

# TWO YEARS IN LIMBO: NORTH CAROLINA'S INCONSISTENT TREATMENT OF SIXTEEN- AND SEVENTEEN-YEAR-OLDS

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## I. INTRODUCTION

Every state has a separate juvenile court system meant to address the individualized needs of youth who break the law.<sup>1</sup> North Carolina's Juvenile Code describes the development of its juvenile system, established in 1919, explaining that "the American people have long subscribed to the proposition that children are fundamentally different from adults and warrant special treatment and protection."<sup>2</sup> When it comes to children, the primary concerns of the court system are meant to be treatment and rehabilitation.<sup>3</sup> While North Carolina's explanation for developing its juvenile system is consistent with the national recognition of juveniles' unique needs,<sup>4</sup> its definition of "juvenile" is not.<sup>5</sup>

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1. Tamar R. Birkhead, *North Carolina, Juvenile Court Jurisdiction, and the Resistance to Reform*, 86 N.C. L. REV. 1443, 1444–45 (2008).

2. THOMAS R. YOUNG, NORTH CAROLINA JUVENILE CODE: PRACTICE AND PROCEDURE § 1:1 (2014).

3. *Id.*; see also *id.* § 1:5 ("[J]uvenile court proceedings were designed with informality in mind to fashion remedies that would paternalistically aid and/or redirect juveniles.").

4. See Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat. 1109 (1974) (encouraging greater state protection of youth through federal funding).

5. See N.C. GEN. STAT. § 7B-1501(7) (2013) (limiting juvenile jurisdiction to those between the ages of six and sixteen); see also Birkhead, *supra* note 1, at 1443 ("North Carolina is the only state in the United States that treats all sixteen- and seventeen-year-olds as adults when they are charged with criminal offenses and then denies them the ability to appeal for return to the juvenile system.").

North Carolina's stated policy is to treat and rehabilitate juveniles based on their fundamental differences from adults, yet it abandons this policy when it comes to sixteen- and seventeen-year-olds, casting them outside of the juvenile system's jurisdiction. Sixteen- and seventeen-year-olds are treated as adults in terms of criminal prosecution, but are "juveniles" in nearly all other aspects of the law. Other North Carolina statutes set the age of adulthood at eighteen,<sup>6</sup> and some even set it at twenty-one.<sup>7</sup> This age disparity reflects a lack of established public policy and results in a system leaving adolescents aged sixteen to eighteen in a sort of legal limbo wondering whether they are adults or not.

The American Justice System has long recognized the importance of providing notice of legal expectations to individuals within its jurisdictions.<sup>8</sup> While establishing various ages of adulthood is certainly different than retroactive punishment, it still presents unclear legal expectations. Children under a certain age occupy a separate legal stance than adults, and are generally understood to need greater protection.<sup>9</sup> Adults are held to a higher standard and must be aware of their rights and legal expectations. The ages in between childhood and adulthood present a legal gray area where rights and expectations are less definite.<sup>10</sup> This ambiguity has resulted in numerous Supreme Court cases attempting to better define where these individuals stand in the law.<sup>11</sup>

The Supreme Court considers eighteen the age of adulthood because of the fundamental differences between those

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6. See, e.g., N.C. GEN. STAT. § 51-2(a) (allowing individuals ages eighteen and older to marry without parental consent).

7. See, e.g., *id.* (deeming individuals under the age of twenty-one as "incapacitated" in terms of managing property and business affairs).

8. See, e.g., U.S. CONST. art. I, § 9, cl. 3 (prohibiting ex post facto laws).

9. See Chauncey E. Brummer, *Extended Juvenile Jurisdiction: Best of Both Worlds?*, 54 ARK. L. REV. 777, 779 (2001) (explaining the common law presumption that children under the age of seven lack criminal capacity). Additionally, many states, including North Carolina set a minimum age of juvenile jurisdiction to reflect this presumption that children under a certain age lack the requisite *mens rea* for criminal capacity. See, e.g., N.C. GEN. STAT. § 7B-1501(7).

10. See THE GOVERNOR'S YOUTH SERV. COMM'N, REPORT OF THE GOVERNOR'S YOUTH SERVICE COMMISSION TO HONORABLE LUTHER HODGES, GOVERNOR OF NORTH CAROLINA 3 (1956) (referring to this age range as the "lost" group in North Carolina because they are not entitled to protective services and they are the most likely to get in trouble through idleness).

11. See *infra* Section III.

under this age and those over it.<sup>12</sup> Forty-one states and numerous other countries limit adult prosecution to eighteen for similar reasons.<sup>13</sup> Despite these nationally recognized fundamental differences and the fact that North Carolina's own Juvenile Code acknowledges these differences,<sup>14</sup> this state still prosecutes individuals aged sixteen and seventeen in adult court, regardless of the crime.<sup>15</sup>

This Comment aims to highlight the differing treatment that individuals aged sixteen and seventeen receive in the state of North Carolina, and the lack of public policy such treatment reflects. Section II discusses North Carolina's inconsistent treatment of juveniles. Part A of this section focuses on North Carolina statutory and case law, listing statutes defining the words "juvenile" and "adult" and discussing their relevance to adolescent rights and public policy. Part B of Section II discusses diversion programs available for juvenile offenders in North Carolina, focusing on Teen Court and how it comports with the previously discussed statutes and public policy. Section III compares North Carolina juvenile laws with national juvenile laws, trends, and policies. Section IV briefly discusses recent bills proposed to the North Carolina legislature regarding the age of adulthood and their likelihood of enactment. Finally, Section V concludes by recommending this state firmly define its policy regarding juveniles and conform its laws accordingly. While commentary on why North Carolina should "Raise the Age" is certainly not scarce, this Comment argues that the juvenile laws in North Carolina should be more consistent, one way or another, if they are to reflect the stated purposes in its Juvenile Code.

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12. See *Roper v. Simmons*, 543 U.S. 551, 569–572, 574 (2005) (drawing the line of adulthood at eighteen and listing three general differences between juveniles and adults that are "marked and well understood").

13. Birkhead, *supra* note 1, at 1447–48; see also Anne Teigen, *Juvenile Age of Jurisdiction and Transfer to Adult Court Laws*, NAT'L CONF. STATE LEGISLATURES (Oct. 1, 2014), <http://www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx> (presenting a visual of juvenile jurisdiction by state and noting that forty-one states set the upper limit of juvenile jurisdiction at eighteen).

14. YOUNG, *supra* note 2, § 1:1.

15. N.C. GEN. STAT. § 7B-1501(7) (2013).

## II. NORTH CAROLINA'S TREATMENT OF SIXTEEN- AND SEVENTEEN-YEAR-OLDS

### A. North Carolina Statutory and Case Law

North Carolina statutory law defines who is considered a “juvenile” in different circumstances. According to North Carolina General Statute Section 7B-101, a juvenile is “a person who has not reached the person’s eighteenth birthday and is not married, emancipated, or a member of the Armed Forces.”<sup>16</sup> However, according to Section 7B-1501, a delinquent juvenile is “any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime.”<sup>17</sup> This second definition meaningfully excludes sixteen- and seventeen-year-olds from the term “delinquent juvenile,” suggesting that they are considered juveniles in North Carolina until they commit a crime, when they are then considered adults for prosecutorial purposes.<sup>18</sup> This discrepancy can create confusion when other statutes, especially criminal statutes, use the word “juvenile,” because if a sixteen-year-old commits a crime, it is unclear whether that person has the statutory rights of a juvenile or of an adult.<sup>19</sup> It also begs the question of what purpose it serves, outside of the criminal context, to label an individual as a juvenile.

In North Carolina, this label serves different and limiting purposes. There are numerous activities that North Carolina *prohibits* individuals ages sixteen and seventeen from doing, as

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16. *Id.* § 7B-101(14).

17. *Id.* § 7B-1501(7).

18. *But see id.* § 14-27.2A(a) (establishing that persons under eighteen years of age cannot be guilty of rape of a child); *id.* § 7B-1501(27) (clarifying that sixteen- and seventeen-year-olds can be considered “delinquent juveniles” for status offenses such as running away from home); *see also id.* § 7B-1706(d) (mandating youth diversion plans and contracts be destroyed when the juvenile reaches the age of eighteen or is no longer under the court’s jurisdiction, despite the fact that individuals aged sixteen to eighteen are already considered adults in terms of criminal prosecution, so it seems their juvenile records should be destroyed at the age of criminal adulthood).

19. For example, *id.* § 7B-2101(a) sets forth certain “juvenile *Miranda* rights,” such as the right to have a parent or guardian present during custodial interrogation. These rights extend to sixteen- and seventeen-year-olds, despite the fact that they are no longer under juvenile jurisdiction. *See, e.g.,* State v. Oglesby, 648 S.E.2d 819, 822 (N.C. 2007). Clearly, the word “juvenile” in North Carolina statutes does not provide the clarity that it should.

juveniles.<sup>20</sup> Sixteen- and seventeen-year-olds cannot claim disability benefits,<sup>21</sup> have full control of their financial assets,<sup>22</sup> or manage a business.<sup>23</sup> They cannot marry without consent,<sup>24</sup> enlist in the military,<sup>25</sup> or get a tattoo.<sup>26</sup> They are barred from purchasing lottery tickets,<sup>27</sup> handguns,<sup>28</sup> tobacco products,<sup>29</sup> alcoholic products,<sup>30</sup> or pornographic materials.<sup>31</sup> Finally, juveniles cannot vote in any state or federal election,<sup>32</sup> and they cannot serve on juries.<sup>33</sup>

There are also actions that North Carolina *allows* individuals between the ages of sixteen and eighteen to do that those under sixteen cannot. They can drop out of school,<sup>34</sup> drive a car,<sup>35</sup> and be prosecuted in adult court if they commit a crime.<sup>36</sup> Although the North Carolina legislature has maintained that those above the age of sixteen are capable of understanding their

20. The list that follows is uniform to all individuals under the age of eighteen in North Carolina, but is not exhaustive.

21. N.C. GEN. STAT. § 108A-113(2).

22. *Id.* § 48A-14 (requiring court approval for certain employment contracts involving minors and requiring at least fifteen percent of the minor's earnings be set aside in a trust or other savings accounts controlled by a court-appointed trustee).

23. *Id.* § 33B-1(8) (deeming individuals under the age of twenty-one "incapacitated" and thus unable to manage property and business affairs effectively).

24. *Id.* § 51-2(a1).

25. 10 U.S.C. § 505 (2012). Although this is a federal statute limiting the age of enlistment to eighteen, it is important when considering the combined rights and duties assigned to individuals in this age group.

26. N.C. GEN. STAT. § 14-400(a) (prohibiting anyone in the state of North Carolina from tattooing an individual under the age of eighteen). While this is a proscription on adult behavior, its purpose is to limit juvenile behavior, namely, getting tattoos. Many of these statutes criminalize adult behavior in order to control juvenile behavior.

27. *Id.* § 18C-131(d).

28. *Id.* § 14-269.7(a) (2013); *see also id.* § 14-315(a) (prohibiting the sale of handguns and other weapons to minors).

29. *Id.* § 14-313(b).

30. *Id.* § 18B-302(b).

31. *Id.* § 14-190.15(a).

32. U.S. CONST. amend. XXVI, § 1; N.C. CONST. art. VI, § 1.

33. N.C. GEN. STAT. § 9-2(b) (preparing a mast jury list from the list of registered voters and persons with driver's license records pursuant to N.C. GEN. STAT. § 20-43.4 (2012) (including only county citizens over eighteen years of age)).

34. *Id.* § 115C-378(a).

35. *Id.* § 20-11(a), (b), (d).

36. *Id.* §§ 7B-1600 to 1604.

crimes, and so should be separate from the juvenile system,<sup>37</sup> it clearly does not consider them capable of much else.

Viewing these two lists in unison raises several concerns. First, adolescents of this targeted age cannot engage in certain productive activities, such as managing business activities or being politically active, but they can drop out of school, drive, and be held criminally responsible in adult court. Research shows this is the time when adolescents are the most likely to offend,<sup>38</sup> and this statutory pattern seems likely to exacerbate that trend.<sup>39</sup> Removing adolescents from the juvenile court's jurisdiction when they are at their most rebellious stage contravenes North Carolina's goals of treatment and rehabilitation for juvenile offenders.<sup>40</sup> If North Carolina is to greatly limit what these individuals can do based on their minority status, it should also be prepared to consider what they may choose to do in light of the same.

Second, comparing the statutes that group all individuals under the age of eighteen together with those that separate sixteen- and seventeen-year-olds presents worrisome contradictions. According to North Carolina statutes, the same sixteen-year-old mind is deemed incompetent to send another individual to jail,<sup>41</sup> but competent enough to resign him or herself

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37. This sentiment traces back to before the creation of the juvenile system, when there were three categories of criminal culpability based on age: children under seven were presumed incapable of criminal intent; children ages seven to fourteen were afforded a rebuttable presumption that they were incapable of criminal intent; and all those above the age of fourteen were treated as adult offenders. *State v. Yeorgan*, 23 S.E. 153, 154 (N.C. 1895). At the time the North Carolina juvenile system was created, other states were similarly reluctant to increase the age of criminal responsibility to eighteen, so setting the age limit at sixteen was common. See Birkhead, *supra* note 1, at 1476, n.145 (explaining the general reluctance to extend juvenile jurisdiction to eighteen-year-olds). Of course, North Carolina is the only state to hold strong to this early Twentieth Century fear of change.

38. See Barry C. Feld, *Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform*, 79 MINN. L. REV. 965, 1010–11 (1995) (identifying mid- to late-adolescence as the peak time of criminality).

39. See THE GOVERNOR'S YOUTH SERV. COMM'N, *supra* note 10, at 3 (stating that individuals aged sixteen to eighteen in North Carolina are more likely to commit crimes due to the "idleness" resulting from statutory law prohibiting them from engaging in certain productive activities).

40. See Feld, *supra* note 38, at 1012 (referring to this as a "punishment gap" because these individuals, as first-time offenders in criminal court, will likely receive lesser punishments during the time they most need to learn).

41. N.C. GEN. STAT. § 9-2(b) (limiting jury service to individuals age eighteen and older).

to the same fate.<sup>42</sup> Individuals in this age group may be subject to a jury of their “peers” in adult court, but these juries do not actually consist of anyone their age. The inconsistency in this reasoning has not gone unnoticed and has been subject to much criticism.<sup>43</sup> As stated by one author, “basic equity is compromised when sixteen- and seventeen-year-olds are considered adults for certain purposes (i.e., committing crimes) but not others (i.e., voting).”<sup>44</sup>

This is certainly not the first time there has been demand for clearer policy reasoning behind laws that set age limits. The national voting age was lowered from twenty-one to eighteen in 1965, and this decision is often attributed to the demand for consistent policies.<sup>45</sup> The fundamental reasoning behind this historic change in law was that if an individual of a certain age is deemed competent for one activity, it naturally follows that the same individual should be competent for another activity of similar nature.<sup>46</sup> The converse of this must also be true; if North Carolina does not consider a sixteen-year-old capable of understanding the consequences of entering into a contract,<sup>47</sup> how can it consider the same individual capable of understanding the consequences of committing a crime such as petty theft? One action is based on an exchange and the other is based on a lack of exchange. Surely, understanding these two activities requires a similar mental capacity, yet North Carolina has deemed sixteen- and seventeen-year-olds responsible for one but not the other.<sup>48</sup> Further, contracts involving minors are voidable by the minor, but

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42. *Id.* § 7B-1501(7).

43. *See, e.g.*, Jonathan Todres, *Maturity*, 48 HOUS. L. REV. 1107, 1138–39 (2012) (“Such a bifurcated approach simultaneously infantilizes children who know better, while harshly punishing other children who might not. It is these types of inconsistencies that come to the forefront when one examines society’s treatment of its children with a view to understanding law’s construction of maturity.”); *see also infra* Section IV.

44. Birkhead, *supra* note 1, at 1483.

45. *See* Eric S. Fish, *The Twenty-Sixth Amendment Enforcement Power*, 121 YALE L. J. 1168, 1170 (2012) (explaining that the voting age was lowered because America could find no reason why individuals should fight and die for their country at the age of eighteen but not be able to vote for their country’s leaders).

46. *Id.*

47. *Creech ex rel. Creech v. Melnik*, 556 S.E.2d 587, 591 (N.C. Ct. App. 2001). North Carolina follows the national trend that individuals are “minors” and thus incapable of forming binding contracts until they are eighteen.

48. The North Carolina Court of Appeals recently explained that “[t]he rationale for allowing minors to avoid contracts is that until they are adults ‘they are not supposed to have the mental capacity to make them.’” *Id.* at 591 (quoting *Nationwide Mut. Ins. Co. v. Chantos*, 238 S.E.2d 597, 605 (N.C. 1977)).

not by the party who is over the age of eighteen when making the contract.<sup>49</sup> So, the other party to the contract can be held liable for breach, but a minor is able to repudiate without consequences. The purpose behind this is “to protect minors from foolishly squandering their wealth through improvident contracts made with crafty adults who would take advantage of them in the marketplace.”<sup>50</sup> This statute effectively eliminates sixteen- and seventeen-year-olds from the “crafty adults” category, acknowledging that they are categorically less blameworthy than adults over the age of eighteen and in need of protection from their own “foolish” decisions. It also limits their civil liability, implying that their money is more deserving of protection than their freedom.

Looking to another statute, if a minor is caught purchasing pornographic material, it is the disseminating adult who will be charged with a misdemeanor.<sup>51</sup> In this context, the word “minor” includes sixteen- and seventeen-year-olds, meaning that adults over the age of eighteen are, again, considered responsible for the actions of individuals aged sixteen and seventeen, who are considered adults in other contexts. The laws discouraging those under the age of eighteen from entering into contracts and viewing pornographic materials are for the protection of minors and recognize that a juvenile is not always responsible for his or her actions. They also implicitly acknowledge that individuals above the age of eighteen should be held to a higher standard than those below it.

While many North Carolina laws treat juveniles as deserving greater protection than adults, there are some that contradict this policy. For example, North Carolina recognizes the “Attractive Nuisance Doctrine,” which stands for the principle that children are not only in need of greater protection, but that their inability to recognize or comprehend certain dangers is so widely acknowledged that adults should be held responsible when they “attract” children to such dangers.<sup>52</sup> Although this doctrine seems consistent with the previously discussed statutes, it typically does

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49. This is known as the “infancy doctrine.” *Id.*

50. 42 AM. JUR. 2d *Infants* § 39 (2014); see also *Melnik*, 556 S.E.2d at 590 (discussing the need for courts to afford minors special protections based on their naiveté and vulnerability).

51. N.C. GEN. STAT. § 14-190.15(a) (2013); *Melnik*, 556 S.E.2d at 590–91.

52. BLACK’S LAW DICTIONARY 155 (10th ed. 2014); see also N.C. GEN. STAT. § 38B-3.

not apply to minors above the age of thirteen.<sup>53</sup> Thus, children above the age of thirteen *are* considered capable of recognizing and comprehending danger. North Carolina is also one of the few states that still recognizes the doctrine of Contributory Negligence, which completely bars plaintiffs from recovery in negligence suits if they are found to have contributed to their own harm. Children may also be found contributorily negligent, and North Carolina has grouped different ages together for purposes of determining liability.<sup>54</sup> Those between the ages of seven and fourteen are presumed incapable of contributory negligence, but this presumption may be overcome.<sup>55</sup> Although held to a slightly different standard than adults, minors aged fourteen to eighteen are presumed to have “sufficient capacity to be sensible of danger and to have power to avoid it.”<sup>56</sup> This reinforces the notion that children above the age of *thirteen* are capable of assessing risk.

These two doctrines, Attractive Nuisance and Contributory Negligence, group fourteen- and fifteen-year-olds in the same category of mental capacity as sixteen- and seventeen-year-olds. They, once again, represent the lack of uniform policy in North Carolina regarding juveniles. Both doctrines stand for the proposition that children even younger than sixteen are legally capable of understanding the consequences of their actions, yet they are under juvenile court jurisdiction and sixteen- and seventeen-year-olds are not. This also directly conflicts with the infancy doctrine, which is meant to protect everyone under the age of eighteen from their own poor decision-making. North Carolina cannot seem to decide at what age individuals no longer deserve a higher level of protection and should be held legally accountable for their actions.

At what age, then, is one actually an adult in the North Carolina legal system? This question has no concrete answer based on North Carolina law. Statutes placing age limits on the word

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53. John Kirby, *Minor's Personal Injury Actions and Settlements in North Carolina*, 34 CAMPBELL L. REV. 293, 303 (2012).

54. *See, e.g., Leonard for Leonard v. Lowe's Home Centers, Inc.*, 506 S.E.2d 291 (N.C. Ct. App. 1998) (acknowledging that contributory negligence may even bar an attractive nuisance claim). Thus, if a thirteen-year-old is considered to have contributed to his or her own harm in any way, that child may not be able to recover damages, even if the adult “attracted” the child to the harm.

55. *Caudle v. Seaboard Air Line R. Co.*, 163 S.E. 122, 124 (N.C.1932).

56. *Welch v. Jenkins*, 155 S.E.2d 763, 767 (N.C. 1967) (quoting *Baker v. Seaboard Airline R.R.*, 64 S.E. 506, 507 (N.C. 1909)).

“adult” range from sixteen to twenty-one,<sup>57</sup> and statutes implying a certain level of adult mental capacity range even further.<sup>58</sup> Individuals aged sixteen to eighteen are given the same reduced trust and rights as minors, while also given the same responsibility for illegal conduct as adults. This inconsistency in North Carolina law presents a lack of well-informed public policy and stance on the age of adulthood,<sup>59</sup> and it should be remedied.

### *B. Diversion Programs in North Carolina*

The Juvenile Justice and Delinquency Prevention Act of 1974 (the “Act”) was passed in response to increasing problems with the American juvenile justice system.<sup>60</sup> It emphasized alternatives to juvenile court in an effort to “divert juveniles from the traditional juvenile justice system and to provide critically needed alternatives to institutionalization.”<sup>61</sup> Research has shown that adolescents in adult court fare much worse than those in

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57. Compare N.C. GEN. STAT. § 7B-1501(7) (2013) (defining “delinquent juvenile” as under sixteen, thereby designating those aged sixteen and over as adults); with *id.* § 108A-101(d) (defining “adult” for “disabled adult” as “18 years of age or over”), and *id.* § 33B-1(1) (defining “adult” as “an individual who is at least 21 years of age”).

58. See, e.g., N.C. GEN. STAT. § 38B-3(2) (2013) (creating an exception to trespasser liability for children); Kirby, *supra* note 53, at 303 (explaining that this exception generally does not extend to those above the age of thirteen).

59. Many attribute this to a lack of state funds. The juvenile justice system is more expensive to maintain than the adult system, and raising the age of juvenile jurisdiction from sixteen to eighteen would cost North Carolina millions of dollars. So, while North Carolina legislators may actually believe in the Juvenile Code’s stated goals, they have determined that economic concerns trump, and remained stagnant because of such. See Birkhead, *supra* note 1, at 1466 (“[L]awmakers have consistently deemed the issue not politically viable, resulting in chronic under-funding from the state.”); Jessica Jones, *NC Closer to Raising the Age at Which Teens Can Be Tried as Adults*, WUNC 91.5 (May 22, 2014, 4:58 PM), <http://wunc.org/post/nc-closer-raising-age-which-teens-can-be-tried-adults> (quoting North Carolina Republican Representative Paul Stam, objecting that raising the age would cost the state “63 million dollars a year”). Others have explained the unwillingness to raise the age to eighteen in terms of deterring gang violence. See Hyun Namkoong, *Historic Raise the Age Legislation Passes the House*, N.C. HEALTH NEWS (May 22, 2014), <http://www.northcarolinahealthnews.org/2014/05/22/historic-raise-the-age-legislation-passes-the-house> (listing some Representatives’ suggestions for remaining tough on gang activity in light of the proposed bill to raise the age).

60. Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat. 1109, 1109–10 (1974) (codified as amended at 42 U.S.C. § 5601 (2002)) (finding that juvenile programs existing at the time were highly inadequate and the increasing number of juvenile offenders and the resulting “threat to the national welfare” required immediate federal action).

61. *Id.* at 1111.

juvenile court,<sup>62</sup> and diversion programs have proven to be even more successful in reducing recidivism rates than the juvenile court system.<sup>63</sup> One such alternative to the juvenile system is Teen Court, a diversion program for first-time juvenile offenders who admit guilt to minor infractions.<sup>64</sup>

While in the minority of states in its limitations on juvenile jurisdiction, North Carolina joined the majority of states in establishing a Teen Court system in 1994.<sup>65</sup> This program is recognized as a tool to aid in the rehabilitation, rather than punishment, of juvenile offenders, and at least fifty-three counties in North Carolina now have some form of Teen Court program.<sup>66</sup> However, because North Carolina limits its juvenile jurisdiction to those under the age of sixteen, first-time sixteen- or seventeen-year-old offenders do not have the Teen Court option.<sup>67</sup> Additionally, individuals who commit minor infractions when they are fifteen will often remain in the Teen Court program and complete their sentence while they are sixteen.<sup>68</sup> This creates a wide and arbitrary dividing line between committing a first offense at the age of fifteen and committing one at the age of sixteen. The

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62. See Birkhead, *supra* note 1, at 1459–61 (explaining that juveniles in adult institutions are more likely to be sexually and physically assaulted, to commit suicide, and to recidivate); see also Lisa S. Beresford, Comment, *Is Lowering the Age at Which Juveniles Can Be Transferred to Adult Criminal Court the Answer to Juvenile Crime? A State-by-State Assessment*, 37 SAN DIEGO L. REV. 783, 822 (2000) (“The benefits of juvenile facilities, no matter how small, outweigh the violence and destruction that occur in adult prisons.”).

63. See S’Lee A. Hinshaw II, *Juvenile Diversion: An Alternative to Juvenile Court*, 1993 J. DISP. RESOL. 305, 312–13 (discussing studies that show diversion programs are reducing the number of repeat juvenile offenders). Thus, the research has created a sort of hierarchy of effectiveness for deterring juvenile delinquency, with diversion programs being the best option and adult court being the worst.

64. N.C. GEN. STAT. § 7B-1706(c) (2013).

65. See Julieta Kendall, *Can It Please the Court? An Analysis of the Teen Court System as an Alternative to the Traditional Juvenile Justice System*, 24 J. JUV. L. 154, 157 (2003) (“Today, there are almost 900 teen courts operating in at least forty-six states.”).

66. Angela Hight, *Teen Courts Help NC Youths*, CIVITAS INST. (October 3, 2013, 10:10 AM), <http://www.nccivitas.org/2013/teen-courts-help-nc-youths>.

67. *But see What Is Teen Court?*, CAP. AREA TEEN CT., <http://www.capitalareateencourt.org> (last visited Feb. 16, 2015) (extending Teen Court jurisdiction in Wake County to “youthful offenders, between the ages of nine and seventeen”). There are even discrepancies within North Carolina regarding how juveniles are treated; in Forsyth County, sixteen-year-olds are barred from Teen Court, while in Wake County, they are not.

68. See JEFFREY A. BUTTS, ET AL., URB. INST. JUST. POL’Y CENTER, *THE IMPACT OF TEEN COURT ON YOUNG OFFENDERS I*, 6 (2002), available at <http://www.urban.org/UploadedPDF/410457.pdf> (describing the lengthy process of teen court).

difference between diversion from formal procedures—resulting in no criminal record and meant to reduce recidivism—and being forced into adult court—resulting in a criminal record, lost school time, and possibly being sentenced to adult prison—could depend entirely on what day of the week the misdemeanor was committed.

On the one hand, the existence of Teen Court and other diversion programs<sup>69</sup> sends the message that North Carolina is dedicated to the juvenile justice system's principles of rehabilitation and treatment. By establishing programs meant to literally "divert" juveniles from the court system, North Carolina implicitly supports one of the Act's conclusions: that it is beneficial to route juveniles away from formal procedures in order to better serve their needs as impressionable and vulnerable individuals.<sup>70</sup> On the other hand, the fact that individuals aged sixteen and seventeen, while still considered juveniles in certain contexts, are routed directly to the adult system sends quite the opposite message. North Carolina seems to consider these individuals not only deserving of less protection, but also deserving of punishment rather than rehabilitation and treatment.

Some scholars find the Teen Court system to be harsher on juveniles because its "constructive sentences" can be more burdensome than those imposed by juvenile courts for the same infraction.<sup>71</sup> Teen Court sentences can include five to twenty hours of community service, educational classes, letters of apology, essays on a topic of the jury's choice, and other rehabilitative measures.<sup>72</sup> Because Teen Court is reserved for first-time offenders, sentences imposed on a juvenile by his or her peers, aimed at educating and connecting him or her to the community, fulfill the legislative goals of the juvenile system.<sup>73</sup> If a juvenile commits a minor infraction for the first time at the age of sixteen

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69. See, e.g., N.C. GEN. STAT. § 7B-1501(25), (28), (29) (defining three diversion programs in North Carolina: teen court, the wilderness program, and youth development centers).

70. See Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat. 1109, 1111 (1974).

71. See Kendall, *supra* note 65, at 163 (describing the great variation in Teen Court sentences and explaining that it can be considered too harsh or too lenient, depending on what sentence the "jury" imposes).

72. See, e.g., *What Is Teen Court?*, *supra* note 67.

73. See Kendall, *supra* note 65, at 159-60 (explaining the positive results of one of the only Teen Court studies, suggesting that Teen Court lowers recidivism rates by using methods that teenagers are more likely to respond to).

and is sent directly to the adult system, he or she will likely receive a trivial punishment, but will also have a criminal record and will be forced to miss valuable school time. Additionally, the social stigma that is associated with adult court and the resulting emotional toll on the young adults are arguably worse punishments than community service or writing an essay. Rather than educating these juveniles on the consequences of their actions and implementing constructive sentences, the current system of sending sixteen- and seventeen-year-olds to adult court labels them as criminals and sends them back into a community they often feel disconnected from and rejected by.<sup>74</sup>

North Carolina seems to recognize that juveniles are different from adults and need time to learn and develop values, but the age of adult criminal jurisdiction limits this period of growth and development in an arbitrary fashion. According to this state's legislature, individuals aged six to sixteen are legally incapacitated, vulnerable, and better served by rehabilitation than by formal justice procedures. Individuals aged sixteen to eighteen are also legally incapacitated and denied many rights reserved for "adults" for their own protection, yet they are inexplicably considered less deserving of the juvenile system's rehabilitative goals.

### III. NATIONAL TREATMENT OF SIXTEEN- AND SEVENTEEN-YEAR-OLDS

Throughout the country, individuals under the age of eighteen are also barred from partaking in similar activities to those in North Carolina.<sup>75</sup> One reason behind this is their "lack of maturity" and their "underdeveloped sense of responsibility" which often result in "impetuous and ill-considered actions and

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74. See Hinshaw, *supra* note 63, at 311 ("The labeling theory states that as society labels a person a 'deviant,' that person begins to act as a 'deviant' should act. Therefore, to avoid the effect of labeling, juveniles with the potential of being processed in juvenile court could be diverted to other less harmful agencies.").

75. See *Stanford v. Kentucky*, 492 U.S. 361, 394-95 (1989) (Brennan, J., dissenting) (discussing the abundance of state laws treating minors differently than adults because "juveniles as a class have not the level of maturation and responsibility that we presume in adults and consider desirable for full participation in the rights and duties of modern life"); see also *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (acknowledging that nearly every state prohibits juveniles under the age of eighteen from voting, serving on juries, or marrying without parental consent).

decisions.”<sup>76</sup> This is why statutes imposing age limitations on such important decisions as getting married, entering into contracts, and getting permanent tattoos are generally accepted as protecting the youth from themselves.<sup>77</sup>

The inherent unique qualities of juveniles, including their susceptibility to peer pressure and reckless behavior, are now well recognized.<sup>78</sup> Statutes limiting jury participation and voting rights to adults are meant to protect the rest of the population from juveniles’ reckless and wanton nature.<sup>79</sup> There are many strong public policy concerns behind statutes imposing age limits on certain “adult” activities, and these limitations are certainly not unique to North Carolina.<sup>80</sup> It is this same reasoning that also precludes individuals under the age of eighteen from being tried as adults in other states.<sup>81</sup> As stated by the Supreme Court, “[t]he reasons why juveniles are not trusted with the privileges and responsibilities of an adult also explain why their irresponsible conduct is not as morally reprehensible as that of an adult.”<sup>82</sup>

The string of Supreme Court decisions over the past fifty years has shown a movement towards providing greater protection for minors, as well as clarification of their rights.<sup>83</sup> This trend

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76. *Roper*, 543 U.S. at 569 (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)).

77. See Beresford, *supra* note 62, at 822 (“The rationalization behind these limitations is that minors do not have the maturity, independence of thought, self-control, and ethical sensibilities to make such decisions.”).

78. *Roper*, 543 U.S. at 553.

79. See Fish, *supra* note 45, at 1185–86 (attributing the reduction in the voting age partially to the recognition that eighteen-year-olds were more educated and politically aware than they used to be, so they could be trusted with such important political decisions).

80. See *infra* Section III.

81. See *Roper*, 543 U.S. at 569 (stating that “juvenile offenders cannot with reliability be classified among the worst offenders” because of the general differences between adults and juveniles); see also HERBERT H. LOU, JUVENILE COURTS IN THE UNITED STATES 50 (1927) (“[T]he eighteenth birthday, adopted by most states and recommended by the Committee on Juvenile-Court Standards, seems to be a more logical dividing line than any other age between adulthood and the preparatory period which precedes it, according to physical growth, changes in personality, and the unfolding of reason.”).

82. *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988).

83. See, e.g., *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011) (holding that a child’s age is a factor to be considered in the *Miranda* custody analysis); *Graham v. Florida*, 560 U.S. 48 (2010) (holding that non-homicidal individuals under the age of eighteen cannot be subject to a sentence of life without parole); *Roper*, 543 U.S. at 551 (holding that juveniles under age eighteen cannot be sentenced to capital punishment); *Kent v. United States*, 383 U.S. 541, 553 (1966) (extending “basic requirements of due process and fairness” to juvenile proceedings).

began with the 1966 landmark case of *Kent v. United States*, in which the Court opined that, “the child receives the worst of both worlds: [] he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.”<sup>84</sup> Over the next ten years, the Supreme Court granted numerous additional constitutional rights to juveniles, observing that “a teenager, too young to exercise or even comprehend his rights, becomes an ‘easy victim of the law.’”<sup>85</sup>

In 2005, the Supreme Court revisited this trend in *Roper v. Simmons*.<sup>86</sup> According to the Court, society views juveniles—those under the age of eighteen—as “categorically less culpable than the average criminal.”<sup>87</sup> North Carolina law is somewhat consistent with the Court’s statement that “[a]ge 15 is a tender and difficult age for . . . any race. [A fifteen-year-old] cannot be judged by the more exacting standards of maturity.”<sup>88</sup> However, the Court has also recognized that “[e]ven the normal 16-year-old customarily lacks the maturity of an adult.”<sup>89</sup> The Supreme Court has established a clear stance on who should be considered juveniles and how they should be treated by the law.

Although not all statutory law has conformed with this policy, most states have at least raised the age of juvenile jurisdiction to eighteen,<sup>90</sup> and are thus more consistent on the responsibilities and expectations of adolescents. Some states even provided further protections for juveniles before the corresponding Supreme Court decisions mandated such protections. For example, some states considered age in the

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84. *Kent*, 383 U.S. at 556. This case was the first to address the limited due process rights afforded to juveniles and find that juveniles are entitled to further constitutional protection.

85. Brief for J.D.B. at 8 as Amici Curiae Supporting Petitioner, *In re J.D.B.*, 686 S.E.2d 135 (N.C. 2009) (No. 09-11121) (quoting *Haley v. Ohio*, 332 U.S. 596, 599 (1948)).

86. *Roper*, 543 U.S. at 551.

87. *Id.* at 567.

88. *Haley v. Ohio*, 332 U.S. at 599.

89. *Eddings v. Oklahoma*, 455 U.S. 104, 116 (1982).

90. See Teigen, *supra* note 13 (giving an overview of state juvenile age limits as of 2014, including the fact that forty-one states set the age of criminal adulthood at eighteen); see also *Raise the Age*, JUV. JUST. INITIATIVE, <http://jjustice.org/juvenile-justice-issues/raise-the-age> (last visited May 5, 2015). The Illinois legislature is the most recent to conform its age of adulthood with the Supreme Court, clarifying that juveniles under the age of eighteen are deserving of greater protection and are better served by rehabilitation and treatment. *Id.*

*Miranda* analysis prior to *J.D.B. v. North Carolina*<sup>91</sup> and some abolished the death sentence for juveniles before *Roper v. Simmons*.<sup>92</sup> Such states' legislatures have agreed with the Supreme Court that individuals under the age of eighteen are inherently different than adults and deserve greater protection.<sup>93</sup> North Carolina was, unsurprisingly, not one of those states. North Carolina juvenile law is not only internally inconsistent, but it is also inconsistent with national juvenile policies.

#### IV. BILLS PROPOSED TO THE NORTH CAROLINA LEGISLATURE

The inconsistent treatment of adolescents in North Carolina has been an ongoing political struggle. Bills to raise the age of criminal prosecution to eighteen have been before the North Carolina legislature numerous times and have continuously been defeated.<sup>94</sup> Yet another form of the "Raise the Age" bill is before the legislature and proposes to include sixteen- and seventeen-year-olds who commit misdemeanors in the juvenile system.<sup>95</sup> Although this bill passed its second reading in front of the House of Representatives with a sixty-one to thirty-seven vote,<sup>96</sup> it still must pass a third reading by the House, be approved by the Senate after several readings, be returned to the House for approval if the Senate amends it, and, finally, be ratified by the governor before it becomes law.<sup>97</sup> Critics doubt this will happen, based in part on the near century of this proposal's rejection. In fact, the original 1919 legislation for a North Carolina juvenile court system proposed jurisdiction over children aged eighteen

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91. See Nicole J. Ettlinger, Note, *You Have the Right to Remain Thirteen: Considering Age in Juvenile Interrogations in J.D.B. v. North Carolina*, 60 BUFF. L. REV. 559, 588–92 (2012).

92. *Roper*, 543 U.S. 551, 564 (2005) (explaining that eighteen states expressly prohibit the execution of juveniles, in addition to the twelve states that reject the death penalty altogether).

93. See Ettlinger, *supra* note 91, at 560.

94. See Birkhead, *supra* note 1, at 1448–49 (discussing the numerous unsuccessful attempts over the past century to raise the age of juvenile jurisdiction in North Carolina).

95. H.R. 725, 2013 Gen. Assemb., Reg. Sess. (N.C. 2013).

96. *House Bill 725 Information/History*, N.C. GEN. ASSEMBLY, <http://www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2013&BillID=h725> (last visited Feb. 26, 2015).

97. *How a Law Is Made*, N.C. GEN. ASSEMBLY, <http://www.ncleg.net/ncgainfo/bill-law/bill-law.html> (last visited Feb. 26, 2015).

and younger.<sup>98</sup> This proposal was clearly rejected and likely will be again.

A similar bill has also been proposed in New York, the only other state to limit juvenile jurisdiction to sixteen.<sup>99</sup> However, this bill has fewer skeptics than North Carolina's, as New York has already begun expanding its juvenile jurisdiction<sup>100</sup> and North Carolina has made no such progress. New York's bill is closer to becoming law than North Carolina's, as it has already passed the House of Representatives and is now a Senate Bill, and its passing would make North Carolina the only remaining state to automatically prosecute sixteen- and seventeen-year-olds in adult court.<sup>101</sup>

Additionally, a bill in opposition to the "Raise the Age" bill is also before the North Carolina legislature, and it proposes to relinquish juvenile court judges' discretion in whether to prosecute fifteen-year-olds in the adult or juvenile system.<sup>102</sup> This means that prosecutors would have full discretion over how to try fifteen-year-olds, further reducing juvenile jurisdiction and, essentially, proposing to do the opposite of the "Raise the Age" bill. This bill passed the House of Representatives with a ninety-two to twenty-six vote,<sup>103</sup> which shows greater support than the opposing bill. Additionally, as recent as 1994, the minimum age of transfer to adult court for felony offenses was lowered from fourteen to thirteen.<sup>104</sup> The historical trend in North Carolina is

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98. Birkhead, *supra* note 1, at 1475–76.

99. S. 1409, 236th Leg. Sess. (N.Y. 2013).

100. *See, e.g.*, N.Y. Family Court Act § 712(a) (McKinney 2010) (raising the age of a "person in need of supervision" from sixteen to eighteen in 2002). The decision to raise the age in this statute was partially based on "a recognition that teens under the age of 18 years need supervision, guidance and support to grow and mature into responsible adults." Act of Oct. 29, 2001, Ch. 383, 2001 Sess. Law News of N.Y. 5828; *see also* Birkhead, *supra* note 1, at 1445–46 (explaining the multiple ways New York has lessened the impact of adult prosecution on juvenile offenders, including deferred judgment, "reverse waiver," and "blended sentencing").

101. *See* David Klepper, *NY Considers Treating Charged 16, 17-Year-Olds as Juveniles*, ABC NEWS (Mar. 3, 2015, 6:32 PM), <http://abcnews.go.com/US/wireStory/ny-considers-treating-charged-16-17-year-olds-29367985>.

102. H.B. 217, 2013 Gen. Assemb., Reg. Sess. (N.C. 2013).

103. *House Bill 217*, N.C. GEN. ASSEMBLY, <http://www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2013&BillID=HB217&submitButton=Go> (last visited Mar. 7, 2015).

104. N.C. GEN. STAT. § 7A-608 (2013). *See* Birkhead, *supra* note 1, at 1452–53.

not promising for proponents of raising the age of juvenile jurisdiction.

## V. CONCLUSION

State legislatures are tasked with creating laws that will define the state's position on certain issues, one of which is how to treat juveniles within its jurisdiction. North Carolina's legislature, however, has seemed to overlook this important issue, simply assigning age limits upon certain rights without following a consistent line of reasoning. One of North Carolina's stated goals for its juvenile justice system is to "provide uniform procedures,"<sup>105</sup> yet its procedures are anything but uniform.

If laws regarding citizenry were as ill-defined as those regarding adulthood, they would certainly be revisited by the legislature. If an individual was considered a citizen in certain situations but not in others, it would be nearly impossible for that individual to know what was expected of him or her and for that individual to receive consistent treatment by the state. Similarly, blurring the lines between juveniles and adults makes it difficult for adolescents to receive consistent treatment and know their rights. The North Carolina legislature has deemed fit to severely restrict the rights of individuals aged sixteen to eighteen while still holding them to the higher "adult" standard of criminal responsibility. Such individuals are adults in certain contexts while juveniles in others. Given the extreme legal implication of the word "adult," it should be more precisely defined.

North Carolina should revisit its laws setting age restrictions to create some type of consistency. Either this state believes sixteen- and seventeen-year-olds are juveniles and should be treated differently than adults, or it considers them adults with coextensive rights of adults. Of course, this does not have to be an all-or-nothing decision; North Carolina's legislature could create an area of law reserved for "young adults" aged sixteen to eighteen if it considers them different from both juveniles under sixteen and adults over eighteen.<sup>106</sup> However, the current lack of

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105. N.C. GEN. STAT. § 7B-1500.

106. Some states have done just this. For example, Minnesota's 1994 Juvenile Crime Act created an intermediate category of serious offenders called "Extended Jurisdiction Juveniles." This statute recognizes that, while older juveniles are still better served by rehabilitative rather than punitive efforts, they are also capable of major crimes and, if

uniformity does nothing more than present a lack of informed public policy and cause confusion about what rights individuals under the age of eighteen have. The country, as a whole, has slowly been recognizing the inconsistency in juvenile law and working to reform it,<sup>107</sup> and North Carolina should follow suit. The words “juvenile” and “adult” need to carry greater meaning, if they are to have any at all.

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rehabilitative efforts fail, they should face the consequences of their actions. *See* Feld, *supra* note 38, at 967.

107. *See supra* notes 75 and 91.