

## **2021 Delinquency Legislation**

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*S. 207 An Act To Implement The Juvenile Justice Reinvestment Act Based On Legislative Recommendations Of The Juvenile Jurisdiction Advisory Committee, To Make Related Changes To The Juvenile Code, And To Provide For An Appropriate Mental Health Assessment To Be Provided For Juveniles Who Have Been Adjudicated Delinquent.*

### **Extended Commitments**

- Allows for extended commitments to the YDC for offenses committed at ages 16 and 17, per the chart below.

Age at offense	Offense type	Commitment to age
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

- Makes conforming changes for release to Post Release Supervision 90 days prior to aging out of custody for offenses at 16 and 17.
- Conforms court’s authority to modify or vacate orders to maximum terms of dispositions for offenses at 16 and 17, including new extended commitments.

### **Confinement after felony conviction following transfer**

- Allows for confinement in juvenile detention pending transfer to the prison system following conviction in superior court and receipt of an active sentence.

### **Reverse waiver and transfer**

- Gives superior court authority to issue a secure custody order when remanding a case to district court. The district court must have a secure custody hearing within 10 days and then ongoing secure custody hearings must be held pursuant to the usual schedule in G.S. 7B-1906(b1).
- Allows prosecutor to decline to transfer a mandatory transfer case for an offense at 16/17 where the most serious offense charged is a Class D – Class G felony. The prosecutor can change their mind any time prior to adjudication.

## Minimum Age

- Raises minimum age of delinquency to 8 for all offenses; establishes limited delinquency jurisdiction for offenses committed at ages 8 and 9 for only for Class A – G felonies and for any child who has a previous adjudication of delinquency and is charged with a new crime; raises minimum age for undisciplined jurisdiction to 10.
- Creates child consultation services for “vulnerable juveniles,” children ages 6 – 9 who commit a crime or infraction and are not delinquent. Consultations can last up to 6 months with a possible 3-month extension and consist of case management – screening, assessment, community resources, and programming—to child and parent. The juvenile court counselor must work collaboratively with a Juvenile and Family Team, to include the parent, guardian, or custodian of the juvenile, the Department of Social Services, the local management entity or managed care organization, the local education authority, and all other community stakeholders involved with the juvenile and family.
- 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.
  - if directed by the juvenile court counselor, attend parental responsibility classes that are available in the district where the parent, guardian, or custodian resides.

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 to apply for Health Choice and/or Medicaid.
- 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.
- 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.

The 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.
- 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.
- 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.
- The juvenile court counselor must 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. The DSS may file an abuse, neglect, or dependency petition pursuant to the usual process DSS follows under G.S. 7B-403.
- The definition of neglected juvenile contained in G.S. 7B-101 is amended to include 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.

***E.M. fix (G.S.7B-2502(c) – mental health evaluations prior to disposition)***

- After adjudication, in a case with suspected mental illness, developmental disability, or intellectual disability, the court shall order JJ to make a referral for a CCA or equivalent mental health assessment, unless one was conducted within the last 45 days before the adjudication hearing
- If an assessment is ordered and, after reviewing the results, the court finds that there is sufficient evidence that the juvenile has severe emotional disturbance, developmental disability, or intellectual disability that substantially contributed to the delinquent behavior, and juvenile is eligible for a Level 3 disposition and/or recommended for a PRTF, the court shall order a care review team to be convened by JJ.
- The care review team must submit a recommendation to the court within 30 days of the order convening the team
- The court must review the care team’s recommendation when determining disposition pursuant to G.S. 7B-2501(c).
- Effective 12/1/2021 and applies to petitions filed after that date
- The effective date for the rest of the bill is 12/1/2021 and the changes apply to offenses committed on or after that date.

S.L. 2021 - 47. S.255 An Act To Make Various Changes And Technical Corrections To The Laws Governing The Administration Of Justice.

- Section 9.(a) adds a new G.S. 7A-49.6. **Proceedings conducted by audio and video transmission.**
- Judicial officials are authorized to conduct proceedings of all type using audio and video transmission in which the parties, the presiding official, and any other participants can see and hear each other, except as otherwise provided in this new section of law.
- When conducting proceedings by audio and video transmission, judicial officials must safeguard the constitutional rights of the people involved in the proceeding and preserve the integrity of the judicial process.
- Each party must be able to communicate fully and confidentially with their attorney.
- A party may object to conducting a civil proceeding by audio and video transmission. If the presiding official finds that the party has demonstrated good cause for the objection, the proceeding must not be held by audio and video transmission. If there is no objection or if good cause is not shown, the proceeding may be conducted by audio and video transmission.
- Except as otherwise provided by law, when the right to confront witnesses or be present is implicated in delinquency proceedings, the court can only proceed by audio and video transmission on a knowing, intelligent, and voluntary waiver of the juvenile respondent's rights.
- Proceedings conducted by audio and video transmission must be held in a manner that complies with federal and state laws governing confidentiality and security of confidential information.
- If the proceeding is open to the public, the presiding official must facilitate access to the proceeding by the public and the media as nearly as practicable to the access that would be available were the proceeding conducted in person.
- If the proceeding is required by law to be recorded, then the audio and video transmission must be recorded in accordance with the law.
- This new statute is not intended to limit the court's authority to receive remote testimony pursuant to statutes that otherwise permit it.
- All proceedings under this section must be conducted using videoconferencing applications approved by the Administrative Office of the Courts.
- Effective June 18, 2021 and applicable to proceedings on or after that date.