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### NEW RESEARCH ANALYZES NORTH CAROLINA'S CENTURY-LONG REFUSAL TO INCLUDE 16- AND 17-YEAR-OLDS IN JUVENILE COURT

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#### OVERVIEW

North Carolina is the only state in the United States that treats all 16- and 17-year-olds as adults when they are charged with criminal offenses and denies them the ability to appeal for return to the juvenile system. In an article entitled, "North Carolina, Juvenile Court Jurisdiction, and the Resistance to Reform," published in the September 2008 issue of the *North Carolina Law Review*, professor Tamar R. Birckhead of the University of North Carolina at Chapel Hill School of Law has chronicled the history of the movement to raise the age of juvenile court jurisdiction in North Carolina to 18. Birckhead argues that an appreciation and understanding of the historical context should cause lawmakers to revisit the issue with a greater sense of urgency, providing them with the momentum needed to join the national consensus and to include 16- and 17-year-olds in juvenile court.

#### North Carolina has been in the minority on this issue for decades

- In 1946, North Carolina was one of only four states with 16 as the upper age limit of juvenile court jurisdiction, with the majority capping it at 18.<sup>i</sup>
- Currently, 37 states cap juvenile court jurisdiction at 18, while 10 do so at 17, leaving North Carolina in the bottom rung with New York and Connecticut.<sup>ii</sup>
- North Carolina has not only been out of step with the majority of states, but it has been and continues to be at variance with the American Bar Association Standards Relating to Juvenile Delinquency, which recommend 18 as the upper age limit of juvenile court jurisdiction.<sup>iii</sup>
- According to international treaties and instruments, many nations of the world consider 18 to be the most appropriate age for delineating between juvenile and adult court jurisdiction.<sup>iv</sup>
- A recent national poll of likely U.S. voters revealed that a clear majority of the public believes that putting youth under 18 in adult correctional facilities makes them more likely to commit future crime; that the decision to try youth under 18 in adult courts should be made on a case-by-case basis; and that spending on rehabilitative services and treatment for youth, rather than incarcerating them with adults, will ultimately save tax dollars.<sup>v</sup>

#### The consequences of North Carolina's scheme for prosecuting minors can be particularly severe

- The approximately 33,000 16- and 17-year-olds who were processed in 2004 in North Carolina's criminal court system encounter significant barriers when attempting to secure employment or access higher education.<sup>vi</sup>
- While it is widely known that adults with criminal histories are automatically excluded from many areas of employment, the proliferation of criminal history background checks and the reluctance of



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insurers to cover employers who hire convicted felons mean that youth with criminal records face extreme obstacles getting jobs.<sup>vii</sup>

- While admissions offices within the University of North Carolina system have reported that a criminal record does not result in an automatic denial of admission, only five schools have an appeals process, and just a few schools inform applicants that their criminal record was the reason for the denial.<sup>viii</sup>

### **A less punitive approach to youth crime lowers recidivism rates and better protects public safety**

- Data has shown that 16- and 17-year-old offenders sentenced either to adult probation or adult prison had higher re-arrest rates than the entire sample of youthful offenders ages 13 to 21.<sup>ix</sup>
- More than 85.8% of offenses committed by 16- and 17-year-olds in the adult system were misdemeanors in 2004, confirming that the majority of older teens commit minor offenses, more appropriately handled in the juvenile justice system.<sup>x</sup>
- Providing intensive probationary supervision and rehabilitation to young offenders, rather than incarcerating them with adults, is consistent with recent findings in the areas of brain development and adolescent psychology.<sup>xi</sup>

**Conclusion:** Although resistance to raising the age of juvenile court jurisdiction in North Carolina has been steadfast, with vocal opposition from law enforcement and prosecutors, it is time for the North Carolina legislature to act. Why, one might ask, should opponents of raising the age agree to negotiate when they have succeeded in perpetuating the status quo for decades? A large part of the answer, confirmed by empirical studies on recidivism rates among other indicators, lies in the long-term cost savings for North Carolina in an era of budget shortfalls, prison overcrowding, and failed criminal justice policies. The rest of the answer is perhaps best expressed by raise-the-age advocates in Connecticut who have asserted, "The time has come for [the state] to recognize in law *what it knows to be morally right.*"<sup>xii</sup>

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

<sup>ii</sup> See N.C. SENTENCING & POLICY ADVISORY COMM'N, REPORT ON STUDY OF YOUTHFUL OFFENDERS, S.L. 2006-248, 8, app. C.1 (2007), available at [http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/yo\\_finalreporttolegislature.pdf](http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/yo_finalreporttolegislature.pdf) (reporting the age at which an offender enters adult court jurisdiction in each state in the United States). Connecticut has passed legislation that will extend juvenile court jurisdiction to 18 beginning on July 1, 2009. See 2007 Conn. Pub. Acts 07-4; H. Ted Rubin, *Juvenile or Adult Jurisdiction? Age Changes in the States*, 13 JUV. JUST. UPDATE 1-2, 6 (Dec.-Jan. 2008)(discussing the Connecticut enactment).

<sup>iii</sup> See JOHN M. JUNKER, INST. OF JUDICIAL ADMIN. AM. BAR ASS'N., STANDARDS RELATING TO JUVENILE DELINQUENCY & SANCTIONS 14-17 (1980); STEVEN SALTZBURG, CRIMINAL JUSTICE SECTION AM. BAR ASS'N., REPORT TO THE HOUSE OF DELEGATES 1-3 (Feb. 2008).

<sup>iv</sup> See, e.g., United Nations Rules for the Protection of Juveniles Deprived of their Liberty, G.A. Res. 45/113, Annex, at 205, ¶ II, U.N. GAOR 45th Sess., Supp. No. 49A, U.N. Doc. A/45/49 (Dec. 14, 1990) ("A juvenile is every person under the age of 18."); Josine Junger-Tas, *Trends in International Juvenile Justice: What Conclusions Can be Drawn?*, in INTERNATIONAL HANDBOOK OF JUVENILE JUSTICE 505, 515-21 (Josine Junger-Tas & Scott H. Decker eds., 2006).

<sup>v</sup> BARRY KRISBERG & SUSAN MARCHIONNA, NAT'L COUNCIL ON CRIME & DELINQUENCY, ATTITUDES OF US VOTERS TOWARDS YOUTH CRIME AND THE JUSTICE SYSTEM, 2-6 (Feb 2007); Roger Ghatt & Seth Turner, *New Report Highlights the Impact of Incarcerating Youth in Adult Facilities and Strategies for Reform*, SHERIFF MAG. 60, 64-65 (Winter 2008)(citing the 2007 poll which was released by the National Council on Crime and Delinquency and conducted by Zogby International).

<sup>vi</sup> See N.C. SENTENCING & POLICY ADVISORY COMM'N, REPORT ON STUDY OF YOUTHFUL OFFENDERS, S.L. 2006-248, at 38, app. D (2007), available at [http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/yo\\_finalreporttolegislature.pdf](http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/yo_finalreporttolegislature.pdf) (reporting the numbers of juvenile and youthful (sixteen- and seventeen-year-old) offenders processed in the North Carolina court system from July to December 2004).

<sup>vii</sup> See, e.g., Jocelyn Simonson, *Rethinking "Rational Discrimination" Against Ex-Offenders*, 13 GEO. J. ON POVERTY L. & POL'Y 283, 283-86 (2006) (discussing the discrimination faced by people with criminal histories when attempting to secure employment and re-enter society); CAMPAIGN FORYOUTHJUSTICE, THE CONSEQUENCES AREN'T MINOR 80 (2007), available at [http://www.campaignforyouthjustice.org/Downloads/NEWS/National\\_Report\\_consequences.pdf](http://www.campaignforyouthjustice.org/Downloads/NEWS/National_Report_consequences.pdf).

<sup>viii</sup> CENTER FOR COMMUNITY ALTERNATIVES, CLOSING THE DOORS TO HIGHER EDUCATION: ANOTHER COLLATERAL CONSEQUENCE OF A CRIMINAL CONVICTION 4 (2008), available at <http://www.communityalternatives.org/pdfs/Higher%20Ed%20Paper%20Final.pdf>.

<sup>ix</sup> N.C. SENTENCING & POLICY ADVISORY COMM'N, REPORT ON STUDY OF YOUTHFUL OFFENDERS, S.L. 2006-248, 7, 29, app. C.1 (2007), available at [http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/yo\\_finalreporttolegislature.pdf](http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/yo_finalreporttolegislature.pdf). *North Carolina Sentencing and Policy Advisory Commission. Report on Study of Youthful Offenders Pursuant to Session Law 2006-248, Sections 34.1 and 34.2. March 2007. Available online at:* [http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/yo\\_finalreporttolegislature.pdf](http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/yo_finalreporttolegislature.pdf). p. 38. *Data Note: The number of offenders is an estimate based upon doubling the numbers for July to December 2004 to reflect a 12-month period.*

<sup>x</sup> Anne Blyth, *When Should Teens Be Tried as Adults?*, NEWS & OBSERVER (Raleigh, N.C.), June 17, 2007, at 25A; N.C. DEP'T OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, 2007 ANNUAL REPORT 9, 10 (2007), available at [http://www.ncdjjdp.org/resources/pdf\\_documents/annual\\_report\\_2007.pdf](http://www.ncdjjdp.org/resources/pdf_documents/annual_report_2007.pdf) (finding that, in 2007, sixty-five percent of juvenile delinquency complaints were for minor misdemeanors, twenty-two percent were for serious misdemeanors or less serious felonies, and only two percent were for violent felonies); ACTION FOR CHILDREN NORTH CAROLINA, PUTTING THE JUVENILE BACK IN JUVENILE JUSTICE 6 (2007), available at

[http://www.ncchild.org/action/images/stories/Juvenile\\_Justice\\_Raising\\_The\\_Age\\_Brief\\_final.pdf](http://www.ncchild.org/action/images/stories/Juvenile_Justice_Raising_The_Age_Brief_final.pdf) (finding that in 2005, approximately 11,000 youth ages sixteen and seventeen were convicted of crimes in the adult system in North Carolina, fewer than fourteen percent of which were for felonies, while only four percent of those were felonies against a person).

<sup>xi</sup> Lisa Boone-Wood, *Advocates Urge Action on State Law: Teens Should Not Face Adult Court, They Say*, WINSTON-SALEM J., Feb. 28, 2008, at B1 (reporting that brain research indicates that teenagers lack the ability to make sound decisions and have difficulty with impulse-control); Laurence Steinberg & Elizabeth S.Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AMER. PSYCHOLOGIST 1009 (2003)(drawing on research and theory about adolescent development to argue that the developmental immaturity of juveniles mitigates their criminal culpability and, thus, calls for less severe punishment).

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