

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 1003
HOUSE BILL 1679

AN ACT TO PROVIDE EARLY INTERVENTION, DEVELOPMENTAL SERVICES, AND EDUCATION TO HANDICAPPED CHILDREN FROM BIRTH TO FIVE YEARS OF AGE.

Whereas, the General Assembly finds that there is an urgent and substantial need to enhance the development of children from birth to their fifth birthday, including infants and toddlers, with or at risk for handicapping conditions and to minimize their potential for developmental delay; and

Whereas, the General Assembly finds that there is an urgent and substantial need to enhance the capacity of families to meet the special needs of their children from birth to their fifth birthday, including infants and toddlers, who have handicapping conditions; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 13A. Interagency Coordinating Council for Handicapped Children from Birth to Five Years of Age.

"§ 143B-179.5. Interagency Coordinating Council for Handicapped Children from Birth to Five Years of Age; establishment, composition, organization; duties, compensation, reporting.

(a) There is established an Interagency Coordinating Council for Handicapped Children from Birth to Five Years of Age in the Department of Human Resources.

(b) The Interagency Coordinating Council for Early Intervention Services shall have 26 members, appointed by the Governor, for terms of two years and until their successors are appointed and qualify. The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. Members may succeed themselves for one term and may be appointed again, after being off the Council for one term.

The composition of the Council shall be as follows:

- (1) At least three members who are parents of infants or toddlers eligible for services pursuant to G.S. 122C-3(13a) or of handicapped children aged three through six;

- (2) At least three other members who are providers of early intervention services;
- (3) Two members of the Senate, appointed from recommendations of the President Pro Tempore and two members of the House of Representatives, appointed from recommendations of the Speaker;
- (4) At least one other member who is a person involved in staff development;
- (5) Other members who represent the Department of Public Instruction, the Department of Human Resources, the Department of Environment, Health, and Natural Resources, and other appropriate agencies involved in the provision of or payment for early intervention services to infants and toddlers and their families; and
- (6) At least eight members to represent the public at large.

(c) At the first meeting following the appointments, the Council shall elect a parent and a professional as cochairs, who may establish those standing and ad hoc committees and task forces as may be necessary to carry out the functions of the Council and appoint Council members or other individuals to serve on these committees and task forces. The Council shall meet at least quarterly. A majority of the Council shall constitute a quorum for the transaction of business.

(d) The Council shall advise the Departments of Human Resources, and Environment, Health, and Natural Resources, and other appropriate agencies in carrying out their early intervention services, and the Department of Public Instruction, and other appropriate agencies, in their activities related to the provision of special education services for preschoolers. The Council shall specifically address in its studies and evaluations that it considers necessary to its advising:

- (1) The identification of sources of fiscal and other support for the early intervention system;
- (2) The development of policies related to the early intervention services;
- (3) The preparation of applications for available federal funds;
- (4) The resolution of interagency disputes; and
- (5) The promotion of interagency agreements.

(e) Members of the Council and parents on ad hoc committees and task forces of the Council shall receive travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) The Council shall prepare and submit an annual report to the Governor and to the General Assembly on the status of the early intervention system for eligible infants and toddlers and on the status of special education services for preschoolers.

All clerical and other services required by the Council shall be supplied by the Secretary of Human Resources and the Superintendent of Public Instruction, as specified by the interagency agreement authorized by G.S. 122C-112(a)(13).

"§ 143B-179.6. Interagency Coordinating Council for Handicapped Children from Birth to Five Years of Age; agency cooperation.

All appropriate agencies, including the Department of Human Resources, the Department of Environment, Health, and Natural Resources, and the Department of

Public Instruction, and other public and private service providers shall cooperate with the Council in carrying out its mandate."

Sec. 2. G.S. 122C-3 reads as rewritten:

"§ 122C-3. Definitions.

As used in this Chapter, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

- (1) 'Area authority' means the area mental health, developmental disabilities, and substance abuse authority.
- (2) 'Area board' means the area mental health, developmental disabilities, and substance abuse board.
- (3) 'Camp Butner reservation' means the original Camp Butner reservation as may be designated by the Secretary as having been acquired by the State and includes not only areas which are owned and occupied by the State but also those which may have been leased or otherwise disposed of by the State.
- (4) 'City' has the same meaning as in G.S. 153A-1(1).
- (5) 'Catchment area' means the geographic part of the State served by a specific area authority.
- (6) 'Client' means an individual who is admitted to and receiving service from, or who in the past had been admitted to and received services from, a facility.
- (7) 'Client advocate' means a person whose role is to monitor the protection of client rights or to act as an individual advocate on behalf of a particular client in a facility.
- (8) 'Commission' means the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, established under Part 4 of Article 3 of Chapter 143B of the General Statutes.
- (9) 'Confidential information' means any information, whether recorded or not, relating to an individual served by a facility that was received in connection with the performance of any function of the facility. 'Confidential information' does not include statistical information from reports and records or information regarding treatment or services which is shared for training, treatment, habilitation, or monitoring purposes that does not identify clients either directly or by reference to publicly known or available information.
- (10) 'County of residence' of a client means the county of his domicile at the time of his admission or commitment to a facility. A county of residence is not changed because an individual is temporarily out of his county in a facility or otherwise.
- (11) 'Dangerous to himself or others' means:
 - a. 'Dangerous to himself' means that within the relevant past:
 1. The individual has acted in such a way as to show:

- I. That he would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and
 - II. That there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given pursuant to this Chapter. A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a **prima facie** inference that the individual is unable to care for himself; or
2. The individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given pursuant to this Chapter; or
 3. The individual has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given pursuant to this Chapter.

Previous episodes of dangerousness to self, when applicable, may be considered when determining reasonable probability of physical debilitation, suicide, or self-mutilation.

b. 'Dangerous to others' means that within the relevant past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is **prima facie** evidence of dangerousness to others.

(12) 'Department' means the North Carolina Department of Human Resources.

- (12a) 'Developmental disability' means a severe, chronic disability of a person which:
- a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - b. Is manifested before the person attains age 22, unless the disability is caused by a traumatic head injury and is manifested after age 22;
 - c. Is likely to continue indefinitely;
 - d. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, capacity for independent living, learning, mobility, self-direction and economic self-sufficiency; and
 - e. Reflects the person's need for a combination and sequence of special interdisciplinary, or generic care, treatment, or other services which are of a lifelong or extended duration and are individually planned and coordinated; or
 - f. When applied to children from birth through four years of age, may be evidenced as a developmental delay.
- (13) 'Division' means the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department.
- (13a) 'Eligible infants and toddlers' means children with or at risk for developmental delays or atypical development until:
- a. They have reached their third birthday;
 - b. Their parents have requested to have them receive services in the preschool program for handicapped children established pursuant to Part 14 of Article IX of Chapter 115C of the General Statutes; and
 - c. They have been placed in the program by the local educational agency.
- In no event shall a child be considered an eligible toddler after the beginning of the school year immediately following the child's third birthday.
- The early intervention services that may be provided for these children and their families include early identification and screening, multidisciplinary evaluations, case management services, family training, counseling and home visits, psychological services, speech pathology and audiology, and occupational and physical therapy. All evaluations performed as part of early intervention services shall be appropriate to the individual child's age and development.
- (13ab) 'Eligible psychologist' means a licensed practicing psychologist who has at least two years' clinical experience.
- (14) 'Facility' means any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or

rehabilitation of the mentally ill, the developmentally disabled, or substance abusers, and includes:

- a. An 'area facility', which is a facility that is operated by or under contract with the area authority. A facility that is providing services under contract with the area authority is an area facility for purposes of the contracted services only. Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility;
 - b. A 'licensable facility', which is a facility that provides services for one or more minors or for two or more adults. When the services offered are provided to individuals who are mentally ill or developmentally disabled, these services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. When the services offered are provided to individuals who are substance abusers, these services shall include all outpatient services, day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities;
 - c. A 'private facility', which is a facility that is either a licensable facility or a special unit of a general hospital or a part of either in which the specific service provided is not covered under the terms of a contract with an area authority;
 - d. The psychiatric service of the University of North Carolina Hospitals at Chapel Hill;
 - e. A 'residential facility', which is a 24-hour facility that is not a hospital, including a group home;
 - f. A 'State facility', which is a facility that is operated by the Secretary;
 - g. A '24-hour facility', which is a facility that provides a structured living environment and services for a period of 24 consecutive hours or more and includes hospitals that are facilities under this Chapter; and
 - h. A Veterans Administration facility or part thereof that provides services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers.
- (15) 'Guardian' means a person appointed as a guardian of the person or general guardian by the court under Chapters 7A, 33, or 35A of the General Statutes.

- (16) 'Habilitation' means training, care, and specialized therapies undertaken to assist a client in maintaining his current level of functioning or in achieving progress in developmental skills areas.
- (17) 'Incompetent adult' means an adult individual adjudicated incompetent.
- (18) 'Intoxicated' means the condition of an individual whose mental or physical functioning is presently substantially impaired as a result of the use of alcohol or other substance.
- (19) 'Law-enforcement officer' means sheriff, deputy sheriff, police officer, State highway patrolman, or an officer employed by a city or county under G.S. 122C-302.
- (20) 'Legally responsible person' means: (i) when applied to an adult, who has been adjudicated incompetent, a guardian; or (ii) when applied to a minor, a parent, guardian, a person standing **in loco parentis**, or a legal custodian other than a parent who has been granted specific authority by law or in a custody order to consent for medical care, including psychiatric treatment.
- (21) 'Mental illness' means: (i) when applied to an adult, an illness which so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control; and (ii) when applied to a minor, a mental condition, other than mental retardation alone, that so impairs the youth's capacity to exercise age adequate self-control or judgment in the conduct of his activities and social relationships so that he is in need of treatment.
- (22) 'Mental retardation' means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.
- (23) 'Mentally retarded with accompanying behavior disorder' means an individual who is mentally retarded and who has a pattern of maladaptive behavior that is recognizable no later than adolescence and is characterized by gross outbursts of rage or physical aggression against other individuals or property.
- (24) 'Next of kin' means the individual designated in writing by the client or his legally responsible person upon the client's acceptance at a facility; provided that if no such designation has been made, 'next of kin' means the client's spouse or nearest blood relation in accordance with G.S. 104A-1.
- (25) 'Operating costs' means expenditures made by an area authority in the delivery of services for mental health, developmental disabilities, and substance abuse as provided in this Chapter and includes the employment of legal counsel on a temporary basis to represent the interests of the area authority.
- (26) Repealed by Session Laws 1987, c. 345, s. 1.

- (27) 'Outpatient treatment' as used in Part 7 of Article 5 means treatment in an outpatient setting and may include medication, individual or group therapy, day or partial day programming activities, services and training including educational and vocational activities, supervision of living arrangements, and any other services prescribed either to alleviate the individual's illness or disability, to maintain semi-independent functioning, or to prevent further deterioration that may reasonably be predicted to result in the need for inpatient commitment to a 24-hour facility.
- (28) 'Person' means any individual, firm, partnership, corporation, company, association, joint stock association, agency, or area authority.
- (29) 'Physician' means an individual licensed to practice medicine in North Carolina under Chapter 90 of the General Statutes or a licensed medical doctor employed by the Veterans Administration.
- (30) 'Provider of support services' means a person that provides to a facility support services such as data processing, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, including human services.
- (30a) 'Psychologist' means an individual licensed to practice psychology under Chapter 90. The term 'eligible psychologist' is defined in subdivision (13a).
- (31) 'Qualified professional' means any individual with appropriate training or experience as specified by the General Statutes or by rule of the Commission in the fields of mental health or developmental disabilities or substance abuse treatment or habilitation, including physicians, psychologists, psychological associates, educators, social workers, registered nurses, and certified counselors.
- (32) 'Responsible professional' means an individual within a facility who is designated by the facility director to be responsible for the care, treatment, habilitation, or rehabilitation of a specific client and who is eligible to provide care, treatment, habilitation, or rehabilitation relative to the client's disability.
- (33) 'Secretary' means the Secretary of the Department of Human Resources.
- (34) 'Single portal of entry and exit policy' means an admission and discharge policy for State and area facilities that may be adopted by an area authority and shall be approved by the Secretary before it is in force. The policy and its provisions shall be designed to promote quality client care in and among State and area facilities. Furthermore, the policy shall be designed to integrate otherwise independent facilities into a unified and coordinated system, in which system the area authority shall be responsible for assuring that the individual client can receive services from the facility that is best able to meet his

needs. However, the policy may not be inconsistent with any other provisions of the General Statutes, nor may the policy include the complete exclusion of clients from admission to any specific State or area facility.

- (35) 'Single portal area' means the county or counties that comprise the catchment area of an area authority that has adopted a single portal of entry and exit policy.
- (36) 'Substance abuse' means the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. 'Substance abuse' may include a pattern of tolerance and withdrawal.
- (37) 'Substance abuser' means an individual who engages in substance abuse."

Sec. 3. G.S. 122C-112(a) reads as rewritten:

"§ 122C-112. Powers and duties of the Secretary.

(a) The Secretary shall:

- (1) Enforce the provisions of this Chapter and the rules of the Commission and the Secretary;
- (2) Assist counties and area authorities in the establishment and operation of community-based programs within catchment areas specified in rules adopted by the Commission;
- (3) Operate State facilities and adopt rules pertaining to their operation;
- (4) Promote a unified system of services for the citizens of this State by coordinating services provided in State facilities and area facilities;
- (5) Approve the plans and budgets of an area authority and adopt rules pertaining to the content and format of these plans and budgets;
- (6) Adopt rules governing the expenditure of all area authority funds;
- (7) Adopt rules for the establishment of single portal designation and approve an area as a single portal area;
- (8) Except as provided in G.S. 122C-26(4), adopt rules establishing procedures for waiver of rules adopted by the Secretary under this Chapter;
- (9) Notify the clerks of superior court of changes in the designation of State facility regions and of facilities designated under G.S. 122C-252;
- (10) Promote public awareness and understanding of mental health, mental illness, developmental disabilities, and substance abuse;
- (11) Administer and enforce rules that are conditions of participation in federal or State financial aid; ~~and~~
- (12) Carry out ~~G.S. 122C-361~~. G.S. 122C-361; and
- (13) Coordinate and facilitate the development and administration of the early intervention system for eligible infants and toddlers and shall assign among the cooperating agencies the responsibility, including financial responsibility, for services. The Secretary shall be advised by the Interagency Coordinating Council for Handicapped Children

from Birth to Five Years of Age, established by G.S. 143B-179.5, and may enter into formal interagency agreements to establish the collaborative relationships with the Department of Environment, Health, and Natural Resources, the Department of Public Instruction, other appropriate agencies, and other public and private service providers necessary to administer the system and deliver the services.

The Secretary shall adopt rules to implement the early intervention system, in cooperation with all other appropriate agencies."

Sec. 4. G.S. 122C-146 reads as rewritten:

"§ 122C-146. Fee for service.

The area authority and its contractual agencies shall prepare fee schedules for services and shall make every reasonable effort to collect appropriate reimbursement for costs in providing these services from individuals able to pay, including insurance and third-party ~~payment~~ payment, except that individuals may not be charged for services involving multidisciplinary evaluations, intervention plan development, and case management services provided to eligible infants and toddlers and their families. This exemption from charges does not exempt insurers or other third-party payors from being charged for payment for these services. However, no individual may be refused services because of an inability to pay. All funds collected from fees from area authority operated services shall be used for the fiscal operation or capital improvements of the area authority's programs. The collection of fees by an area authority may not be used as justification for reduction or replacement of the budgeted commitment of local tax revenue."

Sec. 5. Article IX of Chapter 115C of the General Statutes is amended by adding a new Part to read:

"Part 14. Handicapped Children, Ages Three to Five.

"§ 115C-146.1. Definitions.

The term 'preschool handicapped children' means all handicapped children:

- (1) Who have reached their third birthday and whose parents have requested services from the public schools, which services shall start no later than the beginning of the school year immediately following the children's third birthday;
- (2) Who are not eligible to enroll in public kindergarten; and
- (3) Who, because of permanent or temporary mental, physical, or emotional handicaps, need special education and related services in order to prepare them to benefit from the educational programs provided by the public schools, beginning with kindergarten. This term includes children who are mentally retarded, learning disabled, seriously emotionally disturbed, autistic, cerebral palsied, orthopedically impaired, hearing impaired, speech impaired, blind or visually impaired, multiply handicapped, or other health impaired. All evaluations performed pursuant to this Part shall be appropriate to the individual child's age and development.

"§ 115C-146.2. Entitlement to services.

Preschool handicapped children are entitled, at no cost to their parents or guardians, to individualized programs specifically designed to meet their unique needs for special education and related services.

"§ 115C-146.3. Obligation to provide services.

(a) The General Assembly finds:

- (1) That preschool handicapped children will benefit from the special education and related services required by this Part;
- (2) That the General Assembly has evaluated the known needs of the State and has endeavored to satisfy those needs in comparison to the social and economic problems of the State;
- (3) That the funds appropriated to serve these preschool handicapped children are a reasonable amount to provide such children with special education and related services; and
- (4) That, therefore, (i) State funds appropriated to implement this Part are the only State funds for public schools that may be used to provide special education and related services to preschool handicapped children; and (ii) preschool handicapped children will continue to be served by all other State funds they are otherwise entitled to.

(b) The Department of Public Education shall cause local school administrative units to make available special education and related services to all preschool handicapped children whose parents or guardians request these services.

(c) State funds appropriated to implement the provisions of this Part shall be used to supplement and not supplant existing federal, State, and local funding for the public schools.

(d) Related services provided under this Part shall be provided by qualified services providers. The term 'qualified services provider' means a person who meets State standards for licensure or State Board of Education standards for certification for a specific profession or discipline.

To the extent that the State Board of Education standards include provisions for certification that are less than the standard for certification or licensure for a specific profession, the Department of Public Instruction may certify individuals on a temporary or provisional basis, provided that the State Board of Education shall establish a comprehensive plan and reasonable time lines to ensure that only professionals who meet the appropriate standard for licensure or certification may be employed in the future.

"§ 115C-146.4. Rules.

The State Board of Education shall adopt rules implementing this Part, including rules necessary in order to receive federal funding pursuant to Part B of the Education of the Handicapped Act, 20 U.S.C. § 1400 et seq. These rules shall include a provision that, where a local education agency finds that appropriate services are available from other public agencies or private organizations, that local education agency shall, in accordance with G.S. 115C-149, contract for those services rather than provide them directly. These rules shall also include a provision that, where a local education agency

finds that a child is already receiving appropriate services, that local education agency shall continue those services as long as appropriate."

Sec. 6. Sections 1 through 4 of this act shall become effective July 1, 1990, and Section 5 of this act shall become effective July 1, 1991, if and only if specific funds are appropriated for the specific programs established by this act. Funds appropriated for the 1990-91 fiscal year or for any fiscal year in the future do not constitute any entitlement to services beyond those provided for that fiscal year. Nothing in this act creates any rights except to the extent that funds are appropriated by the State to implement its provisions from year to year and nothing in this act obligates the General Assembly to appropriate any funds to implement its provisions.

In the General Assembly read three times and ratified this the 20th day of July, 1990.