

# JUVENILE LAW BULLETIN

---

No. 2007/03 September 2007

## **2007 NORTH CAROLINA LEGISLATION: JUVENILE LAW**

■ Janet Mason

In its 2007 session the North Carolina General Assembly addressed a variety of subjects relating to children and juvenile law. Two areas stand out in particular, because the new laws were written on relatively clean slates. For the first time, legislation provides guidance to courts with respect to holding juveniles in contempt, by creating “contempt by a juvenile” as a new category of contempt and establishing procedures for dealing with it summarily when it is direct contempt and through the juvenile court process when it is indirect contempt. The legislature also established the first official procedure for providing assistance to adults who were adopted as children and the adults’ birth relatives when they want to contact each other. The new law authorizes county social services departments and licensed child-placing agencies to act as confidential intermediaries, to obtain and share confidential adoption information and facilitate contact between individuals pursuant to the individuals’ written consent.

### **Juvenile Contempt**

The Juvenile Code (G.S. Chapter 7B) authorizes the court to find an undisciplined juvenile in contempt and impose limited sanctions, after appointing counsel for the juvenile, conducting a hearing, and finding that the juvenile has violated the terms of protective supervision. Otherwise the Juvenile Code and other statutes (including G.S. Chapter 5A, the contempt statute) have been silent with respect to contemptuous behavior by juveniles, leaving judges unsure how to deal appropriately with a juvenile who disrupts court or engages in other conduct for which the court would hold an

---

Janet Mason is an Institute of Government faculty member whose areas of responsibility include juvenile law and social services law. She may be reached at 919.966.4246 or [mason@sog.unc.edu](mailto:mason@sog.unc.edu)

adult in contempt. S.L. 2007-168 (H 1479) amends both Chapter 5A and Chapter 7B to fill that gap. The act is effective December 1, 2007, and applies to acts occurring or offenses committed on or after that date.

### Meaning of Contempt by a Juvenile

New G.S. 5A-31 lists the conduct that constitutes contempt by a juvenile. When done by an unemancipated minor who is at least six years of age, is not yet 16 years of age, and has not been convicted of any crime in superior court, each of the following is contempt by a juvenile:

1. Willful behavior committed during court and directly tending to interrupt the court's proceedings.
2. Willful behavior committed during court, in the court's presence and immediate view, and directly tending to impair the respect due the court's authority.
3. Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its execution.
4. Willful refusal to be sworn or affirmed as a witness, or, when sworn or affirmed, willful refusal to answer any legal and proper question without legal justification.
5. Willful or grossly negligent failure to comply with the court's schedules and practices, resulting in substantial interference with the business of the court.
6. Willful refusal to testify or produce other information upon the order of a judge acting pursuant to Article 61 of G.S. Chapter 15A, Granting of Immunity to Witnesses.
7. Willful communication with a juror in an improper attempt to influence the juror's deliberations.
8. Any other act or omission specified in another Chapter of the General Statutes as grounds for criminal contempt.

This list includes most, but not all, of the conduct listed in G.S. 5A-11, which specifies conduct that may constitute criminal contempt by persons age sixteen or older (or emancipated or previously convicted in superior court). But contempt by a juvenile, for example, does not include willful refusal to comply with a condition of probation, probably because the Juvenile Code already specifies the possible consequences of a violation of probation in a delinquency case.

The act does not provide for the use of contempt to coerce compliance with a court order, as civil contempt is used in cases involving adults who willfully fail to comply with court orders. Contempt by a juvenile is neither civil contempt nor criminal contempt. It is an altogether new category of contempt. Its use is not limited to proceedings in juvenile court. The conduct of a juvenile who is a party, a witness, or an observer in any court action may constitute contempt by a juvenile.

The procedures for responding to contempt by a juvenile and sanctions that are available to the court depend on whether the contempt is direct or indirect.

### Direct Contempt by a Juvenile

Contempt by a juvenile is *direct contempt by a juvenile* when all of the following conditions exist:

1. The act is committed within the sight or hearing of a presiding judicial official.
2. The act is committed in, or in the immediate proximity to, the room where proceedings are being held before the court.
3. The act is likely to interrupt or interfere with matters then before the court.

The procedures for addressing direct contempt by a juvenile are set out in G.S. 5A-32. Because direct contempt by a juvenile often requires an immediate response, the statute provides for summary proceedings similar to those that apply when an adult is in direct criminal contempt. A judicial official may act summarily when necessary to restore order or maintain the court's dignity and authority, and when acting substantially contemporaneously with the juvenile's contempt. Before imposing any sanction summarily, however, the judicial official must

1. give the juvenile summary notice of the contempt allegation and a summary opportunity to respond;
2. appoint an attorney to represent the juvenile and allow time for the juvenile and attorney to confer; and
3. make findings, based on facts established beyond a reasonable doubt, to support the summary imposition of sanctions in response to contempt by a juvenile.

In some situations proceeding summarily will not be necessary, and the court is never required to proceed summarily. Instead, the court may appoint counsel for the juvenile and order the juvenile to appear in juvenile court at a later time and show cause why he or she should not be held in direct contempt.

A judicial official who is alleging that a juvenile is in direct contempt may orally order that the juvenile be taken into custody and restrained sufficiently to assure the juvenile's presence for summary proceedings or for notice of a later show cause hearing.

After the court finds that a juvenile is in direct contempt – regardless of whether the finding is made in a summary proceeding or after issuance of a show cause order and a hearing in juvenile court – the court's response to direct contempt by a juvenile is limited to ordering one or more of the following:

- That the juvenile be detained in a juvenile detention facility for up to five days.
- That the juvenile perform up to 30 hours of supervised community service as arranged by a juvenile court counselor.
- That the juvenile be required to undergo any evaluation necessary for the court to determine the juvenile's needs.

Before ordering any of these, the court must find that the juvenile's conduct was willfully contemptuous or that it was preceded by a clear warning by the court that the conduct was improper. The act amends G.S. 143B-536 to specify that a judicial official imposing sanctions for direct contempt by a juvenile may direct a juvenile court counselor to assist in implementing the court's order. After imposing one or more sanctions for direct contempt, if warranted by the juvenile's conduct and the ends of justice, a judicial official at any time may reduce or terminate a period of detention or eliminate or reduce the number of hours of community service ordered.

Direct contempt by a juvenile is not a delinquent act and is not subject to the procedures that apply to acts of delinquency. When the court chooses not to address direct contempt summarily, but issues a show cause order for a hearing in juvenile court, that hearing is simply a contempt hearing. It does not involve a juvenile petition or summons – just the court's order to show cause. The juvenile is either found in direct contempt or not. The juvenile is not adjudicated delinquent or undisciplined, and the only options available to the court after finding the juvenile in direct contempt are the three listed above. Appeal from an order finding a juvenile in direct contempt is to the court of appeals.

### Indirect Contempt by a Juvenile

Any act of contempt by a juvenile that is not direct contempt is *indirect contempt by a juvenile*. Indirect contempt by a juvenile is a delinquent act and is

subject to the same intake, diversion, petition, adjudication, disposition, and other procedures that apply in other delinquency cases. Indirect contempt by a juvenile is a minor offense. However, no points are assigned for a prior adjudication for indirect contempt. Dispositions available to the court for a juvenile who is adjudicated delinquent for indirect contempt are the same as for any other minor offense, considering the juvenile's delinquency history level.

## Delinquent Juveniles

### Impaired Driving Offenses

Section 31 of S.L. 2007-493 (S 999) rewrites G.S. 7B-1903(b) to allow the court to order that a juvenile be placed in secure custody when

1. the juvenile is alleged to be delinquent for violating G.S. 20-138.1 ("Impaired driving") or G.S. 20-138.3 ("Driving by person less than 21 years old after consuming alcohol or drugs"),
2. the court finds a reasonable factual basis to believe the juvenile committed the alleged offense, and
3. the juvenile has demonstrated that he or she is a danger to persons.

This amendment applies to offenses committed on or after December 1, 2007.

Section 32 of S.L. 2007-493 authorizes the Legislative Research Commission to study dispositional alternatives for juveniles who are adjudicated delinquent for violations of G.S. 20-138.1 or G.S. 20-138.3. The act also directs the commission to determine (1) whether these should be classified as violent, serious, or minor offenses and (2) the appropriate delinquency history level points to be assigned to them. The commission may make an interim report to the 2008 regular session and is required to make a final report to the 2009 General Assembly upon its convening.

### Restraint of Juveniles in Courtroom

S.L. 2007-100 (H 1243) adds to the Juvenile Code a new section, G.S. 7B-2402.1, which applies to any hearing involving a juvenile who is alleged or has been adjudicated to be delinquent or undisciplined. The judge may require that the juvenile be physically restrained in the courtroom, but only after finding that the restraint is reasonably necessary to

- maintain order,
- prevent the juvenile's escape, or
- provide for the safety of the courtroom.

When possible, the court must give the juvenile and the juvenile's attorney an opportunity to be heard before ordering the use of restraints. The judge must make findings of fact to support any order that a juvenile be restrained. The act is effective October 1, 2007, and applies to hearings conducted on or after that date.

### **Polygraph Use when Person Claims to be Sexual Assault Victim or Witness**

New G.S. 15A-831.1 prohibits a juvenile justice (as well a criminal justice) agency from requiring a person who claims to be a victim or witness in a sexual assault case to submit to a polygraph as a precondition to the agency's conducting an investigation. An agency that wants to perform a polygraph examination of the person must inform the individual that

1. taking the polygraph examination is voluntary,
2. the results of the examination are not admissible in court, and
3. the person's decision to submit to or refuse a polygraph examination will not be the sole basis for any decision by the agency not to investigate the matter.

If the agency declines to investigate the alleged case of sexual assault after the individual decides not to submit to a polygraph examination, at that person's request the agency must provide the individual a written statement of the reasons the agency did not pursue the investigation.

The act, S.L. 2007-294 (H 1810), is effective December 1, 2007, and applies to sexual assault offenses alleged to have been committed on or after that date.

### **Release of Information about Juveniles Who Escape**

S.L. 2007-458 (H 1148) repeals G.S. 7B-2102(d1), which dealt with the release of the photographs of juveniles who escaped from custody or from a juvenile facility. The act adds a new section, G.S. 7B-3102, which requires the Department of Juvenile Justice and Delinquency Prevention (DJJDP) to maintain a photograph of every juvenile in the department's

custody and establishes requirements for releasing information about juveniles who escape.

DJJDP must release information to the public within twenty-four hours after a juvenile escapes

- from a detention facility, if the juvenile is alleged to have committed a Class A, B1, B2, C, D, or E felony; or
- from a youth development center, if the juvenile has been adjudicated delinquent for a felony or a Class A1 misdemeanor.

The information DJJDP must release in those cases is the juvenile's first name, last initial, and photograph; the name and location of the institution from which the juvenile escaped; and a statement of the level of concern the department has with respect to the juvenile's threat to himself or herself or others. The department is authorized, but not required, to release the same kind of information to the public when a juvenile who escapes from custody has been adjudicated delinquent for a Class 1, 2, or 3 misdemeanor.

In any case, if the juvenile who escaped is returned to custody before the required or permitted disclosure is made, the department may not make the disclosure.

The act also rewrites G.S. 7B-2102 to require county detention facilities to photograph all juveniles who are committed to the facilities and require county detention facilities and the State Bureau of Investigation to release any photograph generated under that section to DJJDP at the department's request. The act is effective October 1, 2007.

### **Program Evaluations**

**Juvenile Crime Prevention Councils.** Subsections 6.21(c) and (g) of S.L. 207-323 require the Department of Juvenile Justice and Delinquency Prevention (DJJDP), by February 1, 2008, to submit a written report on the Juvenile Crime Prevention Councils (JCPCs) to the Appropriations Committees of the Senate and House. The report must include

- a description of the program, information on services it provides, the recipients of its services, and resource requirements.
- program performance measures and whether the program is meeting these measures.
- the rationale for continuing, reducing, or eliminating funding.
- the consequences of discontinuing program funding.
- recommendations for improving services.
- recommendations for reducing costs.

- policy issues that should be brought to the attention of the General Assembly.

Subsection 6.21(h) requires the Appropriations Committees to determine whether to continue, reduce, or eliminate funding for the JCPCs, subject to the continuation review program.

**JCPC-Funded Programs.** Section 18.2 of S.L. 207-323 rewrites G.S. 143B-519 to require DJJDP to report by April 1 each year on the effectiveness of programs that receive JCPC grant funds. The section specifies factors the department must assess in evaluating program effectiveness and requires the department to withhold the fourth quarter payment for local JCPC grants pending receipt of the annual effectiveness report. The report must be made to the chairs of the Appropriations Committees of the Senate and House, the chairs of the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, and the Fiscal Research Division.

**Project Challenge; Juvenile Assessment Center.** Section 18.3 of S.L. 207-323 requires Project Challenge North Carolina, Inc., to report by April 1 each year to DJJDP and to the chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety on the program's operation and effectiveness in providing alternative dispositions and services to delinquent and undisciplined juveniles. It also requires the Juvenile Assessment Center to report to the same committee chairs and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the center's effectiveness, by April 1 each year.

**Wilderness Camps; Teen Courts; Boys and Girls Clubs; Support Our Students; Governor's One-on-One Programs; and Multipurpose Group Homes.** Section 18.4 of S.L. 207-323 requires DJJDP to evaluate the Eckerd and Camp Woodson wilderness camp programs, teen court programs, the program that grants funds to local organizations of the Boys and Girls Clubs, the Support Our Students Program, the Governor's One-on-One Programs, and multipurpose group homes. The act specifies some of the types of information that must be included in some of the reports. DJJDP must report on the evaluations to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the chairs of the House and Senate Appropriations Committees, and the chairs of the Subcommittees on Justice and Public Safety of the House and Senate Appropriations Committees, by March 1 of each year.

**Eckerd Family Focus on Rehabilitative Treatment.** Section 18.10 of S.L. 207-323 requires

DJJDP and Eckerd Family Youth Alternatives, Inc., to report quarterly, beginning by April 1, 2008, to the chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, on the progress of the Eckerd Family Focus on Rehabilitative Treatment (EFFORT) project.

**Detention Centers.** Section 18.8 of S.L. 207-323 requires DJJDP to study the nine state-operated juvenile detention centers. The study must include information specified in the act, and the department must report its findings to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and to the chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety, by March 1, 2008.

**Tarheel Challenge.** Section 16.1 of S.L. 2007-323 requires the Department of Crime Control and Public Safety to report to the chairs of the House and Senate Appropriations Committees and chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety, by March 1 of each year, on the operations and effectiveness of the National Guard Tarheel Challenge Program. The act specifically requires the department to report on the program's effectiveness in preventing juveniles from becoming undisciplined or delinquent and on its role in improving individual skills and employment potential for participants.

## Youth Development Centers

With respect to youth developments centers operated or planned by the Department of Juvenile Justice and Delinquency (DJJDP), section 18 of S.L. 2007-323 requires DJJDP to:

- continue making quarterly reports on the implementation of the treatment staffing model at Samarkand and Stonewall Jackson Youth Development Centers and progress in implementing the model at other youth development centers.
- with the Department of Correction, report quarterly, beginning October 1, 2007, to the chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the departments' joint use of the Swannanoa Valley Youth Development Center.

- implement the treatment staffing model presented to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee as part of the department's November 14, 2006, report regarding the joint use with the Department of Correction of the Swannanoa Youth Development Center campus.
- cap staffing levels of the new youth development centers at 66 staff for a 32-bed facility and 198 staff for the 96-bed facility for the 2007-2009 fiscal biennium, and limit staffing ratios to no more than 2.1 staff per every juvenile committed at every other existing youth development center.
- by April 1, 2008, make a recommendation on whether the staffing and budget for youth development centers should be modified to reflect the results of the pilot treatment programs.
- with assistance from the Office of State Construction and the Capital Improvement Section of the Office of State Budget and Management, report quarterly during the 2007-2009 fiscal biennium, beginning October 1, 2007, to the chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety and to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the department's progress in the planning, design, and construction of new youth development centers.

### Prevention of Gang Activity

Section 16.8 of S.L. 2007-323 requires the Governor's Crime Commission to study gang activity in the state and to report its findings and recommendations by March 15, 2008, to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety.

Section 16.5 of the act directs that of funds appropriated to the Governor's Crime Commission in the Department of Crime Control and Public Safety for fiscal year 2007–2008, more than \$4.7 million be used to provide grants for street gang violence prevention, intervention, and suppression programs.

### Child Welfare

G.S. 7B-908 requires the juvenile court to conduct post-termination of parental rights review hearings every six months after a child's parents' rights have been terminated, when the child is in the custody of a county department of social services or a licensed child-placing agency. Previously hearings were required only until the juvenile was placed for adoption and an adoption petition was filed. S.L. 2007-276 (H 698) rewrites G.S. 7B-908(b) and (e), to require the court to continue holding these hearings until a final order of adoption is entered. The act makes a comparable change to G.S. 7B-909, for hearings conducted when children have been relinquished to an agency for adoption.

The act also amends

- G.S. 7B-506(b), to state that at hearings on the need for continued nonsecure custody, the guardian ad litem, the juvenile, and the juvenile's parent, guardian, or custodian have a right, rather than just an opportunity, to introduce evidence, be heard, and question witnesses.
- G.S. 7B-901, to provide that at dispositional hearings, the juvenile and the juvenile's parent, guardian, or custodian have a right, rather than just an opportunity, to present evidence.
- G.S. 7B-906(a), 7B-907(a), and 7B-908(b)(1), to state that no foster parent, relative, or preadoptive parent shall be deemed a party to the proceeding based solely on receiving notice and the right (formerly, an opportunity) to be heard at a review, permanency planning, or post-termination of parental rights review hearing.

S.L. 2007-276 rewrites the definition of "criminal history" for purposes of various criminal record checks required in relation to foster care and adoption, by amending G.S. 48-1-101(5a), 48-3-309, 131D-10.2(6a), 131D-10.3A(e), and related statutes.

These changes are effective October 1, 2007.

### Termination of Parental Rights and Adoption

#### Jurisdiction over Out-of-State Parents

The North Carolina Court of Appeals has held that in a civil action to terminate a parent's rights, a court in this state may terminate the rights of an out-of-state parent

only if that parent has *minimum contacts* with North Carolina, unless the parent

- submits to the state’s jurisdiction, or
- is served with process while physically in the state, or
- is the father of a child born out of wedlock and has not established paternity, legitimated the child, or provided substantial support or care to the child and mother.

See *In re Trueman*, 99 N.C. App. 579, 393 S.E.2d 569 (1990); *In re Finnican*, 104 N.C. App. 157, 408 S.E.2d 742 (1991), *cert. denied*, 330 N.C. 612, 413 S.E.2d 800, *overruled in part on other grounds*, *Bryson v. Sullivan*, 330 N.C. 644, 412 S.E.2d 327 (1992); *In re Dixon*, 112 N.C. App. 248, 435 S.E.2d 352 (1993); and *In re Williams*, 149 N.C. App. 951, 563 S.E.2d 202 (2002).

S.L. 2007-152 (H 866) is titled “An Act to Expand the Reach of North Carolina Courts in Proceedings to Terminate the Parental Rights of Nonresident Parents of Resident Children.” It amends G.S. 7B-1101 to say that the district court has jurisdiction to terminate the parental rights of a parent, regardless of the parent’s state of residence, if (1) the court has non-emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA, G.S. Chapter 50A), and (2) the parent has been served with a summons pursuant to G.S. 7B-1106.

This change makes the termination of parental rights statute more nearly consistent with the UCCJEA, which provides in G.S. 50A-201(c) that personal jurisdiction over a parent is not necessary in order for a court in this state to exercise jurisdiction in a child-custody proceeding, which may include an action to terminate a parent’s rights. However, in the decisions cited above, the court of appeals held that “minimum contacts” are required as a matter of constitutional law in order for a North Carolina court to terminate the rights of some out-of-state parents. Some states’ courts have applied a *status* exception to the minimum-contacts rule in these circumstances—for example, the Alaska Supreme Court in *S.B. v. State of Alaska*, 61 P.3d 6 (2002) (holding that personal jurisdiction is not required for *status* determinations under the UCCJEA) and the Wisconsin Supreme Court in *In re Thomas J.R.*, 262 Wis.2d 217, 663 N.W.2d 734 (2003). Whether the legislature’s amendment of G.S. 7B-1101 will lead North Carolina’s appellate courts to consider such an exception is unpredictable. The amendment is effective October 1, 2007.

## Termination Ground to Facilitate Out-of-State Adoptions

S.L. 2007-151 (H 865) addresses cases in which a child is freed for adoption in North Carolina but the adoption proceeding takes place in another state, generally where the adoptive parents reside. Sometimes a parent’s consent to adoption or relinquishment of a child to a child-placing agency for adoption under North Carolina law is not sufficient to satisfy the prerequisites for adoption in another state. S.L. 2007-151 creates a new ground for termination of parental rights that applies when the parent’s North Carolina consent or relinquishment has become irrevocable, termination of the parent’s rights is necessary in order for the adoption to occur in another state, and the parent does not contest the termination of parental rights. The new ground, in G.S. 7B-1111(a)(10), is effective October 1, 2007, and applies to termination petitions and motions filed on or after that date.

## Adoption Jurisdiction

S.L. 2007-151 expands North Carolina’s jurisdiction in adoption proceedings to include (1) cases in which the child to be adopted has lived in the state either since birth or for the six consecutive months preceding the filing of the adoption petition, regardless of the adoptive parents’ domicile, and (2) cases in which a social services department or licensed child-placing agency in the state has legal custody of the child when the adoption petition is filed.

The act also provides that North Carolina may exercise jurisdiction in an adoption proceeding even if another state is properly exercising jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act when the adoption petition is filed, if that state either dismisses its proceeding or releases its exclusive continuing jurisdiction within sixty days after the adoption petition is filed in North Carolina.

These amendments to G.S. 48-2-100 are effective October 1, 2007, and apply to adoption petitions filed on or after that date.

## Access to Adoption Information

North Carolina has been slower than many states to offer adult adoptees and the biological parents of adult adoptees assistance in identifying and contacting each other. S.L. 2007-262 (H 445) represents a major

change in that respect. It rewrites various sections of the adoption law, G.S. Chapter 48, to allow county social services departments and licensed child-placing agencies in the state to agree to act as *confidential intermediaries* for purposes of obtaining and sharing confidential adoption information and facilitating contact between individuals when there is written consent by all parties to the contact or information sharing. Agencies may charge a reasonable fee for the service. The act does not create an adoption registry or provide details about how the process will work, but it requires the state Division of Social Services to develop guidelines for confidential intermediary services.

Those who may seek and consent to information sharing or contact or both through a confidential intermediary include an adoptee who has reached the age of twenty-one; an adult lineal descendant of a deceased adoptee; and a biological parent of an adoptee. An agency also may act as a confidential intermediary for the adoptive parents of a minor adoptee for purposes of obtaining and sharing non-identifying birth-family health information. The act is effective January 1, 2008.

## Child Safety

### Expand “Safe Zone” for Schools, Child Care Centers, and Parks

The punishment for certain drug offenses is enhanced if the offense occurs within a certain distance of a child care center, school, or playground in a public park. S.L. 2007-375 (S 8) rewrites G.S. 90-95(e) to increase that distance from 300 feet to 1,000 feet and to apply these provisions to all public parks, not just those with playgrounds. The act is effective December 1, 2007, and applies to offenses committed on or after that date.

### False Reports of Mass Violence at School

S.L. 2007-191 (S 812) creates a new criminal offense – making a false report concerning a threat of mass violence on educational property. New G.S. 14-277.5 makes it a Class H felony for a person to make a report, by any means of communication to any person or persons, that an act of mass violence is going to occur on educational property or at a curricular or extracurricular activity sponsored by a school, knowing or having reason to know that the report is false. The act defines *mass violence* as “physical injury

that a reasonable person would conclude could lead to permanent injury (including mental or emotional injury) or death to two or more people.” A person convicted of the offense may be ordered to pay restitution, including damages resulting from the disruption of the normal activities that would have occurred but for the false report. The act becomes effective December 1, 2007, and applies to offenses committed on or after that date.

### Child Passenger Restraints

G.S. 20-137.1 requires that all motor vehicle passengers under age sixteen be properly secured or restrained. Effective June 1, 2007, S.L. 2007-6 (H 61), amended that section to delete an exception that applied during times that someone was attending to the child’s personal needs. The title of the bill indicates that the change was made to ensure compliance with federal regulations.

S.L. 2007-191 (S 812) directs the Child Fatality Task Force to study issues relating to requiring the installation and use of passenger safety restraint systems on school buses and school activity buses. It requires the task force to report its findings and recommendations to the 2008 regular session of the 2007 General Assembly by May 1, 2008.

### No Tobacco at School or School Events

S.L. 2007-236 (S 1086) rewrites G.S. 115C-407 to require local boards of education, by August 1, 2008, to adopt written policies prohibiting the use of tobacco products not only in school buildings, but also in school facilities, on school campuses, and in or on any other school property owned or operated by the local school administrative unit. The policy also must prohibit the use of tobacco products by anyone attending a school-sponsored event at any other location when in the presence of students or school personnel or in an area where smoking is otherwise prohibited by law.

### Prohibit Mobile Telephone Use by School Bus Operator

S.L. 2007-261 (H 183) adds a new statute, G.S. 20-137.4, which makes it a Class 2 misdemeanor to use a mobile telephone for any purpose, other than communicating an emergency, while operating a

school bus on a public street or highway or public vehicular area, if the bus is in motion. The definition of *school bus* includes, in addition to other school buses, a school activity bus and any vehicle transporting public, private, or parochial school students for compensation. The offense is punishable by a fine of not less than one hundred dollars. The act applies to offenses committed on or after December 1, 2007.

**Duty to Report Image of Child Engaged in Sexual Activity**

S.L. 2007-263 (H 27) imposes a reporting requirement on any photographic image processor or any computer technician who, in the course of his or her employment, sees an image of a minor (or a person who reasonably appears to be a minor) engaging in sexual activity. The report must be made to the Cyber Tip Line at the National Center for Missing and Exploited Children, the appropriate local law enforcement official, or a person designated by the employer as the person responsible for making the report to the tip line or law enforcement. The new statute, G.S. 66-67.4, provides civil and criminal immunity for a person who makes a report in good faith. It does not address the consequences of failing to make a report required by the section. The act became effective September 1, 2007.

**Legislative Study Commission on Children and Youth**

Section 10.10(i) of S.L. 207-323 rewrites Article 24 of G.S. Chapter 120 to make the following changes in the Legislative Study Commission on Children and Youth:

- Require the commission, in its study of the needs of children and youth, to determine the adequacy and appropriateness of services to children and youth served by the Mental Health, Developmental Disabilities, and Substance Abuse Services system.
- Change the membership of the commission by adding one additional member of the House of Representatives and one additional member of the Senate; requiring that there be at least one member who also serves on each of several specified legislative committees; requiring that one member be the parent of a child at risk for behavioral, social, health, or safety problems or academic failure; and that one be a representative of a local board of education.

A new section, G.S. 120-221, creates a task force of the commission, the Task Force on the Coordination of Children’s Services, and specifies its membership. The purpose of the task force is to study collaboration and coordination among agencies that serve children and families with multiple service needs and to make recommendations to the commission, the Governor, and the General Assembly. The act sets out numerous specific duties relating to the task force’s study and recommendations and requires the task force to report at least annually to the commission and on April 1 each year to specified legislative committees.

**Safe Surrender Education**

S.L. 2007-126 (H 485) amends G.S. 115C-47 to require local boards of education to adopt policies to ensure that students in grades nine through twelve receive information annually on the procedure through which a parent may lawfully abandon a newborn baby with a responsible person. That procedure, set out in G.S. 7B-500, applies only during the first seven days of a child’s life. (A parent who follows the procedure is immune from criminal prosecution for child abandonment. However, nothing about the procedure affects a county social services department’s duty to respond as it would in the case of any other abandoned child, including filing a juvenile court proceeding and attempting to identify and locate the infant’s parents.)

The act amends other statutes to create comparable requirements with respect to other schools:

- G.S. 115C-238.29F(a), to impose the same requirement on the state Department of Public Instruction with respect to charter schools;
- G.S. 115C-548 and -556, to require the Division of Nonpublic Education in the Department of Administration to ensure that information is available to private church schools, schools of religious charter, and qualified nonpublic schools so that they can provide information on the manner in which a parent may lawfully abandon a newborn baby;
- G.S. 115C-565, to require the Division of Nonpublic Education to provide the same information to home schools, and to specify that it may do so electronically or on the Division’s Web page.

The act was effective June 27, 2007, and applies beginning with the 2008-2009 school year.

## **Bills That Did Not Pass**

### **Post-Adoption Contact**

H 68 and S 90 would permit court-approved agreements between prospective adoptive parents and a child's birth relatives, providing for post adoption contact between the adopted child and the child's birth relatives. Such an agreement could be enforced, modified, or terminated in a subsequent civil court action. In an action to terminate a parent's rights, any post-adoption contact agreement would be one of the factors the court should consider in determining whether termination of the parent's rights is in the child's best interest.

### **Interstate Compact on Placement**

H 1302 and S 1505 would adopt a new Interstate Compact for the Placement of Children, to become effective when a total of 35 states adopted the compact.

### **Leaving Unattended Child in Vehicle**

H 1562, which passed in the House, would make it a criminal offense to leave an unattended child under the age of nine in a motor vehicle.

### **Raise Juvenile Age**

H 492 and S 1445 would amend the Juvenile Code to provide that juveniles who violate criminal laws when they are age sixteen or seventeen are delinquent juveniles and would no longer automatically be prosecuted as adults.

### **Amend Certain Delinquency Provisions**

H 1253, which passed in the House, would amend the Juvenile Code to allow a juvenile who is alleged to have substantially violated the conditions of probation or post-release supervision to be placed in secure custody, make changes relating to delinquency history levels and dispositional limits, amend the court's options following a finding that a juvenile violated probation, and clarify the meaning of prior adjudication.

This bulletin is published and posted online by the School of Government to address issues of interest to government officials. This publication is for educational and informational use and may be used for those purposes without permission. Use of this publication for commercial purposes or without acknowledgment of its source is prohibited.

To browse a complete catalog of School of Government publications, please visit the School's website at [www.sog.unc.edu](http://www.sog.unc.edu) or contact the Publications Division, School of Government, CB# 3330 Knapp-Sanders Building, UNC Chapel Hill, Chapel Hill, NC 27599-3330; e-mail [sales@sog.unc.edu](mailto:sales@sog.unc.edu); telephone 919.966.4119; or fax 919.962.2707.

©2007

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