

# RAISE THE AGE

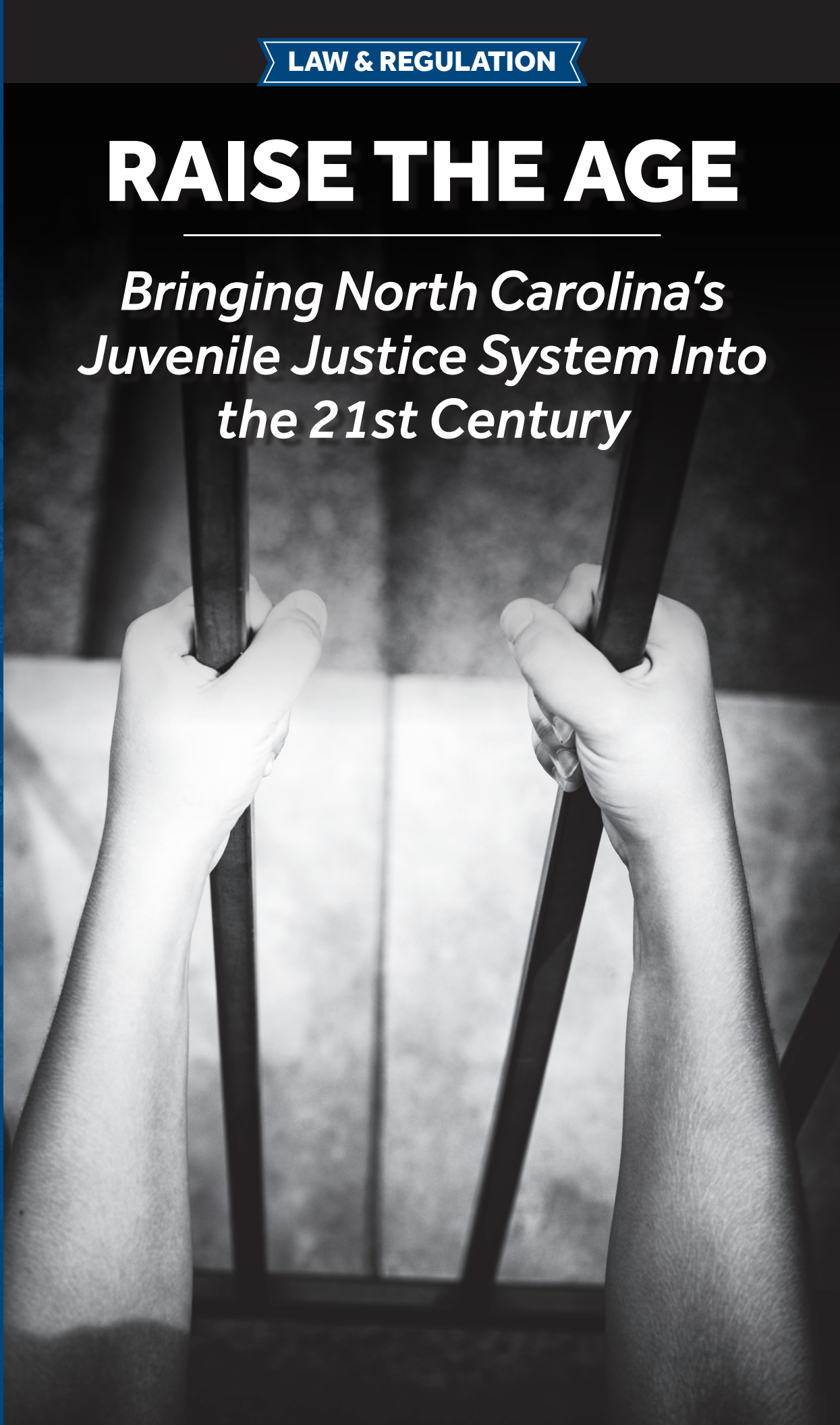
*Bringing North Carolina's  
Juvenile Justice System Into  
the 21st Century*

SPOTLIGHT

#491

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## ABOUT THE AUTHOR



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# RAISE THE AGE

## Bringing North Carolina's Juvenile Justice System Into the 21st Century

In 44 states and the District of Columbia, the age at which young offenders age out of the juvenile justice system is now 18. In five states, it is 17. That leaves North Carolina as the only state that still treats all 16- and 17-year-olds as adults for criminal justice purposes.

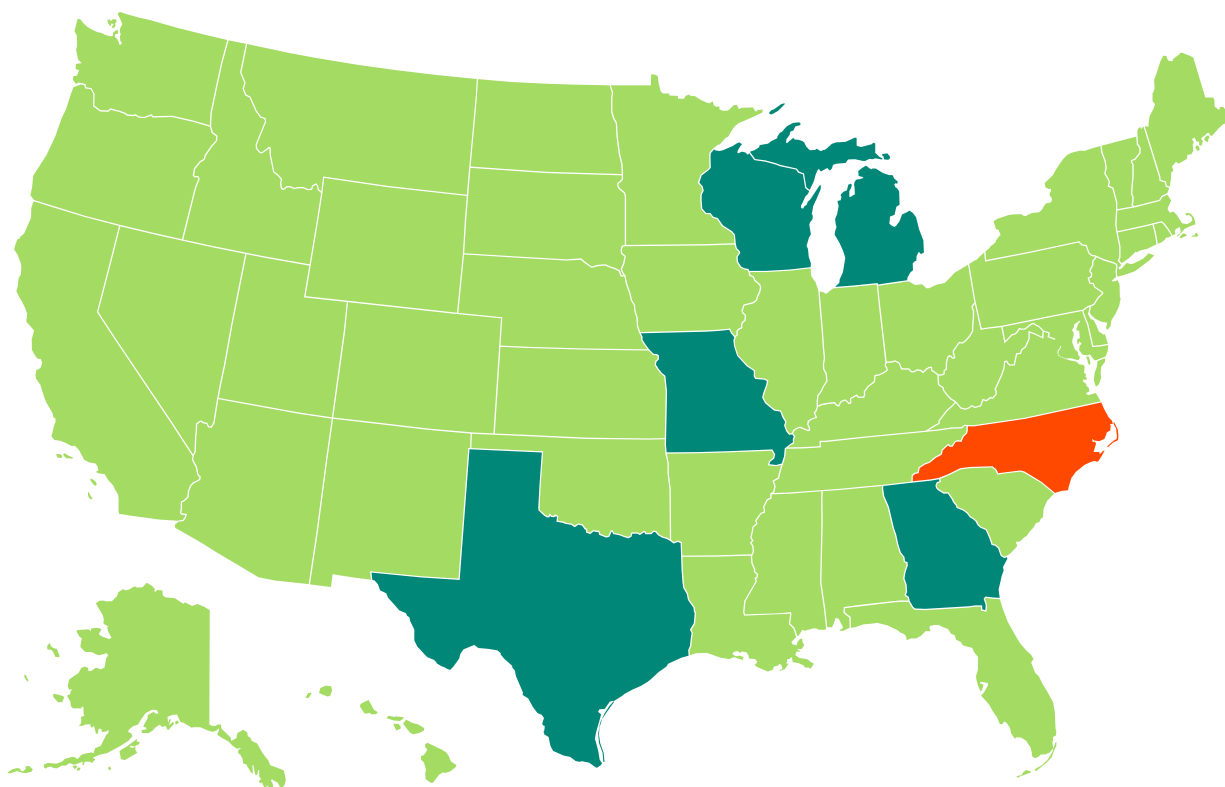
Recent developments suggest that the North Carolina General Assembly may soon pass legislation that would raise the age of juvenile jurisdiction and bring our criminal justice system into line with the rest of the country. By getting the details of this legislation right, the General Assembly can maximize the many benefits to North Carolina of this sensible, long overdue reform.

In March, the North Carolina Commission on the Administration of Law and Justice (NCCALJ) published a detailed, well-researched, and well-reasoned report in

which it recommended raising the age of juvenile jurisdiction to include 16- and 17-year-olds except for those accused of what are commonly referred to as the “violent” felonies — offenses like murder and rape that are assigned to classes A-E under the Structured Sentencing Act.<sup>1</sup> The report went on to identify the many ways in which raising the age would benefit, not only the young offenders themselves, but all the people of North Carolina.

The North Carolina General Assembly quickly responded with several raise-the-age bills. In the House, Reps. Chuck McGrady, David Lewis, Duane Hall, and Susan Martin filed House Bill 280,<sup>2</sup> the “Juvenile Justice Reinvestment Act,” which implements the Commission’s recommendation in full, including the exception for A-E felonies. In the Senate, Sen. Tamara Barringer filed Senate Bill 564,<sup>3</sup> a parallel bill with the same name and the same

**Figure 1. Age of Juvenile Court Jurisdiction by State**



Source: National Conference of State Legislatures

Upper Age: 17 Upper Age: 16 Upper Age: 15



# ***Raising the age of juvenile jurisdiction is the right thing to do, and raising the age to include all 16- and 17-year-olds except for those accused of A-E felonies is the right way to do it.***

provisions, and Sens. Shirley Randleman, Danny Earl Britt, and Warren Daniel filed Senate Bill 549,<sup>4</sup> the “Juvenile Reinvestment Act,” which would raise the age for 16- and 17-year-olds charged with misdemeanors only. In a further indication of strong, bipartisan support, the N.C. Senate announced a budget proposal that includes money to pay for expanding the juvenile justice system to accommodate an influx of 16- and 17-year-old offenders.

These are welcome developments. It is gratifying to see so much support for raising the age, and it is encouraging to see so much agreement about the details of how best to do it. All the proponents of raising the age appear to agree that the age of juvenile jurisdiction should be raised for misdemeanors, and they also appear to agree that it should not be raised for A-E felonies. The only issue to be resolved is whether to raise it for 16- and 17-year-olds accused of what are commonly referred to as the “nonviolent” felonies — offences like larceny and possession of controlled substances that the Structured Sentencing Act relegates to classes F-I.

How the General Assembly resolves this issue will determine the extent to which North Carolina maximizes the benefits of raising the age. While raising it only for misdemeanors would be a good start, raising it for all offenses except for A-E felonies would be significantly better. Continued adult jurisdiction for 16- and 17-year-olds who are accused of F-I felonies would substantially reduce the benefits identified by the NCCALJ, while doing little to enhance the levels of retribution and incapacitation. Moving them to juvenile jurisdiction, on the other hand, would achieve comparable levels of punishment while yielding substantial additional benefits.

## **The NCCALJ recommendation**

The North Carolina Commission on the Administration of Law and Justice was convened by Chief Justice

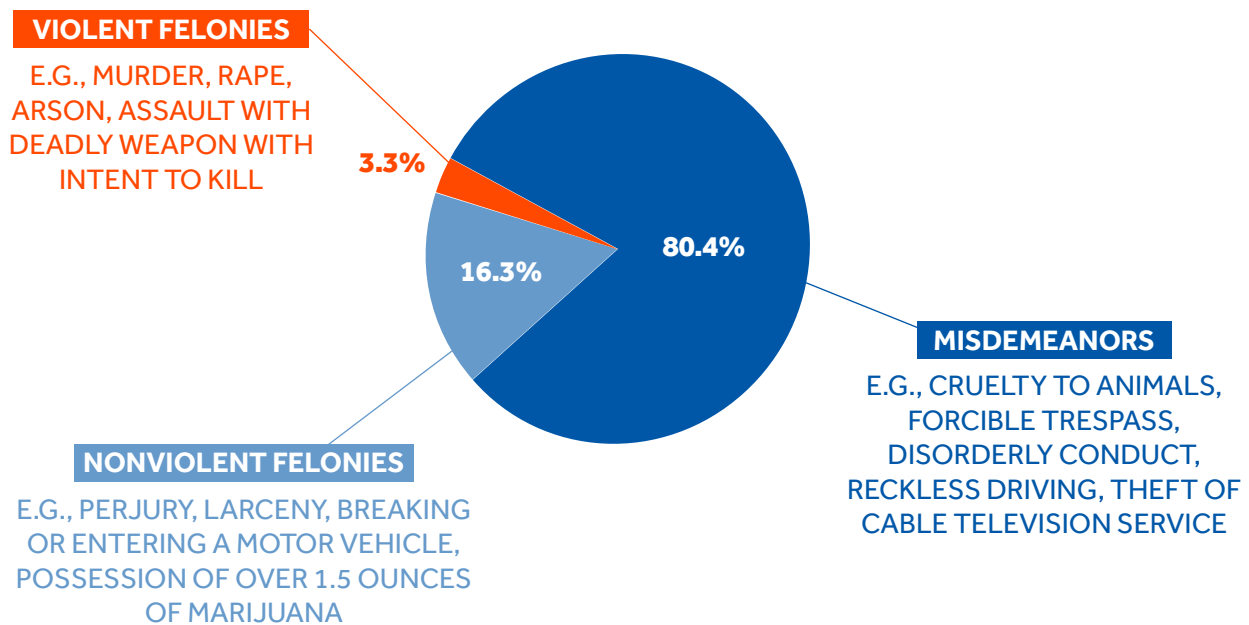
Mark Martin in 2015 as “an independent, multidisciplinary study group created to undertake a comprehensive evaluation of the judicial system and make recommendations.”<sup>5</sup> Among the working groups formed to carry out the NCCALJ’s mission was the Criminal Investigation and Adjudication Committee. In 2016 it announced that:

*After careful review and with historic support of all stakeholders, the Committee recommends that North Carolina raise the age of juvenile court jurisdiction to include youthful offenders aged 16 and 17 for all crimes except Class A through E felonies.<sup>6</sup>*

The committee’s recommendation originally appeared in an interim report called “Juvenile Reinvestment.”<sup>7</sup> It has since been endorsed by the NCCALJ as a whole and published as an appendix to its *Final Report*.<sup>8</sup> At a recent press conference, Chief Justice Martin stated that raising the age of juvenile jurisdiction is his highest legislative priority.<sup>9</sup>

Drawing on research by the John Locke Foundation<sup>10</sup> and many others, the NCCALJ report presents a large body of findings in support of raising the age. It finds, for example, that minors in adult correctional institutions suffer excessively high rates of physical and sexual assault,<sup>11</sup> and that they have inadequate access to educational and other age-specific programming.<sup>12</sup> It also finds that they are burdened with criminal records that put them at a disadvantage compared to similar young offenders in other states and make it difficult for them to become law-abiding, productive citizens.<sup>13</sup> The report finds that, compared to adult jurisdiction, “Rehabilitation of juveniles is more effectively obtained in juvenile justice systems and juvenile facilities, as measured by recidivism rates.”<sup>14</sup> The last of these findings is particularly important. As the report explains, by making it possible to rehabilitate many more juvenile offenders, raising the age will lower the rate of

**Figure 2. Convictions by Offense Type and Class (Age 16-17)**



**Note:** Felonies classified A-E are considered violent felonies. Felonies classified F-I are considered nonviolent felonies.

**Source:** NC Sentencing and Policy Advisory Commission

crime and the cost of law enforcement, and improve the economic and social well-being of all North Carolinians.<sup>15</sup>

Given the strength of these findings, one might have expected the report to recommend raising the age for *all* 16- and 17-year-olds. Instead, however, it makes an exception for 16- and 17-year-olds accused of A-E felonies, who, it suggests, should be automatically transferred to adult jurisdiction and tried and punished as adults.

Upon reflection, this is not surprising. The compassionate treatment and the successful rehabilitation of juvenile offenders are important policy goals, and achieving them will help us achieve many other important policy goals, including reducing the rate of crime. Nevertheless, when it comes to the age of juvenile jurisdiction, there are other factors that must also be taken into consideration. The public resents and fears criminals—even young ones—and with good reason. The criminal justice system must respond to this legitimate resentment and fear by ensuring that juvenile offenders who commit serious crimes are appropriately punished, i.e., that they are punished in ways that promote justice by exacting an appropriate level of retribution, and that promote public safety by imposing an appropriate period of incapacitation.

Assigning dangerous young offenders to adult jurisdiction is assumed to be an effective way of accomplishing these goals. That is why the existing law pertaining to juveniles provides for the automatic transfer to adult jurisdiction of juveniles 13 years of age or older who are accused of Class A felonies, and why it also provides a procedure whereby a court may order the transfer to adult jurisdiction of juveniles 13 years of age or older who are accused of lower-level felonies if it determines that it is necessary or prudent.<sup>16</sup>

Most members of the NCCALJ's Criminal Investigation and Adjudication Committee thought simply extending those existing provisions to 16- and 17-year-olds would be sufficient to satisfy the public's demand for adequate retribution and incapacitation. However, the district attorneys disagreed. At their insistence, the Committee agreed to recommend automatic transfer, not just for Class A felonies, but for B-E felonies as well.<sup>17</sup>

### **The distinction between A-E and F-I felonies**

The NCCALJ's decision to use the distinction between A-E felonies and F-I felonies to determine eligibility for

# **Rehabilitation of juveniles is more effectively obtained in juvenile justice systems and juvenile facilities, as measured by recidivism rates.**

juvenile jurisdiction was not arbitrary. The Felony Classification table used by the North Carolina Court System lists 526 felonies in 9 classes.<sup>18</sup> Classes A-E are commonly referred to as the “violent felonies.” They include crimes like murder, rape, and assault with intent to kill. Classes F-I are commonly referred to as the “nonviolent felonies.” They include crimes like larceny, breaking or entering a motor vehicle, and possession of more than 1.5 ounces of marijuana. (See Figure 2.)

The conventional practice of referring to classes A-E as “violent” and classes F-I as “nonviolent” is not completely accurate. The list of A-E felonies includes many nonviolent crimes, including many white-collar crimes like embezzlement and many drug-related offenses like trafficking in opium or heroin. Similarly, some F-I felonies are violent; domestic abuse, for example, is a Class F felony. Nevertheless, the conventional terminology captures a basic truth about the structure of the table: All the most violent crimes and all the most serious property and drug crimes are listed in classes A-E, while lower-level crimes are relegated to classes F-I.

As recommended in the NCCALJ report, House Bill 280 and Senate Bill 564 use the well-established distinction between A-E felonies and F-I felonies to determine

which 16- and 17-year-olds will be treated as adults and which will not. In contrast, Senate Bill 549 uses the distinction between felonies and misdemeanors. Both approaches make a certain amount of sense. Felonies are more serious than misdemeanors, and A-E felonies are more serious than F-I felonies. In deciding where to draw the line, however, the relative seriousness of various crimes is not the only factor that the General Assembly must consider; it must consider costs and benefits as well.

## **Continuing to treat 16- and 17-year-olds who commit F-I felonies as adults would substantially reduce the benefits of Raising the Age**

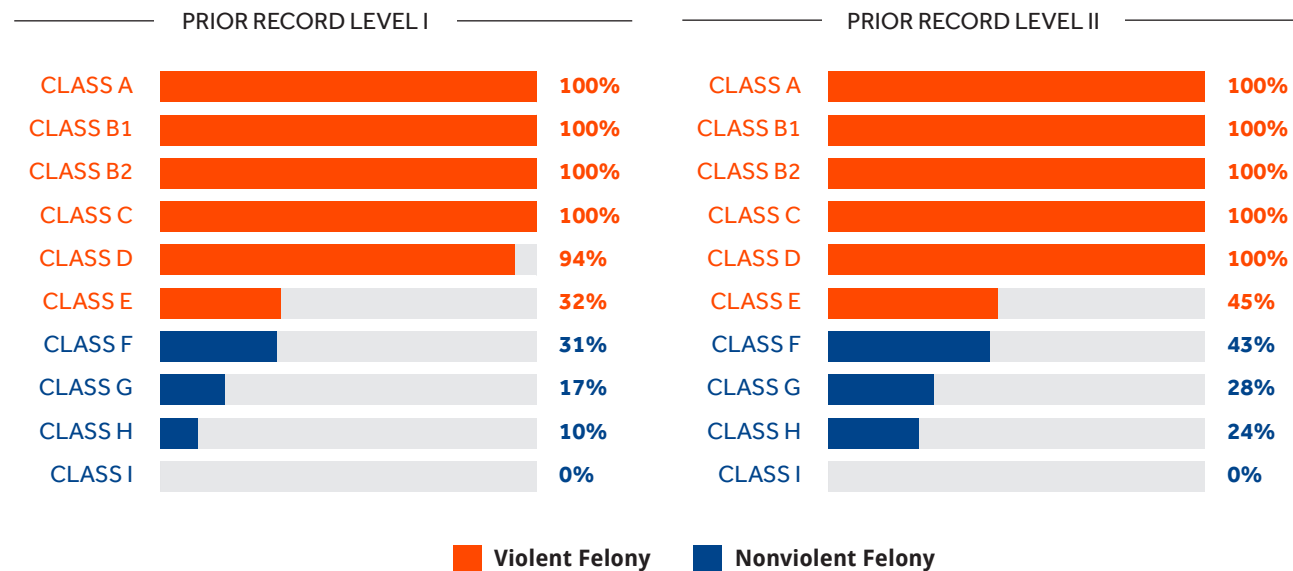
The NCCALJ report cites a 2011 cost-benefit study commissioned by the Governor’s Crime Commission.<sup>19</sup> The study compared the costs of raising the age in the form of expanded systems for youth detention, supervision, and other programs, with the benefits in the form of lower crime rates, lower law enforcement costs, and higher lifetime earnings by rehabilitated young offenders. It found a net economic benefit to North Carolina of \$52.3 million per year. Significantly, the study assumed that the age of juvenile jurisdiction would be raised for all crimes except A-E felonies. If an exception is made for F-I felonies as well, the net benefit will be reduced. Given that convictions for F-I felonies make up over 16 percent of all convictions for 16- and 17-year-olds,<sup>20</sup> (See Figure 2.) it seems reasonable to assume that continued adult jurisdiction for F-I felonies would decrease the yearly economic benefit of raising the age by at least 16 percent, which would amount to more than \$8 million per year.

To that considerable sum should be added hard-to-quantify benefits not included in the study, like lower rates of physical and sexual abuse for young offenders, and greater peace of mind for all North Carolinians due to lower crime rates.<sup>21</sup> The question the General Assembly must ask itself is whether continued adult jurisdiction for 16- and 17-year-olds accused of F-I felonies is justified given that it would mean the loss of all these benefits.

## **Continuing to treat 16- and 17-year-olds accused of F-I felonies as adults would do little to ensure adequate levels of retribution and incapacitation**

As noted above, ensuring adequate retribution and incapacitation for juvenile offenders who commit serious crimes are legitimate policy goals. Those who favor continued adult jurisdiction for 16- and 17-year-olds accused of F-I felonies presumably believe it will achieve these

**Figure 3. Percentage of N.C. Convictions Resulting in a Prison Sentence**



**Note:** Prior Record Level I: No more than one previous misdemeanor. Prior Record Level II: No more than two low-level felonies or five misdemeanors. See N.C. Gen. Stat. § 15A-1340.14.

**Source:** North Carolina Sentencing and Policy Advisory Commission

goals by ensuring that young offenders who commit such crimes are sentenced to long periods of imprisonment. In fact, however, very few of those who are convicted of F-I felonies as adults are imprisoned at all, and those who are imprisoned typically serve very short terms.

Figures 3 & 4 are based on sentencing data compiled by the North Carolina Sentencing and Policy Advisory Commission for the fiscal year that ended in 2015.<sup>22</sup> The data presented are for felons with prior record levels of 1 or 2—i.e., for those who had clean, or almost clean, records at the time of the offense in question.<sup>23</sup> This is relevant to this discussion because 98 percent of 16- and 17-year-olds charged with felonies have prior record levels of 1 or 2.<sup>24</sup>

Figure 3 shows the percentage of adults in each felony class who were sentenced to “active punishment,” i.e., to incarceration in the state prison system.<sup>25</sup> Overall, only 14 percent of the adults at prior record levels 1 or 2 who were convicted of F-I felonies were sentenced to active punishment, and *not a single one was sent to prison for a Class I felony*.

Figure 4 shows minimum and maximum active sentences for adults in felony classes B-I who *were* sent to prison.<sup>26</sup> Class A is omitted because the mandatory sentence for Class A felonies is death or life without parole. As noted above, no one convicted of a Class I felony was

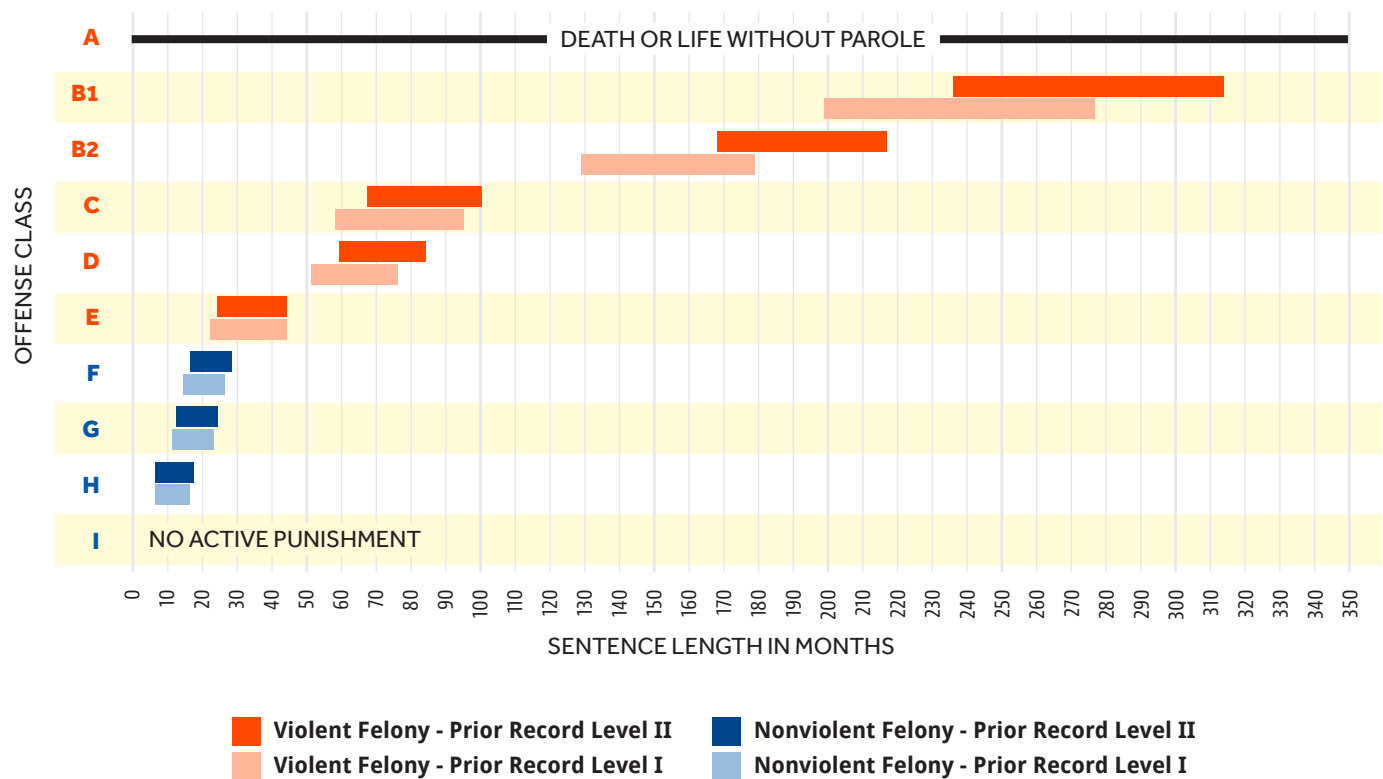
sentenced to active punishment. For those who were convicted of Class F-I felonies, the active punishment sentences varied from a minimum of six months for Class H to a maximum of 28 months for Class F.

The implication of all this for the question at hand is clear. Continuing to treat 16- and 17-year-olds who are accused of F-I felonies as adults will do little to satisfy the public’s demand for adequate retribution and incapacitation. For the few who are sent to prison, the sentences will be short, and the majority will not be sent to prison at all; instead they will be sentenced to some sort of intermediate punishment, like supervised drug treatment or house arrest, or to some form of community punishment, like community service or probation.

### **Moving 16- and 17-year-olds who commit F-I felonies to juvenile jurisdiction would achieve comparable levels of retribution and incapacitation while yielding substantial additional benefits**

Most of the time, when a young offender has been found delinquent in the juvenile system, the judge enters

**Figure 4. Minimum and Maximum Active Punishment by Offense Class**



**Note:** Prior Record Level I: No more than one previous misdemeanor. Prior Record Level II: No more than two low-level felonies or five misdemeanors. See N.C. Gen. Stat. § 15A-1340.14.

**Source:** North Carolina Sentencing and Policy Advisory Commission

a disposition that includes nonresidential consequences like restitution, community service, and supervised day programs. In some cases, however, house arrest may be ordered, or the offender may be placed in a residential treatment facility. And, when a judge determines it is necessary or appropriate, the offender can be committed to state custody in a youth development center.<sup>27</sup>

In terms of retribution and incapacitation, these consequences are not so very different from what happens to offenders who are found guilty of an F-I felony in the adult system as described above. But in terms of rehabilitation, the consequences are very different indeed. In the juvenile system, the judge will also order mental health and substance abuse treatment, remedial education activity, family counseling, community service, and other interventions that have been proven to assist with rehabilitation. As the NCCALJ report emphasizes, the evidence clearly shows that, compared to what happens in adult jurisdiction, this approach is much more effective at rehabilitating

juvenile offenders and helping them become productive citizens, which is why raising the age to include 16- and 17-year-olds will lower the rate of crime and the cost of law enforcement, and improve the economic and social well-being of all North Carolinians.

## Conclusion

Raising the age of juvenile jurisdiction is the right thing to do, and raising the age to include all 16- and 17-year-olds except for those accused of A-E felonies is the right way to do it. The NCCALJ has performed a valuable public service by producing a detailed and well-supported plan for doing exactly that, and the sponsors of House Bill 280 and Senate Bill 564 have performed an equally valuable public service by proposing legislation implementing that plan. Let us hope that legislation is approved by both chambers of the General Assembly and signed into law by the governor.



## ENDNOTES

1. For somewhat technical reasons, the Report also recommends making an exception for traffic offenses, but that's not relevant to the present discussion. See, "Juvenile Reinvestment" (NCCALJ Committee on Criminal Investigation and Adjudication: Raleigh, Nov. 2016) F.N. 3; <https://nccalj.org/wp-content/uploads/2016/10/Juvenile-Reinvestment-FINAL-11.30.2016.pdf>.
2. H. 280, 2017 Gen. Assem. (N.C. 2017); <http://www.ncleg.net/Sessions/2017/Bills/House/PDF/H280v1.pdf>.
3. S. 564, 2017 Gen. Assem. (N.C. 2017); <http://www.ncleg.net/Sessions/2017/Bills/Senate/PDF/S564v1.pdf>.
4. S. 549, 2017 Gen. Assem. (N.C. 2017); <http://www.ncleg.net/Sessions/2017/Bills/Senate/PDF/S549v1.pdf>.
5. <https://nccalj.org/>.
6. "Juvenile Reinvestment" (NCCALJ Committee on Criminal Investigation and Adjudication: Raleigh, Nov. 2016); <https://nccalj.org/wp-content/uploads/2016/10/Juvenile-Reinvestment-FINAL-11.30.2016.pdf>, 3.
7. *Ibid.*
8. Criminal Investigation & Adjudication Committee Report [Appendix A: "Juvenile Reinvestment"] (North Carolina Commission on the Administration of Law and Justice: Raleigh, Nov. 2016); [https://nccalj.org/wp-content/uploads/2017/pdf/nccalj\\_criminal\\_investigation\\_and\\_adjudication\\_committee\\_report\\_juvenile\\_reinvestment.pdf](https://nccalj.org/wp-content/uploads/2017/pdf/nccalj_criminal_investigation_and_adjudication_committee_report_juvenile_reinvestment.pdf).
9. The Chief Justice has made this statement several times, including at a press conference that took place at the N.C. Legislative Building on May 1, 2017.
10. Marc Levin and Jeanette Moll, "Improving Juvenile Justice" (John Locke Foundation: Raleigh, 2012); <https://www.johnlocke.org/research/improving-juvenile-justice-finding-more-effective-options-for-north-carolinas-young-offenders/>.
11. Criminal Investigation & Adjudication Committee Report [Appendix A: Juvenile Reinvestment] (North Carolina Commission on the Administration of Law and Justice: Raleigh, Nov. 2016), 4.
12. *Ibid.*, 4-5.
13. *Ibid.*, 17.
14. *Ibid.*, 8.
15. *Ibid.*, 11-12.
16. N.C. Gen. Stat. § 7B-2200.
17. Criminal Investigation & Adjudication Committee Report [Appendix A: Juvenile Reinvestment] (North Carolina Commission on the Administration of Law and Justice: Raleigh, Nov. 2016), See footnote 5 in the report.
18. Felony Classification under the Structured Sentencing Act (NC Court System: Raleigh, 2016); <http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/Felony-list-2016.pdf>.
19. Youth Accountability Planning Task Force, Final Report to the General Assembly of North Carolina (Jan., 2011). (For the details of the analysis see: Christian Henrichson and Valerie Levshin, "Cost-Benefit Analysis of Raising the Age of Juvenile Jurisdiction in North Carolina" (VERA Institute: New York, 2011); <http://archive.vera.org/files/cost-benefit-analysis-of-raising-the-age-of-juvenile-jurisdiction-in-north-carolina.pdf>).
20. Comparative Statistical Profile of Young Offenders in North Carolina (North Carolina Sentencing and Policy Advisory Commission: Raleigh, Dec. 2015); <https://nccalj.org/wp-content/uploads/2015/12/Comparative-Statistical-Profile-of-Young-Offenders-in-North-Carolina.pdf>.
21. It should be noted that the misdemeanors only approach would mean continued adult jurisdiction for *every* 16- and 17-year-old who is accused of an F-I felony, not just those who are convicted. In typical year, approximately 4,000 16- and 17-year-olds are charged with F-I felonies, but fewer than 1,000 are convicted. In most cases—more than 3 out of 4—the accused juvenile either pleads to a misdemeanor or the charges are dismissed. (*Ibid.*, 4.) Nevertheless, despite the fact that they have not been convicted of a felony—despite the fact that, in many cases, they have not been convicted of *any* crime—all of these 16- and 17-year-olds will be harmed as a result of being subjected to adult jurisdiction. Those who spend time in jail will be exposed to a heightened risk of sexual and physical abuse, and they will also be exposed to the corrupting influence of adult criminals, including gang members. And all of them, even those who do not spend time in jail, will be burdened with a criminal record that will make it harder for them to function as honest, productive citizens in the years to come. Those who favor adult jurisdiction for 16- and 17-year-olds charged with F-I felonies must take the effect on those who are not convicted into consideration before deciding that the benefits justify the costs.
22. 2014 is most recent year for which all the relevant data is available.
23. N.C. Gen. Stat. § 15A-1340.14.
24. Comparative Statistical Profile of Young Offenders in North Carolina, 7.
25. Structured Sentencing Statistical Report for Felonies and Misdemeanors (North Carolina Sentencing and Policy Advisory Commission: Raleigh, Dec. 2015), 12; [http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/statisticalrpt\\_fy13-14.pdf](http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/statisticalrpt_fy13-14.pdf).
26. *Ibid.*, 7.
27. NCCALJ Criminal Investigation & Adjudication Committee Report, 5-6.



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