

# Policy Options and Considerations for Further Deliberation

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North Carolina, Connecticut, and New York are the only states in the country that draw the line of adulthood for criminal justice purposes at age 16. Forty-seven states use 17 or 18 as the age at which most adolescent offenders are treated as adults. In addition to age of jurisdiction, 29 of the 50 states use other approaches (i.e., transfers or waivers) to handle 16- and 17-year-olds who have been charged with a crime. Other sections of this report describe how other states handle 16- and 17-year-olds who have been charged with a crime and the research on sentencing strategies and adolescent development.

Below are three among numerous policy options available to North Carolina policymakers for dealing with 16- and 17-year-olds who have been charged with a crime. For each option, some or all of the following are included: anticipated results, the number of offenders expected to be affected, examples of resource needs, and identification of at least one state currently using the option.

With regard to resources, the General Assembly's Fiscal Research Division is working with the NC Department of Juvenile Justice and Delinquency Prevention (NCDJJD), the NC Department of Correction (DOC), the Judicial Branch, and other agencies to determine the potential costs of shifting 16- and 17-year-olds into the juvenile system. There are numerous questions regarding the resource

implications of such a change. Two of the primary questions are 1) What would it cost to place the 16- and 17-year-olds into the various juvenile programs (including community, intermediate, and commitment levels)?, and 2) What is the current cost to the DOC of supervising and providing programs for 16- and 17-year-olds in state prisons and on probation? This information will help inform policymakers about possible cost shifts from DOC to cover new costs stemming from the potential change.

*Note: The following policy options are not recommendations, nor are they in priority order. Rather, they are intended to inform the important discussion under way in North Carolina regarding how best to handle 16- and 17-year-olds who have been charged with a crime.*

## **Option 1: Status Quo - Continue to treat 16- and 17-year-old offenders as adults, regardless of their crime.**

### *States Using this Option*

Currently, Connecticut and New York have the same age structure as North Carolina. Both Connecticut and New York, however, make it easier for 16- and 17-year-olds to clear their criminal records after a period of good behavior.

*Note: In 2006, the Juvenile Jurisdiction Planning and Implementation Committee of the Connecticut*

*General Assembly created a plan to examine the state's policies concerning 16- and 17-year-olds who have been charged with a crime. The Committee's final report and recommendations are available at <http://www.cga.ct.gov/hdoljpic/>*

### ***Variation to the Status Quo***

Some states use an adult blended sentencing model in which adult court judges have the discretion to order young offenders to begin sentences in the juvenile system and, under conditions specified by the judge, finish sentences in the adult system.

### ***Anticipated Result***

All offending 16- and 17-year-olds would continue to be tried in the adult criminal system, regardless of their crime. If convicted, 16- and 17-year-olds would be sentenced in adult courts and would have permanent criminal records, unless they petition the court to have their record expunged.

*Note: Under current North Carolina law, expungement is available only for misdemeanor offenses committed prior to age 18, except for misdemeanor possession of alcohol or drugs, and one, low-level felony for simple possession of cocaine.*

Programming, treatment, and other services for 16- and 17-year-olds would continue to be operated by the Department of Correction and are similar to those available to adults. Some of these services are designed specifically for youthful offenders.

### ***Some Resource Considerations***

Resources could remain at current levels; however, state DOC officials would need to continue to develop programming for adolescent offenders and may be responsible for meeting federal requirements for mental health, social services, and education. Over the past few years, the NCDJJD has been developing a continuum of evidence-based services, many of which are appropriate for 16- and 17-year-old offenders. The services would generally not be available to young offenders in the adult system.

## **Option 2: Raise the minimum age at which adolescent offenders are tried in adult court to 18 but either allow or mandate that felonies and select other cases continue be handled in adult criminal courts.**

Twenty-nine states use various kinds of transfer laws to put serious crimes committed by 16- and 17-year-olds into the adult criminal courts, even when the age of adult jurisdiction is 18. They do this by allowing prosecutors (through direct file legislation), judges (through waivers), or the legislature (through excluding certain kinds of cases from juvenile court) to move some classes of crimes committed by 16- and 17-year-olds to the adult system. (*For explanations of direct file and waiver laws, see Brief 3.*)

For example, under this option North Carolina could raise the adult age to 18 but give prosecutors the authority to “direct file” any case involving a 16- or 17-year-old in adult court, as is done in Vermont. The legislature could also limit direct file by either excluding certain offenses such as minor felonies, or adding certain offenses, such as misdemeanors. South Carolina and Tennessee allow a judge to move any case involving an adolescent over the age of 16 to adult jurisdiction. Cases involving 16- and 17-year-olds that would remain in adult court would be governed by adult rules. Cases sent to juvenile court would be governed by juvenile rules. Some states designate 16- and 17-year-old offenders for the adult system based on the offender's prior record.

### ***States Using this Option***

Vermont, Nebraska, South Carolina, and Tennessee use some aspects of this option.

### ***Anticipated Result***

The outcomes for felony and other serious offenders could be much like the status quo, depending on the criteria set by the legislature. Most felony cases and cases involving repeat offenders would continue to be tried in adult court, and these offenders would continue to be sent to the adult system for punishment.

For misdemeanor offenses, most adolescent offenders who were previously sent to adult courts would be in the juvenile justice system and would have access to a broad array of community-based services. As discussed in Brief 4 of this report, research has shown that recidivism rates for adolescents are lower when these offenders are handled by juvenile versus criminal courts.

### *Some Resource Considerations*

Law enforcement officers and court personnel would have to process some 16- and 17-year-olds within the rules and procedures of the juvenile justice system which would require changes to pre-trial or pre-adjudicated hearings, parental permission, investigations, non-testimonial identification procedures, and custody.

With regard to facilities, there would be few additional resource needs because felonies committed by 16- and 17-year-olds could continue to be handled in adult court and receive adult supervision. There would be minimal impact on the use of adult and juvenile correctional facilities. The juvenile system could continue to use facilities designed for younger, more serious offenders.

Most misdemeanor cases involving 16- and 17-year-olds would be handled through the juvenile system. The age of dispositional jurisdiction would have to be adjusted, however, to allow time for a meaningful disposition. The effect of having youth 18 and older in the juvenile system would have to be addressed. While jury trials are infrequent in misdemeanor cases in adult court, these would decline even further as more misdemeanors would be handled in juvenile court.

There would be an increase in the resources needed for probation and other community services. If existing staff ratios and supervision rules remained in place, most 16- and 17-year-old misdemeanor offenders would get substantially more supervision in the juvenile system. Since juvenile probation caseloads are smaller than those for adults, the increase in the caseload for juvenile court counselors would be larger than the decrease in the adult probation caseload. There would be a net increase in the need for juvenile court counselors.

Compared to adults, a larger percentage of juvenile offenders receive services such as mental health and substance abuse treatment. NCDJJD has worked with other social service agencies to create an integrated community service model which would have to serve older offenders. There would be a net increase in the need for resources, particularly in the juvenile system.

### **Option 3: Increase the age of juvenile jurisdiction to 18 for all non-traffic crimes or infractions**

*Note: This is a recommendation of the North Carolina Sentencing and Policy Advisory Commission. The Commission also recommends that traffic offenses committed by persons younger than 16 should remain in the jurisdiction of the juvenile courts, as under current law.*

*In 2006, the NC General Assembly passed a study bill that tasked the Sentencing Commission with studying “issues related to the conviction and sentencing of youthful offenders aged 16 to 21,” and whether the State should amend the laws concerning those offenders (whether in the Criminal Procedure Act or the Juvenile Code, but not limited to either).*

*The Commission released its findings and recommendations in March 2007. (See report [http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/yo\\_%20finalreporttolegislature.pdf](http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/yo_%20finalreporttolegislature.pdf).)*

### *States Using this Option*

Forty-seven states use 17 or 18 as the age at which those charged with a crime are considered adults.

### *Anticipated Result*

All 16- and 17-year-olds previously handled by adult court would be handled by the juvenile system. The juvenile court would maintain the ability to transfer more serious cases to the adult system.

Using 2004 data, the NC Sentencing Commission estimates that if the age at which an adolescent offender is tried in the criminal justice system were raised from 16 to 18, 12,767 offenders age 16 and

17 would be shifted to the juvenile system. The question of duration of dispositional jurisdiction would have to be examined.

### *Some Resource Considerations*

As explained in the NC Sentencing Commission Youthful Offender Subcommittee Final Report, this change would have a systemic impact on the judiciary, executive branch agencies, and local governments. NCDJJD services would have to be expanded or modified to deal with older and potentially more serious offenders.

### **Further Considerations for North Carolina Policymakers**

The issues raised in this brief have numerous stakeholders. They include a range of state and local policymakers, juvenile and criminal court judges, child welfare and public education professionals, district attorneys, probation officers, law enforcement, prosecutors, and public defenders, among others. Two additional considerations that currently have particular significance in North Carolina are disposal of juvenile records and compulsory school age.

### **Disposal of Juvenile Records**

Most states have provisions for disposing of a juvenile's legal or social history record. Records can be disposed of by sealing, expunging, or destroying. Laws typically also describe certain conditions that must be met for disposing of records (e.g., no new offenses for a certain amount of time). Usually the law provides for the sealing of records for a given time period and then, at the expiration of that time, the destruction of those records.

Some believe North Carolina's current expungement law places an unfair burden on the poor and less well-educated people because it entails hiring a lawyer and filing a case in court. It also places a burden on local courts. Some states have automatic expungement for adolescent offenders and first-time offenders if they do not reoffend for a designated period of time.

### **Compulsory School Age**

Discussion is under way in North Carolina at both the state and school district levels about the possibility of raising the compulsory school age from 16 to 18. If this were to occur without a change to the juvenile jurisdiction laws, the NC Department of Correction would be required to expand its education system to meet the needs of 16- and 17-year-old adolescent offenders in custody.

In addition to records expungement and compulsory school age are a wide range of other issues that stakeholders are likely to raise with regard to the issues addressed in this briefing report.

Broadly, whether to prosecute adolescents as juveniles or adults encompasses three related but distinct groups of issues:

1. What procedures should be followed and what rights should exist pre-trial or pre-adjudication with respect to investigation, non-testimonial identification procedures, arrest or custody, detention, bail, etc.?
2. What rights and procedures should apply during the fact-finding stage with respect, for example, to jury trials, self-representation, grand jury, etc.?
3. What are the purposes, the means of determining, and the nature of court-imposed consequences following the fact-finding stage? Is the adolescent sentenced as an adult or subject to an individualized disposition with an emphasis on rehabilitation?

Following are other questions that policymakers are likely to encounter. This list is not intended to be comprehensive but recognizes critical questions that policymakers are likely to face.

- How does the proposed change impact efforts to develop a seamless, comprehensive system of juvenile justice which was started with reform and is less than a decade old?

- To what extent are taxpayers willing to pay for rehabilitation versus incarceration of adolescent offenders?
- Who (and how) would meet adolescent offenders' educational and mental health needs?
- What needs would emerge from implementation (personnel, automated systems enhancements, etc.)?
- Would there be resistance from criminal court judges if a change in the age of juvenile jurisdiction required them to hear more juvenile cases?
- How would changing the status quo affect North Carolina families, including families of adolescent offenders, families of those victimized by adolescent offenders, and other families?
- How can families help prevent and intervene in adolescent crime?
- How can North Carolina families help the policy dialogue concerning age of jurisdiction for adolescent offenders?