

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

D

HOUSE BILL 1449
PROPOSED COMMITTEE SUBSTITUTE H1449-PCS50605-SA-19

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:



* H 1 4 4 9 - P C S 5 0 6 0 5 - S A - 1 9 *

- 1 (1) The department shall disclose confidential information to any federal, State,
2 or local government entity or its agent in order to protect a juvenile from
3 abuse or neglect. Any confidential information disclosed to any federal,
4 State, or local government entity or its agent under this subsection shall
5 remain confidential with the other government entity or its agent and shall
6 only be redisclosed for purposes directly connected with carrying out that
7 entity's mandated responsibilities.
- 8 (2) The information may be examined upon request by the juvenile's guardian
9 ad litem or the juvenile, including a juvenile who has reached age 18 or been
10 emancipated.
- 11 (3) A district or superior court judge of this State presiding over a civil matter in
12 which the department of social services is not a party may order the
13 department to release confidential information, after providing the
14 department with reasonable notice and an opportunity to be heard and then
15 determining that the information is relevant and necessary to the trial of the
16 matter before the court and unavailable from any other source. This
17 subdivision shall not be construed to relieve any court of its duty to conduct
18 hearings and make findings required under relevant federal law, before
19 ordering the release of any private medical or mental health information or
20 records related to substance abuse or HIV status or treatment. The
21 department of social services may surrender the requested records to the
22 court, for in camera review, if the surrender is necessary to make the
23 required determinations.
- 24 (4) A district or superior court judge of this State presiding over a criminal or
25 delinquency matter shall conduct an in camera review prior to releasing to
26 the defendant or juvenile any confidential records maintained by the
27 department of social services, except those records the defendant or juvenile
28 is entitled to pursuant to subdivision (2) of this subsection.
- 29 (5) The department may disclose confidential information to a parent, guardian,
30 custodian, or caretaker in accordance with G.S. 7B-700 of this Subchapter.
- 31 (a2) If the director, at any time after receiving a report that a juvenile may be abused,
32 neglected, or dependent, determines that the juvenile's legal residence is in another county, the
33 director shall promptly notify the director in the county of the juvenile's residence, and the two
34 directors shall coordinate efforts to ensure that appropriate actions are taken.
- 35 (b) When a report of a juvenile's death as a result of suspected maltreatment or a report
36 of suspected abuse, neglect, or dependency of a juvenile in a noninstitutional setting is
37 received, the director of the department of social services shall immediately ascertain if other
38 juveniles live in the home, and, if so, initiate an assessment in order to determine whether they
39 require protective services or whether immediate removal of the juveniles from the home is
40 necessary for their protection. When a report of a juvenile's death as a result of maltreatment or
41 a report of suspected abuse, neglect, or dependency of a juvenile in an institutional setting such
42 as a residential child care facility or residential educational facility is received, the director of
43 the department of social services shall immediately ascertain if other juveniles remain in the
44 facility subject to the alleged perpetrator's care or supervision, and, if so, assess the
45 circumstances of those juveniles in order to determine whether they require protective services
46 or whether immediate removal of those juveniles from the facility is necessary for their
47 protection.
- 48 (c) If the assessment indicates that abuse, neglect, or dependency has occurred, the
49 director shall decide whether immediate removal of the juvenile or any other juveniles in the
50 home is necessary for their protection. If immediate removal does not seem necessary, the
51 director shall immediately provide or arrange for protective services. If the parent, guardian,

1 custodian, or caretaker refuses to accept the protective services provided or arranged by the
2 director, the director shall sign a ~~complaint~~-petition seeking to invoke the jurisdiction of the
3 court for the protection of the juvenile or juveniles.

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

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

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

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

42 (g) Within five working days after completion of the protective services assessment, the
43 director shall give subsequent written notice to the person making the report, unless requested
44 by that person not to give notice, as to whether there is a finding of abuse, neglect, or
45 dependency, whether the county department of social services is taking action to protect the
46 juvenile, and what action it is taking, including whether or not a petition was filed. The person
47 making the report shall be informed of procedures necessary to request a review by the
48 prosecutor of the director's decision not to file a petition. A request for review by the prosecutor
49 shall be made within five working days of receipt of the second notification. The second
50 notification shall include notice that, if the person making the report is not satisfied with the
51 director's decision, the person may request review of the decision by the prosecutor within five

1 working days of receipt. The person making the report may waive the person's right to this
2 notification, and no notification is required if the person making the report does not identify
3 himself to the director.

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

6 (1) The reasonable belief that a juvenile is in imminent danger of death or
7 serious physical injury.

8 (2) The permission of the parent or person responsible for the juvenile's care.

9 (3) The accompaniment of a law enforcement officer who has legal authority to
10 enter the residence.

11 (4) An order from a court of competent jurisdiction."

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

13 **"§ 7B-400. ~~Venue; pleading.~~Venue.**

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

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

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

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

25 **"§ 7B-700. ~~Regulation of discovery; protective orders.~~Sharing of information; discovery.**

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

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

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

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

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

50 (d) Protective Order. – Any party served with a motion for discovery may request that
51 the discovery be denied, restricted, or deferred and shall submit, for in camera inspection, the

1 document, information, or materials the party seeks to protect. If the court enters any order
2 granting relief, copies of the documents, information, or materials submitted in camera shall be
3 preserved for appellate review in the event of an appeal.

4 (e) Rediscovery. – Information obtained through discovery or sharing of information
5 under this section may not be redisclosed if the redisclosure is prohibited by State or federal
6 law.

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

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

13 **"§ 7B-900.1. Post adjudication venue.**

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

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

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

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

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

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

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

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

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

- 1 (3) The nature and location of services and service providers necessary to
2 achieve the reunification plan or other permanent plan for the juvenile.
3 (4) The impact upon the juvenile of the potential disruption of an existing
4 therapeutic relationship.
5 (5) The nature and location of witnesses and evidence likely to be required in
6 future hearings.
7 (6) The degree to which the transfer would cause inconvenience to one or more
8 parties.
9 (7) Any agreement of the parties as to which forum is most convenient.
10 (8) The familiarity of the departments of social services, the courts, and the local
11 offices of the guardian ad litem with the juvenile and the juvenile's family.
12 (9) Any other factor the court considers relevant.

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

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

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

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

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

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

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

48 "(a) In any case where custody is removed from a parent, guardian, custodian, or
49 caretaker, the judge shall conduct a review hearing designated as a permanency planning
50 hearing within 12 months after the date of the initial order removing custody, and the hearing
51 may be combined, if appropriate, with a review hearing required by G.S. 7B-906. The purpose

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

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

18 **"§ 7B-908. Post termination of parental rights' placement court review.**

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

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

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

1 of the order terminating parental rights is pending, and a court has stayed the
2 order pending the appeal.

3 (2) If a guardian ad litem for the juvenile has not been appointed previously by
4 the court in the termination proceeding, the court, at the initial six-month
5 review hearing, may appoint a guardian ad litem to represent the juvenile.
6 The court may continue the case for such time as is necessary for the
7 guardian ad litem to become familiar with the facts of the case.

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

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

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

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

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

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

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

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

47 **"§ 7B-1101.1. Parent's right to counsel; guardian ad litem.**

48 (a) The parent has the right to counsel, and to appointed counsel in cases of indigency,
49 unless the parent waives the right. The fees of appointed counsel shall be borne by the Office of
50 Indigent Defense Services. When a petition is filed, unless the parent is already represented by
51 counsel, the clerk shall appoint provisional counsel for each respondent parent named in the

1 petition and indicate the appointment on the juvenile summons. At the first hearing after
2 service upon the respondent parent, the court shall dismiss the provisional counsel if the
3 respondent parent:

- 4 (1) Does not appear at the hearing;
- 5 (2) Does not qualify for court-appointed counsel;
- 6 (3) Has retained counsel; or
- 7 (4) Waives the right to counsel.

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

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

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

19 (d) Communications between the guardian ad litem appointed under this section and the
20 parent and between the guardian ad litem and the parent's counsel shall be privileged and
21 confidential to the same extent that communications between the parent and the parent's
22 counsel are privileged and confidential.

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

- 25 (1) Helping the parent to enter consent orders, if appropriate.
- 26 (2) Facilitating service of process on the parent.
- 27 (3) Assuring that necessary pleadings are filed.
- 28 (4) Assisting the parent and the parent's counsel, if requested by the parent's
29 counsel, to ensure that the parent's procedural due process requirements are
30 met.

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

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

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

- 38 (1) The name of the minor juvenile;
- 39 (2) Notice that a written answer to the petition must be filed with the clerk who
40 signed the petition within 30 days after service of the summons and a copy
41 of the petition, or the parent's rights may be terminated;
- 42 (3) ~~Notice that if they are indigent, the parents are entitled to appointed counsel;~~
43 ~~the parents may contact the clerk immediately to request counsel;~~ Notice that
44 any counsel appointed previously and still representing the parent in an
45 abuse, neglect, or dependency proceeding shall continue to represent the
46 parent unless otherwise ordered by the court;
- 47 (4) ~~Notice that this is a new case. Any attorney appointed previously will not~~
48 ~~represent the parents in this proceeding unless ordered by the court;~~ Notice
49 that if the parent is indigent and is not already represented by appointed
50 counsel, the parent is entitled to appointed counsel, that provisional counsel

1 has been appointed, and that the appointment of provisional counsel shall be
2 reviewed by the court at the first hearing after service;

- 3 (5) Notice that the date, time, and place of any pretrial hearing pursuant to
4 G.S. 7B-1108.1 and the hearing on the petition will be mailed by the clerk
5 upon filing of the answer or 30 days from the date of service if no answer is
6 filed; and
7 (6) Notice of the purpose of the hearing and notice that the parents may attend
8 the termination hearing."

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

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

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

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

29 **§ 7B-1108. Answer or response of ~~parent-parent~~; appointment of guardian ad litem for**
30 **juvenile.**

31 (a) Any respondent may file a written answer to the petition or written response to the
32 motion. The answer or response shall admit or deny the allegations of the petition or motion
33 and shall set forth the name and address of the answering respondent or the respondent's
34 attorney.

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

49 ~~Notice of the hearing shall be deemed to have been given upon the depositing thereof in the~~
50 ~~United States mail, first class postage prepaid, and addressed to the respondent, and guardian~~

1 ~~ad litem or their counsel of record, at the addresses appearing in the petition or motion and~~
2 ~~responsive pleading.~~

3 (c) In proceedings under this Article, the appointment of a guardian ad litem shall not
4 be required except, as provided above, in cases in which an answer or response is filed denying
5 material allegations, or as required under G.S. 7B-1101; but the court may, in its discretion,
6 appoint a guardian ad litem for a juvenile, either before or after determining the existence of
7 grounds for termination of parental rights, in order to assist the court in determining the best
8 interests of the juvenile.

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

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

17 "**§ 7B-1108.1. Pretrial hearing.**

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

21 (1) Retention or release of provisional counsel.

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

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

26 (4) Any pretrial motions.

27 (5) Any issues raised by any responsive pleading, including any affirmative
28 defenses.

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

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

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

34 "**§ 7B-1700.1. Duty to report abuse, neglect, dependency.**

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

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

40 "**§ 7B-1904. Order for secure or nonsecure custody.**

41 The custody order shall be in writing and shall direct a law enforcement officer or other
42 authorized person to assume custody of the juvenile and to make due return on the order. The
43 official executing the order shall give a copy of the order to the juvenile's parent, guardian, or
44 custodian. If the order is for nonsecure custody, the official executing the order shall also give a
45 copy of the petition and order to the person or agency with whom the juvenile is being placed.
46 If the order is for secure custody, copies of the petition and custody order shall accompany the
47 juvenile to the detention facility or holdover facility of the jail. A message of the Division of
48 Criminal Information, State Bureau of Investigation, stating that a juvenile petition and secure
49 custody order relating to a specified juvenile are on file in a particular county shall be authority
50 to detain the juvenile in secure custody until a copy of the juvenile petition and secure custody
51 order can be forwarded to the juvenile detention facility. The copies of the juvenile petition and

1 secure custody order shall be transmitted to the detention facility no later than 72 hours after
2 the initial detention of the juvenile.

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

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

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

9 ...

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

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

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

45 ...

46 c. ~~Place~~ If the director of the county department of social services has
47 received notice and an opportunity to be heard, place the juvenile in
48 the custody of the department of social services in the county of his
49 residence, or in the case of a juvenile who has legal residence outside
50 the State, in the physical custody of a department of social services in
51 the county where the juvenile is found so that agency may return the

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

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

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

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

1 defendant or juvenile any confidential records maintained by the department
2 of social services, except those records the defendant or juvenile is entitled
3 to pursuant to subdivision (1) of this subsection.

4 (4) The department may disclose confidential information to a parent, guardian,
5 custodian, or caretaker in accordance with G.S. 7B-700."

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