

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1159

Short Title: Toby's Bill.

(Public)

Sponsors: Representatives Nesbitt; and Sherrill.

Referred to: Children, Youth and Families.

April 15, 1999

A BILL TO BE ENTITLED

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2 AN ACT TO BE KNOWN AS TOBY'S LAW; TO IMPROVE THE ABILITY OF THE
3 DIVISION OF SOCIAL SERVICES, DEPARTMENT OF HEALTH AND HUMAN
4 SERVICES, TO PROTECT CHILDREN AND YOUTH FROM VIOLENCE PRONE
5 CAREGIVERS.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 7B-101, as enacted by Section 6 of S.L. 1998-202 and as
8 amended by Section 18 of S.L. 1998-229, is amended by adding a new subdivision to
9 read:

10 "(7a) 'Criminal history' means a county, State, or federal criminal history of
11 conviction or pending indictment of a crime, whether a misdemeanor or
12 a felony, involving violence against a person."

13 Section 2. G.S. 7B-302, as enacted by Section 6 of S.L. 1998-202 and as
14 amended by Section 19 of S.L. 1998-229, is amended by adding a new subsection to
15 read:

16 "(d1) Whenever a juvenile is removed from the home due to physical abuse, the
17 director shall conduct a thorough review of the background of the alleged abuser. This
18 review shall include a criminal history check and a review of any available mental health
19 records. If the review reveals that the alleged abuser has a history of violent behavior

1 against people, the director shall petition the court to order the alleged abuser to submit to
2 a complete mental health evaluation by a licensed psychologist or psychiatrist."

3 Section 3. G.S. 7B-304, as enacted by Section 6 of S.L. 1998-202, reads as
4 rewritten:

5 "**§ 7B-304. Evaluation for court.**

6 In all cases in which a petition is filed, the director of the department of social
7 services shall prepare a report for the court containing the results of any mental health
8 evaluation under G.S. 7B-503, a home placement ~~plan-plan,~~ and a treatment plan deemed
9 by the director to be appropriate to the needs of the juvenile. The report shall be available
10 to the court immediately following the adjudicatory hearing."

11 Section 4. G.S. 7B-503, as enacted by Section 6 of S.L. 1998-202, reads as
12 rewritten:

13 "**§ 7B-503. Criteria for nonsecure custody.**

14 (a) When a request is made for nonsecure custody, the court shall first consider
15 release of the juvenile to the juvenile's parent, relative, guardian, custodian, or other
16 responsible adult. An order for nonsecure custody shall be made only when there is a
17 reasonable factual basis to believe the matters alleged in the petition are true, and

18 (1) The juvenile has been abandoned; or

19 (2) The juvenile has suffered physical injury or sexual abuse; or

20 (3) The juvenile is exposed to a substantial risk of physical injury or sexual
21 abuse because the parent, guardian, custodian, or caretaker has created
22 the conditions likely to cause injury or abuse or has failed to provide, or
23 is unable to provide, adequate supervision or protection; or

24 (4) The juvenile is in need of medical treatment to cure, alleviate, or
25 prevent suffering serious physical harm which may result in death,
26 disfigurement, or substantial impairment of bodily functions, and the
27 juvenile's parent, guardian, custodian, or caretaker is unwilling or
28 unable to provide or consent to the medical treatment; or

29 (5) The parent, guardian, custodian, or caretaker consents to the nonsecure
30 custody order; or

31 (6) The juvenile is a runaway and consents to nonsecure custody.

32 A juvenile alleged to be abused, neglected, or dependent shall be placed in nonsecure
33 custody only when there is a reasonable factual basis to believe that there are no other
34 reasonable means available to protect the juvenile. In no case shall a juvenile alleged to
35 be abused, neglected, or dependent be placed in secure custody.

36 (b) Whenever the court orders a juvenile to be placed in nonsecure custody, the
37 court shall also rule on any petition under G.S. 7B-302(d1). If the court finds that the
38 alleged abuser has a history of violent behavior against people, the court shall order the
39 alleged abuser to submit to a complete mental health evaluation by a licensed
40 psychologist or psychiatrist. The county department of social services shall pay for any
41 mental health evaluation required under this section."

1 Section 5. G.S. 7B-506, as enacted by Section 6 of S.L. 1998-202 and as
2 amended by Section 21 of S.L. 1998-229, is amended by adding a new subsection to
3 read:

4 "(c1) In determining whether continued custody is warranted, the court shall give
5 considerable weight to the opinion of the mental health professional who performed an
6 evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that
7 individual."

8 Section 6. G.S. 7B-903, as enacted by Section 6 of S.L. 1998-202 and as
9 amended by Section 23 of S.L. 1998-229, reads as rewritten:

10 "**§ 7B-903. Dispositional alternatives for abused, neglected, or dependent juvenile.**

11 (a) The following alternatives for disposition shall be available to any court
12 exercising jurisdiction, and the court may combine any of the applicable alternatives
13 when the court finds the disposition to be in the best interests of the juvenile:

14 (1) The court may dismiss the case or continue the case in order to allow
15 the parent, guardian, custodian, caretaker or others to take appropriate
16 action.

17 (2) In the case of any juvenile who needs more adequate care or supervision
18 or who needs placement, the court may:

19 a. Require that the juvenile be supervised in the juvenile's own
20 home by the department of social services in the juvenile's
21 county, or by other personnel as may be available to the court,
22 subject to conditions applicable to the parent, guardian,
23 custodian, or caretaker as the court may specify; or

24 b. Place the juvenile in the custody of a parent, relative, private
25 agency offering placement services, or some other suitable
26 person; or

27 c. Place the juvenile in the custody of the department of social
28 services in the county of the juvenile's residence, or in the case of
29 a juvenile who has legal residence outside the State, in the
30 physical custody of the department of social services in the
31 county where the juvenile is found so that agency may return the
32 juvenile to the responsible authorities in the juvenile's home
33 state. The director may, unless otherwise ordered by the court,
34 arrange for, provide, or consent to, needed routine or emergency
35 medical or surgical care or treatment. In the case where the
36 parent is unknown, unavailable, or unable to act on behalf of the
37 juvenile, the director may, unless otherwise ordered by the court,
38 arrange for, provide, or consent to any psychiatric, psychological,
39 educational, or other remedial evaluations or treatment for the
40 juvenile placed by a court or the court's designee in the custody
41 or physical custody of a county department of social services
42 under the authority of this or any other Chapter of the General
43 Statutes. Prior to exercising this authority, the director shall make

1 reasonable efforts to obtain consent from a parent or guardian of
2 the affected juvenile. If the director cannot obtain such consent,
3 the director shall promptly notify the parent or guardian that care
4 or treatment has been provided and shall give the parent frequent
5 status reports on the circumstances of the juvenile. Upon request
6 of a parent or guardian of the affected juvenile, the results or
7 records of the aforementioned evaluations, findings, or treatment
8 shall be made available to such parent or guardian by the director
9 unless prohibited by G.S. 122C-53(d). If a juvenile is removed
10 from the home and placed in custody or placement responsibility
11 of a county department of social services, the director shall not
12 allow unsupervised visitation with, or return physical custody of
13 the juvenile to, the parent, guardian, custodian, or caretaker
14 without a hearing at which the court finds that the juvenile will
15 receive proper care and supervision in a safe home.

16 In placing a juvenile in out-of-home care under this section,
17 the court shall first consider whether a relative of the juvenile is
18 willing and able to provide proper care and supervision of the
19 juvenile in a safe home. If the court finds that the relative is
20 willing and able to provide proper care and supervision in a safe
21 home, then the court shall order placement of the juvenile with
22 the relative unless the court finds that the placement is contrary
23 to the best interests of the juvenile. Placement of a juvenile with
24 a relative outside of this State must be in accordance with the
25 Interstate Compact on the Placement of Children.

26 (3) In any case, the court may order that the juvenile be examined by a
27 physician, psychiatrist, psychologist, or other qualified expert as may be
28 needed for the court to determine the needs of the juvenile:

- 29 a. Upon completion of the examination, the court shall conduct a
30 hearing to determine whether the juvenile is in need of medical,
31 surgical, psychiatric, psychological, or other treatment and who
32 should pay the cost of the treatment. The county manager, or
33 such person who shall be designated by the chairman of the
34 county commissioners, of the juvenile's residence shall be
35 notified of the hearing, and allowed to be heard. If the court finds
36 the juvenile to be in need of medical, surgical, psychiatric,
37 psychological, or other treatment, the court shall permit the
38 parent or other responsible persons to arrange for treatment. If
39 the parent declines or is unable to make necessary arrangements,
40 the court may order the needed treatment, surgery, or care, and
41 the court may order the parent to pay the cost of the care pursuant
42 to G.S. 7B-904. If the court finds the parent is unable to pay the
43 cost of treatment, the court shall order the county to arrange for

1 treatment of the juvenile and to pay for the cost of the treatment.
2 The county department of social services shall recommend the
3 facility that will provide the juvenile with treatment.

- 4 b. If the court believes, or if there is evidence presented to the effect
5 that the juvenile is mentally ill or is developmentally disabled,
6 the court shall refer the juvenile to the area mental health,
7 developmental disabilities, and substance abuse services director
8 for appropriate action. A juvenile shall not be committed directly
9 to a State hospital or mental retardation center; and orders
10 purporting to commit a juvenile directly to a State hospital or
11 mental retardation center except for an examination to determine
12 capacity to proceed shall be void and of no effect. The area
13 mental health, developmental disabilities, and substance abuse
14 director shall be responsible for arranging an interdisciplinary
15 evaluation of the juvenile and mobilizing resources to meet the
16 juvenile's needs. If institutionalization is determined to be the
17 best service for the juvenile, admission shall be with the
18 voluntary consent of the parent or guardian. If the parent,
19 guardian, custodian, or caretaker refuses to consent to a mental
20 hospital or retardation center admission after such
21 institutionalization is recommended by the area mental health,
22 developmental disabilities, and substance abuse director, the
23 signature and consent of the court may be substituted for that
24 purpose. In all cases in which a regional mental hospital refuses
25 admission to a juvenile referred for admission by a court and an
26 area mental health, developmental disabilities, and substance
27 abuse director or discharges a juvenile previously admitted on
28 court referral prior to completion of treatment, the hospital shall
29 submit to the court a written report setting out the reasons for
30 denial of admission or discharge and setting out the juvenile's
31 diagnosis, indications of mental illness, indications of need for
32 treatment, and a statement as to the location of any facility
33 known to have a treatment program for the juvenile in question.

34 (b) When the court has found that a juvenile has suffered physical abuse and that
35 the individual responsible for the abuse has a history of violent behavior against people,
36 the court shall give considerable weight to the opinion of the mental health professional
37 who performed an evaluation under G.S. 7B-503(b) before returning the juvenile to the
38 custody of that individual."

39 Section 7. G.S. 7B-904, as enacted by Section 6 of S.L. 1998-202, reads as
40 rewritten:

41 **"§ 7B-904. Authority over parents of juvenile adjudicated as abused, neglected, or**
42 **dependent.**

1 (a) If the court orders medical, surgical, psychiatric, psychological, or other
2 treatment pursuant to G.S. 7B-903, the court may order the parent or other responsible
3 parties to pay the cost of the treatment or care ordered.

4 (b) At the dispositional hearing or a subsequent hearing in the case of a juvenile
5 who has been adjudicated abused, neglected, or dependent, if the court finds that it is in
6 the best interests of the juvenile for the ~~parent-parent, guardian, custodian, or caretaker~~ to
7 be directly involved in the juvenile's treatment, the court may order the ~~parent-parent,~~
8 guardian, custodian, or caretaker to participate in medical, psychiatric, psychological, or
9 other treatment of the juvenile. The cost of the treatment shall be paid pursuant to G.S.
10 7B-903.

11 (c) At the dispositional hearing or a subsequent hearing in the case of a juvenile
12 who has been adjudicated abused, neglected, or dependent, the court may determine
13 whether the best interests of the juvenile require that the ~~parent-parent, guardian,~~
14 custodian, or caretaker undergo psychiatric, psychological, or other treatment or
15 counseling directed toward remediating or remedying behaviors or conditions that led to
16 or contributed to the juvenile's adjudication or to the court's decision to remove custody
17 of the juvenile from the ~~parent-parent, guardian, custodian, or caretaker.~~ If the court finds
18 that the best interests of the juvenile require the ~~parent-parent, guardian, custodian, or~~
19 caretaker undergo treatment, it may order ~~the parent-that individual~~ to comply with a plan
20 of treatment approved by the court or condition legal custody or physical placement of
21 the juvenile with the ~~parent-parent, guardian, custodian, or caretaker~~ upon ~~the parent's-that~~
22 individual's compliance with the plan of treatment. The court may order the ~~parent-parent,~~
23 guardian, custodian, or caretaker to pay the cost of treatment ordered pursuant to this
24 subsection. In cases in which the court has conditioned legal custody or physical
25 placement of the juvenile with the ~~parent-parent, guardian, custodian, or caretaker~~ upon
26 ~~the parent's-~~compliance with a plan of treatment, the court may charge the cost of the
27 treatment to the county of the juvenile's residence if the court finds the ~~parent-parent,~~
28 guardian, custodian, or caretaker is unable to pay the cost of the treatment. In all other
29 cases, if the court finds the ~~parent-parent, guardian, custodian, or caretaker~~ is unable to
30 pay the cost of the treatment ordered pursuant to this subsection, the court may order ~~the~~
31 parent-that individual to receive treatment currently available from the area mental health
32 program that serves the parent's catchment area.

33 (d) Whenever legal custody of a juvenile is vested in someone other than the
34 juvenile's parent, after due notice to the parent and after a hearing, the court may order
35 that the parent pay a reasonable sum that will cover, in whole or in part, the support of the
36 juvenile after the order is entered. If the court requires the payment of child support, the
37 amount of the payments shall be determined as provided in G.S. 50-13.4(c). If the court
38 places a juvenile in the custody of a county department of social services and if the court
39 finds that the parent is unable to pay the cost of the support required by the juvenile, the
40 cost shall be paid by the county department of social services in whose custody the
41 juvenile is placed, provided the juvenile is not receiving care in an institution owned or
42 operated by the State or federal government or any subdivision thereof.

1 (e) Failure of a parent who is personally served to participate in or comply with
2 this section may result in a proceeding for civil contempt."

3 Section 8. G.S. 7B-1003, as enacted by Section 6 of S.L. 1998-202, reads as
4 rewritten:

5 **"§ 7B-1003. Disposition pending appeal.**

6 Pending disposition of an appeal, the return of the juvenile to the custody of the parent
7 or guardian of the juvenile, with or without conditions, should issue in every case unless
8 the court orders otherwise. When the court has found that a juvenile has suffered physical
9 abuse and that the individual responsible for the abuse has a history of violent behavior,
10 the court shall give considerable weight to the opinion of the mental health professional
11 who performed the evaluation under G.S. 7B-503(b) before returning the juvenile to
12 the custody of that individual. For compelling reasons which must be stated in writing,
13 the court may enter a temporary order affecting the custody or placement of the juvenile
14 as the court finds to be in the best interests of the juvenile or the State. The provisions of
15 subsections (b), (c), and (d) of G.S. 7B-905 shall apply to any order entered under this
16 section which provides for the placement or continued placement of a juvenile in foster
17 care."

18 Section 9. This act becomes effective July 1, 1999, and applies to petitions
19 filed on or after that date.