

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1609\*

Short Title: Clarify Juvenile Procedures.

(Public)

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Sponsors: Representatives Earle, Clary, Easterling (Primary Sponsors); Alexander, Baker, Bonner, Cansler, Cunningham, Ford, Gillespie, Gulley, Horn, Insko, McLawhorn, Melton, Morris, Rayfield, Russell, Setzer, Sutton, Thomas, Tucker, West, C. Wilson, Wright, and Yongue.

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Referred to: Judiciary IV.

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May 18, 2000

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE PROCEDURES FOR ABUSED, NEGLECTED, AND  
3 DEPENDENT JUVENILES.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 7B-406(b) reads as rewritten:

6 "(b) A summons shall be on a printed form supplied by the Administrative Office  
7 of the Courts and shall include:

- 8 (1) Notice of the nature of the proceeding;  
9 (2) Notice of any right to counsel and information about how to seek the  
10 appointment of counsel prior to a hearing;  
11 (3) Notice that, if the court determines at the hearing that the allegations of  
12 the petition are true, the court will conduct a dispositional hearing to  
13 consider the needs of the juvenile and enter an order designed to meet  
14 those needs and the objectives of the State; and  
15 (4) Notice that the dispositional order or a subsequent order:  
16 a. May remove the juvenile from the custody of the parent,  
17 guardian, or custodian.

- 1           b.     May require that the juvenile receive medical, psychiatric,  
2           psychological, or other treatment and that the parent participate  
3           in the treatment.
- 4           c.     May require the parent to undergo psychiatric, psychological, or  
5           other treatment or counseling for the purpose of remedying the  
6           behaviors or conditions that are alleged in the petition or that  
7           contributed to the removal of the juvenile from the custody of  
8           that person.
- 9           d.     May order the parent to pay for treatment that is ordered for the  
10          juvenile or the parent.
- 11          e.     May, upon proper notice and a finding based on the criteria set  
12          out in G.S. 7B-1111, terminate the parental rights of the  
13          respondent parent."

14           Section 2. G.S. 7B-1101 reads as rewritten:

15   **"§ 7B-1101. Jurisdiction.**

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

- 26           (1)   Where it is alleged that a parent's rights should be terminated pursuant  
27           to G.S. 7B-1111(6); or
- 28           (2)   Where the parent is under the age of 18 years.

29   The fees of the guardian ad litem shall be borne by the Administrative Office of the  
30   Courts when the court finds that the respondent is indigent. In other cases the fees of the  
31   court-appointed guardian ad litem shall be a proper charge against the respondent if the  
32   respondent does not secure private legal counsel. Provided, that before exercising  
33   jurisdiction under this Article, the court shall find that it would have jurisdiction to make  
34   a child-custody determination under the provisions of G.S. 50A-201, 50A-203, or 50A-  
35   204. Provided, further, that the clerk of superior court shall have jurisdiction for  
36   adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of the General Statutes  
37   generally."

38           Section 3. G.S. 7B-1102 reads as rewritten:

39   **"§ 7B-1102. Pending child abuse, neglect, or dependency hearings.**

40       When a juvenile is currently within the jurisdiction of the district court based upon an  
41   abuse, neglect, or dependency proceeding, ~~a petition~~ any proceeding for termination of  
42   parental rights to that juvenile ~~may~~ shall be filed as a motion in the cause in the abuse,  
43   neglect, or dependency proceeding. Any parent of that juvenile who was previously

1 served in the abuse, neglect, or dependency proceeding in accordance with G.S. 7B-407  
2 shall be served with the ~~petition~~-motion to terminate parental rights in accordances with  
3 G.S. 1A-1, Rule 5."

4 Section 4. G.S. 7B-1103 reads as rewritten:

5 **"§ 7B-1103. Who may petition.**

6 (a) A petition to terminate the parental rights of either or both parents to his, her,  
7 or their minor juvenile may only be filed ~~by~~: by one or more of the following:

8 (1) Either parent seeking termination of the right of the other ~~parent~~; ~~or~~  
9 parent.

10 (2) Any person who has been judicially appointed as the guardian of the  
11 person of the ~~juvenile~~; ~~or~~ juvenile.

12 (3) Any county department of social services, consolidated county human  
13 services agency, or licensed child-placing agency to whom custody of  
14 the juvenile has been given by a court of competent ~~jurisdiction~~; ~~or~~  
15 jurisdiction.

16 (4) Any county department of social services, consolidated county human  
17 services agency, or licensed child-placing agency to which the juvenile  
18 has been surrendered for adoption by one of the parents or by the  
19 guardian of the person of the juvenile, pursuant to G.S. ~~48-3-701~~; ~~or~~ 48-  
20 3-701.

21 (5) Any person with whom the juvenile has resided for a continuous period  
22 of two years or more next preceding the filing of the ~~petition~~; ~~or~~ petition.

23 (6) Any guardian ad litem appointed to represent the minor juvenile  
24 pursuant to G.S. 7B-601 who has not been relieved of this ~~responsibility~~  
25 ~~and who has served in this capacity for at least one continuous year~~; ~~or~~  
26 responsibility.

27 (7) Any person who has filed a petition for adoption pursuant to Chapter 48  
28 of the General Statutes.

29 (b) Any person or agency that may file a petition under subsection (a) of this  
30 section may intervene in a pending abuse, neglect, or dependency proceeding for the  
31 purpose of filing a motion to terminate parental rights."

32 Section 5. G.S. 7B-1104 reads as rewritten:

33 **"§ 7B-1104. Petition.**

34 The ~~petition~~-petition, or motion pursuant to G.S. 7B-1102, shall be verified by the  
35 petitioner and shall be entitled "In Re (last name of ~~juvenile~~); juvenile), a minor ~~juvenile~~;  
36 juvenile"; and shall set forth such of the following facts as are known; and with respect to  
37 the facts which are unknown the petitioner or movant shall so state:

38 (1) The name of the juvenile as it appears on the juvenile's birth certificate,  
39 the date and place of birth, and the county where the juvenile is  
40 presently residing.

41 (2) The name and address of the petitioner or movant and facts sufficient to  
42 identify the petitioner or movant as one entitled to petition under G.S.  
43 ~~7B-1103~~-7B-1103 or to file a motion under G.S. 7B-1102.

- 1 (3) The name and address of the parents of the juvenile. If the name or  
2 address of one or both parents is unknown to the ~~petitioner~~, petitioner or  
3 movant, the petitioner or movant shall set forth with particularity the  
4 petitioner's or movant's efforts to ascertain the identity or whereabouts  
5 of the parent or parents. The information may be contained in an  
6 affidavit attached to the petition or motion and incorporated therein by  
7 reference.
- 8 (4) The name and address of any person appointed as guardian of the  
9 person of the juvenile pursuant to the provisions of Chapter 35A of the  
10 General Statutes, or of G.S. 7B-600.
- 11 (5) The name and address of any person or agency to whom custody of the  
12 juvenile has been given by a court of this or any other state; and a copy  
13 of the custody order shall be attached to the ~~petition~~, petition or motion.
- 14 (6) Facts that are sufficient to warrant a determination that one or more of  
15 the grounds for terminating parental rights exist.
- 16 (7) That the petition or motion has not been filed to circumvent the  
17 provisions of Article 2 of Chapter 50A of the General Statutes, the  
18 Uniform Child-Custody Jurisdiction and Enforcement Act."

19 Section 6. G.S. 7B-1105 reads as rewritten:

20 "**§ 7B-1105. Preliminary hearing; unknown parent.**

21 (a) If either the name or identity of any parent whose parental rights the petitioner  
22 or movant seeks to terminate is not known to the ~~petitioner~~, petitioner or movant, the court  
23 shall, within 10 days from the date of filing of the ~~petition~~, petition or motion, or during  
24 the next term of court in the county where the petition or motion is filed if there is no  
25 court in the county in that 10-day period, conduct a preliminary hearing to ascertain the  
26 name or identity of such parent.

27 (b) The court may, in its discretion, inquire of any known parent of the juvenile  
28 concerning the identity of the unknown parent and may appoint a guardian ad litem for  
29 the unknown parent to conduct a diligent search for the parent. Should the court ascertain  
30 the name or identity of the parent, it shall enter a finding to that effect; and the parent  
31 shall be summoned to appear in accordance with G.S. 7B-1106.

32 (c) Notice of the preliminary hearing need be given only to the petitioner or  
33 movant who shall appear at the hearing, but the court may cause summons to be issued to  
34 any person directing the person to appear and testify.

35 (d) If the court is unable to ascertain the name or identity of the unknown parent,  
36 the court shall order publication of notice of the termination proceeding and shall  
37 specifically order the place or places of publication and the contents of the notice which  
38 the court concludes is most likely to identify the juvenile to such unknown parent. The  
39 notice shall be published in a newspaper qualified for legal advertising in accordance  
40 with G.S. 1-597 and G.S. 1-598 and published in the counties directed by the court, once  
41 a week for three successive weeks. Provided, further, the notice shall:

- 42 (1) Designate the court in which the petition or motion is pending;

- 1 (2) Be directed to "the father (mother) (father and mother) of a male  
 2 (female) juvenile born on or about..... in  
 3 (date)  
 4 County, ,  
 5 (city)  
 6 ..... , respondent;"  
 7 (State)
- 8 (3) Designate the docket number and title of the case (the court may direct  
 9 the actual name of the title be eliminated and the words "In Re  
 10 Doe" substituted therefor);
- 11 (4) State that a petition or motion seeking to terminate the parental rights of  
 12 the respondent has been filed;
- 13 (5) Direct the respondent to answer the petition or motion within 30 days  
 14 after a date stated in the notice, exclusive of such date, which date so  
 15 stated shall be the date of first publication of notice and be substantially  
 16 in the form as set forth in G.S. 1A-1, Rule 4(j1); and
- 17 (6) State that the respondent's parental rights to the juvenile will be  
 18 terminated upon failure to answer the petition or motion within the time  
 19 prescribed.

20 Upon completion of the service, an affidavit of the publisher shall be filed with the  
 21 court.

22 (e) The court shall issue the order required by subsections (b) and (d) of this  
 23 section within 30 days from the date of the preliminary hearing unless the court shall  
 24 determine that additional time for investigation is required.

25 (f) Upon the failure of the parent served by publication pursuant to subsection (d)  
 26 of this section to answer the petition or respond to the motion within the time prescribed,  
 27 the court shall issue an order terminating all parental rights of the unknown parent."

28 Section 7. G.S. 7B-1106(a) reads as rewritten:

29 "(a) Except as provided in G.S. 7B-1105, upon the filing of the petition, the court  
 30 shall cause a summons to be issued. The summons shall be directed to each of the  
 31 following persons or agency, not otherwise a party petitioner, who shall be named as  
 32 respondents:

- 33 (1) The parents of the ~~juvenile;~~ juvenile.
- 34 (2) Any person who has been judicially appointed as guardian ad litem  
 35 pursuant to G.S. 7B-601 or guardian of the person of the ~~juvenile;~~  
 36 juvenile.
- 37 (3) The custodian of the juvenile appointed by a court of competent  
 38 ~~jurisdiction;~~ jurisdiction.
- 39 (4) Any county department of social services or licensed child-placing  
 40 agency to whom a juvenile has been released by one parent pursuant to  
 41 Part 7 of Article 3 of Chapter 48 of the General Statutes or any county  
 42 department of social services to whom placement responsibility for the

1 child has been given by a court of competent ~~jurisdiction; and~~  
2 jurisdiction.

3 (5) The juvenile, if the juvenile is 12 years of age or older at the time the  
4 petition is filed.

5 Provided, no summons need be directed to or served upon any parent who has  
6 previously surrendered the juvenile to a county department of social services or licensed  
7 child-placing ~~agency~~ agency, nor to any parent who has consented to the adoption of the  
8 juvenile by the ~~petitioner~~ petitioner, nor to any parent who has been served pursuant to  
9 G.S. 7B-407 when a motion is filed in a pending child abuse, neglect, or dependency  
10 proceeding pursuant to G.S. 7B-1102. The summons shall notify the respondents to file a  
11 written answer within 30 days after service of the summons and petition. Service of the  
12 summons shall be completed as provided under the procedures established by G.S. 1A-1,  
13 Rule 4(j); but the parent of the juvenile shall not be deemed to be under disability even  
14 though the parent is a minor."

15 Section 8. Article 11 of Chapter 7B of the General Statutes is amended by  
16 adding a new section to read:

17 "**§ 7B-1106.1. Issuance of notice in pending child abuse, neglect, or dependency**  
18 **cases.**

19 (a) Upon the filing of a motion pursuant to G.S. 7B-1102, the movant shall issue a  
20 notice to each of the following persons or agency, not otherwise a party petitioner:

21 (1) The parents of the juvenile.

22 (2) Any person who has been judicially appointed as guardian ad litem  
23 pursuant to G.S. 7B-601 or guardian of the person of the juvenile.

24 (3) The custodian of the juvenile appointed by a court of competent  
25 jurisdiction.

26 (4) Any county department of social services or licensed child-placing  
27 agency to whom a juvenile has been released by one parent pursuant to  
28 Part 7 of Article 3 of Chapter 48 of the General Statutes or any county  
29 department of social services to whom placement responsibility for the  
30 child has been given by a court of competent jurisdiction.

31 (5) The juvenile, if the juvenile is 12 years of age or older at the time the  
32 motion is filed.

33 Provided, no notice need be directed to or served upon any parent who has previously  
34 surrendered the juvenile to a county department of social services or licensed child-  
35 placing agency nor to any parent who has consented to the adoption of the juvenile by the  
36 movant. The notice shall notify the respondents to file a written response within 30 days  
37 after service of the notice and motion. Service of the notice shall be completed as  
38 provided under the procedures established by G.S. 1A-1, Rule 5, but the parent of the  
39 juvenile shall not be deemed to be under disability even though the parent is a minor.

40 (b) The notice shall be issued for the purpose of terminating parental rights  
41 pursuant to the provisions of subsection (a) of this section and shall include all of the  
42 following:

43 (1) The name of the minor juvenile.

- 1           (2) Notice that a written response to the motion must be filed with the  
2 juvenile clerk within 30 days after service of the notice and motion, or  
3 the parent's rights may be terminated.
- 4           (3) Notice that if they are indigent, the parents are entitled to appointed  
5 counsel; the parents may contact the clerk immediately to request  
6 counsel.
- 7           (4) Notice that any attorney appointed previously will represent the parents  
8 in this proceeding unless otherwise ordered by the court.
- 9           (5) Notice that the date, time, and place of hearing will be mailed by the  
10 clerk upon filing of the response or 30 days from the date of service if  
11 no response is filed.
- 12           (6) Notice of the purpose of the hearing and notice that the parents may  
13 attend the termination hearing.

14       (c) If a county department of social services, not otherwise a party petitioner, is  
15 served with a motion alleging that the parental rights of the parent should be terminated  
16 pursuant to G.S. 7B-1111, the department shall file a written response and shall be  
17 deemed a party to the proceeding."

18           Section 9. G.S. 7B-1107 reads as rewritten:

19 **"§ 7B-1107. Failure of respondents to answer.**

20       Upon the failure of the respondents to file written answer to the petition or a written  
21 response to the motion with the court within 30 days after service of the summons and  
22 ~~petition,~~ petition or notice and motion, or within the time period established for a  
23 defendant's reply by G.S. 1A-1, Rule 4(j1) if service is by publication, the court  
24 shall issue an order terminating all parental and custodial rights of the respondent or  
25 respondents with respect to the juvenile; provided the court shall order a hearing on the  
26 petition or motion and may examine the petitioner or movant or others on the facts  
27 alleged in the ~~petition.~~ petition or motion."

28           Section 10. G.S. 7B-1108 reads as rewritten:

29 **"§ 7B-1108. Answer of respondents.**

30       (a) Any respondent may file a written answer to the ~~petition.~~ petition or a written  
31 response to the motion. The answer or response shall admit or deny the allegations of the  
32 petition or motion and shall set forth the name and address of the answering respondent  
33 or the respondent's attorney.

34       (b) If an answer or response denies any material allegation of the ~~petition,~~ petition  
35 or motion, the court shall appoint a guardian ad litem for the juvenile to represent the best  
36 interests of the juvenile, unless the petition or motion was filed by the guardian ad litem  
37 pursuant to G.S. ~~7B-1103.~~ 7B-1102 or G.S. 7B-1103, or a guardian ad litem has already  
38 been appointed pursuant to G.S. 7B-601. A licensed attorney shall be appointed to assist  
39 those guardians ad litem who are not attorneys licensed to practice in North Carolina. The  
40 appointment, duties, and payment of the guardian ad litem shall be the same as in G.S.  
41 7B-601 and G.S. 7B-603. The court shall conduct a special hearing after notice of not less  
42 than 10 days nor more than 30 days to the ~~petitioner,~~ petitioner or movant, the answering

1 respondent, and the guardian ad litem for the juvenile to determine the issues raised by  
2 the petition and ~~answer~~. answer or motion and response.

3 Notice of the hearing shall be deemed to have been given upon the depositing thereof  
4 in the United States mail, first-class postage prepaid, and addressed to the ~~petitioner,~~  
5 petitioner or movant, respondent, and guardian ad litem or their counsel of record, at the  
6 addresses appearing in the petition or motion and responsive pleading.

7 (c) In proceedings under this Article, the appointment of a guardian ad litem shall  
8 not be required except, as provided above, in cases in which an answer or response is  
9 filed denying material allegations, or as required under G.S. ~~7B-1101;~~ 7B-1101, or in  
10 cases where the judicial proceeding to terminate parental rights is a motion in a pending  
11 child abuse, neglect, or dependency proceeding and a guardian ad litem has been  
12 appointed pursuant to G.S. 7B-601; but the court may, in its discretion, appoint a  
13 guardian ad litem for a juvenile, either before or after determining the existence of  
14 grounds for termination of parental rights, in order to assist the court in determining the  
15 best interests of the juvenile.

16 (d) If a guardian ad litem has previously been appointed for the juvenile under  
17 G.S. 7B-601, and the appointment of a guardian ad litem could also be made under this  
18 section, the guardian ad litem appointed under G.S. 7B-601, and any attorney appointed  
19 to assist that guardian, shall also represent the juvenile in all proceedings under this  
20 Article and shall have the duties and payment of a guardian ad litem appointed under this  
21 section, unless the court determines that the best interests of the juvenile require  
22 otherwise."

23 Section 11. G.S. 7B-1109(f) reads as rewritten:

24 "(f) The burden in such proceedings shall be upon the petitioner or movant and all  
25 findings of fact shall be based on clear, cogent, and convincing evidence. No ~~husband-~~  
26 ~~wife or physician-patient privilege~~ privilege, except the attorney-client privilege, shall be  
27 grounds for excluding any evidence regarding the existence or nonexistence of any  
28 circumstance authorizing the termination of parental ~~rights.~~ rights, both as the privilege  
29 relates to the competency of the witness and to the exclusion of confidential  
30 communications."

31 Section 12. G.S. 7B-1110 reads as rewritten:

32 "**§ 7B-1110. Disposition.**

33 (a) Should the court determine that any one or more of the conditions authorizing  
34 a termination of the parental rights of a parent exist, the court shall issue an order  
35 terminating the parental rights of such parent with respect to the juvenile unless the court  
36 shall further determine that the best interests of the juvenile require that the parental  
37 rights of the parent not be terminated.

38 (b) Should the court conclude that, irrespective of the existence of one or more  
39 circumstances authorizing termination of parental rights, the best interests of the juvenile  
40 require that rights should not be terminated, the court shall dismiss the ~~petition,~~ petition or  
41 deny the motion, but only after setting forth the facts and conclusions upon which the  
42 dismissal or denial is based.



1 (c) Should the court determine that circumstances authorizing termination of  
2 parental rights do not exist, the court shall dismiss the ~~petition~~, petition or deny the  
3 motion, making appropriate findings of fact and conclusions.

4 (d) Counsel for the petitioner shall serve a copy of the termination of parental  
5 rights order upon the guardian ad litem for the juvenile, if any, and upon the juvenile if  
6 the juvenile is 12 years of age or older.

7 (e) The court may tax the cost of the proceeding to any party.

8 (f) The court is not bound by the usual rules evidence at disposition."

9 Section 13. G.S. 7B-1111(b) reads as rewritten:

10 "(b) The burden in such proceedings shall be upon the petitioner or  
11 movant to prove the facts justifying such termination by clear and convincing evidence."

12 Section 14. G.S. 7B-1112 reads as rewritten:

13 "**§ 7B-1112. Effects of termination order.**

14 An order terminating the parental rights completely and permanently terminates all  
15 rights and obligations of the parent to the juvenile and of the juvenile to the parent arising  
16 from the parental relationship, except that the juvenile's right of inheritance from the  
17 juvenile's parent shall not terminate until a final order of adoption is issued. The parent is  
18 not thereafter entitled to notice of proceedings to adopt the juvenile and may not object  
19 thereto or otherwise participate therein:

20 (1) If the juvenile had been placed in the custody of or released for adoption  
21 by one parent to a county department of social services or licensed  
22 child-placing agency and is in the custody of the agency at the time of  
23 the filing of the ~~petition~~, petition or motion, including a petition filed  
24 pursuant to G.S. 7B-1103(6), that agency shall, upon entry of the order  
25 terminating parental rights, acquire all of the rights for placement of the  
26 juvenile as the agency would have acquired had the parent whose rights  
27 are terminated released the juvenile to that agency pursuant to the  
28 provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes,  
29 including the right to consent to the adoption of the juvenile.

30 (2) Except as provided in subdivision (1) above, upon entering an order  
31 terminating the parental rights of one or both parents, the court may  
32 place the juvenile in the custody of the ~~petitioner~~, petitioner or movant,  
33 or some other suitable person, or in the custody of the department of  
34 social services or licensed child-placing agency, as may appear to be in  
35 the best interests of the juvenile."

36 Section 15. This act becomes effective October 1, 2000.