



## Juvenile Minimum Age and Other Raise the Age Changes S.L. 2021-123 (S207)

### I. Introduction

During the 2021 legislative session, the General Assembly enacted S.L. 2021-123 (S207), which amends portions of the NC Juvenile Code and related statutes that address five primary issues: (1) Extended Commitment for 16- and 17-year-olds, (2) Secure Custody and Transfer Housing, (3) Prosecutorial Discretion in Transfer Decisions, (4) Minimum Age of Juvenile Jurisdiction, and (5) Juvenile Court Mental Health Assessments. This memo provides an overview of these changes, which primarily result from Juvenile Jurisdiction Advisory Committee (JJAC) recommendations.

Except for the changes affecting mental health assessments, this legislation is effective 1 December 2021, and applies to “*offenses committed*” on or after that date.

The changes to juvenile court mental health assessments are effective 1 December 2021, and apply to “*petitions filed*” on or after that date.

### II. Extended Commitment for 16- and 17-year-olds and Conforming Changes

S207 enacts several changes that authorize extended commitment for 16- and 17-year-olds who commit a Class A-G felony. Although these offenses are subject to mandatory transfer to superior court, the cases may be remanded to juvenile court, pursuant to G.S. 7B-2200.5(d), and prosecutors now have the discretion to retain certain felonies in juvenile court, which could result in the commitment of a 16- or 17-year-old to a YDC for a serious felony offense.

#### A. Extended Commitment (G.S. 7B-1602 and G.S. 7B-2513)

G.S. 7B-1602 and G.S. 7B-2513 have been amended to extend the maximum term of commitment when a juvenile is committed to a YDC for an offense committed at ages 16 or 17.

#### **If 16 at time of offense, the maximum term is:**

- Age 21 – if the committed offense is first-degree murder, first-degree forcible rape, first-degree statutory rape, first-degree forcible sex offense, or first-degree statutory sex offense;
- Age 20 – if the committed offense is a Class B1, B2, C, D, or E felony (other than those listed above); or
- Age 19 – if the committed offense is anything less than a Class A through E felony.

#### **If 17 at time of offense, the maximum term is:**

- Age 21 – if the committed offense is any Class A through E felony; or
- Age 20 – if the committed offense is anything less than a Class A through E felony.

B. Post-Release Supervision (G.S. 7B-2514 and G.S. 7B-2516)

Under amended G.S. 7B-2514(c), the Division must release a juvenile under a plan of post-release supervision at least 90 days prior to the end of the court's jurisdiction, which is either:

- Completion of a definite commitment.
- If juvenile was committed for first-degree murder, first-degree forcible rape, first-degree statutory rape, first-degree forcible sex offense, or first-degree statutory sex offense:
  - 21<sup>st</sup> birthday
- If the committed offense is a Class B1, B2, C, D, or E felony, other than those listed above:
  - 19<sup>th</sup> birthday, if offense committed before age 16
  - 20<sup>th</sup> birthday, if offense committed at age 16
  - 21<sup>st</sup> birthday, if offense committed at age 17
- If the committed offense is anything less than a Class A-E felony:
  - 18<sup>th</sup> birthday, if offense committed before age 16
  - 19<sup>th</sup> birthday, if offense committed at age 16
  - 20<sup>th</sup> birthday, if offense committed at age 17

If a juvenile's PRS plan is revoked, G.S. 7B-2516(c) provides that the juvenile's maximum term of commitment shall not exceed "the maximum term of commitment allowed pursuant to G.S. 7B-2513(a1), 7B-2513(a2), and 7B-2513(a3)" (see maximum terms listed above).

C. Authority to Modify or Vacate Disposition (G.S. 7B-2600)

**Undisciplined juveniles:** Amended G.S. 7B-2600(c) applies only to undisciplined juveniles and provides that the court's jurisdiction to modify an order or disposition for an undisciplined juvenile continues "during the minority of the juvenile or until terminated by the court."

**Delinquent juveniles:** Under new G.S. 7B-2600(d), the court's jurisdiction to modify an order or disposition for a delinquent juvenile shall continue until one of the following occurs:

- 18<sup>th</sup> birthday, if offense was committed before age 16 (unless committed to a YDC);
- 19<sup>th</sup> birthday, if offense was committed at age 16 (unless committed to a YDC);
- 20<sup>th</sup> birthday, if offense was committed at age 17 (unless committed to a YDC);
- The juvenile reaches the maximum term of commitment, if committed to a YDC; or
- Terminated by court.

### **III. Secure Custody and Housing of Juvenile Transfers**

#### **A. Housing of Transfer Youth (G.S. 7B-2204)**

Amended G.S. 7B-2204(d) provides that a juvenile who has been convicted in superior court following transfer may be detained in a juvenile detention facility approved by the Juvenile Justice Section pending transfer to Adult Correction. Previously, the statute required “immediate transfer” to Adult Correction following conviction and did not allow a juvenile to be housed in a detention center pending transfer to an adult facility, unless the detention facility was operated by the sheriff.

#### **B. Secure Custody upon Remand (G.S. 7A-271, G.S. 7B-1902, and G.S. 7B-2200.5(d))**

Amended G.S. 7B-1902 and a new statute, G.S. 7A-271(g), clarify that any superior court judge may issue a secure custody order, pursuant to G.S. 7B-1903, when a juvenile matter that has been transferred to superior court is remanded to juvenile court. If the juvenile will remain in custody following remand, a secure custody order is necessary because any commitment order entered in the criminal case becomes invalid upon remand. G.S. 7B-2200.5(d) also has been updated to clarify the superior court’s authority.

#### **C. Secure Custody Review Hearing upon Remand (G.S. 7B-1906)**

Pursuant to a new statute, G.S. 7B-1906(b2), an initial hearing on the need for continued custody must be held within 10 days of the issuance of a secure custody order issued by the superior court on remand. The hearing may not be continued or waived, and subsequent hearings shall be held pursuant to G.S. 7B-1906(b1) (*i.e.*, every 30 calendar days, unless waived). The district court has authority to modify any secure custody order issued by the superior court.

#### **D. Notice of Remand and Secure Custody Order (G.S. 7B-2200.5(d))**

Amended G.S. 7B-2200.5(d) requires that prior to submitting a motion to remand to the superior court, the prosecutor “shall provide” a copy of the joint motion to the chief court counselor (or her designee). Further, if authorized under G.S. 7B-1903, the superior court may issue a secure custody order upon the prosecutor’s request. The prosecutor “shall provide” a copy of the secure custody order to the chief court counselor (or her designee), as soon as possible, but not later than 24 hours after the order is issued.

### **IV. Prosecutorial Discretion for Class D, E, F, and G Felonies**

Under a new statute, G.S. 7B-2200.5(a1), a prosecutor may decline to transfer to superior court a Class D, E, F, or G felony committed by a 16- or 17-year-old. Therefore, although these offenses are subject to mandatory transfer, the case will remain in juvenile court, if the prosecutor exercises his or her discretion. If the prosecutor declines to transfer a Class D, E, F, or G felony, jurisdiction shall remain in juvenile court following a finding of probable cause. However, any time prior to adjudication, the prosecutor may decide to transfer the case to superior court.

## V. Minimum Age of Juvenile Jurisdiction

S207 enacts several changes to the Juvenile Code, which collectively raise the minimum age of juvenile court jurisdiction from age 6 to age 10 for all undisciplined offenses, and from age 6 to age 10 for most delinquent offenses, with exceptions for 8- and 9-year-olds who still may be considered “delinquent juveniles” in limited circumstances. The legislation also creates a new category of juveniles, referred to as “vulnerable juveniles,” whom Juvenile Justice may serve informally through a “juvenile consultation.” An overview of these changes is provided below.

### A. Definitions (new and revised)

**Delinquent Juvenile** (G.S. 7B-1501(7) and G.S. 143B-805(6)): the minimum age of a delinquent juvenile is increased from age 6 to age 10, except that 8- and 9-year-olds are considered to be delinquent juveniles, only if (1) they commit a Class A-G felony or (2) have a prior adjudication of delinquency at the time they commit a crime or infraction.

**Juvenile Consultation** (G.S. 7B-1501(1a) and G.S. 143B-805(1a)): a juvenile consultation is the provision of services to a vulnerable juvenile and to the parent, guardian, or custodian of a vulnerable juvenile pursuant to G.S. 7B-1706.1.” Further, juvenile consultations are “subject to the confidentiality laws provided in Subchapter III of [Chapter 7B].”

**Neglected Juvenile** (G.S. 7B-101(15)): the definition of neglected juvenile now includes a child under 18 whose parent, guardian, or custodian has refused to follow the recommendations of the Juvenile and Family Team made pursuant to Article 27A of Chapter 7B.

**Undisciplined Juvenile** (G.S. 7B-1501(27) and G.S. 143B-805(20)): the minimum age of an undisciplined juvenile is increased from age 6 to age 10.

**Vulnerable Juvenile** (G.S. 7B-1501(27b) and G.S. 143B-805(20a)): a vulnerable juvenile is any juvenile who is at least 6 but less than 10 years of age, who commits a crime or infraction, including a motor vehicle violation, and who is not a delinquent juvenile.

### B. Intake Services for Vulnerable Juvenile Complaints

S207 amends G.S. 7B-1700 to require that the chief court counselor in each judicial district establish intake services for “complaints against vulnerable juveniles.” This language, as well as conforming changes to Article 17 of Chapter 7B, indicates that a complaint must be submitted to Juvenile Justice to initiate a vulnerable juvenile consultation. The intake process for vulnerable juvenile complaints is described below.

#### 1. Preliminary Inquiry (G.S. 7B-1701)

Pursuant to G.S. 7B-1701(b), when a complaint is received against a juvenile less than 10 years of age, the juvenile court counselor (JCC) must make a “preliminary determination” as to “whether the juvenile is a vulnerable juvenile or is within the jurisdiction of the court as a delinquent juvenile.” If the JCC

determines the child is a delinquent juvenile, the JCC must proceed under G.S. 7B-1701(a) with the preliminary inquiry applicable to delinquent complaints. If the JCC determines the juvenile is a “vulnerable juvenile,” the JCC must handle the complaint as a juvenile consultation.

The preliminary inquiry also requires the JCC to make a determination regarding the legal sufficiency of the complaint because in order to determine whether the juvenile is a “vulnerable juvenile,” the JCC must determine that the complaint alleges the juvenile committed an offense that would be a crime or infraction under State law or under an ordinance of local government, if committed by an adult. *See* G.S. 7B-1501(27b).

## 2. Evaluation Decision (G.S. 7B-1703)

Pursuant to amended G.S. 7B-1703(a), the 15-day timeline (or 30 days with an extension) for evaluation of a juvenile complaint also applies to vulnerable juvenile complaints. Within this time period, the JCC must decide whether to file a complaint as a juvenile petition or handle it as a juvenile consultation for a vulnerable juvenile or take some other authorized action.

## 3. Victim Notification (G.S. 7B-1703(c))

Pursuant to G.S. 7B-1703(c), if the JCC determines that a complaint should not be handled as a juvenile consultation, the JCC must immediately provide written notification to the victim and/or complainant. The notification must indicate the specific reasons for the decision, whether or not legal sufficiency was found, and whether the matter was closed.<sup>1</sup> The JCC shall destroy any complaint not handled as a juvenile consultation.

Pursuant to G.S. 7B-1703(d), the JCC must obtain referral information, if the complaint will be handled as a juvenile consultation.

## 4. Juvenile Consultation Services (G.S. 7B-1706.1)

Pursuant to G.S. 7B-1706.1, juvenile consultation services for a vulnerable juvenile shall be provided for a period of up to 6 months, with a possible 3-month extension. Case management services for these juveniles shall include screenings, assessments, community resources, and programming for the juvenile and the juvenile’s parent, legal guardian, or custodian.

---

<sup>1</sup> Note that G.S. 7B-1703(c) also requires that victim notifications indicate whether the matter was “diverted and retained” and include information about the right to have the decision reviewed by a prosecutor. However, neither of these procedures apply to vulnerable juvenile complaints. Diversion is not an option applicable to vulnerable juveniles, and the statutes that govern review by the prosecutor, G.S. 7B-1704 and 7B-1705, were not amended to authorize the review of vulnerable juvenile complaints. Therefore, victim notifications related to vulnerable juvenile complaints should not reference diversion or the right to review by the prosecutor.

### C. Authority Over Parents of Vulnerable Juveniles

S207 enacts a new Article 27A in Chapter 7B (“Authority Over Parents, Guardians, or Custodians of Vulnerable Juveniles Who Are Receiving Juvenile Consultation Services”), which sets forth the procedures and requirements applicable to parents and legal guardians of vulnerable juveniles.

#### 1. Meetings with Juvenile Court Counselor (G.S. 7B-2710)

The parent, guardian, or custodian of a juvenile receiving juvenile consultation services must attend all scheduled meetings with a JCC for which they received sufficient notice.

#### 2. Parental Responsibility Classes (G.S. 7B-2711)

If available in the district where a parent lives, the JCC may direct a parent of a juvenile receiving juvenile consultation services to attend parental responsibility classes.

#### 3. Evaluation and Treatment of Vulnerable Juveniles and Parents (G.S. 7B-2712)

The JCC is required to work with a parent of a juvenile receiving juvenile consultation services to obtain recommended evaluation or treatment for the juvenile and to find a means to pay for the juvenile’s treatment, including helping the parent apply for Health Choice and/or Medicaid.

With written recommendations of a qualified medical provider, a JCC shall advise parents to be directly involved in the juvenile’s evaluation or treatment, if it is in the juvenile’s best interests.

With written recommendations of a qualified medical provider, a JCC may recommend that a parent receive evaluation or treatment directed toward remedying behaviors or conditions that contributed to the juvenile consultation.

With written orders or recommendations of a qualified medical provider, a JCC may recommend that parents seek funding from either Juvenile Justice or the local LME/MCO to pay the cost of any evaluation or treatment recommended for the parent.

#### 4. Compliance with JCC’s Recommendations (G.S. 7B-2713)

To the extent possible, JCCs may provide transportation for juveniles receiving consultation services and their parents to keep appointments and otherwise comply with recommendations of the JCC.

While providing juvenile consultation services, JCCs must work collaboratively with a “Juvenile and Family Team.” The Juvenile and Family Team shall be comprised of parents, guardians, or custodians of the juvenile, DSS, the LME/MCO, the local school district, and other community stakeholders involved with the juvenile and family. The Juvenile and Family Team and all local community agencies involved with the juvenile and the juvenile’s parent or guardian must be invited to scheduled meetings.

If a parent, guardian, or custodian refuses to follow the recommendations of the Juvenile and Family Team and the refusal places the child at risk of abuse, neglect, or dependency, the JCC must make a report to DSS. Note that court counselors have an existing statutory duty to report any suspected abuse, neglect, or dependency to DSS, pursuant to G.S. 7B-1700.1, which is not limited to the provision of juvenile consultation services.

#### D. Confidentiality of Juvenile Consultation Records

Both G.S. 7B-1501(1a) and G.S. 143B-805(1a) provide that juvenile consultation services are protected by the same confidentiality rules that apply to undisciplined and delinquent juveniles. Therefore, access to juvenile consultation records is governed by G.S. 7B-3001(c).

Additionally, conforming changes to G.S. 7B-3100(a) authorize designated agencies to share information about vulnerable juveniles who are receiving juvenile consultation services. As with other information sharing between agencies pursuant to this statute, information shared about vulnerable juveniles must remain confidential, be withheld from public inspection, and be “used only for the protection of the juvenile and others or to improve the educational opportunities of the juvenile.” Amended G.S. 7B-3100(b) also prohibits the disclosure of information that would reveal the identity of a juvenile who is receiving juvenile consultation services.

#### E. Duties of the Juvenile Justice Section (G.S. 143B-806(b) and G.S. 143B-831(17a))

S207 amends G.S. 143B-806(b) to clarify that the duties of the Juvenile Justice Section include the provision of juvenile consultation services for vulnerable juveniles. The legislation also expands the duties of a juvenile court counselor, as defined by G.S. 143B-831(17a), to include the provision of multidisciplinary service referrals for vulnerable juveniles who are receiving consultation services. The statute further requires that JCCs must report suspected abuse, neglect, or dependency of a vulnerable juvenile to DSS, pursuant to G.S. 7B-1700.1.

#### F. Evaluation of Intensive Intervention Services (G.S. 143B-811 and G.S. 143B-853(c))

Pursuant to G.S. 143B-811 and G.S. 143B-853(c), the Department shall conduct an annual evaluation of “intensive intervention services” and report the results to the legislature. S207 amends the definition of “intensive intervention services,” as used in both statutes, to include services that are necessary to “prevent further involvement in the juvenile justice system.” Also, in evaluating these services, the Department must consider whether participation results in a “diversion from” or reduction of court involvement among juveniles.

#### G. Legislative Reporting on Vulnerable Juvenile Complaints

Section 7 of S207 requires the Juvenile Justice Section to submit a report to the General Assembly by March 1, 2023, and annually thereafter, on “all complaints filed against a juvenile less than 10 but at least 6 years of age.” The report must include the information outlined below.

1. A summary of the following information since the last report:
  - Total number of complaints.
  - The offenses alleged in the complaints, organized by class of offense.
  - The age of the juveniles at the time of the offense.
  - The number of complaints that resulted in a juvenile consultation.
  - The number of complaints that resulted in delinquency jurisdiction, including a breakdown of the number of diverted complaints and the number that led to the filing of a delinquency petition.
  - The number of juveniles receiving a juvenile consultation that have previously received juvenile consultation services.
  
2. A de-identified list of complaints filed since the last report, which includes:
  - The age of the juvenile.
  - The offenses, including class of offense, allegedly committed by the juvenile.
  - The initial determination by the JCC to treat the complaint as a vulnerable juvenile complaint or a delinquent juvenile complaint.
  - For vulnerable juveniles, whether the juvenile received juvenile consultation services.
  - For vulnerable juveniles, whether the juvenile has received juvenile consultation services for a previous complaint.
  - If the juvenile is alleged to be delinquent, whether the juvenile was diverted or a delinquency petition was filed.

## VI. Juvenile Court Mental Health Assessments

S207 enacts significant changes to G.S. 7B-2502 to make necessary updates to language regarding mental health system referrals. The outdated language in the current statute led the N.C. Court of Appeals to vacate a juvenile's disposition in the case of In re E.M., 263 N.C. App. 476 (2019), based on the trial court's failure to refer the juvenile to the "area mental health services director" before entering a disposition. The revised statute removes language referencing the area mental health services director, which no longer exists, and imposes new requirements that are consistent with current practice.

### A. Definitions (G.S. 7B-1501(24a))

**Severe Emotional Disturbance** (G.S. 7B-1501(24a)): a "severe emotional disturbance" is defined as "a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria specified within the DSM-5 that resulted in functional impairment which substantially interferes with or limits the child's role or functioning in family, school, or community activities in a person who is under the age of 18."



B. Comprehensive Clinical Assessment (G.S. 7B-2502(a2))

Pursuant to G.S. 7B-2502(a2), if a juvenile has been adjudicated delinquent and has a suspected “mental illness, developmental disability, or intellectual disability,” the court must order the Juvenile Justice Section to refer the juvenile for a comprehensive clinical assessment (CCA) or equivalent mental health assessment, unless the court finds that an appropriate assessment has been completed within last 45 days before the adjudication hearing. The assessment must evaluate the developmental, emotional, behavioral, and mental health needs of the juvenile.

C. Care Review Team (G.S. 7B-2502(a3))

If an assessment is ordered under G.S. 7B-2502(a2), the court must review the assessment “prior to disposition.” If the court makes both of the following findings, it must order the Juvenile Justice Section to convene a Care Review Team:

- The juvenile has a severe emotional disturbance, a developmental disability, or intellectual disability *that substantially contributed to the delinquent behavior*; and
- The juvenile is eligible for a Level 3 disposition and/or is recommended for a PRTF.

The Care Review Team must develop a recommended service plan and submit it to the court within 30 days of the court order convening the team. The court “shall review” the recommendation plan when determining the juvenile’s disposition. The Care Review Team must include, at a minimum:

- Juvenile
- Juvenile’s parent, guardian, or custodian
- Representatives of Juvenile Justice Section
- Representative of LME/MCO or prepaid health plan (PHP)
- Representatives of any State agency or local DSS currently providing services to juvenile

D. Payment of Evaluation and Treatment (G.S. 7B-2502(b))

Amended G.S. 7B-2502(b) requires that if the juvenile does not have health insurance coverage, the court must conduct a hearing to determine who should pay for the assessment, evaluation, or treatment. The county manager (or her designee) must be notified of the hearing and given an opportunity to be heard. The court must allow the juvenile’s parent to arrange for evaluation and treatment, but if the parent is unable or unwilling, the court may order such treatment and may order the parent to pay. However, the court shall order the county to arrange and pay for the cost of evaluation and treatment, if the court finds that a parent or funding from the Juvenile Justice Section is unable to pay the cost.

E. Commitment to State Hospital (G.S. 7B-2502(c1))

New G.S. 7B-2502(c1) provides that a juvenile shall not be committed directly to a State hospital or developmental center and that orders purporting to do so are void, except for an order requiring an examination to determine capacity to proceed.