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# North Carolina, Juvenile Court Jurisdiction, and the Resistance to Reform

Tamar R Birckhead, *University of North Carolina at Chapel Hill*



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NORTH CAROLINA,  
JUVENILE COURT JURISDICTION,  
AND THE RESISTANCE TO REFORM\*

TAMAR R. BIRCKHEAD\*\*

*North Carolina is the only state in the United States that treats all sixteen- and seventeen-year-olds as adults when they are charged with criminal offenses and then denies them the ability to appeal for return to the juvenile system. Thirty-seven states cap juvenile court jurisdiction at age eighteen, while ten do so at seventeen. In addition, as reflected by international treaties and instruments, many nations of the world consider eighteen to be the most appropriate age for delineating between juvenile and adult court jurisdiction. Not surprisingly, the consequences of North Carolina's scheme for prosecuting minors can be particularly severe. The approximately 26,000 sixteen- and seventeen-year-olds who are convicted each year in North Carolina's criminal court system encounter significant barriers when attempting to secure employment or access higher education. According to empirical research, a less punitive approach to youth crime lowers recidivism rates and better protects public safety. Further, providing intensive probationary supervision and rehabilitation to young offenders, rather than incarcerating them with adults, is consistent with recent findings in the areas of brain development*

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*and adolescent psychology. Nonetheless, resistance to raising the age of juvenile court jurisdiction in North Carolina has been steadfast, with vocal opposition from law enforcement and prosecutors.*

*This Article examines the repeated attempts by advocates and lawmakers to raise the age of juvenile court jurisdiction in North Carolina. Grounded in primary source materials and legislative records, the Article demonstrates that there has been a recurring pattern over the past century: despite the backing of scholars, child welfare experts, and prominent legislators, proposals to extend jurisdiction from age sixteen to ages seventeen or eighteen have been consistently defeated. Although the precise reasons for North Carolina's refusal to join the majority are difficult, if not impossible, to identify, this Article suggests several likely causes: the self-perpetuating claim by opponents of raising the age that an already-underfunded system should not be expanded; the enduring power of the specter of youth violence; and the continued reluctance of the bench and bar to view juvenile court as a critical forum requiring specialization and commitment from its participants, rather than a mere training ground for inexperienced judges and lawyers. Finally, the Article argues that an appreciation and understanding of the historical context should cause lawmakers to revisit the issue with a greater sense of urgency, providing them with the momentum needed to break with the status quo and to raise the age of juvenile court jurisdiction in North Carolina.*

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## INTRODUCTION

North Carolina is the only state in the United States that treats all sixteen- and seventeen-year-olds as adults when they are charged with criminal offenses and then denies them the ability to appeal for return to the juvenile system.<sup>1</sup> While two other states—Connecticut and New York—currently end juvenile court jurisdiction at age sixteen, Connecticut has passed legislation that will extend it to eighteen beginning in 2009.<sup>2</sup> In addition, both states have laws that significantly lessen the otherwise harsh impact of adult prosecution on offenders younger than twenty-one, including statutes that allow for “youthful offender status,” enabling a sentencing judge to defer judgment for offenders younger than twenty-one for a period of intensive supervision and rehabilitative services;<sup>3</sup> “reverse waiver,” a mechanism by which younger juveniles can readily appeal their transfer to adult court;<sup>4</sup> and “blended sentencing,” allowing courts to

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1. See MELANIE KING & LINDA SZYMANSKI, THE NAT'L CTR. FOR JUVENILE JUSTICE, STATE JUVENILE JUSTICE PROFILES (2006), <http://www.ncjj.org/stateprofiles/overviews/upperage.asp> (reporting that only three states in the United States—North Carolina, New York, and Connecticut—end original juvenile court jurisdiction in delinquency matters at age sixteen); see also N.C. GEN. STAT. §§ 7B-2200, 2203 (2007) (delineating North Carolina's laws regarding transfer of jurisdiction from juvenile to superior court for thirteen, fourteen, and fifteen-year-olds); *In re Bunn*, 34 N.C. App. 614, 616, 239 S.E.2d 483, 484 (1977) (holding that the decision to transfer a juvenile case to superior court is solely within the “sound discretion” of the district court judge, the exercise of which discretion is not subject to review “in the absence of a showing of gross abuse”).

2. See 2007 Conn. Pub. Acts 07-4 (raising the age of juvenile court jurisdiction from sixteen to eighteen effective July 1, 2009); see also H. Ted Rubin, *Juvenile or Adult Jurisdiction? Age Changes in the States*, 13 JUV. JUST. UPDATE 1-2, 6 (Dec.-Jan. 2008) (discussing the Connecticut enactment).

3. Connecticut and New York each have several statutes related to youthful offender status. See CONN. GEN. STAT. §§ 54-76b to 76o (2007), amended by 2008 Conn. Legis. Serv. P.A. 08-32 (H.B. 5748) (WEST) (Sections 54-76b, 76c, and 76l have been amended to reflect the 2008 supplement to the general statutes and do not affect substance for the purposes of the article.); N.Y. CRIM. PROC. LAW §§ 720.10 to .20 (2007); CAMPAIGN FOR YOUTH JUSTICE, THE CONSEQUENCES AREN'T MINOR 36 (2007), [http://www.campaignforyouthjustice.org/Downloads/NEWS/National\\_Report\\_consequences.pdf](http://www.campaignforyouthjustice.org/Downloads/NEWS/National_Report_consequences.pdf); see also SAMUEL M. DAVIS, RIGHTS OF JUVENILES: THE JUVENILE JUSTICE SYSTEM app. B at B-4, B-23, & B-24 (2d ed. 2004) (“Chart of Selected State Statutes”).

4. CONN. GEN. STAT. § 46b-127(b) (2007) (“The court sitting for the regular criminal docket may return any such case to the docket for juvenile matters not later than ten working days after the date of the transfer for proceedings in accordance with the provisions of this chapter.”); N.Y. CRIM. PROC. LAW § 180.75 (2007) (allowing for “reverse waiver” or removal of a criminal case to juvenile court under specified circumstances); CAMPAIGN FOR YOUTH JUSTICE, *supra* note 3, at 35 (discussing the availability of reverse waiver in Connecticut).

impose juvenile dispositions concurrent with adult sentences for serious juvenile offenders.<sup>5</sup> North Carolina has no such provisions.<sup>6</sup>

In fact, North Carolina has been in the minority on this issue for decades. In 1946, North Carolina was one of only four states with sixteen as the upper age limit of juvenile court jurisdiction, while the remainder extended jurisdiction up to ages seventeen through twenty-one, with the majority capping it at eighteen.<sup>7</sup> Similarly, in 2007, thirty-seven states capped juvenile court jurisdiction at age eighteen, while ten did so at seventeen, leaving North Carolina in the bottom rung with New York and Connecticut.<sup>8</sup> North Carolina has not only been out of step with the majority of states, but it has been and continues to be at variance with the American Bar Association Standards Relating to Juvenile Delinquency, which recommend eighteen as the upper age limit of juvenile court jurisdiction.<sup>9</sup> In

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5. CONN. GEN. STAT. § 46b-133(c) (2007) (allowing for blended sentencing); CAMPAIGN FOR YOUTH JUSTICE, *supra* note 3, at 36 (discussing the availability of blended sentencing in Connecticut). New York does not have blended sentencing laws. PATRICK GRIFFIN, NAT'L CTR FOR JUVENILE JUSTICE, TRYING & SENTENCING JUVENILES AS ADULTS 3 (2003), available at <http://ncjj.servehttp.com/NCJJWebsite/pdf/transferbulletin.pdf>.

6. See CAMPAIGN FOR YOUTH JUSTICE, *supra* note 3, at 71-73 (discussing the lack of such provisions in North Carolina); Roger Ghatt & Seth Turner, *New Report Highlights the Impact of Incarcerating Youth in Adult Facilities and Strategies for Reform*, SHERIFF MAG. 60, 62 (Winter 2008) (stating that, of the three states to cap juvenile court jurisdiction at sixteen, North Carolina is the only one that lacks an appeals process by which sixteen- and seventeen-year-olds can petition for return to the juvenile court); GRIFFIN, *supra* note 5, at 3; cf. N.C. GEN. STAT. § 7B-2603 (2007) (allowing for immediate appeal of the decision to transfer thirteen, fourteen, and fifteen-year-olds from juvenile to superior court).

7. See WILEY BRITTON SANDERS, JUVENILE COURTS IN NORTH CAROLINA 6 & n.5 (1948) (citing a 1946 chart of juvenile court jurisdictional ages for each state in the United States).

8. See N.C. SENTENCING & POLICY ADVISORY COMM'N, REPORT ON STUDY OF YOUTHFUL OFFENDERS, S.L. 2006-248, 8, app. C.1 (2007), available at [http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/yo\\_finalreporttolegislature.pdf](http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/yo_finalreporttolegislature.pdf) (reporting the age at which an offender enters adult court jurisdiction in each state in the United States).

9. See JOHN M. JUNKER, INST. OF JUDICIAL ADMIN. AM. BAR ASS'N., STANDARDS RELATING TO JUVENILE DELINQUENCY & SANCTIONS 14-17 (1980) ("Subsection A. also limits juvenile court jurisdiction to persons not more than seventeen years old at the time of the alleged offense. Because the rate and degree of maturation is variable among young persons, any upper age limit on juvenile court jurisdiction is bound to be arbitrary. The proposed standard adopts the age limits most commonly contained in existing legislation on the ground that, in the absence of other controlling criteria, uniformity ought to be encouraged."). STEVEN SALTZBURG, CRIMINAL JUSTICE SECTION AM. BAR ASS'N., REPORT TO THE HOUSE OF DELEGATES 1-3 (Feb. 2008) (recommending eighteen as the upper age limit of juvenile court jurisdiction, as this is consistent with the ABA's long history of recognizing that youth under eighteen who are involved in the justice system should be treated differently than those who are eighteen or older).

addition, a recent national poll of likely voters revealed that a clear majority of the public believes that putting youth under eighteen in adult correctional facilities makes them more likely to commit future crime; that the decision to try youth under eighteen in adult courts should be made on a case-by-case basis; and that spending on rehabilitative services and treatment for youth, rather than incarcerating them with adults, will ultimately save tax dollars.<sup>10</sup>

On the international front, various treaties and instruments confirm that many nations consider eighteen to be the most appropriate age for delineating between juvenile and adult court jurisdiction.<sup>11</sup> For instance, the United Nations Convention on the Rights of the Child, signed by the United States but not ratified, defines “child” as meaning “every human being below the age of eighteen years.”<sup>12</sup> Similarly, while rules of the United Nations related to juvenile justice concede that age limits for juvenile court will depend on the “economic, social, political, cultural and legal systems” of each member state,<sup>13</sup> these instruments also contain aspirational language suggesting that age eighteen *should* be the dividing line between juvenile and adult jurisdiction.<sup>14</sup> Further, in countries as diverse as Belgium,<sup>15</sup> Canada,<sup>16</sup> China,<sup>17</sup> the Czech Republic,<sup>18</sup>

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10. BARRY KRISBERG & SUSAN MARCHIONNA, NAT'L COUNCIL ON CRIME & DELINQUENCY, ATTITUDES OF US VOTERS TOWARDS YOUTH CRIME AND THE JUSTICE SYSTEM, 2–6 (Feb 2007), available at [http://www.nccd-crc.org/nccd/pubs/zogby\\_feb07.pdf](http://www.nccd-crc.org/nccd/pubs/zogby_feb07.pdf); see also Ghatt & Turner, *supra* note 6, at 64–65 (citing the 2007 poll which was released by the National Council on Crime and Delinquency and conducted by Zogby International).

11. See *infra* notes 12–25 and accompanying text.

12. United Nations Convention on the Rights of the Child, G.A. Res. 44/25, Art. 1, Annex, at 167, U.N. GAOR 44<sup>th</sup> Sess., Supp. No 49, U.N. Doc. A/44/49 (Nov. 20, 1989) (entered into force Sept. 2, 1990) (signed by the United States on Feb. 16, 1995, but not ratified).

13. See, e.g., United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), G.A. Res. 40/33, R. 2.2 Comment., Annex, at 207, U.N. GAOR 40<sup>th</sup> Sess., Supp. No. 53, U.N. Doc. A/40/53 (Nov. 29, 1985) (acknowledging that there may be a wide variety of ages coming under the definition of “juvenile,” ranging from seven years to eighteen years or above).

14. See, e.g., United Nations Rules for the Protection of Juveniles Deprived of their Liberty, G.A. Res. 45/113, Annex, at 205, ¶ II, U.N. GAOR 45<sup>th</sup> Sess., Supp. No. 49A, U.N. Doc. A/45/49 (Dec. 14, 1990) (“A juvenile is every person under the age of 18.”).

15. See Josine Junger-Tas, *Trends in International Juvenile Justice: What Conclusions Can be Drawn?*, in INTERNATIONAL HANDBOOK OF JUVENILE JUSTICE 505, 516 (Josine Junger-Tas & Scott H. Decker eds., 2006).

16. See Maureen McGuire, *An Act to Amend the Young Offenders Act and the Criminal Code—Getting Tougher?*, 39 CAN. J. CRIMINOLOGY 186 (1997).

17. See CLEMENS BARTOLLAS & STUART J. MILLER, JUVENILE JUSTICE IN AMERICA 404 (3d ed. 2001) (discussing the juvenile justice system in China).

18. See Junger-Tas, *supra* note 15, at 519.

France,<sup>19</sup> Northern Ireland,<sup>20</sup> Scandinavia,<sup>21</sup> South Africa,<sup>22</sup> Switzerland,<sup>23</sup> and the United Kingdom,<sup>24</sup> the upper age limit for the jurisdiction of juvenile or youth court is eighteen, while several other countries—including Austria, Germany, Lithuania, and Spain—place *all offenders* younger than twenty-one under the jurisdiction of the juvenile court.<sup>25</sup>

Given the near unanimity of policymakers at the national and international levels on this issue, it is not surprising that advocates have advanced compelling arguments for raising the age in North Carolina, a state many consider one of the more “progressive” in the South.<sup>26</sup> Principal among these arguments is that the collateral consequences of a criminal conviction can be severe, with studies documenting that sixteen- and seventeen-year-olds with criminal records encounter significant barriers to employment and higher education.<sup>27</sup> Further, empirical research shows that a less punitive approach to youth crime lowers recidivism rates and better protects public safety.<sup>28</sup> In addition, providing intensive probationary supervision and rehabilitation to young offenders, rather than incarcerating them with adults, is consistent with recent findings in the areas of brain development and adolescent psychology.<sup>29</sup>

Nonetheless, resistance to raising the age of juvenile court jurisdiction in North Carolina has been steadfast, with legislative and archival research revealing a recurring pattern: while advocates and policymakers have long understood that juvenile court *should* include all offenders under age eighteen, their reform efforts have

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19. *See id.* at 515–16.

20. *Id.* at 515.

21. *Id.* at 520–21 (stating that, while Denmark, Sweden, Norway, and Finland do not have a separate juvenile justice system, they have measures specially addressed to offenders aged fifteen through seventeen that “result in a more lenient outcome for this age group”).

22. *See* BARTOLLAS & MILLER, *supra* note 17, at 401 (discussing the juvenile justice system in South Africa).

23. *See* Junger-Tas, *supra* note 15, at 518.

24. *See id.* at 513.

25. *Id.* at 516.

26. *See, e.g.*, Peter Applebome, *In North Carolina, the New South Rubs Uneasily with the Old Ways*, N.Y. TIMES, July 2, 1990, at A1 (characterizing North Carolina as “the most progressive state in the South”); Carol Byrne Hall, *Nobody is Neutral About the Senator*, NEWS & OBSERVER (Raleigh, N.C.), Aug. 23, 2001, at 12A (stating that North Carolina has “long been viewed as one of the most progressive Southern states”).

27. *See infra* notes 52–72 and accompanying text.

28. *See infra* notes 73–87 and accompanying text.

29. *See infra* notes 88–97 and accompanying text.

consistently been defeated.<sup>30</sup> In 1919, for instance, legislation was passed to provide for a statewide juvenile court system with jurisdiction over children aged eighteen and younger.<sup>31</sup> The legislation, entitled “The Juvenile Court Statute of 1919,” was adopted as presented, except for one notable revision: juvenile court jurisdiction would end once a child reached age sixteen.<sup>32</sup> While there is little direct explanation for this eleventh-hour shift in policy, given that no state monies were appropriated for implementation, the answer appears to lie in the refusal of lawmakers to endorse a system that lacked necessary funding, personnel, and resources from the state.<sup>33</sup> This same pattern—wherein well-considered proposals to extend the age of juvenile court jurisdiction to eighteen have consistently failed to bring about change—has recurred every two or three decades over the past hundred years.<sup>34</sup>

This Article examines the repeated attempts by advocates and lawmakers to raise the age of juvenile court jurisdiction in North Carolina. Part I establishes that the stakes for North Carolina are high, as tens of thousands of sixteen- and seventeen-year-olds are convicted each year in the state’s criminal courts. The first Section demonstrates that young people who are convicted encounter significant barriers when attempting to secure jobs or gain access to higher education. The second Section establishes, based on empirical research, that a less punitive approach to youth crime lowers recidivism rates and better protects public safety. The third Section asserts that providing intensive probationary supervision and rehabilitation to young offenders, rather than incarcerating them with adults, is consistent with recent findings in the areas of brain development and adolescent psychology.

Part II considers the nature of the opposition to raise the age, demonstrating that it comes from a number of different sources and directions—none of which would have likely been successful on its

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30. See generally BETTY GENE ALLEY & JOHN THOMAS WILSON, NORTH CAROLINA JUVENILE JUSTICE SYSTEM: A HISTORY, 1868–1993 (1994) (discussing the history of juvenile justice in North Carolina and the repeated, failed attempts to raise the age of juvenile court jurisdiction).

31. *Id.* at 4; see also Law of March 3, 1919, Ch. 97, 1919 N.C. Sess. Laws 243; MASON P. THOMAS, JUVENILE CORRECTIONS: A BRIEF HISTORY; AND JUVENILE JURISDICTION: NORTH CAROLINA’S LAWS AND RELATED CASES 5–10 (1972).

32. See ALLEY & WILSON, *supra* note 30, at 4–5; see also *infra* notes 143–45 and accompanying text (discussing the Juvenile Court Statute of 1919).

33. See ALLEY & WILSON, *supra* note 30 at 4–5.

34. *Id.* at 18, 22–25, 28, 40, 46; see also *infra* Part III (discussing the pattern whereby legislative proposals to raise the age of juvenile court jurisdiction have been put forward and rejected at regular intervals since 1915).



own but together have checked the expansion of juvenile court jurisdiction. The first Section examines the apparent lack of public support for full funding of the state's juvenile courts and hence the repeated refusal of the North Carolina General Assembly to appropriate the monies needed to extend jurisdiction. The second Section discusses the objections expressed by police and prosecutors, from the assertion that "coddling" sixteen- and seventeen-year-old offenders in juvenile court will send the wrong message and increase crime rates, to the claim that applying the due process protections of the Juvenile Code to sixteen- and seventeen-year-olds will place an undue burden upon prosecuting attorneys.

Part III documents the recurring defeat of proposals to raise the age, despite the backing of scholars, child welfare experts, and prominent lawmakers. The first Section examines the establishment of a statewide system of juvenile courts during the 1920s and '30s, and the opposition of various constituencies, including county administrators who were unwilling to provide adequate funding for court personnel and judges who resisted the court's emphasis on rehabilitation rather than punishment. The second Section examines the post-World War II years during which a diverse collection of advocates advanced compelling arguments to raise the age, all of which were ultimately rejected. The third Section demonstrates that resistance to raising the age has continued to the present day despite organized efforts and reasoned advocacy, leaving North Carolina—in some respects—with the harshest juvenile court laws in the United States.<sup>35</sup>

Although the precise reasons for North Carolina's refusal to join the majority are difficult, if not impossible, to identify, Part IV suggests several likely causes: the self-perpetuating claim by opponents of raising the age that an already-underfunded system should not be expanded; the enduring power of the specter of youth violence; and the continued reluctance of the bench and bar to view juvenile court as a critical forum requiring specialization and commitment from its participants, rather than a mere training ground for inexperienced judges and lawyers. Finally, the Article argues that an appreciation and understanding of the historical context should

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35. See Shannon Peluso, *House Considers Juvenile Crimes Bill*, News 14 Carolina, July 14, 2007, <http://news14.com/Default.aspx?ArID=584826> (last visited Aug. 28, 2008) (reporting that N.C. Rep. Alice Bordsen, a sponsor of a bill to allow sixteen- and seventeen-year-old first-time nonviolent offenders to expunge their records, stated that, even if the bill did pass, North Carolina would still have "the harshest laws for juvenile offenders" in the United States).

cause lawmakers to revisit the issue with a greater sense of urgency, providing them with the momentum needed to break with the status quo and to raise the age of juvenile court jurisdiction in North Carolina.

### I. WHAT IS AT STAKE?

The question of where to set the upper age limit of juvenile court jurisdiction raises many broader issues. Among these are the definitions of child, juvenile, and adult;<sup>36</sup> the appropriate role of the state vis-à-vis children and families;<sup>37</sup> and the extent to which the juvenile court's emphasis should be on treatment and rehabilitation rather than punishment.<sup>38</sup> The question also touches on more fundamental concerns, such as whether a separate juvenile justice system might harm the very population it was intended to serve,<sup>39</sup> and whether it is futile from a developmental perspective to set arbitrary age boundaries that fail to account for variations in children's culpability.<sup>40</sup> While much has been written on each of these topics, there has been little if any legal scholarship on juvenile court age

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36. See, e.g., Abbe Smith, *They Dream of Growing Older: On Kids and Crime*, 36 B.C. L. REV. 953, 1018–21 (1995) (discussing legal definitions of juvenile, adult, and child, and the problems of drawing jurisdictional lines).

37. See, e.g., Maxine Eichner, *Who Should Control Children's Education?: Parents, Children, and the State*, 75 U. CIN. L. REV. 1339, 1344–46 (2007) (discussing, in the context of public education, the legitimate and potentially conflicting claims of the majority, parents, and children).

38. See, e.g., Chauncey E. Brummer, *Extended Juvenile Jurisdiction: The Best of Both Worlds?*, 54 ARK. L. REV. 777 (2002) (examining the practices of extended juvenile jurisdiction and blended sentencing, and arguing that together they would create a hybrid system of juvenile justice, incorporating both rehabilitation and punishment); Barry C. Feld, *The Juvenile Court Meets the Principle of Offense: Punishment, Treatment, and the Difference It Makes*, 68 B.U. L. REV. 821 (1988) (analyzing the changing sentencing practices in juvenile court, and arguing that the shift in emphasis from treatment to punishment has led to the substantive and procedural criminalization of the juvenile court).

39. See, e.g., Barry C. Feld, *Juvenile and Criminal Justice Systems' Responses to Youth Violence*, in YOUTH VIOLENCE 189, 243–50 (Mark H. Moore & Michael Tonry eds., 1998) (advocating for an integrated criminal justice system that provides young offenders full due process protections as well as automatic sentence reductions because of the diminished responsibility and immaturity of youth); Barry C. Feld, *Abolish the Juvenile Court: Youthfulness, Criminal Responsibility, and Sentencing Policy*, 88 J. CRIM. L. & CRIMINOLOGY 68, 96–102, 113–21 (1998) (arguing that, because juvenile courts engage in "criminal social control," states should abolish them, sentence young offenders in a unified system, and formally recognize youthfulness as a mitigating factor); see also Junger-Tas, *supra* note 15, at 509–10 (citing Feld as a criminologist who has argued for a unified criminal justice system based on the fact that young people receive harsher and more punitive treatment in the adult system than in the juvenile system).

40. See Feld, *supra* note 39, at 121–23; Junger-Tas, *supra* note 15, at 510.

jurisdiction in North Carolina or on the state's juvenile justice system in general.<sup>41</sup>

Research confirms that raising the age of juvenile court jurisdiction in North Carolina will affect many young people. According to statistics for the most recent year available, approximately 66,000 sixteen- and seventeen-year-olds were processed in the adult criminal court system.<sup>42</sup> Of those, 26,000 were convicted, nearly half of whom were sixteen-year-olds.<sup>43</sup> These figures, however, do not fully reflect the total number of minors who enter the criminal justice system each year or the number convicted, as North Carolina also allows juveniles as young as thirteen who are charged with felonies to be transferred to superior court for trial and sentencing as adults.<sup>44</sup> In fact, beginning in 1919, fourteen- and fifteen-year-olds initially charged in juvenile court with felonies could be transferred to superior court.<sup>45</sup> Since that time, transfer to adult court has been mandatory for some of the state's most serious felonies.<sup>46</sup> In 1994, the minimum age of transfer was reduced from

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41. A Lexis search of law reviews and journals located only a single piece of legal scholarship focusing on juvenile justice law and policy in North Carolina. See Mason P. Thomas, Jr., *Juvenile Justice in Transition—A New Juvenile Code for North Carolina*, 16 WAKE FOREST L. REV. 1 (1980) [hereinafter Thomas, *Juvenile Justice*]. The same scholar also authored an article on the history and development of reforms designed to protect against child abuse and neglect in North Carolina. Mason P. Thomas, Jr., *Child Abuse and Neglect Part II: Historical Overview, Legal Matrix and Social Perspectives on North Carolina*, 54 N.C. L. REV. 743 (1976).

42. See N.C. SENTENCING & POLICY ADVISORY COMM'N, *supra* note 8, at 38, app. D (reporting the numbers of juvenile and youthful (sixteen- and seventeen-year-old) offenders processed in the North Carolina court system from July to December 2004). For illustrative purposes, these numbers have been doubled to provide approximate figures for a twelve-month period.

43. *Id.*

44. See N.C. GEN. STAT. § 7B-2200 (2007).

45. See Law of March 3, 1919, ch. 97, § 9(f), 1919 N.C. Sess. Laws 247 (current version at N.C. GEN. STAT. § 7B-2200 (2007)). Felonies under North Carolina state law include the relatively minor offenses of larceny of a dog, regardless of the value of the animal taken (N.C. GEN. STAT. § 14-81(a1) (2007)), and larceny of pine needles or pine straw (N.C. GEN. STAT. § 14-79.1 (2007)).

46. In 1919, transfer was mandatory for felonies that allowed for punishment in excess of ten years in prison. Law of March 3, 1919, ch. 97, § 9 (f), 1919 N.C. Sess. Laws 247. In 1969, this law was amended to require automatic transfer for felonies that constituted "capital offenses" after a finding of probable cause. N.C. GEN. STAT. § 7A-280 (1969). In 1992, the law was again amended to require automatic transfer only for "Class A" felonies, or first-degree murder, after a probable cause finding. N.C. GEN. STAT. § 7A-608 (1992). Current law requires automatic transfer of juveniles thirteen years of age or older in first-degree murder cases after a finding of probable cause, and a sentence of life in prison without the possibility of parole must be imposed upon conviction. N.C. GEN. STAT. § 7B-2200 (2007) ("If the alleged felony constitutes a Class A felony and the court finds probable cause, the court shall transfer the case to the superior court for trial as in the case

fourteen to thirteen, giving North Carolina judges the discretion to transfer offenders as young as thirteen from juvenile to superior court for any felony crime.<sup>47</sup> After a youth is transferred to and convicted in superior court, she must be prosecuted as an adult for any subsequent criminal charge, regardless of how minor.<sup>48</sup> Once juveniles are tried and convicted in superior court, they must serve their sentences in adult correctional facilities.<sup>49</sup>

Statistics show that approximately twenty-five children aged thirteen through fifteen are transferred to superior court in North Carolina each year.<sup>50</sup> While raising the age would not necessarily

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of adults.”); § 14-17 (“[Murder perpetrated by these specified means] shall be deemed to be murder in the first degree, a Class A felony, and . . . any such person who was under 18 years of age at the time of the murder shall be punished with imprisonment in the State’s prison for life without parole.”).

47. N.C. GEN. STAT. § 7A-608 (1994) (“The court after notice, hearing, and a finding of probable cause may transfer jurisdiction over a juvenile to superior court if the juvenile was thirteen years of age or older at the time the juvenile allegedly committed an offense that would be a felony if committed by an adult.”) (current version at N.C. GEN. STAT. § 7B-2200 (2007)); *see also infra* notes 214–21 and accompanying text (discussing the passage of the law that lowered the age of juvenile transfer from fourteen to thirteen).

48. N.C. GEN. STAT. § 7B-1604(b) (2007) (“A juvenile who is transferred to and convicted in superior court shall be prosecuted as an adult for any criminal offense the juvenile commits after the superior court conviction.”).

49. N.C. GEN. STAT. § 7B-2204 (2007) (“Should the juvenile be found guilty, or enter a plea of guilty or no contest to a criminal offense in superior court and receive an active sentence, then immediate transfer to the Department of Correction shall be ordered . . . The juvenile may not be detained in a [juvenile] detention facility pending transfer to the Department of Correction.”). N.C. Department of Correction policy designates certain facilities for youthful inmates (defined as between ages thirteen and twenty-five); as of 2006, there were five facilities that housed these youth. N.C. SENTENCING & POLICY ADVISORY COMM’N, *supra* note 8, at 6. Male felons and misdemeanants under age nineteen are processed and incarcerated at Western Youth Institution. *Id.* Male felons between nineteen and twenty-five are incarcerated in facilities separate from those housing male felons who are twenty-five and older. *Id.* Male misdemeanants between nineteen and twenty-five may be housed in the same minimum custody prisons as adult male misdemeanants. *Id.* Female youthful offenders (ages thirteen to twenty-five) are housed at the North Carolina Correctional Institution for Women. *Id.* *But see* N.C. GEN. STAT. § 7B-2517 (2007) (allowing the governor to transfer juveniles convicted in superior court from adult correctional facilities to juvenile detention facilities as long as such placements are deemed “feasible”).

50. N.C. SENTENCING & POLICY ADVISORY COMM’N, *supra* note 8, at 23, 27 (finding that in the fiscal year 2004–05, twenty-five offenders younger than sixteen were transferred from the juvenile courts for trial as adults and were convicted of felonies, while one was transferred and convicted of a misdemeanor); *see also* e-mail from Stan Clarkson, of the North Carolina Department of Juvenile Justice and Delinquency Prevention, to author (Apr. 21, 2008) (on file with the North Carolina Law Review) (stating that for fiscal year 2006–07, forty-one juveniles were transferred to superior court from juvenile court for crimes committed before age sixteen). The statistics showed that twenty-four of those transferred in 2006–07 were between thirteen and seventeen at the time of transfer, while seven were between the ages of eighteen and thirty-one. *Id.*

impact current North Carolina law that allows for transfer of juveniles to adult court, many of the arguments for extending juvenile court jurisdiction apply equally to this cohort. Further, future legislative debate on this issue will likely include reconsideration of the laws regarding transfer.<sup>51</sup> Thus, because all sixteen- and seventeen-year-olds are automatically tried and sentenced as adults and because juveniles as young as thirteen *may* be tried as adults, tens of thousands of young people are burdened each year with the collateral consequences of North Carolina's scheme for the criminal prosecution of minors, while being denied the rehabilitative services and programs provided by the juvenile justice system. This Part examines the benefits of raising the jurisdictional age of juvenile court for sixteen- and seventeen-year-olds as well as the community at large.

#### A. *Employment and Higher Education*

When a youth is found "delinquent" of a criminal offense in juvenile court, the "adjudication" is not a criminal conviction, and the young person is not "guilty" of a crime.<sup>52</sup> When sixteen- or

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51. See, e.g., N.C. SENTENCING & POLICY ADVISORY COMM'N, *supra* note 8, at 10 ("Although the Commission discussed the possibility that 13 is too young for a juvenile to assume adult responsibility for criminal actions, the Commission ultimately felt that maintaining the current transfer mechanism . . . was important as a safeguard to public safety in appropriate cases.").

52. N.C. GEN. STAT. § 7B-2412 (2007) ("An adjudication that a juvenile is delinquent or commitment of a juvenile to the Department for placement in a youth development center shall neither be considered conviction of any criminal offense nor cause the juvenile to forfeit any citizenship rights."); see also N.C. GEN. STAT. § 7B-3000(a) (2007) (stating that all juvenile records shall be withheld from public inspection and may be examined only by court order). *But see* N.C. GEN. STAT. § 7B-3000(e)-(f) (2007) (stating that a juvenile's delinquency adjudication for a felony offense may be subsequently used by law enforcement, the magistrate, and the prosecutor for pretrial release and plea negotiating decisions in adult criminal court, and that adjudications for violent felonies may be used in subsequent criminal proceedings for impeachment or as aggravating factors at sentencing); John Schwade, *The Danger of Too Much Secrecy on Juvenile Records*, THE DURHAM NEWS, Apr. 19, 2008, at A2 (arguing, in the wake of recent murders allegedly committed by a youth with a juvenile court record, that criminal courts be allowed to consider juvenile adjudications for violent offenses in sentencing for all matters in adult court, even property crimes). See also RANDY HERTZ ET AL., TRIAL MANUAL FOR DEFENSE ATTORNEYS IN JUVENILE COURT 276-78 (ALI-ABA 2007) (1991) (discussing potential collateral criminal and civil consequences of juvenile delinquency adjudications, including enhanced penalties for future offenses, immigration consequences, and forfeiture); Bonnie Mangum Braudway, *Scarlet Letter Punishment for Juveniles: Rehabilitation Through Humiliation?*, 27 CAMPBELL L. REV. 63, 81 (2004) (describing the problems faced by individuals whose juvenile court record is revealed to employers and colleges); Michael Pinard, *The Logistical and Ethical Difficulties of Informing Juveniles About the Collateral Consequences of Adjudications*, 6 NEV. L.J. 1111, 1114-18 (2006) (discussing possible

seventeen-year-olds are convicted of crimes in adult court, however, the record will forever follow them, absent limited opportunities for expungement or pardon.<sup>53</sup> Thus, one of the strongest arguments for raising the age of juvenile court jurisdiction concerns the impact of a criminal conviction on a youth's ability to obtain work. While it is widely known that adults with criminal histories are automatically excluded from many areas of employment,<sup>54</sup> the proliferation of criminal history background checks and the reluctance of insurance companies to cover employers who hire convicted felons mean that youth with criminal records also face significant obstacles securing jobs.<sup>55</sup> Employers in most states can deny positions to—or even fire—anyone with a criminal record, regardless of the individual's history, the circumstances, or the relationship between the job or the license sought and the applicant's criminal record.<sup>56</sup> Employers in most states can also deny jobs to people who were arrested for, but never convicted of, a crime.<sup>57</sup> While all states have the power to lift

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collateral consequences of juvenile adjudications in the areas of housing, employment, and education).

53. ACTION FOR CHILDREN IN NORTH CAROLINA, PUTTING THE JUVENILE BACK IN JUVENILE JUSTICE 2 (2007), available at [http://www.ncchild.org/action/images/stories/Juvenile\\_Justice\\_Raising\\_The\\_Age\\_Brief\\_final.pdf](http://www.ncchild.org/action/images/stories/Juvenile_Justice_Raising_The_Age_Brief_final.pdf) (stating that when sixteen- and seventeen-year-olds are convicted of any criminal offense in N.C, they will have the criminal record “for the rest of their lives,” even if they do not serve time in prison). Under current North Carolina law, expungement is available only for one low-level felony (simple possession of cocaine) and for misdemeanor offenses committed prior to age eighteen, except for misdemeanor possession of alcohol or drugs. See N.C. GEN. STAT. §§ 15A-145 & 146 (2007).

54. See, e.g., Jocelyn Simonson, *Rethinking “Rational Discrimination” Against Ex-Offenders*, 13 GEO. J. ON POVERTY L. & POL’Y 283, 283–86 (2006) (discussing the discrimination faced by people with criminal histories when attempting to secure employment and re-enter society); see also Alan Rosenthal & Marsha Weissman, *Sentencing for Dollars: The Financial Consequences of a Criminal Conviction* 25–28 (Ctr. for Cmty. Alternatives, Working Paper, Feb. 2007), available at <http://www.communityalternatives.org/pdfs/financial%20consequences.pdf> (discussing the financial penalties and fees imposed upon those convicted of crimes as well as coercive collection methods that are counterproductive to reintegration).

55. CAMPAIGN FOR YOUTH JUSTICE, *supra* note 3, at 80.

56. LEGAL ACTION CENTER, AFTER PRISON: ROADBLOCKS TO REENTRY 10 (2004), available at [http://lacorg.siteprotect.net/lac/upload/lacreport/LAC\\_PrintReport.pdf](http://lacorg.siteprotect.net/lac/upload/lacreport/LAC_PrintReport.pdf) (finding that thirty-six states have no standards governing public employers' consideration of applicants' criminal records, and that forty-five states have no standards governing private employers). Also, twenty-nine states have no standards governing the relevance of conviction records of applicants for occupational licenses. *Id.*

57. *Id.* (finding that thirty-seven states have laws that permit employers and occupational licensing agencies to consider arrests that never led to conviction when making employment decisions).

bars to employment by issuing “certificates of rehabilitation,” only six states offer this option, North Carolina not among them.<sup>58</sup>

A second potential collateral consequence of a criminal conviction is the denial of access to higher education. Increasingly, colleges and universities are using criminal history background checks in the admissions process and then developing exclusionary policies to deny admission to certain categories of applicants.<sup>59</sup> There is no evidence, however, that such policies increase safety on college campuses or that an applicant’s prior criminal record is a relevant risk factor when assessing future “dangerousness.”<sup>60</sup> In fact, the data shows that college campuses have lower crime rates than in the broader community and that students *without* prior criminal records are more likely to commit crimes on campus than those who have criminal histories.<sup>61</sup> In addition, because the juvenile and criminal justice systems have a disparate impact on minorities,<sup>62</sup> policies that

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58. *Id.* (stating that the six states that offer certificates of rehabilitation are Arizona, California, Illinois, Nevada, New Jersey and New York).

59. CENTER FOR COMMUNITY ALTERNATIVES, CLOSING THE DOORS TO HIGHER EDUCATION: ANOTHER COLLATERAL CONSEQUENCE OF A CRIMINAL CONVICTION 1–2 (2008), *available at* <http://www.communityalternatives.org/pdfs/Higher%20Ed%20Paper%20Final.pdf> (reporting, for instance, that the Common Application, used by more than 300 universities and colleges, added questions about school disciplinary records and prior criminal convictions to their 2006–07 application). Another factor compounding the impact of the use of background checks during the college admissions process is the lack of any consistency in their use either within states or among states. As a result, there can be discrepancies as to whether to screen and, if so, how to use the information, even within a single state university system. *Id.* at 3–4.

60. *Id.* at 2 (“Violent crime on campus is rare, and the few college students who are victims of such crimes are mostly victimized off campus by strangers.”). Studies have also shown that college students are “significantly safer” than the nation as a whole and are less likely to be victims of violent crimes than the general population. *Id.* Rape and sexual assault are the only crimes for which there are no statistical differences in their commission by college students versus non-students. *Id.*

61. *Id.*

62. *Id.* at 7 (reporting that, in 2004, more than one million people were convicted of felonies in state courts, forty percent of whom were African-American, which far exceeds their twelve percent representation in the United States population at large). There has also been much written about the “school-to-prison pipeline,” in which disparate treatment of young people of color begins in the schools and continues at each stage of the educational and criminal justice systems. *Id.*; *see also* MARC MAUER & RYAN S. KING, THE SENTENCING PROJECT, UNEVEN JUSTICE: STATE RATES OF INCARCERATION BY RACE AND ETHNICITY (2007), *available at* [http://sentencingproject.org/Admin/Documents/publications/rd\\_stateratesofincbyraceandethnicity.pdf](http://sentencingproject.org/Admin/Documents/publications/rd_stateratesofincbyraceandethnicity.pdf) (reporting on the disproportionate rate of incarceration for African Americans and for Hispanics). Statistics have also borne out the reality of disproportionate minority impact in North Carolina’s juvenile justice and criminal justice systems. *See* N.C. DEP’T OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, 2007 ANNUAL REPORT 9, 10, 14–15 (2007), *available at* [http://www.ncdjjdp.org/resources/pdf\\_documents/annual\\_report\\_2007.pdf#pagemode=bookmarks&page=1](http://www.ncdjjdp.org/resources/pdf_documents/annual_report_2007.pdf#pagemode=bookmarks&page=1) (reporting that sixty percent of juvenile delinquency

exclude those with criminal convictions from higher education will have a greater impact on people of color than on whites.<sup>63</sup> As research has shown that access to higher education lowers recidivism rates by “opening the doors to economic and social advancement,” excluding people from college on this basis will inevitably have a deleterious effect on the safety of the community at large.<sup>64</sup>

North Carolina is among the growing number of states to be affected by these developments. Despite the fact that its college campuses have a crime rate that is just one-sixth of the statewide rate, standardized questions about applicants’ criminal records are asked by all sixteen schools that comprise the University of North Carolina’s four-year system of higher public education.<sup>65</sup> Specially-appointed committees then review and evaluate applicants with criminal histories prior to making admissions decisions.<sup>66</sup> While admissions offices within the UNC system have reported that a criminal record does not result in an automatic denial of admission, only five schools have an appeals process for those who are denied admission on this basis, and just a few schools inform applicants that their criminal record was the principal reason for the denial.<sup>67</sup> Similarly, of the forty-four private four-year colleges in North Carolina, thirty-eight inquire about an applicant’s criminal record on their application form.<sup>68</sup> In contrast, the North Carolina community college system admits all high school graduates who are at least eighteen without regard to criminal history,<sup>69</sup> although it has become more common for community colleges across the United States to

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complaints are given to youth of color, that sixty-seven percent of youth detained are youth of color, and that eighty-two percent of training school commitments are for youth of color); N.C. SENTENCING & POLICY ADVISORY COMM’N, *supra* note 8, at 23 (finding that in the 2004–05 fiscal year, whites through age twenty-one accounted for thirty-six percent of felony convictions, while people of color in the same age group accounted for sixty-four percent).

63. See CENTER FOR COMMUNITY ALTERNATIVES, *supra* note 59, at 7. Until 2006, financial aid in the form of Pell Grants and federal student loans was denied to approximately 50,000 to 60,000 people annually on the basis of drug convictions. *Id.*

64. *Id.*; see also *infra* notes 73–87 and accompanying text (discussing additional grounds for arguing that raising the age of juvenile court jurisdiction would lower recidivism rates).

65. See CENTER FOR COMMUNITY ALTERNATIVES, *supra* note 59, at 3–4; TASK FORCE ON THE SAFETY OF THE COMMUNITY, FINAL REPORT 4 (Dec. 14, 2004) (on file with the North Carolina Law Review).

66. See CENTER FOR COMMUNITY ALTERNATIVES, *supra* note 59, at 4.

67. See *id.*

68. *Id.* (stating, however, that the majority of North Carolina’s private colleges inform the applicant when a criminal conviction is the basis for denial of admission and allow for appeal of the denial).

69. *Id.*



discourage students with criminal records from entering certain fields—like nursing—that will not license people with criminal histories.<sup>70</sup>

The collateral consequences of criminal convictions extend far beyond the areas of employment and higher education with immigration status, access to public housing and benefits, and exclusion from military service being among the most significant.<sup>71</sup> Similarly, the challenges and obstacles facing those who must reenter the community following terms of incarceration cannot be underestimated.<sup>72</sup>

### B. *Recidivism and Public Safety*

Advocates for raising the age of juvenile court jurisdiction in North Carolina have also argued that providing intensive supervision, meaningful treatment, and rehabilitation to sixteen- and seventeen-year-olds in juvenile court, rather than trying and incarcerating them with adult defendants in criminal courts and prisons, would lower recidivism rates and ultimately create safer neighborhoods and communities.<sup>73</sup> Youth who are tried and sentenced as adults have been shown to receive little or no educational services, mental health or substance abuse treatment, job training, or any other type of rehabilitative programming,<sup>74</sup> leading to “salvageable children . . .

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70. See CAMPAIGN FOR YOUTH JUSTICE, *supra* note 3, at 80; LEGAL ACTION CENTER, *supra* note 56, at 10; see also Ben Geiger, *The Case for Treating Ex-Offenders as a Suspect Class*, 94 CAL. L. REV. 1191, 1202 (2006) (describing the ways in which occupational licensing agencies take criminal histories into account in their licensing decisions).

71. See Michael Pinard, *An Integrated Perspective on the Collateral Consequences of Criminal Convictions and Reentry Issues Faced by Formerly Incarcerated Individuals*, 86 B.U. L. REV. 623, 635–36 (2006); see also CAMPAIGN FOR YOUTH JUSTICE, *supra* note 3, at 80 (stating, in the context of a discussion of juvenile justice policy in North Carolina, that the military excludes those with felony convictions); SEJAL ZOTA & JOHN RUBIN, IMMIGRATION CONSEQUENCES OF A CRIMINAL CONVICTION IN NORTH CAROLINA 25–43 (UNC School of Gov’t, 2008) (stating that removal, deportation, and bars to naturalization are among the potential immigration consequences of criminal convictions for noncitizen defendants).

72. See generally LEGAL ACTION CENTER, *supra* note 56 (discussing the legal barriers facing people with criminal records when they attempt to reenter society); Pinard, *supra* note 71 (emphasizing the links between issues raised by the collateral consequences of convictions and by reentry, and advocating for an integrated perspective when analyzing the issues’ legal and policy implications).

73. See *infra* notes 74–87 and accompanying text.

74. CAMPAIGN FOR YOUTH JUSTICE, FACT SHEET: TRYING YOUTH AS ADULTS 2 (2006), available at [http://www.act4jj.org/media/factsheets/factsheet\\_20.pdf](http://www.act4jj.org/media/factsheets/factsheet_20.pdf); CAMPAIGN FOR YOUTH JUSTICE, JAILING JUVENILES: THE DANGERS OF INCARCERATING YOUTH IN ADULT JAILS IN AMERICA 6–7 (2007), available at

being swept up with [the] incorrigible ones.”<sup>75</sup> Sixteen- and seventeen-year-olds placed in adult jails are more likely to be raped and assaulted, and to commit suicide, than adult offenders.<sup>76</sup> Further,

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[http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing\\_Juveniles\\_Report\\_2007-11-15.pdf](http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf) (discussing the inadequacy of staffing and the lack of education and pro-social activities for adolescents in jails compared to juvenile detention facilities); Editorial, *Children in Adult Jails*, N.Y. TIMES, May 23, 2008, at A24 (arguing that it is “barbaric” to confine children in adult jails, as they are “at greater risk of being raped, battered or pushed to suicide” and are “more likely to become violent criminals than children handled through the juvenile justice system”). Compare N.C. DEPT OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, *supra* note 62, at 19 (finding that seventy-five percent of youth in the North Carolina juvenile justice system have mental health needs for which they receive intensive psychological services and that forty-three percent have substance abuse problems for which they receive substance abuse treatment), with SENTENCING & POLICY ADVISORY COMM’N, *supra* note 8, at 6–7 (finding that there are only three programs for youthful offenders in the North Carolina prison system that address such issues as chemical dependency, post-secondary educational needs, and employability, and that they are only offered at a few of the prisons that house youth). Also, the prisons that serve youthful offenders offer only limited programming that addresses mental health issues and vocational education needs. *See id.* at 6–7.

75. Editorial, *In the Lion’s Den*, NEWS & OBSERVER (Raleigh, N.C.), Aug. 14, 1998, at 20A. It is worth noting, however, that there are serious systemic problems within many juvenile detention facilities and juvenile prisons in North Carolina and across the United States. See BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INSTITUTE, THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES (2006), available at [http://www.justicepolicy.org/images/upload/06-11\\_REP\\_DangersOfDetention\\_JJ.pdf](http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf) (finding that, given new research showing that detaining juveniles may not make communities safer, the costs of needlessly detaining young people who do not need to be there are simply too high); Editorial, *Harsh Treatment for Youth Offenders*, N.Y. TIMES, Dec. 8, 2007, at A16 (arguing that Texas authorities should not allow the use of pepper spray in juvenile detention facilities); Ashley Fantz, *Sex Abuse, Violence Alleged at Teen Jails Across U.S.*, CNN, Apr. 4, 2008, <http://edition.cnn.com/2008/CRIME/04/04/juvenile.jails/> (last visited Apr. 24, 2008) (reporting accounts of violence and sexual abuse at juvenile detention facilities in Mississippi, Texas, Ohio, Florida, and Indiana); Jordan Schrader, *Juvenile Justice Appeals for Staff*, ASHEVILLE CITIZEN-TIMES, Apr. 15, 2008 (on file with the North Carolina Law Review) (reporting that North Carolina’s juvenile prisons need more staff and resources, as they are challenged by “gang networks, outdated buildings and imprisoned youths’ ability to outmuscle staff”); see also *infra* note 113 and accompanying text (discussing the failures of North Carolina’s system of training schools). But see Jordan Schrader, *Panel: Raise the Juvenile Age*, ASHEVILLE CITIZEN-TIMES, Dec. 7, 2007, at 1, available at <http://www.ncchild.org/action/index.php/Action-for-Children-In-The-News/December-7-2007-Raising-The-Age-of-Juvenile-Jurisdiction-Asheville-Citizen-Times.html> (reporting that while state juvenile lockups in North Carolina are not the “safest” places, advocates assert that youth are still better off in the juvenile justice system than the adult system).

76. VINCENT SCHIRALDI & JASON ZEIDENBERG, CENTER ON JUVENILE AND CRIMINAL JUSTICE, THE RISKS JUVENILES FACE WHEN THEY ARE INCARCERATED WITH ADULTS (1997), <http://www.cjcj.org/pubs/risks/risks.html> (last visited Aug. 28, 2008); see also CAMPAIGN FOR YOUTH JUSTICE, JAILING JUVENILES: THE DANGERS OF INCARCERATING YOUTH IN ADULT JAILS IN AMERICA, *supra* note 74, at 10–15 (finding that youth in adult jails are many times more likely to commit suicide, suffer long-term

in 2006, only four percent of the sixteen- and seventeen-year-olds charged in North Carolina's criminal courts were convicted of felonies against people, while eighty percent of the complaints brought in juvenile court were misdemeanors—confirming that the majority of crimes committed by older teens are minor offenses, more appropriately handled in the juvenile justice system.<sup>77</sup>

Empirical research has demonstrated that violent adolescent offenders prosecuted in adult criminal court are likely to re-offend more quickly and more often than those adjudicated in a juvenile court setting.<sup>78</sup> One recent study compared the re-arrest and re-incarceration rates of young offenders in New York State, where—as in North Carolina—juveniles as young as thirteen can be charged in adult court, with offenders in neighboring New Jersey, where nearly

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consequences from isolation, and be assaulted or raped than in juvenile detention facilities); Deborah Ross, *A Gain for Juvenile Justice, But...*, NEWS & OBSERVER (Raleigh, N.C.), Nov. 1, 1998, at 31A (reporting on the physical violence experienced by youth in adult jails).

77. Anne Blyth, *When Should Teens Be Tried as Adults?*, NEWS & OBSERVER (Raleigh, N.C.), June 17, 2007, at 25A; see also N.C. DEP'T OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, *supra* note 62, at 10 (finding that, in 2007, sixty-five percent of juvenile delinquency complaints were for minor misdemeanors, twenty-two percent were for serious misdemeanors or less serious felonies, and only two percent were for violent felonies); ACTION FOR CHILDREN NORTH CAROLINA, *supra* note 53, at 6 (finding that in 2005, approximately 11,000 youth ages sixteen and seventeen were convicted of crimes in the adult system in North Carolina, fewer than fourteen percent of which were for felonies, while only four percent of those were felonies against a person).

78. See, e.g., Andrea McGowan et al., *Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System*, 32 AM. J. PREVENTATIVE MED. S7, S14 (2007) (finding, based on empirical evidence, that transferring juveniles to adult court and subjecting them to adult sentences results in higher recidivism rates); Lawrence Winner et al., *The Transfer of Juveniles to Criminal Court: Reexamining Recidivism Over the Long Term*, 43 CRIME & DELINQ. 548 (Oct. 1997) (finding, as a result of a long-term recidivism study in Florida, that transfer of juveniles to adult criminal court is more likely to aggravate recidivism than to stem it); Shay Bilchik, *Wiser Ways on Youth Crime*, WASH. TIMES, Dec. 16, 2007, at B3 (arguing based on a recent federal study that transferring youth to the adult criminal justice system significantly increases crime); Editorial, *Juvenile Injustice*, N.Y. TIMES, May 11, 2007, at A26 (arguing based on an empirical study that the practice of transferring children into adult courts is counterproductive, "actually creating more crime than it cure[s]"); Editorial, *Juvenile Justice*, N.Y. TIMES, July 12, 2007, at A22 (arguing based on a federally-backed study that children handled in adult courts and confined in adult jails committed more violent crime than children processed through the traditional juvenile justice system); J. Fagan et al., *Be Careful What You Wish For: Legal Sanctions and Public Safety Among Adolescent Felony Offenders in Juvenile and Criminal Court* (Columbia Law School, Pub. Law Research Paper No. 03-61, 2007) (finding, based on empirical analysis, that serious adolescent offenders prosecuted in criminal court are likely to be re-arrested more quickly and more often for violent, property and weapons offenses and are then more often and more quickly returned to incarceration).

all offenders under age eighteen are processed in juvenile court.<sup>79</sup> After comparing similar offenders who were arrested and charged with the same felony offenses during the same period, the researchers found that adolescents in the New York adult courts were more likely to be re-arrested; were re-arrested more quickly, more often, and for more serious offenses; and were re-incarcerated at higher rates than those processed in New Jersey's juvenile court system.<sup>80</sup> Results of several other recent studies have been comparable,<sup>81</sup> including ones that have examined recidivism rates in North Carolina.<sup>82</sup> Further, it

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79. See MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, *The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Adult Criminal Court*, 5 ISSUE BRIEF 1 (2006), available at <http://www.macfound.org/atf/cf/{B0386CE3-8B29-4162-8098-E466FB856794}/ADJJTRANSFER.PDF>.

80. *Id.* The study of 2,000 adolescents used two groups from the same metropolitan area, having similar characteristics with regard to economic status, access to weapons, drug use, gang influences, etc. *Id.* Results showed that youth prosecuted in New York's adult courts were eighty-five percent more likely to be re-arrested for violent crimes and forty-four percent more likely to be re-arrested for felony property crimes than those processed in New Jersey's juvenile courts. *Id.* at 1-2.

81. See, e.g., SHAU CHANG & CRAIG A. MASON, JUVENILE SENTENCING ADVOCACY PROJECT OF MIAMI-DADE COUNTY PUBLIC DEFENDER'S OFFICE, RE-ARREST RATES AMONG YOUTH SENTENCED IN ADULT COURT (2001), available at [http://www.pdmiami.com/JSAP\\_2001\\_Impact\\_Evaluation.pdf](http://www.pdmiami.com/JSAP_2001_Impact_Evaluation.pdf) (finding in 2001 that Florida youth who received adult sanctions were over twice as likely to reoffend by being charged with a new criminal offense than youth who received juvenile sanctions); FLORIDA DEPT. OF JUVENILE JUSTICE, A DJJ SUCCESS STORY: TRENDS IN TRANSFER OF JUVENILES TO ADULT CRIMINAL COURT (2002), available at [http://www.sentencingproject.org/Admin/Documents/publications/sl\\_djj.pdf](http://www.sentencingproject.org/Admin/Documents/publications/sl_djj.pdf) (finding that youth in Florida receiving juvenile sanctions had lower recidivism rates than those youth transferred to adult court); see also MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, *supra* note 79, at 2 (finding that teens in adult correctional facilities faced harsher settings and experienced more developmental problems than those in juvenile correctional facilities). This study also revealed that the size and diversity of the populations in correctional settings impact the outcome, as youth placed in larger juvenile facilities had similar outcomes to youth in adult facilities, while youth sentenced as adults who spent some time in juvenile facilities experienced fewer mental health problems when ultimately transferred to adult placements. *Id.*

82. See, e.g., N.C. SENTENCING & POLICY ADVISORY COMM'N, *supra* note 8, at 7, 29 (finding based on data from 2001-02 that sixteen- and seventeen-year-old offenders sentenced either to adult probation or adult prison had higher re-arrest rates than the entire sample of youthful offenders ages thirteen to twenty-one). See generally N.C. SENTENCING & POLICY ADVISORY COMM'N, CORRECTIONAL PROGRAM EVALUATION: OFFENDERS PLACED ON PROBATION OR RELEASED FROM PRISON IN FISCAL YEAR 2001/02 (Apr. 15, 2006), available at [http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/ncspacrecid\\_2006.pdf](http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/ncspacrecid_2006.pdf) (evaluating the effectiveness of the state's correctional programs based upon data on the recidivism rates of youthful offenders); N.C. SENTENCING & POLICY ADVISORY COMM'N, JUVENILE RECIDIVISM STUDY (May 1, 2007), available at [http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/ncspacjuvrecid\\_2007.pdf](http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/ncspacjuvrecid_2007.pdf) (analyzing for the first time in North Carolina an entire cohort of

has been shown that while rehabilitation programs and intensive treatment for adolescents can be expensive, they ultimately save money by reducing the numbers of those who are prosecuted and sentenced as repeat offenders.<sup>83</sup>

Such arguments have in many ways built upon assertions made decades ago in North Carolina regarding the cost-effectiveness of providing children with appropriate treatment and rehabilitative services, rather than incarceration and other more punitive forms of punishment. In 1919, for instance, child welfare advocates recognized that providing preventative services to young offenders through the juvenile court system would likely lower the crime rate.<sup>84</sup> In 1947, welfare officials recommended that young offenders receive treatment in specialized boarding homes and detention centers rather than adult jails, as they had found that this investment of time, effort, and money was “more than repaid” by the improvement in the behavior and attitudes of the children.<sup>85</sup> Likewise, in 1957, the governor asserted that including sixteen- and seventeen-year-olds within the original jurisdiction of juvenile court would “ultimately

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delinquent juveniles statewide, regardless of offense type or disposition, and following them through both the juvenile and adult criminal systems).

83. See Melissa S. Caulum, *Post-Adolescent Brain Development: A Disconnect Between Neuroscience, Emerging Adults, and the Corrections System*, 2007 WIS. L. REV. 729, 757 (2007); Leslie Kaufman, *A Home Remedy for Juvenile Offenders*, N.Y. TIMES, Feb. 20, 2008, at B1 (finding that in-home intensive therapy programs cost a fraction of the annual expense of keeping a child in secure detention, a financial incentive that has led New York State to close six residential juvenile facilities). Arguments premised on cost savings have particular resonance in North Carolina, as the surging adult prison population will require the state to spend tens of millions of dollars for construction of new prisons during the next decade. See Dan Kane, *Rising Inmate Population Puts State in a Bind: Build Prisons or Reduce Sentences?*, NEWS & OBSERVER (Raleigh, N.C.), Feb. 18, 2008, at 10A (reporting on the enormous cost of expanding the state’s prison system and the move to find alternatives to expansion, such as community correction programs); see also Editorial, *Prison Nation*, N.Y. TIMES, Mar. 10, 2008, at A16 (arguing that public officials must adopt a “more rational, cost-effective approach” to prison policy in an age when crime rates have fallen but incarceration rates have continued to rise); Adam Liptak, *Inmate Count in U.S. Dwarfs Other Nations’*, N.Y. TIMES, Apr. 23, 2008, at A1 (reporting that the United States leads the world in the numbers of those incarcerated and in the length of prison sentences).

84. See N.C. STATE BOARD OF CHARITIES & PUBLIC WELFARE, *THE JUVENILE COURT LAW OF NORTH CAROLINA* at vi (1919) (“The children’s court marks the greatest advance in judicial procedure in this century. It has helped reveal to us the need of organizing those preventive agencies spoken of above which may forestall even the action of the court by decreasing the number of offenses.”).

85. See Laurence Aydlett, *Jailing of N.C. Children Showing Steady Decline*, NEWS & OBSERVER (Raleigh, N.C.), Dec. 21, 1947, at 10.

provide great savings in money and human resources.”<sup>86</sup> Such sentiments were expressed again in 1967 when it was found that rehabilitating young offenders by providing meaningful academic services and vocational education in open, closely-supervised training schools lowered recidivism rates more effectively than methods that “punish, ignore, isolate, or try to fit the children into a pattern.”<sup>87</sup>

### C. *Brain Development and Adolescent Psychology*

In recent years, advocates for extending jurisdiction to the age of eighteen in North Carolina have increasingly relied upon research in the neurological, behavioral, and social sciences.<sup>88</sup> In particular, technological advances and statistical findings from the field of neuroscience have provided reformers with a more convincing platform than in past decades, when they grounded their arguments for raising the age either on common sense or well-meaning, but scientifically unfounded, assumptions.<sup>89</sup> To support the argument that it takes far longer for teenage brains to fully develop than was previously thought, policy briefs now contain diagrams of the lobes of the cerebrum with detailed summaries of the processes of adolescent brain development and functioning.<sup>90</sup> They include multiple citations to studies in the areas of developmental medicine and child neurobiology that rely upon such technological advances as structural magnetic resonance imaging and dynamic mapping of human cortical development.<sup>91</sup> In a society evermore dependent upon science and

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86. Press Release, The Office of the Governor of North Carolina (Feb. 13, 1957) (on file with the North Carolina Law Review).

87. Luelle Clark, *Rehabilitation Aides Juveniles*, NEWS & OBSERVER (Raleigh, N.C.), Feb. 19, 1967, at 6; see also STEVENS H. CLARKE, MECKLENBURG CRIMINAL JUSTICE PILOT PROJECT, THE CONTRIBUTION OF JUVENILE OFFENDER TREATMENT AND SERVICE PROGRAMS TO THE REDUCTION OF JUVENILE DELINQUENCY 25–28 (Oct. 19, 1973) (arguing that it is cost-effective to concentrate juvenile justice resources on serious and “dangerous” offenders).

88. See *infra* notes 89–97 and accompanying text.

89. See, e.g., ACTION FOR CHILDREN NORTH CAROLINA, *supra* note 53, at 3–7 (calling for North Carolina to reevaluate state law and to add sixteen- and seventeen-year-olds to the current juvenile system in light of the latest scientific research on adolescent brain development); see also *infra* notes 188–89 and accompanying text (discussing advocacy in the 1950s for raising the age that relied upon assertions about the physiological and psychological differences between adolescents and adults).

90. See, e.g., ACTION FOR CHILDREN NORTH CAROLINA, *supra* note 53, at 3–7 (discussing the structural and functional changes that occur in the adolescent brain).

91. See, e.g., *id.* at 11–12.

technology, advocates' increasing emphasis on hard science has earned them some support.<sup>92</sup>

A related argument for raising the age is based on the cognitive and psychosocial differences between children and adults. Much has been written in both the academic and popular press on this topic, particularly as it relates to the treatment of adolescents in the criminal justice system,<sup>93</sup> and courts have premised critical decisions—including the abolition of the juvenile death penalty—upon research that has exemplified these differences.<sup>94</sup> In fact, a recent American Bar Association report recommended on this basis that youthful offenders receive less punitive sentences than adults convicted of the same offenses.<sup>95</sup> Further, commentators have asserted that North Carolina's juvenile justice system is ideally suited to process cases involving sixteen- and seventeen-year-old offenders, as it already provides developmentally appropriate screening, assessment,

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92. See, e.g., Lisa Boone-Wood, *Advocates Urge Action on State Law: Teens Should Not Face Adult Court, They Say*, WINSTON-SALEM J., Feb. 28, 2008, at B1, available at <http://www2.journalnow.com/content/2008/feb/28/advocates-urge-action-on-state-law/> (reporting that brain research indicates that teenagers lack the ability to make sound decisions and have difficulty with impulse-control); Editorial, *Justice for Juveniles*, THE HERALD (Rock Hill, S.C.), Dec. 9, 2007, at 2F (relying on adolescent brain research to argue for keeping young offenders up to age eighteen under the original jurisdiction of the juvenile court); see also ACTION FOR CHILDREN NORTH CAROLINA, CHILD POVERTY IN NORTH CAROLINA: A PREVENTABLE EPIDEMIC 3–4 (2008), available at [http://www.ncchild.org/action/images/stories/Poverty\\_Brief\\_final.pdf](http://www.ncchild.org/action/images/stories/Poverty_Brief_final.pdf) (relying on research in neuroscience to argue that poverty and deprivation affects brain development); Paul Krugman, Op-Ed, *Poverty is Poison*, N.Y. TIMES, Feb. 18, 2008, at A15 (arguing that governments should commit themselves to reducing poverty, as neuroscientific research has shown that children who grow up in very poor families with low socioeconomic status have impaired neural development that undermines language development and memory).

93. See, e.g., Lisa J. Berlin & Courtney Lloyd, *Research on Adolescent Development, Competence, and Character*, in ADOLESCENT OFFENDERS AND THE LINE BETWEEN THE JUVENILE AND CRIMINAL JUSTICE SYSTEMS 13–16 (2007), available at [http://www.familyimpactseminars.org/s\\_ncfis03report.pdf](http://www.familyimpactseminars.org/s_ncfis03report.pdf) (discussing research on youth development as it relates to issues of blameworthiness, competence to stand trial, and the potential for an adolescent's character to change); Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AMER. PSYCHOLOGIST 1009 (2003) (drawing on research and theory about adolescent development to argue that the developmental immaturity of juveniles mitigates their criminal culpability and, thus, calls for less severe punishment); Editorial, *Young, Tough*, NEWS & OBSERVER (Raleigh, N.C.), Dec. 13, 2006, at A16 (arguing for raising the jurisdiction age in juvenile court to eighteen based on behavioral differences between adolescents and adults).

94. See *Roper v. Simmons*, 543 U.S. 551, 551 (2005) (holding that in light of new evidence regarding adolescent psychosocial and brain development, the imposition of the death penalty on offenders who were younger than eighteen when their crimes were committed violates the Eighth Amendment).

95. See SALTZBURG, *supra* note 9, at 5.

treatment, and rehabilitation for juveniles.<sup>96</sup> North Carolina's juvenile court system also has jurisdiction over the parents and guardians of offenders, enabling the court to order that these adults assist the juvenile in meeting the requirements of disposition and participate in such programming as family counseling and parenting skills training; unlike the adult system, if the youth's parent fails to comply, the juvenile court has the power to impose sanctions.<sup>97</sup> The next Part demonstrates that opposition to raising the age has been steadfast, with vocal opposition from police and prosecutors.

## II. WHY MAINTAIN THE STATUS QUO?

Opponents of raising the age have repeatedly marshaled arguments for the status quo. While no single argument on its own would likely have prevented the expansion of juvenile jurisdiction, together they have continued to resonate with enough politicians and legislators to carry the day. For this reason, among others, it is useful to examine and consider them carefully.

### A. *Lack of Funding and Public Support*

Since the establishment of North Carolina's first juvenile courts in 1919, lawmakers and court personnel opposed to raising the age have contended that the public does not support a comprehensive system to address the needs of children charged with criminal offenses or alleged to be abused or neglected.<sup>98</sup> In fact, the 1919 ratifying legislation was specifically crafted "for practical political reasons" so that a juvenile court system could be established without expending additional public funds and thereby engendering public disapproval.<sup>99</sup> From 1919 to the 1930s, reactions to the growth of the juvenile court system ranged from hostility to indifference on the part of judges and county-level officials, resulting in what one contemporary scholar termed the "neglect [of juvenile court work] in many of the counties of the state."<sup>100</sup> It is, therefore, not surprising that a governor's commission expressed a similar sentiment in 1998

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96. See, e.g., ACTION FOR CHILDREN NORTH CAROLINA, *supra* note 53, at 7.

97. See N.C. GEN. STAT. §§ 7B-2700 to -06 (2007) (stating that the juvenile court has authority over parents, guardians, and custodians of juveniles, that it may order them to comply with orders of the court, and that it may hold them in civil or criminal contempt for failure to comply with such orders).

98. See *infra* notes 99-104 and accompanying text.

99. MASON P. THOMAS, JR., REPORT OF TRAINING AND CURRICULUM DEVELOPMENT FOR JUVENILE COURT JUDGES IN NORTH CAROLINA 1 (1965).

100. WILEY BRITTON SANDERS, NEGRO CHILD WELFARE IN NORTH CAROLINA 185 (1933).



when it concluded that the jurisdictional age should not be extended because, among other factors, public opinion would not favor it.<sup>101</sup>

Without a vocal constituency clamoring for a comprehensive, well-funded system, lawmakers have consistently deemed the issue not politically viable, resulting in chronic under-funding from the state.<sup>102</sup> At most, politicians have readily acknowledged the woefully underfunded state of the system while offering empty assurances that improvements can be made without incurring significant cost.<sup>103</sup> Further compounding the matter, few legislators have taken up the issue in public discourse, and fewer still have used the bully pulpit to urge their constituents to support increased funding for juveniles at risk.<sup>104</sup>

Another common refrain from those opposed to raising the jurisdictional age has been that North Carolina should not take steps to expand a broken system.<sup>105</sup> Those opposed to extending the age on this basis have most often been individuals or representatives of child

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101. See GOVERNOR'S COMM'N ON JUVENILE CRIME AND JUSTICE, FINAL REPORT 4 (Mar. 10, 1998).

102. See, e.g., ALLEY & WILSON, *supra* note 30, at 122 (stating that while the public wanted more punitive measures to be taken against juvenile offenders, there was "an unwillingness to either increase tax revenues or reorder spending priorities" to pay for them); Steve Riley, *Money Still Scarce for Juvenile Offenders*, NEWS & OBSERVER (Raleigh, N.C.), June 15, 1993, at 1A (reporting that the General Assembly refused to budget the funds requested for treatment and services for children in delinquency court).

103. See, e.g., Jim Chaney, *Juvenile Probers Urge Assembly to Set Up 'Youth Service Board'*, NEWS & OBSERVER (Raleigh, N.C.), Mar. 10, 1955, at 1 (reporting that members of a governor's commission on juvenile delinquency characterized facilities in the current system as "pitifully inadequate," while also asserting that the cost of a new Youth Service Board would "not be as great as the present cost" of committing delinquent children to training schools).

104. A fairly exhaustive review of North Carolina's newspapers as well as legislative documents and academic scholarship on the state's juvenile justice system since the early 1900s reveals the infrequency with which lawmakers have urged the public to support increased funding for the juvenile justice system. See, e.g., Chaney, *supra* note 103, at 1 (reporting that the governor's commission in 1955 exhorted the public to support the establishment of a Youth Service Board because "[o]ur children, delinquent or not, are worth the effort and the money required to help them grow into useful and worthwhile citizens"); Kerry Gruson, *Juvenile Justice System for State is Delinquent*, NEWS & OBSERVER (Raleigh, N.C.), Nov. 2, 1969, § I, at 1 (reporting that Gov. Bob Scott promised a "comprehensive review" of services for delinquent youth and stated, "I am being kind when I say the juvenile justice system in North Carolina is fragmented . . ."); Press Release, The Office of the Governor of North Carolina, *supra* note 86, at 1 (announcing that in 1957 Gov. Hodges asserted that raising the age of juvenile court jurisdiction would "ultimately provide great savings in money and human resources").

105. See, e.g., GOVERNOR'S COMM'N ON JUVENILE CRIME AND JUSTICE, *supra* note 101, at 4 ("The majority of the Juvenile Code Advisory Committee members felt that raising the original jurisdictional age for delinquency would have a detrimental impact on an already overburdened juvenile justice system.").

welfare organizations who are involved in the juvenile justice bureaucracy in some capacity and are unconvinced—or unwilling to accept—that expansion can succeed.<sup>106</sup> For instance, in response to a 1959 proposal to raise the age, opponents made much of the short-staffed and overloaded condition of juvenile training schools, and the widespread reluctance to place a “bigger burden” on the courts than they could handle.<sup>107</sup> Similarly, in 1969 opponents emphasized the likelihood of a huge influx of juvenile court cases, the feeling that “we need to do a better job for children under sixteen years of age before the age jurisdiction is enlarged,” and concern over the impact on the state’s juvenile prisons (also called “training schools” or “youth development centers”).<sup>108</sup>

Even though most legislative proposals to raise the jurisdictional age have specifically excluded the types of cases that could overburden the courts or exacerbate overcrowding in training schools,<sup>109</sup> concerns regarding the chronically substandard state of

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106. *Id.* Economists might surmise that it was not in the self-interest of those in the system to support an expansion that could have brought increased workloads with no increase in salary. See Erika Gebo et al., *Juvenile Justice Reform and the Courtroom Workgroup: Issues of Perception and Workload*, 34 J. CRIM. JUST. 425, 431 (2006) (finding that juvenile court employees who believed that reform efforts would lead to an increased workload found ways to subvert or manipulate the effort in order to maintain the status quo).

107. See Jack Crosswell, *Juvenile Age Proposal Headed for Assembly*, NEWS & OBSERVER (Raleigh, N.C.), Feb. 1, 1959, at 3 (stating the bases for opposition to a 1959 proposal by the State Congress of Parents and Teachers to extend the age of juvenile court jurisdiction).

108. N.C. CTS. COMM’N, REPORT OF THE CTS. COMM’N, G.A. 1967, at 18 (1969). Juvenile prisons in North Carolina, also known as “training schools” or “youth development centers,” are secure residential facilities to which delinquent juveniles, under certain specified circumstances, may be committed by the juvenile court for an indefinite term of at least six months. See N.C. GEN. STAT. § 7B-1501(29) (2007); N.C. GEN. STAT. § 7B-2508(e) (2007); N.C. GEN. STAT. § 7B-2513(a) (2007).

109. See, e.g., H.B. 492, Gen. Assemb., 2007-08 Sess. (N.C. 2007) (proposing that juvenile court jurisdiction be extended to age eighteen, except when sixteen- and seventeen-year-olds are charged with traffic offenses); THE NAT’L PROB. & PAROLE ASS’N, A SYSTEM OF FAMILY COURTS FOR NORTH CAROLINA 78–79 (1957) (proposing that the age of juvenile court jurisdiction be raised to eighteen, while allowing for sixteen- and seventeen-year-old offenders charged with felonies to be transferred to adult court); *infra* notes 173–76 and accompanying text (discussing H.B. 396 that proposed extending juvenile court jurisdiction to sixteen-year-old first offenders charged with misdemeanors other than motor vehicle offenses); *infra* notes 197–204 and accompanying text (discussing the proposal to extend the age of jurisdiction to eighteen, advanced in the 1960s, that left the decision of whether sixteen- and seventeen-year-olds should be prosecuted as juveniles or adults within the discretion of the prosecutor or judge).

juvenile courts and correctional facilities are nonetheless legitimate.<sup>110</sup> A 1965 training and curriculum report for juvenile court judges, for example, found that the juvenile court system had continued in North Carolina counties “without change” during the previous forty-six years, that the clerks who served as judges varied widely in their “qualifications . . . and in their attitudes,” and that juvenile court was at most a “minor or incidental” part of the clerks’ responsibilities.<sup>111</sup> The report characterized the juvenile court system as “a weak one” and asserted that the “inadequacies” of the system had been long evident to leaders in the child welfare field and to the juvenile court judges themselves.<sup>112</sup> Scholars and the popular press have also written extensively on the failings of the state’s training schools.<sup>113</sup>

*B. Objections of Police and Prosecutors*

An additional set of objections to extending the age of jurisdiction comes from law enforcement and prosecutors.<sup>114</sup> The views of law enforcement on the topic have changed little during the past several decades. The principal bases of their objections are that “coddling” juvenile offenders will increase, rather than decrease,

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110. See *infra* note 113 and *supra* note 75 and accompanying text (referencing studies and reports that have chronicled the substandard nature of the state’s juvenile courts and training schools).

111. THOMAS, *supra* note 99, at 1; see also Steve Riley, *Quality of Juvenile Justice Fluctuates with Geography*, NEWS & OBSERVER (Raleigh, N.C.), May 21, 1993, at 13A (reporting on inequities in the availability of services for delinquent children in different counties across the state).

112. THOMAS, *supra* note 99, at 2.

113. See, e.g., N.C. BAR ASS’N PENAL SYS. STUDY COMM., AS THE TWIG IS BENT 3 (1972) (asserting that North Carolina has more children committed to training schools per capita than any other state, and characterizing its training schools as “a ‘dumping ground’ for the mentally retarded, the uneducable, the run-aways, pregnant girls, the neglected and, in many instances, simply the unwanted child”); Steve Riley, *Training Schools or Prisons?*, NEWS & OBSERVER (Raleigh, N.C.), May 19, 1993, at 1A (reporting on the deficiencies of North Carolina’s training schools and on their failure to rehabilitate); David Hough, *The Unconstitutionality of the North Carolina Reformatories 6–14* (1970) (unpublished paper, Duke Center on Law & Poverty) (on file with the North Carolina Law Review) (concluding, in the context of a discussion of a 1969 North Carolina law that allows for commitments to training school for indefinite terms, that the reformatory commitment “constitutes a dreary, hateful experience that does more harm than good”); see also *supra* note 75 (acknowledging that there are serious systemic problems with juvenile prisons across the United States).

114. See *infra* notes 115–23 and accompanying text (discussing the concerns of these groups regarding proposals to raise the age of juvenile court jurisdiction); see also David Ingram, *Treat 16-, 17-year-olds as Juveniles*, NEWS & OBSERVER (Raleigh, N.C.), Dec. 6, 2007, at 5B (reporting that opposition to a 2007 bill to raise the jurisdictional age “came from district attorneys, sheriffs and the juvenile justice system itself, which is undergoing a major overhaul”).

crime; that offenses by juveniles are “as much against society” as similar crimes by adults; and that the cost of investigating a crime is the same whether the suspect is a juvenile or an adult.<sup>115</sup> While the language used to express these sentiments has varied over the years, the underlying views have not.<sup>116</sup>

Prosecuting attorneys have emphasized that extending juvenile court due process protections to sixteen- and seventeen-year-old criminal suspects would place unnecessary investigative burdens upon the state.<sup>117</sup> Specifically, they have noted that while adult suspects may give consent for non-testimonial identification procedures such as photographs or fingerprints, the prosecution would need to delay the investigation and obtain a court order for such procedures if the sixteen- or seventeen-year-old suspect were a juvenile.<sup>118</sup> They have also argued that investigations of crimes with sixteen- and seventeen-year-old suspects would likely suffer because juveniles may not be detained for as long as adults without judicial review.<sup>119</sup> Others have

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115. See Crosswell, *supra* note 107, at 3 (reporting the grounds upon which police officials opposed raising the age of juvenile court jurisdiction in 1959); see also Blythe, *supra* note 77 (suggesting that law enforcement opposed raising the age in 2007 because of worries that sending violent teens through the juvenile system would amount to “little more than a slap on the wrist”).

116. Assuming that their stated reasons for opposition are genuine, one response would be to emphasize the benefits of including at least a segment of sixteen- and seventeen-year-old offenders under the original jurisdiction of juvenile court; such a shift would decrease recidivism rates, provide a cost-savings to the state, and bring North Carolina into the mainstream in terms of national juvenile justice policy. See *supra* notes 73–87 and accompanying text.

117. THE JUVENILE LAW STUDY COMM’N, REPORT TO THE 1987 GENERAL ASSEMBLY OF NORTH CAROLINA, G.A. 1987, at E-23 (1987) (on file with the North Carolina Law Review).

118. *Id.*; see also N.C. GEN. STAT. § 15A-271 (2007) (stating that a non-testimonial identification order for an adult may be issued by any judge upon request by a prosecutor). Compare N.C. GEN. STAT. § 7B-2103 (2007) (stating that non-testimonial identification procedures shall not be conducted on any juvenile without a court order unless the juvenile has been charged as an adult or transferred to superior court for trial as an adult), with *State v. Watson*, 294 N.C. 159, 240 S.E.2d. 440 (1978) (holding that a court order is unnecessary when an adult defendant voluntarily participates in the pretrial confrontation).

119. THE JUVENILE LAW STUDY COMM’N 1987, *supra* note 117, at E-23; see also N.C. GEN. STAT. § 7B-1901 (a) & (b) (2007) (stating that when a juvenile is taken into temporary custody without a court order, the juvenile’s parent or guardian must be notified and the juvenile shall not be held for more than twelve hours unless a court order has been entered); N.C. GEN. STAT. § 7B-1906(a) & (b) (2007) (stating that, after a secure custody order has been entered, a juvenile has a right either to a hearing on the merits within five calendar days or further hearings to determine the need for continued secure custody at intervals of no more than ten calendar days); N.C. GEN. STAT. § 15A-505 (2007) (stating that law enforcement has a duty to notify a minor’s parent or guardian after a minor is charged with a criminal offense). But see *In re Whichard*, 8 N.C. App. 154,

maintained that the state's resources should be invested in the treatment and rehabilitation of pre-adolescents and younger teens because sixteen- and seventeen-year-olds are less capable of fundamental change in character, morals, and behavior than the younger cohort.<sup>120</sup> District attorneys and their assistants continue to express similar sentiments today.<sup>121</sup>

In addition, according to the legislative history, crime victims and their advocates have infrequently weighed in on proposals to include sixteen- and seventeen-year-old offenders within the jurisdiction of juvenile court in North Carolina. In recent years, however, some opponents to raising the age have suggested that victims would be dissatisfied with the more rehabilitative and less punitive approach of the juvenile court system, and that they would not be "made whole" through restitution or other remedies that are more readily obtained from adult, rather than juvenile, offenders.<sup>122</sup> Given the commitment of juvenile court to individualized treatment and disposition, however, legislation could be drafted to ensure that victims' views are given weight at critical stages of the adjudicatory process.<sup>123</sup> Since

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158, 174 S.E.2d 281, 283 (1970), *cert. denied*, 403 U.S. 940 (1971) (holding that there is no right to bond in North Carolina's juvenile court system and no right to a jury trial).

120. THE JUVENILE LAW STUDY COMM'N, *supra* note 117, at E-24. *But see supra* notes 88-97 and accompanying text (discussing research in psychology and neurology supporting the view that offenders younger than eighteen should *not* be considered as culpable or criminally responsible as adults because they are not fully formed).

121. *See, e.g.*, Dan Kane, *An Adult at 16? Courts Say Yes*, NEWS & OBSERVER (Raleigh, N.C.), Jan. 8, 2006, at 1B (reporting that in 2006 the former president of the N.C. Conference of District Attorneys opposed raising the age of juvenile court jurisdiction, stating that there were "less dramatic measures that lawmakers should consider"); Moriarity et al., *They Said It*, NEWS & OBSERVER (Raleigh, N.C.), June 17, 2007, at 26A (quoting the president-elect of the N.C. Conference of District Attorneys in his opposition to raising the age of juvenile court jurisdiction in 2007). *But see* Shay Bilchik, Op-Ed., *'Adult' Trials Fails Teenagers*, NEWS & OBSERVER (Raleigh, N.C.), May 21, 2007, at 11A (op-ed by former prosecutor and U.S. Justice Department official in favor of 2007 legislation to raise the age of juvenile court jurisdiction).

122. *See* Blythe, *supra* note 77 (quoting the general counsel of the N.C. Sheriffs' Association as opposing raising the jurisdictional age in 2007 based on the fact that "[t]here's been little study of the victims in all this," and quoting the Wake County Sheriff as urging legislators not to "forget the victims"); Moriarity et al., *supra* note 121, at 26A (quoting a state representative in 2007 as opposing raising the age because "crime victims will get relief much later").

123. For instance, the preferences of the victim could be made an explicit factor in the calculus when the prosecutor, and then the judge, determines whether the sixteen- or seventeen-year-old offender's case should be transferred to adult court. North Carolina's current transfer laws allow for the prosecutor to offer evidence at the transfer hearing, which conceivably could include testimony by the victim. *See* N.C. GEN. STAT. § 7B-2203(a) (2007) ("At the transfer hearing, the prosecutor and the juvenile may be heard and may offer evidence, and the juvenile's attorney may examine any court or probation records, or other records the court may consider in determining whether to transfer the

little has been done in the past to address or satisfy the concerns of victims and their advocates, there is clearly room for compromise in this area—as well as in the aforementioned areas of concern to law enforcement and prosecutors. The next Part documents that, despite the backing of prominent scholars and child welfare experts, well-considered proposals to raise the age have been repeatedly defeated based in large part on the arguments just examined.

### III. A LONG-ESTABLISHED PATTERN: 1915 TO 2008

The North Carolina Constitution of 1868 was the first document to differentiate between adults and children in the state's courts and institutions.<sup>124</sup> It allowed for the establishment of “Houses of Refuge” for juveniles, the original model for today's training schools,<sup>125</sup> and called for the appointment of a Board of Public Charities, which would provide for “the poor, the unfortunate and

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case.”); *see also* N.C. GEN. STAT. § 7B-2200 (2007) (allowing transfer upon motion of the prosecutor, the juvenile's attorney, or upon the court's own motion); *supra* notes 47–51 and *infra* notes 216–21 and accompanying text (discussing the current laws regarding transfer from juvenile to adult court in North Carolina and the criteria to be considered by the court when determining whether to transfer jurisdiction). Similarly, the victim's losses, be they monetary, physical, or psychological, could be considered when determining if transfer to superior court were appropriate. North Carolina's transfer laws could be amended to explicitly include the loss of the victim as a factor to be considered in the transfer decision, although the statute does currently provide for consideration of the serious or violent nature of the offense. *See* N.C. GEN. STAT. § 7B-2203(7) & (8) (2007) (requiring the court in a transfer hearing to consider whether the alleged offense was committed in an “aggressive, violent, premeditated, or willful manner,” as well as the “seriousness of the offense and whether the protection of the public requires that the juvenile be prosecuted as an adult”). Likewise, in cases remaining in juvenile court—such as those involving misdemeanors or felonies that do not involve serious injury to persons or property—the victim's preferences and losses could be taken into account when the juvenile court judge determines the conditions of probation at disposition. *See, e.g.*, N.C. GEN. STAT. § 7B-2506(4) & (22) (2007) (requiring that the juvenile pay restitution to “any person who has suffered loss or damage as a result of the offense committed by the juvenile,” and allowing the court to “determine the amount, terms, and conditions” of the restitution). *But see* Aya Gruber, *Righting Victim Wrongs: Responding to Philosophical Criticisms of the Nonspecific Victim Liability Defense*, 52 *BUFF. L. REV.* 433, 438–39 (2004) (arguing against schemes that allow victims to be portrayed as blameless, as they allow wrongdoers to be framed as entirely morally culpable). *See generally* Lynne N. Henderson, *The Wrongs of Victim's Rights*, 37 *STAN. L. REV.* 937, 938 (1985) (examining “the impact that current victim's rights proposals and programs will likely have both on the criminal process and on victims”).

124. *See* Thomas, *Juvenile Justice*, *supra* note 41, at 2; *see also* JOHN V. ORTH, *THE NORTH CAROLINA STATE CONSTITUTION 12–20* (1995) (discussing the history of the North Carolina Constitution of 1868).

125. N.C. CONST. art. XI, § 5 (1868) (“A House or Houses of Refuge may be established whenever the public interest may require it, for the correction and instruction of other classes of offenders.”).

[the] orphan.”<sup>126</sup> The Constitution of 1868 also gave the Governor executive power and wide discretion to pardon those convicted of “all offenses,”<sup>127</sup> a power that he used to remove young offenders from adult prisons before the establishment of the state’s first training school.<sup>128</sup>

Until a statewide juvenile court system was established in 1919, children aged seven through fifteen were adjudicated in adult criminal courts under the “common law of crimes applicable to children.”<sup>129</sup> These consisted of three general rules that defined the

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126. N.C. CONST. art. XI, § 7 (1868) (“Beneficent provision for the poor, the unfortunate and orphan, being one of the first duties of a civilized and a Christian State, the General Assembly shall, at its first session, appoint and define the duties of a Board of Public Charities, to whom shall be intrusted [sic] the supervision of all charitable and penal State institutions, and who shall annually report to the Governor upon their condition, with suggestions for their improvement.”); N.C. CONST. art. XI, § 8 (1868) (“There shall also, as soon as practicable, be measures devised by the State for the establishment of one or more Orphan Houses, where destitute orphans may be cared for, educated and taught some business or trade.”).

127. N.C. CONST. art. III, § 6 (1868) (“The Governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses (except in cases of impeachment) upon such conditions as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons.”).

128. See Thomas, *Juvenile Justice*, *supra* note 41, at 3–4 & n.17 (stating, based on Legislative and Public Documents for the years 1869–1909, that more than 150 children and youthful offenders were pardoned during these years to remove them from adult prisons, as such punishments were considered “unjust, cruel, monstrous and absurd”). The establishment of the Stonewall Jackson Manual Training and Industrial School, which opened in January 1909, was the result of a seventeen-year campaign by the Board of Charities and Public Welfare and others to ensure that the state had a correctional facility for boys. The school was intended for white boys, aged sixteen and younger, in need of “correction, education, and training in middle class values.” ALLEY & WILSON, *supra* note 30, at 3. In 1918, the State Home and Industrial School for Girls (Samarkand Manor) opened for white girls and, in 1925, a training school was opened for African-American boys as well as one for African-American girls. *Id.* at 3–4, 6–7. The first coeducational and racially-integrated training school in North Carolina was not established until 1961. *Id.* at 35; see also SANDERS, *supra* note 100, at 193–214, 263 (analyzing the delinquency cases of African American children in North Carolina between 1919 and 1929, and concluding that African American children received more punitive treatment than their white counterparts). Despite the establishment of multiple training schools, children younger than ten years old were still being confined to adult jails in 1937. See *Child Prisoners Cause Criticism*, NEWS & OBSERVER (Raleigh, N.C.), Feb. 23, 1938, at 3 (reporting that sixty-six of the 1070 children illegally held in adult jails during 1937 were younger than ten years old). It was not until 1947 that the numbers of children illegally detained in adult jails showed a steady decline. See Aydtlett, *supra* note 85, at 10. However, it was reported in 1963 that delinquent children were still “frequently” placed in jails with adult offenders in violation of North Carolina law. Mason P. Thomas, Jr., *Juvenile Court Judges Discuss Youth Problems*, POPULAR GOV’T, June–July 1963, at 7, 26.

129. State v. Yeagan, 117 N.C. 706, 707, 23 S.E. 153, 154 (1895) (holding that, for children between the ages of seven and fourteen, there is a rebuttable presumption that

concepts of criminal responsibility and criminal intent for young offenders, depending on their age and capacity;<sup>130</sup> 1) children under seven were conclusively presumed to be incapable of criminal intent and, thus, could not be prosecuted or punished for any crime; 2) children between the ages of seven and fourteen were presumed incapable of crime, but such presumption could be rebutted by evidence that the child was “capable of discerning between good and evil”; and 3) children over fourteen were treated as adult offenders.<sup>131</sup> In general, children in the middle cohort—aged seven to fourteen—were prosecuted for felonies but not misdemeanors, unless there were aggravating factors such as serious injury or use of a weapon.<sup>132</sup>

It is against this backdrop—marked by public recognition that, because of their lack of maturity, children should be adjudged differently than adults—that the Probation Courts Act of 1915 was passed, the first piece of legislation to authorize that offenders younger than eighteen were to be adjudicated for crimes in a separate system from adults.<sup>133</sup> While the Probation Courts Act served as a positive, progressive model for subsequent legislation affecting North Carolina’s juvenile court system, its directive that juvenile court jurisdiction extend to age eighteen was rejected just four years later and never again passed into law.<sup>134</sup> This early pattern of reform and retrenchment has continued to the present day.

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they lack criminal intent and are thus incapable of committing crimes); *see also* Thomas, *Juvenile Justice*, *supra* note 41, at 2.

130. *See* Yeagan, 117 N.C. at 707, 23 S.E. at 154; *see also* Thomas, *Juvenile Justice*, *supra* note 41, at 3.

131. *Yeagan*, 117 N.C. at 707, 23 S.E. at 154.

132. *Id.* at 708, 23 S.E. at 154; *see also* State v. Pugh, 52 N.C. (7 Jones) 61, 62–63 (1859) (“The wisdom of the common law is illustrated in the rule, that for an ordinary [non-aggravating] assault and battery, a boy under the age of 14, is not liable to indictment; in the nature of things...it is better to leave such matters to the correction which the parent or school-master may, in their discretion inflict than give importance to it by bringing ‘Young America’ into court like a man, with all the pomp and circumstance of a trial by the court and jury which is to result in a fine, to be paid out of the pocket of ‘papa!’”).

133. *See* Thomas, *Juvenile Justice*, *supra* note 41, at 5.

134. *See* Act of Mar. 9, 1915, ch. 222 § 2, 1915 N.C. Sess. Laws 294 (“Any child eighteen years of age, or under, may be arrested, but without imprisonment with hardened criminals and brought before any of these courts to be tried and dealt with as hereinafter prescribed.”); Mabel Brown Ellis, *Dependency and Delinquency*, in *CHILD WELFARE IN NORTH CAROLINA* 9, 22–28 (1918) (stating that, despite its defects, the Probation Courts Act succeeded in introducing the idea of probation to the North Carolina courts, and that it set the jurisdictional age at eighteen, which was the “highest limit yet established by similar legislation in any part of the country”); *infra* notes 144–45 and accompanying text (discussing the 1919 reduction of the upper age of juvenile court jurisdiction from eighteen to sixteen).



*A. The Juvenile Court System Meets Early Opposition*

While many child advocates and policymakers considered the Probation Courts Act of 1915 to be broadly ineffectual because it gave judges unlimited discretion to transfer whole categories of children to adult criminal court,<sup>135</sup> the law did introduce several new concepts that transformed the state's treatment of juvenile offenders.<sup>136</sup> In addition to recommending that the jurisdictional age be extended to eighteen, the Act initiated the practice of placing an offender on probation after conviction for a crime, rather than imprisoning him or imposing another type of punishment.<sup>137</sup> As North Carolina had no probation law at this time for adults, the proposal that such a system be implemented for juveniles was groundbreaking.<sup>138</sup> The Act also introduced the concept of providing separate forums for juveniles and adults, including trying juveniles apart from adults and keeping separate court dockets and records as well as detaining and imprisoning juveniles in facilities that were segregated from those of adults.<sup>139</sup>

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135. See Act of Mar. 9, 1915, ch. 222 § 2, 1915 N.C. Sess. Laws 294 (“When a child has been known to be a repeated offender against the law, incorrigible, and whose freedom in society is thought by the judge adjudicating his case to be a menace to society, may be disposed of according to the discretion of the court.”); see also Ellis, *supra* note 134, at 28 (stating that this group of children—those who are continually in trouble and have repeated court appearances—are the group above all others who are most in need of probationary services, and that the judge’s discretion to transfer them from the juvenile system to the adult system should be limited).

136. See Ellis, *supra* note 134, at 28 (noting the “three forward steps of importance” that were effectuated by the Probation Courts Act).

137. Act of Mar. 9, 1915, ch. 222 § 2, 1915 N.C. Sess. Laws 294, 294–95 (“It shall be the duty of the court . . . to suspend sentence when the child is found guilty and place him on probation for a specified period, three, six or twelve months, or longer, as the court may think best; and shall require both the probation officer having the moral control of such child remaining under the jurisdiction of the court to appear with the child in question from time to time and at the termination of the probation period fixed by the court, and report as to his progress and general condition. The court may dismiss the case, if satisfied, or place the child again on probation, or commit him to some suitable county or State training school, or a proper private home . . . .”); see also Ellis, *supra* note 134, at 28.

138. Ellis, *supra* note 134, at 22.

139. Act of Mar. 9, 1915, ch. 222 § 4 (“It shall be the duty of the court . . . to hold as far as practicable separate trials for the children, and if possible in a private office removed from all criminal features and surroundings, and also to keep and have kept what shall be known as the Juvenile Record . . . .”); § 5 (“No court or justice of the peace, or sheriff or arresting officer shall commit to prison and incarcerate any child fourteen years of age, and under, in any jail or prison enclosure where the child will be the companion of older and more hardened criminals, except where the charge is for a capital or other felony, or where the child is a known incorrigible or habitual offender. The court . . . may place such child in some suitable place or detention home, or in the temporary custody of any responsible person who will give bail or become responsible for his appearance at court.”). 1915 N.C. Sess. Laws 294, 295; Ellis, *supra* note 134, at 28.

The overriding weakness of the Probation Courts Act, however, was its failure to fund its plan for a statewide system of juvenile courts.<sup>140</sup> While the Act directed that juvenile courts appoint probation officers, it allowed them to work on a voluntary or salaried basis, and it permitted county commissioners to pay them whatever amount was considered “advisable and just.”<sup>141</sup> The result, not surprisingly, was that the law was not uniformly applied across the state; by 1919, only ten North Carolina cities had complied, with just one employing a probation officer who worked full-time in juvenile court or who had any previous training.<sup>142</sup>

In 1919, the Probation Courts Act was repealed by the legislature, and the Juvenile Court Statute was passed, representing the state’s first meaningful attempt to establish a statewide system of juvenile courts.<sup>143</sup> While an early draft of the 1919 statute called for juvenile court jurisdiction to extend to all children under age eighteen, the legislation that was ultimately adopted covered only

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140. Ellis, *supra* note 134, at 11 (“North Carolina has no juvenile court law, for the Probation Courts Act, passed in 1915, accomplished little more than a partial introduction to the principles of probation. It in no sense established a real juvenile court.”); SANDERS, *supra* note 100, at 183 (“[T]he act was so loosely drawn, and was so indefinite in its provisions, that outside of a few of the cities...it had little effect.”). See also *supra* notes 98–104 and accompanying text (discussing the state’s chronic underfunding of the juvenile court system).

141. Law of Mar. 9, 1915, ch. 222 § 2 (“It shall be the duty of the court, after consultation with proper persons, to appoint either some volunteer or paid probation officer who shall have charge of the delinquent or dependent children brought before the court.”), § 3 (“[The court] shall suggest to the county commissioners that such probation officer be paid whatever amount is deemed advisable and just by the court, especially when no suitable volunteer probation officer can be secured, and the board of commissioners of any county are hereby empowered in their discretion to make the necessary appropriation to carry this section into effect.”); 1915 N.C. Sess. Laws 296; ALLEY & WILSON, *supra* note 30, at 4; Thomas, *Juvenile Justice*, *supra* note 41, at 5 (“[The Act] depended on boards of county commissioners to pay the probation staff but did not require them to do so.”).

142. See ALLEY & WILSON, *supra* note 30, at 4; Ellis, *supra* note 134, at 31.

143. See Act of Mar. 3, 1919, ch. 97 § 25, 1919 N.C. Sess. Laws 243, 254; ALLEY & WILSON, *supra* note 30, at 4; SANDERS, *supra* note 100, at 183. The constitutionality of the legislation was challenged—and upheld—soon after the law’s passage. See *State v. Burnett*, 179 N.C. 735, 742, 102 S.E. 711, 714 (1920) (holding that the law, which denies juveniles the right to a trial by jury, was within the police power of the state, as the juvenile court placed the state in the role of guardian of its children); see also *Ex parte Watson*, 157 N.C. 340, 356, 72 S.E. 1049, 1054–55 (1911) (holding that committing a child to training school for a period of time exceeding that allowed for imprisonment of an adult for the same offense is not unconstitutional, as detention of this nature is “for the training and moral development of the criminally delinquent children of the State” and is not punishment for a crime).

those younger than sixteen.<sup>144</sup> While no explicit grounds or rationale for this change can be found in the legislative or social history of the time, the lowering of the jurisdictional age may have reflected the general reluctance of lawmakers to support a “special” court for juveniles that operated outside the traditional adversary system.<sup>145</sup>

In the decades that followed the passage of the 1919 statute, resistance to the concept and reality of a statewide system of juvenile courts surfaced in the areas of government funding and judicial support. Because the legislature appropriated no state funds, counties had to enlist local officials to serve as juvenile court judges and probation officers and to provide services through the already-burdened county public welfare department.<sup>146</sup> Meanwhile, the juvenile court system was handling a large number of cases; during the years of 1929 through 1934, approximately 17,000 children were processed in these courts.<sup>147</sup> The combination of lack of funding and increasing caseloads led to limited supervision, treatment, and residential placements for delinquent as well as dependent and neglected children.<sup>148</sup> In fact, as of 1929, nearly one-third of the state’s counties contributed no monies to their local juvenile court

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144. Act of Mar. 3, 1919, ch. 97 § 1, 1919 N.C. Sess. Laws 243; ALLEY & WILSON, *supra* note 30, at 4; *supra* notes 31–33 and accompanying text (noting that the age of juvenile court jurisdiction was inexplicably lowered from eighteen to sixteen with the passage of the Juvenile Court Statute of 1919).

145. See ALLEY & WILSON, *supra* note 30, at 5. There are few explanations for why age sixteen, rather than another age, was chosen for the upper limit of juvenile court jurisdiction in North Carolina. Given that during this time period more states set the upper limit at sixteen than any other age but eighteen, and given that no state set the age lower than sixteen, it is likely that North Carolina legislators were merely following established pattern and practice. See HERBERT H. LOU, JUVENILE COURTS IN THE UNITED STATES 47 n.1 (1927) (finding that as of 1925, one state set the limit at nineteen; fourteen states set it at eighteen; four set it at seventeen; and thirteen (presumably including North Carolina) set the limit at sixteen, with several outliers setting it at twenty or twenty-one).

146. Act of Mar. 3, 1919, ch. 97 § 11, 1919 N.C. Sess. Laws 243, 248 (“The judge appointing any probation officer may in his discretion determine that a suitable salary be paid and may, with the approval of the judge of the Superior Court, fix the amount thereof. Such salary so determined and so approved shall be paid by the board of county commissioner[s].”), 252 (discussing compensation for judges); ALLEY & WILSON, *supra* note 30, at 4–5.

147. WILEY B. SANDERS & WILLIAM C. EZELL, JUVENILE COURT CASES IN NORTH CAROLINA 1929–1934, at 7–8 (1937).

148. ALLEY & WILSON, *supra* note 30, at 5; see also N.C. STATE BD. OF CHARITIES & PUB. WELFARE, JUVENILE COURTS IN NORTH CAROLINA 10 (1923) (“Wherever the [juvenile court] system is failing to work with reasonable success, it is due to the inefficiency of officials or a lack of proper facilities for handling difficult cases.”).

and approximately one-third of the state's counties paid no salary to their juvenile court judge.<sup>149</sup>

In addition to the tangible problems that arose from lack of funding, the growth and development of the juvenile court system was also stymied by judges' unfamiliarity with juvenile court's principles and procedures.<sup>150</sup> As juvenile judges presided with virtually unfettered discretion, many had little or no regard for traditional notions of due process, and the system became an acutely informal one.<sup>151</sup> These hurdles were further heightened by judges' hostility to the juvenile court's emphasis on treatment and rehabilitation rather than incarceration or other more punitive forms of punishment.<sup>152</sup>

### B. *Strong Advocacy for Raising the Age*

While supporters of North Carolina's incipient juvenile court system acknowledged that there were problems with its functioning and efficacy, statistics showed that for the period of 1929 through 1944, the total number of delinquency cases had in fact decreased, suggesting that the system was beginning to have a positive impact—

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149. See SANDERS, *supra* note 100, at 185.

150. *Id.*

151. See ALLEY & WILSON, *supra* note 30, at 5. The 1919 Juvenile Court Statute provided for separate court hearings for juveniles and for exclusion of the "general public" from juveniles' cases. See Act of Mar. 3, 1919, ch. 97 § 4, 1919 N.C. Sess. Laws 243, 244 ("In the hearing of any case coming within the provisions of this act the general public may be excluded and only such persons admitted thereto as have a direct interest in the case."); N.C. STATE BD. OF CHARITIES & PUB. WELFARE, *supra* note 148, at 5 ("The curious spectators not concerned in the case should be excluded from the room where the hearing is held."). While closed hearings for juveniles were believed to protect children from the stigma of a public adjudication, in recent decades there has been a move toward more openness in juvenile court proceedings, although "widespread ambivalence" still exists over the extent to which such proceedings should be open. See JANET MASON, CONFIDENTIALITY IN JUVENILE COURT PROCEEDINGS 5 & n.3 (2004) (discussing the issue of open hearings in North Carolina juvenile courts); see also William McHenry Horne, Note, *The Movement to Open Juvenile Courts: Realizing the Significance of Public Discourse in First Amendment Analysis*, 39 IND. L. REV. 659, 676–79 (2006) (describing the trend toward opening juvenile proceedings to the public); Danielle R. Oddo, Note, *Removing Confidentiality Protections and the "Get Tough" Rhetoric: What Has Gone Wrong With the Juvenile Justice System?*, 18 B.C. THIRD WORLD L.J. 105, 131–35 (1998) (describing changes in laws affecting the confidentiality of delinquent proceedings and the consequences of those changes). According to the current N.C. Juvenile Code, the presumption is that all court hearings in delinquency cases are open to the public, although the court may close a hearing for good cause at the juvenile's request. See N.C. GEN. STAT. § 7B-2402 (2007).

152. See SANDERS, *supra* note 100, at 185 ("[I]n some instances the judges were actually hostile to the juvenile court movement, thinking it was merely a method of 'letting the youthful criminal go free.'").

however modest—on the state’s juvenile crime rate.<sup>153</sup> Perhaps in response, scholars, child welfare advocates, and legislators—either directly or through the work of appointed commission members—began to advance arguments for raising the age of juvenile court jurisdiction in North Carolina.<sup>154</sup> Many of the arguments were particularly sophisticated, as they recognized that sixteen- and seventeen-year-olds have more in common with younger adolescents than adults in terms of both social and brain development.<sup>155</sup> These arguments were also notable for their characterization of North Carolina as out of step with the majority of states through its failure to include this group of “lost children” within the original jurisdiction of juvenile court.<sup>156</sup>

The work of Wiley Britton Sanders, a prominent child welfare scholar in the 1940s, is a prime example of such advocacy.<sup>157</sup> In the context of a discussion of the cultural relativity of the meaning of “juvenile delinquency,”<sup>158</sup> Professor Sanders, who taught at the School of Social Work at the University of North Carolina, contended that a child’s age must be considered when attempting to determine “the degree of his responsibility for his behavior.”<sup>159</sup> He surveyed the upper age limit of jurisdiction in juvenile courts across the United States and noted that the disparity meant that “a child can continue to be a juvenile delinquent from one to five years longer in some states than he can in others.”<sup>160</sup>

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153. *Id.* at 4.

154. *See infra* notes 157–92 and accompanying text.

155. *See infra* notes 185–89 and accompanying text.

156. *See infra* notes 179–92 and accompanying text.

157. *See SANDERS, supra* note 7, at 4–10; *see also* Paul W. Shankweiler, Book Review, 28 *SOCIAL FORCES* 98 (1949) (reviewing WILEY BRITTON SANDERS, *JUVENILE COURTS IN NORTH CAROLINA* (1948) and stating, “To Professor Sanders’ untiring devotion to this pioneering task North Carolina and the South at large owe much.”).

158. SANDERS, *supra* note 7, at 6 (“Still another concept which complicates the situation is that children’s behavior standards vary according to the culture of their group.”). Sanders noted, for instance, that while assaultive behavior among children is unacceptable in the United States, certain “primitive tribes” encourage such conduct because it “has a survival value in making the children brave to fight their enemies.” *Id.* (citations omitted). He also observed that cultural standards can vary from generation to generation, as in the case of cigarette smoking, for which young college women could have been expelled “[a] few years ago,” while an institution “would be laughed at for taking such a step today.” *Id.*

159. *Id.*

160. *Id.* at 6–7 (noting that in 1948, the upper age limit of juvenile court jurisdiction was sixteen in four states; seventeen in three states; eighteen in twenty states; nineteen in one state; and twenty-one in five states).

Showing prescience in light of legal developments that occurred in the decades to follow, Professor Sanders addressed a wide range of issues regarding the philosophy and structure of juvenile delinquency court. Because he believed that any discussion of the proper jurisdiction of delinquency court would be incomplete if it were limited to the chronological age of the child, he advocated for the consideration of the “mental age” as well as the “emotional age and [the] social age” of the child when evaluating whether a matter should be handled in juvenile or adult court.<sup>161</sup> Professor Sanders also urged that juvenile delinquency be considered “part of the learning process,” with greater emphasis on the role and responsibility of parents.<sup>162</sup> He called attention to the disparate treatment of children

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161. *Id.* at 7. Sanders suggested that a child’s “mental age” could be revealed by “psychological tests of intelligence,” and that a child’s emotional and social age were concepts that “hold rich promise for further exploration and research.” *Id.* He placed particular emphasis on states like North Carolina, with a jurisdictional age limit of sixteen, as these would likely have many older adolescents whose mental, social, or emotional age was fifteen or younger, potentially qualifying them for juvenile court jurisdiction under such an analysis. *Id.*; see also LOU, *supra* note 145, at 49–52 (asserting that the age jurisdiction of juvenile court should be viewed in the “light of [both] psychology and psychiatry,” and recognizing that a chronological age limit will necessarily “be more or less arbitrary”); Thomas Grisso et al., *Competency to Stand Trial in Juvenile Court*, 10 INT’L J. L. & PSYCHIATRY 1, 9 (1987) (describing “‘normal’ immaturity” as an important aspect of juvenile competence); Kim Taylor-Thompson, *States of Mind/States of Development*, 14 STAN. L. & POL’Y REV. 143, 162–67 (2003) (arguing that “developmental negligence” defenses should not only be based on a defendant’s age but also on his maturity or mental capacity). *But see In re Wright*, 137 N.C. App. 104, 111, 527 S.E.2d 70, 74 (2000) (holding that the N.C. legislature intended for juveniles who have reached age thirteen to be subject to transfer to superior court, and that the decision should be based on chronological age only, not developmental, psychological, or emotional age).

162. SANDERS, *supra* note 7, at 7–9 (asserting that, because all children inevitably make mistakes in the process of “acquiring culture,” delinquency is a “relative matter” that turns on the class and race of the child, for which parents and society must share responsibility). Sanders stated that, because “people of wealth and social prominence have more adequate private resources for correcting their children’s behavior problems than do the parents in the lower social and economic levels[.]” the “highly selective influence of social status” is a “serious limitation . . . in the use of juvenile court cases as a yardstick for measuring juvenile delinquency.” *Id.* at 8. For a contemporary expression of related sentiments, see Franklin E. Zimring, *Penal Proportionality for the Young Offender: Notes on Immaturity, Capacity, and Diminished Responsibility*, in YOUTH ON TRIAL 271, 283–85 (Thomas Grisso & Robert G. Schwartz eds., 2000) (describing adolescence as a period of “learning by doing” in which criminal offenses are “a more or less normal adolescent phenomenon,” and recommending that policies which do not compromise the long-term interests of the youthful offender be utilized to reduce youth crime, rather than purely punitive responses). Based on concepts of penal proportionality and theories of youth as a protected status, Zimring argues that the immaturity and diminished responsibility of youth should be mitigating factors when determining punishment until the offender has reached his late teens. *Id.* at 277–83.

in juvenile court based on race and socioeconomic status,<sup>163</sup> and he expressed concern for the lack of due process rights for juveniles, an issue that would not come to the national fore for another two decades.<sup>164</sup>

Given the depth of Professor Sanders' discussion and analysis of the relevant issues confronting juvenile courts in North Carolina, his ultimate recommendation that the jurisdictional age be raised from sixteen to seventeen is notable for its relative modesty.<sup>165</sup> It is not unlikely that Sanders anticipated the strong resistance that would greet a proposal to raise the age of juvenile court jurisdiction but a single year. In fact, when a 1953 state commission addressed the question of the appropriate upper age limit before the introduction of a House bill on the subject, it favorably noted Sanders' scholarship<sup>166</sup> but ultimately rejected the proposed legislation.<sup>167</sup>

While the commission acknowledged that North Carolina's upper age limit of sixteen was "considerably lower than the average of other states,"<sup>168</sup> it opposed an increase in the limit because judges and correctional personnel maintained that North Carolina lacked the facilities to detain and provide training for "the unruly percentage of such an older age group."<sup>169</sup> Though the commission recognized that

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163. SANDERS, *supra* note 7, at 8–9 (contending that the race of a child influences whether that child will be brought before the juvenile court, as does whether the child lives in an urban or rural area).

164. *Id.* at 7 ("If an adult cannot be classed as a criminal until he has been first tried on a criminal charge and convicted by a jury of his peers in a court of competent jurisdiction, then it would follow that no child should be classed as a juvenile delinquent until he has been declared to be such by a judge of a juvenile court after an official hearing."). Sanders objected to "unofficial" supervision by probation officers when a child has not been formally found delinquent by a juvenile court after an "official" hearing. *Id.*; cf. *In re Gault*, 387 U.S. 1, 33, 41, 55, 57 (1967) (granting to juveniles in delinquency proceedings the due process rights of counsel, notice of the charges, the privilege against self-incrimination, sworn testimony, and the opportunity for cross-examination of witnesses).

165. SANDERS, *supra* note 7, at 198 ("[S]ince only three other states have the age jurisdiction of the juvenile court as low as sixteen years for both boys and girls the age limit in North Carolina should be extended until the child reaches the seventeenth birthday.").

166. See COMM'N ON JUV. CTS. & CORR. INSTS., REPORT TO GOVERNOR LUTHER H. HODGES AND THE GENERAL ASSEMBLY OF NORTH CAROLINA at 7 (1955) (citing Sanders' *Juvenile Court in North Carolina* for "very aptly" pointing out that the crime of placing juveniles in adult jails "oftentimes is more serious and destructive" than any criminal act that the child may have committed); see also SANDERS, *supra* note 7, at 163.

167. See COMM'N ON JUV. CTS. & CORR. INSTS., *supra* note 166, at 5, 19–20.

168. See *id.* at 5.

169. *Id.* at 5–6. The 1953 Commission recommended that a request for appropriations for a 'closed' training school, a locked facility from which juveniles could not readily leave, be presented to the 1957 General Assembly. *Id.* at 17, 18–19; ALLEY & WILSON, *supra* note 30, at 20 ("A separate closed or security type institution of correction and training

the age limit should “in time” be increased,<sup>170</sup> it qualified its endorsement by stating that an appropriate correctional institution for sixteen- and seventeen-year-olds must be established first.<sup>171</sup> Because of the lack of unanimity among commission members with regard to the age jurisdiction issue, specific recommendations were not made, and the proposed bill was not studied.<sup>172</sup>

While the commission may have had reason to worry about correctional facilities and funding,<sup>173</sup> it should not have refused even to consider the proposed legislation. House Bill 396 would have raised juvenile court jurisdiction to seventeen only for first offenders charged with misdemeanors—necessitating no training schools, let alone secure ones.<sup>174</sup> Yet, given the unwillingness of the advisory body to consider the bill, and the vocal opposition of clerks of court and correctional personnel,<sup>175</sup> it is not surprising that lawmakers rejected the legislation less than a month after it was introduced.<sup>176</sup>

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was recommended by the commission, with plans and the appropriations request to be presented to the 1957 General Assembly.”)

170. See COMM’N ON JUV. CTS. & CORR. INSTS., *supra* note 166, at 5.

171. See *id.* at 19–20 (“It is recommended that the juvenile court age be raised to include children in their sixteenth and seventeenth years, by two steps, but only if it can be done in such a manner as to preclude any child in this age group being committed to any one of the institutions of correction and training until the closed institution of correction and training has been established.”)

*Id.*; see also ALLEY & WILSON, *supra* note 30, at 19 (“[H.B. 396] failed with the principal argument against it being that the training schools were overcrowded and could not handle the increased number of children.”); Letter from Samuel E. Leonard, Comm’r of Corr., N.C. Bd. of Corr. and Training, to Pearl Pritchard, Central Falls, N.C. 1 (Mar. 15, 1955) (on file with the North Carolina Law Review) (“Our Training Schools are proving that these youngsters are not too hard to handle. The trouble is, we are getting too many . . . . The real trouble is in the home. Children have far too much or too little. It is a question of being underprivileged or overprivileged.”)

172. See COMM’N ON JUV. CTS. & CORR. INSTS., *supra* note 166, at 20 (“As to what the General Assembly should do at this session, this commission cannot make a recommendation for the reason that its members are not unanimous, and the proposed bill has not been studied.”)

173. See *id.* at 9 (“One of the greatest weaknesses in the entire field of treating juvenile delinquency is the lack of funds for sufficient trained workers to assist the courts. Whatever the wisdom of the judge, the State cannot expect the juvenile courts to march toward a solution of these human problems without the use of its eyes and arms.”)

174. See H.B. 396, 1955 Gen. Assemb., Reg. Sess. (N.C. 1955) (proposing that juvenile court jurisdiction be extended to include sixteen-year-old first offenders charged with misdemeanors other than motor vehicle offenses). First offenders were not sent to the state’s training schools. See Letter from Mrs. Tom Grier, Executive Sec’y for the N.C. Conference for Soc.l Serv., to The Honorable Luther H. Hodges, Governor of North Carolina 1–2 (Mar. 15, 1955) (on file with the North Carolina Law Review) (recognizing that first offenders are not sent to training schools).

175. See *id.* (stating that opposition to H.B. 396 was coming from clerks of court and correctional personnel who contended that training schools could not handle the additional age group, even though “representatives of the latter group admit that first



Debate and discussion over issues related to the administration of the juvenile courts continued through the late 1950s, when several reports by commissions appointed by Governor Luther Hodges were submitted to the General Assembly following in-depth studies of the system.<sup>177</sup> In addition to the question of the proper jurisdiction of juvenile court, among the areas examined were the procedural and substantive laws governing delinquency court, the quality of supervision provided to juveniles on probation, and the condition of statewide services and facilities for at-risk youth.<sup>178</sup>

The first of these reports, from the Governor's Youth Service Commission, called for the enactment of legislation extending the juvenile court age to eighteen, premised on the grounds that children aged sixteen to eighteen were a "lost" group from the "standpoint of state and community resources"<sup>179</sup> and that North Carolina was among only a small minority of states not extending protection to these older adolescents.<sup>180</sup> The report also found that an extension of jurisdiction—and, thus, treatment and services—was justified because sixteen- and seventeen-year-olds were most likely to get in trouble through "idleness" resulting from school attendance laws that permitted sixteen-year-olds to leave school; labor laws that prohibited employment of children under age eighteen; and armed forces regulations that forbade sixteen-year-olds from enlisting without parental consent.<sup>181</sup> The report characterized the juvenile court system as "weak and outmoded" and called for the establishment of a system of family courts that would be state-administered and financed, one that would "substitute diagnosis and therapy for the philosophy of guilt and punishment," thereby lowering recidivism rates.<sup>182</sup>

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offenders are not sent to the training schools"). In addition, the letter's author recommended that qualified judges be appointed to serve in juvenile court, because many clerks of court who serve as juvenile court judges are not qualified and "complain of the burden" of the position. *Id.*

176. See INST. OF GOV'T, DAILY BULLETIN, Feb. 28, 1955, at 1 (recording that H.B. 396 was introduced on this date); INST. OF GOV'T, DAILY BULLETIN, Mar. 24, 1955, at 3 (recording that H.B. 396 was "reported unfavorably"—or rejected—on this date).

177. See ALLEY & WILSON, *supra* note 30, at 17.

178. See *id.* at 21–29.

179. THE GOVERNOR'S YOUTH SERV. COMM'N, REPORT OF THE GOVERNOR'S YOUTH SERV. COMM'N 3 (1956) (on file with the North Carolina Law Review).

180. *Id.* (stating that North Carolina is one of only five states that ends jurisdiction at age sixteen, that twelve states end it at seventeen, and that some "go as high as" twenty-one years of age).

181. *Id.*

182. *Id.* (stating that a family court system would "decrease the number of commitments of children to state correctional institutions and of youthful offenders to the

The following year, the National Probation and Parole Association filed a report further evaluating the need for a state-wide system of family courts for North Carolina.<sup>183</sup> The report addressed how best to provide effective court services and facilities for children and families regardless of socioeconomic status or location, again characterizing children between the ages of sixteen and eighteen as a “lost” group under North Carolina law.<sup>184</sup> Renewing the recommendation to raise the age of juvenile court jurisdiction to eighteen, the 1957 report advanced an argument expressed fifty years later by the U.S. Supreme Court in *Roper v. Simmons*,<sup>185</sup> which invalidated the death penalty for offenders under eighteen.<sup>186</sup> Both the 1957 report and the Court argued that basic equity is compromised when sixteen- and seventeen-year-olds are considered adults for certain purposes (i.e., committing crimes) but not others (i.e., voting).<sup>187</sup> Presaging the reasoning relied upon in *Simmons* and utilized by contemporary raise-the-age advocates, the report’s authors

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Prison System of the state”); *see also supra* notes 73–87 and accompanying text (discussing in detail the contention that raising the age of juvenile court jurisdiction to eighteen would lower recidivism rates and increase public safety).

183. THE NAT’L PROB. & PAROLE ASS’N, A SYSTEM OF FAMILY COURTS FOR NORTH CAROLINA (1957); *see also* Press Release, The Office of the Governor of North Carolina, *supra* note 86 (announcing the recommendation that a state-wide system of family courts be established and that the juvenile court age be raised to eighteen). The study was funded at no expense to the state, with some of the cost absorbed by the non-profit itself and the remainder covered by outside grants. ALLEY & WILSON, *supra* note 30, at 23.

184. *See* THE NAT’L PROB. & PAROLE ASS’N, *supra* note 183, at 12 (“The problem in its broad form was easy to identify, for it is a problem common, in a greater or lesser degree, to each of our forty-eight states: how to provide for all children and families in trouble good court services and facilities, not only for those who happen to reside in a large, relatively wealthy urban area, and one in which the citizens of the community are willing to devote an adequate portion of that wealth to such services.”). *Id.* at 18–19 (“As has been pointed out by the Governor’s Youth Service Commission in its report to Governor Hodges, children who have reached the 16th birthday but have not yet reached the 18th constitute a kind of ‘lost’ group under North Carolina law.”).

185. 543 U.S. 551 (2005).

186. *Id.* at 568.

187. *Compare* THE NAT’L PROB. & PAROLE ASS’N, *supra* note 183, at 19 (“In essence, they are legally children in almost every respect except responsibility for offenses against the law and compulsory school attendance. They are not permitted to marry without parental consent; they cannot vote; the types of employment in which they may engage are legally limited; and they are subject to parental authority. Yet, if one of them steals a car, picks a pocket, or takes a ten cent object from a store without paying for it, he immediately becomes an adult.”) *with Simmons*, 543 U.S. at 569 (“In recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent.”), *and* 574 (“The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death eligibility ought to rest.”).

argued that research in the fields of physiology and psychology supported the contention that offenders under eighteen should not be considered as culpable or criminally responsible as adults because they are not yet fully formed.<sup>188</sup> The report stated:

During the past twenty or thirty years . . . our knowledge shows that it is unreasonable to classify a sixteen or seventeen year old youngster as an adult in connection with offenses against society.

The period of physiological and psychological change which, in the human being, is known as adolescence is the period during which the natural human drives (the drive for recognition, the aggressive drive, the drive for love, and so on) are at their peak strength; and, in the average youngster, the inner controls necessary to keep these drives within bounds are not yet fully developed. In fact that part of the brain (the cortex) that is the seat of the individual's reasoning power does not reach full physical growth until after the age of eighteen.<sup>189</sup>

The last report of this era, the 1958 Bell Report, again raised the question of whether the age of juvenile court jurisdiction should be extended, lowered, or left unchanged.<sup>190</sup> This report, unlike the previous ones, did not explicitly recommend any particular age, but it instead urged clarity on the question.<sup>191</sup> Similar to the other reports, however, it did acknowledge that North Carolina was in the minority of states because of its very low jurisdictional age.<sup>192</sup>

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188. See *Simmons*, 543 U.S. at 569–70, 572–73 (holding that, because juveniles under eighteen are different from adults in terms of maturity, vulnerability to outside pressures, character, personality, and brain development, they cannot be classified among the worst offenders); THE NAT'L PROB. & PAROLE ASS'N, *supra* note 183, at 19–20, 38 (asserting that the North Carolina court system fails to provide appropriate services for sixteen- and seventeen-year-olds, adolescents who are not yet fully matured emotionally, physically, or neurologically and are not considered to be adults with respect to other aspects of their lives); see also ACTION FOR CHILDREN NORTH CAROLINA, *supra* note 53, at 3–7 (relying on scientific research on adolescent brain development to argue that, because teenagers' brains are still developing adult reasoning capabilities, the age of juvenile court jurisdiction should be raised to eighteen).

189. THE NAT'L PROB. & PAROLE ASS'N, *supra* note 183, at 19.

190. See Roddey M. Ligon, Jr., *A Report on the Domestic Relations Courts in North Carolina, the Juvenile Courts in North Carolina, and the Juvenile Courts of Other States*, POPULAR GOV'T, June 1958, at 3, 28–29.

191. See ALLEY & WILSON, *supra* note 30, at 28–29. But see Crosswell, *supra* note 107, at 3 (reporting in 1959 that the commissioner of Public Welfare for North Carolina supported raising the age based on reasons of equity, the stigma of an adult criminal record, and the fact that N.C. was in the minority of states on this issue).

192. See Ligon, *supra* note 190, at 41–42 (stating that in twenty-eight jurisdictions, the upper age is eighteen; in six states the upper age is seventeen; in five states, including

Several years were to pass before formal legislative action was taken to effectuate any of the changes recommended in these reports, and the issue of raising the jurisdictional age was not among them.<sup>193</sup> Thus, while this period may be characterized as “a time of studies” that generated multiple proposals for the extension of juvenile court jurisdiction, there were few concrete results.<sup>194</sup>

C. *Continued Reluctance to Join the Majority*

Although state commissions and advocacy groups have continued to examine the topic—albeit on a more limited basis than in decades past—their recommendations and proposals have again been met with either uncompromising resistance or marked indifference, leaving reams of committee reports, meeting minutes, and failed bills with little to show for it.<sup>195</sup> In recent years, for instance, governor-appointed committees released several reports either recommending that the age of juvenile court jurisdiction be raised to age eighteen or seriously considering the issue but stopping short of endorsing an extension.<sup>196</sup> The first of these occurred in the mid-1960s with the release of a report by a committee appointed specifically to study the juvenile court age.<sup>197</sup> Similar to earlier efforts, the report’s authors concurred that age eighteen is a “more logical breaking point” between childhood and adulthood than sixteen, particularly in light of an adolescent’s emotional maturity, judgment, conscience, and impulse-control.<sup>198</sup> The authors also gave weight to the fact that North Carolina was one of only six states at the time that did not have eighteen as its upper age limit for juvenile

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North Carolina, it is sixteen; in three states it is twenty-one; and in seven states there are special provisions regarding age jurisdiction).

193. See ALLEY & WILSON, *supra* note 30, at 25. Among the recommended changes that were eventually the subject of legislative action in North Carolina were the following: the establishment of a uniform state-wide district court system with a separate court that would have jurisdiction over matters concerning children and the family; adequate funding for secure detention facilities and training schools; and appropriate training of probation staff in the areas of adolescent development and treatment. *Id.* at 34–36.

194. *Id.* at 30.

195. See *infra* notes 196–210 and accompanying text.

196. See *infra* notes 197–210 and accompanying text.

197. See SUBCOMM. OF THE GOVERNOR’S COMM. ON JUVENILE DELINQUENCY & YOUTH CRIME, REPORT TO GOVERNOR TERRY SANFORD TO STUDY THE JUVENILE COURT AGE (196\_) (exact year unknown) (on file with the North Carolina Law Review).

198. *Id.* at 4; see also *supra* notes 183–89 and accompanying text (discussing a 1957 report that advocated for raising the age based, in part, upon psychological and physiological evidence that sixteen- and seventeen-year-olds have more in common with adolescents than adults).

court.<sup>199</sup> The committee ultimately recommended that the age be raised to eighteen, with exceptions for sixteen- and seventeen-year-olds charged with felonies having a maximum punishment exceeding ten years, and for those charged with either misdemeanors or felonies having a maximum penalty of less than ten years, “if the instance requires it.”<sup>200</sup> Such a proposal would have created a scheme that left the question of whether to prosecute sixteen- and seventeen-year-olds as adults or juveniles within the discretion of the prosecutor or judge.<sup>201</sup> The committee qualified its proposal, however, by recommending that such legislation be effective only upon establishing a statewide family court system or upon certifying that the Board of Juvenile Correction had adequate training school facilities, whichever occurred first.<sup>202</sup> The authors also recommended that sufficient funding be appropriated and that state matching funds be provided for detention facilities for sixteen- and seventeen-year-olds so that the law might become effective “as soon as possible.”<sup>203</sup> Consistent with past pattern and practice, the proposal failed to advance in the General Assembly.<sup>204</sup>

While there was some expressed interest in the issue during the late 1960s and early 1970s,<sup>205</sup> the next extended legislative discussion

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199. See THE SUBCOMM. OF THE GOVERNOR’S COMM. ON JUVENILE DELINQUENCY & YOUTH CRIME, *supra* note 197, at 4.

200. *Id.* at 5.

201. *Id.* (“That in [the] case of children between 16 and 18 years of age, and as to felonies, whenever the punishment cannot exceed ten years, they may, if the instance requires it, be bound over to the Superior Court to be prosecuted under the criminal law appertaining to the charge.”). The proposal offered no further details as to how—or by whom—the transfer decision would be made. *Id.*

202. *Id.*; see also *supra* notes 168–71 and accompanying text (discussing a 1953 government-commissioned report that also recommended raising the jurisdictional age only if sufficient numbers of training schools had been established).

203. THE SUBCOMM. OF THE GOVERNOR’S COMM. ON JUVENILE DELINQUENCY & YOUTH CRIME, *supra* note 197, at 5–6.

204. See N.C. CTS. COMM’N, *supra* note 108, at 17–18 (stating that the Commission “struggled with” the issue of the proper age jurisdiction for juvenile court before ultimately concluding that the age should not be raised).

205. See, e.g., MASON P. THOMAS, JR., JUVENILE COURT REVISIONS BY THE 1969 GENERAL ASSEMBLY 2 (1969) (“There was also some feeling that the age jurisdiction of the district court in juvenile cases should include children who are 16 or 17; the Commission concluded that for the present, juvenile jurisdiction in the district court should include only children less than 16 years of age.”); GOVERNOR’S YOUTH ADVISORY COMM. ON YOUTH DEVELOPMENT, REPORT OF THE GOVERNOR’S ADVISORY COMMITTEE ON YOUTH DEVELOPMENT 21 (1973) (identifying whether to increase the juvenile age jurisdiction as an area “requiring legislation”); Meeting Minutes from the N.C. Courts Commission (Oct. 20, 1967–Feb. 14, 1969) (on file with the North Carolina Law Review) (noting repeated instances in which the issue of raising the age of juvenile court jurisdiction was discussed). The interest in extending the jurisdictional age

did not occur until 1985.<sup>206</sup> At that time, proponents of raising the age again focused on the inequities in prosecuting sixteen- and seventeen-year-olds as adults while denying them such privileges as the ability to enter into a contract or to marry without parental consent.<sup>207</sup> Advocates stated that “ample evidence” of how best to extend juvenile court jurisdiction could be found in the laws of the many states that used eighteen as the upper limit; they reiterated that older adolescents had an urgent need for more appropriate treatment,<sup>208</sup> and they concluded by asserting that adult prisons were “inappropriate” for young people, as they were unequipped for treatment and rehabilitation.<sup>209</sup> While the issue was addressed further on several occasions by various legislative bodies during this period, the only action ever taken was a recurring recommendation that a future study commission be funded and staffed to “deal with this problem.”<sup>210</sup>

In the areas of juvenile justice policy and legislation, the decade of the 1990s was notable for a dramatic national escalation in the

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during these years was met at each turn by stark opposition. *See supra* notes 108–13 and accompanying text (discussing the opposition to efforts to raise the age during the 1960s and 1970s).

206. *See* JUVENILE LAW STUDY COMM’N 1987, *supra* note 117, at E-19 to E-24 (reporting an extended discussion of a proposal to raise the age of juvenile court jurisdiction to eighteen during a Mar. 25, 1985, meeting of the Juvenile Law Study Commission). Interestingly, this discussion took place just two months after a discussion by the same commission regarding whether sixteen- and seventeen-year-old crime suspects should have the right to a parent present during police questioning. *Id.* at E-4 (minutes of Jan. 14, 1985 meeting of Juvenile Law Study Commission). It was recognized during this earlier discussion that sixteen- and seventeen-year-olds were still in the age category of “individuals who needed the full opportunity to have parents or guardians present to assist or to counsel them and that they were still juveniles emotionally whether or not they were ‘juveniles’ according to the law.” *Id.*; *see also* Tamar R. Birckhead, *The Age of the Child: Interrogating Juveniles After Roper v. Simmons*, 65 WASH. & LEE L. REV. 385, 406–32 (2008) (arguing that, because of the psychological and brain development of juveniles, they are particularly vulnerable to traditional police interrogation techniques and should be given protections similar to those provided to child victims and witnesses who are questioned).

207. *See* THE JUVENILE LAW STUDY COMM’N 1987, *supra* note 117, at E-19 to E-20.

208. *See id.* at E-20, E-24 (stating that it was “the collective judgment of the country” that eighteen should be the juvenile jurisdictional age, and that it was an “issue of fairness”).

209. *Id.* at E-20.

210. *See, e.g.*, THE JUVENILE LAW STUDY COMM’N, REPORT TO THE GOVERNOR AND THE 1989 GENERAL ASSEMBLY, G.A. 1989, at E-10, E-21, E-22 (1989) (on file with the North Carolina Law Review) (reporting that the issue of raising the age was discussed on several occasions, including Dec. 30, 1988, when it was emphasized that the Commission had “historically been opposed to raising the juvenile age and would continue to take this stand,” and recommending that a study group be created to address the issue).

punitive responses to children charged with criminal offenses,<sup>211</sup> triggered in large part by a perceived increase in the rate of teenage crime.<sup>212</sup> Statistics reflect that, from 1992 through 1999, forty-nine

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211. See ALLEY & WILSON, *supra* note 30, at 122 (stating that the early 1990s were notable for a growing tendency to return to a punitive “get tough” attitude toward juvenile crime); OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEPARTMENT OF JUSTICE, STATE RESPONSES TO SERIOUS AND VIOLENT JUVENILE CRIME 59–61 (July 1996), available at <http://www.ncjrs.gov/pdffiles/statresp.pdf> (finding that as a result of the perception that juvenile crime was on the rise, the majority of states changed their laws during the early 1990s, resulting in a generally more punitive juvenile justice system); Ira J. Hadnot, *Measuring Maturity; Laws Regulating Juveniles Have Their Ups and Downs*, THE DALLAS MORNING NEWS, June 24, 2001, at 1J (describing the public perception that juvenile crime was escalating and the ensuing changes in juvenile codes); Joseph Perkins, *Fighting Juvenile Violence, Preventing Some Kids From Becoming Crime Statistics*, THE SAN DIEGO UNION-TRIBUNE, Nov. 24, 1995, at B7 (predicting an “explosive increase” in crimes committed by juveniles). There were also increasingly punitive responses to juvenile crime in North Carolina during the 1990s. See, e.g., Steve Riley, *Juvenile Crime Advisers Adopt Tough Stance*, NEWS & OBSERVER (Raleigh, N.C.), Oct. 27, 1993, at 3A (reporting that the governor’s crime advisers “recommended that he push for larger training schools, more detention cells, [and] military-style boot camps” to enable the state to “get tougher on violent teenagers”); Steve Riley, *Juvenile Crimes Rise, but Easley’s Data Puzzle Legislators*, NEWS & OBSERVER (Raleigh, N.C.), Oct. 1, 1994, at 3A (reporting that Attorney General Mike Easley stated that “state lawmakers should get tougher on increasingly violent children,” and that “juveniles don’t respect or fear current laws and sanctions”); see also Susan L. Spence, *Our Juvenile Criminals*, NEWS & OBSERVER (Raleigh, N.C.), Nov. 23, 1980, at 4-1 (reporting that, while fewer juveniles were being committed to North Carolina’s training schools, the ones sent there were “tougher than ever”).

212. While the media has consistently asserted that juvenile crime has been on the rise since the 1990s, research studies suggest that this claim has little or no actual merit. See, e.g., LORI DORFMAN & VINCENT SCHIRALDI, BUILDING BLOCKS FOR YOUTH, OFF BALANCE: YOUTH, RACE AND CRIME IN THE NEWS 4 (2001), available at <http://www.buildingblocksforyouth.org/media/media.pdf> (“In a 1996 California poll, 60% of respondents reported believing that juveniles were responsible for most violent crime, when youths were actually responsible for about 13% of violent crime that year.”); J. Robert Flores, Foreword to HOWARD N. SNYDER & MELISSA SICKMUND, U.S. DEPT. OF JUSTICE, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT iii (2006), available at <http://ojjdp.ncjrs.gov/ojstatbb/nr2006/downloads/NR2006.pdf> (finding that the rate of juvenile violent crime arrests has decreased steadily since 1994, falling to a level “not seen since at least the 1970s”); Mike A. Males, FRAMING YOUTH: TEN MYTHS ABOUT THE NEXT GENERATION 32 (1998) (discussing the media’s mischaracterization of youth violence during the 1990s as “soaring,” when it was actually falling); Julian V. Roberts, *Public Opinion and Youth Justice*, 31 CRIME & JUST. 495, 499–503 (2004) (finding that empirical research has shown that people overestimated the volume of crime for which juveniles were responsible); JASON ZIEDENBERG, BUILDING BLOCKS FOR YOUTH, JUVENILE CRIME FACT SHEET: SERIOUS SCHOOL CRIME & JUVENILE CRIME CONTINUES TO DECLINE, <http://www.buildingblocksforyouth.org/issues/juvenilecrime/factsheet.html> (last visited Aug. 28, 2008) (explaining that in 1999 “71% of respondents thought [a school shooting] was very likely or likely . . . [to] happen in their community,” and “[i]n 1998, 62 percent of adults polled by the Building Blocks for Youth Initiative believed youth crime was on the increase, at a time when it had dropped for five years to a 25-year low in the government’s largest crime survey”); Enrico Paganelli, Note, *Children*

states and the District of Columbia enacted or expanded their transfer provisions, meaning that state legislatures increasingly moved juvenile offenders into criminal court based on age and/or the seriousness of the offense charged.<sup>213</sup> North Carolina's lawmakers followed suit with a series of particularly harsh bills aimed at transferring more—and younger—offenders to adult criminal court and removing the discretion for transfer decisions from prosecutors and judges by making it mandatory in a growing subset of cases.<sup>214</sup> While most of the proposed legislation failed in committee,<sup>215</sup> the 1992 murder of an elderly woman by a young boy prompted the General Assembly to lower the minimum age of transfer from fourteen to thirteen.<sup>216</sup> This change in the law meant that for any

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*As Adults: The Transfer of Juveniles to Adult Courts and the Potential Impact of Roper v. Simmons*, 44 AM. CRIM. L. REV. 175, 179–181 (2007) (finding, based on statistical analysis, that the perception that juvenile crime was increasing in the 1990s was “misguided”).

213. Melissa Sickmund, *Juveniles in Court*, JUVENILE OFFENDERS AND VICTIMS: NATIONAL REPORT SERIES 4 (June 2003), available at <http://www.ncjrs.gov/html/ojjdp/195420/page4.html>. *But see id.* at 3, available at <http://www.ncjrs.gov/html/ojjdp/195420/page3.html> (finding that during the 1990s only three states lowered the age cap on original juvenile court jurisdiction: Wyoming lowered it from nineteen to eighteen and New Hampshire and Wisconsin lowered theirs from eighteen to seventeen).

214. *See, e.g.*, THE JUVENILE LAW STUDY COMM'N, REPORT TO THE GOVERNOR AND THE 1993 GEN. ASSEMBLY OF N.C., G.A. 1990–93, at 36, 38 (1993) (discussing and providing a draft of a proposed bill that would create a presumption of transfer for fourteen- and fifteen-year-olds charged with Class B and C felonies, including first degree burglary, first degree rape and second degree murder); H. 28, 1994 Gen. Assemb., Extra Sess. (N.C. 1994) (proposing that transfer to adult court be mandatory for all juveniles fourteen years of age and older charged with a violent felony, as enumerated); H. 29, 1994 Gen. Assemb., Extra Sess. (N.C. 1994) (proposing that commitment to training school be mandatory for delinquent juveniles aged ten, eleven, or twelve for any offense, and for thirteen-year-olds and older for any offense, except Class A, B, C, D, or E felonies).

215. *See, e.g.*, COMM. ON THE JUVENILE CODE, LEGISLATIVE RESEARCH COMM'N, REPORT TO THE 1995 GEN. ASSEMBLY OF N.C., G.A. 1993–94, at 4–6, 19, A-3 (1995) (rejecting H. 28, which proposed mandatory transfer for certain juveniles, based on the lack of evidence indicating that transfer requests were being denied, and recommending that discretion for transfer remain with the prosecutor and the judge with “due regard to the offender's profile and the characteristics of the offense”).

216. *See* N.C. GEN. STAT. § 7A-608 (1994) (“The court after notice, hearing, and a finding of probable cause may transfer jurisdiction over a juvenile to superior court if the juvenile was 13 years of age or older at the time the juvenile allegedly committed an offense that would be a felony if committed by an adult.”) (current version at N.C. GEN. STAT. § 7B-2200 (2007)); J. Andrew Curliss, *Juvenile Justice Proposals Would Alter Release Rules*, NEWS & OBSERVER (Raleigh, N.C.), Sept. 1, 1998, at 1A (reporting the “public outcry” over the murder, and that as a result, legislators were considering a “package of proposed changes in the state's juvenile justice laws”). According to the statute, in determining whether to transfer jurisdiction, the court shall consider the following: the age, maturity, intellectual functioning, and prior record of the juvenile; prior attempts to rehabilitate the juvenile; the likelihood that the juvenile would benefit from treatment or rehabilitation; whether the alleged offense was aggressive, violent, or premeditated; and the seriousness of the offense and whether the protection of the public



felony crime, the juvenile court could—either upon motion by the prosecutor or *sua sponte*—transfer a child as young as thirteen to superior court for trial as an adult.<sup>217</sup>

The brutal killing of ninety-year-old Mary Haddon by thirteen-year-old Gregory Gibson stands out in recent North Carolina history as a prime example of the way in which sensationalized crimes have driven the laws and policies that affect juveniles.<sup>218</sup> Within days of the murder, the public learned that because Gibson was thirteen and not fourteen, he could not be transferred to adult criminal court for trial and the most serious punishment he could receive was a commitment to training school until age eighteen.<sup>219</sup> Soon after the autopsy results confirmed the violent nature of the crime,<sup>220</sup> there were calls for changing the juvenile transfer laws so that thirteen-year-olds could be held “more accountable for their actions.”<sup>221</sup>

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requires that the juvenile be prosecuted as an adult. See N.C. GEN. STAT. § 7B-2203 (2007); see also *supra* notes 44–51 and accompanying text (discussing juvenile transfer laws in North Carolina).

217. See N.C. GEN. STAT. § 7B-2200 (2007).

218. See Curliss, *supra* note 216, at 1A; Joby Warrick, *From Troubled Teens to Violent Adults*, NEWS & OBSERVER (Raleigh, N.C.), Aug. 4, 1996, at 1A (stating that “outrage” over the murder of Mary Haddon resulted in changes to the transfer laws); see also Editorial, *Teen Crime, Punishment*, NEWS & OBSERVER (Raleigh, N.C.), June 20, 1992, at 10A (reporting that Gibson’s grandmother said the boy had been a “time bomb” after living with his mother and stepfather for two years in a neighborhood where he was bullied and beaten by older boys and made to steal from his family); Jane Stancill, *Brash Teen Bragged of Getting Car, Cash Before Brutal Slaying*, NEWS & OBSERVER (Raleigh, N.C.), June 18, 1992, at 14A (stating that car theft seemed to be the only motive for the killing); *infra* notes 253–56 and accompanying text.

219. See Thomas Healy, *Death Fuels Anger Over Laws Protecting Young Criminals*, NEWS & OBSERVER (Raleigh, N.C.), June 18, 1992, at 1A.

220. Joby Warrick & Jane Stancill, *When Their Worlds Collided, Time Stood Still: Fatal Meeting Took One Life, Forever Changed Another*, NEWS & OBSERVER (Raleigh, N.C.), July 12, 1992, at 1A (reporting that Gibson severely beat Haddon to death, and that she suffered more than forty-five blows to her head, neck, and chest from a hammer and garden tool); Joby Warrick, *Autopsy Report Underscores Brutality of Durham Slaying*, NEWS & OBSERVER (Raleigh, N.C.), July 1, 1992, at 3B.

221. Warrick, *supra* note 220. The succeeding chapters in the case, in which Gibson committed suicide at age twenty after being charged with a second murder, are both tragic and cautionary. See John Sullivan & Michelle Kurtz, *Prisoner Who Had Killed at 13 Hangs Self in Jail*, NEWS & OBSERVER (Raleigh, N.C.), Nov. 14, 1998, at 1A; Dawn Wotapka, *Man Who Murdered at Age 13 Held Again*, NEWS & OBSERVER (Raleigh, N.C.), Aug. 30, 1998, at 1A. After Gibson’s suicide it was discovered that at the time of the second killing, he should have been incarcerated, serving the remainder of a sentence for assault on a female; instead, a series of administrative errors had led to his early release. See John Sullivan, *Release Mistake Let Durham Slayer Kill Again*, NEWS & OBSERVER (Raleigh, N.C.), Dec. 5, 1998, at 1A.

In the wake of the Gibson case, the creation of the Commission on Juvenile Crime and Justice in 1997 was met with enthusiasm.<sup>222</sup> The Commission was established by Governor Jim Hunt, who won re-election to his fourth term with a platform that included fighting and reducing juvenile crime.<sup>223</sup> Meeting public expectations, the Commission successfully accomplished the ambitious tasks of rewriting the Juvenile Code—which included changing the stated objective of juvenile delinquency dispositions from the “least restrictive disposition” to the “most effective” one<sup>224</sup>—and restructuring the state’s juvenile justice agency.<sup>225</sup> The issue of extending the age of juvenile court jurisdiction, however, was absent from the Commission’s working agenda.<sup>226</sup>

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222. See, e.g., Joseph Neff, *Hunt Wants Action on Juvenile Crime*, NEWS & OBSERVER (Raleigh, N.C.), Nov. 8, 1997, at 3A (reporting the excitement and optimism felt by some in the legal community towards the work of the Commission); see also Joseph Neff, *Hunt Nudges Panel on Juvenile Justice*, NEWS & OBSERVER (Raleigh, N.C.), Dec. 20, 1997, at 1A (describing the Commission’s recommendations for overhauling the juvenile justice system and Gov. Hunt’s determination to have the group’s final report by Jan. 1998).

223. See GOVERNOR’S COMM’N ON JUVENILE CRIME AND JUSTICE, *supra* note 101, at 1; Danny Lineberry, *Gov. Hunt Lays Out '96 Re-election Agenda, 50-Page Plan Stresses Education, Personal Responsibility*, THE HERALD-SUN (Durham, N.C.), Sept. 4, 1996, at C1 (stating that Gov. Hunt called for a “complete overhaul” of the laws that deal with juvenile offenders and proposing that fourteen- and fifteen-year-olds who commit violent crimes be tried as adults); Kirsten B. Mitchell, *Hunt Seeks Teacher Raises, Crackdown on Youth Crime*, WILMINGTON MORNING STAR, Sept. 4, 1996, at 3B (reporting that Gov. Hunt called for a “complete revision” of the Juvenile Code and recommended that first-time juvenile offenders be punished more severely).

224. GOVERNOR’S COMM’N ON JUVENILE CRIME AND JUSTICE, *supra* note 101, at 19–20 (recommending that juvenile delinquency dispositions follow the national trend of placing greater weight on the protection of public safety than on child protection and treatment); see also N.C. GEN. STAT. § 7B-2500 (2007) (emphasizing the promotion of public safety with no mention of “[the] least restrictive disposition”); Joseph Neff, *Juvenile Justice Reforms Drafted*, NEWS & OBSERVER (Raleigh, N.C.), Mar. 10, 1998, at 1A (reporting that the Buncombe County District Attorney favored deleting language from the law that directed judges to impose the least restrictive alternative on juvenile delinquents, as it had sent the message that the system is “a joke”).

225. GOVERNOR’S COMM’N ON JUVENILE CRIME AND JUSTICE, *supra* note 101, at 3–18, 38–46; see also Juvenile Justice Reform Act, S. 1998-202 (S-1260) (N.C. 1998) (enacting many of the Commission’s recommendations, including substantial changes in the procedures and sanctions that apply to delinquent juveniles).

226. See GOVERNOR’S COMM’N ON JUVENILE CRIME AND JUSTICE, *supra* note 101, at 4–5 (“The maximum age of original jurisdiction for delinquent juveniles should remain up until the 16th birthday.”). *But see id.* at 4 (recommending that for dispositional purposes, juvenile jurisdiction be extended from age eighteen to age twenty-one, resulting in “more appropriate, longer rehabilitative treatment” as well as fewer transfers from juvenile to adult court, “where rehabilitation is unlikely to occur”); N.C. GEN. STAT. § 7B-1602 (2007) (extending jurisdiction to age twenty-one for a delinquent juvenile committed to a youth development center for first-degree murder, first-degree rape, or first-degree sexual offense, and to age nineteen for a delinquent juvenile committed to a youth development

While the Commission acknowledged that North Carolina was now one of only three states to prosecute sixteen-year-olds in adult court, it recommended against increasing the age for old and familiar reasons: that raising the original jurisdictional age would have a “detrimental impact on [the] already overburdened system”; that public opinion would be against the change, particularly in light of the “serious rise” in crimes being committed by children under sixteen; and that budgetary projections would be “exorbitant.”<sup>227</sup> Following another long-established pattern, although the Commission had estimated that \$42 million would be needed to bring its plans to fruition, the General Assembly budgeted only \$19 million for the formation of a single agency to handle the administration of the system—opting once again for a short-term fix, rather than a long-term solution.<sup>228</sup>

Seven years later, following the arrest of four dozen students in the Alamance-Burlington School System for felony drug distribution charges, there was renewed interest in the issue of juvenile court jurisdiction.<sup>229</sup> Among those arrested in the undercover drug operation was James On Curry, a local high school basketball player whose offer to attend the University of North Carolina on a full athletic scholarship was rescinded after he pled guilty to six felony

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center for other serious felonies). If this law, which was passed in 1998, had been in effect at the time of Mary Haddon’s murder, Gregory Gibson could have been committed to training school until age twenty-one. See An Act to Amend and Recodify the North Carolina Juvenile Code, 1998 N.C. Sess. Laws 202 § 6, available at <http://www.ncleg.net/Sessions/1997/Bills/Senate/HTML/S1260v2.html>.

227. See GOVERNOR’S COMM’N ON JUVENILE CRIME AND JUSTICE, *supra* note 101, at 4; see also *supra* notes 98–123 and accompanying text (discussing the tone and tenor of the opposition to raising the age of juvenile court jurisdiction during this period).

228. See Michael Grossman, *Juvenile Justice System Headed For Major Reform*, NEWS & RECORD (Greensboro, N.C.), Aug. 2, 1998, at B1 (reporting that the G.A. pared down Gov. Hunt’s \$42 million request to approximately \$19 million, with the difference in cost attributed primarily to delaying the expansion of training schools); Lynette Blair Mitchell, *Juvenile Justice System Going Through an Awkward Age of Trying Youths as Adults*, NEWS & OBSERVER (Raleigh, N.C.), Aug. 20, 1996, at 1B (stating that the budget for the state juvenile justice system for fiscal year 1995–96 was \$19.5 million); see also Neff, *supra* note 224 (reporting concern on the part of state legislators over the costs of implementing the Commission’s recommendations, with one state representative expressing fear that “we have created a monster that we can’t afford”). The same concerns over inadequate funding for the juvenile justice system have continued to the present day. See Schrader, *supra* note 75 (reporting in 2008 that the N.C. Secretary of Juvenile Justice has appealed to the legislature for an estimated \$1.9 million to staff youth development centers).

229. See Martha Quillin, *Student Drug Arrests Jolt Alamance*, NEWS & OBSERVER (Raleigh, N.C.), Feb. 6, 2004, at 1A. While the undercover officers bought mostly small amounts of marijuana from the students, they also found cocaine, ecstasy, heroin, and various prescription medications. *Id.* at 8A.

drug counts and was placed on probation.<sup>230</sup> As other teens were convicted, they learned that they could be denied jobs because of their criminal convictions and would lose their right to vote and to use a firearm for recreational purposes, among other collateral consequences.<sup>231</sup> As complaints grew over the impact of the criminal charges on these young people, the public as well as lawmakers took notice; State Rep. Alice Bordsen of Alamance County was soon prompted to initiate a proposal to allow nonviolent youthful offenders either to have their felony convictions reduced to misdemeanors or have them expunged.<sup>232</sup> After the proposal failed to advance, Bordsen turned her sights to raising the age.<sup>233</sup>

Since 2006, North Carolina's raise-the-age advocates have become more vocal, and the movement has received increased attention from the news media.<sup>234</sup> Yet, the pattern has continued. Despite a well-researched and persuasive report by the Sentencing and Policy Advisory Committee and new legislative proposals,<sup>235</sup> progress has stalled in light of opposition from familiar

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230. *Id.*; see also Ira Berkow, *A Star. An Arrest. A Second Chance.*, N.Y. TIMES, May 31, 2004, at D5.

231. See Blythe, *supra* note 77; see also *supra* notes 52–72 and accompanying text (discussing potential collateral consequences of a criminal record).

232. *Bill Would Lighten Youthful Offender Penalties*, SHELBY STAR, Jan. 2, 2005, available at <http://www.mpp.org/states/north-carolina/news/bill-would-lighten-youthful-offe.html>.

233. See, e.g., Blyth, *supra* note 77, at A25; Kane, *supra* note 121 (reporting in 2006 that the N.C. Sentencing and Policy Advisory Commission took up the study of raising the age of juvenile court jurisdiction at the request of Alice Bordsen); Barry Smith, *Rep. Bordsen Wants Courts to Treat Kids as Kids*, TIMES-NEWS (Burlington, N.C.), Mar. 25, 2007, available at [http://www.thetimesnews.com/news/court\\_163\\_\\_article.html/](http://www.thetimesnews.com/news/court_163__article.html/) adult\_juvenile.html.

234. See, e.g., Editorial, . . . *No, They're Not Adults*, NEWS & OBSERVER (Raleigh, N.C.), Mar. 26, 2007, at 8A (advocating that raising the age of juvenile court jurisdiction is the “compassionate, progressive” way to address crime committed by teenagers); Editorial, *supra* note 93 (calling in 2006 for North Carolina to join the “national mainstream” by extending the juvenile court age to eighteen); Editorial, *Young and Fixable*, NEWS & OBSERVER (Raleigh, N.C.), Dec. 11, 2007, at 10A (arguing, based on common sense and science, that N.C. should include sixteen- and seventeen-year-olds under juvenile court jurisdiction); Jennifer Fernandez, *Charging Kids as Adults*, GREENSBORO NEWS RECORD (Greensboro, N.C.), Dec. 6, 2007, at A1 (discussing the debate in North Carolina over whether to raise the age of juvenile court jurisdiction to eighteen); David Ingram, *Report: Let 16-Year-Olds be Juveniles*, CHARLOTTE OBSERVER, Dec. 6, 2007, at 2B (discussing the movement in North Carolina to raise the juvenile court age cap to eighteen); Kane, *supra* note 121 (discussing in 2006 the N.C. Sentencing Commission's study of whether the state should raise the age).

235. See N.C. SENTENCING & POLICY ADVISORY COMM'N, *supra* note 8, at 3, 8–9 (recommending that juvenile court jurisdiction be extended to age eighteen, except for traffic offenses committed by persons sixteen and older); H.B. 492, *supra* note 109 (proposing that juvenile court jurisdiction be extended to eighteen).

constituencies.<sup>236</sup> In 2007, the Governor's Crime Commission was granted permission to study the matter further; recommendations, once again, are pending.<sup>237</sup> The next Part identifies several factors that have likely contributed to North Carolina's failure to join the majority.

#### IV. THE FACTORS AT PLAY

The recurring pattern of defeat of legislative proposals despite the support of a strong coalition of proponents is certainly not unique to the issue of raising the age of juvenile court jurisdiction in North Carolina.<sup>238</sup> There are many areas of law and policy that have been plagued by this type of legislative paralysis in which broadly-supported bills have repeatedly and inexplicably failed to advance.<sup>239</sup> While it is impossible to know precisely why the proposals have failed, this Part suggests several *possible* explanations.<sup>240</sup>

The first is the self-perpetuating claim by opponents that the state lacks the necessary resources and that an already underfunded system should not be expanded. As discussed previously, this argument was the most likely reason that the 1919 statute establishing a statewide juvenile court system capped jurisdiction at age sixteen

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236. See Blyth, *supra* note 77 (stating in 2007 that the N.C. Conference of District Attorneys and the N.C. Sheriff's Association opposed raising the age of juvenile court jurisdiction based on the costs involved); Dan Kane, *Bill to Raise Age to be Tried as Adult Falters*, NEWS & OBSERVER (Raleigh, N.C.), May 22, 2007, at 5B (reporting that concerns about the cost of raising the age of juvenile court jurisdiction and the substandard condition of the state's juvenile justice facilities caused the sponsoring state representative to "rework [the] legislation so that the measure would be studied instead"); Moriarity et al., *supra* note 121 (quoting an opponent of raising the age as stating that it would "clog up that court system," crime victims would "get relief much later," and juveniles who commit major crimes will only "[get] their wrists slapped"); see also *supra* notes 114–21 and accompanying text (discussing the grounds for opposition to raising the age expressed by law enforcement and prosecutors).

237. See Stanley B. Chambers Jr., *Grappling with Age of Adult Trial*, NEWS & OBSERVER (WEST ED.) (Raleigh, N.C.), Feb. 15, 2008, at 1B (reporting that permission was granted to study the matter further and that a report is expected in 2009); Ingram, *supra* note 114, at 2B (reporting that the legislation sponsored in 2007 to raise the age never made it to the House floor and that legislators are now considering a study).

238. See, e.g., Melissa B. Jacoby, *Negotiating Bankruptcy Legislation Through the News Media*, 41 HOUS. L. REV. Winter 2004, at 1091, 1093 (discussing the unsuccessful efforts by proponents to enact omnibus bankruptcy legislation over a seven-year period, despite strong bipartisan support from lawmakers).

239. *Id.*

240. This Part is not intended to provide a full or complete analysis of all the possible reasons for North Carolina's failure to join the majority but is intended merely to identify several potential causes. The question of causality as it relates to the legislative process in general, as well as to North Carolina specifically, is one for which further research and scholarship clearly is needed.

rather than eighteen.<sup>241</sup> It has also been one of the most frequently stated reasons given by politicians and lawmakers since that time.<sup>242</sup> In fact, a recent *News & Observer* article covering the raise-the-age campaign reported once again that “[t]hose against raising the cutoff age say it would be expensive, [and] would overburden the criminal justice system . . . ”<sup>243</sup>

The questions of *how much* the state should invest in its juvenile justice system and *whether to expand* to provide for sixteen- and seventeen-year-olds charged with criminal offenses are linked. A familiar dynamic has developed in which the underfunded condition of the system as well as the significant costs of expansion have been repeatedly used to justify opposition to proposals to raise the jurisdictional age to eighteen.<sup>244</sup> At the same time, legislators have been consistently unwilling to allocate sufficient funding for the current system.<sup>245</sup> In other words, while there is certainly truth to the claim that the juvenile court system has perpetually struggled to provide for those youngsters under its aegis, it is equally true that the political will to *fully fund* a system that provides comprehensive

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241. See *supra* notes 31–33 and accompanying text and notes 143–45 and accompanying text (discussing the Juvenile Court Statute of 1919).

242. See *supra* notes 98–108 and accompanying text.

243. Chambers, *supra* note 237; see also *infra* note 244.

244. See, e.g., GOVERNOR’S COMM’N ON JUVENILE CRIME AND JUSTICE, *supra* note 101, at 4 (recommending in 1998 that the age of juvenile court jurisdiction not be extended because “budgetary projections would be exorbitant”); THE JUVENILE LAW STUDY COMM’N 1987, *supra* note 210, at E-21 (reporting opposition to a 1985 proposal to raise the age of juvenile court jurisdiction based on the estimated \$3 million cost of hiring additional juvenile court counselors), E-22 (reporting opposition based on the nearly \$40 million cost of constructing two new secure facilities to house sixteen- and seventeen-year-olds as well as the “fiscal impact” of hiring additional attorneys and psychologists and providing more psychiatric services, vocational programs, substance abuse counselors, and educational programs); Katie Mosher, *Raise Age Cutoff for Adult Court, Group Says*, NEWS & OBSERVER (Raleigh, N.C.), Oct. 17, 1990, at 5B (reporting opposition to raising the age of juvenile court jurisdiction in 1990 and quoting a chief juvenile court counselor as stating that while there is some merit in the proposal, such a change cannot come without additional funding from the state, so as not to “compromise what we are trying to do with the younger kids”).

245. See, e.g., ALLEY & WILSON, *supra* note 30, at 121 (stating that “insufficient funds to employ needed staff and purchase and develop services and facilities” was one of the hindrances to improving the juvenile justice system); see also Barbara Barrett, *Juvenile Justice Costs Rise*, NEWS & OBSERVER (DURHAM ED.) (Raleigh, N.C.), May 25, 1999, at B3 (reporting that the Durham County juvenile court system has cost taxpayers “hundreds of thousands of dollars” by sending children outside the county for specialized care, and that county and community leaders are attempting to “tackle the problem of rising court related costs”).

resources and services for its children—whatever the age demographic—has long been lacking.<sup>246</sup>

The next step for advocates is to determine how best to reframe the debate. How can legislators, policymakers—and perhaps most importantly, the general public—be persuaded to support and fully fund a juvenile court system that meets the treatment, rehabilitation, and counseling needs of all its children, including sixteen- and seventeen-year-old offenders? The cyclical history of the movement to raise the age of juvenile court jurisdiction in North Carolina, discussed in Part III, suggests that the General Assembly is not likely to approve legislation to expand the system until this shift in opinion occurs; lawmakers must first be convinced that their most critical constituency—the voting public—is behind the reform effort.

Research indicates that one reason for the lack of public support is the long-lasting power of the specter of youth violence. The narrative of the “bad seed,” the irredeemable violent youth who threatens the safety of “our neighborhoods,” has had enduring force nationwide since the 1980s.<sup>247</sup> In 1993, leading legislators in North Carolina considering proposals to raise the age admitted that troubled children inevitably get thrust to the “bottom of the budget ‘food chain’ ” by groups whose causes are considered more sympathetic,<sup>248</sup> and that “change is likely to come slowly.”<sup>249</sup> In 2008, Durham’s police chief stated that he favors keeping the juvenile court

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246. See *supra* notes 98–104 and accompanying text (stating that lawmakers do not consider comprehensive funding of the juvenile court system to be politically viable).

247. See DORFMAN & SCHIRALDI, *supra* note 212, at 3 (stating that there is evidence that stereotyping is affecting the treatment that young people experience in the juvenile justice system and that despite sharp declines in youth crime, the public continues to express great fear of its own young people); Barbara Fedders, Randy Hertz & Steve Weymouth, *The Defense Attorney’s Perspective on Youth Violence*, in SECURING OUR CHILDREN’S FUTURE: NEW APPROACHES TO JUVENILE JUSTICE AND YOUTH VIOLENCE 84, 88 (Gary S. Katzmann ed., 2002) (“Politicians and policy advocates have . . . urged harsher treatment for today’s youthful offenders, largely on the premise that they represent a more malevolent breed of offender than their predecessors.”); Barry C. Feld, *Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform*, 79 MINN. L. REV. 965, 966–86 (1995) (finding that, when the growing fear of youth crime combines with the desire to “get tough,” there is political impetus to increase punitive sanctions for young offenders); Michael Welch et al., *Moral Panic Over Youth Violence: Wilding and the Manufacture of Menace in the Media*, 34 YOUTH & SOCIETY 1, 3–5 (2002) (stating that panic over perceived threats to public safety reinforces criminal stereotypes, particularly the perception that young men of color constitute a dangerous class); see also BARRY C. FELD, *BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT* 189–244 (1999) (analyzing the criminalizing of serious young offenders).

248. Riley, *supra* note 102.

249. *Id.* (stating that legislators warned that a major report on the issue would be delayed for at least two years).

age limit at sixteen because “criminals are getting younger.”<sup>250</sup> The state’s politicians have suggested that the stalemate over juvenile court jurisdiction has persisted because legislators “can’t identify with the problem.”<sup>251</sup> The news media, too, has played its part in reinforcing the stereotype of the “super-predator.”<sup>252</sup>

There is also evidence that various sensationalized crimes have served to drive juvenile justice policy in recent decades—a prime example being the way in which Gregory Gibson’s murder of Mary Haddon prompted legislators to lower the age of eligibility for adult prosecution from fourteen to thirteen.<sup>253</sup> The theory that the process of reforming juvenile justice laws has often had the hallmarks of a “moral panic” has been discussed at length elsewhere.<sup>254</sup> The premise is that in the wake of a particular crime or series of incidents, politicians, the media, and the public reinforce each other in a pattern of “escalating alarm” about the threat of youth violence and the urgent need to respond.<sup>255</sup> While it is not surprising that public outrage over a brutal killing by a teenager has triggered the passage of punitive reforms, it is much less likely that the public will be

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250. Chambers, *supra* note 237, at 4B.

251. Riley, *supra* note 102 (quoting N.C. Lt. Gov. Dennis Wicker).

252. John J. DiIulio Jr., *The Coming of the Super-Predators*, WEEKLY STANDARD, Nov. 27, 1995, at 23 (coining the term “super-predator”); PETER ELIKANN, SUPERPREDATORS: THE DEMONIZATION OF OUR CHILDREN BY THE LAW 41–42, 66 (1999); Joyce Purnick, *Youth Crime: Should Laws Be Tougher?*, N.Y. TIMES, May 9, 1996, at B1 (quoting prosecutor as characterizing juvenile delinquents as “superpredators”); see also DORFMAN & SCHIRALDI, *supra* note 212, at 17–26 (finding that youth rarely appear in the news, but that when they do, it is connected to violence); Feld, *supra* note 247, at 982–86 (finding that mass media coverage of youth crime shapes public opinion and political perceptions, indirectly influencing the legislative process); Spence, *supra* note 211, at 4-1 (reporting in 1980 that juvenile criminals in North Carolina are “tough and getting tougher”); Welch, *supra* note 247, at 22 (finding that the media’s exaggerated attention to youth violence continues to “resonate[] in the public imagination” and attaches a “stark criminal stereotype” to young men of color). Studies have also found that a combination of racism, media framing, and public discourse about crime as a problem of the black urban poor has led to the racialization of crime, and that as a consequence of news coverage, “any discussion of crime today is essentially a discussion about race.” DORFMAN & SCHIRALDI, *supra* note 212, at 20–21.

253. See *supra* notes 215–21 and accompanying text.

254. See, e.g., Joseph E. Kennedy, *Monstrous Offenders and the Search for Solidarity Through Modern Punishment*, 51 HASTINGS L. J. 829, 868–77 (2000); Elizabeth S. Scott, *Adolescence and the Regulation of Youth Crime*, 79 TEMP. L. REV. 337, 351–52 (2006); Elizabeth S. Scott & Laurence Steinberg, *Blaming Youth*, 81 TEX. L. REV. 799, 806–09 (2003) (describing how public, legislative, and media responses to the perceived threat of juvenile offenders interacted to create a “moral panic”).

255. Scott, *supra* note 254, at 352.



similarly inspired to mobilize *on behalf of* sixteen- and seventeen-year-olds charged with criminal offenses.<sup>256</sup>

An additional factor at play in North Carolina's failure to join the majority is the continued reluctance of the bench and bar to view juvenile court as a critical forum requiring specialization and commitment from its participants, rather than a mere training ground for inexperienced judges and lawyers. As discussed in Part III, after the legislature established a statewide system of juvenile courts in 1919, some judges were hostile to the court's emphasis on treatment and rehabilitation rather than incarceration or other more punitive measures.<sup>257</sup> As the decades have passed, this hostility has been replaced by indifference and a tendency to marginalize juvenile court practice.<sup>258</sup> Particularly after the policies of the 1990s transferred large numbers of young offenders from juvenile to adult court, many in the legal community considered judges and lawyers practicing in delinquency court to be engaged in either glorified social work or trivial law practice.<sup>259</sup> Such attitudes and perceptions have translated into the practice of training inexperienced prosecutors and defenders in juvenile court until they are deemed ready to "graduate" to one of the more respected forums, such as traffic or criminal district court.<sup>260</sup> Similarly, new judges often begin their tenure in juvenile court before they move up to superior court where they presumably will preside over matters of "greater import."<sup>261</sup>

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256. See Welch et al., *supra* note 247, at 4 ("Compounded by sensationalistic news coverage on...stylized forms of lawlessness associated with urban teens, minority youths remain a lightening rod for public fear, anger, and anxiety over impending social disorder, all of which contribute to additional law and order campaigns.").

257. See *supra* notes 150–52.

258. See, e.g., Eric Collins, *Public Defender Wants to Better Juvenile System*, NEWS & OBSERVER (Raleigh, N.C.), Jan. 3, 2005, at B1 (reporting that juvenile court in North Carolina is often "perceived as a place for young lawyers to cut their teeth and move on because the stakes are not as high as in adult court").

259. *Id.*; see also Thomas F. Geraghty, *Justice for Children: How Do We Get There?*, 88 J.L. & CRIMINOLOGY 190, 234 (1997) (stating that many of the people who work in juvenile court do not want to be there, and that both prosecutors and defense lawyers "repeatedly have their efforts undermined by inefficient, ill-informed, or downright hostile judges").

260. See Thomas L. Fowler, *An Interview with Judge Marcia H. Morey*, 9 N.C. ST. B. J. 43 (Spring 2004), available at [http://www.ncbar.com/journal/archive/journal\\_9,1.pdf#7](http://www.ncbar.com/journal/archive/journal_9,1.pdf#7) ("In many district attorney's offices [in North Carolina], the newest prosecutors are often sent down to juvenile court to get broken in—usually it's a short stint before they find their stride and graduate to traffic court.").

261. Lisa Hoppenjans, *Kernersville Man is State's First Juvenile Defender*, WINSTON-SALEM J. (Winston-Salem, N.C.), Nov. 26, 2004, at 1 (reporting that in "many legal circles," juvenile court is known as "kiddy court," a steppingstone to "more important" courts).

This systemic marginalization of juvenile court practice in North Carolina has perpetuated the conception that the juvenile justice system is not worthy of the state's time, energy, or resources. While there are a few counties in which the various players—judges, prosecutors, and defense attorneys—remain committed to juvenile court practice and develop a high level of professionalism and expertise, these are the exceptions.<sup>262</sup> When such a trend combines with the pervasive specter of the adolescent superpredator, the challenge of generating public support for comprehensive funding is formidable, explaining—at least in part—why politicians and lawmakers have long been unwilling to champion the issue of raising the age. One would hope, however, that after many decades of impasse, the General Assembly will overcome these obstacles and bring North Carolina in line with the majority of states as well as with the international community.

#### CONCLUSION

This Article has examined the movement to raise the age of juvenile court jurisdiction in North Carolina since 1915. Based upon primary source materials and legislative records, the Article has demonstrated that a recurring pattern has developed over the past century: despite the backing of respected scholars, child welfare experts, and the occasional politician, proposals to extend jurisdiction to sixteen- and seventeen-year-olds have been consistently defeated. While causation cannot be definitively proven, the analysis identifies several likely factors at play: legislators' use of the perpetually underfunded state of the juvenile justice system to justify their refusal to provide adequate services for North Carolina's at-risk children; the enduring power of the specter of youth crime; and the marginalization of juvenile court by both the bench and the bar.

Having examined the repeated attempts by advocates and lawmakers to raise the age, it is clear that while the movement's proponents have presented strong arguments grounded in empirical research, the opposition's talking points have continued to resonate

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262. *Id.* (reporting that “no one” wants to work in juvenile court and that very few public defender offices in North Carolina hire full-time staff members to represent juveniles); *see also* AM. BAR ASS'N., N.C.: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS 2, 27–28 (Lynn Grindall & Patricia Puritz eds., 2003) (finding that the quality of juvenile defense representation in North Carolina is uneven, and that in some counties, juvenile defense attorneys “have become so marginalized in the process they seemed to have no role at all”).

with lawmakers and the public. Stated concerns regarding lack of funding, burdening law enforcement, and coddling young criminals have persistently overcome statistics, neuroscience, and predictions of increased public safety. Yet, there is little evidence that the various constituencies have ever engaged in genuine, good faith attempts to negotiate a compromise. Why, one might ask, should opponents of raising the age agree to negotiate when they have succeeded for decades in perpetuating the status quo? Similarly, why should politicians and lawmakers work towards comprehensive reform when there is little evidence of public support?<sup>263</sup> A large part of the answer, confirmed by empirical studies on recidivism rates among other indicators, lies in the long-term cost savings for North Carolina in an era of budget shortfalls, prison overcrowding, and failed criminal justice policies.<sup>264</sup> The rest of the answer is perhaps best expressed by raise-the-age advocates in Connecticut who have asserted that “[t]he time has come for [the state] to recognize in law *what it knows to be morally right.*”<sup>265</sup>

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263. *But see supra* note 10 and accompanying text (citing a recent national poll showing that the public supports an individualized, case-by-case review before trying an offender younger than eighteen in adult court).

264. *See supra* notes 73–87 and accompanying text (discussing how raising the age will reduce recidivism and will ultimately be cost-effective); *see also The Economic Impact of Raising the Age of Juvenile Jurisdiction in Connecticut: Hearing on H.B. 5215 Before the Judiciary and Appropriations Comm.*, Conn. Gen. Assemb. (Feb. 21, 2006), available at [http://www.urban.org/UploadedPDF/900959\\_juvenile\\_jurisdiction\\_CT.pdf](http://www.urban.org/UploadedPDF/900959_juvenile_jurisdiction_CT.pdf) (statement of John Roman, Justice Policy Center, Urban Institute) (testifying that moving sixteen- and seventeen-year-olds out of the adult system and into the juvenile system, while maintaining all other services for youth as they are, would return approximately three dollars in benefit for every one dollar in cost).

265. *Testimony Supporting An Act Concerning the Age of a Child with Respect to Juvenile Court Jurisdiction: Hearing on H.B. 6285 Before the Judiciary Comm.*, Conn. Gen. Assemb., (Apr. 4, 2007), available at [http://www.ctkidslink.org/testimony/040407\\_judiciaryjuvage.pdf](http://www.ctkidslink.org/testimony/040407_judiciaryjuvage.pdf) (statement of Theresa Sgobba, Shelley Geballe, & Mary Glassman, Advocates for Connecticut’s Children and Youth) (emphasis added).