

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 364

Short Title: Juv. Law/Child Protection.

(Public)

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Sponsors: Representatives Easterling, Diamont; Alexander, Barnhill, Colton, Cunningham, Gottovi, Jeffus, Kuczmarski, and Lemmond.

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Referred to: Judiciary II.

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February 25, 1993

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE CHILD FATALITY TASK FORCE TO AMEND THE JUVENILE LAW AND OTHER LAWS TO PROTECT CHILDREN MORE EFFECTIVELY FROM ABUSE, NEGLECT, AND DEPENDENCY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-517(1) reads as rewritten:

"(1) Abused Juveniles. – Any juvenile less than 18 years of age whose ~~parent or other person responsible for his care: parent, guardian, or custodian:~~

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental ~~means which causes or creates a substantial risk of death, disfigurement, impairment of physical health, or loss or impairment of function of any bodily organ; means; or~~

b. Creates or allows to be created a substantial risk of physical injury to the juvenile by other than accidental means which would be likely to cause death, disfigurement, impairment of physical health, or loss or impairment of the function of any bodily organ; or

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

- 1 c. Commits, permits, or encourages the commission of a violation  
2 of the following laws by, with, or upon the juvenile: first degree  
3 rape, as provided in G.S. 14-27.2; second degree rape as  
4 provided in G.S. 14-27.3; first degree sexual offense, as  
5 provided in G.S. 14-27.4; second degree sexual offense, as  
6 provided in G.S. 14-27.5; sexual act by a custodian, as provided  
7 in G.S. 14-27.7; crime against nature, as provided in G.S. 14-  
8 177; incest, as provided in G.S. 14-178 and 14-179; preparation  
9 of obscene photographs, slides or motion pictures of the  
10 juvenile, as provided in G.S. 14-190.5; employing or permitting  
11 the juvenile to assist in a violation of the obscenity laws as  
12 provided in G.S. 14-190.6; dissemination of obscene material to  
13 the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8;  
14 displaying or disseminating material harmful to the juvenile as  
15 provided in G.S. 14-190.14 and G.S. 14-190.15; first and  
16 second degree sexual exploitation of the juvenile as provided in  
17 G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution  
18 of the juvenile as provided in G.S. 14-190.18; and taking  
19 indecent liberties with the juvenile, as provided in G.S. 14-  
20 202.1, regardless of the age of the ~~parties.~~ parties; or  
21 d. Creates or allows to be created serious emotional damage to the  
22 juvenile ~~and refuses to permit, provide for, or participate in~~  
23 ~~treatment.~~ by actions that include continually berating,  
24 terrorizing, tormenting, rejecting, or isolating the juvenile; or  
25 ~~Serious emotional damage is evidenced by a juvenile's severe~~  
26 ~~anxiety, depression, withdrawal or aggressive behavior toward~~  
27 ~~himself or others; or~~  
28 e. Encourages, directs, or approves of delinquent acts involving  
29 moral turpitude committed by the juvenile."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 information and these records to the extent permitted by federal law and regulations.  
2 Upon request, the Director's or the Director's representative's oral demands shall be  
3 confirmed in writing.

4 ~~Unless a petition is filed within~~ Within five working days after receipt of the report of  
5 abuse or neglect, the Director shall give written notice to the person making the report  
6 ~~that~~ report as to whether the report was accepted for investigation and whether the  
7 report was referred to the appropriate State or local law enforcement agency.

8 Within five working days after completion of the protective services investigation,  
9 the Director shall give subsequent written notice to the person making the report as to  
10 whether there is a finding of abuse, neglect, or dependency, whether the county  
11 Department of Social Services is taking action to protect the juvenile, and what specific  
12 action it is taking.

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

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

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

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

22 "(b) For purposes of this section, obstruction of or interference with an  
23 investigation means refusing to disclose the whereabouts of the juvenile, refusing to  
24 allow the director to have personal access to the juvenile, refusing to allow the director  
25 to observe or interview the juvenile in private, refusing to allow the director access to  
26 confidential information and records upon request, refusing to allow the director to  
27 arrange for an evaluation of the juvenile by a physician or other expert, or other conduct  
28 that makes it impossible for the director to carry out ~~his~~ the duty to investigate."

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

30 **"§ 7A-546. Request for review by prosecutor.**

31 The person making the report shall have five working days, from receipt of the  
32 decision of the Director of the Department of Social Services ~~not to petition the court,~~ to  
33 notify the prosecutor that he is requesting a review. The prosecutor shall notify the  
34 person making the report and the Director of the time and place for the review and the  
35 Director shall immediately transmit to the prosecutor a copy of ~~the~~ any investigation  
36 report."

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

38 **"§ 7A-547. Review by prosecutor.**

39 The prosecutor shall review the Director's determination ~~that a petition should not be~~  
40 ~~filed~~ within 20 days after the person making the report is notified. The review shall  
41 include conferences with the person making the report, the protective services worker,  
42 the juvenile, if practicable, and other persons known to have pertinent information about  
43 the juvenile or ~~his~~ the juvenile's family. At the conclusion of the conferences, the  
44 prosecutor may affirm the decision made by the ~~Director~~ Director, may request the

1 appropriate local law enforcement agency to investigate the allegations, or may  
2 authorize the filing of a petition."

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

4 **"§ 7A-548. Duty of Director to report evidence of abuse, neglect; investigation by**  
5 **local law enforcement; notification of Department of Human Resources**  
6 **and State Bureau of Investigation.**

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

19 If the Director receives information that a juvenile ~~has~~ may have been physically  
20 harmed in violation of any criminal statute by any person other than the juvenile's ~~parent~~  
21 ~~or other person responsible for his care,~~ parent, guardian, custodian, or caretaker, ~~he~~ the  
22 Director shall make an immediate oral ~~or~~ and subsequent written report of that  
23 information to the district attorney or the district attorney's designee and to the  
24 appropriate local law enforcement agency within 24 hours after receipt of the  
25 information. The local law enforcement agency shall immediately, but no later than 24  
26 hours after receipt of the information, initiate a criminal investigation. Upon  
27 completion of the investigation, the district attorney shall determine whether criminal  
28 prosecution is appropriate.

29 If the report received pursuant to G.S. 7A-543 involves abuse or neglect of a  
30 juvenile in day care, either in a day care facility or a day care home, the Director shall  
31 notify the Department of Human Resources within 24 hours or on the next working day  
32 of receipt of the report.

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

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

1 The Director of the Department of Social Services shall submit a report of alleged  
2 abuse or neglect cases or child fatalities that are the result of alleged maltreatment to the  
3 central registry under the policies adopted by the Social Services Commission."

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

5 "**§ 7A-550. Immunity of persons ~~reporting~~, reporting and cooperating in an**  
6 **investigation; immunity of county Department of Social Services**  
7 **employees.**

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

15 (b) Any employee of a county Department of Social Services who is assigned to  
16 perform, on behalf of the Director, any of the duties permitted or required by this  
17 Article or who takes a juvenile into temporary custody pursuant to G.S. 7A-571(3), shall  
18 be personally and individually immune from any civil liability for monetary damages  
19 that might otherwise be incurred or imposed for any act or failure to act with respect to  
20 these duties, except when the employee was not acting in good faith or committed gross  
21 negligence or wilful or wanton misconduct that resulted in the damage or injury. In any  
22 proceeding involving liability, good faith on the part of the employee shall be presumed  
23 and the burden of proof shall be upon the plaintiff to prove that the employee did not act  
24 in good faith."

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

26 "**§ 7A-551. Privileges not grounds for failing to report or for excluding evidence.**

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

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

38 "**§ 7A-552. Central registry.**

39 The Department of Human Resources shall maintain a central registry of abuse and  
40 neglect cases and child fatalities that are the result of alleged maltreatment that are  
41 reported under this Article in order to compile data for appropriate study of the extent of  
42 abuse and neglect within the State and to identify repeated abuses of the same juvenile  
43 or of other juveniles in the same family. This data shall be furnished by county  
44 directors of social services to the Department of Human Resources and shall be

1 confidential, subject to policies adopted by the Social Services Commission ~~which~~  
2 ~~provide~~ providing for its ~~appropriate~~ use for study and ~~research~~ research and for other  
3 appropriate disclosure. Data shall not be used at any hearing or court proceeding unless  
4 based upon a final judgment of a court of law."

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

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

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

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