

March 29, 2007

**H 1253. JUVENILE CODE REVISIONS .** Filed 3/29/07. *TO REVISE THE JUVENILE CODE WITH REGARD TO SECURE CUSTODY ORDERS, DELINQUENCY HISTORY LEVELS, AND DISPOSITIONAL LIMITS OF DELINQUENT JUVENILES.*

Amends GS 7B-1903(d) to allow the court to secure custody for a juvenile who is alleged to have substantially violated (was, violated) probation or post-release supervision, and removes the requirement that it be alleged that the juvenile committed acts that damage property or injure persons. Amends GS 7B-2507(b) to increase from one point to two points the points awarded for each prior adjudication of violations of GS 14-202.2 (indecent liberties between children), GS 14-269 (carrying concealed weapons), and GS 14-269.7(a) (prohibitions on handguns for minors). Amends GS 7B-2508(a) to increase the offense classification for adjudications of GS 14-202.2, GS 14-269, and GS 14-269.7(a) from minor to serious. Amends GS 7B-1501 to define *prior adjudication*. Amends GS 7B-2510(e) to provide that when the court finds there has been a probation violation, in the court's discretion, if the juvenile's disposition is not raised to a higher level, the court may include an order of confinement for up to twice the term authorized for the juvenile's disposition level (was, in the court's discretion, part of the new disposition may include an order of confinement in a secure facility for up to twice the term authorized). Makes conforming changes. Effective for offenses committed on or after December 1, 2007.

**Intro. by Dickson.**

GS 7B

July 16, 2008

**H 1253. SEX OFFENDER/INCAPACITY TO PROCEED (NEW).** Filed 3/29/07. Senate committee substitute deletes all provisions of 1st edition and replaces it with *AN ACT TO PROVIDE FOR THE CIVIL COMMITMENT OF CERTAIN SEX OFFENDERS WHO LACK CAPACITY TO PROCEED TO TRIAL.*

Enacts a new GS Chapter 122F to provide for the civil commitment of a person who (1) is charged with committing a sex offense, (2) is found incapable of proceeding to trial and (3) suffers from a mental abnormality. Defines *mental abnormality* as a mental condition affecting a person's emotional or volitional capacity that predisposes the person to commit sex offenses in a degree constituting such person a menace to the health and safety of others, including an individual with a personality disorder that makes the person likely to engage in repeat sex offenses if not confined in a secure facility for long-term control, care, and treatment. Defines *sex offense* as any of the specified offenses listed in the section that are committed against a child under 16, including solicitation or conspiracy to commit any of the offenses against a child under 16 and aiding and abetting any of the offenses if committed against a child under 16.

Establishes legislative findings. Prohibits release of a defendant from a facility, institution, or agency who: (1) is charged with a sex offense but found incapable of proceeding to trial, and (2) is lawfully confined in a secure facility without first providing notice to the Attorney General (AG), the Prosecutor's Review Committee (Committee), and the victim and the victim's parent or legal guardian at least 90 days prior to release. Allows the following information to be released in that notice: (1) the defendant's name, identifying factors, anticipated future residence, and offense history and (2) the documentation of institutional adjustment and any treatment received by the sexual predator. Grants immunity from civil and criminal liability for the facility, institution, or agency with custody of the defendant and the Committee for good-faith conduct under this Chapter. Establishes the Committee, to be appointed and chaired by the AG, which will include an Attorney General staff member, a district attorney, and a victim's representative. The Committee will make a probable cause determination regarding whether a person is a sexual predator for each case referred to the Committee by the court or upon notice of a pending release. Requires the Committee to file a petition for a hearing with the court if it determines probable cause exists, within 30 days of that determination, and to notify the victim and the victim's parent and legal guardian regarding the time and location of the hearing.

Provides for court determination of probable cause; custody of the sexual predator, if not already confined in a secure facility; and evaluation by a qualified expert approved by the court to determine whether the person is a sexual predator. Allows for immediate notice of a person's opportunity to a hearing to contest probable cause concerning whether the person is a sexual

predator, with the hearing held within 72 hours after a person is taken into custody. Provides for court determinations and rights of the defendant.

Provides for a trial for civil commitment within 60 days after the probable cause hearing, in which the court will determine: (1) whether the person committed the act for which the defendant is charged and if so, (2) whether the person is a sexual predator. Allows for the request for a jury trial, if submitted within 30 days of the probable cause hearing. Requires the victim and the victim's parent or legal guardian to be notified of the time and location of the trial. Provides for (1) assistance of counsel for the defendant; (2) access to defendant's own qualified expert, unless the person is an indigent person, then it is in the court's discretion of whether those services are necessary; and (3) payment for services by the court. Describes standards and procedures for the court to determine whether the defendant committed the sexual offense and whether that person is a sexual predator. Requires the court to make specific findings on whether the defendant committed the act with which he or she is charged, including (1) the extent to which the defendant's incompetence or developmental disability affected the outcome of the hearing, including its effect on the defendant's ability to consult with and assist counsel and to testify; (2) the extent to which evidence could be reconstructed without assistance of the defendant; and (3) the strength of the prosecution's case. Requires that the finding by a jury that the defendant is a sexual predator must be by unanimous verdict. Provides that if the court or a jury find that the defendant committed the sexual offense and is a sexual predator, then the defendant will be committed to the custody of the Department of Health and Human Services (DHHS) for control, care, and treatment until the defendant's mental abnormality has changed so that it is safe for the defendant to be at large. Allows for the defendant to be in the custody of the Department of Correction under an interagency agreement with DHHS. Provides for (1) the defendant's release if the court or jury is not convinced beyond a reasonable doubt that the defendant committed the sexual offense or is a sexual predator, (2) mistrial, and (3) appeals.

Requires a committed defendant to have an examination regarding the defendant's mental condition once every year, with an expert retained or appointed by the court upon request. Requires an annual judicial hearing to review the defendant's status and allows for the defendant to petition for release at that hearing, with notice of that right and a form for a waiver of rights provided to the defendant by the Secretary of DHHS. Allows for representation by counsel at the hearing but that the defendant is not entitled to be present. Provides for a trial if the court determines that there is probable cause that the defendant's mental abnormality has so changed to make release a possibility. Sets forth procedures for that trial. Allows a court to deny a subsequent petition for release if the defendant's previous petition was frivolous, unless the petition contains facts that warrant a new hearing. Authorizes release of confidential information under certain conditions, constitutional standard of care for committed defendants, and return to trial upon defendant regaining capacity to proceed to trial pursuant to GS 15A-1006. Requires registration of defendants released from commitment in accordance with GS Chapter 14, Article 27A. Enacts a new GS 14-208.6D to specifically require registration of sexual predators when released from commitment.

Enacts a new GS 15A-1003.1 to allow a presiding judge, who determines that there are reasonable grounds that a defendant, charged with a sex offense against a child under 16 and found incapable of proceeding to trial, meets the involuntary commitment criteria or has a mental abnormality, to issue a custody order for the defendant's transfer to a 24-hour facility for examination by a physician. Provides that the proceedings thereafter be in accordance with Part 7, Article 5, of GS Chapter 122C except if the examining physician finds the defendant does not meet the criteria for involuntary commitment but finds the defendant has a mental abnormality as defined in GS 122F-2, then the physician must notify the clerk of court and the appropriate court as provided by Chapter 122C. The court will refer the case for review by the Committee and the AG for possible commitment under Chapter 122F. Provides that a court may order temporary detention of the defendant pending that proceeding and allows evidence regarding capacity to proceed to be admissible in the involuntary commitment proceedings.

Enacts a new GS 15A-1010 to provide for a court to refer a defendant, who is charged with a sex offense against a child under 16 and is incapable of proceeding to trial, for a civil commitment review under Chapter 122F prior to dismissal of the case if the court determines that referral is appropriate.

Makes conforming changes to GS 15A-1003.1 (referral of incapable defendant for civil commitment proceedings), GS 15A-1004 (orders for safeguarding of defendant and return to trial), GS 122C-261(e) (related to custody orders), GS 122C-263(b) (physician examination of a person in custody), GS 122C-266(b) (related to inpatient commitment physician examination), and GS 122C-268(c) (district court hearing related to inpatient commitment).

Effective September 1, 2008, and applies to any defendant charged with a sex offense as defined by GS 122F-2 and found incapable of proceeding to trial, before, on, or after that date, if the defendant has a mental abnormality, unless the charge was dismissed under GS 15A-1008 before September 1, 2008.