

# MISDEMEANOR DIVERSION PROGRAMS:

*Local solutions for keeping low-risk youth out of the adult criminal system*

**In North Carolina, all 16- and 17-year olds are automatically treated as adults in the criminal system with no opportunity to enter the juvenile justice system. This is the case regardless of the severity of the offense or the individual circumstances of the incident.**

Unfortunately, this means that every year, thousands of North Carolina youth are referred to the criminal system for first-time, low-level offenses. Once in the adult system, youth face many direct and indirect consequences that impede their access to education, employment, and housing and may ultimately harm their ability to be a productive member of society.

While changing the law to include more 16- and 17-year olds in the juvenile system is a clear long-term solution to addressing this problem, an interim solution has been the establishment of pre-arrest Misdemeanor Diversion Programs (MDPs) by communities concerned about the overcriminalization of young people. MDPs are diversion programs for 16- and 17-year olds that operate pre-arrest and pre-charge, before a child has to face all of the pitfalls of entering the adult criminal system. MDPs are designed

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to provide immediate and individualized consequences that limit young people's interaction with the court system and allow them to move on with their lives.

This issue brief provides an overview of MDPs, including what they are, what problems they address, and how communities can develop and implement their own MDP.<sup>i</sup>

## **I. What is an MDP?**

The first Misdemeanor Diversion Program (MDP) was established in 2014 in Durham County to address the criminalization of youth in the adult system and to protect children from the direct and collateral consequences of having an adult criminal record.<sup>ii</sup> Since that time, more counties have established MDPs, including Wake<sup>iii</sup>, Orange<sup>iv</sup>, Cumberland<sup>v</sup>, and New Hanover<sup>vi</sup>.

While many types of diversion programs exist, MDPs are distinguishable in two primary ways. First, an MDP referral occurs pre-arrest and pre-charge, meaning that if the participant successfully completes the program, they will have no record in the adult criminal system. Second, MDPs were established to specifically target 16- and 17-

year olds with no prior adult record who would otherwise have been arrested or cited and sent to adult court. It is truly intended to be the “last chance” for youth to stay out of the adult criminal system.

The eligibility, referral, and intake processes for MDPs are described in more detail below. However, when thinking about MDPs, it is important to keep in mind that they are intended to provide an immediate, short-term, and individualized consequence for youth. The youth served by MDPs are low-risk offenders and, therefore, intensive supervision or overly burdensome program requirements could actually increase the likelihood that they will recidivate.

Finally, while MDPs are a valuable and needed diversion program, they do not supplant the need for legislative action to raise the age of juvenile court jurisdiction to include 16- and 17-year olds. Not all communities have an MDP and even in those that do, some eligible youth inevitably slip through the cracks. Increasing the age of juvenile court jurisdiction statewide is the only way to ensure that more 16- and 17-year olds are consistently and appropriately served by the more rehabilitative juvenile justice system.<sup>vii</sup>

## **II. What Problems Do MDPs Address?**

Despite continuous efforts to raise the age of juvenile jurisdiction, North Carolina remains one of only two states to prosecute all 16- and 17-year olds charged with criminal offenses in the adult system regardless of the severity of the offense.<sup>viii</sup> In 2014, there were 18,947 charges filed against 16-17 year olds in

North Carolina.<sup>ix</sup> Of these charges, a mere 5% of them were for violent crimes.<sup>x</sup> Research shows most offenses committed by youth are minor, and most youth are first-time offenders. The criminalization of youth for first-time, low-level offenses is problematic for many of the reasons outlined below.

### ***a. Direct and Collateral Consequences***

Youth who are arrested and referred to adult court face significant direct consequences<sup>ix</sup> such as court costs, fees, fines, possible jail time, and other penalties imposed during sentencing. Beyond these direct consequences, youth also face collateral consequences, which are lasting negative impacts associated with having a public criminal record. Some of these consequences could include denial of employment, eviction or trouble finding housing, and denial of financial aid and/or scholarships.

Involvement in adult court can also have a negative impact on a young person’s education. Youth must often miss school for court dates. They may be suspended or transferred to an alternative school based on the criminal charge. Their record may prevent them from accessing higher education since most college applications ask about the applicant’s criminal history. For youth detained in adult facilities, access to quality education is impaired since North Carolina law does not require Department of Correction facilities or county-operated jails to provide specific programs or services to youth.

### **b. Scientific and Social Science Research**

Another issue with youth being treated like adults in the criminal system is that scientific research continues to find that adolescent brains are not fully developed. When compared to adults, youth are more likely to engage in risk-taking behavior; more responsive to peer influence; more sensitive to immediate rewards; less able to govern self-regulation and impulse control; less able to weigh long-term consequences; and less responsive to the threat of criminal sanctions.<sup>xi</sup> These characteristics contribute to youth getting involved in the court system, yet also indicate that they are generally less culpable and have different needs than their adult counterparts.

Unfortunately, the adult system is often not equipped to provide developmentally appropriate services for youth aimed at reducing their risk of re-offending. Thus, youth handled in the adult system are more likely to recidivate as compared to their counterparts in the juvenile justice system.<sup>xii</sup> Further, given the malleability of their brains, youth exposed to adult offenders through the court system are more susceptible to negative influences from those interactions, as well as more vulnerable to physical and sexual exploitation.<sup>xiii</sup> Research also reveals that youth who engage in antisocial acts are likely to mature out of those behaviors. Therefore, it is important to find ways to address youthful misbehavior that do not create the life-long disability of a permanent and public criminal record.

### **c. Fiscal Impact**

Youth involvement in the court system has a lasting individual and collective fiscal impact. Court costs for a simple misdemeanor can amount to over \$1,000, more than many youth or families can afford. Similarly, an adult criminal record can hurt educational and employment prospects and, therefore, impact future earning potential. A Labor Department survey, which studied 8,984 people born between 1980-1984 over a period of time, suggested that being arrested by the age of 23, regardless of whether convicted, correlates with negative economic outcomes.<sup>xiv</sup> Of the people surveyed, 26% of those arrested and convicted by age 23 had a household income below the poverty line at age 25, while 21% of those arrested and only 13% of those not arrested found themselves below the poverty line.<sup>xv</sup>

There are also public savings that accrue by keeping youth out of the court system. Research shows that individuals with deeper involvement in the criminal justice system are more likely to reoffend than those with less involvement.<sup>xvi</sup> Repeat offenses result in additional public costs through direct losses to victims, costs of law enforcement and incarceration, and the lost economic contribution of someone not engaged in law-abiding work.<sup>xvii</sup>

### **d. Racial Disparities**

Youth of color are disproportionately arrested, charged and subjected to more punitive sentences when compared to their white peers. When looking at juvenile court

complaints in 2015, black youth accounted for 53.7% of all complaints despite making up less than 25% of the state’s child population.<sup>xviii</sup> Black children are also disproportionately represented in both juvenile detention admissions and long-term Youth Development Center commitments at roughly 61% and 69%, respectively.<sup>xix</sup> The same trends are evident in the adult criminal system. According to the U.S. Department of Justice, despite African-Americans making up roughly 13% of the United States population, they made up 35% of jail inmates and 37% of prison inmates in 2014.<sup>xx</sup> While the racial break-down of 16-17 year olds referred to adult court in North Carolina is not readily available, it is safe to assume that, like their younger and older counterparts, 16-17 year olds of color are disproportionately funneled into the adult criminal system. This racial disproportionately is especially troubling when considering the life-long consequences faced by youth who enter the adult court system.

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The criminalization of young people in our state, especially for first-time, low-level offenses, is a significant problem. Until North Carolina raises the age of juvenile court jurisdiction, MDPs will play a critical role in addressing this problem by creating a buffer that keeps 16-17 year olds out of the adult criminal system, providing them with immediate and appropriate consequences, and enabling them to become a productive member of society.

### III. How Can Communities Develop and Implement a Successful MDP?

Where a community has expressed a desire to keep youth who commit first-time, low-level offenses out of the adult system, Misdemeanor Diversion Programs (MDPs) present a collaborative, locally-driven solution. Compared to many other types of diversion programs, MDPs are easy to set-up and implement since they generally tap into a community’s existing resources and are focused on imposing short-term, less intensive consequences for minor misbehavior. Still, there are many things to consider when a community decides to start developing an MDP.

In the initial stages of development, the most important task is generating stakeholder buy-in and support. Once key stakeholders have expressed commitment to the program, they can begin identifying funding sources, developing the eligibility, intake and program criteria, and hiring experienced staff to manage the program. After the program has been established, important factors to consider include providing ongoing training to law enforcement and other stakeholders, establishing data collection and program evaluation criteria, and developing long-term goals for the program.

#### ***a. Stakeholder Buy-In and Support***

MDPs rely on coordination and support from many different local entities so it is important to start generating buy-in from a diverse group of stakeholders early in the process. Key stakeholders will include: District

Court Judges, District Attorney's offices, law enforcement agencies, defense attorneys, local government staff and officials, school districts, service providers, and other community partners. Support from local law enforcement agencies is especially critical since their officers will be responsible for making pre-arrest referrals to the program.

Not all of these stakeholders will necessarily be on board from the beginning. For existing MDPs, a local leader or smaller group of dedicated stakeholders began the conversations about bringing an MDP to the community. Over time, broader support was built through the collection and distribution of data on 16- and 17-year olds in adult court to illustrate the problem, local trainings and one-on-one meetings on the MDP model and its positive impact on public safety, the gathering of letters of support from key partners, and regularly convened MDP stakeholder meetings to discuss goals and next steps. The stakeholder meetings are a good forum for different entities to express ideas and concerns about the program so that they can be addressed as a group.

#### ***b. Funding***

Fortunately, MDPs require relatively little funding compared to many other types of diversion programs. The programs are typically housed within a county's existing infrastructure for pre-trial or diversionary programming. For example, the Durham MDP is part of the county's Criminal Justice Resource Center. Similarly, in Orange County, the MDP is part of the county's Criminal Justice Resource Office. In Wake County, the

MDP is under the auspices of a private managed care organization, which coordinates behavioral healthcare services in the county.

In terms of programming for referred youth, MDPs rely largely on referrals to existing community resources and services, further mitigating the programmatic costs. In Durham, for example, several independently funded providers have agreed to accept MDP referrals. The reliance on these programs makes it critical to partner with community service providers from the start. Some funding may need to be set aside for stipends for community partners who are not willing or able to donate services.

The primary cost for MDPs is hiring a staff person to manage the program. Depending on the program's jurisdiction, a part-time staff person may be sufficient or the job can be incorporated into an existing staff member's responsibilities. Hiring the right person is critical to the MDP's success. The role of MDP coordinator is very different than that of probation officer. The coordinator should be trained in diversion and understand individualized needs of youth. They must be capable of building a relationship of mutual respect with youth and families as well as have a knowledge of community resources. Finally, they must be able to maintain good working relationships with a variety of stakeholders and be prepared to provide ongoing training to law enforcement and other community partners.

As in any program, identifying funding sources is critical. Durham began by utilizing county funds to support a part-time MDP

Coordinator position. Within a few months, the program received a two-year Governor's Crime Commission grant to fund a full-time position. Currently, Durham county has agreed to continue funding the program when the grant term expires. Similarly, in Orange and Cumberland, the counties committed funding to the programs thanks to support from local leaders and elected officials. In Wake County, the MDP coordinator position is funded through the managed care organization, which earmarks some funding for school-related supports.

### ***c. Eligibility***

Once the key stakeholders have committed to developing an MDP, it must be determined which youth will be eligible for referral. Generally, MDPs have started by focusing on 16- and 17-year olds with no prior adult record who have committed non-violent misdemeanors. Some programs have additional criteria. For example, because Wake County's program is school-based, only students enrolled in Wake County public schools are eligible for referral to MDP.

Just because an MDP starts by serving a particular group of youth does not mean that eligibility criteria cannot expand over time. Durham's MDP began in early 2014 by training School Resource Officer's how to make school-based referrals. By the summer of 2014, all Durham Police Department and Sheriff Department officers and deputies had been trained so that any 16-17 year old in the county could be referred so long as they met the other program criteria (e.g. no prior adult record, accused of non-violent misdemeanor).

In October 2015, Durham expanded the upper age limit of the program to 21 so more youth would have the opportunity to avoid an adult arrest and conviction.<sup>xxi</sup> Given the success of Durham's MDP, other MDPs may choose to start with more expanded eligibility criteria.

### ***d. Referral and Intake***

Stakeholders must also agree on a standardized referral and intake process. The very first step in the intake process occurs when the law enforcement officer determines that a youth is eligible for the program and referral to MDP is appropriate. For most MDPs, allowing officers to have discretion in referrals was a key element to getting support from law enforcement agencies. However, in Wake County, an MDP referral is mandatory if the youth meets certain criteria.

Unfortunately, even where MDP referral is mandatory or strongly encouraged, some youth continue to slip through the cracks. Once a youth has been arrested or cited for an offense, a record is made. Even if the charge is later dismissed, the record can only be erased through expungement, a burdensome process that may not be available in all cases. Stakeholders should consider ways to prevent this: for example, by designating someone to review all proposed arrests or citations of 16-17 year olds to ensure MDP-eligible youth are considered for the program. Ongoing training about MDP for law enforcement, as described below, is also important.

Once the officer makes an MDP referral, the intake process begins. Different

programs have different procedures and timelines for intake. For example, In Orange County, the officer gives the youth an MDP Postcard, explains the program and the requirement that the youth contact the MDP coordinator within 72 hours. The officer also completes a separate MDP Referral Form and Incident Report that will be reviewed to confirm the youth's MDP eligibility. Confirmation of eligibility involves verifying the youth has no adult criminal history and determining if he/she would have really been arrested for the infraction. This latter point is key since MDPs are intended only for youth who otherwise would have been arrested and referred to adult court.

Once a referral is verified, the MDP coordinator will work with the youth and family to set up an intake appointment as soon as possible. The purpose of the appointment is to educate the youth and parent on the purpose and requirements of the program, the potential direct and indirect consequences of an adult arrest or conviction, and to develop a diversion plan for the youth.

***e. Diversion Plans and Referrals***

At the intake appointment, the MDP coordinator will work with the youth and family to create a diversion plan that focuses on the youth's individual strengths and needs, as well as their future plans and potential barriers (e.g. transportation). Where possible, the resources and services required under the plan should be tailored to address the behavior that resulted in the youth's MDP referral. For example, if the youth was referred for simple possession of a controlled

substance, substance use evaluation, education, and/or treatment should be considered. If the youth was referred for fighting, mediation or group classes focused on anger management would be a good option. Similarly, the coordinator may identify the need for additional wrap-around services for the youth and/or family and make a referral based on these needs. These referrals are not necessarily part of the diversion plan, but help address underlying problems that will ultimately help the child and family.

As detailed above, MDP coordinators largely rely upon existing community services and resources when drafting diversion plans. Therefore, it is important for the coordinator to know what community resources are available and to partner closely with organizations willing to work with MDP youth. Some resources to start with include faith-based and community organizations, mental and/or behavioral health services, substance use education/treatment programs, tutoring/mentoring resources, and any programs funded by the local Juvenile Crime Prevention Council. MDPs can also develop their own leadership skills class, or any other group class, to meet the needs of the youth in the program.

In most existing MDPs, the diversion plan also requires the youth attend a Diversion Court session to learn about the consequences of an adult court referral. A role-play scenario of an actual adult criminal court misdemeanor case demonstrates the consequences firsthand. After the role-play, direct and collateral consequences of adult court

involvement are reviewed and explained by the judge and participating attorneys. Beyond the educational value, these court sessions are a good way for court officials, law enforcement, and other community stakeholders to stay involved and invested in the MDP.

Since research shows that focusing intensive supervision and resources on low-risk offenders can actually increase the likelihood that they will commit another crime in the future, contact between the youth and MDP should be brief and individualized. For example, in Orange County, the diversion plan typically includes 8-12 (but no more than 15) hours of community service, classes or other treatment or diversionary programming to be completed within 90 days of entering the program. It is important to remember that MDP youth are not high-risk, habitual offenders and, therefore, should not be treated or supervised as if they are.

#### ***f. Ongoing Training and Education***

Ongoing training to law enforcement officers is a necessary component of a successful MDP. As stated above, law enforcement is the sole source of MDP referrals and, in most existing MDPs, officers are allowed to use discretion when deciding whether to refer an eligible youth. Therefore, it is critically important that trainings be conducted on a regular basis to ensure that officers are aware of the program, understand its purpose, and know how to make a referral. New officers should learn about the program at their academy training (BLET) and all

officers should receive regular refreshers as well.

#### ***g. Evaluating Outcomes***

From the very beginning, stakeholders should be thinking about how to evaluate their MDP to ensure it is meeting the needs of youth and the community. This includes establishing short-term and long-term goals and determining how to measure progress towards those goals. Key components of effective program evaluation include:

- Regular data collection and review (e.g. number of referrals, who is being referred and why, number of successful completions, recidivism of youth in program compared to those not in program, etc.);<sup>xxii</sup>
- Youth and family surveys (both during the program and post-completion); and
- Stakeholder surveys to measure community and public safety impacts.

Data collection and sharing agreements may need to be developed by stakeholders prior to the start of the MDP to guarantee the existence of and access to the information needed for meaningful program evaluation. In these agreements, it is important to identify who will be responsible for collecting and reviewing the data on a regular basis.

Access to reliable data is critical to measuring and monitoring the MDP's progress and where changes may need to be made. For example, a review of referral data may show that some officers are not referring eligible youth, indicating a need for further education or training. Additionally, given the

disproportionate rates at which youth of color are arrested and referred to court, disproportionate minority contact should always be an area of consideration for MDPs. Meaningful program evaluation is important, not only in ensuring that the MDP is impacting youth and the community as intended, but also as a means to securing additional funding and support.

#### ***h. Future Planning***

Even after an MDP is developed and implemented, the planning work is not done. MDPs can be expanded over time to serve more youth by including larger geographic regions, different types of offenses, older youth, or youth who have completed the program before. There will also be a need to address problems that arise during implementation, such as eligible youth not being referred to MDP or the need for additional funding. Convening stakeholders,

including MDP youth and families, on a regular basis to discuss long-term goals and possible program expansion will ensure that MDPs are community-driven and youth-focused.

### **CONCLUSION**

Until North Carolina raises the age of juvenile court jurisdiction, Misdemeanor Diversion Programs (MDPs) give communities the opportunity to work together to keep youth who commit first-time, low-level offenses out of the adult system. Even after North Carolina raises the age, MDPs will continue to serve a valuable role since they can be expanded to include older youth and can serve as a diversionary alternative to court referral for all youth. In the meantime, by reducing the number of 16-17 year olds in the adult system, MDPs produce meaningful benefits for youth, families, and the community as a whole.

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<sup>ii</sup> *Misdemeanor Diversion Program*, Durham County NC: Criminal Justice Resource Center, available at <http://dconc.gov/government/departments-a-e/criminal-justice-resource-center/misdemeanor-diversion-program>.

<sup>iii</sup> Hui, T. Keung, *New program would keep Wake County teens out of criminal court*, The News & Observer (Feb. 21, 2016) available at <http://www.newsobserver.com/news/local/education/article61644592.html>.

<sup>iv</sup> Grubb, Tammy, *Orange County program sentences teens offenders to a second chance*, The News & Observer (July 17, 2016) available at <http://www.newsobserver.com/news/local/community/chapel-hill-news/article89656812.html>.

<sup>v</sup> Woolverton, Paul, *Cumberland County launching program to divert teens from adult court*, The Fayetteville Observer (Aug. 29, 2016) available at [http://www.fayobserver.com/news/crime\\_courts/cumberland-county-launching-program-to-divert-teens-from-adult-court/article\\_eaca5dc8-03b9-5793-9d10-775df4be177f.html](http://www.fayobserver.com/news/crime_courts/cumberland-county-launching-program-to-divert-teens-from-adult-court/article_eaca5dc8-03b9-5793-9d10-775df4be177f.html).

<sup>vi</sup> Delacourt, Hannah, *New Hanover creates misdemeanor diversion program*, StarNews Online (Sept. 19, 2016) available at <http://www.starnewsonline.com/news/20160919/new-hanover-creates-misdemeanor-diversion-program>.

<sup>vii</sup> For additional support for raising the age of juvenile court jurisdiction in North Carolina, see the recommendations of the North Carolina Commission on the Administration of Law and Justice (NCCALJ). See *Interim Report*, Criminal Investigation and Adjudication Committee of the NCCALJ (July 2016) available at [http://nccalj.org/wp-content/uploads/2016/07/Criminal-Investigation-and-Adjudication-interim-report\\_NCCALJ.pdf](http://nccalj.org/wp-content/uploads/2016/07/Criminal-Investigation-and-Adjudication-interim-report_NCCALJ.pdf).

<sup>viii</sup> *Jurisdictional Boundaries*, Juvenile Justice Geography, Policy, Practice & Statistics, National Center for Juvenile Justice, available at <http://www.jigps.org/jurisdictional-boundaries>.

<sup>ix</sup> *Annual Summary Report of 2014 Uniform Crime Reporting Data*, NC Department of Public Safety, available at <http://crimereporting.ncsbi.gov/Reports.aspx>.

<sup>x</sup> *Id.*

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- <sup>xv</sup> *Id.*
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- <sup>xviii</sup> *Racial Equity Report Card: North Carolina*, Youth Justice Project (2016), available at <http://youthjusticenc.org/wp-content/uploads/2016/08/RERC-North-Carolina.pdf>.
- <sup>xix</sup> *Id.*
- <sup>xx</sup> Minton, Todd and Zeng, Zeng, *Jail Inmates at Midyear 2014*, U.S. Department of Justice, Bureau of Justice Statistics (June 2015) available at <https://www.bjs.gov/content/pub/pdf/jim14.pdf>.
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