Confronting the Status Quo:
Raising the Age of Juvenile Jurisdiction in North Carolina

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April 20, 2012
ACKNOWLEDGEMENTS

It was an incredible opportunity to work on this project and gain even more insight into the complex and often confusing system that is “juvenile justice.” I have learned a great deal from this project, from interfacing with clients and stakeholders to the actual writing process itself. Without the help, support and encouragement from my classmates and faculty at the Sanford School of Public Policy, as well as the various individuals who I interviewed, this project would not have been possible. Thank you.

I am especially grateful for Susan Katzenelson at the North Carolina Sentencing and Policy Advisory Commission for agreeing to serve as my client and providing support and flexibility as I marched forward. I hope this report sheds some more light on the juvenile age of jurisdiction issue in North Carolina.

I am indebted to Professor Phil Cook, my Faculty Advisor, who gave me tremendous guidance and support over the past year and a half, always offering his expertise, objective advice and constructive criticism. It was a privilege to have Professor Cook as my advisor. I also owe thanks to Kristen Goss and Joel Rosch for serving on my committee and being there to re-direct me in my pursuits—which was more often than I anticipated. Joel Rosch proved to be an invaluable resource and was the foundation of my support system. Both Jim Johnson and Mac McCorkle, Professors of the Practice at Sanford, served as an extension of my committee, assisting me in connecting with stakeholders, exemplifying the type of caring and professional faculty at Sanford who really care about their students’ success. Thank you.
EXECUTIVE SUMMARY

POLICY QUESTION (p.1)

How can the case for increasing juvenile-status age in North Carolina be presented most effectively in the political arena?

I. INTRODUCTION (p.1)

North Carolina is one of two states (the other being New York) that end juvenile jurisdiction at age sixteen. This means that all sixteen and seventeen-year olds are processed as adults in the criminal justice system. Trying and sentencing youth as adults in the criminal system has serious and broad consequences for the offenders, their families, the criminal justice systems, and society at large. Youth in adult facilities are more prone to abuse; are less likely to receive health treatment and educational services; are more likely to join gangs and engage in violent behavior, and are more likely to recidivate. Further, adult convictions hinder access to employment and educational opportunities—two key sources that reduce the tendency to engage in criminal behavior.

II. HISTORICAL DEVELOPMENT (p.4)

The age of juvenile court jurisdiction in North Carolina is an old and contentious issue with much at stake. North Carolina set the maximum age of juvenile jurisdiction at age sixteen in 1919, over 90 years ago. The juvenile-status age has been looked at a number of times; however, all proposals to increase the status age have failed (See Figure 2, pg. 16 for synopsis). Most recently, proposals in 2007 and 2009 faced opposition from district attorneys, sheriffs and police chiefs, and the Retail Merchant Association. Opponents cited the high financial costs to transition the 16 and 17-year-old cohort to the juvenile system, arguing that the juvenile system is already overcrowded, underfunded, and understaffed. Although the two separate cost-benefit-analyses conducted indicated a substantial long-term net gain from increasing the juvenile-status age, no change was made.

The policymaking process is adversarial, where competing agendas and conflicting interests and perspectives can transcend rational or objective solutions to particular problems. Influential actors and interest groups often oppose policy initiatives irrespective of what evidence and policy research indicates. Opposition to raising the age in North Carolina is indeed still significant and presents a legitimate barrier to successful legislative action.

III. POLITICAL ANALYSIS (p.17)

A Political Analysis involves looking closely at the actors in the policy environment, disaggregating them, identifying how they exert influence towards or against policy initiatives, and developing strategies to effectively communicate and interact with them. Thus, by examining the primary actors in the policy environment (through in-depth
targeted stakeholder interviews) and disaggregating and identifying their values, concerns, and the interests that motivate their positions, I gained insight into the kinds of compromises and political bargaining that can be made to effectively present the case for increasing the juvenile status-age in the political arena.

The primary stakeholders and influential actors identified are district attorneys, sheriffs and police chiefs, and the Retail Merchant Association. The conclusions derived from the political analysis are organized into three categories: (1) Resources & Hollow Promises, (2) Different Perspectives: Different Realities, and (3) Access to Records

**Resources & Hollow Promises (p.18)**

A resource-constraint has been a consistent barrier to legislative action in regards to raising the age of juvenile jurisdiction. Shifting sixteen and seventeen year olds to the juvenile system from the adult system will indeed cost a lot of money. This was detailed in the CBAs from 2009 and 2011, and proponents certainly acknowledge the cost issue. Despite this acknowledgement however, interview data reveals a stringent skepticism toward the General Assembly in regards to providing necessary funding and resources. This skepticism is based on multiple previous experiences where the legislature failed to follow through with their agreements.

Indeed, opponent skepticism toward the General Assembly in this light is a legitimate issue that proponents need to address appropriately and effectively in order to gain support from key influential stakeholders.

**Different Perspectives: Different Realities (p.20)**

In addition to citing an underfunded juvenile system, opponents also referred to the system as too lenient, alluding also to its poor performance in rehabilitating young offenders. There is a strong perception that being in a youth facility and in the custody of the juvenile system is “easier” than being in an adult prison—which, accordingly, encourage criminal behavior for young offenders. This could indeed be a matter of perception, and more research should be conducted in regards to claims and counterclaims about the actual “toughness” of the juvenile system.

There is also the concern of violent young offenders avoiding adult court if the status age is increased. The current legislation that is to be heard however, does not suggest this to be the case. Violent offenses can still be transferred to the adult system. This demonstrates, in part, that opponents do not fully understand the Raise the Age bill, which addresses misdemeanors and low-level felonies. Judge Morey suggested that despite all the education that has taken place over the last decade, law enforcement and district attorneys still do not all realize that violent offenders can still be automatically tried and sentenced as adults. In turn, this signals a failure by proponents to adequately communicate and educate opposing stakeholders on the bill and what it entails.
Access To Records (p.22)

The Retail Merchant Association is an influential player in the political arena regarding this particular issue. The Association’s opposition to increasing the juvenile-status age is based on a legitimate issue, representing a particularly unique challenge in gaining their support to raise the age. The North Carolina business community is accustomed to having access to the criminal histories of the 16 and 17-year-old cohort. If the juvenile-status age were increased to 18, business entities would not have access to 16 and 17 year olds’ criminal histories—an age group that many businesses in North Carolina rely on—because under the law, juvenile records are sealed.

Another component to issue involves tort law. Juries have previously held businesses liable for not screening their employees appropriately. Thus, having the ability to conduct background checks and screen potential employees is of paramount importance to the business community in North Carolina.

IV. CONCLUSIONS & RECOMMENDATIONS (pp.24-26)

There have been a series of proposals to change the age of juvenile jurisdiction over the last century. Opposition to changing the juvenile-status age has varied by group across time, but the lack of resources—funding, facilities, facility capacity and capabilities, personnel and related workforce, or any combination of these—has routinely formed the basis for excluding sixteen and seventeen year olds from the juvenile justice system. A resource-constraint issue is still at the heart of the debate today and there is a strong skepticism toward lawmakers among district attorneys and members of the law enforcement community in particular, based on past funding abandonments by the legislature. Perceptions of a lenient, underfunded and ineffective juvenile system among opposing stakeholders are also prevalent. District attorneys and the Retail Merchant Association are two of the strongest opponents to raising the age. Both coalitions have legitimate concerns regarding the bill to raise the age; however, their opposition can be neutralized using strategies of modification—a process that involves altering the policy proposal to align with stakeholder interests and preferences as a way to build support and neutralize opposition. This can occur through compromises and political bargaining.

To present the most effective case for increasing the juvenile-status age in North Carolina, I recommend Ms. Katzenelson and the North Carolina Sentencing and Policy Advisory Commission do the following:

(1) Tie legislation to an Appropriation

Without the proper funding, increasing the juvenile-status age will not succeed in achieving its purpose. Shifting 16 and 17 year olds to the juvenile system to receive treatment and have access to educational opportunities will reduce recidivism and save taxpayers millions of dollars. However, the programs need to be implemented and
supervised accordingly in order to make the impact they are designed to have. Requiring the “raise the age” bill to be tied to an appropriation will help satisfy legitimate concerns about inadequate resources.

(2) Utilize Prosecutorial Waivers

Modify the bill to appeal to prosecutors—a strong and influential coalition that currently opposes the bill. Enhancing DA discretion in their prosecutorial duties will give them more flexibility and control, satisfying their primary concerns. Gaining DA support will also help the implementation process. This recommendation should be considered carefully and the Committee should investigate the states that use this waiver.

(3) Negotiate Terms & Conditions for Access to Criminal Histories for the Business Community

Providing employer access to juvenile records under certain terms and conditions would substantially reduce opposition from the Retail Merchant Association. Access to records is their only and primary concern. Negotiating a practice that gives employers access while also protecting the privacy of the offender will not only eliminate this particular opposition, but it may also create buy-in and support. This modification represents a significant concession on the part of proponents and if not considered carefully, it could represent a pyrrhic victory where the fundamental purpose of raising the age is jeopardized.

(4) Communicate & Educate

Advocacy efforts must continue to educate all stakeholders, with special attention geared toward law enforcement. There are still a number of misperceptions, such as the leniency of the juvenile system and its ability to help rehabilitate young offenders. Stakeholders need to be convinced that these programs work when implemented and executed properly.

Constant attention should be paid to the way advocacy groups in North Carolina discuss and frame this issue. In Connecticut, the campaign to raise the age faced similar opposition with members from the law enforcement community. One of their strategies was framing the issue in terms of public safety and investing in kids. While adolescent brain development is an important issue that supports increasing the status age, it is an argument that appeals to some, but not all stakeholders. Interview data suggests that this argument is not compelling for members of law enforcement and DA’s because it does not directly coincide with their primary concerns and daily activities.
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POLICY QUESTION

How can the case for increasing juvenile-status age in North Carolina be presented most effectively in the political arena?

I. INTRODUCTION

The age of juvenile court jurisdiction in North Carolina is an old and contentious issue with much at stake. Since the inception of a statewide juvenile justice system in 1919, North Carolina has set the maximum age of juvenile jurisdiction at age sixteen.¹ This means that all sixteen and seventeen-year olds are processed as adults in the criminal justice system. Trying and sentencing youth as adults in the criminal system has serious and broad consequences for the offenders, their families, the juvenile and adult criminal justice systems and society at large.² Advocates for raising the age of juvenile jurisdiction to seventeen or eighteen argue that youth in adult facilities are more prone to abuse; are less likely to receive health treatment and educational services; are more likely to join gangs and engage in violent behavior (CFYJ, 2007); and are more likely to recidivate (Bilchik, 2009). An adult conviction also yields collateral consequences; an adult criminal conviction is permanent, impacting an offender’s ability to gain employment or be admitted to institutions of higher learning—two key sources that help reduce the tendency of engaging in criminal behavior (Birckhead, 2008). On the other hand, opponents of raising the age generally adhere to public safety arguments, often taking a “tough on crime” approach or take a “do the crime, do the time” perspective. Opponents also cite the high financial costs that a successful transition process—where sixteen and seventeen year olds would be removed from the adult system and transferred to the juvenile system—would indeed require. In addition, the juvenile system is overcrowded and overburdened, lacking the resources and support structures to properly treat the offenders currently in the system. Thus, including the sixteen and seventeen year-old cohort would exacerbate an already afflicted and dysfunctional system. Whether sixteen and seventeen year olds are tried and sentenced in adult court or adjudicated and treated in the juvenile system is a significant matter.

Today, 38 states and the District of Columbia end juvenile jurisdiction at age eighteen while ten states end it at age seventeen; only North Carolina and New York end juvenile jurisdiction at age sixteen (Birckhead, 2008). Raising the age of juvenile jurisdiction in North Carolina has been looked at and debated a number of times since the juvenile court was first established; however, opposition to any change has been particularly successful. Birckhead (2008) summarizes:

¹ N.C. GEN. STAT. § 7B-1604(a), 2011 (“Any juvenile, including a juvenile who is under the jurisdiction the court, who commits a criminal offense on or after the juvenile’s sixteenth birthday is subject to prosecution as an adult.”)
² “Youth” refers to anyone under age eighteen (unless otherwise noted). “Conviction” is associated with the adult criminal system while “adjudication” is used with the juvenile system.
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 consistently been defeated (Birckhead, 2008,1448-9, author’s emphasis).

This “recurring pattern” is most recently exemplified by failed legislation in 2007 and in 2009. The 2007 bill to raise the age to eighteen was recommended by the North Carolina Sentencing and Policy Advisory Commission. Faced with stern opposition from “district attorneys, sheriffs and the juvenile justice system itself,” the bill was not passed (Ingram, 2007) and a new bill introduced in 2009 also suffered the same fate. However, the 2007 bill was converted into a directive to conduct a cost-benefit-analysis (CBA) on the status age while the 2009 bill was converted to a budget bill establishing the Youth Accountability Task Force to work with the Sentencing and Policy Advisory Commission and further study the issue (Henrichson & Levshin, 2011). On behalf of the Youth Accountability Planning Task Force, the Vera Institute of Justice conducted a second comprehensive cost-benefit analysis. In their 2011 report, Vera concluded that raising the age of juvenile jurisdiction to eighteen is a prudent course of action for North Carolina to pursue as benefits far outweigh costs (Henrichson & Levshin, 2011).

During the 2011 General Assembly session, bi-partisan bills to raise the age were filed in both the House and Senate. No action has been taken in either chamber since April 2011 when the House re-referred the bill to the Commission on Judiciary Subcommittee B on April 7, 2011 (NCGA, 2011; Penn, 2011). If enacted, the bills would increase the juvenile-status age incrementally (six-month increments) to eighteen by 2018. The legislation is scheduled for the General Assembly’s 2012 short session this May. Given the historical pattern of opposition with this issue and its contentious nature, this report is prepared for the North Carolina Sentencing and Policy Advisory Commission—specifically for Executive Director Susan Katzenelson—and seeks to answer the following question: *How can the case for increasing juvenile-status age in North Carolina be presented most effectively in the political arena?* According to Ms. Katzenelson, there are two primary arguments against raising the age: one is a budget and resource constraint and the other is related to a public safety argument, voiced most strongly by district attorneys, the Sheriffs Association, and the Retail Merchant Association.

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4 Vera’s CBA was the second analysis done in a three year period; the first was done by ESTIS Group in 2009 – discussed in more detail in the “Background: Historical Overview” section of this report.

5 Note: no formal policy analysis is conducted in this report; policy options and initiatives are only discussed as they relate to the question in context.
To address the policy question I used a three-pronged approach. First, I conducted a comprehensive literature review on the history of juvenile justice in North Carolina, focusing on the age of jurisdiction. Reviewing the history and speaking with faculty members familiar with North Carolina issues and politics allowed me to identify and confirm key stakeholders and influential actors within this particular area. My second step involved speaking with and learning from these stakeholders, which included both advocates for raising the age and advocates for maintaining the status quo (referred to in this report as “opponents” of raising the age). With conclusions derived from the literature review and stakeholder interviews (the first two steps), I then conducted a political analysis to best inform my recommendations.

**Figure 1: Three-Pronged Approach (analytical strategy)**

The numerous commissions, reports, and studies devoted to addressing juvenile delinquency over the last 90 plus years show a series of proposals to change the age of juvenile jurisdiction. This series of proposals indicates a basic fundamental and philosophical belief in rehabilitation for young offenders. And while opposition to changing the juvenile-status age has varied by group across time, the issue of resources—funding, facilities, facility capacity and capabilities, personnel and related workforce, or any combination of these—consistently formed the basis for excluding sixteen and seventeen year olds from the juvenile justice system. Indeed, a resource-constraint argument continues to be at the heart of the debate today. Interview data reveals a legitimate skepticism toward lawmakers among district attorneys and members of the law enforcement community based primarily on past funding agreements never being fulfilled. As a result, promises of funding are now perceived as “hollow.” Perceptions of a lenient, underfunded and ineffective juvenile system among opposing stakeholders are prevalent and need to be disabused. With growing bipartisan support in the legislature and a diminished threat of opposition rooted in pure ideological reasoning, a modified “raise the age bill” is likely to gain favor in the political arena and ultimately get passed.

The political analysis I conducted indicates that two of the most staunch opponents to raising the age—district attorneys and the business community—can be neutralized by modifying the bill, aligning the proposal with their preferences but without sacrificing the central tenets of the bill. These modifications represent concessions for proponents, but gaining the support of district attorneys will help the bill pass in the legislature and contribute to a more successful implementation process. The first modification involves providing more flexibility and discretion to prosecutors using a prosecutorial waiver mechanism (“direct file”). The second modification involves allowing employers access to juvenile records under negotiated terms and conditions, providing the business community a way to screen potential employees.
This report is organized into four sections: (I) Introduction, (II) Historical Development, (III) Political Analysis, and (IV) Conclusion. The first section is an introduction to the policy issue, discusses the tension that surrounds it, and introduces my analytical strategy—the process I took to address the posed question. The second section summarizes the history of juvenile justice in North Carolina as it relates to the juvenile-status age. The third section discusses key observations and findings derived from my research and targeted stakeholder interviews. The fourth and final section is a summary of conclusions and my recommendations to Ms. Katzenelson.

## II. HISTORICAL DEVELOPMENT

The history of juvenile justice in North Carolina reveals a recurring pattern “wherein well-considered proposals to extend the age of juvenile court jurisdiction to eighteen have...failed” (Birckhead, 2008, 1449). This section examines this “recurring pattern” while using a national perspective as a backdrop, highlighting the various commissions, studies and reports conducted by the state.

### THE 19TH AND EARLY 20TH CENTURY

The push for a separate justice system to handle young offenders can be traced back to the 19th century (Alley, 1994; Krisberg, 1993). The nationwide reform movement, geared toward treatment and rehabilitation as opposed to punitive measures, was led predominantly by “child-savers”—a group of women who argued that rehabilitation benefited both the child and the community (Alley, 1994; Krisberg, 1993; Mason, 2009; NCDJJDP 2011). The American juvenile justice system, in which North Carolina coincided with, was founded on the idea of protecting children (keeping them away from the sphere of adult criminal influence and prison cruelty), providing them the resources to reform, and public safety (Alley, 1994; Clement, 2002; Krisberg, 1993; Mason, 2009; NCDJJDP 2011; Tanenhaus, 2004).

In 1907, North Carolina passed legislation to create facilities designed for young boys to attend where they would be separate from adults. This legislation was the result of a 17 year campaign led by P.J. Cook, a journalist who objected to the verdict in which a 13 year old boy was sentenced to three years on a “chain-gang” for stealing $1.30 in goods from a local store (Alley, 1994). The legislation led to the construction of North Carolina’s first juvenile correction facility—Stonewall Jackson Manual Training and Industrial School—which officially opened in 1909 (Ally, 1994; Mason, 2009; NCDJJDP, 2011). “White boys sixteen and under, in need of correction, education, and training in
middle class values’ were sent by the court to this training school” (Alley, 1994, 3). At this time, youth were still tried in adult court and judges had the discretion to commit those younger than 16 for an unspecified amount of time (Mason, 2009).

The Juvenile Court Act of 1919 resulted, in part, from the National Child Labor Committee Study, which examined the conditions affecting North Carolina’s children (Alley, 1994; Mason, 2009). The Act established statewide juvenile court jurisdiction for children that were deemed delinquent, dependent, or neglected, although the court did not define these terms (Alley, 1994; Mason, 2009). The original proposed legislation set the cutoff age of jurisdiction at 18; however, when the Act was officially adopted, the age status was revised and set at 16 (Alley, 1994; Mason, 2009). It is not clear why this last minute change occurred, though Birckhead (2008) suggests, “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” (Birckhead, 2008, 1449). It should also be noted that the Juvenile Court Act of 1919 also authorized the transfer of 14 and 15 year olds to superior (adult) court for felony cases at the Judge’s discretion (Mason, 2009).

**THE MID-20TH CENTURY**

In 1946, North Carolina was one of four states in which the juvenile age of jurisdiction ended at age 16, “while [the] remainder of states extended jurisdiction up to ages seventeen through twenty-one, with the majority capping it at eighteen” (Birckhead, 2008, 1446). Youthful Offenders, individuals under the age of 21 and who had not previously served six months in jail or prison, were segregated from the adult populations in jails. The purpose for this separation was founded on the original premise in establishing a separate juvenile court and justice system, namely—to create an environment more conducive to rehabilitation (Alley, 1994).

The Commission on Juvenile Courts and Correctional Institutions (established in 1953 by the North Carolina General Assembly), in agreement with the National Committee on Juvenile Court Standards, recommended including sixteen and seventeen year olds in the juvenile system if a secure facility was made available to detain them (Alley, 1994). However, opposition from “judges and training school personnel…felt the state lacked adequate facilities for the unruly percentage of such an older age group” (Alley, 1994, 18-19). Legislation was introduced in 1955 to extend the juvenile court jurisdiction to seventeen, thus scaling back one year in age, but the bill still failed with the “principal argument…being that training schools were overcrowded and could not handle the increased number of children” (Alley, 1994, 19).

During this time at the national level, the general public became more skeptical about the juvenile system and its ability to reform young offenders (OJJDP, 1999). However, this skepticism was rooted not in the philosophical framework and belief in rehabilitation, but in the actual institutional system (Bernard, 2010; OJJDP, 1999). Bernard (2010) states: “Even in institutions designed to provide rehabilitation and treatment, conditions
of overcrowding, high staff turnover, and limited financial resources...hindered the ability of the system” to achieve its stated desired end of rehabilitation (Bernard, 2010, 139).

In 1956, the Governor’s Youth Service Commission report also advised the extension of juvenile court jurisdiction to include 16 year olds namely because children between 16 and 18 were not receiving adequate state and local resources (Alley, 1994, 22). A study by the National Probation and Parole Association in 1956 agreed with the Governor’s report, stating that the categorization of “a sixteen or seventeen year-old youngster as an adult in connection with offenses against society” is no longer reasonable in light of increasing research and knowledge on brain functioning (NPPA, 1956, 15). The report also noted that although philosophically based on notions of treatment and rehabilitation, the state court system “fail[ed] to provide...statewide diagnostic and treatment services [as well as] specialized staff for juvenile and family counseling and probation services responsible for the supervision and treatment of children in their communities” (Alley, 1994, 25). Thus, theoretical practices of a rehabilitative oriented model of juvenile justice did not coincide with practices on the ground.

This gap between theory and practice was also prevalent at the national level where “[c]are and treatment were often more the exception than the rule” despite the fact that the juvenile system claimed to adhere to the philosophical premise of treatment and rehabilitation, not punishment (Bernard, 2010, 139). “In practice, the juvenile court often did not ‘treat’ juveniles or act in their best ‘interests’ but, rather, punished them for their offenses” (Bernard, 2010, 95).

The age of juvenile court jurisdiction was also examined in the 1958 Bell Report, presented by the Committee on Improving and Expediting the Administration of Justice in North Carolina. In its examination, the Bell Report looked at the development of the juvenile justice system in North Carolina as well as a comparison of the state’s system (including age jurisdiction) with the courts in the other 48 states and District of Columbia (Alley, 1994). The report did discuss the issue of age, and questioned whether North Carolina should raise the age of juvenile jurisdiction, maintain the status quo, or lower the age of jurisdiction. It was noted that the General Statutes of North Carolina defined “child” as a minor younger than 16, and although it was not stated specifically, it was implied that this definition applied to the juvenile court, and therefore, the age for juvenile court jurisdiction in North Carolina was “up to 16” (for certain violent felonies the age was less than 14) (Alley, 1994). At this time, only four other states—Alabama, Connecticut, Kansas, and Vermont—set the upper age of juvenile jurisdiction at sixteen (Ligon, 1958, 50-69).

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6 A fifth state, New York, also had 16 as the upper age limit but only in some situations and under conditions. See Ligon, 1958 for more details.
THE 1960S: SUPREME COURT CASES & REFORM

During the 1960’s, the U.S. Supreme Court made a series of decisions that significantly altered the character of the juvenile justice system at the national and state level (Alley, 1994; Guarino-Ghezzi, 2004; OJJDP, 1999; Tanenhaus, 2004). In North Carolina, “[w]hile participants agreed with the juvenile court philosophy, application of it was a more difficult problem” (Alley, 1994, 34). This issue was a concern throughout the country as people became cognizant of the gap between the original philosophical intentions of the system, namely—rehabilitation—and the practical limitations of the system (Bernard, 2010; Guarino-Ghezzi, 2004; Krisberg, 1993; OJJDP, 1999). Bernard (2010) writes:

Optimism about the juvenile court had broken down and a more realistic view of the situation began to emerge. This view was based on an assessment of the actual performance of the juvenile court rather than on the good intentions of its founders (Bernard, 2010, 95).

As a more punitive-oriented approach prevailed, juvenile advocates across the country were concerned that youth were being treated no different than adults in the adult corrections system (Bernard, 2010; Krisberg, 1993; OJJDP, 1999). In Kent v. United States (1966), Justice Abe Fortas stated that,

There may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.⁹

Prior to Kent, juvenile courts were informal (no legal documentation or record of proceedings kept) where the judge, under the doctrine of parens patriae, served as a “substitute parent” for the child, while also wearing the hat of a social worker, psychiatrist and general guidance counselor (Alley, 1994, 38). The Supreme Court decisions of the 1960’s provided constitutional and due process protections for juveniles—protection against self-incrimination and the right to an attorney, as examples—formalizing the juvenile court system, making it more similar to a criminal court (Mason, 2009; OJJDP, 1999)¹⁰. The high court’s decisions in put an end to the

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⁷ See Kent v. United States (1966); In Re Gault (1967); In Re Winship (1970)
⁸ “Participants” refers to those who gathered together in March of 1963 at the Juvenile Justice Institute—a one-day institute for people interested in North Carolina’s juvenile justice system. The day was sponsored by the following groups: the North Carolina Association of Domestic Relations and Juvenile Court Judges, the North Carolina Sheriffs’ Association, the North Carolina Police Executives, the Governor’s Committee on Delinquency and Youth Crime, the Institute of Government, the State Board of Correction and Training, the State Highway Patrol, and the North Carolina Conference for Social Service. (Alley, 1994, page 33).
⁹ 383 U.S. 541 Kent v. United States (1966)
¹⁰ “Criminal” as distinguished from “civil” (Mason, 2009)
parens patriae doctrine that had guided the youth system since its inception (Alley, 1994; NCDJJDP, 2011).  

In the 1970’s, there was a growing concern among officials throughout the state regarding the juvenile system. A study on North Carolina’s Emotionally Disturbed Children revealed a system of “fragmentation, unmet needs, duplication, and lack of coordination in planning and providing for children’s services” (Alley, 1994, 47). The report, titled: Who Speaks for Children? was delivered to the General Assembly in 1971, the same year that state saw an increase in juvenile crime (Alley, 1994).

The Supreme Court decisions forced states to re-examine their justice systems and confront contentious issues head-on. In response to the Supreme Court’s decisions, the North Carolina Court Commission proposed a revised juvenile code (set of laws relating to the juvenile court system) so as to implement the changes into the state’s recently developed statewide district court system (Alley, 1994). Raising the age of juvenile jurisdiction came up, but no recommendations to make changes were made by the commission (Alley, 1994). The new code (adopted and put into effect in 1970) gave district court judges the discretionary power to do one of two things in regards to felony cases involving a 14 or 15 year old; (1) hear the case, or (2) transfer the case to the superior, adult trial court (Alley, 1994). In 1971, the idea to include 16 and 17 year olds in the juvenile system came up again and was supported by the Senate Committee on Correctional Institutions and Law Enforcement. By this time, most other states had extended their age of juvenile jurisdiction to include the 16 and 17 year old cohort; however, in North Carolina, “juvenile correctional professionals opposed the bill because of inadequacies in the system, including facilities and personnel,” and the bill was defeated (Alley, 1994, 46).

North Carolina found “itself at a crossroads with major changes in the direction of the system—treatment versus punishment and due process versus parens patriae” in the 1970s (Alley, 1994, 33). This “crossroads” is evidenced by the North Carolina Bar Association’s Penal System Study Committee report on the state’s juvenile corrections system. The report, As The Twig Is Bent, (published in 1974) highlighted the fact the training schools, developed to rehabilitate and treat the state’s young offenders, were “primarily custodial and not rehabilitative” (Avery, 1974, 5). Although the report stressed the need for North Carolina to reform the youth system and implement practices geared more toward rehabilitation and treatment, the report noted that “[i]n practice...the

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11 The Judicial Department Act of 1965 is passed giving authority and jurisdiction over delinquent, dependent and neglected children under age 16 to superior district courts. The state (as opposed to the counties) was now in charge of juvenile courts and domestic cases (Alley, 1994; NCDJJDP, 2011).

12 In 1971, the US ratifies the Twenty-sixth Amendment to the US Constitution, lowering the minimum voting age to 18.

13 In 1974, the U.S. Congress passed the Juvenile Justice and Delinquency Prevention Act which required the separation of juvenile and adult offenders (Aarons et al, 2009; Clement, 2002; OJJDP, 1999; Tanenhaus, 2004).
Department simply does not have the specialists, the funds or the public support” to achieve the desired end (Avery, 1974, 4).

Studies and commissions in the 1970s continued to express the need to separate children from adults. For example, the Governor’s Law and Order Commission suggested that by 1979, no juvenile should be in the same facility as an adult (Alley, 1994). However, even though 1975 legislation defined a ‘child’ as “a person who had not reached his or her eighteenth [18th] birthday…juvenile jurisdiction for delinquency included only a child who had not reached his or her sixteenth birthday” (Alley, 1994, 60).

In preparation for drafting a new juvenile code, Governor James (Jim) Hunt in 1977 established multiple special committees responsible for examining laws, planning funding allocation, and implementing improvements to the state’s juvenile justice system. In addition to the Governor’s Crime Commission, the Juvenile Code Revision Commission—tasked with making recommendations for a revised code at the end of 1979—and the Juvenile Justice Planning Committee, were also established (Alley, 1994). A new Juvenile Code, which placed emphasis on new “procedural due process for juvenile offenders” but still left the age of jurisdiction capped at 16, was established and put into effect on January 1, 1980 (Alley, 1994, 75). A Juvenile Law Study Commission was also created by the General Assembly to continue studying policies and laws as they related to juveniles for the purposes of dealing with the evolving needs of the juvenile system (Alley, 1994). Over the years, the law study commission conducted numerous studies, including the age of juvenile jurisdiction (Alley, 1994, 78).

The 1980’s also began with the development of the Mainstream Program of the Division of Youth Services. The program was designed and implemented at training schools (Dobbs, Stonewall Jackson, Samarkand Manor) specifically to improve treatment and habilitation services for youth offenders. Alley (1994) writes:

Because incarcerated children have...learning, emotional, physical, and social problems, the school’s treatment during the 1980s aspired to move from a dehumanizing emphasis on custody and security toward a balance between protection of youth and community and the provision of appropriate therapeutic services...to increase the possibility of adjudicated youth becoming productive and socially acceptable adults (Alley, 1994, 78).

The Governor’s Advocacy Council on Children and Youth were concerned with juveniles being detained in adult jails. As a top priority, a study was commenced in 1981. At that time, North Carolina held 2,361 children in secure juvenile detention centers, while
1,614 were in adult jails (Alley, 1994, 85). The council noted that the national suicide rate was eight times higher for children held in adult jails than children held in detention centers; between 1975 and 1982 four children in North Carolina had committed suicide while in adult jail. The report emphasized that (1) adult jail was inappropriate for children who had not yet been convicted, (2) staff were not trained to handle and supervise youth, and (3) adult jails had no services for youth, e.g., medical, educational, treatment. The 1983 North Carolina legislative mandate forbid the detention of children in adult jails, preceding the 1985 federal law forbidding the same thing for states receiving federal funds (Alley, 1994, 85).

THE 1990s: NATIONAL INCREASES IN YOUTH CRIME

The 1990’s saw the development of community-based programs aimed at rehabilitation. However, consistent with national trends, North Carolina saw increases in youth crime (NCDJJDP, 2011). Beginning in the late 1980s, the United States experienced a significant increase in violent crime (Blumstein, 2002). Youth violence in particular became a concern as the rates of homicide and robbery committed by youth—referring to those under the age of 20—increased (Blumstein, 2002). Similar to other states, North Carolina drafted a series of bills that made it easier to try and sentence youth in the adult system (Birckhead, 2008). Although most bills were unsuccessful, an isolated incident in 1992 in which a 13-year old boy murdered an elderly woman, altered public opinion. An article titled “Death fuels anger over laws protecting young criminals,” Thomas Healy of the News & Observer reported:

> As the rate of juvenile crime increases across North Carolina—particularly violent assaults—it's bringing with it a new attitude that children need to be held more accountable for their actions...‘there is an increasingly antagonistic response to the notion that kids ought to be protected,’ said Irving Joyner, associate dean of the N.C. Central University law school (Healy, 1992).

In effect, this “prompted the General Assembly to lower the minimum age of transfer from fourteen to thirteen” (Birckhead, 2008, 1489). In 1994, the transfer age was officially reduced from fourteen to thirteen. In other words, thirteen year olds could now be transferred to the adult court system at prosecutorial discretion.

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14 In 1967, North Carolina provided standards regarding the types of facilities youth can be detained. The 1967 law allowed children to be held in adult jails under the condition that they are separated by sight and sound (no contact) from adult prisoners (Avery, 1994, 41 and 85)

15 Governor's Advocacy Council On Children And Youth, No Place For A Child (September, 1982)
The Era of Gang-Bangers & Superpredators

In 1995, John Dilulio, a renowned political scientist and criminologist, referred to an impending doom of “morally impoverished juvenile super-predators,” (Dilulio, 1995) while James Allen Fox, also a prominent criminal scholar, warned of an imminent “teenage time bomb” (Dodge, 2008, 576). Blumstein (2002) suggests that these warnings were a response to several horrific killings by youth. According to multiple scholars, crime policy was immediately influenced by these messages (Dodge, 2008; Templeton, 1998). For example, the Violent Youth Predator Act of 1996 required officials to prosecute juvenile chronic violent offenders as adults while also increasing mandatory prison time for juveniles who use firearms when committing violent federal crimes or drug trafficking offenses (Dodge, 2008).

After the 1996 bill became law, “legislatures in nearly every state expanded transfer laws that allowed or required the prosecution of juveniles in adult criminal courts” (OJJDP, 2011). From 1992 through 1999, forty-nine states (and DC) either enacted or expanded transfer provisions, making it easier to transfer juvenile offenders into adult court (Birckhead, 2008). This was all consistent with national trends demonstrating a reliance on punitive measures in response to increases in crime (real or perceived). In a 20-year period, from 1971 to 1991, incarceration rates increased “from 95 to 310 per 100,000 of population”, reflecting the political arguments of incapacitation and deterrence—that it makes criminological sense to lock up sociopaths, keeping them off the streets, while deterring (in theory) others from pursuing crime as the costs outweigh the benefits (Scheingold, 1995, 158).

According to Dodge (2008), policies and laws that make it easier to try and sentence youth as adults were based off of, in large part, the metaphors that experts and policy makers used in their rhetoric. The “super-predator” metaphor was “successful in catalyzing policy-makers and the public because it readily accessed the public’s hidden stereotype of the violent youth as someone who is dangerous, living in a hopeless situation, and not worthy of empathy or support” (Dodge, 2008, 576). For Scheingold (1995), the “perverse” policies that emerged (beginning in the 1960s) resulted from a “variety of…anxieties and insecurities” (Scheingold, 1995, 156, 157), which are linked to the political rhetoric that became “contagious” (Scheingold, 1995, 157) and pervaded both policy and public discourse. Indeed, North Carolina decision-makers cited public opinion as a reason for the state to maintain the status quo and keep the upper age of juvenile jurisdiction at age sixteen (Mason, 2009).

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16 Dilulio played a significant role in advocating and lobbying for the Bill by speaking on news and televisions shows, warning the country about the super-predators. The super-predator metaphor gained significant national attention when Dilulio posed for the cover of Time magazine with a wall of graffiti in the background (Schiraldi, 1997). Dilulio was appointed by President Bush as the first director of the White House Office of Faith-Based and Community Initiatives—founded on the policy “alternative” Dilulio recommended in his 1995 ”superpredator” article (Dodge, 2008).
THE LATE 1990s TO LATE 2000s: ADOLESCENT BRAIN DEVELOPMENT

The 1997 (and 1998) North Carolina Governor’s Commission on Juvenile Crime and Justice recommended to keep the upper age of juvenile jurisdiction at 16 and that the dispositional jurisdiction increase due to public opinion regarding more violent and serious youth crime, financial implications, and the impact on an already overburdened youth system (Mason, 2009).

North Carolina District Court Judge Marcia Morey, who was part of Governor Hunt’s commission, discussed why the commission didn’t recommend raising the age. Morey stated:

We wanted to get the [new juvenile code] passed and not be jeopardized by adding in this other big change...we were changing so many things...add[ing] in sixteen and seventeen year olds...would have been too much to get the legislation passed (Morey Interview, March 2012).

Organized efforts to raise the age of juvenile jurisdiction were amplified in light of emerging scientific data on adolescent brain development cited in the U.S. Supreme Court’s 2005 Roper v. Simmons decision. Writing for the majority, Justice Kennedy stated:

The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a great possibility exists that a minor’s character deficiencies will be reformed.17,18

In ruling that it is unconstitutional to impose the death penalty for crimes committed by an individual while younger than eighteen, the Court’s decision shined a national spotlight on juvenile delinquency and related policy: “[n]euroscience [had] confirmed what child advocates and juvenile justice experts have intuitively believed”—that adolescents are developmentally immature in comparison to adults (Bilchik, 2009). The Court’s decision suggested that not only are adolescents—specifically those younger than eighteen—less culpable for their actions, but that they are also more likely to be reformed. For Connecticut, New York, and North Carolina in particular—the only states at the time of the decision that automatically tried and sentenced youth sixteen and

17 543 U.S. 551, Roper v. Simmons (2005), page 16
18 In reaching their conclusion, the U.S. Supreme Court cited mounting sociological and scientific evidence demonstrating that higher-level cognitive functions—planning, reasoning, judgment, and behavioral control—do not fully develop until the early 20’s (Steinberg, 2009). Adolescents have an incomplete and undeveloped perspective on time, perception of risk, ability to control their behavior, and ability to avoid or ignore negative external influences. In other words, teenagers are especially impulsive, more likely to engage in risky behavior, more vulnerable to peer pressure, and are less concerned about long-term consequences.
older as adults—the question of culpability among young offenders became increasingly relevant to policy discussions relating to the age of jurisdiction.\textsuperscript{19}

Galvanized by the Supreme Court’s decision, juvenile delinquent advocates and experts alike began pushing for legislative action to change the status-age and reverse decisions made during the era of the “superpredator” (Chen, 2010). Indeed, in Connecticut, the Connecticut Juvenile Justice Alliance (CTJJA) launched the Campaign to Raise the Age CT. In 2007, the CT Campaign proved successful; legislation to raise the age to eighteen was passed.\textsuperscript{20} This same year North Carolina began to make similar efforts. The North Carolina Sentencing and Policy Advisory Commission issued a report on the Study of Youthful Offenders to the North Carolina General Assembly, recommending that to increase the age of juvenile jurisdiction to eighteen. (“persons who, at the time they commit a crime or infraction, are under the age of 18”).\textsuperscript{21} The recommendation was based on two factors: (1) the increasing body of sociological evidence and scientific research on adolescent brain development suggesting youth should not be subject to the same level of culpability as adults, and (2) sixteen and seventeen year olds are better served in “a treatment-oriented environment” that focuses on rehabilitation.\textsuperscript{22} Opposition to the bill from “district attorneys, sheriffs and the juvenile justice system itself” derailed any movement forward, however; the bill failed to even reach the House floor (Ingram, 2007). The Department of Juvenile Justice and Delinquency Prevention (DJJDP)—established in 2000 by consolidating several state agencies into one cabinet-level agency—argued that absorbing more kids into the juvenile system would be a detrimental decisions in light of high staff turnover and vacancy rates (Kane, 2007). The bill failed to gain momentum and ultimately never passed.

The 2007 effort, however, was not completely lost. The bill was converted into a directive to study the status-age further and supplement the 2007 study on youthful offenders. The result was the Governor’s Crime Commission Juvenile Age Study report. The report, presented to the Governor and the General Assembly, included a cost-benefit analysis (CBA) and an implementation and action plan authored by the ESTIS Group, LLC. In addition, a legal analysis was provided by UNC School of Government

\textsuperscript{19} Laurence Steinberg, the professor whose work was cited multiple times in \textit{Roper v. Simmons} (2005), notes that although adolescent brain immaturity relative to adults is an “uncontroversial fact” (Steinberg, 2009, 744) within the scientific community, “reasonable people...can disagree about what, if anything, these findings tell us about how we should treat young people under the law” (Steinberg, 2009, 742).

\textsuperscript{20} Raise the CT. A Success Story: How Connecticut is moving from being one of the most punitive states to one of the most progressive. Produced by Connecticut Juvenile Justice Alliance (CJJA). \url{http://wwwraisetheagect.org/index.html}


Professor Janet Mason. The ESTIS Group’s CBA concluded that the “net benefit of raising the age of juvenile jurisdiction within an enhanced system [is] $7.1 million” further noting that “once consideration of the non-quantifiable benefits are taken into account, the overall result would be a significantly larger net benefit to society.” Like the 2007 bill, the 2009 bill also failed to receive a committee hearing. Although no change to the status-age was made, the legislature, with the support of Governor Beverly Purdue, authorized the Youth Accountability Planning Task Force (YAPTF) to examine the juvenile jurisdiction age issue further (Henrichson & Levshin, 2011). Contracted by the Task Force, the Vera Institute of Justice conducted a second cost-benefit analysis, accounting for the more difficult to quantify and long term benefits (the “non-quantifiable” impacts) the ESTIS Group’s CBA did not include. Vera’s conclusions found that expanding juvenile jurisdiction to include misdemeanor and nonviolent felony offenses for 16- and 17-year-olds would yield $52.3 million in net benefits per annual cohort of youth…[A]n annually recurring investment of $70.9 million would yield $123.1 million in total benefits: $21.7 million in taxpayer benefits, $3.6 million in victim benefits, and $97.9 million in benefits to youth (Henrichson & Levshin, 2011, 10).

CURRENT LEGISLATION

During the 2011 General Assembly session, bi-partisan bills (“Juvenile Age to 18”) to raise the age were filed in both the House (HB 632) and Senate (SB 506). No action has been taken in either chamber since April 2011 when the House re-referred the bill to the Commission on Judiciary Subcommittee B on April 7, 2011 (NCGA, 2011; Penn, 2011). If enacted, the bills would raise the age incrementally (six-month increments) to eighteen by 2018. The legislation is scheduled for the General Assembly’s 2012 short session this May.

It’s uncertain what will happen to this bill in the short session. The stakeholder interviews, taken as a whole, reflect this ambiguity. Eriz Zogry, for instance, a juvenile public defender and advocate for raising the age, is optimistic and expects the juvenile-status age to be increased, but in a limited capacity (i.e. only for an unknown select group) (Zogry Interview, February 2012). On the other hand, former district attorney Peter Gilchrist said he would be surprised if the General Assembly passed the bill considering the economic climate we are currently in (Gilchrist Interview, March 2012). Others, such as Rep. Rick Glazier and Sherriff Terry Johnson think that eventually a bill to raise the age will pass, but unsure if this is the right time, mentioning the various other factors that are in play that will necessarily impact the decision (Glazier Interview, February 2012; Johnson Interview, March 2012).

CONCLUSIONS FROM HISTORICAL DEVELOPMENT

The timetable below (page 16) displays a synopsis of the proposals and “attempts” to change the juvenile-status age in North Carolina over the last century, highlighting the “recurring pattern” noted earlier. The table indicates that the juvenile-status age has been on the political agenda frequently, and shows us that inadequate resources was commonly cited as justification for not passing legislation to include sixteen and seventeen year olds in the juvenile system (or just 16 year olds). Additionally, we can see how over the last decade in particular, proposals materialized into bills. Indeed, the most organized lobbying and advocacy efforts began following the Supreme Court’s decision in *Roper v. Simmons* (2005) when the Office of the Juvenile Offender (OJD) and Action for Children North Carolina got involved (Zogry Interview, February 2012).

The history of proposals to change the age of juvenile jurisdiction in North Carolina illustrates a research-to-policy gap—a disconnect between social science research and the utilization of that research by policymakers. A research-to-policy gap, however, is a normal by-product of the policymaking process, where policy and political processes converge. Where policy analysis is rooted in a rational, objective process in which alternatives are compared and a policy is chosen based on its overall merits; politics is generally an irrational and “unpredictable” process in which a policy may be chosen based on self-interest, emotion, influence, or power (Stone, 2002, 376). The policymaking process is adversarial, where competing agendas and conflicting interests and perspectives often transcend rational or objective solutions to particular issue-debates.24 For these reasons, policy changes are almost always incremental where small adjustments from existing policies are made as opposed to large substantial shifts (Lindblom, 1959).25 The last decade of proposals and attempts to raise the age of juvenile jurisdiction in North Carolina exemplifies this process. From 2007 to today, the age issue has been targeted and studied; elected officials have been educated, task forces have been developed, and external agencies consulted. Nevertheless, changing the juvenile-status age would indeed be a profound policy change that would affect multiple stakeholders. Opposition to raising the age is still significant and presents a legitimate barrier to successful legislative action.

25 Lindblom (1959) explained this process whereby policymakers “muddle through”–making small, incremental policy changes as opposed to large significant policy departures, which are likely to impact a multitude of parties while having unintended consequences. This process is generally referred to as “incrementalism,” and is viewed as a strategy embraced by elected officials. Because of limited time and resources, it is nearly impossible to consider all possible alternatives. As a result, elected officials choose to make small policy changes to avoid “lasting mistakes” (Lindblom, 1959, 86).
Figure 2: Timetable - Historical Overview of Proposals to Raise the Age in NC.

<table>
<thead>
<tr>
<th>YEAR</th>
<th>PROPOSAL</th>
<th>STUDY/ REPORT/ CONTEXT</th>
<th>JUSTIFICATION/ OUTCOME</th>
</tr>
</thead>
<tbody>
<tr>
<td>1919</td>
<td>Juvenile Court Act (Original legislation upper at 18)</td>
<td></td>
<td>Resources (funding, personnel) – voiced by lawmakers</td>
</tr>
<tr>
<td>1955</td>
<td>Bill – include 16 &amp; 17 year olds</td>
<td>1953 Commission on Juvenile Courts &amp; Correctional Institutions agrees with National Committee on Juvenile Court Standards, to cutoff age at 18</td>
<td>Resources (facilities overcrowded) – voiced by judges and training school personnel</td>
</tr>
<tr>
<td>1956</td>
<td>Gov.’s Youth Service Commission Report - (include 16 year olds)</td>
<td>National Probation &amp; Parole Association: categorizing 16, 17 year olds as adults no longer reasonable due to research on brain functioning</td>
<td></td>
</tr>
<tr>
<td>1958</td>
<td>Question to lower, maintain, or raise age</td>
<td>The Bell Report studies and compares systems with other states</td>
<td>NC General Statutes defines “child” as minor below 16 (not specified but assumes this applies to juvenile court)</td>
</tr>
<tr>
<td>1971</td>
<td>Senate Committee on Correctional Institutions &amp; Law Enforcement (include 16 &amp;17 year olds)</td>
<td>NC’s Emotionally Disturbed Children study: Who Speaks for Children? – (Unmet needs for all children)</td>
<td>Resources (facilities, personnel) – voiced by juvenile system</td>
</tr>
<tr>
<td>1997</td>
<td>Gov.’s Commission on Juvenile Crime &amp; Justice</td>
<td>1993 Murder of Mary Haddon by 13 year old; National Perspective (“Superpredator”, “Gangbangers”)</td>
<td>Public Opinion and resources (funding)</td>
</tr>
<tr>
<td>2007</td>
<td>Bill – include 16 &amp; 17 year olds</td>
<td>Youthful Offenders Study (cites Roper v. Simmons (2005) Supreme Court case on adolescent brain development); Connecticut passes legislation to raise the age to 18</td>
<td>Resources (funding, personnel) – voiced by DA’s, sheriffs, and Department; Bill converted to directive to conduct CBA</td>
</tr>
<tr>
<td>2009</td>
<td>Bill – include 16 &amp; 17 year olds</td>
<td>Gov.’s Crime Commission Juvenile Age Study-(ESTIS Group CBA: net benefit of $7.1 million/ year)</td>
<td>Bill converted to budget bill - Youth Accountability Planning Task Force (YAPTF) authorized to continue studying issue</td>
</tr>
<tr>
<td>2012</td>
<td>Bill – include 16 &amp; 17 year olds</td>
<td>2011 YAPTF Final Report-(Vera Institute CBA: net benefit of $52.3 million/ year)</td>
<td>Pending</td>
</tr>
</tbody>
</table>
III. POLITICAL ANALYSIS

This section of the report discusses key observations and findings derived from research and targeted stakeholder interviews, which were used to conduct my Political Analysis—the third and final prong of my analytical strategy.

As explained in the previous section, policy is inherently political where influential actors and interest groups choose to remain neutral, support, or oppose policy initiatives often irrespective of what objective evidence and policy research indicates (Bardach, 2009). Interest groups can influence legislation and determine its outcome, and, because interest groups are motivated by self-interest, concerned most about the organizations and constituents they represent, they lobby on their behalf “regardless of what the evidence shows” (Haskins et al, 2009, 2). Both the ESTIS Group and Vera Institute of Justices’ CBA’s concluded that raising the age of juvenile court jurisdiction to include sixteen and seventeen year-olds in the juvenile system (or just 16 year olds), under certain conditions, is an objective and efficient policy choice. Evidence clearly suggests that raising the age makes economic sense; the long term benefits outweigh the upfront costs. Although cost-benefit-analysis is an important tool that helps inform policy debates, it merely represents one element in the decision making process. Indeed, “policy makers do not base decisions just on research but on values, moral judgments and politics” (Rigby, 2005, 203). The history of juvenile justice in North Carolina demonstrates how interest groups have influence in the policy and political arenas.

POLITICAL ANALYSIS DEFINED

Navigating through the complex entanglement that is the policy and political environment is a strategic endeavor. A political analysis is a process that not only provides perspective on the larger social and political context in which the policy issue is located, but it also helps develop a strategic approach to engaging stakeholders—a critical component to advancing policy goals. A Political Analysis involves looking closely at the actors in the policy environment, disaggregating them, identifying how they exert influence towards or against policy initiatives, and developing strategies to effectively communicate and interact with them.26 Thus, by examining the primary actors in the policy environment and disaggregating and identifying their values, concerns, and the forces and interests that motivate their positions, we gain insight into the kinds of compromises and political bargaining that can be made to effectively

26 This definition and explanation is adopted from Yaffee & Chadwick (2004).
present the case for increasing the juvenile status-age in the political arena—the ultimate purpose this report seeks to address.

The primary stakeholders and influential actors identified within this particular area and on this issue are district attorneys, sheriffs and police chiefs, and the Retail Merchant Association. The political analysis therefore focuses on these groups. Other stakeholders, such as the Department itself and the public are also important but play only a secondary and less substantial role in this analysis, proportional to their role in the political arena. The conclusions derived from the political analysis are organized into three categories: (1) Resources & Hollow Promises, (2) Different Perspectives: Different Realities, and (3) Access to Records

RESOURCES & HOLLOW PROMISES

A resource-constraint has been a consistent barrier to legislative action in regards to raising the age of juvenile jurisdiction, as indicated in the timetable. Peg Dorer, Director of the Conference of District Attorneys stated that “For as long as they have been there, the Secretaries of the Department, [DJJDJP], have said that they are underfunded and cannot provide adequate resources for the juveniles they have in their jurisdiction now” (Dorer Interview, March 2012).

In 2007, the Executive Vice President and General Counsel of the North Carolina Sheriff’s Association, Eddie Caldwell, stated: “It makes no sense to give them [the juvenile justice system] two more age groups of clientele to serve when they don’t have the resources to serve those they have now.”27 Inadequate resources is still a serious concern for most opponents, suggesting that if the resources were guaranteed, they would be more willing to support the increase in age. Police Chief Terry Johnson said that as a law enforcement officer, he is not opposed to raising the age

if the state…will mandate that we have the number of juvenile courts we need, the number of juvenile defense attorneys we need, the number of juvenile judges, the number of juvenile detention centers if we need them; if they will pay to have the facilities and everything available to see that these individuals are handled properly (Johnson Interview, March 2012)

Otherwise, Johnson continued, if the resources aren’t provided by the state, then “we will fail” (Johnson Interview, March 2012). Dorer echoed this sentiment stating that without the proper funding and resources, “it would be a disaster, and the people that be would hurt most are those in the juvenile system now” (Dorer Interview, March 2012).

Shifting sixteen and seventeen year olds to the juvenile system from the adult system will indeed cost a lot of money. This was detailed in the CBAs from 2009 and 2011, and it is certainly acknowledged by proponents. Juvenile Defender Eric Zogry, a strong advocate for raising the age, noted that “its going to cost money [and the] work on the front end is nothing compared to the work that will need to be done on the back-end” (Zogry Interview, February 2012). Representative Rick Glazier, who co-sponsored previous bills to raise the age and is also a co-sponsor for the current bill, explained that the shift is “not as easy as it sounds [because] there are huge costs.” Glazier further noted the importance of providing the necessary funding, stating that “the last thing you want to do is shift a body of 16 and 17 year olds to the juvenile court…with no additional staff and resource capacity—that’s not going to help anybody” (Glazier Interview, February 2012).

Despite this acknowledgement, interviews data reveals a stringent skepticism toward the General Assembly in regards to providing necessary funding and resources. This skepticism is based on multiple previous experiences where the legislature failed to follow through on their agreements. Both Peter Gilchrist (former DA) and Colon Willoughby (DA) referred to the idea of the legislature providing funding as a “hollow promise.” In reference to the General Assembly, Gilchrist said: “They aren’t going to be adding additional money and they certainly aren’t going to move money from the adult system into the juvenile system. I think that’s kind of a hollow promise.” (Gilchrist Interview, March 2012). Willoughby stated: “I don’t believe anybody at the legislative level can provide honest assurances of increased services.” According to Willoughby, increasing the juvenile-status age in which more offenders will be “vying for the same over-prescribed services…you create a false expectation among the public that we are going to change the way we do things…when in effect it’s a hollow promise that everyone in the system knows is false” (Willoughby Interview, February 2012).

Willoughby is skeptical of any mandate for resources and services and believes that other DA’s feel the same way:

I think our folks would tend to be very skeptical of promises to provide resources in the future…I think that will be like previous representations that when the time comes, some other priority will take place and it wont go to these offenders (Willoughby Interview, February 2012)

As a result of previous legislature shortcomings, opponents such as district attorneys and law enforcement are likely to be “vehemently opposed” to increasing the juvenile-status age, and this opposition “will be reinforced by the lack of commitment to provide services” (Willoughby Interview, February 2012). Sheriff Johnson corroborates this notion, asserting, “what I am opposed to is many times our legislature mandates things for law enforcement but does not put the resources out there or the monies to pay for these resources” (Johnson Interview, March 2012). Johnson explained that the legislature often does this. They have an idea but “then the footing of the bill comes back on the local tax payers and the headaches come back on the people in the system
Dorer reiterated this concern: “I’ve been doing this for 20 years and I’ve seen [the legislature] put a lot of programs in place and I have rarely seen them fund those programs like they needed to be done” (Dorer Interview, March 2012). In discussing the Department itself as an opponent to raising the age, Representative Glazier substantiated the opposition’s doubt in the legislature:

You know, I think the juvenile system – court counselors, detention folks – their whole thing is, ‘we don’t want this if you’re not going to give us the resources. If you’re going to give us the resources, it makes sense so we are on board.’ But there have been way too many times in the past where we have added more responsibilities to the juvenile system but not given them resources, so they are a little bit gun-shy and one would understand why – particularly with this kind of circumstance (Glazier Interview, February 2012).

Indeed, opponent skepticism toward the General Assembly in this light is a legitimate issue that proponents need to address appropriately and effectively in order to gain support from key influential stakeholders.

DIFFERENT PERSPECTIVES: DIFFERENT REALITIES

There has always been a perception that the juvenile justice system is too lenient—a prevalent perception throughout the United States (Roberts & Stalans, 2000). Similarly, in speaking with various opponents to raising the age in North Carolina, in addition to citing an underfunded juvenile system, opponents also referred to the system as too lenient, alluding also to its poor performance in rehabilitating young offenders. Gilchrist, Willoughby and Johnson all talked about how gangs use “folks who were classified as juveniles to commit crimes recognizing little or nothing was going to happen to them” (Gilchrist Interview, March 2012). Sheriff Johnson explained,

older gang members know if they are over the age of a juvenile they are going to be dealt with extremely harshly when it comes time to go to court for committing crimes. So what they are doing now, is recruiting younger kids to the gangs and they are committing some of the crimes because if they are juvenile, they are not going to be dealt with as harshly as an older member of a gang. That concerns me tremendously because in Alamance County, the youngest gang member we know of is 8-years old. And that part bothers me because many times these gangs will recruit these much much younger gang people, juveniles, so they can commit crimes and still won’t be dealt with as harshly as the adult gang members (Johnson Interview, March 2012).

There is an apparent strong perception that being in a youth facility and in the custody of the juvenile system is “easier” than being in an adult prison. However, this is not necessarily the case. Eric Zogry asserted: “the juvenile justice system is largely
misunderstood, even by the people who work within it” (Zogry Interview, February 2012). Representative Alice Bordsen explained that “with the services and expectations attached to the juvenile system, some kids would rather be in the adult system because they can be over and done with it. (The juvenile system) is challenging, demanding and intensive. They don’t like it.”

District Court Judge Marcia Morey agrees with this notion, stating that the “juvenile system, contrary to a lot of people’s impression, is much more intensive, intrusive on their lives” (Morey Interview, March 2012).

What is important to comprehend, however, is that both sides of the argument may be correct and this is likely a matter of perspective. While the juvenile system presents more hardships for the youth to go through, young offenders might still perceive the juvenile system as more lenient until they actually get there. Moreover, as Peg Dorer explains, “DA’s and Sheriffs and Chiefs, much more so than anybody else, tend to see a population that is not at their best, and they see horrible things every day” (Dorer Interview, March 2012). Their perspective on the front lines reinforces the perception of a lenient juvenile system. This is evidence that proponents need to do a better job communicating this distinction and debunking any misconceptions or false pretenses that both law enforcement and the public have.

Closely related to the issue of leniency and perception, is the concern of violent young offenders avoiding adult court if the status age is increased. DA Willoughby claimed that increasing the juvenile-status age will create a “new category of offender”—the 16 and 17 year old violent “gang banger”—resulting from the resources, Willoughby is convinced, that will not be provided to this additional cohort once moved into the juvenile system (Willoughby Interview, February 2012). Willoughby described what frightens prosecutors most:

We get 13 and 14 year olds that do aggravated assault with a firearm, that’s scary and I think for many of us, we are loath to think, ‘you are 14 years old and you shoot someone with a gun and you’re back out on the street in 72 hours and we have very little control over you. In fact, we have reinforced what your gang leaders have told you; ‘that they [law enforcement and prosecutors] can’t do anything to you if you do this.’ (Willoughby Interview, February 2012)

Willoughby suggests that this is a primary reason why prosecutors have been resistant to raising the age of juvenile jurisdiction—namely, that they have many difficulties with violent offenders right now. Regardless of its accuracy, this statement is consistent with what Dorer notes: “Most DA’s, in fact all of the DA’s, report to us that many of the young criminals that they are seeing starting on a career criminal path start when they are 12 or 13. By the time they get to 16 or 17, the juvenile justice system has not had an effect.

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on them” (Dorer Interview, March 2012). The implicit claim here is that the juvenile system is not effective, as it stands, most likely resulting from a lack of resources. For these reasons, DA’s like Willoughby (and former DA Gilchrist) as well as Peg Dorer, argue that raising the age is not the answer.

This demonstrates, in part, that opponents do not fully understand the Raise the Age bill, which is intended to address misdemeanors and low-level felonies. Judge Morey suggested that despite all the education that has taken place over the last decade, law enforcement and district attorneys still do not all realize that violent offenders can still be automatically tried and sentenced as adults. Morey states:

I don’t think they are convinced we are talking about the non-violent offenders. We are talking about the misdemeanants, primarily if you look at the numbers; we are looking at the shoplifting, the drug offenses, often victimless crimes (Morey Interview, March 2012).

In turn, this signals a failure by proponents to adequately communicate and educate opposing stakeholders on the bill and what it entails. Also implicit in Willoughby’s remarks, is the notion of prosecutorial discretion—the ability to transfer youth to the adult system based on discretion. Currently, North Carolina does not employ a prosecutorial waiver (“direct file”), which would give DA’s more discretion.29 And one of the concerns that DA’s have, according to Peg Dorer, is that young, violent offenders committing serious crimes are not being transferred to the adult court by the judges. In reference to these types of offenders, Dorer said: “The problem is that most DA’s do not see the judges binding people over to adult court unless its murder, and even then sometimes not (Dorer Interview, March 2012). Indeed, DA’s want discretion and flexibility. Willoughby stated: “there would be wide spread support for greater flexibility in dealing with younger violent offenders” (Willoughby Interview, February 2012). Dorer supports this notion. As the lobbyist for all 44 elected DA’s, she said that because DA’s “are answerable to their communities and electorates, it would be a good thing if they had more discretion” and furthermore, she insisted “they would welcome it” (Dorer Interview, March 2012).

ACCESS TO RECORDS

The Retail Merchant Association is an influential player in the political arena, first and foremost because of its membership size. The Association’s opposition to increasing the juvenile-status age is also based on a legitimate issue, representing a particularly unique challenge in gaining their support to raise the age. The individual I spoke with, a representative of the Association and a director of loss prevention at a major wholesaler, stated: “employee theft is the major loss to businesses. About 1 of 3 business failures are due to employee misconduct, or fraud, or theft” (Merchant Interview, March 2012). Thus, having the ability to conduct background checks and

29 As of September 2011, 15 states employ prosecutorial waivers (OJJDP, 2011)
screen potential employees is of paramount importance to the business community. If the juvenile-status age were increased to 18, business entities would not have access to 16 and 17 year olds’ criminal histories—an age group that many businesses in North Carolina rely on—because under the law, juvenile records are sealed. The representative expressed the community’s primary concern as a vulnerability issue. “If they have a history of theft and we put them in charge of cash, or our cash office, then we are exposing ourselves and our company’s assets to those kinds of losses” (Merchant Interview, March 2012).

Without access to criminal records, businesses would not be able to know if they are hiring someone that had a substance abuse issue. The representative stated:

substance abuse is a big deal because not only does that create problems in terms of absenteeism and productivity, but also in terms of work comp claims. We know that those who abuse drugs are more inclined to have accidents at work and that drives up the cost of work comp claims, and therefore it drives up consumer costs and costs for the company. So it’s very important that we are able to screen the people that we hire for those very reasons (Merchant Interview, March 2012).

Another component to issue involves tort law. Juries have previously held businesses liable for not screening their employees appropriately. The representative explained that,

not only do we have the duty to our businesses and our customers, but now we could face civil liability if we put people in our stores that have criminal histories that could be adverse to our customers, employees, or our business. This is crucial. We have to be able to know who we are putting on our pay role (Merchant Interview, March 2012).

The North Carolina business community is accustomed to having access to the criminal histories of the 16 and 17-year-old cohort. Increasing the juvenile-status age would significantly affect the businesses that employ those in this age range. According to the representative,

having free access to criminal records to those between the ages of 16 and 18 to 21...creates a more favorable business environment, for attracting business. Because they know if they are going to hiring teenagers, that they will know who they are hiring and who they are putting in front of their customers, and who they are exposing their assets to (Merchant Interview, March 2012).

For the Retail Merchant Association, therefore, the most salient issue is the access to criminal histories. If they were able to have this access, according to the representative, their opposition would indeed be significantly reduced.
IV. CONCLUSION

All policy is political, whether the politics takes place in the back room or within a legislature, an organization, or a community. You must build support and neutralize opponents.

~Eugene Bardach 30

This fourth and final section is a summary of the primary conclusions derived from the literature review and political analysis, and offers recommendations to Ms. Katzenelson and the North Carolina Sentencing and Policy Advisory Commission.

This report is concerned with presenting the most effective case for increasing the juvenile-status age in the political arena. Examining the historical development of the juvenile justice system in North Carolina provided context and helped identify and confirm key influential stakeholders. Through in-depth interviews with members from these stakeholder groups, I conducted a political analysis focusing on stakeholder interests, concerns, and motivations.

There have been a series of proposals to change the age of juvenile jurisdiction over the last century. Opposition to changing the juvenile-status age has varied by group across time, but the lack of resources—funding, facilities, facility capacity and capabilities, personnel and related workforce, or any combination of these—has routinely formed the basis for excluding sixteen and seventeen year olds from the juvenile justice system. A resource-constraint issue is still at the heart of the debate today and there is a strong skepticism toward lawmakers among district attorneys and members of the law enforcement community in particular, based on past funding abandonments by the legislature. Perceptions of a lenient, underfunded and ineffective juvenile system among opposing stakeholders are also prevalent. District attorneys and the Retail Merchant Association are two of the strongest opponents to raising the age. Both coalitions have legitimate concerns regarding the bill to raise the age; however, their opposition can be neutralized using strategies of modification—a process that involves altering the policy proposal to align with stakeholder interests and preferences.

as a way to build support and neutralize opposition. This can occur through compromises and political bargaining.\textsuperscript{31}

To present the most effective case for increasing the juvenile-status age in North Carolina, I recommend Ms. Katzenelson and the North Carolina Sentencing and Policy Advisory Commission do the following:

\textbf{(1) Tie legislation to an Appropriation}

The resource-constraint issue represents one the biggest challenges. Without the proper funding, increasing the juvenile-status age will not succeed in achieving its purpose. Shifting 16 and 17 year olds to the juvenile system to receive treatment and have access to educational opportunities will reduce recidivism and save taxpayers millions of dollars. However, the programs need to be implemented and supervised in order to make the impact they are designed to have. Requiring the “raise the age” bill to be tied to an appropriation will help satisfy legitimate concerns about inadequate resources.

\textbf{(2) Utilize Prosecutorial Waivers}

Modify the bill to appeal to prosecutors—a strong and influential coalition that currently opposes the bill. Enhancing DA discretion in their prosecutorial duties will give them more flexibility and control, satisfying their primary concerns. Gaining DA support will also help the implementation process. This recommendation should be considered carefully and the Committee should investigate the states that use this waiver, focusing on potential consequences of abuse. Brining more DAs to the table to discuss and negotiate the use of this waiver, or some variation of it, is encouraged.

\textbf{(3) Negotiate Terms & Conditions for Access to Criminal Histories for the Business Community}

Providing employer access to juvenile records under certain terms and conditions would substantially reduce opposition from the Retail Merchant Association and the business community. Access to records is their only and primary concern. Negotiating a practice that gives employers access while also protecting the privacy of the offender will not only eliminate this particular opposition, but it may also create buy-in and support. This modification represents a significant concession on the part of proponents; however, the posed question is about presenting a scenario that will increase the likelihood of success. Indeed, this recommendation might represent a pyrrhic victory; therefore, it is crucial that it is considered carefully and negotiated out.

\textsuperscript{31} Strategies of Modification: “strategies of modification involve altering the various components of a policy, ranging from the policy instrument to the incidence of costs and benefits” (Arnold, 1990, 108). The aim of strategies of modification is to mold the policy proposal to conform to opposing stakeholders’ interests.
(4) Communicate & Educate

Beyond the aforementioned modifications, advocacy efforts must continue to educate all stakeholders, with special attention geared toward law enforcement. There has been a significant amount of education over the last decade in regards to adolescent brain development, the consequences of placing youth in adult facilities, and other evidence-based practices related to treating juvenile delinquency. However, education must continue on all fronts. There are still a number of misperceptions, such as the leniency of the juvenile system and its ability to help rehabilitate young offenders. Stakeholders need to be convinced that these programs work when implemented and executed properly. Further analysis investigating claims and counterclaims regarding the juvenile system’s “toughness” would also be useful for the Commission.

In Connecticut, the campaign to raise the age faced similar opposition with members from the law enforcement community. One of their strategies was framing the issue in terms of public safety and investing in kids. Constant attention should be paid to the way advocacy groups in North Carolina discuss this issue. This can be a difficult process: “getting people to see new problems, or to see old problems in one way rather than another, is a major conceptual and political accomplishment (Kingdon, 2003, 115). While adolescent brain development is an important issue that supports increasing the status age, it is an argument that appeals to some, but not all stakeholders. Interview data suggests that this argument, while understood to a large degree, is not compelling for members of law enforcement and DA’s because it does not directly coincide with their primary concerns and daily activities.


Bilchik, Shay. (March 19, 2009). The Case to Raise the Age in North Carolina. The Center for Juvenile Justice Reform, Georgetown University Public Policy Institute


North Carolina General Statutes-Chapter 7B: Juvenile Code [http://www.ncga.state.nc.us/enactedlegislation/statutes/html/bychapter/chapter_7b.html](http://www.ncga.state.nc.us/enactedlegislation/statutes/html/bychapter/chapter_7b.html) (Accessed 2011)


Raise the CT. A Success Story: How Connecticut is moving from being one of the most punitive states to one of the most progressive. Produced by Connecticut Juvenile Justice Alliance (CJJA). http://www.raisetheagect.org/index.html (Accessed March 2012).


Could you briefly describe your role as the director and your particular functions?

I am the director of the Conference of District Attorneys, which is a state agency that was established by the assistants to the prosecutors in the management administration and prosecution functions of their offices. We do a lot of training for prosecutors and support staff; we look to find ways to manage resources better. We also monitor the legislature for criminal laws that are passed that may or may not have an effect on the DA offices and also let the legislature know appropriation needs of the DA's. The way its structured is that I work directly for the 44 elected DA's.

What is your stance on the age of juvenile jurisdiction in North Carolina, specifically in regards to raising the age?

The DA's oppose raising the age for a number of reasons. Let me start with talking about the Office of Juvenile Delinquency and Prevention. For as long as they have been there, the Secretaries of the Department, (DJJDP), have said that they are underfunded and cannot provide adequate resources for the juveniles they have in their jurisdiction now. They had $160 million budget in 2008, and it was cut to $135 million in 2011, and they proposed another $4 million in cuts this legislative session.

In order to facilitate the change to 16 and 17 year olds, that would be a huge injection of the numbers they are caring for and they are not set up to accommodate that. In order for them to accommodate that they would need an estimated 384 beds in youth development centers [YDCs], 576 beds for detention facilities, and an additional 2,068 positions in DJJDP. Total cost for such a move would be over $174 million. And they have no programming set up for 16 and 17 year olds: no educational programs and no rehabilitative programs. So this would be a major shift in the way things are currently working. They would have to provide those things or it would be a disaster, and the people that would be hurt most are those in the juvenile system now.

In addition to the costs, and the money needs to come from somewhere, we would be fearful that the criminal justice system which is already significantly underfunded, would take a huge hit in order for them to do that. That’s the cost part.

The people who want to raise the juvenile age, one of their arguments is that brains are not fully developed: that 16 and 17 year olds cannot make reasoned, good judgment decisions. (And I have a 16 year old, so I understand their concerns…but my son, so far, has not started to commit any crimes). But currently our laws are kind of out of whack because 16 year olds can already get their drivers license; at 16 years old they can drive a two ton vehicle down the street; they can already take the SAT, they can already consent to sex, and they can own a gun and go hunting. So it’s disparate to say,
that they would now be treated as children. There are also a number of first offender programs available throughout the state, both by legislation and by DA’s setting up first-offender programs on their own initiative. We believe that those kinds of programs can address that one time bad decision. In addition to that the General Assembly has continued to add expungement laws, so they wouldn’t necessarily stay with them for the rest of their lives if they did make a bad decision and were prosecuted for it.

Most of the DA’s, in fact all of the DA’s, report to us that many of the young criminals that they are seeing starting on a career criminal path start when they are 12 or 13. By the time they get to 16 or 17, the juvenile justice system has not had an effect on them and they are already going to go down a road that you can’t bring them back from.

And I’ve talked about the threat of suddenly injecting 16 and 17 year olds into the juvenile system. Without the proper funding and resources provided, you would be putting the 13 and 15 year old at great risk.

The other thing is the way they have proposed doing this is over a 4-year period, where you do it in 6-month increments. Well, that’s very nice if they could provide the funding in the 4-year period, but the problem is that it creates an administrative nightmare for the courts. It’s not like when you get prosecuted for a case when you commit a crime that case happens that week; generally they take months. So by then the person is at a different age, so it’s not the age when they get to court, it’s the age they were when they committed the crime. So now prosecutors and public defenders and the courts would have to have schedules to determine what the appropriate adjudication is, the appropriate court venue is and what the appropriate sentencing would be. It would just be a logistical nightmare.

The final thing is, many of supporters have pointed out to us, we are concerned with the juveniles who may be younger committing very serious crimes that they need to prosecuted as adults for, and the answer is to bind them over to superior court. The problem is that most DA’s do not see the judges binding people over to adult court unless its murder, and even then sometimes not. Many of the states that have 16 and 17 year olds are really just 16 year olds because many states treat 17 year olds as adults, but not 16 year olds. Many of the states that have those laws also give direct discretion to the district attorney about binding over with appropriate circumstances.

**Do you think DA’s think that they should have more discretion and that would enhance the system?**

I think there would be a lot of people who would say no. But I think DA’s, because they are answerable to their communities and electorates, it would be a good thing if they had more discretion. We haven’t specifically talked about the bind over issue, (except as related to changing the juvenile age), but one of the things we have discussed, is not only that we have problems binding people up to adult court, but one of the things discussed was, if you did raise the age, (or didn’t raise the age), to give the DA the
discretion to bind the 16 or 17 year olds down to juvenile court. I think more discretion is good; I’m sure defense attorneys would say not.

**Would DA’s want more discretion than judges?**

I think they would welcome it. I haven’t really asked them about it, but I do think they would welcome more discretion.

**Do you think anything will happen with the legislation that is going to be heard in this upcoming short session?**

Well I know there has been a lot of attention placed on it. Some of the supporters have had hired lobbyists and are working very hard over there. And we’ve had meetings with them, and they have been really trying to raise the attention on this bill. So I think you will hear discussion on it, but I think there is a real problem because the cost is so large. I don’t see how a legislature in these economic times can do this, even staged out over 4 years - that is a lot of money. And someone is going to have money taken away from him or her to have that happen. And although it may not be the criminal justice system, my concern is -- and I’ve been doing this for 20 years and I’ve seen them put a lot of programs in place and I have rarely seen them fund those programs like they needed to be done. So if your not going to fund this appropriately, then do not do it!

**Who else besides DA’s are most prominently opposed to this for similar reasons?**

I know the Sheriffs are opposed to it, and we suspect that the chiefs of police might not be so enamored with it. And one of the things to consider, when I talked about the costs of the detention facilities, you would have to put all these 16 and 17 year olds in a special place; you couldn’t just put them in the local jails because they would be part of the juvenile system. So they would have to build more detention facilities. In addition, I did hear the sheriffs talk a lot about the transportation costs. Because there aren’t that many detention facilities available, they are always concerned about the transportation costs because its not just gas, its also the person doing the driving back and forth. It becomes a real burden on them.

The other thing, DA’s and sheriffs and chiefs, (much more so than anybody else), tend to see a population that is not at their best, and they see horrible things every day. They see juveniles come through the juvenile system, and they say, ‘I know I’m going to see them when they get to be adults.’ They can tell which ones wont make it through and wont be rehabilitated. So I think they feel very strongly that we have a certain group of juveniles that may not be able to be rehabilitated and are going to commit very violent crimes in the future. I’m not saying all juveniles -- we are all about rehabilitation, when its appropriate and tuning some of these people around. But they just feel that a lot of the 16 and 17 year olds they see have already been in the system.
APPENDIX A: INTERVIEW TRANSCRIPTIONS

If cost wasn’t an issue, do you think North Carolina will eventually at some point raise the age – from a moral standpoint and argument?

I think there is a good chance if they got the money to do it. What I am afraid of is that they might do it without the money. But I think lawmakers, if they are going to make the moral argument, and that brains are not fully developed to make good judgment decisions, than I think they need to really look at their other laws like driving license laws and gun owning laws and consent to sex. Because all of those things have responsibility tied to them and require good judgment decisions. Sex may only have unwanted children as a result, but droving a car and making a bad decision kills people. And unfortunately it often kills teenagers. So I think they need to look at the other laws and bring them more in line with what they want to do.

The main argument for DA’s then, is really about cost and resources as opposed to a moral one?

Yes, that’s the big one.

Can you talk about the DA’s relationship with other agencies, specifically with the General Assembly, and how they interact?

That’s a good question. How we interact with the legislature depends on the legislature (laughs). I don’t think the DA’s have been very effective over the years. There are a lot of problems within the criminal justice system and not all of those can be legislative, so they need to pick and choose what they go to the legislature for. We really don’t have a very good audience with the legislature because, unlike all other prosecutors across the nation, we are under the Administrative Office of the Courts -- they sort of dictate what we can and cannot do.

There are of course other opportunities to interact – that is part of my job, to go over there and organize and make sure the DA’s are heard. I don’t think they have had the most a very welcoming reception with the past legislature. The current legislature is probably a little bit better. But still, the legislature takes on a whole host of issues and many times the courts and criminal justice issues are not the most primary things. Most times for example, when you hear the governor run for election you hear them speak about education – which is important, but its not the only thing that makes us float.

Is there anything else that you think is important to this issue that I haven’t brought up or something we haven’t talked about?

I think you’ve got it mostly. I do think, and this is one thing I didn’t add, on the issue of looking at what we allow 16 and 17 year olds do to, like owning a gun and stuff like that. Legally, a 16 year old can be responsible for their employer’s property. In other words, they can embezzle because they can take possession of their employers’ property. So we are already treating them as adults in many other regards, and I think if your going to make the change [in status-age] you need to look at all of it.
And also, I don’t know if you have come across this, but as I understand it, even when someone at 16 or 17 is committed to the Department of Correction, until they are 18 they are still housed in a different facility and are not put in with the general population. As I understand it, the facility they are housed in is horrible, but that’s a whole other funding issue.

One of the things that could be addressed—if your concerned, and I am as a general citizen, about 16 and 17 year olds who enter the system so young at 13 and 14 years old—we don’t provide them with educational opportunities, rehabilitation opportunities, treatment for substance abuse and mental health and then we turn them into worse criminals and put them back into our communities. So I think one thing that should be looked at is spending some more funding for the 16 and 17 year old population that are in the Department of Correction and giving them those services. You don’t necessarily have to take them down to the juvenile department to make that happen. So there is room to compromise.

PETER GILCHRIST
Former District Attorney
Interview Conducted: March 9, 2012

What is your stance on the issue - do you think 16 and 17 years old should be in the juvenile or adult system?

It would be my hope, based on my experience that we would not change and add the 16 and 17 year olds into the juvenile system. There are reasons for this. I recognize NC is in the minority of states that do this, but I guess I started my career in the juvenile system and have always had a particular interest in it, and as I have watched through the years what’s gone on, and I think I perhaps live in one of the counties that may be able to provide more resources than most of the others in NC, I’ve realized we are still woefully short in being able to meet the needs of juveniles under the current age limit with resources that they need. I guess through the years there is this idea that we are going to take another age or two cohorts and put those into a system already struggling to meet the needs of the ones we are serving now. It seems to me that that ‘delusion’ is going to cause additional problems. We would frequently be in situations where we had a person who was under 16 years old and we were just waiting for them to be able to reach the age of 16 so we could put some teeth into what we were able to do to restrain somebody who was just extremely active and, to be frank, just a danger to the community and demonstrated that some behavior that was just criminal and we just didn’t have the ability to hold them or keep them incarcerated.
In your opinion then, the primary reason for not raising the age has to do with resources?

Yes. And also I think we certainly saw and see situations where people were using, folks who were classified as juveniles to commit crimes recognizing little or nothing was going to happen to them. So they were being used to transport drugs and help to facilitate the sales. I even had cases where one was being used by an older person to commit armed robbery – ultimately ended up in a felony murder and I had to bind him over and try him as an adult even though he was under the age of 16.

Do you think the majority of District Attorneys feel the same way as you do?

I can’t speak for all of them. We have a turnover of maybe 20 percent each time we have an election. So they are many current ones that I have not dealt with, but I think there areprobably others who have a very similar reaction to mine. And I think some of the law enforcement agencies, such as the Sheriffs Association, that I have dealt with also share similar reactions. I’ve never done a survey of such but I have, at the time I was actually serving as a DA, I was concerned about this and tried to make sure that I had some of my lawyers working with juvenile courts attempting to monitor the progress of this legislation or proposed legislation.

Can you discuss that a bit more, in terms of your and other DA relationships with legislators?

That has varied with the make-up the leadership of the general assembly as it’s literally changed as new classes of new people come in, and others phase out. I know there has often been, as far back as I can remember, some legislators who felt very very strongly that the age limit needed to be changed. But my sense was that in many cases these were not people intimately familiar with some of the difficulties that the courts were facing in dealing with some of the people who were under 16 years old who were committing quite serious crimes. When you get to 16 and 17 years old, obviously they get drivers licenses and become more mobile and that may accelerate even more.

Did you ever actively speak to legislators or join part of a group to voice your opinions on this issue?

I don’t recall specifically ever serving on a committee that we were specifically addressing that issue. I know that through the years when the opportunities came and I’ve had the chance to speak to individual legislators who were both pro and con on change the age, that I expressed and I think I had some other DA’s who were with me, and they did express some of their reservations about that change, and usually very strongly.
Did you think the DA Association has a powerful influence over pieces of legislation on this or other issues?

Oh yes! I think the legislators, they may not agree with this, but I think they’d listen to us and we gave them our reasons and some of them felt they were compelling and others felt that they may have had a personal mandate, or wanted to make this change. I think it always struck them that NC was in the minority of states, with the age as young as ours is.

You mentioned earlier the concern about some of these young people committing very serious crimes. What if there was a mechanism in place where those types of violent offenses could be bound up to Superior Court but the age of juvenile jurisdiction was raised to 18?

I think we have that now in that, depending on the seriousness of the offense, and the individual situation, that we can make a motion to bind a juvenile over to the adult court and we do that in those cases that are serious but the presumption is that the juvenile will be retained in the juvenile court unless he/she is a danger to society. It’s both in the interest of the juvenile and the community to bind him over to be tried and dealt with as an adult. I think even the department of corrections, and inappropriately so, has units that for youthful offenders rather than put them in general population with the most serious adult offenders. It’s a bad situation under any set of circumstances but I think that the promise to me of adding additional resources to take an older cohort in, I think it’s just not going to happen. You could just look at the situation going on in the courts now, and in corrections. The economic situation that we have today and frankly that has existed for my entire career of 40 years, there has never been adequate resources to deal with the juvenile population and to take this older group and put them in, I think we would see many situations where we, and we frequently see these situations, where they have been in the juvenile system for years, and they reach age 16, and we have obviously had failed, we had not had the results everybody had wanted, and for the first time, we were able to step in and put the situation in where a judge could protect people and slow this person down.

New legislation states that changes would occur over a period of six years. What’s your opinion on incremental change?

I think that’s just a 'put the camel’s hooves under the tent and hope the rest of the body doesn’t come in.' I think that’s getting it done slowly rather than at one time. I don’t think that will affect it. It certainly won’t affect the funding – I don’t see increments every 6 months or every year, increases in funding adequate to provide the additional resources to compensate for the increase in the number of people that would be coming into the system as juveniles as opposed to adults. They aren’t going to be adding additional money and they certainly aren’t going to move money from the adult system into the juvenile system. I think that’s kind of a hollow promise.
Do you think the system in NC is efficient as it is now, or should changes be made in one way or another – referring more specifically to waivers, discretionary issues? What are your primary concerns?

I’m speaking from the perspective of the situation – we had a deferred prosecution system, it was not limited to just the people who were 16 or 17, we took folks considerably older than that, and the program allowed us to take a person who committed a first time offense, even a felony, and we would give them a deferred prosecution – we’d work out a contract where they would have to either go to school, or get a job, or make restitution, as the situation might require, and perhaps if there were drugs or alcohol involved and part of the problem, they had to receive treatment. If they successfully completed that, we would dismiss the charges entirely. It was never as if suddenly a person who had crossed that 16 year old threshold was not going to have options depending on the circumstances and the crime, and what the crime was, not to end up going to prison, and even with a criminal record. So I think there was flexibility there, but the situations that I was most concerned about was – and we had terrible situations – in regards to how youth might be being raised today – they’ve been subject to everything, child abuse to sex abuse, to inadequate adult attention and inadequate food, clothing, education, whatever else, and sometimes coupled with emotional problems. You name it, the breadth of the problem that these young people have, and as I say, I’ve been fortunate to come from an area that probably provided more resources than many others because we were a larger community and more people interested in the youth. But, you reach a point where in spite of everything you have tried to do, inadequate as it was, you had someone that you just simply could not control and we were just at a loss to do that. To be in a situation where suddenly we are thrust back in the juvenile system where even the judge and caseworkers there would think, ‘we failed miserably here.’ And to continue doing this for another two years is sort of difficult to want to change.

I would be interested in talking to someone and ask why adding these in is good? It’s a nice emotional appeal, ‘so we raised the juvenile age, we are going to keep a lot of people out of trouble.’ But I’m more worried about the ones that are already in trouble and causing trouble, and we can’t do anything with them.

It’s certainly a complex issue, and that’s part of my interest in it. My hope is to get something out of this project that sheds some more light on it.

One of the things I always felt was very important, and I had the opportunity to do, we certainly know that young people and even those older than 17, do a lot of foolish things. But you’ve got to draw the line somewhere and I think at 16 you get a driver’s license and at that point, we are beginning to treat you as an adult, you’re taking on adult responsibilities, you have to realize that there are some consequences here. It’s just a line, and it’s probably arbitrary at any point.

But I know that when I was a DA (and also the man who replaced me), we put some of the best people we have in the juvenile court as prosecutors trying to make the
decisions. ‘What do we do with these young people?’ They have difficult choices to make, and the judges do too. And I think, often, the judges that are some of the most thoughtful and hardest working, end up taking assignments in the juvenile court. So we have a lot of people that are trying to make as good of a decision as we can. Nobody wants to send someone to the juvenile facility, as they are very limited. So even when you got someone that needs to be taken out of the community and needs to be put into a juvenile facility, you are struggling to find a place for him and a bed, and to make a substantial increase in the numbers – I think it’s something you might pack yourself on the back for- but I think the impact on society and even the juveniles your trying to help, I think it will be a bad experience.

Where do you come down personally on the issue? Do you think NC would be better off moving the age up two years?

Well, that’s an interesting question and its part of why I am doing this project. To be honest, I am not sure. Ultimately, I do think that 16 and 17 year olds should be in the juvenile system – my belief in that is firm and it is founded on the increasing evidence, as well as on research and adolescent brain development. Youth, (and for me this means anyone 18 or younger) are fundamentally different than adults and should be held to a different standard and at different levels of culpability. For me, it comes down to rehabilitation, and 16 and 17 year olds that are put in the adult system not only don’t have the same opportunities to reform, they are actually worse off – numerous studies tell us this. At the same time, I do understand the issue of resources. If the youth system is already strapped and doesn’t have the necessary resources for these kids, what good is placing them there? I guess I would argue that the state needs to get these kids the resources if they want to reduce recidivism; they need to put the money there. My concern is with the majority of kids that are committing the low level crimes, the less serious crimes that are often victimless. I’m not talking about homicide or rape, or assault with a deadly weapon. These might be the kids that come from tough backgrounds and haven’t had the same opportunities as someone like myself. I think putting them in the adult system automatically where they end up with a permanent adult criminal record, has too many collateral consequences, and I think it’s difficult to alleviate those things. Much of this can be avoided if they are instead placed in the youth system with a better chance to be rehabilitated.

My counter to that, or my reaction is, I think if you look at the numbers is what you would see, at least in Mecklenburg County, even if there was a felony charged, they would be knocked down or reduced to misdemeanors even for some pretty serious crimes. And the ones that were the minor stuff, the shoplifting and minor drug possessions; gosh, we did everything we could to decriminalize those or come up with some sort of community service alternative where the person ended up with no record. And so, at every point you would downgrade it, but when you got somebody braking into houses, stealing cars and joy riding, and been doing this for 18 months or 2 years and they were still under 16 years old, the thought that you would allow them to do this for another two years, just disheartens you. I mean, you were already pulling teeth with
these folks and giving them options with these folks committing these things, and there’s got to be a point where you draw a line in the sand. I think if you got to go into a prosecutor’s office and see what’s happening, even to people who are 16 years old or older, I think you’d realize this moving of the line is not going to take a lot of folks out who don’t need some attention paid to them.

One of the things I often look to, when I was hiring assistant DA’s, there would be guys sitting there saying, ‘by the grace of god, I would not be a prosecutor because I would have had a bad criminal record; but somebody gave me some breaks along the way, and I’m going to be really careful, or try to be, and look at those that come before me and say, this guy just did something stupid. And if you look at the statute they violated it looks pretty serious, but if you consider the impact that it had, or look at their previous record, they really went out and screwed up. But as a prosecutor I have the ability to cut him some slack and maybe take a little hair and hide off it, but nowhere near what the law could theoretically permit’.

And my experience was also that many of the judges thought the same way; they were not trying to drop the hammer on some of these 16 or 17 years old and scar them for life. But they wanted that individual to understand the seriousness of what they had done. And then you got this other group of young people who, well … we had a youth brought into court, not sure what his prior record was, but he was brought in for breaking into a house – a burglary, and he was put on probation in adult court. The following day, one day later, he broke into another house and stole again. This second house happened to belong to a support staff that worked in my office, she came to me real upset – saying, ‘they caught this kid a block from my house wearing my sons shoes.’ I looked at this kids court record and noticed that we had just put him on probation the day before. When you got somebody that’s that active in doing that much, at some point somebody has got to be able to slow him down and deal with him appropriately.

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What is you stance on the age of juvenile jurisdiction in NC?

Since we are one of only two states left with juvenile jurisdiction being still at 16, I have long been a proponent to move it to 18. And I do for a variety of reasons- not the least of which is that we fully disadvantage our children versus any other child from anywhere else in the country by keeping it at 16 -- in terms of jobs, in terms of educational opportunities based on crime they may have committed between the ages of 16 and 18 which is now an adult crime and out in the public, whereas for kids in 48 other states, that isn’t true. With the mobility of our state and the country, lots of those kids are applying to our schools and applying to our jobs and coming to NC, and it would strike
me that all students ought to be treated equally, particularly those from NC. So I am
very much in favor of raising the age. Secondly, I think the juvenile system would be far
better suited to treat and actually rehabilitate a lot of these kids and to actually
supervise them with consequences than the adult system is, which generally doesn’t
view 16 and 17 years olds as their prime responsibility even when they are on their case
load. And third, it’s a different set of supervision and structure issues than most adult
probationers would be for anybody who is put on probation in that age group; and
juvenile court counselors are far more adept and used to dealing with the vast majority
of issues 16 to 18 year olds have. Adult probation officers are not.

So for a variety of reasons - safety of the public, capacity for the long term reduction of
cost in the criminal justice system, capacity to rehabilitee, and just on a fairness issue
as it relates to job and educational opportunities, I am 100 percent in favor of moving to
18.

Why do you think it hasn’t actually happened yet, since there have been several
considerations to do so in the past, most notably in the recent past?

I am real familiar with past attempts because I am one of the sponsors of the bill, and so
a variety of reasons. First, it’s not as easy as it sounds. There are huge costs, and costs
shifting from systems, and so the states that have done it well have done it either
incrementally or certainly over time with planning, and the last thing you want to do is
shift a body of 16 and 17 year olds to the juvenile court system which is already
understaffed and under-resourced with no additional staff and resource capacity -- that’s
not going to help anybody.  Second, there has certainly been significant resistance by
most law enforcement agencies and by groups by the NC school boards association, by
the NC chamber of commerce and retail merchants association, so you had a variety of
business, educational, and law enforcement groups opposing the bill. Only in the last 18
months or so, has there been some movement away from that pure opposition to lets
figure out a way to do this, systemically by some of those groups, which has allowed the
bill to at least be in a much better position to move forward.

What’s your understanding of that type of opposition?

I think it’s a mix, some ideological and for some it’s a security concern. ‘I want to know if
I’m going to be hiring a teacher,’ says the school system, if they have a criminal record.
And I’m sorry I don’t get to know that from the kid from Rhode Island or California but
that doesn’t mean I shouldn't know about it from the kid from NC.’ And the same
concern translates into business. ‘I want to know if I'm hiring someone as a clerk if they
have stolen money from somewhere. And if I’m hiring them at age 21 and they did that
at age 17 and half, that's not that distant in their past where I see a huge record
indicating good behavior, and I ought to be able to know that.’ I think this is very much
part of the concern. You had a group, and still have a group that remains concerned
that the resources aren't there to make the agency shift – so that's a legitimate issue
that hangs there. And again, I think there is a group that ideologically, its like, ‘these
kids did a bad thing they should have consequences, I had consequences when I was a
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kid so what’s wrong with that?’ And so you do have some people that believe that there is just nothing wrong with the current system.

Do you think elected officials also feel similarly?

I think the same kind of issues do exist within the legislature, and groups in the legislature. What the breakdown and percentages are I don’t know. I do think that the good thing about this is that the support for the bill, and to a lesser extent the opposition, but certainly the support for the bill is very much across partisan lines. There are some very strong republican supporters just as there are strong democratic supporters. Now, its probably safe to say there are more democratic supporters than republican supporters, but there is a bi-partisan view on this, and that’s been a good thing that’s helped it move a little bit through the commission and Task Force to sort of get it in a position where it might be able to get passed in 2013.

Does this suggest that the real opposition is outside/ eternal interest groups?

I think that’s right, at least for the last couple of years. Prior to that though when this issue first started being raised in 2003, 2004, 2005, that era, you very much had a republican ideological opposition because the republican leader at the time was an ex-sheriff, who was very hard-lined and viewed this as a tough on crime/ soft on crime issue, and really didn’t allow his caucus to move past that. But that’s not been true since I would say 2007.

What are the primary reasons for the push in support?

A lot of education has taken place with members. Representative Bordsen particularly as the leader of this, took several years, took two study commissions, really getting data from everywhere across the country, looking at the Connecticut model which is the most recent model of sort of incrementally moving forward, looking at new york, working with council state governments and the national conference of state legislatures, bringing in out of state speakers to talk about how you do this, working with these interest groups and trying to find, for example, a few police chiefs that were beginning to speak out in favor of it, and it was really an educational process that made it move forward I think. Plus, again, once we were able to cross the partisan line that allowed discussions in places there hadn’t been discussions before.

With bi-partisan support, what kinds of trade-offs would need to be made, if any at all?

Well, we have to remember that although there is support in both parties, there is also opposition in both parties. And there is continuing opposition at some base level by all of those groups. The groups are not uniform in their opposition, there are splinters within each that see reason to be working through this. The point is you still have to satisfy a lot of folks. It will break down into a number of comprises. What’s the incremental time over which this would occur? Will it be a half-year, age increase each
year? Will it be one-year age increase over 2-year period…so the age in incremental nature of how you change it is open to negotiation. When we say the age grouping, are there going to be exceptions? Do we modify significantly the transfer law out of juvenile court and create some tougher presumptive adult transfers as a way to balance out. So if the crime is these crimes, A through F felonies, they are automatically transferred. And truly we are really not talking about those kids. The mass amounts of kids that are affected by this and can benefit from this are the lower level felonies and the misdemeanants. So how do you separate this out and give the security folks the idea that we aren’t going to put a 17-year old rapist out on the street or an 16 year old murderer out on the street. There is some changes that I think can be negotiated – that whole presumptive transfer capacity. There are tradeoffs to be made on what spaces and resources are to available for 16 and 17 year olds within secure setting both from a detention point of view and from a YDC point of view. I think those are trade offs that may be available. All those things are under discussion.

**What about the juvenile system itself – has there been push back from them? Do they want to take in more offenders assuming that’s what would happen?**

You know, I think the juvenile system – court counselors, detention folks – their whole thing is, ‘we don’t want this if your not going to give us the resources. If your going to give us the resources, it makes sense so we are on board.’ But there have been way too many times in the past where we have added more responsibilities ot the juvenile system but not given them resources, so they are a little bit gun-shy and one would understand why – particularly with this kind of circumstance. And I think they recognize it’s a need, and 49 other states pretty soon will be in that position, so they aren’t resistant. What their resistance is: ‘do not put this on us without assistance.’

**Do you think that assistance will actually come – at an incremental level and through these sorts of compromises?**

Yes, I do. I think eventually. It’s unclear to me the time frame. I do think it will be incremental and I do think it should be incremental. I don’t think the system has the capacity to, particularly given the economics of the country right now, likely until 2016, 2017, to change dramatically. So if that’s the case you cant really just shift it overnight. There’s got to be a multi-year plan to do this. I think it will happen. I am more optimistic now than I was a few years ago, even with the most bizarre thing that we aren’t in control and the republicans are. But, I’m not optimistic it will happen in 2012 s a starting point. I think 2013 is certainly the earliest for the passage of any bill setting out the plan. And a little bit of that remains to be seen with what happens in the election cycle.

**Going back to interest groups and the notion that some movement forward has taken place, what do you see as the current and most influential opposition?**

There is a couple. Clearly the school boards association has a real affect because they have real concerns over this bill but they are generally obviously pro-children in what they do, so their concerns are taken seriously since you would normally think of them on
the other side of the equation. But from the point of view that they hire as an employer, it’s a real issue. The second group is a combination of retail merchants, business groups and the chamber of commerce. I think in many respects they are the big one here because I think if they consent and give a willingness, so to speak, to work through it, I think the schools follow. That would just leave law enforcement hanging out. And law enforcement is split – we got chiefs of police and sheriffs who are in support, and we have others who are not in support, and some who are in a very moderate position of resource allocation, ‘don’t do this without planning it out.’ So, I think once the business groups come on board, that’s the link.

Then it’s the business folks, the retail merchants and chamber of commerce associations that you see as the most influential?

On this issue, probably yes.

Are they influential with particular members?

Sure – different interest groups always with different members. But very much so particularly with the republican majority and our conservative business democrats. School system is less so with the republicans. And probably law enforcement, again a mixed bag, with the person as opposed to the party.

By law enforcement, are you also referring to DA’s?

Yes, although they haven’t been as outspoken on this issue – they have in the past. The big ones have been the chiefs of police and the sheriffs association. They have been much more out there on it.

Can you discuss, in the context of this issue, the back-door politics and the importance of it?

Well, it has certainly changed and it will continue to change. It is always important in whatever session you’re in to know who the players are, who would command some credibility and the energy to deal with a large initiative like this. Number one, I think that whoever is going to lead this has to be a bi-partisan group. This is one where it will not be, it cannot be, all republicans even though republicans dominate the legislature. They are going to want, very much, democrats on board, and democrats, I think, want to be on board. So it’s going to have to be bi-partisan.

Second, your going to have to have people who have the to capacity reach, otherwise to really negotiate; that is, they got a good relationship with business groups particularly and secondarily, have good relationships with law enforcement. You cannot have four trial lawyers, two R’s and two D’s, negotiating this bill – that is not going to work.

I think third is this study commission that has worked and come up with, with many of the stakeholders at the table, with a plan. Whatever is done ought to follow very much
the recommendations of this larger group in my opinion, because the closer they can tie into what the stakeholders have already sort of negotiated out, the better the chance of success.

And finally, there’s no question in the end, that this is going to have to be a leadership call in the House and Senate – they are going to have to give the OK to move it. If for some reason the interest groups get to them and they say its too controversial, its dead in the water – doesn’t matter who else is involved with it. There is not enough public push that I think can be generated on this that I think can create a groundswell to overcome resistance by a legislative leadership. You can do that with some issues, but this one is just not going to have that - so that’s part of the back story going on here.

And let me add one other thing – the governor. Whoever the new governor is going to be, if they are opposed, its DOA [dead on arrival], particularly so if its governor [Pat] McCrory; republicans aren’t in the first year going to go do something that he’s opposed to, its just not going to happen. Now if it’s a democratic governor with a republican legislature, you have that kind of stuff going on, but I don’t think this issue gets too bad into that in that scenario. I think the problem is if you have a governor that’s opposed to this, if it’s a democratic governor opposed to it, republicans wont care, but they aren’t going to push it because they don’t have any real reason to. If a republican governor is opposed to it, they aren’t going to push it because they don’t want to be in opposition to their own first governor in a long time, and its DOA.

Do you think public perception on this issue is at all important – is it influential?

I think public perception definitely affects the individual legislator on this issue. And a number of legislators understand, and certain stories have gotten to them about someone in their district that’s been dramatically affected in a negative way. No college access, no military access, no job access, whatever it may be. So I think its been helpful, but its not going to be helpful if the leadership or governor clamp down on it and there’s just not enough of that that would push them to say, ‘I’m going to go against my party, going to go against my leadership, go against my governor.’ On this issue, it’s just not going to happen, so there is a little bit of fortuitous circumstances politically in 2012 that has to happen to make this possible in 2013.

So what’s the best shot then?

There are a couple scenarios. One is that McCrory can be convinced of the merits of this and doesn’t oppose it and is willing to work through it. If he becomes governor with a republican legislature, and that the republican and democratic legislature, and the legislature is close enough that a large number of democrats in combination with moderate (what’s left of moderate republicans) and even some conservative republicans who believe in this issue, are enough to force it though it McCrory support.

Second scenario, [Lt. Governor Walter] Dalton or a democrat becomes governor, the margins close in the house and senate, I don’t think anyone in their right mind believes
that both will fall back to the democrats this year – just doesn’t appear to happen. But if the margins close, again that collaboration will be available to push the bill, and in my sense, particularly if Dalton isn’t opposed to it, and supports it, (and I think he would), or whoever the democratic governor would be -- I think is even a better scenario for its chance of success.

Of the interest groups opposed, who needs to come the furthest?

I think that the retail merchants and chamber folks, because again they are the key group, the key link I think they still need to be educated, but, I think in terms of who needs to come the furthest to get there – they are beginning (and they got some really good lobbyists) who have an understanding. They have to do some work with their members and that’s the tougher thing – but the lobbyists get it I think. So, the people that probably have to come the furthest are the sheriffs, because they are elected, and there’s not necessarily in some districts the tradition of understanding the issue. And you have some people elected purely ideologically, and they come to the table with different skill sets, some of which will allow them to understand this issue and some of which will allow them to never understand this issue.

TERRY JOHNSON
Sheriff (Alamance County)
Interview Conducted: March 30, 2012

What is your view on the age of juvenile jurisdiction in NC? Should 16 and 17 year olds be part of the youth or the adult criminal system?

Well, I will go all the back to when I was a child. I knew right from wrong even when I was 8, 9, 10 years old. I might not have understood the law, but I knew right from wrong. I feel like in today’s society things have changed tremendously, and kids don’t have the upbringing they did have years ago. And I do not have a major problem with raising the age of the juvenile, if the state of NC will mandate that we have the number of juvenile courts we need, the number of juvenile defense attorneys we need, the number of juvenile judges, the number of juvenile detention centers if we need them; if they will pay to have the facilities and everything available to see that these individuals are handled properly.

Now, so many times, I don’t know if you aware, the federal government says the number one dangerous person now in society is a 15 year old black male gang member. And I can tell you why I think it is; it’s the fact that all the older gang members know if they are over the age of a juvenile they are going to be dealt with extremely harshly when it comes time to go to court for committing crimes. So what they are doing now, is recruiting younger kids to the gangs and they are committing some of the crimes because if they are juvenile, they are not going to be dealt with as harshly as an older member of a gang. That concerns me tremendously because in Alamance County, the youngest gang member we know of is 8-years old - elementary school system. And that
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part bothers me because many times these gangs will recruit these much much younger
gang people, juveniles, so they can commit crimes and still won’t be dealt with as
harshly as the adult gang members.

Now, we are probably one of the few states in the nation that don’t have the juvenile
age raised right now. However, I look back when I was a kid, I knew right from wrong.
If we are going to raise the ages of the juvenile from 16 to 18, or whatever we raise it to,
we need to make sure that we don’t set ourselves up to fail. And if we do not provide the
necessary courts and support system we are going to fail.

So the primary issue is that of resources?

Absolutely, absolutely. And then really right now we don’t have the necessary resources
to deal with the situation the way it is, in adult court and juvenile court.

Could you clarify what you mean by “harsh” when you say that the adult system
would handle offenders more harshly?

Certainly. If you go to court as an adult offender, the judge is, the law is much more
strict. The judges have more leeway in juvenile court than in adult court. In adult court,
sentences are set. First time you might get probation, but there may become a time,
when you got a B or C felon, you go to prison a long time and in juvenile court it’s
treated totally different. Do you understand what I’m saying?

What about lower level crimes, misdemeanors, as opposed to the more violent
crimes committed by this particular age group?

Well, certainly, I think even you can probably, when you were a juvenile, you’ve done
some lower level stuff; ‘mischief’ is what I call it. Everybody has done something at
some time, and I certainly don’t condone it, but at the same time, those type level
 crimes I can swallow better if the age of juvenile delinquency was raised to deal with
those issues. And certainly the past Racial Justice Act that was passed just recently by
the legislature has made this a situation, say for instance, if you get caught with 10
pounds of cocaine, but, even in adult court, if the district attorney takes a felony
possession of cocaine three, that can be expunged from an adults record. And many
times, some of your drug traffickers may get caught here and they might go to jail,
before it gets wiped from the records here and gets caught in California and gets the
same deal and we never know about it, and they are treated similarly out there. I think
that whatever we do with our juveniles, if we raise the age of it, I feel that law
enforcement profession needs to access to that so we can get a true picture of the
individuals criminal history prior to us hiring those individuals.

Records are wiped clean and we never know. We might hire a guy, and there might be
someone in the county that knows this kid when he was younger, he winds up being a
law enforcement officer, winds up testifying in a case, and the lawyer for the other
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individual says, well “wasn’t you charged with stealing or wasn’t you charged with robbery back in such and such time?” These are the ramifications.

However, I don’t have a personal problem as a law enforcement officer, if they choose to raise the age, say to 18, *if* they provide the resources necessary to deal with it, and also provide the resources to be able to find out this record prior to hiring in law enforcement and other important jobs along those lines.

**Do you think the majority of other officers and sheriff’s feel similarly to you?**

I think generally, I’d say in this department, 99 percent probably feel that way. Of course, you’re going to have some that say ‘hey, I believe that the age 16 is when they should be dealt with as adults.’ But, what they don’t look at, and this is something that we have failed at in society, is the home environment and the neighborhood environment that these kids come up in where certain things are accepted practice. Do you understand what I’m saying?

And with that, you know, the justice system is supposed to serve everybody out of the same spoon per say, but when you take the socioeconomic climate and the various areas, and the various kinds of kids, they are totally different. One kid might think totally different than I do. It’s like what we are dealing with right now in the country with same-sex marriages – a lot of people think that’s okay and some people think it’s not, but it’s all the way people were brought up. And it’s that way when you’re dealing with young people, I think, in the criminal elements of society. Am I making any sense to you?

**Could you speak about the relationship that Sheriffs have with legislators-- either you personally or others? How do you voice your opinion and perspective on issues like this to the general assembly?**

Well certainly I have had opportunities to do that. As matter of fact, Alice Bordsen, who said she’s not running again, was really pushing to raise the age of juvenile from 16 to 18. Well the sheriffs, one of the sheriffs in the state decided to go down and talk to their legislator. Ms. Bordsen didn’t have time to talk to me, but later on at a restaurant we met, and she asked me why I was so opposed to raising the age of juveniles from 16 to 18.

I said, ‘Ms. Bordsen, it’s not that I’m totally opposed to raising the age from 16 to 18, what I am opposed to is many times our legislature mandates things for law enforcement but does not put the resources out there or the monies to pay for these resources.’ I said, ‘Ms. Bordsen, do you not understand that when you do that, you’re going to have to have more juvenile detention centers, more juvenile courts, more qualified attorneys to deal with juveniles, or represent them, or qualified district attorney people…’ She said, ‘you know what Sheriff, I haven’t even thought about that.’

That’s the kind of mentality many times, and I’m not knocking on our legislature, that happens down there… ‘Hey this is a great idea, let’s pass it’. Then the footing of the bill
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comes back on the local tax payers and the headaches come back on the people in the system and they never even see that.

I assume you’re already aware of the bill to raise the age that will be heard in the upcoming session. Do you think anything will actually happen given what you just described?

Well, I’ll be honest with you, and let me say, I used to be totally, totally opposed of raising the age of juvenile delinquency, I did. When I become sheriff here, I thought if you’re going to do the crime you should do the time, and I still feel that way to a certain extent. But I looked at myself, when I was 16 years old, I knew right from wrong, I pretty much understood the law, what I could do, what I couldn’t do. When I became sheriff I began to get out in the communities here that were less fortunate than me and I talked to people and I listened. I had people come into my office when they were grown up that had messed up when they were 17 years old, and they still had it on their record and they couldn’t get a job, they were 30 [years old], and I know for a fact they were good people, you know what I’m saying? But their record kept following them and knocking them down and I began to see the other side of it. But, at the same time, this does not make it right for them to violate the law; this does not justify what they’ve done. But some people, given a second chance, can be a viable, hardworking citizen in society. Now, there are some crimes – a murder, a rape, a home invasion, an armored robbery - heck no, they need to be dealt with. But some of your other offenses, possession of marijuana, even a felony possession of marijuana, as long as that record when it was taken care of, when it was expunged, as long as we can find out before we hire them as law enforcement officers or something like that.

So do you think it’s possible that anything will actually happen this session?

I feel that sure, eventually. We are one of the few 3 or 4 states that have it at 16 -- below 16 are still juvenile. I feel like that in it-self will probably allow the legislators to raise the age of juvenile delinquency. However, I hope they will go and do research, and look at the better states where this has been done so they know what the cost to the taxpayers is going to be, and for the system to succeed what resources are going to have to be put out there.

What is your take on public perception?

I think the only people that probably understand some of the things that I’m saying are people that grew up in those areas – that truly understand. Now I think if you asked the general public, you would probably get 70 percent saying [the age of juvenile jurisdiction] needs to stay at 16 and the other 30 percent would say it needs to be raised. Usually that 30 percent that say it needs to be raised are those individuals that grew up in the environments I talked about that there were certain things accepted that wasn’t accepted when I was growing up.
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If you could change one thing with the system in regards to these younger 16 and 17 year old offenders, what would you change and would it be persuasive enough to raise the age?

I think certain violations could be wiped clean of their record, but there would have to be a 5 year period of time from that being wiped from their record that they show no other infractions of the law. I don't mean speeding, but any other criminal violation because there are so many kids, and older people, with criminal records that come in here that can't get a job. Maybe if we did something like that, then give them to age 25, if you violate any laws other than your speeding infraction laws and stuff like that, then this will be put back on your record and you will be dealt with.

Why a 5 year period?

Usually, if a person is going to mess up and violate the law, within 5 years they will. There is these statistics that 17 percent of the criminal element is committing 85 percent of the crime and I find that true in my work in my law enforcement career in the last 40 years. It's usually the repeat offenders of about 17 percent, and they are constantly violating the law. What I want to make sure is that the kid learns his lesson from the first time, and is never a repeat offender of any crime. That's the key, because my job as a sheriff is to protect the citizens of NC and in my county.

MARCIA MOREY
District Court Judge (Durham, 14th District)
Interview Conducted: March 8, 2012

What is you stance on the issue? Do you think 16 and 17 years old should be in the juvenile or adult system?

I am an absolute advocate to raise the age of juvenile jurisdiction. I think it’s an embarrassment to NC - its only one of two states that treats 16 years olds as adults. New York is the other state but they have a way of transferring them back to the juvenile system, and we’re unforgiving on that 16th birthday. So, I am a very strong supporter to change.

Is there any fundamental reason behind that? Does it have to do with adolescent brain development or anecdotal reasons for it?

I don’t see any argument against it that would be persuasive. And we are talking, the way the Committees have met, I was on the legislative Committee, we are talking about the non-violent offenders, non-violent felonies or misdemeanors that, if they are charged, they are in the juvenile system. If it’s a serious felony or a felony you could have a probable cause hearing and it would be up to the judge’s discretion on a non-violent, to bind them up, or to keep them in the juvenile system. Any violent offense is, if probably cause is found, they would be automatically sent to the adult system, which
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now under our current law, at the age of 13, a felony could be bound up, if the
prosecutor presents in transfer hearing and the judge finds, they can bind up anything.

So yes, adolescent brain development is one thing, the adolescent brain is still very
impulsive, they don’t have a good reasoning system, they don’t have good restraint on
self-control, so I think that’s one thing. I think the over representation of minorities is
another reason because too often minorities get caught up into this cycle. The juvenile
system, contrary to a lot of people’s impression, is much more intensive, intrusive on
their lives, I mean we have curfews, we have the ability to order the parent to comply
with treatment, with supervision, with the orders of the court and if they are felt to do so,
they can be held in contempt. Whereas in the adult system now, there is no such
control over the parent to help cooperate to get some accountability and rehabilitation.

And, a criminal charge and conviction can tattoo a juvenile for life. If they have
resources they can get expungement on minor charges after the fact, but the record is
still there and there is still jeopardy. I could easily get into a lot of anecdotal stories
here. For example, I just had a grandmother call whose son is 16, he had an
expungement, yet she claimed that homeland security was doing a background check
for him to get into the marines that found he had had a drug charge and it had been
expunged. But because of that when he was 16, he was denied to be considered to
enter. Whether or not that story is true or not, that she is now having to go through extra
hoops to try to make sure that that was a false story and that is expunged, but they
have to disclose all that. And I think a lot of applications, either employment or school, it
no longer asks if you have been convicted, it asks if you have ever had an expungement.
It’s difficult to look back in the records to verify or not, but I think there is still a way to do it. So for every reason that I can think of, its treating juveniles the way 48 other states know the right way to do it, and we
certainly need to come up to what is morally correct and I think it is our system of
justice, its what’s needed.

Did the juvenile age and jurisdiction issue come up when you served as the
Executive Director to Governor Hunt’s Commission on Juvenile Crime and
Delinquency?

This issue has come up for years, for decades. It did come up, at that time, it was pretty
much tabled because there were so many other reforms that we were trying to do. We
consolidated two different agencies into one department, we put a new disposition grid,
we put more teeth into undisciplined and parent involvement. We tried to get
misdemeanants out of training schools. So we made major overhaul. And when the
discussion of raising the age…they said, well, often, an objection is: ‘it will be too
expensive, to give added treatment, added supervision, educational requirements for
the 16 and 17 year olds, it will cost too much. So let’s put that off the table. Let’s study it’
Well, NC has studied it for decade after decade. And now I do think there is grassroots
support, they are doing a good education job, they are getting bi-partisan support on it.
I think there is still education that needs to be done with law enforcement, district
attorney’s, I think the public, if they are uninformed, they still like the get tough, if your
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old enough to do a crime, as they say, your old enough to do the time. But I think if we can educate, we have a much better way to lessen recidivism, do accountability, help teach the kids, and they will have a better path to the future than if we simply process them through the criminal system where we don’t care about anything other than pay costs, pay fines, or do jail time.

You mentioned law enforcement, DA’s, and public perception. Are these the primary and influential opponents?

Yes, I think so. And I don’t think they are convinced we are talking about the non-violent offenders. We are talking about the misdemeanants, primarily if you look at the numbers; we are looking at the shoplifting, the drug offenses, often victimless crimes.

Is it that they are simply not well informed? What is your perception of their reasoning?

They are not informed; I would say basically, a lot of people don’t know anything about the justice system unless they are reading something in the newspaper. They see a constant barrage of black males usually who are wanted for crimes and they see the pictures in the paper, and that becomes their perception of what our justice system is about and they want to be safe. We see every day, and I do the adult criminal cases here, the type of charges we see coming in over and over, misdemeanor, possession, schedule six marijuana, disorderly conduct, possession of malt beverage underage, simple assault, concealments. These are the kind of cases that, they need attention, they need accountability, but they don’t need a criminal record.

What’s your opinion on public perception in terms of how influential opponents are, with their legislators specifically, and whether they have an impact or not?

I’m sure it has an impact. You can get any sheriff, or police chief, or DA, to go to the legislature with one bad story. But usually that one bad story wouldn’t be umbrella-ed into what we are talking about. Durham, when I was an assistant DA, we had a 13 year old who murdered a 90 year old. Because of that one case, the state legislature changed the entire law, so any 13 year old who commits A through E felony, can be transferred to the adult system because at that time, he stayed in the juvenile system, went to the training school, got out, and committed another murder. These types of sensation events can push though like blazing fire and get legislation passed. So we have to be smart, we have to do it right, we have to try and impact the greatest number of people.

Do you think that during Governor Hunt’s Commission, the opposition is similar to what it is today? If we have had time to inform and educate, what has changed?

I think with Gov. Hunt’s commission, we were changing so many things, to add another piece that was a big piece that would have added in 16 and 17 year olds, it probably
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would have been too much to get the legislation passes. We wanted to get the legislation passed with the new juvenile code and not be jeopardized by adding in this other big change, so that why, I think, it was put aside, and we would study it, and we have.

But the opposition is still not informed, even though we have had much time to do it?

I think we are getting there. I was just on a panel a couple weeks ago with former Justice Robert Orr, who is a Republican, I think he likes to be thought of as conservative, and he is very much in favor of it. As some of the leaders speak out on it, it helps the issue and the awareness.

Is there a particular model that would be ideal for this state?

I think what’s being proposed, is a gradual buy-in, the law would become effective on a gradual basis over I think a 2 or 3 year period, so we would phase in the 16 year olds and then phase in the 17 year olds. But I’m totally supportive, if it’s a violent offense, it should be treated differently. This probably goes contrary to brain development and all that, but protection of the public is very important. Misdemeanors, the low level nonviolent felonies, obtaining property by false pretense, switching a price tag on clothing, embezzlement if you’re working a cash register at Wal-Mart and you slip 10 dollars in, I think those kinds of cases should stay in the juvenile system is what’s being recommended and what I certainly support.

And, it also takes out juveniles that don’t need supervision of the adult system, so you have more time to carefully track and follow the people that need to be supervised. So we need to use our resources a lot more wisely.

But haven’t the bills that have been introduced, at least recently, taken into consideration the “resource argument”, and thus, the change would be incremental?

Well, I think some of the skeptics may say it will cost more money in the juvenile system, it will take more court time in the juvenile system because we do look into mental health records, we look into substance abuse, we look into educational levels, we look into the family, and that does take a lot more time so we would have to put more resources in the juvenile court, including judicial time, more court counselors, more programs to serve these, but if you look at short term costs impacts versus the long term prognosis, everyone we do right up front, we are going to save prison time, and costs, probation time, and productivity to the economy. Get them a job, get them an education, and get them on their way.

What’s your view on judge and DA discretion? What has your experience been and what should the state move towards?
I do think discretion is good, and I think we have DA’s that are better educated about all the issues. I think judges need discretion. Every case is different. I don’t have a problem with that. You can have the same facts in front of two different judges and you may get two different outcomes. One judge may say in a rural county, that kid stole a tractor and broke a fence, and cause property damage, that shod be transfer as a felony to adult system. The same judge in the city that someone breaks into an empty building but its still a felony and breaking and entering, and with intent to commit Larson, they might say well, there wasn’t much harm, this is the first time, let’s keep them in the juvenile system, let’s get them an education, let’s get them off the drugs because that judge is looking toward the long term impact this is going to help this person. So you will have different outcomes, but I think the more you restrict a judge from having discretion, or a DA, you have bad results. We need to be pliable to fit what the offense is, and who the offender is.

**Do you think anything will go through this session?**

I do, and I think there has already been an impact with this push, last year the general assembly looked at more expunction capability which I think is a good step, but it shouldn’t be used as a replacement for what this move is about because we don’t capture enough. For the uninformed and those that can’t pay a 145-expungement, $160 now I think, they are out of luck, and what happens in the meantime if they are trying to get a job, trying to get into a college...they are paralyzed, they can’t do anything because the system has said ‘you’re a criminal offender, you have a record.’ I’m optimistic, I think *Action for Children* has done a great job of getting the word out, their op-ed pieces are going out, we have done videos about it, and I think the education has taken its time, but its sinking in. we are going to have a new legislature in November, we are going to have a new governor for sure, and a lot of it does take the leadership and it will take an informed governor who knows and either supports it or is opposed to it, so whoever that person may be, I hope will have time to do a good educational project on them.

**In your opinion, is there anything at all that could really negate this process, besides having a new Governor that is vehemently opposed to the idea?**

We could have a couple bad crimes committed by 16 year olds – and once again, if we say these violent offenders would still fall under our current system, 13 and older, based on probable cause being found on a felony, they could have them in the adult system

**Who needs to be convinced of that more, the public, law enforcement, judges, prosecutors etc?**

I think we really need to concentrate on informing law enforcement, informing prosecutors. I think if they are satisfied, then the public will be satisfied…I hope.
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Is there anything else you would like to emphasize or highlight; something important about this issue?

So many times when we see a young person who is 16, who may have had juvenile record, may have had many other things going on in their life. You can’t define that individual by the offense. You need to look into it; what’s their reading level? Were there examples of abuse or neglect in that family? Was there a tragedy that resulted in a mental illness, or the anger? Treat people as people, and don’t define them by their offense, because then we are in no justice system. We are trying to help people, trying to get them back on track, we are trying to help society – keep them safe, but also do our best. The playing field is not fair. And today, with our current law, if you’re looking at a 16 year, how much control do they have over their life at 16. Did they choose to be brought up in public housing? Or did they have the luxury of a private home? Did they choose to rely on public transportation or were they fortunate to have a car in the driveway? Did they choose to have a parent in prison or two parents at a table? Did they choose the food stamps or were they able to go to the grocery store on Friday and pick out anything they want? That’s a 16 year old, and how much choice control over their life situation at 16 do they have? Not much. And who do we see that’s impacted most by this draconian law of 16 and 17? Usually those in poverty, who have had the stack piled against them, and I think it’s our duty to try and give them a chance.

RETAIL MERCHANT REPRESENTATIVE (ANONYMOUS)
Retail Merchant Association representative & Director of Loss Prevention at major retail wholesaler:
Interview Conducted: March 14, 2012

Can you describe your job and responsibilities?

My responsibilities are for the entire security and asset protection function at the company, and for regulatory compliance in regard to ABC violations, sale of age restricted items like tobacco, for example… alcohol, fireworks, lottery tickets.

What is your perspective on the age of juvenile jurisdiction issue, and what it means for the people you represent in the business community?

There was an initiative to consider to raise the age of prosecution, I guess, of juveniles, so it would go from the current 15 years – right now, if your 16 years old your charged as an adult, so the concept was to raise that to, some suggested 18, others said 21, and even suggested something even higher than that.

My concern was that, as a business entity, we employ, and many businesses employ, individuals who are under 18, or under 21, and if the age is raised so they would be considered juveniles by statute, it would mean we would not have access to their criminal history. They could in fact rob a bank or a store; they could have serious drug
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charges or serious assault charges and we would have no way to access that through a criminal record check. And depending on the kind of business, there are pretty serious implications.

If retailers are putting individuals in charge of cash registers that interact with customers who have an expectation of the business to provide employees that they interact with that are safe to be around, so if we put a cashier or a stocker in a store, or customer service representative that has a violent history that we don't know about it, and they end up conducting some violent act in the store – that's not a good thing. If they have a history of theft and we put them in charge of cash, or our cash office, then we are exposing ourselves and our company's assets to those kinds of losses.

And certainly, substance abuse is a big deal because not only does that create problems in terms of absenteeism and productivity, but also in terms of work comp claims. We know that those who abuse drugs are more inclined to have accidents at work and that drives up the cost of work comp claims, and therefore it drives up consumer costs and costs for the company. So it's very important that we are able to screen the people that we hire for those very reasons. And the other side of it, there is a considerable amount of tort law out there, and juries have held business liable for not properly screening their employees when they are involved in misconduct. So not only do we have the duty to our businesses and our customers, but now we could face civil liability if we put people in our stores that have criminal histories that could be adverse to our customers, employees, or our business. This is crucial. We have to be able to know who we are putting on our pay role.

Is employee theft a big problem or the primary means of loss at these types of businesses, or is it through theft by other external actors?

I don't have the numbers to what the ratio is between employee theft incidences and those who had prior criminal histories, but I can tell you that employee theft is the major loss to businesses. About 1 and 3 business failures are due to employee misconduct, or fraud, or theft. So it's pretty significant. Employee theft is a big deal to any business.

Are you familiar with other states as well in terms of this issue from your perspective?

I'm mostly familiar with North Carolina. I don't really know about other states.

Since most states have their age limit set at 17 or 18, do you think they are adversely impacted? Would other states, in your opinion, prefer to have their age at 16 like NC for similar reasons if they too are hiring 16 and 17 year olds?

I just don't know. I assume it varies by person. Some might say 17 is too low, or 18 is too low. My opinion is, that I think, by NC having free access to criminal records to those between the ages of 16 and 18 to 21, it creates a more favorable business environment, for attracting business. Because they know if they are going to hiring teenagers, that
they will know who they are hiring and who they are putting in front of their customers, and who they are exposing their assets to. So I think it creates a more favorable business environment for the state.

If there was a mechanism that allowed businesses to have access to records for these age cohorts, do you think your view on the age issue would change given the importance of the screening process?

Right, that's the big issue for us. If the system was structured so that the records were available, that would certainly take a big part of our concern out of the mix.

Are there any other concerns that I might not be aware of in regards to this issue?

Mostly its philosophical, not anything to do with a business perspective, or that I would say my business would take this perspective. But personally, I think that by, in essence, minimizing the consequences of an individual's actions -- because when you put someone in the juvenile system, the consequences aren't nearly as severe, and by doing that, you lessen the seriousness of the offenses when you lessen the consequences. And when you lessen the consequences of an offense, then you promote more of that kind of misconduct. That's my opinion.

So the real issues are; first of all, we want to know who we are putting in front of our customers and who we are putting in our employee environment and who we are exposing our assets to – it's very important. Secondly, failure to properly screen it could end us up in court for negligence in hiring. So, kind of a tough spot there.

What is your position on the raise the age issue in North Carolina?

I don't think that changing the age is where the focus should be. The focus should be on how you address the social problems of juvenile crime, what's the most effective way of doing that? And, where you put the age is an artificial guidepost that doesn’t address the underlying sociological problems and I think if you do that, you create the impression that this is somehow going to affect crime when it probably doesn't have any impact on crime.

What do you mean specifically by ‘sociological’?

Poverty, gangs, lack of parental involvement, single parent households, the breakdown of some other social institutions, difficulties within the family, within the church, communities, there are just lots of different things I think that have contributed to the
rise in crime among younger offenders and I think that artificially putting the number at one place or the other doesn’t really address those…it can part of the discussion, but it is no panacea, nor solution to the underlying problems.

If it’s just an arbitrary number, or guidepost, do you think 16 is a good standard?

Well I think that it’s complicated in that if we allow people to drive at age 16 then we have to address the traffic problems and offenses that arise out of that. But I think there are a number of different ways to approach how you deal with young offenders. We have arbitrarily set it at 16 in NC and I think it has some advantages and disadvantages. I also think we have a juvenile code that was drafted, the idea was formulated and the code drafted at a time when crime was very different than it is in 2012. We had very little influence of street gangs at the time our juvenile code was drafted and so it’s not a very useful tool in dealing with violent street crime, aggravated assaults, armed robberies, drug trafficking, homicide, those kinds of things that the proliferation of street gangs have dramatically increased our number among younger and younger offenders. And so, I think we probably need, if we look at changing one of the factors of juvenile age, I think we ought to address an array of different factors that go hand-in-hand, otherwise it’s like you’re playing the game of jenga, where you pull one block out and what you leave is some precarious situation that you just can’t deal with, with a Band-Aid by just changing the age.

What do you think the consequences would be if the age were to be raised to 17 or 18, even if done incrementally?

I think there are several consequences, one of which is the services. We have traditionally tried to focus, with juvenile offenders, with providing services and through that, trying to change the life patterns and behaviors of young offenders. Currently in NC with the juvenile age set at 16, our demand for those services overwhelms the supply of them. If you raise the juvenile age to 18, you will probably have 2 or 3 times as many offenders vying for the same over-subscribed services, and I think what you do in that, you create the false expectation among the public that we are going to change the way we do things, we are going to change these juveniles when in effect it’s a hollow promise that everyone in the system knows is false. I see no indication that policy makers are willing to make any significant kind of resources to increase the level of services for the current juvenile offenders we have, much less for a 3 or 4 fold increase that I would expect raising the juvenile age would have.

What is your perception on how the government handles this – how the legislature has dealt with and will deal with this issue?

Most crime issues are state issues, especially at the juvenile level. The juvenile age at the federal level is 18, but given the economic times that we are in, I don’t see increasing those levels of services. I think when the juvenile code was changed, there was a movement to try to increase things like out of home placements for kids who were in bad home environments, and we needed to get them out of the home to reform their
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conduct. I think there was a genuine effort to increase the number of services and the commitment, but I think the changing of economic times and the shrinking of state budgets, this has been one of the causalities.

When we [North Carolina] changed the code the last time, we made it increasingly difficult to get younger offenders, and young violent offenders in particular, into adult court that was supposed to be commiserate with an increase in the level of services and attention that we would give the young ones. Well, the barriers to get them to adult court are still there and the services have not been delivered - so, we have a false promise. I don’t believe anybody at the legislative level can provide honest assurances of increased services, so I think it’s a bad idea.

We could look at different kinds of changes in the system where you could use a hybrid system where you would allow prosecutors to directly file and take certain cases to adult court if they chose without having to go through artificial barriers, you could leave some cases that would be subject to the judge’s discretion, and some could remain in juvenile court.

If you adopted a system like that, you could say, we have a 17 year old who has a car break-in, which under NC law would be a felony, but it might be a lower grade property felony in which there was no injury, and for a kid with no significant record, everyone would agree that individual should stay in juvenile court and we ought to focus on some behavioral changes. We might have some sexual offense, that was not a violent rape, but some other type of sexual offense, where we might differ as to whether that child could be better dealt with in juvenile court with some increased services or whether they would be in adult court and the services would probably be lesser. We might also have things like armed robbery in which we would say, the prosecutor can look at that case and decide if it should go to adult court or not. Is this two kids robbing another kid with a stick for his lunch money, or is this a guy with a pistol robbing the pizza delivery guy? and give the prosecutor the discretion to say, ‘I don’t have to jump through these hoops in this case, my discretion is that this case is going to be as an adult. We know this car break in is going to be as a juvenile, and this one in the middle, with the sex offense, we may have to have a hearing and a judge may have to make those decisions.

But I think there are systems where you can make a better product. If you look at something other than just the age, I think you need to look at procedurally how we do this. Right now, Wake County has over 900,000 people. We are taking fewer juveniles to adult court now than we did 10 years ago, not because juvenile crime has gone down, not because we have fewer people, but because the artificial barriers to getting them in superior court are much greater and burdensome to prosecutors and as a result, we are not able to deal effectively with some types of violent crimes that we feel we ought to be able to deal with and the community demands. When someone sticks a gun in your face, you’re not thinking is this kid 15 or 17 years old. The increased danger is that the 15 year old may be more apt to use violence because he or she may not think about the consequences and may be more dangerous than the 25 year old that we have under the same circumstances that may stop before he gratuitously shoots
somebody in a robbery. So there are lots of things that need to be considered if you want to seriously address juvenile crime other than just arbitrarily setting an age.

I know Vermont allows prosecutors a significant amount of discretion – would you be interested in a system like that?

A number of states allow that, they generally refer to it as ‘direct file’ – this allows the prosecutor to directly file the case in superior court if he or she chooses. Those are ordinarily limited by types of offense, if this an armed robbery for example, I might not have to go through a probable cause hearing within 15 days and get my victim and witnesses up here, I don’t have to get a bind over hearing in superior court, I don’t have to prove we have exhausted every possible service we can provide that person in juvenile court. I can direct file and send that case to superior court because of the facts and circumstances of that particular case. And if I’m making bad decisions, then the people in this county can make a change with me, and get someone with more enlightened procedures. And that’s sort of where I come down on this, is that, simply changing the age will not only not solve the problem, it will magnify the problem by not providing the services we need and it will put a new category of offender, the 16 and 17 year old, violent, (particular the gang bangers), that crowd, and give them additional obstacles to me protecting the public from their violent conduct.

Do you think if the system was changed and some of these mechanisms you referenced (direct file) were established, would the age still be considered just an arbitrary set number, and would DA’s be opposed to increasing the age?

I can’t speak for all prosecutors. As for me, I think we could devise a much better system that would either allow some of those cases to stay in juvenile court depending on the type of offense, or we could change the expunction laws that would allow youthful offenders to get expunctions for certain types of offenses so some kinds of youthful indiscretions would not mar someone’s opportunities for education and employment. We currently do that for misdemeanors; if you’re under 18 you can get convicted and get that expunged. There is a limit, you can’t do it repeatedly, but you can get it for individual discretion. But I think there are a number of ways that can get us to what we ought to do, which is 1) try to lesson juvenile crime, and 2) try to take those offenders for which there is a reasonable good likelihood we can reform them and make them law-abiding and try to do that.

I realize you don’t speak for all DAs, but what is your perception on the majority of them – do they tend to agree with?

I think that, and I’m at the risk of trying to sound self-important, I’ve given some thought and reading to this. Most of the prosecutors probably don’t sit around and try to conceptualize how to design a better system. I think most of us tend to look at this particular change in the law that’s in front of us and say, like Ann Landers, ‘am I going to be better off with or without it?’ And they make a decision focused only on that one factor. I think if you were to sit down and talk with prosecutors, in general, there would
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be wide spread acceptance of the concept of taking certain type of property offenses and creating some vehicle to provide additional services and to expunge or keep that off a person’s record. I also think there would be wide spread support for greater flexibility in dealing with younger violent offenders. We get 13 and 14 year olds that do aggravated assault with a firearm, that’s scary and I think for many of us, we are loathed to think, ‘you are 14 years old and you shoot someone with a gun and your back out on the street in 72 hours and we have very little control over you. In fact, we have reinforced what your gang leaders have told you; ‘that they [law enforcement and prosecutors] can’t do anything to you if you do this.’ And I think that sort of thing frightens the prosecutors, and I think that’s one reason that they have been very resistance to any type of change in the juvenile age because the difficulties they have with violent juveniles right now.

What other groups (besides prosecutors) do you think see things in a similar light?

I think law enforcement would probably see things similarly. They are on the front lines and deal with the crimes created. I don’t know what organized victims groups would say about it. I think it’s probably not something that registers with the general public until they pick up a headline and they see, you know: “15 year old charge with shooting his father” or something like that, those kinds of things. But I don’t think it’s an issue that resonates with people a lot. I think it gets…well, they tend to think about it anecdotally – with a particular case or set of facts, and then it becomes an issue for a short period of time and then it gets pushed aside by some more pressing news story.

Earlier you mentioned the importance of resources. Do you think that North Carolina will make an effort to provide what’s necessary – therefore alleviating this part of the issue?

No, I don’t. In fact, this past year I think we even closed some training schools. What the proponents of that will say in three years is: “we are sending fewer people to training school”. That’s right because we have fewer beds – we cant send them there. People that were previously sent to training school that did not go to adult court but they had done something serious, like a robbery, and we couldn’t keep them in a home, we’d send them to a training school. There won’t be sufficient beds to send the same level of offender, and so some of those offenders will be put back in the community because we just don’t have the beds. So by definition, the statistics will probably show that’s it would be a successful endeavor because, instead of having 600 beds we have 400 so we only sent 400 to training school last year, instead of 600. But, if you were to look at the underlying data, you’d probably find the people going are typically much more serious violators, and the people that previously went we just don’t have a place for. And we get fewer and fewer other out of homes, like wilderness programs – not a training school or lock down, but a facility with strict discipline imposed etc., more camping Spartan accommodations. We call them wilderness programs in NC.
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Were those successful?

I don’t know, it’s hard to evaluate much of what’s done with juveniles because its shrouded with secrecy. And juvenile justice doesn’t want to release much of their information so there’s not much transparency so it’s really hard to be able evaluate something without information. I can pull up the offender information about armed robbers in adult court, but I can’t in juvenile court. Somebody over there can - they have the information. They can look at the petitions for armed robbery and of those, how many went to training school, how many had out of home placement, how many got put on probation – all of that information is available to the juvenile justice system but they don’t share that, so no one with any independence can properly evaluate it. There is just no transparency.

In terms of raising the age, you do not see anything happening unless resources are put in place?

Well, I’m not predicting the success of it, I don’t know what that will be – that will be a legislative decision, so I can’t say what that will be. I think that prosecutors and law enforcement will probably be vehemently opposed to the single act of raising the juvenile age and it will probably be reinforced by the lack of commitment to provide services for the dramatically increased number of juvenile offenders that we can expect.

If that single act were in conjunction with a promise of resources, would opposition still be so vehemently opposed?

Promised resources is like, ‘I’ll call you in the morning” I think our folks would tend to be very skeptical of promises to provide resources in the future, or ‘let’s do this in a gradual manner and do a few this year, and a few the next year and the year after” and we’ll get to you and give you these resources when the time comes. I think that will be like previous representations that when the time comes, some other priority will take place and it won’t go to these offenders. What we will be stuck with is the worst of both worlds, where we raise the age, get the obstacles, but we don’t get the resources. I think our folks will be probably distrustful – it’s like Lucy and Charlie Brown in football – they’ve had it jerked out too many times before to embrace the idea: “we will do something and look out for you in the future.”

It seems that the issue is about resources. What’s your view on other arguments like adolescent brain development?

I think advocates generally argue this brain development -- the brain is not fully developed and therefore we should not hold 16 and 17 year olds fully accountable in the same way we old other adults accountable. I think that’s their whole argument.

I do think there is a legitimate issue about brain development, but I don’t necessarily know that brain development changes if you know it’s wrong to shoot someone. I think a
15 year old in most cases knows it’s wrong to shoot someone, or to sexually assault someone, to break into someone’s house and take their property or to do violent crimes. I think that that makes a very dramatic argument that their brain is not developed therefore we shouldn’t hold them accountable when that’s primary an issue of right or wrong. I think what we ought to be focused on is the crime itself and the underlying causes, and how do we design a system that addresses some of those problems and in the end helps reduce that crime and makes people safer. That’s where our focus should be, if we can design a system that gives special consideration to nonviolent offenders who haven’t hurt someone, then maybe we should look at addressing that, if we ought to look at expungement of persons records, if we have a 16 or 17 year old that gets a drug possession that is going to hamper their long term ability, we ought to look at those things and find ways to do that.

But I think simply focusing on the age is a fallacy, it’s not where the focus ought to be and it’s not going to solve the problems I’m taking about. It will make it more difficult for me to take the 17-year-old robber to superior court or the 17 year old that has committed a sexual offense, or drug trafficking. It will make it more difficult. It will put the public more at risk because some of those offenders will be put back on the street under the juvenile guidelines that are different from adults and so I think the public will be at greater risk and when we do that, what we do is undermine public confidence in the system – people’s expectations is that when someone commits a violent crime we stop it and we protect them from that in the future. When we design a system that makes it difficult to do that, we risk losing public confidence in what we do. I think that it’s probably time to do a significant overall review of the juvenile code – and we ought to look at all of these pieces and we ought to weave a fabric that does both public protection but also gives certain protections to juveniles and recognizes that maybe they should be treated differently at different ages. But to simply go in and move one chess piece to one other place on the board doesn’t change the game. I think it’s not the right way to go about what we are doing. I think it’s dangerous, I think that it’s dangerous from the standpoint of what will happen with young offender crime and I think that it’s shortsighted.

The other issue is that it takes a longer, more thoughtful approach. It might take two or three years of thoughtful approach but I think things have changed in society in the last 10 years since we have done a juvenile code revision and I think they’ve changed dramatically to such an extent that we ought to look at the total fabric and say ‘we need to change the way we address this problem,’ and then we need to decide if we do, what it’s going to cost. And then the policy makers ought to say, ‘are we willing to pay the price to make these changes, is this what we were elected to do, should these dollars be spent on these kids, should these services be provided to them, do we do these things or not?’ I’m just a grunt in this war, I’m a soldier. I’m down here, I carry out the policy. Somebody else makes the big decision, but I really think that people with vision ought to be looking at this from that standpoint as opposed to ‘do we make it 16 or do we make at 18?’ that’s not a solution to the problem, that’s a solution to a specific problem of some people who think that a kid gets a record at 16 and I don’t want him to
have a record, therefore, if I move the goal post and lower the basket it solves that problem'. But it creates other problems. I just think it's being short-sighted.

I think when we stop and think about the whole problem, it's more complex than its currently presented. Many times folks don't have the appetite for complex problems, because it requires a lot of energy and it requires give and take. From my perspective, it looks a certain way, and from someone else's it looks different. It's a much more complex problem and I think sociological changes in our society in the last few years have really exacerbated the problem and made it something we really ought to address. We have done some things, particularly with drug offenses to give people diversion to try and keep those things off of people's records. But there are some other property type crimes, like car break-ins, or forging a check or something like that, where no one has been seriously hurt and that exhibition of behavior is not so deviant that with the right kind of guidance you can't get someone back in the fold...I mean, we should at least try. The kid with the nine is a different story, and that scares the pants off of us.

I'm hopeful that we have some people with vision in the generally assembly. Some of those long time people down there, for whom this was a passionate issue, are leaving. People like Alice Bordsen, probably people like [Representative] Joe Hackney who have, although we don't always agree on things, he has a vision of how things should be—not just a reaction. We are losing some of those people and I don't know who will come in to replace them. Hopefully we will get some that think about these things long term and what they mean, and want to develop solutions and not just wallpaper over it.

I agree. I think it's important that people from various professions such as yourself, provide their perspectives and continue to educate both people within their own profession as well as elected officials.

The legislature has been very kind to ask us our opinion on things. Sometimes they have taken what we have said and sometimes they have not. But they usually ask a lot of different people. A lot of times, where the train goes depends on the engineer— whoever is driving the bus. And for the last 5 years it's been some people that adamantly want to raise the age and that's all they have focused on, and they have not wanted to look at a broader spectrum of potential solutions and changes that we need to do. It might be better to take some people that haven't really decided the issue; rather than a bunch of hard-nosed prosecutors or a bunch of very liberal officials – people for whom this is a new issue but who have good judgment and can seek to balance the interest of these things and try to come up with a plan.
In general, do you think 16 and 17 year olds should be treated as adults in the criminal justice system?

No... it doesn’t make any sense. There’s no reasonable explanation why a 16 or 17 year old should be treated any different than someone under the age of 16.

What about the resources that would be presumably needed/used for the 16 and 17 year old cohorts if they were transferred to the juvenile system?

Well, it’s going to cost money. But all these other states do it, so what’s the difference? The thing that is against this issue more than anything else is history. We are a state that’s very slow to change. Professor Birckhead’s article is the best historical explanation of what’s happened.

I’m not even sure if resources are the main issue anymore. They are and they are not. My understanding is that some of the counter proposals have nothing to do with that. The recommendation and what’s in the legislation itself staggers the change over a period of 6 years in 6 month increments. And I still don’t understand why. Someone else has the answer to that.

What is your perception of the opposition’s reasoning?

The opposition generally from elected people, whether they are elected officials, law enforcement, or prosecution, they worry about being elected and one of the issues with the public is protection of the public (public safety). Individual incidents of violence are what motivate and drive this. Data, empirical research, or anything that has to do with adolescent development is not considered.

So it has to do with public perception based on isolated events essentially?

Right. It also has to do with perception of the juvenile justice system. If you piled all the people together, and gave them truth serum and asked them, ‘why don’t you want to do this?’ some of the answers will be varied. Some would probably give you personal answers. But the juvenile justice system is largely misunderstood, even by people who work within it.

If you were to go and observe juvenile court, what will strike you immediately is if there is any law being discussed at all? Are there any rules? Is there a consistency of application of any of this information? And what’s driving all these people? If you thought about it too much, you would go crazy.
This sounds like a non-answer, but the truth is that this court has existed for years for reasons other than its purpose. The reason for a juvenile justice system is that kids obviously don’t process things like adults, so they should not have the same culpability – it’s not a complicated concept. But it’s not being played out here. I’m not sure what the judge is here for, I don’t know what the defense attorney is doing, why does the prosecutor want to punish these kids?

You realize the system has developed in a very awkward way, where I firmly believe that some people involved enjoy delinquency court because they feel like they are making a difference, but the way in which they are making a difference may or may not be consistent, or therapeutic, or legal, or anything else. And so, when you decide to come in and alter the fundamental issue, which is the reason you have juvenile court because of the jurisdiction, the jurisdiction is based on your age, and when you come in and say, we are going to mess with that, you’re going to get a lot of opposition.

**Going against the status quo, correct?**

Yes, this is what the status quo is, and its different to different people but I know because my job is to improve the quality of defense counsel. There is a lot of people who don’t want it to change because they are comfortable and enjoy being in a process and environment where they believe they are helping people. And if you upset that balance, they get upset.

So, there are people within the system that think they are doing the right thing – and that putting 16, 17 year olds in a juvenile facility is not going to help them?

Well, when you think about it, every single aspect of the process is going to have to change. If you’ve been sitting there for 20 years doing the same thing over and over again, and, I mean, even if you don’t know how to read or if your ears are blocked (chuckles), you know, it’s going to impact you somehow, and most people believe it’s going to have a negative impact. Specifically, and first of all, it’s going to increase the number of people. And secondly, some do believe that 16 and 17 year olds are a different breed, even though everything else shows us the contrary.

**The fact that NC is one of two states doesn’t have an impact on the argument – being consistent with the majority of states?**

Why does that matter? How would that motivate you if you were a legislator? That reasoning has not worked very well. That’s the padding; it’s not a reason. No one I know thinks that it’s relevant at all.

**Are there particular groups that are against raising the age for specific reasons?**

The obvious targets are law enforcement and prosecution but I don’t think that’s across the board consistent. I think there are plenty of law enforcement personnel who don’t agree with that, and I know for a fact there is prosecution that don’t, because they’ve
told me. But they can’t come out publicly because they may not get elected, because
the general public doesn’t quite understand.

So are you saying it’s more motivated by public perception and it’s all about
being elected?

I think if the decision makers can be motivated by the public than yes, but that hasn’t
really worked; it hasn’t resonated because the people who make the decisions, the
legislators, they haven’t been in the juvenile or criminal justice system. Very few of the
people, and their families, and maybe even the people they associate with, understand
this issue internally. My point is that they haven’t experienced it so it doesn’t resonate.

Is there any way to make it resonate?

I’m not sure there is. I think it’s about a few of them, and they all fall in line one way or
the other.

In the past though, some have supported legislation to raise the age, right?

Right, but it’s harder… the juvenile justice system, the department, has been defunded
for 10 straight years because nobody gets it. Nobody thinks to themselves, ‘well we are
taking money away from this program that will have devastating impacts on the future’;
they are just like, ‘we don’t get the juvenile justice system.’

Even lawyers who practice or former judges (laughs)… It’s something extra. And
raising the age will permanently change that too, that’s another thing. People will realize
they have to take this system seriously now and that’s not what these people want.

Do you think legislation will pass that will raise the age anytime soon?

This session. It’s going to pass this session, I’m telling you right now. It’s not going to be
what we want but something is coming out of this session, I guarantee you.

What’s going to come out?

Well, something less than what the Task Force proposed. I don’t know what exactly.

But it’s going to raise the age?

It’s going to raise the age for some folks, but I don’t know who.

Does the expunction issue tie into the argument?

I think the people in charge understand that those are separate and unequal issues.
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So despite everything we have been discussing, you still think that something will come out of this legislation that will raise the age in some capacity or form?

Isn't that funny? Your probably asking yourself, 'why would the Republican-led legislature for the first time since Reconstruction and the lame-duck governor, for the first time having the governor not running for a second term when its constitutionally allowed, is this going to happen?' Well I’ll explain it to you.

The governor has been innocuous on this issue from the beginning, so that doesn’t matter. Enough republicans think this is a good idea, to make it go. The truth is, historically, there were enough democrats keeping it from going anywhere. Part of it has to do with the broader view of how politics are in NC, but the democrats in power were not interested in this issue. Republicans, however, are interested in raising the age.

My perception has always been the opposite. In 2007, the legislation was introduced by Rep. Alice Bordsen.

Right. Some of it has to do with personal relationships but a lot of it has to do with the fact that… I think some folks understand the economics of it… but I think it’s more just that there are some republicans in power who think it’s the right thing to do and there weren’t democrats in power who thought it was the right thing to do. It’s that simple.

I don’t think this was ever a strict party issue. If it was, it would have been solved the first time it was brought up. Reconstruction was before 1919, so…its puzzling isn’t it? If it happens you will say, ‘Eric told me this was going to happen.’

So for Republicans, this issue has made ideological sense or would you say it has been more of an economic understanding?

I just don’t think the right democrats embraced the issue.

The ones with influence?

Yes. You wonder if Gov. Hunt had some more information and some more backing, he may have made this happen in 1997, but…. The people who were around the Task Force table were not the same people around his Blue Ribbon Panel in 1997. The Governor’s Commission on Juvenile Crime and Justice from 1997-98 re-wrote the Juvenile Code, but this was in an era of fear, fear of the emergence of what they called the “superpredator”… which never came to pass. Otherwise, it might have gone through and changed, we just don’t know.

In your opinion, what makes the most sense in regards to what will come from this session, if not what the Task Force proposed?

I think the easiest thing to do would be to just put misdemeanants in delinquency court, and leave all 16 and 17 year old felons in adult court. That’s the easiest thing and what
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Some other states do. There may be some variation of that. Maybe all A though Ds, or As through Fs, or whatever, will all be adult court arrests… There’s a theory that there may be a bill that’s like one bit of the apple where if you’re 16 or 17 and you don’t have any prior record, you start off in the delinquency system but next time you come out, you’re done. So you get one shot, which makes no sense!

**If something gets passed in this session, will it be in the right direction in your opinion?**

Yes, I think so. I think this is all this issue is getting. That’s as far as its getting. And it is better than nothing. The only reason you push for something more is to get something a bit less, but that’s because you know you can’t get what you’re asking. But I bet that’s what’s going to happen, and you’re going to see it get done quickly with very little debate or publicity and then will move on to the next step.

**You don’t think there will be any opposition?**

There will be, and if it’s not quelled quickly it probably will not get through. I’m guessing if there is a big blow up about it and people are uneasy it’s not going to happen.

**But you don’t think that will occur?**

I think it really depends on how much in control the leadership is. If the republican leadership that’s in support of this is really in control of what’s going on, it will go right through.

**Are there any particular people you’re thinking of?**

Well [Senator] Fletcher Hartsell is sponsoring it in the Senate, and I think the speaker of the House is generally in favor of this issue if it’s done right.

**And “done right” means?**

That it doesn’t offend the sheriffs or the other law enforcements and DA’s.

**I’ve read that some of the DA’s have been particularly outspoken and influential. Is that true?**

Well, the Conference of District Attorneys might make a statement but there are plenty of DA’s who think the age should be raised.

**But who is more influential?**

Well, you don’t usually speak outside the conference because it has political ramifications. But maybe in private they speak to their legislators and that might also be what will happen. So the Conference might come out and say they don’t agree with the
And you think there is a good chance of this type of thing happening successfully?

Right. I know that Marilyn Avila who is a Wake County Republican, who has been pushing the issue since last session has talked to individual DA’s and law enforcement about it, trying to get a sense from them. It’s not a surprise that when decisions are made they are made back door. Time goes by and nothing happens, still nothing happens, and then all of a sudden it happens, and you want to know how it happened so the next time you can figure out how to do it again. And it’s infuriating. Its politics. It can be something very simple or something very complicated…it’s hard to say.

I find it interesting because of the history of attempts in NC…

But there really hasn’t…I mean, Action for Children just grabbed onto it, and then our office since 2005, Advocates for Children’s services has built some steam over the last 10 years. And Tamar [Birckhead] did the article; it’s really just a lot of bits and pieces. So it’s really come together starting in 2004, 2005, 2006. I forgot how long the session is, but like last session, they will want to get in and out, everyone wants to go home and politic and with the gubernatorial candidacy up for grabs I think it’s even more imperative for people to get out of there without making a lot of waves.

The other reason why I think it’s going to succeed, whatever it is, is that they’re going to say, ‘well, this doesn’t take effect for another six years anyways so don’t worry about it.’ Because the bill—and this is my guess—will say it will start in 2016.

What would the ideal situation be that is also feasible?

Of course, there is what the Task Force suggested. But I was in support of all 16 and 17 year olds staying in delinquency court and having the same rules you have now. The difference is that you have the A though Es being automatically bound over if probable cause is found, unless the DA brings extraordinary circumstances to the court’s attention. And I tried addressing that a couple of times. What I really wanted to see, well I didn’t want to see that at all but I knew I wasn’t going to win on that, so I wanted a presumptive waiver whereby it’s presumed that that person will be waived but the defense has an opportunity to put on a case, and several states do that, it’s not unusual.

And this would be effective since NC has ‘once and adult always an adult’, and no mechanisms of reverse waiver right? You can’t go back right?

Well no, not necessarily. NC is weird. You can be convicted and the govern can place you in delinquency services or treatment, but you still have the conviction. It sort of wins the battle and loses the war. You’re glad because maybe that will prevent them
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from reoffending but they have a felony – the collateral consequences don’t fall off just because you’ve removed that

And I’m not even aware of this provision ever being utilized. It’s just there, and it’s weird, very weird. So I think it’s like stay tuned. You may find out soon that the age has been raised. Of course, the work still has to be done. The work on the front end is nothing compared to the work that will need to be done on the back-end. It’s going to be a real struggle. I’ve suggested that the task force, or another commission be put together because we don’t currently have...we use to have a state advisory council on juvenile justice…and the theory was right – you get people from all sides to make recommendations for change and reform and I hope this will happen - I’ve been pushing that for a while.

Do you mean something similar to the Sentencing and Policy Advisory Commission?

Right. But it would be for juvenile justice. So you’d have Judges, DA’s, lawyers, juvenile justice child advocates, you know, what the Task Force looks like but a little broader.

In summation, you believe that despite public perception—whatever it may be—and the politics of the state, something is likely to happen this session, and primarily because republicans are in control?

Yep. And, it might be hard to gauge, but it’s more likely now than it ever was before – I can tell you that.

Is there anything, or anyone, that could stop it?

There is one particular legislator who I think may try to mess with it, but if that legislator can be motivated or swayed than it should be fine.

Can you tell me who that legislator is?

Well, I am on tape…so no.

But you don’t see a problem with public perception and its relation to the election process?

There has been a lot of media behind this, and the only responses you get are from people who don’t understand. But I don’t think, I mean who knows how large that percentage is.

So it’s not enough to influence legislators one way or the other?

No, because it will be done so quickly no one would know it. Unless there is a huge cry afterwards, and that’s what you really have to be aware of - when that individual incident
happens, and then you really have to start to worry because people have to worry. Eve Carson is the most recent example of that. And this is important. Unfortunately there’s been a number of things happened in the last 6-8 months, it’s been bad. There’s been a lot of serious offenses committed by 15, 16, 17 year olds. But, it hasn’t trickled down as far as I can tell. It takes someone to die, such as Eve Carson.

I mean, there was a serious assault in Pitt County, a 16-year Hispanic man died, and it got media, don’t get me wrong. There was 5 or 6 kids that beat him to death, a few of which are between the ages of 15 and 18. There was a double homicide in Charlotte. I helped on a case in Moore County where a 15 year old, did what we call ‘attempted suicide by cop’ where he stabbed a school resource office. But the office was wearing Kevlar so he was not harmed. This kid got bound over. There was also a homicide case in Nash County. It’s been very bad recently. But, it hasn’t really influenced public because they don’t even know about it.

Well, that’s all the questions I have for you at this time. Is there anything else you think is important that I should note considering what we have discussed?

Well, also, the department wasn’t really in favor of it [raising the age] either, but you’ll have to ask them why.

What’s your perception?

It’s confusing because that was supposedly the new secretary’s line, but maybe being in office for a little while that changed. I’m sure a lot of it is resource based. But that was secretary Sweats thing; he was like ‘it’s a good thing to do but...’ Ya know, the “but” almost came out of his mouth before the first part.

That seems consistent with that many of the news articles report.

Right, so let me ask you this, DJJ, ‘since you have been defunded every year since 2000, when is it going to happen. When is your ship willing to come in?’ I don’t think its coming.

And of course now, they are one Division with the merge. So whatever political standing it has is going to be managed by the Department of Public Safety. Probably.

So, the biggest obstacles for this particular session are a few, or one, particularly adamant legislator, and possibly the media having some form of influence on public perception (derived from some isolated incidences)? But you still suspect that in this session, there is a good chance of something being passed?

Too be honest, I would be surprised if it didn’t happen. I mean, if something else occurs, like the Racial Justice Act takes over, or some other issues, then all bets are off. But if everything else on the criminal side is quiet, then yes.
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My main objective and curiosity is based off of Birckhead’s article, about the historical pattern and the opposition.

I actually think what Tamar’s article doesn’t talk much about is the offense [advocacy to raise the age] – that there have been people in place. Her article itself was part of this.