

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 1090
SENATE BILL 1668

AN ACT TO PROVIDE STANDARDS FOR THE REMOVAL AND RETURN OF JUVENILES FROM THEIR HOMES AND TO APPROPRIATE FUNDS TO THE OFFICE OF GUARDIAN AD LITEM SERVICES UNDER THE ADMINISTRATIVE OFFICE OF THE COURTS FOR DEPENDENCY CASES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-516 reads as rewritten:

"§ 7A-516. **Purpose.**—~~This Article-Subchapter~~ shall be interpreted and construed so as to implement the following purposes and policies:

(1) To divert juvenile offenders from the juvenile system through the intake services authorized herein so that juveniles may remain in their own homes and may be treated through community-based services when this approach is consistent with the protection of the public safety;

(2) To provide procedures for the hearing of juvenile cases that assure fairness and equity and that protect the constitutional rights of juveniles and parents; ~~and~~

(3) To develop a disposition in each juvenile case that reflects consideration of the facts, the needs and limitations of the child, the strengths and weaknesses of the family, and the protection of the public ~~safety~~-safety;

(4) To provide for services for the protection of juveniles by means that respect both the right to family autonomy and juveniles' needs for safety, continuity, and permanence; and

(5) To provide standards for the removal, when necessary, of juveniles from their homes and for the return of juveniles to their homes consistent with preventing the unnecessary or inappropriate separation of juveniles from their parents."

Sec. 2. G.S. 7A-564 reads as rewritten:

"§ 7A-564. **Issuance of summons.**—~~(a)After-Immediately after~~ a petition has been filed alleging that a juvenile is abused, neglected, dependent, undisciplined, or delinquent, the ~~clerk of superior court~~ shall issue a summons to the juvenile, to the parent, and to the guardian, custodian, or caretaker requiring them to appear for a hearing at the time and place stated in the summons. A copy of the petition shall be attached to each summons.

(b) A summons shall be on a printed form supplied by the Administrative Office of the Courts and shall include:

(1) Notice of the nature of the proceeding;

(2) Notice of any right to counsel and information about how to seek the appointment of counsel prior to a hearing; and

(3) Notice that, if the court determines at the hearing that the allegations of the petition are true, the court will conduct a dispositional hearing to consider the needs of the juvenile and enter an order designed to meet those needs and the objectives of the State, and that the dispositional order may remove the juvenile from the custody of the parent, guardian, or custodian.

(c) The summons shall advise the parent that upon service, jurisdiction over him is obtained and that failure of the parent to comply with any order of the court pursuant to G.S. 7A-650 may cause the court to issue a show cause order for contempt.

(d) A summons shall be directed to the person summoned to appear and shall be delivered to any ~~law enforcement officer having authority and territorial jurisdiction to execute the process~~ person authorized to serve process."

Sec. 3. G.S. 7A-574(a) reads as rewritten:

"§ 7A-574. **Criteria for secure or nonsecure custody.**—(a) When a request is made for nonsecure custody, the judge shall first consider release of the juvenile to his parent, relative, guardian, custodian or other responsible adult. An order for nonsecure custody shall be made only when there is a reasonable factual basis to believe the matters alleged in the petition are true, and

- (1) The juvenile has been abandoned; or
- (2) The juvenile has suffered physical injury or sexual abuse; or
- (3) The juvenile is exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, or custodian has created the conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection; or
- (4) The juvenile is in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and his parent, guardian, or custodian is unwilling or unable to provide or consent to the medical treatment; or
- (5) The parent, guardian or custodian consents to the nonsecure custody order;
- (6) The juvenile is a runaway and consents to nonsecure custody; or
- (7) The juvenile meets one or more of the criteria for secure custody but the court finds it in the best interest of the juvenile that the juvenile be placed in a nonsecure placement.

A juvenile alleged to be abused, neglected, or dependent shall be placed in nonsecure custody only when there is a reasonable factual basis to believe that there is no other reasonable means available to protect the juvenile. In no case shall a juvenile alleged to be abused, neglected, or dependent be placed in secure custody."

Sec. 4. G.S. 7A-577 is amended by adding a new subsection to read:

"(h) Any order authorizing the continued nonsecure custody of a juvenile who is alleged to be abused, neglected, or dependent shall include findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the

juvenile in custody and may provide for services or other efforts aimed at returning the juvenile home promptly. A finding that reasonable efforts have not been made to prevent or eliminate the need for placement shall not preclude the entry of an order authorizing continued nonsecure custody when the court finds that continued nonsecure custody is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable."

Sec. 5. G.S. 7A-586 reads as rewritten:

"§ **7A-586. Appointment and duties of guardian ad litem.**—When in a petition a juvenile is alleged to be abused or neglected, the judge shall appoint a guardian ad litem to represent the juvenile. When a juvenile is alleged to be dependent, the judge may appoint a guardian ad litem to represent the juvenile. The appointment shall be made pursuant to the program established by Article 39 of this Chapter unless representation is otherwise provided pursuant to G.S. 7A-491 or G.S. 7A-492. In every case where a nonattorney is appointed as a guardian ad litem, an attorney shall be appointed in the case in order to assure protection of the child's legal rights within the proceeding. The duties of the guardian ad litem shall be to make an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs; to facilitate, when appropriate, the settlement of disputed issues; to explore options with the judge at the dispositional hearing; and to protect and promote the best interest of the juvenile until formally relieved of the responsibility by the judge. ~~When the appointed guardian ad litem is not an attorney licensed to practice in the State of North Carolina, he may employ an attorney when the employment is authorized by the court and pursuant to Chapter 7A or request the appointment of an attorney to appear on behalf of the juvenile in the court proceeding and to assist the guardian ad litem by performing necessary and appropriate legal services on the juvenile's behalf, to present relevant facts to the judge at the adjudicatory hearing and to appeal, when advisable, from an adjudication or order of disposition to the Court of Appeals.~~

The judge may order the Department of Social Services or the guardian **ad litem** to conduct follow-up investigations to insure that the orders of the court are being properly executed and to report to the court when the needs of the juvenile are not being met. The judge may also authorize the guardian **ad litem** to accompany the juvenile to court in any criminal action wherein he may be called on to testify in a matter relating to abuse.

The judge may grant the guardian **ad litem** the authority to demand any information or reports whether or not confidential, that may in the guardian **ad litem's** opinion be relevant to the case. Neither the physician-patient privilege nor the husband-wife privilege may be invoked to prevent the guardian **ad litem** and the court from obtaining such information. The confidentiality of the information or reports shall be respected by the guardian **ad litem** and no disclosure of any information or reports shall be made to anyone except by order of the judge."

Sec. 6. G.S. 7A-588 reads as rewritten:

"§ **7A-588. Payment of court appointed attorney or guardian ad litem.**—An attorney or guardian ad litem appointed pursuant to G.S. 7A-584, 7A-586 or 7A-587 of this

Article or pursuant to any other provision of the Juvenile Code shall be paid a reasonable fee fixed by the court in the same manner as fees for attorneys appointed in cases of indigency or by direct engagement for specialized guardian ad litem services through the Administrative Office of the Courts. The judge may require payment of the attorney or guardian ad litem fee from a person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2 and 7A-450.3. In no event shall the parent or guardian be required to pay the fees for an appointed attorney or guardian ad litem in an abuse, or neglect, or dependency proceeding unless abuse or neglect has been found to have occurred the juvenile has been adjudicated to be abused, neglected, or dependent. A person who does not comply with the court's order of payment may be punished for contempt as provided in G.S. 5A-21."

Sec. 7. G.S. 7A-489 reads as rewritten:

"§ **7A-489. Office of Guardian Ad Litem Services established.**—There is established within the Administrative Office of the Courts an Office of Guardian Ad Litem Services to provide services in accordance with G.S. 7A-586 to abused, and neglected, or dependent juveniles involved in judicial proceedings, and to assure that all participants in these proceedings are adequately trained to carry out their responsibilities. Beginning on July 15, 1983, and ending July 1, 1987, the Administrative Office of the Courts shall establish in phases a statewide guardian ad litem program comprised of local district programs to be established in all judicial districts of the State. Each local district program shall consist of volunteer guardians ad litem, at least one program attorney, a program coordinator who is a paid State employee, and such clerical staff as the Administrative Office of the Courts in consultation with the local district program deems necessary. The Administrative Office of the Courts shall promulgate rules and regulations necessary and appropriate for the administration of the program."

Sec. 8. G.S. 7A-491 reads as rewritten:

"§ **7A-491. Conflict of interest or impracticality of implementation.**—If a conflict of interest prohibits a local district program from providing representation to an abused, or neglected, or dependent juvenile, the court may appoint any member of the district bar to represent said juvenile. If the Administrative Office of the Courts determines that within a particular judicial district the implementation of a local district program is impractical, or that an alternative plan meets the conditions of G.S. 7A-492, the Administrative Office of the Courts shall waive the establishment of the program within the district."

Sec. 9. G.S. 7A-632 reads as rewritten:

"§ **7A-632. Continuances.**—The judge may, for good cause, continue at any time any case to allow the hearing for as long as is reasonably required to receive additional factual evidence, social information reports, or assessments that the court has requested, or other information needed in the best interest of the juvenile or in the interest of justice and to allow for a reasonable time for the parties to conduct expeditious discovery. Otherwise, continuances shall be granted only in extraordinary circumstances when necessary for the proper administration of justice or in the best interest of the juvenile."

Sec. 10. G.S. 7A-651 reads as rewritten:

"§ 7A-651. **Dispositional order.**—(a) The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The judge shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested.

(b) A dispositional order under which a juvenile is removed from the custody of a parent or person standing in loco parentis shall direct that the review hearing required by G.S. 7A-657 be held within six months of the date of the juvenile's placement in custody and, if practicable, shall set the date and time for the review hearing.

(c) Any order directing placement of a juvenile in foster care shall also contain:

- (1) A finding that the juvenile's continuation in or return to his own home would be contrary to the juvenile's best interest; and
- (2) Findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in foster care. A finding that reasonable efforts were not made to prevent or eliminate the need for placement shall not preclude entry of a dispositional order authorizing placement in foster care when the court finds that such placement is needed for protection of the juvenile. When efforts to prevent the need for the juvenile's placement are precluded by an immediate threat of harm to the juvenile, the court may find that placement of the juvenile in the absence of such efforts is reasonable.

The order may provide for services or other efforts aimed at returning the juvenile home.

(d) An order that places a juvenile in the custody of a county department of social services for placement shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the county department is to provide or arrange for the foster care or other placement of the juvenile."

Sec. 11. G.S. 7A-657 is amended by adding a new subsection to read:

"(e) The provisions of subsections (b), (c), and (d) of G.S. 7A-651 shall apply to any order entered under this section which continues the foster care placement of a juvenile."

Sec. 12. G.S. 7A-668 reads as rewritten:

"§ 7A-668. **Disposition pending appeal.**—Pending disposition of an appeal, the release of the juvenile, with or without conditions, should issue in every case unless the judge orders otherwise. For compelling reasons which must be stated in writing, the judge may enter a temporary order affecting the custody or placement of the juvenile as he finds to be in the best interest of the juvenile or the State. The provisions of subsections (b), (c), and (d) of G.S. 7A-651 shall apply to any order entered under this section which provides for the placement or continued placement of a juvenile in foster care."

Sec. 13. Of funds appropriated to the Administrative Office of the Courts for fiscal year 1988-89, the sum of one thousand five hundred fifty-three dollars (\$1,553.00) may be used to implement the start-up costs of Sections 5, 6, 7, and 8 of this

act. Funding to pay the attorneys representing dependent juveniles under Sections 5, 6, 7, and 8 of this act shall come from the Indigent Persons Attorney Fee Fund.

Sec. 14. Sections 5, 6, 7, 8, and 13 of this act shall become effective June 1, 1989. The remainder of this act is effective upon ratification and shall apply to all petitions filed on or after the date of ratification of this act and to all review hearings held on or after the date of ratification of this act.

In the General Assembly read three times and ratified this the 8th day of July, 1988.