

3

Children and Families

The General Assembly made changes in 2001 to a variety of statutes affecting the welfare of children and families. This chapter describes legislative actions taken concerning marriage, juvenile court proceedings and juvenile law, adoption, domestic violence, child support, and equitable distribution. Other chapters describing legislation that will have an impact on children and families include Chapter 5, “Courts and Civil Procedure”; Chapter 6, “Criminal Law and Procedure”; Chapter 9, “Elementary and Secondary Education”; Chapter 11, “Health”; Chapter 18, “Mental Health and Related Laws”; Chapter 22, “Senior Citizens”; and Chapter 23, “Social Services.”

Marriage Law Changes

In 1999 the General Assembly authorized the Legislative Research Commission to study North Carolina’s marriage laws. In January 2001, the commission submitted its report, which made recommendations to address eight problem areas. S.L. 2001-62 (H 142), effective October 1, 2001, rewrites various sections of G.S. Chapter 51 to effect changes in each of the eight areas.

Mode of Solemnization

The act amends G.S. 51-1 to broaden the ways in which marriages may be solemnized in North Carolina. Persons authorized to solemnize marriages continue to include (1) an ordained minister of any religious denomination, (2) a minister authorized by a church, and (3) a magistrate. Previously the law also specifically approved marriages performed according to the form and custom of the Society of Friends or the Baha’is, raising constitutional issues in relation to people who wanted to marry in accordance with the custom or form of some other faith. The new law provides that a couple may express their consent to marry in accordance with any mode of solemnization recognized by any religious denomination or by any federally or state recognized Indian Nation or Tribe. As before, the law makes no attempt to define “religious denomination” or “church,” and it requires no registration or other prior authorization of those who perform marriages.

Consent for Minors to Marry

Under prior law, a minor as young as twelve could marry if she was pregnant or had given birth and had the requisite consent. S.L. 2001-62 prohibits marriage in the state by any person under the age of fourteen. It continues the provision allowing a sixteen- or seventeen-year-old to marry with consent, and it specifies that the consent must be from (1) a parent having full or joint legal custody of the minor or (2) a person, agency, or institution having legal custody of or serving as guardian of the minor. S.L. 2001-62 required that the consent be acknowledged before a notary public or signed in the presence of the register of deeds. Section 60 of S.L. 2001-487 (H 338), however, amended S.L. 2001-62 to delete that requirement.

The act provides that a person who is age fourteen or fifteen may marry, but only if:

1. he or she is the mother or putative father of a child, whether born or unborn; and
2. he or she and the other parent of the child have agreed to marry; and
3. there is filed with the register of deeds a certified copy of an order issued by a district court judge authorizing the marriage.

To seek court authorization, a fourteen- or fifteen-year-old who meets the first two criteria must file a civil action in district court, pursuant to a new section, G.S. 51-2A. The court must appoint a guardian ad litem who is an attorney, pursuant to G.S. 1A-1, Rule 17, to represent the best interest of the minor. A conforming amendment to G.S. 7A-451 specifies that compensation of the attorney shall be in accordance with rules promulgated by the Office of Indigent Defense Services. The minor plaintiff must serve a copy of the complaint and summons on his or her mother and father; on any person, agency, or institution that has legal custody of or is serving as a guardian of the minor; and on the attorney who is appointed as the minor's guardian ad litem.

After a hearing, the district court judge may issue an order authorizing the marriage, but only if the court finds as a fact and concludes as a matter of law that:

- the minor plaintiff is capable of assuming the responsibilities of marriage, and
- the marriage will serve the minor's best interest.

The consent of the minor's parent is not required; however, the statute creates a rebuttable presumption that the marriage will not serve the minor's best interest when the parents oppose the marriage. There is no right to appeal the court's order, and if the court denies authorization for the minor's marriage, the minor may not seek the authorization of any court again until at least one year from the entry of the court's ruling. The court does not have authority to authorize marriage by a sixteen- or seventeen-year-old; only the consent of a parent, guardian, or custodian will suffice. Under existing law, however, a sixteen- or seventeen-year-old can petition the district court for a decree of emancipation. If the court grants the decree, under G.S. 7B-3505, the minor can marry without parental consent.

The act clearly characterizes the proceeding filed by a fourteen- or fifteen-year-old as a district court civil action, and it specifies that the minor plaintiff must pay the filing fee for a civil action (unless he or she is allowed to file as a pauper). It is not clear, then, why the act also amends G.S. 7B-200, the jurisdictional section in Subchapter I of the Juvenile Code, to add these proceedings to the list of matters over which the court has exclusive original jurisdiction. Although juvenile proceedings are civil and are in district court, procedurally and administratively they are handled somewhat differently from the way civil court actions are handled.

Geographical Scope of Marriage License

S.L. 2001-62 amends G.S. 51-6 and G.S. 51-16 to delete the requirement that a marriage license be obtained in the county in which the parties intend to marry. Those sections now make clear that the parties may obtain their license from a register of deeds anywhere in the state, then marry anywhere in the state. It will be important for officials who perform marriages to note that sometimes they will be required to return a license to the register of deeds in a county other than the one in which the marriage took place. Section 83 of S.L. 2001-487 makes a conforming amendment to G.S. 130A-110(a) regarding the responsibility of the register of deeds to make monthly reports of marriage information to the state Registrar.

Designation of Race on Marriage License

S.L. 2001-62 amends G.S. 51-16 to make the designation of the parties' race on the marriage license optional rather than mandatory. In addition, it increases from three to more than twenty (including "other") the options available to applicants who do want their race designated on the license.

Responsibilities of Register of Deeds

The act rewrites G.S. 51-8 to require the register of deeds, upon proper application, to issue a marriage license whenever (1) the applicants are able to answer the necessary questions about age, marital status, and intention to marry, and (2) based on the answers, the register of deeds determines that the applicants are authorized under North Carolina law to be married. The register of deeds still may require the applicants to provide supporting documents, but the change in wording suggests that he or she is not required, for example, to determine that an applicant is legally competent.

Application for License by Person Who Cannot Be Present

S.L. 2001-62 adds a new section, G.S. 51-8.2, which creates a procedure to accommodate people who want to marry and are in prison, hospitalized, or unable for some other reason to appear before the register of deeds to apply for a license. The procedure is not available to minors, even if they otherwise are qualified to marry, and it can be used only when one of the two parties is able to appear personally. That person may present an affidavit from the party who is not able to appear. The statute sets out the required contents of the affidavit, including a statement that attached to the affidavit are (1) proof that the person is over eighteen years of age and (2) any required documentation that the party is divorced.

Penalty for Aiding in Obtaining License by Misrepresentation

The law has long made it a misdemeanor to obtain a marriage license by misrepresentation or false pretenses. S.L. 2001-62 rewrites G.S. 51-15 to provide that it is also a misdemeanor to aid and abet another in the commission of that offense. It makes the new offense a Class 1 misdemeanor and changes the original offense from a Class 3 to a Class 1 misdemeanor.

Correction of Marriage Licenses

S.L. 2001-62 rewrites G.S. 51-18.1, which authorizes and provides a procedure for the correction of a name on a marriage application or license, to authorize and provide the same procedure for the correction of any error in an application or license.

Implementation

S.L. 2001-62 requires the Administrative Office of the Courts to develop "any and all forms necessary" for carrying out the act's purposes and to distribute them to the office of the Clerk of Superior Court in each county. That clearly would include forms relating to civil actions filed by fourteen- and fifteen-year-olds seeking judicial authorization to marry. Other "necessary" forms—a new version of the marriage license and an affidavit for people who are unable to appear personally to apply for a license—are not likely to be viewed as the responsibility of the Administrative Office of the Courts.

Special Provisions

In S.L. 2001-62 the General Assembly also amended G.S. 51-1 to provide that regular resident superior court judges may perform marriages; however, that amendment became effective May 19, 2001, and expired May 28, 2001. Two similar special provisions were enacted in S.L. 2001-14 (H 183). That act amended G.S. 51-1 to allow emergency superior court judges to perform marriages between April 13 and April 16, 2001, and to authorize district court judges to do so between June 1 and June 4, 2001. This kind of amendment generally results from a legislator's desire to accommodate a constituent who wants a particular judge to officiate at his or her marriage ceremony. The authorization is accomplished through general, though short term, changes in the law because of the state constitution's prohibition against private laws regarding marriage.

Child Welfare

Juvenile Court Proceedings

S.L. 2001-208 (H 375) makes various changes in Subchapter I of the Juvenile Code, G.S. Chapter 7B, relating to abused, neglected, and dependent juveniles. Originally, the act applied only to actions filed on or after its effective date, January 1, 2002. Section 101 of S.L. 2001-487, however, amended S.L. 2001-208 to provide that (1) provisions relating to relinquishments for adoption apply only to relinquishments executed on or after January 1, 2002, and (2) everything else in the act applies to actions pending or filed on or after January 1, 2002.

In regard to abuse, neglect, and dependency proceedings in juvenile court, the act

1. amends G.S. 7B-602 to require the court to appoint a guardian ad litem, pursuant to Rule 17 of the North Carolina Rules of Civil Procedure (G.S. 1A-1, Rule 17), for any parent who is a minor or whose incapacity is alleged as the basis for a juvenile's dependency. This requirement conforms to one that already exists in proceedings to terminate parental rights.
2. amends G.S. 7B-506(h) to require the court at nonsecure custody hearings (that is, hearings to determine whether a child should remain in custody pending the hearing on the merits) to inquire as to whether paternity is at issue. It also requires the court to make findings about any efforts that have been made to establish paternity and authorizes the court to order specific efforts.
3. amends G.S. 7B-807 to require that the adjudication order be in writing, contain findings of fact and conclusions of law, and be entered (signed by the judge and filed with the clerk) no later than thirty days following the adjudicatory hearing.
4. amends G.S. 7B-905(a), G.S. 7B-906(d), and G.S. 7B-907(c) to require that orders resulting from dispositional hearings, review hearings, and permanency planning hearings be entered within thirty days of the completion of the hearing.
5. amends G.S. 7B-904 to make clear that the court, at a dispositional hearing or subsequent hearing, may order a parent who is able to do so to pay child support when the child is not in that parent's custody.
6. amends G.S. 7B-904 to authorize the court, at a dispositional or subsequent hearing, to order a parent, guardian, custodian, or caretaker who was served with the proper summons to
 - attend and participate in parental responsibility classes;
 - provide transportation for the juvenile to keep appointments for medical, psychiatric, or other treatment if the juvenile remains in or is returned to the home, to the extent the person is able to do so;
 - take appropriate steps to remedy conditions in the home that led or contributed to the juvenile's adjudication or to the court's decision to remove custody from the parent, guardian, custodian, or caretaker.

It also specifically authorizes the court, on its own motion or motion of a party, to issue an order directing a parent, guardian, custodian, or caretaker to appear and show cause why he or she should not be held in civil or criminal contempt for willfully violating an order of the court. This group of changes comes in response to *In re Cogdill*, 137 N.C. App. 504, 528 S.E.2d 600 (2000), in which the court of appeals held that the trial court did not have authority to order a parent to maintain stable employment and housing and contact a child support agency, because the statute did not give the court that authority.

7. amends G.S. 7B-905(c) to authorize a county social services director to suspend temporarily the parental visitation plan for a child in the agency's custody, when the director determines that the plan may not be consistent with the child's health, safety, and best interest. A director who takes this action must file a motion for review promptly.
8. amends G.S. 7B-2901(a) to provide that the juvenile records maintained by the clerk of superior court may be examined and copied, without a court order, by the juvenile, the guardian ad litem, the county department of social services, the juvenile's parent, guardian, or custodian, or the attorney for the juvenile or the parent, guardian, or custodian. This provision corrects an oversight that resulted in the statute's authorizing no one to access the record without a court order.
9. amends G.S. 7B-1001 to require that any notice of appeal be given in writing, deleting the option of giving the notice orally at the end of a hearing.
10. amends G.S. 7B-1003 to provide that pending disposition of an appeal, the juvenile may be returned to the custody of the parent or guardian, with or without conditions, unless the court orders otherwise. This wording change removes a presumption that the child will be returned home.

In regard to voluntary foster care placements, the act amends G.S. 7B-910(c) to require that an initial review hearing be held not more than ninety days after the juvenile is placed in foster care and that another review be held within ninety days after the first review. It also shortens from twelve months to six months the maximum length of time the child may remain in a voluntary placement before the social services department is required to file a petition alleging abuse, neglect, or dependency.

In regard to termination of parental rights, the act

1. rewrites G.S. 7B-907(d) to require the department of social services to initiate a proceeding to terminate parental rights when a child has been placed outside the home for twelve of the last twenty-two months, unless the court finds that one of the statutory exceptions applies. This replaces a provision that required the court to order social services to file a termination petition when a child had been placed for fifteen of the last twenty-two months, unless one of the exceptions applied.
2. amends G.S. 7B-1106(a) to require that a summons be served on the juvenile in every termination proceeding, not just in cases in which the juvenile is twelve or older. Service on the juvenile is to be made on the juvenile's guardian ad litem if one is appointed.
3. amends G.S. 7B-1111(a)(8) to provide that in a termination proceeding based on the parent's alleged commission of one of several specified criminal offenses, the petitioner must establish that ground by proving either (a) the elements of the offense or (b) that a court of competent jurisdiction has convicted the parent of the offense, whether by jury verdict or any kind of plea.
4. amends G.S. 7B-1109(a) to require that a hearing on a termination petition or motion be held within ninety days after it is filed, unless the court orders that it be held at a later time.
5. amends G.S. 7B-1109(e) and G.S. 7B-1110(a) to require that orders resulting from adjudicatory and dispositional hearings be entered within thirty days following completion of the hearing.
6. amends G.S. 7B-1113 to require that any notice of appeal be given in writing and to specify that the juvenile, acting through the juvenile's guardian ad litem if one is appointed, may appeal.

Infant Abandonment

Lamentable and highly publicized instances of newborn infants being killed or abandoned, usually by very young mothers, has led many states to adopt legislation aimed at discouraging other young parents from taking that kind of action. In 1999 the General Assembly considered but did not enact legislation dealing with the abandonment of very young infants. This year the legislature enacted S.L. 2001-291 (H 275), which amends G.S. 7B-500 in the Juvenile Code to (1) allow a parent, within the first seven days of a child's life, to "give" the child to another person; (2) require certain professionals, and allow any other person, to accept physical custody of the child; and (3) set out the responsibilities of the person who receives the child. Under an amendment to G.S. 7B-1111(a), the parent's rights in relation to the infant may be terminated if the parent's abandonment of the infant has lasted for at least sixty consecutive days immediately preceding the filing of a petition to terminate parental rights.

The act amends several criminal statutes to ensure that the parent who avails himself or herself of the authorized procedure will not be criminally liable for doing so. A new section, G.S. 14-322.3, provides that a parent who abandons an infant younger than seven days of age pursuant to G.S. 7B-500 may not be prosecuted for abandonment under G.S. 14-322 or G.S. 14-322.1. The act also amends (1) G.S. 14-318.2 (misdemeanor child abuse) to provide that the parent may not be prosecuted under that section for any acts or omissions related to the care of the infant and (2) G.S. 14-318.4 (felony child abuse) to provide that the parent's abandonment of an infant pursuant to G.S. 7B-500 may be treated as a mitigating factor in sentencing for a conviction under that section for an offense involving that infant.

Amendments to G.S. 7B-500 provide that any adult may, and certain professionals must, accept temporary custody of an infant under seven days of age if a parent delivers the child to the person voluntarily and does not express an intent to return for the child. Those required to accept temporary custody in that circumstance are

- a health care provider (as defined under G.S. 90-21.11) who is on duty or who is at a hospital, a local or district health department, or a nonprofit community health center;
- a law enforcement officer who is on duty or at a police station or sheriff's department;
- a social services worker who is on duty or at a local department of social services;
- a certified emergency medical services worker who is on duty or at a fire or emergency medical services station.

The person who accepts temporary custody of the infant may inquire as to the parents' identities and as to any relevant medical history but also must notify the parent that he or she is not required to provide that information. The person accepting custody must act to protect the child's physical health and well-being and must notify the department of social services or a local law enforcement agency immediately. Anyone who accepts custody of an infant pursuant to these provisions is immune from civil or criminal liability that otherwise might be imposed as a result of the person's actions, as long as the person acts in good faith and the actions do not constitute gross negligence, wanton conduct, or intentional wrongdoing.

The act also amends G.S. 7B-302(a) to require the county department of social services, whenever it receives a report alleging that a child has been abandoned, to (1) initiate an investigation immediately, (2) take appropriate steps to assume custody of the child, and (3) take appropriate steps to obtain a court order allowing the agency to keep custody pending a court hearing. The social services director also must ask law enforcement officials to investigate, using the North Carolina Center for Missing Persons and other national and state resources to determine whether the juvenile is a missing child.

The act includes a requirement that the Division of Public Health in the Department of Health and Human Services develop recommendations for plans to inform the public about these new provisions. The plans must

1. contain information on responsible parenting in addition to information about the act's provisions;
2. target adolescents and young adults;

3. be developed in consultation with law enforcement officials, medical professionals, and representatives of the Department of Public Instruction; and
4. be reported to the General Assembly in a final report by April 1, 2002.

The act became effective July 19, 2001, and applies to acts committed on or after that date.

Social Services and Indian Affairs Collaboration

S.L. 2001-309 (S 715) directs the Division of Social Services in the Department of Health and Human Services (DHHS)—in collaboration with the Commission of Indian Affairs, the Department of Administration, and the North Carolina Directors of Social Services Association—to develop an effective process for accomplishing the following:

1. a relationship between the Division of Social Services and Indian tribes [as set forth in G.S. 143B-407(a)] that will enable tribes, tribal councils, or other tribal organizations to receive reasonable notice of Indian children who are being placed in foster care or for adoption or who otherwise enter the child protective services system, and to be consulted on policies and other matters relating to the placement of Indian children;
2. a process for identifying and recruiting Indian foster parents and adoptive parents;
3. a process for teaching appropriate child welfare workers and foster and adoptive parents the cultural, social, and historical perspective and significance associated with Indian life;
4. identification or formation of Indian child welfare advocacy, placement, and training entities with which DHHS might contract or form partnerships for implementing the act;
5. a valid and reliable process for identifying Indian children within the child welfare system; and
6. identification of the appropriate roles of the state and of Indian tribes, organizations, and agencies to ensure successful means for securing the best interests of Indian children.

Family Foster Homes

G.S. 130A-235 requires the state Commission for Health Services to adopt rules establishing requirements relating to sanitation and well-water testing for institutions and facilities that provide room or board for individuals and for which a license to operate is required. Effective May 24, 2001, S.L. 2001-109 (S 541) and S.L. 2001-487 rewrite the section to exempt single-family dwellings used as family foster homes or therapeutic foster homes from these rules. Foster homes are licensed and regulated by the state Division of Social Services pursuant to rules of the state Social Services Commission. S.L. 2001-487 also amends G.S. 131D-10.2, relating to the licensure of residential child-care facilities, to define *therapeutic foster home* as a “family foster home where, in addition to the provision of foster care, foster parents who receive appropriate training provide a child with behavioral health treatment services under the supervision of a county department of social services, an area mental health program, or a licensed private agency and in compliance with licensing rules adopted by” the Social Services Commission.

Adoption

S.L. 2001-150 (S 499) makes various changes in the adoption laws, effective November 1, 2001. S.L. 2001-208, as amended by S.L. 2001-487, makes several additional adoption-related changes, effective January 1, 2002.

Revocation of Consent

Whenever a parent consents to a child’s adoption or relinquishes a child to an agency for adoptive placement, the law specifies a period of time during which the parent may change his or her mind and revoke the consent or relinquishment. S.L. 2001-150 rewrites G.S. 48-3-608 and

G.S. 48-3-706 to make that time period seven days in all cases. That already was the time limit in cases involving children older than three months of age. The time period when the child was in utero or three months of age or younger, however, was twenty-one days.

Agency Identified Adoptions

S.L. 2001-150 defines *agency identified adoption* as a placement in which an agency has agreed to place the child with a prospective adoptive parent selected by the child's parent or guardian. S.L. 2001-208, as amended by S.L. 2001-487, rewrites G.S. 48-3-203 to deal with situations in which an agency identified adoption cannot be completed. It allows the parent who relinquished the child to revoke the relinquishment within ten days after receiving notice that the adoption cannot be completed. If the parent does not revoke or cannot be located after due diligence and mailing to the parent's last known address, the relinquishment becomes a general relinquishment, authorizing the agency to place the child in a home selected by the agency. This change applies only to relinquishments that are executed on or after January 1, 2002.

Preplacement Assessments

Sometimes adoptive placements occur before the completion of the preplacement assessment of the adoptive parent(s). S.L. 2001-150 adds to G.S. 48-3-307 a requirement that in that circumstance the prospective adoptive parent must file a certificate indicating that he or she has delivered a copy of the preplacement assessment to the parent or guardian who placed the child for adoption.

S.L. 2001-150 rewrites G.S. 48-3-202(b) to authorize the agency that prepares a preplacement assessment to redact, on the copy given to the placing parent or guardian, specified personal information relating to the prospective adoptive parent.

Affidavit of Parentage

G.S. 48-3-206 requires affidavits of parentage in both direct-placement and agency-placement adoptions. S.L. 2001-208, as amended by S.L. 2001-487, rewrites the section to (1) in a direct-placement adoption, allow any "knowledgeable individual" to sign the affidavit if the placing parent or guardian is not available, and (2) in an agency-placement adoption, delete the requirement for the affidavit when the agency acquires custody of the minor through a court order terminating the parent's or guardian's rights. The change becomes effective January 1, 2002.

Release of Identifying Information

The General Assembly approved a significant exception to the rule that agencies must keep confidential any information that would identify the child, the biological parents, or the adoptive parents. S.L. 2001-150 rewrites G.S. 48-9-109 to provide that in agency-placement adoptions, the parent or guardian who places the child for adoption and the adoptive parent(s) may enter into a written agreement consenting to the agency's release of identifying information. The consent must be signed and acknowledged under oath before the adoption takes place, and it must be filed with the court along with the adoption petition.

Advertising

S.L. 2001-150 includes an amendment to G.S. 48-10-101 allowing a person who has a current, favorable preplacement assessment to advertise his or her desire to adopt a child. The

advertisement may be published only in a periodical or newspaper or on radio, television, cable television, or the Internet. It must

- include a statement that the person has a completed preplacement assessment finding the person suitable to be an adoptive parent,
- identify the agency that completed the preplacement assessment, and
- identify the date the preplacement assessment was completed.

The advertisement may state whether the person is willing to provide lawful expenses. Previously, it was lawful for a person to “solicit” a child for adoption, but not to advertise in public media.

Notice vs. Termination of Parental Rights

In regard to agency-placement adoptions, S.L. 2001-150 rewrites G.S. 48-2-402(c) to make clear that the agency or other proper person must file a petition to terminate the parental rights of any “unknown parent or possible parent,” rather than just serving that parent with notice in the adoption proceeding. The act also adds a statement that nothing in the subsection requires an agency or person to file a petition to terminate the parental rights of “any known or possible parent” who has been served in the adoption proceeding with notice pursuant to G.S. 1A-1, Rule 4(j)(1) (personal service or service by registered or certified mail).

Residency of Children in Pre-adoptive Placement

G.S. 115C-366.2 creates several exceptions to the general rule that a child’s right to enroll in school in a particular place depends on the child’s “domicile” or that of the child’s parent or guardian. It provides that the place of the child’s actual “residence” is determinative in the cases of children of college or university students, faculty, or employees; children residing in group homes or foster homes; and children who reside with their legal custodians. S.L. 2001-303 (S 836) adds to this group of exceptions any child who resides in a pre-adoptive home following placement by a county department of social services or a licensed child-placing agency. The change became effective July 21, 2001.

Clerk’s Responsibilities

S.L. 2001-208, as amended by S.L. 2001-487, rewrites G.S. 48-9-102(d) to simplify the clerk’s handling of documents filed in an adoption proceeding. Effective January 1, 2002, it requires the clerk to retain the original petition and final decree and to send all other documents to the state Division of Social Services within ten days after the decree of adoption is entered or after the final disposition of an appeal.

In relation to adult adoptions, the act amends G.S. 48-2-401(d) to authorize the clerk, for cause, to waive the requirement of notice to the adult adoptee’s parent.

I.D. for Adoptee Born in Another Country

S.L. 2001-208 rewrites G.S. 130A-108 to make available from the State Registrar a certificate of identification for an adopted individual who was born in a foreign country and readopted in this state.

Delinquent and Undisciplined Juveniles

Secure Custody

S.L. 2001-158 (H 1083) amends G.S. 7B-1903(b) to allow the court to order secure custody of a juvenile who (1) has demonstrated that he or she is a danger to persons and (2) is charged with a

misdeemeanor in which the juvenile used, threatened to use, or displayed a firearm or other deadly weapon. The act applies to offenses committed on or after December 1, 2001.

Placement in Custody of Department of Social Services

S.L. 2001-208, as amended by S.L. 2001-487, amends G.S. 7B-2503(1) and G.S. 7B-2506(1) to require that any order placing an undisciplined or delinquent juvenile in the custody or placement responsibility of a county department of social services include a finding that the juvenile's continuation in his or her own home would be contrary to the juvenile's best interest. It also requires that the juvenile's placement be reviewed in accordance with G.S. 7B-906, the procedures that apply when the department has custody of abused, neglected, or dependent children. These changes are intended to satisfy requirements under the federal Adoption and Safe Families Act, to protect against the loss of federal funds that pay part of the cost of care for some of these children. The act is effective January 1, 2002, and applies to actions pending or filed on or after that date.

Day Reporting Centers

S.L. 2001-179 (S 876) amends G.S. 7B-2508(c) to provide that ordering a delinquent juvenile to a day reporting center ("supervised day program") is a Level 1 (community) as well as a Level 2 (intermediate) disposition. It also rewrites G.S. 7B-2506(16) to require the court, in deciding whether to order a juvenile to a particular supervised day program, to consider the structure and operations of the program and whether the program will meet the juvenile's needs. These changes became effective October 1, 2001, and apply to offenses committed on or after that date.

Section 8.7 of S.L. 2001-491 (S 166) authorizes the Joint Legislative Education Oversight Committee to study the development of standards for public schools' acceptance of schoolwork performed by suspended students at day reporting centers and other alternative schools.

Teen Court Guidelines

Section 24.8 of S.L. 2001-424 (S 1005) codifies guidelines for teen courts. The new section, G.S. 143B-520, requires all teen court programs administered by the Department of Juvenile Justice and Delinquency Prevention (DJJDP) to operate as community resources for the diversion of juveniles from juvenile court. It directs that a juvenile diverted to the program is to be tried by a jury of other juveniles and that if the jury finds that the juvenile has committed the delinquent act the jury may assign the juvenile to a rehabilitative measure or sanction, including counseling, restitution, curfews, and community service.

S.L. 2001-424 also provides that teen courts may operate as resources for the local school administrative units to handle problems that develop at school but have not been turned over to juvenile authorities. It requires every teen court program that receives state funds (including funds from a local juvenile crime prevention council) to comply with rules and reporting requirements of DJJDP and specifically requires that they report each year on the expenditure of state funds and the number of cases served.

Terminology

S.L. 2001-95 (H 274) deletes the term "training school" from the Juvenile Code (G.S. Chapter 7B) and other statutes and replaces it with the term "youth development center," effective May 18, 2001. The General Assembly rejected the first version of the bill, which would have referred to these facilities as "youth academies." The act also makes various technical corrections relating to juvenile justice terminology.

S.L. 2001-490 (S 68), effective June 30, 2001, rewrites G.S. 7B-1501, the definitional section of Subchapter II of the Juvenile Code, to

1. delete the terms “court counselor” and “intake counselor”;
2. define “intake” as “the process of screening and evaluating a complaint alleging that a juvenile is delinquent or undisciplined to determine whether the complaint should be filed as a petition”; and
3. define “juvenile court counselor” as a person “responsible for intake services and court supervision services to juveniles under the supervision of the chief court counselor.”

It then makes numerous conforming amendments in the Juvenile Code and related statutes, substituting “juvenile court counselor” wherever the term “court counselor” or “intake counselor” appeared.

S.L. 2001-490 also rewrites G.S. 17C-2(3) to make clear that chief court counselors and juvenile court counselors are “criminal justice officers” for purposes of criminal justice education and training standards.

Department of Juvenile Justice and Delinquency Prevention

S.L. 2001-199 (S 7) amends G.S. 143B-544 to provide that, if possible, two members of each local juvenile crime prevention council should be under the age of eighteen, and one of them should be a member of the State Youth Council. It also amends G.S. 143B-556 to add as members of the State Advisory Council on Juvenile Justice and Delinquency Prevention (1) the Attorney General; (2) a person under the age of eighteen who is a member of the State Youth Council, appointed by the Governor; and (3) a person under the age of eighteen, appointed by the Chief Justice of the Supreme Court.

S.L. 2001-138 (S 67) rewrites G.S. 120-70.94, effective July 1, 2001, to authorize the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee (formerly the Joint Legislative Corrections and Crime Control Oversight Committee) to examine the effectiveness of the Department of Juvenile Justice and Delinquency Prevention in carrying out its responsibilities; study the budget, programs, and policies of the department; and report to the General Assembly on any legislation needed to implement recommendations of the committee.

S.L. 2001-490 makes the Secretary of Juvenile Justice and Delinquency Prevention a continuing, ex officio member of the North Carolina Criminal Justice Education and Training Standards Commission. It also rewrites G.S. 143B-516(b) to authorize the secretary to designate persons, as necessary, as state juvenile justice officers, to provide for the care and supervision of juveniles who are placed in the department’s physical custody.

Pilot Alternative Programs for Suspended Students

S.L. 2001-178 (S 71) requires the State Board of Education, in cooperation with the Department of Juvenile Justice and Delinquency Prevention (DJJDP), to establish up to five pilot programs in which local school administrative units place all students who are on short-term, out-of-school suspension in alternative learning programs. The chief court counselor in the judicial district is required to work closely with the pilot unit in developing a plan for alternative learning programs. The unit must also consult other interested parties such as local designees of specified state departments, the local juvenile crime prevention council, parents, other agencies serving juveniles and their families, business leaders, and youth representatives.

The act authorizes the state DJJDP and local juvenile crime prevention councils to use their resources to meet the needs of students in the pilot program. To the extent reasonable and practicable, a pilot unit must ensure that suspended students are in programs or classrooms separate from those in which violent adjudicated offenders are placed. A pilot program may not send suspended students to programs or classrooms in youth development centers, detention centers, or similar facilities. The Department of Public Instruction and DJJDP are required to report to the Joint Legislative Education Oversight Committee by April 15, 2003, and the report must include a recommendation as to whether the program should be instituted statewide.

The act is discussed more fully in Chapter 9, “Elementary and Secondary Education.”

Domestic Violence

S.L. 2001-518 (S 346) amends G.S. 50B-1(a) to expand the circumstances under which a plaintiff can request a civil protection order. The definition of domestic violence is amended to include actions that place “the aggrieved party or a member of the aggrieved party’s family or household in fear of ... continued harassment ... that rises to such a level as to inflict substantial emotional distress.” The definition of harassment is found in G.S. 14-277.3, the statute creating the criminal offense of stalking. Harassment covers a variety of conduct, including communication directed at a specific person in writing or by telephone, fax, or electronic mail that “torments, terrorizes, or terrifies that person and that serves no legitimate purpose.”

S.L. 2001-518 also amends provisions of G.S. 50B-2(c1), which authorize magistrates to enter ex parte civil protection orders under certain circumstances. The amendment provides that a hearing on an ex parte order granted by a magistrate must be held before a district court judge by the end of the next day on which district court is in session in the county in which the action is filed. The amendment deletes the requirement that the hearing before the judge be held within seventy-two hours. The new law also amends G.S. 50B-4.1 to increase the criminal penalties for persons who commit a felony while the felonious conduct is prohibited by a domestic violence civil protection order, as well as for persons convicted three or more times of violating a civil protection order. The increased penalties are discussed in Chapter 6, “Criminal Law and Procedure.”

S.L. 2001-277 (H 643) makes certain communications between victims and agents of rape crisis centers or domestic violence programs privileged. The new law is discussed in Chapter 5, “Courts and Civil Procedure,” and in Chapter 6, “Criminal Law and Procedure.” Also, S.L. 2001-175 (H 665) extends the time period for filing civil actions for assault and for battery from one year to three years. This new law, as well as the budget provisions relating to the funding of domestic violence programs, is discussed in Chapter 5, “Courts and Civil Procedure.”

Child Support

S.L. 2001-237 (H 377) makes several clarifying and administrative changes to the General Statutes pertaining to child support. Unless otherwise indicated, the provisions of the act are effective June 23, 2001. The act

- amends G.S. 50-13.4 to provide specific authority for a judge to order that a responsible parent in a IV-D establishment case perform a job search, if the parent is not incapacitated. The act also specifies that a judge can order the responsible parent to participate in “work activities” as defined in 42 U.S.C. § 607. The activities set out in that federal statute include: (a) private or public sector employment; (b) work experience, if private sector employment is not available; (c) on-the-job training; (d) job search and readiness assistance; (e) community service programs vocational training (not to exceed twelve months); (f) education directly related to employment (only for those parents who have not received a high school diploma or certificate of high school equivalency); (g) satisfactory attendance at a secondary school or study to obtain certificate of high school equivalency (for those who have not completed secondary school or obtained a certificate); and (h) the provision of child care services to an individual who is participating in a community service program.
- amends G.S. 50-13.4(8) and (9) to provide that when arrears are reduced to judgment, the judgment may provide for periodic payment on the total amount owed. The periodic payment provisions are enforceable by contempt.
- amends G.S. 110-132 and -134 to change terminology: a father’s “acknowledgment of paternity” and the mother’s “affirmation of paternity” now both will be called “affidavits of parentage.”
- amends G.S. 110-136.4 to provide that when implementing income withholding in IV-D cases, an employer is to be served with notices in accordance with Rule 5 of the Rules of Civil

Procedure rather than pursuant to Rule 4. Section 72 of S.L. 2001-487 (the Technical Correction Act) amends G.S. 110-136.5(d) to allow Rule 5 service in non-IV-D cases as well. This means that notices may be sent by regular mail rather than by the more formal methods of Rule 4 service of process (registered mail, return receipt requested; or personal delivery by an authorized person).

- amends G.S. 110-139(c1) to clarify that an employer's written verification may be used to establish an obligor's employment and income in enforcement proceedings as well as in establishment and modification proceedings. (Before this amendment, the statute only mentioned establishment and modification proceedings.)
- amends G.S. 50-13.9(b1) to specify that in IV-D cases, the payment records maintained by the local child support enforcement agency shall be admissible in any court action establishing, enforcing, or modifying a child support order. The court must permit the local agent to authenticate the records.
- amends sections of G.S. Chapter 110 to require use of the National Medical Support Notice to notify employers and health care insurers or health care plan administrators of a court order entered pursuant to G.S. 50-13.11 for health benefit coverage in a IV-D case. The new statutes set out the responsibilities of the IV-D agency, the employer, and the health insurers or plan administrators. The provisions specifying responsibilities of the health insurers and plan administrators are not effective until July 1, 2002.

Equitable Distribution

The General Assembly enacted two pieces of legislation affecting the settlement of financial issues between divorcing spouses.

Death of a Party

S.L. 2001-364 (H 1084) amends G.S. 50-20 and 50-21 to specify that pending court claims for the distribution of property between separated spouses do not abate upon the death of one of the parties. The amendments are effective August 10, 2001, and apply to actions pending or filed on or after that date. The amendments reverse in part the decision by the North Carolina Supreme Court in *Brown v. Brown*, 353 N.C. 220 (2000). In *Brown*, the court held that an action for equitable distribution does not proceed in court after the death of a party if the parties were not divorced before the death. According to the supreme court, equitable distribution and divorce are "inextricably linked," and because a divorce action abates upon the death of a party, so should a claim for equitable distribution. The General Assembly responded by amending the equitable distribution statutes to allow a surviving spouse to proceed with a claim for distribution that was filed with the court before the death of the other spouse regardless of whether divorce had been granted. G.S. 50-20(c) is amended to provide that, when one spouse dies while the equitable distribution claim is pending, property passing to the surviving spouse due to the death of the other spouse, as well as a spouse's right to claim an elective share pursuant to estate law, must be considered as factors in a court's determination of how to distribute marital property between the surviving spouse and the estate of the deceased spouse. Conforming changes are made to estate statutes to clarify that a pending equitable distribution action is a claim against the estate of the decedent spouse, and G.S. 29-14 is amended to provide that the elective share of the surviving spouse must be reduced by the value of the property awarded to the surviving spouse in the final equitable distribution judgment.

Mediation of Family Financial Issues

In 1997 the General Assembly authorized the Administrative Office of the Courts to establish a pilot program in which parties to district court actions involving family financial issues may be

required to attend a pretrial mediated settlement conference. As of July 1, 2001, the Administrative Office of the Courts had established pilot programs in ten judicial districts. S.L. 2001-320 (H 668), effective July 1, 2001, amends G.S. 7A-38.4A to allow the program to expand to all districts in the state. The act authorizes all chief district court judges to mandate mediated settlement conferences in any action involving equitable distribution, alimony, child or post-separation support, or claims arising out of contracts between spouses. Other types of settlement procedures may be used with the consent of the parties. A chief district court judge may implement the program by adopting local rules consistent with guidelines promulgated by the North Carolina Supreme Court. The statute requires that all parties, their attorneys, and other persons with authority to settle a claim attend the required settlement conference and authorizes the imposition of sanctions for parties who, without good cause, fail to attend a scheduled conference. A judge may excuse attendance by victims of domestic violence. The cost of the mediated settlement conferences or other settlement procedures is to be shared by the parties.

Related Legislation

Bicycle safety. The “Child Bicycle Safety Act,” which became effective October 1, 2001, establishes helmet and other safety requirements for children under the age of sixteen who operate or are passengers on bicycles. This new law, S.L. 2001-268 (H 63), is discussed in more detail in Chapter 19, “Motor Vehicles.”

Supervising drivers. S.L. 2001-194 (H 78) authorizes grandparents to act as supervising drivers for drivers with limited learner’s permits.

New criminal or delinquent offense. S.L. 2001-360 (S 1081) makes it a Class F felony for a person in the custody of the Department of Juvenile Justice and Delinquency Prevention, a law enforcement officer, or other specified custodians to knowingly and willingly throw, emit, or cause to be used as a projectile bodily fluids or excrement at a state or local government employee while that person is performing his or her duties. The act applies to offenses committed on or after December 1, 2001.

Treatment courts. While the General Assembly did not enact legislation expanding the family court pilot project (H 901), the budget contains a provision authorizing the creation of pilot Family Drug Treatment Court Programs in district court districts 3B (Craven, Pamlico, and Carteret Counties) and 28 (Buncombe County).

Studies

In addition to any studies mentioned above, the General Assembly authorized or required a variety of studies relating to children and families.

Children Receiving Psychotropic Medications

S.L. 2001-124 (S 542) directs the Department of Health and Human Services and the Department of Juvenile Justice and Delinquency Prevention to review the need for a statewide database on the administration of psychotropic medications to children who receive state services while residing in facilities administered by either department. The departments must report their findings and recommendations by January 1, 2002.

Child Abuse/Neglect in Child Care Facilities

S.L. 2001-491, the Studies Act of 2001, authorizes the Legislative Research Commission to study child abuse and neglect in child care facilities. The commission determines which of many authorized studies it will conduct. In determining the nature, scope, and aspects of a study, the commission may consider the bill or resolution that originally raised the issue or proposed the

study. House Bill 456, which did not pass, is cited in the Studies Act as the source of the study of child abuse and neglect in child care facilities. That bill required a study that specifically included:

1. identification of factors that limit the efficiency and effectiveness of investigations of child abuse and neglect in child care facilities;
2. determination of the reasons behind those factors and the impact they have on the safety of children in child care;
3. recommendations on ways to make the investigation of child abuse and neglect in child care facilities more effective and efficient;
4. determination of how the safety of children is impacted by the presence of child care workers who are perpetrators in substantiated cases of child abuse and neglect;
5. recommendations on the need for work-related sanctions against individual child care workers who are perpetrators in substantiated cases of child abuse and neglect; and
6. recommendations on the need for a registry of individuals who are perpetrators in substantiated cases of child abuse and neglect, on who should have access to the registry, and on how the due process rights of the alleged perpetrators should be protected.

The bill also provided for study of issues related to expungement of information from the Central Registry of abuse, neglect, or dependency; whether the Division of Child Development in the Department of Health and Human Services should have access to information in the Central Registry for the purpose of verifying whether a person seeking to be employed in a child care facility has been substantiated for child abuse, neglect, or dependency; and establishment of the most appropriate and cost-efficient appeals process.

Other LRC Studies Relating to Juveniles

Other subjects that S.L. 2001-491 authorizes the Legislative Research Commission to study are listed below (if the study was proposed originally in a bill that did not pass, the number of that bill is in parentheses):

- improving the academic performance of juveniles in education programs in juvenile facilities,
- establishing procedures in the Juvenile Code for juveniles who lack the capacity to proceed in delinquency proceedings (H 138),
- procedures for the commitment of delinquent juveniles and other issues relating to Subchapters II and III of the Juvenile Code (H 277), and
- allowing counties to appeal certain orders in juvenile court (H 1314).

Incest Penalty Study

In S.L. 2001-491 the General Assembly authorized the Sentencing and Policy Advisory Commission to study the current punishments for incest (G.S. 14-178 and G.S. 14-179) to determine whether they are consistent with punishments for other sex offenses and to study the incest statutes' application to acts between related minors. House Bill 1276, which is eligible for consideration in the short session, would amend the criminal statutes regarding incest.

Underage Drinking

S.L. 2001-491 creates a fifteen-member Underage Drinking Study Commission to study matters relating to alcohol consumption by persons under the age of twenty-one, to evaluate current laws, and to recommend changes to reduce underage persons' access to alcohol. The commission must make an interim report to the Joint Legislative Commission on Governmental Operations on or before May 1, 2002, and a final report by December 1, 2002. The Underage Drinking Study Commission terminates upon submission of its final report.

Bills That Did Not Pass

Bills Eligible for Further Consideration

Bills that passed in the House but not the Senate, or vice versa, may be considered further during the 2002 session. These include bills that would

1. amend the definition of *abuse* in both the Juvenile Code and the criminal law to include persistently fabricating or misrepresenting medical illness in the child, by producing or simulating the illness, in order to obtain otherwise unnecessary medical care (H 93);
2. make various changes relating to agency coordination, especially in relation to educational matters, with respect to children in group homes or other out-of-home placements (S 163); and
3. abolish the civil causes of action for criminal conversation (adultery) and alienation of affection. Alienation of affection is a claim for money damages against a third party for breaking up a marriage (H 576).

Bills Not Eligible for Further Consideration

Bills that were introduced but did not pass in either the House or the Senate are not eligible for consideration in the 2002 session. These include bills that proposed amending the Juvenile Code to

1. specify the circumstances under which a social worker could enter a private residence for investigation purposes (H 971);
2. require the court to appoint counsel for a juvenile before the intake evaluation when the juvenile is alleged to have committed an offense that would be a felony if committed by an adult (S 935);
3. establish procedures relating to juveniles who are alleged to be delinquent and who lack, or are alleged to lack, the capacity to proceed (Note above, however, that the Legislative Research Commission is authorized to study this issue. Bills that implement the recommendations of a study commission are eligible for consideration in the short session.); and
4. require that a DNA sample be taken from a juvenile whose case is transferred to superior court (S 95).

Another bill would have rewritten parts of the adoption law, G.S. Chapter 48, to provide for post-adoption privileges in certain circumstances, based on a written agreement between an adopted child's birth relative and the adoptive parent (H 1164).

Senate Bill 1057 would have prohibited the assessment of court costs to plaintiffs filing for a domestic violence civil protection order pursuant to G.S. 50B.

Cheryl Howell

Janet Mason