INTRODUCTORY REMARKS GIVEN AT THE DUKE FORUM FOR LAW & SOCIAL CHANGE SYMPOSIUM *OUR YOUTH AT A CROSSROAD: THE COLLATERAL CONSEQUENCES OF JUVENILE ADJUDICATION*

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INTRODUCTORY COMMENTS

Here at Duke Law School we have a Children's Law Clinic that represents children, often in cases related to their education. A number of years ago, in my role as director of that clinic, I got a call from a public defender who had represented a fourteen-year-old boy on a juvenile charge. The boy had been accused of some type of sexual contact with his four-year-old step-brother. For a variety of reasons, it had taken the juvenile system a year from the time of the alleged offense to resolution. The boy had been adjudicated delinquent, but was not incarcerated. During that year between the incident and the adjudication, he had been attending public school without incident. Upon adjudication, the juvenile court counselor did what North Carolina law required him to do: he reported the adjudication to the juvenile's school. In response, the principal called the juvenile to the office and told him that he was no longer permitted to come to school. Just like that, his education was cut off. That was my first case involving the collateral consequences of juvenile adjudication. I didn't know the term at the time, but it was not hard to see the impact.

Technically, "collateral consequences" are the various penalties and disqualifications that individuals face by operation of law incidental to criminal conviction or juvenile adjudication. For adults, these can include restrictions on voting, prohibitions from running for office, deportation for immigrants, exclusions from certain types of employment, restrictions on where the individual can travel or what property he can own, and even indefinite involuntary civil commitment. For juveniles, these can include exclusion from school, loss of driving privileges, eviction from public housing, enhancement of future sentences, and long-standing losses of personal freedoms. More informally, collateral consequences are all the various impacts on children which result from their interactions with the juvenile system, including impacts on their family relationships, their education, their long-term employment prospects, and their mental health.

Understanding the impact of collateral consequences is especially important given our society's heavy reliance on the juvenile court system to manage children's behavior. All of us have heard the stories of the kinds of adolescent

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behaviors that are now referred to court, increasingly by school officials who either choose to or are forced to refer cases to court. Here in North Carolina, for example, the state school board passed a new policy in 2010 that requires principals to report to law enforcement any criminal offense that occurs on school property. Because a principal was prosecuted for failing to report an event in a timely way, the principals are interpreting this policy very literally and reporting minor incidents that were once handled with in-school consequences. A newspaper report I saw recently detailed the principal's decision to refer to juvenile court a student who was blowing plastic pellets through a hollow pen casing. He was charged with assault when three of his pellets hit other students—annoying them, but certainly not inflicting injury. As we are exploring today, the impulse to criminalize the normal mischievous behavior of our youth has consequences far beyond what may be thought of at the time the principal is making the call to the local law enforcement authorities.

The phenomenon of harsh collateral consequences of juvenile adjudications is in many ways just one of many examples of our society's schizophrenic and contradictory approach to our children. Our rhetoric recognizes the need for all children to have strong family support, but we resist providing external scaffolding to families that are challenged in their efforts to raise strong and healthy children. We say we understand the vital importance of a child's early development, yet we fund prisons more richly than we fund preschools. We acknowledge the value of a high-quality education for all children—especially those who come from less advantaged backgrounds—yet we continue to allow our schools to be organized and funded based on the wealth or poverty of individual communities and reject a more equitable system. We say we realize that an adolescent's abilities to exercise judgment, control impulses, and foresee consequences are not fully developed, yet we often hold our young people to adult standards and punish them severely for not meeting those standards. And we say that the juvenile justice system is about rehabilitation and second chances, but we impose harsh collateral consequences on juveniles that impede them from moving past their mistakes and on to more safe and productive lives.

As the existence and impact of collateral consequences has grown, so has the attention paid to them. Lawyers, judges, policy analysts, advocates, and scholars alike have begun to grapple with the extent to which the collateral consequences of a juvenile adjudication overshadow the adjudication itself. As the consequences are more severe, questions have arisen about the need for juveniles to know about the consequences at the time of their adjudication. Commentators have addressed whether lack of knowledge about collateral consequences should affect the validity of a plea agreement, and whether a defense attorney's failure to educate a juvenile about the consequences might support a claim for ineffective assistance of counsel. Others have focused on the reverberations of collateral consequences on the life of a juvenile when he is transferred to adult court and treated as an adult defendant.

There is some good news on the horizon. As collateral consequences have been studied, some initiatives have begun to try to blunt the harm. For starters, in many jurisdictions there is an effort to collect information about collateral consequences. The American Bar Association has an ongoing project to collect information about the collateral consequences of juvenile adjudications in all fifty

states. The National Conference of Commissioners on Uniform State Laws has drafted the Collateral Consequences of Conviction Act, which was approved in July 2009. Although not yet law in any state, this model act requires that each state's collateral consequences be compiled in a single document, and that defendants be notified of these consequences during the pretrial stage, at sentencing, as well as prior to release from incarceration. The Act specifically includes juvenile adjudications. Throughout the country, continuing legal education is being offered to juvenile defenders to educate them on collateral consequences so they can then help their clients understand them. In 2010, the U.S. Supreme Court acknowledged the importance of collateral consequences when it found, in the case of *Padilla v. Kentucky,* that a defendant was denied the effective assistance of counsel when his lawyer failed to inform him that his guilty plea would subject him to automatic deportation.

Many of us might agree that a significant solution to ameliorating the harshness of the collateral consequences of juvenile adjudications is to have fewer juvenile adjudications in the first place. Some evidence suggests that our communities are realizing that the "get tough" approach that reached its zenith in the 1990s has not been particularly effective at curbing juvenile crime. While there is still a long way to go, some policy makers are beginning to accept the scientific evidence that the adolescent brain does not function like an adult brain. Study after study shows that cognitively, socially, and emotionally, children are not just small adults. As a result, the evidence shows, systems that are designed for adults will not necessarily be effective for young people. The social science is replete with evidence that meeting the needs of children to be safe, loved, cared for, talked to, educated, guided and treated for illness would go a long way toward reducing the rate of juvenile adjudications. But we are still unwilling as a society to fully embrace that evidence and incorporate its implications into our budgets and our policies. Instead, we continue to pay at the other end, on youth detention facilities and prisons that cost us vastly more than would early childhood programs.

My hope is that we can all leave here today better educated and more committed to doing our part —whether as a scholar, lawyer, policy-maker, or community member—to improving the juvenile justice system in general, and to reducing the impact of the collateral consequences of juvenile adjudications.