

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 423
Health Care Committee Substitute Adopted 4/15/15

Short Title: Foster Care Family Act.

(Public)

Sponsors:

Referred to:

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO ALIGN STATE LAW WITH FEDERAL LAW BY PROVIDING FOR THE SUPPORT OF HEALTHY DEVELOPMENT OF YOUTH IN FOSTER CARE THROUGH IMPLEMENTATION OF A REASONABLE AND PRUDENT PARENT STANDARD FOR DECISIONS MADE BY A FOSTER PARENT OR A DESIGNATED OFFICIAL FOR A CHILD CARE INSTITUTION AND REVISING TO THE JUVENILE CODE UNDER THE LAWS PERTAINING TO ABUSE, NEGLECT, AND DEPENDENCY REGARDING JUVENILE PLACEMENT; TO PROVIDE LIABILITY INSURANCE FOR FOSTER PARENTS; TO REDUCE BARRIERS TO OBTAINING A DRIVERS LICENSE FOR FOSTER CHILDREN BY PROVIDING THAT MINORS AGED SIXTEEN AND OVER IN THE CUSTODY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES ARE COMPETENT TO CONTRACT FOR AUTOMOBILE INSURANCE, BY SPECIFYING PERSONS OTHER THAN THE FOSTER PARENT WHO MAY SIGN FOR A FOSTER CHILD TO OBTAIN A LEARNER'S PERMIT OR PROVISIONAL DRIVERS LICENSE, AND BY CLARIFYING THAT FOSTER PARENTS DO NOT VIOLATE FINANCIAL RESPONSIBILITY REQUIREMENTS BY ALLOWING FOSTER CHILDREN WITH THEIR OWN INSURANCE COVERAGE TO OPERATE A VEHICLE OWNED BY THE FOSTER PARENT; AND TO REQUIRE THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO STUDY A MEDICAID WAIVER FOR CHILDREN WITH SERIOUS EMOTIONAL DISTURBANCE.

The General Assembly of North Carolina enacts:

PART I. SHORT TITLE

SECTION 1.1. This act shall be known and may be cited as the "Foster Care Family Act."

PART II. REASONABLE AND PRUDENT PARENTING STANDARD IN FOSTER CARE

SECTION 2.1. Part 1 of Article 1A of Chapter 131D of the General Statutes is amended by adding a new section to read:

"§ 131D-10.2A. Reasonable and prudent parenting standard.

(a) The reasonable and prudent parenting standard is characterized by careful and sensible parental decisions that maintain a child's health, safety, and best interests while encouraging the child's emotional and developmental growth.



1 **(b)** Every child care institution shall designate an on-site official who is authorized to
2 apply the reasonable and prudent parenting standard pursuant to this section.

3 **(c)** A caregiver, including the child's foster parent, whether the child is in a family
4 foster home or a therapeutic foster home, or the designated official at a child care institution
5 where the child is placed, or the Department of Health and Human Services must use the
6 reasonable and prudent parenting standard when determining whether to allow a child in foster
7 care to participate in extracurricular, enrichment, and social activities.

8 **(d)** A caregiver, including the child's foster parent, whether the child is in a family
9 foster home or a therapeutic foster home, or the designated official at a child care institution
10 where the child is placed, or the county department of social services, or the Department of
11 Health and Human Services with custody of or placement authority over a child in foster care
12 shall not be held liable for an act or omission of the child if the caregiver or county department
13 of social services is acting in accordance with the reasonable and prudent parenting standard
14 under this section.

15 **(e)** Unless otherwise ordered by a court with jurisdiction pursuant to G.S. 7B-200, a
16 caregiver, including the child's foster parent, whether the child is in a family foster home or a
17 therapeutic foster home, exercising the reasonable and prudent parenting standard has the
18 authority to provide or withhold permission, without prior approval of the court or a county
19 department of social services, allowing a child in foster care, in the custody of a county
20 department of social services or under the placement authority of a county department of social
21 services through a voluntary placement agreement, to participate in normal childhood activities.
22 Normal childhood activities shall include, but are not limited to, extracurricular, enrichment,
23 and social activities, and may include overnight activities outside the direct supervision of the
24 caregiver for periods of over 24 hours and up to 72 hours.

25 **(f)** The caregiver, including the child's foster parent, whether the child is in a family
26 foster home or a therapeutic foster home, or the designated official at a child care institution
27 where the child is placed, or the county department of social services, or the Department of
28 Health and Human Services, shall not be liable for injuries to the child that occur as a result of
29 the reasonable and prudent parenting standard. The caregiver, including the child's foster
30 parent, whether the child is in a family foster home or a therapeutic foster home, or the
31 designated official at a child care institution where the child is placed, or the county department
32 of social services or the Department of Health and Human Services, shall be liable for any
33 action or inaction of gross negligence, willful and wanton conduct, or intentional wrongdoing
34 that results in the injury to the child."

35 **SECTION 2.2.** G.S. 7B-505(b) reads as rewritten:

36 **"(b)** The court shall order the Department to make diligent efforts to notify relatives and
37 any custodial parents of the juvenile's siblings that the juvenile is in nonsecure custody and of
38 any hearings scheduled to occur pursuant to G.S. 7B-506, unless the court finds such
39 notification would be contrary to the best interests of the juvenile. In placing a juvenile in
40 nonsecure custody under this section, the court shall first consider whether a relative of the
41 juvenile is willing and able to provide proper care and supervision of the juvenile in a safe
42 home. If the court finds that the relative is willing and able to provide proper care and
43 supervision in a safe home, then the court shall order placement of the juvenile with the relative
44 unless the court finds that placement with the relative would be contrary to the best interests of
45 the juvenile."

46 **SECTION 2.3.** G.S. 7B-800.1(a)(4) reads as rewritten:

47 **"(a)** Prior to the adjudicatory hearing, the court shall consider the following:

48 ...

49 **(4)** Whether relatives or parents with custody of a sibling of the juvenile have
50 been identified and notified as potential resources for placement or support."

51 **SECTION 2.4.** G.S. 7B-901 reads as rewritten:

1 **"§ 7B-901. Dispositional hearing.**

2 The dispositional hearing shall take place immediately following the adjudicatory hearing
3 and shall be concluded within 30 days of the conclusion of the adjudicatory hearing. The
4 dispositional hearing may be informal and the court may consider written reports or other
5 evidence concerning the needs of the juvenile. The juvenile and the juvenile's parent, guardian,
6 or custodian shall have the right to present evidence, and they may advise the court concerning
7 the disposition they believe to be in the best interests of the juvenile. The court may consider
8 any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, including
9 testimony or evidence from any person who is not a party, that the court finds to be relevant,
10 reliable, and necessary to determine the needs of the juvenile and the most appropriate
11 disposition. The court may exclude the public from the hearing unless the juvenile moves that
12 the hearing be open, which motion shall be granted.

13 At the dispositional hearing, the court shall inquire as to the identity and location of any
14 missing parent and whether paternity is at issue. The court shall include findings of the efforts
15 undertaken to locate the missing parent and to serve that parent and efforts undertaken to
16 establish paternity when paternity is an issue. The order may provide for specific efforts in
17 determining the identity and location of any missing parent and specific efforts in establishing
18 paternity. The court shall also inquire about efforts made to identify and notify ~~relatives~~
19 relatives, including parents with custody of a sibling of the juvenile, as potential resources for
20 placement or support."

21 **SECTION 2.5.** Article 9 of Chapter 7B of the General Statutes is amended by
22 adding the following new sections to read:

23 **"§ 7B-903.1. Juvenile placed in custody of a county department of social services.**

24 (a) To the extent authorized by federal law, a county department of social services with
25 custody of a juvenile is authorized to make decisions about matters not addressed in this section
26 that are generally made by a juvenile's custodian, including, but not limited to, educational
27 decisions and consenting to the sharing of the juvenile's information. The county department of
28 social services may delegate any part of this authority to the juvenile's parent, foster parent, or
29 another individual.

30 (b) When a juvenile is in the custody or placement responsibility of a county
31 department of social services, the placement provider may, in accordance with
32 G.S. 131D-10.2A, provide or withhold permission, without prior approval of the court or
33 county department of social services, allowing a juvenile to participate in normal childhood
34 activities. If such authorization is not in the juvenile's best interest, the court shall set forth
35 alternative parameters for approving normal childhood activities.

36 **"§ 7B-912. Juveniles 14 years of age and older; Another Planned Permanent Living**
37 **Arrangement.**

38 (a) In addition to the permanency planning requirements under G.S. 7B-906.1, at every
39 permanency planning hearing for a juvenile in the custody of a county department of social
40 services who has attained the age of 14 years, the court shall inquire and make written findings
41 regarding each of the following:

- 42 (1) The services provided to assist the juvenile in making a transition to
43 adulthood.
44 (2) The steps the county department of social services is taking to ensure that
45 the foster family or other licensed placement provider follows the reasonable
46 and prudent parenting standard as provided in G.S. 131D-10.2A.
47 (3) Whether the juvenile has regular opportunities to engage in age- or
48 developmentally appropriate activities.

49 (b) At or before the last scheduled permanency planning hearing, but at least 90 days
50 before a juvenile attains 18 years of age, the court shall (i) inquire as to whether the juvenile
51 has a copy of the juvenile's birth certificate, Social Security card, health insurance information,

1 drivers license or other identification card, and any educational or medical records the juvenile
2 requests and (ii) determine the person or entity that should assist the juvenile in obtaining these
3 documents before the juvenile attains the age of 18 years.

4 (c) If the court finds each of the following conditions applies, the court shall approve
5 Another Planned Permanent Living Arrangement (APPLA) as the juvenile's primary permanent
6 plan:

7 (1) The juvenile is 16 or 17 years old.

8 (2) The county department of social services has made diligent efforts to place
9 the juvenile permanently with a parent or relative or in a guardianship or
10 adoptive placement.

11 (3) Compelling reasons exist that it is not in the best interest of the juvenile to
12 be placed permanently with a parent or relative or in a guardianship or
13 adoptive placement.

14 (4) APPLA is the best permanency plan for the juvenile.

15 (d) If the court approves APPLA as the juvenile's permanent plan, the court shall, after
16 questioning the juvenile, make written findings addressing the juvenile's desired permanency
17 outcome."

18 19 **PART III. LIABILITY INSURANCE FOR FOSTER PARENTS**

20 **SECTION 3.1.** Article 36 of Chapter 58 of the General Statutes is amended by
21 adding a new section to read:

22 **"§ 58-36-43. Development of policy form or endorsement for personal liability insurance**
23 **for foster parents.**

24 (a) The Rate Bureau shall develop an optional policy form or endorsement to be filed
25 with the Commissioner for approval no later than May 1, 2016, that provides liability insurance
26 for foster parents licensed under Article 1A of Chapter 131D of the General Statutes to provide
27 foster care in a family foster home or therapeutic foster home. The policy form or endorsement
28 shall provide coverage for acts or omissions of the foster parent while the parent is acting in his
29 or her capacity as a foster parent in a licensed family foster home or therapeutic foster home
30 licensed under Article 1A of Chapter 131D of the General Statutes.

31 (b) Nothing in this section is intended to require that the liability insurance policy or
32 endorsement required by this section cover an act or omission that results from any action or
33 inaction of gross negligence, willful and wanton conduct, or intentional wrongdoing that results
34 in injury to the child."

35 36 **PART IV. REDUCE DRIVING BARRIERS FOR FOSTER CHILDREN**

37 **SECTION 4.1.** Article 1 of Chapter 48A of the General Statutes is amended by
38 adding a new section to read:

39 **"§ 48A-4. Certain minors competent to contract.**

40 A minor who is 16 years of age or older and who is in the legal custody of the Department
41 of Health and Human Services, Division of Social Services, shall be qualified and competent to
42 contract for the purchase of an automobile insurance policy with the consent of the court with
43 continuing jurisdiction over the minor's placement under G.S. 7B-1000(b). The minor shall be
44 responsible for paying the costs of the insurance premiums and shall be liable for damages
45 caused by the minor's negligent operation of a motor vehicle. No State or local government
46 agency, foster parent, or entity providing services to the minor under contract or at the direction
47 of a State or local government agency shall be responsible for paying any insurance premiums
48 or liable for damages of any kind as a result of the operation of a motor vehicle by the minor."

49 **SECTION 4.2.** G.S. 20-11(i) reads as rewritten:

50 "(i) Application. — An application for a permit or license authorized by this section
51 must be signed by both the applicant and another person. That person must be:

- 1 (1) The applicant's parent or guardian;
- 2 (2) A person approved by the applicant's parent or guardian; or
- 3 (3) A person approved by the Division.
- 4 (4) With respect to minors in the legal custody of the Department of Health and
- 5 Human Services, Division of Social Services, any of the following:
- 6 a. A guardian ad litem or attorney advocate appointed to advocate for
- 7 the minor.
- 8 b. A case manager or other type of caseworker assigned to work with
- 9 the minor.
- 10 c. If no person listed in sub-subdivision a. or b. of this subdivision is
- 11 available, the court with continuing jurisdiction over the minor's
- 12 placement under G.S. 7B-1000(b)."

13 **SECTION 4.3.** G.S. 20-309 is amended by adding a new subsection to read:

14 "(a2) The owner of a motor vehicle who is a foster parent providing foster care to a
15 person between the ages of 16 and 21 shall not violate the requirements of this Article by
16 allowing the motor vehicle to be operated by the person if the person is covered by a
17 non-owner motor vehicle insurance policy issued by the North Carolina Reinsurance Facility as
18 authorized by G.S. 58-37-35(g)(13). Nothing in this section is intended to prevent a foster
19 parent from including a foster child on the parent's own motor vehicle insurance policy."

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21 **PART V. STUDY MEDICAID WAIVER FOR CHILDREN WITH SERIOUS**
22 **EMOTIONAL DISTURBANCE (SED)**

23 **SECTION 5.1.(a)** The Department of Health and Human Services, Division of
24 Medical Assistance, shall design and draft, but not submit, a 1915(c) Medicaid waiver to serve
25 children with Serious Emotional Disturbance (SED) in home and community-based settings.
26 The Department may submit drafts of the waiver to the Centers for Medicare and Medicaid
27 Services (CMS) to solicit feedback but shall not submit the waiver for CMS approval until
28 authorized by the General Assembly.

29 **SECTION 5.1.(b)** The Department shall report the draft waiver, other findings, and
30 any other options or recommendations to best serve children with SED to the Joint Legislative
31 Oversight Committee on Health and Human Services by December 1, 2015. Specifically, the
32 report shall provide an in-depth analysis of the cost per slot, including an analysis of the
33 estimated number of waiver recipients who would be transitioned from a facility to a home and
34 community-based setting and the estimated number of waiver recipients who would avoid
35 placement in a facility.

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37 **PART VI. EFFECTIVE DATE**

38 **SECTION 6.1.** Parts 2 and 4 of this act become effective October 1, 2015. The
39 remainder of this act is effective when it becomes law.