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SESSION 2019

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HOUSE BILL 301
PROPOSED COMMITTEE SUBSTITUTE H301-PCS30200-TV-9

Short Title: CIP Revisions/Juvenile Code.

(Public)

Sponsors:

Referred to:

March 11, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE REVISIONS TO THE JUVENILE CODE PURSUANT TO
3 RECOMMENDATIONS BY THE COURT IMPROVEMENT PROGRAM (CIP).

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 7B-101(18a) reads as rewritten:

6 "**§ 7B-101. Definitions.**

7 As used in this Subchapter, unless the context clearly requires otherwise, the following words
8 have the listed meanings:

9 ...

10 (18a) Responsible individual. – A parent, guardian, custodian, ~~or caretaker~~
11 caretaker, or individual responsible for subjecting a juvenile to human
12 trafficking under G.S. 14-43.11, 14-43.12, or 14-43.13, who abuses or
13 seriously neglects a juvenile.

14"

15 **SECTION 2.** G.S. 7B-200(c)(1) reads as rewritten:

16 "(c) When the court obtains jurisdiction over a juvenile as the result of a petition alleging
17 that the juvenile is abused, neglected, or dependent:

18 (1) Any other civil action in this State in which the custody of the juvenile is an
19 issue is automatically stayed as to that issue, unless the juvenile proceeding
20 and the civil custody action or claim are consolidated pursuant to subsection
21 (d) of this section or the court in the juvenile proceeding enters an order
22 dissolving the stay. When there is an automatic stay, the court shall ensure
23 that a notice is filed in the stayed action if the county and case file number are
24 made known to the court. The notice shall be on a printed form created by the
25 North Carolina Administrative Office of the Courts, include notice of the stay,
26 and provide the county and case file number for the action under this Article.

27"

28 **SECTION 3.** G.S. 7B-320(a) reads as rewritten:

29 "(a) ~~Within five working days after~~ After the completion of an investigative assessment
30 response that results in a determination of abuse or serious neglect and the identification of a
31 responsible individual, the director shall personally deliver written notice of the determination to
32 the identified ~~individual~~ individual in an expeditious manner."

33 **SECTION 4.** G.S. 7B-323(b) reads as rewritten:

34 "(b) The clerk of court shall maintain a separate docket for judicial review actions. Upon
35 the filing of a petition for judicial review, the clerk shall calendar the matter for hearing within
36 45 days from the date the petition is filed at a session of district court hearing juvenile matters



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1 or, if there is no such session, at the next session of juvenile court. The clerk shall send notice of
2 the hearing to the petitioner and to the director who determined the abuse or serious neglect and
3 identified the individual as a responsible individual. Upon the request of a party, the court shall
4 close the hearing to all persons, except officers of the court, the parties, ~~and their witnesses.~~
5 witnesses, and law enforcement investigating the same allegations. At the hearing, the director
6 shall have the burden of proving by a preponderance of the evidence the abuse or serious neglect
7 and the identification of the individual seeking judicial review as a responsible individual. The
8 hearing shall be before a judge without a jury. The rules of evidence applicable in civil cases
9 shall apply. However, the court, in its discretion, may permit the admission of any reliable and
10 relevant ~~evidence~~ evidence, including, but not limited to, child medical evaluation reports and
11 child and family evaluation reports that the director relied on to make the determination that
12 abuse or serious neglect occurred, if the general purposes of the rules of evidence and the interests
13 of justice will best be served by its admission."

14 **SECTION 5.** G.S. 7B-324 reads as rewritten:

15 "**§ 7B-324. Persons ineligible to petition for judicial review.**

16 (a) An individual who has been identified by a director as a responsible individual ~~may~~
17 ~~not petition~~ is not eligible for judicial review if any of the following apply:

18 ...

19 (a1) If the individual is criminally convicted as a result of the same incident after the
20 petition for judicial review is filed, the court shall dismiss the petition for judicial review with
21 prejudice.

22"

23 **SECTION 6.** G.S. 7B-503(a)(2) reads as rewritten:

24 "(a) When a request is made for nonsecure custody, the court shall first consider release
25 of the juvenile to the juvenile's parent, relative, guardian, custodian, or other responsible adult.
26 An order for nonsecure custody shall be made only when there is a reasonable factual basis to
27 believe the matters alleged in the petition are true, and any of the following apply:

28 ...

29 (2) The juvenile has suffered physical ~~injury or sexual abuse~~ injury, sexual abuse,
30 or serious emotional damage as defined by G.S. 7B-101(1)e."

31 **SECTION 7.(a)** G.S. 7B-600(c) reads as rewritten:

32 "(c) If the court appoints an individual guardian of the person pursuant to this section, the
33 court shall verify that the person being appointed as guardian of the juvenile understands the
34 legal significance of the appointment and will have adequate resources to care appropriately for
35 the juvenile. The fact that the prospective guardian has provided a stable placement for the
36 juvenile for at least six consecutive months is evidence that the person has adequate resources."

37 **SECTION 7.(b)** G.S. 7B-903(a)(4) reads as rewritten:

38 "(a) The following alternatives for disposition shall be available to any court exercising
39 jurisdiction, and the court may combine any of the applicable alternatives when the court finds
40 the disposition to be in the best interests of the juvenile:

41 ...

42 (4) Place the juvenile in the custody of a parent, relative, private agency offering
43 placement services, or some other suitable person. If the court determines that
44 the juvenile should be placed in the custody of an individual other than a
45 parent, the court shall verify that the person receiving custody of the juvenile
46 understands the legal significance of the placement and will have adequate
47 resources to care appropriately for the juvenile. The fact that the prospective
48 custodian has provided a stable placement for the juvenile for at least six
49 consecutive months is evidence that the person has adequate resources."

50 **SECTION 8.** G.S. 7B-901 reads as rewritten:

51 "**§ 7B-901. Initial dispositional hearing.**

1 ...
 2 (c) If the disposition order places a juvenile in the custody of a county department of
 3 social services, the court shall direct that reasonable efforts for reunification as defined in
 4 G.S. 7B-101 shall not be required if the court makes written findings of fact pertaining to any of
 5 the following, unless the court concludes that there is compelling evidence warranting continued
 6 reunification efforts:

7 ...
 8 (2) A court of competent jurisdiction ~~terminates or~~ has terminated involuntarily
 9 the parental rights of the parent to another child of the parent.

10 ...
 11 (d) When the court determines that reunification efforts are not required, the court shall
 12 order a permanent plan as soon as possible, after providing each party with a reasonable
 13 opportunity to prepare and present evidence. The court shall schedule a ~~subsequent permanency~~
 14 planning hearing within 30 days to address the permanent plans in accordance with
 15 G.S. 7B-906.1 and G.S. 7B-906.2."

16 **SECTION 9.** G.S. 7B-905.1 reads as rewritten:

17 "**§ 7B-905.1. Visitation.**

18 (a) An order that removes custody of a juvenile from a parent, guardian, or custodian or
 19 that continues the juvenile's placement outside the home shall provide for ~~appropriate~~ visitation
 20 ~~as may be that is~~ in the best interests of the juvenile consistent with the juvenile's health and
 21 ~~safety.~~ safety, including no visitation. The court may specify in the order conditions under which
 22 visitation may be suspended.

23 (b) If the juvenile is placed or continued in the custody or placement responsibility of a
 24 county department of social services, the court may order the director to arrange, facilitate, and
 25 supervise a visitation plan expressly approved or ordered by the court. The plan shall indicate the
 26 minimum frequency and length of visits and whether the visits shall be supervised. Unless the
 27 court orders otherwise, the director shall have discretion to determine who will supervise visits
 28 when supervision is required, to determine the location of visits, and to change the day and time
 29 of visits in response to scheduling conflicts, illness of the child or party, or extraordinary
 30 circumstances. The director shall promptly communicate a limited and temporary change in the
 31 visitation schedule to the affected party. Any ongoing change in the visitation schedule shall be
 32 communicated to the party in writing and state the reason for the change.

33 If the director makes a good faith determination that the visitation plan is not consistent with
 34 the juvenile's health and safety, the director may temporarily suspend all or part of the visitation
 35 plan. The director shall not be subject to any motion to show cause for this suspension but shall
 36 expeditiously file a motion for ~~review~~ review and request that a hearing be scheduled within 30
 37 days. However, no motion or notice of hearing is required if a review or permanency planning
 38 hearing is already scheduled to be heard within 30 days of the suspension.

39"

40 **SECTION 10.** G.S. 7B-906.1 reads as rewritten:

41 "**§ 7B-906.1. Review and permanency planning hearings.**

42 (a) The court shall conduct a review hearing within 90 days from the date of the initial
 43 dispositional hearing held pursuant to ~~G.S. 7B-901 and shall conduct a review hearing within six~~
 44 ~~months thereafter.~~ G.S. 7B-901. Review hearings shall be held at least every six months
 45 thereafter. Within 12 months of the date of the initial order removing custody, there shall be a
 46 review hearing designated as a permanency planning hearing. Review hearings after the initial
 47 permanency planning hearing shall be designated as ~~subsequent~~ permanency planning hearings.
 48 ~~Subsequent permanency~~ Permanency planning hearings shall be held at least every six months
 49 thereafter or earlier as set by the court to review the progress made in finalizing the permanent
 50 plan for the juvenile, or if necessary, to make a new permanent plan for the juvenile.

51 ...

1 (g) At the conclusion of each permanency planning hearing, the ~~judge court~~ shall make
2 specific findings as to the best permanent plans to achieve a safe, permanent home for the juvenile
3 within a reasonable period of time. ~~The judge shall inform the parent, guardian, or custodian that~~
4 ~~failure or refusal to cooperate with the plan may result in an order of the court in a subsequent~~
5 ~~permanency planning hearing that reunification efforts may cease.~~

6 ...

7 (j) If the court determines that the juvenile shall be placed in the custody of an individual
8 other than a parent or appoints an individual guardian of the person pursuant to G.S. 7B-600, the
9 court shall verify that the person receiving custody or being appointed as guardian of the juvenile
10 understands the legal significance of the placement or appointment and will have adequate
11 resources to care appropriately for the juvenile. The fact that the prospective custodian or
12 guardian has provided a stable placement for the juvenile for at least six consecutive months is
13 evidence that the person has adequate resources.

14 ...

15 (n) Notwithstanding other provisions of this Article, the court may waive the holding of
16 hearings required by this section, may require written reports to the court by the agency or person
17 holding custody in lieu of review hearings, or order that review hearings be held less often than
18 every six months if the court finds by clear, cogent, and convincing evidence each of the
19 following:

- 20 (1) The juvenile has resided in the placement for a period of at least one year-year
21 or the juvenile has resided in the placement for at least six consecutive months
22 and the court enters a consent order pursuant to G.S. 7B-801(b1).

23"

24 **SECTION 11.** G.S. 7B-906.2 reads as rewritten:

25 **"§ 7B-906.2. Permanent plans; concurrent planning.**

26 ...

27 (a1) Concurrent planning shall continue until a permanent plan is or has been achieved.

28 (b) At any permanency planning hearing, the court shall adopt concurrent permanent
29 plans and shall identify the primary plan and secondary plan. Reunification shall ~~remain~~ be a
30 primary or secondary plan unless the court made findings under G.S. 7B-901(c) or
31 G.S. 7B-906.1(d)(3), the permanent plan is or has been achieved in accordance with subsection
32 (a1) of this section, or the court makes written findings that reunification efforts clearly would
33 be unsuccessful or would be inconsistent with the juvenile's health or safety. ~~The~~ The finding
34 that reunification efforts clearly would be unsuccessful or inconsistent with the juvenile's health
35 or safety may be made at any permanency planning hearing. Unless permanence has been
36 achieved, the court shall order the county department of social services to make efforts toward
37 finalizing the primary and secondary permanent plans and may specify efforts that are reasonable
38 to timely achieve permanence for the juvenile.

39 (c) ~~At the first permanency planning hearing held pursuant to G.S. 7B-906.1, the court~~
40 ~~shall make a finding about whether the efforts of the county department of social services toward~~
41 ~~reunification were reasonable, unless reunification efforts were ceased in accordance with~~
42 ~~G.S. 7B-901(e) or this section. Unless reunification efforts were previously ceased, at each~~
43 ~~permanency planning hearing the court shall make a finding about whether the reunification~~
44 ~~efforts of the county department of social services were reasonable. In every subsequent~~
45 ~~permanency planning hearing held pursuant to G.S. 7B-906.1, the court shall make written~~
46 ~~findings about the efforts the county department of social services has made toward the primary~~
47 ~~permanent plan and any secondary permanent plans in effect prior to the hearing. The court shall~~
48 ~~make a conclusion about whether efforts to finalize the permanent plan were reasonable to timely~~
49 ~~achieve permanence for the juvenile.~~

1 (d) At any permanency planning hearing under subsections (b) and (c) of this section, the
2 court shall make written findings as to each of the following, which shall demonstrate ~~lack of~~
3 ~~success:~~the degree of success or failure toward reunification:

4"

5 **SECTION 12.** G.S. 7B-908 reads as rewritten:

6 "**§ 7B-908. Post termination of parental rights' placement court review.**

7 ...

8 (b) The court shall conduct a placement review not later than six months from the date of
9 the termination hearing when parental rights have been terminated by a petition or motion
10 brought by any person or agency designated in G.S. 7B-1103(a)(2) through (6), or one parent's
11 parental rights have been terminated by court order and the other parent's parental rights have
12 been relinquished under Chapter 48 of the General Statutes, and a county director or licensed
13 child-placing agency has custody of the juvenile. The court shall conduct reviews every six
14 months thereafter until the juvenile is the subject of a decree of adoption:

15 (1) No more than 30 days and no less than 15 days prior to each review, the clerk
16 shall give notice of the review to the juvenile if the juvenile is at least 12 years
17 of age, the legal custodian or guardian of the juvenile, the person providing
18 care for the juvenile, the guardian ad litem, if any, and any other person or
19 agency the court may specify. The department of social services shall either
20 provide to the clerk the name and address of the person providing care for the
21 child for notice under this subsection or file written documentation with the
22 clerk that the child's current care provider was sent notice of hearing. Only the
23 juvenile, ~~if the juvenile is at least 12 years of age,~~ the legal custodian or
24 guardian of the juvenile, the person providing care for the juvenile, and the
25 guardian ad litem ~~shall attend~~ may participate in the review hearings, except
26 as otherwise directed by the court. Nothing in this subdivision shall be
27 construed to make the person a party to the proceeding solely based on
28 receiving notice and the right to be heard. Any individual whose parental
29 rights have been terminated shall not be considered a party to the proceeding
30 unless an appeal of the order terminating parental rights is pending, and a court
31 has stayed the order pending the appeal.

32 ...

33 (e1) The order shall be reduced to writing, signed, and entered no later than 30 days
34 following the completion of the hearing. If the order is not entered within 30 days following
35 completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent
36 hearing at the first session of court scheduled for the hearing of juvenile matters following the
37 30-day period to determine and explain the reason for the delay and to obtain any needed
38 clarification regarding the contents of the order. The order shall be entered within 10 days of the
39 subsequent hearing required by this subsection.

40"

41 **SECTION 13.** Article 9 of Chapter 7B of the General Statutes is amended by adding
42 a new section to read:

43 "**§ 7B-909.1. Relinquishment to a department of social services.**

44 Before the relinquishment of a juvenile to a department of social services for the purpose of
45 adoption may be executed by a parent who is a respondent in an action under this Subchapter and
46 (i) whose retained counsel has entered a notice of appearance or (ii) who has an attorney whose
47 provisional appointment has been confirmed by the court, each of the following shall occur:

48 (1) Notice shall be given by any reasonable and timely means of communication
49 to the parent's counsel or, if such counsel is unavailable, to the partner or
50 employee at the attorney's office that the department has made arrangements
51 for the parent to execute a relinquishment at a specific date, time, and location.

1 (2) The parent shall be advised of the right to seek the advice of the parent's
2 counsel prior to executing the relinquishment and to have the parent's counsel
3 present while executing the relinquishment."

4 **SECTION 14.(a)** G.S. 7B-1001 reads as rewritten:

5 "**§ 7B-1001. Right to appeal.**

6 (a) In a juvenile matter under this Subchapter, ~~appeal of a final order of the court shall be~~
7 ~~made directly to the Court of Appeals. Only only the following juvenile matters may be~~
8 ~~appealed:~~ final orders may be appealed directly to the Court of Appeals:

9 ...

10 (a1) In a juvenile matter under this Subchapter, ~~appeal of a final order of the court shall be~~
11 ~~made directly to the Supreme Court in the following juvenile matters:~~ only the following final
12 orders may be appealed directly to the Supreme Court:

13 "

14 **SECTION 14.(b)** 7B-1003(e) reads as rewritten:

15 "(e) The provisions of ~~subsections (b), (c), and (d) of G.S. 7B-905~~ G.S. 7B-903.1 shall
16 apply to any order entered during an appeal that provides for the placement or continued
17 placement of a juvenile in foster care."

18 **SECTION 15.(a)** 7B-2503(1) reads as rewritten:

19 "(1) In the case of any juvenile who needs more adequate care or supervision or
20 who needs placement, the judge ~~may~~ may do any of the following:

- 21 a. Require that the juvenile be supervised in the juvenile's own home by
22 a department of social services in the juvenile's county of residence, a
23 juvenile court counselor, or other personnel as may be available to the
24 court, subject to conditions applicable to the parent, guardian, or
25 custodian or the juvenile as the judge may ~~specify~~ specify.
- 26 b. Place the juvenile in the custody of a parent, guardian, custodian,
27 relative, private agency offering placement services, or some other
28 suitable ~~person~~ person.
- 29 c. If the director of the department of social services has received notice
30 and an opportunity to be heard, place the juvenile in the custody of a
31 department of social services in the county of the juvenile's residence,
32 or in the case of a juvenile who has legal residence outside the State,
33 in the physical custody of a department of social services in the county
34 where the juvenile is found so that agency may return the juvenile to
35 the responsible authorities in the juvenile's home state. An order
36 placing a juvenile in the custody or placement responsibility of a
37 county department of social services shall contain a finding that the
38 juvenile's continuation in the juvenile's own home would be contrary
39 to the juvenile's best interest. This placement shall be reviewed in
40 accordance with G.S. 7B-906.1. A parent who is indigent is entitled to
41 court-appointed counsel for representation in the hearings held
42 pursuant to G.S. 7B-906.1 unless the parent makes a knowing and
43 voluntary waiver of the right to counsel."

44 **SECTION 15.(b)** G.S. 7B-2506(1) reads as rewritten:

45 "(1) **(Effective until December 1, 2019)** In the case of any juvenile who needs
46 more adequate care or supervision or who needs placement, the judge
47 ~~may~~ may do any of the following:

- 48 a. Require that a juvenile be supervised in the juvenile's own home by
49 the department of social services in the juvenile's county, a juvenile
50 court counselor, or other personnel as may be available to the court,

1 subject to conditions applicable to the parent, guardian, or custodian
 2 or the juvenile as the judge may ~~specify~~; ~~or specify~~.
 3 b. Place the juvenile in the custody of a parent, guardian, custodian,
 4 relative, private agency offering placement services, or some other
 5 suitable ~~person~~; ~~or person~~.
 6 c. If the director of the county department of social services has received
 7 notice and an opportunity to be heard, place the juvenile in the custody
 8 of the department of social services in the county of the juvenile's
 9 residence, or in the case of a juvenile who has legal residence outside
 10 the State, in the physical custody of a department of social services in
 11 the county where the juvenile is found so that agency may return the
 12 juvenile to the responsible authorities in the juvenile's home state. An
 13 order placing a juvenile in the custody or placement responsibility of
 14 a county department of social services shall contain a finding that the
 15 juvenile's continuation in the juvenile's own home would be contrary
 16 to the juvenile's best interest. This placement shall be reviewed in
 17 accordance with G.S. 7B-906.1. A parent who is indigent is entitled to
 18 court-appointed counsel for representation in the hearings held
 19 pursuant to G.S. 7B-906.1 unless the parent makes a knowing and
 20 voluntary waiver of the right to counsel.

21 (1) **(Effective December 1, 2019)** In the case of any juvenile under the age of 18
 22 years who needs more adequate care or supervision or who needs placement,
 23 the judge ~~may~~ may do any of the following:

24 a. Require that a juvenile be supervised in the juvenile's own home by
 25 the department of social services in the juvenile's county, a juvenile
 26 court counselor, or other personnel as may be available to the court,
 27 subject to conditions applicable to the parent, guardian, or custodian
 28 or the juvenile as the judge may ~~specify~~; ~~or specify~~.
 29 b. Place the juvenile in the custody of a parent, guardian, custodian,
 30 relative, private agency offering placement services, or some other
 31 suitable ~~person~~; ~~or person~~.
 32 c. If the director of the county department of social services has received
 33 notice and an opportunity to be heard, place the juvenile in the custody
 34 of the department of social services in the county of the juvenile's
 35 residence, or in the case of a juvenile who has legal residence outside
 36 the State, in the physical custody of a department of social services in
 37 the county where the juvenile is found so that agency may return the
 38 juvenile to the responsible authorities in the juvenile's home state. An
 39 order placing a juvenile in the custody or placement responsibility of
 40 a county department of social services shall contain a finding that the
 41 juvenile's continuation in the juvenile's own home would be contrary
 42 to the juvenile's best interest. This placement shall be reviewed in
 43 accordance with G.S. 7B-906.1. A parent who is indigent is entitled to
 44 court-appointed counsel for representation in the hearings held
 45 pursuant to G.S. 7B-906.1 unless the parent makes a knowing and
 46 voluntary waiver of the right to counsel."

47 **SECTION 16.** G.S. 7B-3100 is amended by adding a new subsection to read:

48 "(c) The juvenile's guardian ad litem attorney advocate appointed pursuant to G.S. 7B-601
 49 may share confidential information about the juvenile with the juvenile's attorney appointed or
 50 retained pursuant to G.S. 7B-2000."

51 **SECTION 17.** This act becomes effective October 1, 2019.