

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 879
SENATE BILL 760

AN ACT TO AMEND CHAPTERS 7A AND 48 OF THE GENERAL STATUTES
RELATING TO ADOPTIONS AND TERMINATION OF PARENTAL RIGHTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 48-2 is hereby amended to include a definition of parent in new subdivision (6) to read as follows:

"(6) 'Parent' means the biological or legal mother or father of a child."

Sec. 2. G.S. 48-5 is amended as follows:

(1) By adding two new subsections and designating them, respectively, (a) and (b) as follows:

"(a) The court shall be authorized to determine whether the parent or parents of a child shall be necessary parties to any proceeding under this Chapter, and whether the consent of such parent or parents shall be required in accordance with G.S. 48-6 and G.S. 48-7.

(b) If the identity of either parent is unknown or if one parent is unwilling to identify the other parent, the determination of whether consent of such parent shall be necessary to the adoption of the child shall be made according to G.S. 48-7(c)."

(2) By redesignating the present subsections as (c), (d), (e), and (f), respectively.

(3) By substituting the reference to subsections (d) and (e) for the reference to subsections (b) and (c) on line 2 of present subsection (d).

Sec. 3. G.S. 48-6 is hereby amended by redesignating the present subsection (b) as subsection (c), and is further amended by rewriting the present catch line and subsection (a), and by adding a new subsection (b), so that the catch line and subsections (a) and (b) will read as follows:

"§ 48-6. When consent of parents not necessary. — (a) The court shall determine whether the parent or parents of a child must give written consent to adoption of said child in accordance with the following provisions:

(1) If a parent who has been served with notice pursuant to G.S. 48-7 fails to appear at the hearing by the date and time specified in the notice, and has not given a written consent to adoption, the clerk shall enter an order with supporting findings of fact allowing the adoption to proceed without the said parent's consent.

(2) If a putative father appears at the hearing and cannot establish a parental right in accordance with subsection (3) below as to why his consent should be necessary, the court shall enter an order with supporting findings of fact allowing the adoption to proceed without the said putative father's consent.

(3) In the case of a child born out of wedlock the consent of the putative father shall not be required unless prior to the filing of the adoption petition:

a. paternity has been judicially established or acknowledged by affidavit; or

b. the child has been legitimated either by marriage to the mother or in accordance with provisions of G.S. 49-10, a petition for legitimation has been filed; or

c. the putative father has provided substantial financial support or consistent care with respect to the child and mother.

(b) If a putative father of a child executes an affidavit denying paternity or executes a waiver of any and all rights to said child, including the right to notice of adoption, his consent shall not be required and he shall not be a necessary party to any proceeding under this Chapter, and the court shall enter an order to this effect."

Sec. 4. G.S. 48-6.1 is hereby repealed.

Sec. 5. G.S. 48-9(a)(1) is amended by deleting the last sentence in its entirety, substituting in lieu thereof the following:

"A county director of social services may accept the surrender of a child regardless of its place of birth or the residence of the parent or parents."

Sec. 6. G.S. 48-13 is amended by striking from line 9 the words "and become a part of the report provided for in G.S. 48-16", substituting therefor the words "the petition for adoption".

Sec. 7. G.S. 7A-288 is hereby repealed in its entirety.

Sec. 8. A new Article is added to Chapter 7A of the General Statutes to read as follows:

"ARTICLE 24B.

"Termination of Parental Rights.

"§ 7A-289.20. Legislative intent; construction of Article. — The General Assembly hereby declares as a matter of legislative policy with respect to termination of parental rights:

- (1) The general purpose of this Article is to provide judicial procedures for terminating the legal relationship between a child and his or her biological or legal parents when such parents have demonstrated that they will not provide the degree of care which promotes the healthy and orderly physical and emotional well-being of the child.
- (2) It is the further purpose of this Article to recognize the necessity for any child to have a permanent plan of care at the earliest possible age, while at the same time recognizing the need to protect all children from the unnecessary severance of a relationship with biological or legal parents.
- (3) Action which is in the best interests of the child should be taken in all cases where the interests of the child and those of his or her parents or other persons are in conflict; and to that end this Article should be liberally construed.

"§ 7A-289.21. Jurisdiction. — The district court shall have exclusive original jurisdiction to hear and determine any petition relating to termination of parental rights to any child who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the petition. The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the age of the parent. A guardian ad litem shall be appointed to represent such minor parent, under the age of 14 years.

"§ 7A-289.22. Who may petition. — A petition to terminate the parental rights of either or both parents to his, her, or their minor child may only be filed by:

- (1) either parent seeking termination of the right of the other parent; or
- (2) any person who has been judicially appointed as the guardian of the person of the child; or
- (3) any county department of social services or licensed child-placing agency to whom custody of the child has been given by a court of competent jurisdiction; or

- (4) any county department of social services or licensed child-placing agency to which the child has been surrendered for adoption by one of the parents or by the guardian of the person of such child, pursuant to G.S. 48-9(a)(1); or
- (5) any person with whom the child has resided for a continuous period of two years or more next preceding the filing of the petition.

"§ 7A-289.23. Petition. — The petition shall be verified by the petitioner and shall be entitled 'In re (last name of child), a minor child'; and shall set forth such of the following facts as are known; and with respect to the facts which are unknown the petitioner shall so state:

- (1) The name of the child as it appears on the child's birth certificate, the date and place of birth, and the county where the child is presently residing.
- (2) The name and address of the petitioner and facts sufficient to identify the petitioner as one entitled to petition under G.S. 7A-289.22.
- (3) The name and address of the parents of the child. If the name or address of one or both parents is unknown to the petitioner, the petitioner shall set forth with particularity the petitioner's efforts to ascertain the identity or whereabouts of the parent or parents. Such information may be contained in an affidavit attached to the petition and incorporated therein by reference.
- (4) The name and address of any person appointed as guardian of the person of the child pursuant to the provisions of Article I of Chapter 33 of the General Statutes, or of G.S. 7A-286(7).
- (5) The name and address of any person or agency to whom custody of the child has been given by a court of this or any other state; and a copy of such custody order shall be attached to the petition.
- (6) Facts which are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist.

"§ 7A-289.24. Preliminary hearing; unknown parent. — (a) If either the name or identity of any parent whose parental rights the petitioner seeks to terminate is not known to the petitioner, the court shall within 10 days from the date of filing of the petition, or during the next term of court in the county where the petition is filed if there is no court in said county in that 10-day period, conduct a preliminary hearing to ascertain the name or identity of such parent.

(b) The court may, in its discretion, inquire of any known parent of the child concerning the identity of the unknown parent and may appoint a guardian ad litem for the unknown parent to conduct a diligent search for the parent. Should the court ascertain the name or identity of the parent, it shall enter a finding to that effect; and such parent shall be summoned to appear in accordance with G.S. 7A-289.25.

(c) Notice of the preliminary hearing need be given only to the petitioner who shall appear at the hearing; but the court may cause summons to be issued to any person directing him to appear and testify.

(d) If the court is unable to ascertain the name or identity of the unknown parent, the court shall order publication of notice of the termination proceeding and shall specifically order the place or places of publication and the contents of the notice which the court concludes is most likely to identify the child to such unknown parent. The notice shall be published in a newspaper qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and published in the counties directed by the court, once a week for three successive weeks. Provided, further, the notice shall:

- (1) designate the court in which the petition is pending;
- (2) be directed to 'the father (mother) (father and mother) of a male (female) child born on or about (date) in _____ County, _____ (City), _____ (State), respondent';

- (3) designate the docket number and title of the case (the court may direct the actual name of the title be eliminated and the words 'In Re Doe' substituted therefor);
- (4) state that a petition seeking to terminate the parental rights of the respondent has been filed;
- (5) direct the respondent to answer the petition within 30 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of first publication of notice, and be substantially in the form as set forth in G.S. 1A-1, Rule 4(j)(9)(c); and
- (6) state that the respondent's parental rights to the child will be terminated upon failure to answer the petition within the time prescribed.

Upon completion of the service, an affidavit of the publisher shall be filed with the court.

(e) The court shall issue the order required by G.S. 7A-289.24(b) and (d) within 30 days from the date of the preliminary hearing unless the court shall determine that additional time for investigation is required.

(f) Upon the failure of the parent served by publication pursuant to G.S. 7A-289.24(d) to answer the petition within the time prescribed, the court shall issue an order terminating all parental rights of the unknown parent.

"§ 7A-289.25. Issuance of summons." — Except as provided in G.S. 7A-289.24, upon the filing of the petition, the court shall cause a summons to be issued, directed to the following persons or agency, not otherwise a party petitioner, who shall be named as respondents:

- (1) the parents of the child;
- (2) any person who has been judicially appointed as guardian of the person of the child;
- (3) the custodian of the child appointed by a court of competent jurisdiction;
- (4) any county department of social services or licensed child-placing agency to whom a child has been released by one parent pursuant to G.S. 48-9(a)(1); and
- (5) the child, if he or she is 12 years of age or older at the time the petition is filed.

Provided, no summons need be directed to or served upon any parent who has previously surrendered the child to a county department of social services or licensed child-placing agency, nor to any parent who has consented to the adoption of the child by the petitioner. The summons shall notify the respondents to file written answer within 30 days after service of the summons and petition and that if the respondents fail to answer, the petitioner will apply to the court for the relief prayed for in the petition. Service of the summons shall be completed as provided under the procedures established by G.S. 1A-1, Rule 4(j); but the parent of the child shall not be deemed to be under disability even though such parent is a minor.

"§ 7A-289.26. Failure of respondents to answer." — Upon the failure of the respondents to file written answer to the petition with the court within 30 days after service of the summons and petition, or within 30 days from the date of first publication if service is by publication, the court shall issue an order terminating all parental and custodial rights of the respondent or respondents with respect to the child; provided the court shall order a hearing on the petition and may examine the petitioner or others on the facts alleged in the petition.

"§ 7A-289.27. Answer of respondents." — (a) Any respondent may file a written answer to the petition. The answer shall admit or deny the allegations of the petition and shall set forth the name and address of the answering respondent or his or her attorney.

(b) If an answer denies any material allegation of the petition, the court shall appoint a licensed attorney as guardian ad litem for the child to represent the best interests of the child. The court shall conduct a special hearing after notice of not less than 10 days nor more than 30 days to the petitioner, the answering respondent(s), and the guardian ad litem for the child, to

determine the issues raised by the petition and answer(s). 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 petitioner, respondent, and guardian ad litem or their counsel of record, at the addresses appearing in the petition and responsive pleading.

"§ 7A-289.28. Adjudicatory hearing on termination. — (a) The hearing on the termination of parental rights shall be conducted by the district court sitting without a jury. Reporting of the hearing shall be as provided by G.S. 7A-198 for reporting civil trials.

(b) The court may, upon finding that reasonable cause exists, order the child to be examined by a psychiatrist, a licensed clinical psychologist, a physician, a public or private agency, or any other expert in order that the child's psychological or physical condition or needs may be ascertained or, in the case of a parent whose ability to care for the child is at issue, the court may order a similar examination of any parent of the child.

(c) The court may for good cause shown continue the hearing for such time as is required for receiving additional evidence, any reports or assessments which the court has requested, or any other information needed in the best interest of the child.

(d) The court shall take evidence, find the facts, and shall adjudicate the existence or nonexistence of any of the circumstances set forth in G.S. 7A-289.30 which authorize the termination of parental rights of the respondent.

(e) All findings of fact shall be based upon a preponderance of the evidence. No husband-wife or physician-patient privilege shall be grounds for excluding any evidence regarding the existence or nonexistence of any circumstance authorizing the termination of parental rights.

"§ 7A-289.29. Disposition. — (a) Should the court determine that any one or more of the conditions authorizing a termination of the parental rights of a parent exist, the court shall issue an order terminating the parental rights of such parent with respect to the child unless the court shall further determine that the best interests of the child require that the parental rights of such parent not be terminated.

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

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

(d) The court may tax the cost of the proceeding to any party.

"§ 7A-289.30. Grounds for terminating parental rights. — The court may terminate the parental rights upon a finding of one or more of the following:

- (1) The parent has without cause failed to establish or maintain concern or responsibility as to the child's welfare.
- (2) The parent has physically abused or neglected the child. The child shall be deemed to be physically abused or neglected if the court finds the child to be an abused child within the meaning of G.S. 110-117(1)(a), (b), or (c), or a neglected child within the meaning of G.S. 7A-278(4).
- (3) The parent has willfully left the child in foster care for more than two consecutive years without showing to the satisfaction of the court that substantial progress has been made within two years in correcting those conditions which led to the removal of the child for neglect, or without showing positive response within two years to the diligent efforts of a county department of social services, a child-caring institution or licensed child-placing agency to encourage the parent to strengthen the parental

relationship to the child or to make and follow through with constructive planning for the future of the child.

(4) The child has been placed in the custody of a county department of social services, a licensed child-placing agency, or a child-caring institution, and the parent, for a continuous period of six months next preceding the filing of the petition, has failed to pay a reasonable portion of the cost of care for the child.

(5) One parent has been awarded custody of the child by judicial decree, or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition willfully failed without justification to pay for the care, support, and education of the child, as required by said decree or custody agreement.

(6) The father of a child born out of wedlock has not prior to the filing of a petition to terminate his parental rights:

- a. established paternity judicially or by affidavit; or
- b. legitimated the child pursuant to provisions of G.S. 49-10, or filed a petition for this specific purpose; or
- c. legitimated the child by marriage to the mother of the child; or
- d. provided substantial financial support or consistent care with respect to the child and mother.

"§ 7A-289.31. Effects of termination order. — An order terminating the parental rights completely and permanently terminates all rights and obligations of the parent to the child and of the child to the parent, arising from the parental relationship, except that the child's right of inheritance from his or her parent shall not terminate until such time as a final order of adoption is issued. Such parent is not thereafter entitled to notice of proceedings to adopt the child and may not object thereto or otherwise participate therein.

- (1) If the child had been placed in the custody of or released for adoption by one parent to, a county department of social services or licensed child-placing agency and is in the custody of such agency at the time of such filing of the petition, that agency shall, upon entry of the order terminating parental rights, acquire all of the rights for placement of said child as such agency would have acquired had the parent whose rights are terminated released the child to that agency pursuant to the provisions of G.S. 48-9(a)(1), including the right to consent to the adoption of such child.
- (2) Except as provided in subdivision (1) above, upon entering an order terminating the parental rights of one or both parents, the court may place the child in the custody of the petitioner, or some other suitable person, or in the custody of the department of social services or licensed child-placing agency, as may appear to be in the best interest of the child.

"§ 7A-289.32. Appeals; modification of order after affirmation. — Any child, parent, guardian, custodian or agency who is a party to a proceeding under this Article may appeal from an adjudication or any order of disposition to the Court of Appeals, provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after the hearing. Pending disposition of an appeal, the court may enter such temporary order affecting the custody or placement of the child as the court finds to be in the best interest of the child or the best interest of the State. Upon the affirmation of the order of adjudication or disposition of the district court in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of such an appeal, the district court shall have authority to modify or alter its original order of adjudication or disposition as the court finds to be in the best interest of the child to reflect any adjustment made by the child or change in circumstances during the period of time

the case on appeal was pending, provided that if such modifying order be entered ex parte, the court shall give notice to interested parties to show cause, if any there be, within 10 days thereafter, as to why said modifying order should be vacated or altered."

Sec. 9. This act shall become effective October 1, 1977, but shall not affect pending litigation.

In the General Assembly read three times and ratified, this the 1st day of July, 1977.