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SESSION 1993

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HOUSE BILL 364
Committee Substitute Favorable 5/6/93

Short Title: Juv. Law/Child Protection.

(Public)

Sponsors:

Referred to:

February 25, 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,~~
custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a 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; means; or~~

b1. Uses or allows to be used upon the juvenile cruel or grossly
inappropriate procedures or devices to modify behavior; or

- 1 c. Commits, permits, or encourages the commission of a violation
2 of the following laws by, with, or upon the juvenile: first degree
3 rape, as provided in G.S. 14-27.2; second degree rape as
4 provided in G.S. 14-27.3; first degree sexual offense, as
5 provided in G.S. 14-27.4; second degree sexual offense, as
6 provided in G.S. 14-27.5; sexual act by a custodian, as provided
7 in G.S. 14-27.7; crime against nature, as provided in G.S. 14-
8 177; incest, as provided in G.S. 14-178 and 14-179; preparation
9 of obscene photographs, slides or motion pictures of the
10 juvenile, as provided in G.S. 14-190.5; employing or permitting
11 the juvenile to assist in a violation of the obscenity laws as
12 provided in G.S. 14-190.6; dissemination of obscene material to
13 the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8;
14 displaying or disseminating material harmful to the juvenile as
15 provided in G.S. 14-190.14 and G.S. 14-190.15; first and
16 second degree sexual exploitation of the juvenile as provided in
17 G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution
18 of the juvenile as provided in G.S. 14-190.18; and taking
19 indecent liberties with the juvenile, as provided in G.S. 14-
20 202.1, regardless of the age of the ~~parties.~~ parties; or
21 d. Creates or allows to be created serious emotional damage to the
22 juvenile ~~and refuses to permit, provide for, or participate in~~
23 ~~treatment.~~ by actions that include, but are not limited to,
24 terrorizing, tormenting, rejecting, isolating, or continually
25 berating the juvenile; or ~~Serious emotional damage is evidenced by~~
26 ~~a juvenile's severe anxiety, depression, withdrawal or aggressive~~
27 ~~behavior toward himself or others; or~~
28 e. Encourages, directs, or approves of delinquent acts involving
29 moral turpitude committed by the juvenile."

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

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

1 day care home or licensed or unlicensed child day care facility as
 2 defined in G.S. 110-86 as defined in Article 7 of Chapter 110 of the
 3 General Statutes and in rules of the North Carolina Child Day Care
 4 Commission and the Social Services Commission and includes any
 5 person who has the approval of the care provider to assume
 6 responsibility for the juveniles under the care of the care provider."

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

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

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

15 "**§ 7A-543. Duty to report child ~~abuse or neglect.~~ abuse, neglect, dependency, or**
 16 **death due to maltreatment.**

17 Any person or institution who has cause to suspect that any juvenile is ~~abused or~~
 18 ~~neglected~~ abused, neglected, or dependent, as defined by G.S. 7A-517, or has died as the
 19 result of maltreatment, shall report the case of that juvenile to the Director of the
 20 Department of Social Services in the county where the juvenile resides or is found. The
 21 report may be made orally, by telephone, or in writing. If a licensed health care
 22 professional initially makes an oral report, the professional shall follow it with a
 23 subsequent written report within 72 hours. The report shall include information as is
 24 known to the person making it including the name and address of the juvenile; the name
 25 and address of the juvenile's parent, guardian, or caretaker; the age of the juvenile; the
 26 names and ages of other juveniles in the home; the present whereabouts of the juvenile
 27 if not at the home address; the nature and extent of any injury or condition resulting
 28 from ~~abuse or neglect~~ abuse, neglect, or dependency; and any other information which
 29 the person making the report believes might be helpful in establishing the need for
 30 protective services or court intervention. If the report is made orally or by telephone,
 31 the person making the report shall give ~~his~~ the person's name, address, and telephone
 32 number. Refusal of the person making the report to give ~~his~~ a name shall not preclude
 33 the Department's investigation of the alleged ~~abuse or neglect.~~ abuse, neglect,
 34 dependency, or death as a result of maltreatment.

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

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

1 State Bureau of Investigation. Upon notification that child sexual abuse may have
2 occurred in a day care facility or day care home, the State Bureau of Investigation may
3 form a task force to investigate the report."

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

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

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

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

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

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

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

1 representative's request and unless protected by the attorney-client privilege, any public
2 or private agency or individual shall provide access to and copies of this confidential
3 information and these records to the extent permitted by federal law and regulations. If a
4 custodian of criminal investigative information or records believes that release of such
5 information will jeopardize the right of the State to prosecute a defendant or the right of
6 a defendant to receive a fair trial or will undermine an ongoing or future investigation, it
7 may seek an order from a court of competent jurisdiction to prevent disclosure of the
8 information. In such an action, the custodian of the records shall have the burden of
9 showing by a preponderance of the evidence that disclosure of the information in
10 question will jeopardize the right of the State to prosecute a defendant or the right of a
11 defendant to receive a fair trial or will undermine an ongoing or future investigation.
12 Actions brought pursuant to this paragraph shall be set down for immediate hearing, and
13 subsequent proceedings in such actions shall be accorded priority by the trial and
14 appellate courts.

15 ~~Unless a petition is filed within~~ Within five working-business days after receipt of the
16 report of abuse or neglect, abuse, neglect, or dependency, the Director shall give written
17 notice to the person making the report that: ~~report, unless requested by that person not to~~
18 ~~give notice, as to whether the report was accepted for investigation and whether the~~
19 ~~report was referred to the appropriate State or local law enforcement agency.~~

20 Within five business days after completion of the protective services investigation,
21 the Director shall give subsequent written notice to the person making the report, unless
22 requested by that person not to give notice, as to whether there is a finding of abuse,
23 neglect, or dependency, whether the county Department of Social Services is taking
24 action to protect the juvenile, and what specific action it is taking.

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

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

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

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

34 "(b) For purposes of this section, obstruction of or interference with an
35 investigation means refusing to disclose the whereabouts of the juvenile, refusing to
36 allow the director to have personal access to the juvenile, refusing to allow the director
37 to observe or interview the juvenile in private, refusing to allow the Director access to
38 confidential information and records upon request pursuant to G.S. 7A-544, refusing to
39 allow the director to arrange for an evaluation of the juvenile by a physician or other
40 expert, or other conduct that makes it impossible for the director to carry out ~~his~~ the duty
41 to investigate."

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

43 "**§ 7A-546. Request for review by prosecutor.**

1 The person making the report shall have five ~~working-business~~ days, from receipt of
2 the decision of the Director of the Department of Social Services ~~not to petition the court,~~
3 to notify the prosecutor that he is requesting a review. The prosecutor shall notify the
4 person making the report and the Director of the time and place for the review and the
5 Director shall immediately transmit to the prosecutor a copy of ~~the~~ any investigation
6 report."

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

8 **"§ 7A-547. Review by prosecutor.**

9 The prosecutor shall review the Director's determination ~~that a petition should not be~~
10 ~~filed~~ within 20 days after the person making the report is notified. The review shall
11 include conferences with the person making the report, the protective services worker,
12 the juvenile, if practicable, and other persons known to have pertinent information about
13 the juvenile or ~~his~~ the juvenile's family. At the conclusion of the conferences, the
14 prosecutor may affirm the decision made by the ~~Director~~ Director, may request the
15 appropriate local law enforcement agency to investigate the allegations, or may authorize
16 the filing of ~~direct the Director to file a petition.~~"

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

18 **"§ 7A-548. Duty of Director to report evidence of abuse, neglect; investigation by**
19 **local law enforcement; notification of Department of Human Resources**
20 **and State Bureau of Investigation.**

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

33 If the Director receives information that a juvenile ~~has~~ may have been physically
34 harmed in violation of any criminal statute by any person other than the juvenile's ~~parent~~
35 ~~or other person responsible for his care,~~ parent, guardian, custodian, or caretaker, he the
36 Director shall make an immediate oral or-and subsequent written report of that
37 information to the district attorney or the district attorney's designee and to the
38 appropriate local law enforcement agency within 24 hours after receipt of the
39 information. The local law enforcement agency shall immediately, but no later than 24
40 hours after receipt of the information, initiate a criminal investigation. Upon
41 completion of the investigation, the district attorney shall determine whether criminal
42 prosecution is appropriate.

43 If the report received pursuant to G.S. 7A-543 involves abuse or neglect of a
44 juvenile in day care, either in a day care facility or a day care home, the Director shall

1 notify the Department of Human Resources within 24 hours or on the next ~~working~~
2 business day of receipt of the report.

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

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

13 The Director of the Department of Social Services shall submit a report of alleged
14 ~~abuse or neglect~~ abuse, neglect, or dependency cases or child fatalities that are the result
15 of alleged maltreatment to the central registry under the policies adopted by the Social
16 Services Commission."

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

18 "**§ 7A-550. Immunity of persons ~~reporting.~~ reporting and cooperating in an**
19 **investigation.**

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

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

28 "**§ 7A-551. Privileges not grounds for failing to report or for excluding evidence.**

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

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

40 "**§ 7A-552. Central registry.**

41 The Department of Human Resources shall maintain a central registry of ~~abuse and~~
42 ~~neglect cases~~ abuse, neglect, and dependency cases and child fatalities that are the result
43 of alleged maltreatment that are reported under this Article in order to compile data for
44 appropriate study of the extent of abuse and neglect within the State and to identify

1 repeated abuses of the same juvenile or of other juveniles in the same family. This data
2 shall be furnished by county directors of social services to the Department of Human
3 Resources and shall be confidential, subject to policies adopted by the Social Services
4 Commission ~~which provide~~ providing for its ~~appropriate~~ use for study and ~~research~~
5 research and for other appropriate disclosure. Data shall not be used at any hearing or
6 court proceeding unless based upon a final judgment of a court of law."

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

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

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

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