



# HOUSE BILL 415: Photos of Juveniles/Show-Ups.

2019-2020 General Assembly

<b>Committee:</b>		<b>Date:</b>	July 22, 2019
<b>Introduced by:</b>		<b>Prepared by:</b>	Tawanda F. Artis Staff Attorney
<b>Analysis of:</b>	S.L. 2019-47		

**OVERVIEW:** *S.L. 2019-47 creates an exception in the law governing non-testimonial identification procedures for juveniles to allow a photograph to be taken of a juvenile suspected in committing a crime at the time of a show-up and establishes procedures to be followed when a juvenile is photographed for a show-up.*

*This act became effective on June 26, 2019.*

### CURRENT LAW:

**G.S. 7B-2103** provides non-testimonial identification procedures (including fingerprints, palm prints, footprints, measurements, blood specimens, urine specimens, saliva samples, hair samples, or other reasonable physical examination, handwriting exemplars, voice samples, photographs, and lineups or similar identification procedures requiring the presence of a juvenile) are not to be conducted on any juvenile without a court order, unless the juvenile has been charged as an adult or transferred to superior court for trial as an adult, in which case the procedures applicable to adults apply.

The only exception in current law to this requirement is that juveniles may be photographed in accordance with G.S. 7B-2102 under the following circumstances:

- When a complaint has been prepared for filing as a petition and the juvenile is in physical custody of law enforcement or the Division.
- When a juvenile has been committed to a county detention facility.
- When a juvenile is adjudicated delinquent if the juvenile was 10 years of age or older at the time the juvenile committed the offense that would be a felony if committed by an adult.

When a juvenile is photographed for these purposes it must be done in a proper format for transfer to the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI) and may be released to the Division upon request.

Fingerprints and photographs taken under G.S. 7B-2102 are not public records, must not be included in the clerk's record, must be withheld from public inspection and examination, are not be eligible for expunction pursuant to G.S. 7B-3200, and must be maintained separately from any juvenile record.

If a juvenile is finger printed and photographed pursuant to the filing of a petition the custodian of records must destroy all fingerprints and photographs at the earlier of the following:

- The juvenile court counselor or prosecutor does not file a petition against the juvenile within one year of fingerprinting and photographing the juvenile;
- The court does not find probable cause pursuant to G.S. 7B-2202; or

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- The juvenile is not adjudicated delinquent of any offense that would be a felony or a misdemeanor if committed by an adult.

**G.S. 15A-284.52** defines a show-up as a "procedure in which an eyewitness is presented with a single live suspect for the purpose of determining whether the eyewitness is able to identify the perpetrator of the crime." Show-ups must meet all the following requirements:

- A show-up may only be conducted when 1) a suspect matching the description of the perpetrator is located in close proximity in time and place to the crime, or 2) there is reasonable belief that the perpetrator has changed his or her appearance in close time to the crime, and 3) only if there are circumstances that require the immediate display of a suspect to an eyewitness.
- A show-up must only be performed using a live suspect and must not be conducted with a photograph.
- Investigators must photograph a suspect at the time and place of the show-up to preserve a record of the appearance of the suspect at the time of the show-up procedure.

**BILL ANALYSIS:** This act does the following:

**Section 1** creates exception in G.S. 7B-2103 (Authority to issue nontestimonial identification order where juvenile alleged to be delinquent.) to allow a photograph to be taken of a juvenile suspected in committing a crime at the time of a show-up.

**Section 2** establishes procedures in Article 14A of Chapter 15A (Eyewitness Identification Reform Act) of the General Statutes to be followed when a juvenile is photographed for a show-up. The specific procedures include the following:

- Photographs of juveniles must be retained or disposed of as required by G.S. 7B 2108, except that the law enforcement agency is required to make written certification to the court of the destruction of records under G.S. 7B 2108(6) only if a petition was filed.
- Photographs taken pursuant to this exception are not public records under Chapter 132 of the General Statutes and the photographs shall be (i) kept separate from the records of adults, (ii) withheld from public inspection, and (iii) examined only by order of the court, except that the following persons may examine it without an order of the court:
  - The juvenile or the juvenile's attorney.
  - The juvenile's parent or guardian.
  - The prosecutor.
  - Court counselors.

**EFFECTIVE DATE:** This act became effective on June 26, 2019.

**BACKGROUND:** In 1986, the North Carolina Supreme Court held that show-ups of juveniles do not require a court order and are admissible if due process requirements are met. (*In re Stallings, 318 N.C. 565 (1986)*). This opinion, written by Justice Meyer, reversed an earlier opinion by the North Carolina Court of Appeals in this matter. Two justices concurred in the opinion, while three justices disagreed and wrote a dissenting opinion.