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SENATE DRS35120-MK-95 (03/05)

Short Title: Juvenile Code Reform.

(Public)

Sponsors: Senators Daniel and Hartsell (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE JUVENILE CODE IN REGARD TO
3 DUE PROCESS PROTECTIONS, REENTRY OF JUVENILES IN THE DELINQUENCY
4 SYSTEM, AND CONFINEMENT OF JUVENILES.

5 The General Assembly of North Carolina enacts:

6
7 **PART I. DUE PROCESS CHANGES**

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

9 "(b) When the juvenile is less than ~~4~~16 years of age, no in-custody admission or
10 confession resulting from interrogation may be admitted into evidence unless the confession or
11 admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney. If
12 an attorney is not present, the parent, guardian, or custodian as well as the juvenile must be
13 advised of the juvenile's rights as set out in subsection (a) of this section; however, a parent,
14 guardian, or custodian may not waive any right on behalf of the juvenile."

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

16 "(f) If the court does not find probable cause for a felony offense, the court shall:

17 (1) Dismiss the proceeding, or

18 (2) If the court finds probable cause to believe that the juvenile committed a
19 lesser included offense that would constitute a misdemeanor if committed by
20 an adult, either proceed to an adjudicatory hearing or set a date for that
21 hearing. The adjudicatory hearing shall be a separate hearing. The court may
22 continue the adjudicatory hearing for good cause."

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

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

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

29 "§ 7B-2408.5. Motion to suppress evidence in adjudicatory hearings; procedure; appeal.

30 (a) A motion to suppress evidence in court made before the adjudicatory hearing must
31 be in writing and a copy of the motion must be served upon the State. The motion must state
32 the grounds upon which it is made. The motion must be accompanied by an affidavit containing
33 facts supporting the motion. The affidavit may be based upon personal knowledge, or upon
34 information and belief, if the source of the information and the basis for the belief are stated.
35 The State may file an answer denying or admitting any of the allegations. A copy of the answer



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1 must be served on the juvenile's counsel or the juvenile's parent, guardian, or custodian, if the
2 juvenile has no counsel.

3 (b) The judge must summarily grant the motion to suppress evidence if:

4 (1) The motion complies with the requirements of subsection (a) of this section,
5 it states grounds which require exclusion of the evidence, and the State
6 concedes the truth of allegations of fact which support the motion; or

7 (2) The State stipulates that the evidence sought to be suppressed will not be
8 offered in evidence in any juvenile proceeding.

9 (c) The judge may summarily deny the motion to suppress evidence if:

10 (1) The motion does not allege a legal basis for the motion; or

11 (2) The affidavit does not as a matter of law support the ground alleged.

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

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

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

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

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

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

23 **"§ 7B-1701. Preliminary inquiry.**

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

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

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

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

38 (1) Murder;

39 (2) First-degree rape or second degree rape;

40 (3) First-degree sexual offense or second degree sexual offense;

41 (4) Arson;

42 (5) Any violation of Article 5, Chapter 90 of the General Statutes that would
43 constitute a felony if committed by an adult;

44 (6) First degree burglary;

45 (7) Crime against nature; or

46 (8) Any felony which involves the willful infliction of serious bodily injury
47 upon another or which was committed by use of a deadly weapon."

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

49 **"§ 7B-2404. Participation of the ~~prosecutor~~-prosecutor; voluntary dismissal.**

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

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

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

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

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

20 "**§ 7B-2510. Conditions of probation; violation of probation.**

21 ...

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

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

32 (e) If the court, after notice and a hearing, finds by the greater weight of the evidence
33 that the juvenile has violated the conditions of probation set by the court, the court may
34 continue the original conditions of probation, modify the conditions of probation, or, except as
35 provided in subsection (f) of this section, order a new disposition at the next higher level on the
36 disposition chart in G.S. 7B-2508. In the court's discretion, part of the new disposition may
37 include an order of confinement in a secure juvenile detention facility for up to twice the term
38 authorized by G.S. 7B-2508. However, the court shall not order a new disposition at the next
39 higher level on the disposition chart and order a term of confinement in a secure juvenile
40 detention facility for up to twice the term authorized by G.S. 7B-2508.

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

44 **SECTION 2.5.** G.S. 7B-3200 reads as rewritten:

45 "**§ 7B-3200. Expunction of records of juveniles alleged or adjudicated delinquent and**
46 **undisciplined.**

47 (a) Any person who has attained the age of 18 years may file a petition in the court
48 where the person was adjudicated undisciplined for expunction of all records of that
49 adjudication.

1 (b) Any person who has attained the age of 18 years may file a petition in the court
 2 where the person was adjudicated delinquent for expunction of all records of that adjudication
 3 provided:

4 (1) ~~The~~Except for an offense eligible for expunction under subsection (e1) of
 5 this section, the offense for which the person was adjudicated would have
 6 been a crime other than a Class A, B1, B2, C, D, or E felony if committed by
 7 an adult.

8 (2) At least 18 months have elapsed since the person was released from juvenile
 9 court jurisdiction, and the person has not subsequently been adjudicated
 10 delinquent or convicted as an adult of any felony or misdemeanor other than
 11 a traffic violation under the laws of the United States or the laws of this State
 12 or any other state.

13 Records relating to an adjudication for an offense that would be a Class A, B1, B2, C, D, or
 14 E felony if committed by an adult shall not be expunged.

15 ...

16 (e1) Any person who was adjudicated delinquent for a minor offense as defined in
 17 G.S. 7B-2508 and has attained the age of 16 years may file a petition in the court in which the
 18 person was adjudicated to be delinquent for expunction of all juvenile records of the juvenile
 19 having been adjudicated delinquent for the minor offense. Prior to the filing of a petition under
 20 this subsection, at least 18 months must have elapsed since the person was released from
 21 juvenile court jurisdiction and the person must not have subsequently been adjudicated
 22 delinquent or convicted as an adult of any felony or misdemeanor other than a traffic violation
 23 under the laws of the United States or the laws of this State or any other state. The petition shall
 24 also satisfy the conditions set forth in subdivisions (1) through (3) of subsection (c) of this
 25 section. The petition shall be served on the chief court counselor in the district where the
 26 juvenile petition was filed. The chief court counselor shall have 10 days thereafter in which to
 27 file a written objection in the court. If no objection is filed, the court may grant the petition
 28 without a hearing. If an objection is filed or the court so directs, a hearing shall be scheduled
 29 and the chief court counselor shall be notified as to the date of the hearing. If the court finds
 30 that the petitioner satisfies the conditions specified herein, the court shall order the clerk and
 31 the appropriate law enforcement agencies to expunge their records of the adjudication,
 32 including all references to arrests, complaints, referrals, juvenile petitions, and orders. The
 33 clerk shall forward a certified copy of the order of expunction to the sheriff, chief of police, or
 34 other appropriate law enforcement agency.

35"

36
 37 **PART III. JUVENILE CONFINEMENT**

38 **SECTION 3.1.** G.S. 7B-1902 reads as rewritten:

39 **"§ 7B-1902. Authority to issue custody orders; delegation.**

40 In the case of any juvenile alleged to be within the jurisdiction of the court, when the court
 41 finds it necessary to place the juvenile in custody, the court may order that the juvenile be
 42 placed in secure or nonsecure custody pursuant to ~~criteria set out in~~ G.S. 7B-1903.

43 Any district court judge may issue secure and nonsecure custody orders pursuant to
 44 G.S. 7B-1903. The chief district court judge may delegate the court's authority to issue a
 45 nonsecure custody order to the chief court counselor or the chief court counselor's counseling
 46 staff by administrative order filed in the office of the clerk of superior court. The administrative
 47 order shall specify which persons may be contacted for approval of a ~~secure or~~ nonsecure
 48 custody order. The chief district court judge shall not delegate the court's authority to detain or
 49 house juveniles in holdover facilities pursuant to G.S. 7B-1905 or G.S. 7B-2513."

50 **SECTION 3.2** G.S. 7B-1903(e) reads as rewritten:

1 "(e) The court shall determine the need for secure custody following a hearing conducted
2 in accordance with the procedural requirements for a continued custody hearing set forth in
3 G.S. 7B-1906. If the criteria for secure custody as set out in subsection (b), (c), or (d) of this
4 section are met, the court may enter an order directing an officer or other authorized person to
5 assume custody of the juvenile and to take the juvenile to the place designated in the order. The
6 order shall be in writing with appropriate findings of fact. The findings of fact shall include the
7 evidence relied upon in reaching the decision and the purposes which secure custody is to
8 achieve."

9 **SECTION 3.3.** G.S. 7B-2506 reads as rewritten:

10 "**§ 7B-2506. Dispositional alternatives for delinquent juveniles.**

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

14 ...

15 (12) Impose confinement on an intermittent basis in an approved detention
16 facility. Confinement shall be limited to not more than five 24-hour periods,
17 the timing and imposition of which is determined by the court in its
18 discretion.

19 ...

20 (20) Order that the juvenile be confined in an approved juvenile detention facility
21 for a term of up to 14 24-hour periods, which confinement shall not be
22 imposed consecutively with intermittent confinement pursuant to
23 subdivision (12) of this section at the same dispositional hearing. The timing
24 and imposition of this confinement shall be determined by the court in its
25 discretion.

26 "

27 **PART IV. EFFECTIVE DATE**

28 **SECTION 4.** Section 2.5 of this act is effective when this act becomes law. The
29 remainder of this act becomes effective December 1, 2015, and applies to offenses committed
30 on or after that date.
31