

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

SESSION LAW 1998-229
HOUSE BILL 1720

AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO CUSTODY OF ABUSED AND NEGLECTED JUVENILES AND JUVENILES PLACED FOR ADOPTION IN CONFORMANCE WITH FEDERAL ADOPTION AND SAFE FAMILIES ACT REQUIREMENTS, AND TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY CHANGES TO THE JUVENILE JUSTICE SYSTEM PERTAINING TO CHILD ABUSE, NEGLECT, AND DEPENDENCY.

The General Assembly of North Carolina enacts:

PART I. ADOPTION AND SAFE FAMILIES ACT CHANGES - CERTAIN SECTIONS EFFECTIVE UNTIL JUNE 30, 1999.

Section 1. G.S. 7A-517 reads as rewritten:

"§ 7A-517. Definitions.

Unless the context clearly requires otherwise, the following words have the listed meanings:

- (1) Abused juveniles. – Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:
 - a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means; or
 - b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means; or
 - b1. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior; or
 - c. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first degree rape, as provided in G.S. 14-27.2; second degree rape as provided in G.S. 14-27.3; first degree sexual offense, as provided in G.S. 14-27.4; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178 and 14-179; preparation of obscene photographs, slides or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting

- the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1, regardless of the age of the parties; or
- d. Creates or allows to be created serious emotional damage to the juvenile. Serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal or aggressive behavior toward himself or others; or
 - e. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.
- (2) Aftercare. – The supervision of a juvenile who has been returned to the community on conditional release after having been committed to the Division of Youth Services.
 - (3) Administrator for Juvenile Services. – The person who is responsible for the planning, organization, and administration of a statewide system of juvenile intake, probation, and aftercare services.
 - (3a) Aggravated circumstances. – Any circumstance attending to the commission of an act of abuse or neglect which increases its enormity or adds to its injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.
 - (4) Director of the Division of Youth Services. – The person responsible for the supervision of the administration of institutional and detention services.
 - (5) Caretaker. – Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, or any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility. 'Caretaker' also means any person who has the responsibility for the care of a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed

upon a caretaker as defined in this subdivision shall be for the purpose of Chapter 7A of the General Statutes only.

- (6) Chief Court Counselor. – The person responsible for administration and supervision of juvenile intake, probation, and aftercare in each judicial district, operating under the supervision of the Administrator for Juvenile Services.
- (7) Clerk. – Any clerk of superior court, acting clerk, or assistant or deputy clerk.
- (8) Community-based program. – A program providing nonresidential or residential treatment to a juvenile in the community where his family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.
- (9) Court. – The District Court Division of the General Court of Justice.
- (9a) Court of competent jurisdiction. – A court having the power and authority of law to act at the time of acting over the subject matter of the cause.
- (10) Court counselor. – A person responsible for probation and aftercare services to juveniles on probation or on conditional release from the Division of Youth Services under the supervision of the chief court counselor.
- (11) Custodian. – The person or agency that has been awarded legal custody of a juvenile by a court.
- (12) Delinquent juvenile. – Any juvenile less than 16 years of age who has committed a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws.
- (13) Dependent Juvenile. – A juvenile in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.
- (14) Detention. – The confinement of a juvenile pursuant to an order for secure custody pending an adjudicatory or dispositional hearing or admission to a placement with the Division of Youth Services.
- (15) Detention home. – An authorized facility providing secure custody for juveniles.
- (15a) District. – Any district court district as established by G.S. 7A-133.
- (16) Holdover facility. – A place in a jail which has been approved by the Department of Health and Human Services as meeting the State standards for detention as required in G.S. 153A-221 providing close supervision where the juvenile cannot converse with, see, or be seen by the adult population.
- (16.1) In loco parentis. – A person acting in loco parentis means one, other than parents or legal guardian, who has assumed the status and

obligation of a parent without being awarded the legal custody of a juvenile by a court.

- (17) Intake counselor. – A person who screens a petition alleging that a juvenile is delinquent or undisciplined to determine whether the petition should be filed.
- (18) Interstate Compact on Juveniles. – An agreement ratified by 50 states and the District of Columbia providing a formal means of returning a juvenile, who is an absconder, escapee or runaway, to his home state.
- (19) Judge. – Any district court judge.
- (19a) Judicial district. – Any district court district as established by G.S. 7A-133.
- (20) Juvenile. – Any person who has not reached his eighteenth birthday and is not married, emancipated, or a member of the armed services of the United States. For the purposes of subdivisions (12) and (28) of this section, a juvenile is any person who has not reached his sixteenth birthday and is not married, emancipated, or a member of the armed forces. A juvenile who is married, emancipated, or a member of the armed forces, shall be prosecuted as an adult for the commission of a criminal offense. Wherever the term 'juvenile' is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.
- (21) Neglected Juvenile. – A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.
- (22) Petitioner. – The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.
- (23) Probation. – The status of a juvenile who has been adjudicated delinquent, is subject to specified conditions under the supervision of a court counselor, and may be returned to the court for violation of those conditions during the period of probation.
- (24) Prosecutor. – The assistant district attorney assigned by the district attorney to juvenile proceedings.
- (25) Protective supervision. – The status of a juvenile who has been adjudicated delinquent or undisciplined and is under the supervision of a court counselor.

- (25a) Reasonable efforts. – The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.
- (26) Regional detention home. – A state-supported and administered regional facility providing detention care.
- (26a) Safe home. – A home in which the child is not at substantial risk of physical or emotional abuse or neglect.
- (27) Shelter care. – The temporary care of a juvenile in a physically unrestricting facility pending court disposition.
- (28) Undisciplined juvenile. – A juvenile less than 16 years of age who is unlawfully absent from school; or who is regularly disobedient to his parent, guardian, or custodian and beyond their disciplinary control; or who is regularly found in places where it is unlawful for a juvenile to be; or who has run away from home.
- (29) Director of the department of social services. – The director of the county department of social services in the county in which the juvenile resides or is found, or his representative as authorized in G.S. 108A-14.

The singular includes the plural, the masculine singular includes the feminine singular and masculine and feminine plural unless otherwise specified."

Section 2. G.S. 7A-544 reads as rewritten:

"§ 7A-544. Investigation by Director; access to confidential information; notification of person making the report.

When a report of abuse, neglect, or dependency is received, the Director of the Department of Social Services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the Director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the Director shall initiate the investigation within 72 hours following receipt of the report. The investigation and evaluation shall include a visit to the place where the juvenile resides. All information received by the Department of Social Services, including the identity of the reporter, shall be held in strictest confidence by the Department.

When a report of a juvenile's death as a result of suspected maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile is received, the Director of the Department of Social Services shall immediately ascertain if other juveniles remain in the home, and, if so, initiate an investigation in order to determine whether they require

protective services or whether immediate removal of the juveniles from the home is necessary for their protection.

If the investigation indicates that abuse, neglect, or dependency has occurred, the Director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the Director shall immediately provide or arrange for protective services. If the parent or other caretaker refuses to accept the protective services provided or arranged by the Director, the Director shall sign a complaint seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the Director shall sign a complaint which alleges the applicable facts to invoke the jurisdiction of the court. Where the investigation shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 46 of this Chapter.

In performing any duties related to the investigation of the complaint or the provision or arrangement for protective services, the Director may consult with any public or private agencies or individuals, including the available State or local law-enforcement officers who shall assist in the investigation and evaluation of the seriousness of any report of abuse, neglect, or dependency when requested by the Director. The Director or the Director's representative may make a written demand for any information or reports, whether or not confidential, that may in the Director's opinion be relevant to the investigation of or the provision for protective services. Upon the Director's or the Director's representative's request and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If a custodian of criminal investigative information or records believes that release of the information will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such an action, the custodian of the records shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph shall be set down for immediate hearing, and subsequent proceedings in the actions shall be accorded priority by the trial and appellate courts.

Within five working days after receipt of the report of abuse, neglect, or dependency, the Director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted for investigation and whether the report was referred to the appropriate State or local law enforcement agency.

Within five working days after completion of the protective services investigation, the Director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse,

neglect, or dependency, whether the county Department of Social Services is taking action to protect the juvenile, and what action it is taking, including whether or not a petition was filed. The person making the report shall be informed of procedures necessary to request a review by the prosecutor of the Director's decision not to file a petition. A request for review by the prosecutor shall be made within five working days of receipt of the second notification. The second notification shall include notice that, if the person making the report is not satisfied with the Director's decision, he may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive the person's right to this notification and no notification is required if the person making the report does not identify himself to the Director."

Section 3. G.S. 7A-576 reads as rewritten:

"§ 7A-576. Place of secure or nonsecure custody.

(a) A juvenile meeting the criteria set out in G.S. 7A-574, subsection (a), may be placed in nonsecure custody with the Department of Social Services or a person designated in the order for temporary residential placement in:

- (1) A licensed foster home or a home otherwise authorized by law to provide such care or
- (2) A facility operated by the Department of Social Services or
- (3) Any other home or ~~facility~~facility, including a relative's home, approved by the court and designated in the order.

In placing a juvenile in nonsecure custody under this ~~section and under G.S. 7A-629 and G.S. 7A-651, section,~~ the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the ~~relative.~~relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile. ~~Prior to placement~~In placing a juvenile in nonsecure custody under this section, the court shall consider the Indian Child Welfare Act, Pub. L. No. 95-608, 25 U.S.C. §§ 1901, et seq., as amended, and the Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 4056, as amended, as they may apply. Placement of a juvenile with a relative outside of this ~~State, the placement~~State must be in accordance with the Interstate Compact on the Placement of Children.

(b) A juvenile meeting the criteria set out in G.S. 7A-574(b) may be temporarily detained in an approved county detention home or a regional detention facility which shall be separate from any jail, lockup, prison, or other adult penal institution. It shall be unlawful for a county or any unit of government to operate a juvenile detention home unless the facility meets the standards promulgated by the Department of Health and Human Services."

Section 4. 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 applicable time period set forth in this subsection: Provided, that if such session does not precede the expiration of the 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 the right to have legal representation as provided in G.S. 7A-584 if 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 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 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, 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 promptly to a safe home. A finding that reasonable efforts have not been made 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. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, then the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.~~

(i) At each hearing to determine the need for continued nonsecure custody, the court shall:

- (1) Inquire as to the identity and location of any missing parent. The court shall include findings as to the efforts undertaken to locate the missing parent and to serve that parent. The order may provide for specific efforts aimed at determining the identity and location of any missing parent;
- (2) Inquire as to whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order temporary placement of the juvenile with the ~~relative~~. relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile. Prior to placement In placing a juvenile in nonsecure custody under this section, the court shall consider the Indian Child Welfare Act, Pub. L. No. 95-608, 25 U.S.C. §§ 1901, et seq., as amended, and the Howard M. Metzenbaum

Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 4056, as amended, as they may apply. Placement of a juvenile with a relative outside of this State, the placement State must be in accordance with the Interstate Compact on the Placement of Children; and

- (3) Inquire as to whether there are other juveniles remaining in the home from which the juvenile was removed and, if there are, inquire as to the specific findings of the investigation conducted under G.S. 7A-544 and any actions taken or services provided by the Director for the protection of the other juveniles."

Section 4.1. Article 46 of Chapter 7A of the General Statutes is amended by adding the following new section to read:

"§ 7A-577.1. Reasonable efforts.

(a) An order placing or continuing the placement of a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order:

- (1) Shall contain a finding that the juvenile's continuation in or return to the juvenile's own home would be contrary to the juvenile's best interest;
- (2) Shall contain findings as to whether a county department of social services has made reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined under subsection (b) of this section that such efforts are not required or shall cease;
- (3) Shall contain findings as to whether a county department of social services should continue to make reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined or determines under subsection (b) of this section that such efforts are not required or shall cease;
- (4) Shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the agency is to provide or arrange for the foster care or other placement of the juvenile; and
- (5) May provide for services or other efforts aimed at returning the juvenile to a safe home or at achieving another permanent plan for the juvenile.

A finding that reasonable efforts have not been made by a county department of social services shall not preclude the entry of an order authorizing the juvenile's placement when the court finds that placement 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.

(b) In any order placing a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody,

a dispositional order, or a review order, the court may direct that reasonable efforts to eliminate the need for placement of the juvenile shall not be required or shall cease if the court makes written findings of fact that:

- (1) Such efforts clearly would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time;
- (2) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as defined in G.S. 7A-517(3a);
- (3) A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent; or
- (4) A court of competent jurisdiction has determined that: the parent has committed murder or voluntary manslaughter of another child of the parent; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent; or has committed a felony assault resulting in serious bodily injury to the child or another child of the parent.

(c) At any hearing at which the court finds that reasonable efforts to eliminate the need for the juvenile's placement are not required or shall cease, the court shall direct that a permanency planning hearing as required by G.S. 7A-657.1 be held within 30 calendar days after the date of the hearing and, if practicable, shall set the date and time for the permanency planning hearing.

(d) In determining reasonable efforts to be made with respect to a juvenile and in making such reasonable efforts, the juvenile's health and safety shall be the paramount concern. Reasonable efforts to preserve or reunify families may be made concurrently with efforts to plan for the juvenile's adoption, to place the juvenile with a legal guardian, or to place the juvenile in another permanent arrangement."

Section 5. G.S. 7A-629 reads as rewritten:

"§ 7A-629. Adjudicatory hearing.

The adjudicatory hearing shall be held in the district at such time and place as the chief district judge shall ~~designate~~. designate but no later than 60 days from the filing of the petition, unless the judge pursuant to G.S. 7A-632 orders that it be held at a later time. The judge may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted."

Section 6. G.S. 7A-647 reads as rewritten:

"§ 7A-647. Dispositional alternatives for delinquent, undisciplined, abused, neglected, or dependent juvenile.

The following alternatives for disposition shall be available to any judge exercising jurisdiction, and the judge may combine any of the applicable alternatives when he finds such disposition to be in the best interest of the juvenile:

- (1) The judge may dismiss the case, or continue the case in order to allow the juvenile, parent, or others to take appropriate action.
- (2) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

- a. Require that he be supervised in his own home by the Department of Social Services in his county, a court counselor or other personnel as may be available to the court, subject to conditions applicable to the parent or the juvenile as the judge may specify; or
- b. Place him in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or
- c. Place him in the custody of the Department of Social Services in the county of his residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of the Department of Social Services in the county where he is found so that agency may return the juvenile to the responsible authorities in his home state. The Director may, unless otherwise ordered by the judge, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable or unable to act on behalf of their child or children, the Director may, unless otherwise ordered by the judge, arrange for, provide or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a judge or his designee in the custody or physical custody of a county Department of Social Services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the Director shall make reasonable efforts to obtain consent from a parent or guardian of the affected child. If the Director can not obtain such consent, the Director shall promptly notify the parent or guardian that care or treatment has been provided and shall give him frequent status reports on the circumstances of the child. Upon request of a parent or guardian of the affected child, the results or records of the aforementioned evaluations, findings or treatment shall be made available to such parent or guardian by the Director unless prohibited by G.S. 122C-53(d). If a juvenile is removed from the home and placed in custody or placement responsibility of a county department of social services, the Director shall not allow unsupervised visitation with, or return physical custody of the juvenile to, the parent or person standing in loco parentis without a hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home.

In placing a juvenile in out-of-home care under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is

willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children.

- (3) In any case, the judge may order that the juvenile be examined by a physician, psychiatrist, psychologist or other qualified expert as may be needed for the judge to determine the needs of the juvenile.
- a. Upon completion of the examination, the judge shall conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other treatment and who should pay the cost of the treatment. The county manager, or such person who shall be designated by the chairman of the county commissioners, of the juvenile's residence shall be notified of the hearing, and allowed to be heard. If the judge finds the juvenile to be in need of medical, surgical, psychiatric, psychological or other treatment, the judge shall permit the parent or other responsible persons to arrange for treatment. If the parent declines or is unable to make necessary arrangements, the judge may order the needed treatment, surgery or care, and the judge may order the parent to pay the cost of the care pursuant to G.S. 7A-650. If the judge finds the parent is unable to pay the cost of treatment, the judge shall order the county to arrange for treatment of the juvenile and to pay for the cost of the treatment. The county department of social services shall recommend the facility that will provide the juvenile with treatment.
 - b. If the judge believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the judge shall refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. A juvenile shall not be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental health, developmental disabilities, and substance abuse director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs. If institutionalization is determined to be the best service for the juvenile, admission shall be with the voluntary consent of the parent or guardian. If the parent, guardian, or custodian refuses to consent to a mental

hospital or retardation center admission after such institutionalization is recommended by the area mental health, developmental disabilities, and substance abuse director, the signature and consent of the judge may be substituted for that purpose. In all cases in which a regional mental hospital refuses admission to a juvenile referred for admission by a judge and an area mental health, developmental disabilities, and substance abuse director or discharges a juvenile previously admitted on court referral prior to completion of his treatment, the hospital shall submit to the judge a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question.

- (4) In any case in which a juvenile, who was at least eleven years of age at the time of the offense, is adjudicated delinquent for committing a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), 14-27.4 (first degree sexual offense), 14-27.5 (second degree sexual offense), or G.S. 14-27.6 (attempted rape or sexual offense), the judge, upon a finding that the juvenile is a danger to the community, may order that the juvenile register in accordance with Part 4 of Article 27A of Chapter 14 of the General Statutes."

Section 7. G.S. 7A-651 reads as rewritten:

"§ 7A-651. Dispositional order.

(a) The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The judge shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested.

(b) A dispositional order under which a juvenile is removed from the custody of a parent or person standing in loco parentis shall direct that the review hearing required by G.S. 7A-657 be held within ~~six months of 90 days from~~ the date of the ~~juvenile's placement in custody dispositional hearing~~ and, if practicable, shall set the date and time for the review hearing.

(c) Any ~~dispositional order directing placement of a juvenile in foster care shall also contain:~~ shall comply with the requirements of G.S. 7A-577.1.

- (1) ~~A finding that the juvenile's continuation in or return to his own home would be contrary to the juvenile's best interest; and~~
- (2) ~~Findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in foster care. A finding that reasonable efforts were not made shall not preclude entry of a dispositional order authorizing placement in foster care when the court finds that such placement is needed for protection of the juvenile.~~

~~When efforts to prevent the need for the juvenile's placement are precluded by an immediate threat of harm to the juvenile, the court may find that placement of the juvenile in the absence of such efforts is reasonable.~~

~~The order may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.~~

~~(d) An order that places a juvenile in the custody of a county department of social services for placement shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the county department is to provide or arrange for the foster care or other placement of the juvenile. Any dispositional order shall provide for appropriate visitation as may be in the best interests of the juvenile and consistent with the juvenile's health and safety. If the juvenile is placed in the custody or placement responsibility of a county department of social services, the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved by the court.~~

(e) An order that commits a juvenile to the Division of Youth Services shall recite detailed findings that support commitment to the Division as the least restrictive alternative in light of the circumstances. These findings shall state that all alternatives to commitment prescribed in G.S. 7A-647, 7A-648, and 7A-649 have been attempted unsuccessfully or were considered and found to be inappropriate and that the juvenile's behavior constitutes a threat to persons or property in the community. These findings shall be supported by substantial evidence in the record that the judge determined the needs of the juvenile, determined the appropriate community resources required to meet those needs, and explored and exhausted or considered inappropriate those resources prior to committing the juvenile to the Division."

Section 8. G.S. 7A-657 reads as rewritten:

"§ 7A-657. Review of custody order.

(a) In any case where custody is removed from a ~~parent,~~ parent or person standing in loco parentis, the judge shall conduct a review hearing within six months of 90 days from the date the order was entered, ~~of the dispositional hearing shall conduct a second review within six months after the first review,~~ and shall conduct a subsequent reviews ~~review hearing within six months at least every year thereafter.~~ The Director of Social Services shall make a timely requests ~~request~~ to the clerk to calendar ~~the case~~ each review at a session of court scheduled for the hearing of juvenile matters. ~~matters within six months of the date the order was entered.~~ The Director shall make timely requests for calendaring subsequent reviews. The clerk shall give 15 days' notice of the review and its purpose to the parent ~~or~~ and to any ~~the~~ person standing in loco parentis, the juvenile if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating

the court's impending review. Nothing in this subsection shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection (a), may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every ~~12~~six months, if the court finds by clear, cogent and convincing evidence that:

- (1) The juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least one year; and
- (2) The placement is stable and continuation of the placement is in the juvenile's best interest; and
- (3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every ~~12~~six months; and
- (4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and
- (5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review.

(c) ~~At every review hearing, the court shall consider information from the Department of Social Services, the court counselor, the juvenile, the parent or person standing in loco parentis, the custodian, the foster parent, the guardian ad litem, and any public or private agency~~ the parent, any person standing in loco parentis, the juvenile, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid it in its review.

In each case the court shall consider the following criteria and make written findings regarding those that are relevant:

- (1) Services which have been offered to reunite the family, or whether efforts to reunite the family clearly would be futile or inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time;
- (2) Where the juvenile's return home is unlikely, the efforts which have been made to evaluate or plan for other methods of care;
- (3) Goals of the foster care placement and the appropriateness of the foster care plan;
- (4) A new foster care plan, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile;
- (5) Reports on the placements the juvenile has had and any services offered to the juvenile and the parent;
- (5a) An appropriate visitation plan;

(5b) If the juvenile is 16 or 17 years of age, a report on an independent living assessment of the juvenile and, if appropriate, an independent living plan developed for the juvenile;

(6) When and if termination of parental rights should be considered;

(7) Any other criteria the court deems necessary.

(d) The judge, after making findings of fact, may appoint a guardian of the person for the juvenile pursuant to G.S. 7A-585 or may make any disposition authorized by G.S. 7A-647, including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interest of the juvenile. ~~If the juvenile is placed in or remains in the custody of the department of social services, the court may authorize the department to arrange and supervise a visitation plan. Except for such visitation, the juvenile shall not be returned to the parent or person standing in loco parentis without a hearing at which the court finds sufficient facts to show that the juvenile will receive proper care and supervision. The court may enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interest of the juvenile. If at any time custody is restored to a parent, the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.~~

~~(d1) At a hearing designated by the court, but at least within 12 months after the juvenile's placement, a review hearing shall be held under this section and designated as a permanency planning hearing. The purpose of the hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Notice of the hearing shall inform the parties of the purpose of the hearing. At the conclusion of the hearing, if the juvenile is not returned home, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time and shall enter an order consistent with those findings.~~

(e) The provisions of subsections (b), (c), and (d) of G.S. 7A-651-G.S. 7A-577.1 shall apply to any order entered under this section ~~which continues the foster care placement of a juvenile.~~ section."

Section 8.1. Article 52 of Chapter 7A of the General Statutes is amended by adding the following new section to read:

"§ 7A-657.1. Permanency planning hearing.

(a) In any case where custody is removed from a parent or person standing in loco parentis, the judge shall conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody, and the hearing may be combined, if appropriate, with a review hearing required by G.S. 7A-657. The purpose of the permanency planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Subsequent permanency planning hearings shall be held at least every six months thereafter, or earlier as set by the court, to review the progress made in finalizing the permanent plan for the juvenile, or if necessary, to make a new permanent plan for the juvenile. The Director of Social Services shall make a timely request to the clerk to calendar each permanency planning hearing at a session of court scheduled for the

hearing of juvenile matters. The clerk shall give 15 days' notice of the hearing and its purpose to the parent and to any person standing in loco parentis, the juvenile if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this provision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) At any permanency planning review, the court shall consider information from the parent, any person standing in loco parentis, the juvenile, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid it in the court's review. At the conclusion of the hearing, if the juvenile is not returned home, the court shall consider the following criteria and make written findings regarding those that are relevant:

- (1) Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interests to return home;
- (2) Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents;
- (3) Where the juvenile's return home is unlikely within six months, whether adoption should be pursued, and if so, any barriers to the juvenile's adoption;
- (4) Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why;
- (5) Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile;
- (6) Any other criteria the court deems necessary.

(c) At the conclusion of the hearing, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time. The judge may appoint a guardian of the person for the juvenile pursuant to G.S. 7A-585 or make any disposition authorized by G.S. 7A-647, including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interests of the juvenile. If the juvenile is not returned home, the court shall enter an order consistent with its findings that directs the department of social services to make reasonable efforts to place the juvenile in a timely manner in accordance with the permanent plan, to complete whatever steps are necessary to finalize the permanent placement of the juvenile, and to document such steps in the juvenile's case plan. If at any time custody

is restored to a parent, or findings are made in accordance with G.S. 7A-657(b), the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

If the court continues the juvenile's placement in the custody or placement responsibility of a county department of social services, the provisions of G.S. 7A-577.1 shall apply to any order entered under this section.

(d) In the case of a juvenile who is in the custody or placement responsibility of a county department of social services, and has been in placement outside the home for 15 of the most recent 22 months; or a court of competent jurisdiction has determined that the parent has abandoned the child; or has committed murder or voluntary manslaughter of another child of the parent; or has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent, the court shall order the director of the department of social services to initiate a proceeding to terminate the parental rights of the parent unless the court finds:

- (1) The permanent plan for the juvenile is guardianship or custody with a relative or some other suitable person;
- (2) The court makes specific findings why the filing of a petition for termination of parental rights is not in the best interests of the child; or
- (3) The department of social services has not provided the juvenile's family with such services as the department deems necessary, when reasonable efforts are still required to enable the juvenile's return to a safe home.

(e) If a proceeding to terminate the parental rights of the juvenile's parents is necessary in order to perfect the permanent plan for the juvenile, the director of the department of social services shall file a petition to terminate parental rights within 60 calendar days from the date of the permanency planning hearing unless the court makes written findings why the petition cannot be filed within 60 days. If the court makes findings to the contrary, the court shall specify the time frame in which any needed petition to terminate parental rights shall be filed."

Section 9. G.S. 7A-659 reads as rewritten:

"§ 7A-659. Post termination of parental rights' placement court review.

(a) The purpose of each placement review is to insure that every reasonable effort is being made to provide for a permanent placement plan for the child who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the child's best interest. At each review hearing the court may consider information from the Department of Social Services, the licensed child-placing agency, the guardian ad litem, the child, ~~the~~ any foster parent, relative, or preadoptive parent providing care for the child, and any other person or agency the court determines is likely to aid in the review.

(b) The court shall conduct a placement review not later than six months from the date of the termination hearing when parental rights have been terminated by a petition brought by any person or agency designated in G.S. 7A-289.24(2) through (5) and a county director or licensed child-placing agency has custody of the child. The court shall conduct reviews every six months thereafter until the child is placed for adoption and the adoption petition is filed by the adoptive parents.

- (1) No more than 30 days and no less than 15 days prior to each review, the clerk shall give notice of the review to the child if he is at least 12 years of age, the legal custodian of the child, ~~the any~~ foster parent, relative, or preadoptive parent providing care for the child, the guardian ad litem, if any, and any other person or agency the court may specify. Only the child if he is at least 12 years of age, the legal custodian of the child, ~~the any~~ foster parent, relative, or preadoptive parent providing care for the child, and the guardian ad litem shall attend the review hearings, except as otherwise directed by the court. Nothing in this subdivision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.
 - (2) If a guardian ad litem for the child has not been appointed previously by the court in the termination proceeding, the court, at the initial six-month review hearing, may appoint a guardian ad litem to represent the child. The court may continue the case for such time as is necessary for the guardian ad litem to become familiar with the facts of the case.
- (c) The court shall consider at least the following in its review:
- (1) The adequacy of the plan developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the child's best interest and the efforts of the department or agency to implement such plan;
 - (2) Whether the child has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption agency; and
 - (3) The efforts previously made by the department or agency to find a permanent home for the child.
- (d) The court, after making findings of fact, shall affirm the county department's or child-placing agency's plans or require specific additional steps which are necessary to accomplish a permanent placement which is in the best interests of the child.
- (e) If the child has been placed for adoption prior to the date scheduled for the review, written notice of said placement shall be given to the clerk to be placed in the court file and the review hearing shall be cancelled, with notice of said cancellation given by the clerk to all persons previously notified.
- (f) The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency. The guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five days. Any issue of abuse of discretion by the county department or child-placing agency in the selection process must be

raised by the guardian ad litem within 10 days following the date the agency notifies the court and the guardian ad litem in writing of the filing of the adoption petition."

Section 9.1. Article 24B of Chapter 7A of the General Statutes is amended by adding the following new section to read:

"§ 7A-289.23.1. Pending child abuse, neglect, or dependency hearings.

When a juvenile is currently within the jurisdiction of the district court based upon an abuse, neglect, or dependency proceeding, a petition for termination of parental rights to that juvenile may be filed as a motion in the cause in the abuse, neglect, or dependency proceeding. Any parent of that juvenile who was previously served in the abuse, neglect, or dependency proceeding in accordance with G.S. 7A-565 shall be served with the petition to terminate parental rights in accordance with G.S. 1A-1, Rule 5."

Section 10. G.S. 7A-289.27 reads as rewritten:

"§ 7A-289.27. Issuance of summons.

(a) Except as provided in G.S. 7A-289.26, upon the filing of the petition, the court shall cause a summons to be issued, directed to the following persons or agency, not otherwise a party petitioner, who shall be named as respondents:

- (1) The parents of the child;
- (2) Any person who has been judicially appointed as guardian of the person of the child;
- (3) The custodian of the child appointed by a court of competent jurisdiction;
- (4) Any county department of social services or licensed child-placing agency to whom a child has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General Statutes; Statutes or any county department of social services to whom placement responsibility for the child has been given by a court of competent jurisdiction; and
- (5) The child, if he or she is 12 years of age or older at the time the petition is filed.

Provided, no summons need be directed to or served upon any parent who has previously surrendered the child to a county department of social services or licensed child-placing agency, nor to any parent who has consented to the adoption of the child by the petitioner. The summons shall notify the respondents to file a written answer within 30 days after service of the summons and petition. Service of the summons shall be completed as provided under the procedures established by G.S. 1A-1, Rule 4(j); but the parent of the child shall not be deemed to be under disability even though such parent is a minor.

(b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:

- (1) The name of the minor child;
- (2) Notice that a written answer to the petition must be filed with the clerk who signed the petition within 30 days after service of the summons and a copy of the petition, or the parent's rights may be terminated;

- (3) Notice that if they are indigent, the parents are entitled to appointed counsel. The parents may contact the clerk immediately to request counsel;
- (4) Notice that this is a new case. Any attorney appointed previously will not represent the parents in this proceeding unless ordered by the court;
- (5) Notice that the date, time and place of the hearing will be mailed by the clerk upon filing of the answer or 30 days from the date of service if no answer is filed;
- (6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing.

(c) If a county department of social services, not otherwise a party petitioner, is served with a petition alleging that the parental rights of the parent should be terminated pursuant to G.S. 7A-289.32, the department shall file a written answer and shall be deemed a party to the proceeding."

Section 11. G.S. 7A-289.32 reads as rewritten:

"§ 7A-289.32. Grounds for terminating parental rights.

The court may terminate the parental rights upon a finding of one or more of the following:

- (1) Repealed by Session Laws 1979, c. 669, s. 2.
- (2) The parent has abused or neglected the child. The child shall be deemed to be abused or neglected if the court finds the child to be an abused child within the meaning of G.S. 7A-517(1), or a neglected child within the meaning of G.S. 7A-517(21).
- (3) The parent has willfully left the child in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the child. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the child on account of their poverty.
- (3a) The burden in such proceedings shall be upon the petitioner to prove the facts justifying such termination by clear and convincing evidence.
- (4) The child has been placed in the custody of a county Department of Social Services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition, has willfully failed for such period to pay a reasonable portion of the cost of care for the child although physically and financially able to do so.
- (5) One parent has been awarded custody of the child by judicial decree, or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition willfully failed

- without justification to pay for the care, support, and education of the child, as required by said decree or custody agreement.
- (6) The father of a child born out of wedlock has not prior to the filing of a petition to terminate his parental rights:
- a. Establish(ed) paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or
 - b. Legitimated the child pursuant to provisions of G.S. 49-10, or filed a petition for this specific purpose; or
 - c. Legitimated the child by marriage to the mother of the child; or
 - d. Provided substantial financial support or consistent care with respect to the child and mother.
- (7) That the parent is incapable of providing for the proper care and supervision of the child, such that the child is a dependent child within the meaning of G.S. 7A-517(13), and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.
- (8) The parent has willfully abandoned the child for at least six consecutive months immediately preceding the filing of the petition. ~~For the purpose of this subdivision, a child may be willfully abandoned by his or her natural father if the mother of the child had been willfully abandoned by and was living separate and apart from the father at the time of the child's birth, although the father may not have known of such birth; but in any event the child must be over the age of three months at the time of the filing of the petition.~~
- (9) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.
- (10) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home."

Section 12. G.S. 48-1-101 is amended by adding a new subdivision to read:

"§ 48-1-101. Definitions.

In this Chapter, the following definitions apply:

- (1) 'Adoptee' means an individual who is adopted, is placed for adoption, or is the subject of a petition for adoption properly filed with the court.
- (2) 'Adoption' means the creation by law of the relationship of parent and child between two individuals.
- (3) 'Adult' means an individual who has attained 18 years of age, or if under the age of 18, is either married or has been emancipated under the applicable State law.
- (3a) 'Adoption facilitator' means an individual or a nonprofit entity that assists biological parents in locating and evaluating prospective adoptive parents without charge.
- (4) 'Agency' means a public or private association, corporation, institution, or other person or entity that is licensed or otherwise authorized by the law of the jurisdiction where it operates to place minors for adoption. 'Agency' also means a county department of social services in this State.
- (5) 'Child' means a son or daughter, whether by birth or adoption.
- (5a) 'Criminal history' means a county, State, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.
- (6) 'Department' means the North Carolina Department of Health and Human Services.
- (7) 'Division' means the Division of Social Services of the Department.
- (8) 'Guardian' means an individual, other than a parent, appointed by a clerk of court in North Carolina to exercise all of the powers conferred by G.S. 35A-1241, including a standby guardian appointed under Article 21 of Chapter 35A of the General Statutes whose authority has actually commenced; and also means an individual, other than a parent, appointed in another jurisdiction according to the law of that

- jurisdiction who has the power to consent to adoption under the law of that jurisdiction.
- (9) 'Legal custody' of an individual means the general right to exercise continuing care of and control over the individual as authorized by law, with or without a court order, and:
 - a. Includes the right and the duty to protect, care for, educate, and discipline the individual;
 - b. Includes the right and the duty to provide the individual with food, shelter, clothing, and medical care; and
 - c. May include the right to have physical custody of the individual.
 - (10) 'Minor' means an individual under 18 years of age who is not an adult.
 - (11) 'Party' means a petitioner, adoptee, or any person whose consent to an adoption is necessary under this Chapter but has not been obtained.
 - (12) 'Physical custody' means the physical care of and control over an individual.
 - (13) 'Placement' means transfer of physical custody of a minor to the selected prospective adoptive parent. Placement may be either:
 - a. Direct placement by a parent or the guardian of the minor; or
 - b. Placement by an agency.
 - (14) 'Preplacement assessment' means a document, whether prepared before or after placement, that contains the information required by G.S. 48-3-303 and any rules adopted by the Social Services Commission.
 - (15) 'Relinquishment' means the voluntary surrender of a minor to an agency for the purpose of adoption.
 - (16) 'Report to the court' means a document prepared in accordance with G.S. 48-2-501, et seq.
 - (17) 'State' means a state as defined in G.S. 12-3(11).
 - (18) 'Stepparent' means an individual who is the spouse of a parent of a child, but who is not a legal parent of the child."

Section 13. G.S. 48-3-203 reads as rewritten:

"§ 48-3-203. Agency placement adoption.

(a) An agency may acquire legal and physical custody of a minor for purposes of adoptive placement only by means of a relinquishment pursuant to Part 7 of this Article or by a court order terminating the rights and duties of a parent or guardian of the minor.

(b) An agency shall give any individual upon request a written statement of the services it provides and of its procedure for selecting a prospective adoptive parent for a minor, including the role of the minor's parent or guardian in the selection process. This statement must include a schedule of any fee or expenses charged or required to be paid by the agency and a summary of the provisions of this Chapter that pertain to the requirements and consequences of a relinquishment and to the selection of a prospective adoptive parent.

(c) An agency may notify the parent when a placement has occurred and when an adoption decree is issued.

(d) The selection of a prospective adoptive parent for a minor shall be made by the agency on the basis of a preplacement assessment. The selection may not be delegated, but may be based on criteria requested by a parent who relinquishes the child to the agency.

(d1) A minor who is in the custody or placement responsibility of a county department of social services shall not be placed with a selected prospective adoptive parent prior to the completion of an investigation of the individual's criminal history pursuant to G.S. 48-3-309 or G.S. 131D-10.3A and, based on the criminal history, a determination as to the individual's fitness to have responsibility for the safety and well-being of children.

(e) In addition to the authority granted in G.S. 131D-10.5, the Social Services Commission may adopt rules for placements by agencies consistent with the purposes of this Chapter."

Section 14. G.S. 48-3-303 reads as rewritten:

"§ 48-3-303. Content and timing of preplacement assessment.

(a) A preplacement assessment shall be completed within 90 days after a request has been accepted.

(b) The preplacement assessment must be based on at least one personal interview with each individual being assessed in the individual's residence and any report received pursuant to subsection (c) of this section.

(c) The preplacement assessment must, after a reasonable investigation, report on the following about the individual being assessed:

- (1) Age and date of birth, nationality, race, or ethnicity, and any religious preference;
- (2) Marital and family status and history, including the presence of any children born to or adopted by the individual and any other children in the household;
- (3) Physical and mental health, including any addiction to alcohol or drugs;
- (4) Educational and employment history and any special skills;
- (5) Property and income, and current financial information provided by the individual;
- (6) Reason for wanting to adopt;
- (7) Any previous request for an assessment or involvement in an adoptive placement and the outcome of the assessment or placement;
- (8) Whether the individual has ever been a respondent in a domestic violence proceeding or a proceeding concerning a minor who was allegedly abused, dependent, neglected, abandoned, or delinquent, and the outcome of the proceeding;
- (9) Whether the individual has ever been convicted of a crime other than a minor traffic violation;
- (10) Whether the individual has located a parent interested in placing a child with the individual for adoption and a brief, nonidentifying description of the parent and the child; and

- (11) Any other fact or circumstance that may be relevant to a determination of the individual's suitability to be an adoptive parent, including the quality of the environment in the home and the functioning of any children in the household.

When any of the above is not reasonably available, the preplacement assessment shall state why it is unavailable.

(d) The agency shall conduct an investigation for any criminal record as permitted by law. If a prospective adoptive parent is seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services, a county department of social services shall have the individual's criminal history investigated pursuant to G.S. 48-3-309, and based on the criminal history, make a determination pursuant to subsection (e) of this section as to the individual's fitness to have responsibility for the safety and well-being of children.

(e) In the preplacement assessment, the agency shall review the information obtained pursuant to subsections (b), (c), and (d) of this section and evaluate the individual's strengths and weaknesses to be an adoptive parent. The agency shall then determine whether the individual is suitable to be an adoptive parent.

(f) If the agency determines that the individual is suitable to be an adoptive parent, the preplacement assessment shall include specific factors which support that determination.

(g) If the agency determines that the individual is not suitable to be an adoptive parent, the replacement assessment shall state the specific concerns which support that determination. A specific concern is one that reasonably indicates that placement of any minor, or a particular minor, in the home of the individual would pose a significant risk of harm to the well-being of the minor.

(h) In addition to the information and finding required by subsections (c) through (g) of this section, the preplacement assessment must contain a list of the sources of information on which it is based.

(i) The Social Services Commission shall have authority to establish by rule additional standards for preplacement assessments."

Section 15. Effective January 1, 1999, Article 3 of Chapter 48 of the General Statutes is amended by adding the following new section to read:

"§ 48-3-309. Mandatory preplacement criminal checks of prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services.

(a) The department shall ensure that the criminal histories of all prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services are checked prior to placement and, based on the criminal history, a determination is made as to the individual's fitness to have responsibility for the safety and well-being of children. The department shall ensure that all prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services are checked prior to placement for county, state, and federal criminal histories.

(b) A county department of social services may issue an unfavorable preplacement assessment to a prospective adoptive parent if the county department of social services determines pursuant to G.S. 48-3-303(e) that the individual is unfit to have responsibility for the safety and well-being of children based on the criminal history.

(c) The Department of Justice shall provide to the Department of Health and Human Services the criminal history of such a prospective adoptive parent obtained from the State and National Repositories of Criminal Histories as requested by the Department. The Department shall provide to the Department of Justice, along with the request, the fingerprints of the prospective adoptive parent to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the individual to be checked. The fingerprints of the prospective adoptive parent shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(d) At the time of the request for a preplacement assessment or at a subsequent time prior to placement, a prospective adoptive parent whose criminal history is to be checked shall be furnished with a statement substantially similar to the following:

'NOTICE

MANDATORY CRIMINAL HISTORY CHECK: NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED PRIOR TO PLACEMENT ON PROSPECTIVE ADOPTIVE PARENTS SEEKING TO ADOPT A MINOR WHO IS IN THE CUSTODY OR PLACEMENT RESPONSIBILITY OF A COUNTY DEPARTMENT OF SOCIAL SERVICES.

'Criminal history' means a county, state, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication; violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the

criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

If it is determined, based on your criminal history, that you are unfit to have responsibility for the safety and well-being of children, you shall have the opportunity to complete, or challenge the accuracy of, the information contained in the SBI or FBI identification records.

If you are denied a favorable preplacement assessment by a county department of social services as a result of the criminal history check, you may request a review of the assessment pursuant to G.S. 48-3-308(a).

Any prospective adoptive parent who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.'

Refusal to consent to a criminal history check is grounds for the issuance by a county department of social services of an unfavorable preplacement assessment. Any prospective adoptive parent who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.

(e) The department shall notify the prospective adoptive parent's supervising county department of social services of the results of the criminal history check in accordance with the federal and State law regulating the dissemination of the contents of the criminal history file. The department shall not release nor disclose any portion of the prospective adoptive parent's criminal history to the prospective adoptive parent. The department shall also ensure that the prospective adoptive parent is notified of the prospective adoptive parent's right to review the criminal history information, the procedure for completing or challenging the accuracy of the criminal history, and the prospective adoptive parent's right to contest the preplacement assessment of the county department of social services.

A prospective adoptive parent who disagrees with the preplacement assessment of the county department of social services may request a review of the assessment pursuant to G.S. 48-3-308(a).

(f) All the information that the department receives through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the department and those persons authorized under this section to receive the information. The department may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(g) There is no liability for negligence on the part of a State or local agency, or the employees of a State or local agency, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by

insurance, indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(h) The Department of Justice shall perform the State and national criminal history checks on prospective adoptive parents seeking to adopt a minor in the custody or placement responsibility of a county department of social services and shall charge the Department of Health and Human Services a reasonable fee only for conducting the checks of the national criminal history records authorized by this section. The Division of Social Services, Department of Health and Human Services, shall bear the costs of implementing this section."

Section 16. _Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"§ 114-19.7. Criminal record checks prior to placement of prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services.

The Department of Justice may provide to the Division of Social Services, Department of Health and Human Services, the criminal history from the State and National Repositories of Criminal Histories as defined in G.S. 48-1-101(5a). The Division shall provide to the Department of Justice, along with the request, the fingerprints of the prospective adoptive parent seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the individual to be checked. The fingerprints of the prospective adoptive parent shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Division shall keep all information pursuant to this section privileged, as provided in G.S. 48-3-309(f). The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section."

Section 17. The Legislative Research Commission may study changes proposed to the juvenile justice system contained in House Bill 1561 and Senate Bill 1513, 1997 General Assembly. The study may include other issues relevant to child abuse, neglect, and dependency cases. The Commission shall report its findings, recommendations, and any legislative proposals to the 1999 General Assembly.

PART II. ADOPTION AND SAFE FAMILIES ACT - EFFECTIVE JULY 1, 1999.

Section 18. G.S. 7B-101, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"§ 7B-101. Definitions.

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

- (1) Abused juveniles. – Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:
 - a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;
 - b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;
 - c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;
 - d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. 14-27.2; second degree rape as provided in G.S. 14-27.3; first-degree sexual offense, as provided in G.S. 14-27.4; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178 and G.S. 14-179; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1, regardless of the age of the parties;
 - e. Creates or allows to be created serious emotional damage to the juvenile. Serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; or
 - f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.
- (1a) Aggravated circumstances. – Any circumstance attending to the commission of an act of abuse or neglect which increases its enormity or adds to its injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.
- (2) Caretaker. – Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's

care, or any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility. 'Caretaker' also means any person who has the responsibility for the care of a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of this Subchapter only.

- (3) Clerk. – Any clerk of superior court, acting clerk, or assistant or deputy clerk.
- (4) Community-based program. – A program providing nonresidential or residential treatment to a juvenile in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.
- (5) Court. – The district court division of the General Court of Justice.
- (5a) Court of competent jurisdiction. – A court having the power and authority of law to act at the time of acting over the subject matter of the cause.
- (6) Custodian. – The person or agency that has been awarded legal custody of a juvenile by a court or a person, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court.
- (7) Dependent juvenile. – A juvenile in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.
- (8) Director. – The director of the county department of social services in the county in which the juvenile resides or is found, or the director's representative as authorized in G.S. 108A-14.
- (9) District. – Any district court district as established by G.S. 7A-133.
- (10) Judge. – Any district court judge.
- (11) Judicial district. – Any district court district as established by G.S. 7A-133.
- (12) Juvenile. – A person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States.
- (13) Neglected juvenile. – A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian,

custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

- (14) Petitioner. – The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.
- (15) Prosecutor. – The district attorney or assistant district attorney assigned by the district attorney to juvenile proceedings.
- (16) Reasonable efforts. – The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.
- (17) Safe home. – A home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.
- (18) Shelter care. – The temporary care of a juvenile in a physically unrestricting facility pending court disposition.

The singular includes the plural, the masculine singular includes the feminine singular and masculine and feminine plural unless otherwise specified."

Section 19. G.S. 7B-302, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"§ 7B-302. Investigation by director; access to confidential information; notification of person making the report.

When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the director shall initiate the investigation within 72 hours following receipt of the report. The investigation and evaluation shall include a visit to the place where the juvenile resides. All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department.

When a report of a juvenile's death as a result of suspected maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile is received, the director of the department of social services shall immediately ascertain if other juveniles remain in the home, and, if so, initiate an investigation in order to determine whether they require protective services or whether immediate removal of the juveniles from the home is necessary for their protection.

If the investigation indicates that abuse, neglect, or dependency has occurred, the director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the director shall immediately provide or arrange for protective services. If the parent, guardian, custodian, or caretaker refuses to accept the protective services provided or arranged by the director, the director shall sign a complaint seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the director shall sign a complaint which alleges the applicable facts to invoke the jurisdiction of the court. Where the investigation shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 5 of this Chapter.

In performing any duties related to the investigation of the complaint or the provision or arrangement for protective services, the director may consult with any public or private agencies or individuals, including the available State or local law enforcement officers who shall assist in the investigation and evaluation of the seriousness of any report of abuse, neglect, or dependency when requested by the director. The director or the director's representative may make a written demand for any information or reports, whether or not confidential, that may in the director's opinion be relevant to the investigation of or the provision for protective services. Upon the director's or the director's representative's request and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If a custodian of criminal investigative information or records believes that release of the information will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such an action, the custodian of the records shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph shall be set down for immediate hearing, and subsequent proceedings in the actions shall be accorded priority by the trial and appellate courts.

Within five working days after receipt of the report of abuse, neglect, or dependency, the director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted

for investigation and whether the report was referred to the appropriate State or local law enforcement agency.

Within five working days after completion of the protective services investigation, the director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse, neglect, or dependency, whether the county department of social services is taking action to protect the juvenile, and what action it is taking, including whether or not a petition was filed. The person making the report shall be informed of procedures necessary to request a review by the prosecutor of the director's decision not to file a petition. A request for review by the prosecutor shall be made within five working days of receipt of the second notification. The second notification shall include notice that, if the person making the report is not satisfied with the director's decision, the person may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive the person's right to this notification, and no notification is required if the person making the report does not identify himself to the director."

Section 20. G.S. 7B-505, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"§ 7B-505. Place of nonsecure custody.

A juvenile meeting the criteria set out in G.S. 7B-503 may be placed in nonsecure custody with the department of social services or a person designated in the order for temporary residential placement in:

- (1) A licensed foster home or a home otherwise authorized by law to provide such care; or
- (2) A facility operated by the department of social services; or
- (3) Any other home or ~~facility~~facility, including a relative's home approved by the court and designated in the order.

In placing a juvenile in nonsecure custody under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the ~~relative~~relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile. In placing a juvenile in nonsecure custody under this section, the court shall consider the Indian Child Welfare Act, Pub. L. No. 95-608, 25 U.S.C. §§ 1901, et seq., as amended, and the Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 4056, as amended, as they may apply. Prior to placement Placement of a juvenile with a relative outside of this State, ~~the placement~~State must be in accordance with the Interstate Compact on the Placement of Children, Article 38 of this Chapter."

Section 21. G.S. 7B-506, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"§ 7B-506. Hearing to determine need for continued nonsecure custody.

(a) No juvenile shall be held 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 nonsecure custody conducted under this subsection may be continued for up to 10 business days with the consent of the juvenile's parent, guardian, custodian, or caretaker 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 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. 7B-502, 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 applicable time period set forth in this subsection: Provided, that if such session does not precede the expiration of the time period, the hearing may be conducted at another regularly scheduled session of district court in the district where the order was entered.

(b) At a hearing to determine the need for continued custody, the court shall receive testimony and shall allow the guardian ad litem, or juvenile, and the juvenile's parent, guardian, custodian, or caretaker an opportunity to introduce evidence, to be heard in the person's 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 the juvenile's placement in custody is necessary. The court shall not be bound by the usual rules of evidence at such hearings.

(c) The court shall be bound by criteria set forth in G.S. 7B-503 in determining whether continued custody is warranted.

(d) If the court determines that the juvenile meets the criteria in G.S. 7B-503 and should continue in custody, the court 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.

(e) If the court orders at the hearing required in subsection (a) of this section that the juvenile remain in custody, a subsequent hearing on continued custody shall be held within seven business days of that hearing, excluding Saturdays, Sundays, and legal holidays, and pending a hearing on the merits, hearings thereafter shall be held at intervals of no more than 30 calendar days.

(f) Hearings conducted under subsection (e) of this section may be waived only with the consent of the juvenile's parent, guardian, custodian, or caretaker, 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.

~~(g) Any order authorizing the continued custody of a juvenile 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 promptly to a safe home. A finding that reasonable efforts have not been made shall not preclude the entry of an order authorizing continued custody when the court finds that continued 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. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, then the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.~~

- (h) At each hearing to determine the need for continued custody, the court shall:
- (1) Inquire as to the identity and location of any missing parent. The court shall include findings as to the efforts undertaken to locate the missing parent and to serve that parent. The order may provide for specific efforts aimed at determining the identity and location of any missing parent;
 - (2) Inquire as to whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order temporary placement of the juvenile with the ~~relative.~~ relative unless the court finds that placement with the relative would be contrary to the best interests of the juvenile. In placing a juvenile in nonsecure custody under this section, the court shall consider the Indian Child Welfare Act, Pub. L. No. 95-608, 25 U.S.C. §§ 1901, et seq., as amended, and the Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 4056, as amended, as they may apply. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children set forth in Article 38 of this Chapter; and
 - (3) Inquire as to whether there are other juveniles remaining in the home from which the juvenile was removed and, if there are, inquire as to the specific findings of the investigation conducted under G.S. 7B-302 and any actions taken or services provided by the director for the protection of the other juveniles."

Section 21.1. If Senate Bill 1260, 1997 General Assembly, is enacted into law by the 1997 General Assembly, then G.S. 7A-577.1, as enacted in Part I of this act is recodified as G.S. 7B-506.1 and reads as rewritten:

"§ 7B-506.1. Reasonable efforts.

- (a) An order placing or continuing the placement of a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order:
- (1) Shall contain a finding that the juvenile's continuation in or return to the juvenile's own home would be contrary to the juvenile's best interest;
 - (2) Shall contain findings as to whether a county department of social services has made reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously

determined under subsection (b) of this section that such efforts are not required or shall cease;

- (3) Shall contain findings as to whether a county department of social services should continue to make reasonable efforts to prevent or eliminate the need for placement of the juvenile, unless the court has previously determined or determines under subsection (b) of this section that such efforts are not required or shall cease;
- (4) Shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the agency is to provide or arrange for the foster care or other placement of the juvenile; and
- (5) May provide for services or other efforts aimed at returning the juvenile to a safe home or at achieving another permanent plan for the juvenile.

A finding that reasonable efforts have not been made by a county department of social services shall not preclude the entry of an order authorizing the juvenile's placement when the court finds that placement 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.

(b) In any order placing a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order, the court may direct that reasonable efforts to eliminate the need for placement of the juvenile shall not be required or shall cease if the court makes written findings of fact that:

- (1) Such efforts clearly would be futile or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time;
- (2) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as defined in G.S. ~~7A-517(3a)~~; 7B-101;
- (3) A court of competent jurisdiction has terminated involuntarily the parental rights of the parent to another child of the parent; or
- (4) A court of competent jurisdiction has determined that: the parent has committed murder or voluntary manslaughter of another child of the parent; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntarily manslaughter of the child or another child of the parent; or has committed a felony assault resulting in serious bodily injury to the child or another child of the parent.

(c) At any hearing at which the court finds that reasonable efforts to eliminate the need for the juvenile's placement are not required or shall cease, the court shall direct that a permanency planning hearing as required by G.S. ~~7A-657.1~~ 7B-906.1 be held within 30 calendar days after the date of the hearing and, if practicable, shall set the date and time for the permanency planning hearing.

(d) In determining reasonable efforts to be made with respect to a juvenile and in making such reasonable efforts, the juvenile's health and safety shall be the paramount concern. Reasonable efforts to preserve or reunify families may be made concurrently with efforts to plan for the juvenile's adoption, to place the juvenile with a legal guardian, or to place the juvenile in another permanent arrangement."

Section 22. G.S. 7B-801, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"§ 7B-801. Adjudicatory hearing. ~~Hearing.~~

~~The adjudicatory hearing shall be held in the district at such time and place as the chief district court judge shall designate. The court may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted.~~

(a) At any hearing authorized or required under this Subchapter, the court in its discretion shall determine whether the hearing or any part of the hearing shall be closed to the public. In determining whether to close the hearing or any part of the hearing, the court shall consider the circumstances of the case, including, but not limited to, the following factors:

- (1) The nature of the allegations against the juvenile's parent, guardian, custodian or caretaker;
- (2) The age and maturity of the juvenile;
- (3) The benefit to the juvenile of confidentiality;
- (4) The benefit to the juvenile of an open hearing; and
- (5) The extent to which the confidentiality afforded the juvenile's record pursuant to G.S. 132-1.4(l) and G.S. 7B-2901 will be compromised by an open hearing.

(b) No hearing or part of a hearing shall be closed by the court if the juvenile requests that it remain open.

(c) The adjudicatory hearing shall be held in the district at such time and place as the chief district court judge shall designate, but no later than 60 days from the filing of the petition unless the judge pursuant to G.S. 7B-803 orders that it be held at a later time."

Section 23. G.S. 7B-903, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"§ 7B-903. Dispositional alternatives for abused, neglected, or dependent juvenile.

The following alternatives for disposition shall be available to any court exercising jurisdiction, and the court may combine any of the applicable alternatives when the court finds the disposition to be in the best interests of the juvenile:

- (1) The court may dismiss the case or continue the case in order to allow the parent, guardian, custodian, caretaker or others to take appropriate action.
- (2) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the court may:
 - a. Require that the juvenile be supervised in the juvenile's own home by the department of social services in the juvenile's

county, or by other personnel as may be available to the court, subject to conditions applicable to the parent, guardian, custodian, or caretaker as the court may specify; or

- b. Place the juvenile in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or
- c. Place the juvenile in the custody of the department of social services in the county of the juvenile's residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of the department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. The director may, unless otherwise ordered by the court, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile, the director may, unless otherwise ordered by the court, arrange for, provide, or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a court or the court's designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent or guardian of the affected juvenile. If the director cannot obtain such consent, the director shall promptly notify the parent or guardian that care or treatment has been provided and shall give the parent frequent status reports on the circumstances of the juvenile. Upon request of a parent or guardian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to such parent or guardian by the director unless prohibited by G.S. 122C-53(d). If a juvenile is removed from the home and placed in custody or placement responsibility of a county department of social services, the director shall not allow unsupervised visitation with, or return physical custody of the juvenile to, the parent, guardian, custodian, or caretaker without a hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home.

In placing a juvenile in out-of-home care under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe

home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is contrary to the best interests of the juvenile. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children.

- (3) In any case, the court may order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert as may be needed for the court to determine the needs of the juvenile:
- a. Upon completion of the examination, the court shall conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other treatment and who should pay the cost of the treatment. The county manager, or such person who shall be designated by the chairman of the county commissioners, of the juvenile's residence shall be notified of the hearing, and allowed to be heard. If the court finds the juvenile to be in need of medical, surgical, psychiatric, psychological, or other treatment, the court shall permit the parent or other responsible persons to arrange for treatment. If the parent declines or is unable to make necessary arrangements, the court may order the needed treatment, surgery, or care, and the court may order the parent to pay the cost of the care pursuant to G.S. 7B-904. If the court finds the parent is unable to pay the cost of treatment, the court shall order the county to arrange for treatment of the juvenile and to pay for the cost of the treatment. The county department of social services shall recommend the facility that will provide the juvenile with treatment.
 - b. If the court believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the court shall refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. A juvenile shall not be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental health, developmental disabilities, and substance abuse director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs. If institutionalization is determined to be the best service for the juvenile, admission shall be with the voluntary consent of the parent or guardian. If the parent, guardian, custodian, or caretaker refuses to consent to a mental hospital or retardation center admission after such

institutionalization is recommended by the area mental health, developmental disabilities, and substance abuse director, the signature and consent of the court may be substituted for that purpose. In all cases in which a regional mental hospital refuses admission to a juvenile referred for admission by a court and an area mental health, developmental disabilities, and substance abuse director or discharges a juvenile previously admitted on court referral prior to completion of treatment, the hospital shall submit to the court a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question."

Section 24. G.S. 7B-905, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"§ 7B-905. Dispositional order.

(a) The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The court shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration, and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested.

(b) A dispositional order under which a juvenile is removed from the custody of a parent, guardian, custodian, or caretaker shall direct that the review hearing required by G.S. 7B-906 be held within six months of 90 days from of the date of the juvenile's placement in custody dispositional hearing and, if practicable, shall set the date and time for the review hearing.

(c) Any dispositional order directing placement of a juvenile in foster care shall also contain: shall comply with the requirements of G.S. 7B-506.1.

- (1) ~~A finding that the juvenile's continuation in or return to the juvenile's home would be contrary to the juvenile's best interests; and~~
- (2) ~~Findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in foster care. A finding that reasonable efforts were not made shall not preclude entry of a dispositional order authorizing placement in foster care when the court finds that such placement is needed for protection of the juvenile. When efforts to prevent the need for the juvenile's placement are precluded by an immediate threat of harm to the juvenile, the court may find that placement of the juvenile in the absence of such efforts is reasonable.~~

~~The order may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home~~

~~within a reasonable period of time, the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.~~

~~(d) An order that places a juvenile in the custody of a county department of social services for placement shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the county department is to provide or arrange for the foster care or other placement of the juvenile. Any dispositional order shall provide for appropriate visitation as may be in the best interests of the juvenile and consistent with the juvenile's health and safety. If the juvenile is placed in the custody or placement responsibility of a county department of social services, the court may order the director to arrange, facilitate, and supervise a visitation plan expressly approved by the court."~~

Section 25. G.S. 7B-906, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"§ 7B-906. Review of custody order.

(a) In any case where custody is removed from a parent, guardian, custodian, or caretaker the court shall conduct a review hearing within six months of 90 days from the date ~~the order was entered, of the dispositional hearing~~ shall conduct a second review within six months after the first review, and shall conduct subsequent reviews at least every year thereafter. a review hearing within six months thereafter. The director of social services shall make ~~timely requests~~ a timely request to the clerk to calendar ~~the case~~ each review at a session of court scheduled for the hearing of juvenile ~~matters~~ matters. The director shall make ~~timely requests for calendaring subsequent reviews.~~ The clerk shall give 15 days' notice of the review and its purpose to the parent, the juvenile, if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this subsection shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection (a) of this section, may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every ~~12~~ six months, if the court finds by clear, cogent, and convincing evidence that:

- (1) The juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least one year;
- (2) The placement is stable and continuation of the placement is in the juvenile's best interests;
- (3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every ~~12~~ six months;
- (4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and

- (5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review.

(c) ~~At every review hearing, the court shall consider information from the department of social services, the juvenile, the parent or other person who has assumed the status and obligation of a parent without being awarded legal custody of the juvenile by a court, the custodian, the foster parent, the guardian ad litem, and any public or private agency which will aid it in its review.~~ parent, the juvenile, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will aid in its review.

In each case the court shall consider the following criteria and make written findings regarding those that are relevant:

- (1) Services which have been offered to reunite the family, or whether efforts to reunite the family clearly would be futile or inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time.
- (2) Where the juvenile's return home is unlikely, the efforts which have been made to evaluate or plan for other methods of care.
- (3) Goals of the foster care placement and the appropriateness of the foster care plan.
- (4) A new foster care plan, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile.
- (5) Reports on the placements the juvenile has had and any services offered to the juvenile and the parent, guardian, custodian, or caretaker.
- (5a) An appropriate visitation plan.
- (5b) If the juvenile is 16 or 17 years of age, a report on an independent living assessment of the juvenile and, if appropriate, an independent living plan developed for the juvenile.
- (6) When and if termination of parental rights should be considered.
- (7) Any other criteria the court deems necessary.

(d) The court, after making findings of fact, may appoint a guardian of the person for the juvenile pursuant to G.S. 7B-600 or may make any disposition authorized by G.S. 7B-903, including the authority to place the juvenile in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interests of the juvenile. ~~If the juvenile is placed in or remains in the custody of the department of social services, the court may authorize the department to arrange and supervise a visitation plan. Except for such visitation, the juvenile shall not be returned to the parent or other person who has assumed the status and obligation of a parent without being awarded legal custody of the juvenile by a court without a hearing at which the court finds sufficient facts to show that the juvenile will receive proper care~~

~~and supervision.~~—The court may enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interests of the juvenile. If at any time custody is restored to a parent, guardian, custodian, or caretaker the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

~~(e) At a hearing designated by the court, but at least within 12 months after the juvenile's placement, a review hearing shall be held under this section and designated as a permanency planning hearing. The purpose of the hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Notice of the hearing shall inform the parties of the purpose of the hearing. At the conclusion of the hearing, if the juvenile is not returned home, the court shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time and shall enter an order consistent with those findings.~~

~~(f) The provisions of subsections (b), (c), and (d) of G.S. 7B-905 G.S. 7B-506.1 shall apply to any order entered under this section which continues the foster care placement of a juvenile. section."~~

Section 25.1. If Senate Bill 1260, 1997 General Assembly, is enacted into law by the 1997 General Assembly, then G.S. 7A-657.1, as enacted in Part I of this act, is recodified as G.S. 7B-906.1 and reads as rewritten:

"§ 7B-906.1. Permanency planning hearing.

(a) In any case where custody is removed from a ~~parent or person standing in loco parentis,~~ parent, guardian, custodian, or caretaker, the judge shall conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody, and the hearing may be combined, if appropriate, with a review hearing required by ~~G.S. 7A-657.~~ 7B-906. The purpose of the permanency planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Subsequent permanency planning hearings shall be held at least every six months thereafter, or earlier as set by the court, to review the progress made in finalizing the permanent plan for the juvenile, or if necessary, to make a new permanent plan for the juvenile. The Director of Social Services shall make a timely request to the clerk to calendar each permanency planning hearing at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the hearing and its purpose to the ~~parent and to any person standing in loco parentis,~~ parent, the juvenile if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this provision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

(b) At any permanency planning review, the court shall consider information from the parent, ~~any person standing in loco parentis,~~ the juvenile, the guardian, any foster parent, relative or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency which will

aid it in the court's review. At the conclusion of the hearing, if the juvenile is not returned home, the court shall consider the following criteria and make written findings regarding those that are relevant:

- (1) Whether it is possible for the juvenile to be returned home immediately or within the next six months, and if not, why it is not in the juvenile's best interests to return home;
- (2) Where the juvenile's return home is unlikely within six months, whether legal guardianship or custody with a relative or some other suitable person should be established, and if so, the rights and responsibilities which should remain with the parents;
- (3) Where the juvenile's return home is unlikely within six months, whether adoption should be pursued and if so, any barriers to the juvenile's adoption;
- (4) Where the juvenile's return home is unlikely within six months, whether the juvenile should remain in the current placement or be placed in another permanent living arrangement and why;
- (5) Whether the county department of social services has since the initial permanency plan hearing made reasonable efforts to implement the permanent plan for the juvenile;
- (6) Any other criteria the court deems necessary.

(c) At the conclusion of the hearing, the judge shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time. The judge may appoint a guardian of the person for the juvenile pursuant to G.S. ~~7A-585-7B-600~~ or make any disposition authorized by G.S. ~~7A-647-7B-903~~ including the authority to place the child in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interest of the juvenile. If the juvenile is not returned home, the court shall enter an order consistent with its findings that directs the department of social services to make reasonable efforts to place the juvenile in a timely manner in accordance with the permanent plan, to complete whatever steps are necessary to finalize the permanent placement of the juvenile, and to document such steps in the juvenile's case plan. If at any time custody is restored to a parent, or findings are made in accordance with G.S. ~~7A-657(b),-7B-906(b)~~, the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

If the court continues the juvenile's placement in the custody or placement responsibility of a county department of social services, the provisions of G.S. ~~7A-577.1-7B-506.1~~ shall apply to any order entered under this section.

(d) In the case of a juvenile who is in the custody or placement responsibility of a county department of social services, and has been in placement outside the home for 15 of the most recent 22 months; or a court of competent jurisdiction has determined that the parent has abandoned the child; or has committed murder or voluntary manslaughter of another child of the parent; or has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child or another child of the parent, the

court shall order the director of the department of social services to initiate a proceeding to terminate the parental rights of the parent unless the court finds:

- (1) The permanent plan for the juvenile is guardianship or custody with a relative or some other suitable person;
- (2) The court makes specific findings why the filing of a petition for termination of parental rights is not in the best interests of the child; or
- (3) The department of social services has not provided the juvenile's family with such services as the department deems necessary, when reasonable efforts are still required to enable the juvenile's return to a safe home.

(e) If a proceeding to terminate the parental rights of the juvenile's parents is necessary in order to perfect the permanent plan for the juvenile, the director of the department of social services shall file a petition to terminate parental rights within 60 calendar days from the date of the permanency planning hearing unless the court makes written findings why the petition cannot be filed within 60 days. If the court makes findings to the contrary, the court shall specify the time frame in which any needed petition to terminate parental rights shall be filed."

Section 26. G.S. 7B-907, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"§ 7B-907. Posttermination of parental rights' placement court review.

(a) The purpose of each placement review is to ensure that every reasonable effort is being made to provide for a permanent placement plan for the juvenile who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the juvenile's best interests. At each review hearing the court may consider information from the department of social services, the licensed child-placing agency, the guardian ad litem, the juvenile, the child, any foster parent, relative, or preadoptive parent providing care for the child, and any other person or agency the court determines is likely to aid in the review.

(b) The court shall conduct a placement review not later than six months from the date of the termination hearing when parental rights have been terminated by a petition brought by any person or agency designated in G.S. 7B-1102(2) through (5) and a county director or licensed child-placing agency has custody of the juvenile. The court shall conduct reviews every six months thereafter until the juvenile is placed for adoption and the adoption petition is filed by the adoptive parents:

- (1) No more than 30 days and no less than 15 days prior to each review, the clerk shall give notice of the review to the juvenile if the juvenile is at least 12 years of age, the legal custodian of the juvenile, ~~the-any~~ foster parent, relative, or preadoptive parent providing care for the juvenile, the guardian ad litem, if any, and any other person or agency the court may specify. Only the juvenile, if the juvenile is at least 12 years of age, the legal custodian of the juvenile, ~~the-any~~ foster parent, relative, or preadoptive parent providing care for the juvenile, and the guardian ad litem shall attend the review hearings, except as otherwise directed by the court. Nothing in this subdivision shall be construed to

make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and an opportunity to be heard.

- (2) If a guardian ad litem for the juvenile has not been appointed previously by the court in the termination proceeding, the court, at the initial six-month review hearing, may appoint a guardian ad litem to represent the juvenile. The court may continue the case for such time as is necessary for the guardian ad litem to become familiar with the facts of the case.
- (c) The court shall consider at least the following in its review:
 - (1) The adequacy of the plan developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the juvenile's best interests and the efforts of the department or agency to implement such plan;
 - (2) Whether the juvenile has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption agency; and
 - (3) The efforts previously made by the department or agency to find a permanent home for the juvenile.

(d) The court, after making findings of fact, shall affirm the county department's or child-placing agency's plans or require specific additional steps which are necessary to accomplish a permanent placement which is in the best interests of the juvenile.

(e) If the juvenile has been placed for adoption prior to the date scheduled for the review, written notice of said placement shall be given to the clerk to be placed in the court file, and the review hearing shall be cancelled with notice of said cancellation given by the clerk to all persons previously notified.

(f) The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency. The guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five days. Any issue of abuse of discretion by the county department or child-placing agency in the selection process must be raised by the guardian ad litem within 10 days following the date the agency notifies the court and the guardian ad litem in writing of the filing of the adoption petition."

Section 26.1. If Senate Bill 1260, 1997 General Assembly, is enacted into law by the 1997 General Assembly, then G.S. 7A-289.23.1, as enacted in Part I of this act, is recodified as G.S. 7B-1101.1 and reads as rewritten:

"§ 7B-1101.1. Pending child abuse, neglect, or dependency hearings.

When a juvenile is currently within the jurisdiction of the district court based upon an abuse, neglect, or dependency proceeding, a petition for termination of parental rights to that juvenile may be filed as a motion in the cause in the abuse, neglect, or dependency proceeding. Any parent of that juvenile who was previously served in the

abuse, neglect, or dependency proceeding in accordance with G.S. ~~7A-565~~ 7B-407 shall be served with the petition to terminate parental rights in accordance with G.S. 1A-1, Rule 5."

Section 27. G.S. 7B-1105, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"§ 7B-1105. Issuance of summons.

(a) Except as provided in G.S. 7B-1104, upon the filing of the petition, the court shall cause a summons to be issued. The summons shall be directed to the following persons or agency, not otherwise a party petitioner, who shall be named as respondents:

- (1) The parents of the juvenile;
- (2) Any person who has been judicially appointed as guardian of the person of the juvenile;
- (3) The custodian of the juvenile appointed by a court of competent jurisdiction;
- (4) Any county department of social services or licensed child-placing agency to whom a juvenile has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General Statutes; Statutes or any county department of social services to whom placement responsibility for the child has been given by a court of competent jurisdiction; and
- (5) The juvenile, if the juvenile is 12 years of age or older at the time the petition is filed.

Provided, no summons need be directed to or served upon any parent who has previously surrendered the juvenile to a county department of social services or licensed child-placing agency nor to any parent who has consented to the adoption of the juvenile by the petitioner. The summons shall notify the respondents to file a written answer within 30 days after service of the summons and petition. Service of the summons shall be completed as provided under the procedures established by G.S. 1A-1, Rule 4(j); but the parent of the juvenile shall not be deemed to be under disability even though the parent is a minor.

(b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:

- (1) The name of the minor juvenile;
- (2) Notice that a written answer to the petition must be filed with the clerk who signed the petition within 30 days after service of the summons and a copy of the petition, or the parent's rights may be terminated;
- (3) Notice that if they are indigent, the parents are entitled to appointed counsel. The parents may contact the clerk immediately to request counsel;
- (4) Notice that this is a new case. Any attorney appointed previously will not represent the parents in this proceeding unless ordered by the court;

- (5) Notice that the date, time, and place of the hearing will be mailed by the clerk upon filing of the answer or 30 days from the date of service if no answer is filed; and
- (6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing.

(c) If a county department of social services, not otherwise a party petitioner, is served with a petition alleging that the parental rights of the parent should be terminated pursuant to G.S. 7B-1110, the department shall file a written answer and shall be deemed a party to the proceeding."

Section 28. G.S. 7B-1110, as rewritten and recodified by enacted Senate Bill 1260, 1997 General Assembly, reads as rewritten:

"§ 7B-1110. Grounds for terminating parental rights.

(a) The court may terminate the parental rights upon a finding of one or more of the following:

- (1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.
- (2) The parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.
- (3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.
- (4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition willfully failed without justification to pay for the care, support, and education of the juvenile, as required by said decree or custody agreement.
- (5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition to terminate parental rights:
 - a. Established paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether

- such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or
- b. Legitimated the juvenile pursuant to provisions of G.S. 49-10 or filed a petition for this specific purpose; or
 - c. Legitimated the juvenile by marriage to the mother of the juvenile; or
 - d. Provided substantial financial support or consistent care with respect to the juvenile and mother.
- (6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.
- (7) The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition. ~~For the purpose of this subdivision, a juvenile may be willfully abandoned by the juvenile's natural father if the mother of the juvenile had been willfully abandoned by and was living separate and apart from the father at the time of the juvenile's birth, although the father may not have known of such birth; but in any event the juvenile must be over the age of three months at the time of the filing of the petition.~~
- (8) The parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; or has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home.
- (9) The parental rights of the parent with respect to another child of the parent have been terminated involuntarily by a court of competent jurisdiction and the parent lacks the ability or willingness to establish a safe home.

(b) The burden in such proceedings shall be upon the petitioner to prove the facts justifying such termination by clear and convincing evidence."

Section 29. Sections 1 through 9 of this act become effective January 1, 1999, and apply to abuse, neglect, and dependency reports received, juvenile petitions filed, and review hearings commenced on and after that date. Sections 10 and 11 of this act become effective January 1, 1999, and apply to termination of parental rights petitions filed on and after that date. Sections 12 through 16 of this act become effective January 1, 1999, and apply to any placement of a minor who is in the custody or placement responsibility of a county department of social services on and after that date. If the 1997 General Assembly enacts Senate Bill 1260, Sections 1 through 4, 5

through 8, 9, 10, and 11 of this act expire June 30, 1999, and Sections 18 through 28 of this act only become effective on July 1, 1999. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of October, 1998.

s/ Frank W. Ballance, Jr.
Deputy President Pro Tempore of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 4:50 p.m. this 6th day of November, 1998