

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 421*

Short Title: Amend Child Welfare Laws.-AB

(Public)

Sponsors: Senators Thomas, Metcalf, and Rand.

Referred to: Judiciary II.

March 17, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY AND MAKE TECHNICAL CORRECTIONS TO THE
3 CHILD WELFARE LAWS AND TO ENHANCE THE STATE'S ABILITY TO
4 PROTECT CHILDREN.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 7B-407 reads as rewritten:

7 "**§ 7B-407. Service of summons.**

8 The summons shall be personally served in accordance with G.S. 1A-1, Rule 4(j)
9 upon the parent, guardian, custodian, or caretaker, not less than five days prior to the
10 date of the scheduled hearing. The time for service may be waived in the discretion of
11 the court.

12 If the parent, guardian, custodian, or caretaker entitled to receive a summons cannot
13 be found by a diligent effort, the court may authorize service of the summons and
14 petition by mail or by publication. The cost of the service by publication shall be
15 advanced by the petitioner and may be charged as court costs as the court may direct.

16 If the parent, guardian, custodian, or caretaker is personally served as herein
17 provided and fails without reasonable cause to appear and to bring the juvenile before
18 the court, the parent, guardian, custodian, or caretaker may be proceeded against as for
19 contempt of court."

20 **SECTION 2.** G.S. 7B-1109(d) reads as rewritten:

21 "(d) The court may for good cause shown continue the hearing for such time as is
22 reasonably required for receiving to receive additional evidence, any reports or
23 assessments which the court has requested, or any other information needed in the best
24 interests of the ~~juvenile~~ juvenile and to allow for a reasonable time for the parties to
25 conduct expeditious discovery. Otherwise, continuances shall be granted only in
26 extraordinary circumstances when necessary for the proper administration of justice or
27 in the best interest of the juvenile. If the court, pursuant to this subsection, continues the
28 hearing to a time that is more than 90 days from the filing of the initial petition or

1 motion, the court shall reduce its order to writing and state in the written order its reason
2 for granting the continuance."

3 **SECTION 3.** G.S. 110-132(a) reads as rewritten:

4 "(a) In lieu of or in conclusion of any legal proceeding instituted to establish
5 paternity, the written affidavits of parentage executed by the putative father and the
6 mother of the dependent child shall constitute an admission of paternity and shall have
7 the same legal effect as a judgment of ~~paternity for the purpose of establishing a child~~
8 ~~support obligation, paternity,~~ subject to the right of either signatory to rescind within the
9 earlier of:

10 (1) 60 days of the date the document is executed, or

11 (2) The date of entry of an order establishing paternity or an order for the
12 payment of child support."

13 **SECTION 4.** G.S. 115C-378 reads as rewritten:

14 **"§ 115C-378. Children required to attend.**

15 Every parent, guardian or other person in this State having charge or control of a
16 child between the ages of seven and 16 years shall cause such child to attend school
17 continuously for a period equal to the time which the public school to which the child is
18 assigned shall be in session. Every parent, guardian, or other person in this State having
19 charge or control of a child under age seven who is enrolled in a public school in grades
20 kindergarten through two shall also cause such child to attend school continuously for a
21 period equal to the time which the public school to which the child is assigned shall be
22 in session unless the child has withdrawn from school. No person shall encourage,
23 entice or counsel any such child to be unlawfully absent from school. The parent,
24 guardian, or custodian of a child shall notify the school of the reason for each known
25 absence of the child, in accordance with local school policy.

26 The principal, superintendent, or teacher who is in charge of such school shall have
27 the right to excuse a child temporarily from attendance on account of sickness or other
28 unavoidable cause which does not constitute unlawful absence as defined by the State
29 Board of Education. The term "school" as used herein is defined to embrace all public
30 schools and such nonpublic schools as have teachers and curricula that are approved by
31 the State Board of Education.

32 All nonpublic schools receiving and instructing children of a compulsory school age
33 shall be required to keep such records of attendance and render such reports of the
34 attendance of such children and maintain such minimum curriculum standards as are
35 required of public schools; and attendance upon such schools, if the school refuses or
36 neglects to keep such records or to render such reports, shall not be accepted in lieu of
37 attendance upon the public school of the district to which the child shall be assigned:
38 Provided, that instruction in a nonpublic school shall not be regarded as meeting the
39 requirements of the law unless the courses of instruction run concurrently with the term
40 of the public school in the district and extend for at least as long a term.

41 The principal or his designee shall notify the parent, guardian, or custodian of his
42 child's excessive absences after the child has accumulated three unexcused absences in a
43 school year. After not more than six unexcused absences, the principal shall notify the
44 parent, guardian, or custodian by mail that he may be in violation of the Compulsory

1 Attendance Law and may be prosecuted if the absences cannot be justified under the
2 established attendance policies of the State and local boards of education. Once the
3 parents are notified, the school attendance counselor shall work with the child and his
4 family to analyze the causes of the absences and determine steps, including adjustment
5 of the school program or obtaining supplemental services, to eliminate the problem. The
6 attendance counselor may request that a law-enforcement officer accompany him if he
7 believes that a home visit is necessary.

8 After 10 accumulated unexcused absences in a school year-year, the principal shall
9 review any report or investigation prepared under G.S. 115C-381 and shall confer with
10 the student and his parent, guardian, or ~~eustodian~~-custodian, ~~if possible~~-possible, to
11 determine whether the parent, guardian, or custodian has received notification pursuant
12 to this section and made a good faith effort to comply with the law. If the principal
13 determines that the parent, guardian, or custodian has not, not made a good faith effort
14 to comply with the law, he-the principal shall notify the district attorney-attorney and the
15 director of social services of the county or city where the case arose. After the principal
16 has made a determination based on the report or investigation prepared pursuant to G.S.
17 115C-381, the director shall then decide whether to undertake a protective services
18 assessment against the parent, guardian, or custodian for educational neglect. If he-the
19 principal determines that the parent, guardian, or custodian has, made a good faith effort
20 to comply with the law, he-the principal may file a complaint with the juvenile court
21 counselor pursuant to Chapter 7B of the General Statutes that the child is habitually
22 absent from school without a valid excuse. Evidence that shows that the parents,
23 guardian, or custodian were notified and that the child has accumulated 10 absences
24 which cannot be justified under the established attendance policies of the local board
25 shall establish a prima facie case that the child's parent, guardian, or custodian is
26 responsible for the absences."

27 **SECTION 5.** G.S. 131D-10.6B reads as rewritten:

28 "**§ 131D-10.6B. Report of death. Maintaining a register of applicants by the**
29 **Division of Social Services.**

30 (a) ~~A facility licensed under this Article shall notify the Department immediately~~
31 ~~upon the death of any resident of the facility that occurs within seven days of physical~~
32 ~~restraint of the resident, and shall notify the Department within three days of the death~~
33 ~~of any resident of the facility resulting from violence, accident, suicide, or homicide.~~
34 ~~The Department may assess a civil penalty of not less than five hundred dollars~~
35 ~~(\$500.00) and not more than one thousand dollars (\$1,000) against a facility that fails to~~
36 ~~notify the Department of a death and the circumstances surrounding the death known to~~
37 ~~the facility. Chapter 150B of the General Statutes governs the assessment of a penalty~~
38 ~~under this section. A civil penalty owed under this section may be recovered in a civil~~
39 ~~action brought by the Department or the Attorney General. The clear proceeds of the~~
40 ~~penalty shall be remitted to the State Treasurer for deposit in accordance with State law.~~

41 (a1) The Division of Social Services shall keep a register of all family foster and
42 therapeutic foster home applicants. The register shall be available to the public upon
43 request and upon payment of a reasonable fee for copying as established by the Division
44 of Social Services. The register shall state all of the following:

- 1 (1) The name, age, and address of each applicant.
- 2 (2) The date of the application.
- 3 (3) The applicant's supervising agency.
- 4 (4) Any mandated training completed by the applicant and the dates of
5 training.
- 6 (5) Whether the applicant was licensed and the date of the initial licensure.
- 7 (6) The current licensing period.
- 8 (7) Any adverse licensing actions.
- 9 (8) Any other information deemed necessary by the Division of Social
10 Services.

11 ~~(b) Upon receipt of notification from a facility in accordance with subsection (a)~~
12 ~~of this section, the Department shall notify the Governor's Advocacy Council for~~
13 ~~Persons With Disabilities that a person with a disability has died. The Department shall~~
14 ~~provide the Council access to the information about each death reported to the Council~~
15 ~~pursuant to subsection (a) of this section, including information resulting from any~~
16 ~~investigation of the death by the Department, and from reports received from the Chief~~
17 ~~Medical Examiner pursuant to G.S. 130A-385. The Council shall use the information in~~
18 ~~accordance with its powers and duties under G.S. 143B-403.1 and applicable federal~~
19 ~~law and regulations.~~

20 (b1) Applications of family foster and therapeutic foster home applicants and all
21 other related materials, including letters of reference, mutual home assessments, or
22 medical, psychological, financial, or other personal background information or history
23 of applicants, the applicants' family, or members of the applicants' household, shall be
24 treated as confidential and not as 'public records' subject to disclosure pursuant to
25 Chapter 132 of the General Statutes.

26 ~~(c) If the death of a resident of the facility occurs within seven days of the use of~~
27 ~~physical restraint, the Department shall initiate immediately an investigation of the~~
28 ~~death.~~

29 ~~(d) Nothing in this section abrogates State or federal law or requirements~~
30 ~~pertaining to the confidentiality, privilege, or other prohibition against disclosure of~~
31 ~~information provided to the Department or the Council. In carrying out the requirements~~
32 ~~of this section, the Department and the Council shall adhere to State and federal~~
33 ~~requirements of confidentiality, privilege, and other prohibitions against disclosure and~~
34 ~~release applicable to the information received under this section. A facility or provider~~
35 ~~that makes available confidential information in accordance with this section and with~~
36 ~~State and federal law is not liable for the release of the information.~~

37 ~~(e) The Secretary shall establish a standard reporting format for reporting deaths~~
38 ~~pursuant to this section and shall provide to facilities subject to this section a form for~~
39 ~~the facility's use in complying with this section."~~

40 **SECTION 6.** G.S. 143B-150.20 reads as rewritten:

41 **"§ 143B-150.20. State Child Fatality Review Team; establishment; purpose;**
42 **powers; duties; report by Division of Social Services.**

43 (a) There is established in the Department of Health and Human Services,
44 Division of Social Services, a State Child Fatality Review Team to conduct in-depth

1 reviews of any child fatalities which have occurred involving children and families
2 involved with local departments of social services child protective services in the 12
3 months preceding the fatality. Steps in this in-depth review shall include interviews with
4 any individuals determined to have pertinent information as well as examination of any
5 written materials containing pertinent information.

6 (b) The purpose of these reviews shall be to implement a team approach to
7 identifying factors which may have contributed to conditions leading to the fatality and
8 to develop recommendations for improving coordination between local and State
9 entities which might have avoided the threat of injury or fatality and to identify
10 appropriate remedies. The Division of Social Services shall make public the findings
11 and recommendations developed for each fatality reviewed relating to improving
12 coordination between local and State entities. These findings shall not be admissible as
13 evidence in any civil or administrative proceedings against individuals or entities that
14 participate in child fatality reviews conducted pursuant to this section. The State Child
15 Fatality Review Team shall consult with the appropriate district attorney in accordance
16 with G.S. 7B-2902(d) prior to the public release of the findings and recommendations.

17 (c) The State Child Fatality Review Team shall include representatives of the
18 local departments of social services and the Division of Social Services, a member of
19 the local Community Child Protection Team, a member of the local child fatality
20 prevention team, a representative from local law enforcement, a prevention specialist,
21 and a medical professional.

22 (d) The State Child Fatality Review Team shall have access to all medical
23 records, hospital records, and records maintained by this State, any county, or any local
24 agency as necessary to carry out the purposes of this subsection, including police
25 investigative data, medical examiner investigative data, health records, mental health
26 records, and social services records. The State Child Fatality Review Team may receive
27 a copy of any reviewed materials necessary to the conduct of the fatality review. Any
28 member of the State Child Fatality Review Team may share, only in an official meeting
29 of the State Child Fatality Review Team, any information available to that member that
30 the State Child Fatality Review Team needs to carry out its duties.

31 (d1) Pursuant to subsection (d) of this section, if a request for records by the State
32 Child Fatality Review Team is denied or a response to its request is not immediately
33 forthcoming, the State Child Fatality Review Team may apply for an order compelling
34 disclosure. The application shall state, with reasonable particularity, factors supporting
35 the need for an order compelling disclosure. The State Child Fatality Review Team shall
36 file the application in Wake County Superior Court and the Court shall have jurisdiction
37 to issue any orders compelling disclosure. Actions brought pursuant to this section shall
38 be scheduled for immediate hearing, and subsequent proceedings in these actions shall
39 be given priority by the appellate courts. After a hearing, the Court shall issue an order
40 compelling disclosure unless the court finds that the disclosure of the requested records
41 is not permitted by federal law and regulations.

42 (e) Meetings of the State Child Fatality Review Team are not subject to the
43 provisions of Article 33C of Chapter 143 of the General Statutes. However, the State
44 Child Fatality Review Team may hold periodic public meetings to discuss, in a general

1 manner not revealing confidential information about children and families, the findings
2 of their reviews and their recommendations for preventive actions. Minutes of all public
3 meetings, excluding those of closed sessions, shall be kept in compliance with Article
4 33C of Chapter 143 of the General Statutes. Any minutes or any other information
5 generated during any executive session shall be sealed from public inspection.

6 (f) All otherwise confidential information and records acquired by the State
7 Child Fatality Review Team, in the exercise of its duties are confidential; are not subject
8 to discovery or introduction into evidence in any proceedings except pursuant to an
9 order of the court; and may only be disclosed as necessary to carry out the purposes of
10 the State Child Fatality Review Team. In addition, all otherwise confidential
11 information and records created by the State Child Fatality Review Team in the exercise
12 of its duties are confidential; are not subject to discovery or introduction into evidence
13 in any proceedings; and may only be disclosed as necessary to carry out the purposes of
14 the State Child Fatality Review Team. No member of the State Child Fatality Review
15 Team, nor any person who attends a meeting of the State Child Fatality Review Team,
16 may testify in any proceeding about what transpired at the meeting, about information
17 presented at the meeting, or about opinions formed by the person as a result of the
18 meetings. This subsection shall not, however, prohibit a person from testifying in a civil
19 or criminal action about matters within that person's independent knowledge.

20 (g) Each member of the State Child Fatality Review Team and invited participant
21 shall sign a statement indicating an understanding of and adherence to confidentiality
22 requirements, including the possible civil or criminal consequences of any breach of
23 confidentiality.

24 ~~(h) The Division of Social Services, Department of Health and Human Services,~~
25 ~~shall report to the members of the Senate Appropriations Committee on Human~~
26 ~~Resources, the House of Representatives Appropriations Subcommittee on Health and~~
27 ~~Human Services, and the Fiscal Research Division on the activities of the State Child~~
28 ~~Fatality Review Team including recommendations for changes in the statewide child~~
29 ~~protection system no later than October 1 of each year."~~

30 **SECTION 7.** G.S. 153A-257 is amended by adding a new subsection to
31 read:

32 "(d) If two or more county departments of social services differ regarding the legal
33 residence of a minor in a child abuse, neglect, or dependency case, either county
34 department of social services may refer the factual situation to the Department of Health
35 and Human Services, Division of Social Services. After reviewing the pertinent
36 background facts of the case, the Director of the Division of Social Services or the
37 Director's designee shall determine which county department of social services shall be
38 responsible for providing protective services and financial support for the minor in
39 question. Since the Department of Health and Human Services is the supervising agency
40 under Chapter 108A of the General Statutes for the county-administered programs, the
41 determination of the Director or the Director's designee regarding the minor's legal
42 residence for social services purposes is binding upon the county departments of social
43 services and counties and is not subject to judicial review."

44 **SECTION 8.** This act is effective when it becomes law.