



HOUSE BILL 186: Div. of Juvenile Justice Mods.

2023-2024 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	May 31, 2023
Introduced by:	Reps. Davis, Pyrtle, Carson Smith, A. Jones	Prepared by:	Robert Ryan*
Analysis of:	Sixth Edition		Staff Attorney

OVERVIEW: *House Bill 834 would make the following changes to the juvenile justice system:*

- *Class A through G felonies committed by juveniles who are 16 or older, and Class A felonies committed by juveniles who are under 16, would be transferred to superior court for trial as an adult upon the filing of an indictment.*
- *Certain identifying information about juveniles could be released to the public if a court issues an order authorizing the release of the information, or exigent circumstances exist.*
- *The law related to custodial interrogation of juveniles who are 16 or older would be amended to authorize statements made in the presence of a "caretaker" when the juvenile's parent, guardian, or custodian cannot be reached.*
- *Authorize a juvenile justice court counselor to serve the required individuals with the petition and summons for a juvenile case and clarify the applicability of certain defenses that relate to juvenile processes.*
- *Authorize the court to conduct a hearing to determine if a juvenile needs any medical evaluation or treatment and authorize the court to order the juvenile to comply with any recommended treatment.*
- *Require the Division of Juvenile Justice of the Department of Public Safety to create, implement, and evaluate juvenile minority sensitivity and racial and ethnic disparities training annually.*

CURRENT LAW AND BILL ANALYSIS:

PART I. TRANSFER PROCESS

Delinquent juveniles between the ages of 10 and 18 who commit an act that would be a criminal offense if committed by an adult are not charged with a crime in criminal court, but rather are alleged to have committed a delinquent act and a petition is filed against the juvenile in juvenile court.

However, certain cases may or must be transferred to superior court so that the delinquent juvenile can be tried as an adult. The type of case that may or must be transferred will depend on the age of the delinquent juvenile.

For juveniles who are age 16 and 17 years old, the following laws apply for cases to be transferred to superior court for the juvenile to be tried as an adult:

- If the juvenile commits a Class A through G felony, the case must be transferred after either a bill of indictment has been returned or probable cause has been found after a hearing.

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G.S. 7B-2200.5(a). However, a prosecutor may decline to transfer a class D through G felony to superior court and keep such a case in juvenile court. G.S. 7B-2200.5(a1).

- If the juvenile has already been transferred to and convicted in superior court, then in all subsequent cases the juvenile will be prosecuted as an adult. G.S. 7B-1604.
- If the juvenile commits a Class H or I felony, transfer is in the discretion of the court. G.S. 7B-2200.5(b).

If a juvenile is less than 16 years of age and commits a Class A felony, transfer to superior court for trial as an adult is mandatory upon a finding of probable cause. G.S. 7B-2200.

The bill would modify G.S. 7B-2200.5, to mandate the transfer of a Class A through G felonies to superior court for the juvenile to be tried as an adult upon the return of a true bill of indictment in addition to a finding of probable cause after a hearing.

The bill would modify G.S. 7B-2200 to also mandate the transfer of a Class A felony to superior court for a juvenile less than 16 years of age upon the return of a true bill of indictment.

PART II. CONFIDENTIALITY, "LYRIC AND DEVIN'S LAW"

Information gathered about juveniles is confidential and law enforcement agencies are prohibited from public disclosure of that information. G.S. 7B-2102 and G.S. 7B-3100.

The bill would create a new section, G.S. 7B-3103, that would allow the release of certain information about a juvenile, including the juvenile's name and photograph, if a court authorized the release of the information. A court would need to find all of the following to authorize the release of the juvenile's information:

A petition has been filed alleging an offense that would subject the juvenile to prosecution as an adult.

The court determines that the juvenile presents a danger.

The court determines that good cause exists for the disclosure.

Law enforcement would also be authorized to release the juvenile's information without a court order in exigent circumstances, but the law enforcement agency would then need to seek a court order at the first available session of court. If the court did not issue an order or the juvenile was taken into custody, then the law enforcement agency would be required to take down all public information about the juvenile that the agency has published.

PART III. INTERROGATION PROCEDURES

G.S. 7B-2101 contains the law for the procedure that law enforcement officers must follow when seeking to interrogate a juvenile who is in custody. In addition to advising the juvenile of the juvenile's Miranda rights, the juvenile must be advised that the juvenile has a right to have a parent, guardian, or custodian present at the questioning. If the juvenile is under the age of 16, then no statement is admissible in court unless the juvenile's parent, guardian, custodian, or attorney is present at the time of the questioning.

The bill would modify G.S. 7B-2101 to define and add in the term "caretaker" to the list of people who a juvenile age 16 or 17 years old has the right to have present during a custodial interrogation. Caretaker is any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of the juvenile in a residential setting. A caretaker includes a stepparent or foster parent. The juvenile's caretaker could only be called if the juvenile's parent, guardian, or custodian cannot be reached.

PART IV. OTHER JUVENILE JUSTICE MODIFICATIONS

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Section 4.(a): After a petition has been filed alleging that a juvenile is undisciplined or delinquent, a summons and petition must be served upon the juvenile and a parent, guardian, or custodian of the juvenile at least five days before a scheduled hearing in order for a court to exercise jurisdiction over the juvenile. The sheriff of the county or anyone else authorized by law may serve the juvenile and parent, guardian, or custodian of the juvenile.

This section would allow a juvenile court counselor to serve the juvenile and the juvenile's parent, guardian, or custodian with the petition and summons. If, after being served with the petition and summons, the juvenile and juvenile's parent, guardian, or custodian attend the hearing and do not object to a lack of personal jurisdiction or service of process at that time, those defenses would be waived, similar to the general rules of civil procedure.

Section 4.(b): In undisciplined and delinquent juvenile cases, the court may order the juvenile to be examined by a physician, psychiatrist, psychologist, or other qualified expert as needed to determine the needs of the juvenile. If the juvenile has been adjudicated delinquent and has a suspected mental illness, developmental disability, or intellectual disability, the court must order a referral for a comprehensive clinical assessment or equivalent mental health assessment unless an assessment has been conducted within 45 days before the adjudication hearing.

This section would change the statutory timeline for when a court would be required to order a comprehensive clinical assessment or equivalent mental health assessment from 45 days before the adjudication hearing to 90 days before disposition. Adjudication and disposition may or may not occur on the same date. The court would also be authorized to order the juvenile to comply with any recommended treatment.

Section 4.(c) would make various conforming changes.

Section 4(d): The Department of Justice (Department) is required to develop guidelines for minority sensitivity training for all law enforcement personnel in the State. The Department must ensure that all individuals who work with minority juveniles in the juvenile justice system, including all juvenile court counselors and other Division personnel, are taught how to communicate effectively with the minority juveniles and how to identify and address the needs of those juveniles. The Department is required to conduct minority sensitivity training annually except where local law enforcement has existing minority sensitivity training that meets the Department guidelines. The Department must also assess whether minorities are receiving fair and equal treatment in the juvenile justice system.

This section would provide that the Division of Juvenile Justice of the Department of Public Safety would be responsible for creating, implementing, and evaluating juvenile minority sensitivity and racial and ethnic disparities training annually.

Section 4.(e) would make various conforming changes.

EFFECTIVE DATE: This act becomes effective December 1, 2023, and applies to offenses committed on or after that date.

**Hillary Woodard, Howard Marsilio, and Debbie Griffiths, Staff Attorneys with the Legislative Analysis Division, substantially contributed to this summary.*