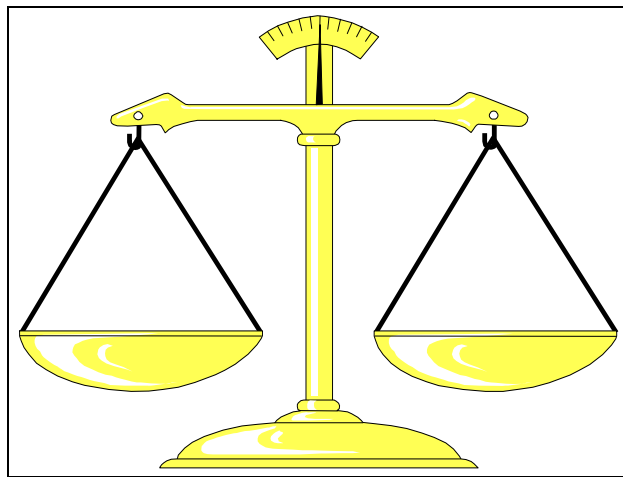


**NORTH CAROLINA
SENTENCING
AND
POLICY ADVISORY
COMMISSION**



***REPORT ON STUDY OF YOUTHFUL OFFENDERS
PURSUANT TO SESSION LAW 2006-248, SECTIONS
34.1 AND 34.2***

***SUBMITTED TO THE 2007 SESSION OF THE
NORTH CAROLINA GENERAL ASSEMBLY
MARCH 2007***

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

REPORT TO THE NORTH CAROLINA GENERAL ASSEMBLY

In compliance with

SESSION LAW 2006-248, SECTIONS 34.1 AND 34.2

March 2007

I. INTRODUCTION

MANDATE

The North Carolina Sentencing and Policy Advisory Commission established the Youthful Offender Subcommittee at its September 23, 2005, meeting in response to a request from Representative Alice Bordsen to study issues related to youthful offenders. The request was formalized through Session Law 2006-248, Sections 34.1 and 34.2 entitled "Study Youthful Offenders." This legislation mandated the following:

The North Carolina Sentencing and Policy Advisory Commission may 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 conducting the study, the Commission may review the laws concerning juveniles and youthful offenders from the federal government, other states, and the relevant North Carolina laws and programs. The Commission shall consult with the Department of Correction, the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Public Instruction in conducting the study. (Session Law 2006-248, Section 34.1.)

The Commission shall submit a final report, along with any recommended legislation, by March 1, 2007, to the 2007 General Assembly. (Session Law 2006-248, Section 34.2.)

PROCESS

The Youthful Offender Subcommittee met six times: November 4, 2005, and January 13, March 31, June 23, August 25, and October 6, 2006. The Subcommittee decided to follow the processing of youthful offenders through the various decision points in North Carolina's criminal justice system, starting with jurisdictional issues. Members received statistical information on youthful offenders aged 16-21 and programs and services available to this age group within the Department of Correction (DOC). Given the fact that some of the youthful offenders have been transferred from the juvenile court, members heard about the history and process of the juvenile justice system as well. Other presentations to the Subcommittee included the stages of development in youth, jurisdictional mechanisms used by North Carolina and other states that open up the options for youth involvement in

the juvenile and/or adult criminal justice systems (*e.g.*, transfer, reverse waiver, blended sentencing), and effective programming strategies for youth. The DOC and the Department of Juvenile Justice and Delinquency Prevention (DJJDP) gave presentations at two of the meetings. The Commission also consulted with the Department of Health and Human Services and the Department of Public Instruction on their programs and services relative to youthful offenders.

This report represents a compilation of the discussions and presentations that occurred during the course of the Subcommittee's work. Following the Introduction, Section II of the report provides a short summary of the recommendations presented to the General Assembly by the Commission. Section III gives an overview of the current laws and policies as well as some statistical information relative to youthful offenders in North Carolina. Section IV lists the recommendations accompanied by detailed commentaries. Finally, the Appendices offer additional information that supplements the main body of the report.

II. SUMMARY OF RECOMMENDATIONS

The North Carolina Sentencing and Policy Advisory Commission, in response to the mandate contained in Session Law 2006-248, Sections 34.1 and 34.2, presents the following as recommendations to be considered by the General Assembly:

- 1. Increase 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.**
- 2. 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. The task force should include but not be limited to representatives of the Administrative Office of the Courts, the Department of Juvenile Justice and Delinquency Prevention, the Department of Correction, the Department of Health and Human Services, the Department of Public Instruction, the Department of Crime Control and Public Safety/Governor's Crime Commission, and the North Carolina Sentencing and Policy Advisory Commission.**
- 3. Retain the current criteria and process for transfer of alleged juvenile offenders to Superior Court for trial as adults.**
- 4. Adopt a post-conviction procedure for juveniles 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. (The General Assembly may wish to consider excluding certain offenses or offense classes from eligibility for this process.)**
- 5. Adopt a youthful offender status for sentencing of misdemeanors and low-level felonies in adult court, such that a sentencing judge may, upon plea or verdict of guilt, impose for offenders under 21 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.**

III. YOUTHFUL OFFENDERS IN NORTH CAROLINA

During its study of youthful offenders, the Sentencing Commission examined the laws governing the treatment of such offenders at all stages of the criminal justice process. There are few statutory considerations for youthful offenders that distinguish their handling from other adult offenders in North Carolina. This section gives a brief overview of the juvenile and adult criminal justice systems, and provides a description of the situations in which the criminal justice process differentiates the processing and treatment of youthful offenders from other adults (*see* Appendix A).

To distinguish them from offenders within the jurisdiction of the juvenile courts (for offenses committed prior to age 16), this report uses “adult” to mean persons 16 or older. “Adult” therefore includes legal minors (ages 16 and 17), young adult offenders (18 to 21) and adults over 21 as a single group within the original jurisdiction of the adult criminal courts. “Youthful offenders” refers only to offenders who commit offenses between their 16th and 21st birthdays, and juveniles transferred from the juvenile courts for trial as adults (but *see* “Corrections,” below, for the age range for “youthful offenders” in the DOC).

JUVENILE VERSUS CRIMINAL JURISDICTION

The juvenile courts of North Carolina have exclusive jurisdiction over juveniles alleged to be delinquent (though limited for certain cases in which the court does not initiate proceedings before the juvenile ‘ages out’ of its jurisdiction). N.C.G.S. 7B-1601 (2001). A “juvenile” is defined as any person under the age of 18 who is not married, emancipated, or a member of the armed forces, but “delinquent juvenile” is limited to persons between the ages of 6 and 16 who commit crimes or infractions. N.C.G.S. 7B-1501 (2001). Delinquency jurisdiction has been vested in the juvenile courts since the inception of a distinct juvenile justice system in North Carolina in the early 20th century (*see* Appendix A.2).

The age of an offender at the time of his or her offense determines which court has jurisdiction. Therefore persons under the age of 16 who commit crimes or infractions are, with limited exceptions, handled initially in the juvenile justice system. Persons who commit offenses after their 16th birthdays are treated as adults and tried in the criminal courts, though some rights and procedures established in the Juvenile Code for juveniles (under 18) continue to apply to those offenders even during their prosecution as adults.

Some juveniles alleged to be delinquent may be transferred to the Superior Court for trial as adults. Any juvenile 13 years of age or older who is alleged to have committed a felony may be transferred for trial as an adult; a juvenile alleged to have committed a Class A felony at age 13 or older must be transferred if probable cause is found. N.C.G.S. 7B-2200 (1998). If a juvenile is convicted in Superior Court, any future offenses committed by the juvenile will be excluded from the juvenile courts regardless of the offender’s age at the time of the new offense. Transferred juveniles from 13 to 15 are treated the same as any other defendant in the criminal courts, subject to the few provisions for youthful offenders described below.

Some youthful offenders are under the simultaneous jurisdiction of both the juvenile and criminal justice systems. An offender adjudicated as a juvenile delinquent remains under the jurisdiction of the juvenile courts until his or her 18th birthday, unless jurisdiction is terminated sooner by an order of

the court. Jurisdiction of the juvenile court extends to age 19 for juveniles adjudicated delinquent for felonies in classes B1 through E and to age 21 for first-degree murder, rape, or sexual offense. N.C.G.S. § 7B-1602 (2001). Therefore a juvenile under the jurisdiction of the juvenile courts who commits a new offense after his or her 16th birthday would be prosecuted as an adult in the criminal courts while still under the jurisdiction of the juvenile justice system; prosecution as an adult does not terminate juvenile court jurisdiction automatically.

INVESTIGATION AND CHARGING

Several statutes account for youth in the pre-trial stages of prosecution. A minor is entitled to the notice, presence and protection of his or her parent and/or attorney when taken into custody or interrogated by law enforcement officials. Juveniles also are “conclusively presumed to be indigent” and therefore entitled to the appointment of counsel to represent them, unlike adults who must prove their indigent status to qualify for appointed counsel. N.C.G.S. 7B-2000(b) (2000). However, youthful offenders are given almost no statutory consideration for their age in the ultimate decision to charge them with crimes (with one exception that limits how youthful convictions may be counted for status as an habitual felon).

Finally, although the statutes governing bail do not provide specifically for youthful offenders in determining the conditions of pre-trial release, several factors for consideration may be impacted indirectly by a defendant’s youth, including: family ties, employment, financial resources and record of prior convictions.

TRIAL AND SENTENCING

Other than the automatic entitlement to counsel described above, North Carolina makes no provision for youthful offenders during the trial stages of a criminal proceeding that differentiate them from older adults.

There also are no mandatory considerations for youth under Structured Sentencing. North Carolina previously provided statutory consideration for the sentencing of youthful offenders in the former Committed Youthful Offender code, but that code was repealed with the enactment of the Structured Sentencing Act.¹ Under Structured Sentencing the only considerations for youth are in felony sentencing, in which the court may find as a mitigating factor a defendant’s age or immaturity or that he is a “minor with reliable supervision available.” N.C.G.S. 15A-1340.16(e) (2005).

North Carolina provides some consideration for a defendant’s age in capital sentencing. N.C.G.S. 14-17 (2004) specifies that capital punishment is not permitted for offenses committed by persons under the age of 17, except in very limited circumstances. This prohibition was superseded in 2005 by the U.S. Supreme Court, which held that capital punishment is unconstitutional for an offense committed while a defendant was under the age of 18. *Roper v. Simmons* 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (1 Mar 2005). For youthful offenders over 18 still eligible for capital punishment, the

¹ The Committed Youthful Offender code, N.C.G.S. 148-49.1, *et seq.* (repealed), allowed early parole for youthful offenders, but Structured Sentencing abolished parole for offenses committed on or after October 1, 1994. As of September 2005, DOC still had custody of 159 inmates sentenced as committed youthful offenders for offenses committed prior to Structured Sentencing.

“age of the defendant” may be taken into account as a mitigating circumstance that weighs against imposition of the death penalty, but the statute does not set a specific age below which a defendant qualifies for the mitigating circumstance and the North Carolina Supreme Court has held that “chronological age is not the determinative factor” for such mitigation. *State v. Oliver*, 309 N.C. 326, 307 S.E.2d 304 (1983).

CORRECTIONS

As with previous stages of the criminal justice process, there are few statutory considerations for youth in the custody or under the supervision of DOC. The only strict statutory prohibition on the handling of youthful offenders is that female inmates under the age of 16 may not be given a work assignment while incarcerated. N.C.G.S. 148-27 (1967). Other statutes provide that DOC shall give priority of resources for educational, vocational or technical training to certain inmates under 21 with relatively short sentences, that surgery may not be performed on a minor inmate without the consent of a parent or guardian, and that inmates may not be imprisoned in Central Prison while under the age of 16 except in limited circumstances. N.C.G.S. 148-22.1 (2005), 148-22.2 (2004) and 148-28 (1977), respectively. With few statutory requirements to govern the handling of youthful offenders, DOC has adopted a number of policies to provide for them.

DOC’s primary policy for youthful offenders pertains to its definition of this offender group within the prison population. Currently, DOC defines youthful inmates as being between the ages of 13 and 25. The lower part of the age range contains juveniles 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, DOC has increased the upper age range for youthful offenders from 21 to 25.

Another DOC policy designates certain facilities for youthful inmates, especially those incarcerated for felonies. As of 2006, there are five facilities that house these youth: Foothills Correctional Institution, Morrison Correctional Institution, North Carolina Correctional Institution for Women, Polk Correctional Institution, and Western Youth Institution. Youthful males who are convicted of felonies are incarcerated in facilities separate from those housing male felons 25 and older. Male felons and misdemeanants under the age of 19 are processed and incarcerated at Western. Males aged 19-25 who receive active sentences for misdemeanors may be housed in the same minimum custody prisons with adult male misdemeanants.

In general, the same programming available for adult offenders within the prison system is also offered to some degree for youthful offenders, especially in the areas of academic education and social skills. There are three programs that are designed for youthful offenders (although not offered at all prisons that house youth) to address post-secondary education needs, chemical dependency, and employability. Within the prisons that serve youthful offenders, there is limited programming which deals with mental health issues and vocational education needs.

Regarding youthful probationers, the Division of Community Corrections (DCC) within DOC does not group caseloads according to age, but rather by various supervision levels based on the seriousness of their offense, risk to the community, criminogenic needs, and by certain offense types.

The majority of the programs offered by DCC are directed at the broader probation population and not at specific age groups.

EXPUNCTION

The one feature of North Carolina's criminal justice system that provides exclusively for youthful offenders is the expunction of records of conviction (*see* Appendix A.3). Records of juvenile proceedings are confidential, and persons adjudicated delinquent may petition for expunction of their juvenile records upon reaching age 18 and after termination of the juvenile court's jurisdiction. Adult offenders convicted of misdemeanors (except for traffic offenses), underage possession of alcohol, and certain low-level offenses involving the possession of controlled substances and drug paraphernalia may petition the court to expunge the records of arrest, trial, and conviction, but only if the offenses were committed prior to age 18 (misdemeanors) or 21 (possession of alcohol), N.C.G.S. 15A-145 (2005), or age 22 (low-level possession of drugs or paraphernalia). N.C.G.S. 90-96 (2002). While defendants of any age may petition the court to expunge records of arrest and trial when they are acquitted or later exonerated, only youthful offenders described above are entitled to expunction of actual convictions.

YOUTHFUL OFFENDER STATISTICS AND RECIDIVISM RATES

Based on adult court data for offenders convicted in FY 2004/05, close to 6% of all offenders were age 16 or 17 at the time of their offenses – 1,612 of the 28,734 felons and 9,786 of the 163,324 misdemeanants (*see* Appendix Tables B-1 and B-6). While felons aged 16 or 17 at the time of their offenses were more likely to be convicted for violent felonies (16% compared to 12% for all felons, Appendix Table B-2), they were considerably less likely to have prior criminal records (35% had a prior record compared to 76% for all felons, Appendix Table B-4). Finally, they were also less likely to receive active sentences than all felons (25% compared to 37%, respectively, Appendix Table B-5).

Recidivism rates were examined in a separate Sentencing Commission study for a sample of 57,973 offenders released from prison or placed on probation during FY 2001/02 (*see* Appendix Table B-9). Rearrest rates after a three-year follow-up period were the highest at 46% for youthful offenders aged 16 or 17 at the time of their commitment to the DOC, compared to a rearrest rate of 38% for the entire sample. Youthful offenders, whether on probation or following incarceration, had the highest failure rates not only for rearrests, but also for reconvictions, reincarcerations, and probation revocations.

IV. RECOMMENDATIONS

The North Carolina Sentencing and Policy Advisory Commission, in response to the mandate contained in Session Law 2006-248, Sections 34.1 and 34.2, presents the following as recommendations to be considered by the General Assembly:

- 1. Increase 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.**

Commentary:

(a) North Carolina is one of only three states (with New York and Connecticut) where the age of adult jurisdiction is 16 – in ten of the states the age is 17, and in the remaining 37 states and the District of Columbia, the age is 18 (*see* Appendix C.1). This majority model is a recognition of the slow maturation process of juveniles and the concomitant need for society to allow for some second chances for this group while providing them with a balance of punishment and treatment in a separate and more rehabilitative system. A significant volume of scientific evidence on stages of human development points to immaturity and its effect on reduced criminal culpability in youth up to age 18 and beyond, well into their 20's. (*See* Appendix C.2.) At least four areas of developmental immaturity may bear directly on the criminal culpability of youth: impaired risk perception, foreshortened time perspective, greater susceptibility to peer influence, and reduced capacity for behavioral control. In recognition of these facts, some states also provide additional consideration for youthful offenders (those over 17 or 18) in the adult criminal justice system. Changing the age of jurisdiction would bring North Carolina in line with the rest of the United States in the way the state processes, adjudicates, and treats its juvenile residents.

Two major considerations lead to the recommendation to leave the age of adult jurisdiction for traffic offenses unchanged: the complexity of resolving the public record issues between juvenile courts and the state's Division of Motor Vehicles, and the resources involved in transferring a large volume of traffic offenses into the juvenile courts. The Commission suggests that the topic of 16 and 17 year old traffic offenders be examined at a later date.

(b) The programming and rehabilitative needs of juveniles, including those between the ages of 16 and 18, are better met within a treatment-oriented environment. Age-specific programming tailored to identify the risk factors faced by adolescents has more evidence-based success in treating court-involved youth and reintegrating them into the community, thereby improving individual lives and reducing the future risk to public safety. (For recidivism rates of youthful offenders in North Carolina, *see* Appendix Tables B-9 and B-10.)

Effective programs should be implemented for youthful offenders, irrespective of whether they remain in the adult criminal justice system or are shifted to the juvenile justice system. Selection of specific programs should be based on two important considerations: program effectiveness and long term program costs/benefits. A growing body of information is available on strategies found to be successful in dealing with (or reducing recidivism for) youthful offenders (*see* Appendix C.3). These strategies focus on areas that have not been fully developed in this age group such as moral reasoning,

problem solving, social skills, and impulse control. Research findings also highlight strategies that have not significantly reduced recidivism, such as specific deterrence programs, boot camp, programs with large groups of high-risk youth, individual counseling, certain types of residential programs, and drug testing without treatment.

In evaluating the cost/benefit balance of programs, short-term costs must be weighed, especially with this age group, against long-term benefits such as reduced future recidivism, gainful employment, or reduced substance abuse. (For a detailed analysis of costs/benefits, *see* the table from the Washington State Institute for Public Policy Study in Appendix C.3).

(c) The recommended change in age of juvenile jurisdiction clearly would have a systemic impact on the judiciary, executive branch agencies, and local governments, as well as large-scale implications on resources – and their redistribution – among these entities. Dealing with the 16 through 18 age groups involves a complex net of laws, processes and services, and any change would impact both state agencies and local governments.

2. 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. The task force should include but not be limited to representatives of the Administrative Office of the Courts, the Department of Juvenile Justice and Delinquency Prevention, the Department of Correction, the Department of Health and Human Services, the Department of Public Instruction, the Department of Crime Control and Public Safety/Governor's Crime Commission, and the North Carolina Sentencing and Policy Advisory Commission.

Commentary:

(a) Phase-in: Implementation of the change in age of juvenile jurisdiction is a complex process and needs careful attention. Factors for consideration include the shift in population from the adult to the juvenile system, infrastructure and procedural changes, personnel requirements, and resources. Implementation should be delayed by two years after the passage of the bill to allow a task force to work out the details and develop a road map to be followed.

(b) Task Force: A multi-agency task force should be formed to plan the implementation of the change in age. The task force would conduct an impact analysis, which would include a plan for the transition of 16 and 17 year old offenders into the juvenile system and the identification of necessary resources. Members of the task force (*see* recommended composition above) may consult with other agencies as they see fit. Consideration should be given by the General Assembly as to the timeline for the task force to complete the road map, so that affected agencies are given sufficient time to implement the plan.

(c) Resources: The scope of this report addresses the resources needed for the population shift that would occur with a change in the age of juvenile jurisdiction. The resource estimates that follow relate only to youthful offenders aged 16 and 17 at the time of their conviction and commitment to the DOC. It is recognized that the need for resources extends beyond these estimates. For example, court

costs, law enforcement and jail resources, and services within the community will need to be studied and planned for by the aforementioned task force.

To estimate the population shift that would occur if a change in the age of juvenile jurisdiction was made, two samples were examined: juvenile court complaints filed and adult court data of youthful defendants charged with felonies and misdemeanors from January to December 2004. From the juvenile data it was determined that 25,186 delinquent complaints were filed, with an adjudication rate of 38.5% or 9,684 of those complaints adjudicated (*see* chart in Appendix D). Applying this adjudication rate to the 32,926 youthful offenders aged 16 and 17 charged in the adult system in 2004, it was estimated that 12,767 offenders aged 16 and 17 would have been adjudicated in the juvenile system (or 5,794 for 16 year olds only).

Resentencing scenarios were applied to convicted 16 and 17 year old youthful offenders sentenced in the adult system, assuming they were processed, adjudicated, and disposed in the juvenile justice system. Under the summary resentencing scenario for offenders aged 16 and 17 (Appendix Table D-4), 74% (n=8,883) would have been sentenced to a community level disposition, 22% (n=2,712) would have been given an intermediate level disposition, and 4% (n=423) would have been committed to a youth development center. Using the same scenario for 16 year olds only, 75% (n=4,049) would have been sentenced to a community level disposition, 22% (n=1,187) to an intermediate disposition, and 3% (n=164) to a youth development center.

Moving these 16 and 17 year old offenders into the juvenile system would result in a savings for the DOC of 1,062 prison beds: 497 for active sentences and 565 for probation revocations (or 191 for active sentences and 252 for probation revocations for 16 year olds only). It would also reduce the number of supervision slots needed by 10,935: 1,785 slots for intermediate supervision and 9,150 slots for community supervision (or 741 slots for intermediate supervision and 4,214 community supervision slots for 16 year olds only) (*see* Appendix Table D-6).

3. Retain the current criteria and process for transfer of alleged juvenile offenders to Superior Court for trial as adults.

Commentary:

Although the Commission discussed the possibility that 13 is too young for a juvenile to assume adult responsibility for criminal actions, the Commission ultimately felt that maintaining the current transfer mechanism (*see* Appendix E.1) was important as a safeguard to public safety in appropriate cases.

4. Adopt a post-conviction procedure for juveniles 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. (The General Assembly may wish to consider excluding certain offenses or offense classes from eligibility for this process.)

Commentary:

The Commission debated the merits of reverse waiver, a process by which juveniles transferred to adult criminal courts for trial as adults could be transferred back to the juvenile courts for disposition of their cases as juvenile matters (*see* Appendix E.1). Reverse waiver provides transferred juveniles with a second review of whether or not their cases merit treatment as adult crimes with adult consequences. The Commission noted that the District Courts in North Carolina currently have an adequate process for making initial determinations about which cases merit transfer, but that the only method of reviewing and reversing transfer orders is by appeal on a narrow legal standard. Evidence presented during the Superior Court proceeding might indicate that the offender would be more likely to benefit from the services of the Department of Juvenile Justice and Delinquency Prevention, but presentation of evidence requires commencement of the trial or plea process, at which point appeal of the transfer is no longer possible and the attachment of jeopardy prevents dismissal and re-filing of the case as a juvenile matter. The Commission therefore recommends adoption of a post-conviction process for disposition of appropriate cases. The juvenile disposition would be imposed as if there had been an adjudication of delinquency for the same offense(s) for which the offender was convicted in Superior Court. The Commission does not recommend that the Superior Court's record of proceedings be expunged or made confidential.

As part of its discussion of reverse waiver, the Commission also discussed various models of blended sentencing, including the Sentencing Commission's 1999 recommendation that blended sentencing not be adopted in North Carolina. The Commission reviewed the merits and weaknesses of each model of blended sentencing and decided again not to recommend their adoption.

5. Adopt a youthful offender status for sentencing of misdemeanors and low-level felonies in adult court, such that a sentencing judge may, upon plea or verdict of guilt, impose for offenders under 21 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.

Commentary:

Criminal conviction has long-term consequences for a youthful offender's future prospects in areas like education, employment and military service. The members examined expunction of records in particular as a mechanism for relieving a first offender of the stigma of a criminal record, but noted that North Carolina's current expunction statutes required long waiting periods after conviction before offenders could petition the courts for relief. The waiting period (two years for most expunctions, one year for low-level drug possession) often impeded offenders' ability to pursue education or employment because of the convictions on their records in the interim. The Commission felt that adoption of a youthful offender status for sentencing that avoided entry of an actual conviction would provide more effective relief, in that offenders could answer honestly that they had not been "convicted" of a crime when applying for education or employment while still demonstrating their rehabilitation through compliance with the supervised probationary conditions until discharge and expunction. Offenders who violated the terms of the special supervised probation, having already pled or been found guilty, could be brought back before the court for imposition of sentence without significant additional trial expense. The youthful offender status would be limited to youth convicted of misdemeanors and felonies in Classes H and I, excluding violent felonies and any offenses that require registration as a sex offender. (The complete elements of the proposed youthful offender status are outlined in Appendix F of this report.)

APPENDICES

- A.1 Comparison of Juvenile to Criminal Processes for Youthful Offenders in North Carolina
- A.2 History of Juvenile Court in North Carolina
- A.3 Expunction in North Carolina
- B. Statistical Profile of Youthful Offenders in North Carolina
- C.1 Age at Which Offender Enters Adult Court Jurisdiction in the U.S.
- C.2 Stages of Development and Jurisprudence
- C.3
 - Successful National Programs for Youthful Offenders
 - Examples of Effective Prevention and Intervention Strategies and Programs for High-Risk and Delinquent Youth
 - Summary of Benefits and Costs (2003 Dollars)
- D. Projected Resource Shifts for Change in Age of Adult Jurisdiction
- E.1 Transfer and Reverse Waiver
- E.2 Blended Sentencing Models
- F. Youthful Offender Status – Proposed

Appendix A.1

Comparison of Juvenile to Criminal Processes for Youthful Offenders in North Carolina

JUVENILE	CRIMINAL
<p>Jurisdiction (Age)</p> <ul style="list-style-type: none"> ▪ Ages 6 to 15 ▪ At ages 13 – 15, charge of first-degree murder must be transferred to Superior Court for trial as an adult; transfer for any other felony is in the court’s discretion. ▪ Extended jurisdiction can continue until 19 or 21 for those adjudicated of certain offenses. 	<p>Jurisdiction (Age)</p> <ul style="list-style-type: none"> ▪ Age 16 and older is “adult” for criminal purposes. ▪ Juveniles convicted as adults in Superior Court are prosecuted as adults for any subsequent criminal offenses, regardless of offense class. ▪ Can lead to duplicate jurisdiction, when juveniles adjudicated delinquent and still under jurisdiction of the juvenile court commit “adult” offenses after 16.
<p>Terminology</p> <ul style="list-style-type: none"> ▪ Terminology is unique to the system. ▪ Terms reflect the therapeutic principles of the juvenile system. 	<p>Terminology</p> <ul style="list-style-type: none"> ▪ No special terminology applicable only to youth; “criminal” applies equally to convicted offenders.
<p>Juvenile Process</p> <ul style="list-style-type: none"> ▪ Process permits wide discretion by officials involved, from the court counselor’s initial diversion decision when a complaint is filed, to the judge’s imposition of disposition from the Juvenile Disposition Chart. ▪ Emphasizes speedy disposition and alternatives to secure custody (incarceration) prior to adjudication. Frequent review of secure custody prior to adjudication hearing is mandatory, but no bail. ▪ Juveniles are presumed indigent and entitled to appointed counsel; parents/guardians are responsible for attorney fees if juvenile is adjudicated delinquent. 	<p>Criminal Process</p> <ul style="list-style-type: none"> ▪ Little discretion for officials in the criminal process. State’s discretion is limited to selection of charge, dismissal, and plea negotiations. Judicial discretion is limited during sentencing, with few considerations for youthful offenders. ▪ Youth are entitled and subject to the same pre-trial release laws as all adults, including bail. No automatic, periodic review of the conditions of release for defendants in pre-trial detention. ▪ Youth under 18 retain the presumption of indigency. No such provision for defendants ages 18-21. Parents/guardians remain responsible for attorney fees for convicted offenders under 18, and those over 18 but still dependent on the parent.

JUVENILE	CRIMINAL
<p>Disposition</p> <ul style="list-style-type: none"> ▪ Purposes of disposition emphasize meeting the needs of the juvenile – treatment, training, and rehabilitation – in addition to public safety and accountability. ▪ “Accountability” includes that of the parents/guardians, in addition to that of the juvenile. ▪ Adjudication of delinquency is via trial by judge, only; there are no jury trials in juvenile court. 	<p>Sentencing</p> <ul style="list-style-type: none"> ▪ Purposes of sentencing address rehabilitation as one purpose among equals: public safety, deterrence, punishment commensurate with injury, and assisting rehabilitation and restoration as a lawful citizen. ▪ Minimal consideration for involvement of others responsible for the defendant. ▪ Disposition of criminal charges in Superior Court is by jury trial or plea only; there are no bench trials in criminal court.
<p>Commitment</p> <ul style="list-style-type: none"> ▪ Commitments of delinquent juveniles to Youth Development Centers can be for indefinite duration, with discretion of the court to allow confinement other than in a YDC upon recommendation from DJJDP. ▪ Commitment may continue to age 19 or 21, depending on the offense of adjudication. 	<p>Corrections</p> <ul style="list-style-type: none"> ▪ Sentences imposed under Structured Sentencing are definite, with little discretion in DOC to deviate from the judgment of the court. ▪ DOC may not extend a sentence beyond the maximum imposed by the court. ▪ Considerations for youth are almost entirely based on DOC policies; there are almost no statutory requirements.
<p>Expunction</p> <ul style="list-style-type: none"> ▪ Record of juvenile adjudication can be expunged for any offense other than a Class A – E felony, absent subsequent misconduct. ▪ No limitation on the number of eligible adjudications that can be expunged. 	<p>Expunction</p> <ul style="list-style-type: none"> ▪ Expunction of convictions is limited to misdemeanor convictions prior to age 18 (or 21 for certain alcohol offenses), absent subsequent misconduct. ▪ Expunction of convictions is unlimited; expunction of arrest and trial records for dismissals or acquittals is one-time only.

Appendix A.2

Presented to the Youthful Offender Subcommittee, January 13, 2006

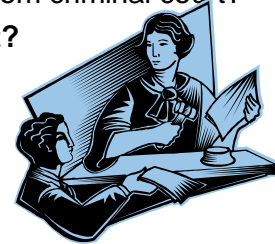
History of Juvenile Court in North Carolina



Janet Mason
December 13, 2005
Institute of Government
UNC at Chapel Hill

Juvenile court is not just a criminal court for young people.

- What is it?
- How does it differ from criminal court?
- **Why do we have it?**



The juvenile justice system provides procedures and resources for certain youth who commit acts that would be crimes if committed by adults:

- Law enforcement
- Complaints, intake, screening, diversion
- Detention
- Court hearings
- Consequences



How is Juvenile Court Different from Criminal Court?

- **Jurisdiction – to whom do these special procedures and resources apply?**
- Participants
- Procedures
- Outcomes
- Purposes
- Language / terminology



How are juvenile and criminal courts alike?

1. They deal with the same acts
 - There are not “adult crimes” and “juvenile crimes.”
2. Juveniles have most of the same rights that adult defendants have – except
 - Self-representation
 - Bail
 - Jury trial



Faulty Assumptions



- Everything in juvenile court is confidential.
- A juvenile record can always be expunged.
- A juvenile record cannot be used against a juvenile in a later adult criminal case.
- Consequences are always more severe in the adult system than in the juvenile system.
- When a juvenile is committed, the judge decides the length of the commitment.

Jurisdiction Based on Age



“Juvenile”

- Under age 18 and not married, emancipated, or in the armed services.

“Delinquent Juvenile”

- A juvenile who commits a crime or infraction when at least 6 years of age and not yet 16.

Initial jurisdiction

1. depends on age at the time of the offense.
2. requires an offense committed by a “juvenile” while at least 6 and not yet 16 (unless previously convicted as an adult).
3. lasts indefinitely for felonies committed while 13, 14, or 15.



When

1. felony is committed before age 16, and
2. a juvenile proceeding is not begun or is not completed before age 18,

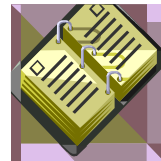
Then

- Juvenile court has initial jurisdiction, but only to determine probable cause and
 - transfer to superior court or
 - dismiss



Court Has Continuing Jurisdiction

1. even if the juvenile is emancipated after the offense.
2. for dispositional purposes,
 - a. to age 18 (unless extended), or
 - b. until terminated by court order, whichever occurs first.



Court May Extend Jurisdiction

1. To age 19, if juvenile is committed to YDC for B1-E felony.
2. To age 21, if juvenile is committed to YDC for first-degree murder, rape, or sex offense.



Extended Jurisdiction

1. is never automatic
2. cannot be ordered at disposition
3. requires written plan for further treatment from DJJDP
4. requires notice and opportunity for a hearing



Court Has Jurisdiction Over Parents and May:

1. Hold parent in contempt
2. Order parent to
 - participate in juvenile's treatment
 - obtain treatment
 - attend parenting classes
 - pay child support and attorney fees



Variety of Age Distinctions

- 6 youngest age of jurisdiction
- 10 youngest age for some fingerprinting, photographs, and commitment to YDC
- 13 probable cause required; transfer possible
- 14 youngest age to waive right to have parent present during interrogation
- 16 treated as adult for criminal conduct
- 18 max. jurisdiction for less than E felony
- 19 max. jurisdiction for B-E felonies
- 21 max. jurisdiction for most serious felonies

Treatment of Juveniles in Early America

- For the most part, children were treated just like adults.
- Use of incarceration became favored over execution and other punishments.
- Prisoners were not classified.
- Concerns re housing children with older serious offenders.
- Governors often pardoned young offenders.



First special attention to juveniles was in relation to corrections, not judicial practices.

- Houses of refuge
- Apprenticeship
- Attempts to “save” children through rehabilitation and discipline
- Creation of larger industrial and reform schools
- Continued use of adult prisons



In N.C., concerns resulted in 1907 legislation authorizing **Stonewall Jackson Manual Training and Industrial School**

- Youth were still tried in criminal court
- Judge could commit those under 16 for indefinite period of time



Early judicial practices followed **English common law:**

- Up to Age 7 – Conclusive presumption that child incapable of criminal intent
- Age 7 to 14 – Rebuttable presumption that child incapable of criminal intent
- Over Age 14 – Always prosecuted and punished as adult



N.C. Legislation
1915 – Probation Courts Act

- Created special jurisdiction for “delinquent” and “dependent” children under 18
- Juvenile probation and detention separate from adults
- Relied on counties for funding
- Not implemented uniformly
- Repealed in 1919

1919 – First N.C. Juvenile Court Act

- National Child Labor Committee study
- Proposed legislation included children age 18 or younger
- Legislature changed to only those under age 16
- Jurisdiction could continue to age of majority
- Court could transfer felony case of 14- or 15-year-old to superior court

1919 Juvenile Court Act applied to children who were

- | | |
|--------------|--|
| • Delinquent | • Misdirected |
| • Neglected | • Disobedient to parents or beyond their control |
| • Dependent | • Destitute or homeless |
| • Truant | • In danger of becoming so |
| • Unruly | |
| • Wayward | |
| • Abandoned | |

1919 Juvenile Court Act

- In all cases, issue before the court was: **Is the child in need of the care, protection, or discipline of the state?**
- Procedures informal
- In many respects, resembles later Juvenile Codes



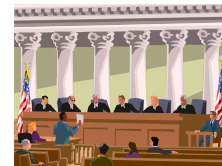
1919 to 1969
Parens Patriae Rules

- Laws held constitutional
- Juveniles viewed as wards of state
- These are civil, not “criminal,” cases
- Benevolent purposes used to justify informality and breadth of judicial discretion
- Lawyers rarely involved

Emergence of Juvenile Rights in Delinquency Cases

U.S. Supreme Court

- 1966 Kent v. U.S.
- 1967 In re Gault
- 1970 In re Winship



Established juveniles’ constitutional due process rights

New N.C. Juvenile Code – 1970
Juvenile Cases Begin to Look More Like Criminal Cases

- Defined “child” as any person under the age of 16
- Distinguished undisciplined and delinquent
- Continued to address all categories of juveniles together
- Added due process protections for delinquency cases

Juvenile Code Revision Committee
Late 1970s

- Much concern about growth in juvenile crime and serious and chronic offenders
- Did not identify age jurisdiction in delinquency cases as concern
- Recommended lowering undisciplined age to 16
- Focused extensively on dispositions, juvenile “corrections,” and need for community resources

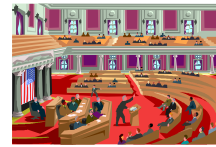
New N.C. Juvenile Code – 1980

- Continued jurisdictional age at 16
- Continued transfer age at 14
- Continued to address all categories of juveniles together
- Expanded due process protections in delinquency cases
- Expanded dispositional options
- Added emancipation, expungement, confidentiality.

1994 – Special Crime Session

N.C. General Assembly lowered to 13 the age at which

- court must conduct probable cause hearings in felony cases and
- juvenile’s case may be transferred to superior court.



Governor’s Commission on Juvenile Crime and Justice
1997 – 1999

- Recommended that age of delinquency jurisdiction remain 16 and age of dispositional jurisdiction be increased, noting:
 1. Detrimental impact on overburdened juvenile justice system
 2. Public opinion in light of serious crimes committed by juveniles
 3. Exorbitant budgetary projections

New Juvenile Code –1999
G.S. Chapter 7B

- Initial jurisdiction age unchanged
- Transfer age unchanged
- Limited expansion of dispositional jurisdiction
- Retained transfer authority of governor [G.S. 7B-2517]



Changes and Trends

- Relevance of nature of offense
- Emergence of Family Court
- Need to improve representation for juveniles
- Need for training
- Emphasis on de-institutionalization
- Influence of federal JJDP Act
- More awareness of parents' role
- More openness in the system

The primary goals of juvenile proceedings are:

- Protect the public
- Help juveniles become nonoffending, responsible, and productive members of the community



In re Allison, 143 N.C. App. 586 (2001) (citing and quoting from earlier cases)

- The purpose of the juvenile law is not for the punishment of offenders but for the salvation of children.
- Juveniles are in need of supervision and control due to their inability to protect themselves. In contrast, adults are regarded as self-sufficient.

In re Allison, 143 N.C. App. 586 (2001)

The Act treats delinquent children not as criminals, but as wards and undertakes to give them the control and environment that may lead to their reformation and enable them to become law-abiding and useful citizens, a support and not a hindrance to the commonwealth.

Appendix A.3 Expunction in North Carolina

Juvenile

Note: Juvenile court records of delinquency or undisciplined status are not public records, and may be disclosed only to specific parties even if not expunged. N.C.G.S. 7B-3000.

- Adjudication for any offense other than a Class A – E felony may be expunged.
- Must be 18 to petition for expunction (16 if alleged delinquent but not adjudicated as such).
- Evidence of rehabilitation required:
 - o 18 months since release from juvenile court jurisdiction
 - o No subsequent adjudication or conviction of a felony or misdemeanor, other than a traffic violation, in any state or against the United States.
 - o Two verified affidavits of the juvenile's good character and reputation, from persons not related to the juvenile.
- Expunction applies to court and law enforcement records.
- Records of the Department of Juvenile Justice and Delinquency Prevention are retained or disposed as determined by the Department.
- Juvenile *and parents* may legally deny the existence of the expunged proceeding. The juvenile must disclose the expunged record if testifying in a future juvenile proceeding.

Criminal

- Records of arrest and prosecution resulting in no conviction or in subsequent exoneration may be expunged.
 - N.C.G.S. 15A-146: Defendant not convicted.
 - N.C.G.S. 15A-147: For victims of identity theft.
 - N.C.G.S. 15A-148: Of DNA if dismissed on appeal or after pardon of innocence.
 - N.C.G.S. 15A-149: Of all records after pardon of innocence.
 - N.C.G.S. 90-96(b): On successful completion of deferred judgment for certain first drug offenses.
 - N.C.G.S. 90-113.14(b): On successful completion of deferred judgment for toxic vapors offenses.

- Expunction of convictions is limited to misdemeanors, underage alcohol possession, and certain low-level drug offenses.

N.C.G.S. 15A-145	N.C.G.S. 90-96(e)
<ul style="list-style-type: none"> ▪ Misdemeanors (no traffic), including underage alcohol possession. ▪ Offense must have occurred prior to age 18 (21 for alcohol). ▪ Evidence of rehabilitation: <ul style="list-style-type: none"> ○ Two-year wait. ○ No intervening conviction. ○ No outstanding restitution. ○ Two affidavits of good character and reputation. ▪ The court and “all law enforcement agencies bearing record of the same” must expunge their records of the conviction. DOC is omitted. 	<ul style="list-style-type: none"> ▪ Misdemeanor possession of Schedule II through VI, paraphernalia, or felony possession of cocaine less than 1 gram. ▪ Offense must have occurred prior to age 22. ▪ Evidence of rehabilitation: <ul style="list-style-type: none"> ○ Twelve-month wait. ○ No intervening conviction. ○ Drug Education School (waivable by the court). ▪ The court and “all law enforcement agencies bearing records of the conviction and records related thereto” must expunge their records of the conviction. DOC is omitted.

Note: N.C.G.S. 90-113.14(e) (in the N.C. Toxic Vapors Act) is almost identical to N.C.G.S. 90-96(e), permitting expunction of convictions for misdemeanor possession of substances in Schedules II through VI. This makes it redundant with 90-96(e), which covers expunction for the same offenses. Further, G.S. 90-113.14(e) says that it applies to convictions for possession of substances in Schedules II through VI “of this Article.” The schedules of controlled substances are not contained in the same Article, making the scope of this statute unclear. According to the AOC’s Records Officer, few (if any) petitions for expunction have been filed under G.S. 90-113.14(e).

- Any petitioner receiving expunction of a conviction in N.C. is restored in the contemplation of the law to “the status he occupied before arrest or indictment or information or conviction.”

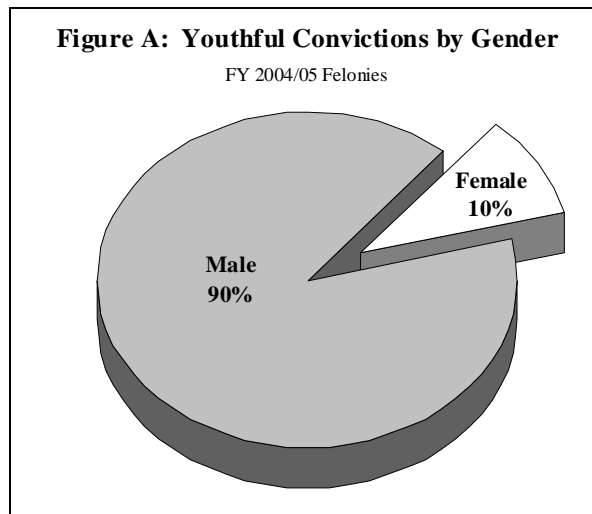
A petitioner granted an expunction may deny the existence of the record without being guilty of perjury or of making a false statement in response “to any inquiry made of him for any purpose.”

Appendix B
Statistical Profile of Youthful Offenders in North Carolina
Table B-1: Distribution of Youthful Offenders by Age at Offense
FY 2004/05 Felonies

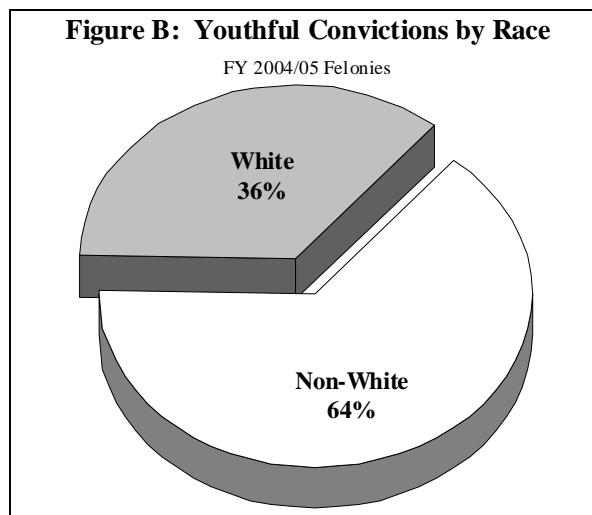
< 16 Years	16-17 Years	18-21 Years	All Youth	All Felons
26 (0%)	1,612 (5%)	5,366 (19%)	7,004 (24%)	28,734 (100%)

Note: Tables one through eight were reviewed by the Youthful Offender Subcommittee using data from FY03/04. The tables presented herein use the most recent fiscal year, 2004/2005.

SOURCE: N.C. Sentencing and Policy Advisory Commission, FY 2004/05 Felony Statistical Report Data.



SOURCE: N.C. Sentencing and Policy Advisory Commission, FY 2004/05 Felony Statistical Report Data.



SOURCE: N.C. Sentencing and Policy Advisory Commission, FY 2004/05 Felony Statistical Report Data.

**Table B-2: Distribution of Convictions by Offense Class
FY 2004/05 Felonies**

Offense Class	Age at Offense			All Youth	All Felons
	< 16 Years	16-17 Years	18-21 Years		
A	0 (0%)	9 (0.6%)	19 (0.4%)	28 (0.4%)	85 (0.3%)
B1	1 (4.0%)	5 (0.3%)	13 (0.3%)	19 (0.3%)	146 (0.6%)
B2	2 (8.0%)	21 (1.4%)	49 (1.0%)	72 (1.1%)	268 (1.0%)
C	2 (8.0%)	10 (.7%)	40 (0.8%)	52 (0.8%)	880 (3.4%)
D	3 (12.0%)	81 (5.5%)	217 (4.4%)	301 (4.7%)	706 (2.7%)
E	6 (24.0%)	110 (7.5%)	284 (5.8%)	400 (6.3%)	1,083 (4.1%)
F	1 (4.0%)	95 (6.4%)	317 (6.5%)	413 (6.5%)	1,857 (7.1%)
G	4 (16.0%)	178 (12.1%)	625 (12.8%)	807 (12.7%)	3,054 (11.6%)
H	5 (20.0%)	709 (48.1%)	2,051 (42.0%)	2,765 (43.3%)	10,633 (40.6%)
I	1 (4.0%)	257 (17.4%)	1,270 (26.0%)	1,528 (23.9%)	7,511 (28.6%)
TOTAL	25 (100%)	1,475 (100%)	4,885 (100%)	6,385 (100%)	26,223 (100%)

Note: Of the 29,093 felony convictions in FY 2004/05, 2,870 were excluded from this table. Of the 7,074 youthful felony convictions in FY 2004/05, 711 convictions were excluded from this table. These convictions did not fit within the sentencing grid due to discrepant offense classes, prior record levels, or for other reasons (such as consecutive sentencing and extraordinary mitigation).

SOURCE: N.C. Sentencing and Policy Advisory Commission, FY 2004/05 Felony Statistical Report Data.

Table B-3: Convictions by Crime Types
FY 2004/05 Felonies

Crime Type	Age at Offense			All Youth	All Felons
	< 16 Years	16-17 Years	18-21 Years		
Person	17 (68.0%)	421 (28.5%)	1,048 (21.5%)	1,486 (23.3%)	4,726 (18.0%)
Property	6 (24.0%)	709 (48.1%)	1,741 (35.6%)	2,456 (38.5)	9,413 (35.9%)
Non-Trafficking Drug	1 (4.0%)	260 (17.6%)	1,679 (34.4%)	1,940 (30.3%)	9,296 (35.5%)
Other Felony	1 (4.0%)	85 (5.8%)	417 (8.5%)	503 (7.9%)	2,788 (10.6%)
TOTAL	25 (100%)	1,475 (100%)	4,885 (100%)	6,385 (100%)	26,223 (100%)

Note: Of the 29,093 felony convictions in FY 2004/05, 2,870 were excluded from this table. Of the 7,004 youthful felony convictions in FY 2004/05, 619 convictions were excluded from this table. These convictions did not fit within the sentencing grid due to discrepant offense classes, prior record levels, or for other reasons (such as consecutive sentencing and extraordinary mitigation).

SOURCE: N.C. Sentencing and Policy Advisory Commission, FY 2004/05 Felony Statistical Report Data.

Table B-4: Convictions by Prior Record Level
FY 2004/05 Felonies

Prior Record Level	Age at Offense			All Youth	All Felons
	< 16 Years	16-17 Years	18-21 Years		
I	21 (84.0%)	958 (64.9%)	1,824 (37.4%)	2,803 (43.9%)	6,273 (23.9%)
II	3 (12.0%)	457 (31.0%)	2,131 (43.6%)	2,591 (40.6%)	9,025 (34.4%)
III	0 (0%)	56 (3.8%)	739 (15.1%)	795 (12.4%)	5,176 (19.7%)
IV	1 (4.0%)	4 (0.3%)	179 (3.7%)	184 (2.9%)	3,953 (15.1%)
V	0 (0%)	0 (0%)	10 (0.2%)	10 (0.2%)	1,040 (4.0%)
VI	0 (0%)	0 (0%)	2 (0%)	2 (0%)	756 (2.9%)
TOTAL	25 (100%)	1,475 (100%)	4,885 (100%)	6,385 (100%)	26,223 (100%)

Note: Of the 29,093 felony convictions in FY 2004/05, 2,870 were excluded from this table. Of the 7,004 youthful felony convictions in FY 2004/05, 619 convictions were excluded from this table. These convictions did not fit within the sentencing grid due to discrepant offense classes, prior record levels, or for other reasons (such as consecutive sentencing and extraordinary mitigation).

SOURCE: N.C. Sentencing and Policy Advisory Commission, FY 2004/05 Felony Statistical Report Data.

**Table B-5: Convictions by Sentence Imposed
FY 2004/05 Felonies**

Type of Punishment	Age at Offense			All Youth	All Felons
	< 16 Years	16-17 Years	18-21 Years		
Active	16 (64.0%)	361 (24.5%)	1,436 (29.4%)	1,813 (28.4%)	9,556 (37.0%)
Intermediate	8 (32.0%)	691 (46.8%)	2,244 (45.9%)	2,943 (46.1%)	11,600 (44.0%)
Community	1 (4.0%)	423 (28.7%)	1,205 (24.7%)	1,629 (25.5%)	5,067 (19.0%)
Minimum Active Sentence (Months)	38	14	14	14	32
TOTAL	25 (100%)	1,475 (100%)	4,885 (100%)	6,385 (100%)	26,223 (100%)

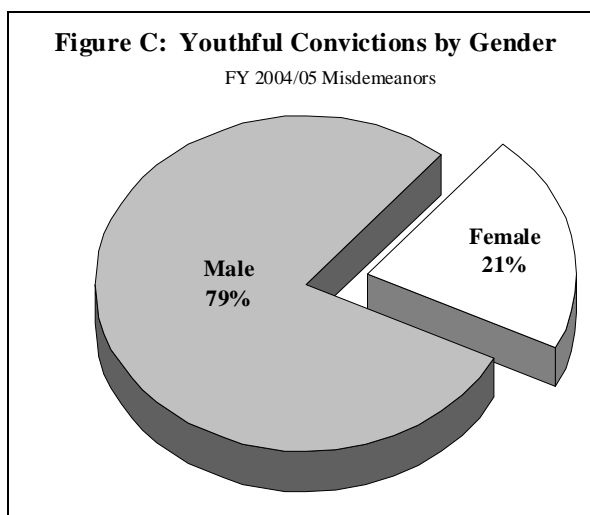
Note: Of the 29,093 felony convictions in FY 2004/05, 2,870 were excluded from this table. Of the 7,004 youthful felony convictions in FY 2004/05, 619 convictions were excluded from this table. These convictions did not fit within the sentencing grid due to discrepant offense classes, prior record levels, or for other reasons (such as consecutive sentencing and extraordinary mitigation).

SOURCE: N.C. Sentencing and Policy Advisory Commission, FY 2004/05 Felony Statistical Report Data.

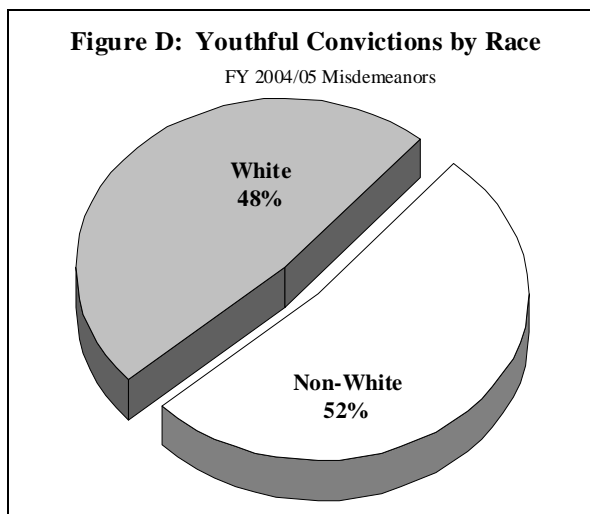
**Table B-6: Distribution of Youthful Offenders by Age at Offense
FY 2004/05 Misdemeanors**

< 16 Years	16-17 Years	18-21 Years	All Youth	All Misdemeanants
1 (0%)	9,786 (6%)	27,642 (17%)	37,429 (23%)	163,324 (100%)

SOURCE: N.C. Sentencing and Policy Advisory Commission, FY 2004/05 Misdemeanor Statistical Report Data.



SOURCE: N.C. Sentencing and Policy Advisory Commission, FY 2004/05 Misdemeanor Statistical Report Data.



SOURCE: N.C. Sentencing and Policy Advisory Commission, FY 2004/05 Misdemeanor Statistical Report Data.

Table B-7: Distribution of Convictions by Offense Class
FY 2004/05 Misdemeanors

Offense Class	Age at Offense			All Youth	All Misdemeanants
	<16	16-17 Years	18-21 Years		
A1	0 (0%)	450 (4.7%)	1,745 (6.4%)	2,195 (6.0%)	14,391 (8.6%)
1	1 (100%)	4,848 (50.3%)	15,168 (55.9%)	20,017 (54.4%)	95,285 (57.2%)
2	0 (0%)	2,722 (28.2%)	4,689 (17.3%)	7,411 (20.1%)	32,010 (19.2%)
3	0 (0%)	1,625 (16.8%)	5,554 (20.4%)	7,179 (19.5%)	25,077 (15.0%)
TOTAL	1 (100%)	9,645 (100%)	27,156 (100%)	36,802 (100%)	166,763 (100%)

Note: Of the 170,542 misdemeanor convictions in FY 2004/05, 3,779 were excluded from this table. Of the 37,429 youthful misdemeanor convictions in FY 2004/05, 627 convictions were excluded from this table. These convictions did not fit within the sentencing grid due to discrepant offense classes, prior conviction levels, or for other reasons.

SOURCE: N.C. Sentencing and Policy Advisory Commission, FY 2004/05 Misdemeanor Statistical Report Data.

Table B-8: Convictions by Prior Conviction Level
FY 2004/05 Misdemeanors

Prior Conviction Level	Age at Offense			All Youth	All Misdemeanants
	<16	16-17 Years	18-21 Years		
I	1 (100%)	6,815 (70.7%)	14,549 (53.6%)	21,365 (58.1%)	75,246 (45.1%)
II	0 (0%)	2,713 (28.1%)	10,882 (40.1%)	13,595 (36.9%)	62,580 (37.5%)
III	0 (0%)	117 (1.2%)	1,725 (6.3%)	1,842 (5.0%)	28,937 (17.4%)
TOTAL	1 (100%)	9,645 (100%)	27,156 (100%)	36,802 (100%)	166,763 (100%)

Note: Of the 170,542 misdemeanor convictions in FY 2004/05, 3,779 were excluded from this table. Of the 37,429 youthful misdemeanor convictions in FY 2004/05, 627 convictions were excluded from this table. These convictions did not fit within the sentencing grid due to discrepant offense classes, prior conviction levels, or for other reasons.

SOURCE: N.C. Sentencing and Policy Advisory Commission, FY 2004/05 Misdemeanor Statistical Report Data.

Table B-9: Rearrest Rates Using a Three-Year Follow-Up for Offenders Placed on Probation or Released from Prison in FY 2001/02

Age at Admission to DOC	N	All	Prisoners	Probationers
< 16 Years	37	43.2	60.0	31.8
16-17 Years	3,970	46.2	67.7	43.2
18-21 Years	9,031	44.9	60.2	39.5
All Youthful Offenders	13,038	45.3	61.5	40.8
All Offenders	57,973	38.2	49.8	33.3

Note: Tables nine and ten were reviewed by the Youthful Offender Subcommittee using data on offenders placed on probation or released from prison in FY98/99. The tables presented herein use data on offenders placed on probation or released from prison in FY 2001/02.

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2001/02 Correctional Program Evaluation Data

Table B-10: Technical Revocation Rates for Offenders Placed on Probation or Released from Prison in FY 2001/02

Age at Admission to DOC	N	All	Prisoners	Probationers
< 16 Years	37	32.4	26.7	36.4
16-17 Years	3,970	34.1	24.2	35.5
18-21 Years	9,031	29.8	24.9	31.5
All Youthful Offenders	13,038	31.1	24.8	33.0
All Offenders	57,973	26.4	19.3	29.4

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2001/02 Correctional Program Evaluation Data

Appendix C.1
Age at Which Offender Enters Adult Court Jurisdiction in the U.S.

16 Years Old	17 Years Old	18 Years Old
Connecticut	Georgia	Alabama
New York	Illinois	Alaska
North Carolina	Louisiana	Arizona
	Massachusetts	Arkansas
	Michigan	California
	Missouri	Colorado
	New Hampshire	Delaware
	South Carolina	<u>District of Columbia</u>
	Texas	Florida
	Wisconsin	Hawaii
		Idaho
		Indiana
		Iowa
		Kansas
		Kentucky
		Maine
		Maryland
		Minnesota
		Mississippi
		Montana
		Nebraska
		Nevada
		New Jersey
		New Mexico
		North Dakota
		Ohio
		Oklahoma
		Oregon
		Pennsylvania
		Rhode Island
		South Dakota
		Tennessee
		Utah
		Vermont
		Virginia
		Washington
		West Virginia
		Wyoming

Appendix C.2

Presented to the Youthful Offender Subcommittee, January 13, 2006

Stages of Development and Jurisprudence

Youthful Offender Subcommittee
NC Sentencing and Policy Advisory Commission

January 13, 2005

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Traditional Juvenile Justice Jurisprudence

Children are not developmentally mature, and hence should be treated differently from adults, because of:

Diminished capacity—the degree to which children and adolescents should be held responsible for their delinquent acts

Proportionality—mitigation of punishments for juveniles because of their developmental lack of social and mental capacity

Room to reform—kind of punishments and the kind of consequences that should be avoided

Key Issue

“When is it appropriate to treat the subjects of the juvenile justice system charged with serious offenses as if they were adults and banish them to prison for long terms? To put the matter less charitably: When are juveniles not juveniles?” (Zimring, 1981, p. 193)

Juvenile Legal Culpability Issues

Because of their deficiencies in cognitive functioning, juveniles do not act with the level of moral culpability that characterizes adult criminal conduct.

Research based factors:

- Impaired risk perception
- Foreshortened time perspective
- Greater susceptibility to peer influence
- Behavioral control capability

New Research on Brain Development

Adolescent brains are far less developed than previously believed, affecting higher level functions such as planning, reasoning, judgment, and behavior control:

National Institute of Mental Health (Drs. Giedd & Gogtay)

UCLA School of Medicine (Dr. Sowell)

Brain Behavior Lab, Univ. of Penn (Dr. Gur)

References

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Appendix C.3

Presented to the Youthful Offender Subcommittee, August 25, 2006

SUCCESSFUL NATIONAL PROGRAMS FOR YOUTHFUL OFFENDERS

North Carolina Sentencing and Policy Advisory Commission
August 25, 2006

Methodology to Evaluate Program Effectiveness

- Rigorous research design
- Empirically measurable program components and outcomes
- Statistically significant effects (*i.e.*, not due to random chance)
- Multi-site evaluations with replicable outcomes
- Cost/benefit analysis

Elements of Effective Programs

- Sizeable impact
- Impact on several age-appropriate risk factors and protective factors
- Multi-context programs (such as individual, family, school, peers, community)
- Impact sustainable over time

Elements of Effective Programs (Cont.)

- Program/client targeting
- Focused and structured program contents
- Accurate/consistent implementation and delivery
- Cost/benefit effectiveness

Examples of Effective Programs for High-Risk Youth

Strategy	Model Program
Compensatory Education	Quantum Opportunities
Youth Development Skills	Life Skills Training
Mentoring	Big Brothers/Big Sisters

Examples of Effective Programs for *Delinquent Youth*

Strategy	Model Programs
Cognitive-Behavioral Training	Aggression Replacement Training
Family Therapy and Cognitive-Behavioral Training	<ul style="list-style-type: none"> • Family Functional Therapy • Multi-Systemic Therapy • Multi-Dimensional Treatment Foster Care
Wrap-Around Services	Juvenile Repeat Offender Prevention Project

Promising Programs

- Drug Court
- Aftercare
- Drug treatment with urine testing
- Intensive Supervision Probation

Ineffective Programs

- Specific Deterrence programs
- Boot Camp
- Programs with large groups of high-risk youth
- Social casework/individual counseling
- Residential milieu treatment
- Drug abstinence/drug testing without treatment
- Waiver to adult court/incarceration

Factoring in Costs and Benefits

- Programs must look at resource issues
- Up-front costs, short- and long-term benefits
- Program effectiveness as measured by benefit/cost ratios
- Study by Washington State Institute for Public Policy (2004)

Conclusions

- There are programs that have been proven cost effective to prevent/reduce criminal behavior of youthful offenders.
- Evaluation research is an ongoing process with more studies and better methods of evaluation nationwide and in NC.

Conclusions (Cont.)

- Evaluations should be used to identify not only strategies and programs that work, but also those that do not work.
- The strategies and programs reviewed here were to give examples for what works and should not be taken as specific program recommendations to be adopted in NC.

Conclusions (Cont.)

- Long-term dollar benefits versus costs should be an important component in evaluating programs.
- Program effectiveness depends as much on implementation and delivery as on content.
- Effective programs should be implemented for youthful offenders, independent of whether they are processed and disposed under juvenile or adult jurisdiction.

Examples of Effective Prevention and Intervention Strategies and Programs for High-Risk and Delinquent Youth

High Risk Youth: Effective Prevention Programs

Strategy	Model Program	Model Program Description
Compensatory Education	Quantum Opportunities	Community-based program targeting youth (9 th grade and up) from low income families. It provides educational, developmental, and service activities combined with a sustained relationship with a peer group and a caring adult.
Youth Development Skills	Life Skills Training	School-based program that provides general life skills and social resistance skills training to middle and junior high school students to increase knowledge and improve attitudes about drug use.
Mentoring	Big Brothers/Big Sisters	Mentoring program serving disadvantaged youth up to age 18 from single parent households. The program aims to provide a consistent mentoring relationship with a responsible adult through frequent interactions between mentor and youth.

Delinquent Youth: Effective Intervention Programs

Strategy	Model Program	Model Program Description
Cognitive-Behavioral Training	Aggression Replacement Training	Multi-mode intervention designed to change the behavior of aggressive youth, reduce anti-social behavior, and teach pro-social skills. Youth attend one-hour group sessions 3 times a week for 10 weeks where they gain the tools to help them solve problems, make decisions, and positively interact in social situations.
Family Therapy and Cognitive-Behavioral Training	Family Functional Therapy	Family-based program delivered in multiple settings by a wide range of service providers designed to engage and motivate youth and families to change their communication, interaction, and problem solving patterns.
	Multi-Systemic Therapy	Short-term intensive family and community-based program delivered by therapists. Four types of services are delivered through a home-based model: strategic family therapy, structural family therapy, behavioral parent training, and cognitive behavioral therapy.
	Multi-Dimensional Treatment Foster Care	Multi-systemic clinical intervention used as an alternative to incarceration. Youth are placed in foster families for 6 to 9 months and receive weekly individualized therapy. Foster families receive weekly group supervision, and biological parents learn behavior management techniques to maintain progress made during foster care placement.
Wrap-Around Services	Juvenile Repeat Offender Prevention Project	Multi-agency, multi-disciplinary program targeting at-risk youth and first time offenders who have the greatest potential to become repeat offenders. It includes a focus on the youth and his/her family using a multi-disciplinary team, case management and service planning, and integrated service delivery.

Source: Howell, J.C. 2003. *Preventing and Reducing Juvenile Delinquency*. Thousand Oaks: Sage Publications.
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 U.S. Department of Health and Human Services. 2001. *Youth Violence: A Report of the Surgeon General*. Rockville, MD. US Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Mental Health Services, National Institutes of Health, National Institute of Mental Health.

Promising Programs

- Drug Court
- Aftercare
- Drug treatment with urine testing
- Intensive Supervision Probation

Programs That Have Not Significantly Reduced Recidivism

- Specific Deterrence programs (e.g., “Scared Straight”)
- Boot Camp
- Programs with large groups of high-risk youth
- Social casework/individual counseling
- Residential milieu treatment
- Drug abstinence/drug testing without treatment
- Waiver to adult court/incarceration

Summary of Benefits and Costs (2003 Dollars)

<u>Estimates as of September 17, 2004</u>	Measured Benefits and Costs Per Youth			
	Benefits	Costs	Benefits per Dollar of Cost	Benefits Minus Costs
	(1)	(2)	(3)	(4)
Juvenile Offender Programs				
Dialectical Behavior Therapy (in Washington)	\$32,087	\$843	\$38.05	\$31,243
<i>Functional Family Therapy (excluding Washington)</i>	\$28,356	\$2,140	\$13.25	\$26,216
<i>Multidimensional Treatment Foster Care (v. regular care)</i>	\$26,748	\$2,459	\$10.88	\$24,290
Washington Basic Training Camp §	\$14,778	-\$7,586	n/a	\$22,364
Adolescent Diversion Project	\$24,067	\$1,777	\$13.54	\$22,290
<i>Aggression Replacement Training (excluding Washington)</i>	\$15,606	\$759	\$20.56	\$14,846
<i>Functional Family Therapy (in Washington)</i>	\$16,455	\$2,140	\$7.69	\$14,315
Other Family-Based Therapy Programs for Juvenile Offenders*	\$14,061	\$1,620	\$8.68	\$12,441
<i>Multi-Systemic Therapy (MST)</i>	\$14,996	\$5,681	\$2.64	\$9,316
<i>Aggression Replacement Training (in Washington)</i>	\$9,564	\$759	\$12.60	\$8,805
Juvenile Boot Camps (excluding Washington)*§	\$0	-\$8,474	n/a	\$8,474
<i>Juvenile Offender Interagency Coordination Programs*</i>	\$8,659	\$559	\$15.48	\$8,100
Mentoring in the Juvenile Justice System (in Washington)	\$11,544	\$6,471	\$1.78	\$5,073
Diversion Progs. w/ Services (v. regular juv. court processing)*	\$2,272	\$408	\$5.58	\$1,865
Juvenile Intensive Probation Supervision Programs*	\$0	\$1,482	\$0.00	-\$1,482
Juvenile Intensive Parole	\$0	\$5,992	\$0.00	-\$5,992
Scared Straight	-\$11,002	\$54	-\$203.51	-\$11,056
Regular Parole (v. not having parole)	-\$10,379	\$2,098	-\$4.95	-\$12,478
Mentoring Programs				
<i>Big Brothers/Big Sisters (taxpayer cost only)</i>	\$4,058	\$1,236	\$3.28	\$2,822
<i>Big Brothers/Big Sisters</i>	\$4,058	\$4,010	\$1.01	\$48
<i>Quantum Opportunities Program</i>	\$10,900	\$25,921	\$0.42	-\$15,022
Youth Substance Abuse Prevention Programs				
<i>Life Skills Training (LST) ‡</i>	\$746	\$29	\$25.61	\$717

Source: S. Aos, R. Lieb, J. Mayfield, M. Miller, A. Pennucci. (2004) Benefits and Costs of Prevention and Early Intervention Programs for Youth. Olympia: Washington State Institution for Public Policy, available at <http://www.wsipp.wa.gov>

‡ Cost estimates for these programs do not include the costs incurred by teachers who might otherwise be engaged in other productive teaching activities. Estimates of these opportunity costs will be included in future revisions.

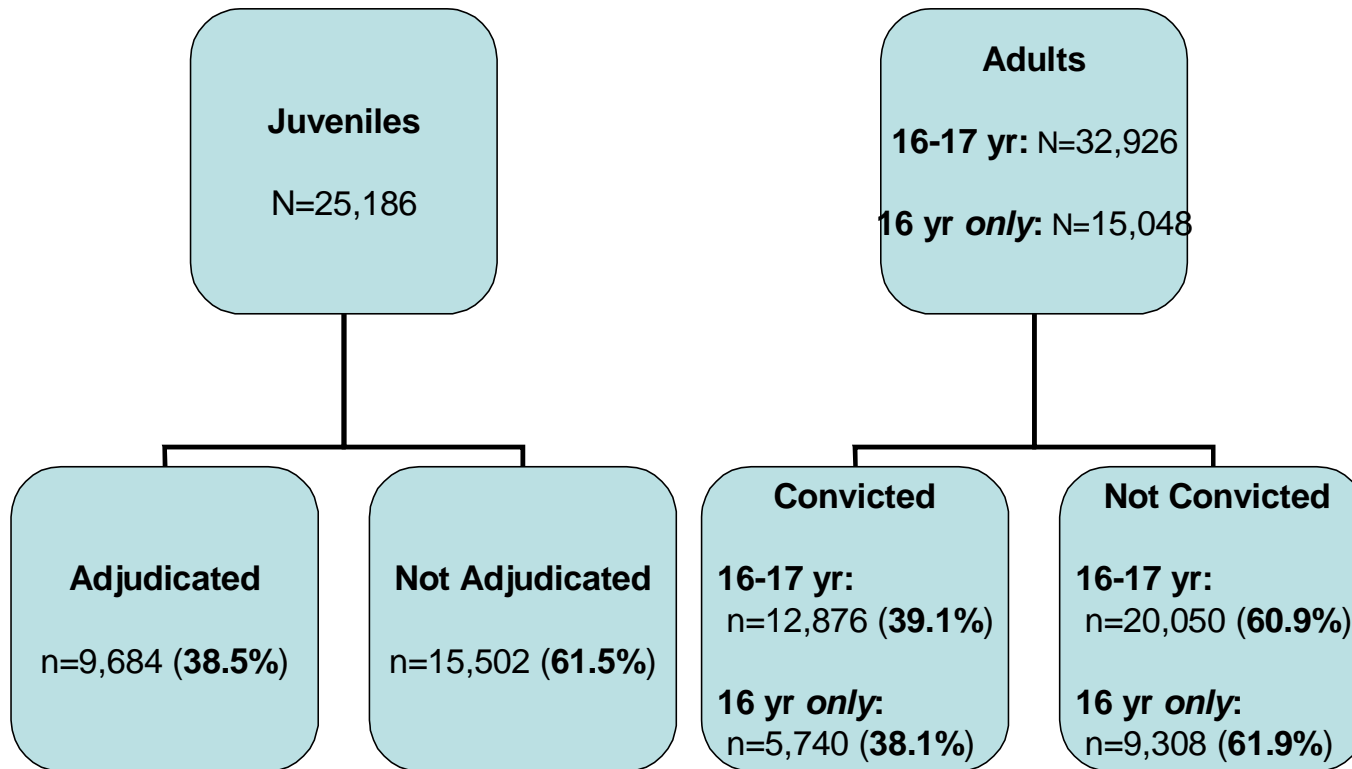
§ The juvenile boot camp cost in column (2) is a negative number because, in Washington, youth in the State's basic training camp spend less total time institutionalized than comparable youth not attending the camp. In column (4), this "negative" cost is a benefit of the camp versus a regular institutional stay.

Notes:

1. Programs marked with an asterisk are the average effects for a group of programs; program without an asterisk refer to individual programs.
2. Programs that are italicized are referenced in the Table 1 in Appendix E.2.
3. Values on this table are estimates of present valued benefits and costs of each program with statistically significant results with respect to crime, education, substance abuse, child abuse and neglect, teen pregnancy, and public assistance. Column 4 represents the overall benefit minus the cost of each program. Programs with negative dollar amounts indicate that the costs outweighed the benefits while programs with positive dollar amounts indicate benefits outweighed the costs.

Appendix D: Projected Resource Shifts for Change in Age of Adult Jurisdiction

Juvenile and Adult Offenders (16-17 Years) by Processing



SOURCE: NC Sentencing and Policy Advisory Commission, July to Dec. 2004 Felony/Misdemeanor Data
 NC Sentencing and Policy Advisory Commission, July to Dec. 2004 Juvenile Complaints Data

Table D-1
Projected Juvenile Dispositions¹ for Adjudicated 16-17 Year Olds²
Scenario 1: Base Resentencing Scenario³

OFFENSE LEVEL	DISPOSITION LEVEL					
	Level 1 Community		Level 2 Intermediate		Level 3 Commitment	
	Age 16	Age 16-17	Age 16	Age 16-17	Age 16	Age 16-17
VIOLENT	25	54	63	133	36	77
SERIOUS	520	1,191	450	1,031	82	188
MINOR	3,563	7,892	652	1,445	21	47
TOTAL	4,108	9,137	1,165	2,609	139	312

SOURCE:

NC Sentencing and Policy Advisory Commission, July to December 2004 Felony/Misdemeanor Data
 NC Sentencing and Policy Advisory Commission, July to December 2004 Juvenile Complaints Data
 NC Sentencing and Policy Advisory Commission, FY 2004/05 Juvenile Simulation Data

¹ Applied FY 2004/05 juvenile dispositional probabilities based on offense level for the most serious offense of conviction. Since juvenile record was not known, it was not possible to resentence using delinquency history level.

² Age at commission of offense.

³ Based on most serious offense of conviction for a weighted sample of 12,058 youthful offenders with criminal filings between July 1, 2004 and December 31, 2004.

Table D-2
Projected Juvenile Dispositions¹ for Adjudicated 16-17 Year Olds²
Scenario 2: Resentencing Scenario with Adjustment for Delinquency History³

OFFENSE LEVEL	DISPOSITION LEVEL					
	Level 1 Community		Level 2 Intermediate		Level 3 Commitment	
	Age 16	Age 16-17	Age 16	Age 16-17	Age 16	Age 16-17
VIOLENT	24	49	63	136	37	79
SERIOUS	509	1,142	456	1,056	87	212
MINOR	3,520	7,704	674	1,539	42	141
TOTAL	4,053	8,895	1,193	2,731	166	432

SOURCE:

NC Sentencing and Policy Advisory Commission, July to December 2004 Felony/Misdemeanor Data
 NC Sentencing and Policy Advisory Commission, July to December 2004 Juvenile Complaints Data
 NC Sentencing and Policy Advisory Commission, FY 2004/05 Juvenile Simulation Data

¹ Applies FY 2004/05 juvenile dispositional probabilities based on offense level for the most serious offense of conviction, with adjustment for incrementally increased delinquency history for 16 and 16-17 year olds.

² Age at commission of offense.

³ Based on most serious offense of conviction for a weighted sample of 12,058 youthful offenders with criminal filings between July 1, 2004 and December 31, 2004.

Table D-3
Projected Juvenile Dispositions¹ for Adjudicated 16-17 Year Olds²
Scenario 3: Resentencing Scenario with Adjustment for Transfers³

OFFENSE LEVEL	DISPOSITION LEVEL					
	Level 1 Community		Level 2 Intermediate		Level 3 Commitment	
	16	16-17	16	16-17	16	16-17
VIOLENT	24	50	60	122	34	70
SERIOUS	517	1,182	448	1,024	81	186
MINOR	3,563	7,892	652	1,445	21	47
TOTAL	4,104	9,124	1,160	2,591	136	303

SOURCE:

NC Sentencing and Policy Advisory Commission, July to December 2004 Felony/Misdemeanor Data
 NC Sentencing and Policy Advisory Commission, July to December 2004 Juvenile Complaints Data
 NC Sentencing and Policy Advisory Commission, FY 2004/05 Juvenile Simulation Data

¹ Applies FY 2004/05 juvenile dispositional probabilities based on offense level for the most serious offense of conviction, with adjustment for incrementally increased numbers of 16 and 16-17 year olds transferred to adult court.

² Age at commission of offense.

³ Based on most serious offense of conviction for a weighted sample of 12,058 youthful offenders with criminal filings between July 1, 2004 and December 31, 2004. Of the 12,058 convicted offenders, 40 are projected to be transferred to adult court.

Table D-4
Projected Juvenile Dispositions¹ for Adjudicated 16-17 Year Olds²
Scenario 4: Resentencing Scenario with Adjustment for Delinquency History
and Transfers³

OFFENSE LEVEL	DISPOSITION LEVEL					
	Level 1 Community		Level 2 Intermediate		Level 3 Commitment	
	Age 16	Age 16-17	Age 16	Age 16-17	Age 16	Age 16-17
VIOLENT	23	45	60	125	35	72
SERIOUS	506	1,134	453	1,048	87	210
MINOR	3,520	7,704	674	1,539	42	141
TOTAL	4,049	8,883	1,187	2,712	164	423

SOURCE:

NC Sentencing and Policy Advisory Commission, July to December 2004 Felony/Misdemeanor Data
 NC Sentencing and Policy Advisory Commission, July to December 2004 Juvenile Complaints Data
 NC Sentencing and Policy Advisory Commission, FY 2004/05 Juvenile Simulation Data

¹ Applies FY 2004/05 juvenile dispositional probabilities based on offense level for the most serious offense of conviction, with adjustments for both incrementally increased delinquency history points for 16 and 16-17 year olds, and for incrementally increased numbers of 16 and 16-17 year olds transferred to adult court.

² Age at commission of offense.

³ Based on most serious offense of conviction for a weighted sample of 12,058 youthful offenders with criminal filings between July 1, 2004 and December 31, 2004. Of the 12,058 convicted offenders, 40 are projected to be transferred to adult court.

**Table D-5
Summary of Resentencing Scenarios**

SCENARIOS	AGE 16				AGE 16-17			
	DISPOSITION LEVEL				DISPOSITION LEVEL			
	Level 1 Community	Level 2 Intermediate	Level 3 Commitment	SUM	Level 1 Community	Level 2 Intermediate	Level 3 Commitment	SUM
Scenario 1	4,108	1,165	139	5,412	9,137	2,609	312	12,058
Scenario 2	4,053	1,193	166	5,412	8,895	2,731	432	12,058
Scenario 3	4,104	1,160	136	5,400	9,124	2,591	303	12,018
Scenario 4	4,049	1,187	164	5,400	8,883	2,712	423	12,018

SOURCE:

NC Sentencing and Policy Advisory Commission, July to December 2004 Felony/Misdemeanor Data
 NC Sentencing and Policy Advisory Commission, July to December 2004 Juvenile Complaints Data
 NC Sentencing and Policy Advisory Commission, FY 2004/05 Juvenile Simulation Data

NOTE:

Of the 32,926 16-17 year olds, 12,058 were adjudicated and 20,050 were not adjudicated. Applying a diversion rate similar to that in the juvenile system, 20.8% or 4,170 of the 20,050 youthful offenders not adjudicated would be diverted and served in the community.

Of the 15,048 16 year olds, 5,412 were adjudicated and 9,308 were not adjudicated. Applying a diversion rate similar to that in the juvenile system, 20.8% or 1,936 of the youthful offenders not adjudicated would be diverted and served in the community.

Cost per YDC bed in FY2004/05 was \$83,125. Cost information for disposition levels 1 and 2 was not available.

**Table D-6
Reductions in Resources in the Adult System**

Age at Offense	Trials	Convictions	Prison Beds (per year)		Supervision ³ (per year)	
			Active ¹	Revocation ²	Intermediate	Community
16-17	34	12,876	497	565	1,785	9,150
16 Only	22	5,740	191	252	741	4,214

SOURCE:

NC Sentencing and Policy Advisory Commission, July to December 2004 Felony/Misdemeanor Data
 NC Sentencing and Policy Advisory Commission, FY 2004/05 Structured Sentencing Simulation Model

¹ Counts all felony active sentences with a minimum of 90 days or longer. The 30 misdemeanor convictions resulting in a minimum sentence of 90 days or longer are not included in this projection.

² Applies a 49% revocation rate for felonies and a 32% revocation rate for misdemeanors with suspended sentences with a minimum sentence of 90 days or longer.

³ Applies 18 months supervision for intermediate and 12 months supervision for community punishment.

NOTE:

Average yearly cost per prison bed in FY 2004/05 was \$23,199.

Appendix E.1

Transfer and Reverse Waiver

I. Transfer

- A. Definition: The process by which a case that normally would be prosecuted in the juvenile court is transferred to adult criminal court for prosecution of the juvenile as an adult.
- B. Three types:
 - 1. Statutory Exclusion – Removing certain cases from juvenile court jurisdiction entirely.
 - 2. Direct File – Prosecutorial discretion to file certain cases directly in criminal court.
 - 3. Judicial waiver – Transfer decision made by the juvenile court.
 - a. Mandatory – Juvenile court must transfer a case meeting certain criteria.
 - b. Presumptive – Shifts the burden to the juvenile to prove transfer is not appropriate.
 - c. Discretionary – Leaves the transfer decision entirely in the juvenile court’s hands.
- C. Transfer in North Carolina
 - 1. Statutory Exclusion – “Once an adult, always an adult.” G.S. 7B-1604.
 - 2. Judicial Waiver (Mandatory) – Juveniles 13 or older, charged with a Class A felony.
 - 3. Judicial Waiver (Discretionary) – Juveniles 13 or older, charged with any felony.

II. Reverse Waiver

- A. Definition: The process by which a juvenile charged in or transferred to criminal court for trial as an adult is transferred to juvenile court for adjudication.
- B. Four Types:
 - 1. Error Correction – Reverse waiver of a case for which jurisdiction properly belongs in juvenile court, but was filed in criminal court.
 - 2. Rejection of Transfer – Reverse waiver for a case that originated in juvenile court but was transferred to criminal court for trial.
 - 3. Post-Disposition – Reverse waiver to juvenile court for entry of a juvenile disposition after the offender has been tried and convicted as an adult in criminal court.
 - 4. Juvenile Selection – Transferring a case in the original jurisdiction of the criminal court to the juvenile court for adjudication, but generally in very limited circumstances.
- C. Reverse Waiver in North Carolina
 - 1. N.C. has no reverse waiver process that transfers a case from criminal court to juvenile court. A case erroneously filed in criminal court against a juvenile must be dismissed and re-filed through the juvenile petition process.
 - 2. N.C. has an appeal process that resembles Rejection of Transfer, in that a juvenile court judge’s transfer decision may be reviewed – but only for an abuse of discretion – in an appeal to the Superior Court. G.S. 7B-2603.

Appendix E.2

BLENDING SENTENCING MODELS

- **Juvenile Court Has Jurisdiction**

- *Juvenile Inclusive* – Juvenile court may impose both a juvenile disposition and adult sentence.
- *Juvenile Exclusive* – Juvenile court may impose either a juvenile disposition or an adult sentence.
- *Juvenile Contiguous* – Juvenile court may impose a sentence that is in force beyond the juvenile jurisdiction.

- **Criminal Court Has Jurisdiction**

- *Criminal Inclusive* – Criminal court may impose both an adult sentence and a juvenile disposition.
- *Criminal Exclusive* – Criminal court may impose either an adult sentence or a juvenile disposition.

Appendix F
Youthful Offender Status – Proposed

Age (at time of offense)	Prior to the 21 st birthday.
Offense(s) Eligible	<ul style="list-style-type: none"> ▪ Misdemeanors ▪ Felonies – H and I, only ▪ No offenses that require registration as a sex offender. ▪ No violent felonies.
Additional Criteria	<ul style="list-style-type: none"> ▪ Victims given notice and opportunity to be heard. ▪ No prior felony conviction or misdemeanor involving moral turpitude. ▪ No previous probation. ▪ Unlikely to commit more than a Class 3 misdemeanor.
Initiating Official	District Attorney or Judge
Timing/Process	Sentencing option for the Court after plea or jury verdict of guilt.
Supervised/ Unsupervised	Supervised probation, only.
Conditions Permitted	Any valid condition of probation.
Term of Probation	<ul style="list-style-type: none"> ▪ Five-year maximum. ▪ Extensible by up to 3 additional years if needed to fulfill conditions of restitution or treatment.
Effect	<ul style="list-style-type: none"> ▪ Upon successful completion of probation, defendant is discharged without conviction. ▪ Offender may petition for expunction of records of arrest and prosecution.