

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 201*

Short Title: Adoption Technical/Minor Amendments.

(Public)

Sponsors: Representative Culpepper.

Referred to: Judiciary II.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND SIMILAR MINOR
CHANGES TO CHAPTER 48 OF THE GENERAL STATUTES AS
RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 48-2-305 reads as rewritten:

"§ 48-2-305. Petition for adoption; additional documents.

At the time the petition is filed, the petitioner shall file or cause to be filed the following documents:

- (1) Any required affidavit of parentage executed pursuant to G.S. 48-3-206;
- (2) Any required consent or relinquishment that has been executed;
- (3) A certified copy of any court order terminating the rights and duties of a parent or a guardian of the adoptee;
- (4) A certified copy of any court order or pleading in a pending proceeding concerning custody of or visitation with the adoptee;
- (5) A copy of any required preplacement assessment certified by the agency that prepared it or an affidavit from the petitioner stating why the assessment is not available;
- (6) A ~~certified~~ copy of any document containing the information required under G.S. 48-3-205 concerning the health, social, educational, and

1 genetic history of the adoptee and the adoptee's original family which
2 the petitioner received before the placement or at any later time,
3 certified by the person that prepared it, or if this document is not
4 available, an affidavit stating the reason why it is not available;

5 (7) Any signed copy of the form required by the Interstate Compact on the
6 Placement of Children, G.S. 110-57.1, et seq., authorizing a minor to
7 come into this State;

8 (8) A writing that states the name of any individual whose consent is or
9 may be required, but who has not executed a consent or a
10 relinquishment or whose parental rights have not been legally
11 terminated, and any fact or circumstance that may excuse the lack of
12 consent or relinquishment; and

13 (9) In an adoption pursuant to Article 4 of this Chapter, a copy of any
14 agreement to release past-due child support payments.

15 The petitioner may also file any other document necessary or helpful to the court's
16 determination."

17 Section 2. G.S. 48-2-401(d) reads as rewritten:

18 "(d) In the adoption of an adult, the petitioner shall also serve notice of the filing on
19 any adult children of the prospective adoptive parent and any parent, spouse, or adult
20 child of the adoptee who are listed in the petition to adopt."

21 Section 3. G.S. 48-2-403 reads as rewritten:

22 "**§ 48-2-403. Notice of proceedings by clerk.**

23 No later than five days after a petition is filed, the clerk of the court shall ~~give notice of~~
24 ~~the adoption proceeding by certified mail, return receipt requested,~~ mail or otherwise deliver to
25 any agency that has undertaken but not yet completed a preplacement assessment and any
26 agency ordered to make a report to the court pursuant to Part 5 of this Article."

27 Section 4. G.S. 48-2-502(b) reads as rewritten:

28 "(b) The report must be in writing and contain:

29 (1) An account of the petitioner's marital or family status, physical and
30 mental health, home environment, property, income, and financial
31 obligations; if there has been a preplacement assessment, the account
32 may be limited to any changes since the filing of the preplacement
33 assessment;

34 (2) All reasonably available nonidentifying information concerning the
35 physical, mental, and emotional condition of the adoptee required by
36 G.S. 48-3-205 which is not already included in the document prepared
37 under that section;

38 (3) Copies of any court order, judgment, decree, or pending legal
39 proceeding affecting the adoptee, the petitioner, or any child of the
40 petitioner relevant to the welfare of the adoptee;

41 (4) A list of the expenses, fees, or other charges incurred, paid, or to be paid
42 in connection with the adoption that can reasonably be ascertained by
43 the agency;

- 1 (5) Any fact or circumstance known to the agency that raises a specific
2 concern about whether the proposed adoption is contrary to the best
3 interest of the adoptee because it poses a significant risk of harm to the
4 well-being of the adoptee;
- 5 (6) A finding by the agency concerning the suitability of the petitioner and
6 the petitioner's home for the adoptee;
- 7 (7) A recommendation concerning the granting of the petition; and
- 8 (8) Such other information as may be required by rules adopted pursuant to
9 subsection (c) of this section.

10 In an agency adoption, the report shall be written in such a way as to exclude all
11 information that could reasonably be expected to lead directly to the identity of the
12 adoptee at birth or any former parent or family member of the adoptee, and any copies of
13 documents included pursuant to subdivision (3) of this subsection shall be redacted to
14 exclude this information."

15 Section 5. (a) G.S. 48-2-503(a) reads as rewritten:

16 **"§ 48-2-503. Timing and filing of report.**

17 (a) The agency shall complete a written report and file it with the court within 60
18 days after ~~receipt~~ the mailing or delivery of the order under G.S. 48-2-501 unless the court
19 extends the time for filing. The agency shall have three additional days to complete and
20 file the report if the order was mailed."

21 (b) G.S. 48-2-503(b) reads as rewritten:

22 "(b) If the agency identifies a specific concern about the suitability of the petitioner
23 or the petitioner's home for the adoptee, the agency must file an interim report
24 immediately, which must contain an account of the specific concern. The agency shall
25 indicate in the final report whether its concerns have been satisfied and in what manner."

26 (c) G.S. 48-2-503 is amended by adding a new subsection to read:

27 "(b1) When an agency identifies a specific concern in a final report and the court
28 extends the time for a final hearing or disposition to allow resolution of these concerns,
29 the agency shall file a supplemental report indicating whether its concerns have been
30 satisfied and in what manner."

31 (d) Subsection (a) of this section applies to reports to the court prepared in
32 response to a notice under G.S. 48-2-403 mailed or delivered after the effective date of
33 this act.

34 Section 6. (a) G.S. 48-2-604 reads as rewritten:

35 **"§ 48-2-604. Denying petition to adopt a minor.**

36 (a) If at any time between the filing of a petition to adopt a minor and the issuance
37 of the final order completing the adoption it appears to the court that the minor should not
38 be adopted by the petitioners or the petition should be denied for some other reason, the
39 court may dismiss the proceeding.

40 (b) The court, before entering an order to dismiss the proceeding, shall give at
41 least five days' notice of the motion to dismiss to the petitioners, to the county director of
42 social services or licensed child-placing agency that made the report to the court, and to
43 the Department of Human Resources, and they shall be entitled to a hearing on the issue.

1 (c) If the court denies ~~a petition to adopt a minor, the petition,~~ the custody of the
2 minor shall revert to any agency or person having custody immediately before the filing
3 of the petition. If the placement of the ~~child-minor~~ was a direct placement under Article 3
4 of this Chapter, the court shall notify the director of social services of the county in which
5 the petition was filed of the dismissal, and the director of social services shall be
6 responsible for taking appropriate action for the protection of the ~~child-minor.~~"

7 (b) This section becomes effective October 1, 1997.

8 Section 7. G.S. 48-3-608(a) reads as rewritten:

9 "(a) A consent to the adoption of an infant who is in utero or is three months old or
10 less at the time the consent is given may be revoked within 21 days following the day on
11 which it is executed, inclusive of weekends and holidays. A consent to the adoption of
12 any other minor may be revoked within seven days following the day on which it is
13 executed, inclusive of weekends and holidays. If the final day of the revocation period
14 falls on a weekend or North Carolina or federal holiday, then the revocation period
15 extends to the next business day. The individual who gave the consent may revoke by
16 giving written notice to the person specified in the consent. Notice may be given by
17 personal delivery, overnight delivery service, or registered or certified mail, return receipt
18 requested. If notice is given by mail, notice is deemed complete when it is deposited in
19 the United States mail, postage prepaid, addressed to the person to whom consent was
20 given at the address specified in the consent. If notice is given by overnight delivery
21 service, notice is deemed complete on the date it is deposited with the service as shown
22 by the receipt from the service, with delivery charges paid by the sender, addressed to the
23 person to whom consent was given at the address specified in the consent."

24 Section 8. (a) G.S. 48-9-102(a) reads as rewritten:

25 "(a) All records created or filed in connection with an adoption, except the decree
26 ~~of adoption, adoption and the entry in the special proceedings index in the office of the~~
27 clerk of court, and on file with or in the possession of the court, an agency, the State, a
28 county, an attorney, or other provider of professional services, are confidential and may
29 not be disclosed or used except as provided in this Chapter."

30 (b) G.S. 48-9-102(f) reads as rewritten:

31 "(f) The Division shall transmit a report of ~~the each adoption of a minor and any~~
32 ~~name change to the State Registrar if the minor-adoptee was born in this State, or State. In~~
33 the adoption of a minor who was not born in this State, the Division shall transmit the
34 report and any name change to the appropriate official responsible for issuing birth
35 certificates or their equivalent if the minor was not born in this State. equivalent. In the
36 adoption of an adult who was not born in this State, the Division shall transmit a copy of
37 the final order and any other required information to the adoptee."

38 (c) G.S. 48-9-102(g) reads as rewritten:

39 "(g) ~~In the adoption of an adult born in this State in which the name of the adoptee~~
40 ~~is changed, the clerk of superior court shall, within 10 days after the decree of adoption is~~
41 ~~entered, send the State Registrar a copy of the final order, any separate order of name~~
42 ~~change, and a report in a form acceptable to the State Registrar containing sufficient~~
43 ~~information for a new birth certificate. In the adoption of an adult who was not born in~~

1 (6) A deceased parent or the personal representative of a deceased parent's
2 estate; or

3 (7) An individual listed in G.S. 48-3-601 who has not executed a consent or
4 a relinquishment and who fails to respond to a notice of the adoption
5 proceeding within 30 days after the service of the notice."

6 (b) G.S. 48-3-201(d) reads as rewritten:

7 "(d) An agency having legal and physical custody of a minor may place the minor
8 for adoption at any time after a relinquishment is ~~executed~~, executed by any one parent or
9 guardian pursuant to G.S. 48-3-701, even if only one parent has executed a relinquishment
10 pursuant to Part 7 of this Article or has had parental rights terminated, the minor has a
11 guardian or other parent whose consent is required before an adoption can be granted,
12 unless the other parent one of these other individuals notifies the agency in writing of the
13 parent's that individual's objections before the placement. The agency shall act promptly
14 after accepting a relinquishment from one parent or guardian to obtain the consent or
15 relinquishment of the any other parent or guardian or to terminate the guardian's authority
16 pursuant to Chapter 35A of the General Statutes and the rights between the minor and the
17 any other parent pursuant to Article 24B of Chapter 7A of the General Statutes."

18 (c) G.S. 48-4-102 reads as rewritten:

19 "**§ 48-4-102. Consent to adoption of stepchild.**

20 Except under circumstances described in G.S. 48-3-603, a petition to adopt a minor
21 stepchild may be granted only if consent to the adoption has been executed by the
22 adoptee if 12 or more years of age; and

23 (1) The adoptee's parents as described in G.S. 48-3-601; ~~or~~ and

24 (2) Any guardian of the adoptee.

25 The consent of an incompetent parent may be given pursuant to the procedures in G.S.
26 48-3-602."

27 (d) G.S. 48-3-602 reads as rewritten:

28 "**§ 48-3-602. Consent of incompetent parents.**

29 If a parent as described in G.S. 48-3-601 has been adjudicated incompetent, then the
30 court shall appoint a guardian ad litem for that parent ~~and~~ and, unless the child already
31 has a guardian, a guardian ad litem for the child to make a full investigation as to whether
32 the adoption should proceed. The investigation shall include an evaluation of the parent's
33 current condition and any reasonable likelihood that the parent will be restored to
34 competency, the relationship between the child and the incompetent parent, alternatives
35 to adoption, and any other relevant fact or circumstance. If the court determines after a
36 hearing on the matter that it will be in the best interest of the child for the adoption to
37 proceed, the court shall order the guardian ad litem of the parent to execute a consent for
38 that parent."

39 (e) G.S. 48-1-101(8) reads as rewritten:

40 "(8) 'Guardian' means an individual, other than a parent, appointed by a clerk
41 of court in North Carolina to exercise all of the powers conferred by
42 ~~G.S. 35A-1241;~~ G.S. 35A-1241, including a standby guardian appointed
43 under Article 21 of Chapter 35A of the General Statutes whose authority

1 has actually commenced; and also means an individual, other than a
2 parent, appointed in another jurisdiction according to the law of that
3 jurisdiction who has the power to consent to adoption under the law of
4 that jurisdiction."

5 Section 11. (a) G.S. 48-2-501 reads as rewritten:

6 "**§ 48-2-501. Report to the court during proceeding for adoption of a minor.**

7 (a) Whenever a petition for adoption of a minor is filed, the court shall order a
8 report to the court made to assist the court to determine if the proposed adoption of the
9 minor by the petitioner is in the minor's best interest.

10 (b) Consistent with G.S. 48-1-109, the court shall order the report to be prepared:

11 (1) By the agency that placed the minor;

12 (2) By the agency that made the placement assessment pursuant to Part 3
13 of Article 3 of this Chapter; or

14 (3) By another agency.

15 (c) The court shall provide the individual who prepares the report with copies of:

16 (i) the petition to adopt; and (ii) the documents filed with it.

17 (d) As an exception to this section, in any stepparent adoption under Article 4 of
18 this Chapter in which the minor has lived with the stepparent for more than two years, the
19 court may, but is not required to, order a report unless the minor's consent is to be waived
20 or the minor has revoked a consent."

21 (b) G.S. 48-4-104 is repealed.

22 Section 12. Except as otherwise provided, this act is effective when it becomes
23 law.