

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

FILED SENATE
Mar 28, 2019
S.B. 413
PRINCIPAL CLERK

S

D

SENATE BILL DRS35175-MV-114

Short Title: Raise the Age Modifications. (Public)

Sponsors: Senators D. Davis, Daniel, and Sanderson (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CERTAIN MODIFICATIONS TO THE GENERAL STATUTES IN
3 ORDER TO FACILITATE IMPLEMENTATION OF THE LEGISLATION KNOWN AS
4 RAISE THE AGE.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.(a)** G.S. 7B-1501(7) reads as rewritten:

7 "(7) Delinquent juvenile. –

8 ...

9 b. Any juvenile who, while less than 18 years of age but at least 16 years
10 of age, commits a crime or an infraction under State law or under an
11 ordinance of local government, excluding any misdemeanor or
12 infraction violation of the motor vehicle laws, laws under Chapter 20
13 of the General Statutes, or who commits indirect contempt by a
14 juvenile as defined in G.S. 5A-31."

15 **SECTION 1.(b)** G.S. 143B-805(6) reads as rewritten:

16 "(6) Delinquent juvenile. –

17 ...

18 b. Any juvenile who, while less than 18 years of age but at least 16 years
19 of age, commits a crime or an infraction under State law or under an
20 ordinance of local government, excluding any misdemeanor or
21 infraction violation of the motor vehicle laws, laws under Chapter 20
22 of the General Statutes, or who commits indirect contempt by a
23 juvenile as defined in G.S. 5A-31."

24 **SECTION 2.** G.S. 7B-1604(b) reads as rewritten:

25 "(b) A juvenile (i) who is transferred to and convicted in superior court or (ii) who has
26 previously been convicted in either district or superior court for a felony or a misdemeanor,
27 ~~including~~ excluding a violation of the motor vehicle laws under State law, ~~law other than an~~
28 offense involving impaired driving, as defined by G.S. 20-4.01(24a), shall be prosecuted as an
29 adult for any criminal offense the juvenile commits after the district or superior court conviction."

30 **SECTION 3.** G.S. 7B-1702 reads as rewritten:

31 **"§ 7B-1702. Evaluation.**

32 Upon a finding of legal sufficiency, except in cases involving nondivertible offenses set out
33 in G.S. 7B-1701, the juvenile court counselor shall determine whether a complaint should be
34 filed as a petition, the juvenile diverted pursuant to G.S. 7B-1706, or the case resolved without
35 further action. In making the decision, the counselor shall consider criteria provided by the



* D R S 3 5 1 7 5 - M V - 1 1 4 *

1 Department and shall conduct a gang ~~assessment~~ assessment for juveniles who are 12 years of
2 age or older. The intake process shall include the following steps if practicable:

- 3 (1) Interviews with the complainant and the victim if someone other than the
4 complainant;
- 5 (2) Interviews with the juvenile and the juvenile's parent, guardian, or custodian;
- 6 (3) Interviews with persons known to have relevant information about the
7 juvenile or the juvenile's family.

8 Interviews required by this section shall be conducted in person unless it is necessary to conduct
9 them by telephone."

10 **SECTION 4.** G.S. 7B-1901 is amended by adding a new subsection to read:

11 "(d) A person who takes an individual who is 18 years of age or older into temporary
12 custody for an offense committed when the individual was a juvenile shall proceed in accordance
13 with the provisions of Article 23 of Subchapter V of Chapter 15A of the General Statutes."

14 **SECTION 5.** G.S. 7B-1903(e) reads as rewritten:

15 "(e) If the criteria for secure custody as set out in subsection (b), (c), or (d) of this section
16 are met, the court may enter an order directing an officer or other authorized person to assume
17 custody of the juvenile and to take the juvenile to the place designated in the order. If, pursuant
18 to the criteria in subsection (b) of this section, secure custody is ordered for any person 18 years
19 of age or older who falls within the jurisdiction of the court, pursuant to G.S. 7B-1601(d) or
20 G.S. 7B-1601(d1), the order may designate that the person be temporarily detained in the county
21 jail where the charges arose."

22 **SECTION 6.** G.S. 7B-1905 reads as rewritten:

23 **"§ 7B-1905. Place of secure or nonsecure custody.**

24 (a) A juvenile meeting the criteria set out in G.S. 7B-1903(a), may be placed in nonsecure
25 custody with a department of social services or a person designated in the order for temporary
26 residential placement in:

- 27 (1) A licensed foster home or a home otherwise authorized by law to provide such
28 care;
- 29 (2) A facility operated by a department of social services; or
- 30 (3) Any other home or facility approved by the court and designated in the order.

31 In placing a juvenile in nonsecure custody, the court shall first consider whether a relative of
32 the juvenile is willing and able to provide proper care and supervision of the juvenile. If the court
33 finds that the relative is willing and able to provide proper care and supervision, the court shall
34 order placement of the juvenile with the relative unless the court finds that placement with the
35 relative would be contrary to the best interest of the juvenile. Placement of a juvenile outside of
36 this State shall be in accordance with the Interstate Compact on the Placement of Children set
37 forth in Article 38 of this Chapter.

38 (b) Pursuant to G.S. 7B-1903(b), (c), or (d), a juvenile may be temporarily detained in an
39 approved detention ~~facility which shall be separate from any jail, lockup, prison, or other adult~~
40 ~~penal institution, except as provided in subsection (c) of this section.~~ facility. It shall be unlawful
41 for a ~~county sheriff~~ or any unit of government to operate a juvenile detention facility unless the
42 facility meets the standards and rules adopted by the Department of Public ~~Safety.~~ Safety and has
43 been approved by the Juvenile Justice Section of the Division for operation as a juvenile detention
44 facility.

45 (c) A juvenile who has allegedly committed an offense that would be a Class A, B1, B2,
46 C, D, or E felony if committed by an adult may be detained in secure custody in a holdover
47 facility up to 72 hours, if the court, based on information provided by the juvenile court
48 counselor, determines that no acceptable alternative placement is available and the protection of
49 the public requires the juvenile be housed in a holdover facility.

50 (d) If, pursuant to the criteria in G.S. 7B-1903(b), secure custody is ordered for any
51 person 18 years of age or older who falls within the jurisdiction of the court, pursuant to

1 G.S. 7B-1601(d) or G.S. 7B-1601(d1), the person may be temporarily detained in the county jail
2 where the charges arose."

3 **SECTION 7.** G.S. 7B-1906 reads as rewritten:

4 **"§ 7B-1906. Secure or nonsecure custody hearings.**

5 ...

6 (b) As long as the juvenile remains in secure or nonsecure custody, further hearings to
7 determine the need for continued secure custody shall be held at intervals of no more than 10
8 calendar days—days, except as otherwise provided in this section. A subsequent hearing on
9 continued nonsecure custody shall be held within seven business days, excluding Saturdays,
10 Sundays, and legal holidays when the courthouse is closed for transactions, of the initial hearing
11 required in subsection (a) of this section and hearings thereafter shall be held at intervals of no
12 more than 30 calendar days. In the case of a juvenile alleged to be delinquent, further hearings
13 may be waived only with the consent of the juvenile, through counsel for the juvenile.

14 (b1) For a juvenile who was 16 years of age or older at the time the juvenile allegedly
15 committed an offense that would be a Class A, B1, B2, C, D, E, F, or G felony if committed by
16 an adult, further hearings to determine the need for secure custody shall be held at intervals of no
17 more than 30 calendar days. Further hearings may be waived only with the consent of the
18 juvenile, through counsel for the juvenile. Upon request of the juvenile, through counsel for the
19 juvenile, and for good cause as determined by the court, further hearings to determine the need
20 for secure custody may be held at intervals of 10 days.

21"

22 **SECTION 8.(a)** G.S. 7B-2200.5 reads as rewritten:

23 **"§ 7B-2200.5. Transfer of jurisdiction of a juvenile at least 16 years of age to superior court.**

24 (a) If a juvenile was 16 years of age or older at the time the juvenile allegedly committed
25 an offense that would be a Class A, B1, B2, C, D, E, F, or G felony if committed by an adult, the
26 court shall transfer jurisdiction over the juvenile to superior court for trial as in the case of adults
27 after either of the following:

28 (1) Notice to the juvenile and a finding by the court that a bill of indictment has
29 been returned against the juvenile charging the commission of an offense that
30 constitutes a Class A, B1, B2, C, D, E, F, or G felony if committed by an adult.

31 (2) Notice, hearing, and a finding of probable cause that the juvenile committed
32 an offense that constitutes a Class A, B1, B2, C, D, E, F, or G felony if
33 committed by an adult.

34 (b) If the juvenile was 16 years of age or older at the time the juvenile allegedly
35 committed an offense that would be a Class H or I felony if committed by an adult, after notice,
36 hearing, and a finding of probable cause, the court may, upon motion of the prosecutor or the
37 juvenile's attorney or upon its own motion, transfer jurisdiction over a juvenile to superior court
38 pursuant to G.S. 7B-2203.

39 (c) A probable cause hearing conducted pursuant to subdivision (2) of subsection (a) of
40 this section shall be conducted within 90 days of the date of the juvenile's first appearance. The
41 court may continue the hearing for good cause.

42 (d) In any case where jurisdiction over a juvenile has been transferred to superior court,
43 upon joint motion of the prosecutor and the juvenile's attorney, the court shall remand the case
44 to district court and shall expunge the superior court record in accordance with G.S. 15A-145.8."

45 **SECTION 8.(b)** G.S. 7B-2202(a) reads as rewritten:

46 "(a) Except as otherwise provided in G.S. 7B-2200.5(a)(1), the court shall conduct a
47 hearing to determine probable cause in all felony cases in which a juvenile was 13 years of age
48 or older when the offense was allegedly committed. ~~The~~ Except as otherwise provided in
49 G.S. 7B-2200.5(c), the hearing shall be conducted within 15 days of the date of the juvenile's
50 first appearance. The court may continue the hearing for good cause."

51 **SECTION 9.** G.S. 7B-2204 reads as rewritten:

1 **"§ 7B-2204. Right to pretrial release; detention.**

2 (a) Once the order of transfer has been entered, the juvenile has the right to pretrial release
3 as provided in G.S. 15A-533 and G.S. 15A-534. The release order shall specify the person or
4 persons to whom the juvenile may be released. Pending release, the court shall order that the
5 juvenile be detained in a detention facility while awaiting trial. Personnel of the Juvenile Justice
6 Section of the Division, or personnel approved by the Juvenile Justice Section, shall transport the
7 juvenile from the detention facility to court.

8 (b) The court may order the juvenile to be held in a holdover facility at any time the
9 presence of the juvenile is required in court for pretrial hearings or trial, if the court finds that it
10 would be inconvenient to return the juvenile to the detention facility. Personnel of the Justice
11 Section of the Division, or personnel approved by the Juvenile Justice Section, shall transport the
12 juvenile from the holdover facility to court and shall transport the juvenile back to the detention
13 center.

14 (c) If the juvenile reaches the age of 18 years while awaiting the completion of
15 proceedings in superior court, the juvenile shall be transported by personnel of the Juvenile
16 Justice Section of the Division, or personnel approved by the Juvenile Justice Section, to the
17 custody of the sheriff of the county where the charges arose.

18 (d) Should the juvenile be found guilty, or enter a plea of guilty or no contest to a criminal
19 offense in superior court and receive an active sentence, then immediate transfer to the Division
20 of Adult Correction and Juvenile Justice of the Department of Public Safety shall be ordered.
21 Until such time as the juvenile is transferred to the Division of Adult Correction and Juvenile
22 Justice of the Department of Public Safety, the juvenile may be detained in a holdover facility.
23 The juvenile may not be detained in a detention facility pending transfer to the Division of Adult
24 Correction and Juvenile Justice of the Department of Public ~~Safety~~-Safety, unless the detention
25 facility is operated by the sheriff pursuant to G.S. 7B-1905(b).

26 (e) The juvenile may be kept by the Division of Adult Correction and Juvenile Justice of
27 the Department of Public Safety as a safekeeper until the juvenile is placed in an appropriate
28 correctional program."

29 **SECTION 10.** G.S. 7B-2508(g1) reads as rewritten:

30 "(g1) Notwithstanding subsection (f) of this section, if a juvenile is adjudicated for an
31 offense that the court finds beyond a reasonable doubt was committed as part of criminal gang
32 activity as defined in G.S. 7B-2508.1, the juvenile shall receive a disposition one level higher
33 than would otherwise be provided for the class of offense and delinquency history level."

34 **SECTION 11.** Article 5 of Chapter 15A of the General Statutes is amended by
35 adding a new section to read:

36 **"§ 15A-145.8 Expunction of records when charges are remanded to district court for**
37 **juvenile adjudication.**

38 (a) Upon remand pursuant to G.S. 7B-2200.5(d), the court shall order expunction of all
39 remanded charges. No person as to whom such an order has been entered shall be held thereafter
40 under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false
41 statement or response to any inquiry made for any purpose, by reason of his or her failure to
42 recite or acknowledge any expunged entries concerning apprehension or trial.

43 (b) The court shall also order the expunction of DNA records when the person's case has
44 been dismissed by the trial court and the person's DNA record or profile has been included in the
45 State DNA Database and the person's DNA sample is stored in the State DNA Databank as a
46 result of the case that was dismissed. The order of expungement shall include the name and
47 address of the defendant and the defendant's attorney and shall direct the North Carolina State
48 Crime Laboratory to send a letter documenting expungement as required by subsection (b2) of
49 this section.

1 (c) Upon order of expungement, the clerk shall notify State and local agencies of the
2 court's order as provided in G.S. 15A-150 and forward the order to the Administrative Office of
3 the Courts."

4 **SECTION 12.** G.S. 20-106 is repealed.

5 **SECTION 13.** This act becomes effective December 1, 2019, and applies to offenses
6 committed on or after that date.