

**GOOD KIDS, m.A.A.d STATE:
EFFECTS OF GEORGIA HOUSE BILL 462 AND
KEEPING THE AGE OF CRIMINAL
RESPONSIBILITY FOR GANG-RELATED CRIMES
UNDER EIGHTEEN**

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INTRODUCTION

Despite decades of proposed legislation and cries for juvenile justice reform, Georgia cannot cross the finish line—it is one of only three U.S. states whose age of criminal responsibility remains seventeen.¹ When an individual’s age equals or exceeds the age of criminal responsibility, the

1. Texas, Wisconsin, and Georgia are the last three states where seventeen-year-old offenders are automatically placed in superior court. Chuck Carroll, *Raise the Age: Where Legislation Stands in the Final Three States*, THE IMPRINT (Feb. 24, 2021, 7:00 PM), <https://imprintnews.org/justice/raise-age-where-legislation-stands-final-three-states/52186> [https://perma.cc/6E83-HL6D].

state treats them as an adult for the purpose of adjudicating criminal offenses. A creature of state law, legislation has historically varied on what constitutes a child, thereby extending juvenile court jurisdiction. But this variance has been settled with forty-seven states establishing the age of criminality as *eighteen*—or older.² Even the United Nations Convention on the Rights of the Child considers a child to be under the age of eighteen.³ In Georgia, however, all seventeen-year-old offenders are automatically prosecuted in superior court as adults, denying them access to rehabilitative programs available in the juvenile court system. Georgia’s treatment of seventeen-year-old offenders raises the question: Why does Georgia remain an outlier in the face of opposing national and global sentiments?

In 2023, the most recent attempt to raise the age of criminality to eighteen, House Bill 462 (HB 462), or the “Raise the Age Act,” was overwhelmingly approved by Georgia’s House of Representatives 145 to 22.⁴ Amending Title 15 of the Georgia Official Code, the Act would have changed the jurisdiction of Georgia’s juvenile court to include children seventeen years of age, with specific exceptions for gang-related crimes, repeat offenders, and categories of serious offenses.⁵ However, the Senate Judiciary Committee failed to advance HB 462 out of committee in the 2023–2024 session.⁶ Lawmakers will likely reconsider it another term.

HB 462 failed by virtue of the disconnect between unelected stakeholders who support raising the age, such as judges and child welfare organizations, and the political branches.⁷ Law enforcement officers and prosecutors continually hinder reform, citing the high cost of expanding juvenile jurisdiction to thousands of seventeen-year-olds and fears of

2. Bomi Kim Hirsch & Naiya Patel, *Raise the Age*, UNIV. WIS. POPULATION HEALTH INST.: CNTY. HEALTH RANKINGS & ROADMAPS (Jan. 22, 2025), <https://www.countyhealthrankings.org/strategies-and-solutions/what-works-for-health/strategies/raise-the-age> [https://perma.cc/CWW8-UEGX] (select “Implementation Examples” tab) (“As of 2023, 47 states have a maximum age of at least 17 for juvenile court jurisdiction: Michigan and New York extend the upper age limit to age 19, and Vermont extends juvenile court jurisdiction to youth under age 20.”).

3. U.N. Convention on the Rights of the Child art. 1, Nov. 20, 1989, 1577 U.N.T.S. 3 (“[A] child means every human being below the age of eighteen years unless, under the law applicable to the child, a majority is attained earlier.”).

4. H.B. 462, 157th Gen. Assemb., Reg. Sess. (Ga. 2023).

5. *Id.*; see also Jill Nolin, *Bill to Raise Age of Defendants Assigned to Juvenile Courts Passes Georgia House Panel*, GA. RECORDER (Feb. 28, 2023, 7:52 PM), <https://georgiarecorder.com/briefs/bill-to-raise-age-of-defendants-assigned-to-juvenile-courts-passes-georgia-house-panel/> [https://perma.cc/MFB2-LKRG].

6. *HB 462*, GA. GEN. ASSEMBLY, <https://www.legis.ga.gov/legislation/64535#21235> [https://perma.cc/FQ7G-VLNE].

7. See *infra* Section II.B for an in-depth discussion on the obstacles to reform in Georgia.

appearing too lenient on crime.⁸ In addition, the opposition's narrative surrounding young delinquents often paints them as violent and morally depraved.⁹ Compounding these dynamics, the executive's contemporary shift back to a "tough on crime" approach has introduced punitive measures into reform proposals, such as HB 462's broad judicial waiver for gang activity.¹⁰ Yet these concerns are outdated, implicate racial disparities, and are out of line with the majority of states across the geographical and ideological spectrum.¹¹ Georgia must embrace change.

This Note will focus on the merits of putting seventeen-year-olds under superior court jurisdiction and ultimately argue for original jurisdiction in juvenile delinquency court for seventeen-year-old youths without a judicial waiver for criminal gang activity. Part I will examine the origins and historical underpinnings of Georgia's juvenile justice scheme. The historical account is not comprehensive, but it surveys important eras that affect reform today. Part II offers a comparative analysis with a neighboring state, North Carolina, pulling general lessons that illuminate Georgia's status as a national outlier in their age of criminality. Part III argues for juvenile jurisdiction over criminal gang activity, addressing implications of HB 462 and opposing views that sustain Georgia's current policies.

I. HISTORY OF JUVENILE JUSTICE AND ADDRESSING YOUTH GANG CRIME IN GEORGIA

The historical development of Georgia's juvenile justice system is crucial to contextualizing why the age of criminality remains seventeen. Understanding stakeholder¹² motivations during Georgia's notable

8. See Josh Lingsch, *Raise the Age – Not DJJ's Budget*, GA. CHILD.'S DEF., LLC, <https://georgiachildrensdefense.com/raise-the-age-not-djjs-budget/> [<https://perma.cc/2MZU-DAED>] (noting the Georgia Department of Juvenile Justice's claim that raising the age would require "an enhanced budget and more detention facilities"); Beau Evans, *Ga. Lawmakers Consider Raising Age for Juveniles to Be Charged as Adults*, GA. RECORDER (Nov. 18, 2019, 8:36 AM), <https://georgiarecorder.com/2019/11/18/ga-lawmakers-consider-raising-age-for-juveniles-to-be-charged-as-adults/> [<https://perma.cc/JZ4F-TWMH>] (noting that certain committee members stated concerns over the change letting "violent young offenders off the hook").

9. See, e.g., Evans, *supra* note 8.

10. Ga. H.B. 462 § 2-6 (allowing waiver of juvenile court jurisdiction and transfer to superior if the petition alleges the child "[w]as 17 years of age at the time he or she is alleged to have committed criminal gang activity").

11. To illustrate the broad support despite political ideology, Rhode Island raised the age to eighteen in 2007, Louisiana in 2016, Illinois in 2014, and Mississippi in 2010. JUST. POL'Y INST., *RAISE THE AGE 16* (2017), <https://justicepolicy.org/wp-content/uploads/2021/06/raisetheage.fullreport.pdf> [<https://perma.cc/5UAF-H7KV>].

12. For this Note, a "stakeholder" in the juvenile justice system includes juvenile court judges, law enforcement officers, prosecutors, defense attorneys, mental health and treatment providers, school personnel, and others with a personal stake in the child welfare system in Georgia.

successes and pitfalls informs how future efforts might succeed in raising the age without including a judicial waiver for gang activity.

A. Early History of Georgia's Juvenile Court

During the 1900s, social understanding of youth crime in the United States shifted from a retributivist to rehabilitative perspective, with the theory that youth crime was a result of a child's social environment, and criminality a "survival mechanism."¹³ Early creators of juvenile courts advocated for a separate system from punitive adult courts by invoking the legal doctrine of *parens patriae*—the thrust of the doctrine was that children needed opportunities to develop a more productive lifestyle by focusing on the child's best interest in individualized sentencing.¹⁴ This led to the establishment of Georgia's first children's court in 1906 with jurisdiction over children under sixteen (i.e., fifteen years of age or younger).¹⁵ Sixty years later, in the wake of the Supreme Court's influential *In re Gault*¹⁶ decision, which expanded the Due Process Clause of the Fourteenth Amendment to delinquency proceedings, the Georgia General Assembly passed the 1968 Juvenile Court Act.¹⁷ The Act extended juvenile court jurisdiction to children under seventeen (i.e., sixteen years of age or younger).¹⁸

In 1971, building on earlier schemes, lawmakers comprehensively revised the Juvenile Code of Georgia to standardize criminal procedures for children.¹⁹ Notably, the original statutory revision defined a "child" as an individual under *eighteen* (i.e., seventeen years of age or younger) for jurisdictional purposes beginning in 1973.²⁰ This was on trend with neighboring Southern states, like Alabama, which established their age of

13. Jesse Russell & Erin Manske, *Achieving Juvenile Justice Reforms Through Decision-Making Structures: The Case of Georgia*, 6 OJJDP J. JUV. JUST. 98, 98 (2017).

14. *See id.* at 99.

15. Melissa D. Carter, *Bending the Arc Toward Justice: The Current Era of Juvenile Justice Reform in Georgia*, 54 GA. L. REV. 1133, 1148 (2020).

16. 387 U.S. 1, 27–31 (1967) (holding juveniles are covered by the Fourteenth Amendment Due Process Clause in adjudications of delinquency).

17. Carter, *supra* note 15, at 1148.

18. *Id.*; see James O. Wilson, Jr., Note, *Juvenile Law – Exclusive Original Jurisdiction of Juvenile Cases in Juvenile Courts*, 27 MERCER L. REV. 335, 335 n.10 (1975).

19. See Elizabeth Locker, *Grow Up Georgia... It's Time to Treat Our Children as Children*, 4 J. MARSHALL L.J. 85, 106 (2011).

20. Lucy S. Henritze, *Juvenile Law and the Juvenile Court System*, 24 MERCER L. REV. 187, 190 n.12 (1973).

criminality at eighteen in the 1970s.²¹ But before the provision could go into effect, there was uncertainty around the Juvenile Code's constitutionality, and soon, Georgia's appellate court declared all efforts unconstitutional.²² The Georgia Constitution explicitly conferred upon superior courts alone "exclusive jurisdiction . . . in criminal cases where the offender is subjected to loss of life or confinement."²³ Ending the jurisdictional debate, in 1972, the General Assembly amended the Georgia Constitution, granting constitutional authority to provide exclusive jurisdiction to juvenile courts.²⁴ The Juvenile Code now conferred original and exclusive jurisdiction on juvenile courts for juvenile matters without controversy.²⁵ As mentioned, the original code provided that by 1973, the juvenile court would have original jurisdiction over individuals under *eighteen*, "a logical arrangement which would have created a perfect fit with the general law fixing [eighteen] as the legal age of majority."²⁶ However, after the constitutional amendment but before implementation, all mentions of that provision were struck by the General Assembly.²⁷ Citing concerns over the general lack of juvenile court resources, lawmakers lowered the age of criminal responsibility back to seventeen, classifying seventeen-year-olds as adults in criminal proceedings, where it remains.²⁸

B. Georgia's Major Juvenile Justice Overhaul

Over the next thirty years, inconsistent amendments to Georgia's overly complex Juvenile Code created confusion, peaking in 1998 when "the U.S. Department of Justice [] issued a findings letter to Georgia Governor Zell Miller" documenting violations of "the federal rights of youth in Georgia

21. ANGEL ZANG, JUV. JUST. GEOGRAPHY, POL'Y, PRAC. & STAT., U.S. AGE BOUNDARIES OF DELINQUENCY 2016, at 3 (2017) ("Alabama raised its upper age from 15 to 16 in 1976 and from 16 to 17 in 1977 . . ."); Jill Nolin & Stanley Dunlap, *Republican State Lawmaker Renews Effort to Divert 17-Year-Olds to Juvenile Court System*, GA. RECORDER (Feb. 21, 2023, 1:00 AM), <https://georgia.recorder.com/2023/02/21/republican-state-lawmaker-renews-effort-to-divert-17-year-olds-to-juvenile-court-system/> [<https://perma.cc/3RJD-Y3H3>].

22. See Wilson, *supra* note 18, at 335–36; Lucy S. Henritze, *Persisting Problems of Georgia Juvenile Court Practice*, 23 MERCER L. REV. 341, 341 (1972).

23. Wilson, *supra* note 18, at 335–36 (citing GA. CONST. art. VI, § 4, ¶ 1; GA. CODE ANN. § 2-3901 (Rev. 1973)).

24. *Id.*

25. *Id.* (explaining jurisdiction of the superior court over felony offenders was exclusive except in the case of juvenile offenders as provided by law).

26. CRYSTAL H. BICE, GEORGIA JUVENILE PRACTICE AND PROCEDURE § 1:5 (2025).

27. *Id.*

28. *Id.*

juvenile facilities.”²⁹ To put this era in frame, a few years prior, Governor Miller introduced one of the harshest criminal justice bills in the country.³⁰ The stringent “two-strikes” law and provision allowing adult sentencing for offenders as young as thirteen emulated Georgia’s aggressive “tough on crime” approach, arguably one step beyond national trends.³¹

Eleven years of federal oversight followed, during which the Juvenile Code was overhauled.³² Restructuring took off when the Proposed Model Code (PMC) was released in 2008 by the Young Lawyers Division of the State Bar of Georgia as the best model for juvenile law policy and practice.³³ The PMC proposed “revising the jurisdictional age of Georgia’s juvenile courts to include persons seventeen years of age and repealing the mandatory transfers to superior court for minors who commit selected crimes.”³⁴ According to the PMC, seventeen-year-olds “would begin the criminal justice process in juvenile court regardless of their alleged crime.”³⁵ Policymakers then advocated for laws “designed to effectuate the aims of the PMC.”³⁶ As with any significant reform that must survive the political gauntlet, the resulting legislative proposals were more restrained and excluded provisions altering the age of criminality, which stayed under seventeen.³⁷

While stakeholders proposed research-based models, the impact of the abovementioned inconsistencies catalyzed action from executive leaders. For example, after the murder of an eight-year-old girl by her twelve-year-old neighbor resulted in as little as *two* years of detention for the child offender, the public noted the abnormality that only bringing a knife to

29. Carter, *supra* note 15, at 1149 n.78 (quoting Letter from Bill Lann Lee, Acting Assistant Att’y Gen., U.S. Dep’t of Just., to Zell Miller, Governor, State of Ga. (Feb. 13, 1998), <https://www.justice.gov/crt/state-juvenile-justice-facilities-findings-letter> [<https://perma.cc/4GBH-YQHS>]).

30. See Bill Nigut, *Opinion: Gov. Kemp’s Fight on Crime: He’s More Zell Miller than Nathan Deal*, ATLANTA J.-CONST.: POL. (Jan. 12, 2024), <https://www.ajc.com/politics/opinion-governor-kemp-s-fight-on-crime-hes-more-zell-miller-that-nathan-deal/XEHDGKCHFFFEJAH54N42ANNBTU> [<https://perma.cc/T3H2-PJD8>].

31. *Id.*; see also *Georgia State of the State Address*, C-SPAN, at 11:00 (Jan. 11, 1994), <https://www.c-span.org/program/state-legislature/georgia-state-of-the-state-address/42636> (last visited Nov. 16, 2025) (Governor Zell Miller stated: “Once a criminal has committed a second violent felony . . . I want him to see the rest of his life behind bars. . . . Some talk about three strikes and you’re out. That’s in baseball. Violent crime is no game. In Georgia, I want the rule to be two strikes and you’re gone.”).

32. Carter, *supra* note 15, at 1150.

33. *Id.* at 1151 n.90. The initial PMC was drafted by three licensed attorneys, including Professor Lucy McGough, one of the drafters of Georgia’s original 1971 Juvenile Code. Kirsten Widner, *Support Proposed Revision of Georgia Juvenile Code*, JUV. JUST. INFO. EXCH. (Sept. 26, 2011), <https://jjiie.org/2011/09/26/why-juvenile-court-professionals-should-support-revision-of-georgia-juvenile-justice-code/> [<https://perma.cc/AX3T-UHWY>].

34. Locker, *supra* note 19, at 108.

35. *Id.* at 108–09.

36. Carter, *supra* note 15, at 1153.

37. See Locker, *supra* note 19, at 110–11.

school could have resulted in *five* years of detention.³⁸ State-wide outrage over these gaps prompted Republican Governor Nathan Deal to issue an executive order in 2011, focusing the Special Council on Criminal Justice Reform for Georgians on the state's juvenile justice system.³⁹

Governor Deal publicly expressed his commitment to criminal justice reform as a pillar of the Republican "law and order" platform.⁴⁰ Governor Deal's background as a prosecutor and juvenile court judge brought the fiscal concerns of Georgia's one-billion-dollar corrections budget, with juveniles sentenced under strict guidelines, to the forefront. More broadly, conservatives realized "evidence-based community programs fit squarely with the three . . . basic conservative ideological constructs: increase public safety, reduce big government, and cut taxpayer costs."⁴¹

The Special Council appointed by Governor Deal collaborated with organizations like the Pew Charitable Trust, the Annie E. Casey Foundation, and the Crime and Justice Institute to analyze system data and solicit diverse input for policy recommendations aimed at reducing recidivism.⁴² The Council's final report, released in December 2012, found the Department of Juvenile Justice (DJJ) was operating at a substantial cost and achieving poor outcomes, with more than half of the youth in Georgia's juvenile justice system committing a subsequent offense within three years.⁴³ In response, the Council introduced data-driven policy recommendations to "hold offenders accountable, increase public safety, and reduce . . . costs."⁴⁴

38. See Susanna Capelouto, *Killing of 8-Year-Old Spurs Changes to Georgia Law*, NPR (July 18, 2005, 12:00 AM), <https://www.npr.org/2005/07/18/4759113/killing-of-8-year-old-spurs-changes-to-georgia-law> [<https://perma.cc/R4US-GXAM>].

39. See Carter, *supra* note 15, at 1153–54; PEW CHARITABLE TRS., *GEORGIA'S 2013 JUVENILE JUSTICE REFORM 2* (2013).

40. See *What Is the Future for Criminal Justice in Georgia*, NPR: POLITICAL REWIND at 18:12 (Apr. 16, 2019), <https://podcasts.apple.com/us/podcast/political-rewind/id964921299?i=1000435088129> (last visited Nov. 16, 2025) (panel discussion between Kevin Reilly, editor at the Atlanta Journal-Constitution; Carey Miller, executive counsel to Governor Nathan Deal; Marissa Dodson, public policy director at the Southern Center for Human Right; and Michael Owens, former chair of the Cobb County Democratic Party).

41. Steven Teske, *Juvenile Justice Reform in Georgia: A Collective Decisionmaking Approach to De-Politicize Crime and Punishment*, 54 GA. L. REV. 1169, 1191 (2020) (arguing Governor Deal was able to establish consensus of politically diverse politicians because he followed four stages of decisionmaking: (1) collaboration, (2) framing the problem and issues, (3) generating alternatives, and (4) deciding a course of action).

42. See Carter, *supra* note 15, at 1154; Russell & Manske, *supra* note 13, at 100.

43. See Carter, *supra* note 15, at 1154. For youth released from Georgia's secure youth development campuses, the recidivism rate was 65%, trending upward. MICHAEL P. BOGGS & CAREY A. MILLER, GA. COUNCIL ON CRIM. JUST. REFORM, *REPORT OF THE GEORGIA COUNCIL ON CRIMINAL JUSTICE REFORM 44* (2017).

44. GA. COUNCIL ON CRIM. JUST. REFORM, *REPORT OF THE SPECIAL COUNCIL ON CRIMINAL JUSTICE REFORM FOR GEORGIANS 2* (2012).

Importantly, the reforms would realize an estimated \$88 million in state savings, or \$90,000 a year in taxpayer savings for each child processed.⁴⁵

The new Children's Code, revised according to the Council's recommendations, was passed unanimously by the General Assembly and signed into law on May 2, 2013, signifying a major culture change in Georgia's approach to detaining youth.⁴⁶ During this period, Georgia led the nation in decreasing out-of-home placements for low-level offenders and increasing community-based alternatives to detention.⁴⁷ By 2016, the number of juveniles committed to the DJJ dropped by 33%.⁴⁸ Black youth sentenced in superior court fell by 56.9%, furthering historic lows in Black Georgians sentenced to state prison during this period.⁴⁹

However, a crucial policy was missing from the Children's Code. Initially the bill increased the age of criminality to eighteen, following PMC guidelines.⁵⁰ But as the General Assembly considered it, the proposal to raise the age was discarded due to limited political support.⁵¹ Concerns raised by the opposition referenced the increased costs for the juvenile court system, along with strong fear rhetoric describing predatory, violent teenagers, mirroring the current resistance discussed below.⁵² To maintain legislative unanimity in the bill's passage, the policy was left on the cutting floor.⁵³ From 2008 to 2013, while Georgia lawmakers were at an impasse, states like Illinois, Mississippi, and Massachusetts passed legislation that

45. See Rhonda Cook, *Senate Approves Juvenile Justice Reform*, ATLANTA J.-CONST.: POL. (Mar. 21, 2013), <https://www.ajc.com/news/state--regional-govt--politics/senate-approves-juvenile-justice-reforms/GZe3ijVIFWKTPa89v326nI/> [<https://perma.cc/CJJ7-DXU8>].

46. BOGGS & MILLER, *supra* note 43, at 44–45.

47. See Carter, *supra* note 15, at 1163. Key examples of the community-based alternatives implemented in 2013 include “the separation of designated felony offenses into two tiers to differentiate the response based on the severity of the offense, the prohibition against detention for status offenders and certain misdemeanants, and the mandate for validated risk and needs assessment and detention assessment instruments to be administered prior to disposition.” BICE, *supra* note 26, § 1.6.

48. MICHAEL P. BOGGS & W. THOMAS WORTHY, GA. COUNCIL ON CRIM. JUST. REFORM, REPORT OF THE GEORGIA COUNCIL ON CRIMINAL JUSTICE REFORM 7 (2016); BOGGS & MILLER, *supra* note 43, at 46 (“Since 2013 [HB 242’s passing], Georgia has reduced its number of youth in secure confinement by 36 percent and the number of youth in detention by 11 percent.”).

49. UNIV. GA. CARL VINSON INST. OF GOV’T, GEORGIA CRIMINAL JUSTICE DATA LANDSCAPE REPORT 81 (2020) [hereinafter GA. LANDSCAPE REPORT]; see also Nigut, *supra* note 30 (“Over two terms Deal passed sweeping legislation designed to reduce the state’s prison population . . . reduc[ing] the number of African Americans sentenced to state prison to historic lows.”).

50. See *supra* notes 32–35 and accompanying text.

51. See Carter, *supra* note 15, at 1166.

52. *Id.*; see *infra* Section II.B (detailing the executive’s villainization of juvenile offenders when discussing current reform proposals to raise the age).

53. See Carter, *supra* note 15, at 1166.

expanded juvenile court jurisdiction to seventeen-year-old offenders, but Georgia could not get it done.⁵⁴

C. *From Nationwide Leader to HB 462*

Following the Council’s other recommendations, the General Assembly continued to reform the juvenile system. Despite a desire to continue reducing recidivism, amendments did not include the original PMC proposal to raise the age of criminality to eighteen.⁵⁵ Advocacy groups and state legislators vigorously examined the topic, submitting numerous bills to raise the age of juvenile jurisdiction. However, attempts to raise the age in 2019⁵⁶ and 2021⁵⁷ faced the same resistance as previous years, with worries about public safety and the cost of expanding the juvenile justice system. Similar to the legend of Sisyphus, the boulder laboriously pushed up the hill only to roll back down.

Modern reform characterizes an era of reactive, fear-based policies and Georgia’s re-embrace of Governor Miller’s “tough-on-crime” philosophy.⁵⁸ This is best exemplified by HB 462, the General Assembly’s most recent proposal to raise the age, which features an overly broad judicial waiver for seventeen-year-olds involved in gang activity.⁵⁹ A prosecutor or a judge triggers a judicial waiver by bringing a motion to transfer the child.⁶⁰ Following a subsequent hearing, the juvenile court judge decides whether to waive juvenile jurisdiction and move the child to adult criminal court.⁶¹ As it stands, under Georgia Code § 15-11-561, after a petition alleging delinquency, the court may convene a hearing to determine whether to transfer the offense to the superior court if the petition alleges the child “(A) [w]as at least 15 years of age at the time of the commission of the offense and committed an act which would be a felony if committed by an adult” or

54. See MARCY MISTRETT, SENT’G PROJECT, BRINGING MORE TEENS HOME: RAISING THE AGE WITHOUT EXPANDING SECURE CONFINEMENT IN THE YOUTH JUSTICE SYSTEM (June 25, 2021), <https://www.sentencingproject.org/app/uploads/2022/10/Bringing-More-Teens-Home-Raising-the-Age-Without-Expanding-Secure-Confinement-in-the-Youth-Justice-System-1.pdf> [<https://perma.cc/PB4Q-AZYR>].

55. See Carter, *supra* note 15, at 1157 (surveying state legislation from 2013 to 2017).

56. H.B. 440, 155th Gen. Assemb., Reg. Sess. (Ga. 2019).

57. H.B. 272, 157th Gen. Assemb., Reg. Sess. (Ga. 2021).

58. See Carter, *supra* note 15, at 1148; *infra* Section II.B.

59. H.B. 462, 157th Gen. Assemb., Reg. Sess. (Ga. 2023).

60. GA. CODE ANN. § 15-11-561(a) (West 2025).

61. *Id.* § 15-11-561(b)–(c) (Westlaw). States transfer youth to adult court through several mechanisms—judicial waiver, prosecutorial discretion, or legislative exclusion. With a judicial waiver, the juvenile court judge can forgo juvenile court jurisdiction and transfer the case to adult criminal court. Statutes vary in the guidance provided to judges on the criteria used to determine whether to transfer. See Stacey Sabo, Note, *Rights of Passage: An Analysis of Waiver of Juvenile Court Jurisdiction*, 64 FORDHAM L. REV. 2425 (1996).

“(B) [w]as 13 or 14 years of age and either committed an act for which the punishment is loss of life or confinement for life . . . or committed aggravated battery resulting in serious bodily injury to an alleged victim who is not a public safety officer”⁶² HB 462 section 2-6 would add subsection (C), including children “17 years of age at the time of participating in criminal gang activity,” as a basis for transfer.⁶³

“Criminal gang activity” is defined in the Street Gang Terrorism Prevention Act⁶⁴ and includes any offense defined as racketeering activity under the Georgia Racketeer Influenced and Corrupt Organization (RICO) Act.⁶⁵ Georgia’s RICO Act prohibits various forms of participation in a criminal enterprise connected to a pattern of racketeering activity.⁶⁶ Georgia’s RICO Act is broader in scope than its federal counterpart.⁶⁷ Its elusive elements make securing convictions under the state statute easier.⁶⁸ For instance, the federal understanding of an “enterprise” is a group of individuals, but Georgia’s RICO Act allows one individual to constitute an “enterprise.”⁶⁹ The statute also encompasses various entities, including sole proprietorships and groups without prior connections.⁷⁰ Additionally, a pattern of racketeering is defined as “engaging in at least two” predicate “acts of racketeering activity” committed “in furtherance of one or more incidents, schemes, or transactions that have the same or similar” purpose.⁷¹ But, startlingly, participation in a RICO conspiracy does not require an individual to commit an illegal act if others in the enterprise commit the two predicate crimes.⁷² Georgia’s RICO Act includes forty-two predicate crimes

62. GA. CODE ANN. § 15-11-561 (West 2025).

63. Ga. H.B. 462 § 2-6.

64. GA. CODE ANN. § 16-15-3(A)–(G), (J) (West 2025).

65. *See id.* § 16-14-3 (Westlaw).

66. *See id.* § 16-14-2 (Westlaw).

67. *See* Ashley Starnes, Note, *Can Anybody Be a Gangster?: Differences Between Georgia RICO and Federal RICO with Anecdotal Examples*, 16 J. MARSHALL L.J. 306, 312 (2023). Starnes offers a comprehensive review of Georgia’s RICO Act in comparison with the Federal RICO Act, highlighting the lower burden of proof and far-reaching implications of the ambiguous “enterprise” definition. *Id.*

68. Demonstrating the statute’s reach, Fulton County District Attorney Fani Willis has utilized Georgia’s RICO Act to charge President Donald Trump and eighteen other defendants after the 2020 election, education officials in Atlanta Public Schools involved in a cheating scandal, rappers Young Thug and Gunna for their involvement in a criminal street gang, and twenty-six alleged members of the Drug Rich Gang. *See* Devan Cole, *What Is RICO, the Law at the Heart of Trump’s Georgia Criminal Case?*, CNN (Sept. 6, 2023, 10:38 AM), <https://www.cnn.com/2023/08/15/politics/rico-explainer-georgia-trump-indictment/index.html> [<https://perma.cc/463U-RW4C>].

69. *See* Manubir Arora, Jennifer Hyman & Robert Wilson, Commentary, *The Metamorphosis of the Georgia RICO Statute*, LAW.COM: DAILY REP. (Nov. 8, 2023, 1:20 PM), <https://www.law.com/dailyreportonline/2023/11/08/the-metamorphosis-of-the-georgia-rico-statute/?sreturn=20251020140320> [<https://perma.cc/P7FF-N8UC>].

70. *Id.*

71. GA. CODE ANN. § 16-14-3(4)(A) (West 2025).

72. *Id.*

and twelve generic categories of violations, intentionally covering a broad range of nonviolent offenses.⁷³ Racketeering activity includes unlawful transportation of alcoholic beverages, smash-and-grab burglary, theft, illegal use of financial transaction cards, marijuana possession and distribution, dealing in narcotic drugs, and obstruction of justice.⁷⁴

The sponsors of HB 462 expanded the circumstances that would qualify a seventeen-year-old for superior court transfer by including the “criminal gang activity” waiver as a concession to law enforcement groups, who expressed concerns over costs and a perceived “soft on crime” approach, explored comprehensively in Section II.B.⁷⁵ This concession is an illustrative marker. Where once Georgia was a pinnacle for advances in juvenile justice, the state has fallen behind.

II. COMPARATIVE ANALYSIS TO NORTH CAROLINA: HOW AND WHY DID GEORGIA GET LEFT BEHIND?

In 2007, fourteen states automatically placed sixteen or seventeen-year-old offenders under superior court jurisdiction.⁷⁶ Over the next decade and a half, eleven of those fourteen states raised their age of criminality in an initiative called “Raise the Age.”⁷⁷ After the “super predator” teen framework⁷⁸ of the 1990s was discredited, public opinion quickly shifted away from punitive punishment.⁷⁹ While once considered risky, spurring the shift was nationwide data demonstrating that expanding juvenile jurisdiction was successful in reducing recidivism and incarcerated youth.⁸⁰ This was enough to jolt most states into reforming their treatment of juvenile

73. GA. CODE ANN. § 16-14-3(5)(A)–(C) (West 2025).

74. *Id.*; Starnes, *supra* note 67, at 322.

75. See Russ Bynum, *Georgia House Votes to Prosecute 17 Year Olds as Juveniles*, AP NEWS (Mar. 6, 2023, 11:58 AM), <https://apnews.com/article/georgia-legislature-juvenile-crime-general-assembly-85d83ff9ed922a87398114d68ca98bd3> [<https://perma.cc/3NSQ-823G>].

76. See NEELUM ARYA ET AL., UCLA CRIM. JUST. REFORM CLINIC, GETTING TO ZERO: A 50-STATE STUDY OF STRATEGIES TO REMOVE YOUTH FROM ADULT JAILS 39 (2018).

77. See MISTRETT, *supra* note 54. Those eleven states are Connecticut, Illinois, Mississippi, Massachusetts, New Hampshire, Louisiana, South Carolina, New York, North Carolina, Missouri, and Michigan. *Id.*

78. Coined by academic John J. DiLulio Jr. in a conservative political opinion magazine, the “super-predator” theory warned of a “new breed of conscience-less teen killers.” Carroll Bogert & Lynnell Hancock, *Superpredator: The Media Myth That Demonized a Generation of Black Youth*, MARSHALL PROJECT, <https://www.themarshallproject.org/2020/11/20/superpredator-the-media-myth-that-demonized-a-generation-of-black-youth> [<https://perma.cc/ZWY3-GD7N>]. The media used the term to villainize Black youth and support the notion of an impending wave of juvenile violent crime and savagery. *Id.* However, juvenile murder arrests fell by two-thirds in 2000, and DiLulio’s warnings never came to fruition. *Id.*

79. See Carroll, *supra* note 1.

80. See MISTRETT, *supra* note 54.

offenders: Mississippi raised the juvenile age to eighteen in 2011,⁸¹ South Carolina in 2019,⁸² and North Carolina in 2019.⁸³ Some states even went beyond, with Michigan and New York setting the age so that eighteen-year-olds remain under juvenile jurisdiction.⁸⁴ As of 2022, Vermont extends juvenile jurisdiction to any individual under twenty.⁸⁵ “Raise the Age” initiatives resulted in a 60% drop in young people held in the adult system.⁸⁶ Only three states remain resistant despite the national wave in the opposite direction.⁸⁷

It is hard to fully contextualize the circumstances of a state’s intricate criminal code. Like Russian nesting dolls, one factor often leads to another underlying policy judgment or historical influence. But comparing Georgia to states that have passed reform will illuminate why Georgia has failed to successfully raise the age of criminality and why reform proposals include a special waiver for gang activity. Section A will offer a comparative analysis of Georgia and North Carolina, detailing the political development of the latter state’s “Raise the Age” bill that went into effect in 2019.⁸⁸ Section B will explain how the obstacles faced by the polity in North Carolina reveal that Georgia, similarly, remains a national outlier due to “the long shadow of fear of morally-depraved, violence-prone adolescents

81. Clay Duda, *Mississippi Joins 38 Other States, Raises Juvenile Age to Eighteen*, JUV. JUST. INFO. EXCH. (July 11, 2011), <https://jjie.org/2011/07/11/mississippi-joins-other-states-raises-juvenile-age-eighteen/> [<https://perma.cc/K9DG-UNEG>].

82. Michael Majchrowicz, *SC’s Raise the Age Law Is About to Go into Effect. How It Will Be Implemented Remains Vague*, POST & COURIER (Sept. 14, 2020), https://www.postandcourier.com/news/scs-raise-the-age-law-is-about-to-go-into-effect-how-it-will-be/article_69335050-8bb0-11e9-b95a-ffa4649741db.html [<https://perma.cc/C4XX-5GT9>].

83. *Raise the Age*, N.C. DEP’T PUB. SAFETY, <https://www.ncdps.gov/our-organization/juvenile-justice/juvenile-justice-overview/key-initiatives/raise-age> [<https://perma.cc/K6KM-UU72>].

84. Logan Seacrest, *Treating Kids Like Kids: “Raise the Age” Laws Align Juvenile Justice with Neuroscience and Common Sense*, RSTREET (Feb. 2, 2023), <https://www.rstreet.org/research/treating-kids-like-kids-raise-the-age-laws-align-juvenile-justice-with-neuroscience-and-common-sense/> [<https://perma.cc/64YM-RX8V>].

85. *Id.*

86. MISTRETT, *supra* note 54.

87. Carroll, *supra* note 1. Again, these states are Texas, Wisconsin and Georgia. *Id.*

88. North Carolina was chosen due to the novelty of their successful “Raise the Age” statute, their cultural proximity, and the two states’ economic similarities. Georgia and North Carolina had similar 2024 preliminary Q3 Gross Domestic Products, with Georgia reporting \$887,924M and North Carolina reporting \$845,143M. BUREAU ECON. ANALYSIS, U.S. DEP’T COM., GROSS DOMESTIC PRODUCT BY STATE AND PERSONAL INCOME BY STATE, 3RD QUARTER 2024 (2024), <https://www.bea.gov/sites/default/files/2024-12/stgdppi3q24.pdf> [<https://perma.cc/Z496-WXX8>]. The states’ residents have similar economic well-being, with Georgia recording \$718,785M in personal state income comparable to \$699,661M in North Carolina. *Id.* Further, their unemployment rates recorded in December 2024 were identical at 3.7%. *U.S. States Comparison: North Carolina vs Georgia*, COUNTRYECONOMY.COM, <https://countryeconomy.com/countries/usa-states/compare/north-carolina/georgia> [<https://perma.cc/VJ8S-KAU5>]. Additionally, their populations are nearly identical, with 11M and 10.8M, respectively. *Id.*

and a lack of commitment to provide adequate funding,” before addressing the importance that these obstacles are overcome in Part III.⁸⁹

A. North Carolina’s Juvenile Justice Reinvestment Act

In 2017, North Carolina passed the Juvenile Justice Reinvestment Act,⁹⁰ raising the age of criminality from sixteen to eighteen. The Act provides original and exclusive juvenile court jurisdiction for misdemeanors and low-level felonies for all seventeen-year-old offenders.⁹¹ If the court determines a delinquent act was part of “criminal gang activity,” the seventeen-year-old offender remains under juvenile jurisdiction; however, the court increases the disposition level, restricting the offender’s access to community-based programs.⁹² In its first year, the Act retained 4,300 children aged sixteen and seventeen in the juvenile system who would have otherwise been processed in adult courts.⁹³ These teens now have access to rehabilitative programs that identify career options, address challenges like teen homelessness, and prevent criminal records that impede future job, housing, and financial aid prospects.⁹⁴

Like Georgia, despite campaigns to raise the age of criminal responsibility, competing concerns about public safety and the cost of expanding the juvenile justice system won out in North Carolina for decades.⁹⁵ In the early 2000s, the state was still “recovering from the hangover of the superpredator myth.”⁹⁶ “[S]cared lawmakers . . . projected that youths, particularly black and brown boys, would ‘murder, assault, rape, rob, burglarize, deal deadly drugs, join gun-toting gangs, and create serious communal disorder.’”⁹⁷ Vocal opposition from law enforcement and prosecutors, who feared being perceived as lenient on crime, stymied

89. Carter, *supra* note 15, at 1166.

90. N.C. GEN. STAT. ANN. § 7B-1601 (West 2025).

91. *Id.*

92. See LaToya Powell, “Raise the Age” Is Now the Law in North Carolina, UNC SCH. GOV’T: N.C. CRIM. L. (Aug. 31, 2017), <https://nccriminallaw.sog.unc.edu/raise-age-now-law-north-carolina/> [<https://perma.cc/RVN4-9UHY>].

93. Virginia Bridges, *How ‘Raise the Age’ Helped Thousands of North Carolina Teens This Year*, NEWS & OBSERVER (Dec. 29, 2020, 5:45 AM), <https://www.newsobserver.com/news/local/crime/article248023695.html> [<https://perma.cc/VM7A-2T7S>].

94. *Id.*

95. *Id.*

96. Eric Ferkenhoff, *Effort to Raise the Age in North Carolina Was Long, Exhausting March*, JUV. JUST. INFO. EXCH. (Mar. 10, 2020), <https://jjie.org/2020/03/10/effort-to-raise-the-age-in-north-carolina-was-long-exhausting-march/> [<https://perma.cc/XNG8-RJLK>]. See Bogert & Hancock, *supra* note 78, and accompanying text for an explanation of political scientist John DiLulio’s super predator framework.

97. Ferkenhoff, *supra* note 96.

reform.⁹⁸ Additionally, executive actors pointed to under-funded state juvenile facilities they claimed would be further burdened.⁹⁹ This persisted even though proposals to raise the age, like those introduced in Georgia’s General Assembly, had data behind them. “[C]ost-benefit analyses show[ed] it made fiscal sense” for North Carolina and the proposal had broad stakeholder support, but it was consistently defeated by “[t]he Senate, some sheriffs . . . and the strong lobbying of the NC Conference of District Attorneys.”¹⁰⁰

The pivotal moment came when North Carolina Supreme Court Chief Justice Mark Martin formed the North Carolina Commission on the Administration of Law and Justice (NCCALJ) Committee on Investigation and Adjudication.¹⁰¹ The sixty-five member committee, informed by law enforcement officials, prosecutors, juvenile justice representatives, and judges, set out to study North Carolina’s court system and juvenile reinvestment.¹⁰² The committee developed a “Raise the Age” proposal released in a December 2016 Juvenile Reinvestment Report.¹⁰³ It demonstrated that rehabilitating sixteen and seventeen-year-old offenders would reduce crime and save the state money.¹⁰⁴ Lawmakers were persuaded that treatment in the juvenile justice system rather than incarceration in adult prisons would be more effective in reducing crime, thus producing more broad economic benefits for the state.¹⁰⁵

This persuasion succeeded. Only four months after the NCCALJ’s report, North Carolina’s General Assembly overwhelmingly passed the Juvenile Justice Reinvestment Act, placing sixteen and seventeen-year-olds under the jurisdiction of juvenile courts.¹⁰⁶ North Carolina’s Juvenile Justice Reinvestment Act was realized “through a strong, bipartisan coalition of support from all three branches of government, law enforcement, the business community and advocacy organizations.”¹⁰⁷ The Act was not “enacted haphazardly” but rather research on juvenile psychology and

98. See, e.g., *id.*; Tamar R. Birkhead, *North Carolina, Juvenile Court Jurisdiction, and the Resistance to Reform*, 86 N.C. L. REV. 1443, 1444 (2008).

99. *Id.* at 1467–68.

100. Ferkenhoff, *supra* note 96.

101. Powell, *supra* note 92.

102. *Id.*; NCCALJ COMM. CRIM. INVESTIGATION & ADJUDICATION, COMMITTEE REPORT APPENDIX A: JUVENILE REINVESTMENT (2016).

103. NCCALJ COMM. CRIM. INVESTIGATION & ADJUDICATION, *supra* note 102, at 1–4.

104. *Id.* at 8–14; see also Powell, *supra* note 92.

105. Powell, *supra* note 92.

106. The Juvenile Justice Reinvestment Act passed 104 to 8 in the House. *House Bill 280*, N.C. GEN. ASSEMB., <https://www.ncleg.gov/BillLookup/2017/h280> [<https://perma.cc/36F3-ZRAS>].

107. Maggie Horzempa, Opinion, *Remembering the ‘Why’ Behind Raise the Age in North Carolina*, DUPLIN J. (Mar. 20, 2024), <https://duplinjournal.com/remembering-the-why-behind-raise-the-age-in-north-carolina> [<https://perma.cc/RZ32-R2LK>].

economic benefits swayed lawmakers because of the NCCALJ Committee and the Governor's Crime Commission's backing.¹⁰⁸

However, while North Carolina conquered decades of entrenchment to pass "Raise the Age" legislation, the reform measure faced continued resistance from prosecutors. Thus, in 2024, the Juvenile Justice Reinvestment Act was revised, reinstating superior court jurisdiction over teens aged sixteen and seventeen for certain felonies.¹⁰⁹ Complicating the dynamic, the head of the executive, Democratic Governor Roy Cooper, vetoed the amendment.¹¹⁰ Regardless, Orange County District Attorneys and other lower executive officers lobbied lawmakers to pass a veto override.¹¹¹ The moral of North Carolina's story is: collaboration with law enforcement and a unified executive working in tandem is one key to unlocking juvenile justice reform.¹¹²

B. Why Does Georgia Maintain the Status Quo?

Despite the agreement of scholars and child welfare experts, proposals to extend jurisdiction in Georgia have been defeated by executive opposition. HB 462's judicial waiver for criminal gang activity, aimed at appeasing law enforcement groups, demonstrates their influence over policy in this area.¹¹³ Unlike North Carolina, Georgia has struggled to pass "Raise the Age" legislation due to a disconnect between stakeholders and the executive, who argue that raising the age would be too costly and perpetuate fear rhetoric around juvenile crime, especially gang activity.

As a result of a statewide interview process, the Georgia Appleseed Center for Law & Justice reports that a vast majority of juvenile justice and child welfare stakeholders support raising the age of criminality for delinquency matters above seventeen.¹¹⁴ The most common rationales provided are:

108. *Id.*; see Molly Weisner, *Why Did North Carolina Raise the Age in 2017?*, JUV. JUST. INFO. EXCH. (Nov. 18, 2019), <https://jjiie.org/2019/11/18/why-did-north-carolina-raise-the-age-in-2017/> [<https://perma.cc/B2FB-MECD>].

109. DeJuan Hoggard, *Law Aimed at Trying More North Carolina Teens in Adult Court Takes Effect*, ABC 11 (Dec. 2, 2024), <https://abc11.com/post/new-north-carolina-law-raise-age-teens-crimes-adult-court-trial/15613899/> [<https://perma.cc/J7XG-68HL>].

110. *Id.*

111. *Id.*

112. Powell, *supra* note 92 ("[NCCALJ's Juvenile Reinvestment Report] is the first raise the age proposal to receive broad bipartisan support and the endorsement of the law enforcement community. Apparently, this collaboration was the change needed to make the raise the age a reality in NC.").

113. See Bynum, *supra* note 75.

114. GA. APPLESEED CTR. L. JUST., EMBRACING COMMON WISDOM: THE NEW JUVENILE CODE IN GEORGIA app. C (2018) ("116 (73%) responded that the law should be changed to extend delinquency

(1) . . . seventeen-year-olds do not have the maturity or brain development of adults to fully understand the legal consequences of their actions or control their impulses; (2) seventeen-year-olds are still children in need of the . . . services provided through the juvenile justice system . . . ; (3) excluding seventeen-year-olds from the juvenile justice system is inconsistent with other Georgia laws . . . ; and (4) punishing seventeen-year-olds with adult criminal sentences unfairly burdens children with criminal records that will follow them throughout their lives.¹¹⁵

However, only one-third of prosecutors interviewed supported raising the age.¹¹⁶ If the observation that most stakeholders support raising the age is accurate, why has the executive pushed back? And how has the executive influenced the status quo concerning juvenile justice legislation in Georgia, a domain formally charged to the state's legislature?

For one, lawmakers consistently raise cost concerns. North Carolina's legislature overcame historical concerns of financial costs with research proving that rehabilitating seventeen-year-old offenders in the juvenile system would save the state money.¹¹⁷ Georgia's DJJ, however, continues to assert that raising the age would necessitate a significant budget allocation and more detention facilities.¹¹⁸ But the DJJ has not released analytics that support these claims.¹¹⁹ Juvenile Justice Commissioner Tyrone Oliver, in a 2020 House panel studying legislation to raise the age of juvenile court jurisdiction, indicated that raising the age required four new secure juvenile detention centers.¹²⁰ The Georgia Sheriffs' Association also expressed concerns about the strain on regional detention centers from the increased influx of youth processed.¹²¹ Others oppose the change because of doubts that the juvenile court system has the general resources

jurisdiction to seventeen-year-olds. . . . [T]his opinion was held by all 17 (100%) of the public defenders who responded; 29 (81%) of juvenile court judges; 7 (88%) of court administrators; 17 (71%) of CASAs; 4 (33%) of prosecutors; 12 (60%) of DFCS workers; and 13 (81%) of SAAGs.”)

115. *Id.*

116. *Id.*

117. *See supra* Section II.A.

118. *See* Lingsch, *supra* note 8.

119. *Id.*

120. Gracie Bonds Staples, *Opinion: What Raising the Age of Juvenile Offenders Has to Do with More Jails*, ATLANTA J.-CONST. (Feb. 20, 2020), <https://www.ajc.com/lifestyles/what-raising-the-age-juvenile-offenders-has-with-more-jails/RoxXg7ySAPvR7G9WS9aYQO/> [<https://perma.cc/9G4Z-UCJ5>].

121. Nolin, *supra* note 5.

to handle a higher caseload.¹²² However, these concerns contradict evidence showing a steady decline in youth arrests and incarceration since 2009.¹²³

This concern, together with Georgia's notable history of gang activity, shapes rhetoric choices surrounding youth offenders. The Georgia Criminal Street Gang Database contains over 100 gangs and over 17,000 active members.¹²⁴ In response, while Governor Nathan Deal promoted community treatment, Governor Brian Kemp has steered the executive back to a "tough on crime" philosophy, echoing Governor Miller's approach. Illustrating these principles, in March 2020, Governor Kemp introduced a crime bill that would have allowed prosecutors to charge juvenile offenders aged thirteen to seventeen as adults in *all* gang-related offenses.¹²⁵ Prominent community leaders, including the Southern Center for Human Rights, Dekalb County District Attorney Sherry Boston, and the ACLU of Georgia, prompted lawmakers to amend the bill after expressing strong objections.¹²⁶ Undeterred, Governor Kemp launched Georgia's first statewide Gang Prosecution Unit and established mandatory prison sentences for gang-related crimes with harsh penalties.¹²⁷ Since then, the state has been aggressive in arresting juveniles on gang-related charges.¹²⁸

The basis of their objections to raising the age and their desire to ease the transfer of alleged gang-affiliated children is an increase in crime that results from "coddling" immoral seventeen-year-old offenders in juvenile court, leaving them to prey on communities. This underlying view is

122. Nolin & Dunlap, *supra* note 21; *see also* Wanya Reese, *Georgia Bill Could Raise Adult Crime Age from 17 to 18*, 13WMAZ (Feb. 19, 2021, 7:58 PM), <https://www.13wmaz.com/article/news/politics/georgia-bill-could-raise-adult-crime-age-from-17-to-18-2/93-7ae33331-7c6a-4c2a-9e3e-9f9f4e3d6e6d> [<https://perma.cc/K6HA-JWH8>] (explaining Dublin Police Chief Tim Chatman's worries that raising the age would "hurt the judicial system" because it will be "swamped with a lot of cases").

123. Staples, *supra* note 120; *see infra* Section III.B.1.

124. Press Release, Ga. Bureau Investigation, Georgia Criminal Street Gang Database Operational (Feb. 5, 2020), <https://gbi.georgia.gov/press-releases/2020-02-05/georgia-criminal-street-gang-database-operational> [<https://perma.cc/CA9B-QA38>]. For a critique on how the information in these databases is collected, *see* Alan Judd, *From Los Angeles, a Cautionary Tale for Georgia's New Gang Database*, ATLANTA J.-CONST. (Mar. 6, 2020), <https://www.ajc.com/news/crime-law/from-los-angeles-cautionary-tale-for-georgia-new-gang-database/xewZ1V5dMRuisz4izT4J4K/> [<https://perma.cc/62LF-ZNQ9>] (describing the "racial inequities, privacy concerns and possible constitutional issues in gang databases across the country"), and Linda S. Beres & Thomas D. Griffith, *Demonizing Youth*, 34 LOY. L.A. L. REV. 747, 759–61 (2001) (offering a general critique on how the information in gang databases is collected).

125. *Controversial Gang-Crime Bill May Charge Teens as Adults*, ZIMMERMAN & ASSOCS., <https://zimmermanatlantalaw.com/blog/controversial-gang-crime-bill-may-charge-teens-as-adults/> [<https://perma.cc/K73G-7XRC>].

126. Joshua Sharpe, *Kemp's Anti-Gang Bill Amended After Swell of Opposition*, ATLANTA J.-CONST. (Mar. 4, 2020), <https://www.ajc.com/news/crime-law/kemp-anti-gang-bill-amended-due-opposition/yeOQplDDd8ym7alGQliHSL/> [<https://perma.cc/L2EX-AMJZ>].

127. *See Gang Activity*, OFF. GA. ATT'Y GEN., <https://law.georgia.gov/key-issues/gang-activity> [<https://perma.cc/2GF6-JGB5>].

128. *Id.*

expressed in a variety of ways. Lawmakers on the House Judiciary Committee have expressed worries about letting violent offenders “off the hook” or sending a message that this age group can get away with even more violent offenses.¹²⁹ These statements continue despite the fact that the majority of seventeen-year-old inmates held in adult state prisons committed nonviolent felony robbery or theft.¹³⁰ Georgia prosecutors focus on punishing the “hardened criminals” who “lack remorse,” targeting even those younger than seventeen.¹³¹ Other law enforcement officers have opposed bills that would expose “evil” seventeen-year-olds to others and create less safe communities.¹³² Fulton County District Attorney Fani Willis supports raising the age of criminality, but also supports the HB 462 provision that excludes gang crime to “ensure community safety.”¹³³ Similar to the more punitive sentencing policies of Georgia’s former “tough on crime” era, the dialogue around crime and punishment emphasizes severe punishment as a deterrence model.¹³⁴

Another contributor to executive actors’ rhetoric: Every reform proposal carries political repercussions. Historically, circumscribing the juvenile court’s jurisdiction to appear tough on crime has been good state politics.¹³⁵ For officials who rely on re-election every few years, campaign politics likely explains their hesitation toward bill proposals to expand juvenile jurisdiction over seventeen-year-old offenders. Seventeen-year-olds are not directly within the electorate and cannot themselves form a voting bloc to drive outcomes. Those with political influence who are strongly motivated by juvenile justice reform battle against private prison companies and law enforcement groups who have “poured campaign contributions and lobbying expenditures into the state.”¹³⁶ In 2023, while HB 462 was debated, private prison companies Aramark, CoreCivic, GEO Group, MHM Services, and Telmate Inc. had thirteen active state-level lobbyists in

129. Evans, *supra* note 8.

130. *Id.*

131. *Id.*

132. Nolin, *supra* note 5.

133. ‘They’re Just 17-Year-Olds:’ Georgia Lawmakers Discuss Bill to Raise Age of Juvenile Offenders, WSBTV (Dec. 16, 2022, 7:54 PM), <https://www.wsbtv.com/news/local/atlanta/theyre-just-17-year-olds-georgia-lawmakers-discuss-bill-raise-age-juvenile-offenders/5BCOWKOVDFHHTIFLHJ52WOGO4A/> [<https://perma.cc/UFP7-4LQA>].

134. Teske, *supra* note 41, at 1186–87.

135. See, e.g., Nigut, *supra* note 30 (explaining Governor Miller’s “two strikes” law was launched at the beginning of his reelection campaign, boosted his “underwater approval ratings,” and was a “key issue in his successful bid for re-election”); Edward A. Risler, Tim Sweatman & Larry Nackerud, *Evaluating the Georgia Legislative Waiver’s Effectiveness in Deterring Juvenile Crime*, 8 RSCH. ON SOC. WORK PRAC. 657, 660 (1998); Udi Ofer, *Politicians’ Tough-on-Crime Messaging Could Have Devastating Consequences*, TIME (Nov. 3, 2022, 10:54 AM), <https://time.com/6227704/politicians-crime-messaging-mass-incarceration/> [<https://perma.cc/5R2D-AKSM>].

136. S. CTR. HUM. RTS., ROADBLOCKS TO REFORM 8 (2012).

Georgia.¹³⁷ Meanwhile, prominent law enforcement lobbying groups include the Georgia Fraternal Order of the Police,¹³⁸ Georgia Sheriffs' Association,¹³⁹ and Southern States Police Benevolent Association.¹⁴⁰ So, unlike North Carolina, which kept gang-related crime under juvenile jurisdiction, legislation in Georgia cannot overcome punitive rhetoric aimed at voters, forcing a judicial waiver for gang activity to generate political support.

Flowing out of the historical “superpredator” framework, racial implications also undoubtedly play a role when analyzing the language of the opposition and the association of gang-related crime with racial minorities. In 2024, Black youth represented 64.63% of seventeen-year-old arrestees despite representing only 34.5% of the population.¹⁴¹ Black youth consistently represent nearly two-thirds of all delinquency findings¹⁴² and three-quarters of youth sentenced in superior court.¹⁴³ Comprehensive studies indicate that “[t]he prism of race distorts our perception of the Black youthful offender,” causing the “system [to] prematurely label Black children as adults.”¹⁴⁴ The “adultification” of Black youth is “pervasive and culturally ingrained,” influencing how we categorize offenders and stripping seventeen-year-old Black children of the privileges and protection

137. For each dataset, follow the hyperlink; then select ‘Lobbying’ tab; then select ‘As a Client’ tab; then select ‘By State and Year’: *Aramark*, FOLLOWTHEMONEY, <https://www.followthemoney.org/entity-details?eid=221> [<https://perma.cc/8HAH-BJ9J>]; *CoreCivic FKA Corrections Corp of America*, FOLLOWTHEMONEY, <https://www.followthemoney.org/entity-details?eid=695> [<https://perma.cc/RQ5P-KKP4>]; *GEO Group*, FOLLOWTHEMONEY, <https://www.followthemoney.org/entity-details?eid=1096> [<https://perma.cc/B6Q3-3FNL>]; *MHM Services*, FOLLOWTHEMONEY, <https://www.followthemoney.org/entity-details?eid=50560> [<https://perma.cc/7H4R-HMVY>]; *Telmate Inc.*, FOLLOWTHEMONEY, <https://www.followthemoney.org/entity-details?eid=26237104> [<https://perma.cc/5XBJ-T5ZB>].

138. See *Legislative Update*, GA. FRATERNAL ORD. POLICE, <https://www.georgiafop.org/legislative-update> [<https://perma.cc/YB7R-Z3XC>].

139. See *About Us*, GA. SHERIFFS’ ASS’N, <https://georgiasheriffs.org/about-us/> [<https://perma.cc/PFU6-U4PV>] (describing group’s advocacy at the Georgia General Assembly).

140. *Governmental Affairs*, S. STATES PBA, https://www.sspa.org/gen/articles/Governmental_Affairs_124.jsp [<https://perma.cc/EF6F-HX8E>].

141. GA. CRIME INFO. CTR., 2024 GEORGIA 17YO ARRESTEES (Feb. 7, 2025) (unpublished manuscript) (on file with author). The Georgia Crime Information Center, within the Georgia Bureau of Investigations, maintains the Georgia Uniform Crime Reporting (UCR) Program, wherein crime data is collected by law enforcement agencies in the state. In response to a formal request, a CLIS Analysis Supervisor provided a Microsoft Excel list of all seventeen-year-old arrestees for state-level offenses in 2024 with their demographic profile. *Id.* There were 1,196 individuals listed, with 773 identifying as Black or African American (64.63%) and 405 identifying as White (33.86%). The remaining fell into other racial categories. *Id.*

142. GA. LANDSCAPE REPORT, *supra* note 49, at 70, 77.

143. *Id.* at 81.

144. Kim Taylor-Thompson, *Treating All Kids as Kids*, BRENNAN CTR. FOR JUST. (May 24, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/treating-all-kids-kids> [<https://perma.cc/YV4D-X36B>].

of childhood.¹⁴⁵ Misbehavior in the company of peers is labeled “gang activity,” and young children as “thugs,” or “hoodlums” in the media.¹⁴⁶

Two points need to be made here. First, claims of burdensome costs and rhetoric villainizing young offenders, even when inaccurate, are primary reasons for HB 462’s gang activity waiver. Second, these challenges are historically overcome when a state’s executive-branch officers are united in support *and* the chief executive champions reform. For instance, in North Carolina, reform was originally passed through a unified coalition, but subsequently rolled back once prosecutors began lobbying against it.¹⁴⁷ The circumstances of Georgia’s 2013 juvenile system reform also point to this conclusion. Georgia’s previous success was supported by the head of the executive branch, Governor Nathan Deal, who advocated alongside the Special Council on Criminal Justice Reform.¹⁴⁸ Specifically, the Council’s report detailed how the policy change would save the state \$88 million in state expenditures.¹⁴⁹ Comparatively, Georgia currently lacks executive-led research on the specific impact of raising the age, and there is a vast gap between the current executive and other stakeholders, rendering efforts to raise the age politically unattainable.

III. IN GEORGIA, SEVENTEEN-YEAR-OLD OFFENDERS MUST BE UNDER ORIGINAL JURISDICTION IN JUVENILE DELINQUENCY COURT, WITHOUT A JUDICIAL WAIVER FOR GANG ACTIVITY

Taking a page from North Carolina’s playbook, Georgia must pass a “Raise the Age” bill providing original jurisdiction in juvenile delinquency court for seventeen-year-olds without a specific waiver for criminal gang activity.¹⁵⁰ One must normatively account for many factors when crafting criminal schemes—which are structurally complex involving both intergovernmental and inter-branch relationships.¹⁵¹ Yet prosecuting seventeen-year-olds in superior court thwarts the purpose of state-sanctioned punishment. According to Georgia’s Juvenile Code, the juvenile

145. *Id.* Participants in a series of comprehensive studies misperceived thirteen-year-old Black children as seventeen-year-olds, thus “adultifying” them. *Id.*

146. *Id.*

147. See *supra* notes 106–11 and accompanying text.

148. See *supra* Section I.B.

149. GA. COUNCIL CRIM. JUST. REFORM, REPORT OF THE SPECIAL COUNCIL ON CRIMINAL JUSTICE ON REFORM FOR GEORGIANS 3 (2012).

150. See *supra* Section II.A (explaining North Carolina’s Juvenile Justice Reinvestment Act mandates an offender involved in “criminal gang activity” remains under juvenile jurisdiction but is restricted in access to community-based programs).

151. JONATHAN HERRING, CRIMINAL LAW: THE BASICS 5 (2d ed. 2022) (deciding what is criminal “involves balancing a wide range of different factors and it is difficult to say how they should be weighed. . . . [but] the question of criminalization often turns on politics”).

justice system's purpose is to "protect the community, impose accountability for violations of law, provide treatment and rehabilitation, and equip juvenile offenders with the ability to live responsibly."¹⁵² Part III will address these pillars, arguing that expanding juvenile jurisdiction to seventeen-year-olds is more retributively just, less costly, and more likely to lead to safer communities. Further, this Part will clarify how the research supporting raising the age of criminality also supports extending juvenile jurisdiction over seventeen-year-olds involved in gang activity without a statutory carve-out.

A. Impose Accountability for the Violation of Law and Provide Treatment & Rehabilitation

Essential to the legitimacy of criminal legal systems, punishment must be proportional to the culpability of the offender.¹⁵³ For seventeen-year-olds, this means recognizing inherent factors that reduce culpability. Seventeen-year-olds are different from adults: more impulsive, susceptible to peer pressure, and poor at delaying gratification.¹⁵⁴ Indeed, greater than 30% of American males commit a violent offense before the age of seventeen,¹⁵⁵ but the majority of delinquent youth will not engage in illegal conduct as adults, reflecting the difference in cognitive decision-making at this age.¹⁵⁶ The Supreme Court, in *Miller v. Alabama*,¹⁵⁷ emphasized that juvenile offenders are less culpable because (1) they are less able to assess risk, (2) they are more susceptible to outside influences, and (3) they do not have a fully developed character.¹⁵⁸ *Miller* reflects a string of Supreme Court cases that reiterate the same sentiment: Youth under the age of

152. GA. CODE ANN. § 15-11-1 (West 2025) ("It is the intent of the General Assembly to promote a juvenile justice system that will protect the community, impose accountability for violations of law, provide treatment and rehabilitation, and equip juvenile offenders with the ability to live responsibly and productively.").

153. E.g., Jeffrey A. Fagan, *Legitimacy and Criminal Justice*, 6 OHIO ST. J. CRIM. L. 123, 126 (2008) ("The legitimacy of the criminal law is enhanced when its legal actors and institutions act in ways that citizens perceive as consistent with popular principles of procedural fairness, security, and proportionality.").

154. E.g., Laurence Steinberg & Kathryn C. Monahan, *Age Difference in Resistance to Peer Influence*, 43 DEV. PSYCH. 1531, 1541 (2007) (finding "resistance to peer pressure increases linearly over the course of adolescence, especially between ages 14 and 18," but "very little evidence for growth in this capacity . . . between 18 and 30"); see also *In re Stanford*, 537 U.S. 968 (2002) (Stevens, J., dissenting from denial of petition for writ of habeas corpus).

155. U.S. DEP'T HEALTH & HUM. SERVS., *YOUTH VIOLENCE: A REPORT OF THE SURGEON GENERAL* ch. 1, at 16 (2001).

156. Locker, *supra* note 19, at 96.

157. 567 U.S. 460 (2012).

158. *Id.*

eighteen are fundamentally different from adults and demand a different response when the state is imposing criminal punishment.¹⁵⁹

The added component of gang activity does not negate the limited culpability of seventeen-year-olds iterated by the Court. In fact, it strengthens it, given the unique pressure of gang influences on youth. Gang dynamics intensify concerns about culpability, as familial ties and undue influence are core functions in the structure of criminal gang organizations.¹⁶⁰ Decisions to engage in criminal gang activity are shaped by “status threats and affiliation challenges, group cohesiveness, protection and loyalty norms, and other group processes.”¹⁶¹ Contrary to the portrayal of gang youth as calculating and “predatory,” as purported by executive actors,¹⁶² the “spontaneous and chaotic nature of . . . gang violence” indicates juvenile offenders are not “weighing the certainty and severity of potential punishments for gang crime.”¹⁶³

Moreover, HB 462 does not consider the severity of offenses or risk levels when subjecting seventeen-year-olds to Georgia’s statutory scheme for adult gang crime. Georgia’s RICO Act is far more expansive than the federal version.¹⁶⁴ It applies vague definitions that allow adult sentencing for acts that fail to fit the standard definition of a crime.¹⁶⁵ The state can classify any group as a criminal “enterprise,” even if members have never met, complicating the understanding of gang association for youth.¹⁶⁶ The fluid nature of gang membership makes it difficult to understand the social

159. *Roper v. Simmons*, 543 U.S. 551 (2005) (distinguishing different standards of culpability between adolescents and adults); *Graham v. Florida*, 560 U.S. 48 (2010) (holding juveniles cannot be sentenced to life without parole for non-homicide offenses); *Miller*, 567 U.S. 460 (2012) (holding mandatory life imprisonment without possibility of parole for those under *eighteen* violated the Eighth Amendment).

160. Pamela Lachman, Caterina G. Roman & Meagan Cahill, *Assessing Youth Motivations for Joining a Peer Group as Risk Factors for Delinquent and Gang Behavior*, 11 YOUTH VIOLENCE & JUV. JUST. 212 (2013). Respondents aged fourteen to twenty-one involved in criminal gang activity mostly joined for instrumental purposes, like for protection, to get money, because someone in their family was in the group, or they did not have a choice. *Id.* at 219, 223. Therefore, “[i]t is possible that youth do not seek a group that will engage in delinquent acts, but feel pressure to join for protection, and after joining they engage in delinquent acts through affiliation with delinquent peers.” *Id.* at 223; *see also* Christian Bolden, *Tales from the Hood: An Emic Perspective on Gang Joining and Gang Desistance*, 38 CRIM. JUST. REV. 473, 488 (2013) (describing the prevalence of personal relationships in gangs and their equivalence to familial structures, which makes it hard to leave).

161. Cheryl L. Maxson, Kristy N. Matsuda & Karen Hennigan, “Deterrability” Among Gang and Nongang Juvenile Offenders: Are Gang Members More (or Less) Deterrable than Other Juvenile Offenders?, 57 CRIME & DELINQ. 516, 518 (2011).

162. *See supra* Section II.B.

163. *See* Maxson et al., *supra* note 161 (citing Cheryl L. Maxson, *Gang Homicide: A Review and Extension of the Literature*, in *HOMICIDE: A SOURCEBOOK OF SOCIAL RESEARCH* 239 (M. Dwayne Smith & Margaret A. Zahn, eds. 1999)).

164. *See supra* notes 67–74 and accompanying text.

165. *See* Arora et al., *supra* note 69.

166. *Id.*

relationship of gang association, entrance, and desistence, especially for categorizing youth as gang members.¹⁶⁷

Beyond that, the offenses listed as racketeering, thus qualifying as “criminal gang activity,” are not intuitive.¹⁶⁸ As discussed in Section I.C, racketeering activity includes many nonviolent offenses: unlawful transportation of alcoholic beverages; smash-and-grab burglary; theft; marijuana possession and distribution; and dealing in narcotic or dangerous drugs.¹⁶⁹ In 2024, 1,196 seventeen-year-olds were arrested in Georgia, and 37.04% were arrested for drug or narcotic violations.¹⁷⁰ If they fall in the broad definition of an “enterprise,” they are vulnerable to waiver to superior court jurisdiction and harsher penalties.¹⁷¹

HB 462 contravenes proportionality in sentencing by putting seventeen-year-olds who commit gang-related crimes at risk of heavy sentences under Georgia’s criminal code.¹⁷² These sentences were made even heavier in 2023 when Governor Brian Kemp signed Senate Bill 44, creating a mandatory minimum five-year prison sentence for anyone convicted under the Street Gang and Terrorism Act and ten years for anyone convicted of recruiting anyone under seventeen (i.e., sixteen years old or younger) into a gang.¹⁷³ Senate Bill 44 is likely to disproportionately harm seventeen-year-olds accused of “recruiting” legal minors who are only slightly younger.¹⁷⁴ Exposing seventeen-year-olds to these punitive approaches violates the pillar of culpability promoted in Georgia’s juvenile code.

This violation is more apparent as there are existing pathways to superior court for youth offenders who commit particularly violent offenses. In 1994, Georgia mandated automatic exclusive and original superior court jurisdiction over youths aged thirteen to seventeen charged with certain

167. See Bolden, *supra* note 160, at 747.

168. *Id.*

169. GA. CODE ANN. § 16-14-3(5)(A)–(C) (West 2025).

170. GA. CRIME INFO. CTR., *supra* note 141. Of the 1,196 arrestees, 447 were arrested for drug or narcotics violations, specifically possessing or concealing. *Id.*

171. For example, when a legally defined juvenile is charged with felony marijuana possession in Georgia, possession of more than one ounce under GA. CODE ANN. § 16-13-30, the judge may order probation, counseling for the child and parent, completion of high school diploma or GED program, community service, suspension of the child’s driver’s license, a treatment program provided by the DJJ, or up to thirty days in a juvenile detention facility, *id.* § 15-11-601 (Westlaw). However, as a seventeen-year-old, the defendant faces a possible one to ten years in adult prison, with a one year mandatory minimum, *id.* § 16-13-30 (Westlaw).

172. See Sarah A. Kellogg, Note, *Just Grow Up Already: The Diminished Culpability of Juvenile Gang Members after Miller v. Alabama*, 55 B.C. L. REV. 265, 266 (2014).

173. S.B. 44, 157th Gen. Assemb., Reg. Sess. (Ga. 2023).

174. Nolin & Dunlap, *supra* note 21.

violent crimes.¹⁷⁵ These crimes include murder, rape, armed robbery, aggravated child molestation, aggravated sodomy, aggravated sexual battery, and voluntary manslaughter.¹⁷⁶ Notably, gang-related crimes, specifically named, are not included. Further, state judges already have the discretion to transfer individual delinquents involved in violent offenses under Georgia's Juvenile Code, negating a waiver focused exclusively on gang involvement instead of the child's total circumstances.¹⁷⁷

B. Protect the Community and Equip Juvenile Offenders with the Ability to Live Responsibly

Maintaining Georgia's DJJ is arguably costly, requiring over a \$357 million budget for the 2023 fiscal year.¹⁷⁸ Lawmakers are understandably concerned with the threat of increased costs to taxpayers by adding seventeen-year-olds to the juvenile justice system.¹⁷⁹ Bolstering concerns, the DJJ asserts that raising the age would necessitate a larger budget allocation.¹⁸⁰ However, thus far, the DJJ has not released any analytics that support these claims.¹⁸¹ In truth, placing seventeen-year-olds under juvenile

175. GA. CODE ANN. § 15-11-560(b) (West 2025). For criticism of this provision see Luis A. Velez, Opinion, *Rethink How We Punish Juveniles*, ATLANTA J.-CONST. (Aug. 17, 2010), <https://www.ajc.com/news/opinion/rethink-how-punish-juveniles/JTWPuRCjdxzbZqCIVMCgsJK/> [<https://perma.cc/W85Y-2S69>].

176. GA. CODE ANN. § 15-11-560(b) (West 2025). For a discussion on the lack of effectiveness of this particular provision in reducing recidivism see *infra* notes 204–05 and accompanying text.

177. The relevant provision provides:

(a) After a petition alleging delinquency has been filed but before the adjudication hearing, on its own motion or on a motion by a prosecuting attorney, the court may convene a hearing to determine whether to transfer the offense to the appropriate superior court for criminal trial if the court determines that . . .

(3) The petition alleges that such child:

(A) Was at least 15 years of age at the time of the commission of the offense and committed an act which would be a felony if committed by an adult; or

(B) Was 13 or 14 years of age and either committed an act for which the punishment is loss of life or confinement for life in a penal institution or committed aggravated battery resulting in serious bodily injury to an alleged victim who is not a public safety officer as such term is defined in Code Section 16-5-19.

GA. CODE ANN. § 15-11-561 (West 2025).

178. GA. DEP'T JUV. JUST., FY 2023 ANNUAL REPORT 11 (2023).

179. In 2020, in response to then-proposed "Raise the Age" legislation, the Georgia Public Defenders Associations "estimated it would need about \$750,000" to accommodate the change and the Georgia Sheriffs' Association "estimated counties would pay \$1.6 million more" to juvenile detention centers and courts. See Riley Bunch, *Raise the Age Bill Could Cost Millions*, DALTON DAILY CITIZEN (Feb. 12, 2020, 2:58 PM), <https://daltoncitizen.com/2020/02/12/raise-the-age-bill-could-cost-millions-2/> [<https://perma.cc/DS2X-R7CF>].

180. See Lingsch, *supra* note 8.

181. *Id.*

jurisdiction would reduce taxpayers' fiscal and economic burdens and strengthen the local economy.

1. *Reduces General State Expenditures*

Actors in the political branches point to increased costs from expanding secure juvenile centers that house violent offenders if Georgia raised the age.¹⁸² However, the majority of Georgia's seventeen-year-olds are arrested on drug charges, larceny, and simple assault.¹⁸³ Violent offenses compromise a small percentage of arrests, so claims that costs would increase for secure juvenile centers are unfounded.¹⁸⁴ The number of seventeen-year-olds arrested in Georgia is also continually decreasing, indicating the source of potential strain is trending downward. Arrests decreased from 5,206 in 2020¹⁸⁵ to 3,842 in 2022¹⁸⁶ to 1,196 in 2024.¹⁸⁷ Further, juvenile judges have discretion on whether to place offenders in a facility or under supervision, and therefore, an increase in youth moving through the system does not necessarily equate to a need for more facility capacity.¹⁸⁸

Data compiled from the eleven states that have increased their age of criminality since 2007 show no strain on the capacity of secure facilities needed to house juveniles.¹⁸⁹ In North Carolina, raising the age *reduced* reliance on detention facilities, importantly without a special waiver for gang activity.¹⁹⁰ This reduced reliance ultimately saved taxpayers money, even during the 2019 COVID-19 pandemic.¹⁹¹

182. See *supra* Section II.B (describing the executive's claims raising the age would require building more facilities).

183. Of the 1,196 seventeen-year-old arrestees, 447 (37.04%) were arrested on drug charges, mainly possessing/concealing. GA. CRIME INFO. CTR., *supra* note 141. 188 individuals (15.72%) were arrested on simple assault charges. Another 123 individuals (10.28%) were arrested for stolen property offenses and robbery. *Id.* Notable enough to mention, a large portion of seventeen-year-olds were arrested for *possession and concealment* of weapons violations (23.07%), likely for possession in a school safety zone. *Id.*; Staples, *supra* note 120.

184. See Staples, *supra* note 120 (claiming only 5% of arrests were for violent offenses).

185. Nolin & Dunlap, *supra* note 21.

186. *Fair Treatment*, VOICES FOR GA.'S CHILD., <https://www.georgiavoices.org/fair-treatment> [<https://perma.cc/3QXS-QRKH>].

187. GA. CRIME INFO. CTR., *supra* note 141.

188. *Id.*

189. See MISTRETT, *supra* note 54.

190. See Melissa Boughton, *NC's New "Raise the Age" Law Appears to Be Off to a Promising Start*, NC NEWSLINE (Jan. 16, 2020, 5:30 AM), <https://ncnewsline.com/2020/01/16/ncs-new-raise-the-age-law-appears-to-be-off-to-a-promising-start/> [<https://perma.cc/W4RT-L3AX>].

191. See Jerry Higgins, *Not Even the Pandemic Could Pull Down Raise the Age in the First Year*, N.C. DEP'T PUB. SAFETY (Dec. 22, 2020), <https://www.ncdps.gov/blog/2020/12/22/not-even-pandemic-could-pull-down-raise-age-first-year> [<https://perma.cc/E95E-VQGF>].

Ensuring taxpayer money is spent effectively, offenders whose cases are heard in juvenile court incur less administrative costs than in superior court, where prosecutorial staff and law enforcement exert more effort.¹⁹² Although the juvenile system carries its own labor costs and procedural challenges, such as prosecutors having to coordinate with family services, the judge, the child's attorney, and sometimes a guardian ad litem, it remains significantly less costly than adult trials.¹⁹³ Including the thousands of seventeen-year-olds charged in Georgia under juvenile court jurisdiction will promote these cost-reducing benefits.

2. *Reduces Recidivism*

Expanding jurisdiction would reduce recidivism, thereby lowering law enforcement costs, court costs, and losses to victims. The prevailing philosophy of Georgia lawmakers seems to be that if one punishes harshly, juveniles will not commit criminal gang activity initially or repeatedly. However, a substantial body of research proves that the "tough on crime" stance is generally unworkable in the juvenile context.¹⁹⁴ "Evidence shows that rehabilitative programs in the juvenile system, including educational classes, vocational training, and therapeutic interventions, lead to lower rates of recidivism."¹⁹⁵ On top of that, empirical research suggests young people incarcerated or under probation in the adult criminal justice system re-offend at a higher rate than those who remain in the juvenile system.¹⁹⁶

The gang activity waiver in HB 462 abandons the rehabilitative ideal of the juvenile court in favor of the retributive process of adult criminal courts

192. See Risler et al., *supra* note 135, at 665–66.

193. A study by the Justice Policy Institute concluded state expenditure on confinement for youth in adult prisons cost around \$400 per day, compared to only \$75 per day for community programs. JUST. POL'Y INST., STICKER SHOCK: CALCULATING THE FULL PRICE TAG FOR YOUTH INCARCERATION I (2014), https://justicepolicy.org/wp-content/uploads/2022/02/executive_summary_-_sticker_shock_final.pdf [https://perma.cc/W5DW-AWKY].

194. See, e.g., Benjamin Steiner & Emily Wright, *Assessing the Relative Effects of State Direct File Waiver Laws on Violent Juvenile Crime: Deterrence or Irrelevance?*, 96 J. CRIM. L. & CRIMINOLOGY 1451, 1457–58 (2006) (surveying leading research showing transferred juveniles re-offend sooner and more often than youth processed in the juvenile system).

195. Michele Deitch, Rebecca Breeden & Ross Weingarten, *Seventeen, Going on Eighteen: An Operational and Fiscal Analysis of a Proposal to Raise the Age of Juvenile Jurisdiction in Texas*, 40 AM. J. CRIM. L. 1, 12 (2012).

196. See Eric Fowler & Megan C. Kurlychek, *Drawing the Line: Empirical Recidivism Results from a Natural Experiment Raising the Age of Criminal Responsibility*, 16 YOUTH VIOLENCE & JUV. JUST. 263 (2017); Jeffrey Fagan, *The Comparative Advantage of Juvenile Versus Criminal Court Sanctions on Recidivism Among Adolescent Felony Offenders*, 18 LAW & POL'Y 77 (1996).

when dealing with gang-related offenses.¹⁹⁷ However, when applied to youth at the highest risk of rearrest—such as older youth offenders involved in gang-related activity—interventions afforded in juvenile courts are most effective.¹⁹⁸ In contrast, deterrence-based responses, such as increased legal sanctions in superior court, are less “predictive of future offending among gang youth.”¹⁹⁹ Collective oppositional norms to the legal system, group process, and experience with violent subculture lessen the deterrent impact of risk of arrest or punishment.²⁰⁰ “Juveniles are likely influenced by peers, status, identity issues, and other potential situational contexts such as drug and alcohol use in ways that” render deterrence in “response to laws that mete out draconian penalties for gang crime” less effective for gang members.²⁰¹ Further, “gangs occupy a central place in the social order of [adult] prisons,” and seventeen-year-olds are constantly observing, hearing about, partaking in, or victims of criminal gang activity while incarcerated, only re-enforcing gang affiliation in their social development.²⁰²

This Note does not argue that youth gang members do not commit serious violent crimes.²⁰³ Nor does it argue that these recognized community challenges cannot be successfully overcome through state legislation and executive involvement. However, Georgia must employ the most effective mechanism to ensure youth violence that begins in adolescence ends with the transition to adulthood. Answering proponents who argue deterrence is best achieved by trying gang offenders in superior court, four years after the Georgia General Assembly imposed a legislative waiver for automatic transfer to adult court for youth thirteen to seventeen who commit certain violent offenses,²⁰⁴ a study found no significant deterrent effect on the arrest rates of serious juvenile crime.²⁰⁵ Similarly, it is likely that waiving seventeen-year-old offenders involved in gang activity to adult court will not reduce serious juvenile crime.

197. See Samuel M. Davis, *The Jurisdictional Dilemma of the Juvenile Court*, 51 N.C. L. REV. 195, 199 (1972) (explaining juvenile courts face a fundamental tension between their rehabilitative focus and the punitive expectations of the legal system, creating a dilemma in defining and exercising proper jurisdiction over juvenile offenders).

198. Russell & Manske, *supra* note 13, at 100.

199. Maxson et al., *supra* note 161, at 520.

200. *Id.*

201. *Id.* at 522, 535 (finding a weak negative effect of perceived severity of punishment on anticipated property offending in the population of gang youth offenders studied).

202. See, e.g., Meghan M. Mitchell, Kallee McCullough, Jun Wu, David C. Pyrooz & Scott H. Decker, *Survey Research with Gang and Non-Gang Members in Prison: Operational Lessons from the LoneStar Project*, 25 TRENDS ORG. CRIME 378, 379 (2022).

203. See U.S. DEP’T HEALTH & HUM. SERVS., *supra* note 155, at ch. 2, at 14–15.

204. Describing GA. CODE ANN. § 15-11-560(b) (West 2025), see *supra* notes 175–76 and accompanying text.

205. Risler et al., *supra* note 135, at 663.

Researchers argue that raising the age of criminality in Texas, one of three remaining states resistant to raising the age, to eighteen, would result in an estimated 10% reduction in recidivism, and in North Carolina, after the raise the age bill passed, 15% fewer youth were admitted to the juvenile justice system than projected.²⁰⁶ Georgia would experience a similar drop, comparable to the 2013 reform period when Georgia made evidence-based intervention for juveniles—proven to reduce recidivism—available in every judicial circuit in Georgia, and the number of juveniles committed to the DJJ dropped by 33%.²⁰⁷

3. *Increases Economic Mobility for Disproportionately Impacted Communities*

Broadened access to rehabilitative programs can enhance economic mobility of seventeen-year-old offenders, particularly those from disproportionately impacted minority communities. Transferring a child into the adult system for nonviolent offenses categorized as “criminal gang activity” jeopardizes their future, whether they are incarcerated on those charges or not. A seventeen-year-old incarcerated in adult prison could be ineligible for public assistance, food stamps,²⁰⁸ public employment,²⁰⁹ and housing.²¹⁰ At seventeen, many are finishing their primary schooling, pursuing their GED, or beginning to build their professional careers, making the repercussions of adult incarceration overly punitive in comparison to the more individualized sentencing options available in juvenile court. Seventeen-year-olds, especially those with a history of gang involvement, would benefit from valuable second-chance educational opportunities.

As outlined above, access to juvenile court rehabilitation programs significantly reduces recidivism in youth at the highest rate of re-arrest.²¹¹ By reducing recidivism, offenders gain economic mobility through saved financial and social costs.²¹² Collateral consequences to family members are

206. Deitch et al., *supra* note 195, at 52; *Raise the Age*, N.C. DEP’T PUB. SAFETY (2020), <https://web.archive.org/web/20230330105253/https://files.nc.gov/ncdps/documents/files/Divisions/jj/RTA/JJ-Update.pdf#expand> [<https://perma.cc/9DZ3-PY6Y>].

207. BOGGS & WORTHY, *supra* note 48, at 7.

208. GA. CODE ANN. § 49-4-22 (West 2025).

209. *Id.* § 45-23-5 (Westlaw).

210. *Id.* § 186-2-.02(1)(c)(iii) (Westlaw).

211. *See supra* Section III.B.2.

212. *See, e.g.*, Ilana Blumsack & Scott Lincicome, *Criminal Justice*, in CATO INST., EMPOWERING THE NEW AMERICAN WORKER 95, 95 (Scott Lincicome, ed. 2022) (“[Work] substantially reduces recidivism, particularly in the months after release when reoffending is most likely to occur, and it increases workers’ incomes and economic mobility—outcomes that also benefit the United States as a whole.”).

also avoided: such as, financial burdens, the loss of a family caretaker and wage earner, and the psychological trauma of a child in adult prison.²¹³

These negative consequences disproportionately affect minority communities. Across all phases of criminal proceedings, Black youth are over-represented. In 2024, Black youth constituted 64.63% of seventeen-year-old arrestees despite accounting for only 34.5% of the population.²¹⁴ At the sentencing stage, in 2022, Black youth were 3.8 times more likely to be sentenced as adults in superior court.²¹⁵ Consequently, in 2023, 73% of seventeen-year-olds in adult prison were Black.²¹⁶ Post-2019, the collateral effects of these arrests are felt harder by minority communities in the continued fallout from the COVID-19 pandemic, where Georgia experienced the most significant economic downturn since the Great Depression.²¹⁷ Black, Latinx, and Indigenous communities faced the brunt of the pandemic due to persistent racial inequalities in income, employment, housing, and access to healthcare.²¹⁸

Some might argue HB 462's judicial waiver mechanism will mitigate these effects. But research indicates race and geographic residence are indirect, but visible variables raising the likelihood of youths being waived to superior court for violent crimes.²¹⁹ This will extend to the "criminal gang activity" waiver for seventeen-year-old offenders, compounding the disproportionate impact of collateral consequences on minority populations.²²⁰ In Georgia, after a delinquency petition is filed, prosecutors

213. See Bitu Amani, et al., *Families and the Juvenile Justice System: Considerations for Family-Based Interventions*, 41 FAM. & CMTY. HEALTH 55 (2018); Lauren MacDougall, *The Effect of Youth Incarceration on Siblings and the Family*, SHARED JUST. (May 25, 2017), <https://archive.sharedjustice.org/domestic-justice/2017/5/25/the-effect-of-youth-incarceration-on-siblings-and-the-family> [<https://perma.cc/SPT3-WTM3>].

214. GA. CRIME INFO. CTR., *supra* note 141; GA. LANDSCAPE REPORT, *supra* note 49, at 31.

215. S. POVERTY L. CTR., ONLY YOUNG ONCE: DISMANTLING GEORGIA'S PUNITIVE YOUTH INCARCERATION SYSTEM 13 (2024).

216. GA. DEP'T CORR., INMATE STATISTICAL PROFILE: JUVENILES IN ADULT PRISON SYSTEM 4 (2023).

217. See Taifa Smith Butler, *Georgians Need Congress to Prioritize Bipartisan Relief Package*, GA. BUDGET & POL'Y INST. (Aug. 3, 2020), <https://gbpi.org/georgians-need-congress-to-prioritize-bipartisan-relief-package/> [<https://perma.cc/7YHZ-D97J>].

218. See Jennifer Crane, *Spread the Word: COVID Relief Plan Must Meet the Need of Georgians*, GA. BUDGET & POL'Y INST. (July 28, 2020), <https://gbpi.org/spread-the-word-covid-relief-plan-doesnt-meet-the-need-of-georgians/> [<https://perma.cc/8384-587W>].

219. See Marcy Rasmussen Podkopacz & Barry C. Feld, *Judicial Waiver Policy and Practice: Persistence, Seriousness and Race*, 14 LAW & INEQ. 73, 110–11 (1995).

220. See Leon Banks, Jr., *Georgia Senate Bill 440: An Examination of Determining Factors of Youth Who Are Waived to Superior Court and the Effectiveness of Juvenile Waivers as a Deterrent to Recidivism* (May 2007) (Ph.D. dissertation, University of Georgia); Steven N. Zane, Brandon C. Welsh & Kevin M. Drakulich, *Assessing the Impact of Race on the Juvenile Waiver Decision: A Systematic Review and Meta-Analysis*, 46 J. CRIM. JUST. 106–17 (2016).

can request a transfer to superior court.²²¹ During the subsequent waiver hearing, both the state and juvenile present evidence regarding the juvenile's amenability for juvenile court treatment, with the judge ultimately deciding on the waiver.²²² While "[i]n the past, prosecutors had to convince a judge to waive a juvenile . . . [n]ow the trend is that the juvenile needs to prove that the case should stay in the juvenile system."²²³

Admittedly, judicial waivers serve as the best mechanism for transferring juveniles. But the process still allows for arbitrary decision-making when focused on characteristics of the offense rather than the individual.²²⁴ Judges might struggle to administer waiver statutes on an evenhanded basis due partly to the discretionary criteria guiding transfer decisions.²²⁵ Accordingly, empirical evidence indicates that a juvenile's race often influences waiver decisions,²²⁶ a trend amplified by racial stereotypes surrounding gang-related crimes and youth.²²⁷ Concentrating on "criminal gang activity" shapes waiver discretion around gang involvement instead of the factors most relevant to the appropriate jurisdiction for each offender.²²⁸ This emphasis overshadows the offender's delinquent history, the most reliable predictor of future violations, shifting attention to gang affiliation as the central issue in decision-making.²²⁹ This inflation leads to other biases, as seen in cases brought under Georgia's RICO Act, which "exemplify how systemic biases emerge from conflating race and crime, [and] associating gangs and gang-related crime with racial minorities."²³⁰ These biases encourage government actors to engage in harmful racial profiling and mass arrests of minorities under the Georgia RICO

221. GA. CODE ANN. § 15-11-561 (West 2025).

222. *Id.*

223. Angela M. Collins & Maisha Cooper, *Juvenile Waivers as a Mechanism in the Erosion of the Juvenile Justice System*, 13 SOC. SCI., issue no. 7, July 2024, art. no. 367, at 7.

224. For a comparative analysis of prosecutorial waivers, legislative waivers, and judicial waivers, see Sabo, *supra* note 61.

225. See Collins & Cooper, *supra* note 223, at 7; GA. CODE ANN. § 15-11-562(a) (West 2025) (listing the criteria juvenile court judges must consider such as "protection of the community," "impact of the alleged offense on the alleged victim," and "history of the child").

226. See Joe M. Brown & Jon R. Sorensen, *Race, Ethnicity, Gender, and Waiver to Adult Court*, 11 J. ETHNICITY CRIM. JUST. 181, 183 (2013) (detailing relevant studies and their findings concerning decision-making in juvenile court).

227. *Id.* at 181. In a study of juveniles transferred to adult court in the largest urban jurisdiction in Texas, the results indicated that Black and Hispanic youth were approximately three times more likely to receive a transfer to adult court, net of legally relevant case criteria. *Id.*; see *supra* Section II.B.

228. See Barry C. Feld, *The Juvenile Court Meets the Principles of the Offense: Legislative Changes in Juvenile Waiver Statutes*, 78 J. CRIM. L. & CRIMINOLOGY 471, 492 (1987).

229. *Id.* at 665.

230. Starnes, *supra* note 67, at 356.

framework, which will extend to seventeen-year-old offenders waived to superior court for gang activity.²³¹

In contrast, as documented, proper reform efforts can lower these disparities. When Georgia passed comprehensive reform in 2013, there was a 56.9% drop in the percentage of Black youth sentenced in superior court.²³² Adopting a system like North Carolina, where the disposition for youth offenders charged with criminal gang activity is modified while remaining under the jurisdiction of the juvenile court, following the original 2008 PMC guidelines, will likely see similar results.

CONCLUSION

Over the past fifty years, Georgia's attempts to raise the age of criminality have faced significant political opposition, making inclusion of seventeen-year-olds under original juvenile court jurisdiction unattainable. This resistance has persisted despite similar laws being passed in forty-seven other states. Contributing factors include claims of burdensome cost and rhetoric by executive actors villainizing young offenders. Raising the age of criminality is the first step in a more significant paradigm shift in Georgia's juvenile criminal justice system. To ensure a steady step, any proposed reform must exclude a judicial waiver for gang activity. Seventeen-year-olds are less culpable than adults. Therefore, proportional sentencing would place them under juvenile jurisdiction. This approach reduces recidivism, which generally reduces taxpayer costs and provides economic mobility for vulnerable communities. As lawmakers grapple with the future of juvenile justice reform, gang-affiliated youth need to be served with rehabilitative opportunities without the collateral consequences of adult prison. Only then will Georgia's aims of the justice system be reached: stopping recidivism and protecting public safety.

*Danielle S. Williams**

231. *Id.* (citing Jordan Blair Woods, *Systematic Racial Bias and RICO's Application to Criminal Street and Prison Gangs*, 17 MICH. J. RACE & L. 303 (2012)).

232. GA. LANDSCAPE REPORT, *supra* note 49, at 81.

* J.D. Candidate, Washington University School of Law (2026); B.A., University of Georgia (2022). Thank you to my parents for their own service-driven careers and teaching me to use my influence to create seats at the table for marginalized stories; the *Washington University Law Review* editorial staff for their thoughtful advice throughout the development of this Note; and Alyssa Kapasi, Ethan Knoll, and Emma Roesler—my dear friends who dedicated their personal knowledge and support during the writing process. Finally, thank you to the courageous advocates who have been fighting for the rights of incarcerated children in the state of Georgia for decades.