**South Carolina General Assembly**

125th Session, 2023-2024

**S. 266**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Hutto, Jackson, Shealy, Devine, McLeod, Allen and Tedder

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Introduced in the Senate on January 10, 2023

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

Summary: Status Offenders

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

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12/7/2022 Senate Referred to Committee on **Judiciary**

1/10/2023 Senate Introduced and read first time ([Senate Journal‑page 137](h:\sj\20230110.docx))

1/10/2023 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 137](h:\sj\20230110.docx))

2/9/2023 Scrivener's error corrected

3/19/2024 Senate Referred to Subcommittee: Hutto (ch), Rice, Senn,
Adams, Tedder

3/27/2024 Senate Committee report: Favorable with amendment **Judiciary** ([Senate Journal‑page 10](h:\sj\20240327.docx))

4/3/2024 Senate Committee Amendment Tabled ([Senate Journal‑page 67](h:\sj\20240403.docx))

4/3/2024 Senate Read second time ([Senate Journal‑page 67](h:\sj\20240403.docx))

5/1/2024 Senate Recommitted to Committee on **Judiciary** ([Senate Journal‑page 16](h:\sj\20240501.docx))

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**VERSIONS OF THIS BILL**

[12/07/2022](https://www.scstatehouse.gov/sess125_2023-2024/prever/266_20221207.docx)

[02/09/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/266_20230209.docx)

[03/27/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/266_20240327.docx)

Indicates Matter Stricken

Indicates New Matter

Committee Report

March 27, 2024

S. 266

Introduced by Senators Hutto, Jackson, Shealy, Devine and McLeod

S. Printed 03/27/24--S.

Read the first time January 10, 2023

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The committee on Senate Judiciary

To whom was referred a Bill (S. 266) to amend the South Carolina Code of Laws by amending Section 63‑19‑820, relating to out‑of‑home placement, so as to eliminate the exception for children to be tried, etc., respectfully

Report:

That they have duly and carefully considered the same, and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

SECTION 1. Section 63-19-20(9) of the S.C. Code is amended to read:

(9) “Status offense” means an offense which would not be a misdemeanor or felony if committed by an adult including, but not limited to, incorrigibility or beyond the control of parents, truancy, or running away, playing or loitering in a billiard room, playing a pinball machine, or gaining admission to a theater by false identification.

SECTION 2. Section 63‑19‑820(C) and (E) of the S.C. 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 hours, excluding weekends and holidays. However, nothing in this section precludes a law enforcement officer from taking a status offender into custody. 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, or because of a violation of a court order related to a status offense, must not be placed or ordered detained in an adult or juvenile detention facility. If 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 out-of-home placement of that child, the child may be held in secure confinement in a juvenile detention facility, therapeutic foster care, crisis shelter, or other alternative nonsecure placement approved by the Department of Juvenile Justice, when leaving the child outside of state custody will not reasonably protect the child or the public, for not more than forty-eight hours, excluding weekends and holidays. However, nothing in this section precludes a law enforcement officer from initiating a case against a child allegedly committing a status offense, as long as all requirements listed in Section 63-19-1020(B) are met.

SECTION 3. Section 63‑‑1020 of the S.C. 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 4. Section 63-19-1410 of the S.C. Code is amended to read:

Section 63-19-1410. (A) When a child is found by decree of the court to be subject to this chapter, the court shall in its decree make a finding of the facts upon which the court exercises its jurisdiction over the child. Following the decree, the court by order shall enter the least restrictive appropriate disposition order from the following options in view of the seriousness of the delinquent act, such child's culpability as indicated by the circumstances of the particular case, the age of such child, such child's prior record, and such child's strengths and needs; and by order may:

(1) cause a child concerning whom a petition has been filed to be examined or treated by a physician, psychiatrist, or psychologist and for that purpose place the child in a hospital or other suitable facility and;

(2) order care and treatment as it considers best, except as otherwise provided in this section and may designate a state agency as the lead agency to provide a family assessment to the court. The assessment shall include, but is not limited to, the strengths and weaknesses of the family, problems interfering with the functioning of the family and with the best interests of the child, and recommendations for a comprehensive service plan to strengthen the family and assist in resolving these issues.

The lead agency shall provide the family assessment to the court in a timely manner, and the court shall conduct a hearing to review the proposed plan and adopt a plan as part of its order that will best meet the needs and best interest of the child. In arriving at a comprehensive plan, the court shall consider:

(a) additional testing or evaluation that may be needed;

(b) economic services including, but not limited to, employment services, job training, food stamps, and aid to families with dependent children;

(c) counseling services including, but not limited to, marital counseling, parenting skills, and alcohol and drug abuse counseling; and

(d) any other programs or services appropriate to the child's and family's needs.

The lead agency is responsible for monitoring compliance with the court-ordered plan and shall report to the court as the court requires. In support of an order, the court may require the parents or other persons having custody of the child or any other person who has been found by the court to be encouraging, causing, or contributing to the acts or conditions which bring the child within the purview of this chapter to do or omit to do acts required or forbidden by law, when the judge considers the requirement necessary for the welfare of the child. In case of failure to comply with the requirement, the court may proceed against those persons for contempt of court;

(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) 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 presumptively shall not exceed two years for a felony offense or one year for a misdemeanor or status offense, but in no case may probation expire before but not extend after the twentieth birthday of the child. Probation means casework services during a continuance of the case. 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. When a child is adjudicated for multiple offenses, the maximum term of probation shall be calculated based on the most severe adjudicated offense. The court may impose a longer term of probation if agreed to by the parties, or can extend the term if it is needed for the child to finish an evidence-based program as recommended by a clinical evaluation, but in no case may probation extend after the child’s twentieth birthday;

(b) 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.

(c) 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. Restitution presumptively shall not be ordered for any child who is under the age of sixteen at the time of the offense. To overcome this presumption, the state has a burden of proving by the preponderance of the evidence that the child has the ability to pay the restitution. 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 shall 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 willfully failed to pay restitution, the court shall make specific findings on the record of the child’s willful 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;

(d) If a child is ordered to complete drug screens as a condition of probation or during the community evaluation period and if the child's health insurance does not cover the costs of the drug screens, the Department of Juvenile Justice shall pay for the drug screens or administer them at their local offices at no charge for the child. A child must not be required to pay for drug screens as part of any court order;.

(4) order the child to participate in a community mentor program as provided in Section 63-19-1430;

(5) commit the child to the custody or to the guardianship of a public or private institution or agency authorized to care for children or to place them in family homes or under the guardianship of a suitable person. Commitment must be for an indeterminate period but in no event beyond the child's twenty-second birthday.; Such commitment may only be ordered subject to the commitment limitations established by Section 63-19-1440;

(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 restitution calculated pursuant to subitem (A)(3)(c), or complete community service or other sanction. Administrative supervision is not probation, and administrative supervision terminates automatically upon completion of the ordered sanction or sanctions; and

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

(B) Whenever the court commits a child to an institution or agency, it shall transmit with the order of commitment a summary of its information concerning the child, and the institution or agency shall give to the court information concerning the child which the court may require. Counsel of record, if any, must be notified by the court of an adjudication under this section, and in the event there is no counsel of record, the child or the child's parents or guardian must be notified of the adjudication by regular mail from the court to the last address of the child or the child's parents or guardian.

(C) No adjudication by the court of the status of a child is a conviction, nor does the adjudication operate to impose civil disabilities ordinarily resulting from conviction, nor may a child be charged with crime or convicted in a court, except as provided in Section 63-19-1210(6). The disposition made of a child or any evidence given in court does not disqualify the child in a future civil service application or appointment.

SECTION 5. Section 63-19-1440 of the S.C. Code is amended to read:

Section 63-19-1440. See Editor’s Note for contingency.

(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 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.

(B) A child may be committed to the custody of the Department of Juvenile Justice as provided below if:

(1) the child has a current adjudication for an offense which would be an A, B, C, or D felony if committed by an adult; or

(2) the child has a current adjudication for an offense which would be a misdemeanor if committed by an adult and one or more of the following apply:

(a) the current adjudicated offense involved the use of a firearm, as defined in Section 16-23-490(D); or

(b) the child has had at least one prior adjudication for an offense that would be a felony if committed by an adult and at least three other prior adjudications for a delinquent act;

(3) the child is adjudicated for an offense which would be a felony if committed by an adult;

(4) the child is adjudicated for an offense which is a lesser included offense to the petitioned felony offense; and

(5) the parties agree that a commitment is in the child’s best interest.

In any case in which the court commits the child to the custody of the department, the court shall issue individualized written findings as to why a less restrictive disposition option would not adequately protect the public or rehabilitate the child. For the purposes of this section, an adjudication is considered a prior adjudication only if the date of the commission of the subsequent offense or delinquent act occurred after the imposition of the sentence for the prior offense or delinquent act.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.

(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 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 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

(C) .A child must not be committed to the Department of Juvenile Justice for a status offense, or any 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.

(D) All commitments to the custody of 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, 63-3-600, 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, the court must order:

(1) an indeterminate sentence, not extending beyond the twenty-second birthday of the child unless sooner released by the department; or

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

(E) If a child is subject to a disposition order for more than one adjudicated offense, the child may not be committed for consecutive determinate commitment sentences when the total length of the determinate commitment would be for longer than the minimum parole guideline as established by the release authority, pursuant to Article 17 of this Title, if the child were to be committed to the Department of Juvenile Justice for an indeterminate period of time.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 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) 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 birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections at age nineteen. 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

(F) . A child adjudicated delinquent for a violation of a probation order related to a misdemeanor or felony offense must not receive an indeterminate commitment sentence but may receive a determinate sentence not to exceed one hundred eighty days for a violation of a probation order related to a misdemeanor charge or three hundred sixty-five days for a violation of a probation order related to a felony charge.

(G) Prior to the issuance of a determinate commitment sentence for a violation of probation or contempt of court, the court must 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.A child committed under this section may not be confined with a child who has been determined by the department to be violent.

(H) (1) The court, before committing a child as a delinquent, shall order a community evaluation or temporarily commit the child to the Department of Juvenile Justice for not more than thirty-five days for evaluation, subject to the exceptions listed below. 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.

(2) The court shall only order an evaluation if the child is eligible for commitment pursuant to Section 63-19-1440(B). There is a presumption for a community evaluation. The court may order a residential evaluation for the child in the custody of the Department only if the court finds that the child presents an unreasonable flight or public safety risk to their home community. The court shall issue individualized written findings establishing why a community evaluation with additional supervision measures arranged by the Department of Juvenile Justice would not adequately protect the public or reasonably ensure the child’s presence at a dispositional hearing. The court also may commit a child to the Department of Juvenile Justice for a residential evaluation if the court finds at a contempt hearing that the child willfully failed to cooperate with or successfully complete a community evaluation ordered pursuant to this section.

(3) The court may waive in writing the evaluation of the child and proceed to issue final disposition in the case if the child:

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

(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

(c) receives a determinate commitment sentence not to exceed ninety days.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) When a child 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 child may be committed for an indeterminate period until the child 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 child who has not been paroled or otherwise released from the custody of the department by the child's nineteenth 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 child must be released by age twenty-two according to the provisions of the child's commitment; however, notwithstanding the above provision, any child 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.Juveniles 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.

(J) A child 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 child who has not been paroled or released from the custody of the department by his nineteenth birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections at age nineteen. If not released sooner by the Board of Juvenile Parole, a child 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 child 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.

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

(L) Children detained in any temporary holding facility or juvenile detention center, short term alternative placement or its equivalent, 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.

SECTION 6. Section 63‑‑1810(A) of the S.C. 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 children adjudicated delinquent and committed after March 31, 2007, for an indeterminate period for a status offense or a misdemeanor, all statutorily non-violent offenses, and violations of probation related to any chargesother 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; or

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

SECTION 7.A. Section 63‑‑2050(A) of the S.C. 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. Section 63‑19‑2050(C) of the S.C. 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.

(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.

SECTION 8. This act takes effect upon approval by the Governor.

Renumber sections to conform.

Amend title to conform.

LUKE RANKIN for Committee.

statement of estimated fiscal impact

Explanation of Fiscal Impact

State Expenditure

This bill specifies that no child may be placed in confinement in an adult jail for more than six hours, even if the juvenile has been waived to the court of general sessions for purposes of standing trial as an adult. This bill also limits the amount of time a juvenile may be detained for violating a court order to no more than forty-eight hours, excluding weekends and holidays. Further, this bill modifies the penalties for a juvenile charged with status offenses. Additionally, this bill requires an automatic expungement for status offenses when a child turns eighteen.

Currently, a child may only be placed in an adult prison if the juvenile has been waived to the court of general sessions for purposes of standing trial as an adult. Additionally, a juvenile may be detained for twenty-four to seventy-two hours after being taken into custody, dependent upon the reason the child went into custody. Also, a child may be committed to the custody of DJJ or a juvenile detention center due to multiple status offenses.

Judicial. This bill may result in a modification in the number and timing of cases heard in family court and increase the number of expungements. Judicial anticipates being able to manage any altered caseload in family court with existing staff and within existing appropriations. Therefore, this bill will have no expenditure impact for Judicial.

Department of Juvenile Justice. This bill modifies the responsibilities of DJJ for certain juveniles. DJJ anticipates this bill may have a non-recurring expenditure impact to implement the required automatic expungement of certain juvenile records. However, DJJ anticipates it may be able to manage this within existing appropriations. Therefore, this bill will have no expenditure impact for DJJ.

Local Expenditure

This bill requires automatic expungement for certain juvenile records. Based on a response from Charleston County on similar legislation, RFA anticipates this bill will have no local expenditure impact for any county that may operate a juvenile detention center.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

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A bill

to amend the South Carolina Code of Laws by amending Section 63‑19‑820, relating to Out‑of‑home placement, 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; by amending Section 63‑19‑1020, relating to Instituting proceedings, so as to REQUIRE THAT THE CHILD AND HIS FAMILY SEEK COUNSELING WHEN THE STATUS OFFENSE IS OF INCORRIGIBILITY; by amending Section 63‑19‑1440, relating to Commitment, so as to DISTINGUISH BETWEEN STATUS AND CRIMINAL OFFENSES AND TO CHANGE THE REQUIREMENTS FOR COURT ORDERS; by amending Section 63‑19‑1810, relating to Determination of release, so as to MAKE CONFORMING CHANGES; by amending Section 63‑19‑2050, relating to Petition for expungement of official records, so as to make conforming changes; and by amending Section 63‑19‑2050, relating to Petition for expungement of official 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 S.C. 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 S.C. 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. Section 63‑19‑1440(A), (C), and (F) of the S.C. 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.

SECTION 4.  Section 63‑19‑1810(A) of the S.C. 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 S.C. 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. Section 63‑19‑2050(C) of the S.C. 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.

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

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