

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1159

Committee Substitute Favorable 4/28/99

Senate Children & Human Resources Committee Substitute Adopted 6/30/99

Short Title: Protection From Violent Caregivers.

(Public)

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Sponsors:

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Referred to:

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April 15, 1999

A BILL TO BE ENTITLED

1 AN ACT TO IMPROVE THE ABILITY OF THE DIVISION OF SOCIAL SERVICES,  
2 DEPARTMENT OF HEALTH AND HUMAN SERVICES, TO PROTECT  
3 CHILDREN AND YOUTH FROM VIOLENCE-PRONE CAREGIVERS.  
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 7B-101, as enacted by Section 6 of S.L. 1998-202 and as  
7 amended by Section 18 of S.L. 1998-229, is amended by adding a new subdivision to  
8 read:

9 "(7a) 'Criminal history' means a county, State, and federal criminal history of  
10 conviction or pending indictment of a crime, whether a misdemeanor or  
11 a felony, involving violence against a person."

12 Section 2. G.S. 7B-302, as enacted by Section 6 of S.L. 1998-202 and as  
13 amended by Section 19 of S.L. 1998-229, is amended by adding a new subsection to  
14 read:

15 "(d1) Whenever a juvenile is removed from the home of a parent, guardian,  
16 custodian, stepparent, or adult relative entrusted with the juvenile's care due to physical  
17 abuse, the director shall conduct a thorough review of the background of the alleged  
18 abuser or abusers. This review shall include a criminal history check and a review of any

1 available mental health records. If the review reveals that the alleged abuser or abusers  
2 have a history of violent behavior against people, the director shall petition the court to  
3 order the alleged abuser or abusers to submit to a complete mental health evaluation by a  
4 licensed psychologist or psychiatrist."

5 Section 3. G.S. 7B-304, as enacted by Section 6 of S.L. 1998-202, reads as  
6 rewritten:

7 **"§ 7B-304. Evaluation for court.**

8 In all cases in which a petition is filed, the director of the department of social  
9 services shall prepare a report for the court containing the results of any mental health  
10 evaluation under G.S. 7B-503, a home placement ~~plan~~ plan, and a treatment plan deemed  
11 by the director to be appropriate to the needs of the juvenile. The report shall be available  
12 to the court immediately following the adjudicatory hearing."

13 Section 4. G.S. 7B-503, as enacted by Section 6 of S.L. 1998-202, reads as  
14 rewritten:

15 **"§ 7B-503. Criteria for nonsecure custody.**

16 (a) When a request is made for nonsecure custody, the court shall first consider  
17 release of the juvenile to the juvenile's parent, relative, guardian, custodian, or other  
18 responsible adult. An order for nonsecure custody shall be made only when there is a  
19 reasonable factual basis to believe the matters alleged in the petition are true, and

20 (1) The juvenile has been abandoned; or

21 (2) The juvenile has suffered physical injury or sexual abuse; or

22 (3) The juvenile is exposed to a substantial risk of physical injury or sexual  
23 abuse because the parent, guardian, custodian, or caretaker has created  
24 the conditions likely to cause injury or abuse or has failed to provide, or  
25 is unable to provide, adequate supervision or protection; or

26 (4) The juvenile is in need of medical treatment to cure, alleviate, or  
27 prevent suffering serious physical harm which may result in death,  
28 disfigurement, or substantial impairment of bodily functions, and the  
29 juvenile's parent, guardian, custodian, or caretaker is unwilling or  
30 unable to provide or consent to the medical treatment; or

31 (5) The parent, guardian, custodian, or caretaker consents to the nonsecure  
32 custody order; or

33 (6) The juvenile is a runaway and consents to nonsecure custody.

34 A juvenile alleged to be abused, neglected, or dependent shall be placed in nonsecure  
35 custody only when there is a reasonable factual basis to believe that there are no other  
36 reasonable means available to protect the juvenile. In no case shall a juvenile alleged to  
37 be abused, neglected, or dependent be placed in secure custody.

38 (b) Whenever a petition is filed under G.S. 7B-302(d1), the court shall rule on the  
39 petition prior to returning the child to a home where the alleged abuser or abusers are or  
40 have been present. If the court finds that the alleged abuser or abusers have a history of  
41 violent behavior against people, the court shall order the alleged abuser or abusers to  
42 submit to a complete mental health evaluation by a licensed psychologist or psychiatrist.

1 The court may order the alleged abuser or abusers to pay the cost of any mental health  
2 evaluation required under this section."

3 Section 5. G.S. 7B-506, as enacted by Section 6 of S.L. 1998-202 and as  
4 amended by Section 21 of S.L. 1998-229, is amended by adding a new subsection to  
5 read:

6 "(c1) In determining whether continued custody is warranted, the court shall  
7 consider the opinion of the mental health professional who performed an evaluation  
8 under G.S. 7B-503(b) before returning the juvenile to the custody of that individual."

9 Section 6. G.S. 7B-903, as enacted by Section 6 of S.L. 1998-202 and as  
10 amended by Section 23 of S.L. 1998-229, reads as rewritten:

11 "**§ 7B-903. Dispositional alternatives for abused, neglected, or dependent juvenile.**

12 (a) The following alternatives for disposition shall be available to any court  
13 exercising jurisdiction, and the court may combine any of the applicable alternatives  
14 when the court finds the disposition to be in the best interests of the juvenile:

15 (1) The court may dismiss the case or continue the case in order to allow  
16 the parent, guardian, custodian, caretaker or others to take appropriate  
17 action.

18 (2) In the case of any juvenile who needs more adequate care or supervision  
19 or who needs placement, the court may:

20 a. Require that the juvenile be supervised in the juvenile's own  
21 home by the department of social services in the juvenile's  
22 county, or by other personnel as may be available to the court,  
23 subject to conditions applicable to the parent, guardian,  
24 custodian, or caretaker as the court may specify; or

25 b. Place the juvenile in the custody of a parent, relative, private  
26 agency offering placement services, or some other suitable  
27 person; or

28 c. Place the juvenile in the custody of the department of social  
29 services in the county of the juvenile's residence, or in the case of  
30 a juvenile who has legal residence outside the State, in the  
31 physical custody of the department of social services in the  
32 county where the juvenile is found so that agency may return the  
33 juvenile to the responsible authorities in the juvenile's home  
34 state. The director may, unless otherwise ordered by the court,  
35 arrange for, provide, or consent to, needed routine or emergency  
36 medical or surgical care or treatment. In the case where the  
37 parent is unknown, unavailable, or unable to act on behalf of the  
38 juvenile, the director may, unless otherwise ordered by the court,  
39 arrange for, provide, or consent to any psychiatric, psychological,  
40 educational, or other remedial evaluations or treatment for the  
41 juvenile placed by a court or the court's designee in the custody  
42 or physical custody of a county department of social services  
43 under the authority of this or any other Chapter of the General

1 Statutes. Prior to exercising this authority, the director shall make  
2 reasonable efforts to obtain consent from a parent or guardian of  
3 the affected juvenile. If the director cannot obtain such consent,  
4 the director shall promptly notify the parent or guardian that care  
5 or treatment has been provided and shall give the parent frequent  
6 status reports on the circumstances of the juvenile. Upon request  
7 of a parent or guardian of the affected juvenile, the results or  
8 records of the aforementioned evaluations, findings, or treatment  
9 shall be made available to such parent or guardian by the director  
10 unless prohibited by G.S. 122C-53(d). If a juvenile is removed  
11 from the home and placed in custody or placement responsibility  
12 of a county department of social services, the director shall not  
13 allow unsupervised visitation with, or return physical custody of  
14 the juvenile to, the parent, guardian, custodian, or caretaker  
15 without a hearing at which the court finds that the juvenile will  
16 receive proper care and supervision in a safe home.

17 In placing a juvenile in out-of-home care under this section,  
18 the court shall first consider whether a relative of the juvenile is  
19 willing and able to provide proper care and supervision of the  
20 juvenile in a safe home. If the court finds that the relative is  
21 willing and able to provide proper care and supervision in a safe  
22 home, then the court shall order placement of the juvenile with  
23 the relative unless the court finds that the placement is contrary  
24 to the best interests of the juvenile. Placement of a juvenile with  
25 a relative outside of this State must be in accordance with the  
26 Interstate Compact on the Placement of Children.

- 27 (3) In any case, the court may order that the juvenile be examined by a  
28 physician, psychiatrist, psychologist, or other qualified expert as may be  
29 needed for the court to determine the needs of the juvenile:
- 30 a. Upon completion of the examination, the court shall conduct a  
31 hearing to determine whether the juvenile is in need of medical,  
32 surgical, psychiatric, psychological, or other treatment and who  
33 should pay the cost of the treatment. The county manager, or  
34 such person who shall be designated by the chairman of the  
35 county commissioners, of the juvenile's residence shall be  
36 notified of the hearing, and allowed to be heard. If the court finds  
37 the juvenile to be in need of medical, surgical, psychiatric,  
38 psychological, or other treatment, the court shall permit the  
39 parent or other responsible persons to arrange for treatment. If  
40 the parent declines or is unable to make necessary arrangements,  
41 the court may order the needed treatment, surgery, or care, and  
42 the court may order the parent to pay the cost of the care pursuant  
43 to G.S. 7B-904. If the court finds the parent is unable to pay the

1 cost of treatment, the court shall order the county to arrange for  
2 treatment of the juvenile and to pay for the cost of the treatment.  
3 The county department of social services shall recommend the  
4 facility that will provide the juvenile with treatment.

- 5 b. If the court believes, or if there is evidence presented to the effect  
6 that the juvenile is mentally ill or is developmentally disabled,  
7 the court shall refer the juvenile to the area mental health,  
8 developmental disabilities, and substance abuse services director  
9 for appropriate action. A juvenile shall not be committed directly  
10 to a State hospital or mental retardation center; and orders  
11 purporting to commit a juvenile directly to a State hospital or  
12 mental retardation center except for an examination to determine  
13 capacity to proceed shall be void and of no effect. The area  
14 mental health, developmental disabilities, and substance abuse  
15 director shall be responsible for arranging an interdisciplinary  
16 evaluation of the juvenile and mobilizing resources to meet the  
17 juvenile's needs. If institutionalization is determined to be the  
18 best service for the juvenile, admission shall be with the  
19 voluntary consent of the parent or guardian. If the parent,  
20 guardian, custodian, or caretaker refuses to consent to a mental  
21 hospital or retardation center admission after such  
22 institutionalization is recommended by the area mental health,  
23 developmental disabilities, and substance abuse director, the  
24 signature and consent of the court may be substituted for that  
25 purpose. In all cases in which a regional mental hospital refuses  
26 admission to a juvenile referred for admission by a court and an  
27 area mental health, developmental disabilities, and substance  
28 abuse director or discharges a juvenile previously admitted on  
29 court referral prior to completion of treatment, the hospital shall  
30 submit to the court a written report setting out the reasons for  
31 denial of admission or discharge and setting out the juvenile's  
32 diagnosis, indications of mental illness, indications of need for  
33 treatment, and a statement as to the location of any facility  
34 known to have a treatment program for the juvenile in question.

35 (b) When the court has found that a juvenile has suffered physical abuse and that  
36 the individual responsible for the abuse has a history of violent behavior against people,  
37 the court shall consider the opinion of the mental health professional who performed an  
38 evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that  
39 individual."

40 Section 7. G.S. 7B-904, as enacted by Section 6 of S.L. 1998-202, reads as  
41 rewritten:

42 **"§ 7B-904. Authority over parents of juvenile adjudicated as abused, neglected, or**  
43 **dependent.**

1 (a) If the court orders medical, surgical, psychiatric, psychological, or other  
2 treatment pursuant to G.S. 7B-903, the court may order the parent or other responsible  
3 parties to pay the cost of the treatment or care ordered.

4 (b) At the dispositional hearing or a subsequent hearing in the case of a juvenile  
5 who has been adjudicated abused, neglected, or dependent, if the court finds that it is in  
6 the best interests of the juvenile for the ~~parent~~ parent, guardian, custodian, stepparent,  
7 adult member of the juvenile's household, or adult relative entrusted with the juvenile's  
8 care to be directly involved in the juvenile's treatment, the court may order the ~~parent~~  
9 parent, guardian, custodian, stepparent, adult member of the juvenile's household, or  
10 adult relative entrusted with the juvenile's care to participate in medical, psychiatric,  
11 psychological, or other treatment of the juvenile. The cost of the treatment shall be paid  
12 pursuant to G.S. 7B-903.

13 (c) At the dispositional hearing or a subsequent hearing in the case of a juvenile  
14 who has been adjudicated abused, neglected, or dependent, the court may determine  
15 whether the best interests of the juvenile require that the ~~parent~~ parent, guardian,  
16 custodian, stepparent, adult member of the juvenile's household, or adult relative  
17 entrusted with the juvenile's care undergo psychiatric, psychological, or other treatment  
18 or counseling directed toward remediating or remedying behaviors or conditions that led  
19 to or contributed to the juvenile's adjudication or to the court's decision to remove  
20 custody of the juvenile from the ~~parent~~ parent, guardian, custodian, stepparent, adult  
21 member of the juvenile's household, or adult relative entrusted with the juvenile's care.  
22 If the court finds that the best interests of the juvenile require the ~~parent~~ parent, guardian,  
23 custodian, stepparent, adult member of the juvenile's household, or adult relative  
24 entrusted with the juvenile's care undergo treatment, it may order ~~the parent~~ that  
25 individual to comply with a plan of treatment approved by the court or condition legal  
26 custody or physical placement of the juvenile with the ~~parent~~ parent, guardian, custodian,  
27 stepparent, adult member of the juvenile's household, or adult relative entrusted with the  
28 juvenile's care upon the parent's ~~that individual's~~ compliance with the plan of treatment.  
29 The court may order the ~~parent~~ parent, guardian, custodian, stepparent, adult member of  
30 the juvenile's household, or adult relative entrusted with the juvenile's care to pay the  
31 cost of treatment ordered pursuant to this subsection. In cases in which the court has  
32 conditioned legal custody or physical placement of the juvenile with the ~~parent~~ parent,  
33 guardian, custodian, stepparent, adult member of the juvenile's household, or adult  
34 relative entrusted with the juvenile's care upon ~~the parent's~~ compliance with a plan of  
35 treatment, the court may charge the cost of the treatment to the county of the juvenile's  
36 residence if the court finds the ~~parent~~ parent, guardian, custodian, stepparent, adult  
37 member of the juvenile's household, or adult relative entrusted with the juvenile's care is  
38 unable to pay the cost of the treatment. In all other cases, if the court finds the ~~parent~~  
39 parent, guardian, custodian, stepparent, adult member of the juvenile's household, or  
40 adult relative entrusted with the juvenile's care is unable to pay the cost of the treatment  
41 ordered pursuant to this subsection, the court may order ~~the parent~~ that individual to  
42 receive treatment currently available from the area mental health program that serves the  
43 parent's catchment area.

1 (d) Whenever legal custody of a juvenile is vested in someone other than the  
2 juvenile's parent, after due notice to the parent and after a hearing, the court may order  
3 that the parent pay a reasonable sum that will cover, in whole or in part, the support of the  
4 juvenile after the order is entered. If the court requires the payment of child support, the  
5 amount of the payments shall be determined as provided in G.S. 50-13.4(c). If the court  
6 places a juvenile in the custody of a county department of social services and if the court  
7 finds that the parent is unable to pay the cost of the support required by the juvenile, the  
8 cost shall be paid by the county department of social services in whose custody the  
9 juvenile is placed, provided the juvenile is not receiving care in an institution owned or  
10 operated by the State or federal government or any subdivision thereof.

11 (e) Failure of a parent who is personally served to participate in or comply with  
12 this section may result in a proceeding for civil contempt."

13 Section 8. G.S. 7B-1003, as enacted by Section 6 of S.L. 1998-202, reads as  
14 rewritten:

15 "**§ 7B-1003. Disposition pending appeal.**

16 Pending disposition of an appeal, the return of the juvenile to the custody of the parent  
17 or guardian of the juvenile, with or without conditions, should issue in every case unless  
18 the court orders otherwise. When the court has found that a juvenile has suffered physical  
19 abuse and that the individual responsible for the abuse has a history of violent behavior,  
20 the court shall consider the opinion of the mental health professional who performed the  
21 evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that  
22 individual. For compelling reasons which must be stated in writing, the court may enter a  
23 temporary order affecting the custody or placement of the juvenile as the court finds to be  
24 in the best interests of the juvenile or the State. The provisions of subsections (b), (c),  
25 and (d) of G.S. 7B-905 shall apply to any order entered under this section which provides  
26 for the placement or continued placement of a juvenile in foster care."

27 Section 9. This act becomes effective October 1, 1999, and applies to petitions  
28 filed on or after that date.