

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

HOUSE BILL 879  
RATIFIED BILL

AN ACT TO MAKE VARIOUS CHANGES TO THE JUVENILE CODE IN REGARD TO DUE PROCESS PROTECTIONS, REENTRY OF JUVENILES IN THE DELINQUENCY SYSTEM, AND CONFINEMENT OF JUVENILES.

The General Assembly of North Carolina enacts:

**PART I. DUE PROCESS CHANGES**

**SECTION 1.1.** G.S. 7B-2101(b) reads as rewritten:

"(b) When the juvenile is less than ~~14-16~~ years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney. If an attorney is not present, the parent, guardian, or custodian as well as the juvenile must be advised of the juvenile's rights as set out in subsection (a) of this section; however, a parent, guardian, or custodian may not waive any right on behalf of the juvenile."

**SECTION 1.2.** G.S. 7B-2202(f) reads as rewritten:

- "(f) If the court does not find probable cause for a felony offense, the court shall:
- (1) Dismiss the proceeding, or
  - (2) If the court finds probable cause to believe that the juvenile committed a lesser included offense that would constitute a misdemeanor if committed by an adult, either proceed to an adjudicatory hearing or set a date for that hearing. The adjudicatory hearing shall be a separate hearing. The court may continue the adjudicatory hearing for good cause."

**SECTION 1.3.** G.S. 7B-2203(d) reads as rewritten:

"(d) If the court does not transfer the case to superior court, the court shall either proceed to an adjudicatory hearing or set a date for that hearing. The adjudicatory hearing shall be a separate hearing. The court may continue the adjudicatory hearing for good cause."

**SECTION 1.4.** Article 24 of Chapter 7B of the General Statutes is amended by adding a new section to read:

**§ 7B-2408.5. Motion to suppress evidence in adjudicatory hearings; procedure; appeal.**

(a) A motion to suppress evidence in court made before the adjudicatory hearing must be in writing and a copy of the motion must be served upon the State. The motion must state the grounds upon which it is made. The motion must be accompanied by an affidavit containing facts supporting the motion. The affidavit may be based upon personal knowledge, or upon information and belief, if the source of the information and the basis for the belief are stated. The State may file an answer denying or admitting any of the allegations. A copy of the answer must be served on the juvenile's counsel or the juvenile's parent, guardian, or custodian, if the juvenile has no counsel.

- (b) The judge must summarily grant the motion to suppress evidence if:
- (1) The motion complies with the requirements of subsection (a) of this section, it states grounds which require exclusion of the evidence, and the State concedes the truth of allegations of fact which support the motion; or
  - (2) The State stipulates that the evidence sought to be suppressed will not be offered in evidence in any juvenile proceeding.
- (c) The judge may summarily deny the motion to suppress evidence if:
- (1) The motion does not allege a legal basis for the motion; or
  - (2) The affidavit does not as a matter of law support the ground alleged.



(d) If the motion is not determined summarily, the judge must make the determination after a hearing and finding of facts. Testimony at the hearing must be under oath.

(e) A motion to suppress made during the adjudicatory hearing may be made in writing or orally and may be determined in the same manner as when made before the adjudicatory hearing.

(f) The judge must set forth in the record his or her findings of facts and conclusions of law.

(g) An order finally denying a motion to suppress evidence may be reviewed upon an appeal of a final order of the court in a juvenile matter.

(h) The provisions of G.S. 15A-974 shall apply to this section."

## **PART II. REDUCE FURTHER ENTRY OF JUVENILES**

### **SECTION 2.1.** G.S. 7B-1701 reads as rewritten:

#### **"§ 7B-1701. Preliminary inquiry.**

When a complaint is received, the juvenile court counselor shall make a preliminary determination as to whether the juvenile is within the jurisdiction of the court as a delinquent or undisciplined juvenile. If the juvenile court counselor finds that the facts contained in the complaint do not state a case within the jurisdiction of the court, that legal sufficiency has not been established, or that the matters alleged are frivolous, the juvenile court counselor, without further inquiry, shall refuse authorization to file the complaint as a petition.

If a complaint against the juvenile has not been previously received, as determined by the juvenile court counselor, the juvenile court counselor shall make reasonable efforts to meet with the juvenile and the juvenile's parent, guardian, or custodian if the offense is divertable.

When requested by the juvenile court counselor, the prosecutor shall assist in determining the sufficiency of evidence as it affects the quantum of proof and the elements of offenses.

The juvenile court counselor, without further inquiry, shall authorize the complaint to be filed as a petition if the juvenile court counselor finds reasonable grounds to believe that the juvenile has committed one of the following nondivertible offenses:

- (1) Murder;
- (2) First-degree rape or second degree rape;
- (3) First-degree sexual offense or second degree sexual offense;
- (4) Arson;
- (5) Any violation of Article 5, Chapter 90 of the General Statutes that would constitute a felony if committed by an adult;
- (6) First degree burglary;
- (7) Crime against nature; or
- (8) Any felony which involves the willful infliction of serious bodily injury upon another or which was committed by use of a deadly weapon."

### **SECTION 2.2.** G.S. 7B-2404 reads as rewritten:

#### **"§ 7B-2404. Participation of the ~~prosecutor~~prosecutor; voluntary dismissal.**

(a) A prosecutor shall represent the State in contested delinquency hearings including first appearance, detention, probable cause, transfer, adjudicatory, dispositional, probation revocation, post-release supervision, and extended jurisdiction hearings.

(b) A prosecutor may dismiss any allegations stated in a juvenile petition with or without leave by entering an oral dismissal in open court at any time or by filing a written dismissal with the clerk. The juvenile, the juvenile's parent, guardian, or custodian, and the juvenile's counsel shall be notified of the dismissal by the prosecutor either in open court or by being served with the written dismissal. In addition, the written dismissal shall be served on (i) the chief court counselor or his or her designee and (ii) if the juvenile is being held in a detention center, the director of the detention center. If the prosecutor dismisses the petition with leave because of the failure of the juvenile to appear in court, the prosecutor may refile the petition if the juvenile is apprehended or apprehension is imminent."

### **SECTION 2.3.** G.S. 7B-2507(a) reads as rewritten:

"(a) Generally. – The delinquency history level for a delinquent juvenile is determined by calculating the sum of the points assigned to each of the juvenile's prior adjudications and to the juvenile's probation status, if any, that the court finds to have been proved in accordance with this section. For the purposes of this section, a prior adjudication is an adjudication of an offense that occurs before the adjudication of the offense before the court."

### **SECTION 2.4.** G.S. 7B-2510 reads as rewritten:

**"§ 7B-2510. Conditions of probation; violation of probation.**

...

(c) An order of probation shall remain in force for a period not to exceed one year from the date entered. Prior to expiration of an order of probation, the court may extend it for an additional period of one year after notice and a hearing, if the court finds that the extension is necessary to protect the community or to safeguard the welfare of the juvenile. At the discretion of the court, the hearing to determine to extend probation may occur after the expiration of an order of probation at the next regularly scheduled court date or if the juvenile fails to appear in court.

(d) On motion of the juvenile court counselor or the juvenile, or on the court's own motion, the court may review the progress of any juvenile on probation at any time during the period of probation or at the end of probation. The conditions or duration of probation may be modified only as provided in this Subchapter and only after notice and a hearing.

(e) If the court, after notice and a hearing, finds by the greater weight of the evidence that the juvenile has violated the conditions of probation set by the court, the court may continue the original conditions of probation, modify the conditions of probation, or, except as provided in subsection (f) of this section, order a new ~~disposition at the next higher level on the disposition chart in G.S. 7B-2508.~~ disposition. In the court's discretion, ~~part of the new disposition may include an~~ the court may order a new disposition at the next higher level on the disposition chart or order a term of confinement in a secure juvenile detention facility for up to twice the term authorized by G.S. 7B-2508. G.S. 7B-2508, in addition to any other Level 2 dispositional option.

(f) A court shall not order a Level 3 disposition for violation of the conditions of probation by a juvenile adjudicated delinquent for an offense classified as minor under G.S. 7B-2508."

**SECTION 2.5.** G.S. 7B-2512 reads as rewritten:

**"§ 7B-2512. Dispositional order.**

(a) The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The court shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration, and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested.

(b) The court shall include information at the time of issuing the dispositional order, either orally in court or in writing, on the expunction of juvenile records as provided for in G.S. 7B-3200 that are applicable to the dispositional order."

**PART III. JUVENILE CONFINEMENT**

**SECTION 3.1.** G.S. 7B-1903 reads as rewritten:

**"§ 7B-1903. Criteria for secure or nonsecure custody.**

(a) When a request is made for nonsecure custody, the court shall first consider release of the juvenile to the juvenile's parent, guardian, custodian, or other responsible adult. An order for nonsecure custody shall be made only when there is a reasonable factual basis to believe the matters alleged in the petition are true, and that:

- (1) The juvenile is a runaway and consents to nonsecure custody; or
- (2) The juvenile meets one or more of the criteria for secure custody, but the court finds it in the best interests of the juvenile that the juvenile be placed in a nonsecure placement.

(b) When a request is made for secure custody, the court may order secure custody only where the court finds there is a reasonable factual basis to believe that the juvenile committed the offense as alleged in the petition, and that one of the following circumstances exists:

- (1) The juvenile is charged with a felony and has demonstrated that the juvenile is a danger to property or persons.
- (2) The juvenile has demonstrated that the juvenile is a danger to persons and is charged with either (i) a misdemeanor at least one element of which is assault on a person or (ii) a misdemeanor in which the juvenile used, threatened to use, or displayed a firearm or other deadly weapon.
- (2a) The juvenile has demonstrated that the juvenile is a danger to persons and is charged with a violation of G.S. 20-138.1 or G.S. 20-138.3.

- (3) The juvenile has willfully failed to appear on a pending delinquency charge or on charges of violation of probation or post-release supervision, providing the juvenile was properly notified.
- (4) A delinquency charge is pending against the juvenile, and there is reasonable cause to believe the juvenile will not appear in court.
- (5) The juvenile is an absconder from (i) any residential facility operated by the Division or any detention facility in this State or (ii) any comparable facility in another state.
- (6) There is reasonable cause to believe the juvenile should be detained for the juvenile's own protection because the juvenile has recently suffered or attempted self-inflicted physical injury. In such case, the juvenile must have been refused admission by one appropriate hospital, and the period of secure custody is limited to 24 hours to determine the need for inpatient hospitalization. If the juvenile is placed in secure custody, the juvenile shall receive continuous supervision and a physician shall be notified immediately.
- (7) The juvenile is alleged to be undisciplined by virtue of the juvenile's being a runaway and is inappropriate for nonsecure custody placement or refuses nonsecure custody, and the court finds that the juvenile needs secure custody for up to 24 hours, excluding Saturdays, Sundays, and State holidays, to evaluate the juvenile's need for medical or psychiatric treatment or to facilitate reunion with the juvenile's parents, guardian, or custodian.
- (8) The juvenile is alleged to be undisciplined and has willfully failed to appear in court after proper notice; the juvenile shall be brought to court as soon as possible and in no event should be held more than 24 hours, excluding Saturdays, Sundays, and State holidays.

(c) When a juvenile has been adjudicated delinquent, the court may order secure custody pending the dispositional hearing or pending placement of the juvenile pursuant to G.S. 7B-2506. As long as the juvenile remains in secure custody, further hearings to determine the need for continued secure custody shall be held at intervals of no more than 10 calendar days but may be waived for no more than 30 calendar days only with the consent of the juvenile, through counsel for the juvenile, either orally in open court or in writing. The order for continued secure custody shall be in writing with appropriate findings of fact.

(d) The court may order secure custody for a juvenile who is alleged to have violated the conditions of the juvenile's probation or post-release supervision, but only if the juvenile is alleged to have committed acts that damage property or injure persons.

(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.

(f) If the court finds that there is a need for an evaluation of a juvenile for medical or psychiatric treatment pursuant to subsection (b) of this section and that juvenile is under 10 years of age and does not have a pending delinquency charge, the law enforcement officer or other authorized person assuming custody of the juvenile shall not use physical restraints during the transport of the juvenile to the place designated in the order, unless in the discretion of the officer or other authorized person, the restraints are reasonably necessary for the safety of the officer, authorized person, or the juvenile."

**SECTION 3.2.** G.S. 7B-2506 reads as rewritten:

**"§ 7B-2506. Dispositional alternatives for delinquent juveniles.**

The court exercising jurisdiction over a juvenile who has been adjudicated delinquent may use the following alternatives in accordance with the dispositional structure set forth in G.S. 7B-2508:

- ...  
(12) Impose confinement on an intermittent basis in an approved detention facility. Confinement shall be limited to not more than five 24-hour periods, the timing and imposition of which is determined by the court in its discretion.
- ...  
(20) Order that the juvenile be confined in an approved juvenile detention facility for a term of up to 14 24-hour periods, which confinement shall not be

imposed consecutively with intermittent confinement pursuant to subdivision (12) of this section at the same dispositional hearing. The timing and imposition of this confinement shall be determined by the court in its discretion.

...."

**PART IV. EFFECTIVE DATE**

**SECTION 4.** This act becomes effective December 1, 2015, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 26<sup>th</sup> day of May, 2015.

s/ Daniel J. Forest  
President of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

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Pat McCrory  
Governor

Approved \_\_\_\_\_ .m. this \_\_\_\_\_ day of \_\_\_\_\_, 2015