

## Raise the Age Legislative Changes

[Parts I – IV of Session Law 2021-123](#) make changes to the statutory structure that raised the age of juvenile jurisdiction to include most offenses committed at ages 16 and 17. The most significant changes relate to new prosecutorial discretion to decline to transfer cases in which the most serious charge is a Class D – Class G felony and the ability to extend the length of jurisdiction when a juvenile is committed to a Youth Development Center (YDC) for a Class A – Class E felony committed at age 16 or 17. The raise the age changes in S.L. 2021-123 are detailed below.

### Part I – Extended Commitments for Certain Offenses

While the court is allowed to terminate jurisdiction sooner, the Juvenile Code requires the automatic termination of juvenile jurisdiction when juveniles reach a certain age. Generally, jurisdiction terminates for a juvenile adjudicated delinquent for an offense committed under the age of 16 when that juvenile turns 18. [G.S. 7B-1601\(b\)](#). However, the Juvenile Code has long contained provisions to extend YDC commitments based on adjudications for Class A – Class E felonies committed under the age of 16. If the juvenile is committed to the YDC based on adjudication for first-degree murder, first-degree forcible rape, first-degree statutory rape, first-degree forcible sexual offense, or first-degree statutory sexual offense, jurisdiction extends to age 21. If the juvenile is committed to the YDC for any other Class B1 – Class E felony, jurisdiction extends an extra year, to age 19. [G.S. 7B-1602](#).

The length of jurisdiction provisions that apply to adjudications for offenses committed at ages 16 and 17 do not currently provide any possibility for extended commitments. Instead, there is a hard rule that jurisdiction over adjudications for offenses committed at age 16 ends when the juvenile turns 19 and jurisdiction over adjudications for offenses committed at age 17 ends with the juvenile turns 20. [G.S. 7B-1601\(b1\)](#).

New Extended Jurisdiction Law: S.L. 2021-123 adds extended jurisdiction in cases that involve YDC commitments based on Class A – Class E felonies committed at ages 16 and 17. Under the new law, **jurisdiction will extend to age 21 for any juvenile committed to the YDC based on an adjudication for first-degree murder, first-degree forcible rape, first-degree statutory rape, first-degree forcible sexual offense, or first-degree statutory sexual offense.** Age at offense is not relevant. G.S. 7B-1601. In addition, juveniles who are committed to the YDC based on an adjudication for **any other Class B1 – Class E felony committed at age 16 or 17 will be subject to an additional year of juvenile jurisdiction.** This means that juveniles who committed their **offense at age 16 will be subject to juvenile jurisdiction to age 20** and juveniles who committed their **offense at age 17 will be subject to juvenile jurisdiction to age 21.** G.S. 7B-1602(c), (d). The chart below provides a summary of the extended jurisdiction law with the S.L. 2021-123 changes incorporated.

Age at offense	Offense type	Extended jurisdiction to age
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Any	first degree murder, first-degree forcible rape, first-degree statutory rape, first-degree forcible sexual offense, or first-degree statutory sexual offense	21
Under 16	Other B1 - E	19
16	Other B1 - E	20
17	Other B1 - E	21

S.L. 2021-123 includes conforming changes to [G.S. 7B-2514\(c\)](#) and [G.S. 7B-2516\(c\)](#) to ensure that the statutes governing the use and revocation of post release supervision reflect these new timeframes for juvenile jurisdiction. [G.S. 7B-2600](#) is also amended to ensure that the court retains express statutory authority to modify or vacate any orders of disposition as long as the court retains jurisdiction.

## **Part II – Use of Juvenile Detention Following Conviction in Transferred Case**

The Juvenile Code currently prohibits the use of juvenile detention when a case is transferred to superior court, the youth is convicted and sentenced to an active sentence, and the youth is waiting for transfer to the adult corrections system. [G.S. 7B-2204\(d\)](#). S.L. 2012-123 amends this statute to **allow for the use of juvenile detention facilities while awaiting transfer to the adult corrections system** under these circumstances.

## **Part III – Superior Court Authorized to Enter Secure Custody Orders on Remand**

Under current law, a case that is transferred to superior court for trial as an adult, and in which the offense is alleged to have occurred at age 16 or 17, must be remanded back to district court for processing as a juvenile matter when a joint motion for remand is submitted by the prosecutor and the juvenile’s attorney. [G.S. 7B-2200.5\(d\)](#).

This movement from juvenile jurisdiction to criminal jurisdiction and back again creates complications if the juvenile is being detained pending the outcome of the case. As the case begins under juvenile jurisdiction, the juvenile can only be detained pursuant to a secure custody order issued under the Juvenile Code. [G.S. 7B-1903](#). Once the case is transferred, that secure custody order ceases to apply because the case is not governed by the Juvenile Code. Instead, as a defendant in a criminal matter, the youth is entitled to have conditions of pretrial release determined pursuant to the criminal law. [G.S. 7B-2204\(a\)](#). When the case is remanded back to district court, any confinement is once again governed by the Juvenile Code. The conditions of pretrial release no longer apply and any confinement must be ordered pursuant to a secure

custody order.

New superior court authority: S.L. 2021-123 provides new, **express statutory authority for the superior court to issue a secure custody order pursuant to the requirements of the Juvenile Code** when ordering remand on a case. Language is added to both [G.S. 7A-271](#) and [G.S. 7B-1902](#) to allow the superior court judge to issue a secure custody order pursuant to G.S. 7B-1903 when remanding a case.

Ongoing secure custody hearings: S.L. 2021-123 also adds a new subdivision (b2) to G.S. 7B-1906 to require ongoing secure custody hearings after the superior court issues a secure custody order under these circumstances. Pursuant to this new language, the district court must hold a hearing on the need for continued secure custody within **10 calendar days** of the day that the superior court issues the secure custody order. This initial hearing cannot be waived or continued. Once the initial hearing is held, ongoing hearings on the need for secure custody must be held according to the usual schedule for ongoing secure custody hearings in these matters—every 30 days unless the juvenile requests, and the court finds good cause, to hold them every 10 days. [G.S. 7B-1906\(b1\)](#). These ongoing hearings can be waived with the consent of the juvenile. The new subdivision (b2) also provides that the district court has authority to modify any secure custody order issued by the superior court.

Prosecutor required to provide communication to juvenile justice: The movement of a case from juvenile jurisdiction to criminal jurisdiction and then back to juvenile jurisdiction also presents challenges for the flow of information to juvenile justice. S.L. 2021-123 contains amendments to [G.S. 7B-2200.5\(d\)](#) to address these challenges. The new language requires the prosecutor to provide the chief court counselor, or their designee, with a copy of the joint motion for remand before it is filed in court. The prosecutor is also required to provide a copy of any secure custody order issued by the superior court to juvenile justice as soon as possible and at least within 24 hours of the issuance of the order.

#### **Part IV – Prosecutorial Discretion Not to Transfer Certain Felonies**

Perhaps the most significant change to raise the age contained in S.L. 2012-123 is the addition of prosecutorial discretion regarding transfer of cases in which the most serious offense is a Class D – Class G felony committed at age 16 or 17. This group of cases is currently subject to mandatory transfer. [G.S. 7B-2200.5\(a\)](#). The only way to proceed with these cases as juvenile matters is to follow the administratively complex process for remand discussed above. According to the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice at the North Carolina Department of Public Safety, in fiscal year 2020-2021, 35 cases were remanded back to juvenile court and Class D felonies were the most common offense class (13 of the 35 cases). Each of these remands required the time and resources of both district and superior courts to simply place a case back where it began.

S.L. 2021-123 eliminates the administrative complexity of returning these cases to juvenile jurisdiction by allowing the prosecutor to decline to use the automatic transfer provisions in the first instance. A new subdivision (a1) is added to G.S. 7B-2200.5 to allow the **prosecutor to decline to prosecute in superior court a case in which the most serious charge is a Class D – Class G felony that is otherwise subject to mandatory transfer**. If the prosecutor makes this choice, the case proceeds to a probable cause hearing and then to adjudication as a juvenile matter. The new language also allows the prosecutor to change their mind and invoke the mandatory transfer provision any time prior to adjudication.

### Effective Date

All of the changes discussed in this blog apply to **offenses committed on or after December 1, 2021**.

### One More Substantial Change Ahead

As I mentioned in my first blog about S.L. 2021-123, describing the changes to the [minimum age of juvenile jurisdiction](#), this legislation also included major changes to the statutory requirements regarding the court's obligation to order mental health evaluations prior to disposition. Stay tuned for a November blog that explains those changes in detail.