

2019 Delinquency Legislation

Jacqui Greene
UNC School of Government
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greene@sog.unc.edu

S.L. 2019 - 186. S.413 Raise the Age Modifications

- The definition of a delinquent juvenile is clarified to exclude all violations of the motor vehicle laws under Chapter 20 of the General Statutes from juvenile jurisdiction for juvenile who are 16- and 17-years-old at the time of the offense. G.S. 7B-1501(7)b. and G.S. 143B-805(6)b.
- Recodifies G.S. 20-106 (receiving or transferring stolen vehicles) as G.S. 14-71.2.
- Excludes violations of the motor vehicle laws punishable as misdemeanors or infractions, other than those involving impaired driving, from the bar on future juvenile court jurisdiction following a conviction in district or superior court. G.S. 7B-1604(b).
- Limits the gang assessment required as part of the juvenile intake process to juveniles who are 12 years of age or older. G.S. 7B-1702.
- Requires that any individual age 21 or older who is taken into custody for an offense committed when the person would have been under juvenile jurisdiction and who is detained to be detained in the county jail where the charges arose. G.S. 7B-1901(d).
- Allows an individual between the ages of 18 and 21 who (1) is no longer age-eligible for juvenile jurisdiction, (2) has been taken into custody for an offense committed when the person would have been under juvenile jurisdiction, and (3) is detained, to be detained in the county jail where the charges arose. G.S. 7B-1903(e).
- Requires that any juvenile detention facility operated by a sheriff or any unit of government meet the standards and rules adopted by the Department of Public Safety and receive approval from the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice for operation as a juvenile detention facility. G.S. 7B-1905(b).
- Requires ongoing secure custody hearings for juveniles alleged to have committed offenses that would be Class A – Class G felony offenses at age 16 or 17 every 30 days. Hearings may be waived only with the consent of the juvenile through his or her attorney. Hearings can be required every 10 days upon request of the juvenile and a judicial finding of good cause. G.S. 7B-1906.
- Extends the timeframe in which a probable cause hearing must be held, for juveniles alleged to have committed Class A – Class G felony offenses at ages 16 and 17, to within 90 days of the juvenile’s first appearance. The hearing may be continued by the court for good cause. G.S. 7B-2200.5(c).
- Requires the court to remand a case--(1) in which the offense was alleged to have been committed by the juvenile at age 16 or 17 and (2) that was transferred to superior court--back to district court upon joint motion of the prosecutor and the juvenile’s attorney. Superior court records must be expunged on remand. G.S. 7B-2200.5(d).
- Requires personnel of the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice, or personnel approved by the Juvenile Justice Section, to transport youth who

are being held in juvenile detention following transfer of their case to superior court between detention, court, and any holdover facility (if used). G.S. 7B-2204.

- Requires any youth being held in juvenile detention following transfer of his or her case to superior court to be transported by the Juvenile Justice Section of DACJJ to the sheriff from the county in which the charges arose for pre-trial confinement in the local jail when the juvenile turns 18. G.S. 7B-2204(c).
- Allows for the detention of youth in a juvenile detention facility approved by DACJJ and operated by a sheriff or unit of government following conviction in a case transferred to superior court pending transfer to the Division of Adult Correction and Juvenile Justice of the Department of Public Safety. G.S. 7B-2204(d).
- Requires the judicial finding that the offense for which the juvenile was adjudicated was committed as part of criminal gang activity be found beyond a reasonable doubt in order to increase the juvenile's disposition level by one level. G.S. 7B-2508(g1).
- Creates a new expunction statute for cases that are transferred to superior court and then remanded back to district court on joint motion of the prosecutor and juvenile defense attorney. The court must order expunction on remand. Expunction must include any DNA records and samples associated with the remanded charges as well as clerk notification to various state and local agencies. G.S. 15A-145.8.
- Effective date: December 1, 2019 and applies to offenses committed on or after that date.

S.L. 2019-41 An Act to Eliminate the Prohibition on Referring A Juvenile to A Teen Court Program If the Juvenile Has Been Referred to A Teen Court Program Previously. (H.B. 617)

- Allows for multiple teen court program referrals for the same juvenile. G.S. 7B-1706(c).
- Effective date: when it becomes law (June 21, 2019).

S.L. 2019-47 An Act to Clarify the Requirement to Take A Photograph of A Suspect at the Time Of A Show-Up Where the Suspect is A Juvenile. (H.B. 415)

- All changes below contained in G.S. 15A-284.52(c1).
- Juveniles age 10 or older who are reported to have committed a nondivertible offense or common law robbery must be photographed by an investigator at the time and place of any show-up.
- Photographs must be retained or disposed as required by G.S. 7B-2108 (destruction of records resulting from nontestimonial identification procedures) except that written certification of destruction to the court is only required if a petition was filed.
- Juvenile photographs taken pursuant to a show-up are not public records under Chapter 132 of the General Statutes
- Juvenile photographs taken pursuant to a show-up must be kept separate from adult records, withheld from public inspection, and examined only by order of the court. A court order is not required for examination by the juvenile or the juvenile's attorney, the juvenile's parent or guardian, the prosecutor, and court counselors.
- Effective date: when it becomes law (June 26, 2019)

S.L. 2019-33 An Act to Make Revisions to the Juvenile Code Pursuant to Recommendations By the Court Improvement Program (CIP). (H.B. 301)

- Provides entitlement to court-appointed counsel for parents in review and permanency hearings held for juveniles who are placed in DSS custody pursuant to orders of disposition following undisciplined and delinquency adjudications. Parents can make a knowing and voluntary waiver of this right to counsel. G.S. 7B-2503(1)c., G.S. 7B-2506(1)c.
- Allows a guardian ad litem attorney advocate appointed for a juvenile in an abuse, neglect, or dependency matter to share confidential information about the juvenile with the juvenile's attorney appointed in a delinquency or undisciplined matter. G.S. 7B-3100(c).
- The legislation includes many other provisions that relate only to abuse, neglect, and dependency proceedings.
- Effect date: October 1, 2019.

S.L. 2019-158 An Act to Implement Recommendations Made By the North Carolina Human Trafficking Commission. (H.B. 198)

- All amendments below are contained in G.S. 7B-3200.
- Requires that the person has been released from juvenile court jurisdiction in order to file a petition for expunction of delinquent and undisciplined adjudication records.
- Exempts people whose participation in their adjudicated offense was a result of having been a victim of human trafficking or a victim of a severe form of human trafficking from the requirements that at least 18 months have passed since release from juvenile court jurisdiction and that the person not be adjudicated or convicted of any felony or misdemeanor offense since adjudication, other than a traffic violation, in order to file a petition for expunction of juvenile records.
- Requires the petitioner for juvenile record expunction to include the following new information in an affidavit:
 - That he or she has been released from juvenile court jurisdiction, and
 - If the petitioner is not subject to the 18-month waiting period following release from juvenile jurisdiction and the requirement to remain free from further adjudications or convictions, that the petition was adjudicated delinquent for an offense the petitioner participated in as a result of having been a victim of human trafficking or of a severe form of human trafficking.
- This legislation contains many other provisions that apply to criminal cases related to human trafficking and a civil cause of action for human trafficking victims.
- Effective date: July 1, 2019.

*S.L. 2019-216 An Act to Implement the Constitutional Amendment to Provide Better Protections and Safeguards to Victims of Crime (S. 682)**

- Adds a new Article 20A, "Rights of Victims of Delinquent Acts," to Chapter 7B of the General Statutes.

- Provides definitions for the meaning of “court proceeding,” “family member,” “felony property offense,” “offense against the person,” and “victim” for the purposes of the new Article. G.S. 7B-2051(a).
- Allows for a parent, guardian, or legal custodian, if they are not the accused person in the matter, to assert the rights of any victim who is a minor or who is legally incapacitated. G.S. 7B-2051(b).
- Allows a family member to assert the victim’s rights if the victim is deceased. The guardian or legal custodian of a deceased minor has priority over a family member and the right to restitution under G.S. 15A-834 can only be exercised by the personal representative of the victim’s estate. G.S. 7B-2051(b).
- Allows an individual entitled to exercise the victim’s rights as the appropriate family member to designate any family member to act on the victim’s behalf. G.S. 7B-2051(c).
- Provides that if an individual is determined by the district attorney’s office to be someone who would not act in the best interests of the victim, that person is not entitled to assert the victim’s rights. Any such determination can be reviewed by the court following a petition for review. G.S. 7B-2051(d).
- Establishes victim rights, including the right to: reasonable, accurate, and timely notice of court proceedings (upon request); be present at court proceedings of the juvenile (upon request); be reasonably heard at court proceedings involving the adjudication, disposition, or release of the juvenile; receive any ordered restitution in a reasonably timely manner; be given information about the offense, how the juvenile justice system works, the rights of victims, and the availability of victim services; receive information about the adjudication or disposition of the case (upon request); receive notification of the escape or release of the juvenile (upon request); and reasonably confer with the district attorney’s office. G.S. 7B-2052.
- Establishes the following responsibilities of the office of the district attorney:
 - Provide the victim certain information within 72 hours of petition filing;
 - Provide the victim a form on which he or she can request to receive notice of court proceedings and information regarding case adjudication and disposition;
 - Make every effort to ensure that a victim’s personal information is not disclosed unless otherwise required by law;
 - Offer the victim the opportunity to reasonably confer with an attorney in the district attorney’s office to obtain the victim’s views about, at least, dismissal, plea or negotiations, disposition, and any dispositional alternatives;
 - Provide and document reasonable, accurate and timely notice to the victim of the date and time of scheduled court proceedings, as requested;
 - Whenever practical, provide a secure waiting area during court proceedings that does not place the victim in close proximity to the juvenile or the juvenile’s family;
 - Prior to the dispositional hearing, notify the victim of the right to request to be notified in advance of the juvenile’s scheduled release date if the juvenile is committed to a YDC and of any escape of the juvenile if the juvenile is being held in secure custody or is committed to a YDC. Submit a form to the court at disposition regarding the victim’s request for these further notices;
 - Following disposition, provide the victim with information on the adjudication and disposition of the juvenile as requested by the victim. This information is limited to:

whether the juvenile was adjudicated, adjudicated offense classification, available dispositions, any no contact orders as they relate to the victim, and any orders for restitution. G.S. 7B-2053.

- Adds the following responsibilities for judicial officials:
 - In any court proceeding subject to this article and in which the victim may be present, inquire as to whether the victim is present and wishes to be heard. If the victim wishes to be heard, grant an opportunity to be heard through an oral statement, submission of a written statement, or submission of an audio or video statement;
 - Provide the victim an opportunity to be heard regarding the victim's right to be present in the event that an entire hearing has been closed to the victim;
 - Review any motion alleging a violation of the victim's rights established by this Article;
 - Make every effort to provide a secure waiting area during court proceedings that does not place the victim in close proximity to the juvenile or the juvenile's family. G.S. 7B-2054.
- Creates the following responsibilities within the Division of Adult Correction and Juvenile Justice:
 - If a victim has requested to be notified of a juvenile's release from a YDC, notify the victim at least 45 days before releasing the juvenile to post-release supervision, including only the juvenile's initials, offense, date of commitment, projected release date, and any no-contact release conditions related to the victim;
 - Provide the victim an opportunity to be reasonably heard regarding release of the juvenile when determining whether the juvenile is ready for release and consider the victim's views. If the juvenile is determined to be ready for release, consider the victim's views during the post-release supervision planning conference process;
 - If a victim has requested to be notified of the juvenile's escape, notify the victim within 24 hours of any escape from a YDC or from secure custody. If public disclosure of the escape is required, make a reasonable effort to notify the victim prior to releasing information to the public. Notify the victim within 24 hours of the juvenile's return to custody, even if the juvenile is returned before notification of the escape is required;
 - Notify the victim of the procedure for alleging a failure of the Division to notify the victim of any requested notification of release or escape. G.S. 7B-2055.
- Prohibits examination by and release of confidential juvenile records to victims. Limits disclosure of information contained in a juvenile record to a victim to the information expressly allowed in this Article. G.S. 7B-2057.
- Establishes a judicial process for enforcement of victim rights. Any allegation involving failure of the district attorney to comply with the provisions of this Article must begin by filing a written complaint with the district attorney. The Administrative Office of the Courts must create a form to serve as a motion to enable a victim to allege a violation of the rights provided under this Article. The motion must be filed with the clerk of the superior court in the same proceeding giving rise to the rights in question. Victims have a right to consult with counsel, although victims do not have a right to counsel provided by the State. The judge may dispose of the motion through conference or following a hearing. If the judge does not review and dispose of the motion, the victim may petition the Court of Appeals for a writ of mandamus;

- Provides that failure or inability to provide a right or service under this Article may not be used as a ground for relief in a juvenile or other civil proceeding except as provided in Section 37 of Article I of the North Carolina Constitution (Rights of Victims of Crimes). G.S. 7B-2058.
- Makes conforming changes regarding existing release and escape notification provisions and confidentiality of juvenile records. G.S. 7B-2514(d), -3000(b), -3100(b), -3102(e).
- Repeals G.S. 7B-2513(j), which previously provided a process for victim notification of release of certain juveniles from YDC commitments.
- Requires the Conference of District Attorneys and the Administrative Office of the Court to develop and disseminate required forms by August 31, 2019.
- Requires the Administrative Office of the Courts, in consultation with the Conference of District Attorneys, to develop procedures to automate required court date notifications.
- Effective Date: applies to acts of delinquency committed on or after August 31, 2019. Requirements for new forms and development of automated court date notifications take effect immediately.

*this summary includes only the juvenile provisions. This legislation also creates similar crime victim rights within the NC Criminal Procedure Act.