

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1609\*  
Committee Substitute Favorable 6/6/00

Short Title: Clarify Juvenile Procedures.

(Public)

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Sponsors:

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Referred to:

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May 18, 2000

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE PROCEDURES FOR ABUSED, NEGLECTED, AND  
3 DEPENDENT JUVENILES.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 7B-406(b) reads as rewritten:

6 "(b) A summons shall be on a printed form supplied by the Administrative Office  
7 of the Courts and shall include:

8 (1) Notice of the nature of the proceeding;

9 (2) Notice of any right to counsel and information about how to seek the  
10 appointment of counsel prior to a hearing;

11 (3) Notice that, if the court determines at the hearing that the allegations of  
12 the petition are true, the court will conduct a dispositional hearing to  
13 consider the needs of the juvenile and enter an order designed to meet  
14 those needs and the objectives of the State; and

15 (4) Notice that the dispositional order or a subsequent order:

16 a. May remove the juvenile from the custody of the parent,  
17 guardian, or custodian.

- 1           b.     May require that the juvenile receive medical, psychiatric,  
2           psychological, or other treatment and that the parent participate  
3           in the treatment.
- 4           c.     May require the parent to undergo psychiatric, psychological, or  
5           other treatment or counseling for the purpose of remedying the  
6           behaviors or conditions that are alleged in the petition or that  
7           contributed to the removal of the juvenile from the custody of  
8           that person.
- 9           d.     May order the parent to pay for treatment that is ordered for the  
10          juvenile or the parent.
- 11          e.     May, upon proper notice and hearing and a finding based on the  
12          criteria set out in G.S. 7B-1111, terminate the parental rights of  
13          the respondent parent."

14           Section 2. G.S. 7B-1101 reads as rewritten:

15   **"§ 7B-1101. Jurisdiction.**

16       The court shall have exclusive original jurisdiction to hear and determine any petition  
17   or motion relating to termination of parental rights to any juvenile who resides in, is  
18   found in, or is in the legal or actual custody of a county department of social services or  
19   licensed child-placing agency in the district at the time of filing of the ~~petition~~ petition or  
20   motion. The court shall have jurisdiction to terminate the parental rights of any parent  
21   irrespective of the age of the parent. The parent has the right to counsel and to appointed  
22   counsel in cases of indigency unless the parent waives the right. The fees of appointed  
23   counsel shall be borne by the Administrative Office of the Courts. In addition to the right  
24   to appointed counsel set forth above, a guardian ad litem shall be appointed in accordance  
25   with the provisions of G.S. 1A-1, Rule 17, to represent a parent in the following cases:

- 26           (1)   Where it is alleged that a parent's rights should be terminated pursuant  
27           to G.S. 7B-1111(6); or
- 28           (2)   Where the parent is under the age of 18 years.

29   The fees of the guardian ad litem shall be borne by the Administrative Office of the  
30   Courts when the court finds that the respondent is indigent. In other cases the fees of the  
31   court-appointed guardian ad litem shall be a proper charge against the respondent if the  
32   respondent does not secure private legal counsel. Provided, that before exercising  
33   jurisdiction under this Article, the court shall find that it would have jurisdiction to make  
34   a child-custody determination under the provisions of G.S. 50A-201, 50A-203, or 50A-  
35   204. Provided, further, that the clerk of superior court shall have jurisdiction for  
36   adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of the General Statutes  
37   generally."

38           Section 3. G.S. 7B-1102 reads as rewritten:

39   **"§ 7B-1102. Pending child abuse, neglect, or dependency ~~hearings~~ proceedings.**

40   ~~When a juvenile is currently within the jurisdiction of the district court based upon an~~  
41   ~~abuse, neglect, or dependency proceeding, a petition for termination of parental rights to~~  
42   ~~that juvenile may be filed as a motion in the cause in the abuse, neglect, or dependency~~  
43   ~~proceeding. Any parent of that juvenile who was previously served in the abuse, neglect,~~

1 ~~or dependency proceeding in accordance with G.S. 7B-407 shall be served with the~~  
2 ~~petition to terminate parental rights in accordance with G.S. 1A-1, Rule 5.~~

3 (a) When the district court is exercising jurisdiction over a juvenile and the  
4 juvenile's parent in an abuse, neglect, or dependency proceeding, a person or agency  
5 specified in G.S. 7B-1103(a) may file in that proceeding a motion for termination of the  
6 parent's rights in relation to the juvenile.

7 (b) A motion pursuant to subsection (a) of this section and the notice required by  
8 G.S. 7B-1106.1 shall be served in accordance with G.S. 1A-1, Rule 5(b), except:

9 (1) Service must be in accordance with G.S. 1A-1, Rule 4, if the person or  
10 agency to be served was not served originally with summons, or by  
11 published notice if service was by publication, that included notice  
12 substantially in conformity with the notice required by G.S. 7B-  
13 406(b)(4)e.

14 (2) In any case, the court may order that service of the motion and notice be  
15 made pursuant to G.S. 1A-1, Rule 4.

16 The parent of the juvenile shall not be deemed to be under disability even though the  
17 parent is a minor.

18 (c) When a petition for termination of parental rights is filed in the same district in  
19 which there is pending an abuse, neglect, or dependency proceeding involving the same  
20 juvenile, the court on its own motion or motion of a party may consolidate the action  
21 pursuant to G.S. 1A-1, Rule 42."

22 Section 4. G.S. 7B-1103 reads as rewritten:

23 **"§ 7B-1103. Who may ~~petition.~~ file a petition or motion.**

24 (a) A petition ~~or motion~~ to terminate the parental rights of either or both parents to  
25 his, her, or their minor juvenile may only be filed ~~by:~~ by one or more of the following:

26 (1) Either parent seeking termination of the right of the other ~~parent;~~ or  
27 parent.

28 (2) Any person who has been judicially appointed as the guardian of the  
29 person of the ~~juvenile;~~ or juvenile.

30 (3) Any county department of social services, consolidated county human  
31 services agency, or licensed child-placing agency to whom custody of  
32 the juvenile has been given by a court of competent ~~jurisdiction;~~ or  
33 jurisdiction.

34 (4) Any county department of social services, consolidated county human  
35 services agency, or licensed child-placing agency to which the juvenile  
36 has been surrendered for adoption by one of the parents or by the  
37 guardian of the person of the juvenile, pursuant to G.S. ~~48-3-701;~~ or 48-  
38 3-701.

39 (5) Any person with whom the juvenile has resided for a continuous period  
40 of two years or more next preceding the filing of the ~~petition;~~ or petition  
41 or motion.

42 (6) Any guardian ad litem appointed to represent the minor juvenile  
43 pursuant to G.S. 7B-601 who has not been relieved of this ~~responsibility~~

1 ~~and who has served in this capacity for at least one continuous year; or~~  
2 ~~responsibility.~~

3 (7) Any person who has filed a petition for adoption pursuant to Chapter 48  
4 of the General Statutes.

5 (b) Any person or agency that may file a petition under subsection (a) of this  
6 section may intervene in a pending abuse, neglect, or dependency proceeding for the  
7 purpose of filing a motion to terminate parental rights."

8 Section 5. G.S. 7B-1104 reads as rewritten:

9 "**§ 7B-1104. Petition-Petition or motion.**

10 The ~~petition~~ petition, or motion pursuant to G.S. 7B-1102, shall be verified by the  
11 petitioner or movant and shall be entitled 'In Re (last name of ~~juvenile~~)', juvenile), a  
12 minor ~~juvenile; juvenile~~'; and shall set forth such of the following facts as are known; and  
13 with respect to the facts which are unknown the petitioner or movant shall so state:

14 (1) The name of the juvenile as it appears on the juvenile's birth certificate,  
15 the date and place of birth, and the county where the juvenile is  
16 presently residing.

17 (2) The name and address of the petitioner or movant and facts sufficient to  
18 identify the petitioner or movant as one ~~entitled to petition under G.S. 7B-~~  
19 ~~1103-~~ authorized by G.S. 7B-1103 to file a petition or motion.

20 (3) The name and address of the parents of the juvenile. If the name or  
21 address of one or both parents is unknown to the ~~petitioner, petitioner or~~  
22 movant, the petitioner or movant shall set forth with particularity the  
23 petitioner's or movant's efforts to ascertain the identity or whereabouts  
24 of the parent or parents. The information may be contained in an  
25 affidavit attached to the petition or motion and incorporated therein by  
26 reference.

27 (4) The name and address of any person who has been judicially appointed  
28 as guardian of the person of the ~~juvenile pursuant to the provisions of~~  
29 ~~Chapter 35A of the General Statutes, or of G.S. 7B-600-~~ juvenile.

30 (5) The name and address of any person or agency to whom custody of the  
31 juvenile has been given by a court of this or any other state; and a copy  
32 of the custody order shall be attached to the ~~petition-petition or motion.~~

33 (6) Facts that are sufficient to warrant a determination that one or more of  
34 the grounds for terminating parental rights exist.

35 (7) That the petition or motion has not been filed to circumvent the  
36 provisions of Article 2 of Chapter 50A of the General Statutes, the  
37 Uniform Child-Custody Jurisdiction and Enforcement Act."

38 Section 6. Article 11 of Chapter 7B of the General Statutes is amended by  
39 adding a new section to read:

40 "**§ 7B-1106.1. Notice in pending child abuse, neglect, or dependency cases.**

41 (a) Upon the filing of a motion pursuant to G.S. 7B-1102, the movant shall prepare  
42 a notice directed to each of the following persons or agency, not otherwise a movant:

43 (1) The parents of the juvenile.

- 1           (2) Any person who has been judicially appointed as guardian of the person  
2           of the juvenile.
- 3           (3) The custodian of the juvenile appointed by a court of competent  
4           jurisdiction.
- 5           (4) Any county department of social services or licensed child-placing  
6           agency to whom a juvenile has been released by one parent pursuant to  
7           Part 7 of Article 3 of Chapter 48 of the General Statutes or any county  
8           department of social services to whom placement responsibility for the  
9           juvenile has been given by a court of competent jurisdiction.
- 10          (5) The juvenile's guardian ad litem if one has been appointed pursuant to  
11          G.S. 7B-601 and has not been relieved of responsibility.
- 12          (6) The juvenile, if the juvenile is 12 years of age or older at the time the  
13          motion is filed.

14          Provided, no notice need be directed to or served upon any parent who has previously  
15          surrendered the juvenile to a county department of social services or licensed child-  
16          placing agency nor to any parent who has consented to the adoption of the juvenile by the  
17          movant. The notice shall notify the person or agency to whom it is directed to file a  
18          written response within 30 days after service of the motion and notice. Service of the  
19          motion and notice shall be completed as provided under G.S. 7B-1102(b).

20          (b) The notice required by subsection (a) of this section shall include all of the  
21          following:

- 22               (1) The name of the minor juvenile.
- 23               (2) Notice that a written response to the motion must be filed with the clerk  
24               within 30 days after service of the motion and notice, or the parent's  
25               rights may be terminated.
- 26               (3) Notice that any attorney appointed previously to represent the parent in  
27               the abuse, neglect, or dependency proceeding will continue to represent  
28               the parents unless otherwise ordered by the court.
- 29               (4) Notice that if the parent is indigent, the parent is entitled to appointed  
30               counsel and if the parent is not already represented by appointed counsel  
31               the parent may contact the clerk immediately to request counsel.
- 32               (5) Notice that the date, time, and place of hearing will be mailed by the  
33               clerk upon filing of the response or 30 days from the date of service if  
34               no response is filed.
- 35               (6) Notice of the purpose of the hearing and notice that the parents may  
36               attend the termination hearing.

37          (c) If a county department of social services, not otherwise a movant, is served  
38          with a motion seeking termination of a parent's rights, the director shall file a written  
39          response and shall be deemed a party to the proceeding."

40          Section 7. G.S. 7B-1107 reads as rewritten:

41          "**§ 7B-1107. Failure of respondents to answer- parent to answer or respond.**

42          Upon the failure of ~~the respondents~~ a respondent parent to file written answer to the  
43          petition or written response to the motion ~~with the court~~ within 30 days after service of the

1 summons and ~~petition, petition or notice and motion,~~ or within the time period established  
2 for a defendant's reply by G.S. 1A-1, Rule 4(j1) if service is by publication, the court  
3 shall issue an order terminating all parental and custodial rights of ~~the respondent or~~  
4 ~~respondents~~ that parent with respect to the juvenile; provided the court shall order a  
5 hearing on the petition or motion and may examine the petitioner or movant or others on  
6 the facts alleged in the ~~petition, petition or motion.~~"

7 Section 8. G.S. 7B-1108 reads as rewritten:

8 "**§ 7B-1108. ~~Answer of respondents.~~ Answer or response of parent.**

9 (a) Any respondent may file a written answer to the ~~petition, petition or written~~  
10 response to the motion. The answer or response shall admit or deny the allegations of the  
11 petition or motion and shall set forth the name and address of the answering respondent  
12 or the respondent's attorney.

13 (b) If an answer or response denies any material allegation of the ~~petition, petition~~  
14 or motion, the court shall appoint a guardian ad litem for the juvenile to represent the best  
15 interests of the juvenile, unless the petition or motion was filed by the guardian ad litem  
16 pursuant to G.S. ~~7B-1103, 7B-1103,~~ or a guardian ad litem has already been appointed  
17 pursuant to G.S. 7B-601. A licensed attorney shall be appointed to assist those guardians  
18 ad litem who are not attorneys licensed to practice in North Carolina. The appointment,  
19 duties, and payment of the guardian ad litem shall be the same as in G.S. 7B-601 and  
20 G.S. 7B-603. The court shall conduct a special hearing after notice of not less than 10  
21 days nor more than 30 days to the ~~petitioner, petitioner or movant,~~ the answering  
22 respondent, respondent who answered or responded, and the guardian ad litem for the  
23 juvenile to determine the issues raised by the petition and ~~answer, answer or motion and~~  
24 response.

25 Notice of the hearing shall be deemed to have been given upon the depositing thereof  
26 in the United States mail, first-class postage prepaid, and addressed to the ~~petitioner,~~  
27 petitioner or movant, respondent, and guardian ad litem or their counsel of record, at the  
28 addresses appearing in the petition or motion and responsive pleading.

29 (c) In proceedings under this Article, the appointment of a guardian ad litem shall  
30 not be required except, as provided above, in cases in which an answer or response is  
31 filed denying material allegations, or as required under G.S. 7B-1101; but the court may,  
32 in its discretion, appoint a guardian ad litem for a juvenile, either before or after  
33 determining the existence of grounds for termination of parental rights, in order to assist  
34 the court in determining the best interests of the juvenile.

35 (d) If a guardian ad litem has previously been appointed for the juvenile under  
36 G.S. 7B-601, and the appointment of a guardian ad litem could also be made under this  
37 section, the guardian ad litem appointed under G.S. 7B-601, and any attorney appointed  
38 to assist that guardian, shall also represent the juvenile in all proceedings under this  
39 Article and shall have the duties and payment of a guardian ad litem appointed under this  
40 section, unless the court determines that the best interests of the juvenile require  
41 otherwise."

42 Section 9. G.S. 7B-1109 (b) and (f) read as rewritten:

1           (b)       The court shall inquire whether the juvenile's parents are present at  
2 the hearing and, if so, whether they are represented by counsel. If the parents are not  
3 represented by counsel, the court shall inquire whether the parents desire counsel but are  
4 indigent. In the event that the parents desire counsel but are indigent as defined in G.S.  
5 7A-450(a) and are unable to obtain counsel to represent them, the court shall appoint  
6 counsel to represent them. The court shall grant the parents such an extension of time as  
7 is reasonable to permit their appointed counsel to prepare their defense to the termination  
8 ~~petition.~~petition or motion. In the event that the parents do not desire counsel and are  
9 present at the hearing, the court shall examine each parent and make findings of fact  
10 sufficient to show that the waivers were knowing and voluntary. This examination shall  
11 be reported as provided in G.S. 7A-198.

12       ...

13       (f)       The burden in such proceedings shall be upon the petitioner or movant and all  
14 findings of fact shall be based on clear, cogent, and convincing evidence. No ~~husband-~~  
15 ~~wife or physician-patient privilege~~privilege, except the attorney-client privilege, shall be  
16 grounds for excluding any evidence regarding the existence or nonexistence of any  
17 circumstance authorizing the termination of parental ~~rights.~~rights, both as the privilege  
18 relates to the competency of the witness and as it relates to the exclusion of confidential  
19 communications."

20           Section 10. G.S. 7B-1110 reads as rewritten:

21 **"§ 7B-1110. Disposition.**

22       (a)       Should the court determine that any one or more of the conditions authorizing  
23 a termination of the parental rights of a parent exist, the court shall issue an order  
24 terminating the parental rights of such parent with respect to the juvenile unless the court  
25 shall further determine that the best interests of the juvenile require that the parental  
26 rights of the parent not be terminated.

27       (b)       Should the court conclude that, irrespective of the existence of one or more  
28 circumstances authorizing termination of parental rights, the best interests of the juvenile  
29 require that rights should not be terminated, the court shall dismiss the ~~petition,~~petition or  
30 deny the motion, but only after setting forth the facts and conclusions upon which the  
31 dismissal or denial is based.

32       (c)       Should the court determine that circumstances authorizing termination of  
33 parental rights do not exist, the court shall dismiss the ~~petition,~~petition or deny the  
34 motion, making appropriate findings of fact and conclusions.

35       (d)       Counsel for the petitioner or movant shall serve a copy of the termination of  
36 parental rights order upon the guardian ad litem for the juvenile, if any, and upon the  
37 juvenile if the juvenile is 12 years of age or older.

38       (e)       The court may tax the cost of the proceeding to any party.

39       (f)       The court is not bound by the usual rules of evidence at disposition."

40           Section 11. G.S. 7B-1111 reads as rewritten:

41 **"§ 7B-1111. Grounds for terminating parental rights.**

42       (a)       The court may terminate the parental rights upon a finding of one or more of  
43 the following:

- 1 (1) The parent has abused or neglected the juvenile. The juvenile shall be  
2 deemed to be abused or neglected if the court finds the juvenile to be an  
3 abused juvenile within the meaning of G.S. 7B-101 or a neglected  
4 juvenile within the meaning of G.S. 7B-101.
- 5 (2) The parent has willfully left the juvenile in foster care or placement  
6 outside the home for more than 12 months without showing to the  
7 satisfaction of the court that reasonable progress under the  
8 circumstances has been made within 12 months in correcting those  
9 conditions which led to the removal of the juvenile. Provided, however,  
10 that no parental rights shall be terminated for the sole reason that the  
11 parents are unable to care for the juvenile on account of their poverty.
- 12 (3) The juvenile has been placed in the custody of a county department of  
13 social services, a licensed child-placing agency, a child-caring  
14 institution, or a foster home, and the parent, for a continuous period of  
15 six months next preceding the filing of the ~~petition~~, petition or motion,  
16 has willfully failed for such period to pay a reasonable portion of the  
17 cost of care for the juvenile although physically and financially able to  
18 do so.
- 19 (4) One parent has been awarded custody of the juvenile by judicial decree  
20 or has custody by agreement of the parents, and the other parent whose  
21 parental rights are sought to be terminated has for a period of one year  
22 or more next preceding the filing of the petition or motion willfully  
23 failed without justification to pay for the care, support, and education of  
24 the juvenile, as required by said decree or custody agreement.
- 25 (5) The father of a juvenile born out of wedlock has not, prior to the filing  
26 of a petition or motion to terminate parental rights:
- 27 a. Established paternity judicially or by affidavit which has been  
28 filed in a central registry maintained by the Department of Health  
29 and Human Services; provided, the court shall inquire of the  
30 Department of Health and Human Services as to whether such an  
31 affidavit has been so filed and shall incorporate into the case  
32 record the Department's certified reply; or
- 33 b. Legitimated the juvenile pursuant to provisions of G.S. 49-10 or  
34 filed a petition for this specific purpose; or
- 35 c. Legitimated the juvenile by marriage to the mother of the  
36 juvenile; or
- 37 d. Provided substantial financial support or consistent care with  
38 respect to the juvenile and mother.
- 39 (6) That the parent is incapable of providing for the proper care and  
40 supervision of the juvenile, such that the juvenile is a dependent  
41 juvenile within the meaning of G.S. 7B-101, and that there is a  
42 reasonable probability that such incapability will continue for the  
43 foreseeable future. Incapability under this subdivision may be the result

1 of substance abuse, mental retardation, mental illness, organic brain  
2 syndrome, or any other similar cause or condition.

3 (7) The parent has willfully abandoned the juvenile for at least six  
4 consecutive months immediately preceding the filing of the ~~petition~~  
5 petition or motion.

6 (8) The parent has committed murder or voluntary manslaughter of another  
7 child of the parent or other child residing in the home; has aided,  
8 abetted, attempted, conspired, or solicited to commit murder or  
9 voluntary manslaughter of the child, another child of the parent, or other  
10 child residing in the home; or has committed a felony assault that results  
11 in serious bodily injury to the child, another child of the parent, or other  
12 child residing in the home.

13 (9) The parental rights of the parent with respect to another child of the  
14 parent have been terminated involuntarily by a court of competent  
15 jurisdiction and the parent lacks the ability or willingness to establish a  
16 safe home.

17 (b) The burden in such proceedings shall be upon the petitioner or movant to  
18 prove the facts justifying such termination by clear and convincing evidence."

19 Section 12. G.S. 7B-1112 reads as rewritten:

20 "**§ 7B-1112. Effects of termination order.**

21 An order terminating the parental rights completely and permanently terminates all  
22 rights and obligations of the parent to the juvenile and of the juvenile to the parent arising  
23 from the parental relationship, except that the juvenile's right of inheritance from the  
24 juvenile's parent shall not terminate until a final order of adoption is issued. The parent is  
25 not thereafter entitled to notice of proceedings to adopt the juvenile and may not object  
26 thereto or otherwise participate therein:

27 (1) If the juvenile had been placed in the custody of or released for adoption  
28 by one parent to a county department of social services or licensed  
29 child-placing agency and is in the custody of the agency at the time of  
30 the filing of the ~~petition~~, petition or motion, including a petition or  
31 motion filed pursuant to G.S. 7B-1103(6), that agency shall, upon entry  
32 of the order terminating parental rights, acquire all of the rights for  
33 placement of the juvenile as the agency would have acquired had the  
34 parent whose rights are terminated released the juvenile to that agency  
35 pursuant to the provisions of Part 7 of Article 3 of Chapter 48 of the  
36 General Statutes, including the right to consent to the adoption of the  
37 juvenile.

38 (2) Except as provided in subdivision (1) above, upon entering an order  
39 terminating the parental rights of one or both parents, the court may  
40 place the juvenile in the custody of the ~~petitioner~~, petitioner or movant,  
41 or some other suitable person, or in the custody of the department of  
42 social services or licensed child-placing agency, as may appear to be in  
43 the best interests of the juvenile."

1           Section 13. This act becomes effective October 1, 2000.