

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1637*

Short Title: Violent Caregiver Changes.

(Public)

Sponsors: Representatives Nesbitt, Easterling (Primary Sponsors); Sherrill and Melton.

Referred to: Judiciary IV.

May 18, 2000

A BILL TO BE ENTITLED

1 AN ACT TO IMPROVE THE ABILITY OF THE DIVISION OF SOCIAL SERVICES,
2 DEPARTMENT OF HEALTH AND HUMAN SERVICES, AND OF THE
3 DISTRICT COURT TO PROTECT JUVENILES FROM VIOLENCE-PRONE
4 CAREGIVERS.
5

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 7B-101(7a) reads as rewritten:

8 "7a) ~~"Criminal history" means a~~ Criminal history. – A local, State, or
9 federal criminal history of conviction or pending charge or indictment of
10 a crime, whether a misdemeanor or a felony, involving violence against
11 a ~~person.~~ person, including the North Carolina crimes involving violence
12 against a person contained in any of the following Articles of Chapter
13 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and
14 Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and
15 Abduction; Article 13, Malicious Injury or Damage by Use of Explosive
16 or Incendiary Device or Material; Article 17, Robbery; Article 39,
17 Protection of Minors; or similar crimes under federal law or under the
18 laws of this or other states."

19 Section 2. G.S. 7B-302(d1) is repealed.

20 Section 3. G.S. 7B-304 reads as rewritten:

1 **"§ 7B-304. Evaluation for ~~court~~; criminal history check.**

2 (a) In all cases in which a petition is filed, the director of the department of social
3 services shall prepare a report for the court containing ~~the results of any mental health~~
4 ~~evaluation under G.S. 7B-503,~~ a home placement ~~plan,~~ plan and a treatment plan deemed by
5 the director to be appropriate to the needs of the juvenile. The report shall be available to
6 the court immediately following the adjudicatory hearing.

7 (b) In all cases in which a petition alleges physical abuse by a parent, guardian,
8 custodian, stepparent, adult member of the juvenile's household, or adult relative
9 entrusted with the juvenile's care, the director shall conduct a thorough review of the
10 background of that individual, including a criminal history check and a review of any
11 available mental health records. The criminal history check of the alleged abuser shall be
12 conducted as follows:

13 (1) The Division of Social Services, Department of Health and Human
14 Services, shall provide to the Department of Justice the request for a
15 criminal history check, the fingerprints of the alleged abuser to be
16 checked, any additional information required by the Department of
17 Justice, and a form signed by the individual to be checked consenting to
18 the check of the criminal record and to the use of fingerprints and other
19 identifying information required by the State or National Repositories of
20 Criminal Histories. The fingerprints of the alleged abuser shall be
21 forwarded to the State Bureau of Investigation for a search of the State's
22 criminal history record file. The State Bureau of Investigation shall
23 then forward a set of fingerprints to the Federal Bureau of Investigation
24 for a national criminal history record check.

25 (2) At the time of the request for a criminal history check, the Division of
26 Social Services shall ensure that the alleged abuser is notified of all of
27 the following:

28 a. The criminal history records that will be checked.

29 b. The procedure for review of the criminal history information and
30 for completing or challenging the accuracy of the criminal
31 history check.

32 c. That the court may condition the return of the juvenile's custody
33 to that individual or to another person in whose home that
34 individual remains, upon the completion of a criminal history
35 check.

36 d. That any person who intentionally falsifies any information
37 required to be furnished to conduct the criminal history check is
38 guilty of a Class 2 misdemeanor.

39 (3) The Division of Social Services shall notify the director of the
40 department involved in the case of the results of the criminal history
41 check in accordance with the federal and State law regulating the
42 dissemination of the contents of the criminal history file. The Division

1 of Social Services shall not release nor disclose any portion of the
2 criminal history check to the individual checked.

3 (4) All the information that the Division of Social Services receives from
4 the Department of Justice through the checking of the criminal history is
5 confidential and is for the exclusive use of the Division of Social
6 Services and those persons authorized under this section to receive the
7 information. The Division of Social Services may destroy the
8 information after it is used for the purposes authorized by this section
9 after one calendar year.

10 (5) There is no liability for negligence on the part of a State or local agency,
11 or the employees of a State or local agency, arising from any action
12 taken or omission by any of them in carrying out the provisions of this
13 subsection. The immunity established by this subsection does not
14 extend to gross negligence, wanton conduct, or intentional wrongdoing
15 that would otherwise be actionable. The immunity established by this
16 subsection is waived to the extent of indemnification by insurance,
17 indemnification under Article 31A of Chapter 143 of the General
18 Statutes, and to the extent sovereign immunity is waived under Article
19 31 of Chapter 143 of the General Statutes.

20 The criminal record acquired as a result of a criminal history check may be presented
21 to and considered by the court at any hearing to determine the need for continued
22 nonsecure custody and at any time following an adjudication that the juvenile is abused,
23 neglected, or dependent.

24 (c) Any person who intentionally falsifies any information required to be furnished
25 to conduct the criminal history check under subsection (b) of this section is guilty of a
26 Class 2 misdemeanor."

27 Section 4. G.S. 7B-503 reads as rewritten:

28 "**§ 7B-503. Criteria for nonsecure custody.**

29 (a) When a request is made for nonsecure custody, the court shall first consider
30 release of the juvenile to the juvenile's parent, relative, guardian, custodian, or other
31 responsible adult. An order for nonsecure custody shall be made only when there is a
32 reasonable factual basis to believe the matters alleged in the petition are true, and

33 (1) The juvenile has been abandoned; or

34 (2) The juvenile has suffered physical injury or sexual abuse; or

35 (3) The juvenile is exposed to a substantial risk of physical injury or sexual
36 abuse because the parent, guardian, custodian, or caretaker has created
37 the conditions likely to cause injury or abuse or has failed to provide, or
38 is unable to provide, adequate supervision or protection; or

39 (4) The juvenile is in need of medical treatment to cure, alleviate, or
40 prevent suffering serious physical harm which may result in death,
41 disfigurement, or substantial impairment of bodily functions, and the
42 juvenile's parent, guardian, custodian, or caretaker is unwilling or
43 unable to provide or consent to the medical treatment; or

1 (5) The parent, guardian, custodian, or caretaker consents to the nonsecure
2 custody order; or

3 (6) The juvenile is a runaway and consents to nonsecure custody.

4 A juvenile alleged to be abused, neglected, or dependent shall be placed in nonsecure
5 custody only when there is a reasonable factual basis to believe that there are no other
6 reasonable means available to protect the juvenile. In no case shall a juvenile alleged to
7 be abused, neglected, or dependent be placed in secure custody.

8 (b) ~~Whenever a petition is filed under G.S. 7B-302(d1), the court shall rule on the~~
9 ~~petition prior to returning the child to a home where the alleged abuser or abusers are or~~
10 ~~have been present. If the court finds that the alleged abuser or abusers have a history of~~
11 ~~violent behavior against people, the court shall order the alleged abuser or abusers to~~
12 ~~submit to a complete mental health evaluation by a licensed psychologist or psychiatrist.~~
13 ~~The court may order the alleged abuser or abusers to pay the cost of any mental health~~
14 ~~evaluation required under this section."~~

15 Section 5. G.S. 7B-506(c1) is repealed.

16 Section 6. G.S. 7B-506 is amended by adding a new subsection to read:

17 "(c2) The court may impose appropriate conditions, reasonably related to the health
18 and safety of the juvenile, before releasing a juvenile from nonsecure custody. When it is
19 alleged that the juvenile has suffered physical abuse at the hands of the parent, guardian,
20 custodian, stepparent, adult member of the juvenile's household, or adult relative
21 entrusted with the juvenile's care, the court may condition the juvenile's release from
22 nonsecure custody and the return of the juvenile's custody to that individual or to another
23 person in whose home that individual remains, upon that individual's consent to a
24 criminal history check pursuant to G.S. 7B-304(b), and if that individual is found to have
25 a criminal history as defined by G.S. 7B-101, upon that individual's submission to a
26 mental health evaluation. In determining whether continued custody is warranted, the
27 court shall consider the opinion of the mental health professional who performed the
28 evaluation."

29 Section 7. G.S. 7B-903(b) reads as rewritten:

30 (b) ~~When the court has found that a juvenile has suffered physical abuse~~
31 ~~and that the individual—parent, guardian, custodian, stepparent, adult member of the~~
32 ~~juvenile's household, or adult relative entrusted with the juvenile's care is responsible for~~
33 ~~the abuse has a history of violent behavior against people, the court shall consider the opinion of~~
34 ~~the mental health professional who performed an evaluation under G.S. 7B-503(b)—abuse,~~
35 ~~before returning the juvenile to the custody of that individual—individual or to another~~
36 ~~person in whose home that individual remains, the court may condition the juvenile's~~
37 ~~return upon its receipt of a criminal history check of the abuser pursuant to G.S. 7B-~~
38 ~~304(b), and if that individual is found to have a criminal history as defined in G.S. 7B-~~
39 ~~101, upon a mental health evaluation of that individual and consideration of any~~
40 ~~recommendation by the mental health professional who performed the evaluation. If a~~
41 ~~mental health evaluation is unavailable or if the mental health professional's~~
42 ~~recommendations are unfavorable, the court may order the abuser to undergo psychiatric,~~
43 ~~psychological, or other treatment or counseling pursuant to G.S. 7B-904(c) directed~~

1 toward remediating or remedying the behavior or conditions that led to or contributed to
2 the juvenile's adjudication or the court's decision to remove the juvenile from the home,
3 and may condition the juvenile's return upon compliance with that order."

4 Section 8. G.S. 7B-1003 reads as rewritten:

5 **"§ 7B-1003. Disposition pending appeal.**

6 Pending disposition of an appeal, the return of the juvenile to the custody of the parent
7 or guardian of the juvenile, with or without conditions, should issue in every case unless
8 the court orders otherwise. ~~When the court has found that a juvenile has suffered physical~~
9 ~~abuse and that the individual responsible for the abuse has a history of violent behavior, the court~~
10 ~~shall consider the opinion of the mental health professional who performed the evaluation under~~
11 ~~G.S. 7B-503(b) before returning the juvenile to the custody of that individual.—~~For
12 compelling reasons which must be stated in writing, the court may enter a temporary
13 order affecting the custody or placement of the juvenile as the court finds to be in the best
14 interests of the juvenile or the State. In any case, a finding that the juvenile has suffered
15 physical abuse shall be sufficient reason for entry of such an order. The provisions of
16 ~~subsections (b), (c), and (d) of G.S. 7B-905 shall apply to any order entered under this~~
17 section which provides for the placement or continued placement of a juvenile in foster
18 care."

19 Section 9. Article 4 of Chapter 114 of the General Statutes is amended by
20 adding a new section to read:

21 **"§ 114-19.10. Criminal history checks for violence-prone caregivers.**

22 In accordance with G.S. 7B-304(b) or G.S. 7B-903(b), the Department of Justice
23 may provide from the State and National Repositories of Criminal Histories to the
24 Division of Social Services, Department of Health and Human Services, the criminal
25 history of a parent, guardian, custodian, stepparent, adult member of the juvenile's
26 household, or adult relative entrusted with the juvenile's care, who has been alleged or
27 found to have inflicted physical abuse upon the juvenile. The Division of Social Services
28 shall provide to the Department of Justice the request for a criminal history check, the
29 fingerprints of the alleged abuser, any additional information required by the Department
30 of Justice, and a form signed by the individual to be checked consenting to the criminal
31 record check and to the use of fingerprints and other identifying information required by
32 the State or National Repositories. The fingerprints of the alleged abuser shall be
33 forwarded to the State Bureau of Investigation for a search of the State's criminal history
34 record file. The State Bureau of Investigation shall then forward a set of fingerprints to
35 the Federal Bureau of Investigation for a national criminal history record check. The
36 Division of Social Services shall keep all information acquired pursuant to this section
37 confidential, as provided in G.S. 7B-304(b). The Department of Justice may charge a
38 reasonable fee only for conducting the checks of the national criminal history records
39 authorized by this section."

40 Section 10. This act becomes effective October 1, 2000, and applies to
41 petitions filed on or after that date.