

## The Juvenile Court Counselor's Role As Gatekeeper

With the passage of “Raise the Age” legislation this year, juvenile justice officials, the court system, law enforcement agencies, and various other state officials are busy planning and preparing for the implementation of this major policy change which will become effective December 1, 2019 (see this prior [blog post](#)). One of the issues raised by juvenile court counselors is whether their authority to approve juvenile petitions will be impacted by the mandatory transfer to adult court of 16 and 17-year-olds who commit Class A-G felonies. The short answer is no. Here’s why.

**Juvenile court counselors are the gatekeepers of juvenile court.** Pursuant to [G.S. 7B-1700](#), the chief court counselor has exclusive discretion over intake decisions regarding alleged delinquent and undisciplined juveniles. The intake process determines whether a complaint against a juvenile will be filed as a juvenile petition. Except in cases involving [nondivertible offenses](#) (*i.e.*, serious and violent felonies), a juvenile court counselor must complete an intake evaluation for every juvenile complaint to determine whether a juvenile petition should be filed. If the court counselor determines that court intervention is unnecessary, the counselor may approve a diversion to refer the juvenile to community-based services or simply close the case. [G.S. 7B-1702](#).

This discretion is subject to review by a prosecutor, but only if a petition is not filed. [G.S. 7B-1704](#). If a juvenile court counselor declines to file a juvenile petition, a victim or complainant may appeal to a prosecutor, who can overturn the court counselor’s decision. [G.S. 7B-1705](#). With the exception of this review process, prosecutors have no authority to directly file a juvenile petition.

The Court of Appeals has cautioned prosecutors not to interfere with a court counselor’s exclusive role to approve or disapprove complaints. See *In re Register*, 84 N.C. App. 336 (1987). In *Register*, the Court reversed adjudications of delinquency against six juveniles who were prosecuted for vandalizing a home because their parents were unwilling or unable to pay restitution to the victim in the amount of \$1,000.00. Seven other juveniles, who did pay the restitution, were not charged because the district attorney instructed a court counselor not to file petitions against them. Thus, the six adjudications of delinquency involved in the appeal resulted from selective prosecution. *Register*, 84 N.C. App. at 346.

The prosecutor in *Register* also circumvented the intake process, which is statutorily required in every juvenile case. Emphasizing the importance of intake, the Court stated:

It is unfortunate that the judge apparently did not determine whether the cases had “been through intake.” We cannot overemphasize the importance of the intake counselor’s evaluation in cases involving juveniles alleged to be delinquent or undisciplined. The role of an intake counselor is to ensure that the needs and limitations of the juveniles and the concern for the protection of public safety have been objectively balanced before a juvenile petition is filed initiating court action.

*Register*, 84 N.C. App. at 346.

In short, the intake process is designed to ensure that juvenile court is reserved only for those juveniles who truly require formal court supervision based on the juvenile's needs and the need for public safety. See [G.S. 7B-1500](#) (stating that a purpose of the Juvenile Code is “[t]o provide an effective system of intake services for the screening and evaluation of complaints and, in appropriate cases, where court intervention is not necessary to ensure public safety, to refer juveniles to community-based resources”). The General Assembly entrusted court counselors with the significant responsibility of achieving this goal.

**How does this issue relate to “Raise the Age”?** The [Juvenile Justice Reinvestment Act](#) raises the age of criminal responsibility to 18, which means that **all** criminal offenses committed by juveniles who are under 18, excluding motor vehicle offenses, must be initiated in juvenile court. Class A-G felonies committed by 16 and 17-year-olds will be automatically transferred to adult criminal court upon the filing of an indictment by a prosecutor or a finding of probable cause by a district court judge. However, before a prosecutor can file an indictment to transfer a juvenile's case, a court counselor must first complete an intake evaluation and approve the filing of a juvenile petition. If no petition is filed, the case cannot be transferred. In other words, juvenile court counselors are still the gatekeepers in cases subject to mandatory transfer.

Although most Class A-G felonies are [nondivertible](#) offenses, which means they must be approved for court, a few are eligible for diversion (*e.g.*, common law robbery and financial identity theft are divertible Class G felonies). Based on *Register*, juvenile court counselors may exercise their discretion to divert eligible cases without the interference of a prosecutor.

Raise the Age will not impact the court counselor's statutory role to evaluate juvenile complaints consistent with the goals of the juvenile court system. However, it may require more collaboration between juvenile justice officials and prosecutors to ensure compliance with Juvenile Code procedures in this new class of juvenile cases.