



The Nelson A. Rockefeller Center at Dartmouth College

The Center for Public Policy and the Social Sciences

## Policy Research Shop

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### The Minimum Age of Criminal Responsibility

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#### *A Study of the Implications of Treating Seventeen-Year-Olds as Adults in the New Hampshire Criminal Justice System*

Presented to the New Hampshire Interbranch Criminal and Juvenile Justice Council

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### **EXECUTIVE SUMMARY**

This report examines the effects and implications of the 1996 New Hampshire law that transferred seventeen-year-old offenders to the adult criminal justice system. It analyzes the benefits and drawbacks of this decision with the available budget and recidivism data. The report also compares New Hampshire's policy to those of other states and examines the implications of trying seventeen-year-olds as adults in other states. Innovative alternative policy options for the treatment of seventeen-year-old criminal such as a blended sentencing approach, teen courts, and alternative specialized courts are also examined as possible policy options.

### **1. INTRODUCTION**

In 1996, New Hampshire put into effect a law lowering the age of criminal responsibility in the criminal justice system from eighteen to seventeen years old.<sup>1</sup> As a result, seventeen-year-olds are treated as adults in the criminal justice system and are therefore prosecuted as adults. A number of factors led to the policy change. Some law enforcement professionals and legislators believed that treating seventeen-year-olds, as adults would lead to better results for the state in the long run.<sup>2</sup> Legislators were particularly concerned about age consistency with Massachusetts, which lowered its age of criminal responsibility to seventeen; legislators worried that seventeen-year-olds in Massachusetts would commit crimes in New Hampshire to avoid being tried as adults.<sup>3</sup> Two murders committed by juveniles also created political pressure for legislators to adopt 'tough on crime' policies.<sup>4</sup> In addition, legislators believed that incarcerating seventeen-year-olds in adult facilities would be less costly than incarcerating them in juvenile facilities.<sup>5</sup>

In New Hampshire, however, there are relatively few seventeen-year-olds in the adult criminal justice system. Five of the state's eight county correctional facilities held fewer than twenty seventeen-year-old inmates from 2007-2008 (see Table 1). Even though the Sullivan County held 33 seventeen-year-olds from 2007-2008, sixteen of these inmates were held for less than ten days (Betsy Miller, personal communication, November 4, 2010). In addition, in 2009, 98 of the 2,853, or 3.4 percent, of the inmates in state-run prisons were seventeen to twenty-one years old.<sup>6</sup>



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Table 1. Total Number of Seventeen-Year-Olds Held in County Correctional Facilities  
2007-2008

County	Number of Seventeen-year-olds held
Belknap	2
Carroll	Data Unavailable
Cheshire	19
Coos	15
Grafton	16
Hillsborough	128
Merrimack	18
Rockingham	Data Unavailable
Strafford	58
Sullivan	33

The majority of the charges for which these seventeen-year-olds were convicted were non-violent crimes, such as possession of alcohol, possession of controlled drugs, criminal trespassing, and breach of bail (Betsy Miller, personal communication, November 4, 2010). There were, however, a significant number of seventeen-year-olds convicted of simple assault, second-degree assault, and sexual assault.<sup>7</sup>

In considering potential changes to the criminal justice system, there are several options for the legislature to consider: maintaining the current age of criminal responsibility, blended sentencing, and raising the age of adulthood and expanding alternative programs, such as teen courts and alternative specialized courts.<sup>8</sup>

## 2. MAINTAINING THE CURRENT AGE OF CRIMINAL RESPONSIBILITY

The first policy option to consider is maintaining the current age of criminal responsibility and continuing to try seventeen-year-olds as adults.

### 2.1 Benefits of Treating Seventeen-Year-Olds as Adults

There are a number of benefits to trying seventeen-year-olds in the adult criminal justice system. Proponents believe that holding juveniles accountable for their offenses is an important way for the government to be "tough on crime."<sup>9</sup> Furthermore, they contend that juvenile justice is too lenient, so offenders will receive insufficient punishments for lesser crimes and consequently be more likely to commit serious crimes in the future.<sup>10</sup> For states such as New Hampshire that are bordered by states that have already lowered the age of criminal responsibility, it is beneficial to lower the age to create age consistency and ensure that seventeen-year-olds from neighboring states do not cross state borders to commit crimes.<sup>11</sup> Proponents also argue that treating seventeen-year-olds as adults has a general deterrent effect by decreasing the likelihood that juveniles



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will commit crimes in the first place.<sup>12</sup> In a 2004 series of interviews with juvenile offenders who had been transferred to adult courts, 75 percent of interviewees reported that “their experiences in the adult criminal justice system had taught them the serious consequences of committing crimes.”<sup>13</sup> In addition, three-quarters of respondents said they might not have committed the crime if they had known they would be adjudicated as adults.<sup>14</sup> However, there are also multiple studies indicating that transferring juveniles to adult courts has no general deterrent effect.<sup>15</sup>

### *2.2 Drawbacks of Treating Seventeen-Year-Olds as Adults*

There are also compelling arguments against lowering the age of criminal responsibility to seventeen. The empirical research that has been conducted on the recidivism rates of juvenile offenders who were transferred to adult courts indicates that transferring juveniles increases recidivism. As of June 2010, six comprehensive studies have been performed on whether trying juveniles as adults decreases recidivism, and all six found that juveniles tried in adult criminal courts had higher recidivism rates than those tried in juvenile courts.<sup>16</sup> Even though these studies were conducted in five different jurisdictions (Florida, New Jersey, New York, Minnesota, and Pennsylvania) that have different types of transfer laws and used different methodologies and sample sizes, they all show higher recidivism rates for seventeen-year-olds tried as adults.<sup>17</sup> These studies thus provide compelling evidence that transferring seventeen-year-olds to adult courts increases recidivism rates. These higher recidivism rates seem to correlate to the sense of unfairness juvenile offenders feel when they are tried in adult courts. Redding and Fuller’s 2004 study found that offenders transferred to adult courts overwhelmingly felt transfer laws were unfair, and the offender’s perception of fairness has been proven to have a significant relationship with future recidivism rates.<sup>18</sup> Juveniles held in adult prisons are also exposed early on to a more bleak criminal culture, which may reinforce criminal tendencies, turning delinquent juveniles into lifelong criminals.<sup>19</sup>

Putting seventeen-year-olds in the adult criminal justice system also has significant consequences for their development. For instance, juveniles held in adult correctional facilities are particularly vulnerable to physical and/or sexual abuse by older inmates.<sup>20</sup> Many have also argued that juveniles should not be incarcerated in adult correctional facilities because adult facilities offer fewer opportunities for meaningful rehabilitation.<sup>21</sup> Multiple studies on juvenile correctional facilities have found that juvenile facilities not only provide better access to counseling and educational services but also adhered to more therapeutic models of rehabilitation than adult facilities.<sup>22</sup> As a result, juvenile offenders sent to juvenile facilities are more likely to rehabilitate and successfully re-enter society than those sent to adult facilities. Furthermore, juvenile offenders convicted in adult courts are often stigmatized by an adult criminal conviction, which hinders their future educational and employment opportunities, both of which would help them successfully re-enter society.<sup>23</sup> For example, felons convicted of a drug offense cannot apply for student loans or other financial assistance and all convicted felons are ineligible for federally supported public housing.<sup>24</sup>



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2.3 Implications for New Hampshire

In conjunction with 2007 House Bill 584, which proposed raising the age of criminal responsibility to eighteen, the NH House of Representatives produced a report assessing the financial impact of raising the age of criminal responsibility from seventeen to eighteen. Based on 2006 data, the report estimates that rising the age of majority to eighteen would cause 1,214 additional juveniles to be tried in the juvenile justice system. This figure includes 256 individuals who committed offenses before their seventeenth birthday that would remain in the juvenile justice system and 958 individuals who committed offenses as seventeen-year-olds who would be tried in the juvenile rather than adult criminal justice system.<sup>25,26</sup> Because cases often open and close within a year, it is estimated that 607 cases involving seventeen-year-olds would be open at any given time.<sup>27</sup> The Department of Health and Human Services, Division for Juvenile Justice Services (DJJS) estimated that this increase would require seventeen more Juvenile Probation and Parole Officers, who supervise all juveniles entering the juvenile justice system, and two more support staff.

The state juvenile justice system is multi-component and multi-faceted; some juveniles are placed in the Sununu Youth Services Center (SYSC), which is the state’s residential juvenile justice institution, while others are placed in in-home community-based services and ancillary services.<sup>28</sup> In 2006, the DJJS estimated the financial impact on the entire juvenile justice system of treating seventeen-year-olds as juveniles (see Table 2).<sup>29</sup>

Table 2. Additional Costs of Serving Seventeen-Year-Olds in the Juvenile Justice System

	FY 2009	FY 2010	FY 2011	FY 2012
<b>Field Services</b>	\$1,140,656	\$1,209,175	\$1,249,260	\$1,290,748
<b>Rehabilitative Programs</b>	\$636,975	\$691,115	\$713,992	\$737,669
<b>Institutional Consumables</b>	\$117,783	\$123,673	\$129,856	\$136,348
<b>Residential Services</b>	\$1,912,045	\$3,043,573	\$4,251,962	\$4,714,906
<b>Community-Based Services</b>	\$1,584,660	\$1,568,066	\$1,556,570	\$1,542,348
<b>Salary and Benefits</b>	Data Unavailable	Data Unavailable	Data Unavailable	Data Unavailable
<b>Total</b>	\$5,392,119	\$6,635,602	\$7,901,640	\$8,422,019

The DJJS estimates that changing the age of criminal responsibility would result in 509 of the additional juveniles being placed in in-home community-based services. Changing the age of criminal responsibility would also result in additional juveniles receiving ancillary services, such as non-institutional residential treatment. Even though as of FY 2008, there were approximately “47 residential slots available in facilities that accept older delinquent youth,” the DJJS estimates



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that raising the age of criminal responsibility would raise the number of non-institutional residential beds required.<sup>30</sup> The exact number of additional beds and the cost of this increase was unavailable.

This policy change would also increase the number of juveniles in the SYSC. According to the DJJS, if the age were raised, 22 seventeen-year-olds would be admitted to the facility, and to accommodate these residents the Center would have to hire twelve Youth Counselors, one Psychological Associate, one teacher, and one secretary. It is impossible to compare directly the cost of holding seventeen-year-olds in adult correctional facilities as opposed to the SYSC because each state and county prison has different costs (see Table 3), (Betsy Miller, personal communication, November 4, 2010). According to Betsy Miller of the NH Association of Counties, there is so much variation among the average annual cost per offender of county prison because some facilities are new, some include the bond costs in the daily operating expense, and some are larger facilities that house more inmates.

Table 3. Average Annual Cost per Offender by Facility

Facility	Average Annual Cost per Offender
Belknap County Jail	\$37,230
Carroll County Jail	\$47,450
Cheshire County Jail	\$41,610
Coos County Jail	\$42,158
Grafton County Jail	\$30,707
Hillsborough County Jail	\$22,243
Merrimack County Jail	\$50,735
Rockingham County Jail	\$25,000
Strafford County Jail	\$24,955
Sullivan County Jail	\$31,332
State Prisons*	\$32,492

\* The NH Department of Corrections does not calculate a separate average annual cost per offender for each of its three state prisons, but rather calculates one figure that encompasses all three facilities.

Even though a direct comparison between the costs of housing a seventeen-year-old in a juvenile rather than adult correctional facility is impossible, it may be more expensive to house the offender in the juvenile facility. It can cost up to \$370 per day to house an inmate in the juvenile facility, totaling \$135,050 per year, which is significantly higher than the average annual cost per offender at any of the adult correctional facilities.<sup>31</sup>



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Overall, it seems that trying seventeen-year-olds in the adult criminal justice system may be less expensive than serving them in the juvenile justice system. Unavailability of data about the recidivism rates for seventeen-year-olds in NH correctional facilities, however, makes it impossible to draw definitive conclusions about the implications of treating seventeen-year-olds as adults in NH because recidivism rates have significant budgetary implications. As shown by Table 3, the average annual cost per offender in adult correctional facilities can be as high as \$50,735. The state thus has a strong economic incentive to adopt a policy with regard to seventeen-year-olds that minimizes recidivism rates. This is especially important due to the continued growth of New Hampshire's prison population. Between 1999 and 2009, the NH prison population has increased 31 percent and corrections expenditures have nearly doubled.<sup>32</sup> Recidivism plays a key part in this as while during 1999 and 2000 the state crime rate remained low and stable recidivism rates in New Hampshire have increased 50 percent since 2000.<sup>33</sup> It is thus imperative for the state to collect comprehensive recidivism data to use when adopting policies.

County prison superintendents commented that different facilities across the state used different definitions of recidivism, preventing the state from collecting comprehensive recidivism data. Even though recidivism data for seventeen-year-olds was unavailable, county prison superintendents remarked that they did not notice an unusually high or low recidivism rate for their seventeen-year-old inmates. As discussed in Section 2.2, however, the existing studies conducted on the recidivism rates of seventeen-year-olds tried as adults in other states provide compelling evidence that treating seventeen-year-olds as adults increases recidivism.

It is also important to keep in mind that the lowering of the age of adulthood to seventeen has had limited implications for state and county correctional facilities because there have been relatively few seventeen-year-olds in the criminal justice system (see Table 1). Superintendent Glenn Libby of the Grafton County Jail reported that his facility holds one or two seventeen-year-olds each day (Glenn Libby, personal communication, October 27, 2010). In addition, the State Prison for Men only holds one or two seventeen-year-old inmates each year and there are currently no seventeen-year-olds in the state prison system (Jeff Lyon, personal communication, November 2, 2010). As a result, the lowering of the age has had a limited impact on the budgets and operations of the state and county correctional facilities because the facilities had to accommodate only a few more inmates.

Furthermore, New Hampshire correctional facilities have not had to create new educational programs to accommodate these seventeen-year-old inmates; county prison superintendents indicated that seventeen-year-old inmates could participate in the facility's existing GED preparation programs that were offered to all inmates (Richard Van Wickler, personal communication, October 28, 2010). The admission of seventeen-year-olds into adult correctional facilities increased the educational program needs of county correctional facilities because the seventeen-year-old inmates tended not to have completed high school or received their GED (Daniel Ward, personal communication, November 2, 2010). Superintendent Daniel Ward of the Belknap County Jail, however, noted that because there were relatively few





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seventeen-year-olds in county correctional facilities, these additional program needs did not create substantial costs for the facilities (Daniel Ward, personal communication, November 2, 2010).

Even though a direct comparison between the cost of holding seventeen-year-olds in juvenile and adult facilities cannot be made, the available budget data suggests that it may be less expensive to serve seventeen-year-olds in the criminal justice system than the juvenile justice system. The lack of recidivism data for seventeen-year-olds in NH, however, makes it impossible to draw definitive conclusions about the implications of trying seventeen-year-olds as adults. Studies conducted in other states, however, show that treating seventeen-year-olds as adults increases recidivism.

*2.4 Other States with Same Policy*

Wisconsin and New Hampshire are currently two of the twelve states in which seventeen-year-olds are automatically located to the adult criminal justice system.<sup>34</sup> Ten states set the minimum age of criminal responsibility as seventeen, while two set sixteen as the minimum age (see Table 4).<sup>35</sup>

*Table 4. Minimum Age of Criminal Court Jurisdiction in States*

<b>16 YEARS OLD</b>	<b>17 YEARS OLD</b>	<b>18 YEARS OLD</b>
New York	Georgia	All other states
North Carolina	Illinois	
	Louisiana	
	Massachusetts	
	Michigan	
	Missouri	
	New Hampshire	
	South Carolina	
	Texas	
	Wisconsin	

Since 2006, six other states besides New Hampshire have either considered or enacted legislation to raise the age of criminal court jurisdiction.<sup>36</sup> Illinois, Missouri, New York, North Carolina, and Wisconsin have so far introduced, but not enacted, legislation to increase the minimum age.<sup>37</sup> In Connecticut, the age of criminal court jurisdiction was raised from sixteen to eighteen on January 1, 2010; however, juveniles accused of serious felonies will remain under criminal court jurisdiction.<sup>38</sup> In an effort to decrease the state’s prison expenditures, in FY 2007-2008, Rhode Island transferred seventeen-year-olds from juvenile to criminal court jurisdiction.”<sup>39</sup> However, this legislation was reversed in November 2007, when cost-savings estimates were questioned.<sup>40</sup>



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### *2.5 Wisconsin Case Study*

Like New Hampshire, Wisconsin enacted a law in 1996 transferring all seventeen-year-old juveniles from the juvenile justice system to the adult criminal justice system.<sup>41</sup> This law, effective in 1996, was enacted in response to a large increase in the juvenile crime rate and a number of highly conspicuous juvenile offenses.<sup>42</sup> This law sought to hold delinquents accountable for their actions, achieve age consistency with Illinois and Michigan, and to allow the juvenile justice system to focus its resources on younger offenders.<sup>43</sup>

In the years following the enactment of this law, most criminal and juvenile justice system practitioners agree that the legislation accomplished two out of its three goals. Though the legislation successfully held seventeen-year-olds more accountable and achieved age consistency with neighboring states, “most juvenile practitioners did not report a decrease in their workloads or an increase in the availability of resources for prevention services.”<sup>44</sup>

The State of Wisconsin Legislative Audit Bureau completed a study assessing the implications of the legislation. According to the study, recidivism rates among seventeen-year-olds were higher than those for juveniles and older adults. Among offenders released in 2002, 48.1 percent of seventeen-year-old offenders were re-incarcerated within three years of release, while only 21.3 percent of all adult offenders and 18.2 percent of juvenile offenders were re-incarcerated within three and two years, respectively.<sup>45</sup> The Bureau also found that there would be significant fiscal effects on both the county and state juvenile justice systems if seventeen-year-olds were returned to the juvenile criminal system. The Wisconsin Department of Corrections estimates that the average annual cost of incarcerating an offender in a juvenile correctional facility is \$74,100, compared to \$27,600 to incarcerate an offender in an adult correctional facility.<sup>46</sup> As a result, the Bureau estimates that raising the age of criminal responsibility could cost the state between \$53.5 million and \$82.4 million each year.<sup>47</sup>

Wisconsin thus seems to be facing a dilemma, in which the state must choose between the lower expenditures and higher recidivism rates associated with trying seventeen-year-olds as adults as compared to the lower recidivism rates and higher expenditures incurred when trying them as juveniles.

## **3. BLENDED SENTENCING**

Another policy option is to adopt a type of blended sentencing, in which seventeen-year-old offenders are not automatically placed in a specific court.

### *3.1 Background*

In recent juvenile reform efforts, a number of states have adopted a ‘blended sentencing’ policy. Though for most of these states the minimum age of criminal court jurisdiction remains eighteen, seventeen-year-olds are not automatically placed into the juvenile justice system. Instead,



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blended sentencing does not restrict judges to either the juvenile or criminal justice system and instead allows them to impose juvenile or criminal sanctions, or a combination of both.<sup>48</sup> Rather than simply raising or lowering the minimum age and condemning all the seventeen-year-olds to one system, judges have more flexibility to impose tough sanctions that are “tailored to individual circumstances.”<sup>49</sup> This is a sentencing reform approach to juvenile justice reform, as opposed to the current categorical exclusion approach (excluding all seventeen-year-olds from the juvenile justice system) used by New Hampshire and Wisconsin.

### 3.2 Vermont Case Study

Vermont defines the minimum age of adulthood as eighteen, but also has a unique blended sentencing system. According to a 2008 Juvenile Justice Commission Report, “for youth under 18, the decision of whether to file a delinquency or criminal petition in juvenile or adult court is—with a few statutory guidelines for serious crimes— at the discretion of the State’s Attorney.”<sup>50</sup> A juvenile who pleads guilty in district court, however, may move to have his or her case transferred to family court, which is juvenile jurisdiction, but the district court must find “the juvenile amenable to treatment and the public safety not threatened by the transfer.”<sup>51</sup> Even though the offender is not subsequently tried at family court because the juvenile has already pled guilty, the offender is given a juvenile disposition<sup>52</sup> But this waiver process is rarely used, and most cases remain in the adult criminal justice system; according to the JJC report, more than 80 percent of petitions filed on sixteen and seventeen year olds begin in adult court, and the majority remain in the adult criminal justice system. The State’s Attorney is largely responsible for determining whether the offender is tried in District Court or Family Court.<sup>53</sup> According to a 2007 NCJJ report, a seventeen-year-old offender in Vermont was about twelve times more likely to be tried in District Court than in Family Court.

### 3.3 New Mexico Case Study

One state that adopted a blending sentencing system is New Mexico. Effective since July 1, 1993, New Mexico enacted legislation that caused three significant changes: “(1) elimination of the judicial waiver provision, (2) passage of a blended sentencing provision that allows juvenile or a criminal justice sanction for a new category of ‘serious youthful offender’ and (3) elimination of juvenile court jurisdiction over a new category of ‘serious youthful offender’ in favor of those cases being filed directly into court.”<sup>54</sup> The purpose behind this reform was to preserve the original intent of its Children’s Code to protect a majority of the juvenile delinquents, while also cracking down on older youth who commit serious crimes.

Under the new law, the authority of judges and prosecutors has been expanded and they make the initial decision about whether to implement criminal or juvenile sanctions.<sup>55</sup> Judges and prosecutors, however, have reported satisfaction with their new expanded authority to make individualized case decisions.<sup>56</sup> Although statewide data on the number of cases for which the prosecutor sought a criminal sanction rather than a juvenile sanction is unavailable, only a very small percent of youthful offenders in the districts studied actually received a criminal sanction



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and very few received a ‘straight prison term.’<sup>57</sup> The OJJDP reports significant local variation in the application of sentencing, with rural districts issuing a considerably higher proportion of criminal sanctions than urban districts.<sup>58</sup> Under the new blended sentencing law, however, plea-bargaining is common because prosecutors can use the threat of criminal sanction to “obtain pleas that guarantee juvenile sanctions.”<sup>59</sup>

### *3.4 Minnesota Case Study*

Minnesota’s 1994 reforms made three large changes to its juvenile justice system: it “created the ‘extended jurisdiction juvenile’ (EJJ) category of serious or repeat juvenile offenders, authorized juvenile court judges to impose both a juvenile disposition and a stayed sentence to the adult criminal corrections system, and extended the juvenile court’s jurisdiction to age 21.”<sup>60</sup> By creating this new class of juvenile offenders, Minnesota created a third sentencing option, besides placing an individual immediately in the juvenile court or adult criminal court. This alternative option “allows the juvenile court to impose a sanction involving the juvenile and criminal justice systems – with the later sanction becoming effective only if the juvenile fails to meet the conditions of the juvenile disposition.”<sup>61</sup> The legislative intent behind this option was to give juvenile offenders in the EJJ category “one last chance of success in the juvenile system – with the threat of criminal sanctions ‘hanging over their heads’ if they reoffend.”<sup>62</sup>

Overall, like the blended sentencing reform in New Mexico, the reform legislation in Minnesota has been generally believed to be a success. Though there were some implementation problems in the first year (for instance, a lag between enactment and allocation of funding), the policy was considered a great compromise between “those who wanted a more punitive response to juvenile crime and those who wanted to salvage and bolster the juvenile justice response.”<sup>63</sup> According to a study conducted by the OJJDP, participants believe the new law has effectively used the threat of criminal sanction to get the attention of young people, while “at the same time strengthening the community, linking youth with jobs, and supporting competency development and accountability.”<sup>64</sup> As in New Mexico, however, there is significant local variation in the implementation of the law, and a higher proportion of criminal sanctions are issued in rural areas than urban areas.<sup>65</sup> In addition, the new law may disproportionately affect male and minority offenders.<sup>66</sup> Another downside to this policy is that it is not always effective with juvenile offenders in the EJJ category. Though the threat of criminal sanctions deters some, for others it has little effect.<sup>67</sup>

The above case studies provide a look at the value of blending sentencing in helping the state deter crime and implement justice in a way that focuses on the individual needs of the offender. Even though there is significant variation in the blended sentencing reforms adopted in these three states, blended sentencing seems to lead to an expansion of the prosecutor’s authority, an increase in the use of plea-bargaining, and significant local variation in the application of sentencing. Blended sentencing, however, may more effectively help the offender obtain the appropriate services needed for full rehabilitation.



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### 4. TEEN COURTS

A third policy option is to change the age of criminal responsibility to eighteen and increase the use of teen courts to deal with juvenile offenders. Teen courts are a type of diversion program that seek to hold youth accountable for their actions while keeping them out of the criminal justice system.

#### *4.1 Background*

Teen courts, also known as youth courts or peer courts, are alternatives to the juvenile justice system for young offenders. Teen courts vary significantly by jurisdiction, but most are voluntary alternatives for first-time offenders who have committed non-violent crimes.<sup>68</sup> In most cases, to begin the process, teen offenders go through an intake process, in which the offender and his/her parents agree to diversion to teen court.<sup>69</sup> Before the case is heard, most teen courts require the offender to admit his/her guilt.<sup>70</sup> Teen court programs vary in whether the judges and attorneys are teens or adults and whether there is a jury, but the basic concept behind teen courts is that juvenile offenders are held accountable for their actions by fellow teens.<sup>71</sup> The sentences teen court programs are permitted to issue are dependent by jurisdiction, but typical sentences include community service, apology letters, and jury duty.<sup>72</sup> Teen courts also differ in their dispositional and sentencing method options. Most state laws call for dispositional teen courts, in which the offender has already confessed to the offense and the court determines the sentence. However there are exceptions to this. Alaska's state law calls for an adjudicatory teen court system, in which the teen's guilt is determined, and West Virginia state law is ambiguous.<sup>73</sup>

The number of teen courts across the country has increased significantly since the 1990s. In 1994, there were only 78 teen courts, but in August 2002 there were more than 900 youth courts in 46 states and the District of Columbia.<sup>74</sup> Teen courts have become a significant component of the juvenile justice system; in 1998, the 500 teen courts in the United States heard about 65,000 cases, while traditional juvenile courts typically handle 750,000 cases each year. With hundreds more teen courts operating today, the number of cases handled is likely even higher. There is, however, significant variation in the state laws governing teen courts. In some states, such as New Hampshire, state law does not mention teen courts, but non-profit organizations or municipalities may organize teen court programs.<sup>75</sup> State law regulates teen courts and determines funding, case eligibility, and other requirements in some states, while in other states, state law allows local jurisdictions to design their own youth court programs.<sup>76</sup>

#### *4.2 Benefits and Drawbacks of Teen Court*

One significant benefit is that teen courts provide an effective mechanism of accountability. Because their offenses are often relatively minor, these juvenile offenders would not likely receive sanctions from a traditional juvenile justice court.<sup>77</sup> Teen courts, however, hold offenders accountable by issuing sentences. Unlike the juvenile and adult criminal justice systems, teen courts hold offenders accountable without labeling them as 'delinquents' or 'criminals,' thus



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avoiding stigmatization.<sup>78</sup> Proponents also argue that teen courts provide a particularly effective form of accountability because teen jurors provide positive peer pressure that encourages youth to abide by the law.<sup>79</sup>

In addition to holding offenders accountable, teen courts also help foster social bonds and pro-social attitudes. A 2002 study conducted by the Urban Institute found that the overwhelming majority of teen court participants felt they were treated fairly by the teen court.<sup>80</sup> Perceptions of procedural fairness are positively correlated with attitude toward authority figures, such as law enforcement officers and judges.<sup>81</sup> Teen courts thus help young offenders develop a more positive attitude toward authority figures. Proponents argue that these social bonds and pro-social attitudes fostered in teen court make offenders significantly less likely to re-offend.<sup>82</sup> Although limited research has been conducted on rates of recidivism in teen courts, several studies indicate that teen courts have lower recidivism rates than traditional juvenile courts. For example, a 2002 study conducted by the Urban Institute analyzed the recidivism rates for teen courts in Alaska, Arizona, Maryland, and Missouri in comparison to recidivism rates for traditional juvenile justice courts in the same jurisdictions. In three of the four sites analyzed, the rate of recidivism was lower for teen courts, and in two sites, the teen courts had significantly lower recidivism rates.<sup>83</sup>

Teen courts also have other more pragmatic benefits. Teen courts are typically less expensive to operate than traditional juvenile courts because they usually rely on youth and adult volunteers.<sup>84</sup> They can also process cases more quickly than traditional juvenile courts; while traditional courts often require months to process a case, effective teen courts can sanction an offender within days of arrest.<sup>85</sup> “This rapid response may increase the positive impact of court sanctions, regardless of their severity.”<sup>86</sup>

Teen courts, however, also have significant drawbacks and limitations. For example, teen courts are generally limited in the types of cases they can handle; teen courts are intended to handle less serious offenses and are not suitable to handle violent crimes.<sup>87</sup> Furthermore, teen courts tend to be voluntary programs in which participants must admit their guilt before their case is heard, further limiting the number of cases teen courts can handle. In addition, the effectiveness of teen courts has not been firmly established. Studies on the recidivism rates of teen courts use different definitions of recidivism and track recidivism over different period of time.<sup>88</sup> Furthermore, recidivism rates are influenced by a multitude of internal and external factors.<sup>89</sup>

### *4.3 Teen Courts in New Hampshire*

Even though New Hampshire state law does not mention teen courts, some teen courts do operate in the state. For example, Child and Family Services of New Hampshire, a non-profit agency, partners with the Grafton County Family Division and the Lebanon Family Court to operate the Upper Valley Youth Court.<sup>90</sup> Local police, judges, and diversion boards refer cases to the Youth Court, but the program is voluntary.<sup>91</sup> The most commonly heard cases are for charges of shoplifting, criminal mischief, simple assault, and vandalism.<sup>92</sup>



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The Merrimack County Department of Human Services also operates a teen court as part of its Juvenile Diversion Program.<sup>93</sup> The Merrimack County teen court is a voluntary program for first-time juvenile offenders where offenders participate in a judicial review and trial process administered by fellow teens and supervised by adults.<sup>94</sup> The teen court program started in 2001 and serves 23 towns and two cities (Nicole Keaton, personal communication, January 21, 2011). According to Nicole Keaton, the program coordinator, the court consists of an adult judge, a teen jury with six to twelve jurors, teen attorneys, and teen bailiffs. Keaton reports that the court hears four cases per month, and the most commonly hear cases are shoplifting, theft, and drug-related crimes. The teen jury determines the offender's sentence, which can include up to 50 hours of community service and restitution, but Keaton commented that offenders typically are only sentenced to recompense up to half.<sup>95</sup>

New Hampshire's absence of legislation on teen courts poses some benefits and drawbacks. The absence of state legislation provides communities with the flexibility to design local programs that best serve their communities.<sup>96</sup> Legislation, however, can help ensure that teen courts operate effectively. Legislation not only gives teen court programs a certain amount of legitimacy but also establishes acceptable standards for programs.<sup>97</sup> Furthermore, legislation can increase consistency and maintain minimal standards for teen court programs, thus ensuring that participants have positive experiences.<sup>98</sup>

Due to their ability to provide positive peer pressure and promote pro-social attitudes, teen courts have become an increasingly popular alternative diversion program to the juvenile criminal justice system. There is, however, significant variation in the structure and operation of teen courts. NH has two teen courts, one run by a non-profit and the other by a municipality, but there is no legislation mandating teen courts in the state.

### **5. ALTERNATIVE SPECIALIZED COURTS**

A final policy option is to change the age of criminal responsibility to eighteen and expand the use of alternative specialized courts to handle juvenile offenders. Such specialized courts would target specific problems of the seventeen-year-olds (and other participating juvenile offenders) in an attempt to lower their recidivism rate. Examples of such specialized courts include juvenile mental health courts (JHMC) and juvenile drug courts (JDC). Because New Hampshire already has a juvenile drug court system in operation but does not have a juvenile mental health court system, and in recognition of the nature of this report and its objectives, this report mainly focuses on the study of juvenile drug courts.

#### *5.1 Juvenile Drug Courts: Background*

According to a 2002 in-home survey, twelve percent of the surveyed youths in the nation admitted to the usage of illicit drugs in the past month, while fifteen percent of the New Hampshire youths admitted to the same.<sup>99</sup> Also, while nine percent of the youths were found with any drug or alcohol dependence or abuse nationally, twelve percent of New Hampshire



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youths were found with such dependence or abuse.<sup>100</sup> This relatively significant prevalence of substance use and abuse among teens has led to the creation of an alternative juvenile drug court (JDC) in districts across the nation, including New Hampshire. JDCs seek to decrease substance abuse problems among juvenile offenders, and therefore recidivism rates and costs for the overall criminal justice system of each district and state.

These courts provide specialized community-based treatment programs to eligible drug-involved youths and their families, accompanied by intensive and constant judicial supervision and diverse support services.<sup>101</sup> To respond quickly to drug usage, JDCs administer frequent and random drug tests.<sup>102</sup> Studies also show that the most effective treatment allows the youth to remain in his/her community and focus on his/her strengths and needs.<sup>103</sup>

### *5.2 Juvenile Drug Courts: Benefits and Drawbacks*

JDCs offer many benefits, including more options and opportunities for both their participants and the juvenile courts, immediate incentives and sanctions, increased coordination, and a more expedient and targeted response. Because many of the participating youth have not had access to substance abuse treatment before their convictions, JDCs offer a new opportunity for these youths, while the juvenile courts themselves also have more options in dealing with the offenders. They also allow for a more expedient and targeted response to the problem of the substance abuse by juvenile offenders. Similarly, the increased availability and ease of enacting immediate incentives and sanctions facilitates progress for both the juvenile offenders and their families.<sup>104</sup> JDCs also facilitate increased coordination among the court, the community treatment programs, the school system, and other community agencies that allow for a more thorough approach to the treatment of juveniles with problems of substance abuse.<sup>105</sup> Finally, through frequent random drug tests and other intensive and comprehensive supervision methods, as well as a concentration of efforts by JDC administrators and specialists, juvenile offenders are given more attention and supervision than they would be given otherwise.<sup>106</sup>

JDCs can also have significant drawbacks that include multiple challenges unique to a JDC. For example, JDCs must remain conscious of the continued negative influences of peers, gangs, family members, and community members of the juveniles, as well as the lack of adequate resources and information about each juvenile.<sup>107</sup> Furthermore, juveniles are psychologically different from adult drug court participants, in that they feel a sense of invulnerability rather than the typical 'hitting rock bottom' sentiment of adults, as well as constantly evolving desires and needs.<sup>108</sup> The necessity and the overall effectiveness of this type of program have also been questioned.

### *5.3 Juvenile Drug Courts in New Hampshire*

The prevalence of alcohol and drug use among teens in New Hampshire is alarming. New Hampshire ranks in the top ten states in the nation in the rate of drug and alcohol use by teens.<sup>109</sup> The rate of marijuana use among NH teens in particular is one of the highest in the nation, while





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alcohol use is only slightly above the national average.<sup>110</sup> Comparatively, NH teens receive a low rate of drug treatment; it is estimated that roughly twelve percent of NH teens have a serious problem with substance abuse but do not receive treatment for it.<sup>111</sup> Despite a low and decreasing rate of juvenile crime charges and arrests overall, the rate of NH's juvenile drug charges and arrests is significantly high and increasing, contrary to the decreasing national trend.<sup>112</sup> This trend among juvenile offenders in the state is presumably duplicated among seventeen-year-olds, though data on the drug arrests of NH seventeen-year-olds was unavailable.

According to Raymond Bilodeau, the Clinical Director of the state's Juvenile Drug Court, New Hampshire first established its JDC in 2001, though some courts have closed down since then (Raymond Bilodeau, personal communication, November 4, 2010). First- or second-time juvenile offenders between the ages of thirteen and sixteen who have committed non-violent crimes are eligible for referrals.<sup>113</sup> The court, school, law enforcement, and/or probation/parole officers give referrals.<sup>114</sup> However, not all referred youth have been convicted of possession of drugs, and their charges vary in nature (Raymond Bilodeau, personal communication, November 4, 2010). Treatment is given in four main levels: educational, outpatient counseling, community-based intensive supervision, and residential care.<sup>115</sup> Treatment options include group and individual therapy, community service, and probation.<sup>116</sup> Due to a five-year program run by Reclaiming Futures of New Hampshire (funded by the Robert Wood Johnson Foundation), the NH JDC also has a fairly strong administrative structure and standardized assessment procedure.<sup>117</sup>

Each juvenile participant in the JDC costs the state \$35,174.<sup>118</sup> In comparison, the Belknap County Correctional Facility, for example, spends \$31,025 per inmate per year.<sup>119</sup> Furthermore, many of the JDC programs are dependent on donations; so consistent funding is not guaranteed.<sup>120</sup> As a result, seventeen-year-olds substance abuse problems may incur more costs for the state as juvenile offenders than as adult offenders, but a comprehensive budget analysis is not possible because of a lack of recidivism for seventeen-year-olds in the criminal justice system.

Treatment of juveniles for drug and alcohol abuse is a difficult task with a relatively low success rate, with roughly half the participants committing at least one new drug-related offense within two years of the completion of the program (see Table 5).<sup>121</sup>

Table 5. JDC Participants' Charges, Before and After JDC

Within One Year Prior to Entry into JDC (%)			Within Six Months After End of JDC (%)			Within Two Years After End of JDC (%)		
Drug Charge	Felony Charge	Any Charge*	Drug Charge	Felony Charge	Any Charge	Drug Charge	Felony Charge	Any Charge
51	19	69	28	10	52	48	19	85

\* This includes the charge that initiated the entry into the court.



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Because the study team was not able to uncover data for the overall recidivism rate for juvenile offenders across the state, recidivism rate of JDC participants could not be compared to other juvenile offenders to determine effectiveness. However, as evidenced by the rate of recidivism in Table 5, the effectiveness of the New Hampshire JDC is at least questionable; slightly less than half of the participants of JDC committed at least one new drug-related offense within two years of the completion of their respective programs. On the other hand, it is important to consider that treatment of juveniles for drug and alcohol abuse is a difficult task with a relatively low success rate.<sup>122</sup> Director Bilodeau, for example, mentioned that “very few” of the charges incurred after the youths’ participation in the JDC constituted drug charges, suggesting that the rate indicated success of the JDC program to Director Bilodeau (Raymond Bilodeau, personal communication, November 4, 2010).

### *5.4 Juvenile Mental Health Courts: Brief Overview*

Mental health issues in juvenile offenders are a major but often overlooked problem across the country, with 65 to 75 percent of the convicted youths in the US estimated to be affected by a mental disorder.<sup>123</sup> Considering that many of these offenders are convicted of minor crimes and detained without access to appropriate treatment for their mental disorders, some juvenile justice systems have established an alternative option for the offenders: juvenile mental health courts.<sup>124</sup> Such courts are formed in part to help prevent future delinquent behaviors by treating mental disorders of juvenile offenders early on.<sup>125</sup>

While the study team found ample information pertaining to how the current JMHCs function, the team has yet been unsuccessful in finding evidence of either the effectiveness or ineffectiveness of JHMCs in the nation. The study team also has not been able to determine how applicable a JHMC would be to the state of New Hampshire, however awareness of mental health issues in the juvenile offender population should not be overlooked and assessed in any policy enacted.

Both JDCs and JHMCs provide alternative options to handling seventeen-year-old offenders, while holding the age of criminal responsibility at eighteen. These alternative specialized courts are focused on the rehabilitation of the young offenders, as opposed to punishment, in attempt to lower the recidivism rate. The effectiveness of these options are unclear however, as there is a lack of comprehensive data on the recidivism rates of these seventeen-year-old offenders.

## **6. CONCLUSION AND RECOMMENDATION**

Through analysis of the implications of New Hampshire’s 1996 decision to transfer seventeen-year-olds to the adult criminal system, the study team aimed to determine the effectiveness of this policy. The study team, however, was unable to determine conclusively the implications of this policy because of the lack of data about the recidivism rates for seventeen-year-olds in NH correctional facilities. The study team recommends that the state not only create a consistent state-wide definition of recidivism but also make a concerted effort to track recidivism rates in



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all of the state and county correctional facilities. Despite the unavailability of recidivism data, there is evidence suggesting it is less expensive for the state to treat seventeen-year-olds as adults rather than as juveniles. Furthermore, the inclusion of seventeen-year-olds in the adult prison system does not seem to have been burdensome for the facilities, and because of the relatively small number of seventeen-year-old offenders in the criminal justice system, the adult facilities been able to provide its juvenile offenders with the same amenities and services as its older offenders.

The study team, however, recognizes the developmental concerns associated with incarcerating seventeen-year-olds in adult facilities. The study team recommends further analysis and exploration of alternative policy options such as blended sentencing, teen courts, and alternative policy options to determine whether these approaches would be effective alternatives in NH. In the future, the state may wish to create a hybrid of these approaches to meet the needs of the state and its seventeen-year-old offenders.



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## Policy Research Shop

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<sup>117</sup> Butts, Jeffrey A., John K. Roman and Elissa Gitlow. (2009). *Organizing for Outcomes*. Report. Portland, OR: Reclaiming Futures. In 2002, the Robert Wood Johnson Foundation included the New Hampshire JDC system as a part of its five-year Reclaiming Futures initiative, in which the existing RF models and program were integrated into the existing JDC programs. Spanning across multiple independent and diverse districts, RF focused on helping to improve the administrative structure of the JDCs, such as the standardization of the assessment of juvenile offenders for their eligibility for JDCs, as well as a more open and regular communication between the JDCs and the overall juvenile court system. By the end of its third year, RF had helped increase the proportion of juvenile offenders assessed for JDC from 78 percent to 97 percent. RF also created programs to allow the participating youths to volunteer and engage within their communities. Overall, RF had a positive effect on the JDC substance abuse treatment programs across the state, and helped it improve significantly.

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