

## **Raise the Age and Enforcement of Domestic Violence Protective Orders and Civil No-Contact Orders**

The Juvenile Justice Reinvestment Act and its subsequent corresponding legislation raised the age of juvenile jurisdiction to 18 for most offenses committed at ages 16 or 17 that would otherwise be crimes. [S.L. 2017-57, §§ 16.D.4.\(a\)-16.D.4.\(tt\)](#) and [S.L. 2019-186](#). Last summer, the legislature enacted changes to the criminal law to ensure that minors who fall outside of raise the age and continue to be tried as adults are not housed in adult jails. [S.L. 2020-83, §§ 8.\(a\)-8.\(p\)](#). While it may feel like these changes must mean that the age of 18 is now consistently the legal demarcation for being treated as an adult, the law continues to use the age of 16 as a defining line in some instances. For example, Chapter 50B (Domestic Violence) and Chapter 50C (Civil No-Contact Orders) continue to provide that domestic violence protective orders (DVPOs) and Civil No-Contact Orders can be obtained against youth once they reach the age of 16. This blog addresses how enforcement of these orders against youth who are ages 16 and 17 is affected by raise the age and by the removal of minors from jails.

### **Enforcement of Domestic Violence Protective Orders Against 16- and 17-Year-Olds**

Chapter 50B provides that, “[f]or purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16.” [G.S. 50B-1\(b\)\(3\)](#). Therefore, an order of protection can be obtained against a child or grandchild who is age 16 or 17. The initial issuance of such an order is accomplished through a civil action. [G.S. 50B-2\(a\)](#). Because the issuance of a DVPO does not constitute a crime, infraction, or indirect contempt by a juvenile, it does not fall under the definition of delinquent juvenile. [G.S. 7B-1501\(7\)](#). Raise the age therefore has no impact on the initial issuance of the DVPO.

The interaction between raise the age and Chapter 50B becomes complicated on enforcement of a violation of the DVPO. Pursuant to [G.S. 50B-4](#), a party is allowed to file a motion for contempt for violation of a DVPO. In addition, G.S. 50B-4.1 connects knowing violations of a valid DVPO with criminal law by making such violation a Class A1 misdemeanor, subjecting the violator to arrest, and requiring arrest for a knowing violation when the DVPO excludes the person from the residence or household occupied by the victim or requires the person to refrain from any of the acts listed in [G.S. 50B-3\(a\)\(9\)](#).

### *The Crime of Violating a Valid DVPO and Raise the Age*

Any 16- or 17-year-old who is charged with violating a valid DVPO is charged with a crime. The law regarding juvenile jurisdiction for crimes committed at those ages therefore applies. These charges must be analyzed in the same way that all criminal charges for offense committed at ages 16 and 17 must be analyzed under the raise the age legal framework.

1. [S. 7B-1501\(7\)\(b\)](#) provides that crimes committed at ages 16 and 17 are under the original jurisdiction of the district court as delinquency matters unless they are Chapter 20 motor vehicle offenses. Violation of a DVPO is not a Chapter 20 motor vehicle offense, so these charges fall under juvenile jurisdiction.
2. A youth may be excluded from juvenile jurisdiction for charges that would otherwise fall under juvenile jurisdiction if they meet criteria under [S. 7B-1604](#), which include:
  1. being emancipated; or
  2. receiving a disqualifying criminal conviction (anything other than a misdemeanor motor vehicle offense that did not involve impaired driving) before committing the new offense. This is often referred to as once an adult, always an adult. You can find more about these requirements in one of my [previous blogs](#).

In the occasional instance in which the youth is barred from juvenile jurisdiction under G.S. 7B-1604, the charge of violating the DVPO should proceed as a criminal matter. However, most youth will not fall under exceptions to juvenile jurisdiction. For most youth, the charge of violating the DVPO must be brought as a juvenile matter. This means that the usual process for filing a complaint, going through the juvenile intake process, and potentially moving to district court through the petition process must be followed. These cases will largely be misdemeanor delinquency matters.

#### *DVPO Violations and Mandatory Arrest in the Juvenile Context*

Chapter 50B's mandatory arrest provision on a violation of a DVPO is subject to the new reality that most violations committed at ages 16 and 17 are now juvenile matters. Law enforcement officers *must* follow the requirements regarding taking custody of juveniles that are contained in [Article 19](#) of Chapter 7B.

Pursuant to [G.S. 7B-1900](#), a law enforcement officer can take a juvenile into temporary custody when grounds exist for the arrest of an adult in identical circumstances, including when the person has committed the misdemeanor offense of violating a valid DVPO.

The process for taking the juvenile into custody should be the process outlined in Article 19 of Chapter 7B, that is:

- notification to the juvenile's parent, guardian, or custodian pursuant to [S. 7B-1901\(a\)\(1\)](#); and
- either release to the juvenile's parent, guardian, or custodian or submission of a petition and a determination of the need for continued custody. [S. 7B-1901\(a\)\(2\), -\(3\)](#).

A juvenile can only be held in temporary custody for up to 12 hours (or up to 24 hours if any of the 12 hours falls on a Saturday, Sunday, or legal holiday). An order for secure or nonsecure custody must be entered in order for the juvenile to be held beyond those time limits. [G.S. 7B-1901\(b\)](#).

Construing the mandatory arrest provisions and the juvenile provisions together, it appears that law enforcement must take the juvenile into custody for violations of a DVPO that require arrest but must follow the Juvenile Code process for temporary custody for juveniles.

### *Secure Custody Orders Based on the Offense of Violating a DVPO*

[G.S. 7B-1903](#) provides specific circumstances in which a secure custody order—that is, an order detaining the juvenile in custody—can be issued in a juvenile proceeding. A secure custody order can only be issued in a juvenile matter alleging the violation of a DVPO if one of these statutory criteria is met. If the juvenile is charged with only the Class A1 misdemeanor of violation of the DVPO, they will not meet the statutory criteria for the issuance of a secure custody order unless there is reasonable cause to believe that they will not appear in court or they willfully fail to appear on the charge. It is unlikely that juveniles charged only with a violation of a DVPO will meet the statutory criteria for the issuance of a secure custody order.

### **Enforcement of Civil No-Contact Orders Against 16- and 17-Year-Olds**

Pursuant to [G.S. 50C-1\(7\)](#), the definition of unlawful contact that provides the basis for the issuance of a civil no-contact order is limited to the listed acts when committed by a person 16 years of age or older. As discussed above for DVPO proceedings, proceedings related to the issuance of a civil no-contact order against a youth who is age 16 or 17 do not trigger raise the age in any way because there is no allegation of a crime, infraction, or indirect contempt by a juvenile. Instead, 16- or 17-year-olds are subject to Chapter 50C in the same manner as people who are age 18 or over.

Enforcement of a knowing violation of a civil no-contact order is different than enforcement of a violation of a DVPO because Chapter 50C does not make violation of a civil no-contact order a crime. Instead, the remedy provided in Chapter 50C is civil or criminal contempt. [G.S. 50C-10](#). However, use of criminal contempt as the remedy will again involve raise the age.

### *Criminal Contempt and Raise the Age*

[G.S. 5A-31](#) defines contempt by a juvenile. That definition applies when an unemancipated minor between the ages six and 18, who has not been convicted of any crime in superior court, engages in any of the listed behaviors. One listed behavior is any “act or omission specified in another Chapter of the General Statutes as grounds for criminal contempt.” Because [G.S. 50C-10](#) provides that a knowing violation of a civil no-contact order is punishable by criminal contempt, violation of a civil no-contact order at the ages of 16 and 17 falls under the definition of contempt by a juvenile. As long as the violation occurs outside of the courthouse, it will fall under the definition of indirect contempt by a juvenile provided in [G.S. 5A-31](#). Indirect contempt by a juvenile is included in the definition of delinquent juvenile. [G.S. 7B-1501\(b\)](#).

Putting all of this together may remind you of a logic game:

If violation of a civil no-contact order at ages 16 and 17 is indirect criminal contempt ( $A = B$ ) and if indirect criminal contempt at ages 16 and 17 is subject to juvenile jurisdiction ( $B = C$ ), then a violation of a civil no-contact order at ages 16 and 17 is subject to juvenile jurisdiction ( $A = C$ ).

After reading all the statutes together, this appears to be the case—use of indirect criminal contempt as the remedy constitutes an act of delinquency. Pursuant to [G.S. 5A-33](#), the process to pursue indirect contempt by a juvenile is to file a new delinquency petition that alleges the indirect criminal contempt.

### *Civil Contempt*

Civil contempt can be used as a remedy for a violation of a civil no-contact order and it can also be used as a remedy for violation of a DVPO. Use of civil contempt does not trigger the same requirement for a delinquency proceeding because it is not subject to the definition of a delinquent juvenile in [G.S. 7B-1501\(7\)b](#). Holding the youth in civil contempt will therefore follow the same process as holding someone age 18 or older in civil contempt, with one major exception: place of confinement.

[G.S. 5A-21](#) allows for imprisonment of a person held in civil contempt under certain circumstances. These provisions apply to a 16- or 17-year-old held in civil contempt for violation of a civil no-contact order in the same way that they apply to older adults. However, if a 16- or 17-year-old is imprisoned pursuant to civil contempt, they must be housed in a juvenile detention setting. [S.L. 2020-83](#) (H 593) amended [G.S. 15-6](#) to provide that:

If the person being imprisoned is under the age of 18, that person shall be imprisoned in a detention facility approved by the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice to provide secure confinement and care for juveniles, or to a holdover facility as defined in G.S. 7B-1501(11).

Therefore, any person under the age of 18 who would otherwise be confined in an adult jail must now be confined in a juvenile facility. This includes youth who are imprisoned as a result of being held in civil contempt for violation of a civil no-contact order.

### *Coordination Challenges*

The variation between how civil and criminal contempt can be used may raise practice challenges because civil and criminal contempt are often considered in the same proceeding. For youth who are 16 and 17, they cannot now be considered simultaneously. The civil contempt can be considered in the existing civil no-contact order proceeding and the criminal contempt can be

considered in a delinquency proceeding.

### **If You Remember Nothing Else**

This post got into weeds that may seem somewhat strange. Shifting the age of juvenile jurisdiction without shifting the age at which one can be the subject of a DVPO or a civil no-contact order resulted in these muddled enforcement pathways. If it all feels too much, remember these three main themes:

1. Youth who are 16 and 17 continue to be eligible to be subjected to DVPOs and civil no-contact orders and those initial proceedings are not related to the increased age of delinquency jurisdiction.
2. Enforcement of violations of DVPOs and civil no-contact orders are affected by raise the age when new criminal charges are brought or youth are alleged to be in indirect criminal contempt.
3. No youth under the age of 18 should be held in an adult jail even if they are being imprisoned as the result of being held in civil contempt outside of a delinquency proceeding.