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**H. 4719**

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Summary: Prearrest diversion programs

**HISTORY OF LEGISLATIVE ACTIONS**

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**VERSIONS OF THIS BILL**

[11/20/2019](file:///p:\pprever\2019-20\4719_20191120.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA 1976, BY ADDING SECTIONS 63‑19‑500 AND 63‑19‑510 SO AS TO PROVIDE FOR THE ESTABLISHMENT AND OVERSIGHT OF PREARREST DIVERSION PROGRAMS IN EACH JUDICIAL CIRCUIT IN THE STATE FOR CERTAIN JUVENILE OFFENSES AND TO PROVIDE FOR THE ESTABLISHMENT AND PURPOSES OF THE JUVENILE JUSTICE IMPROVEMENT FUND IN THE BUDGET OF THE DEPARTMENT OF JUVENILE JUSTICE; TO AMEND SECTION 63‑3‑510, RELATING TO THE JURISDICTION OF THE FAMILY COURT, SO AS TO PROVIDE FOR TERMS OF PROBATION BASED ON THE TYPE OF ADJUDICATED OFFENSE; TO AMEND SECTION 63‑19‑10, RELATING TO THE JUVENILE JUSTICE CODE, SO AS TO PROVIDE GOALS AND POLICIES; TO AMEND SECTION 63‑19‑350, RELATING TO COMMUNITY SERVICES PROVIDED BY THE DEPARTMENT, SO AS TO REQUIRE THE USE OF STRUCTURED DECISION‑MAKING TOOLS DURING THE JUVENILE JUSTICE PROCESS; TO AMEND SECTION 63‑19‑360, RELATING TO COMMUNITY AND RESIDENTIAL EVALUATIONS, SO AS TO REQUIRE COMPREHENSIVE, INDIVIDUALIZED BIOPSYCHOSOCIAL ASSESSMENTS; TO AMEND SECTION 63‑19‑820, RELATING TO SECURE DETENTION OF A CHILD, SO AS TO CHANGE THE ELIGIBILITY CRITERIA FOR SECURE DETENTION; TO AMEND SECTION 63‑19‑830, RELATING TO JUVENILE DETENTION, SO AS TO PROVIDE FOR DETENTION IN AN APPROVED HOME, PROGRAM, OR FACILITY OTHER THAN A SECURE JUVENILE DETENTION FACILITY; TO AMEND SECTION 63‑19‑1020, RELATING TO THE RIGHT OF CERTAIN CRIME VICTIMS TO INSTITUTE LEGAL PROCEEDINGS AGAINST A JUVENILE OFFENDER, SO AS TO REQUIRE CHILD AND FAMILY COUNSELING FOR A REFERRAL FOR THE STATUS OFFENSES OF INCORRIGIBILITY OR RUNAWAY AND FOR OTHER PURPOSES; TO AMEND SECTION 63‑19‑1210, RELATING TO JURISDICTION OF THE FAMILY COURT, SO AS TO CHANGE THE AGE REQUIREMENTS FOR TRANSFER OF CERTAIN CASES INVOLVING A CHILD TO ADULT JURISDICTION; TO AMEND SECTION 63‑19‑1410, RELATING TO ADJUDICATION OF A CHILD, SO AS TO PROVIDE FOR TERMS OF PROBATION BASED ON THE TYPE OF ADJUDICATED OFFENSE, TO REQUIRE A MONTHLY PAYMENT SCHEDULE FOR THE PAYMENT OF RESTITUTION BY A CHILD ON PROBATION, TO ALLOW FOR ADMINISTRATIVE SUPERVISION OF A CHILD WITH THE DEPARTMENT, AND FOR OTHER PURPOSES; TO AMEND SECTION 63‑19‑1440, RELATING TO COMMITMENT OF A CHILD, SO AS TO PROVIDE CRITERIA WHEREBY A CHILD MAY BE COMMITTED TO THE DEPARTMENT, TO PROVIDE THE FAMILY COURT WITH ADDITIONAL DISPOSITIONAL OR SENTENCING OPTIONS, AND FOR OTHER PURPOSES; TO AMEND SECTION 63‑19‑1820, RELATING TO CHILDREN COMMITTED TO THE DEPARTMENT ON AN INDETERMINATE SENTENCE, SO AS PROVIDE THAT THE RELEASING ENTITY SHALL BASE LENGTH OF STAY GUIDELINES ON EVIDENCE‑BASED BEST PRACTICES AND FOR OTHER PURPOSES; TO AMEND SECTION 63‑19‑1835, RELATING TO CHILDREN UNDER PROBATION OR PAROLE SUPERVISION, SO AS TO REQUIRE THE DEPARTMENT ESTABLISH AND ADMINISTER AN ADMINISTRATIVE SANCTIONS POLICY AND PROGRAM; AND FOR OTHER PURPOSES.

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

SECTION 1. Article 3, Chapter 19, Title 63 of the 1976 Code is amended by adding:

“Section 63‑19‑500. (A) The General Assembly finds that the creation and implementation of prearrest diversion programs promote public safety, aids interagency cooperation, and provides prompt intervention services to children and their families. The General Assembly further finds that the widespread use of prearrest diversion programs has a positive effect on the juvenile justice system and contributes to an overall reduction in the juvenile crime rate and recidivism in the State. The General Assembly strongly encourages counties, municipalities, local and state‑level child‑serving agencies, nonprofit and other child‑serving organizations, and public or private educational institutions to participate in a prearrest diversion program created under this section.

(B) At least one prearrest diversion program must be established in each judicial circuit in the State and provide services to children in all counties in that circuit for the purpose of providing an efficient and innovative alternative to referral to the juvenile justice system for children who commit first‑time, nonviolent delinquent acts, as the term ‘nonviolent crime’ is defined in Section 16‑1‑70, and to ensure swift and appropriate consequences. Each program shall serve all eligible children in each county in that circuit, and no child may be denied participation in a prearrest diversion program based on an inability to pay program fees. These programs must divert eligible children from initial contact with the juvenile justice system using approaches that are evidence‑based, culturally relevant, trauma‑informed, developmentally appropriate, and that promote long‑term success for children.

(C) The department shall develop a plan for the establishment, implementation, and oversight of prearrest diversion programs around the State to which all first‑time, nonviolent offenders must be referred. The department shall provide competitively awarded funding to at least one such program in each judicial circuit to supplement other funding received by the program. Programs receiving funding from the department must adhere to the standards and procedures for such programs developed by the department, which must include requirements for applicants, organizational characteristics, reporting and auditing criteria, and such other standards for eligibility and accountability, and funding must be based on the number of children served and such other requirements as may be established by the department. Prearrest diversion programs may incorporate some or all of the following: educational services, including academic and vocational services; mentoring services; mental health services; and behavioral health services.

(D) A law enforcement officer who takes a child into custody, as defined in Section 63‑19‑810, for a nonviolent offense, as defined in Section 16‑1‑70, shall utilize the Juvenile‑on‑Demand‑Access System provided by the department to review the child’s criminal history with the juvenile justice system. If the child has no prior referral to the department, the law enforcement officer shall refer the child to the local prearrest diversion program for that circuit via a referral form provided by the department and provide a copy of the referral form to the child’s parent or guardian, the department, and the entity designated to run the prearrest diversion program.

(E) If a referral to the juvenile justice system is received for a first‑time nonviolent offender, the referral must not be accepted and must be returned to the referral source with instructions to refer the child to the entity designated to run the prearrest diversion program in that respective circuit.

(F) All records of a child’s referral to and participation in a prearrest diversion program must be kept separate from records of children referred to the juvenile justice system. A referral to a prearrest diversion program is not a referral to the juvenile justice system, and accordingly, must not be reflected on a child’s criminal history.

(G) Each prearrest diversion program shall submit data to the department on at least an annual basis which identifies for each child participating in the diversion program:

(1) the race, ethnicity, gender, and age of that child;

(2) the alleged offense committed, including the statute number of the offense;

(3) the county in which the offense was committed and the law enforcement agency that had contact with the child for the offense; and

(4) other information as specified by the department.

Section 63‑19‑510. (A) There is hereby established in the department’s budget the ‘Juvenile Justice Improvement Fund’. All expenditures from the Juvenile Justice Improvement Fund must be for the development, implementation, or monitoring of community‑based diversion or intervention programs, practices, and services for children and their families that reduce youth risk factors or rates of recidivism. The department shall at least annually transfer into the Juvenile Justice Improvement Fund available state general recurring funds identified as savings as a result of decreased reliance on out‑of‑home placement of youth.

(B) The department shall create a plan to incentivize the development of a continuum of evidence‑based community intervention programs and services for children under supervision of the department. These community intervention programs and services must serve to divert children from further involvement with the juvenile justice system. Intervention programs may incorporate some or all of the following: educational services, including academic and vocational services; mentoring services; mental health services; and behavioral health services. Funding prioritization must be given to community‑based intervention programs that provide services to counties that demonstrate a high rate of out‑of‑home placement of children and that have few existing community‑based alternatives.

(C) The department may contract with one or more service coordination agencies to assist the department with building a continuum of community‑based services for children and families across the State. Among other services, a service‑coordination agency may provide referral processing, billing, reporting, monitoring of the quality of direct service providers, monitoring of evidence‑based programs for fidelity, completion of on‑going service gaps analyses, filling of service gaps, assessment of existing treatment capacity, development of new treatment capacity, and selection of and subcontracting with direct service providers.”

SECTION 2. Section 63‑3‑510(B) of the 1976 Code is amended to read:

“(B) Whenever the court has acquired the jurisdiction of any child under eighteen years of age, jurisdiction continues so long as, in the judgment of the court, it may be necessary to retain jurisdiction for the correction or education of the child, but jurisdiction shall terminate when the child attains the age of twenty‑two years. Any child who has been adjudicated delinquent and placed on probation by the court remains under the authority of the court only until the expiration of the specified term of his probation. This specified term of probation may be up to two years for a felony offense or up to one year for a misdemeanor or status offense, but in no case may probation expire ~~before but not~~ after the ~~twentieth~~ nineteenth birthday of the child. A child adjudicated delinquent for a probation violation or held in contempt for violation of a prior court order may be placed on probation for up to an additional six months, not to exceed the child’s nineteenth birthday. When a child is adjudicated for multiple offenses, the maximum term of probation shall be calculated based on the most severe adjudicated offense.”

SECTION 3. Section 63‑19‑10 of the 1976 Code is amended to read:

“Section 63‑19‑10. (A) This chapter may be cited as the ‘Juvenile Justice Code’.

(B) The primary goals of the juvenile justice code are to promote public safety, hold children accountable for their behavior, provide children with treatment and rehabilitation, and equip children with the ability to live more productively and responsibly in the community. To accomplish these goals, juvenile justice policies developed pursuant to the juvenile justice code shall be designed to:

(1) protect public safety;

(2) recognize that the ultimate solutions to juvenile crime lie in the strengthening of families and educational institutions, the involvement of the community and the implementation of effective prevention and early intervention programs;

(3) be community‑based to the greatest extent possible;

(4) be family‑centered when appropriate;

(5) facilitate efficient and effective cooperation, coordination, and collaboration among agencies of the local, state, and federal government;

(6) be outcome‑based, allowing for the effective and accurate assessment of program performance;

(7) be cost‑effectively implemented and administered to utilize resources wisely;

(8) encourage the recruitment and retention of well‑qualified, highly trained professionals to staff all components of the system; (9) appropriately reflect community norms and public priorities; and

(10) encourage public and private partnerships to address community risk factors.”

SECTION 4. Section 63‑19‑350 of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

“( ) developing and utilizing structured decision‑making tools at all key points in the juvenile justice process, to include detention, diversion, disposition, and release from commitment.”

SECTION 5. Section 63‑19‑360(3) of the 1976 Code is amended to read:

“(3) establishing and maintaining residential and nonresidential reception and evaluation centers at which all children committed to its custody by a ~~circuit or~~ family court must be received, examined, and evaluated before assignment to one of its institutions or before other disposition or recommendation is made concerning the child. The commitment of a child to a reception and evaluation center or youth ~~correctional~~ rehabilitative institution of the department may be made only after the child has been adjudicated delinquent. The evaluation conducted by the reception and evaluation centers includes, but is not limited to:

(a) a ~~complete~~ comprehensive, individualized biopsychosocial assessment to include an examination of the child’s social, physical, ~~psychological,~~ and mental health functioning ~~examination~~;

(b) an investigation and consideration of family and community environment and other ~~facts~~ factors in the background of the person concerned that might relate to the person’s delinquency;

(c) a determination of the ~~correctional~~ rehabilitative or custodial care that would be most appropriate. The department shall create facilities and employ personnel as will enable the centers to conduct the necessary ~~physical, mental, and psychological~~ examinations and assessments required by this section;”

SECTION 6. Section 63‑19‑820(B) and (E) of the 1976 Code is amended to read:

“(B) A child is eligible for detention in a secure juvenile detention facility only if the child:

(1) is charged with a violent crime as defined in Section 16‑1‑60;

(2) is charged with a crime which, if committed by an adult, would be a felony ~~or a misdemeanor other than a violent crime, and the child:~~ offense;

~~(a)~~ ~~is already detained or on probation or conditional release or is awaiting adjudication in connection with another delinquency proceeding;~~

~~(b)~~ ~~has a demonstrable recent record of wilful failures to appear at court proceedings;~~

~~(c)~~ ~~has a demonstrable recent record of violent conduct resulting in physical injury to others; or~~

~~(d)~~ ~~has a demonstrable recent record of adjudications for other felonies or misdemeanors; and~~

~~(i)~~  ~~there is reason to believe the child is a flight risk or poses a threat of serious harm to others; or~~

~~(ii)~~ ~~the instant offense involved the use of a firearm~~;

(3) is a fugitive from another jurisdiction;

~~(4)~~ ~~requests protection in writing under circumstances that present an immediate threat of serious physical injury;~~

~~(5)~~(4) had in his possession a deadly weapon; or

(5) is court ordered to be detained. Only children who meet one or more of the above criteria can be ordered to be detained.

~~(6)~~ ~~has a demonstrable recent record of wilful failure to comply with prior placement orders including, but not limited to, a house arrest order;~~

~~(7)~~ ~~has no suitable alternative placement and it is determined that detention is in the child’s best interest or is necessary to protect the child or public, or both; or~~

~~(8)~~ ~~is charged with an assault and battery or an assault and battery of a high and aggravated nature on school grounds or at a school‑sponsored event against any person affiliated with the school in an official capacity.~~

A child who meets the criteria provided in this subsection is eligible for detention. Detention is not mandatory for a child meeting the criteria if that child can be supervised adequately at home or in a less secure setting or program. Secure detention must be limited to a child who poses a current risk to public safety or is a current flight risk. If the officer does not consent to the release of the child, the parents or other responsible adult may apply to the family court within the circuit for an ex parte order of release of the child. The officer’s written report must be furnished to the family court judge who may establish conditions for the release.

(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 or because of a violation of a court order related to a status offense must not be placed or ordered detained ~~more than twenty‑four hours~~ in a secure 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 hours, excluding weekends and holidays~~. The child must be offered appropriate intervention services in the community. However, nothing in this section precludes a law enforcement officer from taking a status offender into custody.”

SECTION 7. Section 63‑19‑830(A) of the 1976 Code is amended to read:

“(A) If the officer who took the child into custody has not released the child to the custody of the child’s parents or other responsible adult, the court shall hold a detention hearing within forty‑eight hours from the time the child was taken into custody, excluding Saturdays, Sundays, and holidays. At this hearing, the authorized representative of the department shall submit to the court a report stating the facts surrounding the case and a recommendation as to the child’s continued detention pending the adjudicatory and dispositional hearings. The court shall appoint counsel for the child if none is retained. No child may proceed without counsel in this hearing~~, unless the child waives the right to counsel and then only after consulting at least once with an attorney~~. At the conclusion of this hearing, the court shall determine whether probable cause exists to justify the detention of the child and the appropriateness of, and need for, the child’s continued detention. If continued detention of a juvenile is considered appropriate by the court and if a juvenile detention facility exists in that county which meets state and federal requirements for the secure detention of juveniles or if that facility exists in another county with which the committing county has a contract for the secure detention of its juveniles and if commitment of a juvenile by the court to that facility does not cause the facility to exceed its design and operational capacity, the family court shall order the detention of the juvenile in that facility. The family court also may order that the child be detained or remain detained in an approved home, program, or facility, other than a secure juvenile detention facility. A juvenile must not be detained in secure confinement or in an approved home, program, or facility, other than a secure juvenile detention facility, in excess of ninety days except in exceptional circumstances as determined by the court. A detained juvenile is entitled to further and periodic review:

(1) within ten days following the juvenile’s initial detention hearing;

(2) within thirty days following the ten‑day hearing; and

(3) at any other time for good cause shown upon motion of the child, the State, or the department.

If the child does not qualify for detention or otherwise require continued detention under the terms of Section 63‑19‑820(A) or (B), the child must be released to a parent, guardian, or other responsible person.”

SECTION 8. 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 offenses of incorrigibility or runaway, or before a petition for the offenses of incorrigibility or runaway 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.

(C) The department may accept a referral for a school‑related offense and a petition may be filed for a school‑related offense if the child is: (1) charged with a felony offense, or (2) charged with a misdemeanor offense and the referring entity attaches documentation to the referral demonstrating that the child has three or more prior discipline referrals for related conduct within the prior six months for which the child received a school‑based consequence or appropriate community referral for services. Discipline referrals for being tardy to class, cutting class, violating school policy regarding school IDs, violating school dress code policy, being out of place, refusing to obey instruction of school personnel, using profanity, using or possessing tobacco products or paraphernalia, and other minor student misconduct must not count as prior discipline referrals for purposes of this section. The department must not accept a referral for and a petition must not be filed for a school‑based misdemeanor offense unless documentation is provided by the referring entity that meets this criteria and further demonstrates that prior consequences, interventions, or community referrals instituted by the school have been attempted and proven unsuccessful. Any referral for a school‑based offense must include a copy of the child’s school disciplinary history for at least the current school year, including documentation of consequences instituted by the school for the alleged conduct being referred. Before filing of a petition for a school‑based offense, consideration must be given to the school‑based discipline or other consequences the child received for the alleged conduct subject to the petition.”

SECTION 9. Section 63‑19‑1210(5), (6), (9), and (10) of the 1976 Code is amended to read:

“(5) If a child ~~fourteen, fifteen, or~~ sixteen years of age is charged with an offense which, if committed by an adult, would be a Class A, B, C, or D felony as defined in Section 16‑1‑20 or a felony which provides for a maximum term of imprisonment of fifteen years or more, the court, after full investigation and hearing, may determine it contrary to the best interest of the child or of the public to retain jurisdiction. The court, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.

(6) Within thirty days after the filing of a petition in the family court alleging ~~the~~ a child fifteen or sixteen years of age has committed the offense of murder or criminal sexual conduct, the person executing the petition may request in writing that the case be transferred to the court of general sessions with a view to proceeding against the child as a criminal rather than as a child coming within the purview of this chapter. The judge of the family court is authorized to determine this request. If the request is denied, the petitioner may appeal within five days to the circuit court. Upon the hearing of the appeal, the judge of the circuit court is vested with the discretion of exercising and asserting the jurisdiction of the court of general sessions or of relinquishing jurisdiction to the family court. If the circuit judge elects to exercise the jurisdiction of the general sessions court for trial of the case, he shall issue an order to that effect, and then the family court has no further jurisdiction in the matter.

(9) If a child ~~fourteen~~ sixteen years of age or older is charged with a violation of Section 16‑23‑430, Section 16‑23‑20, or Section 44‑53‑445, the court, after full investigation and hearing, if it considers it contrary to the best interest of the child or the public to retain jurisdiction, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.

(10) If a child ~~fourteen~~ sixteen years of age or older is charged with an offense which, if committed by an adult, provides for a term of imprisonment of ten years or more and the child previously has been adjudicated delinquent in family court or convicted in circuit court for two prior offenses which, if committed by an adult, provide for a term of imprisonment of ten years or more, the court, after full investigation and hearing, if it considers it contrary to the best interest of the child or the public to retain jurisdiction, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult. For the purpose of this item, an adjudication or conviction is considered a second adjudication or conviction only if the date of the commission of the second offense occurred subsequent to the imposition of the sentence for the first offense.”

SECTION 10. A. Section 63‑19‑1410(A)(3), (6), and (7) of the 1976 Code is amended to read:

“(3) place the child on probation or under supervision in the child’s own home or in the custody of a suitable person elsewhere, upon conditions as the court may determine. A child placed on probation by the court remains under the authority of the court only until the expiration of the specified term of the child’s probation. This specified term of probation may be up to two years for a felony offense or up to one year for a misdemeanor or status offense, but in no case may probation expire ~~before but not~~ after the ~~twentieth~~ nineteenth birthday of the child. A child adjudicated delinquent for a probation violation or held in contempt for violation of a prior court order may be placed on probation for up to an additional six months, not to exceed the child’s nineteenth birthday. When a child is adjudicated for multiple offenses, the maximum term of probation shall be calculated based on the most severe adjudicated offense. Probation means casework services during a continuance of the case. Probation must not be ordered or administered as punishment but as a measure for the protection, guidance, and well‑being of the child and the child’s family. Probation methods must be directed to the discovery and correction of the basic causes of maladjustment and to the development of the child’s personality and character, with the aid of the social resources of the community. As a condition of probation, the court may order the child to participate in a community mentor program as provided for in Section 63‑19‑1430. The court may impose monetary restitution or participation in supervised work or community service, or both, as a condition of probation. The Department of Juvenile Justice, in coordination with local community agencies, shall develop and encourage employment of a constructive nature designed to make reparation and to promote the rehabilitation of the child. When considering the appropriate amount of monetary restitution to be ordered, the court shall establish the monetary loss suffered by the victim and then weigh and consider this amount against the number of individuals involved in causing the monetary loss, the child’s particular role in causing this loss, and the child’s ability to pay the amount over a reasonable period of time. The order for monetary restitution must specify a monthly payment schedule that will result in full payment for the established amount of restitution by the end of the child’s probationary period. In the absence of a monthly payment schedule, the Department of Juvenile Justice shall impose a payment schedule of equal monthly payments that will result in full restitution being paid by the end of the child’s probationary period. If the court determines at a contempt of court hearing that the basis for holding the child in contempt is that the child has wilfully failed to pay restitution, the court shall make specific findings on the record of the child’s wilful failure to pay and shall issue an order, other than a commitment order, that addresses the child’s failure to pay. The Department of Juvenile Justice shall develop a system for the transferring of court‑ordered restitution from the child to the victim or owner of property injured, destroyed, or stolen. As a condition of probation the court may impose upon the child a fine not exceeding two hundred dollars when the offense is one in which a magistrate, municipal, or circuit court judge has the authority to impose a fine. A fine may be imposed when commitment is suspended but not in addition to commitment;

(6) require that a child under twelve years of age who is adjudicated delinquent for an offense listed in Section 23‑3‑430(C) be given appropriate psychiatric or psychological treatment to address the circumstances of the offense for which the child was adjudicated; ~~and~~

(7) place a child on administrative supervision with the Department of Juvenile Justice for a period of up to one year in order to pay a fine, complete community service, or other sanction. Administrative supervision is not probation, and administrative supervision terminates automatically upon completion of the ordered sanction; and

(8) dismiss the petition or otherwise terminate its jurisdiction at any time on the motion of either party or on its own motion.”

B. Section 63‑19‑1410 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

“( ) Whenever a child, who has not previously been adjudicated delinquent for a criminal offense, pleads guilty to or is found guilty of a nonviolent crime, as defined in Section 16‑1‑60, the court, without entering an adjudication of delinquency and with the consent of the child and the child’s attorney, may defer further proceedings and place the child on probation, upon terms and conditions as it requires. Upon violation of a term or condition of probation imposed by the court, the court shall enter an adjudication of delinquency and proceed as otherwise provided. Upon fulfillment of the terms and conditions of probation, the court shall issue an order which dismisses the associated charges. Deferred dismissal under this section must occur only once with respect to any child. Charges dismissed under a deferred dismissal are not considered an adjudication for purposes of disqualifications or disabilities imposed by law upon an individual adjudicated or convicted of a crime.”

SECTION 11. Section 63‑19‑1440 of the 1976 Code is amended to read:

“Section 63‑19‑1440. (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, may be committed to the custody of the Department of Juvenile Justice which shall arrange for placement in a suitable ~~corrective~~ rehabilitative 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~~ rehabilitative 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.

(B)(1) A child may be committed to the Department of Juvenile Justice as outlined below if the child has a current adjudication for a felony offense.

(2) A child may be committed to the Department of Juvenile Justice as outlined below if the child has a current adjudication for a misdemeanor offense and one or more of the following apply:

(a) the current adjudicated offense involved the use of a deadly weapon;

(b) the current adjudicated offense places the child on the sex offender registry;

(c) the child has three or more prior adjudications for a felony or misdemeanor offense; or

(d) the child has three or more prior adjudications for supervision violations.

For purposes of subitems (c) and (d), an adjudication is considered a prior adjudication only if the date of the commission of the subsequent offense or supervision violation occurred after the imposition of the sentence for the prior offense or supervision violation.

(3) A child may not be committed to the Department of Juvenile Justice for a status offense or violation of a court order related to a status offense. A child who 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 status offense may not be committed to the Department of Juvenile Justice.

(C) All commitments to the custody of the Department of Juvenile Justice for delinquency as opposed to the conviction of a specific crime may be made only for the reasons and in the manner prescribed in Sections 63‑3‑510, 63‑3‑520, 63‑3‑580, 63‑3‑600, 63‑3‑650, and this chapter, with evaluations made and proceedings conducted only by the judges authorized to order commitments in this section. When a child is committed to the custody of the department, commitment must be for an indeterminate sentence, not extending beyond the twenty‑second birthday of the child unless sooner released by the department, or for a determinate commitment sentence not to exceed ninety days, except that a child adjudicated delinquent for an offense which provides for a maximum term of imprisonment of fifteen years or more can receive a determinate commitment sentence not to exceed one‑hundred and eighty days. A child adjudicated delinquent for a violation of a court order or held in contempt of court for a violation of a court order related to a misdemeanor or felony offense must not receive an indeterminate commitment sentence but may receive a determinate commitment sentence not to exceed seventy‑two hours. Prior to issuing a determinate commitment sentence of up to seventy‑two hours for violation of a court order, the court shall make a finding on the record that less restrictive alternatives have been considered and are unavailable or inappropriate or that the child has already been ordered to comply with a less restrictive alternative sanction but failed to comply with the sanction.

~~(C)~~(D)(1) 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 child adjudicated delinquent for a status offense, a misdemeanor offense, or 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 commit a child to the Department of Juvenile Justice for a residential evaluation if the child has a current adjudication for a felony offense. The court also may commit a child to the Department of Juvenile Justice for a residential evaluation if the child has a current adjudication for a misdemeanor offense and one or more of the following apply:

(a) the current adjudicated offense involved the use of a deadly weapon;

(b) the current adjudicated offense places the child on the sex offender registry;

(c) the child has three or more prior adjudications; or

(d) the child has four or more prior adjudications for supervision violations.

For purposes of subitems (c) and (d), an adjudication is considered a prior adjudication only if the date of the commission of the subsequent offense or supervision violation occurred after the imposition of the sentence for the prior offense or supervision violation.

(2) The court also may commit a child to the Department of Juvenile Justice for a residential evaluation for a violation of a court order for failure to cooperate with or successfully complete a community evaluation. A child must not be committed to the Department of Juvenile Justice for a residential evaluation for any other reason, to include a child who is adjudicated for a status offense, violation of a status offense, or who is determined by the court to have violated the conditions of probation set forth by the court. The court may waive in writing the evaluation of the child and proceed to issue final disposition in the case if the child:

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

~~(2)~~(b) 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)~~(c) receives a determinate commitment sentence not to exceed ninety days.

~~(D)~~(E) When a juvenile is adjudicated delinquent or convicted of a crime or has entered a plea of guilty or nolo contendere in a court authorized to commit to the custody of the Department of Juvenile Justice, the juvenile may be committed for an indeterminate period until the juvenile has reached age twenty‑two or until sooner released by the releasing entity or released by order of a judge of the Supreme Court or the circuit court of this State, rendered at chambers or otherwise, in a proceeding in the nature of an application for a writ of habeas corpus. A juvenile who has not been paroled or otherwise released from the custody of the department by the juvenile’s ~~nineteenth~~ eighteenth birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections. If not sooner released by the releasing entity, the juvenile must be released by age twenty‑two according to the provisions of the juvenile’s commitment; however, notwithstanding the above provision, any juvenile committed as an adult offender by order of the court of general sessions must be considered for parole or other release according to the laws pertaining to release of adult offenders.

~~(E)~~(F) A juvenile committed to the Department of Juvenile Justice following an adjudication for a violent offense contained in Section 16‑1‑60 or for the offense of assault and battery of a high and aggravated nature, who has not been paroled or released from the custody of the department by his eighteenth birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections. A juvenile who has not been paroled or released from the custody of the department by his ~~nineteenth~~ eighteenth birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections at age ~~nineteen~~ eighteen. If not released sooner by the Board of Juvenile Parole, a juvenile transferred pursuant to this subsection must be released by his twenty‑second birthday according to the provisions of his commitment. Notwithstanding the above provision, a juvenile committed as an adult offender by order of the court of general sessions must be considered for parole or other release according to the laws pertaining to release of adult offenders.

~~(F)~~ ~~Notwithstanding subsections (A) and (E), a child may be committed to the custody of the Department of Juvenile Justice 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 status offense, 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 status offense, 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 status offense, 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.~~

~~(G)~~ ~~A child committed under this section may not be confined with a child who has been determined by the department to be violent.~~

~~(H)~~(G) After having served at least two‑thirds of the time ordered by a court, a child committed to the Department of Juvenile Justice for a determinate period pursuant to this section may be released by the department prior to the expiration of the determinate period for ‘good behavior’ as determined by the department. ~~The court, in its discretion, may state in the order that the child is not to be released prior to the expiration of the determinate period ordered by the court.~~

~~(I)~~(H) ~~Juveniles~~ Children detained in any temporary holding facility or juvenile detention center or who are temporarily committed for evaluation to a Department of Juvenile Justice evaluation center for the offense for which they were subsequently committed by the family court to the custody of the Department of Juvenile Justice shall receive credit toward their parole guidelines, if indeterminately sentenced, or credit toward their date of release, if determinately sentenced, for each day they are detained in or temporarily committed to any secure pre‑dispositional facility, center, or program. Children detained in an approved home, program, or facility other than a secure juvenile detention facility and children placed in an out‑of‑home alternative placement residential setting while undergoing a community evaluation also shall receive time‑served credit as described above.”

SECTION 12. Section 63‑19‑1820 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

“( ) The releasing entity shall ensure that length‑of‑stay guidelines are based on evidence‑based best practices and that the balance of public safety, personal accountability, and competency development are accounted for in length‑of‑stay decisions and plans. The projected release date for a committed child must be based on the severity of the committing offense and the child’s risk for reoffending. The actual release date may take into consideration other factors, including the child’s progress in treatment and behavior during commitment.”

SECTION 13. Section 63‑19‑1835 of the 1976 Code is amended to read:

“Section 63‑19‑1835. (A) The department may grant up to a ten‑day reduction of the probationary or parole term to probationers and parolees who are under the department’s supervision for each month they are compliant with the terms and conditions of their probation or parole order.

(B) Except for an alleged community safety violation, in response to an alleged technical violation of the terms and conditions of a child’s probationary or parole term, the department shall serve on the child a notice of administrative sanctions as an alternative to pursuing a probation violation or parole revocation. Prior to implementation of administrative sanctions, the child and the child’s parent or guardian must agree in writing to the additional conditions set forth in the notice of administrative sanctions. Once the notice of administrative sanctions is signed, these additional conditions are considered to be incorporated as part of the original probation or parole order, and the department shall file a copy of the notice of administrative sanctions with the court or parole authority. The criteria for administering structured, community‑based administrative sanctions must be established by policy of the department. The department shall delineate in the policy a listing of administrative sanctions for the most common types of supervision violations including, but not limited to, failure to report, failure to pay restitution, failure to participate in a required program or service, failure to comply with a mandatory school attendance order or order to refrain from engaging in misconduct resulting in school disciplinary referrals, failure to complete community service, failure to follow curfew or the conditions of electronic monitoring, failure to successfully complete an alternative placement program, and failure to refrain from the use of alcohol or controlled substances. The sanctions must take into consideration the severity of the current violation, the child’s previous juvenile record, the number and severity of previous supervision violations, the child’s risk and needs assessment, the child’s age and developmental level, the child’s mental health diagnosis or other special needs, the extent to which administrative sanctions were imposed for previous violations, and other relevant factors. The department, in determining the administrative sanctions to be served on an child, shall ascertain the availability of community‑based programs and treatment options including, but not limited to, inpatient and outpatient substance abuse treatment facilities, individual and family counseling, mentoring programs, day or night reporting centers, intensive supervision, electronic monitoring, community service, programs to reduce recidivism, and other community‑based options consistent with evidence‑based practices. Nothing in this section precludes the department from responding immediately to an alleged community safety violation by initiating violation proceedings with the appropriate authority.”

SECTION 14. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this , and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 15. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 16. This act takes effect upon approval by the Governor.

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