



**This Bill Analysis
reflects the contents
of the bill as it was
presented in
committee.**

SENATE BILL 625: Child Welfare, Safety and Permanency Reforms.

2023-2024 General Assembly

Committee:	Senate Health Care. If favorable, re-refer to Judiciary. If favorable, re-refer to Rules and Operations of the Senate	Date:	April 19, 2023
Introduced by:	Sens. Krawiec, Jarvis, Batch	Prepared by:	Debbie Griffiths Staff Attorney
Analysis of:	First Edition		

OVERVIEW: *Senate Bill 625 would make various changes to laws affecting juveniles and associated services including the following changes:*

- *Clarifying that a petition alleging abuse, neglect, or dependency must be drafted by legal counsel for the department and that the standard of proof is clear and convincing evidence, that a county must be represented by legal counsel in abuse, neglect, and dependency matters and that the county's legal counsel must complete a minimum of six hours of continuing education in federal and State child welfare laws annually.*
- *Establishing a procedure for addressing conflicts of interest when a report alleging abuse, neglect, or dependency is made.*
- *Allowing a petition to be provided to a district court judge or delegated magistrate by any secure means.*
- *Allowing the district court judge to delegate authority to a magistrate to receive a petition and enter a nonsecure custody order and requiring each county to have a district court judge or delegated magistrate available at all times to do so.*
- *Allowing the appointment of co-guardians.*
- *Removing the requirement for payment of child support when a child is in the custody of someone other than the parent(s).*
- *Establishing procedures for mental health treatment and assessments for children in the custody of the department of social services.*
- *Revising the grounds for termination of parental rights.*
- *Revising the requirements for when consent is required for adoption of a child.*
- *Providing authority to the Secretary to review any child welfare cases, requiring the Secretary to notify the county board of commissioners and other county officials when a violation of federal or State law is found, and to require the director of the county social services office to take immediate action to correct the violations.*
- *Allowing post-adoption contact agreements to be entered and enforced if certain requirements are met.*

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- *Establishing a procedure for expungement from the responsible individuals list if certain requirements are met.*
- *Various technical and conforming changes.*

CURRENT LAW AND BILL ANALYSIS:

Section 1-Definitions

Section 1 would add definitions as used in the abuse, neglect, dependency subchapter of Chapter 7B of the General Statutes to define:

- Judicial official as a magistrate, clerk, judge, or justice of the General Court of justice.
- Legal counsel for department as an attorney representing the department in legal proceedings regarding abuse, neglect, and dependency, regardless of whether the attorney is a county attorney, department attorney, or contract attorney.

Section 1 would become effective when it becomes law.

Section 2-Drafting petitions alleging abuse, neglect, dependency, or interference with an investigation of those allegations.

Section 2 would amend several statutes to clarify that a petition alleging abuse, neglect, or dependency of a minor must be prepared by legal counsel for the department and signed by the director of the department and clarify that the standard of proof is clear and convincing evidence. As written, these statutes do not specify who prepares the petition. The standard of proof currently reads clear, cogent, and convincing evidence.

Section 2 would become effective January 1, 2024.

Section 3-Conflicts of interest.

Section 3 would create a procedure for handling conflicts of interest that arise in abuse, neglect, dependency matters.

A conflict of interest would exist when the reported abuse, neglect, or dependency involves one of several individuals including:

- Any employee of the county department of social services.
- A relative of an employee of the child welfare division of the county department of social services.
- A relative of an employee of the county department of social services outside of the child welfare division when the director determines there is a conflict of interest.
- A foster parent supervised by the court department of social services.
- A juvenile who is the subject of a new report alleging abuse or neglect arising from events occurring while in the custody of the department.

The director must request another county department of social services to handle the assessment when a conflict exists and must notify the State Division of Social Services that a conflict of interest exists and the county that will handle the assessment.

Section 4-Parties

Section 4 would include foster parents in the procedure for intervention rather than having a separate subsection addressing when foster parents can intervene.

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Section 5-Authority to issue custody orders; delegation.

Section 5 would clarify that a district court judge may enter a nonsecure custody order once a petition is filed and that a district court judge may delegate that authority to a magistrate. Section 5 would require that a district court judge or delegated magistrate must be available at all times in each county for filing a petition to seek nonsecure custody.

Section 5 would become effective when it becomes law.

Section 6-Hearing to determine need for continued nonsecure custody.

Section 6 makes conforming changes related to a delegated magistrate.

Section 6 would become effective when it becomes law.

Section 7-Telephonic communication authorized.

Section 7 would allow the petition to be provided to the judge or delegated magistrate by any secure means including hand delivery, fax, or encrypted electronic delivery and the requirements for an order obtained through telephonic communication.

Section 7 would become effective when it becomes law.

Section 8-Appointment of Guardian.

Section 8 would allow the appointment of co-guardians.

Section 9(a)-Parent's right to counsel; guardian ad litem.

Section 9(a) would clarify that the appointment of a guardian ad litem for a minor parent under 7B-602 would not impact the minor parent's right to a guardian ad litem if the minor parent is also the subject of a separate juvenile petition and that a parent cannot be found incompetent solely because they are an unemancipated minor.

Section 9(b)-Legal counsel for the department.

Section 9(b) would require a county to be represented by legal counsel in all abuse, neglect, dependency actions and that the attorney complete a minimum of six hours of continuing education on federal and State child welfare laws annually and prior to representing a county.

Section 9(b) would become effective on January 1, 2024.

Section 10-Juvenile placed in custody of a department of social services.

Section 10 would clarify that recommendations for unsupervised visitations or the return of custody to a parent do not have to occur in that order but may be whichever occurs first.

Section 11-Emergency motion for placement and payment. G.S. 122C-142.2 provides a process for assessment of a juvenile in the custody of the department of social services (DSS) when the juvenile presents to a hospital emergency department for mental health treatment, and a determination of the appropriate placement and treatment for the juvenile following the hospital stay. G.S. 7B-903.2 provides a means for seeking court intervention to assess costs and other relief related to a juvenile's continued stay in an emergency room or hospital when the requirements of G.S. 122C-142.2 are not met.

Section 11 would make conforming changes in accord with changes made in Section 15 of this bill, as well as the following changes:

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- Remove the standing of the Department of Health and Human Services (DHHS) to file a motion in the matter, but authorize DHHS the opportunity to be heard in any motion as the supervising principal of the county DSS.
- Authorize evidence of a hospital's failure to cooperate in a juvenile's assessment in defense of alleged violations by DSS or a LME/MCO or prepaid health plan (LME/MCO).
- Require a hearing on the motion within five business days of filing.
- Require the court make findings as to whether the juvenile met hospital discharge criteria instead of whether there was no medical necessity for the juvenile to remain in the hospital. The date on which the court determined the juvenile met hospital discharge criteria would be used to determine that date after which payment of hospital charges and property damage would be required from the responsible party.
- Dismissal of a motion due to discharge of the juvenile from the hospital would not preclude a separate cause of action for monetary damages.

Section 11 would become effective when it becomes law.

Section 12.(a)-Review and permanency planning hearings.

Section 12.(a) would clarify that when the juvenile is residing with a caretaker when the petition is filed, a permanency planning hearing is required instead of a review hearing. A parent, guardian, or custodian would be required to complete court-ordered services within 12 months of the filing of the petition, demonstrate the circumstances leading to the department's involvement have been resolved to the court's satisfaction, and that a safe home can be provided for the juvenile. When this can be shown, the court would be required to terminate jurisdiction absent extraordinary circumstances. This section would clarify the purposes of review and permanency planning hearings.

Section 12.(b)-Permanent plans; concurrent planning.

Section 12.(b) would require that the department file a motion with the court when a caretaker objects to a change in placement of a child when the following requirements are met:

- The juvenile is in the custody of the department of social services.
- The primary permanent plan is adoption.
- The current caretaker has notified the department of their desire to adopt the child.

The hearing on the motion must be held within ten days of filing the motion.

The section would not apply in cases where there are allegations of abuse or neglect of the juvenile while under the care and supervision of the caretaker.

The court would be inquired to inform the guardian or custodian of their right to pursue child support after the order awarding guardianship or custody has been entered.

Section 13-Child support; termination of parental rights.

Section 13(a) would repeal G.S. 7B-904(d) which addresses the payment of child support when legal custody of a minor is vested with someone other than the child's parent(s).

Section 13(b) would clarify that the standard of proof is clear and convincing evidence at an adjudicatory hearing in a termination of parental rights action.

Section 13(c) would amend the grounds for terminating parental rights as follows:

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- For purposes of terminating parental rights, neglect would include a biological or possible biological father of a child born out of wedlock who within three months of the child's birth or within 30 days of the discovery that the mother committed fraud in concealing her pregnancy or the child's birth, whichever is greater in time, failed to make efforts to acknowledge or establish paternity of the child and failed to form or to attempt to form a relationship with the child.
- By repealing G.S. 7B-1111(a)(3-4) which address failure to pay child support as a ground for terminating parental rights.
- By repealing G.S. 7B-1111(a)(5) which addresses failure of a father to take certain steps to establish paternity, legitimate, or support a child born out of wedlock.

Section 13(d) would allow a parent whose parental rights have been terminated to be included in the list of permissible individuals who may file a petition to reinstate parental rights.

Section 13 would become effective when it becomes law and would apply to any action filed or pending on that date.

Section 14-Consent to Adoption

Section 14 would amend three of the six scenarios where the consent of man who may or may not be child's father is required as follows:

- Any male who legitimates the child prior to filing the adoption petition or within three months of the child's birth, whichever is greater.
- Prior to the greater of the filing of the adoption petition, within three months of the child's birth, or within 30 days of discovering that the mother committed fraud in identifying the father or withheld the known identify of the father, or, if applicable, prior to the date of the prebirth determination of right to consent hearing, the man has acknowledged paternity of the child and is (i) obligated to support the child under a written agreement or court order, (ii) has provided or attempted to provide support in accordance with his financial means to the mother, the child, or both during and after pregnancy and regularly visited or communicated with the mother, the child, or both, during and after the pregnancy; or, (iii) before the child's placement for adoption or the mother's relinquishment, has married or attempted to marry the mother by a marriage solemnized in apparent compliance with law, although the marriage is or could be held invalid.
- Any male who receives the child into his home and openly holds the child out as his biological child prior to the adoption petition being filed or within three months of the child's birth.

This section would become effective when it becomes law.

Section 15 –Mental Health Treatment, Assessment, and Placement Following Hospitalization for Juvenile in DSS Custody. – G.S. 122C-142.2 provides a process for assessment of a juvenile in the custody of the department of social services (DSS) when the juvenile presents to a hospital emergency department for mental health treatment. The process includes involvement of the LME/MCO or prepaid health plan (LME/MCO) to determine appropriate placement within 24 hours of a determination that the juvenile should not remain in the hospital and no appropriate placement is immediately available, and referral to a State-level Rapid Response Team for assistance when an appropriate placement cannot be found or agreed upon.

Section 15 would make technical, clarifying, and organizational changes to G.S. 122C-142.2, as well as the following substantive changes:

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- DSS would be required to contact the LME/MCO within 24 hours of the juvenile's stay in the hospital to request an assessment.
- The LME/MCO would arrange an assessment within 48 hours of the notice from DSS, with cooperation from the hospital.
- The hospital would be required to keep the juvenile until either hospital discharge criteria was met, the assessment recommended placement was available, or consent was given for release by an individual authorized to consent to treatment.
- The DSS director or the LME/MCO would be authorized to contact the Rapid Response Team (RRT) to resolve differences in assessment recommendations, for delays in accessing behavioral health assessments, or when there was an unauthorized release of the juvenile from the hospital.
- The RRT would evaluate and determine if a response were necessary. If so, the RRT would develop a plan with the LME/MCO, including plan monitoring. The private RRT meetings would be limited to members of the RRT and invited members of the relevant DSS and LME/MCO. Confidential information could be shared with the RRT and would not be a public record.
- LME/MCOs would notify the Division of Social Services of the Department of Health and Human Services monthly of the number of DSS notifications of assessments, length of time for juvenile placements, and number of recommendations at each level of care.

This section would become effective when it becomes law.

Section 16-Christal's Law

Except where prohibited by federal law and notwithstanding other applicable provisions of State law, Section 16 would allow the Secretary:

- To access records and information related to any open or closed child welfare case of a county department of social services.
- To inquire into and review any county social work practice or the legal representation of any county or regional department of social services as related to the delivery of services to a particular or all child welfare cases.
- To exercise this authority as regular monitoring of the performance of a department or in response to a complaint received by the Department regarding either (i) a juvenile who has been the subject of a report of abuse, neglect, or dependency within the previous 12 months, or (ii) when the juvenile or the juvenile's family was a recipient of child welfare services within the previous 12 months.

The Secretary would be required to notify the county board of commissioners, the county manager, and the board of social services if a violation of State law or rules is found and direct the director of the social services to remedy the violation by taking immediate action in a manner prescribed by the Secretary.

This section would become effective when it becomes law.

Section 17-Post-adoption contact agreements.

Section 17(a) would amend Chapter 48 to allow post-adoption agreements which would be defined as a voluntary written agreement that is approved by a district court judge and is incorporated into a district court order that allows specifically described post-adoption contact including visitation, information sharing, and communication such as telephone calls, electronic communication, and exchange of letters. Failure of an adoptive parent, former parent, or the adoptee to follow the post-adoption agreement and order would not be grounds to set aside the adoption. A voluntary mediation program would be established

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which prospective adoptive parents and a parent(s) of the minor to be adopted could utilize to reach a voluntarily mediated post-adoption contact agreement. Parties would not be entitled to court appointed counsel. A court-approved voluntarily mediated agreement would be modifiable, enforceable, or could be discontinued upon request for a party to the agreement and determination by the court. The agreement would not abrogate the rights of the adoptive parents to make decisions for the child except as provided for in the agreement.

Post-adoption contact agreements are currently unenforceable in North Carolina.

Section 17 would also make conforming changes to various statutes to incorporate references to the post-adoption contact agreement where applicable.

Section 18-Responsible individuals list (RIL).

Notwithstanding other time requirements, Section 18(a) would allow a district court to review a petition filed by an individual placed on the RIL if less than one year has passed from placement on the RIL and if the review serves the interest of justice or for other good cause. The current law allows this review at any time and if the review serves the interest of justice or for extraordinary circumstances.

Section 18(b) would create a procedure for requesting an expungement of inclusion on the RIL. An individual placed on the RIL would be allowed to file a petition for expungement of their name from the RIL when the following conditions are met:

- At least one year has passed since the individual was placed on the RIL without judicial review, though eligible for review.
- At least three years have passed since placement on the RIL after judicial review.
- At least five years have passed since an individual convicted of a crime arising out of the same incident that placed the individual on the RIL completed their sentence, complied with all post-release conditions, and was not subsequently convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, North Carolina, or any other state.
 - Exceptions to this provision are for convictions for sexual abuse of a child, human trafficking, or a child fatality related to abuse or neglect.

In determining whether to grant the petition, the court must consider:

- The nature of the abuse or serious neglect.
- The amount of time since placement on the RIL.
- Any activities reflecting upon the individual's changed behavior or circumstances such as therapy, employment, or education.
- Any other circumstance relative to the petition being granted.

The court may grant the petition upon a finding by clear and convincing evidence that there is little likelihood that the individual will be a future perpetrator.

EFFECTIVE DATE: Except as otherwise provided, this act would become effective October 1, 2023 and would apply to all actions filed or pending on or after that date.