

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

SESSION LAW 2019-186
SENATE BILL 413

AN ACT TO MAKE CERTAIN MODIFICATIONS TO THE GENERAL STATUTES IN ORDER TO FACILITATE IMPLEMENTATION OF THE LEGISLATION KNOWN AS RAISE THE AGE.

The General Assembly of North Carolina enacts:

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

"(7) Delinquent juvenile. –

...

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

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

"(6) Delinquent juvenile. –

...

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

SECTION 1.(c) G.S. 20-106 is recodified as G.S. 14-71.2.

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

"(b) ~~A juvenile (i) who is transferred to and convicted in superior court or (ii) who has previously been convicted in either district or superior court for a felony or a misdemeanor, including a violation of the motor vehicle laws under State law, shall be prosecuted as an adult for any criminal offense the juvenile commits after the district or superior court conviction.~~A juvenile shall be prosecuted as an adult for any criminal offense the juvenile commits after a district or superior court conviction if either of the following applies:

- (1) The juvenile has previously been transferred to and convicted in superior court.
- (2) The juvenile has previously been convicted in either district or superior court for a felony or a misdemeanor. Violations of the motor vehicle laws punishable as a misdemeanor or infraction shall not be considered a conviction for the purposes of this subsection unless the conviction is for an offense involving impaired driving as defined by G.S. 20-4.01(24a)."

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

"§ 7B-1702. Evaluation.



Upon a finding of legal sufficiency, except in cases involving nondivertible offenses set out in G.S. 7B-1701, the juvenile court counselor shall determine whether a complaint should be filed as a petition, the juvenile diverted pursuant to G.S. 7B-1706, or the case resolved without further action. In making the decision, the counselor shall consider criteria provided by the Department and shall conduct a gang ~~assessment~~ assessment for juveniles who are 12 years of age or older. The intake process shall include the following steps if practicable:

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

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

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

"(d) A person who takes an individual who is 21 years of age or older into temporary custody for an offense committed when the individual was a juvenile shall proceed in accordance with this Chapter. If, pursuant to the criteria in G.S. 7B-1903(b), secure custody is ordered for any person 21 years of age or older who falls within the jurisdiction of the court, pursuant to G.S. 7B-1601(d) or G.S. 7B-1601(d1), the order shall designate that the person be temporarily detained in the county jail where the charges arose."

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

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

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

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

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

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

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

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

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

(d) If, pursuant to the criteria in G.S. 7B-1903(b), secure custody is ordered for any person 18 years of age or older who falls within the jurisdiction of the court, pursuant to G.S. 7B-1601(d) or G.S. 7B-1601(d1), the person may be temporarily detained in the county jail where the charges arose."

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

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

...

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

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

...."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The court shall also order the expunction of DNA records when the person's case has been dismissed by the trial court and the person's DNA record or profile has been included in the

State DNA Database and the person's DNA sample is stored in the State DNA Databank as a result of the case that was dismissed. The order of expungement shall include the name and address of the defendant and the defendant's attorney and shall direct the North Carolina State Crime Laboratory to send a letter documenting expungement as required by subsection (c) of this section.

(c) Upon receiving an order of expungement entered pursuant to subsection (b) of this section, the North Carolina State Crime Laboratory shall purge the DNA record and all other identifying information from the State DNA Database and the DNA sample stored in the State DNA Databank covered by the order, except that the order shall not apply to other offenses committed by the individual that qualify for inclusion in the State DNA Database and the State DNA Databank. A letter documenting expungement of the DNA record and destruction of the DNA sample shall be sent by the North Carolina State Crime Laboratory to the defendant and the defendant's attorney at the address specified by the court in the order of expungement.

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

SECTION 12. This act becomes effective December 1, 2019, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 23rd day of July, 2019.

s/ Ralph E. Hise
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 12:27 p.m. this 1st day of August, 2019