Do the Adult Crime, Do the Adult Time: Due Process and Cruel and Unusual Implications for a 13-Year-Old Sex Offender Sentenced to Life Imprisonment in State v. Green

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I. INTRODUCTION

Andre Demetrius Green is the only thirteen-year-old sex offender in North Carolina subjected to a mandatory life sentence.1 In 1994, Green attacked and sexually assaulted a twenty-three-year-old woman.2 At the time of the attack, Green was thirteen years old.3 North Carolina had recently lowered the minimum age at which a juvenile could be tried in a criminal court.4 Thus, North Carolina's juvenile justice system confronted the possibility of transferring a thirteen-year-old sex offender to superior court to be tried as an adult.5

Over the past two decades, the number of violent crimes committed by juveniles has risen at an alarming rate.6 When dealing with violent juveniles, courts are confronted with the dilemma of deciding whether to adjudicate the juvenile offender in the juvenile courts or the criminal system.7 States have various mechanisms for transferring juveniles to the

1. See State v. Green, 502 S.E.2d 819, 833-34 (N.C. 1998) (noting that Green is only 13-year-old sex offender to be transferred to superior court and convicted of first-degree sexual offense under statutory scheme that mandated life sentence for such offense). For a discussion of changes in the statutory scheme, see infra notes 114-20, 140-42 and accompanying text.
2. See id. at 822 (detailing circumstances of sexual offense).
3. See id.
4. See id. at 829 (noting that N.C. GEN. STAT. § 7A-608 (1997) was amended effective May 1, 1994 to permit transfer of 13-year-old juveniles, and Green committed offense on July 27, 1994 shortly after amendment took effect).
5. See id. at 822 (reporting that State filed Green's transfer petition to superior court pursuant to N.C. GEN. STAT. § 7A-610 (1997)). Upon the State's petition, the district court judge "held a probable cause hearing on 18 August 1994 pursuant to N.C. GEN. STAT. §§ 7A-608 to -612 and determined that probable cause existed and granted the state's motion for transfer." Id.
criminal system. North Carolina uses the waiver method of transfer where, upon a finding of probable cause and petition by the State, a juvenile court may waive its jurisdiction over the juvenile and transfer the case to superior court.

During the waiver and transfer processes, a court must protect the due process rights of the juvenile by adhering to procedural requirements and statutory guidelines included in the juvenile code. The Supreme Court of the United States has also issued a list of criteria that juvenile court judges should consult when deciding whether to waive jurisdiction with "the notion of specialized treatment of juveniles who have violated the criminal code;" yet they recognize their role as preserving social justice. It is difficult to reconcile legislation and policy inconsistencies regarding jurisdictional grants and limitations of the juvenile system. Moreover, transferring juveniles creates a gaping inconsistency in ideologies because:

[The legislature's] interpretation of what occurs in the juvenile process is distorted; they seem to be saying that the redemptive philosophy of the juvenile court is laudable when dealing with "wayward" youths or childish pranks, but that when serious criminal offenses are committed, the rehabilitative ideal must be abandoned in favor of the retributive processes of the criminal law.

For a discussion of waiver of jurisdiction by juvenile courts and concurrent jurisdiction between juvenile and criminal courts, see Davis, supra note 7, at 199-201.

9. See N.C. GEN. STAT. § 7A-610 (1997) (providing for transfer by waiver of jurisdiction by juvenile court where transfer is not required by § 7A-608, which requires adjudication of juveniles in superior court for Class A felonies).

The juvenile justice system as a whole is beyond the scope of this Note, which focuses on the due process safeguards of the juvenile justice system and cruel and unusual punishment of juveniles through the adult system. For an in-depth discussion of the juvenile justice system and the mechanics of transfer in North Carolina, see generally Mason P. Thomas, Jr., Juvenile Justice in Transition—A New Juvenile Code for North Carolina, 16 WAKE FOREST L. REV. 1 (1980) (discussing history of legislative reform in area of juvenile justice).

10. For a discussion of due process problems in the juvenile justice system, specifically the process of transferring juveniles to superior court, see infra notes 21-45 and accompanying text.
tion. Difficulty arises, however, where rehabilitation, the goal of the juvenile code and a criterion listed by the Supreme Court, clashes with the punishments imposed in the criminal system. 12

The Supreme Court of North Carolina confronted this dilemma in *State v. Green* when Green appealed his conviction on the grounds that (1) North Carolina's transfer statute violated the Due Process Clause by failing to provide sufficient guidelines for the exercise of judicial discretion and (2) sentencing a thirteen-year-old to life imprisonment for first-degree sexual offense is cruel and unusual punishment. 14

This Note discusses and compares the North Carolina Supreme Court's holding with other state and federal court decisions addressing the constitutional protections and policy considerations of transferring and sentencing juveniles. 15 Part II summarizes the procedural requirements of the Due Process Clause and the Eighth Amendment prohibition against cruel and unusual punishment as applied to juvenile justice. 16 Part III describes the circumstances that led to Green's life sentence. 17 Part IV traces the North Carolina Supreme Court's approach in upholding the state's juvenile transfer statute and subsequent sentencing of Green as constitutionally sound. 18 Part V analyzes the court's conclusions of law with specific emphasis on the juvenile justice system's rehabilitative goals. 19 Finally, part VI focuses on the likely impact of *Green* for the North Carolina courts and legislature and for the constitutionality of juvenile sentencing nationwide. 20

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11. See Kent v. United States, 383 U.S. 541, 566-67 (1966) (listing criteria for juvenile judge's consideration). For a discussion of these criteria, see infra notes 29-39 and accompanying text.


14. See id. at 823, 828 (listing Green's grounds for appeal).

15. For a discussion of the court's decision in *Green*, see infra notes 123-44 and accompanying text.

16. For a discussion of Supreme Court and lower court decisions outlining procedural safeguards necessary to preserve due process, see infra notes 21-50 and accompanying text. For a discussion of the constitutional prohibition of cruel and unusual punishments as applied to juveniles, see infra notes 51-96 and accompanying text.

17. For a discussion of Green's offense, transfer, conviction and sentencing, see infra notes 97-122 and accompanying text.

18. For a discussion of the North Carolina Supreme Court's decision in *Green*, see infra notes 123-44 and accompanying text.

19. For a discussion of the appropriateness of the conclusions of law reached and policy considerations made by the court, see infra notes 145-202 and accompanying text.

20. For a discussion of the consequences of the court's decision in *Green*, see infra notes 203-15 and accompanying text.
II. BACKGROUND

A. Due Process of Law: Application to Juvenile System

The Fifth and Fourteenth Amendments to the United States Constitution guarantee the right of every defendant to due process of law. An essential requirement of due process is that a statute contain sufficiently definite criteria to guide a court when exercising discretion under that statute. The Due Process Clause requires courts to exercise judicial discretion within the bounds provided by the legislature because "[d]iscretion without a criterion for its exercise is authorization of arbitrariness." In In re Gault, the United States Supreme Court extended the protections of due process to juvenile proceedings. In that case, the transferring judge illegally questioned a juvenile, who had been taken into

21. See U.S. CONST. amends. V, XIV. The Fifth Amendment to the Constitution states that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. CONST. amend. V. The right to due process under state law is set forth in the Fourteenth Amendment: "nor shall any State deprive any person of life liberty, or property, without due process of law." U.S. CONST. amend. XIV. For a discussion of the extension of the Due Process Clause to juvenile proceedings, see infra notes 24-45 and accompanying text.

22. See Grayned v. City of Rockford, 408 U.S. 104, 10809 (1972) (stating due process requirements). The United States Supreme Court applied a two-prong test to determine whether a statute violated due process. See id. at 108. First, a statute fails to meet due process "if its prohibitions are not clearly defined." Id. This "vagueness" prong deems statutes violative of due process when the illegal activity is not defined in a way sufficient to "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited." Id. Second, a statute fails to meet due process by failing to provide guidelines for the court in its exercise of discretion. See id. at 108-09. "[I]f arbitrary and discriminatory enforcement is to be prevented, [the Court reasoned that] laws must provide explicit standards for those who apply them." Id. at 108 (emphasis added); see Kingsley Int'l Pictures Corp. v. Regents of the Univ. of New York, 360 U.S. 684, 694 (1959) (Frankfurter, J., concurring) ("[L]egislation must not be so vague, the language so loose, as to leave to those who have to apply it too wide a discretion.").

23. Brown v. Allen, 344 U.S. 443, 496 (1953) (Frankfurter, J., dissenting) (distinguishing between "discretion" and "judicial discretion"). "Judicial discretion" must be "subject to rational criteria, by which particular situations may be adjudged." Id.


25. See id. at 21 (extending, in part, constitutional guarantee of procedural due process to juvenile proceedings). The Supreme Court acknowledged that juvenile proceedings differ from criminal proceedings in that the juvenile benefits from additional protections. See id. at 22-25 (recognizing that juveniles benefit from sealed records and rehabilitative efforts). But the Court refused to elevate these benefits to the level of a constitutional substitute for due process. See id. at 30 (limiting extension of procedural due process protection to juvenile proceedings as something less than criminal proceedings). "There is no reason why, consistently with due process, a State cannot continue if it deems it appropriate, to provide" benefits to juveniles that they would not be afforded under criminal proceedings. Id. at 25. "In their zeal to care for children neither juvenile judges nor welfare workers can be permitted to violate the Constitution, especially the constitutional provisions as to due process . . . ." Id. at 19 n.25 (quoting Arthur T. Van-
custody for possessing a stolen wallet, and failed to serve appropriate notice of hearing.\textsuperscript{26} The Court noted that the unbridled discretion enjoyed by juvenile court judges violated several constitutional rights, and it used the opportunity to impose strict requirements on the juvenile justice systems of the States.\textsuperscript{27} Although \textit{Gault} stands as a landmark decision for the application of due process to juvenile proceedings, it failed to establish general guidelines that courts could apply to various factual situations.\textsuperscript{28} Other cases, however, have sought to establish these much-needed guidelines.

1. \textit{Supreme Court Provides Criteria Checklist in United States v. Kent}

In \textit{United States v. Kent},\textsuperscript{29} the United States Supreme Court addressed the statutory mechanism for transferring juveniles to superior court in Washington, D.C.\textsuperscript{30} The juvenile court judge transferred the defendant to

\textsuperscript{26} \textit{See} \textit{Gault}, 387 U.S. at 6-9 (stating that juvenile was taken into custody for possession of stolen wallet and for making comments "of the irritatingly offensive, adolescent, sex variety"). The Court limited its holding to the facts at hand. \textit{See id.} at 13 ("We do not in this opinion consider the impact of these constitutional provisions upon the totality of the relationship of the juvenile and the state."). Subsequent language in the opinion, however, undermines the Court's qualification. \textit{See id.} at 18 ("Juvenile Court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure.") (emphasis added).

\textsuperscript{27} \textit{See id.} at 31-58 (criticizing amount of discretion enjoyed by juvenile judge). The Court listed several requirements to which state juvenile justice systems must adhere. First, the family of the juvenile must have notice of the charges against the juvenile. \textit{See id.} at 33. Notice must be given early enough to provide the family with a reasonable opportunity to prepare for the hearing. \textit{See id.} (prescribing parameters of adequate notice). Also, notice must "set forth the alleged misconduct with particularity." \textit{Id.} Second, a court in a juvenile proceeding must advise the juvenile of his right to counsel. \textit{See id.} at 34-36. Third, a juvenile's Fifth Amendment right to be free from self-incrimination must be observed in juvenile proceedings. \textit{See id.} at 55. Absent such observance, confessions of juveniles may not be introduced into juvenile proceedings. \textit{See id.} at 56.


\textsuperscript{29} 383 U.S. 541 (1966).

\textsuperscript{30} \textit{See id.} at 547-48 (noting lack of standards issued to guide juvenile judges in transfer decisions). Section 11-914 of the Juvenile Court Act was the mechanism through which transfers were accomplished in Washington, D.C. at the time of the case. \textit{See id.} at 547 n.6. The statute read:

If a child sixteen years of age or older is charged with an offense which would amount to a felony in the case of an adult, or any child charged with an offense which if committed by an adult is punishable by death or life imprisonment, the judge may, \textit{after full investigation}, waive jurisdiction and order such child held for trial [in superior court] ....
criminal court on robbery and rape charges without conducting an investigation or stating his reasons in the transfer order. The Supreme Court found that, although the juvenile court judge was granted broad discretion in transferring a juvenile, the defendant's due process rights had not been preserved. The Court stated that a transfer "without hearing, without effective assistance of counsel, without a statement of reasons" clearly violated the Due Process Clause.

In an appendix to the opinion, the Supreme Court criticized the statute for failing to provide "specific standards for the exercise of this important discretionary act" and for leaving "the formulation of such criteria to the [j]udge." The Court listed the following eight criteria, now known as "Kent factors," for the juvenile court judge to consider upon remand: (1) the "seriousness of the offense" and the need to protect the community against it; (2) the violent and willful manner of the offense; (3) whether the offense was against persons or property; (4) the prosecutorial merit of the offense; (5) the economy of trying the juvenile with adults charged with same crime; (6) the maturity of the juvenile; (7) the juvenile's record; and (8) "the likelihood of reasonable rehabilitation . . . by


In Kent, the juvenile judge waived jurisdiction and issued the order stating only "that after full investigation, I do hereby waive jurisdiction of the [defendant]." Kent, 383 U.S. at 546 (quoting juvenile judge's transfer order). The defendant appealed on the basis that the juvenile judge: (1) held no hearing; (2) made no findings; and (3) failed to state his reasons for transfer. See id. The defendant also contended that he was denied due process because, if he were an adult, he would have been entitled to a probable cause hearing. See id. at 551 (detailing due process challenge). In reviewing the defendant's motion to invalidate the waiver of jurisdiction, the district court held that the terms "after full investigation" did not require the judge to hold an evidentiary or any other type of hearing. See id. at 549.

31. See Kent, 383 U.S. at 543-47 (discussing defendant's offenses and juvenile court judge's conduct in transferring defendant). At the time of transfer, the transfer statute required that a "full investigation" be conducted before a determination of transfer. See id. at 547 (noting express language of transfer statute) (citing D.C. Code § 11-914).

32. See id. at 553-54. The juvenile court can use a substantial degree of discretion in selecting the "factual considerations to be evaluated, the weight to be given them and the conclusion to be reached." Id. at 553. Due process, however, requires that the juvenile be entitled to a hearing and to a statement of reasons for the judge's decision. See id. at 557 (noting existence of minimal requirements). The Court passionately decreed that "there is no place in our system of law for reaching a result of such tremendous consequences without ceremony . . . without a statement of reasons." Id. at 554.

33. Id. at 554. The Court asserted that such a proceeding against an adult in this manner was "inconceivable" and it refused to permit such lack of procedure in juvenile proceedings. See id. (criticizing lack of due process in juvenile proceeding).

34. Id. at 566.
the use of procedures, services and facilities currently available to the Juvenile Court.\textsuperscript{35}

The Supreme Court did not, however, explicitly state that transfer statutes were constitutionally required to adopt the \textit{Kent} factors.\textsuperscript{36} The Courts of Appeals for the Third and Sixth Circuits have interpreted \textit{Kent} as failing to establish minimum requirements for preserving juveniles' due process rights.\textsuperscript{37} Nevertheless, some circuits have been receptive to the \textit{Kent} factors.\textsuperscript{38} In addition, numerous states have amended their transfer statutes to include some, if not all, of the \textit{Kent} factors.\textsuperscript{39}

\begin{itemize}
\item \textsuperscript{35} Id.
\item \textsuperscript{36} See generally id. at 565-68 (declining to require incorporation of \textit{Kent} factors into state transfer statutes).
\item \textsuperscript{37} See In re M.B., 122 F.3d 164, 167-68 (3d Cir. 1997) (stating that \textit{Kent} requires only procedural protection sufficient to preserve "fundamental fairness and due process"); Oviedo v. Jago, 809 F.2d 326, 327 (6th Cir. 1987) (upholding transfer statute that incorporated only three of eight \textit{Kent} factors). "Although the Supreme Court made it clear that juveniles are entitled to some minimal level of procedural safeguards, . . . the [Supreme] Court did not specify the exact nature of the constitutional requirements of due process." Id. at 327. At the time of the transfer, the Ohio Rule of Juvenile Procedure 30(E) required a judge contemplating transfer to consider the following five factors:
\begin{enumerate}
\item The child's age and his mental and physical health;
\item The child's prior juvenile record;
\item Efforts previously made to treat or rehabilitate the child;
\item The child's family environment; and
\item School records.
\end{enumerate}
\textbf{Ohio R. Juv. P. 30(E) (1987).} The Ohio rule substantively covers only three of the \textit{Kent} factors. See \textit{Kent}, 383 U.S. at 566 (listing all eight \textit{Kent} factors). Notably, the Ohio rule does not mandate consideration of the seriousness of the offense, its aggressive nature or the distinction between injury to property or persons. See \textbf{Ohio R. Juv. P. 30(E)} (listing first, second and third \textit{Kent} factors). Nevertheless, the Sixth Circuit held that the judge's decision did not violate the juvenile's due process. See \textit{Oviedo}, 809 F.2d at 328-29; see also Patton v. Toy, 867 F. Supp. 356, 362 (D.S.C. 1994) ("[T]he Supreme Court did not explicitly hold that these factors must be followed by lower courts.").

For a discussion of the Supreme Court's failure to require incorporation of any specific guidance into state transfer statutes, see \textit{infra} notes 145-155 and accompanying text.
\begin{itemize}
\item \textsuperscript{38} Compare \textit{Oviedo}, 809 F.2d at 326 (stating that all \textit{Kent} factors need not be considered), with \textit{Green v. Reynolds}, 57 F.3d 956, 960 (10th Cir. 1995) (stating that Oklahoma courts "strictly adhere to the constitutional precepts announced in \textit{Kent}"); and \textit{Toomey v. Clark}, 76 F.2d 1433 (9th Cir. 1989) (noting trial court's "careful and judicious" application of \textit{Kent} factors).
\item \textsuperscript{39} Compare \textbf{ Ala. Code} \textsuperscript{\textsection} 12-15-34(d) (1988) (listing six factors, all of which must be considered), with \textbf{Ark. Code Ann.} \textsuperscript{\textsection} 9-27-318(e) (Michie 1998) (listing only three very broad criteria that bear little resemblance to \textit{Kent}). See \textit{generally} \textit{Williams v. State}, 494 So. 2d 887, 890 (Ala. Crim. App. 1986) (requiring consideration of all factors).

For a more extensive list of state transfer statutes and required considerations, see \textit{infra} note 153.
\end{itemize}
In *United States ex rel. Pedrosa v. Sielaf,* the District Court for the Northern District of Illinois struck down the Illinois transfer statute for violating the Due Process Clause by failing to provide "any guidelines or standards" for the judge to follow in making his or her decision. The defendant argued that his transfer to criminal court on murder charges violated his due process because the transfer statute was unconstitutionally vague. The court agreed that the transfer statute's vagueness violated the Due Process Clause, despite the existence of Illinois decisions construing the statute to impose sufficient criteria to guide the juvenile courts. The State in *Sielaf* further argued that the transfer statute satisfied due process when read with the rehabilitative policy presented in the preface to the juvenile code. The Court disagreed and stated that, in a due process challenge for vagueness, a statute must be examined solely on its face and must fail if facially deficient.

41. *Id.* at 495. The transfer statute provided:
If a petition alleges commission by a minor 13 years of age or over of an act which constitutes a crime under the laws of this State, the State's Attorney shall determine the court in which that minor is to be prosecuted; however, if the Juvenile Court Judge objects to the removal of a case from the jurisdiction of the Juvenile Court, the matter shall be referred to the chief judge of the circuit for decision and disposition. If criminal proceedings are instituted, the petition shall be dismissed insofar as the act or acts involved in the criminal proceedings are concerned. Taking of evidence in an adjudicatory hearing in any such case is a bar to criminal proceedings based upon the conduct alleged in the petition. Ill. Rev. Stat. Chap. 37, § 702-7 (1971).
42. *See Sielaf,* 434 F. Supp. at 495. The defendant also appealed his transfer on the grounds that the transfer statute did not require a preliminary hearing in the juvenile court. *See id.* (noting alternative claims of appeal). The court dismissed this claim because, although the statute did not provide for a hearing, the defendant was given one and, thus, lacked standing to appeal his transfer on this claim. *See id.*
43. *See id.* at 496-97 (invalidating transfer statute as violative of due process). The fact that the Illinois courts had read the criteria into the statute was irrelevant. *See id.* at 496 (dismissing State's argument that Illinois courts had applied criteria). The court stated that the statute was unconstitutionally vague because "[n]othing prevented the Illinois juvenile judge from using any criteria he desired no matter how arbitrary." *Id.*
44. *See id.* at 496. The State argued that reading the transfer statute in light of the rehabilitative purpose of the juvenile code satisfied due process. *See id.* (setting forth State's argument). The Court, nonetheless, found that although a statement of purpose might in some circumstances supply the precision lacking in a statute, the particular statement at issue provided "little if any" guidance and did not compensate for the vagueness of the transfer statute. *See id.* (citing Ill. Rev. Stat. § 701-2 (1971), which provides "Purpose and Policy").
45. *See id.* (examining statute on face and striking it down for vagueness). The constitutional test for vagueness is a strict examination of the statute on its face. *See Thornhill v. Alabama,* 310 U.S. 88, 96-98 (1940) (conducting facial examination of statute restricting First Amendment as test for vagueness); *see also* Papachristou v. City of Jacksonville, 405 U.S. 156, 170-71 (1972) (extending *Thornhill* and strict facial examination test for vagueness to other constitutional rights). For a discussion of vagueness and the Due Process Clause, see Kathryn J. Parsley.
2. Rehabilitative Ideal Still Pervades Juvenile Codes

Rehabilitation is both a Kent factor and, as evidenced by Sielaf, the focus of many debates over juvenile justice and due process. Most juvenile justice systems in America were established for the purpose of rehabilitating the juvenile offender. In fact, North Carolina's juvenile system was founded on such an ideal. The rehabilitative goals, however, have been obscured by Gault and Kent—the very Supreme Court decisions that attempted to protect the due process rights of juveniles. Despite the early rehabilitative goals of the juvenile justice system, transfer of a juvenile for reasons other than rehabilitation does not violate a juvenile's due process.

B. Cruel & Unusual: Is Punishment Decent and Proportional?

The Eighth Amendment prohibits the imposition of "cruel and unusual punishments." The Supreme Court of the United States has held that the Eighth Amendment's prohibition against cruel and unusual punishment is applicable to state-imposed punishments through the Fourteenth Amendment.

For a discussion of vagueness and its applicability to Green, see infra notes 156-66 and accompanying text.


47. See Rothchild, supra note 46, at 721-22 (discussing traditional purposes of state juvenile justice systems). States have traditionally taken a protective role as "guardian of persons under legal disability" where the disability is age. Id. Early juvenile systems did not adjudge guilt; rather, the juvenile courts focused on determining how the juvenile had become what he was and how to best save him from himself. See id. at 730-31 (discussing approach of early juvenile justice systems).


48. See, e.g., State v. Dellinger, 468 S.E.2d 218, 221 (N.C. 1996) (stating that Juvenile Code was enacted with "aim that delinquent children might be rehabilitated and reformed and become useful, law-abiding citizens").

49. See Feld, supra note 28, at 695-725 (discussing impact of Gault on juvenile justice systems). Although the Supreme Court did not intend to change the rehabilitative purpose of the juvenile justice system, in the years following Gault, "judicial and administrative responses to Gault have modified the [juvenile] court's jurisdiction, purpose, and procedures." Id. at 691.

50. See, e.g., Deel v. Jago, 967 F.2d 1079, 1090 (6th Cir. 1992) (transferring 15-year-old, first-time offender to superior court based on seriousness of crime does not violate due process simply because state's juvenile justice system was founded with rehabilitative goal).

51. U.S. CONST. amend. VIII.
teenth Amendment. Additionally, many states have recognized the importance of the Eighth Amendment prohibition and have adopted similar, if not exact, provisions in their state constitutions. Section 27 of article 1 of North Carolina’s constitution prohibits the imposition of “cruel or unusual” punishments. Despite potential discrepancies between the use of “and” in the United States Constitution and “or” in the North Carolina Constitution, North Carolina courts have historically analyzed the state provision in a manner similar to the Supreme Court’s analysis of the federal provision. Thus, the Supreme Court’s analysis is applicable here.

The Supreme Court of the United States has defined “cruel and unusual” punishments as (1) barbaric punishments or (2) punishments that are grossly disproportionate to the crime committed. The Court has also stated that the Eighth Amendment must be interpreted in a “flexible and dynamic manner” to reflect societal views. Chief Justice Warren first

52. See Robinson v. California, 370 U.S. 660, 666 (1962) (applying Eighth Amendment’s prohibition of cruel and unusual punishment to state through Fourteenth Amendment).

53. See, e.g., CAL. CONST. art I, § 17 (prohibiting cruel or unusual punishments); IND. CONST. art. I, § 16 (prohibiting cruel and unusual punishments).

54. See N.C. CONST. art. I, § 27 (using disjunctive “or,” rather than conjunctive “and,” in prohibiting “cruel or unusual” punishments). For a discussion of the difference between “cruel and unusual” and “cruel or unusual” analysis, see infra note 136 and accompanying text.

55. See, e.g., State v. Bronson, 432 S.E.2d 772, 780 (N.C. 1992) (stating that there is no substantive difference between federal and North Carolina constitutional provisions).

56. See Gregg v. Georgia, 428 U.S. 153, 173 (1976) (analyzing phrase “cruel and unusual”). In Gregg, The Supreme Court traced the history of the prohibition of “cruel and unusual” punishment from its origin in England. See id. at 169-70 (discussing origin of phrase). The phrase first appeared in the English Bill of Rights of 1689. See Anthony F. Granucci, “Nor Cruel and Unusual Punishments Inflicted”: The Original Meaning, 57 CAL. L. REV. 839, 852-53 (1969). The Framers of the Constitution adopted the phrase to prohibit tortures and other “barbarous” punishments. See id. at 842 (stating that Framers wished to outlaw infliction of barbaric punishments). This principle was reflected in early Court decisions. See Gregg, 428 U.S. at 170. For example, in Wilkerson v. Utah, the Court stated, “[I]t is safe to affirm that punishments of torture . . . and all others in the same line of unnecessary cruelty, are forbidden by [the Eighth] [A]mendment . . . .” 99 U.S. 130, 136 (1879). In In re Kemmler, the Court stated more emphatically that “[p]unishments are cruel when they involve torture or a lingering death.” 136 U.S. 436, 447 (1890).

Since these early decisions, interpretations of the Eighth Amendment have grown to include a disproportionality prohibition. See, e.g., Weems v. United States, 217 U.S. 349, 380-82 (1910). In Weems, the Court rejected the idea that “cruel and unusual” only applied to torturous punishments. See id. at 367-68 (expanding scope of Eighth Amendment to include requirement that punishments “be graduated and proportioned to the offense”).

57. Gregg, 428 U.S. at 171.
expressed this concept in *Trop v. Dulles* and it has since become the mantra of Eighth Amendment interpretation.

1. **Trop v. Dulles: Evolving Standards of Decency**

In explaining the dynamic nature of the Eighth Amendment and whether a punishment is barbaric, the Court in *Trop v. Dulles* stated that "[t]he [Eighth] Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Although *Trop* established the need to look to evolving standards of society, the Court did not state where judges should look to determine those standards, and it relied in part on its own subjective beliefs. In *Gregg v. Georgia*, the Court provided some guidance when it stated that judges must look to "objective indicia that reflect the public attitude toward a given sanction" to determine the standards of society, but it did not tell the lower courts where to find these objective indicia. Thirteen years after *Gregg*, the Court finally set guidelines for determining by objective evidence the societal standards of decency in *Stanford v. Kentucky*. The

58. 356 U.S. 86 (1958)
59. See id. at 100-01 (stating that scope of Eighth Amendment is not static); see also Stanford v. Kentucky, 492 U.S. 361, 369 (1989) (determining scope of Eighth Amendment in light of "evolving standards of decency that mark the progress of a maturing society") (quoting *Trop*, 356 U.S. at 101); *Gregg*, 428 U.S. at 173 (same); Harris v. Wright, 93 F.3d 581, 583 (9th Cir. 1996) (same); Carmona v. Ward, 576 F.2d 405, 429 (2d Cir. 1978) (same); Ingraham v. Wright, 525 F.2d 909, 923 (5th Cir. 1976) (same).
60. *Trop*, 356 U.S. at 101. The Court was confronted with the question of whether the denationalization of an American citizen upon conviction of a military court martial for wartime desertion constituted cruel and unusual punishment in violation of the Eighth Amendment. See id. at 87-88 (discussing facts of case and appeal). The Court concluded that the punishment violated the Eighth Amendment because it destroyed the defendant's political existence. See id. at 101 (holding that punishment violated Eighth Amendment despite not involving physical mistreatment or primitive torture). In so holding, the Court went beyond the limited interpretation of the Eighth Amendment as prohibiting only barbaric punishments by stating that a punishment is cruel and unusual if it violates society's standards of decency. See id. (establishing "evolving standards of decency" as test for Eighth Amendment).
61. See generally id. at 101-02 (failing to provide guidelines for determining standards of society). The Court stated that the punishment of denationalization was against society's standards of decency because it stripped the punished of their identity and, therefore, it "believe[d] ... that use of denationalization as a punishment is barred by the Eighth Amendment." Id. at 101.
63. Id. at 173; see *Coker v. Georgia*, 433 U.S. 584, 592 (1977) (requiring use of objective evidence in determination of standards of decency).
64. 492 U.S. 361, 370 (1989) (stating that federal and state laws are most reliable evidence of standards of decency). In *Stanford*, the Court was confronted with the issue of whether sentencing a 17-year-old murderer to death violated the Eighth Amendment. See id. at 361 (granting certiorari to hear appeal of 17-year-old murderer sentenced to death). The 17-year-old had plead guilty in adult court and was sentenced to death. See id. (stating that 17-year-old plead guilty after being

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Court held that the primary indicia of the standards of decency are the "statutes passed by society's elected representatives." Accordingly, after looking to the capital punishment statutes of all fifty states, the Court concluded that sentencing a seventeen-year-old murderer to death did not violate the standards of decency.

Although the Supreme Court has established sixteen as the constitutional minimum age for capital punishment, the Court has yet to establish a minimum age for imposing a life sentence. Courts, therefore, still look to the "evolving standards of decency" when determining the constitutionality of sentencing juveniles to life imprisonment. In Workman v. Commonwealth, the Supreme Court of Kentucky held that life sentences of transferred for trial as adult by juvenile court that had conducted proper hearings.

65. Id. at 370. Standards of decency should be determined in reference to acts of the legislature. See id. (deeming acts of legislatures as primary evidence of standards of decency); see also Harris v. Wright, 93 F.3d 581, 583 (9th Cir. 1996) (same). In Gregg, the Court stated that acts of the legislature are presumptively valid. See Gregg, 428 U.S. at 175 (noting Court's practice of deferring to legislature). Acts of the legislature should not be replaced by a judge's subjective beliefs. See id. The Court relied on the fact that legislative representatives are elected by the people while judges are appointed. See id. (stating that elected representatives provide better foundation for determining standards of decency).


67. See Streib, supra note 46, at 431-32 (noting Court's failure to establish constitutional minimum age for life imprisonment). For a discussion of a minimum age for life imprisonment, see infra notes 67-83 and accompanying text.


69. 429 S.W.2d 374 (Ky. 1968).
two fourteen-year-old rapists violated the Eighth Amendment. On August 18, 1958, two fourteen year-old males broke into a seventy-one-year-old woman’s home, gagged her and raped her repeatedly. The two juveniles were tried as adults and sentenced to life imprisonment. Life sentences were statutorily permitted and, as such, typically would have been upheld. The court, however, stated that “life imprisonment without benefit of parole for two fourteen-year-old youths under all circumstances shocks the general conscience of society today.”

The dissent in Workman pointed out that the majority failed to cite a single case supporting the legal basis of its conclusion. The majority acknowledged this criticism but stated that the court will defer to the legislature only “with the proviso in mind that the court retains the power to determine whether or not an act of legislature violates the provisions of the Constitution.”

Notwithstanding the dissent’s criticism, Workman’s validity is questionable because the case was decided thirty years ago, in 1968, and the standards of decency undoubtedly have evolved. Indeed, the court

70. See id. at 378 (overturning life sentences of two 14-year-old rapists upon finding that sentences were cruel and unusual). The two juveniles robbed, attempted to rape and sexually assaulted a woman with a mop. See id. at 374.
71. See id. at 374.
72. See id. at 375-77. After convicting the juveniles of rape, the jury requested life sentences and the court complied by ordering the juveniles to life imprisonment without possibility of parole. See id. The juveniles appealed on the ground that the punishment violated their Eighth Amendment right to be free from cruel and unusual punishment. See id. at 376.
73. See id. at 377 (noting that holding departs from statutorily permitted sentence). “We have previously held where punishment is within the limits prescribed by statute it could not be properly classified as cruel punishment.” Id.; see Stanford v. Kentucky, 492 U.S. 361 (1989) (stating that legislative enactment demonstrates standards of decency).

For a discussion of legislation as evidence of society’s standards of decency, see infra note 137 and accompanying text.
74. Workman, 429 S.W.2d at 378 (emphasis added) (applying language, “shocks the general conscience”) (citing Trop v. Dulles, 356 U.S. 86, 101 (1958)).
75. See id. (Montgomery, J., dissenting) (“No cases are cited in support of [the majority’s position].”). Furthermore, the dissent relied on precedent in its argument to uphold the sentences, which “[t]he courts have steadfastly declined to interfere in . . . legislative judgment and discretion.” Id. at 379 (quoting Fry v. Commonwealth, 82 S.W.2d 431, 433 (Ky. 1935)); accord McElwain v. Commonwealth, 159 S.W.2d 11 (Ky. 1942).
76. Workman, 429 S.W.2d at 377 (dismissing dissent’s criticisms by acknowledging power of judiciary to review sentences for cruelty and disproportionality despite power of legislature to promulgate sentencing guidelines). The court reviewed the punishment under the standards of decency to determine whether it “shock[s] the moral sense of the community.” Id. In that sense, the court followed Trop but did not follow Stanford because the court did not determine the standards of decency by looking to acts of the legislature. See Stanford, 492 U.S. at 369-70 (stating that courts and judges owe deference to state legislatures).
77. See Workman, 429 S.W.2d at 378 (stating proposition that Eighth Amendment prohibitions are not static and standards of decency evolve). Workman was
anticipated this evolution and restricted its holding accordingly by stating that (1) the punishment "shocks the general conscience of society today" and (2) resort to "ancient authorities" is not required when determining whether a punishment is cruel and unusual.\textsuperscript{78}

In a recent decision, \textit{Harris v. Wright},\textsuperscript{79} the Court of Appeals for the Ninth Circuit upheld a life sentence of a fifteen-year-old murderer.\textsuperscript{80} Applying the test established in \textit{Trop}, the court held that the defendant had failed to meet the "heavy burden" of showing that the statutorily permitted sentence did not comport with society's standards of decency.\textsuperscript{81} The court avoided defining what would satisfy the defendant's burden.\textsuperscript{82} The court stated that, because the sentence was similar to that adopted by twenty-one

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\textsuperscript{78} Id. Presumably, the court was referring to \textit{Fry} and \textit{McElwain}, which required deference to the legislature and sentencing guidelines. \textit{See id.} at 379 (Montgomery, J., dissenting) (using \textit{Fry} and \textit{McElwain} for proposition that punishment is not cruel because legislature has provided for it). In 1968, the year that \textit{Workman} was decided, \textit{Fry} was 33 years old and \textit{McElwain} was 26 years old. \textit{See Fry}, 82 S.W.2d 431 (decided in 1935); \textit{McElwain}, 159 S.W.2d 11 (decided in 1942). Today, \textit{Workman} is more than 30 years old and may be dismissed as "ancient authority." \textit{See Workman}, 429 S.W.2d at 378, 379 (Montgomery, J., dissenting) (stating that not "a lot of attention" needs to be paid to 26-year-old decision).

\textsuperscript{79} 93 F.3d 581 (9th Cir. 1996).

\textsuperscript{80} \textit{See id.} at 586. In 1987, 15-year-old Harris and 13-year-old Massey entered their victim's store with the intent to rob it. \textit{See id.} at 582. Upon entering the store, Massey shot the owner of the store. \textit{See id.} The victim was shot in the head and the stomach and had been stabbed seven times. \textit{See State v. Massey}, 803 P.2d 340, 342 (Wash. Ct. App. 1991). Because Harris was convicted of aggravated first-degree murder and the State did not seek the death penalty, Harris was sentenced to life imprisonment, which was the only available sentence under state law. \textit{See Harris}, 93 F.3d at 582; \textit{see also WASH. REV. CODE § 10.95.030} (1998) (limiting sentences for aggravated first-degree murder to death penalty or life imprisonment without parole). Massey was also convicted of aggravated first-degree murder and was sentenced to life imprisonment. \textit{See Massey}, 803 P.2d at 343.

\textsuperscript{81} \textit{See Harris}, 93 F.3d at 583-84 (looking to state legislation to establish standards of decency). Given the presumptive validity of a punishment that is permitted by legislation, a defendant who desires to have the punishment overturned for failing to comport with the standards of decency bears a heavy burden of "showing that our culture and laws emphatically and well nigh universally reject [his sentence]." \textit{Id.} at 588; \textit{see Stanford}, 492 U.S. at 373 (placing burden on defendant to show that state legislation is not indicative of standards of decency).

\textsuperscript{82} \textit{See Harris}, 93 F.3d at 583-84 (stating that Harris bore "the burden of proving a strong legislative consensus against imposing mandatory life without parole on offenders who commit their crimes before the age of sixteen"). Harris could only list two states that prohibited life sentences on 15 year-olds. \textit{See id.; see also IND. CODE § 35-50-2-3} (1996) (prohibiting life imprisonment without parole for crimes committed under age 16); \textit{OR. REV. STAT. §§ 161.620} (1996) (prohibiting life imprisonment for juveniles transferred from juvenile court to superior court). The court concluded that, regardless of "[w]hatever degree of consensus might be necessary before [the court] could overturn the considered judgment of a state legislature, [Harris didn't] come close." \textit{Harris}, 93 F.3d at 584.
other states, the defendant’s sentence did not violate society’s standards of decency.\footnote{83}


In \textit{Harmelin v. Michigan},\footnote{84} the United States Supreme Court stated that “[t]he Eighth Amendment does not require strict proportionality between crime and sentence. Rather, it forbids only extreme sentences that are ‘grossly disproportionate’ to the crime.”\footnote{85} In \textit{Harmelin}, the Court revisited many of its previous holdings to establish the correct proportionality requirement of the Eighth Amendment.\footnote{86} The Court ultimately upheld a life sentence for possession of 672 grams of cocaine on the grounds that a punishment is not cruel and unusual simply because it is severe.\footnote{87}

\footnote{83. See Harris, 93 F.3d at 584 (noting that 21 states permit life sentence on 15 year-olds); see also Stanford, 492 U.S. at 370-71 (stating that where majority of states allows punishment there can be no consensus to satisfy defendant’s burden in order to disprove presumption of validity).


85. Id. at 1001 (Kennedy, J., concurring in part and concurring in judgment) (quoting Solem v. Helm, 463 U.S. 277, 294 (1983)). The decision of the Court in \textit{Harmelin} was a plurality. \textit{See id.}. Justice Kennedy’s concurring opinion is widely accepted as the holding of the Court. \textit{See, e.g.}, United States v. Bland, 961 F.2d 123, 129 (9th Cir. 1992) (concluding that Justice Kennedy’s opinion is “rule” of \textit{Harmelin}); United States v. Johnson, 944 F.2d 396, 408 (8th Cir. 1991) (adopting Justice Kennedy’s opinion); United States v. Hopper, 941 F.2d 419, 422 (6th Cir. 1991) (stating that Justice Kennedy’s opinion was dispositive).


In \textit{Rummel v. Estelle}, 445 U.S. 263 (1980), the Court “acknowledged the existence of the proportionality rule for both capital and noncapital cases.” \textit{Harmelin}, 501 U.S. at 997 (citing \textit{Rummel}, 445 U.S. at 271-74, 274 n.11). In \textit{Hutto v. Davis}, 454 U.S. 370 (1982), the Court recognized that the Eighth Amendment may provide for a proportionality review of noncapital sentences but failed to establish such a review because the Court determined that any such review was inapplicable to the sentence in the case. \textit{See Harmelin}, 501 U.S. at 997 (citing \textit{Hutto}, 454 U.S. at 374 n.3 (stating that proportionality review may be appropriate in noncapital context)). Lastly, the Court in \textit{Harmelin} looked to its recent decision in \textit{Solem v. Helm}, 463 U.S. 277 (1983). \textit{See id.} at 997-98. In \textit{Solem}, the Court held that a life sentence was “grossly disproportionate” to the crime committed. \textit{See Solem}, 463 U.S. at 280 (holding that life sentence was cruel and unusual punishment for recidivism based on seven underlying nonviolent felonies).

87. See \textit{Harmelin}, 501 U.S. at 994-95. The Court distinguished between severe and cruel punishments and noted that, outside the context of capital punishment,
Severity is nowhere more apparent in the Eighth Amendment proportionality analysis than in the capital context, which the Court has often distinguished from punishments in the noncapital context. 88 “[T]he Supreme Court has addressed the Eighth Amendment implications of capital sentencing of juveniles and [has] held that the juvenile status of a criminal defendant weighs heavily in the proportionality equation.” 89 The Court, however, has not addressed the implications of a juvenile’s age in the proportionality analysis of noncapital sentences. 90

In Harmelin, Justice Kennedy indicated that the Supreme Court would invalidate a legislatively based prison term only in “extreme circumstances;” but Justice Kennedy did not define what would qualify as “ex-

88. See Harmelin, 501 U.S. at 995-97 (noting different requirements under Eighth Amendment for capital and noncapital sentencing). The Court has so held because “[t]he death penalty differs from all other forms of criminal punishment, not in degree but in kind. It is unique in its total irrevocability.” Furman v. Georgia, 408 U.S. 238, 306 (1972) (Stewart, J., concurring).

89. Recent Case, Eighth Amendment—Juvenile Sentencing—Ninth Circuit Upholds Life Sentence Without Possibility of Parole of Fifteen-Year-Old Murderer.—Harris v. Wright, 93 F.3d 581 (9th Cir. 1996), 110 Harv. L. Rev. 1185, 1185 (1997) [hereinafter Ninth Circuit Upholds]. The Supreme Court has established a minimum age for the death penalty at 16 years old. Compare Stanford v. Kentucky, 492 U.S. 361 (1989) (holding that Eighth Amendment does not prohibit death penalty for 16- and 17-year-old offenders), with Thompson v. Oklahoma, 487 U.S. 815 (1988) (holding that Eighth Amendment prohibits death penalty for 15-year-old offenders). In Thompson, the Court stated that the execution of a 15-year-old was “generally abhorrent to the conscience of the community.” Thompson, 487 U.S. at 892. The Court based this finding on the idea that “less culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult,” adding that “the experience of mankind, as well as the long history of our law, dictate that the normal 15-year-old is not prepared to assume the full responsibilities of an adult.” Id. at 824-25.

In Eddings v. Oklahoma, the Court expressly stated that “the chronological age of a minor is itself a relevant mitigating factor of great weight” in Eighth Amendment analysis of sentencing juveniles. 455 U.S. 104, 116 (1982). The Court in Eddings, however, was addressing the issue in the capital context. See id. (hearing appeal of 16-year-old murderer sentenced to death). For a discussion of the role of age in capital sentencing, see generally Sherri Jackson, Note, Too Young to Die—Juveniles and the Death Penalty—A Better Alternative to Killing Our Children: Youth Empowerment, 22 New Eng. J. Crim. & CIV. Confinement 591 (1996).

90. See Ninth Circuit Upholds, supra note 89, at 1185 (noting Court’s failure to address “effect of juvenile status within the context of noncapital sentencing”); see also Streib, supra note 46, at 431-32 (discussing lack of minimum age for life imprisonment).
treme circumstances." In *Harris*, however, the Ninth Circuit refused to accept the defendant's argument that his young age qualified as an "extreme circumstance[ ]" requiring a holding that his life sentence was cruel and unusual.92

In *State v. Massey*,93 the Washington Court of Appeals refused to consider age a mitigating factor in sentencing a thirteen-year-old to life imprisonment.94 The *Massey* court simply deferred to the legislation that provided for the life sentence.95 *Massey*, however, was a case involving a thirteen-year-old murderer; society's standards of decency may require a different outcome for a thirteen-year-old sex offender.96

**III. **STATE V. GREEN: FACTS

On July 27, 1994, Andre Demetrius Green broke into his victim's home.97 Green had been harassing his victim for six weeks and had selected this night to attack her.98 Green approached the victim with a
weapon, knocked her down and proceeded to sexually molest her.99 Green also physically abused his victim before fleeing the scene.100 Green was promptly identified as the assailant and charged with first-degree sexual offense.101 At the time of the attack, Green was only thirteen years old.102

Just months before the attack, section 7A-608 of the North Carolina General Statutes, which establishes the minimum age for transfer of juveniles to superior court, had been amended.103 The North Carolina legislature voted to lower the minimum age for transferring juveniles to superior court from fourteen to thirteen.104 The legislature amended the statute in response to the growing concern over the increasing incidence of violent crimes being committed by juveniles.105 The amended section 7A-610 went into effect on May 1, 1994.106 Thus, the statute permitting transfer of thirteen-year-old juveniles was in effect when Green committed his crimes.107

The attorneys for the State petitioned the district court to order a transfer as authorized by section 7A-610.108 Upon a showing of probable cause, the district court granted the petition and transferred Green from juvenile court to superior court to be tried as an adult.109 The district

99. See id. at 823. Green entered the bedroom of his twenty-three-year-old victim with a mop handle, swung the weapon at his victim and then knocked her onto the bed and then to the floor. See id. Green fondled the victim's breasts, performed oral sex upon her and penetrated her vagina with his penis and finger. See id. Moreover, Green threatened further harm during the attack. See id.

100. See id. (noting that Green repeatedly slapped his victim leaving her bruised and scarred).

101. See id. Two witnesses identified Green as the person fleeing the victim's home and the victim, herself, later identified Green in a police line-up. See id. Green was charged in juvenile petitions with first-degree sexual offense, first-degree burglary and first-degree rape. See id. at 822. Green was ultimately convicted of first-degree burglary, first-degree sexual offense and attempted first-degree rape in superior court under the adult criminal system. See id. Because only the conviction for first-degree sexual offense carried a mandatory life sentence, it is the focus of this Note. See id.

102. See id. at 822.


105. See Green, 502 S.E.2d at 830. For a discussion of the impetus for lowering the minimum age of transfer, see infra notes 136-39 and accompanying text.

106. See id. at 825-26.

107. See id. at 822, 825-26.

108. See id. at 822. For crimes other than Class A felonies, North Carolina follows the petition method for adjudicating juveniles as adults. See N.C. GEN. STAT. §§ 7A-608, 610 (1997) (providing petition as transfer mechanism for juvenile judges). For a discussion of the petition method of transferring juveniles to adult court and other transfer mechanisms, see infra notes 8-9 and accompanying text.

109. See Green, 502 S.E.2d at 822 (stating that probable cause hearing was held on August 18, 1994 in accordance with N.C. GEN. STAT. §§ 7A-608 to -612 (1997)).
judge found that transfer would best serve the needs of the juvenile and the interests of the State.\textsuperscript{110} In addition, the district judge cited the following factors that influenced the decision to issue the transfer order: (1) the serious nature of the crime, (2) the victim was a stranger to Green, (3) the community's need to be protected from serious criminal activity, (4) Green's history of assaultive behavior, and (5) strong evidence of probable cause based on Green's own statements.\textsuperscript{111}

In January 1995, Green was tried by a jury in superior court and convicted of first-degree sexual offense.\textsuperscript{112} The superior court sentenced Green to life imprisonment.\textsuperscript{113} At the time that Green committed the crime, section 14-1.1 of the North Carolina General Statutes imposed a mandatory life sentence on persons convicted of this crime.\textsuperscript{114} Although the mandatory life sentence for first-degree sexual offense had been replaced with discretionary sentencing guidelines during the same session in which the North Carolina legislature lowered the minimum age for transfer, the discretionary sentencing guidelines did not take effect until October 1, 1994.\textsuperscript{115} Green attacked his victim on July 27, 1994.\textsuperscript{116} Therefore, the superior court had no discretion in sentencing and was required by law to sentence Green to life imprisonment.\textsuperscript{117}

Green's history of assaultive behavior, his confession to police officers and his subsequent denials provided the basis for the finding of probable cause. See id. (noting factors to which juvenile court looked to find probable cause).

\textsuperscript{110} See id.; see also N.C. GEN. STAT. § 7A-610(c) (requiring statement of reasons for transfer in transfer order).

\textsuperscript{111} See Green, 502 S.E.2d at 822. The criminal statute provides:

A person is guilty of a sexual offense in the first degree if the person engages in a sexual act . . . (2) w ith another person by force and against the will of the other person, and . . .

a. [e]mploy or displays a dangerous or deadly weapon or . . . b. [i]nflicts serious personal injury upon the victim.

N.C. GEN. STAT. § 14-27.4 (1997). Because the allegations indicated that the statutory requirements would be satisfied, the court could have properly found probable cause and a societal desire to try Green as an adult. See Green, 502 S.E.2d at 822-24.

\textsuperscript{112} See Green, 502 S.E.2d at 822.

\textsuperscript{113} See id.

\textsuperscript{114} See id. At the time of the attack, section 14-1.1 read, "A Class B felony shall be punishable by life imprisonment." N.C. GEN. STAT. § 14-1.1 (repealed effective Jan. 1, 1995). Green was convicted of first-degree sexual offense which is a Class B felony. See N.C. GEN. STAT. § 14-27.4(b) (1997).

\textsuperscript{115} See Green, 502 S.E.2d at 834 (Frye, J., dissenting). Section 14-1.1 was replaced by discretionary sentencing guidelines. See N.C. GEN. STAT. § 15A-1340.10 to -1340.58 (1997). Section 15A-1340.10 restricts the discretionary guidelines to crimes occurring "on or after October 1, 1994." Id. § 15A-1340.10. Within the sentencing guidelines, life imprisonment is only mandated for first-degree murder. See N.C. GEN. STAT. § 15A-1340.17 (1997) (requiring that first-degree murder be punished with nothing less than life imprisonment).

\textsuperscript{116} See Green, 502 S.E.2d at 834.

\textsuperscript{117} See id. at 834-35 (Frye, J., dissenting) (stating that because legislature, and not judiciary, is charged with determining "extent of punishment which may be imposed," court was not permitted to weigh any mitigating circumstances in...
The interplay between the amendment of section 7A-610, which lowered the minimum age of transfer to thirteen, and the repeal of section 14-1.1, which mandated a life sentence for first-degree sexual offense, resulted in only a five-month period during which a thirteen-year-old could be tried in superior court, convicted of first-degree sexual offense and sentenced to mandatory life imprisonment.\(^\text{118}\) By happenstance, Green was the only thirteen-year-old during this five-month period to be transferred to superior court and convicted of first-degree sexual offense.\(^\text{119}\) Green is, therefore, the only thirteen-year-old first-degree sexual offender subjected to a mandatory life sentence in North Carolina.\(^\text{120}\)

On appeal, Green challenged the validity of section 7A-610 on the ground that it violated his Fifth Amendment right of due process by failing to provide specific guidelines for the district judge to follow in determining whether to grant the State’s petition for transfer to superior court.\(^\text{121}\) Green also challenged his sentence on the ground that sentencing a thirteen-year-old to life imprisonment for a first-degree sexual offense violated the Eighth Amendment’s prohibition of cruel and unusual punishment.\(^\text{122}\)

IV. ANALYSIS

A. State v. Green: Narrative Analysis

1. North Carolina Upholds Transfer Statute Because Statutory Scheme Provides Sufficient Guidelines to Protect Juvenile’s Due Process

Section 7A-610 permits the transfer of juveniles to superior court upon petition from the State if the judge determines that “the needs of the juvenile or the best interest of the State will be served by transfer of the case to superior court for trial as in the case of adults.”\(^\text{123}\) Green asserted that section 7A-610 was “unconstitutionally vague because it provides no meaningful guidance to juvenile court judges.”\(^\text{124}\) Green claimed that this vagueness violated his due process because, with insufficient guidance,

\(^{118}\) See id. at 833.

\(^{119}\) See id. (“[Because Green] was the only thirteen-year-old to commit first-degree sexual offense during this ‘window,’ to have his case subsequently transferred to superior court, and to be convicted of the crime, he is the only thirteen-year-old who will be sentenced to a mandatory term of life imprisonment under this statutory scheme as it existed.”).

\(^{120}\) See id. (stating that fact that Green is only 13-year-old to face mandatory life imprisonment is merely coincidence and does not meet constitutional definition of “unusual”).

\(^{121}\) See id. at 821-22 (setting forth Green’s due process challenge of N.C. GEN. STAT. § 7A-610 (1997)).

\(^{122}\) See id. (discussing Green’s Eighth Amendment challenge to life sentence).


\(^{124}\) Green, 502 S.E.2d at 823.
transfers were "arbitrary" and "discriminatory." Green also contended that the statute violated his due process because the purpose of the juvenile justice system is to rehabilitate.

Green argued that section 7A-610 offers no specific criteria to be considered by the judge ordering the transfer and, at most, provides only a balancing test between the needs of the juvenile and the interest of the state. Green cited the United States Supreme Court decision in Kent, which enumerated eight criteria for courts to consider when transferring juveniles to superior court, as the basis for holding that section 7A-610 violated his due process. The court, nonetheless, determined that section 7A-610 did not violate due process because, when read as a part of the larger statutory scheme, it provided judges with sufficient guidelines to consider when transferring juveniles.

In reaching this conclusion, the court stated that section 7A-608 requires a preliminary hearing and a finding of probable cause before a juvenile may be transferred. Also, a judge cannot order the transfer of a juvenile unless the alleged crime is statutorily defined as a felony. The court also noted that the juvenile code provided other criteria in its general purpose: "[t]o develop a disposition in each juvenile case that reflects consideration of the facts, the needs and limitation of the child, the

125. See id.; see also Grayned v. City of Rockford, 408 U.S. 104, 108-09 (1972) (requiring statute to contain "sufficiently definite criteria to govern court's exercise of discretion").
126. See Green, 502 S.E.2d at 823 (citing Green's argument that North Carolina's juvenile justice system was founded on rehabilitative ideal).
127. See N.C. GEN. STAT. § 7A-610 (1997) (requiring transferring judge to balance interests of juvenile and society but failing to list criteria to be considered). For a discussion of the merits of Green's claim that § 7A-610 fails to provide sufficient criteria to guide juvenile judges' decisions, see infra notes 145-55 and accompanying text.
128. See Green, 502 S.E.2d at 826-27 (noting Green's reliance on Kent to challenge constitutionality of § 7A-610). For a discussion of the Kent factors, see supra notes 34-39 and accompanying text.
129. See id. at 826-28 (pointing to various sections in juvenile code that supply additional criteria that may aid judge in decision whether to transfer juvenile to superior court or to retain jurisdiction of case in juvenile system).
130. See N.C. GEN. STAT. § 7A-608 (1997) (stating that "[t]he court after notice, hearing, and a finding of probable cause may transfer jurisdiction over a juvenile to superior court" and establishing 13 as minimum age of transfer).
131. See id. (permitting transfer of only those juveniles who have committed what would, but for their age, be classified as felony). A juvenile may be transferred on charges of first-degree sexual offense because first-degree sexual offense is a Class B1 felony. See N.C. GEN. STAT. § 14-27.4 (1997) (classifying first-degree sexual offense as Class B1 felony). Importantly, juvenile judges are denied discretion where the juvenile has been charged with first-degree murder because § 7A-608 requires transfer of alleged offenders who have obtained the age of thirteen and are charged with a class A felony. See id. §§ 7A-608, 14-17 (requiring transfer of juveniles charged with first-degree murder).
strengths and weaknesses of the family, and the protection of the public safety.”

The court further concluded that section 7A-610 supplied a sufficient test and that the overall juvenile code constrained a judge contemplating transfer of a juvenile to superior court so as to protect against arbitrary and discriminatory transfers. Accordingly, the court upheld section 7A-610 against Green’s vagueness challenge despite its lack of enumerated criteria as suggested in Kent. Moreover, the court concluded that the judge who ordered the transfer complied with the guidelines provided by the overall juvenile code and the balancing test as explicitly stated in section 7A-610.

2. Life Imprisonment of a Thirteen-Year-Old Sex Offender Is Severe But Not Cruel and Unusual

In his appeal, Green argued that his life sentence violated both the North Carolina and the federal prohibitions of cruel and unusual punishment. Green maintained that sentencing a thirteen-year-old to life im-

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132. Green, 502 S.E.2d at 825 (citing N.C. GEN. STAT. § 7A-516(3)). The court also referenced § 7A-646, which points to criteria for the exercise of discretion by judges in juvenile actions. See N.C. GEN. STAT. § 7A-646 (1997) (“[T]he judge shall select the least restrictive disposition [of the juvenile] both in terms of kind and duration, that is appropriate to the seriousness of the offense, the degree of culpability indicated by the circumstances ... and prior record of the juvenile.”). Section 7A-646 applies only to judges in the course of a juvenile action and refers to committing juveniles to “training schools” or disposition through other “community-level resources.” See id. (limiting its application to judges in midst of juvenile actions and not to transfers). Thus, the judge, who ordered the transfer of Green to superior court, was not constrained by the criteria provided in § 7A-646. See Green, 502 S.E.2d at 825.

133. See Green, 502 S.E.2d at 825 (holding that “section 7A-610 in light of the entire juvenile and criminal codes establishes that [section 7A-610] provides juvenile court judges with sufficient guidance and criteria by which to make discretionary transfer rulings”).

134. See id. at 827 (stating that lack of enumerated criteria in § 7A-610 did not invalidate it as violative of due process because Supreme Court’s holding in Kent did not go as far as to require inclusion of enumerated criteria in state transfer statutes). Rather the United States Supreme Court was “merely exercising its supervisory role over [an] inferior court” and, therefore, the criteria have no binding effect on the North Carolina statute or Supreme Court. Id.

135. See id. at 822 (noting that juvenile judge based her judgment on seriousness of sexual offense, community’s interest in being protected from serious crime and Green’s bad temper and history of assaultive behavior in school). The criteria listed were sufficient to demonstrate that the transfer had not been made arbitrarily. See id. at 827 (finding that juvenile code provides sufficient protection against arbitrary transfers).

136. See id. at 828. Article I, Section 27 of the North Carolina Constitution mirrors the language of the Eighth Amendment to the United States Constitution except that Section 27 prohibits “cruel or unusual punishments.” N.C. CONST. art. I, § 27 (emphasis added). The Eighth Amendment to the United States Constitution prohibits “cruel and unusual” punishment. U.S. CONST. amend. VII (emphasis added). The distinction is noted but has had no impact on analysis; the North Carolina Supreme Court historically has analyzed questions of cruel and/or unu-
prisonment was cruel and unusual because it did not comport with society’s standards of decency.\textsuperscript{137} The court found that the life sentence did not violate society’s standards of decency because the minimum age of transfer was lowered in response to community outcries over the increased number of violent crimes being committed by juveniles and the need for deterring such crimes.\textsuperscript{138} The court pointed to these public outcries and

\begin{quote}
\textit{ \textsuperscript{137.} See Green, 502 S.E.2d at 828 (setting forth Green’s challenge to his sentence as not meeting standard established in \textit{Trop}). Actually, Green presented three reasons for why the North Carolina Supreme Court should find that his life sentence was unconstitutional. See \textit{id.} at 827-28. Green’s first argument was that his life sentence “does not comport with current societal standards of decency.” \textit{id.} at 828. Secondly, Green argued that life imprisonment was disproportionate to a first-degree sexual offense. See \textit{id.} North Carolina has repeatedly held that “a mandatory life sentence for first-degree sexual offense is not cruel and unusual punishment” under either the state constitution or federal Constitution. State v. Holley, 388 S.E.2d 110, 111 (N.C. 1990) (holding that life sentence for first-degree sexual offense is not so grossly disproportionate as to violate federal and state prohibitions against cruel and unusual punishment); State v. Spaugh, 364 S.E.2d 368, 373 (N.C. 1988) (same); State v. Cooke, 351 S.E.2d 290, 293 (N.C. 1987) (same); \textit{Higginbottom}, 324 S.E.2d 834, 837 (N.C. 1985) (same).

Similarly, the United States Supreme Court has not drawn a distinction between “cruel” and “unusual.” See \textit{Trop} v. Dulles, 356 U.S. 86, 101 n.32 (1958). “On the few occasions this Court has had to consider the meaning of the phrase, precise distinctions between cruelty and unusualness do not seem to have been drawn.” \textit{id.}; see \textit{Weems} v. United States, 217 U.S. 349, 376-78 (1910) (drawing no significant difference between two words “and” and “or”).

Third, Green argued that his sentence was cruel and unusual because the elimination of the mandatory life sentence for first-degree sexual offenses and the adoption of sentencing guidelines result in Green being the only thirteen year-old sex offender who will be sentenced to life in North Carolina. See \textit{Green}, 502 S.E.2d at 828. The Court dismissed this contention as irrelevant. See \textit{id.} at 833. “Unusual” in the sense that it is used in the state and federal constitutions does not refer to the number of occurrences. See \textit{id.} at 828. Rather, the Eighth Amendment prohibits punishments that are disproportionate or barbaric. See \textit{Gregg} v. Georgia, 428 U.S. 153 (1976). “In determining whether a punishment violates the Eighth Amendment, the Court simply examines the particular punishment involved in light of the basic prohibition against inhuman treatment, without the subtleties of meaning that might be latent in the word unusual.” \textit{Trop}, 356 U.S. at 101 n.32.

\textsuperscript{138.} See \textit{Green}, 502 S.E.2d at 828-31 (reporting that social outrage spurred concern regarding juvenile violence and resulted in lowering of minimum age for transfer).

During the legislative session, North Carolina’s governor, city officials and many others raised concerns about the increase in juvenile violent offenses. See generally \textit{Verbatim Transcript, Public Hearings before Senate of the N.C. General Assembly Sitting as a Committee of the Whole in Extra Session on Crime, Feb. 8-9, 1994}, Raleigh, N.C. (printed in \textit{N.C. Senate Journal, Extra Session 1994}) [hereinafter \textit{Verbatim Transcript}]. A local mayor complained that “[t]he current juvenile justice code [was] hopelessly outdated.” \textit{id.} at 249. District Court Judge Margaret Sharpe added, “It’s not unusual to see 11-12-13-year-olds committing rape and other serious sexual assaults.” \textit{id.} at 328.
\end{quote}
bolstering statistics that show a drastic increase in juvenile violence as representative of the contemporary standards of decency.\footnote{139}

The court reasoned that "[t]he clearest and most reliable objective evidence of contemporary values is the legislation enacted by the [state] legislature[.].\footnote{140} A dissenting opinion agreed but asserted that the repeal of the mandatory life sentence for first-degree sexual offense was evidence that the life sentence did violate the standards of decency.\footnote{141} The dissent scoffed at the majority's claim that, by lowering the minimum age to thirteen, the legislature justified the life sentence because "[b]y eliminating the mandatory life sentence for all defendants convicted of [first-degree sexual offense], the legislature cannot realistically be deemed to have specifically intended that thirteen-year-old juveniles be suddenly subject to mandatory life terms during the five-month period of 1 May to 1 October 1994."\footnote{142}

Accordingly, the court concluded that "the general consensus of the people through their elected representatives was that violent youthful offenders were a substantial threat to the security and well-being of society, and they must be dealt with in a more severe manner." \textit{Green}, 502 S.E.2d at 830. Accordingly, the court held that the imposition of a life sentence on a thirteen-year-old was "within the bounds of society's current and evolving standards of decency." \textit{Id.} at 831.


\footnote{141. \textit{See Green}, 502 S.E.2d at 834-35 (Frye, J., dissenting) (arguing that life imprisonment of 13-year-old sex offender did not comport with standards of decency in North Carolina as evidenced by repeal of life sentence required by § 14-1.1). The repeal of all mandatory sentences for offenses other than first-degree murder took place during the same session of the General Assembly during which the minimum age was reduced from 14 to 13; and, as such, this repeal demonstrates that society's standards do not subject first-degree sex offenders to mandatory life imprisonment. \textit{See id.} at 835 (Frye, J., dissenting) (arguing that majority misinterprets society's standards of decency). Judge Frye urges that this repeal also be considered "reliable[,] objective evidence of contemporary values." \textit{Id.} (Frye, J., dissenting) (quoting \textit{Perry v. Lynaugh}, 492 U.S. 302, 331 (1989))).}

\footnote{142. \textit{Id.} at 835. Green was a "borderline mentally retarded juvenile." \textit{Id.} Judge Frye applied similar reasoning as did Judge Calogero in his dissent in \textit{State v. Foley}, 456 So.2d 979 (La. 1984). There, Judge Calogero wrote: I am not unmindful of the fact that the statutory penalty for aggravated rape is mandatory, and the trial judge, by statute, is afforded no discre-
The majority noted that a life sentence for a thirteen-year-old was severe but not “cruel and unusual.” The court justified the sentence by stating that the predatory attack was not of the kind normally attributable to a thirteen-year-old and, thus, Green was not a suitable candidate for rehabilitation in the juvenile system.

B. Critical Analysis

1. Due Process: Statute, Not Transfer, Violates Due Process Clause

Green argued that North Carolina’s transfer statute, section 7A-610, violated his due process because section 7A-610 does not list the Kent factors for consideration by the transferring judge. Nowhere in Kent did the Supreme Court mandate that state transfer statutes incorporate the factors in sentencing the defendant. However, that does not absolve this Court (or any appellate court) of its duty to enforce an individual’s constitutional right against excessive punishment on appellate review of his sentence.

Id. at 990 n.6 (Calogero, J., dissenting). Green and Foley were both limited in their mental capacity and came from poor family situations. See id. at 989 (finding that juvenile had limited mental capacity and was poor); Green, 502 S.E.2d at 834-35 (Frye, J., dissenting) (finding that juvenile had limited mental capacity and came from poor, dysfunctional home in which father constantly viewed pornography).

143. See Green, 502 S.E.2d at 834 (citing State v. Fulcher, 243 S.E.2d 338, 352 (N.C. 1978)).

144. See id. at 832 (“While the chronological age of a defendant is a factor . . . , the Court’s review is not limited to this factor.”). Age is not simply chronological; other factors such as the severity of the crime demonstrate that “the number of years a defendant has spent on this planet” are not determinative of one’s age. State v. Oliver, 307 S.E.2d 304, 333 (1983). Green had harassed and preyed on his victim for six weeks. See id. at 822, 832. Green violently attacked his victim in front of her 20-month-old son. See id. at 832. Moreover, Green relented his attack only after the police arrived and, even then, continued the attack until the last moment before fleeing. See id.

The alternative of adjudicating Green as a juvenile was insufficient. See id. (recognizing that had Green been tried as juvenile, he would have been subject to only four years of incarceration and that rehabilitation would be ineffective because Green was not typical juvenile sex offender to whom rehabilitative programs are geared). For a discussion of the general characteristics of juvenile sex offenders and their crimes, see infra notes 211-12 and accompanying text; Earl F. Martin & Marsha Kline Pruett, The Juvenile Sex Offender and the Juvenile Justice System, 35 Am. Crim. L. Rev. 279, 294-303 (1998) (providing profile of juvenile sex offenders and patterns of offenses).

145. See Green, 502 S.E.2d at 826-27 (finding against Green on his contention that § 7A-610 was unconstitutional because it failed to include Kent factors). In fact, § 7A-610 does not adopt the Kent factors. See N.C. GEN. STAT. § 7A-610 (1997) (providing simple balancing test rather than express criteria). Instead, § 7A-610 only requires the juvenile judge to determine whether transfer will serve “the needs of the juvenile or the best interest of the State.” Id.
eight factors.146 Therefore, the Supreme Court of North Carolina was correct in dismissing this contention.147

What the Due Process Clause does require is that a statute provide "sufficiently definite criteria" to govern a court's exercise of discretion.148 Section 7A-610 does not provide even one explicit criterion but instead offers a balancing test between the "needs of the juvenile" and the "best interest of the State."149

To satisfy this requirement of sufficiently definite criteria, many states have heeded the warning in Kent and have specifically included the Kent factors in their transfer statutes.150 In fact, many state statutes offer more guidance than section 7A-610.151 In Kent, the Supreme Court acknowledged that states' statutory schemes dealing with the transfer of juveniles would inevitably vary, but this variance does not excuse North Carolina's duty to provide due process protection for juveniles.152 Section 7A-610's balancing test falls significantly short in supplying standards for transfer decisions.

146. See Kent v. United States, 383 U.S. 541, 565-667 (1966) (stating that holding was directed to specific Judge of Juvenile Court of District of Columbia and enumerating Kent factors for specific Judge to consider on remand).

147. See Green, 502 S.E.2d at 827 ("[T]he Supreme Court [of the United States] nowhere stated in Kent that the above factors were constitutionally required.").

148. Id. at 823 (citing Grayned v. City of Rockford, 408 U.S. 104, 108-09 (1972)). The Supreme Court of the United States has warned against unbridled discretion: "Discretion without a criterion for its exercise is authorization of arbitrariness." Brown v. Allen, 344 U.S. 443, 496 (1953). Vagueness often violates constitutional values. See Grayned, 408 U.S. at 108 (stating that vague laws offend several important values). First, vague laws fail to provide the opportunity for reasonable citizens to discern what is lawful behavior. See id. (requiring statute to be clear so citizens know what activity is prohibited). This is not pertinent to Green because § 7A-610 is not the kind of statute that prohibits conduct. See N.C. GEN. STAT. § 7A-610 (1997) (providing mechanism by which juvenile judges may transfer juveniles to adult court). Moreover, Green did not raise this issue on appeal. See Green, 502 S.E.2d at 824-25 (noting that appeal claims vagueness for insufficient guidance to judges, not insufficient warning to citizens).

Secondly, as stated by the Court in Grayned, vagueness violates important values by failing to provide judges and juries with adequate standards upon which they can base their decisions. See Grayned, 408 U.S. at 108 (requiring statutes to provide sufficient criteria to ensure proper guidance in exercise of discretion).

149. N.C. GEN. STAT. § 7A-610.

150. See Martin & Pruett, supra note 144, at 326 (stating that many jurisdictions model their transfer statutes after Kent factors). See, e.g., FLA. STAT. ANN. § 985.226(3)(c) (West 1998) (adopting all eight Kent Factors).

151. See, e.g., IOWA CODE § 232.45(8) (1997) (providing only three guidelines). The Iowa juvenile code only requires that the juvenile judge consider (1) the nature of the alleged crime and the surrounding circumstances, (2) the juvenile's prior history and (3) the availability of rehabilitative programs. See id.

152. See Breed v. Jones, 421 U.S. 519, 535-36 (1975) (noting importance of transfer process to juvenile system as indicated in Kent and stating that "the statutory provisions differ in numerous details. Whatever their differences, however, such transfer provisions represent an attempt to impart to the juvenile-court system the flexibility needed to deal with youthful offenders ... ").
Section 7A-610 lacks the specificity of most states' transfer statutes, which explicitly enumerate factors to be considered in transferring juveniles to adult court.\textsuperscript{153} The Supreme Court of North Carolina may not compensate for section 7A-610's failure to enumerate specific criteria by looking at other provisions of the juvenile code.\textsuperscript{154} The fact that the juvenile judge considered some of the Kent factors supports a finding that Green's individual due process rights were not violated; it does not, however, mask the fact that section 7A-610 violates the Due Process Clause.\textsuperscript{155}

a. Vagueness vs. Ambiguity: The Green Court Incorrectly Looked to the Statutory Scheme

The Green court did not address the due process challenge of "vagueness" when it looked to other statutes in North Carolina's juvenile code and concluded that they provided sufficient protection of due process.\textsuperscript{156} In what it considered to be its answer to the vagueness challenge, the court incorrectly cited a canon of construction that states: "where the language of a statute is arguably ambiguous, . . . courts must give effect to legislative intent by reference . . . to statutes . . . having a common purpose."

\textsuperscript{153} See, e.g., ALA. CODE § 12-15-54(d) (1998) (listing six factors, all of which must be considered); ARIZ. REV. STAT. § 8-239(D) (listing eight factors that shall be considered); CAL. WELF. & INST. CODE § 707(e)(3) (1998) (adding five criteria in 1994 that must be considered in transferring juvenile on counts of reckless murder); COLO. REV. STAT. § 19-2-518(4)(b) (1998) (listing 14 factors that court shall consider); 10 DEL. CODE ANN. § 1010(c)(1) (listing six factors that court shall consider); D.C. CODE ANN. § 16-2307(E) (1998) (adopting all eight Kent factors that courts shall consider); IDAHO CODE § 20-508(8) (1998) (listing seven factors that court shall consider); 730 ILL. COMP. STAT. § 5/3-10-7 (West 1998) (listing five factors that court shall consider); TEX. REV. CIV. STAT. ANN. art. 2338-1, § 6(h) (West 1998) (listing six factors that court shall consider); VA. CODE ANN. § 16.1-269.1(A)(4) (Michie 1998) (listing 10 factors that court shall consider).

\textsuperscript{154} For a discussion of the strict vagueness test, see infra notes 156-63 and accompanying text.

\textsuperscript{155} For a discussion of the juvenile judge's adherence to the Kent factors, see infra notes 167-79 and accompanying text.

\textsuperscript{156} See State v. Green, 502 S.E.2d 819, 825-26 (N.C. 1998) (discussing statutory guidance provided to juvenile judges). The court in Green held that the juvenile code provided sufficient guidance, by which juvenile judges are to make discretionary transfer decisions, through an "examination of section 7A-610 in light of the entire juvenile and criminal codes." Id. at 825 (emphasis added). Section 7A-516(3) requires disposition of a juvenile case after a consideration of: (1) the facts; (2) the "needs and limitations of the child;" (3) the juvenile's family situation; and (4) the threat to the public. See N.C. GEN. STAT. § 7A-516(3) (1997). Section 7A-646 states that the juvenile court "shall select the least restrictive disposition . . . that is appropriate to the seriousness of the offense, the degree of culpability indicated by the circumstances of the particular case and the age and prior record of the juvenile." N.C. GEN. STAT. § 7A-646 (1998); see Green, 502 S.E.2d at 825 (noting that juvenile judge's discretion was not absolute because code limits it) (citing N.C. GEN. STAT. § 7A-646). The court also considered § 7A-608, that requires notice, a hearing and a finding of probable cause. See N.C. GEN. STAT. § 7A-608 (1998); see also Green, 502 S.E.2d at 825 (stating that § 7A-610 must be read in conjunction with § 7A-608).

\textsuperscript{157} Green, 502 S.E.2d at 825.
The Court’s holding that section 7A-610 does not violate the Due Process Clause rests wholly on its incorrect assumption that “vague” in a due process analysis is synonymous with “ambiguity.”158 Because the Due Process Clause prohibits statutes that are vague, but not statutes that are merely ambiguous, the court’s ambiguous analysis is irrelevant to Green’s due process challenge.159

Under similar circumstances in United States v. Sielaf,160 the District Court for the Northern District of Illinois struck down an Illinois transfer statute as vague “because [the statute] was devoid of any guidelines or standards for decision.”161 The State argued that reading the transfer statute together with another portion of the juvenile statutory scheme provided sufficient guidelines for the judges to follow.162 The court

158. See BLACK’S LAW DICTIONARY 79, 1549 (6th ed. 1990) (defining ambiguous and vague). The Vagueness Doctrine originates under the Fourteenth Amendment’s Due Process Clause and requires “definite standards to guide discretionary actions.” Id. at 1549. Vague is defined as “[i]ndefinite. Uncertain; not susceptible of being understood.” Id. at 1549. Ambiguity is defined as “doubleness of meaning.” Id. at 79. It follows, therefore, that something that is vague cannot be understood at all while something that is ambiguous can be understood in at least two ways. See id. at 79, 1549. See generally E. ALLAN FARNSWORTH, CONTRACTS § 7.8, at 454 (3d ed. 1999) (discussing differences between “vagueness” and “ambiguity”).

Vagueness is defined as not including a “neatly bounded class” while “[a]mbiguity is an entirely distinct concept.” Id. at 454; see Jeremy Waldron, Vagueness in Law and Language: Some Philosophical Issues, 82 CAL. L. REV. 509, 512 (1994) (stating that “ambiguity” is distinct from “vagueness” for purposes of due process analysis). Section 7A-610 would be ambiguous if it offered guidelines that could have two different connotations at the same time. See id. Here, § 7A-610 lacks any guidelines; and, therefore, it violates the Due Process Clause for its vagueness because the criteria that may be used in transferring juveniles are not defined in a “neatly bounded class.” See id. at 513; see also FARNSWORTH, supra, § 7.8, at 454 (defining vagueness).

159. See United States v. Trout, 68 F.3d 1276, 1279-80 (11th Cir. 1995) (addressing vagueness challenge to Due Process Clause and ambiguity argument for use of Rule of Lenity separately). The Court of Appeals in Trout stated that the proper analysis of a statute challenged under the Due Process Clause was for vagueness and not ambiguity. See id. at 1280 (accepting Fifth Circuit’s reasoning that criminal statute was not vague despite its ambiguity); see also Smith v. Goguen, 415 U.S. 566, 579-80 (1974) (refusing to look to other provisions in statute to shed light on vagueness of term “treats contemptuously” and holding that statute was vague despite existence of specificity elsewhere).


161. Id. at 495. For text of the Illinois transfer statute, 37 ILL. REV. STAT. § 702-7(3) (1971), see supra note 41. The Sielaf court stated that the lack of standards “permit[ted] and encourag[ed] an arbitrary and discriminatory enforcement of the law.” Sielaf, 434 F. Supp. at 496 (quoting Papachristou v. City of Jacksonville, 405 U.S. 156, 170 (1972)).

162. See Sielaf, 434 F. Supp. at 496. The State argued that the transfer statute was not vague because the preface, titled “Purpose and Policy,” to the Juvenile Court Act provided sufficient guidelines to judges making transfer decisions under the Act. See id. The preface stated:

The purpose of this Act is to secure for each minor subject hereto such care and guidance, preferably in his own home, as will serve the moral,
reluctantly recognized that a "statement of purpose" may be relevant but, nonetheless, concluded that the transfer statute was vague and, thus, failed to protect the defendant's due process. 163

Thus, even in a vagueness analysis, the court in Green may have been permitted to look to other statutory provisions; but, the provisions cited do not offer much more guidance than the preface in Sielaf offered. 164 As the preface failed to compensate for the vagueness of the statute in Sielaf, the provisions in Green likewise fail to overcome the vagueness of section 7A-610. 165 Section 7A-610 violates the Due Process Clause because "[n]othing prevent[s] the juvenile judge from using any criteria he desire[s] no matter how arbitrary." 166

b. Juvenile Court Judge in Green Protected Green's Due Process by Applying the Kent Factors

Although section 7A-610 fails to protect juveniles' due process, Green's individual right to due process was not violated. The Court in Kent established precepts to which juvenile courts must adhere regardless of what the individual state's transfer statute requires. 167 The Kent factors embody these precepts; thus, all juvenile courts must strictly adhere to them. 168 Accordingly, by adhering to the precepts enumerated in Kent regardless of whether the transfer statute includes them in its language,

emotional, mental, and physical welfare of the minor and the best interests of the community; to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parent only when his welfare or safety or the protection of the public cannot be adequately safeguarded without removal . . . .

37 ILL. REV. STAT. § 701-2(1) (West 1971).

163. See Sielaf, 434 F. Supp. at 496 (recognizing that although statement of purpose might "in some circumstances" provide sufficient guidelines, preface to Illinois Act did not "compensate for the vagueness in the transfer statute").

164. Compare N.C. GEN. STAT. §§ 7A-516(3), -608, -610, -646 (1997) (requiring balance of societal concerns with best interest of juvenile and providing procedural safeguards), with 37 ILL. REV. STAT. § 701-2(1) (setting forth policy of juvenile code to be in best interest of juvenile, his or her family and community).

165. See Grayned v. City of Rockford, 408 U.S. 104, 108-09 (1972) (establishing that law that fails to provide explicit standards for those who apply it is void for vagueness because it "impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application").

166. Sielaf, 434 F. Supp. at 496.

167. See Green v. Reynolds, 57 F.3d 956, 960 (10th Cir. 1995) (noting that juvenile courts "strictly adhere to the constitutional precepts announced in Kent"). The Supreme Court stated that the process by which juveniles are transferred to superior court "must measure up to the essentials of due process and fair treatment." Id. (quoting Kent v. United States, 383 U.S. 541, 560 (1966)). According to the Tenth Circuit, these essentials must be included in an adequate statement of the reasons for the transfer. See id.

168. See Kent, 383 U.S. at 566-68 (setting forth sample criteria for satisfying greater constitutional requirements of juvenile due process).
the juvenile judge who transferred Green honored the precepts announced in *Kent*, thereby protecting Green’s right to due process.169

In *Green*, the juvenile judge considered the “serious nature of the offense,” which clearly satisfies the first *Kent* factor.170 Without explicitly citing the *Kent* factors, the juvenile judge also considered the “community’s need to be aware of [and] protected from” crimes of such serious nature, thereby further satisfying the first *Kent* factor.171 By including in the transfer order the statement that a conviction was likely, the juvenile judge upheld the precepts of the fourth *Kent* factor: “[t]he prosecutive merit of the complaint.”172 Furthermore, by listing Green’s history of assaultive behavior as a reason for the transfer, the juvenile judge clearly weighed the seventh *Kent* factor: “[t]he record and previous history of the juvenile.”173

Although only three of the eight *Kent* factors can be directly attributed to the juvenile judge’s statement of the reasons for Green’s transfer, the juvenile judge offers an additional reason, which arguably encompasses two more. The juvenile judge notes that the “victim [was] essentially a stranger to” Green as one of the reasons for the transfer.174 The third *Kent* factor states that the juvenile judge should favor transfer where the crime has been committed against a person “especially if personal injury resulted.”175 By considering the victim at all, the juvenile judge acknowledged that the offense was against a person and not against property.176

Because the victim was a stranger who Green had stalked, the second *Kent* factor could not have been avoided.177 This factor, which calls for a

169. *See State v. Green*, 502 S.E.2d 819, 827 (N.C. 1998) (noting that upon examining reasons for transfer given by juvenile judge, “substantially all of the *Kent* factors . . . [were] already subjects of consideration by our juvenile court judges in transfer determinations”).

170. *Id.* at 822 (noting that juvenile judge who ordered transfer of Green to superior court considered seriousness of offense); *see Kent*, 383 U.S. at 566 (listing “seriousness of the alleged offense” as first *Kent* factor).

171. *Green*, 502 S.E.2d at 822; *see Kent*, 383 U.S. at 566 (listing protection of community in first *Kent* factor).

172. *Kent*, 383 U.S. at 567. The juvenile judge who transferred Green to superior court noted the strong evidence against Green and Green’s confession to police officers in order to establish probable cause and the likelihood of prosecution. *See Green*, 502 S.E.2d at 822-23.

173. *See Kent*, 383 U.S. at 567 (listing history of violence in seventh *Kent* factor); *Green*, 502 S.E.2d at 822 (noting defendant’s history of violence as reason for transfer).


176. *See Green*, 502 S.E.2d at 822 (acknowledging human victim). The third *Kent* factor calls for juvenile judges to distinguish between cases where the crime is committed against a person or persons and cases where the crime is committed against property. *See Kent*, 383 U.S. at 567 (discussing victims). The *Kent* Court stated that “greater weight” should be given to offenses against a person. *See id.* (noting more serious nature of offenses against person than offenses against property).

177. *See Green*, 502 S.E.2d at 822 (describing nature of attack).
consideration of whether the crime was committed in a "violent, premeditated or willful manner," pervaded both the reasons listed by the transferring judge and the facts of the case. Thus, although the statute is vague, the juvenile judge did not violate Green's individual right to due process during the transfer proceedings because the judge considered at least five of the eight Kent factors.

2. Is Life Sentence of Thirteen-Year-Old Cruel & Unusual?: Evolving Standards of Society Permit Life Sentence of Thirteen-Year-Old

In Trop v. Dulles, the Supreme Court of the United States established the test for determining whether a punishment is cruel and unusual: the punishment must be measured against the "evolving standards of decency that mark the progress of a maturing society." In Green, the dissent argued that the sentence was cruel and unusual because thirty-one states did not permit a life sentence for first-degree sexual offense. This argument, however, is irrelevant; the Supreme Court has expressly stated that a state-imposed punishment is not unconstitutional simply because it is the most severe permitted by all fifty states. Therefore, a state-imposed punishment will not be held unconstitutional for the sole reason that no

178. Kent, 383 U.S. at 566-67; see Green, 502 S.E.2d at 822 (noting that juvenile judge included both violent nature of crime and bad temper in her statement of reasons accompanying Green's transfer).

179. For a list of the Kent factors and discussion of the precepts of juvenile justice system established by the Supreme Court, see supra notes 34-39 and accompanying text.


181. See Green, 502 S.E.2d at 834 (Frye, J., dissenting) (noting that defendant cited 31 jurisdictions in which life sentence for first-degree sexual offense is not permitted). Only two other states, Arizona and Iowa, have mandatory life sentences for first-degree sexual offense. See id. (Frye, J., dissenting). And, in Iowa, a 13-year-old is not subject to transfer. See id. (Frye, J., dissenting). Therefore, given the repeal of the mandatory life sentence in North Carolina, a 13-year-old sex offender will face a mandatory life sentence only in Arizona. See id. at 834-35 (Frye, J., dissenting) (noting that North Carolina legislature modified its sentencing guidelines to remove mandatory life sentence for first-degree sexual offense).

182. See Harmelin v. Michigan, 501 U.S. 957, 994-95 (1991) (stating that severe punishment is not necessarily cruel and unusual); Rummel v. Estelle, 445 U.S. 263, 281 (1980) (same). "Even were we to assume that the statute employed against [the defendant] was the most stringent found in the 50 states, that severity hardly would render [the defendant's] punishment [unconstitutional]." Id. at 281. A state-imposed punishment is not grossly disproportionate merely because only one state imposes such punishment. See Harmelin, 501 U.S. at 1000 (Kennedy, J., concurring) (noting that most severe punishment among all 50 states is not necessarily grossly disproportionate) (citing Rummel, 445 U.S. at 281). The Court continually reinforces this precept on the basis that "some State will always bear the distinction of treating particular offenders more severely than any other State." Harmelin, 501 U.S. at 1000 (Kennedy, J., concurring) (quoting Lochner v. New York, 198 U.S. 45, 76 (1905) (Holmes, J., dissenting)); Rummel, 445 U.S. at 282 (same).
other state imposes a similar punishment because "[o]ur federal system recognizes the independent power of a State to articulate societal norms through criminal law."\footnote{183}

Moreover, Green’s young age does not lend itself to a per se ruling of unconstitutionality.\footnote{184} Once a juvenile of any age is transferred to superior court, charged with a violation of state law and convicted, the juvenile must be "handled in every respect as an adult."\footnote{185} Although juvenile courts should consider age during transfer proceedings, "[y]outh has no obvious bearing" on cruel and unusual punishments outside of the capital context.\footnote{186} In fact, Justice O’Connor has warned that the Supreme Court of the United States should not "substitute [its own] inevitably subjective judgment about the best age at which to draw a line . . . for the judgments of [state] legislatures."\footnote{187} Thus, although age was a factor that the court could have considered in the transfer proceeding, it is not dispositive to the inquiry as to whether Green’s life sentence is cruel and unusual.\footnote{188}

The correct analysis of Green’s life sentence is, however, an examination in light of society’s standards of decency.\footnote{189} In 1968, a life sentence

\footnote{183. Harmelin, 501 U.S. at 999 (Kennedy, J., concurring) (quoting McCleskey v. Zant, 499 U.S. 467, 491 (1991)) (emphasis added). In Harmelin, Justice Kennedy stated that the seriousness of the crime and the need for society to be protected from such crimes eliminated any need for comparison with the sentences imposed by other states. See id. at 1004 (refusing to compare punishments of states). But see id. at 1019-20 (White, J., dissenting) (stating that previous decisions in Coker v. Georgia, 433 U.S. 584 (1977), and Trop v. Dulles, 356 U.S. 86 (1958), did survey other jurisdictions).}

\footnote{184. See Green, 502 S.E.2d at 832.}


\footnote{186. See Harris v. Wright, 93 F.3d 581, 585 (9th Cir. 1996) (refusing to weigh chronological age heavily, if at all). Lack of bright line rules when deciding whether a punishment is cruel and unusual for adults precludes any bright line rules for juveniles. See id. at 584-85 (discussing impracticality of formulating bright line rules); see also Green, 502 S.E.2d at 832 (stating that age may be considered during transfer proceeding but there is no bright line rule). Physical age may be trumped by the severity of the crime and/or sophistication of the criminal. See State v. Johnson, 346 S.E.2d 596, 624 (N.C. 1986) (stating that other factors are to be weighed more heavily than defendant’s age).}

\footnote{187. Thompson v. Oklahoma, 487 U.S. 815, 854 (1988) (O’Connor, J., concurring). Justice O’Connor’s concurrence, however, is considered to be the holding for the Supreme Court of the United States in Thompson. See Marks v. United States, 430 U.S. 188, 193 (1977) (stating that concurring opinion that reflects “position taken by those Members who concurred in the judgment[ ] on the narrowest grounds” is the opinion of the Court).}

\footnote{188. See Thompson, 487 U.S. at 835 (noting that juvenile judge may consider juvenile’s age when deciding transfer); Harris, 93 F.3d at 584-85 (stating that age has no bearing on transfer decision).}

\footnote{189. See Trop v. Dulles, 356 U.S. 86, 101 (1958) (setting forth “evolving standards of decency” as proper test). For a discussion of the standard by which an Eighth Amendment challenge must be measured, see supra notes 60-83 and accompanying text.}
for two fourteen-year-old rapists "shock[ed] the general conscience of society." Yet, in the same decision the court recognized that "the concept [of cruel and unusual punishment] changes with the continual development of society and with sociological views concerning the punishment for crime." Society has undoubtedly changed in the past thirty years.

In Green, the court noted some of these changes as evidenced by the increase in both the number and severity of juvenile offenses in North Carolina. The same trends are occurring nationwide. Based on the staggering statistics and both the local and national reaction to increased juvenile violence, the North Carolina Supreme Court was justified in holding that transferring a thirteen-year-old sex offender and sentencing him to life imprisonment comported with society's standards of decency.

190. Workman v. Commonwealth, 429 S.W.2d 374, 378 (Ky. Ct. App. 1968). The court stated that life sentences without benefit of parole for two 14 year-olds was "under all [ ] circumstances" cruel and unusual and "intolerable to fundamental fairness." Id. The two juveniles had been convicted of forcible rape, which is a violent crime; yet, the court struck down their life sentences. See id. at 375-76.

191. Id. at 377.

192. See State v. Green, 502 S.E.2d 819, 829-30 (N.C. 1998) (acknowledging statistics that reflected increase in juvenile crime). The Supreme Court of North Carolina acknowledged the hearings before the state legislature, which presented concerns of the public and statistics of juvenile violence. See id. at 829-31 (taking judicial notice of legislative hearings). For a discussion of the public's desire for stricter penalties, see supra notes 112-20, 137 and accompanying text.

193. See JEFFREY A. BUTTS ET AL., JUVENILE COURT STATISTICS 1994 (reporting statistics of increased juvenile offenses and increased violent juvenile offenses); Harris, 93 F.3d at 582 (deciding case involving 13 and 15-year-old murderers). From 1985 to 1994, the number of offenses committed by a juvenile against a person increased 93%. See BUTTS ET AL., supra at 5 (noting dramatic increase in offenses against persons, defined as "criminal homicide, forcible rape, robbery, aggravated assault, simple assault, and other person offenses" with "other person offenses" defined as kidnapping, violent sex acts other than forcible rape, reckless endangerment and others). See id. at 58-59 (listing comprehensive list of other offense against persons and including "attempts to commit any such acts").

Furthermore, statistics from 1985 to 1994 indicate that younger and younger juveniles are committing crimes; for example, the number of offenses committed by 13 year-olds jumped 44% in the 10-year period with offenses against a person jumping 20%. See id. at 18, fig.6 & tbl.22 (reporting increase in number of juvenile offenses for 13 year-olds).


194. See Green, 502 S.E.2d at 829-30 ("An examination of defendant's punishment in this case indicates it clearly comports with the 'evolving standards of decency' in society."). The court noted that "[c]hief among the concerns, especially among city and county leaders, was the growing number of younger and younger violent offenders." Id. at 830 (citing Verbatim Transcript, supra note 158, at 245-46, 249).
Included in society's standards of decency is the goal of rehabilitating juveniles. Accordingly, Green's sentence must be examined in light of this goal. In weighing the choice between imprisonment and rehabilitation, some courts have held that the harsh conditions of adult jails subject juveniles to cruel and unusual punishment. Furthermore, proponents of rehabilitation for juveniles find imprisonment cruel and unusual because these harsh conditions often destroy any possibility of rehabilitation. Although rehabilitation is favored for juveniles because of the proven effectiveness of rehabilitative efforts, the rehabilitative ideal may and should be abandoned when the crime is of a sufficiently violent nature such as forcible rape.

195. See Andrew D. Roth, Note, An Examination of Whether Incarcerated Juveniles are Entitled by the Constitution to Rehabilitative Treatment, 84 Mich. L. Rev. 286, 288 (1985) (stating that "confinement absent rehabilitation violates evolving standards of decency").

196. See State v. Dellinger, 468 S.E.2d 218, 220-21 (N.C. 1996) (noting that juvenile transfers must be examined in light of goal of North Carolina's juvenile code). The juvenile code of North Carolina seeks to rehabilitate juveniles and, thus, the courts should follow this purpose when deciding whether to transfer. See id. at 221. Moreover, the Supreme Court of the United States included this rehabilitative ideal as one of the Kent factors. See Kent v. United States, 383 U.S. 541, 566-67 (1966). For a discussion of the Kent factors, see supra notes 29-39 and accompanying text.

197. See, e.g., Santana v. Collazo, 714 F.2d 1172, 1182 (1st Cir. 1983) (holding that conditions that are constitutional in adult prisons may not be constitutional when imposed on juveniles). Although juveniles are generally separated from the general population in adult facilities, separation is not guaranteed. See In re Gault, 387 U.S. 1, 50 (1967) (stating that there is no assurance that juveniles will be kept separate from adult prisoners); see also Rothchild, supra note 46, at 741 (noting that juveniles are not always sequestered from general population in adult prisons).

Juveniles in adult prisons are likely to encounter dangerous conditions such as overcrowding, inferior security and poor health care. See Patricia Puritz et al., Due Process Advocacy Project Report: Seeking Better Representation for Young Offenders, Crim. Just., Winter 1996, at 14-15.

198. See Rothchild, supra note 46, at 741-42 ("During confinement in adult facilities, many juvenile offenders suffer physical, mental and psychological abuse by adult inmates as well as by other juveniles. This abuse damages a juvenile offender's self-esteem. Even short periods of confinement in adult prisons can cause juvenile offenders 'severe and irreparable damage.'") (quoting Kristina H. Chung, Note, Kids Behind Bars: The Legality of Incarcerating Juveniles in Adult Jails, 66 Ind. L.J. 999, 1006-08 (1991)).

199. See Get Control of Child Rapists, TAMPA TRIB., Aug. 16, 1995, at 10 (reporting that approximately 85-95% of juvenile offenders enrolled in treatment programs are rehabilitated through psychological treatment); Sally Kestin, State Gets Wake-up Call on Child Sex Offenders, TAMPA TRIB., Aug. 14, 1995, at 1 (same). Imprisonment of juveniles seriously hinders rehabilitative efforts. See Feld, supra note 28, at 716-17 (warning of potential harms of imprisonment of juveniles); see also Gary v. Hegstrom, 831 F.2d 1430, 1434-36 (9th Cir. 1987) (Ferguson, J., concurring) (stating that confinement of juveniles inhibits rehabilitation). Furthermore, increasing punitive penalties against juveniles does not help break their cycle of sex-
The rehabilitative ideal should also be abandoned in the present case because Green does fit the profile of the juvenile sex offender to which rehabilitative efforts are most often tailored. The heinous nature of Green's offense and the slight probability of successful rehabilitation due to the atypical nature of the crime justifies the decision of the juvenile judge in abandoning the rehabilitative ideal of North Carolina's juvenile sexual abuse. See Briscoe, supra note 12, at 4 (stating that statistics show that "young offenders cannot be deterred from committing crimes simply by toughening the criminal penalties"). Thus, by imprisoning juveniles, courts miss an opportunity to rehabilitate the juvenile because "[u]nlike an adult offender, a juvenile sex offender's 'deviant patterns are less deeply ingrained and are therefore easier to disrupt." Rothchild, supra note 46, at 751 (quoting Fay Honey Knapp, The Youthful Offender: The Rationale & Goals of Early Intervention & Treatment 12 (1985)).

For a discussion of alternatives to imprisonment such as treatment centers and community involvement, see Gordon Bazemore & Susan E. Day, Restoring the Balance: Juvenile and Community Justice, JUVENILE JUST., vol. 3, at 3 (1996). But see Hurst, supra note 193 (stating that rehabilitation is not best disposition of violent juvenile). The Director of the National Center for Juvenile Justice wrote, "[F]orible rape—not homicide—is the classic crime of violence." Id. This is so because homicide may often be committed in the heat of passion while rape is always intentional. See id. Although Green was not convicted of forcible rape, he was convicted of first-degree sexual offense and attempted forcible rape. See Green, 502 S.E.2d at 822.

Attempts to rehabilitate such sex offenders are almost useless. See Hurst, supra note 193 ("Persons who commit assaultive sex offenses have proven almost totally invulnerable to [the State's] best efforts to correct their behavior."). In fact, a sex offender who begins as a juvenile will typically commit 380 sex crimes during his or her lifetime. See Eddie Lucio, Jr., Treating Sex Offenders Saves Victims, AUSTIN AM. STATESMAN, Feb. 21, 1995, at A15 (noting high rate of recidivism). Thus, any successful rehabilitation of Green appears to be unlikely especially because "[f]orible rape by a thirteen-year-old is double trouble. Delinquent behavior of any kind at an early age is predictive of a criminal career. Rape by a thirteen-year-old is not only predictive of a criminal career, it is predictive of a life of violence." Hurst, supra note 193.

200. For a discussion of the juvenile sex offender profile, see Rothchild, supra note 46, at 723-27. A juvenile sex offender is generally male. See id. at 724. The juvenile's victim is typically a seven- or eight-year-old female. See id. at 726. Juvenile offenses generally occur in groups "such as inner-city gangs and sports teams" as misguided attempts to prove their manhood. Id. at 727; see Beth Weinhouse, The Number of Rapes Committed by Youths Has Increased, YOUTH VIOLENCE 37, 37-38 (David L. Bender et al. eds., 1992) (stating that many juvenile sex offenses take place "when there's one guy who wants to prove he's a man and five guys who are terrified of being thought of as less than one"). The "portrait" of the juvenile sex offender is embodied by the example of "[f]our boys, ages eleven to fourteen, [who] accosted a thirteen-year-old girl on her way home from school, 'locked her into an outdoor shower stall and sexually assaulted her.'" Rothchild, supra note 46, at 719 (quoting Geeta Anand, Teens Perpetrate Many Sex Attacks, Figures Show, ORANGE COUNTY REG., Mar. 18, 1995, at A19).

Green did not attack a younger, weaker female. See Green, 502 S.E.2d at 822 (stating that victim was 23-year-old stranger). Green did not attack his victim during a gang or team rite of passage. See id. at 822-23 (noting solitary and predatory nature of crime).
system.\textsuperscript{201} In fact, when balancing the “prospects for adequate protection of the public and the likelihood of reasonable rehabilitation,” the absence of any weight supporting rehabilitation tips considerably in favor of life imprisonment for Green.\textsuperscript{202}

V. IMPACT

The North Carolina legislature is charged with the double duty of enacting legislation that: (1) satisfies the needs of the public and (2) preserves the constitutional minimum safeguards.\textsuperscript{203} Section 7A-610 meets the public’s need to be protected from crime by enabling the juvenile courts to transfer violent juveniles; the statute, however, fails to meet the second prong.\textsuperscript{204} North Carolina’s transfer statute does not provide satisfactory guidelines to prevent patently arbitrary decisions.\textsuperscript{205} Accordingly, section 7A-610 violates the Due Process Clause and should be found void for vagueness.\textsuperscript{206}

Effective July 1, 1999, the North Carolina Legislature repealed the applicable transfer statute; whether the new laws better serve the precepts of juvenile justice and/or the due process rights of juveniles, however, remains to be seen.\textsuperscript{207} The North Carolina legislature should adopt the Kent factors or, at the very least, the legislature should adopt transfer guidelines

\begin{itemize}
\item \textsuperscript{201} See Green, 502 S.E.2d at 832-33. The North Carolina Supreme Court stated:
\begin{quote}
An examination of the crime committed by [Green] reveals it is not the type attributable to or characteristic of a “child,” nor is it one for which the special considerations due children under the criminal justice system are appropriate. . . . The cruelty of the attack, its predatory nature toward an essential stranger, [Green’s] refusal to accept full responsibility, his difficulty controlling his temper, his previous record and his unsupportive family situation all suggest defendant is not particularly suited to the purpose and type of rehabilitation dominant in the juvenile system.
\end{quote}
\textit{Id.} at 832 (emphasis added).

\item \textsuperscript{202} Kent v. United States, 383 U.S. 541, 567 (1966). If the rehabilitative ideal is abandoned because the nature of Green’s crime indicates that rehabilitation is likely to fail, the only thing left on the scale is the public’s need to be free from violent, heinous crimes. See Hurst, supra note 193 (establishing that rehabilitative ideal may be discarded).

\item \textsuperscript{203} See N.C. Const. art. II, § 12 (stating that legislators take oath to uphold United States Constitution as well as North Carolina Constitution); N.C. Const. art. I, §§ 2-3 (vesting authority of state in people).

\item \textsuperscript{204} For a discussion of the public’s request for stricter juvenile laws and its need to be protected from violent crimes, see supra notes 138-40 and accompanying text.

\item \textsuperscript{205} For a discussion of § 7A-610’s lack of definite criteria, failure to include Kent factors and sole requirement of a balancing test, see supra notes 145-66 and accompanying text.


\item \textsuperscript{207} See N.C. Gen. Stat. § 7A-646 (repealed effective July 1, 1999).
\end{itemize}
modeled after them. Then, to preserve procedural due process, Green need only be returned to the jurisdiction of the juvenile court from where he could be transferred to the superior court again pursuant to a valid transfer statute. If the due process violation was corrected in this manner, the sentence of life imprisonment may stand as a punishment which, although severe, does not violate the Eighth Amendment of the U.S. Constitution or section 27, article 1 of the North Carolina Constitution.

State v. Green may be viewed either as a historical anomaly in which a thirteen-year-old fell into a five-month window that resulted in life imprisonment or as a wake-up call reminding America of the juvenile justice system’s need for guidance in both process and punishment. Data show that incident rates of juvenile crime and juvenile violence will only continue to increase as society evolves; simultaneously, the ages at which juveniles commit these offenses continue to decrease. In their role as the public’s elected representatives, state legislators will be required to balance the juvenile codes’ rehabilitative ideal with the evolving standards of decency.

208. For a discussion of the Kent factors and their adoption by other states, see supra notes 29-39 and accompanying text.

209. See Sielaf, 434 F. Supp. at 496 (holding that although juvenile was transferred pursuant to unconstitutionally vague statute, unconditional release was not required); see also State v. Green, 502 S.E.2d 819, 826 (N.C. 1998) (failing to note that finding of vagueness would not result in unconditional release). The court in Sielaf held that the Illinois transfer statute was unconstitutionally vague and released the juvenile only to be transferred pursuant to the amended transfer statute, which preserved juvenile’s due process. See Sielaf, 434 F. Supp. at 496 (striking down transfer statute and releasing defendant only to be transferred again).

210. For a discussion of the distinction between the severity of a punishment and the unconstitutionality of a punishment on the grounds that it is cruel and unusual, see supra notes 136-44 and accompanying text. For a discussion of the evolving standards of decency that surrounded the North Carolina legislature’s decision to lower the minimum age of transfer—a decision that facilitated the prosecution and ultimate sentencing of Green, see supra notes 138-40 and accompanying text.

211. For a discussion of the amendments made to the North Carolina Juvenile Code that resulted in a five-month window during which a 13-year-old sex offender could be transferred to superior court, tried and convicted as an adult and sentenced to mandatory life imprisonment, see supra notes 114-20 and accompanying text; see also Green, 502 S.E.2d at 835 (Frye, J., dissenting) (asserting that North Carolina legislature was not aware of potential life imprisonment of 13-year-old for first-degree sex offense when amendments to § 7A-608 and sentencing guidelines were made during same session but put into effect five months apart).

212. See Briscoe, supra note 12, at 3 ("Most experts agree that the number of juveniles arrested for murder, rape, robbery, and aggravated assault will more than double by 2010."); see also Buttis et al., supra note 193, at 5-7 (discussing trend throughout history of increasing incidence rate of juvenile crime).

213. See Briscoe, supra note 12, at 4 (suggesting that solutions to increasing rates of juvenile violence must focus on prevention and swift punishment and recognizing that “legitimate public concerns justify imprisoning dangerous, repeat offenders”). For a discussion of precepts of juvenile justice system, see supra notes 24-39, 46-50 and accompanying text.
Less than ten years ago, the Supreme Court acknowledged the dilemma facing state legislatures and established a minimum age for capital punishment.\textsuperscript{214} The time has come for the Supreme Court to take notice of the alarming statistics regarding juvenile offenses and establish a minimum age for life imprisonment.\textsuperscript{215} Until the Court so speaks, however, state courts will struggle to adhere to the principles of the juvenile system while more and more cries of outrage over juvenile violence and sentencing inundate the floors of state legislatures.

Paul G. Morrissey

\textsuperscript{214} For a discussion of the constitutional minimum age for infliction of capital punishment, see \textit{supra} notes 180-94 and accompanying text.

\textsuperscript{215} \textit{See Ninth Circuit Upholds, supra note 89, at 1190 (expressing concern over lack of guidance from Supreme Court regarding noncapital sentencing of juveniles). Due to the indeterminate nature of the Supreme Court stance on the age that renders a sentence of life imprisonment cruel and unusual, the Court "must seize the opportunity to provide better guidance to lower courts . . . and legislators in deciding th[is] difficult question[ ] that tug[s] at the fabric of society's conscience and go[es] to the heart of the meaning of the Eighth Amendment." \textit{Id.}