

## From 6 to 10: New Minimum Age for Juvenile Delinquency and Undisciplined Jurisdiction

[Session Law 2021-123](#) includes several significant changes to the law that governs juvenile delinquency cases. This post will describe one of those changes—an increase in the minimum age for delinquency and undisciplined cases. As I write this post, that age is set at **6 years old**. [G.S. 7B-1501\(7\)a., -1501\(27\)a.](#) Beginning with offenses committed on or after December 1, 2021, the minimum age for most acts of delinquency and for all undisciplined behaviors will be **10 years old**. S.L. 2021-123 § 5.(b). This change comes with limited exceptions that provide for delinquency jurisdiction for some offenses committed at ages 8 and 9, a new procedure for juvenile justice to work with children between the ages of 6 and 10 through a juvenile consultation process, and new law related to the role of parents in juvenile consultation matters. This post walks through each of these components.

### Age of Jurisdiction

Undisciplined Juveniles: When S.L. 2021-123 takes effect on December 1, 2021, **the new minimum age of undisciplined jurisdiction will be 10**. S.L. 2021-123 § 5.(b). There are no exceptions to this minimum age, and there are no other changes to the law that governs undisciplined cases.

Delinquent Juveniles: The changes related to the minimum age for delinquency jurisdiction are more complex. **In general, the minimum age for delinquency jurisdiction will be set at 10**. However, there are two limited circumstances in which children will continue to be subject to delinquency jurisdiction for offenses committed at age 8 or 9. S.L. 2021-123 § 5.(b). Those exceptions are

1. when the child is charged with a Class A – Class G felony, or
2. when the child has been previously adjudicated delinquent and is charged with commission of a subsequent crime or infraction.

Children who are ages 6 and 7 will never be subject to delinquency jurisdiction once the new law takes effect.

### New Legal Category for Young Children—the Vulnerable Juvenile

While children under the age of 8 will no longer be subject to delinquency jurisdiction and children who are ages 8 and 9 will only rarely be subject to delinquency jurisdiction, S.L. 2021-123 creates a new category for these young children (and their parents, guardians, and custodians) to access services from the juvenile court counselor. Rather than following the procedures for a delinquent or undisciplined juvenile, a new legal category, called “vulnerable juvenile,” has been created.

The newly enacted G.S. 7B-1501(27b) defines a vulnerable juvenile as “[a]ny juvenile who, while less than 10 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws, and is not a delinquent juvenile.”

### **Procedure for Vulnerable Juveniles**

Under the new law, when a complaint is received regarding a child under the age of 10, the juvenile court counselor will determine if the child meets the definition of a vulnerable juvenile. S.L. 2021-123 § 5.(c). If the child does meet that definition, then the juvenile court counselor must serve the child under a “juvenile consultation.” S.L. 2021-123 § 5.(c).

Juvenile consultation services will be defined by a new G.S. 7B-1706.1. Pursuant to this new law, consultation will consist of case management services, which includes screenings, assessments, community resources, and programming for the juvenile and their parent, legal guardian, or custodian. Consultation can last for up to six months, with the possibility of an additional three-month extension if approved by the chief court counselor.

Although the juvenile court counselor works with the juvenile, there is **no jurisdiction for the court** to become involved in juvenile consultation services for vulnerable juveniles. The law requires that the juvenile court counselor provides services to the vulnerable juvenile and their parent, legal guardian, or custodian outside of any court proceeding.

### **The Role of Parents, Guardians, and Custodians of Vulnerable Juveniles in Receipt of Juvenile Consultation Services**

S.L. 2021-123 adds a new Article 27A to the Juvenile Code, titled “Authority Over Parents, Guardians, or Custodians of Vulnerable Juveniles Who Are Receiving Juvenile Consultation Services.” The new Article requires the following of these parents, guardians or custodians:

- if given sufficient notice, attend all scheduled meetings with the juvenile court counselor. (G.S. 7B-2710); and
- if directed by the juvenile court counselor, attend parental responsibility classes that are available in the district where the parent, guardian, or custodian resides. (G.S. 7B-2711).

In addition, the juvenile court counselor is required to engage parents, guardians and custodians in the following ways:

- work to obtain any medical, surgical, psychiatric, psychological, or other evaluation or treatment as needed for the juvenile. This includes finding a means for paying for such services, including helping the parent, guardian, or custodian apply for Health Choice and/or Medicaid. (G.S. 7B-2712(a));

- with written recommendations of a qualified physician, surgeon, or mental health provider, advise the parent, guardian, or custodian to be directly involved in the juvenile's evaluation or treatment and participate in medical, psychological, or other evaluation or treatment of the juvenile that is in the juvenile's best interests. (G.S. 7B-2712(b)); and
- work collaboratively with the Juvenile and Family Team. The Juvenile and Family Team is to include the parent, guardian, or custodian; the Department of Social Services (DSS); the local management entity or managed care organization; the local education authority; and all other community stakeholders involved with the juvenile and family. The Juvenile and Family Team and all local community agencies involved with the juvenile and their family must be invited to all meetings scheduled with the juvenile and their parent, guardian, or custodian. (G.S. 7B-2713(b)).

The new Article also provides ways that juvenile court counselors may opt to work with parents, guardians, and custodians. This includes

- with written orders or recommendations from a qualified mental or physical health provider that are directed toward remedying behaviors or conditions that led to or contributed to the juvenile consultation, recommend that the parent, guardian or custodian undergo psychiatric, psychological, or other evaluation or treatment or counseling. (G.S. 7B-2712(c));
- with written orders or recommendations from a qualified mental or physical health provider, recommend that the parent, guardian, or custodian seek funding through the Division of Juvenile Justice and/or the local management entity and managed care organization to pay the cost of any evaluation or treatment recommended for the parent, guardian, or custodian. (G.S. 7B-2712(d)); and
- to the extent they are able to do so, transport the parent, guardian, or custodian and the juvenile to keep an appointment or to comply with the recommendations of the juvenile court counselor. (G.S. 7B-2713(a)).

### *Consequences for Parental Noncompliance*

The new law requires the juvenile court counselor to make a report to the DSS if a parent, guardian, or custodian refuses to follow the recommendations of the Juvenile and Family Team and the refusal puts the juvenile at risk of abuse, neglect, or dependency. G.S. 7B-2713(c). The DSS may file an abuse, neglect, or dependency petition pursuant to the usual process DSS follows under [G.S. 7B-403](#). S.L. 2021-123 also makes a change to the definition of neglected juvenile contained in [G.S. 7B-101](#). Any juvenile less than 18 years of age whose parent, guardian, or custodian has refused to follow the recommendations of the Juvenile and Family Team will be defined as a neglected juvenile once the new law takes effect.

### **Confidentiality of Juvenile Consultation Records**

The records generated by juvenile court counselors in juvenile consultation matters will be protected by the same confidentiality provisions that apply to the delinquency-related records maintained by juvenile court counselors. S.L. 2021-123 §5.(b). This means that the records will not be subject to public inspection and can only be accessed by the individuals listed in [G.S. 7B-3001\(c\)](#) or by order of the court.

Juvenile consultation services records will also be added to the records that can be shared among local agencies pursuant to the provisions of [G.S. 7B-3100](#). The records will be authorized for sharing under this statute until the juvenile consultation is closed. The existing confidentiality provisions of G.S. 7B-3100 will apply to any juvenile consultation services records that are shared pursuant to the statute. The records will therefore remain confidential and can only be used by the agencies authorized to share information for the protection of the juvenile and others or to improve the educational opportunities of the juvenile.

### More to Come

These changes to the minimum age of undisciplined and juvenile delinquency jurisdiction are just one part of S.L. 2021-123. There are also changes that relate to raise the age and the statute that has been the hot topic in recent delinquency decisions from the Court of Appeals—mental health evaluations prior to disposition. See *In re E.M.*, 263 N.C.App. 476 (2019). All of these changes will take effect on December 1, 2021. If you are eager to know more about them today, you can access this [2021 summary of delinquency legislation](#). Stay tuned for blogs later in October and in November that discuss the other changes.