

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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HOUSE BILL 27*

Short Title: Juv. Record/Open and Perm.

(Public)

Sponsors: Representatives G. Miller; Alphin, Arnold, Baddour, Berry, Black, Bowie, Bowman, Brawley, Brubaker, Church, Cole, Crawford, Cromer, Cummings, Diamont, Dickson, Esposito, Gardner, Gottovi, Hall, Hayes, Hightower, Hill, Holt, Hunt, R. Hunter, Ives, Jarrell, Jeffus, Jenkins, Joye, Lemmond, Mavretic, McCombs, McCrary, McLawhorn, Mercer, Mitchell, Moore, Nichols, C. Preston, J. Preston, Redwine, Robinson, Russell, Sexton, Smith, Spears, Stewart, Sutton, Warner, Wilkins, Wilmoth, Wilson, Wood, and Wright.

Referred to: Judiciary III.

February 8, 1994

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE JUVENILE RECORDS OF JUVENILES ADJUDICATED OR CONVICTED OF CERTAIN FELONIES ARE OPEN, MAY NOT BE EXPUNGED AND THAT EVIDENCE OF JUVENILE DELINQUENCY ADJUDICATIONS MAY BE ADMISSIBLE INTO EVIDENCE IN SUBSEQUENT CRIMINAL PROCEEDINGS AND MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-675(a) reads as rewritten:

"(a) The clerk of superior court shall maintain a complete record of all juvenile cases filed in ~~his~~ the clerk's office to be known as the juvenile record, which shall be withheld from public inspection and except as provided in this subsection may be examined only by order of the judge, except that the juvenile, ~~his~~ the juvenile's parent, guardian, custodian, or other authorized representative ~~of the juvenile shall have~~ has a right to examine the juvenile's ~~record.~~ record regardless of whether the record is withheld from public inspection. The record shall include the summons, petition, custody order, court order, written motions, the electronic or mechanical recording of the hearing, and other papers filed in the proceeding. The recording of the hearing shall

1 be reduced to a written transcript only when notice of appeal has been timely given.
2 After the time for appeal has expired with no appeal having been filed, the recording of
3 the hearing may be erased or destroyed upon the written order of the judge.

4 The record of the clerk of superior court pertaining to an adjudication of delinquency
5 for an offense that would be a Class A, B, C, D, or E felony if committed by an adult is
6 open for inspection and use in subsequent juvenile or adult criminal proceedings by the
7 district and superior courts, the prosecutor, the Department of Correction or the Parole
8 Commission."

9 Sec. 2. G.S. 7A-676(b) reads as rewritten:

10 "(b) Any person who has attained the age of 16 years may file a petition in the
11 court where he was adjudicated delinquent for expunction of all records of that
12 adjudication provided:

13 (1) The offense for which ~~he~~ the person was adjudicated would have been
14 a crime other than a Class A, B, C, D, or E felony if committed by an
15 adult.

16 (2) The person has not subsequently been adjudicated delinquent or
17 convicted as an adult of any felony or misdemeanor other than a traffic
18 violation under the laws of the United States or the laws of this State
19 or any other state.

20 Records relating to an adjudication for an offense that would be a Class A, B, C, D,
21 or E felony if committed by an adult shall not be expunged."

22 Sec. 3. G.S. 8C-1, Rule 404(b) reads as rewritten:

23 "(b) Other crimes, wrongs, or acts. – Evidence of other crimes, wrongs, or acts is
24 not admissible to prove the character of a person in order to show that he acted in
25 conformity therewith. It may, however, be admissible for other purposes, such as proof
26 of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of
27 mistake, entrapment or accident. Admissible evidence may include evidence of an
28 offense committed by a juvenile if it would have been a Class A, B, C, D, or E felony if
29 committed by an adult."

30 Sec. 4. G.S. 8C-1, Rule 609(d) reads as rewritten:

31 "(d) Juvenile adjudications. – Evidence of juvenile adjudications is generally not
32 admissible under this rule. The court may, however, in a criminal case allow evidence
33 of a juvenile adjudication either (i) of a witness other than the accused or (ii) of a
34 witness who is the accused who was adjudicated delinquent for an offense that would
35 have been a Class A, B, C, D, or E felony if committed by an adult, if conviction of the
36 offense would be admissible to attack the credibility of an adult and the court is satisfied
37 that admission in evidence is necessary for a fair determination of the issue of guilt or
38 innocence."

39 Sec. 5. (a) G.S. 15A-1340.11, as enacted by Section 1 of Chapter 538 of the
40 1993 Session Laws, becomes effective May 1, 1994.

41 (b) G.S. 15A-1340.11 reads as rewritten:

42 "**§ 15A-1340.11. (Effective January 1, 1995) Definitions.**

43 The following definitions apply in this Article:

- 1 (1) Active punishment. – A sentence in a criminal case that requires an
2 offender to serve a sentence of imprisonment and is not suspended.
3 Special probation, as defined in G.S. 15A-1351, is not an active
4 punishment.
- 5 (2) Community punishment. – A sentence in a criminal case that does not
6 include an active punishment or an intermediate punishment.
- 7 (3) Day-reporting center. – A facility to which offenders are required, as a
8 condition of probation, to report on a daily or other regular basis at
9 specified times for a specified length of time to participate in activities
10 such as counseling, treatment, social skills training, or employment
11 training.
- 12 (4) Electronic monitoring. – A condition of probation in which the
13 offender is required to remain in one or more specified places for a
14 specified period or periods each day, and in which the offender shall
15 wear a device which permits the supervising agency to monitor the
16 offender's compliance with the condition electronically.
- 17 (5) Intensive probation. – Probation that requires the offender to submit to
18 supervision by officers assigned to the Intensive Probation Program
19 established pursuant to G.S. 143B-262(c), and to comply with the rules
20 adopted for that Program.
- 21 (6) Intermediate punishment. – A sentence in a criminal case that places
22 an offender on supervised probation and includes at least one of the
23 following conditions:
24 a. Special probation as defined in G.S. 15A-1351(a).
25 b. Assignment to a residential program.
26 c. Electronic monitoring.
27 d. Intensive probation.
28 e. Assignment to a day-reporting center.
29 In addition, a sentence to regular supervised probation imposed
30 pursuant to a community penalties plan as defined in G.S. 7A-771(2) is
31 an intermediate punishment, regardless of whether any of the above
32 conditions is imposed, if the plan is accepted by the court and the plan
33 does not include active punishment.
- 34 (7) Prior conviction. – A person has a prior conviction when, on the date a
35 criminal judgment is entered, the person being sentenced has been
36 previously convicted of a crime:
37 a. In the district court, and the person has not given notice of
38 appeal and the time for appeal has expired; or
39 b. In the superior court, regardless of whether the conviction is on
40 appeal to the appellate division; or
41 c. In the courts of the United States, another state, the armed
42 services of the United States, or another county [country],
43 regardless of whether the offense would be a crime if it
44 occurred in ~~North Carolina~~, North Carolina; or

d. In the district court, in a juvenile adjudication of delinquency for an offense that would be a Class A, B, C, D, or E felony if committed by an adult,

regardless of whether the crime was committed before or after the effective date of this Article.

- (8) Residential program. – A program in which the offender, as a condition of probation, is required to reside in a facility for a specified period and to participate in activities such as counseling, treatment, social skills training, or employment training, conducted at the residential facility or at other specified locations."

Sec. 6. G.S. 15A-1340.2 reads as rewritten:

"§ 15A-1340.2. (Repealed effective January 1, 1995) Definitions.

The following definitions apply in this Article.

- (1) Convicted. – For the purpose of imposing sentence, a person has been convicted when he has been adjudged guilty or has entered a plea of guilty or no contest.
- (2) Jail. – A jail is a local confinement facility maintained by a county as provided by G.S. 153A-218 or a district confinement facility maintained by two or more units of local government as provided by G.S. 153A-219. For purposes of G.S. 15A-1355(c), a satellite jail/work release unit shall be considered a local confinement facility.
- (3) Jailer. – A jailer is the sheriff or other person having the care and custody of a jail as provided by G.S. 162-22 or the administrator of a district confinement facility as provided by G.S. 153A-219.
- (4) Prior Conviction. – A person has received a prior conviction when (i) he has been adjudged guilty of or has entered a plea of guilty or no contest to a criminal charge, and judgment has been entered thereon, and the time for appeal has expired, or the conviction has been finally upheld on direct ~~appeal~~—appeal; or (ii) he has been adjudicated delinquent in a juvenile proceeding for an offense that would be a Class A, B, C, D, or E felony if committed by an adult.
- (5) Prison Term. – A prison term is a period of imprisonment to be served either in the custody of the Department of Correction or a jail."

Sec. 7. G.S. 15A-2000(e) reads as rewritten:

"(e) Aggravating Circumstances. – Aggravating circumstances which may be considered shall be limited to the following:

- (1) The capital felony was committed by a person lawfully incarcerated.
- (2) The defendant had been previously convicted of another capital ~~felony~~—felony or had been previously adjudicated delinquent in a juvenile proceeding for committing an offense that would be a capital felony if committed by an adult.
- (3) The defendant had been previously convicted of a felony involving the use or threat of violence to the ~~person~~—person or had been previously adjudicated delinquent in a juvenile proceeding for committing an

1 offense that would be a felony involving the use or threat of violence
2 to the person if the offense had been committed by an adult.

3 (4) The capital felony was committed for the purpose of avoiding or
4 preventing a lawful arrest or effecting an escape from custody.

5 (5) The capital felony was committed while the defendant was engaged, or
6 was an aider or abettor, in the commission of, or an attempt to commit,
7 or flight after committing or attempting to commit, any homicide,
8 robbery, rape or a sex offense, arson, burglary, kidnapping, or aircraft
9 piracy or the unlawful throwing, placing, or discharging of a
10 destructive device or bomb.

11 (6) The capital felony was committed for pecuniary gain.

12 (7) The capital felony was committed to disrupt or hinder the lawful
13 exercise of any governmental function or the enforcement of laws.

14 (8) The capital felony was committed against a law-enforcement officer,
15 employee of the Department of Correction, jailer, fireman, judge or
16 justice, former judge or justice, prosecutor or former prosecutor, juror
17 or former juror, or witness or former witness against the defendant,
18 while engaged in the performance of his official duties or because of
19 the exercise of his official duty.

20 (9) The capital felony was especially heinous, atrocious, or cruel.

21 (10) The defendant knowingly created a great risk of death to more than
22 one person by means of a weapon or device which would normally be
23 hazardous to the lives of more than one person.

24 (11) The murder for which the defendant stands convicted was part of a
25 course of conduct in which the defendant engaged and which included
26 the commission by the defendant of other crimes of violence against
27 another person or persons."

28 Sec. 8. Sections 1, 2, 5, 6, and 7 of this act become effective May 1, 1994,
29 and apply to offenses committed on or after that date. Sections 3 and 4 of this act
30 become effective May 1, 1994, and apply to trials begun on or after that date and, this
31 section is effective upon ratification.