

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 688

Short Title: Indigent Defense of Parents During Appeals.

(Public)

Sponsors: Senator Kerr.

Referred to: Judiciary II.

March 21, 2005

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE COUNSEL APPOINTED TO REPRESENT PARENTS IN
2 TERMINATION OF PARENTAL RIGHTS CASES OR IN CASES IN WHICH
3 THE JUVENILE IS ALLEGED TO BE ABUSED, NEGLECTED, OR
4 DEPENDENT TO CONTINUE REPRESENTATION DURING THE APPEALS
5 PROCESS.
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7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 7B-602(a) reads as rewritten:

9 "(a) In cases where the juvenile petition alleges that a juvenile is abused,
10 neglected, or dependent, the parent has the right to counsel and to appointed counsel in
11 cases of indigency unless that person waives the right. Notwithstanding any other law to
12 the contrary, in cases of indigency, the counsel appointed to represent the parent during
13 an adjudication or other dispositional proceeding shall continue to represent the parent
14 during any appeal made pursuant to G.S. 7B-1001."

15 **SECTION 2.** G.S. 7B-1101 reads as rewritten:

16 **"§ 7B-1101. Jurisdiction.**

17 The court shall have exclusive original jurisdiction to hear and determine any
18 petition or motion relating to termination of parental rights to any juvenile who resides
19 in, is found in, or is in the legal or actual custody of a county department of social
20 services or licensed child-placing agency in the district at the time of filing of the
21 petition or motion. The court shall have jurisdiction to terminate the parental rights of
22 any parent irrespective of the age of the parent. The parent has the right to counsel and
23 to appointed counsel in cases of indigency unless the parent waives the right.
24 Notwithstanding any other law to the contrary, in cases of indigency, the counsel
25 appointed to represent the parent during an adjudication or other dispositional
26 proceeding shall continue to represent the parent during any appeal made pursuant to
27 G.S. 7B-1113. The fees of appointed counsel shall be borne by the Office of Indigent
28 Defense Services. In addition to the right to appointed counsel set forth above, a

1 guardian ad litem shall be appointed in accordance with the provisions of G.S. 1A-1,
2 Rule 17, to represent a parent in the following cases:

3 (1) Where it is alleged that a parent's rights should be terminated pursuant
4 to G.S. 7B-1111(6), and the incapability to provide proper care and
5 supervision pursuant to that provision is the result of substance abuse,
6 mental retardation, mental illness, organic brain syndrome, or another
7 similar cause or condition.

8 (2) Where the parent is under the age of 18 years.

9 The fees of the guardian ad litem shall be borne by the Office of Indigent Defense
10 Services when the court finds that the respondent is indigent. In other cases the fees of
11 the court-appointed guardian ad litem shall be a proper charge against the respondent if
12 the respondent does not secure private legal counsel. Provided, that before exercising
13 jurisdiction under this Article, the court shall find that it would have jurisdiction to
14 make a child-custody determination under the provisions of G.S. 50A-201, 50A-203, or
15 50A-204. Provided, further, that the clerk of superior court shall have jurisdiction for
16 adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of the General Statutes
17 generally."

18 **SECTION 3.** The Office of Indigent Defense Services shall amend or adopt
19 rules to implement this act.

20 **SECTION 4.** This act becomes effective October 1, 2005, and applies to
21 appeals taken on or after that date.