

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 423
Health Care Committee Substitute Adopted 4/15/15
PROPOSED COMMITTEE SUBSTITUTE S423-PCS45358-TU-13

Short Title: Foster Care Family Act.

(Public)

Sponsors:

Referred to:

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO ALIGN STATE LAW WITH FEDERAL LAW BY PROVIDING FOR THE SUPPORT OF HEALTHY DEVELOPMENT OF YOUTH IN FOSTER CARE THROUGH IMPLEMENTATION OF A REASONABLE AND PRUDENT PARENTING STANDARD FOR DECISIONS MADE BY A FOSTER PARENT OR A DESIGNATED OFFICIAL FOR A CHILD CARE INSTITUTION AND REVISING THE LAWS PERTAINING TO ABUSE, NEGLECT, AND DEPENDENCY REGARDING JUVENILE PLACEMENT UNDER THE JUVENILE CODE; TO PROVIDE LIABILITY INSURANCE FOR FOSTER PARENTS; TO REDUCE BARRIERS TO OBTAINING A DRIVERS LICENSE FOR FOSTER CHILDREN BY PROVIDING THAT MINORS AGED SIXTEEN AND OVER IN THE CUSTODY OF THE COUNTY DEPARTMENT OF SOCIAL SERVICES ARE COMPETENT TO CONTRACT FOR AUTOMOBILE INSURANCE, BY SPECIFYING PERSONS OTHER THAN THE FOSTER PARENT WHO MAY SIGN FOR A FOSTER CHILD TO OBTAIN A LEARNER'S PERMIT OR PROVISIONAL DRIVERS LICENSE, AND BY CLARIFYING THAT FOSTER PARENTS DO NOT VIOLATE FINANCIAL RESPONSIBILITY REQUIREMENTS BY ALLOWING FOSTER CHILDREN WITH THEIR OWN INSURANCE COVERAGE TO OPERATE A VEHICLE OWNED BY THE FOSTER PARENT; AND TO REQUIRE THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO STUDY A MEDICAID WAIVER FOR CHILDREN WITH SERIOUS EMOTIONAL DISTURBANCE.

The General Assembly of North Carolina enacts:

PART I. SHORT TITLE

SECTION 1.1. This act shall be known and may be cited as the "Foster Care Family Act."

PART II. REASONABLE AND PRUDENT PARENTING STANDARD IN FOSTER CARE

SECTION 2.1. Part 1 of Article 1A of Chapter 131D of the General Statutes is amended by adding a new section to read:

"§ 131D-10.2A. Reasonable and prudent parenting standard.

(a) The reasonable and prudent parenting standard is characterized by careful and sensible parental decisions that maintain a child's health, safety, and best interests while encouraging the child's emotional and developmental growth.



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1 **(b)** Every child care institution shall designate an on-site official who is authorized to
2 apply the reasonable and prudent parenting standard pursuant to this section.

3 **(c)** A caregiver, including the child's foster parent, whether the child is in a family
4 foster home or a therapeutic foster home, the designated official at a child care institution
5 where the child is placed, or the county department of social services, must use the reasonable
6 and prudent parenting standard when determining whether to allow a child in foster care to
7 participate in extracurricular, enrichment, and social activities.

8 **(d)** A caregiver, including the child's foster parent, whether the child is in a family
9 foster home or a therapeutic foster home, the designated official at a child care institution
10 where the child is placed, the county department of social services, or the Department of Health
11 and Human Services with custody of or placement authority over a child in foster care shall not
12 be held liable for an act or omission of the child if the caregiver or county department of social
13 services is acting in accordance with the reasonable and prudent parenting standard under this
14 section.

15 **(e)** Unless otherwise ordered by a court with jurisdiction pursuant to G.S. 7B-200, a
16 caregiver, including the child's foster parent, whether the child is in a family foster home or a
17 therapeutic foster home, exercising the reasonable and prudent parenting standard has the
18 authority to provide or withhold permission, without prior approval of the court or a county
19 department of social services, allowing a child in foster care, in the custody of a county
20 department of social services, or under the placement authority of a county department of social
21 services through a voluntary placement agreement, to participate in normal childhood activities.
22 Normal childhood activities shall include, but are not limited to, extracurricular, enrichment,
23 and social activities and may include overnight activities outside the direct supervision of the
24 caregiver for periods of over 24 hours and up to 72 hours.

25 **(f)** The caregiver, including the child's foster parent, whether the child is in a family
26 foster home or a therapeutic foster home, the designated official at a child care institution
27 where the child is placed, the county department of social services, or the Department of Health
28 and Human Services, shall not be liable for injuries to the child that occur as a result of the
29 reasonable and prudent parenting standard. The burden of proof with respect to a breach of the
30 reasonable and prudent parenting standard shall be by clear and convincing evidence.

31 **(g)** The caregiver, including the child's foster parent, whether the child is in a family
32 foster home or a therapeutic foster home, the designated official at a child care institution
33 where the child is placed, the county department of social services, or the Department of Health
34 and Human Services, shall be liable for any action or inaction of gross negligence, willful and
35 wanton conduct, or intentional wrongdoing that results in the injury to the child."

36 **SECTION 2.2.** G.S. 7B-505(b) reads as rewritten:

37 **"(b)** The court shall order the Department to make diligent efforts to notify relatives and
38 any custodial parents of the juvenile's siblings that the juvenile is in nonsecure custody and of
39 any hearings scheduled to occur pursuant to G.S. 7B-506, unless the court finds such
40 notification would be contrary to the best interests of the juvenile. In placing a juvenile in
41 nonsecure custody under this section, the court shall first consider whether a relative of the
42 juvenile is willing and able to provide proper care and supervision of the juvenile in a safe
43 home. If the court finds that the relative is willing and able to provide proper care and
44 supervision in a safe home, then the court shall order placement of the juvenile with the relative
45 unless the court finds that placement with the relative would be contrary to the best interests of
46 the juvenile."

47 **SECTION 2.3.** G.S. 7B-800.1(a)(4) reads as rewritten:

48 **"(a)** Prior to the adjudicatory hearing, the court shall consider the following:

49 ...

50 **(4)** Whether relatives or parents with custody of a sibling of the juvenile have
51 been identified and notified as potential resources for placement or support."

1 **SECTION 2.4.** G.S. 7B-901 reads as rewritten:

2 **"§ 7B-901. Dispositional hearing.**

3 The dispositional hearing shall take place immediately following the adjudicatory hearing
4 and shall be concluded within 30 days of the conclusion of the adjudicatory hearing. The
5 dispositional hearing may be informal and the court may consider written reports or other
6 evidence concerning the needs of the juvenile. The juvenile and the juvenile's parent, guardian,
7 or custodian shall have the right to present evidence, and they may advise the court concerning
8 the disposition they believe to be in the best interests of the juvenile. The court may consider
9 any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, including
10 testimony or evidence from any person who is not a party, that the court finds to be relevant,
11 reliable, and necessary to determine the needs of the juvenile and the most appropriate
12 disposition. The court may exclude the public from the hearing unless the juvenile moves that
13 the hearing be open, which motion shall be granted.

14 At the dispositional hearing, the court shall inquire as to the identity and location of any
15 missing parent and whether paternity is at issue. The court shall include findings of the efforts
16 undertaken to locate the missing parent and to serve that parent and efforts undertaken to
17 establish paternity when paternity is an issue. The order may provide for specific efforts in
18 determining the identity and location of any missing parent and specific efforts in establishing
19 paternity. The court shall also inquire about efforts made to identify and notify ~~relatives~~
20 relatives or parents with custody of a sibling of the juvenile, as potential resources for
21 placement or support."

22 **SECTION 2.5.** Article 9 of Chapter 7B of the General Statutes is amended by
23 adding the following new sections to read:

24 **"§ 7B-903.1. Juvenile placed in custody of a county department of social services.**

25 (a) To the extent authorized by federal law, a county department of social services with
26 custody of a juvenile is authorized to make decisions about matters not addressed in this section
27 that are generally made by a juvenile's custodian including, but not limited to, educational
28 decisions and consenting to the sharing of the juvenile's information. The county department of
29 social services may delegate any part of this authority to the juvenile's parent, foster parent, or
30 another individual.

31 (b) When a juvenile is in the custody or placement responsibility of a county
32 department of social services, the placement provider may, in accordance with
33 G.S. 131D-10.2A, provide or withhold permission, without prior approval of the court or
34 county department of social services, allowing a juvenile to participate in normal childhood
35 activities. If such authorization is not in the juvenile's best interest, the court shall set forth
36 alternative parameters for approving normal childhood activities.

37 **"§ 7B-912. Juveniles 14 years of age and older; Another Planned Permanent Living**
38 **Arrangement.**

39 (a) In addition to the permanency planning requirements under G.S. 7B-906.1, at every
40 permanency planning hearing for a juvenile in the custody of a county department of social
41 services who has attained the age of 14 years, the court shall inquire and make written findings
42 regarding each of the following:

43 (1) The services provided to assist the juvenile in making a transition to
44 adulthood.

45 (2) The steps the county department of social services is taking to ensure that
46 the foster family or other licensed placement provider follows the reasonable
47 and prudent parenting standard as provided in G.S. 131D-10.2A.

48 (3) Whether the juvenile has regular opportunities to engage in age-appropriate
49 or developmentally appropriate activities.

50 (b) At or before the last scheduled permanency planning hearing, but at least 90 days
51 before a juvenile attains 18 years of age, the court shall (i) inquire as to whether the juvenile

1 has a copy of the juvenile's birth certificate, Social Security card, health insurance information,
2 drivers license or other identification card, and any educational or medical records the juvenile
3 requests and (ii) determine the person or entity that should assist the juvenile in obtaining these
4 documents before the juvenile attains the age of 18 years.

5 (c) If the court finds each of the following conditions applies, the court shall approve
6 Another Planned Permanent Living Arrangement (APPLA) as the juvenile's primary permanent
7 plan:

8 (1) The juvenile is 16 or 17 years old.

9 (2) The county department of social services has made diligent efforts to place
10 the juvenile permanently with a parent or relative or in a guardianship or
11 adoptive placement.

12 (3) Compelling reasons exist that it is not in the best interest of the juvenile to
13 be placed permanently with a parent or relative or in a guardianship or
14 adoptive placement.

15 (4) APPLA is the best permanency plan for the juvenile.

16 (d) If the court approves APPLA as the juvenile's permanent plan, the court shall, after
17 questioning the juvenile, make written findings addressing the juvenile's desired permanency
18 outcome."

19 **PART III. LIABILITY INSURANCE FOR FOSTER PARENTS**

20 **SECTION 3.1.** Article 36 of Chapter 58 of the General Statutes is amended by
21 adding a new section to read:

22 **"§ 58-36-44. Development of policy form or endorsement for personal liability insurance**
23 **for foster parents.**

24 (a) The Rate Bureau shall develop an optional policy form or endorsement to be filed
25 with the Commissioner for approval no later than May 1, 2016, that provides liability insurance
26 for foster parents licensed under Article 1A of Chapter 131D of the General Statutes to provide
27 foster care in a family foster home or therapeutic foster home. The policy form or endorsement
28 shall provide coverage for acts or omissions of the foster parent while the parent is acting in his
29 or her capacity as a foster parent in a licensed family foster home or therapeutic foster home
30 licensed under Article 1A of Chapter 131D of the General Statutes.

31 (b) Nothing in this section is intended to require that the liability insurance policy or
32 endorsement required by this section cover an act or omission that results from any action or
33 inaction of gross negligence, willful and wanton conduct, or intentional wrongdoing that results
34 in injury to the child."

35 **PART IV. REDUCE DRIVING BARRIERS FOR FOSTER CHILDREN**

36 **SECTION 4.1.** Article 1 of Chapter 48A of the General Statutes is amended by
37 adding a new section to read:

38 **"§ 48A-4. Certain minors competent to contract.**

39 A minor who is 16 years of age or older and who is in the legal custody of the county
40 department of social services, shall be qualified and competent to contract for the purchase of
41 an automobile insurance policy with the consent of the court with continuing jurisdiction over
42 the minor's placement under G.S. 7B-1000(b). The minor shall be responsible for paying the
43 costs of the insurance premiums and shall be liable for damages caused by the minor's
44 negligent operation of a motor vehicle. No State or local government agency, foster parent, or
45 entity providing services to the minor under contract or at the direction of a State or local
46 government agency shall be responsible for paying any insurance premiums or liable for
47 damages of any kind as a result of the operation of a motor vehicle by the minor."

48 **SECTION 4.2.** G.S. 20-11(i) reads as rewritten:
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1 "(i) Application. — An application for a permit or license authorized by this section
2 must be signed by both the applicant and another person. That person must be:

- 3 (1) The applicant's parent or guardian;
4 (2) A person approved by the applicant's parent or guardian; or
5 (3) A person approved by the Division.
6 (4) With respect to minors in the legal custody of the county department of
7 social services, any of the following:
8 a. A guardian ad litem or attorney advocate appointed to advocate for
9 the minor.
10 b. The director or his or her designee or other type of caseworker
11 assigned to work with the minor.
12 c. If no person listed in sub-subdivision a. or b. of this subdivision is
13 available, the court with continuing jurisdiction over the minor's
14 placement under G.S. 7B-1000(b)."

15 **SECTION 4.3.** G.S. 20-309 is amended by adding a new subsection to read:

16 "(a2) Notwithstanding any other provision of this Chapter, an owner's policy of liability
17 insurance issued to a foster parent or parents, which policy includes an endorsement excluding
18 coverage for one or more foster children residing in the foster parent's or parents' household,
19 may be certified as proof of financial responsibility, provided that each foster child for whom
20 coverage is excluded is insured in an amount equal to or greater than the minimum limits
21 required by G.S. 20-279.21 under some other owner's policy of liability insurance or a named
22 nonowner's policy of liability insurance. The North Carolina Rate Bureau shall establish, with
23 the approval of the Commissioner of Insurance, a named driver exclusion endorsement or
24 endorsements for foster children as described herein."

25 **SECTION 4.4.** G.S. 20-279.21(b) reads as rewritten:

26 "(b) ~~Such~~ Except as provided in G.S. 20-309(a2), such owner's policy of liability
27 insurance:

28 "

30 **PART V. STUDY MEDICAID WAIVER FOR CHILDREN WITH SERIOUS** 31 **EMOTIONAL DISTURBANCE (SED)**

32 **SECTION 5.1.(a)** The Department of Health and Human Services, Division of
33 Medical Assistance, shall design and draft, but not submit, a 1915(c) Medicaid waiver to serve
34 children with Serious Emotional Disturbance (SED) in home and community-based settings.
35 The Department may submit drafts of the waiver to the Centers for Medicare and Medicaid
36 Services (CMS) to solicit feedback but shall not submit the waiver for CMS approval until
37 authorized by the General Assembly.

38 **SECTION 5.1.(b)** The Department shall report the draft waiver, other findings, and
39 any other options or recommendations to best serve children with SED to the Joint Legislative
40 Oversight Committee on Health and Human Services by December 1, 2015. Specifically, the
41 report shall provide an in-depth analysis of the cost per slot, including an analysis of the
42 estimated number of waiver recipients who would be transitioned from a facility to a home and
43 community-based setting and the estimated number of waiver recipients who would avoid
44 placement in a facility.

46 **PART VI. EFFECTIVE DATE**

47 **SECTION 6.1.** Parts 2 and 4 of this act become effective October 1, 2015. The
48 remainder of this act is effective when it becomes law.