

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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HOUSE BILL 110

Short Title: Change Temp. Custody/Juv.

(Public)

Sponsors: Representatives Culpepper; and Bowman.

Referred to: Judiciary II.

February 14, 1994

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE TIME WITHIN WHICH HEARINGS FOR JUVENILES IN CUSTODY TAKE PLACE, TO PROVIDE FOR WAIVER OF HEARINGS ON CONTINUED CUSTODY, TO LENGTHEN TIME OF TEMPORARY CUSTODY OF JUVENILES WITHOUT AN ORDER, AND TO ALLOW PLACEMENT OF JUVENILES BY THE DEPARTMENT OF SOCIAL SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-577 reads as rewritten:

"§ 7A-577. Hearing to determine need for continued secure or nonsecure custody.

(a) No juvenile shall be held under a secure custody order for more than five-10 calendar days or under a nonsecure custody order for more than 14 calendar days without a hearing on the merits or a hearing to determine the need for continued custody. In every case in which an order has been entered by an official exercising authority delegated pursuant to G.S. 7A-573, a hearing to determine the need for continued custody shall be conducted on the day of the next regularly scheduled session of district court in the city or county where the order was entered if such session precedes the expiration of the five-calendar-day period; applicable time period set forth in this subsection: Provided, that if such session does not precede the expiration of the five calendar period, time period, the hearing may be conducted at another regularly scheduled session of district court in the district where the order was entered.

(b) Any juvenile who is alleged to be delinquent shall be advised of his right to have an attorney represent him legal representation as provided in G.S. 7A-584 if he-the juvenile appears without counsel at the hearing.

1 (c) At a hearing to determine the need for continued custody, the judge shall
2 receive testimony and shall allow the juvenile, and ~~his~~the juvenile's parent, guardian, or
3 custodian an opportunity to introduce evidence, to be heard in their own behalf, and to
4 examine witnesses. The State shall bear the burden at every stage of the proceedings to
5 provide clear and convincing evidence that restraints on the juvenile's liberty are
6 necessary and that no less intrusive alternative will suffice. The judge shall not be
7 bound by the usual rules of evidence at such hearings.

8 (d) The judge shall be bound by criteria set forth in G.S. 7A-574 in determining
9 whether continued custody is warranted.

10 (e) The judge shall impose the least restrictive interference with the liberty of a
11 juvenile who is released from secure custody including:

- 12 (1) Release on the written promise of the juvenile's parent, guardian, or
13 custodian to produce ~~him~~the juvenile in court for subsequent
14 proceedings; or
- 15 (2) Release into the care of a responsible person or organization; or
- 16 (3) Release conditioned on restrictions on activities, associations,
17 residence or travel if reasonably related to securing the juvenile's
18 presence in court; or
- 19 (4) Any other conditions reasonably related to securing the juvenile's
20 presence in court.

21 (f) If the judge determines that the juvenile meets the criteria in G.S. 7A-574 and
22 should continue in custody, ~~he~~the judge shall issue an order to that effect. The order
23 shall be in writing with appropriate findings of fact. The findings of fact shall include
24 the evidence relied upon in reaching the decision and the purposes which continued
25 custody is to achieve.

26 (g) Pending a hearing on the merits, further hearings to determine the need for
27 continued custody shall be held at intervals of no more than ~~seven~~30 calendar days.
28 Further hearings to determine the need for continued custody may be waived by the
29 juvenile or counsel for the juvenile in the case of a juvenile alleged to be delinquent. If
30 the juvenile is alleged to be undisciplined, abused, neglected, or dependent, further
31 hearings to determine the need for continued custody may be waived if the juvenile, the
32 juvenile's parent, guardian, or custodian, and the juvenile's guardian **ad litem** and
33 attorney advocate, as applicable, consent to the waiver.

34 (h) Any order authorizing the continued nonsecure custody of a juvenile who is
35 alleged to be abused, neglected, or dependent shall include findings as to whether
36 reasonable efforts have been made to prevent or eliminate the need for placement of the
37 juvenile in custody and may provide for services or other efforts aimed at returning the
38 juvenile home promptly. A finding that reasonable efforts have not been made to
39 prevent or eliminate the need for placement shall not preclude the entry of an order
40 authorizing continued nonsecure custody when the court finds that continued nonsecure
41 custody is necessary for the protection of the juvenile. Where efforts to prevent the need
42 for the juvenile's placement were precluded by an immediate threat of harm to the
43 juvenile, the court may find that the placement of the juvenile in the absence of such
44 efforts was reasonable."

1 Sec. 2. G.S. 7A-571 reads as rewritten:

2 **"§ 7A-571. Taking a juvenile into temporary custody.**

3 Temporary custody means the taking of physical custody and providing personal
4 care and supervision until a court order for secure or nonsecure custody can be obtained.

5 A juvenile may be taken into temporary custody under the following circumstances:

6 (1) A juvenile may be taken into temporary custody by a law-enforcement
7 officer without a court order if grounds exist for the arrest of an adult
8 in identical circumstances under G.S. 15A-401(b).

9 (2) A juvenile may be taken into temporary custody without a court order
10 by a law-enforcement officer or a court counselor if there are
11 reasonable grounds to believe that he is an undisciplined juvenile.

12 (3) A juvenile may be taken into temporary custody without a court order
13 by a law-enforcement officer or a Department of Social Services
14 worker if there are reasonable grounds to believe that the juvenile is
15 abused, neglected, or dependent and that he would be injured or could
16 not be taken into custody if it were first necessary to obtain a court
17 order. If temporary custody of a juvenile is taken by a Department of
18 Social Services worker under this subdivision, the worker may provide
19 for the placement, care, supervision, and transportation of the juvenile.

20 (4) A juvenile may be taken into custody without a court order by a law-
21 enforcement officer, by a court counselor, by a member of the Black
22 Mountain Center, Alcohol Rehabilitation Center and Juvenile
23 Evaluation Center Joint Security Force established pursuant to G.S.
24 122C-421, or by personnel of the Division of Youth Services as
25 designated by the Department of Human Resources if there are
26 reasonable grounds to believe the juvenile is an absconder from any
27 State training school or approved detention facility."

28 Sec. 3. G.S. 7A-572(a) reads as rewritten:

29 "(a) A person who takes a juvenile into custody without a court order under G.S.
30 7A-571(1), (2), or (3) shall proceed as follows:

31 (1) Notify the juvenile's parent, guardian, or custodian that the juvenile
32 has been taken into temporary custody and advise the parent, guardian,
33 or custodian of ~~his~~the right to be present with the juvenile until a
34 determination is made as to the need for secure or nonsecure custody.
35 Failure to notify the parent that the juvenile is in custody shall not be
36 grounds for release of the juvenile;

37 (2) Release the juvenile to his parent, guardian, or custodian if the person
38 having the juvenile in temporary custody decides that continued
39 custody is unnecessary.

40 (3) If the juvenile is not released under subsection (b), the person having
41 temporary custody shall proceed as follows:

42 a. In the case of a juvenile alleged to be delinquent or
43 undisciplined, he shall request a petition be drawn pursuant to
44 G.S. 7A-561 or if the clerk's office is closed, the magistrate

1 pursuant to G.S. 7A-562. Once the petition has been drawn and
2 verified, the person shall communicate with the intake
3 counselor who shall consider prehearing diversion. If the
4 decision is made to file a petition, the intake counselor shall
5 contact the judge or person delegated authority pursuant to G.S.
6 7A-573 if other than the intake counselor for a determination of
7 the need for continued custody.

8 b. In the case of a juvenile alleged to be abused, neglected, or
9 dependent, he shall communicate with the Director of the
10 Department of Social Services who shall consider prehearing
11 diversion. If the decision is made to file a petition, the director
12 shall contact the judge or person delegated authority pursuant to
13 G.S. 7A-573 for a determination of the need for continued
14 custody.

15 (4) A juvenile taken into temporary custody under this Article shall not be
16 held for more than ~~42~~24 hours unless:

17 a. A petition or motion for review has been filed by an intake
18 counselor or the Director of the Department of Social Services,
19 and

20 b. An order for secure or nonsecure custody has been entered by a
21 judge."

22 Sec. 4. This act becomes effective July 1, 1994, and applies to offenses
23 committed or causes of action arising on or after that date.