

spotlight

No. 442 – July 16, 2013

IMPROVING JUVENILE JUSTICE

Finding More Effective Options for North Carolina's Young Offenders

- KEY FACTS:**
- North Carolina is one of only two states which automatically send all 16 and 17 year-olds to the adult justice system, and does not allow juveniles to petition for juvenile court jurisdiction.
 - North Carolina does have a robust system of transfer for felony juvenile offenders, which ensures that the most serious of juvenile offenders can be tried in adult courts even if the age of juvenile court jurisdiction is raised.
 - Methods to improve the juvenile justice system in North Carolina include both adjusting the age of juvenile court jurisdiction and creating a system of blended sentencing, which would permit juvenile courts to hand down sentences including terms in both a juvenile facility and the adult system.
 - Adult court jurisdiction of juveniles does not deter juvenile crime: studies of crime rates before and after the enactment of criminal court jurisdiction of juveniles show no decrease in crime rates, increased crime rates, or decreased crime rates but smaller decreases than in control jurisdictions.
 - Adult court jurisdiction results in poor rehabilitation of juveniles. One study found an 85 percent increase in re-arrest rates amongst juveniles tried in the adult court system over those retained in the juvenile justice system.
 - A review of studies on recidivism found an average 33.7 percent increase in re-arrest rates when juveniles were placed in the adult court system.
 - Re-arrest rates amongst minors in North Carolina's adult justice system are higher than those for any other age group, and even low-risk minors in the criminal justice system had re-arrest rates twice as high as low risk offenders aged 18-21.
 - Research points to higher victimization rates amongst minors in criminal justice systems in both sexual and physical violence, and suggests a higher risk of suicide for youths in adult systems.
 - Minors in criminal justice systems have less access to education and other age-specific programming than those in the juvenile justice system, putting them at a serious disadvantage upon release.
 - Any apparent savings from keeping 16-17 year olds in the adult system are ultimately overwhelmed by the costs associated with higher rates of recidivism and revocations.

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Whether through courts which exclusively deal with the needs of delinquent minors, the probation officers who include visits to the local high school as part of their beats, or confinement which attempts to include emotional development in its programming, the juvenile justice system in North Carolina and all other states reflects and upholds the concept that minors are unique, even when on the wrong side of the law. There is not, however, a consensus on the exact age at which to draw the line between the juvenile and adult systems, with 37 states setting the maximum juvenile age of jurisdiction at 18 and 11 states at 17.

Despite the lack of consensus on 17 versus 18, there are only two states that send all 16 year-olds to the adult system. Currently, North Carolina's juvenile justice system is limited only to those minors 15 and younger. In all other states except New York, the default is that 16 year-olds go into the juvenile justice system. Unlike New York, North Carolina does not have a reverse waiver provision that allows 16 year-olds to petition the adult court to send them to juvenile court, meaning that North Carolina is the only state where all 16 year-olds end up in an adult court.¹

If North Carolina raised its age of juvenile system jurisdiction to 16, state prosecutors would still have a means of punishing as adults those 16 and younger who commit the most serious offenses. That is because state law permits the transfer of those 13 or older charged with a felony to the adult system and requires such transfer for youths charged with first-degree murder (upon a finding of probable cause), providing an avenue for criminal processing for serious juvenile offenders regardless of the age of juvenile jurisdiction.

As demonstrated below, decades of experimentation with this age-based divide reveals some evidentiary support for a distinct juvenile justice system that would include most 16 year-olds. While there are a small number of very serious juvenile offenders who should be tried as adults due to the nature of their crimes, in the aggregate, the limited available evidence discussed below suggests that placing all 16 year-olds in the adult criminal justice system is not the most effective strategy for deterring crime or successfully rehabilitating and protecting these youngsters.

As long as there are mechanisms in place which permit juvenile offenders whose crimes are individually deemed serious enough to be tried as adults, considerations of public safety and the wellbeing of state wards suggest North Carolina should seriously look at joining nearly all other states in making the juvenile justice system the default destination for 16 year-olds.

While North Carolina already has a broad transfer law that allows any minor who is at least 13 years old charged with a felony to be tried and sentenced as an adult, the state should also consider adopting a blended sentencing mechanism as used in Texas and other states that allows courts to send minors for the first portion of their sentences to the juvenile system, with the second part to be served in the adult system. In Texas, if a minor is sent to a state youth institution under a blended sentence, the case is sent back to the court once he turns 19 at which time the court decides, after reviewing the evidence of the offense and progression while in the juvenile institution, whether to release the offender on adult parole or transfer him to adult prison.²

This provides another option, in addition to adult transfer, for prosecutors and courts seeking a potentially longer sentence due to public safety concerns. However, it offers unique advantages because it allows a very young and vulnerable offender to begin in a juvenile facility with more age-appropriate programming and protections and enables the decision on the remaining part of the sentence to be made at a later time when there is more evidence concerning the extent to which the offender may still pose a danger to the public.

The support for these recommendations is sourced in years of research that focuses on three significant concerns surrounding systematic placement of juveniles: the deterrent effects of criminal court jurisdiction, programmatic effectiveness for juveniles in adult systems as measured by recidivism, and in-facility safety and programming for minors.

Does Criminal Court Jurisdiction Act as a Deterrent?

In years past, many supported criminal court jurisdiction and sentencing of older juveniles due to perceived deterrent effects of the more serious treatment usually handed down in criminal courts. However, when states actually took the step of lowering the age of criminal court jurisdiction to include certain juveniles, studies show that such legislation did not deter crime.

In 1978, New York responded to highly publicized violent crimes committed by juveniles with the New York Juvenile Offender Law as part of the Crime Package Bill.³ This legislation, amongst other things, increased criminal court jurisdiction over certain 13, 14, and 15 year-olds and provided more avenues for transfer of juveniles to criminal courts.⁴ These changes in the laws of juvenile jurisdiction were widely publicized and a topic of conversation in the months before and after passage.

Unfortunately, even though highly publicized, New York's modifications to juvenile and criminal court jurisdictions did not deter crime. In 1988, researchers analyzed arrest rates for the specific offenses in the Juvenile Offender Law in the four years prior to the law change and six years afterwards, and compared the data to other cohorts of youth.⁵ The arrest rates for those offenses, such as homicide and serious assault, either did not change or rose after passage of the Law.⁶ While arrest rates did fall for rape, arrest rates for that crime also fell in the control jurisdictions analyzed by the researchers, where no such criminal jurisdiction existed, suggesting the decrease in arrests was part of a national trend rather than due to criminal court jurisdiction over juveniles.⁷

Therefore, at least, there is insufficient evidence to indicate that New York's widening of the scope of criminal court jurisdiction over certain juveniles achieved a demonstrable deterrent effect. This conclusion has been mirrored in research of other states' efforts to try more juveniles as adults. For example, the 1981 decision by the Idaho legislature to increase mandatory transfer of juveniles to criminal courts preceded a 13 percent increase in arrest rates for the targeted offenses, while rates fell in neighboring states without mandatory transfer.⁸ Similarly, expansion of criminal court jurisdiction in Georgia over juveniles charged with certain crimes brought about no reductions in arrest rates.⁹

The studies all show that, perhaps due to minors' lack of maturity or less-than-developed frontal cortex, which controls reasoning,^{*} legislative efforts to inflict criminal court jurisdiction and punishments upon minors have not deterred crime. Even more than adult offenders, the very problem with juvenile offenders is that too often they do not think carefully before committing their misdeeds, and they rarely, if ever, review the statutory framework to determine the consequences. This alone does not automatically require the juvenile justice system to handle all minors, however, as deterrence would fall as a justification to more effective handling of juveniles by the criminal courts. The next question turns to that point.

Do Criminal Courts More Effectively Rehabilitate Juveniles?

Given that a major goal of both juvenile and criminal justice systems is to release reformed and rehabilitated offenders to begin productive, law-abiding lives, it is important to place juveniles in the systems where they will be most effectively rehabilitated. Research consistently shows that rehabilitation of juveniles is more effectively obtained in juvenile justice systems and juvenile facilities, as measured by recidivism rates.

Several studies have compared recidivism rates for juvenile offenders tried in juvenile courts with those for juveniles tried in criminal courts. One such study considered 475 pairs of juveniles in Florida, matched for age, gender,

* Dr. James Howell testified before the North Carolina Sentencing and Policy Advisory Commission on this issue. He detailed minors' impaired risk perception, foreshortened time perspective, greater susceptibility to peer influence, and their behavior control capability, citing several references. See "Report on Study of Youthful Offenders Pursuant to Session Law 2006-248, Section 34.1 and 34.2," North Carolina Sentencing and Policy Advisory Commission (March 2007), pg. 32.

race, offense history, offense severity, and other factors, with one member of each pair transferred to criminal courts while the other was retained in juvenile courts.¹⁰

In 29 percent of pairs, only the transferred juvenile re-offended, while for less than 15 percent of pairs did only the retained juvenile re-offend.¹¹ After age 18, 50 percent of those transferred to criminal courts re-offended while 35 percent of those adjudicated by a juvenile court re-offended.¹² And in those cases where both members of a matched pair re-offended, the transferred juvenile was more likely to have committed a more serious felony.¹³

In another such study, researchers found that when comparing youth sent to the criminal court system to those retained by the juvenile court system in Minnesota, those tried as adults were more likely to be reconvicted or readjudicated than those originally adjudicated by the juvenile court system.¹⁴ The study considered only those minors who had at least two years of “at-risk” time under their belts, which means two years of non-incarcerated time following their sentence, and limited the recidivism definition to those reconvicted or readjudicated.¹⁵ The researchers found that 58 percent of those originally tried in the criminal court system re-offended, while 42 percent of those retained by the juvenile system recidivated.¹⁶

Yet another study looked at over 2,000 juveniles charged with aggravated assault, armed robbery, or burglary in New York and New Jersey, where the former are processed through criminal courts and the latter are adjudicated in juvenile court.¹⁷ That study found an 85 percent increase in re-arrest rates for violent crimes amongst juveniles in adult courts and a 44 percent increase in re-arrests for felony property crimes.¹⁸ Re-incarceration rates rose 26 percent for those prosecuted as adults.¹⁹

The Task Force on Community Preventive Services systematically reviewed seven such studies across a variety of states and research methodologies and found and compiled a median change in re-arrest rates, for transferred juveniles compared to retained juveniles.²⁰ The Task Force concluded, “transferred juveniles were approximately 33.7 [percent] more likely to be re-arrested for a violent or other crime than were juveniles retained in the juvenile justice system.”²¹

Similarly, when the Office of Juvenile Justice and Delinquency Prevention summarized six large-scale studies on juveniles in criminal courts, covering thousands of juveniles, five states, different definitions of recidivism, and different types of transfer, the result was that “[a]ll of the studies found higher recidivism rates among offenders who had been transferred to criminal court . . . even for offenders who only received a sentence of probation from the criminal court.”²²

Each study consistently showed higher recidivism rates for minors in criminal courts than in juvenile courts, even when controlling for other risk factors such as criminal histories, and under various forms of transfer and jurisdictional rules.

While no empirical studies have been done on minors exiting North Carolina’s adult and juvenile facilities, recidivism rates for minors exiting adult facilities are unimpressive. The last time that North Carolina reported recidivism rates for minors separate from any other age group was in 2006, in a report that analyzed offenders released in the 2001-2002 fiscal year. Re-arrest rates for offenders who were minors when entering the system were higher than any other age group at every risk level, even when controlling for other factors.²³

In fact, low-risk minors in North Carolina’s criminal court system were more than twice as likely to be re-arrested as low-risk offenders aged 18-21.²⁴ In contrast, out of those minors sent and released from a secure lockup in the juvenile system, only 47 percent were ever subsequently rearrested as an adult, while those minors who had been committed to juvenile detention facilities were re-arrested as an adult only 32 percent of the time.²⁵

These recidivism rates strongly suggest that, just as each national study has shown, North Carolina's criminal courts and adult facilities are not producing effective results for minors. This higher recidivism severely affects public safety in North Carolina as well as negatively impacts budgets. The greater rate at which minors exiting adult facilities are re-arrested not only increases victimization but also forces taxpayers to pay for additional terms or interventions for that offender. But higher recidivism isn't the only negative outcome for minors in the criminal justice system in North Carolina, as revealed in the answer to the next question.

Are Adult Facilities Safe and Effective for Juvenile Offenders?

While some juveniles in the criminal justice system receive probation or fines, a portion of juvenile offenders tried as adults will receive a sentence that includes a prison or jail term. There are relatively few 16 year-olds in North Carolina sent to adult prisons, suggesting that a change in this regard would not create a significant disruption in either the juvenile or adult systems.

Given the age groupings used in the available statistics, there is not data on 16 year-olds alone. Currently, many more 16 and 17 year-olds enter adult probation and county jail every year, and in 2011, only 365 youths aged 16 or 17 years-old entered the adult prison system in North Carolina.²⁶ Most male offenders aged 17 or under are currently at the North Carolina Department of Correction's Western Youth Institution, which houses offenders ages 13 to 22.²⁷ The inmates are not separated by age within this range, but rather by level of privileges.²⁸

Additionally, under North Carolina law, there is no statutory requirement that the Department provide specialized youthful offender programming.²⁹ While there is a G.E.D. program at this lockup, there is not a program at the Western Youth Institution for earning an actual high school diploma.³⁰ The small number of female inmates ages 16 and 17 are housed with women of all ages at the Department of Correction's North Carolina Institution for Women.³¹

While there certainly are particular juveniles that should be placed in adult facilities, given the grave risks to the juvenile in those facilities it is important to avoid overreliance on this type of placement.

The first risk is safety related. Minors in adult facilities are at greater risk for harm given their age, stature, and lack of maturity. For example, one national survey of jails found that in one year, minors were the victims of inmate-on-inmate sexual violence 21 percent of the time, even though they only made up less than one percent of jail inmates.³²

Non-sexual violence is similarly high for minors in adult facilities. Research has found minors are 50 percent more likely to be physically attacked by a fellow inmate with a weapon of some sort, and twice as likely to be assaulted by staff.³³

Another physical risk to minors in adult facilities is suicide. Precise suicide rates are difficult to calculate for all types of institutions because the cause of death is not always specified, but the limited evidence available suggests the risk of suicide may be higher for youths placed in adult prisons.³⁴

The second risk is the lack of adequate programming for minors in adult facilities. Almost all minors will at some point be released into society (and, unlike older offenders, often while still in the age group that commits the most crimes), and even the most basic education or vocational training can increase the odds they will be productive, law-abiding citizens. Those skills may not necessarily be learned in an adult prison or jail.

Minors in adult facilities usually have not yet completed their secondary education, yet 40 percent of jails do not provide any education and only 7 percent provide some sort of vocational education, often necessary to obtaining any sort of gainful employment upon release.³⁵ Further, only 56 percent of prisons in the United States have vocational education.³⁶ Even amongst those facilities that do offer education, it is not clear that it is widely used: only 54 percent of state inmates reported taking classes when polled by the federal government.³⁷

In North Carolina, criminal courts and adult facilities are similarly poor places for minors to develop. When the North Carolina Sentencing and Policy Advisory Commission analyzed treatment of minors in adult prisons, they found only three programs designed specifically for minors and their education, employment, and substance abuse needs, and those three are not offered at every prison in North Carolina that houses youthful offenders.³⁸

In contrast, minors in the juvenile justice system in North Carolina have access to, through Juvenile Crime Prevention Councils,

- Parent, family, and interpersonal skill building; tutoring, prevention programs, and guided growth,
- Community Day Programs that include mentoring,
- Home-based clinical treatments for specific issues including family issues,
- Restorative services including restitution, mediation and conflict resolution, or teen courts,
- Psychological services, or
- Group home, foster care, or shelter care.³⁹

Other juvenile specific rehabilitation programs include community initiatives such as non-institutional pre-adjudication homes, wilderness camps, after-school programs, and mentoring options,⁴⁰ while minors in secure juvenile facilities take part in year-round education, vocational training, work opportunities, mental health and substance abuse services (if appropriate), and social skills services.⁴¹ While all such programs must be carefully scrutinized to ensure they are effective, and those which are not should be eliminated, the overarching point is that it makes more sense to focus existing, limited rehabilitation resources on the youngest offenders since they will be back in society for the greatest number of years.

In addition to comparing adult and juvenile facilities, it is also important for policymakers to consider the differences between adult and juvenile probation. For example, juvenile probation maintains strong connections with the education system and places a high import on the statutory mandate that 16 year-olds be in school.⁴² Adult probation focuses far more heavily on employment requirements and imposes extensive court costs and fees.⁴³ These costs are lower in the juvenile system since it is assumed youths lack an income stream and are instead in school.

Benefits Likely to Exceed Costs Over Time

On the surface, raising the age can appear to lead to higher costs given that juvenile probation and incarceration cost more than adult probation and incarceration. This is largely the result of smaller caseloads in juvenile probation and lower staff to inmate ratios in juvenile lockups, as well as the greater economies of scale in adult lockups and the greater availability of programming in the juvenile system. Also, adult probationers pay more in fees, as they are expected to hold a job, while juvenile probationers, who are expected to be in school, are assessed minimal fees.

However, evidence suggests that these cost advantages of the adult system in the short term are ultimately overwhelmed by the higher costs associated with higher rates of recidivism and revocations when 16 and 17 year-olds are in the adult system. This is partly due to some of the same factors that account for the lower short-term costs, such as larger caseloads and less programming in the adult system.

In 2011, the Vera Institute for Justice estimated that raising the age of juvenile jurisdiction from 16 to 18 for alleged misdemeanants and low-level felons will generate \$52.3 million in net benefits, per annual cohort of youth aged 16 and 17, from the combined perspectives of taxpayers, victims, and youth.⁴⁴ These net benefits include both savings to taxpayers and an approximation of the human costs of crime, which include lost or damaged property, medical costs, and pain and suffering. While it is painfully difficult to put a price-tag on the toll that many crimes take on victims, these actuarial estimates have been performed using well accepted techniques similar to those used to measure losses in the insurance industry. In addition to the avoided costs to victims, the state benefits from the increased rate of em-

ployment and amount of earnings that are forecast for these formerly troubled youngsters attributable to not being saddled with a lifetime adult criminal record. It should be noted that although the Vera study assumed some low-level teen felons would also be placed in the juvenile system, H.B. 725 only affects 16-17 year olds who have committed misdemeanors.

Fortunately, North Carolina is not merely relying on the projections, but can look to the proven experience of other states. Some 48 other states from Massachusetts to Mississippi have successfully raised the age and implemented this policy change effectively and without significant complications. Many states, including Connecticut and Illinois, have found that the transition can be accomplished largely by reallocating funds and resources among the adult and juvenile systems.

In fact, Connecticut found that the actual cost of raising the age was much less than had been projected. Although juvenile caseloads were expected to grow 40 percent, they only grew 22 percent.⁴⁵ Moreover, these figures reflected the addition of felony offenders to the juvenile system, who are not covered by the pending North Carolina legislation. As a result of this smaller than anticipated increase, Connecticut spent nearly \$12 million less in fiscal years 2010 and 2011 than had been budgeted.

In Illinois, the state shifted 17 year-old misdemeanants to the juvenile justice system in 2010. This was so successful that the state in 2013 also made the juvenile system the default destination for 17 year-old felony offenders. Illinois went further in 2013 largely because the juvenile and overall crime fell sharply following the 2010 change and, rather than being overrun, the juvenile justice system continued to shrink after the change.⁴⁶ Indeed, Illinois subsequently closed three juvenile lockups because they were no longer needed and juvenile arrests fell overall, even with the addition of 17 year-old misdemeanants.⁴⁷ Illinois even found that the size and scope of the juvenile justice system decreased after program implementation because of its effectiveness.

Another factor that weighs in favor of making this shift is recently adopted federal standards pursuant to the Prison Rape Elimination Act (PREA). While PREA has long required those under 18 (federal law treats 16 and 17 year-olds as juveniles) to be separated when in custody with older offenders, the new standards specify that this cannot be accomplished simply by relying on solitary confinement and that, instead, programming must be provided to youths in adult lockups.⁴⁸ This is likely to raise costs for county jails and state prisons in areas such as staffing, programming, and facilities. Noncompliance can result in a 5 percent penalty of federal grant funds, which support state and local law enforcement agencies throughout the state, as well as increased exposure to civil litigation.

Conclusion

The evidence indicates North Carolina should reconsider its laws relating to the youngest offenders who now enter the adult corrections system. From the lack of deterrent effects of imposing criminal court jurisdiction on minors, to the greatly increased recidivism rates for minors handled by the criminal justice system, to the dual risks of harm and lack of education or training for minors in adult facilities, it becomes pointedly clear that the best place for most of the state's young offenders is in the juvenile justice system.

Further, there is already a mechanism in place to ensure that minors who commit the most serious crimes can be tried and incarcerated as adults. Current law permits the transfer of any minor over the age of 13 to criminal courts if charged with a felony, and minors charged with first-degree murder for which probable cause is found must be transferred to criminal court.⁴⁹

This ensures that the "worst of the worst" juvenile offenders are indeed placed in the criminal court system—as distinguished from the vast majority of minors committing mostly nonviolent crimes. The direct transfer procedure

could be supplemented with a blended sentencing law that would provide greater flexibility to split the sentence between the juvenile and adult systems when appropriate.

But for the vast majority of 16 year-olds, the appropriate place is the juvenile justice system—appropriate for juveniles, by obtaining better outcomes, and appropriate for North Carolina’s citizens, by creating a safer state for all.

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