

## Minutes

December 11, 2015 Committee Meeting

Present: Adams, Byrd, Coleman, Davis, Holcombe, Huffman, Jordan, Kemp, McLaurin, Murray, Seigle, Smith (Reporter), Wagoner

Absent: Buck, Webb

After a welcome from Judge Wagoner, serving as acting chair in Judge Webb's absence, the Committee approved the minutes from its last meeting. It then moved to the primary agenda item: Juvenile age.

Charles E. Brown, Chief District Court Judge, 19C, offered remarks.

Judge Brown described the issue of raising the juvenile age as one of "import and urgency."

His background includes presiding in district court for 17 years. He was a prosecutor before coming to the bench, handling juvenile and criminal cases.

Brown recounted that during the week that Reporter Smith called him about speaking at the meeting, he presided over 5 cases involving 16 and 17-year-olds. He described cases to give the Committee a clear picture of the type of cases that are at issue.

Case 1 involved 17-year-old Jacob. His case was before Brown to comply with the terms of mediation. Jacob was living in a group home. After a 19-year-old staff member filed a private warrant alleging that Jacob threatened her, Jacob was charged with communicating threats.

Cases 2 & 3 involved Jamesha, 16, and Aubrey, 17, both high school students charged by a School Resource Officer (SRO) with affray. Although the offense occurred in May, the matter had not been resolved when the case came to him—after 5 courts dates—in December. Brown suggested that the long delay in the response to misconduct by youthful offenders should lead us to question the effectiveness of the system. Brown noted that even if these 2 cases ultimately are resolved by diversion programs, the students' arrest records will remain, impacting their ability to secure employment.

Case 4 involved Lauren, a 16-year-old high school student charged with assault on a child under 12. Lauren, who turned 16 one month before the incident, was playing volleyball, with the larger, 12-year-old victim. After the victim cursed at Lauren and pulled her hair, Lauren hit her in the face. Lauren was charged in criminal court and her case resulted in an acquittal. However, her name appeared in the local police blotter, and everyone, including her teacher, knew that she had been charged with this crime.

Case 5 involved a girl, charged with larceny, and represented by a court-appointed lawyer.

Brown noted that although his district has a deferred prosecution program, the DAs office has full discretion whether to use diversion; Brown has no authority to refer a case to that program.

Brown emphasized that these are the typical cases implicated by the juvenile age issue. He stated: they are not "super predators" or thuggish, gang involved teens.

Brown noted that NC was not in a distinct minority when it originally set the age of juvenile jurisdiction, but we it is now. Because Brown finds New York's law to be distinguishable (it includes a liberal and aggressive reverse transfer process), he described NC as the only state in the nation that effectively treats all 16 and 17-year-olds as adults. Brown asserted that there were serious implications and consequences of this policy decision. While the juvenile justice system works on a rehabilitative model, the criminal justice system focuses on punishment.

Long-term consequences for juveniles with criminal records include: difficulties accessing a college education; difficulties accessing college financial aid; eligibility problems for military service; and barriers to employment.

Even if a youthful offender is acquitted, there are legal fees associated with expunction.

Short-term consequences include anxiety, sleepless nights, stigma, and shame, as well as missing school and ineligibility to participate in extracurricular sports.

Brown noted that existing pilot projects in NC, designed to keep juveniles out of the criminal justice system, implicitly acknowledge that our laws are not in keeping with what we know about juvenile offenders.

He asserted that NC is putting its youth at a disadvantage compared to youth from other states, whose juvenile adjudications remain confidential.

Brown noted that the issue has been studied by numerous entities and that all of the study committees have concluded that NC should raise the juvenile age.

With respect to the concern about violent juveniles, Brown noted that NC has a strong existing framework for transferring violent juveniles to the criminal system so that public safety can be protected. This procedure is already being used for 13, 14, and 15-year-olds.

Brown concluded by urging the Committee to recommend raising the juvenile age. He suggested that doing so is simply an extension of our successful Justice Reinvestment program. Justice Reinvestment brings new emphasis on models to curb recidivism and address mass incarceration; while we may not be engaged in mass incarceration of our youth, Brown asserted that we are not reinvesting in our youth. Raising the age would be do that. He concluded: "It's time to raise the age."

Commissioner Kemp asked Brown how often he sees expunctions for misdemeanor convictions.

Brown responded that he sees them about every other week for 16 and 17-year-olds, but it's a tiny fraction of the overall number of convicted youthful offenders.

Commissioner Bryd asked: If we make this change, do we have to strengthen the juvenile system?

Brown said yes.

Bryd asked Brown to assess the biggest weakness in the juvenile system that would have to be addressed.

Brown responded that the issue was volume: we would need more juvenile court sessions and more juvenile court counselors.

Professor LaToya Powell, UNC School of Government, provided a historical perspective on juvenile justice in NC.

Because the substance of Powell's is captured in her PowerPoint slides, posted on the Commission's website, it is not detailed here.

Dr. Cindy Cottle, Ph.D, clinical and forensic psychologist, spoke on the topic of adolescent brain development.

Cottle's PowerPoint presentation, which includes much of the content of her talk, is posted on the Commission's website.

Cottle explained that while we used to think that the first three years of human life are the most crucial time for brain development, we now know that adolescence is an equally important time.

Cottle stated that the science regarding adolescent brain development is well established.

Adolescence is a critical time because of the structural and chemical changes that occur in the adolescent brain. Because of these changes we now know:

- Adolescence extends to young adulthood.
- Adolescents do not process information as efficiently as adults
- Older adolescents may be as capable as adults of making decisions, in some contexts.
- Adolescents are more sensitive to emotion and social evaluation.
- Adolescents' capabilities to weigh risks and long-term consequences are relatively impaired.

Cottle explained that adolescents have unique needs as compared to children and adults. Specifically, they require more sleep and physical activity; they require or benefit from a range of activities, including risk-taking activities in healthy contexts, and they benefit from active teaching. Additionally, adolescents are particularly susceptible to the environment and environmental stressors, such as alcohol.

While being vulnerable, adolescents also are at the time of opportunity, as their brains are ready and primed for learning. She noted that adolescents learn from immediate feedback and that positive feedback can be more effective for learning.

Describing the physical changes in the adolescent brain, Cottle noted that during this period, there is an increase in the myelin sheath, which allows for speeded transmission within the brain.

There is also an increase in white and gray matter. Gray matter increases and then decreases through a “pruning” process, which is where learning occurs. During this time there is a fine tuning of connections within the brain; Cottle described it as a “use it or lose it” time.

In adolescence changes occur throughout the brain but generally progress from back to front. The functions at the front of the brain, such as the frontal lobe, are very important to reasoning.

This process of brain development lasts longer than was originally thought.

Additionally, neuroscience shows the amygdala is still developing in adolescence. Adolescents rely more on the amygdala for decision-making than the frontal lobe.

Science teaches us that adolescents require more excitement and stimulation to give them pleasure than adults do. This is one reason they get involved in risk-taking and thrill-seeking activities. Notably, this happens at a time when the frontal lobe isn’t mature enough to stop them.

Science tells us that effective adolescent interventions include:

- increasing family, social, and community support
- adolescents learn better when responding to rewards rather than through punishment
- adolescents benefit from treatment and skills development.

Commissioner Jordan asked whether there is any difference in brain development between the sexes.

Cottle responded yes but that with respect to gender differences, social pressures play a much greater factor than brain development.

Commissioner Seigle asked when full capacity for abstract thinking occurs.

Cottle responded that the mid-20s seems to be when that occurs.

Commissioner Seigle asked how this information relates to juveniles with mental health issues.

Cottle indicated that when mental health issues are involved, the situation gets complex. Approximately 70% of adolescents in the juvenile justice system have mental illness. The effect of mental illness on brain vulnerabilities is significant. We see the same thing with the depression.

Commissioner Seigle asked whether we should be thinking about sex offenders differently.

Cottle said that population presents a lot of issues, including: were they themselves victims of abuse.

She noted that we are not very good at predicting recidivism in sex offenders or identifying them.

Emily Portner, Commission Research Assistant, asked: if we don’t see full mental capacity until the early 20s, is there a marked difference between 16 and 17-year-olds and other youthful offenders?

Cottle responded that 19 years of age probably represents a marker or breakpoint; she noted that most 16 year olds simply cannot control impulses.

Chief Palombo asked why 16 and 17-year-olds don’t rely more on the frontal lobe.

Cottle explained that the connections to and from and within the frontal lobe have not yet been developed at that age.

Michelle Hall, Senior Research and Policy Associate, NC Sentencing and Policy Advisory Commission, presented a comparative statistical profile of young offenders in North Carolina.

Her handout, which contains most of the substantive content of her presentation, is posted on the Commission website.

Hall noted that the Sentencing Commission has been working on juvenile issues since the 1990s, and has developed expertise in the area. The Sentencing Commission produces a number of regular reports, including a report every 2 years on juvenile recidivism. Most recently the Commission produced a report on effectiveness of interventions.

With respect to table 1 in the handout, state population by age group, Hall noted one fact not reflected in the table: youth as a percentage of population will grow at a declining rate.

Hall noted that with respect to table 3, convictions by offense type, class, and age at offense, the numbers presented have remained stable over time.

With respect to table 5, convictions by criminal history and age at offense, Hall indicated that the take away point is that a very small percentage of youthful offenders fall in the violent crime category. Also noteworthy is that the numbers are very small overall. Hall noted that it is not surprising that 16 and 17-year-olds present without an extensive history, because of the “reset” that occurs at 16.

With respect to table 6, adjudications by delinquency history and age at offense, Hall noted that most juveniles do not have a significant delinquency history.

Hall noted that with respect to table 7, convictions by disposition type and age at offense, the biggest take away is that the majority of youthful offenders are not receiving active sentences.

With respect to table 8, adjudications by disposition type and age at offense, she noted that the very small number of commitments shown for 15-year-olds and juveniles overall reflects a policy decision by the Division. She also noted that these numbers have decreased significantly over time.

Summarizing, Hall suggested that the majority of youthful offenders have misdemeanor and low-level felony convictions, have a low criminal history, and are receiving non-active sentences.

Table 9 presents recidivism rates. Hall noted that research suggests and the data confirms that you see worse outcomes for prison releases because those individuals have a deeper involvement with the system. She also noted however that recidivism rates were high for probationers as well.

Table 10 shows recidivism rates for juveniles. She noted that recidivism is highest when the juvenile’s involvement with system is greatest. She indicated that juveniles recidivate at a lower rate than 16 and 17-year-olds and that research suggests that 16 and 17-year-olds who are treated in a more rehabilitative environment may have better outcomes.

Table 12 shows recidivism rates for 2 cohorts: 15-year-old juveniles and youthful offenders. Hall suggested that the difference in recidivism rates for juveniles and youthful offenders treated in the adult system may suggest that something positive is happening in the juvenile system to reduce recidivism.

Will Robinson, Commission Executive Dir., asked whether the Commission requires additional data.

Hall responded that NC does not have a statewide jail confinement data and this lack of information limits the Commission’s examination of recidivism.

Judge Marcia Morey, Chief District Court Judge in Durham presented on that county’s misdemeanor diversion program.

After raise the age legislation was tabled, Moray decided to put together a program to help avoid arrest records for youthful offenders. She noted that an arrest record is “indelible.” Even if charges are dismissed, the arrest remains on the individual’s record, and employers can find it.

Morey noted that one reason the criminal justice system is failing is that the majority of charges against 16 and 17-year-olds are being dismissed. This teaches them a negative lesson: there are no consequences for your actions.

Her group created a misdemeanor diversion program for first-time offenders age 16 and 17 (youthful offenders with firearms charges, sex offenses, and traffic matters are not eligible for the program). They have had 100+ youthful offenders referred over a 12 month period.

Program partners include: courts, law enforcement, schools, community partners and affected youth and their families.

Officers have total discretion as to who gets referred; the judge has none. She noted that discretion is a huge issue with disproportionate minority contact.

Moray detailed the referral process by law enforcement and intake screening.

She then outlined the consequences of adult charges, including direct consequences like jail, probation and fines, as well as indirect and collateral consequences, such as denial of employment, public benefits, loss of housing, etc.

Moray discussed what happens in misdemeanor diversion court and showed a short video of proceedings.

Services provided include substance abuse and mental health services and tutoring and mentoring.

Moray provided data on program intakes, by race and ethnicity, which are reflected in her PowerPoint slides. Another PowerPoint slide catalogs referral offenses, and shows the most common referral is for misdemeanor larceny, followed by misdemeanor possession of marijuana. Another slide shows the number of intakes by referral source, indicating that the majority of referrals come from SROs.

Moray concluded that the program has a huge impact for NC's kids. She noted that if they lived in any neighboring state, they wouldn't have this issue. She argued that the way we treat our 16 and 17-year-olds is damaging the future opportunity for our youth. She ended by offering an example of a recent motion for appropriate relief filed 24 years after an individual was convicted for misdemeanor shoplifting as a juvenile and now finds himself unable to get a job.

Moray noted that so far 135 kids have gone through the program and to date there has been no recidivism.

Judge J.H. Corpening, Chief District Court Judge in Wilmington, spoke about his pilot project to reduce referrals from the schools to the juvenile and criminal courts.

Corpening got the idea for the program from Judge Teske of Georgia, who started one in Atlanta.

The basic notion is to deal with misconduct when and where it happens instead of scheduling a court date 6 months later and pretending that there is a connection. Corpening asserted: When we put off discipline, we are ignoring the behavior.

His workgroup included the sheriff, chief of police, DA, chief court counselor, chief public defender, superintendent of schools, chairman of the board of education, and community members. They spent 2 years developing the project, finally agreeing to approach school offenses and discipline on a consistent and positive basis. They agreed that minor school offenses wouldn't be charged the 1<sup>st</sup> time, or the 2<sup>nd</sup> time if the subsequent occurrence occurred in the same year. Minor offenses do not have to be charged the 3<sup>rd</sup> time, but can be. They adopted a graduated discipline model, including suggestions that mesh with the positive behavioral model. The agreement was signed on November 2 of this year, and the county provided money for prevention work.

He noted that both the Chief Justice and the AOC director are supportive of the program, and that other jurisdictions are working on similar programs.

Corpening noted that Judge Teske has argued that these types of programs should be required by law.

He further noted that in Connecticut, every school with a SRO must have a plan to address behavior intentionally, and to reduce disproportionate minority contact.

Results from Teske's program show that charges are down 83% and graduation rates are up 24%. Corpening asserted that because so many referrals come from the schools, programs like this can help reduce the costs of raise the age legislation.

Commissioner Adams asked Corpening about buy-in from law enforcement. Corpening responded that law enforcement are the biggest fans of the project. Adams stated that he knew a man who was 1<sup>st</sup> arrested at age 9 and then went on to murder 4 people. Adams suggested that this project is right on target with what is needed and that we need buy-in from every government agency.

Commissioner Davis asked to see the CT statute mentioned by Corpening.

Commissioner Seigle asked Corpening about the impact of raising the age on juvenile caseloads. Corpening responded that intake would double. He added however that they have a huge diversion program and that juvenile probation is very effective.

Commissioner Andrew Murray, DA and President of the NC Conference of DAs, provided the DA's perspective on the issue. He noted that it is inaccurate to say that the DAs oppose raise the age legislation. Murray said the DAs are not opposed; they simply want to make sure that any change is properly funded, including funding for DAs offices. He noted that juvenile cases take longer to process than adult cases. The average district court misdemeanor case takes 3 minutes of DA time whereas the average juvenile case takes 59 minutes. He rejected prior proposals that have called for staggered implementation, asserting that if adopted, it should be done at once. Murray stated that while many jurisdictions have diversions in place, they don't exist everywhere because of lack of funding. Murray asserted that violent criminals need to be diverted to criminal court, and DAs can make that choice. He further asserted that the juvenile code needs to be updated.

Commissioner Kemp asked: Assuming funding is provided, do the DAs have any philosophical issues with raising the age with respect to misdemeanor and low-level felonies committed by 16 and 17-year-olds? Murray responded that they do not. He stressed that the issue was funding. He noted that in his office, staff handling juvenile matters are "maxed out", and the court is "maxed out" as well.

Robinson asked how we could learn about all of the misdemeanor diversion programs statewide. Murray said that every district does some sort of diversion or teen court program. He stated: "we are not there to put records on juveniles. It can be a life sentence."

Eddie Caldwell, Executive Vice President and General Counsel of the NC Sheriffs Association provided a law enforcement perspective. Caldwell stated that within the Association some sheriffs are adamantly opposed to raise the age and some are not. The Association has opposed the legislation that has been put forward to date, but has done so because of deficiencies it. He asserted that prior bills had no plan for implementation and provided no funding. He also asserted that we need to improve the current juvenile justice system before we add 16 and 17-year-olds to it. He stated that the needs of 16 and 17-year-olds are different from other juveniles. He further asserted that one problem with prior efforts was that they didn't

include input from the law enforcement community; court system employees provided input but they are not the people who deal with juveniles on the front line.

With respect to the 2013 legislation, Caldwell stated that we should not fool ourselves; although that legislation dealt with misdemeanors, the end goal is to move all 16 and 17-year-olds into the juvenile system.

He noted that prior Commissioners have said that the Department of Juvenile Justice is underfunded and that law enforcement has opposed prior legislation because they believe the system is overburdened. He stated that too many juveniles are being diverted from the juvenile system and that law enforcement has difficulty getting kids into the system. SROs say that when they can't fix problems in the school, they need to get the kids out of the schools.

Caldwell rejected the notion that all juvenile records should be sealed, suggesting that is appropriate only when the person is not a repeat offender.

He asserted that the Chiefs of Police agree with his articulated positions.

Reporter Smith asked whether Caldwell found any deficiencies in the implementation plan included in the Governor's Crime Commission's 2009 Juvenile Age Study.

Caldwell responded that he wasn't familiar with that plan and that it was not included with the last legislation.

Kemp asked whether Caldwell had spoken with other law enforcement associations in US states that already have raised the age. He asked: what is it that you know that no one else knows?

Caldwell stated that he has not done that. He stated that he was not saying that we shouldn't raise the age, just that we shouldn't do it without a plan and without money.

Chief Reporter Jon Williams noted that an earlier courts commission, the Bell Commission, adopted massive changes without a plan.

Police Chief Palombo (retired, New Bern) provided another law enforcement perspective.

He stated that over 2 million NC kids have acquired arrest records but would have been juveniles in 48 other states. This has the result of penalizing our children twice. 1<sup>st</sup>, we arrest them. Then, we give them a lifelong record that can kill their futures.

Palombo asserted that we cannot continue to burden our youth, justifying our decision on the fact that there is no money. He emphasized that other states, who are no better off economically than we are, have made this change. He asserted: "we are never going to have enough money. Let's get over that excuse and get it done."

Commissioner Coleman suggested that anything we look at is going to involve cost. He suggested that our role is to figure out what is best; if we say we are not going to do anything until a funding stream is available, we will end up doing nothing.

Murray noted that he's frightened by the notion of unfunded mandates. If we simply raise the age without funding, DAs are left having to decide how to "dilute justice." Murray believes that any recommendation to raise the age must be contingent on funding.

Coleman responded that he did not disagree. He emphasized that if you refuse to look at the issue until you have a guaranteed funding source, that will guarantee that you do nothing.

Moray noted that in Durham, the juvenile crime rate has dropped. Overall, juvenile dockets are down and we're closing adult prisons. She suggested that the resources are there.

Palombo suggested that this isn't simply a matter of raising the juvenile age. We should look at the juvenile process and determine whether there is a way to make improvements, for example, reducing the total amount of time an ADA has to spend on a juvenile case.

W. David Guice., Commissioner, Division of Adult Correction & Juvenile Justice spoke next. He noted the caseloads in the juvenile justice system are at their lowest in 15 years. He also noted that NC passed the Justice Reinvestment Act without having a plan in place; nonetheless it was fully implemented and millions of dollars have been saved. With respect to the juvenile age, Guice stated: "if we do the right thing, we're going to save some money." He added that we have learned that if we keep doing things the same way we'll get the same result. We need to have bold thinking.

William Lassiter, Deputy Commissioner, Juvenile Justice spoke about system trends. His PowerPoint presentation is posted on the Commission website. Lassiter indicated that the Department has let data guide decision making. As a result, the delinquency rate has been reduced, mainly because juveniles are being diverted before they get to juvenile court. Through training SROs and police officers, 50% of kids never have a complaint filed. He noted that almost 40% of complaints come from the schools. We need to do more work in that regard, but Judge Corpening's project is a huge step forward. Lassiter noted that 16 and 17-year-olds can be charged with "status offenses", such as being a runaway, even though these "offenses" do not constitute crimes for adults. Overall detentions in youth development centers have reduced dramatically, from 1400 kids in 1999 to 202 currently. Lassiter commented: "when people say the juvenile justice system is not working, I don't understand that. The data tells us the exact opposite." He noted that sometimes people say it's not working because they can't put a kid in detention. But, he added, we know that putting a kid in detention isn't always the best thing. We are making evidenced-based decisions, relying, in part, on what we know about adolescent brain development. With respect to the suggestion that the juvenile justice system cannot handle 16 and 17-year-olds, Lassiter asserted that the average kid in youth development centers is 16 ½ years old. This fact defeats the argument that we can't handle 16 and 17-year-olds. Lassiter continued, discussing basic facts about adolescent brain development (see PowerPoint slides accompanying his presentation). Lassiter noted that future orientation increases with age. He mentioned that juvenile court is good at putting a sanction in place right away, so that the kid experiences it immediately. Lassiter further noted that it is important for parents to be involved with youthful offenders. When 16 and 17-year-olds are treated in the adult system, the parent doesn't have to be called. Finally, he noted that there is more accountability in the juvenile justice system, often because the family is involved. He also noted that the juvenile justice system offers the advantage of greater flexibility.

Guice expressed concern about co-mingling 16 and 17-year-olds with 40 and 50-year-old offenders in the adult system. He further noted that the adult system is not equipped to provide what youthful

offenders need to be successful. Thus, revocation rates are much higher for youthful offenders in the criminal justice system than in the juvenile system.

He added that the Department is “very supportive” of addressing this issue and that he doesn’t approach it lightly.

Speaking of Justice Reinvestment, Guice stated that we experienced success in the adult world when we brought stakeholders together and made decisions based on data.

Regarding the juvenile age, we have data and we had studies. Additionally other states have already led the way on this issue. Their programs have been data driven, and based on their experience “there is no reason why we can’t address this in NC.”

Guice suggested that because of savings that have been achieved in both the adult and juvenile systems, funds are available to implement this change

He added that we “cannot and should not ignore what the data is telling us.”

We have seen results, such as the Durham diversion program discussed earlier.

Guice said that he is supportive of raising the juvenile age and that there is national support on the issue as well. He urged, “let’s not back away from doing what is right.”

He further noted that he wasn’t fully supportive of the last bill because it didn’t go far enough. Guice stated that we need a comprehensive bill and if the Committee wants an implementation plan, “we’re available to do it.”

Robinson asked about the main problems associated with the current juvenile age.

Lassiter suggested that the most important issue is treatment options. The juvenile justice system can offer treatment that simply isn’t available in the adult system.

Guice added that additional issues are: prisoners under 18 years old are more than 8 times likely to be raped in prison than an adult; recidivism among 16 and 17-year-olds in the adult system is twice as high as similar cohorts in the juvenile system; changing the juvenile age would bring NC in compliance with federal law and the federal prison rape compliance act; youth in the adult system are rearrested, re-convicted, re-incarcerated, and have their probation revoked at rates higher than adults. He added that juvenile justice has been successful. The juvenile system can hold youth more accountable, in part because parents have to be involved, whereas they don’t even have to be informed of charges when youthful offenders are prosecuted in the adult system.

Commissioner Seigle suggested that the issue is a “no-brainer” and that “it’s time to change the age.”

Susan Katzenelson from the Sentencing Commission noted in connection with a discussion about cost that when looking at legislative fiscal notes, research is limited to a 5 to 10 year impact. By contrast the cost-benefit studies that have been done on this issue have looked longer-term. She added that 6 state task forces have looked at the issue and every one has recommended that the age be raised.

Bryd asked Guice whether reducing recidivism saves us money.

Guice said it does.

Coleman suggested that the Committee needs to hear about opposition other than cost.

Commissioner Jordan said that next to indigent defense, it’s the most important issue that the Committee has to address. He added that it is important to hear from teachers. He emphasized hearing from teachers, not administrators.

Bryd added that it would be helpful to hear from the SROs and detectives in the field.

Seigle suggested that decriminalizing low-level crimes would also help.

Commissioners Holcomb, Kemp, Seigle, and Adams volunteered to serve on a subcommittee to work on this issue. Reporter Smith agreed to work with Chair Webb to form a subcommittee.