

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 182

Short Title: Parental Control/Appeals/Pro Se.

(Public)

Sponsors: Senators Allran; Basnight, Bryan, Carpenter, Carter, Cochrane, Daughtry, Forrester, Hartsell, Marvin, Odom, Pollard, Smith, Soles, and Walker.

Referred to: Judiciary II.

February 25, 1991

A BILL TO BE ENTITLED

1 AN ACT RECOMMENDED BY THE JUVENILE STUDY COMMISSION TO
2 ELIMINATE APPEALS TO SUPERIOR COURT UNDER THE PARENTAL
3 CONTROL ACT AND TO FACILITATE PRO SE REPRESENTATION BY
4 PARENTS.
5

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 110-44.4 reads as rewritten:

8 "**§ 110-44.4. Enforcement.**

9 The provisions of this Article may be enforced by the parent, guardian, or person
10 standing **in loco parentis** to the child by filing a civil action in the district court of the
11 county where the child can be ~~found~~-found or the county of parents' residence. Upon the
12 institution of such action by a verified complaint, alleging that the defendant child has
13 left home or has left the place where he has been residing and refuses to return and
14 comply with the direction and control of the plaintiff, the court may issue an order
15 directing the child personally to appear before the court at a specified time to be heard
16 in answer to the allegations of the plaintiff and to comply with further orders of the
17 court. Such orders shall be served by the sheriff upon the child and upon any other
18 person named as a party defendant in such action. At the time of the issuance of the
19 order directing the child to appear the court may in the same order, or by separate order,
20 order the sheriff to enter any house, building, structure or conveyance for the purpose of
21 searching for said child and serving said order and for the purpose of taking custody of
22 the person of said child in order to bring said child before the court. Any order issued at
23 said hearing shall be treated as a mandatory injunction and shall remain in full force and

1 effect until the child reaches the age of 18, or until further orders of the court. Within 30
2 days after the hearing on the original order, the child, or anyone acting in his behalf,
3 may file a verified answer to the complaint. Upon the filing of an answer by or on
4 behalf of said child, any district court judge holding court in the county or district court
5 district as defined in G.S. 7A-133 where said action was instituted shall have
6 jurisdiction to hear the matter, without a jury, and to make findings of fact, conclusions
7 of law, and render judgment thereon. ~~Any aggrieved party may within the time allowed for~~
8 ~~appeal of civil actions generally appeal to the superior court where trial shall be had without a~~
9 ~~jury.~~ Appeals from the superior district court to the Court of Appeals shall be allowed as
10 in civil actions generally. The district judge issuing the original order or the district
11 judge hearing the matter after answer has been filed shall also have authority to order
12 that any person named defendant in the order or judgment shall not harbor, keep, or
13 allow the defendant child to remain on said person's premises or in said person's home.
14 Failure of any defendant to comply with the terms of said order or judgment shall be
15 punishable as for contempt."

16 Sec. 2. Article 2A of Chapter 110 of the General Statutes is amended by
17 adding a new section to read:

18 "**§ 110-44.5. Pro Se representation by parents.**

19 (a) **Pro Se Procedures.** – Any aggrieved party entitled to relief under this Article
20 may file a civil action and proceed **pro se**, without the assistance of legal counsel. If the
21 party is proceeding **pro se** and does not request an **ex parte** hearing, the clerk shall set a
22 date for hearing and issue a notice of hearing within the time periods provided in this
23 section, and shall effect service of the summons, complaint, notice, and other papers
24 through the appropriate law enforcement agency where the defendant is to be served,
25 upon payment of the required service fees. If an aggrieved party acting **pro se** requests
26 **ex parte** relief, the clerk of superior court shall schedule an **ex parte** hearing with the
27 district court division of the General Court of Justice within 72 hours of the filing for
28 said relief, or by the end of the next day on which the district court is in session in the
29 county in which the action was filed, whichever shall first occur. If the district court is
30 not in session in said county, the aggrieved party may contact the clerk of superior court
31 in any other county within the same judicial district who shall schedule an **ex parte**
32 hearing with the district court division of the General Court of Justice by the end of the
33 next day on which said court division is in session in that county. Upon the issuance of
34 an **ex parte** order under this section, if the party is proceeding **pro se**, the clerk shall set
35 a date for hearing and issue a notice of hearing within the time periods provided in this
36 section, and shall effect service of the summons, complaint, notice, order, and other
37 papers through the appropriate law enforcement agency where the defendant is to be
38 served, upon payment of the required service fees.

39 (b) **Pro Se Forms.** – The clerk of superior court of each county shall provide to
40 **pro se** complaints all forms which are necessary or appropriate to enable them to
41 proceed **pro se** pursuant to this session.

42 (c) A party may file a motion for contempt for violation of any order entered
43 pursuant to this Chapter. Said party may file and proceed with such motion **pro se**,
44 using forms provided by the clerk of superior court. Upon the filing **pro se** of a motion

1 for contempt under this section, the clerk shall schedule and issue notice of a show
2 cause hearing with the district court division of the General Court of Justice at the
3 earliest possible date pursuant to G.S. 5A-23. The clerk shall effect service of the
4 motion, notice, and other papers through the appropriate law enforcement agency where
5 the defendant is to be served, upon payment of the required service fees."

6 Sec. 3. This act becomes effective October 1, 1991, and applies to actions
7 initiated on and after this date.