Comments on Preliminary Report of the NC Commission on the Administration of Law & Justice

By Rep. Paul Stam

August 3, 2016

RE: Juvenile Age Subcommittee

My objections to "*raise the age*" include:

1) 16 and 17 year olds who claim their innocence lose their right to a jury trial. This is very important in he said/she said matters. Since juvenile court is organized on the rehabilitative model it is too easy to want to fix problems with the juvenile even if guilt is not clear.

2) Shielding records from the **public** is not beneficial to the **public**. The report of the sub-committee focused on harm to juveniles obtaining employment after committing an offense. But this is a reason that courts are open. The public interest may outweigh the potential harm to the juvenile's employment prospects in some cases:

    a. If I were a young woman considering whether to marry (or cohabitate with) a young man, I would want to know if he had been convicted of strangling his former girlfriend, causing physical injury, violated a protective order against her, or even stalked her (with a court order in effect)- all of which are class H felonies. The young woman contemplating marriage is shielded from obvious problems if this case is heard in juvenile court.

    b. If I were hiring a bookkeeper, I would want to know if this 20 year old had been convicted of larceny or embezzlement while age 16-17.

    c. If a minor set fire to a school, as their teacher, I would want to know.

    d. If I were going to permit a 17 year old in High School to babysit my kids, I would want to know whether the potential babysitter had been charged with unlawful sale, surrender or purchase of a minor.

There are many routes to expunction, but if these cases are heard in juvenile court, potential victims will never know. One of the most effective deterrents to bad behavior among older minors is **the prospect that their deeds will be known**. To take that away is a real mistake. There are multiple felony offenses that the public, future spouses and employers may never hear. If you haven't already, you should take a look at all of the felonies that would be shielded HERE.

3) Juvenile Court does not have sufficient punishment authority for some of the class F, G and H felonies.

Three years ago, 16 and 17 year old prostitutes became immune from prosecution, so that argument goes away. I have no issue with requiring 16 and 17 year olds in prison to be segregated from the adult population. But, in this proposal, those juvenile 16-17 year olds would be placed with 14 and 15 year olds, which could be worse.

For some functions gangs use 14-15 year olds, probably will not be tried in adult court. This proposal will allow gangs to employ 16-17 year olds for the same functions. For example, these teenagers could be used to traffic marijuana (more than 10 pounds, less than 50 pounds) and be charged only in juvenile court with a class H Felony- which would have little deterrence value. 16-17 year olds have a higher earning potential with illegal drugs than they do at a minimum-wage job.

I hope that the Commission will consider these thoughts.

Sincerely,

Rep. Paul Stam

Former Chair, N.C. Juvenile Law Study Commission, 1989-1992

August 31, 2016

Criminal Investigation and Adjudication Committee
North Carolina Commission on the Administration of Law & Justice
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Re: Public Comment – Interim Report on Juvenile Court Jurisdiction

Dear Members of the Criminal Investigation and Adjudication Committee,

We write to commend the NCCALJ Criminal Investigation and Adjudication Committee for its recommendation—made with overwhelming stakeholder support—to raise the age of juvenile jurisdiction to include youthful offenders ages 16 and 17 years old. The Committee's recommendation would limit admission of children into the adult corrections system—a policy change that would reap myriad benefits for our state's young people, benefit our economy, and increase public safety.

The Interim Report's presentation of the compelling reasons to raise the age of juvenile jurisdiction is clear, exhaustive, and wholly persuasive. If the North Carolina General Assembly acts on the Committee's recommendation, the full range of available evidence demonstrates that North Carolina will improve the lives and outcomes of most 16- and 17-year-olds entangled in our judicial system as well as the safety and economic health of the broader community.

Although we support the Committee's overarching recommendation to raise the age of juvenile jurisdiction, we urge you to make an important change to the current draft. The current proposal recommends a system by which 16- and 17-year-olds who are charged with A-E felonies are automatically transferred to superior court, upon a finding of probable cause or by indictment. As noted in the report, "[a]utomatic transfer to superior court means that the district court judge has no discretion to retain Class A-E felony charges against 16- and 17-year-olds in juvenile court."[1] We believe this strikes the wrong balance, and consequently the proposal should be revised to maintain our current system of transfer for all youth, including 16- and 17-year-olds.

Under the existing transfer provision, the district court may transfer jurisdiction over a juvenile who is at least 13 years old and is alleged to have committed a felony to superior court.[2] A

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[1] Interim Report, Criminal Investigation and Adjudication Committee Appendix A 2 fn. 5 (July 2016).
[2] NCGS 7B-2200.

motion to transfer may be made by the prosecutor, the juvenile's attorney, or the court.[3] In the case of a Class A felony, juveniles aged 13 or older must be transferred to superior court if probable cause is found in juvenile court.[4]

This system of transfer represents the most common approach to transferring youth to the adult criminal justice system, for good reason.[5] Judges are neutral arbiters whose perspective takes into account the array of stakeholders before them—including prosecutor and defendant, victim and society. Further, evidence shows that the current transfer system is working for our state.[6] A case by case approach results in transfers to superior court when appropriate, with better overall outcomes as measured by recidivism rates. Available data from North Carolina show that youth who are charged with B-E felonies and who are retained in the juvenile justice system have significantly lower recidivism rates than those who enter the adult system (27% and 44%, respectively).[7] Nationally, we know that youth who are prosecuted in the adult system are 34% more likely to be re-arrested for a violent crime than youth prosecuted in the juvenile system, and that there is insufficient evidence to support the assertion that trying youth as adults acts as a crime deterrent.[8] A system that provides a mechanism to transfer in appropriate cases, after probable cause and transfer hearings, is working in North Carolina. We should preserve—and build upon—what works.

It has been noted by several Committee members that the number of youth actually impacted by the current proposal to automatically transfer 16- and 17-year-olds who are charged with A-E felonies to the adult system, after a probable cause hearing or by indictment, is relatively small.[9] That is true. We believe that's all the more reason to expand the current transfer system to include these 16- and 17-year olds rather than create a new transfer system to apply to a small subset of youth.

Finally, we urge the Committee to include in the current juvenile age recommendation the creation of a new law to provide expungement relief for the hundreds of thousands of North Carolinians who have been convicted as adults at 16- or 17-years-old over the years and do not have the benefit of a more confidential record. As the Interim Report describes, these men and women are potentially still suffering the collateral consequences of these youthful convictions, even decades later. Specifically, we encourage the Committee to propose the passage of a new expungement law that includes fee waiver provisions and that would provide for the automatic

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[3] *Id.*
[4] *Id.*
[5] *Jurisdictional Boundaries*, Juvenile Justice Geography, Policy, Practice & Statistics, *available at* http://www.jjgps.org/jurisdictional-boundaries#transfer-discretion.
[6] *See* Juvenile Age, Issue Briefing Transfer of 14- and 15-year-olds (June 2016).
[7] *Id.*
[8] Center for Disease Control and Prevention, Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services. MMWR 2007; 56 (No. RR-9).
[9] Of the 5,689 16- and 17-year-olds convicted in North Carolina in 2014, only 187 (3.3%) were convicted of a Class A-E felony. Interim Report, Criminal Investigation and Adjudication Committee Appendix A 6 (July 2016).

and immediate expungement of all convictions for misdemeanor and nonviolent felony offenses committed when the defendants were aged 16 or 17.

Thank you again for all of your work and commitment to raising the age of juvenile court jurisdiction in North Carolina. It is a policy change that will improve lives, expand opportunities, and provide benefits to both young offenders and our broader communities.

Sincerely,

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August 31, 2016

NC·CRED
NORTH CAROLINA
COMMISSION ON RACIAL AND ETHNIC DISPARITIES
IN THE CRIMINAL JUSTICE SYSTEM

Racial Impact Statement

On the North Carolina Commission on Administration of Law and Justice
Juvenile Age Subcommittee Interim Report

Background

NCCRED is a nonpartisan, nonprofit organization that works to identify, document and reduce racial and ethnic disparities in the criminal justice system in North Carolina. Represented on the Commission are members of the Judiciary (Court of Appeal, Superior Court and District Court Judges), law enforcement professionals (Chiefs of Police), elected District Attorneys, appointed Public Defenders, community activists and academics. NC-CRED works collaboratively across professional, political and ideological lines to promote racially equitable, data-informed criminal justice practices across North Carolina.

NCCRED is providing this racial impact statement for the NCCALJ's consideration. Racial impact statements are a tool for policymakers to evaluate potential racial disparities of proposed legislation prior to adoption and implementation. This enables policymakers to modify legislation that would worsen existing racial disparities.[1] As such, the statement is intended as neither an endorsement nor opposition to the recommendations contained in the Interim Report. Rather, it is meant to comment, using the available data and research, on the likely racial impact of the recommendations if enacted.

Summary

Children of color are disproportionately represented in every phase where they are involved with the criminal and juvenile justice systems.[2] A wealth of research—much of which is cited throughout the Subcommittee's report—shows that when children remain in the juvenile justice system, they receive more appropriate rehabilitative services, recidivate less and avoid the long-term damaging effects of a criminal record. Accordingly, raising the age of adult jurisdiction would reduce racial disparities in the juvenile and criminal justice systems by reducing recidivism and the economic losses that accompany a criminal record. However, the Subcommittee's recommendation to automatically transfer 16-17 year olds charged with A-E felonies to superior court after a probable cause or by indictment is not supported by the data and would disproportionately harm children of color.

[1] See The Sentencing Project, Racial Impact Statements. http://www.sentencingproject.org/publications/racial-impact-statements/

[2] See JOSHUA ROVNER, THE SENTENCING PROJECT, RACIAL DISPARITIES IN YOUTH COMMITMENTS AND ARRESTS (2016), http://www.sentencingproject.org/publications/racial-disparities-in-youth-commitments-and-arrests/

Raising the Age Would Lower Racial Disparities in the Criminal Justice System
Disproportionate minority contact with the criminal and juvenile justice systems is well-documented. Of the 15,942 children who came into contact with the juvenile justice system in 2010 and 2011, almost half (48.6%) were Black, 39.3% were White, 8.1% were Hispanic, and 4.0% were identified as other ethnicities.[3] As the Subcommittee's report notes, recidivism rates drop when youth are prosecuted in juvenile court as opposed to adult court.[4] Additionally, collateral consequences of obtaining a criminal record—especially difficulty securing employment—are disproportionately more severe for people of color, limiting their lifelong economic opportunities.[5] Though raising the age will not address significant racial disparities in juvenile arrest rates, charging and commitments, it will go far in providing resources to reduce recidivism and avoid collateral consequences for children of color. It is important to note that this conclusion is reached assuming adequate funding to provide the kinds of developmentally appropriate interventions that the juvenile justice system is meant to provide.

Automatic Transfer to Superior Court of 16-17 Year Olds Charged with A-E Felonies after Probable Cause or by Indictment Would Disproportionately Affect Children of Color
Though raising the age generally is supported by data and would likely lower racial disparities in the criminal justice system, the Subcommittee's recommendation to automatically transfer 16-17 year olds charged with A-E felonies to superior court after probably cause or by indictment is undercut by the Subcommittee's own research and would have a severe disproportionate impact on children of color.

As the Sentencing Project has documented, racial disparities in juvenile arrests increase as the severity of the charge increases:

Arrest Rate (per 100,000 Juveniles), 2013[6]

	White	Black	RRI
All delinquent offenses	32.2	73.8	2.3
Person	5.1	18.3	3.6
Violent offenses	1.1	5.8	5.3
Simple assault	4.0	12.5	3.1

[3] North Carolina Sentencing and Policy Advisory Commission (2015), Juvenile Recidivism Study: FY 2010/11 Juvenile Sample.
[4] NCCLAJ Interim Report, p. 7-8.
[5] See AMANDA Y. AGAN, SONJA B. STARR (2016), Ban the Box, Criminal Records, and Statistical Discrimination: A Field Experiment, U of Michigan Law & Econ Research Paper No. 16-012.
[6] JOSHUA ROVNER (2016), THE SENTENCING PROJECT, RACIAL DISPARITIES IN YOUTH COMMITMENTS AND ARRESTS, http://www.sentencingproject.org/publications/racial-disparities-in-youth-commitments-and-arrests/

Property offenses	9.3	23.5	2.5
Property crime index	7.1	19.4	2.7
Other property	2.2	4.1	1.9
Drug law violations	4.1	6.0	1.5
Public order offenses	13.6	26.0	1.9

In North Carolina, these disparities are also clear: In 2011, children identified as non-white comprised 73% of the complaints for A-E felonies despite being only 36% of the population.[7] Notably, Black children accounted for 57% of the complaints while being only 22% of the population.[8]

Total Complaints for Class A-E Felonies: 2011[9]

American Indian or Alaska Native	9
Asian	4
Black or African American	484
Hispanic/Latino	63
Native Hawaiian or Other Pacific Islander	0
Two or More Races	32
Unknown	0
White	252
Total	**844**

Racial disparities in prison admissions and youth felony convictions are also consistent with these disparities in charging serious offenses. In 2014-15, 80% of prison admissions of 13-18 year olds were identified as non-white, with 70% identified as Black.[10] Additionally, in 2014-15, 68% of people under 21 convicted of felonies were identified as non-white, with 63% identified as Black.[11]

It is also noteworthy that much of the research cited throughout the Subcommittee report shows significant drops recidivism when juvenile court retains jurisdiction over serious offenses. For example, a John Locke Foundation report cited by the Subcommittee states:

> Yet another study looked at over 2,000 juveniles charged with aggravated assault, armed robbery, or burglary in New York and New Jersey, where the former are processed through criminal courts and the latter are adjudicated in juvenile court. That study found

[7] North Carolina Division of Juvenile Justice (2015), Annual Report: 2011, p. 11. U.S. Census Bureau, 2010.. http://www.census.gov/quickfacts/table/PST045215/37
[8] Id.
[9] Id.
[10] North Carolina Department of Public Safety (2015), Fiscal Year 2014-2015 Annual Statistical Report, p. 11.
[11] North Carolina Sentencing and Policy Advisory Commission (2015), Structured Sentencing Statistical Report for Felonies and Misdemeanors, Fiscal Year 2014/15, p. 10.

> an 85 percent increase in re-arrest rates for violent crimes amongst juveniles in adult courts and a 44 percent increase in re-arrests for felony property crimes. Re-incarceration rates rose 26 percent for those prosecuted as adults.[12]

Regardless of the cause of this disparity in arrest rates for serious offenses, exposing 16-17 year olds charged with class A-E felonies to automatic transfer to superior court after probable cause or by indictment would, in turn, automatically expose children of color disproportionately to an adult criminal justice system that provides less developmentally appropriate resources and burdens them with the lifelong stigma of a criminal record.

Respectfully submitted,

Rob Wall
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[12] MARK LEVIN & JEANETTE MOLL, JOHN LOCKE FOUNDATION (2013), IMPROVING JUVENILE JUSTICE: FINDING MORE EFFECTIVE OPTIONS FOR NORTH CAROLINA'S YOUNG OFFENDERS, Cited by NCCALJ Juvenile Age Subcommittee Report, p. 20, 21, 24-27.

Conference of District Attorneys
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August 29, 2016

Will Robinson
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Dear Will:

District Attorneys across North Carolina have joined with citizens, other legal professionals and Chief Justice Mark Martin in the Commission's comprehensive evaluation of our judicial system. As such, both Elected District Attorneys and assistant district attorneys have participated in discussions on numerous committees and subcommittees. Now at this interim juncture, the North Carolina Conference of District Attorneys, consisting of the 44 Elected District Attorneys, would like to offer comment on the Commission's work.

CRIMINAL INVESTIGATION AND ADJUDICATION COMMITTEE

Juvenile Age: The Conference of District Attorneys supports the Committee's recommendation to raise the juvenile age for 16 and 17 year olds with two priority conditions:

1. District Attorney have bind over discretion (without transfer hearings) for all juveniles 13-17 who commit A-E felonies.District Attorneys are elected by the citizens and charged with administering justice to hold the guilty accountable, protect the innocent, and ensure public safety. While juvenile courts are structured to protect the juveniles and provide opportunities for second chances and rehabilitation, they do not possess the tools to deal with the small, but violent, sector of juveniles. That is not to say that all violent juveniles should be adjudicated through adult court, but there are times when it is appropriate. District Attorneys have the most intimate knowledge of the facts of each case and working with law enforcement, are able to determine when there is significant public safety risk and when the more appropriate venue for a particular juvenile would be adult court. This is exemplified in the processes of at least 19 other states.
2. Funding is provided for processing the increased numbers of juveniles through juvenile court. Previous fiscal analyses for raising the juvenile age have only addressed the increased needs of the Division of Juvenile Justice; never the needs of the courts. This must be factored into any appropriations that are provided. Current workload formulas, which are antiquated, indicate District Attorneys are already operating at a personnel deficit of 60 assistant district attorneys, statewide. Juvenile court is much more time-consuming than adult court. This need must be met before changes to the current system are made. Raising the age will require more judges, more prosecutors and most likely more clerks to cover the additional juvenile courts required.

Only with both of these conditions met, will the District Attorneys support raising the juvenile age for 16 and 17 year olds.

Indigent Defense: Our system of justice works best when both sides are represented by fair, competent and knowledgeable counsel who conduct themselves in a professional manner. We support efforts to assist counsel in the efficient delivery of ethical and competent legal services to indigent clients that may include providing oversight, supervision and support to all counsel providing indigent defense services.

Various districts, especially rural areas, report significant difficulties in scheduling defense attorneys on the indigent list, indicating defense attorneys and public defenders are spread too thin. One-size-fits-all solutions do not work in our state. However, establishing more regional public defenders could assist in alleviating reported scheduling conflicts at reduced costs.

Oversight and transparency of IDS ensure that tax payer monies are being utilized in an effective and efficient manner and serve to protect a population that is often powerless. Certainly every cases is unique, but the fact remains that over 98% of all criminal cases are resolved by plea. IDS could collect more detailed information regarding the cost of case representation by case type. Tracking costs per case by case type would allow IDS to recognize trends and establish case cost norms. Cases that fall outside norms could be further evaluated for training opportunities and the creation of expected standards.

District Attorneys support the need to improve indigent services through specialized training and compensation. We support IDS' efforts to assist private assigned counsel in the efficient delivery of ethical and competent legal services to indigent clients. As is the case with assistant district attorneys, improving the pay rate for public defenders and appointed attorneys will attract more qualified professionals to public service and thereby improve the ability and readiness of those who serve.

Many defendants who come through our courts have mental health and/or substance abuse issues. Addressing these issues early on can enhance and expedite case resolution. More services are needed, especially in rural areas. Both District Attorneys and defense attorneys need to be well-versed on treatment options available and training in this area could improve their knowledge base. The sooner a defense attorney can identify their client's mental health or substance abuse needs, the sooner we can start a process of identifying available services…especially for incarcerated clients. If a defendant begins mental health or substance abuse treatment pre-trial, the participation can have a significant influence on the ultimate resolution of the case.

Capital cases present additional unique, controversial and complex issues. Annually there are over 500 cases filed as first degree or "undesignated murder," but less than 10 cases actually proceed capitally each year. Eliminating the "undesignated murder" category from ACIS would eliminate some ambiguity for hundreds of those cases. Once a case has been designated "noncapital," the second attorney should not be retained. Rule 24 Hearings are the decision points for designation of capital cases. Prior to that hearing, there is no need for two attorneys to be assigned to a case. Waiting to assign two attorneys to a case when it is declared capital would produce significant savings. Additionally, reducing the number of out-of-district or out-of-region defense attorneys assigned to capital cases would reduce travel costs and scheduling issues. Utilizing attorneys in the Capital Defender's Office for capital case assignments would help with efficiencies and costs. Finally, IDS needs to develop a mentor program encouraging more attorneys to sit second chair in capital cases and ready themselves to serve on the capital list.

Pretrial Release: The Conference of District Attorneys supports the committee's interest in evidence-based pretrial release programs that include the following:

- Preventative detention of defendants who are either a flight risk, a public safety risk or both;
- Pretrial release of defendants who are not a public safety risk and can be relied upon to return to court;
- Assessment tools that are evidence-based and are actively and effectively being utilized in other jurisdictions;
- Analysis of a variety of pre-trial release programs that are tailored to meet the unique needs of various jurisdiction sizes;
- Suggested plans for financial support of such programs.

Case Management - In order to be more effective and efficient in case management, more court time, more judges and more prosecutors need to be allocated. Many districts are still working with the same amount of court time they had decades ago. Additionally, the Conference of District Attorneys recommends the following:

- The Supreme Court should exercise leadership in communicating the importance of timely resolution of cases.
- The Supreme Court, in consultation with the District Attorneys and the Superior Court Judges, should develop and adopt caseflow management principles.
- The Supreme Court, in consultation with the District Attorneys and the Superior Court Judges, should develop and endorse the use of time guildelines as tools for managing criminal caseloads
- District Attorneys should develop criminal caseflow management best practices in accordance with criminal case docketing statutes.
- The AOC should continue to promote data consistency with a particular emphasis on consistent and accurate case-load counts and dispositions to ensure the accuracy of reports and performance measures. This initiative should begin with a clear definition of a case.
- The AOC should work with the District Attorneys to identify data and information needs necessary to manage criminal caseloads.
- The AOC should provide District Attorneys and courts with access to caseflow management reports that contain accurate and necessary information on the age and status of pending cases to enable District Attorneys to calendar cases and enable leaders and the public to monitor the progress of cases.
- The AOC should conduct studies designed to further assess the status of case management including:
    - What is the frequency of continuances and their impact on case age?
    - What are the primary reasons for continuances?
    - What factors account for the wide range of time to disposition across the state.
- The AOC and the Conference of District Attorneys should develop expertise and information to assist courts in implementing caseflow management practices.
- Caseflow management topics should be incorporated into training programs for District Attorneys and judges.

CIVIL JUSTICE COMMITTEE COMMITTEE

The Conference of District Attorneys strongly supports the recommendation to restore funding for legal assistance programs including loan repayment relief. Public interest law is especially vulnerable to the effects of crippling law school debt. The Conference recommends the Chief's Commission support funding debt relief organizations like the North Carolina Legal Education Assistance Fund (NCLEAF). Only through this kind of support organization can public interest lawyers, like assistant district attorneys and assistant public defenders afford to concentrate and continue careers in public interest law. It is critical to both District Attorneys and Public Defenders that they can attract and maintain quality attorneys to handle cases within the criminal courts. (Please see the appendix at the end of this report that includes comments from assistant district attorneys.)

LEGAL PROFESSIONALISM COMMITTEE

The Conference of District Attorneys also supports this committee's further study of standards and methods that North Carolina uses to assess candidates for the practice of law to ensure that those admitted to the bar are competent and of the highest level of ethical character and fitness.

TECHNOLOGY COMMITTEE

Document Management: The Conference of District Attorneys supports the committee's recommendation to employ document management systems within the court's technology. Incorporated into such an endeavor needs to be

an expansion or overhaul of the current Discovery Automation System (DAS). The discovery responsibility for prosecutors is one of the most critical functions of the Office of District Attorneys and has expanded over time, especially in the increase of cell phone and surveillance videos. The current system continues to struggle with uploading law enforcement reports as well as storing the myriad of video and other media evidence that now exists in criminal cases. To ensure that prosecutors are receiving, storing, tracking and managing discovery, as well as delivering it to the defense in a timely, efficient and effective manner, a robust automated discovery system is critical.

Calendaring: The Conference of District Attorneys supports an initiative that would allow for electronic calendaring through a case management system. As the District Attorneys have the criminal calendaring authority, they need a system that will allow them to track and identify cases for court settings.

Case Data Analysis and Reporting: The Conference of District Attorneys supports recommendations to provide information about case processing as well as statistical information by district and statewide, as a whole and by case type, including number of filings, number of dispositions and age, and number and age of pending cases. This is critical information that District Attorneys need in order to manage their personnel and the criminal cases in their districts. This information is not currently accessible.

Case Management Systems: The Conference of District Attorneys supports the concept that case management systems must be employed throughout the court system. Currently the District Attorneys have a case management system that has suffered from years of "scope-creep"; trying to do too much for too many. While it is a vast system that has many functions, it is cumbersome, slow and confusing to use. Therefore, most districts have employed work-around solutions for limited functions, as opposed to using the current case management system. In addition to setting calendars, a case management system should allow management of case activity, witnesses, victims, law enforcement, prosecuting attorneys and defense attorneys. A system needs to be employed that is user-friendly and addresses prosecutors' specific needs.

The Conference of District Attorneys appreciates of the opportunity to be involved in this comprehensive review of North Carolina's Courts System. We look forward to continuing our work with the Commission, legal representatives and citizens on this initiative.

Sincerely,

Peg Dorer
Director
North Carolina Conference of District Attorneys

APPENDIX

NC LEGAL EDUCATION ASSISTANCE FOUNDATION

I have been a prosecutor for over 20 years and I can not stress how crucial the funding from NC Leaf was when I became a prosecutor. I started in 1996 at the statutory minimum which I believe was $27,500. I had law school loans from Wake Forest University School of Law in excess of $66,000. I could not have paid my rent AND my loans back without their assistance!! During the application process, I quickly realized that if I did not get the funding to assist me, I would have to quit and go into private practice, take on a part-time job in the evening (although I often worked late as a new prosecutor trying to prove myself) or default on my loans. When I received that grant money, I was elated, it allowed me to pursue my passion as a prosecutor and remain a financially responsible young adult. I cannot thank the NC Leaf foundation enough!!
Marci Trageser
Assistant District Attorney

I benefitted from NC LEAF's funding for several years after I became a prosecutor. I have been an ADA for 10 years now and NC LEAF helped me for about the first five years of my prosecutorial career.

As you know, entry-level ADAs do not make too much; generally, half of what our private sector colleagues make. In addition, we have to bear the costs of North Carolina state bar dues and other costs that are generally paid by the larger private firms. Nevertheless, those generous entities that loan us money as students do not care about our aspirations to serve the public sector. We pay the same principle and the same interest regardless, with no options for debt relief or interest reductions based on where we work or what we do.

Long story short, if it were not for NC LEAF, I would have struggled to make ends meet those five or so years that I received NC LEAF aid. Student debt is a tremendous burden and public sector attorneys, including ADAs, need incentive and encouragement to continue without having to worry about paying the grocery bill or enjoying a vacation somewhere other than at home. Assistant district attorneys work hard and they have worked hard to get where they are. NC LEAF is a great program to say "thank you" for that hard work and to encourage us to keep striving to benefit the State and its people.
Matthew Levchuk
Assistant District Attorney

When I first started practicing law 20 years ago, I was accepted into the NC LEAF program. I was working for Legal Services and the financial assistance NC LEAF provided was invaluable to me. When you choose to work in public service there are many enriching things about the work of helping others, but obviously it does not bring with it much in the way of financial rewards. I was able to assist those less fortunate than me, and later became an assistant district attorney where I have continued service to my community in other ways. The financial assistance provided by NC LEAF was significant for me and truly allowed me to continue to be of service in ways that otherwise I might not have been able to afford.

I would love to see this program re-established to encourage and assist others to carry on the difficult work of public service in the legal arena. Please do not hesitate to reach out if I can be of any assistance.
Connie Jordan
Assistant District Attorney

I have not received the benefits of LEAF as it was de-funded prior to my employment with the 9th Prosecutorial District Attorney's Office. I can say, that as a young prosecutor, and to some degree as a slightly more senior prosecutor, it would have made a GREAT difference in my financial situation. Until recently, working for the District Attorney's Office presented financial challenges for me, largely due to the disparity between my salary and the amount of student loan debt I incurred during law school. I have remained an Assistant District Attorney because I enjoy my job and believe in what I do on a day to day basis. That said, there have been many opportunities to leave for a much higher salary, and due only to my commitment to law abiding citizens in the communities in which I have served, have I remained despite the financial challenges those decisions presented. I hope this helps, NC LEAF was a great program and kept many a good prosecutor working in District Attorney's offices State wide. I hated to see it go and hope that it returns, regardless of whether I may avail myself of its benefits.
John S. Hindsman, Jr.
Assistant District Attorney

I received LEAF funding for three years when I was first employed as an Assistant District Attorney. My student loan debt from just law school alone was $82,000. The payment was $1,100 a month and my take home pay as a starting ADA was $1800. You can see how that math doesn't add up to sticking with state employment.

I refinanced my loans (and still pay on them 16 years later) to make the payment more manageable. However even with the refinance stretching the term out to 25 years my payment was $650 still a large chunk of my take home pay. Without LEAF in those lean years I would have left the State for a more lucrative job in the private sector. LEAF monies got me through until I was married and my husband's salary could supplement my poorly paid state employment. 16 years later I am still prosecuting and I know I could not have stayed without that money to help pay my loans in the beginning.

I still think about leaving for a more lucrative job in the private sector because ADA pay stinks but that is another topic!
Christy L. Hawkins
Assistant District Attorney

I was fortunate enough to qualify for NC LEAF when I started my first job as an Assistant District Attorney. As a recent law school graduate, establishing my first home in a brand new area, having NC LEAF help pay some of my law school loans was very important to me. Brand new Assistant District Attorneys do not make a lot of money. The assistance from NC LEAF helped me get established in my chosen profession. It is a valuable service to North Carolina, and I hope future ADA's can benefit from its services.
Melanie Earles
Assistant District Attorney

I have not availed myself of the LEAF program because it was not funded when I applied, but I will say that I recently returned to being a DA after some time in private practice. To do so, I took a 35% paycut so that I am now being paid approximately what I was paid at my first attorney job 10 years ago. My loans are currently being deferred as I work things out, but forgiveness – of even part of my loans, would make the situation significantly less stressful. I am good at this job and I am committed to it so it would be nice to see the legislature recognize the commitment that so many public servants are making.
Amy Broughton
Assistant District Attorney

NCLEAF was a great benefit to me and I am grateful for all of the assistance it provided me in paying off my law school loans while serving my community as an Assistant District Attorney. I was able to pay off my loans from NC Central School of Law in six years after graduating with the help of NCLEAF. This valuable assistance program allows quality lawyers to remain in public service fields and be able to pay off their loans without being overburdened by how much money they owe. Without this funding, many great lawyers will not be able to afford to remain in public service fields.
Meredith R. Pressley
Assistant District Attorney

NC Leaf has been a tremendous help to me. My wife is still in school, we have two kids and only one income. Every little bit helps. My payment is low but I definitely notice the extra $100 every month. It makes a big difference. At the end of every month I am always right on the cusp of going into the red so it really does help me stay out of debt.
John Stone
Assistant District Attorney

I was approved for the program for one year. It was beneficial as a supplement to assist with my student loans since the starting salary at the time was in the mid-thirties. As you know many of us come out of school with approximately $55,000.00 in consolidated Stafford loans and have private loans as well. The program assists the state in retaining young attorneys who have the difficult decision of doing the work they feel called to do or avoid prolonged debt by going into private practice.
Allan Adams
Assistant District Attorney

I received NC LEAF for 5 years for $25,000. It enabled me to become a career prosecutor. I received $5000.00 a year tax free from 1999-2004.
Jennifer L. Martin
Assistant District Attorney

I availed myself of this program back in 2007. I voluntarily withdrew from the program because I had to take a second job to cover my expenses, which took me over the required income bracket. However, after I gave up my second job I tried to reapply 2 yrs ago, but was treated very badly by the person who had taken over Patsy Frye's position. She basically told me not to bother applying because they were only catering to new graduates. It really was not WHAT she said, but HOW she addressed me.
I have been with the State for 9.5 yrs. If anyone should benefit from the program it should be people with longevity and dedication to their job as oppose to new graduates.
Caroline Tomlinson Pemberto
Assistant District Attorney

I was a recipient of the NCLEAF scholarship program over 10 years ago, but I assure anyone who is looking into whether the program is worth the funding that it was instrumental in my decision to pursue a career in public service when I accepted a job with the Wake county DA's office in 2002, and I have been a prosecutor since that time and I love my job and am thankful for the opportunity. I know that I had classmates at the time who went to law school and pursued a legal career for the money or status that it often symbolizes. Many of the people I've seen that have taken jobs in the private sector, even after an initial career in the public forum, still pine after the days they worked for the State. It is a truly noble endeavor, and often thankless, but necessary more and more as society and crime grows and develops. Any organization or group that helps make it even a little easier for people who are willing to take up the sword of justice, should be heralded and appreciated just as those of us who have benefitted from their generosity.
Jennifer Reimer
Assistant District Attorney

YOUTH JUSTICE PROJECT

SOUTHERN COALITION *for* SOCIAL JUSTICE

August 31, 2016

Criminal Investigation and Adjudication Committee
North Carolina Commission on the Administration of Law & Justice
P.O. Box 2448
Raleigh, NC 27602
info@nccalj.org

Re: Public Comment – Committee Recommendation Interim Report on Raising the Age

Dear Members:

The Youth Justice Project (YJP) of the Southern Coalition for Social Justice supports the recommendation of the NCCALJ Criminal Investigation and Adjudication Committee to raise the age of juvenile jurisdiction in North Carolina from 16-years old to 18-years old. YJP applauds the Committee for taking steps to truly invest in our state's youth and knows this will inevitably yield a lasting return from a public health, public safety, and economic standpoint. A major benefit of the recommendation is that it gives more youth the opportunity to avoid the devastating collateral consequences of a criminal conviction. Under the current recommendation, most of North Carolina's 16- and 17-year-olds will no longer suffer the potentially lifelong stigma of a criminal conviction that makes finding employment, securing housing, and accessing education and financial aid far more difficult for North Carolina youth than their peers in other states. YJP recognizes that holding 16- and 17-year-olds accountable in the rehabilitative framework of juvenile court is in the best interest of the public, as well as that of the individual juveniles. It also gives North Carolina's children the best opportunity to become productive, economically independent, and well-adjusted adults. Ultimately, YJP hopes that this will be the first in a number of steps to improve juvenile justice in our state.

Although YJP supports the spirit of the recommendation as it currently stands, there are two points of contention that are truly at the core of all of the committee's work. These points of contention are: 1.) the current proposal recommends automatic transfer to superior court of A-E felonies for youth age 16- and 17 after a finding of probable cause or by indictment; and 2.) the North Carolina Conference of District Attorneys' very recent demand that the same transfer procedure apply to 13-, 14-, and 15-year-olds; meaning those children would also be automatically transferred to superior court for A-E

felonies after a finding of probable cause or by indictment.[1] Adopting these transfer procedures as part of the Commission's recommendations would be contradictory to the data-driven and research-based approach the Committee has thus far taken in crafting its recommendations and have the potential to do more harm than good to North Carolina children.

Currently, the state's juvenile code requires that after notice, hearing, and a finding of probable cause, the court may transfer jurisdiction over a juvenile age 13 or older to superior court, where the juvenile is tried as an adult. If the alleged felony constitutes a class A felony and the court finds probable cause, the court must transfer the case to superior court. For all other alleged felony offenses, the prosecutor, the juvenile's attorney, or the court can move to transfer to superior court.[2] Transferring a case from juvenile court to superior court generally requires a procedure known as a transfer hearing.

A transfer hearing is the process by which a district court judge determines whether or not a juvenile should be sent to superior court and treated as an adult. At this hearing, the prosecutor and the juvenile have the opportunity to be heard or offer evidence and the juvenile's attorney has the opportunity to examine records that the court may use in considering whether to transfer the case to superior court. The judge determines whether the protection of the public and the needs of the juvenile will be served by transfer of the case to superior court and must consider the following factors:

1. The age of the juvenile;
2. The maturity of the juvenile;
3. The intellectual functioning of the juvenile;
4. The prior record of the juvenile;
5. Prior attempts to rehabilitate the juvenile;
6. Facilities or programs available to the court and the likelihood that the juvenile would benefit from treatment or rehabilitative efforts;
7. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; and
8. The seriousness of the offense and whether the protection of the public requires that the juvenile be prosecuted as an adult.[3]

The transfer process as it currently stands allows for the judge to do exactly what a judge is supposed to do, make the best decision for not only the community at-large, but also the juvenile, by evaluating all of the factors. This is the process that should continue to be used for 13-17 year olds.

Naturally, in bringing a variety of stakeholders to the table to develop these recommendations, compromises must and have been made by all parties; the current draft recommendation reflects such concessions. Committee members have already agreed to keeping provision G.S. 7B-2000 (allowing the district court to transfer jurisdiction). They have also agreed to add a provision that, by motion of the

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[1] At the August 17, 2016 meeting of the Criminal Investigation and Adjudication Committee, Andrew Murray, purporting to speak on behalf of the North Carolina Conference of District Attorneys, stated that the Conference would rescind its support of the recommendations if prosecutors were not given the sole discretion to transfer class A-E felonies to superior court for 13- 15-year-olds by a finding of probable cause or indictment.

[2] NCGS 7B-2200

[3] NCGS 7B-2203

prosecutor, automatically transfers 16- and 17-year olds accused of A-E felonies to superior court after a finding of probable cause or by indictment.[4] Unfortunately, the latter provision effectively neutralizes the judge's ability to be a neutral arbiter for youth in that age range. YJP does not feel that the latter provision is supported by research or data and instead believes that this represents a clear compromise by the Committee. Juvenile crime rates have decreased dramatically since 2008 and every indication suggests that juvenile court is works far better for youth than adult court.[5] In its current recommendation, the Committee is already deviating from best practice by allowing prosecutors the power to transfer some 16- and 17- year-olds to superior court without a transfer hearing. Extending this new power even further, and granting prosecutors near unfettered discretion to transfer 13-, 14-, and 15-year-old's cases to superior court is an intolerable compromise and not the right path for North Carolina to take in raising the age.

As a state, we are finally acknowledging the inherent differences in children and adults. Young people's brains don't fully develop until their mid-20s. Their brains are more vulnerable and malleable.[6] For this reason, there are legal provisions that prohibit minors from entering into contracts, getting married, joining the military, voting, smoking cigarettes or drinking alcohol, among other things. While YJP believes the current transfer process for all youth is the best procedure for deciding whether serious offenders should be handled in juvenile or superior court, we understand that the Committee has made compromises in order to get broad stakeholder support. However, the recent proposal from the Conference of District Attorneys that would grant them additional powers to automatically transfer 13-15-year-olds after probable cause or indictment is an unacceptable compromise.

Extension of prosecutorial power to transfer cases is improper and ignores that the fact that we have an existing transfer process that generally works well. According to the NC Division of Juvenile Justice, between 2004 and 2016, transfer was sought for 487 13-15-year-olds accused of class A-E felonies.[7] Of those juveniles, 66% were transferred to superior court, while only 34% were retained in juvenile court.[8] While 91 of the juveniles transferred were subject to the mandatory transfer for class A felonies, the remaining 232 discretionary transfers amounted to a 58% success rate for prosecutors.[9] Focusing specifically on 15-year-olds, transfer was sought for 341 juveniles charged with class A-E felonies.[10] Seventy-one percent were transferred to superior court and just 29% were retained in juvenile court. While 61 of these juveniles were subject to the mandatory transfer for class A felonies, the remaining 182 discretionary transfer motions resulted in a 65% success rate for prosecutors.[11] This

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[4] Interim Report, Criminal Investigation and Adjudication Committee Appendix A fn. 5 (July 2016), http://nccalj.org/wp-content/uploads/2016/07/Criminal-Investigation-and-Adjudication_-interim-report_NCCALJ.pdf.

[5] Interim Report, Criminal Investigation and Adjudication Committee Appendix A fn. 58 (July 2016), http://nccalj.org/wp-content/uploads/2016/07/Criminal-Investigation-and-Adjudication_-interim-report_NCCALJ.pdf.

[6] Teenage Brains Are Malleable And Vulnerable, Researchers Say, http://www.npr.org/sections/health-shots/2012/10/16/162997951/teenage-brains-are-malleable-and-vulnerable-researchers-say.

[7] Juvenile Age: Issue Briefing, Transfer of 14- and 15-year Olds (June 2016).

[8] Id

[9] Id

[10] Id

[11] Id

data contradicts the claims of some prosecutors that the current transfer process needs modification because judges always deny their transfer motions. Instead, the data shows that the current transfer process actually favors prosecutors and does not need to be modified any further. While we vehemently oppose any provision making it easier for prosecutors to send children to superior court, we find any provision that grants prosecutors almost sole power to send 13-15-year olds accused of A-E felonies particularly egregious.

Finally, there is one glaring issue that must be addressed; that is, the racial inequity that pervades our juvenile and adult criminal systems. The Committee's recommendation is silent to these inequities and how they should be addressed. While the recommendation highlights that school-based complaints account for almost half of juvenile court referrals statewide and reducing school-based referrals could mitigate the cost of raising the age, it fails to note that in 2015-2016, black youth represented 25.8% of the public school population, but accounted for 48.2% of all school-based delinquency complaints.[12] Further, despite making up only 24.81% of the state child (age 0-17) population, black youth accounted for roughly 53.7% of all juvenile court complaints.[13] The recommendation also fails to mention that black children are disproportionately represented in both juvenile detention admissions and Youth Development Center commitments at roughly 61% and 69%, respectively.[14] The recommendation also fails to address that black students are 2.3 times more likely to be referred to law enforcement or have a school-related arrest as their white peers.[15] YJP encourages the Committee to add measures to the recommendation that specifically target racial disparities for youth in the juvenile and adult criminal systems such as requiring trainings in cultural competency, racial equity and restorative justice for school administrators, school police, and court personnel. Such efforts will not only improve the school and community climate and reduce the disparate punishment of black youth, they will also potentially reduce the costs associated with raising the age since fewer youth will be unnecessarily funneled into the court system.

YJP is pleased to see an array of stakeholders on the Committee acknowledging that our state got the age of juvenile jurisdiction wrong almost one hundred years ago when the law was first written.[16] It seems like we are truly on the verge of finally correcting this mistake. Some of the most vulnerable children, especially those accused of A-E felonies, stand to gain the most from the rehabilitative services provided in juvenile court. Instead of sending children to a cruel, punitive system that is more likely to shape them into dependent, hardened, life-long products of a broken system, we can invest in them now by raising the age, and guarantee our children hope and opportunity. We ask that the Committee make the right decision and present a final recommendation that is consistent with

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[12] Racial Equity Report Cards, Youth Justice Project, http://youthjusticenc.org/wp-content/uploads/2016/08/Sources.pdf

[13] Id

[14] Id

[15] 2013-2014 Civil Rights Data Collection: A First Look, http://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf p. 4

[16] Interim Report, Criminal Investigation and Adjudication Committee Appendix A fn. 1 (July 2016) http://nccalj.org/wp-content/uploads/2016/07/Criminal-Investigation-and-Adjudication_-interim-report_NCCALJ.pdf

the science and data we know to be effective and in the best interest of both children and the public by maintaining the current transfer process and increasing efforts to establish racial equity.

Sincerely,

K. Ricky Watson, Jr.
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Southern Coalition for Social Justice
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Peggy Nicholson
Co-Director, Youth Justice Project
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August 9, 2016

North Carolina Commission on the Administration of Law & Justice
Committee Reporter Jessica Smith
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UNC Chapel Hill
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Dear Committee Reporter Smith:

NACDL has reviewed the draft report *Improving Indigent Defense in North Carolina*, and finds it to be a careful and enlightened report in many respects. The Committee has clearly made concerted efforts to identify best practices in public defense and has largely issued recommendations that would raise North Carolina's standing in terms of the quality of public defense services it provides. There are, however, a few issues of concern that NACDL wishes to address.

The Committee's draft report currently expresses a strong preference for public defender offices, including the involvement of conflict defender offices and the use of part-time public defenders, while largely removing private appointed lawyers from the delivery of public defense services. NACDL's position, in line with the American Bar Association's *Ten Principles of a Public Defense Delivery System*, supports robust involvement of the private bar in the delivery of public defense services. In fact, the ABA position is that there should be "active and substantial" involvement of private practitioners, and public defender offices are only needed "when population and caseload are sufficient to support such an organization."[1] NACDL and the ABA also highlighted this idea in a joint 2012 report: "The private bar has a critical role as an active and engaged partner in advocating for reforms and additional funding and in ensuring quality representation by taking cases when public defenders become overburdened."[2]

[1] Norman Lefstein, SECURING REASONABLE CASELOADS: ETHICS AND LAW IN PUBLIC DEFENSE 232 (ABA 2011) (quoting ABA PROVIDING DEFENSE SERVICES Std. 5-1.2(a)).
[2] NAT'L ASSOC. CRIM. DEF. LAWYERS and ABA, NATIONAL INDIGENT DEFENSE REFORM: THE SOLUTION IS MULTIFACETED 11 (2012) *available at* https://www.nacdl.org/reports/indigentdefensereform/ (hereinafter THE SOLUTION IS MULTIFACETED).

NACDL strongly urges that North Carolina consider maintaining a "Mixed System" of public defense. As public defense expert Professor Norman Lefstein stated in his book, *Securing Reasonable Caseloads*:

> In order to ensure reasonable caseloads of public defenders, it is essential that private lawyers remain actively and substantially involved in providing indigent defense representation through programs that are independent of judges and politics. Such defense programs should provide (1) mandatory training for all participating lawyers; (2) adequate compensation for their services; (3) mentoring of inexperienced lawyers; (4) close supervision of the representation by all lawyers; and (5) appointments to types of cases for which the lawyers are qualified by training and experience. Before private lawyers and public defenders begin to provide criminal and juvenile defense services, an independent authority should certify that the lawyers are qualified to do so.[3]

Rather than minimizing the role of private attorneys in public defense, North Carolina should develop uniform oversight and training for such attorneys to ensure that they have skill and support on par with institutional defenders. The Committee for Public Counsel Services in Massachusetts, for example, has had much success with the use of private bar advocates as a complement to public defender offices to provide public defense services with appropriate oversight and training, including uniform qualifications, mentorship, periodic file checks, and court observation, among other measures. The private defender program (PDP) in San Mateo County, CA, formed in 1969, has also long been a model for delivery of public defense services using private counsel. San Mateo County's PDP has rigorous training and qualification standards and provides a great deal of ancillary support, including a Chief Investigator and a network of contract investigators available to work on PDP cases.[4] More recently, the Capital Area Private Defender Service (CAPDS) managed assigned counsel program in Austin, TX, which began operation in 2015, has had success implementing a similar model. CAPDS created qualification standards for attorneys, instituted a mentoring program, provided 70 hours of training in its first year, and hired staff to handle investigation requests and immigration consultations. This increase in training and resources has had measurable impact. In 2015, CAPDS approved 234 investigation requests, resulting in higher rates of dismissals, reductions, or findings of not guilty for both misdemeanor and felony defendants as compared to cases with no investigators or with investigators from the pre-CAPDS period.[5] In the same year, CAPDS attorneys also requested

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[3] Norman Lefstein, EXECUTIVE SUMMARY AND RECOMMENDATIONS -- SECURING REASONABLE CASELOADS: ETHICS AND LAW IN PUBLIC DEFENSE 30 (ABA 2011).

[4] For a full discussion of San Mateo County's private defender program, *see* Lefstein, SECURING REASONABLE CASELOADS, *supra* note 1 at 217-28.

[5] CAPDS 2015 Annual Report, *available at* http://adobe.ly/1MXcDAV. For misdemeanor cases, 60% of cases with a CAPDS investigator were dismissed, reduced, or resulted in a finding of not guilty, as compared to just under 40% of those without investigators and just over 20% of those with pre-CAPDS investigators. For felonies, just over 50% of cases with a CAPDS investigator were dismissed, reduced, or resulted in a finding of not guilty, as compared to just over 30% of those without investigators and approximately 35% of those with pre-CAPDS investigators.

the assistance of immigration experts 193 times; no such requests were documented in 2014, prior to the start of the CAPDS program.[6]

As the Committee is aware, many national standards advise against the use of part-time defenders. Part-time public defenders present many of the same challenges as contract private assigned counsel. Part-time employees generally do not receive benefits such as health insurance and retirement plans and are not considered full-time institutionally employed defenders for programs such as public service loan forgiveness. These disadvantages as compared to full time institutional defenders lead to a financial conflict of interest, wherein the part time defender seeks to supplement his or her income by taking on more private work to the detriment of the appointed clients. While the Committee's draft report highlights the lack of oversight for PAC as an issue in North Carolina, the proposal to increase supervision and training of PAC through measures such as PAC supervisors housed within public defender offices is a better approach. NACDL also supports the Committee's recommendation that IDS determine more reasonable compensation for PAC to encourage more qualified and experienced attorneys to participate in the public defense function.

Aside from the reduced involvement of the private bar, there are a number of recommendations in the Committee's draft report that NACDL supports and a few that are good recommendations that could be strengthened. In particular, the recommendations designed to increase independence from the judiciary – including moving IDS back out from under AOC and restoring the appointment of chief defenders to IDS rather than the resident Superior Court judges – are excellent.

The goal of creating uniform indigency standards, while taking into consideration geographic variations in cost of living and legal defense, shows a clear intent to ensure equal justice across the state, but not to the detriment of common sense considerations. North Carolina should take care to ensure that any uniform standards are not so restrictive as to chill the right to publicly provided counsel. North Carolina's own statute defines what qualifies as "indigent" rather broadly: "An indigent person is a person who is financially unable to secure legal representation and to provide all other necessary expenses of representation."[7] Due to complexity of laws, collateral consequences, and increased involvement of experts in criminal proceedings, the costs of competent legal representation continue to grow. The right to counsel does not turn on "indigence" alone, but rather on the lack of resources to hire counsel and fund a defense; one need not be destitute to be unable to afford legal counsel.[8] Additionally, programs that require defendants to pay fees to be appointed attorneys and to reimburse the state for the cost of the defense if convicted are concerning to NACDL. The state has a constitutional obligation to bear

[6] *Id.*
[7] N.C. Gen. Stat. 7A-450
[8] In recognition of this very fact, NACDL made a decision in early 2016 to rename its Indigent Defense Department as its Public Defense Department, and to cease using the term "indigent defense" to refer to public counsel services.

the costs of public counsel, and shifting those costs to individuals who are deemed unable to afford counsel is injurious to the very population that the right is designed to protect.

NACDL supports the Committee's recommendation that workload formulas should be developed, and adds that public defenders should be required to track their time to facilitate the creation of reasonable workload standards, ensure better resource allocation, and provide valuable data for purposes of budget projections and requests. NACDL encourages the Committee to recommend that North Carolina undertake a study to develop specific workload metrics tailored to North Carolina law and practice, rather than relying on national standards.[9] Ideally, such a study should include both time-tracking to determine current conditions and a Delphi study to build consensus among both public and private practitioners regarding the amount of time needed to provide competent representation.[10]

NACDL strongly supports the recommendation that the General Assembly consider reclassification of minor crimes. Meaningful public defense reform can only be achieved by reducing the flow of cases into the system through decriminalization and reclassification.[11]NACDL further commends the Committee for recognizing that the half-step of creating fine-only misdemeanors is contrary to effective public defense. In light of the growing body of collateral consequences of conviction – those life altering legal impediments that restrict opportunities and benefits based on even minor criminal records – counsel is no less essential simply because incarceration is unavailable as a penalty.[12] As the Committee is well aware, the North Carolina legislature created a number of fine-only misdemeanors in 2014 when it amended the misdemeanor sentencing grid, stripping many first-, second-, and even third-time defendants accused of low-level offenses of the right to appointed counsel. In light of this unfortunate reality, NACDL strongly recommends that the Committee go a step further and recommend that the General Assembly create a statutory right to counsel in all criminal cases regardless of potential penalty.

Finally, timely appointment of counsel is essential. The Committee's recommendation that "counsel should be provided as soon as possible after arrest, charge, detention, or a request for counsel by the client," could, however, be strengthened. NACDL urges the Committee to adopt NACDL's own recommendation that counsel be provided "at the first appearance . . . at which liberty is at stake or a plea of guilty . . . may be entered."[13]Additionally, NACDL supports

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[9] For a brief overview of the importance of workload measurement and the development of local standards, see the Sixth Amendment Center's webpage, http://sixthamendment.org/sufficient-time-to-ensure-quality-representation/.

[10] NACDL has been working with two jurisdictions since 2013 to develop local workload standards using this two-part method. The American Bar Association has also done such work, most notably in Missouri.

[11] *See* THE SOLUTION IS MULTIFACETED, *supra* note 2 at 9, 14-17.

[12] *See* NAT'L ASSOC. CRIM. DEF. LAWYERS, COLLATERAL DAMAGE: AMERICA'S FAILURE TO FORGIVE OR FORGET IN THE WAR ON CRIME - A ROADMAP TO RESTORE RIGHTS AND STATUS AFTER ARREST AND CONVICTION (2014), *available at* https://www.nacdl.org/restoration/roadmapreport/.

[13] *See* Resolution of the Board of Directors of NACDL, February 8, 2012, *available at* https://www.nacdl.org/resolutions/2012mm1/.

the recommendation that the first appearance statute be amended to require a first appearance for all in-custody defendants within 24 hours or the next day that district court is open, regardless of whether the crime charged is a felony or a misdemeanor. However, this procedure still leaves defendants who are cited to court rather than arrested, and those who are arrested but quickly released, without counsel until their first court date, which in some cases can be weeks or even months later. The Committee should encourage the development of a procedure that would allow these defendants to be screened for counsel prior to their first court date if they so choose, to both streamline the process and to ensure that defendants have counsel early enough in the process to begin building a defense before exculpatory evidence is lost.

Overall, the Committee's report contains several fine recommendations that, if implemented, could greatly strengthen North Carolina's commitment to providing constitutionally adequate public defense services.

Sincerely,

Gerry Morris
President

CC: Will Robinson, Executive Director
NC Commission on the Administration of Law and Justice

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August 19, 2016

Will Robinson, Executive Director
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RE: Comments on Interim Report from the Criminal Investigation and Adjudication Committee

Dear Mr. Robinson:

On behalf of the Commission on Indigent Defense Services, we would like to thank Chief Justice Martin and the Criminal Investigation and Adjudication Committee for the work that has gone into the detailed examination of the issues identified by the Committee. The interim report addresses some of the most important and challenging issues in our criminal justice system; indigent defense, the age of juvenile jurisdiction, pre-trial release and criminal case management.

The Commission on Indigent Defense Services endorses the recommendations made in the interim reports. As the reports from the various subcommittees are extremely detailed, we will not discuss each of the recommendations or the reasons for our support. We do, however, wish specifically address some of the important recommendations in the report from the Indigent Defense Subcommittee. We appreciate the focus in the report on the quality of representation needed in a healthy public defense system. In a time in which even a relatively minor criminal conviction can have lasting adverse consequences on employment, housing and other important issues, and in which the majority of people who are facing charges in the criminal justice system simply cannot afford to hire their own lawyer, investing in a healthy public defense system is crucial to North Carolina.

The Subcommittee on Indigent Defense wisely focused on identifying the characteristics required to produce a healthy and sustainable public defense system. As recognized by the Subcommittee, a public defense system needs to provide meaningful and timely access to qualified counsel. Counsel need to work in a system with appropriate oversight, supervision and support. The public defense system must be actively managed, with access to necessary data and the ability to develop and implement appropriate standards for counsel. The public defense system should be independent of judicial control, and instead be directly responsible to the legislature for the provision of constitutionally effective representation in a cost-effective manner.

We would like to comment on two issues that are central to a healthy system of public defense; resources and independence from judicial control. The responsibility of IDS, and of any public defense system, is to ensure that all persons entitled to appointed counsel receive effective representation. The right to effective representation is important not just to those who face the

most serious charges, but also to the large number of people who face relatively minor charges, often resolved in district court. Those charges, which we may view as minor, can result a period of incarceration that can impact children and other family members, as well as more lasting impact such as job loss, loss of a driver's license and other collateral consequences. Effective representation can only be provided by counsel, and other professionals such as investigators, who have the skill and experience to match the needs of the case, and who can put in the time needed to properly represent their clients. The current rates paid by IDS to private counsel simply are inadequate to meet the long-term needs of public defense in North Carolina. In addition, while we greatly appreciate the recent increase in pay of those who work in the public defenders' offices, many in those offices struggle with educational loans and other financial obligations while they carry caseloads that make effective representation difficult. Any system of public defense needs adequate resources, and needs to pay counsel in a manner that does not undercut counsel's ability to provide effective representation.

Just as adequate resources are crucial to public defense, so is independence from the judiciary. The Subcommittee's report commendably recounts the reasons for the need for independence from the judiciary, and recognizes that a system of public defense should be directly accountable to the legislature. We believe that this should include the appointment of Chief Public Defenders. As detailed in the report of the Subcommittee, national standards support the position that the Chief Public Defender not be appointed by a judge, but rather by an independent defense body. Indeed, we are not aware of a single organization that works in the field of public defense that does not support this position. The legitimate concern that the Chief Public Defender work well in the local court system is met by using the system that was in place while IDS had appointment authority, which required that the appointment be made from lawyers voted on by the local bar.

The Commission on Indigent Defense also supports the recommendations regarding the age of juvenile jurisdiction. As spelled out in the Appendix to the Interim Report of the Committee, there are numerous reasons for raising the age of juvenile jurisdiction. We are pleased to see that there is wide-spread support for the important initiative, and hope to see the legislature act on this issue.

Finally, while the issues of pre-trial release and case management do not always draw as much attention as the other issues addressed by the Committee, we support the work of the Committee in these areas. North Carolina needs to address the risk that people are detained in jail only because of their inability to pay a bond. Justice is not well served when significant punishment by way of incarceration is imposed prior to trial rather than as a result of a conviction. The issue of case management is related; a system in which defendants, witnesses and victims are required repeatedly to attend court for sessions in which the case is not addressed not only wastes resources, it imposes an unwarranted burden on those involved in the case.

We look forward to seeing the recommendations of the Criminal Investigation and Adjudication Committee become the reality of how our criminal justice system operates.

Sincerely,

W. James Payne
IDS Commission Chair

August 31, 2016

VIA MAIL AND EMAIL

Criminal Investigation and Adjudication Committee
North Carolina Commission on the Administration of Law & Justice
PO Box 2448
Raleigh, NC 27602
info@nccalj.org

RE: Public Comment – Interim Report of the Criminal Investigation and Adjudication Committee

Members of the Criminal Investigation and Adjudication Committee,

On behalf of the Criminal Justice Debt Working Group, we commend the NCCALJ Criminal Investigation and Adjudication Committee for identifying the judicial system's pretrial release apparatus as in need of study and reform. Our working group is comprised of social justice organizations and legal practitioners and would welcome the opportunity to contribute our knowledge, resources, and other assistance to the Committee and the Pretrial Justice Institute's efforts to study the discriminatory impact and safety implications of the current pretrial release apparatus and provide evidence-based recommendations for alternative structures and practices.

For several of the compelling reasons described in the Committee's Interim Report, we urge the Committee to explicitly require the Pretrial Justice Institute to study wholesale alternatives to North Carolina's current pretrial release apparatus, including deposit bond and no money bond. We echo the Committee's concern that "routinely detaining individuals who present little or no pretrial release risk simply because of their inability to pay a money bond" has profound implications on community safety and, as several states have found in conducting similar studies, disproportionately impacts low-income individuals and individuals of color. Moreover, as described in a recent bail reform study published by the conservative Reason Foundation, "Putting more people in jail than necessary is costly, hurts our principles as a country, puts future careers in jeopardy, and breaks up families."

We also write to urge the NCCALJ Criminal Investigation and Adjudication Committee to mutually adopt or otherwise support the Civil Justice Committee's interim recommendation to study and address the destructive collateral impact of rising court fines, fees, and penalties. As acknowledged by the Civil Justice Committee, the "domino effect of unpaid fines [and] fees…potentially creates a 'destitution pipeline' and debtors' prison." This is an accurate and extremely troubling description of the devastating daily experiences of many thousands of low-income defendants ensnared in our state's criminal justice system.

The average criminal court costs facing defendants have more than tripled in recent years. In 1995, the general court of justice fee for district court was $41. In 2015, the general court of justice fee for criminal district court was $127. In 2016, the criminal district court of justice

fee—a standard fee charged to every defendant found guilty or responsible for a criminal or traffic offense— was increased to $147. This is just one of dozens of steadily increasing fees often charged to defendants. Particularly relevant to the Committee's study of pre-trial release is the "jail fee" charged to criminal defendants upon conviction for each and every day of their pre-trial confinement. This jail fee was increased from $5 to $10 in 2011 and can alone add hundreds of dollars—sometimes thousands—to an individual's criminal justice debt.

These rising court costs represent an enormous extraction of wealth from the thousands of North Carolinians who pay these fees across our state every day—often in lieu of rent, child care, car payments, and other essential expenses. In a small percentage of cases, courts are willing to waive the court costs based on a defendant's inability to pay. There are growing concerns among advocates that recent statutory changes may be curtailing the appropriate use of indigency fee waivers. Moreover, several fees—including the $200 fee to participate in first offense diversionary programs—are mandatory and cannot be waived. Defendants that do not receive waivers and are unable to pay the court costs are left with debts that often give rise to severe civil and criminal consequences.

The judicial system currently employs several mechanisms that penalize the nonpayment of various types of court costs, including an additional fee to make installment payments, disqualification from federal assistance programs (Temporary Assistance for Needy Families, Supplemental Nutrition Assistance, Supplemental Security Income for the Aged and Blind, etc.), wage garnishment, driver's license suspension, expunction disqualification, extension of probation, and, potentially, incarceration. As referenced in the Civil Justice Committee's Interim Report, a defendant's criminal justice debt can also be converted into a civil judgment, which accrues 8% compounded interest annually even while the defendant is incarcerated and becomes a lien against real estate owned or inherited by the defendant as well as any tax refunds. Consider the case of an indigent criminal defendant who is found guilty of serious charges in Superior Court. Between attorney fees, investigation fees, expert witness fees, and various other court costs, the ultimate bill to the indigent defendant after trial will often top $10,000. Once converted to a civil judgement, this bill begins accruing 8% interest immediately and continues until the full bill is paid off. So, for example, an individual sentenced to 30 years imprisonment would see her $10,000 debt to the State balloon to $100,626.57 by the time she is freed.

The Criminal Justice Debt Working Group would welcome the opportunity to assist the NCCALJ in investigating the impact of rising court costs and criminal justice debt as well as best practices and evidence-based alternatives. Over the last year, we have gathered and examined evidence that criminal court costs and the mechanisms employed to collect outstanding debts undermine the financial security and liberties of low-income individuals; achieve low rates of recoupment; often cost more to administer than the outstanding fees they are intended to collect; contribute to a costly revolving-door criminal justice system; and otherwise fail to achieve the North Carolina Judicial Branch's stated mission of facilitating "a fair, independent, and accessible forum for the just, timely, and economical resolution of their affairs."

Thank you for the opportunity to share this information with you. Again, we applaud and strongly support the Criminal Investigation and Adjudication Committee's interim recommendation to study and reform North Carolina's pretrial release system. We also urge the Committee to mutually adopt or otherwise support the Civil Justice Committee's interim recommendation to study and address the destructive impact of rising court costs and court debt on low-income North Carolinians. Our working group welcomes the opportunity to assist your Committee in these crucial efforts to improve the administration of our state's judicial system.

Please direct any response to Bill Rowe by phone at (919) 856-2177 or email at bill@ncjustice.org.

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