

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2023

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HOUSE BILL 834  
Committee Substitute Favorable 5/31/23

Short Title: Juv Capacity/Transfer/Interrog/Confidential.

(Public)

Sponsors:

Referred to:

April 24, 2023

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH A PROCEDURE TO EVALUATE WHETHER A JUVENILE HAS  
3 THE CAPACITY TO PROCEED, TO APPROPRIATE FUNDS, TO MODIFY THE  
4 TRANSFER PROCESS FOR JUVENILES WHO ALLEGEDLY COMMITTED CERTAIN  
5 FELONIES, TO MODIFY THE CONFIDENTIALITY OF CERTAIN INFORMATION  
6 CONCERNING JUVENILES UNDER INVESTIGATION, AND TO MODIFY THE  
7 INTERROGATION PROCEDURES FOR CERTAIN JUVENILES.

8 The General Assembly of North Carolina enacts:

9  
10 **PART I. JUVENILE CAPACITY TO PROCEED**

11 **SECTION 1.(a)** G.S. 7B-2401 reads as rewritten:

12 "**§ 7B-2401. ~~Determination of incapacity~~ No proceedings when juvenile is not capable to**  
13 **proceed; evidence; temporary commitment; temporary orders.proceed.**

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

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

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

26 (c) This section does not apply to individuals over whom the juvenile court has  
27 jurisdiction pursuant to G.S. 7B-1601(d) through (d1) nor to any juvenile who is subject to  
28 transfer by indictment pursuant to G.S. 7B-2200 and G.S. 7B-2200.5(a)(1). Capacity to proceed  
29 under these circumstances shall not be addressed by the juvenile court. Capacity to proceed may  
30 be raised pursuant to Article 56 of Chapter 15A of the General Statutes if the superior court  
31 obtains jurisdiction of the proceeding."

32 **SECTION 1.(b)** Article 24 of Subchapter II of Chapter 7B of the General Statutes is  
33 amended by adding the following new sections to read:

34 "**§ 7B-2401.1. Definitions.**

35 The following definitions apply in this Article:



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

25 **§ 7B-2401.2. Procedures to determine capacity; hearing procedures; evidence.**

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

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

37           (c)    At any time in the case of a juvenile that allegedly committed an offense that would  
38           be a felony if committed by an adult, the court may order the juvenile to a State facility for the  
39           mentally ill for observation and treatment for the period, not to exceed 60 days, necessary to  
40           determine the juvenile's capacity to proceed. If a juvenile is ordered to a State facility without  
41           first having an examination pursuant to subsection (b) of this section, the judge shall make a  
42           finding that an examination pursuant to this subsection would be more appropriate to determine  
43           the juvenile's capacity. The Division shall return the juvenile to the county when notified that the  
44           evaluation has been completed. The director of the facility shall direct his or her report on the  
45           juvenile's condition to the juvenile's attorney and to the clerk of superior court, who shall bring  
46           it to the attention of the court. The report is admissible at the hearing.

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

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

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

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

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

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

42          (h)   When the capacity of the juvenile to proceed is questioned, the court shall hold a  
43          hearing to determine the juvenile's capacity to proceed. If an evaluation is ordered pursuant to  
44          subsection (b) of this section, the hearing shall be held upon receipt of the forensic evaluation  
45          report. The clerk shall provide notice to the juvenile and the prosecutor in accordance with  
46          G.S. 7B-1807. The order of the court shall contain findings of fact to support its determination  
47          of the juvenile's capacity to proceed. The parties may stipulate that the juvenile is capable to  
48          proceed but shall not be allowed to stipulate that the juvenile lacks capacity to proceed. If the  
49          court finds the juvenile is capable to proceed, the juvenile proceedings shall no longer be stayed  
50          and the court shall set a date for such further proceedings. If the juvenile's capacity to proceed is  
51          contested, the juvenile bears the burden of proving the juvenile is incapable to proceed by a

1 preponderance of the evidence. At a contested hearing, the State and the juvenile may call  
2 witnesses and present evidence. Nothing in this subsection may be construed to prohibit the State  
3 or the juvenile from calling other expert witnesses to testify at a capacity hearing. If appropriate,  
4 the court may order remediation services in accordance with G.S. 7B-2401.4.

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

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

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

15 **"§ 7B-2401.3. Juvenile forensic evaluation credentialing; conducting forensic evaluations;**  
16 **written reports; compensation of experts.**

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

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

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

43 (d) No statement or disclosure made by the juvenile during the forensic evaluation  
44 regarding the juvenile's responsibility for a criminal act that can result either in an adjudication  
45 of delinquency or transfer of a matter to superior court for trial as an adult is admissible in any  
46 juvenile or criminal proceeding against the juvenile or defendant. The forensic evaluation shall  
47 not include any such statement.

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

- 1           (1)    Whether the juvenile is capable to proceed, incapable to proceed, or incapable  
2           to proceed with an ability to attain capacity in the foreseeable future with  
3           remediation services.
- 4           (2)    The basis of the juvenile's incapacity, to include mental disorder, intellectual  
5           disability, neurological disorder, traumatic or acquired brain injury, or  
6           developmental immaturity.
- 7           (3)    The capacity of the juvenile to do any of the following:  
8           a.     Appreciate the allegations against the juvenile.  
9           b.     Appreciate the range and nature of allowable dispositions that may be  
10           imposed in the proceedings against the juvenile.  
11           c.     Understand the roles of the participants and the adversary nature of the  
12           legal process.  
13           d.     Disclose to counsel facts pertinent to the proceedings at issue.  
14           e.     Display appropriate courtroom behavior.  
15           f.     Testify regarding the relevant issues.  
16           g.     Make reasonable and rational decisions.  
17           h.     Assist in the juvenile's defense in a rational manner.  
18           i.     Any other factors that the forensic evaluator deems to be relevant.
- 19       (f)    Written forensic reports submitted to the court shall consist of and contain all of the  
20       following:
- 21           (1)    Identify the specific matters referred to the forensic evaluator by the juvenile  
22           court for evaluation.
- 23           (2)    Include notification to the juvenile of the nature, purpose, and anticipated use  
24           or uses of the examination and applicable limits of confidentiality.
- 25           (3)    Describe the procedures, techniques, and tests used in the forensic evaluation  
26           of the juvenile and the purposes of each.
- 27           (4)    Describe the considerations considered by the forensic evaluator.
- 28           (5)    State any clinical observations, findings, and opinions of the forensic  
29           evaluator on each issue referred to the forensic evaluator for evaluation by the  
30           court and specifically indicate any issues on which the forensic evaluator was  
31           unable to give an opinion.
- 32           (6)    Identify the sources of information used by the forensic evaluator and present  
33           the factual basis for any clinical observations, findings, and opinions of the  
34           forensic evaluator.
- 35           (7)    Address any other issues ordered by the court.
- 36       (g)    If a forensic evaluator is of the opinion that a juvenile is incapable to proceed, the  
37       written forensic report shall contain all of the additional information:
- 38           (1)    Any recommended treatment or education needed for the juvenile to attain  
39           capacity, if any.
- 40           (2)    The likelihood that the juvenile will attain capacity in the foreseeable future  
41           because of the recommended treatment or education.
- 42           (3)    An assessment of the probable duration of the treatment or education required  
43           to attain capacity.
- 44           (4)    If the forensic evaluator recommends treatment for the juvenile to attain  
45           capacity, a recommendation as to the least restrictive environment in which  
46           services can be provided to the juvenile.
- 47       (h)    Any forensic evaluator appointed by the court to conduct a forensic evaluation,  
48       ordered pursuant to G.S. 7B-2401.2, shall receive a reasonable fee for such service. The fee shall  
49       be determined for each forensic evaluation by the appointing court, in accordance with  
50       reimbursement guidelines maintained by the North Carolina Administrative Office of the Courts.  
51       If any such forensic evaluator is required to appear as a witness in any hearing held pursuant to

1 this section, the forensic evaluator shall receive reimbursement for expenses according to  
2 guidelines maintained by the North Carolina Administrative Office of the Courts.

3 **"§ 7B-2401.4. Remediation.**

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

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

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

12 (1) Whether there is probable cause to believe the allegations in the petition are  
13 true.

14 (2) The nature of the incapacity.

15 (3) The juvenile's age or developmental maturity.

16 (4) The nature of the act alleged to have been committed and the seriousness of  
17 the offense.

18 (5) The availability and appropriateness of programming in the juvenile's  
19 community.

20 (6) Supervision needs and level of available community supervision or  
21 alternatives such as family members, custodians, guardians, and  
22 community-based programs.

23 (7) Any prior treatment or interventions provided to the juvenile.

24 (8) Any other relevant factors not previously specified.

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

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

31 (1) Written findings of fact regarding the least restrictive environment for the  
32 remediation services.

33 (2) If the court order allows for secure confinement pursuant to  
34 G.S. 7B-2401.4(d), the maximum time for placement in a secure facility shall  
35 be pursuant to subsection (f) of this section.

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

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

47 (2) If the most serious offense alleged in the petition is a Class B1, B2, C, D, or  
48 E felony if committed by an adult, other than an offense set forth in  
49 subdivision (1) of this subsection, remediation shall not exceed 12 months  
50 beyond the original finding of incapacity to proceed, or the maximum  
51 jurisdiction of the court as provided in G.S. 7B-1601, whichever occurs

1 sooner. The court for good cause may grant an extension of up to 12 months  
2 for remediation. If an extension is granted, remediation shall not exceed 24  
3 months beyond the original finding of incapacity to proceed, or the maximum  
4 jurisdiction of the court as provided in G.S. 7B-1601, whichever occurs  
5 sooner.

6 (3) If the most serious offense alleged in the petition is a Class F, G, H, or I felony  
7 or any misdemeanor if committed by an adult, remediation shall not exceed  
8 six months beyond the original finding of incapacity to proceed, or the  
9 maximum jurisdiction of the court as provided in G.S. 7B-1601, whichever  
10 occurs sooner. The court may grant an extension of up to six months for  
11 remediation. If an extension is granted, remediation shall not exceed 12  
12 months beyond the original finding of incapacity to proceed, or the maximum  
13 jurisdiction of the court as provided in G.S. 7B-1601, whichever occurs  
14 sooner.

15 (4) In no case shall the court grant extensions of time for the remediation services  
16 beyond the maximum jurisdiction of the court as provided in G.S. 7B-1601.

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

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

26 (1) The dates of any services provided to the juvenile.

27 (2) A summary of the juvenile's attendance and participation.

28 (3) Information about the juvenile's progress in the areas that were found to be  
29 relevant to the juvenile's incapacity, including education regarding court  
30 procedures and stabilization or improvement of symptoms leading to  
31 functional impairments.

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

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

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

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

16 **"§ 7B-2401.5. Involuntary commitment; dismissal; seal records.**

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

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

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

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

42       **SECTION 1.(c) G.S. 7B-1906 reads as rewritten:**

43 **"§ 7B-1906. Secure or nonsecure custody hearings.**

44       ...

45       (b3) When the capacity of the juvenile to proceed is questioned pursuant to  
46 G.S. 7B-2401.2(a), further hearings to determine the need for secure custody shall be held at  
47 intervals of no more than 30 calendar days from the date of the motion. Further hearings may be  
48 waived only with the consent of the juvenile through counsel for the juvenile. Upon request of  
49 the juvenile, through counsel for the juvenile, and for good cause as determined by the court,  
50 further hearings to determine the need for secure custody may be held at intervals of 10 days.

51       ...."



1           **SECTION 1.(d)** Prosecutions for offenses committed before the effective date of  
2 Section 1 of Part I of this act are not abated or affected by Section 1 of this act, and the statutes  
3 that would be applicable but for Section 1 of this act remain applicable to those prosecutions.

4           **SECTION 1.(e)** There is appropriated from the General Fund to the Department of  
5 Public Safety, Division of Juvenile Justice and Delinquency Prevention, the nonrecurring sums  
6 of two hundred seventeen thousand one hundred thirty-five dollars (\$217,135) for the 2023-2024  
7 fiscal year, eight hundred ninety-five thousand one hundred sixty-two dollars (\$895,162) for the  
8 2024-2025 fiscal year, and the recurring sum of one million two hundred eighty-eight thousand  
9 two hundred thirty-eight dollars (\$1,288,238) for the 2025-2026 fiscal year to implement the  
10 provisions of Section 1 of Part I of this act.

11           **SECTION 1.(f)** Sections 1(a) through 1(d) of this act become effective January 1,  
12 2025, and apply to offenses committed on or after that date. Section 1(e) of this act becomes  
13 effective July 1, 2023.

## 14 **PART II. TRANSFER PROCESS**

15           **SECTION 2.(a)** G.S. 7B-2200.5 reads as rewritten:

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

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

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

26           (2) Notice, hearing, and a finding of probable cause that the juvenile committed  
27 an offense that constitutes a Class A, B1, B2, C, D, E, F, or G felony if  
28 committed by an adult.

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

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

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

45           (d) In any case where jurisdiction over a juvenile has been transferred to superior court,  
46 upon joint motion of the prosecutor and the juvenile's attorney, the superior court shall remand  
47 the case to district court. The prosecutor shall provide the chief court counselor or his or her  
48 designee with a copy of the joint motion prior to submitting the motion to the court. The superior  
49 court shall expunge the superior court record in accordance with G.S. 15A-145.8 at the time of  
50 remand, and, if the juvenile meets the criteria established in G.S. 7B-1903, may issue an order  
51

1 for secure custody upon the request of a prosecutor. The prosecutor shall provide a copy of any  
2 secure custody order issued to the chief court counselor or his or her designee, as soon as possible  
3 and no more than 24 hours after the order is issued."

4 **SECTION 2.(b)** G.S. 7B-2200 reads as rewritten:

5 **"§ 7B-2200. Transfer of jurisdiction of a juvenile under the age of 16 to superior court.**

6 Except as otherwise provided in G.S. 7B-2200.5, after notice, hearing, and a finding of  
7 probable cause the court may, upon motion of the prosecutor or the juvenile's attorney or upon  
8 its own motion, transfer jurisdiction over a juvenile to superior court if the juvenile was at least  
9 13 years of age but less than 16 years of age at the time the juvenile allegedly committed an  
10 offense that would be a felony if committed by an adult. ~~If the alleged felony constitutes a Class~~  
11 ~~A felony and the court finds probable cause, the court shall transfer the case to the superior court~~  
12 ~~for trial as in the case of adults.~~The court shall transfer the case to superior court for trial as in  
13 the case of adults if the felony the juvenile allegedly committed constitutes a Class A felony and  
14 (i) the court finds probable cause or (ii) upon notice of the return of a true bill of indictment as  
15 provided in G.S. 15A-630."

16 **SECTION 2.(c)** G.S. 7B-2202(a) reads as rewritten:

17 "(a) Except as otherwise provided in G.S. 7B-2200 and G.S. 7B-2200.5(a)(1), the court  
18 shall conduct a hearing to determine probable cause in all felony cases in which a juvenile was  
19 13 years of age or older when the offense was allegedly committed. Except as otherwise provided  
20 in G.S. 7B-2200.5(c), the hearing shall be conducted within 15 days of the date of the juvenile's  
21 first appearance. The court may continue the hearing for good cause."

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

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

25 **SECTION 3.(a)** Article 31 of Subchapter II of Chapter 7B of the General Statutes is  
26 amended by adding a new section to read:

27 **"§ 7B-3103. Disclosure of information about juveniles for public safety reasons.**

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

32 (1) A petition has been filed alleging that the juvenile has committed at least one  
33 offense that would subject the juvenile to transfer to superior court pursuant  
34 to G.S. 7B-2200 or G.S. 7B-2200.5.

35 (2) There is a judicial determination, based on the juvenile's record or the nature  
36 of the alleged offense or offenses, that the juvenile presents a danger to self or  
37 others.

38 (3) There is a judicial determination that good cause exists for the disclosure.

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

41 (1) The juvenile's first name, last name, and photograph.

42 (2) Any offense in a juvenile petition alleged to have been committed by the  
43 juvenile.

44 (3) Whether a secure custody order has been issued for the juvenile.

45 (4) A statement, based on the juvenile's record or the nature of the alleged offense  
46 and the level of concern of the Division or law enforcement agency, as to the  
47 juvenile's threat to self or others.

48 (c) If a juvenile who is the subject of an order entered under subsection (a) of this section  
49 is taken into custody before the required disclosure is made to the public, the Division or law  
50 enforcement agency shall not make the disclosure. If the juvenile who is the subject of an order  
51

1 entered under subsection (a) of this section or a disclosure pursuant to subsection (e) of this  
2 section is taken into custody, then all released information must be removed from any publicly  
3 available law enforcement agency or Division website or social media account controlled by the  
4 law enforcement agency or Division.

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

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

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

#### 19 **PART IV. INTERROGATION PROCEDURES**

20 **SECTION 4.(a)** G.S. 7B-2101 reads as rewritten:

21 **"§ 7B-2101. Interrogation procedures.**

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

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

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

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

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

46 (b) When the juvenile is less than 16 years of age, no in-custody admission or confession  
47 resulting from interrogation may be admitted into evidence unless the confession or admission  
48 was made in the presence of the juvenile's parent, guardian, custodian, or attorney. If an attorney  
49 is not present, the parent, guardian, or custodian as well as the juvenile must be advised of the  
50

1 juvenile's rights as set out in subsection (a) of this section; however, a parent, guardian, or  
2 custodian may not waive any right on behalf of the juvenile.

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

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

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

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

20  
21 **PART V. EFFECTIVE DATE**

22 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes  
23 law.