

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1150

Short Title: Expedite Juv. Proceedings/Guardians ad Litem. (Public)

Sponsors: Representatives Goodwin, Glazier, Ross (Primary Sponsors); Bordsen, Insko, Parmon, Underhill, and Womble.

Referred to: Judiciary I.

April 7, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE JUVENILE CODE TO EXPEDITE OUTCOMES FOR CHILDREN AND FAMILIES INVOLVED IN WELFARE CASES AND APPEALS AND TO LIMIT THE APPOINTMENT OF GUARDIANS AD LITEM FOR PARENTS IN ABUSE, NEGLECT, AND DEPENDENCY PROCEEDINGS, AS RECOMMENDED BY THE COURT IMPROVEMENT PROJECT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-507 is amended by adding a new subsection to read:

"(e) At any hearing at which the court finds and orders that reasonable efforts to reunify a family shall cease, the affected parent or that parent's counsel may give notice to preserve the parent's right to appeal the finding and order. Notice may be given in open court or in writing within 10 days of the hearing at which the court orders the efforts to reunify the family to cease. The affected parent shall be permitted to make a detailed offer of proof as to any evidence that person sought to offer in opposition to cessation of reunification that the court refused to admit as evidence or to consider. The Court of Appeals shall review the order to cease unification if (i) a motion or petition to terminate the parent's rights is heard and granted, (ii) the order terminating parental rights is appealed in a proper and timely manner, and (iii) the order to cease reunification is assigned as error in the record on appeal of the termination of parental rights."

SECTION 2. G.S. 7B-602 reads as rewritten:

"§ 7B-602. Parent's right to counsel; guardian ad litem.

(a) In cases where the juvenile petition alleges that a juvenile is abused, neglected, or dependent, the parent has the right to counsel and to appointed counsel in cases of indigency unless that person waives the right. When a petition is filed alleging that a juvenile is abused, neglected, or dependent, the clerk shall appoint provisional counsel for each parent named in the petition and indicate the appointment on the

1 juvenile summons or attached notice. At the first hearing, the court shall dismiss the
2 provisional counsel if the respondent parent:

- 3 (1) Does not appear at the hearing;
- 4 (2) Does not qualify for court-appointed counsel;
- 5 (3) Has retained counsel; or
- 6 (4) Waives the right to counsel.

7 The court shall confirm the appointment of counsel if subdivisions (1) through (4) of
8 this subsection are not applicable to the respondent parent.

9 The court may reconsider a parent's eligibility and desire for appointed counsel at
10 any stage of the proceeding.

11 (b) In addition to the right to appointed counsel set forth above, a guardian ad
12 litem shall be appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to
13 represent a parent in the following cases:

- 14 (1) ~~Where it is alleged that the juvenile is a dependent juvenile within the~~
15 ~~meaning of G.S. 7B-101 in that the parent is incapable as the result of~~
16 ~~substance abuse, mental retardation, mental illness, organic brain~~
17 ~~syndrome, or any other similar cause or condition of providing for the~~
18 ~~proper care and supervision of the juvenile; or~~
- 19 (2) ~~Where the parent who is under the age of 18 years, years and who is~~
20 ~~not married or otherwise emancipated. The appointment of a guardian~~
21 ~~ad litem under this subsection shall not affect the minor parent's~~
22 ~~entitlement to a guardian ad litem pursuant to G.S. 7B-601 in the event~~
23 ~~that the minor parent is the subject of a separate juvenile petition.~~

24 (c) On motion of any party or on the court's own motion, the court may appoint a
25 guardian ad litem for a parent in accordance with G.S. 1A-1, Rule 17, if the court
26 determines that there is a reasonable basis to believe that the parent is incompetent or
27 has diminished capacity and cannot adequately act in his or her own interest. The
28 parent's counsel shall not be appointed to serve as the guardian ad litem.

29 (d) Communications between the guardian ad litem and the parent and between
30 the guardian ad litem and the parent's counsel shall be privileged and confidential to the
31 same extent that communications between the parent and the parent's counsel are
32 privileged and confidential.

33 (e) Guardians ad litem appointed under this section may engage in all of the
34 following practices:

- 35 (1) Enable the parent to enter consent orders, if appropriate.
- 36 (2) Facilitate service of process on the parent.
- 37 (3) Assure that necessary pleadings are filed.
- 38 (4) Assist the parent and the parent's counsel, if requested by the parent's
39 counsel, to ensure that the parent's procedural due process
40 requirements are met."

41 **SECTION 3.** G.S. 7B-807(b) reads as rewritten:

42 "(b) The adjudicatory order shall be in writing and shall contain appropriate
43 findings of fact and conclusions of law. The order shall be reduced to writing, signed,
44 and entered no later than 30 days following the completion of the hearing. If the order is

1 not entered within 30 days following completion of the hearing, the clerk of court or
2 case manager for juvenile matters shall schedule a subsequent hearing at the first
3 session of court scheduled for the hearing of juvenile matters following the 30-day
4 period to determine and explain the reason for the delay and to obtain any needed
5 clarification as to the contents of the order. The order shall be entered within 10 days of
6 the subsequent hearing required by this subsection."

7 **SECTION 4.** G.S. 7B-901 reads as rewritten:

8 **"§ 7B-901. Dispositional hearing.**

9 The dispositional hearing shall take place immediately following the adjudicatory
10 hearing, but in any event shall be concluded within 30 days of the conclusion of the
11 adjudicatory hearing. The dispositional hearing may be informal and the court may
12 consider written reports or other evidence concerning the needs of the juvenile. The
13 juvenile and the juvenile's parent, guardian, or custodian shall have an opportunity to
14 present evidence, and they may advise the court concerning the disposition they believe
15 to be in the best interests of the juvenile. The court may consider any evidence,
16 including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be
17 relevant, reliable, and necessary to determine the needs of the juvenile and the most
18 appropriate disposition. The court may exclude the public from the hearing unless the
19 juvenile moves that the hearing be open, which motion shall be granted."

20 **SECTION 5.** G.S. 7B-903 is amended by adding a new subsection to read:

21 "(d) When a county department of social services having custody or placement
22 responsibility of a juvenile intends to change the juvenile's placement, the department
23 shall give the guardian ad litem for the juvenile notice of its intention unless precluded
24 by emergency circumstances from doing so. Where emergency circumstances exist, the
25 department of social services shall notify the guardian ad litem or the attorney advocate
26 within 72 hours of the placement change, unless local rules require notification within a
27 shorter time period."

28 **SECTION 6.** G.S. 7B-906(d) reads as rewritten:

29 "(d) The court, after making findings of fact, may appoint a guardian of the person
30 for the juvenile pursuant to G.S. 7B-600 or may make any disposition authorized by
31 G.S. 7B-903, including the authority to place the juvenile in the custody of either parent
32 or any relative found by the court to be suitable and found by the court to be in the best
33 interests of the juvenile. The court may enter an order continuing the placement under
34 review or providing for a different placement as is deemed to be in the best interests of
35 the juvenile. The order must be reduced to writing, signed, and entered within 30 days
36 of the completion of the hearing. If the order is not entered within 30 days following
37 completion of the hearing, the clerk of court or case manager for juvenile matters shall
38 schedule a subsequent hearing at the first session of court scheduled for the hearing of
39 juvenile matters following the 30-day period to determine and explain the reason for the
40 delay and to obtain any needed clarification as to the contents of the order. The order
41 shall be entered within 10 days of the subsequent hearing required by this subsection.

42 If at any time custody is restored to a parent, guardian, custodian, or caretaker the
43 court shall be relieved of the duty to conduct periodic judicial reviews of the
44 placement."

1 **SECTION 7.** G.S. 7B-907(c) reads as rewritten:

2 "(c) At the conclusion of the hearing, the judge shall make specific findings as to
3 the best plan of care to achieve a safe, permanent home for the juvenile within a
4 reasonable period of time. The judge may appoint a guardian of the person for the
5 juvenile pursuant to G.S. 7B-600 or make any disposition authorized by G.S. 7B-903
6 including the authority to place the child in the custody of either parent or any relative
7 found by the court to be suitable and found by the court to be in the best interest of the
8 juvenile. If the juvenile is not returned home, the court shall enter an order consistent
9 with its findings that directs the department of social services to make reasonable efforts
10 to place the juvenile in a timely manner in accordance with the permanent plan, to
11 complete whatever steps are necessary to finalize the permanent placement of the
12 juvenile, and to document such steps in the juvenile's case plan. Any order shall be
13 reduced to writing, signed, and entered no later than 30 days following the completion
14 of the hearing. If the order is not entered within 30 days following completion of the
15 hearing, the clerk of court or case manager for juvenile matters shall schedule a
16 subsequent hearing at the first session of court scheduled for the hearing of juvenile
17 matters following the 30-day period to determine and explain the reason for the delay
18 and to obtain any needed clarification as to the contents of the order. The order shall be
19 entered within 10 days of the subsequent hearing required by this subsection.

20 If at any time custody is restored to a parent, or findings are made in accordance
21 with G.S. 7B-906(b), the court shall be relieved of the duty to conduct periodic judicial
22 reviews of the placement.

23 If the court continues the juvenile's placement in the custody or placement
24 responsibility of a county department of social services, the provisions of G.S. 7B-507
25 shall apply to any order entered under this section."

26 **SECTION 8.** G.S. 7B-908(b)(1) reads as rewritten:

27 "(1) No more than 30 days and no less than 15 days prior to each review,
28 the clerk shall give notice of the review to the juvenile if the juvenile is
29 at least 12 years of age, the legal custodian of the juvenile, any foster
30 parent, relative, or preadoptive parent providing care for the juvenile,
31 the guardian ad litem, if any, and any other person or agency the court
32 may specify. Only the juvenile, if the juvenile is at least 12 years of
33 age, the legal custodian of the juvenile, any foster parent, relative, or
34 preadoptive parent providing care for the juvenile, and the guardian ad
35 litem shall attend the review hearings, except as otherwise directed by
36 the court. Nothing in this subdivision shall be construed to make any
37 foster parent, relative, or preadoptive parent a party to the proceeding
38 solely based on receiving notice and an opportunity to be heard. Any
39 individual whose parental rights have been terminated shall not be
40 considered a party to the proceeding unless an appeal of the order
41 terminating parental rights is pending and a court has stayed the order
42 pending the appeal."

43 **SECTION 9.** G.S. 7B-909(c) reads as rewritten:

1 "(c) Notification of the court required under subsection (a) or (b) of this section
2 shall be by a petition for review. The petition shall set forth the circumstances
3 necessitating the review under subsection (a) or (b) of this section. The review shall be
4 conducted within 30 days following the filing of the petition for review unless the court
5 shall otherwise direct. The court shall conduct reviews every six months until the
6 juvenile is placed for adoption and the adoption petition is filed by the adoptive parents.
7 The initial review and all subsequent reviews shall be conducted pursuant to
8 G.S. 7B-908. Any individual whose parental rights have been terminated shall not be
9 considered a party to the review unless an appeal of the order terminating parental rights
10 is pending and a court has stayed the order pending the appeal."

11 **SECTION 10.** G.S. 7B-1001 reads as rewritten:

12 **"§ 7B-1001. Right to appeal.**

13 ~~Upon motion of a proper party as defined in G.S. 7B-1002, review of any final order~~
14 ~~of the court in a juvenile matter under this Article shall be before the Court of Appeals.~~
15 ~~Notice of appeal shall be given in writing within 10 days after entry of the order.~~
16 ~~However, if no disposition is made within 60 days after entry of the order, written~~
17 ~~notice of appeal may be given within 70 days after such entry. A final order shall~~
18 ~~include:~~

- 19 (1) ~~Any order finding absence of jurisdiction;~~
- 20 (2) ~~Any order which in effect determines the action and prevents a~~
21 ~~judgment from which appeal might be taken;~~
- 22 (3) ~~Any order of disposition after an adjudication that a juvenile is abused,~~
23 ~~neglected, or dependent; or~~
- 24 (4) ~~Any order modifying custodial rights.~~

25 (a) In a juvenile matter under this Subchapter, appeal of a final order of the court
26 in a juvenile matter shall be made directly to the Court of Appeals. Only the following
27 juvenile matters may be appealed:

- 28 (1) Any order finding absence of jurisdiction.
- 29 (2) Any order, including the involuntary dismissal of a petition, which in
30 effect determines the action and prevents a judgment from which
31 appeal might be taken.
- 32 (3) Any initial order of disposition and the adjudication order upon which
33 it is based.
- 34 (4) Any order, other than a nonsecure custody order, that changes legal
35 custody of a juvenile.
- 36 (5) Any order that terminates parental rights or denies a petition or motion
37 to terminate parental rights. If a parent's objection to a court's
38 determination that reunification efforts shall cease was properly
39 preserved for appeal pursuant to G.S. 7B-507, then this issue may be
40 appealed only in conjunction with the order terminating parental
41 rights.

42 (b) Notice of appeal shall be given in writing by a proper party as defined in
43 G.S. 7B-1002 and shall be made within 30 days after entry and service of the order in
44 accordance with G.S. 1A-1, Rule 58.

1 (c) Notice of appeal shall be signed by counsel for the appealing party, if any,
2 and by the appealing party. In the case of an appeal by a juvenile, notice of appeal shall
3 be signed by the guardian ad litem attorney advocate."

4 **SECTION 11.** G.S. 7B-1002 reads as rewritten:

5 **"§ 7B-1002. Proper parties for appeal.**

6 ~~An appeal may be taken by the guardian ad litem or juvenile, the juvenile's parent,~~
7 ~~guardian, or custodian, the State or county agency. Appeal from an order permitted~~
8 ~~under G.S. 7B-1001 may be taken by:~~

9 (1) A juvenile acting through the juvenile's guardian ad litem.

10 (2) A county department of social services.

11 (3) A parent, guardian, or custodian adversely affected by the order.

12 (4) Any party that sought but failed to obtain termination of parental
13 rights."

14 **SECTION 12.** G.S. 7B-1003 reads as rewritten:

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

16 (a) During an appeal of an order entered under this Subchapter, the trial court
17 may enforce the order unless the trial court or an appellate court orders a stay.

18 (b) ~~Pending disposition of an appeal, the return of the juvenile to the custody of~~
19 ~~the parent or guardian of the juvenile, with or without conditions, may issue unless the~~
20 ~~court orders otherwise. unless directed otherwise by an appellate court, the court shall:~~

21 (1) Continue to exercise jurisdiction under this Subchapter and to conduct
22 hearings under this Subchapter; and

23 (2) Enter orders affecting the custody or placement of the juvenile as the
24 court finds to be in the best interests of the juvenile.

25 (c) When the court has found that a juvenile has suffered physical abuse and that
26 the individual responsible for the abuse has a history of violent behavior, the court shall
27 consider the opinion of the mental health professional who performed the evaluation
28 under G.S. 7B-503(b) before returning the juvenile to the custody of that individual. ~~For~~
29 ~~compelling reasons which must be stated in writing, the court may enter a temporary~~
30 ~~order affecting the custody or placement of the juvenile as the court finds to be in the~~
31 ~~best interests of the juvenile or the State. individual pending resolution of an appeal.~~

32 (d) The provisions of subsections (b) and (c) of G.S. 7B-905 shall apply to any
33 order entered ~~under this section which during an appeal that~~ provides for the placement
34 or continued placement of a juvenile in foster care."

35 **SECTION 13.** G.S. 7B-1004 reads as rewritten:

36 **"§ 7B-1004. Disposition after appeal.**

37 ~~Upon the affirmation of the~~ When an order of adjudication or disposition of the court
38 is affirmed by the Court of Appeals or by the Supreme Court ~~in the event of an appeal,~~
39 ~~the court shall have authority to~~ Court, the trial court may modify or alter the original
40 ~~order of adjudication or disposition~~ as the court finds to be in the best interests of the
41 juvenile to reflect any ~~adjustment made by the juvenile or~~ change in circumstances
42 during the period of time the appeal was pending. If the modifying order is entered ex
43 parte, the court shall give notice to interested parties to show cause within 10 days
44 thereafter as to why the modifying order should be vacated or altered."

1 **SECTION 14.** G.S. 7B-1101 reads as rewritten:

2 "**§ 7B-1101. Jurisdiction.**

3 The court shall have exclusive original jurisdiction to hear and determine any
4 petition or motion relating to termination of parental rights to any juvenile who resides
5 in, is found in, or is in the legal or actual custody of a county department of social
6 services or licensed child-placing agency in the district at the time of filing of the
7 petition or motion. The court shall have jurisdiction to terminate the parental rights of
8 any parent irrespective of the age of the parent. ~~The parent has the right to counsel and~~
9 ~~to appointed counsel in cases of indigency unless the parent waives the right. The fees~~
10 ~~of appointed counsel shall be borne by the Office of Indigent Defense Services. In~~
11 ~~addition to the right to appointed counsel set forth above, a guardian ad litem shall be~~
12 ~~appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a parent~~
13 ~~in the following cases:~~

14 (1) ~~Where it is alleged that a parent's rights should be terminated pursuant~~
15 ~~to G.S. 7B-1111(6), and the incapability to provide proper care and~~
16 ~~supervision pursuant to that provision is the result of substance abuse,~~
17 ~~mental retardation, mental illness, organic brain syndrome, or another~~
18 ~~similar cause or condition.~~

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

20 ~~The fees of the guardian ad litem shall be borne by the Office of Indigent Defense~~
21 ~~Services when the court finds that the respondent is indigent. In other cases the fees of~~
22 ~~the court appointed guardian ad litem shall be a proper charge against the respondent if~~
23 ~~the respondent does not secure private legal counsel. Provided, that before exercising~~
24 ~~jurisdiction under this Article, the court shall find that it would have has jurisdiction to~~
25 ~~make a child-custody determination under the provisions of G.S. 50A-201, 50A-203, or~~
26 ~~50A-204. Provided, further, that the clerk of superior court shall have jurisdiction for~~
27 ~~adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of the General Statutes~~
28 ~~generally. Statutes."~~

29 **SECTION 15.** Article 11 of Chapter 7B of the General Statutes is amended
30 by adding a new section to read:

31 "**§ 7B-1101.1. Parent's right to counsel; guardian ad litem.**

32 (a) The parent has the right to counsel, and to appointed counsel in cases of
33 indigency, unless the parent waives the right. The fees of appointed counsel shall be
34 borne by the Office of Indigent Defense Services.

35 (b) In addition to the right to appointed counsel under subsection (a) of this
36 section, a guardian ad litem shall be appointed in accordance with G.S. 1A-1, Rule 17,
37 to represent any parent who is under the age of 18 years and who is not married or
38 otherwise emancipated.

39 (c) On motion of any party or on the court's own motion, the court may appoint a
40 guardian ad litem for a parent if the court determines that there is a reasonable basis to
41 believe that the parent is incompetent or has diminished capacity and cannot adequately
42 act in his or her own interest. The parent's counsel shall not be appointed to serve as the
43 guardian ad litem.

1 (d) Communications between the guardian ad litem and the parent and between
2 the guardian ad litem and the parent's counsel shall be privileged and confidential to the
3 same extent that communications between the parent and the parent's counsel are
4 privileged and confidential.

5 (e) Guardians ad litem appointed under this section may engage in all of the
6 following practices:

7 (1) Enable the parent to enter consent orders, if appropriate.

8 (2) Facilitate service of process on the parent.

9 (3) Assure that necessary pleadings are filed.

10 (4) Assist the parent and the parent's counsel, if requested by the parent's
11 counsel, to ensure that the parent's procedural due process
12 requirements are met.

13 (f) The fees of a guardian ad litem appointed pursuant to this section shall be
14 borne by the Office of Indigent Defense Services when the court finds that the
15 respondent is indigent. In other cases the fees of the guardian ad litem shall be borne by
16 the respondent."

17 **SECTION 16.** G.S. 7B-1109(e) reads as rewritten:

18 "(e) The court shall take evidence, find the facts, and shall adjudicate the
19 existence or nonexistence of any of the circumstances set forth in G.S. 7B-1111 which
20 authorize the termination of parental rights of the respondent. The adjudicatory order
21 shall be reduced to writing, signed, and entered no later than 30 days following the
22 completion of the termination of parental rights hearing. If the order is not entered
23 within 30 days following completion of the hearing, the clerk of court or case manager
24 for juvenile matters shall schedule a subsequent hearing at the first session of court
25 scheduled for the hearing of juvenile matters following the 30-day period to determine
26 and explain the reason for the delay and to obtain any needed clarification as to the
27 contents of the order. The order shall be entered within 10 days of the subsequent
28 hearing required by this subsection."

29 **SECTION 17.** G.S. 7B-1110 reads as rewritten:

30 "~~§ 7B-1110. Disposition. Determination of best interests of the juvenile.~~

31 ~~(a) Should the court determine that any one or more of the conditions authorizing~~
32 ~~a termination of the parental rights of a parent exist, the court shall issue an order~~
33 ~~terminating the parental rights of such parent with respect to the juvenile unless the~~
34 ~~court shall further determine that the best interests of the juvenile require that the~~
35 ~~parental rights of the parent not be terminated. After an adjudication that one or more~~
36 ~~grounds for terminating a parent's rights exist, the court shall determine whether~~
37 ~~terminating the parent's rights is in the juvenile's best interest. In making this~~
38 ~~determination, the court shall consider the following:~~

39 ~~(1) The age of the juvenile.~~

40 ~~(2) The likelihood of adoption of the juvenile.~~

41 ~~(3) Whether the termination of parental rights will aid in the~~
42 ~~accomplishment of the permanent plan for the juvenile.~~

43 ~~(4) The bond between the juvenile and the parent.~~

1 (5) The quality of the relationship between the juvenile and the proposed
2 adoptive parent, guardian, custodian, or other permanent placement.

3 (6) Any relevant consideration.

4 Any order shall be reduced to writing, signed, and entered no later than 30 days
5 following the completion of the termination of parental rights hearing. If the order is not
6 entered within 30 days following completion of the hearing, the clerk of court or case
7 manager for juvenile matters shall schedule a subsequent hearing at the first session of
8 court scheduled for the hearing of juvenile matters following the 30-day period to
9 determine and explain the reason for the delay and to obtain any needed clarification as
10 to the contents of the order. The order shall be entered within 10 days of the subsequent
11 hearing required by this subsection.

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

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

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

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

24 **SECTION 18.** G.S. 7B-1113 is repealed.

25 **SECTION 19.** This act becomes effective October 1, 2005, and applies to
26 petitions filed on or after that date.