

JUVENILE LAW BULLETIN

Number 2005/02 November 2005

2005 LEGISLATION: JUVENILE LAW

by Janet Mason

This bulletin discusses legislation enacted by the 2005 session of the North Carolina General Assembly relating to juvenile law and other subjects affecting children and families. The exact text of legislation and related information are available at the Web site for the North Carolina General Assembly: <http://www.ncleg.net/homePage.pl>. In addition, summaries of 2005 legislation on a variety of subjects will be available on the Web page for the School of Government at <http://ncinfo.iog.unc.edu/pubs/nclegis/index.html>, along with summaries of legislation from prior sessions.

Child Abuse, Neglect, Dependency, and Termination of Parental Rights

Assessment Response to Reports of Abuse, Neglect, Dependency

S.L. 2005-55 (H 277) codifies and makes statewide the Multiple Response approach to responding to reports of abuse, neglect, and dependency. This approach began as a pilot program and already is in place in many counties. Where the Juvenile Code has required a county social services department to conduct an investigation after receiving a report of suspected abuse, neglect, or dependency, the act requires the department to conduct either a family assessment or an investigative assessment, depending on the nature of the report. The county social services director determines which response is appropriate in a particular case. An investigative assessment response involves a formal information gathering process to determine whether a child is abused or seriously neglected. A family assessment response,

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which may not be used in abuse cases, uses “a family-centered approach that is protection and prevention oriented and that evaluates the strengths and needs of the juvenile’s family, as well as the condition of the juvenile.”

The act makes a number of technical and conforming amendments to Subchapter I of the Juvenile Code, G.S. Chapter 7B. It also rewrites G.S. 7B-302(a) to provide that an assessment following a report that a child is abused or neglected in a child care facility does not require a visit to the place where the child lives, as other assessments do. Finally, it rewrites G.S. 7B-303(a) to require a department of social services, when it files a petition alleging interference with or obstruction of an assessment, to include in the petition a concise statement of the basis for initiating the assessment. The act is effective October 1, 2005.

“Responsible Individuals” List; Appeal and Expunction Procedures

When a county department of social services receives a report of suspected child abuse or neglect, the department conducts an assessment to determine whether the child has been abused or neglected. Regardless of the determination, the department submits information about the report and assessment to the Central Registry maintained by the state Department of Health and Human Services (DHHS). The registry is a confidential collection of information used both to generate statewide statistics and to enable social services departments to identify children who are the subject of more than one report. Effective October 1, 2005, when the county social services director’s assessment determines that a child has been abused or seriously neglected – a determination primarily about the child’s status, not the conduct of the parent or other adult – the director also must identify the person(s) responsible for the child’s status and report that information to DHHS for inclusion on a “Responsible Individuals List.”

S.L. 2005-399 (H 661) authorizes DHHS to release information from this list to child caring institutions, child placing agencies, group homes, and other providers of foster care, child care, or adoption services, to assist in determining whether individuals are fit to care for or adopt children. The act directs the state Social Services Commission to adopt rules defining “serious neglect” and addressing various procedures relating to the list. It is a Class 3 misdemeanor for a public official or employee knowingly to release information from the list or the central registry to an unauthorized person, for an

authorized person who receives such information to release it to an unauthorized person, or for an unauthorized person to access or attempt to access the information.

Because information released from the Responsible Individuals List may affect a person’s employment, potential employment, or opportunity to provide foster care or to adopt a child, it is essential that the information be accurate, that an individual know that his or her name is being put on the list, and that procedures exist for contesting, correcting, or expunging information on the list. If the county department of social services initiates a juvenile court proceeding alleging that the child is abused or neglected, the person determined by the director to be a responsible individual has a judicial forum for contesting the department’s allegations. (The precise issue of whether that person is a “responsible individual” whose name should be placed on the list is not before the court, although the court may make findings of fact about an individual’s responsibility for a child’s condition.) In most cases, the individual will have a right to appeal the court’s order to the court of appeals. (A “caretaker,” who is not a parent, guardian, or custodian, does not have a right to appeal. *See* G.S. 7B-1002.) In many cases, however, after determining that a child is abused or neglected, a county social services department works with the family to ensure the child’s safety without initiating a court action.

S.L. 2005-399 adds to the Juvenile Code, G.S. Chapter 7B, a new Article 3A, establishing notification requirements and expungement procedures. Within five days after completing an investigative assessment, the social services director must notify DHHS and give “personal written notice” of the results of the assessment to anyone determined to be a responsible individual. If personal notice cannot be given within fifteen days, the director must send notice by registered or certified mail, restricted delivery, to the individual’s last known address. The notice must:

1. inform the individual of the nature of the assessment response and whether the director determined abuse or serious neglect or both;
2. summarize “substantial evidence” supporting the director’s determination, without identifying the reporter or collateral contacts;
3. inform the individual that his or her name is being placed on the Responsible Individuals List and of the extent to which DHHS may release information from the list; and
4. clearly describe procedures the individual must follow to seek removal of his or her name from the list.

A person seeking removal of his or her name from the Responsible Individuals List first must make a written request for expungement to the county social services director who made the determination. The request must be delivered in person or by certified mail within thirty days after the individual receives the notice described above. Within fifteen working days after the director receives the expungement request, the director must review all relevant agency records and information, determine whether substantial evidence supported placement of the individual's name on the list, and either

1. notify DHHS to expunge the person's name from the list, or
2. uphold or modify the initial determination and refuse the expungement request.

The director must send a written statement of the decision to the individual by personal delivery or first-class mail. If the decision is to deny the expungement request the director also must send the individual a written statement of the reasons for the decision, a statement that the decision is final, information about the time within which the individual may seek review of the decision by the district attorney or the court, a second notice like the one sent to the individual initially, and a copy of a petition for expunction form. A director's failure to send a written statement of the decision within fifteen days operates as a denial of the expungement request, and the individual may seek review by the district attorney or file a petition for expungement in the district court.

Within thirty days after receiving notification that a request for expunction has been denied, the individual may request review of the director's decision by the district attorney or file a petition for expungement in the district court.

A request for review by the district attorney (or the district attorney's designee) is made by letter to the attention of the district attorney. The social services director must provide the district attorney with all of the information that was used in reaching the decision to deny the expungement request. The district attorney conducts a review and within thirty days after receiving the request for review must either agree or disagree with the director's determination that substantial evidence supported the director's initial decision. The district attorney must notify the individual and the director of the decision in writing. Failure to make a timely request for review by the district attorney is a waiver of the right to that form of review but does not affect the individual's right to petition the court for expungement.

A person may petition the district court for expungement of his or her name from the Responsible

Individuals List either within thirty days after receiving the director's review decision or within thirty days after the district attorney's decision agreeing with the director's determination, whichever is later. The petition must contain information specified in the statute, and a copy must be delivered in person or by certified mail to the social services director. Failure to file a timely petition constitutes a waiver of the right to file a petition for expungement. Nevertheless, a district court may review a determination of abuse or serious neglect any time, if the review serves the interest of justice or in extraordinary circumstances.

The clerk of superior court is required to maintain a separate docket for expunction actions, to schedule the cases for hearing in a session of district court hearing juvenile cases, and to send the director and the petitioner a notice of hearing. At the request of a party, the court is required to close the hearing to everyone except the parties, witnesses, and officers of the court.

At the hearing the social services director has the burden of proving by a preponderance of the evidence the correctness of his or her determination that (1) the child was abused or seriously neglected and (2) the petitioner was a "responsible individual." The rules of evidence in civil cases apply; however, the court has discretion to admit any evidence that is reliable and relevant if doing so will serve both the general purposes of the rules of evidence and the interests of justice. The parties have the right to

- present sworn evidence, law, or rules;
- represent themselves or obtain representation by an attorney at their own expense; and
- subpoena witnesses, cross-examine witnesses, and make closing arguments.

The court must enter its order, making findings of fact and conclusions of law, within thirty days after the hearing. The order may uphold the director's decision or reverse or modify it and order that DHHS be notified to make appropriate changes in the Responsible Individuals List. A party may appeal the court's decision to the court of appeals.

A person is not entitled to challenge the placement of his or her name on the Responsible Individuals List if he or she

1. is convicted criminally as a result of the same incident. The district attorney must notify the director of the result of the criminal proceeding, and the director must notify DHHS, which must consider the information when determining whether the person's name should remain on or be expunged from the list. (It is not altogether clear how the district attorney is to identify the cases in which he or she must notify the social services director.)

2. is a respondent in a juvenile proceeding involving abuse or serious neglect from the same incident. The director must notify DHHS, which must consider the information when determining whether the person's name should remain on or be expunged from the list.
3. fails to make a timely request for expunction to the county social services director.
4. fails to file a timely petition for expunction with the court.
5. fails to keep the department of social services informed of his or her current address during a request for expunction so that the individual may receive notification of the director's decision.

If before or during an expungement proceeding the individual seeking expungement is named as a respondent in a juvenile proceeding based on the same incident, the expungement proceeding – whether before the director, the district attorney, the district court, or the court of appeals – is stayed until the juvenile proceeding is completed or dismissed. If the juvenile proceeding is dismissed or concluded either without an adjudication or with an adjudication different from the director's determination (for example, neglect instead of abuse), the director must notify DHHS to expunge the individual's name or modify information on the list as appropriate.

The act applies to investigative assessments initiated by county social services departments on or after October 1, 2005.

Provisional Counsel for Parents

S.L. 2005-398 (H 1150) rewrites G.S. 7B-602 to require the appointment of "provisional counsel" for every respondent parent when an abuse, neglect, or dependency petition is filed. Either the summons or an attached notice must notify the parent of the appointment. At the first hearing in the case the court must confirm the appointment unless the parent does not appear at the hearing, does not qualify for appointed counsel, has retained counsel, or waives the right to counsel. In any of those instances, the court must dismiss the provisional counsel. The court may reconsider a parent's eligibility and desire for appointed counsel at any point in the proceeding. The act applies to petitions and actions filed on or after October 1, 2005.

Guardians ad Litem for Parents

G.S. 7B-602 and G.S. 7B-1101 require the appointment of a guardian ad litem for a respondent parent when (1) a child is alleged to be dependent or the dependency ground for termination of parental rights is alleged and (2) the parent's inability to care for the child is alleged to be due to mental illness, mental retardation, substance abuse, or a similar cause or condition. S.L. 2005-398 (H 1150) rewrites G.S. 7B-602 and replaces these provisions in G.S. 7B-1101 with a new section, G.S. 7B-1101.1, setting out new provisions for the appointment of a guardian ad litem for a parent in an abuse, neglect, dependency, or termination of parental rights proceeding.

For petitions or actions filed on or after October 1, 2005, the court on its own motion or motion of a party may appoint a guardian ad litem for a parent if the court determines that there is a reasonable basis to believe that the parent is incompetent or has diminished capacity and cannot act adequately in his or her own interest. As rewritten, G.S. 7B-602 refers specifically to appointment "pursuant to G.S. 1A-1, Rule 17." New G.S. 7B-1101.1 does not, but in every other respect the provisions are the same and there is no indication that the omission is significant. The court may not appoint the parent's attorney to serve as guardian ad litem. Communications between the parent or the parent's attorney and the parent's guardian ad litem are privileged and confidential to the same extent as attorney-client communications. Both sections specifically authorize the guardian ad litem to

1. help the parent enter consent orders, if appropriate.
2. facilitate service of process on the parent.
3. assure that necessary pleadings are filed.
4. assist the parent and the parent's attorney, if requested by the attorney, to ensure that procedural due process requirements with respect to the parent are met.

There is no requirement that the guardian ad litem be an attorney.

The act does not address whether some or all of these provisions also should apply if the court makes findings about the possible incompetence or diminished capacity of a guardian or custodian who is the respondent in an abuse, neglect, or dependency proceeding. If the provisions simply clarify the operation of G.S. 1A-1, Rule 17, in these cases, the identity of the party should not make a difference. If, instead, they are intended to give parents additional

protections because these cases involve parents' constitutionally protected rights, the court would have to discern what Rule 17 requires with respect to parties who are not parents.

Time Limits

For petitions and actions that are filed on or after October 1, 2005, disposition hearings in abuse, neglect, and dependency cases must take place immediately following the adjudication hearing and be concluded within thirty days after the adjudication hearing. S.L. 2005-398 (H 1150) adds this requirement to G.S. 7B-901, which heretofore has not addressed the timing of the disposition hearing.

S.L. 2005-398 also creates a procedure the court must follow when an order that is required by statute to be entered within thirty days after a hearing is not entered within that time period. In that circumstance the "clerk of court for juvenile matters" must schedule another hearing in the matter for the first session of court scheduled for hearing juvenile matters following the thirty-day period. The purpose of this subsequent hearing is to "determine and explain" the reason for the delay and obtain any needed clarification as to the contents of the order. The order in question must be entered within ten days after this hearing. These provisions are added to G.S. 7B-807(b) (adjudication orders); G.S. 7B-906(d) (review hearing orders); G.S. 7B-907(c) (permanency planning hearing orders); G.S. 7B-1109(e) (adjudication orders in termination proceedings); and G.S. 7B-1110(a) (disposition orders in termination proceedings). Failure to include the provision in G.S. 7B-905(a) (disposition orders in abuse, neglect, or dependency proceedings) probably was an oversight.

Notice of Change in Child's Placement

S.L. 2005-398 rewrites G.S. 7B-905 to require a county department of social services that has custody of or placement responsibility for a child to notify the child's guardian ad litem about a change in the child's placement. Generally the department must notify the guardian ad litem of its intention to change a child's placement. When an emergency makes that impossible, the department must notify the guardian ad litem or attorney advocate within seventy-two hours after changing the child's placement unless local rules require notification sooner. The provision applies to petitions and actions filed on or after October 1, 2005.

Appeals

S.L. 2005-398 substantially rewrites provisions in Subchapter I of the Juvenile Code regarding appeals in actions and proceedings filed on or after October 1, 2005. It reorganizes and rewrites provisions about who may appeal orders in these cases. G.S. 7B-1002, as rewritten, gives that right to (i) the juvenile, acting through a guardian ad litem, either already appointed pursuant to G.S. 7B-601 or appointed by the court pursuant to G.S. 1A-1, Rule 17, for purposes of the appeal; (ii) a county department of social services; (iii) a parent, guardian, or custodian who is not a prevailing party; and (iv) a party who sought but failed to obtain termination of parental rights. It continues to omit caretakers, who also may be named as respondents in some proceedings.

More significantly, the act rewrites G.S. 7B-1001 to provide that only the following orders may be appealed:

1. an order finding absence of jurisdiction
2. an order that determines the action and prevents a judgment from which appeal might be taken
3. an initial order of disposition and the adjudication order on which it is based
4. any order, other than a nonsecure custody order, that changes legal custody of a juvenile
5. an order under G.S. 7B-507(c) to cease reunification efforts (but only if the issue is properly preserved for appeal, as described below)
6. an order that terminates parental rights or denies a motion or petition to terminate parental rights

By referring to "initial" orders of disposition the change omits from the list orders resulting from review and permanency planning hearings unless they are covered by another category, such as review orders that change custody or order the cessation of reunification efforts.

For all appealable orders other than those ceasing reunification efforts, notice of appeal must be given in writing within thirty days after entry and service of the order – a change from the ten-day period that previously applied.

A party may give notice to preserve the right to appeal an order ceasing reunification efforts either in open court or in writing within ten days after the hearing at which the court orders that reunification efforts cease. The party giving notice may make a detailed offer of proof as to any evidence the court excluded or refused to consider. A guardian or custodian who appeals an order ceasing reunification

efforts may do so immediately. A parent, however, may appeal an order ceasing reunification efforts only

1. when the parent appeals a later order terminating the parent's rights, the parent has properly preserved the right to appeal the order ceasing reunification efforts, and that order is assigned as error in the appeal of the termination order; or
2. if no petition or motion for termination of the parent's rights is filed "within 180 days of the order" ceasing reunification efforts.

The act states that notice of appeal from an order under G.S. 7B-507(c) ceasing reunification efforts shall be given in writing by a proper party. For a guardian or custodian who may appeal the order "immediately," it states no time period. It is not clear whether the thirty-day period for appealing other orders applies or the time described above for giving notice to preserve the issue for appeal applies. The act is silent with respect to a juvenile's appeal of an order ceasing reunification efforts.

In every appeal the attorney, if there is one, representing an appealing party must sign the notice of appeal and may give notice of appeal only when the client has given the attorney direct instructions to do so after the conclusion of the proceeding. When a juvenile appeals, the notice of appeal must be signed by the guardian ad litem attorney advocate.

S.L. 2005-398 addresses the authority of the trial court while an appeal in an abuse, neglect, or dependency proceeding is pending – a subject that has been before the court of appeals and the supreme court and about which advocates involved in these cases have very different views. Given the time an appeal typically takes, there is not an obvious resolution that serves both parents' interest in meaningful and timely appellate review and the interest reflected throughout the Juvenile Code in achieving permanence for the child within a reasonable period of time. As rewritten, G.S. 7B-1003 resolves the question this way:

1. The trial court may enforce an order that is on appeal unless the trial court or an appellate court stays the order.
2. While an appeal is pending, unless an appellate court orders otherwise, the trial court may continue to exercise jurisdiction and conduct hearings, except under Article 11 (termination of parental rights), and may enter orders affecting the child's custody or placement as the court finds to be in the child's best interest.
3. When an order in a termination of parental rights case is on appeal in a case that did not begin as an abuse, neglect, or dependency

case, the court may enter temporary orders affecting the child's custody or placement as the court finds to be in the child's best interest.

The exclusion of termination of parental rights cases from those in which the trial court may proceed during an appeal supersedes the North Carolina Supreme Court's decision in *In re R.T.W.*, 359 N.C. 539, 614 S.E.2d 489 (2005), in which the court interpreted then current law to allow a termination case to proceed while another order in the case was on appeal.

Custody Orders in Juvenile and Civil Cases; Termination of Juvenile Court Jurisdiction

After the juvenile court adjudicates a child to be abused, neglected, or dependent, the court may place the child in the custody of a parent, a relative, an agency, or some suitable person. Sometimes the custody of the child already will have been the subject of a civil custody action between the parents (or other private parties) and an order giving a parent or other person custody will exist in an action under G.S. Chapter 50. That order and the juvenile disposition order may conflict. Although no statute addresses that kind of conflict, the juvenile order generally is viewed as taking precedence for as long as the court exercises jurisdiction in the juvenile case.

If the court in the juvenile proceeding removes the child from the custody of a parent, the goal initially is almost always returning the child to the parent's custody as soon as that can be done safely. Eventually, however, if the court determines that the child cannot return home safely within a reasonable period of time, the court establishes another "permanent plan" for the child, such as adoption, placement in the custody of a relative, or appointment of a legal guardian for the child.

Juvenile proceedings are designed to permit agency and judicial intervention to protect a child, and juvenile court orders are considered temporary in the sense that they should last only so long as state intervention on behalf of the child is justified. When the court implements a permanent plan of placing the juvenile in the custody of someone other than a parent, however, the juvenile court order awarding custody is designed to be as permanent as any order entered in a civil custody action under G.S. Chapter 50. In addition, the department of social services that initiated the juvenile action may have no further role to play, and the court may relieve the guardian ad litem, who was

appointed to represent the child's best interest in the juvenile case, from further responsibilities.

S.L. 2005-320 (H 801) adds new provisions to the Juvenile Code (G.S. Chapter 7B) and to G.S. Chapter 50 to address situations in which (1) both a juvenile court order and a Chapter 50 order address the custody of a child; or (2) a custody order entered in a juvenile proceeding is intended to be as permanent as a Chapter 50 order and there is not a need for the juvenile court's ongoing involvement in the matter. The General Assembly enacted a similar law in 2003 (S.L. 2003-381) as a pilot program that applied only in the Twelfth Judicial District (Cumberland County). The Administrative Office of the Courts reported favorably on the pilot and recommended that it be implemented statewide.

The act rewrites G.S. 7B-200 to provide explicitly that when a civil custody order and an order in a juvenile abuse, neglect, or dependency proceeding conflict, the juvenile order controls for as long as the court exercises jurisdiction in the juvenile case. In addition, whenever the court obtains jurisdiction over a child in an abuse, neglect, or dependency proceeding, any other civil action in which custody of the child is an issue is stayed automatically with respect to the custody issue. The court in the juvenile matter may consolidate the two actions if they are in the same judicial district. If the juvenile proceeding and the civil action or claim for custody are in different judicial districts, for good cause and after consulting the court in the other district, the court in the juvenile case may (1) order that the civil action or claim be transferred to the county in which the juvenile case is pending or (2) transfer the juvenile proceeding to the county in which the civil action or claim is pending. Regardless of where the actions are pending, the court in the juvenile case may proceed in the juvenile matter while the civil action or claim remains stayed, or dissolve the stay in the civil action and stay the juvenile proceeding pending resolution of the civil matter.

The court's jurisdiction in an abuse, neglect, or dependency proceeding ends when the child reaches age eighteen or when the court orders that jurisdiction is terminated, whichever occurs first. The act rewrites G.S. 7B-201 to clarify that when jurisdiction ends for either reason all orders entered in the juvenile case cease to have effect. The custody and status of the child and the related rights of the parties revert to whatever they were when the juvenile petition was filed, subject to other applicable laws (such as the child's automatic emancipation at age eighteen) or a valid court order in another action in which a court is properly exercising jurisdiction (such as a custody order in a divorce action).

Although it is already the law, the act adds to G.S. 7B-402 a requirement that the petition (or an affidavit attached to the petition) in an abuse, neglect, or dependency proceeding contain the information required by G.S. 50A-209, which includes information about any other court proceeding involving custody of the child.

S.L. 2005-320 adds a new section, G.S. 7B-911, allowing the court in a juvenile proceeding to enter a custody order in a civil action under G.S. Chapter 50 and terminate its jurisdiction in the juvenile matter. This might occur when the permanent plan for a child has become placement in the custody of a relative. It also might occur when the child is returned to the custody of a parent and that parent needs the ongoing security of a custody order to make clear that the other parent is not entitled to custody of the child. The court may take this step on its own motion or motion of a party, but only after making proper findings at a disposition or subsequent hearing. The order must comport with applicable requirements of G.S. 50-13.1, -13.2, -13.5, and -13.7 for entering or modifying a civil custody order. In a separate order terminating jurisdiction in the juvenile case, the court must make two critical findings:

1. There is no longer a need for continued state intervention on the child's behalf through a juvenile court proceeding.
2. At least six months have passed since the court determined that the permanent plan for the child was placement with the person to whom the court is awarding custody. This finding is not required, however, if the court is awarding custody to a parent or to the person with whom the child was living when the juvenile petition was filed.

The civil custody order will be entered one of two ways.

- If a civil custody action already exists, the court will enter the order in that action. If a custody order has been entered in that action previously, the new order will constitute a modification of that order. If necessary, the court may order that the party to whom custody is being awarded be joined as a party to the civil action and order that the caption of the case be changed as appropriate.
- If there is no existing civil custody action, entry of the new order initiates one. The court must designate the parties and determine the appropriate caption for the case. The filing fee for a civil action is waived unless the court orders one or more of the parties to pay it.

The act authorizes the Administrative Office of the Courts to adopt rules and develop appropriate forms for establishing a civil file in this circumstance.

The act applies to juvenile proceedings and civil actions pending or filed on or after October 1, 2005.

Termination of Rights of Parent Who Murders Other Parent

G.S. 7B-1111 sets out the grounds on which a court may terminate a parent's rights in relation to the parent's child, rendering the child eligible to be adopted. S.L. 2005-146 (H 97) rewrites the section to allow termination of the rights of a parent who has committed murder or voluntary manslaughter of the child's other parent. A petitioner may establish the ground by proving the elements of the offense or by proving that a court has convicted the parent of the offense, whether by jury verdict or any kind of plea. In a case involving this ground, the court must consider whether the murder or voluntary manslaughter was committed in self-defense or in the defense of others, or whether there was substantial evidence of other justification. The act applies to termination of parental rights proceedings filed on or after June 30, 2005.

Best Interest Determination in Action to Terminate Parental Rights

After the court concludes that a petitioner has proved that a ground exists for terminating a parent's rights, the court is not required to terminate the parent's rights if it determines that doing so is not in the child's best interest. Often the court makes an affirmative finding that terminating the parent's rights is in the child's best interest. Appellate courts have held consistently that this determination is in the trial court's discretion and that neither party has a burden of proof with respect to the best interest determination. S.L. 2005-398 (H 1150) rewrites G.S. 7B-1110 to require the court, after adjudicating that one or more grounds exist, to determine whether termination of parental rights is in the child's best interest. It directs the court in doing so to consider

1. the child's age,
2. the likelihood of the child's being adopted,
3. whether termination will help achieve the permanent plan for the child,
4. the bond between the child and the parent,

5. the quality of the relationship between the child and the proposed adoptive parent, guardian, or custodian, and
6. any other relevant factor.

These changes apply to petitions or actions filed on or after October 1, 2005.

Recoupment of Attorney Fees from Parents

Parents who are respondents in abuse, neglect, dependency, or termination of parental rights proceedings are entitled to court-appointed counsel if they are indigent and do not waive the right. Heretofore, statutes have not addressed recoupment from parents of fees for their court-appointed counsel in these cases, although they have provided for recoupment from parents of fees for attorneys appointed to represent their children. (See G.S. 7A-450.1, -450.2, -450.3; 7B-603(c) and -2704.) S.L. 2005-254 (S 594) rewrites G.S. 7B-603 to provide that the district court may require payment from the parent respondent for his or her own attorney's fees, but only if the child was adjudicated abused, neglected, or dependent, or the parent's rights were terminated. In determining whether to order a parent to reimburse the state for some or all of the parent's attorney's fees, the court must take into account the parent's ability to pay.

If the court orders the respondent to pay attorneys' fees and the respondent does not comply at the time of disposition, the court must file a judgment against the respondent for the amount due the state. The act also provides for the filing of a judgment immediately against a parent who does not comply at disposition with an order to pay the fees of the child's attorney or guardian ad litem. (A parent who fails to comply with an order to pay attorney fees in a delinquency proceeding, where the child always is entitled to court-appointed counsel, continues to be subject to civil or criminal contempt. See G.S. 7B-2704 and -2706.)

These changes apply to appointments of counsel on or after October 1, 2005.

Parent's Participation in Reviews after Rights Are Terminated

S.L. 2005-398 (H 1150) rewrites G.S. 7B-908(b)(1) and -909(c) to clarify that once a court has terminated a parent's rights, the parent is not considered a party for purposes of review hearings in the child's case unless an appeal of the termination

order is pending and a court has stayed the order pending the appeal. These amendments apply to petitions and actions filed on or after October 1, 2005.

Adoption

Procedures for Determining Whose Consent Is Required

With respect to adoption proceedings filed on or after October 1, 2005, S.L. 2005-166 (H 532) makes several changes to clarify and streamline procedures for determining whose consent to the adoption of a child is required.

G.S. 48-2-206 allows the court to find, before a child is born, that the biological father's consent to any adoption filed within three months after the child's birth is not necessary. The court may make this determination if the biological father is given proper notice and either (1) does not respond or (2) responds, but has not acknowledged the child and taken at least one of the other steps specified in G.S. 48-3-601, *e.g.*, paid support and regularly visited or communicated with the child's mother. The statute states that a biological father who does not respond after being given proper notice is not entitled to get notice of the adoption proceeding. S.L. 2005-166 clarifies that the same is true for a biological father who does respond but whose consent is found to be unnecessary. It also provides explicitly that a father whose consent to the adoption is unnecessary may not participate in the adoption proceeding.

With respect to the more usual circumstance of determining the need for a parent's consent after the child is born, G.S. 48-3-603 lists the persons whose consent to the adoption of a minor is not required. Often one or more possible fathers are served with notice of the adoption, and the consent of a person who does not respond to the notice is not required. If a person served with notice responds and asserts that his consent is required, the court applies the statutory criteria to determine whether his consent is necessary. Neither G.S. 48-3-603 nor any other statute, however, sets out a procedure for the court to follow in determining and documenting whether an individual's consent is required. S.L. 2005-166 adds new G.S. 48-2-207 to fill that gap.

If the individual served with notice does not respond, the court must enter an order that his consent to the adoption is not required. If the individual does respond and assert that his consent is necessary, or if someone who did not receive notice intervenes and alleges that his consent is required, the court must hold

an evidentiary hearing to determine whether that person's consent is necessary. If an individual's consent is necessary, the adoption may not proceed until that person's consent is obtained or his rights are terminated. If the individual did not have physical custody of the child immediately before the adoptive placement, the determination that his consent is required does not entitle him to physical custody of the child. An individual whose consent is not required is not entitled to participate further in the adoption proceeding.

Interstate Compact on the Placement of Children

Most adoptions that involve two states require compliance with the Interstate Compact on the Placement of Children (ICPC), Article 38 of G.S. Chapter 7B. If the parties are unaware of the ICPC requirements or simply fail to comply with them, retroactive compliance may be impossible. Under G.S. 48-2-603(b), however, the court still may enter the final order of adoption, after finding that (1) in every other respect there has been substantial compliance with the adoption laws and (2) adoption will serve the child's best interest. S.L. 2005-166 amends G.S. 48-2-304 and -305, governing adoption petitions and documents, to require that if compliance with the ICPC cannot be shown, the petitioner must provide a statement describing the circumstances of any noncompliance. The change applies to adoption proceedings filed on or after October 1, 2005.

Waiver of Notice to Non-Petitioning Parent

If an adoption petitioner is married, G.S. 48-2-301(b) requires that the petitioner's spouse join in the petition unless the spouse has been declared incompetent or the court waives the requirement for cause. Effective October 1, 2005, S.L. 2005-166 amends G.S. 48-2-401, so that the clerk also may waive the requirement that the non-petitioning spouse be notified when a petitioner seeks a waiver of the requirement that the spouse join in the petition.

Adoption of Special Children

Section 10.48 of S.L. 2005-276 allocates \$100,000 to support the Special Children Adoption Fund for the 2005-2006 fiscal year and directs the Division of Social Services, in consultation with others, to develop

guidelines for awarding funds to licensed public and private adoption agencies to enhance adoption services. It directs the division to monitor fund expenditures, redistribute unspent funds, and report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division on program expenditures and activities by December 1, 2005, and June 30, 2006.

Section 10.49 directs DHHS to study potential incentives for the adoption of children who are difficult to place and to report to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by October 1, 2005.

Interstate Compact for Juveniles

The Interstate Compact on Juveniles was created in 1955 to give states a uniform approach to dealing with juveniles who cross state lines – both those who run away and those who need supervision in one state as a result of an offense committed in another state. All states adopted the compact, but it has become seriously outdated. The desired uniformity is lacking because not all states have passed the same amendments to their versions of the compact. S.L. 2005-194 (H 1346) adds to the Juvenile Code (G.S. Chapter 7B) a new Article 40, “The Interstate Compact for Juveniles.” This new compact becomes effective when thirty-five states have adopted it. When all states have adopted it, North Carolina’s version of the Interstate Compact on Juveniles, Article 28 of G.S. Chapter 7B, is repealed.

The Council of State Governments, which is supervising the introduction of the new compact in cooperation with the federal Office of Juvenile Justice and Delinquency Prevention, describes the primary changes as follows:

- Establishment of an independent compact operating authority to administer ongoing compact activity
- Gubernatorial appointments of representatives for all member states on a national governing commission
- Rule-making authority and significant sanctions to support essential compact operations
- Mandatory funding mechanism to support essential compact operations
- Collection of standardized information

Extensive information about the compact can be accessed from the Web site of the Council of State Governments, <http://www.csg.org>.

The new compact sets out the purposes of the compact and applicable definitions. It provides for the creation of an Interstate Commission for Juveniles and provides in detail for the commission’s power and duties, its organization and operation, its rule-making function, and its role in oversight, enforcement, and dispute resolution. The commission’s work will be funded through assessments on the participating states. In addition, each member state is to create a State Council for Interstate Juvenile Supervision. Unlike the original compact, the Interstate Compact for Juveniles does not set out the specific procedures states are to follow with respect to juveniles who cross or need to cross state lines for reasons covered by the compact. Rather, it apparently looks to the commission and its rule-making authority to provide those details.

One section of the new compact as enacted in North Carolina creates the state Council for Interstate Juvenile Supervision. It designates the Secretary of the North Carolina Department of Juvenile Justice and Delinquency Prevention, or that person’s designee, to serve as the state’s compact administrator, the state’s commissioner to the interstate commission, and the chair of the state council. Other members of the state council include

- one member representing the executive branch, appointed by the Governor;
- one member from a victim’s assistance group, appointed by the Governor;
- one at-large member, appointed by the Governor;
- one member of the state Senate, appointed by the President Pro Tempore of the Senate;
- one member of the House of Representatives, appointed by the Speaker of the House of Representatives;
- a district court judge, appointed by the Chief Justice of the North Carolina Supreme Court; and
- four members representing the juvenile court counselors, appointed by the Secretary of the Department of Juvenile Justice and Delinquency Prevention.

Child Day Care

Subsidized Child Care

Section 10.60 of S.L. 2005-276 (S 622), the Appropriations Act, provides that the Department of

Health and Human Services (DHHS) may not require local matching funds for the receipt of funds appropriated by the act for child care unless federal law requires a match. Section 10.61 sets out the allocation formula for child care subsidy voucher funds and authorizes the department to reallocate unused funds. It requires DHHS to allocate up to \$22 million in federal block grant funds and state funds appropriated for fiscal years 2004-2005 and 2005-2006 to prevent the termination of child care services. Section 10.62 establishes the maximum gross annual income for initial eligibility for subsidized child care services at 75 percent of the state median income, adjusted for family size, and includes other detailed provisions relating to eligibility and payment requirements. Section 10.66 requires the Division of Child Development in DHHS to analyze the child care subsidy reimbursement system and to develop strategies to implement market rate equity among counties.

The act appropriates an additional \$3.6 million to reduce child care subsidy waiting lists.

Star-rated Licensure of Child Care Facilities

S.L. 2005-36 (H 707) rewrites G.S. 110-90(4) regarding star-rated licensure of child care facilities. Current law provides that ratings shall be based on program standards, staff education levels, and a facility's compliance history. Effective January 1, 2006, new licenses issued for child care facilities with a rating of two to five stars will be based on program standards and staff education levels, and DHHS may issue a provisional license or Notice of Compliance to a facility that fails to maintain a compliance history of at least 75 percent for the past eighteen months or during the length of time it has operated, whichever is less. For facilities already holding licenses of two to five stars on January 1, 2006, this change does not take effect until January 1, 2008. The act requires DHHS to give child care providers additional opportunities to earn points for program standards and staff education levels.

Short-term and Drop-in Child Care

S.L. 2005-416 (H 1517) rewrites the definition of "child care" in G.S. 110-86(2) to clarify that it does not include drop-in or short-term care provided by an employer for its part-time employees where (1) the child is not provided care for more than two and a half hours in a day, (2) the parents are on the premises, and (3) no more than twenty-five children are in any one

group in any one room. Both these providers and the short-term and drop-in care providers already clearly excluded from the definition must register with DHHS the fact that they are providing this type of care and post a notice that the care is not licensed or regulated by DHHS. The act requires the Director of the Division of Child Development to report to the General Assembly

- by May 1, 2006, the number of facilities that have registered pursuant to this provision and
- by April 30, 2006, findings and recommendations based on a study of current policies, practices, and laws related to drop-in and short-term care and baby sitting services.

These provisions are effective September 22, 2005.

Baby Sitting Services

S.L. 2005-416 also adds new G.S. 14-321.1 making it unlawful for an adult to provide or offer to provide a baby sitting service

1. in a home in which a resident is a registered sex offender, or
2. if a provider of care for the baby sitting service is a registered sex offender.

For purposes of the section, "baby sitting service" means providing, for profit, supervision or care for a child younger than thirteen who is not related to the provider by blood, marriage, or adoption, for more than two hours per day while the child's parent or guardian is not on the premises. A first offense is a Class 1 misdemeanor. A second or subsequent offense is a Class H felony. These provisions apply to offenses committed on or after December 1, 2005.

Collaborative Programs to Help Children

Comprehensive Treatment Services Program for Children¹

Section 10.25 of S.L. 2005-276 directs DHHS to continue the Comprehensive Treatment Services Program (CTSP) for children and establishes both an interagency children's services workgroup and a study commission on children's services. The purpose of

¹ This section is based on materials prepared by Mark Botts, an Institute of Government faculty member who works in the area of mental health law.

CTSP is to provide appropriate and medically necessary residential and nonresidential treatment alternatives for children at risk for institutionalization or other out-of-home placement. Program funds must target non-Medicaid eligible children and may be used to expand statewide a “system-of-care” approach to children’s services. The program must include

1. behavioral health screening for all children at risk of institutionalization or other out-of-home placement;
2. appropriate and medically necessary services for deaf children, sexually aggressive youth, children with serious emotional disturbances, and youth needing substance abuse treatment services;
3. multidisciplinary case management services;
4. a system of utilization review specific to the nature and design of the program;
5. mechanisms to ensure that children are not placed in the custody of county departments of social services for the purpose of obtaining residential mental health treatment services;
6. mechanisms to maximize current state and local funds and to expand the use of Medicaid funds to accomplish the intent of the program; and
7. a system to identify and track children placed in group homes, therapeutic foster homes, and other out-of-home placements.

S.L. 2005-276 requires DHHS to establish from funds appropriated for CTSP a three percent reserve to ensure the availability of funding for children with specialized needs and complex problems. In addition, the act authorizes DHHS to enter into contracts with residential service providers. The Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (MH/DD/SAS) is charged with implementing utilization review of services, limiting services to those that are medically necessary, providing services in accordance with guidelines enumerated in the act, and implementing cost-reduction strategies, including the preauthorization of all services except emergency services.

Interagency Memoranda of Agreement for Children’s Services

Section 10.25 of S.L. 2005-276 prohibits the allocation of funds appropriated for CTSP until a memorandum of agreement (MOA) has been executed between DHHS, the Department of Public Instruction (DPI), and other affected state agencies. The MOA must address the specific roles and responsibilities of departmental divisions and state agencies involved in

the administration, financing, care, and placement of children at risk of institutionalization and other out-of-home placement. Although the act does not list the Department of Juvenile Justice and Delinquency Prevention (DJJDP) specifically as a participant in the state agency MOA, it presumably would be a participant, as the act requires DJJDP to consult, collaborate, and report on the program along with DHHS and DPI.

S.L. 2005-276 also requires local government agencies to be parties to memoranda of agreement with each other and certain state agencies. DHHS may not allocate CTSP funds until memoranda of agreement are executed between local departments of social services, area mental health programs, local education agencies, the Administrative Office of the Courts, and DJJDP, as appropriate to effectuate the program. These MOA must address issues pertinent to local implementation of the program, including the availability of student records to a local school administrative unit that receives a child placed in a residential setting outside of the child’s home county.

DHHS, in conjunction with DJJDP and DPI, must report specified program data to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on MH/DD/SA Services, and the Fiscal Research Division by April 1, 2006, and April 1, 2007.

Children’s Services Work Group

Expressing the need for greater collaboration and coordination among state agencies responsible for developing and implementing policy pertaining to children’s services, Section 10.25 of S.L. 2005-276 establishes a state level children’s services work group. The secretaries of DHHS and DJJDP, the chair of the State Board of Education, the Superintendent of Public Instruction, and the Chief Justice of the North Carolina Supreme Court each must designate at least one representative to serve on the work group from among the programs, divisions, or departments under their respective control that provide services to children and youth. Each of these administrators also must appoint at least one parent of a child or youth who has or is at risk for behavioral, social, health, or safety problems or academic failure; at least one member of a local collaborative body; and at least one private sector service provider. The work group must meet at least monthly to

1. identify common outcome and preventative measures for child-serving agencies that can

- be used for monitoring the safety, health, and well-being of North Carolina's children, youth, and families;
2. identify strategies for funding flexibility between state and local agencies, including shared funding streams and the removal of financial and bureaucratic barriers;
 3. develop appropriate common service terminology for use across child-serving agencies to assist collaboration and coordination;
 4. make recommendations regarding the creation of a shared database to track population and program outcomes information while protecting individual confidentiality;
 5. develop mechanisms that would allow agencies to share information about individual children receiving multiple services in a manner that would meet legal requirements for confidentiality, be voluntary on the part of the party receiving services, and be time-limited;
 6. examine state and local training needs for implementing increased coordination and collaboration; and
 7. study other issues that the work group determines would improve coordination and collaboration between child-serving agencies.

The work group must submit its findings and recommendations, specifying those recommendations that require statutory changes and those that do not, to the children's services study commission (discussed below) by December 15, 2005, and April 15, 2006.

Children's Services Study Commission

S.L. 2005-276 creates the Coordination of Children's Services Study Commission to study and recommend changes to improve collaboration and coordination among agencies that provide services to children, youth, and families with multiple service needs. As part of its charge, the commission must

- identify and recommend the consolidation, reorganization or elimination of existing state, regional, and local collaborative bodies that are charged with serving, protecting, or improving the well-being of children, youth, and families;
- study the practices of agencies currently implementing a "system of care" platform of practices and recommend whether to adopt those practices statewide across child-serving agencies;

- examine the principles associated with "system of care" and determine whether to recommend the adoption of state policy that reflects these principles;
- determine whether "system of care" principles articulate measurable goals and, if not, whether they can be modified to reflect measurable goals; and
- receive and study the recommendations of the children's work group and determine whether to recommend any of that group's statutory proposals.

The commission will consist of eighteen members, nine appointed by the Speaker of the House of Representatives (five members of the House and four members of the public) and nine appointed by the President Pro Tempore of the Senate (five members of the Senate and four members of the public). The study commission must report annually on April 1 to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on MH/DD/SA Services, and the Fiscal Research Division.

School-Based Child and Family Team Initiative²

Section 6.24 of S.L. 2005-276 establishes the School-Based Child and Family Team Initiative to identify and coordinate community services and supports for children at risk of school failure or out-of-home placement in order to address the physical, social, legal, emotional, and development factors that affect academic performance. Agencies charged with collaborating in this initiative include the Department of Health and Human Services, the Department of Public Instruction, the State Board of Education, the Department of Juvenile Justice and Delinquency Prevention, the Administrative Office of the Courts, and other public agencies that provide services for children. These agencies must provide services and "shall share responsibility and accountability to improve outcomes for these children and their families."

² This section is based on materials prepared by Laurie Mesibov, an Institute of Government faculty member who works in the area of public education law.

Responsibilities given to affected state and local agencies include:

1. To increase the capacity to address children's academic, health, mental health, social, and legal needs in the school setting.
2. To ensure the initial screening and periodic assessment of children receiving services.
3. To develop uniform screening mechanisms and outcome measures.
4. To eliminate cost shifting and facilitate cost-sharing with respect to service development, delivery, and monitoring.
5. To participate in local memoranda of agreement.

In coordination with the new North Carolina Child and Family Leadership Council, each local school board must establish the initiative at designated schools and appoint a school nurse and a school social worker as Child and Family Team Leaders. These leaders must identify and screen children who are potentially at risk of academic failure or out-of-home placement due to physical, social, legal, emotional, or developmental factors. Representatives from appropriate agencies will work as a team, and teams must coordinate, monitor, and assure the successful implementation of a unified Child and Family Plan.

Each agency's responsibilities are determined by the results of the screening and, depending on the nature of the primary unmet needs, the lead role is taken by school personnel, the local management entity, the county department of social services, the local department of public health, or the chief district court counselor.

In each county with a participating school, the superintendent must either identify an existing cross agency collaborative or council or form a new group to serve as a local advisory committee to monitor and support implementation of the initiative, and the North Carolina Child and Family Leadership Council will review the initiative.

Other Services and Benefits

Medicaid for Children in Low-income Families³

North Carolina's Medicaid program currently covers children under the age of one year who live in

³ This section is based on materials prepared by John Saxon, an Institute of Government faculty member who works in the areas of social services law and policy, child support, and laws affecting older adults.

families whose incomes do not exceed 185 percent of the federal poverty level, children aged one through five who live in families whose incomes do not exceed 133 percent of the federal poverty level, and children aged six through eighteen who live in families whose incomes do not exceed the federal poverty level. Effective January 1, 2006, Section 10.11(m) of S.L. 2005-276 extends Medicaid eligibility to all children who are under the age of six years and live in families whose incomes do not exceed 200 percent of the federal poverty level. Extending Medicaid coverage for all low-income children under the age of six allows children who previously were covered under the Health Choice insurance program for uninsured children rather than Medicaid to be "shifted" from Health Choice to Medicaid.

Foster Care and Adoption Assistance

Section 10.46 of S.L. 2005-276 sets the maximum rates for state participation in the foster care and adoption assistance programs as follows:

Foster Care Assistance

1. \$390.00 per child per month for children aged birth through five;
2. \$440.00 per child per month for children aged six through twelve; and
3. \$490.00 per child per month for children aged thirteen through eighteen.

Of these amounts, \$15.00 is a special needs allowance for the child.

Adoption Assistance

1. \$390.00 per child per month for children aged birth through five;
2. \$440.00 per child per month for children aged six through twelve; and
3. \$490.00 per child per month for children aged thirteen through eighteen.

HIV Foster Care and Adoption Assistance

1. \$800.00 per child per month with indeterminate HIV status;
2. \$1,000 per child per month confirmed HIV-infected, asymptomatic;
3. \$1,200 per child per month confirmed HIV-infected, symptomatic; and
4. \$1,600 per child per month terminally ill with complex care needs.

Intensive Family Preservation Services

Section 10.51A of S.L. 2005-276 provides for the Intensive Family Preservation Services (IFPS)

Program to offer intensive services to children and families in

1. cases of abuse, neglect, and dependency, where a child is at imminent risk of removal from the home; and
2. cases of abuse, where a child is not at imminent risk of removal.

The program is to be implemented statewide, on a regional basis, and use standardized criteria for determining when “imminent risk” of removal exists. The section sets out information and data that DHHS must ensure that participating entities provide. The department must report on the program’s implementation by February 1, 2006, to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

Attachment of Bank Accounts to Collect Past-due Child Support⁴

G.S. 110-139.2(b1) allows the state’s child support enforcement agency to collect past-due child support by attaching a bank account (or other account in a financial institution) maintained by a person who owes past-due child support. Effective December 13,

2005, S.L. 2005-389 (H 1375) amends this statute

1. to make it applicable to persons who owe past-due child support but are not “delinquent” (*see Davis v. Dep’t. of Human Resources*, 126 N.C. App. 383, 485 S.E.2d 342 (1997), *aff’d. in part and rev’d. in part* 349 N.C. 208, 505 S.E.2d 77 (1998));
2. to require that notice of the attachment be served pursuant to G.S. 1A-1, Rule 4, on any nonliable owner of an account held jointly with the person who owes past-due child support;
3. to allow a nonliable owner to contest the attachment to the extent that the funds in the account belong to the nonliable owner rather than the person who owes past-due child support;
4. to require that the notice of attachment be served on the financial institution pursuant to G.S. 1A-1, Rule 5;
5. to allow this procedure to be used by the child support programs of other states without the involvement of North Carolina’s child support enforcement agency; and
6. to make it clear that use of this procedure does not preclude the use of other child support enforcement remedies.

⁴ This section is based on materials prepared by John Saxon, an Institute of Government faculty member who works in the areas of social services law and policy, child support, and laws affecting elderly adults.

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School of Government. The University of North Carolina at Chapel Hill

Printed in the United States of America

This publication is printed on permanent, acid-free paper in compliance with the North Carolina General Statutes.