**South Carolina General Assembly**

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**S. 1042**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Hutto and Shealy

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Introduced in the Senate on February 2, 2022

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

Summary: Confinement of children in custody

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/2/2022 Senate Introduced and read first time ([Senate Journal‑page 92](file:///h:\sj\20220202.docx))

2/2/2022 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 92](file:///h:\sj\20220202.docx))

2/15/2022 Senate Referred to Subcommittee: Malloy (ch), McLeod, Senn, Adams, Garrett

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**VERSIONS OF THIS BILL**

[2/2/2022](file:///p:\pprever\2021-22\1042_20220202.docx)

**A** **BILL**

TO AMEND ARTICLE 15, CHAPTER 19, TITLE 63 OF THE 1976 CODE, RELATING TO THE JUVENILE JUSTICE CODE, BY ADDING SECTION 63‑19‑1690 TO PROHIBIT THE USE OF RESTRAINT OR CONFINEMENT AND TO PROVIDE EXCEPTIONS; TO AMEND SECTION 63‑19‑820(C) AND (E) OF THE 1976 CODE, RELATING TO OUT-OF-HOME CUSTODY OF A JUVENILE, TO REMOVE THE EXCEPTION OF SOLITARY CONFINEMENT FOR CHILDREN IF THE CHILD IS WAITING TO STAND TRIAL AS AN ADULT, TO PROHIBIT A CHILD FROM BEING TAKEN INTO CUSTODY IN A JUVENILE DETENTION FACILITY IF THE CRIME THE CHILD COMMITTED WOULD NOT BE CONSIDERED A CRIME IF COMMITTED BY AN ADULT, AND TO LIMIT THE TIME PERMITTED FOR THE SOLITARY CONFINEMENT OF CHILDREN; TO AMEND SECTION 63‑19‑1440(A), (C), AND (F) OF THE 1976 CODE, RELATING TO THE COMMITMENT OF CHILDREN TO CUSTODY, TO ALTER THE TERMS UNDER WHICH A CHILD MAY BE COMMITTED TO A JUVENILE DETENTION FACILITY; TO AMEND SECTION 63‑19‑1810(A) OF THE 1976 CODE, RELATING TO THE DETERMINATION OF RELEASE OF JUVENILES, TO REMOVE THE CONDITION OF STATUS OFFENSE; AND TO AMEND SECTION 63‑19‑2050(A) OF THE 1976 CODE, RELATING TO JUVENILE RECORDS, TO REMOVE THE CONDITION OF STATUS OFFENSE.

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

SECTION 1. Article 15, Chapter 19, Title 63 of the 1976 Code is amended by adding:

“Section 63‑19‑1690. Mechanical or chemical restraint, isolation, or room confinement may only be used to ensure the immediate safety of an individual or others if no less restrictive intervention has been, or is likely to be, effective in averting danger. Mechanical or chemical restraint, isolation, or room confinement must never be used for coercion, retaliation, or humiliation; as a threat or form of punishment; in lieu of adequate staffing; as a replacement for active treatment; for staff convenience; or for property damage not involving imminent danger.”

SECTION 2. 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 child 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 3. 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~~ ten 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 who is 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.”

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. 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.”

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

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