

## No More Minors in Jails

Many people assumed that the implementation of raise the age on December 1, 2019 meant the end of confinement of anyone under 18 in a jail. That was not the case. Even under our new legal framework for juvenile jurisdiction, some youth under 18 still have cases that are handled in criminal court from the very beginning. There is currently no legal mechanism to house these youth in a juvenile detention facility instead of a jail. This changes on August 1, 2020, when [Part II of Session law 2020-83](#) takes effect.

### Which youth are impacted by this change?

There are four categories of people under 18 with matters that never fall under juvenile jurisdiction. They are:

1. Youth who are charged with committing a motor vehicle offense under Chapter 20 of the General Statutes at age 16 or 17. [S. 7B-1501\(7\)b](#).
2. Youth who are alleged to have committed a new offense following a previous conviction in criminal court (other than a previous conviction for a misdemeanor motor vehicle law offense that did not involve impaired driving). [S. 7B-1604\(b\)](#).
3. Youth who are legally emancipated. [S. 7B-1604\(a\)](#).
4. Youth charged as an adult for commission of an offense that occurred prior to December 1, 2019 and at age 16 or 17. The changes to juvenile jurisdiction contained in the Juvenile Justice Reinvestment Act (JJRA) apply to offenses committed on or after December 1, 2019. [L. 2017-57, §16D.4.\(tt\)](#). Anyone aged 16 or 17 charged with a criminal offense that occurred prior to that date was processed, or is still being processed, as an adult from the beginning to the end of their case. The population of these youth who are under 18 diminishes each day as more and more of them turn 18. Eventually, the entirety of this population will reach age 18 and no longer be impacted by Session Law 2020-83.

Because these youth, who I will refer to as “covered youth” in this post, never fall under juvenile jurisdiction, prosecution of their offenses remains in the criminal justice system beginning at the time they are charged. Provisions of the Juvenile Code do not apply to their cases and, prior to enactment of S.L. 2020-83, any local confinement occurred in an adult jail pursuant to criminal law provisions.

This is not the case for youth who are initially charged under juvenile jurisdiction and then have their cases transferred to Superior Court for criminal processing. [G.S. 7B-2200, -2200.5](#). The process for these youth begins in juvenile court and, following transfer, continues as a criminal matter. While these cases are under juvenile jurisdiction any secure confinement is ordered pursuant to the Juvenile Code and must therefore occur in a juvenile detention facility. [G.S. 7B-1905](#). Following transfer, any of these youth who are not able to meet their conditions of pretrial release continue to be held in juvenile detention until they turn 18. [G.S. 7B-2204](#). S.L. 2020-83

does not apply to transferred youth because this statutory structure already provides for their confinement in a juvenile detention setting until they reach the age of 18.

## Place of confinement change

S.L. 2020-83 does apply to the covered youth, as their cases never fall under juvenile jurisdiction despite being under age 18. The overarching structure of the changes in S.L. 2020-83 provides that any covered youth who is ordered to a period of confinement in a local confinement facility must be housed in a juvenile detention setting and not a jail. This change effectively removes all minors who would otherwise remain in jails from the jail setting.

This total removal of minors from jails will be required of all states that receive federal juvenile justice and delinquency prevention funding as of December, 2021. Pursuant to [34 U.S.C. §11133\(a\)\(11\)\(B\)](#), states must ensure that juveniles who are being treated as adults for the purpose of criminal prosecution are not held in any jail for adults. Enactment of S.L. 2020-83 accelerates North Carolina's compliance with this federal requirement.

## Under what circumstances does S.L. 2020-83 apply?

There are a variety of ways that a covered youth might end up serving a period of confinement in a juvenile detention setting. These include:

- Pretrial confinement,
- Active sentences for misdemeanor offenses,
- Probation sanctions, and
- Contempt orders.

S.L. 2020-83 provides for a new bright-line rule regarding the place of confinement for youth under age 18 who are accused of an offense and are being held securely pending resolution of those charges. Regardless of whether the youth is being processed as a juvenile or as an adult, the place of confinement will be a juvenile detention facility. S.L. 2020-83 §8.(c). This does not mean that the arrest of covered youth should be processed by the juvenile system. The adult arrest process will remain the same for covered youth. The only change is the place of confinement. This means that any Order of Commitment in a Release Order should direct that the youth be held in a juvenile detention facility and not a jail. New language added to [G.S. 15A-521\(a\)](#) requires that any covered youth being held pretrial under the new place of confinement requirement must be moved to jail once that youth turns 18. S.L. 2020-83 §8.(c).

Youth who are imprisoned as the result of a misdemeanor conviction and youth who receive some sort of probation sanction that includes or ultimately results in a period of confinement in a local confinement facility are also included in S.L. 2020-83. Active sentences to imprisonment for misdemeanor offenses, including DWI, and nonpayment of fines will now be served in a juvenile

detention facility for covered youth. S.L. 2020-83 §8.(k). Anyone under 18 who is sentenced to an active term of imprisonment on a felony offense will continue to serve that time in the state prison system, as is the current practice. These youth are all housed at the Foothills Correctional Institution and S.L. 2020-83 does not change this practice.

There are a variety of ways that a person sentenced to adult probation can end up serving some time in a local correctional facility. This includes original sentences to probation that include a split sentence or a quick dip (imposed either by the court or by probation under its delegated authority). [G.S. 15A-1343\(a1\)\(3\)](#), [-1343.2\(e\)](#), [-1343.2\(f\)](#), [-1351\(a\)](#). It also includes a defendant ordered to a period of confinement as the result of a probation violation for an underlying misdemeanor offense. [G.S. 15A-1344\(d2\)](#), [-1344\(e\)](#). Under the new law, the place of confinement for any covered youth under these circumstances will be a juvenile detention setting. S.L. 2020-83 §8.(e)-(j).

S.L. 2020-83 also changes the place of confinement for covered youth who are ordered to confinement as the result of contempt. S.L. 2020-83 §8.(b). Any youth under 18 who is ordered to a term of imprisonment as a result of a contempt finding in criminal court will now serve that time in a juvenile detention facility.

## **Practical implications**

While there are a wide variety of ways that covered youth may end up in a juvenile detention setting as a result of this new law, the North Carolina Sentencing and Policy Advisory Commission estimates that only 23 new secure juvenile detention beds will need to be developed across the state to accommodate the new population. As time passes and more and more 16- and 17-year-olds are processed in the juvenile system, the numbers of covered youth will decline. For example, far fewer youth will fall under the ban on juvenile court jurisdiction that follows a criminal conviction as the number of youth who are processed in criminal court declines.

However, implementation of S.L. 2020-83 is not likely to be without its operational challenges. Because covered youth will never touch the juvenile justice system, their cases will not be handled by a juvenile court counselor. Therefore, new processes will need to be developed so that information about each youth flows from the criminal system to the juvenile detention provider, including criminal paperwork ordering the commitment of the youth and information about when youth have criminal court appearances. It will also be less convenient for defense attorneys to meet with their clients when they are housed in a juvenile detention facility that is not close to their home county.

It is also likely that pretrial youth being held at a juvenile detention setting will need a process in place to post bond. Because there is no bond process in the juvenile system, juvenile detention facilities are not structured to process bonds. In addition, because juvenile detention facilities are not available in every county, distance between the locality where the bond should be posted and the juvenile detention facility where the youth is housed can pose challenges. This is an issue that

has proven challenging in the context of transferred youth under raise the age and may only grow under S.L. 2020-83. I hope to be able to write a post about promising practices related to this issue, so please send yours my way if you have them in your locality.

The provision of services to covered youth confined in a juvenile detention setting should not create the same kind of operational challenges that come with moving youth involved in a purely criminal court process into juvenile detention. The reality is that covered youth are the same age and present the same sets of risks and needs as the youth who are already housed in a juvenile detention setting. This was a major reason behind the push to house all of these youth in the same setting. Once they are at the juvenile detention facility, covered youth should receive the same set of educational, vocational, and mental health services as other youth housed at the facility. Moving them into a juvenile detention setting allows them to receive these adolescent-focused services.

## **No time like the present**

S.L. 2020-83 was approved by the Governor on July 1, 2020 and takes effect on August 1, 2020. Our colleagues at the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice are working tirelessly to be ready for the new population with this very short one-month window for implementation. We are supporting that effort at the SOG and, to that end, we created a video that explains the new law. While the video was created primarily for training of detention providers, it provides details about the new law that may be helpful to others. You can access the video, called “H593 Training,” [here](#). It will be important to spread the word about the changes to a wide range of criminal court stakeholders so that the intent of removing all minors from jails is realized.