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ATTORNEYS AT LAW, PLLC

LEGAL CONSULTANTS TO LAW ENFORCEMENT

## Raise the Age:

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### The Wait is Over

By Brian Beasley,  
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#### ROLL CALL TRAINING

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**BREAKING:** We live in an impatient society. A 2015 survey found that 96% of Americans will knowingly consume hot food or drink that burns their mouth and that 63% will do so frequently.<sup>1</sup> Online marketers point to studies that show that 40% of visitors will leave a website if it takes more than 3 seconds to load. Overall, we are a people who seek immediate gratification in most instances.<sup>2</sup> This also has negatively affected our attention span which, according to a 2015 study from Microsoft, has dropped to eight seconds while the average goldfish's attention span is nine seconds.<sup>3</sup>

I told you back in 2017 about the "Juvenile Justice Reinvestment Act," which is more commonly referred to as the "Raise the Age" law.<sup>4</sup> Although passed in 2017, most of the provisions of this law will not go into effect until December 1 of this year. Back then, of course, December 1, 2019 seemed like the distant future, but now we are only 92 days away! I am so proud of those who have been waiting so patiently not only for the law to go into effect, but also for the questions that still surrounded the law to be answered.

For those that haven't been caught up in the anticipation or who need a reminder, the Raise the Age law raises the age of young people whose cases will be handled in our juvenile court system rather than adult court. **For offenses committed on or after December 1<sup>st</sup> of this year, 16 and 17-year-olds who commit crimes will need to be charged as juveniles on a juvenile petition unless they are being charged with a motor vehicle offense or have been convicted of a non-motor vehicle offense or impaired driving offense in adult court previously.**<sup>5</sup> I will discuss these exceptions in more detail below.

#### Exception #1: 16 and 17-year-olds Charged with Motor Vehicle Offense

Even after "Raise the Age" goes into effect on December 1<sup>st</sup>, 16 and 17-year-olds charged with motor vehicle offenses will be charged as adults. This means that you can write them a citation or arrest when appropriate. It was unclear from the Juvenile Justice Reinvestment Act exactly which crimes would be considered "motor vehicle offenses," but that was clarified this year by Session Law 2019-186 which excludes "all violations of the motor vehicle laws under Chapter 20 of the General Statutes" from the new provisions.

Based on that language, any offense from Chapter 20 committed by a 16 or 17-year-old will continue to be charged in adult court. Juveniles younger than 16 who commit Chapter 20 offenses must continue to be charged on petitions in juvenile court. Related to this, the crime of "Receiving or transferring a stolen vehicle" in G.S. 20-106

<sup>1</sup> Does this show impatience or stupidity? I'm not 100% sure.

<sup>2</sup> And especially you "Gen Y'ers," those born between 1980 and 1994, more commonly know as "Millenials." Since you grew up with the internet, you kids have never had to wait for anything in your life. Now get off my lawn!

<sup>3</sup> I have thought about making these legal updates into YouTube videos for those that don't want to take the time to read them, but let's be honest - I have a face best suited for the written word and it's really hard to show footnotes on a video.

<sup>4</sup> Session Law 2017-57.

<sup>5</sup> If a 16 or 17-year-old commits a criminal offense prior to December 1<sup>st</sup>, you will still charge them as an adult even if you don't bring the charges until after December 1<sup>st</sup>. Be sure to document the date of offense clearly on the warrant.

(which often is charged as “Possession of a Stolen Vehicle”) has been recodified as G.S. 14-71.2 which means that this is no longer a motor vehicle offense in Chapter 20.<sup>6</sup>

### Exception #2: Once an Adult, Always an Adult....almost

Under the “Raise the Age” law, once a juvenile of any age<sup>7</sup> has been previously convicted of a crime in adult court, all future criminal charges of any kind are handled in adult court. This is often called “once an adult, always an adult.” However, this rule does not apply if the previous conviction was a misdemeanor or infraction under Chapter 20 unless it was an impaired driving offense. This means that when dealing with 16 and 17-year olds, you should do a CJLeads check when possible to see whether any prior adult convictions are present and what type of crime they were for.

If all of these exceptions to the exceptions have your brain spinning, have no fear! I have prepared an appendix you will find at the end of this update that you can use when deciding whether to charge a 16 or 17-year-old as an adult on or after December 1<sup>st</sup>.<sup>8</sup> If you are charging a 16 or 17-year-old with multiple offenses, you may end up charging some on a petition and others on a warrant or magistrate’s order. For example, suppose a 16-year-old steals a car, commits a hit and run, flees from police, and after apprehension has drugs on his person. The felony larceny (G.S. 14-72) and drug possession charges (G.S. 90-95) would be charged via petition while the hit and run (G.S. 20-166) and flee to elude arrest charges (G.S. 20-141.5) will go to adult court.<sup>9</sup>

### What Initially Goes to Juvenile Court May Not Stay There

Under current law, there is a provision that allows 13, 14, and 15-year-olds charged with a felony in juvenile court to be transferred to superior court for trial as an adult after two hearings: a probable cause hearing and a separate hearing to decide if transfer is warranted based on the circumstances.<sup>10</sup> For 16 and 17-year-olds charged under the new law with a Class A through G felony in juvenile court, the transfer process is streamlined somewhat. Transfer to Superior Court is mandatory for these juveniles upon a finding of probable cause or if the District Attorney obtains an indictment. 16 and 17-year-olds charged with Class H or I felonies may be transferred to Superior Court after a probable cause hearing and a separate transfer hearing. A case can be sent back to juvenile court after transfer upon a joint motion from the prosecutor and the juvenile’s attorney.

If I have kept your attention this long, which is unlikely,<sup>11</sup> I would encourage you to stay tuned for future questions that might arise as we implement this new law and inevitably find practical issues that we haven’t thought of yet. But you’ll have to wait until December 1<sup>st</sup>, when Raise the Age finally becomes a reality. By then, we will no doubt have forgotten what all the fuss was about to begin with but hopefully not the appendix on the next page.

**Brian Beasley**  
**Police Attorney**  
**High Point Police Department**

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<sup>6</sup> Chapter 20 will not miss this single offense and between you and me, could stand to lose a few more crimes as it has really gotten fat over the last several years.

<sup>7</sup> It would be an extremely rare case, but you might find a juvenile less than 16 who was convicted of an earlier charge transferred to Superior Court. You would charge them as an adult as well under this law regardless of age.

<sup>8</sup> AND IT IS IN COLOR. Three colors, even. I know, I know, I shouldn’t spoil you like I do. Frankly, when the police attorney starts trying to use graphic design to get a point across, you know we are in lots of trouble.

<sup>9</sup> I know this doesn’t make a lot of sense and raises all kinds of complications but that’s what the law says for now. We will see if a legislative “fix” comes out for this at some point.

<sup>10</sup> A juvenile charged with first degree murder is automatically transferred to Superior Court upon a finding of probable cause.

<sup>11</sup> I read that YouTube videos begin losing viewers at a loading delay of two seconds and every one second of waiting after that marks a 5.8% increase in the number of people who move on. Gang – we used to have to wait until a specific time to watch a show on television and a whole week between episodes! And we had the watch all these commercials that were each about 3 minutes long! In related news, I’m ancient.

ABOUT THE AUTHOR: Brian Beasley is the Legal Advisor for the High Point Police Department. This legal update is provided free of charge to the SR Webpage in the hopes that officers across the state would be able to benefit from it. Brian is not an attorney with Smith Rodgers, PLLC but he thinks they're pretty cool guys.



### Smith Rodgers, PLLC

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#### “RAISE THE AGE” FLOWCHART:

**DO I CHARGE THIS 16 OR 17-YEAR OLD AS JUVENILE OR ADULT?**



