

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 698
Committee Substitute Favorable 4/30/07
Senate Judiciary I (Civil) Committee Substitute Adopted 7/3/07

Short Title: Amend Child Welfare Laws/Comply W/Fed Laws.-AB (Public)

Sponsors:

Referred to:

March 15, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND EXISTING CHILD WELFARE LAWS TO COMPLY WITH
3 FEDERAL LAW AND REGULATIONS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 7B-506(b) reads as rewritten:

6 "(b) At a hearing to determine the need for continued custody, the court shall
7 receive testimony and shall allow the guardian ad litem, or juvenile, and the juvenile's
8 parent, guardian, custodian, or caretaker ~~an opportunity~~the right to introduce evidence,
9 to be heard in the person's own behalf, and to examine witnesses. The State shall bear
10 the burden at every stage of the proceedings to provide clear and convincing evidence
11 that the juvenile's placement in custody is necessary. The court shall not be bound by
12 the usual rules of evidence at such hearings."

13 **SECTION 2.** G.S. 7B-901 reads as rewritten:

14 "**§ 7B-901. Dispositional hearing.**

15 The dispositional hearing shall take place immediately following the adjudicatory
16 hearing and shall be concluded within 30 days of the conclusion of the adjudicatory
17 hearing. The dispositional hearing may be informal and the court may consider written
18 reports or other evidence concerning the needs of the juvenile. The juvenile and the
19 juvenile's parent, guardian, or custodian shall have ~~an opportunity~~the right to present
20 evidence, and they may advise the court concerning the disposition they believe to be in
21 the best interests of the juvenile. The court may consider any evidence, including
22 hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant,
23 reliable, and necessary to determine the needs of the juvenile and the most appropriate
24 disposition. The court may exclude the public from the hearing unless the juvenile
25 moves that the hearing be open, which motion shall be granted."

26 **SECTION 3.** G.S. 7B-906(a) reads as rewritten:

27 "(a) In any case where custody is removed from a parent, guardian, custodian, or
28 caretaker the court shall conduct a review hearing within 90 days from the date of the

1 dispositional hearing and shall conduct a review hearing within six months thereafter.
2 The director of social services shall make a timely request to the clerk to calendar each
3 review at a session of court scheduled for the hearing of juvenile matters. The clerk
4 shall give 15 days' notice of the review and its purpose to the parent, the juvenile, if 12
5 years of age or more, the guardian, any foster parent, relative, or preadoptive parent
6 providing care for the child, the custodian or agency with custody, the guardian ad
7 litem, and any other person or agency the court may specify, indicating the court's
8 impending review. Nothing in this subsection shall be construed to make any foster
9 parent, relative, or preadoptive parent a party to the proceeding solely based on
10 receiving notice and ~~an opportunity~~the right to be heard."

11 **SECTION 4.** G.S. 7B-907(a) reads as rewritten:

12 "(a) In any case where custody is removed from a parent, guardian, custodian, or
13 caretaker, the judge shall conduct a review hearing designated as a permanency
14 planning hearing within 12 months after the date of the initial order removing custody,
15 and the hearing may be combined, if appropriate, with a review hearing required by
16 G.S. 7B-906. The purpose of the permanency planning hearing shall be to develop a
17 plan to achieve a safe, permanent home for the juvenile within a reasonable period of
18 time. Subsequent permanency planning hearings shall be held at least every six months
19 thereafter, or earlier as set by the court, to review the progress made in finalizing the
20 permanent plan for the juvenile, or if necessary, to make a new permanent plan for the
21 juvenile. The Director of Social Services shall make a timely request to the clerk to
22 calendar each permanency planning hearing at a session of court scheduled for the
23 hearing of juvenile matters. The clerk shall give 15 days' notice of the hearing and its
24 purpose to the parent, the juvenile if 12 years of age or more, the guardian, any foster
25 parent, relative, or preadoptive parent providing care for the child, the custodian or
26 agency with custody, the guardian ad litem, and any other person or agency the court
27 may specify, indicating the court's impending review. Nothing in this provision shall be
28 construed to make any foster parent, relative, or preadoptive parent a party to the
29 proceeding solely based on receiving notice and ~~an opportunity~~the right to be heard."

30 **SECTION 5.** G.S. 7B-908 reads as rewritten:

31 **"§ 7B-908. Post termination of parental rights' placement court review.**

32 (a) The purpose of each placement review is to ensure that every reasonable
33 effort is being made to provide for a permanent placement plan for the juvenile who has
34 been placed in the custody of a county director or licensed child-placing agency, which
35 is consistent with the juvenile's best interests. At each review hearing the court may
36 consider information from the department of social services, the licensed child-placing
37 agency, the guardian ad litem, the child, any foster parent, relative, or preadoptive
38 parent providing care for the child, and any other person or agency the court determines
39 is likely to aid in the review. The court may consider any evidence, including hearsay
40 evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable,
41 and necessary to determine the needs of the juvenile and the most appropriate
42 disposition.

43 (b) The court shall conduct a placement review not later than six months from the
44 date of the termination hearing when parental rights have been terminated by a petition

1 brought by any person or agency designated in G.S. 7B-1103(2) through (5) and a
2 county director or licensed child-placing agency has custody of the juvenile. The court
3 shall conduct reviews every six months thereafter until the juvenile is ~~placed for~~
4 ~~adoption and the adoption petition is filed by the adoptive parents:~~the subject of a
5 decree of adoption:

6 (1) No more than 30 days and no less than 15 days prior to each review,
7 the clerk shall give notice of the review to the juvenile if the juvenile is
8 at least 12 years of age, the legal custodian of the juvenile, any foster
9 parent, relative, or preadoptive parent providing care for the juvenile,
10 the guardian ad litem, if any, and any other person or agency the court
11 may specify. Only the juvenile, if the juvenile is at least 12 years of
12 age, the legal custodian of the juvenile, any foster parent, relative, or
13 preadoptive parent providing care for the juvenile, and the guardian ad
14 litem shall attend the review hearings, except as otherwise directed by
15 the court. Nothing in this subdivision shall be construed to make any
16 foster parent, relative, or preadoptive parent a party to the proceeding
17 solely based on receiving notice and ~~an opportunity~~the right to be
18 heard. Any individual whose parental rights have been terminated shall
19 not be considered a party to the proceeding unless an appeal of the
20 order terminating parental rights is pending, and a court has stayed the
21 order pending the appeal.

22 (2) If a guardian ad litem for the juvenile has not been appointed
23 previously by the court in the termination proceeding, the court, at the
24 initial six-month review hearing, may appoint a guardian ad litem to
25 represent the juvenile. The court may continue the case for such time
26 as is necessary for the guardian ad litem to become familiar with the
27 facts of the case.

28 (c) The court shall consider at least the following in its review:

29 (1) The adequacy of the plan developed by the county department of
30 social services or a licensed child-placing agency for a permanent
31 placement relative to the juvenile's best interests and the efforts of the
32 department or agency to implement such plan;

33 (2) Whether the juvenile has been listed for adoptive placement with the
34 North Carolina Adoption Resource Exchange, the North Carolina
35 Photo Adoption Listing Service (PALS), or any other specialized
36 adoption agency; and

37 (3) The efforts previously made by the department or agency to find a
38 permanent home for the juvenile.

39 (d) The court, after making findings of fact, shall affirm the county department's
40 or child-placing agency's plans or require specific additional steps which are necessary
41 to accomplish a permanent placement which is in the best interests of the juvenile.

42 (e) If the juvenile ~~has been placed for~~is the subject of a decree of adoption prior
43 to the date scheduled for the review, written notice of ~~said placement~~the issuance of the
44 decree of adoption shall be given to the clerk to be placed in the court file, and the

1 review hearing shall be cancelled with notice of said cancellation given by the clerk to
2 all persons previously notified."

3 **SECTION 6.** G.S. 7B-909 reads as rewritten:

4 "**§ 7B-909. Review of agency's plan for placement.**

5 (a) The director of social services or the director of the licensed private
6 child-placing agency shall promptly notify the clerk to calendar the case for review of
7 the department's or agency's plan for the juvenile at a session of court scheduled for the
8 hearing of juvenile matters in any case where:

9 (1) One parent has surrendered a juvenile for adoption under the
10 provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes
11 and the termination of parental rights proceedings have not been
12 instituted against the nonsurrendering parent within six months of the
13 surrender by the other parent, or

14 (2) Both parents have surrendered a juvenile for adoption under the
15 provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes
16 and that juvenile has not been placed for adoption within six months
17 from the date of the more recent parental surrender.

18 ~~(b) In any case where an adoption is dismissed or withdrawn and the juvenile
19 returns to foster care with a department of social services or a licensed private
20 child placing agency, then the department of social services or licensed child placing
21 agency shall notify the clerk, within 30 days from the date the juvenile returns to care,
22 to calendar the case for review of the agency's plan for the juvenile at a session of court
23 scheduled for the hearing of juvenile matters.~~

24 (c) Notification of the court ~~required under subsection (a) or (b) of this section~~
25 shall be by a petition for review. The petition shall set forth the circumstances
26 necessitating the review under subsection (a) ~~or (b) of this section.~~ The review shall be
27 conducted within 30 days following the filing of the petition for review unless the court
28 shall otherwise direct. The court shall conduct reviews every six months until the
29 juvenile is ~~placed for adoption and the adoption petition is filed by the adoptive~~
30 parents the subject of a decree of adoption. The initial review and all subsequent
31 reviews shall be conducted pursuant to G.S. 7B-908. Any individual whose parental
32 rights have been terminated shall not be considered a party to the review unless an
33 appeal of the order terminating parental rights is pending, and a court has stayed the
34 order pending the appeal."

35 **SECTION 7.** G.S. 48-1-101(5a) reads as rewritten:

36 "In this Chapter, the following definitions apply:

37 ...

38 (5a) "Criminal history" means a county, State, or federal ~~criminal history of~~
39 conviction of a felony by a court of competent jurisdiction or a
40 pending felony indictment of a crime, ~~whether a misdemeanor or a~~
41 ~~felony, that bears upon an individual's fitness to have responsibility for~~
42 ~~the safety and well being of children, including the following North~~
43 ~~Carolina crimes contained in any of the following Articles of Chapter~~
44 ~~14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and~~

1 ~~Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and~~
2 ~~Abduction; Article 13, Malicious Injury or Damage by Use of~~
3 ~~Explosive or Incendiary Device or Material; Article 26, Offenses~~
4 ~~Against Public Morality and Decency; Article 27, Prostitution; Article~~
5 ~~39, Protection of Minors; Article 40, Protection of the Family; and~~
6 ~~Article 59, Public Intoxication. Such crimes also include possession or~~
7 ~~sale of drugs in violation of the North Carolina Controlled Substances~~
8 ~~Act, Article 5 of Chapter 90 of the General Statutes, and~~
9 ~~alcohol-related offenses such as sale to underage persons in violation~~
10 ~~of G.S. 18B-302 or driving while impaired in violation of~~
11 ~~G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina~~
12 ~~crimes listed in this subdivision, such crimes also include~~
13 ~~crime for~~
14 ~~child abuse or neglect, spousal abuse, a crime against a child,~~
15 ~~including child pornography, or for a crime involving violence,~~
16 ~~including rape, sexual assault, or homicide, other than physical assault~~
17 ~~or battery; a county, State, or federal conviction of a felony by a court~~
18 ~~of competent jurisdiction or a pending felony indictment for physical~~
19 ~~assault, battery, or a drug-related offense, if the offense was committed~~
20 ~~within the past five years; or similar crimes under federal law or under~~
21 ~~the laws of other states."~~

21 **SECTION 8.** G.S. 48-3-303(d) reads as rewritten:

22 "(d) The agency shall conduct an investigation for any criminal record as
23 permitted by law. If a prospective adoptive parent is seeking to adopt a minor who is in
24 the custody or placement responsibility of a county department of social services, a
25 county department of social services shall have the prospective adoptive parent's
26 criminal history and the criminal histories of all individuals 18 years of age or older
27 who reside in the prospective adoptive home investigated pursuant to G.S. 48-3-309,
28 and ~~based on the criminal history,~~ in accordance with G.S. 48-3-309(b), make a
29 determination as to the prospective adoptive parent's fitness to have responsibility for
30 the safety and well-being of children and as to whether other individuals required to be
31 checked are fit for an adoptive child to reside with them in the home."

32 **SECTION 9.** G.S. 48-3-309(b) reads as rewritten:

33 "(b) A county department of social services shall issue an unfavorable
34 preplacement assessment to a prospective adoptive parent if an individual required to
35 submit to a criminal history check pursuant to subsection (a) of this section has a
36 criminal history. A county department of social services shall issue an unfavorable
37 preplacement assessment to a prospective adoptive parent if the county department of
38 social services determines, pursuant to G.S. 48-3-303(e), that, based on other criminal
39 convictions, whether felony or misdemeanor, the criminal ~~the prospective adoptive~~
40 parent is unfit to have responsibility for the safety and well-being of children or other
41 individuals required to be checked are unfit for an adoptive child to reside with them in
42 the home."

43 **SECTION 10.** G.S. 48-3-309(d) reads as rewritten:

1 (d) At the time of the request for a preplacement assessment or at a subsequent
2 time prior to placement, any individual whose criminal history is to be checked shall be
3 furnished with a statement substantially similar to the following:
4

5 "NOTICE
6

7 MANDATORY CRIMINAL HISTORY CHECK: NORTH CAROLINA LAW
8 REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED
9 PRIOR TO PLACEMENT ON PROSPECTIVE ADOPTIVE PARENTS
10 SEEKING TO ADOPT A MINOR WHO IS IN THE CUSTODY OR
11 PLACEMENT RESPONSIBILITY OF A COUNTY DEPARTMENT OF
12 SOCIAL SERVICES AND ON ALL PERSONS 18 YEARS OF AGE OR
13 OLDER WHO RESIDE IN THE PROSPECTIVE ADOPTIVE HOME.

14 "Criminal history" means a county, ~~state,~~State, or federal ~~criminal history of~~
15 conviction of a felony by a court of competent jurisdiction or a pending felony
16 indictment of a crime, ~~whether a misdemeanor or a felony,~~ that bears upon a
17 prospective adoptive parent's fitness to have responsibility for the safety and
18 well being of children and whether other individuals required to be checked are
19 fit for an adoptive child to reside with them in the home, including the following
20 North Carolina crimes contained in any of the following Articles of Chapter 14 of
21 the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred
22 Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13,
23 Malicious Injury or Damage by Use of Explosive or Incendiary Device or
24 Material; Article 26, Offenses Against Public Morality and Decency; Article 27,
25 Prostitution; Article 39, Protection of Minors; Article 40, Protection of the
26 Family; and Article 59, Public Intoxication; violation of the North Carolina
27 Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and
28 alcohol related offenses such as sale to underage persons in violation of
29 G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through
30 G.S. 20-138.5;crime for child abuse or neglect, spousal abuse, a crime against a
31 child, including child pornography, or for a crime involving violence, including
32 rape, sexual assault, or homicide, other than physical assault or battery; a county,
33 State, or federal conviction of a felony by a court of competent jurisdiction or a
34 pending felony indictment for physical assault, battery, or a drug-related offense,
35 if the offense was committed within the past five years; or similar crimes under
36 federal law or under the laws of other states. Your fingerprints will be used to
37 check the criminal history records of the State Bureau of Investigation (SBI) and
38 the Federal Bureau of Investigation (FBI).

39 If it is determined, based on your criminal history, that you are unfit to have
40 responsibility for the safety and well being of children or have an adoptive child
41 reside with you, you shall have the opportunity to complete, or challenge the
42 accuracy of, the information contained in the SBI or FBI identification records.

43 If the prospective adoptive parent is denied a favorable preplacement assessment
44 by a county department of social services as a result of a criminal history check

1 as required under G.S. 48-3-309(a), the prospective adoptive parent may request
2 a review of the assessment pursuant to G.S. 48-3-308(a).

3 Any person who intentionally falsifies any information required to be furnished
4 to conduct the criminal history is guilty of a Class 2 misdemeanor."

5 Refusal to consent to a criminal history check by any individual required to be
6 checked under G.S. 48-3-309(a) is grounds for the issuance by a county department of
7 social services of an unfavorable preplacement assessment. Any person who
8 intentionally falsifies any information required to be furnished to conduct the criminal
9 history is guilty of a Class 2 misdemeanor."

10 **SECTION 11.** G.S. 131D-10.2(6a) reads as rewritten:

11 "For purposes of this Article, unless the context clearly implies otherwise:

12 ...

13 (6a) "Criminal History" means a county, ~~state,~~State, or federal ~~eriminal~~
14 ~~history of conviction of a felony by a court of competent jurisdiction~~
15 ~~or a pending felony indictment of a erime, whether a misdemeanor or a~~
16 ~~felony, that bears upon an individual's fitness to have responsibility for~~
17 ~~the safety and well-being of children, including the following North~~
18 ~~Carolina crimes contained in any of the following Articles of Chapter~~
19 ~~14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and~~
20 ~~Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and~~
21 ~~Abduction; Article 13, Malicious Injury or Damage by Use of~~
22 ~~Explosive or Incendiary Device or Material; Article 26, Offenses~~
23 ~~Against Public Morality and Decency; Article 27, Prostitution; Article~~
24 ~~39, Protection of Minors; Article 40, Protection of the Family; and~~
25 ~~Article 59, Public Intoxication. Such crimes also include possession or~~
26 ~~sale of drugs in violation of the North Carolina Controlled Substances~~
27 ~~Act, Article 5 of Chapter 90 of the General Statutes, and~~
28 ~~alcohol-related offenses such as sale to underage persons in violation~~
29 ~~of G.S. 18B 302 or driving while impaired in violation of~~
30 ~~G.S. 20 138.1 through G.S. 20 138.5. In addition to the North Carolina~~
31 ~~erimes listed in this subdivision, such crimes also include~~crime for
32 child abuse or neglect, spousal abuse, a crime against a child,
33 including child pornography, or for a crime involving violence,
34 including rape, sexual assault, or homicide, other than physical assault
35 or battery; a county, State, or federal conviction of a felony by a court
36 of competent jurisdiction or a pending felony indictment for physical
37 assault, battery, or a drug-related offense, if the offense was committed
38 within the past five years; or similar crimes under federal law or under
39 the laws of other states.

40"

41 **SECTION 12.** G.S. 131D-10.3A(c) reads as rewritten:

42 "(c) The Department shall prohibit an individual from providing foster care by
43 denying or revoking the license to provide foster care if an individual required to submit
44 to a criminal history check pursuant to subsection (a) of this section has a criminal

1 history. The Department may prohibit an individual from providing foster care by
2 denying or revoking the license to provide foster care if the Department determines that
3 the safety and well-being of a child placed in the home for foster care would be at risk
4 based on other criminal convictions, whether felony or misdemeanor. ~~the criminal~~
5 ~~history of the individuals required to be checked pursuant to subsection (a) of this~~
6 ~~section."~~

7 **SECTION 13.** G.S. 131D-10.3A(e) reads as rewritten:

8 "(e) At the time of application, the individual whose criminal history is to be
9 checked shall be furnished with a statement substantially similar to the following:

10
11 "NOTICE

12
13 MANDATORY CRIMINAL HISTORY CHECK

14
15 NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL
16 HISTORY CHECK BE CONDUCTED ON ALL PERSONS 18
17 YEARS OF AGE OR OLDER WHO RESIDE IN A LICENSED
18 FAMILY FOSTER HOME.

19 "Criminal history" includes any county, ~~state,~~State, and federal
20 ~~convictions~~ conviction of a felony by a court of competent
21 jurisdiction or pending indictments of any crime, of any of the
22 following crimes: the following Articles of Chapter 14 of the
23 General Statutes: Article 6, Homicide; Article 7A, Rape and
24 Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and
25 Abduction; Article 13, Malicious Injury or Damage by Use of
26 Explosive or Incendiary Device or Material; Article 26, Offenses
27 Against Public Morality and Decency; Article 27, Prostitution;
28 Article 39, Protection of Minors; Article 40, Protection of the
29 Family; and Article 59, Public Intoxication; violation of the North
30 Carolina Controlled Substances Act, Article 5 of Chapter 90 of the
31 General Statutes, and alcohol related offenses such as sale to
32 underage persons in violation of G.S. 18B-302 or driving while
33 impaired in violation of G.S. 20-138.1 through
34 G.S. 20-138.5; felony indictment of a crime for child abuse or
35 neglect, spousal abuse, a crime against a child, including child
36 pornography, or for a crime involving violence, including rape,
37 sexual assault, or homicide, other than physical assault or battery; a
38 county, State, or federal conviction of a felony by a court of
39 competent jurisdiction or a pending felony indictment for physical
40 assault, battery, or a drug-related offense, if the offense was
41 committed within the past five years; or similar crimes under
42 federal law or under the laws of other states. Your fingerprints will
43 be used to check the criminal history records of the State Bureau of
44 Investigation (SBI) and the Federal Bureau of Investigation (FBI).

1 If it is determined, based on your criminal history, that you are
2 unfit to have a foster child reside with you, you shall have the
3 opportunity to complete or challenge the accuracy of the
4 information contained in the SBI or FBI identification records.

5 If licensure is denied or the foster home license is revoked by
6 the Department of Health and Human Services as a result of the
7 criminal history check, if you are a foster parent, or are applying to
8 become a foster parent, you may request a hearing pursuant to
9 Article 3 of Chapter 150B of the General Statutes, the
10 Administrative Procedure Act.

11 Any person who intentionally falsifies any information required
12 to be furnished to conduct the criminal history is guilty of a Class 2
13 misdemeanor."

14 Refusal to consent to a criminal history check is grounds for the Department to deny
15 or revoke a license to provide foster care. Any person who intentionally falsifies any
16 information required to be furnished to conduct the criminal history is guilty of a Class
17 2 misdemeanor."

18 **SECTION 14.** This act becomes effective October 1, 2007.