

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 801
Committee Substitute Favorable 4/13/05

Short Title: Child Custody/Guardianship Jurisdiction.

(Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

1
2 AN ACT TO ESTABLISH A PROCEDURE TO RESOLVE THE ISSUE OF
3 CONFLICTING CHILD CUSTODY ORDERS; TO CLARIFY THE EFFECT OF
4 TERMINATING JURISDICTION IN CERTAIN JUVENILE CASES; TO GIVE
5 THE COURT AUTHORITY TO CONVERT A JUVENILE COURT CUSTODY
6 ORDER INTO A PERMANENT CUSTODY ORDER UNDER CHAPTER 50 OF
7 THE GENERAL STATUTES; AND TO MAKE TECHNICAL AND
8 CONFORMING CHANGES TO THE LAW.

9 The General Assembly of North Carolina enacts:

10 **SECTION 1.** G.S. 7B-200 is amended by adding the following new
11 subsections to read:

12 "(c) When the court obtains jurisdiction over a juvenile as the result of a petition
13 alleging that the juvenile is abused, neglected, or dependent:

14 (1) Any other civil action in this State in which the custody of the juvenile
15 is an issue is automatically stayed as to that issue, unless the juvenile
16 proceeding and the civil custody action or claim are consolidated
17 pursuant to subsection (d) of this section or the court in the juvenile
18 proceeding enters an order dissolving the stay.

19 (2) If an order entered in the juvenile proceeding and an order entered in
20 another civil custody action conflict, the order in the juvenile
21 proceeding controls as long as the court continues to exercise
22 jurisdiction in the juvenile proceeding.

23 (d) Notwithstanding G.S. 50-13.5(f), the court in a juvenile proceeding may order
24 that any civil action or claim for custody filed in the district be consolidated with the
25 juvenile proceeding. If a civil action or claim for custody of the juvenile is filed in
26 another district, the court in the juvenile proceeding, for good cause and after consulting
27 with the court in the other district, may: (i) order that the civil action or claim for
28 custody be transferred to the county in which the juvenile proceeding is filed; or (ii)
29 order a change of venue in the juvenile proceeding and transfer the juvenile proceeding

1 to the county in which the civil action or claim is filed. The court in the juvenile
2 proceeding may also proceed in the juvenile proceeding while the civil action or claim
3 remains stayed or dissolve the stay of the civil action or claim and stay the juvenile
4 proceeding pending a resolution of the civil action or claim."

5 **SECTION 2.** G.S. 7B-201 reads as rewritten:

6 "**§ 7B-201. Retention and termination of jurisdiction.**

7 (a) When the court obtains jurisdiction over a juvenile, jurisdiction shall continue
8 until terminated by order of the court or until the juvenile reaches the age of 18 years or
9 is otherwise emancipated, whichever occurs first.

10 (b) When the court's jurisdiction terminates, whether automatically or by court
11 order, the court thereafter shall not modify or enforce any order previously entered in
12 the case, including any juvenile court order relating to the custody, placement, or
13 guardianship of the juvenile. The legal status of the juvenile and the custodial rights of
14 the parties shall revert to the status they were before the juvenile petition was filed,
15 unless applicable law or a valid court order in another civil action provides otherwise.
16 Termination of the court's jurisdiction in an abuse, neglect, or dependency proceeding,
17 however, shall not affect any of the following:

18 (1) A civil custody order entered pursuant to G.S. 7B-911.

19 (2) An order terminating parental rights.

20 (3) A pending action to terminate parental rights, unless the court orders
21 otherwise.

22 (4) Any proceeding in which the juvenile is alleged to be or has been
23 adjudicated undisciplined or delinquent.

24 (5) The court's jurisdiction in relation to any new abuse, neglect, or
25 dependency petition that is filed."

26 **SECTION 3.** G.S. 7B-402 reads as rewritten:

27 "**§ 7B-402. Petition.**

28 (a) The petition shall contain the name, date of birth, address of the juvenile, the
29 name and last known address of the juvenile's parent, guardian, or ~~eustodian~~ custodian,
30 and ~~shall allege the facts which~~ allegations of facts sufficient to invoke jurisdiction over
31 the juvenile. A person whose actions resulted in a conviction under G.S. 14-27.2 or
32 G.S. 14-27.3 and the conception of the juvenile need not be named in the petition. The
33 petition may contain information on more than one juvenile when the juveniles are from
34 the same home and are before the court for the same reason.

35 (b) The petition, or an affidavit attached to the petition, shall contain the
36 information required by G.S. 50A-209.

37 (c) Sufficient copies of the petition shall be prepared so that copies will be
38 available for each parent if living separate and apart, the guardian, custodian, or
39 caretaker, the guardian ad litem, the social worker, and any person determined by the
40 court to be a necessary party."

41 **SECTION 4.** Article 9 of Chapter 7B of the General Statutes is amended by
42 adding a new section to read:

43 "**§ 7B-911. Civil child-custody order.**

1 (a) After making proper findings at a dispositional hearing or any subsequent
2 hearing, the court on its own motion or the motion of a party may award custody of the
3 juvenile to a parent or other appropriate person pursuant to G.S. 50-13.1, 50-13.2,
4 50-13.5, and 50-13.7, as provided in this section, and terminate the court's jurisdiction
5 in the juvenile proceeding.

6 (b) When the court enters a custody order under this section, the court shall either
7 cause the order to be filed in an existing civil action relating to the custody of the
8 juvenile or, if there is no other civil action, instruct the clerk to treat the order as the
9 initiation of a civil action for custody.

10 If the order is filed in an existing civil action and the person to whom the court is
11 awarding custody is not a party to that action, the court shall order that the person be
12 joined as a party and that the caption of the case be changed accordingly. The order
13 shall resolve any pending claim for custody and shall constitute a modification of any
14 custody order previously entered in the action.

15 If the court's order initiates a civil action, the court shall designate the parties to the
16 action and determine the most appropriate caption for the case. The civil filing fee is
17 waived unless the court orders one or more of the parties to pay the filing fee for a civil
18 action into the office of the clerk of superior court. The order shall constitute a custody
19 determination, and any motion to enforce or modify the custody order shall be filed in
20 the newly created civil action in accordance with the provisions of Chapter 50 of the
21 General Statutes. The Administrative Office of the Courts may adopt rules and shall
22 develop and make available appropriate forms for establishing a civil file to implement
23 this section.

24 (c) The court may enter a civil custody order under this section and terminate the
25 court's jurisdiction in the juvenile proceeding only if:

26 (1) In the civil custody order the court makes findings and conclusions
27 that support the entry of a custody order in an action under Chapter 50
28 of the General Statutes or, if the juvenile is already the subject of a
29 custody order entered pursuant to Chapter 50, makes findings and
30 conclusions that support modification of that order pursuant to
31 G.S. 50-13.7; and

32 (2) In a separate order terminating the juvenile court's jurisdiction in the
33 juvenile proceeding, the court finds:

34 a. That there is not a need for continued State intervention on
35 behalf of the juvenile through a juvenile court proceeding; and

36 b. That at least six months have passed since the court made a
37 determination that the juvenile's placement with the person to
38 whom the court is awarding custody is the permanent plan for
39 the juvenile, though this finding is not required if the court is
40 awarding custody to a parent or to a person with whom the
41 child was living when the juvenile petition was filed."

42 **SECTION 5.** G.S. 50-13.1 is amended by adding a new subsection to read:

43 "(i) If the child whose custody is the subject of an action under this Chapter also
44 is the subject of a juvenile abuse, neglect, or dependency proceeding pursuant to

1 Subchapter 1 of Chapter 7B of the General Statutes, then the custody action under this
2 Chapter is stayed as provided in G.S. 7B-200."

3 **SECTION 6.** This act becomes effective October 1, 2005, and applies to
4 juvenile proceedings and civil actions pending or filed on or after that date.