

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 230

Short Title: Juv. Pet./Guardian ad Litem.

(Public)

Sponsors: Representatives Hensley; and Gottovi.

Referred to: Judiciary III.

February 22, 1993

A BILL TO BE ENTITLED

1 AN ACT RECOMMENDED BY THE JUVENILE LAW STUDY COMMISSION TO
2 REQUIRE THAT OPPORTUNITY TO BE HEARD BE PROVIDED A
3 JUVENILE'S GUARDIAN AD LITEM PRIOR TO THE DISMISSAL OF THE
4 PETITION ALLEGING ABUSE OR NEGLECT OF THE JUVENILE, TO
5 ENSURE THE GUARDIAN AD LITEM'S STANDING TO REPRESENT THE
6 JUVENILE, AND TO MAKE OTHER CHANGES NECESSARY TO PROTECT
7 THE INTERESTS OF THE JUVENILE.
8

9 The General Assembly of North Carolina enacts:

10 Section 1. G.S. 7A-563 reads as rewritten:

11 "**§ 7A-563. Commencement of ~~action~~-action; guardian ad litem's opportunity to be**
12 **heard prior to dismissal of petition of abuse or neglect.**

13 (a) An action is commenced by the filing of a petition in the clerk's office when
14 that office is open, or by the issuance of a juvenile petition by a magistrate when the
15 clerk's office is closed, which issuance shall constitute filing.

16 (b) If a petition alleging abuse or neglect of a juvenile is considered for dismissal
17 at any time during any of the proceedings under Subchapter XI of Chapter 7A of the
18 General Statutes, the party moving for dismissal shall notify the guardian ad litem
19 appointed for the juvenile pursuant to G.S. 7A-586 of the motion to dismiss sufficiently
20 prior to the hearing or the motion to dismiss to give the guardian ad litem an
21 opportunity to be heard before the appropriate official regarding the motion for
22 dismissal of the petition."

23 Sec. 2. G.S. 7A-586 reads as rewritten:

24 "**§ 7A-586. Appointment and duties of guardian ad litem.**

1 When in a petition a juvenile is alleged to be abused or neglected, the judge shall
2 appoint a guardian **ad litem** to represent the juvenile. When a juvenile is alleged to be
3 dependent, the judge may appoint a guardian **ad litem** to represent the juvenile. The
4 guardian **ad litem** has standing to represent the juvenile in all actions in which the
5 juvenile is a party. The appointment shall be made pursuant to the program established
6 by Article 39 of this Chapter unless representation is otherwise provided pursuant to
7 G.S. 7A-491 or G.S. 7A-492. In every case where a nonattorney is appointed as a
8 guardian **ad litem**, an attorney shall be appointed in the case in order to assure
9 protection of the child's legal rights within the proceeding. The duties of the guardian
10 **ad litem** shall be to make an investigation to determine the facts, the needs of the
11 juvenile, and the available resources within the family and community to meet those
12 needs; to move for amendment of the petition; to facilitate, when appropriate, the
13 settlement of disputed issues; to explore options with the judge at the dispositional
14 hearing; and to protect and promote the best interest of the juvenile until formally
15 relieved of the responsibility by the ~~judge.~~ judge, including representing the juvenile
16 regarding the dismissal of the petition.

17 The judge may order the Department of Social Services or the guardian **ad litem** to
18 conduct follow-up investigations to insure that the orders of the court are being properly
19 executed and to report to the court when the needs of the juvenile are not being met.
20 The judge may also authorize the guardian **ad litem** to accompany the juvenile to court
21 in any criminal action wherein he may be called on to testify in a matter relating to
22 abuse.

23 The judge may grant the guardian **ad litem** the authority to demand any information
24 or reports whether or not confidential, that may in the guardian **ad litem's** opinion be
25 relevant to the case. Neither the physician-patient privilege nor the husband-wife
26 privilege may be invoked to prevent the guardian **ad litem** and the court from obtaining
27 such information. The confidentiality of the information or reports shall be respected by
28 the guardian **ad litem** and no disclosure of any information or reports shall be made to
29 anyone except by order of the judge. If the department petitions for and receives legal
30 custody of the juvenile pursuant to G.S. 7A-661(b), the guardian **ad litem** has the right
31 and the standing to request of and receive from the department the juvenile's
32 preadoption placement information sufficiently prior to any adoption proceedings to
33 enable the guardian **ad litem** to represent the best interests of the juvenile."

34 Sec. 3. G.S. 7A-661(b) reads as rewritten:

35 "(b) The court may approve the continued placement of the juvenile in foster care
36 on a voluntary agreement basis, disapprove the continuation of the voluntary placement,
37 or direct the department of social services to petition the court for legal custody if the
38 placement is to continue. If the department does not petition the court for legal custody
39 after the court has directed it to do so, the court may order the juvenile removed from
40 foster care and returned to the juvenile's home."

41 Sec. 4. This act becomes effective October 1, 1993, and applies to petitions
42 filed and requests for information made on or after that date.