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SENATE BILL 413
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Short Title: Raise the Age Modifications.

(Public)

Sponsors:

Referred to:

April 1, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CERTAIN MODIFICATIONS TO THE GENERAL STATUTES IN
3 ORDER TO FACILITATE IMPLEMENTATION OF THE LEGISLATION KNOWN AS
4 RAISE THE AGE.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.(a)** G.S. 7B-1501(7) reads as rewritten:

7 "(7) Delinquent juvenile. –

8 ...

9 b. Any juvenile who, while less than 18 years of age but at least 16 years
10 of age, commits a crime or an infraction under State law or under an
11 ordinance of local government, excluding ~~violation~~ all violations of
12 the motor vehicle ~~laws,~~ laws under Chapter 20 of the General Statutes,
13 or who commits indirect contempt by a juvenile as defined in
14 G.S. 5A-31."

15 **SECTION 1.(b)** G.S. 143B-805(6) reads as rewritten:

16 "(6) Delinquent juvenile. –

17 ...

18 b. Any juvenile who, while less than 18 years of age but at least 16 years
19 of age, commits a crime or an infraction under State law or under an
20 ordinance of local government, excluding ~~violation~~ all violations of
21 the motor vehicle ~~laws,~~ laws under Chapter 20 of the General Statutes,
22 or who commits indirect contempt by a juvenile as defined in
23 G.S. 5A-31."

24 **SECTION 1.(c)** G.S. 20-106 is recodified as G.S. 14-71.2.

25 **SECTION 2.** G.S. 7B-1604(b) reads as rewritten:

26 "(b) ~~A juvenile (i) who is transferred to and convicted in superior court or (ii) who has~~
27 ~~previously been convicted in either district or superior court for a felony or a misdemeanor,~~
28 ~~including a violation of the motor vehicle laws under State law, shall be prosecuted as an adult~~
29 ~~for any criminal offense the juvenile commits after the district or superior court conviction.~~
30 A juvenile shall be prosecuted as an adult for any criminal offense the juvenile commits after a
31 district or superior court conviction if either of the following applies:

32 (1) The juvenile has previously been transferred to and convicted in superior
33 court.

34 (2) The juvenile has previously been convicted in either district or superior court
35 for a felony or a misdemeanor. Violations of the motor vehicle laws



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1 punishable as a misdemeanor or infraction shall not be considered a conviction
2 for the purposes of this subsection unless the conviction is for an offense
3 involving impaired driving as defined by G.S. 20-4.01(24a)."

4 **SECTION 3.** G.S. 7B-1702 reads as rewritten:

5 **"§ 7B-1702. Evaluation.**

6 Upon a finding of legal sufficiency, except in cases involving nondivertible offenses set out
7 in G.S. 7B-1701, the juvenile court counselor shall determine whether a complaint should be
8 filed as a petition, the juvenile diverted pursuant to G.S. 7B-1706, or the case resolved without
9 further action. In making the decision, the counselor shall consider criteria provided by the
10 Department and shall conduct a gang ~~assessment~~ assessment for juveniles who are 12 years of
11 age or older. The intake process shall include the following steps if practicable:

- 12 (1) Interviews with the complainant and the victim if someone other than the
13 complainant;
- 14 (2) Interviews with the juvenile and the juvenile's parent, guardian, or custodian;
- 15 (3) Interviews with persons known to have relevant information about the
16 juvenile or the juvenile's family.

17 Interviews required by this section shall be conducted in person unless it is necessary to conduct
18 them by telephone."

19 **SECTION 4.** G.S. 7B-1901 is amended by adding a new subsection to read:

20 "(d) A person who takes an individual who is 21 years of age or older into temporary
21 custody for an offense committed when the individual was a juvenile shall proceed in accordance
22 with this Chapter. If, pursuant to the criteria in G.S. 7B-1903(b), secure custody is ordered for
23 any person 21 years of age or older who falls within the jurisdiction of the court, pursuant to
24 G.S. 7B-1601(d) or G.S. 7B-1601(d1), the order shall designate that the person be temporarily
25 detained in the county jail where the charges arose."

26 **SECTION 5.** G.S. 7B-1903(e) reads as rewritten:

27 "(e) If the criteria for secure custody as set out in subsection (b), (c), or (d) of this section
28 are met, the court may enter an order directing an officer or other authorized person to assume
29 custody of the juvenile and to take the juvenile to the place designated in the order. If, pursuant
30 to the criteria in subsection (b) of this section, secure custody is ordered for any person 18 years
31 of age or older who falls within the jurisdiction of the court, pursuant to G.S. 7B-1601(d) or
32 G.S. 7B-1601(d1), the order may designate that the person be temporarily detained in the county
33 jail where the charges arose."

34 **SECTION 6.** G.S. 7B-1905 reads as rewritten:

35 **"§ 7B-1905. Place of secure or nonsecure custody.**

36 (a) A juvenile meeting the criteria set out in G.S. 7B-1903(a), may be placed in nonsecure
37 custody with a department of social services or a person designated in the order for temporary
38 residential placement in:

- 39 (1) A licensed foster home or a home otherwise authorized by law to provide such
40 care;
- 41 (2) A facility operated by a department of social services; or
- 42 (3) Any other home or facility approved by the court and designated in the order.

43 In placing a juvenile in nonsecure custody, the court shall first consider whether a relative of
44 the juvenile is willing and able to provide proper care and supervision of the juvenile. If the court
45 finds that the relative is willing and able to provide proper care and supervision, the court shall
46 order placement of the juvenile with the relative unless the court finds that placement with the
47 relative would be contrary to the best interest of the juvenile. Placement of a juvenile outside of
48 this State shall be in accordance with the Interstate Compact on the Placement of Children set
49 forth in Article 38 of this Chapter.

50 (b) Pursuant to G.S. 7B-1903(b), (c), or (d), a juvenile may be temporarily detained in an
51 approved detention facility ~~which shall be separate from any jail, lockup, prison, or other adult~~

1 ~~penal institution, except as provided in subsection (c) of this section, facility.~~ It shall be unlawful
2 for a ~~county sheriff~~ or any unit of government to operate a juvenile detention facility unless the
3 facility meets the standards and rules adopted by the Department of Public ~~Safety.~~ ~~Safety and has~~
4 ~~been approved by the Juvenile Justice Section of the Division for operation as a juvenile detention~~
5 ~~facility.~~

6 (c) A juvenile who has allegedly committed an offense that would be a Class A, B1, B2,
7 C, D, or E felony if committed by an adult may be detained in secure custody in a holdover
8 facility up to 72 hours, if the court, based on information provided by the juvenile court
9 counselor, determines that no acceptable alternative placement is available and the protection of
10 the public requires the juvenile be housed in a holdover facility.

11 (d) If, pursuant to the criteria in G.S. 7B-1903(b), secure custody is ordered for any
12 person 18 years of age or older who falls within the jurisdiction of the court, pursuant to
13 G.S. 7B-1601(d) or G.S. 7B-1601(d1), the person may be temporarily detained in the county jail
14 where the charges arose."

15 **SECTION 7.** G.S. 7B-1906 reads as rewritten:

16 **"§ 7B-1906. Secure or nonsecure custody hearings.**

17 ...

18 (b) As long as the juvenile remains in secure or nonsecure custody, further hearings to
19 determine the need for continued secure custody shall be held at intervals of no more than 10
20 ~~calendar days.~~ ~~days, except as otherwise provided in this section.~~ A subsequent hearing on
21 continued nonsecure custody shall be held within seven business days, excluding Saturdays,
22 Sundays, and legal holidays when the courthouse is closed for transactions, of the initial hearing
23 required in subsection (a) of this section and hearings thereafter shall be held at intervals of no
24 more than 30 calendar days. In the case of a juvenile alleged to be delinquent, further hearings
25 may be waived only with the consent of the juvenile, through counsel for the juvenile.

26 (b1) For a juvenile who was 16 years of age or older at the time the juvenile allegedly
27 committed an offense that would be a Class A, B1, B2, C, D, E, F, or G felony if committed by
28 an adult, further hearings to determine the need for secure custody shall be held at intervals of no
29 more than 30 calendar days. Further hearings may be waived only with the consent of the
30 juvenile, through counsel for the juvenile. Upon request of the juvenile, through counsel for the
31 juvenile, and for good cause as determined by the court, further hearings to determine the need
32 for secure custody may be held at intervals of 10 days.

33"

34 **SECTION 8.(a)** G.S. 7B-2200.5 reads as rewritten:

35 **"§ 7B-2200.5. Transfer of jurisdiction of a juvenile at least 16 years of age to superior court.**

36 (a) If a juvenile was 16 years of age or older at the time the juvenile allegedly committed
37 an offense that would be a Class A, B1, B2, C, D, E, F, or G felony if committed by an adult, the
38 court shall transfer jurisdiction over the juvenile to superior court for trial as in the case of adults
39 after either of the following:

- 40 (1) Notice to the juvenile and a finding by the court that a bill of indictment has
41 been returned against the juvenile charging the commission of an offense that
42 constitutes a Class A, B1, B2, C, D, E, F, or G felony if committed by an adult.
- 43 (2) Notice, hearing, and a finding of probable cause that the juvenile committed
44 an offense that constitutes a Class A, B1, B2, C, D, E, F, or G felony if
45 committed by an adult.

46 (b) If the juvenile was 16 years of age or older at the time the juvenile allegedly
47 committed an offense that would be a Class H or I felony if committed by an adult, after notice,
48 hearing, and a finding of probable cause, the court may, upon motion of the prosecutor or the
49 juvenile's attorney or upon its own motion, transfer jurisdiction over a juvenile to superior court
50 pursuant to G.S. 7B-2203.

1 (c) A probable cause hearing conducted pursuant to subdivision (2) of subsection (a) of
2 this section shall be conducted within 90 days of the date of the juvenile's first appearance. The
3 court may continue the hearing for good cause.

4 (d) In any case where jurisdiction over a juvenile has been transferred to superior court,
5 upon joint motion of the prosecutor and the juvenile's attorney, the court shall remand the case
6 to district court and shall expunge the superior court record in accordance with G.S. 15A-145.8."

7 **SECTION 8.(b)** G.S. 7B-2202(a) reads as rewritten:

8 "(a) Except as otherwise provided in G.S. 7B-2200.5(a)(1), the court shall conduct a
9 hearing to determine probable cause in all felony cases in which a juvenile was 13 years of age
10 or older when the offense was allegedly committed. ~~The~~ Except as otherwise provided in
11 G.S. 7B-2200.5(c), the hearing shall be conducted within 15 days of the date of the juvenile's
12 first appearance. The court may continue the hearing for good cause."

13 **SECTION 9.** G.S. 7B-2204 reads as rewritten:

14 "**§ 7B-2204. Right to pretrial release; detention.**

15 (a) Once the order of transfer has been entered, the juvenile has the right to pretrial release
16 as provided in G.S. 15A-533 and G.S. 15A-534. The release order shall specify the person or
17 persons to whom the juvenile may be released. Pending release, the court shall order that the
18 juvenile be detained in a detention facility while awaiting trial. Personnel of the Juvenile Justice
19 Section of the Division, or personnel approved by the Juvenile Justice Section, shall transport the
20 juvenile from the detention facility to court.

21 (b) The court may order the juvenile to be held in a holdover facility at any time the
22 presence of the juvenile is required in court for pretrial hearings or trial, if the court finds that it
23 would be inconvenient to return the juvenile to the detention facility. Personnel of the Justice
24 Section of the Division, or personnel approved by the Juvenile Justice Section, shall transport the
25 juvenile from the holdover facility to court and shall transport the juvenile back to the detention
26 center.

27 (c) If the juvenile reaches the age of 18 years while awaiting the completion of
28 proceedings in superior court, the juvenile shall be transported by personnel of the Juvenile
29 Justice Section of the Division, or personnel approved by the Juvenile Justice Section, to the
30 custody of the sheriff of the county where the charges arose.

31 (d) Should the juvenile be found guilty, or enter a plea of guilty or no contest to a criminal
32 offense in superior court and receive an active sentence, then immediate transfer to the Division
33 of Adult Correction and Juvenile Justice of the Department of Public Safety shall be ordered.
34 Until such time as the juvenile is transferred to the Division of Adult Correction and Juvenile
35 Justice of the Department of Public Safety, the juvenile may be detained in a holdover facility.
36 The juvenile may not be detained in a detention facility pending transfer to the Division of Adult
37 Correction and Juvenile Justice of the Department of Public ~~Safety~~-Safety, unless the detention
38 facility is operated by the sheriff pursuant to G.S. 7B-1905(b).

39 (e) The juvenile may be kept by the Division of Adult Correction and Juvenile Justice of
40 the Department of Public Safety as a safekeeper until the juvenile is placed in an appropriate
41 correctional program."

42 **SECTION 10.** G.S. 7B-2508(g1) reads as rewritten:

43 "(g1) Notwithstanding subsection (f) of this section, if a juvenile is adjudicated for an
44 offense that the court finds beyond a reasonable doubt was committed as part of criminal gang
45 activity as defined in G.S. 7B-2508.1, the juvenile shall receive a disposition one level higher
46 than would otherwise be provided for the class of offense and delinquency history level."

47 **SECTION 11.** Article 5 of Chapter 15A of the General Statutes is amended by
48 adding a new section to read:

49 "**§ 15A-145.8. Expunction of records when charges are remanded to district court for**
50 **juvenile adjudication.**

1 (a) Upon remand pursuant to G.S. 7B-2200.5(d), the court shall order expunction of all
2 remanded charges. No person as to whom such an order has been entered shall be held thereafter
3 under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false
4 statement or response to any inquiry made for any purpose, by reason of his or her failure to
5 recite or acknowledge any expunged entries concerning apprehension or trial.

6 (b) The court shall also order the expunction of DNA records when the person's case has
7 been dismissed by the trial court and the person's DNA record or profile has been included in the
8 State DNA Database and the person's DNA sample is stored in the State DNA Databank as a
9 result of the case that was dismissed. The order of expungement shall include the name and
10 address of the defendant and the defendant's attorney and shall direct the North Carolina State
11 Crime Laboratory to send a letter documenting expungement as required by subsection (c) of this
12 section.

13 (c) Upon receiving an order of expungement entered pursuant to subsection (b) of this
14 section, the North Carolina State Crime Laboratory shall purge the DNA record and all other
15 identifying information from the State DNA Database and the DNA sample stored in the State
16 DNA Databank covered by the order, except that the order shall not apply to other offenses
17 committed by the individual that qualify for inclusion in the State DNA Database and the State
18 DNA Databank. A letter documenting expungement of the DNA record and destruction of the
19 DNA sample shall be sent by the North Carolina State Crime Laboratory to the defendant and
20 the defendant's attorney at the address specified by the court in the order of expungement.

21 (d) Upon order of expungement, the clerk shall notify State and local agencies of the
22 court's order as provided in G.S. 15A-150 and forward the order to the Administrative Office of
23 the Courts."

24 **SECTION 12.** This act becomes effective December 1, 2019, and applies to offenses
25 committed on or after that date.