

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1216

Short Title: Juvenile Justice Technical Corrections.

(Public)

Sponsors: Representative Baddour.

Referred to: Judiciary IV.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE JUVENILE JUSTICE REFORM ACT OF 1998.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-2512(h), as enacted by S.L. 1998-202 and renumbered as G.S. 7B-2513(h) by the Codifier of Statutes, reads as rewritten:

"(h) Pending placement of a juvenile with the Office, the court may house a juvenile who has been adjudicated ~~guilty of a delinquent act~~ delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult in a holdover facility up to 72 hours if the court, based on the information provided by the court counselor, determines that no acceptable alternative placement is available and the protection of the public requires that the juvenile be housed in a holdover facility."

Section 2. G.S. 7B-2603(a), as enacted by S.L. 1998-202, reads as rewritten:

"(a) Notwithstanding G.S. 7B-2602, any order transferring jurisdiction of the district court in a juvenile matter to the superior court may be appealed to the superior court for a hearing on the record. Notice of the appeal must be given in open court or in writing within 10 days after the transfer hearing in the district court. ~~A juvenile who fails to appeal the transfer order to the superior court waives the right to raise the issue of transfer before the Court of Appeals until final disposition of the matter in superior court.~~ The clerk of superior court shall provide the district attorney with a copy of any written notice of

1 appeal filed by the attorney for the juvenile. Upon expiration of the 10 day period in
2 which an appeal may be entered, if an appeal has been entered and not withdrawn, the
3 clerk shall transfer the case to the superior court docket. The superior court shall, within
4 a reasonable time, review the record of the transfer hearing for abuse of discretion by the
5 juvenile court in the issue of transfer. The superior court shall not review the findings as
6 to probable cause for the underlying offense."

7 Section 3. G.S. 7B-3800, as enacted by S.L. 1998-202, reads as rewritten:

8 **"§ 7B-3800. Adoption of Compact.**

9 The Interstate Compact on the Placement of Children is hereby enacted into law and
10 entered into with all other jurisdictions legally joining therein in a form substantially as
11 contained in this Article. It is the intent of the General Assembly that ~~Article 4~~ Article 37
12 of this Chapter shall govern interstate placements of children between North Carolina and
13 any other jurisdictions not a party to this Compact. It is the intent of the General
14 Assembly that Chapter 48 of the General Statutes shall govern the adoption of children
15 within the boundaries of North Carolina.

16 **ARTICLE I. PURPOSE AND POLICY.**

17 It is the purpose and policy of the party states to cooperate with each other in the
18 interstate placement of children to the end that:

19 (a) Each child requiring placement shall receive the maximum opportunity to be
20 placed in a suitable environment and with persons or institutions having appropriate
21 qualifications and facilities to provide a necessary and desirable degree and type of care.

22 (b) The appropriate authorities in a state where a child is to be placed may have
23 full opportunity to ascertain the circumstances of the proposed placement, thereby
24 promoting full compliance with applicable requirements for the protection of the child.

25 (c) The proper authorities of the state from which the placement is made may
26 obtain the most complete information on the basis of which to evaluate a projected
27 placement before it is made.

28 (d) Appropriate jurisdictional arrangements for the care of children will be
29 promoted.

30 **ARTICLE II. DEFINITIONS.**

31 As used in this Compact:

32 (a) 'Child' means a person who, by reason of minority, is legally subject to
33 parental, guardianship or similar control.

34 (b) 'Sending agency' means a party state officer or employee thereof; a subdivision
35 of a party state, or officer or employee thereof; a court of a party state; a person,
36 corporation, association, charitable agency or other entity which sends, brings, or causes
37 to be sent or brought any child to another party state.

38 (c) 'Receiving state' means the state to which a child is sent, brought, or caused to
39 be sent or brought, whether by public authorities or private persons or agencies, and
40 whether for placement with state or local public authorities of [or] for placement with
41 private agencies or persons.

42 (d) 'Placement' means the arrangement for the care of a child in a family free or
43 boarding home or in a child-caring agency or institution but does not include any

1 institution caring for the mentally ill, mentally defective, or epileptic or any institution
2 primarily educational in character, and any hospital or other medical facility.

3 (e) 'Appropriate public authorities' as used in Article III shall, with reference to
4 this State, mean the Department of Health and Human Services and said agency shall
5 receive and act with reference to notices required by Article III.

6 (f) 'Appropriate authority in the receiving state' as used in paragraph (a) of Article
7 V shall, with reference to this State, means the Secretary.

8 (g) 'Executive head' as used in Article VII means the Governor.

9 **ARTICLE III. CONDITIONS FOR PLACEMENT.**

10 (a) No sending agency shall send, bring, or cause to be sent or brought into any
11 other party state any child for placement in foster care or as a preliminary to a possible
12 adoption unless the sending agency shall comply with each and every requirement set
13 forth in this Article and with the applicable laws of the receiving state governing the
14 placement of children therein.

15 (b) Prior to sending, bringing, or causing any child to be sent or brought into a
16 receiving state for placement in foster care or as a preliminary to a possible adoption, the
17 sending agency shall furnish the appropriate public authorities in the receiving state
18 written notice of the intention to send, bring, or place the child in the receiving state. The
19 notice shall contain:

20 (1) The name, date, and place of birth of the child.

21 (2) The identity and address or addresses of the parents or legal guardian.

22 (3) The name and address of the person, agency or institution to or with
23 which the sending agency proposes to send, bring, or place the child.

24 (4) A full statement of the reasons for such proposed action and evidence of
25 the authority pursuant to which the placement is proposed to be made.

26 (c) Any public officer or agency in a receiving state which is in receipt of a notice
27 pursuant to paragraph (b) of this Article may request of the sending agency, or any other
28 appropriate officer or agency of or in the sending agency's state, and shall be entitled to
29 receive therefrom, such supporting or additional information as it may deem necessary
30 under the circumstances to carry out the purpose and policy of this Compact.

31 (d) The child shall not be sent, brought, or caused to be sent or brought into the
32 receiving state until the appropriate public authorities in the receiving state shall notify
33 the sending agency, in writing, to the effect that the proposed placement does not appear
34 to be contrary to the interests of the child.

35 **ARTICLE IV. PENALTY FOR ILLEGAL PLACEMENT.**

36 The sending, bringing, or causing to be sent or brought into any receiving state of a
37 child in violation of the terms of this Compact shall constitute a violation of the laws
38 respecting the placement of children of both the state in which the sending agency is
39 located or from which it sends or brings the child and of the receiving state. Such
40 violation may be punished or subjected to penalty in either jurisdiction in accordance
41 with its laws. In addition to liability for any such punishment or penalty, any such
42 violation shall constitute full and sufficient grounds for the suspension or revocation of

1 any license, permit, or other legal authorization held by the sending agency which
2 empowers or allows it to place, or care for children.

3 **ARTICLE V. RETENTION OF JURISDICTION.**

4 (a) The sending agency shall retain jurisdiction over the child sufficient to
5 determine all matters in relation to the custody, supervision, care, treatment, and
6 disposition of the child which it would have had if the child had remained in the sending
7 agency's state, until the child is adopted, reaches majority, becomes self-supporting or is
8 discharged with the concurrence of the appropriate authority in the receiving state. Such
9 jurisdiction shall also include the power to effect or cause the return of the child or its
10 transfer to another location and custody pursuant to law. The sending agency shall
11 continue to have financial responsibility for support and maintenance of the child during
12 the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction
13 by a receiving state sufficient to deal with an act of delinquency or crime committed
14 therein.

15 (b) When the sending agency is a public agency, it may enter into an agreement
16 with an authorized public or private agency in the receiving state providing for the
17 performance of one or more services in respect of such case by the latter as agent for the
18 sending agency.

19 (c) Nothing in this Compact shall be construed to prevent a private charitable
20 agency authorized to place children in the receiving state from performing services or
21 acting as agent in that state for a private charitable agency of the sending state; nor to
22 prevent the agency in the receiving state from discharging financial responsibility for the
23 support and maintenance of a child who has been placed on behalf of the sending agency
24 without relieving the responsibility set forth in paragraph (a) hereof.

25 **ARTICLE VI. INSTITUTIONAL CARE OF DELINQUENT CHILDREN.**

26 A child adjudicated delinquent may be placed in an institution in another party
27 jurisdiction pursuant to this Compact, but no such placement shall be made unless the
28 child is given a court hearing on notice to the parent or guardian with opportunity to be
29 heard, prior to the child's being sent to such other party jurisdiction for institutional care
30 and the court finds that:

- 31 (1) Equivalent facilities for the child are not available in the sending
32 agency's jurisdiction; and
33 (2) Institutional care in the other jurisdiction is in the best interests of the
34 child and will not produce undue hardship.

35 **ARTICLE VII. COMPACT ADMINISTRATOR.**

36 The executive head of each jurisdiction party to this Compact shall designate an
37 officer who shall be general coordinator of activities under this Compact in the officer's
38 jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall
39 have power to promulgate rules and regulations to carry out more effectively the terms
40 and provisions of this Compact.

41 **ARTICLE VIII. LIMITATIONS.**

42 This Compact shall not apply to: (a) the sending or bringing of a child into a
43 receiving state by the child's parent, stepparent, grandparent, adult brother or sister, adult

1 uncle or aunt, or the child's guardian and leaving the child with any such relative or
2 nonagency guardian in the receiving state. (b) Any placement, sending or bringing of a
3 child into a receiving state pursuant to any other interstate compact to which both the
4 state from which the child is sent or brought and the receiving state are party, or to any
5 other agreement between said states which has the force of law.

6 **ARTICLE IX. ENACTMENT AND WITHDRAWAL.**

7 This Compact shall be open to joinder by any state, territory or possession of the
8 United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the
9 consent of Congress, the government of Canada or any province thereof. It shall become
10 effective with respect to any such jurisdiction when such jurisdiction has enacted the
11 same into law. Withdrawal from this Compact shall be by the enactment of a statute
12 repealing the same, but shall not take effect until two years after the effective date of such
13 statute and until written notice of the withdrawal has been given by the withdrawing state
14 to the governor of each other party jurisdiction. Withdrawal of a party state shall not
15 affect the rights, duties, and obligations under this Compact of any sending agency
16 therein with respect to a placement made prior to the effective date of withdrawal.

17 **ARTICLE X. CONSTRUCTION AND SEVERABILITY.**

18 The provisions of this Compact shall be liberally construed to effectuate the purposes
19 thereof. The provisions of this Compact shall be severable and if any phrase, clause,
20 sentence, or provision of this Compact is declared to be contrary to the constitution of
21 any party state or of the United States or the applicability thereof to any government,
22 agency, person, or circumstance is held invalid, the validity of the remainder of this
23 Compact and the applicability thereof to any government, agency, person, or
24 circumstance shall not be affected thereby. If this Compact shall be held contrary to the
25 constitution of any state party thereto, the Compact shall remain in full force and effect as
26 to the remaining states and in full force and effect as to the state affected as to all
27 severable matters."

28 Section 4. G.S. 95-241(a), as amended by Section 7 of S.L. 1998-202, reads as
29 rewritten:

30 "(a) No person shall discriminate or take any retaliatory action against an employee
31 because the employee in good faith does or threatens ~~to~~ to do any of the following:

- 32 (1) File a claim or complaint, initiate any inquiry, investigation, inspection,
33 proceeding or other action, or testify or provide information to any
34 person with respect to any of the following:
- 35 a. Chapter 97 of the General Statutes.
 - 36 b. Article 2A or Article 16 of this Chapter.
 - 37 c. Article 2A of Chapter 74 of the General Statutes.
 - 38 d. G.S. 95-28.1.
 - 39 e. Article 16 of Chapter 127A of the General Statutes.
 - 40 f. G.S. 95-28.1A.
- 41 (2) Cause any of the activities listed in subdivision (1) of this subsection to
42 be initiated on an employee's behalf.

1 (3) Exercise any right on behalf of the employee or any other employee
2 afforded by Article 2A or Article 16 of this Chapter or by Article 2A of
3 Chapter 74 of the General Statutes.

4 (4) Comply with the provisions of Article 27 of Chapter 7B of the General
5 Statutes."

6 Section 5. G.S. 120-216(1) reads as rewritten:

7 "(1) Study the needs of children and youth. This study shall include, but is
8 not limited to:

9 a. Determining the adequacy and appropriateness of services:

10 1. To children and youth receiving child welfare services;

11 2. To children and youth in the juvenile court system; and

12 3. Provided by the Division of Social Services and ~~the~~
13 ~~Division of Youth Services of the Department of Health and~~
14 ~~Human Services.~~ the Office of Juvenile Justice.

15 b. Developing methods for identifying and providing services to
16 children and youth not receiving but in need of child welfare
17 services, children and youth at risk of entering the juvenile court
18 system, and children and youth exposed to domestic violence
19 situations.

20 c. Developing strategies for addressing the issues of school dropout,
21 teen suicide, and adolescent pregnancy.

22 d. Identifying and evaluating the impact on children and youth of
23 other economic and environmental issues.

24 e. Identifying obstacles to ensuring that children who are in secure
25 or nonsecure custody are placed in safe and permanent homes
26 within a reasonable period of time and recommending strategies
27 for overcoming those obstacles. The Commission shall consider
28 what, if anything, can be done to expedite the adjudication and
29 appeal of abuse and neglect charges against parents so that
30 decisions may be made about the safe and permanent placement
31 of their children as quickly as possible."

32 Section 6. G.S. 131D-10.4(3), as amended by Section 13(ii) of S.L. 1998-202,
33 reads as rewritten:

34 "(3) Secure detention facilities as specified in ~~Article 40 of Chapter 7B~~ Article
35 3C of Chapter 147 of the General Statutes;"

36 Section 7. G.S. 143B-261 reads as rewritten:

37 "**§ 143B-261. Department of Correction – duties.**

38 It shall be the duty of the Department to provide the necessary custody, supervision,
39 and treatment to control and rehabilitate criminal offenders ~~and juvenile delinquents~~ and
40 thereby to reduce the rate and cost of crime and delinquency."

41 Section 8. G.S. 143B-262 reads as rewritten:

42 "**§ 143B-262. Department of Correction – functions.**

1 (a) The functions of the Department of Correction shall comprise except as
2 otherwise expressly provided by the Executive Organization Act of 1973 or by the
3 Constitution of North Carolina all functions of the executive branch of the State in
4 relation to corrections and the rehabilitation of adult ~~offenders and juvenile delinquents~~
5 offenders, including detention, parole, and aftercare supervision, and further including
6 those prescribed powers, duties, and functions enumerated in Article 14 of Chapter 143A
7 of the General Statutes and other laws of this State.

8 (b) All such functions, powers, duties, and obligations heretofore vested in the
9 Department of Social Rehabilitation and Control and any agency enumerated in Article
10 14 of Chapter 143A of the General Statutes and laws of this State are hereby transferred
11 to and vested in the Department of Correction except as otherwise provided by the
12 Executive Organization Act of 1973. They shall include, by way of extension and not of
13 limitation, the functions of:

- 14 (1) The State Department of Correction and Commission of Correction,
- 15 ~~(2) The State Board of Youth Development,~~
- 16 (3) The State Probation Commission,
- 17 (4) The State Board of Paroles,
- 18 (5) The Interstate Agreement on Detainers, and
- 19 (6) The Uniform Act for Out-of-State Parolee Supervision.

20 (c) The Department shall establish within the Division of Adult Probation and
21 Parole a program of Intensive Supervision. This program shall provide intensive
22 supervision for probationers, post-release supervisees, and parolees who require close
23 supervision in order to remain in the community pursuant to a community penalties plan,
24 community work plan, community restitution plan, or other plan of rehabilitation. The
25 intensive supervision program shall be available to both felons and misdemeanants. Each
26 offender shall be required to comply with the rules adopted for the Program as well as the
27 requirements specified in G.S. 15A-1340.11(5).

28 (d) The Department shall establish a Substance Abuse Program. This Program
29 shall include an intensive term of inpatient treatment, normally four to six weeks, for
30 alcohol or drug addiction in independent, residential facilities for approximately 100
31 offenders per facility."

32 Section 9. G.S. 143B-150.6(e) reads as rewritten:

33 "(e) Inter-agency fund transfers: The Department may allow the Division of Social
34 Services, ~~the Division of Youth Services,~~ and the Division of Mental Health,
35 Developmental Disabilities, and Substance Abuse Services, to use funds available to each
36 Division to support family preservation services provided by the Division under the
37 Program; provided that such use does not violate federal regulations pertaining to, or
38 otherwise jeopardize the availability of federal funds."

39 Section 10. G.S. 143B-150.8(a)(1) reads as rewritten:

- 40 "(1) Provide guidance and advice to the Secretary in the development of a
41 plan for the statewide implementation of an inter-agency family
42 preservation services program whereby family-centered preservation
43 services are available to all counties by July 1, 1995, through the

1 coordinated efforts of the Division of Social ~~Services, Division of Youth~~
2 ~~Services, Services~~ and Division of Mental Health, Developmental
3 Disabilities, and Substance Abuse Services."

4 Section 11. G.S. 143B-478, as amended by Section 4(aa) of S.L. 1998-202,
5 reads as rewritten:

6 **"§ 143B-478. Governor's Crime Commission – creation; composition; terms;
7 meetings, etc.**

8 (a) There is hereby created the Governor's Crime Commission of the Department
9 of Crime Control and Public Safety. The Commission shall consist of 35 voting
10 members and five nonvoting members. The composition of the Commission shall be as
11 follows:

12 (1) The voting members shall be:

13 a. The Governor, the Chief Justice of the Supreme Court of North
14 Carolina (or his alternate), the Attorney General, the Director of
15 the Administrative Office of the Courts, the Secretary of the
16 Department of Health and Human Services, the Secretary of the
17 Department of Correction, and the Superintendent of Public
18 Instruction;

19 b. A judge of superior court, a judge of district court specializing in
20 juvenile matters, a chief district court judge, a clerk of superior
21 court, and a district attorney;

22 c. A defense attorney, three sheriffs (one of whom shall be from a
23 'high crime area'), three police executives (one of whom shall be
24 from a 'high crime area'), six citizens (two with knowledge of
25 juvenile delinquency and the public school system, two of whom
26 shall be under the age of 21 at the time of their appointment, one
27 representative of a 'private juvenile delinquency program,' and
28 one in the discretion of the Governor), three county
29 commissioners or county officials, and three mayors or municipal
30 officials;

31 d. Two members of the North Carolina House of Representatives
32 and two members of the North Carolina Senate.

33 (2) The nonvoting members shall be the Director of the State Bureau of
34 Investigation, the Secretary of the Department of Crime Control and
35 Public Safety, a representative of the Office of Juvenile Justice, the
36 Director of the Division of Prisons and the Director of the Division of
37 Adult Probation and Paroles.

38 (b) The membership of the Commission shall be selected as follows:

39 (1) The following members shall serve by virtue of their office: the
40 Governor, the Chief Justice of the Supreme Court, the Attorney General,
41 the Director of the Administrative Office of the Courts, the Secretary of
42 the Department of Health and Human Services, the Secretary of the
43 Department of Correction, the Director of the State Bureau of

1 Investigation, the Secretary of the Department of Crime Control and
2 Public Safety, the Director of the Division of Prisons, the Director of the
3 Division of Adult Probation and Parole, ~~the Director of the Division of~~
4 ~~Youth Services, the Administrator for Juvenile Services of the Administrative~~
5 ~~Office of the Courts,~~ and the Superintendent of Public Instruction.
6 Should the Chief Justice of the Supreme Court choose not to serve, his
7 alternate shall be selected by the Governor from a list submitted by the
8 Chief Justice which list must contain no less than three nominees from
9 the membership of the Supreme Court.

10 (2) The following members shall be appointed by the Governor: a
11 representative of the Office of Juvenile Justice, the district attorney, the
12 defense attorney, the three sheriffs, the three police executives, the six
13 citizens, the three county commissioners or county officials, the three
14 mayors or municipal officials.

15 (3) The following members shall be appointed by the Governor from a list
16 submitted by the Chief Justice of the Supreme Court, which list shall
17 contain no less than three nominees for each position and which list
18 must be submitted within 30 days after the occurrence of any vacancy in
19 the judicial membership: the judge of superior court, the clerk of
20 superior court, the judge of district court specializing in juvenile
21 matters, and the chief district court judge.

22 (4) The two members of the House of Representatives provided by
23 subdivision (a)(1)d. of this section shall be appointed by the Speaker of
24 the House of Representatives and the two members of the Senate
25 provided by subdivision (a)(1)d. of this section shall be appointed by the
26 President Pro Tempore of the Senate. These members shall perform the
27 advisory review of the State plan for the General Assembly as permitted
28 by section 206 of the Crime Control Act of 1976 (Public Law 94-503).

29 (5) The Governor may serve as chairman, designating a vice-chairman to
30 serve at his pleasure, or he may designate a chairman and vice-chairman
31 both of whom shall serve at his pleasure.

32 (c) The initial members of the Commission shall be those appointed pursuant to
33 subsection (b) above, which appointments shall be made by March 1, 1977. The terms of
34 the present members of the Governor's Commission on Law and Order shall expire on
35 February 28, 1977. Effective March 1, 1977, the Governor shall appoint members, other
36 than those serving by virtue of their office, to serve staggered terms; seven shall be
37 appointed for one-year terms, seven for two-year terms, and seven for three-year terms.
38 At the end of their respective terms of office their successors shall be appointed for terms
39 of three years and until their successors are appointed and qualified. The Commission
40 members from the House and Senate shall serve two-year terms effective March 1, of
41 each odd-numbered year; and they shall not be disqualified from Commission
42 membership because of failure to seek or attain reelection to the General Assembly, but
43 resignation or removal from office as a member of the General Assembly shall constitute

1 resignation or removal from the Commission. Any other Commission member no longer
2 serving in the office from which he qualified for appointment shall be disqualified from
3 membership on the Commission. Any appointment to fill a vacancy on the Commission
4 created by the resignation, dismissal, death, disability, or disqualification of a member
5 shall be for the balance of the unexpired term.

6 (d) The Governor shall have the power to remove any member from the
7 Commission for misfeasance, malfeasance or nonfeasance.

8 (e) The Commission shall meet quarterly and at other times at the call of the
9 chairman or upon written request of at least eight of the members. A majority of the
10 voting members shall constitute a quorum for the transaction of business."

11 Section 12. G.S. 153A-221.1, as amended by Section 13(nn) of S.L. 1998-202,
12 reads as rewritten:

13 "**§ 153A-221.1. Standards and inspections.**

14 The legal responsibility of the Secretary of Health and Human Services and the Social
15 Services Commission for State services to county juvenile detention homes under this
16 Article is hereby confirmed and shall include the following: development of State
17 standards under the prescribed procedures; inspection; consultation; technical assistance;
18 and training. ~~Further, the legal responsibility of the Department of Health and Human Services~~
19 ~~is hereby expanded to give said Department the same legal responsibility as to the State-~~
20 ~~administered regional detention homes which shall be developed by the State Department of~~
21 ~~Correction as provided by G.S. 7B-4008.~~

22 ~~The Secretary of Health and Human Services~~ Director of the Office of Juvenile Justice
23 shall develop new standards which shall be applicable to county detention homes and
24 regional detention homes as defined by ~~Article 40 of Chapter 7B~~ Article 3C of Chapter 147
25 of the General Statutes in line with the recommendations of the report entitled Juvenile
26 Detention in North Carolina: A Study Report (January, 1973) where practicable, and such
27 new standards shall become effective not later than July 1, 1977.

28 The Secretary of Health and Human Services shall also develop standards under
29 which a local jail may be approved as a holdover facility for not more than five calendar
30 days pending placement in a juvenile detention home which meets State standards,
31 providing the local jail is so arranged that any child placed in the holdover facility cannot
32 converse with, see, or be seen by the adult population of the jail while in the holdover
33 facility. The personnel responsible for the administration of a jail with an approved
34 holdover facility shall provide close supervision of any child placed in the holdover
35 facility for the protection of the child."

36 Section 13. This act becomes effective July 1, 1999.