

Article 21.

Law Enforcement Procedures in Delinquency Proceedings.

§ 7B-2100. Role of the law enforcement officer.

A law enforcement officer who takes a juvenile into temporary custody should select the most appropriate course of action to the situation, the needs of the juvenile, and the protection of the public safety. The officer may:

- (1) Release the juvenile, with or without first counseling the juvenile;
- (2) Release the juvenile to the juvenile's parent, guardian, or custodian;
- (3) Refer the juvenile to community resources;
- (4) Seek a petition; or
- (5) Seek a petition and request a custody order. (1979, c. 815, s. 1; 1998-202, s. 6.)

§ 7B-2101. Interrogation procedures.

(a) Any 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.
- (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, or custodian 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.

(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. (1979, c. 815, s. 1; 1998-202, s. 6; 2015-58, s. 1.1; 2023-114, s. 3(a).)

§ 7B-2102. Fingerprinting and photographing juveniles.

(a) A law enforcement officer or agency shall fingerprint and photograph a juvenile who was 10 years of age or older at the time the juvenile allegedly committed a nondivertible offense as set forth in G.S. 7B-1701(a), when a complaint has been prepared for filing as a petition and the juvenile is in physical custody of law enforcement or the Division.

(a1) A county juvenile detention facility shall photograph a juvenile who has been committed to that facility. The county detention facility shall release any photograph it makes or receives pursuant to this section to the Division, upon the Division's request. The duty of confidentiality in subsection (d) of this section applies to the Division, except as provided in G.S. 7B-3102.

(b) If a law enforcement officer or agency does not take the fingerprints or a photograph of the juvenile pursuant to subsection (a) of this section or the fingerprints or photograph have been destroyed pursuant to subsection (e) of this section, a law enforcement officer or agency shall fingerprint and photograph a juvenile who has been adjudicated delinquent if the juvenile was 10 years of age or older at the time the juvenile committed an offense that would be a felony if committed by an adult.

(c) A law enforcement officer, facility, or agency who fingerprints or photographs a juvenile pursuant to this section shall do so in a proper format for transfer to the State Bureau of Investigation and the Federal Bureau of Investigation. After the juvenile, who was 10 years of age or older at the time of the offense, is adjudicated delinquent of an offense that would be a felony if committed by an adult, fingerprints obtained pursuant to this section shall be transferred to the State Bureau of Investigation and placed in the Automated Fingerprint Identification System (AFIS) to be used for all investigative and comparison purposes, and may be entered into a local fingerprint database for the same purposes, if the law enforcement agency with jurisdiction is served by a secure crime laboratory facility that maintains a local fingerprint database. Photographs obtained pursuant to this section shall be placed in a format approved by the State Bureau of Investigation and may be used for all investigative or comparison purposes. The State Bureau of Investigation shall release any photograph it receives pursuant to this section to the Division, upon the Division's request. The duty of confidentiality in subsection (d) of this section applies to the Division, except as provided in G.S. 7B-3102.

(d) Fingerprints and photographs taken pursuant to this section are not public records under Chapter 132 of the General Statutes, shall not be included in the clerk's record pursuant to

G.S. 7B-3000, shall be withheld from public inspection or examination, and shall not be eligible for expunction pursuant to G.S. 7B-3200. Fingerprints and photographs taken pursuant to this section shall be maintained separately from any juvenile record, other than the electronic file maintained by the State Bureau of Investigation.

(d1) Repealed by Session Laws 2007-458, s. 1, effective October 1, 2007.

(e) If a juvenile is fingerprinted and photographed pursuant to subsection (a) of this section, the custodian of records shall destroy all fingerprints and photographs at the earlier of the following:

- (1) The juvenile court counselor or prosecutor does not file a petition against the juvenile within one year of fingerprinting and photographing the juvenile pursuant to subsection (a) of this section;
- (2) The court does not find probable cause pursuant to G.S. 7B-2202; or
- (3) The juvenile is not adjudicated delinquent of any offense that would be a felony or a misdemeanor if committed by an adult.

The chief court counselor shall notify the local custodian of records, and the local custodian of records shall notify any other record-holding agencies, when a decision is made not to file a petition, the court does not find probable cause, or the court does not adjudicate the juvenile delinquent. (1996, 2nd Ex. Sess., c. 18, s. 23.2(a); 1998-202, s. 6; 2000-137, s. 3; 2001-490, s. 2.16; 2003-297, s. 2; 2007-458, ss. 1, 3(a), (b); 2011-145, s. 19.1(l); 2019-243, s. 19.5; 2021-123, s. 5(d).)

§ 7B-2103. Authority to issue nontestimonial identification order where juvenile alleged to be delinquent.

Except as provided in G.S. 7B-2102 or G.S. 15A-284.52(c1), nontestimonial identification procedures shall not be conducted on any juvenile without a court order issued pursuant to this Article unless the juvenile has been charged as an adult or transferred to superior court for trial as an adult in which case procedures applicable to adults, as set out in Articles 14 and 23 of Chapter 15A of the General Statutes, shall apply. A nontestimonial identification order authorized by this Article may be issued by any judge of the district court or of the superior court upon request of a prosecutor. As used in this Article, "nontestimonial identification" means identification by fingerprints, palm prints, footprints, measurements, blood specimens, urine specimens, saliva samples, hair samples, or other reasonable physical examination, handwriting exemplars, voice samples, photographs, and lineups or similar identification procedures requiring the presence of a juvenile. (1979, c. 815, s. 1; 1981, c. 454, s. 1; 1998-202, s. 6; 2019-47, s. 1.)

§ 7B-2104. Time of application for nontestimonial identification order.

A request for a nontestimonial identification order may be made prior to taking a juvenile into custody or after custody and prior to the adjudicatory hearing. (1979, c. 815, s. 1; 1981, c. 454, s. 2; 1998-202, s. 6.)

§ 7B-2105. Grounds for nontestimonial identification order.

(a) Except as provided in subsection (b) of this section, a nontestimonial identification order may issue only on affidavit or affidavits sworn to before the court and establishing the following grounds for the order:

- (1) That there is probable cause to believe that an offense has been committed that would be a felony if committed by an adult;

- (2) That there are reasonable grounds to suspect that the juvenile named or described in the affidavit committed the offense; and
- (3) That the results of specific nontestimonial identification procedures will be of material aid in determining whether the juvenile named in the affidavit committed the offense.

(b) A nontestimonial identification order to obtain a blood specimen from a juvenile may issue only on affidavit or affidavits sworn to before the court and establishing the following grounds for the order:

- (1) That there is probable cause to believe that an offense has been committed that would be a felony if committed by an adult;
- (2) That there is probable cause to believe that the juvenile named or described in the affidavit committed the offense; and
- (3) That there is probable cause to believe that obtaining a blood specimen from the juvenile will be of material aid in determining whether the juvenile named in the affidavit committed the offense. (1979, c. 815, s. 1; 1997-80, s. 11; 1998-202, s. 6.)

§ 7B-2106. Issuance of order.

Upon a showing that the grounds specified in G.S. 7B-2105 exist, the judge may issue an order following the same procedure as in the case of adults under G.S. 15A-274, 15A-275, 15A-276, 15A-277, 15A-278, 15A-279, 15A-280, and 15A-282. (1979, c. 815, s. 1; 1998-202, s. 6.)

§ 7B-2107. Nontestimonial identification order at request of juvenile.

A juvenile in custody for or charged with an offense which if committed by an adult would be a felony offense may request that nontestimonial identification procedures be conducted. If it appears that the results of specific nontestimonial identification procedures will be of material aid to the juvenile's defense, the judge to whom the request was directed must order the State to conduct the identification procedures. (1979, c. 815, s. 1; 1997-80, s. 12; 1998-202, s. 6.)

§ 7B-2108. Destruction of records resulting from nontestimonial identification procedures.

The results of any nontestimonial identification procedures shall be retained or disposed of as follows:

- (1) If a petition is not filed against a juvenile who has been the subject of nontestimonial identification procedures, all records of the evidence shall be destroyed.
- (2) If the juvenile is not adjudicated delinquent or convicted in superior court following transfer, all records resulting from a nontestimonial order shall be destroyed. Further, in the case of a juvenile who is under 13 years of age and who is adjudicated delinquent for an offense that would be less than a felony if committed by an adult, all records shall be destroyed.
- (3) If a juvenile 13 years of age or older is adjudicated delinquent for an offense that would be a felony if committed by an adult, all records resulting from a nontestimonial order may be retained in the court file. Special precautions shall be taken to ensure that these records will be maintained in a manner and under sufficient safeguards to limit their use to inspection by law enforcement officers for comparison purposes in the investigation of a crime.

- (4) If the juvenile is transferred to and convicted in superior court, all records resulting from nontestimonial identification procedures shall be processed as in the case of an adult.
- (5) Any evidence seized pursuant to a nontestimonial order shall be retained by law enforcement officers until further order is entered by the court.
- (6) Destruction of nontestimonial identification records pursuant to this section shall be performed by the law enforcement agency having possession of the records. Following destruction, the law enforcement agency shall make written certification to the court of the destruction. (1979, c. 815, s. 1; 1994, Ex. Sess., c. 22, s. 28; 1998-202, s. 6.)

§ 7B-2109. Penalty for willful violation.

Any person who willfully violates provisions of this Article which prohibit conducting nontestimonial identification procedures without an order issued by the court shall be guilty of a Class 1 misdemeanor. (1979, c. 815, s. 1; 1993, c. 539, s. 5; 1994, Ex. Sess., c. 24, s. 14(c); 1998-202, s. 6.)