

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE DRH60229-LT-96 (3/31)

Short Title: Child Custody/Guardianship Jurisdiction.

(Public)

Sponsors: Representative Glazier.

Referred to:

A BILL TO BE ENTITLED

1
2 AN ACT TO ESTABLISH A PROCEDURE TO RESOLVE THE ISSUE OF
3 CONFLICTING CHILD CUSTODY ORDERS; TO CLARIFY THE EFFECT OF
4 TERMINATING JURISDICTION IN CERTAIN JUVENILE CASES; TO GIVE
5 THE COURT AUTHORITY TO CONVERT A JUVENILE COURT CUSTODY
6 ORDER INTO A PERMANENT CUSTODY ORDER UNDER CHAPTER 50 OF
7 THE GENERAL STATUTES; AND TO MAKE TECHNICAL AND
8 CONFORMING CHANGES TO THE LAW.

9 The General Assembly of North Carolina enacts:

10 **SECTION 1.** G.S. 7B-200 is amended by adding the following new
11 subsections to read:

12 "(c) When the court obtains jurisdiction over a juvenile as the result of a petition
13 alleging that the juvenile is abused, neglected, or dependent:

14 (1) Any other civil action in this State in which the custody of the juvenile
15 is an issue is automatically stayed as to that issue, unless the juvenile
16 proceeding and the civil custody action or claim are consolidated
17 pursuant to subsection (d) of this section or the judge in the juvenile
18 proceeding enters an order dissolving the stay.

19 (2) If an order entered in the juvenile proceeding and an order entered in
20 another civil custody action conflict, the order in the juvenile
21 proceeding controls as long as the court continues to exercise
22 jurisdiction in the juvenile proceeding.

23 (d) Notwithstanding G.S. 50-13.5(f), the judge assigned to a juvenile proceeding
24 may order that any civil action or claim for custody filed in the district be consolidated
25 with the juvenile proceeding. If a civil action or claim for custody of the juvenile is filed
26 in another district, the judge assigned to the juvenile proceeding, for good cause and
27 after consulting with the judge in the other district, may (i) order that the civil action or

1 claim for custody be transferred to the county in which the juvenile proceeding is filed;
2 (ii) order a change of venue in the juvenile proceeding and transfer the juvenile
3 proceeding to the district in which the civil action or claim is filed; (iii) proceed in the
4 juvenile proceeding while the civil action or claim remains stayed; or (iv) dissolve the
5 stay of the civil action or claim and stay the juvenile proceeding pending a resolution of
6 the civil action or claim."

7 **SECTION 2.** G.S. 7B-201 reads as rewritten:

8 "**§ 7B-201. Retention and termination of jurisdiction.**

9 (a) When the court obtains jurisdiction over a juvenile, jurisdiction shall continue
10 until terminated by order of the court or until the juvenile reaches the age of 18 years or
11 is otherwise emancipated, whichever occurs first.

12 (b) When the court's jurisdiction terminates, whether automatically or by
13 court-order, the court thereafter shall not modify or enforce any order previously
14 entered in the case, including any juvenile court order relating to the custody,
15 placement, or guardianship of the juvenile. The legal status of the juvenile and the
16 custodial rights of the parties shall revert to the status they were before the juvenile
17 petition was filed, unless applicable law or a valid court order in another civil action
18 provides otherwise. Termination of the court's jurisdiction in an abuse, neglect, or
19 dependency proceeding, however, shall not affect any of the following:

20 (1) A civil custody order entered pursuant to G.S. 7B-911.

21 (2) A final order terminating parental rights.

22 (3) A pending action to terminate parental rights, unless the court orders
23 otherwise.

24 (4) Any proceeding in which the juvenile is alleged to be or has been
25 adjudicated undisciplined or delinquent.

26 (5) The court's jurisdiction in relation to any new abuse, neglect, or
27 dependency petition that is filed."

28 **SECTION 3.** G.S. 7B-402 reads as rewritten:

29 "**§ 7B-402. Petition.**

30 (a) The petition shall contain the name, date of birth, address of the juvenile, the
31 name and last known address of the juvenile's parent, guardian, or ~~eustodian~~-custodian,
32 and ~~shall allege the facts which~~ allegations of facts sufficient to invoke jurisdiction over
33 the juvenile. The petition may contain information on more than one juvenile when the
34 juveniles are from the same home and are before the court for the same reason.

35 (b) The petition, or an affidavit attached to the petition, shall contain the
36 information required by G.S. 50A-209.

37 (c) Sufficient copies of the petition shall be prepared so that copies will be
38 available for each parent if living separate and apart, the guardian, custodian, or
39 caretaker, the guardian ad litem, the social worker, and any person determined by the
40 court to be a necessary party."

41 **SECTION 4.** G.S. 7B-600(a) reads as rewritten:

42 "(a) In any case when no parent appears in a hearing with the juvenile or when the
43 court finds it would be in the best interests of the juvenile, the court may appoint a
44 guardian of the person for the juvenile. The guardian shall operate under the supervision

1 of the court with or without bond and shall file only such reports as the court shall
2 require. The guardian shall have the care, custody, and control of the juvenile or may
3 arrange a suitable placement for the juvenile and may represent the juvenile in legal
4 actions before any court. The guardian may consent to certain actions on the part of the
5 juvenile in place of the parent including (i) marriage, (ii) enlisting in the armed forces,
6 and (iii) enrollment in school. The guardian may also consent to any necessary
7 remedial, psychological, medical, or surgical treatment for the juvenile. The authority of
8 the guardian shall continue until the guardianship is terminated by court order, until the
9 juvenile is emancipated pursuant to Article 35 of Subchapter IV of this Chapter, or until
10 the juvenile reaches the age of majority. The court shall retain jurisdiction in the case
11 until the guardianship is terminated, unless the court's jurisdiction terminates earlier as a
12 matter of law."

13 **SECTION 5.** Article 9 of Chapter 7B of the General Statutes is amended by
14 adding a new section to read:

15 **"§ 7B-911. Civil child-custody order.**

16 (a) After making proper findings at a dispositional hearing or any subsequent
17 hearing, the court on its own motion or the motion of a party may award custody of the
18 juvenile to a parent or other appropriate person pursuant to G.S. 50-13.1, 50-13.2, 50-
19 13.5, and 50-13.7, as provided herein, and terminate the court's jurisdiction in the
20 juvenile proceeding.

21 (b) When the juvenile court enters a custody order under this section, the court
22 shall either cause the order to be filed in an existing civil action relating to the custody
23 of the juvenile or, if there is no other civil action, instruct the clerk to treat the order as
24 the initiation of a civil action for custody.

25 If the order is filed in an existing civil action and the person to whom the court is
26 awarding custody is not a party to that action, the court shall order that the person be
27 joined as a party and that the caption of the case be changed accordingly. The order
28 shall resolve any pending claim for custody and shall constitute a modification of any
29 custody order previously entered in the action.

30 If the court's order initiates a civil action, the court shall designate the parties to the
31 action and determine the most appropriate caption for the case. The court may order one
32 or more of the parties to pay the filing fee for a civil action into the office of the clerk of
33 superior court. The order shall constitute a custody determination, and any motion to
34 enforce or modify the custody order shall be filed in the newly created civil action in
35 accordance with the provisions of Chapter 50 of the General Statutes. The
36 Administrative Office of the Courts may adopt rules and shall develop and make
37 available appropriate forms for establishing a civil file to implement this section.

38 (c) The court may enter a civil custody order under this section and terminate the
39 court's jurisdiction in the juvenile proceeding only if :

- 40 (1) In the civil custody order the court makes findings and conclusions
41 that support the entry of a custody order in an action under Chapter 50
42 of the General Statutes or, if the juvenile is already the subject of a
43 custody order entered pursuant to Chapter 50, makes findings and

1 conclusions that support modification of that order pursuant to G.S.
2 50-13.7; and

3 (2) In a separate order terminating the juvenile court's jurisdiction in the
4 juvenile proceeding, the court finds:

5 a. That the juvenile's status and the issues in the case are in the
6 nature of a private custody agreement or dispute and that there
7 is not a need for continued State intervention on behalf of the
8 juvenile through a juvenile court proceeding; and

9 b. That at least six months have passed since the court made a
10 determination that the juvenile's placement with the person to
11 whom the court is awarding custody is the permanent plan for
12 the juvenile, though this finding is not required if the court is
13 awarding custody to a parent or to a person with whom the
14 child was living when the juvenile petition was filed."

15 **SECTION 6.** G.S. 50-13.1 is amended by adding a new subsection to read:

16 "(i) If the child whose custody is the subject of an action under this Chapter also
17 is the subject of a juvenile abuse, neglect, or dependency proceeding pursuant to
18 Subchapter 1 of Chapter 7B of the General Statutes, then the custody action under this
19 Chapter is stayed as provided in G.S. 7B-200."

20 **SECTION 7.** This act becomes effective October 1, 2003, and applies to
21 petitions and actions filed on or after that date.