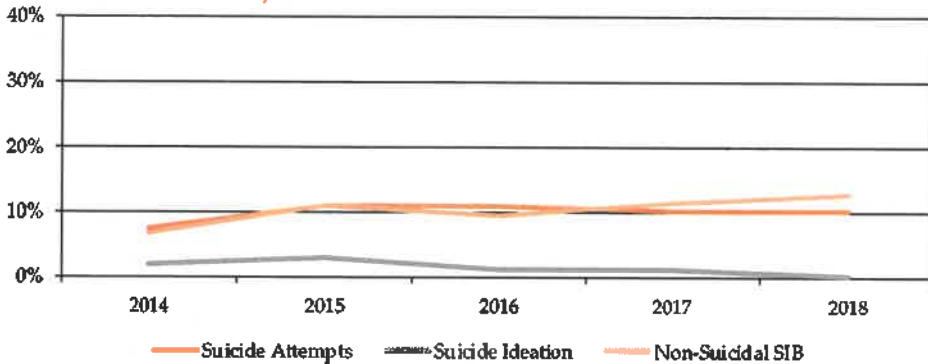
MHSTP alerts are given to youth who are identified by DJJ as having a mental health treatment need. The purpose of the MHSTP alert is to identify and coordinate the provision of existing services available within the community to which the youth will be returning.

MHSTP Alert by Sex, FY 2014-2018



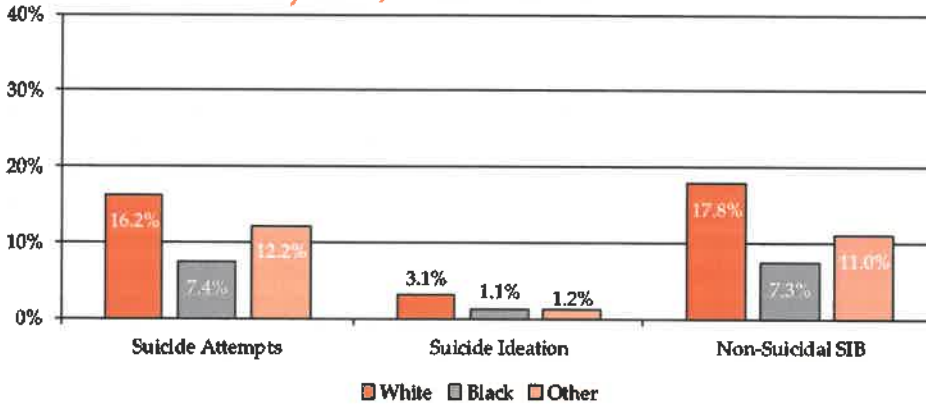
Suicidal Behaviors

Suicidal Behaviors, FY 2014-2018

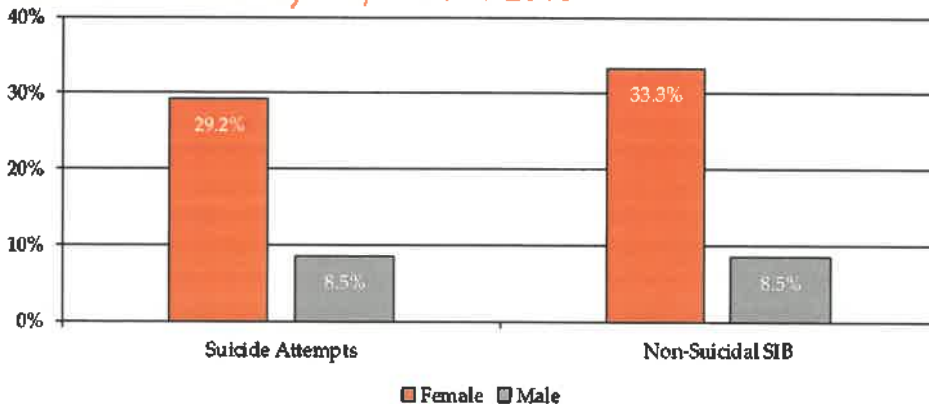


- » Since FY 2014, an average of 10% of youth had previously attempted suicide, 10% had a pattern of non-suicidal self-injurious behavior (SIB), and 2% had current suicide ideation.
- » A higher percentage of White youth had attempted suicide, had suicide ideation, and had non-suicidal SIB compared to Black youth and youth of other races.
- » A higher percentage of females had attempted suicide and had non-suicidal SIB compared to males.

Suicidal Behaviors by Race, FY 2014-2018



Suicidal Behaviors by Sex, FY 2014-2018



Data presented on this page are collected on the Psychological Information form.





The photographs throughout this report are the original creations of Bon Air JCC students in the *Introduction to Photography* and *Advanced Photography* courses.

6 Attitudes, Aggression, & Substance Use

The Attitudes, Aggression, & Substance Use section includes information from the *Aggression, Alcohol and Drugs*, and *Attitudes YASI* domains, the Social History Information (Appendix A) and Psychological Information (Appendix B) forms, and DJJ's electronic data management system. The section discusses topics including youth's attitudes toward aggressive and delinquent behaviors such as bullying or physical assault. This section also includes youth's risk and symptoms of substance abuse. The information presented in this section is collected through self-report and staff assessment during one-on-one interviews with the youth upon admission.

Attitudes

Attitudes and delinquency work together, in a reciprocal process, to mutually influence one another (Kelman, 1974; Zhang, Loeber, & Stouthamer-Loeber, 1997). Delinquent attitudes precede delinquent behavior (Menard & Huizinga, 1994). Taking accountability for delinquent actions requires the youth to accept responsibility for their behavior, make amends to their victim(s), and understand the impact of their behavior (Beyer, 2003).

Substance Use and Delinquency

Research suggests there is a strong relationship between substance use and delinquency. For example, one study found a three- to five-fold increase in delinquent behaviors among youth who abuse alcohol (Armstrong & Costello, 2002). However, the dynamics of this relationship are not entirely clear. Some studies have found that substance use predicts delinquent behavior, making it a key risk factor (Ford, 2005; Loeber & Farrington, 2000). However, other studies suggest delinquency may lead to substance use (Doherty, Green, & Ensminger, 2008; Wanner, Vitaro, Carbonneau, & Tremblay, 2009).

Regardless of the underlying cause, there is a great deal of evidence of an association between substance use and delinquency. Many juvenile criminal offenses directly involve substance use, and a number of studies have found a link between substance abuse and non-substance-related offenses (Chassin, 2008; Prichard & Payne, 2005). For instance, a study of teenage boys in detention centers in Australia found that a majority (70%)

reported being under the influence of drugs or alcohol at the time of their most recent criminal offense. Additionally, almost half (44%) of youth who had a burglary charge reported committing the act to obtain money to purchase more drugs or alcohol (Prichard & Payne, 2005).

Treatment at DJJ

BSU provides aggression management treatment services in all units by mental health professionals and counselors. Intensive treatment is group-oriented and more rigorous compared to prescriptive treatment, which is delivered individually as needed. Youth must complete core objectives that address anger control, moral reasoning, and social skills as well as demonstrate aggression management in their environment. Depending on individual needs, treatment completion generally requires approximately four months.

The Adolescent Substance Abuse Subtle Screening Inventory (SASSI) is a psychological assessment tool to identify youth who likely have a substance use disorder. It addresses topics directly related to substances such as the frequency of experiences with drugs and alcohol, the effect of substances on daily activities, family and social environment association with substances, and personal attitudes and beliefs about substances.

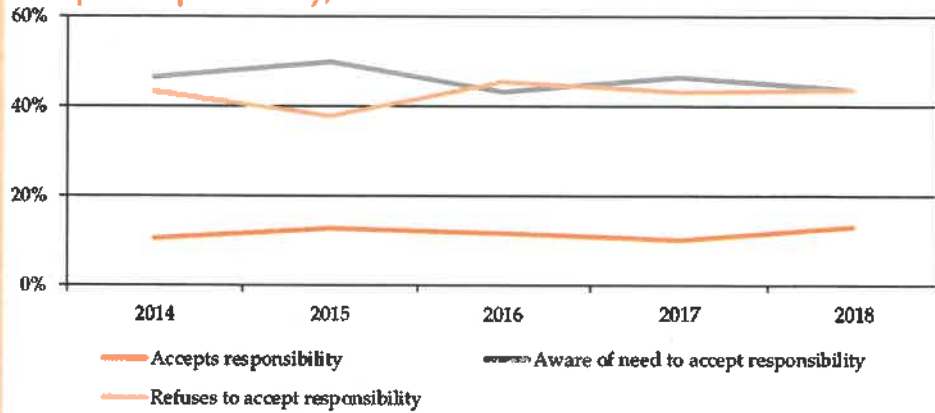
DJJ operates substance abuse treatment programs for youth with a history of substance use or a high probability of future substance use. BSU provides cognitive-behavioral substance abuse treatment services in all units. Track I is for youth meeting Diagnostic and Statistical Manual (DSM) criteria for Substance Use Disorder and in need of intensive services. Track II is for youth who have experimented with substances but do not meet the DSM criteria for Substance Use Disorder. Treatment emphasizes motivation to change, drug and alcohol refusal skills, addiction and craving coping skills, relapse prevention, problem solving, and other skills. Depending on individual needs, completion of substance abuse treatment services requires five weeks to six months. The treatment program uses a combination of motivational enhancement therapy and cognitive behavior therapy to treat participants.



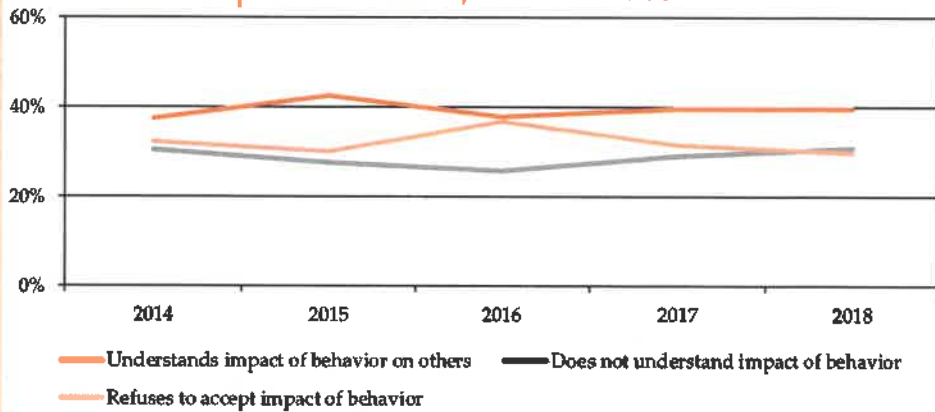
Attitudes

- » Since FY 2014, an average 46% of youth were aware of their need to accept responsibility for their delinquent behavior, 42% refused to accept responsibility, and 12% accepted responsibility for their behavior.
- » An average of 39% of youth understood the impact of their behavior on others, 32% denied the impact of their behavior, and 29% did not understand the impact of their behavior.

Accepts Responsibility, FY 2014-2018

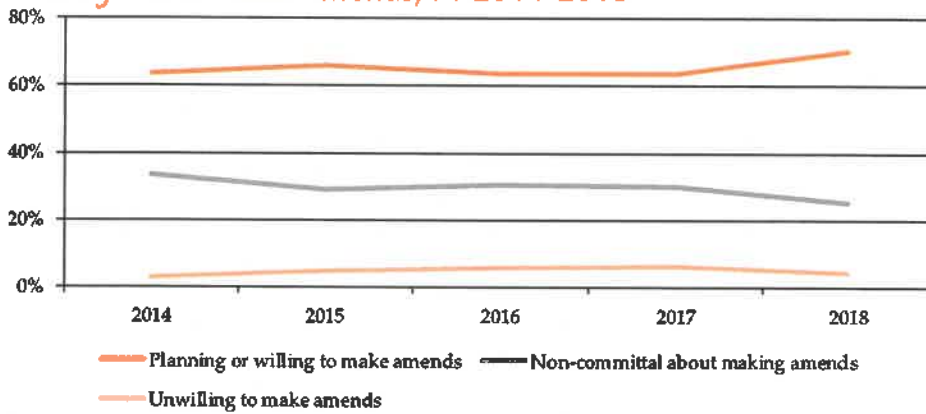


Understands Impact of Behavior, FY 2014-2018



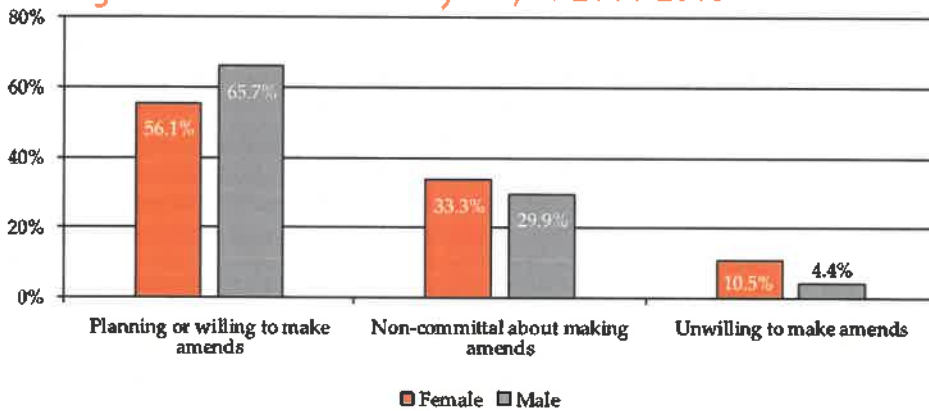
Attitudes, cont.

Willingness to Make Amends, FY 2014-2018



- » Since FY 2014, an average of 65% of youth were planning or willing to make amends, 30% were non-committal about making amends, and 5% were unwilling to make amends.
- » A higher percentage of males were planning or willing to make amends compared to females.
- » A higher percentage of females were non-committal or unwilling to make amends compared to males.

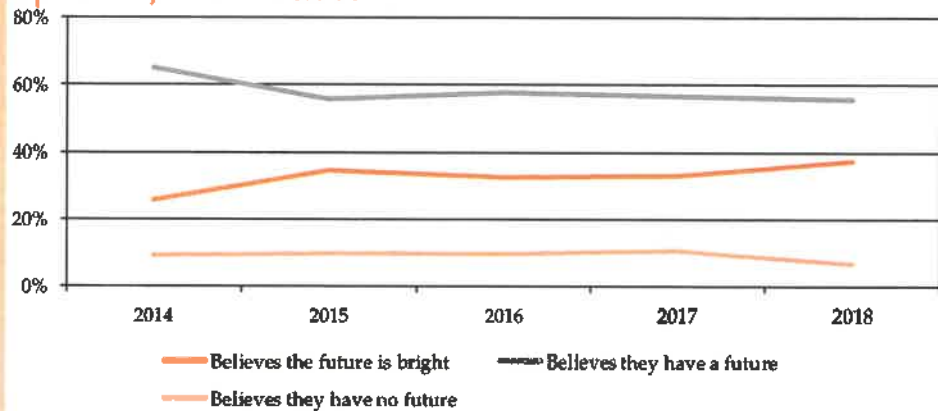
Willingness to Make Amends by Sex, FY 2014-2018



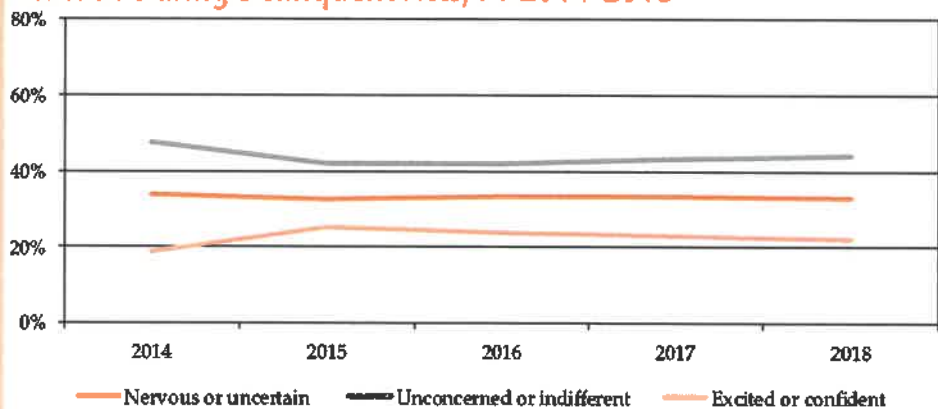
Attitudes, cont.

- » Since FY 2014, an average of 58% of youth believed they had a future, 32% believed their future was bright, and less than 10% believed they had no future.
- » An average of 44% of youth were unconcerned or indifferent during delinquent acts, 33% were nervous or uncertain, and 23% were excited or confident.

Optimism, FY 2014-2018

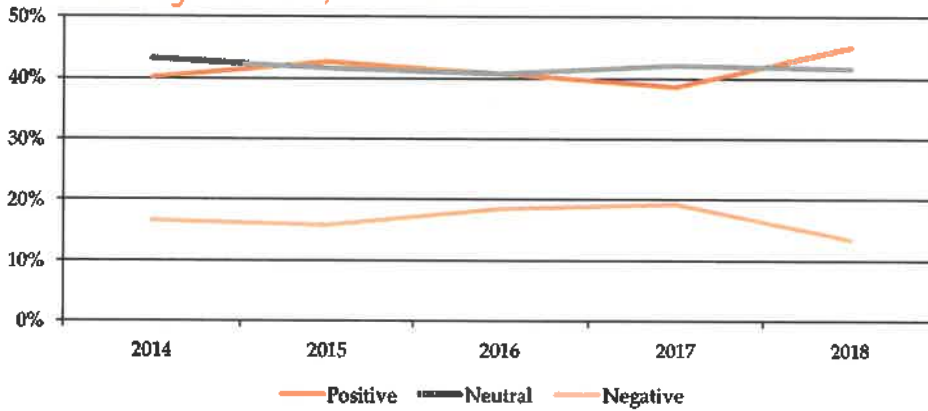


Attitude During Delinquent Acts, FY 2014-2018

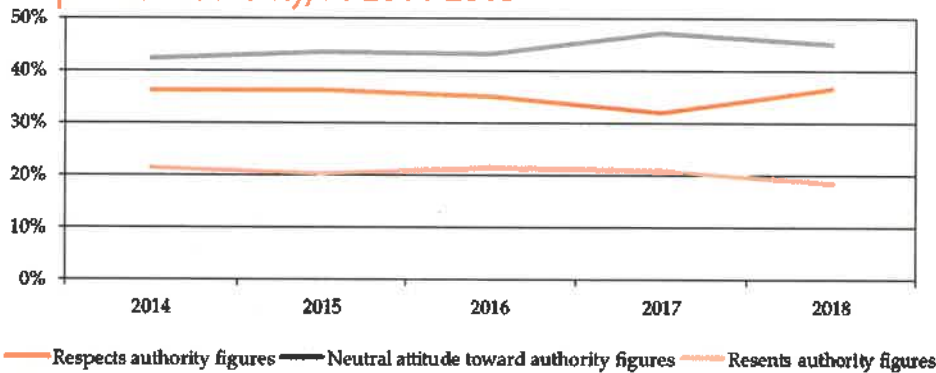


Attitudes, cont.

Law Abiding Attitudes, FY 2014-2018

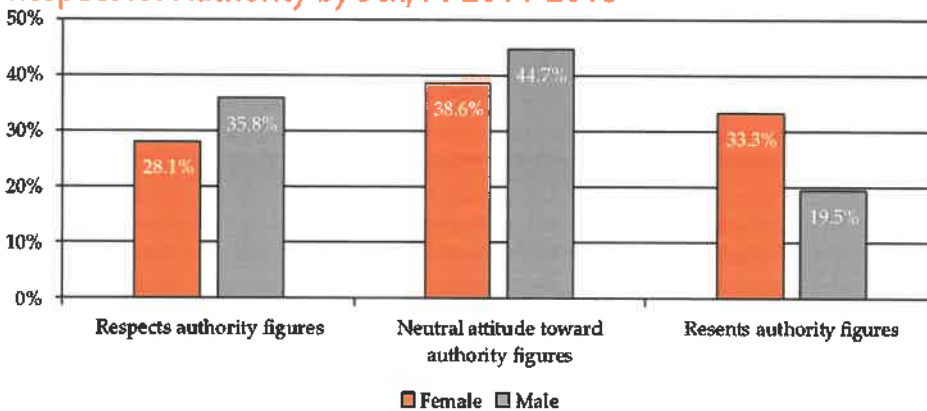


Respect for Authority, FY 2014-2018



- » An average of 42% of youth had neutral attitudes towards law abiding behavior, 41% had positive attitudes, and 17% had negative attitudes.
- » Since FY 2014, an average of 44% of youth had a neutral attitude toward authority figures, 35% respected authority figures, and 21% resented authority figures.
- » A higher percentage of males respected or had neutral attitudes toward authority figures compared to females.
- » A higher percentage of females resented authority figures compared to males.

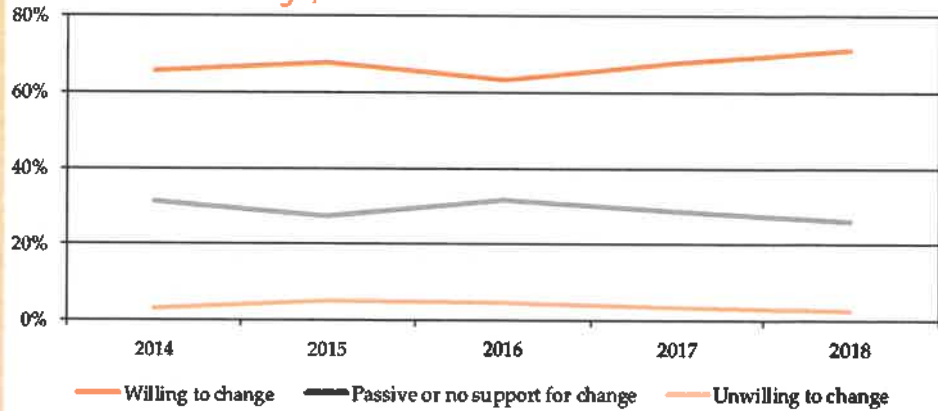
Respect for Authority by Sex, FY 2014-2018



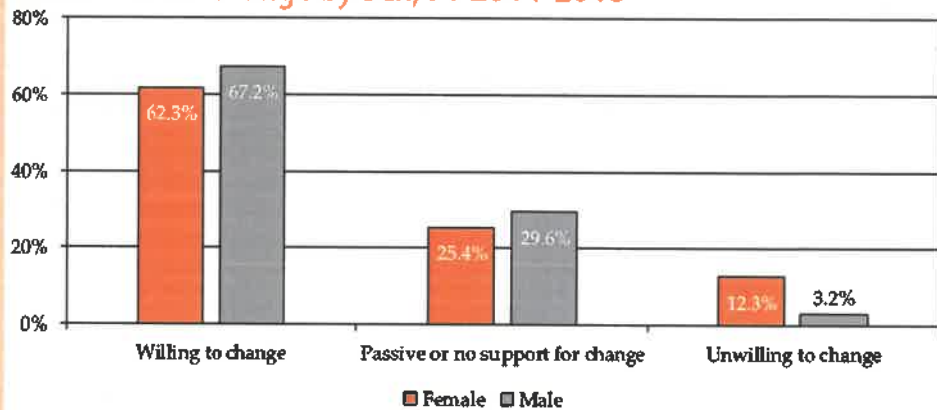
Attitudes, cont.

- » Since FY 2014, an average of 67% of youth expressed readiness to change their problem behavior, 29% were passive or expressed no support for change, and 4% were unwilling to change.
- » A higher percentage of males expressed a readiness for change or were passive compared to females.
- » A higher percentage of females were unwilling to change compared to males.

Readiness for Change, FY 2014-2018

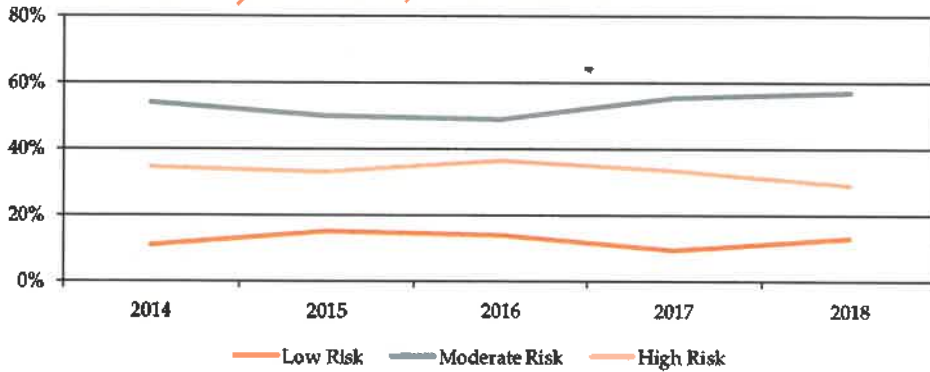


Readiness for Change by Sex, FY 2014-2018



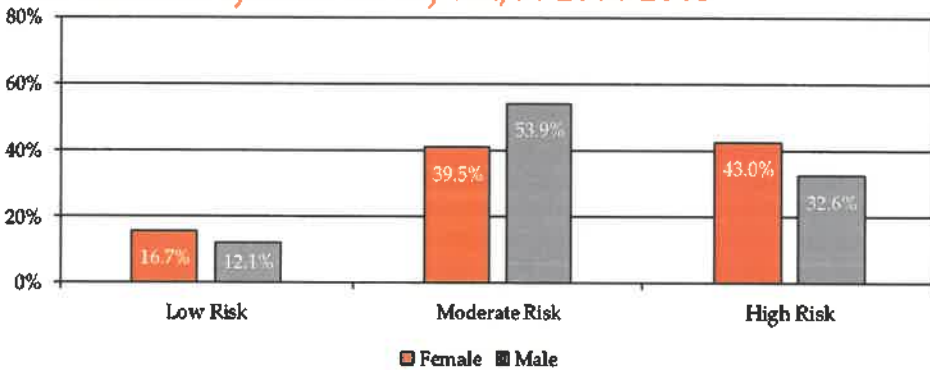
Attitudes Risk (from YASI)

YASI Attitudes Dynamic Risk, FY 2014-2018



- » Since FY 2014, an average of 53% of youth were classified as moderate risk for the Attitudes dynamic risk domain.
- » A higher percentage of males were moderate risk compared to females.
- » A higher percentage of females were low or high risk compared to males.

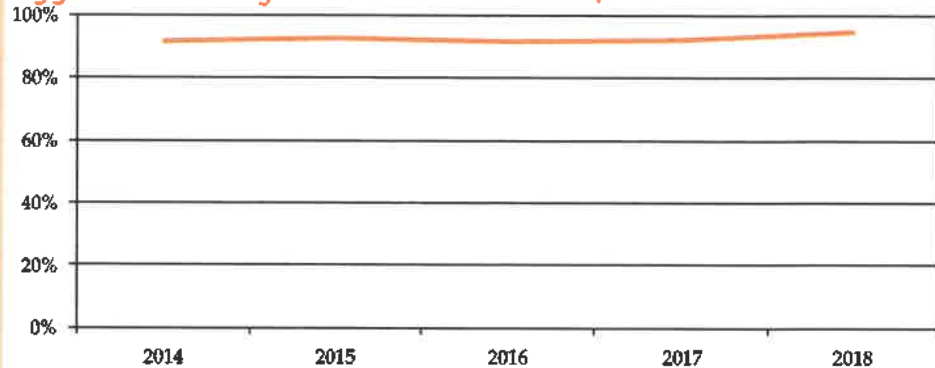
YASI Attitudes Dynamic Risk by Sex, FY 2014-2018



Aggression Management Treatment Need

» Since FY 2014, an average of 93% of youth had an aggression management treatment need.

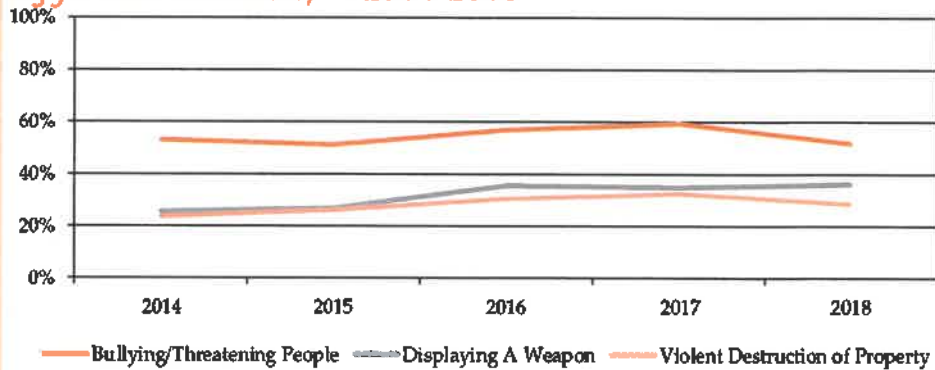
Aggression Management Treatment Need, FY 2014-2018



Aggressive Behaviors

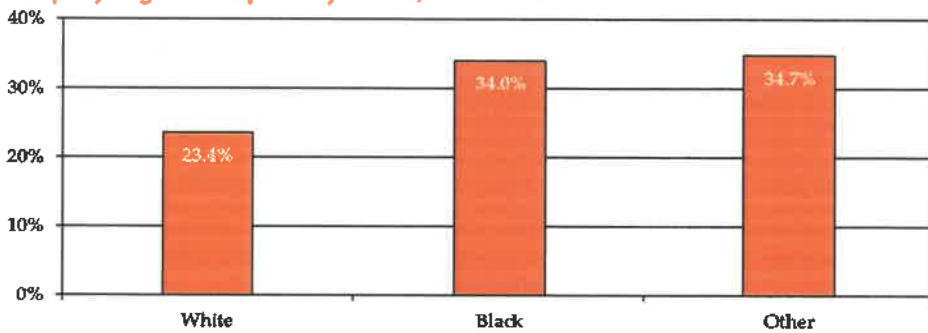
» Since FY 2014, an average of 54% of youth had bullied or threatened others, 31% had displayed a weapon, and 28% had engaged in the violent destruction of property.

Aggressive Behaviors, FY 2014-2018



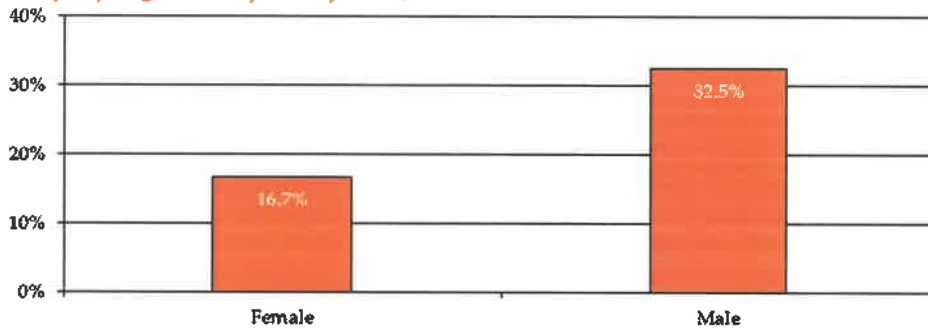
Aggressive Behaviors, cont.

Displaying a Weapon by Race, FY 2014-2018



- » A lower percentage of White youth had displayed a weapon compared to Black youth and youth of other races.
- » A higher percentage of males had displayed a weapon compared to females.

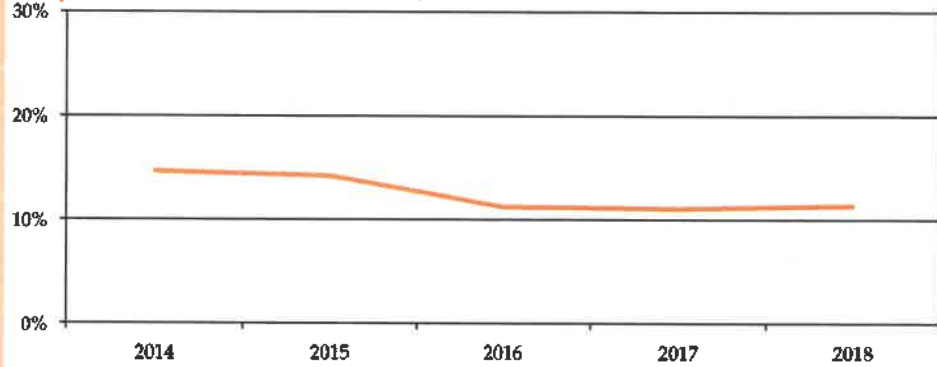
Displaying a Weapon by Sex, FY 2014-2018



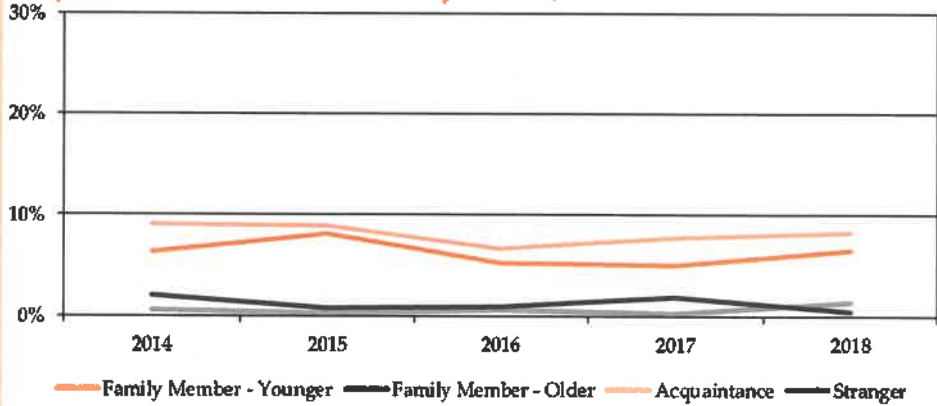
Sexual Assault

- » Since FY 2014, an average of 13% of youth had been the perpetrator of sexual assault.
- » An average of 8% of youth had sexually assaulted acquaintances, making them the most common victims.

Perpetrator of Sexual Assault, FY 2014-2018

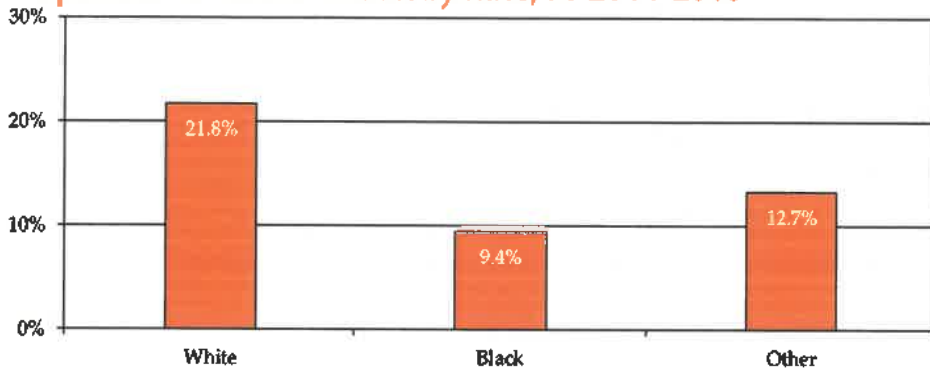


Perpetrator of Sexual Assault by Victim, FY 2014-2018



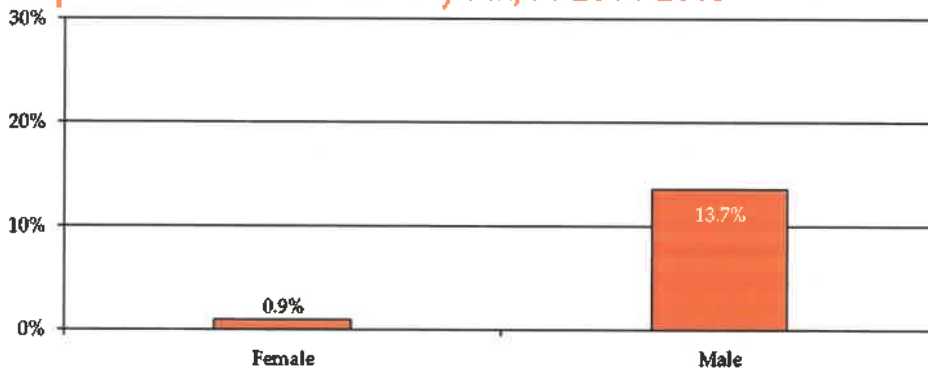
Sexual Assault, cont.

Perpetrator of Sexual Assault by Race, FY 2014-2018



- » A higher percentage of White youth were perpetrators of sexual assault compared to Black youth and youth of other races.
- » A higher percentage of males were perpetrators of sexual assault compared to females.

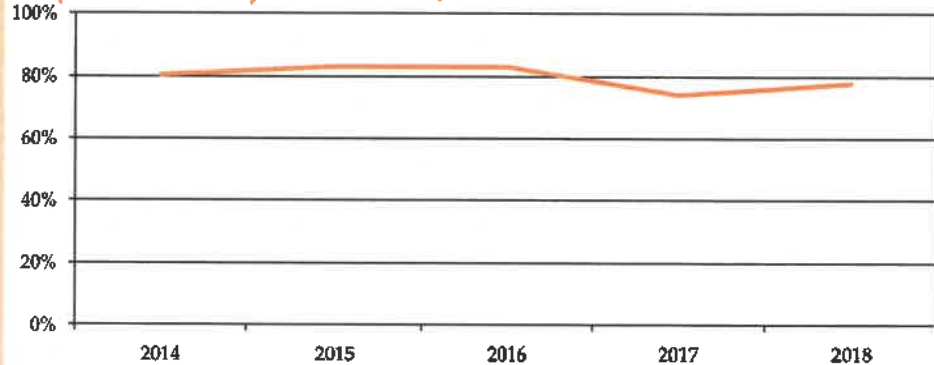
Perpetrator of Sexual Assault by Sex, FY 2014-2018



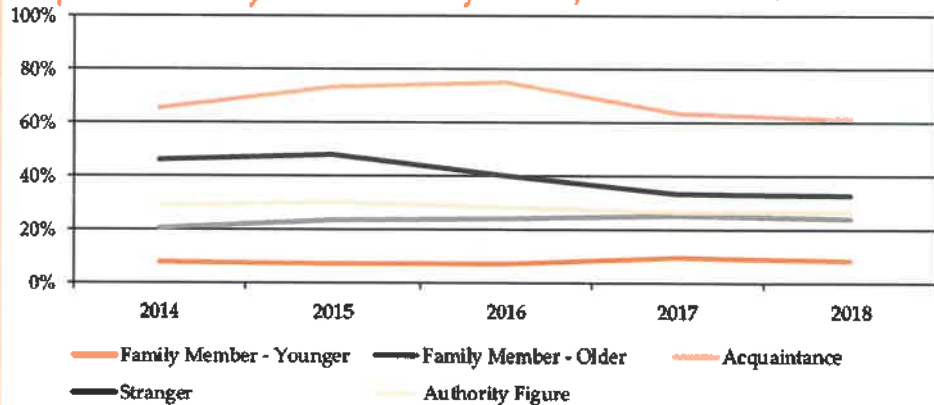
Physical Assault

- » Since FY 2014, an average of 80% of youth had been the perpetrator of physical assault.
- » An average of 68% of youth had physically assaulted acquaintances, making them the most common victims.
- » A higher percentage of Black youth were perpetrators of physical assault compared to White youth and youth of other races.

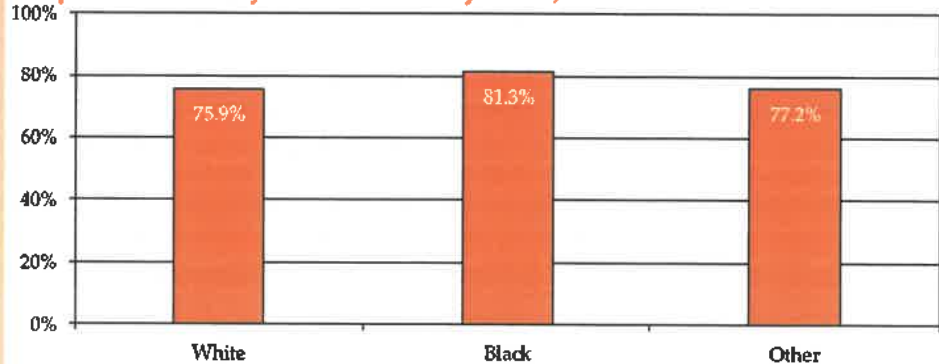
Perpetrator of Physical Assault, FY 2014-2018



Perpetrator of Physical Assault by Victim, FY 2014-2018



Perpetrator of Physical Assault by Race, FY 2014-2018

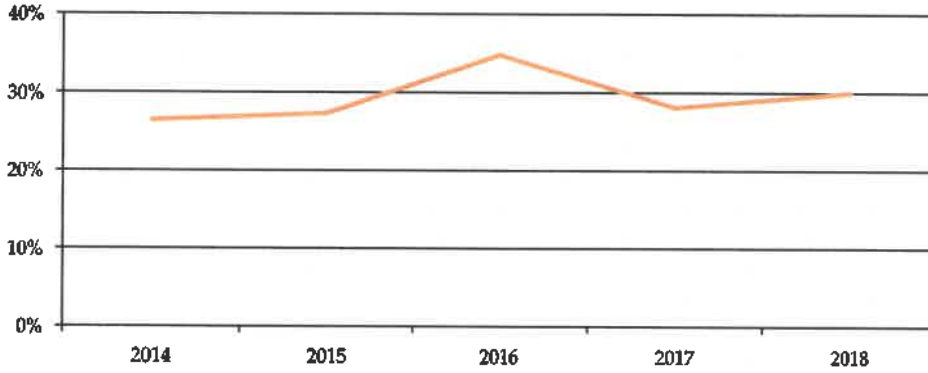


Data presented on this page are collected on the Psychological Information form.



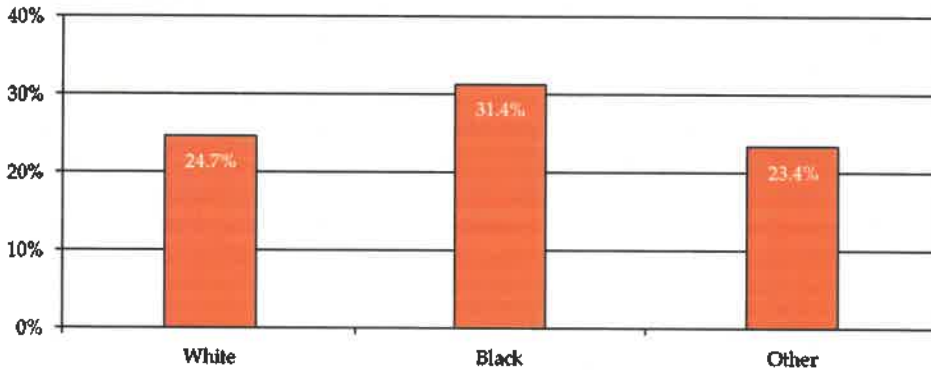
Physical Assault, cont.

Assault Resulting In Injury Requiring Medical Attention, FY 2014-2018

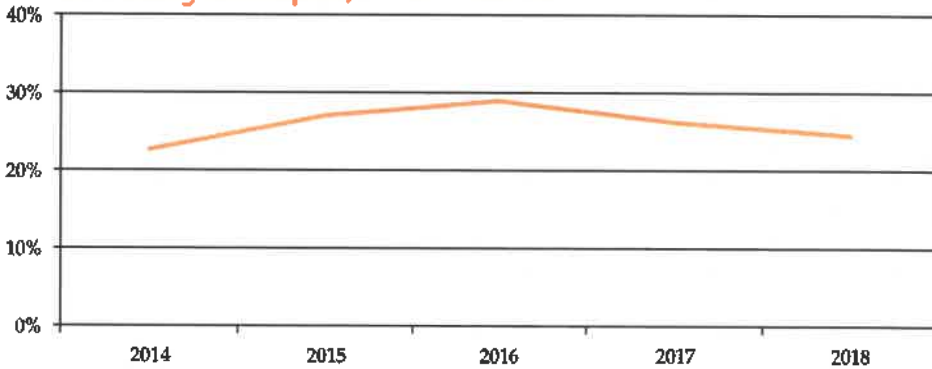


- » Since FY 2014, an average of 29% of youth had physically assaulted someone resulting in an injury that required medical attention.
- » A higher percentage of Black youth had physically assaulted someone resulting in an injury requiring medical attention compared to White youth and youth of other races.
- » An average of 26% of youth had physically assaulted someone with a weapon.

Assault Resulting In Injury Requiring Medical Attention by Race, FY 2014-2018



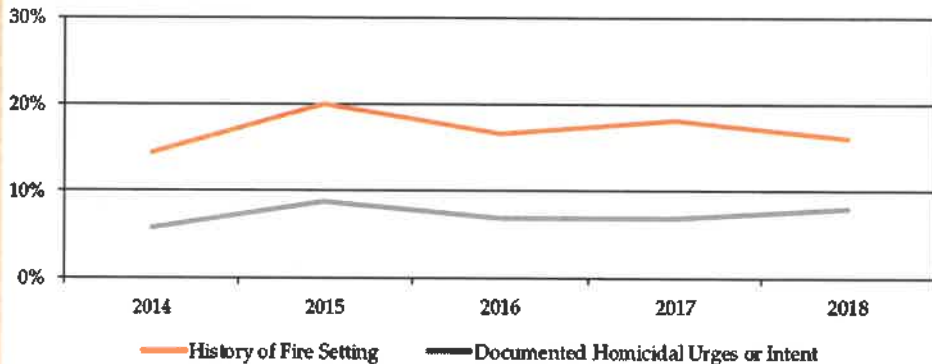
Assault Using a Weapon, FY 2014-2018



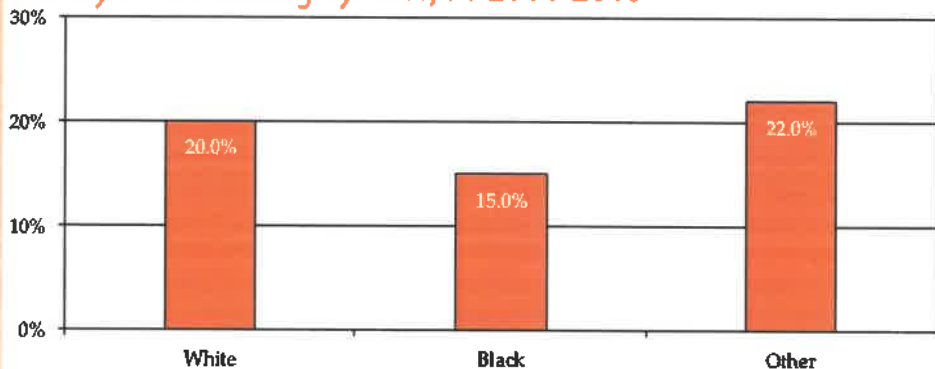
Fire Setting and Homicidal Urges

- » Since FY 2014, an average of 17% of youth had a history of fire setting, and 7% had documented homicidal urges or intent.
- » A lower percentage of Black youth had a history of fire setting compared to White youth and youth of other races.
- » A higher percentage of females had documented homicidal urges or intent compared to males.

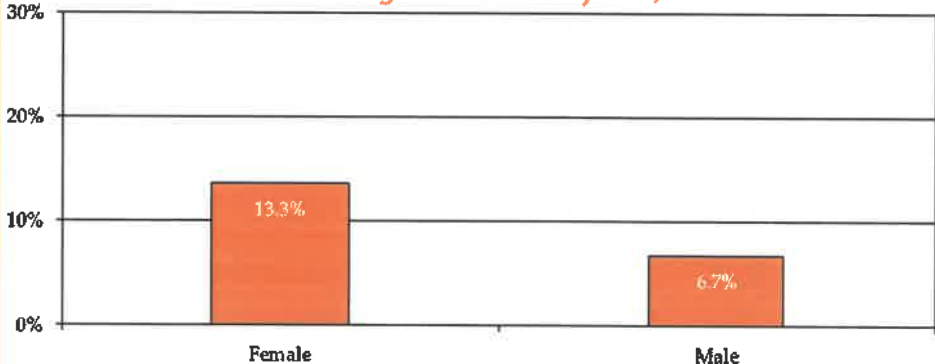
History of Fire Setting and Documented Homicidal Urges or Intent, FY 2014-2018



History of Fire Setting by Race, FY 2014-2018



Documented Homicidal Urges or Intent by Sex, FY 2014-2018

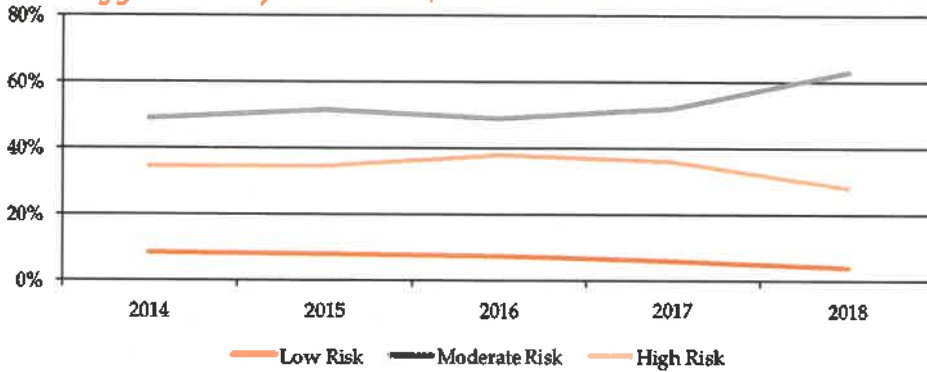


Data presented on this page are collected on the Psychological Information form.



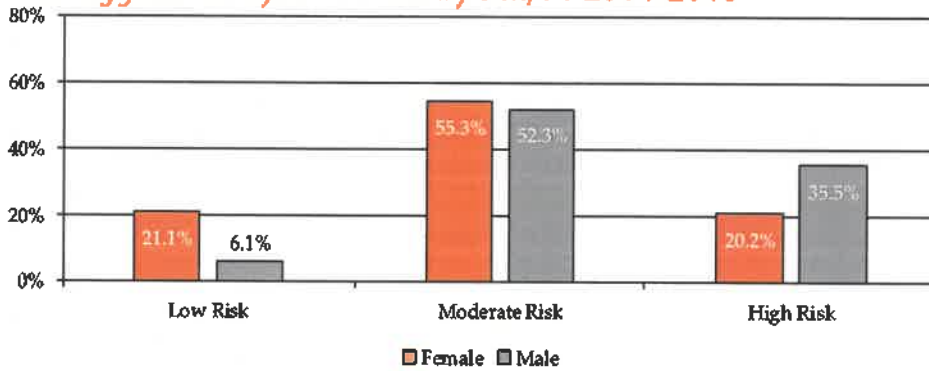
Aggression Risk (from YASI)

YASI Aggression Dynamic Risk, FY 2014-2018



- » Since FY 2014, an average of 53% of youth were classified as moderate risk in the Aggression dynamic risk domain.
- » A higher percentage of females were low or moderate risk compared to males.

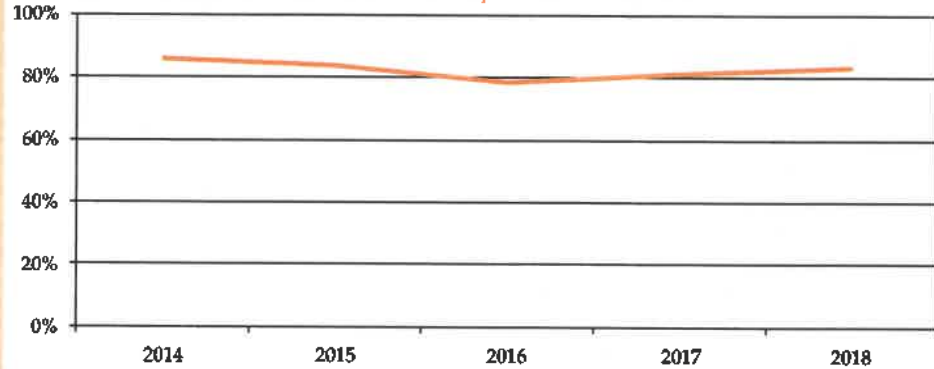
YASI Aggression Dynamic Risk by Sex, FY 2014-2018



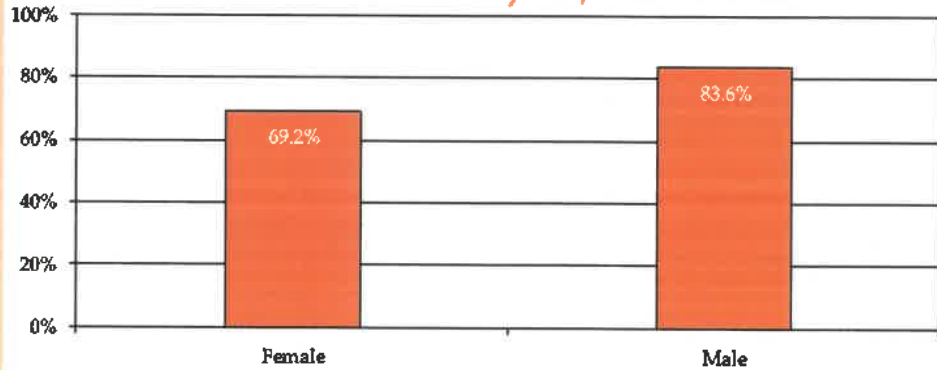
Substance Abuse Treatment Need

- » Since FY 2014, an average of 83% of youth had a substance abuse treatment need.
- » A higher percentage of males had a substance abuse treatment need compared to females.

Substance Abuse Treatment Need, FY 2014-2018

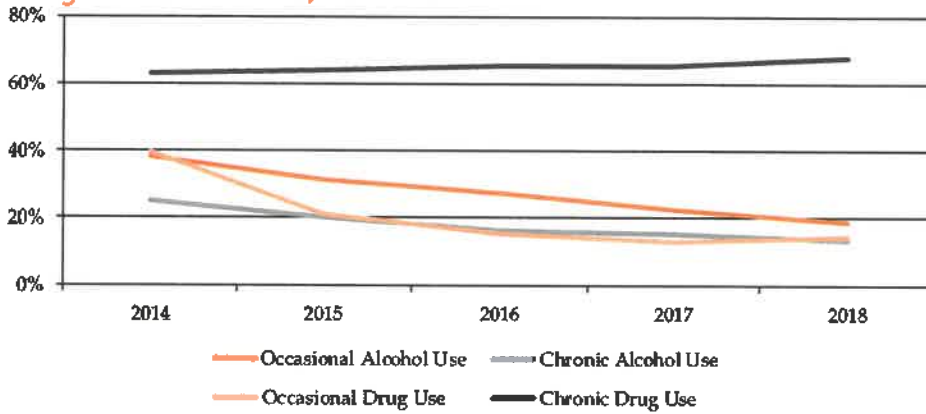


Substance Abuse Treatment Need by Sex, FY 2014-2018



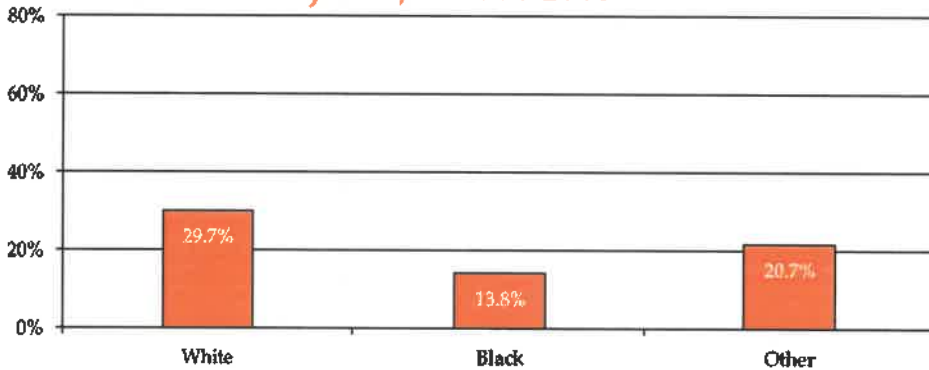
Drug and Alcohol Use

Drug and Alcohol Use, FY 2014-2018

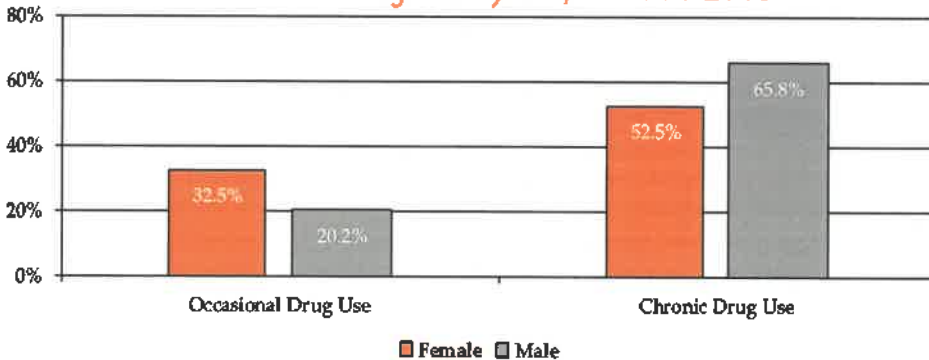


- » From FY 2014 to FY 2018, the percentage of youth who occasionally used alcohol decreased from 38% to 19% while the percentage who chronically used alcohol decreased from 25% to 13%.
- » The percentage of youth who occasionally used drugs decreased from 40% to 14% while the percentage who chronically used drugs increased from 63% to 68%.
- » A higher percentage of White youth chronically used alcohol compared to Black youth and youth of other races.
- » A higher percentage of females occasionally used drugs compared to males.
- » A higher percentage of males chronically used drugs compared to females.

Chronic Alcohol Use by Race, FY 2014-2018



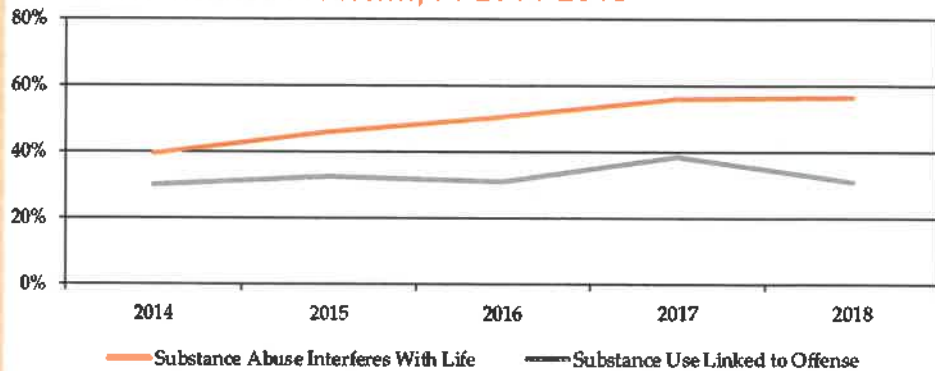
Occasional and Chronic Drug Use by Sex, FY 2014-2018



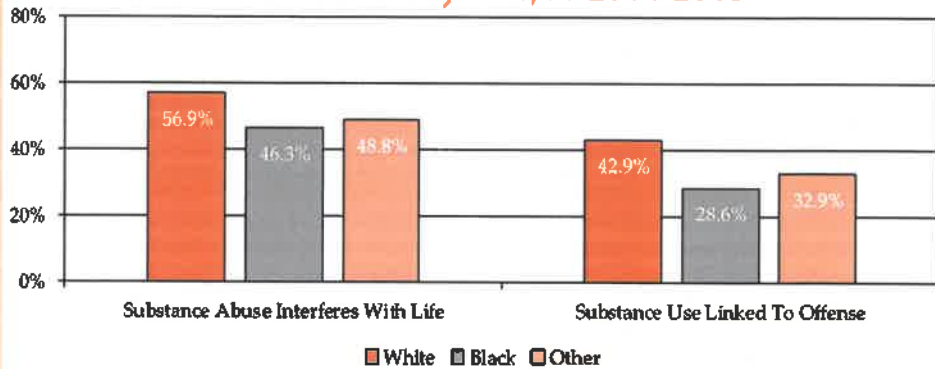
Substance-Related Problems, cont.

- » The percentage of youth whose substance abuse interfered with their daily lives increased from 39% in FY 2014 to 56% in FY 2018.
- » Since FY 2014, an average of 33% of youth's offenses were linked to their substance use.
- » A higher percentage of White youth reported that substance abuse interfered with their daily life and that substance use was linked to their offense compared to Black youth and youth of other races.

Substance-Related Problems, FY 2014-2018

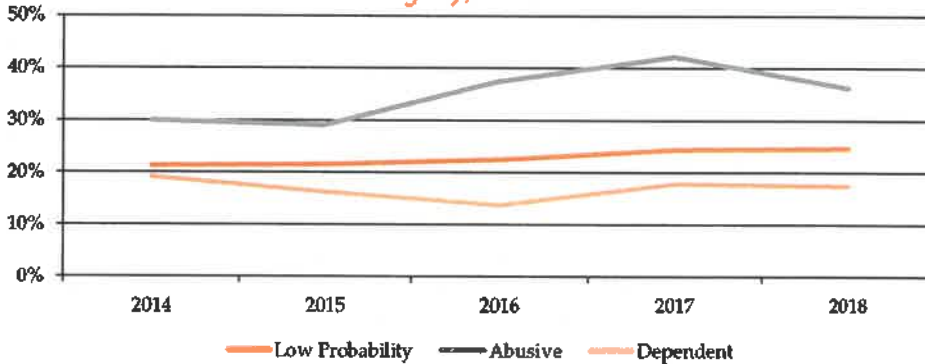


Substance-Related Problems by Race, FY 2014-2018



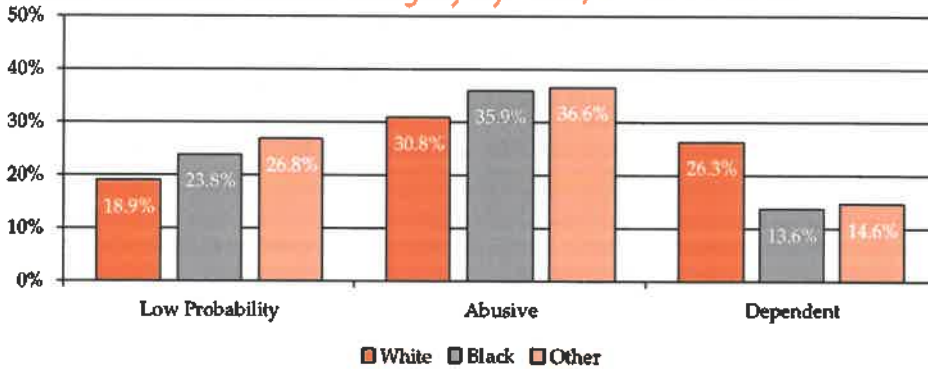
Substance Abuse Category (from SASSI)

SASSI Substance Abuse Category, FY 2014-2018



- » Since FY 2014, an average of 35% of youth received an abusive rating, 23% were given a low probability score, and 17% received a dependent rating.
- » A lower percentage of White youth received an abusive rating compared to Black youth and youth of other races.
- » A higher percentage of White youth received a dependent rating compared to Black youth and youth of other races.

SASSI Substance Abuse Category by Race, FY 2014-2018



Youth are assigned a substance abuse category based on their SASSI scores. If certain criteria are met, the results will designate youth as a "high probability of having a substance abuse or substance dependence disorder." If none of the criteria are met, youth are designated as a "low probability of a substance abuse or substance dependence disorder."

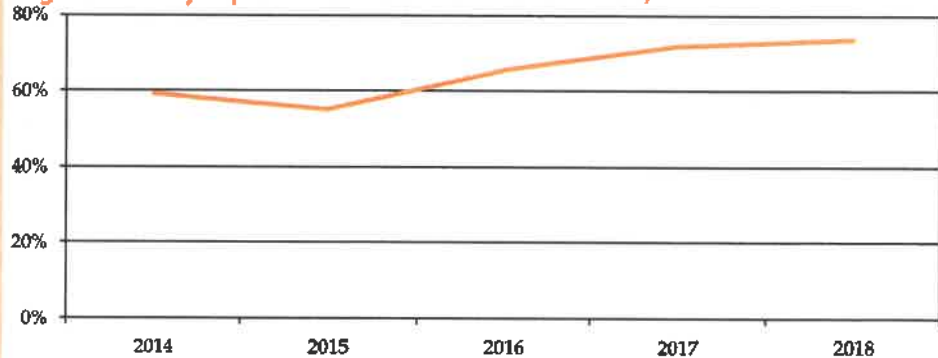
SASSI also includes items designed to indicate potentially invalid response sets. If certain criteria are met, the results of the SASSI would be invalid because the respondent provided seemingly random answers to the questions.



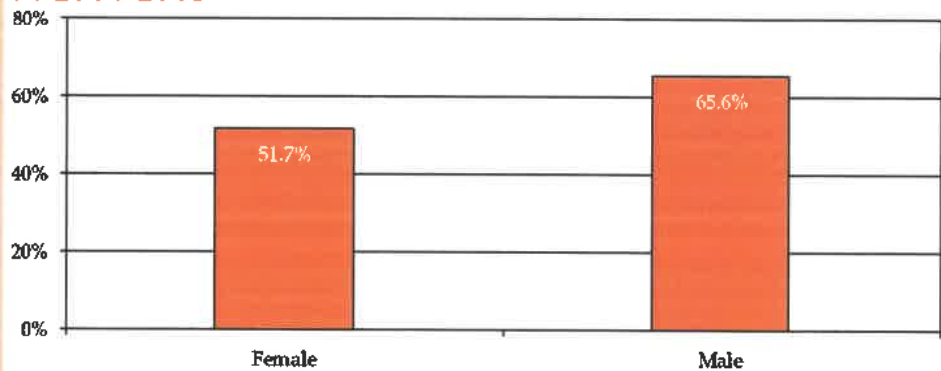
Substance Disorders

- » The percentage of youth who showed significant symptoms of a substance disorder increased from 59% in FY 2014 to 74% in FY 2018.
- » A higher percentage of males showed significant symptoms of a substance disorder compared to females.

Significant Symptoms of Substance Disorders, FY 2014-2018

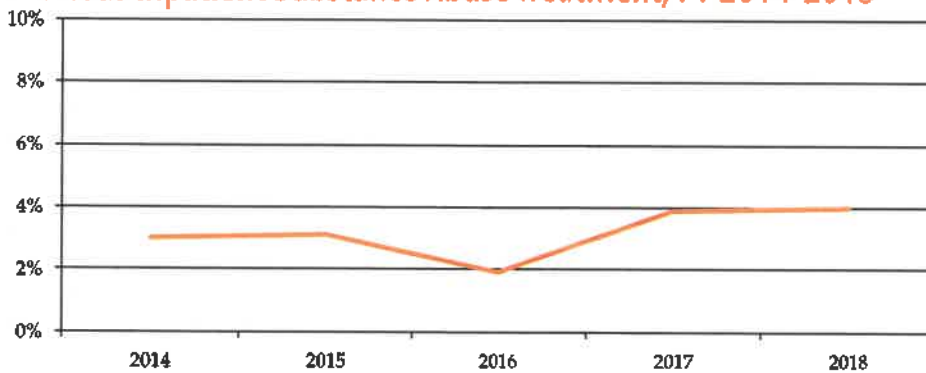


Significant Symptoms of Substance Disorders by Sex, FY 2014-2018



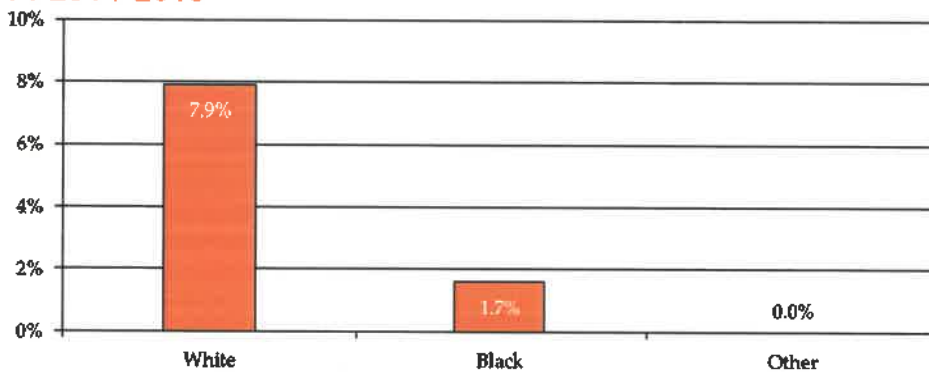
Previous Inpatient Substance Abuse Treatment

Previous Inpatient Substance Abuse Treatment, FY 2014-2018

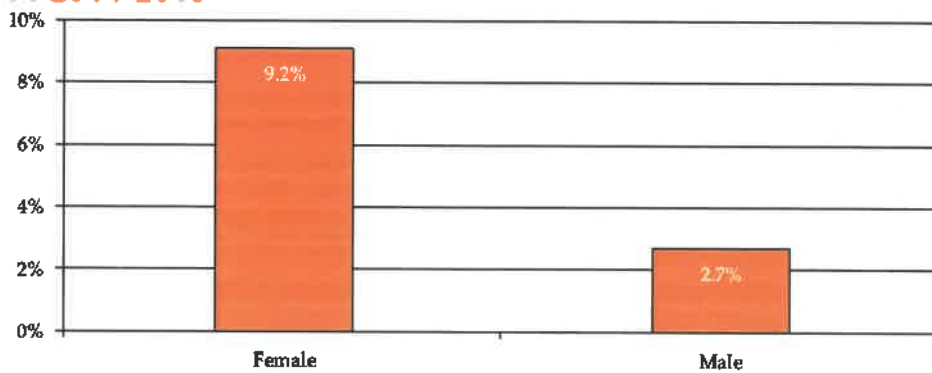


- » Since FY 2014, an average of 3% of youth had previous inpatient substance abuse treatment.
- » A higher percentage of White youth had previous inpatient substance abuse treatment compared to Black youth and youth of other races.
- » A higher percentage of females had previous inpatient substance abuse treatment compared to males.

Previous Inpatient Substance Abuse Treatment by Race, FY 2014-2018



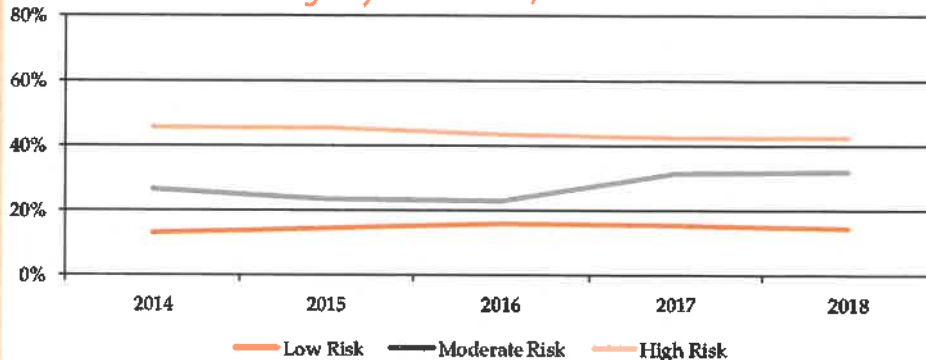
Previous Inpatient Substance Abuse Treatment by Sex, FY 2014-2018



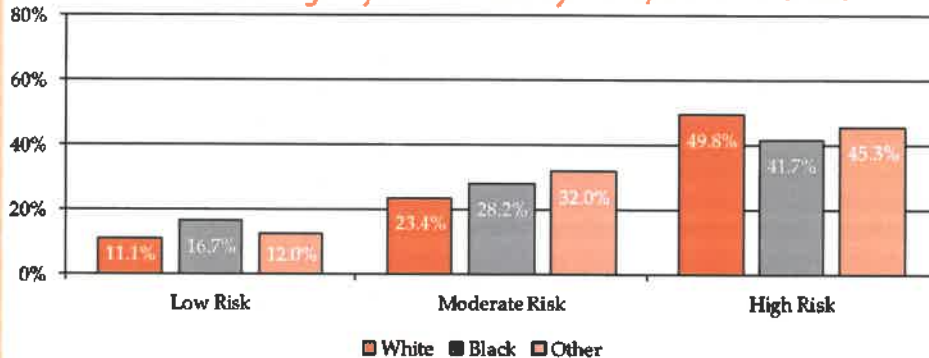
Alcohol and Drug Risk (from YASI)

- » Since FY 2014, an average of 44% of youth were classified as high risk in the Alcohol and Drugs dynamic risk domain.
- » A higher percentage of White youth were high risk compared to Black youth and youth of other races.
- » A higher percentage of females were moderate risk compared to males.

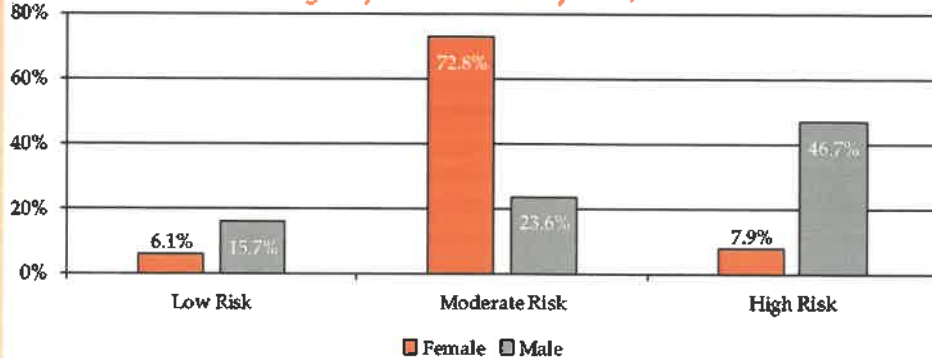
YASI Alcohol and Drugs Dynamic Risk, FY 2014-2018



YASI Alcohol and Drugs Dynamic Risk by Race, FY 2014-2018



YASI Alcohol and Drugs Dynamic Risk by Sex, FY 2014-2018



Data presented on this page are collected with YASI.





The photographs throughout this report are the original creations of Bon Air JCC students in the *Introduction to Photography* and *Advanced Photography* courses.





7 Offenses

The Offenses section includes information from the *Legal History* domain of YASI, the Social History Information form (Appendix A), and DJJ's electronic data management system. This section describes the quantity and types of offenses for youth committed to DJJ. In addition, this section discusses topics such as youth's offense history, YASI risk level, and LOS offense tier.

Types of Offenses Nationwide

Despite a national decline, the U.S. still leads the industrialized world in the rate of youth incarceration (AECF, 2013b; Juvenile Law Center, 2014). The number of youth in residential placement is tracked biennially by the Census of Juveniles in Residential Placement, which also collects information on youth's committing offenses. Offense types are grouped into the following categories: person, property, drug, public order, status offense, and technical violation. In 2015, 95% of youth in residential placement were held for a delinquency offense, and 5% were held for a status offense. More specifically, 38% committed a person offense, 22% committed a property offense, 18% committed a technical violation, 13% committed a public order offense, and 5% committed a drug offense (Hockenberry, 2018).

LOS and Recidivism

In general, evidence does not support longer LOSs for youth. For example, early studies found that longer LOSs were not associated with reduced subsequent recidivism (Fagan, 1995; Saake, 1972). In addition, another study argued that incarceration did not serve as a deterrent for youth based on an examination of the relationship between the length of first confinement and the number of subsequent convictions among a sample of male youth. Furthermore, the study also found that the longer the length of the initial incarceration, the greater the number of subsequent convictions (Myner, Santman, Capelletty, & Perlmutter, 1998). A 1999 review of Virginia's youth offender population conducted by the Virginia Poverty Law Center found that incarcerating youth beyond the point of rehabilitation may make youth more dangerous than they were when initially incarcerated and may hamper successful reintegration into the community following release (Burdeiri, 1999).

Similar findings have been found in more recent studies. For example, Loughran and colleagues (2009) examined four-year rearrest rates of serious youth offenders and found that for institutional stays lasting between 3 and 13 months, longer periods of confinement did not reduce recidivism. In addition, a study in Florida found no consistent relationship between LOS and recidivism (Winokur, Smith, Bontrager, & Blankenship, 2008). Also, a study conducted in Ohio found that, after controlling for demographic factors and risk levels, youth placed in state facilities for longer periods had higher rates of reincarceration than those held for shorter periods (Lovins, 2013).

LOS at DJJ

Effective October 15, 2015, the Board of Juvenile Justice issued a revision to DJJ's LOS Guidelines to better align with national norms and best practices. Under the current guidelines, youth's projected LOSs are calculated using their YASI risk level and their current most serious offense (MSO). If a youth is determined to need inpatient sex offender treatment services, the youth is not assigned a projected LOS; youth who receive a treatment override are eligible for consideration for release upon completion of the designated treatment program. Youth may be assigned other treatment needs as appropriate, but they are not required to complete those treatment programs to be eligible for consideration for release. The current guidelines apply to all youth admitted as of October 15, 2015, while the previous guidelines still apply to all youth admitted with an indeterminate commitment to DJJ before the effective date.

Sex Offender Treatment

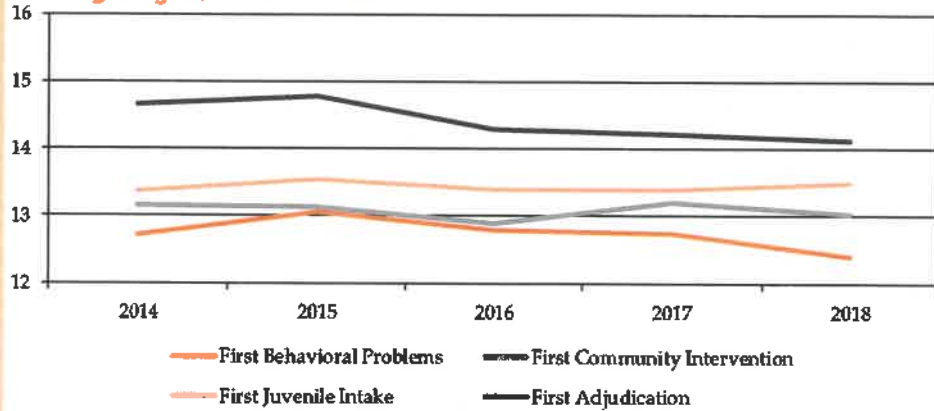
BSU provides cognitive-behavioral sex offender evaluation and treatment services in specialized treatment units and in the general population. Each juvenile receives an individualized treatment plan that addresses programmatic goals, competencies, and core treatment activities. Successful completion of sex offender treatment may require 6 to 36 months, depending on the juvenile's treatment needs, behavioral stability, and motivation.



Average Ages

» Since FY 2014, the average age at first behavioral problems was 12.8, the average age at first community intervention was 13.1, the average age at first juvenile intake was 13.4, and the average age at first adjudication was 14.4.

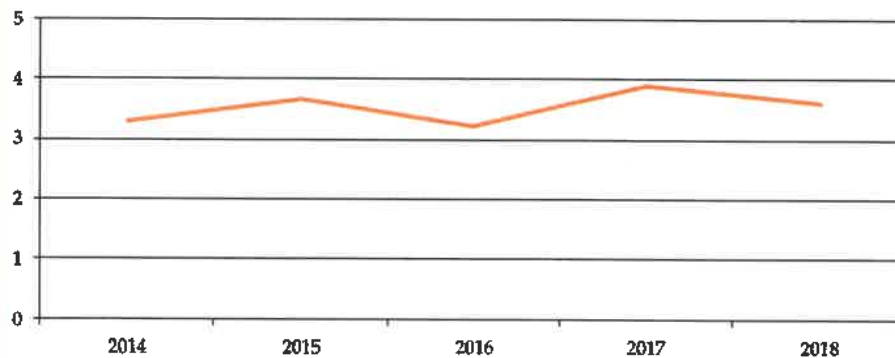
Average Ages, FY 2014-2018



Committing Offenses*

» Since FY 2014, the average number of committing offenses was 3.5.

Average Number of Committing Offenses, FY 2014-2018



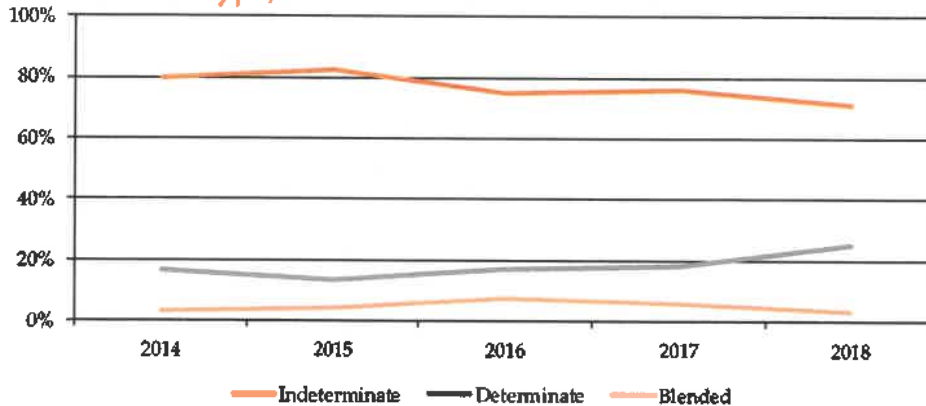
* Data include offenses from subsequent commitments.



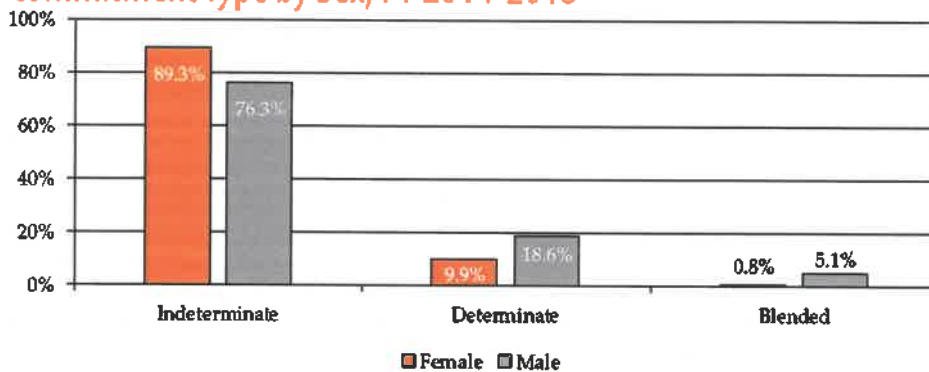
Commitment Type*

- » Since FY 2014, the majority of youth had indeterminate commitments each year.
- » A higher percentage of males had determinate commitments or blended sentences compared to females.

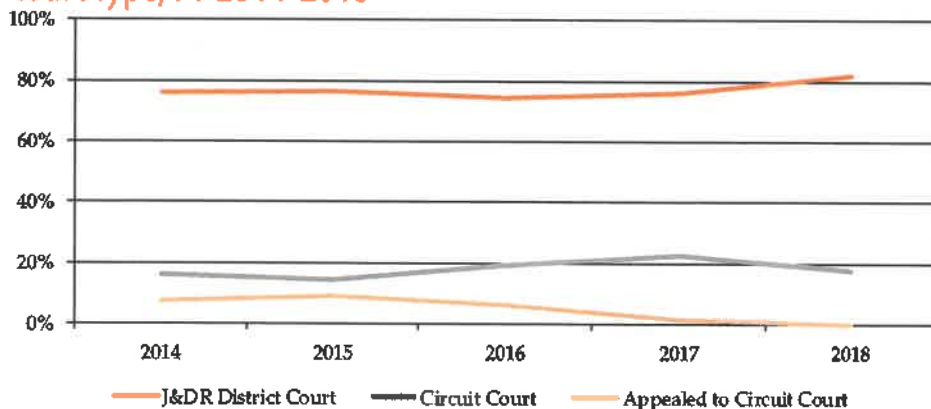
Commitment Type, FY 2014-2018



Commitment Type by Sex, FY 2014-2018



Court Type, FY 2014-2018



Court Type**

- » Since FY 2014, the majority of youth were committed by juvenile and domestic relations (J&DR) district courts.
- » An average of 18% of youth were committed by a circuit court since FY 2014.

* If a youth had multiple commitments for the same admission (including subsequent commitments), commitment type was determined by the commitment with the longest assigned LOS.

** Court type was determined by the first commitment associated with the admission.



Committing CSU*

» Between FY 2014 and FY 2018, the highest percentage of youth were committed by CSU 4 (Norfolk), followed by CSU 7 (Newport News) and CSU 13 (Richmond).

Committing CSU, FY 2004-2018

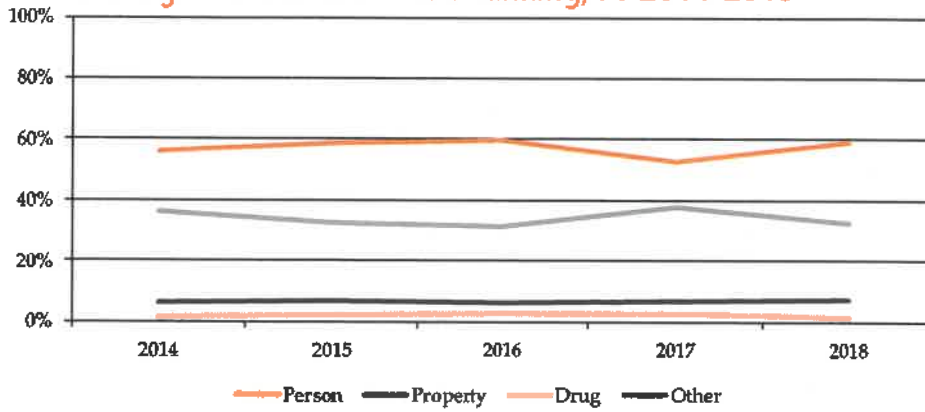
	2014	2015	2016	2017	2018	Total
1	2.7%	4.2%	2.8%	2.1%	1.8%	2.8%
2	5.4%	7.6%	4.4%	6.0%	6.2%	6.0%
2A	1.4%	0.8%	1.3%	0.6%	1.2%	1.0%
3	4.4%	3.1%	3.8%	2.7%	2.5%	3.3%
4	8.4%	10.4%	9.1%	9.9%	9.8%	9.6%
5	2.2%	2.6%	1.9%	4.2%	2.5%	2.7%
6	1.9%	2.3%	1.3%	3.9%	4.0%	2.7%
7	10.1%	8.3%	4.4%	6.3%	8.3%	7.6%
8	2.7%	5.7%	5.0%	8.4%	4.9%	5.3%
9	2.2%	2.3%	2.5%	3.3%	1.5%	2.4%
10	3.3%	1.6%	2.2%	1.5%	5.8%	2.8%
11	2.5%	2.1%	3.8%	3.9%	2.2%	2.8%
12	6.3%	2.9%	4.1%	2.1%	4.6%	4.0%
13	7.9%	4.7%	9.7%	6.9%	4.3%	6.7%
14	4.1%	6.8%	3.8%	5.1%	4.6%	4.9%
15	5.2%	3.9%	7.2%	3.6%	5.5%	5.0%
16	3.3%	4.7%	7.2%	3.3%	4.6%	4.6%
17	1.9%	2.1%	2.8%	1.5%	1.2%	1.9%
18	1.4%	1.3%	0.9%	1.5%	0.9%	1.2%
19	4.1%	1.6%	5.0%	3.6%	4.3%	3.6%
20L	1.1%	2.1%	2.2%	1.8%	0.0%	1.4%
20W	1.1%	0.3%	0.3%	0.0%	0.0%	0.3%
21	1.6%	0.5%	0.0%	1.5%	1.2%	1.0%
22	1.4%	2.1%	3.1%	3.9%	4.6%	3.0%
23	0.0%	0.0%	0.0%	0.3%	0.0%	0.1%
23A	2.2%	1.3%	2.2%	1.8%	2.2%	1.9%
24	3.5%	2.1%	1.3%	0.6%	2.8%	2.1%
25	0.8%	0.8%	2.2%	1.8%	1.5%	1.4%
26	1.6%	3.9%	1.6%	0.9%	1.5%	2.0%
27	0.3%	0.0%	0.0%	0.0%	0.0%	0.1%
28	0.3%	0.0%	0.0%	0.0%	0.3%	0.1%
29	0.0%	0.3%	0.0%	0.0%	0.6%	0.2%
30	0.3%	0.3%	0.0%	0.0%	0.3%	0.2%
31	4.6%	7.6%	4.1%	6.6%	4.0%	5.4%
Total	367	384	319	332	325	1,727

* CSU was determined by the first commitment associated with the admission.



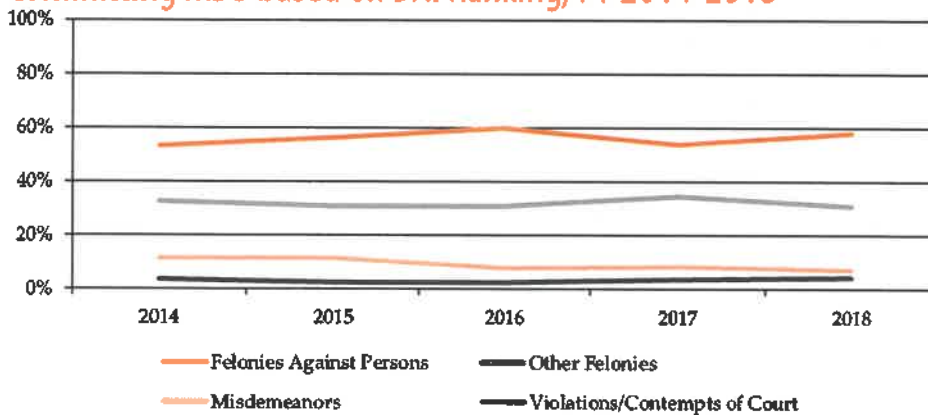
MSO by Virginia Criminal Sentencing Commission (VCSC) Ranking*

Committing MSO based on VCSC Ranking, FY 2014-2018



- » Since FY 2014, an average of 57% of youth had a person offense as their committing MSO.
- » An average of 34% of youth had a property offense as their committing MSO.
- » An average of 2% of youth had a drug offense as their committing MSO.
- » An average of 7% of youth had another type of offense as their committing MSO.

Committing MSO based on DAI Ranking, FY 2014-2018



MSO by Detention Assessment Instrument (DAI) Ranking*

- » Since FY 2014, an average of 56% of youth had a felony against persons as their committing MSO.
- » An average of 32% of youth had an other felony as their committing MSO.
- » An average of 9% of youth had a misdemeanor as their committing MSO.
- » An average of 3% of youth had a violation/contempt of court offense as their committing MSO.

* Data include offenses from subsequent commitments.



Offense Category*

» Between FY 2014 and FY 2018, robbery was the most common offense category, followed by larceny, assault, and burglary.

Committing MSO Category, FY 2014-2018

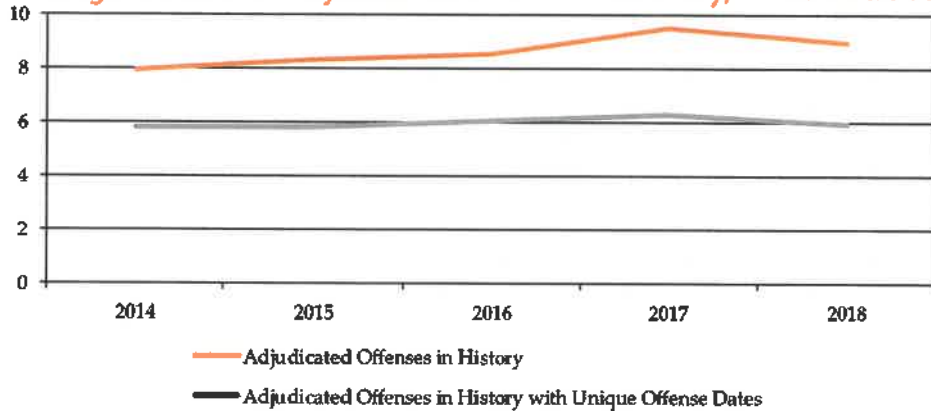
	2014	2015	2016	2017	2018	Total
Alcohol	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Arson	0.8%	0.8%	0.9%	1.8%	0.0%	0.9%
Assault	17.4%	19.8%	17.2%	15.7%	16.0%	17.3%
Burglary	14.2%	16.9%	15.4%	16.0%	11.7%	14.9%
Computer	0.3%	0.0%	0.0%	0.0%	0.0%	0.1%
Contempt of Court	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Disorderly Conduct	0.5%	0.8%	0.0%	0.3%	0.0%	0.3%
Escapes	0.0%	0.3%	0.0%	0.0%	0.0%	0.1%
Extortion	0.5%	0.8%	0.3%	0.3%	0.0%	0.5%
Failure to Appear	0.0%	0.3%	0.3%	0.0%	0.0%	0.1%
Family Offense	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Fraud	1.4%	1.0%	1.3%	0.9%	2.2%	1.3%
Gangs	0.5%	1.6%	1.9%	0.0%	0.3%	0.9%
Kidnaping	0.3%	0.0%	0.9%	0.9%	1.2%	0.6%
Larceny	21.8%	15.1%	16.3%	21.1%	18.8%	18.6%
Misc./Other	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Murder	0.8%	0.3%	2.5%	1.2%	0.6%	1.0%
Narcotics	1.4%	1.8%	2.5%	2.4%	1.2%	1.9%
Obscenity	0.5%	0.3%	1.9%	0.6%	0.3%	0.7%
Obstruction of Justice	0.3%	0.8%	0.9%	0.9%	0.3%	0.6%
Parole Violation	3.3%	2.3%	2.2%	3.6%	4.0%	3.1%
Probation Violation	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Robbery	21.0%	23.4%	22.9%	22.9%	28.0%	23.6%
Sexual Abuse	9.8%	8.1%	7.5%	5.4%	8.3%	7.9%
Sexual Offense	0.0%	0.3%	0.0%	0.0%	0.0%	0.1%
Traffic	1.4%	1.0%	1.3%	0.3%	1.8%	1.2%
Trespass	0.3%	0.3%	0.3%	0.3%	0.0%	0.2%
Vandalism	1.6%	2.1%	1.3%	2.1%	2.2%	1.9%
Weapons	1.9%	1.3%	2.2%	3.0%	3.1%	2.3%
Total	367	384	319	332	325	1,727

* Data include offenses from subsequent commitments.



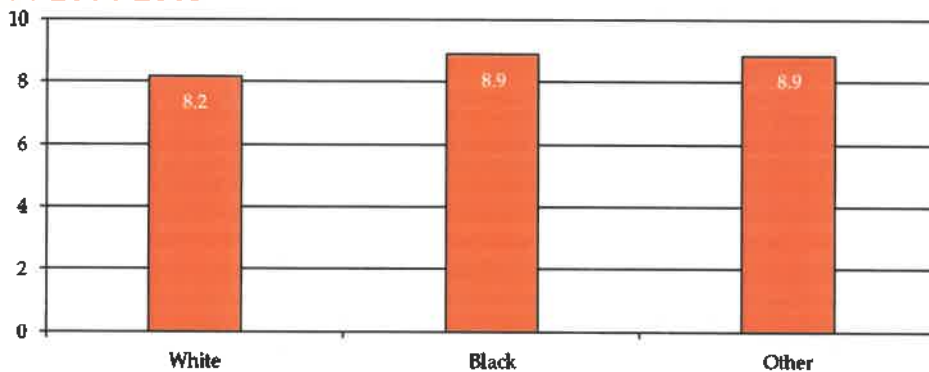
Adjudicated Offenses in History*

Average Number of Adjudicated Offenses in History, FY 2014-2018



- » The average number of adjudicated offenses in a youth's history increased from 8.0 in FY 2014 to 9.0 in FY 2018.
- » In addition, the average number of adjudicated offenses in a youth's history with unique offense dates was 6.0.
- » White youth had a lower average number of adjudicated offenses in their history compared to Black youth and youth of other races.
- » Females had a higher average number of adjudicated offenses in their history with unique offense dates compared to males.

Average Number of Adjudicated Offenses in History by Race, FY 2014-2018



Average Number of Adjudicated Offenses in History with Unique Offense Dates by Sex, FY 2014-2018



Youth's committing offenses for their current admission are included in the number of adjudicated offenses in history.

* Data exclude offenses from subsequent commitments.



Adjudicated Offenses in History by Category*

- » The highest percentage of adjudicated offenses in youth's histories were larceny or assault offenses.
- » The highest percentage of adjudicated felony offenses in youth's histories were larceny offenses.

Adjudicated Offenses in History by Category, FY 2014-2018

	2014	2015	2016	2017	2018	Total
Assault	27.4%	29.7%	29.5%	25.8%	28.4%	28.2%
Burglary	12.5%	12.9%	13.5%	13.8%	12.1%	13.0%
Larceny	30.1%	28.0%	28.7%	32.7%	30.3%	30.0%
Murder	0.4%	0.4%	1.7%	0.9%	0.6%	0.8%
Narcotics	9.6%	8.3%	6.0%	8.7%	7.6%	8.1%
Robbery	13.3%	14.7%	15.1%	14.0%	15.9%	14.6%
Sex Offense	6.7%	5.9%	5.4%	4.1%	5.1%	5.5%
Total	730	743	630	701	686	3,490

Adjudicated Felony Offenses in History by Category, FY 2014-2018

	2014	2015	2016	2017	2018	Total
Assault	19.5%	22.1%	20.9%	20.0%	21.9%	20.9%
Burglary	17.7%	17.9%	18.0%	18.5%	16.2%	17.7%
Larceny	32.6%	29.5%	29.4%	35.3%	32.2%	31.8%
Murder	0.6%	0.6%	2.3%	1.1%	0.8%	1.1%
Narcotics	2.7%	2.8%	2.5%	2.7%	1.8%	2.5%
Robbery	18.9%	20.4%	20.1%	18.7%	21.3%	19.9%
Sex Offense	8.0%	6.7%	6.8%	3.6%	5.9%	6.2%
Total	513	535	473	524	512	2,557

Youth's committing offenses for their current admission are included in the number of adjudicated offenses in history.

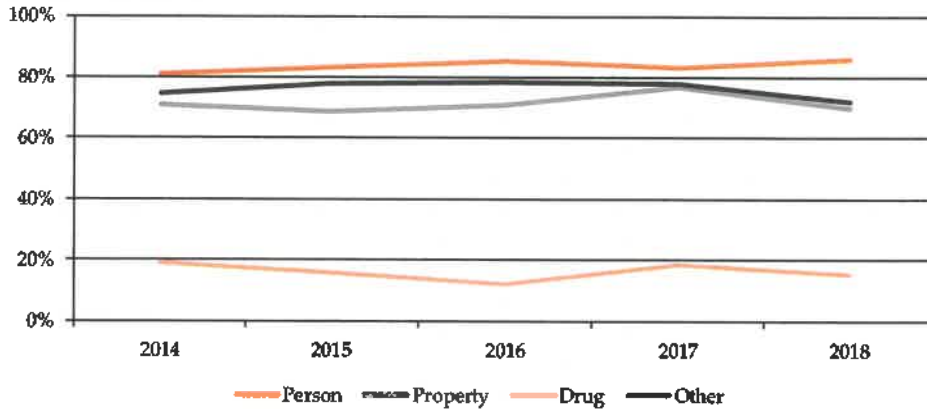
* Data exclude offenses from subsequent commitments. Percentages add to more than 100% because one youth may be in more than one category.

* Adjudicated offenses include only those offenses with a guilty finding.



Adjudicated Offenses in History by VCSC*

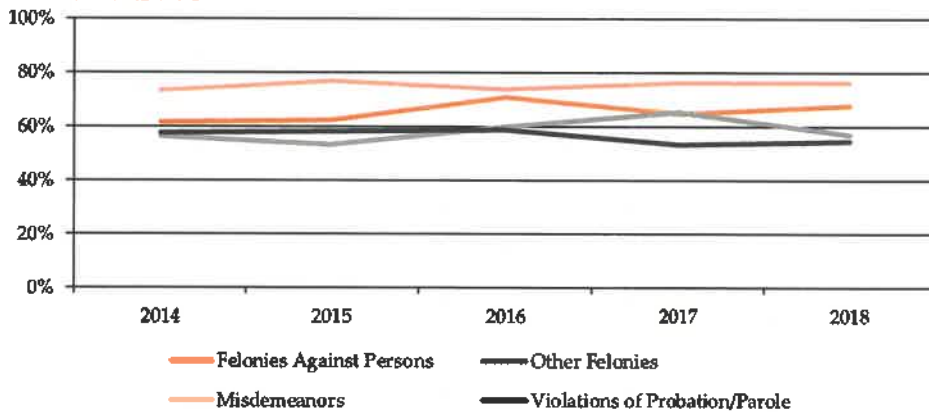
Adjudicated Offenses in History based on VCSC Ranking, FY 2014-2018



- » An average of 84% of adjudicated offenses in youth's histories were for a person offense.
- » An average of 76% were for an other offense.
- » An average of 72% were for a property offense.
- » An average of 16% were for a drug offense.

Adjudicated Offenses in History by DAI*

Adjudicated Offenses in History based on DAI Ranking, FY 2014-2018



- » An average of 75% of adjudicated offenses in youth's histories were for a misdemeanor.
- » An average of 65% were for a felony against person.
- » An average of 58% were for an other felony.
- » An average of 56% were for a violation of probation or parole.

Youth's committing offenses for their current admission are included in the number of adjudicated offenses in history.

* Data exclude offenses from subsequent commitments. Percentages add to more than 100% because one youth may be in more than one category.

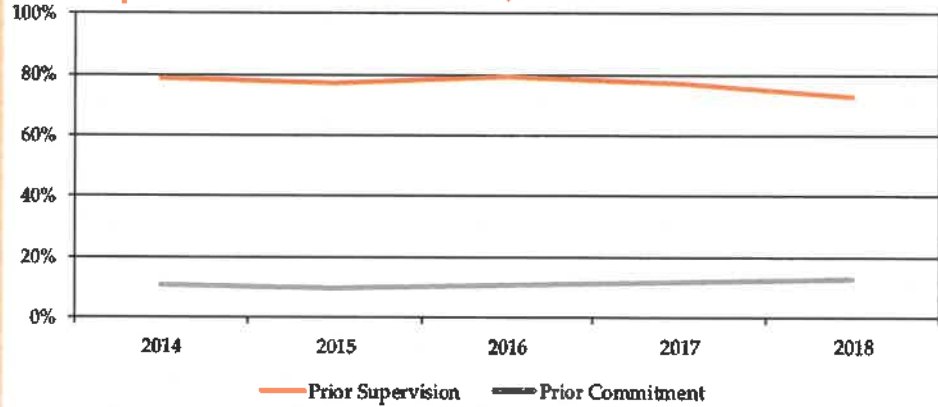
* Adjudicated offenses include only those offenses with a guilty finding.



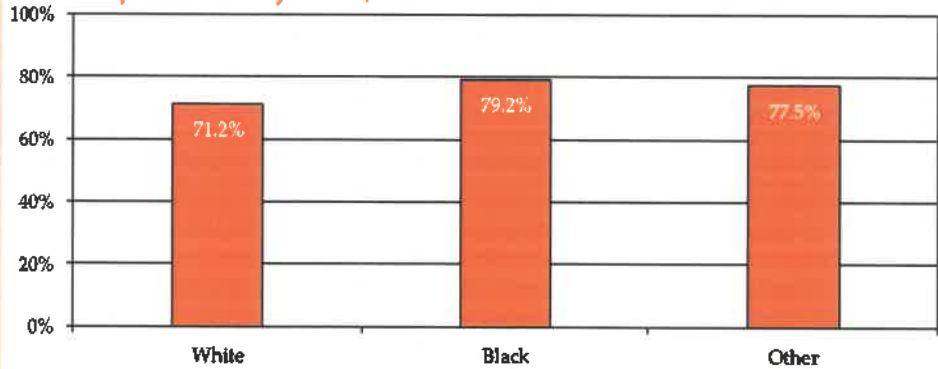
Prior Supervision

- » Since FY 2014, an average of 77% of youth had been under prior supervision (e.g., probation), and 11% had a prior commitment.
- » A lower percentage of White youth had been under prior supervision compared to Black youth and youth of other races.
- » Since FY 2014, youth had an average of 3.0 prior probation and parole violations.

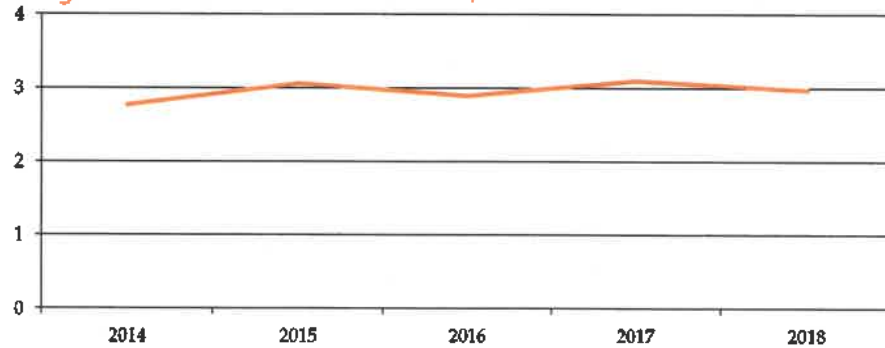
Prior Supervision and Commitment, FY 2014-2018



Prior Supervision by Race, FY 2014-2018

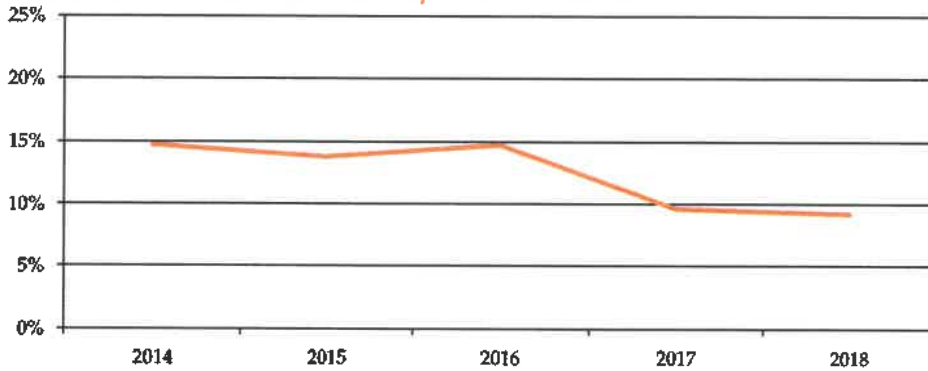


Average Number of Prior Violations, FY 2014-2018



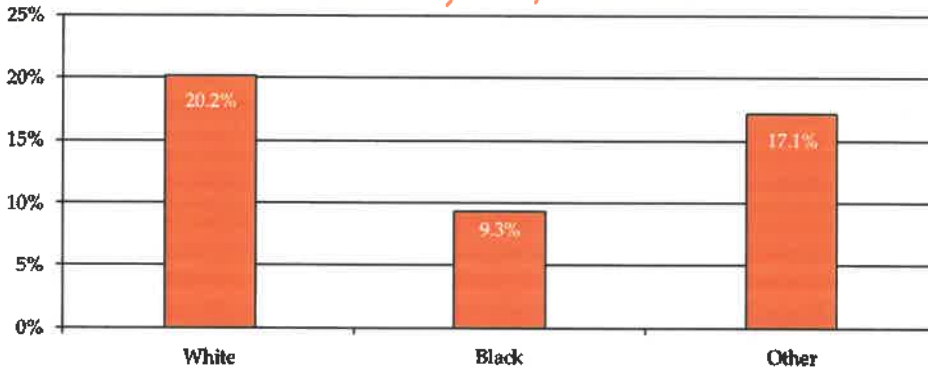
Sex Offender Treatment Need

Sex Offender Treatment Need, FY 2014-2018

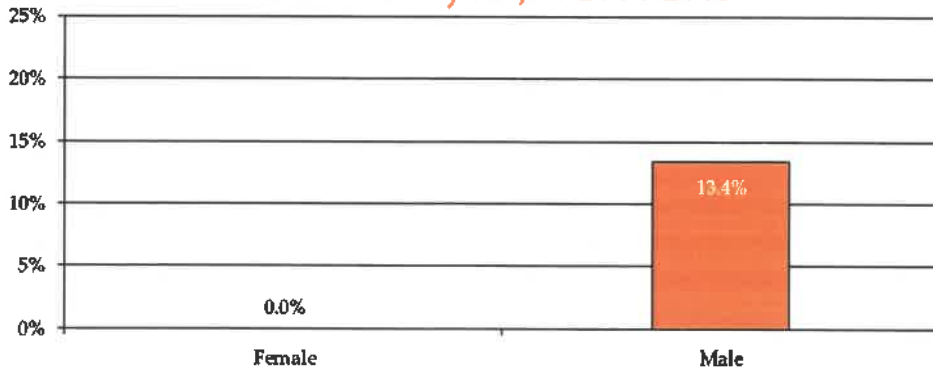


- » Since FY 2014, an average of 13% of youth had a sex offender treatment need.
- » A lower percentage of Black youth had a sex offender treatment need compared to White youth and youth of other races.
- » A higher percentage of males had a sex offender treatment need compared to females.

Sex Offender Treatment Need by Race, FY 2014-2018



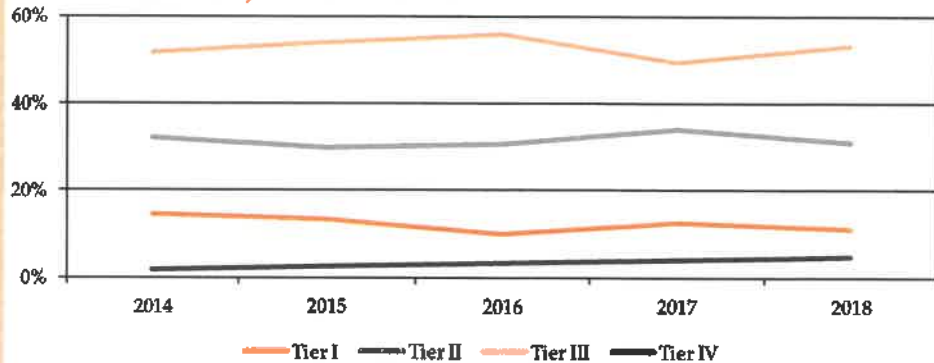
Sex Offender Treatment Need by Sex, FY 2014-2018



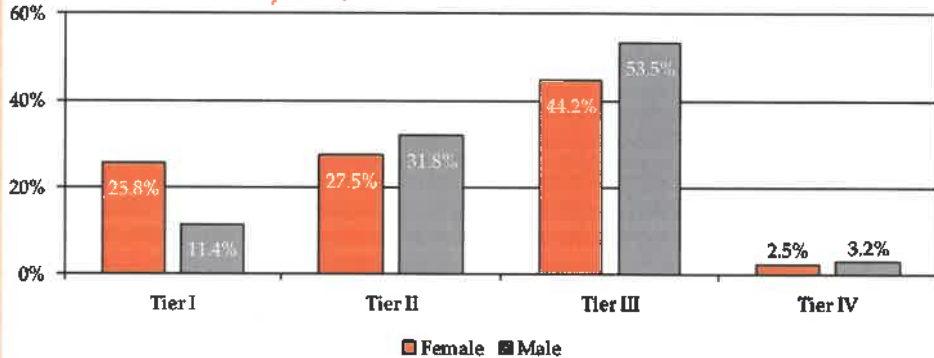
LOS Offense Tiers

- » Offenses are separated into four tiers in the LOS Guidelines.
- » Tier I is for misdemeanors against persons, any other misdemeanor, or violations of parole. It is the least serious LOS offense tier.
- » Tier II is for felony weapons or narcotics distribution and other felony offenses which are not punishable with 20 or more years of confinement if the offense were committed by an adult.
- » Tier III is for felonies against persons that are not punishable with a statutory minimum of 20 or more years of confinement if the offense were committed by an adult.
- » Tier IV is for felony offenses that are punishable with 20 or more years of confinement if the offense were committed by an adult. It is the most serious of the LOS offense tiers.
- » Since FY 2014, an average of 53% of youth committed a Tier III offense.
- » A higher percentage of males had committed Tier II, III, and IV offenses.

LOS Offense Tiers, FY 2014-2018



LOS Offense Tiers by Sex, FY 2014-2018

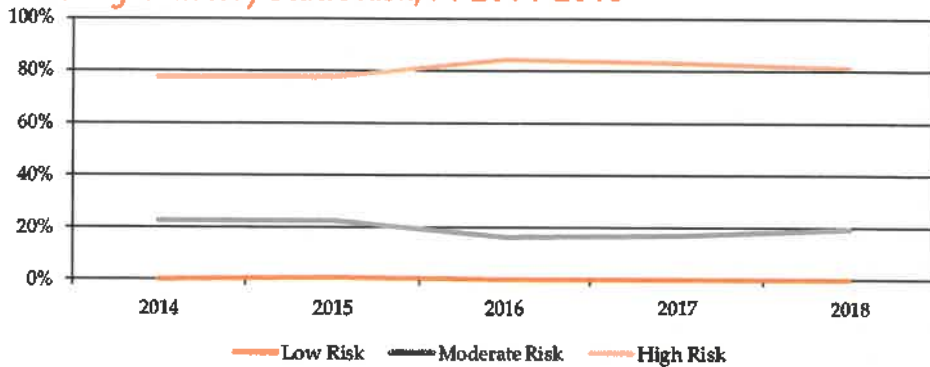


LOS offense tiers were calculated for all youth, including those with a determinate commitment or blended sentence.



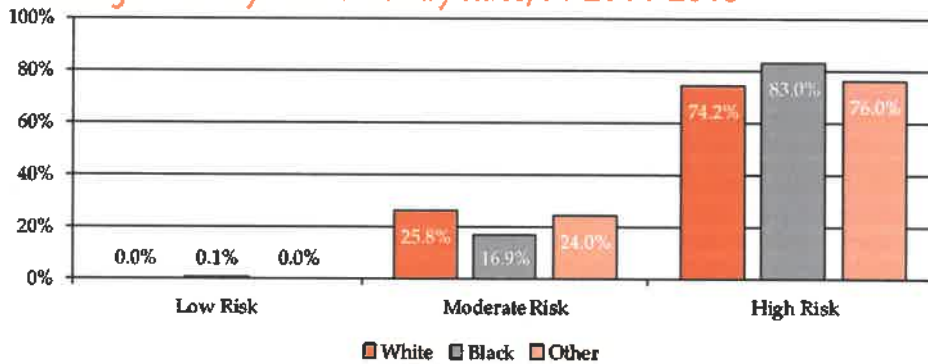
Legal History Risk (from YASI)

YASI Legal History Static Risk, FY 2014-2018

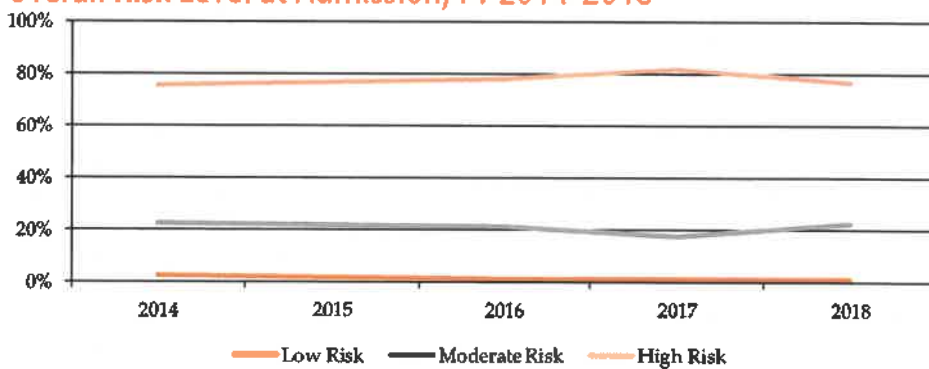


- » Since FY 2014, an average of 81% of youth were classified as high risk in the Legal History static risk domain.
- » A higher percentage of Black youth were high risk compared to White youth and youth of other races.

YASI Legal History Static Risk by Race, FY 2014-2018



Overall Risk Level at Admission, FY 2014-2018



Overall Risk Level

- » Since FY 2014, an average of 78% of youth were high risk.





The photographs throughout this report are the original creations of Bon Air JCC students in the *Introduction to Photography* and *Advanced Photography* courses.

8 Appendices

The forms on the following pages were used to collect youth data. These forms are modified periodically; therefore, the most recent version of each form is presented rather than including every version that was in use for the duration of this report's data.

- » Appendix A: Social History Information Form
- » Appendix B: Psychological Information Form
- » Appendix C: Educational Information Form
- » Appendix D: Medical History Form
- » Appendix E: Physical Examination Form

Additionally, the references cited throughout the report can be found in Appendix F.



Appendix A: Social History Information Form

**Department of Juvenile Justice
DIVISION OF OPERATIONS
Social History Information**

Juvenile Name:			
Last	First	Middle	DOC
Juvenile No.: _____ Race: _____ Sex: _____			

LIVING SITUATIONS

1. Living Situation Immediately Prior to Detention/Incarceration (check ONE)

<input type="checkbox"/> Both Biological Parents	<input type="checkbox"/> Grandparent(s)	<input type="checkbox"/> Other Family member
<input type="checkbox"/> One Parent + One Step-Parent	<input type="checkbox"/> Adoptive Parent(s)	<input type="checkbox"/> Other
<input type="checkbox"/> Mother Only	<input type="checkbox"/> Foster Home	
<input type="checkbox"/> Father Only	<input type="checkbox"/> Group Home/ Crisis Shelter	
<input type="checkbox"/> Step-Parent Only	<input type="checkbox"/> Psychiatric Placement	

2. Prior Living Situations (check all that apply)

<input type="checkbox"/> Both Biological Parents	<input type="checkbox"/> Grandparent(s)	<input type="checkbox"/> Other Family member
<input type="checkbox"/> One Parent + One Step-Parent	<input type="checkbox"/> Adoptive Parent(s)	<input type="checkbox"/> Other
<input type="checkbox"/> Mother Only	<input type="checkbox"/> Foster Home	
<input type="checkbox"/> Father Only	<input type="checkbox"/> Group Home/ Crisis Shelter	
<input type="checkbox"/> Step-Parent Only	<input type="checkbox"/> Psychiatric Placement	

MENTAL HEALTH/SUBSTANCE ABUSE (MH/SA) TREATMENT SERVICES

3. Inpatient/Residential Treatment (indicate number of placements)

- _____ Psychiatric Placement
- _____ Residential Treatment Facility (not primarily substance abuse)
- _____ Substance Abuse Treatment Facility
- _____ Therapeutic Foster Care

4. Outpatient MH/SA Services (check all that apply)

- Home-Based Services
- Counseling
- Medication Management

FAMILY HISTORY

5. Indicate applicable parental history:

0=No 1=Mother 2=Father 3=Other Female Parental Figure 4=Other Male Parental Figure 5=Multiple Parties

- | | |
|---------------------------------------|--|
| _____ Domestic Violence (perpetrator) | _____ Outpatient Mental Health Treatment |
| _____ Criminal Activity | _____ Abandonment/Rejection of juvenile |
| _____ Incarceration | _____ Death |
| _____ Substance Abuse | |
| _____ Psychiatric Hospitalization | |



Appendix B: Psychological Information Form

**Department of Juvenile Justice
DIVISION OF RESIDENTIAL SERVICES
PSYCHOLOGICAL INFORMATION**

Juvenile Name:			
Last	First	Middle	DOC
Juvenile No.: _____ Race: _____ Sex: _____			

ASSESSMENT OF RISKS AND NEEDS

1. Special Considerations:	
<input type="checkbox"/> Indications of neglect	<input type="checkbox"/> Pattern of non-suicidal SIB
<input type="checkbox"/> Documented Homicidal Ideation/Intent	<input type="checkbox"/> History of suicide attempts
<input type="checkbox"/> History of harming animals	<input type="checkbox"/> Current Suicidal Ideation/Intent
<input type="checkbox"/> History of fire setting	

2. Substance Use*:	
<input type="checkbox"/> Occasional drug use	<input type="checkbox"/> Chronic alcohol use
<input type="checkbox"/> Chronic drug use	<input type="checkbox"/> Substance abuse interferes with life
<input type="checkbox"/> Occasional alcohol use	<input type="checkbox"/> Substance use linked to offense(s)

*Chronic=weekly or more frequently
Occasional=less than weekly use

PSYCHOTROPIC MEDICATION

3. Psychotropic Medications: Check all that apply	Psychotropic	Sleep	Stimulant
Never Prescribed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prescribed in the past	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Current prescription (prior to commitment)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Newly prescribed at direct care placement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



Appendix B, cont.: Psychological Information Form

**Department of Juvenile Justice
DIVISION OF RESIDENTIAL SERVICES
PSYCHOLOGICAL INFORMATION**

Juvenile Name:	Last	First	Middle	DOC
Juvenile No.:	Race:	Sex:		

ASSESSMENT OF SUBSTANCE USE

4. Substances:	Age of First Use N/A=0 15-18 yo=1 12-14 yo=2 <12 yo=3	Current Exposure* None=0 Experimentation=1 Use Disorder (Mild, Moderate, Severe)=2 *Based on DSM criteria
Tobacco		
Alcohol		
Marijuana		
Inhalants		
Ecstasy		
Crack/Cocaine		
Methamphetamine		
Prescription stimulants (Adderall, Ritalin, etc.)		
Sedatives, Anxiolytics, and Hypnotics		
Hallucinogens		
Opiates		
Synthetic Marijuana (K-2, Spice, etc.)		
Other prescription drugs (not elsewhere captured)		
Other non-prescription or other substance (not elsewhere captured)		

ASSAULT HISTORY

5. History of Assaultiveness:	
0 = No 1 = Once 2 = Multiple Times/Recurring	
Sexual Assault perpetrated by Resident:	Physical Assault perpetrated by Resident:
___ Against Family Member Younger than Juv.	___ Against Family Member Younger than Juv.
___ Against Family Member Older than Juv.	___ Against Family Member Older than Juv.
___ Against Acquaintance	___ Against Acquaintance
___ Against Stranger	___ Against Stranger
	___ Against Authority Figure
	___ Resulting in Physical Injury Req. Med. Attn.
	___ Using a Weapon



Appendix B, cont.: Psychological Information Form

**Department of Juvenile Justice
DIVISION OF RESIDENTIAL SERVICES
PSYCHOLOGICAL INFORMATION**

Juvenile Name:	_____	_____	_____	_____
	Last	First	Middle	DOC
Juvenile No.:	_____	Race:	_____	Sex:
	_____		_____	_____

6. History of Victimization:	
0 = No 1 = Once 2 = Multiple Times/Recurring	
Sexual Assault against Resident:	Physical Assault against Resident:
Parent/Parental Figure _____	Parent/Parental Figure _____
Other Family Member or Trusted Adult _____	Other Family Member or Trusted Adult _____
Acquaintance _____	Acquaintance _____
Stranger _____	Stranger _____
Other _____	Other _____

FUNCTIONALITY INFORMATION

7. Intellectual Functioning:	
Testing Instrument: _____	0=None/Invalid, 1=WASI, 2=WISC, 3=WAIS 4=Other
FSIQ: _____	_____

8. Significant Symptoms of:	
<input type="checkbox"/> Depressive Disorder	<input type="checkbox"/> ADHD
<input type="checkbox"/> Anxiety Disorder	<input type="checkbox"/> Eating Disorder
<input type="checkbox"/> Bipolar/Cyclothymic Disorder	<input type="checkbox"/> Oppositional Defiant Disorder
<input type="checkbox"/> Adjustment Disorder	<input type="checkbox"/> Conduct Disorder
<input type="checkbox"/> Dissociative Disorder	<input type="checkbox"/> Substance Use Disorder, Mild
<input type="checkbox"/> Psychotic Disorder	<input type="checkbox"/> Substance Use Disorder, Moderate or Severe
<input type="checkbox"/> Cluster A Personality Disorder	<input type="checkbox"/> Intellectual Disability
<input type="checkbox"/> Cluster B Personality Disorder	<input type="checkbox"/> Paraphilic Disorder
<input type="checkbox"/> Cluster C Personality Disorder	<input type="checkbox"/> Other

STAFF RESPONSIBLE FOR FORM COMPLETION:

Name: _____

Last
First
Middle
Initials

Contact Number: (____) ____-____

I have filled out and reviewed this form and the information contained within is accurate and complete.

Signature: _____ **Date:** _____

Facility: _____



Appendix C: Educational Information Form

Department of Juvenile Justice DIVISION OF OPERATIONS EDUCATIONAL INFORMATION

Juvenile Name:	Last _____	First _____	Middle _____	DOC _____
Juvenile No.:	_____	Race: _____	Sex: _____	

- ____ 1. Last Grade Completed (K-12)
 13 = Diploma 14 = High School Equivalency 15 = Ungraded/Alternative 16 = Unknown
- ____ 2. Date of Testing (mm/dd/yyyy)

MAP TEST RESULTS*

	PRE-TEST		POST-TEST	
	RIT SCORE	PERCENTILE RANK	RIT SCORE	PERCENTILE RANK
MATH	_____	_____	_____	_____
READING	_____	_____	_____	_____
LANGUAGE USE	_____	_____	_____	_____

***Please submit this form after the CEST meeting. The post-test section will be blank.**
The MAP is a test of academic achievement. It identifies strengths and weaknesses to improve outcomes for students. This information alone does not suggest that a student has a disability.

SCHOOL HISTORY

0 = Minimal or No Problem 1 = Minor Problem 2 = Moderate Problem 3 = Severe Problem
 (Please refer to the attached rubric for scoring.)

- ____ 3. Attendance
- ____ 4. Disruptive Classroom Behavior
- ____ 5. Disruptive Behavior on School Property
- ____ 6. Academic Progress
- ____ 7. Peer Interactions
- ____ 8. Staff Relationships

SCHOOL ENROLLMENT

- ____ 9. Current Status 0 = Currently Enrolled 1 = Released from Compulsory Attendance 2 = Dropped Out/Did Not Attend 3 = Suspended 4 = Expelled 5 = Earned High School Diploma/Equivalency



Appendix C, cont.: Educational Information Form

Department of Juvenile Justice EDUCATIONAL INFORMATION

Juvenile Name:	Last	First	Juvenile Number	DOC
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EDUCATIONAL NEEDS

1 = Not a Need 2 = Moderate Priority Need 3 = High Priority Need
(Please refer to the attached rubric for scoring.)

_____ 10. Career Education

_____ 11. Parenting Skills

_____ 12. Independent Living Skills

_____ 13. Suggested Educational Plan 1 = School 2 = High School Equivalency Program 3 = Post-Grad Program

CLASSIFICATIONS 0 = No 1 = Yes, in Community 2 = Yes, at DJJ

_____ 14. Individualized Education Plan (IEP)

_____ 15. 504 Plan

_____ 16. English Language Learner (ELL)

STAFF RESPONSIBLE FOR MAP ASSESSMENT:

Name: _____ Last _____ First _____ Contact Number: () _____ - _____

I have filled out and reviewed this form and the information contained within is accurate and complete.

Signature: _____ Date: _____

STAFF RESPONSIBLE FOR SCHOOL HISTORY, EDUCATIONAL NEEDS, AND CLASSIFICATIONS:

Name: _____ Last _____ First _____ Contact Number: () _____ - _____

I have filled out and reviewed this form and the information contained within is accurate and complete.

Signature: _____ Date: _____



Appendix C, cont.: Educational Information Form

Department of Juvenile Justice EDUCATIONAL INFORMATION

School History Rubric

Criteria	0 Minimal or No Problem	1 Minor Problem	2 Moderate Problem	3 Serious Problem
Attendance	Student attends school on a regular basis unless the student has an excused absence.	Student misses school (3 unexcused days) and/or student is removed from class due to disciplinary actions at least twice weekly.	Student misses school (4 unexcused days) and/or student is removed from class due to disciplinary actions at least three times or more times weekly.	Student has missed (5 or more unexcused days) and/or student is removed from class daily due to disciplinary actions.
Disruptive Classroom Behavior	Student displays appropriate behavior in the classroom.	Student is disruptive in class at least twice weekly.	Student is disruptive in class at least three times weekly and prevents learning.	Student is disruptive in class daily and prevents learning. S/He manages to prevent the teacher from giving the other students attention as needed.
Disruptive Behavior on School Property	Student displays appropriate behavior while on school property.	Student is disruptive while on school property at least twice weekly.	Student is disruptive while on school property three or more times weekly.	Student is disruptive while on school property. S/He violates school property to include destruction of property, theft, and vandalism.
Academic Progress	Student is on track for completion of high school diploma.	Student is behind cohort by one grade level in completion of requirements for high school diploma.	Student is behind cohort by 2 grade levels in completion of requirements for high school diploma and/or court-ordered to remain on the high-school equivalency track.	Student is behind cohort by 3 grade levels in completion of requirements for high school diploma and/or is court-ordered to remain on the high school equivalency track.
Peer Interactions	Student displays appropriate peer interactions.	Student displays the inability to effectively listen, cooperate, and communicate with peers at least twice weekly.	Student displays the inability to effectively listen, cooperate, and communicate with peers at least three times weekly.	Student does not practice listening, cooperating, and communicating well with peers. S/He argues with peers and instigates problems on a daily basis.
Staff Relationships	Student displays professional relationships with staff.	Student displays inappropriate relationships with staff at least twice weekly.	Student displays inappropriate relationships with staff three or more times weekly.	Student does not attempt to display appropriate relationship with staff. S/He argues, instigates, and curses directly at staff on a daily basis.



Appendix C, cont.: Educational Information Form

Department of Juvenile Justice EDUCATIONAL INFORMATION

Educational Needs Rubric

Criteria	1 Not a Need	2 Moderate Priority Need	3 High Priority Need
Career Education	Student has one or fewer CTE courses to complete to meet the necessary VDOE requirements.	Student has at least 2 CTE courses to complete to meet the necessary VDOE requirements.	Student will not have the CTE course electives (credits) in the time necessary to complete the requirements for graduation.
Parenting Skills	Student displays skills necessary to properly raise children with little or no assistance from others, or s/he does not have children.	Student needs to attend a Parenting Skills program at least once weekly in an effort to demonstrate the proper way to raise children and help the entire family.	Student needs to attend a Parenting Skills program at least three times weekly in an effort to demonstrate the proper way to raise children and help the entire family.
Independent Living Skills	Student displays independent living skills with little or no assistance from others.	Student needs to attend an Independent Living Skills program at least once weekly in an effort to demonstrate the skills necessary for independent living.	Student needs to attend an Independent Living Skills program at least three times weekly in an effort to demonstrate the skills necessary for independent living.



Appendix D: Medical History Form

Virginia Department of Juvenile Justice Medical History

Mark boxes where indicated.

Current Medical Problems:

Yes No Unknown **Allergies:**

- | | | | |
|--------------------------|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 1. Medication and Reactions: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 2. Environmental and Reactions: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 3. Food(s) and Reactions: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 4. TB or Positive PPD: _____ Was it Treated: _____
Date: _____ Medications: _____
CXR: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 5. Asthma: _____ Peak Flow: _____ Last Symptoms: _____
Hospitalizations: _____ Last Date: _____
Medications: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 6. Diabetes: _____ Age or Year Diagnosed: _____
Medications/Complications: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 7. Hepatitis: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 8. Heart Problem: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 9. Sickle Cell Anemia/Trait: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 10. Orthopedic Problem: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 11. Glasses: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 12. Other Assistive Devices Needed for Care: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 13. Current Psychiatric Problems: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 14. Physical Disabilities: _____ |

Vulnerability Factors:

Yes No Unknown

- | | | | |
|--------------------------|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 15. Small Physical Stature: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 16. Developmental/Mental/Physical Disability: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 17. Presents as Lesbian, Gay, Bisexual, Transgender, Gender Identity Issues: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 18. History of Sexual Victimization: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 19. History of Sexual Activity While in Custody: _____ |

Place ID Sticker Here

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Appendix D, cont.: Medical History Form

Virginia Department of Juvenile Justice Medical History

Past Medical History:

Yes No Unknown

20. Chicken Pox: _____ Other Childhood Diseases: _____
21. Head Injury: _____
Where Treated? _____
22. Loss of Consciousness: _____ How Long? _____
23. Fractures: _____
24. Seizures: _____
25. Gunshot Wounds: _____
Bullet or Fragments Retained: _____
26. Stab Wounds: _____
27. Medical Hospitalizations: Where? When? Why? _____

28. Psychiatric Hospitalizations: Where? When? Why? _____

29. Surgery/Operations/Procedures: _____

- Females Only: (leave blank if male)**
30. Pregnancy: G ____ P ____ AB ____
Induced: _____ Spontaneous: _____
Last Pregnancy/Delivery: _____ Vaginal: ____ C-Section: ____
Complications: _____
31. Menstrual Cycle/Pap Smears: _____
Last Period: _____ N Abn _____
Problems with Periods: _____
Last Pap Smear: _____ N Abn _____



Appendix D, cont.: Medical History Form

Virginia Department of Juvenile Justice Medical History

STIs:

Yes No N/A Unknown

- 32. Chlamydia: _____
- 33. Gonorrhea: _____
- 34. Syphilis: _____
- 35. Herpes: _____
- 36. Venereal Warts: _____
- 37. Genital Sores: _____
- 38. HPV: _____
- 39. Pediculosis: _____
- 40. Trichomonis: _____

Medications:

(check if yes)

- 41. Medical: Name? Dose? Frequency? Indication? _____

Birth Control for Females: _____

- 42. Psychotropics: _____
(check all that apply)

	Psychotropic	Sleep	Stimulant
Never Previously Prescribed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prescribed in the Past	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Current Prescription (prior to arrival at RDC)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Newly Prescribed at RDC	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Current: (Name? Dose? Frequency? Indication?) _____

Previous: Psychotropic(s), if applicable: _____

Physician:

Yes No Unknown

- 44. Family Doctor or Clinic: _____ Address: _____
Psychiatrist: _____ Address: _____
OB/Gyn: _____ Address: _____

Family History:

Yes No Unknown

- 45. TB: Who? _____
- 46. Heart Problems: Who? _____
- 47. High Blood Pressure: Who? _____
- 48. Blood Sugar Problems: Who? _____
- 49. Asthma: Who? _____
- 50. Other: _____

Place ID Sticker Here

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Appendix D, cont.: Medical History Form

Virginia Department of Juvenile Justice Medical History

Social History:

(check all that apply)

Substance abuse:	Frequency of Use	Age of First Use
<input type="checkbox"/> 51. Cigarettes	_____	_____
<input type="checkbox"/> 52. Alcohol	_____	_____
<input type="checkbox"/> 53. Marijuana	_____	_____
<input type="checkbox"/> 54. Cocaine	_____	_____
<input type="checkbox"/> 55. Crack	_____	_____
<input type="checkbox"/> 56. Heroin	_____	_____
<input type="checkbox"/> 57. Hallucinogens	_____	_____
<input type="checkbox"/> 58. Inhalants	_____	_____
<input type="checkbox"/> 59. Other Illicit/ 'Designer'/ Prescription Drugs:	_____	

High Risk Behavior/ Sexual History:

(check if applicable)

60. Have you had sex? Yes No

61. Was it consensual? Yes No

If nonconsensual, did you report it to anyone? Yes No

Who? _____

62. Age at first sexual intercourse (not abuse): _____

63. Have you ever been forced or pressured into doing something sexual that you didn't want to do? No Yes

64. IV drug use? Yes No

65. History of blood transfusion or blood product administration? Yes No

66. Trading sex for money or drugs? Yes No

67. How many sexual partners have you had in the past year? _____

Past 3 years? _____

How many (lifetime)? _____

68. Were your sexual partner(s): Male Female Both

69. High risk sexual partner (promiscuous/IV drug use/prostitution): _____

70. Condom use: No Yes If yes, sometimes or every time

71. Multiple tattoos: _____

Family:

Lives with: _____ Phone #: _____

72. Number of children you have (include age/sex): _____



Appendix D, cont.: Medical History Form

Virginia Department of Juvenile Justice Medical History

Review of Systems: (Current Only)

Constitutional: Insomnia Night Sweats Recent Weight Loss (>10lbs Past Month)

HEENT: Headaches Nasal Congestion/Sneezing Nose Bleeds Blurry Vision

Respiratory: Cough Shortness of Breath (Exertional?) Chest Pain

Cardiac: Palpitations Blackout Spells

Gastrointestinal: Nausea Abdominal Pain Diarrhea Heartburn Constipation

Genitourinary: Trouble Voiding Bedwetting Urethral Discharge (Males)
 Vaginal Discharge: _____

Skin: Acne Athlete's Foot Jock Itch Rashes Open Lesions/Wounds

Musculoskeletal: Joint Pain Which joint(s)? _____
 Muscle Pain Where? _____
 Back Pain _____
 Recent Injuries When? _____ How? _____

Psychiatric: Depressed: _____
 Thoughts or plans of hurting/killing oneself or others: _____

Signature and Credentials: _____ Date: _____



Appendix D, cont.: Medical History Form

Virginia Department of Juvenile Justice Medical History

Tuberculosis Risk Assessment

The United States Public Health Service and the Center for Disease Control and Prevention recommends that tuberculosis (TB) skin testing be performed on all individuals who may be at risk of TB. To assist us in determining your risk level, please answer the following questions:

- Were you born in a country outside of the United States?
 No Yes What Country? _____
- Have you received vaccinations in a country other than the United States?
 No Yes What Country? _____
- Have you spent three or more consecutive months in a foreign country in the past 5 years?
 No Yes What Country? _____
- Have you been exposed or had contact with a person with active TB in the two last years?
 No Yes Whom? _____ Relationship? _____
- Have you been homeless or have you lived in a shelter during the last two years?
 No Yes
- Do you have any of the following? (check all that apply).
 Fatigue Weight loss Chills Night sweats Productive cough
 Persistent cough (how long _____) Coughing up blood Loss of appetite
 Fever for more than one week Unexplained weight loss None of the above
- Are you currently taking oral steroid (other than inhalers) or cancer treating drugs?
 No Yes What? _____
- Are you currently taking medications for Rheumatoid Arthritis such as Humira, Remicade or Enbrel?
 No Yes What? _____
- Have you ever had a positive TB skin test or taken any treatment for TB disease or a positive TB test?
 No Yes
 Where and when were you treated (city/state/county): _____
 (Month/year): _____
 Did you complete the medication? No Yes
 If no, how long did you take the medications (Months): _____
 Explain: _____
- Do you have any of the following medical conditions? (Check all that apply)
 Diabetes Malnutrition Cancer Chronic kidney failure
 Congenital or Acquired Immunodeficiency Other _____ None of the above

To the best of my knowledge the above information is correct and complete.

Signature: _____ Date: _____

Reviewed by: _____ Date: _____



Appendix E: Physical Examination Form

Virginia Department of Juvenile Justice Physical Examination

Mark boxes when indicated.

Vital Signs: Weight: _____ lbs Height: _____ feet _____ inches BMI: _____
 Temp: _____ Heart rate: _____ per/min Resp: _____ per/min
 BP: _____/_____

Hearing Screening: Pass Fail _____

Vision Screening: Pass Fail _____

Allergies: Yes No _____

General Appearance: _____

Skin: Checked Not Checked _____
 (check all that apply below)

- Birthmarks _____
- Skin marks (scars, tattoos, carvings) _____
- Acne _____
- Fungal infections _____
- Other skin infections _____
- Signs of recent trauma _____
- Other _____

HEENT: Checked Not Checked Under Investigation

Head: N Abn _____
 Eyes: N Abn _____
 Ears: N Abn _____
 Nose: N Abn _____
 Throat: N Abn _____
 Neck: N Abn _____

Pulmonary: N Abn _____
 Cardiovascular: N Abn _____
 Chest: N Abn _____
 Breast exam for females (if indicated): N Abn _____
 Abdomen: N Abn _____
 Musculoskeletal: N Abn _____
 Neurological: N Abn _____

Place ID Sticker Here

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Appendix E, cont.: Physical Examination Form

Virginia Department of Juvenile Justice Physical Examination

Genital Exam: Conducted Not Conducted Under Investigation/Results not Available
(choose one below)

Males

Ext. genitalia: N Abn _____
 Circumcised: Yes No _____
 Hernia: Yes No _____
 Testicles/scrotum: N Abn _____
 Tanner Stage: _____

Females

Ext. genitalia: N Abn _____
 Vagina: N Abn _____
 Cervix: N Abn _____
 Uterus: N Abn _____
 Adnexae: N Abn _____
 Rectovaginal: N Abn _____
 Tanner Stage: _____
 PID:

LAB: Conducted Not Conducted Under Investigation/Results not Available

GC: Neg: Pos Chlamydia: Neg Pos HIV: Neg Pos
 Hgb/Hct: N Abn BS: N Abn
 UA: N Abn
 UPT: Neg Pos
 Other: _____

Assessment:

Apparently free from communicable disease: Yes No _____

Handicaps: Yes No _____

Medical Status Changes: Yes No _____



Appendix E, cont.: Physical Examination Form

Virginia Department of Juvenile Justice Physical Examination

Plans/Recommendations:
(check all that apply)

Psychotropic medications: _____

Other medications: _____

Referral w/in DJJ: Optometrist Dental BSU Other _____

Referral outside of DJJ: Dermatology Orthopedics Neurology Cardiology
 Urology OB/Gyn ENT Nephrology Audiology
 PT/OT Ophthalmology Hematology Surgery _____

Diagnostic tests: X-ray _____ EKG Lab(s) _____
 Other _____

Prosthetic device or equipment: _____

Patient education discussed: _____

Immunizations: No records
(check one) DJJ records only
 Records from schools, family, and other non-DJJ source

Signature: _____ Date: _____



Appendix F: References

- Abram, K., Teplin, L., King, D., Longworth, S., Emanuel, K., Romero, E., ... & Olson, N. (2013). *PTSD, trauma, and comorbid psychiatric National Center for Mental Health and Juvenile Justice 15 disorders in detained youth*. OJJDP Juvenile Justice Bulletin. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.
- Acoca, L., Stephens, J., & Van Vleet, A. (2014). Health coverage and care for youth in the juvenile justice system: The role of Medicaid and CHIP [Issue Brief]. *The Kaiser Commission on Medicaid and the Uninsured*. Retrieved from <https://kaiserfamilyfoundation.files.wordpress.com/2014/05/8591-health-coverage-and-care-for-youth-in-the-juvenile-justice-system.pdf>
- Agudelo, S. V. (2013). *The impact of family visitation on incarcerated youths' behavior and school performance* [Issue Brief]. New York, NY: Vera Institute of Justice.
- American Academy of Pediatrics. (2011). Health care for youth in the juvenile justice system [Policy Statement]. *Pediatrics*, *128*, 1219–1235. doi:10.1542/peds.2011-1757
- Annie E. Casey Foundation. (2013a). *Bernalillo county mental health clinic case study: A guide to juvenile detention reform #6*. Retrieved from <http://www.aecf.org/resources/a-guide-to-juvenile-detention-reform-6/>
- Annie E. Casey Foundation. (2013b). *Youth incarceration in the United States* [Infographic]. Retrieved from <http://www.aecf.org/resources/youth-incarceration-in-the-united-states/>
- Apel, R., & Kaukinen, C. (2008). On the relationship between family structure and antisocial behavior: Parental cohabitation and blended households. *Criminology*, *46*, 35–69. doi:10.1111/j.1745-9125.2008.00107.x
- Armstrong, T. D., & Costello, E. J. (2002). Community studies on adolescent substance use, abuse, or dependence and psychiatric comorbidity. *Journal of Consulting and Clinical Psychology*, *70*, 1224–1239. doi:10.1037/0022-006X.70.6-1224
- Bachman, J., O'Malley, P. M., Schulenberg, J. E., Johnston, L., Freedman-Doan, P., & Messersmith, E. E. (2008). *The education-drug use connection: How successes and failures in school relate to adolescent smoking, drinking, drug use, and delinquency*. New York: Lawrence Erlbaum Associates/Taylor & Francis.
- Beyer, M. (2003). *Best practices in juvenile accountability: Overview* [JAIBG Bulletin]. U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. Retrieved from <https://www.ncjrs.gov/pdffiles1/ojjdp/184745.pdf>
- Borowski, I. W., Ireland, M., & Resnick, M. D. (2002). Violence risk and protective factors among youth held back in school. *Ambulatory Pediatrics*, *2*, 475–484. doi:10.1367/1539-4409(2002)002<0475:VRAPFA>2.0.CO;2
- Briggs, E. C., Fairbank, J. A., Greeson, J. K. P., Layne, C. M., Steinberg, A. M., Amaya-Jackson, L. M., . . . & Pynoos, R. S. (2012). Links between child and adolescent trauma exposure and service use histories in a national clinic-referred sample. *Psychological Trauma: Theory, Research, Practice, and Policy*, *5*, 101–109. doi:10.1037/a0027312
- Brown, T. L., Henggeler, S. W., Brondino, M. J., Pickrel, S. G. (1999). Trauma exposure, protective factors, and mental health functioning of substance-abusing and dependent juvenile offenders. *Journal of Emotional and Behavioral Disorders*, *7*, 94–102. doi:10.1177/106342669900700204
- Burdeiri, P. (1999). *Secrecy shrouds decisions about release of juvenile major offenders—far-ranging negative ramifications likely* [Position paper]. Richmond, VA: Mental Health Association of Virginia Public Policy and Advocacy.
- Chassin, L. (2008) Juvenile justice and substance use. *The Future of Children*, *18*, 165–183. doi:10.1353/foc.0.0017
- Chung, H. L., & Steinberg, L. (2006). Relations between neighborhood factors, parenting behaviors, peer deviance, and delinquency among serious juvenile offenders. *Developmental Psychology*, *42*, 319–331. doi:10.1037/0012-1649.42.2.319
- Cook, A., Spinazzola, J., Ford, J., Lanktree, C., Blaustein, M., Cloitre, M., . . . van der Kolk, B. (2005). Complex trauma in children and adolescents. *Psychiatric Annals*, *35*, 390–398. doi:10.3928/00485713-20050501-05
- Council of Juvenile Correctional Administrators. (2014). *Mental health needs among youth involved in juvenile justice: Prevalence, puzzles, and responses* [PowerPoint presentation]. Retrieved from <http://cjca.net/images/webinars/20140919-cjca-webinar-mental-health.pdf>
- Cuellar, A. E., & Markowitz, S. (2015). School suspension and the school-to-prison pipeline. *International Review of Law and Economics*, *43*, 98–106. doi:10.1016/j.drugalcdep.2007.08.018
- Doherty, E. E., Green, K. M., & Ensminger, M. E. (2008). Investigating the long-term influence of adolescent delinquency on drug use initiation. *Drug and Alcohol Dependence*, *93*, 72–84. doi:10.1016/n.drugalcdep.2007.08.018



- Fagan, J. (1995). Separating the men from the boys: The comparative advantage of juvenile versus criminal court sanctions on recidivism among adolescent felony offenders. In J. C. Howell, B. Krisberg, J. D. Hawkins, & J. J. Wilson (Eds.), *Sourcebook on serious, violent, and chronic juvenile offenders* (pp. 247–252). Thousand Oaks, CA: Sage.
- Fairbank, J. A. (2008). The epidemiology of trauma and trauma related disorders in children and youth. *PTSD Research Quarterly*, *19*, 1–7.
- Ferguson, C. J., San Miguel, C., & Hartley, R. D. (2009). A multivariate analysis of youth violence and aggression: The influence of family, peers, depression, and media violence. *The Journal of Pediatrics*, *155*, 904–908. doi:10.1016/j.jpeds.2009.06.021
- Finkelhor, D., Ormrod, R., & Turner, H. (2007). Poly-victimization: A neglected component in child victimization trauma. *Child Abuse & Neglect*, *31*, 7–26. doi:10.1016/j.chiabu.2006.06.008
- Finkelhor, D., Turner, H., Ormrod, R., & Hamby, S. L. (2009). Violence, crime, and abuse exposure in a national sample of children and youth: An update. *Pediatrics*, *124*, 1411–1423. doi:10.1542/peds.2009-0467
- Fisher, P. A., Leve, L. D., O'Leary, C. C., & Leve, C. (2003). Parental monitoring of children's behavior: Variation across stepmother, stepfather, and two-parent biological families. *Family Relations*, *52*, 45–52. doi:10.1111/j.1741.3729.2003.00045.x
- Foley, R. M. (2001). Academic characteristics of incarcerated youth and correctional educational programs: A literature review. *Journal of Emotional and Behavioral Disorders*, *9*, 248–259. doi:10.1177/106342660100900405
- Ford, J. A. (2005). Substance use, the social bond, and delinquency. *Sociological Inquiry*, *75*, 109–128. doi:10.1111/j.1475-682X.2005.00114.x
- Ford, J. D., Elhai, J. D., Connor, D. F., & Frueh, B. C. (2010). Poly-victimization and risk of posttraumatic, depressive, and substance use disorders and involvement in delinquency in a national sample of adolescents. *Journal of Adolescent Health*, *46*, 545–552. doi:10.1016/j.jadohealth.2009.11.212
- Glaze, L. E., & Maruschak, L. M. (2010). Parents in prison and their minor children [Special Report]. *Bureau of Justice Statistics* (NCJ 222984), 1–25. Retrieved from U.S. Department of Justice website: <http://www.bjs.gov/content/pub/pdf/pptmc.pdf>.
- Heim, C., Shugart, M., Craighead, W. E., & Nemeroff, C. B. (2010). Neurobiological and psychiatric consequences of child abuse and neglect. *Developmental Psychobiology*, *52*, 671–690. doi:10.1002/dev.20494
- Hockenberry, S. (2018). Juveniles in residential placement, 2015. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. Retrieved from <https://www.ojjdp.gov/pubs/250951.pdf>
- Hockenberry, S., & Sladky, A. (2018). Juvenile residential facility census, 2016: Selected findings. U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. Retrieved from <https://www.ojjdp.gov/pubs/251785.pdf>
- Hoeve, M., Dubas, J. S., Eichelsheim, V. I., van der Laan, P. H., Smeenk, W., & Gerris, J. R. M. (2009). The relationship between parenting and delinquency: A meta-analysis. *Abnormal Child Psychology*, *37*, 749–775. doi:10.1007/S10802-009-9310-8
- Irish, L., Kobayashi, I., & Delahanty, D. L. (2010). Long-term physical health consequences of childhood sexual abuse: A meta-analytic review. *Journal of Pediatric Psychology*, *35*, 450–461. doi:10.1093/jpepsy/jsp118
- Juvenile Law Center. (2014). *Youth in the Justice System: An overview*. Retrieved from <http://www.jlc.org/newsroom/media-resources/youth-justice-system-overview>
- Kelman, H. C. (1974). Attitudes are alive and well and gainfully employed in the sphere of action. *American Psychologist*, *29*, 310–324. doi:10.1037/h0037623
- Kierkus, C. A., Johnson, B. R., & Hewitt, J. D. (2010). Co-habiting, family and community stressors, selection, and juvenile delinquency. *Criminal Justice Review*, *35*, 393–411. doi:10.1177/0734016810379338
- Krohn, M. D., Ward, J. T., Thornberry, T. P., Lizotte, A. J., & Chu, R. (2011). The cascading effects of adolescent gang involvement across the life course. *Criminology*, *49*, 991–1028. doi:10.1111/j.1745-9125.2011.00250.X
- Lansford, J. E., Dodge, K. A., Pettit, G. S., Bates, J. E., Crozier, J., & Kaplow, J. (2002). A 12-year prospective study of the long-term effects of early child physical maltreatment on psychological, behavioral, and academic problems in adolescence. *Archives of Pediatrics and Adolescent Medicine*, *156*, 824–830. doi:10.1001/archpedi.156.8.824
- Lipsey, M. W., & Derzon, J. H. (1998). Predictors of violent or serious delinquency in adolescence and early adulthood: A synthesis of longitudinal research. In R. Loeber, & D. P. Farrington (Eds.) *Serious and violent juvenile offenders: Risk factors and successful interventions* (pp. 86–105). Thousand Oaks, CA: Sage.
- Lochner, L., & Moretti, E. (2004). The effect of education on crime: Evidence from prison inmates, arrests, and self-reports. *American Economic Review*, *94*, 155–189. doi:10.1257/000282804322970751

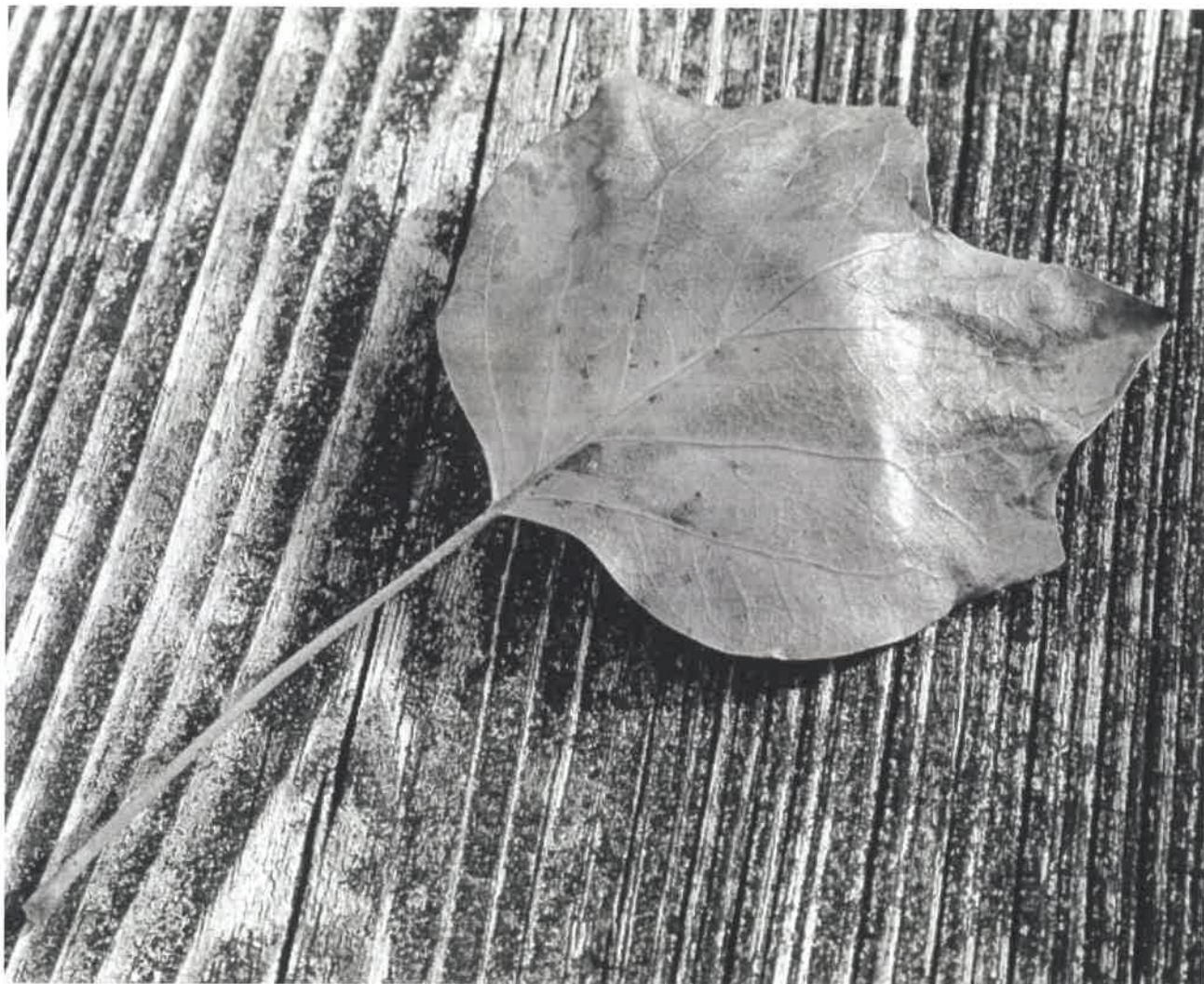


- Loeber, R., & Farrington, D. P. (2000). Young children who commit crime: Epidemiology, developmental origins, risk factors, early interventions, and policy implications. *Development and Psychopathology, 12*, 737–762. doi:10.1017/S0954579400004107
- Loughran, T., Mulvey, E. P., Schubert, C. A., Fagan, J., Losoya, S. H., & Piquero, A. R. (2009). Estimating a dose-response relationship between length of stay and future recidivism in serious juvenile offenders. *Criminology, 47*, 699–740. doi:10.1111/j.1745-9125.2009.00165.x
- Lovins, B. K. (2013). *Putting wayward kids behind bars: The impact of length of stay in a custodial setting on recidivism*. (Unpublished doctoral dissertation). University of Cincinnati, Cincinnati, OH.
- Manning, W. D., & Lamb, K. A. (2003). Adolescent well-being in cohabitating, married, and single-parent families. *Journal of Marriage and Family, 65*, 876–893. doi:10.1111/j.1741-3737.2003.0086.x
- McCord, J., Widom, C. S., & Crowell, N. A. (Eds.). (2000). *Juvenile crime, juvenile justice. Panel on juvenile crime: Prevention, treatment, and control*. Washington, D.C.: National Academy Press.
- Menard, S., & Huizinga, D. (1994). Changes in the conventional attitudes and delinquent behavior in adolescence. *Youth & Society, 26*, 23–53. doi:10.1177/0044118X94026001002
- Meservey, F., & Skowrya, K. R. (2015). Caring for youth with mental health needs in the juvenile justice system: Improving knowledge and skills. *Research and Program Brief*. Retrieved from <https://www.ncmhjj.com/wp-content/uploads/2015/05/OJJDP-508-050415-FINAL.pdf>
- Mortimer, J. T. (2003). *Working and growing up in America*. Cambridge, MA: Harvard University Press.
- Mowen, T., & Brent, J. (2016). School discipline as a turning point. *Journal of Research in Crime and Delinquency, 53*, 628–653. doi:10.1177/0022427816643135
- Murray J., Farrington, D. P., Sekol, I., & Olsen, R. F. (2009). Effects of parental imprisonment on child antisocial behaviour and mental health: A systematic review. *Campbell Systematic Reviews, 4*, 1–91. doi:10.4073/csr.2009.4
- Myner, J., Santman, J., Cappelletty, G., & Perlmutter, B. (1998). Variables related to recidivism among juvenile offenders. *International Journal of Offender Therapy and Comparative Criminology, 42*, 65–80. doi:10.1177/0306624X98421006
- Office of Juvenile Justice and Delinquency Prevention. (2015). Risk/needs assessments for youths: Literature review. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention. Retrieved from <https://www.ojjdp.gov/mpg/litreviews/RiskandNeeds.pdf>
- Office of Juvenile Justice and Delinquency Prevention. (2004). Causes and correlates: Findings and implications, also risk-based responses to gangs. *Juvenile Justice* (NCJ203555). Retrieved from <https://www.ncjrs.gov/pdffiles1/ojjdp/203555.pdf>
- Osgood, D. W. (1999). Having the time of their lives: All work and no play? In A. Booth, A. C. Crouter, & M. J. Shanahan (Eds.), *Transitions to adulthood in a changing economy: No work, no family, no future?* Westport, CT: Praeger.
- Osgood, D. W., Wilson, J. K., O'Malley, P. M., Bachman, J. G., & Johnston, L. D. (1996). Routine activities and individual deviant behavior. *American Sociological Review, 61*, 635–55. doi:10.2307/2096397
- Petrosino, A., Derzon, J., & Lavenberg, J. (2009). The role of the family in crime and delinquency: Evidence from prior quantitative reviews. *Southwest Journal of Criminal Justice, 6*(2), 108–132.
- The Pew Charitable Trusts. (2010). *Collateral Costs: Incarceration's effect on economic mobility*. Washington, DC: The Pew Charitable Trusts.
- Price, C., & Kunz, J. (2003). Rethinking the paradigm of juvenile delinquency as related to divorce. *Journal of Divorce & Remarriage, 39*, 109–133. doi:10.1300/J087v39n01_07
- Prichard, J., & Payne, J. (2005). Alcohol, drugs and crime: A study of juveniles in detention. *Research and Public Policy Series, 67*, 1–114. Canberra, Australia: Australian Institute of Criminology.
- Reck, P. (2015). The influence of community characteristics on police officers' approaches to patrolling Latinos in three towns. *Race and Justice, 5*, 4–32. doi:10.1177/2153368714537524
- Rios, V. M. (2011). *Punished: Policing the lives of black and Latino boys*. New York, NY: New York University Press.
- Saake, R. (1972). *Probation camp schools and recidivism*. (Unpublished doctoral dissertation). University of Southern California, Los Angeles.
- Schubert, C. A., & Mulvey, E. P. (2014). *Behavioral health problems, treatment, and outcomes in serious youthful offenders*. Juvenile Justice Bulletin. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
- Schubert, C. A., Mulvey, E. P. & Glasheen, C. (2011). Influence of mental health and substance use problems and criminogenic risk on outcomes in serious juve-



- nile offenders. *Journal of American Academy of Child & Adolescent Psychiatry*, 50, 925–937. doi:10.1016/j.jaac.2011.06.006
- Sedlak, A., & McPherson, K. (2010). Youth's needs and services. *OJJDP Juvenile Justice Bulletin*. Retrieved from <https://www.ncjrs.gov/pdffiles1/ojdp/227728.pdf>
- Shufelt, J. L., & Cocozza, J. J. (2006). Youth with mental health disorders in the juvenile justice system: Results from a multi-state prevalence study [Research and Program Brief]. Retrieved from [https://www.unicef.org/tdad/usmentalhealthprevalence06\(3\).pdf](https://www.unicef.org/tdad/usmentalhealthprevalence06(3).pdf)
- Skiba, R. J. (2014). The failure of zero tolerance. *Reclaiming Children and Youth*, 22(4), 27–33.
- Skiba, R. J., Michael, R. S., Nardo, A. C., & Peterson, R. L. (2002). The color of discipline: Sources of racial and gender disproportionality in school punishment. *Urban Review*, 34, 317–332. doi:10.1023/A:1021320817372
- Smith, D. K., Leve, L. D., & Chamberlain, P. (2006). Adolescent girls' offending and health-risking sexual behavior: The predictive role of trauma. *Child Maltreatment*, 11, 346–353. doi:10.1177/1077559506291950
- Sprague, C. (2008). Judges and child trauma: Findings from the National Child Traumatic Stress Network/National Council of Juvenile and Family Court Judges Focus Groups [NCTSN Service Systems Brief]. Retrieved from https://www.nctsn.org/sites/default/files/resources//judges_child_trauma_findings_nctsn_njcfcj_focus_groups.pdf
- Staff, J., & Uggen, C. (2003). The fruits of good work: Early work experiences and adolescent deviance. *Journal of Research in Crime and Delinquency*, 40, 263–290. doi:10.1177/0022427803253799
- Teplin, L. A., Welty, L. J., Abram, K. M., Dulcan, M. K., Washburn, J. J., McCoy, K., & Stoke, M. L. (2015). *Psychiatric disorders in youth after detention*. Juvenile Justice Bulletin. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
- Thornberry, T. P., Krohn, M. D., Lizotte, A. J., Smith, C. A. (2003). *Gangs and delinquency in developmental perspective*. New York, NY: Cambridge University Press.
- Thornberry, T. P., Smith, C. A., Rivera, C., Huizinga, D., & Stouthamer-Loeber, M. (1999). Family disruption and delinquency. *Juvenile Justice Bulletin* (NCJ178285). Retrieved from <https://www.ncjrs.gov/pdffiles1/ojdp/178285.pdf>
- Travis J., & Waul, M. (2003). Prisoners once removed: The children and families of prisoners. In J. Travis & M. Waul (Eds.), *Prisoners once removed: The impact of incarceration and reentry on children, families, and communities* (pp. 1–29). Washington, D.C.: Urban Institute Press.
- Wald, J., & Losen, D. J. (2003). Defining and redirecting a school-to-prison pipeline. *New Directions for Youth Development*, 2003, 9–16. doi:10.1002/yd.51
- Wallman, K. K. (2010). Federal statistics: Understanding a crucial resource. *The Annals of the American Academy of Political and Social Science*, 631, 22–24. doi:10.1177/0002716210372485
- Warner, B., Vitaro, F., Carboneau, R., & Tremblay, R. E. (2009). Cross-lagged links among gambling, substance use, and delinquency from midadolescence to young adulthood: additive and moderating effects of common risk factors. *Psychology of Addictive Behaviors*, 23, 91–104. doi:10.1037/a0013182
- Wasserman, G. A., Keenan, K., Tremblay, R. E., Coie, J. D., Herrenkohl, T. I., Loeber, R. & Petechuk, D. (2003). Risk and protective factors of child delinquency [Child Delinquency Bulletin Series]. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
- Winokur, K. P., Smith, A., Bontrager, S. R., & Blankenship, J. L. (2008). Juvenile recidivism and length of stay. *Journal of Criminal Justice*, 36, 126–137. doi:10.1016/j.jcrimjus.2008.02.001
- Zhang, Q., Loeber, R., & Stouthamer-Loeber, M. (1997). Developmental trends of delinquent attitudes and behaviors: Replications and synthesis across domains, time, and samples. *Journal of Quantitative Criminology*, 13, 181–215. doi:10.1007/BF02221307





The photographs throughout this report are the original creations of Bon Air JCC students in the *Introduction to Photography* and *Advanced Photography* courses.

2023 DHS DOCKET ~ HOT TOPICS



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HOT TOPIC 1: ICWA

- ICWA didn't get overturned In June of this year, SCOTUS held (7-2) that ICWA does not impermissibly impose a federal mandate on traditional state-regulated areas of power.
- What is ICWA again? The Indian Child Welfare Act, known as ICWA, was enacted in 1978 after a congressional investigation found that over the course of the preceding 30 years, over 1/3 of all Native children had been removed from their homes, some forcibly, and placed with non-Indian families and institutions with no ties to the tribes. To ensure that would never happen again, the law established three preferences for the placement of Native children when they are adopted or put in foster care: the first preference is for placement with the child's extended family, then to other members of the tribe, and if neither of those is available, to members of another tribe.

- What was the challenge to ICWA?

- *Haaland v. Brackeen, et. al.*, 143 S.Ct. 1609 (2023) : the case arose out of 3 separate custody proceedings that fell under ICWA. The petitioners (families in TX) challenged ICWA as unconstitutional on multiple grounds, specifically claiming that: (1) Congress lacks authority to enact ICWA and that several of ICWA's requirements violate the anticommandeering principle of the Tenth Amendment; (2) Sec. §1915(c) of ICWA—the provision that allows tribes to alter the prioritization order for placement of children—violates the nondelegation doctrine; and (3) ICWA employs racial classifications that unlawfully hinder non-Indian families from fostering or adopting Indian children.

SCOTUS HELD

- 1. ICWA is not unconstitutional; Congress' power to legislate with respect to Indian Tribes is "plenary and exclusive," and supersedes both state and tribal authority. This power is inherent in both the Commerce Clause and the Treaty Clause as well as to the constitutional principals that have historically been held to empower Congress to act in the field of Indian Affairs. This power extends to areas generally reserved to the states, including the area of domestic relations. Where state law conflicts, federal controls. The "anticommandeering" challenge was also rejected; the Court found that ICWA evenhandedly applied to both state and private actions.
- 2. SCOTUS did not reach the merits on the nondelegation challenge or the equal protection challenge- finding the petitioners did not have standing to raise those issues.

DID THAT CHANGE ANYTHING?

- No- but it reinforced the principle that States must comply with ICWA and many have fallen short on those obligations- Virginia being one of them.
- However- in 2021, VDSS set up a statewide work group to look at ICWA compliance across the State, and to identify issues and solutions to those issues, many face when trying to comply with ICWA in a VA case. Here are 3 issues discussed:
 - * State forms not in compliance
 - * JDR is not a court of record/ lack of transcript/record
 - * Lack of access to "expert testimony"

CHANGES AND RECOMMENDATIONS

- - OES is changing the state DC forms to comply with ICWA
- - Where forms are not yet changed, Courts are recommended to make all necessary findings on DC 570(s) or in a separate written pleading - this will help VA comply with the "written findings on the record" requirement.
- - VDSS has outreached "experts" from various federally recognized tribes to be of assistance in statewide cases
- - LDSS are recommended to use all BIA Notice forms to contact potential tribes and continue to send such notices for every hearing until written confirmation is received from the tribe that the child is not eligible for membership
- - LDSS are required to ask ICWA questions at outset of investigation to try and get the tribes involved before court action (if at all possible)
- - Training reminding all stakeholders that ICWE standard of proof is higher - CCE

HOT TOPIC 2: OFFICE OF THE CHILDREN'S OMBUDSMEN

- Established in 2021 via Virginia Code Sec. 2.2-439, the OCO was established to:
- effect changes in policy, procedure, and legislation;
- educate the public;
- investigate and review actions of VDSS, local departments, child-placing agencies, or child-caring institutions; and
- monitor and ensure compliance with relevant statutes, rules, and policies pertaining to child protective services and the placement, supervision, and treatment of, and improvement of delivery of care to, children in foster care and adoptive homes.

WHAT CAN THE OCO DO?

- The OCO has statutory authority to receive complaints regarding cases involving children who (i) have been alleged to have been abused or neglected, (ii) are receiving child protective services, (iii) are in foster care, or (iv) are awaiting adoption.
- The OCO can investigate complaints alleging that an agency's action was:
 - in violation of a law, rule, or policy;
 - imposed without an adequate statement of reason; or
 - based on irrelevant, immaterial, or erroneous grounds.

OCO CAN ALSO

- Pursue all necessary action, including legal action, to protect the rights and welfare of children receiving child protective services, in foster care, or placed for adoption
- Advocate for legislative changes to improve Virginia's child welfare system
- Review policies and procedures related to any child-serving agency's involvement with a child and make recommendations for improvement

OCO CANNOT ...

- **Address complaints related to:**
 - Any court decision, court order, or the actions of judges or attorneys
 - Child custody, visitation, or child support cases
 - School issues or educational services
 - The actions of Law Enforcement Officers
 - Employment or personnel issues within an agency

OCO CAN AND DOES...

- Refer parties to:
 - * *Virginia State Bar*
 - * *Judicial Inquiry and Review Commission*
 - * *VDSS Constituent Services*

WHAT ARE THE CURRENT ISSUES FOR WHICH OCO IS MOST FOCUSED ?

- 1.) "Diversion Cases" - cases where the LDSS requests the family make a safety plan for the child. Generally, voluntary compliance with safety plans has always been seen as "least restrictive measures," however OCO has raised a concern that safety plans implicate a parent's constitutional rights when the LDSS requests a safety plan without then petitioning the court to make the plan "legal." Thus, OCO opines that out of home safety plans where the child needs to be out of the home for an extended period of time (weeks/months) should be subject to court approval.

- 2. Foster Care Service Plans Must be Family Specific - Many LDSS were using "cookie-cutter plans" - not tailoring plans for each family and each child to remedy the reasons the child came into care- using specifics from the original affidavit. Not everyone needs the same services. See Virginia Code Sec. 63.2-906 & 16.1-281
- 3. Visitation- Ensuring visits happen timely with family in an appropriate setting considering the circumstances - **OCO acknowledged this issue was largely drive by resources (\$\$) and staffing issues plaguing the LDSS across the state.

COURT APPOINTED ATTORNEY EDUCATION AND COMPENSATION- both CACs and GALs-

This is an acknowledged problem! Work group established to look at changes and increase compensation to at least the level of felony representation in adults! Also- looking at establishing a certification necessary to get on the DHS CAC/GAL list.

Take-Aways: The DHS docket is not mere family law- do not think just anyone can jump in and do it without study. What you do not know- do not assume- you will hurt your client- you will get a bar complaint.

NEW TO THE PRACTICE AREA??? Ask your fellow CAC colleagues and city attorneys for help! Ask for the Prior "Bootcamp" Training!

HOT TOPIC 3: “KINSHIP” FOSTER CARE: 4 OPTIONS IN VA

SEE VA CODE SEC. 63.2-100 & 63.2-1305

- 1. The court could transfer custody of the child to a kinship care provider. (no \$\$)
- 2. The local department of social services, who has custody of the child, could approve the kinship care provider as a foster parent. (\$\$)
- 3. The kinship care provider, who is an approved foster parent, may be able to adopt the child if the court terminates the rights of the child’s parents and approves the goal of adoption. (\$\$)
- 4. The kinship care provider, who is an approved foster parent, may become permanent legal custodian and receive continuing financial support through the Kinship Guardianship Assistance Program (KinGAP) (\$\$)

HOT TOPIC 4: MARIJUANA.... IT'S LEGAL- RIGHT?

Well....

- 1) You cannot drive high just like you cannot drive drunk... so transporting your child to daycare while high is not legal.
- 2) You should not be parenting while high just like you should not be parenting while drunk. This also goes for prescribed substances that may have an effect on one's ability to be a caretaker. If a parent "needs" to take any substance that could affect their ability to parent, they should have a "designated caretaker" akin to a designated driver to be in charge whilst consuming such substances.
- 3) Marijuana is illegal for all minors- so minors testing positive (whether for consumption or exposure) is a problem.
- 4) Medical Marijuana Cards- if your client is taking antipsychotics and medical marijuana- they will need an opinion from the prescribing psychiatrist that there is no negative interference possible (not from an opinion from the med mj prescriber).

HOT TOPIC 5

RELIEF OF CUSTODY

- Virginia Code Sec. 16.1-278.3 provides that any parent or custodian of a child may file for relief of custody and the same may be granted if in the best interests of the child. ROC is highly disfavored and should only be used where all other options have failed, i.e.) Return Home is Impossible or Abuse/Neglect is present.
- Other options? PARENTAL AGREEMENT THROUGH CHILD & YOUTH (child placed out of the home but not in foster care)
- **“Mandated services pursuant to CSA may be provided to eligible children who are in need of such mental health services without their parents having to relinquish custody to local social services agencies” 2006 Va AG Lexis 50.**

QUESTIONS FOR CLIENTS SEEKING ROC

- 1) What is the problem you are trying to solve?
- 2) What services have you sought?
- 3) What recommendations have you received?
- 4) Have you filed a CHINS?
- 5) Are you saying that you never will reconcile with the child- ever?
- 6) For parents- are you seeking TPR?
- 7) Are you aware that foster care may equal child support?

Q & A ????



WHO WE ARE AND WHAT WE DO 😊

Legal authority for CASA Program: Virginia Code § 9.1-151 et seq. of the Code of Virginia

Virginia Code § 9.1-151:

The Program shall provide services in accordance with this article to children who are subjects of judicial proceedings (i) involving allegations that the child is abused, neglected, in need of services, or in need of supervision or (ii) for the restoration of parental rights pursuant to § 16.1-283.2 and for whom the juvenile and domestic relations court judge determines such services are appropriate.

Statutory Requirements to be a CASA § 9.1-153(D) and (E)

- Compliance with state regulations
- DCJS grant conditions
- National CASA standards

Duties of a CASA: § 9.1-153(B) Volunteer court-appointed special advocates; powers and duties; assignment; qualifications; training.

- a. Investigating the case to which he is assigned to provide independent factual information to the court.
- b. Submitting to the court of a written report of his investigation in compliance with the provisions of § 16.1-274.

§ 9.1-151. Court-Appointed Special Advocate Program; appointment of advisory committee.

A. There is established a Court-Appointed Special Advocate Program (the Program) that shall be administered by the Department. The Program shall provide services in accordance with this article to children who are subjects of judicial proceedings (i) involving allegations that the child is abused, neglected, in need of services, or in need of supervision or (ii) for the restoration of parental rights pursuant to [§ 16.1-283.2](#) and for whom the juvenile and domestic relations district court judge determines such services are appropriate. Court-Appointed Special Advocate volunteer appointments may continue for youth 18 years of age and older who are in foster care if the court has retained jurisdiction pursuant to subsection Z of [§ 16.1-241](#) or [§ 16.1-242](#) and the juvenile and domestic relations district court judge determines such services are appropriate. The Department shall adopt regulations necessary and appropriate for the administration of the Program.

B. The Board shall appoint an Advisory Committee to the Court-Appointed Special Advocate Program, consisting of 15 members, one of whom shall be a judge of the juvenile and domestic relations district court or circuit court, knowledgeable of court matters, child welfare, and juvenile justice issues and representative of both state and local interests. The duties of the Advisory Committee shall be to advise the Board on all matters relating to the Program and the needs of the clients served by the Program, and to make such recommendations as it may deem desirable.

§ 9.1-152. Local court-appointed special advocate programs; powers and duties.

A. The Department shall provide a portion of any funding appropriated for this purpose to applicants seeking to establish and operate a local court-appointed special advocate program in their respective judicial districts. Only local programs operated in accordance with this article shall be eligible to receive state funds.

B. Local programs may be established and operated by local boards created for this purpose. Local boards shall ensure conformance to regulations adopted by the Board and may:

1. Solicit and accept financial support from public and private sources.
2. Oversee the financial and program management of the local court-appointed special advocate program.
3. Employ and supervise a director who shall serve as a professional liaison to personnel of the court and agencies serving children.
4. Employ such staff as is necessary to the operation of the program.

§ 9.1-153. Volunteer court-appointed special advocates; powers and duties; assignment; qualifications; training.

A. Services in each local court-appointed special advocate program shall be provided by volunteer court-appointed special advocates, hereinafter referred to as advocates. The advocate's duties shall include:

1. Investigating the case to which he is assigned to provide independent factual information to the court.
2. Submitting to the court of a written report of his investigation in compliance with the provisions of [§ 16.1-274](#). The report may, upon request of the court, include recommendations as to the child's welfare.
3. Monitoring the case to which he is assigned to ensure compliance with the court's orders.
4. Assisting the guardian ad litem appointed to represent the child in providing effective representation of the child's needs and best interests.
5. Reporting a suspected abused or neglected child pursuant to [§ 63.2-1509](#).

B. The advocate is not a party to the case to which he is assigned and shall not call witnesses or examine witnesses. The advocate shall not, with respect to the case to which he is assigned, provide legal counsel or advice to any person, appear as counsel in court or in proceedings which are part of the judicial process, or engage in the unauthorized practice of law. The advocate may testify if called as a witness.

C. The program director shall assign an advocate to a child when requested to do so by the judge of the juvenile and domestic relations district court having jurisdiction over the proceedings. The advocate shall continue his association with each case to which he is assigned until relieved of his duties by the court or by the program director. The program director may assign an advocate to attend and participate in family partnership meetings as defined by the Department of Social Services and in meetings of family assessment and planning teams established pursuant to [§ 2.2-5208](#), multidisciplinary child sexual abuse response teams established pursuant to [§ 15.2-1627.5](#), individualized education program teams established pursuant to Article 2 ([§ 22.1-213](#) et seq.) of Chapter 13 of Title 22.1, and multidisciplinary teams established pursuant to [§§ 63.2-1503](#) and [63.2-1505](#).

D. The Department shall adopt regulations governing the qualifications of advocates who for purposes of administering this subsection shall be deemed to be criminal justice employees. The regulations shall require that an advocate be at least twenty-one years of age and that the program director shall obtain with the approval of the court (i) a copy of his criminal history record or certification that no conviction data are maintained on him and (ii) a copy of information from the central registry maintained pursuant to [§ 63.2-1515](#) on any investigation of child abuse or neglect undertaken on him or certification that no such record is maintained on him. Advocates selected prior to the adoption of regulations governing qualifications shall meet the minimum requirements set forth in this article.

E. An advocate shall have no associations which create a conflict of interests or the appearance of such a conflict with his duties as an advocate. No advocate shall be assigned to a case of a child whose family has a professional or personal relationship with the advocate. Questions concerning conflicts of interests shall be determined in accordance with regulations adopted by the Department.

F. No applicant shall be assigned as an advocate until successful completion of a program of training required by regulations. The Department shall set standards for both basic and ongoing training.

§ 9.1-154. Immunity.

No staff or volunteers participating in a program, whether or not compensated, shall be subject to personal liability while acting within the scope of their duties, except for gross negligence or intentional misconduct.

§ 9.1-155. Notice of hearings and proceedings.

The provision of [§ 16.1-264](#) regarding notice to parties shall apply to ensure that an advocate is notified of hearings and other proceedings concerning the case to which he is assigned.

§ 9.1-156. Inspection and copying of records by advocate; confidentiality of records.

A. Upon presentation by the advocate of the order of his appointment and upon specific court order, any state or local agency, department, authority, or institution, and any hospital, school, physician, or other health or mental health care provider shall permit the advocate to inspect and copy, without the consent of the child or his parents, any records relating to the child involved in the case. Upon the advocate presenting to the mental health provider the order of the advocate's appointment and, upon specific court order, in lieu of the advocate inspecting and copying any related records of the child involved, the mental health care provider shall be available within seventy-two hours to conduct for the advocate a review and an interpretation of the child's treatment records which are specifically related to the investigation.

B. An advocate shall not disclose the contents of any document or record to which he becomes privy, which is otherwise confidential pursuant to the provisions of this Code, except (i) upon order of a court of competent jurisdiction or (ii) if the advocate has been assigned pursuant to subsection C of [§ 9.1-153](#) to attend and participate in family partnership meetings as defined by the Department of Social Services or in meetings of family assessment and planning teams established pursuant to [§ 2.2-5208](#), multidisciplinary child sexual abuse response teams established pursuant to [§ 15.2-1627.5](#), individualized education program teams established pursuant to Article 2 ([§ 22.1-213](#) et seq.) of Chapter 13 of Title 22.1, or multidisciplinary teams established pursuant to [§§ 63.2-1503](#) and [63.2-1505](#), the advocate may verbally disclose any information contained in such document or record related to the child to which he is assigned at such meetings, provided that such information shall not be disclosed further.

§ 9.1-157. Cooperation of state and local entities.

All state and local departments, agencies, authorities, and institutions shall cooperate with the Department and with each local court-appointed special advocate program to facilitate its implementation of the Program.

Virginia Beach Bar Association/Virginia Beach
Juvenile and Domestic Relations District Court CLE

September 21, 2023 Meeting

Pupilage Group VI Presentation

Ethical Issues of Emerging Technologies

Agenda:

Hypothetical 1 – Using an AI Bot to Draft Legal Pleadings

Hypothetical 2 – Accepting Cryptocurrency as an Advance Payment of Legal Fees

Hypothetical 3 – Ethical Issues Arising from the Use of “Reply All”

Hypothetical 1 – Using an AI Bot to Draft Legal Pleadings

SUMMARY:

A new associate is presented with a last-minute request from a partner to draft a legal brief requested by the court in advance of a motions hearing, and the brief must be filed that day. Overwhelmed and facing other crucial, tight deadlines, the attorney decides to use ChatGPT to draft the brief. After the associate enters the prompt, ChatGPT works in the background while the associate does the other deadline-driven work. Because the attorney is required to continually re-prompt due to the program's reluctance to prepare legal work, ChatGPT does not finish until the draft brief is due for the partner's review. The associate hands the draft to the partner without reviewing ChatGPT's work product. The partner, after being delayed by a lengthy conference call, signs and files the brief without reviewing it. Upon appearing in court, the partner and associate must answer difficult questions when the presiding judge is quite concerned about quality of the brief.

QUESTIONS:

- Was it ethically permissible for Attorney Wilson, the associate, to have Chat GPT draft the brief for him?
- Was it an ethical violation for Gibbs to sign and file the brief?
 - Even if she believed Wilson had drafted it himself?
- Did she or Wilson violate any Virginia Rules of Professional Conduct in having an AI bot draft the brief that neither of them read but that Gibbs signed and filed with the Court?
- Did Gibbs or Wilson commit any ethics violations in response to Judge Mills's questioning at the hearing?
- Is this similar to ghost-writing?

Hypothetical 2 – Accepting Cryptocurrency as an Advance Payment of Legal Fees

SUMMARY:

An attorney is confronted with a new type of payment for her services: Bitcoin. When a client offers to pay for the attorney's services in Bitcoin, the attorney must determine how to accept, hold, protect, and navigate the ups and downs of cryptocurrency while maintaining professional and ethical standards.

QUESTIONS:

- Does Attorney Smith have to convert the bitcoin into US dollars?
- Does Attorney Smith have to hold the bitcoin in a trust account?
- Does Attorney Smith's retainer agreement with Mr. Jones have to disclose information related to the risks associated with bitcoin as the form of payment? If so, what?
- Can Attorney Smith take her fee from the retainer?
- Does Attorney Smith have to convert the bitcoin to currency before she transfers the fees to her personal account?
- Can Attorney Smith accept a bitcoin bonus?
- What could Attorney Smith do to protect herself from the fluctuation in value of cryptocurrency?

Hypothetical 3 – Ethical Issues Arising from the Use of “Reply All”

SUMMARY:

An attorney represents a client in a zoning enforcement dispute against the City of Virginia Beach. There are claims, counterclaims, and even a criminal enforcement action pending against the attorney’s client.

The City hires a law firm to represent its interests which sends you a letter indicating all current City employees are represented parties and that you cannot contact anyone on the City payroll without their consent and participation. The City copies an assistant city attorney and the City inspector who cited your client with the violation for renting their house to a complete stranger for less than thirty days.

QUESTIONS:

- Can the attorney reply to the email copying everyone included on the original email including the inspector?
- Can the attorney call their classmate, who works as an assistant City attorney, to suggest settlement?
- What other ethical issues may arise if “Reply All” is used inadvertently? How should such a situation be handled?

Hypothetical 1 – Using an AI Bot to Draft Legal Pleadings

RESOURCES:

LEO 1874

Rules of Professional Conduct:

1.1 - Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

1.2 – Scope of Representation

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the objectives of the representation if the client consents after consultation.

(c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may

(1) discuss the legal consequences of any proposed course of conduct with a client;

(2) counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law; and

(3) counsel or assist a client regarding conduct expressly permitted by state or other applicable law that conflicts with federal law, provided that the lawyer counsels the client about the potential legal consequence of the client's proposed course of conduct under applicable federal law

1.6 – Confidentiality of Information

(a) A lawyer shall not reveal information protected by the attorney-client privilege under applicable law or other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

3.1 – Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

3.3 – Candor Towards the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal;

(2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(3) fail to disclose to the tribunal controlling legal authority in the subject jurisdiction known to the lawyer to be adverse to the position of the client and not disclosed by opposing counsel; or

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(b) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(c) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

(d) A lawyer who receives information clearly establishing that a person other than a client has perpetrated a fraud upon the tribunal in a proceeding in which the lawyer is representing a client shall promptly reveal the fraud to the tribunal.

(e) The duties stated in paragraphs (a) and (d) continue until the conclusion of the proceeding, and apply even if compliance requires disclosure of information protected by Rule 1.6.

3.4 – Fairness to Opposing Party and Counsel

(d) A lawyer shall not: Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

4.1 – Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of fact or law; or

(b) fail to disclose a fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

8.4 – Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

LEO 1874: LIMITED SCOPE REPRESENTATION—REVIEWING PLEADINGS FOR PRO SE LITIGANTS—SUBSTANTIAL ASSISTANCE AND “GHOSTWRITING”

Law Firm has contracted with a pre-paid legal services plan (“Plan”) to review and comment to Plan Members on certain documents submitted to Law Firm by Plan Members. “Plan Members” or “Members” are persons who contract with the Plan for access to services provided by Law Firm. Law Firm is compensated by the Plan for this document review service (and a wide range of other designated services) on a membership per capita basis.¹ In addition to the services designated for payment on a membership per capita basis, the Plan allows a Member to request certain other legal services by the Law Firm, including representation before tribunals, on a discounted hourly fee-for-service basis in which the fee is paid by the Member to the Law Firm.

A Member requests Law Firm to review and provide legal advice on a Warrant In Debt with a Bill of Particulars that the Member has prepared for *pro se* filing in a General District Court and a petition for a change of custody that the Member has prepared for filing *pro se* in a Juvenile and Domestic Relations District Court. A review of these documents may fall under the designated document review service described above for which Law Firm is paid on a capitated basis. Law Firm agrees to review and provide advice on these documents, provided the Member agrees to transmit a letter to the court at the time of the filing of the documents that includes this language:

At the request of [Member] Law Firm has reviewed the attached pleading or document or a version thereof that [Member] has informed Law Firm that he/she intends to file in this court *pro se*. Law Firm has provided legal advice to [Member] regarding the pleading or document. Member has neither retained Law Firm to represent [Member] before this court in the proceeding initiated by the attached pleading or a version thereof nor has Law Firm agreed to represent [Member] in such proceeding. This letter is merely notice to the court that Law Firm has reviewed and provided legal advice to [Member] with regard to the attached pleading or a version thereof to assist [Member] in accurately presenting his/her claim to the court in the proceeding.

Questions Presented

You have asked the Committee to address these questions:

1. Has Law Firm fully satisfied its ethical obligations of notice to the court as described in LEOs 1127, 1592, 1761 and 1803 by the actions described above?

For the reasons set out in this opinion, absent a court rule or law to the contrary, there is no ethical obligation to notify the court of the lawyer’s assistance to the *pro se* litigant. To the extent that LEOs 1127, 1592, 1761 and 1803 are inconsistent with this opinion, they are overruled.

¹ Law Firm’s compensation is based on the number of members residing in the Law Firm’s state, not on the number of times a Member calls Law Firm for the designated service.

2. Does Law Firm have an affirmative obligation to determine if the pleading or a version thereof was filed and the letter transmitted to the court with it?

No.

3. If Law Firm determines that the pleading or a version thereof was filed without the letter, does Law Firm have an obligation to transmit a similar notice to the court?

No.

4. Does Law Firm have an obligation to determine if the pleading was filed in the form reviewed by the Law Firm and to advise the tribunal if any change was made prior to its filing?

No.

5. Does Law Firm have an obligation to determine in advance whether or not the court in which the pleading or document will be filed will consider the notice to be an appearance and Law Firm ruled counsel of record and then so notify the Member prior to filing?

The question of whether the assistance provided to a *pro se* litigant constitutes an "appearance" is a question of law beyond the purview of this Committee. A lawyer owes a duty of competence to a client, even if the representation has been limited by agreement. This would include determining a particular court's rules, decisions or policies in regard to "ghostwriting" or providing undisclosed assistance to *pro se* litigants and advising a *pro se* litigant of any applicable law.

6. Does Law Firm have an obligation to appear as counsel of record in the proceeding even if Member refuses to engage Law Firm or compensate Law Firm on the discounted fee-for-service basis as provided in the Plan?

Probably not, but this depends on whether the court has deemed the lawyer to have entered an appearance on behalf of the Member. See discussion below.

7. Does Law Firm have an obligation to determine if the opposing party or parties to the proceeding are represented by counsel and, if so, to provide counsel with a similar notice?

No. Because the representation in your hypothetical will have terminated, no further ethical obligations are owed.

8. Would any answer to the questions above change if Member directly compensated Law Firm for the requested review on a fee-for-service basis if the review was not covered under the capitated payment portion of the Plan?

No.

DISCUSSION

Question 1 assumes that Law Firm has an obligation to notify the court if it has provided assistance to a member that seeks a document review of a pleading that *the member has prepared* and intends to file *pro se*. This assumption appears to be based on the Committee's prior

guidance in Legal Ethics Opinions 1127 and 1592. The Committee will review and analyze each.

Legal Ethics Opinion 1127

In LEO 1127, the Committee was asked whether it is ethically permissible for a lawyer to advise and assist a *pro se* litigant in pending employment litigation by providing legal advice, legal research, recommendations for courses of action to follow in discovery and redrafting of documents prepared by the litigant himself. The Committee opined that there was nothing in the Code of Professional Responsibility that prohibited a lawyer from rendering such assistance to a *pro se* litigant. However, in LEO 1127, the Committee pointed to former DR 7-105(A), which requires that a lawyer shall not disregard or advise his client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding. Rule 3.4(d) of the current Rules of Professional Conduct adopts the identical language. Rule 3.4(d) is violated when a lawyer *knowingly* disregards “a standing rule or a ruling of a tribunal made in the course of a proceeding.” (Emphasis added). LEO 1127 explains that the lawyer cannot disregard a court’s rule or requirement that the identity of the drafter of a pleading be disclosed. While this may be a correct statement of an ethics rule, the rules of procedure in state and federal court generally do not require the identification of a lawyer who prepares a pleading for a *pro se* litigant.² The rules of procedure require that a pleading be signed by a lawyer admitted to practice before that court, or by the unrepresented party.³ In your hypothetical, the *pro se* litigant signs and files the pleading, not the lawyer. In effect, LEO 1127 advises lawyers to avoid violating a non-existent rule of procedure. Absent a standing rule of procedure that requires disclosure of the *drafter* of a pleading, who does not sign that pleading nor enter an appearance as counsel of record, neither Rule 3.4(d) nor former DR 7-105(A) comes into play.

By way of example, United States District Court Judge Henry Morgan held:

The Court believes that the practice of lawyers ghost-writing legal documents to be filed with the Court by litigants who state they are proceeding *pro se* is inconsistent with the intent of certain procedural, ethical, and substantive rules of the Court. While there is no specific rule that prohibits ghost-writing, the Court believes that this practice (1) unfairly exploits the Fourth Circuit’s mandate that the pleadings of *pro se* parties be held to a less stringent standard than pleadings drafted by lawyers, *see, e.g., White v. White*, 886 F.2d 721, 725 (4th Cir. 1989) (citations omitted), (2) effectively nullifies the certification requirement of Rule 11 of the Federal Rules of Civil Procedure (“Rule 11”), and (3) circumvents the withdrawal of appearance requirements of Rule 83.1(G) of the Local Rules for the United States District Court for the Eastern District of Virginia (“Rule 83.1(G”).

Laremont-Lopez v. Southeastern Tidewater Opportunity Center, 968 F. Supp. 1075, 1077-78 (E.D. Va. 1997).

² 11 U.S.C. §110 requires that non-lawyer bankruptcy petition preparers sign and make certifications on the petition prepared for a *pro se* debtor.

³ Va. S. Ct. R. 1:4(c): “Counsel or an unrepresented party who files a pleading shall sign it and state his address.”

In this case, there was no rule of procedure requiring that the identity of the drafting attorney be disclosed, as discussed and assumed in LEO 1127. Further, it is more likely that the lawyers chastised by Judge Morgan in *Laremont-Lopez* reasonably believed that they were acting in good faith and did not *knowingly* disregard any standing rules in the federal court. Without a rule of procedure prohibiting their conduct, how could they know? The attorneys in this case maintained that they were retained by the plaintiffs for the discrete limited purpose of drafting the complaints. They argued that at the time the complaints were filed their representation of the plaintiffs had terminated, and thus, it was appropriate for the plaintiffs to sign the pleadings as unrepresented litigants. In short, their position is that they did not sign the pleadings because they no longer represented the plaintiffs. *Laremont-Lopez, supra*, 968 F. Supp. at 1078. It is hard to question this argument. Indeed, Judge Morgan allowed that the attorneys' reasoning was "not at odds with the plain language of Rule 11" but nevertheless held that they had circumvented the rule by not having signed the pleadings. But this still begs the question of whether the lawyers in this case had *knowingly* disregarded any standing rule that required disclosure of their identity as the drafter of pleadings filed by the *pro se* litigants. As to the lawyers in *Laremont-Lopez*, the court found that they had not:

The Court FINDS that the practice of ghost-writing legal documents to be filed with the Court by litigants designated as proceeding *pro se* is inconsistent with the procedural, ethical and substantive rules of this Court. While the Court believes that the Attorneys should have known that this practice was improper, *there is no specific rule which deals with such ghost-writing*. Therefore, the Court FINDS that there is insufficient evidence to find that the Attorneys knowingly and intentionally violated its Rules. In the absence of such intentional wrongdoing, the Court FINDS that disciplinary proceedings and contempt sanctions are unwarranted.

Laremont-Lopez, supra, 968 F. Supp. at 1079-80. (Emphasis added). Judge Morgan found that the lawyer's conduct was *inconsistent* with the rules but did not find that they had *violated* any of those rules. However, lawyers are now on notice, because of *Laremont-Lopez* and other federal court cases, that "ghostwriting" may be forbidden in some courts, and should take heed, even if such conduct does not violate any specific standing rule of court.

Legal Ethics Opinion 1592

In this opinion, the Committee addressed a situation in which an attorney was retained by an uninsured motorist insurance carrier to defend the carrier in an action in which the uninsured motorist ("Defendant Motorist") has appeared *pro se*. Although Attorney A had not entered an appearance on behalf of the Defendant Motorist, the Defendant Motorist consulted with Attorney A, and Attorney A assisted Defendant Motorist and/or gave Defendant Motorist advice in regard to responding to discovery requests propounded by the Plaintiff in the case. The Committee opined:

Under DR 7-105(A), and indications from the courts that *attorneys who draft pleadings for pro se clients would be deemed by the court to be counsel of record for the pro se client*, any disregard by either Attorney A or Defendant Motorist of a court's requirement that the drafter of pleadings be revealed would be violative of that disciplinary rule. Such failure to disclose would also be violative of DR 7-

102(A)(3). Further, such failure to disclose Attorney A's substantial assistance, including the drafting of pleadings and motions, may also be a misrepresentation to the court and to opposing counsel and, therefore, violative of DR 1-102(A)(4). The committee cautions that Attorney A may wish to obtain Defendant Motorist's assurance that he will disclose A's assistance to the court and adverse counsel. See LEO #1127; Association of the Bar of the City of New York Opinion 1987-2 (3/23/87), ABA/BNA Law. Man. on Prof. Conduct, 901:6404.

(Emphasis added). LEO 1592 does not cite any specific cases for the italicized language nor was this conclusion reached in any of the "ghostwriting" opinions rendered in the federal courts in the Eastern District of Virginia. Moreover, controlling authority in state court says just the opposite. *Walker v. American Ass'n of Prof. Eye Care*, 268 Va. 117, 597 S.E.2d 47, (2004) (lawyer who assisted *pro se* plaintiff with preparation of motion for judgment signed only by plaintiff as a *pro se* litigant and filed pleading with court together with filing fee did not appear on plaintiff's behalf as counsel of record). Without any supporting authority, LEO 1592 reaches the conclusion that a lawyer who assists a *pro se* litigant by preparing a pleading or providing her with legal assistance is deemed by the court to have entered an "appearance" as counsel of record on behalf of that person. That conclusion is incorrect, but at least one circuit court has deemed the litigant "represented by counsel" when a lawyer prepared for a client a motion for judgment for the client to sign and proceed *pro se*. See *Walker, supra*.

LEO 1592 concluded that the lawyer violated DR 7-105(A) following the approach taken in LEO 1127. The opinion also cites former DR 7-102(A)(3), which states: "In his representation of a client a lawyer shall not . . . conceal or knowingly fail to disclose that which he is required by law to reveal." Application of this rule under these circumstances raises some questions. First, as the attorney argued in *Laremont-Lopez*, the lawyer-client relationship was concluded when the "ghostwriting" attorney completed the drafting of the pleading. So when the *pro se* litigant filed his pleading with the court, he was not represented by counsel. DR 7-102(A)(3) on its face speaks to misconduct by a lawyer in the course of representing a client. The rule seems inapplicable to the circumstances presented in the opinion. Second, was the lawyer "required by law" to disclose that he or she assisted the *pro se* litigant? As stated in the discussion of LEO 1127, there was no rule violated when the attorney failed to disclose his identity as the drafter of the pleading. Judge Morgan was frustrated by the fact that the attorney had circumvented some other rules, but made no finding that the rules had been violated by the "ghostwriting" attorney and acknowledged that there was no rule forbidding "ghostwritten" pleadings. Finally, LEO 1592 cites DR 1-102(A)(4) as having been violated when the lawyer failed to disclose his "substantial assistance" to an unrepresented defendant motorist. This rule is nearly identical to current Rule 8.4 (b): "A lawyer shall not . . . engage in conduct involving dishonesty, fraud, deceit, or misrepresentation which reflects adversely on a lawyer's fitness to practice law." Application of this rule assumes, of course, that the "ghostwriting" lawyer is being dishonest or deceitful for not having disclosed his assistance to the *pro se* litigant, even though no standing court rule or law required such disclosure.

Other Bar Opinions

State and local ethics committees have reached different conclusions on whether disclosure of a lawyer's assistance to a *pro se* litigant is required by the Rules of Professional Conduct. Some have opined that no disclosure is required.⁴ Others, in contrast, have expressed the view that the identity of the lawyer providing assistance must be disclosed on the theory that failure to do so would both be misleading to the court and adversary counsel, and would allow the lawyer to evade responsibility for frivolous litigation under applicable court rules.⁵ The ABA's Standing Committee on Ethics and Professional Responsibility took the "middle ground" approach adopted in LEOs 1127 and 1592 stating that disclosure of at least the fact of legal assistance must be made to avoid misleading the court and other parties, but that the lawyer providing the assistance need not be identified.⁶ The ABA has since taken the position, as have other jurisdictions, that the fact of assistance need not be disclosed, a position this Committee has likewise chosen to adopt, overruling LEOs 1127 and 1592 to the extent they are inconsistent with this opinion. See ABA Formal Op. 07-446 (May 5, 2007). The Committee concludes that there is not a provision in the Rules of Professional Conduct that prohibits undisclosed assistance to a *pro se* litigant as long as the lawyer does not do so in a manner that violates a rule of conduct that otherwise would apply to the lawyer's conduct. This Committee does not believe that the failure to disclose that fact would constitute fraudulent or otherwise dishonest conduct on the

⁴ New York County Law Ass'n Ethics Op. 742 (2010)(disclosure of lawyer's assistance not required unless necessary by law, rule of court or court order); New Jersey Ethics Op. 713 (2008)(disclosure not required unless lawyer behind the scene controlling litigation); ABA Formal Op. 446-07(2007)(litigants ordinarily have the right to proceed without representation and may do so without revealing that they have received legal assistance in the absence of a law or rule requiring disclosure). Some state bar opinions have struck a "middle ground" stating that the lawyer's assistance should be disclosed if not the lawyer's identity. Arizona Eth. Op. 06-03 (July 2006) (Limited Scope Representation; Confidentiality; Coaching; Ghost Writing); Illinois State Bar Ass'n Op. 849 (Dec. 9, 1983) (Limiting Scope of Representation); Maine State Bar Eth. Op. 89 (Aug. 31, 1988); Los Angeles County Bar Ass'n Eth. Op. 502 (Nov. 4, 1999) (Lawyers' Duties When Preparing Pleadings or Negotiating Settlement for In Pro Per Litigant); Los Angeles County Bar Ass'n Eth. Op. 483 (Mar. 20, 1995) (Limited Representation of In Pro Per Litigants). *But see* Alaska Eth. Op. 93-1 (March 19, 1993) (Preparation of a Client's Legal Pleadings in a Civil Action Without Filing an Entry of Appearance) (lawyer's assistance must be disclosed unless lawyer merely helped client fill out forms designed for pro se litigants).

⁵ Colorado Bar Ass'n Eth. Op. 101 (Jan. 17, 1998) (Unbundled Legal Services) (Addendum added Dec. 16, 2006, noting that Colorado Rules of Professional Conduct amended to state that a lawyer providing limited representation to *pro se* party involved in court proceeding must provide lawyer's name, address, telephone number and registration number in pleadings); Connecticut Inf. Eth. Op. 98-5 (Jan. 30, 1998) (Duties to the Court Owed by a Lawyer Assisting a *Pro Se* Litigant); Delaware State Bar Ass'n Committee on Prof'l Eth. Op. 1994-2 (May 6, 1994); Kentucky Bar Ass'n Eth. Op. E-343 (Jan. 1991); New York State Bar Ass'n Committee on Prof'l Eth. Op. 613 (Sept. 24, 1990).

⁶ ABA Inf. Op. 1414 (June 6, 1978) (Conduct of Lawyer Who Assists Litigant Appearing *Pro Se*), in FORMAL AND INFORMAL ETHICS OPINIONS: FORMAL OPINIONS 316-348, INFORMAL OPINIONS 1285-1495, at 1414 (ABA 1986). *See also* Florida Bar Ass'n Eth. Op. 79-7 (Reconsideration) (Feb. 15, 2000); Iowa Supreme Court Bd. Of Prof'l Eth. & Conduct Op. 96-31 (June 5, 1997) (Ghost Writing Pleadings); Massachusetts Bar Ass'n Eth. Op. 98-1 (May 29, 1998); New Hampshire Bar Association (May 12, 1999) (Unbundled Services: Assisting the *Pro Se* Litigant); Utah 74 (1981); Association of the Bar of the City of New York, Committee on Prof'l & Jud. Eth. Formal Op. 1987-2 (Mar. 23, 1987).

part of the lawyer or client, and therefore there would be no violation of Rules 1.2(d), 3.3(b), 4.1(b), or 8.4(c).

Analysis

LEOs 1127 and 1592 did not address the right of the client and the lawyer to agree to limit the scope of the engagement as explicitly authorized by Rule 1.2(b): “[a] lawyer may limit the objectives of the representation if the client consents after consultation.” Perhaps that is because there was no counterpart in the Code of Professional Responsibility for current Rule 1.2(b).⁷ With Virginia’s adoption of most of the ABA Model Rules in 2000, a discussion of Rule 1.2(b) and “unbundling” legal services became a hot topic not only in Virginia but across the country as well.

We agree with the reasoning in ABA Formal Op. 07-446 that:

The fact that a litigant submitting papers to a tribunal on a pro se basis has received legal assistance behind the scenes is not material to the merits of the litigation. Litigants ordinarily have the right to proceed without representation and may do so without revealing that they have received legal assistance in the absence of a law or rule requiring disclosure.

Some case decisions and ethics opinions have required disclosure of the lawyer’s assistance on the basis that *pro se* litigants are treated more leniently and held to less stringent standards than litigants that are represented by counsel. This Committee does not share this concern and believes that a *pro se* litigant that receives undisclosed assistance by a lawyer will not receive any unwarranted special treatment. In many instances, if the lawyer has been competent and effective with his undisclosed assistance it will be obvious to the court and other parties that a lawyer has been involved. If the undisclosed lawyer has not been competent or effective, the *pro se* litigant will have no advantage. We see no reason to conclude, as some decisions and opinions have, that undisclosed assistance will give the *pro se* litigant an “unfair advantage.” As noted by one commentator:

Practically speaking ... ghostwriting is obvious from the face of the legal papers, a fact that prompts objections to ghostwriting in the first place.... Thus, where the court sees the higher quality of the pleadings, there is no reason to apply any liberality in construction because liberality is, by definition, only necessary where pleadings are obscure. If the pleading can be clearly understood, but an essential fact or element is missing, neither an attorney-drafted nor a pro se-drafted complaint should survive the motion. A court that refuses to dismiss or enter

⁷ DR 7-101(B)(1) stated that a lawyer may, “with the express or implied authority of his client, exercise his professional judgment to limit or vary his client objectives and waive or fail to assert and waive or fail to assert a right or position of his client.” This provision seems quite different from current Rule 1.2(c) as the former rule only authorizes the lawyer to waive or fail to assert positions of the client in mid-stream after the representation has begun. In contrast, and more appropriate to the subject of “ghostwriting” a pleading for a *pro se* litigant, Rule 1.2(c) and Comment [6] focus on an agreement reached between lawyer and client at the outset of the representation. Most of the newer ethics opinions on “ghostwriting” rely heavily on Rule 1.2 and the right to limit the scope of the representation.

summary judgment against a non-ghostwritten *pro se* pleading that lacks essential facts or elements commits reversible error in the same manner as if it refuses to deny such dispositive motions against an attorney-drafted complaint.

Jona Goldschmidt, *In Defense of Ghostwriting*, 29 FORDHAM URB. L.J. 1145, 1157-58 (2002). Critics are concerned that a litigant appearing *pro se* will receive an unfair benefit from a tribunal as a result of undisclosed legal assistance. That concern, in the Committee's view, is outweighed by the court having a properly pleaded motion, complaint, answer, or other document to consider and the broader access to justice that limited assistance may promote. The Committee believes, therefore, that the nature or extent of such assistance is immaterial and need not be disclosed.

Nor does the Committee believe that providing undisclosed assistance to a *pro se* litigant violates Rule 3.3. Similarly, this Committee believes that non-disclosure of the lawyer's assistance is not an act of dishonesty, fraud, deceit or misrepresentation that is prohibited by Rule 8.4(c) nor is the lawyer assisting the *pro se* litigant in conduct that is illegal or fraudulent in contravention of Rule 1.2(c). Finally, we believe that assistance to a *pro se* litigant is not a material fact that must be disclosed to another party under Rule 4.1. The Committee believes that a lawyer who has been asked by a *pro se* litigant for limited assistance on some discrete tasks and who undertakes them in a manner that comports with Rule 1.2(b) and all other applicable rules of conduct should not be subject to discipline for having done so.

This opinion assumes that the lawyer is practicing in a jurisdiction where no law or tribunal rule requires disclosure of such participation, prohibits litigants from employing lawyers (e.g., small claims courts), or otherwise regulates such undisclosed advice or drafting. If there is such a regulation, the boundaries of the lawyer's obligation are beyond the scope of this opinion.

Your inquiries in Questions 1-4 have been answered on the basis that the Rules of Professional Conduct do not obligate the lawyer to ensure that the court is informed that a *pro se* litigant has received assistance from the lawyer. The Committee adds that it is not practical to require that lawyers *ensure* that a court is informed of his assistance to a *pro se* litigant after the lawyer-client relationship has ended and the lawyer has no control over what pleadings are actually filed with the court.

In regard to your Question Number 5, whether the court in which the pleading is filed will regard Law Firm as having entered an appearance on behalf of Member is a question of law beyond the Committee's purview.⁸ However, as part of the lawyer's duty of competence under Rule 1.1, the lawyer should exercise diligence and research the particular court's view of "ghostwriting" pleadings for a *pro se* litigant. As one court stated:

⁸ See *Walker v. American Ass'n of Prof. Eye Care*, 268 Va. 117, 597 S.E.2d 47 (2004)(lawyer who assisted *pro se* litigant with motion for judgment signed only by plaintiff as *pro se* party and filed pleading with clerk's office with filing fee did not enter an appearance on behalf of plaintiff).

Nevertheless, the Court considers it improper for lawyers to draft or assist in drafting complaints or other documents submitted to the Court on behalf of litigants designated as *pro se*.⁹

Thus, regardless of whether the preparation of a pleading for a *pro se* litigant constitutes an “appearance,” the lawyer must make a reasonable effort to determine if the particular court will permit the preparation of a lawsuit on behalf of a *pro se* litigant that is not signed by the lawyer preparing the document, as some courts do not allow such a practice on procedural, ethical and substantive grounds.¹⁰ As some courts have complained that “ghostwriting” evades the lawyer’s obligations under Rule 11 of the Federal Rules of Civil Procedure, Law Firm must also be mindful of its obligation to not assist a Member in the preparation of a pleading that is frivolous. See Rule 3.1.¹¹

This Committee observes that, in contrast to the federal court precedents, a majority of state courts and state bar ethics opinions point to a positive trend toward acceptance of undisclosed assistance to *pro se* litigants. See Ira P. Robbins, *Ghostwriting: Filling in the Gaps of Pro Se Prisoners’ Access to the Courts*, 23 GEO. J. LEGAL ETHICS 271, 286-88 (2010)(reporting that of 24 states that have addressed this issue, 13 permit ghostwriting, and of those 13 states, 10 permit undisclosed ghostwriting while 3 require a statement on the pleading to

⁹ *Laremont-Lopez v. Southeastern Tidewater Opportunity Ctr.*, 968 F.Supp. 1075, 1077 (E.D. Va. 1997). See also *Sejas v. MortgageIT, Inc.*, 1:11cv469 (JCC) (E.D. Va. 2011):

[T]his Court admonishes Plaintiff that ‘the practice of ghost-writing legal documents to be filed with the Court by litigants designated as proceeding *pro se* is inconsistent with the procedural, ethical and substantive rules of this Court.’ *Laremont-Lopez v. Southeast Tidewater Opportunity Ctr.*, 968 F. Supp. 1075, 1080-81 (E.D. Va. 1997). The Court further warns any attorney providing ghostwriting assistance that he or she is behaving unethically. *Davis v. Back*, No. 3:09cv557, 2010 WL 1779982, at *13 (E.D. Va. April 29, 2010) (Ellis, J.).

¹⁰ *Barnett v. LeMaster*, 12 F. App’x 774, 778–79 (10th Cir. 2001) (stating that where the party entered a *pro se* appearance as well as filed and signed his appeal *pro se*, the attorney who drafted the brief knowingly committed a gross misrepresentation to this court); *Duran v. Carris*, 238 F.3d 1268, 1272 (10th Cir. 2001) (determining that attorney ghostwriting of *pro se* litigant’s appellate brief constitute[d] a misrepresentation to this court by litigant and attorney); *Laremont-Lopez v. Southeastern Tidewater Opportunity Ctr.*, 968 F. Supp. 1075, 1078 (E.D. Va. 1997) (finding that attorney ghostwriting of *pro se* litigants’ complaints constitute[d] a misrepresentation to the Court); *United States v. Eleven Vehicles*, 966 F. Supp. 361, 367 (E.D. Pa. 1997) (“Clearly, the party’s representation to the Court that he is *pro se* is not true when the pleadings are being prepared by the lawyer. A lawyer should not silently acquiesce to such representation.”); *In re Mungo*, 305 B.R. 762, 769 (Bankr. D.S.C. 2003) (“[T]his Court prohibits attorneys from ghost-writing pleadings and motions for litigants that appear *pro se* because such an act is a misrepresentation that violates an attorney’s duty and professional responsibility to provide the utmost candor toward the Court.”); see also *Johnson v. Bd. of County Comm’rs*, 868 F. Supp. 1226, 1232 (D. Colo. 1994) (“Having a litigant appear to be *pro se* when in truth an attorney is authoring pleadings and necessarily guiding the course of the litigation with an unseen hand . . . is far below the level of candor which must be met by members of the bar.”), *aff’d*, 85 F.3d 489 (10th Cir. 1995); *In re Merriam*, 250 B.R. 724, 733 (Bankr. D. Colo. 2000) (finding that attorney ghostwriting of *pro se* litigant’s court documents violates the attorney’s duty of honesty and candor to the court).

¹¹ “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.”

indicate it was prepared with the assistance of counsel; 10 states expressly forbid ghostwriting). Even some federal courts have “softened” their position toward ghostwriting. The Second Circuit, in an attorney disciplinary case styled *In re Fengling Liu*, Doc. No. 09-90006-am, 2011 U.S. App. LEXIS 23326 (Nov. 22, 2011), while publicly reprimanding an immigration lawyer for other misconduct, found that her ghostwritten pleadings were not improper:

We also conclude that there is no evidence suggesting that Liu knew, or should have known, that she was withholding material information from Court or that she otherwise acted in bad faith. The petitions for review not at issue were fairly simple and unlikely to cause any confusion or prejudice. Additionally, there is no indication that Liu sought, or was aware that she might obtain, any unfair advantage through her ghostwriting. Finally, Liu’s motive in preparing the petitions—to preserve the petitioner’s right of review by satisfying the thirty-day jurisdictional deadline—demonstrated concern for clients rather than a desire to mislead this Court or opposing parties. Under these circumstances, we conclude that Liu’s ghostwriting did not constitute misconduct and therefore does not warrant the imposition of discipline.

In response to Question Number 6, this is a question of law beyond the Committee’s purview. Assuming the court deems Law Firm to have appeared as counsel for Member, Law Firm would have a duty to perform the tasks required of counsel of record to protect Member’s interests in the pending case unless and until Law Firm is granted leave to withdraw, even if Member refuses to pay for Law Firm’s services.

As to your Question Number 7, to perform only the limited and discrete task of preparing a pleading for a person to file *pro se*, the Committee does not believe the Rules of Professional Conduct require that notice of that limited representation be given to an opposing party or their counsel.

As to your Question Number 8, the Committee believes that the manner in which Law Firm is compensated does not affect how the questions in this opinion are addressed.

Conclusion

To sum up, the Committee does not believe that nondisclosure of the fact of legal assistance is dishonest so as to violate Rules 3.3 or 8.4(c). Whether it is dishonest for the lawyer to provide undisclosed assistance to a *pro se* litigant turns on whether the court would be misled by failure to disclose such assistance. The lawyer is making no representation to the tribunal regarding the nature or scope of the representation, and indeed, may be obliged under Rule 1.6 not to reveal the fact of the representation. Absent an affirmative statement by the client that can be attributed to the lawyer that the documents were prepared without legal assistance, the lawyer has not made any false statements of fact to the court prohibited by Rule 3.3, nor has been dishonest within the meaning of Rule 8.4(c). The non-disclosure of the lawyer’s behind-the-scenes assistance is not material to the court’s determination of the merits of the *pro se* litigant’s position or case and therefore the court is not misled by the non-disclosure.

While this Committee opines that undisclosed assistance to a *pro se* litigant is permissible under the Rules of Professional Conduct, if a lawyer agrees to prepare a lawsuit for a *pro se*

litigant, he or she must do so competently and may not prepare one that is frivolous. *See* Rules 1.1 and 3.1. Preparing a lawsuit for a person to file *pro se* requires that the lawyer make a sufficient inquiry of the facts and research of applicable law to ensure that the pleading contains claims that are not frivolous. Further, depending on the complexity of the case and the sophistication of the limited scope client, the preparation of a lawsuit for the limited scope client may not be an appropriate means by which to accomplish the client's objectives. *See* Rule 1.2. When limited scope representation is considered for a *pro se* litigant, the lawyer must meet the "consultation" requirement of Rule 1.2 by explaining to the client the advantages and disadvantages of limited scope versus full representation.

This Committee concludes that the Rules of Professional Conduct do not prohibit undisclosed assistance to a *pro se* litigant. However, lawyers who undertake to prepare or assist in the preparation of a pleading for a *pro se* litigant may advise the *pro se* litigant to insert a statement to the effect that "this document was prepared with the assistance of a licensed and active member of the Virginia State Bar." Because the fact of the lawyer's assistance may be confidential under Rule 1.6(a), the lawyer should not include such a statement if the client objects to revealing that fact.

This opinion is advisory only and is not binding on any court or tribunal.

Committee Opinion

July 28, 2014

Hypothetical 2 – Accepting Cryptocurrency as an Advance Payment of Legal Fees

RESOURCES:

LEO 1898

Rules of Professional Conduct:

1.1 - Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

1.5 - Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

(b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

1.8 – Conflict of Interest: Prohibited Transactions

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;
- (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
- (3) the client consents in writing thereto.

1.15 – Safekeeping Property

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

(2) For lawyers or law firms located in Virginia, a lawyer trust account shall be maintained only at a financial institution approved by the Virginia State Bar, unless otherwise expressly directed in writing by the client for whom the funds are being held.

(3) No funds belonging to the lawyer or law firm shall be deposited or maintained therein except as follows:

(i) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution or to maintain a required minimum balance to avoid the imposition of service fees, provided the funds deposited are no more than necessary to do so; or

(ii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in the trust account until the dispute is resolved and there is an accounting and severance of their interests. Any portion finally determined to belong to the lawyer or law firm shall be withdrawn promptly from the trust account.

*Approved by the Supreme Court of Virginia
September 19, 2022*

LEGAL ETHICS OPINION 1898. ACCEPTING CRYPTOCURRENCY AS AN ADVANCE FEE FOR LEGAL SERVICES.

In this opinion the committee considers the ethics issues that arise when a lawyer accepts an advance fee paid by the client in Bitcoin or other cryptocurrency for legal services. For example, a lawyer is hired by a client to pursue a contested divorce against the client's spouse. The lawyer asks for an advance payment or fee of \$20,000 to handle the case to completion with a final decree of divorce. The client wishes to pay the advance fee in Bitcoin. The client tenders the current market equivalent in Bitcoin to pay the advance fee of \$20,000.

For purposes of this opinion, cryptocurrency also means virtual or digital currency.

QUESTIONS PRESENTED

- 1. What are the ethical obligations of a lawyer who accepts cryptocurrency as an advance fee for payment for legal services?**
- 2. May the lawyer keep the cryptocurrency in its digital form, or must it be converted to US Currency and deposited in the lawyer's trust account as required by Rule 1.15(a) of the Virginia Rules of Professional Conduct?**
- 3. Is the lawyer's acceptance of cryptocurrency as an advance fee payment a "business transaction" subject to Rule 1.8(a) of the Virginia Rules of Professional Conduct?**
- 4. What actions must the lawyer take to safekeep cryptocurrency that has been delivered to the lawyer as an advance fee?**

SHORT ANSWERS

1. A lawyer may accept cryptocurrency as an advance fee for services yet to be performed. However, the lawyer must ensure that the fee arrangement is reasonable, objectively fair to the client, and has been agreed to by the client only after being informed of its implications and given the opportunity to seek the advice of independent counsel, all of which is confirmed in writing. In addition, if the lawyer accepts cryptocurrency as an advance fee, the lawyer must also take competent and reasonable security precautions to

safekeep the client's property.

2. Yes, the lawyer may keep the cryptocurrency in its digital form and is not required to convert payment into US currency and deposit the funds in the lawyer's trust account pursuant to Rule 1.15(a) of the Virginia Rules of Professional Conduct.

3. Yes, the lawyer's acceptance of cryptocurrency as an advance fee is a "business transaction" subject to Rule 1.8(a) of the Virginia Rules of Professional Conduct. However, Rule 1.8(a) does not apply if the lawyer accepts cryptocurrency as payment for an earned fee.

4. If cryptocurrency is used to pay an advance fee, the lawyer should safekeep cryptocurrency as client property with the care of a professional fiduciary and take reasonable security measures to safekeep the client's property from theft, loss, destruction or misdelivery.

APPLICABLE RULES OF PROFESSIONAL CONDUCT

Rule 1.1: Competence. A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

* * *

Rule 1.5: Fees

(a) A lawyer's fee shall be reasonable.

(b) The lawyer's fee shall be adequately explained to the client.

* * *

Rule 1.8: Conflict of Interest; Special Rules

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be

reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

* * *

Rule 1.15: Safekeeping Property

* * *

Comment [1]: A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. For purposes of this Rule, the term “fiduciary” includes personal representative, trustee, receiver, guardian, committee, custodian, and attorney-in-fact. All property that is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if funds, in one or more trust accounts.

Prior Relevant Virginia Legal Ethics Opinions

Legal Ethics Opinion 1593 (April 11, 1994); Virginia Legal Ethics Opinion 1489 (November 16, 1992); Virginia Legal Ethics Opinion 1041 (February 19, 1988); Virginia Legal Ethics Opinion 1564 (February 15, 1995).

DISCUSSION

Cryptocurrency is used as a medium of exchange via a peer-to-peer computer network that is not reliant on or controlled by any central authority such as a government or bank, to uphold, maintain or verify it. Cryptocurrency is given the name because it uses encryption to verify transactions. Advance coding is used in storing and transmitting cryptocurrency data between wallets and to public digital ledgers. Cryptocurrency is not currency in the traditional sense and while various names have been given to classify or categorize it (i.e., commodities, securities, as well as currencies), it is generally viewed as a distinct asset class. In 2014, the IRS issued Notice 2014-21, 2014-16 I.R.B. 938, explaining that cryptocurrency is taxed as property for Federal income tax purposes.

Cryptocurrency does not exist in physical form and is not issued by any central authority. It is a tradeable digital asset, or digital form of money, built on blockchain

technology that exists only online. An advance payment by a client to a lawyer in cryptocurrency cannot be deposited into the lawyer's trust account. As of 2021 there were over ten thousand cryptocurrencies. Some popular currencies are Bitcoin, Ethereum, Litecoin and Dogecoin. Bitcoin, first released as open-source software in 2009, is the first decentralized cryptocurrency. Each cryptocurrency works through "distributed ledger technology," typically a blockchain, that serves as a public financial transaction database.

Holders or owners of cryptocurrency may use digital (hot) wallets or hardware (cold) wallets to store and secure cryptocurrency. Cryptocurrency may be purchased through an exchange using real currency and then stored in a wallet until the owner is ready to use it. Cryptocurrency may be used to send payments to individuals and businesses for goods and services, but it is not yet a form of payment that has mainstream acceptance. It is also held as a speculative and volatile investment that can increase or decrease rapidly in value. Because cryptocurrencies are driven by supply and demand, and have no central issuer or regulatory authority, they can fluctuate in value unpredictably from day to day or even minute to minute. Thus, an agreement to value a transaction in cryptocurrency or convert cryptocurrency into traditional currency on a certain date carries potential risks for both sides.

Considering a cryptocurrency's extreme fluctuation, any transaction in which it is used as an advance payment to a lawyer involves a great deal of risk undertaken by the lawyer and/or client as to the ultimate value of the legal services for which the parties have contracted. Unless an agreement between the lawyer and client is reached on when the value of the cryptocurrency payment is determined, the lawyer could, for example, receive an inappropriate windfall due to an extreme overpayment—an excessive and unreasonable fee for the value of the legal service. Because *all* fee agreements must be reasonable and adequately explained to the client, Rule 1.5(a) and (b) are applicable to lawyers who accept cryptocurrency as payment for legal fees.

Despite its market volatility, cryptocurrency as a medium of payment has rapidly made inroads to several marketplaces. As a result, some law firms are accepting or considering accepting certain cryptocurrencies, such as Bitcoin, as payment for legal services. *See, e.g.,* Sara Merken, "More Law Firms are Accepting Bitcoin Payments," ABA BNA Lawyers Man. Prof.

Conduct (Sept. 6, 2017); Melissa Stanzione, “Client Cryptocurrency Payments May Pose Ethical Risks for Lawyers,” ABA BNA Lawyers Man. Prof. Conduct (May 11, 2019).

Given the extraordinary nature of the transaction, the committee agrees with three other state bar ethics opinions that the client’s payment of *an advance fee* using cryptocurrency “has the essential qualities of a business transaction with the client” subject to the requirements of Rule 1.8(a). North Carolina State Bar Ethics Opinion 2019-05 (October 25, 2019); D.C. Bar Ethics Opinion 378 (June 2020); New York City Bar Ass’n Ethics Opinion 2019-5 (July 11, 2019).

As Rule 1.15 indicates, a lawyer is not limited to accepting money for payment of a legal fee and may instead accept property as payment for legal services. This committee has previously opined that a lawyer may accept property, for example stock in the client’s company, as payment of the lawyer’s advance fee on services to be rendered. Virginia Legal Ethics Opinion 1593 (April 11, 1994). Applying DR-5-104 of the Code of Professional Responsibility, the predecessor to Rule 1.8(a), the committee stated:

An attorney may, under DR 5-104(A), provide legal services to a corporation in consideration of the stock issued so long as he feels his independent professional judgment will not be affected by his status as a stockholder, the client consents after full disclosure by the lawyer of the potential conflicts of interest, and provided that the transaction is not unconscionable, unfair or inequitable when made.

See also Comment [4], ABA Model Rule 1.5:

A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8(i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

All three state bar ethics opinions cited above conclude that the lawyer’s acceptance of cryptocurrency as payment of an advance fee is more in the nature of accepting *property* from the client rather than fiat currency. When a client is using cryptocurrency to pay an advance fee for future services, the reasonableness of the transaction is based not only on the

amount of the fee charged by the lawyer for the legal service, but also on how well the lawyer has explained to the client the financial risks considering the agreed upon fee and the volatility of cryptocurrency.

Rule 1.8(a) recognizes the fiduciary relationship between attorney and client, requiring that a business transaction with the client must be fair and reasonable. The Rule requires that:

- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;
- (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
- (3) the client consents in writing thereto.

IS THE ACCEPTANCE OF CRYPTOCURRENCY AS AN ADVANCED LEGAL FEE A “BUSINESS TRANSACTION” UNDER RULE 1.8(a)?

In general, a “business transaction” between attorney and client is any business or commercial transaction other than the contract of representation. *See* Comment [1], ABA Model Rule 1.8 (“does not apply to ordinary fee agreements between client and lawyer, which are governed by Rule 1.5, although its requirements must be met when the lawyer accepts an interest in the client’s business or other nonmonetary property as payment of all or part of a fee.”).

Also, as Comment [1] to Virginia Rule 1.8 explains:

Paragraph (a) does not, however, apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

For example, if a lawyer obtains a loan from a client while representing that client, that situation is subject to the “business transaction rule.” Virginia Legal Ethics Opinion 1489 (November 16, 1992). *See also* Virginia Legal Ethics Opinion 1593, *supra* (attorney accepting

stock in client's company for payment of legal fees); Virginia Legal Ethics Opinion 1041 (February 19, 1988) (attorney going into partnership with friend and drafting partnership agreement; assuming friend relied on attorney's services and professional judgment); Virginia Legal Ethics Opinion 1564 (February 15, 1995) (referral of real estate client to lawyer-owned company for title and settlement services). *See also* ABA Formal Opinion 00-418 (July 7, 2000) (acquiring ownership interest in client company, i.e., stock, while performing legal services for client company).

The transaction proposed in this opinion is not an ordinary fee agreement or a standard commercial transaction. Instead, as the New York City Bar Association's Ethics Committee observes:

It is one in which the lawyer and the client must negotiate potentially complex questions, and in which an unsophisticated client may therefore place unwarranted trust in the lawyer to resolve these questions fairly or advantageously to the client. The variables associated with payment in cryptocurrency include the rate of exchange on any given day, any associated fees when converting cryptocurrency to currency, whether (and when) cryptocurrency must be converted into cash, the exchange to be used, the type of cryptocurrency being used (or whether the payment would be in a single cryptocurrency or a combination of cryptocurrencies), and how any dispute will be handled in the event of a disagreement between the lawyer and the client related to these issues.

AT WHAT POINT IN THE ENGAGEMENT IS "FAIRNESS" AND REASONABLENESS" TO BE DETERMINED?

This question is important when analyzing the fairness of a fee arrangement in which a volatile asset like cryptocurrency is being offered for services not yet rendered. In ABA Formal Opinion 00-418, *supra*, concerning accepting stocks or partial ownership of a client in lieu of fees the committee opined that:

For purposes of judging the fairness and reasonableness of the transaction and its terms, the Committee's opinion is that, as when assessing the reasonableness of a contingent fee, only the circumstances reasonably ascertainable at the time of the transaction should be considered.

ABA Formal Op. 00-418 at 4. The DC Bar agrees with this approach:

Rule 1.8(a) and the commentary thereto are silent on how fairness is to be

determined, and whether it is to be determined only by reference to facts and circumstances existing at the time the arrangement is accepted by the parties, or by reference to subsequent developments (for example, a huge appreciation in the value of the shares received as fees such that the lawyer is effectively compensated at 100-fold the reasonable value of his services). For ethics purposes (and not for purposes of assessing common law fiduciary duties), we believe that the “fairness” of the fee arrangement should be judged at the time of the engagement. In other words, if the fee arrangement is “fair and reasonable to the client” at the time of the engagement, no ethical violation could occur if subsequent events, beyond the control of the lawyer, caused the fee to appear unfair or unreasonable.

See also Restatement (3d) of the Law Governing Lawyers, § 126, Comment e (2000) (“Fairness is determined based on facts that reasonably could be known at the time of the transaction, not as facts later develop.”).

Therefore, any fee arrangement that charges fees in cryptocurrency, or that allows or requires a client to either provide an advance fee or accept a settlement payment from a party in cryptocurrency, should be assessed for fairness at the time that it is agreed upon, based on the facts then available.

WHAT DISCLOSURES TO THE CLIENT DOES RULE 1.8(a) REQUIRE?

At the very least, Rule 1.8(a) requires the lawyer to disclose to the client the risks associated with accepting cryptocurrency as payment of an advance fee and how those risks will be addressed. Particularly, what happens if the value of the cryptocurrency rises above or falls below the actual currency value of the legal services agreed upon by the parties? The information that a lawyer must disclose will vary, of course. However, as the DC Bar Ethics Committee recommends:

a lawyer accepting cryptocurrency should consider including a clear explanation of how the client will be billed (i.e., in dollars or cryptocurrency); whether and how frequently cryptocurrency held by the lawyer will be calculated in dollars, or otherwise trued-up or adjusted for accounting purposes and whether, upon that accounting, market increases and decreases in the value of the cryptocurrency triggers obligations by either party; how responsibility for payment of cryptocurrency transfer fees (if any) will be allocated; which cryptocurrency

exchange platform will be utilized to determine the value of cryptocurrency upon receipt and, in the case of advance fees, as the representation proceeds (i.e., as fees are earned) and upon its termination; and who will be responsible if cryptocurrency accepted by the lawyer in settlement of the client's claims loses value and cannot satisfy third party liens.

SAFEKEEPING CLIENT PROPERTY UNDER RULE 1.15 — COMPETENTLY SAFEGUARDING CRYPTOCURRENCY

Comment [1] to Virginia Rule 1.15 states that a lawyer should safekeep the property of clients and third parties with the care required of a professional fiduciary. The Rule also requires segregation of client and third-party property from the property of the lawyer. As a fiduciary, the lawyer may not commingle, misappropriate, or convert to the lawyer's personal use property that has been entrusted to the lawyer under Rule 1.15.

The first Rule of Professional Conduct, Rule 1.1, requires that a lawyer must act competently in representing a client. Ancillary to that rule, Comment [6] states that the lawyer "should pay attention to the benefits and risks of relevant technology." Applying these principles, several points require discussion.

Before accepting cryptocurrency by a lawyer, the duty of competence requires the lawyer to have the knowledge and skill to understand the risks associated with this technology, and safeguard against the many ways cryptocurrency may be stolen or lost. D.C. Bar Ethics Opinion 378, *supra*. "Because blockchain transactions are unregulated, uninsured, anonymous, and irreversible, cryptocurrency is regularly targeted for digital fraud and theft." *Id.*

Unlike traditional funds deposited in a lawyer's trust account, cryptocurrency is not FDIC insured. Cryptocurrency online wallets and exchange platforms may be fraudulent. Even legitimate online wallets and platforms may be hacked. Transactions stored on a digital (hot) wallet connected to an online network may be vulnerable to malware and hacking.

The private key is very important, because if lost or stolen, the cryptocurrency is likely permanently inaccessible. The user must keep the private key secret, not share it with anyone and store it in a safe place. Some recommend a "cold wallet" to store cryptocurrency more securely. However, even "cold wallets" (offline software, hardware or paper) may be

lost, stolen, damaged or destroyed and therefore the lawyer must exercise reasonable care to protect them. Some recommend purchasing a hardware wallet to store cryptocurrency and avoiding using digital wallets that are connected online.

When accepting cryptocurrency for “safekeeping” under Rule 1.15, the lawyer-client agreement should specify that the cryptocurrency remains the property of the client until earned by the lawyer — as does the appreciation or loss on the cryptocurrency. The agreement should address responsibility for the safekeeping, discuss the safekeeping mechanism(s), and allocate responsibility for security and responsibility for storage costs and risk of loss — whether loss of value or actual loss of the property through hacking or loss of the key. Since property held for safekeeping under Rule 1.15 remains property of the client, the client should be specifically allowed to cause the lawyer to sell the cryptocurrency (whether to prevent market losses, appreciate gain in value or otherwise), and to determine the procedures the lawyer should use in doing so.

Assuming the client has the right to direct the lawyer to sell the cryptocurrency, a lawyer should consider and address in the agreement with the client: (1) whether the cryptocurrency should be sold or exchanged in its present state or converted to fiat currency; and, who bears the responsibility for payment of any expenses incurred as a result of any sale, exchange or conversion; (2) what portion of the sale proceeds will be applied to the advance fee agreed upon by the parties versus what portion will be returned to the client; (3) who bears the risk if the cryptocurrency is sold at a loss or less than the value of the agreed advance fee, i.e., will the client be obligated to replenish any deficiency; and (4) if the direction to sell is incident to the termination of the lawyer-client relationship, what portion of the sales proceeds has been earned by the lawyer and how much the client is owed as a refund. These are some but by no means all of the questions that could arise if the client has directed the lawyer to sell the cryptocurrency.

Once the cryptocurrency can be applied to earned fees, the agreement should state that it becomes the lawyer’s property, the lawyer has the risk of gain or loss, and the lawyer makes the decision when and how to sell the cryptocurrency. Any gain recognized by the lawyer on the value will not be credited to the client’s future fees.

Many of the same security measures lawyers can be expected to use with cloud-based software and storage apply to handling cryptocurrency. Some important measures include:

- Use a private and secure internet connection and not public wi-fi when making transactions.
- Use a unique and robust password.
- Use two-factor authentication to better secure and verify transactions.
- Keep the security level high and do not install unsecured apps.

CONCLUSION

A lawyer may accept client property including cryptocurrency offered as an advance payment for the lawyer's services, provided the lawyer's fee is reasonable under Rule 1.5, and this business transaction with the client meets the requirements of Rule 1.8(a), namely, that the transaction is fair and reasonable to the client, the transaction and terms are fully disclosed in writing in a manner the client understands, the client is advised of the opportunity to consult with independent counsel, and the client's consent is confirmed in writing. When cryptocurrency is being held by the lawyer as an advance fee, the requirements of Rule 1.15 regarding safekeeping client property apply and require that the lawyer take reasonable steps to secure the client's property against loss, theft, damage or destruction. When cryptocurrency is used by the client for payment of an earned fee, Rules 1.8(a) and 1.15 do not apply but the lawyer's fee must be reasonable under Rule 1.5.

*Approved by the Supreme Court of Virginia
September 19, 2022*

Hypothetical 3 – Ethical Issues Arising from the Use of “Reply All”

RESOURCES:

LEO 1820

LEO 1897

Rules of Professional Conduct:

4.2 – Communications with Persons Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

LEGAL ETHICS OPINION 1820

CAN AN ATTORNEY EMPLOYEE OF A
RAILROAD COMMUNICATE WITH
INJURED RAILROAD WORKERS WHO
ARE REPRESENTED BY COUNSEL?

You have presented two hypotheticals involving the employees of a railroad. The underlying situation in each is that an employee was injured on the job. That employee hires an attorney, who notifies the railroad claims department of his representation. The claims department has employees who investigate the claims made by injured employees. That department is supervised by a member of the Virginia State Bar. Some, but not all, of the employees in the claims department are also members of the Bar.

In the first scenario, a nonlawyer claims agent contacts the injured employee to confirm that the lawyer does represent him. That claims agent asks why the injured employee wants a lawyer and recommends that he not use one. At no time has the department supervisor instructed the claims agent not to communicate with represented claimants.

In the second scenario, the claims department has an office entitled, "Disability Support Services." An employee of that services department, who is a Bar member, contacts the injured employee after receipt of the notice of representation, seeking medical records from the injured employee and offering rehabilitation services. If the injured employee does not respond to that offer, the department employee will testify that rehabilitation was offered and declined. If the injured employee *does* respond, the claims agent asks for a direct interview and broad access to medical records. The claims agent may then testify against the injured employee regarding statements made during the interview.

The claims agents may also consult with the in-house counsel and the railroad's retained counsel who serve as defense counsel in the matter. The railroad claims those conversations are within the protection of the attorney/client privilege.

With regard to these scenarios, your request poses the following questions:

- 1) Is the claims department prohibited from contacting the employee after receiving notice of representation, as the supervisor of the department is a Bar member?
- 2) Is the claims department permitted to contact an employee for purposes of "verifying" legal representation after receiving notice from counsel?
- 3) If that contact is permitted, may a representative of the claims department question the represented employee regarding why he hired counsel and advise the employee that he would be better served by dealing directly with the claims department without the assistance of an attorney?
- 4) May the claims department contact a represented employee directly in order to request medical records, offer job retraining, or offer vocational services?

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5) May the Bar member/claims agent contact a represented employee for purposes of requesting medical records, offering job retraining, or vocational services?

6) While working for an attorney-supervised claims department, is a Virginia attorney bound by the Rules of Professional Conduct, even though maintaining that he is merely offering disability support services?

Before addressing your specific questions, it would be helpful to clarify the ethical responsibilities of the individuals in the differing roles outlined in your scenario. In all instances, the Virginia Rules of Professional Conduct govern conduct only of licensed attorneys. The rules do not govern the conduct of nonlawyers. Regulation of nonlawyers is governed by the Virginia State Bar and the Unauthorized Practice Rules. Interpretation of the Unauthorized Practice Rules is not within the purview of this Committee.¹ Thus, in the discussion of this opinion request, this Committee can apply pertinent provisions of the Rules of Professional Conduct to the *lawyers* in the scenario, not to the nonlawyer employees, or to corporate departments. In answering the questions, this Committee will not be determining whether the conduct of the lawyers, if performed by nonlawyers, would constitute the unauthorized practice of law. Such an issue is outside the purview of this Committee. The remarks in this opinion will focus specifically on whether the outlined conduct of the attorneys employed by this railroad is permissible under the Rules of Professional Conduct.

The crux of the presented scenario and questions is whether these contacts by railroad claims agents with the injured workers are permissible. The pertinent provision in the ethics rules is Rule 4.2, which states as follows:

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyers knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

The portion of the rule especially at issue here in resolving the questions presented is the phrase, "in representing a client." The plain language of this rule suggests that the prohibition is only triggered when the lawyer actually represents a client in the matter to be discussed. Reviewing the various attorneys in the scenario, which come within that language? Of the in-house counsel, the claims department head, and the attorney/claims agents, which actually represent the railroad such that Rule 4.2 governs their communications with the injured workers?

Whether an attorney/client relationship has been formed in any particular situation is a fact-specific determination. The Rules of Professional Conduct do not specifically

¹ Issuing opinions interpreting the Unauthorized Practice Rules is the task of the Virginia State Bar's Standing Committee on the Unauthorized Practice of Law.

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contain a definition of "attorney/client relationship". This Committee has consistently relied upon the definition found in the Unauthorized Practice Rules:

Generally, the relation of attorney and client exists, and one is deemed to be practicing law whenever he furnishes to another advice or service under circumstances which imply his possession and use of legal knowledge.

That definition looks to the nature of the work performed more than to some formalistic requirement of an express agreement by the client to retain the lawyer as his attorney. Consistent with that approach, this Committee found in LEO 1819 that a lawyer who works as a lobbyist may have created an attorney/client relationship with his lobbying customers if he provided them with legal advice as part of the lobbying services. Similarly, in LEO 1803, this Committee opined that an institutional attorney assisting prison inmates created attorney/client relationships with those inmates for whom he provides legal advice regarding the inmates' legal documents as well as those for whom he actually drafted their documents. In LEO 1592, this Committee concluded that an attorney/client relationship was established where the attorney hired to represent an uninsured motorist carrier had also provided legal advice and assistance to the *pro se* driver. Similarly, in LEO 1127, this Committee found an attorney/client relationship where the attorney provided legal assistance on items such as discovery requests for *pro se* litigants. In each of these opinions, the Committee focused on the nature of the services provided.

Applying this concept to the present scenario, the Committee notes that the in-house counsel represents the railroad. Regarding the head of the claims department, the Committee opines that he also represents the railroad with regard to these injured workers' claims. That attorney operates his claims department to, among other things, assist the railroad in gathering information from the claimants for the use of the railroad and its litigation attorney, the in-house counsel, and in persuading the claimants to fire their retained counsel. Such work is squarely within the concept of furnishing "to another advice or service under circumstances which imply his possession and use of legal knowledge;" the standard from the above-quoted definition. For the same reason, the work of the attorney/claims agents also constitutes representing the railroad in these matters. Those attorney/agents gather information potentially useful in any litigation that develops out of these claims and try to dissuade the claimants from legal representation. If the railroad hired a lawyer specifically for those tasks, there would be no question that the law firm was providing legal representation to the railroad. That instead the railroad places these lawyers in-house and labels them claims agents does not change the underlying character of their work. The claims management work performed by the attorneys employed by the railroad involves legal representation of the railroad. As these claims lawyers, both the department head and the claims agents, are providing legal services to the railroad, their communications with represented persons is limited by Rule 4.2.

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The attorney serving as department head in this scenario has additional responsibilities in this context. The Rules of Professional Conduct establish obligations regarding how he supervises his staff. First, in considering communications with the represented workers, he must consider the interplay of Rule 8.4(a) with Rule 4.2. Rule 8.4(a) declares it impermissible for an attorney to:

Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another.

Thus, the attorney/department head, where precluded from communicating with a represented claimant by Rule 4.2, could not permissibly direct his staff to do so. *See* LEOs ##233, 1375.

Also establishing ethical obligations regarding this department head's staff supervision are Rules 5.1 and 5.3, which govern the supervision of attorney staff and nonattorney staff respectively². While the precise details of each rule differ, both rules direct the

² Those rules state as follows:

RULE 5.1 Responsibilities of Partners and Supervisory Lawyers

(a) A partner in a law firm, or a lawyer who individually or together with other lawyers possesses managerial authority, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

RULE 5.3. Responsibilities Regarding Nonlawyer Assistants. — With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

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supervising attorney to supervise his staff in a manner consistent with his own ethical obligations. This attorney cannot establish and implement a procedure for his staff to routinely contact represented workers when the initiation of that contact as well as the content of the communications are incompatible with the attorney's responsibilities under Rule 4.2.

While the in-house counsel was not the focus of your inquiry, the Committee notes that this same point applies equally to the in-house counsel. Because the claims department is housed within her legal department, she also has ethical obligations stemming from her supervisory responsibilities regarding the activities of the claims department.

Based on the general principles established above, the Committee answers your particular question as follows:

1) Is the claims department prohibited from contacting the employee after receiving notice of representation, as the supervisor of the department is a Bar member?

The Virginia Rules of Professional Conduct govern members of the Virginia State Bar. The rules do not apply to corporations, or departments of corporations, such as the claims department of this railroad. Accordingly, the provision in the rules, Rule 4.2, regarding contact with a represented party does not apply to the claims department. However, see the response to Question 3, below, for discussion of application of the rule to the individual lawyers in the claims department, including the department head.

2) Is the claims department permitted to contact an employee for purposes of "verifying" legal representation after receiving notice from counsel?

The answer to Question 1 also addresses this second question.

3) If that contact is permitted, may a representative of the claims department question the represented employee regarding why he hired counsel and advise the employee that he would be better served by dealing directly with the claims department without the assistance of an attorney?

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

For this third question, the identity of the particular “representative of the claims department” is important. If the representative is a nonlawyer, the rules do not directly apply to that employee’s conduct. However, if the representative is a member of the Virginia State Bar, the rules do apply to his activities. The Committee has consistently opined that lawyers working in other fields nevertheless may be subject to the authority of applicable Rules of Professional Conduct.³ This is no less true for these lawyers working in the railroad’s claims department.

As discussed earlier, the particular rule at issue is Rule 4.2, governing contact with represented persons. The Committee reiterates that the lawyer/claims agents *are* providing legal services to their employer, the railroad. The conversations between claims agents and the injured workers include the lawyer/agent’s analysis of the legal needs of the worker and advice regarding each worker’s case. When a lawyer/claims agent tries to persuade a worker that he does not need a lawyer and that his claim will be better resolved without one, that agent is providing legal analysis and advice. The Committee opines that such a service comes within the reach of Rule 4.2. Accordingly, the lawyers operating as railroad claims agents should *only* be communicating with workers known to have counsel if that counsel has already provided consent to that communication. The attorney/agents in the present scenario have improperly failed to obtain that consent.

A final note regarding the issues raised in these first three questions. The counsel in each instance has already written the railroad to provide notice of the representation. There is suggestion that the purpose of the claims department’s contact with the injured workers is to confirm that they are represented. That stated reason for these contacts cannot justify the communications. First, written notice from counsel is sufficient; the attorneys should rely upon that and begin any contact in these matters with counsel, and not the represented workers. Second, even if written notice was less than clear for some reason, these contacts should begin with an inquiry as to whether each worker is represented. When the workers answer that they do have counsel, the communication should stop at that point. Any further communication regarding the matter would need to be redirected to counsel. Requests for information and advice regarding the worth of legal representation would be improper.

For this third question, the role of the “representative of the claims department” is determinative. If the representative is a nonlawyer, the rules do not directly govern that individual. If the representative is a member of the Virginia State Bar, the rules do apply to his activities; the lawyer/claims agents must work within the communication

³See 1819 (lobbying firm); 1764 (attorney fee sharing with finance company); 1754 (attorney selling life insurance products); 1658 (employment law firm/human resources consulting firm); 1647 (employee-owned title agency); 1634 (accounting firm); 1579 (serving as fiduciary such as guardian or executor); 1584 (partnership with non-lawyer); 1368 (mediation/arbitration services); 1442 (lender’s agent); 1345 (court reporting); 1318 (consulting firm); 1311 (insurance products); 1254 (bail bonds); 1198 (court reporting); 1163 (accountant; tax preparation); 1131 (realty corporation); 1083 (non-legal services subsidiary); 1016 (billing services firm); 187 (title insurance).

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restriction established by Rule 4.2. Furthermore, the department head attorney's supervision of and/or interaction with his staff must not contradict his Rule 4.2 ethical obligation.

4) May the claims department contact a represented employee directly in order to request medical records, offer job retraining, or offer vocational services?

As with Questions 1 and 2, above, this question is outside the purview of this Committee as the Rules of Professional Conduct do not apply to the railroad's claims department. However, the analysis in Question 3 regarding the individual members of the claims department is equally applicable here. If the member of the department is a nonlawyer, the Rules do not regulate his or her conduct. If the member of the department is a lawyer, any contact with the represented worker is impermissible if in violation of Rule 4.2. That would include communications requesting medical records as well as offering job training and/or vocational services as such requests and offers are part of the negotiation of the particular claim for which the worker has legal counsel.

5) May the Bar member/claims agent contact a represented employee for purposes of requesting medical records, offering job retraining, or vocational services?

The discussion in answer to Question 4 responds to this fifth question.

6) While working for an attorney-supervised claims department, is a Virginia attorney bound by the Rules of Professional Conduct, even though maintaining that he is merely offering disability support services?

The Committee fully discussed this question in the introduction to this opinion as well as in the response to Question 3. The attorney/claims agents are bound by the Rules of Professional Conduct while providing these claims management services. The Committee notes that offering disability support services is within the subject matter of the representation for purposes of Rule 4.2 as those services are in response to the claims of the injured workers.

Finally, the Committee would like to comment on two issues not asked expressly in one of the questions but nonetheless suggested by the facts presented. First, the facts note that the railroad does have a legal department, with an in-house counsel who represents the railroad generally and therefore, presumably, in these claims cases. That attorney would, in line with the discussion presented in response to Questions 3, 5, and 6, above, need to limit all communications with the represented workers in the claims cases to conform to Rule 4.2. Also, that attorney should be mindful of Rule 8.4(a), which precludes an attorney from violating the Rules through the acts of another. Thus, the Committee cautions that the attorney in the legal department cannot circumvent the requirements of Rule 4.2 by directing members of the claims department to initiate communications the attorney himself is precluded from conducting. Any factual determination as to whether, in a particular instance, the communication by a claims agent occurred with sufficient involvement of the in-house counsel as to trigger Rules 4.2

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and 8.4(a) would depend on facts far more detailed than those provided in the present hypothetical.

Finally, the Committee clarifies that in no way do the conclusions of this opinion prohibit *parties* from direct communication. As pointed out in Comment 1 to Rule 4.2, "parties to a matter may communicate directly with each other." In many instances such communication can be effective in speedy resolution of the dispute. However, a lawyer communicating on behalf of a client, even where that client is his employer, is not a party to the dispute but instead is counsel for a party. In the context of attorneys employed in various capacities by party employers, there may be circumstances where it is unclear whether particular communication derives from the lawyer as counsel or from the party itself. As discussed throughout this opinion, the Committee opines that the present context of the railroad employees is not one of those cases that are hard to determine. The Committee reiterates that both the attorney department head and the attorney claims/agents represent the railroad in negotiating these claims. Accordingly, their communications with the represented, injured workers come within the prohibition of Rule 4.2 rather than the allowance in Comment One for parties to communicate directly with each other.

This opinion is advisory only, based only on the facts you presented and not binding on any court or tribunal.

**LEGAL ETHICS OPINION 1897. RULE 4.2 - REPLYING ALL TO AN EMAIL WHEN
THE OPPOSING PARTY IS COPIED**

QUESTION PRESENTED

The question presented is whether a lawyer who receives an email from opposing counsel, with the opposing party copied, violates Rule 4.2 if he replies all to the email, sending the response to both the sending lawyer and her client.

SHORT ANSWER

The committee concludes that the answer is no, Rule 4.2 is not violated. A lawyer who includes their client in the “to” or “cc” field of an email has given implied consent to a reply-all response by opposing counsel.

Applicable Rule of Professional Conduct

Rule 4.2. Communication With Persons Represented By Counsel. In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

ANALYSIS

Ethics opinions from a number of other jurisdictions¹ have concluded that a lawyer copying his client does not always provide consent to communication by opposing counsel. While cautioning that it is best practice to blind copy all recipients or separately forward an email to the lawyer’s client, the opinions conclude that failing to follow that best practice does not provide consent under Rule 4.2 and that the receiving lawyer must review the list of

¹ Washington State Bar Association Advisory Opinion 202201 (2022); Illinois State Bar Association Opinion No. 19-05 (2019); Alaska Bar Association Ethics Opinion No. 2018-1 (2018); South Carolina Bar Ethics Advisory Opinion 18-04 (2018); Kentucky Bar Association Ethics Opinion KBA E-442 (2017); North Carolina Bar Formal Ethics Opinion 2012-7 (2013); California LEO 2011-181 (2011); New York City LEO 2009-1 (2009).

recipients and remove the opposing party from his response. A recent opinion from New Jersey² reaches the opposite conclusion, expressly rejecting the reasoning of those other jurisdictions to find that lawyers who include their clients in the “to” or “cc” field of a group email will be deemed to have provided implied consent to a reply-all response from opposing counsel. The committee believes that a bright-line rule is appropriate here, rather than a “totality of the circumstances” test used in the opinions of other states, for example North Carolina and Washington. Both lawyers who are trying to comply with the Rules while practicing law, and the disciplinary process that seeks to impose discipline on lawyers who do not comply with the Rules, benefit from an unambiguous answer to allow lawyers to engage in the communications they are permitted to have while making clear that there are certain communications that are off-limits.

As for what that bright-line rule should be, the committee agrees with the analysis of the New Jersey opinion. By this point in its evolution, email is not analogous to paper letters, and is often treated more like an ongoing conversation than with the formality of written correspondence. The literal mechanics of copying are an important difference as well – there is no option to “reply all” to a written letter, without copying and separately sending a response to each copied recipient. When email is used, the committee believes that the onus should be on the sending lawyer to blind copy all recipients, or separately forward the email to the client, if they do not want a reply-all conversation. As the New Jersey opinion explains:

Email is an informal mode of communication. Group emails often have a

² ACPE Opinion 739 (2021).

conversational element with frequent back-and-forth responses. They are more similar to conference calls than to written letters. When lawyers copy their own clients on group emails to opposing counsel, all persons are aware that the communication is between the lawyers. The clients are mere bystanders to the group email conversation between the lawyers.

A “reply all” response by opposing counsel is principally directed at the other lawyer, not at the lawyer’s client who happens to be part of the email group. The goals that Rule of Professional Conduct 4.2 are intended to further – protection of the client from overreaching by opposing counsel and guarding the clients’ right to advice from their own lawyer – are not implicated when lawyers “reply all” to group emails.

The committee finds that this analysis of the text and purposes of Rule 4.2 provides appropriate guidance to lawyers and is consistent with the nature of email as opposed to paper communication. A lawyer who includes their client in the “to” or “cc” field of an email to opposing counsel has given implied consent under Rule 4.2 for opposing counsel to reply-all to the message. The reply must not exceed the scope of the email to which the lawyer is responding, however, as the sending lawyer’s choice to use “cc” does not authorize the receiving lawyer to communicate beyond what is reasonably necessary to respond to the initial email.

The committee reiterates that the lawyer sending an email should control the recipients and who may respond by using “bcc” for all recipients, or separately forwarding the email to the lawyer’s client. Including or copying the lawyer’s client risks not only that the opposing lawyer, or another recipient of the email, will respond directly to the lawyer’s client, but also that the lawyer’s client will respond in a way that the lawyer would not advise or desire. All of these issues can be prevented by appropriately limiting the recipients. Lawyers should note

*Approved by the Supreme Court of Virginia
September 19, 2022*

further that merely blind copying their own client, while including other recipients in the “to” field, will not fully prevent these issues; a blind copied client may still be able to reply all to everyone who was in the “to” field of the original email. All recipients must be blind copied to avoid the risk of a reply all response.

*Approved by the Supreme Court of Virginia
September 19, 2022*