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HOUSE BILL 1609*
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Short Title: Clarify Juvenile Procedures.

(Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE AND CLARIFY THE PROCEDURES FOR FILING A
2 MOTION TO TERMINATE PARENTAL RIGHTS IN A PENDING JUVENILE
3 ABUSE, NEGLECT, OR DEPENDENCY PROCEEDING, AND TO AUTHORIZE
4 THE LEGISLATIVE RESEARCH COMMISSION TO STUDY WHETHER
5 INFORMATION SHOULD BE EXPUNGED FROM CERTAIN RECORDS WHEN
6 AN ABUSE, NEGLECT, OR DEPENDENCY REPORT IS NOT
7 SUBSTANTIATED OR PROVEN.
8

9 The General Assembly of North Carolina enacts:

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

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

- 13 (1) Notice of the nature of the proceeding;
14 (2) Notice of any right to counsel and information about how to seek the
15 appointment of counsel prior to a hearing;
16 (3) Notice that, if the court determines at the hearing that the allegations of
17 the petition are true, the court will conduct a dispositional hearing to

1 consider the needs of the juvenile and enter an order designed to meet
2 those needs and the objectives of the State; and

3 (4) Notice that the dispositional order or a subsequent order:

4 a. May remove the juvenile from the custody of the parent,
5 guardian, or custodian.

6 b. May require that the juvenile receive medical, psychiatric,
7 psychological, or other treatment and that the parent participate
8 in the treatment.

9 c. May require the parent to undergo psychiatric, psychological, or
10 other treatment or counseling for the purpose of remedying the
11 behaviors or conditions that are alleged in the petition or that
12 contributed to the removal of the juvenile from the custody of
13 that person.

14 d. May order the parent to pay for treatment that is ordered for the
15 juvenile or the parent.

16 e. May, upon proper notice and hearing and a finding based on the
17 criteria set out in G.S. 7B-1111, terminate the parental rights of
18 the respondent parent."

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

20 "**§ 7B-1101. Jurisdiction.**

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

31 (1) Where it is alleged that a parent's rights should be terminated pursuant
32 to G.S. 7B-1111(6); or

33 (2) Where the parent is under the age of 18 years.

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

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

1 **"§ 7B-1102. Pending child abuse, neglect, or dependency ~~hearings.~~ proceedings.**

2 When a juvenile is currently within the jurisdiction of the district court based upon an
3 abuse, neglect, or dependency proceeding, a petition for termination of parental rights to
4 that juvenile may be filed as a motion in the cause in the abuse, neglect, or dependency
5 proceeding. Any parent of that juvenile who was previously served in the abuse, neglect,
6 or dependency proceeding in accordance with G.S. 7B-407 shall be served with the
7 petition to terminate parental rights in accordance with G.S. 1A-1, Rule 5.

8 (a) When the district court is exercising jurisdiction over a juvenile and the
9 juvenile's parent in an abuse, neglect, or dependency proceeding, a person or agency
10 specified in G.S. 7B-1103(a) may file in that proceeding a motion for termination of the
11 parent's rights in relation to the juvenile.

12 (b) A motion pursuant to subsection (a) of this section and the notice required by
13 G.S. 7B-1106.1 shall be served in accordance with G.S. 1A-1, Rule 5(b), except:

14 (1) Service must be in accordance with G.S. 1A-1, Rule 4, if one of the
15 following applies:

16 a. The person or agency to be served was not served originally with
17 summons.

18 b. The person or agency to be served was served originally by
19 publication that did not include notice substantially in conformity
20 with the notice required by G.S. 7B-406(b)(4)e.

21 c. Two years has elapsed since the date of the original action.

22 (2) In any case, the court may order that service of the motion and notice be
23 made pursuant to G.S. 1A-1, Rule 4.

24 The parent of the juvenile shall not be deemed to be under disability even though the
25 parent is a minor.

26 (c) When a petition for termination of parental rights is filed in the same district in
27 which there is pending an abuse, neglect, or dependency proceeding involving the same
28 juvenile, the court on its own motion or motion of a party may consolidate the action
29 pursuant to G.S. 1A-1, Rule 42."

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

31 **"§ 7B-1103. Who may ~~petition.~~ file a petition or motion.**

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

34 (1) Either parent seeking termination of the right of the other ~~parent,~~ or
35 parent.

36 (2) Any person who has been judicially appointed as the guardian of the
37 person of the ~~juvenile,~~ or juvenile.

38 (3) Any county department of social services, consolidated county human
39 services agency, or licensed child-placing agency to whom custody of
40 the juvenile has been given by a court of competent ~~jurisdiction,~~ or
41 jurisdiction.

42 (4) Any county department of social services, consolidated county human
43 services agency, or licensed child-placing agency to which the juvenile

1 has been surrendered for adoption by one of the parents or by the
2 guardian of the person of the juvenile, pursuant to G.S. ~~48-3-701; or 48-~~
3 3-701.

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

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

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

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

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

17 "**§ 7B-1104. Petition-~~Petition or motion.~~**

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

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

25 (2) The name and address of the petitioner or movant and facts sufficient to
26 identify the petitioner or movant as one ~~entitled to petition under G.S. 7B-~~
27 ~~1103- authorized by G.S. 7B-1103 to file a petition or motion.~~

28 (3) The name and address of the parents of the juvenile. If the name or
29 address of one or both parents is unknown to the ~~petitioner, petitioner or~~
30 movant, the petitioner or movant shall set forth with particularity the
31 petitioner's or movant's efforts to ascertain the identity or whereabouts
32 of the parent or parents. The information may be contained in an
33 affidavit attached to the petition or motion and incorporated therein by
34 reference.

35 (4) The name and address of any person who has been judicially appointed
36 as guardian of the person of the ~~juvenile pursuant to the provisions of~~
37 ~~Chapter 35A of the General Statutes, or of G.S. 7B-600- juvenile.~~

38 (5) The name and address of any person or agency to whom custody of the
39 juvenile has been given by a court of this or any other state; and a copy
40 of the custody order shall be attached to the ~~petition- petition or motion.~~

41 (6) Facts that are sufficient to warrant a determination that one or more of
42 the grounds for terminating parental rights exist.

1 (7) That the petition or motion has not been filed to circumvent the
2 provisions of Article 2 of Chapter 50A of the General Statutes, the
3 Uniform Child-Custody Jurisdiction and Enforcement Act."

4 Section 6. Article 11 of Chapter 7B of the General Statutes is amended by
5 adding a new section to read:

6 "**§ 7B-1106.1. Notice in pending child abuse, neglect, or dependency cases.**

7 (a) Upon the filing of a motion pursuant to G.S. 7B-1102, the movant shall prepare
8 a notice directed to each of the following persons or agency, not otherwise a movant:

- 9 (1) The parents of the juvenile.
10 (2) Any person who has been judicially appointed as guardian of the person
11 of the juvenile.
12 (3) The custodian of the juvenile appointed by a court of competent
13 jurisdiction.
14 (4) Any county department of social services or licensed child-placing
15 agency to whom a juvenile has been released by one parent pursuant to
16 Part 7 of Article 3 of Chapter 48 of the General Statutes or any county
17 department of social services to whom placement responsibility for the
18 juvenile has been given by a court of competent jurisdiction.
19 (5) The juvenile's guardian ad litem if one has been appointed pursuant to
20 G.S. 7B-601 and has not been relieved of responsibility.
21 (6) The juvenile, if the juvenile is 12 years of age or older at the time the
22 motion is filed.

23 Provided, no notice need be directed to or served upon any parent who has previously
24 surrendered the juvenile to a county department of social services or licensed child-
25 placing agency nor to any parent who has consented to the adoption of the juvenile by the
26 movant. The notice shall notify the person or agency to whom it is directed to file a
27 written response within 30 days after service of the motion and notice. Service of the
28 motion and notice shall be completed as provided under G.S. 7B-1102(b).

29 (b) The notice required by subsection (a) of this section shall include all of the
30 following:

- 31 (1) The name of the minor juvenile.
32 (2) Notice that a written response to the motion must be filed with the clerk
33 within 30 days after service of the motion and notice, or the parent's
34 rights may be terminated.
35 (3) Notice that any attorney appointed previously to represent the parent in
36 the abuse, neglect, or dependency proceeding will continue to represent
37 the parents unless otherwise ordered by the court.
38 (4) Notice that if the parent is indigent, the parent is entitled to appointed
39 counsel and if the parent is not already represented by appointed counsel
40 the parent may contact the clerk immediately to request counsel.
41 (5) Notice that the date, time, and place of hearing will be mailed by the
42 moving party upon filing of the response or 30 days from the date of
43 service if no response is filed.

1 (6) Notice of the purpose of the hearing and notice that the parents may
2 attend the termination hearing.

3 (c) If a county department of social services, not otherwise a movant, is served
4 with a motion seeking termination of a parent's rights, the director shall file a written
5 response and shall be deemed a party to the proceeding."

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

7 **"§ 7B-1107. Failure of ~~respondents to answer.~~ parent to answer or respond.**

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

16 Section 8. G.S. 7B-1108 reads as rewritten:

17 **"§ 7B-1108. ~~Answer of respondents.~~ Answer or response of parent.**

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

22 (b) If an answer or response denies any material allegation of the ~~petition.~~ petition
23 or motion, the court shall appoint a guardian ad litem for the juvenile to represent the best
24 interests of the juvenile, unless the petition or motion was filed by the guardian ad litem
25 pursuant to G.S. ~~7B-1103.~~ 7B-1103, or a guardian ad litem has already been appointed
26 pursuant to G.S. 7B-601. A licensed attorney shall be appointed to assist those guardians
27 ad litem who are not attorneys licensed to practice in North Carolina. The appointment,
28 duties, and payment of the guardian ad litem shall be the same as in G.S. 7B-601 and
29 G.S. 7B-603. The court shall conduct a special hearing after notice of not less than 10
30 days nor more than 30 days ~~to the petitioner, the answering respondent,~~ given by the
31 petitioner or movant to the respondent who answered or responded, and the guardian ad
32 litem for the juvenile to determine the issues raised by the petition and ~~answer.~~ answer or
33 motion and response.

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

38 (c) In proceedings under this Article, the appointment of a guardian ad litem shall
39 not be required except, as provided above, in cases in which an answer or response is
40 filed denying material allegations, or as required under G.S. 7B-1101; but the court may,
41 in its discretion, appoint a guardian ad litem for a juvenile, either before or after
42 determining the existence of grounds for termination of parental rights, in order to assist
43 the court in determining the best interests of the juvenile.

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

8 Section 9. G.S. 7B-1109 (b) and (f) read as rewritten:

9 "(b) The court shall inquire whether the juvenile's parents are present at
10 the hearing and, if so, whether they are represented by counsel. If the parents are not
11 represented by counsel, the court shall inquire whether the parents desire counsel but are
12 indigent. In the event that the parents desire counsel but are indigent as defined in G.S.
13 7A-450(a) and are unable to obtain counsel to represent them, the court shall appoint
14 counsel to represent them. The court shall grant the parents such an extension of time as
15 is reasonable to permit their appointed counsel to prepare their defense to the termination
16 ~~petition.~~petition or motion. In the event that the parents do not desire counsel and are
17 present at the hearing, the court shall examine each parent and make findings of fact
18 sufficient to show that the waivers were knowing and voluntary. This examination shall
19 be reported as provided in G.S. 7A-198.

20 ...
21 (f) The burden in such proceedings shall be upon the petitioner or movant and all
22 findings of fact shall be based on clear, cogent, and convincing evidence. No husband-
23 wife or physician-patient privilege shall be grounds for excluding any evidence regarding
24 the existence or nonexistence of any circumstance authorizing the termination of parental
25 rights."

26 Section 10. G.S. 7B-1110 reads as rewritten:

27 "**§ 7B-1110. Disposition.**

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

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

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

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

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

2 Section 11. G.S. 7B-1111 reads as rewritten:

3 **"§ 7B-1111. Grounds for terminating parental rights.**

4 (a) The court may terminate the parental rights upon a finding of one or more of
5 the following:

6 (1) The parent has abused or neglected the juvenile. The juvenile shall be
7 deemed to be abused or neglected if the court finds the juvenile to be an
8 abused juvenile within the meaning of G.S. 7B-101 or a neglected
9 juvenile within the meaning of G.S. 7B-101.

10 (2) The parent has willfully left the juvenile in foster care or placement
11 outside the home for more than 12 months without showing to the
12 satisfaction of the court that reasonable progress under the
13 circumstances has been made within 12 months in correcting those
14 conditions which led to the removal of the juvenile. Provided, however,
15 that no parental rights shall be terminated for the sole reason that the
16 parents are unable to care for the juvenile on account of their poverty.

17 (3) The juvenile has been placed in the custody of a county department of
18 social services, a licensed child-placing agency, a child-caring
19 institution, or a foster home, and the parent, for a continuous period of
20 six months next preceding the filing of the ~~petition~~, petition or motion,
21 has willfully failed for such period to pay a reasonable portion of the
22 cost of care for the juvenile although physically and financially able to
23 do so.

24 (4) One parent has been awarded custody of the juvenile by judicial decree
25 or has custody by agreement of the parents, and the other parent whose
26 parental rights are sought to be terminated has for a period of one year
27 or more next preceding the filing of the petition or motion willfully
28 failed without justification to pay for the care, support, and education of
29 the juvenile, as required by said decree or custody agreement.

30 (5) The father of a juvenile born out of wedlock has not, prior to the filing
31 of a petition or motion to terminate parental rights:

32 a. Established paternity judicially or by affidavit which has been
33 filed in a central registry maintained by the Department of Health
34 and Human Services; provided, the court shall inquire of the
35 Department of Health and Human Services as to whether such an
36 affidavit has been so filed and shall incorporate into the case
37 record the Department's certified reply; or

38 b. Legitimated the juvenile pursuant to provisions of G.S. 49-10 or
39 filed a petition for this specific purpose; or

40 c. Legitimated the juvenile by marriage to the mother of the
41 juvenile; or

42 d. Provided substantial financial support or consistent care with
43 respect to the juvenile and mother.

- 1 (6) That the parent is incapable of providing for the proper care and
2 supervision of the juvenile, such that the juvenile is a dependent
3 juvenile within the meaning of G.S. 7B-101, and that there is a
4 reasonable probability that such incapability will continue for the
5 foreseeable future. Incapability under this subdivision may be the result
6 of substance abuse, mental retardation, mental illness, organic brain
7 syndrome, or any other similar cause or condition.
- 8 (7) The parent has willfully abandoned the juvenile for at least six
9 consecutive months immediately preceding the filing of the ~~petition~~
10 petition or motion.
- 11 (8) The parent has committed murder or voluntary manslaughter of another
12 child of the parent or other child residing in the home; has aided,
13 abetted, attempted, conspired, or solicited to commit murder or
14 voluntary manslaughter of the child, another child of the parent, or other
15 child residing in the home; or has committed a felony assault that results
16 in serious bodily injury to the child, another child of the parent, or other
17 child residing in the home.
- 18 (9) The parental rights of the parent with respect to another child of the
19 parent have been terminated involuntarily by a court of competent
20 jurisdiction and the parent lacks the ability or willingness to establish a
21 safe home.

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

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

25 **"§ 7B-1112. Effects of termination order.**

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

- 32 (1) If the juvenile had been placed in the custody of or released for adoption
33 by one parent to a county department of social services or licensed
34 child-placing agency and is in the custody of the agency at the time of
35 the filing of the ~~petition~~, petition or motion, including a petition or
36 motion filed pursuant to G.S. 7B-1103(6), that agency shall, upon entry
37 of the order terminating parental rights, acquire all of the rights for
38 placement of the juvenile as the agency would have acquired had the
39 parent whose rights are terminated released the juvenile to that agency
40 pursuant to the provisions of Part 7 of Article 3 of Chapter 48 of the
41 General Statutes, including the right to consent to the adoption of the
42 juvenile.

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

7 Section 13. The Legislative Research Commission shall study issues related to
8 expungement of information from the central registry of abuse, neglect, and dependency
9 cases or from judicial records of juvenile cases that alleged abuse, neglect, or
10 dependency. In particular, this study should consider whether expungement (i) from the
11 central registry should be available when a local department of social services does not
12 substantiate a report of abuse, neglect, or dependency or (ii) from the juvenile court
13 record in a case where alleged abuse, neglect, or dependency is not proven by clear and
14 convincing evidence. The Commission shall make recommendations to the 2001 Session
15 of the General Assembly.

16 Section 14. This act becomes effective October 1, 2000.