



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

2023-2024 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	April 26, 2023
Introduced by:	Sens. Krawiec, Jarvis, Batch	Prepared by:	Debbie Griffiths
Analysis of:	Third Edition		Staff Attorney

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

- *Amending the definition of "Abused juveniles" to include a juvenile who is a victim of an unlawful sale, surrender, or purchase of a minor or whose parent, custodian, guardian, custodian, or caretaker commits, permits, or encourages the commission of a sexually violent act by, with, or upon the juvenile.*
- *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.*
- *Substituting the prosecutor with the Department of Health and Human Services as the investigator of a decision by the director of the county department of social services not to file a petition alleging abuse, neglect, or dependency when a request to review the director's decision has been made.*
- *Establishing a procedure for addressing conflicts of interest when a report alleging abuse, neglect, or dependency is made.*
- *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 a petition to be provided to a district court judge or delegated magistrate by any secure means.*
- *Allowing the appointment of co-guardians.*
- *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 and inclusion of a parent whose rights have been terminated as an additional authorized individual to request reinstatement of his or her 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*

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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.*
- *Establishing a procedure for expungement from the responsible individuals list if certain requirements are met.*
- *Removing the requirement for payment of child support to the State when a child is in the custody of someone other than the parent(s).*
- *Various technical and conforming changes.*

CURRENT LAW: Current law is underlined throughout the document.

BILL ANALYSIS:

Section 1. G.S. 7B-101-Definitions

G.S. 7B-101 would amend the definition of abused juvenile, add a definition for legal counsel for the department, and delete the definition of prosecutor.

Section 2. G.S. 7B-302, 7B-303, and 7B-403.

Currently, G.S. 7B-302, 7B-303, and 7B-403 do not specify who prepares the petition, references the standard of proof as clear, cogent, and convincing evidence, and provide that the prosecutor investigates a decision by the director of the county department of social services to not file a petition alleging abuse, neglect, or dependency when a request to review the director's decision has been made.

Section 2 would amend those statutes to:

- Clarify that a petition alleging abuse, neglect, or dependency of a minor must be prepared by legal counsel for the department and it must be signed by the director of the department.
- Clarify that the standard of proof is clear and convincing evidence.
- Substitute the Department of Health and Human Services for the prosecutor to conduct an investigation when the director of the county department of social services does not file a petition when a request for that review has been made.

Section 2 would become effective January 1, 2024.

Section 3. G.S. 7B-302.1-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.

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- 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. G.S. 7B-401.1-Parties

Currently, 7B-401.1 includes a subsection addressing foster parents intervening in the action and a separate subsection addressing intervention in the action.

Section 4 would restructure G.S. 7B-401.1 to include foster parents in the procedure for intervention. Section 4 would also allow the court to remove a guardian, custodian, or caretaker as a party after adjudication, if they are a party, and their continuation as a party is not necessary to meet the needs of the juvenile and it is in the juvenile's best interest.

Section 5. G.S. 7B-502-Authority to issue custody orders; delegation.

G.S. 7B-502 does not specifically state when the district court judge can enter a nonsecure custody order and it allows a district court judge to delegate their authority to persons other than the district court judge.

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 6. G.S. 7B-506-Hearing to determine need for continued nonsecure custody.

Section 6 makes conforming changes related to a delegated magistrate.

Section 7. G.S. 7B-508-Telephonic communication authorized.

Currently, G.S. 7B-508 allows certain orders, notices, communications, and authorizations may be made by telephone when other methods are not practical.

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

Section 8. G.S. 7B-600-Appointment of Guardian.

Currently, G.S. 7B-600 allows the appointment of a single guardian.

Section 8 would allow the appointment of co-guardians and establish a procedure for addressing the co-guardianship if the relationship between the co-guardians dissolves.

Section 9.(a). G.S. 7B-602-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 is not entitled to a guardian ad litem under Rule 17 of the North Carolina Rules of Civil Procedure solely because they are an unemancipated minor.

Section 9.(b). G.S. 7B-604-Legal counsel for the department.

Section 9(b) would create a new section which 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.

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

Section 10. G.S. 7B-903.1-Juvenile placed in custody of a department of social services.

Section 10 would clarify that it is not required for unsupervised visitations with the parent to occur before the custody is returned to a parent.

Section 11. G.S. 7B-903.2-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 the following changes:

- 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 hearing on 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 service or the next scheduled juvenile court session, whichever is later.
- 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.
- Conforming changes.

Section 12.(a). G.S. 7B-906.1-Review and permanency planning hearings.

7B-906.1 provides that a review hearing is conducted when custody has not been removed from a parent, guardian, caretaker, or custodian and that a permanency planning hearing is held when custody has been removed from a parent, guardian, or custodian.

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. For review hearings, Section 12.(a) would establish the circumstances under which a child may be removed from their current placement and that when the parent, guardian, or custodian successfully completes court ordered services and the child is residing in the home, the court shall terminate jurisdiction absent extraordinary circumstances. 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. This section would clarify the purposes of review and permanency planning hearings.

Section 12.(b). G.S. 7B-906.2-Permanent plans; concurrent planning.

Section 12.(b) would create a procedure to be followed when a caretaker objects to a change in placement. To be eligible to object, the caretaker would be required to be (1) a relative caretaker or (2) a non-relative when there are no relatives willing and able to provide proper care and supervision of the child in a safe

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home for 12 consecutive months. If a caretaker objects to the removal, the department would be required to file a motion with the court 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 30 days of filing the motion. Section 12.(b) also establishes the requirements for hearing notice and other rules and procedures for the hearing. The caretaker would be allowed to address the court, present evidence, cross-examine witnesses, and be represented by an attorney at the caretaker's expense. Participation in this hearing would not make the caretaker a party to the action.

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 required to inform the guardian or custodian of their right to pursue child support when the permanent plan of guardianship or custody has been achieved.

Section 13.(a). G.S. 7B-904-Authority over parents of juvenile adjudicated as abused, neglected, or dependent.

Currently, G.S. 7B-904(d) requires that a parent pay a reasonable sum in child support when legal custody of the child is vested in someone other than a parent if the court finds the parent is able to do so.

Section 13(a) would eliminate the requirement for a parent to pay child support when legal custody of their child is placed with someone other than the parent and would require the county department of social services to pay for the support of the child.

Section 13.(b). G.S. 7B-1109-Adjudicatory hearing on termination.

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). G.S. 7B-1111-Grounds for terminating parental rights.

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

- 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). G.S. 7B-1114-Reinstatement of parental rights.

Currently, G.S. 7B-1114 allows only the child whose parent's rights have been terminated, the guardian ad litem attorney, or a department of social services with custody of the child to file a motion to reinstate a parent's rights. G.S. 7B-1114(n) allows a parent whose rights are reinstated under this statute to not be

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liable for child support or costs for any services provided for the child from the order terminating parental rights until the order reinstating parental rights.

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 and clarify that parent is not entitled to court appointed counsel but may retain private counsel of his or her choosing. It would also repeal 7B-1114(n).

Section 14. G.S. 48-3-601-Person's whose consent to adoption is required.

Section 14 would amend three of the six scenarios to make conforming changes where the consent of a 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.

Section 15. G.S. 122C-142.2-Presentation at a hospital for mental health treatment; assessment and placement upon discharge. – 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:

- 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.

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- The RRT would evaluate and determine if a response were necessary. If so, the RRT would develop a plan with DSS and 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, or other providers invited by the RRT. 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.

Section 16. G.S. 108A-74-Counties and regional social services departments required to enter into annual written agreement for all social services programs other than medical assistance; local department failure to comply with written agreement or applicable law; corrective action; State intervention in or control of service delivery.

This section would be entitled "Christal's Law".

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

- Access records and information related to any open or closed child welfare case of a county department of social services.
- 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.
- 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.

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

A director who fails to comply with a directive of the Department made pursuant to this section would be acting contrary to the duties and responsibilities of the director set forth in G.S. 108A-14(a)(5) and would fall outside the scope of the county department's agency relationship with the Department.

Section 17.(a). Chapter 48 of the General Statutes-Adoptions.

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

Section 17(a) would amend Chapter 48 to allow post-adoption agreements in cases under Chapter 7B of the General Statutes, make conforming changes related to the post-adoption agreements, and establish the procedure for entering the agreement and obtaining court approval, modifying the agreement, enforcing the agreement, and terminating the agreement. Post-adoption contact agreement and order would be defined as a voluntary written agreement that is approved by a district court judge and incorporated into a district court order allowing specifically described post-adoption contact including visitation, information sharing, and communication such as telephone calls, electronic communication, and exchange of letters. A post-adoption contact agreement and order would be void if a relinquishment is revoked, rescinded, set aside, or voided as provided for in the statutes. Jurisdiction and venue for approval of the voluntarily mediated agreement is the district court having jurisdiction Failure of an adoptive parent, former parent,

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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 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. Any order entered under this section would not be appealable.

Section 18.(a). G.S. 7B-323(e)-Petition for judicial review; district court.

The current law allows the review of an individual's placement on the Responsible Individual List (RIL) at any time and if the review serves the interest of justice or for extraordinary circumstances.

Notwithstanding other time requirements, Section 18(a) would allow a district court to review a petition filed by an individual placed on the Responsible Individual List (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.

Section 18.(b). G.S. 7B-325-Petition for expungement.

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.

Section 19.(a). G.S. 7B-305-Request for review by Department of Health and Human Services.

Currently, G.S. 7B-305 provides that a person requesting review of a director's decision to not file a petition alleging the abuse, neglect, or dependency of a juvenile make the request to the prosecutor.

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Section 19.(a) would make conforming changes substituting the Department of Health and Human Services for the prosecutor and would require that the request for review be made through the complaint line at the Department.

Section 19.(b). G.S. 7B-306-Review by Department of Health and Human Services.

Currently, G.S. 7B-306 requires the prosecutor to conduct the investigation after receiving a request for review of the director's decision, the requirements for the investigation, and the actions which may be taken.

Section 19.(b) would make conforming changes substituting the Department of Health and Human Services for the prosecutor, clarify that the review would be conducted if the request is received in accordance with G.S. 7B-305, and would allow the Department to take specific actions to provide protective services in addition to the other actions available under the statute.

Section 19.(c). G.S. 7B-308-Authority of medical professionals in abuse cases.

Section 19.(c) would make conforming changes substituting the Department of Health and Human Services for the prosecutor.

Section 20.(a). G.S. 50-13.10-Past due child support vested; not subject to retroactive modification; entitled to full faith and credit.

Currently, G.S. 50-13.10 provides that a child support payment, or any portion thereof, is not past due and no arrearage accrues (1) from and after the date of the child's death, (2) from and after the date of the supporting party's death, (3) during any period when the child is living with the supporting party pursuant to a court order or voluntary agreement between the parties, and (4) any period when the supporting party is incarcerated, is not on work release and does not have other resources to pay child support.

Section 20.(a) would add foster care assistance owed to the State by the supporting party during any period when the child is placed in the custody of a department of social services to the list above.

Section 20.(b)-G.S. 110-135.1-Foster care assistance payments.

Section 20.(b) would add a new section creating the procedure to address foster care assistance payments. Upon filing a motion in the cause by either party showing that the child has been placed in foster care, the following would be required:

- The obligor's child support, if owed to the State, would be suspended during any time the child is placed in the custody of a county department of social services.
- Any foster care assistance payments owed to the State for past foster care assistance payments would be reduced to zero.

This new provision would not create a debt to be owed to the obligor.

Section 20 would become effective when it becomes law and apply to any action filed or pending on or after that date.

Section 21.(a), (b), and (c). Medicaid eligibility for children in DSS custody.

Section 21.(a) would allow DHHS to seek approval from CMS to allow a parent or caretaker relative to retain Medicaid eligibility when the department of social services has been granted custody of that child under federally recognized tribal codes, and a court has not made certain findings, including that the caretaker relative's custody is an inappropriate permanent plan for the juvenile.

Section 21.(b) would codify the CMS approval.

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Section 21.(c) would provide that if approval by CMS for the change codified in Section 21.(b) is not granted within 90 days of a joint resolution adjourning the 2023 General Assembly sine die the codification would expire.

EFFECTIVE DATE: Sections 1, 3, 4, 5, 6, 7, 8, 10, 12, and 19 of this act would become effective October 1, 2023 and would apply to all actions filed or pending on or after that date. Sections 17 and 18 would become effective July 1, 2024 and apply to all actions filed and pending on or after that date. Except as otherwise provided, the act would become effective when it becomes law.