

GENERAL ASSEMBLY OF NORTH CAROLINA
EXTRA SESSION 1994

CHAPTER 27
HOUSE BILL 110

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 seven calendar days, without a hearing on the merits or a hearing to determine the need for continued custody. A hearing on secure custody conducted under this subsection may not be continued or waived. A hearing on nonsecure custody conducted under this subsection may be continued for up to 10 business days with the consent of the juvenile's parent, guardian, or custodian, and, if appointed, the juvenile's guardian ad litem. In addition, the court may require the consent of additional parties or may schedule the hearing on nonsecure custody despite a party's consent to a continuance. 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 another regularly scheduled session of district court in the district where the order was entered.

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

(c) At a hearing to determine the need for continued custody, the judge shall receive testimony and shall allow the juvenile, and ~~his~~-the juvenile's parent, guardian, or custodian an opportunity to introduce evidence, to be heard in their own behalf, and to examine witnesses. The State shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that restraints on the juvenile's liberty are

necessary and that no less intrusive alternative will suffice. The judge shall not be bound by the usual rules of evidence at such hearings.

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

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

- (1) Release on the written promise of the juvenile's parent, guardian, or custodian to produce ~~him~~ the juvenile in court for subsequent proceedings; or
- (2) Release into the care of a responsible person or organization; or
- (3) Release conditioned on restrictions on activities, associations, residence or travel if reasonably related to securing the juvenile's presence in court; or
- (4) Any other conditions reasonably related to securing the juvenile's presence in court.

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

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

(g1) Hearings conducted under subsection (g) of this section may be waived as follows:

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

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

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

juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable."

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

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

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

- (1) A juvenile may be taken into temporary custody by a law-enforcement officer without a court order if grounds exist for the arrest of an adult in identical circumstances under G.S. 15A-401(b).
- (2) A juvenile may be taken into temporary custody without a court order by a law-enforcement officer or a court counselor if there are reasonable grounds to believe that ~~he~~ the juvenile is an undisciplined juvenile.
- (3) A juvenile may be taken into temporary custody without a court order by a law-enforcement officer or a Department of Social Services worker if there are reasonable grounds to believe that the juvenile is abused, neglected, or dependent and that ~~he~~ the juvenile would be injured or could not be taken into custody if it were first necessary to obtain a court order. If a Department of Social Services worker takes a juvenile into temporary custody under this subdivision, the worker may arrange for the placement, care, supervision, and transportation of the juvenile.
- (4) A juvenile may be taken into custody without a court order by a law-enforcement officer, by a court counselor, by a member of the Black Mountain Center, Alcohol Rehabilitation Center and Juvenile Evaluation Center Joint Security Force established pursuant to G.S. 122C-421, or by personnel of the Division of Youth Services as designated by the Department of Human Resources if there are reasonable grounds to believe the juvenile is an absconder from any State training school or approved detention facility."

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

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

- (1) Notify the juvenile's parent, guardian, or custodian that the juvenile has been taken into temporary custody and advise the parent, guardian, or custodian of ~~his~~ the right to be present with the juvenile until a determination is made as to the need for secure or nonsecure custody. Failure to notify the parent that the juvenile is in custody shall not be grounds for release of the juvenile;
- (2) Release the juvenile to ~~his~~ the juvenile's parent, guardian, or custodian if the person having the juvenile in temporary custody decides that continued custody is unnecessary.

- (3) If the juvenile is not released under subsection ~~(b)~~, (b) of this section, the person having temporary custody shall proceed as follows:
- a. In the case of a juvenile alleged to be delinquent or undisciplined, ~~he~~ the person having temporary custody shall request a petition be drawn pursuant to G.S. 7A-561 or if the clerk's office is closed, the magistrate pursuant to G.S. 7A-562. Once the petition has been drawn and verified, the person shall communicate with the intake counselor who shall consider prehearing diversion. If the decision is made to file a petition, the intake counselor shall contact the judge or person delegated authority pursuant to G.S. 7A-573 if other than the intake counselor for a determination of the need for continued custody.
 - b. In the case of a juvenile alleged to be abused, neglected, or dependent, ~~he~~ the person having temporary custody shall communicate with the Director of the Department of Social Services who shall consider prehearing diversion. If the decision is made to file a petition, the director shall contact the judge or person delegated authority pursuant to G.S. 7A-573 for a determination of the need for continued custody.
- (4) A juvenile taken into temporary custody under this Article shall not be held for more than 12 ~~hours~~ hours, or for more than 24 hours if any of the 12 hours falls on a Saturday, Sunday, or legal holiday, unless:
- a. A petition or motion for review has been filed by an intake counselor or the Director of the Department of Social Services, and
 - b. An order for secure or nonsecure custody has been entered by a judge."

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

In the General Assembly read three times and ratified this the 26th day of March, 1994.

Marc Basnight
President Pro Tempore of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives