

Re-Considering North Carolina's Age of Juvenile Jurisdiction

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Good afternoon. It's a pleasure to be in your beautiful state and to be asked to join this debate about juvenile justice. I want to begin by applauding Action for Children and its allies for their efforts to challenge state government to reconsider the age of jurisdiction for the juvenile justice system. I must admit, however, given the length of this debate and the depth at which it has been waged, that it made me nervous to think about what I would bring to today's discussions that would be different or better than the excellent briefing papers that Action has spread around and that many of you have already read. So I thought I would start with a story you've probably never heard to help clarify some points that I want to address in these comments.

My story begins precisely a little over a century ago in Seattle, WA, where a young high school student dropped out in order to help support his fatherless family of his mom and three siblings. To accomplish this daunting task, he decided to use his bicycle to deliver packages for and to Seattle's growing business community. This was an obviously enterprising and ambitious young fellow, and as the country went through rapid development in the 20th century, he proved uniquely adept at growing his company in ways that anticipated those changes. For example, as transportation became motorized, his company stopped delivering packages on bicycles and switched to trucks. As the highway system was built, the company expanded beyond Seattle to become a regional service. When commerce became more reliant on airplanes, our young man

oversaw the transition that not only led them to transport things by air, but also to expand nationally and internationally.

This was a special guy, with a lot of special insights. One key insight that greatly influenced his philanthropic endeavors was his recognition, early in his career, that the young people who came to his company best prepared to succeed in the world of work were those who had the advantage of being raised in a family or family-like setting. Conversely, he recognized that the people who most often failed in his business were those who had been raised in institutional settings, in then-common orphanages, group homes, juvenile correctional facilities and the like. As a result, when he got fabulously wealthy, and turned his attention to using that wealth for society's benefit, his philanthropic activities were dedicated to increasing the odds that our most disadvantaged kids would have the benefit of being raised by families, rather than in those congregate care institutions that only seemed to worsen their odds of success. His impetus, therefore, was not just a good charitable heart, though he had that. His impetus was also business-driven: he knew our society needed to grow a labor force capable of succeeding at work. Our entrepreneur was trying to do both the right thing, the charitable thing, and the most effective thing, that which would help his business and the overall community.

The company this person founded is, of course, the United Parcel Service, now known as UPS. His name was Jim Casey; his mother's name was Annie Casey. When he used his wealth to create a foundation, he named it in her honor. This is a true story, and it helps to explain why an institution like the one I work for, the Annie E. Casey Foundation, invests so much time, people and money trying to transform the nation's juvenile justice systems. After all, if you are the nation's largest foundation devoted

exclusively to improving outcomes for disadvantaged kids, you might find a less culpable population, a less easily disliked population, a population that people generally are more empathetic towards than kids who break the law.

But, as Jim Casey recognized early on, those court-involved kids are at greatest risk to end up among the parts of our population who have the lowest educational achievement and the worst employment records; who are the least likely to form enduring families; who are the most likely to have chronic public health problems, including addiction; and, who are most likely to create the havoc that Chief Palombo and his colleagues will have to deal with and that we taxpayers will have to pay for in the form of jails and prisons.

I tell you this story because I think it is important, as we talk about the issue of juvenile justice jurisdiction, that we recognize the debate needs to occur on two levels: (1) what is the right thing to do, the values-driven angle of what is right, moral and fair; and (2) what's the best public policy, or what is most effective in achieving the dual goals of public safety and positive youth development.

A couple of decades ago, the director Spike Lee exhorted all of us to “do the right thing”, and in some ways that's what we're here to discuss today: what's the right thing about kids who break the law? I actually think this aspect of the juvenile jurisdiction debate is easy to put to rest. In the arena of public safety, where consensus is often rather fragile, if possible at all, I think the right thing in terms of juvenile justice jurisdiction has long since received resounding affirmation. 75% of the states in this country include 16 and 17-year olds in their juvenile justice systems; 96% of the states include kids through the age of 16. North Carolina, therefore, is part of a tiny minority in the country. If

Connecticut, which recently changed its statute, goes ahead with raising its age of majority, North Carolina and New York State will be the only places in the country that have not embraced the commonly accepted notion of what is right regarding where we should prosecute kids who break the law and how they should be treated if they are found guilty. North Carolina is, in other words, a significant outlier in terms of this unusually strong consensus.

This consensus is not new. It goes back at least to the formation of the juvenile court in 1898. And it is not just a consensus within our country: the rest of the world has embraced the notion that juvenile jurisdiction should extend to age 18.

This consensus regarding the age of majority was largely driven by instinct for many years. What I mean is, most adults understand intuitively that kids are different. We may not know exactly why, we may not have read a lot of scientific research or other proof about it, but we have long had a sense that even (or especially) teenagers were different and we acted on those instincts to create a separate justice system. In the last two decades, those instincts have been validated scientifically. Research has demonstrated that our brains, especially the critical parts that help with reasoning and decision making, do not become fully developed until our mid-twenties. Research has also proven that kids are much more amenable to positive change than adults, in part because they are still evolving.

All of this new scientific evidence affirms and reinforces the policy consensus that I was describing. In fact, the U. S. Supreme Court recently used that new research, and the basic consensus that kids are different, to ban application of the death penalty for offenses committed prior to the age of 18.

So, regarding the “do the right thing” side of this debate, I think this is really a no-brainer. In the final analysis, it’s a no-brainer because what you are doing in North Carolina will not pass the “my-child test”. The “my-child test” asks “what you would want if your 16 or 17 year old got in trouble and had to be brought before a court?” I have no doubt that the overwhelming majority of parents in the state of North Carolina would prefer to see their kids, if they got in trouble, brought before a system more consistent with the developmental status of children, one that was more concerned with rehabilitation than punishment, one that had different sensibilities and different resources to apply not only to maximize public safety, but also to help kids get back on the right track.

Because the “my-child test” would overwhelmingly and easily demonstrate consensus different from what your law now requires, one must wonder whether the failure to act on this common consensus derives primarily from who the children and families most affected are: overwhelmingly poor people of color, often disadvantaged, disabled, and without powerful adult champions. That’s who is served in our juvenile justice system. The problems of the juvenile justice system, I suggest, would be far fewer if the populations served were more diverse and representative of our society as a whole. And, the issue of jurisdiction, I submit, would have been resolved in favor of keeping 16 and 17 year olds in juvenile justice.

So let’s move beyond the “what’s right” part of the debate onto the "what works" part. Since there is obviously nothing in North Carolina’s water, or in your history, that explains your state’s virtually unique stance regarding the age of juvenile jurisdiction, perhaps you have knowledge regarding effective public policy that is simply better than

the rest of the states. Put another way, I suspect that North Carolina officials justify the continued exclusion of 16 and 17 year olds on the grounds that to do otherwise would undermine public safety. Folks here are motivated by the same questions as every other place: what's effective in terms of public safety, what's effective in terms of youth development, and what's the most effective use of public dollars. Unfortunately, the standard answers to those questions are based more on the status quo than on empirical evidence, which may explain your state's persistent adherence to the lower age limit. However, if the questions I posed are the correct ones, a review of research and experience indicates that North Carolina's policy regarding juveniles ought to be reconsidered.

In the past twenty years, the evidence has grown stronger and stronger that the juvenile justice system is the most appropriate and most effective venue for these youth. We now know much more now about adolescent development than ever, including more about the onset and desistance of delinquency. The bad news is that delinquency is a normative phenomenon in our society, that 4 out of 5 kids engage in delinquent acts at some time during their teenage years. That's distressing, that's troubling, but the good news is that most of us grow out of it as part of the natural maturation process. As importantly, we have learned over the past two decades a great deal about what works to help those most at risk of sustained delinquency to make successful transitions to adulthood, including how to make better assessments of risks and needs and which interventions work and which don't.

Unfortunately, we have not applied this knowledge on a system-wide or national scale. Increasingly, the field is talking about being evidence-based programs and

practices, an enormously encouraging development in a society that rarely bases public policy on sound research or evidence of what works. But, in general, we continue to make policy in the juvenile and adult justice systems on the basis of the last worst case.

So, we know more about adolescent development and more about what works to change the lives of kids who violate the law. We also know now that the public policies we implemented during the 1980s and 1990s, which criminalized delinquency by prosecuting and incarcerating more youth in the adult system, were unsound.

Organizations as reputable as the Centers for Disease Control and the Office of Juvenile Justice and Delinquency Prevention (of the U.S. Department of Justice) have published reports that say, in effect, “Our experiment trying to deter serious juvenile offending by putting kids into the adult system has not worked. It has driven up recidivism rates and, therefore, worsened public safety outcomes. And, it has been a disaster for the youth.”

From the “what works” angle, then, it seems to me that there is little that argues for excluding 16 and 17 year olds from the juvenile justice system. On the contrary, there is lots of new research that calls for re-examination of North Carolina’s statutes, research that indicates we get better outcomes--greater public safety, kids doing better in general, less taxpayer dollars spent--if we keep 16 and 17 year olds in the juvenile justice system.

In reflecting on North Carolina’s dilemma, it seems that the real issue may neither be what’s right, or what works, but what *can* work. Put another way, perhaps North Carolina may be avoiding this change mainly because it’s complicated and difficult and means overturning the status quo in ways that are scary and challenging, that require a lot of people in this room to change what they do and make government rethink how it’s organized and how it allocates resources. If the age of jurisdiction is raised, cops will

have to treat 16 and 17 year olds differently. Judges, prosecutors and defenders will probably have to be re-assigned from criminal courts to juvenile courts. Operational dollars, for everything from confinement costs to community supervision, will have to follow the kids from the adult to juvenile system. These are complex administrative challenges that some will contend are not worth the effort.

I get it that changing the age of jurisdiction will be challenging to folks here in North Carolina, but I think that's good. The reason I think that's good is because I think that changing the age of jurisdiction in your juvenile justice system can be transformative to your justice system generally. That is, raising the age will not simply raise the age: it will inspire and stimulate a whole set of changes that can make your juvenile justice system more accountable for results, better able to use tax payer dollars efficiently and more likely to produce positive public safety and youth development outcomes. Maybe we need to turn reconsider these challenges; maybe we shouldn't think, "Oh, that's scary" but instead affirm, "Wow, that's exciting, we can really use this well."

Here's an example of what I mean. Many here have argued that changing the age of jurisdiction would be difficult because juvenile justice is currently underfunded. But there's a circular, almost tautological logic in which you seem to be caught. You have, by statute, marginalized juvenile justice by excluding 16 and 17 year olds. Consequently, juvenile justice has fewer resources and lesser ambitions here than the average juvenile justice system. Changing the jurisdictional age can propel you to wrestle with and answer those tough questions.

Yes, you may wonder, "Where are the resources going to come from?" For fifteen years I have been managing what is now the most widely replicated juvenile justice

reform initiative in the country. We work in 100 different places helping folks re-engineer their juvenile justice systems to reduce reliance on incarceration without sacrificing public safety. This is transformation on a scale similar to that which you would precipitate by raising the age of juvenile justice jurisdiction. What we have found in these 100 places is that it is not about the money. The truth is there is lots of money in public systems now being spent unwisely. There are also people deployed on tasks that ought to be done more efficiently and there are priorities that should be reconsidered. Changing the age of jurisdiction, I would argue, like changing who we think needs to be locked up, will inspire and demand that you re-engineer your system: that you redefine the roles people play, develop smarter ways to make decisions, deploy personnel more effectively, spend public dollars with greater accountability for results.

Our experience in triggering these kinds of transformations is not just that you will find you can safely bring the kids into the juvenile courts, but that you will have a better juvenile justice system generally. We started with a simple ambition to lower the number of kids who were inappropriately or unnecessarily locked up, but we have found that systems can be transformed by the process of change. I imagine that virtually everyone here today would prefer a juvenile justice system that is collaboratively managed by cooperating stakeholders, a system that's data driven, that doesn't lock up so many kids, that produces better public safety outcomes, that engages families and youth, and that reduces racial disparities. That is the kind of systems you would see if you went to visit our most mature reform sites.

And that is the opportunity I think you have here in North Carolina. The issue we discuss today is not simply about doing the "right thing" or implementing the right public

policy in terms of age of jurisdiction. The real issue is whether or not your state's juvenile justice system is all it should be. Does it, generally, pass the "my-child test", meeting standards that you would favor if your own child were getting in trouble? Bringing 16 and 17 year olds under juvenile court jurisdiction will, I contend, stimulate reforms that leave you with a fundamentally different system, one that is more effective and more consistent with the well-being of adolescents. This is a huge opportunity, a great opportunity, something you shouldn't be afraid of, but should embrace. This is, in the final analysis, about Jim Casey's insight, for it's about what we need to do so young adults are ready to work, are ready to form families, are ready to participate in civic life. That is ultimately what is at stake in the debate about 16 and 17 year olds.

Thank you and good luck.