

Children and Juvenile Law

New laws relating to gang activity and sex offenses have implications for juveniles as well as adults. Local school boards, for example, will have authority to expel a student who is ordered in a delinquency proceeding to register as a sex offender. The legislature made very few changes to the Juvenile Code, but enacted or rewrote several laws aimed at protecting children.

Delinquency

Study of Extending Juvenile Age

North Carolina remains one of only three states that automatically prosecute sixteen- and seventeen-year-olds as adults. During the 2007–08 session, legislators introduced, but did not enact, bills that would have raised the age of juvenile court delinquency jurisdiction from sixteen to eighteen. (See H 492, S 1078, and S 1445.) Section 18.1 of S.L. 2008-107 (H 2436), however, directs the Governor’s Crime Commission in the Department of Crime Control and Public Safety to study multiple aspects of extending the juvenile age—legal, statutory, financial, systematic, organizational, practical—and to report to the governor and General Assembly by April 1, 2009. It also requires quarterly reports, beginning October 1, 2008, to specified legislative committees. The act authorizes the commission to use up to \$200,000 of funds appropriated to the commission to conduct the study.

Release of Information about Escaped Juvenile

G.S. 7B-3102 prescribes conditions under which the juvenile justice system may release specified information to the public about a juvenile when that juvenile escapes. As rewritten by S.L. 2008-169 (H 2492), effective October 1, 2008, the statute provides as follows:

1. When a juvenile who has been adjudicated delinquent for any offense escapes from a detention facility, secure custody, or a youth development center, the Department of Juvenile Justice and Delinquency Prevention (DJJDP) is required to release to the public, within 24 hours,
 - a. the juvenile’s first name, last initial, and photograph;
 - b. the circumstances and location of the escape, including the name of any institution from which the juvenile escaped; and
 - c. a statement, based on the juvenile’s record, of the level of concern DJJDP has about the juvenile’s threat to self or to others.
2. DJJDP is authorized to release the same information when a juvenile who is alleged, but not adjudicated, to be delinquent escapes from a detention facility or secure custody, but only if
 - a. the juvenile is alleged to have committed an offense that would be a felony if committed by an adult, and
 - b. DJJDP determines, based on the juvenile’s record, that the juvenile presents a danger to self or others.

In either circumstance DJJDP is required to make a reasonable effort to notify the juvenile’s parent, legal guardian, or custodian before releasing information to the public. If an escaped juvenile is taken into custody before the information is released, DJJDP shall not release the information.

Juvenile Sex Offender Registration

When a juvenile is adjudicated delinquent for a sex offense, the court is never required to order that the juvenile register as a sex offender. G.S. 7B-2509 and G.S. 14-208.26 authorize the court at disposition in a delinquency case to order a juvenile to register with the sheriff only if

1. the juvenile was adjudicated delinquent for first or second degree rape, first or second degree sexual offense, or attempted rape or sexual offense; and
2. the juvenile was at least eleven years old at the time of the offense; and
3. the court finds that the juvenile is a danger to the community.

When the court is authorized to and does order a juvenile to register with the sheriff, the registration is separate from registrations of adults, is not a public record, and terminates when the juvenile becomes eighteen.

S.L. 2008-117 (H 933) increases the significance of a requirement that a juvenile sex offender register. First, the act amends G.S. 14-208.29 to require that registry information for any juvenile who is enrolled in the local school administrative unit be forwarded to the local board of education. Second, it amends G.S. 115C-391 to allow a local board of education to expel any student who is subject to the registration requirement. (This provision also applies to a student who is convicted and required to register as an adult, if the student committed rape or any other sex offense under Article 7A of G.S. Chapter 14 or any offense involving a victim who was younger than sixteen when the offense occurred.) Before ordering expulsion the school board must consider whether there is an alternative program for educational services that the school system might offer. If the board allows the juvenile to continue to attend school on school property, school personnel must supervise the student at all times.

The act makes many other changes in G.S. Chapter 14, and some of them affect juveniles who are required to register. A new section, G.S. 14-208.18, makes it a Class H felony for a juvenile who is required to register (as well as certain persons who are required to register as adults) to knowingly be

1. on the premises of a place intended primarily for use by minors or the care or supervision of minors, such as schools, children's museums, child care centers, nurseries, and playgrounds;
2. within 300 feet of a location of the type described in the preceding paragraph, when it is on premises that are not intended primarily for such use by or care or supervision of minors, such as malls, shopping centers, or other property open to the general public; or
3. at any place where minors gather for regularly scheduled educational, recreational, or social programs.

Two exceptions to these restrictions affect juveniles. First, a person who is eligible to attend public school may be on school property if permitted to be there by the local board of education. Second, a juvenile who is required to register may be at an otherwise proscribed location to receive medical treatment or mental health services, but only if the juvenile is under the direct supervision of an employee of the treating institution at all times.

The act shortens from ten days to three business days the time within which a court counselor must (1) notify the sheriff of a juvenile's change of address, as required by G.S. 14-208.27, and (2) return to the sheriff the periodic registration verification form required by G.S. 14-208.28(2).

Finally, the act directs the state Department of Justice to study federal guidelines issued pursuant to the Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006—P.L. 109-248) and report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by December 1, 2008, about its assessment of and any recommendations regarding the state's compliance with the guidelines.¹

Street Gang Prevention and Intervention Act

One of two acts addressing gang issues, S.L. 2008-56 (S 1358) amends G.S. 143B-543 and 143B-549, which deal with local Juvenile Crime Prevention Councils, to

- express the General Assembly's intent to provide community-based gang prevention strategies and programs;
- require local councils to include in their annual assessments the needs of juveniles who are or are at risk of being associated with gangs or gang activity, and local resources to address those needs; and
- require each council to develop strategies to intervene in and respond appropriately to the needs of gang-associated juveniles.

The act requires DJJDP and the Department of Public Instruction to report to specified legislative committees by December 1, 2008, on

1. the prevalence of school violence and gang activity,
2. the use of DJJDP local council programs for out-of-school suspension alternative learning programs for gang-associated students,
3. programs to educate school personnel and parents about signs that a student may be involved or associated with a gang,

1. The U.S. Department of Justice's guidelines, issued in June 2008, are available online at www.ojp.usdoj.gov/smart/pdfs/final_sornaguidelines.pdf.

4. practices that have been successful in other states in reducing school violence and gang activity, and
5. recommendations for further coordination between the two departments to address issues related to the prevention of and intervention in youth gang activity.

The act requires the Department of Crime Control and Public Safety to report to specified legislative committees by December 1, 2008, on protocols and procedures for entering identifying information about juveniles in the GangNet database system.² The report must include any recognized standards for continuing the listing of juveniles in the database, any benefits of maintaining juvenile listings for extended periods, and any recommendations about listing juveniles in GangNet.

The act requires the Governor's Crime Commission to develop criteria for allocating funds appropriated for gang prevention and intervention, including a 25 percent match requirement (half of which may be in-kind). The commission must report to specified legislative committees by April 15, 2009, on the grant award process, the grants awarded, and criteria for program evaluation.

Street Gang Suppression Act

The other act addressing gang issues, S.L. 2008-214 (H 274), relates primarily to adult offenders (including juveniles who are tried as adults). It amends various sections of G.S. Chapters 14 and 15A and adds new sections, to create new gang-related offenses, procedures, and penalties that are effective December 1, 2008. New Article 13A of G.S. Chapter 14 is the North Carolina Street Gang Suppression Act. Juveniles younger than age sixteen are specifically excluded from most of its provisions. A new statute, G.S. 14-50.18, makes it a Class F felony for a person to cause, encourage, solicit, or coerce a person under age sixteen to participate in criminal street gang activity. The act is discussed more fully in Chapter 6, "Criminal Law and Procedure."

Juvenile Crime Prevention Council Programs

Section 14.8 of S.L. 2008-107 requires the North Carolina Sentencing and Policy Advisory Commission to conduct a feasibility study for measuring the effectiveness of programs that receive Juvenile Crime Prevention Council

2. In North Carolina "GangNet is a state-wide web based repository for law enforcement intelligence information on individual gang members and the gangs they associate with that was designed for the purposes of tracking and sharing this information with participating criminal justice agencies." Governor's Crime Commission Criminal Gang Study 2008: Interpreting the Data and Dispelling Myths, March 2008. Available online at www.neighborsforasafercharlotte.org/documents/Gang%20Study.pdf.

(JCPC) grants. The commission is required to make an interim report to specified legislative committees by December 1, 2008, and to submit a final plan for measuring programs' effectiveness by May 1, 2009.

The section repeals G.S. 143B-519, which required DJJDP to report annually to the General Assembly on numerous matters, including the effectiveness of programs that receive JCPC funding. However, Section 16.1 of S.L. 2008-107 continues some of those reporting requirements, calling for the department to submit a list of JCPC grant recipients and some of the other information that the statute previously specified to the Joint Legislative Commission on Governmental Operations and the Appropriations Committees of the Senate and House of Representatives by October 1 each year. The Fiscal Research Division of the General Assembly also must receive this report.

Section 16.3 of S.L. 2008-107 requires the DJJDP, the North Carolina Juvenile Services Association, and the Community Alternatives for Youth, in consultation with the Fiscal Research Division of the General Assembly, to develop and propose a revised county allocation formula for JCPCs. The department is required to report the recommendations to specified legislative committees by December 1, 2008.

Access to Juvenile Records

An involuntary mental commitment, whether inpatient or outpatient, is a bar to a person's ability to purchase, possess, or transfer a firearm. S.L. 2008-210 (S 2081) establishes in G.S. Chapter 122C a procedure by which a person may petition the district court for removal of that bar. The petitioner has the burden of proving by a preponderance of the evidence that he or she no longer suffers from the condition that resulted in the commitment and is no longer a danger to self or others. Notice of the hearing must be given to the district attorney, who is required to "present any and all evidence to the contrary." For purposes of the hearing, the district attorney may access and use, among other things, any juvenile records of the applicant. The act is effective December 1, 2008.

Child Welfare and Safety

Foster Care and Adoption Assistance Payments

Effective January 1, 2009, Section 10.7 of S.L. 2008-107 increases the maximum per child monthly rates for state participation in the foster care assistance program and for the state adoption assistance program as follows:

- for children up to age 5, from \$390 to \$475;
- for children ages 6 through 12, from \$440 to \$581; and
- for children ages 13 through 18, from \$490 to \$634.

The act did not amend the rates for state participation in HIV foster care and HIV adoption assistance.

Studying Smoking in Foster Homes

Section 2.12 of S.L. 2008-181 (H 2431) authorizes the Legislative Research Commission to study the impact of smoking prohibitions in foster care homes, including whether the prohibitions affect the availability of foster care homes.

Fees and Costs in Juvenile Cases

S.L. 2008-193 (S 2056) rewrites G.S. 7A-317, effective July 1, 2008, to provide that counties (and municipalities) are not required to advance the following costs in civil actions:

- the facilities fee;
- the General Court of Justice fee;
- miscellaneous fees listed in G.S. 7A-308 in child support actions, child abuse actions, and other actions filed by the department of social services; or
- the civil process fees listed in G.S. 7A-311.

Reporting by Hospitals and Doctors

In addition to the duty to report suspected child abuse, neglect, dependency, and death by maltreatment to social services under G.S. 7B-301, hospitals and physicians have a duty under G.S. 90-21.20 to report specified types of injury or illness to a law enforcement agency. S.L. 2008-179 (H 2338) rewrites that section to add to the reporting requirement cases involving recurrent illness of or serious physical injury to a child younger than eighteen where, in the doctor's professional judgment, the illness or injury appears to be the result of nonaccidental trauma. The act is effective December 1, 2008.

Criminal Child Abuse

For offenses committed on or after December 1, 2008, S.L. 2008-191 (S 1860) amends G.S. 14-318.2 to make misdemeanor child abuse a Class A1 (instead of Class 1) misdemeanor. It also amends G.S. 14-318.4, the felony child abuse statute, so that it applies to a parent or other person providing care to or supervision of a child younger than sixteen, whose willful act or grossly negligent omission in the care of the child shows a reckless disregard for human life. If the act or omission results in serious bodily injury to the child, the offense is a Class E felony. If it results in serious physical injury to the child, it is a Class H felony. The act includes definitions of "serious bodily injury" and "serious physical injury." Three other acts make numerous changes in criminal sex offense, pornography,

and sex offender registration statutes: S.L. 2008-220 (S 1736); S.L. 2008-218 (S 132); and S.L. 2008-117 (H 933), discussed above in relation to delinquent juveniles. In addition, Section 39.1 of S.L. 2008-181 creates the Joint Legislative Study Committee on Civil Commitment of Sexual Predators Who Are Determined to be Incapable of Proceeding to Trial. These acts are discussed in Chapter 6, "Criminal Law and Procedure."

Information about Minors as Park or Recreation Participants

S.L. 2008-126 (S 212) adds a new G.S. 132-1.12, providing that a "public record" does not include specified information about any minor participant in a local government park or recreation program. It applies to the minor's name, address, age, date of birth, telephone number, parents' or guardian's name or address, and any other identifying information in a program's records. The act does not make the information confidential, but exempts it from being accessible as a public record. Information that remains accessible includes the county, municipality, and zip code of each participating minor's residence.

Transporting Children in Open Truck Bed

S.L. 2008-216 (H 2340) rewrites G.S. 20-135.2B, which makes it an infraction to allow children under twelve to ride in the back of pickup trucks or open vehicle beds, to (1) apply the prohibition to children under the age of sixteen, (2) delete the exemption for any county with no incorporated area and a population under 3,500, and (3) provide that violation of the section is not negligence per se. The act is effective October 1, 2008.

Other

Health Choice

North Carolina Health Choice for Children provides low cost medical insurance for children whose family income is less than 200 percent of the federal poverty level—children who may not be eligible for Medicaid. The General Assembly continued funding for the program and allocated additional funds for program growth of up to 6 percent. Under Section 10.14 of S.L. 2008-107, the Department of Health and Human Services (DHHS) may increase enrollment by up to 8.73 percent if Congress makes sufficient funds available.

Section 10.12 of S.L. 2008-107 rewrites Section 10.48 of S.L. 2007-323 (H 1473) to establish NC Kids' Care, an expansion of the children's health insurance program to cover children in families whose income is between 200 percent and 250 percent of the federal poverty level. The expansion will not be implemented, however, until July 1, 2009, or Congress's

reauthorization of the State Children's Health Insurance Program with funding sufficient to support both the NC Health Choice program and NC Kids' Care.

Child Care Funds

Section 10.6 of S.L. 2008-107 amends Section 10.17 of S.L. 2007-323 to increase from 15 percent to 20 percent the required match local purchasing agencies must provide when they receive reallocated funds beyond their initial allocations. No match is required if the funds are reallocated because of a disaster. The act requires DHHS to evaluate the match requirement, its effects on agencies, and whether it should be adjusted. The department must report to specified legislative committees by April 1, 2009.

Autism Awareness

According to the TEACCH Autism Program, a Division of the UNC Chapel Hill Department of Psychiatry, "[a]utism is one of the most common developmental disabilities in the world, affecting approximately 1 out of every 166 children."³ Some of those children, who have special needs because of their autism, are children and youth in the state's foster care, child welfare, juvenile justice, and criminal justice systems.

Based on recommendations of the Joint Study Committee on Autism Spectrum Disorder and Public Safety, the General Assembly enacted S.L. 2008-83 (H 2523), which directs several university, governmental, and other entities to

1. develop a video for people involved in government and public service to increase their awareness of autism;
2. study groups in the judicial system to determine their training needs with respect to legal issues related to autism and appropriate responses to persons with autism; and
3. develop a proposal by October 1, 2008, for the most appropriate way to deliver that training.

Coordinating Councils for Young Children with Disabilities

S.L. 2008-85 (H 2127) repeals G.S. 143B-179.5A, which established regional interagency coordinating councils for children from birth to age five with disabilities and their families. The act does not affect the state coordinating council established by G.S. 143B-179.5.

3. Information about TEACCH is available online at www.psychiatry.unc.edu/teacch/welcome.html.

Educational Services in Private Facility

S.L. 2008-174 (H 2306) requires the State Board of Education and DHHS, jointly, to determine which public agency is responsible for providing special education and related services to children with disabilities who are placed in private psychiatric residential treatment facilities by a public agency other than the local educational agency. The board and DHHS are required to report the determination and any related recommendations by January 1, 2009, to the Joint Legislative Education Oversight Committee and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

Compulsory School Attendance Age

Section 5.4 of S.L. 2008-181 (H 2431) authorizes the Joint Legislative Education Oversight Committee, in coordination with the Department of Public Instruction, to study the effects of raising the compulsory school attendance age from sixteen to seventeen or eighteen.

Selected Appropriations

In Section 10.17 of S.L. 2008-107, appropriations for 2008-09 of funds from the Temporary Assistance for Needy Families (TANF) Block Grant included the following:

- \$2,049,642 to the Division of Social Services in DHHS, to expand after-school programs and services by awarding grants to community-based programs that demonstrate the ability to reach children at risk of teen pregnancy, school dropout, and gang participation. The appropriation also may be used for one position in the Division of Social Services to coordinate at-risk after-school programs. Another appropriation to the division of \$500,000 is for expansion of after-school programs for at-risk children attending middle school.
- \$14,452,391 to the Division of Social Services in DHHS, to be allocated to county departments of social services for child welfare improvements.
- \$3 million to the Special Children Adoption Fund in DHHS.
- \$1.2 million to DHHS for implementation of North Carolina Families Accessing Services through Technology (N.C. FAST).
- \$2 million to DHHS for grants to Boys and Girls Clubs.
- \$600,000 to the Division of Social Services to implement a Citizens Schools Program, a three-year urban/rural dropout prevention pilot program in the Durham and Vance county public school systems. North Carolina State University is required to evaluate the program and report the results by January 1, 2009,

to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

From the Social Services Block Grant, for 2008–09, Section 10.17 of S.L. 2008-107 appropriates the following:

- \$2,649,642 for DJJDP to support the existing Support Our Students program and to expand the program statewide,
- \$2,738,827 to the Division of Social Services to support specified child welfare training projects,
- \$838,000 to DHHS to purchase services at maternity homes in the state,
- \$2,372,587 for allocation to the State Private Child-Caring Agencies Fund, and
- \$290,000 to be used for the child care component of pediatric day treatment centers for medically fragile children.

Bill That Did Not Pass

Adoption Information

Two bills recommended by the House Select Committee on Adoptee Birth Certificates would have made changes with respect to confidential intermediary services relating to adoption information. H 2185 would have rewritten G.S. 48-9-104 to (1) require adoption agencies that act as confidential intermediaries to report specified information to DHHS; and (2) require DHHS to maintain that information, determine the numbers of agencies in each county that provide and do not provide confidential intermediary services, and report that information to the Legislative Study Commission on Children and Youth annually by July 31. H 2186 would have expanded both the list of individuals with access to confidential intermediary services and the kinds of information agencies providing those services could share.

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