

Getting Ready for Raise the Age Implementation

North Carolina now sits ten months away from implementation of the Juvenile Justice Reinvestment Act (JJRA), widely referred to as “Raise the Age.” I had the opportunity to attend a summit hosted by Justice Initiatives in Charlotte last week focused on readiness for raise the age implementation. The recent report from the Juvenile Jurisdiction Advisory Committee (JJAC) is full of information about what still needs to be done for optimal implementation. The recommendations contain two major themes: provide legislative fixes to avoid unintended consequences and fully fund the new system.

The JJAC

The JJRA created the JJAC to “develop a specific plan for the implementation of any changes in the juvenile justice system that would be required in order to extend jurisdiction in delinquency matters and proceedings to include 16- and 17-year-old persons within the juvenile justice system.” S.L. 2017-57, §16D.4(pp). As the JJRA takes effect the JJAC is charged with the ongoing obligation to “monitor and review the implementation of the expansion and shall make additional recommendations to the General Assembly as necessary.” S.L. 2017-57, §16D.4(pp).

Comprised of 21 members who represent a wide range of state agencies, juvenile prosecutors and defense counsel, the judiciary, law enforcement, court counselors, and advocates for both juveniles and victims, the JJAC meets regularly to carry out this statutory duty. On January 15, 2019 the JJAC issued its required [annual interim report](#) to the legislature. The report contains several recommendations and fiscal details along with suggestions for three significant legislative changes to alter the way cases flow to either the juvenile or adult system.

1. Allow youth with motor vehicle violations to continue to have access to juvenile court

As currently written, the JJRA requires that all youth convicted in district or superior court of any felony, misdemeanor, or motor vehicle violation lose access to the juvenile court for any future offense. G.S. 7B-1604(b). Often referred to as “once an adult, always an adult,” this provision of the law requires that once a juvenile receives an adult conviction, that juvenile will be treated as an adult for any future offense, no matter how minor.

The JJRA also carved motor vehicle offenses out of juvenile court jurisdiction for all juveniles who are alleged to have committed such an offense at age 16 or 17. G.S. 7B-1501(7)(b). This means that any motor vehicle offense for these youth will be processed through the adult criminal court system. As a result, a juvenile convicted of a low-level motor vehicle law violation will thereafter be subject to adult court jurisdiction for any alleged criminal act. For example, as the law is currently written, once the JJRA takes effect, if a 16- or 17-year-old is issued a speeding ticket, pleads guilty to a misdemeanor speeding offense in district court, and then is arrested for a misdemeanor, that

juvenile must be processed as an adult for the misdemeanor offense.

The JJAC is proposing a legislative change to avoid this scenario. Under the JJAC proposal, violations of the motor vehicle law, other than driving while impaired, would not require that the juvenile be processed as an adult for all future offense.

2. Increase the time period available to determine if the case will be eligible for mandatory transfer

The JJRA introduced the process of indictment for the first time in the juvenile justice system. Currently, prior to JJRA implementation, a select set of higher level felonies committed by juveniles at age 13, 14, or 15 can be transferred to the criminal system following a finding of probable cause and a transfer hearing. G.S. 7B-2202(e). If the juvenile is age 13, 14, or 15 and probable cause is found for a Class A felony, transfer to criminal court is mandatory. G.S. 7B-2200.

The JJRA establishes a wider range of offenses that require transfer to the criminal system for juveniles who allegedly commit those offenses at age 16 or 17. Under the JJRA all Class A – Class G felonies must be transferred to superior court. G.S. 7B-2200.5(a). In addition, this same provision of the JJRA requires that the transfer occur upon either a finding of probable cause or an indictment. The introduction of the possibility of indictment of a juvenile is new to the Juvenile Code.

It is not clear how the interaction of the options of probable cause and indictment will operate once the JJRA takes effect. However, the Juvenile Code places strict time limits on probable cause hearings. Both currently and following JJRA implementation, the statute requires that the probable cause hearing be held within 15 days of the juvenile's first appearance. G.S. 7B-2202(a). While that timeframe can be adjusted for good cause, JJAC members have raised concern that the 15-day window is too short to allow for adequate investigation of serious felony offenses and to utilize the grand jury process necessary to obtain an indictment. The JJAC is suggesting that the timeframe for probable cause in cases of Class A – Class G felonies for 16- and 17-year-olds be extended to 90 days in order to allow for adequate investigation and informed decision making in these cases that have the potential to trigger automatic transfer.

3. Create Mechanism for Reverse Transfer

If the JJRA goes into effect without any additional legislative changes, there will be no mechanism in place for a case to be moved from adult court back to juvenile court once it has been transferred. The JJAC is proposing a mechanism to allow the case to return to juvenile court on the joint motion of the prosecutor and the juvenile's attorney. Often referred to as "reverse waiver," this process would provide a safety valve in case both the prosecution and defense come to believe that adult prosecution is not the appropriate course of action. The JJAC is also suggesting that the statute be amended to automatically expunge the adult court record generated as a result of the initial transfer

once the case is returned to juvenile court.

Funding the JJRA

The JJAC report also includes a detailed fiscal recommendation to fund the system changes necessary to implement the JJRA. The requested funding includes resource needs for juvenile justice (\$47.6 million in FY 20; \$62.7 million in FY 21; and \$57.3 million annualized), the Administrative Office of the Courts (\$2.9 million in FY 20; and \$2.8 million annualized), the Conference of District Attorneys (\$125,589 recurring and \$3,752 non-recurring beginning FY20), the Office of the Juvenile Defender (\$122,000 recurring beginning FY 20). The JJAC also recommended funding the existing deficiencies in the Administrative Office of the Court (\$15.1 million in FY 20; and \$14.5 million annualized).

The requested funding would support a range of services and structures necessary for the juvenile system to handle a projected 64% increase in the number of youth served in the juvenile system. The recommendations include funding for core components of the juvenile system such as: lower-cost community-based services, court staff to conduct intake and supervision, transportation services, and higher-cost detention and placement bed development as well as lower-cost residential alternatives.

There was a strong consensus across the broad range of stakeholders at last week's summit that the juvenile system needs to be resourced with capacity to work with this new population of older juveniles. The JJAC report offers a thoughtful, data driven estimate regarding those resource needs. The JJAC will continue to meet until the winter of 2023 as required by the JJRA. S.L. 2017-57, §16D.4(rr). You can find more information about its works and track its progress [here](#).