



HOUSE BILL 186: Juvenile Justice Modifications/Department of Insurance Expenses/Technical Changes.

2023-2024 General Assembly

Committee:		Date:	December 15, 2023
Introduced by:		Prepared by:	Robert Ryan
Analysis of:	S.L. 2023-114		Staff Attorney

OVERVIEW: *S.L. 2023-114 makes 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, are transferred to superior court for trial as an adult upon the filing of an indictment.*
- *Certain identifying information about juveniles can be released to the public if a court issues an order authorizing the release of the information, or exigent circumstances exist.*
- *Amends the law related to custodial interrogations of juveniles who are 16 or older to authorize statements made in the presence of a "caretaker" when the juvenile's parent, guardian, or custodian cannot be reached.*
- *Authorizes a juvenile justice court counselor to serve the required individuals with the petition and summons for a juvenile case and clarifies the applicability of certain defenses that relate to juvenile processes.*
- *Authorizes the court to conduct a hearing to determine if a juvenile needs any medical evaluation or treatment and authorizes the court to order the juvenile to comply with any recommended treatment.*
- *Requires 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.*
- *Creates a procedure to determine a juvenile's capacity to stand trial.*
- *Requires services to assist a juvenile to attain the capacity to stand trial or consideration of involuntary commitment of a juvenile if attainment of capacity is not likely.*
- *Modifies the laws related to secure custody orders.*

The act also authorizes the Department of Insurance to use certain funds to obtain new office space and makes technical corrections to S.L. 2023-97.

This act has various effective dates. Please see the full summary for more detail.

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.

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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. 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 act modifies G.S. 7B-2200.5, to mandate the transfer of 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 act modifies G.S. 7B-2200 to 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.

This section became effective December 1, 2023, and applies to offenses committed on or after that date.

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 act creates a new section, G.S. 7B-3103, that allows the release of certain information about a juvenile, including the juvenile's name and photograph, if a court authorizes the release of the information. A court needs to find all 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 to the juvenile or others.
- The court determines that good cause exists for the disclosure.

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

This section became effective December 1, 2023, and applies to offenses committed on or after that date.

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

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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 act modifies G.S. 7B-2101 to define and add in the term "caretaker" to the list of people whom 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 can only be called if the juvenile's parent, guardian, or custodian cannot be reached.

This section became effective December 1, 2023, and applies to offenses committed on or after that date.

PART IV. OTHER JUVENILE JUSTICE MODIFICATIONS

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 allows 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 are 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 in the 45 days preceding the adjudication hearing.

This section changes 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 is also authorized to order the juvenile to comply with any recommended treatment.

Section 4.(c) makes 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 provides 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) makes various conforming changes.

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Section 4.(f) This section became effective December 1, 2023, and applies to offenses committed on or after that date.

PART V. JUVENILE CAPACITY TO PROCEED

A juvenile's capacity to stand trial is currently established utilizing the procedure used to determine the capacity of an adult to stand trial. The act establishes new procedures to determine the capacity of a juvenile to stand trial that include the following:

Section 5.(a) No proceedings are held if (i) a juvenile has a mental disorder, intellectual disability, neurological disorder, traumatic or acquired brain injury, or developmental immaturity, and (ii) the juvenile is unable to understand the nature and object of the proceedings, to comprehend their situation in reference to the proceedings, or to assist in his or her own defense. Motions that can be handled by counsel without the assistance of the juvenile can proceed.

Section 5.(b) Changes to hearing procedures for juveniles include new definitions and the following:

- Establishes the procedure to be used when the issue of the juvenile's capacity is raised including:
 - The question of the juvenile's capacity can be raised at any time during the proceedings, unless the juvenile is under 12, then capacity can be raised at the first hearing.
 - When the issue of capacity is raised, the court can appoint forensic evaluators to prepare a report that would be admissible in court. The State and the juvenile can hire their own expert as well.
 - The court can order a juvenile charged with a felony to a State facility for the mentally ill for 60 days for observation and treatment to determine capacity.
 - An order requiring a forensic evaluation stays the juvenile proceedings with the exception of review hearings for secure or nonsecure custody and proceedings related to transfer of jurisdiction related to indictment.
 - The juvenile bears the burden of proof if capacity is contested.
 - If the juvenile is found incapable to proceed, the juvenile is not subject to transfer, adjudication, disposition, or modification of disposition as long as the incapacity exists.
- Establishes credentials for the evaluators, requirements for the contents of the evaluation and the report, and payment for the evaluators.
- If incapacity is found, the court can order remediation services directed at facilitating the attainment of capacity. This may include mental health treatment to reduce interfering symptoms. The service provider is required to provide progress reports every 90 days and a hearing to review the progress must be held within 30 days of receiving the report. The court can order a reassessment of capacity at any time during this process.
- Requires consideration of involuntary commitment of the juvenile when the juvenile is found to be incapable to proceed and not likely to attain capacity in the foreseeable future.

Section 5.(c) Hearings on the need for secure custody are held at least every 30 days when the juvenile's capacity to proceed is raised. Secure custody is when the juvenile is held in a locked facility. The juvenile, through counsel, can request the hearings to be held every 10 days if good cause is determined by the court. The juvenile, through counsel, can also waive future secure custody hearings.

Section 5.(d) Prosecutions for offenses occurring before the effective date of this part of the act are not abated or affected.

Section 5.(e) This section becomes effective January 1, 2025, and applies to offenses committed on or after that date.

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PART VI. MODIFY CERTAIN LAWS RELATED TO SECURE CUSTODY ORDERS

Section 6.(a) G.S. 7B-1904 provides the required content and procedures for providing a copy of the secure or nonsecure custody order to the person or institution where the juvenile is being ordered placed. G.S. 7B-1904 also provides that an order which is complete and regular on its face may be executed by a law enforcement officer without the officer needing to further inquire about the order, and it also provides immunity for execution by the law enforcement officer. This section of the act modifies G.S. 7B-1904 by adding that an initial order for secure custody may be issued after the filing of a petition but before the juvenile has been served with the petition. This section also provides that if a juvenile has not been served with the petition upon being detained, the juvenile must be served with the petition within 72 hours. Finally, this section deletes the provision related to the facial validity of an order and the related immunity for a law enforcement officer, because these provisions are moved into the new G.S. 7B-1904.5 which is contained in section 6.(b) of this act.

Section 6.(b) This section creates a new statute, G.S. 7B-1904.5, which provides the procedure for a law enforcement officer executing a secure custody order. This section first contains the provision originally provided in G.S. 7B-1904, which states that an order which is complete and regular on its face may be executed by a law enforcement officer without the officer needing to further inquire about the validity of the order, and it also provides immunity for execution by the law enforcement officer. This section also provides that a law enforcement officer may enter a private premises or vehicle, and use force to gain entry, under certain listed circumstances that are provided, in order to take a juvenile into custody as provided in an issued secure custody order.

Section 6.(c) This section became effective December 1, 2023, and applies to offenses committed on or after that date.

PART VII. DEPARTMENT OF INSURANCE LEASE EXPENSES

This section of the act authorizes the Department of Insurance to use a sum not to exceed eighteen million dollars (\$18,000,000) to enter into a lease agreement for the temporary relocation of its offices and authorizes the use of a sum not to exceed one million dollars (\$1,000,000) for costs associated with the relocation. The Office of the State Fire Marshal must not be relocated.

This section became effective August 24, 2023.

PART VIII. MAKE TECHNICAL CHANGES TO S.L. 2023-97

This section of the act makes technical corrections to section 2 of S.L. 2023-97.

This section became effective December 1, 2023, and applies to offenses committed on or after that date.

EFFECTIVE DATE: Except as otherwise provided, this act became effective August 24, 2023.

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