



# COMMONWEALTH of VIRGINIA

*Department of Criminal Justice Services*

Leonard G. Cooke  
Director

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November 1, 2009

The Honorable David B. Albo, Chairman, House Courts of Justice  
General Assembly Building, Room 529  
Capitol Square  
Richmond, Virginia 23219

The Honorable Henry L. Marsh, III, Chairman, Senate Courts of Justice  
General Assembly Building, Room 432  
Capitol Square  
Richmond, Virginia 23219

Dear Chairman Albo and Chairman Marsh:

As directed by House Bill 719 (2008), the Department of Criminal Justice Services is providing to you the final report on the number of detentions pursuant to §18.2-266.1 that are in violation of the federal Juvenile Justice and Delinquency Prevention (JJDP) Act. Please feel free to contact me or Fran Ecker, Director, Office of Programs (786-3967 or [Fran.Ecker@dcjs.virginia.gov](mailto:Fran.Ecker@dcjs.virginia.gov)).

Sincerely,

A handwritten signature in cursive script, appearing to read "Leonard G. Cooke".

Leonard G. Cooke, Director

cc: The Honorable John Marshall, Secretary of Public Safety

**Document Title**

Final Report Regarding Juvenile Detentions Under §18.2-266.1

**Author**

Department of Criminal Justice Services

**Enabling Authority**

Chapter 729 (Regular Session, 2008)

**Executive Summary**

The Department of Criminal Justice Services was directed by House Bill 719 (2008) to report to the Chairmen of the House and Senate Committees for Courts of Justice on the number of detentions pursuant to §18.2-266.1 that are in violation of the Act. This is the final report on the number of detentions pursuant to § 18.2-266.1 of the Code of Virginia (Persons under age 21 driving after illegally consuming alcohol; penalty.) that are in violation of the federal Juvenile Justice and Delinquency Prevention Act.

## Final Report Regarding the Impact of HB 719 (2008)

### Background

During the 2008 Legislative Session, amendments were made to §18.2-266.1 of the *Code of Virginia* regarding the punishment of individuals under age 21 found guilty of driving after illegally consuming alcohol with a blood alcohol level of .02 or more, but less than .08 (HB719). The amended legislation raised the severity of this offense from an unclassified offense to a Class 1 misdemeanor. Because of concerns raised regarding its potential impact on compliance with the federal Juvenile Justice and Delinquency Prevention (JJDP) Act, the Department of Criminal Justice Services (DCJS) was directed to report to the Chairmen of the House and Senate Committees for Courts of Justice on the number of detentions pursuant to §18.2-266.1 that are in violation of the Act.

Under the JJDP Act, underage alcohol offenses, including that governed by §18.2-266.1, are viewed as status offenses. Status offenses are generally considered offenses which apply to juveniles only. However, since the application of underage alcohol offenses is limited by age and applies to only a small cohort of adults, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) includes them with other status offenses such as truancy and underage possession of tobacco. The JJDP Act prohibits confinement of juvenile status offenders, with limited exceptions, under the Deinstitutionalization of Status Offenders (DSO) component of the Act.

DCJS is responsible for monitoring Virginia's compliance with the JJDP Act and has, for the past several years, noted increasing numbers of juveniles placed in detention facilities for violating underage alcohol offenses under §4.1-305 (possession, purchase, or consumption of alcohol). In FY2008, 245 juveniles were admitted to detention with a violation of §4.1-305 as their most serious offense. This was almost 45% higher than the number for FY2006. Many of these detentions did not fall into the exception categories and were therefore considered in violation of the JJDP Act. If the number of violations exceeds an allowable formula-based de minimis figure, Virginia will be found out of compliance with the JJDP Act and will lose 20% of the federal funding we receive through it (we currently receive \$1.415M). In addition, 50% of the remaining funds must go towards achieving compliance with the Act, thereby significantly reducing the amount of federal funds available for prevention and intervention programs in Virginia's communities.

### Impact of HB 719

Since the amendments to §18.2-266.1 went into effect on July 1, 2008, 7 juveniles have been detained for a violation of this *Code* section as their most serious offense.

#### **Detentions for violations of §18.2-266.1 as most serious offense<sup>1</sup>**

	FY06- FY08	FY09 July-Sept	FY09 Oct-Dec	FY09 Jan-Mar	FY09 April-June	FY10 July-Sept
Detentions	N/A	0	2	1	4	0
Detentions in violation of the JJDP Act	N/A	0	2 (100%)	0	0	0

<sup>1</sup> Figures are reported only for detentions when a violation of §18.2-266.1 is the most serious offense. Additional juveniles may be detained for a violation of this offense but they have additional, more serious charges.

When viewed alone, the number of detentions for violations of §18.2-266.1 does not appear to be a threat to Virginia's compliance with the JJDP Act *at this time*. However, combined with other detentions for status offenses, there continues to be justification for concern. In FY08, over 650 detention admissions were for an offense classified as "status" by OJJDP.<sup>2</sup> Approximately 70 were found to be in violation of the JJDP Act when taking currently allowable exceptions into account. Though the number of violations continues to be below the allowable *de minimis* figure, any legislation which allows for the detention of juveniles defined by OJJDP as status offenders poses a threat to Virginia's compliance.

### **Additional Legislative Compliance Concerns**

Concern regarding juveniles detained for underage alcohol offenses, as well as other status offenses, has recently been heightened with the introduction of S678 in Congress which reauthorizes and amends the JJDP Act. In its current form, the Act allows an exception to the DSO component for status offenders held in violation of valid court orders ("VCO exception"). The reauthorization amends the JJDP Act to immediately limit the detention period for status offenders held under the VCO exception to 7 days and, within three years, require states to completely eliminate the use of valid court order violations to provide for the secure lockup of status offenders. Due to strong support from the juvenile justice advocacy community, DCJS believes that the amendment will be approved by Congress either as is, or with a modification to the immediate seven day limitation period. Regardless, it is likely that the VCO exception will be eliminated from the Act.

Virginia will quickly fall out of compliance with the DSO component of the JJDP Act if passed as introduced. Judges regularly avail themselves of the *Code* provision allowing confinement for up to ten days for a violation of a court order, regardless of the underlying offense. Under the reauthorization, the JJDP Act will immediately limit this to seven days for status offenders, including juveniles held for any underage alcohol offense. Any instance in which a juvenile is held for over seven days for violating a court order issued on a status offense will create a violation.

The eventual elimination of the VCO exception creates a significant concern for Virginia's continued compliance with the JJDP Act. As noted, Virginia's judges will frequently place juveniles in detention for failing to comply with court orders issued on status offenses, including underage alcohol offenses and truancy. Many of the detentions of status offenders which do not constitute violations of the JJDP Act meet the current exception that permits detention for a violation of a court order. In FY2008, 267 juveniles were held in detention for violating a court order where the underlying offense was a status offense as defined by OJJDP. Under the proposed reauthorization, each of these would constitute a violation. This number would certainly exceed the *de minimus* allowance, putting Virginia out of compliance with the JJDP Act.

As noted previously, if found out of compliance, Virginia's federal JJDP Act funding would be reduced and restricted. In order to remain fully compliant and in full receipt of federal funds under the proposed reauthorization, Virginia would need a legislative change prohibiting the detention of status offenders as defined by OJJDP for violating court orders.

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<sup>2</sup> This figure includes 413 admissions for a status offense as defined by the *Code of Virginia* plus 245 admissions for a violation of underage alcohol offenses where these offenses are the most serious.