

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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HOUSE BILL 110
Committee Substitute Favorable 3/7/94

Short Title: Change Temp. Custody/Juv.

(Public)

Sponsors:

Referred to:

February 14, 1994

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE TIME WITHIN WHICH HEARINGS FOR JUVENILES IN CUSTODY TAKE PLACE, TO PROVIDE FOR WAIVER OF HEARINGS ON CONTINUED CUSTODY, TO LENGTHEN TIME OF TEMPORARY CUSTODY OF JUVENILES WITHOUT AN ORDER, AND TO ALLOW PLACEMENT OF JUVENILES BY THE DEPARTMENT OF SOCIAL SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-577 reads as rewritten:

"§ 7A-577. Hearing to determine need for continued secure or nonsecure custody.

(a) No juvenile shall be held under a secure custody order for more than five calendar days or under a nonsecure custody order for more than five business days, excluding Saturdays, Sundays, and legal holidays, without a hearing on the merits or a hearing to determine the need for continued custody. A hearing conducted pursuant to this subsection may not be waived. In every case in which an order has been entered by an official exercising authority delegated pursuant to G.S. 7A-573, a hearing to determine the need for continued custody shall be conducted on the day of the next regularly scheduled session of district court in the city or county where the order was entered if such session precedes the expiration of the ~~five-calendar day period~~: applicable time period set forth in this subsection: Provided, that if such session does not precede the expiration of the ~~five-calendar period~~, time period, the hearing may be conducted at another regularly scheduled session of district court in the district where the order was entered.

1 (b) Any juvenile who is alleged to be delinquent shall be advised of ~~his~~the right
2 to have ~~an attorney represent him~~legal representation as provided in G.S. 7A-584 if ~~he~~the
3 juvenile appears without counsel at the hearing.

4 (c) At a hearing to determine the need for continued custody, the judge shall
5 receive testimony and shall allow the juvenile, and ~~his~~the juvenile's parent, guardian, or
6 custodian an opportunity to introduce evidence, to be heard in their own behalf, and to
7 examine witnesses. The State shall bear the burden at every stage of the proceedings to
8 provide clear and convincing evidence that restraints on the juvenile's liberty are
9 necessary and that no less intrusive alternative will suffice. The judge shall not be
10 bound by the usual rules of evidence at such hearings.

11 (d) The judge shall be bound by criteria set forth in G.S. 7A-574 in determining
12 whether continued custody is warranted.

13 (e) The judge shall impose the least restrictive interference with the liberty of a
14 juvenile who is released from secure custody including:

- 15 (1) Release on the written promise of the juvenile's parent, guardian, or
16 custodian to produce ~~him~~the juvenile in court for subsequent
17 proceedings; or
- 18 (2) Release into the care of a responsible person or organization; or
- 19 (3) Release conditioned on restrictions on activities, associations,
20 residence or travel if reasonably related to securing the juvenile's
21 presence in court; or
- 22 (4) Any other conditions reasonably related to securing the juvenile's
23 presence in court.

24 (f) If the judge determines that the juvenile meets the criteria in G.S. 7A-574 and
25 should continue in custody, ~~he~~the judge shall issue an order to that effect. The order
26 shall be in writing with appropriate findings of fact. The findings of fact shall include
27 the evidence relied upon in reaching the decision and the purposes which continued
28 custody is to achieve.

29 (g) Pending a hearing on the merits, further hearings to determine the need for
30 continued secure custody shall be held at intervals of no more than seven calendar days.
31 A subsequent hearing on continued nonsecure custody shall be held within seven
32 business days, excluding Saturdays, Sundays, and legal holidays, of the initial hearing
33 required in subsection (a) and hearings thereafter shall be held at intervals of no more
34 than 30 calendar days.

35 (g1) Hearings conducted pursuant to subsection (g) of this section may be waived
36 as follows:

- 37 (1) In the case of a juvenile alleged to be delinquent, only with the consent
38 of the juvenile, through counsel for the juvenile;
- 39 (2) In the case of a juvenile alleged to be undisciplined, only with the
40 consent of an attorney representing the juvenile; and
- 41 (3) In the case of a juvenile alleged to be abused, neglected, or dependent,
42 only with the consent of the juvenile's parent, guardian, custodian,
43 caretaker, or guardian **ad litem**.

1 The court may require the consent of additional parties or schedule a hearing despite
2 a party's consent to waiver.

3 (h) Any order authorizing the continued nonsecure custody of a juvenile who is
4 alleged to be abused, neglected, or dependent shall include findings as to whether
5 reasonable efforts have been made to prevent or eliminate the need for placement of the
6 juvenile in custody and may provide for services or other efforts aimed at returning the
7 juvenile home promptly. A finding that reasonable efforts have not been made to
8 prevent or eliminate the need for placement shall not preclude the entry of an order
9 authorizing continued nonsecure custody when the court finds that continued nonsecure
10 custody is necessary for the protection of the juvenile. Where efforts to prevent the need
11 for the juvenile's placement were precluded by an immediate threat of harm to the
12 juvenile, the court may find that the placement of the juvenile in the absence of such
13 efforts was reasonable."

14 Sec. 2. G.S. 7A-571 reads as rewritten:

15 **"§ 7A-571. Taking a juvenile into temporary custody.**

16 Temporary custody means the taking of physical custody and providing personal
17 care and supervision until a court order for secure or nonsecure custody can be obtained.
18 A juvenile may be taken into temporary custody under the following circumstances:

- 19 (1) A juvenile may be taken into temporary custody by a law-enforcement
20 officer without a court order if grounds exist for the arrest of an adult
21 in identical circumstances under G.S. 15A-401(b).
- 22 (2) A juvenile may be taken into temporary custody without a court order
23 by a law-enforcement officer or a court counselor if there are
24 reasonable grounds to believe that ~~he~~ the juvenile is an undisciplined
25 juvenile.
- 26 (3) A juvenile may be taken into temporary custody without a court order
27 by a law-enforcement officer or a Department of Social Services
28 worker if there are reasonable grounds to believe that the juvenile is
29 abused, neglected, or dependent and that ~~he~~ the juvenile would be
30 injured or could not be taken into custody if it were first necessary to
31 obtain a court order. If a Department of Social Services worker takes a
32 juvenile into temporary custody under this subdivision, the worker
33 may arrange for the placement, care, supervision, and transportation of
34 the juvenile.
- 35 (4) A juvenile may be taken into custody without a court order by a law-
36 enforcement officer, by a court counselor, by a member of the Black
37 Mountain Center, Alcohol Rehabilitation Center and Juvenile
38 Evaluation Center Joint Security Force established pursuant to G.S.
39 122C-421, or by personnel of the Division of Youth Services as
40 designated by the Department of Human Resources if there are
41 reasonable grounds to believe the juvenile is an absconder from any
42 State training school or approved detention facility."

43 Sec. 3. G.S. 7A-572(a) reads as rewritten:

1 "(a) A person who takes a juvenile into custody without a court order under G.S.
2 7A-571(1), (2), or (3) shall proceed as follows:

3 (1) Notify the juvenile's parent, guardian, or custodian that the juvenile
4 has been taken into temporary custody and advise the parent, guardian,
5 or custodian of ~~his~~the right to be present with the juvenile until a
6 determination is made as to the need for secure or nonsecure custody.
7 Failure to notify the parent that the juvenile is in custody shall not be
8 grounds for release of the juvenile;

9 (2) Release the juvenile to ~~his~~the juvenile's parent, guardian, or custodian
10 if the person having the juvenile in temporary custody decides that
11 continued custody is unnecessary.

12 (3) If the juvenile is not released under subsection (b), the person having
13 temporary custody shall proceed as follows:

14 a. In the case of a juvenile alleged to be delinquent or
15 undisciplined, ~~he~~the person having temporary custody shall
16 request a petition be drawn pursuant to G.S. 7A-561 or if the
17 clerk's office is closed, the magistrate pursuant to G.S. 7A-562.
18 Once the petition has been drawn and verified, the person shall
19 communicate with the intake counselor who shall consider
20 prehearing diversion. If the decision is made to file a petition,
21 the intake counselor shall contact the judge or person delegated
22 authority pursuant to G.S. 7A-573 if other than the intake
23 counselor for a determination of the need for continued custody.

24 b. In the case of a juvenile alleged to be abused, neglected, or
25 dependent, ~~he~~the person having temporary custody shall
26 communicate with the Director of the Department of Social
27 Services who shall consider prehearing diversion. If the
28 decision is made to file a petition, the director shall contact the
29 judge or person delegated authority pursuant to G.S. 7A-573 for
30 a determination of the need for continued custody.

31 (4) A juvenile taken into temporary custody under this Article shall not be
32 held for more than ~~12~~24 hours unless:

33 a. A petition or motion for review has been filed by an intake
34 counselor or the Director of the Department of Social Services,
35 and

36 b. An order for secure or nonsecure custody has been entered by a
37 judge."

38 Sec. 4. This act becomes effective July 1, 1994, and applies to offenses
39 committed, or causes of action arising, on or after that date.