

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2023**

**HOUSE BILL 186  
RATIFIED BILL**

AN ACT TO MODIFY THE TRANSFER PROCESS FOR JUVENILES WHO ALLEGEDLY COMMITTED CERTAIN FELONIES, TO MODIFY THE CONFIDENTIALITY OF CERTAIN INFORMATION CONCERNING JUVENILES UNDER INVESTIGATION, TO MODIFY THE INTERROGATION PROCEDURES FOR CERTAIN JUVENILES, TO MODIFY THE SERVICE OF SUMMONS FOR JUVENILE PETITIONS, TO CLARIFY THE PROCESS FOR COURT-ORDERED EVALUATIONS FOR JUVENILES, TO CLARIFY MINORITY SENSITIVITY TRAINING FOR LAW ENFORCEMENT PERSONNEL, TO CLARIFY JUVENILE DETENTION TRANSFER, TO MAKE VARIOUS TECHNICAL AND CONFORMING CHANGES, AS RECOMMENDED BY THE DEPARTMENT OF PUBLIC SAFETY, DIVISION OF JUVENILE JUSTICE, TO CREATE LAWS TO EVALUATE WHETHER A JUVENILE HAS THE CAPACITY TO PROCEED, TO MODIFY CERTAIN LAWS RELATED TO SECURE CUSTODY ORDERS, TO AUTHORIZE CERTAIN DEPARTMENT OF INSURANCE LEASE EXPENSES, AND TO MAKE TECHNICAL CHANGES TO S.L. 2023-97.

The General Assembly of North Carolina enacts:

**PART I. TRANSFER PROCESS**

**SECTION 1.(a)** G.S. 7B-2200.5 reads as rewritten:

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

(a) If a juvenile was 16 years of age or older at the time the juvenile allegedly committed an offense that would be a Class A, B1, B2, C, D, E, F, or G felony if committed by an adult, the court shall transfer jurisdiction over the juvenile to superior court for trial as in the case of adults unless the prosecutor declines to prosecute in superior court as provided in subsection (a1) of this section after either of the following:

- (1) Notice to the juvenile ~~and a finding by the court that a bill of indictment has been returned against the juvenile charging the commission of an offense that constitutes a Class A, B1, B2, C, D, E, F, or G felony if committed by an adult.~~ of the return of a true bill of indictment as provided in G.S. 15A-630.
- (2) Notice, hearing, and a finding of probable cause that the juvenile committed an offense that constitutes a Class A, B1, B2, C, D, E, F, or G felony if committed by an adult.

(a1) The prosecutor may decline to prosecute in superior court a matter that would otherwise be subject to mandatory transfer pursuant to subsection (a) of this section if the juvenile has allegedly committed an offense that would be a Class D, E, F, or G felony if committed by an adult. If the prosecutor declines to prosecute the matter in superior court, jurisdiction over the juvenile shall remain in juvenile court following a finding of probable cause pursuant to G.S. 7B-2202. Prior to adjudication, the prosecutor may choose to transfer the matter pursuant to subsection (a) of this section if the juvenile has allegedly committed an offense that would be a Class D, E, F, or G felony if committed by an adult.

(b) If the juvenile was 16 years of age or older at the time the juvenile allegedly committed an offense that would be a Class H or I felony if committed by an adult, after notice,



hearing, and a finding of probable cause, the court may, upon motion of the prosecutor or the juvenile's attorney or upon its own motion, transfer jurisdiction over a juvenile to superior court pursuant to G.S. 7B-2203.

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

(d) In any case where jurisdiction over a juvenile has been transferred to superior court, upon joint motion of the prosecutor and the juvenile's attorney, the superior court shall remand the case to district court. The prosecutor shall provide the chief court counselor or his or her designee with a copy of the joint motion prior to submitting the motion to the court. The superior court shall expunge the superior court record in accordance with G.S. 15A-145.8 at the time of remand, and, if the juvenile meets the criteria established in G.S. 7B-1903, may issue an order for secure custody upon the request of a prosecutor. The prosecutor shall provide a copy of any secure custody order issued to the chief court counselor or his or her designee, as soon as possible and no more than 24 hours after the order is issued."

**SECTION 1.(b)** G.S. 7B-2200 reads as rewritten:

**"§ 7B-2200. Transfer of jurisdiction of a juvenile under the age of 16 to superior court.**

Except as otherwise provided in G.S. 7B-2200.5, after notice, hearing, and a finding of probable cause the court may, upon motion of the prosecutor or the juvenile's attorney or upon its own motion, transfer jurisdiction over a juvenile to superior court if the juvenile was at least 13 years of age but less than 16 years of age at the time the juvenile allegedly committed an offense that would be a felony if committed by an adult. ~~If the alleged felony constitutes a Class A felony and the court finds probable cause, the court shall transfer the case to the superior court for trial as in the case of adults.~~ The court shall transfer the case to superior court for trial as in the case of adults if the felony the juvenile allegedly committed constitutes a Class A felony and (i) the court finds probable cause or (ii) upon notice of the return of a true bill of indictment as provided in G.S. 15A-630."

**SECTION 1.(c)** G.S. 7B-2202(a) reads as rewritten:

"(a) Except as otherwise provided in G.S. 7B-2200 and G.S. 7B-2200.5(a)(1), the court shall conduct a hearing to determine probable cause in all felony cases in which a juvenile was 13 years of age or older when the offense was allegedly committed. Except as otherwise provided in G.S. 7B-2200.5(c), the hearing shall be conducted within 15 days of the date of the juvenile's first appearance. The court may continue the hearing for good cause."

**SECTION 1.(d)** This section becomes effective December 1, 2023, and applies to offenses committed on or after that date.

## **PART II. CONFIDENTIALITY, "LYRIC AND DEVIN'S LAW"**

**SECTION 2.(a)** Article 31 of Subchapter II of Chapter 7B of the General Statutes is amended by adding a new section to read:

**"§ 7B-3103. Disclosure of information about juveniles for public safety reasons.**

(a) Notwithstanding G.S. 7B-2102(d) or any other provision of law to the contrary, a court may order the Division or any law enforcement agency within the State to release to the public the information contained in subsection (b) of this section if a court makes all of the following findings in a written order:

- (1) A petition has been filed alleging that the juvenile has committed at least one offense that would subject the juvenile to transfer to superior court pursuant to G.S. 7B-2200 or G.S. 7B-2200.5.
- (2) There is a judicial determination, based on the juvenile's record or the nature of the alleged offense or offenses, that the juvenile presents a danger to self or others.
- (3) There is a judicial determination that good cause exists for the disclosure.

(b) The following information about a juvenile subject to a public disclosure under subsection (a) of this section may be released to the public:

- (1) The juvenile's first name, last name, and photograph.
- (2) Any offense in a juvenile petition alleged to have been committed by the juvenile.
- (3) Whether a secure custody order has been issued for the juvenile.
- (4) A statement, based on the juvenile's record or the nature of the alleged offense and the level of concern of the Division or law enforcement agency, as to the juvenile's threat to self or others.

(c) If a juvenile who is the subject of an order entered under subsection (a) of this section is taken into custody before the required disclosure is made to the public, the Division or law enforcement agency shall not make the disclosure. If the juvenile who is the subject of an order entered under subsection (a) of this section or a disclosure pursuant to subsection (e) of this section is taken into custody, then all released information must be removed from any publicly available law enforcement agency or Division website or social media account controlled by the law enforcement agency or Division.

(d) Before the information contained in subsection (b) of this section is released to the public, the Division or law enforcement agency shall make a reasonable effort to notify a parent, legal guardian, or custodian of the juvenile.

(e) Notwithstanding subsections (a) and (d) of this section, when exigent circumstances exist, the Division or any law enforcement agency within the State may release the information contained in subsection (b) of this section. If information is released pursuant to this subsection, the releasing party must seek an order as provided by subsection (a) of this section as soon as reasonably practicable, but no later than the first available session of a court in the county after the release of information. If a court does not issue an order as provided by subsection (a) of this section at the next available session of court, all released information must be removed from any publicly available law enforcement agency or Division website or social media account controlled by the law enforcement agency or Division."

**SECTION 2.(b)** This section becomes effective December 1, 2023, and applies to offenses committed on or after that date.

### **PART III. INTERROGATION PROCEDURES**

**SECTION 3.(a)** G.S. 7B-2101 reads as rewritten:

**"§ 7B-2101. Interrogation procedures.**

(a) Any juvenile juvenile, who is less than 16 years of age, in custody must be advised of all of the following prior to questioning:

- (1) That the juvenile has a right to remain ~~silent~~;silent.
- (2) That any statement the juvenile does make can be and may be used against the ~~juvenile~~;juvenile.
- (3) That the juvenile has a right to have a parent, guardian, or custodian present during ~~questioning~~; andquestioning.
- (4) That the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.

(a1) Any juvenile, who is 16 years of age or older, in custody must be advised of all of the following prior to questioning:

- (1) That the juvenile has a right to remain silent.
- (2) That any statement the juvenile does make can be and may be used against the juvenile.
- (3) That the juvenile has a right to have a parent, guardian, custodian, or caretaker present during questioning.

(4) That the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.

(a2) If a juvenile, who is 16 years of age or older, requests that a parent, guardian, or custodian be present during questioning, law enforcement shall make a reasonable effort to contact the parent, guardian, or custodian. If the parent, guardian, or custodian is not available, a caretaker can be present during questioning.

(b) When the juvenile is less than 16 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney. If an attorney is not present, the parent, guardian, or custodian as well as the juvenile must be advised of the juvenile's rights as set out in subsection (a) of this section; however, a parent, guardian, or custodian may not waive any right on behalf of the juvenile.

(c) If the juvenile indicates in any manner and at any stage of questioning pursuant to this section that the juvenile does not wish to be questioned further, the officer shall cease questioning.

(d) Before admitting into evidence any statement resulting from custodial interrogation, the court shall find that the juvenile knowingly, willingly, and understandingly waived the juvenile's rights.

(e) For the purposes of this section, "caretaker" means any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, a foster parent, an adult member of the juvenile's household, an adult entrusted with the juvenile's care, a potential adoptive parent during a visit or trial placement with a juvenile in the custody of a department, any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility, or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services."

**SECTION 3.(b)** This section becomes effective December 1, 2023, and applies to offenses committed on or after that date.

#### **PART IV. OTHER JUVENILE JUSTICE MODIFICATIONS**

**SECTION 4.(a)** G.S. 7B-1806 reads as rewritten:

**"§ 7B-1806. Service of summons.**

The summons and petition shall be personally served upon the parent, the guardian, or custodian and the juvenile not less than five days prior to the date of the scheduled hearing. The time for service may be waived in the discretion of the court. A law enforcement officer or juvenile court counselor may serve and complete juvenile process under this section and as provided in G.S. 143B-831. A defense of lack of personal jurisdiction or insufficiency of service of process is waived if a parent, guardian, or custodian and juvenile avail themselves to the court and an objection is not raised at the initial court appearance.

If the parent, guardian, or custodian entitled to receive a summons cannot be found by a diligent effort, the court may authorize service of the summons and petition by mail or by publication. The cost of the service by publication shall be advanced by the petitioner and may be charged as court costs as the court may direct.

The court may issue a show cause order for contempt against a parent, guardian, or custodian who is personally served and fails without reasonable cause to appear and to bring the juvenile before the court.

The provisions of G.S. 15A-301(a), (c), (d), and (e) relating to criminal process apply to juvenile process; provided the period of time for return of an unserved summons is 30 days."

**SECTION 4.(b)** G.S. 7B-2502 reads as rewritten:

**"§ 7B-2502. Evaluation and treatment of undisciplined and delinquent juveniles.**

(a) In any case, the court may order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert as may be needed for the court to determine the needs of the juvenile. Upon the completion of the examination, the court may conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other evaluation or treatment, and the court may order the juvenile to comply with any evaluation or treatment recommended by the examination.

(a1) In the case of a juvenile adjudicated delinquent for committing an offense that involves the possession, use, sale, or delivery of alcohol or a controlled substance, the court shall require the juvenile to be tested for the use of controlled substances or alcohol within 30 days of the adjudication. In the case of any juvenile adjudicated delinquent, the court may, if it deems it necessary, require the juvenile to be tested for the use of controlled substances or alcohol. The results of these initial tests conducted pursuant to this subsection shall be used for evaluation and treatment purposes only. In placing a juvenile in out-of-home care under this section, the court shall also consider whether it is in the juvenile's best interest to remain in the juvenile's community of residence.

(a2) In the case of a juvenile who has been identified with a suspected mental illness, illness through the use of a validated screening instrument or other evidence presented to the court, or a suspected developmental disability, disability or intellectual disability-disability, that has been adjudicated delinquent, the court shall order that the Division of Juvenile Justice of the Department of Public Safety make a referral for a comprehensive clinical assessment or equivalent mental health assessment, unless the court finds a comprehensive clinical assessment or equivalent mental health assessment has been conducted within the last ~~45-90~~ 90 days before the ~~adjudication-disposition~~ hearing. An assessment ordered by a court under this subsection shall evaluate the developmental, emotional, behavioral, and mental health needs of the juvenile.

(a3) If an assessment is ordered by the court under subsection (a2) of this ~~section,~~ section or if an assessment has been conducted within the last 90 days before the disposition hearing, the court shall review the comprehensive clinical assessment or equivalent mental health assessment prior to the ~~date of~~ disposition in the case. If the court finds sufficient evidence that the juvenile has severe emotional disturbance, as defined in G.S. 7B-1501(24a), or a developmental disability, as defined in G.S. 122C-3(12a), or intellectual disability, as defined in G.S. 122C-3(17a), that, in the court's discretion, substantially contributed to the juvenile's delinquent behavior, and the juvenile is eligible for a Juvenile Justice Level 3 disposition and/or is recommended for a Psychiatric Residential Treatment Facility (PRTF) placement, the court shall order a care review team to be convened by the Division of Juvenile Justice of the Department of Public Safety and assigned to the case.

...."

**SECTION 4.(c)** G.S. 153A-218 reads as rewritten:

**"§ 153A-218. County confinement facilities.**

A county may establish, acquire, erect, repair, maintain, and operate local confinement facilities and may for these purposes appropriate funds not otherwise limited as to use by law. Subject to the holdover provisions in G.S. 7B-2204, no person under the age of 18 may be held in a county confinement facility unless there is an agreement between the county confinement facility and the Division of Juvenile Justice allowing the housing of persons under the age of 18 at the facility or a portion of the facility that has been approved as a juvenile detention facility by the Division of Juvenile Justice. A juvenile detention facility may be located in the same facility as a county jail provided that the juvenile detention facility meets the requirements of this Article and ~~G.S. 147-33.40.~~ G.S. 143B-819."

**SECTION 4.(d)** G.S. 114-12.1 reads as rewritten:

**"§ 114-12.1. Minority sensitivity training for law enforcement personnel.**

(a) The Department of Justice shall develop guidelines for minority sensitivity training for all law enforcement personnel throughout the State. The Department shall ensure that all persons who work with minority juveniles in the juvenile justice system are taught how to communicate effectively with minority juveniles and how to recognize and address the needs of those juveniles. The Department shall also advise all law enforcement and professionals who work within the juvenile justice system of ways to improve the treatment of minority juveniles so that all juveniles receive equal treatment. Except where local law enforcement or the Division of Juvenile Justice of the Department of Public Safety has existing minority sensitivity training that meets the Department guidelines, the Department shall conduct the minority sensitivity training annually. Prior to the training each year, the Department shall assess whether minorities are receiving fair and equal treatment in the juvenile justice system with regard to the administration of predisposition procedures, of diversion methods, of dispositional alternatives, and of treatment and post-release supervision plans.

(b) The Division of Juvenile Justice of the Department of Public Safety shall ensure that all juvenile court counselors and other Division personnel receive the minority sensitivity training specified in subsection (a) of this section. The Division of Juvenile Justice of the Department of Public Safety is responsible for creating, implementing, and evaluating juvenile minority sensitivity and racial and ethnic disparities training annually."

**SECTION 4.(e)** G.S. 7B-2204 reads as rewritten:

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

...

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

...."

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

## **PART V. JUVENILE CAPACITY TO PROCEED**

**SECTION 5.(a)** G.S. 7B-2401 reads as rewritten:

**"§ 7B-2401. ~~Determination of incapacity~~ No proceedings when juvenile is not capable to proceed; evidence; temporary commitment; temporary orders. proceed.**

~~The provisions of G.S. 15A-1001, 15A-1002, and 15A-1003 apply to all cases in which a juvenile is alleged to be delinquent. No juvenile committed under this section may be placed in a situation where the juvenile will come in contact with adults committed for any purpose.~~

(a) No juvenile may be transferred to superior court for trial as an adult, adjudicated delinquent or undisciplined, or subject to disposition for an offense in juvenile court, including a violation of probation, when, by reason of mental disorder, intellectual disability, neurological disorder, traumatic or acquired brain injury, or developmental immaturity, the juvenile is unable to understand the nature and object of the proceedings against the juvenile, to comprehend the juvenile's own situation in reference to the proceedings, or to assist in the juvenile's own defense in a rational or reasonable manner.

(b) This section does not prevent the court from going forward with any motions which can be handled by counsel without the assistance of the juvenile.

(c) This section does not apply to individuals over whom the juvenile court has jurisdiction pursuant to G.S. 7B-1601(d) through (d1) nor to any juvenile who is subject to

transfer by indictment pursuant to G.S. 7B-2200 and G.S. 7B-2200.5(a)(1). Capacity to proceed under these circumstances shall not be addressed by the juvenile court. Capacity to proceed may be raised pursuant to Article 56 of Chapter 15A of the General Statutes if the superior court obtains jurisdiction of the proceeding."

**SECTION 5.(b)** Article 24 of Chapter 7B of the General Statutes is amended by adding the following new sections to read:

**"§ 7B-2401.1. Definitions.**

The following definitions apply in this Article:

- (1) Developmental immaturity. – Incomplete development or delay associated with chronological age, which manifests as a functional limitation in one or more domains, including cognitive, emotional, and social development.
- (2) Division. – The Division of Juvenile Justice and Delinquency Prevention of the Department of Public Safety.
- (3) Forensic evaluation. – A forensic evaluation is a full examination by a forensic evaluator using evidence-based psychological tools to determine if a juvenile has the capacity to proceed. This evaluation shall consist of a review of all available prior mental health and educational records of the juvenile and IQ testing and may include other developmentally appropriate testing for juveniles deemed relevant by the forensic evaluator.
- (4) Forensic evaluation report. – The written report, by a forensic evaluator, that contains the information required by G.S. 7B-2401.3.
- (5) Incapacity to proceed. – By reason of mental disorder, intellectual disability, neurological disorder, traumatic or acquired brain injury, or developmental immaturity, the juvenile is unable to understand the nature and object of the proceedings against the juvenile, to comprehend the juvenile's own situation in reference to the proceedings, or to assist in the juvenile's own defense in a rational or reasonable manner.
- (6) Remediation. – Services directed only at facilitating the attainment of capacity to proceed for a juvenile who the court finds is incapable to proceed. Such term may include mental health treatment to reduce interfering symptoms, specialized psychoeducational programming, or a combination of these interventions.

**"§ 7B-2401.2. Procedures to determine capacity; hearing procedures; evidence.**

(a) The question of capacity of the juvenile to proceed may be raised at any time on motion by the prosecutor, the juvenile, the juvenile's attorney, or the court. The motion shall detail the specific conduct that leads the moving party to question the juvenile's capacity to proceed.

(b) When the capacity of the juvenile to proceed is questioned, the court may appoint one or more forensic evaluators qualified by the Department of Health and Human Services to conduct forensic evaluations for juveniles to examine the juvenile and return a forensic evaluation report. Reports so prepared are admissible at the hearing. The court may call any expert so appointed to testify at the hearing with or without the request of either party. This subsection shall not be construed to limit the juvenile's right to retain his or her own expert or the State's right to obtain its own expert.

(c) At any time in the case of a juvenile that allegedly committed an offense that would be a felony if committed by an adult, the court may order the juvenile to a State facility for the mentally ill for observation and treatment for the period, not to exceed 60 days, necessary to determine the juvenile's capacity to proceed. If a juvenile is ordered to a State facility without first having an examination pursuant to subsection (b) of this section, the judge shall make a finding that an examination pursuant to this subsection would be more appropriate to determine the juvenile's capacity. The Division shall return the juvenile to the county when notified that the

evaluation has been completed. The director of the facility shall direct his or her report on the juvenile's condition to the juvenile's attorney and to the clerk of superior court, who shall bring it to the attention of the court. The report is admissible at the hearing.

(d) The forensic evaluation report shall be completed within 30 days of the date the forensic evaluation was ordered, consistent with this section. The court may extend the time for completion of the forensic evaluation for good cause shown. The forensic evaluation report shall be provided to the court as follows:

- (1) The report in a case of a juvenile who is alleged to have committed an offense that would be a misdemeanor if committed by an adult shall be completed and provided to the court no later than 10 days following the completion of the evaluation for a juvenile.
- (2) The report in the case of a juvenile who is alleged to have committed an offense that would be a felony if committed by an adult shall be completed and provided to the court no later than 30 days following the completion of the evaluation.
- (3) In cases where the juvenile challenges the determination made by the court-ordered evaluator and the court orders an independent evaluation, that evaluation and report to the court must be completed within 60 days of the entry of the order by the court.

The court may, for good cause shown, extend the time for the provision of the forensic evaluation report to the court for up to 30 additional days. The court may renew an extension of time for an additional 30 days upon request of the State or the juvenile prior to the expiration of the previous extension. In no case shall the court grant extensions totaling more than 120 days beyond the time periods otherwise provided in this subsection.

(e) Any report made to the court pursuant to this section shall be forwarded to the clerk of superior court in a sealed envelope addressed to the attention of a presiding judge, with a covering statement to the clerk of the fact of the examination of the juvenile and any conclusion as to whether the juvenile has or lacks capacity to proceed. If the juvenile is being held in the custody of the Division, the clerk shall send a copy of the covering statement to the Division. The Division and any persons employed by the Division shall maintain the copy of the covering statement as a confidential record. A copy of the full report shall be forwarded to the juvenile's counsel. If the question of the juvenile's capacity to proceed is raised at any time, a copy of the full report must be forwarded to the prosecutor. Until the question of the juvenile's capacity is raised, the full report to the court shall be kept under such conditions as are directed by the court, and its contents shall not be revealed except the report and the relevant confidential information previously ordered released under G.S. 7B-2401.3(c) shall be released to the program where the juvenile is receiving remediation services and as directed by the court. Any report made to the court pursuant to this section shall be maintained as a confidential record.

(f) For any juvenile who is alleged to be delinquent and is less than 12 years of age, the court shall inquire of the prosecutor and the juvenile's attorney regarding the juvenile's capacity to proceed the first time the juvenile appears in court. If the prosecutor or the juvenile's attorney requests additional time to determine whether it is necessary to raise the question of the juvenile's capacity to proceed, the court shall allow the question of capacity to be raised at any time pursuant to subsection (a) of this section.

(g) An order for a forensic evaluation shall stay juvenile proceedings, with the exception of hearings to review the need for continued nonsecure or secure custody and proceedings related to the transfer of jurisdiction by indictment pursuant to G.S. 7B-2200.5(a), until capacity has been determined pursuant to this Subchapter.

(h) When the capacity of the juvenile to proceed is questioned, the court shall hold a hearing to determine the juvenile's capacity to proceed. If an evaluation is ordered pursuant to subsection (b) of this section, the hearing shall be held upon receipt of the forensic evaluation



report. The clerk shall provide notice to the juvenile and the prosecutor in accordance with G.S. 7B-1807. The order of the court shall contain findings of fact to support its determination of the juvenile's capacity to proceed. The parties may stipulate that the juvenile is capable to proceed but shall not be allowed to stipulate that the juvenile lacks capacity to proceed. If the court finds the juvenile is capable to proceed, the juvenile proceedings shall no longer be stayed, and the court shall set a date for such further proceedings. If the juvenile's capacity to proceed is contested, the juvenile bears the burden of proving the juvenile is incapable to proceed by a preponderance of the evidence. At a contested hearing, the State and the juvenile may call witnesses and present evidence. Nothing in this subsection may be construed to prohibit the State or the juvenile from calling other expert witnesses to testify at a capacity hearing. If appropriate, the court may order remediation services in accordance with G.S. 7B-2401.4.

(i) A juvenile who has been found incapable to proceed by the court shall not be subject to transfer, adjudication, disposition, or modification of disposition so long as the incapacity exists pursuant to this Article.

(j) If the court orders a forensic evaluation, the court shall order that the evaluation be conducted in the least restrictive environment, considering the best interests of the juvenile and the safety of the public. The forensic evaluation may be conducted in any location in this State. The forensic evaluation may be conducted outside of this State for juveniles in residential facilities on an individual basis as indicated by the order of the court.

(k) The Division shall arrange for the transportation of juveniles who are confined in secure custody to the ordered location of the forensic evaluation.

**"§ 7B-2401.3. Juvenile forensic evaluation credentialing; conducting forensic evaluations; written reports; compensation of experts.**

(a) The Department of Health and Human Services shall designate and oversee a credentialing body which will set and maintain the minimum standards to qualify professionals who are court-appointed to conduct forensic evaluations as ordered pursuant to G.S. 7B-2401.2. The credentialing body shall determine that a qualified professional has demonstrated knowledge and experience with age-appropriate and developmentally appropriate methods for evaluating juvenile functional capacities to proceed. This subsection shall not be construed to limit the juvenile's right to retain his or her own expert.

(b) Qualified professionals who have been conducting forensic evaluations of juveniles prior to enactment of this section shall be deemed to possess the minimum requirements to become an evaluator. Such qualified professionals shall be required to satisfy the qualification standards developed by the Department of Health and Human Services within 12 months of the adoption of those standards pursuant to subsection (a) of this section.

(c) A presiding district court judge of this State who orders an examination pursuant to G.S. 7B-2401.2 shall order the release of relevant confidential information to the forensic evaluator, including the juvenile petition, orders for secure or nonsecure custody, the law enforcement incident report, the juvenile's delinquency history, detention records, any prior medical and mental health records of the juvenile, and any school records of the juvenile after providing the juvenile with reasonable notice and an opportunity to be heard and then determining that the information is relevant and necessary to the hearing of the matter before the court and unavailable from any other source. This subsection shall not be construed to relieve any court of its duty to conduct hearings and make findings required under relevant federal law before ordering the release of any private medical or mental health information or records related to substance abuse or HIV status or treatment. The records may be surrendered to the court for in camera review if surrender is necessary to make the required determinations. The records shall be withheld from public inspection and, except as provided in this subsection, may be examined only by order of the court.

(d) No statement or disclosure made by the juvenile during the forensic evaluation regarding the juvenile's responsibility for a criminal act that can result either in an adjudication

of delinquency or transfer of a matter to superior court for trial as an adult is admissible in any juvenile or criminal proceeding against the juvenile or defendant. The forensic evaluation shall not include any such statement.

(e) The forensic evaluator shall consider all of the following as part of the forensic evaluation:

- (1) Whether the juvenile is capable to proceed, incapable to proceed, or incapable to proceed with an ability to attain capacity in the foreseeable future with remediation services.
- (2) The basis of the juvenile's incapacity, to include mental disorder, intellectual disability, neurological disorder, traumatic or acquired brain injury, or developmental immaturity.
- (3) The capacity of the juvenile to do any of the following:
  - a. Appreciate the allegations against the juvenile.
  - b. Appreciate the range and nature of allowable dispositions that may be imposed in the proceedings against the juvenile.
  - c. Understand the roles of the participants and the adversary nature of the legal process.
  - d. Disclose to counsel facts pertinent to the proceedings at issue.
  - e. Display appropriate courtroom behavior.
  - f. Testify regarding the relevant issues.
  - g. Make reasonable and rational decisions.
  - h. Assist in the juvenile's defense in a rational manner.
  - i. Any other factors that the forensic evaluator deems to be relevant.

(f) Written forensic reports submitted to the court shall consist of and contain all of the following:

- (1) Identify the specific matters referred to the forensic evaluator by the juvenile court for evaluation.
- (2) Include notification to the juvenile of the nature, purpose, and anticipated use or uses of the examination and applicable limits of confidentiality.
- (3) Describe the procedures, techniques, and tests used in the forensic evaluation of the juvenile and the purposes of each.
- (4) Describe the considerations considered by the forensic evaluator.
- (5) State any clinical observations, findings, and opinions of the forensic evaluator on each issue referred to the forensic evaluator for evaluation by the court and specifically indicate any issues on which the forensic evaluator was unable to give an opinion.
- (6) Identify the sources of information used by the forensic evaluator and present the factual basis for any clinical observations, findings, and opinions of the forensic evaluator.
- (7) Address any other issues ordered by the court.

(g) If a forensic evaluator is of the opinion that a juvenile is incapable to proceed, the written forensic report shall contain all of the additional information:

- (1) Any recommended treatment or education needed for the juvenile to attain capacity, if any.
- (2) The likelihood that the juvenile will attain capacity in the foreseeable future because of the recommended treatment or education.
- (3) An assessment of the probable duration of the treatment or education required to attain capacity.
- (4) If the forensic evaluator recommends treatment for the juvenile to attain capacity, a recommendation as to the least restrictive environment in which services can be provided to the juvenile.

(h) Any forensic evaluator appointed by the court to conduct a forensic evaluation, ordered pursuant to G.S. 7B-2401.2, shall receive a reasonable fee for such service. The fee shall be determined for each forensic evaluation by the appointing court, in accordance with reimbursement guidelines maintained by the North Carolina Administrative Office of the Courts. If any such forensic evaluator is required to appear as a witness in any hearing held pursuant to this section, the forensic evaluator shall receive reimbursement for expenses according to guidelines maintained by the North Carolina Administrative Office of the Courts.

**"§ 7B-2401.4. Remediation.**

(a) The purpose of remediation ordered pursuant to this section shall be for the juvenile to attain capacity to proceed.

(b) When the court finds the juvenile incapable to proceed, and substantially likely to attain capacity in the foreseeable future, the court may order remediation services. The remediation services shall be based on the recommendations from the forensic evaluation.

(c) Remediation services shall be provided in the least restrictive environment considering the best interests of the juvenile and the safety of the public. In addition, the court shall consider the following when determining where services may be rendered:

- (1) Whether there is probable cause to believe the allegations in the petition are true.
- (2) The nature of the incapacity.
- (3) The juvenile's age or developmental maturity.
- (4) The nature of the act alleged to have been committed and the seriousness of the offense.
- (5) The availability and appropriateness of programming in the juvenile's community.
- (6) Supervision needs and level of available community supervision or alternatives such as family members, custodians, guardians, and community-based programs.
- (7) Any prior treatment or interventions provided to the juvenile.
- (8) Any other relevant factors not previously specified.

(d) When the juvenile is found incapable to proceed based on mental disorder, intellectual disability, neurological disorder, or traumatic or acquired brain injury but substantially likely to attain capacity, and the court finds that all available less restrictive alternatives are inappropriate, the court may enter an order in accordance with G.S. 7B-2401.5 for the juvenile to be assessed for an involuntary commitment pursuant to Chapter 122C of the General Statutes.

(e) An order for remediation services shall contain all of the following:

- (1) Written findings of fact regarding the least restrictive environment for the remediation services.
- (2) If the court order allows for secure confinement pursuant to subsection (d) of this section, the maximum time for placement in a secure facility shall be pursuant to subsection (f) of this section.

(f) If the court finds that the juvenile is incapable of proceeding and substantially likely to attain capacity in the foreseeable future, the court shall enforce the following time limitations on remediation services. In the case of a probation violation, the underlying offense shall serve as the most serious offense as used in this section:

- (1) If the most serious offense alleged in the petition is first degree murder (G.S. 14-17), first-degree forcible rape (G.S. 14-27.21), first-degree statutory rape (G.S. 14-27.24), first-degree forcible sexual offense (G.S. 14-27.26), or first-degree statutory sexual offense (G.S. 14-27.29) if committed by an adult, remediation shall not exceed 36 months beyond the original finding of incapacity to proceed or the maximum jurisdiction of the court as provided in G.S. 7B-1601, whichever occurs sooner.

- (2) If the most serious offense alleged in the petition is a Class B1, B2, C, D, or E felony if committed by an adult, other than an offense set forth in subdivision (1) of this subsection, remediation shall not exceed 12 months beyond the original finding of incapacity to proceed, or the maximum jurisdiction of the court as provided in G.S. 7B-1601, whichever occurs sooner. The court for good cause may grant an extension of up to 12 months for remediation. If an extension is granted, remediation shall not exceed 24 months beyond the original finding of incapacity to proceed, or the maximum jurisdiction of the court as provided in G.S. 7B-1601, whichever occurs sooner.
- (3) If the most serious offense alleged in the petition is a Class F, G, H, or I felony or any misdemeanor if committed by an adult, remediation shall not exceed six months beyond the original finding of incapacity to proceed, or the maximum jurisdiction of the court as provided in G.S. 7B-1601, whichever occurs sooner. The court may grant an extension of up to six months for remediation. If an extension is granted, remediation shall not exceed 12 months beyond the original finding of incapacity to proceed, or the maximum jurisdiction of the court as provided in G.S. 7B-1601, whichever occurs sooner.
- (4) In no case shall the court grant extensions of time for the remediation services beyond the maximum jurisdiction of the court as provided in G.S. 7B-1601.

(g) The Division shall be responsible for the provision of psychoeducation remediation programming and working with community partners to secure any additional services recommended in the forensic evaluation report. The Division is authorized to contract with the University of North Carolina at Chapel Hill or any other qualified educational organization to develop and conduct related trainings and curriculum.

The remediation service provider shall provide reports to the court at least every 90 days. Any report made to the court pursuant to this subsection shall be forwarded to the clerk of superior court addressed to the attention of the presiding judge. A report provided under this subsection shall include all of the following:

- (1) The dates of any services provided to the juvenile.
- (2) A summary of the juvenile's attendance and participation.
- (3) Information about the juvenile's progress in the areas that were found to be relevant to the juvenile's incapacity, including education regarding court procedures and stabilization or improvement of symptoms leading to functional impairments.

No statement or disclosure made by the juvenile during the remediation services regarding the juvenile's responsibility for a criminal act that can result either in an adjudication of delinquency or transfer of a matter to superior court for trial as an adult is admissible in any juvenile or criminal proceeding against the juvenile or defendant. All remediation progress reports, summaries, and notes shall not include any such statement.

The court shall hold a hearing within 30 days of receipt of the remediation progress report to review the remediation services. The remediation review hearing may be informal, and the court may consider all remediation progress reports. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine if remediation services should continue or reassessment of capacity is warranted. The juvenile and the juvenile's parent, guardian, or custodian shall have an opportunity to present evidence, and they may advise the court concerning the remediation services. The order of the court may be amended or supplemented only as provided in this Subchapter and only after notice and a hearing.

(h) If the court determines that reassessment of capacity is warranted, the court shall order a new forensic evaluation. This forensic evaluation shall be performed by the original forensic evaluator when possible and comply with the requirements of G.S. 7B-2401.3. Any initial forensic evaluation or reevaluation shall be conducted independently of the remediation services and shall not be conducted by the remediation specialist for the juvenile.

(i) If, at any time during the remediation treatment, the remediation service provider finds that the juvenile has likely completed the requirements of the remediation services, the remediation service provider shall provide written notification to the court, the prosecutor, and the juvenile's attorney within two business days regarding this finding. A copy of any remediation report or reports shall be forwarded to the court and to the juvenile's attorney. The court may order the release of a remediation report to the prosecutor after providing the juvenile with reasonable notice and an opportunity to be heard and then determining that the information is relevant and necessary to the hearing of the matter before the court and unavailable from any other source. This subsection shall not be construed to relieve any court of its duty to conduct hearings and make findings required under relevant federal law before ordering the release of any private medical or mental health information or records related to substance abuse or HIV status or treatment. The records shall be withheld from public inspection and, except as provided in this subsection, may be examined only by order of the court. The juvenile's matter shall be returned to court within a reasonable time, and not more than 30 days after the completion of remediation services, for review or further proceedings.

**"§ 7B-2401.5. Involuntary commitment; dismissal; seal records.**

(a) When the court finds that a juvenile is incapable to proceed and not likely to attain capacity in the foreseeable future, the court may conduct an additional hearing, as the court determines to be necessary, to determine whether there are reasonable grounds to believe the juvenile meets the criteria for involuntary commitment under Part 7 of Article 5 of Chapter 122C of the General Statutes. If the presiding judge finds reasonable grounds to believe that the juvenile meets the criteria, the judge shall make findings of fact and issue a custody order in the same manner upon the same grounds and with the same effect as an order issued by a clerk or magistrate pursuant to G.S. 122C-261. Proceedings thereafter are in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes. If the juvenile allegedly committed a violent crime, including a crime involving assault with a deadly weapon, the judge's custody order shall require a law enforcement officer to take the juvenile directly to a 24-hour facility as described in G.S. 122C-252. The order must also indicate that the juvenile allegedly committed a violent crime and that the juvenile was found incapable of proceeding. Evidence used at the hearing regarding capacity to proceed is admissible in the involuntary civil commitment proceedings.

(b) When the court finds that a juvenile is incapable to proceed and not likely to attain capacity in the foreseeable future, the court shall dismiss the petition.

(c) The prosecutor may voluntarily dismiss with leave any allegations stated in the petition, pursuant to G.S. 7B-2404, prior to the termination of the jurisdiction of the court as provided in G.S. 7B-1601.

(d) After the completion of all capacity hearings or after a juvenile has been found not to be substantially likely to be restored to or to attain capacity in the foreseeable future, the court shall direct the clerk to seal all forensic evaluations, remediation reports, and any other records pertaining to the capacity of the juvenile, pursuant to G.S. 7B-3000(c). Any records sealed pursuant to this subsection may be opened or inspected only by order of the court or for appellate review."

**SECTION 5.(c) G.S. 7B-1906 reads as rewritten:**

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

...

(b3) When the capacity of the juvenile to proceed is questioned pursuant to G.S. 7B-2401.2(a), further hearings to determine the need for secure custody shall be held at

intervals of no more than 30 calendar days from the date of the motion. Further hearings may be waived only with the consent of the juvenile through counsel for the juvenile. Upon request of the juvenile, through counsel for the juvenile, and for good cause as determined by the court, further hearings to determine the need for secure custody may be held at intervals of 10 days.

...."

**SECTION 5.(d)** Prosecutions for offenses committed before the effective date of this section are not abated or affected by this section, and the statutes that would be applicable but for this section remain applicable to those prosecutions.

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

## **PART VI. MODIFY CERTAIN LAWS RELATED TO SECURE CUSTODY ORDERS**

**SECTION 6.(a)** G.S. 7B-1904 reads as rewritten:

### **"§ 7B-1904. Order for secure or nonsecure custody.**

The custody order shall be in writing and shall direct a law enforcement officer or ~~other authorized person~~ juvenile court counselor to assume custody of the juvenile and to make due return on the order. An initial order for secure custody may be issued following the filing of the petition and before the juvenile has been served with the petition pursuant to G.S. 7B-1806. The official executing the order shall give a copy of the order to the juvenile and the juvenile's parent, guardian, or custodian. If the juvenile has not been served with the petition upon being detained, the juvenile shall be served with the petition no more 72 hours after the juvenile has been detained. If the order is for nonsecure custody, the official executing the order shall also give a copy of the petition and order to the person or agency with whom the juvenile is being placed. If the order is for secure custody, copies of the petition and custody order shall accompany the juvenile to the detention facility or holdover facility of the jail. A message of the Department of Public Safety stating that a juvenile petition and secure custody order relating to a specified juvenile are on file in a particular county shall be authority to detain the juvenile in secure custody until a copy of the juvenile petition and secure custody order can be forwarded to the juvenile detention facility. The copies of the juvenile petition and secure custody order shall be transmitted to the detention facility no later than 72 hours after the initial detention of the juvenile.

~~An officer receiving an order for custody which is complete and regular on its face may execute it in accordance with its terms and need not inquire into its regularity or continued validity, nor does the officer incur criminal or civil liability for its execution."~~

**SECTION 6.(b)** Article 19 of Chapter 7B of the General Statutes is amended by adding a new section to read:

### **"§ 7B-1904.5. Execution of secure custody order by law enforcement officer.**

(a) A law enforcement officer receiving an order for custody which is complete and regular on its face may execute it in accordance with its terms and need not inquire into its regularity or continued validity nor does the law enforcement officer incur criminal or civil liability for its execution.

(b) Entry on Private Premises or Vehicle and Use of Force. – A law enforcement officer may enter a private premises or a vehicle to take a juvenile into custody when all of the following requirements are met:

- (1) The law enforcement officer has in the law enforcement officer's possession a secure custody order or a copy of the order, provided that a law enforcement officer may utilize a copy of a secure custody order only if the original order is in the possession of a member of a law enforcement agency located in the county where the law enforcement officer is employed and the law enforcement officer verifies with the agency that the order is current and valid.

- (2) The law enforcement officer has reasonable cause to believe the juvenile to be taken into custody is present in the premises or vehicle.
- (3) The law enforcement officer has given, or made a reasonable effort to give, notice of the law enforcement officer's authority and purpose to an occupant of the premises or vehicle, unless there is reasonable cause to believe that the giving of such notice would present a danger to the life or safety of any person.

A law enforcement officer may use force to enter the premises or vehicle if the law enforcement officer believes that admittance is being denied or unreasonably delayed or if the law enforcement officer is authorized under subdivision (3) of this subsection to enter without giving notice of the law enforcement officer's authority and purpose."

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

## **PART VII. DEPARTMENT OF INSURANCE LEASE EXPENSES**

**SECTION 7.(a)** The General Assembly authorizes the Department of Insurance to fund, with receipts or from other non-General Fund and non-State Capital and Infrastructure Fund sources available to the Department, a sum not to exceed eighteen million dollars (\$18,000,000) to enter into a lease agreement for the temporary relocation of the Department's offices and a sum not to exceed one million dollars (\$1,000,000) for costs associated with the temporary relocation. The lease agreement funded by the sum authorized in this subsection shall be for a term not to exceed five years and shall not be renewed without prior approval from the General Assembly. The Department shall complete the relocation process no later than October 15, 2023.

**SECTION 7.(b)** The Office of State Fire Marshal shall not relocate and shall maintain its offices on Rock Quarry Road in Raleigh for the duration of the lease agreement at that location.

**SECTION 7.(c)** This section is effective when it becomes law.

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

**SECTION 8.(a)** G.S. 20-141.3(g), as amended by S.L. 2023-97, reads as rewritten:

"(g) The following provisions apply to this section:

- (1) When any officer of the law discovers that any person has operated or is operating a motor vehicle willfully in violation of subsection (a) of this section, the officer shall seize the motor vehicle. When any officer of the law discovers that any person has operated or is operating a motor vehicle in violation of G.S. 20-141.10, the officer may seize the vehicle. Any vehicle seized pursuant to this subsection shall be delivered to the sheriff of the county in which such offense is committed, or the same shall be placed under said sheriff's constructive possession if delivery of actual possession is impractical, and the vehicle shall be held by the sheriff pending the trial of the person or persons arrested for operating such motor vehicle in violation of subsection (a) of this ~~section~~-section or in violation of G.S. 20-141.10. The sheriff shall restore the seized motor vehicle to the owner upon execution by the owner of a good and valid bond, with sufficient sureties, in an amount double the value of the property, which bond shall be approved by said sheriff and shall be conditioned on the return of the motor vehicle to the custody of the sheriff on the day of trial of the person or persons accused. Upon the acquittal of the person charged under subsection (a) of this section or G.S. 20-141.10, the sheriff shall return the motor vehicle to the owner thereof.
- (2) Notwithstanding the provisions for sale set out above, on petition by a lienholder, the court, in its discretion and upon such terms and conditions as

it may prescribe, may allow reclamation of the vehicle by the lienholder. The lienholder shall file with the court an accounting of the proceeds of any subsequent sale of the vehicle and pay into the court any proceeds received in excess of the amount of the lien.

- (3) Upon conviction of the operator of said motor vehicle of a violation of subsection (a) of this ~~section~~, section or in violation of G.S. 20-141.10, the court shall order a sale at public auction of said motor vehicle and the officer making the sale, after deducting the expenses of keeping the motor vehicle, the fee for the seizure, and the costs of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise, at said hearing or in other proceeding brought for said purpose, as being bona fide, and shall pay the balance of the proceeds to the proper officer of the county who receives fines and forfeitures to be used for the school fund of the county. All liens against a motor vehicle sold under the provisions of this section shall be transferred from the motor vehicle to the proceeds of its sale. If, at the time of hearing, or other proceeding in which the matter is considered, the owner of the vehicle can establish to the satisfaction of the court that said motor vehicle was used in a prearranged speed competition with another motor vehicle on a street or highway or in a street takeover without the knowledge or consent of the owner, and that the owner had no reasonable grounds to believe that the motor vehicle would be used for such purpose, the court shall not order a sale of the vehicle but shall restore it to the owner, and the said owner shall, at his request, be entitled to a trial by jury upon such issues.
- (4) If the owner of said motor vehicle cannot be found, the taking of the same, with a description thereof, shall be advertised in some newspaper published in the city or county where taken, or, if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by handbills posted in three public places near the place of seizure, and if said owner shall not appear within 10 days after the last publication of the advertisement, the property shall be sold, or otherwise disposed of in the manner set forth in this section.
- (5) When any vehicle confiscated ~~under the provisions of this section~~ for a violation of subsection (a) of this section is found to be specially equipped or modified from its original manufactured condition so as to increase its speed, the court shall, prior to sale, order that the special equipment or modification be removed and destroyed and the vehicle restored to its original manufactured condition. However, if the court should find that such equipment and modifications are so extensive that it would be impractical to restore said vehicle to its original manufactured condition, then the court may order that the vehicle be turned over to such governmental agency or public official within the territorial jurisdiction of the court as the court shall see fit, to be used in the performance of official duties only, and not for resale, transfer, or disposition other than as junk: Provided, that nothing herein contained shall affect the rights of lienholders and other claimants to said vehicles as set out in this section."

**SECTION 8.(b)** This section becomes effective December 1, 2023, and applies to offenses committed on or after that date.



**PART IX. EFFECTIVE DATE**

**SECTION 9.** Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17<sup>th</sup> day of August, 2023.

s/ Phil Berger  
President Pro Tempore of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

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Roy Cooper  
Governor

Approved \_\_\_\_\_m. this \_\_\_\_\_ day of \_\_\_\_\_, 2023