

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2009-311
HOUSE BILL 1449**

AN ACT TO MAKE VARIOUS REVISIONS TO THE JUVENILE CODE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-302 reads as rewritten:

"§ 7B-302. Assessment by director; access to confidential information; notification of person making the report.

(a) When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough assessment, using either a family assessment response or an investigative assessment response, in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the assessment. When the report alleges neglect or dependency, the director shall initiate the assessment within 72 hours following receipt of the report. When the report alleges abandonment, the director shall immediately initiate an assessment, take appropriate steps to assume temporary custody of the juvenile, and take appropriate steps to secure an order for nonsecure custody of the juvenile. The assessment and evaluation shall include a visit to the place where the juvenile resides, except when the report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes. When a report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes, a visit to the place where the juvenile resides is not required. When the report alleges abandonment, the assessment shall include a request from the director to law enforcement officials to investigate through the North Carolina Center for Missing Persons and other national and State resources whether the juvenile is a missing child. ~~All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department. However, the department of social services shall disclose confidential information to any federal, State, or local governmental entity or its agent needing confidential information to protect a juvenile from abuse and neglect. Any confidential information disclosed to any federal, State, or local governmental entity, or its agent, under this subsection shall remain confidential with the other governmental entity, or its agent, and shall only be redisclosed by the governmental entity or its agent for purposes directly connected with carrying out the governmental entity's or agent's mandated responsibilities.~~

(a1) All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department, except that:

- (1) The department shall disclose confidential information to any federal, State, or local government entity or its agent in order to protect a juvenile from abuse or neglect. Any confidential information disclosed to any federal, State, or local government entity or its agent under this subsection shall remain confidential with the other government entity or its agent and shall only be redisclosed for purposes directly connected with carrying out that entity's mandated responsibilities.



- (2) The information may be examined upon request by the juvenile's guardian ad litem or the juvenile, including a juvenile who has reached age 18 or been emancipated.
- (3) A district or superior court judge of this State presiding over a civil matter in which the department of social services is not a party may order the department to release confidential information, after providing the department with reasonable notice and an opportunity to be heard and then determining that the information is relevant and necessary to the trial of the matter before the court and unavailable from any other source. This subdivision shall not be construed to relieve any court of its duty to conduct hearings and make findings required under relevant federal law, before ordering the release of any private medical or mental health information or records related to substance abuse or HIV status or treatment. The department of social services may surrender the requested records to the court, for in camera review, if the surrender is necessary to make the required determinations.
- (4) A district or superior court judge of this State presiding over a criminal or delinquency matter shall conduct an in camera review prior to releasing to the defendant or juvenile any confidential records maintained by the department of social services, except those records the defendant or juvenile is entitled to pursuant to subdivision (2) of this subsection.
- (5) The department may disclose confidential information to a parent, guardian, custodian, or caretaker in accordance with G.S. 7B-700 of this Subchapter.

(a2) If the director, at any time after receiving a report that a juvenile may be abused, neglected, or dependent, determines that the juvenile's legal residence is in another county, the director shall promptly notify the director in the county of the juvenile's residence, and the two directors shall coordinate efforts to ensure that appropriate actions are taken.

(b) When a report of a juvenile's death as a result of suspected maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile in a noninstitutional setting is received, the director of the department of social services shall immediately ascertain if other juveniles live in the home, and, if so, initiate an assessment in order to determine whether they require protective services or whether immediate removal of the juveniles from the home is necessary for their protection. When a report of a juvenile's death as a result of maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile in an institutional setting such as a residential child care facility or residential educational facility is received, the director of the department of social services shall immediately ascertain if other juveniles remain in the facility subject to the alleged perpetrator's care or supervision, and, if so, assess the circumstances of those juveniles in order to determine whether they require protective services or whether immediate removal of those juveniles from the facility is necessary for their protection.

(c) If the assessment indicates that abuse, neglect, or dependency has occurred, the director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the director shall immediately provide or arrange for protective services. If the parent, guardian, custodian, or caretaker refuses to accept the protective services provided or arranged by the director, the director shall sign a ~~complaint~~ petition seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

(d) If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the director shall sign a ~~complaint~~ petition that alleges the applicable facts to invoke the jurisdiction of the court. Where the assessment shows that it is warranted, a

protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 5 of this Chapter.

(d1) Whenever a juvenile is removed from the home of a parent, guardian, custodian, stepparent, or adult relative entrusted with the juvenile's care due to physical abuse, the director shall conduct a thorough review of the background of the alleged abuser or abusers. This review shall include a criminal history check and a review of any available mental health records. If the review reveals that the alleged abuser or abusers have a history of violent behavior against people, the director shall petition the court to order the alleged abuser or abusers to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist.

(e) In performing any duties related to the assessment of the report or the provision or arrangement for protective services, the director may consult with any public or private agencies or individuals, including the available State or local law enforcement officers who shall assist in the assessment and evaluation of the seriousness of any report of abuse, neglect, or dependency when requested by the director. The director or the director's representative may make a written demand for any information or reports, whether or not confidential, that may in the director's opinion be relevant to the assessment or provision of protective services. Upon the director's or the director's representative's request and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If a custodian of criminal investigative information or records believes that release of the information will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such an action, the custodian of the records shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph shall be set down for immediate hearing, and subsequent proceedings in the actions shall be accorded priority by the trial and appellate courts.

(f) Within five working days after receipt of the report of abuse, neglect, or dependency, the director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted for assessment and whether the report was referred to the appropriate State or local law enforcement agency.

(g) Within five working days after completion of the protective services assessment, the director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse, neglect, or dependency, whether the county department of social services is taking action to protect the juvenile, and what action it is taking, including whether or not a petition was filed. The person making the report shall be informed of procedures necessary to request a review by the prosecutor of the director's decision not to file a petition. A request for review by the prosecutor shall be made within five working days of receipt of the second notification. The second notification shall include notice that, if the person making the report is not satisfied with the director's decision, the person may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive the person's right to this notification, and no notification is required if the person making the report does not identify himself to the director.

(h) The director or the director's representative may not enter a private residence for assessment purposes without at least one of the following:

- (1) The reasonable belief that a juvenile is in imminent danger of death or serious physical injury.
- (2) The permission of the parent or person responsible for the juvenile's care.
- (3) The accompaniment of a law enforcement officer who has legal authority to enter the residence.
- (4) An order from a court of competent jurisdiction."

SECTION 2. G.S. 7B-400 reads as rewritten:

"§ 7B-400. ~~Venue; pleading.~~Venue.

A proceeding in which a juvenile is alleged to be abused, neglected, or dependent may be commenced in the district in which the juvenile resides or is present. ~~When a proceeding is commenced in a district other than that of the juvenile's residence, the court, on its own motion or upon motion of any party, may transfer the proceeding to the court in the district where the juvenile resides. A transfer under this section may be made at any time.~~"

SECTION 3. G.S. 7B-402 is amended by adding the following new subsection to read:

"(d) If the petition is filed in a county other than the county of the juvenile's residence, the petitioner shall provide a copy of the petition and any notices of hearing to the director of the department of social services in the county of the juvenile's residence."

SECTION 4. G.S. 7B-700 reads as rewritten:

"§ 7B-700. ~~Regulation of discovery; protective orders.~~Sharing of information; discovery.

(a) ~~Upon written motion of a party and a finding of good cause, the court may at any time order that discovery be denied, restricted, or deferred.~~

(b) ~~The court may permit a party seeking relief under subsection (a) of this section to submit supporting affidavits or statements to the court for in camera inspection. If, thereafter, the court enters an order granting relief under subsection (a) of this section, the material submitted in camera must be available to the Court of Appeals in the event of an appeal.~~

(a) Sharing of Information. – A department of social services is authorized to share with any other party information relevant to the subject matter of an action pending under this Subchapter. However, this subsection does not authorize the disclosure of the identity of the reporter or any uniquely identifying information that would lead to the discovery of the reporter's identity in accordance with G.S. 7B-302 or the identity of any other person where the agency making the information available determines that the disclosure would be likely to endanger the life or safety of the person.

(b) Local Rules. – The chief district court judge may adopt local rules or enter an administrative order addressing the sharing of information among parties and the use of discovery.

(c) Discovery. – Any party may file a motion for discovery. The motion shall contain a specific description of the information sought and a statement that the requesting party has made a reasonable effort to obtain the information pursuant to subsections (a) and (b) of this section or that the information cannot be obtained pursuant to subsections (a) and (b) of this section. The motion shall be served upon all parties pursuant to G.S. 1A-1, Rule 5. The motion shall be heard and ruled upon within 10 business days of the filing of the motion. The court may grant, restrict, defer, or deny the relief requested. Any order shall avoid unnecessary delay of the hearing, establish expedited deadlines for completion, and conform to G.S. 7B-803.

(d) Protective Order. – Any party served with a motion for discovery may request that the discovery be denied, restricted, or deferred and shall submit, for in camera inspection, the document, information, or materials the party seeks to protect. If the court enters any order granting relief, copies of the documents, information, or materials submitted in camera shall be preserved for appellate review in the event of an appeal.

(e) Redisclosure. – Information obtained through discovery or sharing of information under this section may not be redisclosed if the redisclosure is prohibited by State or federal law.

(f) Guardian Ad Litem. – Unless provided otherwise by local rules, information or reports obtained by the guardian ad litem pursuant to G.S. 7B-601 are not subject to disclosure pursuant to this subsection, except that reports and records shall be shared with all parties before submission to the court."

SECTION 5. Article 9 of Chapter 7B of the General Statutes is amended by adding the following new section to read:

"§ 7B-900.1. Post adjudication venue.

(a) At any time after adjudication, the court on its own motion or motion of any party may transfer venue to a different county, regardless of whether the action could have been commenced in that county, if the court finds that the forum is inconvenient, that transfer of the action to the other county is in the best interest of the juvenile, and that the rights of the parties are not prejudiced by the change of venue.

(b) Before ordering that a case be transferred to another county, the court shall find that the director of the department of social services in the county in which the action is pending and the director in the county to which transfer is contemplated have communicated about the case and that:

- (1) The two directors are in agreement with respect to each county's responsibility for providing financial support for the juvenile and services for the juvenile and the juvenile's family; or
- (2) The Director of the Division of Social Services or the Director's designee has made that determination pursuant to G.S. 153A-257(d).

(c) When the court transfers a case to a different county, the court shall join or substitute as a party to the action the director of the department of social services in the county to which the case is being transferred and, if the juvenile is in the custody of the department of social services in the county in which the action is pending, shall transfer custody to the department of social services in the county to which the case is being transferred. The director of the department of social services in the county to which the case is being transferred must be given notice and an opportunity to be heard before the court enters an order pursuant to this subsection. However, the director may waive the right to notice and a hearing.

(d) Before ordering that a case be transferred to a different district, the court shall communicate with the chief district court judge or a judge presiding in juvenile court in the district to which the transfer is contemplated explaining the reasons for the proposed transfer. If the judge in the district to which the transfer is proposed makes a timely objection to the transfer, either verbally or in writing, the court shall order the transfer only after making detailed findings of fact that support a conclusion that the juvenile's best interests require that the case be transferred.

(e) Before ordering that a case be transferred to another county, the court shall consider relevant factors, which may include:

- (1) The current residences of the juvenile and the parent, guardian, or custodian and the extent to which those residences have been and are likely to be stable.
- (2) The reunification plan or other permanent plan for the juvenile and the likely effect of a change in venue on efforts to achieve permanence for the juvenile expeditiously.
- (3) The nature and location of services and service providers necessary to achieve the reunification plan or other permanent plan for the juvenile.
- (4) The impact upon the juvenile of the potential disruption of an existing therapeutic relationship.

- (5) The nature and location of witnesses and evidence likely to be required in future hearings.
- (6) The degree to which the transfer would cause inconvenience to one or more parties.
- (7) Any agreement of the parties as to which forum is most convenient.
- (8) The familiarity of the departments of social services, the courts, and the local offices of the guardian ad litem with the juvenile and the juvenile's family.
- (9) Any other factor the court considers relevant.

(f) The order transferring venue shall be in writing, signed, and entered no later than 30 days from completion of the hearing. The order shall identify the next court action and specify the date within which the next hearing shall be held. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection.

(g) The clerk shall transmit to the court in the county to which the case is being transferred a copy of the complete record of the case within three business days after entry of the order transferring venue.

Upon receiving a case that has been transferred from another county, the clerk shall promptly satisfy the following:

- (1) Assign an appropriate file number to the case.
- (2) Ensure that any necessary appointments of new attorneys or guardians ad litem are made.
- (3) Calendar the next court action as set forth in the order transferring venue and give appropriate notice to all parties."

SECTION 6. G.S. 7B-906(a) reads as rewritten:

"(a) In any case where custody is removed from a parent, guardian, custodian, or caretaker the court shall conduct a review hearing within 90 days from the date of the dispositional hearing and shall conduct a review hearing within six months thereafter. The director of social services shall make a timely request to the clerk to calendar each review at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the review and its purpose to the parent, the juvenile, if 12 years of age or more, the guardian, ~~any~~the foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. The department of social services shall either provide to the clerk the name and address of the foster parent, relative, or preadoptive parent providing care for the child for notice under this subsection or file written documentation with the clerk that the child's current care provider was sent notice of hearing. Nothing in this subsection shall be construed to make ~~any~~the foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and the right to be heard."

SECTION 7. G.S. 7B-907(a) reads as rewritten:

"(a) In any case where custody is removed from a parent, guardian, custodian, or caretaker, the judge shall conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody, and the hearing may be combined, if appropriate, with a review hearing required by G.S. 7B-906. The purpose of the permanency planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Subsequent permanency planning hearings shall be held at least every six months thereafter, or earlier as set by the court, to review the progress made in finalizing the permanent plan for the juvenile, or if necessary, to

make a new permanent plan for the juvenile. The Director of Social Services shall make a timely request to the clerk to calendar each permanency planning hearing at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the hearing and its purpose to the parent, the juvenile if 12 years of age or more, the guardian, ~~any~~the foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. The department of social services shall either provide to the clerk the name and address of the foster parent, relative, or preadoptive parent providing care for the child for notice under this subsection or file written documentation with the clerk that the child's current care provider was sent notice of hearing. Nothing in this provision shall be construed to make ~~any~~the foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and the right to be heard."

SECTION 8. G.S. 7B-908 reads as rewritten:

"§ 7B-908. Post termination of parental rights' placement court review.

(a) The purpose of each placement review is to ensure that every reasonable effort is being made to provide for a permanent placement plan for the juvenile who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the juvenile's best interests. At each review hearing the court may consider information from the department of social services, the licensed child-placing agency, the guardian ad litem, the child, ~~any~~the foster parent, relative, or preadoptive parent providing care for the child, and any other person or agency the court determines is likely to aid in the review. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition.

(b) The court shall conduct a placement review not later than six months from the date of the termination hearing when parental rights have been terminated by a petition brought by any person or agency designated in G.S. 7B-1103(2) through (5) and a county director or licensed child-placing agency has custody of the juvenile. The court shall conduct reviews every six months thereafter until the juvenile is the subject of a decree of adoption:

- (1) No more than 30 days and no less than 15 days prior to each review, the clerk shall give notice of the review to the juvenile if the juvenile is at least 12 years of age, the legal custodian of the juvenile, ~~any~~the foster parent, relative, or preadoptive parent providing care for the juvenile, the guardian ad litem, if any, and any other person or agency the court may specify. The department of social services shall either provide to the clerk the name and address of the foster parent, relative, or preadoptive parent providing care for the child for notice under this subsection or file written documentation with the clerk that the child's current care provider was sent notice of hearing. Only the juvenile, if the juvenile is at least 12 years of age, the legal custodian of the juvenile, ~~any~~the foster parent, relative, or preadoptive parent providing care for the juvenile, and the guardian ad litem shall attend the review hearings, except as otherwise directed by the court. Nothing in this subdivision shall be construed to make ~~any~~the foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and the right to be heard. Any individual whose parental rights have been terminated shall not be considered a party to the proceeding unless an appeal of the order terminating parental rights is pending, and a court has stayed the order pending the appeal.
- (2) If a guardian ad litem for the juvenile has not been appointed previously by the court in the termination proceeding, the court, at the initial six-month review hearing, may appoint a guardian ad litem to represent the juvenile.

The court may continue the case for such time as is necessary for the guardian ad litem to become familiar with the facts of the case.

- (c) The court shall consider at least the following in its review:
- (1) The adequacy of the plan developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the juvenile's best interests and the efforts of the department or agency to implement such plan;
 - (2) Whether the juvenile has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption agency; and
 - (3) The efforts previously made by the department or agency to find a permanent home for the juvenile.

(d) The court, after making findings of fact, shall affirm the county department's or child-placing agency's plans or require specific additional steps which are necessary to accomplish a permanent placement which is in the best interests of the juvenile.

(e) If the juvenile is the subject of a decree of adoption prior to the date scheduled for the review, ~~written notice of the issuance of the decree of adoption shall be given to the clerk to be placed in the court file, and the~~ and within 10 days of receiving notice that the adoption decree has been entered, the department of social services shall file with the court and serve on any guardian ad litem for the juvenile written notice of the entry. The adoption decree shall not be filed in the court file. The review hearing shall be cancelled with notice of said cancellation given by the clerk to all persons previously notified.

(f) The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency. The guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five days. ~~Any issue of abuse of discretion by the county department or child placing agency in the selection process must be raised by the guardian ad litem within 10 days following the date the agency notifies the court and the guardian ad litem in writing of the filing of the adoption petition. Within 10 days of receiving a copy of the adoption petition, the county department of social services shall file with the court and serve on any guardian ad litem for the juvenile written notice that the adoption petition has been filed. The adoption petition shall not be filed in the court file. The guardian ad litem has 10 days from service of the written notice that the adoption petition has been filed to file a motion alleging any abuse of discretion by the county department of social services or child placing agency in the adoption selection process. The motion shall be filed in the adoption proceeding and result in the transfer of the adoption proceeding to the district court pursuant to G.S. 48-2-601(a1). The guardian ad litem shall file with the court and serve the department of social services written notice that the motion was filed. The motion shall not be filed in the court file."~~

SECTION 9. G.S. 7B-1101.1 reads as rewritten:

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

(a) The parent has the right to counsel, and to appointed counsel in cases of indigency, unless the parent waives the right. The fees of appointed counsel shall be borne by the Office of Indigent Defense Services. When a petition is filed, unless the parent is already represented by counsel, the clerk shall appoint provisional counsel for each respondent parent named in the petition and indicate the appointment on the juvenile summons. At the first hearing after service upon the respondent parent, the court shall dismiss the provisional counsel if the respondent parent:

- (1) Does not appear at the hearing;
- (2) Does not qualify for court-appointed counsel;

- (3) Has retained counsel; or
- (4) Waives the right to counsel.

The court shall confirm the appointment of counsel if subdivisions (1) through (4) of this subsection are not applicable to the respondent parent. The court may reconsider a parent's eligibility and desire for appointed counsel at any stage of the proceeding.

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

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

(d) Communications between the guardian ad litem appointed under this section and the parent and between the guardian ad litem and the parent's counsel shall be privileged and confidential to the same extent that communications between the parent and the parent's counsel are privileged and confidential.

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

- (1) Helping the parent to enter consent orders, if appropriate.
- (2) Facilitating service of process on the parent.
- (3) Assuring that necessary pleadings are filed.
- (4) Assisting the parent and the parent's counsel, if requested by the parent's counsel, to ensure that the parent's procedural due process requirements are met.

(f) The fees of a guardian ad litem appointed pursuant to this section shall be borne by the Office of Indigent Defense Services when the court finds that the respondent is indigent. In other cases, the fees of the court-appointed guardian ad litem shall be a proper charge against the respondent if the respondent does not secure private legal counsel."

SECTION 10. G.S. 7B-1106(b) reads as rewritten:

"(b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:

- (1) The name of the minor juvenile;
- (2) Notice that a written answer to the petition must be filed with the clerk who signed the petition within 30 days after service of the summons and a copy of the petition, or the parent's rights may be terminated;
- (3) ~~Notice that if they are indigent, the parents are entitled to appointed counsel; the parents may contact the clerk immediately to request counsel;~~ Notice that any counsel appointed previously and still representing the parent in an abuse, neglect, or dependency proceeding shall continue to represent the parent unless otherwise ordered by the court;
- (4) ~~Notice that this is a new case. Any attorney appointed previously will not represent the parents in this proceeding unless ordered by the court;~~ Notice that if the parent is indigent and is not already represented by appointed counsel, the parent is entitled to appointed counsel, that provisional counsel has been appointed, and that the appointment of provisional counsel shall be reviewed by the court at the first hearing after service;
- (5) Notice that the date, time, and place of any pretrial hearing pursuant to G.S. 7B-1108.1 and the hearing on the petition will be mailed by the clerk upon filing of the answer or 30 days from the date of service if no answer is filed; and

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

SECTION 11. G.S. 7B-1106.1(b) reads as rewritten:

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

- (1) The name of the minor juvenile.
- (2) Notice that a written response to the motion must be filed with the clerk within 30 days after service of the motion and notice, or the parent's rights may be terminated.
- (3) Notice that any ~~attorney-counsel~~ appointed previously ~~to represent~~ and still representing the parent in ~~the~~ an abuse, neglect, or dependency proceeding will continue to represent the parents unless otherwise ordered by the court.
- (4) Notice that if the parent is indigent, the parent is entitled to appointed counsel and if the parent is not already represented by appointed counsel the parent may contact the clerk immediately to request counsel.
- (5) Notice that the date, time, and place of any pretrial hearing pursuant to G.S. 7B-1108.1 and the hearing on the motion will be mailed by the moving party upon filing of the response or 30 days from the date of service if no response is filed.
- (6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing."

SECTION 12. G.S. 7B-1108 reads as rewritten:

"§ 7B-1108. Answer or response of ~~parent-parent~~; appointment of guardian ad litem for juvenile.

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

(b) If an answer or response denies any material allegation of the petition or motion, the court shall appoint a guardian ad litem for the juvenile to represent the best interests of the juvenile, unless the petition or motion was filed by the guardian ad litem pursuant to G.S. 7B-1103, or a guardian ad litem has already been appointed pursuant to G.S. 7B-601. A licensed attorney shall be appointed to assist those guardians ad litem who are not attorneys licensed to practice in North Carolina. The appointment, duties, and payment of the guardian ad litem shall be the same as in G.S. 7B-601 and G.S. 7B-603, but in no event shall a guardian ad litem who is trained and supervised by the guardian ad litem program be appointed to any case unless the juvenile is or has been the subject of a petition for abuse, neglect, or dependency or with good cause shown the local guardian ad litem program consents to the appointment. ~~The court shall conduct a special hearing after notice of not less than 10 days nor more than 30 days given by the petitioner or movant to the respondent who answered or responded, and the guardian ad litem for the juvenile to determine the issues raised by the petition and answer or motion and response.~~

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

(c) In proceedings under this Article, the appointment of a guardian ad litem shall not be required except, as provided above, in cases in which an answer or response is filed denying material allegations, or as required under G.S. 7B-1101; but the court may, in its discretion, appoint a guardian ad litem for a juvenile, either before or after determining the existence of

grounds for termination of parental rights, in order to assist the court in determining the best interests of the juvenile.

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

SECTION 13. Article 11 of Chapter 7B of the General Statutes is amended by adding the following new section to read:

"§ 7B-1108.1. Pretrial hearing.

(a) The court shall conduct a pretrial hearing. However, the court may combine the pretrial hearing with the adjudicatory hearing on termination in which case no separate pretrial hearing order is required. At the pretrial hearing, the court shall consider the following:

- (1) Retention or release of provisional counsel.
- (2) Whether a guardian ad litem should be appointed for the juvenile, if not previously appointed.
- (3) Whether all summons, service of process, and notice requirements have been met.
- (4) Any pretrial motions.
- (5) Any issues raised by any responsive pleading, including any affirmative defenses.
- (6) Any other issue which can be properly addressed as a preliminary matter.

(b) Written notice of the pretrial hearing shall be in accordance with G.S. 7B-1106 and G.S. 7B-1106.1."

SECTION 14. Article 17 of Chapter 7B of the General Statutes is amended by adding the following new section to read:

"§ 7B-1700.1. Duty to report abuse, neglect, dependency.

Any time a juvenile court counselor or any person has cause to suspect that a juvenile is abused, neglected, or dependent, or has died as the result of maltreatment, the juvenile court counselor or the person shall make a report to the county department of social services as required by G.S. 7B-301."

SECTION 15. G.S. 7B-1904 reads as rewritten:

"§ 7B-1904. Order for secure or nonsecure custody.

The custody order shall be in writing and shall direct a law enforcement officer or other authorized person to assume custody of the juvenile and to make due return on the order. The official executing the order shall give a copy of the order to the juvenile's parent, guardian, or custodian. If the order is for nonsecure custody, the official executing the order shall also give a copy of the petition and order to the person or agency with whom the juvenile is being placed. If the order is for secure custody, copies of the petition and custody order shall accompany the juvenile to the detention facility or holdover facility of the jail. A message of the Division of Criminal Information, State Bureau of Investigation, stating that a juvenile petition and secure custody order relating to a specified juvenile are on file in a particular county shall be authority to detain the juvenile in secure custody until a copy of the juvenile petition and secure custody order can be forwarded to the juvenile detention facility. The copies of the juvenile petition and secure custody order shall be transmitted to the detention facility no later than 72 hours after the initial detention of the juvenile.

An officer receiving an order for custody which is complete and regular on its face may execute it in accordance with its terms and need not inquire into its regularity or continued validity, nor does the officer incur criminal or civil liability for its execution."

SECTION 16. G.S. 7B-2503(1)c. reads as rewritten:

"(1) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

...

- c. ~~Place~~ If the director of the department of social services has received notice and an opportunity to be heard, place the juvenile in the custody of a department of social services in the county of the juvenile's residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of a department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. An order placing a juvenile in the custody or placement responsibility of a county department of social services shall contain a finding that the juvenile's continuation in the juvenile's own home would be contrary to the juvenile's best interest. This placement shall be reviewed in accordance with G.S. 7B-906. The director may, unless otherwise ordered by the judge, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile or juveniles, the director may, unless otherwise ordered by the judge, arrange for, provide or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a judge or the judge's designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent, guardian, or custodian of the affected juvenile. If the director cannot obtain consent, the director shall promptly notify the parent, guardian, or custodian that care or treatment has been provided and shall give the parent, guardian, or custodian frequent status reports on the circumstances of the juvenile. Upon request of a parent, guardian, or custodian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to the parent, guardian, or custodian by the director unless prohibited by G.S. 122C-53(d)."

SECTION 17. G.S. 7B-2506(1)c. reads as rewritten:

"(1) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

...

- c. ~~Place~~ If the director of the county department of social services has received notice and an opportunity to be heard, place the juvenile in the custody of the department of social services in the county of his residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of a department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. An order placing a juvenile in the custody or placement responsibility of a county department of social services shall contain a finding that the juvenile's continuation in the juvenile's own home would be contrary to the juvenile's best interest. This placement shall be reviewed in accordance with G.S. 7B-906. The director may, unless otherwise

ordered by the judge, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile or juveniles, the director may, unless otherwise ordered by the judge, arrange for, provide, or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a judge or his designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent, guardian, or custodian of the affected juvenile. If the director cannot obtain consent, the director shall promptly notify the parent, guardian, or custodian that care or treatment has been provided and shall give the parent, guardian, or custodian frequent status reports on the circumstances of the juvenile. Upon request of a parent, guardian, or custodian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to the parent, guardian, or custodian by the director unless prohibited by G.S. 122C-53(d)."

SECTION 18. G.S. 7B-2901(b) reads as rewritten:

"(b) The Director of the Department of Social Services shall maintain a record of the cases of juveniles under protective custody by the Department or under placement by the court, which shall include family background information; reports of social, medical, psychiatric, or psychological information concerning a juvenile or the juvenile's family; interviews with the juvenile's family; or other information which the court finds should be protected from public inspection in the best interests of the juvenile. The records maintained pursuant to this subsection may be examined only ~~by order of the court except that the guardian ad litem, or juvenile, shall have the right to examine them in the following circumstances:~~

- (1) The juvenile's guardian ad litem or the juvenile, including a juvenile who has reached age 18 or been emancipated, may examine the records.
- (2) A district or superior court judge of this State presiding over a civil matter in which the department is not a party may order the department to release confidential information, after providing the department with reasonable notice and an opportunity to be heard and then determining that the information is relevant and necessary to the trial of the matter before the court and unavailable from any other source. This subsection shall not be construed to relieve any court of its duty to conduct hearings and make findings required under relevant federal law before ordering the release of any private medical or mental health information or records related to substance abuse or HIV status or treatment. The department may surrender the requested records to the court, for in camera review, if surrender is necessary to make the required determinations.
- (3) A district or superior court judge of this State presiding over a criminal or delinquency matter shall conduct an in camera review before releasing to the defendant or juvenile any confidential records maintained by the department of social services, except those records the defendant or juvenile is entitled to pursuant to subdivision (1) of this subsection.
- (4) The department may disclose confidential information to a parent, guardian, custodian, or caretaker in accordance with G.S. 7B-700."

SECTION 19. This act becomes effective October 1, 2009.

In the General Assembly read three times and ratified this the 9th day of July, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 5:30 p.m. this 17th day of July, 2009