

Family Law

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2002 LEGISLATION

This bulletin summarizes changes made to statutes relating to family law by the 2002 session of the 2001 General Assembly. While the General Assembly made few changes in this area, there were important developments in equitable distribution, domestic violence and juvenile law.

Equitable Distribution

In 1997, the General Assembly created a new classification of property subject to distribution in an equitable distribution proceeding. Called divisible property, this new category was created to give courts more authority to deal with changes in the financial conditions of the parties that occur between the time of separation and the time of the equitable distribution trial. *See* G.S. 50-20(b)(4). While the 1997 amendments addressed to a limited degree changes in the marital debt of the parties during separation by permitting a court to divide increases in debt between the parties, the amendments did not address the difficult issue of how to account for payments of marital debt made by one party during separation. Recently, in *Hay v. Hay*, 148 N.C. App. 649, 559 S.E.2d 268 (2002), the court of appeals held that the postseparation payment of marital debt did not result in the creation of divisible property. Rather, the court held that it remained within the discretion of the judge to decide whether and to what extent one spouse is entitled to “credit” in the final distribution for the postseparation payment of debt.

To address that issue, the General Assembly amended the definition of divisible property in the technical corrections bill, S.L. 2002-159, sec. 33.5. Effective October 11, 2002, divisible property includes decreases as well as increases in marital debt. This amendment requires that the court identify, value and distribute between the parties all decreases in marital debt, including those decreases that result from the payment of the debt by one party. While the court will continue to have discretion about the allocation of debt and debt payments in the final distribution, the final equitable distribution judgment will specifically account for all payments made by either party.

Domestic Violence

Two bills were enacted that deal with domestic violence, both recommended by the Domestic Violence Commission.

Approving Abuser Treatment Programs

G.S. 50B-3 allows the judge issuing a civil domestic violence protective to require a party to attend and complete an abuser treatment program approved by the Department of Administration, and G.S. 15A-1343 sets out a similar provision as a condition for probation of a defendant who is responsible for acts of domestic violence. S.L. 2002-105(H 1534) transfers the power for approving abuser treatment programs from the Department of Administration to the Domestic Violence Commission and specifically authorizes the Commission to adopt rules, subject to the Administrative Procedure Act, for the approval of abuser treatment programs. The rules must establish a consistent level of performance from providers of programs and ensure that approved programs enhance the safety of victims and hold responsible those who perpetrate acts of domestic violence.

Address Confidentiality

Effective January 1, 2003, S.L. 2002-171 enacts a new Chapter 15C of the General Statutes to establish an address confidentiality program for victims of domestic violence, sexual offense, and stalking. The program allows victims to register with the Attorney General and be given a substitute address that can be used in any public document, thereby keeping their actual physical location confidential. The statute requires that the Attorney General act as agent for program participants for purposes of service of process and receiving and forwarding first-class, certified or registered mail.

If an applicant meets the program requirements and is certified as a program participant, the Attorney General issues the applicant an Address Confidentiality Program authorization card. The program participant thereafter can use the substitute address printed on the authorization card on any state or local agency document, for example a court pleading or an application for services from a county department of social services. Agencies are required to use the designated address when creating a public record and for the purpose of mailing or service of process. If an agency already has the actual address and phone number of the participant, or if the agency is one of those listed below as exempt from the provisions of the act, the statute provides that

information concerning a program participant's actual address and phone number is not a public record. Agency employees are prohibited from disclosing a program participant's actual address "to a person known to the employee to be prohibited from receiving the participant's actual address" and knowing disclosure of that information is a Class 1 misdemeanor.

If a program participant is subject to a court order relating to divorce, child support, or child custody or visitation, or is involved in a court proceeding relating to one of those issues at the time of certification in the program, the Attorney General is required to notify the court of the participant's substitute address. Once notified, the court is required to use the designated address for mailing and service of process and to avoid disclosure of the participant's actual address and telephone number.

The statute requires the participant to notify the Attorney General of a name change or a change of address or telephone number. It also provides a civil penalty of \$500 for falsely attesting in application to the program that disclosure of the applicant's address would endanger the applicant's safety. The Attorney General must terminate participation in the program if the participant fails to notify the Attorney General of an address or name change, the participant submits false information in the program application, or mail forwarded by the Attorney General is returned as undeliverable.

Exemptions for Certain Agencies. The following agencies are not required to use the substitute address for a participant in the program: boards of elections; tax offices for purpose of listing, levying and collecting property taxes on motor vehicles and real property; registers of deeds on recorded documents or land registrations; local school units for purposes of determining admission or assignments. However, records of the actual address and telephone number of a program participant kept by these agencies are not public records.

Extension of time for participants. Whenever state law provides a program participant a legal right to act within a prescribed period of ten days or less after service of a notice or other paper upon the program participant and the participant is served with the notice or other paper by mail, the participant is granted an additional five days to act. The legislation also amends Rule 6 of the Rules of Civil Procedure regarding service by mail to reflect this extension of time.

Juvenile Law

Out-of-Home Placements. S.L. 2002-164 amends four sections of the Juvenile Code to require the court, in placing a juvenile in out-of-home care, to “consider whether it is in the juvenile’s best interest to remain in the juvenile’s community of residence.” Effective October 23, 2002, this new requirement will come into play any time the court orders that the juvenile be placed outside his or her own home

1. in a nonsecure custody order under G.S. 7B-505 for a juvenile who is alleged to be *abused, neglected, or dependent*.
2. in a disposition order pursuant to G.S. 7B-903(a)(2)c. in an *abuse, neglect, or dependency* proceeding.
3. as part of a disposition order providing for evaluation or treatment of an *undisciplined or delinquent* juvenile pursuant to G.S. 7B-2502.
4. as a disposition under G.S. 7B-2503 in the case of an *undisciplined* juvenile.

Destruction of Juvenile Court Records. S.L. 2002-159 (S 1217) rewrites G.S. 7B-3000(g) to provide that the Administrative Office of the Courts (not the Department of Juvenile Justice and Delinquency Prevention) is authorized to adopt rules relating to the destruction of court records in cases involving undisciplined or delinquent juveniles.

Transfer of Adoption Proceedings to District Court. An amendment to G.S. 48-2-601 provides that if an issue of fact, an equitable defense, or a request for equitable relief is raised before the clerk in an adoption proceeding, the clerk must transfer the proceeding to the district court under G.S. 1-301.2. This is not a change in the law; it repeats in the adoption chapter a requirement that exists already under G.S. 1-301.2. This change was made by S.L. 2002-159 (S 1217).

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