

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 487*

Short Title: Juv. Law/Child Protection.

(Public)

Sponsors: Senators Cooper; and Carpenter.

Referred to: Judiciary I.

March 16, 1993

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE CHILD FATALITY
TASK FORCE TO AMEND THE JUVENILE LAW AND OTHER LAWS TO
PROTECT CHILDREN MORE EFFECTIVELY FROM ABUSE, NEGLECT,
AND DEPENDENCY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-517(1) reads as rewritten:

"(1) Abused Juveniles. – Any juvenile less than 18 years of age whose
~~parent or other person responsible for his care:~~ parent, guardian, or
custodian:

- a. Inflicts or allows to be inflicted upon the juvenile a serious
physical injury by other than accidental ~~means which causes or
creates a substantial risk of death, disfigurement, impairment of
physical health, or loss or impairment of function of any bodily
organ;~~ means; or
- b. Creates or allows to be created a substantial risk of physical
injury to the juvenile by other than accidental means which
would be likely to cause death, disfigurement, impairment of
physical health, or loss or impairment of the function of any
bodily organ; or
- b1. Uses or allows to be used upon the juvenile cruel or grossly
inappropriate procedures or devices to modify behavior; or
- c. Commits, permits, or encourages the commission of a violation
of the following laws by, with, or upon the juvenile: first degree

1 rape, as provided in G.S. 14-27.2; second degree rape as
2 provided in G.S. 14-27.3; first degree sexual offense, as
3 provided in G.S. 14-27.4; second degree sexual offense, as
4 provided in G.S. 14-27.5; sexual act by a custodian, as provided
5 in G.S. 14-27.7; crime against nature, as provided in G.S. 14-
6 177; incest, as provided in G.S. 14-178 and 14-179; preparation
7 of obscene photographs, slides or motion pictures of the
8 juvenile, as provided in G.S. 14-190.5; employing or permitting
9 the juvenile to assist in a violation of the obscenity laws as
10 provided in G.S. 14-190.6; dissemination of obscene material to
11 the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8;
12 displaying or disseminating material harmful to the juvenile as
13 provided in G.S. 14-190.14 and G.S. 14-190.15; first and
14 second degree sexual exploitation of the juvenile as provided in
15 G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution
16 of the juvenile as provided in G.S. 14-190.18; and taking
17 indecent liberties with the juvenile, as provided in G.S. 14-
18 202.1, regardless of the age of the ~~parties.~~ parties; or

- 19 d. Creates or allows to be created serious emotional damage to the
20 juvenile ~~and refuses to permit, provide for, or participate in~~
21 ~~treatment.~~ by actions that include continually berating,
22 terrorizing, tormenting, rejecting, or isolating the juvenile; or
23 ~~Serious emotional damage is evidenced by a juvenile's severe~~
24 ~~anxiety, depression, withdrawal or aggressive behavior toward~~
25 ~~himself or others; or~~
- 26 e. Encourages, directs, or approves of delinquent acts involving
27 moral turpitude committed by the juvenile."

28 Sec. 2. G.S. 7A-517(5) reads as rewritten:

29 "(5) Caretaker. – Any person other than a ~~parent who has the care of a~~
30 ~~juvenile. Caretaker includes any blood relative, stepparent, foster~~
31 ~~parent, house parent, cottage parent, or other person supervising a~~
32 ~~juvenile in a child-care facility.~~ parent, guardian, or custodian who has
33 responsibility for the health and welfare of a juvenile in a residential
34 setting. A person responsible for a juvenile's health and welfare means
35 a stepparent, foster parent, and adult member of the juvenile's
36 household, a boyfriend or girlfriend of the juvenile's parent, guardian,
37 or custodian, and adult relative entrusted with the juvenile's care, or
38 any person such as a house parent or cottage parent who has primary
39 responsibility for supervising a juvenile's health and welfare in a
40 residential child care facility or residential educational facility.
41 'Caretaker' also means any person who has the responsibility for the
42 care of a juvenile in a registered, nonregistered, or unregulated child
43 day care home or licensed or unlicensed facility ~~as defined in G.S.~~
44 ~~110-86~~ as defined in Article 7 of Chapter 110 of the General Statutes

1 and in rules of the North Carolina Child Day Care Commission and the
2 Social Services Commission and includes any person who has the
3 approval of the care provider to assume responsibility for the juveniles
4 under the care of the care provider."

5 Sec. 3. G.S. 7A-517(13) reads as rewritten:

6 "(13) Dependent Juvenile. – A juvenile in need of assistance or placement
7 because he has no parent, ~~guardian-guardian,~~ or custodian responsible
8 for ~~his-the juvenile's~~ care or supervision or whose parent, guardian, or
9 ~~eustodian-custodian,~~ due to physical or mental incapacity and the
10 absence of an alternative child care arrangement, is unable to provide
11 for ~~his-the~~ care or supervision."

12 Sec. 4. G.S. 7A-543 reads as rewritten:

13 "**§ 7A-543. Duty to report child ~~abuse or neglect.~~ abuse, neglect, dependency, or**
14 **death due to maltreatment.**

15 Any person or institution who has cause to suspect that any juvenile is ~~abused or~~
16 ~~neglected-abused,~~ neglected, or dependent, as defined by G.S. 7A-517, or has died as the
17 result of maltreatment shall report the case of that juvenile to the Director of the
18 Department of Social Services in the county where the juvenile resides or is found. The
19 report may be made orally, by telephone, or in writing. If a licensed health care
20 professional initially makes an oral report, the professional shall follow it with a
21 subsequent written report. The report shall include information as is known to the
22 person making it including the name and address of the juvenile; the name and address
23 of the juvenile's parent, guardian, or caretaker; the age of the juvenile; the names and
24 ages of other juveniles in the home; the present whereabouts of the juvenile if not at the
25 home address; the nature and extent of any injury or condition resulting from ~~abuse or~~
26 ~~neglect-abuse, neglect, or dependency;~~ and any other information which the person
27 making the report believes might be helpful in establishing the need for protective
28 services or court intervention. If the report is made orally or by telephone, the person
29 making the report shall give ~~his-the~~ person's name, address, and telephone number.
30 Refusal of the person making the report to give ~~his-a~~ name shall not preclude the
31 Department's investigation of the alleged ~~abuse or neglect.~~ abuse, neglect, dependency, or
32 death as a result of maltreatment.

33 ~~In the case of any report of abuse, the Director of Social Services, upon receipt of~~
34 ~~the report, may immediately provide the appropriate local law enforcement agency with~~
35 ~~information on the nature of the report. The law enforcement agency may investigate~~
36 ~~the report, and upon request of the Director of the Department of Social Services, the~~
37 ~~law enforcement agency shall provide assistance with the investigation.~~

38 Upon receipt of any report of child sexual abuse in a day care facility or day care
39 home, the Director shall notify the State Bureau of Investigation within 24 hours or on
40 the next work day. If child sexual abuse in a day care facility or day care home is not
41 alleged in the initial report, but during the course of the investigation there is reason to
42 suspect that child sexual abuse has occurred, the Director shall immediately notify the
43 State Bureau of Investigation. Upon notification that child sexual abuse may have

1 occurred in a day care facility or day care home, the State Bureau of Investigation may
2 form a task force to investigate the report."

3 Sec. 5. G.S. 7A-544 reads as rewritten:

4 **"§ 7A-544. Investigation by Director; access to confidential information;**
5 **notification of person making the report.**

6 When a report of ~~abuse or neglect~~ abuse, neglect, or dependency is received, the
7 Director of the Department of Social Services shall make a prompt and thorough
8 investigation in order to ascertain the facts of the case, the extent of the abuse or
9 neglect, and the risk of harm to the juvenile, in order to determine whether protective
10 services should be provided or the complaint filed as a petition. When the report alleges
11 abuse, the Director shall immediately, but no later than 24 hours after receipt of the
12 report, initiate the investigation. When the report alleges ~~neglect, neglect or dependency,~~
13 the Director shall initiate the investigation within 72 hours following receipt of the
14 report. The investigation and evaluation shall include a visit to the place where the
15 juvenile resides. All information received by the Department of Social Services shall be
16 held in strictest confidence by the Department.

17 When a report of a juvenile's death as a result of suspected maltreatment is received,
18 the Director of the Department of Social Services shall immediately ascertain if other
19 juveniles remain in the home, and, if so, initiate an investigation in order to determine
20 whether they require protective services or whether immediate removal of the juveniles
21 from the home is necessary for their protection.

22 If the investigation reveals abuse or neglect, the Director shall decide whether
23 immediate removal of the juvenile or any other juveniles in the home is necessary for
24 their protection. If immediate removal does not seem necessary, the Director shall
25 immediately provide or arrange for protective services. If the parent or other caretaker
26 refuses to accept the protective services provided or arranged by the Director, the
27 Director shall sign a complaint seeking to invoke the jurisdiction of the court for the
28 protection of the juvenile or juveniles.

29 If immediate removal seems necessary for the protection of the juvenile or other
30 juveniles in the home, the Director shall sign a complaint which alleges the applicable
31 facts to invoke the jurisdiction of the court. Where the investigation shows that it is
32 warranted, a protective services worker may assume temporary custody of the juvenile
33 for the juvenile's protection pursuant to Article 46 of this Chapter.

34 In performing any of these duties, the Director may ~~utilize the staff of the county~~
35 ~~Department of Social Services or any other public or private community agencies that~~
36 ~~may be available. The Director may also consult with the~~ consult with any public or
37 private agencies or individuals, including the available State or local law-enforcement
38 officers who shall assist in the investigation and evaluation of the seriousness of any
39 report of ~~abuse or neglect~~ abuse, neglect, or dependency when requested by the
40 Director. The Director may make an oral or written demand for any information or
41 reports, whether or not confidential, that may in the Director's opinion be relevant to the
42 protective services case. Upon the Director's representative's request, any public or
43 private agency or individual shall provide access to and copies of this confidential
44 information and these records to the extent permitted by federal law and regulations.

1 Upon request, the Director's or the Director's representative's oral demands shall be
2 confirmed in writing.

3 ~~Unless a petition is filed within~~ Within five working days after receipt of the report of
4 abuse or neglect, the Director shall give written notice to the person making the ~~report~~
5 ~~that report~~ as to whether the report was accepted for investigation and whether the
6 report was referred to the appropriate State or local law enforcement agency.

7 Within five working days after completion of the protective services investigation,
8 the Director shall give subsequent written notice to the person making the report as to
9 whether there is a finding of abuse, neglect, or dependency, whether the county
10 Department of Social Services is taking action to protect the juvenile, and what specific
11 action it is taking.

12 (1) ~~There is no finding of abuse or neglect; or~~

13 (2) ~~The county Department of Social Services is taking action to protect~~
14 ~~the welfare of the juvenile and what specific action it is taking.~~

15 ~~The notification~~ Both notifications shall include notice that, if the person making the
16 report is not satisfied with the Director's decision, he may request review of the decision
17 by the prosecutor within five working days of receipt. The person making the report
18 may waive his right to this notification and no notification is required if the person
19 making the report does not identify himself to the Director."

20 Sec. 6. G.S. 7A-544.1(b) reads as rewritten:

21 "(b) For purposes of this section, obstruction of or interference with an
22 investigation means refusing to disclose the whereabouts of the juvenile, refusing to
23 allow the director to have personal access to the juvenile, refusing to allow the director
24 to observe or interview the juvenile in private, refusing to allow the director access to
25 confidential information and records upon request, refusing to allow the director to
26 arrange for an evaluation of the juvenile by a physician or other expert, or other conduct
27 that makes it impossible for the director to carry out ~~his~~ the duty to investigate."

28 Sec. 7. G.S. 7A-546 reads as rewritten:

29 **"§ 7A-546. Request for review by prosecutor.**

30 The person making the report shall have five working days, from receipt of the
31 decision of the Director of the Department of Social Services ~~not to petition the court,~~ to
32 notify the prosecutor that he is requesting a review. The prosecutor shall notify the
33 person making the report and the Director of the time and place for the review and the
34 Director shall immediately transmit to the prosecutor a copy of ~~the~~ any investigation
35 report."

36 Sec. 8. G.S. 7A-547 reads as rewritten:

37 **"§ 7A-547. Review by prosecutor.**

38 The prosecutor shall review the Director's determination ~~that a petition should not be~~
39 ~~filed~~ within 20 days after the person making the report is notified. The review shall
40 include conferences with the person making the report, the protective services worker,
41 the juvenile, if practicable, and other persons known to have pertinent information about
42 the juvenile or ~~his~~ the juvenile's family. At the conclusion of the conferences, the
43 prosecutor may affirm the decision made by the ~~Director~~ Director, may request the

1 appropriate local law enforcement agency to investigate the allegations, or may
2 authorize the filing of a petition."

3 Sec. 9. G.S. 7A-548 reads as rewritten:

4 **"§ 7A-548. Duty of Director to report evidence of abuse, neglect; investigation by**
5 **local law enforcement; notification of Department of Human Resources**
6 **and State Bureau of Investigation.**

7 (a) If the Director finds evidence that a juvenile ~~has~~ may have been abused as
8 defined by G.S. 7A-517(1), ~~he~~ the Director shall immediately ~~make a~~ an immediate oral
9 and subsequent written report of the findings of his investigation to the district attorney,
10 who shall determine if criminal prosecution is appropriate, and who may request the Director or
11 his designee to appear before a magistrate. ~~attorney or the district attorney's designee and~~
12 the appropriate local law enforcement agency within 24 hours after receipt of the report.
13 The local law enforcement agency shall immediately, but no later than 24 hours after
14 receipt of the information, initiate and coordinate a criminal investigation with the
15 protective services investigation being conducted by the county Department of Social
16 Services. Upon completion of the investigation, the district attorney shall determine
17 whether criminal prosecution is appropriate and may request the Director or the
18 Director's designee to appear before a magistrate.

19 If the Director receives information that a juvenile ~~has~~ may have been physically
20 harmed in violation of any criminal statute by any person other than the juvenile's ~~parent~~
21 ~~or other person responsible for his care,~~ parent, guardian, custodian, or caretaker, ~~he~~ the
22 Director shall make an immediate oral ~~or~~ and subsequent written report of that
23 information to the district attorney or the district attorney's designee and to the
24 appropriate local law enforcement agency within 24 hours after receipt of the
25 information. The local law enforcement agency shall immediately, but no later than 24
26 hours after receipt of the information, initiate a criminal investigation. Upon
27 completion of the investigation, the district attorney shall determine whether criminal
28 prosecution is appropriate.

29 If the report received pursuant to G.S. 7A-543 involves abuse or neglect of a
30 juvenile in day care, either in a day care facility or a day care home, the Director shall
31 notify the Department of Human Resources within 24 hours or on the next working day
32 of receipt of the report.

33 (a1) If the Director finds evidence that a juvenile has been abused or neglected as
34 defined by G.S. 7A-517 in a day care facility or day care home, he shall immediately so
35 notify the Department of Human Resources and, in the case of child sexual abuse, the
36 State Bureau of Investigation, in such a way as does not violate the law guaranteeing the
37 confidentiality of the records of the Department of Social Services.

38 (a2) Upon completion of the investigation, the Director shall give the Department
39 written notification of the results of the investigation required by G.S. 7A-544. Upon
40 completion of an investigation of child sexual abuse in a day care facility or day care
41 home, the Director shall also make written notification of the results of the investigation
42 to the State Bureau of Investigation.

1 The Director of the Department of Social Services shall submit a report of alleged
2 abuse or neglect cases or child fatalities that are the result of alleged maltreatment to the
3 central registry under the policies adopted by the Social Services Commission."

4 Sec. 10. G.S. 7A-550 reads as rewritten:

5 "**§ 7A-550. Immunity of persons ~~reporting~~, reporting and cooperating in an**
6 **investigation; immunity of county Department of Social Services**
7 **employees.**

8 (a) Anyone who makes a report pursuant to this Article, cooperates with the
9 county department of social services in ~~any ensuing a protective services~~ inquiry or
10 investigation, testifies in any judicial proceeding resulting from ~~the report, a protective~~
11 services report or investigation, or otherwise participates in the program authorized by
12 this Article, is immune from any civil or criminal liability that might otherwise be
13 incurred or imposed for such action provided that the person was acting in good faith.
14 In any proceeding involving liability, good faith is presumed.

15 (b) Any employee of a county Department of Social Services who is assigned to
16 perform, on behalf of the Director, any of the duties permitted or required by this
17 Article or who takes a juvenile into temporary custody pursuant to G.S. 7A-571(3), shall
18 be personally and individually immune from any civil liability for monetary damages
19 that might otherwise be incurred or imposed for any act or failure to act with respect to
20 these duties, except when the employee was not acting in good faith or committed gross
21 negligence or wilful or wanton misconduct that resulted in the damage or injury. In any
22 proceeding involving liability, good faith on the part of the employee shall be presumed
23 and the burden of proof shall be upon the plaintiff to prove that the employee did not act
24 in good faith."

25 Sec. 11. G.S. 7A-551 reads as rewritten:

26 "**§ 7A-551. Privileges not grounds for failing to report or for excluding evidence.**

27 ~~Neither the physician-patient privilege, the psychologist-client privilege, nor the husband-~~
28 ~~wife privilege~~ No privilege shall be grounds for any person or institution failing to report
29 that a juvenile may have been abused, neglected, or dependent, even if the knowledge or
30 suspicion is acquired in an official professional capacity. No privilege, except the
31 attorney-client privilege, shall be grounds for excluding evidence of ~~abuse or neglect~~
32 abuse, neglect, or dependency in any judicial proceeding (civil, criminal, or juvenile) in
33 which a juvenile's ~~abuse or neglect~~ abuse, neglect, or dependency is in issue nor in any
34 judicial proceeding resulting from a report submitted under this Article, both as ~~said~~
35 privileges ~~relate~~ this privilege relates to the competency of the witness and to the
36 exclusion of confidential communications."

37 Sec. 12. G.S. 7A-552 reads as rewritten:

38 "**§ 7A-552. Central registry.**

39 The Department of Human Resources shall maintain a central registry of abuse and
40 neglect cases and child fatalities that are the result of alleged maltreatment that are
41 reported under this Article in order to compile data for appropriate study of the extent of
42 abuse and neglect within the State and to identify repeated abuses of the same juvenile
43 or of other juveniles in the same family. This data shall be furnished by county
44 directors of social services to the Department of Human Resources and shall be

1 confidential, subject to policies adopted by the Social Services Commission ~~which~~
2 ~~provide~~ providing for its ~~appropriate~~ use for study and ~~research~~ research and for other
3 appropriate disclosure. Data shall not be used at any hearing or court proceeding unless
4 based upon a final judgment of a court of law."

5 Sec. 13. G.S. 122C-54(h) reads as rewritten:

6 "(h) A facility ~~may~~ shall disclose confidential information for purposes of
7 complying with Article 44 of Chapter 7A of the General Statutes and Article 6 of
8 Chapter 108A of the General Statutes, or as required by other State or federal law."

9 Sec. 14. Nothing in this act obligates the General Assembly to make any
10 appropriations to implement it.

11 Sec. 15. This act becomes effective October 1, 1993, and applies to
12 allegations of abuse, neglect, or dependency initiating on or after that date.