



THE CONSEQUENCES AREN'T MINOR



WHAT IS THE LAW IN NORTH CAROLINA?

In North Carolina, there are a number of ways young people under age 18 who commit crimes can be tried and sentenced as adults. Since 1919, state law has given jurisdiction of youth ages 16 and 17 to the adult criminal justice system. Since then, laws have been enacted that allow cases for youth ages 13 to 15 to be transferred—automatically in the case of alleged first-degree murder—to the adult criminal justice system. Once transferred, the law provides limited access to appeal the transfer decision.

The upper age of juvenile court jurisdiction in North Carolina is 15.

In North Carolina, the age of majority is 18, but the age of juvenile court jurisdiction allows 16- and 17-year-olds to be tried as adults.¹ This means that all 16- and 17-year-olds arrested for any offense, regardless of whether the offense is violent or non-violent, are automatically treated and tried as adults. North Carolina, Connecticut, and New York are the only three states in the country that end juvenile court jurisdiction at age 16.² Of the three, North Carolina is the only state that does not allow youth to appeal for a reverse waiver so that they can be transferred back to the juvenile justice system.

Youth as young as 13 may face mandatory waiver to adult court for Class A felonies (statutory exclusion).

In 1993³ a Special Crime Session of the North Carolina General Assembly passed the Structured Sentencing Act. The law included a provision that reduced the minimum age that a youth's case could be transferred to Superior Court (adult court) to 13. As a result, young people ages 13 and over can be sentenced to life without parole. This law took effect in 1994 and stated that following a probable cause hearing, youth ages 13 and over who face Class A felony charges must be transferred to adult court for trial and sentencing.⁴

Young people age 13 to 15 may be transferred to adult court for lower-level felonies (judicial waiver).

North Carolina's *discretionary judicial waiver* statute allows juvenile court judges to transfer into adult court young people as young as 13 accused of felonies. The process of transfer is as follows. Within 10 days after a petition alleging delinquency has been

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filed charging a youth with a felony, a hearing is held in juvenile court to consider a young person's continued custody, inform the young person of the charges, appoint counsel, set a date for the next hearing, and contact the guardian. Then a second hearing is held, where a juvenile district court judge determines whether probable cause exists that the youth may have committed any felony other than first-degree murder. Except for first-degree murder, the severity of the felony charges that these young people face plays no role in the decision to transfer. If probable cause is established, the district court judge determines whether the youth should remain in juvenile court or be transferred to superior court for trial as an adult. Motions to transfer may be made by the district court itself, prosecutors, or the young person's counsel. A judge may consider up to eight factors when considering whether to transfer certain felonies to superior court:

- the youth's age;
- the youth's maturity;
- the youth's intellectual functioning;
- the youth's prior record;
- prior attempts to rehabilitate the youth;
- facilities or programs available to the court during the time it would have jurisdiction over the youth and the likelihood that the youth would benefit from treatment or rehabilitative efforts;
- whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; and
- the seriousness of the offense and whether the protection of the public requires that the youth be prosecuted as an adult.⁵

When youth who are 14 and 15 years old are arrested, and if their case merits that they remain in secure custody, they can be detained in a county jail.

North Carolina, unlike Connecticut and New York, lacks a reverse waiver provision.

In North Carolina, youth whose cases are being prosecuted in adult court cannot be transferred back down to the juvenile court system. A youth may appeal if he or she believes there is abuse of discretion in the transfer decision to superior court. The superior court judge can only review the transfer decision for an abuse of discretion; the judge cannot review the probable cause findings.⁶

North Carolina is a “once an adult, always an adult” state.

After a youth is transferred to and convicted in superior court, he or she must be prosecuted as an adult for any charge thereafter, no matter how minor the subsequent offense.⁷

Young people who are being detained until trial may be housed in adult facilities.

When youth who are 14 and 15 years old are arrested, and if their case merits that they remain in secure custody, they can be detained in a county jail. Youth detained in county jails are closely supervised and separated from the adult population by both sight and sound.⁸ Youth alleged to have committed certain felonies⁹ may be placed in “holdover facilities” in jails for up to 72 hours, but only if the court, based on information provided by the court counselor, determines that no acceptable alternative placement is available and that the protection of the public requires that the youth be housed in a holdover facility. The Department of Health and Human Services must inspect holdover facilities in jails to ensure that they provide close supervision of youth in custody and that sight and sound

separation from the adult population is maintained.¹⁰ Once a youth is indicted, superior court judges make the decision about whether to detain young people who have been transferred to adult court in juvenile or adult facilities.¹¹ Again, youth detained in adult facilities must be closely supervised and separated from the adult population by sight and sound.¹² Efforts are also made to keep violent and non-violent offenders separated; they also try to keep older youth separated from younger youth.

Once young people are tried and convicted in adult court, they must serve their sentences in adult correctional facilities.¹³

North Carolina does not allow judges to sentence transferred youth, regardless of their age, to serve any part of their sentences in juvenile facilities.¹⁴ Upon conviction, they must immediately be transferred to the Department of Correction (DOC). The DOC has six primary facilities in which “youthful offenders,” young people age 13 to 20, are housed. Although the facilities vary in terms of age ranges and custody levels, all male youth under age 18 are generally sent to the Western Youth Institution; female youth are sent to the North Carolina Correctional Institution for Women where many serve their entire sentence but some are transferred at age 20.¹⁵ With few exceptions, inmates younger than 16 are prohibited from being incarcerated in Central Prison.¹⁶ These youth are generally incarcerated in one of five DOC facilities: Foothills Correctional Institution, Morrison Correctional Institution, North Carolina Correctional Institution for Women, Polk Correctional Institution, and Western Youth Institution.¹⁷ Although there are no legal statutes governing the incarceration of youth under age 25, the North Carolina DOC has a number of policies that it applies to this group. Male youthful offenders with felony convictions are kept separate from inmates who are older than 25. Felons and misdemeanants who are younger than 19 are processed and incarcerated at Western Youth Institution. Males age 19 to 25 serving sentences for misdemeanors are housed with their older inmates in minimum custody facilities.¹⁸ Since females represent a much smaller portion of North Carolina’s youthful offender populations, there are no separate youth prisons for female youthful offenders. Therefore, female youthful offenders are incarcerated in women’s prisons with the general population.¹⁹

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North Carolina no longer has a “youthful offenders” code.

Prior to the early 1990s, youth who were younger than 21 years old and serving sentences in adult facilities were given “youthful offender” status. This status was intended “to improve the chances of correction, rehabilitation, and successful return to the community of youthful offenders sentenced to imprisonment by preventing, as far as practicable, their association during their terms of imprisonment with older and more experienced criminals, and by closer coordination of the activities of sentencing, training in custody, parole, and final discharge.”²⁰ In 1993, in an effort to address concerns about rising crime rates, and to make sentencing more meaningful and equitable, the North Carolina General Assembly passed the Structured Sentencing Act. Implemented in 1994, the Structured Sentencing Act repealed provisions that established “youthful offender” status. This change in the statute abolished parole for everyone but first-time misdemeanants, and required all offenders (including youthful offenders) to serve their entire sentence.²¹ The term “youthful offender” continues to be used in North Carolina, however it now “refers only to offenders who commit offenses between their 16th and 21st birthdays, and youth transferred from the juvenile courts for trial as adults.”²² “The DOC defines “youthful inmates” as being between the ages of 13 and 25. The lower part of the age range contains youth between 13 and 15 charged with felonies and transferred to the criminal court system for trial as adults. Due to a decline in the number of prison admissions for youthful offenders over the last several years, the DOC has increased the upper age range for youthful inmates from 21 to 25.”²³

An April 2006 analysis of data from the North Carolina Sentencing and Policy Advocacy Commission and the DOC showed that in fiscal year 2001/02 there were 13,038 youthful offenders under some form of supervision.²⁴

Nearly 70% of the young people in the North Carolina Department of Correction were African-American, Latino, or Native American.

Among the number of young people in the North Carolina prisons in 2005, the majority of young people under the jurisdiction of the adult DOC were there for offenses the FBI would classify as non-violent crimes.

The youth prisons used to incarcerate youthful offenders focus primarily on retribution rather than rehabilitation.

The “youth prisons,” which are operated by the North Carolina Department of Correction (DOC), differ from Youth Development Centers (YDC), which are operated by the North Carolina Department of Juvenile Justice and Delinquency Prevention (NCDJJD). YDCs are treatment-focused and embrace the philosophy of rehabilitation. As a way to promote successful re-entry, youth who are committed to these facilities are able to maintain their connections to the communities they will re-enter.²⁵ And after they serve their sentences at a YDC, their criminal records are expunged. In contrast, North Carolina law does not require facilities operated by the Department of Correction to provide specific programs or services to youth under its care. Youthful inmates in the DOC do have priority for participation in educational, vocational, or technical training, but youth who have served their sentences in Youth Prison Facilities leave with criminal records that cannot be expunged.

WHO IS AFFECTED BY THE LAWS IN NORTH CAROLINA?

Race and ethnicity:

The disproportionate impact of adultification on youth of color.

In 2005, there were 407 young people²⁶ under the age of 18 in adult prison facilities in North Carolina. Seventy-eight percent²⁷ of these young people were 17, 20% were 16, and 2% were 15. Non-white youth were overrepresented among the young people under custody by the adult DOC. Nearly 70% of the young people in the North Carolina DOC were African-American, Latino, or Native American.²⁸

Offense type: Half the young people in adult custody are there for non-violent crimes.

Among the number of young people in the North Carolina prisons in 2005, the majority (55%) of young people under the jurisdiction of the adult DOC were there for offenses the FBI would classify as non-violent²⁹ crimes. Among those under custody for violent crimes, 5% of the young people were under the custody of the DOC for homicide, 6% for rape, 15% for assault, and 19% for robbery. However, among the 55% of youth who were under DOC custody for non-violent crimes, 19% were there for breaking and entering, 9% were there for drug offenses, and 14% were there for larceny. Twenty young people were under the custody of the adult DOC for “other public order offenses,” and 10 were in custody for traffic offenses.³⁰

Adult corrections: Admissions, releases, and community supervision (probation).

During the 2005 calendar year, 3,863 youth (3,109 males, 754 females) under the age of 18 were on probation/parole/post-release.³¹ In 2001/02, 2,832 youthful offenders entered prison and 10,206 were placed on probation.³² Although it is not clear how many of the 10,000 young people under community supervision spent time in an adult jail or an adult facility, these youth may face some of the collateral consequences of an adult conviction.

Recidivism and re-offending.

The DOC notes that youth under their supervision, whether in prison or not, represent a significant correctional issue: “The challenge for the courts, corrections, and society at large is to impose sanctions to deter recidivism with this age group while providing programs to rehabilitate and reintegrate them, truncating an otherwise lengthy and possibly escalating criminal career.”³³ The DOC found that young people in prison had a higher re-arrest rate than young people on probation. Of the three groups they looked at (youthful prisoners, youthful probationers, and adult prisoners), youthful prisoners were the most likely to be rearrested.³⁴ Of the three groups studied, youthful prisoners were the

most likely to experience a recidivist incarceration.³⁵ Although these data did not control for offense background and other characteristics, they do suggest that sending young people to adult prison is not achieving public safety goals.

YOUNG PEOPLE AND FAMILIES AFFECTED BY NORTH CAROLINA'S LAWS

Although no one story can capture the impact of North Carolina's adultification statutes, a drug case that caused dozens of young people to receive drug felony convictions reveals the issues at play.

In the fall of 2004, headlines in North Carolina were dominated by news of a six-school undercover sting operation in the Alamance-Burlington high school system that resulted in the arrests of 60 students under age 18. In accordance with the State's 1919-enacted "Juvenile Court Act," of the 60 arrested in the sting operation, those 16 and over faced felony charges and were automatically under the jurisdiction of the state's adult criminal justice system. Forty-five of the 60 youth pled guilty and were sentenced to three years' probation. Although most did not serve prison time, some, including Jeff Webster, served active sentences. Regardless, the convictions continue to seriously affect the lives of these young people.

JamesOn Curry: A mistake narrowly redeemed.

JamesOn Curry was 17 years old when arrested for selling marijuana to an undercover police officer posing as a fellow student as part of the sting operation. After the officer purchased marijuana on previous occasions, the officer videotaped JamesOn selling the officer marijuana in the school parking lot. The district attorney said Curry's profit on these two drug deals was \$95.³⁶

In April 2004, Curry pleaded guilty to six felony drug counts, including two counts each of possession with intent to sell and deliver marijuana; sale and delivery of marijuana; and possession and selling and delivering a controlled substance on school grounds.³⁷ Judge Kenneth C. Titus suspended his sentence, placed him on probation for 36 months, and ordered him to perform 200 hours of community service. Because he was not allowed to return to his high school, Curry attended an alternative school in the area and graduated in May.³⁸

Curry was a promising high school basketball player and he hoped to parlay that talent into a college education. In fact, when Curry was just a sophomore, University of North Carolina coach, Matt Doherty, committed an athletic scholarship to him. The year Curry was arrested, he was ranked among the best high school players in the country, scoring 40.3 points per game in 2003, including 65 points in one game. Over his high school career, he scored 3,307 points, exceeding the number of points James Worthy or Michael Jordan scored in their high school careers.

Curry's adult felony conviction put much of his future at risk. Because North Carolina law places youth age 16 and over under the jurisdiction of adult criminal courts, Curry has an adult criminal record that is not sealed and cannot be expunged. Subsequently, Curry's arrest and conviction was brought to the attention of the University of North Carolina's new head coach, Roy Williams. Williams decided to rescind the scholarship. Curry had been recruited by Roy Williams's predecessor and Williams had committed to honoring Doherty's offers to all incoming recruits unless they'd robbed "a bank or something." Williams stated later, "Well, he did rob a bank, or something."

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Curry understood Williams's decision: "I had the scholarship as long as I didn't screw up. I screwed up." Fortunately, three months after his arrest, Curry signed a new letter of intent to attend Oklahoma State, which had reached the Final Four in 2004. Before signing, Coach Eddie Sutton told Curry what Oklahoma State expected of him and that his "margin for error was zero."

Before offering the scholarship, Oklahoma State's basketball coaches did a lot of investigating into both Curry's basketball abilities and his character. "Nobody had a bad word to say about him," said Assistant Coach James Dickey. "I've been around a lot of kids, and some have expressed remorse and not meant it. I believed James On meant it." "He sat in my office and tears came to his eyes," Oklahoma State Athletic Director Harry Birdwell said. "And he told me: 'I embarrassed my family and all the people who trusted in me. I want to make amends. If you give me a second chance, I will not let you down.' I thought the kid was telling me the truth."

In summer 2005, Curry was one of 20 individuals selected to try out for Team USA. Although an injury forced his withdrawal from the try-outs, the opportunity to play for Team USA drew criticism from those concerned about Curry's criminal record. However, Sean Ford, the director for the men's USA basketball program stated: "It seems like he's made tremendous progress from the bad decision he made... As a committee, we didn't feel—based on the progress he made, the season he had, the second chance he's taking advantage of—that we were putting ourselves at tremendous risk by including him in these trials."³⁹

Curry's story of redemption is an unfinished one. As Curry reflected after his first exhibition game wearing a University of Oklahoma Cowboys' uniform, "I had never been in trouble before, but for the people out there that think I need to prove myself to them, I've got to set a perfect example that I am not that type of person... History tends to repeat itself, so I try not to look back as much and try to walk as straight as I can."⁴⁰

Jeff Webster: Second chances do not come easily.

Jeff Webster was 17 years old when he was arrested for selling marijuana to a female undercover officer. Webster bought marijuana for her on three occasions in 2003: October 30, November 4, and November 12. The officer gave him money, which he used to purchase the drugs from known dealers at school. He did not profit from the sales. Webster admitted to friends that he had a crush on the officer and testified that she flirted with him, hinted to his friends that they planned to attend the prom together, and that she even hugged him on occasion. Webster said they "often walked in school hallways holding hands." According to newspaper accounts of his testimony, Webster agreed to sell her drugs within 10 minutes of their initial encounter. He testified, "I was trying to get her good prices and impress her in a way... I had never purchased any drugs or received any drugs for anyone before." "I was attracted to her and was thinking about things that 17-year-old boys think about when being pursued by a very attractive girl who usually wears very provocative clothes," he said. "She zeroed in on me. Now I realize that she used me to get in with the popular crowd."⁴¹

Webster was arrested and charged with three felony counts: possession with the intent to sell and deliver marijuana, selling marijuana, and delivering marijuana.⁴² Webster, whom character witnesses described as a model citizen who attended church three days per week, volunteered in the community, did well in school (3.7 grade point average and 12th in his class),⁴³ and worked two jobs, asserted that he was entrapped because the undercover officer flirted with him and led him to believe that she would go out with him.⁴⁴

After his arrest, Webster was shocked by the realization that he was to be treated and tried as an adult. In addition, he was surprised to learn that the charges he faced were

felonies. “I thought what I had done was a misdemeanor. Had I known that it was a felony, it would have changed my decision to obtain marijuana for her.”⁴⁵ Webster had planned to join the military as a means to pay for his college education. Concerned that a felony conviction would prevent him from joining the military, Webster offered to serve an active sentence if the district attorney would reduce the charges to misdemeanors.⁴⁶ The district attorney rejected the offer, and Webster elected to claim entrapment as his defense in his trial.

When asked about his experience as a defendant, Webster identified several aspects of the trial that appeared unfair and prevented him from proving entrapment. First, the undercover officer had recorded all her conversations with Webster. However, a key conversation—the conversation in which Webster informed the undercover officer that he didn’t feel right about buying her drugs and that he would no longer buy them for her—was “accidentally recorded over” before the jury had an opportunity to hear it. Webster said, “I felt like I had been set up.”⁴⁷

Second, before the defense had an opportunity to prepare Webster for questioning, the judge stipulated that Webster be the first of the defense witnesses; he went before the court without preparation.⁴⁸ According to newspaper accounts, the prosecuting attorney asked Webster, “So she didn’t persuade you in any way or trick you in any way on that first occasion, did she?”⁴⁹ Webster responded, “Not in any verbal way. No sir, she did not.”⁵⁰

Third, the prosecution attempted to make the undercover officer appear less attractive to the jury. In response to the defense’s request that the prosecution admit into evidence examples of clothing that the undercover officer wore at school, the prosecution produced baggy jeans and sweatshirts rather than the tight-fitting, low-cut halter tops that Webster had been accustomed to seeing her wear. “What [the prosecution] produced was nothing I’d ever seen her wear before,” says Webster. And last, Webster claims that the judge allowed the prosecution to introduce evidence in the trial without first notifying defense counsel.⁵¹

After an hour of deliberation, the jury found Webster guilty on all nine counts.⁵² During sentencing, in reference to Webster’s answer about whether the undercover officer had tricked him, Judge J.B. Allen said, “You got on the witness stand and convicted yourself.”⁵³

“I was shocked by the conviction. I didn’t think I’d be convicted. My head fell to the table. It was like a slap in the face,” Webster says.⁵⁴

Judge Allen did not see any benefit to imposing the maximum sentence of six years for all nine charges. Instead, Webster was sentenced to serve five to six months in prison followed by three years of probation.⁵⁵ Webster served a five-month sentence in Western Youth Institution, where he was incarcerated in a minimum-security section with other youthful offenders, most of whom were serving sentences for non-violent offenses, such as breaking and entering and drug-related crimes.

“I willed myself to get through the experience... You never feel totally safe in prison... There were fights everyday, and you always had to be careful about keeping others from stealing your stuff... There was a lot of gang activity... It was a very difficult time not to be able to see my family. You don’t realize how important your family is until you have them taken from you...”⁵⁶

Although his prison experience was very difficult, Webster developed positive relationships with a corrections officer and a counselor. He learned to respect them because of their willingness to help him and because they treated him with dignity. While in prison, Webster was also able to complete the courses he needed to graduate from

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Cummings High School, and he worked three different jobs, including Keeper of the Yard, the highest-paying job (\$1 per day) you could obtain in the prison.⁵⁷

Webster was released in September 2004. Now his felony conviction creates a number of barriers to employment and education. Luckily for Webster, after his trial one of the jurors approached his parents and offered to help Webster find an Information Technology (IT) job after he was released. Webster followed up with the juror immediately after his release, but it took five months before the juror was able to help him get hired. After two years, he continues to enjoy his job, but he notes that quitting is not an option because finding another well-paying job would be extremely difficult.⁵⁸

Webster's felony conviction has also made it difficult for him to attend college. Before the conviction, Webster had a partial academic scholarship to North Carolina State and had planned on enlisting in the U.S. Air Force to help pay for the remaining college expenses. As was the case with James On Curry's athletic scholarship, Webster's scholarship was rescinded upon his conviction. He is also no longer eligible to join the military. Unlike Curry, no recruiters have approached Webster with offers of a second chance. However, Webster wants to own his own IT business someday and knows that higher education will help him to achieve his goal. So he is making his own second chance by taking courses at the local community college. Unfortunately, he cannot quit his job to take classes full time. Webster explains that often the courses he needs to take at the community college are not offered at times when he can attend.

Webster was released from prison for good behavior, has paid all his restitution (approximately \$2,100), and continues to work to prove that he is a good person who made a youthful mistake. As Webster notes, "Just because you made a mistake doesn't mean that you are a terrible person."⁵⁹

WHAT ARE THE POLICY OPTIONS IN NORTH CAROLINA?

Sentencing Commission studies judicial processing of young people, age 16 to 21 years.

The Alamance-Burlington High School System drug sting discussed in this chapter's profiles occurred in the district of Representative Alice Bordsen, a member of the North Carolina General Assembly. In 2005, Bordsen introduced legislation⁶⁰ (H.B. 1298) folded into an "omnibus" study bill (H.B. 1723) that was enacted on August 18, 2006. The Act authorizes the North Carolina Sentencing and Policy Advisory Commission to "study issues related to the conviction and sentencing of youthful offenders aged 16 to 21 years, to determine whether the State should amend the laws concerning these offenders, including, but not limited to, revisions of the Juvenile Code and/or the Criminal Procedure Act that would provide appropriate sanctions, services, and treatment for such offenders." In anticipation of the passage of the study bill and at Bordsen's request, the North Carolina Sentencing and Policy Advisory Commission established the Youthful Offender Subcommittee in 2005. Chaired by Judge Fred Morrison and William Dudley (Vice Chair), the Subcommittee met six times in 2005 and 2006. On December 1, 2006, the Subcommittee approved its final report, including five policy recommendations (most summarized in this chapter's Recommendations section). The Act also requires the Commission to consult with the state's Departments of Health and Human Services, Juvenile Justice and Delinquency Prevention, and Public Instruction and submit a report to the General Assembly by March 1, 2007.⁶¹

North Carolina debates "raising the age."

As previously noted, North Carolina is only one of three states where, regardless of the

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severity of the offense, youth age 16 and 17 are automatically tried and sentenced as adults. In September 1997, Governor James Hunt created the Governor's Commission on Juvenile Crime and Justice to conduct a thorough and comprehensive review of North Carolina's juvenile justice system. It examined the implications associated with increasing the age of adult jurisdiction to 18. At that time, the committee determined that the costs associated with increasing the age to 18 would be prohibitive and would overburden the State's limited juvenile justice resources, and so it recommended keeping the age of jurisdiction at 16.⁶²

A decade later, policymakers are reconsidering the age of jurisdiction. During their meetings in 2006, the North Carolina Sentencing Commission's Youthful Offender Subcommittee discussed how they should carefully consider changing the age of jurisdiction. The Subcommittee's final report recommended that the state "[i]ncrease the age of juvenile jurisdiction to persons who, at the time they commit a crime or infraction, are under the age of 18. Traffic offenses committed by persons 16 and older will remain within the jurisdiction of the adult criminal courts." They also recommended that the state "delay the implementation of the change in juvenile jurisdiction by [two years] after passage of the bill and create a task force to analyze legal, systemic, and organizational changes required; to determine necessary resources; and to produce a detailed road map for implementation of the new law."⁶³

When asked whether youthful offenders (16 and 17) would have a better chance in the juvenile system, George Sweat, Secretary of the North Carolina Department of Juvenile Justice and Delinquency Prevention answered, "I don't think there's any question; yes, I think they would."⁶⁴ Sweat, however, has raised concerns about the state's ability to effectively absorb an influx of youth age 17 and 18 into the juvenile justice system. He believes it would be a challenge to bring these young people into this system at a time when the agency is in the middle of a reform process that includes attempting to move young people, 16 and under, into smaller, more therapeutic facilities that are accessible to families. "Research shows that raising the minimum juvenile age is the right thing to do," Sweat says. "However, the options for raising the juvenile age must be carefully weighed in terms of cost, impact, and timing."⁶⁵

Does North Carolina need more community programs for young people and does the state need to improve their efficacy? During their meetings in 2006, several members of the North Carolina Sentencing Commission's Youthful Offender Subcommittee were concerned about the lack of resources for youthful offenders, including community diversion and reentry programs. Community programs, both adult- and youth-specific, are important components in the state's efforts to support offenders who are likely to respond to therapeutic approaches that help these individuals successfully reenter their communities. As stated, prior to the enactment of the Structured Sentencing Act in 1994, young people 21 years old and serving sentences in adult facilities were governed by statutes that intended "to improve the chances of correction, rehabilitation, and successful return to the community of youthful offenders sentenced to imprisonment by preventing, as far as practicable, their association during their terms of imprisonment with older and more experienced criminals, and by closer coordination of the activities of sentencing, training in custody, parole, and final discharge."⁶⁶ Changes to the age of jurisdiction and sentencing statutes would need to be made as part of a larger approach to delivering community-based services, supervision, and alternatives to incarcerations.

Should North Carolina implement blended sentencing? North Carolina is the only one of the states that transfers youth to adult court that lacks blended sentencing, a sentencing tool that allows courts to impose juvenile dispositions in addition to adult sentences for serious juvenile offenders who are 14 years of age or older. Whether

"I don't think there's any question; yes, I think they would." –George Sweat, Secretary of the North Carolina Department of Juvenile Justice and Delinquency Prevention, responding to whether youthful offenders (16 and 17) would have a better chance in the juvenile system.

North Carolina could use blended sentencing is questionable. Some in the state believe that the state's constitution, which guarantees the right to trial by jury, would prohibit implementation of blended sentences. Juvenile dispositions in North Carolina are decided by bench trials rather than jury trials. This raises a question of whether the constitutional rights of youth who go on to serve the adult sanctions of their blended sentences would be violated; they are considered convicted as adults, yet were not allowed trials by jury.⁶⁷ Others disagree, believing that criminal models of blended sentencing could be imposed in North Carolina, but the conviction in adult court would still leave the offender with an adult criminal record.⁶⁸

Collateral consequences and expunging the records of juveniles convicted as adults.

Once convicted as adults, youth who are tried and sentenced as adults face life-long barriers, including barriers to education and employment.

Since North Carolina's age of adult jurisdiction is 16, students who have criminal records may experience some barriers to postsecondary education. The University of North Carolina system includes six standard questions about applicants' criminal histories. Students may be denied admission to North Carolina state universities if they have been convicted of any crime other than a traffic-related misdemeanor or an infraction; however, admitting to a criminal history does not result in an automatic denial of admission.⁶⁹ Although the decision to admit students with criminal histories is left to each of the 16 constituent campuses, UNC officials assert that students are more likely to be denied admission to the University of North Carolina for omitting pertinent information about their criminal backgrounds on their applications than for merely admitting their criminal backgrounds.⁷⁰ Students may not be denied admission to the state's community colleges based on criminal background. However, community colleges often discourage students with criminal backgrounds from pursuing certain careers, such as nursing, that prohibit licenses and credentials to people who have criminal backgrounds.⁷¹ People who have felony convictions also are not allowed to join the military, an option young people often take to help pay for college.

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In addition to the impediments youth face when attempting to go to college, background checks make finding employment difficult. Furthermore, insurance companies are reluctant to provide insurance for employers who hire convicted offenders.

Rep. Alice Bordsen, concerned about the stigma that inevitably supplements a criminal conviction, has stated that early exposure to the criminal justice system builds a "complete box" around youth. In response to the Alance-Burlington High School System drug sting, the State House of Representatives passed a bill (H.B. 1084) in 2005 that would allow first-offender youth who have been convicted of non-violent crimes before they turned 18 to petition the court to expunge their records. Petitions could be submitted two years after the youths' convictions or after the completion of sentences (including post-release supervision), and after serving 100 hours of community service. The State Senate did not consider the bill. According to Judge Ronald Payne, a member of the North Carolina Sentencing Commission's Youthful Offender Subcommittee, expunction is useful. Those who favor expunction want to ensure that limits exist, including a waiting period for the record to be expunged. If the case takes a long time to expunge, social, education, and employment opportunities for youth who have been convicted as adults will continue to be negatively impacted.⁷²

NORTH CAROLINA RECOMMENDATIONS

As part of their 2006 report to the Legislature,⁷³ the Sentencing Commission recommended that legislators consider a number of changes to adult and juvenile statutes that would reform how young people are treated.

- **Increase the age of juvenile court jurisdiction to persons who, at the time they commit a crime or infraction, are under the age of 18.**⁷⁴

To deal with concerns over the impact of the change on the juvenile justice system, the Sentencing Commission recommends a two-year phase-in for the implementation of the change in juvenile jurisdiction by creating a task force after passage of the bill to analyze the legal, systemic, and organizational changes required to determine necessary resources, and to produce a detailed road map for implementation of the new law. Although the Sentencing Commission did not recommend it, the two-year implementation phase-in could take steps to ensure that youth (16 to 18) who are convicted of crimes during the long implementation period may be eligible for retroactive juvenile dispositions, including sealing or expunging records.

- **Develop a “transfer back” mechanism.**

Adopt a post-conviction procedure for youth transferred to and convicted in Superior Court by which the Court, in lieu of imposing a criminal sentence, may return the offender to the exclusive jurisdiction of the District Court for entry of a juvenile disposition.

- **Adopt a youthful offender status for sentencing in adult court.**

The state should make it possible for a sentencing judge, upon plea or verdict of guilt, to defer judgment for offenders under 21 for a period of special, supervised probation that, if successful, would result in discharge of the defendant, dismissal of the charge, and eligibility for expunction of the records of arrest and prosecution.

The Sentencing Commission recommendations to the legislature would represent a significant step towards making North Carolina’s adultification statutes consistent with other states’ statutes. It would take into account new research on adolescent development, as well as the research on the impact of sending youth into the adult system. The state could also consider other policy options to improve rehabilitation opportunities for young people and promote public safety.

- **Increase dispositional options for judges for young people.**

Along with extending the age of juvenile court jurisdiction to 18, the age of extended juvenile jurisdiction for dispositional purposes for delinquent youth could be extended from 18 to 21 to ensure that fair and meaningful dispositions can be implemented for young people.

- **Support the ability of young people to expunge their records.**

The state could enact legislation to allow individuals who have been convicted of non-violent crimes in adult court committed before they turned 21 to petition to expunge their criminal records. These records could be sealed for the duration of the waiting period to ensure access to employment and educational opportunities for youth who are reentering the community.

- **Develop community-based alternatives to incarceration for young people.**

The state should adequately invest in treatment and diversion strategies that provide judges with suitable sentencing options that are proven to rehabilitate youth while protecting public safety. They should do so by ensuring access to, and sufficient resources for, youth (13 to 21) who are currently serving adult sentences.

- **Abolish “once an adult, always an adult.”**

This would ensure suitable access to services provided by the juvenile justice system for youth 18 and under who have been previously convicted as adults.

- **Increase the age that youth can be tried as adults from 13 to 15.**

Very few jurisdictions see 13-year-olds entering the adult system. North Carolina has already taken steps in this direction by raising the age in most cases to 14.

NOTES

- ¹ Mason, J. (2004, October). *Confidentiality in juvenile proceedings*. UNC School of Government, <http://www.iog.unc.edu/pubs/electronicversions/pdfs/ss19.pdf>
- ² The National Center for Juvenile Justice. (2005, August). *State juvenile justice profile*. <http://www.ncjj.org/stateprofiles/overviews/upperage.asp>
- ³ Minutes from North Carolina Sentencing and Policy Advisory Commission Youthful Offenders Subcommittee Meeting on January 13, 2006, in the Correction Enterprises' Conference Room at the Department of Correction facility with Dr. James Howell regarding American thinking on juvenile jurisprudence, p.5.
- ⁴ N.C. Gen. Stat. § 7B-2200 (2006).
- ⁵ Mason, J. (1999, January 1). *Juvenile justice reform act*. Chapel Hill, NC: Institute of Government, The University of North Carolina at Chapel Hill. <http://www.juvjus.state.nc.us/about/reform.html>
- ⁶ N.C. Gen. Stat. § 7B-1064 (b) (2006).
- ⁷ N.C. Gen. Stat. § 7B-1064 (b)
- ⁸ See Mason, J., 5.
- ⁹ Class A, B1, B2, C, D, or E felonies.
- ¹⁰ See Mason, J., 5.
- ¹¹ N.C. Gen. Stat. § 7B-2204 (2006).
- ¹² N.C. Gen. Stat. § 7B-1501 (11) (2006).
- ¹³ N.C. Gen. Stat. § 7B-2204 (2006).
- ¹⁴ Note, however, that the Governor may order the transfer of any young person under 18 from any jail to one of the juvenile residential facilities after consultation with the Department of Juvenile Justice and Delinquency Prevention. N.C. Gen. Stat. § 7B-2517 (2006).
- ¹⁵ North Carolina Sentencing and Policy Advisory Commission Youthful Offender Subcommittee [Meeting Minutes]. (2006, March 31). Raleigh, NC: The North Carolina Department of Correction. pp. 31-32.
- ¹⁶ North Carolina Sentencing and Policy Advisory Commission Youthful Offender Subcommittee. (2006, December 1). *Final report*. Raleigh, NC: The North Carolina Department of Correction.
- ¹⁷ Ibid.
- ¹⁸ Ibid.
- ¹⁹ Flinchum, T., Jones, K., Hevener, G., Moore-Gurrera, M., & Katzenelson, S. (2006). *Correctional program evaluation: Offenders placed on probation or released from prison in fiscal year 2001/02*. Raleigh: North Carolina Department of Corrections, Sentencing and Policy Advisory Commission. p. 79.
- ²⁰ The Committed Youthful Offender Code, N.C.G.S 148-49, et seq. (repealed 1993).
- ²¹ State Strategies to manage budget shortfalls. (2003, January). *National Conference of State Legislatures*. <http://www.ncsl.org/programs/fiscal/fpsmsbnc.htm>
- ²² See North Carolina Sentencing and Policy Advisory Commission, 16.
- ²³ Ibid.
- ²⁴ See Flinchum, T., et al., 19.
- ²⁵ National Center for Juvenile Justice data. <http://www.ncjj.org/stateprofiles/profiles/ NC06.asp?topic=Profile&state=%2Fstateprofiles%2Fprofiles%2FNC06.asp>
- ²⁶ Collected from the Office of Research and Planning, Department of Correction, North Carolina, on July 20, 2006 and July 24 2006. All data and statistics concern youth under the age of 18 during the calendar year of 2005. Fourteen [10 males, 4 females], however, were "safekeepers"—defined as "individuals who have been charged with a crime but have yet to be adjudicated and who are court ordered into the custody of DOC. The 14 "safekeepers" are configured into the data results that follow.
- ²⁷ Of the 17-year-olds, 303 were males and 16 were females; of the 16-year-olds, 74 were males and 10 were females; and of the 15-year-olds, three were males and one was female.
- ²⁸ Of these 407 young people, 64% were African-American (243 males, 18 females), 5% were known to be Latino (18 males, 1 female), two were Native American, and seven were defined as "other" (6 males, 1 female). One hundred and nineteen were European/Caucasian (113 males, 6 females).
- ²⁹ The FBI categorizes homicide, rape, robbery, and aggravated assault as violent crimes.
- ³⁰ See Office of Research and Planning, 26.
- ³¹ Ibid.
- ³² See Flinchum, T., et al., 19.
- ³³ Ibid.
- ³⁴ Ibid.
- ³⁵ Ibid.
- ³⁶ Berkow, I. (2004, May 31). Basketball: A star. An arrest. A second chance. *The New York Times*. <http://select.nytimes.com/gst/abstract.html?res=F40A12FE3D550C728FDDAC0894DC404482&n=Top%2fReference%2fTimes%20Topics%2fOrganizations%2fO%2fOklahoma%20State%20University>
- ³⁷ Huguenin, M. (2005, February 28). JamesOn Curry tries to leave past behind. *Knight Ridder/Tribune News Service*. http://www.accessmylibrary.com/coms2/summary_0286-8442747_ITM
- ³⁸ See Berkow, 36. Unless otherwise noted, the remaining profile of JamesOn Curry is from Berkow's article.
- ³⁹ DeCourcy, M. (2005, July 8). Not the right choice for Team USA: North Carolinians will be surprised to learn JamesOn Curry still might represent them. *The Sporting News* http://findarticles.com/p/articles/mi_m1208/is_27_229/ai_n14713612
- ⁴⁰ Landis, T. (2004, November 10). Curry shines in debut while thoughts stray. *Cowboy Book*. http://www.ocolly.okstate.edu/new_ocollycom/archives/show_story.php?a_id=24075
- ⁴¹ Interview with Jeff Webster. Jan 5, 2007.
- ⁴² Hayhurst, B. "Judge sentences to 5-6 months in prison." *Times-News*.
- ⁴³ See 41.
- ⁴⁴ See Hayhurst. 42.
- ⁴⁵ See 41.
- ⁴⁶ Smith, T. Teenager was entrapped into crime. *Times-News*.
- ⁴⁷ See 41.
- ⁴⁸ Ibid.
- ⁴⁹ Hayhurst. 42.
- ⁵⁰ See 41.
- ⁵¹ See 41.
- ⁵² Hayhurst. 42.
- ⁵³ Hayhurst. 42.
- ⁵⁴ See 41.
- ⁵⁵ Hayhurst. 42.
- ⁵⁶ See 41.
- ⁵⁷ See 41.
- ⁵⁸ See 41.
- ⁵⁹ See 41.
- ⁶⁰ Borden's bill was also sponsored by State Representatives R. Phillip Haire, Earline W. Parmon, and Larry Womble.
- ⁶¹ House Bill 1723 / S.L. 2006-248, <http://www.ncga.state.nc.us/gascripts/BillLookup/BillLookup.pl?Session=2005&BillID=H1723>
- ⁶² North Carolina Sentencing and Policy Advisory Commission, Youthful Offenders Subcommittee Meeting Minutes. June 23, 2006.
- ⁶³ See North Carolina Sentencing and Policy Advisory Commission, 16.

⁶⁴ Minutes from North Carolina Sentencing and Policy Advisory Commission Youthful Offenders Subcommittee Meeting on June 23, 2006, in the Correction Enterprises' Conference Room at the Department of Correction, p. 3. George Sweat, Secretary of the North Carolina Department of Juvenile Justice Delinquency and Prevention.

⁶⁵ Right thing to do! Wrong time to do it: Secretary Sweat discusses raising the juvenile age with North Carolina Youthful Offender Subcommittee. (2006, June). *DJJDP News Express*, http://www.ncdjjdp.org/newsletter/archives/2006/printable_june06.html

⁶⁶ The Committed Youthful Offender Code, N.C.G.S 148-49, et seq. (repealed 1993).

⁶⁷ North Carolina Sentencing and Policy Advisory Commission, Youthful Offenders Subcommittee Meeting Minutes. June 23, 2006.

⁶⁸ Ibid

⁶⁹ Interview with Robert Kanoy, University of North Carolina System. December 15, 2006.

⁷⁰ Ibid.

⁷¹ Interview with David Sullivan, North Carolina Community College System. December 14, 2006.

⁷² North Carolina Sentencing and Policy Advisory Commission, Youthful Offenders Subcommittee Meeting Minutes. June 23, 2006.

⁷³ See North Carolina Sentencing and Policy Advisory Commission, 16.

⁷⁴ The Sentencing Commission exempted traffic offenses from their recommended changes.