

3

Children and Families

The 2003 North Carolina General Assembly addressed a number of issues relating to children and families. This chapter summarizes enacted bills dealing with divorce, domestic violence, juvenile proceedings, and child support. Also discussed herein are bills relating to child care; the Amber Alert system; and contracts for certain artistic, creative, or athletic services by minors. Other chapters that contain information regarding children and families include Chapter 5, “Courts and Civil Procedure”; Chapter 6, “Criminal Law and Procedure”; Chapter 8, “Elementary and Secondary Education”; Chapter 10, “Health”; Chapter 11, “Higher Education”; Chapter 16, “Mental Health”; and Chapter 21, “Social Services.”

Divorce

Alternative Dispute Resolution for Divorce Cases

S.L. 2003-61 (H 952) amends G.S. 50-53, a provision of the Family Law Arbitration Act (G.S. Chapter 50, Article 3), to clarify that parties may agree not to submit to the court for confirmation an arbitration agreement reached pursuant to this article. The legislation became effective May 20, 2003.

S.L. 2003-371 (H 1126), effective October 1, 2003, adds new G.S. 50-70 through -79 to create a collaborative law settlement procedure for issues arising out of a divorce. The procedure includes a written agreement by the parties to make a good faith effort to resolve disputes arising from the marital relationship by agreement and without resort to judicial intervention. If the procedure results in a settlement agreement signed by both parties, either party is entitled to an entry of judgment or an order to effectuate the terms of the settlement agreement. If the parties fail to reach an agreement, either party can initiate civil proceedings. However, attorneys representing the parties during the collaborative process may not represent the parties in any future civil proceeding arising out of the marital relationship of the parties. An agreement to participate in the collaborative settlement process tolls all time limits or deadlines imposed by statutes or local court rules, including statutes of limitation, discovery and filing deadlines, and scheduling orders. Consistent with the recent amendment to G.S. 50-20(l)

discussed below, a personal representative of a deceased spouse can continue a collaborative law procedure initiated before the death of the party.

Equitable Distribution

S.L. 2003-168 (S 394) amends G.S. 50-20(1) to provide that a claim for equitable distribution survives the death of a spouse as long as the parties are living separate and apart at the time of death. The amendment replaces the current version of G.S. 50-20(1), enacted during the 2001 session of the General Assembly, *see* S.L. 2001-364, which allows a claim to survive only if an action is pending in court at the time of death. Both the 2001 amendment and S.L. 2003-168 are in response to the opinion by the North Carolina Supreme Court in *Brown v. Brown*, 353 N.C. 220, 539 S.E.2d 621 (2000), wherein the court held that a claim for equitable distribution does not survive death unless a judgment of absolute divorce is entered before death.

S.L. 2003-168 clarifies that a claim for equitable distribution by a surviving spouse is treated as a claim against the decedent's estate, subject to the provisions of G.S. Chapter 28A, Article 19. Claims by an estate against a surviving spouse must be filed within one year of death.

The amendment probably applies only to actions filed on or after the effective date of the legislation, June 12, 2003, and not to cases pending on that date. *See* *Morris v. Morris*, 79 N.C. App. 386, 339 S.E.2d 424 (1986) (statutes that do not say otherwise are presumed to apply prospectively only); *Gardner v. Gardner*, 300 N.C. 715, 268 S.E.2d 468 (1980) (amendments presumed to apply prospectively unless they are procedural in nature). *But cf.* *Bowen v. Mabry*, 154 N.C. App. 734, 572 S.E.2d 809 (2002) (earlier amendment to G.S. 50-20 regarding the survival of actions for equitable distribution held to apply to actions pending on the effective date because the amendment was clarifying a statute that had been "misconstrued" by the courts).

Marriage

S.L. 2003-4 (H 382) amends G.S. 51-1 to allow district court judges to perform marriage ceremonies between March 27, 2003, and March 31, 2003.

Domestic Violence

Renewal of Civil Protective Orders

S.L. 2003-107 (S 630) amends various sections of G.S. Chapter 50B to clarify that protective orders entered by consent of the parties are domestic violence protective orders for all purposes under the statute. The legislation also amends G.S. 50B-3(b) to clarify that a motion to renew a protective order must be filed before the expiration of the original or previous order, that orders previously renewed also are subject to renewal, and that the court can renew any order for good cause. No new act of domestic violence is required to support a renewal. S.L. 2003-107 became effective May 31, 2003.

Surrender of Firearms upon Entry of a Civil Protective Order

S.L. 2003-410 (S 919) adds new G.S. 50B-3.1 to provide that a court entering a civil domestic violence protective order must require the defendant to surrender all firearms and firearm permits to the sheriff if the court finds one of the following factors:

- the use or threatened use by the defendant of a deadly weapon against the aggrieved party or minor child or a pattern of prior conduct by the defendant involving the use or threatened use of violence with a firearm against persons,
- threats by the defendant to seriously injure or kill the aggrieved party or minor child,

- threats by the defendant to commit suicide,
- serious injuries inflicted by the defendant upon the aggrieved party or minor child.

S.L. 2003-410 requires the judge to inquire at the ex parte hearing and at the ten-day hearing as to the defendant's ownership of firearms and firearm permits. If the court orders the surrender of the firearms, the defendant must surrender them when served with the protective order by the sheriff or within twenty-four hours thereafter, at a time and place specified by the sheriff. The sheriff can charge a fee to the defendant for storage of the firearms. Once the items have been surrendered, the sheriff cannot return firearms or permits to the defendant without a court order. The court cannot order the firearms returned to the defendant until the protective order expires and the court determines that the defendant is not prohibited by state or federal law from possessing firearms. S.L. 2003-410 requires that the defendant seek recovery of the firearms within ninety days following the expiration of the domestic violence protective order. Firearms not recovered in a timely manner are subject to destruction or sale by the sheriff upon court approval. The legislation specifies a procedure for a third-party owner to file a motion with the court seeking recovery of surrendered firearms. S.L. 2003-410 does not apply to law enforcement officers or members of the armed services possessing or using firearms for official purposes.

S.L. 2003-410 is effective December 1, 2003, and applies to offenses committed on or after that date.

Child Abuse, Neglect, and Dependency

Purpose of Juvenile Code

S.L. 2003-140 (H 1048) amends G.S. 7B-100, the purpose statement for Subchapter I of the Juvenile Code. An addition to the section refers to the federal Adoption and Safe Families Act of 1997 (P.L. 105-89) as the basis for standards to ensure that

1. the juvenile's best interests are the court's paramount consideration, and
2. when it is not in the juvenile's best interest to be returned home, the juvenile will be placed in a safe, permanent home within a reasonable time.

The change is effective June 1, 2003.

Duty of School Principal to Report Nonattendance

As rewritten by S.L. 2003-304 (S 421), G.S. 115C-378 requires a school principal to notify the social services director in the county where a child resides when

1. the child has accumulated ten unexcused absences in a school year, and
2. the principal determines that the child's parent, guardian, or custodian has not made a good faith effort to comply with the compulsory attendance law.

A social services director who receives this kind of notification from a principal must determine whether to undertake a child protective services investigation. This provision is effective July 4, 2003.

Social Worker Entering Home during Investigation

Effective July 4, 2003, S.L. 2003-304 amends G.S. 7B-302 to provide that a social services director or the director's representative may enter a private residence for purposes of a child protective services investigation only

- if the person has a reasonable belief that a child is in imminent danger of death or serious physical injury, or
- with permission of the parent or person responsible for the child's care, or

- residence, or
- pursuant to an order from a court of competent jurisdiction.

Guardians ad Litem

Effective June 1, 2003, S.L. 2003-140 adds a new section, G.S. 7B-408, requiring the clerk of superior court, immediately after an abuse or neglect petition is filed, to provide a copy of the petition and any notices of hearing to the local guardian ad litem office.

Service of Process

As amended by S.L. 2003-304, G.S. 7B-407 allows service of process in an abuse, neglect, or dependency proceeding to be made by any method permitted by G.S. 1A-1, Rule 4(j). Previously, the statute required personal service on the parent, guardian, custodian, or caretaker unless the court authorized service by certified or registered mail or by publication. Service by publication continues to require prior court approval. This change became effective July 4, 2003.

Predisposition Reports

S.L. 2003-140 repeals G.S. 7B-304 (which required the county social services director to prepare an evaluation for the court in abuse, neglect, and dependency cases) and incorporates its provisions into G.S. 7B-808 (predisposition report). As rewritten, G.S. 7B-808 allows the court to proceed with a dispositional hearing without receiving a predisposition report if the court makes a written finding that a report is not necessary. The act also authorizes each chief district court judge to adopt a local rule or issue an administrative order to address the sharing of predisposition reports among the parties in abuse, neglect, and dependency proceedings. The rule or order may prohibit disclosure of the report to the juvenile, but it may not prohibit a party from receiving information that the party is legally entitled to receive or allow disclosure of confidential information to the public. S.L. 2003-140 is effective June 1, 2003.

Evidence Admissible at Disposition or Review

S.L. 2003-62 (H 126) makes clear that the court may consider any evidence—including hearsay evidence—that the court finds to be relevant, reliable, and necessary to determine the juvenile’s needs or the most appropriate disposition in:

- abuse, neglect, and dependency dispositional hearings pursuant to G.S. 7B-901;
- abuse, neglect, and dependency review hearings pursuant to G.S. 7B-906;
- permanency planning hearings pursuant to G.S. 7B-907; and
- placement review hearings pursuant to G.S. 7B-908.

The act is effective May 20, 2003.

Determining Child’s County of Residence

G.S. 153A-257 sets out rules for determining a person’s residence for purposes of social services programs. S.L. 2003-304, effective July 4, 2003, adds to that section a provision authorizing the state Division of Social Services in the Department of Health and Human Services to determine which county is responsible for providing protective services and financial support for a child when two or more social services departments disagree about the child’s legal residence in an abuse, neglect, or dependency case.

Appointment of Custodian or Guardian

S.L. 2003-140 amends G.S. 7B-600, -903, -906, and -907 to require the court, any time it either places a child in the custody of someone other than a parent or appoints someone as guardian of the child's person, to verify that the person being given custody or the appointed guardian

1. understands the legal significance of the placement or appointment, and
2. will have adequate resources to care appropriately for the child.

The act is effective June 4, 2003.

Conflicting Custody Orders Pilot

In abuse, neglect, and dependency proceedings the district court often enters orders that change or affect a child's custody. Sometimes an order concerning that same child's custody exists or is sought in a civil action pursuant to Chapter 50 of the General Statutes. Neither the Juvenile Code nor Chapter 50 addresses the relationship between these two kinds of orders or provides guidance for reconciling them when they conflict. House Bill 1033, which would have established a procedure for resolving these conflicts, was not enacted. S.L. 2003-381 (S 753), however, adopts a similar procedure as a pilot program that the Administrative Office of the Courts is required to create in the 12th Judicial District (Cumberland County). In the pilot program, a court that has jurisdiction over an abused, neglected, or dependent juvenile is authorized to

- stay any other civil action in North Carolina in which custody of the same child is an issue;
- order that a civil action for custody filed in the 12th judicial district be consolidated with the juvenile proceeding; and
- when a custody action is filed in another district in North Carolina, either order that action transferred to the 12th judicial district or order venue in the juvenile proceeding transferred to the district where the civil action is pending, after consulting with the court in which the civil action is filed.

For purposes of the pilot program, if there are two orders in North Carolina, the order in the juvenile court controls as long as the court retains jurisdiction in the juvenile proceeding. The court also can establish a mechanism, including a custody determination, for determining the legal status of the juvenile after the juvenile court's jurisdiction terminates. The act requires the Administrative Office of the Courts to evaluate the pilot program and report to the General Assembly by the beginning of the 2005 session. The act is effective August 1, 2003, and expires June 30, 2005.

Termination of Parental Rights

Appointment of Guardian ad Litem. Effective June 1, 2003, S.L. 2003-140 amends G.S. 7B-1108(b) to specify that a guardian ad litem trained and supervised by the state guardian ad litem program may be appointed in a termination of parental rights case only if

1. the juvenile is or has been the subject of an abuse, neglect, or dependency petition; or
2. the local guardian ad litem program, with good cause shown, consents to the appointment.

Continuances. Effective July 1, 2003, S.L. 2003-304 rewrites G.S. 7B-1109(d), which relates to continuances in the adjudication stage of a proceeding to terminate parental rights, to

- limit an initial continuance to ninety days from the date of the petition;
- add, as a reason the court may grant a continuance, allowing the parties to conduct expeditious discovery;
- provide that continuances longer than ninety days may be granted only in extraordinary circumstances when necessary for the proper administration of justice; and
- require the court to issue a written order stating the grounds for granting a continuance longer than ninety days.

Incapacity ground. S.L. 2003-140 amends 7B-1111(a)(6), which authorizes termination of parental rights based on a parent's incapacity to provide proper care and supervision of his or her child, to provide that the parent's incapacity may be due to any cause or condition (rather than just conditions that are listed, or similar to those that are listed, in the statute) that renders the parent unable or unavailable to parent the juvenile. The amendment also requires the court, before terminating parental rights based on incapacity, to find that the parent lacks an appropriate alternative child care arrangement. The act rewrites G.S. 7B-1101 to provide that when parental incapacity is alleged as a ground for terminating a parent's rights, the court is required to appoint a guardian ad litem for the parent only in cases in which the parent's incapacity is alleged to be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or another similar cause or condition.

Child Fatality Review Team

G.S. 143B-150.20(d) authorizes the state Child Fatality Review Team to obtain a variety of information that the team needs to carry out its duties. Effective July 1, 2003, S.L. 2003-304 amends the subsection to provide that if the team does not receive information within thirty days after requesting it, the team may apply for an order compelling disclosure. The application must state factors supporting the need for the order and must be filed in the district court of the county where the investigation is being conducted. The act specifies that the court has jurisdiction to issue orders compelling disclosure. Actions brought under the section must be scheduled for immediate hearing, and the appellate courts must give priority to subsequent proceedings in these actions.

Assault on Court Officers

S.L. 2003-140 amends G.S. 14-16.10(1) to provide that the term *court officer*, for purposes of G.S. Chapter 14, Article 5A (Endangering Executive, Legislative, and Court Officers), includes

- social services department attorneys and employees acting on the department's behalf in a juvenile proceeding under Subchapter I of the Juvenile Code,
- guardians ad litem and attorney advocates appointed to represent children in those proceedings, and
- any employee of the Guardian ad Litem Services Division of the Administrative Office of the Courts.

This amendment applies to offenses committed on or after December 1, 2003.

Other Criminal Offenses

Several criminal law changes that relate to child protection are described in Chapter 6, "Criminal Law and Procedure." Among the subjects they address are the following:

- Indecent liberties by a school safety officer. S. L. 2003-98 (S 555).
- Prohibition of "rebirthing" therapy. S.L. 2003-205 (S 251).
- New offense of sexual battery. S.L. 2003-252 (S 912).
- Revision of the peeping statutes. S.L. 2003-303 (H 408).
- Enhanced penalty for assault in the presence of a child. S.L. 2003- (H 926).

Delinquent and Undisciplined Juveniles

Evidence Admissible at Disposition Hearing

S.L. 2003-62 makes clear that in dispositional hearings for undisciplined or delinquent juveniles the court may consider any evidence, including hearsay evidence, that the court finds to

be relevant, reliable, and necessary to determine the juvenile's needs and the most appropriate disposition. This amendment to G.S. 7B-2501 became effective May 20, 2003.

Allowing Juvenile to Escape

S.L. 2003-297 (H 1037) amends G.S. 14-239 to make the misdemeanor offense of allowing a prisoner to escape applicable to custodial personnel who willfully or wantonly allow the escape of a juvenile who is committed to the Department of Juvenile Justice and Delinquency Prevention. This amendment applies to offenses committed on or after December 1, 2003.

Photographing Juveniles

Effective October 1, 2003, S.L. 2003-297 amends G.S. 7B-2102 to require a county detention facility to photograph any juvenile in its custody who was at least ten years old when he or she allegedly committed a nondivertible offense. (Nondivertible offenses—those for which a court counselor must approve the filing of a petition after finding reasonable grounds to believe the juvenile committed the offense—are listed in G.S. 7B-1701.) It also authorizes the court to order the release of a juvenile's photograph to the public if the juvenile escapes from a youth development center, some other juvenile facility, a holdover facility, or the custody of juvenile personnel or a local law enforcement officer.

Court Approval of Alternative Commitment Plan

The most severe disposition for a delinquent juvenile is commitment to the Department of Juvenile Justice and Delinquency Prevention for placement in a youth development center (previously referred to as training school). The department conducts an assessment of every committed juvenile and has discretion to determine which youth development center can best meet a juvenile's needs. S.L. 2003-53 (H 950) clarifies the department's authority to place a committed juvenile somewhere other than a youth development center and establishes a procedure for making alternative placements. The act amends G.S. 7B-2513 to require prior approval of the committing district court when the department proposes assigning a committed juvenile to a program that is not located in a youth development center or detention facility. Before making an alternative placement, the department must file and serve on the prosecutor, the juvenile, and the juvenile's attorney a motion and information about the services it recommends for the juvenile. The court can approve the alternative placement without a hearing if the court determines that the proposed plan is appropriate and that a hearing is not necessary. The court must hold a hearing, however, if the juvenile or the juvenile's attorney requests one, and the department must keep the juvenile in a youth development center or detention facility pending the outcome of the hearing. These changes apply to dispositions entered on or after October 1, 2003.

County Appeal from Payment Orders

Subchapter II of the Juvenile Code authorizes the court to charge to the county the costs of various kinds of evaluation and treatment the court may order for an undisciplined or delinquent juvenile or for the juvenile's parent, when the parent is not able to pay. G.S. 7B-2502 requires that the county manager or another county official be notified and have an opportunity to be heard before this kind of order is entered. It also states that the county department of social services shall recommend the facility that will provide the juvenile with evaluation or treatment. The county is not a party to the juvenile proceeding, however, and the North Carolina appellate courts have held several times that the county may not appeal from these orders, which sometimes involve substantial financial commitments. *See, e.g., In re Brownlee*, 301 N.C. 532, 272 S.E.2d 861 (1981); *In re Voigt*, 138 N.C. App. 542, 530 S.E.2d 76 (2000); *In re Braithwaite*, 150 N.C. App. 434, 562 S.E.2d 897 (2002). S.L. 2003-171 (H 925) rewrites G.S. 7B-2604 to authorize a county, in delinquency and undisciplined cases, to appeal any order that requires the county to pay for

medical, psychological, or other evaluation or treatment of a juvenile or the juvenile's parent. The act is effective October 1, 2003, and applies to petitions for appeal filed on or after that date.

Juvenile Justice Compliance with Audit Report

Section 15.9 of S.L. 2003-284 (H 397) directs the Department of Juvenile Justice and Delinquency Prevention to develop and implement a plan to address the findings and recommendations in the May 2003 report of the performance audit of the youth development centers and juvenile detention centers within the department. The plan must address problems identified in the report through proposed changes in organization and management, policies and procedures, and programs. It also must identify and document any funding needs for consideration by the 2004 session of the General Assembly. The act requires the department to report by November 1, 2003, to the chairs of the Senate and House Appropriations Committees and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on progress in developing the plan and initial steps taken to address the issues raised in the audit report. The department must report on the final plan by March 1, 2004.

Child Support

Health Insurance Requirements in Child Support Orders

Effective July 1, 2003, S.L. 2003-288 (S 423) amends G.S. 50-13.11(a1) to provide that if a court orders a parent or other responsible party to maintain health insurance for the benefit of a child for whom court-ordered child support is owed, but the parent or responsible party does not have access to health insurance at a reasonable cost at the time the order is entered, the court must order the parent or responsible party to obtain health insurance for the child when health insurance becomes available at a reasonable cost. The effect of this amendment is to negate, in part, the Court of Appeals' decision in *Buncombe County ex rel. Frady v. Rogers*, 148 N.C. App. 401, 559 S.E.2d 227 (2002).

Liquidation of Child Support Arrearages

S.L. 2003-288 amends G.S. 50-13.4(c) to provide that if (1) a parent's court-ordered child support obligation terminates (for example, when the child for whom support is owed reaches his or her eighteenth birthday and has graduated from high school), (2) the parent still owes child support arrearages under the order, and (3) the court order or an income withholding order requires the parent to pay both current support and an additional amount to liquidate the arrearage, the total payment due under the order, until further order of the court, will continue to be the amount due for current support plus the additional arrearage payment, and the total amount of the payment will be applied to the parent's child support arrearage until it is fully paid. The amendment is effective July 4, 2003, and probably applies to court-ordered child support obligations that terminate on or after that date.

State and Local Child Support Enforcement (IV-D) Agencies

Additional legislation regarding the establishment and enforcement of child support by state and local child support enforcement (IV-D) agencies is discussed in Chapter 21, "Social Services."

Child Day Care and Early Childhood Programs

Child Care Facilities

Safe sleep policies. Effective December 1, 2003, S.L. 2003-407 (H 152) amends G.S. 110-91 to require child care facilities to develop and implement safe sleep policies to reduce the risk of Sudden Infant Death Syndrome (SIDS).

Administration of medication. Effective December 1, 2003, S.L. 2003-406 (S 226) prohibits the administration of prescription or over-the-counter medication to a child in a licensed or unlicensed child care facility without the written authorization of the child's parent or guardian. The prohibition does not apply in the event of an emergency medical condition, if medication is administered with the authorization of and in accordance with the instructions of a bona fide medical care provider. Willful violation of the statute is a Class A1 misdemeanor, or a Class F felony if the violation results in serious injury to the child. The statute, known as "Kaitlyn's Law," is codified as G.S. 110-102.1A.

Information for parents. Effective October 1, 2003, S.L. 2003-196 (H 1063) amends G.S. 110-102 to require operators of child care facilities to provide the state Division of Child Development's summary of laws relating to child care facilities to the parents, guardians, or custodians of children who receive child care and to post this summary in the facility.

Criminal penalties. Effective December 1, 2003, S.L. 2003-192 (S 877) amends the criminal penalties for violations of the Child Care Facilities Act. A person who offers or provides child care without complying with the provisions of G.S. Chapter 110, Article 7, is guilty of a Class 1 misdemeanor, or a Class H felony if the violation causes serious injury to a child attending the facility or the person has a prior conviction for offering or providing child care in violation of G.S. Chapter 110, Article 7. A person who willfully operates a child care facility without a current license or who willfully violates the provisions of G.S. Chapter 110, Article 7, while providing child care for three or more children for more than four hours per day on two consecutive days is guilty of a Class I felony, or a Class H felony if the violation causes serious injury to a child attending the facility. The act decriminalizes violations related to advertising child care without disclosing the facility's identifying number, displaying child care licenses, and providing information to parents.

Investigation of abuse and neglect. Effective December 1, 2003, S.L. 2003-407 amends G.S. 110-105.2(a) to require the Department of Health and Human Services (DHHS), county social services departments, and local law enforcement personnel to cooperate with the medical community to ensure that reports of child abuse and neglect in child care facilities are properly investigated.

S.L. 2003-284 appropriates additional state funding to increase by fifteen the number of staff in the Division of Child Development's abuse and neglect investigation section.

License fees. Effective October 1, 2003, S.L. 2003-284 amends G.S. 110-90 to allow the Secretary of Health and Human Services, under policies and rules adopted by the Child Development Commission, to establish a fee (not to exceed \$35 to \$400 depending on facility capacity) for licensing child care centers (other than religious-sponsored child care centers operating pursuant to a letter of compliance).

Section 10.39A of S.L. 2003-284 requires the Division of Child Development to develop a plan proposing fees for the licensing of family child care homes and to submit the plan to the General Assembly's Fiscal Research Division, the Senate Appropriations Committee on Health and Human Services, and the House Appropriations Subcommittee on Health and Human Services by April 1, 2004.

Child Day Care Subsidies

Section 10.35 of S.L. 2003-284 sets the income eligibility limit for subsidized child care at 75 percent of the state's median income adjusted for family size and provides that families who are required to share in the cost of child care must pay 8 to 10 percent (depending on family size) of

their gross family income for child care. The act also provides that noncitizen families who reside in the state legally are eligible for subsidized child care if they meet all other conditions of eligibility and the child for whom a subsidy is sought (1) is receiving child protective services or foster care services, (2) is developmentally delayed or at risk of being developmentally delayed, or (3) is a U.S. citizen.

Section 10.35 also requires the Division of Child Development to calculate statewide, regional, and county market rates for child care centers and homes at each rated license level and for each age group or category of children. The section specifies the maximum subsidy payments for licensed child care centers and homes that are rated at the two-star level or above, licensed child care centers and homes that meet the minimum licensing standards, religious-sponsored child care facilities operating pursuant to G.S. 110-106, and nonlicensed homes.

Section 10.36 of S.L. 2003-284 requires that federal and state funding for subsidized child care (other than the mandatory 30 percent Smart Start subsidy allocation) be allocated based on each county's projected cost of serving children under the age of eleven in families with working parents who earn less than 75 percent of the state's median income, but that no county's allocation may be less than 90 percent of its initial child care subsidy allocation for fiscal year 2001–2002. Section 10.34 of S.L. 2003-284 prohibits the Department of Health and Human Services from requiring local matching funds as a condition of receiving state funding for child care unless federal law requires a local match, but it authorizes local governments to spend local funds for child care services. Section 10.36 of S.L. 2003-284 authorizes DHHS to reallocate unused funding for child care subsidies based on county expenditures of federal, state, local, and Smart Start funding for subsidized child care.

More at Four

More at Four is a voluntary prekindergarten program for at-risk four-year-olds. S.L. 2003-284 provides approximately \$85 million in state funding for the More at Four program for the fiscal biennium. Section 10.40 of S.L. 2003-284 requires the program to include

- a system for identifying unserved and underserved children who are at risk of academic failure;
 - curricula that prepare children for kindergarten emotionally, socially, and academically;
 - minimum teacher qualifications;
 - requirements for local contribution of resources;
 - pre- and post-assessment of children; and
 - other specified components.
- Section 10.40 also requires the state Department of Health and Human Services and the Department of Public Instruction to establish a task force to oversee the program's development and implementation; directs DHHS to plan for the program's expansion to include child care centers with four- or five-star ratings and schools serving four-year-olds; allows DHHS to use nonobligated program funding to reduce the waiting list for subsidized child care, giving priority to four-year-olds attending child care centers with at least a three-star rating; and requires DHHS, the Department of Public Instruction, and the More at Four Task Force to submit program reports to specified legislative committees and agencies by January 1, 2004, and May 1, 2004.

Smart Start

Section 10.38 of S.L. 2003-284 limits the aggregate allowable administrative costs of local Smart Start partnerships (not to exceed 8 percent of the total statewide allocation to all local partnerships); requires the state and local Smart Start partnerships to use specified competitive bidding practices with respect to contracts for the purchase of goods and services; imposes match requirements for state Smart Start funding; requires local partnerships to spend at least \$52 million for child care subsidies in fiscal year 2003–2004 to meet federal maintenance of effort and match

requirements; prohibits the expenditure of allocated funds for capital expenditures, playground equipment, and advertising and promotional activities; limits the use of state funding for one-time quality improvement initiatives; requires the assessment of a penalty against the allocation of local partnerships whose audits are classified as “needs improvement performance assessment”; and requires the state Smart Start partnership to submit a report to the General Assembly’s Fiscal Research Division, the Senate Appropriations Committee on Health and Human Services, and the House Appropriations Subcommittee on Health and Human Services by March 1, 2004. S.L. 2003-284 also cuts state funding for Smart Start by \$7.7 million per year.

Section 10.39 of S.L. 2003-284 authorizes the Division of Child Development to evaluate the quality of child care provided by the Smart Start program and the program’s progress in promoting children’s readiness to enter school and succeed.

Other Legislation Affecting Children and Families

Amber Alert

In 2002 the General Assembly enacted legislation (S.L. 2002-126) establishing the “North Carolina Child Alert Notification System” as part of the North Carolina Center for Missing Persons. S.L. 2003-191 (H 478) amends G.S. 143B-499.7 to change the name to the “North Carolina AMBER Alert System.” The act also amends G.S. 143B-499.1 to require a law enforcement agency that receives a missing person report that meets the AMBER Alert criteria to notify the National Center for Missing and Exploited Children as well as the North Carolina Center for Missing Persons. In addition, it rewrites G.S. 143B-499.7(b), which sets out the AMBER Alert criteria, to

1. increase the maximum age of covered children from twelve to seventeen. (Previously, disseminating information about children ages thirteen through seventeen was discretionary and determined on a case-by-case basis.)
2. provide that the child is believed either to have been abducted or to be in danger of injury or death. (Previously, one criterion required both.)
3. include children who are known or suspected to have been abducted by a parent of the child, if the child is suspected to be in danger of injury or death. (The statute retains a statement, however, that the North Carolina Center for Missing Persons, in its discretion, may disseminate information through the AMBER Alert System if the child is believed to be in danger of injury or death.)

The act, which makes other conforming changes, is effective June 12, 2003.

Assault in the Presence of a Minor

S.L. 2003-409, enhancing the criminal penalty for assault in the presence of a minor, is discussed in Chapter 6, “Criminal Law and Procedure.”

Unemployment Compensation

S.L. 2003-220 (S 439) amends G.S. 96-14 to provide that an individual is not disqualified from receiving unemployment compensation based on his or her leaving work solely due to an adequate disability or health condition of (1) a minor child who is in the individual’s legally recognized custody, (2) the individual’s aged or disabled parent, or (3) a disabled member of the individual’s immediate family. S.L. 2003-220 also (1) reduces the disqualification period when an individual leaves work to accompany his or her spouse to a new place of residence where the spouse has secured employment, and (2) provides that an individual who leaves work to accompany his or her spouse to a new place of residence as the result of the spouse’s military reassignment is deemed to have good cause for leaving work.

Certain Contracts by Minors

S.L. 2003-207 (S 315) designates existing provisions in G.S. Chapter 48A (Minors) as Article 1 and adds to the chapter a new Article 2 dealing with minors' contracts for certain artistic, creative, or athletic services. The act establishes a procedure whereby any party to the contract may petition the superior court for approval of the contract. For purposes of this or any other proceeding under the article, the parent or legal guardian who is entitled to physical custody, care, and control of the minor is considered the minor's guardian ad litem unless the court determines that the minor's best interest requires the appointment of someone else as the minor's guardian ad litem. The action may be filed in any county in which the minor resides or is employed or in which any party to the contract has its principal office in this state. A contract that is approved by the superior court cannot be disaffirmed, either during or after the minor party's minority, on the basis that the party was a minor when the contract was made.

Regardless of whether a contract has been approved by the superior court, the act requires that 15 percent (or a different percent ordered by the court when it approves a contract) of the minor's gross earnings be set aside in a trust or other savings plan for the benefit of the minor. Unless the court orders otherwise, a parent or guardian entitled to custody of the minor serves as trustee and in that regard has with the minor a fiduciary relationship that is governed by the law of trusts. The minor may claim the funds in the trust when he or she becomes eighteen. The act includes considerable detail about the establishment and management of the required trusts. S.L. 2003-207 is effective June 19, 2003, and applies to contracts that are entered into on or after January 1, 2004.

Cheryl Howell

Janet Mason

John L. Saxon