

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S

4

SENATE BILL 423
Health Care Committee Substitute Adopted 4/15/15
Insurance Committee Substitute Adopted 4/23/15
House Committee Substitute Favorable 6/11/15

Short Title: Foster Care Family Act.

(Public)

Sponsors:

Referred to:

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO ALIGN STATE LAW WITH FEDERAL LAW BY PROVIDING FOR THE SUPPORT OF HEALTHY DEVELOPMENT OF YOUTH IN FOSTER CARE THROUGH IMPLEMENTATION OF A REASONABLE AND PRUDENT PARENT STANDARD FOR DECISIONS MADE BY A FOSTER PARENT OR A DESIGNATED OFFICIAL FOR A CHILD CARE INSTITUTION AND REVISING THE LAWS PERTAINING TO ABUSE, NEGLECT, AND DEPENDENCY REGARDING JUVENILE PLACEMENT UNDER THE JUVENILE CODE; TO PROVIDE LIABILITY INSURANCE FOR FOSTER PARENTS; TO REDUCE BARRIERS TO OBTAINING A DRIVERS LICENSE FOR FOSTER CHILDREN AND BY CLARIFYING THAT FOSTER PARENTS DO NOT VIOLATE FINANCIAL RESPONSIBILITY REQUIREMENTS BY ALLOWING FOSTER CHILDREN WITH THEIR OWN INSURANCE COVERAGE TO OPERATE A VEHICLE OWNED BY THE FOSTER PARENT; AND TO REQUIRE THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO STUDY A MEDICAID WAIVER FOR CHILDREN WITH SERIOUS EMOTIONAL DISTURBANCE.

The General Assembly of North Carolina enacts:

PART I. SHORT TITLE

SECTION 1.1. This act shall be known and may be cited as the "Foster Care Family Act."

PART II. REASONABLE AND PRUDENT PARENT STANDARD IN FOSTER CARE

SECTION 2.1. Part 1 of Article 1A of Chapter 131D of the General Statutes is amended by adding a new section to read:

"§ 131D-10.2A. Reasonable and prudent parent standard.

(a) The reasonable and prudent parent standard is characterized by careful and sensible parental decisions that are reasonably intended to maintain a child's health, safety, and best interests while encouraging the child's emotional and developmental growth.

(b) Every child care institution shall designate an on-site official who is authorized to apply the reasonable and prudent parent standard pursuant to this section.

(c) A caregiver, including the child's foster parent, whether the child is in a family foster home or a therapeutic foster home, or the designated official at a child care institution where the child is placed, or the county department of social services, must use the reasonable



1 and prudent parent standard when determining whether to allow a child in foster care to
2 participate in extracurricular, enrichment, and social activities.

3 (d) A caregiver, including the child's foster parent, whether the child is in a family
4 foster home or a therapeutic foster home, or the designated official at a child care institution
5 where the child is placed, shall not be held liable for an act or omission of the child if the
6 caregiver or county department of social services is acting in accordance with the reasonable
7 and prudent parent standard under this section.

8 (e) Unless otherwise ordered by a court with jurisdiction pursuant to G.S. 7B-200, a
9 caregiver, including the child's foster parent, whether the child is in a family foster home or a
10 therapeutic foster home, exercising the reasonable and prudent parent standard has the authority
11 to provide or withhold permission, without prior approval of the court or a county department
12 of social services, to allow a child in foster care, in the custody of a county department of social
13 services, or under the placement authority of a county department of social services through a
14 voluntary placement agreement to participate in normal childhood activities. Normal childhood
15 activities shall include, but are not limited to, extracurricular, enrichment, and social activities
16 and may include overnight activities outside the direct supervision of the caregiver for periods
17 of over 24 hours and up to 72 hours.

18 (f) The caregiver, including the child's foster parent, whether the child is in a family
19 foster home or a therapeutic foster home, or the designated official at a child care institution
20 where the child is placed, shall not be liable for injuries to the child that occur as a result of the
21 reasonable and prudent parent standard.

22 (g) The caregiver, including the child's foster parent, whether the child is in a family
23 foster home or a therapeutic foster home, the designated official at a child care institution
24 where the child is placed, the county department of social services, or the Department of Health
25 and Human Services, shall be liable for any action or inaction of gross negligence, willful and
26 wanton conduct, or intentional wrongdoing that results in the injury to the child.

27 (h) For any action under this section, the burden of proof with respect to a breach of the
28 reasonable and prudent parent standard shall be by clear and convincing evidence."

29 **SECTION 2.2.** G.S. 7B-505(b) reads as rewritten:

30 "(b) The court shall order the department of social services to make diligent efforts to
31 notify relatives and any custodial parents of the juvenile's siblings that the juvenile is in
32 nonsecure custody and of any hearings scheduled to occur pursuant to G.S. 7B-506, unless the
33 court finds such notification would be contrary to the best interests of the juvenile. In placing a
34 juvenile in nonsecure custody under this section, the court shall first consider whether a relative
35 of the juvenile is willing and able to provide proper care and supervision of the juvenile in a
36 safe home. If the court finds that the relative is willing and able to provide proper care and
37 supervision in a safe home, then the court shall order placement of the juvenile with the relative
38 unless the court finds that placement with the relative would be contrary to the best interests of
39 the juvenile."

40 **SECTION 2.3.** G.S. 7B-800.1(a)(4) reads as rewritten:

41 "(a) Prior to the adjudicatory hearing, the court shall consider the following:

42 ...

43 (4) Whether ~~relatives~~relatives, parents, or other persons with legal custody of a
44 sibling of the juvenile have been identified and notified as potential
45 resources for placement or support."

46 **SECTION 2.4.** G.S. 7B-901 reads as rewritten:

47 **"§ 7B-901. Dispositional hearing.**

48 The dispositional hearing shall take place immediately following the adjudicatory hearing
49 and shall be concluded within 30 days of the conclusion of the adjudicatory hearing. The
50 dispositional hearing may be informal and the court may consider written reports or other
51 evidence concerning the needs of the juvenile. The juvenile and the juvenile's parent, guardian,

1 or custodian shall have the right to present evidence, and they may advise the court concerning
2 the disposition they believe to be in the best interests of the juvenile. The court may consider
3 any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, including
4 testimony or evidence from any person who is not a party, that the court finds to be relevant,
5 reliable, and necessary to determine the needs of the juvenile and the most appropriate
6 disposition. The court may exclude the public from the hearing unless the juvenile moves that
7 the hearing be open, which motion shall be granted.

8 At the dispositional hearing, the court shall inquire as to the identity and location of any
9 missing parent and whether paternity is at issue. The court shall include findings of the efforts
10 undertaken to locate the missing parent and to serve that parent and efforts undertaken to
11 establish paternity when paternity is an issue. The order may provide for specific efforts in
12 determining the identity and location of any missing parent and specific efforts in establishing
13 paternity. The court shall also inquire about efforts made to identify and notify ~~relatives~~
14 relatives, parents, or other persons with legal custody of a sibling of the juvenile, as potential
15 resources for placement or support."

16 **SECTION 2.5.** Article 9 of Chapter 7B of the General Statutes is amended by
17 adding a new section to read:

18 **"§ 7B-903.1. Juvenile placed in custody of a department of social services.**

19 (a) To the extent authorized by federal law, the director of a county department of
20 social services with custody of a juvenile shall be authorized to make decisions about matters
21 not addressed herein that are generally made by a juvenile's custodian, including, but not
22 limited to, educational decisions and consenting to the sharing of the juvenile's information.
23 The court may delegate any part of this authority to the juvenile's parent, foster parent, or
24 another individual.

25 (b) When a juvenile is in the custody or placement responsibility of a county
26 department of social services, the placement provider may, in accordance with
27 G.S. 131D-10.2A, provide or withhold permission, without prior approval of the court or
28 county department of social services, to allow a juvenile to participate in normal childhood
29 activities. If such authorization is not in the juvenile's best interest, the court shall set out
30 alternative parameters for approving normal childhood activities.

31 (c) If a juvenile is removed from the home and placed in the custody or placement
32 responsibility of a county department of social services, the director shall not allow
33 unsupervised visitation with or return physical custody of the juvenile to the parent, guardian,
34 custodian, or caretaker without a hearing at which the court finds that the juvenile will receive
35 proper care and supervision in a safe home.

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

42 **SECTION 2.6.** Article 9 of Chapter 7B of the General Statutes is amended by
43 adding a new section to read:

44 **"§ 7B-912. Juveniles 14 years of age and older; Another Planned Permanent Living**
45 **Arrangement.**

46 (a) In addition to the permanency planning requirements under G.S. 7B-906.1, at every
47 permanency planning hearing for a juvenile in the custody of a county department of social
48 services who has attained the age of 14 years, the court shall inquire and make written findings
49 regarding each of the following:

50 (1) The services provided to assist the juvenile in making a transition to
51 adulthood.

1 (2) The steps the county department of social services is taking to ensure that
2 the foster family or other licensed placement provider follows the reasonable
3 and prudent parent standard as provided in G.S. 131D-10.2A.

4 (3) Whether the juvenile has regular opportunities to engage in age-appropriate
5 or developmentally appropriate activities.

6 (b) At or before the last scheduled permanency planning hearing, but at least 90 days
7 before a juvenile attains 18 years of age, the court shall (i) inquire as to whether the juvenile
8 has a copy of the juvenile's birth certificate, Social Security card, health insurance information,
9 drivers license or other identification card, and any educational or medical records the juvenile
10 requests and (ii) determine the person or entity that should assist the juvenile in obtaining these
11 documents before the juvenile attains the age of 18 years.

12 (c) If the court finds each of the following conditions applies, the court shall approve
13 Another Planned Permanent Living Arrangement (APPLA) as defined by P.L. 113-183, as the
14 juvenile's primary permanent plan:

15 (1) The juvenile is 16 or 17 years old.

16 (2) The county department of social services has made diligent efforts to place
17 the juvenile permanently with a parent or relative or in a guardianship or
18 adoptive placement.

19 (3) Compelling reasons exist that it is not in the best interest of the juvenile to
20 be placed permanently with a parent or relative or in a guardianship or
21 adoptive placement.

22 (4) APPLA is the best permanency plan for the juvenile.

23 (d) If the court approves APPLA as the juvenile's permanent plan, the court shall, after
24 questioning the juvenile, make written findings addressing the juvenile's desired permanency
25 outcome."

27 **PART III. LIABILITY INSURANCE FOR FOSTER PARENTS**

28 **SECTION 3.1.** Article 36 of Chapter 58 of the General Statutes is amended by
29 adding a new section to read:

30 **"§ 58-36-44. Development of policy form or endorsement for personal liability insurance** 31 **for foster parents.**

32 (a) The Rate Bureau shall develop an optional policy form or endorsement to be filed
33 with the Commissioner for approval no later than May 1, 2016, that provides liability insurance
34 for foster parents licensed under Article 1A of Chapter 131D of the General Statutes to provide
35 foster care in a family foster home or therapeutic foster home. The policy form or endorsement
36 shall provide coverage for acts or omissions of the foster parent while the parent is acting in the
37 foster parent's capacity as a foster parent in a licensed family foster home or therapeutic foster
38 home licensed under Article 1A of Chapter 131D of the General Statutes.

39 (b) Nothing in this section is intended to require that the liability insurance policy or
40 endorsement required by this section cover an act or omission that results from any action or
41 inaction of gross negligence, willful and wanton conduct, or intentional wrongdoing that results
42 in injury to the child."

44 **PART IV. REDUCE DRIVING BARRIERS FOR FOSTER CHILDREN**

45 **SECTION 4.1.** Article 1 of Chapter 48A of the General Statutes is amended by
46 adding a new section to read:

47 **"§ 48A-4. Certain minors competent to contract.**

48 A minor who is 16 years of age or older and who is in the legal custody of the county
49 department of social services shall be qualified and competent to contract for the purchase of an
50 automobile insurance policy with the consent of the court with continuing jurisdiction over the
51 minor's placement under G.S. 7B-1000(b). The minor shall be responsible for paying the costs

1 of the insurance premiums and shall be liable for damages caused by the minor's negligent
2 operation of a motor vehicle. No State or local government agency, foster parent, or entity
3 providing services to the minor under contract or at the direction of a State or local government
4 agency shall be responsible for paying any insurance premiums or liable for damages of any
5 kind as a result of the operation of a motor vehicle by the minor."

6 **SECTION 4.2.** G.S. 20-11(i) reads as rewritten:

7 "(i) Application. — An application for a permit or license authorized by this section
8 must be signed by both the applicant and another person. That person must be:

- 9 (1) The applicant's parent or guardian;
- 10 (2) A person approved by the applicant's parent or guardian; or
- 11 (3) A person approved by the Division.
- 12 (4) With respect to minors in the legal custody of the county department of
13 social services, any of the following:
 - 14 a. A guardian ad litem or attorney advocate appointed to advocate for
15 the minor under G.S. 7B-601.
 - 16 b. The director of the county department of social services or the
17 director's designee.
 - 18 c. If no person listed in sub-subdivision a. or b. of this subdivision is
19 available, the court with continuing jurisdiction over the minor's
20 placement under G.S. 7B-1000(b)."

21 **SECTION 4.3.** G.S. 20-309 is amended by adding a new subsection to read:

22 "(a2) Notwithstanding any other provision of this Chapter, an owner's policy of liability
23 insurance issued to a foster parent or parents, which policy includes an endorsement excluding
24 coverage for one or more foster children residing in the foster parent's or parents' household,
25 may be certified as proof of financial responsibility, provided that each foster child for whom
26 coverage is excluded is insured in an amount equal to or greater than the minimum limits
27 required by G.S. 20-279.21 under some other owner's policy of liability insurance or a named
28 nonowner's policy of liability insurance. The North Carolina Rate Bureau shall establish, with
29 the approval of the Commissioner of Insurance, a named driver exclusion endorsement or
30 endorsements for foster children as described herein."

31 **SECTION 4.4.** G.S. 20-279.21(b) reads as rewritten:

32 "(b) ~~Such~~ Except as provided in G.S. 20-309(a2), such owner's policy of liability
33 insurance:
34"
35

36 **PART V. STUDY MEDICAID WAIVER FOR CHILDREN WITH SERIOUS** 37 **EMOTIONAL DISTURBANCE**

38 .Medical Assistance, shall design and draft, but not submit, a 1915(c) Medicaid
39 waiver to serve children with Serious Emotional Disturbance in home and community-based
40 settings. The Department may submit drafts of the waiver to the Centers for Medicare and
41 Medicaid Services (CMS) to solicit feedback but shall not submit the waiver for CMS approval
42 until authorized by the General Assembly.

43 **SECTION 5.1.(b)** The Department shall report the draft waiver, other findings, and
44 any other options or recommendations to best serve children with Serious Emotional
45 Disturbance to the Joint Legislative Oversight Committee on Health and Human Services by
46 December 1, 2015. Specifically, the report shall provide an in-depth analysis of the cost per
47 slot, including an analysis of the estimated number of waiver recipients who would be
48 transitioned from a facility to a home and community-based setting and the estimated number
49 of waiver recipients who would avoid placement in a facility.

50 **PART VI. EFFECTIVE DATE** 51

1 **SECTION 6.1.** Parts 2 and 4 of this act become effective October 1, 2015. The
2 remainder of this act is effective when it becomes law.