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Children and Juvenile Law

The General Assembly appropriated additional funds for a variety of programs and services important for children and families. These funds include \$13.5 million for the North Carolina Partnership for Children for subsidized day care and other local initiatives. The Division of Child Development received over \$14 million to implement a rate increase and to decrease the number of children on waiting lists, and the Division of Social Services received an additional \$12 million to address the increased cost of Foster Care and Adoption Assistance payments and the growth in foster care maintenance payments to relatives. The court system was given authority, but no specific funding, to provide mediation services in juvenile court cases involving abuse, neglect, dependency, or termination of parental rights. Numerous studies that may result in recommendations for consideration by the 2007 General Assembly include topics such as post-adoption contact between an adopted child and the child's biological family, increasing the compulsory school attendance age, and the treatment of youthful offenders in the juvenile and adult justice systems.

Child Protective Services

Confidential Information

G.S. 7B-302(a) requires county departments of social services to hold "in strictest confidence" all information they receive in relation to reports and assessments of possible child abuse, neglect, or dependency. S.L. 2006-205 (S 1216) rewrites the subsection to add a requirement that a social services department disclose confidential information to any federal, state, or local government entity (or its agent) that needs the information to protect a child from abuse or neglect. It also specifies that the governmental entity to which social services discloses the confidential information may redisclose it only for purposes directly connected with that entity's mandated responsibilities.

County social services departments and many other state and local agencies in North Carolina are already required to share confidential information about possibly abused, neglected, or dependent children in circumstances described in G.S. 7B-3100 and in rules issued by the Department of Juvenile Justice and Delinquency Prevention pursuant to that section. (*See* 28 N.C. Admin. Code 01A .0301 and .0302.) S.L. 2006-205 rewrites G.S. 7B-3100(a) to expand the time frame within which the sharing must occur. Instead of applying only between the time a juvenile petition is filed and the time the court's jurisdiction ends, the duty now arises when a social services department is responding to a report of abuse, neglect, or dependency (by conducting an assessment or providing or arranging for protective services) and extends until the court's jurisdiction ends or the department of social services closes its protective services case.

These changes became effective August 8, 2006.

Permanency Mediation

Three district court districts in the state—District 26 (Mecklenburg County), District 27A (Gaston County), and District 28 (Buncombe County)—have established local programs to provide mediation services in juvenile cases involving abuse, neglect, dependency, or termination of parental rights. The positive experiences of those districts almost certainly influenced the General Assembly's decision to mandate the creation of a statewide Permanency Mediation Program. Section 4 of S.L. 2006-187 (H 1848) requires the Administrative Office of the Courts (AOC) to establish in phases local district programs to provide uniform permanency mediation services statewide. The AOC will administer any funds the legislature appropriates for the program. The act authorizes the director of the AOC to approve contractual agreements for mediation services, as executed by order of the chief district court judge in a district. The contracts are exempt from competitive bidding requirements.

The act requires the AOC to promulgate policies and regulations for administration of the program but also sets out a number of specific program requirements. Participants in the mediation must include the parties and their attorneys, including the child's guardian ad litem and attorney advocate. However, the court may allow mediation to proceed without a party in specified circumstances, and others may participate by agreement of the parties, their attorneys, and the mediator, or by order of the court.

Mediation sessions must be held in private and are confidential. All communications by a participant to the mediator or between the participants in the presence of the mediator are absolutely privileged and inadmissible in court. In addition, no person involved in the mediation sessions is competent to testify about communications made during or in furtherance of the mediation sessions. The only specified exceptions are communications made in furtherance of a crime or fraud and reports required by the child abuse and neglect reporting law or by the adult protective services law.

Any agreement reached through the mediation, regardless of what the agreement is called, must be reduced to writing, signed by each party, and submitted to the court as soon as practicable. The court must incorporate the agreement into a court order and it becomes enforceable as a court order, unless the court finds good reason not to incorporate the agreement. If any or all of the issues referred to mediation are not resolved by mediation, the mediator must report that fact to the court.

The act does not specify any particular stages at which a case may be referred to mediation, make referral to mediation mandatory, exclude particular types of cases from mediation, establish mediator qualifications, or establish a timetable for the creation of local programs. These and other matters will be determined by the AOC or delegated by the AOC to the chief district court judges.

These provisions became effective July 1, 2006, and the AOC is authorized to use funds available during the 2006–07 fiscal year to begin implementation of the act.

School Admissions

When the court places a child in foster care, with a relative, or in a group home or other facility, special rules apply regarding the assignment of the child to a particular public school. S.L. 2006-65 (H 1074) rewrites G.S. 115C-366 and repeals G.S. 115C-366.2 to consolidate and clarify those rules. With respect to homeless children and youth, the rewritten section: (1) requires the state and local boards of education to ensure compliance with the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001, (2) substitutes “legal custodian” for “person standing in loco parentis” in describing those who may apply to the State Board of Education for a determination of whether a particular local board must enroll a homeless child or youth, and (3) allows an “unaccompanied youth” (defined in the act) to make that type of request him- or herself.

Sometimes parents voluntarily place their children with relatives, without any court involvement, as part of a protection plan developed with the county social services department. A new provision allows a child who is not a domiciliary of a local school administrative unit to attend school in that location without paying tuition if the student is living with an adult domiciled there. The student must be living with that adult because the student’s parent or legal guardian relinquished physical custody and control of the student based on the recommendation of a county department of social services or the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. The adult with whom the child lives must assume responsibility for making educational decisions on the child’s behalf.

A student placed in a licensed group home or foster home may attend school without paying tuition in the local administrative unit in which the facility is located. If an agency or person other than the child’s parent or guardian has legal custody of the child and placed the child in the home or facility, that agency or person must give the school information in writing about the individual who has authority and responsibility regarding educational decisions for the student. That individual must reside or be employed in the local school administrative unit and must give the school a written statement that the individual understands and accepts this authority and responsibility.

These changes apply beginning with the 2006–07 school year. S.L. 2006-65 is discussed in more detail in Chapter 10, “Elementary and Secondary Education.”

Education of Children with Disabilities

S.L. 2006-69 (H 1908), which replaces or rewrites numerous sections of G.S. Chapter 115C relating to children with disabilities, is discussed in Chapter 10, “Elementary and Secondary Education.”

Criminal Law Changes

S.L. 2006-247 (H 1896), An Act to Protect North Carolina’s Children/Sex Offender Law Changes, makes extensive modifications to the sex offender registration laws. These include the imposition of certain residential, employment, and volunteering restrictions on persons required to register; establishment of a satellite-based sex offender monitoring program; and creation of the criminal offenses of involuntary servitude, sexual servitude, and human trafficking. The act is discussed in Chapter 7, “Criminal Law and Procedure.”

Juvenile Court

Court System Employees and Volunteers

Effective October 1, 2006, the Judicial Department may deny employment, a contract, or a volunteer opportunity to anyone who refuses to consent to a criminal history record check. In

addition, the department may, as of that date, dismiss someone who is already employed or terminate a contractor or volunteer relationship if the employee, contractor, or volunteer refuses to consent to a criminal history record check. Section 3 of S.L. 2006-187 establishes this authority in new G.S. 7A-349 and also enacts new G.S. 114-19.16, which authorizes the State Bureau of Investigation to conduct the record checks and provide the information to the Judicial Department. Guardian ad litem staff and volunteers, attorney advocates in the guardian ad litem program, court interpreters, and juvenile and family drug treatment court staff are just a few of the court system employees, contractors, and volunteers who could be affected by these new provisions.

Foreign Language Interpreters

Section 5 of S.L. 2006-187 rewrites G.S. 7A-314(f) to provide that when the Judicial Department is paying for representation for a party and the party or a witness for the party does not speak or understand English, payment of any court-appointed foreign language interpreter for the party or witness in juvenile and other civil cases as well as criminal cases must be made from funds appropriated to the AOC. The act also adds new G.S. 7A-343(9b) authorizing the director of the AOC to prescribe uniform policies and procedures for the appointment and payment of foreign language interpreters in these cases. If, after consulting with the Joint Legislative Commission on Governmental Operations, the director determines that it will be more cost effective to convert contractual interpreter positions to permanent state positions, he or she is authorized to do so.

Delinquent Juveniles

Effect of Certain Delinquency Adjudications

Article 3 of G.S. Chapter 31A, sometimes referred to as the “slayer statute,” defines circumstances in which a person may not inherit or otherwise benefit from the death of a person he or she willfully and unlawfully killed. S.L. 2006-107 (S 1378) rewrites G.S. 31A-3 to include in the definition of “slayer,” for purposes of these statutes, a juvenile who is adjudicated delinquent for committing an act that, if committed by an adult, would make the adult a principal or accessory before the fact of the willful and unlawful killing of another person.

Youth Development Centers

Section 16.6 of S.L. 2006-66 (S 1741) requires the Department of Juvenile Justice and Delinquency Prevention to report by November 10, 2006, on the final recommended staffing plan for youth development centers for fiscal year 2007–08. The report must go to the chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety and the Joint Corrections, Crime Control, and Juvenile Justice Oversight Committee. The section specifies the subjects the report must address and expresses the intent of the General Assembly to consider appropriating funds for new treatment positions at youth development centers only after the report is received by the two chairs.

Joint Use of Youth Development Center Property

Section 16.8 of S.L. 2006-66 directs the Department of Juvenile Justice and Delinquency Prevention and the Department of Correction to prepare a joint report on the proposed use by both departments of the property now used to operate the Swannanoa Valley Youth Development Center. The report must evaluate the feasibility of using the property to establish an adult female correctional center while continuing to operate a juvenile youth development center there. The section specifies subjects the report must address and requires that it be submitted by November

10, 2006, to the Joint Legislative Commission on Governmental Operations and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

Gang Prevention Grants

Section 16A of S.L. 2006-66 directs the Governor's Crime Commission in the Department of Crime Control and Public Safety to use \$1.5 million of the funds appropriated to the department for fiscal year 2006-07 to provide two-year grants for community street gang violence prevention and intervention programs. A 25 percent match (a quarter of which may be in-kind contributions) is required, and no grant may exceed \$100,000. The Governor's Crime Commission must report by April 1, 2007, to the chairs of the House of Representatives and Senate Appropriations Committees and chairs of the Appropriations Subcommittees on Justice and Public Safety of the House of Representatives and the Senate on the number of grants awarded, the amount of each grant, and each grantee's program.

Child Care

Allocation Formula

Section 10.34 of S.L. 2006-66 requires the Department of Health and Human Services (DHHS), by October 1, 2006, to implement child care market rate adjustments, by region, based on the 2005 Child Care Market Rate Study. The section also amends section 10.61.(c) of the 2005 appropriations act (S.L. 2005-276) to authorize DHHS to allocate funds appropriated for specific purposes, including market rate adjustment, separately from the allocation formula.

Subsidy Rates

Section 10.35 of S.L. 2006-66 rewrites section 10.62.(e) of the 2005 appropriations act to require that the market rates calculated for child care centers and homes be representative of fees charged to parents for each age group of enrollees within a county. Previously the requirement was that these rates be representative of fees charged to unsubsidized privately paying parents for each age group in the county.

Child Care Funds Matching Requirement

Section 10.36 of S.L. 2006-66 rewrites section 10.60 of the 2005 appropriations act to require local purchasing agencies to provide a 15 percent local match to receive reallocated funds made after initial allocations. The match requirement applies only when DHHS reallocates additional funds over \$25,000, and it does not apply when funds are allocated because of a disaster, as defined in G.S. 166A-4(1). DHHS must evaluate (1) the effect of the matching requirement on local purchasing agencies and (2) whether the requirement should be adjusted. The department must report its findings and recommendations by April 1, 2007.

Use of Smart Start Funds for Child Care Subsidies

The General Assembly appropriated \$13.5 million to the North Carolina Partnership for Children, Inc., for fiscal year 2006-07 for local partnership initiatives. Section 10.37 of S.L. 2006-66 requires that at least 30 percent of the allocation from those funds to each local partnership be used for child care subsidies.

Studies

Post-adoption Contact (Legislative Research Commission)

Section 2 of S.L. 2006-248 (H 1723) authorizes the Legislative Research Commission to study whether there is a need to establish laws providing for post-adoption contacts or communication between an adopted child and a birth relative. (Senate Bill 209, which would have made specific statutory changes relating to post-adoption contacts, did not pass.) The commission may report its findings and recommendations to the 2007 session of the General Assembly.

Erroneous Paternity Judgments (Legislative Research Commission)

Section 2 of S.L. 2006-248 authorizes the Legislative Research Commission to study whether the grounds for challenging a paternity judgment and the time allowed to do so should be expanded. Specifically, the commission may evaluate whether Rule 60 of the North Carolina Rules of Civil Procedure should be amended to give courts greater authority and a longer period of time to set aside a paternity judgment when a party discovers that the judgment was erroneous because of mistake, fraud, misrepresentation, or other misconduct of the adverse party; newly discovered evidence; or another reason for which it would not be equitable that the judgment have prospective application. The commission may report its findings and recommendations to the 2007 session of the General Assembly.

Drug Treatment Courts (Legislative Research Commission)

Section 4 of S.L. 2006-32 (H 2120), as amended by Section 8 of S.L. 2006-187 and Section 44 of S.L. 2006-259 (S 1523), requires the Legislative Research Commission to study the state's drug treatment courts. Issues the study must address include funding mechanisms, target populations, and interagency collaboration. The study's findings and recommendations may be reported to the 2007 session of the General Assembly.

Youthful Offenders (N.C. Sentencing and Policy Advisory Commission)

Section 34 of S.L. 2006-248 authorizes the North Carolina Sentencing and Policy Advisory Commission to study whether the state should amend its laws to ensure that they provide appropriate sanctions, services, and treatment for youthful offenders aged sixteen to twenty-one. The commission may review other states' and federal laws as well as relevant North Carolina laws and programs. The act requires the commission to consult with the Department of Correction, the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Public Instruction. The commission must submit a final report and any recommended legislation by March 1, 2007, to the 2007 General Assembly.

School Issues (Joint Legislative Education Oversight Committee)

Section 5 of S.L. 2006-248 authorizes the Joint Legislative Education Oversight Committee to study topics including the following:

- Raising the compulsory school attendance age. Specific factors the committee might consider are set out in House Bill 1079, which originally proposed the study.
- Appropriate education for suspended students. House Bill 1747, which did not pass, would have made specific statutory changes relating to the education of suspended students.
- Corporal punishment policies. As originally proposed by House Bill 1462, this study would have been assigned to the State Board of Education.
- Creation of a Joint Education Leadership Team for Disadvantaged Students.

The committee may report its findings and recommendations to the 2007 session of the General Assembly.

Sex Offender Registration and Internet Crimes against Children

Section 53 of S.L. 2006-248 establishes a Joint Legislative Study Committee on Sex Offender Registration and Internet Crimes against Children. The committee will include eighteen members—nine appointed by the Speaker of the House of Representatives and nine by the President Pro Tempore of the Senate. The act directs the committee to consider a number of specific subjects, including the following:

- Any changes that should be made to the list of offenses for which registration is required or the length of time a person must remain on the registry
- Procedures for terminating the registration requirement for a particular individual
- Whether law enforcement should have an affirmative duty to notify residents, schools, or other interested parties that a sex offender lives in the neighborhood
- Methods of tracking the location of sex offenders
- Whether sex offenders should be prohibited from working in jobs that involve direct contact with children
- Proposals that would require sex offenders to stay a certain distance from schools and day care facilities
- Ways to strengthen and improve state statutes and sentencing guidelines relating to child pornography and enticement of children through the use of computers or the Internet
- Law enforcement practices, capacity, and training for combating child pornography and other Internet crimes against children
- Ways to increase the use of asset forfeiture in child pornography cases
- Best practices federally and in other states as regards combating Internet crimes against children

The committee is required to make a final report to the 2007 General Assembly and will terminate on the earlier of the date its final report is filed or the convening of the 2007 General Assembly.

Legislative Study Commission on Day Care and Related Programs

Section 56 of S.L. 2006-248 creates the Legislative Study Commission on Day Care and Related Programs. The commission consists of twelve members—four members of the Senate appointed by the President Pro Tempore of the Senate, four members of the House of Representatives appointed by the Speaker of the House of Representatives, two members of the general public appointed by the President Pro Tempore of the Senate, and two members of the general public appointed by the Speaker of the House of Representatives. The act directs the commission to assess or consider the following:

1. Shortfalls and benefits of various day care and related programs
2. Needed adjustments, possible program consolidations, and reprioritization of funds
3. The effect of day care and related programs on economic development today and in the future
4. Any other matters relevant to the commission's charge

The act gives the commission power to request all state officers, agents, agencies, and departments to provide information, data, or documents in their possession, ascertainable from their records, or otherwise available to them, as well as the power to subpoena witnesses. The commission must make a final report to the 2007 General Assembly by December 31, 2006, and will terminate upon filing the report.

Smart Start and Child Care Funding Study Commission

Section 26 of S.L. 2006-248 establishes a fifteen-member Smart Start and Child Care Funding Study Commission to study the funding of the North Carolina Partnership for Children. The study will look at the current funding system, strategies for achieving full funding and full service, funding equity among counties and local partnerships, and other information relevant to providing services, including child care services, to young children and families. The commission will expire on the earlier of the date it submits its final report or the convening of the 2007 General Assembly.

The President Pro Tempore of the Senate will appoint the following commission members:

- Four members of the Senate
- A representative of the North Carolina Partnership for Children
- The county director of a department of public health
- A representative from a private for-profit day care

The Speaker of the House of Representatives will appoint the following commission members:

- Four members of the House of Representatives
- The director of a county department of social services
- A representative of a local partnership for children
- A representative from a private not-for-profit day care

The Secretary of DHHS or the Secretary's designee also is a member of the commission.

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