

# Delinquency and Raise the Age Issues

2020 Appellate Training: New and Emerging Legal Issues



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## Topics

1. RTA Structural Issues
2. RTA Gaps in the law
3. Mental Health Evaluation Issues

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### Raise the Age Structural Issues

- Big bucket of mandatory transfer for offenses committed at ages 16 and 17
- Is this constitutional?




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### Raise the Age Structural Issues

Many state statutes that provide for automatic transfer have been upheld as constitutional

- Rational basis for the carve outs
- Not 8<sup>th</sup> amendment cruel and unusual punishment issue
- Youth do not have a liberty interest in being in juvenile proceedings
- Recent Supreme Court decisions are about criminal sentencing of minors, not about transfer itself




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### Raise the Age Structural Issues

Indictments to trigger automatic transfer

G.S. 7B-2200.5(a)(1):  
**Notice** to the juvenile and a finding by the court that a bill of indictment has been returned against the juvenile charging the commission of an offense that constitutes a Class A, B1, B2, C, D, E, F, or G felony if committed by an adult. (triggers automatic transfer)




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### Raise the Age Structural Issues

Indictments to trigger automatic transfer

- What can be indicted when?
- Charging instrument in juvenile court is petition
- Can all related charges be indicted at once –even those less than A – G felonies?




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## Raise the Age Structural Issues

Indictments to trigger automatic transfer

- Is a hearing necessary?
- Indictments are returned to the superior court and there is no superior court case as of yet
- Confidentiality/sealing of indictments




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## Raise the Age Gaps

Appeals of mandatory transfer orders (especially following a finding of PC)

- What basis is there for appellate review? The finding of PC is NOT immediately appealable (*In re K.R.B.*, 134 N.C.App. 328 (1999))

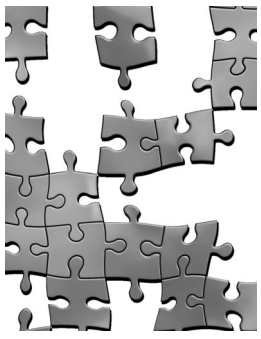


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## Raise the Age Gaps

Juveniles under Jurisdiction at ages 18 and 19

- Role of parents?
- Foster care issues (emancipated from care at age 18 and no legal parent; DSS placements that began under 18 and juvenile turns 18)
- G.S. 7B-2001: appointment of guardian
  - The authority of the guardian shall continue until... the juvenile reaches the age of majority.

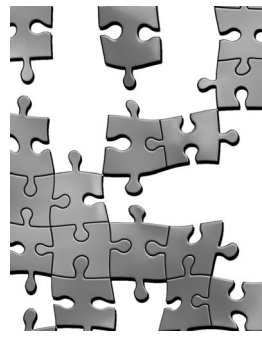


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## Raise the Age Gaps

Representation of youth immediately following transfer

- Critical stage of proceeding – statutory right to appeal and issues of pretrial release conditions/posting bond from a juvenile detention setting
- <https://nccriminalaw.sog.unc.edu/appointment-of-attorneys-in-juvenile-transfer-cases/>



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## Mental Health Evaluation Issues

G.S. 7B-2502(c): required referral for interdisciplinary evaluation and mobilization of resources by the LME prior to entering disposition on evidence or court belief of mental illness or developmental disability

- Line of COA opinions makes this requirement clear (*In re E.M.* 823 S.E.2d 674 (2019), *In re E.A.* 267 N.C.App. 396 (2019); *In re A.L.B.* 849 S.E.2d 352 (2020))

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## Mental Health Evaluation Issues

Lingering questions:

- Is a CCA an interdisciplinary evaluation?
- How recent must the evaluation be?
- How should/must the court use the information from the LME in determining disposition?
- The LME and juveniles with private insurance – who pays?

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