

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1048
Committee Substitute Favorable 4/24/03

Short Title: Juvenile Code Revisions/Ct. Improvement Proj.

(Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE REVISIONS TO THE JUVENILE CODE AS RECOMMENDED
BY THE NORTH CAROLINA JUVENILE COURT IMPROVEMENT PROJECT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-304 is repealed.

SECTION 2. G.S. 7B-808 reads as rewritten:

"§ 7B-808. **Predisposition ~~investigation and~~ report.**

(a) The court shall proceed to the dispositional hearing upon receipt of sufficient social, medical, psychiatric, psychological, and educational information. No predisposition report shall be submitted to or considered by the court prior to the completion of the adjudicatory hearing. The court may proceed with the dispositional hearing without receiving a predisposition report if the court makes a written finding that a report is not necessary.~~The court shall permit the guardian ad litem or juvenile to inspect any predisposition report to be considered by the court in making the disposition unless the court determines that disclosure would seriously harm the juvenile's treatment or would violate a promise of confidentiality. Opportunity to offer evidence in rebuttal shall be afforded the guardian ad litem or juvenile, and the juvenile's parent, guardian, or custodian at the dispositional hearing. The court may order counsel not to disclose parts of the report to the guardian ad litem or juvenile, or the juvenile's parent, guardian, or custodian if the court finds that disclosure would seriously harm the treatment of the juvenile or would violate a promise of confidentiality given to a source of information.~~

(b) The director of the department of social services shall prepare the predisposition report for the court containing the results of any mental health evaluation of a juvenile under G.S. 7B-503, a placement plan, and a treatment plan the director deems appropriate to meet the juvenile's needs.

(c) The chief district court judge may adopt local rules or make an administrative order addressing the sharing of the reports among parties, including an order that prohibits disclosure of the report to the juvenile if the court determines that disclosure

1 would not be in the best interest of the juvenile. Such local rules or administrative order
2 may not:

3 (1) Prohibit a party entitled by law to receive confidential information
4 from receiving that information.

5 (2) Allow disclosure of any confidential source protected by statute."

6 **SECTION 3.** G.S. 7B-1111(a)(6) reads as rewritten:

7 "(a) The court may terminate the parental rights upon a finding of one or more of
8 the following:

9 ...

10 (6) That the parent is incapable of providing for the proper care and
11 supervision of the juvenile, such that the juvenile is a dependent
12 juvenile within the meaning of G.S. 7B-101, and that there is a
13 reasonable probability that such incapability will continue for the
14 foreseeable future. Incapability under this subdivision may be the
15 result of substance abuse, mental retardation, mental illness, organic
16 brain syndrome, or any other ~~similar~~-cause or ~~condition~~-condition that
17 renders the parent unable or unavailable to parent the juvenile and the
18 parent lacks an appropriate alternative child care arrangement.

19"

20 **SECTION 4.** G.S. 7B-1101 reads as rewritten:

21 "**§ 7B-1101. Jurisdiction.**

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

33 (1) Where it is alleged that a parent's rights should be terminated pursuant
34 to ~~G.S. 7B-1111(6); or~~G.S. 7B-1111(6), and the incapability to provide
35 proper care and supervision pursuant to that provision is the result of
36 substance abuse, mental retardation, mental illness, organic brain
37 syndrome, or another similar cause or condition.

38 (2) Where the parent is under the age of 18 years.

39 The fees of the guardian ad litem shall be borne by the Office of Indigent Defense
40 Services when the court finds that the respondent is indigent. In other cases the fees of
41 the court-appointed guardian ad litem shall be a proper charge against the respondent if
42 the respondent does not secure private legal counsel. Provided, that before exercising
43 jurisdiction under this Article, the court shall find that it would have jurisdiction to
44 make a child-custody determination under the provisions of G.S. 50A-201, 50A-203, or

1 50A-204. Provided, further, that the clerk of superior court shall have jurisdiction for
2 adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of the General Statutes
3 generally."

4 **SECTION 5.** G.S. 7B-100 is amended by adding the following new
5 subdivision to read:

6 "This Subchapter shall be interpreted and construed so as to implement the
7 following purposes and policies:

8 ...

9 (5) To provide standards, consistent with the Adoption and Safe Families
10 Act of 1997, P.L. 105-89, for ensuring that the best interests of the
11 juvenile are of paramount consideration by the court and that when it
12 is not in the juvenile's best interest to be returned home, the juvenile
13 will be placed in a safe, permanent home within a reasonable amount
14 of time."

15 **SECTION 6.** Article 4 of Chapter 7B of the General Statutes is amended by
16 adding a new section to read:

17 **§ 7B-408. Copy of petition and notices to guardian ad litem.**

18 Immediately after a petition has been filed alleging that a juvenile is abused or
19 neglected, the clerk shall provide a copy of the petition and any notices of hearings to
20 the local guardian ad litem office."

21 **SECTION 7.** G.S. 7B-1108(b) reads as rewritten:

22 "(b) If an answer or response denies any material allegation of the petition or
23 motion, the court shall appoint a guardian ad litem for the juvenile to represent the best
24 interests of the juvenile, unless the petition or motion was filed by the guardian ad litem
25 pursuant to G.S. 7B-1103, or a guardian ad litem has already been appointed pursuant to
26 G.S. 7B-601. A licensed attorney shall be appointed to assist those guardians ad litem
27 who are not attorneys licensed to practice in North Carolina. The appointment, duties,
28 and payment of the guardian ad litem shall be the same as in G.S. 7B-601 and ~~G.S.~~
29 ~~7B-603.~~G.S. 7B-603, but in no event shall a guardian ad litem who is trained and
30 supervised by the guardian ad litem program be appointed to any case unless the
31 juvenile is or has been the subject of a petition for abuse, neglect, or dependency or with
32 good cause shown the local guardian ad litem program consents to the appointment. The
33 court shall conduct a special hearing after notice of not less than 10 days nor more than
34 30 days given by the petitioner or movant to the respondent who answered or
35 responded, and the guardian ad litem for the juvenile to determine the issues raised by
36 the petition and answer or motion and response.

37 Notice of the hearing shall be deemed to have been given upon the depositing
38 thereof in the United States mail, first-class postage prepaid, and addressed to the
39 respondent, and guardian ad litem or their counsel of record, at the addresses appearing
40 in the petition or motion and responsive pleading."

41 **SECTION 8.** G.S. 7B-1003 reads as rewritten:

42 **§ 7B-1003. Disposition pending appeal.**

43 Pending disposition of an appeal, the return of the juvenile to the custody of the
44 parent or guardian of the juvenile, with or without conditions, may issue unless the court

1 orders otherwise. When the court has found that a juvenile has suffered physical abuse
2 and that the individual responsible for the abuse has a history of violent behavior, the
3 court shall consider the opinion of the mental health professional who performed the
4 evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that
5 individual. For compelling reasons which must be stated in writing, the court may enter
6 a temporary order affecting the custody or placement of the juvenile as the court finds to
7 be in the best interests of the juvenile or the State. The provisions of subsections ~~(b)~~, ~~(e)~~,
8 ~~and (d)~~ (b) and (c) of G.S. 7B-905 shall apply to any order entered under this section
9 which provides for the placement or continued placement of a juvenile in foster care."

10 **SECTION 9.(a)** G.S. 7B-600 is amended by adding a new subsection to
11 read:

12 "(c) If the court appoints an individual guardian of the person pursuant to this
13 section, the court shall verify that the person being appointed as guardian of the juvenile
14 understands the legal significance of the appointment and will have adequate resources
15 to care appropriately for the juvenile."

16 **SECTION 9.(b)** G.S. 7B-903 is amended by adding a new subsection to
17 read:

18 "(c) If the court determines that the juvenile shall be placed in the custody of an
19 individual other than the parents, the court shall verify that the person receiving custody
20 of the juvenile understands the legal significance of the placement and will have
21 adequate resources to care appropriately for the juvenile."

22 **SECTION 9.(c)** G.S. 7B-906 is amended by adding a new subsection to
23 read:

24 "(g) If the court determines that the juvenile shall be placed in the custody of an
25 individual other than the parents or appoints an individual guardian of the person
26 pursuant to G.S. 7B-600, the court shall verify that the person receiving custody or
27 being appointed as guardian of the juvenile understands the legal significance of the
28 placement or appointment and will have adequate resources to care appropriately for the
29 juvenile."

30 **SECTION 9.(d)** G.S. 7B-907 is amended by adding a new subsection to
31 read:

32 "(f) If the court determines that the juvenile shall be placed in the custody of an
33 individual other than the parents or appoints an individual guardian of the person
34 pursuant to G.S. 7B-600, the court shall verify that the person receiving custody or
35 being appointed as guardian of the juvenile understands the legal significance of the
36 placement or appointment and will have adequate resources to care appropriately for the
37 juvenile."

38 **SECTION 10.** G.S. 14-16.10(1) reads as rewritten:

39 "The following definitions apply in this Article:

- 40 (1) Court officer. – Magistrate, clerk of superior court, acting clerk,
41 assistant or deputy clerk, judge, or justice of the General Court of
42 Justice; district attorney, assistant district attorney, or any other
43 attorney designated by the district attorney to act for the State or on
44 behalf of the district attorney; public defender or assistant defender;

1 court reporter; juvenile court counselor as defined in ~~G.S.~~
2 ~~7B-1501(18a)~~.G.S. 7B-1501(18a); any attorney or other individual
3 employed by or acting on behalf of the department of social services in
4 proceedings pursuant to Subchapter I of Chapter 7B of the General
5 Statutes; any attorney or other individual appointed pursuant to G.S.
6 7B-601 or G.S. 7B-1108 or employed by the Guardian ad Litem
7 Services Division of the Administrative Office of the Courts."

8 **SECTION 11.** Section 10 of this act becomes effective December 1, 2003,
9 and applies to offenses committed on or after that date. The remainder of this act is
10 effective when it becomes law.