



This Bill Analysis reflects the contents of the bill as it was presented in committee.

HOUSE BILL 834: Juv Capacity/Transfer/Interrog/Confidential.

2023-2024 General Assembly

Committee:	House Judiciary 1. If favorable, re-refer to Appropriations. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	May 31, 2023
Introduced by:	Reps. Davis, N. Jackson	Prepared by:	Debbie Griffiths* Staff Attorney
Analysis of:	PCS to First Edition H834-CSC1a-22		

OVERVIEW: House Bill 834 would make the following changes to the juvenile justice system by creating a procedure to:

- Determine a juvenile's capacity to stand trial.
- Require services to assist a juvenile to attain the capacity to stand trial or consider involuntary commitment of a juvenile if attainment of capacity is not likely.

The PCS to House Bill 834 would make the following additional 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.

CURRENT LAW AND BILL ANALYSIS:

PART I. 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. House Bill 834 would establish a new procedure to determine the capacity of a juvenile to stand trial that would include the following:

Section 1.(a)-No proceedings would be 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 could proceed.

Section 1.(b)-Changes to hearing procedures for juveniles would include new definitions and would:

- Establish the procedure to be used when the issue of the juvenile's capacity is raised including:

Jeffrey Hudson
Director



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- Allow the question of the juvenile's capacity to be raised at any time during the proceedings, unless the juvenile is under 12, then capacity would be raised at the first hearing.
- When the issue of capacity is raised, the court could appoint forensic evaluators to prepare a report that would be admissible in court. The State and the juvenile could hire their own expert as well.
- The court could 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 would stay 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.
- Establish credentials for the evaluators, requirements for the contents of the evaluation and the report, and payment for the evaluators.
- If incapacity is found, allow the court to order remediation which is services directed at facilitating the attainment of capacity. This may include mental health treatment to reduce interfering symptoms. The service provider would be 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 could order a reassessment of capacity at any time during this process.
- Require 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. If the juvenile is found to be incapable to proceed and not likely to attain capacity, the petition must be dismissed but the court must consider involuntary commitment. The prosecutor may voluntarily dismiss with leave any allegations contained in the petition.

Section 1.(c)-Hearings on the need for secure custody would be 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, could request the hearings to be held every 10 days if good cause is determined by the court. The juvenile, through counsel, could also waive future secure custody hearings.

Section 1.(d)-Prosecutions for offenses occurring before the effective date of this part of the act would not abate or be affected.

Section 1.(e)-There would be nonrecurring funds in the amount of \$217,135 for 2023-2024 and \$895,162 for 2024-2025 and recurring funds in the amount of \$1,288,238 for 2025-2026 from the General Fund to the Department of Public Safety, Division of Juvenile Justice and Delinquency Prevention for the implementation of Part 1 of the act.

Section 1.(f)-Sections 1.(a) through 1.(d) would become effective January 1, 2025, and apply to offenses committed on or after that date. Section 1.(e) would become effective July 1, 2023.

PART II. 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.

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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 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.

Section 2 of this act would become effective December 1, 2023, and apply to offenses committed on or after that date.

PART III. CONFIDENTIALITY

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.

Section 3 of this act would become effective December 1, 2023, and apply to offenses committed on or after that date.

PART IV. 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 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.

Section 4 of this act would become effective December 1, 2023, and apply to offenses committed on or after that date.

PART V. EFFECTIVE DATE

Except as otherwise provided, this act would become effective when it becomes law.

** Robert Ryan, LAD Staff Attorney, substantially contributed to this summary.*