Summer 1994 Volume 60, Number 1

Popular Government

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Feature Articles

Popular Government (ISSN 0032-4515) is published four times a year (summer, fall, winter, spring) by the Institute of Government, CB# 3330 Knapp Building, UNC-CH, Chapel Hill, NC 27599-3330. Subscription: $12.00 per year. Second-class postage paid at Chapel Hill, NC, and additional mailing offices. POSTMASTER: Please send change of address to Institute of Government, CB# 3330 Knapp Building, UNC-CH, Chapel Hill, NC 27599-3330. For ordering information, contact the Publications Sales Office at (919) 966-4119. ♾ This publication is printed on permanent, acid-free paper in compliance with the North Carolina General Statutes. ♲ Printed on recycled paper with soy-based ink. Printed in the United States of America.

Popular Government is distributed without charge to city and county officials as one of the services provided by the Institute of Government in consideration of membership dues. The Institute of Government of The University of North Carolina at Chapel Hill has printed a total of 8,000 copies of this public document at a cost of $10,254.30, or $1.28 per copy. These figures include only the direct cost of reproduction. They do not include preparation, handling, or distribution costs.

On the cover Mandated public assistance and social services programs represent a large share of county government budgets. Photo by Bob Donnan.

Mandates, Money, and Welfare: Financing Social Services Programs

John L. Saxon

Legal requirements (known as "mandates") that are imposed on counties by the federal and state governments have sparked a growing "revolt" by some North Carolina counties.

Since 1991 at least sixty-nine North Carolina counties have passed resolutions opposing federal and state mandates.[1] Commissioners complain that mandates "are devouring half or more of [county] revenues, leaving them scrambling for money to support police, firefighters, and schools."[2] A resolution passed by the Union County commissioners in July 1993 asserted that federal- and state-mandated programs make up 60 to 70 percent of county government budgets.

County opposition to mandates has surfaced mainly in resolutions, newspaper articles, and proposed legislation,[3] but a few North Carolina counties have taken more dramatic steps. In June 1992 the Gaston County commissioners voted not to spend the $1.8 million in county funds necessary to pay for the increased costs of mandated welfare programs.[4] The state was able to force the county to provide the funding, however, by withholding it from sales tax revenues that the state collected for the county.[5]

The *unfunded* nature of mandates has sparked most of the recent controversy. Leaders of the antimandate movement argue that *all* unfunded mandates on local governments should be eliminated, and that the federal and state governments should be required to provide *full* funding for any obligation they impose on counties, rather than passing the cost of mandates on to local governments.[6] Funding, however, is only one aspect of

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Bob Donnan

the larger debate concerning the proper roles of the federal, state, and county governments in providing programs and services to their citizens.

Mandates and Welfare

There are thousands of federal and state mandates relating to environmental protection, transportation, employment, education, health care, and scores of other areas. However, most of the controversy in North Carolina has centered on mandated spending for public assistance (welfare) and social services programs.[7] This debate raises a number of important questions regarding these mandated programs:

- What are federal and state mandates?
- What public assistance and social services programs are North Carolina's counties mandated to administer or pay for?
- Where do public assistance and social services mandates come from?
- Who pays for mandated public assistance and social services programs?
- Are federal and state public assistance and social services programs really *unfunded* mandates?
- How much (and why) has the cost of public assistance increased during recent years?
- How does spending for mandated public assistance and social services programs affect North Carolina's counties?

What Are Federal and State Mandates?

In its broadest sense, a "mandate" can be defined as any responsibility, action, or procedure that is imposed by one level of government on another level of government through constitutional, legislative, administrative, executive, or judicial action, either as a direct requirement or as a condition of receiving financial assistance.[8]

In the case of local governments, such as counties, mandates may be imposed by either the federal government or by the state.

The legal authority of the state to impose mandates on counties is based on the legal status of counties as political subdivisions of the state.[9] Counties are local units of government created by the state legislature to exercise some of the state's governmental powers and responsibilities within a certain geographic area.[10] In a 1935 decision the North Carolina Supreme Court held that counties are subject to almost unlimited control by the state government in the exercise of their ordinary governmental functions.[11]

This means that, unless the state constitution in a particular situation provides otherwise, the General Assembly has the legal authority to grant any of the state's governmental powers, functions, or responsibilities to county governments, and that counties are required to carry out the duties and responsibilities assigned to them by the General Assembly. In some instances the state gives counties some discretion to decide whether to provide a particular program or how to exercise their governmental authority. However, when the state *requires* a county to administer or finance a certain program, or to exercise its governmental authority in compliance with state standards or rules, it has imposed a mandate.

This means that many aspects of county government involve state mandates. For example, state law requires counties to provide financing for construction and maintenance of public schools,[12] to ensure adequate facilities for the state's court system,[13] and to provide public health services.[14] Counties also are required to comply with state mandates relating to open meetings of public bodies;[15] accounting, budgets, and fiscal control;[16] purchasing and contracting;[17] nondiscrimination against county employees; and other record-keeping, reporting, organizational, and procedural matters.

In most instances these state requirements constitute unfunded mandates; counties are expected to bear the entire cost of complying with the mandate by levying local property taxes or by using other local revenue sources.[18] The fact that a mandate is unfunded, however, does not necessarily mean that it is unjustified or unreasonable. A strong case can be made that counties should pay the added costs of complying with reasonable fiscal, record-keeping, due process, personnel, organizational, and procedural mandates that are necessary to ensure that county governments exercise their authority effectively, ethically, and equitably.[19] It also can be argued that local governments should have at least some financial responsibility for mandated programs or services that primarily benefit local citizens as opposed to residents of other jurisdictions, or mandates that are necessary to keep problems in one county from "spilling over" into neighboring jurisdictions.[20]

Local governments (and state governments as well) also are subject to a broad range of mandates imposed by the federal government. Sometimes these federal mandates are imposed directly on state or local governments pursuant to the federal government's legal authority to enact laws and regulations relating to fair labor standards, environmental protection, or civil rights.

Often, however, federal mandates are imposed by using the "carrot" of federal funding rather than the "stick" of federal regulation. In 1991 the federal government provided more than $150 billion in grants and revenues to state and local governments for community development, public education, transportation, human services, and other programs.[21] As a condition of receiving these federal funds, state and local governments generally must agree to comply with federally mandated standards or requirements; they are free to refuse the funds, but if they accept the money they are required to comply with the conditions attached to the funding.[22] Because refusing the federal funding is such an unattractive alternative, the standards and requirements fall within the broad definition of "mandate."

What Public Assistance and Social Services Programs Are Counties Mandated to Administer or Pay For?

Two different kinds of welfare programs are caught up in the mandates controversy—public assistance programs and social services programs. Public assistance programs provide financial assistance directly to poor people, and often are referred to as "welfare." They include Aid to Families with Dependent Children (AFDC), Medicaid, and Food Stamps. Social services programs do not involve direct payments to participants, but provide adoption services, adult protective services, guardianship, child protective services, child support enforcement, subsidized day care for children, and in-home services for disabled adults.

Most, but not all, of the public assistance and social services programs administered by county departments of social services are mandated by state law and involve federal or state standards or requirements that the county is mandated to follow.

Chapter 108A of the General Statutes requires every county in North Carolina to administer the following six federal and state public assistance programs:[23]

1. AFDC
2. Food Stamps
3. Medicaid
4. Low-Income Energy Assistance
5. State-County Special Assistance for Adults
6. State Foster Care and Adoption Assistance

In the AFDC, Food Stamp, Medicaid, and Energy Assistance programs, the federal government pays all, or part, of the cost of the assistance provided, and part of the state and local costs of administering the program.[24] The *nonfederal* share of the costs is paid by the state (or, in North Carolina and thirteen other states, by the state

and county governments). Eligibility for the Food Stamp and Energy Assistance programs is determined primarily by federal rules; in the AFDC and Medicaid programs, some of the eligibility requirements are determined by federal law and other standards are set by the states.[25]

The State-County Special Assistance program (which provides financial assistance to elderly and disabled residents of rest homes) is not funded by the federal government.[26] Eligibility for Special Assistance and the amount of benefit payments are determined entirely by state law, and the cost of the program is divided between the state and the counties. The Foster Care and Adoption Assistance program is a combined federal and state program. The state receives some federal funding under Title IV-E of the Social Security Act to provide foster care and adoption assistance payments for children who would have been eligible to receive AFDC if they had not been placed in foster care. However, state law also provides non-federally funded benefits for children in foster care who are not eligible for federal benefits.

In addition to these six mandated public assistance programs, state law requires county departments of social services to administer and finance a number of social services programs. For example, county departments of social services must provide protective services for abused, neglected, or dependent children and disabled adults.[27] Counties receive some federal funds (through the federal Social Services Block Grant) and state appropriations for child protective services, but the mandate to provide these services requires North Carolina counties to spend more than $9.4 million per year in county funds to protect children from abuse and neglect. Counties also are required to administer and finance other social services programs, such as adoption screening and placement services,[28] foster care placement,[29] guardianship of incompetent adults and minors,[30] monitoring and inspection of domiciliary care homes,[31] employment and training programs connected with mandated public assistance programs, and (except in thirty counties in which the state has assumed responsibility) child support enforcement.[32]

Where Do Public Assistance and Social Services Mandates Come From?

Historically, counties in North Carolina have had some responsibility for administering and financing public assistance and social services programs for their residents.[33] Before the Civil War counties assumed primary responsibility for "poor relief" and levied local property taxes to build county "poorhouses" and provide "direct relief" payments to poor people. The pattern continued after the war. Even though the Constitution of 1868 declared that the "[b]eneficent provision for the poor, the unfortunate, and orphan[s] [is] one of the first duties of a civilized and Christian state,"[34] the General Assembly delegated most of the responsibility for public welfare to the counties. An 1868 statute gave county commissioners the general duty to provide for the poor, the authority to employ an overseer of the poor, and the authority to raise taxes to support county homes for the poor.[35]

Then, after the first World War and during the Great Depression, the federal and state governments began to assume more responsibility for financing public assistance and social services programs.

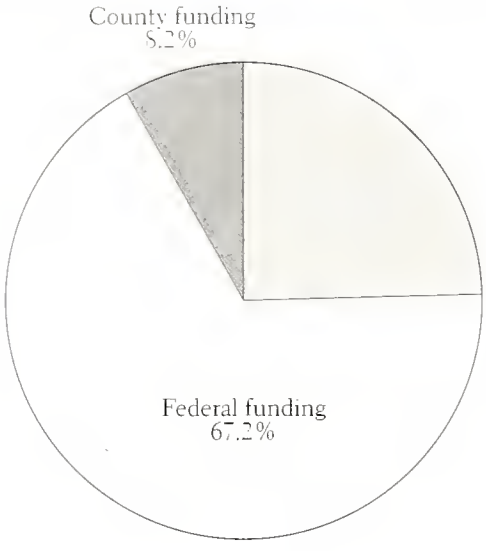
In 1917 state law required counties to establish local boards of charity and public welfare, and in 1919 counties were required to appoint a superintendent of public welfare.[36] In 1923 the state passed a mother's aid law to provide financial assistance to poor mothers with dependent children. The mother's aid program (a predecessor of today's AFDC) was administered by the counties, and the cost of the program was divided equally between the state and the counties; county participation in the program was optional.

During the early 1930s the state government assumed responsibility for many government functions that previously had been administered or financed by county governments. It took over the highway and prison systems and assumed primary funding responsibility for the public schools. However, counties remained primarily responsible for poor relief, care of the elderly, and care of dependent children.

In 1935 Congress passed the federal Social Security Act, providing federal funds for state public assistance programs. Under the act, states that accepted federal funds were required to provide public assistance programs on a statewide basis but could choose to administer them either through a state welfare agency or through local welfare agencies under state supervision. North Carolina adopted the county-administered, state-supervised system and enacted legislation requiring county boards of public welfare to administer the new Aid to Families with Dependent Children (AFDC), Old Age Assistance, and Aid to the Permanently and Totally Disabled programs. In addition, the state required counties to pay most of the nonfederal cost of the new programs.[37]

Today North Carolina—unlike the vast majority of other states—retains this county-administered, state-supervised system,[38] and, although the state has assumed increased financial responsibility for public assistance and

Figure 1
Federal, State, and County Funding of Public Assistance and Social Services Programs in North Carolina, 1992



social services programs, it still requires counties to pay part of the cost of these programs. Therefore, in most states, the controversy over mandates on local governments would have little or nothing to do with the administration and financing of public assistance and social services programs; in North Carolina, the controversy centers there.

The federal government does not require any state to administer the AFDC, Medicaid, or Food Stamp programs or other federally funded public assistance and social services programs. Instead, federal mandates with respect to public assistance and social services programs are imposed indirectly as conditions of receiving federal funding.[39] These conditions often include requirements that (1) the program be administered in all political subdivisions of the state, (2) state or local government employees who administer the program be selected under a merit system, and (3) assistance be provided to everyone who meets the program's eligibility requirements.[40] In most cases, federal rules and regulations set the eligibility requirements, but in some instances federal law allows states, at least to some extent, to set eligibility requirements or determine the amount of assistance to be provided.

Federally mandated public assistance programs, therefore, are imposed on *state* governments, and are conditional, rather than absolute mandates; they contain requirements that must be followed *only if* a state chooses to accept the federal funding. Under North Carolina's county-administered, state-supervised system, however, the *state* mandates counties to administer these programs and "passes along" to counties the federal mandates that are imposed as conditions of receiving federal funding.

Similarly, although federal law requires states to pay the nonfederal share of the cost of federally funded programs, each state may choose whether the nonfederal share will be paid from state or local revenues. Again, in North Carolina the *state* has chosen to require counties to pay part of the nonfederal share of the cost of administration and benefits for federally funded public assistance and social services programs.

Therefore, in North Carolina, it is the *state*, not the federal government, that mandates counties to administer and finance public assistance and social services programs.

Who Pays for Mandated Public Assistance & Social Services Programs?

In 1992 North Carolina counties spent approximately $342 million in county funds for public assistance and social services programs.[41] County-funded expenditures for these programs, however, comprise less than *one-tenth* of the total cost of public assistance and social services programs in North Carolina. The federal and state governments pay the overwhelming majority of the costs of these programs administered by county departments of social services (more than $3 billion per year); the federal government provides about *two-thirds* of the funding for the programs, and state appropriations pay about *one-fourth* of these costs.[42] (See Figure 1.)

In federally funded programs, Congress determines how much money the federal government will spend and how the cost of the program will be divided between the federal government and the states. The share of costs funded by the federal government is called the "federal share," or the rate of federal financial participation; the share of costs that must be paid for by the state (or by the state and counties) is called the "nonfederal share" or the "nonfederal matching requirement."

The federal share varies from program to program, and, in particular programs, different federal shares are set for administrative costs, for the cost of assistance payments made directly to recipients, and for special program activities (such as information systems or investigation of fraud). For example, the federal government pays the entire cost of Food Stamp and Energy Assistance benefits, about two-thirds of the cost of AFDC and Medicaid payments, and half of the state and local costs of administering these programs. In some programs (such as AFDC and Medicaid), the federal government's commitment to provide funding is open-ended because

federal law provides that every person who meets the eligibility requirements is entitled to receive benefits. In other programs (such as Energy Assistance and the Social Services Block Grant), the amount of federal funding is capped; state and local social services agencies receive a fixed amount of federal funding and must either limit the number of people served by the program, limit the amount of services or benefits provided to eligible persons, or provide additional state or local funding for the program.

In most states the nonfederal share of public assistance and social services programs is paid for by the state government. In North Carolina, however, the nonfederal share of public assistance and social services costs is divided between the state government and the counties.[43]

The allocation between the state and counties of costs for public assistance and social services programs varies from program to program. For example, state revenues pay 85 percent of the nonfederal share of Medicaid benefits, half of the nonfederal share of AFDC benefits, and half of the cost of Special Assistance benefits. The state also provides some financial assistance to counties for administrative costs, including $13 million per year for additional county child protective services workers and more than $6 million for "state aid to counties." State appropriations also provide an additional $7 million to certain counties under Section 108A-92 of the North Carolina General Statutes to help equalize the tax burden of counties that have more limited fiscal resources and higher proportions of persons receiving public assistance.

In North Carolina county governments are responsible for paying almost all of the nonfederal share of the local administrative costs (for facilities, equipment, and personnel) related to public assistance programs, as well as half of the nonfederal share of AFDC payments, half of the cost of Special Assistance payments, and 15 percent of the nonfederal share of Medicaid payments for county residents.[44] Counties also are responsible for paying the remaining costs (in excess of any federal or state grants to the county) for other public assistance and social services programs administered by the county department of social services.

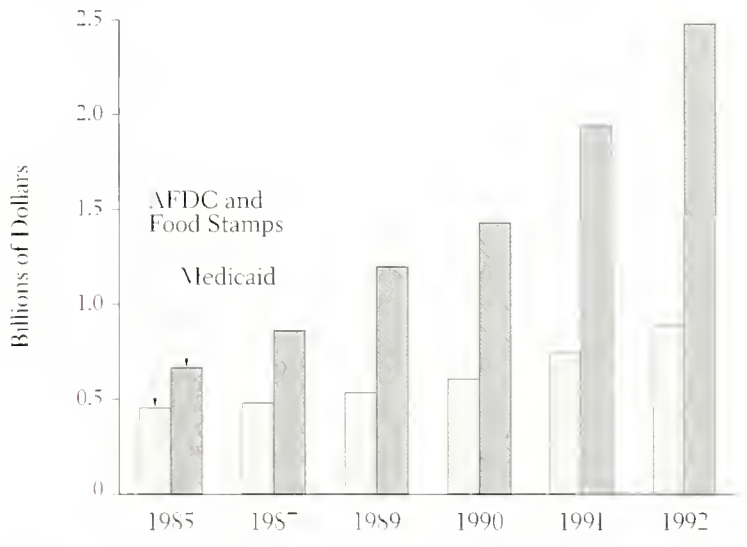
Are Federal and State Public Assistance and Social Services Programs Really *Unfunded* Mandates?

In one sense mandated public assistance and social services programs are unfunded mandates because the federal and state governments do not pay the *full* cost of these programs, requiring North Carolina counties to spend hundreds of millions of dollars in county funds for these programs each year.

In another sense, however, it is not accurate to describe mandated public assistance and social services programs as unfunded mandates, because the federal and state governments pay more than 90 percent of the cost of these programs.

The real question, though, is not whether public assistance and social services programs are unfunded mandates. The real question is *how* counties are affected by the mandated spending for these programs and *whether* counties should assume any financial responsibility for them.

Figure 2
Spending for AFDC, Food Stamps, and Medicaid in North Carolina



Note: Includes federal, state, and county spending for benefits and administrative costs.

Sources: N.C. Division of Social Services, *Annual Statistical Report* for fiscal year 1992 (Raleigh, N.C.: NCDSS, 1992); N.C. Division of Medical Assistance, *Medicaid in North Carolina: Annual Report for State Fiscal Year 1992*.

How Much (and Why) Has the Cost of Public Assistance Increased during Recent Years?

North Carolina, like every other state in the nation, has recently experienced significant increases in spending for mandated public assistance programs. Between 1987 and 1992 the total cost of the AFDC, Medicaid, and Food Stamp programs in North Carolina increased from $1.3 billion to more than $3.3 billion.[45] (See Figure 2.)

This dramatic increase in the cost of mandated welfare programs has resulted in equally dramatic increases

Table 1
Spending for Mandated Public Assistance Benefit Payments by North Carolina Counties, 1987–92

	1987	1988	1989	1990	1991	1992	Cumulative Increase ($)	Cumulative Increase (%)
All Counties	$93,618,343	$103,493,745	$118,827,455	$136,667,905	$167,416,537	$200,178,952	$106,560,609	113.8
Gaston County	3,393,227	2,567,621	2,940,729	3,230,772	4,357,158	5,436,939	2,043,712	60.2
Tyrrell County	xx	108,089	108,891	116,554	206,205	191,551	83,462	77.2
Union County	808,827	895,114	1,045,882	1,283,779	1,592,159	1,854,532	1,045,705	129.3
Wake County	4,042,973	4,256,324	5,016,011	3,360,641	5,767,843	5,882,417	1,839,444	45.5

Note: Data for Tyrrell County in 1987 were not available or there was no net county spending that year.

Source: County Annual Financial Information Reports. Includes county payments to the state for the counties' share of AFDC, Medicaid, and Special Assistance payments made to county residents; does not include administrative costs.

in county expenditures for public assistance.[46] County spending for the four major mandated welfare programs—AFDC, Food Stamps, Medicaid, and Special Assistance—increased from $147.3 million in 1987 to $277 million in 1992 (an increase of 88 percent).[47] County spending for benefit payments in these programs increased from $93.6 million to $200.2 million (see Table 1), while county spending for administrative costs rose from $53.7 million to $76.8 million.[48]

Most of this recent increase in spending for public assistance programs is due to the fact that more people are receiving public assistance.[49] Figure 3 shows the increase in the number of North Carolinians who received public assistance under the AFDC, Food Stamp, and Medicaid programs between 1987 and 1992.[50]

There are at least two factors that have contributed to this dramatic increase in the state's welfare rolls. One of these is the recent recession. A report by the U.S. Congressional Budget Office concluded that most of the increased growth in AFDC caseloads nationwide during the past several years is attributable to the recession.[51] Eligibility for public assistance programs like AFDC, Food Stamps, and Medicaid is based on financial need, and the number of needy people tends to increase during times of increased poverty, high unemployment, and recession.

A second reason that the welfare rolls have increased is that recent changes in federal and state rules have extended eligibility to additional categories of low-income people. For example, during the past seven years, new federal rules have required states to extend Medicaid eligibility to all pregnant women with incomes under 185 percent of the federal poverty guidelines, to children under the age of one who live in single-parent or two-parent families with incomes under 185 percent, to children under the age of five who live in families with incomes under 133 percent, and to children under the age of ten who live in families with incomes under 100 percent.[52] In addition, changes in federal Medicaid rules have made it easier for some elderly and disabled persons to get benefits when they need nursing home care and have a spouse who continues to live at home, and have required Medicaid to pay the Medicare premiums, deductibles, and co-insurance amounts for elderly and disabled Medicare beneficiaries with incomes under the federal poverty guidelines.[53] The Urban Institute estimates that these expansions of federal eligibility, coming at a time of increased participation due to the recession, accounted for one-third of the nationwide increase in Medicaid spending between 1988 and 1991.[54]

Obviously, counties have little or no control over the factors that have contributed to the recent increased costs of public assistance programs. They cannot end recessions, stop rising health care costs, eliminate poverty, or change the eligibility standards for mandated welfare programs, and this lack of control undoubtedly contributes to the frustration of county officials regarding increased spending for mandated welfare programs. However, because North Carolina's counties are mandated to pay a share of the costs of public assistance programs, the real question is how these mandated expenditures affect counties financially.

How Does Spending for Mandated Public Assistance and Social Services Programs Affect Counties?

As noted earlier, some county officials argue that spending for mandated public assistance and social services programs imposes a substantial financial burden on county taxpayers, consumes an ever-increasing portion of county budgets and financial resources, forces counties to increase local property tax rates, and limits counties' ability to fund other governmental functions such as public safety and schools.

Considering the significant increases in county spending for public assistance and social services programs during recent years, there is almost certainly some truth to this argument. However, the financial impact of welfare and social services programs on counties is probably far less substantial than claimed by these counties, and there appears to be little direct evidence to support the claim that these programs have caused significant increases in local property tax rates or significant decreases in funding for other functions of county governments.

To assess the financial impact of public assistance and social services spending on counties,[55] this article analyzes county-funded spending for these programs[56] in terms of

- county spending for public assistance and social services per county resident (per capita spending) and the relationship between per capita spending and the proportion of county residents living in poverty,
- the percentage of total county spending consumed by public assistance and social services programs compared to spending for other local government functions, and
- the proportion of county tax revenues and the property tax base allocated to spending for public assistance and social services programs.

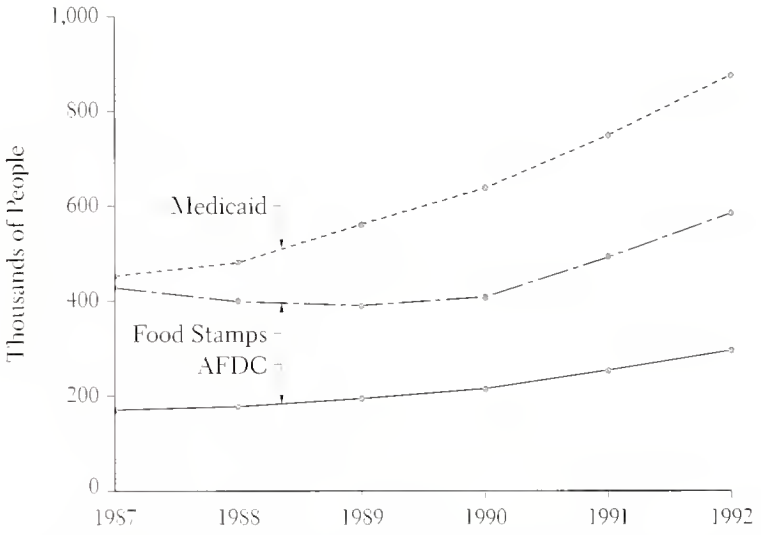
Measuring spending for public assistance and social services programs on a per capita basis provides, at best, an extremely rough estimate of the financial impact of these programs on a statewide basis. Between 1987 and 1992 county-funded spending for public assistance and social services programs by all North Carolina counties increased from $26.21 per person to $40.57 (in "real" dollars). (See Table 2.) However, there have been real increases in per capita spending for other government functions as well. For example, real spending by counties for public safety rose from $43.51 to $67.22 per capita during this period, while real spending for education increased from $133.04 to $169.85 per person.

Per capita spending for public assistance and social services programs also varies from county to county[57] and is almost certainly affected by the proportion of county residents who live in poverty or who receive public assistance.[58] As shown in Table 2, per capita spending for public assistance and social services by Tyrrell County, which has a poverty rate that is almost twice the statewide rate, was significantly higher than per capita spending by Wake County, whose poverty rate is much lower than the state average.[59]

A second way of assessing the financial impact of public assistance and social services programs is to determine the percentage of total county spending consumed by these programs compared to spending for other local government functions.

On a statewide basis, spending for public assistance and social services programs administered by county departments of social services accounted for about 15 percent of total spending by North Carolina's counties in 1992.[60] However, because federal and state revenues received by the counties paid for almost half of the

Figure 3
Number of North Carolinians Receiving Public Assistance



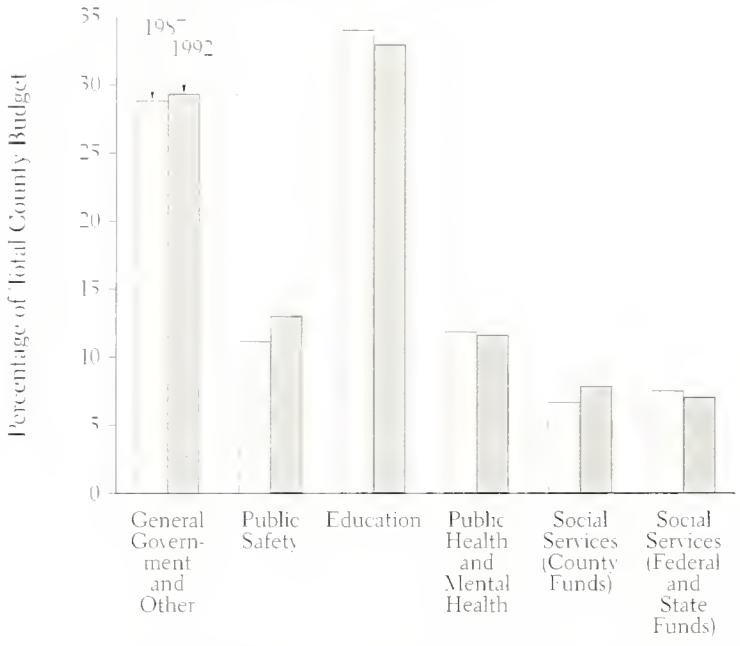
Sources: N.C. Division of Social Services, *Annual Statistical Report* for fiscal year 1992 (Raleigh, N.C.: NCDSS, 1992); N.C. Division of Medical Assistance, *Medicaid in North Carolina: Annual Report for State Fiscal Year 1992*. Data for AFDC and Food Stamps based on average number of recipients (all persons who actually received AFDC or Food Stamp benefits) per month; data for Medicaid include total number of persons who were authorized to receive Medicaid benefits during the year regardless of whether they actually received covered medical care.

Table 2
Per Capita County Spending for Public Assistance and Social Services

	Gaston County	Tyrrell County	Union County	Wake County	All North Carolina Counties
Per Capita Spending, 1987	$23.48	$49.02	$24.53	$20.73	$26.21
Per Capita Spending, 1992 (in 1987 dollars)	$44.60	$65.52	$40.97	$27.65	$40.57
Poverty Rate (1990)	10.6%	25.0%	8.4%	8.4%	13.0%

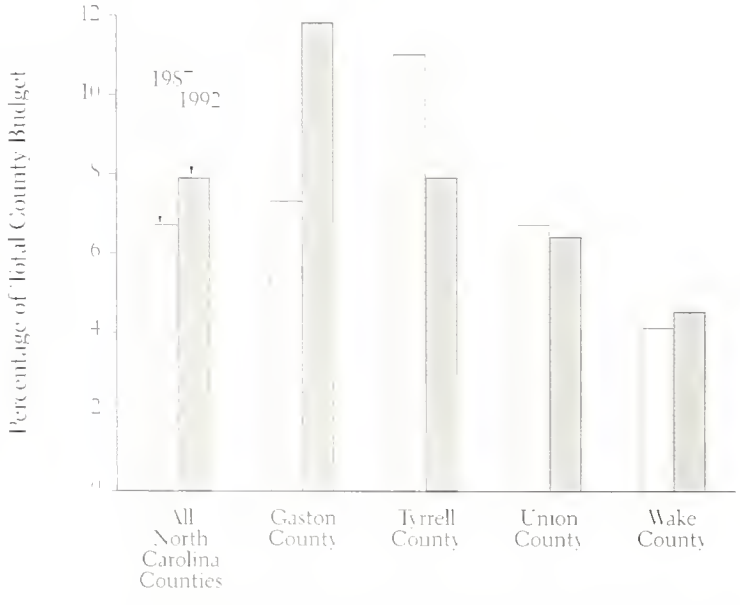
Source: Data derived from the county Annual Financial Information Reports (AFIR).

Figure 4
Types of Spending by North Carolina Counties as a Percentage of Total County Budget



Source: Data derived from the county Annual Financial Information Reports (AFIR).

Figure 5
County-Funded Expenditures for Public Assistance and Social Services as a Percentage of Total County Budget



Source: Data derived from the county Annual Financial Information Reports (AFIR).

public assistance and social services expenditures included in county budgets, *county-funded* spending for these programs comprised less than 8 percent of total spending by North Carolina counties. (See Figure 4.) In comparison, county-funded spending for public safety and education constituted 13 percent and 32 percent, respectively, of county spending.

Figure 4 also shows that spending for public assistance and social services programs has increased as a percentage of total county spending. Between 1987 and 1992 county-funded spending for public assistance and social services programs increased from 6.7 percent to 7.85 percent of total county spending, while spending for general government, education, and other services decreased as a percentage of total county spending. These changes reflect the fact that during this period county spending for public assistance and social services increased at a much faster rate than spending for general government, education, and other services. However, it is important to note that (1) the percentage of county spending consumed by public safety and debt service increased by a greater amount than the percentage of spending for public assistance and social services, and (2) although the *percentage* of county spending allocated to general government, education, and other services decreased, the *amount* of spending for these functions increased by more than 50 percent.

More importantly, the data do not necessarily indicate that increased spending for public assistance and social services *caused* the decreases in the percentage of total county spending for other local government functions. County budgets are reflections of the extent to which counties decide to—and can afford to—provide services to its citizens. A decision to increase or decrease funding for any particular government function may be affected by any number of different financial, policy, or political considerations, and the decision regarding funding for one particular function usually cannot be directly linked to the decision regarding funding for another function or program.

The percentage of the total county budget appropriated for public assistance and social services programs varies from county to county.[6] For example, in 1992 county-funded spending for public assistance and social services programs in Gaston County consumed almost 12 percent of the county's budget, compared to 4.5 percent in Wake County and the statewide average of 7.85 percent for all North Carolina counties. (See Figure 5.)

It may be more meaningful to try to measure the financial impact of public assistance and social services spending in relation to the financial resources or property

tax base of counties, rather than as a percentage of total county spending.

Increased spending by counties for public assistance and social services (or for any other government function) obviously requires increased county revenues from property taxes, other local taxes, or other revenue sources. There is little evidence, however, that increased county spending for public assistance and social services programs has caused significant increases in the property tax burden in most North Carolina counties.

Between 1987 and 1992 the statewide property tax burden (measured as the ratio of total property tax collections by counties to the total assessed value of property in the state) increased from 56.3 cents per $100 to 63.5 cents per $100 of assessed property value.[62] During this same period, county-funded spending for public assistance and social services increased from 8.1 cents to 11.9 cents per $100 of assessed value (see Table 3), and the percentage of county property tax collections needed to fund these programs increased from 14.3 percent in 1987 to 18.7 percent in 1992.

It appears that at least some of the increased property tax burden on county taxpayers can be attributed to increased spending by counties for public assistance and social services programs. However, the precise relationship between increased spending for these programs and property tax rates is often difficult to determine. For example, in Gaston County county-funded expenditures for public assistance and social services programs increased from 11.2 cents per $100 of assessed value in 1988 to 16.5 cents per $100 in 1992.[63] The county's property tax rate, however, increased by only eight-tenths of a cent—from 79.82 cents to 79.90 cents per $100 during this period.[64] On the other hand, in Union County the property tax rate rose from 60 cents per $100 in 1988 to 77 cents per $100 in 1992.[65] During this same period county-funded spending for public assistance and social services programs increased by $2 million, consuming approximately 28 percent of the revenues generated by the increased property tax rate. This suggests that 4.7 cents of the 17-cent increase in Union County's property tax rate may have been due to increased county spending for welfare and social services.

Nonetheless, on a statewide basis less than 13.2 cents of every tax dollar collected by county governments is used to fund public assistance and social services programs. Whether this constitutes a substantial financial burden on counties, however, is probably a subjective rather than objective determination, and may depend on the value one places on public assistance and social services programs and the degree to which one thinks that funding these programs is a legitimate responsibility of county governments.

Conclusion

Although this article does not answer the ultimate issue of whether, or to what extent, North Carolina's counties *should* be responsible for administering or financing public assistance and social services programs, perhaps it can serve as a resource and starting point for policy makers at the state and county levels in their discussions on mandates, funding, and responsibility.

The mandate issue has also been the focus of a special

Table 3
Property Taxes and County-Funded Spending for Public Assistance and Social Services, 1992

	Gaston County	Tyrrell County	Union County	Wake County	All North Carolina Counties
County-Funded Public Assistance and Social Services Expenditures	$9,739,216	$304,644	$4,371,417	$15,119,928	$342,585,767
Residents in Poverty	18,560	964	7,074	35,564	861,723
and Poverty Rate (1990)	10.6%	25.0%	8.4%	8.4%	13.0%
Per Capita Income (1990)	$12,447	$7,884	$13,135	$17,195	$ 12,885
Assessed Property Value (millions)	$ 5,919	$ 159	$ 2,893	$20,067	$288,708
County Spending for Public Assistance and Social Services per $100 Assessed Property Value	$ 0.165	$0.192	$ 0.151	$ 0.075	$ 0.119
County Spending for Public Assistance and Social Services as Percentage of Property and Sales Tax Collections	15.4%	16.2%	14.1%	6.7%	13.2%

Sources: Data derived from the county Annual Financial Information Reports (AFIR) and the annual *Fiscal Summary of North Carolina Counties*, prepared by the N.C. Department of the Treasurer with the assistance of N.C. Association of County Commissioners.

"mandates committee" that was established by the North Carolina Association of County Commissioners in October 1993. The committee's charge included the identification of federal- and state-imposed mandates on North Carolina's counties, assessment of the impact of mandates on counties, and analysis of the program and fiscal responsibilities of counties in the context of modern service needs, resource availability, and intergovernmental relations. The committee's preliminary report should be released in the summer of 1994.

The recent controversy regarding mandated public assistance and social services programs has been long on rhetoric and short on facts. Nonetheless, it has provided an opportunity for the state government and counties to take a thorough and comprehensive look at how financial responsibility for public assistance and social services programs has been—and should be—divided between them, how spending for public assistance and social services affects state and county budgets, whether the state and counties are providing adequate funding for public assistance or social services programs and for the administrative costs needed to effectively and efficiently implement those programs, and whether additional financial resources are needed to address the financial problems of some counties in providing public assistance and social services programs to needy county residents. ❖

Notes

1. Jeffrey Ball, "Union Board's Withholding of Funds for Social Programs Criticized," *Charlotte Observer*, Oct. 16, 1993, C2; Joby Warrick, "Counties Fighting Mandated Programs," *News and Observer* (Raleigh), June 27, 1993, A1.

2. Joby Warrick, "Counties Fighting Mandated Programs," *News and Observer* (Raleigh), June 27, 1993, A1. Counties collect taxes for special fire districts and provide police protection through the sheriff's department. However, it may be misleading to say that counties have a primary responsibility for supporting police and firefighters.

3. Two bills, H.R. 433 and H.R. 434, introduced in the North Carolina General Assembly in 1993, would have prohibited the state from requiring a city or county to spend funds for any program unless the state appropriated sufficient funds to pay for the local governments' cost of complying with the mandate or the spending was required by federal law. Neither was enacted.

4. Chip Wilson, "Gaston Warns Welfare Funding May Not Rise," *Charlotte Observer*, June 18, 1992, G1. At least two other counties (Union and Yadkin) followed Gaston County's lead and withheld some county funding for mandated social services programs in 1993. Joby Warrick, "Counties Fighting Mandated Programs," *News and Observer* (Raleigh), June 27, 1993, A1.

5. Section 108A-93 of the N.C. General Statutes (hereinafter G.S.) provides that if a county does not pay the state for the county's full share of mandated public assistance costs, the state Department of Revenue may withhold local sales tax revenues that have been collected for the county by the state Department of Revenue.

6. Joby Warrick, "Counties Fighting Mandated Programs," *News and Observer* (Raleigh), June 27, 1993, A1.

7. Newspaper reports, for example, have focused almost entirely on the "crushing burden" of mandated welfare spending on North Carolina counties, which is described as the "biggest concern" of mandate opponents. And the most tangible action that counties have taken to contest the imposition of mandates has been to withhold county funds for mandated welfare programs. In California one county filed a lawsuit against the state regarding mandated spending for public assistance programs, but the court upheld the state's authority to require the county to pay a share of the cost of public assistance benefits for county residents. Board of Supervisors, County of Butte v. McMahon, 219 Cal. App. 3d 286, 268 Cal. Rptr. 219 (1990).

8. Catherine H. Lovell, et al., *Federal and State Mandating on Local Governments: An Exploration of Issues and Impacts (Final Report to the National Science Foundation)* (Riverside, Calif.: University of California Press, 1979), 25.

9. For an excellent discussion of the issue of mandates and the relationship between the state and county governments, see Warren Jake Wicker, "Relationships between Counties and Municipalities," in *State-Local Relations in North Carolina: Their Evolution and Current Status*, ed. Charles D. Liner (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1985), 35–36.

10. Joseph S. Ferrell, "Counties and County Commissioners," in *County Government in North Carolina*, 3d ed., ed. A. Fleming Bell, II (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1989), 6.

11. Martin v. Commissioners of Wake County, 208 N.C. 354, 365, 180 S.E. 777, 783 (1935).

12. G.S. 115C-521. Occasionally the state also appropriates funds for construction of public school buildings or issues state bonds to assist counties and local boards of education with respect to the cost of building public schools.

13. G.S. 7A-302. Counties receive a portion of the fees collected by the court system to assist in constructing and maintaining facilities for the court system.

14. G.S. 130A-34. Counties may provide public health services by operating a county health department, by participating in a district health department, or by contracting with the state for provision of public health services.

15. G.S. 143-318.9 through -318.18.

16. G.S. 159-7 through -38.

17. G.S. 143-129.

18. Requirements and limitations with respect to the counties' authority to levy local property taxes are found in G.S. 153A-149.

19. Joseph F. Zimmerman, "The State Mandate Problem," *State and Local Government Review* (Spring 1987): 79.

20. Steven D. Gold, *Reforming State-Local Relations: A Practical Guide* (Denver, Colo.: National Conference of State Legislatures, 1989), 107–8.

21. *Statistical Abstract of the United States 1992*, 112th ed. (Washington, D.C.: Department of Commerce, 1992), 282.

22. Requirements or conditions that apply to the specific program that receives federal funds are called *vertical* mandates; *horizontal* or *cross-cutting* mandates require the recipient to comply with the federal requirements or standards in all programs or activities as a condition of receiving federal funding for one specific program. Catherine Lovell and Charles Tobin, "The Mandate Issue," *Public Administration Review* 41 (May/June 1981): 319.

23. G.S. 108A-25. *See also* G.S. 153A-255.

24. The federal government provides the entire cost of benefit payments in the Food Stamp and Energy Assistance programs and pays half of the cost of state and local administration of these programs. In the AFDC and Medicaid programs, the federal government pays about two-thirds of the costs of benefit payments and half of the administrative costs.

25. In the AFDC program, states have the authority (within broad federal limits) to set their own "need standard" (the maximum amount of income that a family can have without losing eligibility for benefits) and benefit payment amounts. In the Medicaid program, states were given the option (known as the "209(b) option") to establish more restrictive eligibility requirements for elderly and disabled persons than those under the federal Supplemental Security Income (SSI) program. States also have some degree of discretion in determining the amount and type of services that will be provided under the state Medicaid program.

26. G.S. 108A-40 through -47. Participation by counties in Special Assistance for Certain Disabled Persons (a general public assistance program for disabled persons who are not eligible to receive federal SSI benefits) is optional. G.S. 108A-41(d); G.S. 108A-45.

27. G.S. 108A-14(a)(11); G.S. 108A-14(a)(14); G.S. 7A-516 through -678; G.S. 108A-99 through -111.

28. G.S. 108A-14(a)(6); G.S. 48-16.

29. G.S. 108A-14(a)(12).

30. G.S. 108A-15; G.S. 35A-1202(4); G.S. 35A-1213(d); G.S. 35A-1220.

31. G.S. 108A-14(a)(8).

32. G.S. 110-141.

33. For an excellent discussion of the historical evolution of the relationship between North Carolina's state and county governments in the area of public assistance and social services programs, see Janet Mason, "Social Services," in *State-Local Relations in North Carolina: Their Evolution and Current Status*, ed. Charles D. Liner (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1985), 82–87 (hereinafter Mason, *State-Local Relations in North Carolina*).

34. N.C. CONST. of 1868, art. XI, § 7.

35. N.C. Pub. Laws 1868, ch. 20, § 24.

36. Mason, *State-Local Relations in North Carolina*, 84.

37. Mason, *State-Local Relations in North Carolina*, 85.

38. Under this system, county departments of social services are responsible for administering statewide public assistance and social services programs under the supervision of the state Department of Human Resources. The exact relationship and authority between the state and counties in this system, however, is not always clear. In general the counties' administrative responsibilities include providing facilities for local social services offices, hiring local social services personnel, approving or denying applications for public assistance and social services programs, and providing direct social services to clients; the state's supervisory responsibilities include training employees of county social services departments, monitoring and evaluating the counties' administration of public assistance and social services programs, and establishing standards and policies for those programs.

39. Failure to comply with the federal requirements could result in loss of federal funding or imposition of monetary penalties against the state. In addition, most federal requirements relating to public assistance programs may be enforced by federal courts in lawsuits brought by public assistance recipients against states. *See, e.g.*, Alexander v. Flaherty, 549 F. Supp. 1355 (W.D.N.C. 1982).

40. *See, e.g.*, 42 U.S.C. § 602 (1988) (provisions of the federal Social Security Act establishing requirements for state AFDC programs).

41. This figure includes *county-funded* expenditures for administrative and program-related costs for *all* public assistance and social services programs administered by the county departments of social services, including *nonmandated* programs and services and county payments to the state for mandated public assistance programs. The data were obtained from the Annual Financial Information Reports (AFIR) submitted by counties to the State and Local Government Finance Division of the Office of the State Treasurer.

42. Of course *taxpayers*—not *governments*—ultimately pay the cost of every government program. But the manner in which financial responsibility for a government program is divided among the federal, state, and local governments is important because it determines which taxpayers will pay for the program and what resources will be available to support it.

43. North Carolina is one of only six states that require counties to pay more than half of the nonfederal share of the cost of administering public assistance programs at the local level. *Overview of Entitlement Programs: Background Material and Data on Programs within the Jurisdiction of the Committee on Ways and Means* (Washington, D.C.: U.S. Government Printing Office, 1993), 677. Under North Carolina's social services law, the "nonfederal share of the annual cost of each public assistance and social services program and related administrative costs [other than costs of services to Native Americans living on federal reservations] may be divided between the State and counties as determined by the General Assembly." G.S. 108A-87(a). The actual allocation between the state and counties of financial responsibility for federally funded public assistance and social services programs is done through the state's biennial budget process. State law also provides that whenever a portion of the nonfederal share of public assistance expenses is assigned to county governments, "the board of commissioners of each county shall levy and collect the taxes required to meet the county's share of such expenses." G.S. 108A-90(a).

44. The counties' responsibility for half of the nonfederal share of AFDC benefits represents about 17 percent of the total cost of AFDC payments to North Carolina residents; their responsibility for 15 percent of the nonfederal share of Medicaid benefits represents about 5 percent of the total cost of Medicaid payments. G.S. 153A-257 allocates financial responsibility

for care and support of poor people among counties based on legal residence in the county.

45. N.C. Division of Social Services, *Annual Statistical Report* for fiscal year 1993 (Raleigh, N.C.: NCDSS, 1993), 2, 10; N.C. Division of Medical Assistance, *Medicaid in North Carolina: Annual Report for State Fiscal Year 1992* (Raleigh, N.C.: NCDMA, 1992), 17. The figures for total spending include federal, state, and county funds for administrative costs and benefit payments in these programs.

46. These data are based on the Annual Financial Information Reports (AFIR) submitted by counties to the State and Local Government Finance Division of the Office of the State Treasurer. They include total spending (including administrative costs) by county departments of social services, plus county payments to the state for the county's share of AFDC, Medicaid, and Special Assistance benefits, minus federal and state revenues received by the county for public assistance and social services programs.

47. Between 1987 and 1992 county-funded expenditures for *all* public assistance and social services programs increased by 104 percent—from $167.9 million to $342.6 million. Of course, county spending for other government services also increased significantly during recent years. Total expenditures by North Carolina's 100 counties increased by almost 75 percent between 1987 and 1992; expenditures for public safety more than doubled, and county spending for public education increased by almost 70 percent.

48. However, the proportion of county funding for public assistance programs in North Carolina, relative to state and federal funding, actually *decreased* from 10 percent in 1987 to 8 percent in 1992.

49. Increased state and county spending for welfare benefits has *not* been caused by increases in the amount of benefits paid to individual welfare recipients. Between 1987 and 1993 the maximum monthly AFDC payment for a mother and two children in North Carolina increased by approximately 5 percent—from $259 to $272—but the average monthly payment to AFDC families *decreased* from $234 to $225. N.C. Division of Social Services, *Annual Statistical Report* for fiscal year 1993 (Raleigh, N.C.: NCDSS, 1993), 1. The 5 percent increase in maximum AFDC benefits constituted a *decrease* of 15 percent in "real dollars" when inflation is considered. The average monthly Food Stamp benefit for eligible North Carolina families increased from $112.67 in 1987 to $161.63 in 1992, a 43 percent increase in nominal dollars, and a 16 percent increase after adjusting for inflation. The increased cost of Food Stamp benefits, however, was funded entirely by the federal government, rather than by the state and counties.

50. N.C. Division of Social Services, *Annual Statistical Report* for fiscal year 1993 (Raleigh, N.C.: NCDSS, 1993), 2, 10. N.C. Division of Medical Assistance, *Medicaid in North Carolina: Annual Report for State Fiscal Year 1992* (Raleigh, N.C.: NCDMA, 1992), 18. Other states have experienced similar increases in their welfare rolls during recent years.

51. U.S. Congressional Budget Office, *A Preliminary Analysis of Growing Caseloads in AFDC* (Washington, D.C.: December 1991). The report also noted that AFDC caseloads often increase before the "official" start of recessions because poor people are often the first ones to feel the effects of an oncoming recession. The impact of the recent recession on poor people is evidenced by the fact that, between 1989 and 1992, the unemployment rate in the United States increased from 5.3 percent to 7.4 percent, the percentage of Americans living in poverty increased from 12.8 percent to 14.5 percent (from 15.4 percent to 16.9 percent in the South), and the number of poor people increased by 5.4 million, the largest three-year increase on record, to almost 37 million Americans. *Poverty Remains High in 1992 Despite Economic Recovery* (Washington, D.C.: Center on Budget and Policy Priorities, 1993), 1–2, citing data from the U.S. Bureau of the Census.

52. Under the old rules, pregnant women and children were not "categorically eligible" for Medicaid benefits unless they lived in a home in which the child's father was absent (or was unable to care for the child) *and* the family's income was low enough to meet the AFDC income limit (which is less than one-third of the amount under the federal poverty guidelines). The federal poverty guideline for 1994 is $820 per month for a two-person household and $1,027 per month for a three-person household.

53. Under the old rules, Medicaid would not pay the Medicare costs of elderly and disabled North Carolina residents unless the person's countable income (minus accrued medical bills) was less than $242 per month for an individual or $317 per month for a couple (approximately 40 percent of the amount under the federal poverty guidelines).

54. John Holahan, et al., *Explaining the Recent Growth in Medicaid Expenditures* (Washington, D.C.: The Urban Institute, 1993), 12–13. The Urban Institute researchers estimated that an additional one-third of the increase in Medicaid spending was due to inflation in medical costs.

55. Although the mandate debate has focused exclusively on the financial cost of public assistance and social services programs, these programs do provide substantial financial benefits to local communities as well as to the county residents who receive financial assistance. Each year more than $3 billion in federal and state revenues are paid to needy county residents who spend this money in the local economy for food, clothing, shelter, medical care, and other goods and services.

56. The data include all *county-funded* spending for all *mandated and nonmandated* public assistance and social services programs administered by county departments of social services.

57. This article looks at spending for public assistance and social services programs in four North Carolina counties—Gaston, Tyrrell, Union, and Wake—as well as total spending for all 100 counties. Gaston and Union counties were used as examples because of the recent attention in the media regarding the impact of spending for mandated welfare programs in those counties. In addition, Gaston and Union counties are fairly typical of many North Carolina counties in terms of population, per capita income, poverty rate, size of the county budget, property tax base, and other factors. Tyrrell County was chosen as an example of a small, rural county with a relatively low property tax base, low per capita income, and high poverty rate, while Wake County is representative of some of North Carolina's more urban and more prosperous counties. The time period 1987 through 1992 is used because it coincides with the recent increases in spending for public

assistance programs and because of the availability of financial data for these years.

58. Spending for public assistance and social services programs clearly imposes a relatively greater financial burden on counties that have higher proportions of low-income residents, higher percentages of county residents receiving public assistance, lower per capita incomes, and lower property values. Federal and state laws require counties to administer most public assistance and social services programs in accordance with uniform statewide standards. However, despite the significant federal and state financial assistance provided to counties (including $7 million per year under G.S. 108A-92 to equalize the tax burden on poorer counties caused by public assistance expenditures), the varying financial abilities of counties undoubtedly result in disparities in the services that are provided by county departments of social services across the state.

59. Although the poverty rate in Gaston and Union counties is less than the statewide poverty rate, per capita spending in both counties has been roughly the same as statewide per capita spending for public assistance and social services.

60. These data are derived from the county Annual Financial Information Reports (AFIR). The AFIR data regarding "total spending" by counties include expenditures from federal and state revenues received by the counties, as well as spending financed by county tax revenues, user fees, and bond proceeds. The AFIR data for public assistance and social services spending include all spending through the county departments of social services, but do not include the federal and state share of AFDC, Food Stamp, Medicaid, and Special Assistance benefits paid directly to county residents by the state divisions of social services and medical assistance. "County-funded" spending for public assistance and social services programs was determined by subtracting the federal and state intergovernmental revenues received by the county for public assistance and social services programs. It is not completely accurate to compare county-funded spending for public assistance and social services to "total spending" for other government functions. For example, if all intergovernmental revenues are excluded from the county budgets, the percentage of county-funded spending for public assistance and social services programs would have been approximately 8.1 percent in 1987 and 9.8 percent in 1992.

61. News reports have sometimes overstated the proportion of county budgets consumed by spending for mandated public assistance programs. For example, an article in the June 27, 1993, Raleigh *News and Observer* indicated that mandated welfare costs consumed more than 15 percent of the total county budgets in Orange and Gaston counties, more than 20 percent of the county budgets in Sampson and New Hanover counties, and more than 25 percent of the budget in Union County. Joby Warrick, "Counties Fighting Mandated Programs," *News and Observer* (Raleigh), June 27, 1993, A9. The article failed to note, however, that the reported spending by Gaston County included expenditures paid for with federal or state funds and did not represent the percentage of the total county budget consumed by *county-funded* expenditures for public assistance and social services programs. By that measure, spending by Gaston County from *county* revenues for *all* public assistance and social services programs in 1992 was $9.7 million—not $16.4 million—and comprised 11.8 percent of the total county budget—not 17.9 percent. Similarly, county-funded expenditures for public assistance and social services (including nonmandated expenditures) consumed about 6.4 percent (not 22.3 percent) of Union County's budget for 1992, 5.1 percent of Orange County's budget, 6.8 percent of New Hanover County's budget, and 8.6 percent of Sampson County's budget.

62. This figure was calculated from data contained in the annual *Fiscal Summary of North Carolina Counties*, prepared by the N.C. Department of the Treasurer with the assistance of the N.C. Association of County Commissioners. It should not be viewed as an average or statewide local property tax rate.

63. These figures were calculated from data in the Annual Financial Information Reports and the *Fiscal Summary of North Carolina Counties*. They do not take into account the fact that property values were re-evaluated in Gaston County in 1989.

64. The tax rate in Gaston County increased from $0.7982 to $0.8836 in fiscal year 1989, but following revaluation of property values was decreased to $0.7795 in 1990 and to $0.7790 in 1991.

65. At least part of the increase in Union County's property tax rate appears to have been due to the fact that property values had not been re-evaluated since 1984 and that the sales to assessment ratio had fallen from 68.56 percent to 55.15 percent between 1988 and 1992.

Bob Donnan

Bob Donnan

Can Imprisonment Prevent Violent Crime?

Imprisonment per capita has been increasing in North Carolina and in the United States for some time. One reason is that lawmakers believe that imprisonment prevents violent crime. Yet, at the same time, violent crime per capita has not decreased significantly—in fact, one source of data says that it has increased.

This article first looks at some basic concepts of penal sanctions. It then reviews data relevant to the question of whether increasing imprisonment reduces crime, especially violent crime. It also briefly examines people's concerns about the dangers of crime. The article concludes with a discussion of some other approaches to the prevention of violent crime.

Some Basic Concepts of Penal Sanctions

There are five generally recognized goals of criminal sanctions, including imprisonment: retribution, deterrence of crime, rehabilitation of offenders, incapacitation of offenders, and compensation for the harm caused by crime. Rehabilitation, incapacitation, and deterrence are concerned with the prevention of crime, while retribution and compensation are not. A discussion of these theoretical goals does not imply that the criminal justice system actually accomplishes any of them; it may or it may not.

Retribution, also called "just deserts," involves fair punishment for an actual crime commensurate with the harm caused. It is not concerned with the prevention of crime.

Deterrence of crime is the prevention of crime through intimidation of potential offenders—in other words, through the fear of punishment. There are two types of deterrence. *General deterrence* is aimed at keeping all potential offenders from committing crime through the threat of punishment, while *specific deterrence* is aimed at keeping an identified offender from becoming a recidivist by punishing the offender in such a way that he or she will not want to repeat the experience.

Rehabilitation of offenders is directed at convicted offenders. In theory rehabilitation is achieved through treatment, services, or experiences that will help offenders improve their adjustment to law-abiding society and refrain from crime.

Incapacitation of offenders involves restraining or removing offenders—by imprisonment, supervision, or other means—so that they cannot commit crimes.

Compensation for the harm caused by crime is a goal addressed by sanctions like payment of restitution to crime victims and performance of unpaid community service.[1] In theory the offender makes up to some degree for the loss caused by the offense.

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North Carolina has been expanding the capacity of its state prisons and local jails in recent years, presumably in an attempt to address the goals of retribution, deterrence, rehabilitation, and incapacitation. But does increased imprisonment (in theory) address these goals?

Whether increased funds for more prisons and legislation enacted to keep certain offenders in prison longer accomplish the goal of retribution depends on one's views of what punishments are deserved in given circumstances. In a democratic society, negotiation and consensus building decide what punishment is appropriate. An example of what this democratic process produces is North Carolina's new Structured Sentencing Act, which establishes new, strict guidelines for punishment of all crimes. This new law is designed to punish violent crimes more, and nonviolent crimes less, than they currently are punished, and to emphasize "intermediate punishments" instead of just ordinary probation supervision or imprisonment.[2] Despite the democratic process through which this new law was enacted, people may disagree about whether it provides proper retribution; retribution is largely a matter of subjective belief.

Does increased imprisonment increase general deterrence of violent crime, by increasing either the probability of getting an active sentence or the expected length of prison time to be served? An examination of trends in crime rates (which will be described below) will help answer this question. If there is an effect on general deterrence, it may be small because the probability of avoiding prison for a violent crime may remain quite high even after expansion of imprisonment.[3]

Policy makers also may have specific deterrence and rehabilitation of offenders in mind when they build more prisons. The analysis of crime rates later in this article looks for evidence that increased imprisonment has produced increased specific deterrence and rehabilitation, along with general deterrence and incapacitation. But other data are available regarding specific deterrence and rehabilitation. A recent study involving North Carolina offenders released in 1989 found no evidence that, controlling for other relevant factors, prolonging imprisonment reduces the probability of recidivism after release.[4] In fact the study suggested that, other things being equal, lengthening imprisonment *increases* the chance of recidivism, especially in terms of new property crimes. This is not to say that imprisoned offenders are never rehabilitated through treatment or service they receive in prison, or are never specifically deterred from further crime by fear of further incarceration. No doubt some are. But this study's results indicated that overall, prolonging the prison experience does not reduce recidivism, and in fact may be detrimental to offenders' chances of avoiding lawbreaking.

Testing the Theory that Increased Imprisonment Reduces Violent Crime

Ideally an evaluation of increased imprisonment's effects would involve controls, so that increased imprisonment could be isolated from other factors that might affect violent crime (for example, urbanization or the breakdown of the family). For example, to evaluate increased imprisonment, it could be deliberately increased in one of two identical communities and left alone in the other. The ensuing crime rates would then be compared. Such a scheme is not possible, because increased imprisonment comes about through the political process, not for research purposes. In practice researchers must make do with actual data on imprisonment and violent crime.

Two things should be kept in mind in looking at the available data on imprisonment and crime: (1) If imprisonment has increased but violent crime rates have not decreased substantially, this does not necessarily mean that increased imprisonment is ineffective. It may be ineffective; on the other hand, it may have effects that are concealed by countervailing factors that cause violent crime to increase. (2) In comparing trends in imprisonment with trends in the violent crime rate, it is impossible to separate out the various kinds of effects that the increased imprisonment could have on crime—the effects of incapacitation, specific deterrence, general deterrence, and offender rehabilitation. Instead, one is forced to look at the *overall* effect.

Increased Imprisonment and Violent Crime Rates

What actually happened to imprisonment and crime rates from 1975 to 1992? North Carolina, California, and the nation as a whole are examined below as examples.

North Carolina

Since the 1970s North Carolina's per capita incarceration rate (measured as prisoners per 100,000 state residents) generally has grown. From 1975 to 1992 the incarceration rate in state prisons rose 31 percent[5] and the rate in county jails rose 205 percent,[6] producing a 58 percent increase in the combined prison and jail rate.

Did North Carolina's per capita index crime rates[7] (see "Definition and Measurement of Crimes," page 19) decline from 1975 to 1992, during this period of rapid growth in incarceration? Most observers think that just

the opposite occurred. Data from the Uniform Crime Reports (UCR), based on information reported to police and reported by police to the state and federal Bureaus of Investigation, indicate that the rate of violent index crime generally rose during the period, and was 56 percent greater in 1992 than in 1975.[8] The rate of property index crime also generally grew and ended the period 52 percent greater.[9]

This apparent increase in index crime rates could be at least partly illusory, because improvements in police may cause police-reported (UCR) crime to increase faster than total crime.[10] North Carolina saw improvements in police during the 1975–92 period; for example, law enforcement personnel per 100,000 residents increased 52 percent (to 279.8 in 1992, up from 184.3 in 1975). But still, despite a long period of rising incarceration, most people would agree that per capita crime rates generally have not declined.

California

With its continuing expansion of prisons and jails, North Carolina may be following in the footsteps of California. In 1976 California had about 21,000 offenders in state prison, slightly fewer than North Carolina now has.[11] Thereafter California expanded its prisons. By 1992 its state prisoners had increased to about 109,000—that is, their numbers more than quintupled. California's local jail population more than doubled, going from 28,000 in 1976 to 74,000 in 1992. (In the meantime, of course, the number of California residents increased—from about 21 million in 1976 to 31 million in 1992—but their rate of increase was much less than that of the prison and jail populations.)

Did California's per capita index crime rates decrease during the state's enormous growth in incarceration? Not the violent crime rate; just the opposite, in fact. UCR data indicate that California's violent index crime rate doubled in size from 1976 to 1992, a growth that cannot be attributed to a per capita increase in police personnel because none occurred.[12] However, California's property index crime rate declined modestly, about 15 percent, during the period.[13] A forthcoming book by the criminologists Franklin Zimring and Gordon Hawkins estimates that the huge expansion of imprisonment in California did reduce crime in California, but "the reductions were concentrated in burglary and larceny categories. . . . There were no indications of substantial incapacitation benefits for homicide, assault, and robbery, and auto theft rates were much higher than expected." Zimring and Hawkins also note that "the reduction in rates of burglary and larceny appeared to be concentrated on offenders under 18 because juvenile arrests for these crimes went down while arrests of older offenders for these offenses increased."[14] In other words, this study suggests that the primary effect of increased imprisonment in California was on less serious property offenses.

California was selected as an example of a state that has pursued an expansionist policy regarding prisons. Of course California is different in many ways from North Carolina; if North Carolina quintupled its prison population, it might have different results. For more perspective on the question of whether increased incarceration reduces crime, we can look at what has been happening nationwide.

The United States as a Whole

Beginning in 1974 the United States experienced an unprecedented surge of imprisonment. From 1975 to 1992, according to data from the Bureau of Justice Statistics, the state prison incarceration rate[15] tripled, going from 102 to 303. What happened to nationwide crime rates in the meantime? The murder rate (including nonnegligent manslaughter) varied from about 8 to 10 per 100,000 residents (averaging 9) during the period, but the linear trend was flat. Murder is believed to be consistently reported in the UCR and unlikely to be affected by improvements in policing. Thus the national increase in incarceration did not make the murder rate go down.

Looking at the rest of the violent index crimes—rape, robbery, and aggravated assault—the UCR and the National Crime Victimization Survey (NCVS) disagree.[16] The UCR indicates that the combined rate of rape, robbery, and aggravated assault per 100,000 Americans generally has been rising, with some fluctuation, since 1970, showing no sign of slowing down after 1974 when the huge surge in incarceration began; the UCR rate in 1992 was 748 per 100,000 residents, 60 percent greater than in 1975 (467).[17] Probably most readers will believe that this growth reflects a real increase in the danger of violent crime victimization throughout the country. On the other hand, the NCVS, whose crime rates are considerably higher than the UCR's, indicates that the combined rate of rape, robbery, and aggravated assault generally did not increase from 1975 to 1992 and in fact declined slightly over the period.[18] *But the important fact here is that neither the UCR nor the NCVS shows a substantial decline in the national per capita violent crime rate from 1975 to 1992, despite the huge increase in incarceration.*

Regarding the national rate of property index crime, again the UCR and the NCVS disagree. The UCR's property index crime rate varied but showed only a 3 percent increase from 1975 to 1992.[19] The NCVS's much

higher rate dropped 32 percent during the period.[20] Thus it seems possible—if one believes the NCVS rather than the UCR—that property crime per capita dropped and that the drop resulted from increased imprisonment during the period. But evidently increased imprisonment did not reduce the per capita rate of motor vehicle theft. This rate increased from 1975 to 1992, according to both the UCR and the NCVS; the former indicated a 36 percent increase and the latter 15 percent.[21] Motor vehicle theft is much more serious in terms of financial loss than the other property index crimes (burglary and larceny) and robbery.[22]

What this may show about the nation as a whole is what Zimring and Hawkins found in their study of California. The enormous increase in the national incarceration rate has not brought down the violent crime rate. It may have reduced the property index crime rate somewhat (depending on whether one believes the NCVS rather than the UCR), except for motor vehicle theft.

Summary

This review of crime rates in North Carolina, California, and the United States as a whole suggests that substantial expansion of per capita incarceration from 1975 to 1992 did not substantially reduce per capita rates of either violent index crime or motor vehicle theft. It may have reduced the rate of burglary and larceny somewhat, especially the less serious instances of these crimes. The fact that violent crime and auto theft rates did not drop substantially while incarceration increased rapidly does not necessarily mean that the latter was ineffective in reducing those crimes. But, as a later section explains, it may mean that we need to look for other strategies of crime prevention.

Problems with the Concept of Incapacitation As a Crime Prevention Strategy

Advocates of expanded imprisonment often cite its benefits in terms of reducing crime through incapacitation. They argue for the "selective incapacitation" (or "career criminal") strategy—identifying the most active offenders and removing them from society. This strategy won acceptance in the 1970s because of research showing that relatively few offenders commit a great deal of crime, and also perhaps, as Zimring and Hawkins suggest, because of the need to fill the void left by the discrediting of the rehabilitative ideal of corrections. Yet, as the preceding section explained, there is no compelling reason to believe that the expansion of imprisonment since the 1970s has reduced the violent crime rate. This fact should lead to a questioning of the concept of incapacitation, just as evaluation research of the 1950s, 1960s, and 1970s led to questioning the rehabilitation of convicted offenders.

One problem with the selective incapacitation strategy is that it is difficult to identify people who are likely to be frequent and serious recidivists (repeaters) soon enough to reduce their crimes substantially. Even the best methods of predicting recidivism are quite inaccurate. Consider a recent Institute of Government study. In 1989 37,933 offenders convicted by North Carolina courts were set free, on supervised probation or after release from prison. Of these offenders, 1,517 were arrested for a new violent index crime in the state within a year after release or after probation began. Data on the 37,933 offenders were analyzed to see how well one could have identified in advance those who would be

Definition and Measurement of Crimes

At a minimum, to know whether crime is going up, going down, or staying the same, one must compare the same crimes over time. This article, and most criminological research, looks at measures of *index crimes.*

Index crimes include four *violent index crimes*—murder and nonnegligent manslaughter, rape, robbery, and aggravated assault—and three *property index crimes*—burglary (including common law burglary plus the much more frequent offense of breaking or entering as defined in North Carolina law), larceny, and motor vehicle theft. Index crimes do not include such offenses as simple assault, credit card fraud, issuing worthless checks, drug offenses, traffic offenses, and nonassaultive sex crimes. UCR index crimes are those reported by victims to police and by police to the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) system. The other primary source of crime data is the National Crime Victimization Survey (NCVS) conducted every six months by the Census Bureau for the U.S. Department of Justice; it covers all the index crimes except murder, plus simple assault. The NCVS crime counts and rates, estimated from its nationwide sample, generally are higher than the UCR crime rates because they include offenses not officially reported to and by the police. NCVS data are based on a representative national sample of persons over age twelve; these data are not available for individual states. At the time this article was written, 1992 was the latest year for which UCR and NCVS data were published.

rearrested for new crimes. A statistical prediction model developed from available data was used to select the 1,517 offenders who statistically had the highest risk of recidivism. This selection had a low *sensitivity*: only 17 percent of those who actually were rearrested for a new violent index crime in the first year of freedom were included among those selected. Also, the selection had a high *false positive rate*: 83 percent of the 1,517 offenders in fact were not rearrested for a violent index crime. In other words, for every violent repeater who could be correctly locked up on the basis of this model's predictions, four persons who would *not* be violent repeaters would also be locked up. If a larger group had been selected, the sensitivity would have increased but so would the false positive rate; if a smaller group had been selected, the false positive rate would have been less but so would the sensitivity.

This example of risk classification, unfortunately, is typical of the best criminologists can do with prediction of recidivism. But poor as it is, this example may be better, from an incapacitation point of view, than the kinds of implicit risk classifications now made by judges and legislatures in classifying crimes and prescribing sentences. Those classifications tend to be even more inaccurate than statistically derived ones because they rely heavily on the severity of the offender's current offense (a poor predictor) and on intuition. In reviewing the literature, Stephen Gottfredson found that "[i]n virtually every decision-making situation for which the issue has been studied, it has been found that statistically developed prediction devices outperform human judgments."[23]

What predicts recidivism? People tend to think first about the seriousness of the offender's latest offense. In fact, this is a poor predictor of recidivism, and it works differently from the way many people assume: generally, the more serious the current offense, the *less* likely recidivism is to occur and the less serious it will be. The best single predictor of recidivism is a person's criminal history.[24] This presents a dilemma: By the time the person accumulates enough of a criminal history to be sure that he or she is a serious repeater, it is too late; most of the damage already has been done. Also, the offender who has enough criminal history to be tagged reliably as a serious repeater may have aged beyond dangerousness. Judging from arrest rates, index crime activity peaks in the late teens and declines rapidly throughout life.

Another problem with the concept of selective incapacitation is the notion of the career criminal—the idea that crime, like legitimate professions, begins at a low level of skill and rewards and progresses toward higher skill and rewards. While this may happen with some offenders, it is not typical. In a recent review of research, criminologists Michael Gottfredson and Travis Hirschi note "the overwhelming evidence" that the typical criminal career "starts at the bottom and proceeds nowhere."[25]

A third problem with the selective incapacitation strategy is that it ignores the problem of new entrants into crime. Incapacitation's primary appeal, perhaps, is that it is easy to visualize—we can see that imprisoned offenders are on the other side of the bars. So, if we could just find the right people and incarcerate them, crime could be eradicated! But if it were really true that the same few "career criminals" were responsible for most of the crime, then as these wicked few aged out of crime, got locked up, or died, crime would disappear—and that is not happening. Crime persists because children are continuing to grow up and become involved in serious crime. One indication of how much new offenders may contribute to crime is that in 1988 in the country's seventy-five largest counties, half of those arrested for index offenses had no prior convictions.[26]

Has Increased Incarceration Made People Feel Safer?

Americans' fear of crime did not decline from 1975 to 1992 during the period of rapid expansion of imprisonment, according to opinion polls. Consistently since 1975, between one-fourth and one-half of Harris Poll respondents have reported that they personally felt more uneasy on the streets than during the previous year, and about half of Gallup Poll respondents said there was more crime in their area than during the previous year. The proportion of Gallup Poll respondents who feel afraid to walk alone at night in some area within a mile of where they live has remained in the 40 to 45 percent range; the proportion who feel unsafe at home, which had dropped from 20 percent in 1975 to 10 percent in 1989, climbed to 17 percent in 1992. The belief that crime is the country's number one problem, which had been held by only 2 to 6 percent of Gallup Poll respondents from 1981 to 1992, climbed to 9 percent in January 1993. The Carolina Poll shows a recent increase in North Carolinians' fear of crime: the percentage of respondents who said they were "very worried" or "somewhat worried" that they or their family would become a victim of crime was 64 percent in spring 1992, 67 percent in fall 1993, and 72 percent in spring 1994.[27]

How is it possible that Americans consistently feel that crime in their area is increasing when NCVS data indicate that per capita violent index crime did not increase (in fact, declined slightly) from 1975 to 1992, and

burglary and larceny rates dropped? Perhaps it is the absolute number of crimes per year, not per capita crime rates, that fuel their concerns. Per capita crime rates, which criminologists use as a measure of an individual's risk of crime victimization, are an abstraction to most people. For people to feel safer, it may be necessary to reduce not only per capita crime rates but also *the absolute number of crimes per year in their communities*—in other words, to reduce crimes per square mile.

Expanded incarceration does not seem to have accomplished this reduction, at least as far as violent crimes and motor vehicle theft (the most serious property crime in terms of average loss) are concerned. Along with the per capita rates, the annual numbers of these crimes increased from 1975 to 1992 according to both the UCR and the NCVS.[28] The two sources differ on the annual number of burglaries and larcenies, with the UCR showing an 18 percent increase over the period and the NCVS showing a 22 percent decrease.

Beyond the Justice System: Other Approaches to Crime Prevention

The fact that rates of violent crime and motor vehicle theft did not drop substantially during a period of rapid expansion of imprisonment may mean that expanded imprisonment was ineffective in reducing these crimes. On the other hand, it may have been effective to some degree, but its effect may have been offset by other factors—sometimes called the "root causes of crime." The former interpretation implies that policy makers should give up on increasing incarceration as a means of crime prevention and look for other strategies that address causes of crime. The latter interpretation also implies that they should look for such strategies, even though they may not want to give up on incarceration just yet.

Crime, like other social behavior, is complex in its origins and its effects. It is not a simple matter of bad guys and good guys. All people are potential victims and all are potential criminals. Individuals often cross and recross the line between legitimate and illegal activities. This helps to explain why increased imprisonment of the "bad guys" has not been effective (or at least not effective enough) in bringing down violent crime rates. Imprisonment is not intended to address causes of crime.

Strategies involving primary prevention and secondary prevention of violent crime in the long run may be more effective than the criminal justice system, which is primarily designed to bring offenders to justice after crimes have already occurred.[29] *Primary prevention* is concerned with keeping people—primarily children—from ever becoming involved in crime. *Secondary prevention* focuses on children with a higher-than-average risk of becoming involved, and reduces that risk.[30] Both of these types of prevention focus on children, especially before they reach their late teens when the risk of crime involvement is greatest.[31] But one note of caution here: To devise a program that in theory undertakes primary or secondary prevention does not make it effective; only rigorous testing and evaluation will show whether it works.

Criminologists have a variety of theories of causes of crime; these tend to focus on children and youth.[32] The dominant theory, known as the "social bonding" or "social control" theory, holds that criminal acts "result when an individual's bond to society is weak or broken."[33] An important component of this "bond," and one whose causation of delinquency and crime is supported by empirical research,[34] is the degree of a child's attachment to parents, teachers, and other adults. Attachment to these adults consists of ties of mutual respect and love, communication, supervision and discipline, and identification with them as models. The stronger this attachment is, according to the theory, the more likely children are to develop internal controls (standards of conduct) that keep them from becoming delinquent or criminal. If this theory is correct, it suggests that crime prevention should focus on strengthening families and children's relationships with their parents, as well as with teachers and other potential adult role models.

Another major theory of crime causation, the "social learning" or "differential association" theory, emphasizes children's relationships with their peers. According to this theory, "a youngster associates differentially with peers who are deviant or tolerant of deviance, learns definitions [values] favorable to delinquent behavior, is exposed to deviant models that reinforce delinquency, then engages in or increases that behavior."[35] This theory suggests another approach to crime prevention: programs that concentrate on groups of children to try to make their experiences with their peers more positive.

The American Psychological Association (APA), in a recent report, presents findings about youth involvement in violent crime that tend to support the "social bonding" theory. Regardless of inherited factors, learning plays a major role in violent behavior, according to this report. Violent and aggressive youth tend to have had weak bonding to their parents in infancy and to have experienced ineffective parenting, including lack of supervision, inconsistent discipline, extremely harsh or abusive treatment, encouragement of aggressive or violent behavior, and failure to support positive behavior. But if children can learn violent behavior, they can also learn appropriate behavior,

especially when they are very young. "For this reason," the APA report says, "effective intervention for aggressive and violent behavior in childhood is critical, and the earlier the better."[36]

The APA report identifies the following hallmarks of promising violence-prevention programs: (1) The programs begin as early as possible in childhood. (2) They deal with other inappropriate behavior along with aggression. (Frequently, aggressive behavior is accompanied by other problems—for example, substance abuse or early sexual activity.) (3) They include "multiple components" that operate across the child's everyday life: "family, school, peer groups, media, and community." (4) They take advantage of major transitions in children's lives: "birth, entry into preschool, the beginning of elementary school, and adolescence." Regarding primary prevention programs aimed at children, the APA report says that programs that promote social and cognitive skills have the greatest impact on youngsters' attitudes about violent behavior. These skills include management of anger, negotiation with peers, problem solving, and the generation of nonviolent responses to problems.[37]

Conclusion

Sometimes the public discourse about the violent crime problem focuses exclusively on the criminal justice system, as if it were to blame. No doubt the criminal justice system could be improved. But violent crime is not the result of the police not solving enough crimes or the courts not convicting enough offenders or the prisons and jails being too small. The criminal justice system does not bring up children. Its primary functions—which are quite important—are to identify those responsible for crimes and impose fair punishment on them. But it would seem to be much more important to prevent the crimes from occurring in the first place.

The desire to see that offenders receive appropriate punishment—certainly an understandable desire—should not overshadow the importance of primary and secondary prevention of violent crime. Shifting efforts and resources from the criminal justice system to prevention will require courage and imagination. It will require local efforts, to which the state and the federal governments can give financial and technical support. It will require long-range planning—thinking ahead ten or fifteen years to the time when today's young children become teenagers—rather than expecting quick fixes.

Finally, a shift to prevention will require careful evaluation. Although many would find it desirable to attempt primary and secondary prevention of violent crime, one should not assume that any such program works—no more than one should assume that expanded imprisonment works. Policy makers need to take a healthy dose of skepticism and evaluate each new program rigorously. If it does not prove to be sufficiently effective, either the program should be improved or a better one should be found. ❖

Notes

1. See Anita L. Harrison, "North Carolina's Community Service Program: Putting Criminal Offenders to Work for the Public Good," *Popular Government* 58 (Winter 1993): 30–38.

2. Some examples of intermediate punishments are probation plus electronic house arrest, probation with intensive supervision, and probation plus participation in a residential treatment program. See North Carolina Sentencing and Policy Advisory Commission, *Summary of New Sentencing Laws and the State-County Criminal Justice Partnership Act* (Raleigh, N.C.: NCSPAC, 1993). For an analytical summary, see Stevens H. Clarke, "Sentencing and State Corrections," in *North Carolina Legislation 1993*, Joseph S. Ferrell, ed. (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1993), 189–206.

3. About 40 percent of violent index crimes, excluding murder, are not reported to the police by victims, according to the National Crime Victimization Survey (NCVS). U.S. Department of Justice, Bureau of Justice Statistics, *Criminal Victimization in the United States 1991* (Washington, D.C.: USDJ, 1992), 100, 102, table 101, using the figures provided for rape, robbery, and aggravated assault. (Because there are so few murders compared with other violent index crimes, the omission of murder has virtually no effect on the nonreporting rate.) From 1990 to 1992 in North Carolina, an average of 43,896 violent index crimes were reported annually to the police, an average of 3,588 persons entered North Carolina prisons for conviction of violent index crimes each year, and the average number of persons *in prison* for violent index crimes during that period was approximately 9,006. This last number was estimated by averaging the number of persons in prison for violent index crimes on the last day of the year in 1990, 1991, and 1992. The probability that a reported violent index crime would result in someone *going to prison* can be estimated at 8 percent (3,588 divided by 43,896) during the period. The 8 percent could be increased to 10 percent to take into account the possibility of a guilty plea to a reduced (nonindex) charge below the violent index crime level that was accompanied by an active prison term. (This 10 percent is exaggerated because it does not take into consideration that (1) violent index crimes sometimes involve more than one perpetrator and (2) roughly 40 percent of violent index crimes never are reported to police and thus never result in the offender being apprehended.) Using an estimate of 10 percent as the probability of going to prison for a violent index crime, the next question is how much the general deterrence of crime would be increased if this probability were raised. Suppose, for example, it was increased by half, to 15 percent. This would require a great deal of additional prison space (unless nonviolent offenders were released in large numbers). Assuming that the average time served remained the same, and that at least initially the number of violent index crimes remained the same,

the increase would be roughly 4,500 beds—half of the current number (approximately 9,000) of persons in prison for violent index crimes. There is no reliable way of estimating the additional general deterrence that would result. But the benefit in terms of additional general deterrence would appear to be small, because the chance of avoiding imprisonment would still be at least 85 percent. What about increasing the time served in prison? This would seem to have much less effect than increasing the probability of prison admission, because if imprisonment is unlikely, the extra prison time may not intimidate potential offenders.

4. See Stevens H. Clarke and Anita L. Harrison, "Criminal Recidivism: How Is It Affected by Community Correctional Programs and Imprisonment?" *Popular Government* 58 (Summer 1992): 19–28.

5. From 227 state prisoners per 100,000 residents in 1975 to 297 in 1992.

6. From 42 jail prisoners per 100,000 residents in 1975 to 128 in 1992. See Stevens H. Clarke and Emily Coleman, "County Jail Population Trends, 1975–92," *Popular Government* 59 (Summer 1993): 10–15. Note that North Carolina's jail population, unlike that of most states, consists mostly of pretrial detainees (defendants awaiting trial) who tend to have criminal records or serious charges, especially violent ones.

7. These rates generally are measured in terms of crimes per 100,000 residents.

8. What about murder? North Carolina's rate of murder (including nonnegligent manslaughter) was 12.2 per 100,000 residents in 1975. Thereafter it dropped substantially to 7.9 in 1988, but then rose to 11.4 in 1991, declining slightly to 10.6 in 1992. The prison and jail incarceration rate was rising fairly steadily through the period, including the period from 1988 to 1991 when the murder rate jumped, so it is hard to see how it could have been responsible for the drop in this rate between 1975 and 1988.

9. The UCR crime rates were as follows: The violent index crime rate was 436.5 in 1975 and 681.0 in 1992, and the property index crime rate was 3,380.3 in 1975 and 5,121.2 in 1992.

10. Stevens H. Clarke, "North Carolina's Growing Prison Population: Is There an End in Sight?" *Popular Government* 56 (Spring 1991): 9–19.

11. Data for 1976 are used because California prisoner data for 1975 were not available.

12. California's UCR violent index crime rate was 669.3 per 100,000 residents in 1976 and 1,119.7 in 1992. During that period, the number of police personnel failed to keep pace with California's growing population; police personnel per 100,000 residents actually declined, from 297.7 in 1976 to 281.9 in 1992, a drop of about 5 percent. This fact might help explain the drop in the UCR property index crime rate: with fewer police, less attention may be given to investigating and reporting property crimes. Along with the total violent index crime rate, California's murder rate (including nonnegligent manslaughter) increased; it was 10.4 per 100,000 residents in 1975 and 12.7 in 1992 (most of that growth occurred after 1989).

13. California's UCR property index crime rate was 6,564.7 in 1976 and 5,559.8 in 1992.

14. Franklin E. Zimring and Gordon Hawkins, *Incapacitation: Restraint as a Motive and Effect of Penal Policy* (New York: Oxford University Press, 1994, in press), ch. VI.

15. This rate is defined as the number of prisoners serving sentences of more than one year in state prisons, per 100,000 residents.

16. For some reasons that UCR and NCVS crime rates disagree, see Stevens H. Clarke, "North Carolina's Growing Prison Population: Is There an End in Sight?" *Popular Government* 56 (Spring 1991): 9–19.

17. It seems unlikely that this increase in the UCR rate of rape, robbery, and aggravated assault is due solely to greater numbers of police. The number of law enforcement personnel per 100,000 residents, nationwide, was about 2,600 in 1975 and 3,100 in 1992, an increase of 19 percent over the period, considerably less than the 60 percent increase in the UCR rate of rape, robbery, and aggravated assault.

18. The NCVS rate of rape, robbery, and aggravated assault per 100,000 Americans was 1,361 in 1975 and 1,261 (7 percent lower) in 1992. These rates were computed as victimizations of persons over age twelve (the NCVS does not include younger persons, but very few are victims of index crimes) per 100,000 American residents of all ages.

19. The UCR rate of property index crime per 100,000 Americans was 4,748 in 1975 and 4,903 in 1992. Over the period the rate varied between 4,538 and 5,291. There was a slight downturn from 1991 to 1992 (5,140 to 4,902), which received news media attention, but there have been downturns several times since the 1970s.

20. From 15,638 in 1975 to 10,596 in 1992.

21. The UCR motor vehicle theft rate was 464 per 100,000 Americans in 1975 and 632 in 1992; the NCVS rate was 665 in 1975 and 768 in 1992. Like murder, motor vehicle theft is believed to be more consistently reported to police than other index crimes because insurance claims require reporting and because the chance of recovering a stolen car is better than that of recovering other stolen property. The UCR and NCVS rates have been fairly close and have followed the same patterns.

22. The NCVS reported the following 1992 nationwide median losses for property crimes that involved some financial loss to the victim: motor vehicle theft—$3,600; robbery—$89; larceny—$55; and burglary—$50. Patsy A. Klaus, *The Costs of Crime to Victims* (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, 1994). The N.C. State Bureau of Investigation reported these 1992 mean losses for North Carolina: motor vehicle theft—$4,446; robbery—$627; larceny—$401; and burglary—$845. N.C. Department of Justice, State Bureau of Investigation, *Crime in North Carolina 1992* (Raleigh, N.C.: NCDJ, 1993), 136. Note that mean values often are greater than medians because of relatively few very high values.

23. Stephen D. Gottfredson, "Prediction: Methodological Issues," in *Prediction and Classification: Criminal Justice Decision Making*, Don M. Gottfredson and Michael Tonry, eds. (Chicago: University of Chicago Press, 1987), 36–37.

24. Stevens H. Clarke and Anita L. Harrison, "Criminal Recidivism: How Is It Affected by Community Correctional Programs and Imprisonment?" *Popular Government* 58 (Summer 1992): 19–28.

25. Michael Gottfredson and Travis Hirschi, "The True Value of Lambda Would Appear to Be Zero: An Essay on Career Criminals, Criminal Careers, Selective Incapacitation, Cohort Studies, and Related Topics," *Criminology* 24 (May 1986): 213–34, 218.

26. Kathleen Maguire and Timothy J. Flanagan, eds., *Sourcebook of Criminal Justice Statistics 1990* (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, 1991), 440.

27. These poll results are reprinted in Kathleen Maguire, Ann L. Pastore, and Timothy J. Flanagan, eds., *Sourcebook of Criminal Justice Statistics 1992* (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, 1993), 162, 187, 188, tables 2.1, 2.31, and 2.32. The Carolina Poll results are taken from an unpublished on-line computer database maintained by the UNC–CH School of Journalism and the Institute for Research in Social Sciences.

28. For the United States as a whole, the UCR indicates that the annual number of murders and nonnegligent manslaughters increased 15 percent, from 20,600 in 1975 to 23,760 in 1992. Considering rapes, robberies, and aggravated assaults together, the UCR indicates an increase of 90 percent (1,005,779 to 1,908,514) over the period, while the NCVS indicates an increase of 10 percent (2,932,000 to 3,216,000). Burglaries and larcenies increased 18 percent (9,229,827 to 10,895,083), according to the UCR, but *decreased* 22 percent (32,261,000 to 25,069,000), according to the NCVS. Motor vehicle thefts increased 61 percent (1,000,455 to 1,610,834), according to the UCR, and 37 percent (1,433,000 to 1,959,000), according to the NCVS.

29. The criminal justice system (police, courts, and correctional agencies) is not designed primarily for primary or secondary crime prevention. The system does attempt *tertiary prevention*—reducing recidivism by known, adjudicated offenders and delinquents.

30. The terms "primary," "secondary," and "tertiary" prevention are borrowed from medicine and public health. See Jan J. M. van Dijk and Jaap de Waard, "A Two-Dimensional Typology of Crime Prevention Projects," *Criminal Justice Abstracts* (Sept. 1991): 483–503. In addition to prevention aimed at known and potential offenders, van Dijk and de Waard also provide examples of prevention aimed at crime situations and crime victims.

31. One indication of criminal activity is per capita rates of arrest. Nationally the property crime arrest rate peaks at age sixteen, and the violent crime arrest rate at age eighteen. U.S. Department of Justice, Bureau of Justice Statistics, *Report to the Nation on Crime and Justice*, 2d ed. (Washington, D.C.: USDJ, 1988), 42.

32. See Ronald L. Akers, *Criminological Theories: Introduction and Evaluation* (Los Angeles: Roxbury Publishing Co., 1994) (hereinafter Akers, *Criminological Theories*).

33. Travis Hirschi, *Causes of Delinquency* (Berkeley and Los Angeles, Calif.: University of California Press, 1969), 16.

34. See the discussion in Akers, *Criminological Theories*, 119–20.

35. Akers, *Criminological Theories*, 103.

36. American Psychological Association, *Violence and Youth: Psychology's Response*, vol. 1, *Summary Report of the American Psychological Association Commission on Violence and Youth* (Washington, D.C.: APA, 1993), 17.

37. American Psychological Association, *Violence and Youth: Psychology's Response*, vol. 1, *Summary Report of the American Psychological Association Commission on Violence and Youth* (Washington, D.C.: APA, 1993), 53–56.

Courtesy of TEACCH, UNC-CH

What's So Special about Special Education?

Laurie L. Mesibov

Special education provides individualized services for children with disabilities. Here a child with autism works on a puzzle in the classroom.

All children can learn.

The United States Congress and the North Carolina General Assembly have written this premise directly into law and, in doing so, have dramatically changed public education.[1] If all children can learn, the state has both an interest in educating every child and an obligation to do so. Only a generation ago, across the United States, millions of children with disabilities were either unserved by public schools or served inappropriately,[2] and North Carolina had its share. Now every child who has a disability and who needs special education is entitled to a free appropriate education provided by the state.

Defining the scope of the state's obligation is a challenging task, even with guidance from state and federal statutes, regulations, and court decisions. It is not always clear how to fulfill the obligation in an individual child's situation. The desired result, however, *is* clear. The goal of public education in North Carolina is the same for all students: "to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential."[3] This common goal is approached through somewhat different routes for special education students and for other students. The assumption is that the system of "regular" education (for want of a better term) allows students without special needs an opportunity to learn, achieve, and fulfill their potential but that additional rights and rules are necessary to offer special education students that same opportunity.

These additional rights and rules are the foundation of a system of special education that at times overlaps, at times parallels, and at times trumps the system of regular education. It is a system that has brought opportunities to disabled students who in earlier times would have been cast aside. It is a system that has challenged school boards with responsibilities, red-tape, and expenses. And it is a system whose successes have paved the way for changes in regular education.

This article highlights four themes that make special education "special":

1. The role of the federal government
2. The mandatory collaboration among professionals in identifying a child's needs and developing the child's educational program
3. The mandatory tailoring of the educational program to meet each child's unique needs
4. The opportunities parents of children with disabilities have to be involved in their child's education and to complain when they are dissatisfied with that education

The article concludes with a brief discussion of the extension of the principles of special education to regular education.

The mission of the public school community is to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential.

—North Carolina General Statutes

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The Role of the Federal Government

Education in the United States is largely a local concern, but special education is one area of education in which the federal government has significant involvement and control. The standard view before the 1954 desegregation decision in *Brown v. Board of Education*[4] was that public education was a function and responsibility solely of state government. The Tenth Amendment to the Constitution reserves to the states or to the people those powers not delegated to the federal government, and education is not mentioned in the Constitution. Therefore, each state was free to decide how to organize and operate its public school system.

This view of the federal government's role in education, which has long been too simplistic, is less and less accurate every year.[5] Certainly in special education, although there is room for local action and adaptation, school officials' duties are largely shaped by federal statutes.

The Individuals with Disabilities Education Act

The primary federal statute affecting special education is the Individuals with Disabilities Education Act (IDEA).[6] In form IDEA is a funding statute designed to help states with the "excess" costs (over the costs of regular education) of special education. IDEA makes grants for special education available to states that agree to comply with its requirements.[7] In theory a state could refuse those funds and escape IDEA's requirements; in practice every state accepts the funds, strings and all, at least in part because states are obligated by the constitutional principle of "equal protection of the law" to offer an education to students with disabilities with or without federal assistance.[8]

In addition to providing financial assistance, IDEA was enacted to ensure that each child with a disability has available a free appropriate public education designed to meet his or her unique needs. Congress hoped to end the arbitrary decision making that too frequently shut out children with disabilities. It sought to ensure that these children are educated with other children whenever appropriate and to protect the rights of the children and those of their parents.[9]

These goals translate into IDEA's basic principles:

- Every student with a disability must be provided a free appropriate education.
- The education must be offered in the least restrictive environment.
- Special education may be offered only after a nondiscriminatory evaluation.
- Decisions about a child's education may not be made by single individuals, but only by groups of professionals and, in most cases, parents.
- A state must have available due process procedures for parents and school officials when conflicts over a child's educational program or placement cannot be resolved informally.

Underlying these principles seem to be certain guiding assumptions:

- All children can learn.
- The regular curriculum must be mediated by special instruction for students whose disabilities affect their education.
- Parents know a lot about their children and will almost always use this information on behalf of their child.
- Compliance with procedures in identifying a child with special needs and in developing his or her educational program will go a long way toward ensuring that the school offers an appropriate education.
- School officials acting alone cannot always be relied upon to make fair decisions.[10]
- Placing students with disabilities in the least restrictive environment helps all students.
- Money will be found to provide an appropriate education for every student with a disability as well as for all students who are not disabled.

Section 504

Even before the federal education statute was enacted in 1975, schools were prohibited from discriminating against children with disabilities. Section 504 of the Rehabilitation Act of 1974 prohibits school boards receiving federal funds from excluding disabled students from participating in, or being denied the benefits of, programs offered to students who are not disabled.[11] Unlike IDEA, which is expressly designed to impose affirmative duties on school systems, Section 504 is a general nondiscrimination statute that applies to any program, not just schools, receiving federal funds and to all of that program's activities.[12]

The requirements of Section 504 overlap those of IDEA, but they are not identical, and Section 504 may protect some children who are not covered by IDEA. As a result, Section 504 is becoming a more active source of litigation in special education.[13] Nonetheless, IDEA remains the primary special education statute. A full

discussion of Section 504 is beyond the scope of this article; the remainder of the article will discuss only the requirements of IDEA and parallel North Carolina statutes.

Interaction with North Carolina Law

States must comply with IDEA. It sets a floor of required services and procedures that a state must meet, but it does not prevent states from doing or requiring more. In several aspects of special education law, the North Carolina General Assembly has chosen to move beyond the federal requirements. The state extends the protections of its special education statutes to academically gifted students and pregnant students in need of special education;[14] these students are not protected by federal special education statutes. The state also requires a higher standard for the educational program developed for each child with special needs than federal statutes would otherwise require.[15] That heightened state requirement is discussed later in this article.

Mandatory Collaboration

To be eligible to receive funds under IDEA, a state must have a policy assuring all children with disabilities the right to a free appropriate public education and a plan assuring that children are evaluated, identified, and served. As a practical matter, local school administrative units are responsible for evaluating, identifying, and serving the children.[16] There are six steps in this process.

Step One: Referral

If a child has not been identified as having a special need before he or she enrolls in public school, the process generally begins when a parent, teacher, or other involved professional—such as a social worker—recognizes that the child is having problems in school and may need special assistance. If the problem is not obvious, the school's appropriate response may be a period of observation of the child.

Once it is determined that a special need may exist, an elaborate process begins for evaluating the child's needs and designing an educational program for the child. Only after a "school-based committee," a "multidisciplinary team," and an "administrative placement committee" have finished their work is the process complete. At no point may a single individual make any substantive decision about the child's status as a child with special needs or about his or her educational placement or program.

North Carolina Definitions

A number of terms relating to special education are used regularly in North Carolina statutes. Some of these terms are defined below.

"Children with special needs" includes, without limitation, all children from age five through age twenty who because of permanent or temporary mental, physical, or emotional handicaps need special education, are unable to have all their needs met in a regular class without special education or related services, or are unable to be adequately educated in the public schools. Included are those who are mentally retarded, epileptic, learning disabled, cerebral palsied, seriously emotionally disturbed, orthopedically impaired, autistic, multiply handicapped, pregnant, hearing-impaired, speech-impaired, blind or visually impaired, other health impaired, or academically gifted. G.S. 115C-109.

"Special education" means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a special needs child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions. The term also includes speech pathology, audiology, and occupational and physical therapy. G.S. 115C-108.

"Related services" means transportation for handicapped children with special needs who are unable because of their handicap to ride the regular school buses and such developmental, corrective, and other supportive services required to assist a special needs child to benefit from special education. Included are speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes only. The term also includes school social work services, parent counseling and training, the provision of information to the parents about child development, and assistance to parents in understanding the special needs of their child. Other similar services, materials, and equipment may be provided as approved by regulations adopted by the State Board of Education. G.S. 115C-108.

"Free appropriate public education" means special education and related services that (1) are provided at public expense, under public supervision and direction, and without charge; (2) meet the standards of the state education agency; and (3) are provided in conformity with an individualized education program for a handicapped student, a group education program for an academically gifted student, or a written educational program for a pregnant student. State Department of Public Instruction, *Procedures Governing Programs and Services for Children with Special Needs* (Raleigh, N.C.: SDPI, 1993) § .1501.

Step Two: School-Based Committee Initial Consideration

The matter is referred first to a school-based committee, which provides a team framework for evaluating data and recommending the most appropriate placement for children referred for special education services. The committee receives referrals, involves parents in the planning process, and obtains parental permission for evaluation. It initiates evaluation procedures to be carried out through a multidisciplinary team, as described below, and evaluates the results.

A striking feature of a school-based committee is its composition. There is no magic number, but the committee must include one member who is knowledgeable about the child. Other members are selected from among the following: the principal or designee as chairperson, teacher referring the child, director of programs for exceptional children or designee, teacher of exceptional children, psychologist, social worker, guidance counselor, speech-language specialist, physician or school nurse, physical therapist, occupational therapist, physical education teacher, recreation specialist, referring agency personnel, and parents. Under North Carolina procedures at least one member of the committee should be of the same race and sex as the child being referred, and when the committee is considering the placement for a child who is at least fourteen years old, a vocational education teacher and/or a vocational rehabilitation counselor should be included on the committee if possible.[17]

At initial meetings the committee may examine whether the school's regular educational program can be adapted to meet the child's needs or whether special education appears to be indicated. At this point it would be premature to say special education is required because that decision is possible only after a full and individual evaluation of the child.

Step Three: Multidisciplinary Evaluation

Evaluation of children with special needs requires collaboration among professionals and consent by parents.[18] A multidisciplinary diagnosis and evaluation must be conducted by a multidisciplinary team, which includes at least one teacher or other specialist with knowledge in the area of the suspected disability. There may be overlap between membership of the school-based committee and the multidisciplinary team.

The multidisciplinary team must assess the child in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, speech-language, motor ability, social and emotional status, general intelligence, academic performance, adaptive behavior, and social or developmental history. The group must make sure that testing and evaluation materials are not racially or culturally discriminatory.[19] Assessment tools may include standardized tests, curriculum-based tests, sensorimotor assessments, observations, interviews, play and interactive assessments, and behavioral checklists. No single test or observation is sufficient. The evaluation is intended to discover why the child is having learning problems through a "comprehensive view of the child from the perspective of the school, home, and community"[20] and to provide information that will guide decisions about how to help the child.

Step Four: Report and Recommendation

Once the multidisciplinary team has finished its work, it reports to the school-based committee. At that point, the school-based committee makes its determination whether to recommend that this child be considered a child with special needs. The school-based committee then passes its recommendations along to the administrative placement committee.

Step Five: The IEP

The administrative placement committee makes final decisions regarding the classification of students with special needs and the placement of students in programs for exceptional children.[21] This committee must include someone from the central office who has been authorized by the superintendent to commit financial or other resources. Other members may be selected from among the following: the exceptional children program administrator, the chairperson of the school-based committee, the superintendent or designee, a general supervisor, a school psychologist, and other appropriate school personnel. One member must be knowledgeable about the particular child, and if a child was referred by an agency outside the school, a representative from that agency must provide information relevant to placement. The committee should have at least one member of the same race and sex as the student being considered for special education.

The school system must develop and implement an individualized education program (IEP) for each child who meets the criteria for identification as a child with special needs and is therefore eligible for special education.[22] Making sure this happens is one of the jobs of the administrative placement committee. The IEP is a written statement developed in a meeting open to parents

if they choose to participate and, whenever appropriate, the child.

The entire school-based committee may or may not be involved in developing the IEP, but at a minimum the following individuals must be involved: (1) a representative of the school system—other than the child's teacher—who is qualified to provide, or supervise the provision of, special education; (2) the child's teacher; (3) the child's parents or guardians if they choose to participate;[23] (4) the child, when appropriate; and (5) for a child who has been evaluated for the first time, a member of the evaluation team or some other person who is knowledgeable about the evaluation procedures used with the child and who is familiar with the results of the evaluation. School officials or parents may invite other individuals to attend the meetings.

The IEP must include

- the child's present levels of educational performance;
- annual goals and a statement of short-term instructional objectives for each goal;[24]
- the extent to which the child will participate in regular education programs;
- projected dates for initiation of services and their anticipated duration; and
- objective criteria, evaluation procedures, and a schedule for determining, at least annually, whether the instructional objectives are being achieved.

Beginning no later than when a student is sixteen years old, and when appropriate beginning at age fourteen, the IEP must also include a statement of the needed transition services (activities that promote movement from school to post-school activities).[25] The IEP is meant to be a "written record of reasonable expectations,"[26] not a guarantee that a child will achieve all of the goals and objectives.[27]

Step Six: Follow-up

The school-based committee is responsible for seeing that an IEP for the student is developed within thirty days of the team decision that one is necessary and ensuring that the IEP is reviewed at least annually.[28]

The procedures for identifying a child with special needs and developing an IEP are set out here at length to convey the collaboration they require. These procedures take a lot of time and generate a lot of paper. Keep in mind that they were designed to avoid arbitrary decisions, take advantage of various kinds of expertise, and allow decisions to be based on accurate information.

Tailoring the Educational Program

Proper development of an IEP is mandatory, and as IDEA and North Carolina law clearly state,[29] each IEP must provide the child with a free appropriate public education. Through rulings in numerous cases, the courts have provided guidance for understanding what makes an education "appropriate." That is, school systems have a standard to use when considering whether an IEP offers what the child is entitled to.

In 1982 the United States Supreme Court, in a case from New York, created the test for determining whether an IEP complies with federal law.[30] Amy Rowley had a profound hearing impairment as did both her parents. Amy had some residual hearing and was an excellent lip reader. She began kindergarten in a regular classroom, supplemented with special education services, and was succeeding both academically and socially. Her parents wanted a sign language interpreter for her, and the school provided one on a trial basis for two weeks. At the end of that time, the interpreter reported that Amy did not need his services. Based in part on that opinion, the school proposed an IEP for Amy for first grade that included speech therapy, instruction from a tutor who was a certified teacher of the deaf, and use of a wireless microphone, but not an interpreter. Amy would continue in a regular class.

Amy's parents contested the IEP through an administrative hearing and then in a federal district court and court of appeals. The Supreme Court agreed to review the case to decide whether the school board was required to provide Amy with an interpreter as part of its duty to provide her with a free appropriate public education. Or, to put it another way, would an IEP for Amy that did not include the services of an interpreter violate the law? To answer this question, the Court said the IEP must satisfy both a procedural and a substantive standard.

The Procedural Standard

To meet the procedural standard, the school system must follow the statutory procedures for developing an IEP. The Supreme Court said, "We think that the congressional emphasis upon full participation of concerned parties throughout the development of the IEP. . . demonstrates the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content of an IEP."[31]

The Substantive Standard

Procedural compliance was not at issue in Amy's case, only the substantive content of her educational program. The Court declared that a state offers a free appropriate public education by "providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction."[32] Because Amy was making reasonable progress under her IEP without an interpreter, she was not entitled to one, even though she might have made even more progress with the interpreter.

The Court explained that the statute guarantees a "basic floor" of opportunity that is "sufficient to confer some educational benefits."[33] It does not require the best possible education or that every IEP maximize each disabled child's potential.[34] It does not require the educational program to enable the child to develop maximum self-sufficiency or that the child be able to maximize his or her potential commensurate with the opportunity provided nonhandicapped children.[35]

To summarize, in judging whether a child is being offered an appropriate education, a court will ask whether the IEP was developed following the statutory procedures and whether that IEP was reasonably calculated to enable the child to receive educational benefits. If the answer to these two questions is yes, then the school, if it properly implements the IEP, is providing a free appropriate public education.

Applying the Standards

Although the Supreme Court in Amy's case was careful to say that it was not establishing the one and only test for determining the adequacy of educational benefits conferred on all children,[36] other courts have used the "opportunity for educational benefit" notion to decide whether an IEP meets the substantive standard. Some cases have examined the level of educational benefit that should be available to the child. In a North Carolina case from Vance County, a federal court found that Congress did not intend to permit a school system to discharge its duty by providing a program that merely produces "some minimal academic advancement, no matter how trivial."[37] In examining an IEP, another federal court found that Congress intended to afford children with special needs "an education that could confer meaningful benefit."[38] As with so many issues in special education, it is not possible to discuss the level of benefit without examining the individual child and his or her needs.

In developing an IEP the right group of people must ask the right questions: What are this individual student's needs? What goals and objectives are reasonable, based on this student's capabilities? Is the program of special education and related services designed to meet those unique needs? Does that program offer the child the opportunity to meet the goals and benefit educationally?[39]

Decisions must be made one child at a time. They must be based on the child's unique needs and not on the child's label, not on programs just because they happen to be available, and not on the cost. For each child, school officials must start with a blank slate and without predetermined limits to the educational program or placement. For example, a school board may not have a policy that limits the length of the school year for every child with special needs to the standard 180 days.[40] If the only way a child will have the opportunity to benefit from an educational program is with an extended school year, the IEP must include an extended school year.

Categorical limitations on the possible duration of special education programs,[41] or for that matter on any component of the IEP,[42] are simply inconsistent with IDEA's insistence on IEPs formulated to meet a child's unique needs. Although good teachers have been considering the individual student's needs since classroom instruction began, the extent to which this consideration is required by law for special education students is something new. The state must "treat each child as an individual, a human whose unique qualities and needs can be evaluated and served only by a plan designed with wisdom, care, and educational expertise. Its grand design does not tolerate policies that impose a rigid pattern on the education of children."[43]

The Higher Standard under North Carolina Law

In North Carolina, as elsewhere in the country, to analyze whether an IEP offers an appropriate education, one must ask about both its procedural development and substantive components. The question relating to procedure is the same as that in Amy Rowley's case: was the IEP developed following proper procedures? And the lesson here is clear. School officials should be compulsive about following the procedures, no matter how time-consuming or cumbersome they seem. If proper procedures are not followed, that alone may be enough for a successful challenge to a child's IEP. One North Carolina school board learned that lesson. It had consistently failed to inform the parents of a dyslexic child of their procedural rights. The federal courts said that was an adequate ground for finding the board did

not provide the child with an appropriate education.[44] In another case a board of education wanted to place a student at a new in-county facility instead of continuing his placement in a private residential school as his parent preferred. The court found that the board had selected the placement before reexamining the child's needs and developing a new IEP. Because of this procedural violation, the board did not offer the child an appropriate education.[45] Failure to act within the statutory timelines, such as a six-month delay in evaluating a child,[46] may also be a violation.

The question relating to an IEP's substance is slightly different because North Carolina has chosen to impose a more stringent standard than federal law would otherwise require. In North Carolina the question relating to substance is as follows: does the IEP offer the child the opportunity to reach full potential commensurate with the opportunity given other children? This is the very equal opportunity standard that was rejected by the Supreme Court in *Rowley* in favor of the educational benefit standard.[47]

This higher North Carolina substantive standard was set in a case from Wilson County[48] and later made a statutory requirement.[49] Parents of Marguerite Harrell, a hearing impaired child, asked the school system to pay the costs of sending her to the Central Institute for the Deaf in Missouri. The school's proposed IEP offered Marguerite support services in a regular sixth grade class. The North Carolina Court of Appeals looked at the state statute then in effect[50] and said that, although the North Carolina statute was designed, in part, to bring the state into conformity with federal law, the Supreme Court's interpretation of Congress's intent does not control the state court's interpretation of the North Carolina General Assembly's intent. The state appeals court said, "We believe that our General Assembly intended to eliminate the effects of the handicap, at least to the extent that the child will be given an equal opportunity to learn if that is reasonably possible. Under this standard a handicapped child should be given an opportunity to achieve his full potential commensurate with that given other children."[51] The court explained that the statute was not designed to require the development of a utopian educational program for handicapped students any more than the public schools are required to provide utopian educational programs for nonhandicapped students.[52]

A small number of special education cases have mentioned this standard without defining what it means or how to measure it. It is not possible to say just how much "more" the North Carolina standard requires than the federal standard. Chris Denton, a nineteen-year-old North Carolinian with autism and moderate mental handicaps, sued the Burke County school board seeking services, twenty-four hours a day, every day of the year, in his home. Chris had returned home from a residential facility and was enrolled in a local school where he made educational progress even without the services he sought. His progress undermined his claim that an absolutely consistent in-home behavior management program was required for him to have an appropriate education. The link between the in-home services and the possibility of educational benefit was not established. Without that link, federal law does not require the school to provide the services.

But Chris argued that even if his claim failed under federal law, the higher North Carolina standard required the school to provide the in-home behavior management services. The court agreed that "North Carolina apparently does require more than the [IDEA]. The special education program must provide the child with an equal opportunity to learn if that is reasonably possible, ensuring that the child has an opportunity to reach her full potential commensurate with the opportunity given other children."[53] This higher standard, however, "does not mandate expansive interpretation of what the statute contemplates as an educational service."[54] In this case the services sought were "habilitative," not educational, so the board was not required to provide them.

A case that acknowledges that North Carolina requires more than IDEA, but that is equally unhelpful in deciding how much more, arose when parents in Maryland challenged a school's proposed IEP for their son with dyslexia. The dispute reached the court of appeals, which sent it back to the district court for that court to determine whether Maryland law was more expansive than federal law concerning the level of education that has to be offered to children with disabilities.[55] The appeals court noted that the federal law sets a minimum that states must comply with but also gives states freedom to structure educational programs that exceed the federal benchmark. As an example, the court noted that North Carolina's lawmakers have built upon the federal floor and have decided "to provide the handicapped children, within the state, with a level of educational services that surpasses the national minimum."[56]

Related Services

Schools may be required to provide, as part of the free appropriate special education, services that are not strictly part of an educational program. If a student needs a service related to education to benefit from special

education, the related service must be part of the child's IEP. For example, a child who is too severely disabled to ride the regular school bus needs transportation to get to school. A child assigned to a special education program at a school that the child would not otherwise attend needs transportation to that school. Another common related service is counseling for a child and his or her family.

Ten years ago the United States Supreme Court, in the one case it has heard on this issue, clarified and set some limits on related services.[57] Amber Tatro was born with spina bifida and needed a catheter to empty her bladder. When she began public school, her parents requested that someone at the school perform a procedure called clean, intermittent catheterization (CIC). School officials refused, claiming that CIC was medical treatment, not a related service. The Court found that CIC was a related service as a school health service. It requires only a trained lay person, not a physician, and is not unduly expensive. Without it Amber could not attend school and benefit from special education. Schools are not required, however, to provide health services that only a physician or hospital can perform or that a child can obtain during nonschool hours.

A related service that has a potentially great impact on both the school and the child is the provision of assistive technology. "Assistive technology" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.[58] Already some schools are receiving increasing requests for computers, especially from children with learning disabilities. As technology improves, more requests are sure to follow. The issue, of course, is whether the child needs this related service to receive an appropriate education. If assistive technology is an essential part of a child's IEP, the school board must provide it at no cost to the parents. A school may not refuse a necessary related service because of its cost or fear of establishing a precedent, or because of blanket rules that deny the service.

Least Restrictive Environment

Once the school system, through the proper procedure, has identified a child's needs and developed a program of special education and related services, it must decide where the program will be delivered. As with all aspects of special education, placement decisions must be made one student at a time, never based automatically on the student's classification or on current availability of programs.[59] IDEA requires that children with disabilities be educated with children who are not disabled "to the maximum extent appropriate."[60] Schools may remove children with disabilities from the regular educational environment through special classes, separate schooling, or other placements only when the nature and severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

North Carolina's administrative procedures have a similar requirement:

> To the maximum extent appropriate, children with special educational needs including children in public or other care facilities are educated in regular class settings. Each child with special needs is to participate with children who are not children with special needs in services and activities to the maximum extent appropriate to the needs of the child in both non-academic and extracurricular activities including meals, recess period, counseling services, recreational activities, special interest groups or clubs sponsored by the local educational agency. When the regular class environment or normal setting is not satisfactory in meeting the needs of the children, consultant or supportive services, remedial or advanced instruction and/or special instructional materials should be provided before removing them from the regular classroom. Special classes, separate schools or removal of children requiring special education from the regular educational environment shall occur only when the needs of the children are such that education in regular classes, even with the aid of supplemental aids and services, cannot be accomplished satisfactorily.[61]

To comply with these requirements, school units must offer a continuum of placements for children. The range of placements may vary from year to year depending on the children who are enrolled, and it may extend from regular classes incorporating special education and related services, through resource classes, separate classes, separate schools, residential facilities, to home-based services. If the school system does not have a proper placement, it must create one or pay for the child to be in an appropriate placement elsewhere.

Note that what is required is placement in the least restrictive environment. What is not required is full inclusion[62] for every child in the regular class, although many special education advocates believe that this is the best way to educate children.[63] Others believe that full inclusion is not suitable for every child and that a full inclusion mandate would run counter to the requirement that decisions be based on a student's individual needs.[64]

Placement is becoming an increasingly common issue in special education litigation,[65] and courts are developing

tests to determine if a child has been placed in the least restrictive environment.[66] Generally, they ask whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily, and, if not, whether the school has included the child in school programs with nondisabled children whenever possible. In answering these questions, courts consider several factors, though different courts might weigh the factors differently:

Educational benefits to the disabled child. Only placements in which a child can receive an appropriate education are options. If an IEP that offers an appropriate education cannot be delivered in the regular classroom, even with supplemental aids and services, then the regular classroom is not the least restrictive environment for a student. In one case, parents of a seventeen-year-old student with autism wanted him placed at the regular high school. The court found that he could not benefit from merely "monitoring" regular high school academic classes, and therefore he was appropriately placed at the county vocational center.[67] Beyond that initial question, a court may compare the benefits the child would receive in the regular classroom and benefits in a more restrictive setting. However, a determination that a child might make greater academic progress in a segregated special education class does not warrant automatically excluding the child from the regular classroom.[68]

Nonacademic benefits to the child with a disability. A student may benefit substantially from the opportunity to model his or her behavior after that of other students. The student may develop improved self-esteem and better behavior, language, and social skills from interaction with and observation of nondisabled peers. All of these are more likely in a regular classroom. Another possible benefit occurs in some classes when students do not know who among them has a disability, thus preventing any potential stigma.

Possible harmful effects, either academic or social, of a proposed placement on the child with a disability. For some children, placement in a regular classroom carries a risk of possible harmful effects. A court might consider, for example, whether a hearing-impaired child might be more isolated socially in a regular classroom than in a separate class for hearing-impaired students.

The impact on the other children in the class. If the child's placement in the regular class would significantly impair other children's education, the placement may not be appropriate. A court will consider disruption of normal class activities, the extent to which the curriculum must be altered, and the demands on the teacher's time. Before finding a regular classroom is not suitable, however, a court will examine whether meaningful supplemental aids and services have been provided. The effect on other students in the class also may include positive outcomes, such as learning how much they have in common with a disabled student, respect for differences, and the benefits of helping another student.

The cost of the supplemental aids and services necessary for the child to receive an appropriate education in the regular classroom. A court will consider whether the costs of supplemental aids and services necessary to place a child in the regular classroom will have a significant impact on the education of other children.[69] When it comes to providing an appropriate education, schools apparently have to spend whatever it takes, but cost is more readily accepted as a factor in placement cases.[70]

As with special education and related services, placement choices must always be made on an individual basis, with no outcome selected in advance. Only after the proper people determine the child's needs and ways to meet those needs can they decide what is the least restrictive environment for the student.

Parental Involvement

In North Carolina parents may enroll their child in a public school, private school, or home school. Once a child is enrolled in public school, his or her parents have certain rights. For example, they may make certain requests to the board,[71] appeal decisions of school personnel,[72] inspect and control access to their child's records,[73] and attend school board meetings.[74]

But even with these rights, most parents have legal authority for only a limited role in their child's public education. The state, local school boards, administrators, and teachers traditionally decide what is taught, who will teach it, how it will be taught, and how students will be assigned to classes and evaluated. Parents may have little or no voice in these decisions, and they may not be aware of how the decisions are made. Many schools do encourage parental involvement because they believe students learn best when home and school work together.

Once a child is identified as a child with special needs, his or her parents have a second set of rights that other parents do not have. Special education statutes empower parents to act as educational advocates for their children; school officials must listen to their voices.

Chief among these additional rights is the right to participate in developing the IEP. Even if this were the only additional right, it would be significant,[75] but involvement

in the IEP is not their only additional right. Parents of children with special needs have a right to extensive information. School officials must give them written notice whenever the school proposes any significant change in the child's status as a child with special needs, placement, or provision of a free appropriate education.[76] The notice must include a full explanation of the procedural safeguards available to the parents; a description and explanation of the action the school is proposing or refusing to take; a description and explanation of any options the school considered; a description of each evaluation procedure, test, record, or report used as a basis for the school's proposal; an offer of mediation if parents and school officials do not agree; and a statement advising parents of their right to administrative and judicial review.

This final element—the right to administrative and judicial review—exists alongside the right all parents have to appeal to the local board of education if they are dissatisfied with decisions about their child's education. Parents of children with special needs may use this separate route to appeal a school's proposed decision on several grounds. They may assert that

- the child has not been identified or has been incorrectly identified as a child with special needs,
- the child's IEP is not appropriate to meet his or her needs,
- the child's IEP is not being implemented, or
- the child is otherwise being denied a free appropriate education.[77]

Parents and school officials are encouraged to try to resolve their disputes informally before beginning the process of formal administrative review.[78] If the dispute cannot be resolved, the parent may seek administrative review through the state Office of Administrative Hearings. Once a petition is filed there, a second opportunity for mediation is available.[79] If mediation fails, a formal hearing will be held. Following the hearing, the administrative law judge makes a decision. This decision is final unless the losing party appeals to a review officer appointed by the state superintendent of public instruction. The review officer's decision is final unless appealed to state or federal court.

One significant feature of the review process is that once a petition is filed, no change may be made in the child's status or placement by school officials during the entire review period, unless the parent consents to the change[80] or a court orders a change.[81] This "stay-put" requirement is important because full administrative and judicial review may take years.

Extending Principles of Special Education Law to Regular Education

Providing special education to every student who needs it is a challenging task, and educators, advocates, and families are concerned about how well schools fulfill this responsibility. Yet even with the difficult problems this obligation presents, there is much to celebrate about special education and the progress students are making. And, perhaps, there is much to be learned by educators, advocates, and families concerned with how well North Carolina's schools fulfill their responsibility to children *without* special needs.

The major principles of special education law—individualized education, parental involvement, and collaboration among professionals—are spilling over into regular education. Many individual schools have voluntarily used these principles for regular education,[82] and there is a new push at the state level for all schools to use them.

Several recent legislative acts enhance the opportunities for parental involvement.[83] According to the General Assembly, parental involvement is an "essential" component of school success and positive student outcomes.[84] To make involvement easier, the legislature in 1993 passed a law requiring employers to grant up to four hours of unpaid leave per year to an employee who is a parent (or guardian or person standing *in loco parentis*) of a school-aged child so that the employee may attend or otherwise be involved at that child's school.[85]

Parents also have the opportunity for involvement through the Performance-based Accountability Program (commonly known as Senate Bill 2),[86] which gives school boards increased flexibility and provides funds for differentiated pay for employees in return for increased accountability. This voluntary program is designed to improve student performance through adoption of local student performance goals and plans to reach those goals. The program gives a larger role in managing schools to faculty and staff and parents with the expectation that those closest to the classroom and to the students will be best able to determine how to improve education. Schools must include parents in developing student performance goals, school improvement plans, and differentiated play plans.[87] Individual schools are encouraged to include a comprehensive parent involvement program as part of their building-level improvement plan.[88] As part of the Accountability Program, the State Board of Education must adopt indicators for measuring and assessing student performance in participating school units. One indicator must be parent

Children with Special Needs in North Carolina by Category and Placement, 1992

Category	Regular Class	Resource Class	Separate Class Self-Contained	Public Separate School Facility	Private Separate School Facility	Public or Private Residential Facility	Homebound or Hospital Environment	Totals
Academically gifted	66,169	15,041	2,235	0	0	0	5	83,450
Autistic	58	33	681	176	17	0	9	974
Deaf-blind	1	0	2	2	0	2	0	7
Emotionally handicapped	3,112	2,266	3,818	276	7	12	75	9,566
Educable mentally handicapped	2,335	6,940	7,539	285	63	1	25	17,188
Hearing impaired	868	311	293	9	2	141	1	1,625
Specific learning disabled	33,171	18,246	4,563	36	3	0	37	56,056
Multihandicapped	63	71	702	291	53	7	26	1,213
Other health impaired	1,397	687	441	35	17	0	99	2,676
Pregnant	0	0	0	0	0	0	11	11
Orthopedically impaired	616	149	242	67	26	0	14	1,114
Speech-language impaired	33,002	472	517	86	160	5	34	34,276
Severely or profoundly mentally handicapped	1	1	480	354	122	0	25	983
Trainable mentally handicapped	36	60	2,494	768	10	1	8	3,377
Visually impaired	389	127	68	10	17	3	5	619
Traumatic brain injured	9	6	7	2	1	1	1	27
Preschool developmentally delayed	214	78	391	139	54	0	11	887
Totals	141,441	44,488	24,473	2,536	552	173	386	214,049

Note: The N.C. Department of Public Instruction placements in this chart correspond to the following definitions by the U.S. Department of Education:

Regular class includes students who receive the majority of their education program in a regular classroom and receive special education and related services outside the regular classroom for less than 21 percent of the school day.

Resource room includes students who receive special education and related services outside the regular classroom for at least 21 percent but not more than 60 percent of the school day.

Separate class includes students who receive special education and related services outside the regular classroom for more than 60 percent of the school day.

Separate school includes students who receive special education and related services in separate day schools for students with disabilities for more than 50 percent of the school day.

Residential facility includes students who receive education in a public or private residential facility, at public expense, for more than 50 percent of the school day.

Homebound or hospital environment includes students placed in and receiving special education in hospital or homebound programs.

Sources: For placement figures: Exceptional Children Support Team, *Cultivating Potential: The Challenge for Gifted Education in North Carolina for the 1990's* (N.C. Department of Public Instruction, 1994), 32-A. For definitions: U.S. Department of Education, *Fifteenth Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (USDE, 1993), 15.

involvement.[89] The State Board of Education also must adopt guidelines to help local units gauge parent involvement.[90]

The Basic Education Program (BEP) defines the basic education that should be available to every child in the North Carolina public schools. In describing the state dropout-prevention program, the BEP says that making parents "active partners" offers many opportunities, and that all staff, not just dropout-prevention specialists, must be involved for a successful program.[91] Dropout-prevention programs should have early identification and intervention and special programs and services, which might include possible curriculum modifications, programs that provide special services such as school social work or school psychology services, counseling, extended school day, and school-to-work transition programs for at-risk students.

With regard to promotion standards, the BEP says, "School personnel (including teachers, instructional support staff, and administrators) shall consider how the curriculum content and instructional methods may be modified within the regular classroom to benefit high risk students."[92] Also in the BEP, school psychological services include assessing students to determine their instructional needs, strengths and weaknesses, and learning styles,[93] presumably so that this information can be used to better tailor a child's educational program to meet his or her needs.

Independent of the Basic Education Program, the General Assembly encourages local school administrative units to assist students who are at risk of school failure through extended services programs.[94] These programs should expand students' opportunities for educational success through high-quality, integrated access to instructional programming during nonschool hours. They may include tutoring, direct instruction, enrichment activities, study skills, reinforcement projects, and other appropriate activities.[95]

These are just some recent examples of the extension of special education principles to regular education,[96] and we can expect to see more as the state tries to improve education and provide safe schools. Other proposals that would have continued this trend were introduced, but not enacted, in the General Assembly's extra session on crime in early 1994, and these ideas may surface again. Several bills dealt with alternative schools, which are a variation of the regular educational program, for children who are disruptive or at risk of academic failure in the regular classroom, students with learning and behavioral disabilities, and students with violent behavior.[97] Under one or more bills, alternative schools were directed to increase student and parent involvement in decision making; emphasize individualized instruction, flexible scheduling, personalization, caring, cooperation, and acceptance to each student; and operate with a staff trained in different learning styles and positive discipline techniques.

Another bill was designed to provide school and family assistance to students who are not achieving at their full potential due to educational neglect or students who are at risk of academic failure.[98] Families would have opportunities to participate in discussions of how to assist the student and to develop an education plan, which could include adjustment of the school program, supplemental school services, the appointment of an adult volunteer to work with the student, and instruction for the parent.

Conclusion

There is no public disagreement about the most fundamental assumption of special education: all children can learn. But the system of special education created by statute is under increased scrutiny. Secretary of Education Richard S. Riley recently asked, "Could it be that in our attempt to do good—offering pullout programs and overlabeling students into special education classes—we have contributed in some significant way to a sense of classification . . . that tells these young people early on that they will not make it in life, so why even try?"[99]

At the same time those concerned with improving regular education are recognizing the value of special education principles. Every child has strengths and weaknesses and unique needs that should be taken into account in considering how and what to teach. Collaboration among professionals within the school system, with other agencies, and especially with parents should help students learn more.

Perhaps the lines between special and regular education will blur, not only in the way children are educated but also in the requirements of the law. Perhaps regular education programs can adopt the best elements of special education without adopting a maze of regulations, and perhaps special education can become less of a separate system. Perhaps there will be more cooperation among home, school, and community. Certainly the discussion of how best to improve the educational opportunities we offer all our children will continue. ❖

Notes

1. In 1975 Congress found that, "given appropriate funding, State and local educational agencies can and will provide effective special education and related services to meet the needs of handicapped children." 20 U.S.C. § 1400(b)(7). The statute now uses the phrase "children with disabilities." N.C. Gen. Stat. (hereinafter G.S.) § 115C-238.1 ("The General Assembly believes that all children can learn"). G.S. 115C-107 ("The General Assembly finds that all children with special needs are capable of benefiting from appropriate programs of special education and training and that they have the ability to be educated and trained and to learn and develop").

2. The Education for All Handicapped Children Act was enacted in 1975 in response to a congressional finding that "more that half of the children with disabilities in the United States do not receive appropriate educational services." 20 U.S.C. § 1400(b)(3).

3. G.S. 115C-238.13.

4. Brown v. Board of Educ., 347 U.S. 483 (1954).

5. For instance, the new Goals 2000: Educate America Act stakes out a federal role for what happens in the classroom. The act promotes voluntary national content, performance, and "opportunity to learn" standards, and for the first time, according to the *New York Times*, creates a "Federal blueprint" for how the nation should educate its children. William Celis III, "New Education Legislation Defines Federal Role in Nation's Classrooms," *New York Times*, March 30, 1994, B7. The federal government already has an extensive role in protecting the civil rights of students and school employees. In addition, control of federal funding creates many opportunities for federal involvement in educational decisions.

6. 20 U.S.C. §§ 1401–85. The initial version of the act was passed in 1975; in 1990 it was named the Individuals with Disabilities Education Act. It is often referred to by its original public law number, 94-142, or as the Education of the Handicapped Act (EHA) or the Education of All Handicapped

Children Act (EAHCA). Its essential elements have been in place since 1975, and Congress is expected to reauthorize IDEA in 1994 or 1995.

7. State and local education agencies have the primary responsibility for funding special education. In 1975 Congress was expected to provide states with 40 percent of the national average per pupil expenses for the excess costs. However, federal appropriations have never exceeded 12 percent of these costs, and funding now is less than 10 percent. Nationwide, special education expenditures are more than $18 billion, with the federal government under the IDEA contributing approximately $1.5 billion. August W. Steinhilber, "United States Supreme Court and Education: Present and Future," *NOLPE Notes* 20 (Feb. 1993): 1–5.

8. Pennsylvania Ass'n for Retarded Children v. Pennsylvania, 334 F. Supp. 1257 (E.D. Pa. 1971) and 343 F. Supp. 279 (E.D. Pa. 1972), and Mills v. Board of Educ., 348 F. Supp. 866 (D.D.C. 1972). Although there is no federal constitutional right to education, once a state undertakes to provide education, it must make education available to everyone. In North Carolina equal access to participation in the public school system is a fundamental right, guaranteed by the state constitution. Sneed v. Board of Educ., 299 N.C. 609, 618, 264 S.E.2d 106, 113 (1980).

9. 20 U.S.C. § 1400(c).

10. Years later the Supreme Court said, "We think it clear that Congress very much meant to strip schools of the *unilateral* authority they had to exclude disabled students, particularly emotionally disturbed students, from school." Honig v. Doe, 484 U.S. 305, 323 (1988).

11. 29 U.S.C. § 794.

12. Since January 26, 1992, by virtue of regulations adopted under the Americans with Disabilities Act (ADA) [42 U.S.C. §§ 12101–12213], all governmental units in North Carolina (and everywhere else in the country) are covered by the rules of Section 504, regardless of whether the units receive federal funds. 28 C.F.R. § 35.140 (1992). The ADA is expected to have little impact on special education services.

13. See Ronald D. Wenkart, "Providing a Free Appropriate Public Education under Section 504," *Education Law Reporter* 65 (April 21, 1991): 1021, and Perry A. Zirkel, "Section 504: The New Generation of Special Education Cases," *Education Law Reporter* 85 (Dec. 2, 1993): 601, for an annotated outline of administrative and judicial rulings under Section 504 with regard to services to public school students.

14. G.S. 115C-506.

15. IDEA incorporates by reference relevant state law and enforces that law as part of the federal right to a free appropriate public education. *See* Town of Burlington v. Department of Educ., 736 F.2d 773, 789 (1st Cir. 1984), *aff'd sub nom.*, Burlington School Comm. v. Department of Educ., 471 U.S. 359 (1985).

16. G.S. 115C-111; G.S. 115C-115; and State Department of Public Instruction, *Procedures Governing Programs and Services for Children with Special Needs* (hereinafter *Procedures*) (Raleigh, N.C.: SDPI, 1993) § .1502 .

17. *Procedures* § .1506.

18. If a parent refuses to consent to an evaluation for the purpose of determining whether the child is a child with special needs or for the purpose of developing a free appropriate educational program for the child, school officials may call for a review of that refusal. G.S. 115C-116(c). While school officials may want to honor a parent's wishes, their legal obligation is to the child, not the parent.

19. G.S. 115C-113. In 1990 Congress found that greater efforts are needed to prevent the intensification of problems connected with mislabeling among minority children and that more minority children are served in special education than would be expected from the percentage of minority students in the general school population. 20 U.S.C. § 1409(j)(1)(B).

20. *Procedures* § .1508. A parent may always provide other information about the child to the committee. A parent also has the right to an independent educational evaluation at public expense if the parent disagrees with the evaluation obtained by the school. However, the school board may request a hearing to show that its evaluation was appropriate. If the final decision is that the school's evaluation was appropriate, the parent still has the right to the independent evaluation, but not at public expense. *Procedures* § .1517.

21. *Procedures* § .1507. With the approval of the Department of Public Instruction, a school unit may combine these various committees to meet the needs of that particular unit.

22. *Procedures* § .1512.

23. School officials must make good faith efforts to involve parents in IEP development. They must notify parents early enough to ensure they will have the opportunity to participate and try to schedule the meeting at a mutually agreed upon time and place. Parents must be told the purpose of the meeting and who else will attend. If neither parent can attend, school officials must use other methods to ensure parent participation, including individual or conference telephone calls. Parents are entitled to participate in the annual review of an IEP. *Procedures* § .1512.

24. Annual goals are statements describing an observable behavior; for example, "Jill will speak in three-word sentences." Goals and objectives are required for all special education services.

25. 20 U.S.C. § 1401(B)(19).

26. Board of Educ. v. Rowley, 458 U.S. 176, 209 (1982).

27. 34 C.F.R. § 300.350.

28. *Procedures* § .1506. Academically gifted students may be served under a group education program; pregnant students in need of special education are served under a written education program.

29. G.S. 115C-107.

30. Board of Educ. v. Rowley, 458 U.S. 176 (1982).

31. *Rowley*, 458 U.S. at 205–6.

32. *Rowley*, 458 U.S. at 203.

33. *Rowley*, 458 U.S. at 200.

34. *Rowley*, 458 U.S. at 199.

35. *Rowley*, 458 U.S. at 198.

36. *Rowley*, 458 U.S. at 202.

37. Hall v. Vance County Bd. of Educ., 774 F.2d 629, 636 (4th Cir. 1985).

38. Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171, 184 (3d Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989).

39. The consequences of failing to provide a free appropriate education may be serious. Obviously, a child may not have the educational opportunity that he or she was entitled to. The

consequences for schools may be serious too. A court may order the school board to reimburse parents for the expenses of private special education for a child if the parents place the child in a private school and the court ultimately determines that (1) the school's proposed IEP did not offer an appropriate education and (2) the private placement did offer a proper education. Burlington School Comm. v. Department of Educ., 471 U.S. 359 (1985); Florence County School Dist. Four v. Carter, 114 S. Ct. 391 (1993). Schools also may be ordered to provide a student with compensatory education. Lester H. v. Gilhool, 916 F.2d 865 (3d Cir. 1990), *cert. denied*, 499 U.S. 923 (1991); Pihl v. Massachusetts Dept. of Educ., 9 F.3d 184 (1st Cir. 1993). The costs of defending an IEP may be substantial, and if parents are prevailing parties in an IEP challenge, the school board will probably have to pay the parents' attorneys' fees as well as its own. 20 U.S.C. § 1415(e)(4)(B).

40. Georgia Ass'n of Retarded Citizens v. McDaniel, 716 F.2d 1565 (11th Cir. 1983), *vacated in part on other grounds*, 468 U.S. 1213, *reinstated in relevant part*, 740 F.2d 902 (1984), *cert. denied*, 469 U.S. 1228 (1985); Johnson v. Independent School Dist. No. 4, 921 F.2d 1022 (10th Cir.), *cert. denied*, 111 S. Ct. 1685 (1991); Battle v. Pennsylvania, 629 F.2d 269 (3d Cir. 1980), *cert. denied*, 452 U.S. 968 (1981).

41. Crawford v. Pittman, 708 F.2d 1027, 1034 (5th Cir. 1983).

42. Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171 (1988), *cert. denied*, 488 U.S. 1030 (1989) (a school district may not adopt a consultative model, in which a physical therapist instructs the teacher who then works directly with the child for physical therapy, for all students and thereby refuse to consider whether an individual student needs direct services from a licensed physical therapist).

43. *Crawford*, 708 F.2d at 1030.

44. Hall v. Vance County Bd. of Educ., 774 F.2d 629, 635 (4th Cir. 1985).

45. Spielberg v. Henrico County Public Schools, 853 F.2d 256 (4th Cir. 1988), *cert. denied*, 489 U.S. 1016 (1989).

46. Tice v. Botetourt County School Bd., 908 F.2d 1200 (4th Cir. 1990).

47. Board of Educ. v. Rowley, 458 U.S. 176, 198 (1982).

48. Harrell v. Wilson County Schools, 58 N.C. App. 260, 293 S.E.2d 687, *disc. rev. denied*, 306 N.C. 740, 295 S.E.2d 759 (1982), *cert. denied*, 460 U.S. 1012 (1983).

49. G.S. 115C-106 ("The policy of the State is to ensure every child a fair and full opportunity to reach his full potential").

50. G.S. 115-363 (1977).

51. *Harrell*, 58 N.C. App. at 265–66, 293 S.E.2d at 690–91.

52. *Harrell*, 58 N.C. App. at 265, 293 S.E.2d at 691.

53. Burke County Bd. of Educ. v. Denton, 895 F.2d 973, 976 (4th Cir. 1990).

54. *Burke County*, 895 F.2d at 983.

55. *In re* Conklin, 946 F.2d 306 (4th Cir. 1991)

56. *Conklin*, 946 F.2d at 381.

57. Irving Indep. School Dist. v. Tatro, 468 U.S. 883 (1984).

58. 20 U.S.C. § 1401(25). Schools may also have to provide technology services to assist with the selection, acquisition, or use of an assistive technology device. 20 U.S.C. § 1401(26).

59. "The category of handicapping condition, configuration of the service delivery system, availability of educational or related services, availability of space, curriculum content or methods of curriculum delivery, or administrative convenience are not acceptable reasons for determining placement." *Procedures* § .1515.

60. 20 U.S.C. § 1412(5)(B).

61. *Procedures* § .1515.

62. "Mainstreaming" to some suggests shuttling a child with a disability in and out of a regular class without altering the classroom to accommodate the child. "Inclusion" emphasizes the use of supplementary aids and support services within the regular classroom to facilitate inclusion of children with disabilities. Oberti v. Board of Educ., 995 F.2d 1204, 1207 n.1 (3d Cir. 1993), citing *Winners All: A Call for Inclusive Schools*, Report to the National Association of State Boards of Education by the Study Group on Special Education (Oct. 1992).

63. *See* Lynda Richardson, "Minority Children Languish in Special Education," *New York Times*, April 6, 1994, A1, B8.

64. *E.g.*, Oscar Cohen, "'Inclusion' Should Not Include Deaf Students," *Education Week* 13 (April 20, 1994): 35.

65. *E.g.*, Daniel R. v. State Bd. of Educ., 874 F.2d 1036 (5th Cir. 1989); Greer v. Rome City School Dist., 950 F.2d 688 (11th Cir. 1991), *withdrawn*, 956 F.2d 1025, *reinstated*, 967 F.2d 470 (11th Cir. 1992); Devries v. Fairfax County School Bd., 882 F.2d 876 (4th Cir. 1989); Oberti v. Board of Educ., 995 F.2d 1204 (3d Cir. 1993); Sacramento City Unified School Dist. v. Rachel H., 14 F.3d 1398 (9th Cir.), *cert. denied*, 62 U.S.L.W. 3825 (June 13, 1994). In many cases parents are seeking less restrictive placements; in others they seek more restrictive placements. *See, e.g.*, Board of Educ. v. Diamond, 808 F.2d 897 (3d Cir. 1986); Drew P. v. Clarke County School Dist., 676 F. Supp. 1559 (M.D. Ga. 1987), *aff'd*, 877 F.2d 927 (11th Cir. 1989), *cert. denied*, 494 U.S. 1046 (1990).

66. Allan G. Osborne, Jr., "The IDEA's Least Restrictive Environment Mandate: A New Era," *Education Law Reporter* 88 (March 24, 1994): 541.

67. Devries v. Fairfax County School Bd., 882 F.2d 876 (4th Cir. 1989).

68. Kerkam v. Superintendent, D.C. Public Schools, 931 F.2d 84 (D.C. Cir. 1991) (a local extended-day program offered by the school district complies with the statute even if the student could have made more educational progress at a residential facility).

69. See Sacramento City Unified School Dist. v. Rachel H., 14 F.3d 1398 (9th Cir.), *cert. denied*, 62 U.S.L.W. 3825 (June 13, 1994), for an example of what happens when school officials inflate the cost of placing a child in the regular classroom.

70. *See* Leslie A. Collins and Perry A. Zirkel, "To What Extent, If Any, May Cost Be a Factor in Special Education Cases?" *Education Law Reporter* 71 (Jan. 30, 1992): 11.

71. G.S. 115C-369 (student assignments).

72. G.S. 115C-45.

73. 20 U.S.C. § 1232g.

74. G.S. 115C-4.

75. Consider the role for parents of a student whose high school permits students to sign up for courses without parental approval and then schedules students primarily through the use of a computer program.

76. *Procedures* § .1517.

77. G.S. 115C-116(c). Based on the assumption that there may be occasional exceptions to the general rule that parents

will act in the interests of their children, under some circumstances the board of education has available the same due process procedures. A school board may obtain review if a parent refuses to consent to an evaluation to determine whether the child is a child with special needs or for the purpose of developing a free appropriate educational program for the child. G.S. 115C-116(c). School officials may also initiate the review process when parents refuse to consent to an initial placement. *Procedures* § .1517.

78. G.S. 115C-116(b).

79. G.S. 150B-23.1 authorizes the Office of Administrative Hearings to establish a mediation program. An administrative law judge may require the parties in a contested case to attend a prehearing settlement conference conducted by a mediator. Mediation arranged by school officials is optional under G.S. 115C-116.

80. G.S. 115C-116(l).

81. *Procedures* § .1517. *See* Honig v. Doe, 484 U.S. 305, 327 (1988).

82. Some schools make unusual efforts to individualize education. Ann B. Clark of Alexander Graham Middle School in Mecklenburg County, National Principal of the Year in 1994, meets individually with each child—and sometimes with his or her parents and former teachers—to determine the child's strengths, weaknesses, and interests before making out class schedules. A child is assigned to the teaching team that the principal believes will best meet the student's needs. "Ann Clark, PEP 36, Named National Principal of the Year," *Leadership* 10 (Principals' Executive Program, Winter 1994): 1–2.

83. The federal government is encouraging parental involvement. The Goals 2000: Educate America Act, which takes effect on July 1, 1994, adopts national education goals. One goal is that every school will strive to increase parental involvement and participation in education. The other goals are (1) all children will start school ready to learn, (2) the high school graduation rate will increase to at least 90 percent, (3) students will master challenging subject matter, (4) American students will be first in the world in math and science, (5) all adult Americans will be literate and able to compete in a global economy, (6) every school will be free of violence and drugs, and (7) teachers will have access to training programs to improve their skills. "Clinton Signs 'Goals 2000' Legislation to Back Education Reforms with Money," *News and Observer* (Raleigh), April 1, 1994, 8A.

84. G.S. 95-28.5.

85. G.S. 95-28.3.

86. G.S. 115C-238.1 through -238.8.

87. G.S. 115C-238.2 and 115C-238.3(b).

88. G.S. 115C-238.8.

89. G.S. 115C-238.1(3).

90. G.S. 115C-238.1(4).

91. State Board of Education, *The Basic Education Program for North Carolina's Public Schools* (hereinafter *BEP*) (Raleigh, N.C.: SBE, 1988), 29.

92. *BEP*, at 36.

93. *BEP*, at 31.

94. G.S. 115C-238.30.

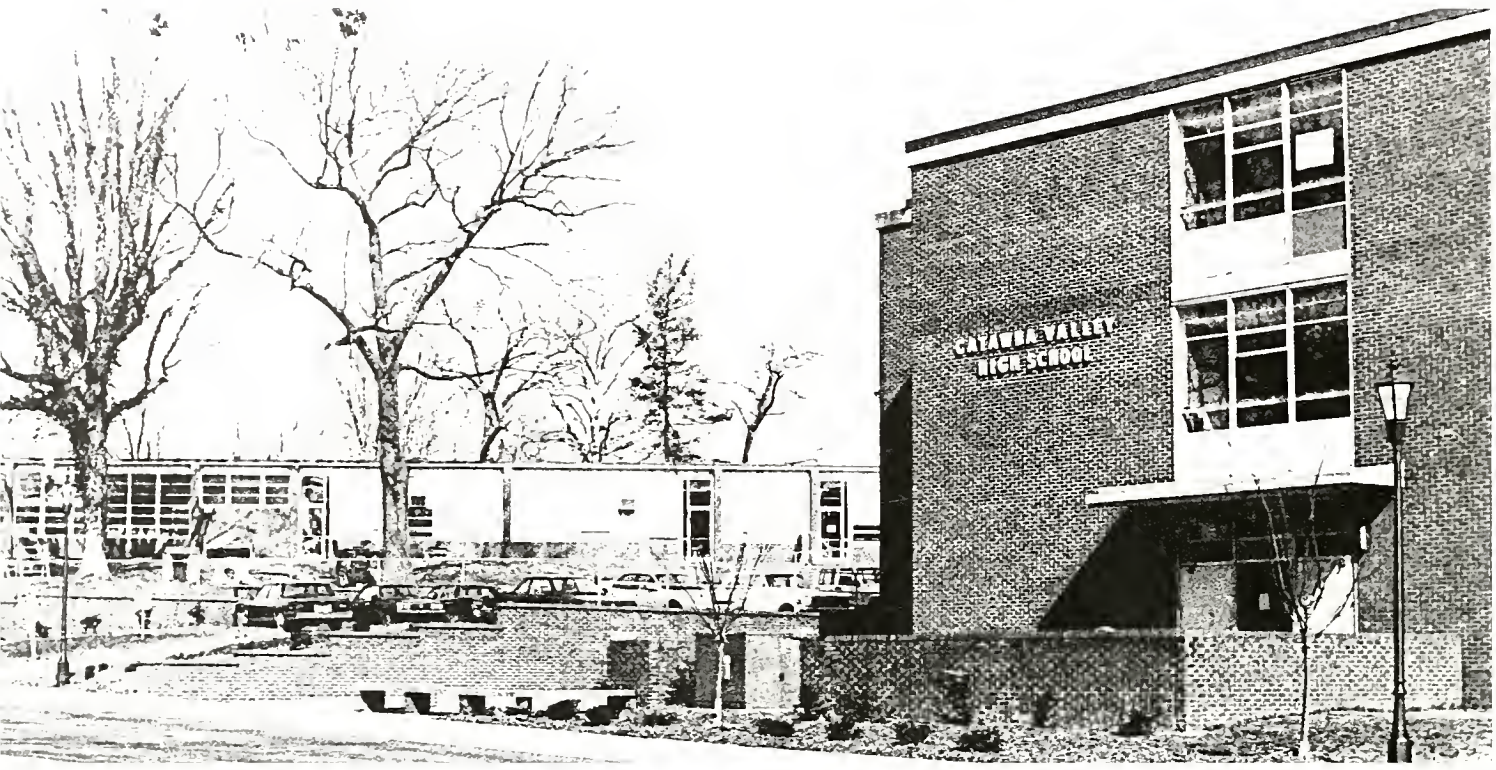
95. G.S. 115C-238.31.

96. Other examples include the requirement that school units participating in the Outcome-Based Education Program involve parents and guardians in a student's selection of high school completion options. G.S. 115C-238.14(4). Each unit identified as a low-performing school unit by the State Board of Education must notify parents that the state board has found that (1) student performance measures in the unit are substantially below those reported by other units in the state, (2) student performance measures in the unit are substantially below those reported for other units in the state with similar demographic characteristics, or (3) student dropout rates are substantially higher than the average statewide rate. G.S. 115C-64.3.

97. H.R. 181, H.R. 219, S. 42, S. 172.

98. S. 138.

99. Secretary Riley made this remark as part of his State of Education speech in February 1994. Lynda Richardson, "Minority Students Languish in Special Education System," *New York Times*, April 6, 1994, B8.



Courtesy Catawba Valley High School

Teaching the Hardest Cases: Alternative Education at Catawba Valley High School

Peggy Mainess

We began in an abandoned school building with no glass in the windows. We had no books, no supplies, no custodian or secretary. We welcomed a student body composed disproportionately of children unkempt, undisciplined, or unhappy—and seemingly unreachable.

Sixteen years later Catawba Valley High School occupies a unique position in North Carolina public education, earning the Governor's Award for Excellence in Education, a state school beautification award, and—a rarity for alternative schools—accreditation from the Southern Association of Colleges and Schools. Most alternative programs die within a short time, but this school has survived to provide education for students at risk for school failure or incarceration from three Catawba County school systems.

By traditional measures we frequently fail. Teachers at most high schools would blanch if asked to deliver a student's course work assignments to the county jail, which occasionally happens at Catawba Valley. But we most frequently succeed, turning around the lives of young people whose lives are the hardest. And we never give up.

I am proud to tell our story.

The author is the principal of Catawba Valley High School in Hickory, North Carolina.

Farsighted but Humble Beginnings

In 1975 the North Carolina General Assembly directed every county to provide community-based alternatives to incarceration for youthful offenders. The Catawba County commissioners established a task force to survey the needs, identify appropriate responses, and establish priorities for implementation. The commissioners accepted the task force's recommendation to fund an alternative school to serve the three school systems in the county—Catawba County Schools, Hickory City Schools, and Newton-Conover City Schools.

The commissioners and the three school superintendents worked out a plan and a budget and assigned responsibility to the Hickory City Schools. In late July of 1978 the Hickory Board of Education gave the program an old school building and named me principal. I was directed to write policies and procedures for operating the school and to oversee repairs of the building, which had been vandalized during the time it was vacant. On opening day in 1978 four teachers and I greeted the first students and wondered how we were going to educate them. During that first year we struggled with inadequate transportation, lack of support services, trouble getting lunches for students, and repair delays.

These tactical problems paled, however, in comparison to our adjustment to a student body composed almost entirely of unmotivated, misbehaving, unresponsive students. The first breakthrough came from a casual conversation with a student who had missed his bus. While driving him to school, I learned that he had never been to the mountains and had no idea that the trip could be made in an hour. This incident gave birth to the idea that our students needed exposure to the outside world.

The staff and student body soon made that first memorable trip to Mt. Mitchell State Park. Some of the students had never been in the woods, were terrified of wild animals, and were convinced that moving two feet away from a staff member put them in danger of being eaten. Teachers had no problem keeping track of students. Even lunch was exciting. A skunk decided that the smell of freshly grilled hamburgers was an invitation to the party. We discovered that the skunk would be content on his side of the fire if we threw hamburger buns to him. Students returned to school excited about their adventures and eager to talk about them to those who had not gone.

From this trip came a feeling of community and a desire to explore the unknown. Experiential learning opened doors previously locked by student resistance. The students began to respond to classroom instruction because they made the connection between those activities and the outside world.

The grand finale for the first year was a trip to Long Beach, North Carolina. Good behavior, academic success, and regular attendance were the price of the ticket. We spent five days exploring the ecosystem, visiting historic sites, learning to get along with others in small quarters, and playing in the sea. When we returned, everyone delighted in recounting a teacher's experience with vengeful seabirds, the great water fight on the shore, and the first night's practical jokes.

The most significant accomplishment during the first year was creating a school community. Students began to trust the staff and passed that feeling to new enrollees.

Today we are in a modern, well-maintained school facility in the Claremont Historic District of Hickory, which we moved to in 1981. Our student body has grown from thirty students that first year to 120, and our faculty now numbers 13. School community and trust continue, nonetheless, to be cornerstones to our success.

Who We Are

Catawba Valley High School serves students in grades six through twelve, from schools throughout our three school systems. Some come to us as an alternative to expulsion or long-term suspension from their regular school. That requires the recommendation of the superintendent who approved the expulsion or suspension. Some come to us from court as a condition of probation—and sometimes as an alternative to incarceration. All our students are referred to us after assessments made at their home schools in cooperation with our counseling and administrative offices. They come because of

- low academic achievement;
- lack of self respect, social responsibility, self-esteem, motivation, and discipline;
- truancy; and
- disruptive or even criminal behavior.

Our present student body is 51 percent male, 49 percent female. White males make up 26 percent, black males 24 percent, and Asian males 1 percent. White females make up 12 percent, black females 36 percent, and Hispanic females 1 percent. One in four of our students is a parent.

The schools from which the students come outline the steps they have taken to resolve problems and provide

information about the student's behavior, attendance, and performance. Confidential and cumulative records help staff place students in appropriate classes.

What We Try to Do

Our mission is to prepare each one of these students in the areas of academic achievement, healthy physical and emotional development, and appropriate social interactions, and to enhance each individual's potential to return to his or her home school and succeed. We expect each student to achieve these goals:

- to comprehend material that is read;
- to write and speak with clarity and effectiveness;
- to solve mathematical problems;
- to use scientific facts and principles;
- to understand past and present cultures;
- to develop habits that promote physical and emotional well-being;
- to demonstrate learning and problem-solving skills;
- to show courtesy, respect, and concern for others; and
- to assume a productive, responsible role in society.

A key element in this effort is recognizing that the boundaries of this job are not the same as the boundaries for teachers in standard schools. When one unsuccessful student's mother died, for example, teachers and students collected money to pay for the funeral. The student's attendance and behavior improved, and he eventually made the honor roll for academic achievement.

A faculty member heard that a clothing store was going out of business. He approached the owner and secured a donation of clothing worth more than $5,000. Because the students find it demeaning to be given things, the staff rigged a drawing so that every pupil received exactly the clothing items needed. Somehow, none of the children noticed that they all won a prize.

Because of delivery complications and the premature birth of her infant, one of our students delivered her baby in another town. The family had no resources to provide her transportation, and she called the school to ask for help. Immediately the school team went to work identifying resources for her. While the court counselor went to pick her up, the school staff rounded up baby clothes, food, and equipment.

Our social worker, counselor, and other staff members routinely seek out the community resources to provide for student physical needs because so many of our students are ill-fed and ill-housed.

How We Try to Do It

Because the school was initiated by combined efforts of the commissioners and all three school systems, it had broad support from the beginning. Local funding allowed us flexibility in allocating resources, planning programs, and filling staff positions. These factors contributed to the freedom the staff felt to design a program to meet the specific needs of local adolescents.

As we gained experience dealing with the problems our students brought to school, we came increasingly to value flexibility, creativity, and sharing. From the very beginning, each day brought a variety of new issues that could not be addressed using old solutions. Unusual problems became the norm.

Students are given an opportunity to learn in an atmosphere where each learner is accepted and valued as an individual of worth and dignity, and where caring for self and others is nurtured. They are asked to make a commitment to rules about attendance, the quality and quantity of work, appropriate behavior, and the consequences of breaking those rules. They are encouraged to take an active role in learning. They experience social interactions with adults who stress responsibility, the work ethic, and positive human relationships through planned experiential learning.

Students are subject to suspension or expulsion for violating school rules and board policies. We average twenty short-term and ten long-term suspensions a year. The most common offenses are fighting, possession of controlled substances, and weapons violations. Our attendance statistics are significantly worse than those at regular schools, and the dropout rate is significantly higher, but our teacher turnover rate is the lowest in the three systems.

The curriculum is based on the North Carolina course of study found in the Basic Education Program, applicable to public schools statewide. Students below grade nine are scheduled into a language arts bloc and are in a departmentalized setting for five courses. Students in grades nine through twelve have seven departmentalized classes. High school–aged special needs students are served by two cross-categorical teachers for math, science, English, and social studies. They are mainstreamed for three electives.

Teachers use many methods to help students achieve academically. Individual differences are addressed by using a variety of teaching techniques, varying assignments, adjusting time requirements to complete assignments, employing peer tutors, making learning experience excursions, encouraging independent studies, and

incorporating technology-based instruction. Classes average only ten to fifteen students. Periodic testing tracks comprehensive achievement. As appropriate, students take end-of-course and end-of-year tests as mandated by the state. We award high school diplomas, and thirty-three students graduated in June 1993. Those who remain with us to graduation have problems that cannot be resolved at their home schools.

The Constraints of Reality

Catawba Valley High School cannot reach all the students who enter. Some come heavily burdened by family problems, substance abuse, and emotional distress.

By the time "Tom" came to us, he had been rejected by the significant people in his life. His parents had a history of substance abuse, and their neglect pushed Tom to foster care, where he was sexually exploited. His behavior in his home school had alienated him from teachers and peers.

Tom bonded with the staff at our school. His school behavior improved, but his involvement with drugs increased. Academic achievement was impossible because he could not think clearly. He denied having a drug problem because he didn't want staff members to dislike him. Every attempt to help him was blocked by his denial.

Tom eventually dropped out, but over the past five years he came back time and again to school to visit the staff. He began voicing a vow to break his old habits. Then in March of this year we received a letter from him from prison, where he is serving a sentence for a robbery committed to support his drug habit.

Other students present similar challenges. In 1992 several young men were involved in a name-calling incident. The next morning staff members had to disarm one of the disputants, who had come prepared to kill another. The gun-carrying student was charged, prosecuted, and convicted for having a weapon at school. In another incident a fight on the bus involving a large group of young women spilled out into a busy highway during rush hour traffic.

The proportion of our students who return to their regular schools has decreased from 80 percent to 20. Two factors have altered the return rate. First, the addition of the Young Parents Program (described later) has added a group of students who need long-term services, such as day care, not available at the regular schools. Second, the age of students referred to us has steadily gone up. Students referred near the end of their freshman year or later usually remain with us for the rest of their school time.

Reaching beyond the Classroom

Our chief funding sources are the county commissioners, who provide local financial support for the basic program, and the state, which allots funds based on average daily membership just as if we were a regular public school. We also receive additional funds allocated for exceptional children programs and vocational education programs. Together these funding sources allow us to operate at a per pupil cost of $6,582, far in excess of the statewide public school average.

Because we recognize that for many of our students the needs outside the classroom exceed those inside, we also have an elaborate community support network in place. Funds that we get from a cooperative effort with the Catawba County Department of Social Services, for instance, help support the day care facility for children of our students. The federal Job Training Partnership Act funds an extended-day vocational program and a day vocational program for high school juniors and seniors. Grants from the state Department of Human Resources, the Governor's Crime Commission, the state Department of Public Instruction, and private foundations have helped fund special activities for students, equipment and materials for home economics classes, and a Parents as Teachers program. A project employing federal Chapter One funds established a computer network system and the software for language, math, and reading instruction. Community agencies and individuals provide financial support, materials, or volunteer services.

With these resources the school employs several professionals to work with the students' special needs. A school counselor holds individual and group counseling sessions for students and parents. She coordinates student orientation, personal development sessions, testing, record keeping, and referral services. A social worker—provided under contract with the department of social services—works with students, parents, and appropriate agencies to develop action plans to alleviate student difficulties. A Young Parents Program coordinator works with teachers, counselors, psychologists, students, and parents to access support services for adolescent parents. She directs Family Connections, the on-site day care program. A part-time vocational rehabilitation counselor assists students in removing barriers to employment. A part-time psychologist provides testing, individual counseling, and consultation.

Our work extends into the outside world as well. Bolstered by our successes with outdoor activities in our earliest days, we have continuously reached beyond our normal curriculum to provide those kinds of experiences.

We offer the opportunity to participate in canoeing, hiking, ropes courses, and whitewater rafting. The trips build cooperation skills, create comradeship, and teach students creative problem solving.

Students love to retell the stories, myths, and legends that have been generated on these trips. Even new pupils can tell about the time the principal was trapped under a canoe, when students were terrified of cows, and when a student caught a fish because it jumped into the canoe.

On one canoe trip a girl, who failed to listen to instructions and wore only a thin shirt, began to develop hypothermia. No one had extra clothing. Team members solved her problem by making a poncho from a trash bag.

On another trip a young man who had a history of disobedience and rudeness toward a particular teacher insisted, when the time came for choosing partners, to be in that teacher's canoe. He didn't feel safe with anyone else. After that trip, their relationship improved so much that the student has maintained contact with the teacher after graduation.

Overnight camping trips have taught the meaning of responsibility through chores. Struggling to conquer a raging river, sharing the "Bloody Pigman" story around the campfire, making "s'mores," and singing camp songs create lasting bonds.

The Outward Bound program offers students an opportunity to develop self-esteem and group skills. Students earn the privilege of attending this program through appropriate school behavior and participation in community service projects.

The rapport resulting from these activities enables staff to identify areas that impede student progress. With this information we can help students get the help they need. Our students have intense needs that must be met before they are ready to learn.

Other Special Programs

Because of staff concern for parenting teens dropping out of school, we have a Young Parents Program and an on-site licensed day care facility. Teens enrolled in the program attend parenting classes to improve their skills, have access to support groups, and participate in activities with their children. The day care provides developmental programs for the students' children.

One of the young women who graduated because these services were available is now a senior at Lenoir Rhyne College in their nursing program. Complications associated with her son's premature birth hampered her being served in a regular high school. With some homebound instruction, counseling, and additional services, she graduated on time and entered college. She would not have finished school without this program. Another young mother had a learning disability in mathematics and had failed the North Carolina competency test several times. The staff worked with a community group to coordinate outside tutoring with in-school classes. Her situation was complicated by problems of living independently with her chronically ill son. Support services provided by the staff and community enabled her to graduate with a diploma and enter the community college.

We believe that children must feel good about themselves and have confidence in their abilities before they can succeed. Children who are always recipients and never donors suffer from low self-esteem. Our students need ways to become productive in the community.

To this end we developed a service program to help students realize that all people can contribute to the community, even if they are receiving at the same time. Students have cleared trails at South Mountain State Park, worked separating clothing at the Cooperative Christian Ministry, served food at the local soup kitchen, and helped build a log barn at a retreat center. The staff and students participated in an antiviolence parade to protest killing in a community served by our school. Our home economics and vocational classes have helped build sets and make costumes for community theater and school play productions. In return for their efforts, those students are allowed to attend the performances. One student, whose dress and language clearly revealed him as a heavy-metal music loving biker, worked on these projects. Teachers were amused to hear him humming the score from *Oklahoma*.

Conclusion

The staff at Catawba Valley High School are committed to children. When our students are in trouble, they call school for help. They have called from jail and from the hospital. When students have died, staff members have attended the funeral, helped pay the burial expenses, provided transportation for students to attend the services, and given support to the families. When students are ill, they frequently look to us to access medical care. Our school is child-centered, even when the child is belligerent, undisciplined, or hopelessly distant.

We have moved from those old quarters in the abandoned school to much more comfortable surroundings. We have grown greatly in size, in numbers of students, and in numbers of teachers. But basic faith has never changed. We do not mouth the belief that all children can learn. We live it. ❖

Home Fire Safety in North Carolina

Carol W. Runyan and Mary A. Linzer

The United States has one of the highest fire mortality rates in the world, with 2.7 deaths for every 100,000 people. The Southeast exhibits especially high rates, and North Carolina's is 50 percent higher than the national rate.[1]

What factors contribute to this high fire mortality rate? Fire deaths are highest among the old and the young, males, members of minority groups, poor people, those living in remote areas, and those living in mobile homes.[2] Changes in legislation or public education programs may have little effect on the risk of residential fire death associated with these factors, but several risk factors for fire death *are* amenable to changes in the law or to programs of education. One example is the use of smoke detectors. A recent study of North Carolina fires shows that it is five times more likely that a residence with a fatal fire will have had no smoke detector than a residence with a nonfatal fire, where the occupants in each case were not impaired by drugs or alcohol.[3]

With information such as this in mind, the Federal Emergency Management Agency advocates that all homes have smoke detectors and fire extinguishers, that families devise and regularly practice escape plans, and that property owners regularly clean their chimneys.[4] But do people use these safety practices?

A recent study of fire safety practices and hazards in North Carolina households set out to answer this question. This article describes the results of that study.

The Study

The study examined the use of fire safety practices in North Carolina households, particularly smoke detectors and fire extinguishers, escape plans, and chimney cleaning. In addition, the study looked at the prevalence of one fire hazard: space heaters, especially those fueled by kerosene.[5] The researchers were particularly interested in comparing rented property with owner-occupied property and comparing dwellings constructed before implementation of a state building code requiring smoke detectors in new construction with those built afterward. (See "Fire Protection Requirements and the State Building Code," page 46.)

Telephone interviews were conducted during three consecutive weeks among a simple random sample of North Carolina homes with working telephones. Any resident over age seventeen who answered the phone was interviewed; when a child answered, the interviewer asked to speak to an adult. Eligibility was restricted to households that had not experienced a fire requiring a call to the fire department within the past three months.[6] The sixty-one-item interview was directed at identifying safety features and potential fire hazards (especially smoke detectors, fire extinguishers, escape plans, and types of heating).

Four hundred and thirty-nine respondents were interviewed, including people in 379 single-family dwellings (86 percent) and sixty in multifamily dwellings (14 percent), from 90 of the state's 100 counties. The respondents had a mean age of forty-eight years, and 66 percent were female. Eighty percent of the heads of household were white, 45 percent had completed more than twelve years of formal education, and 41 percent of the households reported annual incomes of $30,000 or more. Comparisons of the sample to North Carolina census figures showed that demographic characteristics from the sample in this study were similar to the general North Carolina population of households with telephones.[7]

The Results

Overall, 79 percent of households reported having a smoke detector, and 52 percent had more than one. However, approximately a third of the respondents with smoke detectors had not checked it within the last three months. Respondents were substantially less likely to report having a smoke detector if they lived in a rented dwelling (67 percent) compared to an owner-occupied dwelling (83 percent). Residents of rented homes were also less likely to report having multiple detectors or checking them regularly (see Table 1, page 47).

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Both rental and owner-occupied homes were much more likely to have smoke detectors if they were built after provisions of the State Building Code were changed in the mid 1970s to require smoke detectors in new residential construction. Rental homes constructed prior to the changes in the code were least likely to have a smoke detector (63 percent) compared to rented homes built after the changes (97 percent) or to owner-occupied homes, regardless of whether the owned homes were built before (77 percent) or after (98 percent) detectors were required.

This study confirms earlier investigations indicating that smoke detectors are not being used in all homes, despite their demonstrated effectiveness in reducing the likelihood that a fire will prove fatal.[8] Though dwellings built after the smoke detector provisions of the State Building Code were enacted are more likely to have detectors than those built before the provisions, rented homes are less likely to have smoke detectors. These findings signal the need to ensure that landlords assume responsibility for providing smoke detectors in rental properties and for policies focused on retrofitting all older dwellings.

Even among households that have smoke detectors, regular maintenance checks are not routine, according to this study. Fire officials recommend monthly checks of detector functioning and annual replacement of batteries.[9] However, only 72 percent of the households surveyed indicated that their detector had been tested within the past three months, and the figure is lower (66 percent) in rented property.

As shown in Table 1, fire extinguishers were reported to be present in 52 percent of the households overall, with 34 percent having more than one. Fifty-one percent of the respondents reported having an escape plan, though only 17 percent of those who had a plan had actually practiced it. Residents of rental property were more likely than those in owner-occupied dwellings to report having practiced an escape plan (21 percent versus 16 percent).

An earlier study found that space heaters—especially kerosene heaters—were a prominent factor in fatal residential fires. Of the nearly 40 percent of fatal fires attributed to heating systems, space heaters were responsible for more than half, and 87 percent of them burned kerosene.[10] Homes without fires and those experiencing

Fire Protection Requirements and the State Building Code

Where can the fire protection requirements for North Carolina be found? The standards and regulations concerning appliances and conditions affecting fire safety in residential units come from a variety of sources. One important source is the North Carolina State Building Code. The code is adopted and amended by the North Carolina Building Code Council, a state agency whose twenty members—mostly from the construction industry—are appointed by the governor. It is enforced, however, by local government code-enforcement officials, who are certified by another state agency, the North Carolina Code Officials Qualification Board, to enforce those portions of the code in which each is qualified. Each North Carolina municipality and county is legally mandated to arrange for the enforcement of the code within its planning jurisdiction.

The North Carolina State Building Code consists collectively of the following ten volumes: Volume I (General Construction Code), Volume I-A (Administrative and Enforcement Requirements), Volume I-C (Accessibility Code), Volume II (Plumbing Code), Volume III (Mechanical Code), Volume IV (Electrical Code), Volume V (Fire Prevention Code), Volume VI (Gas Code), Volume VII (Residential Code), and Volume VIII (Modular Construction Requirements). Most of the technical codes are based on one of a series of nationally recognized codes. For example, the current Electrical Code is based on a North Carolina adaptation of the 1993 National Electrical Code, set out by the Southern Building Code Congress International. Some of the volumes (for example, the Plumbing Code) are oriented to a particular construction trade; others (for example, the Residential Code) apply to buildings used for a particular purpose (one- and two-family residences). The code generally applies to new construction, but the fire prevention volume also applies to the use of existing buildings.

Many code standards found in the various volumes refer to material or appliance rating standards of certain national testing laboratories. For example, the 1993 edition of the General Construction Code (which generally applies to all construction not covered by the one- and two-family Residential Code) requires that smoke detectors be "listed" (approved by a testing laboratory recognized in the code) and installed according to certain standards approved by the National Fire Protection Association.

Construction standards intended to protect against fire and fire protection regulations governing the use of dangerous materials and establishing more general precautions are spread throughout various volumes of the code. Each code has its own organization and index. However, there is no common index to all of the volumes, and sections of one volume do not necessarily crossreference related sections in other volumes. Requirements that smoke detectors be installed in new dwelling units first became effective in North Carolina on January 1, 1975, when they were added to the Residential Code (for one- and two-family dwellings) and to the General Construction Code (for multifamily residential complexes, hotels, hospitals, office buildings, and the like). In 1976 the State Building Code Council adopted a series of construction-related requirements that had to be met by

Table 1
Prevalence of Selected Fire Safety Practices and Hazards in North Carolina Households by Ownership of Dwelling

Safety Practice or Hazard	Total	Actual Numbers	Property Type: Rented		Property Type: Owner-Occupied	
Any smoke detector	79%	(346 out of 437)	67%	(70 out of 105)	83%	(276 out of 332)
More than one smoke detector	52%	(180 out of 346)	37%	(26 out of 70)	56%	(154 out of 276)
Smoke detector checked within last three months	72%	(224 out of 312)	66%	(43 out of 65)	73%	(181 out of 247)
Any fire extinguisher	52%	(229 out of 438)	38%	(40 out of 106)	57%	(189 out of 332)
More than one fire extinguisher	34%	(78 out of 229)	23%	(9 out of 40)	37%	(69 out of 189)
Escape route planned	51%	(222 out of 432)	37%	(39 out of 106)	56%	(183 out of 326)
Escape practiced	17%	(37 out of 222)	21%	(8 out of 39)	16%	(29 out of 183)
Fireplace or wood stove used and chimney cleaned in last year	36%	(56 out of 155)	50%	(7 out of 14)	35%	(49 out of 141)
Space heater used	28%	(124 out of 437)	21%	(22 out of 105)	31%	(102 out of 332)
Space heater burned kerosene	52%	(65 out of 124)	50%	(11 out of 22)	53%	(54 out of 102)

Note: The total number interviewed was 438. One respondent did not know if the home was rented or owner-occupied. Unknowns were excluded from all denominators.

owners of certain existing high-rise buildings. These special requirements (which required express legislative authority from the North Carolina General Assembly) called for owners within one year to install smoke detectors in certain corridors and equipment rooms that would activate a building's fire alarm system. However, the 1975 and 1976 requirements were not enforced in certain parts of the state, because it was not until 1977 that the General Assembly adopted legislation requiring all local governments throughout the state to arrange for the enforcement of the code within their respective jurisdictions by dates (1981 through 1985) based on their populations.

Today many of the code requirements governing such matters as the location of smoke detectors and their integration into fire alarm systems in multifamily residential buildings, malls, hospitals, high-rise buildings, motels, and certain other types of buildings can be found in Section 903.2 and various other sections of the General Construction Code. Remarkably, the new Residential Code, which became effective April 15, 1993, includes no substantive requirement for smoke detectors in one- and two-family residences. Instead, the requirements were transferred to the new Electrical Code. Because smoke detectors must be connected to the electrical system of a home, inspections of smoke detectors are typically made by electrical inspectors rather than building inspectors. However, some smoke detector regulations also appear in the Fire Protection Code and the Mechanical Code.

Volume V of the State Building Code, a statewide fire protection code, became effective July 1, 1991. Before that date a city or county was authorized to adopt its own fire protection ordinance so long as it did not conflict with the provisions of the code. The current Fire Protection Code is notable because, although it applies to existing buildings as well as new ones, it does not apply to one- and two-family residences. Some of the construction requirements found in other codes have been incorporated into Volume V. Many of the requirements of the Fire Protection Code, however, concern the use and storage of various types of commercial or industrial equipment and materials. The code also includes some of the more familiar regulations governing the maintenance of exit ways; the use of unapproved appliances, adapters, extension cords, and the like; and more general precautions against fire. A city or county that wishes to apply certain fire protection requirements to existing one- and two-family residences may be able to do so by adopting a minimum housing ordinance, which sets standards for determining when a dwelling is unfit for human habitation. The local government chooses whether to adopt such an ordinance and, if it does, what standards it will include.

The State Building Code is published in loose-leaf volumes and sold by the Engineering Division of the North Carolina Department of Insurance. The Building Code Council meets quarterly to consider proposed amendments to the code. Notice of adopted amendments is distributed after each meeting at which an amendment is adopted. Supplements that include all revisions to the code in the prior year are distributed annually. For more information contact the Code Council Section, North Carolina Department of Insurance, P.O. Box 26387, Raleigh, NC 27611. The phone number is (919) 733-3901.

—Richard D. Ducker

The author is an Institute of Government faculty member who specializes in the legal aspects of land development regulation and code enforcement.

nonfatal fires were equally likely to have kerosene or other space heaters.[11] This suggests that fires may not be more likely to be caused by space heaters, but that fires that are space-heater related are more likely to be fatal. In this survey (see Table 1), 28 percent of all households reported using space heaters, and 52 percent of those heaters burned kerosene. Rented units were less likely (21 percent) to have space heaters than owner-occupied homes (31 percent).

A smaller percentage of rented than owner-occupied homes had wood stoves (10 percent versus 28 percent) and fireplaces (15 percent versus 36 percent). Only 36 percent of the households using fireplaces or wood stoves in the past year reported that their chimneys had been cleaned within the last twelve months. Fifty-two percent reported that either they had never had their chimney cleaned or had no idea when it had been done.

This study has limitations. Because data were collected by telephone interview, the study population did not include households without phones. Though the sample is representative of the homes in North Carolina with phones (89 percent), as documented by the census,[12] people in homes without phones tend to be poorer, less educated, and more likely to live alone and to be renters than people in homes with phones. Consequently, the findings in this study may underestimate the risks of death by fire in the population overall.

The method of interviewing whoever answered the phone resulted in higher proportions of older and female respondents[13] who, in some cases, may assume less responsibility for or know less about home safety features, potentially biasing the results.

Also, the study is subject to social desirability biases that may occur when people are reporting about themselves. Subjects were assured at the outset that they would not be asked to give their names and were told that their number was dialed at random. However, it is impossible to ascertain the extent to which respondents may have given socially desirable, but inaccurate, responses. Whatever the extent of this bias may be, the data can be assumed to underestimate rather than overestimate the true risk.

Conclusion

This study confirms that fire safety measures are not routinely employed in North Carolina, particularly in rental properties. Coupled with the data about the higher fatality risks associated with fires involving space heaters and the lack of smoke detectors, this study shows the need for targeted approaches to improve personal safety practices and to assure that state and local policies adequately protect all residents. Improved education programs or changes in legislation aimed at addressing these factors may help to lower the risk of death by fire in North Carolina. ❖

Notes

1. M. J. Karter, Jr. "Fire Loss in the United States during 1988," *Fire Journal* 83 (Sept.–Oct. 1989): 24–32; Carol W. Runyan, Shrikant Bangdiwala, Mary A. Linzer, John Butts, and Jeffrey Sacks, "Risk Factors for Fatal Residential Fires," *New England Journal of Medicine* 327 (Sept. 17, 1992): 859–63 (hereinafter Runyan et al., "Risk Factors").

2. Runyan et al., "Risk Factors."

3. Runyan et al., "Risk Factors."

4. John Marshall, U.S. Fire Administration, Emmittsburg, Md., personal communication with the author, May 17, 1994.

5. Another hazard is smoking. The study mentioned in note 2 identified smoking as a risk factor second only to heating systems.

6. This restriction was included because data from this study were also used as part of another study.

7. In comparison, North Carolina figures showed that demographic characteristic of North Carolina households with telephones in 1980 were as follows: head of household was white, 82 percent; head of household had more than twelve years' education, 42 percent; household income was greater than $30,000, 15 percent.

8. Federal Emergency Management Agency, *Fire in the United States*, 7th ed. (Washington, D.C.: FEMA, 1990); C. N. Bohan, R. K. Sikes, and J. R. Hall, Jr., "Prevalence of Smoke Detectors in Private Residences—Dekalb County, Georgia, 1985," *Morbidity and Mortality Weekly Report* 35 (July 18, 1986): 445–48; Council on Scientific Affairs, *Preventing Death and Injury from Fire with Automatic Sprinklers and Smoke Detectors: Who Has Them? How Well Do They Work? When Don't They Work?* (Quincy, Mass.: National Fire Protection Association, 1989); New York Department of Health, "Burn Injuries and Deaths," *New York State Journal of Medicine* 89 (May 1989): 299–300.

9. Federal Emergency Management Agency, *Fire in the United States*, 7th ed. (Washington, D.C.: FEMA, 1990).

10. Runyan et al., "Risk Factors."

11. Runyan et al., "Risk Factors."

12. U.S. Bureau of the Census, *Census of Population and Housing, 1980* (Washington, D.C., 1983), public-use microdata sample, North Carolina (electronic data file).

13. D. A. Dillman, *Mail and Telephone Surveys: Total Design Methods* (New York, N.Y.: John Wiley and Sons, 1978), 45.

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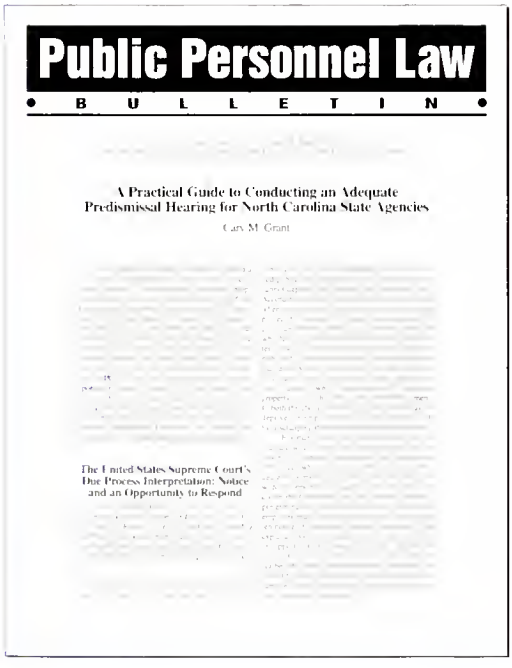

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