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Committee Substitute Favorable 5/6/93
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Short Title: Juv. Law/Child Protection.

(Public)

Sponsors:

Referred to:

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,
custodian, or caretaker:

- 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 serious
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; means; or~~

- 1 b1. Uses or allows to be used upon the juvenile cruel or grossly
2 inappropriate procedures or cruel or grossly inappropriate
3 devices to modify behavior; or
4 c. Commits, permits, or encourages the commission of a violation
5 of the following laws by, with, or upon the juvenile: first degree
6 rape, as provided in G.S. 14-27.2; second degree rape as
7 provided in G.S. 14-27.3; first degree sexual offense, as
8 provided in G.S. 14-27.4; second degree sexual offense, as
9 provided in G.S. 14-27.5; sexual act by a custodian, as provided
10 in G.S. 14-27.7; crime against nature, as provided in G.S. 14-
11 177; incest, as provided in G.S. 14-178 and 14-179; preparation
12 of obscene photographs, slides or motion pictures of the
13 juvenile, as provided in G.S. 14-190.5; employing or permitting
14 the juvenile to assist in a violation of the obscenity laws as
15 provided in G.S. 14-190.6; dissemination of obscene material to
16 the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8;
17 displaying or disseminating material harmful to the juvenile as
18 provided in G.S. 14-190.14 and G.S. 14-190.15; first and
19 second degree sexual exploitation of the juvenile as provided in
20 G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution
21 of the juvenile as provided in G.S. 14-190.18; and taking
22 indecent liberties with the juvenile, as provided in G.S. 14-
23 202.1, regardless of the age of the ~~parties.~~parties; or
24 d. Creates or allows to be created serious emotional damage to the
25 juvenile ~~juvenile. and refuses to permit, provide for, or participate in~~
26 ~~treatment.~~—Serious emotional damage is evidenced by a
27 juvenile's severe anxiety, depression, withdrawal or aggressive
28 behavior toward himself or others; or
29 e. Encourages, directs, or approves of delinquent acts involving
30 moral turpitude committed by the juvenile."

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

32 "(5) Caretaker. – Any person other than a ~~parent who has the care of a~~
33 ~~juvenile. Caretaker includes any blood relative, stepparent, foster~~
34 ~~parent, house parent, cottage parent, or other person supervising a~~
35 ~~juvenile in a child care facility.~~ parent, guardian, or custodian who has
36 responsibility for the health and welfare of a juvenile in a residential
37 setting. A person responsible for a juvenile's health and welfare means
38 a stepparent, foster parent, an adult member of the juvenile's
39 household, an adult relative entrusted with the juvenile's care, or any
40 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 child day care home or child day care facility as

1 ~~defined in G.S. 110-86 as defined in Article 7 of Chapter 110 of the~~
 2 General Statutes and includes any person who has the approval of the
 3 care provider to assume responsibility for the juveniles under the care
 4 of the care provider. Nothing in this subdivision shall be construed to
 5 impose a legal duty of support under Chapter 50 or Chapter 110 of the
 6 General Statutes. The duty imposed upon a caretaker as defined in this
 7 subdivision shall be for the purpose of Chapter 7A of the General
 8 Statutes only."

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

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

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

17 "**§ 7A-543. Duty to report child ~~abuse or neglect.~~ abuse, neglect, dependency, or**
 18 death due to maltreatment.

19 Any person or institution who has cause to suspect that any juvenile is ~~abused or~~
 20 ~~neglected-abused,~~ neglected, or dependent, as defined by G.S. 7A-517, or has died as the
 21 result of maltreatment, shall report the case of that juvenile to the Director of the
 22 Department of Social Services in the county where the juvenile resides or is found. The
 23 report may be made orally, by telephone, or in writing. The report shall include
 24 information as is known to the person making it including the name and address of the
 25 juvenile; the name and address of the juvenile's parent, guardian, or caretaker; the age of
 26 the juvenile; the names and ages of other juveniles in the home; the present whereabouts
 27 of the juvenile if not at the home address; the nature and extent of any injury or
 28 condition resulting from ~~abuse or neglect-abuse, neglect, or dependency;~~ and any other
 29 information which the person making the report believes might be helpful in
 30 establishing the need for protective services or court intervention. If the report is made
 31 orally or by telephone, the person making the report shall give ~~his-the person's~~ name,
 32 address, and telephone number. Refusal of the person making the report to give ~~his-a~~
 33 name shall not preclude the Department's investigation of the alleged ~~abuse or neglect-~~
 34 abuse, neglect, dependency, or 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,~~ indicates that abuse, neglect, or
24 dependency has occurred, the Director shall decide whether immediate removal of the
25 juvenile or any other juveniles in the home is necessary for their protection. If
26 immediate removal does not seem necessary, the Director shall immediately provide or
27 arrange for protective services. If the parent or other caretaker refuses to accept the
28 protective services provided or arranged by the Director, the Director shall sign a
29 complaint seeking to invoke the jurisdiction of the court for the protection of the
30 juvenile or juveniles.

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

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

1 representative's request and unless protected by the attorney-client privilege, any public
2 or private agency or individual shall provide access to and copies of this confidential
3 information and these records to the extent permitted by federal law and regulations. If a
4 custodian of criminal investigative information or records believes that release of such
5 information will jeopardize the right of the State to prosecute a defendant or the right of
6 a defendant to receive a fair trial or will undermine an ongoing or future investigation, it
7 may seek an order from a court of competent jurisdiction to prevent disclosure of the
8 information. In such an action, the custodian of the records shall have the burden of
9 showing by a preponderance of the evidence that disclosure of the information in
10 question will jeopardize the right of the State to prosecute a defendant or the right of a
11 defendant to receive a fair trial or will undermine an ongoing or future investigation.
12 Actions brought pursuant to this paragraph shall be set down for immediate hearing, and
13 subsequent proceedings in such actions shall be accorded priority by the trial and
14 appellate courts.

15 ~~Unless a petition is filed within~~ Within five working days after receipt of the report of
16 ~~abuse or neglect, abuse, neglect, or dependency, the Director shall give written notice to~~
17 ~~the person making the report that:~~ report, unless requested by that person not to give
18 notice, as to whether the report was accepted for investigation and whether the report
19 was referred to the appropriate State or local law enforcement agency.

20 Within five working days after completion of the protective services investigation,
21 the Director shall give subsequent written notice to the person making the report, unless
22 requested by that person not to give notice, as to whether there is a finding of abuse,
23 neglect, or dependency, whether the county Department of Social Services is taking
24 action to protect the juvenile, and what action it is taking.

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

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

28 ~~The notification—~~ The second notification shall include notice that, if the person making
29 the report is not satisfied with the Director's decision, he may request review of the
30 decision by the prosecutor within five working days of receipt. The person making the
31 report may waive his right to this notification and no notification is required if the
32 person making the report does not identify himself to the Director."

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

34 "(b) For purposes of this section, obstruction of or interference with an
35 investigation means refusing to disclose the whereabouts of the juvenile, refusing to
36 allow the director to have personal access to the juvenile, refusing to allow the director
37 to observe or interview the juvenile in private, refusing to allow the Director access to
38 confidential information and records upon request pursuant to G.S. 7A-544, refusing to
39 allow the director to arrange for an evaluation of the juvenile by a physician or other
40 expert, or other conduct that makes it impossible for the director to carry out his ~~the~~ duty
41 to investigate."

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

43 **"§ 7A-547. Review by prosecutor.**

1 The prosecutor shall review the Director's determination that a petition should not be
2 filed within 20 days after the person making the report is notified. The review shall
3 include conferences with the person making the report, the protective services worker,
4 the juvenile, if practicable, and other persons known to have pertinent information about
5 the juvenile or ~~his~~ the juvenile's family. At the conclusion of the conferences, the
6 prosecutor may affirm the decision made by the ~~Director~~ Director, may request the
7 appropriate local law enforcement agency to investigate the allegations, or may authorize
8 the filing of direct the Director to file a petition."

9 Sec. 8. G.S. 7A-548 reads as rewritten:

10 "**§ 7A-548. Duty of Director to report evidence of abuse, neglect; investigation by**
11 **local law enforcement; notification of Department of Human Resources**
12 **and State Bureau of Investigation.**

13 (a) If the Director finds evidence that a juvenile ~~has~~ may have been abused as
14 defined by G.S. 7A-517(1), ~~he~~ the Director shall immediately ~~make a~~ an immediate oral
15 and subsequent written report of the findings of his investigation to the district attorney,
16 who shall determine if criminal prosecution is appropriate, and who may request the Director or
17 his designee to appear before a magistrate ~~attorney or the district attorney's designee and~~
18 the appropriate local law enforcement agency within 48 hours after receipt of the report.
19 The local law enforcement agency shall immediately, but no later than 48 hours after
20 receipt of the information, initiate and coordinate a criminal investigation with the
21 protective services investigation being conducted by the county Department of Social
22 Services. Upon completion of the investigation, the district attorney shall determine
23 whether criminal prosecution is appropriate and may request the Director or the
24 Director's designee to appear before a magistrate.

25 If the Director receives information that a juvenile ~~has~~ may have been physically
26 harmed in violation of any criminal statute by any person other than the juvenile's ~~parent~~
27 ~~or other person responsible for his care,~~ parent, guardian, custodian, or caretaker, ~~he~~ the
28 Director shall make an immediate oral ~~or~~ and subsequent written report of that
29 information to the district attorney or the district attorney's designee and to the
30 appropriate local law enforcement agency within 24 ~~48~~ hours after receipt of the
31 information. The local law enforcement agency shall immediately, but no later than 48
32 hours after receipt of the information, initiate a criminal investigation. Upon
33 completion of the investigation, the district attorney shall determine whether criminal
34 prosecution is appropriate.

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

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

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

6 The Director of the Department of Social Services shall submit a report of alleged
7 ~~abuse or neglect~~ abuse, neglect, or dependency cases or child fatalities that are the result
8 of alleged maltreatment to the central registry under the policies adopted by the Social
9 Services Commission."

10 Sec. 9. G.S. 7A-550 reads as rewritten:

11 "**§ 7A-550. Immunity of persons ~~reporting.~~ reporting and cooperating in an**
12 **investigation.**

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

20 Sec. 10. G.S. 7A-551 reads as rewritten:

21 "**§ 7A-551. Privileges not grounds for failing to report or for excluding evidence.**

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

34 Sec. 11. G.S. 7A-552 reads as rewritten:

35 "**§ 7A-552. Central registry.**

36 The Department of Human Resources shall maintain a central registry of ~~abuse and~~
37 ~~neglect cases~~ abuse, neglect, and dependency cases and child fatalities that are the result
38 of alleged maltreatment that are reported under this Article in order to compile data for
39 appropriate study of the extent of abuse and neglect within the State and to identify
40 repeated abuses of the same juvenile or of other juveniles in the same family. This data
41 shall be furnished by county directors of social services to the Department of Human
42 Resources and shall be confidential, subject to policies adopted by the Social Services
43 Commission which ~~provide~~ providing for its ~~appropriate~~ use for study and research.

1 research and for other appropriate disclosure. Data shall not be used at any hearing or
2 court proceeding unless based upon a final judgment of a court of law."

3 Sec. 12. G.S. 122C-54(h) reads as rewritten:

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

7 Sec. 13. Nothing in this act obligates the General Assembly to make any
8 appropriations to implement it.

9 Sec. 14. This act becomes effective October 1, 1993, and applies to
10 allegations of abuse, neglect, or dependency initiating on or after that date.