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HOUSE BILL 424
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Senate Health Care Committee Substitute Adopted 6/24/16

Short Title: Prohibit Unlawful Custody Transfer of Child.

(Public)

Sponsors:

Referred to:

April 1, 2015

A BILL TO BE ENTITLED
AN ACT TO PROHIBIT THE UNLAWFUL TRANSFER OF CUSTODY OF A MINOR CHILD
AND TO MAKE CONFORMING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 39 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-321.2. Prohibit unlawful transfer of custody of minor child.

(a) It shall be unlawful for:

- (1) A parent to effect or attempt to effect an unlawful transfer of custody of that parent's minor child.
- (2) A person to accept or attempt to accept custody pursuant to an unlawful transfer of custody of a minor child; except that it shall not be unlawful for a person to receive custody of a child from a parent who intends to effect an unlawful transfer of custody of that parent's minor child if the person promptly notifies law enforcement or child protective services in the county where the child resides or is found and promptly makes the child available to law enforcement or child protective services.
- (3) A person to advertise, recruit, or solicit, or to aid, abet, conspire, or seek the assistance of another to advertise, recruit, or solicit the unlawful transfer of custody of a minor child.

(b) Definitions. – As used in this section, the following definitions apply:

- (1) "Minor child" means a child under the age of 18 and includes an adopted minor child, as defined in G.S. 48-1-101(14a).
- (2) "Parent" means a biological parent, adoptive parent, legal guardian, or legal custodian.
- (3) "Relative" means the child's other parent, stepparent, grandparent, adult sibling, aunt, uncle, first cousin, great-aunt, great-uncle, great-grandparent, or a parent's first cousin.
- (4) "Unlawful transfer of custody" means the permanent transfer of physical custody of a minor child, in willful violation of applicable adoption law or by grossly negligent omission in the care of the child, by the child's parent, without a court order or other authorization under law, to a person other than a relative or another individual having a substantial relationship with the child. Compensation in the form of money, property, or other item of value is not



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required in order for an unlawful transfer of custody to occur. Unlawful transfer of custody does not include any of the following:

- a. Placement of a minor child with a prospective adoptive parent in accordance with Part 2 of Article 3 of Chapter 48 of the General Statutes.
- b. A consent to adoption of a minor child in accordance with Part 6 of Article 3 of Chapter 48 of the General Statutes.
- c. Relinquishment of a minor child in accordance with Part 7 of Article 3 of Chapter 48 of the General Statutes.
- d. Placement of a minor child in accordance with the Interstate Compact on the Placement of Children under Article 38 of Chapter 7B of the General Statutes or the Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption.
- e. Temporary transfer of physical custody of a minor child to an individual with a prior substantial relationship with the child for a specified period of time due to (i) the child's medical, mental health, educational, or recreational needs or (ii) the parent's inability to provide proper care or supervision for the minor child, which may be due to the parent's incarceration, military service, employment, medical treatment, incapacity, or other voluntary or involuntary absence.
- f. Transfer of physical custody of a minor child to a relative.
- g. Temporary transfer of physical custody of a minor child to a behavioral health facility or other health care provider, an educational institution, or a recreational facility by a parent for a specified period of time due to the child's medical, mental health, educational, or recreational needs.
- h. A voluntary foster care placement of the minor child made pursuant to an agreement between the minor child's parent and a county department of social services as described in G.S. 7B-910.
- i. Placement of a minor child with a prospective adoptive parent in substantial compliance with the applicable adoption laws of this State or of another state.

(c) Any person who commits an offense under subsection (a) of this section is guilty of a Class A1 misdemeanor.

(d) Any person who commits an offense under subsection (a) of this section that results in serious physical injury to the child is guilty of a Class G felony."

SECTION 2. G.S. 48-10-101(b) reads as rewritten:

"(b) No one other than a county department of social services, an adoption facilitator, or an agency licensed by the Department in this State may advertise in any periodical or newspaper, or by radio, television, or other public medium, that any person or entity will place or accept a child for adoption. For purposes of this section, "other public medium" includes the use of any computerized system, including electronic mail, Internet site, Internet profile, or any similar medium of communication provided via the Internet."

SECTION 3. G.S. 7B-101(15) reads as rewritten:

"§ 7B-101. Definitions.

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

...

- (15) Neglected juvenile. – A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment

1 injurious to the juvenile's welfare; or the custody of whom has been unlawfully
2 transferred under G.S. 14-321.2; or who has been placed for care or adoption in
3 violation of law. In determining whether a juvenile is a neglected juvenile, it is
4 relevant whether that juvenile lives in a home where another juvenile has died
5 as a result of suspected abuse or neglect or lives in a home where another
6 juvenile has been subjected to abuse or neglect by an adult who regularly lives
7 in the home."

8 **SECTION 4.** G.S. 7B-302(a) reads as rewritten:

9 "(a) When a report of abuse, neglect, or dependency is received, the director of the
10 department of social services shall make a prompt and thorough assessment, using either a family
11 assessment response or an investigative assessment response, in order to ascertain the facts of the
12 case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine
13 whether protective services should be provided or the complaint filed as a petition. When the
14 report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the
15 report, initiate the assessment. When the report alleges neglect or dependency, the director shall
16 initiate the assessment within 72 hours following receipt of the report. When the report alleges
17 ~~abandonment,~~ abandonment of a juvenile or unlawful transfer of custody under G.S. 14-321.2, the
18 director shall immediately initiate an ~~assessment,~~ assessment. When the report alleges
19 abandonment, the director shall also take appropriate steps to assume temporary custody of the
20 juvenile, and take appropriate steps to secure an order for nonsecure custody of the juvenile. The
21 assessment and evaluation shall include a visit to the place where the juvenile resides, except when
22 the report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter 110 of
23 the General Statutes. When a report alleges abuse or neglect in a child care facility as defined in
24 Article 7 of Chapter 110 of the General Statutes, a visit to the place where the juvenile resides is
25 not required. When the report alleges abandonment, the assessment shall include a request from
26 the director to law enforcement officials to investigate through the North Carolina Center for
27 Missing Persons and other national and State resources whether the juvenile is a missing child."

28 **SECTION 5.** The Department of Health and Human Services shall collect data on the
29 incidence of disrupted adoptions and unlawful transfer of custody of children in North Carolina
30 and the outcomes for children and families associated with disrupted adoptions and shall develop a
31 program to provide needed supports to families at risk of adoption disruptions in order to keep
32 families together.

33 **SECTION 6.** Sections 1, 3, and 4 of this act become effective December 1, 2016, and
34 apply to offenses committed on or after that date. The remainder of this act is effective when it
35 becomes law.