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Short Title: Change Temp. Custody/Juv.

(Public)

Sponsors:

Referred to:

February 14, 1994

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE TIME WITHIN WHICH HEARINGS FOR JUVENILES IN CUSTODY TAKE PLACE, TO PROVIDE FOR WAIVER OF HEARINGS ON CONTINUED CUSTODY, TO LENGTHEN TIME OF TEMPORARY CUSTODY OF JUVENILES WITHOUT AN ORDER, AND TO ALLOW PLACEMENT OF JUVENILES BY THE DEPARTMENT OF SOCIAL SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-577 reads as rewritten:

"§ 7A-577. **Hearing to determine need for continued secure or nonsecure custody.**

(a) No juvenile shall be held under a secure custody order for more than five calendar days or under a nonsecure custody order for more than five business days, excluding Saturdays, Sundays, and legal holidays, without a hearing on the merits or a hearing to determine the need for continued custody. A hearing conducted pursuant to this subsection may not be waived. In every case in which an order has been entered by an official exercising authority delegated pursuant to G.S. 7A-573, a hearing to determine the need for continued custody shall be conducted on the day of the next regularly scheduled session of district court in the city or county where the order was entered if such session precedes the expiration of the ~~five-calendar-day period~~; applicable time period set forth in this subsection. Provided, that if such session does not precede the expiration of the ~~five-calendar period, time period,~~ the hearing may be conducted at

1 another regularly scheduled session of district court in the district where the order was
2 entered.

3 (b) Any juvenile who is alleged to be delinquent shall be advised of ~~his~~the right
4 to have ~~an attorney represent him~~legal representation as provided in G.S. 7A-584 if ~~he~~the
5 juvenile appears without counsel at the hearing.

6 (c) At a hearing to determine the need for continued custody, the judge shall
7 receive testimony and shall allow the juvenile, and ~~his~~the juvenile's parent, guardian, or
8 custodian an opportunity to introduce evidence, to be heard in their own behalf, and to
9 examine witnesses. The State shall bear the burden at every stage of the proceedings to
10 provide clear and convincing evidence that restraints on the juvenile's liberty are
11 necessary and that no less intrusive alternative will suffice. The judge shall not be
12 bound by the usual rules of evidence at such hearings.

13 (d) The judge shall be bound by criteria set forth in G.S. 7A-574 in determining
14 whether continued custody is warranted.

15 (e) The judge shall impose the least restrictive interference with the liberty of a
16 juvenile who is released from secure custody including:

17 (1) Release on the written promise of the juvenile's parent, guardian, or
18 custodian to produce ~~him~~the juvenile in court for subsequent
19 proceedings; or

20 (2) Release into the care of a responsible person or organization; or

21 (3) Release conditioned on restrictions on activities, associations,
22 residence or travel if reasonably related to securing the juvenile's
23 presence in court; or

24 (4) Any other conditions reasonably related to securing the juvenile's
25 presence in court.

26 (f) If the judge determines that the juvenile meets the criteria in G.S. 7A-574 and
27 should continue in custody, ~~he~~the judge shall issue an order to that effect. The order
28 shall be in writing with appropriate findings of fact. The findings of fact shall include
29 the evidence relied upon in reaching the decision and the purposes which continued
30 custody is to achieve.

31 (g) Pending a hearing on the merits, further hearings to determine the need for
32 continued secure custody shall be held at intervals of no more than seven calendar days.
33 A subsequent hearing on continued nonsecure custody shall be held within seven
34 business days, excluding Saturdays, Sundays, and legal holidays, of the initial hearing
35 required in subsection (a) and hearings thereafter shall be held at intervals of no more
36 than 30 calendar days.

37 (g1) Hearings conducted pursuant to subsection (g) of this section may be waived
38 as follows:

39 (1) In the case of a juvenile alleged to be delinquent, only with the consent
40 of the juvenile, through counsel for the juvenile;

41 (2) In the case of a juvenile alleged to be undisciplined, only with the
42 consent of an attorney representing the juvenile; and

- 1 (3) In the case of a juvenile alleged to be abused, neglected, or dependent,
2 only with the consent of the juvenile's parent, guardian, or custodian,
3 and, if appointed, the juvenile's guardian ad litem.

4 The court may require the consent of additional parties or schedule a hearing despite
5 a party's consent to waiver.

6 (h) Any order authorizing the continued nonsecure custody of a juvenile who is
7 alleged to be abused, neglected, or dependent shall include findings as to whether
8 reasonable efforts have been made to prevent or eliminate the need for placement of the
9 juvenile in custody and may provide for services or other efforts aimed at returning the
10 juvenile home promptly. A finding that reasonable efforts have not been made to
11 prevent or eliminate the need for placement shall not preclude the entry of an order
12 authorizing continued nonsecure custody when the court finds that continued nonsecure
13 custody is necessary for the protection of the juvenile. Where efforts to prevent the need
14 for the juvenile's placement were precluded by an immediate threat of harm to the
15 juvenile, the court may find that the placement of the juvenile in the absence of such
16 efforts was reasonable."

17 Sec. 2. G.S. 7A-571 reads as rewritten:

18 **"§ 7A-571. Taking a juvenile into temporary custody.**

19 Temporary custody means the taking of physical custody and providing personal
20 care and supervision until a court order for secure or nonsecure custody can be obtained.
21 A juvenile may be taken into temporary custody under the following circumstances:

- 22 (1) A juvenile may be taken into temporary custody by a law-enforcement
23 officer without a court order if grounds exist for the arrest of an adult
24 in identical circumstances under G.S. 15A-401(b).
- 25 (2) A juvenile may be taken into temporary custody without a court order
26 by a law-enforcement officer or a court counselor if there are
27 reasonable grounds to believe that ~~he~~the juvenile is an undisciplined
28 juvenile.
- 29 (3) A juvenile may be taken into temporary custody without a court order
30 by a law-enforcement officer or a Department of Social Services
31 worker if there are reasonable grounds to believe that the juvenile is
32 abused, neglected, or dependent and that ~~he~~the juvenile would be
33 injured or could not be taken into custody if it were first necessary to
34 obtain a court order. If a Department of Social Services worker takes a
35 juvenile into temporary custody under this subdivision, the worker
36 may arrange for the placement, care, supervision, and transportation of
37 the juvenile.
- 38 (4) A juvenile may be taken into custody without a court order by a law-
39 enforcement officer, by a court counselor, by a member of the Black
40 Mountain Center, Alcohol Rehabilitation Center and Juvenile
41 Evaluation Center Joint Security Force established pursuant to G.S.
42 122C-421, or by personnel of the Division of Youth Services as
43 designated by the Department of Human Resources if there are

1 reasonable grounds to believe the juvenile is an absconder from any
2 State training school or approved detention facility."

3 Sec. 3. G.S. 7A-572(a) reads as rewritten:

4 "(a) A person who takes a juvenile into custody without a court order under G.S.
5 7A-571(1), (2), or (3) shall proceed as follows:

6 (1) Notify the juvenile's parent, guardian, or custodian that the juvenile
7 has been taken into temporary custody and advise the parent, guardian,
8 or custodian of ~~his~~the right to be present with the juvenile until a
9 determination is made as to the need for secure or nonsecure custody.
10 Failure to notify the parent that the juvenile is in custody shall not be
11 grounds for release of the juvenile;

12 (2) Release the juvenile to ~~his~~the juvenile's parent, guardian, or custodian
13 if the person having the juvenile in temporary custody decides that
14 continued custody is unnecessary.

15 (3) If the juvenile is not released under subsection (b), the person having
16 temporary custody shall proceed as follows:

17 a. In the case of a juvenile alleged to be delinquent or
18 undisciplined, ~~he~~the person having temporary custody shall
19 request a petition be drawn pursuant to G.S. 7A-561 or if the
20 clerk's office is closed, the magistrate pursuant to G.S. 7A-562.
21 Once the petition has been drawn and verified, the person shall
22 communicate with the intake counselor who shall consider
23 prehearing diversion. If the decision is made to file a petition,
24 the intake counselor shall contact the judge or person delegated
25 authority pursuant to G.S. 7A-573 if other than the intake
26 counselor for a determination of the need for continued custody.

27 b. In the case of a juvenile alleged to be abused, neglected, or
28 dependent, ~~he~~the person having temporary custody shall
29 communicate with the Director of the Department of Social
30 Services who shall consider prehearing diversion. If the
31 decision is made to file a petition, the director shall contact the
32 judge or person delegated authority pursuant to G.S. 7A-573 for
33 a determination of the need for continued custody.

34 (4) A juvenile taken into temporary custody under this Article shall not be
35 held for more than ~~12~~24 hours unless:

36 a. A petition or motion for review has been filed by an intake
37 counselor or the Director of the Department of Social Services,
38 and

39 b. An order for secure or nonsecure custody has been entered by a
40 judge."

41 Sec. 4. This act becomes effective July 1, 1994, and applies to offenses
42 committed, or causes of action arising, on or after that date.