

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 182
Judiciary II Committee Substitute Adopted 5/16/91

Short Title: Parental Control/Appeals/Pro Se.

(Public)

Sponsors:

Referred to:

February 25, 1991

A BILL TO BE ENTITLED

1 AN ACT RECOMMENDED BY THE JUVENILE STUDY COMMISSION TO
2 ELIMINATE APPEALS TO SUPERIOR COURT UNDER THE PARENTAL
3 CONTROL ACT AND TO FACILITATE PRO SE REPRESENTATION BY
4 PARENTS.
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6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 110-44.4 reads as rewritten:

8 "**§ 110-44.4. Enforcement.**

9 The provisions of this Article may be enforced by the parent, guardian, or person
10 standing **in loco parentis** to the child by filing a civil action in the district court of the
11 county where the child can be ~~found~~ found or the county of the plaintiff's residence.
12 Upon the institution of such action by a verified complaint, alleging that the defendant
13 child has left home or has left the place where he has been residing and refuses to return
14 and comply with the direction and control of the plaintiff, the court may issue an order
15 directing the child personally to appear before the court at a specified time to be heard
16 in answer to the allegations of the plaintiff and to comply with further orders of the
17 court. Such orders shall be served by the sheriff upon the child and upon any other
18 person named as a party defendant in such action. At the time of the issuance of the
19 order directing the child to appear the court may in the same order, or by separate order,
20 order the sheriff to enter any house, building, structure or conveyance for the purpose of
21 searching for said child and serving said order and for the purpose of taking custody of
22 the person of said child in order to bring said child before the court. Any order issued at
23 said hearing shall be treated as a mandatory injunction and shall remain in full force and

1 effect until the child reaches the age of 18, or until further orders of the court. Within 30
2 days after the hearing on the original order, the child, or anyone acting in his behalf,
3 may file a verified answer to the complaint. Upon the filing of an answer by or on
4 behalf of said child, any district court judge holding court in the county or district court
5 district as defined in G.S. 7A-133 where said action was instituted shall have
6 jurisdiction to hear the matter, without a jury, and to make findings of fact, conclusions
7 of law, and render judgment thereon. ~~Any aggrieved party may within the time allowed for~~
8 ~~appeal of civil actions generally appeal to the superior court where trial shall be had without a~~
9 ~~jury.~~ Appeals from the superior district court to the Court of Appeals shall be allowed as
10 in civil actions generally. The district judge issuing the original order or the district
11 judge hearing the matter after answer has been filed shall also have authority to order
12 that any person named defendant in the order or judgment shall not harbor, keep, or
13 allow the defendant child to remain on said person's premises or in said person's home.
14 Failure of any defendant to comply with the terms of said order or judgment shall be
15 punishable as for contempt."

16 Sec. 2. Article 2A of Chapter 110 of the General Statutes is amended by
17 adding a new section to read:

18 "**§ 110-44.5. Pro Se representation by parents.**

19 (a) **Pro Se Procedures.** – Any aggrieved party entitled to relief under this Article
20 may file a civil action and proceed **pro se**, without the assistance of legal counsel. If the
21 party is proceeding **pro se** and does not request an **ex parte** hearing, the clerk shall set a
22 date for hearing and issue a notice of hearing and shall effect service of the summons,
23 complaint, notice, and other papers through the appropriate law enforcement agency
24 where the defendant is to be served, upon payment of the required service fees. If an
25 aggrieved party acting **pro se** requests **ex parte** relief, the clerk of superior court shall
26 schedule an **ex parte** hearing with the district court division of the General Court of
27 Justice within 72 hours of the filing for relief, or by the end of the next day on which the
28 district court is in session in the county in which the action was filed, whichever shall
29 first occur. If the district court is not in session in that county, the aggrieved party may
30 contact the clerk of superior court in any other county within the same judicial district
31 who shall schedule an **ex parte** hearing with the district court division of the General
32 Court of Justice by the end of the next day on which said court division is in session in
33 that county. Upon the issuance of an **ex parte** order under this section, if the party is
34 proceeding **pro se**, the clerk shall set a date for hearing within 10 days from the date of
35 issuance of the order and issue a notice of hearing and shall effect service of the
36 summons, complaint, notice, order, and other papers through the appropriate law
37 enforcement agency where the defendant is to be served, upon payment of the required
38 service fees.

39 (b) **Pro Se Forms.** – The clerk of superior court of each county shall provide to
40 **pro se** complainants all forms which are necessary or appropriate to enable them to
41 proceed **pro se** pursuant to this section.

42 (c) **Contempt.** – A party may file a motion for contempt for violation of any
43 order entered pursuant to this Article. The party may file and proceed with the motion
44 **pro se**, using forms provided by the clerk of superior court. Upon the filing **pro se** of a

1 motion for contempt, the clerk shall schedule and issue notice of a show cause hearing
2 with the district court division of the General Court of Justice at the earliest possible
3 date pursuant to G.S. 5A-23. The clerk shall effect service of the motion, notice, and
4 other papers through the appropriate law enforcement agency where the defendant is to
5 be served, upon payment of the required service fees.

6 (d) Applicability. – This section only applies to unemancipated minors who are at
7 least 16 years of age at the time of the initiation of the action.

8 (e) Court Costs. – The plaintiff shall pay the costs of court including any fee for a
9 guardian **ad litem** for the child."

10 Sec. 3. This act becomes effective October 1, 1991, and applies to actions
11 initiated on and after that date.