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HOUSE BILL 1159
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Short Title: Protection From Violent Caregivers.

(Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED
AN ACT TO IMPROVE THE ABILITY OF THE DIVISION OF SOCIAL SERVICES,
DEPARTMENT OF HEALTH AND HUMAN SERVICES, TO PROTECT
CHILDREN AND YOUTH FROM VIOLENCE-PRONE CAREGIVERS.

The General Assembly of North Carolina enacts:

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

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

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

"(d1) Whenever a juvenile is removed from the home of a parent, guardian, custodian, stepparent, or adult relative entrusted with the juvenile's care due to physical abuse, the director shall conduct a thorough review of the background of the alleged

1 abuser or abusers. This review shall include a criminal history check and a review of any
2 available mental health records. If the review reveals that the alleged abuser or abusers
3 have a history of violent behavior against people, the director shall petition the court to
4 order the alleged abuser or abusers to submit to a complete mental health evaluation by a
5 licensed psychologist or psychiatrist."

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

8 **"§ 7B-304. Evaluation for court.**

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

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

16 **"§ 7B-503. Criteria for nonsecure custody.**

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

21 (1) The juvenile has been abandoned; or

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

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

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

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

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

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

39 (b) Whenever a petition is filed under G.S. 7B-302(d1), the court shall rule on the
40 petition prior to returning the child to a home where the alleged abuser or abusers are or
41 have been present. If the court finds that the alleged abuser or abusers have a history of
42 violent behavior against people, the court shall order the alleged abuser or abusers to
43 submit to a complete mental health evaluation by a licensed psychologist or psychiatrist.

1 The court may order the alleged abuser or abusers to pay the cost of any mental health
2 evaluation required under this section."

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

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

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

11 "**§ 7B-903. Dispositional alternatives for abused, neglected, or dependent juvenile.**

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

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

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

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

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

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

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

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

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

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

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

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

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

42 **§ 7B-904. Authority over parents of juvenile adjudicated as abused, neglected, or**
43 **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, stepparent,
7 adult member of the juvenile's household, or adult relative entrusted with the juvenile's
8 care to be directly involved in the juvenile's treatment, the court may order the ~~parent~~
9 parent, guardian, custodian, stepparent, adult member of the juvenile's household, or
10 adult relative entrusted with the juvenile's care to participate in medical, psychiatric,
11 psychological, or other treatment of the juvenile. The cost of the treatment shall be paid
12 pursuant to G.S. 7B-903.

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

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

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

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

15 "**§ 7B-1003. Disposition pending appeal.**

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

27 Section 9. This act becomes effective October 1, 1999, and applies to petitions
28 filed on or after that date.