

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1298*

Short Title: Clarify Juvenile Procedures.

(Public)

Sponsors: Senator Wellons.

Referred to: Judiciary I.

May 18, 2000

A BILL TO BE ENTITLED

**AN ACT TO AMEND THE PROCEDURES FOR ABUSED, NEGLECTED, AND
DEPENDENT JUVENILES.**

The General Assembly of North Carolina enacts:

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

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

- (1) Notice of the nature of the proceeding;
- (2) Notice of any right to counsel and information about how to seek the appointment of counsel prior to a hearing;
- (3) Notice that, if the court determines at the hearing that the allegations of the petition are true, the court will conduct a dispositional hearing to consider the needs of the juvenile and enter an order designed to meet those needs and the objectives of the State; and
- (4) Notice that the dispositional order or a subsequent order:
 - a. May remove the juvenile from the custody of the parent, guardian, or custodian.
 - b. May require that the juvenile receive medical, psychiatric, psychological, or other treatment and that the parent participate in the treatment.

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

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

12 **"§ 7B-1101. Jurisdiction.**

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

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

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

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

36 **"§ 7B-1102. Pending child abuse, neglect, or dependency hearings.**

37 When a juvenile is currently within the jurisdiction of the district court based upon an
38 abuse, neglect, or dependency proceeding, a ~~petition~~ any proceeding for termination of
39 parental rights to that juvenile ~~may~~ shall be filed as a motion in the cause in the abuse,
40 neglect, or dependency proceeding. Any parent of that juvenile who was previously
41 served in the abuse, neglect, or dependency proceeding in accordance with G.S. 7B-407
42 shall be served with the ~~petition~~ motion to terminate parental rights in accordances with
43 G.S. 1A-1, Rule 5."

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

2 **"§ 7B-1103. Who may petition.**

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

- 5 (1) Either parent seeking termination of the right of the other ~~parent~~, or
6 parent.
- 7 (2) Any person who has been judicially appointed as the guardian of the
8 person of the ~~juvenile~~, or juvenile.
- 9 (3) Any county department of social services, consolidated county human
10 services agency, or licensed child-placing agency to whom custody of
11 the juvenile has been given by a court of competent ~~jurisdiction~~, or
12 jurisdiction.
- 13 (4) Any county department of social services, consolidated county human
14 services agency, or licensed child-placing agency to which the juvenile
15 has been surrendered for adoption by one of the parents or by the
16 guardian of the person of the juvenile, pursuant to G.S. ~~48-3-701~~, or 48-
17 3-701.
- 18 (5) Any person with whom the juvenile has resided for a continuous period
19 of two years or more next preceding the filing of the ~~petition~~, or petition.
- 20 (6) Any guardian ad litem appointed to represent the minor juvenile
21 pursuant to G.S. 7B-601 who has not been relieved of this ~~responsibility~~
22 ~~and who has served in this capacity for at least one continuous year~~, or
23 responsibility.
- 24 (7) Any person who has filed a petition for adoption pursuant to Chapter 48
25 of the General Statutes.

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

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

30 **"§ 7B-1104. Petition.**

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

- 35 (1) The name of the juvenile as it appears on the juvenile's birth certificate,
36 the date and place of birth, and the county where the juvenile is
37 presently residing.
- 38 (2) The name and address of the petitioner or movant and facts sufficient to
39 identify the petitioner or movant as one entitled to petition under G.S.
40 ~~7B-1103~~. 7B-1103 or to file a motion under G.S. 7B-1102.
- 41 (3) The name and address of the parents of the juvenile. If the name or
42 address of one or both parents is unknown to the ~~petitioner~~, petitioner or
43 movant, the petitioner or movant shall set forth with particularity the

petitioner's or movant's efforts to ascertain the identity or whereabouts of the parent or parents. The information may be contained in an affidavit attached to the petition or motion and incorporated therein by reference.

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

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

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

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

Section 6. G.S. 7B-1105 reads as rewritten:

"§ 7B-1105. Preliminary hearing; unknown parent.

(a) If either the name or identity of any parent whose parental rights the petitioner or movant seeks to terminate is not known to the ~~petitioner~~ petitioner or movant, the court shall, within 10 days from the date of filing of the ~~petition~~ petition or motion, or during the next term of court in the county where the petition or motion is filed if there is no court in the county in that 10-day period, conduct a preliminary hearing to ascertain the name or identity of such parent.

(b) The court may, in its discretion, inquire of any known parent of the juvenile concerning the identity of the unknown parent and may appoint a guardian ad litem for the unknown parent to conduct a diligent search for the parent. Should the court ascertain the name or identity of the parent, it shall enter a finding to that effect; and the parent shall be summoned to appear in accordance with G.S. 7B-1106.

(c) Notice of the preliminary hearing need be given only to the petitioner or movant who shall appear at the hearing, but the court may cause summons to be issued to any person directing the person to appear and testify.

(d) If the court is unable to ascertain the name or identity of the unknown parent, the court shall order publication of notice of the termination proceeding and shall specifically order the place or places of publication and the contents of the notice which the court concludes is most likely to identify the juvenile to such unknown parent. The notice shall be published in a newspaper qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and published in the counties directed by the court, once a week for three successive weeks. Provided, further, the notice shall:

- (1) Designate the court in which the petition or motion is pending;
- (2) Be directed to "the father (mother) (father and mother) of a male (female) juvenile born on or about..... in

(date)

County, ,

(city)
....., respondent;"
(State)

- (3) Designate the docket number and title of the case (the court may direct the actual name of the title be eliminated and the words "In Re Doe"substituted therefor);
(4) State that a petition or motion seeking to terminate the parental rights of the respondent has been filed;
(5) Direct the respondent to answer the petition or motion within 30 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of first publication of notice and be substantially in the form as set forth in G.S. 1A-1, Rule 4(j1); and
(6) State that the respondent's parental rights to the juvenile will be terminated upon failure to answer the petition or motion within the time prescribed.

Upon completion of the service, an affidavit of the publisher shall be filed with the court.

(e) The court shall issue the order required by subsections (b) and (d) of this section within 30 days from the date of the preliminary hearing unless the court shall determine that additional time for investigation is required.

(f) Upon the failure of the parent served by publication pursuant to subsection (d) of this section to answer the petition or respond to the motion within the time prescribed, the court shall issue an order terminating all parental rights of the unknown parent."

Section 7. G.S. 7B-1106(a) reads as rewritten:

"(a) Except as provided in G.S. 7B-1105, upon the filing of the petition, the court shall cause a summons to be issued. The summons shall be directed to each of the following persons or agency, not otherwise a party petitioner, who shall be named as respondents:

- (1) The parents of the juvenile; juvenile.
(2) Any person who has been judicially appointed as guardian ad litem pursuant to G.S. 7B-601 or guardian of the person of the juvenile; juvenile.
(3) The custodian of the juvenile appointed by a court of competent jurisdiction; jurisdiction.
(4) Any county department of social services or licensed child-placing agency to whom a juvenile has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General Statutes or any county department of social services to whom placement responsibility for the child has been given by a court of competent jurisdiction; and jurisdiction.
(5) The juvenile, if the juvenile is 12 years of age or older at the time the petition is filed.

1 Provided, no summons need be directed to or served upon any parent who has
2 previously surrendered the juvenile to a county department of social services or licensed
3 child-placing ~~agency~~ agency, nor to any parent who has consented to the adoption of the
4 juvenile by the ~~petitioner~~ petitioner, nor to any parent who has been served pursuant to
5 G.S. 7B-407 when a motion is filed in a pending child abuse, neglect, or dependency
6 proceeding pursuant to G.S. 7B-1102. The summons shall notify the respondents to file a
7 written answer within 30 days after service of the summons and petition. Service of the
8 summons shall be completed as provided under the procedures established by G.S. 1A-1,
9 Rule 4(j); but the parent of the juvenile shall not be deemed to be under disability even
10 though the parent is a minor."

11 Section 8. Article 11 of Chapter 7B of the General Statutes is amended by
12 adding a new section to read:

13 **"§ 7B-1106.1. Issuance of notice in pending child abuse, neglect, or dependency**
14 **cases.**

15 (a) Upon the filing of a motion pursuant to G.S. 7B-1102, the movant shall issue a
16 notice to each of the following persons or agency, not otherwise a party petitioner:

- 17 (1) The parents of the juvenile.
- 18 (2) Any person who has been judicially appointed as guardian ad litem
19 pursuant to G.S. 7B-601 or guardian of the person of the juvenile.
- 20 (3) The custodian of the juvenile appointed by a court of competent
21 jurisdiction.
- 22 (4) Any county department of social services or licensed child-placing
23 agency to whom a juvenile has been released by one parent pursuant to
24 Part 7 of Article 3 of Chapter 48 of the General Statutes or any county
25 department of social services to whom placement responsibility for the
26 child has been given by a court of competent jurisdiction.
- 27 (5) The juvenile, if the juvenile is 12 years of age or older at the time the
28 motion is filed.

29 Provided, no notice need be directed to or served upon any parent who has previously
30 surrendered the juvenile to a county department of social services or licensed child-
31 placing agency nor to any parent who has consented to the adoption of the juvenile by the
32 movant. The notice shall notify the respondents to file a written response within 30 days
33 after service of the notice and motion. Service of the notice shall be completed as
34 provided under the procedures established by G.S. 1A-1, Rule 5, but the parent of the
35 juvenile shall not be deemed to be under disability even though the parent is a minor.

36 (b) The notice shall be issued for the purpose of terminating parental rights
37 pursuant to the provisions of subsection (a) of this section and shall include all of the
38 following:

- 39 (1) The name of the minor juvenile.
- 40 (2) Notice that a written response to the motion must be filed with the
41 juvenile clerk within 30 days after service of the notice and motion, or
42 the parent's rights may be terminated.

1 (3) Notice that if they are indigent, the parents are entitled to appointed
2 counsel; the parents may contact the clerk immediately to request
3 counsel.

4 (4) Notice that any attorney appointed previously will represent the parents
5 in this proceeding unless otherwise ordered by the court.

6 (5) Notice that the date, time, and place of hearing will be mailed by the
7 clerk upon filing of the response or 30 days from the date of service if
8 no response is filed.

9 (6) Notice of the purpose of the hearing and notice that the parents may
10 attend the termination hearing.

11 (c) If a county department of social services, not otherwise a party petitioner, is
12 served with a motion alleging that the parental rights of the parent should be terminated
13 pursuant to G.S. 7B-1111, the department shall file a written response and shall be
14 deemed a party to the proceeding."

15 Section 9. G.S. 7B-1107 reads as rewritten:

16 **"§ 7B-1107. Failure of respondents to answer.**

17 Upon the failure of the respondents to file written answer to the petition or a written
18 response to the motion with the court within 30 days after service of the summons and
19 ~~petition, petition or notice and motion,~~ or within the time period established for a
20 defendant's reply by G.S. 1A-1, Rule 4(j1) if service is by publication, the court
21 shall issue an order terminating all parental and custodial rights of the respondent or
22 respondents with respect to the juvenile; provided the court shall order a hearing on the
23 petition or motion and may examine the petitioner or movant or others on the facts
24 alleged in the ~~petition, petition or motion.~~

25 Section 10. G.S. 7B-1108 reads as rewritten:

26 **"§ 7B-1108. Answer of respondents.**

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

31 (b) If an answer or response denies any material allegation of the ~~petition, petition~~
32 or motion, the court shall appoint a guardian ad litem for the juvenile to represent the best
33 interests of the juvenile, unless the petition or motion was filed by the guardian ad litem
34 pursuant to G.S. ~~7B-1103, 7B-1102~~ or G.S. 7B-1103, or a guardian ad litem has already
35 been appointed pursuant to G.S. 7B-601. A licensed attorney shall be appointed to assist
36 those guardians ad litem who are not attorneys licensed to practice in North Carolina. The
37 appointment, duties, and payment of the guardian ad litem shall be the same as in G.S.
38 7B-601 and G.S. 7B-603. The court shall conduct a special hearing after notice of not less
39 than 10 days nor more than 30 days to the ~~petitioner, petitioner or movant,~~ the answering
40 respondent, and the guardian ad litem for the juvenile to determine the issues raised by
41 the petition and ~~answer, answer or motion and response.~~

42 Notice of the hearing shall be deemed to have been given upon the depositing thereof
43 in the United States mail, first-class postage prepaid, and addressed to the ~~petitioner,~~

1 petitioner or movant, respondent, and guardian ad litem or their counsel of record, at the
2 addresses appearing in the petition or motion and responsive pleading.

3 (c) In proceedings under this Article, the appointment of a guardian ad litem shall
4 not be required except, as provided above, in cases in which an answer or response is
5 filed denying material allegations, or as required under G.S. ~~7B-1101~~; 7B-1101, or in
6 cases where the judicial proceeding to terminate parental rights is a motion in a pending
7 child abuse, neglect, or dependency proceeding and a guardian ad litem has been
8 appointed pursuant to G.S. 7B-601; but the court may, in its discretion, appoint a
9 guardian ad litem for a juvenile, either before or after determining the existence of
10 grounds for termination of parental rights, in order to assist the court in determining the
11 best interests of the juvenile.

12 (d) If a guardian ad litem has previously been appointed for the juvenile under
13 G.S. 7B-601, and the appointment of a guardian ad litem could also be made under this
14 section, the guardian ad litem appointed under G.S. 7B-601, and any attorney appointed
15 to assist that guardian, shall also represent the juvenile in all proceedings under this
16 Article and shall have the duties and payment of a guardian ad litem appointed under this
17 section, unless the court determines that the best interests of the juvenile require
18 otherwise."

19 Section 11. G.S. 7B-1109(f) reads as rewritten:

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

27 Section 12. G.S. 7B-1110 reads as rewritten:

28 "**§ 7B-1110. Disposition.**

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

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

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

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

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

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

6 Section 13. G.S. 7B-1111(b) reads as rewritten:

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

9 Section 14. G.S. 7B-1112 reads as rewritten:

10 "**§ 7B-1112. Effects of termination order.**

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

17 (1) If the juvenile had been placed in the custody of or released for adoption
18 by one parent to a county department of social services or licensed
19 child-placing agency and is in the custody of the agency at the time of
20 the filing of the ~~petition,~~ petition or motion, including a petition filed
21 pursuant to G.S. 7B-1103(6), that agency shall, upon entry of the order
22 terminating parental rights, acquire all of the rights for placement of the
23 juvenile as the agency would have acquired had the parent whose rights
24 are terminated released the juvenile to that agency pursuant to the
25 provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes,
26 including the right to consent to the adoption of the juvenile.

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

33 Section 15. This act becomes effective October 1, 2000.