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## Children, Families, and Juvenile Law

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The 2005 session of the North Carolina General Assembly addressed a number of issues concerning children and families. This chapter summarizes bills enacted dealing with divorce and marital dissolution proceedings, child custody and support, domestic violence, and juvenile law. Other chapters that may contain legislation of interest regarding children and families include Chapter 6, “Courts and Civil Procedure”; Chapter 7, “Criminal Law and Procedure”; Chapter 10, “Elementary and Secondary Education”; Chapter 12, “Health”; Chapter 13, “Higher Education”; Chapter 16, “Mental Health”; and Chapter 23, “Social Services.”

### **Divorce**

#### **Fees to Fund Grants to Centers for Displaced Homemakers**

The North Carolina Council for Women within the Department of Administration is authorized by G.S. Chapter 143B, Part 10B, Article 9, to establish centers to assist displaced homemakers and to make grants to those centers. Part 10B defines a *displaced homemaker* as an individual who has worked at home and provided unpaid household services; has been dependent on the income of another, which is no longer available; and is unable to secure gainful employment due to age or lack of training or experience. S.L. 2005-405 (H 1635) makes various changes to Part 10B, including deleting the provision that a person must work at home for at least five years before qualifying as a displaced homemaker. The grants to the centers are funded in part by a fee assessed to all persons filing a court action seeking absolute divorce. Beginning with divorce cases filed on or after October 1, 2005, S.L. 2005-405 increases that fee from \$20 to \$55.

#### **Resumption of Maiden Name after Divorce**

G.S. 50-12 allows a woman to resume her maiden name or a prior husband’s surname when a divorce is granted. If the name is not changed in the divorce judgment, the woman can petition the clerk of superior court in the county of her residence for an order of name change. S.L. 2005-38 (H 508) amends G.S. 50-12 to allow a woman to also make the request for a name change to the clerk of the county where the divorce judgment was granted. The amendment applies to requests for name changes filed on or after August 10, 2005.

## Child Custody

### Parenting Coordinators

Many parents have difficulty sharing parenting responsibilities and cooperating to address the needs of their children during custody litigation or after a custody dispute is settled by the court. As a result the parties often continuously return to court for assistance in dealing with the conflict. In the attempt to reduce the time, expense, and stress of repeated court appearances, courts in several other states have turned to facilitators called “parenting coordinators” to work with parents to resolve many parenting and custody issues without involving the court. S.L. 2005-228 (H 1221), titled “An Act to Establish the Appointment of Parenting Coordinators in Domestic Child Custody Actions,” creates new Article 5 in G.S. Chapter 50 (G.S. 50-90 through G.S. 50-100), effective October 1, 2005, to allow and regulate the appointment of parenting coordinators in North Carolina child custody proceedings. The new article authorizes the court to appoint a parenting coordinator in any case with the parties’ consent. If the parties do not consent, the court may appoint a parenting coordinator when a custody order is entered if the court decides that (1) the custody case is a *high-conflict case*, as defined in the statute, (2) the appointment of the coordinator is in the best interest of any minor child in the case, and (3) the parties are able to pay the cost of the coordinator. A *high-conflict case* is defined as one in which the parties demonstrate an ongoing pattern of the following:

- Excessive litigation
- Anger and distrust
- Verbal abuse
- Physical aggression or threats of physical aggression
- Difficulty communicating about and cooperating in the care of minor children
- Conditions that, in the court’s discretion, warrant the appointment of a parenting coordinator

The parenting coordinator’s authority is limited to matters that will aid the parties in accomplishing the following:

- Identification of disputed issues
- Reduction of misunderstandings
- Clarification of priorities
- Exploration of possibilities for compromise
- Development of methods for collaboration in parenting
- Compliance with the court’s order of custody, visitation, or guardianship

In addition to facilitating agreements between the parties, a parenting coordinator also may be authorized by the court to decide issues regarding the implementation of a parenting plan when the parties cannot. The parties are bound by the decisions of the coordinator in such cases. However, the parties may request an expedited hearing for the judge to review any decision made by the parenting coordinator.

A coordinator can be appointed only after the court holds an appointment conference during which the court explains the role of the coordinator to the parties and their attorneys; informs the parties of rules regarding communications between the parties, the coordinator, and the court; and determines the financial arrangements concerning the payment of fees to the coordinator.

The court must maintain a list of qualified coordinators, and appointments must be made from that list. To be eligible to be on the list, a person must

- hold a master’s or doctorate in psychology, law, medicine, social work, counseling, or a related field;
- have at least five years of related professional postdegree experience;
- hold a current license in his or her area of practice, if applicable; and
- participate in twenty-four hours of training as specified in the statute.

To remain eligible, the coordinator must attend continuing education courses for parenting coordinators.

The court can terminate the coordinator for good cause at any time.

## **Custody Orders in Juvenile and Civil Proceedings Involving the Same Child**

The General Assembly enacted S.L. 2005-320 (H 801), titled “An Act to Establish a Procedure to Resolve the Issue of Conflicting Child Custody Orders; to Clarify the Effect of Terminating Jurisdiction in Certain Juvenile Cases; to Give the Court Authority to Convert a Juvenile Court Custody Order into a Permanent Custody Order under Chapter 50 of the General Statutes; and to Make Technical and Conforming Changes to the Law.” The details of this legislation are summarized below in the section entitled “Juvenile Law.”

## **Child Support and Paternity**

### **Responsibilities of the Clerk of Superior Court in Child Support Cases**

Effective July 1, 2007, S.L. 2005-389 (H 1375) repeals the provisions of G.S. 50-13.9 that require the clerk of superior court to monitor an obligor’s compliance with a child support order entered in a non-IV-D case (that is, a case in which services are not being provided by a state or local child support enforcement agency) and to initiate legal proceedings to enforce non-IV-D child support orders. The act also repeals the provisions of G.S. 50-13.9 that require the clerk to maintain a list of attorneys who are willing to represent obligees in enforcement proceedings in non-IV-D cases and that allow a district court judge to appoint an attorney to represent an obligee in these proceedings and to order an obligor to pay the appointed attorneys’ fees under G.S. 50-13.6. The new law, however, allows the clerk or a district court judge, upon affidavit of an obligee, to order a delinquent child support obligor to appear and show cause why he or she should not be held in contempt or subjected to income withholding.

Under the amended statute, the state Child Support Collection and Disbursement Unit will be solely responsible for maintaining all records regarding IV-D and non-IV-D child support payments made through the unit. An obligee in a non-IV-D case may obtain child support enforcement services from a state or local child support enforcement agency by applying for these services and paying an application fee as required by G.S. 110-130.1(a) and federal law. The act, however, does not authorize a chief district court judge to issue an administrative order transferring the enforcement of non-IV-D cases from the clerk to a state or local child support enforcement agency.

### **Voluntary Acknowledgment of Paternity**

Effective December 13, 2005, S.L. 2005-389 repeals the provisions of G.S. 130A-101(f) that created a legal presumption that a man who executes an affidavit acknowledging paternity of a child is the child’s natural father. A certified copy of the affidavit, however, remains admissible in a civil action to establish the child’s paternity if paternity is properly placed at issue.

### **Civil Action to Establish Paternity**

Effective December 13, 2005, S.L. 2005-389 amends G.S. 49-14(a) to delete the requirement that a *certified* copy of a child’s birth certificate be attached to the complaint in a civil action to establish the child’s paternity. The amended statute, however, still requires that a copy of the child’s birth certificate be attached to the complaint, and failure to do so may render a judgment of paternity void. *See Reynolds v. Motley*, 96 N.C. App. 299, 385 S.E.2d 548 (1989).

## **Equitable Distribution**

### **Enforcement of a Judgment against the Estate of a Deceased Spouse**

An action for equitable distribution of marital property can be filed at any time after spouses separate and begin to live apart. If either or both spouses die while the action is pending, the action

continues, with the estate of the deceased spouse substituted as a party to the action. In addition, as long as spouses have separated and lived apart before death, an action for equitable distribution can be filed after the death of one or both spouses. Legislation enacted in 2003 clarified that any equitable distribution judgment entered after the death of a spouse or former spouse is a claim against the estate of the deceased party. S.L. 2005-180 (H 804) further clarifies that equitable distribution judgments are seventh in order of payment priority with regard to other claims against the estate.

### **Consideration of Tax Consequences**

G.S. 50-20 authorizes a court to distribute marital property between divorcing spouses in a manner that the court determines equitable. The statute lists a number of considerations the court must take into account in determining what manner of distribution will be equitable in an individual case. One such consideration is the tax consequences to each party of the property distribution. The appellate courts have interpreted this statutory provision to require that courts consider only those tax consequences that will actually occur as a result of the court-ordered distribution. For example, if the court orders that a retirement account be liquidated to pay debts, the court must consider that the party who owns the account will suffer tax penalties and other tax consequences that will reduce the value of the property being distributed. However, the appellate courts have prohibited trial courts from considering potential tax consequences that may arise when and if property distributed to one spouse is sold in the future. For example, if the trial court distributes stock to one party, the court must consider only the date-of-distribution value of the stock; it cannot consider the tax consequences that may result to the spouse receiving the stock when and if that spouse ever sells the stock. S.L. 2005-353 (H 1318) amends G.S. 50-20(c)(11) to provide that the trial court should consider tax consequences “that would have been incurred had the property been sold or liquidated on the date of valuation.” However, the new statute also allows the judge to take into account in determining the weight to assign this consideration whether and when such tax consequences are likely to occur. This amendment applies to actions filed on or after October 1, 2005.

### **Postseparation Support Orders**

G.S. 50-16.2A allows a court to order a supporting spouse to pay postseparation support to a dependent spouse when the court finds that the dependent spouse needs financial resources to meet his or her reasonable needs and that the supporting spouse is able to pay the support. The North Carolina Court of Appeals has held that the General Assembly intended that postseparation support be temporary financial support for a dependent spouse, to be awarded when necessary to assist a dependent spouse while that spouse is waiting for a trial court to make a decision on his or her claim for permanent alimony. However, the appellate court has also held that the specific language of the postseparation support statute allows an order for postseparation support to last indefinitely. S.L. 2005-177 (H 923) amends the definition of postseparation support in G.S. 50-16.1A(4) to clarify that postseparation support terminates automatically upon any of the following:

- The date specified in the order
- The entry of an order awarding or denying alimony
- The dismissal of the alimony claim
- The entry of absolute divorce if no claim for alimony is pending
- Termination of postseparation support by reason of cohabitation, reconciliation, or death of a party

In addition, the legislation specifies that an order of postseparation support can be entered at the time a divorce is granted only if a claim for alimony is pending.

The legislation applies to all postseparation support orders issued on or after October 1, 2005.

## **Family Court**

There are currently nine district court districts in the state operating under the family court model: District 5 (New Hanover and Pender counties), 6A (Halifax County), 8 (Lenoir, Green and Wayne counties), 12 (Cumberland County), 14 (Durham County), 20 (Union, Rockingham, Stanly, and Anson counties), 25 (Catawba, Burke and Caldwell counties), 26 (Mecklenburg County) and 28 (Buncombe County). Section 14.18 of the Current Operations and Capital Improvements Appropriations Act of 2005, S.L. 2005-276 (S 622), requires that the Administrative Office of the Courts (AOC) study the feasibility of implementing the family court model in District 10 (Wake County). The AOC is to report on the study to the General Assembly by April 1, 2006. In addition, S.L. 2005-356 (H 569) requires that the AOC expand the family court model to additional jurisdictions in the state “as resources allow.” That statute also requires the AOC to study the elements of the family court model that can be adopted without additional funding and implement those parts of the model where possible.

## **Domestic Violence**

### **Concealed Handgun Permits**

S.L. 2005-343 (H 1311) amends G.S. 14-415.15(b) to specify that proof of the entry of a civil domestic violence protection order pursuant to G.S. Chapter 50B is evidence of an emergency situation that allows a sheriff to issue to the victim of domestic violence a temporary permit to carry a concealed weapon. The legislation also amends G.S. Chapter 50B to add new G.S. 50B-3(c1). The new provision requires that when a protective order is filed with the clerk of court, the clerk must provide the plaintiff information about the plaintiff’s right to apply for a concealed weapon permit. The act is effective October 1, 2005, and applies to protective orders issued on or after that date.

### **Joint Legislative Committee on Domestic Violence**

S.L. 2005-356 creates a sixteen-member legislative committee to “examine, on a continuing basis, domestic violence issues in North Carolina in order to make on-going recommendations to the General Assembly on ways to reduce the incidences of domestic violence and to provide additional assistance to victims of domestic violence.” The legislation also requires (1) the AOC to study and review the use of global positioning satellite technology to track criminal offenders and (2) the Department of Correction to study and report on measures the Division of Community Corrections is taking to address the supervision of domestic violence offenders.

### **Civil Protection Orders and Amendments to Landlord/Tenant Laws**

The General Assembly enacted S.L. 2005-423 (S 1029), titled “An Act to Clarify and Enhance the Laws Relating to Domestic Violence, to Enact Laws Regarding Domestic Violence Victims and Tenancy, to Clarify that Failure to File a Counterclaim in a Small Claims Action Does Not Bar the Claim in a Separate Action and to Make Changes to Landlord Tenant Law.” The act makes various statutory changes to further enhance protection for domestic violence victims. The legislation does the following:

- Amends G.S. 50B-3(a) to remove the requirement that the court, when entering a civil domestic violence protection order, grant only that relief necessary to effect the cessation of domestic violence. The statute now requires that if the court or magistrate finds that an act of domestic violence has occurred, the court must grant a protection order restraining the defendant from further acts of domestic violence. Other types of relief are left to the discretion of the judge or magistrate.
- Amends G.S. 50B-3(b) to allow civil protection orders to be renewed for a period not to exceed two years (was, one year).

- Amends G.S. 50B-3(c) to require that when a defendant is ordered to stay away from a child's school as a condition of a civil domestic violence protection order, a copy of the order be promptly delivered by the sheriff to the school principal.
- Amends provisions in G.S. Chapter 50B requiring that a defendant found to have committed certain acts of domestic violence surrender all firearms to the sheriff. The new provision allows the court to deny return of weapons to the defendant as long as any criminal proceeding is pending against the defendant.
- Amends G.S. 50-13.1(c) to clarify that all domestic violence between parents, not just spousal abuse, is good cause to waive mandatory child custody mediation. Child custody mediation normally is required whenever parents become involved in a court proceeding dealing with contested claims for child custody and visitation.
- Makes various changes to landlord/tenant statutes in G.S. Chapter 42 to protect victims of domestic violence. The legislation limits circumstances under which a landlord can terminate a victim's lease and allows the victim to request that locks be changed under certain circumstances and to terminate lease agreements when statutory conditions are met. These amendments apply to leases entered into on or after October 1, 2005.
- Amends landlord/tenant and small claims procedure statutes in ways unrelated to domestic violence.

## **Arbitration and Mediation**

### **Family Financial Mediation**

G.S. 7A-38.4A authorizes a chief district court judge to create a program in his or her judicial district to require mandatory mediation in all cases filed concerning equitable distribution, alimony, and child support. Most district court districts in the state have adopted mandatory mediation of these cases by local rule. S.L. 2005-167 (S 806) makes changes to G.S. 7A-38.2 regarding the operation and administration of the Dispute Resolution Commission. This commission administers a program to certify and qualify mediators and other neutrals who work in the state courts. The legislation specifies that certification and rules of conduct for superior court mediators apply to mediators and other neutrals in district court family financial mediation as well. The legislation also makes changes to G.S. 7A-38.1 and G.S. 7A-38.4A dealing with the inadmissibility in court proceedings of information used in negotiations in both settlement conferences and district court mediation. Revisions relating to admissibility of information apply to mediations commenced on or after October 1, 2005.

### **Family Law Arbitration**

The 1999 General Assembly enacted the Family Law Arbitration Act, G.S. 50, Article 3, to authorize and encourage people to enter into binding agreements to arbitrate issues arising from marital separation or divorce. The legislation recognized arbitration as "an efficient and speedy means of resolving these disputes." The 2005 General Assembly made several technical and procedural changes to the Arbitration Act in S.L. 2005-187 (H 1319). All changes apply to agreements made on or after October 1, 2005. The legislation

- adds a provision to prohibit parties from waiving by agreement certain requirements contained in the Arbitration Act;
- adds a new section to the act to clarify notice requirements relating to the initiation of an arbitration proceeding;
- clarifies that the arbitrator decides whether an agreement to arbitrate is enforceable and allows an arbitration to continue when a judicial proceeding challenging the arbitration is pending, unless the court orders otherwise;
- adds a new section to the act to specify the disclosure requirements for arbitrators;
- rewrites provisions in the act dealing with the consolidation of separate arbitration proceedings involving the same parties;

- amends various sections of the act to provide that agreements between the parties regarding the details of the arbitration proceeding be reduced to writing; and
- adds a provision to the act to allow a court to order that awards or judgments entered pursuant to the arbitration proceeding be sealed, resealed, or redacted for good cause.

## **Juvenile Law**

### **Response to Abuse and Neglect Reports; Appeal of “Responsible Individual” Designation**

Two acts make substantial changes in the Juvenile Code, G.S. Chapter 7B, relating to responses by social services departments to reports of abuse, neglect, and dependency; allowing limited access to information the state maintains about persons determined to be responsible for a child’s abuse or neglect; and establishing a procedure for appealing and seeking expunction of a determination of responsibility. See “Assessment Response to Reports of Abuse, Neglect, and Dependency,” discussing S.L. 2005-55 (H 277), and “Responsible Individuals’ List, Appeal and Expunction Procedures,” discussing S.L. 2005-399 (H 661), in Chapter 23, “Social Services.”

### **Provisional Counsel for Parents**

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

### **Guardians ad Litem for Parents**

G.S. 7B-602 and G.S. 7B-1101 require the appointment of a guardian ad litem for a respondent parent when (1) a child is alleged to be dependent or the dependency ground for termination of parental rights is alleged and (2) the parent’s inability to care for the child is alleged to be due to mental illness, mental retardation, substance abuse, or a similar cause or condition. S.L. 2005-398 rewrites G.S. 7B-602 and replaces these provisions in G.S. 7B-1101 with a new section, G.S. 7B-1101.1, setting out new provisions for the appointment of a guardian ad litem for a parent in an abuse, neglect, dependency, or termination of parental rights proceeding. For petitions or actions filed on or after October 1, 2005, the court on its own motion or motion of a party may appoint a guardian ad litem for a parent if the court determines that there is a reasonable basis to believe that the parent is incompetent or has diminished capacity and cannot act adequately in his or her own interest. As rewritten, G.S. 7B-602 refers specifically to appointment “pursuant to G.S. 1A-1, Rule 17.” New G.S. 7B-1101.1 does not, but in every other respect the provisions are identical and no indication exists that the omission is significant. The court may not appoint the parent’s attorney to serve as guardian ad litem. Communications between the parent or the parent’s attorney and the parent’s guardian ad litem are privileged and confidential to the same extent as attorney-client communications. Both sections specifically authorize the guardian ad litem to

- help the parent enter consent orders, if appropriate;
- facilitate service of process on the parent;
- assure that necessary pleadings are filed; and
- assist the parent and the parent’s attorney, if requested by the attorney, in ensuring that procedural due process requirements with respect to the parent are met.

There is no requirement that the guardian ad litem be an attorney. In the past, however, courts have typically appointed attorneys to serve in this role, since no other obvious pool of candidates for appointment exists.

The act does not address whether some or all of these provisions also should apply if the court makes findings about the possible incompetence or diminished capacity of a guardian or custodian who is the respondent in an abuse, neglect, or dependency proceeding. If the provisions simply clarify the operation of G.S. 1A-1, Rule 17, in these cases, the identity of the party should not matter. If, instead, they are intended to give parents additional protections because these cases involve the constitutionally protected rights of parents, a court would have to discern what Rule 17 requires with respect to parties who are not parents.

### **Time Limits**

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

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

### **Notice of Change in Child’s Placement**

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

### **Appeals**

S.L. 2005-398 substantially rewrites provisions in Subchapter I of the Juvenile Code regarding appeals for actions and proceedings filed on or after October 1, 2005. The new legislation reorganizes and rewrites provisions about who may appeal orders in these cases. G.S. 7B-1002, as rewritten, gives that right to (1) the juvenile, acting though a guardian ad litem, either already appointed pursuant to G.S. 7B-601 or appointed by the court pursuant to G.S. 1A-1, Rule 17, for purposes of the appeal; (2) a county department of social services; (3) a parent, guardian, or custodian who is not a prevailing party; and (4) a party who sought but failed to obtain termination of parental rights. The statute continues to omit caretakers, who also may be named as respondents in some proceedings.

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

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

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

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

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

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

The act states that notice of appeal from an order under G.S. 7B-507(c) ceasing reunification efforts shall be given in writing by a proper party. For a guardian or custodian who may appeal the order “immediately,” the act states no time limit. It is unclear whether the thirty-day period for appealing other orders applies or the time limit described above for giving notice to preserve the issue for appeal applies. The act is silent with respect to a juvenile’s appeal of an order ceasing reunification efforts.

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

S.L. 2005-398 addresses the authority of the trial court while an appeal in an abuse, neglect, or dependency proceeding is pending—an issue addressed by the court of appeals and the supreme court and about which advocates involved in these cases have very different views. Given the time an appeal typically takes, there is no obvious resolution that both serves the parents’ interest in meaningful and timely appellate review and reflects the Juvenile Code’s emphasis on achieving permanence for the child within a reasonable period of time. As rewritten, G.S. 7B-1003 resolves the question as follows.

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

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

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

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

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

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

S.L. 2005-320 adds new provisions to the Juvenile Code (G.S. Chapter 7B) and to G.S. Chapter 50 to address situations in which (1) both a juvenile court order and a Chapter 50 order pertain to the custody of a child or (2) a custody order entered in a juvenile proceeding is intended to be as permanent as a Chapter 50 order and no further need for juvenile court involvement in the matter exists. The General Assembly enacted a similar law in 2003 (S.L. 2003-381) as a pilot program applicable only in the Twelfth Judicial District (Cumberland County). The AOC reported favorably on the pilot and recommended that it be implemented statewide.

S.L. 2005-320 rewrites G.S. 7B-200 to provide explicitly that when a civil custody order and an order in a juvenile abuse, neglect, or dependency proceeding conflict, the juvenile order controls for as long as the court exercises jurisdiction in the juvenile case. In addition, whenever the court obtains jurisdiction over a child in an abuse, neglect, or dependency proceeding, any other civil action in which custody of the child is an issue is stayed automatically with respect to the custody issue. The court in the juvenile matter may consolidate the two actions if they are in the same judicial district. If the juvenile proceeding and the civil action or claim for custody are in different judicial districts, for good cause and after consulting the court in the other district, the court in the juvenile case may (1) order that the civil action or claim be transferred to the county in which the juvenile case is pending or (2) transfer the juvenile proceeding to the county in which the civil action or claim is pending. Regardless of where the actions are pending, the court in the juvenile case may proceed in the juvenile matter while the civil action or claim remains stayed, or it may dissolve the stay in the civil action and stay the juvenile proceeding pending resolution of the civil matter.

The court's jurisdiction in an abuse, neglect, or dependency proceeding ends when the child turns eighteen or when the court orders that jurisdiction is terminated, whichever occurs first. S.L. 2005-320 rewrites G.S. 7B-201 to clarify that when jurisdiction ends for either reason, all orders entered in the juvenile case cease to have effect. The custody and status of the child and the related rights of the parties revert to whatever they were when the juvenile petition was filed, subject to other applicable

laws (such as the child's automatic emancipation at age eighteen) or a valid court order in another action in which a court is properly exercising jurisdiction (such as a custody order in a divorce action).

Although such a requirement is already law, S.L. 2005-320 adds to G.S. 7B-402 a provision that the petition (or an affidavit attached to the petition) in an abuse, neglect, or dependency proceeding must contain the information required by G.S. 50A-209, which includes information about any other court proceeding involving custody of the child.

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

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

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

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

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

### **Termination of Rights of Parent Who Murders Other Parent**

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

### **Best Interest Determination in Action to Terminate Parental Rights**

After the court concludes that a petitioner has proved that a ground exists for terminating a parent's rights, the court is not required to terminate the parent's rights if it determines that doing so is not in the child's best interest. Often the court makes an affirmative finding that terminating the parent's rights is in the child's best interest. Appellate courts have held consistently that this determination is in the trial court's discretion and that neither party has a burden of proof with respect to the best interest determination. S.L. 2005-398 rewrites G.S. 7B-1110 to require the court, after

adjudicating that one or more grounds exist, to determine whether termination of parental rights is in the child's best interest. In doing so the court must consider

- the child's age,
- the likelihood of the child's being adopted,
- whether termination will help achieve the permanent plan for the child,
- the bond between the child and the parent,
- the quality of the relationship between the child and the proposed adoptive parent, guardian, or custodian, and
- any other relevant factor.

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

### **Recoupment of Attorneys' Fees from Parents**

Parents who are respondents in abuse, neglect, dependency, or termination of parental rights proceedings are entitled to court-appointed counsel if they are indigent and do not waive the right. Heretofore, statutes have not addressed recoupment from parents of fees for their court-appointed counsel in these cases, although there are provisions for recoupment from parents of fees for attorneys appointed to represent their children. (See G.S. 7A-450.1, -450.2, -450.3; 7B-603(c) and -2704.) S.L. 2005-254 (S 594) rewrites G.S. 7B-603 to provide that the district court may require payment from the parent respondent for his or her own attorneys' fees, but only if the child was adjudicated abused, neglected, or dependent or the parent's rights were terminated. In determining whether to order a parent to reimburse the state for some or all of his or her attorneys' fees, the court must take into account the parent's ability to pay. If the court orders the respondent to pay attorneys' fees and the respondent does not comply at the time of disposition, the court must enter a judgment against the respondent for the amount due the state. The act also authorizes the immediate entering of a judgment against a parent who does not comply at disposition with an order to pay the fees of the child's attorney or guardian ad litem. (A parent who fails to comply with an order to pay attorneys' fees in a delinquency proceeding, where the child always is entitled to court-appointed counsel, remains subject to civil or criminal contempt. See G.S. 7B-2704 and G.S. 7B-2706.) These changes apply to appointments of counsel made on or after October 1, 2005.

### **Parent's Participation in Reviews after Rights Are Terminated**

S.L. 2005-398 rewrites G.S. 7B-908(b)(1) and G.S. 7B-909(c) to clarify that once a court has terminated a parent's rights, the parent is not considered a party for purposes of review hearings in the child's case unless an appeal of the termination order is pending and a court has stayed the order pending the appeal. These amendments apply to petitions and actions filed on or after October 1, 2005.

## **Adoption**

### **Criminal History Checks**

G.S. 48-3-309 requires the state Department of Health and Human Services (DHHS) to ensure that before a county department of social services places a child in a prospective adoptive home, the county, state, and federal criminal histories of the prospective adoptive parent or parents are checked. S.L. 2005-114 (H 451) rewrites that section and related sections to require, in addition, (1) criminal history checks of all other individuals eighteen or older who reside in the prospective adoptive home and (2) a determination by the county social services department of whether those individuals are fit for having an adoptive child live in the home with them. The act also rewrites G.S. 114-19.7 to authorize the state Department of Justice to provide these additional criminal histories. The act became effective June 27, 2005.

## **Procedures for Determining Whose Consent Is Required**

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

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

With respect to the more usual circumstance of determining the need for a parent's consent after the child is born, G.S. 48-3-603 lists the persons whose consent to the adoption of a minor is not required. Often one or more possible fathers are served with notice of the adoption, and the consent of a person who does not respond to the notice is not required. If a person served with notice responds and asserts that his consent is required, the court applies the statutory criteria to determine whether his consent is necessary. Neither G.S. 48-3-603 nor any other statute, however, sets out a procedure for the court to follow to determine and document whether an individual's consent is required. S.L. 2005-166 adds new G.S. 48-2-207 to fill that gap. If the individual served with notice does not respond, the court must enter an order that his consent to the adoption is not required. If the individual does respond and assert that his consent is necessary, or if someone who did not receive notice intervenes and alleges that his consent is required, the court must hold a hearing to take evidence and determine whether that person's consent is indeed necessary. If an individual's consent is determined to be necessary, the adoption may not proceed until that person's consent is obtained or his rights are terminated. If the individual did not have physical custody of the child immediately before the adoptive placement, the determination that his consent is required does not entitle him to physical custody. An individual whose consent is not required is not entitled to participate further in the adoption proceeding.

## **Interstate Compact on the Placement of Children**

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

## **Waiver of Notice to Nonpetitioning Parent**

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

## Juvenile Justice

### Interstate Compact for Juveniles

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

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

- The compact establishes an independent compact operating authority to administer ongoing compact activity.
- The compact provides for gubernatorial appointments of representatives from all member states to a national governing commission. The commission would meet annually to elect the compact operating authority members and to attend to general business and rule-making procedures.
- The compact establishes rule-making authority and provides for significant sanctions to support essential compact operations.
- The compact establishes a mandatory funding mechanism sufficient to support essential compact operations (staffing, data collection, training/education, and so forth).
- The compact compels the collection of standardized information.

Extensive information about the compact can be accessed from the Web site of the Council of State Governments, [www.csg.org](http://www.csg.org).

The new compact outlines its purposes and defines applicable terms. It creates the Interstate Commission for Juveniles and sets out details about the commission’s powers and duties, its organization and operation, its rule-making function, and its role in oversight, enforcement, and dispute resolution. The commission’s work will be funded through assessments on the participating states. In addition, each member state must create a State Council for Interstate Juvenile Supervision.

Unlike the original compact, the Interstate Compact for Juveniles does not set out the specific procedures states must follow with respect to juveniles who cross or need to cross state lines for reasons included within the compact. Rather, it apparently looks to the commission and its rule-making authority to provide those details.

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

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

## Juvenile Recidivism

Section 14.19(a) of S.L. 2005-276 enacts G.S. 164-48, directing the North Carolina Sentencing and Policy Advisory Commission to conduct biennial studies of recidivism among a sample of juveniles who have been adjudicated delinquent, looking at their subsequent involvement in both the juvenile and criminal justice systems. Section 14.19(c) of the act repeals Article 33 of the Juvenile Code (G.S. Chapter 7B), which imposed similar responsibilities on the Department of Juvenile Justice and Delinquency Prevention.

## Juvenile Justice Advisory Council

Section 16.12 of S.L. 2005-276 rewrites G.S. 143B-556(i) to delete the requirement that the state Juvenile Justice Advisory Council meet at least four times a year. Instead, meetings are to be held “as often as necessary.”

## Youth Development Centers

Section 16.10 of S.L. 2005-276 directs the Department of Juvenile Justice and Delinquency Prevention and the State Construction Office in the Department of Administration to continue the planning, design, and construction of up to 224 youth development center beds, to be located at four 32-bed facilities and one 96-bed facility.

## Evaluations and Reports

The appropriations act, S.L. 2005-276, contains numerous provisions requiring evaluations or reports by or related to the Department of Juvenile Justice and Delinquency Prevention. The topics, and the sections of the act in which they appear, include the following:

- Local Juvenile Crime Prevention Council grants [sec. 16.2]
- Operation and effectiveness of Project Challenge North Carolina Inc. in providing alternative dispositions and services to juveniles adjudicated delinquent or undisciplined [sec. 16.3(a)]
- Effectiveness of the Juvenile Assessment Center and of juvenile assessment plans and services [sec. 16.3(b)]
- The operation and effectiveness of Communities in Schools [sec. 16.3(c)]
- Evaluation of the Eckerd and Camp Woodson wilderness camp programs, the teen court programs, the program that grants funds to local Boys and Girls Clubs, the Save Our Students program, the Governor’s One-on-One Programs, and multipurpose group homes—including whether participation in each program results in a reduction of court involvement among juveniles (sec. 16.4)
- The treatment staffing model being piloted at Samarkand and Stonewall Jackson Youth Development Centers and implementation of the treatment staffing model at Dobbs, Dillon, and Juvenile Evaluation Center Youth Development Centers (sec. 16.6)
- Progress in the planning, design, and construction of new youth development centers (sec. 16.7)
- Grants awarded to Juvenile Crime Prevention Councils for street gang violence prevention and intervention programs [sec. 16.8(a)]
- County-operated juvenile detention centers in Durham, Guilford, Forsyth, and Mecklenburg Counties, including admission trends and projections, offense histories and assessed needs, staffing levels, housing capacity, operating costs, feasibility of state operation if recommended by a county, repair and renovation needs, and estimated cost to plan, design, and construct new detention centers, if appropriate (sec. 16.9) (This study is to be done by the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.)

- The awarding and use of grants to up to four Juvenile Crime Prevention Councils, from a \$250,000 appropriation, to provide residential and/or community-based intensive services to juveniles who have been adjudicated delinquent and have a level 2 or 3 disposition or are reentering the community after release from a youth development center (sec. 16.11)
- The operations and effectiveness of the National Guard Tarheel Challenge Program (sec. 18.1) (This report is to be made by the Department of Crime Control and Public Safety.)

### **School-Based Child and Family Team Initiative**

Section 6.24 of S.L. 2005-276 establishes the School-Based Child and Family Team Initiative to identify and coordinate community services for children at risk of school failure or out-of-home placement. Responsibility for the initiative is to be shared among DHHS, the Department of Public Instruction, the State Board of Education, the Department of Juvenile Justice and Delinquency Prevention, the AOC, and other state agencies that provide services for children. The new section also establishes the North Carolina Child and Family Leadership Council, in the Department of Administration, to advise the Governor in the development of the School-Based Child and Family Team Initiative and to ensure active participation and collaboration by state and local agencies providing services to children in participating counties. These provisions are described in more detail in Chapter 10, "Elementary and Secondary Education."

### **Comprehensive Treatment Services Program**

Section 10.25 of S.L. 2005-276 directs DHHS to continue the Comprehensive Treatment Services Program for children at risk of out-of-home placement. It creates a children's services work group, in the Department of Administration, with specified membership and duties. In addition, it creates an eighteen-member Coordination of Children's Services Study Commission to study and recommend changes to improve collaboration and coordination among agencies providing services to children and families with multiple service needs. These provisions are described in more detail in Chapter 16, "Mental Health."

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