

Maximum YDC Commitment Age for 16- and 17-year-olds

- Pursuant to G.S. 7B-1601(b1) (effective 12/1/2019), jurisdiction cannot extend beyond the age of 19 for an offense committed at age 16, or beyond the age of 20 for an offense committed at age 17. Likewise, the maximum YDC commitment age for these juveniles is 19 or 20, pursuant to G.S. 7B-2513(a2) and (a3).
- Due to the reverse transfer provision in G.S. 7B-2200.5(d), a juvenile case may be remanded back to juvenile court for a Class A-G felony committed at age 16 or 17. This result would create the odd situation that a 16- or 17-year-old committed to YDC for a Class A-G felony has a shorter maximum possible commitment than a juvenile who commits the SAME offense while being less than 16.
- Resolving this inconsistency would require conforming amendments to G.S. 7B-1602 (extended jurisdiction) and G.S. 7B-2513 (commitment to Division).

Conforming amendments to G.S. 7B-2514(c), G.S. 7B-2516(c), and G.S. 7B-2600(c)

- All three statutes still reference the pre-Raise the Age jurisdictional limitations that do not account for the maximum age of jurisdiction applicable to offenses committed by 16- and 17-year-olds (compare with G.S. 7B-2513(a2) and (a3)).

Items for January 31, 2020 LRLI Subcommittee meeting

Once an Adult, Always an Adult Cases – Referral to Juvenile Court Counselor

- There is no clear, statutory guidance on who is responsible for determining that a juvenile must be charged as an adult due to prior convictions. NC DPS has adopted a policy that encourages law enforcement officers to consult a court counselor before processing the juvenile as an adult. However, in the absence of a mandate, there likely will be inconsistent practices throughout the state on charging juveniles as adults according to this provision, and it will possibly increase the workload of court officials (judges, clerks, magistrates) who will have the burden of correcting errors when juveniles are incorrectly charged as adults. An amendment to G.S. 7B-1604(b) requiring that law enforcement officers must consult with a juvenile court counselor to determine jurisdiction would provide consistency across the state and help eliminate these errors.
- For example, an additional sentence could be added to 7B-1604(b) stating that: *“A juvenile court counselor shall determine whether a juvenile must be prosecuted as an adult pursuant to this subsection.”*

Post-Transfer Arrest/Custody Process (G.S. 7B-2204)

- G.S. 7B-2204(a) (effective 12/1/2019) provides that once the transfer order is entered, “the juvenile has the right to pretrial release as provided in G.S. 15A-533 and G.S. 15A-534.” The statute implies that conditions of release must be ordered immediately, but it does not explicitly

mandate the district court judge to order conditions of release. Based on anecdotal evidence, some juveniles may remain in custody under a secure custody order, until the superior court sets conditions of release (even though the secure custody order is probably invalid after transfer). Therefore, it would be clearer if the statute required the district court to enter a release order at the time of transfer, if the juvenile is currently in secure custody.

- For juveniles who are not in custody at the time of transfer, it's unclear what should happen if they fail to appear in superior court or otherwise violate conditions of release. Presumably, the superior court should enter an order for arrest under G.S. 15A-305, followed by a release order under G.S. 15A-533 and -534 directing that the juvenile be detained in a juvenile detention facility. However, that process is not explicitly defined by the statute. The NCAOC has received numerous questions regarding which orders are appropriate to use in the situation (*e.g.*, secure custody order or order for arrest/commitment order).
- A similar issue will arise in the reverse transfer scenario under G.S. 7B-2200.5. In the reverse transfer scenario, once the superior court orders remand, what happens if the juvenile is in custody pursuant to an order of commitment under Ch. 15A? Should G.S. 7B-2200.5(d) more explicitly define the procedure that applies when the juvenile is in custody to ensure that a secure custody order is entered at the time of remand, if necessary?

Mandatory Transfer of Class A-G felonies (G.S. 7B-2200.5)

G.S. 7B-2200.5(a) is unclear regarding the “notice” requirement and the transfer process:

- G.S. 7B-2200.5(a) requires the district court to transfer jurisdiction over the juvenile to superior court upon “notice to the juvenile and a finding by the court that a bill of indictment has been returned against the juvenile charging the commission of [a Class A-G felony].” It is unclear what type of “notice” the statute requires. It could be interpreted as notice that an indictment has been returned, similar to G.S. 15A-630 in the adult context, or it could mean notice of the intent to transfer. The ambiguity of this notice requirement has made it difficult for the NCAOC to develop a form for the transfer order.
- Further, the procedure for transferring the case is unclear. G.S. 7B-2200.5(a) does not explicitly refer to a hearing, as does G.S. 7B-2200.5(b), which allows transfer upon notice, **hearing**, and a finding of probable cause. Rather, subsection (a) appears to allow for the transfer order to be entered without a hearing. If the court orders the transfer without a hearing, it is unclear how the court will determine that “notice” has been provided (whatever that notice may be) or how the clerk will receive a copy of the transfer order to carry out the transfer process. Also, even though the court has no discretion in the transfer decision, there may be circumstances for the juvenile to contest the transfer (*e.g.*, juvenile is not the person named in the indictment). Scheduling a hearing for the purpose of determining notice, making the finding regarding the indictment, and entering the transfer order would eliminate a lot of confusion for court officials, the parties, and juvenile justice representatives.

Transfer of Remanded Charges (G.S. 15A-145.8)

Two subsections of this statute are unclear:

1. G.S. 15A-145.8(b) requires the “court” to order the expunction of related DNA records “when the person’s case has been **dismissed** by the trial court.” Presumably, the legislature meant to require DNA expunction when the person’s case has been **remanded** by the trial court. If dismissal is the trigger for the expunction, it’s unclear when, if ever, the superior court would be required to order the expunction, since the superior court is simply remanding the case, not dismissing it. [*This technical correction is currently in HB 470 (NCAOC omnibus bill) and SB 419 (Technical and Other Changes)*]

SECTION 21.(a) G.S. 15A-145.8(b), as enacted by S.L. 2019-186, s. 11, reads as rewritten:

"(b) The court shall also order the expunction of DNA records when the person's charges have been remanded to district court for juvenile adjudication and the person's DNA record or profile has been included in the State DNA Database and the person's DNA sample is stored in the State DNA Databank as a result of the charges that were remanded. The order of expungement shall include the name and address of the person and the person's attorney and shall direct the North Carolina State Crime Laboratory to send a letter documenting the expunction as required by subsection (c) of this section."

2. G.S. 15A-145.8(d) requires the clerk to notify state and local agencies of the expunction “**as provided in G.S. 15A-150[.]**” Pursuant to G.S. 15A-150(b), upon receipt of the order, those agencies must purge “all entries made as a result of the charge or conviction ordered expunged.” Applying this statute to reverse transfer expunctions is problematic (1) because it directs that state and local agencies expunge records related to a case that is still pending in juvenile court, and (2) many of those state and local agencies (*e.g.*, DACJJ, local law enforcement agency, SBI) will have records relating to the original juvenile charges that are still pending). Therefore, it does not make sense to order that such agencies expunge all entries related to the case. A possible solution would be to instead direct that such agencies *delete any public records created as a result of the superior court charges and to maintain any records resulting from the juvenile petition as confidential records pursuant to G.S. 7B-3000 and -30001.*

"§ 15A-145.8. Expunction of records when charges are remanded to district court for juvenile adjudication.

....

(d) Upon order of expungement, the clerk shall send a certified copy of the order to the person granted an expunction, the Administrative Office of the Courts, and the State and local agencies listed in G.S. 15A-150(b). An agency receiving an order under this subsection shall delete any public records made as a result of the superior court charge(s) ordered expunged, in accordance with G.S. 15A-150. Any records made as a result of the original juvenile petition shall not be deleted but shall be maintained as confidential records, pursuant to Article 30 of Subchapter II of Chapter 7B of the North Carolina General Statutes."