

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE DRH70269-LU-74 (4/2)

Short Title: Revise to Juvenile Code/Guardians ad Litem.

(Public)

Sponsors: Representative Ross.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE REVISIONS UNDER THE JUVENILE CODE REGARDING
GUARDIANS AD LITEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-304 is repealed.

SECTION 2. G.S. 7B-808 reads as rewritten:

"§ 7B-808. Predisposition ~~investigation and~~ report.

(a) In all cases in which a petition is filed, the director of the department of social services shall prepare a predisposition report for the court containing the results of any mental health evaluation of a juvenile under G.S. 7B-503 and a placement and treatment plan the director deems appropriate to meet the juvenile's needs. In cases where no predisposition report is available and the court makes a written finding that a report is not needed, the court may proceed with the dispositional hearing without receiving a predisposition report.

(b) The chief district court judge may adopt local rules or make an administrative order addressing the sharing of the reports among parties, including an order that prohibits disclosure of the report to the juvenile if the court determines that disclosure would not be in the best interest of the child. However, in no event shall this provision prevent a party who is entitled by law to receive confidential information from receiving the information.

(c) The court shall proceed to the dispositional hearing upon receipt of sufficient social, medical, psychiatric, psychological, and educational information. No predisposition report shall be submitted to or considered by the court prior to the completion of the adjudicatory hearing. ~~The court shall permit the guardian ad litem or juvenile to inspect any predisposition report to be considered by the court in making the disposition unless the court determines that disclosure would seriously harm the juvenile's treatment or would violate a promise of confidentiality. Opportunity to offer~~

1 evidence in rebuttal shall be afforded the guardian ad litem or juvenile, and the
2 juvenile's parent, guardian, or custodian at the dispositional hearing. The court may
3 order counsel not to disclose parts of the report to the guardian ad litem or juvenile, or
4 the juvenile's parent, guardian, or custodian if the court finds that disclosure would
5 seriously harm the treatment of the juvenile or would violate a promise of
6 confidentiality given to a source of information."

7 **SECTION 3.** G.S. 7B-1111(a)(6) reads as rewritten:

8 "(a) The court may terminate the parental rights upon a finding of one or more of
9 the following:

10 ...

11 (6) That the parent is incapable of providing for the proper care and
12 supervision of the juvenile, such that the juvenile is a dependent
13 juvenile within the meaning of G.S. 7B-101, and that there is a
14 reasonable probability that such incapability will continue for the
15 foreseeable future. Incapability under this subdivision may be the
16 result of substance abuse, mental retardation, mental illness, organic
17 brain syndrome, or any other ~~similar cause or condition~~ condition that
18 renders the parent unable or unavailable to parent the child and the
19 parent has no appropriate alternative child care arrangement.

20"

21 **SECTION 4.** G.S. 7B-1101 reads as rewritten:

22 **"§ 7B-1101. Jurisdiction.**

23 The court shall have exclusive original jurisdiction to hear and determine any
24 petition or motion relating to termination of parental rights to any juvenile who resides
25 in, is found in, or is in the legal or actual custody of a county department of social
26 services or licensed child-placing agency in the district at the time of filing of the
27 petition or motion. The court shall have jurisdiction to terminate the parental rights of
28 any parent irrespective of the age of the parent. The parent has the right to counsel and
29 to appointed counsel in cases of indigency unless the parent waives the right. The fees
30 of appointed counsel shall be borne by the Office of Indigent Defense Services. In
31 addition to the right to appointed counsel set forth above, a guardian ad litem shall be
32 appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a parent
33 in the following cases:

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

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

40 The fees of the guardian ad litem shall be borne by the Office of Indigent Defense
41 Services when the court finds that the respondent is indigent. In other cases the fees of
42 the court-appointed guardian ad litem shall be a proper charge against the respondent if
43 the respondent does not secure private legal counsel. Provided, that before exercising
44 jurisdiction under this Article, the court shall find that it would have jurisdiction to

1 make a child-custody determination under the provisions of G.S. 50A-201, 50A-203, or
2 50A-204. Provided, further, that the clerk of superior court shall have jurisdiction for
3 adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of the General Statutes
4 generally."

5 **SECTION 5.** G.S. 7B-100 is amended by adding the following new
6 subdivision to read:

7 "This Subchapter shall be interpreted and construed so as to implement the
8 following purposes and policies:

9 ...

10 (5) To provide standards, consistent with the Adoption and Safe Families
11 Act of 1997, P.L. 105-89, for ensuring that the best interests of the
12 juvenile are of paramount consideration by the court and that when it
13 is not in the juvenile's best interest to be returned home, the juvenile
14 will be placed in a safe, permanent home within a reasonable amount
15 of time."

16 **SECTION 6.** G.S. 7B-406(a) reads as rewritten:

17 "(a) Immediately after a petition has been filed alleging that a juvenile is abused,
18 neglected, or dependent, the clerk shall issue a summons to the parent, guardian,
19 custodian, or caretaker requiring ~~them~~that person to appear for a hearing at the time and
20 place stated in the summons. When the petition alleges abuse or neglect, the clerk shall
21 provide a copy of the petition and notice of hearing to the local guardian ad litem office.
22 A copy of the petition shall be attached to each summons. Service of the summons shall
23 be completed as provided in G.S. 7B-407, but the parent of the juvenile shall not be
24 deemed to be under a disability even though the parent is a minor."

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

26 "**§ 7B-1001. Right to appeal.**

27 Upon motion of a proper party as defined in G.S. 7B-1002, review of any final order
28 of the court in a juvenile matter under this Article shall be before the Court of Appeals.
29 Notice of appeal shall be given in writing within 10 days after entry of the ~~order~~order
30 and, in the case of appeals taken by the respondent parent, signed by both the
31 respondent parent and the attorney for the respondent parent. However, if no disposition
32 is made within 60 days after entry of the order, written notice of appeal may be given
33 within 70 days after such entry. A final order shall include:

- 34 (1) Any order finding absence of jurisdiction;
- 35 (2) Any order which in effect determines the action and prevents a
36 judgment from which appeal might be taken;
- 37 (3) Any order of disposition after an adjudication that a juvenile is abused,
38 neglected, or dependent; or
- 39 (4) Any order modifying custodial rights."

40 **SECTION 8.** G.S. 7B-1113 reads as rewritten:

41 "**§ 7B-1113. Appeals; modification of order after affirmation.**

42 Any juvenile, juvenile acting through the juvenile's guardian ad litem if one is
43 appointed, parent, guardian, custodian, or agency who is a party to a proceeding under
44 this Article may appeal from an adjudication or any order of disposition to the Court of

1 Appeals, provided that notice of appeal is given in writing within 10 days after entry of
2 the order. In the case of appeals taken by the respondent parent, the notice of appeal
3 must be signed by both the respondent parent and the attorney for the respondent parent.
4 Entry of an order shall be treated in the same manner as entry of a judgment under G.S.
5 1A-1, Rule 58 of the North Carolina Rules of Civil Procedure. Pending disposition of an
6 appeal, the court may enter a temporary order affecting the custody or placement of the
7 juvenile as the court finds to be in the best interests of the juvenile or the best interests
8 of the State. Upon the affirmation of the order of adjudication or disposition of the court
9 in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of an
10 appeal, the court shall have authority to modify or alter its original order of adjudication
11 or disposition as the court finds to be in the best interests of the juvenile to reflect any
12 adjustment made by the juvenile or change in circumstances during the period of time
13 the case on appeal was pending, provided that if the modifying order be entered ex
14 parte, the court shall give notice to interested parties to show cause, if any there be,
15 within 10 days thereafter, as to why the modifying order should be vacated or altered."

16 **SECTION 9.** G.S. 7B-1108(b) reads as rewritten:

17 "(b) If an answer or response denies any material allegation of the petition or
18 motion, the court shall appoint a guardian ad litem for the juvenile to represent the best
19 interests of the juvenile, unless the petition or motion was filed by the guardian ad litem
20 pursuant to G.S. 7B-1103, or a guardian ad litem has already been appointed pursuant to
21 G.S. 7B-601. A licensed attorney shall be appointed to assist those guardians ad litem
22 who are not attorneys licensed to practice in North Carolina. The appointment, duties,
23 and payment of the guardian ad litem shall be the same as in G.S. 7B-601 and ~~G.S.~~
24 ~~7B-603.~~G.S. 7B-603, but in no event shall a guardian ad litem who is trained and
25 supervised by the Guardian ad Litem program be appointed to any case unless the child
26 is or has been the subject of a petition for abuse, neglect, or dependency. The court shall
27 conduct a special hearing after notice of not less than 10 days nor more than 30 days
28 given by the petitioner or movant to the respondent who answered or responded, and the
29 guardian ad litem for the juvenile to determine the issues raised by the petition and
30 answer or motion and response.

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

35 **SECTION 10.** G.S. 7B-1003 reads as rewritten:

36 "**§ 7B-1003. Disposition pending appeal.**

37 Pending disposition of an appeal, the return of the juvenile to the custody of the
38 parent or guardian of the juvenile, with or without conditions, may issue unless the court
39 orders otherwise. When the court has found that a juvenile has suffered physical abuse
40 and that the individual responsible for the abuse has a history of violent behavior, the
41 court shall consider the opinion of the mental health professional who performed the
42 evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that
43 individual. For compelling reasons which must be stated in writing, the court may enter
44 a temporary order affecting the custody or placement of the juvenile as the court finds to

1 be in the best interests of the juvenile or the State. The provisions of subsections ~~(b)~~, ~~(c)~~,
2 ~~and (d)~~, ~~(b)~~ and ~~(c)~~ of G.S. 7B-905 shall apply to any order entered under this section
3 which provides for the placement or continued placement of a juvenile in foster care."

4 **SECTION 11.** G.S. 7B-907 is amended by adding a new subsection to read:

5 "(f) If the court determines that the child shall be placed in the custody of an
6 individual other than the parents or appoints an individual guardian of the person
7 pursuant to G.S. 7B-600, the court shall verify that the person receiving custody or
8 being appointed as guardian of the child understands the legal significance of the
9 placement or appointment and will have adequate resources to care appropriately for the
10 child."

11 **SECTION 12.** G.S. 14-16.10(1) reads as rewritten:

12 "The following definitions apply in this Article:

13 (1) Court officer. – Magistrate, clerk of superior court, acting clerk,
14 assistant or deputy clerk, judge, or justice of the General Court of
15 Justice; district attorney, assistant district attorney, or any other
16 attorney designated by the district attorney to act for the State or on
17 behalf of the district attorney; public defender or assistant defender;
18 court reporter; juvenile court counselor as defined in ~~G.S.~~
19 ~~7B-1501(18a)~~; G.S. 7B-1501(18a); any attorney or other individual
20 employed by or acting on behalf of the department of social services in
21 proceedings pursuant to Subchapter I of Chapter 7B of the General
22 Statutes; any attorney or other individual appointed pursuant to G.S.
23 7B-601 or G.S. 7B-1108 or employed by the Guardian ad Litem
24 Services Division of the Administrative Office of the Courts."

25 **SECTION 13.** This act is effective when it becomes law.