

Juvenile Justice Update

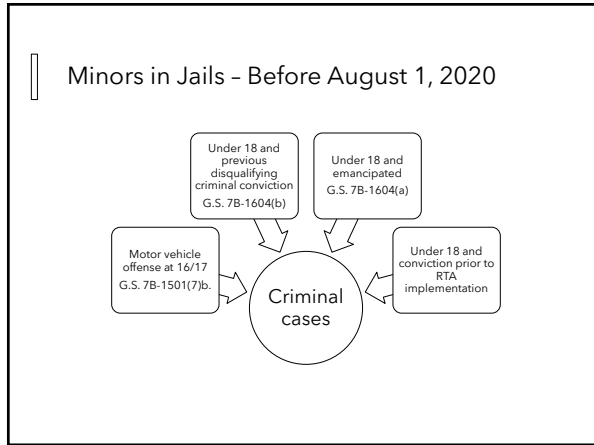
District Court Judges Fall Conference
October 8, 2020

1

Summer 2020

*Legislation Addressing
Juveniles NOT Impacted by
Raise the Age*

2



3

S.L. 2020-83

Minors with criminal cases who would have been held in jail must be held in juvenile detention as of August 1, 2020

1 Aug. 2020

New:

- Offenses committed
- Sentences imposed
- Orders of imprisonment issued

4

What Changes?

5

What Doesn't Change?

- ✓ Criminal cases
- ✓ Youth held pursuant to conditions of pretrial release
- ✓ No role for juvenile court
- ✓ No secure custody orders

6

Covered Youth - Under 18 &

- Held pretrial pursuant to criminal charges (must be moved to jail at 18)
- Criminal sentence on misdemeanor offense (including DWI)
- Sanctions imposed as part of adult probation
 - At sentencing or in response to a violation
- Held in contempt of court or for nonpayment of a fine

7

Probation Sanctions

- Split sentences (mix of incarceration and probation)
 - Up to ¼ the maximum sentence of youth's suspended term of imprisonment
- Quick dips
 - 2- or 3-day period of confinement
 - Can be court-imposed or imposed by probation
- Confinement in response to violation (CRV)
 - Period of imprisonment up to 90 days for DWI probation technical violations

8

System Impacts

- New lines of communication between juvenile detention and criminal courts may need to be developed
 - When should the youth be in court and where?
- A process must be in place for pretrial youth to post bond
- Some youth will stay very short-term, others longer term

9

Resources

- H 593 Training video (made for juvenile detention staff)

<https://www.sog.unc.edu/resources/microsites/juvenile-law/resources-and-links-raise-age>
- Blogs:
 - No More Minors in Adult Jails

<https://nccriminallaw.sog.unc.edu/no-more-minors-in-jails/>
 - Satisfying Conditions of Pretrial Release When in Juvenile Detention

<https://nccriminallaw.sog.unc.edu/satisfying-conditions-of-pretrial-release-when-in-juvenile-detention/>

10

Expunction of Pre-Raise the Age Convictions

S.L. 2020-35; new G.S. 15A-145.8A


11

Requirements for Expunction

- Have a record of conviction for an eligible offense,
- Committed the eligible offense at age 16 or 17 and prior to December 1, 2019, and
- Served any active sentence, period of probation, and post-release supervision ordered for the offense and not be subject to any order for restitution or civil judgment that represents amounts ordered for restitution for the offense.

12

Qualifying conviction for offense at 16 or 17? She's eligible.



13


Eligible Offenses

Convictions for misdemeanors and Class H and Class I felony offenses except for:

- Violations of the motor vehicle laws under Chapter 20 and
- Offenses that require registration as a sex offender, even if the person is not currently required to register.

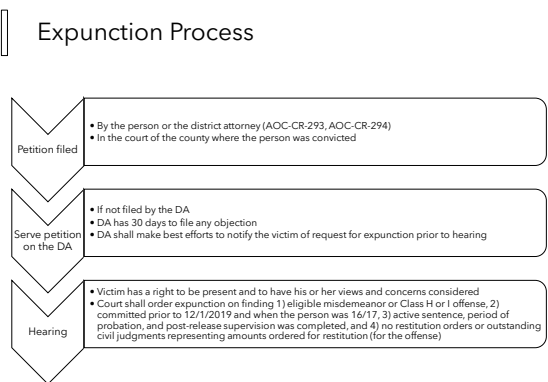
14

Every qualifying conviction is eligible



15

Expunction Process



```

graph TD
    A[Petition filed] --> B[Serve petition on the DA]
    B --> C[Hearing]
  
```

Petition filed

- By the person or the district attorney (AOC-CR-293, AOC-CR-294)
- In the court of the county where the person was convicted

Serve petition on the DA

- If not filed by the DA
- DA has 30 days to file any objection
- DA shall make best efforts to notify the victim of request for expunction prior to hearing

Hearing

- Victim has a right to be present and to have his or her views and concerns considered
- Court shall order expunction on finding 1) eligible misdemeanor or Class H or I offense, 2) committed prior to 12/1/2019 and when the person was 16/17, 3) active sentence, period of probation, and post-release supervision was completed, and 4) no restitution orders or outstanding civil judgments representing amounts ordered for restitution (for the offense)

16

RTA Tips

Does the juvenile court have jurisdiction over parents once the juvenile turns 18?

Yes - RTA amendments did not alter any of the statutory language related to jurisdiction over parents

17

RTA Tips

- Consider discussing issue of representation once transfer is ordered
- Juvenile defender representation should continue through the 10-day period for appeal
- Superior court then needs to address the issue of representation in the new superior court matter

18

Hot off the Presses...another *E.M.* decision

In the Matter of A.L.B., __ N.C.App. __
(October 6, 2020)

19

G.S. 7B-2502(c)

If the court believes, or if there is evidence presented to the effect that the juvenile has a mental illness or a developmental disability, the court **shall** refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action.... The area mental health, developmental disabilities, and substance abuse director is responsible for **arranging an interdisciplinary evaluation** of the juvenile **and mobilizing resources to meet the juvenile's needs.**

20

A.L.B. facts

- 15-year-old juvenile who was in DSS custody following voluntary surrender by mom
- 3 Level Two therapeutic foster homes and 2 Level Three group homes (mental health Level system)
- History of repeated stealing vehicles and running away
- Disposition following admission to possession of stolen vehicle and probation violations

21

Mental Health History

- March 2018 assessment diagnosed with:
 - PTSD
 - Depressive disorder
 - Unspecified disruptive, impulse-control, and conduct disorder
- More recent recommendation from clinical provider was for a Level Five PRTF

22

Disposition Hearing

- Juvenile - Level Five PRFT
 - Partners (LME/MCO) Care Coordination Supervisor testified that Partners did not have the most recent clinical assessment, only had March 2018 assessment
 - March 2018 assessment too old to use for current placement recommendation; needs to be within last 30 days to authorize care
 - Not a clinician and not her role to make a recommendation
- State - YDC
 - JCC testified regarding concern about history of running away, multiple probation violations, car theft and accidents, and that the services at the YDC were basically the same as the PRTF, except that the YDC is fenced

23

Holding

- Failure to make statutorily mandated referral was error
- This error prejudiced the juvenile
 - Court lacked the opportunity to weigh a clinician's opinion regarding a PRTF against the State's recommendation for a YDC
 - An updated assessment could show new diagnosis or rationales for specific treatment - "A year is not insignificant in the mental development of an adolescent"
- Vacated and remanded for required referral, evaluation, and mobilizing of resources

24

But There May be More to This Story

- Dissent:
 - Failure to make referral was error, BUT
 - The error did not prejudice the juvenile
 - The area mental health services director testified
 - The court will be considering the same dispositional alternatives on remand

25

Contact Information

Jacqui Greene
greene@sog.unc.edu

26