

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H

3

HOUSE BILL 111
Committee Substitute Favorable 4/24/95
Third Edition Engrossed 5/1/95

Short Title: Open Records and Publish Identity of Juv.

(Public)

Sponsors:

Referred to:

February 6, 1995

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE FOR THE INDEXING OF CERTAIN OFFENSES
2 COMMITTED BY JUVENILES, TO PUBLISH THE IDENTITY OF CERTAIN
3 JUVENILES WHO HAVE COMMITTED A-E FELONIES, TO MAINTAIN
4 RECORDS OF CERTAIN JUVENILES, AND TO REQUIRE NOTIFICATION OF
5 SCHOOL OFFICIALS IN CERTAIN CASES WHEN THE JUVENILE IS
6 ADJUDICATED DELINQUENT.
7

8 The General Assembly of North Carolina enacts:

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

10 **"§ 7A-675. Confidentiality of records.**

11 (a) The clerk of superior court shall maintain a complete record of all juvenile
12 cases filed in the clerk's office to be known as the juvenile record, which shall be
13 withheld from public inspection and may be examined only by order of the judge. The
14 record shall include the summons, petition, custody order, court order, written motions,
15 the electronic or mechanical recording of the hearing, and other papers filed in the
16 proceeding. The recording of the hearing shall be reduced to a written transcript only
17 when notice of appeal has been timely given. After the time for appeal has expired with

1 no appeal having been filed, the recording of the hearing may be erased or destroyed
2 upon the written order of the judge.

3 The following persons may examine the juvenile's record without an order of the
4 judge:

5 (1) The juvenile, the juvenile's parent, guardian, or custodian, or another
6 authorized representative of the juvenile.

7 (2) The prosecutor in a subsequent criminal proceeding against the juvenile.

8 The juvenile's record of an adjudication of delinquency for an offense that would be a
9 Class A, B, C, D, or E felony if committed by an adult may be used in a subsequent
10 criminal proceeding against the juvenile either under G.S. 8C-1, Rule 404(b), or to prove
11 an aggravating factor at sentencing under G.S. 15A-1340.4(a), G.S. 15A-1340.16(d), or
12 G.S. 15A-2000(e). The record may be so used only by order of the judge in the
13 subsequent criminal proceeding, upon motion of the prosecutor, after an in camera
14 hearing to determine whether the record in question is admissible.

15 (a1) Notwithstanding the provisions of subsection (a) of this section, an
16 adjudication of delinquency shall be indexed by the clerk of superior court in the regular
17 public index to criminal dispositions maintained pursuant to G.S. 7A-109. This
18 subsection shall apply only to an adjudication of delinquency for an offense that, if
19 committed by an adult, would be one of the following:

20 (1) Murder under G.S. 14-17;

21 (2) A sex offense under Article 7A of Chapter 14;

22 (3) Kidnapping under G.S. 14-39;

23 (4) Robbery with firearm or other dangerous weapon under G.S. 14-87;

24 (5) Assault with a deadly weapon with intent to kill inflicting serious injury
25 under G.S. 14-32(a);

26 (6) Assault with a deadly weapon with intent to kill under G.S. 14-32(c).

27 Upon motion of the juvenile or the district attorney, the judge may order the clerk not to
28 index the juvenile's adjudication of delinquency if the interest of justice requires that the
29 juvenile's adjudication be protected from public inspection.

30 (b) The Chief Court Counselor shall maintain a record of the cases of juveniles
31 under supervision by court counselors which shall include family background
32 information; reports of social, medical, psychiatric, or psychological information
33 concerning a juvenile or his family; a record of the probation reports of a juvenile;
34 interviews with ~~his~~ the juvenile's family; or other information which the judge finds
35 should be protected from public inspection in the best interest of the juvenile.

36 (c) The Director of the Department of Social Services shall maintain a record of
37 the cases of juveniles under protective custody by ~~his~~ the Department or under placement
38 by the court. This file shall include material similar in nature to that described in
39 subsection ~~(b)~~ (b) of this section.

40 (d) The records maintained pursuant to subsections (b) and (c) of this section may
41 be examined only by order of the judge except that the juvenile shall have the right to
42 examine them.

1 (e) Law-enforcement records and files concerning a juvenile shall be kept separate
2 from the records and files of adults except in proceedings when jurisdiction of a juvenile
3 is transferred to superior court. Law-enforcement records and files concerning juveniles
4 shall be open only to the inspection of the prosecutor, court counselors, the juvenile, ~~his~~
5 and the juvenile's parent, guardian, and custodian.

6 (f) All records and files maintained by the Division of Youth Services shall be
7 withheld from public inspection and shall be open only to the inspection of the juvenile,
8 professionals in that agency who are directly involved in the juvenile's case, and court
9 counselors. The judge authorizing commitment of a juvenile shall have the right to
10 inspect and order the release of records maintained by the Division of Youth Services on
11 that juvenile.

12 (g) Disclosure of information concerning any juvenile under investigation or
13 alleged to be within the jurisdiction of the court that would reveal the identity of that
14 juvenile is prohibited except ~~that~~ that:

15 (1) ~~publication~~ Publication of names and pictures of runaways is permitted
16 with the permission of the parents.

17 (2) Upon a determination by the district attorney for the jurisdiction that
18 publication of the name and picture of the juvenile under investigation
19 of an offense that would be a Class A, B, C, D, or E felony if committed
20 by an adult is necessary to further the investigation, the juvenile's name
21 and picture may be published to appropriate law enforcement agencies.

22 (3) Upon a determination by the chief district court judge or a juvenile court
23 judge for the jurisdiction that publication of the name and picture of the
24 juvenile under investigation of an offense that would be a Class A, B, C,
25 D, or E felony if committed by an adult is necessary to lead to the
26 apprehension of a juvenile, the juvenile's name and picture may be
27 published.

28 (h) Nothing in this section shall preclude the necessary sharing of information
29 among authorized agencies.

30 (i) In the case of a child victim, a judge may order the sharing of information
31 among ~~such~~ the public agencies ~~as~~ the judge deems necessary to reduce the trauma to the
32 child victim."

33 Sec. 2. G.S. 7A-596 reads as rewritten:

34 "**§ 7A-596. Authority to issue nontestimonial identification order where juvenile**
35 **alleged to be delinquent, and to conduct certain procedures without an**
36 **order.**

37 (a) Nontestimonial identification procedures shall not be conducted on any
38 juvenile without a court order issued pursuant to this Article unless the juvenile has been
39 transferred to superior court for trial as an adult in which case procedures applicable to
40 adults as set out in Articles 14 and 23 of Chapter 15A shall apply. A nontestimonial
41 identification order authorized by this Article may be issued by any judge of the district
42 court or of the superior court upon request of a prosecutor. As used in this Article,
43 'nontestimonial identification' means identification by fingerprints, palm prints,

1 footprints, measurements, blood specimens, urine specimens, saliva samples, hair
2 samples, or other reasonable physical examination, handwriting exemplars, voice
3 samples, photographs, and lineups or similar identification procedures requiring the
4 presence of a juvenile.

5 (b) Notwithstanding the provisions of subsection (a) of this section, a juvenile who
6 is taken into custody for an offense that would be a Class A, B, C, D, or E felony may be
7 photographed and the juvenile's fingerprints may be taken."

8 Sec. 3. G.S. 7A-601(3) reads as rewritten:

9 "(3) If a juvenile ~~13 years of age or older~~ is found to have committed a
10 delinquent act that would be a felony if committed by an adult, all
11 records resulting from ~~a nontestimonial order~~ identification procedures
12 may be retained in the court file. Special precautions shall be taken to
13 ensure that these records will be maintained in such a manner and under
14 such safeguards as to limit their use to inspection for comparison
15 purposes by law-enforcement officers only in the investigation of a
16 crime. ~~crime, except that the name and picture of a juvenile resulting~~
17 from a nontestimonial identification procedure may be published as
18 provided in G.S. 7A-675(g)."

19 Sec. 4. G.S. 7A-649(8) reads as rewritten:

20 "(8) Place the juvenile on probation under the supervision of a court
21 counselor. In any case where a juvenile is placed on probation, the
22 court counselor shall have the authority to visit the juvenile where the
23 juvenile resides. The judge shall specify conditions of probation that
24 are related to the needs of the juvenile including any of the following:

25 a. That the juvenile shall remain on good behavior and not violate
26 any laws.

27 b. That the juvenile attend school regularly. If the adjudication of
28 delinquency was for an offense involving a threat to the safety of
29 the juvenile or others and school attendance is a condition of
30 probation, the judge shall ~~make a finding of whether or not the~~
31 ~~principal of the juvenile's school should be notified. If the judge~~
32 ~~orders that the principal be notified, the order that the principal of~~
33 the juvenile's school be notified. The juvenile court counselor
34 shall within five days of the judge's order or before the juvenile
35 begins to attend school, whichever occurs first, notify the
36 principal of the juvenile's school in writing of the nature of the
37 offense and the probation requirements related to school
38 attendance. A principal notified by a juvenile court counselor
39 shall handle the report according to the guidelines and rules
40 adopted by the State Board of Education.

41 b1. That the juvenile maintain passing grades in up to four courses
42 during each grading period and meet with the court counselor

1 and a representative of the school to make a plan for how to
2 maintain those passing grades.

3 c. That the juvenile not associate with specified persons or be in
4 specified places.

5 d. That the juvenile report to a court counselor as often as required
6 by a court counselor.

7 e. That the juvenile make specified financial restitution or pay a
8 fine in accordance with subdivisions (2) and (3).

9 f. That the juvenile be employed regularly if not attending school.

10 An order of probation shall remain in force for a period not to exceed
11 one year from the date entered. Prior to expiration of an order of
12 probation, the judge may extend it for an additional period of one year
13 after a hearing if the judge finds that the extension is necessary to
14 protect the community or to safeguard the welfare of the juvenile;"

15 Sec. 5. Section 3 of Chapter 369 of the 1993 Session Laws reads as rewritten:

16 "Sec. 3. This act becomes effective October 1, 1993, and applies to delinquent acts
17 committed on or after that date. ~~This act expires October 1, 1995.~~"

18 Sec. 6. This act becomes effective October 1, 1995, and applies to delinquent
19 acts committed on or after that date.