

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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SENATE BILL 27*

Short Title: Juv. Record/Open and Perm.

(Public)

Sponsors: Senators Martin of Guilford, Perdue; Cochrane, Forrester, Harris, Walker, Gunter, Kaplan, Edwards, Speed, Lee, Lucas, Albertson, Daniel, Plyler, Cooper, Sands, Marshall, Seymour, Ward, Parnell, Tally, and Allran.

Referred to: Juveniles/Prevention.

February 9, 1994

A BILL TO BE ENTITLED

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2 AN ACT TO PROVIDE THAT THE JUVENILE RECORDS OF JUVENILES
3 ADJUDICATED OR CONVICTED OF CERTAIN FELONIES ARE OPEN, MAY
4 NOT BE EXPUNGED AND THAT EVIDENCE OF JUVENILE DELINQUENCY
5 ADJUDICATIONS MAY BE ADMISSIBLE INTO EVIDENCE IN
6 SUBSEQUENT CRIMINAL PROCEEDINGS AND MAKE CONFORMING
7 CHANGES.

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 7A-675(a) reads as rewritten:

10 "(a) The clerk of superior court shall maintain a complete record of all juvenile
11 cases filed in ~~his~~ the clerk's office to be known as the juvenile record, which shall be
12 withheld from public inspection and except as provided in this subsection may be
13 examined only by order of the judge, except that the juvenile, ~~his~~ the juvenile's parent,
14 guardian, custodian, or other authorized representative ~~of the juvenile shall have~~ has a
15 right to examine the juvenile's ~~record.~~ record regardless of whether the record is
16 withheld from public inspection. The record shall include the summons, petition,
17 custody order, court order, written motions, the electronic or mechanical recording of
18 the hearing, and other papers filed in the proceeding. The recording of the hearing shall
19 be reduced to a written transcript only when notice of appeal has been timely given.
20 After the time for appeal has expired with no appeal having been filed, the recording of
21 the hearing may be erased or destroyed upon the written order of the judge.

1 The record of the clerk of superior court pertaining to an adjudication of delinquency
2 for an offense that would be a Class A, B, C, D, or E felony if committed by an adult is
3 open for inspection and use in subsequent juvenile or adult criminal proceedings by the
4 district and superior courts, the prosecutor, the Department of Correction or the Parole
5 Commission."

6 Sec. 2. G.S. 7A-676(b) reads as rewritten:

7 "(b) Any person who has attained the age of 16 years may file a petition in the
8 court where he was adjudicated delinquent for expunction of all records of that
9 adjudication provided:

10 (1) The offense for which ~~he~~ the person was adjudicated would have been
11 a crime other than a Class A, B, C, D, or E felony if committed by an
12 adult.

13 (2) The person has not subsequently been adjudicated delinquent or
14 convicted as an adult of any felony or misdemeanor other than a traffic
15 violation under the laws of the United States or the laws of this State
16 or any other state.

17 Records relating to an adjudication for an offense that would be a Class A, B, C, D,
18 or E felony if committed by an adult shall not be expunged."

19 Sec. 3. G.S. 8C-1, Rule 404(b) reads as rewritten:

20 "(b) Other crimes, wrongs, or acts. – Evidence of other crimes, wrongs, or acts is
21 not admissible to prove the character of a person in order to show that he acted in
22 conformity therewith. It may, however, be admissible for other purposes, such as proof
23 of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of
24 mistake, entrapment or accident. Admissible evidence may include evidence of an
25 offense committed by a juvenile if it would have been a Class A, B, C, D, or E felony if
26 committed by an adult."

27 Sec. 4. G.S. 8C-1, Rule 609(d) reads as rewritten:

28 "(d) Juvenile adjudications. – Evidence of juvenile adjudications is generally not
29 admissible under this rule. The court may, however, in a criminal case allow evidence
30 of a juvenile adjudication either (i) of a witness other than the accused or (ii) of a
31 witness who is the accused who was adjudicated delinquent for an offense that would
32 have been a Class A, B, C, D, or E felony if committed by an adult, if conviction of the
33 offense would be admissible to attack the credibility of an adult and the court is satisfied
34 that admission in evidence is necessary for a fair determination of the issue of guilt or
35 innocence."

36 Sec. 5. (a) G.S. 15A-1340.11, as enacted by Section 1 of Chapter 538 of the
37 1993 Session Laws, becomes effective May 1, 1994.

38 (b) G.S. 15A-1340.11 reads as rewritten:

39 "**§ 15A-1340.11. (Effective January 1, 1995) Definitions.**

40 The following definitions apply in this Article:

41 (1) Active punishment. – A sentence in a criminal case that requires an
42 offender to serve a sentence of imprisonment and is not suspended.
43 Special probation, as defined in G.S. 15A-1351, is not an active
44 punishment.

- 1 (2) Community punishment. – A sentence in a criminal case that does not
2 include an active punishment or an intermediate punishment.
- 3 (3) Day-reporting center. – A facility to which offenders are required, as a
4 condition of probation, to report on a daily or other regular basis at
5 specified times for a specified length of time to participate in activities
6 such as counseling, treatment, social skills training, or employment
7 training.
- 8 (4) Electronic monitoring. – A condition of probation in which the
9 offender is required to remain in one or more specified places for a
10 specified period or periods each day, and in which the offender shall
11 wear a device which permits the supervising agency to monitor the
12 offender's compliance with the condition electronically.
- 13 (5) Intensive probation. – Probation that requires the offender to submit to
14 supervision by officers assigned to the Intensive Probation Program
15 established pursuant to G.S. 143B-262(c), and to comply with the rules
16 adopted for that Program.
- 17 (6) Intermediate punishment. – A sentence in a criminal case that places
18 an offender on supervised probation and includes at least one of the
19 following conditions:
20 a. Special probation as defined in G.S. 15A-1351(a).
21 b. Assignment to a residential program.
22 c. Electronic monitoring.
23 d. Intensive probation.
24 e. Assignment to a day-reporting center.
25 In addition, a sentence to regular supervised probation imposed
26 pursuant to a community penalties plan as defined in G.S. 7A-771(2) is
27 an intermediate punishment, regardless of whether any of the above
28 conditions is imposed, if the plan is accepted by the court and the plan
29 does not include active punishment.
- 30 (7) Prior conviction. – A person has a prior conviction when, on the date a
31 criminal judgment is entered, the person being sentenced has been
32 previously convicted of a crime:
33 a. In the district court, and the person has not given notice of
34 appeal and the time for appeal has expired; or
35 b. In the superior court, regardless of whether the conviction is on
36 appeal to the appellate division; or
37 c. In the courts of the United States, another state, the armed
38 services of the United States, or another county [country],
39 regardless of whether the offense would be a crime if it
40 occurred in ~~North Carolina~~, North Carolina; or
41 d. In the district court, in a juvenile adjudication of delinquency
42 for an offense that would be a Class A, B, C, D, or E felony if
43 committed by an adult.

1 regardless of whether the crime was committed before or after the
2 effective date of this Article.

- 3 (8) Residential program. – A program in which the offender, as a
4 condition of probation, is required to reside in a facility for a specified
5 period and to participate in activities such as counseling, treatment,
6 social skills training, or employment training, conducted at the
7 residential facility or at other specified locations."

8 Sec. 6. G.S. 15A-1340.2 reads as rewritten:

9 **"§ 15A-1340.2. (Repealed effective January 1, 1995) Definitions.**

10 The following definitions apply in this Article.

- 11 (1) Convicted. – For the purpose of imposing sentence, a person has been
12 convicted when he has been adjudged guilty or has entered a plea of
13 guilty or no contest.
- 14 (2) Jail. – A jail is a local confinement facility maintained by a county as
15 provided by G.S. 153A-218 or a district confinement facility
16 maintained by two or more units of local government as provided by
17 G.S. 153A-219. For purposes of G.S. 15A-1355(c), a satellite
18 jail/work release unit shall be considered a local confinement facility.
- 19 (3) Jailer. – A jailer is the sheriff or other person having the care and
20 custody of a jail as provided by G.S. 162-22 or the administrator of a
21 district confinement facility as provided by G.S. 153A-219.
- 22 (4) Prior Conviction. – A person has received a prior conviction when (i)
23 he has been adjudged guilty of or has entered a plea of guilty or no
24 contest to a criminal charge, and judgment has been entered thereon,
25 and the time for appeal has expired, or the conviction has been finally
26 upheld on direct ~~appeal~~ appeal; or (ii) he has been adjudicated
27 delinquent in a juvenile proceeding for an offense that would be a
28 Class A, B, C, D, or E felony if committed by an adult.
- 29 (5) Prison Term. – A prison term is a period of imprisonment to be served
30 either in the custody of the Department of Correction or a jail."

31 Sec. 7. G.S. 15A-2000(e) reads as rewritten:

32 "(e) Aggravating Circumstances. – Aggravating circumstances which may be
33 considered shall be limited to the following:

- 34 (1) The capital felony was committed by a person lawfully incarcerated.
- 35 (2) The defendant had been previously convicted of another capital felony.
36 felony or had been previously adjudicated delinquent in a juvenile
37 proceeding for committing an offense that would be a capital felony if
38 committed by an adult.
- 39 (3) The defendant had been previously convicted of a felony involving the
40 use or threat of violence to the ~~person~~ person or had been previously
41 adjudicated delinquent in a juvenile proceeding for committing an
42 offense that would be a felony involving the use or threat of violence
43 to the person if the offense had been committed by an adult.

- 1 (4) The capital felony was committed for the purpose of avoiding or
2 preventing a lawful arrest or effecting an escape from custody.
- 3 (5) The capital felony was committed while the defendant was engaged, or
4 was an aider or abettor, in the commission of, or an attempt to commit,
5 or flight after committing or attempting to commit, any homicide,
6 robbery, rape or a sex offense, arson, burglary, kidnapping, or aircraft
7 piracy or the unlawful throwing, placing, or discharging of a
8 destructive device or bomb.
- 9 (6) The capital felony was committed for pecuniary gain.
- 10 (7) The capital felony was committed to disrupt or hinder the lawful
11 exercise of any governmental function or the enforcement of laws.
- 12 (8) The capital felony was committed against a law-enforcement officer,
13 employee of the Department of Correction, jailer, fireman, judge or
14 justice, former judge or justice, prosecutor or former prosecutor, juror
15 or former juror, or witness or former witness against the defendant,
16 while engaged in the performance of his official duties or because of
17 the exercise of his official duty.
- 18 (9) The capital felony was especially heinous, atrocious, or cruel.
- 19 (10) The defendant knowingly created a great risk of death to more than
20 one person by means of a weapon or device which would normally be
21 hazardous to the lives of more than one person.
- 22 (11) The murder for which the defendant stands convicted was part of a
23 course of conduct in which the defendant engaged and which included
24 the commission by the defendant of other crimes of violence against
25 another person or persons."

26 Sec. 8. Sections 1, 2, 5, 6, and 7 of this act become effective May 1, 1994,
27 and apply to offenses committed on or after that date. Sections 3 and 4 of this act
28 become effective May 1, 1994, and apply to trials begun on or after that date and, this
29 section is effective upon ratification.