

Satisfying Conditions of Pretrial Release When in Juvenile Detention

Two changes in the law have led to a new phenomenon—the need for youth under the age of 18 to satisfy conditions of pretrial release while being confined in a juvenile detention facility. First, the Juvenile Justice Reinvestment Act (JJRA) raised the age of juvenile court jurisdiction for offenses committed at ages 16 and 17 on or after December 1, 2019. The JJRA includes a broad mandatory transfer provision, requiring that many felony matters shift from juvenile to superior court jurisdiction. [G.S. 7B-2200.5\(a\)](#). When that happens, the rules of criminal procedure (including those governing pretrial release) apply rather than the rules for juvenile cases. Second, [Part II of Session Law 2020-83](#) required that the few minors who continue to be processed as adults in the criminal system from the outset of their cases be held in juvenile detention instead of adult jails. The release of minors subject to criminal rather than juvenile jurisdiction is governed by the usual criminal process for setting and satisfying conditions for pretrial release. Those conditions sometimes require posting a bond. But juvenile detention facilities are not equipped to process bonds. So how does this work? This post will review the circumstances in which a youth confined in juvenile detention may need to post bond, the impediments to doing so, and potential ways to address those problems.

Under what circumstances might a youth be eligible to post bond to be released from a juvenile detention facility?

The opportunity to post bond to secure release from custody does not exist under the Juvenile Code. If ordered into secure custody in the context of a delinquency proceeding—the term used for detention while a juvenile petition is pending—a juvenile can be released only through an order of the court issued at a hearing on the need for continued custody. [G.S. 7B-1906](#). Bond is not part of this process.

Before enactment of the JJRA and S.L. 2020-83, nearly all youth who were held in juvenile detention were under the jurisdiction of the juvenile court. While it has long been possible to transfer from juvenile to criminal court felony offenses alleged to have been committed at ages 13 – 15, transfer of these cases is rare. Only cases that charge the juvenile with a Class A felony are required to be transferred among this age group. [G.S. 7B-2200](#). Transfer of all other felony offenses are discretionary. According to the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice (DACJJ), 23 juveniles who were alleged to have committed their offenses between ages 13 and 15 had their cases transferred to superior court in FY 2020.

The transfer provisions implemented under the JJRA for offenses committed at ages 16 and 17 are different. Transfer of all Class A – Class G felony offenses is required following a finding of probable cause or the return of an indictment. [G.S. 7B-2200.5](#). Discretion over the transfer decision is only available in matters in which the most serious offense is a Class H or Class I felony.

According to the Juvenile Justice Section of DACJJ, 160 juveniles alleged to have committed a felony offense at age 16 or 17 have had their cases transferred to superior court during the first nine months of implementation (December 1, 2019 – August 31, 2020).

Once a case is transferred to superior court, the matter is no longer under juvenile jurisdiction. It becomes a criminal case governed entirely by the criminal law. After ordering transfer of the case, the district court judge must determine the pretrial release conditions pursuant to [G.S. 15A-533](#) and [G.S. 15A-534](#). See [G.S. 7B-2204\(a\)](#). Form [AOC-CR-922](#) is available for this purpose. Whether or not the youth remains in custody depends on his or her capacity to satisfy any conditions of pretrial release, including posting of a bond. Because any youth under the age of 18 whose case has been transferred and who is not released must be confined in a juvenile detention facility (G.S. 7B-2204), these youth may need to post bond while confined in juvenile detention.

The second group of youth who may need to post bond to be released from a juvenile detention facility are youth under the age of 18 who are charged with an offense that does not fall under juvenile jurisdiction. Chapter 20 motor vehicle offenses alleged to have been committed at ages 16 and 17 remain under the original jurisdiction of the criminal court. [G.S. 7B-1501\(7\)b](#). In addition, any person under 18 with a previous disqualifying criminal conviction is excluded from juvenile jurisdiction. [G.S. 7B-1604\(b\)](#). The pretrial place of confinement for these youth was shifted to juvenile detention facilities for offenses committed on or after August 1, 2020 with the enactment of Part II of S.L. 2020-83. You can find more information on this aspect of the law in a blog post I wrote earlier [here](#). Because these youth have criminal cases, they also may need to post bond while being confined in a juvenile detention facility.

Why is posting bond while in juvenile detention complicated?

There are four reasons why posting bond while confined in a juvenile detention facility presents significant challenges. First and foremost, the juvenile detention facility itself cannot process bonds. As discussed above, bond does not play a role in the juvenile justice system. It is only a function of the criminal justice system. Juvenile detention facilities do not have the personnel or systems that are necessary to process bonds.

Geography presents a second challenge. There are not juvenile detention facilities in every county. According to the [DACJJ website](#), there are 11 juvenile detention facilities throughout the State. This means that the majority of counties do not have local juvenile detention capacity. A youth may therefore have a criminal case pending in one county and be confined in a juvenile detention facility in another county. This creates practical barriers related to the actual processing of the bond as well as the physical release of the youth. The bond needs to be posted in the county where the criminal matter is pending, not in the county where the juvenile is being confined. The fact that the bond has been posted needs to be communicated back to the juvenile detention facility. The youth must also be transported back to his or her home which may be far from the juvenile detention facility.

The physical release of these youth following posting of a bond is also complicated because they are minors and therefore must be released to an adult. This is reflected in the Juvenile Code provisions that address pretrial release following transfer. G.S. 7B-2204(a) requires that “[t]he release order shall specify the person or persons to whom the juvenile may be released.” Minors who are in juvenile detention as a result of a matter that was criminal from the beginning and are therefore not subject to G.S. 7B-2204 must also be released into someone’s custody. Pursuant to the holding in [Shoaf v. Shoaf, 282 N.C. 287, 291 \(1972\)](#), the age of emancipation is fixed at eighteen. Therefore, as long as these youth are not otherwise emancipated (meaning they are either married or have been the subject of a court order of emancipation), they are minors who should be released to the custody of an adult. This can become challenging if the youth is being held in a juvenile detention facility that is far from home.

Finally, the process for these youth to post bond is complicated by federal law that requires sight and sound separation between minors and adult inmates. Many local procedures for satisfying conditions of pretrial release involve processing inside the jail where the youth is likely to come into contact with adult inmates. However, the Juvenile Justice and Delinquency Prevention Act (JJJPA) requires sight and sound separation from adult inmates for any youth under 18 who is housed in a secure facility, regardless of whether the youth is being processed as a juvenile or as a defendant in the criminal system. [34 U.S.C. §11133\(a\)\(11\)\(B\)\(i\)\(I\)](#) (effective December 21, 2021). The JJJPA allows for a minor to be held in an adult jail for up to six hours for processing of the minor’s release. However, if the jail is used to process release, the youth still must have no sight or sound contact with any adult inmate. [34 U.S.C. §11133\(a\)\(13\)\(A\)](#). Therefore, any process used to post bond for youth housed in juvenile detention will need to comply with this sight and sound separation requirement.

What might help?

On August 31, 2020, the 10th Judicial District (Wake County) adopted a [“Policy for Releasing Juveniles Transferred to Superior Court”](#). The policy provides clear, practical guidance about satisfying conditions of pretrial release, including processing bonds, after transfer of cases to superior court. These processes also could be used for youth held in juvenile detention when their cases begin as criminal cases from the outset.

If the youth is ready to satisfy conditions of pretrial release during regular business hours (Monday – Friday, 9am – 5 pm), the following procedures apply:

- Juvenile justice staff transports the youth to the magistrate located in a courtroom of the Wake County Justice Center.
- If all of the conditions are satisfied, the magistrate modifies the original release order (AOC-CR-922) to indicate that all conditions of release have been satisfied and submits the paperwork to the clerk’s office in an envelope for the criminal superior assistant clerk.
- The youth is released from custody at the Wake County Justice Center.

If the youth is ready to satisfy conditions of pretrial release outside of regular business hours:

- Juvenile justice staff transports the youth, along with the original release order (AOC-CR-922), to the magistrate's office located on Hammond Road.
- The youth is kept on the public side of the magistrate's office and is kept separate from any setting in which adult inmates are present.
- The magistrate modifies the original release order (AOC-CR-922) to indicate that all conditions of release have been satisfied and submits the paperwork to the clerk's office.
- The youth is released from the Magistrate's office on Hammond Road.

By weaving together juvenile and criminal system components, this policy addresses some of the impediments to release discussed above. It addresses the basic issue of transportation of juveniles by relying on juvenile justice staff to get juveniles from the detention facility to the official responsible for determining that release conditions have been satisfied. It designates the magistrates responsible for determining that release conditions have been satisfied and ordering release. It allows juveniles to obtain release at any time of day once they meet their release conditions. And, it is mindful of the need for sight and sound separation of youth under 18 from adult inmates.

Former Chief District Court Judge Rader finalized this policy just before his retirement. I am grateful to him for his work on this policy and appreciate Judge Christian's willingness to share it with me and with all of you.