

# JUVENILE REINVESTMENT

## NCCALJ COMMITTEE ON CRIMINAL INVESTIGATION & ADJUDICATION REPORT

OCTOBER 2016

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### Executive Summary

North Carolina stands alone in its treatment of 16- and 17-year-olds (“youthful offenders”) like adults for purposes of the criminal justice system. In 1919, North Carolina determined that juvenile court jurisdiction would extend only to those under 16 years old.<sup>1</sup> A substantial body of evidence suggests that both youthful offenders and society benefit when persons under 18 years old are treated in the juvenile justice system rather than the criminal justice system. In response to this evidence, other states have raised the juvenile age. Notwithstanding recommendations from two legislatively-mandated studies of the issue, positive experiences in other states that have raised the age, and two cost-benefit studies showing that raising the age would benefit the state economically, North Carolina has yet to take action on this issue.

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<sup>1</sup> In 1919, the Juvenile Court Statute was passed, providing statewide juvenile courts with jurisdiction over children under the age of 16. BETTY GENE ALLEY & JOHN THOMAS WILSON, NORTH CAROLINA JUVENILE JUSTICE SYSTEM: A HISTORY, 1868-1993, at 4 (NC AOC 1994) [hereinafter NC JUVENILE JUSTICE: A HISTORY]. The intent of this legislation “was to provide a special children’s court based upon a philosophy of treatment and protection that would be removed from the punitive approach of criminal courts.” *Id.* at 5.

After careful review, the Committee<sup>2</sup> recommends that North Carolina raise the age of juvenile court jurisdiction to include youthful offenders aged 16 and 17 years old for all crimes except Class A through E felonies and traffic offenses.<sup>3</sup> this recommendation is contingent on:

- (1) Maintaining the existing procedure in G.S. 7B-2200 to transfer juveniles to adult criminal court,<sup>4</sup> except that Class A-E felony charges against 16- and 17-year olds will be automatically transferred to superior court after a finding of probable cause or by indictment.<sup>5</sup>
- (2) Amending G.S. 7B-3000(b) to provide that the juvenile court counselor must, upon request, disclose to a sworn North Carolina law enforcement officer information about a juvenile's record and prior law enforcement consultations with a juvenile court counselor about the juvenile, for the limited purpose of

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<sup>2</sup> See *infra* pp. 23-24 for a list of Committee members and other participants.

<sup>3</sup> Ensuring that Class A through E felony charges against 16- and 17-year olds are tried in superior court is critical to the support of these recommendations by the N.C. Conference of District Attorneys.

Traffic offenses are excluded because of the resources involved with transferring the large volume of such crimes to juvenile court. This recommendation parallels those made by others who have examined the issue. See NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION, REPORT ON STUDY OF YOUTHFUL OFFENDERS PURSUANT TO SESSION LAW 2006-248, Sections 34.1 and 34.2 (2007) [hereinafter 2007 SENTENCING COMMISSION REPORT] (excluding traffic offenses from its recommendation to raise the age); YOUTH ACCOUNTABILITY PLANNING TASK FORCE, FINAL REPORT TO THE GENERAL ASSEMBLY OF NORTH CAROLINA (Jan., 2011) [hereinafter YOUTH ACCOUNTABILITY TASK FORCE REPORT] (same). Consistent with prior recommendations, the Committee suggests that transferring youthful offenders who commit traffic offenses be examined at a later date. See 2007 SENTENCING COMMISSION REPORT, at 8 (so suggesting).

While prior working groups have recommended staggered implementation for 16- and 17-year olds, the Committee recommends implementing the change for both ages at once.

<sup>4</sup> Under the existing provision, the court *may* transfer jurisdiction over a juvenile who is at least 13 years of age and is alleged to have committed a felony to superior court, where the juvenile will be tried as an adult. G.S. 7B-2200. A motion to transfer may be made by the prosecutor, the juvenile's attorney, or the court. *Id.* If the juvenile is alleged to have committed a Class A felony at age 13 or older, jurisdiction *must* be transferred to superior court if probable cause is found in juvenile court. *Id.*

<sup>5</sup> Early in the development of this proposal the N.C. Conference of District Attorneys' representative on the Committee indicated that requiring Class A-E felonies to be automatically transferred to superior court would be critical to the support of these recommendations by that organization. Automatic transfer to superior court means that the district court judge has no discretion to retain Class A-E felony charges against 16- and 17-year olds in juvenile court. Providing for transfer by indictment meets the prosecutors' interest in being able to avoid requiring fragile victims to testify at a probable cause hearing within days of a violent crime. The Conference of District Attorneys subsequently revised its position to make support of the proposal contingent on the district attorney being given sole discretion (without judicial review) to prosecute juveniles aged 13-17 and charged with Class A-E felonies in adult criminal court. As discussed *infra* at pp. 21-23, the Committee demurred on this approach.

The Committee contemplated a statutory exclusion for Class A-E felonies but adopted this approach primarily for two reasons. First, it simplifies detention decisions for law enforcement officers. Under this approach when a juvenile is arrested for *any* crime, there will be no uncertainty with respect to custody: custody always will be with the Division of Juvenile Justice. To help implement this change, the Division of Juvenile Justice has committed to provide transportation to all juveniles from local jails to juvenile facilities (currently law enforcement is responsible for this transportation). Second, this procedure protects juveniles who are prosecuted in adult court but are found not guilty or their charges are reduced or dismissed, perhaps because of an error in charging. See *State v. Collins*, \_\_\_ N.C. App. \_\_\_, 783 S.E.2d 9 (2016) (with respect to three charges, the juvenile improperly was charged as an adult because of a mistake with respect to his age).

assisting the officer in exercising his or her discretion about how to handle an incident being investigated by the officer which could result in the filing of a complaint.<sup>6</sup>

- (3) Requiring the Division of Juvenile Justice to (a) track all consultations with law enforcement officers about a juvenile<sup>7</sup> and (b) provide more information to complainants and victims about dismissed, closed, and diverted complaints.<sup>8</sup>
- (4) Amending G.S. 7B-1704 to provide that the victim has a right to seek review by the prosecutor of a juvenile court counselor's decision not to approve the filing of a petition.<sup>9</sup>
- (5) Improving computer systems to give the prosecutor and the juvenile's attorney electronic access to an individual's juvenile delinquency record statewide.<sup>10</sup>
- (6) Full funding to implement the recommended changes.<sup>11</sup>

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<sup>6</sup> This recommendation is designed to ensure that law enforcement officers have sufficient information to exercise discretion when responding to incidents involving juveniles (e.g., whether to release a juvenile or pursue a complaint). Although G.S. 7B-3000(b) already allows the prosecutor to share information obtained from a juvenile's record with law enforcement officers, given the time sensitive nature of officers' field decisions, it is not practical to designate the prosecutor as the officer's source for this information. Because juvenile court counselors are available 24/7, on weekends and on holidays, have access to this information, and are the officer's first point of contact in the juvenile system, they are the best source of time sensitive information for officers.

Consistent with the existing statutory provision that the prosecutor may not allow an officer to photocopy any part of the record, the Committee recommends that the counselor share this information orally only. To preserve confidentiality, if this information is included in a report or record created by the officer, such report or record must be designated and treated as confidential, in the same way that all law enforcement records pertaining to juveniles currently are so designated and treated.

<sup>7</sup> This recommendation is necessary to implement recommendation (2) above.

<sup>8</sup> In response to Committee discussions the Division of Juvenile Justice already has revised the Complainant/Victim Letter used for this purpose and presented the revision to the Committee for feedback.

<sup>9</sup> G.S. 7B-1704 currently provides this right only to the complainant. To implement this recommendation, conforming changes would need to be made to G.S. 7B-1705 (prosecutor's review of counselor's determination).

<sup>10</sup> G.S. 7B-3000(b) already provides that the prosecutor and the juvenile's attorney may examine the juvenile's record and obtain copies of written parts of the juvenile record without a court order. Section 12 of the Rules of Recordkeeping defines that record as the case file (the file folder containing all paper documents) and the electronic data. Currently the electronic data is maintained in the JWise computer system, an electronic index of the juvenile record. Without access to this computer system, prosecutors encounter logistical hurdles to accessing the juvenile record to inform decisions regarding charging, plea negotiations, etc. Allowing prosecutors access to the relevant computer system removes these impediments. The prosecutor's access to computer system information should be limited to juvenile delinquency information and may not include other protected information contained in that system, such as that pertaining to abuse neglect and dependency or termination of parental rights. Additionally, the JWise system currently allows only for county-by-county searches; it does not allow for a statewide search. Given the mobility of North Carolina's citizens, there is a need for statewide searches. To allow for meaningful access to a juvenile's delinquency record, the computer system must be improved to allow for statewide searching.

To ensure parity of access, if the prosecutor is given access to the juvenile record in the relevant computer system, the same access must be given to the juvenile's attorney. As with prosecutors, G.S. 7B-3000 already allows the attorney to have access to the record without a court order; but as with the prosecutor, lack of access to the computer system makes this logistically impossible.

Existing law prohibiting photocopying any part of the juvenile record, G.S. 7B-3000(c), would be maintained and apply to computer system records.

<sup>11</sup> Two separate studies have examined the costs of raise the age legislation. See *infra* pp. 11-12 (discussing studies).

*This last contingency bears special emphasis: The stakeholders are unanimous in the view that full funding must be provided to implement these recommendations and that an unfunded or partially unfunded mandate to raise the age will be detrimental to the court system and community safety.*

To ameliorate implementation costs to the juvenile justice system associated with raise the age legislation, the Committee recommends that North Carolina expand state-wide existing programs to reduce school-based referrals to the juvenile justice system.<sup>12</sup>

Finally the Committee recommends requiring regular juvenile justice training for sworn law enforcement officers and forming a limited term standing committee of juvenile justice stakeholders to review implementation of these recommendations and make additional recommendations if needed.<sup>13</sup>

### **A Brief Comparison of Juvenile & Criminal Proceedings.**

When there is probable cause that a North Carolina youthful offender has committed a crime, that person is charged like any adult. If not released before trial, the youthful offender is detained in the local jail and at risk of being victimized by sexual violence.<sup>14</sup> The youthful offender is tried in adult criminal court and if found guilty, is convicted of a crime. Although a minor's parent or guardian must be informed when the child is charged or taken into custody,<sup>15</sup> the criminal case proceeds without any additional requirement of notice to the parent or parental involvement. If convicted and sentenced to prison, the youthful offender serves the sentence in an adult prison facility.<sup>16</sup> In prison, youthful offenders are significantly more likely than other inmates to be victimized by physical violence.<sup>17</sup> The criminal proceeding and all records, including the record of arrest and conviction, are available to the public, even if the youthful offender is found not guilty. All collateral consequences that apply to adult defendants apply to youthful offenders. These consequences include, among other things, ineligibility for

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<sup>12</sup> See *infra* pp. 18-19 (discussing such programs).

<sup>13</sup> The Standing Committee should include, among others: a district court judge; a superior court judge; a prosecutor who handles juvenile matters; a victims' advocate; and representatives from the law enforcement community, the Division of Juvenile Justice, and the Office of the Juvenile Defender.

<sup>14</sup> A report for the John Locke Foundation supporting raising the juvenile age notes: "one national survey of jails found that in one year, minors were the victims of inmate-on-inmate sexual violence 21 percent of the time, even though they only made up less than one percent of jail inmates." MARK LEVIN & JEANETTE MOLL, JOHN LOCKE FOUNDATION, IMPROVING JUVENILE JUSTICE: FINDING MORE EFFECTIVE OPTIONS FOR NORTH CAROLINA'S YOUNG OFFENDERS 5 (2013) [hereinafter JOHN LOCKE FOUNDATION REPORT], <http://www.johnlocke.org/acrobat/spotlights/YoungOffendersRevised.pdf>.

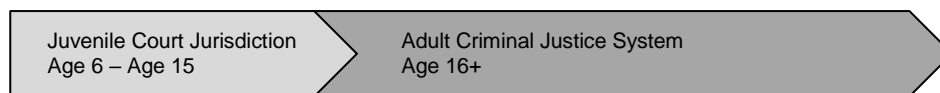
<sup>15</sup> G.S. 15A-505(a).

<sup>16</sup> Male youthful offenders are incarcerated at the Foothills Correctional Institution, an 858-capacity facility for males aged 18-25 years old. See N.C. Dep't Pub. Safety, *Foothills Correctional Institution*, N.C. DPS, <https://www.ncdps.gov/Adult-Corrections/Prisons/Prison-Facilities/Foothills-Correctional-Institution> (last modified Mar. 19, 2013). Female youthful offenders serve their sentences at the N.C. Correctional Institution for Women, a facility housing the largest inmate population in the state and female inmates of all ages and all custody and control statuses, including death row, maximum, close, medium, minimum and safekeepers. See N.C. Dep't Pub. Safety, *NC Correctional Institution for Women*, N.C. DPS, <https://www.ncdps.gov/Adult-Corrections/Prisons/Prison-Facilities/NC-Correctional-Institution-for-Women> (last modified Aug. 6, 2015).

<sup>17</sup> With respect to physical violence, a report for the John Locke Foundation supporting raising the juvenile age notes: "Research has found minors are 50 percent more likely to be physically attacked by a fellow inmate with a weapon of some sort, and twice as likely to be assaulted by staff." JOHN LOCKE FOUNDATION REPORT, *supra* note 13, at 5.

employment, professional licensure, public education, college financial aid, and public housing.<sup>18</sup>

**Fig. 1.** Current age of legal jurisdiction.



By contrast, when a person under 16 years old is believed to have committed acts that would constitute a crime if committed by an adult, a complaint is filed in the juvenile justice system alleging the juvenile to be delinquent.<sup>19</sup> A juvenile court counselor conducts a preliminary review of the complaint to determine, in part, whether it states facts that constitute a delinquent offense;<sup>20</sup> essentially this determination looks at whether the elements of a crime have been alleged. If the juvenile court has no jurisdiction over the matter or if the complaint is frivolous, the juvenile court counselor must refuse to file the complaint as a petition.<sup>21</sup> Once the juvenile court counselor determines that the complaint is legally sufficient, he or she decides whether it should be filed as a petition, diverted, or resolved without further action.<sup>22</sup> This evaluation can involve interviews with the complainant and victim and the juvenile and his or her parents.<sup>23</sup> “Non-divertable” offenses, however, are not subject to this inquiry; the juvenile court counselor must approve as a petition a complaint alleging a non-divertable offense once legal sufficiency is established.<sup>24</sup> Non-divertable offenses include murder, rape, sexual offense, and other serious offenses designated by the statute.<sup>25</sup> For all other offenses, the case may be diverted with the stipulation that the juvenile and his or her family comply with requirements agreed upon in a diversion plan or contract, such as participation in mediation, counseling, or teen court.<sup>26</sup> The diversion plan or contract can be in effect for up to six months, during which time the court counselor conducts periodic reviews to ensure compliance by the juvenile and the juvenile’s parent, guardian, or custodian.<sup>27</sup> If diversion is unsuccessful, the complaint may be filed as a petition.<sup>28</sup> If successful, the juvenile court counselor may close the case at an appropriate time.<sup>29</sup> The Division of Adult Correction and Juvenile Justice reports that for calendar years 2008-2011, 21% of complaints were diverted and 18% were closed at intake.<sup>30</sup> 76% of those diverted did not acquire new juvenile complaints within two years.<sup>31</sup> If the counselor approves a complaint as a petition, the case is calendared for juvenile court. If the counselor declines to so approve a complaint, the complainant can request that the prosecutor review that decision.<sup>32</sup> In

<sup>18</sup> For a complete catalogue of collateral consequences, see the UNC School of Government’s Collateral Consequences Assessment Tool, a searchable database of the North Carolina collateral consequences of a criminal conviction, available online at <http://ccat.sog.unc.edu/>.

<sup>19</sup> For the procedures for intake, diversion, and juvenile petitions, see G.S. Ch. 7B, Arts. 17 & 18.

<sup>20</sup> G.S. 7B-1701.

<sup>21</sup> *Id.*

<sup>22</sup> G.S. 7B-1702.

<sup>23</sup> *Id.*

<sup>24</sup> G.S. 7B-1701.

<sup>25</sup> *Id.*

<sup>26</sup> G.S. 7B-1706.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> N.C. DEP’T PUB. SAFETY, DIVISION OF JUVENILE JUSTICE, JUVENILE DIVERSION IN NORTH CAROLINA 7 (2013).

<sup>31</sup> *Id.* at 2.

<sup>32</sup> G.S. 7B-1704.

certain circumstances, such as where the juvenile presents a danger to the community, a district court judge may order that the juvenile be taken into secure custody.<sup>33</sup>

For cases that go to court, the child's parent, guardian, or custodian is made a party to the proceeding and is required to attend court hearings.<sup>34</sup> If the child is adjudicated delinquent, a dispositional hearing is held after which the judge enters a disposition that provides "appropriate consequences, treatment, training, and rehabilitation to assist the juvenile toward becoming a nonoffending, responsible, and productive member of the community."<sup>35</sup> Interventions that can be imposed on delinquent youth array on a continuum. Lower level sanctions include things like restitution, community service, and supervised day programs.<sup>36</sup> Intermediate sanctions include things like placement in a residential treatment facility and house arrest.<sup>37</sup> In certain circumstances, the judge's dispositional order may require the child to be committed into State custody, in which case the child will be held in a youth development center (YDC), housing only those adjudicated as juveniles.<sup>38</sup> Upon commitment to and placement in a YDC, the juvenile undergoes a "screening and assessment of developmental, educational, medical, neurocognitive, mental health, psychosocial and relationship strengths and needs."<sup>39</sup> This and other information is used to develop an individualized service plan "outlining commitment services, including plans for education, mental health services, medical services and treatment programming as indicated."<sup>40</sup> A service planning team meets at least monthly to monitor the juvenile's progress.<sup>41</sup> In contrast to the adult prison setting and because YDCs deal exclusively with juvenile populations, all of their programming is age- and developmentally-appropriate for juveniles. Because of the focus on rehabilitation, and in contrast to a judge's authority in the criminal system, the juvenile dispositional order can require action by the child's parent, guardian, or custodian, such as attending parental responsibility classes,<sup>42</sup> or participation in the child's psychological treatment.<sup>43</sup> Because the juvenile record is confidential and not part of the public record,<sup>44</sup> barriers to employment, education, college financial aid, and other collateral consequences associated with a criminal conviction do not attach to the same extent.

### **North Carolina Stands Alone Nationwide in its Treatment of Youthful Offenders**

Forty-three states plus the District of Columbia set the age of criminal responsibility at age 18.<sup>45</sup> In these jurisdictions, 16- and 17-year olds are tried in the juvenile justice system, not the adult

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<sup>33</sup> G.S. 7B-1903.

<sup>34</sup> G.S. 7B-2700.

<sup>35</sup> G.S. 7B-2500.

<sup>36</sup> Juvenile Justice Disposition Chart and Dispositional Alternatives (Dec. 2015) (a copy of this document was provided by the Division of Adult Correction and Juvenile Justice, Subcommittee on Juvenile Age Meeting Feb. 18, 2016).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*; see also G.S. 7B-2506(24).

<sup>39</sup> N.C. Dep't Pub. Safety, *Youth Development Centers*, N.C. DPS, <https://www.ncdps.gov/Juvenile-Justice/Juvenile-Facility-Operations/Youth-Development-Centers> (last visited Mar. 21, 2016).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> G.S. 7B-2701.

<sup>43</sup> G.S. 7B-2702.

<sup>44</sup> G.S. 7B-3000. In certain circumstances, however, information in juvenile court records later may be revealed to the prosecutor, probation officer, magistrate, law enforcement, and the court. *Id.*

<sup>45</sup> Juvenile Justice Geography, Policy, Practice & Statistics, *Jurisdictional Boundaries*, JJGPS, <http://www.jjgps.org/jurisdictional-boundaries> (last visited Aug. 8, 2016) [hereinafter *Jurisdictional Boundaries*]. Please note that as of August 2016, this source had not been updated to reflect successful raise the age legislation in Louisiana and South Carolina.

system. The most recent states to join this majority approach are Louisiana and South Carolina; both of those states raised the juvenile age to 18 in 2016.<sup>46</sup> Raise the age legislation received unanimous support in South Carolina's legislature.<sup>47</sup> Five states set the age of criminal responsibility at age 17.<sup>48</sup> This leaves North Carolina and one other state—New York—as the only jurisdictions that prosecute both 16- and 17-year olds in adult criminal court.<sup>49</sup> New York's procedure, however, is much more flexible than North Carolina's in that it has a reverse waiver provision allowing a youthful offender to petition the court to be tried as a juvenile.<sup>50</sup> While other states have moved<sup>51</sup>--and continue to move<sup>52</sup>--to increase juvenile age, North Carolina has not followed suit.

### **Most North Carolina Youthful Offenders Commit Misdemeanors & Non-Violent Felonies**

Consistent with data from other states, stable data shows that only a small number of North Carolina's 16- and 17-year-olds are convicted of violent felonies.<sup>53</sup> Of the 5,689 16-and 17-year olds convicted in 2014,<sup>54</sup> only 187—3.3% of the total—were convicted of violent felonies (Class A-E).<sup>55</sup> The vast majority of these youthful offenders—80.4%—were convicted of misdemeanors.<sup>56</sup> The remaining 16.3% were convicted of non-violent felonies.<sup>57</sup>

The fact that such a small percentage of youthful offenders commit violent felonies caused Newt Gingrich to argue, in support of raising the age in New York, that “[i]t is commonsense to design the system around what is appropriate for the majority, while providing exceptions for the most serious cases.”<sup>58</sup> Likewise, a report on raising the age prepared by the John Locke Foundation notes, “[w]hile there are a small number of very serious juvenile offenders who should be tried as adults due to the nature of their crimes, in the aggregate, the limited available evidence . . . suggests that placing all 16 year-olds in the adult criminal justice system is not the most

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<sup>46</sup> The South Carolina law is available here, along with a history of legislative action: [http://www.scstatehouse.gov/sess121\\_2015-2016/bills/916.htm](http://www.scstatehouse.gov/sess121_2015-2016/bills/916.htm). The Louisiana law is here: <https://www.legis.la.gov/legis/ViewDocument.aspx?d=1012088>.

<sup>47</sup> The unanimous votes in the South Carolina House and Senate are reported here: [http://www.scstatehouse.gov/sess121\\_2015-2016/bills/916.htm](http://www.scstatehouse.gov/sess121_2015-2016/bills/916.htm).

<sup>48</sup> *Id.* (these states include: Georgia, Michigan, Missouri, Texas and Wisconsin). Raise the age proposals are under consideration in at least one of these states. See Newt Gingrich & Pat Nolan, *Missouri, Raise the Age*, ST. LOUIS POST-DISPATCH, Apr. 27, 2016, [http://www.stltoday.com/news/opinion/missouri-raise-the-age/article\\_ade5dad7-12aa-54b4-b180-97d3977edfc1.html](http://www.stltoday.com/news/opinion/missouri-raise-the-age/article_ade5dad7-12aa-54b4-b180-97d3977edfc1.html) (noting that Missouri legislature is working on raise the age bill).

<sup>49</sup> *Jurisdictional Boundaries*, *supra* note 45.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* (providing a color coded map showing the upper age of juvenile jurisdiction in U.S. states from 1997 to 2014).

<sup>52</sup> See *supra* note 48.

<sup>53</sup> Convictions by Offense Type and Class for Offenders Age 16 and 17 FY 2004/05 – FY 2013/14 (chart indicating that convictions for Class A-E felonies never exceeded 4% of total convictions for this age group over ten-year period; a copy of this document was provided to the Committee Reporter by Michelle Hall, Executive Director of the North Carolina Sentencing and Policy Advisory Commission, Mar. 24, 2016).

<sup>54</sup> MICHELLE HALL, NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION, COMPARATIVE STATISTICAL PROFILE OF YOUNG OFFENDERS IN NORTH CAROLINA 6 [hereinafter COMPARATIVE STATISTICAL PROFILE] (Presented to the NCCALJ Criminal Investigation and Adjudication Committee, Dec. 11, 2015).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Newt Gingrich, *Treating Kids As Kids to Help Curb Crime*, N.Y. POST, Mar. 20, 2015, <http://nypost.com/2015/03/20/treating-kids-as-kids-to-help-curb-crime/> [hereinafter Gingrich].

effective strategy for deterring crime or successfully rehabilitating and protecting these youngsters.”<sup>59</sup> Consistent with these arguments, the Committee recommends a policy that is appropriate for the majority of youthful offenders, with two safeguards for ensuring community safety with respect to the minority of youthful offenders who commit violent crimes: (1) requiring that youthful offenders charged with Class A through E felonies be tried in adult criminal court and (2) maintaining the existing procedure that allows other cases to be transferred to adult court when appropriate.<sup>60</sup>

### **Raising the Age Will Make North Carolina Safer**

As noted in the John Locke Foundation report supporting raising the juvenile age in North Carolina, “[r]esearch consistently shows that rehabilitation of juveniles is more effectively obtained in juvenile justice systems and juvenile facilities, as measured by recidivism rates.”<sup>61</sup> Recidivism refers to an individual’s relapse into criminal behavior, after having experienced intervention for a previous crime,<sup>62</sup> such as a conviction and prison sentence. Lower rates of recidivism means less crime and safer communities. Both North Carolina and national data suggest that prosecuting youthful offenders as adults results in higher rates of recidivism than when youthful offenders are treated in the juvenile system. Thus, raising the age is likely to result in lower recidivism, less crime, and increased safety.

North Carolina data shows a significant 7.5% decrease in recidivism when teens are adjudicated in the juvenile versus the adult system.<sup>63</sup> Experts suggest that youthful offenders have a higher recidivism rate when prosecuted in the adult criminal system because, unlike the juvenile system, the criminal system lacks the ability to implement the most targeted, juvenile-specific, effective interventions for rehabilitation within a framework of parental and community involvement to include mental health, education, and social services participation in the continuum of care.<sup>64</sup> North Carolina data also shows that when youthful offenders are prosecuted in the adult system, they recidivate at a rate that is 12.6% higher than the overall population.<sup>65</sup> Also, individuals with deeper involvement in the criminal justice system generally recidivate at higher rates than those with less involvement (for example, a sentence of probation versus one of imprisonment).<sup>66</sup> Contrary to the conventional rule, in North Carolina youthful offenders who receive probation recidivate at a higher rate than defendants who are released

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<sup>59</sup> JOHN LOCKE FOUNDATION REPORT, *supra* note 14, at 2.

<sup>60</sup> See *supra* pp. 2-4 (specifying these recommendations); see generally JOHN LOCKE FOUNDATION REPORT, *supra* note 14, at 2 (arguing: “As long as there are mechanisms in place which permit juvenile offenders whose crimes are individually deemed serious enough to be tried as adults, considerations of public safety and the wellbeing of state wards suggest North Carolina should seriously look at joining nearly all other states in making the juvenile justice system the default destination for 16 year-olds.”).

<sup>61</sup> JOHN LOCKE FOUNDATION REPORT, *supra* note 14, at 3.

<sup>62</sup> National Institute of Justice, *Recidivism*, NIJ,

<http://www.nij.gov/topics/corrections/recidivism/pages/welcome.aspx> (last modified June 17, 2014).

<sup>63</sup> COMPARATIVE STATISTICAL PROFILE, *supra* note 54, at Tables 9 and 11 (showing a two-year recidivism rate for 16-17 year old probationers to be 49.3% and a two-year recidivism rate for 15-year-olds to be 41.8%).

<sup>64</sup> Comments of William Lassiter, Committee Meeting Dec. 11, 2015.

<sup>65</sup> COMPARATIVE STATISTICAL PROFILE, *supra* note 54, at Table 9 (while the overall probation entry population recidivates at a rate of 36.7%, 16- and 17-year-olds recidivate at the much higher rate of 49.3%).

<sup>66</sup> NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION, CORRECTIONAL PROGRAM EVALUATION: OFFENDERS PLACED ON PROBATION OR RELEASED FROM PRISON IN FISCAL YEAR 2010/11, at iii, Figure 2 (2014) (showing that two-year recidivism rate as measured by rearrests was 36.8% for probationers while the rate for persons released from prison was 48.6%).



after a prison sentence.<sup>67</sup> These last two data points indicate that North Carolina's treatment of youthful offenders is inconsistent with reducing crime and promoting community safety. Overall, North Carolina data is consistent with data nationwide: recidivism rates are higher when juveniles are prosecuted in adult criminal court.<sup>68</sup>

Additionally, evidence shows that youth receive more supervision in the juvenile system than the adult system. Because they typically present in the adult system with low-level offenses, charges against youthful offenders often are dismissed.<sup>69</sup> Even when youthful offenders are convicted, because they typically have little or no prior criminal record,<sup>70</sup> sentences are often light.<sup>71</sup> As Newt Gingrich observed when supporting raise the age legislation in New York, "because most minors are charged with low-level offenses, the adult system often imposes no punishment whatsoever, teaching a dangerous lesson: You won't be held accountable for breaking the law."<sup>72</sup>

Some assert that prosecuting youthful offenders in criminal court has an important deterrent effect. However, as noted in a John Locke Foundation report supporting raising the age in North Carolina, studies show that prosecuting juveniles in adult court does not in fact deter crime.<sup>73</sup> That report continues:

The studies all show that, perhaps due to minors' lack of maturity or less-than-developed frontal cortex, which controls reasoning, legislative efforts to inflict

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<sup>67</sup> COMPARATIVE STATISTICAL PROFILE, *supra* note 54, at Table 9 (showing that while recidivism for overall prison releases is 48.6%, recidivism rates for youthful offenders sentenced to probation is 49.3%).

<sup>68</sup> As noted by Newt Gingrich when arguing in favor of raise the age legislation in New York:

Research shows that prosecuting youths as adults increases the chances that they will commit more serious crimes. A Columbia University study compared minors arrested in New Jersey (where the age of adulthood is 18) with those in New York. New York teens were more likely to be rearrested than those processed in New Jersey's juvenile court for identical crimes. For violent crimes, rearrests were 39 percent greater. Studies in other states have yielded similar results, leading experts at the Centers for Disease Control to recommend keeping kids out of adult court to combat community violence.

Gingrich, *supra* note 58; see also JOHN LOCKE FOUNDATION REPORT, *supra* note 14, at 3-4 (citing several studies that have compared recidivism rates for juvenile offenders tried in juvenile courts with those for juveniles tried in criminal courts); OLA LISOWSKI & MARC LEVIN, MACIVER INSTITUTE & TEXAS PUBLIC POLICY FOUNDATION, 17-YEAR-OLDS IN ADULT COURT: IS THERE A BETTER ALTERNATIVE FOR WISCONSIN'S YOUTH AND TAXPAYERS? 3, 7-9 (2016) [hereinafter LISOWSKI & LEVIN] (noting that "[i]n Wisconsin, 17-year-olds are three times more likely to return to prison if they originally go through the adult system rather than the juvenile system"; discussing studies in other states, including New York and New Jersey, Florida, and Minnesota).

<sup>69</sup> PowerPoint accompanying Comments of Judge Morey, Committee Meeting Dec. 11, 2015 (noting that in Durham, of the 632 misdemeanors charges taken out on 16- and 17-year-olds in 2012, 495 were dismissed), <http://nccalj.org/wp-content/uploads/2015/12/October-2015-Sentencing-Commissions-Research-and-Policy-Study-Group.pdf>.

<sup>70</sup> COMPARATIVE STATISTICAL PROFILE, *supra* note 54, at Table 5 (showing that less than 2% of youthful offenders present with a prior record at level III or above).

<sup>71</sup> *Id.* at Table 7 (showing that almost 75% of youthful offenders receive non-active (community) punishment).

<sup>72</sup> Gingrich, *supra* note 58.

<sup>73</sup> JOHN LOCKE FOUNDATION REPORT, *supra* note 14, at 3 (so noting and discussing data from New York, Idaho, and Georgia calling into question the notion that prosecuting juveniles in adult court has a deterrent effect).

criminal court jurisdiction and punishments upon minors have not deterred crime. Even more than adult offenders, the very problem with juvenile offenders is that too often they do not think carefully before committing their misdeeds, and they rarely, if ever, review the statutory framework to determine the consequences.<sup>74</sup>

Other researchers agree that adult criminal sanctions do not deter youth crime.<sup>75</sup>

Some have suggested that raising the age will give gang members additional youth to recruit for illegal activities. However, the Division of Juvenile Justice reports that only 7-8% of all youth in the juvenile justice system are “gang involved.” This figure includes youth who are recruited by gang members to help drug or other criminal activity. While this percentage is not insignificant, it shows that only a small proportion of all juveniles who enter the system are connected with gang crimes. Also, the number of juveniles who are alleged to have committed acts that constitute a gang crime offense is very, very small; from 2009-2016, only 20 juveniles in the entire system were alleged to have perpetrated such acts.<sup>76</sup> Finally, there is reason to believe that youth with gang connections are likely to do better in the juvenile system than the adult system. Juveniles in the YDCs are exposed to gang awareness educational and intervention programs, as well as substance abuse programming. Youth processed in the adult system and incarcerated in adult prison have no access to that crucial programming.

It should be noted that the Committee’s recommendation has built-in protections to deal with violent juveniles: (1) requiring that youthful offenders charged with Class A through E felonies be tried in adult criminal court<sup>77</sup> and (2) maintaining the existing procedure that allows other cases to be transferred to adult court when appropriate.<sup>78</sup> Notably, North Carolina’s existing transfer provision has been used for 13, 14, and 15-year-olds for many years, with no empirical evidence suggesting that violent or gang-involved youth are falling through the cracks.<sup>79</sup>

Finally, studies show when states have implemented raise the age legislation, public safety has improved.<sup>80</sup>

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<sup>74</sup> *Id.*

<sup>75</sup> LISOWSKI & LEVIN, *supra* note 68, at 5 (noting that in 1994, after Georgia passed a law restricting access to juvenile court for certain youth, a study showed no significant change in juvenile arrest rates in the years following the statute’s enactment; noting that after New York passed a similar law in 1978, a study found that arrest rates for most offenses remained constant or increased in the time period of the study).

<sup>76</sup> Email from William Lassiter, Deputy Commissioner for Juvenile Justice to Committee Reporter (Sept. 20, 2016) (on file with Committee Reporter) (the offenses examined included all crimes in Article 13A of G.S. Chapter 14 (North Carolina Street Gang Suppression Act) and G.S. 14-34.9 (discharging a firearm from within an enclosure as part of a pattern of street gang activity)).

<sup>77</sup> According to the recommendations above, Class A-E felony charges against 16- and 17-year olds will be automatically transferred to superior court after a finding of probable cause or by indictment. See *supra* p. 2 (so specifying)

<sup>78</sup> See *supra* p. 2 (so specifying).

<sup>79</sup> The John Locke Foundation report concluded: “North Carolina [has] a robust system of transfer for felony juvenile offenders, which ensures that the most serious of juvenile offenders can be tried in adult courts even if the age of juvenile court jurisdiction is raised.” JOHN LOCKE FOUNDATION REPORT, *supra* note 14, at 1.

<sup>80</sup> See, e.g., RICHARD MENDEL, JUSTICE POLICY INSTITUTE, JUVENILE JUSTICE REFORM IN CONNECTICUT: HOW COLLABORATION AND COMMITMENT HAVE IMPROVED PUBLIC SAFETY AND OUTCOMES FOR YOUTH 29 (2013) [hereinafter CONNECTICUT REPORT] (“Available data leave no doubt that public safety has improved as a result of Connecticut’s juvenile justice reforms.”); see also *infra* pp. 14-15 (discussing other states’ experiences with raise the age legislation).

## Raising the Age Will Yield Economic Benefit to North Carolina & Its Citizens

Two separate studies authorized by the North Carolina General Assembly indicate that raising the juvenile age will produce significant economic benefits for North Carolina and its citizens:

- (1) In 2009, the Governor's Crime Commission Juvenile Age Study submitted to the General Assembly included a cost-benefit analysis of raising the age of juvenile court jurisdiction to 18. The analysis, done by ESTIS Group, LLC, found that the age change would result in a net benefit to the state of \$7.1 million.<sup>81</sup>
- (2) In 2011, the Youth Accountability Planning Task Force submitted its final report to the General Assembly. The Task Force's report included a cost-benefit analysis, done by the Vera Institute of Justice, of prosecuting 16 and 17-year-old misdemeanants and low-level felons in juvenile court. That report estimated net benefits of \$52.3 million.<sup>82</sup>

Much of the estimated cost savings would result from reduced recidivism, which "eliminates future costs associated with youth 'graduating' to the adult criminal system, and increased lifetime earnings for youth who will not have the burden of a criminal record."<sup>83</sup> Cost savings from reduced recidivism has been cited in the national discourse on raising the juvenile age. As noted by Newt Gingrich when arguing in favor of raise the age legislation in New York:

Recidivism is expensive. There are direct losses to victims, the public costs of law enforcement and incarceration and the lost economic contribution of someone not engaged in law-abiding work. When Connecticut raised the age for adult prosecution to 18, crime rates quickly dropped and officials were able to close an adult prison. Researchers calculated the lifetime gain of helping a youth graduate high school and avoid becoming a career criminal or drug user at \$2.5 million to \$3.4 million *for just one person*. An adult record permanently limits youth prospects; it becomes harder to gain acceptance to a good school, get a job or serve in the military. Juvenile records are sealed and provide more opportunity. It's only fair to give a young person who has paid his debt to society a fresh start. It is in our best interest that youth go on to contribute to the economy, rather than becoming a drain through serial incarceration or dependence on public assistance.<sup>84</sup>

And as noted in a John Locke Foundation report supporting raising the juvenile age, "North Carolina is not merely relying on the projections, but can look to the proven experience of other states."<sup>85</sup> That report continues: "Some 48 other states from Massachusetts to Mississippi have successfully raised the age and implemented this policy change effectively and without significant complications. Many states, including Connecticut and Illinois, have found that the transition can be accomplished largely by reallocating funds and resources among the adult and juvenile systems."<sup>86</sup>

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<sup>81</sup> GOVERNOR'S CRIME COMMISSION JUVENILE AGE STUDY, A STUDY OF THE IMPACT OF EXPANDING THE JURISDICTION OF THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION 4-6 (2009) [hereinafter 2009 GOVERNOR'S CRIME COMMISSION REPORT].

<sup>82</sup> YOUTH ACCOUNTABILITY TASK FORCE REPORT, *supra* note 3.

<sup>83</sup> LaToya Powell, *U.S. Senators Support "Raise the Age"*, N.C. CRIM. LAW BLOG (July 14, 2014), <http://nccriminallaw.sog.unc.edu/u-s-senators-support-raise-the-age/>.

<sup>84</sup> Gingrich, *supra* note 58.

<sup>85</sup> JOHN LOCKE FOUNDATION REPORT, *supra* note 14, at 7.

<sup>86</sup> *Id.* (providing detail on the experience in Connecticut and Illinois).

The Committee recognizes that its recommendations will require a significant outlay of taxpayer funds, with benefits achieved long-term. However, there are good reasons to believe that costs will be lower than estimated in the analyses noted above. First, the 2011 Vera Institute cost-benefit analysis estimated costs with FY 2007/08 juvenile arrest data. However, as shown in Figure 2 below, juvenile arrest rates have decreased dramatically from 2008.<sup>87</sup>

**Fig. 2.** Falling arrest rates for juveniles under age 18.

	Violent Crime	Property Crime
2008	2,597	13,307
2014	1,537	7,919

Source: North Carolina State Bureau of Investigation, *Crime in North Carolina – 2014*, 7 (Nov. 2015).

These declining arrest numbers for all persons under 18 years old suggest that system costs may be lower than those estimated based on FY 2007/08 data.<sup>88</sup>

Additionally, no prior cost analysis on the juvenile age issue has accounted for cost reductions associated with statewide implementation of pilot programs that reduce admissions into the juvenile system, as recommended by the Committee.<sup>89</sup> For these reasons North Carolina may experience actual costs that are less than those that have been predicted. This in fact would be consistent with the experiences of other states that have raised the juvenile age.<sup>90</sup>

Finally, prior examination of fiscal impact may not have sufficiently taken into account current standards linked to the federal Prison Rape Elimination Act (PREA) that “are likely to raise costs in the adult justice system as county jails and state prisons spend more in areas such as staffing, programming, and facilities.”<sup>91</sup> Thus, “[e]ven the apparent short-term cost advantages of the adult justice system will diminish.”<sup>92</sup> With respect to staffing costs, male 16- and 17-year-old criminal defendants are housed at Foothills Correctional Center; females at North Carolina Correctional Institution for Women.<sup>93</sup> The Division of Juvenile Justice reports that Foothills currently houses 65 juveniles; the Institution for Women houses three. In order to comply with the sight and sound segregation requirements of PREA, every time juveniles are moved within those adult facilities, the facilities must be in lock down, with obvious staffing costs.

<sup>87</sup> North Carolina State Bureau of Investigation, *Crime in North Carolina - 2014*, 7 (Nov. 2015) [hereinafter *NC SBI Crime Report*], [http://crimereporting.ncsbi.gov/public/2014/ASR/2014 Annual Summary.pdf](http://crimereporting.ncsbi.gov/public/2014/ASR/2014%20Annual%20Summary.pdf).

<sup>88</sup> A 2013 fiscal note prepared in connection with HB 725 used data from FY 2012/13. Juvenile arrest rates likewise have declined since 2012: In 2012, 1,556 juveniles under 18 were arrested for violent crimes; that number dropped to 1,537 in 2014. *NC SBI Crime Report*, *supra* note 87. In 2012, 9,539 juveniles under 18 were arrested for property crimes; that number dropped to 7,919 in 2014. *Id.*

<sup>89</sup> See *infra* pp. 18-19.

<sup>90</sup> See *infra* pp. 14-15 (noting that in Connecticut although juvenile caseloads were expected to grow by 40% they grew only 22% and that Connecticut spent nearly \$12 million less in 2010 and 2011 than had been budgeted).

<sup>91</sup> Press Release, John Locke Foundation, Long-Term Cost Savings Likely from Raising N.C. Juvenile Justice Age (July 17, 2013) [hereinafter John Locke Press Release] (quoting Marc Levin, co-author of JOHN LOCKE FOUNDATION REPORT), [http://www.johnlocke.org/press\\_releases/show/713](http://www.johnlocke.org/press_releases/show/713).

<sup>92</sup> *Id.*

<sup>93</sup> See *supra* note 16.

## Division of Juvenile Justice Already Has Produced Cost Savings to Pay for Raise the Age

Although raising the age will yield long-term economic benefit to North Carolina and its citizens, it will require a significant outlay of taxpayer funds. In its 2011 report, the Youth Accountability Planning Task Force estimated that the annual taxpayer cost of the then-considered proposal to be \$49.2 million.<sup>94</sup> Although there is reason to believe that actual costs may be lower than estimated in that analysis,<sup>95</sup> even if cost reductions are not realized, the Division of Juvenile Justice already has produced cost savings of over \$44 million that can be used to pay for raise the age.

Between fiscal year 2008-2009 and fiscal year 2015-2016, the Division of Juvenile Justice's budget was reduced from \$168,523,752 to \$123,782,978.<sup>96</sup> This cost savings of \$44,740,774 can be attributed to several Division changes:

- 1) *Reduction in Juvenile Pretrial Detentions through the Use of a Detention Assessment Tool.* The Division's implementation of a detention assessment tool has reduced the number of juveniles housed in detention, instead placing low risk juveniles in less expensive diversion programming and secure custody alternatives that assess juveniles' needs and provide targeted referrals and resources.<sup>97</sup> Specifically, detention center admissions fell from 6,246 in 2010 to 3,229 in 2015. By way of a benchmark, the annual cost per child for diversion programming is \$857; the annual cost per child of a detention center bed is \$57,593.<sup>98</sup>
- 2) *Reduction in Commitments to Youth Development Centers.* As a result of the juvenile reform act and better utilization of less expensive community-based options for lower risk juveniles, the Division has significantly reduced the number of juveniles committed to youth development centers.<sup>99</sup> Because it costs \$125,000/year to confine a juvenile in a youth development center, this reduction in commitments has yielded significant savings to the state.<sup>100</sup>
- 3) *Facility Closures:* Due to the reduction in pretrial detentions and commitments to youth development centers noted above, the Division has been able to close a number of detention center and youth development center facilities,<sup>101</sup> repurposing portions of

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<sup>94</sup> See YOUTH ACCOUNTABILITY TASK FORCE REPORT, *supra* note 3.

<sup>95</sup> See *supra* p. 12 (noting that costs may be lower than estimated because of falling arrest rates for juveniles and potential cost reductions associated with statewide implementation of school justice partnerships designed to reduce referrals to the juvenile justice system, as recommended in this report).

<sup>96</sup> Juvenile Justice Cost Avoidance Since 2008 (Division of Juvenile Justice, Aug. 15, 2016) (on file with Committee Reporter).

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* Because North Carolina's counties pay half of the cost of a juvenile's stay in a detention center, the decline in juvenile pretrial detentions yielded savings for the counties as well as the state. *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> The affected facilities include:

- Perquimans detention center; closed November 15, 2012; approximately \$1 million savings
- Buncombe detention center; closed July 1, 2013; approximately \$1 million savings
- Richmond detention center; closed July 1, 2013; approximately \$1.5 million savings
- Samarkand youth development center; closed July 1, 2011; approximately \$3.1 million savings
- Swannanoa Valley youth development center; closed March 1, 2011; approximately \$4.5 million savings
- Lenoir youth development center, closed October 1, 2013 (scheduled to reopen in 2017 after closing less secure Dobbs youth development center); approximately \$3 million savings

*Id.*

these facilities to provide assessment services and crisis intervention. These closures reduced annual operational costs by \$14.1 million.<sup>102</sup>

- 4) *Decreased Delinquency Rate*. Consistent with national trends, North Carolina has experienced a reduction in its juvenile delinquency rate.<sup>103</sup> Specifically, the rate of delinquent complaints per 1,000 youth age 6-15 went from 27.55 in 2010 to 20.78 in 2015. This reduced delinquency rate has reduced cost to the Division.<sup>104</sup>

The Committee recommends reinvesting the \$44 million in cost savings *already achieved* by the Division of Juvenile Justice to support raise the age.

### **Raising the Age Has Been Successfully Implemented in Other States**

Other states have enacted raise the age legislation, over vigorous objections that doing so would negatively affect public safety, create staggering caseloads and overcrowded detention facilities, and result in unmanageable fiscal costs.<sup>105</sup> As it turns out, none of the predicted negative consequences have come to pass. For example, in 2009 Illinois moved 17-year-olds charged with misdemeanors from the adult to the juvenile system.<sup>106</sup> Among other things, Illinois reported:

- The juvenile system did not “crash.”
- Public safety did not suffer.
- County juvenile detention centers and state juvenile incarceration facilities were not overrun. In fact, three facilities were closed and the state reported excess capacity statewide.<sup>107</sup>

The Illinois experience was so positive that in July 2013, that state expanded its raise the age legislation to include all 17-year-olds in the juvenile justice system, including those charged with felonies.<sup>108</sup>

Connecticut’s experience was similarly positive. In 2007, Connecticut enacted legislation to raise the age of juvenile jurisdiction from 16 to 18, effective 2010 for 16-year-olds and 2012 for 17-year olds.<sup>109</sup> After the change, juvenile caseloads grew at a lower-than-expected rate and the state spent nearly \$12 million less than budgeted in the two years following the change.<sup>110</sup> A report on Connecticut’s experience gives this bottom line for that state’s experience: “Cost

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<sup>102</sup> See *supra* note 101 (itemizing savings).

<sup>103</sup> Juvenile Justice Cost Avoidance Since 2008 (Division of Juvenile Justice, Aug. 15, 2016) (on file with Committee Reporter).

<sup>104</sup> *Id.*

<sup>105</sup> ILLINOIS JUVENILE JUSTICE COMMISSION, RAISING THE AGE OF JUVENILE COURT JURISDICTION: THE FUTURE OF 17-YEAR-OLDS IN ILLINOIS’ JUSTICE SYSTEM 6 (2013) [hereinafter ILLINOIS REPORT] (noting these objections), <http://ijjc.illinois.gov/sites/ijjc.illinois.gov/files/assets/IJJC - Raising the Age Report.pdf>.

<sup>106</sup> *Id.* (noting that initial legislation was passed over opponents’ assertions that the law would lead to “unmanageable fiscal costs”). For more background on the raising the age in Illinois, see Illinois Juvenile Justice Commission, *Raising the Age of Juvenile Court Jurisdiction: The Future of 17-Year-Olds in Illinois’ Justice System*, IJJC, <http://ijjc.illinois.gov/rta> (last visited Mar. 23, 2016).

<sup>107</sup> ILLINOIS REPORT, *supra* note 105, at 6; see also John Locke Press Release, *supra* note 91 (noting that “[a]fter Illinois raised the juvenile jurisdiction age in 2010, both juvenile crime and overall crime dropped so much that the state was able to close three juvenile lockups because they were no longer needed”).

<sup>108</sup> Illinois Public Act 098-0061.

<sup>109</sup> See CONNECTICUT REPORT, *supra* note 80, at 15-16.

<sup>110</sup> *Id.* at 27 (reporting that juvenile caseloads grew at a rate of 22% versus 40% as projected).

savings and improved public safety.”<sup>111</sup> As has been noted, 48 other states have increased the juvenile age “without significant complications.”<sup>112</sup>

While raise the age efforts have proved to be successful, lower the age campaigns have proved unworkable. In 2007, Rhode Island lowered its juvenile age, pulling 17-year-olds out of the juvenile system and requiring that they be prosecuted as adults.<sup>113</sup> Proponents asserted that the change would save the state \$3.6 million because 17-year-olds would be housed in adult prisons rather than training schools. But the experiment was a failure. As it turned out, youths sentenced to adult prison had to be, for safety reasons, housed in super max custody facilities at the cost of more than \$100,000 per year.<sup>114</sup> Just months later Rhode Island abandoned course and rescinded the law.<sup>115</sup>

### **Raising the Age Strengthens Families**

Suppose that 16-year-old high school junior Bobby is charged with assault, after a fight at school over a girl. Because North Carolina treats Bobby as an adult, his case can proceed to completion with no parental involvement or input. This led Newt Gingrich to assert, when arguing for raise the age legislation in New York:

[L]aws that undermine the family harm society. When a 16- or 17-year-old is arrested [he or she] . . . can be interviewed alone and can even agree to plea bargains without parental consent. What parent would not want the chance to intervene, to set better boundaries or simply be a parent? The current law denies them that right.<sup>116</sup>

While the criminal justice system cuts parents out of the process, the juvenile system requires their participation.<sup>117</sup> and thus serves to strengthen parents’ influence on their teens.

### **Raising the Age Is Supported By Science**

Although North Carolina treats its youthful offenders as adults, widely accepted science reveals that adolescent brains are not fully developed.<sup>118</sup> Among other things, research teaches that:

- Interactions between neurobiological systems in the adolescent brain cause teens to engage in greater risk-taking behavior.<sup>119</sup>
- Increases in reward- and sensation-seeking behavior precede the maturation of brain systems that govern self-regulation and impulse control.<sup>120</sup>

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<sup>111</sup> *Id.* at 3. More information on Connecticut’s experience is available at Raise the Age CT (a project of the Connecticut Juvenile Justice Alliance). See Connecticut Juvenile Justice Alliance, *Raise the Age CT*, <http://raisetheagect.org/index.html> (last visited Mar 23, 2016).

<sup>112</sup> John Locke Press Release, *supra* note 91.

<sup>113</sup> 2009 GOVERNOR’S CRIME COMMISSION REPORT, *supra* note 81, at 13.

<sup>114</sup> *Id.*; see also Katie Zezima, *Law on Young Offenders Causes Rhode Island Furor*, N.Y. TIMES, Oct. 30, 2007, [http://www.nytimes.com/2007/10/30/us/30juvenile.html?\\_r=0](http://www.nytimes.com/2007/10/30/us/30juvenile.html?_r=0).

<sup>115</sup> 2009 GOVERNOR’S CRIME COMMISSION REPORT, *supra* note 81, at 13.

<sup>116</sup> Gingrich, *supra* note 58.

<sup>117</sup> See *supra* p. 6 (noting that parents must participate in proceedings in juvenile court).

<sup>118</sup> Comments of Dr. Cindy Cottle, Committee Meeting December 11, 2015; Comments of Deputy Commissioner Lassiter, Committee Meeting Dec. 11, 2015; Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANNU. REV. CLIN. PSYCHOL. 459, 465 (2009) (research shows continued brain maturation through the end of adolescence).

<sup>119</sup> Steinberg, *supra* note 118, at 466; Comments of Dr. Cindy Cottle, Committee Meeting Dec. 11, 2015.

<sup>120</sup> Steinberg, *supra* note 118, at 466.

- Despite the fact that many adolescents may appear as intelligent as adults, their ability to regulate their behavior is more limited.<sup>121</sup>
- Teens are more responsive to peer influence than adults.<sup>122</sup>
- Relative to adults, adolescents have a lesser capacity to weigh long-term consequences;<sup>123</sup> as they mature into adults, they become more future oriented, with increases in their consideration of future consequences, concern about the future, and ability to plan ahead.<sup>124</sup>
- As compared to adults, adolescents are more sensitive to rewards, especially immediate rewards.<sup>125</sup>
- Adolescents are less able than adults to control impulsive behaviors and choices.<sup>126</sup>
- Adolescents are less responsive to the threat of criminal sanctions.<sup>127</sup>

This research and related data has significant implications for justice system policy. First, it suggests that adolescents are less culpable than adults.<sup>128</sup> If the relative immaturity of a 16-year-old's brain prevents him from controlling his impulses, he is less culpable than an adult who possesses that capability but acts nevertheless.<sup>129</sup> Second, the vast majority of adolescents who commit antisocial acts desist from such activity as they mature into adulthood.<sup>130</sup> Rather than creating a lifetime disability for youthful offenders (e.g., public record of arrest and conviction; ineligibility for employment and college financial aid, etc.), sanctions for delinquent youth should take into account the fact that most juvenile offenders "mature out of crime,"<sup>131</sup> growing up to be law-abiding citizens. Third, response systems that "attend to the lessons of developmental psychology" are more effective in reducing recidivism among adolescents than the punitive criminal justice model.<sup>132</sup> Research shows that active interventions focused on strengthening family support systems and improving abilities in the areas of self-control, academic performance, and job skills are more effective than strictly punitive measures in reducing crime.<sup>133</sup> While these type of interventions can be and are implemented in the juvenile system, they are virtually unavailable in the adult criminal justice system. Finally, because adolescents are particularly susceptible to peer influence, outcomes are likely to be better when individuals in a formative stage of development are placed in an environment with an authoritative parent or guardian and prosocial peers rather than with adult criminals.<sup>134</sup>

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<sup>121</sup> *Id.* at 467.

<sup>122</sup> *Id.* at 468; Comments of Dr. Cindy Cottle, Committee Meeting Dec. 11, 2015; Comments of Deputy Commissioner Lassiter, Committee Meeting Dec. 11, 2015.

<sup>123</sup> Comments of Dr. Cindy Cottle, Committee Meeting Dec. 11, 2015.

<sup>124</sup> Steinberg, *supra* note 118, at 469; Comments of Deputy Commissioner Lassiter, Committee Meeting Dec. 11, 2015.

<sup>125</sup> Steinberg, *supra* note 118, at 469; Comments of Dr. Cindy Cottle, Committee Meeting Dec. 11, 2015.

<sup>126</sup> Steinberg, *supra* note 118, at 470.

<sup>127</sup> *Id.* at 480; Comments of Dr. Cindy Cottle, Committee Meeting Dec. 11, 2015.

<sup>128</sup> Steinberg, *supra* note 118, at 471.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* at 478.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 478-79.

<sup>133</sup> *Id.* at 479.

<sup>134</sup> *Id.* at 480.



## **Raising the Age is Consistent with Supreme Court Decisions Recognizing Juveniles' Lesser Culpability & Greater Capacity for Rehabilitation**

Raising the juvenile age is consistent with recent decisions by the United States Supreme Court recognizing that juveniles' unique characteristics require that they be treated differently than adults. First, in *Roper v. Simmons*,<sup>135</sup> the Court held that the Eighth Amendment bars imposing capital punishment on juveniles. Next, in *Graham v. Florida*,<sup>136</sup> it held that same amendment prohibits a sentence of life without the possibility of parole for juveniles who commit non-homicide offenses. Then, in *Miller v. Alabama*,<sup>137</sup> the Court held that mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment. Citing the type of science and social science research discussed in this report,<sup>138</sup> the Court recognized that juvenile offenders are less culpable than adults, have a greater capacity than adults for rehabilitation, and are less responsive than adults to the threat of criminal sanctions.<sup>139</sup> The Court found persuasive research "showing that only a relatively small proportion of adolescents who engage in illegal activity develop entrenched patterns of problem behavior,"<sup>140</sup> stating:

[Y]outh is more than a chronological fact. It is a time of immaturity, irresponsibility, impetuosity[,] and recklessness. It is a moment and condition of life when a person may be most susceptible to influence and to psychological damage. And its signature qualities are all transient.<sup>141</sup>

And just this year, in *Montgomery v. Louisiana*,<sup>142</sup> the Court took the extraordinary step of holding that the *Miller* rule applied retroactively to cases that became final before it was decided. The *Montgomery* Court recognized that the "vast majority of juvenile offenders" are not permanently incorrigible, and that only the "rarest" of juveniles can be so categorized.<sup>143</sup> The Court again noted that most juvenile crime "reflect[s] the transient immaturity of youth."<sup>144</sup>

The Court's reasoning in these cases supports raising the age of juvenile court jurisdiction.

## **Raising the Age Removes a Competitive Disadvantage NC Places on its Youth**

Suppose two candidates apply for a job. Both have the same credentials. Both got into fights at school when they were 16 years old, triggering involvement with the judicial system. But because one of the candidates, Sam, lives in Tennessee, his juvenile delinquency adjudication is confidential and cannot be discovered by his potential employer. The other candidate, Tom, is from North Carolina. Because of that, his interaction with the justice system resulted in a criminal conviction for affray. Tom's entire criminal record is discovered by his potential employer. Who is more likely to get the job?

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<sup>135</sup> 543 U.S. 551 (2005).

<sup>136</sup> 560 U.S. 48 (2010).

<sup>137</sup> 567 U.S. \_\_\_, 132 S. Ct. 2455 (2012).

<sup>138</sup> See *supra* pp. 15-16.

<sup>139</sup> *Miller*, 567 U.S. at \_\_\_, 132 S. Ct. at 2464-65.

<sup>140</sup> *Id.* at \_\_\_, 132 S. Ct. at 2464 (internal quotation omitted).

<sup>141</sup> *Id.* at \_\_\_, 132 S. Ct. at 2467 (internal quotation and citation omitted).

<sup>142</sup> 577 U.S. \_\_\_, 136 S. Ct. 718 (2016).

<sup>143</sup> *Id.* at \_\_\_, 136 S. Ct. at 734.

<sup>144</sup> *Id.*

As this scenario illustrates, saddling North Carolina's youth with arrest and conviction records puts them at a competitive disadvantage as compared to youth from other states.<sup>145</sup> Although some have suggested that expunction can be used to remove teens' criminal records, there are significant barriers to expunction, such as legal fees. One district court judge reported to the Committee that expunctions for youthful offenders represent only a "tiny fraction" of the total convictions.<sup>146</sup> Additionally, even if expunction is available to remove the official criminal record, it does nothing to delete information about a youthful offender's arrest or conviction as reported on the internet by news outlets, private companies, and social media.

### **Reducing School-Based Referrals Can Mitigate the Costs of Raising the Age**

In North Carolina, school-based complaints account for almost half of the referrals to the juvenile justice system.<sup>147</sup> This phenomenon is asserted to be part of the "school to prison pipeline," through which children are referred to the court system for classroom misbehavior that a generation ago would have been handled in the schools. Concerns have been raised nationally and in North Carolina that excessive punishment of public school students for routine misbehavior is counterproductive and out of sync with what science and social science teach about the most effective corrective action.<sup>148</sup> Some have suggested that such referrals unnecessarily burden the juvenile justice system with frivolous complaints.<sup>149</sup>

Responding to these concerns, individuals and groups throughout the nation have developed models to stem the flow of school-based referrals to the court system, instead addressing school misconduct immediately and effectively when and where it happens. In 2004, Juvenile Court Judge Steven Teske of Georgia developed one such model, in which school officials, local law enforcement, and others signed on to a cooperative agreement. The agreement provides, among other things, that "misdemeanor delinquent acts," like disrupting school and disorderly conduct do not result in the filing of a court complaint unless the student commits a third or subsequent similar offense during the school year, and the principal conducts a review of the student's behavior plan. Youth first receive warnings and after a second offense, they are referred to mediation or school conflict training programs. Elementary students cannot be referred to law enforcement for "misdemeanor delinquent acts" at all. Teske's program reports an 83% reduction in school referrals to the justice system.<sup>150</sup> It also reports another significant outcome: a 24% increase in graduation rates.<sup>151</sup> Two other states that have adopted similar programs—commonly referred to as school-justice partnerships—have experienced similar

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<sup>145</sup> Comments of Judge Brown, Committee Meeting Dec. 11, 2015; Comments of Police Chief Palombo, Committee Meeting Dec. 11, 2015.

<sup>146</sup> Comments of Judge Brown, Committee Meeting Dec. 11, 2015.

<sup>147</sup> Presentation by Deputy Commissioner William Lassiter, Committee Meeting Dec. 11, 2015, <http://nccalj.org/wp-content/uploads/2015/12/JJ-Trends-SPAC-2015.pdf>.

<sup>148</sup> See, e.g., TERI DEAL ET AL., NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, SCHOOL PATHWAYS TO THE JUVENILE JUSTICE SYSTEM PROJECT: A PRACTICE GUIDE 1 (2014), [http://www.ncjfcj.org/sites/default/files/NCJFCJ\\_SchoolPathwaysGuide\\_Final2.pdf](http://www.ncjfcj.org/sites/default/files/NCJFCJ_SchoolPathwaysGuide_Final2.pdf).

<sup>149</sup> *Id.*

<sup>150</sup> Steven Teske, *States Should Mandate School-Justice Partnership to End Violence Against Our Children*, JUVENILE JUSTICE INFORMATION EXCHANGE (Dec. 8, 2015), <http://jjiie.org/states-should-mandate-school-justice-partnership-to-end-violence-against-our-children/163156/>.

<sup>151</sup> *Id.*

results.<sup>152</sup> In fact, Connecticut has enacted a state law requiring all school systems that use law enforcement officers on campus to create school-justice partnerships.<sup>153</sup>

North Carolina already has one such program in place. Modeled on Teske's program, Chief District Court Judge J.H. Corpening II, has implemented a school-justice partnership program in Wilmington, North Carolina. Like Teske's program, the Wilmington program requires that official responses to school-based disciplinary issues conform to what science and social science teaches is effective for juveniles.<sup>154</sup> The program was crafted with participation from local law enforcement, prosecutors, court counselors, the chief public defender, school officials, and community members. The group developed an approach that deals with school discipline in a consistent and positive way through a graduated discipline model.<sup>155</sup> The goal is for the schools to take a greater role in addressing misbehavior when and where it happens, rather than referring minor matters to the court system, with its delayed response. Officials in North Carolina's Juvenile Justice system view the program as a "huge step forward" with respect to reducing school-based referrals.<sup>156</sup> Because Wilmington's program is so new, data on its effectiveness is not available. However, based on data from other jurisdictions, statewide implementation of school-justice partnerships based on the Georgia model promises to reduce referrals to the juvenile system and thus mitigate costs associated with raising the juvenile age.

### **North Carolina Department of Juvenile Justice Stands Ready to Implement Raise the Age Legislation**

Increasing the juvenile age will increase the number of juveniles in the juvenile justice system. Notwithstanding this, the North Carolina Division of Adult Correction and Juvenile Justice supports this recommendation and stands ready to implement raise the age legislation.<sup>157</sup> Speaking to the Committee, Commissioner Guice indicated that he was very supportive of raising the age and emphasized that North Carolina already has done the studies and developed the data on the issue. Additionally, he noted that other states have led the way and their experience with raise the age legislation suggests that "there is no reason why we can't address this in North Carolina." In fact, he urged the Committee, not to "back away from doing what is right" on this issue.

### **Every North Carolina Study Has Made the Same Recommendation: Raise the Age**

In recent history, General Assembly has commissioned two studies of raise the age legislation. Both came to the same conclusion: North Carolina should join the majority of states in the nation and raise the juvenile age. First, in 2007, pursuant to legislation passed by the General Assembly, the North Carolina Sentencing and Policy Advisory Commission submitted its Report on Study of Youthful Offenders recommending, in part, that North Carolina increase the age of juvenile jurisdiction to 18.<sup>158</sup> Second, in 2011, pursuant to legislation passed by the General

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<sup>152</sup> *Id.* (early results from Texas showed a 27% drop in referrals; two sites in Connecticut experienced reductions of 59% and 87% respectively).

<sup>153</sup> *Id.* (reporting that "Connecticut passed Public Law 15-168 to require all school systems using law enforcement on campus to create a school-justice partnership that limits the role of police in disciplinary matters and requires a graduated response system in lieu of arrests").

<sup>154</sup> Comments of Judge Corpening, Committee Meeting Dec. 11, 2015 (describing Wilmington's program).

<sup>155</sup> *Id.*

<sup>156</sup> Comments of Deputy Commissioner William Lassiter, Committee Meeting Dec. 11, 2015.

<sup>157</sup> Comments of Commissioner W. David Guice, Division of Adult Correction and Juvenile Justice, Committee Meeting Dec. 11, 2015; Comments of Deputy Commissioner William Lassiter, Committee Meeting Dec. 11, 2015.

<sup>158</sup> 2007 SENTENCING COMMISSION REPORT, *supra* note 3.

Assembly, the Youth Accountability Task Force submitted its final report to the General Assembly recommending, among other things, moving youthful offenders to the juvenile justice system.<sup>159</sup> Additionally, in December 2012, the Legislative Research Commission submitted its report to the 2013 General Assembly, supporting a raise the age proposal.<sup>160</sup>

### **Bi-Partisan, Public & Law Enforcement Support for Raise the Age**

Bills to raise the juvenile age have been introduced and supported in North Carolina by lawmakers from both sides of the aisle.<sup>161</sup> Raise the age proposals and related efforts to remove non-violent juveniles from the adult criminal justice system have enjoyed bipartisan support around the nation,<sup>162</sup> as well as support from groups such as ALEC (the American Legislative Exchange Council).<sup>163</sup>

Public support for raise the age in North Carolina is high. In August 2016, the Commission held public hearings to receive comments on its interim reports, including the Committee's raise the age proposal. 423 people attended those hearings, with 131 offering oral comments.<sup>164</sup> An additional 208 people submitted written comments to the Commission, as did various organizations, such as the NC Conference of Superior Court Judges and the NC Magistrates Association.<sup>165</sup> 96% of the comments supported the Committee's raise the age proposal.<sup>166</sup>

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<sup>159</sup> YOUTH ACCOUNTABILITY TASK FORCE REPORT, *supra* note 3.

<sup>160</sup> LEGISLATIVE RESEARCH COMMISSION, AGE OF JUVENILE OFFENDERS COMMITTEE, REPORT TO THE 2013 GENERAL ASSEMBLY OF NORTH CAROLINA 12 (Dec., 2012) [hereinafter AGE OF JUVENILE OFFENDERS COMMITTEE REPORT] (supporting S 434 after consideration of identified issues), [http://www.ncleg.net/documentsites/committees/lrc/2013 Committee Reports to LRC/Age of Juvenile Offenders LRC Report.pdf](http://www.ncleg.net/documentsites/committees/lrc/2013%20Committee%20Reports%20to%20LRC/Age%20of%20Juvenile%20Offenders%20LRC%20Report.pdf).

In fact, efforts to raise North Carolina's juvenile age to 18 date back at least until the 1950s. NC JUVENILE JUSTICE: A HISTORY, *supra* note 1, at 17-18 (in 1955, the Commission on Juvenile Courts and Correctional Institutions recommended that the age limit should be so increased); *id.* at 21-22 (in 1956, the preliminary report of the Governor's Youth Service Commission made the same recommendation); *id.* at 23-24 (a 1956 study by the National Probation and Parole Association noted "the unreasonableness of classifying a sixteen or seventeen year-old youngster as an adult in connection with offenses against society" (quotation omitted)).

<sup>161</sup> See, e.g., HB 399, 2015 Session of the N.C. General Assembly (primary sponsors: Reps. Avila (R), Farmer-Butterfield (D), Jordan (R), and D. Hall (D)), <http://www.ncga.state.nc.us/gascripts/BillLookup/BillLookup.pl?Session=2015&BillID=h399&submitButton=Go>; HB 725, 2013 Session of the N.C. General Assembly (primary sponsors: Reps. Avila (R), Moffitt (R), Mobley (D), and D. Hall (D)), <http://www.ncga.state.nc.us/gascripts/BillLookup/BillLookup.pl?Session=2013&BillID=h725&submitButton=Go>; AGE OF JUVENILE OFFENDERS COMMITTEE REPORT, *supra* note 160, at 12 (supporting S 434 after consideration of identified issues).

<sup>162</sup> See, e.g., Gingrich, *supra* note 58. In 2014, U.S. Senators Rand Paul (R-KY) and Cory Booker (D-NJ) introduced the REDEEM (Record Expungement Designed to Enhance Employment) Act, encouraging states to increase the age of criminal responsibility to 18.

<sup>163</sup> *Resolution in Support of Presumptively Treating 17 Year-olds in the Juvenile Justice System*, American Legislative Exchange Council (Dec. 2015), <https://www.alec.org/model-policy/resolution-to-treat-17-year-olds-as-juveniles/> (last visited Oct. 25, 2016).

<sup>164</sup> Emily Portner, Summary of Public Comments on Interim Report 1 (2016) (on file with Commission staff).

<sup>165</sup> *Id.*

<sup>166</sup> *Id.* at 2.

Support for the Committee's proposal came from a broad range of groups, including the John Locke Foundation<sup>167</sup> and Conservatives for Criminal Justice Reform.<sup>168</sup>

The Committee's proposal already has received historic law enforcement support. In August 2016, the North Carolina Division of the Police Benevolent Association, the state's largest law enforcement association, issued a press release supporting the Committee's raise the age proposal.<sup>169</sup>

### **A Balanced, Evidence-Based Proposal**

This proposal includes more than a raise the age recommendation; it includes ten other provisions, most of which were designed to address important, legitimate concerns raised by law enforcement and prosecutors, such as the need to provide more information to officers about juveniles with whom they interact and ensuring that prosecutors have access to information about an individual's juvenile record.<sup>170</sup> Although other proposals have been made to raise the age in North Carolina, no other proposal has been as attentive as this one to the needs, interests, and concerns of those who have historically opposed this reform.<sup>171</sup>

Although the Committee sought to accommodate all concerns, it declined to adopt a position raised by the Conference of District Attorneys: that the District Attorney be given sole authority to decide whether juveniles aged 13-17 and charged with Class A-E felonies would be prosecuted in adult court, without *any* judicial review. The original rationale for this proposal was that under current procedures, prosecutors are unable to successfully transfer juveniles charged with Class A-E felonies to adult court. Under the existing transfer provision, the district court may transfer jurisdiction over a juvenile who is at least 13 years of age and is alleged to have committed a felony to superior court.<sup>172</sup> A motion to transfer may be made by the prosecutor, the juvenile's attorney, or the court.<sup>173</sup> If the juvenile is alleged to have committed a Class A felony

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<sup>167</sup> *Statement Regarding the NCCALJ's "Juvenile Reinvestment" Report*, by Jon Guze, Director of Legal Studies, John Locke Foundation (on file with Commission staff).

<sup>168</sup> Email from Tarrah Callahan, Conservatives for Criminal Justice Reform to Will Robinson, NCCALJ Executive Director (Sept. 7, 2016) (on file with Commission staff).

<sup>169</sup> Press Release, NC Police Benevolent Association, North Carolina's Largest Law Enforcement Association Supports Raising the Juvenile Age (August 30, 2016), [https://www.sspba.org/gen/articles/North\\_Carolina\\_s\\_Largest\\_Law\\_Enforcement\\_Association\\_supports\\_raising\\_the\\_juvenile\\_age\\_639.jsp](https://www.sspba.org/gen/articles/North_Carolina_s_Largest_Law_Enforcement_Association_supports_raising_the_juvenile_age_639.jsp) (last visited Sept. 19, 2016).

<sup>170</sup> *See supra* pp. 2-4.

<sup>171</sup> Committee membership included the President of the N.C. Sheriff's Association, the President of the N.C. Police Benevolent Association and the then-President of the N.C. Conference of District Attorneys. *See infra* pp. 23-24. Another elected District Attorney served on the Subcommittee on Juvenile Age and the Executive Vice President & General Counsel of the N.C. Sheriff's Association was actively involved in all meetings and conversations. *Id.* The Committee Chair, Committee Reporter, and the Deputy Commissioner of Juvenile Justice presented the Committee's proposal and received feedback on it at the Sheriff's Association conference and numerous meetings and conversations occurred with that group's leadership. Outreach was made to the N.C. Police Chiefs' Association, whose leadership attended meetings, discussed the proposal with the Committee Chair and Reporter, heard from the Committee Reporter and Deputy Commissioner at a conference, and submitted feedback to the Committee. The Committee Reporter presented the proposal to the Executive Board of the N.C. Police Benevolent Association and responded to inquiries and feedback thereafter. Finally, the Committee Reporter prepared a seven-page briefing paper for law enforcement officers addressing common issues or concerns raised about raise the age. These efforts at engagement contributed to the balanced nature of this proposal.

<sup>172</sup> G.S. 7B-2200.

<sup>173</sup> *Id.*

at age 13 or older, jurisdiction *must* be transferred to superior court if probable cause is found in juvenile court.<sup>174</sup> The Committee's proposal recommends maintaining the existing procedure and providing that Class A-E felony charges against 16- and 17-year olds will be automatically transferred to superior court after a finding of probable cause or by indictment.<sup>175</sup> The Committee found that the evidence did not support the prosecutors' request for sole discretion to decide whether 13-17 year olds would be prosecuted in adult court. Specifically, the Division of Juvenile Justice reports that for the 12-year period from 2004-2016:

- Transfer was sought for 487 13-, 14-, and 15-year-olds charged with Class A-E felonies. Of those, 66% were transferred to adult court; 34% were retained in juvenile court. Ninety-one of the juveniles transferred were subject to mandatory transfer for Class A felonies. Removing this number from the data set reveals that 232 discretionary transfer motions were granted, a 58% prosecution success rate.
- Focusing on 14-year olds, transfer was sought for 101 juveniles charged with Class A-E felonies. Of those, 57% were transferred to adult court; 43% were retained in juvenile court. Twenty-four of the juveniles transferred were subject to mandatory transfer for Class A felonies. Removing this number from the data set reveals that 34 discretionary transfer motions were granted, a 44% prosecution success rate.
- Focusing on 15-year-olds, transfer was sought for 341 juveniles charged with Class A-E felonies. Of those, 71% were transferred to adult court; 29% were retained in juvenile court. Sixty-one of the juveniles transferred were subject to the existing mandatory transfer for Class A felonies. Removing this number from the data set reveals that 182 discretionary transfer motions were granted, a 65% prosecution success rate.

Thus, long-term statewide data does not support the suggestion that the prosecution is unable to obtain transfer of 13-, 14-, and 15-year-old juveniles charged with A-E felonies to adult court. After this data was presented, it was suggested that the problem was isolated and judge-specific. The evidence, however, does not support that suggestion. Data from the Division of Juvenile Justice's NC-JOIN database reveals that for the 12-year period from 2004-2016, five judges denied all transfers brought to them. None of those judges, however, had more than 8 juveniles presented (the number of juveniles presented to these five judges were respectively: 8; 7; 7; 6; 6). At the other end of the spectrum four judges granted all transfers brought to them for a much larger population of juveniles (the number of juveniles presented to these four judges (and transferred to adult court) were respectively: 50, 42, 29, 24). All other judges had mixed results on transfers for the 2004-2016 period. Thus, if this data is read to suggest an issue with some judges always denying transfer motions it also must be read to suggest an even more significant issue with some judges always granting them.<sup>176</sup>

In formal comments to the Committee, the Conference of District Attorneys offered this explanation for its request: "District Attorneys have the most intimate knowledge of the facts of each case and working with law enforcement, are able to determine when there is significant public safety risk and when the more appropriate venue for a particular juvenile would be adult

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<sup>174</sup> *Id.*

<sup>175</sup> This recommendation was a concession to a position expressed by the prosecutors early in the process. See *supra* note 5.

<sup>176</sup> The Committee's prosecutor member also suggested that the data does not fairly represent the prosecution's experience with transfer because some prosecutors have "given up" trying to transfer cases after experience a high failure rate. This suggestion, however, is inconsistent with the data presented above regarding prosecutor's historical success rate on transfer motions.

court.”<sup>177</sup> It was added that “[t]his is exemplified in the processes of at least 19 other states.”<sup>178</sup> The Committee disagrees with the first point and concludes that justice is best served when a judge—the only neutral party to the proceeding—determines, according to prescribed statutory factors, whether the protection of the public and the juvenile’s needs warrant transfer to adult court, as is done under the current juvenile code.<sup>179</sup> This determination is consistent with a policy decision that the General Assembly already has made: that public safety is best protected by vesting transfer authority with judges. In enacting the existing juvenile code, the General Assembly decided that the code should be interpreted and construed so as to implement several purposes including “protect[ing] the public.”<sup>180</sup> With this purpose in mind, the General Assembly opted to vest transfer authority with judges not prosecutors. Additionally, affording prosecutors—one side in criminal litigation—sole discretion to decide this significant procedural issue conflicts with core concepts of procedural fairness<sup>181</sup> and is unwarranted in light of the evidence presented above. As to the second point raised by the District Attorneys, the National Conference of State Legislatures reports that a national trend in juvenile law includes reforms of transfer, waiver and direct file statutes, “placing decisions about rehabilitation and appropriate treatment in the hands of the juvenile court.”<sup>182</sup>

Although the Committee was open to discuss a variety of alternative procedures that might meet the prosecutors’ concerns, such as a right to appeal a denial of a transfer request, having a superior court judge determine the transfer motion, or a reverse transfer procedure, exploration of these alternatives ceased when it became clear that further discussion would not be productive.

### **Committee & Subcommittee Members & Other Key Participants**

To facilitate its work, the Committee formed a Juvenile Age Subcommittee to prepare draft recommendations for Committee review. Members of the Subcommittee included:

Augustus A. Adams, Committee member and member, N.C. Crime Victims  
Compensation Committee  
Asa Buck III, Committee member and Sheriff Carteret County & Chairman N.C. Sheriffs’  
Association Executive Committee  
Michelle Hall, Executive Director, N.C. Sentencing and Policy & Advisory Commission  
Paul A. Holcombe, Committee member and N.C. District Court Judge  
William Lassiter, Deputy Commissioner for Juvenile Justice, Division of Adult Correction  
and Juvenile Justice, NC Department of Public Safety  
LaToya Powell, Assistant Professor, UNC School of Government  
Diann Seigle, Committee member and Executive Director, Carolina Dispute Settlement  
Services  
James Woodall, District Attorney

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<sup>177</sup> Comments of the Conference of District Attorneys to Will Robinson, Commission Executive Director (Aug. 29, 2016) (relevant portion of these Comments are attached as Appendix A).

<sup>178</sup> *Id.*

<sup>179</sup> See generally G.S. 7B-2203 (judges determines whether transfer will serve “the protection of the public and the needs of the juvenile” and statute delineates factors that the court must consider, including, among other things, the juvenile’s prior record, prior attempts to rehabilitate the juvenile, and the seriousness of the offense).

<sup>180</sup> G.S. 7B-1500 (purposes).

<sup>181</sup> Significantly, one of the core purposes of the juvenile code is to “assure fairness and equity.” *Id.*

<sup>182</sup> SARAH ALICE BROWN, NATIONAL CONFERENCE OF STATE LEGISLATURES, TRENDS IN JUVENILE JUSTICE STATE LEGISLATION 2011-2015, at 4 (2015) (detailing legislative action in various states), [http://www.ncsl.org/documents/cj/Juvenile\\_Justice\\_Trends\\_1.pdf](http://www.ncsl.org/documents/cj/Juvenile_Justice_Trends_1.pdf).

Eric J. Zogry, Juvenile Defender, N.C. Office of the Juvenile Defender

Committee members included:

Augustus A. Adams, N.C. Crime Victims Compensation Committee  
Asa Buck III, Sheriff Carteret County & Chairman N.C. Sheriffs' Association Executive Committee  
Randy Byrd, President, N.C. Police Benevolent Association  
James E. Coleman Jr., Professor, Duke University School of Law  
Kearns Davis, President, N.C. Bar Association  
Paul A. Holcombe, N.C. District Court Judge  
Darrin D. Jordan, lawyer, & Commissioner, N.C. Indigent Defense Commission  
Robert C. Kemp III, Public Defender & Immediate Past President, N.C. Defenders' Association  
Sharon S. McLaurin, Magistrate & Past-President, N.C. Magistrates' Association.  
R. Andrew Murray Jr., District Attorney & Immediate Past President, N.C. Conference of District Attorneys  
Diann Seigle, Executive Director, Carolina Dispute Settlement Services  
Anna Mills Wagoner, Senior Resident Superior Court Judge  
William A. Webb, Commission Co-Chair, Committee Chair & Ret. U.S. Magistrate Judge

Other key participants in the Committee's discussions included:

Edmond W. Caldwell, Jr., Executive Vice President and General Counsel, N.C. Sheriff's Association  
Peg Dorer, Director, N.C. Conference of District Attorneys

This report was prepared by Committee Reporter, Jessica Smith, W.R. Kenan Distinguished Professor, School of Government, UNC-Chapel Hill.



Appendix A: Comments of the Conference of District Attorneys

Conference of District Attorneys  
N O R T H C A R O L I N A

Peg Dorer  
Director

August 29, 2016

P.O. Box 3159  
Cary, NC 27519

Will Robinson  
Executive Director  
North Carolina Commission on the Administration  
Of Law & Justice  
P.O. Box 2448  
Raleigh, NC 27602

919.890.1500  
919.890.1931

Dear Will:

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

**CRIMINAL INVESTIGATION AND ADJUDICATION COMMITTEE**

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

EXECUTIVE COMMITTEE

Scott Thomas  
President

Kimberly Robb  
President Elect

Billy West  
Vice President

Andrew Murray  
Past President

Garry Frank

Mike Miller

Ernie Lee

Lorin Freeman

Pat Nadolski

Jim O'Neill

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

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