

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1449
Committee Substitute Favorable 4/29/09

Short Title: Juvenile Code Revisions.

(Public)

Sponsors:

Referred to:

April 13, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS REVISIONS TO THE JUVENILE CODE.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. G.S. 7B-302 reads as rewritten:

5 "**§ 7B-302. Assessment by director; access to confidential information; notification of**
6 **person making the report.**

7 (a) When a report of abuse, neglect, or dependency is received, the director of the
8 department of social services shall make a prompt and thorough assessment, using either a
9 family assessment response or an investigative assessment response, in order to ascertain the
10 facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order
11 to determine whether protective services should be provided or the complaint filed as a petition.
12 When the report alleges abuse, the director shall immediately, but no later than 24 hours after
13 receipt of the report, initiate the assessment. When the report alleges neglect or dependency, the
14 director shall initiate the assessment within 72 hours following receipt of the report. When the
15 report alleges abandonment, the director shall immediately initiate an assessment, take
16 appropriate steps to assume temporary custody of the juvenile, and take appropriate steps to
17 secure an order for nonsecure custody of the juvenile. The assessment and evaluation shall
18 include a visit to the place where the juvenile resides, except when the report alleges abuse or
19 neglect in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes.
20 When a report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter
21 110 of the General Statutes, a visit to the place where the juvenile resides is not required. When
22 the report alleges abandonment, the assessment shall include a request from the director to law
23 enforcement officials to investigate through the North Carolina Center for Missing Persons and
24 other national and State resources whether the juvenile is a missing child. ~~All information
25 received by the department of social services, including the identity of the reporter, shall be
26 held in strictest confidence by the department. However, the department of social services shall
27 disclose confidential information to any federal, State, or local governmental entity or its agent
28 needing confidential information to protect a juvenile from abuse and neglect. Any confidential
29 information disclosed to any federal, State, or local governmental entity, or its agent, under this
30 subsection shall remain confidential with the other governmental entity, or its agent, and shall
31 only be redisclosed by the governmental entity or its agent for purposes directly connected with
32 carrying out the governmental entity's or agent's mandated responsibilities.~~

33 (a1) All information received by the department of social services, including the identity
34 of the reporter, shall be held in strictest confidence by the department, except that:

35 (1) The department shall disclose confidential information to any federal, State,
36 or local government entity or its agent in order to protect a juvenile from
37 abuse or neglect. Any confidential information disclosed to any federal,



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1 State, or local government entity or its agent under this subsection shall
2 remain confidential with the other government entity or its agent and shall
3 only be redisclosed for purposes directly connected with carrying out that
4 entity's mandated responsibilities.

5 (2) The information may be examined upon request by the juvenile's guardian
6 ad litem or the juvenile, including a juvenile who has reached age 18 or been
7 emancipated.

8 (3) A district or superior court judge of this State presiding over a civil matter in
9 which the department of social services is not a party may order the
10 department to release confidential information, after providing the
11 department with reasonable notice and an opportunity to be heard and then
12 determining that the information is relevant and necessary to the trial of the
13 matter before the court and unavailable from any other source. This
14 subdivision shall not be construed to relieve any court of its duty to conduct
15 hearings and make findings required under relevant federal law, before
16 ordering the release of any private medical or mental health information or
17 records related to substance abuse or HIV status or treatment. The
18 department of social services may surrender the requested records to the
19 court, for in camera review, if the surrender is necessary to make the
20 required determinations.

21 (4) A district or superior court judge of this State presiding over a criminal or
22 delinquency matter shall conduct an in camera review prior to releasing to
23 the defendant or juvenile any confidential records maintained by the
24 department of social services, except those records the defendant or juvenile
25 is entitled to pursuant to subdivision (2) of this subsection.

26 (5) The department may disclose confidential information to a parent, guardian,
27 custodian, or caretaker in accordance with G.S. 7B-700 of this Subchapter.

28 (a2) If the director, at any time after receiving a report that a juvenile may be abused,
29 neglected, or dependent, determines that the juvenile's legal residence is in another county, the
30 director shall promptly notify the director in the county of the juvenile's residence, and the two
31 directors shall coordinate efforts to ensure that appropriate actions are taken.

32 (b) When a report of a juvenile's death as a result of suspected maltreatment or a report
33 of suspected abuse, neglect, or dependency of a juvenile in a noninstitutional setting is
34 received, the director of the department of social services shall immediately ascertain if other
35 juveniles live in the home, and, if so, initiate an assessment in order to determine whether they
36 require protective services or whether immediate removal of the juveniles from the home is
37 necessary for their protection. When a report of a juvenile's death as a result of maltreatment or
38 a report of suspected abuse, neglect, or dependency of a juvenile in an institutional setting such
39 as a residential child care facility or residential educational facility is received, the director of
40 the department of social services shall immediately ascertain if other juveniles remain in the
41 facility subject to the alleged perpetrator's care or supervision, and, if so, assess the
42 circumstances of those juveniles in order to determine whether they require protective services
43 or whether immediate removal of those juveniles from the facility is necessary for their
44 protection.

45 (c) If the assessment indicates that abuse, neglect, or dependency has occurred, the
46 director shall decide whether immediate removal of the juvenile or any other juveniles in the
47 home is necessary for their protection. If immediate removal does not seem necessary, the
48 director shall immediately provide or arrange for protective services. If the parent, guardian,
49 custodian, or caretaker refuses to accept the protective services provided or arranged by the
50 director, the director shall sign a ~~complaint~~ petition seeking to invoke the jurisdiction of the
51 court for the protection of the juvenile or juveniles.

1 (d) If immediate removal seems necessary for the protection of the juvenile or other
2 juveniles in the home, the director shall sign a ~~complaint~~ petition that alleges the applicable
3 facts to invoke the jurisdiction of the court. Where the assessment shows that it is warranted, a
4 protective services worker may assume temporary custody of the juvenile for the juvenile's
5 protection pursuant to Article 5 of this Chapter.

6 (d1) Whenever a juvenile is removed from the home of a parent, guardian, custodian,
7 stepparent, or adult relative entrusted with the juvenile's care due to physical abuse, the director
8 shall conduct a thorough review of the background of the alleged abuser or abusers. This
9 review shall include a criminal history check and a review of any available mental health
10 records. If the review reveals that the alleged abuser or abusers have a history of violent
11 behavior against people, the director shall petition the court to order the alleged abuser or
12 abusers to submit to a complete mental health evaluation by a licensed psychologist or
13 psychiatrist.

14 (e) In performing any duties related to the assessment of the report or the provision or
15 arrangement for protective services, the director may consult with any public or private
16 agencies or individuals, including the available State or local law enforcement officers who
17 shall assist in the assessment and evaluation of the seriousness of any report of abuse, neglect,
18 or dependency when requested by the director. The director or the director's representative may
19 make a written demand for any information or reports, whether or not confidential, that may in
20 the director's opinion be relevant to the assessment or provision of protective services. Upon
21 the director's or the director's representative's request and unless protected by the
22 attorney-client privilege, any public or private agency or individual shall provide access to and
23 copies of this confidential information and these records to the extent permitted by federal law
24 and regulations. If a custodian of criminal investigative information or records believes that
25 release of the information will jeopardize the right of the State to prosecute a defendant or the
26 right of a defendant to receive a fair trial or will undermine an ongoing or future investigation,
27 it may seek an order from a court of competent jurisdiction to prevent disclosure of the
28 information. In such an action, the custodian of the records shall have the burden of showing by
29 a preponderance of the evidence that disclosure of the information in question will jeopardize
30 the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or
31 will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph
32 shall be set down for immediate hearing, and subsequent proceedings in the actions shall be
33 accorded priority by the trial and appellate courts.

34 (f) Within five working days after receipt of the report of abuse, neglect, or
35 dependency, the director shall give written notice to the person making the report, unless
36 requested by that person not to give notice, as to whether the report was accepted for
37 assessment and whether the report was referred to the appropriate State or local law
38 enforcement agency.

39 (g) Within five working days after completion of the protective services assessment, the
40 director shall give subsequent written notice to the person making the report, unless requested
41 by that person not to give notice, as to whether there is a finding of abuse, neglect, or
42 dependency, whether the county department of social services is taking action to protect the
43 juvenile, and what action it is taking, including whether or not a petition was filed. The person
44 making the report shall be informed of procedures necessary to request a review by the
45 prosecutor of the director's decision not to file a petition. A request for review by the prosecutor
46 shall be made within five working days of receipt of the second notification. The second
47 notification shall include notice that, if the person making the report is not satisfied with the
48 director's decision, the person may request review of the decision by the prosecutor within five
49 working days of receipt. The person making the report may waive the person's right to this
50 notification, and no notification is required if the person making the report does not identify
51 himself to the director.

1 (h) The director or the director's representative may not enter a private residence for
2 assessment purposes without at least one of the following:

- 3 (1) The reasonable belief that a juvenile is in imminent danger of death or
4 serious physical injury.
5 (2) The permission of the parent or person responsible for the juvenile's care.
6 (3) The accompaniment of a law enforcement officer who has legal authority to
7 enter the residence.
8 (4) An order from a court of competent jurisdiction."

9 **SECTION 2.** G.S. 7B-400 reads as rewritten:

10 **"§ 7B-400. ~~Venue; pleading.~~Venue.**

11 A proceeding in which a juvenile is alleged to be abused, neglected, or dependent may be
12 commenced in the district in which the juvenile resides or is present. ~~When a proceeding is~~
13 ~~commenced in a district other than that of the juvenile's residence, the court, on its own motion~~
14 ~~or upon motion of any party, may transfer the proceeding to the court in the district where the~~
15 ~~juvenile resides. A transfer under this section may be made at any time."~~

16 **SECTION 3.** G.S. 7B-402 is amended by adding the following new subsection to
17 read:

18 "(d) If the petition is filed in a county other than the county of the juvenile's residence,
19 the petitioner shall provide a copy of the petition and any notices of hearing to the director of
20 the department of social services in the county of the juvenile's residence."

21 **SECTION 4.** G.S. 7B-700 reads as rewritten:

22 **"§ 7B-700. ~~Regulation of discovery; protective orders.~~Sharing of information; discovery.**

23 (a) ~~Upon written motion of a party and a finding of good cause, the court may at any~~
24 ~~time order that discovery be denied, restricted, or deferred.~~

25 (b) ~~The court may permit a party seeking relief under subsection (a) of this section to~~
26 ~~submit supporting affidavits or statements to the court for in camera inspection. If, thereafter,~~
27 ~~the court enters an order granting relief under subsection (a) of this section, the material~~
28 ~~submitted in camera must be available to the Court of Appeals in the event of an appeal.~~

29 (a) Sharing of Information. – A department of social services is authorized to share with
30 any other party information relevant to the subject matter of an action pending under this
31 Subchapter. However, this subsection does not authorize the disclosure of the identity of the
32 reporter or any uniquely identifying information that would lead to the discovery of the
33 reporter's identity in accordance with G.S. 7B-302 or the identity of any other person where the
34 agency making the information available determines that the disclosure would be likely to
35 endanger the life or safety of the person.

36 (b) Local Rules. – The chief district court judge may adopt local rules or enter an
37 administrative order addressing the sharing of information among parties and the use of
38 discovery.

39 (c) Discovery. – Any party may file a motion for discovery. The motion shall contain a
40 specific description of the information sought and a statement that the requesting party has
41 made a reasonable effort to obtain the information pursuant to subsections (a) and (b) of this
42 section or that the information cannot be obtained pursuant to subsections (a) and (b) of this
43 section. The motion shall be served upon all parties pursuant to G.S. 1A-1, Rule 5. The motion
44 shall be heard and ruled upon within 10 business days of the filing of the motion. The court
45 may grant, restrict, defer, or deny the relief requested. Any order shall avoid unnecessary delay
46 of the hearing, establish expedited deadlines for completion, and conform to G.S. 7B-803.

47 (d) Protective Order. – Any party served with a motion for discovery may request that
48 the discovery be denied, restricted, or deferred and shall submit, for in camera inspection, the
49 document, information, or materials the party seeks to protect. If the court enters any order
50 granting relief, copies of the documents, information, or materials submitted in camera shall be
51 preserved for appellate review in the event of an appeal.

1 (e) Redisclosure. – Information obtained through discovery or sharing of information
2 under this section may not be redisclosed if the redisclosure is prohibited by State or federal
3 law.

4 (f) Guardian Ad Litem. – Unless provided otherwise by local rules, information or
5 reports obtained by the guardian ad litem pursuant to G.S. 7B-601 are not subject to disclosure
6 pursuant to this subsection, except that reports and records shall be shared with all parties
7 before submission to the court."

8 **SECTION 5.** Article 9 of Chapter 7B of the General Statutes is amended by adding
9 the following new section to read:

10 **"§ 7B-900.1. Post adjudication venue.**

11 (a) At any time after adjudication, the court on its own motion or motion of any party
12 may transfer venue to a different county, regardless of whether the action could have been
13 commenced in that county, if the court finds that the forum is inconvenient, that transfer of the
14 action to the other county is in the best interest of the juvenile, and that the rights of the parties
15 are not prejudiced by the change of venue.

16 (b) Before ordering that a case be transferred to another county, the court shall find that
17 the director of the department of social services in the county in which the action is pending
18 and the director in the county to which transfer is contemplated have communicated about the
19 case and that:

20 (1) The two directors are in agreement with respect to each county's
21 responsibility for providing financial support for the juvenile and services
22 for the juvenile and the juvenile's family; or

23 (2) The Director of the Division of Social Services or the Director's designee has
24 made that determination pursuant to G.S. 153A-257(d).

25 (c) When the court transfers a case to a different county, the court shall join or
26 substitute as a party to the action the director of the department of social services in the county
27 to which the case is being transferred and, if the juvenile is in the custody of the department of
28 social services in the county in which the action is pending, shall transfer custody to the
29 department of social services in the county to which the case is being transferred. The director
30 of the department of social services in the county to which the case is being transferred must be
31 given notice and an opportunity to be heard before the court enters an order pursuant to this
32 subsection. However, the director may waive the right to notice and a hearing.

33 (d) Before ordering that a case be transferred to a different district, the court shall
34 communicate with the chief district court judge or a judge presiding in juvenile court in the
35 district to which the transfer is contemplated explaining the reasons for the proposed transfer. If
36 the judge in the district to which the transfer is proposed makes a timely objection to the
37 transfer, either verbally or in writing, the court shall order the transfer only after making
38 detailed findings of fact that support a conclusion that the juvenile's best interests require that
39 the case be transferred.

40 (e) Before ordering that a case be transferred to another county, the court shall consider
41 relevant factors, which may include:

42 (1) The current residences of the juvenile and the parent, guardian, or custodian
43 and the extent to which those residences have been and are likely to be
44 stable.

45 (2) The reunification plan or other permanent plan for the juvenile and the likely
46 effect of a change in venue on efforts to achieve permanence for the juvenile
47 expeditiously.

48 (3) The nature and location of services and service providers necessary to
49 achieve the reunification plan or other permanent plan for the juvenile.

50 (4) The impact upon the juvenile of the potential disruption of an existing
51 therapeutic relationship.

- 1 (5) The nature and location of witnesses and evidence likely to be required in
2 future hearings.
- 3 (6) The degree to which the transfer would cause inconvenience to one or more
4 parties.
- 5 (7) Any agreement of the parties as to which forum is most convenient.
- 6 (8) The familiarity of the departments of social services, the courts, and the local
7 offices of the guardian ad litem with the juvenile and the juvenile's family.
- 8 (9) Any other factor the court considers relevant.

9 (f) The order transferring venue shall be in writing, signed, and entered no later than 30
10 days from completion of the hearing. The order shall identify the next court action and specify
11 the date within which the next hearing shall be held. If the order is not entered within 30 days
12 following completion of the hearing, the clerk of court for juvenile matters shall schedule a
13 subsequent hearing at the first session of court scheduled for the hearing of juvenile matters
14 following the 30-day period to determine and explain the reason for the delay and to obtain any
15 needed clarification as to the contents of the order. The order shall be entered within 10 days of
16 the subsequent hearing required by this subsection.

17 (g) The clerk shall transmit to the court in the county to which the case is being
18 transferred a copy of the complete record of the case within three business days after entry of
19 the order transferring venue.

20 Upon receiving a case that has been transferred from another county, the clerk shall
21 promptly satisfy the following:

- 22 (1) Assign an appropriate file number to the case.
- 23 (2) Ensure that any necessary appointments of new attorneys or guardians ad
24 litem are made.
- 25 (3) Calendar the next court action as set forth in the order transferring venue and
26 give appropriate notice to all parties."

27 **SECTION 6.** G.S. 7B-906(a) reads as rewritten:

28 "(a) In any case where custody is removed from a parent, guardian, custodian, or
29 caretaker the court shall conduct a review hearing within 90 days from the date of the
30 dispositional hearing and shall conduct a review hearing within six months thereafter. The
31 director of social services shall make a timely request to the clerk to calendar each review at a
32 session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days'
33 notice of the review and its purpose to the parent, the juvenile, if 12 years of age or more, the
34 guardian, ~~any~~the foster parent, relative, or preadoptive parent providing care for the child, the
35 custodian or agency with custody, the guardian ad litem, and any other person or agency the
36 court may specify, indicating the court's impending review. The department of social services
37 shall either provide to the clerk the name and address of the foster parent, relative, or
38 preadoptive parent providing care for the child for notice under this subsection or file written
39 documentation with the clerk that the child's current care provider was sent notice of hearing.
40 Nothing in this subsection shall be construed to make ~~any~~the foster parent, relative, or
41 preadoptive parent a party to the proceeding solely based on receiving notice and the right to be
42 heard."

43 **SECTION 7.** G.S. 7B-907(a) reads as rewritten:

44 "(a) In any case where custody is removed from a parent, guardian, custodian, or
45 caretaker, the judge shall conduct a review hearing designated as a permanency planning
46 hearing within 12 months after the date of the initial order removing custody, and the hearing
47 may be combined, if appropriate, with a review hearing required by G.S. 7B-906. The purpose
48 of the permanency planning hearing shall be to develop a plan to achieve a safe, permanent
49 home for the juvenile within a reasonable period of time. Subsequent permanency planning
50 hearings shall be held at least every six months thereafter, or earlier as set by the court, to
51 review the progress made in finalizing the permanent plan for the juvenile, or if necessary, to

1 make a new permanent plan for the juvenile. The Director of Social Services shall make a
2 timely request to the clerk to calendar each permanency planning hearing at a session of court
3 scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the hearing
4 and its purpose to the parent, the juvenile if 12 years of age or more, the guardian, ~~any~~the
5 foster parent, relative, or preadoptive parent providing care for the child, the custodian or
6 agency with custody, the guardian ad litem, and any other person or agency the court may
7 specify, indicating the court's impending review. The department of social services shall either
8 provide to the clerk the name and address of the foster parent, relative, or preadoptive parent
9 providing care for the child for notice under this subsection or file written documentation with
10 the clerk that the child's current care provider was sent notice of hearing. Nothing in this
11 provision shall be construed to make ~~any~~the foster parent, relative, or preadoptive parent a
12 party to the proceeding solely based on receiving notice and the right to be heard."

13 **SECTION 8.** G.S. 7B-908 reads as rewritten:

14 "**§ 7B-908. Post termination of parental rights' placement court review.**

15 (a) The purpose of each placement review is to ensure that every reasonable effort is
16 being made to provide for a permanent placement plan for the juvenile who has been placed in
17 the custody of a county director or licensed child-placing agency, which is consistent with the
18 juvenile's best interests. At each review hearing the court may consider information from the
19 department of social services, the licensed child-placing agency, the guardian ad litem, the
20 child, ~~any~~the foster parent, relative, or preadoptive parent providing care for the child, and any
21 other person or agency the court determines is likely to aid in the review. The court may
22 consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the
23 court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the
24 most appropriate disposition.

25 (b) The court shall conduct a placement review not later than six months from the date
26 of the termination hearing when parental rights have been terminated by a petition brought by
27 any person or agency designated in G.S. 7B-1103(2) through (5) and a county director or
28 licensed child-placing agency has custody of the juvenile. The court shall conduct reviews
29 every six months thereafter until the juvenile is the subject of a decree of adoption:

30 (1) No more than 30 days and no less than 15 days prior to each review, the
31 clerk shall give notice of the review to the juvenile if the juvenile is at least
32 12 years of age, the legal custodian of the juvenile, ~~any~~the foster parent,
33 relative, or preadoptive parent providing care for the juvenile, the guardian
34 ad litem, if any, and any other person or agency the court may specify. The
35 department of social services shall either provide to the clerk the name and
36 address of the foster parent, relative, or preadoptive parent providing care for
37 the child for notice under this subsection or file written documentation with
38 the clerk that the child's current care provider was sent notice of hearing.
39 Only the juvenile, if the juvenile is at least 12 years of age, the legal
40 custodian of the juvenile, ~~any~~the foster parent, relative, or preadoptive
41 parent providing care for the juvenile, and the guardian ad litem shall attend
42 the review hearings, except as otherwise directed by the court. Nothing in
43 this subdivision shall be construed to make ~~any~~the foster parent, relative, or
44 preadoptive parent a party to the proceeding solely based on receiving notice
45 and the right to be heard. Any individual whose parental rights have been
46 terminated shall not be considered a party to the proceeding unless an appeal
47 of the order terminating parental rights is pending, and a court has stayed the
48 order pending the appeal.

49 (2) If a guardian ad litem for the juvenile has not been appointed previously by
50 the court in the termination proceeding, the court, at the initial six-month
51 review hearing, may appoint a guardian ad litem to represent the juvenile.

1 The court may continue the case for such time as is necessary for the
2 guardian ad litem to become familiar with the facts of the case.

3 (c) The court shall consider at least the following in its review:

4 (1) The adequacy of the plan developed by the county department of social
5 services or a licensed child-placing agency for a permanent placement
6 relative to the juvenile's best interests and the efforts of the department or
7 agency to implement such plan;

8 (2) Whether the juvenile has been listed for adoptive placement with the North
9 Carolina Adoption Resource Exchange, the North Carolina Photo Adoption
10 Listing Service (PALS), or any other specialized adoption agency; and

11 (3) The efforts previously made by the department or agency to find a
12 permanent home for the juvenile.

13 (d) The court, after making findings of fact, shall affirm the county department's or
14 child-placing agency's plans or require specific additional steps which are necessary to
15 accomplish a permanent placement which is in the best interests of the juvenile.

16 (e) If the juvenile is the subject of a decree of adoption prior to the date scheduled for
17 the review, ~~written notice of the issuance of the decree of adoption shall be given to the clerk to~~
18 ~~be placed in the court file, and the and~~ within 10 days of receiving notice that the adoption
19 decree has been entered, the department of social services shall file with the court and serve on
20 any guardian ad litem for the juvenile written notice of the entry. The adoption decree shall not
21 be filed in the court file. The review hearing shall be cancelled with notice of said cancellation
22 given by the clerk to all persons previously notified.

23 (f) The process of selection of specific adoptive parents shall be the responsibility of
24 and within the discretion of the county department of social services or licensed child-placing
25 agency. The guardian ad litem may request information from and consult with the county
26 department or child-placing agency concerning the selection process. If the guardian ad litem
27 requests information about the selection process, the county shall provide the information
28 within five days. ~~Any issue of abuse of discretion by the county department or child placing~~
29 ~~agency in the selection process must be raised by the guardian ad litem within 10 days~~
30 ~~following the date the agency notifies the court and the guardian ad litem in writing of the~~
31 ~~filing of the adoption petition. Within 10 days of receiving a copy of the adoption petition, the~~
32 ~~county department of social services shall file with the court and serve on any guardian ad litem~~
33 ~~for the juvenile written notice that the adoption petition has been filed. The adoption petition~~
34 ~~shall not be filed in the court file. The guardian ad litem has 10 days from service of the written~~
35 ~~notice that the adoption petition has been filed to file a motion alleging any abuse of discretion~~
36 ~~by the county department of social services or child placing agency in the adoption selection~~
37 ~~process. The motion shall be filed in the adoption proceeding and result in the transfer of the~~
38 ~~adoption proceeding to the district court pursuant to G.S. 48-2-601(a1). The guardian ad litem~~
39 ~~shall file with the court and serve the department of social services written notice that the~~
40 ~~motion was filed. The motion shall not be filed in the court file."~~

41 **SECTION 9.** G.S. 7B-1101.1 reads as rewritten:

42 **"§ 7B-1101.1. Parent's right to counsel; guardian ad litem.**

43 (a) The parent has the right to counsel, and to appointed counsel in cases of indigency,
44 unless the parent waives the right. The fees of appointed counsel shall be borne by the Office of
45 Indigent Defense Services. When a petition is filed, unless the parent is already represented by
46 counsel, the clerk shall appoint provisional counsel for each respondent parent named in the
47 petition and indicate the appointment on the juvenile summons. At the first hearing after
48 service upon the respondent parent, the court shall dismiss the provisional counsel if the
49 respondent parent:

50 (1) Does not appear at the hearing;

51 (2) Does not qualify for court-appointed counsel;

1 (3) Has retained counsel; or

2 (4) Waives the right to counsel.

3 The court shall confirm the appointment of counsel if subdivisions (1) through (4) of this
4 subsection are not applicable to the respondent parent. The court may reconsider a parent's
5 eligibility and desire for appointed counsel at any stage of the proceeding.

6 (b) In addition to the right to appointed counsel under subsection (a) of this section, a
7 guardian ad litem shall be appointed in accordance with G.S. 1A-1, Rule 17, to represent any
8 parent who is under the age of 18 years and who is not married or otherwise emancipated.

9 (c) On motion of any party or on the court's own motion, the court may appoint a
10 guardian ad litem for a parent in accordance with G.S. 1A-1, Rule 17 if the court determines
11 that there is a reasonable basis to believe that the parent is incompetent or has diminished
12 capacity and cannot adequately act in his or her own interest. The parent's counsel shall not be
13 appointed to serve as the guardian ad litem.

14 (d) Communications between the guardian ad litem appointed under this section and the
15 parent and between the guardian ad litem and the parent's counsel shall be privileged and
16 confidential to the same extent that communications between the parent and the parent's
17 counsel are privileged and confidential.

18 (e) Guardians ad litem appointed under this section may engage in all of the following
19 practices:

20 (1) Helping the parent to enter consent orders, if appropriate.

21 (2) Facilitating service of process on the parent.

22 (3) Assuring that necessary pleadings are filed.

23 (4) Assisting the parent and the parent's counsel, if requested by the parent's
24 counsel, to ensure that the parent's procedural due process requirements are
25 met.

26 (f) The fees of a guardian ad litem appointed pursuant to this section shall be borne by
27 the Office of Indigent Defense Services when the court finds that the respondent is indigent. In
28 other cases, the fees of the court-appointed guardian ad litem shall be a proper charge against
29 the respondent if the respondent does not secure private legal counsel."

30 **SECTION 10.** G.S. 7B-1106(b) reads as rewritten:

31 "(b) The summons shall be issued for the purpose of terminating parental rights pursuant
32 to the provisions of subsection (a) of this section and shall include:

33 (1) The name of the minor juvenile;

34 (2) Notice that a written answer to the petition must be filed with the clerk who
35 signed the petition within 30 days after service of the summons and a copy
36 of the petition, or the parent's rights may be terminated;

37 (3) ~~Notice that if they are indigent, the parents are entitled to appointed counsel;~~
38 ~~the parents may contact the clerk immediately to request counsel;~~ Notice that
39 any counsel appointed previously and still representing the parent in an
40 abuse, neglect, or dependency proceeding shall continue to represent the
41 parent unless otherwise ordered by the court;

42 (4) ~~Notice that this is a new case. Any attorney appointed previously will not~~
43 ~~represent the parents in this proceeding unless ordered by the court;~~ Notice
44 that if the parent is indigent and is not already represented by appointed
45 counsel, the parent is entitled to appointed counsel, that provisional counsel
46 has been appointed, and that the appointment of provisional counsel shall be
47 reviewed by the court at the first hearing after service;

48 (5) Notice that the date, time, and place of any pretrial hearing pursuant to
49 G.S. 7B-1108.1 and the hearing on the petition will be mailed by the clerk
50 upon filing of the answer or 30 days from the date of service if no answer is
51 filed; and

- 1 (6) Notice of the purpose of the hearing and notice that the parents may attend
2 the termination hearing."

3 **SECTION 11.** G.S. 7B-1106.1(b) reads as rewritten:

4 "(b) The notice required by subsection (a) of this section shall include all of the
5 following:

- 6 (1) The name of the minor juvenile.
7 (2) Notice that a written response to the motion must be filed with the clerk
8 within 30 days after service of the motion and notice, or the parent's rights
9 may be terminated.
10 (3) Notice that any ~~attorney-counsel~~ appointed previously ~~to represent and still~~
11 representing the parent in ~~the~~ an abuse, neglect, or dependency proceeding
12 will continue to represent the parents unless otherwise ordered by the court.
13 (4) Notice that if the parent is indigent, the parent is entitled to appointed
14 counsel and if the parent is not already represented by appointed counsel the
15 parent may contact the clerk immediately to request counsel.
16 (5) Notice that the date, time, and place of any pretrial hearing pursuant to
17 G.S. 7B-1108.1 and the hearing on the motion will be mailed by the moving
18 party upon filing of the response or 30 days from the date of service if no
19 response is filed.
20 (6) Notice of the purpose of the hearing and notice that the parents may attend
21 the termination hearing."

22 **SECTION 12.** G.S. 7B-1108 reads as rewritten:

23 **§ 7B-1108. Answer or response of parent-parent; appointment of guardian ad litem for**
24 **juvenile.**

25 (a) Any respondent may file a written answer to the petition or written response to the
26 motion. The answer or response shall admit or deny the allegations of the petition or motion
27 and shall set forth the name and address of the answering respondent or the respondent's
28 attorney.

29 (b) If an answer or response denies any material allegation of the petition or motion, the
30 court shall appoint a guardian ad litem for the juvenile to represent the best interests of the
31 juvenile, unless the petition or motion was filed by the guardian ad litem pursuant to
32 G.S. 7B-1103, or a guardian ad litem has already been appointed pursuant to G.S. 7B-601. A
33 licensed attorney shall be appointed to assist those guardians ad litem who are not attorneys
34 licensed to practice in North Carolina. The appointment, duties, and payment of the guardian ad
35 litem shall be the same as in G.S. 7B-601 and G.S. 7B-603, but in no event shall a guardian ad
36 litem who is trained and supervised by the guardian ad litem program be appointed to any case
37 unless the juvenile is or has been the subject of a petition for abuse, neglect, or dependency or
38 with good cause shown the local guardian ad litem program consents to the appointment. ~~The~~
39 ~~court shall conduct a special hearing after notice of not less than 10 days nor more than 30 days~~
40 ~~given by the petitioner or movant to the respondent who answered or responded, and the~~
41 ~~guardian ad litem for the juvenile to determine the issues raised by the petition and answer or~~
42 ~~motion and response.~~

43 ~~Notice of the hearing shall be deemed to have been given upon the depositing thereof in the~~
44 ~~United States mail, first class postage prepaid, and addressed to the respondent, and guardian~~
45 ~~ad litem or their counsel of record, at the addresses appearing in the petition or motion and~~
46 ~~responsive pleading.~~

47 (c) In proceedings under this Article, the appointment of a guardian ad litem shall not
48 be required except, as provided above, in cases in which an answer or response is filed denying
49 material allegations, or as required under G.S. 7B-1101; but the court may, in its discretion,
50 appoint a guardian ad litem for a juvenile, either before or after determining the existence of

1 grounds for termination of parental rights, in order to assist the court in determining the best
2 interests of the juvenile.

3 (d) If a guardian ad litem has previously been appointed for the juvenile under
4 G.S. 7B-601, and the appointment of a guardian ad litem could also be made under this section,
5 the guardian ad litem appointed under G.S. 7B-601, and any attorney appointed to assist that
6 guardian, shall also represent the juvenile in all proceedings under this Article and shall have
7 the duties and payment of a guardian ad litem appointed under this section, unless the court
8 determines that the best interests of the juvenile require otherwise."

9 **SECTION 13.** Article 11 of Chapter 7B of the General Statutes is amended by
10 adding the following new section to read:

11 "**§ 7B-1108.1. Pretrial hearing.**

12 (a) The court shall conduct a pretrial hearing. However, the court may combine the
13 pretrial hearing with the adjudicatory hearing on termination in which case no separate pretrial
14 hearing order is required. At the pretrial hearing, the court shall consider the following:

15 (1) Retention or release of provisional counsel.

16 (2) Whether a guardian ad litem should be appointed for the juvenile, if not
17 previously appointed.

18 (3) Whether all summons, service of process, and notice requirements have been
19 met.

20 (4) Any pretrial motions.

21 (5) Any issues raised by any responsive pleading, including any affirmative
22 defenses.

23 (6) Any other issue which can be properly addressed as a preliminary matter.

24 (b) Written notice of the pretrial hearing shall be in accordance with G.S. 7B-1106 and
25 G.S. 7B-1106.1."

26 **SECTION 14.** Article 17 of Chapter 7B of the General Statutes is amended by
27 adding the following new section to read:

28 "**§ 7B-1700.1. Duty to report abuse, neglect, dependency.**

29 Any time a juvenile court counselor or any person has cause to suspect that a juvenile is
30 abused, neglected, or dependent, or has died as the result of maltreatment, the juvenile court
31 counselor or the person shall make a report to the county department of social services as
32 required by G.S. 7B-301."

33 **SECTION 15.** G.S. 7B-1904 reads as rewritten:

34 "**§ 7B-1904. Order for secure or nonsecure custody.**

35 The custody order shall be in writing and shall direct a law enforcement officer or other
36 authorized person to assume custody of the juvenile and to make due return on the order. The
37 official executing the order shall give a copy of the order to the juvenile's parent, guardian, or
38 custodian. If the order is for nonsecure custody, the official executing the order shall also give a
39 copy of the petition and order to the person or agency with whom the juvenile is being placed.
40 If the order is for secure custody, copies of the petition and custody order shall accompany the
41 juvenile to the detention facility or holdover facility of the jail. A message of the Division of
42 Criminal Information, State Bureau of Investigation, stating that a juvenile petition and secure
43 custody order relating to a specified juvenile are on file in a particular county shall be authority
44 to detain the juvenile in secure custody until a copy of the juvenile petition and secure custody
45 order can be forwarded to the juvenile detention facility. The copies of the juvenile petition and
46 secure custody order shall be transmitted to the detention facility no later than 72 hours after
47 the initial detention of the juvenile.

48 An officer receiving an order for custody which is complete and regular on its face may
49 execute it in accordance with its terms and need not inquire into its regularity or continued
50 validity, nor does the officer incur criminal or civil liability for its execution."

51 **SECTION 16.** G.S. 7B-2503(1)c. reads as rewritten:

1 "(1) In the case of any juvenile who needs more adequate care or supervision or
2 who needs placement, the judge may:

3 ...

4 c. ~~Place~~If the director of the department of social services has received
5 notice and an opportunity to be heard, place the juvenile in the
6 custody of a department of social services in the county of the
7 juvenile's residence, or in the case of a juvenile who has legal
8 residence outside the State, in the physical custody of a department
9 of social services in the county where the juvenile is found so that
10 agency may return the juvenile to the responsible authorities in the
11 juvenile's home state. An order placing a juvenile in the custody or
12 placement responsibility of a county department of social services
13 shall contain a finding that the juvenile's continuation in the
14 juvenile's own home would be contrary to the juvenile's best interest.
15 This placement shall be reviewed in accordance with G.S. 7B-906.
16 The director may, unless otherwise ordered by the judge, arrange for,
17 provide, or consent to, needed routine or emergency medical or
18 surgical care or treatment. In the case where the parent is unknown,
19 unavailable, or unable to act on behalf of the juvenile or juveniles,
20 the director may, unless otherwise ordered by the judge, arrange for,
21 provide or consent to any psychiatric, psychological, educational, or
22 other remedial evaluations or treatment for the juvenile placed by a
23 judge or the judge's designee in the custody or physical custody of a
24 county department of social services under the authority of this or
25 any other Chapter of the General Statutes. Prior to exercising this
26 authority, the director shall make reasonable efforts to obtain consent
27 from a parent, guardian, or custodian of the affected juvenile. If the
28 director cannot obtain consent, the director shall promptly notify the
29 parent, guardian, or custodian that care or treatment has been
30 provided and shall give the parent, guardian, or custodian frequent
31 status reports on the circumstances of the juvenile. Upon request of a
32 parent, guardian, or custodian of the affected juvenile, the results or
33 records of the aforementioned evaluations, findings, or treatment
34 shall be made available to the parent, guardian, or custodian by the
35 director unless prohibited by G.S. 122C-53(d)."

36 **SECTION 17.** G.S. 7B-2506(1)c. reads as rewritten:

37 "(1) In the case of any juvenile who needs more adequate care or supervision or
38 who needs placement, the judge may:

39 ...

40 c. ~~Place~~If the director of the county department of social services has
41 received notice and an opportunity to be heard, place the juvenile in
42 the custody of the department of social services in the county of his
43 residence, or in the case of a juvenile who has legal residence outside
44 the State, in the physical custody of a department of social services in
45 the county where the juvenile is found so that agency may return the
46 juvenile to the responsible authorities in the juvenile's home state. An
47 order placing a juvenile in the custody or placement responsibility of
48 a county department of social services shall contain a finding that the
49 juvenile's continuation in the juvenile's own home would be contrary
50 to the juvenile's best interest. This placement shall be reviewed in
51 accordance with G.S. 7B-906. The director may, unless otherwise

1 ordered by the judge, arrange for, provide, or consent to, needed
2 routine or emergency medical or surgical care or treatment. In the
3 case where the parent is unknown, unavailable, or unable to act on
4 behalf of the juvenile or juveniles, the director may, unless otherwise
5 ordered by the judge, arrange for, provide, or consent to any
6 psychiatric, psychological, educational, or other remedial evaluations
7 or treatment for the juvenile placed by a judge or his designee in the
8 custody or physical custody of a county department of social services
9 under the authority of this or any other Chapter of the General
10 Statutes. Prior to exercising this authority, the director shall make
11 reasonable efforts to obtain consent from a parent, guardian, or
12 custodian of the affected juvenile. If the director cannot obtain
13 consent, the director shall promptly notify the parent, guardian, or
14 custodian that care or treatment has been provided and shall give the
15 parent, guardian, or custodian frequent status reports on the
16 circumstances of the juvenile. Upon request of a parent, guardian, or
17 custodian of the affected juvenile, the results or records of the
18 aforementioned evaluations, findings, or treatment shall be made
19 available to the parent, guardian, or custodian by the director unless
20 prohibited by G.S. 122C-53(d)."

21 **SECTION 18.** G.S. 7B-2901(b) reads as rewritten:

22 "(b) The Director of the Department of Social Services shall maintain a record of the
23 cases of juveniles under protective custody by the Department or under placement by the court,
24 which shall include family background information; reports of social, medical, psychiatric, or
25 psychological information concerning a juvenile or the juvenile's family; interviews with the
26 juvenile's family; or other information which the court finds should be protected from public
27 inspection in the best interests of the juvenile. The records maintained pursuant to this
28 subsection may be examined only ~~by order of the court except that the guardian ad litem, or~~
29 ~~juvenile, shall have the right to examine them in the following circumstances:~~

- 30 (1) The juvenile's guardian ad litem or the juvenile, including a juvenile who has
31 reached age 18 or been emancipated, may examine the records.
- 32 (2) A district or superior court judge of this State presiding over a civil matter in
33 which the department is not a party may order the department to release
34 confidential information, after providing the department with reasonable
35 notice and an opportunity to be heard and then determining that the
36 information is relevant and necessary to the trial of the matter before the
37 court and unavailable from any other source. This subsection shall not be
38 construed to relieve any court of its duty to conduct hearings and make
39 findings required under relevant federal law before ordering the release of
40 any private medical or mental health information or records related to
41 substance abuse or HIV status or treatment. The department may surrender
42 the requested records to the court, for in camera review, if surrender is
43 necessary to make the required determinations.
- 44 (3) A district or superior court judge of this State presiding over a criminal or
45 delinquency matter shall conduct an in camera review before releasing to the
46 defendant or juvenile any confidential records maintained by the department
47 of social services, except those records the defendant or juvenile is entitled
48 to pursuant to subdivision (1) of this subsection.
- 49 (4) The department may disclose confidential information to a parent, guardian,
50 custodian, or caretaker in accordance with G.S. 7B-700."

51 **SECTION 19.** This act becomes effective October 1, 2009.