North Carolina Commission on the Administration of Law & Justice

INTERIM REPORTS

A Compilation of Interim Reports from the NCCALJ Committees

July 2016

www.NCCALJ.org

Preface

These interim reports outline the work-to-date of the North Carolina Commission on the Administration of Law and Justice (NCCALJ). Chief Justice Mark Martin convened the independent, multidisciplinary commission in September of 2015, and charged the members to evaluate the North Carolina judicial system and provide findings and recommendations for strengthening our courts within the existing administrative framework.

Sixty-five voting members and additional non-voting guests were asked to serve, drawn statewide from business, academia, the bar, the non-profit sector, the Legislature, and the Judicial Branch, to ensure a well-rounded evaluation of the judicial system. Each of the members serves on one of five NCCALJ committees studying the areas of civil justice, criminal investigation and adjudication, legal professionalism, public trust and confidence, and technology. Over the past 10 months, these committees have held forty meetings where members heard presentations from more than ninety different national and statewide experts, practitioners, and court officials, resulting in productive and focused dialogue.

The NCCALJ Wants to Hear From You

The NCCALJ recognizes the vital importance of public participation in the process of court system improvement. The interim reports that follow are intended to inform the public of the relevant issues the committees are addressing and to invite input and feedback. Submit comments online at www.nccalj.org/interim-reports or sign up to speak in person at one of the four public hearings scheduled for August 2016. The dates, locations, and sign-up forms for those meetings are also at the commission's website.

In the fall of 2016, the NCCALJ's five committees will incorporate the public feedback into final recommendations to be presented to the Chief Justice, the Legislature, and the public in early 2017.

The NCCALJ thanks you for your feedback on how North Carolina courts can best meet institutional needs and 21st century public expectations. We look forward to hearing from you.

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North Carolina Commission on the Administration of Law & Justice

INTERIM REPORT
Civil Justice Committee

July 2016

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I. Introduction and Guiding Principles

The North Carolina Commission on the Administration of Law and Justice is an independent, multidisciplinary advisory body convened by the Chief Justice of the Supreme Court of North Carolina to recommend improvements to the judicial system for the residents of North Carolina, which include individuals, organizations, businesses, and other entities. The judiciary is a co-equal and separate branch of state government, along with the executive and the legislature, and is responsible for exercising the judicial powers exclusively conferred upon it by the North Carolina Constitution. The Civil Justice Committee is a committee of this commission, charged with evaluating the civil justice system in North Carolina, identifying areas of concern, and making preliminary recommendations for reform. Civil justice is the process whereby North Carolina's courts resolve or assist in resolving disputes between individuals, private entities, and governmental bodies. The North Carolina civil justice system is comprised of residents, lawyers and officers of the court, magistrates, clerks of courts, District Courts, the Superior Courts, the North Carolina Court of Appeals, the Office of Administrative Hearings, the Industrial Commission, and the Supreme Court of North Carolina, as well as all the supporting staff, including the Administrative Office of the Courts. Although some courts also have jurisdiction over criminal matters, this committee's task is to examine only the civil justice system.

The committee has developed five guiding principles for our work. The committee believes that a modern civil justice system should be **fair**, **accessible**, **transparent**, **efficient**, and **effective**.

What do we mean by these principles?

- A system is **fair** when cases are decided based on the principles of law and justice and the facts and circumstances of the particular case, and are not biased by the wealth, political influence, or identity of the parties. Partisanship and prejudice have no place in a fair decision.

- A system is **accessible** when the courts and court-assisted processes are open and available to all persons who wish to participate, without barriers or costs, financial or otherwise, that are so high as to deter residents from using the courts.

- A system is **transparent** when participants understand how their case will be assigned, processed, and adjudicated, and when records of the proceedings are open and available to the public except when privacy or safety concerns require otherwise.

- A system is **efficient** when time and resources expended are proportionate to the needs of the case, and when litigation, lawyers, or courts do not generate unnecessary costs or delay.

- A system is **effective** when judicial officers have sufficient support, resources, and administrative structures to permit quality and timely decision-making and processing of cases, and when the system generates data to evaluate performance as measured by relevant benchmarks.

These are the guiding principles the committee believes are essential to a modern civil justice system able to meet the needs of and provide justice to the residents of North Carolina. The

committee has used these principles to determine the principal areas of focus for study and improvement, and to develop the recommendations outlined below. Going forward, these principles will inform the relevant benchmarks to assess progress toward ensuring all residents of North Carolina have confidence in the civil justice system.

II. Areas of Focus

The committee held six public meetings at which various individuals spoke. Among those attending, speaking, or presenting at the meetings were members of the business community, sitting judges on the Business Court, the Superior and District Courts, court administrators, members of the Administrative Office of the Courts, court executives and judges from other jurisdictions, legal aid professionals, representatives from the North Carolina Bar, the North Carolina Conference of Clerks of the Superior Court, law students, legislative liaisons, and other members of the public.

After consulting with these stakeholders, experts, and researchers, the committee decided to focus on the following areas, recognizing that there may be other areas of concern raised by stakeholders or the public not identified here.

- Technology
- Case management and tracking
- Judicial assignment system
- Legal support staff
- Legal assistance and self-represented litigation
- Civil fines, fees, and penalties

Technology

North Carolina was once a leader in using technology in its civil justice system, but today lags behind other jurisdictions. The federal government's court system and states like Utah have adopted a uniform and comprehensive electronic filing and document management system. In comparison, electronic filing is available for only a fraction of the cases in North Carolina, primarily in the Court of Appeals, the Supreme Court, the Business Court, and certain pilot programs in four of North Carolina's one hundred counties. Electronic management of cases, from filing to dismissal, is not uniform throughout North Carolina. Despite security risks and substantial taxpayer expense in terms of storage and administration, paper filing and documentation remain the norm in most North Carolina courts. This paper system is also prone to inefficiencies and transcription errors when files are processed or converted to other formats, such as for database entry. Members of the legal aid community observed that the lack of uniform technology-enhanced filing in North Carolina makes representation of indigent clients burdensome both for the lawyers and for the litigants themselves. The committee also heard speculation that some potential litigants may not file claims at all because of perceived barriers to access, such as the need to visit a courthouse, read, understand, and complete a legal form, or other costs that could be mitigated with technology.

There was substantial agreement across different stakeholder groups that increased use of technology has the potential to substantially improve the civil justice system as a whole and for all its participants: businesses, individuals, lawyers, judges, and court staff.

Case Management and Tracking

The North Carolina civil justice system currently uses the dollar amount in dispute as a rough estimate for complexity. With some exceptions, whether a case ends up before a magistrate, a clerk, a District Court Judge or a Superior Court Judge (including the Business Court) depends largely on how much money is at issue. Once a case is before a certain judicial officer, the process of how the case is managed from filing to disposition depends on a patchwork of statewide rules, local rules, and specific practices of individual courts. Cases are managed by agreement of the parties, by court administrators, or by judicial assistants, rather than by a standard case management order. One court administrator referred to the case management system there as "management by event" or "management by the passage of time." The lack of uniformity also contributes to the difficulty of gathering reliable data about the performance of the civil justice system across the entire state, as comparisons are often inaccurate or misleading. Without standard measures of evaluation, the performance of the state's judicial system cannot be assessed.

Although some courts seem to process cases fairly efficiently, stakeholders generally expressed dissatisfaction with the lack of uniformity between judicial districts, and the resulting delays that enter into the system, especially at the Superior Court level. A recent High Point University Survey showed that a majority of North Carolina residents believe that the court system does not resolve cases in a timely manner. Best practices suggested by the National Center for State Courts, such as "right-sizing" court resources to the complexity of the case, may help resolve some of these issues.

Judicial Assignment System

North Carolina's judicial assignment process is difficult to navigate, particularly for self-represented litigants and others who do not interact regularly with the court system. District Court Judges are assigned to dockets, on a certain date, typically by the Chief District Court Judge. Therefore, a person may not have the same judge from the beginning to the end of her case. Superior Court Judges rotate according to the North Carolina Constitution, which provides that "[t]he principle of rotating Superior Court Judges among the various districts of a division is a salutary one and shall be observed." Currently, there are eight divisions and 50 districts across the state. Superior Court judges rotate through the districts in their respective divisions on a six-month cycle. As a result, in Superior Court, like in District Court, a single case can be heard by more than one judge. Though the rotation system is intended to help avoid favoritism that could result from having a permanent judge in one district, the system can also lead to inefficiency and judge-shopping. The exceptions to the rotation system are the special superior court judges, including those who make up the Business Court. Under Rule 2.1 of the North Carolina General Rules of Practice, some cases that are not in the Business Court can be specially designated as "exceptional" by the Chief Justice, and receive a single judge for the duration of the litigation.

The Superior Court assignment system is implemented primarily through the North Carolina Administrative Office of Courts, working with the office of the Chief Justice. The District Court assignment system is typically administered by the Chief District Court Judge. The personnel in these courts work very hard to ensure that cases do not linger, that judicial personnel are staffed to cases as necessary, and that all participants adhere to the six-month rotation system when required

and to the extent possible, while also emphasizing access and fairness. The assignment system is critically dependent upon the competence and integrity of just a few individuals and therefore is sensitive to any change in personnel. The committee heard mixed reviews from many stakeholders about the rotation system, with no clear consensus across different perspectives.

Legal Support Staff

Legal support staff includes legal assistants, clerks, and court administrators. These staff are responsible for processing cases, and, in the case of Clerks of Court, for adjudicating certain kinds of claims. At the trial level, only the North Carolina Business Court uses staff trained to assist the judges in investigating the law and helping the judge make legal rulings. Although they may confront complex evidentiary or constitutional issues, Superior Court judges and District Court judges have little to no such research support. This lack of legally trained support staff takes place in an environment where there are significant numbers of law graduates looking for full-time employment, suggesting a potential opportunity for matching supply with demand.

Legal Assistance and Self-Represented Litigation

For those who cannot afford representation, a number of legal aid organizations, as well as private lawyers, offer free legal counsel in North Carolina. In 2014, the North Carolina Equal Access to Justice Commission estimated that private attorneys supplied approximately 18,000 hours of legal services worth more than an estimated $3.6 million on a pro-bono basis, that is, for little or no pay for their time and expertise. Notwithstanding their efforts, one-half of the approximately 70,000 individuals who seek a lawyer are turned away without one, with eighty percent of the civil legal needs of poor people in North Carolina unmet. Legal aid is supported by private donations, members of the legal profession, and by federal, state, and local funding. All these funding levels have dropped by one-third to one-half since 2008. Over the same time period, the need for legal aid has increased by 30 percent, with many clients who present significant literacy and language challenges to representation. Attorneys working in legal aid face challenges including low wages, high debt burdens from law school, and heavy caseloads.

Where litigants do not want, cannot afford, or cannot find a lawyer, they sometimes represent themselves. The number of self-represented litigants is a significant issue in North Carolina as they are in most major states. The number of self-represented litigants has been increasing. Because self-represented litigants must navigate complex procedures, they challenge the resources of the court system and can lead to delays, further exacerbated by the same types of literacy and language barriers faced by many legal aid clients. System-wide data on the number of self-represented litigants, the types of claims most likely to involve self-represented litigants, and how their cases compare to the others in the system are scarce, partly because of the technology and case management process outlined above. County-level analyses in the early 2000s and self-reporting by judges suggest that self-represented litigation is concentrated in areas like domestic relations, housing, and debt collection, and self-represented litigants can account for up to half of the docket in those matters.

Civil Fines, Fees, and Penalties

The use of civil fines, fees, and penalties is an area of concern in North Carolina and nationwide, as reflected in recent reports by government agencies and private organizations. Courts that use fines, fees, and penalties to finance their operations, as well as the potential domino effect of unpaid fines,

fees, and penalties on residents, can undermine confidence in the judicial system as a whole and potentially create a "destitution pipeline" and debtors' prison. In North Carolina, fees generated during a criminal proceeding are turned into civil judgments for which the individual is responsible. Furthermore, court costs and fees currently go into general state revenues. While there are constitutional due process prohibitions on jailing persons for failure to pay debts who are unable to pay, and state constitutional checks on using fees to support local or court budgets, these legal mechanisms are imperfect and not self-executing.

III. Preliminary Recommendations

Consistent with the guiding principles and findings outlined above, the Civil Justice Committee offers the following preliminary recommendations. It offers these recommendations as an invitation for comment and discussion, rather than as firm commitments. Further, these recommendations are not meant to be exclusive. They may be modified, supplemented, or discarded as the public comment and discussion period progresses.

The committee also observes that, while these recommendations can be debated or adopted separately, some of them may be interlinked with recommendations from this committee, or from other committees on the commission.

Electronic Filing and Management of Cases

Electronic filing and case management holds the potential to make the civil justice system more equitable, accessible, and efficient. In addition, it can generate data that will better enable evaluation of the performance of the entire system according to benchmarks designed to measure progress toward each of the guiding principles outlined above. Adoption of comprehensive electronic filing and case management in Utah and in the federal system can serve as a model for North Carolina. Personnel currently managing a paper system in the judicial system may then be reassigned and retrained, where appropriate, to spend time and resources on other important case management tasks not well suited for automation.

Create an Efficient Rule-Making Process for Implementation of Electronic Filing and Management

Without a rule-making process that is suitably flexible, the substantial cost savings over time of electronic filing and management may not be fully captured. As the experience of other jurisdictions has shown, adopting an electronic filing system without rules that offer certainty about the legal significance of the electronic filing can generate expense without a corresponding benefit to the civil justice system. The legislature already has provided the courts with rule-making authority in this area. The Chief Justice should appoint a rules committee that represents the bench, bar, and staff of the courts. An academic expert in procedure may be appointed as a reporter for the committee. Proposed rules should go through a public comment process and become final upon approval of the Supreme Court, unless the General Assembly votes to defer, alter, or reject those rules.

Identify and Track Cases According to Three Categories: Simple, General, Complex

Cases at every level of the civil justice system should be identified early and designated as simple, general, or complex. Resources should be matched with the complexity of the case, and metrics in addition to the amount in dispute should be used to determine where a case should be tracked. This "right-sizing" in case management will increase efficiencies throughout the system and ultimately should contribute to greater access as cases and claims are disposed of without expending unnecessary time or resources. "Right sizing" cases acknowledges the unique nature, complexity, and sensitivity of some types of cases and recognizes that not all cases require the same kind of system resources. For example, domestic relations cases may require different forms of processing and management than other types of cases, particularly since mandatory mediation is often a part of such cases. Cases with particular features could be referred for alternative dispute resolution processes such as mediation, arbitration, and collaborative law. Data gathered from such a tracking system can also be used for future evaluation of performance of specific tracks and other measures.

Require Use of Uniform Case Management Orders in All Courts

One of the principles and achievements of the Bell Commission was the establishment of a unified court system throughout the State of North Carolina. However, local rules and practice still vary considerably across the different judicial districts. The committee believes that efficiency, fairness, and transparency may be furthered by the use of uniform case management procedures and civil rules that are based on best practices. A case assignment system that matches the conduct of the case to the needs of the case will require new rules and case management orders, depending on whether the case is simple, general, or complex. The rules and orders will require modification over time as cases and best practices change. The Chief Justice should appoint a civil rules committee modeled on civil rules committees that exist in the federal judiciary and in other states. This committee shall propose rules of procedure for adoption by the Supreme Court and made binding on all lower courts, unless the General Assembly votes to defer, alter, or reject those rules.

Reassign and Retrain as Necessary Court Support Staff and Supply Judges with Research Staff

Some of the anticipated savings the system generates through improved technology and streamlined procedures can be directed to improving the quality of justice delivered in the system as a whole. The committee suggests that some portion of expected savings from the transition to technology be used to reassign, retrain, or reinvest in judicial system support staff, including trial court administrators, clerks of court, and pools of research support personnel, so that a more precise, accurate, and efficient disposition of cases can occur early in any case.

Increase Use of Technology for Remote Communications

Use of technology for remote communication (including teleconferencing and videoconferencing) in certain cases, such as for arbitration, mediation, custody, and domestic relations matters, can be used to reduce travel and expense and make the proceedings more accessible for those with limited resources or mobility.

Restore Funding for Legal Assistance Programs Including Loan Repayment Relief

Resources are at the heart of access to justice. Since the 2008 economic downturn, civil legal aid funding has decreased from virtually every source while the number of North Carolinians living in poverty has increased. When individuals are represented by legal aid, they are able to meaningfully access the court system and their interests are protected regardless of how much money they have. With skilled advocates that pursue only meritorious cases and settle many matters outside of court, legal aid conserves judicial resources.

Civil legal aid is an excellent investment of state resources that generates over $2 in economic benefits for every $1 in funding. The value of stopping domestic abuse, preventing unnecessary homelessness, and blocking illegal and predatory consumer practices is incalculable. The committee recommends restoring state legal aid funding, including loan repayment assistance for lawyers who serve North Carolinians in need.

Enhanced Use of Online Forms, Explore Use of Self-Help Kiosks and Centers

To assist self-represented litigants, forms and instructions should be improved and made available online. These online resources would help streamline common and non-technical matters such as small claims, simple divorces, or simple landlord-tenant cases. Self-help kiosks or centers, online court assistance, and online dispute resolution mechanisms should be explored as a way to match appropriate judicial resources with self-represented litigants. However, the committee agrees that none of these resources should be viewed as a substitute for trained competent counsel in appropriate cases. Through technology-enhanced tools as well as case management orders, self-represented litigants should be notified as early as practicable of the availability of legal services and how to obtain those services. Such a system should be designed to better distribute and designate the limited legal aid and pro bono attorney resources to litigants who are most in need of, and would most benefit from, their services.

Study Single Judge Assignment in District Court, and in Superior Court within Spirit of Rotation Required by the North Carolina Constitution

The committee agrees that there are cases beyond those handled in the Business Court or under Rule 2.1 that should be heard by a single judge. These cases typically involve multiple hearings, discovery and discovery motions, motions to dismiss and for summary judgment, and numerous court dates. The committee believes that the judiciary should further study a method that would identify those disputes for which single judge assignment is most efficient and create a transparent, neutral, and reliable method of making single judge case assignment. Such a method could comply with the spirit of the state constitutional requirement that Superior Court judges rotate through districts by assigning such cases on a rotating basis so that the assigned superior court judge has cases from different districts. The Chief Justice may encourage experimentation and pilot projects in the different districts and divisions to determine what method of assignment is most appropriate to satisfy the guiding principles of fairness, accessibility, transparency, efficiency, and effectiveness.

Ensure That Laws and Procedures Respecting Civil Fines, Fees, and Penalties Do Not Cause or Aggravate Poverty and Inequality Issues

The committee believes that further study of the effects of civil fines, fees, and penalties and their collateral consequences is warranted to ensure that an inequitable system is not taking root in North Carolina. Such study may include a cost-benefit analysis of the practice of converting criminal

fines or penalties into civil judgments, the effect of monitoring fee waivers on judicial independence, and the effect of penalties such as suspension of licenses and criminal sanctions for failure to pay child support.

North Carolina Commission on the Administration of Law & Justice

INTERIM REPORT
Criminal Investigation and Adjudication Committee

July 2016

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The Criminal Investigation & Adjudication Committee ("the Committee") is focusing on four issues: (I) Juvenile Age; (II) Indigent Defense; (III) Pretrial Release; and (IV) Criminal Case Management. This report provides an update on the Committee's work on these issues. The Committee welcomes input from all interested persons and organizations.

I. Juvenile Age

The Committee's work on this issue is summarized in its draft report, attached as Appendix A. Because the Committee has actively engaged all stakeholders in its work on this issue and has strived to address all validated stakeholder concerns, the draft report is presented with the ultimate hoped-for result of unanimous stakeholder support.

II. Indigent Defense

As the United States Supreme Court recently declared: "No one doubts the fundamental character of a criminal defendant's Sixth Amendment right to the Assistance of Counsel." This right is so critical that the high Court has deemed its wrongful deprivation to constitute "structural" error, affecting the very "framework within which the trial proceeds." For indigent defendants, this fundamental right to effective assistance of counsel must be provided at state expense. When the system fails to provide this right, it denies indigent defendants justice. That denial can have very real consequences for defendants, including excessive pretrial detention, increased pressure on innocent persons to plead guilty, wrongful convictions, and excessive sentences.

There are, however, other costs associated with the State's failure to provide effective assistance, including costs to victims, families, communities, taxpayers and the criminal justice system as a whole. Costs to the criminal justice system include trial delays and an increased number of appeals and post-conviction challenges, all of which must be funded by North Carolina taxpayers, as are costly retrials when those challenges are successful. As has been noted: "Justice works best when all players within the system are competent and have access to adequate resources. When the system includes well-trained public defenders, cases move faster … and the system tends to generate and implement innovative programs." Trial delay is not merely a theoretical danger; it is an actual one. District Attorneys forcefully asserted to the Committee that an erosion of the quality of North Carolina's indigent defense bar was impairing their ability to deliver justice in the state's criminal courts.

In comments to the Committee, Justice Rhoda Billings emphasized that wrongful convictions deny justice to victims and put North Carolina's citizens in danger by allowing the real criminals to remain at large, free to perpetrate crime on others. Additionally, families of wrongfully convicted defendants suffer, not just from the loss of a family member who may be incarcerated, but from the dramatic collateral consequences that follow as a result of any criminal conviction, including barriers to obtaining employment, joining the military, or receiving financial aid to pursue higher education. These collateral consequences impair the person's ability to support both himself and his family, often necessitating public assistance and thus additional taxpayer support.

In addition to paying for the cost of an inefficient justice system, taxpayers pick up the tab for ineffective assistance in other ways. When inadequate lawyering results in excessive pretrial detentions and sentences and in incarceration for convictions that are later reversed, the costs of such detentions are paid by North Carolina's citizens. Also, the cost of civil suits and large case settlements leave taxpayers with the bill for wrongful convictions.

Finally — and importantly — another cost of failing to provide an effective indigent defense system is a loss of public confidence in the court system's ability to administer justice. Inadequate indigent defense services compromise the integrity of the justice system by calling its fairness into question. Because people in the lowest income groups are most likely to require indigent defense services, failures in the indigent defense system are felt most acutely by these individuals. As Justice Billings noted to the Committee: Americans strongly believe that the amount of money a person has should not affect the amount of justice he or she receives; any perception of fairness vanishes if our citizens believe that a poor person is placed at a significant disadvantage in the justice system. In fact, evidence indicates that a majority of citizens *already* believe that poor people are at such a disadvantage: A recent survey of North Carolinians shows that 64% of respondents believe that low-income people fare worse than others in our state court system.

Sixteen years ago the North Carolina General Assembly created the state's existing indigent defense system. While stakeholders agree that North Carolina has benefited greatly from the creation of the Office of Indigent Defense Services and the Commission on Indigent Defense Services, the potential that both hold for providing uniform quality, cost-effective representation statewide has yet to be fully achieved.

The Committee is developing recommendations designed to help North Carolina strengthen the protections it offers to indigent people when their liberty is at stake. It is approaching this issue in a two-step process. First, defining the critical characteristics of an effective indigent defense system. And second, making recommendations regarding how to best achieve those characteristics in North Carolina. Recommendations currently under consideration include:

- Establishing single-district and regional public defender offices throughout the state.
- Providing oversight, supervision and support to all counsel providing indigent defense services.
- Implementing uniform indigency standards.
- Implementing uniform qualification and performance standards and workload formulas for all counsel providing indigent services.
- Providing reasonable compensation for all counsel providing indigent defense services.
- Developing a long-term plan for the delivery of indigent defense services in the state.
- Reducing the cost of indigent defense services to make resources available for needed reforms

III. Pretrial Release

The Committee is examining pretrial release for several reasons. One is a concern that North Carolina may be routinely detaining individuals who present little or no pretrial release risk simply because of their inability to pay a money bond. Another concern is that wealthy but very dangerous defendants can simply buy their way out of detention, presenting an unacceptable risk to community safety. Other concerns revolve around the lack of evidence-based practices with respect to pretrial risk assessment and the opportunity for racial or other biases to improperly influence pretrial release decisions.

To begin to address these and other issues, the Committee is undertaking a jail study. Although statewide data exists with respect to jail populations and maximum jail capacities, no statewide data currently exists with respect to North Carolina's pretrial detainees. The Committee's study is examining the number of pretrial detainees in local jails, their race, their offense type, the number detained on secured bond, the average secured bond by offense type, and the average days of pretrial detention. Additionally, through the National Center for State Courts, the Commission has retained an expert to prepare a report providing:

- Recommendations regarding how North Carolina can improve the way it measures pretrial risk. The Committee has noted that it is interested in any evidence-based recommendations in this respect. It further noted that it is particularly interested in exploring whether or not North Carolina should use a validated, evidence-based pretrial risk assessment tool that can be implemented by the magistrate, typically the first decision-maker in the pretrial release process. If the evidence suggests that such a tool would be beneficial, the Committee has asked that the report recommend a specific tool and identify the most effective implementation method (e.g. statutory, court rule, etc.). The Committee has further asked that the report identify existing statutes, court rules, local procedures, etc. that will need to be modified or repealed to implement the recommendations regarding assessing pretrial risk.

- Recommendations regarding how North Carolina can improve the way it manages pretrial risk. The Committee specified that although the report need not be limited to these issues, it is particularly interested in:

  - Whether or not North Carolina should adopt a procedure allowing for the preventative detention of defendants for whom pretrial release is inappropriate. If so, what the procedure should look like.

  - A statement of general principles with respect to release of persons other than those preventatively detained and recommendations regarding statutory language to that effect.

  - Whether or not North Carolina should provide clearer guidance to judicial officials to help them match appropriate pretrial conditions to an individualized assessment of pretrial risk. If so, how.

  - An evaluation of pretrial release conditions currently being used in North Carolina and identification of effective pretrial release conditions being used in other jurisdictions that should be considered here (e.g., court date reminders).

- Identification of statutes, court rules, local policies, etc., that would need to be adopted, modified or repealed to implement the recommendations.

Additionally, the Committee will receive information from interested stakeholders on the issues under consideration.

IV. Criminal Case Management

Concerns about case delays and inefficient case processing have caused the Committee to focus on criminal case management. Through the National Center for State Courts, the Commission has retained an expert to meet with stakeholders and prepare a report for the Committee:

- Identifying indicators suggesting that North Carolina should undertake an effort to improve the management of criminal cases through better caseflow management.
- Discussing the potential benefits for addressing criminal caseflow management including cost savings, improvements in public trust and confidence, and improved user perception of and satisfaction with fairness of criminal proceedings.
- Reviewing the fundamental principles of criminal caseflow management and their application to the North Carolina courts.
- Identifying key components of effective criminal caseflow management that could be employed in North Carolina, such as differentiated case management, performance metrics, evaluation, and feedback.
- Setting forth a step-by-step plan to guide a statewide effort to improve criminal case management including major activities, key players, and a plan timeline.

Appendix A

Juvenile Reinvestment

Contents

Executive Summary

North Carolina stands alone in its treatment of 16- and 17-year-olds ("youthful offenders") like adults for purposes of the criminal justice system. In 1919, North Carolina determined that juvenile court jurisdiction would extend only to those under 16 years old.[1] A substantial body of evidence suggests that both youthful offenders and society benefit when persons under 18 years old are treated in the juvenile justice system rather than the criminal justice system. In response to this evidence, other states have raised the juvenile age. Notwithstanding recommendations from two legislatively-mandated studies of the issue, positive experiences in other states that have raised the age, and two cost-benefit studies showing that raising the age would benefit the state economically, North Carolina has yet to take action on this issue.

After careful review and with historic support of all stakeholders,[2] the Committee recommends that North Carolina raise the age of juvenile court jurisdiction to include youthful offenders aged 16 and

[1] *In 1919, the Juvenile Court Statute was passed, providing statewide juvenile courts with jurisdiction over children under the age of 16.* BETTY GENE ALLEY & JOHN THOMAS WILSON, NORTH CAROLINA JUVENILE JUSTICE SYSTEM: A HISTORY, 1868-1993, *at 4 (NC AOC 1994) [hereinafter* NC JUVENILE JUSTICE: A HISTORY*]. The intent of this legislation "was to provide a special children's court based upon a philosophy of treatment and protection that would be removed from the punitive approach of criminal courts." Id.*

[2] *See infra page __ for a listing of all stakeholders.*

17 years old for all crimes except Class A through E felonies and traffic offenses.[3] This recommendation is contingent on:

1. Maintaining the existing procedure in G.S. 7B-2200 to transfer juveniles to adult criminal court,[4] except that Class A-E felony charges against 16- and 17-year olds will be automatically transferred to superior court after a finding of probable cause or by indictment.[5]

2. Amending G.S. 7B-3000(b) to provide that the juvenile court counselor must, upon request, disclose to a sworn North Carolina law enforcement officer information about a juvenile's record and prior law enforcement consultations with a juvenile court counselor about the juvenile, for the limited purpose of assisting the officer in exercising his or her discretion about how to handle an incident being investigated by the officer which could result in the filing of a complaint.[6]

3. Requiring the Division of Juvenile Justice to (a) track all consultations with law enforcement officers about a juvenile[7] and (b) provide more information to complainants and victims about dismissed, closed, and diverted complaints.[8]

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[3] Ensuring that Class A through E felonies charges against 16- and 17-year olds are tried in superior court is critical to the support of these recommendations by the N.C. Conference of District Attorneys.

Traffic offenses are excluded because of the resources involved with transferring the large volume of such crimes to juvenile court. This recommendation parallels those made by others who have examined the issue. See NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION, REPORT ON STUDY OF YOUTHFUL OFFENDERS PURSUANT TO SESSION LAW 2006-248, SECTIONS 34.1 AND 34.2 (2007) (excluding traffic offenses from its recommendation to raise the age) [hereinafter 2007 SENTENCING COMMISSION REPORT]; YOUTH ACCOUNTABILITY PLANNING TASK FORCE, FINAL REPORT TO THE GENERAL ASSEMBLY OF NORTH CAROLINA (Jan., 2011) (same) [hereinafter YOUTH ACCOUNTABILITY TASK FORCE REPORT]. Consistent with prior recommendations, the Committee suggests that transferring youthful offenders who commit traffic offenses be examined at a later date. See 2007 SENTENCING COMMISSION REPORT, at 8 (so suggesting).

While prior working groups have recommended staggered implementation for 16- and 17-year olds, the Committee recommends implementing the change for both ages at once.

[4] Under the existing provision, the court may transfer jurisdiction over a juvenile who is at least 13 years of age and is alleged to have committed a felony to superior court, where the juvenile will be tried as an adult. G.S. 7B-2200. A motion to transfer may be made by the prosecutor, the juvenile's attorney, or the court. Id. If the juvenile is alleged to have committed a Class A felony at age 13 or older, jurisdiction must be transferred to superior court if probable cause is found in juvenile court. Id.

[5] Requiring that Class A-E felonies are automatically transferred to superior court is critical to the support of these recommendations by the N.C. Conference of District Attorneys. Automatic transfer to superior court means that the district court judge has no discretion to retain Class A-E felony charges against 16- and 17-year olds in juvenile court. Providing for transfer by indictment meets the prosecutors' interest in being able to avoid requiring fragile victims to testify at a probable cause hearing within days of a violent crime.

The Committee contemplated a statutory exclusion for Class A-E felonies but adopted this approach primarily for two reasons. First, it simplifies detention decisions for law enforcement officers. Under this approach when a juvenile is arrested for any crime, there will be no uncertainty with respect to custody: custody always will be with the Division of Juvenile Justice. To help implement this change, the Division of Juvenile Justice has committed to provide transportation to all juveniles from local jails to juvenile facilities (currently law enforcement is responsible for this transportation). Second, this procedure protects juveniles who are prosecuted in adult court but are found not guilty or their charges are reduced or dismissed, perhaps because of an error in charging. See State v. Collins, __ N.C. App. __, __ S.E.2d __ (Feb. 16, 2016) (with respect to three charges, the juvenile improperly was charged as an adult because of a mistake with respect to his age).

[6] This recommendation is designed to ensure that law enforcement officers have sufficient information to exercise discretion when responding to incidents involving juveniles (e.g., whether to release a juvenile or pursue a complaint). Although G.S. 7B-3000(b) already allows the prosecutor to share information obtained from a juvenile's record with law enforcement officers, given the time sensitive nature of officers' field decisions, it is not practical to designate the prosecutor as the officer's source for this information. Because juvenile court counselors are available 24/7, on weekends and on holidays, have access to this information, and are the officer's first point of contact in the juvenile system, they are the best source of time sensitive information for officers.

Consistent with the existing statutory provision that the prosecutor may not allow an officer to photocopy any part of the record, the Committee recommends that the counselor share this information orally only. To preserve confidentiality, if this information is included in a report or record created by the officer, such report or record must be designated and treated as confidential, in the same way that all law enforcement records pertaining to juveniles currently are so designated and treated.

[7] This recommendation is necessary to implement recommendation (2) above.

[8] In response to Committee discussions the Division of Juvenile Justice already has revised the Complainant/Victim Letter used for this purpose and presented the revision to the Committee for feedback.

4. Amending G.S. 7B-1704 to provide that the victim has a right to seek review by the prosecutor of a juvenile court counselor's decision not to approve the filing of a petition.[9]

5. Improving computer systems to give the prosecutor and the juvenile's attorney electronic access to an individual's juvenile delinquency record statewide.[10]

6. Full funding to implement the recommended changes.[11]

This last contingency bears special emphasis: The stakeholders are unanimous in the view that full funding must be provided to implement these recommendations and that an unfunded or partially unfunded mandate to raise the age will be detrimental to the court system and community safety.

To ameliorate implementation costs to the juvenile justice system associated with raise the age legislation, the Committee recommends that North Carolina expand state-wide existing programs to reduce school-based referrals to the juvenile justice system.[12]

Finally the Committee recommends requiring regular juvenile justice training for sworn law enforcement officers and forming a limited term standing committee of juvenile justice stakeholders to review implementation of these recommendations and make additional recommendations if needed.[13]

A Brief Comparison of Juvenile & Criminal Proceedings

When there is probable cause that a North Carolina youthful offender has committed a crime, that person is charged like any adult. If not released before trial, the youthful offender is detained in the local jail and at risk of being victimized by sexual violence.[14] The youthful offender is tried in adult criminal court and if found guilty, is convicted of a crime. Although a minor's parent or guardian

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[9] G.S. 7B-1704 currently provides this right only to the complainant. To implement this recommendation, conforming changes would need to be made to G.S. 7B-1705 (prosecutor's review of counselor's determination).

[10] G.S. 7B-3000(b) already provides that the prosecutor and the juvenile's attorney may examine the juvenile's record and obtain copies of written parts of the juvenile record without a court order. Section 12 of the Rules of Recordkeeping defines that record as the case file (the file folder containing all paper documents) and the electronic data. Currently the electronic data is maintained in the JWise computer system, an electronic index of the juvenile record. Without access to this computer system, prosecutors encounter logistical hurdles to accessing the juvenile record to inform decisions regarding charging, plea negotiations, etc. Allowing prosecutors access to the relevant computer system removes these impediments. The prosecutor's access to computer system information should be limited to juvenile delinquency information and may not include other protected information contained in that system, such as that pertaining to abuse neglect and dependency or termination of parental rights. Additionally, the JWise system currently allows only for county-by-county searches; it does not allow for a statewide search. Given the mobility of North Carolina's citizens, there is a need for statewide searches. To allow for meaningful access to a juvenile's delinquency record, the computer system must be improved to allow for statewide searching.

To ensure parity of access, if the prosecutor is given access to the juvenile record in the relevant computer system, the same access must be given to the juvenile's attorney. As with prosecutors, 7B-3000 already allows the attorney to have access to the record without a court order; but as with the prosecutor, lack of access to the computer system makes this logistically impossible.

Existing law prohibiting photocopying any part of the juvenile record, G.S. 7B-3000(c), would be maintained and apply to computer system records.

[11] Two separate studies have examined the costs of raise the age legislation. See infra pages __ - __ (discussing studies).

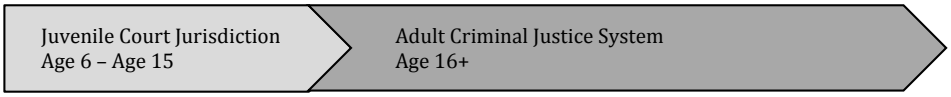
[12] See infra pages __ - __ (discussing such programs).

[13] The Standing Committee should include, among others: a district court judge; a superior court judge; a prosecutor who handles juvenile matters; a victims' advocate; and representatives from the law enforcement community, the Division of Juvenile Justice, and the Office of the Juvenile Defender.

[14] A report for the John Locke Foundation supporting raising the juvenile age notes: "one national survey of jails found that in one year, minors were the victims of inmate-on-inmate sexual violence 21 percent of the time, even though they only made up less than one percent of jail inmates." MARK LEVIN & JEANETTE MOLL, JOHN LOCKE FOUNDATION, IMPROVING JUVENILE JUSTICE: FINDING MORE EFFECTIVE OPTIONS FOR NORTH CAROLINA'S YOUNG OFFENDERS 5 (2013) [hereinafter JOHN LOCKE FOUNDATION REPORT], http://www.johnlocke.org/acrobat/spotlights/YoungOffendersRevised.pdf.

must be informed when the child is charged or taken into custody,[15] the criminal case proceeds without any additional requirement of notice to the parent or parental involvement. If convicted and sentenced to prison, the youthful offender serves the sentence in an adult prison facility.[16] In prison, youthful offenders are significantly more likely than other inmates to be victimized by physical violence.[17] The criminal proceeding and all records, including the record of arrest and conviction, are available to the public, even if the youthful offender is found not guilty. All collateral consequences that apply to adult defendants apply to youthful offenders. These consequences include, among other things, ineligibility for employment, professional licensure, public education, college financial aid, and public housing.[18]

Fig. 1. Current age of legal jurisdiction.



By contrast, when a person under 16 years old is believed to have committed acts that would constitute a crime if committed by an adult, a complaint is filed in the juvenile justice system alleging the juvenile to be delinquent.[19] A juvenile court counselor conducts a preliminary review of the complaint to determine, in part, whether it states facts that constitute a delinquent offense;[20] essentially this determination looks at whether the elements of a crime have been alleged. If the juvenile court has no jurisdiction over the matter or if the complaint is frivolous, the juvenile court counselor must refuse to file the complaint as a petition.[21] Once the juvenile court counselor determines that the complaint is legally sufficient, he or she decides whether it should be filed as a petition, diverted, or resolved without further action.[22] This evaluation can involve interviews with the complainant and victim and the juvenile and his or her parents.[23] "Non-divertable" offenses, however, are not subject to this inquiry; the juvenile court counselor must approve as a petition a complaint alleging a non-divertable offense once legal sufficiency is established.[24] Non-divertable offenses include murder, rape, sexual offense, and other serious offenses designated by the statute.[25] For all other offenses, the case may be diverted with the stipulation that the juvenile and his or her family comply with requirements agreed upon in a diversion plan or contract, such as participation in mediation, counseling, or teen court.[26] The diversion plan or contract can be in effect for up to six months, during which time the court counselor conducts periodic reviews to

[15] G.S. 15A-505(a).
[16] Male youthful offenders are incarcerated at the Foothills Correctional Institution, an 858-capacity facility for males aged 18-25 years old. See N.C. Dep't Pub. Safety, Foothills Correctional Institution, N.C. DPS, https://www.ncdps.gov/Adult-Corrections/Prisons/Prison-Facilities/Foothills-Correctional-Institution (last modified Mar. 19, 2013). Female youthful offenders serve their sentences at the N.C. Correctional Institution for Women, a facility housing the largest inmate population in the state and female inmates of all ages and all custody and control statuses, including death row, maximum, close, medium, minimum and safekeepers. See N.C. Dep't Pub. Safety, NC Correctional Institution for Women, N.C. DPS, https://www.ncdps.gov/Adult-Corrections/Prisons/Prison-Facilities/NC-Correctional-Institution-for-Women (last modified Aug. 6, 2015).
[17] With respect to physical violence, a report for the John Locke Foundation supporting raising the juvenile age notes: "Research has found minors are 50 percent more likely to be physically attacked by a fellow inmate with a weapon of some sort, and twice as likely to be assaulted by staff." JOHN LOCKE FOUNDATION REPORT, supra note __, at 5. As to suicide, that same report notes: "the limited evidence available suggests the risk of suicide may be higher for youths placed in adult prisons." Id.
[18] For a complete catalogue of collateral consequences, see the UNC School of Government's Collateral Consequences Assessment Tool, a searchable database of the North Carolina collateral consequences of a criminal conviction, available online at http://ccat.sog.unc.edu/.
[19] For the procedures for intake, diversion, and juvenile petitions, see G.S. Ch. 7B, Arts. 17 & 18.
[20] G.S. 7B-1701.
[21] Id.
[22] G.S. 7B-1702.
[23] Id.
[24] G.S. 7B-1701.
[25] Id.
[26] G.S. 7B-1706.

ensure compliance by the juvenile and the juvenile's parent, guardian, or custodian.[27] If diversion is unsuccessful, the complaint may be filed as a petition.[28] If successful, the juvenile court counselor may close the case at an appropriate time.[29] The Division of Adult Correction and Juvenile Justice reports that for calendar years 2008-2011, 21% of complaints were diverted and 18% were closed at intake.[30] 76% of those diverted did not acquire new juvenile complaints within two years.[31] If the counselor approves a complaint as a petition, the case is calendared for juvenile court. If the counselor declines to so approve a complaint, the complainant can request that the prosecutor review that decision.[32] In certain circumstances, such as where the juvenile presents a danger to the community, a district court judge may order that the juvenile be taken into secure custody.[33]

For cases that go to court, the child's parent, guardian, or custodian is made a party to the proceeding and is required to attend court hearings.[34] If the child is adjudicated delinquent, a dispositional hearing is held after which the judge enters a disposition that provides "appropriate consequences, treatment, training, and rehabilitation to assist the juvenile toward becoming a nonoffending, responsible, and productive member of the community."[35] Interventions that can be imposed on delinquent youth array on a continuum. Lower level sanctions include things like restitution, community service, and supervised day programs. [36] Intermediate sanctions include things like placement in a residential treatment facility and house arrest.[37] In certain circumstances, the judge's dispositional order may require the child to be committed into State custody, in which case the child will be held in a youth development center (YDC), housing only those adjudicated as juveniles.[38] Upon commitment to and placement in a YDC, the juvenile undergoes a "screening and assessment of developmental, educational, medical, neurocognitive, mental health, psychosocial and relationship strengths and needs."[39] This and other information is used to develop an individualized service plan "outlining commitment services, including plans for education, mental health services, medical services and treatment programming as indicated."[40] A service planning team meets at least monthly to monitor the juvenile's progress.[41] In contrast to the adult prison setting and because YDCs deal exclusively with juvenile populations, all of their programming is age- and developmentally-appropriate for juveniles. Because of the focus on rehabilitation, and in contrast to a judge's authority in the criminal system, the juvenile dispositional order can require action by the child's parent, guardian, or custodian, such as attending parental responsibility classes,[42] or participation in the child's psychological treatment.[43] Because the juvenile record is confidential and not part of the public record,[44] barriers to employment, education, college financial

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[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *N.C. DEP'T PUB. SAFETY, DIVISION OF JUVENILE JUSTICE, JUVENILE DIVERSION IN NORTH CAROLINA 7 (2013).*
[31] *Id. at 2.*
[32] *G.S. 7B-1704.*
[33] *G.S. 7B-1903.*
[34] *G.S. 7B-2700.*
[35] *G.S. 7B-2500.*
[36] *Juvenile Justice Disposition Chart and Dispositional Alternatives (Dec. 2015) (a copy of this document was provided by the Division of Adult Correction and Juvenile Justice, Subcommittee on Juvenile Age Meeting Feb. 18, 2016).*
[37] *Id.*
[38] *Id.; see also G.S. 7B-2506(24).*
[39] *N.C. Dep't Pub. Safety, Youth Development Centers, N.C. DPS, https://www.ncdps.gov/Juvenile-Justice/Juvenile-Facility-Operations/Youth-Development-Centers (last visited Mar. 21, 2016).*
[40] *Id.*
[41] *Id.*
[42] *G.S. 7B-2701.*
[43] *G.S. 7B-2702.*
[44] *G.S. 7B-3000. In certain circumstances, however, information in juvenile court records later may be revealed to the prosecutor, probation officer, magistrate, law enforcement, and the court. Id.*

aid, and other collateral consequences associated with a criminal conviction do not attach to the same extent.

North Carolina Stands Alone Nationwide in its Treatment of Youthful Offenders

Forty-one states plus the District of Columbia set the age of criminal responsibility at age 18.[45] In these jurisdictions, 16- and 17-year olds are tried in the juvenile justice system, not the adult system. Seven states set the age of criminal responsibility at age 17.[46] This leaves North Carolina and one other state — New York — as the only jurisdictions that prosecute both 16- and 17-year olds in adult criminal court.[47] New York's procedure, however, is much more flexible than North Carolina's in that it has a reverse waiver provision allowing a youthful offender to petition the court to be tried as a juvenile.[48] While other states have moved[49] — and continue to move[50] — to increase juvenile age, North Carolina has not followed suit.

Most North Carolina Youthful Offenders Commit Misdemeanors & Non-Violent Felonies

Consistent with data from other states, stable data shows that only a small number of North Carolina's 16- and 17-year-olds are convicted of violent felonies.[51] Of the 5,689 16-and 17-year olds convicted in 2014,[52] only 187 — 3.3% of the total — were convicted of violent felonies (Class A-E).[53] The vast majority of these youthful offenders — 80.4% — were convicted of misdemeanors.[54] The remaining 16.3% were convicted of non-violent felonies.[55]

The fact that such a small percentage of youthful offenders commit violent felonies caused Newt Gingrich to argue, in support of raising the age in New York, that "[i]t is commonsense to design the system around what is appropriate for the majority, while providing exceptions for the most serious cases."[56] Likewise, a report on raising the age prepared by the John Locke Foundation notes, "[w]hile there are a small number of very serious juvenile offenders who should be tried as adults due to the nature of their crimes, in the aggregate, the limited available evidence … suggests that placing all 16 year-olds in the adult criminal justice system is not the most effective strategy for

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[45] *Juvenile Justice Geography, Policy, Practice & Statistics, Jurisdictional Boundaries, JJGPS, http://www.jjgps.org/jurisdictional-boundaries (last visited Mar. 21, 2016) [hereinafter Jurisdictional Boundaries].*

[46] *Id. (these states include: Georgia, Louisiana, Michigan, Missouri, South Carolina, Texas and Wisconsin). Raise the age proposals are under consideration in some of these states See Erik Eckholm, States Move Toward Treating 17-Year-Old-Offenders as Juveniles, Not Adults, NEW YORK TIMES, May 13, 2016, http://www.nytimes.com/2016/05/14/us/states-move-to-treat-17-year-old-offenders-as-juveniles.html (reporting that Louisiana and South Carolina are considering legislation to raise the age to 18); Newt Gingrich & Pat Nolan, Missouri, Raise the Age, ST. LOUIS POST-DISPATCH, Apr. 27, 2016, http://www.stltoday.com/news/opinion/missouri-raise-the-age/article_ade5dad7-12aa-54b4-b180-97d3977edfc1.html (noting that Missouri legislature is working on raise the age bill); Editorial Board, Louisiana Should Raise the Age to 18 for Prosecution as an Adult, THE TIMES-PICAYUNE (New Orleans), Apr. 27, 2016, http://www.nola.com/politics/index.ssf/2016/04/raise_the_age_juvenile.html (advocating for pending bill in Louisiana).*

[47] *Jurisdictional Boundaries, supra n. __.*

[48] *Id.*

[49] *Id. (providing a color coded map showing the upper age of juvenile jurisdiction in U.S. states from 1997 to 2014).*

[50] *See supra n. __.*

[51] *Convictions by Offense Type and Class for Offenders Age 16 and 17 FY 2004/05 – FY 2013/14 (chart indicating that convictions for Class A-E felonies never exceeded 4% of total convictions for this age group over ten-year period; a copy of this document was provided to the Committee Reporter by Michelle Hall, Executive Director of the North Carolina Sentencing and Policy Advisory Commission, Mar. 24, 2016).*

[52] *MICHELLE HALL, NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION, COMPARATIVE STATISTICAL PROFILE OF YOUNG OFFENDERS IN NORTH CAROLINA 6 (Presented to the NCCALJ Criminal Investigation and Adjudication Committee, Dec. 11, 2015) [hereinafter COMPARATIVE STATISTICAL PROFILE].*

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] *Newt Gingrich, Treating Kids As Kids to Help Curb Crime, N.Y. POST, Mar. 20, 2015, http://nypost.com/2015/03/20/treating-kids-as-kids-to-help-curb-crime/ [hereinafter Gingrich].*

deterring crime or successfully rehabilitating and protecting these youngsters."[57] Consistent with these arguments, the Committee recommends a policy that is appropriate for the majority of youthful offenders, with two safeguards for ensuring community safety with respect to the minority of youthful offenders who commit violent crimes: (1) requiring that youthful offenders charged with Class A through E felonies be tried in adult criminal court and (2) maintaining the existing procedure that allows other cases to be transferred to adult court when appropriate.[58]

Raising the Age Will Make North Carolina Safer

As noted in the John Locke Foundation report supporting raising the juvenile age in North Carolina, "[r]esearch consistently shows that rehabilitation of juveniles is more effectively obtained in juvenile justice systems and juvenile facilities, as measured by recidivism rates."[59] Recidivism refers to an individual's relapse into criminal behavior, after having experienced intervention for a previous crime,[60] such as a conviction and prison sentence. Lower rates of recidivism means less crime and safer communities. Both North Carolina and national data suggest that prosecuting youthful offenders as adults results in higher rates of recidivism than when youthful offenders are treated in the juvenile system. Thus, raising the age is likely to result in lower recidivism, less crime, and increased safety.

North Carolina data shows a significant 7.5% decrease in recidivism when teens are adjudicated in the juvenile versus the adult system.[61] Experts suggest that youthful offenders have a higher recidivism rate when prosecuted in the adult criminal system because, unlike the juvenile system, the criminal system lacks the ability to implement the most targeted, juvenile-specific, effective interventions for rehabilitation within a framework of parental and community involvement to include mental health, education, and social services participation in the continuum of care.[62] North Carolina data also shows that when youthful offenders are prosecuted in the adult system, they recidivate at a rate that is 12.6% higher than the overall population.[63] Also, individuals with deeper involvement in the criminal justice system generally recidivate at higher rates than those with less involvement (for example, a sentence of probation versus one of imprisonment).[64] Contrary to the conventional rule, in North Carolina youthful offenders who receive probation recidivate at a higher rate than defendants who are released after a prison sentence.[65] These last two data points indicate that North Carolina's treatment of youthful offenders is inconsistent with reducing crime and promoting community safety. Overall, North Carolina data is consistent with data nationwide: recidivism rates are higher when juveniles are prosecuted in adult criminal court.[66]

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[57] JOHN LOCKE FOUNDATION REPORT, supra note __, at 2.

[58] See supra pages __-__ (specifying these recommendations); see generally JOHN LOCKE FOUNDATION REPORT, supra note __, at 2 (arguing: "As long as there are mechanisms in place which permit juvenile offenders whose crimes are individually deemed serious enough to be tried as adults, considerations of public safety and the wellbeing of state wards suggest North Carolina should seriously look at joining nearly all other states in making the juvenile justice system the default destination for 16 year-olds.").

[59] JOHN LOCKE FOUNDATION REPORT, supra note __, at 3.

[60] National Institute of Justice, Recidivism, NIJ, http://www.nij.gov/topics/corrections/recidivism/pages/welcome.aspx (last modified June 17, 2014).

[61] COMPARATIVE STATISTICAL PROFILE, supra note __, at Tables 9 and 11 (showing a two-year recidivism rate for 16-17 year old probationers to be 49.3% and a two-year recidivism rate for 15-year–olds to be 41.8%).

[62] Comments of William Lassiter, Committee Meeting Dec. 11, 2015.

[63] COMPARATIVE STATISTICAL PROFILE, supra note __, at Table 9 (while the overall probation entry population recidivates at a rate of 36.7%, 16- and 17-year-olds recidivate at the much higher rate of 49.3%).

[64] NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION, CORRECTIONAL PROGRAM EVALUATION: OFFENDERS PLACED ON PROBATION OR RELEASED FROM PRISON IN FISCAL YEAR 2010/11, at iii, Figure 2 (2014) (showing that two-year recidivism rate as measured by rearrests was 36.8% for probationers while the rate for persons released from prison was 48.6%).

[65] COMPARATIVE STATISTICAL PROFILE, supra note __, at Table 9 (showing that while recidivism for overall prison releases is 48.6%, recidivism rates for youthful offenders sentenced to probation is 49.3%).

[66] As noted by Newt Gingrich when arguing in favor of raise the age legislation in New York:

Additionally, evidence shows that youth receive more supervision in the juvenile system than the adult system. Because they typically present in the adult system with low-level offenses, charges against youthful offenders often are dismissed.[67] Even when youthful offenders are convicted, because they typically have little or no prior criminal record,[68] sentences are often light.[69] As Newt Gingrich observed when supporting raise the age legislation in New York, "because most minors are charged with low-level offenses, the adult system often imposes no punishment whatsoever, teaching a dangerous lesson: You won't be held accountable for breaking the law."[70]

Some assert that prosecuting youthful offenders in criminal court has an important deterrent effect. However, as noted in a John Locke Foundation report supporting raising the age in North Carolina, studies show that prosecuting juveniles in adult court does not in fact deter crime.[71] That report continues:

> The studies all show that, perhaps due to minors' lack of maturity or less-than-developed frontal cortex, which controls reasoning, legislative efforts to inflict criminal court jurisdiction and punishments upon minors have not deterred crime. Even more than adult offenders, the very problem with juvenile offenders is that too often they do not think carefully before committing their misdeeds, and they rarely, if ever, review the statutory framework to determine the consequences.[72]

Other researchers agree that adult criminal sanctions do not deter youth crime.[73]

The Committee's recommendation has built-in protections to deal with violent juveniles: (1) requiring that youthful offenders charged with Class A through E felonies be tried in adult criminal court[74] and (2) maintaining the existing procedure that allows other cases to be transferred to adult court when appropriate.[75] Notably, North Carolina's existing transfer provision has been used for 13, 14, and 15-year-olds for many years, with no empirical evidence suggesting that violent youth

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> *Research shows that prosecuting youths as adults increases the chances that they will commit more serious crimes. A Columbia University study compared minors arrested in New Jersey (where the age of adulthood is 18) with those in New York. New York teens were more likely to be rearrested than those processed in New Jersey's juvenile court for identical crimes. For violent crimes, rearrests were 39 percent greater. Studies in other states have yielded similar results, leading experts at the Centers for Disease Control to recommend keeping kids out of adult court to combat community violence.*

Gingrich, supra note __; see also JOHN LOCKE FOUNDATION REPORT, supra note __, at 3-4 (citing several studies that have compared recidivism rates for juvenile offenders tried in juvenile courts with those for juveniles tried in criminal courts); OLA LISOWSKI & MARC LEVIN, MACIVER INSTITUTE & TEXAS PUBLIC POLICY FOUNDATION, 17-YEAR-OLDS IN ADULT COURT: IS THERE A BETTER ALTERNATIVE FOR WISCONSIN'S YOUTH AND TAXPAYERS? 3, 7-9 (2016) (noting that "[i]n Wisconsin, 17-year-olds are three times more likely to return to prison if they originally go through the adult system rather than the juvenile system"; discussing studies in other states, including New York and New Jersey, Florida, and Minnesota) [hereinafter LISOWSKI & LEVIN].

[67] PowerPoint accompanying Comments of Judge Morey, Committee Meeting Dec. 11, 2015 (noting that in Durham, of the 632 misdemeanors charges taken out on 16- and 17-year-olds in 2012, 495 were dismissed), http://nccalj.org/wp-content/uploads/2015/12/October-2015-Sentencing-Commissions-Research-and-Policy-Study-Group.pdf.

[68] COMPARATIVE STATISTICAL PROFILE, supra note __, at Table 5 (showing that less than 2% of youthful offenders present with a prior record at level III or above).

[69] Id. at Table 7 (showing that almost 75% of youthful offenders receive non-active (community) punishment).

[70] Gingrich, supra note __.

[71] JOHN LOCKE FOUNDATION REPORT, supra note __, at 3 (so noting and discussing data from New York, Idaho, and Georgia calling into question the notion that prosecuting juveniles in adult court has a deterrent effect).

[72] Id.

[73] LISOWSKI & LEVIN, supra note __, at 5 (noting that in 1994, after Georgia passed a law restricting access to juvenile court for certain youth, a study showed no significant change in juvenile arrest rates in the years following the statute's enactment; noting that after New York passed a similar law in 1978, a study found that arrest rates for most offenses remained constant or increased in the time period of the study).

[74] According to the recommendations above, Class A-E felony charges against 16- and 17-year olds will be automatically transferred to superior court after a finding of probable cause or by indictment. See supra p. __ (so specifying)

[75] See supra p. __ (so specifying).

are falling through the cracks.[76] Finally, studies show when states have implemented raise the age legislation, public safety has improved.[77]

Raising the Age Will Benefit North Carolina Economically

Two separate studies authorized by the North Carolina General Assembly indicate that raising the juvenile age will produce significant economic benefits for North Carolina:

1. In 2009, the Governor's Crime Commission Juvenile Age Study submitted to the General Assembly included a cost-benefit analysis of raising the age of juvenile court jurisdiction to 18. The analysis, done by ESTIS Group, LLC, found that the age change would result in a net benefit to the state of $7.1 million.[78]

2. In 2011, the Youth Accountability Planning Task Force submitted its final report to the General Assembly. The Task Force's report included a cost-benefit analysis, done by the Vera Institute of Justice, of prosecuting 16 and 17-year-old misdemeanants and low-level felons in juvenile court. That report estimated net benefits of $52.3 million.[79]

Much of the estimated cost savings would result from reduced recidivism, which "eliminates future costs associated with youth 'graduating' to the adult criminal system, and increased lifetime earnings for youth who will not have the burden of a criminal record."[80] Cost savings from reduced recidivism has been cited in the national discourse on raising the juvenile age. As noted by Newt Gingrich when arguing in favor of raise the age legislation in New York:

> Recidivism is expensive. There are direct losses to victims, the public costs of law enforcement and incarceration and the lost economic contribution of someone not engaged in law-abiding work. When Connecticut raised the age for adult prosecution to 18, crime rates quickly dropped and officials were able to close an adult prison. Researchers calculated the lifetime gain of helping a youth graduate high school and avoid becoming a career criminal or drug user at $2.5 million to $3.4 million *for just one person*. An adult record permanently limits youth prospects; it becomes harder to gain acceptance to a good school, get a job or serve in the military. Juvenile records are sealed and provide more opportunity. It's only fair to give a young person who has paid his debt to society a fresh start. It is in our best interest that youth go on to contribute to the economy, rather than becoming a drain through serial incarceration or dependence on public assistance.[81]

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[76] *The John Locke Foundation report concluded: "North Carolina [has] a robust system of transfer for felony juvenile offenders, which ensures that the most serious of juvenile offenders can be tried in adult courts even if the age of juvenile court jurisdiction is raised." JOHN LOCKE FOUNDATION REPORT, supra note __, at 1.*

[77] *See, e.g., RICHARD MENDEL, JUSTICE POLICY INSTITUTE, JUVENILE JUSTICE REFORM IN CONNECTICUT: HOW COLLABORATION AND COMMITMENT HAVE IMPROVED PUBLIC SAFETY AND OUTCOMES FOR YOUTH 29 (2013) ("Available data leave no doubt that public safety has improved as a result of Connecticut's juvenile justice reforms.") [hereinafter CONNECTICUT REPORT]; see also infra pages __ - __ (discussing other states' experiences with raise the age legislation).*

[78] *GOVERNOR'S CRIME COMMISSION JUVENILE AGE STUDY, A STUDY OF THE IMPACT OF EXPANDING THE JURISDICTION OF THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION 4-6 (2009) [hereinafter 2009 GOVERNOR'S CRIME COMMISSION REPORT].*

[79] *YOUTH ACCOUNTABILITY TASK FORCE REPORT, supra note __.*

[80] *LaToya Powell, U.S. Senators Support "Raise the Age", N.C. CRIM. LAW BLOG (July 14, 2014), http://nccriminallaw.sog.unc.edu/u-s-senators-support-raise-the-age/.*

[81] *Gingrich, supra note __.*

And as noted in a John Locke Foundation report supporting raising the juvenile age, "North Carolina is not merely relying on the projections, but can look to the proven experience of other states."[82] That report continues: "Some 48 other states from Massachusetts to Mississippi have successfully raised the age and implemented this policy change effectively and without significant complications. Many states, including Connecticut and Illinois, have found that the transition can be accomplished largely by reallocating funds and resources among the adult and juvenile systems."[83]

The Committee recognizes that its recommendations will require a significant outlay of taxpayer funds, with benefits achieved long-term. However, there are good reasons to believe that costs will be lower than estimated in the analyses noted above. First, the 2011 Vera Institute cost-benefit analysis estimated costs with FY 2007/08 juvenile arrest data. However, as shown in Figure 2 below, juvenile arrest rates have decreased dramatically from 2008.[84]

Fig. 2. Falling arrest rates for juveniles under age 18.

	Violent Crime	Property Crime
2008	2,597	13,307
2014	1,537	7,919

Source: North Carolina State Bureau of Investigation, Crime in North Carolina – 2014, 7 (Nov. 2015).

These declining arrest numbers for all persons under 18 years old suggest that system costs may be lower than those estimated based on FY 2007/08 data.[85]

Additionally, no prior cost analysis on the juvenile age issue has accounted for cost reductions associated with statewide implementation of pilot programs that reduce admissions into the juvenile system, as recommended by the Committee.[86] For these reasons North Carolina may experience actual costs that are less than those that have been predicted. This in fact would be consistent with the experiences of other states that have raised the juvenile age.[87]

Finally, prior examination of fiscal impact may not have sufficiently taken into account current standards linked to the federal Prison Rape Elimination Act (PREA) that "are likely to raise costs in the adult justice system as county jails and state prisons spend more in areas such as staffing, programming, and facilities."[88] Thus, "[e]ven the apparent short-term cost advantages of the adult justice system will diminish."[89] With respect to staffing costs, male 16- and 17-year-old criminal defendants are housed at Foothills Correctional Center; females at North Carolina Correctional

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[82] *JOHN LOCKE FOUNDATION REPORT, supra note __, at 7.*
[83] *Id. (providing detail on the experience in Connecticut and Illinois).*
[84] *North Carolina State Bureau of Investigation, Crime in North Carolina - 2014, 7 (Nov. 2015) [hereinafter NC SBI Crime Report], http://crimereporting.ncsbi.gov/public/2014/ASR/2014 Annual Summary.pdf.*
[85] *A 2013 fiscal note prepared in connection with HB 725 used data from FY 2012/13. Juvenile arrest rates likewise have declined since 2012: In 2012, 1,556 juveniles under 18 were arrested for violent crimes; that number dropped to 1,537 in 2014. NC SBI Crime Report, supra note __. In 2012, 9,539 juveniles under 18 were arrested for property crimes; that number dropped to 7,919 in 2014. Id.*
[86] *See infra pages __-__.*
[87] *See infra pages __-__ (noting that in Connecticut although juvenile caseloads were expected to grow by 40% they grew only 22% and that Connecticut spent nearly $12 million less in 2010 and 2011 than had been budgeted).*
[88] *Press Release, John Locke Foundation, Long-Term Cost Savings Likely from Raising N.C. Juvenile Justice Age (July 17, 2013) (quoting Marc Levin, co-author of JOHN LOCKE FOUNDATION REPORT) [hereinafter John Locke Press Release], http://www.johnlocke.org/press_releases/show/713.*
[89] *Id.*

Institution for Women.[90] The Division of Juvenile Justice reports that Foothills currently houses 65 juveniles; the Institution for Women houses three. In order to comply with the sight and sound segregation requirements of PREA, every time juveniles are moved within those adult facilities, the facilities must be in lock down, with obvious staffing costs.

Raising the Age Has Been Successfully Implemented in Other States

Other states have enacted raise the age legislation, over vigorous objections that doing so would negatively affect public safety, create staggering caseloads and overcrowded detention facilities, and result in unmanageable fiscal costs.[91] As it turns out, none of the predicted negative consequences have come to pass. For example, in 2009 Illinois moved 17-year-olds charged with misdemeanors from the adult to the juvenile system.[92] Among other things, Illinois reported:

- The juvenile system did not "crash."
- Public safety did not suffer.
- County juvenile detention centers and state juvenile incarceration facilities were not overrun. In fact, three facilities were closed and the state reported excess capacity statewide.[93]

The Illinois experience was so positive that in July 2013, that state expanded its raise the age legislation to include all 17-year-olds in the juvenile justice system, including those charged with felonies.[94]

Connecticut's experience was similarly positive. In 2007, Connecticut enacted legislation to raise the age of juvenile jurisdiction from 16 to 18, effective 2010 for 16-year-olds and 2012 for 17-year olds.[95] After the change, juvenile caseloads grew at a lower-than-expected rate and the state spent nearly $12 million less than budgeted in the two years following the change.[96] A report on Connecticut's experience gives this bottom line for that state's experience: "Cost savings and improved public safety."[97] As has been noted, 48 other states have increased the juvenile age "without significant complications."[98]

While raise the age efforts have proved to be successful, lower the age campaigns have proved unworkable. In 2007, Rhode Island lowered its juvenile age, pulling 17-year-olds out of the juvenile system and requiring that they be prosecuted as adults.[99] Proponents asserted that the change would save the state $3.6 million because 17-year-olds would be housed in adult prisons rather

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[90] See supra n. __.
[91] ILLINOIS JUVENILE JUSTICE COMMISSION, RAISING THE AGE OF JUVENILE COURT JURISDICTION: THE FUTURE OF 17-YEAR-OLDS IN ILLINOIS' JUSTICE SYSTEM 6 (2013) (noting these objections) [hereinafter ILLINOIS REPORT], http://ijjc.illinois.gov/sites/ijjc.illinois.gov/files/assets/IJJC - Raising the Age Report.pdf.
[92] Id. (noting that initial legislation was passed over opponents' assertions that the law would lead to "unmanageable fiscal costs"). For more background on the raising the age in Illinois, see Illinois Juvenile Justice Commission, Raising the Age of Juvenile Court Jurisdiction: The Future of 17-Year-Olds in Illinois' Justice System, IIJC, http://ijjc.illinois.gov/rta (last visited Mar. 23, 2016).
[93] ILLINOIS REPORT, supra note __, at 6; see also John Locke Press Release, supra note __ (noting that "[a]fter Illinois raised the juvenile jurisdiction age in 2010, both juvenile crime and overall crime dropped so much that the state was able to close three juvenile lockups because they were no longer needed").
[94] Illinois Public Act 098-0061.
[95] See CONNECTICUT REPORT, supra note __, at 15-16.
[96] Id. at 27 (reporting that juvenile caseloads grew at a rate of 22% versus 40% as projected).
[97] Id. at 3. More information on Connecticut's experience is available at Raise the Age CT (a project of the Connecticut Juvenile Justice Alliance). See Connecticut Juvenile Justice Alliance, Raise the Age CT, http://raisetheagect.org/index.html (last visited Mar 23, 2016).
[98] John Locke Press Release, supra note __.
[99] 2009 GOVERNOR'S CRIME COMMISSION REPORT, supra note __, at 13.

than training schools. But the experiment was a failure. As it turned out, youths sentenced to adult prison had to be, for safety reasons, housed in super max custody facilities at the cost of more than $100,000 per year.[100] Just months later Rhode Island abandoned course and rescinded the law.[101]

Raising the Age Strengthens Families

Suppose that 16-year-old high school junior Bobby is charged with assault, after a fight at school over a girl. Because North Carolina treats Bobby as an adult, his case can proceed to completion with no parental involvement or input. This led Newt Gingrich to assert, when arguing for raise the age legislation in New York:

> [L]aws that undermine the family harm society. When a 16- or 17-year-old is arrested [he or she] … can be interviewed alone and can even agree to plea bargains without parental consent. What parent would not want the chance to intervene, to set better boundaries or simply be a parent? The current law denies them that right.[102]

While the criminal justice system cuts parents out of the process, the juvenile system requires their participation[103] and thus serves to strengthen parents' influence on their teens.

Raising the Age Is Supported By Science

Although North Carolina treats its youthful offenders as adults, widely accepted science reveals that adolescent brains are not fully developed.[104] Among other things, research teaches that:

- Interactions between neurobiological systems in the adolescent brain cause teens to engage in greater risk-taking behavior.[105]
- Increases in reward- and sensation-seeking behavior precede the maturation of brain systems that govern self-regulation and impulse control.[106]
- Despite the fact that many adolescents may appear as intelligent as adults, their ability to regulate their behavior is more limited.[107]
- Teens are more responsive to peer influence than adults.[108]
- Relative to adults, adolescents have a lesser capacity to weigh long-term consequences;[109] as they mature into adults, they become more future oriented, with increases in their consideration of future consequences, concern about the future, and ability to plan ahead.[110]

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[100] *Id.; see also Katie Zezima, Law on Young Offenders Causes Rhode Island Furor, N.Y. TIMES, Oct. 30, 2007, http://www.nytimes.com/2007/10/30/us/30juvenile.html?_r=0.*
[101] *2009 GOVERNOR'S CRIME COMMISSION REPORT, supra note __, at 13.*
[102] *Gingrich, supra note __.*
[103] *See supra pages __-__ (noting that parents must participate in proceedings in juvenile court).*
[104] *Comments of Dr. Cindy Cottle, Committee Meeting December 11, 2015; Comments of Deputy Commissioner Lassiter, Committee Meeting Dec. 11, 2015; Laurence Steinberg, Adolescent Development and Juvenile Justice, 5 ANNU. REV. CLIN. PSYCHOL. 459, 465 (2009) (research shows continued brain maturation through the end of adolescence).*
[105] *Steinberg, supra note __, at 466; Comments of Dr. Cindy Cottle, Committee Meeting Dec. 11, 2015.*
[106] *Steinberg, supra note __, at 466.*
[107] *Id. at 467.*
[108] *Id. at 468; Comments of Dr. Cindy Cottle, Committee Meeting Dec. 11, 2015; Comments of Deputy Commissioner Lassiter, Committee Meeting Dec. 11, 2015.*
[109] *Comments of Dr. Cindy Cottle, Committee Meeting Dec. 11, 2015.*
[110] *Steinberg, supra note __, at 469; Comments of Deputy Commissioner Lassiter, Committee Meeting Dec. 11, 2015.*

- As compared to adults, adolescents are more sensitive to rewards, especially immediate rewards.[111]
- Adolescents are less able than adults to control impulsive behaviors and choices.[112]
- Adolescents are less responsive to the threat of criminal sanctions.[113]

This research and related data has significant implications for justice system policy. First, it suggests that adolescents are less culpable than adults.[114] If the relative immaturity of a 16-year-old's brain prevents him from controlling his impulses, he is less culpable than an adult who possesses that capability but acts nevertheless.[115] Second, the vast majority of adolescents who commit antisocial acts desist from such activity as they mature into adulthood.[116] Rather than creating a lifetime disability for youthful offenders (e.g., public record of arrest and conviction; ineligibility for employment and college financial aid, etc.), sanctions for delinquent youth should take into account the fact that most juvenile offenders "mature out of crime,"[117] growing up to be law-abiding citizens. Third, response systems that "attend to the lessons of developmental psychology" are more effective in reducing recidivism among adolescents than the punitive criminal justice model.[118] Research shows that active interventions focused on strengthening family support systems and improving abilities in the areas of self-control, academic performance, and job skills are more effective than strictly punitive measures in reducing crime.[119] While these type of interventions can be and are implemented in the juvenile system, they are virtually unavailable in the adult criminal justice system. Finally, because adolescents are particularly susceptible to peer influence, outcomes are likely to be better when individuals in a formative stage of development are placed in an environment with an authoritative parent or guardian and prosocial peers rather than with adult criminals.[120]

Raising the Age Is Consistent with Supreme Court Decisions Recognizing Juveniles' Lesser Culpability & Greater Capacity for Rehabilitation

Raising the juvenile age is consistent with recent decisions by the United States Supreme Court recognizing that juveniles' unique characteristics require that they be treated differently than adults. First, in *Roper v. Simmons*,[121] the Court held that the Eighth Amendment bars imposing capital punishment on juveniles. Next, in *Graham v. Florida*,[122] it held that same amendment prohibits a sentence of life without the possibility of parole for juveniles who commit non-homicide offenses. Then, in *Miller v. Alabama*,[123] the Court held that mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment. Citing the type of science and social science research discussed in this report,[124] the Court recognized that juvenile offenders are less culpable than adults, have a greater capacity than adults for rehabilitation, and

[111] *Steinberg, supra note __, at 469; Comments of Dr. Cindy Cottle, Committee Meeting Dec. 11, 2015.*
[112] *Steinberg, supra note __, at 470.*
[113] *Id. at 480; Comments of Dr. Cindy Cottle, Committee Meeting Dec. 11, 2015.*
[114] *Steinberg, supra note __, at 471.*
[115] *Id.*
[116] *Id. at 478.*
[117] *Id.*
[118] *Id. at 478-79.*
[119] *Id. at 479.*
[120] *Id. at 480.*
[121] *543 U.S. 551 (2005).*
[122] *560 U.S. 48 (2010).*
[123] *567 U.S. ___, 132 S. Ct. 2455 (2012).*
[124] *See supra pages __ - __.*

are less responsive than adults to the threat of criminal sanctions.[125] The Court found persuasive research "showing that only a relatively small proportion of adolescents who engage in illegal activity develop entrenched patterns of problem behavior,"[126] stating:

> [Y]outh is more than a chronological fact. It is a time of immaturity, irresponsibility, impetuousness[,] and recklessness. It is a moment and condition of life when a person may be most susceptible to influence and to psychological damage. And its signature qualities are all transient.[127]

And just this year, in *Montgomery v. Louisiana,*[128] the Court took the extraordinary step of holding that the *Miller* rule applied retroactively to cases that became final before it was decided. The *Montgomery* Court recognized that the "vast majority of juvenile offenders" are not permanently incorrigible, and that only the "rarest" of juveniles can be so categorized.[129] The Court again noted that most juvenile crime "reflect[s] the transient immaturity of youth."[130]

The Court's reasoning in these cases supports raising the age of juvenile court jurisdiction.

Raising the Age Removes a Competitive Disadvantage NC Places on its Youth

Suppose two candidates apply for a job. Both have the same credentials. Both got into fights at school when they were 16 years old, triggering involvement with the judicial system. But because one of the candidates, Sam, lives in Tennessee, his juvenile delinquency adjudication is confidential and cannot be discovered by his potential employer. The other candidate, Tom, is from North Carolina. Because of that, his interaction with the justice system resulted in a criminal conviction for affray. Tom's entire criminal record is discovered by his potential employer. Who is more likely to get the job?

As this scenario illustrates, saddling North Carolina's youth with arrest and conviction records puts them at a competitive disadvantage as compared to youth from other states.[131] Although some have suggested that expunction can be used to remove teens' criminal records, there are significant barriers to expunction, such as legal fees. One district court judge reported to the Committee that expunctions for youthful offenders represent only a "tiny fraction" of the total convictions.[132] Additionally, even if expunction is available to remove the official criminal record, it does nothing to delete information about a youthful offender's arrest or conviction as reported on the internet by news outlets, private companies, and social media.

Reducing School-Based Referrals Can Mitigate the Costs of Raising the Age

In North Carolina, school-based complaints account for almost half of the referrals to the juvenile justice system.[133] This phenomenon is asserted to be part of the "school to prison pipeline," through which children are referred to the court system for classroom misbehavior that a generation ago would have been handled in the schools. Concerns have been raised nationally and in North

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[125] *Miller, 567 U.S. at ___, 132 S. Ct. at 2464-65.*
[126] *Id. at ___, 132 S. Ct. at 2464 (internal quotation omitted).*
[127] *Id. at ___, 132 S. Ct. at 2467 (internal quotation and citation omitted).*
[128] *577 U.S. ___, 136 S. Ct. 718 (2016).*
[129] *Id. at ___, 136 S. Ct. at 734.*
[130] *Id.*
[131] *Comments of Judge Brown, Committee Meeting Dec. 11, 2015; Comments of Police Chief Palombo, Committee Meeting Dec. 11, 2015.*
[132] *Comments of Judge Brown, Committee Meeting Dec. 11, 2015.*
[133] *Presentation by Deputy Commissioner William Lassiter, Committee Meeting Dec. 11, 2015, http://nccalj.org/wp-content/uploads/2015/12/JJ-Trends-SPAC-2015.pdf.*

Carolina that excessive punishment of public school students for routine misbehavior is counterproductive and out of sync with what science and social science teach about the most effective corrective action.[134] Some have suggested that such referrals unnecessarily burden the juvenile justice system with frivolous complaints.[135]

Responding to these concerns, individuals and groups throughout the nation have developed models to stem the flow of school-based referrals to the court system, instead addressing school misconduct immediately and effectively when and where it happens. In 2004, Juvenile Court Judge Steven Teske of Georgia developed one such model, in which school officials, local law enforcement, and others signed on to a cooperative agreement. The agreement provides, among other things, that "misdemeanor delinquent acts," like disrupting school and disorderly conduct do not result in the filing of a court complaint unless the student commits a third or subsequent similar offense during the school year, and the principal conducts a review of the student's behavior plan. Youth first receive warnings and after a second offense, they are referred to mediation or school conflict training programs. Elementary students cannot be referred to law enforcement for "misdemeanor delinquent acts" at all. Teske's program reports an 83% reduction in school referrals to the justice system.[136] It also reports another significant outcome: a 24% increase in graduation rates.[137] Two other states that have adopted similar programs — commonly referred to as school-justice partnerships — have experienced similar results.[138] In fact, Connecticut has enacted a state law requiring all school systems that use law enforcement officers on campus to create school-justice partnerships.[139]

North Carolina already has one such program in place. Modeled on Teske's program, Chief District Court Judge J.H. Corpening II, has implemented a school-justice partnership program in Wilmington, North Carolina. Like Teske's program, the Wilmington program requires that official responses to school-based disciplinary issues conform to what science and social science teaches is effective for juveniles.[140] The program was crafted with participation from local law enforcement, prosecutors, court counselors, the chief public defender, school officials, and community members. The group developed an approach that deals with school discipline in a consistent and positive way through a graduated discipline model.[141] The goal is for the schools to take a greater role in addressing misbehavior when and where it happens, rather than referring minor matters to the court system, with its delayed response. Officials in North Carolina's Juvenile Justice system view the program as a "huge step forward" with respect to reducing school-based referrals.[142] Because Wilmington's program is so new, data on its effectiveness is not available. However, based on data from other jurisdictions, statewide implementation of school-justice partnerships based on the Georgia model promises to reduce referrals to the juvenile system and thus mitigate costs associated with raising the juvenile age.

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[134] See, e.g., TERI DEAL ET AL., NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, SCHOOL PATHWAYS TO THE JUVENILE JUSTICE SYSTEM PROJECT: A PRACTICE GUIDE 1 (2014), http://www.ncjfcj.org/sites/default/files/NCJFCJ_SchoolPathwaysGuide_Final2.pdf.

[135] Id.

[136] Steven Teske, States Should Mandate School-Justice Partnership to End Violence Against Our Children, JUVENILE JUSTICE INFORMATION EXCHANGE (Dec. 8, 2015), http://jjie.org/states-should-mandate-school-justice-partnership-to-end-violence-against-our-children/163156/.

[137] Id.

[138] Id. (early results from Texas showed a 27% drop in referrals; two sites in Connecticut experienced reductions of 59% and 87% respectively).

[139] Id. (reporting that "Connecticut passed Public Law 15-168 to require all school systems using law enforcement on campus to create a school-justice partnership that limits the role of police in disciplinary matters and requires a graduated response system in lieu of arrests").

[140] Comments of Judge Corpening, Committee Meeting Dec. 11, 2015 (describing Wilmington's program).

[141] Id.

[142] Comments of Deputy Commissioner William Lassiter, Committee Meeting Dec. 11, 2015.

North Carolina Department of Juvenile Justice Stands Ready to Implement Raise the Age Legislation

Increasing the juvenile age will increase the number of juveniles in the juvenile justice system. Notwithstanding this, the North Carolina Division of Adult Correction and Juvenile Justice supports this recommendation and stands ready to implement raise the age legislation.[143] Speaking to the Committee, Commissioner Guice indicated that he was very supportive of raising the age and emphasized that North Carolina already has done the studies and developed the data on the issue. Additionally, he noted that other states have led the way and their experience with raise the age legislation suggests that "there is no reason why we can't address this in North Carolina." In fact, he urged the Committee, not to "back away from doing what is right" on this issue.

Every North Carolina Study Has Made the Same Recommendation: Raise the Age

In recent history, General Assembly has commissioned two studies of raise the age legislation. Both came to the same conclusion: North Carolina should join the majority of states in the nation and raise the juvenile age. First, in 2007, pursuant to legislation passed by the General Assembly, the North Carolina Sentencing and Policy Advisory Commission submitted its Report on Study of Youthful Offenders recommending, in part, that North Carolina increase the age of juvenile jurisdiction to 18.[144] Second, in 2011, pursuant to legislation passed by the General Assembly, the Youth Accountability Task Force submitted its final report to the General Assembly recommending, among other things, moving youthful offenders to the juvenile justice system.[145] Additionally, in December 2012, the Legislative Research Commission submitted its report to the 2013 General Assembly, supporting a raise the age proposal.[146]

Broad Bi-Partisan & Unanimous Stakeholder Support to Raise the Age

Bills to raise the juvenile age have been introduced and supported in North Carolina by lawmakers from both sides of the aisle[147] and raise the age proposals and related efforts to remove non-violent juveniles from the adult criminal justice system have enjoyed bipartisan support around the nation.[148]

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[143] Comments of Commissioner W. David Guice, Division of Adult Correction and Juvenile Justice, Committee Meeting Dec. 11, 2015; Comments of Deputy Commissioner William Lassiter, Committee Meeting Dec. 11, 2015.

[144] 2007 SENTENCING COMMISSION REPORT, supra note __.

[145] YOUTH ACCOUNTABILITY TASK FORCE REPORT, supra note __.

[146] LEGISLATIVE RESEARCH COMMISSION, AGE OF JUVENILE OFFENDERS COMMITTEE, REPORT TO THE 2013 GENERAL ASSEMBLY OF NORTH CAROLINA 12 (Dec., 2012) (supporting S 434 after consideration of identified issues) [hereinafter AGE OF JUVENILE OFFENDERS COMMITTEE REPORT], http://www.ncleg.net/documentsites/committees/lrc/2013 Committee Reports to LRC/Age of Juvenile Offenders LRC Report.pdf.

In fact, efforts to raise North Carolina's juvenile age to 18 date back at least until the 1950s. NC JUVENILE JUSTICE: A HISTORY, supra n. __, at 17-18 (in 1955, the Commission on Juvenile Courts and Correctional Institutions recommended that the age limit should be so increased); id. at 21-22 (in 1956, the preliminary report of the Governor's Youth Service Commission made the same recommendation); id. at 23-24 (a 1956 study by the National Probation and Parole Association noted "the unreasonableness of classifying a sixteen or seventeen year-old youngster as an adult in connection with offenses against society." (quotation omitted)).

[147] See, e.g., HB 399, 2015 Session of the N.C. General Assembly (primary sponsors: Reps. Avila (R), Farmer-Butterfield (D), Jordan (R), and D. Hall (D)), http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2015&BillID=h399&submitButton=Go; HB 725, 2013 Session of the N.C. General Assembly (primary sponsors: Reps. Avila (R), Moffitt (R), Mobley (D), and D. Hall (D)), http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2013&BillID=h725&submitButton=Go; AGE OF JUVENILE OFFENDERS COMMITTEE REPORT, supra note __, at 12 (supporting S 434 after consideration of identified issues).

[148] See, e.g., Gingrich, supra note __. In 2014, U.S. Senators Rand Paul (R-KY) and Cory Booker (D-NJ) introduced the REDEEM (Record Expungement Designed to Enhance Employment) Act, encouraging states to increase the age of criminal responsibility to 18.

Support

The recommendations in this report enjoy unanimous support of the following Committee members, Subcommittee on Juvenile Age members, and key stakeholders, including the N.C. Conference of District Attorneys and the law enforcement community:

- Augustus A. Adams, Committee member & member, N.C. Crime Victims Compensation Committee
- Asa Buck III, Committee member, Sheriff Carteret County & Chairman N.C. Sheriffs' Association Executive Committee
- Randy Byrd, Committee member, & President, N.C. Police Benevolent Association
- James E. Coleman Jr., Professor, Duke University School of Law
- Kearns Davis, Committee member & President-Elect, N.C. Bar Association
- W. David Guice, Commissioner, North Carolina Division of Adult Correction and Juvenile Justice
- Paul A. Holcombe, Committee member & N.C. District Court Judge
- Darrin D. Jordan, Committee member, lawyer, & Commissioner, N.C. Indigent Defense Commission
- Robert C. Kemp III, Committee member, Public Defender & President, N.C. Defenders' Association
- William Lassiter, Subcommittee member & Deputy Commissioner for Juvenile Justice
- Sharon S. McLaurin, Committee member, Magistrate & Past-President, N.C. Magistrates' Association
- R. Andrew Murray Jr., Committee member, District Attorney, & President, N.C. Conference of District Attorneys
- Diann Seigle, Committee member & Executive Director, Carolina Dispute Settlement Services
- Anna Mills Wagoner, Committee member & N.C. Senior Resident Superior Court Judge
- William A. Webb, Commission Co-Chair, Committee Chair & Ret. U.S. Magistrate Judge
- James Woodall, Subcommittee member & District Attorney
- Eric J. Zogry, Subcommittee member & Juvenile Defender, N.C. Office of the Juvenile Defender[149]

[149] *LaToya Powell, Assistant Professor, UNC School of Government (SOG) served on the Subcommittee but could not join in these recommendations due to the SOG's guiding principle of non-advocacy. Michelle Hall, Executive Director, N.C. Sentencing and Policy & Advisory Commission also served on the Subcommittee but is not authorized to support or recommend on behalf of the Sentencing and Policy & Advisory Commission. Jessica Smith, W.R. Kenan Distinguished Professor at the SOG, served as Committee Reporter and prepared this report.*

North Carolina Commission on the Administration of Law & Justice

INTERIM REPORT
Legal Professionalism Committee

July 2016

www.NCCALJ.org

This Interim Report states and describes the interim recommendations of the Legal Professionalism Committee of the North Carolina Commission on the Administration of Law and Justice. Before stating these recommendations, the report offers background for them.

I. The Charge of this Committee

At its meeting on September 30, 2015, the Legal Professionalism Committee discussed the following charge to guide its work:

- The mission of the North Carolina Commission on the Administration of Law and Justice is to consider how North Carolina courts can best meet our 21st century legal needs and the expectations of the public, ensuring that we can continue to provide justice for all.

- The role of the Legal Professionalism Committee is to consider and evaluate possible changes in our system of delivery of legal services. The committee will explore ways to address structural challenges that affect access to justice, including the barriers that create a lack of affordable legal services for large segments of our population, the costs and debt associated with a legal education, and the challenges of developing and sustaining a legal career.

- Democratic societies are founded on a shared belief in the rule of law and the integrity of the judiciary. Any change that the committee considers must take into account the core values of our system of justice, including the exercise of independent judgment on behalf of clients, the absence of conflicts, and confidentiality of client communications. The committee will also consider the need to protect the public from unskilled advisors and the effects of unrepresented parties on the court system.

II. The Status Quo on the Issues under Study, as well as Factors that are Causing Change in the Status Quo

Over the last year, the committee has studied the delivery of law-related services in North Carolina and nationwide. The committee has identified several issues that are affecting, and will continue to affect, the dynamics of law-related services and the needs of clients.

Access to Justice in North Carolina

Civil legal services are currently beyond the reach of many North Carolinians. Many of our citizens cannot afford to hire a lawyer even for relatively inexpensive services, such as a will or an uncontested divorce. In a recent North Carolina poll, 73% of survey respondents disagreed with the statement that most people can afford to bring a case to court.[150]

[150] *High Point University Poll, Nov. 19, 2015.*

Further, it is not only the indigent who find themselves priced out of the market for legal services. Small and mid-sized companies, for example, find it increasingly difficult to afford to retain lawyers to address the legal issues that inevitably arise in a modern business.

In addition, access to lawyers can have non-economic dimensions. For example, some rural areas of North Carolina are losing lawyers as lawyers retire or move to more densely populated areas. Likewise, non-English-speaking North Carolinians have trouble finding lawyers who can advise them in their own languages.

These problems have led many people to try to represent themselves — not only in transactions, but in court as well. A 2015 study by the National Center on State Courts found that "at least one party was self-represented in more than three-quarters of civil cases." Although some of these parties might represent themselves for idiosyncratic reasons, most of them do so because they cannot afford a lawyer (or believe that they cannot).

The increasing prevalence of self-represented litigants poses many challenges to our civil-justice system. These litigants are often tripped up by procedural rules and other features of our complex legal system. They often seek help from clerks and judges, draining the courts' limited resources and making the judicial process less efficient. In addition, requests from self-represented litigants sometimes create dilemmas for judges and clerks, whose ethical duties bar them from giving legal advice.

The North Carolina courts have made efforts to assist self-represented litigants by providing templates and forms. However, our committee has learned that these documents are not standardized from one North Carolina county to another. Further, the forms are largely unavailable online, unlike the forms in most other states. These difficulties magnify the confusion and bad outcomes that self-represented litigants often experience.

Paradoxically, many clients' legal needs are going unmet at the same time that many lawyers cannot find steady legal employment. The ranks of these unemployed and underemployed lawyers span the generations, and they increase with each graduating law school class. In addition, many law graduates, even those who go into practice by themselves, graduate with heavy debt burdens that make it untenable for them to offer low-cost legal services.[151] Law school debt also deters many lawyers from practicing in rural areas of the state.

In sum, there is ample demand for law-related services, but relatively few clients can afford the high-cost, customized legal services that law graduates are trained to provide. This mismatch between client needs and the types of services being offered requires careful study and creative solutions.

The Definition of the Practice of Law in North Carolina

Chapter 84 of the North Carolina General Statutes defines the practice of law. The definition is broad: it includes "performing any legal service for any other person, firm or corporation, with or without compensation." N.C. Gen. Stat. § 84-2.1. In recent years, North Carolina has witnessed intense litigation over whether certain online services, such as LegalZoom, involve the unauthorized practice of law.

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[151] *See, e.g., Noam Scheiber, An Expensive Law Degree, and No Place to Use It, N.Y. Times (June 17, 2016), http://mobile.nytimes.com/2016/06/19/business/dealbook/an-expensive-law-degree-and-no-place-to-use-it.html.*

North Carolina's definition of the practice of law has not been comprehensively updated to address changes in the market for law-related services. The General Assembly recently adopted chapter 84 amendments that resolve the lawsuits involving LegalZoom. These amendments are mostly a tailored response to issues raised in the LegalZoom cases. A comprehensive update to chapter 84, in contrast, will be one that (1) addresses the unmet legal needs of many North Carolinians, as discussed above, and (2) decides the status of emerging providers of law-related services, as discussed in the next section.

Alternative Providers of Law-Related Services

In North Carolina today, the majority of legal services continue to be provided by lawyers in small partnerships or solo practices.

In the United States, more generally, however, technology and other market forces are expanding the law-related services that are available. Technology companies and entrepreneurs are making efforts to meet the demand for affordable law-related services.

These technology-based providers offer a variety of services. Some address discrete legal problems, such as preparing wills, deeds, or contracts. Others take on larger projects, such as providing short-term lawyers to corporations, helping companies analyze high-volume contracts, and helping people comply with government regulations.

In addition, some states are experimenting with licensing independent non-lawyer providers of law-related services. These limited-license legal technicians are not admitted to the bar and generally do not have a law degree. Even so, they are authorized to help clients with a strictly defined range of law-related tasks. The goals of allowing and licensing these services include (1) offering an alternative to lawyers' services in discrete areas and (2) regulating the alternative services in the interest of consumer protection.

North Carolina's Institutions that Regulate Entry into the Practice of Law

Entry into the practice of law in North Carolina is regulated by chapter 84 of the North Carolina General Statutes. Chapter 84 is implemented by the North Carolina State Bar, the North Carolina Board of Law Examiners, and the courts. The State Bar and Board of Law Examiners are state agencies.

The State Bar is governed by the State Bar Council, which is composed of licensed North Carolina lawyers. The councilors are elected, within geographic districts, by other licensed lawyers. The State Bar, through its Authorized Practice of Law Committee, makes decisions on whether to pursue unauthorized-practice charges or lawsuits against people or companies that provide law-related services.

The Board of Law Examiners considers applications for admission into the State Bar and administers the North Carolina Bar Examination. The Board is composed of lawyers selected by the State Bar Council.

The courts play a role in regulating entry into the practice of law, but only when they decide lawsuits or appeals on unauthorized practice or similar issues. On rare occasions, the courts get

involved in bar admissions when they rule on appeals from decisions of the Board of Law Examiners.

In most states, the State Bar or equivalent agency is housed directly within the Judicial Branch. In those states, the Judicial Branch has greater ability to change who can provide legal services and to change how legal services may be provided. These changes typically do not require approval by other branches of government.

In North Carolina, in contrast, changing the requirements for entry into the legal profession would require amending chapter 84, then implementing the changes through a regulatory structure controlled by lawyers. This structure arguably insulates the status quo from change, even in situations where clients' needs or the dynamics of law-related services are changing.

North Carolina's Institutions that Regulate Lawyers

The State Bar regulates the professional conduct of lawyers by handling disciplinary matters, issuing ethical opinions, and offering information to lawyers and the public.

The State Bar investigates complaints of professional misconduct, then prosecutes cases before a statutorily created tribunal called the Disciplinary Hearing Commission. Twelve of the 20 members of this commission are lawyers appointed by the State Bar Council. The remaining eight are non-lawyer citizens of North Carolina who are appointed by the Governor and the General Assembly. Each panel of the Disciplinary Hearing Commission consists of two lawyers and a public member.

The courts also have inherent authority to regulate the conduct of lawyers who appear before them. This authority operates in parallel with the authority of the State Bar. In addition, the North Carolina courts play a role in shaping the law on professional conduct when they decide appeals from decisions of the Disciplinary Hearing Commission, as well as lawsuits filed in the state trial courts in the first instance.

The State Bar also adopts rules that govern the practice of law, including the Revised Rules of Professional Conduct. The North Carolina Supreme Court has the authority to approve, change, or reject those rules. The State Bar also administers certain programs that the North Carolina Supreme Court has created, such as the Interest on Lawyers' Trust Accounts program and the Client Security Fund

North Carolina's Criteria and Methods for Assessing Candidates for the Practice of Law

Another factor that affects the supply (and quality) of law-related services in North Carolina is the way that the state assesses new candidates for law practice.

The Board of Law Examiners administers a two-day written exam that seeks to ensure that a law graduate has a reasonable level of competence as a lawyer. One day of this exam consists of essays on selected aspects of North Carolina substantive law. The other day consists of the multiple-choice Multistate Bar Examination. Bar applicants must also pass the Multistate Professional Responsibility Examination. They must also undergo an extensive background check and demonstrate good character to the satisfaction of the Board of Law Examiners.

These methods of assessing candidates have remained essentially the same for decades. Over the last few years, however, the percentage of candidates who are failing the bar exam has been rising. There has also been a sharp increase in the share of candidates who exhibit serious problems with character and fitness.

North Carolina allows licensed lawyers from 36 states and the District of Columbia to apply for admission by comity — that is, without taking the North Carolina Bar Examination. These admissions require an extensive application process. Rulings on comity applications often take several months.

In contrast, under chapter 84A of the General Statutes, North Carolina allows lawyers whose only law license is from another country (or from Puerto Rico, Guam, or the U.S. Virgin Islands) to practice law independently in this state. To do so, these foreign legal consultants, as they are called, need not be admitted to the bar of any U.S. state. However, the statute limits them to a scope of practice narrower than the scope allowed for North Carolina-licensed lawyers.

With narrow exceptions, all candidates for law licensure in North Carolina must be graduates of law schools approved by the State Bar Council. This list of law schools is limited to ABA-accredited law schools.

Many other states have begun reassessing their methods for assessing candidates for the practice of law. Currently, 23 states have adopted the Uniform Bar Examination. Each state that adopts the Uniform Bar Examination has the option of adding a state-specific component to the exam. The Uniform Bar Examination is administered and graded according to uniform guidelines created by the National Conference of Bar Examiners. The exam results in a score that is portable among any of the participating states. The North Carolina Board of Law Examiners is currently assessing the Uniform Bar Examination.

In addition, some states are experimenting with performance-based methods of testing bar applicants. For example, a majority of states administer the Multistate Performance Test, an exam that requires an applicant to carry out simulated lawyering for a simulated client.

III. Our Interim Recommendations and Supporting Reasons

The committee has heard from multiple speakers and has reviewed extensive written material on the issues discussed above. An attachment to this report lists the speakers who have appeared before the committee so far. The committee has now formed several interim recommendations. This section of the report states these recommendations and summarizes the reasons for them.

Recommendation 1

The committee endorses the work of the North Carolina Equal Access to Justice Commission and the related North Carolina Pro Bono Resource Center.

The committee recommends that the Equal Access to Justice Commission explore ways to increase the help offered to self-represented litigants throughout North Carolina. For example, the Equal Access Commission might consider the following projects:

- Analyzing whether the North Carolina court system is accessible to and usable by self-represented litigants. This analysis should consider whether the current level of access raises any due process issues.
- Creating a statewide action plan for self-represented litigants.
- Identifying ways to streamline commonly encountered court processes to make them easier for self-represented litigants to handle.
- Standardizing forms and templates for pro se litigants across North Carolina.
- Studying trial courts' local rules and identifying ways to standardize or consolidate these rules as much as is reasonable.
- Creating websites with user-friendly court information and online forms, with links to live assistance from court personnel.
- Providing online triage services that give self-represented litigants routes for pursuing their cases and, at the same time, help the courts process and track cases.
- Offering standard training to help judges and court personnel work with self-represented litigants.
- Forging agreements with law schools' clinical programs, in an effort to involve law students (under supervision) in client service.
- Developing court assistance offices, self-help centers, and courtroom-based resources to help self-represented litigants.
- Collaborating with public libraries and law libraries to help self-represented litigants.
- Collecting and analyzing data on the barriers facing unrepresented litigants, how unrepresented litigants fare in court, and the impact of efforts to help them.

The committee also recommends that the North Carolina Pro Bono Resource Center consider the following initiatives:

- Developing a statewide campaign to educate North Carolina lawyers about their responsibility to provide pro bono legal services under Rule 6.1 of North Carolina's Revised Rules of Professional Conduct.
- Working with local bar organizations to develop pro bono projects throughout North Carolina.

- Expanding training opportunities for lawyers who volunteer to provide pro bono legal services.

- Supporting efforts to track and recognize North Carolina lawyers' pro bono service.

Summary of Reasons for Recommendation 1:
As an unfortunate side effect of North Carolina's current system for delivery of legal services, many North Carolinians have law-related needs, but cannot afford lawyers. The committee discussed a wide range of possible direct initiatives to fill the justice gap in North Carolina.

The committee received especially valuable information from the North Carolina Equal Access to Justice Commission. For several years, the Equal Access Commission has been studying the causes of the justice gap and possible solutions. Our committee considers it important for North Carolina to speak with one voice on these issues. Thus, we endorse the work and recommendations of the Equal Access Commission.

Although all of the Equal Access Commission's work is important, the committee would like to highlight and endorse the Equal Access Commission's initiatives in two areas:

Finding Ways to Accommodate Self-Represented Litigants
Across the United States, the abundance of self-represented litigants is among the biggest challenges facing the courts. Most aspects of the court system are not designed for use by people who litigate without the help of a lawyer. Most self-represented litigants have only a limited understanding of the substantive law involved in their cases, the meaning of legal terms, the rules of evidence and procedure, and filing deadlines. They face challenges at every step, including filing a lawsuit, serving process, conducting and responding to discovery, and more. In sum, the absence of a lawyer makes it unlikely that unrepresented parties can achieve their objectives in court.

As another concern, when unrepresented parties try to file papers, interact with court officials and opposing counsel, and appear in court, their efforts often strain the resources of the court system and cause difficulties in the litigation process. Judges and court officials often face difficult choices over how much they can help unrepresented parties.

To ease these challenges, courts in some states have started efforts to make the court system more user-friendly for self-represented litigants.[152]

One opportunity for improvement in North Carolina involves the substantial county-to-county variation in trial courts' forms and local practices. These variations make it especially difficult for self-represented parties to identify which forms they might need to use, and to understand those forms. The variations even make it difficult for pro bono lawyers to represent litigants across county lines.

[152] *For example, the state courts of Utah and California have launched self-help websites that provide standardized forms, explanations of basic procedural steps, and links to the substantive law that most self-represented people encounter. See Utah Courts, Self-Help Resources / Self-Represented Parties, https://www.utcourts.gov/selfhelp/ (last visited June 30, 2016); The California Courts Self-Help Center, http://www.courts.ca.gov/selfhelp.htm (last visited June 30, 2016).*

The committee encourages the Equal Access Commission to recommend measures that will reduce the burdens faced by self-represented parties and volunteer lawyers. Although the committee defers to the Equal Access Commission on the best choice of measures, worthwhile efforts might include those listed in the body of Recommendation 1.

None of these measures, however, should be viewed as a substitute for trained, competent counsel in appropriate cases. Through technology-enhanced tools and case management orders, the court system should notify self-represented litigants, as early as is practical in a given case, what free or low-cost legal services might be available and how to obtain them. These systems should be designed to match legal-aid resources and volunteer lawyers' services with the litigants who need them the most and would benefit from them the most.

Advancing Pro Bono Efforts

Rule 6.1 of North Carolina's Revised Rules of Professional Conduct confirms that each lawyer has a professional obligation to provide legal services to those who are unable to pay. The rule urges all lawyers, regardless of their professional roles, "to render at least (50) hours of pro bono publico legal services per year."

Since the adoption of Rule 6.1 in 2010, however, there have been only limited efforts to educate North Carolina lawyers on their ethical duty to provide pro bono legal services. Although pro bono lawyers alone cannot serve the needs of all clients who seek help, pro bono programs and dedicated pro bono volunteer lawyers can play a crucial role in bridging the justice gap and helping legal-aid organizations to serve those most in need.

In 2014, the Equal Access Commission surveyed lawyers across the state to identify current pro bono activities and barriers to increasing pro bono service. According to the survey, the resources that would be most likely to encourage pro bono service include (1) an online portal to review and select pro bono opportunities, (2) manuals on skills and best practices, and (3) a statewide agency to connect lawyers with organizations that administer pro bono activities.

In 2016, the Equal Access Commission established the North Carolina Pro Bono Resource Center with the goal of increasing pro bono participation statewide. The initial activities of the Pro Bono Resource Center include these:

- Providing support for existing pro bono activities through recruitment, training, and opportunities for collaboration.
- Communicating to lawyers statewide about pro bono projects.
- Developing pro bono projects, with an initial focus on projects to deploy recent law school graduates to meet unmet legal needs in Wake and Mecklenburg counties.
- Implementing voluntary pro bono reporting.
- Recognizing lawyers' pro bono service statewide.

The committee endorses these efforts.

Recommendation 2

The Legal Professionalism Committee should continue to study (and, if appropriate, propose changes to) the definition of the practice of law in North Carolina, as well as the entities with the authority to adjust that definition. Any proposals should account for the evolving needs and expectations of clients, as well as the impact of technology on law-related services. The committee should also study whether North Carolina should license or certify any other providers of law-related services — and, if so, what categories of providers should be licensed or certified, and how these providers should be regulated.

Summary of Reasons for Recommendation 2:

Chapter 84 of the North Carolina General Statutes defines the practice of law in North Carolina, limits the entities and persons who can provide services within that definition, and provides for the regulation of those persons and entities. With the exception of a recent enactment that is currently before the Governor, these statutes have not been updated since the internet age began.

Over the last 15 years, new modes of providing law-related services have emerged. The emergence of these services has generated uncertainty and intense litigation over unauthorized-practice issues.

Some states, moreover, have begun to experiment with limited-license providers of law-related services: persons with some legal training, but less training than a lawyer has, who are allowed to provide a strictly defined set of law-related services.

Currently, large numbers of North Carolinians with law-related needs are not having those needs met by lawyers. The demand for law-related services in North Carolina and the available supply of those services are not matching.

The definition of the practice of law, as well as the statutes that decide who can provide services that fall within that definition, limit the quantity and types of law-related services that are available in this state. Statutes of this type, however, exist for good reasons — most notably, to prevent incompetent or unfit practitioners from harming consumers.

In an effort to improve the matching of supply and demand, the committee plans to study possible updates to chapter 84. The committee will continue to review the effects of technological change on law-related services, the many types of possible providers of law-related services, and the great variation of possible law-related services. Any recommended updates will address the need to protect consumers from incompetent or unfit practitioners, deceptive practices, and other forms of exploitation.

Recommendation 3

The Legal Professionalism Committee should continue to study (and, if appropriate, propose changes to) the choice of the organization(s) with the authority to regulate entry into the practice of law, as well as entry into any other regulated tiers of law-related services. Likewise, the Legal Professionalism Committee should continue to study (and, if appropriate, propose changes to) the choice of the organization(s) with the authority to regulate the professional conduct of lawyers and any other providers of law-related services.

Summary of Reasons for Recommendation 3:

As noted above, chapter 84 of the North Carolina General Statutes limits the practice of law to licensed lawyers and creates the framework for the regulation of law-related services in North Carolina. Of course, the precise effects of chapter 84 depend on more than the text of the statutes. Those effects also depend on the choice of the institutions that implement chapter 84, as well as the decisions and conduct of those institutions.

Currently, chapter 84 is implemented in part by the Council of the North Carolina State Bar — a Council elected by practicing lawyers — and its appointees and staff. Those who enforce chapter 84 also include the Disciplinary Hearing Commission, a majority of the members of which are lawyers appointed by the State Bar Council.

The North Carolina courts also play a role in regulating the practice of law in this state. The North Carolina Supreme Court reviews and approves rules proposed by the State Bar Council. Lawsuits alleging unauthorized practice are generally filed in the North Carolina trial courts. Decisions in those cases, as well as decisions of the Disciplinary Hearing Commission, are appealable to the North Carolina appellate courts.

In the wake of *North Carolina State Board of Dental Examiners v. FTC*, 135 S. Ct. 1101 (2015), courts and federal antitrust agencies are scrutinizing the makeup, authority, and actions of organizations that regulate licensed professionals. This committee expresses no opinion on how North Carolina's institutions that regulate entry into the practice of law would fare under a *Dental Board* analysis.

The prospect of a *Dental Board* analysis, however, makes it appropriate to study the makeup, roles, and histories of the institutions involved and what steps they can take to manage and avoid potential antitrust risks. This study will consider whether there is a policy basis for recommending any change in the interaction of these institutions. In addition, the committee's study will complement possible changes to chapter 84 that might result from the committee's further work.

Recommendation 4

An appropriate organization should study the standards and methods that North Carolina should use in the future to assess candidates for the practice of law, as well as candidates to provide any other licensed or certified categories of law-related services. The standards and methods should consider the evolving scope of the practice of law, the scope of practice of any other regulated type of law-related services, recent and future changes in the dynamics of law-related services, and the needs of clients.

Summary of Reasons for Recommendation 4:

North Carolina has used essentially the same methods to assess candidates for the practice of law for many years. Several developments suggest a need to study, and possibly update, those methods:

- Clients are seeking a wider range of services from lawyers. In some cases, they are seeking new or more limited services, such as "unbundled" strategic and technical advice, document review, or form completion.

- More candidates present serious issues with character and fitness than in earlier eras.

- Many states are considering alternatives to the traditional bar exam, including performance-based exams and apprenticeship-like systems.

If the definition of the practice of law in North Carolina changes, this change will call for further adaptation of the skills and other characteristics required of lawyers. Moreover, if North Carolina decides to license or certify any non-lawyer providers of law-related services, the state will need to find ways to assess candidates for those roles.

The committee believes that these questions deserve sustained review that will extend beyond the tenure of this committee. Bar examiners and lawyer regulators nationwide are currently studying the policy issues in this area. In addition, the issues involve matters of test methodology that lie beyond the expertise of this committee. Finally, some decisions in this area will be possible only *after* this committee's other recommendations — for example, its recommendations on who can provide law-related services — are implemented or rejected.

For these reasons, the committee recommends that the standards and methods for assessing candidates be referred to another appropriate group.

IV. Our Invitation to Readers

Thank you for reading this interim report. If you have questions or comments on our recommendations or any aspect of the committee's work, please feel free to share them with us. You can get in touch with us through the NCCALJ website or in any of the public meetings that the NCCALJ will be holding throughout the state.

/s/ Matt Sawchak
Reporter

July 2016

V. Attachment

Speakers Who Have So Far Appeared Before the Legal Professionalism Committee

North Carolina has used essentially the same methods to assess candidates for the practice of law for many years. Several developments suggest a need to study, and possibly update, those methods:

- Professor William Henderson, Indiana University Maurer School of Law (videotaped)
- Alice Mine, North Carolina State Bar
- Peter Bolac, North Carolina State Bar
- Dan Lear, Director of Industry Relations, Avvo
- Chas Rampenthal, General Counsel, LegalZoom
- Dean Andrew Perlman, Suffolk University School of Law
- Jaye Meyer, Chair, North Carolina Board of Law Examiners
- Lee Vlahos, Executive Director, North Carolina Board of Law Examiners
- Jim Leipold, Executive Director, National Association for Law Placement
- Paul Carr, President, Axiom
- Kelly Zitzmann, General Counsel, Axiom
- Reid Phillips, outside counsel for Capital Associated Industries
- Jennifer Lechner, Executive Director, North Carolina Equal Access to Justice Commission
- Sylvia Novinsky, Director, North Carolina Pro Bono Resource Center

North Carolina Commission on the Administration of Law & Justice

INTERIM REPORT
Public Trust and Confidence Committee

July 2016

www.NCCALJ.org

I. Introduction

The mission of the North Carolina Commission on the Administration of Law and Justice ("NCCALJ") is to address how North Carolina courts can best meet twenty-first century legal needs and the expectations of the public, and to provide justice for all. The role of the Public Trust and Confidence Committee ("PTCC") is to identify and evaluate factors that influence public trust and confidence in the judicial system and to recommend actions that enhance this trust and confidence.

To gain an understanding of the current state of public perception in the courts, the PTCC partnered with Elon University Poll and High Point University Survey Research Center to conduct live caller phone surveys in October and November of 2015. Survey results identified issues related to knowledge of the courts, efficiency, fairness, access, and judicial independence, among others. Based on the results of those surveys, the PTCC decided to focus on the following goals aimed at increasing public trust and confidence in the courts of North Carolina:

- Promoting fair and equal access to the courts;
- Eliminating actual and perceived bias in the courts;
- Providing for the just, timely and economical scheduling and disposition of cases;
- Enhancing access to information and court records;
- Recommending a selection process that ensures well-qualified and independent judges;
- Strengthening civics education; and
- Conducting a recurring public opinion survey.

The PTCC has held seven public meetings addressing these issues, and will make recommendations in the second half of 2016 with the goal of improving the public's perception of North Carolina state courts. The PTCC looks forward to promoting additional education, dialogue, and public input to help guide its work moving forward.

II. Public Presentations

During the PTCC public meetings, experts and judicial stakeholders gave presentations related to court performance, judicial selection, access, and fairness. The information shared in these presentations educated the commissioners and also provided a launching point for the PTCC's further inquiry. A summary of the presentations and presenters is listed below.

- Performance Metrics and the Courts
  Professor David Ammons, UNC School of Government

- How North Carolina Has Selected Judges, 1776-2016
  Martin Brinkley, Dean of UNC School of Law

- Strategies for Dealing with Implicit Bias in the Judicial Process
  Jim Drennan, Professor of Public Law and Government, UNC School of Government

- CourTools: Measuring Performance in North Carolina State Courts
  Brad Fowler, Officer, Planning and Organizational Development, NCAOC

- A Broader Look at Judicial Selection
  Charlie Geyh, Professor of Law, Indiana School of Law

- Attorney Perspectives on Judicial Selection in North Carolina
  Tony Hornthal, John Wester, and Bill Womble, Jr., North Carolina Bar Association Committee on Judicial Independence

- National Perspectives on Public Trust in the Judicial System
  Laura Klaversma, Court Services Director, National Center for State Courts
  David Rottman, Principal Research Consultant, National Center for State Courts

- Public Confidence in North Carolina State Courts: Recent Survey Results
  Emily Portner, Policy Analyst, NCCALJ

- Recent Legislative Efforts Regarding Judicial Selection
  Representative Sarah Stevens, NC General Assembly

- Judicial Campaign Finance in North Carolina
  Kim Strach, Executive Director, Board of Elections

- Understanding Implicit Bias and Its Impact on the Criminal Justice System
  The Honorable Louis Trosch Jr., District Court Judge, 26th Judicial District

All of the presentation materials are available on the NCCALJ website at www.nccalj.org.

III. Areas of Focus

Promoting Fair and Equal Access to the Courts

The North Carolina Constitution provides that "[a]ll courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay." Yet the 2015 surveys indicated that a majority of survey respondents (73 percent) do not believe that most people can afford to bring a case to court. Moreover, 76 percent of survey respondents believe that people who have no lawyer representing them receive somewhat worse or far worse treatment in the courts. Therefore, the perception appears to be that much needs to be done to increase public confidence in equal access to the courts.

The PTCC recommends that the Judicial Branch take steps to identify and remove barriers that impede fair and equal access to the courts. These barriers include physical impediments, cost factors, language issues, and the complexity of the judicial process. Courthouses must be able to accommodate persons with disabilities and eliminate any physical impediments that prohibit full access to all courthouse facilities and operations. Citizens who cannot afford an attorney should be able to access forms, educational materials, and other resources that help them understand and navigate the complicated judicial process. Court costs should be affordable for the average citizen, and the system must erase cultural and language barriers. Fair and equal access requires a simple process, manageable costs, cultural competence, and full physical access. The Judicial Branch must be committed to these objectives to ensure that courts are open to all citizens, without favor, denial, or delay.

Eliminating Actual and Perceived Bias in the Courts

A substantial number of respondents in the 2015 surveys believe that certain groups generally receive better treatment than others in North Carolina courts – a perception that undermines the Judicial Branch's commitment to the fair administration of justice for all. Eighty percent of respondents believe that the wealthy receive better treatment, while 48 percent believe whites receive better treatment. Conversely, a significant number of respondents believe that low-income people (64 percent), non-English speaking individuals (53 percent), African Americans (46 percent) and Hispanics (46 percent) receive worse treatment in the courts. If justice is to be served without favor, denial, or delay, the Judicial Branch must create an atmosphere in which every person serving in the Judicial Branch understands the importance of bias-free behavior in the courts, and every person who interacts with the Judicial Branch experiences a bias-free environment.

Empirical studies recognize the potential for disparate treatment based on demographic factors, such as race, religion, gender, primary language, economic status, or other factors. That potential bias may sometimes manifest itself unintentionally and unconsciously. To ensure a fair and impartial process, the Judicial Branch must acknowledge the potential for bias and train court personnel and judicial officials to recognize and rectify it. Uniform policies and procedures, together with consistent decision-making processes, will help minimize disparate treatment among similarly situated parties. Finally, a workforce that reflects the diversity of the people who interact with the judicial system is critical to promoting greater understanding and acceptance of cultural differences and reducing the potential for bias. To ensure the fair administration of justice, the Judicial Branch must be committed to uniform policies and procedures, impartial decision-making, cultural competence, a diverse workforce, and an overall bias-free environment.

Providing for the Just, Timely, and Economical Scheduling and Disposition of Cases

As stewards of public resources and individual citizens' time, Judicial Branch officials must strive to operate a court system facilitating the just, timely, and economical scheduling and disposition of cases. This includes a commitment to minimizing trips to the courthouse by citizens and attorneys when feasible. Public perception is that the state's courts fail to achieve this goal, as only 25 percent of survey respondents agree that cases are resolved in a timely manner.

The PTCC recommends that the Judicial Branch evaluate methods and take actions to encourage the just, timely, and economical scheduling and disposition of cases. Such actions include evaluation of case management strategies that encourage more efficient handling of cases by a single judge, the timely and efficient resolution of hearings and matters before the court, and the increased use of

firm scheduling orders and deadlines. Using improved technology and performance metrics, the Judicial Branch should be well-poised to regularly monitor court performance, identify areas for improvement, minimize inefficiency, and encourage best practices among jurisdictions. The Judicial Branch should also focus on improving the efficiency of its interaction with public actors by eliminating unnecessary trips to the courthouse for jurors, witnesses, parties, and attorneys.

Enhancing Access to Information and Court Records

Participation in the judicial process can be challenging, even for those with knowledge of the law. For those without such knowledge, the process can be especially difficult to navigate. People seeking general information may be unaware of what information is available and how to access it. Parties and self-represented litigants may lack sufficient information and resources to guide them through a sometimes complicated process. Information is power, but channeling that power requires open access to information and resources.

The PTCC recommends that the Judicial Branch enhance access to court records, information, and resources to the greatest extent possible. The courts must use technology to increase the availability of electronic records and information and to minimize the need to visit the physical courthouse. Judicial stakeholders should explore ways to expand the availability of legal assistance for low and moderate-income individuals and to create staffed self-help centers to provide assistance for self-represented litigants. In addition, general information about court processes, procedures, and operations should be readily available electronically. The fair administration of justice depends on an informed citizenry equipped with understandable legal forms, convenient access to public records, and information and resources that help them to navigate the complicated judicial process.

Recommending a Selection Process that Ensures Well-Qualified and Independent Judges

Nothing is more fundamental to our system of justice than having qualified, independent judges to settle disputes. While 60 percent of respondents in the 2015 surveys agree that judges make decisions based on facts, 76 percent do not believe that courts are free from political influence. Respondents generally believe that judges' decisions are influenced by political parties (76 percent) and by the fact they must run for election (75 percent). Moreover, funding of the Judicial Branch remains stagnant, and inadequate salaries threaten the Judicial Branch's ability to identify and retain qualified judges.

The PTCC recommends that the General Assembly take steps to minimize the perceived impact of judicial elections on our system of justice by changing how judges and justices are selected and retained. The PTCC further recommends that the General Assembly take action to ensure sufficient funding for the Judicial Branch and to ensure that judges and justices are provided competitive compensation packages to attract and retain qualified judges. The PTCC also recommends that the Judicial Branch evaluate procedures and guidance related to conflicts of interest for judges and justices.

Strengthening Civics Education

A low percentage of respondents in the 2015 surveys (13%) indicated that they were very knowledgeable about our state courts. Increased citizen understanding of the administration of the state court system is strongly and positively correlated with the public's trust and confidence in the

day-to-day functioning of our state courts. Civics education serves to foster citizen engagement and increase transparency – two overarching principles that are widely recognized to enhance the public's trust in their government institutions.

The PTCC recommends that the Judicial Branch strengthen civics education in North Carolina among school-aged children and adults through curricula enhancements, programmatic materials, increased social media, and court-user information at first point of contact with the court system. School-aged children should learn early-on the importance of a well-functioning court system as one of three co-equal branches of government. Adult citizens should understand how an effective and efficient court system affects their lives, even if they never come into contact with the system itself. The Judicial Branch should empower its officials and court staff to engage in public service efforts related to civics education. Lastly, when feasible, jurors, witnesses, litigants, and others interacting with the court system should be provided relevant background information on the work of the courts and their respective roles in the judicial process.

Conducting a Recurring Public Opinion Survey

To more effectively serve the public and to maintain and increase public trust and confidence, the Judicial Branch must understand how the public perceives North Carolina's courts. The best source of the public's perception of the Judicial Branch is the public itself. The 2015 surveys have been instrumental in framing the issues related to public trust and confidence and shaping the work of the PTCC.

The PTCC recommends that the Judicial Branch establish and conduct a biennial survey to measure public opinion regarding the operation of the courts. The survey should seek to measure the public's perception of fairness, timeliness, administrative efficiency, and general operation, among other factors to be identified. The survey must also be sensitive to varying perceptions among different socioeconomic groups. By evaluating the survey results from year to year, the Judicial Branch will be in a strong position to address perceived weaknesses, either substantively or through public relations, to track progress over time and to capitalize on acknowledged strengths. The Judicial Branch also should engage in systematic surveying of court system users through periodic in-person courthouse surveys and continuous online surveys for those accessing the court system through the Internet.

IV. Summary

The PTCC has relied on presentations from experts and other judicial stakeholders in shaping its work to date, but public input is essential to the work of the PTCC. Members of the public will be able to identify the issues that matter most to them and to highlight specific situations and issues that negatively or positively affect their perception of the judicial system. The members of the PTCC look forward to sharing information with the public, receiving public input, and working with the public to implement recommended changes. The expectation is that the PTCC's final recommendations will result in changes that improve the user experience in state courts and enhance the overall level of public trust and confidence in the North Carolina Judicial Branch.

North Carolina Commission on the Administration of Law & Justice

INTERIM REPORT
Technology Committee

July 2016

www.NCCALJ.org

I. Introduction

Innovative uses of technology can revolutionize the ways organizations and people conduct business and live their lives. Recent examples of this include Amazon's transformation of retail shopping as well as the development of smartphones and mobile apps that support banking and payment transactions. Likewise, innovative technology has been utilized both in state courts and federal courts to dramatically improve the administration of justice. North Carolina's Judicial Branch will benefit from employing additional technology to achieve its constitutionally mandated mission. Importantly, implementing technological change brings with it the promise of a truly uniform statewide court system as first envisioned by the Bell Commission almost 60 years ago. That uniformity will empower local and statewide judicial officials to better manage court performance through improved data-driven decision-making, thus promoting greater stewardship of judicial resources. It will also remove many of the local barriers to court access for self-represented litigants and will increase the service capacity of low-income legal service providers. Additionally, through a uniform Judicial Branch online presence, the courts can meet and exceed expectations for public access to courts. In the 21st century, the public expects delivery of public services — including those provided at the courthouse — via modern technology. The numbers tell the story: 85% of people under the age of 40 and 76% of people under the age of 65 are willing to conduct their court business online.

The North Carolina Commission on the Administration of Law and Justice (NCCALJ) is an independent, multidisciplinary advisory body convened by the Chief Justice of the Supreme Court of North Carolina to recommend improvements to the judicial system. The Technology Committee is one of five committees of this Commission. The Technology Committee is focused on identifying significant ways technology can support the Judicial Branch's mission of providing a fair, independent, and accessible forum for the just, timely, and economical resolution of the legal affairs of the public.

The Judicial Branch's 6,500 employees work hard each day to carry out the Branch's mission. The Technology Committee's goal is to recommend ways that technology can enhance our court officials' and staff's efficiency, effectiveness, and timeliness of court processes, and also meet the public's expectations for accessibility and transparency. The committee's challenge is to reimagine the courtroom and clerk's office of the future and to produce a strategic plan to deliver on that vision.

This interim report is intended to provide background on technology in the Judicial Branch, describe the work and goals of the Technology Committee, and invite input from the public. The committee looks forward to hearing from you.

Judicial Branch Technology Overview

The Technology Services Division (TSD) of the North Carolina Administrative Office of the Courts provides network infrastructure, hardware, software applications, technical support, and services to over 500 courtrooms and offices spread throughout all 100 North Carolina counties. Included in the Judicial Branch are more than 500 independently elected, judges, district attorneys, and clerks of court. With the ninth largest population in the United States, the courts of our state handle roughly 2.7 million cases each year.

The approximately 200 permanent employees of TSD support over 200 Judicial Branch software applications. They also serve over two dozen government agencies, vendors, and private entities that interface with the court system's technology and data. This makes for an extensive, statewide, inter-agency technology operation.

Background on the Technology Committee's Work

The committee held six public meetings and heard presentations from states that are already utilizing innovative technology to address the needs of their citizens, from national court technology experts, from current North Carolina judicial officials, and from other members of the public. In early 2016, the consulting group BerryDunn was retained to assist the committee on the legislatively-mandated need to create a strategic plan for e-courts. The goal of an e-court system is to increase the efficiency and effectiveness of court processes by converting the courts' current paper-driven work flow to an electronic one, including public-interfacing work flow processes like filing and payment. An e-court system will provide the foundation for further technology innovation throughout the court system.

To understand the current state of the Judicial Branch's technology, BerryDunn conducted an online survey of court employees and members of the public, collecting responses from over 1,000 individuals. Additionally, BerryDunn organized in-person interviews over 12 days of focus groups at six sites with more than 200 Judicial Branch employees and members of the bar from across the state. Having heard from end users, BerryDunn then reviewed the Judicial Branch's infrastructure and capabilities and fielded reports from the other committees of the Commission about the role technology should play in their areas of reform.

II. Issues Impacting Technology

The committee and BerryDunn have identified four overarching elements that are relevant when considering the transition to greater technological functionality in the court system.

Technology Management and Governance

Technology management and governance address how core technology initiatives are identified, analyzed, prioritized, and budgeted. Without a governance process in place, important technology needs may be overlooked, less-important technology projects prioritized, limited technology resources diluted, and project completions delayed because of short-term changes in technology agendas. Equally important, a healthy governance process ensures that software applications are developed with user input to ensure effective implementation. The committee observes that best practices within the technology industry include a governance process that involves users and fact-based decision-making, maintains the installed technology base, and increases simplicity.

The Judicial Branch's technology governance process historically was unstructured, irregular, and not externally transparent. Initiatives began from internal ideas, field demands, executive branch or local government requests, and legislative mandates. A lack of formal technology governance in the past has hindered the effectiveness of technology innovation and execution by being vulnerable to constant course changes, thus making accurate and consistent budgeting and time management of

technology projects difficult. A plan for structured governance was developed by court stakeholders in 2014, and reported to the committee at an early meeting in 2015. The committee has preliminarily recommended that such a governance process be formalized.

The Business Environment: Lacking Uniformity and Paper-Based

Because the purpose of technology is to solve business problems and improve business processes, any use of technology must be considered within the context of the business environment. North Carolina's court system is unified, but there remains a clear lack of uniformity with respect to the business processes that individual courts and courthouses use. Courts are managed based on local jurisdictional needs, and with 100 counties and more than 500 independently elected officials, this results in business processes that vary dramatically from courthouse to courthouse. Implementing technology improvements that accommodate a multitude of variations in local business processes is too costly, both in terms of limited time and financial resources, as well as impossible given the limited resources available. For technology initiatives to be effective, they must be accompanied by increased business process uniformity.

Another barrier to efficiency in the current North Carolina court business environment is that processes are highly paper-driven. Over 30 million individual pages of paper are added to state court case files each year. Official legal records are almost entirely in paper form. System actors describe several challenges resulting from a largely paper-based case file system. Among those challenges are that official decisions and notes are annotated on paper files during court and later transposed into one of the many supported software applications to create an electronic index of the same actions, leading to constant duplication of effort. Maintaining organization of and ongoing access to court files is labor-intensive because of the constraints of the paper environment. Additionally, individuals report instances where the only record of a case disposition is written on the outside of the court file prior to filing it in a box or filing cabinet, never to be entered into an electronic system for easy future reference. The continued reliance on a paper-based system creates data entry redundancies and limits payment processes related to cases. Simultaneous access to case files by multiple parties (e.g., judges and clerks) as well as access across county or jurisdictional lines is difficult or impossible.

The physical impact of maintaining a paper-based system also merits review. Each year, over four miles of shelving is needed to maintain the new case files generated during that year. Counties are utilizing attics, basements, and off-site arrangements for storage. Old files must either be promptly archived into microfilm or digital formats to create shelf space, or new space must be obtained. While the staffs of clerks' offices have electronic indexing systems for some case information and management tasks, paper files still serve as the primary tool for court personnel to manage cases. Cases must be physically carted and carried throughout courthouses.

The highly paper-driven business environment is ripe with opportunity for technological innovation, but the lack of uniformity across local business processes is an obstacle that needs to be thoughtfully addressed.

Technology Development: Software Applications

Software applications will require an initial infusion of judicial resources to be developed and implemented as well as continuous resources in order to be maintained. Software applications can be developed in-house by TSD staff and contractors, can be purchased off the shelf from third-party

vendors, or can be a combination that heavily customizes a commercial application. For example, the state's workhorse Criminal Case Information System was developed in-house and is tied closely to North Carolina law and procedure. Microsoft Office products like Word, Excel and Outlook are off-the-shelf. And the clerks' Financial Management System is a heavily customized vendor general ledger accounting product. The vast majority of the Judicial Branch's 200 applications have been developed in-house because they filled niche needs. This approach has provided for a greater level of technology customization interfacing with external government agencies and their various technology platforms and has allowed projects to be slowed or accelerated as agendas and funding changed. The in-house approach, however, has also resulted in a proliferation of aging applications that are increasingly difficult to maintain as underlying technologies become obsolete and that require maintenance by developers who are aging out of the workforce.

Anytime, Anywhere Access to Services

The 21st century public expects to manage their lives, their finances, their health, and a host of other things remotely from their smartphones and other electronic devices. When considering the business environment as it relates to public use of technology, the predominance of the need for online information and supporting mobile technology cannot be overstated. Calendars, maps and instructions for parties, witnesses, and jurors must be easy to access. Software applications should facilitate communications with key offices, electronic payment options, and efiling of documents. Software applications with a public-interfacing component must be accessible across multiple types of devices like desktops, tablets, and phones. Compatibility with smartphones is particularly important because their widespread use throughout populations of varying income levels will help reduce barriers to court access. The importance of equal access to justice has been a focal point in each of the NCCALJ's four other committees.

III. Areas of Focus

The committee is encouraged by the fact that BerryDunn's initial field work has shown nearly universal Judicial Branch employee and outside user support for innovative technological improvements that increase the effectiveness, efficiency, and timeliness of court processes.

The committee, in consultation with BerryDunn, has initially identified the following business processes that can be reengineered through technology innovation.

Document Management System

The current process of relying on physical access to court documents could be dramatically improved through the development of an electronic document management system. An electronic system should support a transition from paper-based to digital files over time, while increasing electronic access to those files from anywhere at any time by both court employees and the public.

No single repository of case data

Selected data from paper files is manually keyed by authorized personnel into one or more of the Judicial Branch databases, to be accessed through various software applications. Lack of a single

repository for case data significantly decreases efficiency, requires redundant data entry, and requires users to log into multiple systems, often toggling between them, to complete a business process. A single, integrated case management system would save valuable employee hours as well as reduce data entry errors.

Calendaring

The process to create, update, and distribute calendar information is time consuming, often requiring redundant data entry, and resulting in some courts instituting their own "workarounds" (e.g., Google calendars). An electronic calendaring system that is automatically populated through a case management system would be easily accessible by both court employees and the public.

Public Demands for Service

Many clerks interviewed during BerryDunn's focus groups reported that a majority of their time is spent servicing public requests for information — information that is a public record but is not readily available to the public without calling or visiting a clerk's office. This service is important, but is also interruption-driven, causing clerks to spend time "reorienting" themselves to the task that they were working on prior to the inquiry. A statewide effort to make basic, relevant courthouse information available online will improve clerk's office productivity, customer service, and transparency. In addition to making information available online, the clerk's office should be able to provide the public with the option to conduct numerous other routine transactions online.

From a customer service standpoint, maintaining information available online saves individuals from having to take time off of work to drive to the courthouse. Making forms available online, creating portals for the submission of documents to the courthouse electronically, and providing for online payment of court costs and fees are just three examples of the level of online access the 21st century public has come to expect from its institutions. As the NCCALJ's Public Trust and Confidence Committee notes, increased access to the courts and to information about the courts has the potential to foster greater confidence in our courts.

Financials

Staff using the current Financial Management System (FMS) report significant redundancies and inefficiencies with the system. Specifically, the system does not integrate well with the case management system(s), requiring paper printouts of financial obligations, and access to multiple systems (FMS and a case management system) to cross-reference the obligations. The committee sees substantial benefits from having the financial management system being rolled into a single integrated case management system.

Centralized Electronic Filing, Document Management, Case Management, and Financial Management Systems

Electronic filing is nominally an option with North Carolina's appellate courts, the Business Courts, and four pilot sites for civil cases. In addition, more than 1 million criminal and non-criminal citations, primarily traffic-related, enter the courthouse electronically each year. In most instances, however, this information is then printed and a physical file is created. This manual process contributes to the estimated 30 million pieces of paper that are added to state court case files annually. A truly innovative electronic filing system must allow for electronic document storage and

case management so that documents filed electronically are able to move electronically throughout the system.

North Carolina's unified court system would be strengthened by the implementation of mandatory statewide electronic filing. In the near term, high-volume and forms-driven case types may present the greatest opportunity for significant and immediate savings. While some filings may still require paper to be converted to an electronic format for storage at a later date, the document should be retrievable through an integrated case management system. A case should be maintained by an electronic workflow that allows varied dashboard views for court officials and parties, depending upon their role within the court system. Functionality should give individuals the ability to manipulate documents and information at the case level. The Civil Justice Committee has observed that uniform, technology-enhanced filing has the potential to make representation of indigent clients less burdensome for both the lawyers and the litigants themselves.

The use of electronic filing and electronic information management systems will require a thorough review and revision of filing and recordkeeping rules prior to implementation. This will ensure that all parties, including self-represented litigants, have equal access and understanding. It will also ensure that the rules address changes necessitated by electronic filing. Training both internal and external Judicial Branch stakeholders will be essential and may be accomplished by a combination of in-person training and web-based instructional videos that will need to be created.

Data Analytics and Reporting

The Judicial Branch's data system initially was developed to collect and compile statistics about the number of cases in the system. A master index of criminal convictions was later added. Systems were not conceived with a purpose to support the daily management of high volume workflows. In order for local officials and Judicial Branch leadership to measure court performance effectively, replicate successes, and identify weaknesses, the court system must be able to collect, manage, and provide data in a useful format. That ability does not currently exist. In addition, policy makers and the public will benefit from more insight into what the aggregate data can show about the evolution of the court system through a variety of different metrics, such as changes to statutes, changes in case filing patterns, and how long it takes to resolve a particular type of case.

Case counting remains the underlying purpose for many of the Judicial Branch's case tracking systems, and, although it provides valuable information about the status of a case, it affords little information about the case's progression through the system. This hampers effective data-informed management decisions because system actors are unable to determine points in the case management process that require improvement. Furthermore, many data fields in the current case tracking systems lack standard written definitions, and the lack of uniformity in data entry creates barriers to meaningful analysis of the data that has been collected. Finally, as previously noted, much of the information pertaining to a case that would be valuable for the purpose of analysis is maintained only in hard copy files. As a result, it is difficult, if not impossible as a practical matter, to access simple data.

These burdens on data availability prevent effective management of both the overall court system and the local needs of judicial system stakeholders across the state. Ineffective management can result in delays, inconsistent outcomes for parties, and legislative concern over stewardship of resources. Several of the NCCALJ's companion committees have stressed the importance of improving the timeliness and efficiencies of our courts. Public polling data from the Public Trust and Confidence Committee shows that the public is highly concerned about delays in the

administration of justice. Good management of the courts supported by good data will positively impact every aspect of the Judicial Branch.

Currently, when data is in a format that allows for reporting, Judicial Branch employees indicate that the reports provided are both useful and informative. They further note that current reporting must be accomplished by requesting new reports to be developed by TSD and the Research and Planning Office. There is minimal access to self-service reporting in the courts, requiring days of staff time to produce and execute a report. Innovative technology solutions should offer real-time performance dashboards, providing both baseline data measurements and additional analytical modification for use by local officials and the public alike. The NCCALJ's Public Trust and Confidence Committee has also emphasized greater access to information, because the court system's inability to respond to its perceived shortcomings negatively impacts public trust.

The demand for data in a usable format will continue to grow. It is important for data to be available, complete, accurate, timely, and consistent throughout the court system. Similarly, utilization of standardized definitions is essential as the Judicial Branch implements court performance measures, such as the National Center for State Court's *CourTools*. As the emphasis on data moves to predictive analytics, such as assessing at case initiation whether a civil case will be simple, general, or complex in order to determine likely resourcing needs, the integrity of the data and the use of standardized definitions become increasingly important.

IV. Conclusion

The Technology Committee has gathered a tremendous amount of information during the last ten months. The committee is eager to hear further from members of the public as it prepares to finalize its recommendations in the fall and complete its strategic technology plan. The committee envisions a court system that will fulfill the vision of a 21st century courthouse — where technology is used to enhance efficiency, effectiveness, and timeliness of process, and where the public has greater access to and confidence in the courts. The committee welcomes the insights of the public on the ideas presented in this report as well as areas where additional research or investigation should be directed.

NORTH CAROLINA
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The committees of the North Carolina Commission on the Administration of Law and Justice (NCCALJ) welcome your comment at www.nccalj.org/interim-reports.

Thank You for Your Interest in North Carolina's Court System.