

## Raise the Age FAQs

Training efforts to support implementation of the Juvenile Justice Reinvestment Act, or “raise the age,” are in full swing. With the December 1, 2019 implementation date drawing near, I have had the pleasure of teaching about the new law at many fall conferences and at five regional workshops. Common questions have been raised across these venues. This blog contains answers to some of those commonly asked questions as well as information on how to access further training and resources.

### **1. Which Chapter 20 motor vehicle misdemeanor offense convictions bar future juvenile court jurisdiction under once an adult, always an adult?**

The new [G.S. 7B-1604\(b\)](#) will prohibit any future juvenile court jurisdiction for almost all youth who have a previous conviction in criminal court. This is often referred to as “once an adult, always an adult.” However, there is an exception to this prohibition. Youth who have a conviction for a misdemeanor Chapter 20 motor vehicle offense that does not involve impaired driving or who have been found responsible for a motor vehicle infraction are not included under once an adult, always an adult. Any youth with one of these convictions should still be treated as a juvenile if they are age 16 or 17 at the time of any non-chapter 20 offense.

One of the scenarios that we discuss during the raise the age workshop involves a 17-year-old who has a previous conviction under [G.S. 20-138.3](#), driving by a person under age 21 after consuming alcohol or drugs. Many workshop participants have been surprised to learn that this is not an offense that involves impaired driving for the purpose of once an adult, always an adult.

Several participants have asked me for a list of the chapter 20 misdemeanors that do not involve impaired driving and therefore do not trigger once an adult, always an adult. It turns out that is a very long list that includes all kinds of driver’s license, vehicle registration, and rules of the road violations, among other things. It is much less complicated to remember what does qualify as an impaired driving offense for the purposes of once an adult, always an adult. Pursuant to G.S. 7B-1604(b), misdemeanors that involve impaired driving are those offenses listed as impaired driving offenses in [G.S. 20-4.01\(24a\)](#). There are only two misdemeanor offenses that fall under the definition of impaired driving offenses under G.S. 20-4.01(24a). They are:

- Impaired driving under [20-138.1](#) and
- Impaired driving in a commercial vehicle under [G.S. 20-138.2](#).

Juvenile court will never have jurisdiction over any subsequent offense committed by a youth after he or she has been convicted under either one of these statutes. *Any other chapter 20 misdemeanor conviction or finding of responsibility for a chapter 20 infraction does not disqualify the youth from future juvenile court jurisdiction.*

**2. Can the indictment process be used to begin a case with a Class A – Class G felony alleged to have been committed at age 16 or 17 directly in Superior Court?**

The short answer is no. The return of an indictment on a Class A – Class G felony alleged to have been committed at age 16 or 17 is one of two potential triggers for automatic transfer of the case to superior court. [G.S. 7B-2200.5](#) However, the transfer can only be accomplished in the context of a delinquency case initiated through the filing of a juvenile petition. While the new statute does not dictate when an indictment should be returned as part of the delinquency proceeding, it is clear that there is no capacity for the superior court to establish jurisdiction other than through an order of transfer issued by the district court in the juvenile matter. Therefore, any indictment must be returned to a juvenile matter in district court. Once the juvenile receives notice of the return of the indictment and the district court finds that the bill of indictment has been returned, the case must be transferred to superior court.

**3. If a prosecutor intends to consent to return of a Class G felony to juvenile court, can the matter simply remain in juvenile court or must it first be transferred?**

The new [G.S. 7B-2200.5](#) mandates that every Class G felony alleged to have been committed at age 16 and 17 be transferred to superior court on a finding of probable cause or the return of an indictment. There is no way to proceed in the juvenile matter that alleges a felony at age 13 or older without a finding of probable cause. [G.S. 7B-2202](#). It is therefore not possible to move forward in a juvenile proceeding on a Class G felony without triggering the automatic transfer.

The capacity for reverse waiver, added in [S.L. 2019-186](#), requires that any proceeding, with an alleged offense committed by someone at age 16 or 17 and transferred to superior court, be remanded back to juvenile court on joint motion of the prosecutor and the youth's attorney. [G.S. 7B-2200.5\(d\)](#). There are no additional parameters on this reverse waiver capacity beyond consent of the prosecutor and the juvenile. It is therefore possible that a Class G offense could be remanded back to juvenile court for juvenile processing. However, this can only be accomplished through a reverse waiver that follows the initial mandatory transfer.

**4. Where will older adolescents be housed if they are held securely while their cases are pending?**

The answer to this question depends on three things:

1. Which system has original jurisdiction over the offense?
2. Which system continues to have jurisdiction over the offense?
3. How old is the youth?

*Which system has original jurisdiction over the offense?*

Nearly all offenses alleged to have been committed by youth at ages 16 and 17 will originate under juvenile jurisdiction once raise the age takes effect. [G.S. 7B-1501\(7\)b](#). Any youth under the jurisdiction of the juvenile court and ordered into secure custody must be held in a juvenile detention setting. [G.S. 7B-1905](#).

There are two exceptions to original juvenile court jurisdiction following raise the age implementation. No chapter 20 offenses alleged to have been committed by youth at ages 16 and 17 will ever be under juvenile jurisdiction. In addition, any youth who has a disqualifying previous criminal conviction under once an adult, always an adult will never again fall under juvenile jurisdiction. To the extent that any youth falls under one of these exclusions to juvenile jurisdiction, that youth will be processed as an adult. Therefore, any pretrial confinement in these matters will remain in adult jail.

*Which system continues to have jurisdiction over the offense?*

As long as a juvenile remains under the jurisdiction of the juvenile court, the place of secure custody must be in a juvenile detention setting. G.S. 7B-1905. This will be the case even if a juvenile turns 18, or even 19, as long as that juvenile is being held in secure custody in a matter that is under the jurisdiction of the juvenile court.

The law regarding housing of youth who become a defendant in a criminal matter following transfer of their case from juvenile to criminal court is different. This is where the age of the youth becomes important.

*How old is the youth?*

Once a proceeding is transferred to superior court for criminal processing, the age of the youth dictates their place of confinement if they are not released pending their trial.

- Youth who are defendants in cases that are transferred, are not released pretrial, and are under the age of 18 will remain in juvenile detention.
- Youth who are defendants in cases that are transferred, are not released pretrial, and are age 18 or over will be confined in the adult jail in the locality where their charges arose. [G.S. 7B-2204](#)

#### **5. How can people in my office access training if they cannot attend a workshop?**

Several workshop participants have asked me about additional training for their colleagues. It has become clear to me that, despite my best efforts, I cannot possibly train everyone interested in training in an in-person format. The SOG is therefore planning to webcast the October 30<sup>th</sup> Raise the Age Workshop that is being held here in Chapel Hill. [Registration](#) for that webcast is available on our website. You can also find the [handouts](#) from the workshops on our website.

## On the Civil Side

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You can also find a comprehensive [Juvenile Justice Reinvestment Act Implementation Guide](#) available for purchase on the SOG website. Finally, I am developing a series of short videos that highlight the key raise the age provisions in bite-sized chunks. The videos will be added to the [juvenile law microsite](#) at the SOG soon.