**South Carolina General Assembly**

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**H. 3297**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Erickson, Bernstein, Collins, Clyburn and Norrell

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Companion/Similar bill(s): 22

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Currently residing in the House Committee on **Judiciary**

Summary: Children placed in adult jails

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

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12/18/2018 House Referred to Committee on **Judiciary**

1/8/2019 House Introduced and read first time ([House Journal‑page 161](file:///h:\hj\20190108.docx))

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**VERSIONS OF THIS BILL**

[12/18/2018](file:///p:\pprever\2019-20\3297_20181218.docx)

**A** **BILL**

TO AMEND SECTION 63‑19‑820, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PLACING CHILDREN IN AN ADULT JAIL, SO AS TO ELIMINATE THE EXCEPTION FOR CHILDREN TO BE TRIED AS AN ADULT AND TO DECREASE THE LENGTH OF TIME THAT A CHILD MAY BE HELD IN A JUVENILE DETENTION FACILITY FOR COMMITTING A STATUS OFFENSE OR FOR VIOLATING A RELATED COURT ORDER; TO AMEND SECTION 63‑19‑1020, RELATING TO THE RIGHT OF CERTAIN PERSONS AND ENTITIES INJURED BY DELINQUENT ACTS OF A CHILD TO INSTITUTE LEGAL PROCEEDINGS AGAINST THE CHILD, SO AS TO REQUIRE THAT THE CHILD AND HIS FAMILY SEEK COUNSELING WHEN THE STATUS OFFENSE IS OF INCORRIGIBILITY; TO AMEND SECTION 63‑19‑1440, RELATING TO COMMITMENT OF CERTAIN CHILDREN TO THE DEPARTMENT OF JUVENILE JUSTICE, SO AS TO DISTINGUISH BETWEEN STATUS AND CRIMINAL OFFENSES AND TO CHANGE THE REQUIREMENTS FOR COURT ORDERS; TO AMEND SECTION 63‑19‑1810, RELATING TO DETERMINATION OF RELEASE OF JUVENILES ADJUDICATED DELINQUENT BY THE DEPARTMENT, SO AS TO MAKE CONFORMING CHANGES; AND TO AMEND SECTION 63‑19‑2050, AS AMENDED, RELATING TO EXPUNGEMENT OF CERTAIN COURT RECORDS, SO AS TO PROVIDE FOR THE AUTOMATIC EXPUNGEMENT OF A JUVENILE’S RECORDS FOR STATUS OFFENSES, WITH EXCEPTIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 63‑19‑820(C) and (E) of the 1976 Code is amended to read:

“(C) ~~No~~ A child ~~may~~ must not be placed in secure confinement or ordered detained by the court in secure confinement in an adult jail or other place of detention for adults for more than six hours. ~~However, the prohibition against the secure confinement of juveniles in adult jails does not apply to juveniles who have been waived to the court of general sessions for the purpose of standing trial as an adult. Juveniles~~ A juvenile placed in secure confinement in an adult jail during this six‑hour period must be confined in an area of the jail which is separated by sight and sound from adults similarly confined.

(E) A child who is taken into custody because of a violation of law which would not be a criminal offense under the laws of this State if committed by an adult must not be placed or ordered detained in an adult detention facility. A child who is taken into custody because of a violation of the law which would not be a criminal offense under the laws of this State if committed by an adult must not be placed or ordered detained ~~more than twenty‑four hours~~ in a juvenile detention facility, unless an order previously has been issued by the court, of which the child has notice and which notifies the child that further violation of the court’s order may result in the secure detention of that child in a juvenile detention facility. If a juvenile is ordered detained for violating a valid court order, the juvenile may be held in secure confinement in a juvenile detention facility for not more than ~~seventy‑two~~ forty‑eight hours, excluding weekends and holidays. However, nothing in this section precludes a law enforcement officer from taking a status offender into custody.”

SECTION 2. Section 63‑19‑1020 of the 1976 Code is amended to read:

“Section 63‑19‑1020. (A) The parent or custodian of a child, an official of a child welfare board, a public official charged by law with the care of the poor, the recognized agents of an agency, association, society, or institution, a person having knowledge or information of a nature which convinces the person that a child is delinquent or that a child, by reason of his own acts in accordance with this chapter, is subject to the jurisdiction of the court, any person who has suffered injury through the delinquency of a child, or an officer having an arrested child in charge, may institute a proceeding respecting the child.

(B) Before the department may accept a referral for the status offense of incorrigibility or before a petition for the offense of incorrigibility may be filed, the person or entity seeking to institute the proceeding first shall provide documentation indicating that the parent or custodian and the child have made reasonable efforts to resolve the challenges confronting the family through participation in family counseling, pastoral counseling, parenting improvement classes, or other family therapy services. If no prior assistance has been sought, the department shall refer the parent or custodian to service providers in the family’s community or provide services itself to assist the family.”

SECTION 3. A. 1. Section 63‑19‑1440(A), (C), and (F) of the 1976 Code is amended to read:

“(A) A child, after the child’s twelfth birthday and before the seventeenth birthday or while under the jurisdiction of the family court for disposition of ~~an~~ a criminal offense that occurred prior to the child’s seventeenth birthday, or for conduct that is a violation of probation or an act of contempt of court where the prior order of probation or court order arose from an adjudication for a criminal offense, may be committed to the custody of the Department of Juvenile Justice which shall arrange for placement in a suitable corrective environment. Children under the age of twelve years may be committed only to the custody of the department which shall arrange for placement in a suitable corrective environment other than institutional confinement. No child under the age of seventeen years may be committed or sentenced to any other penal or correctional institution of this State.

(C) The court, before committing a child as a delinquent or as a part of a sentence including commitments for contempt, shall order a community evaluation or temporarily commit the child to the Department of Juvenile Justice for not more than forty‑five days for evaluation. A community evaluation is equivalent to a residential evaluation, but it is not required to include all components of a residential evaluation. However, in either evaluation the department shall make a recommendation to the court on the appropriate disposition of the case and shall submit that recommendation to the court before final disposition. The department is authorized to allow ~~any~~ a child adjudicated delinquent for ~~a status offense,~~ a misdemeanor offense~~,~~ or for violation of probation or contempt for any offense who is temporarily committed to the department’s custody for a residential evaluation, to reside in that child’s home or in his home community while undergoing a community evaluation, unless the committing judge finds and concludes in the order for evaluation, that a community evaluation of the child must not be conducted because the child presents an unreasonable flight or public safety risk to his home community. The court may waive in writing the evaluation of the child and proceed to issue final disposition in the case if the child:

(1) has previously received a residential evaluation or a community evaluation and the evaluation is available to the court;

(2) has been within the past year temporarily or finally discharged or conditionally released for parole from a correctional institution of the department, and the child’s previous evaluation or other equivalent information is available to the court; or

(3) receives a determinate commitment sentence not to exceed ninety days.

(F) Notwithstanding ~~subsections (A) and (E)~~ any other provision of this chapter, a child may not be committed to the custody of the Department of Juvenile Justice, a juvenile detention center, or ~~to~~ a secure evaluation center ~~operated by the department for a determinate period not to exceed ninety days~~ when:

(1) the child has been adjudicated delinquent by a family court judge for ~~a~~ one or more status ~~offense~~ offenses, as defined in Section 63‑19‑20~~, excluding truancy, and the order acknowledges that the child has been afforded all due process rights guaranteed to a child offender~~;

(2) the child is in contempt of court for violation of a court order to attend school or an order issued as a result of the child’s adjudication of delinquency for ~~a~~ one or more status ~~offense~~ offenses, as defined in Section 63‑19‑20; or

(3) the child is determined by the court to have violated the conditions of probation set forth by the court in an order issued as a result of the child’s adjudication of delinquency for ~~a~~ one or more status ~~offense~~ offenses, as defined in Section 63‑19‑20 ~~including truancy~~.

~~Orders issued pursuant to this subsection must acknowledge:~~

~~(a)~~ ~~that the child has been advised of all due process rights afforded to a child offender; and~~

~~(b)~~ ~~that the court has received information from the appropriate state or local agency or public entity that has reviewed the facts and circumstances causing the child to be before the court.~~

Nothing in this section precludes the commitment of a child who is charged with, adjudicated of, or convicted of a criminal offense.”

2. These subsections take effect upon approval by the Governor and are effective until July 1, 2019.

B. 1. Section 63‑19‑1440(A),(C), and (F) of the 1976 Code is amended to read:

“(A) A child, after the child’s twelfth birthday and before the eighteenth birthday or while under the jurisdiction of the family court for disposition of ~~an~~ a criminal offense that occurred prior to the child’s eighteenth birthday, or for conduct that is a violation of probation or an act of contempt of court where the prior order of probation or court order arose from an adjudication for a criminal offense, may be committed to the custody of the Department of Juvenile Justice which shall arrange for placement in a suitable corrective environment. Children under the age of twelve years may be committed only to the custody of the department which shall arrange for placement in a suitable corrective environment other than institutional confinement. No child under the age of eighteen years may be committed or sentenced to any other penal or correctional institution of this State.

(C) The court, before committing a child as a delinquent or as a part of a sentence including commitments for contempt, shall order a community evaluation or temporarily commit the child to the Department of Juvenile Justice for not more than forty‑five days for evaluation. A community evaluation is equivalent to a residential evaluation, but it is not required to include all components of a residential evaluation. However, in either evaluation the department shall make a recommendation to the court on the appropriate disposition of the case and shall submit that recommendation to the court before final disposition. The department is authorized to allow ~~any~~ a child adjudicated delinquent for ~~a status offense,~~ a misdemeanor offense~~,~~ or for violation of probation or contempt for any offense and who is temporarily committed to the department’s custody for a residential evaluation, to reside in that child’s home or in his home community while undergoing a community evaluation, unless the committing judge finds and concludes in the order for evaluation, that a community evaluation of the child must not be conducted because the child presents an unreasonable flight or public safety risk to his home community. The court may waive in writing the evaluation of the child and proceed to issue final disposition in the case if the child:

(1) has previously received a residential evaluation or a community evaluation and the evaluation is available to the court;

(2) has been within the past year temporarily or finally discharged or conditionally released for parole from a correctional institution of the department, and the child’s previous evaluation or other equivalent information is available to the court; or

(3) receives a determinate commitment sentence not to exceed ninety days.

(F) Notwithstanding ~~subsections (A) and (E)~~ any other provision of this chapter, a child may not be committed to the custody of the Department of Juvenile Justice, a juvenile detention center, or ~~to~~ a secure evaluation center ~~operated by the department for a determinate period not to exceed ninety days~~ when:

(1) the child has been adjudicated delinquent by a family court judge for ~~a~~ one or more status ~~offense~~ offenses, as defined in Section 63‑19‑20~~, excluding truancy, and the order acknowledges that the child has been afforded all due process rights guaranteed to a child offender~~;

(2) the child is in contempt of court for violation of a court order to attend school or an order issued as a result of the child’s adjudication of delinquency for ~~a~~ one or more status ~~offense~~ offenses, as defined in Section 63‑19‑20; or

(3) the child is determined by the court to have violated the conditions of probation set forth by the court in an order issued as a result of the child’s adjudication of delinquency for ~~a~~ one or more status ~~offense~~ offenses, as defined in Section 63‑19‑20 ~~including truancy~~.

~~Orders issued pursuant to this subsection must acknowledge:~~

~~(a)~~ ~~that the child has been advised of all due process rights afforded to a child offender; and~~

~~(b)~~ ~~that the court has received information from the appropriate state or local agency or public entity that has reviewed the facts and circumstances causing the child to be before the court.~~

Nothing in this section precludes the commitment of a child who is charged with, adjudicated of, or convicted of a criminal offense.”

2. These subsections take effect July 1, 2019.

SECTION 4. Section 63‑19‑1810(A) of the 1976 Code is amended to read:

“(A) The release and revocation of release of juveniles adjudicated delinquent and committed to the department must be determined by:

(1) the department for juveniles adjudicated delinquent and committed after March 31, 2007, for an indeterminate period for ~~a status offense or~~ a misdemeanor, other than assault and battery of a high and aggravated nature or assault with intent to kill, and for juveniles who have violated probation for ~~a status offense or~~ a misdemeanor, other than assault and battery of a high and aggravated nature or assault with intent to kill;

(2) the Board of Juvenile Parole for juveniles adjudicated delinquent and committed for an offense other than an offense provided for in item (1).”

SECTION 5.A. Section 63‑19‑2050(A) of the 1976 Code is amended to read:

“(A)(1) A person who has been taken into custody for, charged with, or adjudicated delinquent for having committed a ~~status offense or a~~ nonviolent crime, as defined in Section 16‑1‑70, may petition the court for an order expunging all official records relating to:

(a) being taken into custody;

(b) the charges filed against the person;

(c) the adjudication; and

(d) the disposition.

(2) A person may not petition the court if the person has a prior adjudication for an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult.”

B. 1. Section 63‑19‑2050(C) of the 1976 Code, as last amended by Act 254 of 2018, is further amended to read:

“(C)(1) ~~If the person has been taken into custody for, charged with, or adjudicated delinquent for having committed a status offense, the court shall grant the expungement order. If the person has been taken into custody for, charged with, or adjudicated delinquent for having committed multiple status offenses, the court may grant an expungement order for the multiple status offenses.~~ All official records relating to taking into custody, the charges filed, the adjudication, and the disposition for committing a status offense, as defined in Section 63‑19‑20, must be expunged automatically. The automatic expungement must occur as soon as the person has reached the age of seventeen and has successfully completed any dispositional sentences imposed, as long as the person has not been subsequently adjudicated delinquent for or convicted of a criminal offense other than for a probation violation or contempt of court arising from a status offense.

(2) If the person has been taken into custody for, charged with, or adjudicated delinquent for having committed a nonviolent crime, as defined in Section 16‑1‑70, the court may grant the expungement order. For the purpose of this section, any number of offenses for which the individual received youthful offender sentences at a single sentencing proceeding for offenses that are closely connected and arose out of the same incident may be considered as one offense and treated as one conviction for expungement purposes.

~~(3)~~ The court shall not grant the expungement order unless the court finds that the person is at least seventeen years of age, has successfully completed any dispositional sentence imposed, has not been subsequently adjudicated for or convicted of any criminal offense, and does not have any criminal charges pending in family court or general sessions court. If the person was found not guilty in an adjudicatory hearing in the family court, the court shall grant the expungement order regardless of the person’s age and the person must not be charged a fee for the expungement. An adjudication for a violent crime, as defined in Section 16‑1‑60, must not be expunged.”

2. This subsection takes effect upon approval by the Governor and is effective until July 1, 2019.

C. 1. Section 63‑19‑2050(C) of the 1976 Code, as last amended by Act 254 of 2018, is further amended to read:

“(C)(1) ~~If the person has been taken into custody for, charged with, or adjudicated delinquent for having committed a status offense, the court shall grant the expungement order. If the person has been taken into custody for, charged with, or adjudicated delinquent for having committed multiple status offenses, the court may grant an expungement order for the multiple status offenses.~~ All official records relating to the taking into custody, the charges filed, the adjudication, and the disposition for committing a status offense, as defined in Section 63‑19‑20, must be expunged automatically. The automatic expungement must occur as soon as the person has reached the age of eighteen and has successfully completed any dispositional sentences adjudicated imposed, as long as the person has not been subsequently adjudicated delinquent for or convicted of a criminal offense other than for a probation violation or contempt of court arising from a status offense.

(2) If the person has been taken into custody for, charged with, or adjudicated delinquent for having committed a nonviolent crime, as defined in Section 16‑1‑70, the court may grant the expungement order. For the purpose of this section, any number of offenses for which the individual received youthful offender sentences at a single sentencing proceeding for offenses that are closely connected and arose out of the same incident may be considered as one offense and treated as one conviction for expungement purposes.

~~(3)~~ The court shall not grant the expungement order unless the court finds that the person is at least eighteen years of age, has successfully completed any dispositional sentence imposed, has not been subsequently adjudicated for or convicted of any criminal offense, and does not have any criminal charges pending in family court or general sessions court. If the person was found not guilty in an adjudicatory hearing in the family court, the court shall grant the expungement order regardless of the person’s age and the person must not be charged a fee for the expungement. An adjudication for a violent crime, as defined in Section 16‑1‑60, must not be expunged.”

2. This subsection takes effect July 1, 2019.

SECTION 6. This act takes effect upon approval by the Governor.

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