

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 896

Committee Substitute Favorable 4/24/97

Third Edition Engrossed 4/30/97

Senate Children & Human Resources Committee Substitute Adopted 7/24/97

Short Title: Child Welfare Changes.

(Public)

Sponsors:

Referred to:

April 8, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW PERTAINING TO THE CUSTODY AND PLACEMENT OF JUVENILES TO ENHANCE THE STATE'S ABILITY TO ENSURE THAT JUVENILES ARE PLACED IN A SAFE, PERMANENT HOME WITHIN A REASONABLE PERIOD OF TIME, TO AUTHORIZE THE DEPARTMENT OF HUMAN RESOURCES TO ASSUME CONTROL OF DELIVERY OF COUNTY CHILD WELFARE SERVICES UNDER CERTAIN CIRCUMSTANCES, AND TO ESTABLISH THE LEGISLATIVE STUDY COMMISSION ON CHILDREN AND YOUTH.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-289.32(3) reads as rewritten:

"(3) The parent has willfully left the child in foster care for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the ~~child~~ ~~child~~ ~~or without showing positive response within 12 months to the diligent efforts of a county Department of Social Services, a child-caring institution or~~

1 licensed child placing agency to encourage the parent to strengthen the
2 parental relationship to the child or to make and follow through with
3 constructive planning for the future of the child. Provided, however, that no
4 parental rights shall be terminated for the sole reason that the parents are
5 unable to care for the child on account of their poverty."

6 Section 2. G.S. 7A-289.32(7) reads as rewritten:

7 "(7) That the parent is incapable ~~as a result of mental retardation, mental illness,~~
8 ~~organic brain syndrome, or any other degenerative mental condition~~ of
9 providing for the proper care and supervision of the child, such that the
10 child is a dependent child within the meaning of G.S. 7A-517(13), and
11 that there is a reasonable probability that such incapability will continue
12 ~~throughout the minority of the child.~~ for the foreseeable future.
13 Incapability under this subdivision may be the result of substance abuse,
14 mental retardation, mental illness, organic brain syndrome, or any other
15 similar cause or condition."

16 Section 3. G.S. 7A-517 is amended by adding the following new subdivisions
17 to read:

18 "(25a) 'Reasonable efforts'. – The diligent use of preventive or reunification
19 services by a department of social services when a juvenile's remaining
20 at home or returning home is consistent with achieving a safe,
21 permanent home for the juvenile within a reasonable period of time.

22 (25b) 'Safe home'. – A home in which the child is not at substantial risk of
23 physical or emotional abuse or neglect."

24 Section 4. G.S. 7A-576 reads as rewritten:

25 **"§ 7A-576. Place of secure or nonsecure custody.**

26 (a) A juvenile meeting the criteria set out in G.S. 7A-574, subsection (a), may be
27 placed in nonsecure custody with the Department of Social Services or a person
28 designated in the order for temporary residential placement in:

- 29 (1) A licensed foster home or a home otherwise authorized by law to
30 provide such care or
31 (2) A facility operated by the Department of Social Services or
32 (3) Any other home or facility approved by the court and designated in the
33 order.

34 In placing a juvenile in nonsecure custody under this section and under G.S. 7A-629
35 and G.S. 7A-651, the court shall first consider whether a relative of the juvenile is willing
36 and able to provide proper care and supervision of the juvenile in a safe home. If the
37 court finds that the relative is willing and able to provide proper care and supervision in a
38 safe home, then the court shall order placement of the juvenile with the relative. Prior to
39 placement of a juvenile with a relative outside of this State, the placement must be in
40 accordance with the Interstate Compact on the Placement of Children.

41 (b) A juvenile meeting the criteria set out in G.S. 7A-574(b) may be temporarily
42 detained in an approved county detention home or a regional detention facility which
43 shall be separate from any jail, lockup, prison, or other adult penal institution. It shall be

1 unlawful for a county or any unit of government to operate a juvenile detention home
2 unless the facility meets the standards promulgated by the Department of Human
3 Resources."

4 Section 5. G.S. 7A-577(h) reads as rewritten:

5 "(h) Any order authorizing the continued nonsecure custody of a juvenile who is
6 alleged to be abused, neglected, or dependent shall include findings as to whether
7 reasonable efforts have been made to prevent or eliminate the need for placement of the
8 juvenile in custody and may provide for services or other efforts aimed at returning the
9 juvenile ~~home promptly.~~ promptly to a safe home. A finding that reasonable efforts have
10 not been made ~~to prevent or eliminate the need for placement~~ shall not preclude the entry of
11 an order authorizing continued nonsecure custody when the court finds that continued
12 nonsecure custody is necessary for the protection of the juvenile. Where efforts to prevent
13 the need for the juvenile's placement were precluded by an immediate threat of harm to
14 the juvenile, the court may find that the placement of the juvenile in the absence of such
15 efforts was reasonable. If the court finds through written findings of fact that efforts to
16 eliminate the need for placement of the juvenile in custody clearly would be futile or
17 would be inconsistent with the juvenile's safety and need for a safe, permanent home
18 within a reasonable period of time, then the court shall specify in its order that
19 reunification efforts are not required or order that reunification efforts cease."

20 Section 6. G.S. 7A-577 is amended by adding the following new subsection to
21 read:

22 "(h1) At each hearing to determine the need for continued nonsecure custody, the
23 court shall:

- 24 (1) Inquire as to the identity and location of any missing parent. The court
25 shall include findings as to the efforts undertaken to locate the missing
26 parent and to serve that parent. The order may provide for specific
27 efforts aimed at determining the identity and location of any missing
28 parent; and
29 (2) Inquire as to whether a relative of the juvenile is willing and able to
30 provide proper care and supervision of the juvenile in a safe home. If
31 the court finds that the relative is willing and able to provide proper care
32 and supervision in a safe home, then the court shall order temporary
33 placement of the juvenile with the relative. Prior to placement of a
34 juvenile with a relative outside of this State, the placement must be in
35 accordance with the Interstate Compact on the Placement of Children."

36 Section 7. G.S. 7A-585 reads as rewritten:

37 "**§ 7A-585. Appointment of guardian.**

38 In any case when no parent appears in a hearing with the juvenile or when the judge
39 finds it would be in the best interest of the juvenile, the judge may appoint a guardian of
40 the person for the juvenile. The guardian shall operate under the supervision of the court
41 with or without bond and shall file only such reports as the court shall require. The
42 guardian shall have the care, custody, and control of the juvenile or may arrange a
43 suitable placement for ~~him~~ the juvenile and may represent the juvenile in legal actions

1 before any court. The guardian ~~shall also have authority to~~ may consent to certain actions
2 on the part of the juvenile in place of the parent including (i) marriage, (ii) enlisting in
3 the armed forces, and (iii) ~~undergoing major surgery.~~ enrollment in school. The guardian
4 may also consent to any necessary remedial, psychological, medical, or surgical treatment
5 for the juvenile. The authority of the guardian shall continue until the guardianship is
6 terminated by court order, until the juvenile is emancipated pursuant to Article ~~56,~~ 56 of
7 this Chapter, or until the juvenile reaches the age of majority."

8 Section 8. G.S. 7A-651(c) reads as rewritten:

9 "(c) Any order directing placement of a juvenile in foster care shall also contain:

- 10 (1) A finding that the juvenile's continuation in or return to his own home
11 would be contrary to the juvenile's best interest; and
12 (2) Findings as to whether reasonable efforts have been made to prevent or
13 eliminate the need for placement of the juvenile in foster care. A finding
14 that reasonable efforts were not made ~~to prevent or eliminate the need for~~
15 ~~placement~~ shall not preclude entry of a dispositional order authorizing
16 placement in foster care when the court finds that such placement is
17 needed for protection of the juvenile. When efforts to prevent the need
18 for the juvenile's placement are precluded by an immediate threat of
19 harm to the juvenile, the court may find that placement of the juvenile in
20 the absence of such efforts is reasonable.

21 The order may provide for services or other efforts aimed at returning the juvenile
22 promptly to a safe home. If the court finds through written findings of fact that efforts to
23 eliminate the need for placement of the juvenile in custody clearly would be futile or
24 would be inconsistent with the juvenile's safety and need for a safe, permanent home
25 within a reasonable period of time, the court shall specify in its order that reunification
26 efforts are not required or order that reunification efforts cease."

27 Section 9. G.S. 7A-657 reads as rewritten:

28 "**§ 7A-657. Review of custody order.**

29 (a) ~~In any case where the judge removes custody from a parent or person standing~~
30 ~~in loco parentis because of dependency, neglect or abuse, the juvenile shall not be~~
31 ~~returned to the parent or person standing in loco parentis unless the judge finds sufficient~~
32 ~~facts to show that the juvenile will receive proper care and supervision.~~ In any case where
33 custody is removed from a parent, the judge shall conduct a review within six months of
34 the date the order was entered, shall conduct a second review within six months after the
35 first review, and shall conduct subsequent reviews at least every year thereafter. The
36 Director of Social Services shall make timely requests to the clerk to calendar the case at
37 a session of court scheduled for the hearing of juvenile matters within six months of the
38 date the order was entered. The Director shall make timely requests for calendaring ~~of~~
39 ~~the yearly reviews thereafter.~~ subsequent reviews. The clerk shall give 15 days' notice of
40 the review to the parent or the person standing in loco parentis, the juvenile if 12 years of
41 age or more, the guardian, foster parent, custodian or agency with custody, the guardian
42 ad litem, and any other person the court may specify, indicating the court's impending
43 review.

1 (b) Notwithstanding other provisions of this Article, the court may waive the
2 holding of review hearings required by subsection (a), may require written reports to the
3 court by the agency or person holding custody in lieu of review hearings, or order that
4 review hearings be held less often than every 12 months, if the court finds by clear,
5 cogent and convincing evidence that:

- 6 (1) The juvenile has ~~been placed~~ resided with a relative or has been in the
7 custody of another suitable person for a ~~continuous~~ period of at least one
8 year; and
9 (2) The placement is stable and continuation of the placement is in the
10 juvenile's best interest; and
11 (3) Neither the juvenile's best interests nor the rights of any party require
12 that review hearings be held every 12 months; and
13 (4) All parties are aware that the matter may be brought before the court for
14 review at any time by the filing of a motion for review or on the court's
15 own motion; and
16 (5) The court order has designated the relative or other suitable person as
17 the juvenile's permanent caretaker or guardian of the person. ~~at the~~
18 ~~review at which these findings are made.~~

19 The court may not waive or refuse to conduct a review hearing if a party files a motion
20 seeking the review.

21 (c) At every review hearing, the court shall consider information from the
22 Department of Social Services, the court counselor, the juvenile, the parent or person
23 standing in loco parentis, the custodian, the foster parent, the guardian ad litem, and any
24 public or private agency which will aid it in its review.

25 In each case the court shall consider the following ~~criteria~~ criteria and make written
26 findings regarding those that are relevant:

- 27 (1) Services which have been offered to reunite the ~~family~~ family, or
28 whether efforts to reunite the family clearly would be futile or
29 inconsistent with the juvenile's safety and need for a safe, permanent
30 home within a reasonable period of time;
31 (2) Where the juvenile's return home is unlikely, the efforts which have
32 been made to evaluate or plan for other methods of care;
33 (3) Goals of the foster care placement and the appropriateness of the foster
34 care plan;
35 (4) A new foster care plan, if continuation of care is sought, that addresses
36 the role the current foster parent will play in the planning for the
37 juvenile;
38 (5) Reports on the placements the juvenile has had and any services offered
39 to the juvenile and the parent;
40 (6) When and if termination of parental rights should be considered;
41 (7) Any other criteria the court deems necessary.

42 (d) The judge, after making findings of fact, ~~shall have authority to~~ may appoint a
43 guardian of the person for the juvenile pursuant to G.S. 7A-585 or may make any

1 disposition authorized by G.S. 7A-647, including the authority to place the child in the
2 custody of either parent or any relative found by the court to be suitable and found by the
3 court to be in the best interest of the juvenile. If the juvenile is placed in or remains in the
4 custody of the department of social services, the court may authorize the department to
5 arrange and supervise a visitation plan. Except for such visitation, the juvenile shall not
6 be returned to the parent or person standing in loco parentis without a hearing at which
7 the court finds sufficient facts to show that the juvenile will receive proper care and
8 supervision. The court may enter an order continuing the placement under review or
9 providing for a different placement as is deemed to be in the best interest of the juvenile.
10 If at any time custody is restored to a parent, the court shall be relieved of the duty to
11 conduct periodic judicial reviews of the placement.

12 (d1) At a hearing designated by the court, but at least within 12 months after the
13 juvenile's placement, a review hearing shall be held under this section and designated as a
14 permanency planning hearing. The purpose of the hearing shall be to develop a plan to
15 achieve a safe, permanent home for the juvenile within a reasonable period of time.
16 Notice of the hearing shall inform the parties of the purpose of the hearing. At the
17 conclusion of the hearing, if the juvenile is not returned home, the judge shall make
18 specific findings as to the best plan of care to achieve a safe, permanent home for the
19 juvenile within a reasonable period of time and shall enter an order consistent with those
20 findings.

21 (e) The provisions of subsections (b), (c), and (d) of G.S. 7A-651 shall apply to any
22 order entered under this section which continues the foster care placement of a juvenile."

23 Section 10. Article 3 of Chapter 108A of the General Statutes is amended by
24 adding the following new section to read:

25 "**§ 108A-74. County department failure to provide services; State intervention in or**
26 **control of service delivery.**

27 (a) Notwithstanding any other provision of law to the contrary, the Secretary of
28 Human Resources may take action in accordance with this section to ensure the delivery
29 of child welfare services in accordance with State laws and applicable rules. As used in
30 this section, the terms:

31 (1) 'County department of social services' also means the consolidated
32 human services agency, whichever applies;

33 (2) 'County director of social services' also means the human services
34 director, whichever applies; and

35 (3) 'County board of social services' also means the consolidated human
36 services board, whichever applies.

37 (b) If the Secretary of Human Resources determines that a county department of
38 social services is not providing child protective services, foster care services, or adoption
39 services in accordance with State law and with applicable rules adopted by the Social
40 Services Commission, or fails to demonstrate reasonable efforts to do so, then the
41 Secretary, after providing written notification of intent to the county director of social
42 services, to the chair of the county board of commissioners, and to the chair of the county
43 board of social services, and after providing them with an opportunity to be heard, may

1 intervene in the particular service or services in question. Intervention includes, but is
2 not limited to, the following activities:

3 (1) Sending staff of the Department of Human Resources to the county
4 department of social services to provide technical assistance and to
5 monitor the services being provided;

6 (2) Establishing a corrective plan of action to correct inappropriate policies
7 and procedures; and

8 (3) Advising county personnel as to appropriate policies and procedures.

9 If within 60 days of completion of the intervention activities, the Secretary finds that
10 the county department of social services is not providing in accordance with State laws
11 and applicable rules the particular service or services for which intervention was initiated,
12 or has not demonstrated reasonable efforts to do so, the Secretary shall withhold State
13 and federal child welfare services administrative funds until the particular service or
14 services are provided in accordance with State laws and applicable rules.

15 (c) If the Secretary determines that a county department of social services is not
16 providing child protective, foster care, or adoption services in accordance with State law
17 and with applicable rules adopted by the Social Services Commission, or fails to
18 demonstrate reasonable efforts to do so, and the failure to provide the services poses a
19 substantial threat to the safety and welfare of children in the county who receive or are
20 eligible to receive the services, then the Secretary, after providing written notification of
21 intent to the chair of the county board of commissioners, to the chair of the county board
22 of social services, and to the county director of social services, and after providing them
23 with an opportunity to be heard, shall withhold funding for the particular service or
24 services in question and shall ensure the provision of these services through contracts
25 with public or private agencies or by direct operation by the Department of Human
26 Resources.

27 (d) In the event that the Secretary assumes control of service delivery pursuant to
28 subsection (c) of this section, the county director of social services shall be divested of all
29 service delivery powers conferred upon the director by G.S. 108A-14 and other
30 applicable State law as the powers pertain to the services in question. Upon assumption
31 of control of service delivery, the Secretary may assign any of the powers and duties of
32 the county director of social services to the Director of the Division of Social Services of
33 the Department of Human Resources or to a contractor as the Secretary deems necessary
34 and appropriate to continue the provision of the services in the county.

35 (e) In the event the Secretary takes action under this section, the Department of
36 Human Resources shall, in conjunction with the county board of commissioners, the
37 county board of social services, and the county director of social services develop and
38 implement a corrective plan of action. The Department of Human Resources shall also
39 keep the chair of the county board of commissioners, the chair of the county board of
40 social services, and the county director of social services informed of any ongoing
41 concerns or problems with the delivery of the services in question.

42 (f) Upon the Secretary taking action pursuant to subsection (c) of this section,
43 county funding of the services in question shall continue and at no time during the period

1 of time that the Secretary is taking action shall a county withdraw funds previously
2 obligated or appropriated for the services. Upon the Secretary's assumption of the control
3 of service delivery, the county shall also pay the nonfederal share of any additional cost
4 that may be incurred to operate the services in question at the level necessary to comply
5 fully with State law and Social Services Commission rules.

6 (g) During the period of time that the Secretary is taking action pursuant to
7 subsection (c) of this section, the Department of Human Resources shall work with the
8 county board of commissioners, the county board of social services, and the county
9 director of social services, to enable service delivery to be returned to the county if and
10 when the Secretary has determined that services can be provided by the county in
11 accordance with State law and applicable rules."

12 Section 11. Chapter 120 of the General Statutes is amended by adding the
13 following new Article to read:

14 **"ARTICLE 24.**

15 **"THE LEGISLATIVE STUDY COMMISSION ON CHILDREN AND YOUTH.**

16 There is created the Legislative Study Commission on Children and Youth. The
17 purpose of the Commission is to study and evaluate the system of delivery of services to
18 children and youth and to make recommendations to improve service delivery to meet
19 present and future needs of the children and youth of this State. This study shall be a
20 continuing one and the evaluation ongoing.

21 **"§ 120-209. Commission duties.**

22 The Commission shall have the following duties:

23 (1) Study the needs of children and youth. This study shall include, but is
24 not limited to:

25 a. Determining the adequacy and appropriateness of services:

26 1. To children and youth receiving child welfare services;

27 2. To children and youth in the juvenile court system; and

28 3. Provided by the Division of Social Services and the
29 Division of Youth Services of the Department of Human
30 Resources.

31 b. Developing methods for identifying and providing services to
32 children and youth not receiving but in need of child welfare
33 services, children and youth at risk of entering the juvenile court
34 system, and children and youth exposed to domestic violence
35 situations.

36 c. Developing strategies for addressing the issues of school dropout,
37 teen suicide, and adolescent pregnancy.

38 d. Identifying and evaluating the impact on children and youth of
39 other economic and environmental issues.

40 e. Identifying obstacles to ensuring that children who are in secure
41 or nonsecure custody are placed in safe and permanent homes
42 within a reasonable period of time and recommending strategies
43 for overcoming those obstacles. The Commission shall consider

1 what, if anything, can be done to expedite the adjudication and
2 appeal of abuse and neglect charges against parents so that
3 decisions may be made about the safe and permanent placement
4 of their children as quickly as possible.

5 (2) Evaluate problems associated with juveniles who are beyond the
6 disciplinary control of their parents, including juveniles who are
7 runaways, and develop solutions for addressing the problems of those
8 juveniles.

9 (3) Identify strategies for the development and funding of a comprehensive
10 statewide database relating to children and youth to facilitate State
11 agency planning for delivery of services to children and youth.

12 (4) Conduct any other studies, evaluations, or assessments necessary for
13 the Commission to carry out its purpose.

14 **"§ 120-210. Commission membership; terms; compensation.**

15 (a) The Commission shall consist of 21 members, as follows:

16 (1) Nine members appointed by the Speaker of the House of
17 Representatives, as follows:

18 a. Four shall be members of the House of Representatives at the
19 time of their appointment.

20 b. One shall be the director of a local health department.

21 c. One shall be the director of a county department of social
22 services.

23 d. One shall be a representative of the general public who has
24 knowledge of issues relating to children and youth.

25 e. One shall be a licensed physician who is knowledgeable about
26 the health needs of children and youth, and

27 f. One shall be a chief district court judge recommended by the
28 Council of Chief District Judges.

29 (2) Nine members appointed by the President Pro Tempore of the Senate, as
30 follows:

31 a. Four shall be members of the Senate at the time of their
32 appointment.

33 b. One shall be the director of a mental health area authority.

34 c. One shall be a representative of the Association of County
35 Commissioners.

36 d. One shall be a representative of the general public who has
37 knowledge of issues relating to children and youth.

38 e. One shall be a licensed attorney whose practice includes the
39 representation of parents accused of criminal or civil abuse or
40 neglect, and

41 f. One shall be a chief district court judge recommended by the
42 Council of Chief District Judges.

1 (3) The following shall serve ex officio as nonvoting members of the
2 Commission:

- 3 a. The Secretary of Human Resources, or the Secretary's designee,
4 b. The State Superintendent of Public Instruction, or the
5 Superintendent's designee, and
6 c. The Secretary of Administration, or the Secretary's designee.

7 (b) Any vacancy shall be filled by the appointing authority who made the initial
8 appointment and by a person having the same qualification. Members' terms shall last for
9 two years. Members may be reappointed for two consecutive terms and may be
10 appointed again after having been off the Commission for two years.

11 (c) Commission members shall receive no salary as a result of serving on the
12 Commission but shall receive necessary subsistence and travel expenses in accordance
13 with G.S. 120-3.1, 138-5, and 138-6, as applicable.

14 **"§ 120-211. Commission meetings; public hearings; staff.**

15 (a) The Commission shall hold its initial meeting at the call of the Speaker of the
16 House of Representatives and the President Pro Tempore of the Senate. Subsequent
17 meetings shall be held upon the call of the Commission cochair. The Speaker of the
18 House of Representatives and the President Pro Tempore of the Senate shall appoint a
19 cochair each from the membership of the Commission.

20 (b) The Commission may hold public hearings across the State to solicit public
21 input with respect to issues relating to children and youth.

22 (c) The Commission may contract for clerical or professional staff or for any other
23 services it may require in the course of its ongoing study. At the request of the
24 Commission, the Legislative Services Commission may supply members of the staff of
25 the Legislative Services Office and clerical assistance to the Commission as the
26 Legislative Services Commission considers appropriate. The Commission may, with the
27 approval of the Legislative Services Commission, meet in the State Legislative Building
28 or the Legislative Office Building.

29 **"§ 120-212. Commission reports.**

30 The Commission shall report to the General Assembly and to the Governor the results
31 of its study and recommendations. A written report shall be submitted to each biennial
32 session of the General Assembly at its convening.

33 **"§ 120-213. Commission authority.**

34 The Commission has the authority to obtain information and data from all State
35 officers, agents, agencies, and departments, while in discharge of its duties, pursuant to
36 G.S. 120-19, as if it were a committee of the General Assembly."

37 Section 12. Sections 1 through 9 of this act become effective October 1, 1997,
38 and apply to actions commenced on and after that date. Section 10 of this act becomes
39 effective January 1, 1998. The remainder of this act is effective when it becomes law.