

ARLINGTON CIVIC FEDERATION RESOLUTION ON CRIMINAL JUSTICE REFORM

EXECUTIVE SUMMARY

PROCEDURAL HISTORY

This resolution was introduced to the membership at the Civic Federation meeting held on November 14, 2017 by Juliet Hiznay on behalf of the Legislative Committee. Members asked questions about the resolution at that time. This resolution of the Legislative Committee was passed unanimously, pending amendments, on September 26, 2017. Upon circulation of the resolution with amendments, these were accepted without objection. Voting members of the legislative committee were: John Seymour, Ronald Haddox, Takis Karantonis, Juliet Hiznay, Donald Gurney, and John Bloom. Based upon excellent feedback from members, further research of sources and the Virginia Code were carried out and revisions were made to two whereas clauses, as marked below.

BACKGROUND

Incarceration rates in the United States outpace any other country in the world, both in absolute terms and by percentage.¹ At the same time, research has shown that a criminal record is a significant obstacle to finding gainful employment.²

Virginia is no exception. According to the National Institute of Corrections, the Virginia incarceration rate (2015) exceeded the national average by 19% at 457 individuals per 100,000 adults.³ Virginia has the 8th highest jail incarceration rate in the United States, holding 1 in every 214 adult Virginians.⁴ Racial disparities in arrest and sentencing in the United States and Virginia are well documented.⁵

According to the Virginia Department of Juvenile Justice, 6.6% of state charges brought against minors in 2016 were brought against children between 8 and 12 years of age.⁶ Virginia has the lowest felony larceny threshold in the nation. This means that children who steal items such as mobile phones, athletic shoes, or winter coats, which frequently cost \$200 or more, can carry a felony record for life.

¹ <https://www.hrw.org/world-report/2016/country-chapters/united-states>;
http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All;

<http://www.prisonstudies.org/country/united-states-america>

² http://thecrimereport.s3.amazonaws.com/2/fb/e/2362/criminal_stigma_race_crime_and_employment.pdf

³ <https://nicic.gov/statestats/?st=va>

⁴ http://www.justicepolicy.org/uploads/justicepolicy/documents/va_justice_system_expensive_ineffective_and_unfair_final.pdf

⁵ <http://sentencingproject.org/wp-content/uploads/2015/12/Race-and-Justice-Shadow-Report-ICCPR.pdf>

<http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>

⁶ http://www.djj.virginia.gov/pdf/about-djj/DRG/FY16_DRG.pdf

A number of factors have made it particularly difficult for Virginia youth to recover from court involvement. Virginia has been identified as number one in the nation in referrals of school children to law enforcement.⁷ Zero tolerance policies implemented through the code of conduct in the public schools have driven court involvement. Children age 14 and older can be tried as adults. Virginia youth are unable to expunge any record of an offense that would be a felony if charged as an adult.

In addition, typical youthful behavior has been criminalized under a specific provision of the Virginia disorderly conduct statute that applies only in school or during school activities. The statute does not require intoxication in order to apply. Also, unlike other sections of the statute, Subsection C of Virginia Code Section 18.2-415 strips out the requirement that the behavior have “a direct tendency to cause acts of violence by the person or persons at whom, individually, the disruption is directed.” Instead, Subsection C permits a criminal case to proceed where the behavior merely “disrupts” the operation of the school. This could be an act as simple as interrupting a teacher, tapping a pencil, pacing in the classroom or the distracting use of fidgets or school materials. Even children whose dysregulated behaviors are related to their disability have been prosecuted under this code section. These types of behaviors can be effectively addressed through school services or through school discipline and should not be treated as criminal in nature.

Due to the extreme punitive nature of the targeted provisions of Virginia law, the difficulty in finding gainful employment for those who turn their lives around, the disparate impact on those living in poverty and the working poor, as well as the high risk of permanent loss of civil rights for those charged with felonies, the legislative committee of the ACCF unanimously voted in favor of the following resolution regarding criminal justice reform in Virginia.

RESOLUTION ON CRIMINAL JUSTICE REFORM

WHEREAS, the threshold amount for felony larceny and related offenses in Virginia is \$200, and has not been raised since 1980;⁸

WHEREAS, thirty states have thresholds of \$1000 to \$2,500 for felony larceny (FN8, FN9)⁹;

WHEREAS, Virginia and New Jersey have the lowest felony larceny threshold in the nation at \$200 (FN8);

WHEREAS, the penalty for felony grand larceny and related offenses is punishable by confinement in a state correctional facility for not less than one year and not more than twenty years (Va. Code §18.2-95(ii); Va. Code §18.2-10);¹⁰

⁷ <https://www.publicintegrity.org/2015/04/10/17089/virginia-tops-nation-sending-students-cops-courts-where-does-your-state-rank>

⁸ <https://www.dcis.virginia.gov/sites/dcis.virginia.gov/files/publications/dcis/virginia-felony-larceny-threshold-35-years-later.pdf>;

⁹ http://www.pewtrusts.org/~media/assets/2017/04/pspp_the_effects_of_changing_felony_theft_thresholds.pdf

WHEREAS, adults and children age 14 years or older tried as an adult for felony grand larceny face a minimum sentence of one year's confinement in a state correctional facility, and a maximum sentence of twenty years under Virginia law, for theft of such items as a mobile telephones, eye glasses, footwear or outerwear (FN10);

WHEREAS, the penalty for petit larceny and related offenses is punishable by confinement in jail of up to 12 months and a fine of not more than \$2500, either or both (Va. Code § 18.2-11);¹¹

WHEREAS, when children under the age of 18 are adjudicated delinquent for offenses that would be felonies if carried out by an adult, they continue to have a criminal record that is considered for future sentencing. (Margaret A. Nelson, *Marked for Life, Virginia Lawyer, Vol. 57 pp 30-32 (December 2008)*;¹² Va. Code § 16.1-306¹³; Va. Code § 16.1-269.1);¹⁴

Whereas, children age 11 or older can be committed to juvenile detention if previously adjudicated delinquent for offenses that would be felonies if carried out by an adult (Va. Code § 16.1-278.8);¹⁵

WHEREAS, children age 14 years or older, when adjudicated delinquent for offenses that would be felonies if carried out by an adult, cannot obtain a firearm until age twenty-nine (29) (Va. Code § 18.2-308.2);¹⁶

WHEREAS, under its disorderly conduct statute, Virginia criminalizes the behavior of students at school (age 8 and older) that is not defined as criminal for adults outside of school (Va. Code § 18.2-415(C));¹⁷

WHEREAS, juvenile adjudications for offenses that would be felonies if carried out by an adult are included as prior felony convictions under state and federal sentencing guidelines (FN12; Va. Code § 19.2-295.1);

WHEREAS, juvenile adjudication for drug-related offenses affect eligibility for federal student financial assistance (FN12);

WHEREAS, an adjudication as a juvenile can exclude young adults from military service (FN12);

NOW THEREFORE, THE ARLINGTON CIVIC FEDERATION recommends the following state legislative changes be made:

1. Raise the minimum threshold for felony larceny and all theft related felony offenses to \$1000.

¹⁰ <https://law.lis.virginia.gov/vacode/title18.2/chapter5/section18.2-95/>;

<https://law.lis.virginia.gov/vacode/title18.2/chapter1/section18.2-10/>

¹¹ <https://law.lis.virginia.gov/vacode/title18.2/chapter1/section18.2-11/>

¹² http://www.vsb.org/docs/valawyeremagazine/vl1208_juv-adjudications.pdf

¹³ <https://law.lis.virginia.gov/vacode/title16.1/chapter11/section16.1-306/>

¹⁴ <https://law.lis.virginia.gov/vacode/title16.1/chapter11/section16.1-269.1/>

¹⁵ <https://law.lis.virginia.gov/vacode/title16.1/chapter11/section16.1-278.8/>

¹⁶ <https://law.lis.virginia.gov/vacode/title18.2/chapter5/section18.2-308.2;>

¹⁷ <https://law.lis.virginia.gov/vacode/title18.2/chapter9/section18.2-415/>

2. Revise subsection C of Virginia Code § 18.2-415 (Disorderly Conduct, which is punishable by up to 1 year in jail and/or up to a \$2500 fine) (FN17), as marked below:
 - C. Willfully or while intoxicated, whether willfully or not, and whether such intoxication results from self-administered alcohol or other drug of whatever nature, disrupts the operation of any school or any activity conducted or sponsored by any school, if the disruption ~~(i) prevents or interferes with the orderly conduct of the operation or activity or (ii)~~ has a direct tendency to cause acts of violence by the person or persons at whom, individually, the disruption is directed.
3. Provide a legal means for individuals charged with offenses when under 18 years of age to expunge their records once they reach majority age.